

**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 343

Held at :

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

Tuesday, January 27, 2009

Tenue à:

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

Mardi, le 27 janvier 2009

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
M ^e Pierre Dumais	Commission Counsel
Ms. Suzanne Sinnamon	
Mr. John E. Callaghan	Cornwall Community Police
Mr. Mark Crane	Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Leslie McIntosh	Attorney General for Ontario
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
MR. James Stewart	

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1 --- Upon commencing at 9:35 a.m./

2 L'audience débute à 9h35

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you. Good morning,
10 all.

11 Mr. Engelmann.

12 **MR. ENGELMANN:** Good morning, sir.

13 I believe at the end of the day yesterday
14 there was comment about the submissions that the Cornwall
15 Police Service wish to make with respect to their oral
16 argument.

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

18 **MR. ENGELMANN:** I understand this is a brief
19 submission. So Mr. Crane is here and would like to present
20 it this morning ---

21 **THE COMMISSIONER:** Thank you.

22 **MR. ENGELMANN:** --- just before we start our
23 witness.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Crane.

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CRANE:

2 MR. CRANE: Good morning, sir.

3 THE COMMISSIONER: Good morning, sir.

4 MR. CRANE: I'm here to speak with you
5 briefly to make submissions, sir, in regards to the amount
6 of time that has been allocated to our client with regards
7 to the Phase I oral submission phase.

8 THE COMMISSIONER: Right.

9 MR. CRANE: As you'll likely recall, sir,
10 the Cornwall Police Service has been allocated two hours,
11 and in our respectful view, that is an insufficient amount
12 of time given how the evidence has unfolded at this
13 Inquiry.

14 By way of background, Mr. Commissioner, we
15 wrote to Commission counsel and CC'd all parties on
16 November 13th last year and said on our position that some
17 institutions have been of greater focus than others, that
18 there's been a great deal of focus on the Cornwall Police
19 Service and its members during the course of this Inquiry.
20 Procedural fairness would dictate that we cannot treat all
21 parties the same and that in light of such, we would
22 require one day or more to do a proper job during the Phase
23 I oral submission phase.

24 That, obviously, Mr. Commissioner, was not a
25 feasible request. That was followed up by further

1 correspondence on December 4th to Commission counsel setting
2 out -- reiterating our position, which was followed up on
3 December 8th formally. The Commission advised the parties
4 of the allocation of time to each party on December 8th of
5 last year which resulted in, again, two hours of time to
6 our client, the Diocese, the Children's Aid Society, the
7 Ontario Provincial Police, the Ministry of the Attorney
8 General and the Ministry of Corrections.

9 And then we followed this up, Mr.
10 Commissioner, by letter dated January 13th of this year,
11 seeking to make submissions before you, which is why I'm
12 here this morning.

13 Mr. Commissioner, the institutional response
14 of our client began on February 26th of last year and
15 continued uninterrupted in this hearing room until June
16 26th, which amounted to 49 volumes of hearing time. In
17 addition to this, the Commission later called Sergeant
18 White in October of last year.

19 And in further addition to this, you'll
20 recall that Angelo Towndale and Gordon Bryan, both former
21 members of the Cornwall Police Services Board, also
22 testified in part in relation to matters dealing with the
23 institutional response of the Cornwall police and its
24 Board.

25 With this in mind, the institutional

1 response of our client has lasted in excess of 50 hearing
2 days and included 20 witnesses, in addition to an ODE from
3 former Constable Sebalj.

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

5 **MR. CRANE:** By comparison, Mr. Commissioner,
6 which may be the easiest form of assessing things, is the
7 Ministry of Corrections, their institutional response was
8 completed over a period of 25 hearing days and included 18
9 witnesses. The institutional response of the Diocese
10 spanned 23 hearing days and included 11 witnesses, which
11 included five hearing days of Mr. Leduc who, of course, has
12 been allocated 45 minutes of time, I believe.

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

14 **MR. CRANE:** The 23 days of hearing time of
15 the Diocese ---

16 **THE COMMISSIONER:** Yes.

17 **MR. CRANE:** --- included also the evidence
18 of Mr. Leduc who, of course, has been allocated ---

19 **THE COMMISSIONER:** Oh, 45 minutes in
20 submissions?

21 **MR. CRANE:** That's correct, in addition to
22 the two hours of the Diocese.

23 The institutional response of the Children's
24 Aid Society lasted 22 hearing days and involved nine
25 witnesses, and the institutional response of the Ontario

1 Provincial Police and the OPPA was completed over 29
2 hearing days and involved a total of 12 witnesses.

3 Finally, sir, I anticipate the institutional
4 response of the Ministry of the Attorney General will
5 involve 12 witnesses and may last over 20 hearing days.

6 In summary, there is no public institution
7 at this Inquiry that has withstood, in my respectful view,
8 the scrutiny of the CPS either in the number of witnesses
9 who have testified here or in the length of the
10 institutional response, and although we intend our oral
11 submissions to be as economical as possible, we would
12 request an additional amount of time, something in the
13 nature of what was allocated collectively to the OPP and
14 the OPPA for institutional response.

15 And I should add that our request is not in
16 the vacuum of a zero-sum game. So I'm not here before you
17 to suggest that an hour should be allocated -- an
18 additional hour should be allocated to the Cornwall police
19 at the loss of another party but rather an additional hour
20 be found during that week.

21 I would simply conclude, sir, that I think
22 that procedural fairness is owed to this institution and
23 its clients and former members in order to provide a
24 sufficient response during the oral phase.

25 Subject to any questions, those are my

1 submissions.

2 **THE COMMISSIONER:** Thank you.

3 Anybody wish to comment on that matter?

4 Anybody wishing to donate some time?

5 Mr. Engelmann?

6 **MR. ENGELMANN:** Sir, I have no comments at
7 this time. As you know, though, we won't know until the
8 12th of February if all of the parties are in fact using
9 their time. That was the date they were given to provide
10 us with an indication that they were in fact making the
11 oral submissions and, as well, if they were going to be
12 using their full period of time.

13 **THE COMMISSIONER:** All right.

14 I'll address this at around two o'clock this
15 afternoon then. Thank you.

16 Let's go.

17 **MR. ENGELMANN:** Mr. Commissioner, the next
18 witness for the Commission is Mr. James Stewart who is
19 presently coming forward. If the witness could be sworn,
20 sir?

21 **THE COMMISSIONER:** Thank you.

22 Good morning, sir.

23 **JAMES STEWART, Sworn/Assermenté:**

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

25 **MR. STEWART:** Good morning.

1 **THE COMMISSIONER:** Welcome aboard. You have
2 some fresh water and glasses, I hope that are not cracked.

3 I'd ask you to speak into the microphone
4 because the worldwide web is listening.

5 You'll be provided with documents either in
6 hardcopy or on the screen. So use whichever which you're
7 more comfortable with.

8 More importantly, if at any time you have
9 any problems or you need a break, let me know.

10 **MR. STEWART:** Thank you.

11 **THE COMMISSIONER:** Thank you.

12 Mr. Engelmann.

13 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
14 **ENGELMANN:**

15 **MR. ENGELMANN:** Good morning, Mr. Stewart.

16 **MR. STEWART:** Good morning.

17 **MR. ENGELMANN:** Sir, if you're not hearing
18 me well, you also have a speaker. That's the small --
19 right in front of you -- the small object right in front of
20 you and you can turn that up if it's not sufficiently
21 clear.

22 I'd like to start with a copy of Mr.
23 Stewart's CV. It is Document Number 20033 -- sorry,
24 200341.

25 **THE COMMISSIONER:** Thank you.

1 Exhibit 3313 is the Curriculum Vitae of Mr.
2 James Stewart.

3 **--- EXHIBIT NO./PIÈCE NO. P-3313:**

4 (200341) - Curriculum Vitae of James Stewart

5 **MR. ENGELMANN:** Mr. Stewart, this is
6 something you have had a chance to review and can confirm
7 its accuracy?

8 **MR. STEWART:** Yes.

9 **MR. ENGELMANN:** Sir, I understand you've
10 been called to the Bar of Ontario in approximately 1973?

11 **MR. STEWART:** True.

12 **MR. ENGELMANN:** And that you joined the
13 Crown Attorney's Office in Sudbury that year?

14 **MR. STEWART:** I did.

15 **MR. ENGELMANN:** And I understand you worked
16 there as an Assistant Crown Attorney for approximately
17 three years?

18 **MR. STEWART:** Yes.

19 **MR. ENGELMANN:** And, sir, I understand that
20 we've got you named as you were transferred to the Ottawa
21 Crown Attorney's Office in July of 1976 as an assistant
22 Crown attorney?

23 **MR. STEWART:** That's correct.

24 **MR. ENGELMANN:** And you worked there for
25 approximately 15 years; is that right, until about 1991?

1 **MR. STEWART:** No, I actually worked -- I was
2 at the Ottawa Crown's office in fact, off and on until
3 1999.

4 **MR. ENGELMANN:** All right. Well, you did
5 get some appointments, at least on a short-term basis ---

6 **MR. STEWART:** Yes.

7 **MR. ENGELMANN:** --- during some of that
8 time? So if we could just go through a few of those.

9 **MR. STEWART:** Sure.

10 **MR. ENGELMANN:** You were appointed as a
11 general counsel in 1991.

12 **MR. STEWART:** Yes.

13 **MR. ENGELMANN:** You did -- you were the
14 Acting Crown Attorney for Ottawa-Carleton in '92-'93.

15 **MR. STEWART:** Correct.

16 **MR. ENGELMANN:** Then I understand you acted
17 as counsel on a coroner's inquest in Brockville ---

18 **MR. STEWART:** Yes.

19 **MR. ENGELMANN:** --- 'til about April of '94?

20 **MR. STEWART:** Yes, for six months.

21 **MR. ENGELMANN:** And, sir, from September of
22 '94 until December of '96 you were the Senior Crown Counsel
23 for the Special Prosecutions Branch ---

24 **MR. STEWART:** Correct.

25 **MR. ENGELMANN:** --- in Toronto?

1 **MR. STEWART:** Yes.

2 **MR. ENGELMANN:** And, sir, does that involve
3 the prosecution of people associated to justice issues?

4 **MR. STEWART:** It's the administration of
5 justice whether are lawyers, police -- there's a judge
6 thrown in.

7 **MR. ENGELMANN:** All right. Could include
8 coroners as well on occasion?

9 **MR. STEWART:** During my time there we didn't
10 deal with coroners.

11 **MR. ENGELMANN:** All right.

12 I understand, sir, that then from '97 to '99
13 you were back in Ottawa working as a Crown Prosecutor?

14 **MR. STEWART:** Correct.

15 **MR. ENGELMANN:** And that you were appointed
16 the Director of Crown Operations for Eastern Ontario in
17 January of 1999?

18 **MR. STEWART:** Yes, late January.

19 **MR. ENGELMANN:** And, sir, is that still your
20 substantive position?

21 **MR. STEWART:** Yes.

22 **MR. ENGELMANN:** And I understand that since
23 approximately May of last year, you've been seconded to
24 Toronto as the Director of Major Cases?

25 **MR. STEWART:** Yes.

1 **MR. ENGELMANN:** All right. And can you,
2 sir, give us just an example of your responsibilities in
3 your substantive position as the Director of Crown
4 Operations?

5 **MR. STEWART:** For the East Region?

6 **MR. ENGELMANN:** Yes.

7 **MR. STEWART:** Certainly. There's 10
8 officers in the East. The main office is Ottawa in terms
9 of population and would have approximately half the number
10 of Crowns. There's nine other offices and they vary in
11 size from two Crowns to about -- well, to Cornwall, quite
12 frankly. And it reaches -- when you're driving on the 401
13 and you reach Trenton you're starting to the East Region,
14 and it goes all the way along the river to Quebec and then
15 comes back through the Ottawa River up past Pembroke. So
16 it's a fairly large geographical area.

17 **MR. ENGELMANN:** Approximately how many
18 Crowns would you be responsible for?

19 **MR. STEWART:** A little over 90.

20 **MR. ENGELMANN:** And is the job mainly
21 administrative or managerial in nature? You're not doing
22 any more trial work?

23 **MR. STEWART:** Over the time I've done the
24 odd special prosecution, sort of narrow work for something
25 in Toronto. Maybe there's a conflict. Prosecuted a lawyer

1 down there; it was a conflict situation.

2 MR. ENGELMANN: And what about mentoring or
3 supervising prosecutions of Crowns reporting to you?

4 MR. STEWART: Well, certainly I'm consulted
5 -- I'm not just consulted in the East but I've been
6 consulted on cases all over the province in regards to
7 that. That's sort of an ongoing thing.

8 MR. ENGELMANN: All right.

9 And, sir, in terms of your own trial
10 experience, I understand you've had extensive experience
11 prosecuting at all levels of trial courts in Ontario?

12 MR. STEWART: That's correct.

13 MR. ENGELMANN: And that would include a
14 number of serious prosecutions?

15 MR. STEWART: Yes.

16 MR. ENGELMANN: And extensive work with
17 juries?

18 MR. STEWART: Yes.

19 MR. ENGELMANN: Sir ---

20 MR. STEWART: If I can just say, times have
21 changed also in regards to jury work. When I started we
22 had many, many more juries and so younger counsel now when
23 they're on jury trials are mostly major, major cases,
24 whereas for years -- and I'm sure there's a couple of
25 senior counsel in the room would remember when we had jury

1 work for cases that weren't as serious.

2 MR. ENGELMANN: And, sir, some of those
3 serious prosecutions or major cases you've been involved
4 in, I know there's extensive homicides, murder cases.
5 Would there also be sexual assault cases?

6 MR. STEWART: I've prosecuted some sexual
7 assault cases, yes.

8 MR. ENGELMANN: What about sexual assault
9 cases where the victims are children or youth?

10 MR. STEWART: No. I was thinking about
11 that. I might have had one or two cases of that nature,
12 but I -- most of mine were -- I was dealing with the sort
13 of high-end violent cases.

14 MR. ENGELMANN: All right. And what about
15 historical reporting, where an adult is coming forward and
16 reporting abuse as a child?

17 MR. STEWART: For trial work, very rare.

18 MR. ENGELMANN: And, sir, with respect to
19 experience or training, I understand that you've been
20 involved in an active way with respect to training of
21 Crowns?

22 MR. STEWART: Yes.

23 MR. ENGELMANN: And can you just give us a
24 sense as to the type of work you've done in that respect?

25 MR. STEWART: Certainly. I was a course

1 director for many, many years for young Crowns entering the
2 system -- probably 8 or 10 years. I was a director on a
3 homicide course and have lectured -- we have summer schools
4 for all different courses, and I -- countless times.

5 MR. ENGELMANN: All right. And that's
6 something that's been going on for many years now, the
7 summer school program?

8 MR. STEWART: Yes, yes.

9 MR. ENGELMANN: And you would have certainly
10 been involved in advocacy skills training and things of
11 that nature?

12 MR. STEWART: Yes.

13 MR. ENGELMANN: All right.

14 Sir, I want to then take you back to at or
15 about the time you were appointed as the Director of Crown
16 Operations for the East Region, and that would have been in
17 January of 1999; correct?

18 MR. STEWART: Yes.

19 MR. ENGELMANN: And I'm wondering if you had
20 any involvement in, or awareness of, Project Truth
21 investigations or prosecutions when you became the Director
22 of Crown Operations?

23 MR. STEWART: Just a very, very general -- I
24 mean, there was publicity about it and that would be it. I
25 had no professional involvement at all.

1 **MR. ENGELMANN:** All right. Were you
2 involved -- or were you aware of some of the challenges
3 that the OPP were having getting Crowns assigned at the
4 outset of Project Truth back in, say, early 1998?

5 **MR. STEWART:** I'm not sure what you mean by
6 "trouble".

7 **MR. ENGELMANN:** There were some significant
8 time gaps before Crowns were assigned to some of the
9 earliest prosecutions and Crowns were assigned from outside
10 region as well.

11 **MR. STEWART:** Well, by the time I was
12 appointed Director there were a number of Crowns on board.

13 **MR. ENGELMANN:** That's correct.

14 **MR. STEWART:** So I'm not sure that I was
15 aware of any history of any problem.

16 **MR. ENGELMANN:** All right.

17 And, sir, shortly after you came on board,
18 would you have had some discussions with a Detective
19 Inspector Pat Hall?

20 **MR. STEWART:** I can't remember the first
21 time I talked to him but certainly I -- there would have
22 been periodic discussions with him and I -- a lot of this,
23 because it's so long ago, I don't want to get into
24 revisionist history and start filling in blanks that I
25 can't, but I'm sure that I would have talked to Bob

1 Pelletier when he was leaving as the Director in regards to
2 -- there were three or four matters on the plate to keep an
3 eye on, and I'm sure Project Truth was one of them.

4 MR. ENGELMANN: Right. And, sir, were you
5 familiar with or had you worked with Detective Inspector
6 Hall ---

7 MR. STEWART: No.

8 MR. ENGELMANN: --- before this?

9 MR. STEWART: No.

10 MR. ENGELMANN: Did you have any
11 involvement, to your knowledge, with the first case
12 manager, Detective Inspector Smith?

13 MR. STEWART: I seem to know him but I can't
14 remember that -- any specific case that I dealt with him.

15 MR. ENGELMANN: All right.

16 MR. STEWART: I could be -- stand to be
17 corrected on that.

18 MR. ENGELMANN: All right.

19 Well, it wouldn't -- you would expect that
20 you would have at least had some conversations or telephone
21 calls from Detective Inspector Hall shortly after you
22 started as the Director of Crown Operations for the East
23 Region?

24 MR. STEWART: I don't remember that.

25 MR. ENGELMANN: All right.

1 **MR. STEWART:** But I'm sure that we had
2 contact at a certain point.

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

4 Well, let's take you to a meeting that
5 perhaps you have some recollection of, sir, and that is --
6 it's Exhibit 2750. Counsel, Document Number 727751.

7 I'm going to refer you to some of Detective
8 Inspector Hall's notes. He has some notes of telephone
9 calls with you. I just want to take you to a particular
10 meeting, if I may, that he references.

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

12 **MR. ENGELMANN:** The meeting is set out on
13 Bates page -- the Bates number is at the top left, sir, and
14 the last three digits are 098. Madam Clerk, the Bates page
15 number is 7110098.

16 The reference is right at the bottom of the
17 page, Mr. Stewart, and I'm just going to ask the Clerk to
18 blow it up on the screen:

19 "Attended office of Regional Crown,
20 Ottawa."

21 Sorry:

22 "Regional Crown Attorney, James Stewart.
23 Met with Bob Pelletier and Stewart."

24 If we flip over:

25 "Disclosure briefs requested by

1 Neville. Given to Pelletier. Meeting
2 with Stewart and Pelletier on Project
3 Truth. Bernard Sauvé and Jean-Luc
4 Leblanc cases to be prosecuted by Curt
5 Flanagan's office. Contact him next
6 week as he is sick today. A Brian
7 Dufour is to be done by Flanagan's
8 office. Final point to be reviewed by
9 Special Prosecutions Branch, as well as
10 Ron Leroux and conspiracy to obstruct
11 justice. Stewart to call Toronto and
12 request I go to Toronto and explain
13 investigations to Director of Special
14 Prosecutions Unit."

15 This appears to be the first meeting at
16 least referenced in the notes and this would indicate, as
17 you have, sir, that there would be some transition with Mr.
18 Pelletier, who was apparently at this meeting and Detective
19 Inspector Hall. So this appears to be one of the first
20 meetings you have on this file.

21 So in any event, sir, shortly after you
22 start working as the Director for the East Region, you
23 would have had some involvement in Project Truth
24 prosecutions. Is that fair?

25 **MR. STEWART:** Yes, I take no issue with

1 that.

2 MR. ENGELMANN: All right.

3 Do you have any recollection of this initial
4 meeting sir?

5 MR. STEWART: I do not.

6 MR. ENGELMANN: All right.

7 And decisions about Curt Flanagan's office
8 and that would have been your Brockville office, I believe?

9 MR. STEWART: Correct.

10 MR. ENGELMANN: Decisions on his being
11 involved or assigned prosecutions; that would have been
12 your decision at the time?

13 MR. STEWART: Yes. I may have talked to Mr.
14 Pelletier about that in regards to history, but yes.

15 MR. ENGELMANN: Okay. And at that point in
16 time, Mr. Pelletier, was he going back to L'Orignal,
17 Hawkesbury?

18 MR. STEWART: Correct.

19 MR. ENGELMANN: And you were assuming the
20 responsibilities he'd been acting?

21 MR. STEWART: Yes. Yes.

22 MR. ENGELMANN: And there's a reference to
23 going to Toronto to explain investigations to the Director
24 of Special Prosecutions. At that point in time, that was
25 Shelley Hallett's home base, if I can call it that?

1 **MR. STEWART:** Yes, I think John Corelli may
2 have been the Director at that point.

3 **MR. ENGELMANN:** Right.

4 **MR. STEWART:** And that's the -- I had worked
5 there for two years, sir.

6 **MR. ENGELMANN:** All right. And it appears
7 that you're asking Detective Inspector Hall to go down and
8 have a meeting with him. Would that have been with respect
9 to resource issues as well, sir?

10 **MR. STEWART:** It might -- and again I'm
11 concerned about revision as history, but probably would it
12 be to deal with Leduc because Leduc was a lawyer. Special
13 Prosecutions prosecutes lawyers and policemen.

14 **MR. ENGELMANN:** Yes, but the Leduc matter
15 had been assigned to Ms. Hallett the previous year.

16 **MR. STEWART:** Yeah.

17 **MR. ENGELMANN:** In the summer of 1998, and
18 you would have been aware of that and briefed on that?

19 **MR. STEWART:** I would have been aware of it.

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

21 We've heard from Inspector Hall that he
22 attended a meeting in Toronto on the 22nd of March with Mr.
23 Corelli, yourself, and he thought that Mr. Pelletier may
24 have been there as well. Do you recall attending a meeting
25 shortly after this in Toronto with these individuals?

1 **MR. STEWART:** As I sit here today, I don't.

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

3 Do you recall, either at that meeting or
4 shortly thereafter, that Shelley Hallett was assigned to
5 review outstanding investigative briefs and provide
6 opinions on them?

7 **MR. STEWART:** Well, on reviewing the
8 material, it would appear that's what happened.

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

10 And I understand that over the course of
11 1999 and into 2000, you were receiving some of the police
12 or Crown briefs on various Project Truth investigations and
13 then assigning them to other Crowns for review?

14 **MR. STEWART:** Yes, I've seen some letters in
15 the files where I've signed the letter saying could you
16 take care of this file or that one.

17 **MR. ENGELMANN:** Yes. You didn't take on any
18 of that work personally?

19 **MR. STEWART:** I did not.

20 **MR. ENGELMANN:** You would have just assigned
21 it as it came in?

22 **MR. STEWART:** Yes.

23 **MR. ENGELMANN:** So if Detective Inspector
24 Hall brought in the Brian Dufour case, you would have then
25 made a decision as to which Crown ---

1 MR. STEWART: Yes.

2 MR. ENGELMANN: --- would then do the work?

3 MR. STEWART: Yes.

4 MR. ENGELMANN: And provide the opinion.

5 All right.

6 And I understand from time to time, there
7 would be follow-up from Detective Inspector Hall with you
8 as to the progress of work on briefs, and I just want to
9 take you to a couple of those, if I may?

10 MR. STEWART: Certainly.

11 MR. ENGELMANN: If we could look at Exhibit
12 2752. Counsel, the Document Number is 727754.

13 This is just to give you a flavour, sir, of
14 some of the context.

15 It is a very small desk there, so we're
16 going to try to move binders if we can from time to time.

17 So the Exhibit Number is 2752. The Bates
18 page, sir, has a 353, the last three digits on the left.
19 Madam Clerk, the number for the screen 7110353.

20 It might be easier, sir, on the screen. And
21 the reference we're looking for is about the middle of the
22 page. There's a reference that says -- and this is
23 December 23rd, 1999. So this is almost a year into it for
24 you, sir, with respect to your job.

25 "Call to Jim Stewart on Crowns for

1 cases. Suggested Godin. Review Kevin
2 Maloney and Brian Dufour. Request I
3 call him first week of January 2000 on
4 same."

5 Sir, you may recall Alain Godin was down
6 from the North Region prosecuting some of the cases where
7 Claude Marleau was the alleged victim and Maloney was a
8 priest here. And there were several other briefs involving
9 priests that had been given to Shelley Hallett, who at this
10 time was prosecuting the Leduc matter for you and also
11 prosecuting the Father MacDonald matter for you. All
12 right? Just to situate you.

13 **MR. STEWART:** Yeah.

14 **MR. ENGELMANN:** And it appears at least
15 initially you're suggesting to Hall that these two briefs
16 are going to be done by Alain Godin. And sir, we know just
17 by looking at the next Bates page, 0357, January 4th, 2000,
18 right at the bottom of the page:

19 "Call to Jim Stewart's office; advised
20 ..."

21 There's a -- I can't read a couple of words.

22 --

23 "... advised him regarding Malcolm
24 MacDonald."

25 And Malcolm MacDonald was a case that Miss

1 Hallett was looking at for you, reviewing the brief.

2 "He will call Hallett on same to review
3 extra briefs."

4 And then if we go forward one more -- well,
5 to Bates page 0361, right at the bottom:

6 "13:00: call from Shelley Hallett, was
7 talking to Jim Stewart. Will do review
8 of Kevin Maloney and Brian Dufour
9 briefs. Will try and have all the
10 other briefs done by end of January
11 2000."

12 So it appears that initially, you're
13 assigning or thinking of assigning Alain Godin. You decide
14 to assign Shelley Hallett.

15 Do you recall your reasons why you might
16 have assigned these additional briefs to Ms. Hallett?

17 **MR. STEWART:** I do not.

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

19 You would have been aware of all of the work
20 she was already doing for you, sir; the prosecutions of
21 MacDonald and Leduc and the other outstanding briefs she
22 would have had, I presume?

23 **THE COMMISSIONER:** Mr. Carroll.

24 **MR. CARROLL:** Just a moment.

25 **(OFF RECORD DISCUSSION/DISCUSSION HORS ENREGISTREMENT)**

1 **MR. ENGELMANN:** Sir, Mr. Carroll has
2 reminded me that Mr. Malcolm MacDonald, who at the time was
3 a brief that Shelley Hallett was carrying would have died
4 at or about this time. So when we see the reference on
5 Bates page 357, "Advised him regarding Malcolm MacDonald,"
6 just to refresh your memory, if I may, it would have been
7 presumably to inform you that he was deceased and that may
8 have sparked your decision that Hallett do these extra
9 briefs. I'm not sure.

10 **MR. STEWART:** I don't know. I ---

11 **MR. ENGELMANN:** You can't help us?

12 **MR. STEWART:** I have no recollection.

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

14 Did you have some sense, sir, at this point
15 in time, this is early 2000 -- late '99 or early 2000 --
16 that there was any concern by Detective Inspector Hall
17 about the length of time it was taking for some of these
18 briefs to be reviewed and opinions given?

19 **MR. STEWART:** I think there's a document
20 that somewhere I saw that was -- she was assigned them in
21 the summer of '99.

22 **MR. ENGELMANN:** She was assigned some of
23 these briefs on September 22nd of 1999.

24 **MR. STEWART:** Yes, and this is three months
25 later?

1 MR. ENGELMANN: Yes.

2 MR. STEWART: I wouldn't be that concerned.

3 MR. ENGELMANN: All right.

4 I think later on we'll get to some documents
5 where there's some concern being expressed, and I'll take
6 you there.

7 Well, in fact, let's go there now, if we
8 can. Exhibit 2756, it should be in the same binder, if you
9 want to go there, but the Bates page for the screen would
10 be 7110725 and just to put this in context again, sir --
11 counsel, Document Number 727759 -- these are Inspector
12 Hall's notes and there's a reference at the bottom of the
13 page.

14 MR. STEWART: What date is this now?

15 MR. ENGELMANN: It's 725 ---

16 MR. STEWART: No, but -- but ---

17 MR. ENGELMANN: Oh, date ---

18 MR. STEWART: Date.

19 MR. ENGELMANN: --- sorry, December 5th,
20 2000, okay. It's almost a year later.

21 It says:

22 "Call to Jim Stewart on Kilger.

23 Advised that Terry Cooper is in Cancun.

24 Back next week. Discussed Project

25 Truth legal opinions. Doesn't want to

1 push Hallett. No rush in his opinion."

2 All right?

3 So apparently you're indicating to Detective
4 Inspector Hall at this point that you don't believe there's
5 a rush on this and that you don't want to push her at that
6 time.

7 And just by way of context, sir, the Leduc
8 trial that she was handling, would that have been a major
9 prosecution, sir, Leduc?

10 **MR. STEWART:** A serious prosecution.

11 **MR. ENGELMANN:** Okay. That was starting in
12 mid-January of 2001.

13 **MR. STEWART:** I was going to deal with that.
14 Obviously if somebody's starting a trial and you have
15 something where you haven't laid charges yet, in terms of
16 priority, Leduc is the priority.

17 **MR. ENGELMANN:** All right.

18 Now, do you recall having a concern raised
19 prior to this time about the length of time it's taking?
20 Clearly, it's being raised here with you.

21 **MR. STEWART:** I -- I don't. As I sat here
22 now, I -- I don't remember.

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

24 Now, do you know if you would have spoken to
25 Ms. Hallett shortly after this about this or -- you're

1 saying there's no rush in your opinion at this time; you
2 know she's got the Leduc trial. Do you recall if you ever
3 would have spoken to her about the briefs and delay?

4 **MR. STEWART:** I don't remember that. I just
5 know being trial counsel, if you're preparing, you're
6 dealing with witnesses and victims and everybody else; that
7 if somebody wants to give a legal opinion on something that
8 hasn't -- the 11(b) clock hasn't started to tick or
9 whatever, the priority is Leduc.

10 **MR. ENGELMANN:** Well, Ms. Hallett, when she
11 testified here said you did not speak to her about the
12 briefs.

13 **MR. STEWART:** Yes, I don't remember.

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

15 Now, we've also heard from a superintendent
16 with the OPP by the name of Chris Lewis, and he indicated
17 he would have spoken to you about these outstanding briefs
18 about a week after this, about -- on or about December 13th
19 of 2000, and he indicated that he'd been facing some
20 questions from a number of fronts as to when the Project
21 Truth investigations would be concluded and he contacted
22 you about the delays in legal opinions. Do you have any
23 recollection of that, sir?

24 **MR. STEWART:** I have a vague recollection
25 that I talked to Chris Lewis -- I know him -- and I think

1 he was transferring out of the region also ---

2 MR. ENGELMANN: All right.

3 MR. STEWART: --- and he had been, sort of,
4 in charge of the OPP in that area and so I vaguely remember
5 talking to him.

6 MR. ENGELMANN: All right. When he spoke to
7 us, he said something about the OPP wishing to put out a
8 press release on the status of Project Truth and he
9 indicated you were opposed to the idea of a press release
10 due to the fact that there were upcoming trials slated for
11 early 2001. Do you have any recollection of that, sir?

12 MR. STEWART: I don't, but I'll put it this
13 way. That sounds like something I'd say ---

14 MR. ENGELMANN: All right.

15 MR. STEWART: --- because it -- the reality
16 is that there was a lot of publicity going back and forth
17 in a number of areas in regards to Project Truth. And if
18 you've got a trial just about to start or other trials, if
19 somebody decides they want to have a jury you don't want to
20 have anything that -- that can be pointed at that the
21 authorities in some way added to the publicity file.

22 MR. ENGELMANN: All right.

23 MR. STEWART: You just -- you stay mute ---

24 MR. ENGELMANN: All right.

25 MR. STEWART: --- as best you can.

1 Sometimes you can't, but it has to be something that's
2 overriding.

3 **MR. ENGELMANN:** Is that a particular concern
4 when you have a jury trial as well?

5 **MR. STEWART:** Well, it is. I -- I was
6 thinking about it in preparation to be here and I've
7 prosecuted four murder cases on the -- on the road because
8 of publicity and it's a problem for everybody. I mean,
9 this Inquiry can go on and people from Cornwall can come
10 down and hear it, but if it was going on in Toronto, they
11 couldn't.

12 **MR. ENGELMANN:** Yeah.

13 **MR. STEWART:** And murder cases where you
14 have to move them or cases like this with this kind of
15 attention from the community, you don't want to have
16 anything that the authorities have done to add to that, so
17 counsel can point to it and say, well, look what the Crown
18 did or the OPP did in regards to publicity. So you're
19 better off not saying anything at all.

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

21 I just -- I want to show you an email that
22 he would have written about this at or about that time.
23 Now, the email's not written to you, but it's about your
24 conversation. It's Exhibit 2911. The Document Number is
25 726686. Madam Clerk, it's one page. Perhaps we could put

1 it on the screen because it's only a paragraph that I wish
2 to show Mr. Stewart. The page -- the Bates page is
3 7101860. And the paragraph I'm interested in -- perhaps,
4 you could blow it up -- is the second full paragraph. All
5 right.

6 So he says:

7 "We've discussed and have been gearing
8 up for an eventual press conference to
9 announce the completion of our
10 investigation 'unless further victims
11 come forward'. The Regional Crown,
12 Jimmy Stewart, is against us doing a
13 press conference or release as it may
14 impact ongoing trials which are
15 scheduled right through until late
16 spring."

17 And you've got Leduc in January and I think
18 MacDonald in May. And it says:

19 "I like Jim Stewart, but I don't buy
20 it. In my view, the Crown is worried
21 that they'll look bad in this thing due
22 to the delays we've been put through.
23 I told Jim before Christmas that we'd
24 have internal discussions and get back
25 to him in the new year before doing a

1 major media release."

2 So, sir, he's suggesting to you that -- that
3 despite the fact that he likes you, that your concern's not
4 about upcoming trials but about the Crown possibly looking
5 bad. I just want your comment on that.

6 **MR. STEWART:** Certainly, I -- I wasn't privy
7 to this ---

8 **MR. ENGELMANN:** No.

9 **MR. STEWART:** --- this at all and I guess
10 we're into a mutual admiration society. I like Chris
11 Lewis. He's a good policeman and all the rest of it, but I
12 respectfully disagree.

13 I mean, when you're in the public eye and
14 when you're Crown Attorney, there's always going to be
15 things said about you whether you like it or not and
16 whether they're true or not, and the fact whether somebody
17 may think that we're going to look bad in regards to stuff.

18 That's part of the territory, but the
19 reality is you can't add gasoline to the fire in regards to
20 starting to do any kind of publicity during ongoing cases.
21 It's just not -- it's not done.

22 **MR. ENGELMANN:** So you stand by what you
23 said to him at the time, that the concern was the upcoming
24 trials?

25 **MR. STEWART:** Yes, I mean, when we look bad,

1 I mean, you know, I haven't looked at these websites or all
2 the rest of them, but I'm sure there's all kinds of things
3 that were said about them so one more thing doesn't make
4 any difference.

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

6 We've heard from a few witnesses at the
7 Inquiry about the issue of having a designated Crown;
8 whether a Crown or Crowns. Suggestion is there should have
9 been some designated or solely designated for Project Truth
10 right at the outset, and I realize that you weren't there
11 at the outset but it certainly was a going concern when you
12 arrived.

13 Do you recall any discussions or any thought
14 given to that consideration when you would have started as
15 the Director for Crown Operations?

16 **MR. STEWART:** Well, the -- the prosecutions
17 were up and running at that point-in-time, I mean, and the
18 main ones were being -- being dealt with, so I can't say
19 that. I probably -- and you've heard from people that were
20 there at the time, whether it's Justice Griffiths, Justice
21 Pelletier or whatever -- everything seemed to be
22 incremental from my understanding of this, but you've sat
23 here and you've listened to them. You know more -- way
24 more about it than I do, but I do know by the time I was
25 there, a good portion of it is up and running and so there

1 are other ones that we have capable Crowns dealing with,
2 you know, we can deal with at some point.

3 In hindsight, knowing what we know now,
4 that's something different, but you have -- you have to
5 look at the dynamics of what was going on at that point-in-
6 time.

7 **MR. ENGELMANN:** Well, you had -- you had two
8 prosecutors here from out of the region ---

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** --- Shelley Hallett and
11 Alain Godin. We know they were prosecuting a number of
12 cases ---

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

14 **MR. ENGELMANN:** --- and we know that with
15 Ms. Hallett, in any event, she had a number of briefs to
16 look at as well.

17 And we knew there -- we knew there was an
18 issue with the Cornwall office because of the ongoing
19 investigation involving allegations against the local Crown
20 in that office, so there were -- there were complications,
21 clearly, and I'm wondering, sir, about just other Crowns
22 being available or other forms of resources because we've
23 heard from Ms. Hallett that she often worked in her hotel
24 room.

25 I just don't know if you were aware of some

1 of those concerns at the time, and ---

2 **MR. STEWART:** Well, a number of things.
3 There's different parts to that.

4 One is the hotel room thing, and I'm not
5 sure I was totally aware of it. I -- I may have been, I
6 may not.

7 The reality is, and I've prosecuted all over
8 the province, it is a problem when you come in from the
9 outside. It's a problem, for example, getting any room in
10 a courthouse.

11 In Cornwall, as I understand it, when the
12 new courthouse was built, it was supposed to be two storeys
13 and it was stopped at one, so there was a premium in
14 regards to space at all points in time for their regular
15 users.

16 I've had situations -- I remember going into
17 North Bay to do a murder case and there was a really good
18 court manager named Nestor who assisted me by getting us a
19 room. It wasn't a big room, but it was a room. It's a
20 real problem when you come in from out of town.

21 In this situation, I would have thought and
22 maybe I assumed, that the Project Truth OPP had interviews
23 rooms in regards to dealing with -- with situations. The
24 other things -- and there was a conflict, as you said, in
25 regards to the Cornwall office.

1 Normally, when you have one of these cases -
2 - and we can deal with major cases later -- there's always
3 somebody on the ground, somebody from the local office.

4 The problem you have in a situation like
5 this is it's intermittent. It's not going to be that
6 you're going to be working full-time. For example, there
7 were a couple of files that went to Brockville that were
8 serious in regards to -- well, the Brockville office is
9 down the road, so to speak, in the geographical area and
10 there's very capable people dealing with that, at that
11 point-in-time.

12 So I have to say, by the time I came along,
13 things were up and running. Leduc was being dealt with,
14 MacDonald was being dealt with, and there were other --
15 Godin was dealing with a number of cases. So the logical
16 thing is, if you have people in the region that aren't
17 conflicted out, you have them assist also.

18 **MR. ENGELMANN:** And I realize, sir, it's a
19 while ago, 10 years or so, but any recollection of requests
20 from the OPP or others about having a designated or
21 dedicated Crown, just having someone available so these
22 officers could get opinions quickly, whether they were oral
23 or otherwise?

24 **MR. STEWART:** I -- I don't remember that, in
25 particular. I mean, if there was a particular question, I

1 may very well have fielded it to Curt Flanagan or to
2 somebody senior in the region.

3 **MR. ENGELMANN:** From time-to-time, Detective
4 Inspector Hall picked up the phone and called you when he
5 had concerns?

6 **MR. STEWART:** He didn't call on a -- I saw a
7 document, you could see it was -- you know, it might be
8 every six weeks, it might be a call now and again in
9 regards to things.

10 And as you go through the documents you'll
11 see, for example, there was an issue with Mr. Dunlop and
12 Mr. Cooper ---

13 **MR. ENGELMANN:** Yes.

14 **MR. STEWART:** --- got back to him on that,
15 and that type of thing.

16 **MR. ENGELMANN:** All right.

17 Well, after these Crowns were assigned, did
18 you retain any supervisory control over these files, these
19 files that were East Region files?

20 **MR. STEWART:** Well, I -- Mr. Godin would
21 call me, for example, if -- and keep me informed in regards
22 to what happened to the case or whether it was one we would
23 appeal.

24 Obviously, with Ms. Hallett, she sent me a
25 couple of letters. It was a tricky situation because of

1 the allegations against Mr. MacDonald. We had to be
2 careful in regards to me being in a conflict situation
3 because Mr. MacDonald worked directly for me.

4 **MR. ENGELMANN:** Right. Right.

5 **MR. STEWART:** All right?

6 **MR. ENGELMANN:** Fair enough. And so from
7 time-to-time, Hallett, Godin, Flanagan, people that were
8 assigned these files, would at least keep you in the loop?

9 **MR. STEWART:** Yes, but it wasn't very often.
10 I mean, I got maybe a couple of letters from Ms. Hallett;
11 you'd have them there.

12 **MR. ENGELMANN:** Yes.

13 **MR. STEWART:** I remember talking to
14 Mr. Godin on the phone about a couple of his cases.

15 **MR. ENGELMANN:** Okay.

16 Can you give us a sense as to the reporting
17 relationship because they're not reporting to you in a
18 supervisory sense, but they're doing your work? So how ---

19 **MR. STEWART:** Certainly, but in a Crown
20 system, when you have senior counsel -- and it may not work
21 in a private practice -- but when you have senior counsel
22 they're not calling you up once a week and saying, "Guess
23 what I just did?" It just doesn't happen like that and
24 I've done -- and especially Ms. Hallett of the Special
25 Prosecutions, she was a senior prosecutor and she was

1 brought in because of the conflict.

2 When I was there, I might inform my boss of
3 what -- what has happened to the case or if there's
4 something extremely unusual, but you're not reporting back
5 like every ten minutes in regards to what's going on.

6 **MR. ENGELMANN:** All right.

7 **MR. STEWART:** I mean, you're just not doing
8 that.

9 **MR. ENGELMANN:** So, sir, just as an example,
10 and you've mentioned it, that there are a couple of letters
11 that Ms. Hallett would have written to you.

12 Let's look at one of them. It's Exhibit
13 244.

14 **THE COMMISSIONER:** Thank you.

15 **MR. ENGELMANN:** Document Number 113847.
16 This is a letter from Shelley Hallett to yourself, sir,
17 dated April 19th, 2000, and it's concerning the Charles
18 MacDonald prosecution. Perhaps we should have the hard
19 copy here.

20 **THE COMMISSIONER:** Okay.

21 **MR. STEWART:** The screen is working well. I

22 ---

23 **MR. ENGELMANN:** Oh, okay, sorry.

24 **MR. STEWART:** --- can spare you the trouble.

25 **MR. ENGELMANN:** I know the Commissioner

1 likes to -- to write now and then.

2 THE COMMISSIONER: M'hm, thank you.

3 MR. ENGELMANN: It's just two pages, so
4 perhaps, Mr. Stewart, we'll work off the screen then.

5 THE COMMISSIONER: What exhibit again?

6 MR. ENGELMANN: It is 244, sir.

7 THE COMMISSIONER: Thank you.

8 MR. ENGELMANN: The first Bates page number
9 is 1069750. It says "Front" as well. Yes, 1069750.

10 THE REGISTRAR: Thank you.

11 MR. ENGELMANN: Now, sir, we heard from Ms.
12 Hallett about her work on the Charles MacDonald prosecution
13 and she informed us about the fact that a trial date had
14 been set for May 1st, 2000, but that she had brought the
15 matter forward to speak to in front of Justice Desmarais.
16 This was on April 18th, and that the matter was put over as
17 a result of several factors.

18 She told us, for example, that although she
19 felt prepared to proceed to trial on May 1st, the judge felt
20 that date was unrealistic in light of -- there was a new
21 complainant in the MacDonald prosecution, and there were
22 new materials that had been provided by Perry Dunlop that
23 needed to be disclosed.

24 And it appears already in this letter to you
25 -- at the bottom of the first page, she says:

1 "Justice Desmarais considered the trial
2 date unrealistic in view of the above-
3 mentioned factors. Michael Neville for
4 the defence did not protest the judge's
5 opinion than an adjournment was
6 required, but I suspect he will attempt
7 to use the delay to support an
8 application for a stay under 11(b) of
9 the Charter, as a result of the delay."

10 All right? Now, would this be an example,
11 sir, of a letter to inform you of, you know, significant
12 developments on a case and keep you in the loop, that you -
13 --

14 **MR. STEWART:** If she ---

15 **MR. ENGELMANN:** --- would see a letter like
16 this?

17 **MR. STEWART:** She was keeping me in the
18 loop.

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

20 And did you have any specific knowledge or
21 awareness of a ninth complainant coming forward and issues
22 involving this late disclosure with respect to Perry
23 Dunlop?

24 **MR. STEWART:** Not specific knowledge of
25 that. I don't remember that.

1 **MR. ENGELMANN:** All right. Is it likely you
2 would have had some at the time?

3 **MR. STEWART:** I don't know.

4 **MR. ENGELMANN:** All right. I'll come back
5 to the MacDonald prosecution a bit later, but this appears,
6 sir, that she's bringing up the fact that there could be an
7 11(b) argument.

8 And, sir, the original set of complainants,
9 the first three, charges were laid in the spring of '96, so
10 they'd be four years old by this time. That would be a
11 concern you might share as well then, that 11(b) could --
12 could be raising its head?

13 **MR. STEWART:** Well, you have to, sort of,
14 ask Mr. Pelletier when he was in his part of the case, and
15 also Ms. Hallett was an experienced counsel.

16 And so when I look at that, and she's
17 bringing me up to date and she's indicating that -- that
18 it's not -- an 11(b) is on the horizon, but basically she's
19 saying that it can be addressed.

20 **MR. ENGELMANN:** Right. She's talking about
21 complications involved in ---

22 **MR. STEWART:** Sure.

23 **MR. ENGELMANN:** --- the case? And from your
24 own experience that can sometimes be a -- that's a relevant
25 factor on an 11(b), how complicated the case is and issues

1 that arise?

2 MR. STEWART: Certainly.

3 MR. ENGELMANN: All right.

4 So let's look at the Leduc matter for a few
5 minutes if we can.

6 We know that Ms. Hallett was assigned to
7 that case before you became the Director of Crown
8 Operations. You would have had some discussions with her
9 from time-to-time about the case?

10 MR. STEWART: I can't remember any specific
11 ones.

12 MR. ENGELMANN: All right. I take it ---

13 MR. STEWART: I take no issue if she said we
14 did. I just don't remember.

15 MR. ENGELMANN: All right.

16 Were you aware of something that occurred
17 during the trial in February of 2001 where one of the
18 complainants' mothers gave some evidence and talked about
19 some contact or communication from Perry Dunlop?

20 MR. STEWART: Yes, I became aware of that,
21 yes.

22 MR. ENGELMANN: And then within a week or so
23 of that there was a stay, an 11(b) application filed by the
24 defence counsel, Messrs. Skurka and Campbell, that were
25 acting for him?

1 **MR. STEWART:** Yes.

2 **MR. ENGELMANN:** And that originally they --
3 well, at least the written documentation alleged wilful
4 non-disclosure on the part of the police?

5 **MR. STEWART:** Yes, I became aware of that.

6 **MR. ENGELMANN:** Right. And you would have
7 been informed of that at or about the time it was happening
8 because that would be a significant development?

9 **MR. STEWART:** Well, things happened very
10 quickly. My recollection is that I got a phone call and I
11 was trying to remember who it was from, whether it was both
12 from Shelley and Pat Hall or just one of them, and the
13 phone call was of the nature they weren't getting along.

14 And so I hopped in my car and I drove down
15 here and had dinner at the Best Western with Ms. Hallett
16 and Ms. Tier, and Mr. Hall was in the restaurant by
17 serendipity or whatever.

18 He came over and talked to us for a little
19 bit and it was quite pleasant, and I hopped in my car and
20 drove home and thought, you know, it's one of those things;
21 you're working together, you're working close, you've been
22 thrown together in this case. Certain stresses happen and
23 that was the end of it.

24 And then a day or two later, everything
25 broke loose and then this happened where the judge

1 basically stayed the charge.

2 MR. ENGELMANN: All right. So I just want
3 to take you through that a bit. We know that the date you
4 had the supper at the Best Western was February ---

5 MR. STEWART: Okay.

6 MR. ENGELMANN: --- 21st.

7 MR. STEWART: Okay.

8 MR. ENGELMANN: And the friction, at least
9 from Hallett's point-of-view, doesn't really start until
10 the next day.

11 Detective Inspector Hall has testified on
12 the 21st. He then testifies again on the 22nd and it's as a
13 result of things that are said on the 22nd that she begins
14 to be concerned and mentions having some difficulties.

15 So I'm wondering, sir, you can't recall who
16 would have phoned you before you came down, whether that
17 was Ms. Hallett or Mr. Hall?

18 MR. STEWART: I'm not sure.

19 MR. ENGELMANN: Are you sure you were coming
20 down because of friction being expressed by one of them or
21 would this have just possibly been you were checking in on
22 them?

23 MR. STEWART: No. The way I remember it was
24 there was some friction.

25 MR. ENGELMANN: All right.

1 **MR. STEWART:** I stand to be corrected. I
2 mean, this is years and years ago, but that's the way I
3 remember it.

4 **MR. ENGELMANN:** Presumably, it would be more
5 likely that Hallett would have contacted you because you
6 were having supper with her and Tier, not with Detective
7 Inspector Hall?

8 **MR. STEWART:** It may have been.

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

10 **MR. STEWART:** Again, I ---

11 **MR. ENGELMANN:** All right.

12 But in any event, as a result of the dinner
13 you had, and you had some discussions with Detective
14 Inspector Hall in the presence of Christine Tier and
15 Shelley Hallett?

16 **MR. STEWART:** My recollection was light.
17 I'm not even sure we talked any business or anything of
18 that nature at all. They may be able to remember better
19 than I am right now, but nothing stuck out in my mind about
20 it.

21 **MR. ENGELMANN:** Well, did you get a sense,
22 after spending that evening here in Cornwall, that there
23 were issues between them or that things were pretty well
24 working?

25 **MR. STEWART:** Well, all I can say is Hall

1 came over. It was friendly. It was sociable. Whatever
2 had gone on or whatever, I thought it was dissipated. You
3 know, everybody thinks -- things happen when you're on long
4 matters, and that's what I thought it was.

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

6 Do you recall any expression of difficulties
7 from Hallett and Tier about Hall at that time or vice versa
8 from your time in Cornwall on the 21st?

9 **MR. STEWART:** I remember there was a comment
10 about scratching eyes or something, but I can't ---

11 **MR. ENGELMANN:** That's later, sir.

12 **MR. STEWART:** Okay.

13 **MR. ENGELMANN:** So I just ---

14 **MR. STEWART:** Okay. I can't put that in
15 time.

16 **MR. ENGELMANN:** All right.

17 **MR. STEWART:** That things sticks in my mind,
18 but I don't know when it was.

19 **MR. ENGELMANN:** Right.

20 You had a later call from Pat Hall on the
21 27th.

22 **MR. STEWART:** Okay. Well, that's ---

23 **MR. ENGELMANN:** And that was clearly after
24 there had been some friction developed. Okay.

25 But the evening of the 21st, the supper, as

1 far as you know, no one is complaining to you about the
2 other?

3 **MR. STEWART:** I don't remember that. I
4 don't remember any complaints. There may have been, but I
5 don't remember any.

6 **MR. ENGELMANN:** All right. Well, do you
7 remember how you felt leaving Cornwall that day? Did you
8 feel that there was any significant problem?

9 **MR. STEWART:** No.

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

11 And at that point-in-time, the 21st of
12 February, had either of these individuals, either Detective
13 Inspector Hall or Shelley Hallett, raised a concern with
14 you about something that took place back on February 7th,
15 and in fact the whole issue about a complainant's mother
16 revealing this issue about contact from Dunlop?

17 **MR. STEWART:** I remember vaguely something
18 about it coming out. I don't remember when I knew that.

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

20 **MR. STEWART:** And so it ended up with the
21 cross-referencing of the files and all that sort of thing,
22 but I don't know when I became aware of what the issue was.

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

24 Now, I'm going to come back to some of the
25 issues that are raised with you on the 27th by Detective

1 Inspector Hall, but you became aware at or about the time
2 of this stay that it in fact had been issued by Justice
3 Chadwick?

4 MR. STEWART: Yes.

5 MR. ENGELMANN: And that was on March the
6 1st.

7 And you would have been kept in the loop
8 with respect to filing an appeal; correct?

9 MR. STEWART: Yes. I think Mr. Pearson was
10 involved in that more than I was.

11 MR. ENGELMANN: All right.

12 But we're aware of a checklist that had to
13 be prepared by trial counsel, and we had a form here, and
14 it is Exhibit 3193, Document Number 102179.

15 And, sir, you'd be familiar with this type
16 of form at the time?

17 MR. STEWART: I've seen them before.

18 MR. ENGELMANN: Okay. And, sir, as I
19 understand it, before they go through this -- and I think
20 it's a tripartite committee, a review appeal panel? I may
21 have the words backwards, but there's a review panel that
22 considers appeals; correct?

23 MR. STEWART: I believe what they do at our
24 Appeal Branch is there's three, yes.

25 MR. ENGELMANN: Yes.

1 And before that can happen, the Crown
2 responsible has to prepare the checklist form and also to
3 do some kind of a synopsis and background; correct?

4 **MR. STEWART:** Yes.

5 **MR. ENGELMANN:** And it's my understanding,
6 if we look at the -- it's the last page of the document.
7 Am I correct in saying if it's an East Region request for
8 an appeal, you would have to approve the request before it
9 goes to this panel?

10 **MR. STEWART:** I probably would and I would
11 have in this case.

12 **MR. ENGELMANN:** Yes. Okay.

13 **MR. STEWART:** But there's no ---

14 **MR. ENGELMANN:** So would it be fair to say
15 that on or before the 14th of March, as indicated on this
16 form, next to it it says:

17 "Crown approving request..."

18 If you go down a little further on the
19 screen, Madam Clerk.

20 Apparently Shelley Hallett prepares this
21 five-page form.

22 **MR. STEWART:** M'hm.

23 **MR. ENGELMANN:** And the contents of the form
24 aren't that significant at this time, sir, but you would
25 have at least reviewed this matter and presumably had a

1 discussion with her about the case before agreeing to
2 approve?

3 MR. STEWART: We'd certainly wanted to
4 appeal this case.

5 MR. ENGELMANN: Right.

6 MR. STEWART: No question of that.

7 MR. ENGELMANN: You felt strongly that an
8 appeal was necessary?

9 MR. STEWART: From what I understood, yes.

10 MR. ENGELMANN: All right.

11 So you approve her request for the appeal
12 and then it goes to this tripartite panel and they have to
13 decide in favour of an appeal before it's filed?

14 MR. STEWART: Yes.

15 MR. ENGELMANN: All right.

16 Now, do you have any other role other than
17 an approval of the checklist synopsis at the beginning or
18 is that really in the hands of a review panel?

19 MR. STEWART: I mean, obviously at the time
20 when the stay happened, I would have been involved. I
21 would have been phoning Toronto, talking to them or
22 whatever in regards to it, that this would be a matter that
23 we'd want to appeal.

24 MR. ENGELMANN: All right.

25 MR. STEWART: I mean ---

1 **MR. ENGELMANN:** So ---

2 **MR. STEWART:** But I mean, I can't tell you
3 specifically who I called, what I talked about it, but this
4 was a case that of course we're going to appeal this.

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

6 **MR. STEWART:** We're going to ask for appeal.

7 **MR. ENGELMANN:** Yes. All right.

8 I want to take you then to -- it's Document
9 Number 130734, Madam Clerk. This is an email from Paul
10 Lindsay dated April 4th, 2001.

11 **THE COMMISSIONER:** Thank you.

12 Exhibit 3314 is an email correspondence from
13 Paul Lindsay to a general email address to all in the
14 Criminal Law Office of MAG and it's dated April 04, 2001 --
15 April 4th, sorry, 2001.

16 **--- EXHIBIT NO./PIÈCE NO. P-3314:**

17 (130734) - E-mail from Paul Lindsay various
18 re: R. v. Jacques Leduc - Crown Appeal
19 Against Stay dated 04 Apr 01

20 **MR. ENGELMANN:** Sir, it's my understanding
21 that Mr. Lindsay would have sent this email to a great
22 number of people and I can't read or understand the
23 acronyms, but would this have gone to prosecutors
24 throughout the province?

25 **MR. STEWART:** I'm not sure all -- whether

1 it's the appeal -- CLO all, or whether it's every
2 prosecutor. That I don't know.

3 **MR. ENGELMANN:** All right. It appears that
4 he's notifying Crowns about the fact that an appeal has
5 been lodged.

6 **MR. STEWART:** Yes.

7 **MR. ENGELMANN:** And he's talking about the
8 fact that there's been some press ---

9 **MR. STEWART:** M'hm.

10 **MR. ENGELMANN:** --- about Chadwick's
11 decision. And I'm looking at the middle paragraph for a
12 minute:

13 "This case was widely reported in the
14 media, not only in Cornwall but also in
15 other areas of the province. The stay
16 of proceedings attracted a great deal
17 of publicity. I am not so sure that
18 the fact that the Crown is appealing
19 against the stay received a
20 corresponding degree of media
21 attention. Accordingly, I thought it
22 was important for you to know that the
23 Crown has launched an appeal against
24 the findings made by the trial judge
25 and against the remedy which he gave."

1 And he says:

2 "Because this trial was conducted by
3 counsel in this office, I felt that in
4 order that the public would feel
5 assured that the Crown appeal request
6 process had been conducted in as
7 objective a manner as possible, the
8 decision as to whether an appeal should
9 be launched should be made outside of
10 this office. Accordingly I delegated
11 that responsibility to John McMahon."

12 Okay, who was in a similar position to
13 yourself, sir, but for a different region; correct?

14 **MR. STEWART:** Yes.

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

16 Sir, did you have anything to do with this
17 email being sent out more broadly so that people became
18 aware of the lodging of the appeal?

19 **MR. STEWART:** I do not remember having any
20 involvement.

21 **MR. ENGELMANN:** All right. Did you feel
22 that this was an appropriate response to the publicity
23 surrounding the original stay decision?

24 **MR. STEWART:** Yes. I don't remember it but
25 reading it, basically he's informing a number of Crown

1 prosecutors that the publicity involving Ms. Hallett --
2 that the Crown is in fact appealing it. And that might not
3 be a well-known fact because, I mean, this was -- if you're
4 a Crown Attorney and things that had been said about her in
5 that case -- it was a very serious, serious matter. And
6 what Mr. Lindsay would appear to be doing from there is
7 making sure everybody knows, "Well, just a minute, the
8 jury's still out here. We're going to have an appeal and
9 see what happens."

10 **MR. ENGELMANN:** Would this be a strategy you
11 would be in favour of, sir?

12 **MR. STEWART:** Yes, I would. I would because
13 -- I mean, it's very hard, as I said earlier, when you're
14 in public life you get criticized and a lot of times you
15 can't do anything back.

16 But as it is with people, sometimes they're
17 charged and the acquittal is on the last page of the paper,
18 and that's a criticism you hear. Well, in a situation like
19 this where she's been publicly whatever -- and he wants
20 people that work in the area to know that there's an
21 appeal, so this story isn't over yet.

22 **MR. ENGELMANN:** All right.

23 Sir, I want to ask you about an email that I
24 think you would have received just the day before this, and
25 that's an email dated April 3rd, 2001 and I think you

1 probably remember receiving that email.

2 **MR. STEWART:** I do. There's not many things
3 I remember in this but I remember this one.

4 **MR. ENGELMANN:** All right. And if you could
5 take a look -- if the witness could be shown Document
6 Number 130739.

7 The actual email is already in but this is -
8 - there are a couple of emails attached, so I want to put
9 in a couple more documents, sir, if I may.

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

11 Thank you. Exhibit 3315 is email
12 correspondence from James Stewart to John McMahon and John
13 Pearson on April 8th, 2001. Exhibit 3315.

14 **--- EXHIBIT NO./PIÈCE NO. P-3315:**

15 (130739) - E-mail from James Stewart to John
16 McMahon and John Pearson re: Perry Dunlop
17 Disclosure - Nine Bankers Boxes dated 08 Apr
18 01

19 **MR. ENGELMANN:** Mr. Stewart, the April 3rd
20 email is apparently sent by you to Mr. McMahon and
21 Mr. Pearson a few days later.

22 **MR. STEWART:** Yes, I was forwarding it on.

23 **MR. ENGELMANN:** And there's another one a
24 bit later that I'm going to show you as well, but why would
25 you have been sending this to those two individuals at that

1 time?

2 **MR. STEWART:** Well, you'll see that -- I
3 think from the last exhibit that you indicated to me, they
4 were involved in the appeal.

5 **MR. ENGELMANN:** Fair enough. And sir, the
6 email that's attached, the April 3rd email from Detective
7 Inspector Hall ---

8 **MR. STEWART:** Yes.

9 **MR. ENGELMANN:** --- is that something that
10 you expected or requested from him in any way?

11 **MR. STEWART:** No. If you note the time, it
12 was 6:10. It was sort of a warm spring night and I
13 happened to be -- you know, normally my hours are regular
14 hours. This was a little after and this email popped in,
15 and I started looking at it and it was sort of -- you know,
16 there's this outstanding; there's that -- sort of routine.

17 And then at the end, the last paragraph was
18 something quite serious and it just seemed very peculiar,
19 the way it came in and "Oh, by the way" and then there's
20 the last paragraph and, you know, indicating that there had
21 been a telephone conversation with Ms. Hallett and the rest
22 of it.

23 I guess it's the last two paragraphs I
24 should say is -- but when he says, "What disturbs me most
25 is Ms. Hallett not being truthful with Skurka and Campbell

1 on February 7th," and then the rest of it, yes.

2 MR. ENGELMANN: All right. So just -- let's
3 just look at this in a couple of steps if we may.

4 MR. STEWART: Sure.

5 MR. ENGELMANN: The stay was March the 1st,
6 this is now April the 3rd, and there was a conversation, a
7 phone call -- Detective Inspector Hall called you on
8 February 27th to express some concerns, and we'll go to that
9 in a minute, but the concerns that are expressed don't talk
10 about dishonesty with the two defence counsel. So I'm
11 wondering -- this comment here, "What disturbs me most is
12 Ms. Hallett not being truthful with Skurka and Campbell on
13 February 7th," so a couple of months earlier, "when they
14 first asked about the Dunlop material." Was that a new
15 allegation as far as you were concerned?

16 MR. STEWART: Well, I think you have -- when
17 things were fresh in my mind, I prepared an answer to this.

18 MR. ENGELMANN: Yes.

19 MR. STEWART: And you have it.

20 MR. ENGELMANN: Yes.

21 MR. STEWART: And I indicated that I talked
22 to him a bunch of times in between and he didn't have any
23 problem with her, and whatever. This was all new to me,
24 this phone call, and the problem was that the stay -- there
25 was an issue about what she knew, what she didn't know, all

1 the rest of it, and it was a critical issue with regards to
2 it. Now I have a senior police officer sending me an email
3 basically saying certain things about her.

4 **MR. ENGELMANN:** And did you -- when a senior
5 police officer writes someone in your position, a very
6 senior Crown prosecutor, about another senior Crown
7 prosecutor with an allegation of this nature, is it obvious
8 what's going to happen next ---

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** --- in your view?

11 **MR. STEWART:** Yes.

12 **MR. ENGELMANN:** What is that, sir?

13 **MR. STEWART:** Well, it's something I'm not
14 going to ignore. I drafted an email. I was going to go
15 back to him with all these concerns I had with this
16 particular comment, and then I realized that I'd be right
17 in the middle of this. I'd be right in the middle of this
18 when -- if there is an issue, if there is something. He's
19 just made an allegation against a senior Crown that
20 somebody is going to have to look into.

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

22 **MR. STEWART:** And so I passed it up the
23 line.

24 **MR. ENGELMANN:** Well, in the document we're
25 looking at right now, 3315, you said:

1 "I have prepared a response to this
2 email that I will not send out until I
3 talk to you too, but I wish to send it
4 probably on Monday, so I'll connect
5 with you tomorrow."

6 **MR. STEWART:** M'hm.

7 **MR. ENGELMANN:** You did prepare a draft
8 response ---

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** --- to Detective Inspector
11 Hall; correct?

12 **MR. STEWART:** Yes.

13 **MR. ENGELMANN:** And you never actually sent
14 it to him, did you?

15 **MR. STEWART:** I did not.

16 **MR. ENGELMANN:** All right. And ---

17 **MR. STEWART:** For a variety of reasons.

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

19 **MR. STEWART:** One of them would be the idea
20 that I was attempting to have him change his mind in
21 regards to what he said or something. I didn't want to go
22 down that route. He has sent something in writing. And I
23 knew right away what it meant when I looked at it.

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

25 Well, let's look at a couple of other

1 emails. One of them has your draft response, but just
2 before we get to it, 130740; 130740. And then, Madam
3 Clerk, I'll be asking you for 130741; 130740 and then
4 130741.

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: Thank you.

7 Exhibit Number 3316 is an email
8 correspondence from John McMahon to Murray Segal dated
9 April 9th, 2001. That's Exhibit 3316.

10 --- EXHIBIT NO./PIÈCE NO P-3316:

11 (130740) - E-mail from John McMahon to
12 Murray Segal re: Perry Dunlop Disclosure -
13 Nine Bankers Boxes dated 09 Apr 01

14 THE COMMISSIONER: Exhibit 3317 is email
15 correspondence from Murray Segal to Susan Kyle dated April
16 10th, 2001.

17 --- EXHIBIT NO./PIÈCE NO P-3317:

18 (130741) - E-mail from Murray Segal to Susan
19 Kyle re: Perry Dunlop Disclosure - Nine
20 Bankers Boxes dated 10 Apr 01

21 MR. ENGELMANN: All right, 3316 just for a
22 minute, sir, which is the one from John McMahon.

23 MR. STEWART: M'hm.

24 MR. ENGELMANN: I'm not sure if you were
25 aware that he was going to be forwarding this on to Murray

1 Segal, you're not copied. I presume that wouldn't surprise
2 you that he would.

3 MR. STEWART: No, it wouldn't.

4 MR. ENGELMANN: All right. And Murray Segal
5 at that time, sir, what was his title?

6 MR. STEWART: He was probably, and I'm
7 saying probably, the Deputy by that point and John McMahon
8 was probably the Assistant Deputy.

9 MR. ENGELMANN: All right.

10 MR. STEWART: I'm not sure though, in the
11 sequence of the years.

12 MR. ENGELMANN: All right.

13 And sir, the next document 3317; this would
14 appear to have your draft response. Is that correct?

15 MR. STEWART: Yes.

16 MR. ENGELMANN: If you just want to have a
17 quick look at that.

18 MR. STEWART: Yes.

19 MR. ENGELMANN: All right. So you decide to
20 send this to Murray Segal and not to Pat Hall?

21 MR. STEWART: Yes, I never sent it to Mr.
22 Hall.

23 MR. ENGELMANN: All right. And in the
24 second paragraph or the paragraph that starts with the
25 number two, you are referencing the fact that Detective

1 Inspector Hall did not mention the January 9th, 2001
2 telephone conversation with Hallett to the court during his
3 evidence on this stay application.

4 **MR. STEWART:** That was my understanding.

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

6 And why was that significant to you, sir?

7 **MR. STEWART:** Well, I think that at that
8 point it was a very live issue of her knowledge. I mean,
9 again, I'm at a disadvantage. I don't have all the records
10 that you have here.

11 But my understanding is on the Leduc thing,
12 it was a -- the big issue was her knowledge in regards to
13 certain things and it was canvassed a great deal in that
14 case, and it never came up, this phone call. The first
15 time I ever became aware of the phone call was the email on
16 April the 3rd.

17 **MR. ENGELMANN:** Well if you turn back to
18 that for a minute, the email of April 3rd, 3315, it says:

19 "What disturbs me most is Ms. Hallett
20 not being truthful with Skurka and
21 Campbell on February 7th, 2001, when
22 they first asked about the Dunlop
23 materials in light of the fact that on
24 January 9th, 2001, I have had a
25 telephone conversation with Miss

1 Hallett, when she asked me about the
2 Dunlop involvement in the Leduc matter
3 and how the initial complaint came in."

4 Okay? So you're getting a reference to the
5 fact that there had been some discussion between Hallett
6 and Hall a few weeks before. In fact, three or four weeks
7 before, he says that she wasn't truthful with defence
8 counsel, and that seemed to be of particular interest or
9 concern to you at that time.

10 **MR. STEWART:** Well, it did because I thought
11 that was the main issue or one of the main issues on the
12 Leduc stay.

13 **MR. ENGELMANN:** And you do say in your
14 response -- you say:

15 "This weekend I have reviewed your
16 evidence from the stay application
17 regarding Crown non-disclosure, and I
18 couldn't find any reference to the
19 January 9th telephone conversation. I
20 now have some concerns after realising
21 you didn't tell the court, and this
22 appears to be new information."

23 So you actually ---

24 **MR. STEWART:** That was my understanding.

25 **MR. ENGELMANN:** You actually would have

1 spent the time reviewing these transcripts as a result of
2 this email you received from Detective Inspector Hall?

3 **MR. STEWART:** I believe that I did.

4 **MR. ENGELMANN:** And you say:

5 "As you're aware after the stay of
6 proceedings on the Leduc matter, I
7 asked you if there was anything else
8 and you said 'no'. In addition, on I
9 believe two separate occasions, you
10 indicated to me that you would have no
11 trouble if Ms. Hallett were to be the
12 Crown to decide whether charges are to
13 be processed for the five remaining
14 potential accused of possible
15 conspiracy charge. She will recall, we
16 spent part of a day in Kingston
17 reviewing in a global way those
18 matters. As a result, I'm not seeing
19 any reference to this call of January
20 9th, and I have no idea what you have or
21 have not disclosed in your February
22 meeting with defence counsel. I would
23 ask that you, as soon as is reasonable,
24 prepare a written and complete
25 supplementary witness statement

1 accompanied by any notes made at the
2 time and send it to me. I ask that you
3 include all details of the January 9th
4 call and a fuller discussion of your
5 knowledge of Ms. Hallett's knowledge."

6 So at least when you're preparing this,
7 you're anticipating sending it to him and asking him to do
8 this?

9 **MR. STEWART:** But then I realised, a sort of
10 sober second thought that I'm going to become an
11 investigator investigating this. This thing's going to
12 have a life of its own. And I would expect that he -- an
13 investigator should sit down with him; he gives a complete
14 statement in regards to this, how it fit in and why -- and
15 all these questions that I have, but that wasn't my -- that
16 shouldn't be my role. And if I start doing that, then --
17 but those were some of my concerns at the time when things
18 were fresh in my mind.

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

20 So one of the concerns you had about
21 actually sending this to Detective Inspector Hall and
22 asking these types of questions was, in effect, you could
23 become a witness and as sort of an investigator?

24 **MR. STEWART:** Well, not only that. I mean
25 it's something I guess we all know and this was a much more

1 serious situation. Email is too -- how would I put it --
2 it's sometimes too dangerous, where you could send
3 something out in anger or respond too quickly where on
4 sober second thought, you shouldn't be there at all.

5 In regards to this, I've had some time to
6 think about it, and these were all my concerns. But as I
7 said a little bit earlier, I mean, there could be an
8 interpretation that I was -- if I sent all this to Hall,
9 that I wanted him to keep quiet. I mean all of a sudden,
10 I'm dragged into this thing when I'm just the recipient of
11 this message. So there's no question and I knew when I saw
12 it that it was going to have a life of its own.

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

14 **MR. STEWART:** And if it were true, it was
15 something extremely serious.

16 **THE COMMISSIONER:** But you -- but you did
17 send your sober second thoughts to Murray Segal?

18 **MR. STEWART:** Well I did.

19 **THE COMMISSIONER:** So by that time, you must
20 have known that Murray was involved -- Mr. Segal rather --
21 was involved in all of this?

22 **MR. STEWART:** Oh, I knew he'd know about
23 this. I mean this was an allegation against the Crown.

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

25 **MR. STEWART:** For sure, but I sent it up to

1 whoever was my boss at the time, and I think it was Mr.
2 McMahon.

3 **THE COMMISSIONER:** All right.

4 **MR. ENGELMANN:** And if true, you were aware
5 that perhaps criminal charges could proceed?

6 **MR. STEWART:** Well, there's going to have to
7 be an investigation.

8 **MR. ENGELMANN:** Right.

9 **MR. STEWART:** To find out what was going on.
10 And, in fact, when they had the investigation, this was my
11 notes to them because this is what I knew. I didn't know
12 anything else in regards to this, and I would have expected
13 they'd go and find out from Inspector Hall and complete in
14 regards to what he was talking about.

15 **MR. ENGELMANN:** All right. We'll come to
16 that investigation in a few minutes if we can, but that was
17 the York Regional Police investigation?

18 **MR. STEWART:** I just know there was an
19 outside force. It was a man and a woman, and I remember
20 them coming to Ottawa. I briefly talked to them and I
21 hadn't thrown out this response. I hadn't sent it but I
22 still had it somewhere.

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

24 **MR. STEWART:** So I knew -- again, back -- it
25 was fresh in my mind as to my concerns at that time.

1 **MR. ENGELMANN:** And just to be clear, the
2 decision to actually have the extra force investigate these
3 allegations vis-à-vis Miss Hallett, that would not have
4 been your decision?

5 **MR. STEWART:** No, not at all.

6 **MR. ENGELMANN:** Would you have been asked
7 for your input on that by Mr. Segal or others?

8 **MR. STEWART:** I don't think so. I think
9 it's one of those ones you just -- you send it up, but you
10 know where it's going. I mean with that type of
11 allegation.

12 **MR. ENGELMANN:** All right. So it didn't
13 surprise you at all when there was an outside police force
14 investigating this?

15 **MR. STEWART:** No.

16 **MR. ENGELMANN:** All right.

17 Let's look at Exhibit 2757. These are Pat
18 Hall's notes, Document Number 727760. And you've referred
19 to the fact yesterday that you had a call and there was
20 this comment about "scratch your eyes out" or words to that
21 effect. I think this is a call in late February 2001.

22 **MR. STEWART:** Okay. I -- I thought it was
23 closer to the time when I -- the trip down, but I don't
24 have notes on it, so I don't know.

25 **MR. ENGELMANN:** All right. So this would be

1 right -- just before the stay is issued.

2 And I'll just be a moment sir.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. ENGELMANN: I have got Bates page
5 7110817, but -- and the call with Regional Crown Jim
6 Stewart starts at 9:45.

7 THE COMMISSIONER: I'm sorry. Whose notes
8 are these again?

9 MR. ENGELMANN: Detective Inspector Hall.

10 THE COMMISSIONER: Thank you.

11 MR. ENGELMANN: Can we just go to the
12 preceding page for a minute? I believe the date is
13 February 27th. It's not on this page.

14 THE COMMISSIONER: Yes.

15 MR. ENGELMANN: There it is, yes. All
16 right, so we have got the 27th of February and just if you
17 could give us a bit more of the page, Madam Clerk. And I'm
18 looking at everything from the 27th down.

19 Yeah. Okay. So he's noting comments that
20 he gets from his fellow officers, Dupuis and Seguin. And
21 this is the comment that is attributed to Hallett. Do you
22 see there? And it says:

23 "Also said I was ..."

24 Can we blow that up just a bit more?

25 THE COMMISSIONER: "... I was drinking ..."

1 **MR. ENGELMANN:** Yes.

2 "... drinking beer in a bar with Tim
3 Smith. Didn't attend meeting with her
4 and Smith. Dupuis asked if there was
5 anything she wanted them to do for her.
6 She said, 'No, just wait until Thursday
7 decision.' Call to [a fellow by the
8 name of] Miller..."

9 Who is a senior superintendent, Jim Miller. Are you
10 familiar with that name?

11 **MR. STEWART:** I know Jim Miller.

12 **MR. ENGELMANN:** Yeah.

13 "Updated. Suggested Jim Stewart should
14 be in court on Thursday for decision.
15 Miller suggested that I call him."

16 So then we get the:

17 "Call to Regional Crown Jim Stewart,
18 apprised him of the events, background,
19 between February 7th and present."

20 Okay? So presumably he's giving you his
21 version of events from February 7th to the 27th about some of
22 these issues that have arisen with defence counsel, with
23 Shelley Hallett, et cetera?

24 **MR. STEWART:** What was the date of the stay?

25 **MR. ENGELMANN:** The date of the stay is

1 March 1st. There's a meeting with defence counsel and the
2 reason I think Detective Inspector Hall has used the date
3 of February 7th, that was the day when the complainant's
4 mother testified and this news came out in the courtroom.
5 And there was a meeting with the police and the Crown with
6 the defence counsel that day where both Detective Inspector
7 Hall and Ms. Hallett were saying that the defence counsel
8 were very aggressive and were accusing the police of not
9 disclosing documents.

10 During the course of this, there's a comment
11 by Ms. Hallett to the effect of "This is all news to me" or
12 "This is news to me" and there appears to perhaps be a
13 disagreement about what that meant.

14 But in any event, Detective Inspector Hall
15 would have been filling you in, presumably, on some of
16 those events and then meetings that he and Detective
17 Inspector Smith and others might have had with defence
18 counsel in the absence of Ms. Hallett, disclosures of
19 documents.

20 I don't know if any of this is bringing back
21 some memories?

22 **MR. STEWART:** No, it isn't, and I don't know
23 to what extent he told me, to what detail at all.

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

25 Well, let's just look at some of his notes

1 then, if we can?

2 **MR. STEWART:** Sure.

3 **MR. ENGELMANN:** For example, he says -- if
4 we go a little bit further down, apparently you're to be in
5 Toronto on the Thursday. It says:

6 "Discussed Charles MacDonald case. I
7 advised I didn't think Ms. Hallett,
8 from my observations of her in the past
9 two years, could handle the case. In
10 my view, she didn't have it to be a
11 frontline Crown, having in mind the
12 type of victims she was dealing with ..."

13 I've lost my place.

14 "... and ..."

15 **THE COMMISSIONER:** "... there would be
16 issue brought up that would go right
17 back to 1993 and the obvious
18 involvement with ..."

19 I don't know what -- "with other"?

20 "... all victims ..."

21 **MR. ENGELMANN:** "... in this case. He
22 seemed to agree."

23 All right.

24 **THE COMMISSIONER:** That's Mr. Stewart saying
25 that?

1 **MR. ENGELMANN:** Yes. That was how it was
2 identified by Detective Inspector Hall when he testified
3 here, that he would have given you his opinions about
4 Shelley Hallett not being capable perhaps of handling the
5 Father MacDonald prosecution, expressing that to you and
6 that you seemed to agree.

7 I'm wondering, one, if you remember these
8 comments being made to you and whether or not you would
9 have agreed with them?

10 **MR. STEWART:** I do not remember that
11 conversation at all. I never read his notes to see if they
12 were accurate. I have no idea what "seemed to agree"
13 means.

14 I don't -- I was a little leery in regards
15 to the way things had gone on in regards to the stay where
16 -- I'd never heard, quite frankly, police officers meeting
17 the defence lawyers to discuss what their evidence was
18 going to be on an abuse motion where their conduct was at
19 issue. I just had never heard of that before and it seemed
20 peculiar. And ---

21 **MR. ENGELMANN:** Were you aware at this time
22 that there had been disclosure made by the police of a
23 document?

24 **MR. STEWART:** I became aware at some point
25 in time where they went and Ms. Hallett gave it to them.

1 **MR. ENGELMANN:** Yes.

2 **MR. STEWART:** And then they disclosed ---

3 **THE COMMISSIONER:** Okay. Whoa, whoa, whoa.
4 Yes, Ms. Hallett gave it to the police officers; the police
5 officers disclosed it to defence?

6 **MR. STEWART:** Yes, I'm sorry.

7 **MR. ENGELMANN:** And would she have told you
8 or would you have been apprised of the fact that she didn't
9 know that this was being disclosed to the police -- or by
10 the police to the defence?

11 **MR. STEWART:** Again, I don't know when I
12 became aware of that.

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

14 **MR. STEWART:** I mean, I could have been
15 aware of that a month later. I don't know.

16 But I just know that when I heard that the
17 police were doing that kind of disclosure -- and I can't
18 remember when I became aware of it -- I found it just odd.
19 I hadn't heard of that type of thing before.

20 And I don't remember this conversation with
21 Hall at all in regards of -- Ms. Hallett was -- and you've
22 had her here. I think you went through -- probably went
23 through her credentials. I mean, she was an experienced
24 Crown. She had been a frontline Crown. She wasn't just an
25 appeal Crown in regards to it. And I don't know what he

1 means by "seems to agree". I have no recollection of that.
2 It seems very odd that I'd agree in regards to that.

3 **MR. ENGELMANN:** Did you have any concerns
4 about her ability to prosecute the MacDonald case at the
5 time?

6 **MR. STEWART:** The MacDo -- no. No.

7 **MR. ENGELMANN:** Or the Leduc matter?

8 **MR. STEWART:** No.

9 **MR. ENGELMANN:** Now, on the next page,
10 7110818, this is after it said:

11 "He seemed to agree and he has more of
12 a concern about the MacDonald case than
13 that of Leduc. I also advised that
14 Neville was the defence counsel and Ms.
15 Hallett had previously said that she
16 did not want to do the case."

17 Do you recall Detective Inspector Hall
18 saying that to you, that Hallett didn't want to do the
19 MacDonald case?

20 **MR. STEWART:** I don't recall any of this and
21 I don't recall the context in which we talked about the
22 relative importance of the cases. I mean, you know, one
23 was still ongoing; one was undergoing -- I don't remember
24 this.

25 **MR. ENGELMANN:** All right. Well, did Ms.

1 Hallett ever suggest to you that she didn't want to do the
2 MacDonald case?

3 **MR. STEWART:** I don't remember that.

4 **MR. ENGELMANN:** He then says:

5 "I suggested Bob Pelletier be assigned.
6 Stewart wanted to know if we could meet
7 next week sometime and he would mediate
8 between Hallett and myself."

9 This is where this issue about friction,
10 sir, is certainly being raised and the possibility of your
11 getting involved.

12 "I said that due to the fact she has
13 made what I consider serious
14 allegations against me ..."

15 **THE COMMISSIONER:** Whoa, flip the page,
16 please, Madam Clerk.

17 **MR. ENGELMANN:** Eight-one-eight (818) --
18 7110818, a little further up, middle of the page:

19 "... serious allegations against me, that
20 would be doubtful, but I would meet ..."

21 Okay? So do you recall at all suggesting
22 that you might mediate some friction between them?

23 **MR. STEWART:** I don't recall.

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

25 And he said that:

1 "She has made what I consider to be
2 serious allegations against me."

3 Do you recall what those were now?

4 **MR. STEWART:** I don't.

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

6 Presumably that would have been explained to
7 you at the time?

8 **MR. STEWART:** I'm not sure. I don't
9 remember this phone call. As I say, I didn't read these
10 notes at the time to see if they were accurate. And I
11 don't know what conversations I would have had with Shelley
12 Hallett as to whether she said anything in my presence
13 against Mr. Hall.

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

15 It goes on:

16 "I outlined other difficulties such as
17 the possession of nine boxes ..."

18 And we note there's a reference, sir, in
19 that email you got about the nine boxes.

20 **MR. STEWART:** M'hm.

21 **MR. ENGELMANN:** "... and her continued
22 interviewing of victims."

23 Do you recall these concerns being
24 expressed?

25 **MR. STEWART:** I don't. What's the date of

1 this again?

2 **MR. ENGELMANN:** This is February 27th, so
3 this is after there's been a couple of meetings between
4 Detective Inspector Hall and defence counsel, and he's
5 testified, and this is right after the argument is finished
6 on the stay application but before the stay is actually
7 granted.

8 **MR. STEWART:** So this is shortly before she
9 -- before the stay.

10 **MR. ENGELMANN:** Right. But all of the
11 evidence is in and the arguments have just been completed.

12 **MR. STEWART:** I don't know. I know there
13 was friction between the two. He may have been venting to
14 me about issues with her. I didn't take note of them. I
15 don't know, I'm just in revisionist history in regards to
16 it because I don't remember this call.

17 **MR. ENGELMANN:** All right.

18 Sir, I note the time.

19 **THE COMMISSIONER:** Yes.

20 **MR. ENGELMANN:** Perhaps this is an
21 appropriate time?

22 **THE COMMISSIONER:** Thank you. Let's take
23 the morning break.

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

1 The hearing will resume at 11:20 a.m.

2 --- Upon recessing at 11:05 a.m./

3 L'audience est suspendue à 11h05

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

5 L'audience est reprise à 11h25

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

8 This hearing is now resumed. Please be
9 seated. Veuillez vous asseoir.

10 **JAMES STEWART, Resumed/Sous le même serment:**

11 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR**

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

13 **MR. ENGELMANN:** Sir, we've been looking at
14 Exhibit 2757, some notes from Detective Inspector Hall from
15 February 27th, '01, and I just want to sort of recapture
16 some of this for a minute if we can.

17 We looked at these notes and apparently he
18 does not note in his notes of your conversation that
19 Shelley Hallett was dishonest or untruthful with the
20 police, and nor does he note specifically speaking to her
21 on January 9th, 2001. All right?

22 He does bring out some other concerns and
23 I've gone through them with you: (1) that she couldn't
24 handle the MacDonald case because she didn't have it to be
25 a front-line Crown; (2) that she didn't want to do the

1 case; (3) issues about the possession of the Dunlop boxes,
2 the nine boxes; (4) continued interviewing of witnesses.
3 And if I could throw it on, number 5, that she's made
4 serious allegations against him.

5 Now, I realize your memory is not very good,
6 sir, but do you have any sense that those four or five
7 issues would have been brought to your attention by
8 Detective Inspector Hall before this conversation ---

9 MR. STEWART: I don't remember ---

10 MR. ENGELMANN: --- or is this all coming at
11 you?

12 MR. STEWART: No, I don't remember him
13 bringing these concerns to me. First of all, I don't
14 remember this conversation but I do refer in my notes that
15 I -- my drafted notes that I never sent ---

16 MR. ENGELMANN: Right.

17 MR. STEWART: --- indicating that we had
18 talked a couple of times and he never referred to certain
19 things. This is a few days before the stay by Chadwick,
20 and whether he called me and he was venting about issues or
21 whatever within three or four days of that, I don't know,
22 it was a little late in the day.

23 In regards to it there was a big -- a
24 decision that happened four days later, or whatever number
25 of days, and that was -- that took on a whole new hue in

1 regards to this situation.

2 **MR. ENGELMANN:** Just looking back at this
3 now and ---

4 **MR. STEWART:** Yeah.

5 **MR. ENGELMANN:** --- being apprised of what
6 you're being told after the evidence is in on the stay and
7 after the submissions are made, any concerns about the
8 timing of these concerns?

9 **MR. STEWART:** Well, it -- all I can say is
10 that it would appear that the two of them were fighting.
11 Okay, that's, I think, the highest I can put it, and I
12 think I was aware of that from the time of after I came
13 down here. It appeared then things went sideways in
14 regards to the hearing in front of Chadwick, and then
15 things deteriorated. That's the way I sort of recall it,
16 but I have no independent recollection of him on the phone
17 and what he complained about. I don't remember.

18 **MR. ENGELMANN:** This meeting that you might
19 have tried to get where you would mediate, that never
20 happened, did it?

21 **MR. STEWART:** No.

22 **MR. ENGELMANN:** And this particular call,
23 this is three or four days before the stay -- no, in fact
24 not three or four days, probably a day or two; this is
25 February -- before the stay comes down.

1 Did that change or affect your opinion as to
2 whether Shelley Hallett should or could remain involved in
3 other Project Truth cases? This is before the stay.

4 **MR. STEWART:** I can't deal with that
5 hypothetical. I don't remember the conversation.

6 **MR. ENGELMANN:** All right.

7 **MR. STEWART:** So a conversation I don't
8 remember, as to what it would have done, I can't help you,
9 sir.

10 **MR. ENGELMANN:** Sir, you told us you gave a
11 statement to the York Regional Police or you were
12 interviewed?

13 **MR. STEWART:** I was interviewed and what I
14 told them was I have -- it wasn't a long conversation. We
15 talked for a little bit. I think it was in the boardroom
16 at a regional office, and I said, "Oh, by the way, I have
17 these notes that I made of my concerns at the time", and
18 they said -- I remember the female officer said, "Would you
19 like them?" and I went and found them and gave them to
20 them, and that was basically my statement because, as I
21 said earlier, that's all I knew.

22 **MR. ENGELMANN:** All right.

23 Document Number 123034, if that could be
24 shown to the witness, Madam Clerk. That could be the next
25 exhibit, sir. It's entitled "Statement of James Stewart".

1 **THE COMMISSIONER:** Thank you.

2 Exhibit 3318 is a Statement of James
3 Stewart.

4 **--- EXHIBIT NO./PIÈCE NO. P-3318:**

5 (123034) - Statement of James Stewart

6 **MR. ENGELMANN:** Okay.

7 This is in fact the statement, sir, that you
8 would have given the York Regional Police?

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** And you would have shared
11 with them your draft email reply?

12 **MR. STEWART:** Yes.

13 **MR. ENGELMANN:** All right. Sir, just a
14 couple of more issues with respect to the Leduc matter.

15 You were apparently copied on an email from
16 Shelley Hallett to Lorne McConnery. This is July 27th,
17 2001. It's Exhibit 3080. Counsel, the Document Number is
18 130363.

19 Yes, she's indicating in the email, and she
20 copies you, that she wants to be copied on correspondence
21 to and from Project Truth officers. Were you aware of
22 this, sir?

23 **MR. STEWART:** I wouldn't have been aware at
24 the time. I would have been away in July.

25 **MR. ENGELMANN:** Okay. Do you know if that

1 in fact happened?

2 MR. STEWART: I don't ---

3 MR. ENGELMANN: She's expressing a concern
4 about having an opportunity to respond in a timely way if
5 there are some inaccuracies.

6 MR. STEWART: I don't know what happened.
7 Mr. McConnery took over the file and dealt with it.

8 MR. ENGELMANN: All right.

9 And if we could take a quick look at Exhibit
10 3083 as well. The Document Number is 130364.

11 (SHORT PAUSE/COURTE PAUSE)

12 MR. ENGELMANN: Now, this is after
13 Ms. Hallett's interview. She then sends a letter to the
14 officers involved in the York Regional investigation, which
15 is entitled "Unauthorized Disclosure by Police to the
16 Defence, Stay of Proceedings". Do you know if this was
17 shared with you at the time, sir?

18 MR. STEWART: I don't remember seeing it.

19 MR. ENGELMANN: Okay. It references you on
20 a couple of occasions, and I just wondered if we could turn
21 to the second page, 1065251. It's the second-last
22 paragraph and she's referring to the fact you were down in
23 Cornwall on the 21st of February, and she's -- in fact, it's
24 the third paragraph on the bottom.

25 She's referring to this July 4th letter

1 between her and -- from her to Dupuis, and talking about
2 his unilateral disclosure of the July 4th letter. This is
3 Detective Inspector Hall to the -- to the defence counsel.

4 And she says:

5 "Although this information should have
6 been made known to the Crown long
7 before the officer entered the witness
8 box, the attendance of Mr. Stewart in
9 Cornwall provided an excellent
10 opportunity for Detective Inspector
11 Hall to take this matter up with
12 another senior Crown who was not
13 involved with the case.
14 Detective Inspector Hall was well-
15 acquainted with Mr. Stewart, the
16 Regional Director of Crown Operations
17 for the East Region, as is evidenced by
18 the familiar tone by the officer in his
19 email exchange of April 3rd, 2001 to
20 'Jim.'"

21 Now, is that perhaps a bit of an over-
22 statement, sir, "well-acquainted?"

23 **MR. STEWART:** I knew him. I knew him in a
24 professional way.

25 **MR. ENGELMANN:** Yes. But you'd only known

1 him for -- well, during the course of the Project Truth
2 investigation?

3 MR. STEWART: Yes.

4 MR. ENGELMANN: And he would have just --
5 you'd never socialized with this man, you ---

6 MR. STEWART: No.

7 MR. ENGELMANN: --- just knew him in a
8 professional sense?

9 MR. STEWART: Yes.

10 MR. ENGELMANN: And only as a result of
11 Project Truth?

12 MR. STEWART: Yes.

13 MR. ENGELMANN: Okay.

14 "If Detective Inspector Hall had
15 discussed disclosure of the July 4th
16 letter, even with Mr. Stewart, steps
17 could have then been taken to obtain
18 another prosecutor, while I could have
19 made informed decisions about preparing
20 the stay application."

21 Now, you were not informed by Detective
22 Inspector Hall that he was going to be disclosing a note
23 from -- from Shelley Hallett to Joe Dupuis to the defence
24 counsel?

25 MR. STEWART: No.

1 **MR. ENGELMANN:** I'll just be a moment, sir.

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

3 **MR. ENGELMANN:** All right, I -- I'm going to
4 leave it.

5 Sir, I want to ask you about some
6 correspondence with a fellow by the name of Garry Guzzo,
7 who is ---

8 **MR. STEWART:** Yes.

9 **MR. ENGELMANN:** --- a Member of the
10 Provincial Parliament. And the Document Number is 130753.

11 And, sir, we're aware that there was --
12 there were some inquiries made of Mr. Guzzo, and Mr. Guzzo
13 was making inquiries of Ms. Hallett about some issues
14 arising from the Leduc case.

15 And -- thank you -- we now have a two-page
16 document, a fax cover sheet, and then ---

17 **THE COMMISSIONER:** And the letter is dated
18 October 31st, 2001, addressed to Mr. Garry Guzzo from James
19 Stewart, which will be Exhibit 3319.

20 **---EXHIBIT NO./PIÈCE NO P-3319:**

21 (130753) - Letter from James Stewart to
22 Garry Guzzo re: R. v. Leduc dated 31 Oct 01

23 **MR. ENGELMANN:** Essentially, Mr. Guzzo was
24 asking you some specific questions. Ms. Hallett had
25 prepared a draft response, I believe, for Mr. Segal, and it

1 appears, sir, that you were tasked to respond?

2 MR. STEWART: Yes.

3 MR. ENGELMANN: And you gave the -- if I can
4 use the term, the "politician's" response? The matter is
5 before the court so you're not able to comment?

6 MR. STEWART: Well, it's not a politician's
7 response, it's -- it's what we do.

8 Interestingly enough -- I knew Mr. Guzzo
9 when he was a judge, and ---

10 MR. ENGELMANN: All right.

11 MR. STEWART: --- I appeared in front of
12 him.

13 And after I sent this letter back, I was
14 crossing the street in Ottawa one day, and Mr. Guzzo was on
15 the other side of the street, and he stopped and he looked
16 at me, and he smiled and says, "Since when have you become
17 a politician?"

18 (LAUGHTER/RIRES)

19 MR. STEWART: And we, sort of, smiled and
20 went our separate ways. But, no, that was -- the matter
21 was before the courts, so ---

22 MR. ENGELMANN: That was the standard ---

23 MR. STEWART: But it ---

24 MR. ENGELMANN: That's the standard
25 response?

1 **MR. STEWART:** --- it's standard, I'll put it
2 that way, because for a lot of things, we -- we don't have
3 the luxury of -- of answering.

4 **MR. ENGELMANN:** Right. And I think
5 politicians sometimes take ---

6 **THE COMMISSIONER:** It's standard and it ---

7 **MR. ENGELMANN:** --- the same view.

8 **THE COMMISSIONER:** It was standard and it
9 was a proper response.

10 **MR. STEWART:** Thank you.

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

12 **MR. ENGELMANN:** And just by way of
13 background, sir, if we could look at 130752? This appears
14 to be a draft of the letter that is eventually sent, that
15 we just looked at.

16 **THE COMMISSIONER:** Thank you.

17 Exhibit Number 3320 is a draft of a letter
18 addressed to Mr. Guzzo from Mr. Stewart.

19 **---EXHIBIT NO./PIÈCE NO P-3320:**

20 (130752) - Draft of letter from James
21 Stewart to Garry Guzzo re: R. v. Leduc
22 undated

23 **MR. ENGELMANN:** If you could just give us a
24 hand with the handwriting, here, sir, if you can? Is any
25 of this yours?

1 **MR. STEWART:** No.

2 **MR. ENGELMANN:** Okay, so you would have
3 drafted what is there?

4 **MR. STEWART:** Yes.

5 **MR. ENGELMANN:** And there's just a note that
6 says:

7 "Murray, Jim has a concern that what
8 Garry Guzzo is asking for is public
9 record. I told him, even if it was, it
10 was not necessarily available to the
11 public from us, as the matter is before
12 the court. I said I would check with
13 you. Are you content this go out?"

14 And then it says:

15 "I think I persuaded him."

16 Did you want to say a little bit more,
17 initially, sir?

18 **MR. STEWART:** I -- you know, I don't
19 remember this. I may -- I think I've seen something where
20 it was something to do with some questioning of ---

21 **MR. ENGELMANN:** Prospective jurors?

22 **MR. STEWART:** --- prospective jurors, and I
23 may have -- I may have had a query whether that had been
24 filed as a court exhibit, which is something totally
25 different.

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

2 **MR. STEWART:** But -- but I don't remember a
3 specific conversation about it. All I can remember, quite
4 frankly, is the conversation with Mr. Guzzo that was ---

5 **MR. ENGELMANN:** After?

6 **MR. STEWART:** --- very short.

7 **MR. ENGELMANN:** All right.

8 **MR. STEWART:** But, other than -- and the
9 fact that I did send him a letter at some time.

10 **MR. ENGELMANN:** All right. Well, we looked
11 at the Leduc matter, and what happened in the case. Let's
12 just turn back to Crown assignment for a minute.

13 What occurred in the Leduc matter has some
14 implications for other Project Truth cases; correct?

15 **MR. STEWART:** It did.

16 **MR. ENGELMANN:** And, in particular,
17 Ms. Hallett was no longer to be involved in these cases; --
18 -

19 **MR. STEWART:** Yes.

20 **MR. ENGELMANN:** --- correct? And I just
21 want to ask you, was that a decision you made, or other
22 managers made, or was that something that she decided; she
23 expressed she no longer wanted to continue?

24 **MR. STEWART:** You know, I don't know ---

25 **MR. ENGELMANN:** Do you know?

1 **MR. STEWART:** No, I don't. I -- I don't
2 know if it was mutual or whatever. I -- the reality is, I
3 don't think she'd want to continue. I mean, it wasn't, in
4 our view -- when I say "our view," certainly in my view.
5 that she had done anything wrong or whatever. We were
6 appealing this case.

7 But, you know, she -- she had had a pretty
8 tough stretch in regards to what went on in this thing and
9 whatever. But it wasn't like I said to her "You can't do
10 this," or whatever. I think it was mutual, but I don't --
11 I don't remember whether ---

12 **MR. ENGELMANN:** All right.

13 **MR. STEWART:** --- specifically.

14 **MR. ENGELMANN:** Well, let's take a look at
15 an email, if we can for a minute, from yourself to a fellow
16 by the name of Terrance Cooper.

17 **MR. STEWART:** M'hm.

18 **MR. ENGELMANN:** And just to put this in --
19 first of all, the Document Number, 101715.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **THE COMMISSIONER:** Thank you.

22 Exhibit 3321 is email correspondence from
23 James Stewart to Terrance Cooper, March 6th, 2001. Exhibit
24 3321.

25 **---EXHIBIT NO./PIÈCE NO P-3321:**

1 (101715) - E-mail from James Stewart to
2 Terrance Cooper re: Project Truth
3 dated 06 Mar 01

4 **MR. ENGELMANN:** Just to put it in
5 perspective, sir, Mr. Cooper was a Crown working for you?

6 **MR. STEWART:** Yes.

7 **MR. ENGELMANN:** All right. And this appears
8 to be an email you write to him about finding a replacement
9 Crown ---

10 **MR. STEWART:** Yes.

11 **MR. ENGELMANN:** --- for Ms. Hallett on the
12 Father MacDonald prosecution?

13 **MR. STEWART:** Yes.

14 **MR. ENGELMANN:** And you write that -- well,
15 you write out some characteristics that you want?

16 **MR. STEWART:** M'hm.

17 **MR. ENGELMANN:** "A very experienced trial
18 lawyer, excellent judgment, mentally
19 focussed, able to drown out background
20 noise, and be prepared for some
21 personal sacrifice."

22 **MR. STEWART:** Yes.

23 **MR. ENGELMANN:** And, of course, you need
24 someone who's available.

25 **MR. STEWART:** Yes.

1 **MR. ENGELMANN:** And you suggest some names.

2 **MR. STEWART:** Yes.

3 **MR. ENGELMANN:** And one of those names is,
4 in fact, Lorne McConnery, who ends up taking this on?

5 **MR. STEWART:** Yes.

6 **MR. ENGELMANN:** All right. And at this
7 point in time, this isn't for all of those outstanding
8 briefs, this is just for the Father Macdonald prosecution?

9 **MR. STEWART:** Correct.

10 **MR. ENGELMANN:** And one of the reasons why
11 it may be just for that is, you were aware that this
12 prosecution is set to commence in late May of that year?

13 **MR. STEWART:** I know -- I know it was coming
14 up, sir.

15 **MR. ENGELMANN:** Right. And this is now
16 early March, so you need a Crown -- an experienced Crown,
17 in there quickly?

18 **MR. STEWART:** Yes.

19 **MR. ENGELMANN:** All right. Now, sir, you
20 would have -- would this email have been forwarded on, or
21 these names at least been forwarded on to Mr. Segal?

22 **MR. STEWART:** I can't remember. I -- I'm
23 not sure. I think we had a discussion about -- well, you
24 know, "Who -- who would you want?"

25 I -- all four of those are very senior

1 prosecutors, all four fit the bill. I had worked with Mr.
2 McConnery. He's -- and he's testified here, as ---

3 **MR. ENGELMANN:** Yes.

4 **MR. STEWART:** --- I understand. And he --
5 he was a very experienced counsel and he fit the bill in
6 regards to what -- what we needed for this.

7 **MR. ENGELMANN:** Given your time constraints,
8 given that these experienced Crown are coming from outside
9 the East Region, you would have had some discussion with
10 Mr. Segal about this.

11 **MR. STEWART:** I think so.

12 **MR. ENGELMANN:** Yeah.

13 **MR. STEWART:** Yes.

14 **MR. ENGELMANN:** And let's look at Document
15 Number 130682.

16 **(SHORT PAUSE/COURTE PAUSE)**

17 **THE COMMISSIONER:** Thank you.

18 Exhibit 3322 is email correspondence from
19 Murray Segal to Dinah Watts, March 7th, 2001.

20 **--- EXHIBIT NO./PIÈCE NO. P-3322:**

21 (130682) - E-mail from Murray Segal to
22 Dinah Watts re: Project Truth dated 07
23 Mar 01

24 **MR. ENGELMANN:** Sir, it would appear that --
25 at least to the email attached down below -- you're

1 informing Mr. Segal and others -- and who's Ms. Kyle?

2 **MR. STEWART:** Pardon?

3 **MR. ENGELMANN:** Who's Susan Kyle?

4 **MR. STEWART:** Susan Kyle is a Director now
5 in Toronto, but at that time, she was the Executive
6 Assistant counsel to Mr. Segal.

7 **MR. ENGELMANN:** All right.

8 And Mr. Lindsay?

9 **MR. STEWART:** Paul Lindsay was -- was in
10 charge of the Criminal Appeals Branch for the Ministry and
11 he's the Assistant Deputy Minister today and the next three
12 days and then he goes ---

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

14 **MR. STEWART:** --- he's changing roles.

15 **MR. ENGELMANN:** So you're indicating to
16 them, at least, on March 7th, that you're going to be in
17 Kingston on March the 8th meeting with Detective Inspector
18 Hall and Project Truth officers.

19 **MR. STEWART:** Yes.

20 **MR. ENGELMANN:** And one of the things --
21 you're discussing outstanding briefs where opinions on
22 reasonable prospect of conviction are still outstanding.

23 And sir, we've looked at that issue before
24 some of those were sent to Ms. Hallett in late September of
25 '99, some -- one other one in January of 2000 and then a

1 conspiracy brief sometime during the summer, I think about
2 August of 2000. So these briefs have been there for awhile
3 and it appears you're informing Mr. Segal and others that
4 you're meeting with the OPP about those matters.

5 **MR. STEWART:** It would appear to be.

6 **MR. ENGELMANN:** Yeah.

7 And you say:

8 "The ultimate review, perhaps, should
9 be rendered by the new senior Crown,
10 whoever that might be, but I understand
11 from Paul that Shelley might want to
12 continue and I want to do my own
13 initial assessment of the cases; the
14 appropriateness. I will keep you
15 posted."

16 Can you just give us a sense as to -- well,
17 first of all, it appears that Ms. Hallett may have still
18 wanted to be involved in some of those opinions.

19 **MR. STEWART:** It would appear from my email,
20 yes.

21 **MR. ENGELMANN:** And at that point in time,
22 you're saying that you want to do your own initial
23 assessment of the cases and you're talking about
24 appropriateness and I think there might be a word missing
25 there, but is that the appropriateness of the cases or is

1 it the appropriateness of Ms. Hallett staying involved?
2 Can you help us out there what you might be doing?

3 **MR. STEWART:** I'm guessing a little bit, but
4 I think probably what I was considering was the optics.
5 The judge -- wrong as he might be -- has just made a
6 substantial finding against a Crown attorney on the case
7 and that's going to have a life of its own; it's going to
8 go to appeal. And whether it would be appropriate for Ms.
9 Hallett to continue with the other files; that might --
10 might be ---

11 **MR. ENGELMANN:** All right.

12 **MR. STEWART:** --- one aspect of it.

13 **MR. ENGELMANN:** But these files are simply
14 for an opinion at this ---

15 **MR. STEWART:** Yes.

16 **MR. ENGELMANN:** --- point, they're not to
17 prosecute?

18 **MR. STEWART:** No, but it's still part --
19 part of the situation.

20 And you have to realize that this was March
21 7th and this was six days after the stay while things ---

22 **MR. ENGELMANN:** Right.

23 **MR. STEWART:** --- are still in the state of
24 flux at that point.

25 **MR. ENGELMANN:** Right.

1 And you did, in fact, meet with the OPP
2 officers in March of that year?

3 **MR. STEWART:** I must have. I don't remember
4 that.

5 **MR. ENGELMANN:** All right. And aside from
6 discussing opinions, you would have, no doubt, told them
7 that there would be a new Crown on the MacDonald
8 prosecution because you were seeking one.

9 **MR. STEWART:** Well, I -- I would have told
10 them that.

11 **MR. ENGELMANN:** All right.

12 And would you have explained reasons as to
13 why she was being replaced?

14 **MR. STEWART:** I'm not sure that I would
15 have.

16 **MR. ENGELMANN:** All right.

17 In your view, did that have anything to do
18 with her competency ---

19 **MR. STEWART:** No.

20 **MR. ENGELMANN:** --- as a Crown?

21 **MR. STEWART:** No, it -- the other thing is,
22 as I was saying, I mean, you know, she was from Special
23 Prosecutions in Toronto; she wasn't from the area and she'd
24 been working here and this -- this decision would be very
25 devastating to any Crown. And -- but it wasn't whether she

1 could do the job or not. It had nothing to do with that.

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

3 And just to turn back to his notes for a
4 minute, if we can; it's Exhibit 2757, the Bates page
5 7110835, 13:00 and this is lunch -- just after -- I think
6 it's lunch, Kingston:

7 "Meet with Regional Crown, Jim Stewart,
8 on Leduc case. Have ordered
9 transcripts. Panel to decide on an
10 appeal. Will have another Crown
11 attorney do Father Charles MacDonald
12 trial. Won't be going until fall
13 probably."

14 So you -- you're already contemplating a
15 possible adjournment of that matter.

16 **MR. STEWART:** Don't remember.

17 **MR. ENGELMANN:** All right.

18 "Three plus six victims. Seven plus
19 twelve counts. Discussed matter still
20 under review by Hallett. Suggests he
21 will have a scrum on same. Pick three
22 Crown attorneys. Meeting in Ottawa.
23 Do presentation on evidence. Require
24 the investigators for same. Work
25 through each case."

1 Then on the next page, it carries on:
2 "Decided it would be better for Crown
3 doing Father Charles MacDonald to do
4 the conspiracy review as well. Appears
5 Hallett will not be further involved in
6 Project Truth matters."

7 All right?

8 So you -- you appear to be giving them
9 information about what's going on and -- and you don't take
10 any issue with ---

11 **MR. STEWART:** I don't. I'm sorry, what date
12 was that? I ---

13 **MR. ENGELMANN:** This would be March the 8th
14 and you've -- in your -- the email we just looked at of
15 March 7th to Mr. Segal, you're saying you're going to be
16 meeting with the OPP officers to review these matters on
17 the -- the next day.

18 **MR. STEWART:** And also, just for information
19 purposes, the term "scrum", we use in regards to case
20 conferences. We'll have three or four Crown attorneys sit
21 around and look -- look at a case and make decision in
22 regards to it. That's the reference there.

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

24 **MR. STEWART:** So I would have said that.
25 That's what term I use.

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

2 And just to follow-up, if we may, Document
3 Number 726407. I think, sir, another -- this looks
4 familiar. I'm not sure if it's already an exhibit; maybe
5 under a different document number. It's a letter from
6 Detective Inspector Hall to the Director of the Criminal
7 Investigations Branch, dated 22nd March '01.

8 The Document Number I have here is 726407.
9 I -- I'm thinking this may already be an exhibit under a
10 different document number. March 22nd, '01.

11 Yes. This is from P.R. Hall to the Director
12 of Criminal Investigations Branch. It looks like a
13 document might have gone in with Detective Inspector Hall.
14 All right. Document Number 726407.

15 **(SHORT PAUSE/COURTE PAUSE)**

16 **THE COMMISSIONER:** Thank you.

17 Exhibit Number 3323 is a letter dated March
18 22nd, '01 to the Director of Criminal Investigations Branch
19 from Pat Hall.

20 **--- EXHIBIT NO./PIÈCE NO. P-3323:**

21 (726407) - Memorandum from Pat Hall to The
22 Director Criminal Investigation Branch dated
23 22 Mar 01

24 **MR. ENGELMANN:** Sir, this letter doesn't
25 appear to be copied to you. Any sense as whether you might

1 have received it?

2 MR. STEWART: No, I don't -- I don't
3 remember seeing this.

4 MR. ENGELMANN: All right.

5 There's a reference to you on the second
6 page which is Bates page 876.

7 MR. STEWART: Yes.

8 MR. ENGELMANN: "Project Truth cannot be
9 concluded until the previously
10 mentioned legal opinions are obtained."

11 And these are the legal opinions referring
12 to the individual clergy and the conspiracy brief.

13 "Regional Director of Crown Attorneys,
14 Jim Stewart, is presently arranging for
15 a team of three Crown attorneys to
16 conduct this review with input from the
17 investigators due to the sensitive
18 nature of these investigations."

19 Now, sir, just -- and we just looked at a
20 note sort of to this effect as well. Were you actually
21 going to have three Crowns write opinions or was it just to
22 have a scrum and have one or two write these opinions or
23 did you have a sense as to how you were going to approach
24 this?

25 MR. STEWART: You know, I'm not sure how we

1 would have done it. I think, ultimately, Lorne McConnery
2 rendered the opinions.

3 **MR. ENGELMANN:** You had Lorne McConnery and
4 another fellow by the name of Kevin Phillips ---

5 **MR. STEWART:** Yes.

6 **MR. ENGELMANN:** --- that worked on these for
7 some time?

8 **MR. STEWART:** Yes. Often when we do scrums
9 it's not as in the Appeals Branch where it's a written
10 legal opinion, but in this case, it would have been. But I
11 guess once Lorne came along, I ended up tasking him with
12 doing it.

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

14 Let's look at another document then, 130684.
15 It's an email. At the top it says "From Murray Segal to
16 Susan Kyle, March 28, 2001".

17 **THE COMMISSIONER:** Thank you.

18 Exhibit Number 3324.

19 **MR. STEWART:** Thank you.

20 --- **EXHIBIT NO./PIÈCE NO. P-3324:**

21 (130684) - E-mail from Murray Segal to Susan
22 Kyle re: R. v. MacDonald dated 28 Mar 01

23 **MR. ENGELMANN:** And I'm really interested in
24 the email from Christine Bartlett-Hughes.

25 Do you recall, sir, that she had been

1 involved at least to some extent in assisting Ms. Hallett
2 on the MacDonald matter?

3 **MR. STEWART:** I don't remember that. I know
4 Christine Tier was.

5 **MR. ENGELMANN:** Yes.

6 **MR. STEWART:** But I didn't remember Ms.
7 Bartlett. I may have known it at the time, of course.

8 **MR. ENGELMANN:** And it appears she's being
9 contemplated for some role in the ongoing Father MacDonald
10 prosecution; correct?

11 **MR. STEWART:** Yes.

12 **MR. ENGELMANN:** And she's asking you, for
13 example, whether you found someone or whether you're going
14 to come down and be actually prosecuting this case?

15 **MR. STEWART:** Yes.

16 **MR. ENGELMANN:** And she's telling you about
17 issues about her availability and she's also saying:

18 "Given past events, it might also be
19 prudent to have the investigating
20 officers review all the materials,
21 including their notebooks, to assure
22 themselves that everything has been
23 disclosed and to have the assigned
24 Crown or Crowns oversee this process
25 once a Crown has been assigned."

1 All right. Did you think that was prudent
2 advice in the circumstances?

3 MR. STEWART: I'm sorry; which part of the
4 advice?

5 MR. ENGELMANN: "...have the investigating
6 officers review all the materials,
7 including their notebooks, to assure
8 themselves that everything has been
9 disclosed and to have the assigned
10 Crown or Crowns oversee this process
11 once a Crown has been assigned."

12 MR. STEWART: Certainly, I think Mr.
13 McConnery did that. Once Mr. McConnery took over, there
14 were some documents, I think -- people weren't sure what
15 had been given, so we just did everything.

16 MR. ENGELMANN: Right. Well, you just had
17 this finding against your office, potentially, on ---

18 MR. STEWART: Yes.

19 MR. ENGELMANN: --- the 1st. All right.
20 And she's just giving you a sense about her
21 availability as well or perhaps unavailability. Fair
22 enough?

23 MR. STEWART: Yes.

24 MR. ENGELMANN: And she's indicating that:
25 "There's some disclosure that will have

1 to be made to the defence by the new
2 Crown."

3 Correct?

4 **MR. STEWART:** Yes.

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

6 And in fact, a few days later, as I
7 understand it, you receive a letter from Ms. Hallett about
8 material she had regarding this ninth complainant who is
9 known here as C-2 and that this is going to have to be
10 disclosed.

11 And that is -- it's Exhibit 2827 and it's a
12 one-page document, sir. It might be just as easy to look
13 at it on the screen. This is Shelley Hallett to yourself.
14 This is the end of March of 2001, so about four weeks after
15 the stay. And she's saying:

16 "This is to confirm our discussion in
17 our meeting of today's date in which I
18 advised you I had received from Project
19 Truth officers this week notes of their
20 March 14th..."

21 **THE COMMISSIONER:** No -- I'm sorry.

22 **MR. ENGELMANN:** "... 2001 meeting with ..."

23 And that fellow is known here as C-2. Okay,
24 the individual alleged victim?

25 "... one of the complainants in the

1 above-noted case. This meeting was at
2 [C-2's] request and there's also a
3 videotape."

4 So she's informing you, sir, that there's
5 still disclosure that will have to be done by a new Crown.
6 And at this point in time, you don't have a new Crown yet;
7 correct?

8 **MR. STEWART:** Shortly, we're going to have a
9 new Crown.

10 **MR. ENGELMANN:** Yes, right.

11 And she's saying:

12 "You indicated to me that new counsel
13 will be available within the next two
14 weeks."

15 So there's still no Crown for the MacDonald
16 matter or the clergy briefs, but that's happening shortly.
17 She's still receiving disclosure from the OPP and she tells
18 you she'll pass it on but that she doesn't want to be
19 involved in any further disclosure. Fair enough?

20 **MR. STEWART:** Fair.

21 **MR. ENGELMANN:** And she's copying Detective
22 Inspector Hall. All right.

23 And, sir, I understand that within a couple
24 of days of that, Mr. McConnery is assigned.

25 And if we could take a look briefly at

1 Exhibit 3036? This is an email from yourself, sir?

2 MR. STEWART: Yes.

3 MR. ENGELMANN: So you're confirming that
4 one of the four individuals you asked for is in fact being
5 assigned. That's Mr. McConnery; correct?

6 And this case was of particular importance,
7 was it not?

8 MR. STEWART: Well, all of them were, but
9 this one was also -- had significance, let's put it that
10 way.

11 MR. ENGELMANN: All right.

12 And you're indicating you're going to have
13 three counsel involved here?

14 MR. STEWART: Well, certainly Christine
15 Bartlett-Hughes would be playing a role, but it was going
16 to be Lorne and Kevin Phillips.

17 MR. ENGELMANN: Right.

18 And presumably that's -- you thought that
19 this required at least two lawyers and perhaps a third for
20 some work on the file?

21 MR. STEWART: Well, with the history and
22 where we were at that point in time, you wouldn't be
23 assigning a single Crown.

24 MR. ENGELMANN: Right.

25 MR. STEWART: When we hadn't, we had missed

1 here with Ms. Hallett.

2 MR. ENGELMANN: She was quite junior, was
3 she not?

4 MR. STEWART: Yes.

5 MR. ENGELMANN: We understood she had no
6 litigation experience, but these two lawyers here, Ms.
7 Bartlett-Hughes and Mr. Phillips, they'd had some
8 experience; correct?

9 MR. STEWART: Mr. Phillips -- I mean, this
10 was eight years ago.

11 MR. ENGELMANN: Yes.

12 MR. STEWART: He would be mid-range. He
13 wasn't senior.

14 MR. ENGELMANN: No.

15 MR. STEWART: He definitely wasn't senior
16 counsel, maybe mid-senior. He got on with the Oshawa
17 office and transferred to Ottawa. But I wouldn't know how
18 many years he'd have at the Bar at that point, but he
19 wasn't senior.

20 MR. ENGELMANN: No.

21 MR. STEWART: No.

22 MR. ENGELMANN: No, that, I think, we'd been
23 told, but they weren't coming out of law school either.
24 They had some trial experience?

25 MR. STEWART: That's fair.

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

2 And I'm just wondering, sir; you're
3 recognizing that this is a significant matter; you're
4 assigning these resources; what about earlier? Did you
5 think perhaps you should have had more people on this
6 earlier, this prosecution?

7 **MR. STEWART:** Not really. We were in a
8 timeframe -- right now, we've just had the Crown who had
9 corporate knowledge in regards to the case chastised,
10 knocked off a case. We have another case that's coming up
11 with a history in regards to it, and I want to have
12 somebody senior come in that isn't going to be affected by
13 all the background in regards to it and make sure that he
14 has a good junior with him.

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

16 Were you involved in making sure that Mr.
17 McConnery had those good assistants available?

18 **MR. STEWART:** Well, Mr. Phillips was the
19 main one, and I'm doing a revision -- that's history here
20 because I was trying to think about it, but the way I would
21 have done it is talked to the Crown Attorney in Ottawa,
22 which was Hillary McCormack at the time, saw who was
23 available, went down, saw them and said, "Get everything
24 off your plate and you're on this."

25 **MR. ENGELMANN:** And it's my understanding,

1 sir, if I can just for a minute, that you would have
2 provided them with an office in Ottawa?

3 **MR. STEWART:** Well, actually, what we did is
4 there's a boardroom within the Regional Office.

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

6 **MR. STEWART:** Because they were at different
7 places. Phillips was from Ottawa; McConnery was from
8 Barrie and they were working offsite from Cornwall. They
9 weren't in Cornwall. So they had to have a place.

10 **THE COMMISSIONER:** I'm just thinking out
11 loud, sir, that victims and everyone concerned with this
12 case, the Leduc case, I guess, has now learned that all of
13 the Crown attorneys had to do double duty. The police had
14 to do double duty, and maybe cynically a little bit, they
15 say, well, things change when a Crown is accused of doing
16 something wrong and that there's a bill for \$350,000 in the
17 air, then all of the Crowns are freed up to concentrate on
18 this appeal to save one of theirs. And then, there's some
19 issue as to proper allocation of people.

20 **MR. STEWART:** All right, no, I'd like to
21 deal with that directly.

22 **THE COMMISSIONER:** Yes.

23 **MR. STEWART:** The reality is that Ms.
24 Hallett was a senior counsel from Special Prosecutions
25 where I worked.

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

2 **MR. STEWART:** She had a junior Crown with
3 her. And basically we were replacing her; when we did
4 replace her with Lorne McConnery, senior Crown from Barrie,
5 and Phillips from Ottawa. Ms. Bartlett-Hughes may have
6 dealt with a couple of motions but she wasn't -- she wasn't
7 on the case regularly.

8 And the only reason that they ended up in
9 the Ottawa area, because there was two of them, they
10 weren't in the same place. Shelley Hallett worked in the
11 same place as Tier did in Toronto; so they're in the same
12 place.

13 **MR. ENGELMANN:** But sir, we understood at
14 least that Miss Hallett was not relieved of all of her
15 other responsibilities. She was still doing appellate
16 work.

17 **MR. STEWART:** Yes.

18 **MR. ENGELMANN:** And she talked to us about
19 some of it and some of the significant importance of it.

20 **MR. STEWART:** Yes.

21 **MR. ENGELMANN:** And she wasn't just doing
22 one case.

23 **THE COMMISSIONER:** And she was doing that
24 sexual abuse thing that the Minister had asked her to get
25 onto.

1 **MR. STEWART:** M'hm.

2 **THE COMMISSIONER:** So -- and in fact, I
3 think she said it on a few times that her review of those
4 five or six cases kept getting bumped back because she has
5 to set up her own priorities. And so ---

6 **MR. STEWART:** Well, I -- all I'm going to
7 say is I mean at the point in time MacDonald was almost
8 ready to go, Ms. Hallett had been on it for how long? So
9 we're into a timeline thing in regards to it. And we've
10 also had issues that were mushrooming all the time and, in
11 fairness to Ms. Hallett, they mushroomed as they went on in
12 the Dunlop issue ---

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

14 **MR. STEWART:** --- in regards to the boxes
15 and the nine boxes here, four boxes there and wherever they
16 were.

17 And so you have a situation where somebody
18 is starting from a dead stop. And that's where McConnery
19 is. He's never heard of the case and then all of a sudden,
20 we need him there to review all the materials, to get up to
21 speed; hasn't been involved in the Leduc; hasn't been
22 involved in anything.

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

24 **MR. STEWART:** So then you're in a situation,
25 but we didn't bring in a shock troupe of five Crowns. We

1 brought in the same -- we brought in two.

2 Now, it may be -- and I don't know all the
3 details of Ms. Hallett's in regards to what work she had in
4 Toronto. Okay, I do not know that. But I'm just saying in
5 regards to it, it wasn't like five for two because we had a
6 situation now where a judge has just stayed a major case
7 and we've got another one that needs prep on a very quick
8 basis.

9 **MR. ENGELMANN:** And in this case with Mr.
10 McConnery, he was coming from outside the Region, but you
11 insisted for him and for Mr. Phillips that their plates be
12 cleared so they could take this on?

13 **MR. STEWART:** I hope they would. I mean I
14 don't know. Mr. McConnery was here; I don't if what he
15 said what else he had or what else Mr. Phillips had in
16 regards to it. I can't assist there.

17 I mean we don't have -- we're not like
18 firemen where we have a group of people sitting at the
19 station and calling them in regards to -- what you do is
20 try and see who's available in regards to it, and McConnery
21 was one of the four.

22 I mean obviously, if he could -- he could be
23 here. It could be he's on a murder case and then he can't
24 do it.

25 **MR. ENGELMANN:** We understand that he agreed

1 to take on this case in early April but then he was still
2 in Barrie, as I understand it, for most of that month. And
3 he was aware that the defence was requesting an adjournment
4 on the MacDonald trial, and I understand you were managing
5 that issue on an interim basis?

6 **MR. STEWART:** Yeah and looking back now, it
7 would appear that I was.

8 **MR. ENGELMANN:** All right. And for example
9 if we look at -- it's Document Number 109565.

10 **THE COMMISSIONER:** I think, Mr. Stewart,
11 what we are looking at is not looking at institutionally
12 saying that we should have firemen, like, and Crown
13 attorneys like firemen.

14 But I think that what we have to do is look
15 at a little smaller, micro look at it. And it seems that,
16 from some of the evidence, that some people can conclude
17 that the police are severely understaffed; the Crowns are
18 severely understaffed, and there's no capacity to be able
19 to deal with these types of cases when they come up.

20 And so it's not an issue of saying the
21 recommendation is going to be we want 50 Crowns sitting on
22 the fire station wall waiting for something to happen, but
23 it's the question of putting in the nuances so that a) we
24 can afford it; b) your personnel are there, and that is
25 what we're looking at I think.

1 **MR. STEWART:** That's very fair.

2 **THE COMMISSIONER:** All right.

3 **MR. STEWART:** And I think counsel is going
4 to get to my other role, the major case, ---

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

6 **MR. STEWART:** --- for what we've done --
7 what -- and I'll explain what we've done. That doesn't
8 mean we're not a moving landscape.

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

10 **MR. STEWART:** Like what we're doing now and
11 we didn't do in 2001, we can discuss. And you've had the -
12 - and they're not luxury -- the hard work of being here for
13 a time looking at this whole thing.

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

15 **MR. STEWART:** And you can see the big
16 picture in regards to it. And, you know, obviously, we can
17 learn and if there are things that -- okay, in something
18 like this, what will we do different? Well, I mean
19 hindsight is always -- we can say a number of things.

20 **MR. ENGELMANN:** One point ---

21 **MR. STEWART:** But I just want to say, and I
22 will get to the major case thing later that will explain
23 what we do. There are subparts to that because of all the
24 background here.

25 You know, once you take the Cornwall office

1 out of the mix, which normally never happens, but it was
2 here, but we have to be prepared for the unusual also.
3 It's not an answer to say, oh, well, we can take care of 90
4 percent of the major cases but we can't take care of 10
5 percent.

6 **THE COMMISSIONER:** Yeah, all right. We'll
7 get to that later. Thank you.

8 **MR. ENGELMANN:** All right. Sir, we were
9 looking at Document Number 109565. That is a letter of
10 April 11th, 2001 from Mr. Stewart to Mr. Neville.

11 **THE COMMISSIONER:** Exhibit 3325 -- you've
12 said it, April 11th, 2001, Neville from Stewart.

13 **--- EXHIBIT NO./PIÈCE NO P-3325:**

14 (109565) - Letter from James Stewart to
15 Michael Neville re: R. v. MacDonald dated 11
16 Apr 01

17 **MR. ENGELMANN:** Now, sir, I asked you just a
18 minute ago about whether or not you were involved in
19 dealing with this matter on an interim basis until Mr.
20 McConnery is up to speed or what have you. It appears that
21 you're dealing with this request of the defence to have an
22 adjournment; correct?

23 **MR. STEWART:** Yes.

24 **MR. ENGELMANN:** And you're noting:

25 "I also understand you're presently

1 involved in a murder trial in Perth
2 that would overlap with the MacDonald
3 case. I ask you at this point in time
4 to deal with my office on the case.
5 Notify me as soon as possible. We can
6 arrange a mutually agreeable date to
7 the matter spoken to."

8 All right?

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** So you're dealing with it
11 because Mr. McConnery is not quite up to speed and ---

12 **MR. STEWART:** No, he isn't there yet.

13 **MR. ENGELMANN:** He's not there yet. All
14 right. And at this point in time, sir, the initial
15 charges, the three first complainants, it's five years old,
16 right? They were laid in March of '96; correct, and this
17 is April of 2001?

18 And then you have other charges that are
19 laid in '98 and then some more recent charges from 2000?
20 Okay, but some of your charges are up to five years old?

21 **MR. STEWART:** M'hm.

22 **MR. ENGELMANN:** So this must be a concern of
23 yours that the defence is seeking an adjournment?

24 **MR. STEWART:** Well, I mean the reality is
25 that if Mr. Neville is involved in a murder case in Perth,

1 he can't be two places at once.

2 **MR. ENGELMANN:** Correct. Correct.

3 And are you concerned, sir, about further
4 delays and the issue of 11(b) looming over you?

5 **MR. STEWART:** Well, you're always concerned
6 with that. But I mean the reality is he can't be in two
7 places. And so he's going to get the adjournment. I mean
8 that's going to be the reality.

9 Yes, of course we're concerned. We're
10 always concerned with that, but that's the reality of it.
11 And it would appear that he had called the judge's
12 secretary 10 days before to attempt to get this date.

13 **THE COMMISSIONER:** Were you also aware that
14 he was going to not waive any delay argument and, in fact,
15 was going to use the fact that there was a Crown problem in
16 the other case in Perth, and he was going to use that to
17 bolster his delay argument?

18 **MR. STEWART:** I don't know if I was aware of
19 that. I mean that can be argued in court and one judge
20 might say, "Well, you can't have it both ways."

21 I mean, "the Crown was ready to proceed at a
22 such and such a date, and the only reason it isn't is
23 because you were in Perth."

24 Whether he waives it or not, he's going to
25 get an adjournment.

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

2 **MR. ENGELMANN:** Fair enough, but you sent
3 Mr. Phillips there from your office?

4 **MR. STEWART:** I must have. If you tell me I
5 did, I don't ---

6 **THE COMMISSIONER:** Well no, how we know,
7 Phillips showed up. He's on the record.

8 **MR. STEWART:** Okay, thank you.

9 **MR. ENGELMANN:** Yes, and he requested a
10 waiver of the 11(b) with respect to the adjournment. I
11 understand that defence counsel's agents advised they did
12 not have instructions to waive, and the adjournment was
13 granted. Are you aware of that, that there was no waiver
14 of the 11(b)?

15 **MR. STEWART:** Not sure whether I was aware
16 at the time. I'm sure Mr. Phillips would have come back
17 and talked to me about it.

18 **MR. ENGELMANN:** All right. And on reporting
19 back to you about that, would there have been a letter
20 written forthwith to try and get the earliest possible
21 trial date?

22 **MR. STEWART:** I don't know.

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

24 You were concerned, though, at this point
25 about an 11(b) application?

1 **MR. STEWART:** I'm not sure I directed my
2 mind to it. I had a new Crown coming on. We were going to
3 get it on as fast as we could. Obviously, if there's a
4 situation where the defence lawyer can't be available then
5 we can't do it on the date that we're there because matters
6 have been delayed.

7 **MR. ENGELMANN:** But, sir, if the initial
8 charges are five years old that must have been on your
9 mind?

10 **MR. STEWART:** Well, I'm not sure they were.
11 I had -- the reality is Mr. Pelletier was on it --
12 Ms. Hallett on it -- very experienced counsel. I was
13 bringing in a senior counsel to deal with it.

14 **MR. ENGELMANN:** Sir, I understand that
15 another issue that arose during that month before
16 Mr. McConnery arrives is there's some new boxes or new
17 material being produced by Constable Dunlop as a result of
18 an order he gets from the Cornwall Police.

19 And there's an email with respect to this
20 issue but it appears that what you were seeking to have
21 done -- and I'm not sure if this was yourself or Mr.
22 McConnery. Actually, Mr. McConnery told us in his evidence
23 there was a decision made to paginate and copy the Dunlop
24 materials using a method previously used in another -- I
25 think a murder case. Would you have been involved in that

1 decision, sir, with respect to trying to get this
2 disclosure together?

3 **MR. STEWART:** I know my philosophy is if
4 you're not sure whether you've disclosed or not, always err
5 on the side of caution and just do it all again, even if --
6 -

7 **MR. ENGELMANN:** All right.

8 **MR. STEWART:** But I don't specifically -- he
9 may have mentioned -- talked to me about it. I don't know.

10 **MR. ENGELMANN:** Yeah, he indicated that he
11 was spending a lot of time with you at or around that time,
12 and you determined that you should send this material out
13 to a private photocopying firm, have multiple copies made,
14 and just get the disclosure out.

15 **MR. STEWART:** I take no issue with that. I
16 don't remember.

17 **MR. ENGELMANN:** All right.

18 And there was this issue about whether you
19 should disclose the entirety of the boxes or only some of
20 the boxes because there may be some privacy concerns, and
21 Mr. McConnery told us that his decision was just to
22 disclose everything to the defence counsel. And would he
23 have run that by you at the time or do you want to ---

24 **MR. STEWART:** I'm not sure he did. I don't
25 know.

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

2 Were you aware, sir, that material from
3 Mr. Dunlop was being sought in other cases by other defence
4 counsel as well?

5 **MR. STEWART:** I don't remember that.

6 **MR. ENGELMANN:** If we could take a look at
7 an email, Document Number 702003.

8 **THE COMMISSIONER:** Thank you.

9 Exhibit 3326 is email correspondence from
10 Patrick Hall to Kevin Phillips et al, April 25th, 2001.

11 --- **EXHIBIT NO./PIÈCE NO. P-3326:**

12 (702003) - E-mail from Pat Hall to Kevin
13 Phillips and Terrance Cooper dated April 25,
14 2001

15 **MR. ENGELMANN:** Now, this is not copied to
16 you, sir, but my understanding is -- and we'll look at a
17 couple of other documents in a minute -- that Mr. Cooper
18 worked at your office and was apprising you of issues
19 concerning the Dunlop disclosure and the boxes. This is
20 before Mr. McConnery is in Ottawa. Do you have some
21 recollection of having something to do with the Dunlop
22 boxes and the disclosure, you and Mr. Cooper?

23 **MR. STEWART:** I have no recollection now.

24 **MR. ENGELMANN:** All right. I just note ---

25 **THE COMMISSIONER:** This has been an exhibit

1 already.

2 **MR. ENGELMANN:** Oh, I'm sorry.

3 **THE COMMISSIONER:** That's okay.

4 **MR. ENGELMANN:** It references the fact, in
5 about the middle of the paragraph:

6 "No reflection on you, Kevin. It seems
7 Terry is giving the direction on behalf
8 of Jim Stewart."

9 And this is the direction on what to do with
10 respect to the disclosure of these boxes.

11 Well, let's look at another document
12 perhaps, if we can, and that is Exhibit 3040. This is a
13 letter the next day from Mr. Cooper to Detective Inspector
14 Hall and it's copied to you, sir.

15 **MR. STEWART:** M'hm.

16 **MR. ENGELMANN:** It refers to an email and
17 attachment and that is the document we just looked at,
18 Mr. Commissioner.

19 And in the email we just looked at, there
20 was an issue about who should be dealing with Mr. Dunlop
21 and whether he should deal directly with the Crown and the
22 advice given back by Mr. Cooper, and it appears after
23 discussion with you, sir, is that:

24 "Mr. Dunlop should deal exclusively
25 with you [being Pat Hall] or another

1 OPP officer for a number of reasons
2 related to future litigation."

3 **MR. STEWART:** Yes.

4 **MR. ENGELMANN:** And you make the comment,
5 and I'm sure you'll agree with the statement today --
6 sorry, Mr. Cooper does:

7 "Generally speaking, a Crown does not
8 interview a witness without a police
9 officer being present."

10 **MR. STEWART:** That's correct.

11 **MR. ENGELMANN:** That's good advice?

12 **MR. STEWART:** Yes.

13 **MR. ENGELMANN:** And so this is a situation
14 where you don't want Mr. Dunlop giving disclosure directly
15 to one of your Crowns. You want this done through Mr. Hall
16 -- or Detective Inspector Hall -- who's a police officer
17 and who he has a relationship with?

18 **MR. STEWART:** Yes.

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

20 And, sir, at this point-in-time -- this is
21 April of 2001 -- and I'm not sure if you're aware of this
22 but Constable Dunlop had, in June of the year before, come
23 to the Crown Law Office in Toronto and had an unannounced
24 meeting with Shelley Hallett there where there were some
25 disclosure issues. I'm not sure if that was present in

1 your mind at this time or not?

2 MR. STEWART: No.

3 MR. ENGELMANN: Okay. But in any event you
4 wanted the police, and in particular Detective Inspector
5 Hall, to deal with this?

6 MR. STEWART: Yes.

7 MR. ENGELMANN: All right.

8 Now, with respect to the outstanding briefs,
9 my understanding is even after Mr. McConnery is assigned to
10 the MacDonald matter there's still not a decision made
11 immediately on the outstanding briefs, and we had some
12 interest in -- on Ms. Hallett of possibly continuing;
13 correct?

14 MR. STEWART: Well, it seems to be from the
15 documents.

16 MR. ENGELMANN: Yes, all right.

17 And we know that the MacDonald matter does
18 get postponed, and we also know that Mr. McConnery and Mr.
19 Phillips get assigned to work on these briefs, and that
20 they do so in June, July and part of August. And you would
21 have been -- asked for that assignment, sir, or been
22 involved in assigning them to that?

23 MR. STEWART: I would have asked them to do
24 it.

25 MR. ENGELMANN: All right.

1 Sir, I just want to show you an email, if I
2 may. It's dated April 16th, 2001. It's Document Number
3 726646 -- 726646.

4 **THE COMMISSIONER:** Thank you.

5 Exhibit 3327 is email correspondence from
6 Patrick Hall to Jim Miller dated April 16th, 2001.

7 **--- EXHIBIT NO./PIÈCE NO. P-3327:**

8 (726646) - E-mail from Pat Hall to Jim
9 Miller re: Project Truth dated April 16,
10 2001

11 **MR. ENGELMANN:** Can you blow that up,
12 please? Sorry, make it bigger.

13 Now, this is an internal OPP email from
14 Detective Inspector Hall to Superintendent Miller, so I'm
15 assuming that this would not have been shared with you at
16 that time?

17 **MR. STEWART:** No.

18 **MR. ENGELMANN:** He's confirming that -- "he"
19 being Pat Hall -- is confirming that he's expressed
20 concerns to you about the briefs, and we know that in
21 December of 2000, just before the Leduc trial, he would
22 have called you about it and you were of the opinion it was
23 no rush at that time.

24 He also refers to the fact that Chris Lewis
25 has spoken to you and to Murray Segal, and that again was

1 around the time of the Leduc trial.

2 And he's saying:

3 "Since Hallett has been removed from
4 Project Truth case, Jim Stewart is in
5 the process of getting three Crowns
6 together to review these cases. I
7 expect this to take place in the next
8 couple of weeks."

9 Okay? And he said earlier on that -- in
10 very bold letters:

11 "We're waiting for legal opinions on
12 five clergy and conspiracy. Hallett
13 had promised on numerous occasions she
14 would have them for us. We are being
15 held hostage by the Crown's office."

16 All right? So it appears that in April, you
17 may have indicated to them that this process would only
18 take a couple of weeks. Do you recall if you would have
19 given any kind of time estimate on how quickly these briefs
20 could be reviewed and opinions given?

21 **MR. STEWART:** I don't remember. I don't
22 remember. I -- again, revision is history. Obviously, it
23 would appear that with Mr. McConnery coming in on the
24 MacDonald case and it being adjourned, that there would be
25 an opportunity for him to be the one to review.

1 **MR. ENGELMANN:** And we understand that that
2 review was done on a fairly full time basis in June, July,
3 August. Does that time seem unreasonable in the
4 circumstances, sir, or are you able to comment on that?

5 **MR. STEWART:** Well I don't know what else he
6 had to review to get up to speed in regards -- for the
7 whole context of this. I don't know the answer to that.

8 **MR. ENGELMANN:** All right.
9 Just be a moment, sir.

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

11 **MR. ENGELMANN:** If we could just look at
12 some notes of Mr. McConnery's for a minute, and they are
13 Exhibit 3042.

14 I'm looking at Bates page 908, Mr. Stewart.
15 He's got a reference to May 23rd:

16 "Telephone call from Jim Stewart and
17 received copies of emails from
18 Detective Superintendent Jim Miller,
19 CIB, and I'm not sure if it's the one
20 we just looked at or others but OPP and
21 Assistant Deputy General Murray Segal,
22 that I'm to review other briefs and
23 that same to be done with some
24 priority."

25 All right? So it would appear -- and this

1 is the MacDonald matter has been postponed at this point --
2 it appears that he's assigned in late May. All right?

3 He also notes a bit further down:

4 "Several of these briefs were already
5 at Stewart's office but S.H. still had
6 copies of the conspiracy brief."

7 That's Ms. Hallett still having one of the
8 briefs. May 29th: "Meeting with Jim Stewart and others and
9 he's to use Stewart's boardroom for some time." All right?
10 Does that seem correct, sir?

11 **MR. STEWART:** Certainly.

12 **MR. ENGELMANN:** All right. And as well,
13 sir, on the next Bates page, the bottom, he references a
14 travelling to Toronto, June 4th:

15 "Meet Jim Stewart. He and I review
16 background of Project Truth
17 investigation so as to be able to
18 advise M. Segal. Neither of us have
19 anything approaching a complete picture
20 but some overview knowledge."

21 Would you agree with that statement, sir?

22 **MR. STEWART:** I do.

23 **MR. ENGELMANN:** All right. Then there's a
24 reference to a meeting you have with Murray Segal at 1:00
25 p.m. I'm on Bates page 910.

1 And you're talking about the six briefs, and
2 it says:

3 "Segal would like to have review of
4 these briefs done in about 30 days."

5 And we know it took longer than that, sir.
6 It didn't get done in the month of June. This matter
7 carried on until August. Was that a concern at the time?
8 Can you recall getting any pressure or feeling that this
9 wasn't being done quickly enough?

10 **MR. STEWART:** I don't have any independent
11 recall at all.

12 **MR. ENGELMANN:** All right.

13 **THE COMMISSIONER:** Pick a time for lunch,
14 Mr. Engelmann?

15 **MR. ENGELMANN:** Yes. Perhaps it's
16 appropriate right now, sir. Thank you.

17 **THE COMMISSIONER:** Thank you. Come back at
18 2:00.

19 **THE REGISTRAR:** Order. All rise. À
20 l'ordre. Veuillez vous lever.

21 This hearing will resume at 2:00 p.m.

22 --- Upon adjourning at 12:28 p.m.

23 L'audience est ajournée à 12h28.

24 --- Upon resuming at 2:05 p.m.

25 L'audience est reprise à 14h05.

1 **THE REGISTRAR:** This hearing is now resumed.
2 Please be seated. Veuillez vous asseoir.

3 **JAMES STEWART, Resumed/Sous le même serment:**

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

5 Mr. Stewart, if you want to just there for a
6 moment. I have to address the request from the Cornwall
7 Police Service.

8 Here we go.

9 Mr. Horn, on behalf of the Cornwall Police
10 Service Board came forward to me ---

11 **(LAUGHTER/RIRES)**

12 **THE COMMISSIONER:** What's the matter?

13 **MS. DALEY:** You mean Crane.

14 **MR. CALLAGHAN:** Crane, not Horn.

15 **THE COMMISSIONER:** What did I say?

16 **MR. CALLAGHAN:** Horn.

17 **MS. DALEY:** Horn.

18 ---SUBMISSIONS BY THE COMMISSIONER/REPRÉSENTATIONS PAR LE
19 COMMISSAIRE:

20 **THE COMMISSIONER:** Oh, I'm sorry; Mr. Crane.
21 I'm sorry. And I've written it here, "Mr. Crane".

22 **(LAUGHTER/RIRES)**

23 **THE COMMISSIONER:** He came forward on behalf
24 of the Cornwall Police Service to ask for more time to make
25 oral submissions on behalf of his client. He indicates

1 reasons for his request as follows.

2 That the Cornwall Police Services had the
3 more witnesses, there was more time spent on the Cornwall
4 police evidence. And when you look at the other parties,
5 for example the OPP and the OPPA, their position on many
6 things are similar and therefore it could be argued that
7 they have more time to present their material. And again
8 Mr. Crane raises the often-quoted matter of procedural
9 fairness.

10 As you know, the time set to complete the
11 submissions was set by the legislature and any extension of
12 time was in fact denied by the Attorney General, and so we
13 are within -- we're stuck with the limits that we have.

14 As for setting the time for oral
15 submissions, this was allotted with that limitation of time
16 in mind. I must advise you that I'm not inclined to change
17 the allotment of time at this time. It is a very tight
18 schedule.

19 But I want to speak about the argument of
20 procedural fairness. The matter of oral submission does in
21 no way impact on procedural fairness. Procedural fairness
22 speaks to the issue of the ability of a party to make full
23 and complete representations to the Inquiry. That
24 opportunity is being addressed in written submission form.
25 The parties are given no restriction as to the number of

1 pages and topics to be covered.

2 Further, the full written submissions of all
3 parties will be posted on the website, giving the public
4 full and unfettered access not only to the Executive
5 Summary but to the complete submissions. Every single word
6 will be made available to the public. Further, as to
7 splitting down each party and then analyzing each second
8 and every day and every witness, seems to me a little too
9 specific.

10 As I indicated throughout the Inquiry, I
11 intentionally took more time in hearing from the victims.
12 Their needs were of vital importance to me, given the
13 horrific evidence they were asked to relive.

14 During the course of this Inquiry, I
15 indicated that we would be accelerating the manner of
16 receiving the evidence. The Cornwall Police Services'
17 response laid down the factual background which gave rise
18 to other institutional responses. This in turn facilitated
19 the hearing of institutional witnesses. The importance of
20 the other responses is in no way made less important or
21 simpler to express simply because we were able to complete
22 their evidence more quickly.

23 Having said that, we have a date by which --
24 I believe it's February 12th, Mr. Engelmann -- whereby the
25 parties will be advising Commission counsel of their

1 decision and estimate of time up to the two-hour or
2 whatever allocation was given to them. At that point, if
3 there is time that has not been used, I will consider the
4 application of the Cornwall Police Service and deal with
5 the matter of allocation of time at that time.

6 Thank you.

7 Mr. Engelmann?

8 **JAMES STEWART, Resumed/Sous le même serment:**

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

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

11 **MR. ENGELMANN:** Sir, I want to talk to you
12 about an issue involving some materials that were delivered
13 to the Ministry of the Attorney General on April 7th, 1997
14 by Perry Dunlop and some follow-up work you may have been
15 involved in to try and determine what happened to those
16 materials. All right?

17 So just by way of background, there's a few
18 emails and documents dealing with that that I'd like to
19 turn you to. For starters, there's a letter that Pat Hall
20 -- Detective Inspector Pat Hall writes to Lorne McConnery
21 on July 13th, 2001. It's Exhibit 2838. It's a two-page
22 letter, sir. It might just be easier to view it on the
23 screen.

24 **THE COMMISSIONER:** Mr. Stewart has indicated
25 that he's fine with the screen.

1 **MR. STEWART:** I am.

2 **THE COMMISSIONER:** You don't have to repeat
3 that all the time, and I'll speak with the clerk if ever I
4 need the document.

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

6 Sir, in the paragraph that starts "On or
7 about April 7th" you'll see the reference to Perry Dunlop:

8 "Dunlop delivered to the Ministry of
9 the Attorney General four binders of
10 what he considered to be investigative
11 material and he was given a receipt for
12 these items."

13 At the end of that paragraph:

14 "It became quite apparent Project Truth
15 had not received any materials from the
16 Ministry of the Attorney General.
17 Dunlop was asked to reproduce the four
18 volumes, which he was allowed to do on
19 duty, cost incurred by the Cornwall
20 Police Service."

21 He talks about the fact that he received
22 them at the end of July 1998 and we know that Project Truth
23 got rolling in the spring of '97. And he says that this
24 issue has been in the press, it's been brought up by Garry
25 Guzzo, and he says:

1 "The allegation has been reported many
2 times in the last three years with wide
3 media coverage."

4 Then on the next page he talks about the
5 fact that they're often asked why they didn't receive
6 materials from the Ministry of the Attorney General, and
7 it's always, "We're looking into it," or, "I don't know,"
8 and he's suggesting that, you know, he needs to have an
9 explanation. And he talks in the next paragraph about
10 speaking to Ms. Hallett about it and that:

11 "She stated the Ministry of the
12 Attorney General receives tons of
13 material. She didn't know what
14 happened to it."

15 And a couple of paragraphs later, he says:

16 "It is my view this issue will not go
17 away and it is incumbent upon the
18 Ministry of the Attorney General to
19 conduct an investigation into this
20 matter."

21 Then he says again perhaps an independent
22 investigation.

23 Now, sir, we know because of other
24 correspondence that this letter was forwarded on to you for
25 a response, and I will come to that response in a couple of

1 minutes. But I understand that even before this, you were
2 involved -- and I don't know if I want to call it an
3 investigation, but Mr. Segal's office was looking into
4 this.

5 **MR. STEWART:** Yes, his office was looking
6 into it.

7 **MR. ENGELMANN:** Right.

8 And, sir, if I can just have the witness
9 look at Document Number 130696. It's an email from
10 Mr. Stewart to Mr. Segal and Ms. Kyle.

11 **THE COMMISSIONER:** Thank you.

12 **MR. ENGELMANN:** If that could be the next
13 exhibit; it's June 16th, 2001.

14 **THE COMMISSIONER:** Exhibit 3328.

15 **--- EXHIBIT NO./PIÈCE NO. P-3328:**

16 (130696) - E-mail from James Stewart to
17 Murray Segal re: Project Truth dated 16 Jun
18 01

19 **MR. ENGELMANN:** Sir, just to paraphrase if I
20 may. It appears that Mr. Segal or someone from his office
21 asked you to speak to Bob Pelletier about whether or not he
22 had actually received these four volumes, and he recalls
23 getting one binder and you do say:

24 "Bob does not have any knowledge of the
25 four volumes that were deposited at the

1 AG in Toronto."

2 So it appears that you were tasked by
3 Mr. Segal or someone from his office to speak to
4 Mr. Pelletier and confirm whether he got them or not. He
5 confirmed that he didn't. Is that fair?

6 **MR. STEWART:** Fair.

7 **MR. ENGELMANN:** All right. So you would
8 have been aware that at or about this time, the Ministry
9 was attempting to find out what had happened to this
10 material. Is that fair?

11 **MR. STEWART:** Yes.

12 **MR. ENGELMANN:** All right. So when you were
13 contacted by Mr. McConnery about Inspector Hall's letter,
14 the one we just looked at, you told Mr. McConnery that you
15 would respond, and you did in fact respond.

16 And if the witness could see Exhibit 2814?
17 All right.

18 And in the second paragraph, sir, and this
19 is in September 6th of 2001, you're advising Detective
20 Inspector Hall that at least -- in the second paragraph it
21 says, "Searches have been made." So in other words at
22 least two searches have been made without any success, to
23 try and find out what happened to this material. Do I
24 understand that?

25 **MR. STEWART:** I understand that there was

1 searches made and there was a report given. I have not
2 read the report but I was aware that efforts had been made.
3 That's about the extent of my knowledge.

4 **MR. ENGELMANN:** But at the point when you're
5 writing to Detective Inspector Hall, you don't know what
6 happened to these materials?

7 **MR. STEWART:** Personally I don't.

8 **MR. ENGELMANN:** Right. And you didn't know
9 if anyone in the Ministry knew either. You said that ---

10 **MR. STEWART:** I have no knowledge that
11 anybody knew where they were.

12 **MR. ENGELMANN:** Right.

13 Sir, in the third paragraph, you say that a
14 virtually identical set of materials had been delivered to
15 Chief Fantino in December of '96, and you're making the
16 point that maybe this isn't such a big deal essentially, if
17 I can -- am I taking that correctly?

18 **MR. STEWART:** I was -- I'm not sure I
19 drafted this letter. In fact the date is September the 6th
20 and I would have been away part of that summer. And I'm
21 not sure whether it was McConnery with, assisting him,
22 Susan Kyle or Terry Cooper.

23 I don't know who actually drafted the
24 letter.

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

1 **THE COMMISSIONER:** Can we see the last --
2 the signature page, please?

3 **MR. ENGELMANN:** The second page, is that
4 your signature, sir?

5 **MR. STEWART:** Yes. I definitely signed it
6 and I was answering on behalf of the Ministry.

7 **THE COMMISSIONER:** Okay.

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

9 Because when he testified here, Detective
10 Inspector Hall talked about this and he talked about ten
11 additional tabs, three of which contained new witness
12 statements and that there were two binders of *Police*
13 *Services Act* materials from the *Police Services Act* charges
14 against Mr. Dunlop that had numerous statements from
15 Cornwall Police officers, all of which Detective Inspector
16 Hall found extremely useful in the conspiracy
17 investigation. And so he did testify to that fact here.

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

19 **MR. ENGELMANN:** I'm just looking at the
20 second page of the letter for a minute.

21 You're saying, at least in the top paragraph
22 and whether it's your response or the Ministry's response,
23 that it doesn't appear -- you're saying that circumstances
24 do not support the suggestion that the documents were
25 somehow withheld from the police, and I think you refer to

1 the fact that Mr. Griffiths had received a letter that at
2 least had a notation on it saying that there were other
3 documents available.

4 Do I understand that first paragraph?

5 **MR. STEWART:** Well, it speaks for itself.

6 **MR. ENGELMANN:** All right.

7 **MR. STEWART:** I mean, I signed the letter.

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

9 **THE COMMISSIONER:** What date is the letter
10 again?

11 **MR. ENGELMANN:** The letter is dated
12 September 6th, 2001, sir.

13 **THE COMMISSIONER:** All right.

14 Well, by then, wasn't there a big issue made
15 in the newspapers and in the media about the lost files or
16 the withheld files from the Attorney General? I mean, it
17 may not have been a very big deal for some people, but I
18 think it became a very big issue in the media.

19 **MR. STEWART:** I don't know. I don't know
20 about the media. I mean, Mr. Guzzo was -- there was a lot
21 of things. Mr. Guzzo, for example, said things in the
22 media, so it was ongoing over a couple of years. So I do
23 not know specifically if this was.

24 I should indicate there's a report, as I
25 said, that was done in regards to looking for this, and I

1 guess the part -- and I'm not as familiar with all these
2 aspects as you are. I thought that the officer -- and I
3 may stand corrected -- had talked to Mr. Dunlop, and I
4 would have expected Mr. Dunlop would have an original copy
5 of everything.

6 **MR. ENGELMANN:** Yes. In fact, Mr. Dunlop,
7 in conversation with Detective Inspector Hall in July of
8 1998, Detective Inspector Hall acknowledged to Constable
9 Dunlop that he did not have all this material and the
10 material was turned over on July 31st of '98. The concern
11 was this 15- or 16-month delay, and the Commissioner's
12 point about media coverage, when we looked at the previous
13 letter, the letter from Hall to McConnery dated July 13th,
14 2001, it talks about widespread media coverage from March
15 of '99.

16 **MR. STEWART:** M'hm.

17 **MR. ENGELMANN:** So clearly it had been in
18 the media to some extent.

19 **MR. STEWART:** But I guess my point is there
20 had been a search in regards to these materials. They
21 couldn't find them and the police had the materials.

22 **THE COMMISSIONER:** Well -- whoa.

23 **MR. STEWART:** Maybe I got it wrong.

24 **THE COMMISSIONER:** They didn't have "the
25 boxes" from the Attorney General. They claimed that they

1 had "the material", but no one has ever been able to
2 compare them and to make absolutely sure.

3 Now, in fairness, Ms. McIntosh, Mr. Dunlop
4 at some point did say, "Yes, here, now you've got
5 everything".

6 **MR. STEWART:** That was my understanding.

7 **MR. ENGELMANN:** If I could for a second, and
8 then I'll pass it over, but I understand -- your point,
9 sir, if I understand you, is that by the time your first
10 searches are done in '99 and then other searches in 2001,
11 the police were in possession of material by that time?

12 **MR. STEWART:** That's my understanding.

13 **MS. McINTOSH:** I wasn't here for Inspector
14 Hall's evidence, but my recollection from what I did hear
15 and from the transcript was that he also said that he found
16 it useful for the conspiracy brief but that he wasn't
17 wrapping up the conspiracy investigation anytime prior to
18 getting that material in July of '98 so that it didn't
19 prejudice the conspiracy investigation, is what I
20 understood him to say as well.

21 **THE COMMISSIONER:** Well, I guess when
22 something like this happens, you can be relieved by saying
23 there's no harm done. I'm just wondering what the Attorney
24 General is doing, losing boxes of very important material
25 as per a citizen who is saying, "Here is some serious

1 criminality activity that I think is outstanding".

2 MS. McINTOSH: I don't think it was boxes,
3 though, sir.

4 THE COMMISSIONER: Oh, whatever, whatever.

5 MS. McINTOSH: Yes.

6 THE COMMISSIONER: Whatever.

7 MS. McINTOSH: Thank you.

8 MR. ENGELMANN: It was four binders of
9 materials.

10 All right. I'll just be a moment, sir.

11 Now, I understand that, sir, after you wrote
12 this letter in September of 2001, you actually received a
13 response about two-and-a-half years later in April of 2004?

14 MR. STEWART: Yes.

15 MR. ENGELMANN: And I just want to show you
16 that. It's Exhibit 3267. Oh, I'm sorry, no, it's Exhibit
17 2832. I apologize.

18 Now, sir, this is April of 2004. Detective
19 Inspector Hall is responding to your letter of September
20 6th, 2001. Do you have -- was there something that you know
21 of that would have sparked this letter?

22 MR. STEWART: No idea.

23 MR. ENGELMANN: All right.

24 MR. STEWART: It was two-and-a-half years
25 later.

1 **MR. ENGELMANN:** All right. He again appears
2 to be raising concerns about these binders and, more
3 generally, the position of the Ministry of the Attorney
4 General as a suspect in a conspiracy investigation?

5 **MR. STEWART:** That's the letter.

6 **MR. ENGELMANN:** Yeah.

7 **MR. STEWART:** The letter's the letter.

8 **MR. ENGELMANN:** Yeah. Did you discuss this
9 with him or any of his superiors?

10 **MR. STEWART:** With Pat Hall?

11 **MR. ENGELMANN:** Yes.

12 **MR. STEWART:** No.

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

14 And you respond with a letter of your own,
15 sir?

16 **MR. STEWART:** Yes.

17 **MR. ENGELMANN:** And that's about a week
18 later. And that is Exhibit 3267. This is the letter you
19 would have written back to Detective Inspector Hall?

20 **MR. STEWART:** Yes.

21 **MR. ENGELMANN:** All right. And you're
22 talking to him about the fact that there is a matter still
23 ongoing on the Leduc case?

24 **MR. STEWART:** Yes.

25 **MR. ENGELMANN:** And that if he has new

1 evidence, he should contact someone involved in that case?

2 MR. STEWART: Yes, with giving the name of
3 the prosecutor.

4 MR. ENGELMANN: Right.

5 You then say:

6 "I'm not at this time going to deal
7 with any inaccuracies in your letter of
8 April 22nd, 2004."

9 MR. STEWART: Yes.

10 MR. ENGELMANN: Why were you taking that
11 position, sir?

12 MR. STEWART: Well, at that point-in-time it
13 was a very peculiar letter. It's two-and-a-half years
14 later. If there's some problem with somebody when they
15 write a letter, you might think that you'd respond sooner
16 than two-and-a-half years later. I don't know the purpose
17 of the letter, the Hall letter, at that point-in-time.
18 Honestly, I don't.

19 But the reality is if he has any fresh
20 information in regards to Leduc that would affect the
21 innocence or not of that person, certainly tell the Crown
22 Attorney, but I wasn't going to get into a letter-writing
23 campaign with Mr. Hall.

24 MR. ENGELMANN: All right.

25 You do say "inaccuracies" in your letter?

1 **MR. STEWART:** Yes.

2 **MR. ENGELMANN:** I'm -- do you have any idea
3 what those inaccuracies are?

4 **MR. STEWART:** I wasn't going to go through
5 the letter line-by-line and write him back; then he'd write
6 me. We'd just gone through -- I shouldn't say "just" -- we
7 went through the situation where there were the allegations
8 against Shelley Hallett and it ended up with a criminal
9 investigation, and there were no charges.

10 **MR. ENGELMANN:** But that had just happened
11 just before you wrote in September of 2001?

12 **MR. STEWART:** In 2001. But this is 2004
13 now.

14 **THE COMMISSIONER:** And so the Leduc decision
15 has been rendered and a new trial has been ordered?

16 **MR. STEWART:** Yes.

17 **MR. ENGELMANN:** Yes.

18 **MR. STEWART:** Yes. And there weren't any
19 charges against Ms. Hallett. That investigation was
20 launched as a result of an email from Mr. Hall, as you
21 know.

22 **MR. ENGELMANN:** Yes.

23 **MR. STEWART:** And I wasn't, in 2004 -- when
24 he answers a letter two-and-a-half years later, I'm not
25 going to get into any letter-writing campaign with him at

1 that point. I'm just not going to do that.

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

3 Sir, there were some issues that arose in
4 the MacDonald prosecution with respect to changes in
5 judges?

6 **MR. STEWART:** Yes.

7 **MR. ENGELMANN:** And I'm just wondering if
8 you would have been advised, for example, of a potential
9 conflict of interest with the original trial judge
10 assigned, a judge by the name of Charbonneau.

11 **MR. STEWART:** It's interesting, because this
12 was taken -- you know, we're years later.

13 I have no independent recollection of it,
14 but reviewing materials have been provided kindly by the
15 Inquiry and by counsel. There is the -- the memo from
16 Kevin Philips in regards to it, and -- but I think somebody
17 said that I was the one that that was involved in -- in
18 that, and I have no independent recollection. But I have
19 no quarrel that I might very well have been the one that
20 dealt with it; I just don't remember.

21 **MR. ENGELMANN:** Yes. And that's -- if we
22 could -- Mr. Commissioner, it's Document Number 130390.
23 I'd just like to have it made an exhibit, sir. It's a
24 memorandum from Kevin Phillips to Jim Stewart.

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

1 **MR. ENGELMANN:** I believe it's dated
2 February 13th, 2002.

3 **THE COMMISSIONER:** Thank you.

4 Exhibit 3329 is a memorandum to Jim Stewart.
5 Yes. There's a "Draft" -- it's noted in handwriting,
6 "Draft, February 13th, 2002."

7 **---EXHIBIT NO./PIÈCE NO P-3329:**

8 (130390) - Draft Memorandum from Kevin
9 Phillips to Jim Stewart re: Project Truth -
10 Potential Conflict of Interest dated 13 Feb
11 02

12 **MR. ENGELMANN:** Sir, the final copy turns
13 out to be 3060; that's Exhibit 3060. I don't know if I
14 need to go there, but, just for the record, this is a draft
15 ---

16 **THE COMMISSIONER:** Okay, I've got it.

17 **MR. ENGELMANN:** --- of the more formal copy.
18 But this one indicates that Kevin Phillips
19 is briefing you, and you just don't recall this now, sir?

20 **MR. STEWART:** I don't, but I have no doubt -
21 --

22 **MR. ENGELMANN:** All right.

23 **MR. STEWART:** --- that I received it and
24 acted on it.

25 **MR. ENGELMANN:** All right. And there was a

1 concern that before Justice Charbonneau was appointed to
2 the bench, he had -- he'd been the lawyer responsible for a
3 -- there was a lawsuit against several police officers,
4 including Detective Inspector Tim Smith; correct?

5 **MR. STEWART:** Yes, on reading that, it's
6 what it seems to say.

7 **MR. ENGELMANN:** And Mr. Phillips says, on
8 the second page of the document, the second last paragraph,
9 and this is about Tim Smith:

10 "Given his direct involvement with some
11 of the original complainants, as well
12 as his extensive dealings with Perry
13 Dunlop, there's a strong chance that he
14 will become involved in the trial as a
15 witness. For his part, Tim Smith feels
16 that Mr. Justice Charbonneau would be
17 in a conflict of interest if he were to
18 be called upon to assess Mr. Smith's
19 credibility."

20 And he says:

21 "He was accusing us of withholding
22 evidence. This was an accusation made
23 against Officer Smith and others."

24 Did you agree with that approach, that there
25 should be an attempt to have a change of judge in the case?

1 **MR. STEWART:** I -- well, again, I -- it'd
2 have to be revisionist memory in my situation because I
3 honestly don't remember this. But this all makes sense,
4 that if that -- if that were true, that -- then Justice
5 Charbonneau should -- should not hear the case.

6 **MR. ENGELMANN:** All right.

7 **MR. STEWART:** I just -- at this point, of
8 sitting here, you know, the end of January in 2009, I don't
9 remember this.

10 **THE COMMISSIONER:** What I'm interested in is
11 review again, if we -- the procedure whereby this was made
12 known to either the administrative judge, or to Judge
13 Charbonneau, so that he was replaced.

14 **MR. STEWART:** Oh. The -- the normal way
15 would be, of course, to contact the -- the regional judge,
16 which would be Cunningham, with a copy to the defence
17 counsel, indicating that that's what -- that there'd be a
18 conflict.

19 **MR. ENGELMANN:** All right, well, we have
20 documentation with respect to a further change, but, on
21 this one, are you familiar with the ---

22 **MR. STEWART:** I don't -- I do not remember
23 if I went into chambers with Mr. Neville and talked to
24 Judge Cunningham; I have no independent recollection of
25 that. That would have been the process though.

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

2 **MR. STEWART:** And, normally, in something
3 like this, too, you don't want to do it in open court.
4 There's no need. It's just a ---

5 **MR. ENGELMANN:** Right.

6 **MR. STEWART:** --- a situation here.

7 **MR. ENGELMANN:** I understand that, well, as
8 a result of an approach, there was a change in the trial
9 judge and there was a change from Mr. Justice Charbonneau
10 originally -- initially, changed to a Justice Rutherford?

11 **MR. STEWART:** Yes. I was getting this from
12 Mr. McConnery.

13 **MR. ENGELMANN:** Right. And then shortly
14 after that there was a further change to Justice Chilcott?

15 **MR. STEWART:** Yes.

16 **MR. ENGELMANN:** And there was a delay of
17 about six weeks in the -- and what was to be a trial ended
18 up being an 11(b) application?

19 **MR. STEWART:** Yes.

20 **MR. ENGELMANN:** All right. And Mr.
21 McConnery's testified here that he had some concerns about
22 that adjournment and the second change in the trial judge.
23 And I think that was as a result, at least initially, of a
24 discussion he'd had with the defence counsel, about the
25 courts and about -- about the judges involved. And he had

1 a concern that somehow this might not look right, with
2 respect to the new trial judge?

3 Did he bring this issue to your attention,
4 sir?

5 **MR. ENGELMANN:** He did.

6 **MR. STEWART:** All right.

7 **THE COMMISSIONER:** So that's having
8 Mr. Justice -- Chilcott?

9 **MR. ENGELMANN:** Yes.

10 **THE COMMISSIONER:** Chilcott, replacing
11 Mr. Justice Rutherford?

12 **MR. STEWART:** Yes.

13 **THE COMMISSIONER:** Okay.

14 **MR. ENGELMANN:** And, in fact, sir, if you
15 would look at Exhibit 3063. It appears to be a memo
16 drafted by you and not -- not sent to anyone in particular,
17 but we know that it was received by Mr. McConnery on or
18 about the 7th of March 2002.

19 **MR. STEWART:** Yes. That's mine.

20 **MR. ENGELMANN:** All right. And can you just
21 give us a sense, sir -- have a look at it and give us a
22 sense as to what was going through your mind at the time?

23 **MR. STEWART:** Well, I think -- I think the
24 memo speaks for itself in regards to what -- what the issue
25 was and what some of the options -- to consider.

1 **MR. ENGELMANN:** All right. Well, you say
2 that you're concerned, at least initially, at about an
3 appearance that somehow the accused selected the judge?

4 You say the Crowns and the police involved
5 are "quite upset."

6 Were you, sir, at the time -- you and
7 McConnery may have been upset, but did the police even know
8 about this? Or would they have been informed by you?

9 **MR. STEWART:** If -- if I've written -- and
10 this was current in my memory at the time, and if I've
11 indicated that the police were -- were upset, I would have
12 got that from McConnery.

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

14 **MR. STEWART:** Because I didn't talk to the
15 police directly.

16 **MR. ENGELMANN:** All right. And you talk
17 about some options, and in the middle of the memo you say:

18 "The only viable course of actions for
19 a new judge from completely out of the
20 East Region, with no ties to the case,
21 or any judge in the east, in light of
22 this history and including the appeal
23 on the Leduc matter -- the fact that
24 the accused in this case was
25 represented on these very charges

1 earlier, by a presently sitting judge,
2 who was part of the Leduc appeal, is
3 also the basis for an out of town
4 judge."

5 And there's something there, written in
6 hand:

7 "Accurate. See attached memo of
8 R. Pelletier."

9 Is that your handwriting?

10 **MR. STEWART:** That's not my handwriting.

11 **MR. ENGELMANN:** All right. I believe it may
12 be McConnery.

13 The issue about Justice MacKinnon having
14 been involved briefly as counsel for Father MacDonald, that
15 was something that you were made aware of, sir?

16 **MR. STEWART:** I can't remember when I knew
17 about it ---

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

19 **MR. STEWART:** --- but ---

20 **MR. ENGELMANN:** But you would have known at
21 this time; you're putting it in your memo.

22 **MR. STEWART:** Yes, I put it in the memo that
23 I knew about it at that time.

24 **MR. ENGELMANN:** All right. So you talk
25 about -- after talking about an out of town judge, you say:

1 "Second option" --

2 Sorry, you say:

3 "The second option is the only
4 realistic one and the right thing to
5 do, namely, take steps to have a new
6 judge from completely outside the
7 region, without any ties to the case,
8 counsel, Crown or defence, and any
9 members of the judiciary."

10 All right? So that seems to be the approach
11 that you want to take at this point?

12 **MR. STEWART:** Yes. I want to be clear in
13 regards to this.

14 The quarrel wasn't with Justice Chilcott,
15 all right? I've had -- I remember doing a homicide trial
16 with him when he was a defence lawyer. Had he been the
17 first judge after Charbonneau, there wasn't a problem. It
18 was the problem of the discussion and then him being
19 appointed.

20 **MR. ENGELMANN:** All right. And -- but by
21 this point in time, by March the 7th, would you have been
22 apprised by Mr. McConnery that he'd made some inquiries of
23 the trial coordinator, and found out that, you know, that
24 this was a scheduling issue?

25 **MR. STEWART:** Well, I know he had talked to

1 the trial coordinator and he got certain answers, and then
2 -- and then you have my email to Justice Cunningham ---

3 **MR. ENGELMANN:** Yes.

4 **MR. STEWART:** --- which was copied to
5 Mr. Neville, that I wanted to have a meeting in chambers
6 about this ---

7 **MR. ENGELMANN:** Right.

8 **MR. STEWART:** --- about the change of the
9 date.

10 **MR. ENGELMANN:** All right. Well, you're
11 talking about, in this memo at least, that you -- you're
12 saying the second option is the only realistic one, the
13 right thing to do, namely, take steps to have a new judge
14 from completely outside the region.

15 You set out some options underneath ---

16 **MR. STEWART:** M'hm.

17 **MR. ENGELMANN:** --- "Convene a meeting of
18 the senior regional judge with defence
19 counsel and outline the concerns?"

20 **MR. STEWART:** M'hm.

21 **MR. ENGELMANN:** And, again, you talk about
22 doing it informally, not in public; (b) is to file a motion
23 on the issue; and, (c):

24 "If we do arrive at the stage where
25 there's not going to be any change in

1 the judge, we then determine a strategy
2 as to the documents to file on a
3 motion, who actually argues I ..."

4 Et cetera.

5 Okay?

6 **MR. STEWART:** Yes.

7 **MR. ENGELMANN:** And, sir, as I understand
8 it, none of these options were actually followed. There
9 was an attempt to do "A", but it was through an informal
10 memo or email?

11 **MR. STEWART:** Oh -- sorry.

12 **THE COMMISSIONER:** Go ahead.

13 **MR. STEWART:** Well, I -- that was -- I don't
14 -- the connotation was an informal email is that nothing --
15 -

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

17 **MR. STEWART:** --- that's the way I was
18 communicating with Justice Cunningham, and that -- there
19 was nothing informal about wanting to have a meeting.

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

21 **MR. STEWART:** I just did not want to do it
22 in an open court.

23 **MR. ENGELMANN:** Yes.

24 **MR. STEWART:** Which is something different.
25 I could not go and see him without counsel. Counsel, as I

1 ever recall or read something, did not want to go into the
2 chambers unless Justice Cunningham said that he should, but
3 ---

4 **MR. ENGELMANN:** Fair enough, sir. You tried
5 to do Option A?

6 **MR. STEWART:** Yes, I did. You have the
7 email, the attempts.

8 **MR. ENGELMANN:** Right.

9 **THE COMMISSIONER:** Just a minute now. The
10 email though, if I understand it correctly, deals with the
11 matter of the adjournment?

12 **MR. STEWART:** Yes.

13 **THE COMMISSIONER:** It does nothing -- it
14 says nothing about the issue of an out-of-region judge.

15 **MR. STEWART:** Not at this point.

16 **THE COMMISSIONER:** All right.

17 **MR. STEWART:** Well, I -- no. No, what I
18 wanted to do was get into chambers and find out why the
19 judges were switched and why it was adjourned. We had the
20 Crown counsel ready to go and all of a sudden it's not
21 going. It's going a number of weeks to another judge, who
22 obviously wasn't available on the original trial date.

23 **MR. ENGELMANN:** Right, and sir, let's take a
24 look at that email then, if we can, because you talk about
25 optics and you talk about a number of things that concern

1 you in wanting to follow Option A. The email itself is
2 Exhibit 3064.

3 **THE COMMISSIONER:** Yes, and let's make it
4 clear that the email is being forwarded directly to the
5 Justice with a copy to Mr. Neville because there's a strike
6 on, right?

7 **MR. STEWART:** And it's hand-delivered to Mr.
8 Neville. I wanted to make sure there was no communication
9 without his knowledge.

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

11 And you also indicate in the first
12 paragraph:

13 "I did write a letter to you asking
14 that both Crown and defence be
15 requested to attend and would now wish
16 to outline why the Crown had wished the
17 meeting."

18 And just before that, you say:

19 "...tried to arrange a meeting with
20 yourself and counsel for Charles
21 MacDonald. Mr. Neville indicated he
22 did not wish to meet unless at the
23 behest of yourself."

24 **MR. STEWART:** Yes.

25 **MR. ENGELMANN:** All right? So it's not

1 working on consent. You're trying then to do this with a
2 letter and an email; correct?

3 MR. STEWART: Yes.

4 MR. ENGELMANN: And the email itself talks
5 about your concerns regarding the delay. This is a six-
6 week delay.

7 MR. STEWART: M'hm.

8 MR. ENGELMANN: And the inconvenience to a
9 number of individuals, all of the witnesses, et cetera, but
10 it doesn't get into anything about the changing of the
11 judge and some of your concerns there.

12 MR. STEWART: Not at this point.

13 MR. ENGELMANN: All right.

14 MR. STEWART: And also I want to be clear.
15 I mean, this date had been set for 46 weeks. So we have
16 counsel in; we're ready to go. It's very unusual that a
17 date fixed that long ago and 60 witnesses subpoenaed and
18 all of a sudden, we just -- you know, it's a phone call and
19 it's not going ahead.

20 MR. ENGELMANN: But, sir, given the strong
21 views expressed in your own memo that we just looked at,
22 would you not have wanted the Regional Justice to be aware
23 of some of the background other than simply the
24 inconvenience and set more out in this email?

25 MR. STEWART: I've lost you. Like what?

1 **MR. ENGELMANN:** Well, it turns out that this
2 email doesn't get you what you want, which is the meeting?

3 **MR. STEWART:** That's correct.

4 **MR. ENGELMANN:** And so you don't get to go
5 further?

6 **MR. STEWART:** That's correct.

7 **MR. ENGELMANN:** And I'm wondering if, sir,
8 looking back on this now, perhaps you should have said a
9 little bit more in your email about why you needed this
10 meeting?

11 **MS. McINTOSH:** Am I understanding correctly
12 that he's being asked why he didn't accuse Mr. Neville of
13 judge shopping in this email?

14 **THE COMMISSIONER:** No, no, no. I think that
15 maybe saying, "Listen, there is an issue that has come up
16 and for the proper administration of justice, I just want
17 to bring it to your attention and get it cleared up".

18 Just in the same way, "I would like to speak
19 to you about perhaps considering getting an out-of-region
20 judge".

21 I think there were three reasons why he
22 wanted to see the justice, and he only put one down there.
23 And it's not a question of accusing Mr. Neville. I think
24 it was -- I think Mr. Justice Cunningham addressed it in
25 his email saying it was an administrative thing. But I

1 think the idea is for institutional responses and people in
2 the justice system, you have to go through the process, and
3 he didn't.

4 **MS. McINTOSH:** As long as that's not the
5 suggestion.

6 **THE COMMISSIONER:** No, no, no. Of course,
7 not, no.

8 **MR. ENGELMANN:** Clearly, there was a concern
9 about having a judge from the East Region and I'm wondering
10 why, sir, you didn't set out some of that concern in this
11 email?

12 **MR. STEWART:** Well, there's a problem with
13 that. There's a problem with that in this sense. If we
14 started to -- if you don't get into chambers for starters,
15 you've got a real problem, and I'll deal with that in a
16 minute, but trying to change Justice Chilcott because
17 Justice Chilcott has done nothing wrong.

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

19 **MR. STEWART:** All right. He's done nothing
20 wrong.

21 If, at that point -- and we were quite
22 content quite frankly with Rutherford. He's from the area
23 and had Chilcott been first, wouldn't have had a problem.

24 But now we are into a situation where we
25 attempt somehow to knock Chilcott off the case. Then we

1 are into a Regan-type situation where we're going to be
2 accused of judge shopping. Unless I can get into chambers,
3 have a discussion in regards to how this happened, it might
4 have happened totally innocently. I don't know that. I
5 don't know to this minute as I sit here what happened. I
6 have no idea. All right?

7 But I can't -- I'm not going to put it in
8 writing. I'm not going to make an allegation against
9 somebody senior that I have no reason -- I can't -- I have
10 no evidence in regards to. I've just got a coincidence.
11 So I'm not about to put that in writing. I wouldn't even
12 consider it.

13 I mean, we've had enough things in this
14 whole area where there's been allegations back and forth
15 about all kinds of things. Well, for a Crown Attorney -- a
16 senior Crown Attorney to put in writing anything about a
17 senior lawyer when I've got a coincidence, and that's as
18 much as I have, there isn't a chance I'm going to put that
19 in writing.

20 **MR. ENGELMANN:** I'm not ---

21 **MR. STEWART:** And I -- well, I just want to
22 be clear on that. There's no ---

23 **MR. ENGELMANN:** I wasn't suggesting that,
24 sir.

25 **MR. STEWART:** No, but I want to be clear in

1 regards to that because that's a bit different. I made the
2 effort to get into chambers. I was snookered a little bit
3 because the lawyer won't consent to go in. It's a specific
4 case. I may have talked to Justice Cunningham in regards
5 to other matters at other times, they're administrative,
6 but this is a case before the court and a judge has already
7 been assigned. So then what are my options?

8 We had a situation where we were content
9 with Rutherford. Well, then I try and get Chadwick
10 switched at this point-in-time. It's different if I get
11 into chambers and find out something more than what I know
12 already, but I don't have that option.

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

14 I've just, sir, from your email, which is
15 pretty strong, talking about only viable course of action,
16 new judge from completely outside of the East Region, and
17 I'm just wondering, and I don't know if you can help me,
18 why you wouldn't have included some of that issue in your
19 email?

20 **MS. McINTOSH:** And I apologise for
21 interrupting again, but the point in the draft email, the
22 ground for asking for a new judge outside the East Region,
23 and there are a couple of grounds, but certainly one of the
24 chief grounds has to do with the views expressed in Mr.
25 Stewart's private sort of note to himself about judge

1 shopping, and that's the connection that I'm worried about
2 being made here.

3 **MR. ENGELMANN:** Well ---

4 **THE COMMISSIONER:** No.

5 **MR. ENGELMANN:** --- and my friend and Mr.
6 Stewart keep doing -- I'm not doing that. I mean, he
7 already knows by this point.

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

9 **MR. ENGELMANN:** He's already had an
10 explanation from Mr. McConnery presumably that, you know,
11 it was a scheduling issue.

12 There is an issue here though, quite aside
13 from that, about looking for a judge from outside the
14 region and I'm wondering why there wasn't a sentence
15 perhaps saying, "There are some issues in this case. We
16 might wish to seek a judge from outside the region. It
17 would be important that we convene in chambers to deal with
18 that." And I just ---

19 **MR. STEWART:** Well, I guess what I've
20 already explained ---

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

22 **MR. STEWART:** --- in regards to -- with the
23 Chilcott situation, if I don't have more information than I
24 have, then I'm in a situation where Chilcott hasn't done
25 anything wrong and we were content with Rutherford. And

1 we're back in the *Supreme Court of Canada v. Regan* on Crown
2 shopping by the Crown -- judge shopping. And I'm not going
3 there.

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

5 And, sir, you received a response to your
6 email about the delay and inconvenience, the email that you
7 sent seeking, and you received your response that same day?

8 **MR. STEWART:** Yes.

9 **MR. ENGELMANN:** And that's Exhibit 3065,
10 where essentially the Regional Senior Justice says, in view
11 of -- he finds it unnecessary for you, Mr. Neville, and he
12 to meet further on the issue.

13 **MR. STEWART:** Yes.

14 **MR. ENGELMANN:** And again he sets out that
15 this came about as a result of judicial resources and a
16 shortage of same in the East Region -- the change in the
17 judges; correct?

18 **MR. STEWART:** Well, that's what he said.

19 **MR. ENGELMANN:** Yeah.

20 **THE COMMISSIONER:** I don't know, but it's
21 interesting to note that when it came to the new -- and
22 something we'll cover I guess, I don't know how. But
23 Mr. Justice Platana is the one who did the new trial ---

24 **MR. STEWART:** I know.

25 **THE COMMISSIONER:** --- and he's out of

1 region.

2 MR. STEWART: I know.

3 THE COMMISSIONER: So I guess the
4 unfortunate thing I see, from the administrative judge's
5 point of view, is that he was not given an opportunity to
6 hear your concerns with respect to the global matter. It
7 has nothing to do with "judge shopping"; has to do with the
8 perceptions in the community, and maybe he would have
9 appreciated having an opportunity to discuss that matter.

10 MR. STEWART: Well, the problem with that,
11 Mr. Commissioner, is we were content with Rutherford and he
12 was from the area.

13 THE COMMISSIONER: All right.

14 MR. ENGELMANN: All right.

15 MR. STEWART: See, that's the problem. It's
16 not like we raised it before Rutherford was assigned and
17 said we wanted somebody from outside. We were okay with
18 that.

19 THE COMMISSIONER: M'hm.

20 MR. STEWART: And we would have been okay
21 with Chilcott but for the background that had happened.

22 MR. ENGELMANN: All right.

23 THE COMMISSIONER: Okay.

24 MR. STEWART: That's the issue to that.

25 THE COMMISSIONER: Okay.

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

2 Now, I understand that leading up to the
3 stay argument in MacDonald you would have had some
4 discussions with Mr. McConnery about how to approach this.

5 **MR. STEWART:** Yes. One thing ---

6 **MR. ENGELMANN:** In fact ---

7 **MR. STEWART:** Can I just deal with one
8 point?

9 **MR. ENGELMANN:** Sure.

10 **MR. STEWART:** And that is in regards to
11 Justice Cunningham's letter.

12 Mr. Commissioner, you may not be aware of
13 this, and this is why I point -- because you're from out of
14 jurisdiction.

15 And he indicates in it it's all about
16 judicial resources and a shortage of same in the East
17 Region, and that deals with the Superior Court. That was -
18 - I was trying to recall in my memory in regards to it.
19 That had been a chronic problem in the East Region. The
20 Senior Regional -- or I should say the Chief Judge, Heather
21 Smith, at every swearing-in that I ever attended, would
22 indicate that there was a problem with the shortage of
23 judges in that bench, and constantly that became a thing.

24 And it also became an issue in regards to --
25 in my region, where we would have criminal matters we'd

1 want to hear but they were competing with family matters
2 and whatever. And historically, I cannot say in regards to
3 March 14th, 2002, the exact snapshot -- what the issue was.
4 But that was a very live issue in our region in regards to
5 the shortage of superior judges, and the judges brought it
6 up all the time.

7 **THE COMMISSIONER:** Right.

8 **MR. STEWART:** I just want you to know that.

9 **THE COMMISSIONER:** Wasn't it Justice Lesage
10 who was still the Chief Judge in March of 2002?

11 **MR. STEWART:** You know, I'm not sure about
12 that. Well, you may be correct.

13 **THE COMMISSIONER:** I don't know, but it's
14 close, so who knows? Anyhow, let's carry on.

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

16 Exhibit 3079. This is a document, sir, I
17 believe ---

18 **THE REGISTRAR:** Three zero?

19 **MR. ENGELMANN:** Three zero seven nine
20 (3079), Document Number 130462.

21 **MR. STEWART:** Yes.

22 **MR. ENGELMANN:** I believe these are some
23 thoughts you were sharing with Lorne McConnery on how to
24 approach the stay application.

25 **MR. STEWART:** Yes. When I had a chance to

1 look at this, it must have been they were talking about the
2 case, and since he was working out of my office I just sat
3 down at the computer one day and threw out some ideas that
4 he might consider. He's very senior counsel, as I
5 indicated. He could ignore all of it; it didn't matter.

6 **MR. ENGELMANN:** All right. For example, you
7 were giving some advice on cross-examination, in the middle
8 of the page, assuming that Charles MacDonald is going to be
9 called as a witness or possibly an affidavit on the issue
10 of prejudice.

11 **MR. STEWART:** Possible.

12 **MR. ENGELMANN:** That's just an example of
13 advice you were giving.

14 **MR. STEWART:** Sure.

15 **MR. ENGELMANN:** All right. And you're just
16 giving this advice. You're not telling him what to do?
17 Because he's a senior ---

18 **MR. STEWART:** To Lorne McConnery? I guess
19 not.

20 **MR. ENGELMANN:** Yes. Fair enough.

21 **MR. STEWART:** I mean, he's the same vintage
22 as I am. He's a very senior counsel. It was just throwing
23 out some ideas for discussion.

24 **MR. ENGELMANN:** Fair enough. And, sir, I
25 understand that, well, you would have been advised by

1 Mr. McConnery about the granting of the stay by Justice
2 Chilcott on May 13th, 2002.

3 MR. STEWART: Yes.

4 MR. ENGELMANN: And sir, would you have
5 requested that Mr. McConnery write a letter ---

6 MR. STEWART: Yes.

7 MR. ENGELMANN: --- to Mr. Lindsay about the
8 appeal and a possible appeal.

9 MR. STEWART: Yes. I've seen the document
10 where he indicates that I requested them; sure I did.

11 MR. ENGELMANN: And that's Exhibit 3080, I
12 believe, if we can take a quick look.

13 I assume, sir, at that time with a major
14 case ending in a stay this would have been almost automatic
15 to request the prosecutor involved in the trial to do up a
16 letter with respect to an appeal.

17 MR. STEWART: Well, certainly if we think
18 there's any hope in regards to it, of course.

19 MR. ENGELMANN: One way or the other;
20 wouldn't you want that?

21 MR. STEWART: Most of the time. Sometimes
22 you can have a case where, you know, it's a situation where
23 there isn't really going to be anything appealable.

24 MR. ENGELMANN: All right. So he's setting
25 out a lengthy factual background and essentially coming to

1 the conclusion that he did not see any obvious error in the
2 ruling, and there was no appeal filed in this matter; nor
3 was one requested by you.

4 **MR. STEWART:** Yes, that's my understanding.

5 **MR. ENGELMANN:** Right.

6 Now, another area that I wanted to touch
7 upon briefly was issues about Perry Dunlop and the possible
8 investigation and/or prosecution of Mr. Dunlop ---

9 **MR. STEWART:** Yes.

10 **MR. ENGELMANN:** --- for alleged perjury or
11 obstruct justice; things of that nature.

12 **MR. STEWART:** M'hm.

13 **MR. ENGELMANN:** And you were sent a letter,
14 and I'll just find the document here, sir.

15 Yes, it's Exhibit 1400, Mr. Commissioner.
16 Exhibit 1400, ---

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

18 **MR. ENGELMANN:** --- Document Number 705437.
19 So this would have been within a couple of days of the stay
20 decision in MacDonald. Inspector Hall is writing to you
21 regarding a recantation of evidence by a particular
22 complainant who's known here as C-8.

23 **THE COMMISSIONER:** Madam Clerk, would you --
24 are you aware who C-8 is, sir?

25 **MR. ENGELMANN:** It's on the first line under

1 "Synopsis" on January ---

2 THE COMMISSIONER: Okay.

3 MR. ENGELMANN: --- on 23rd January, 1997.

4 THE COMMISSIONER: That person is known as
5 C-8.

6 MR. STEWART: C-8?

7 THE COMMISSIONER: Eight.

8 THE COMMISSIONER: Yes.

9 MR. STEWART: Thank you.

10 MR. ENGELMANN: All right. And so he's
11 advising that there's been a recantation of this
12 allegation, and it appears -- I'll just be a moment.

13 At least on the second page of the letter,
14 Detective Inspector Hall is saying that C-8 should be
15 investigated for possible perjury, last full paragraph.
16 And there's also issues about the connection he had with
17 Dunlop; all right? And he's saying:

18 "In my view the Cornwall Police Service
19 should not conduct any investigation
20 into [C-8] due to the Dunlop
21 connection."

22 At least at that point. And do you know why
23 this is being -- do you have some sense as to why he's
24 writing to you about this?

25 MR. STEWART: I don't.

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

2 Now, I understand you received a copy of
3 further correspondence that was sent by the Cornwall Police
4 Chief, a fellow by the name of Repa, to the local Crown,
5 Murray MacDonald, and that document is Exhibit 1412.
6 Counsel, it's Document Number 727929.

7 This is a bit later now. This is June 3rd of
8 2003, so this is over a year after the stay in the
9 MacDonald case. And the letter refers to information that
10 the Cornwall Police Service has received from the OPP about
11 incidents that occurred in the Cornwall area involving
12 Perry Dunlop that may be criminal in nature. And he
13 says that he's advised -- "he" being Chief Repa -- of a
14 meeting of Crown Attorneys that's going to take place, at
15 which times these concerns would be discussed and, if
16 appropriate, a police service would be directed to conduct
17 an investigation. That's in the second paragraph.

18 Do you know what he's referring to there?

19 **MR. STEWART:** No.

20 **MR. ENGELMANN:** Do you know if you had some
21 sense to this at the time?

22 **MR. STEWART:** Don't remember this -- what
23 he's referring to.

24 **MR. ENGELMANN:** Were you aware of any
25 discussion amongst yourself and other Crown prosecutors

1 about a possible investigation into Perry Dunlop?

2 **MR. STEWART:** You'd have to ask Mr.
3 McConnery. I don't remember that.

4 **MR. ENGELMANN:** And he says, on the second
5 page, Bates page 051, first paragraph:

6 "Notwithstanding the need to have an
7 external police agency investigate
8 these allegations, many of the
9 incidents are alleged to have occurred
10 in the City of Cornwall."

11 He's talking about the statutory duty of his
12 police service.

13 Second paragraph:

14 "Ample time's passed since these
15 matters were brought to the Crown's
16 attention."

17 And he's, therefore, formally requesting you
18 bring my -- bring his concerns to the attention of the
19 Attorney General and seek directions accordingly. Now, you
20 recall, this is being written to Murray MacDonald who's the
21 local Crown and presumably, he's asking Mr. MacDonald to
22 take it up the line with the -- with the Ministry and we
23 know this goes at least up to your level; fair enough?

24 **MR. STEWART:** Yes.

25 **MR. ENGELMANN:** And he then says:

1 "Should there be public scrutiny or
2 review of this matter, it is my
3 intention to make it clear to all
4 concerned that the Cornwall Community
5 Police Service was prepared to conduct
6 a thorough review of the allegations
7 and to report it in the prescribed
8 manner to the Attorney General."

9 You would have read that at some point, sir?

10 **MR. STEWART:** I've read the letter, yes.

11 **MR. ENGELMANN:** Yeah.

12 Do you have some sense as to what he may be
13 talking about back then?

14 **MR. STEWART:** Well, perhaps, we could have
15 my reply.

16 **MR. ENGELMANN:** Yes.

17 **MR. STEWART:** That'd be helpful.

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

19 Your reply is the next exhibit. Actually,
20 it would be helpful with the book, perhaps, but 1413.

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

22 **MR. ENGELMANN:** You've got it?

23 **MR. STEWART:** Yes.

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

25 I don't know if that helps you answer my

1 question about the last paragraph.

2 MR. STEWART: Okay, what's the question?

3 About the public ---

4 MR. ENGELMANN: What that ---

5 MR. STEWART: --- inquiry?

6 MR. ENGELMANN: --- really means to you?

7 MR. STEWART: Well, I think it's clear in my
8 answer to him that there had been an investigation earlier
9 in regards to Mr. Dunlop that because of the conflict
10 situation Mr. Dunlop had been involved in certain
11 allegations that involved Mr. Murray MacDonald and Mr.
12 Murray MacDonald worked for me.

13 MR. ENGELMANN: Yes.

14 MR. STEWART: So we -- we couldn't have a
15 Crown attorney giving legal opinion in regards to -- like
16 myself or somebody directly related -- in regards to Mr.
17 Dunlop. It wouldn't be fair. It would be a conflict. So
18 in fact, I had Mr. Garson, who's the Director of Crown
19 Operations for the West Region -- that's London and that
20 area, you know ---

21 MR. ENGELMANN: He had looked into this
22 matter in the fall of 1999.

23 MR. STEWART: Yes, and -- and gave an
24 extensive opinion in regards to it. And that was the
25 situation. There's -- I wondered about the letter, quite

1 frankly, from Mr. Chief Repa. I don't know him.

2 **MR. ENGELMANN:** Yes.

3 **MR. STEWART:** The police investigate. The
4 Crown never investigates.

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

6 **MR. STEWART:** And I think Mary Nethery, who
7 was here -- and it's either on page 12 or 14 of her
8 materials that she went through separating in Ontario the
9 very clear constitutional between the police investigating
10 and the Crown advising in regards to charges.

11 So for -- if Mr. Dunlop has -- if there's
12 any alleged charges and it's in the Cornwall area,
13 normally, it would be the Cornwall police. But of course,
14 they've been advised that they have a conflict situation
15 with him so they're the host police service and they would
16 invite another service in, which, in Project Truth, was the
17 OPP.

18 My letter back to them is, "Look, you get
19 somebody to investigate it; you put a brief together; I'll
20 have somebody give you legal advice." We did this all the
21 time when I was in Special Prosecutions. You would never
22 give legal advice without a full brief. So they do the
23 investigating, but the police do not need any dispensation
24 from me at all to go and investigate.

25 So whoever they did, in fact, if this is the

1 one, within a week I had an email from Murray MacDonald
2 saying that the Chief had talked to the RCMP and they were
3 going to go investigate.

4 MR. ENGELMANN: Yes, it is.

5 MR. STEWART: Yes, well, that's -- so that
6 was the answer to ---

7 MR. ENGELMANN: All right.

8 MR. STEWART: --- the Chief's situation.

9 MR. ENGELMANN: All right.

10 And you were aware that back in 1999 that
11 they had -- "they" being the Cornwall Police Service --
12 after Mr. Garson's letter to them -- had requested that the
13 Ottawa Police Service investigate Mr. Dunlop and that that
14 had happened?

15 MR. STEWART: I think so. I -- I ---

16 MR. ENGELMANN: All right.

17 MR. STEWART: --- going back, but I remember
18 there was an investigation, Garson looked at it. And my
19 answer was back to the Chief again, if you want to do it.
20 But the police never have to call the Crown or get approval
21 to investigate anybody; that's not our role.

22 MR. ENGELMANN: All right.

23 So your answer is simply back to basics
24 then. Get a police force to investigate this; we'll
25 consider it after we have a Crown or police brief.

1 **MR. STEWART:** Yes.

2 **THE COMMISSIONER:** Mr. Engelmann, how much
3 longer do you think you'll be in-chief?

4 **MR. ENGELMANN:** About 10 or 15 minutes, sir.

5 **THE COMMISSIONER:** All right. I had planned
6 to stop at five. I was hoping that we'd be finished with
7 Mr. Stewart by 5 o'clock, take an hour off and then go into
8 the non-publication matters so you might want to canvas the
9 parties. Maybe we'll have to sit until six, take an hour
10 off and then begin at seven, but I'm sure you want to leave
11 today, Mr. Stewart.

12 **MR. STEWART:** Yes, I do.

13 **THE COMMISSIONER:** Yes.

14 **MR. STEWART:** Thank you. Thanks very much.

15 **THE COMMISSIONER:** So I think we should
16 complete this witness today. So canvas the parties and
17 we'll come back in 15. Thank you.

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

20 This hearing will resume at 3:15 p.m.

21 --- Upon recessing at 3:02 p.m./

22 L'audience est suspendue à 15h02

23 --- Upon resuming at 3:21 p.m./

24 L'audience est reprise à 15h21

25 **THE REGISTRAR:** This hearing is now resumed.

1 Please be seated. Veuillez vous asseoir.

2 **THE COMMISSIONER:** Thank you.

3 Go ahead, sir.

4 **MR. ENGELMANN:** Sir, I canvassed counsel and
5 the estimates were between an hour and fifteen minutes to
6 about an hour and forty minutes so ---

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

8 **MR. ENGELMANN:** --- and if I'm within my 10
9 or 15, I think we're still doing fairly well.

10 **THE COMMISSIONER:** All right.

11 **MR. ENGELMANN:** I also advised counsel that
12 my colleague, Pierre Dumais, would be here this evening
13 dealing with some of the publication ban issues that need
14 to be resolved.

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

16 **MR. ENGELMANN:** And there's been some
17 interest on some counsel's part about what exactly will be
18 covered and I indicated that Maître Dumais would be
19 available to speak to them just before we start. So we'll
20 -- we'll go until we finish with Mr. Stewart ---

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** --- and then you want to
23 take approximately an hour off at that point, sir.

24 **THE COMMISSIONER:** Yes and that session will
25 be in camera because ---

1 **MR. ENGELMANN:** Yes.

2 **THE COMMISSIONER:** --- it's only to confirm
3 the names to the monikers.

4 **MR. ENGELMANN:** Yes.

5 **THE COMMISSIONER:** Yes. All right.

6 **THE COMMISSIONER:** Thank you.

7 **JAMES STEWART, Resumed/Sous le même serment:**

8 **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**
9 **ENGELMANN (Cont'd/Suite):**

10 **MR. ENGELMANN:** Mr. Stewart, just before the
11 break, you indicated that following the correspondence back
12 and forth with Chief Repa, you received an email from
13 Murray MacDonald. Is that correct?

14 **MR. STEWART:** Correct.

15 **MR. ENGELMANN:** And if the witness could be
16 shown Document Number 130756.

17 **THE COMMISSIONER:** Mr. Callaghan?

18 **MR. CALLAGHAN:** Before you mark that an
19 exhibit, I think you should look at the document just so
20 you know what it is. I do have an objection if -- if Madam
21 Clerk could provide it to you.

22 The document is an email which is referable
23 allegedly to a conversation that Murray MacDonald had with
24 Chief Repa. The document is dated -- I don't have in front
25 of you -- of yes, I do. Yeah, the document is dated in

1 June 2003. It was produced to us on January 16th, 2009.

2 It was not available for the cross-
3 examination of Murray MacDonald. It was not available for
4 the examination of Chief Repa. And it purports to talk
5 about a conversation they had and I don't think it's
6 appropriate. I -- I don't know the explanation; maybe the
7 witness can assist us as to why we're getting these in
8 January. But I don't think it's necessarily fair to try to
9 put in -- and I'm not sure my friend's doing it, but that's
10 what the point about the email is; a conversation between
11 two people when not -- when both testified and this
12 document wasn't provided to us, even though it was
13 obviously in existence.

14 **THE COMMISSIONER:** And ---

15 **MR. CALLAGHAN:** I just think it's
16 fundamentally unfair, and it may not amount to much and
17 maybe we get an explanation as to why we don't have this
18 document until January of this year, after Murray MacDonald
19 testifies, after Chief Repa testifies.

20 **THE COMMISSIONER:** And is ---

21 **MR. CALLAGHAN:** I'll abide by whatever you
22 do, obviously.

23 **THE COMMISSIONER:** Well ---

24 **MR. CALLAGHAN:** But I do ---

25 **THE COMMISSIONER:** That's a nice thought,

1 that's a nice -- thank you ever so much.

2 (LAUGHTER/RIRES)

3 THE COMMISSIONER: What value ---

4 MR. CALLAGHAN: I wouldn't have thought
5 much, but ---

6 THE COMMISSIONER: Why are you objecting?

7 MR. CALLAGHAN: Because I don't think -
8 because I don't know whether they're trying to put it in
9 for the conversation that happened between Murray MacDonald
10 and Chief Repa, or what they're trying to do. And I'm not
11 sure anybody is trying to do anything other than it's a
12 document and the flow of communications that wasn't
13 available.

14 THE COMMISSIONER: Well I think we're all
15 getting -- no, Mr. Callaghan, you might be getting a little
16 touchy on things like -- I mean, this is -- come on. Come
17 on. Tsk, tsk.

18 MR. ENGELMANN: Sir, this was late
19 disclosure from MAG. Ms. McIntosh explained, as I
20 understood it, it was an oversight.

21 THE COMMISSIONER: Well that ---

22 Mr. ENGELMANN: No, no. There were some
23 documents that were, I believe -- sorted -- well actually,
24 on this one, no. This wasn't part of those. This was
25 something that I believe she received late from the

1 witness.

2 MR. STEWART: Correct.

3 MR. ENGELMANN: Is that correct, Mr.
4 Stewart?

5 MR. STEWART: Yes.

6 THE COMMISSIONER: Were you ever canvassed,
7 sir, at the beginning of the inquiry to produce all
8 documents that you had in your possession?

9 MR. STEWART: I probably was, and this one
10 came up, I was sort of on the B-list if I can use that, of
11 being witnesses and up until a week ago, it wasn't even
12 that I was for sure to be a witness.

13 And nowadays you just have so many emails I
14 didn't even go through them and I happened to see if I had
15 any and I saw that one.

16 THE COMMISSIONER: M'hm.

17 MR. STEWART: I had about six or eight, I
18 think.

19 THE COMMISSIONER: M'hm. It just goes to
20 the quality of disclosure. Make it an Exhibit.

21 Thank you. Exhibit 3330, correspondence from
22 James Stewart to Leslie McIntosh on December 31st, 2008.

23 ---EXHIBIT NO./PIÈCE NO. P-3330:

24 (130756) - E-mail from Murray MacDonald to
25 James Stewart re: Cornwall Police Your

1 letter to Chief Repa dated 26 Jun 03

2 **THE COMMISSIONER:** In the end, is it not
3 correct just to say that the RCMP were tasked with this?

4 **MR. ENGELMANN:** Well that was -- that was
5 the information you received.

6 **MR. STEWART:** Absolutely.

7 **MR. ENGELMANN:** Correct?

8 **MR. STEWART:** Yes. I don't know what
9 happened, but that's what I was told.

10 **MR. ENGELMANN:** All right. And do you know
11 if there was any follow up or further correspondence or
12 discussion about this issue?

13 **MR. STEWART:** I do not.

14 **MR. ENGELMANN:** All right. Sir, before I
15 forget, when we looked at the issue of the memo you had
16 done to yourself about viable options with respect to the
17 change of the trial judge and your efforts to have a
18 meeting with the regional senior, it's my understanding
19 that, at some point during that process, you and Mr.
20 McConnery would have had a discussion with Murray Segal?

21 **MR. STEWART:** That's correct.

22 **MR. ENGELMANN:** And he would have provided
23 you some advice?

24 **MR. STEWART:** Yes, that's true. It was on
25 the telephone.

1 **MR. ENGELMANN:** All right. And it's my
2 understanding, he did not wish you to proceed with some
3 form of formal motion?

4 **MR. STEWART:** Yes. That's true.

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

6 Sir, I want to turn to another topic, and
7 that's the projecttruth.com website.

8 As I understand it, you had some
9 involvements -- you had some involvement with individuals,
10 or you were aware of individuals by the name of James
11 Bateman and Richard Nadeau, who were involved in a website
12 called projecttruth.com?

13 **MR. STEWART:** I remember there was a call or
14 something from Pat Hall about the website.

15 **MR. ENGELMANN:** All right. And that in
16 September of 2000, an issue with respect to the website
17 registered to James Bateman was brought to your attention?

18 And just by way of background, sir, through
19 the OPP, we've heard that it came to the attention of the
20 OPP in the summer of 2000. This website was in operation,
21 had sensitive materials including victim statements being
22 posted on the site.

23 And Ms. Hallett has testified that she
24 requested a meeting with yourself on how to deal with the
25 issue of the website and that you brought in Mr. Segal and

1 Mr. Lindsay to that meeting, and the meeting occurred in
2 September of 2000.

3 **MR. STEWART:** I have no recollection of a
4 meeting at all.

5 **MR. ENGELMANN:** All right. We have a
6 document that she prepared for the meeting, sir, and that
7 is Document Number -- Exhibit Number 3189.

8 And she told us that she would have prepared
9 this as sort of background information for you, for Mr.
10 Segal and Mr. Lindsay, so that you could discuss the
11 various options you had for dealing with this website. You
12 don't remember this at all, sir?

13 **MR. STEWART:** I don't -- not at all.

14 **MR. ENGELMANN:** She's talking about bringing
15 a court action of some sort to help get the website issue
16 resolved. And her evidence was that, as a result of the
17 meeting with you, that she was advised not to bring any
18 formal court action.

19 **MR. STEWART:** I take no issue at all, I just
20 ---

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

22
23 **MR. STEWART:** --- I have no independent
24 recollection at all of the meeting.

25 **MR. ENGELMANN:** All right. I'm not going to

1 take you through her notes, then.

2 I understand, sir, that you were written to
3 by Detective Inspector Hall, concerning this matter in
4 December of 2002. If the witness could be shown, it's
5 Document Number 101699.

6 **THE COMMISSIONER:** Thank you.

7 Exhibit Number 2 -- I'm sorry, 3331, it's a
8 letter dated December 17th, 2002 addressed to Mr. James
9 Stewart from Detective Inspector Hall.

10 **--- EXHIBIT NO./PIÈCE NO. P-3331:**

11 (101699) - Letter from Pat Hall to James Stewart
12 re: Project Truth Website dated 17 Dec 02

13 **MR. ENGELMANN:** Sir, this is a -- this is a
14 letter that Detective Inspector Hall is writing to you, and
15 you'll note on the second page of the letter, at the
16 bottom, he's requesting a written legal opinion pertaining
17 to criminal charges in this matter?

18 **MR. STEWART:** Yes.

19 **MR. ENGELMANN:** The complainants -- well,
20 the complainant is the defence counsel who had acted for
21 Mr. Leduc, Steven Skurka. Does this bring back?

22 **MR. STEWART:** It doesn't at this point in
23 time. I think it was another sometime later letter, a
24 message from Mr. Hall referencing this, and then there was
25 the email in May, following year, from Mr. McConnery,

1 indicating that he had dealt with that.

2 **MR. ENGELMANN:** Right. Okay.

3 **MR. STEWART:** Well perhaps we'll go through
4 the chain, because I don't remember this letter as we sit
5 here now. When I reviewed documents ---

6 **MR. ENGELMANN:** All right. There's a
7 further email exchange between yourself and Detective
8 Inspector Hall on this issue in the fall of 2003, and that
9 is at -- that's Exhibit 3104.

10 **MR. STEWART:** Yes.

11 **MR. ENGELMANN:** And you had asked Lorne
12 McConnery to get involved and assist you with this?

13 **MR. STEWART:** When I -- when I go through
14 this, when I refresh my memory, it appeared that I did, and
15 then Mr. McConnery answered me May 9th and said that he had
16 dealt with it.

17 **MR. ENGELMANN:** Right. And he says in that
18 email of May 9th, which flows on to the second page, that he
19 -- he does not see a case made for defamatory libel. So he
20 does not see the possibility of pursuing criminal charges
21 with respect to these websites?

22 **MR. STEWART:** Yes. But the sort of the
23 sequence is, when you start at the bottom then, on
24 September the 25th, Mr. Hall indicating he hasn't had an
25 answer for some time ---

1 **MR. ENGELMANN:** Right.

2 **MR. STEWART:** --- and then I thought we had
3 dealt with this a long time ago and found the email that
4 had answered it.

5 **MR. ENGELMANN:** All right. And in fact, he
6 had been provided with a copy of that originally.

7 **MR. STEWART:** Then he apologises later
8 saying he had lost the email somewhere.

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

10 Okay. Sir, another matter quickly. *R. v*
11 *Lapierre*. This is Paul Lapierre, a priest, was acquitted
12 here in Cornwall, not in Quebec but in Cornwall on charges,
13 and the Crown had begun an appeal process. I understand
14 that some time later, the appeal was abandoned, and there
15 is -- it's at Document Number 129837.

16 **THE COMMISSIONER:** Thank you.

17 Exhibit 3332 is email correspondence from
18 Paul Lindsay to Murray Segal et al, February 21st, 2003.

19 **--- EXHIBIT NO./PIÈCE NO. P-3332:**

20 (129837) - E-mail from Paul Lindsay to
21 Murray Segal re: *R. v. Lapierre* - Project
22 Truth Crown Appeal dated February 21, 2003

23 **MR. ENGELMANN:** All right. So just a couple
24 of questions here, sir.

25 There's two James Stewarts here?

1 **MR. STEWART:** Yes.

2 **MR. ENGELMANN:** You are James M. Stewart?

3 **MR. STEWART:** Yes, and James K. who is about
4 the same vintage, is with the Appeal Branch.

5 **MR. ENGELMANN:** Right, and it was James K.
6 Stewart who was actually tasked with pursuing this appeal,
7 at least at one point?

8 **MR. STEWART:** Yes, and I think there's some
9 documents. It would be very confusing, but there -- he was
10 dealing with the appeal, I wasn't.

11 **MR. ENGELMANN:** All right.

12 This is a note from Paul Lindsay to Murray
13 Segal saying:

14 "I spoke with Jim Stewart today and advised
15 him of my tentative decision to abandon the
16 Crown appeal on *R. v. Lapierre*, which has
17 been launched provisionally subject to
18 review following the receipt of the complete
19 transcript. Jim indicated that other than
20 the Leduc appeal which is still on reserve
21 in the Court of Appeal, he is unaware of any
22 other Project Truth prosecutions in Ontario.
23 Jim is also unaware of any outstanding
24 Project Truth prosecutions in Quebec,
25 although Jim did not profess being an expert

1 on what charges might be outstanding in
2 Quebec."

3 Now is the Jim Stewart being referred to, is
4 that you?

5 **MR. STEWART:** That's me.

6 **MR. ENGELMANN:** All right.

7 Were you aware, sir, at this time, there was
8 an ongoing prosecution against this same individual
9 with the same alleged victim in Montreal?

10 **MR. STEWART:** I may have been aware at some
11 point-in-time. Obviously, at this point-in-time, I was not
12 aware of it.

13 **MR. ENGELMANN:** Okay, because we have
14 information about that. The victim testified here.

15 **MR. STEWART:** M'hm.

16 **MR. ENGELMANN:** And Paul Lapierre was, in
17 fact, convicted in 2004, the matter in Montreal.

18 **MR. STEWART:** Yes.

19 **MR. ENGELMANN:** Was that at all a concern
20 abandoning the appeal and the possible prejudice that might
21 have or was that something do you know that -- whether that
22 would have been considered ---

23 **MR. STEWART:** I don't understand the
24 prejudice and abandoning the appeal.

25 **MR. ENGELMANN:** I -- I ---

1 **MR. STEWART:** I don't know what that means.

2 **MR. ENGELMANN:** Well, there was -- there was
3 a finding here. He was acquitted here after trial.

4 **MR. STEWART:** M'hm.

5 **MR. ENGELMANN:** There was -- obviously,
6 there was an appeal filed. There were some concerns about
7 the judgment and you had this outstanding criminal matter
8 involving the same complainant and the same accused in
9 Montreal.

10 Was there any concern -- well, did you -- I
11 guess the first thing is, would you have known about the
12 matter in Montreal?

13 **MR. STEWART:** I'm not sure if I did or the
14 trial counsel. Was it -- this was Mr. Godin?

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** Yes.

17 **MR. STEWART:** I ---

18 **MR. ENGELMANN:** He's not copied on this.

19 **MR. STEWART:** No, I ---

20 **MR. ENGELMANN:** It appears you are the
21 person being asked ---

22 **MR. STEWART:** Yeah.

23 **MR. ENGELMANN:** --- for the background
24 information.

25 **MR. STEWART:** Okay, and I'm not sure what

1 the question is then.

2 MR. ENGELMANN: The question was, I guess
3 you had to have the knowledge that the matter was going on
4 in Montreal.

5 MR. STEWART: Yes.

6 MR. ENGELMANN: And whether there was an
7 issue about abandoning this appeal while that matter was
8 still ongoing; whether that might have some impact on that
9 trial.

10 MR. STEWART: I don't think it would one way
11 or the other.

12 MR. ENGELMANN: All right. Okay. I'll just
13 be a moment.

14 Sir, you have been the Director of Major
15 Cases now since May of last year?

16 MR. STEWART: Yes.

17 MR. ENGELMANN: On an acting basis?

18 MR. STEWART: Yes.

19 MR. ENGELMANN: You are still in your
20 substantive position as Director of Crown Operations for
21 the East Region?

22 MR. STEWART: Yes.

23 MR. ENGELMANN: And, sir, whether this is
24 part of recommendations or suggestions or whether this is
25 just providing us with some background, many of the cases

1 we were dealing with here would be major cases, would they
2 not? Cases like the Charles MacDonald prosecution?

3 MR. STEWART: No.

4 MR. ENGELMANN: The Jacques Leduc
5 prosecution?

6 MR. STEWART: You mean you're taking one
7 case at a time?

8 MR. ENGELMANN: What do you mean when you
9 use the term "Major Cases"?

10 MR. STEWART: Sure.

11 And then we'll get back to this.

12 MR. ENGELMANN: Sure.

13 MR. STEWART: I don't want to leave a false
14 impression.

15 Major cases are cases -- there's two ways
16 they come about and the *LeSage Code* Report that came out
17 recently deals with that.

18 One is cases that you can tell from the
19 outset that, in fact, they are going to be major cases, and
20 the ones that you see quite often -- we dealt with for a
21 period of time because I've been the Chair of a Major Case
22 Committee for the last few years but now doing it full-time
23 -- would be ones like the guns and gangs in Toronto.

24 MR. ENGELMANN: All right.

25 MR. STEWART: You'll have a roundup and you

1 have 60, 70, 80 accused, multiple charges, wide-range; that
2 you would know is going to be a major case. And it's a
3 sliding scale and I'll -- well, I'll deal with that in a
4 minute in regards to the province.

5 But the second type of major cases, and the
6 *LeSage Code* refers to this, is the ones that morph into
7 one. They don't start out necessarily as one, but without
8 putting too fine a point on it, Elliott -- the Elliott case
9 out of Brockville was a routine homicide case that ended up
10 having a life of its own and became a major case.

11 The Cumberland case in Ottawa that went on
12 four about eight years, a murder case of four individuals,
13 was a serious case, but it took on again a life of its own.

14 Some of the cases that we're dealing with
15 now, there's two biker cases going on in London, one's been
16 going for six years. There's another one with six or seven
17 victims, five accused. People were executed. That type of
18 thing are automatic major cases. You look at them, you
19 know that they are.

20 But the other ones morph into it, whether
21 it's the personality of the judge, the Crown, the defence,
22 the circumstances; sometimes the perfect storm where you
23 put a bunch of things together and it ends up being a major
24 case, but it didn't start out that way.

25 We are constantly looking at them in regards

1 to -- what would normally happen is if you know that
2 there's a major case in your jurisdiction, you would apply
3 to our group and we would, in fact, give you a Crown
4 position. That would not be a Crown person.

5 It was different in this case, for example,
6 where Shelley Hallett came in from Toronto, but we would
7 give you an extra position to your office.

8 So, for example, if Cornwall could have
9 handled this case ---

10 **MR. ENGELMANN:** Yes.

11 **MR. STEWART:** --- and Cornwall had people
12 that could do this which they did, but because of the
13 conflict they were outside it, Cornwall would get an
14 additional person to their staff. That person would
15 backfill for the Crown assigned to the major case, plus
16 they'd pick up somebody from the Cornwall office, and if it
17 was really that major, they may -- I'm talking about now,
18 in 2009, they may get one of the two prosecutors that work
19 for me right now out of the regional office. So it's not a
20 position a person is transferred, the position is.

21 I got an email this morning in regards to a
22 Toronto homicide case wondering if they were able to keep
23 that person over into the new fiscal year.

24 As soon as you finish your case, within a
25 reasonable time of a month or so, we take that position

1 back and we move it somewhere else.

2 It's a sliding scale in this sense. If
3 you're on the Manitoulin Island and you have two
4 prosecutors, a case that is three months may in fact, be a
5 major case for the Manitoulin Island, but in downtown
6 Toronto that's a very routine case.

7 So we've got one -- I won't go into the
8 details of where we are all over the province, but Lindsay,
9 for example, has a situation that is beyond the normal
10 capacity of that office.

11 **MR. ENGELMANN:** All right, but here we had a
12 number of prosecutions. Just looking at Project Truth for
13 a moment, 15 individuals charged, many charges, many
14 victims. This is all from '98 through to 2001 or so.

15 How would this be dealt with differently now
16 8 to 10 years later?

17 **MR. STEWART:** All right. If we were doing -
18 - if we knew everything, all right, if we had hindsight,
19 which is always 20/20, and you factored in the -- without
20 getting into the pros and cons, the Dunlop issue, the
21 disclosure issues, the conflict issues or whatever, and
22 knowing what we know now, yes, it would.

23 You have to look back to the time when Peter
24 Griffiths was looking at it when it first came in the door.
25 And then things started to happen, more things started to

1 happen, more things started to happen in regards to it.

2 So cases sometimes get to a point where
3 you're there. If you had a situation where you had, say,
4 five or six accused in something like this, an office like
5 Cornwall with the people that they had could probably
6 handle it. It's just when it gets bigger than -- you
7 almost get to a cusp or a tipping point when you say, "No,
8 this is going to drain this particular office".

9 Usually, there's one Crown on the ground
10 from that office, so they're there for routine adjournments
11 and whatever and then you can move from there.

12 I don't know if that explains it.

13 **MR. ENGELMANN:** Okay, well, if you have 15
14 accused going forward in two or three years, number of
15 cases, you would be assigning a position to the office, to
16 the area?

17 **MR. STEWART:** What would happen, if Cornwall
18 was doing this, they would assign a lead Crown out of their
19 office and they would get an extra -- a person in that
20 office, so they'd be at least two of them. And if it
21 morphed into something else, we'd end up with three.

22 **MR. ENGELMANN:** All right.

23 **MR. STEWART:** That depends on the situation.
24 The problem you had here, and you've listened to everything
25 more than I have, is you have an intermittence. It's not

1 like somebody is working full-time on certain things. It
2 got to a point where it was and, obviously, in the
3 interchange earlier today when we were talking about Leduc
4 and MacDonald, but some of the other cases, you know, you
5 might have one and not have one for another six months or
6 something like that.

7 Normally when you have these cases,
8 somebody's working on it full time for three years or
9 whatever. We have them in the biker thing in London. I
10 mean, that's what they do.

11 **MR. ENGELMANN:** But just having someone
12 available for calls and for questions, I mean, that could
13 have been done back then, whether that person was here in
14 Cornwall or someone else, right?

15 **MR. STEWART:** For calls.

16 **MR. ENGELMANN:** To just provide immediate
17 advice?

18 **MR. STEWART:** Well, you can, and actually
19 it's interesting that you say that because out of the
20 *Lesage Code* again, we're in fact putting five Crown
21 Attorneys into five different police stations across the
22 province, and hopefully this will be successful to give
23 frontline advice to the police because a lot of these
24 cases, what happens is we don't tell the police who to
25 investigate, but we'd like to have some focus in regards to

1 it so that instead of having a roundup of 60 accused, 40 of
2 who are released on bail immediately and we clog all the
3 courts and shut down the courts in Kitchener with this
4 project, when in fact there's four or five main players
5 that are the ones that should be prosecuted and we put our
6 efforts that way.

7 **MR. ENGELMANN:** And who is it that
8 determines, sir, when serious cases morph into major cases,
9 to use your terminology?

10 **MR. STEWART:** Well, it's going to be a Crown
11 Attorney. It's going to be the Regional Director. And
12 what happens is we're looking into all of that.

13 The cases have changed. When -- I remember
14 doing murder cases where you could finish them in six
15 weeks. Well, now they're three months, six months, not
16 that we have a better product, but that's the reality of
17 it.

18 So we have to figure out what is beyond the
19 capacity -- the normal capacity of that office. What makes
20 this particular prosecution pass that?

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

22 Mr. Stewart, we've asked -- unless there's
23 something else you wanted to add on major cases right now -
24 --

25 **MR. STEWART:** Well, I just want to say that

1 it's a constant learning process, that times have changed
2 since 2001 in regards to it, and obviously there's many
3 aspects to this Inquiry.

4 I mean, there's the one of getting out all
5 the information to the public, and I know because I spent
6 six months on an inquest and one part of it was finding out
7 what happened and the second one was recommendations. And
8 everybody knows this, but the reality is because it is a
9 constant learning process, recommendations, you know, have
10 to be practical so we can deal with it in a real world.

11 And sometimes there are situations -- not to
12 say this was and it will be for wiser people to decide this
13 -- but sometimes there are situations where because of "but
14 for" -- somebody might argue but for the Chadwick decision,
15 we would have finished Leduc and maybe MacDonald would have
16 -- who knows? But for the judge we had here or the judge
17 there, but for Mr. Dunlop -- and I'm throwing out
18 hypotheticals. People can argue different ways. More
19 cooperation by Mr. Dunlop, we may not be -- who knows, in
20 regards to it. I don't have any answers.

21 But all I'm saying is there were so many
22 factors in regards to it, and it's quite a complex
23 situation or you wouldn't have had the hearings as long as
24 you had because it is a complicated situation.

25 I don't know if that's helpful, but ---

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

2 Sir, anything else you might want to add?
3 We've asked witnesses if they want to comment on impact
4 either on themselves or perhaps their colleagues or others
5 dealing with these types of cases?

6 **MR. STEWART:** No, you've heard from the
7 Crowns involved in it and they're the frontline, and the
8 Deputy Minister is going to be here in a couple of days, so
9 certainly he can speak for the Ministry.

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

11 And is that the same, sir, with respect to
12 any further recommendations or suggestions you might have?

13 **MR. STEWART:** Yes. I believe he's going to
14 be speaking to that.

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

16 **THE COMMISSIONER:** Thank you.

17 **MR. ENGELMANN:** Thank you very much, Mr.
18 Stewart. My friends will have some questions for you.
19 They will identify themselves and who they act for ---

20 **MR. STEWART:** Thank you.

21 **MR. ENGELMANN:** --- before they start.

22 **THE COMMISSIONER:** Thank you.

23 Ms. Daley?

24 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

25 **DALEY:**

1 **MS. DALEY:** Hello, Mr. Stewart. My name is
2 Helen Daley. I am counsel to a group called Citizens for
3 Community Renewal, and that is a local group of citizens
4 who have an interest in principally institutional reform.

5 Just a few areas I wanted to address with
6 you, sir. The first one relates to the role -- interaction
7 between Crown and police. That's the general topic.

8 And one document that illustrated this to a
9 point was Exhibit 3322. If you want to see that on the
10 screen? That's just a very short email, sir, that you sent
11 in March of '01 and this dealt with reviewing the Crown
12 briefs that were outstanding. So it's 3322.

13 You recall seeing that earlier today?

14 **MR. STEWART:** Yes, I do. Thank you.

15 **MS. DALEY:** This was helpful to me because
16 of the phrase you used, and this is something I want to
17 talk to you about.

18 You're referring in this email, sir, to the
19 Crown having a look at these cases so as to offer a view as
20 to the reasonable prospect of conviction. That's the
21 concept that ---

22 **MR. STEWART:** Agreed, yes.

23 **MS. DALEY:** --- I want to talk to you about.

24 And we understood from Mr. McConnery's
25 testimony that that is a second level of review, if you

1 will, that might be applied after the police officers have
2 initially concluded that they have reasonable and probable
3 grounds to lay a charge?

4 **MR. STEWART:** Well, the situation is,
5 although it was a little different in this particular case,
6 but the normal situation is the first hurdle is there has
7 to be reasonable and probable grounds by the police
8 officer.

9 If the police officer doesn't feel they have
10 it, that's the end of it. It normally never gets to us.

11 **MS. DALEY:** That's what Mr. McConnery told
12 us as well, sir.

13 So in these particular briefs that were
14 outstanding, I don't know if you recall this detail, but
15 the case was in each of those that the police conclusion is
16 that they did not have RPG on a subjective basis. Did you
17 know that?

18 **MR. STEWART:** I have come to know that and I
19 have also come to know that I think the original agreement
20 -- and I stand to be corrected again -- with Peter
21 Griffiths was that all of these files would be reviewed by
22 the Crown before the police would consider laying charges,
23 and I think that was part and parcel of the ---

24 **MS. DALEY:** All right.

25 So that was an approach specific to Project

1 Truth, but that wouldn't be the general ---

2 **MR. STEWART:** Not generally.

3 I'd have to say in a number of provinces
4 there is pre-charge approval by the Crown, and so the
5 charge won't even get laid without the Crown approval. We
6 do not have that in Ontario.

7 But normally, if the police don't have
8 reasonable and probable grounds, it doesn't get to us.
9 Sometimes in sensitive cases they'll come to us because
10 they'll know the next test is the reasonable prospect, and
11 why would they lay charges that we won't prosecute?

12 **MS. DALEY:** All right. So in that kind of
13 circumstance, you might tell the telescope the two and
14 police would come to you asking about RPC?

15 **MR. STEWART:** Yes.

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

17 Staying with the general topic of police and
18 Crown interaction, I just have some questions for you about
19 Officer Hall and the role he played. And in particular,
20 you recall you spoke about his April 3rd, '01 email?

21 **MR. STEWART:** Yes.

22 **MS. DALEY:** The concluding lines of which
23 caused you concern.

24 I take it, sir, that the content of that
25 email, particularly those final lines, I took it from your

1 evidence that it was immediately obvious to you that that
2 accusation required an investigation?

3 **MR. STEWART:** Well, it wasn't something I
4 could sit on ---

5 **MS. DALEY:** Right.

6 **MR. STEWART:** --- in regards to it. It was
7 one thing where the judge had made a finding in regards to
8 -- and there's different interpretations, but now, as a
9 result of that written allegation against Ms. Hallett, I
10 was going to be sending that to other parties to deal with.

11 **MS. DALEY:** All right. And, in part, was
12 that because of the seniority and the status of the folks
13 involved? In other words, Hall is a very senior officer.
14 Ms. Hallett's a very senior Crown, and what he's alleging
15 is a serious allegation; that is, he's alleging she misled
16 defence counsel?

17 **MR. STEWART:** In this situation, there
18 wasn't any doubt what I was going to do. I can't answer
19 for every hypothetical, something that's relatively minor,
20 a police officer swore at somebody on the street or
21 something.

22 **MS. DALEY:** Fair enough. The situation you
23 were confronted with ---

24 **MR. STEWART:** In this situation, I knew
25 right away.

1 **MS. DALEY:** Because they were senior people,
2 both of them, and it was a serious allegation of misconduct
3 by a Crown?

4 **MR. STEWART:** Well, also because of the
5 context of Judge Chadwick's ruling ---

6 **MS. DALEY:** Yes.

7 **MR. STEWART:** --- that was on that very
8 point. I mean, that's something different from people
9 maybe having a misunderstanding ---

10 **MS. DALEY:** Right.

11 **MR. STEWART:** --- between them and it
12 happens often, but here he is saying there was a specific
13 phone call with information.

14 **MS. DALEY:** Now, sir, would you have
15 expected to hear from Officer Hall sooner if he believed
16 sincerely that a senior Crown had lied to the defence
17 during the course of the Leduc matter that was back in
18 February of that year?

19 **MR. STEWART:** Let's put it this way; I
20 composed the email that I never sent and it was fresh in my
21 mind, and that's what -- I had concerns.

22 **MS. DALEY:** In part, your concerns were
23 about the timeliness of ---

24 **MR. STEWART:** Well, if you can review that,
25 that was ---

1 **MS. DALEY:** That was ---

2 **MR. STEWART:** --- the things that were fresh
3 in my mind at the time. As I sit here now, I mean, it's --
4 the time's past, too far to ---

5 **MS. DALEY:** Okay, fair enough.

6 Now, in terms of what you knew about that
7 circumstance, sir, there's some elements of it we've heard
8 about in evidence. I just want to know if you were aware.

9 I assume you were aware that what had
10 occurred was a private meeting between the defence and
11 Officer Hall and some of his fellow officers, and that was
12 in the context of a motion by the defence alleging wilful
13 police non-disclosure? I think you were aware of that
14 fact.

15 **MR. STEWART:** I became aware of that later.

16 **MS. DALEY:** But did you not tell us this
17 morning that when you did become aware of it, that struck
18 you as highly unusual?

19 **MR. STEWART:** Let's put it this way, I
20 hadn't heard of that before.

21 **MS. DALEY:** Right. And I think you also
22 became aware that one of the officers gave a document
23 directly to the defence without the knowledge of the Crown,
24 and that was also a very unusual circumstance was it not,
25 sir?

1 **MR. STEWART:** I'm not sure that would be
2 that, just by itself. It wouldn't be -- I mean, you know,
3 the police officer telling the Crown later that, "I
4 couldn't find you, I wanted to -- the defence needed this
5 document", that type of thing.

6 In these circumstances, where it was a very
7 live issue, it was different. I don't know. I -- I
8 haven't sat down and gone -- read the transcripts of the
9 police ---

10 **MR. DALEY:** Right.

11 **MR. STEWART:** --- or Ms. Hallett in regards
12 to what went on at the stay, to say what was unusual or
13 not, and I don't feel that comfortable doing that, quite
14 frankly, because someone else may add a detail or two that
15 changes what my answer is. I'm not hedging on it; I want
16 to be fair.

17 **MS. DALEY:** You did learn though that Ms.
18 Hallett had never been made aware until after the fact that
19 the document had been handed over? You knew that was ---

20 **MR. STEWART:** That's my understanding, yes.

21 **MS. DALEY:** --- the situation?

22 **MR. STEWART:** Yes.

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

24 And whether intended or otherwise, the
25 outcome of those actions were to focus the defence motion

1 to intentional non-disclosure by the Crown as opposed to by
2 the police, and I think you -- you did know that that was
3 what happened?

4 **MR. STEWART:** Yes, but I'm getting -- again,
5 I'm getting that second-hand. It's like everybody in this
6 room has heard that.

7 **MS. DALEY:** Understood.

8 **MR. STEWART:** I don't have any particular
9 knowledge on that.

10 **MS. DALEY:** But my question for you is this.
11 Putting together those various elements of what you
12 learned, did you ever consider that what Officer Hall had
13 done itself might merit a closer look?

14 **MR. STEWART:** Well, the reality is if this
15 was still before the court and we had different versions of
16 what went on, so at that point-in-time I wasn't going to
17 start going down and start to investigate our -- our lead
18 OPP officer as to what he did or didn't do. I just -- I
19 didn't think of doing that, quite frankly.

20 **MS. DALEY:** Once the appeal had concluded,
21 did -- was any thought given to that event and whether or
22 not the conduct of the officers required a closer look?

23 **MR. STEWART:** I haven't made any complaint
24 about them. I mean, Ms. Hallett may or may not have. I'm
25 not sure what she did.

1 **MS. DALEY:** All right.

2 I'd like to ask you some questions then
3 about the delay issue in the MacDonald matter and, as I
4 understood your evidence here, I think you said that you
5 hadn't really turned your mind to the 11(b) argument that
6 the defence might be bringing, notwithstanding the age of
7 the charges. And, in fairness, I just wanted to ask you a
8 little -- probe you a little bit further on that.

9 By May of 2000, as Mr. Engelmann put to you,
10 there was a trial date which was to be adjourned. The --
11 just to refresh your mind about the date of the charges,
12 sir, at that point the oldest charges had been laid in
13 March of '96, and the most recent charges had been laid in
14 '98, so you had a situation where charges were two to four
15 years old and another significant adjournment was coming
16 up.

17 And it was in that context I thought that
18 you'd said you were cognizant the delay might be raised but
19 you, yourself, hadn't focussed much on it as a -- as a
20 fatal issue to that case. Is that correct?

21 **MR. STEWART:** Well, I had the reporting
22 letter from Ms. Hallett, but I mean when -- when you have
23 senior counsel dealing with matters, if they bring
24 something to your attention and say, "Look it, this is
25 something we're going to lose if we don't do X, Y or Z",

1 that would be something that I would be alerted to.

2 The part that it came up in the context this
3 morning was the adjournment of Mr. -- by Mr. Neville
4 because he was somewhere else, and that to me was going to
5 happen whether he waived this 11(b) or not.

6 **MS. DALEY:** All right.

7 **MR. STEWART:** And, I mean, that's -- would
8 be part of the argument. I mean, I may disagree with
9 Justice Chilcott's assessment.

10 I've argued a number of these cases over the
11 years, and you start out with what looks like a bad number
12 in terms of years or months and then you whittle away, and
13 you whittle away, and I guess that as part of that -- that
14 little memo I did to Lorne McConnery ---

15 **MS. DALEY:** Right.

16 **MR. STEWART:** --- about dealing with this
17 and, all of a sudden, well, if you're in a big hurry and
18 here we have everybody ready to go but your lawyer goes off
19 to another trial, you don't have a problem with it -- that
20 type of thing.

21 But the fact that there was an adjournment
22 lurking for Mr. Neville for 8 or 10 months, I don't think
23 that would be affecting the timeline. Mr. Chilcott,
24 Justice Chilcott, may think that, but I don't. I mean,
25 he's entitled to his -- Mr. MacDonald is entitled to his --

1 his counsel of choice, but it shouldn't always count
2 against the Crown and that.

3 And even in the Chilcott decision -- and I'm
4 not arguing -- I mean, I still to this day don't know how
5 the Crown was penalized for any issue with Mr. Dunlop. We
6 didn't have control over it.

7 **MS. DALEY:** So to put some words to what
8 you've just said, I take it that as far as you were aware,
9 the details of the case, there were enough elements in the
10 case that could explain the delay such that there wasn't a
11 heightened concern that the charges would be lost. Was
12 that your feeling?

13 **MR. STEWART:** I -- in fairness, I didn't
14 direct my mind to it and start looking at it and saying,
15 "Okay, do we have exposure for this period, that period?"
16 I did not do that.

17 **MS. DALEY:** Right.

18 **MR. STEWART:** I did not do that.

19 **MS. DALEY:** Mr. McConnery here left us with
20 the impression that his argument before Chilcott was a
21 rough ride and it was a very uphill argument.

22 **MR. STEWART:** M'hm.

23 **MS. DALEY:** In your mind, sir, was the
24 complexity of this case of such a nature that it should
25 have countervailed the delay? Or did you know enough about

1 the case to come to that conclusion?

2 **MR. STEWART:** Well, I just indicated for the
3 parts that I knew about, but Mr. McConnery was in a better
4 position and Ms. Hallett and Mr. Pelletier, they all had
5 direct involvement in it. And Mr. McConnery's a very
6 senior counsel and -- and I think his opinion would be more
7 valued than mine in regards to it because he had the
8 working knowledge of the case.

9 **MS. DALEY:** All right.

10 Sir, some questions for you about another
11 topic, and I take it that you may know very, very little
12 about this. This is the web site topic, but I'm going to
13 try to see if I can jog any further memory from you. Do
14 you -- the Project Truth website is what I'm referring to.

15 Do you recall knowing, sir, during the time
16 Ms. Hallett was on the files, that there was indeed a local
17 website in which, amongst other things, statements of
18 alleged victims were being posted? Do you recall knowing
19 that?

20 **MR. STEWART:** I -- I knew of that, but I
21 don't know when I knew of that.

22 **MS. DALEY:** All right.

23 **MR. STEWART:** And I -- I guess that's why I
24 had tasked Mr. McConnery to -- to deal with Officer Hall on
25 that.

1 **MS. DALEY:** Did you -- did you have an
2 awareness that on this site some affidavits were posted of
3 a fellow named Ron Leroux in which he made fairly broad
4 allegations about many prominent people in the community
5 and labelled them as paedophiles? Did you -- did you know
6 that that was happening on the site?

7 **MR. STEWART:** The notes that counsel --
8 counsel showed to me, Inquiry counsel, about the meeting
9 that -- it was Mr. Segal, Mr. Lindsay and Ms. Hallett.

10 I believe there was some discussions of
11 that, but I have no recollection of it now.

12 **MS. DALEY:** All right.

13 Ultimately, what Ms. Hallett tells us and
14 what her notes indicate, is that it was the view at that
15 meeting that it was not the AG's fight to get involved in
16 a matter of this nature. Do you recall that decision?

17 **MR. STEWART:** I just -- on reading it, I
18 don't recall. I don't recall the meeting at all.

19 **MS. DALEY:** All right, fair enough.

20 Was it ever raised with you by Ms. Hallett
21 or any other prosecutor that the existence of the site
22 could be jeopardizing the Project Truth trials?

23 **MR. STEWART:** It might have been. It might
24 have been raised in that meeting, but I -- as I say, I
25 don't remember that.

1 **MS. DALEY:** Okay.

2 One additional matter I wanted to talk to
3 you about, and that is the Dunlop issue and the issues that
4 arose between himself and his own force, and himself and
5 the OPP. Did you have a generalized awareness about that,
6 sir? Did you have a general knowledge that there had been
7 ongoing efforts to obtain materials from Mr. Dunlop and
8 there was a police belief that he was not forthcoming?

9 **MR. STEWART:** I knew that there was trouble
10 between the two. I knew there were some *Police Act*
11 matters. I know there was a lawsuit. I didn't know the
12 particulars.

13 **MS. DALEY:** All right.

14 **MR. STEWART:** And I knew he was problematic
15 as -- and when this letter was shown to me today where --
16 indicated to Mr. Cooper that we wanted to always have a
17 police officer deal with Mr. Dunlop. I mean, there's
18 allegations back and forth. I know generally about them.

19 **MS. DALEY:** Did it filter up to you, sir,
20 from the prosecutors that they were concerned that Dunlop's
21 activities in withholding disclosure might be impairing
22 their prosecutions?

23 **MR. STEWART:** Mr. McConnery may have made me
24 aware of it. I'm not sure.

25 **MS. DALEY:** All right.

1 In terms of the letter -- I think you refer
2 to this in your testimony, sir. You were aware that a
3 Regional Crown from the Western Region, Mr. Garson, had
4 dealt with this?

5 **MR. STEWART:** Yes.

6 **MS. DALEY:** Just a question or two for you
7 about his document. That's Exhibit 1326.

8 It runs to a couple of pages, so it might be
9 helpful for the witness to have the hard copy -- 1326.

10 Hopefully you've seen this recently, sir, in
11 the course of preparing ---

12 **MR. STEWART:** I've just glanced at it.

13 **MS. DALEY:** Okay.

14 **MR. STEWART:** Thank you. Thanks.

15 **MS. DALEY:** There's a number of items here
16 where he comments that the Crown -- it's not the Crown's
17 role to get involved, and I'll just point them out to you.
18 The first question that he is asked, or the first issue
19 he's asked to comment on, issue 1, were the requirements of
20 the CPS at law to ensure full disclosure has been made, and
21 he gives them his opinion.

22 And then if you look at page 3 of his
23 correspondence, sir, the last full paragraph of that
24 section, he says:

25 "You've requested our advice on the

1 action that should be taken by the
2 Police Service in dealing with the
3 conduct of Constable Dunlop."

4 And he goes on to say, "It's not our mandate
5 to give you that advice." Are you with me? Did you find
6 that?

7 **MR. STEWART:** Yes.

8 **MS. DALEY:** My question is this, sir, and
9 it's based on the evidence that we have heard here of
10 difficulties, for want of a better word, that CPS was
11 having with Dunlop, and they seem to have come to the Crown
12 for some advice and the Crown is not able to provide it.

13 Can you offer any comments or thoughts as to
14 where a police service could go for this type of guidance
15 or information, if not the Crown?

16 **MR. STEWART:** Well, I'll put it this way.
17 This isn't the Crown's role when we're getting into *Police*
18 *Services Act* issues between the individual and his police
19 service. That's not what we do. We prosecute criminal
20 matters. You bring us a brief and we deal with it. But
21 this is not something that we get involved in.

22 **MS. DALEY:** I appreciate that, and that's
23 what Mr. Garson says.

24 **MR. STEWART:** Yes.

25 **MS. DALEY:** Are you aware of any other

1 resources that were available or are available now to a
2 police service that had this difficulty to deal with?

3 **MR. STEWART:** Well, I'm sure they would be
4 able to retain counsel and figure out what the options are.
5 I mean, that's the bottom line to that.

6 **MS. DALEY:** All right.

7 **MR. STEWART:** And I'll just give you an
8 example. I met the senior counsel for the Metro Toronto
9 Police two weeks ago and I was exchanging -- we had a
10 conversation yesterday morning on things -- police
11 services. Obviously in something like Cornwall police are
12 not going to have a lawyer on staff.

13 **MS. DALEY:** Correct.

14 **MR. STEWART:** I mean, it's an expense issue.
15 But there may things where they need legal opinions, but
16 we're not -- the Crown is not mandated by law to deal with
17 that at all.

18 **MS. DALEY:** All right. I take it beyond
19 that you wouldn't consider it an appropriate role for the
20 Crown to ---

21 **MR. STEWART:** Not at all.

22 **MS. DALEY:** --- involve itself in?

23 **MR. STEWART:** No.

24 **MS. DALEY:** All right. Even when it comes
25 to a point such that the officer's conduct might be

1 impairing prosecutions?

2 **MR. STEWART:** Well, I mean, then there's an
3 issue, investigating him -- whether he's obstructing
4 justice or something. That's something different.

5 **MS. DALEY:** Right.

6 **MR. STEWART:** But this was a very charged
7 situation back and forth between -- as I understood it,
8 between Mr. Dunlop and the Police Service.

9 **MS. DALEY:** Right.

10 **MR. STEWART:** And if it gets to the point of
11 criminal, well, of course we're interested.

12 **MS. DALEY:** All right. But absent conduct
13 that would go to the level of a criminal offence, there's
14 no role for the Crown in that situation?

15 **MR. STEWART:** I don't see how we could get
16 involved.

17 **MS. DALEY:** You gave -- moving to a
18 different topic, sir, you gave testimony about the role --
19 sorry, the assignment of Crowns to Project Truth. You gave
20 a fair bit of evidence about that.

21 Were you aware, sir, that in addition to the
22 Project Truth cases there was a prosecution in Cornwall
23 against a schoolteacher named Marcel Lalonde which had many
24 similar features to the Project Truth case? Did you know
25 about that?

1 **MR. STEWART:** As I sit here now, I don't
2 recognize that.

3 **MS. DALEY:** All right. It involved -- they
4 were historic allegations. They were primarily teacher-
5 pupil relationships and it happened in Cornwall, but that
6 doesn't -- that's not something that ever crossed your
7 consciousness, so to speak, when you were dealing with
8 Project Truth?

9 **MR. STEWART:** No.

10 **MS. DALEY:** And nor, I assume, would you
11 know that Officer Dunlop played a role in the Lalonde
12 matter.

13 **MR. STEWART:** I don't at this point in time.
14 The Lalonde name doesn't ring a bell with me.

15 **MS. DALEY:** All right.
16 Give me one second, sir.

17 Those are my questions, thank you.

18 **MR. STEWART:** Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Horn?

21 Good afternoon, sir.

22 **MR. HORN:** Good afternoon.

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

24 **HORN:**

25 **MR. HORN:** Frank Horn, Coalition for Action,

1 a citizens group, and we're interested in asking a few
2 questions regarding some of the matters that took place
3 involving the Project Truth investigation.

4 The first area I'm interested in is -- I'd
5 like to have Document Number -- Exhibit Number 2832,
6 Document Number 732780.

7 **THE COMMISSIONER:** So this is a letter to
8 Mr. Stewart on April 22nd, 2004.

9 **MR. HORN:** Yes. On the second page, I'd
10 like to look at paragraph -- third paragraph down from the
11 top.

12 Now, when you read that paragraph -- just
13 take -- read it.

14 **THE COMMISSIONER:** This is a letter from Mr.
15 Hall?

16 **MR. HORN:** Yes. I believe it is, yes.

17 **THE COMMISSIONER:** All right.

18 **MR. HORN:** Okay. It would seem that what
19 Mr. Hall is doing is he's looking over his shoulder and
20 he's realizing that there's probably going to be a public
21 inquiry coming after the Leduc matter is over, it's
22 concluded. And so what he is doing is he's coming to you
23 and seeing if the two -- the OPP and the Attorney General
24 can get together and put a common front if there's going to
25 be questions being asked.

1 Is that what that sounds like to you?

2 **MR. STEWART:** I have no idea, Mr. Horn,
3 what's in Mr. Hall's mind when he wrote that; nothing.

4 **MR. HORN:** But doesn't it sound like what
5 he's trying to do is get you and your -- the Crown attorney
6 and the police to get together and face the coming
7 investigations that will be coming -- an inquiry.

8 **THE COMMISSIONER:** Just a minute, Mr. Horn.

9 **MR. CARROLL:** I think that Mr. Stewart's
10 answer was the correct one, that he does not know what's in
11 Mr. Hall's mind, and the question should not continue down
12 that route.

13 **THE COMMISSIONER:** Thank you. Mr. Horn?

14 **MR. HORN:** Well, I know you may not know
15 what he -- what's in his mind. But, I mean, he wrote to
16 you and you must have thought about it and had to respond
17 to it. In your mind, how would you respond to that -- or
18 you didn't respond at all?

19 **MR. STEWART:** I did. I did, and there's a
20 response to it. The bottom line is this answer was two and
21 a half years after my original letter, so I didn't take
22 much stock in it, sir.

23 **MR. HORN:** Okay, but did you -- okay, was
24 there this idea that the Crown attorney and the police were
25 concerned about the scrutiny of a public inquiry and

1 they've got to cross all their t's and dot all their i's
2 because they know there's going to be a lot of questions
3 going to be asked about things that happened?

4 **MR. STEWART:** Who -- can I have that
5 question again?

6 **MR. HORN:** Okay. Was there this feeling
7 that somehow whatever you do and whatever the police do is
8 going to be under the microscope of -- or a magnifying
9 glass and there's going to be a lot of questions asked and
10 we'd better make sure that we cover ourselves, make sure
11 that we cover ourselves.

12 **MR. STEWART:** Well, I guess if you were
13 thinking that, that I'd answer that letter with some sort
14 of lengthy self-serving letter about this and that and
15 whatever and, quite frankly, I was almost dismissive of
16 that letter. I answered it, in part, and said "If you have
17 anything, talk to the Crown attorney". Basically, I wasn't
18 going to become his pen pal.

19 **MR. HORN:** Okay. What the Coalition for
20 Action's concern has always been is that there has been --
21 cooperation between the institutions ---

22 **MR. STEWART:** Cooperation?

23 **MR. HORN:** Cooperation between them in order
24 to do cover-ups and to make sure that the public don't know
25 about the things that really occurred. And that sounds

1 like an attempt on the part of Mr. Hall to get the police
2 and the Crown to work together, to put a common front to
3 make sure that we talk the same language to the public and
4 give the same answers. And that's what it sounds like.

5 Was that -- did you feel that he was trying
6 to solicit your support?

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

8 **MR. CARROLL:** I think he's essentially re-
9 phrased -- repackaged the same proposal, and it may sound
10 like that to him and he can put that in his submissions, if
11 he chooses, but not put it as a question to this witness.

12 **THE COMMISSIONER:** Thank you, Mr. Carroll.

13 Mr. Horn?

14 **MR. HORN:** Yeah.

15 **THE COMMISSIONER:** I'm not -- let me be very
16 clear. Your question raises a good issue, but you're
17 posing it the wrong way.

18 **MR. HORN:** Well, I'm just asking Mr.
19 Stewart, who was the one that got this letter from Mr.
20 Hall, this is the letter that was sent to you. You had to
21 answer it and it looks like, to me, that he was trying to
22 get your support in making sure that we have a common
23 front. That's what it looks like.

24 **THE COMMISSIONER:** All right.

25 Mr. Horn, let's assume for a minute ---

1 **MR. HORN:** You'll agree ---

2 **THE COMMISSIONER:** I have no -- no, no, Mr.
3 Horn. The fact of the matter is this gentleman has said "I
4 responded. I didn't take this letter seriously." So even
5 if it was an offer of Pat Hall to get in collusion with
6 this gentleman, it seems fairly clear by the letter that he
7 sent back that he wanted nothing to do with it.

8 **MR. ENGELMANN:** That's Exhibit 3267, and Mr.
9 Stewart has clearly indicated that he wasn't doing that.
10 And I don't think he can speak for Mr. Hall or Detective
11 Inspector Hall.

12 **THE COMMISSIONER:** Right. No, no, but I
13 think it's important for Mr. Horn to get the point across.

14 **MR. ENGELMANN:** Oh, absolutely. And Mr.
15 Carroll did say that Mr. Horn can make submissions on that
16 as well.

17 **THE COMMISSIONER:** Sure.

18 But, Mr. Stewart, did you, at any time,
19 consider cooperating with the police in any way that would
20 either cover up or change any of the investigations in this
21 matter?

22 **MR. STEWART:** No.

23 **MR. HORN:** Okay.

24 **THE COMMISSIONER:** Now, Mr. Horn, are you
25 suggesting that Mr. Stewart, for example, because he's

1 here, had any -- posed any action that would be wrong?

2 **MR. HORN:** The question really is this.

3 Were you aware that there was probably going to be a public
4 inquiry coming?

5 **MR. STEWART:** I can't -- there had been talk
6 of that. Mr. Guzzo had -- whatever -- and I don't remember
7 when it was finally decided that there was one. I mean, it
8 was always in the background, but it wasn't something that
9 I concerned myself with.

10 **MR. HORN:** You didn't feel that that was
11 going to be a problem? You weren't afraid of any ---

12 **MR. STEWART:** No.

13 **MR. HORN:** --- questioning that could come
14 toward ---

15 **MR. STEWART:** Not at all.

16 **MR. HORN:** --- anything that you or any of
17 the Crowns did?

18 **MR. STEWART:** You're absolutely right; I was
19 afraid of nothing in regards to this, sir.

20 **MR. HORN:** Okay. And in the application for
21 -- by Ms. Hallett to request a Crown appeal, in Exhibit
22 Number 3193, Document Number 102179.

23 **THE COMMISSIONER:** It's on the ---

24 **MR. HORN:** Okay. If we can look at the
25 bottom of page 3?

1 **THE COMMISSIONER:** Okay. So we're at the
2 relevant part.

3 **MR. HORN:** Yes. And the paragraph we're
4 talking about is:

5 "A group of concerned observers who
6 want to see a greater accountability by
7 the Catholic Church, the clergy who
8 committed sexual assaults against young
9 people are extremely interested in the
10 outcome of this case..."

11 And so forth.

12 It would seem that one of the things that
13 was really a concern of Ms. Hallett was that there was a
14 lot of interest among the public, a lot of interest by
15 people who wanted something to be done.

16 Now, was that a consideration that really
17 they had to make a decision -- they had to have the appeal
18 because they had to appease the public?

19 **MR. STEWART:** Are you saying that -- first
20 of all, I didn't decide on the appeal, but are you saying
21 that cases are appealed if there's public outrage but there
22 isn't any grounds?

23 **MR. HORN:** I'm suggesting that that would be
24 one of the -- was that one of the considerations in having
25 the appeal? Because this was put into the document which

1 was requesting the appeal, there must have been a purpose
2 for it?

3 **MR. STEWART:** Certainly there would have to
4 be -- the first hurdle is grounds for an appeal. If there
5 isn't any grounds for an appeal, then that's the end of it.
6 It's like reasonable and probable grounds.

7 The second thing is of course you want to
8 have appeal counsel to know that there's public interest in
9 a matter, that there's public concern, of course.

10 **MR. HORN:** And is that one of the
11 considerations that has to be taken into account?

12 **MR. STEWART:** It wouldn't be decisive in any
13 situation, but certainly you want to give background to the
14 appeal counsel that this matter has -- because one of the
15 things we talk about is public deterrence. We talk about
16 protection of the public or whatever. And if part of the
17 public is concerned with this, of course it's something
18 that you want to know about. What weight you give to it is
19 another issue.

20 **MR. HORN:** So the -- I'm trying to
21 understand this. Because of the public interest, Mr. Hall
22 (sic), thinking that there's going to be a public inquiry
23 coming, didn't that even play a little bit in the back of
24 your mind as to things that you were going to do and the
25 Attorney General's Office were going to do, to be watchful

1 and careful and do everything they can to make sure that
2 they're not going to be scrutinized and looked at and be
3 found wanting?

4 **MS. McINTOSH:** My only concern with Mr.
5 Horn's question here is that this appeal checklist was done
6 in 2001, and I'm not sure there was any public inquiry on
7 the horizon in 2001, but they can be separated out, I
8 think.

9 **THE COMMISSIONER:** Okay.

10 **MR. HORN:** There was agitation. There was -
11 - at one point there was -- 10,000 people signed and later
12 on there was another 13,000 people signed ---

13 **THE COMMISSIONER:** Mr. Horn, let's not get
14 into the submission stage.

15 **MR. HORN:** Okay.

16 **THE COMMISSIONER:** Let's get back to what
17 you're talking about.

18 So if I remember correctly, what you're
19 asking Mr. Stewart is given the fact that when you're
20 reading this and Mr. Hall, in 2004, talks about a public
21 inquiry, not in 2001, were you concerned enough to start
22 making -- taking steps to make sure that your department
23 and the Attorney General's department what?

24 **MR. HORN:** Well, make sure that you searched
25 high and low for any documents, any boxes of documents that

1 there might be within the system?

2 **THE COMMISSIONER:** Okay. Okay. So now
3 we're going to that issue now?

4 **MR. HORN:** Well, that's one of the issues
5 that they would be concerned about.

6 **THE COMMISSIONER:** No, I understand that,
7 sir, except that your question started -- I thought you
8 were going one way and now you're starting to ---

9 **MR. HORN:** Oh okay.

10 **THE COMMISSIONER:** So what do you want to
11 do?

12 **MR. HORN:** We'll do it generally.

13 Generally, there must have been a concern
14 within the department? There's going to be an inquiry. It
15 looks like it's coming. We've got to do something to make
16 sure that the Attorney General's Office is going to come
17 out all right at the end?

18 **THE COMMISSIONER:** And what do you mean by
19 "doing something"? Are you talking about destroying
20 documents?

21 **MR. HORN:** No, I'm not suggesting that
22 whatsoever.

23 **THE COMMISSIONER:** Okay.

24 **MR. HORN:** I'm suggesting that what they're
25 going to do is they're going to look high and low and make

1 sure that all the documents that were supposed to have been
2 given for disclosure and all the things that the Crown
3 should have done. There should have been cooperation with
4 the police. They should have -- they should -- I mean, all
5 the things that should have been done by the Crowns would
6 have been done because there's -- you're going to be put
7 under a magnifying glass and you're going to be looked at
8 very closely on every little thing that you would have
9 done.

10 **MR. STEWART:** Well, what's your question,
11 sir?

12 **MR. HORN:** The question is, was that a
13 concern? Was there any discussions between you and Mr.
14 Segal and other people in the department along those lines?

15 **MR. STEWART:** What, that we're scared of an
16 inquiry so we're going to change our course of conduct?
17 No. There's no discussion.

18 **MR. HORN:** None? No discussion ---

19 **MR. STEWART:** None.

20 **MR. HORN:** --- whatsoever?

21 **MR. STEWART:** None.

22 **MR. HORN:** Okay. And so there was no
23 concern with -- okay, we'll get to the documents. Did you
24 feel that -- did you -- did you ever meet Mr. Dunlop at
25 all?

1 **MR. STEWART:** I never met the man, sir.

2 **MR. HORN:** Never met him?

3 **MR. STEWART:** I've never met the man.

4 **MR. HORN:** Okay. Did you have any knowledge
5 about what had happened to him over the period of time that
6 he was involved in this -- these cases?

7 **MR. STEWART:** Well, I know from some of the
8 media reports. I know from some of the things I read, but
9 most people in this room would know more than I know on
10 that topic, sir.

11 **MR. HORN:** Okay. Would you have any idea
12 about his feelings about trusting the institutions like the
13 Attorney General's Office or his police department?

14 **MR. STEWART:** You'd have to ask him, sir.

15 **MR. HORN:** Did -- no, did you know anything
16 about -- about that? Did you have any idea about how he
17 felt about cooperating with the -- with the Attorney
18 General's Office or the police?

19 **MR. STEWART:** Maybe. I don't know. At what
20 point in time?

21 **MR. HORN:** Well, when he was being asked to
22 produce documents and -- and all the -- all of his
23 evidence.

24 **MR. STEWART:** Sir, you would be better to
25 ask that question of Mr. Hall or people that dealt with the

1 man directly. I never dealt with the man directly at any
2 time. In fact, I gave instructions that we wouldn't, so he
3 would -- there would always be evidence of what he said to
4 police officers or what he did. So I have no direct
5 knowledge of the man at all, sir.

6 **MR. HORN:** Did you -- did you ever talk to
7 Ms. Hallett about the time that he came to her office and
8 gave her some documents?

9 **MR. STEWART:** I don't recall that. She may
10 have told me that. I don't remember that.

11 **MR. HORN:** Do you remember her -- him saying
12 that, "There's only one police officer. He's the top cop
13 and top Crown and that's the only ones I trust"? Did you
14 know about that?

15 **MR. STEWART:** I may have heard that comment
16 somewhere. I don't know where though. I may have read it
17 somewhere. I don't -- I don't know that, but I do not
18 remember talking to Ms. Hallett about it, so I can't ask
19 you -- I can't answer you, sir, whether he said something
20 to Ms. Hallett or not because I don't remember her ever
21 talking to me about him ever -- she ever meeting him
22 directly.

23 **MR. HORN:** Okay. So that -- that never was
24 part of the discussions between you and Ms. Hallett?

25 **MR. STEWART:** She may remember and maybe we

1 did. Sir, I honestly, as I sit here years later, I don't
2 remember.

3 **MR. HORN:** You mentioned the fact that there
4 was any -- all of the charges that were laid due to the
5 Project Truth investigation were -- all of them were vetted
6 by the Crown's Office before they were laid?

7 **MR. STEWART:** You mean the ones that were
8 actually prosecuted?

9 **MR. HORN:** Yeah, the ones that were
10 prosecuted, all the charges that were laid and eventually
11 prosecuted. I understand there was 115 charges laid?

12 **MR. STEWART:** Well, I think the system that
13 was set up -- and you've heard from other witnesses, so
14 they can better attest to this, but I thought the system
15 that Peter Griffiths had set up is that the Crowns would
16 give opinions in regards to matters before they went ahead.
17 So if that was the situation in all of them, fit that
18 criteria, then the answer to your question, sir, is yes. I
19 don't know that, though.

20 **MR. HORN:** So that if there was 115 charges
21 ---

22 **MR. STEWART:** Here ---

23 **MR. HORN:** --- laid ---

24 **MR. STEWART:** --- counsel ---

25 **MR. KOZLOFF:** In fairness to Mr. Stewart, of

1 those 115 charges against 15 individuals, you have to
2 account for the, I think, 43 charges laid against Jean-Luc
3 Leblanc which were not the subject matter of an opinion
4 because of the ---

5 **THE COMMISSIONER:** Right.

6 **MR. KOZLOFF:** --- exigency of the situation,
7 the arrests taking place.

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

9 **MR. KOZLOFF:** And Jacques Leduc.

10 **MR. ENGELMANN:** The original Leduc charges.

11 **THE COMMISSIONER:** Right.

12 **MR. HORN:** Okay. So the responsibility of
13 laying those charges were then totally OPP?

14 **MR. STEWART:** Sir, I -- you've had Mr.
15 Griffiths here in regards to it and you've had Officer
16 Hall. They'd be in a better position to answer that
17 question, sir.

18 **MR. HORN:** Okay. Because the -- one of the
19 things that were of interest to the public was the fact
20 that there was a number of investigations and, finally, 115
21 charges were laid. And I -- we'd like to know if the -- is
22 that just totally because of Project Truth, police officers
23 went out and laid the charges or did they speak to the
24 Crown Attorneys first before they laid those charges?

25 **MR. STEWART:** And as I've said, sir, a

1 number of other witnesses would have been able to attest to
2 that. I don't know.

3 **THE COMMISSIONER:** The other thing, sir, you
4 have to be careful. You've just said that there were a
5 number of investigations leading up to these charges, and
6 we still have to see what it is really, but I certainly
7 wouldn't want the public to think that they were the same
8 investigation going on and on and on. I think we've seen
9 what each investigation did and what its mandate was, and
10 so I don't know that it would be fair to characterize it as
11 those successive investigations.

12 **MR. HORN:** The public -- as an organization
13 which was advocating for the public inquiry, that was one
14 of the main things that came up is the fact that there was
15 a number of police investigations and, finally, the final
16 one, there was 115. That was -- was things that were in
17 the public forum at the time. And that's why I'm asking,
18 is it -- is it just the police that did the investigation
19 that laid the charges or was it usually police going to the
20 Crowns and saying, "Do we have RPC ---

21 **THE COMMISSIONER:** RPG.

22 **MR. HORN:** --- RPG and later on if we can
23 get a conviction." Is that the usual case?

24 **MR. STEWART:** What's the question, sir?

25 **MR. HORN:** The question is, does that mean

1 that the -- that the police always went to the Crown first
2 before they would lay the charges?

3 **MR. STEWART:** In this case or normally?

4 **MR. HORN:** Well, not normally, but in this
5 case with the -- with the Project Truth?

6 **MR. STEWART:** Well, you've had the benefit,
7 sir, of Mr. Hall and Justice Griffiths in regards to
8 answering that question. I can't answer for every charge.
9 At this point in time, I don't know.

10 **MR. HORN:** And you're indicating that when
11 the Cornwall Police -- Community Police Services were
12 requesting an opinion as to whether to lay charges against
13 Mr. Dunlop, the Crown's Office did not want to -- the local
14 Crown's Office and your office did not want to become
15 involved in that?

16 **MR. STEWART:** Clearly, yes.

17 **MR. HORN:** You never wanted to become
18 involved ---

19 **MR. STEWART:** We did not.

20 **MR. HORN:** --- in any way?

21 **MR. STEWART:** Definitely not. Because of
22 the allegations involving Murray MacDonald, there was --
23 there was -- it would not be appropriate for me to make the
24 decision, for example, and so what I did is I asked a very
25 senior prosecutor from Western Ontario to look into it and

1 deal with it.

2 MR. HORN: Okay. So that was something that
3 had been discussed at your level and maybe even with Mr.
4 Segal?

5 MR. STEWART: No, it was my decision for
6 sure in regards that I might have told Mr. Segal, you know,
7 I'm not sure, but there was no question it wouldn't be fair
8 to Mr. Dunlop.

9 MR. HORN: Okay.

10 THE COMMISSIONER: Are you alleging, sir,
11 that there's something wrong with having sent to Mr. Garson
12 ---

13 MR. HORN: No, there's nothing wrong with
14 that. I just wanted to know what -- what really happened.

15 THE COMMISSIONER: Okay.

16 MR. HORN: What I'm concerned about is the -
17 - the fact that the -- it would seem that what the police
18 were doing was trying to place responsibility onto the
19 Attorney General's Office in making these decisions.

20 MR. STEWART: No, the reality is, sir, the
21 police investigate matters.

22 I don't get into squad cars. I don't send
23 Crowns out. We don't do any investigating. The police do
24 it. Once they've investigated it, they bring it to us in
25 regards to it. They can decide to lay charges on their own

1 with the reasonable and probable grounds or they can even
2 seek our advice ahead of time.

3 But in regards to Mr. Dunlop, there was no
4 question that I was in a position of conflict; that if, for
5 example, I looked at the brief and recommended charges,
6 people would allege that it was some kind of payback
7 because there were allegations against Murray MacDonald.

8 So the clear way to do it was to have
9 independent police investigate independent Crown that
10 doesn't have anything to do with the Region make the call,
11 and he did, sir.

12 **MR. HORN:** Okay.

13 I'll just say that Mr. Dunlop did not trust
14 the police. He did not trust the institutions. He was
15 afraid. He has a number of documents. He has a numbers of
16 documents that you want for your prosecutions.

17 When he went and took them to the Attorney
18 General's office and tried to take them to the Solicitor
19 General's office and took them to the Fantino's -- to
20 Fantino, do you think that those decisions on his part were
21 something that someone in his position was a logical thing
22 to do?

23 **MR. STEWART:** All I will say in regards to
24 all of it, sir, I would think, and I'm speculating and
25 maybe I shouldn't be doing this sitting here.

1 **THE COMMISSIONER:** No.

2 **MR. STEWART:** Is that he would keep a master
3 copy of everything.

4 **MR. HORN:** He may be -- but I'm suggesting,
5 so that he's not criticized later on for withholding
6 information and withholding documents, he had to give it to
7 somebody and he had to give it to somebody he trusted. So
8 he says, "I'm going to give it to Ms. Hallett. I'm going
9 to give it to the Attorney General's office. I'm going to
10 give it to Mr. Fantino because I know that it will be in
11 their hands, and it'll eventually get to the right people.

12 That's what he did. Do you think that that
13 was a right thing for him to have done?

14 **MR. STEWART:** Sir, my answer is in relation
15 to this -- because we were looking to make sure we had all
16 the right documents, because the police were investigating
17 this. They were looking for assistance from him. I would
18 expect that he would have a master copy of everything that
19 he had, and he would give that to Mr. Hall. Because as an
20 officer, they are ready to take them, somebody that's
21 interested in the documents. That's my answer in regards
22 to that, sir.

23 What else he did, I -- I don't know Mr.
24 Dunlop. I don't know why he went here. I don't why he
25 gave it to that person, not -- I can't comment, sir. I

1 don't know the man.

2 **MR. HORN:** But there are some problems
3 because when he gave it to the Attorney General's office
4 that it never got to where it was supposed to go. It got
5 lost somewhere along the way.

6 So was that something because he made the
7 mistake of going to the Attorney General's office or is it
8 because of internal problems or maybe somebody did destroy
9 them?

10 **THE COMMISSIONER:** I ---

11 **MS. McINTOSH:** I think Mr. Horn really is
12 inviting this witness to speculate now, and I'm not sure
13 it's proper.

14 **THE COMMISSIONER:** I understand there's a
15 report. So somewhere along the line, that report is going
16 to be filed sometime?

17 **MR. HORN:** Yes.

18 **THE COMMISSIONER:** So the issue of the lost
19 boxes is going to be ---

20 **MR. ENGELMANN:** Yes. This was a late
21 disclosure, but the parties had enough for ---

22 **MR. HORN:** I don't have a copy of that.

23 **MR. ENGELMANN:** Yeah, you do. All of the
24 parties received this, I'm just trying to think about when,
25 early January, and this will be dealt with by Mr. Segal.

1 **MR. HORN:** Okay. Good.

2 I just want to have one more document;
3 number 123085. This is a newspaper article.

4 **THE COMMISSIONER:** Thank you.

5 Exhibit Number 3333 is an article in The
6 Standard-Freeholder dated Tuesday, May 4th, 1999.

7 **MR. HORN:** Exhibit Number?

8 **THE COMMISSIONER:** Three three three three
9 (3333).

10 **--- EXHIBIT NO./PIÈCE NO P-3333:**

11 (123085) - Standard-Freeholder Article
12 'Local priest to stand trial' dated 04 May
13 99

14 **MR. HORN:** Okay. It's not a very long
15 article. If you can just read it.

16 **(SHORT PAUSE/COURTE PAUSE)**

17 **THE COMMISSIONER:** Okay? Thank you.
18 Go ahead, sir.

19 **MR. HORN:** Okay, is that an accurate story
20 about your position in regards to consolidating the
21 charges?

22 **MR. STEWART:** I don't remember the reporter
23 calling at all sir.

24 **MR. HORN:** So are you saying that his --
25 what he's saying is that you, James Stewart, Eastern

1 Director of Operations for the Attorney General's office
2 said he will try to have all 15 charges combined into one
3 trial?

4 MR. STEWART: M'hm.

5 MR. HORN: You don't remember saying that?

6 MR. STEWART: No.

7 MR. HORN: To a newspaperman?

8 MR. STEWART: No.

9 MR. HORN: Do you have any idea where this
10 comes from or ---

11 MR. STEWART: No.

12 MR. HORN: --- where these ideas come from?

13 MR. STEWART: Probably from Mr. Pelletier. I
14 mean -- Pelletier, Mr. Pelletier was on the case and he may
15 have said that to me, but I have no -- it's very, very rare
16 that I ever speak to anybody from the media. And I must
17 have answered the phone by mistake, because I don't
18 remember this at all.

19 MR. HORN: So that would have been said by
20 Mr. Pelletier, not yourself?

21 MR. STEWART: No, I'm -- no, I'm -- I may
22 very well have said it, you know, I have no issues with
23 that. I could have said it, might have said it, maybe said
24 it. I just don't remember it at all.

25 MR. HORN: Now, does that reflect your --

1 what you thought was the proper thing to do in this case?

2 **MR. STEWART:** Well, if I said it at the
3 time, which I don't remember, I would have got that
4 information from Mr. Pelletier who was the Crown on the
5 case at the time.

6 **MR. HORN:** So that decision that was made
7 back then could have been made -- you could have agreed
8 with it back then?

9 **MR. STEWART:** I -- what I'm saying, I think
10 you had the benefit of Mr. Pelletier being here, and I'm
11 sure he would have dealt with this issue, sir. He would be
12 in a better position to deal with this.

13 What -- if I -- if I said anything, I was
14 basically being a parrot for Mr. Pelletier because it was
15 his case, and I don't remember saying anything or talking
16 to the media. I'm not denying at all that I may have. I
17 just don't remember, sir. And if I had any information, it
18 came from Pelletier -- Mr. Justice Pelletier, sorry.

19 **MR. HORN:** Because you're saying that he's
20 the one that had to make the decision anyways. You
21 wouldn't be the one making that decision?

22 **MR. STEWART:** No, it was his case.

23 **MR. HORN:** It was his case, but you don't
24 remember him consulting with you and saying this is what
25 you should do?

1 **MR. STEWART:** No. Not me because he was
2 still on the case or he was just about to turn it over.

3 **MR. HORN:** How long was the search done
4 within the Attorney General's office to find those
5 documents?

6 **THE COMMISSIONER:** What documents?

7 **MR. HORN:** I'm talking about the documents
8 that Mr. Dunlop was supposed to have dropped off at the
9 Attorney General's office.

10 **THE COMMISSIONER:** I don't know that this is
11 the witness to ask. There may be a ---

12 **MR. ENGELMANN:** Mr. Segal will be asked
13 these questions.

14 **THE COMMISSIONER:** Mr. Horn?

15 **MR. HORN:** Yeah, but Mr. Stewart wrote the
16 letter.

17 **THE COMMISSIONER:** Wrote what letter?

18 **MR. HORN:** I'm -- letter number 2814.

19 **THE COMMISSIONER:** Exhibit 2814?

20 **MR. HORN:** Twenty-eight fourteen (2814).
21 Seven three two (732).

22 **MR. STEWART:** I signed the letter.

23 **MR. HORN:** You signed it?

24 **MR. STEWART:** Yes.

25 **MR. HORN:** Okay.

1 "Over the years, searches have been
2 made for the MAG documents" ---

3 **THE COMMISSIONER:** "Without success".

4 **MR. HORN:** Okay. "Over the years" what does
5 that mean? How many years did they search?

6 **MR. STEWART:** Sir, there's going to be a --
7 if you haven't read it, there's a report in regards to
8 this, and there will be another witness that can answer
9 this. I'm not in a good position to answer it.

10 **MR. HORN:** But you signed it, you -- this is
11 ---

12 **MR. STEWART:** I ---

13 **MR. HORN:** --- your -- this is your letter.

14 **MR. STEWART:** Yes, I sign letters all the
15 time, sir.

16 **MR. HORN:** So you didn't even look at it?

17 **MR. STEWART:** No, I would have looked at it,
18 sir. I would have perhaps been briefed on it, but in
19 regards to those details, sir, there's the report and the
20 other witness would be in a better position to answer, not
21 me.

22 **MR. HORN:** Okay. Thank you.

23 **THE COMMISSIONER:** Thank you.

24 Mr. Neville?

25 **MR. NEVILLE:** Good afternoon, Commissioner.

1 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

2 MR. NEVILLE:

3 MR. NEVILLE: Good afternoon, Mr. Stewart.

4 We obviously know each other for ---

5 MR. STEWART: Quite a while.

6 MR. NEVILLE: --- some 30 years or so.

7 Defence counsel's dream, wouldn't you say?

8 MR. STEWART: Maybe. We'll see.

9 (LAUGHTER/RIRES)

10 MR. NEVILLE: We'll see, we'll see.

11 As you know, I represent Father MacDonald
12 and also the Estate of Ken Seguin, the late probation
13 officer and his family. I just have three points I'd like
14 to talk to you about briefly.

15 You mentioned in one of your comments, I
16 believe to Ms. Daley, that you had some difficulty
17 understanding how it was that the conduct of Mr. Dunlop was
18 made the responsibility of the Crown. I think your phrase
19 was "because we had no control over him", right?

20 Could we have Mr. Stewart see, Commissioner,
21 our Exhibit 1326. It's Document 116912. This,
22 Commissioner, is the opinion letter of Crown Garson to
23 Staff Sergeant Derochie.

24 THE COMMISSIONER: M'hm.

25 MR. NEVILLE: It's on the screen there, Mr.

1 Stewart, if you see it.

2 MR. STEWART: Yes.

3 MR. NEVILLE: It's written on the 19th of
4 November, 1999, and if Madam Clerk would just flip to the
5 final page, it's cc'd to you. It's likely you received
6 that?

7 MR. STEWART: Yes.

8 MR. NEVILLE: Do you have any independent --
9 without looking all the way through it because we can save
10 some time, do you have any independent recollection now of
11 this opinion from Crown Garson?

12 MR. STEWART: I glanced at it last week. I
13 don't think I'd ever read it.

14 MR. NEVILLE: What I'm going to summarize
15 for you is that it's the opinion of Mr. Garson that
16 Constable Dunlop, regardless of whether he was on sick
17 leave, on shift, off shift, was a police officer and what
18 he was doing -- the material collected was the fruits of an
19 investigation for which the Crown had responsibility to
20 ensure disclosure, right?

21 MR. STEWART: That's Mr. Garson's opinion.

22 MR. NEVILLE: All right. And you obviously
23 were cc'd on it, yes?

24 MR. STEWART: I got a copy of it.

25 MR. NEVILLE: All right.

1 Now, let's look, if we can then, at Exhibit
2 C-627, which is Justice Chilcott's decision, Commissioner.

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

4 **MR. NEVILLE:** And if Madam Clerk could take
5 us first -- and if I may, Commissioner, I'll use the
6 pagination that's in the text itself. It will be page 17.
7 It's in the top centre, Madam Clerk. There you go, you can
8 see the page number in the middle of the page. Page 17; I
9 just want to just touch on it so Mr. Stewart can refresh
10 his memory.

11 You'll see in the middle of the -- if you
12 could blow it up for Mr. Stewart. Those are the four
13 components ---

14 **MR. STEWART:** Sure.

15 **MR. NEVILLE:** --- to the section 11(b)
16 analysis, and you'll see under the heading "See Reasons for
17 Delay" there's the ones that we're fairly familiar with:
18 inherent time, actions of the parties, institutional or
19 systemic problems. And number (v) -- small Roman numeral
20 (v) -- Other Reasons for Delay.

21 **MR. STEWART:** M'hm.

22 **MR. NEVILLE:** And do you recall, if you can,
23 Mr. Stewart, that in the decisions that inform this area,
24 such as *Askov* and *Morin* that are cited there, that item
25 (v), Other Reasons for Delay, don't relate specifically to

1 the conduct of the parties, it's something else, but most
2 of the time are weighed in the scales against the Crown?
3 Do you recall that that's the law?

4 **MR. STEWART:** Well, it may be. A lot of
5 times the law is that if things get weighed against Crown,
6 whether I agree with that ---

7 **MR. NEVILLE:** All right, well -- sorry, go
8 ahead.

9 **MR. STEWART:** Well, it's just sort of -- and
10 from a biased point of view, obviously, but sometimes every
11 sparrow that falls from the sky, it's the Crown's fault.
12 And if there's delays that the Crown can't control, I have
13 problems with that in a philosophical way.

14 **MR. NEVILLE:** All right. So it may be a
15 philosophical concern for you but the law may say
16 otherwise. Is that fair?

17 **MR. STEWART:** Well, I've argued a number of
18 cases where I -- I said earlier where I'd start out with a
19 lot of months and then we'd hack away and we'd end up down
20 at a reasonable -- within the guidelines.

21 **MR. NEVILLE:** I'm just talking about the
22 principles now, not what you may have accomplished in a
23 given trial.

24 **MR. STEWART:** Oh.

25 **MR. NEVILLE:** Let's look next then, just to

1 keep ourselves moving here, at page 21. You'll see there,
2 Mr. Stewart, that in the text of his reasons Justice
3 Chilcott is going through the components, (i) through (v),
4 and you can see Roman numeral (v), the heading "Other
5 Reasons for Delay".

6 **MR. STEWART:** Yes.

7 **MR. NEVILLE:** So he's now got to that part
8 of the analysis.

9 **MR. STEWART:** Yes.

10 **MR. NEVILLE:** So if -- Madam Clerk, if you'd
11 take us to page 22, the next page? If we look -- if you'd
12 make it a bit larger for all of us, myself included and Mr.
13 Stewart.

14 If we look at line 16, Mr. Stewart, as
15 follows:

16 "Now, it is clear that Dunlop was
17 trusted at the time and that was a
18 mistake. Mr. Dunlop was the cause of a
19 large part of the delay. I do not
20 attribute that delay to the Crown. In
21 my opinion, it would fall under
22 subsection (v) in *R. v. Morin*, i.e.
23 other reasons for delay. I do not
24 attribute the delay by reason of
25 Dunlop's actions or lack thereof to any

1 party because of his purposeful deceit
2 and deception. However, if I had to
3 charge that delay to some party I
4 would, as a result of considering all
5 the circumstances, have to lay it at
6 the feet of the Crown because the Crown
7 and the police were aware of Dunlop's
8 procrastination and deception and his
9 reluctance to provide the material."

10 So you see that Justice Chilcott puts it as
11 a Crown delay but not directly as the conduct of the Crown,
12 right?

13 **MR. STEWART:** Except that the Crown ends up
14 being penalized.

15 **MR. NEVILLE:** Yes; well?

16 **MR. STEWART:** And our job is to protect the
17 public.

18 **MR. NEVILLE:** Well ---

19 **MR. STEWART:** Mr. Neville, if I can just
20 finish -- and I know you're going to have other things to
21 do, but you and I tonight could start -- it's 10-to-5 and
22 we could argue to midnight and I don't think you're going
23 to change my view, sir, in regards to the fact that on this
24 particular thing, the Crown did not have control over this
25 man and the fact whatever the law -- you talk about other

1 reasons for delay, but we end being penalized and the
2 victims end up being penalized, and the reality is he was a
3 factor that we didn't have control over.

4 **MR. NEVILLE:** That's your ---

5 **MR. STEWART:** And I -- and the law -- and
6 you may argue it, and all of the rest of it, but that's my
7 own personal opinion.

8 **MR. NEVILLE:** Well, you know what,
9 Mr. Stewart, we won't go till midnight because we'd both
10 run out of energy, believe it or not.

11 **MR. STEWART:** I don't think we would, sir.
12 I think we'd go till midnight.

13 **MR. NEVILLE:** Well, we've been there.
14 One final item, Commissioner; Document
15 Number 130417.

16 **THE COMMISSIONER:** Thank you.
17 Exhibit Number 3334 is a Standard-Freeholder
18 article dated Tuesday, March 19th, 2002.

19 --- **EXHIBIT NO./PIÈCE NO. P-3334:**
20 (130417) - Standard-Freeholder Article
21 "Accused Priest Scuffles with Cameraman"
22 dated March 19, 2002

23 **MR. NEVILLE:** Mr. Stewart, I take it you
24 personally weren't present when the MacDonald matter was
25 spoken to in court on the 18th of March and traversed or

1 adjourned to the 29th. You weren't personally there on
2 behalf of the Crown?

3 **MR. STEWART:** It would appear that people
4 mentioned that Mr. Phillips may have been there.

5 **MR. NEVILLE:** I think you might be right.

6 **MR. STEWART:** Yes.

7 **MR. NEVILLE:** Can you just see what is said
8 as attributed to the presiding judge, Madam Justice Johanne
9 Lafrance-Cardinal. You'll see in column number 2 from the
10 left in quotation marks, third-last line, she's quoted as
11 follows:

12 "'This is simply because of scheduling
13 problems', said Judge Johanne Lafrance-
14 Cardinal of the Superior Court of
15 Justice. 'This is neither a defence
16 request nor a Crown request.'
17 According to court officials, no judge
18 was available to hear the case as
19 scheduled."

20 What Justice Cardinal is quoted as saying in
21 the quotation marks in the article, Mr. Stewart, are
22 essentially repeating the comments of Justice Cunningham in
23 his letter, Exhibit 3065.

24 **MR. STEWART:** And your question is?

25 **MR. NEVILLE:** She is repeating, in essence,

1 what Justice Cunningham put in his letter?

2 MR. STEWART: Well, they are the same words.

3 MR. NEVILLE: Yes. Thank you.

4 That's all.

5 THE COMMISSIONER: Thank you.

6 Mr. Callaghan?

7 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

8 MR. CALLAGHAN:

9 MR. CALLAGHAN: Mr. Stewart, I act for the
10 Cornwall Police.

11 MR. STEWART: I'm sorry, for the who?

12 MR. CALLAGHAN: Cornwall Police Service.

13 MR. STEWART: All right; thank you.

14 MR. CALLAGHAN: Just a moment ago you talked
15 about reasonable prospect of conviction. I take it that's
16 a concept that came into being with the Martin Report in
17 about 1993?

18 MR. STEWART: Sounds right.

19 MR. CALLAGHAN: So up to -- before the mid-
20 nineties, it was more customary to talk about reasonable
21 and probable grounds; correct?

22 MR. STEWART: I can't remember when the
23 change was. I know we've been using "reasonable prospect"
24 for years.

25 MR. CALLAGHAN: Right, but ---

1 **MR. STEWART:** I don't know what year. You
2 can -- you may be very well correct, sir.

3 **MR. CALLAGHAN:** But you do recall it arising
4 out of the Martin Report?

5 **MR. STEWART:** I remember the Martin Report.
6 I can't remember if that was the fork in the road.

7 **MR. CALLAGHAN:** I just want to be clear
8 because you'd indicated that one of the mandates of Justice
9 Griffiths on Project Truth was to provide opinions on the
10 reasonable prospect of conviction and reasonable probable
11 grounds; correct?

12 **MR. STEWART:** I think so. He testified here
13 what -- people in the room would know about it than I do.

14 **MR. CALLAGHAN:** All right. But prior to
15 that, you're aware the Crowns were giving opinions, at
16 least on the objective element of reasonable probable
17 grounds?

18 **MR. STEWART:** May have done that on
19 occasion.

20 **MR. CALLAGHAN:** Well, you're aware that, for
21 example, Mr. Justice Griffiths gave three opinions to the
22 OPP in 1994, on some of the topics we're talking about,
23 prior to Project Truth on reasonable probable grounds?

24 **MR. STEWART:** I sort of became aware as he's
25 testified.

1 **MR. CALLAGHAN:** Right. And I take it you'd
2 agree with me that in the area of historical sexual
3 assaults, it's complicated because of course you have to
4 deal with *Criminal Code* offences that may no longer exist,
5 that may be familiar to officers; correct?

6 **MR. STEWART:** Certainly.

7 **MR. CALLAGHAN:** Right. And that would be
8 one reason why you might go to a Crown?

9 **MR. STEWART:** Certainly. Certainly. You
10 have to figure out what was the law at that point in time
11 and -- yes.

12 **MR. CALLAGHAN:** And you'll agree that, in
13 respect of reasonable probable grounds, that the subjective
14 element of reasonable probable grounds is the sole domain
15 of the officer?

16 **MR. STEWART:** Yes.

17 **MR. CALLAGHAN:** All right. And it's the
18 objective element that the Crown can assist on, because
19 that's a legal test. Correct?

20 **MR. STEWART:** Yes.

21 **MR. CALLAGHAN:** All right.

22 Now, if I could take you back to Exhibit
23 1326, and situate you for one second? This is the letter
24 of Crown Garson and it's copied, to be clear, not just to
25 you but Claudette Wilhelm. And you probably saw that a

1 moment ago. Do you recall that?

2 MR. STEWART: I saw it a moment ago. And I
3 glanced at it before.

4 MR. CALLAGHAN: Now, you're aware that
5 Project Truth involved an allegation of a conspiracy
6 involving, amongst others, Cornwall Police Service;
7 correct?

8 MR. STEWART: All right. I knew there was a
9 conspiracy charge and I knew Mr. McConnery was looking at
10 it. I don't know who all was in the conspiracy.

11 MR. CALLAGHAN: All right. Well this is
12 even before. But you weren't aware that, in fact, one of
13 the alleged conspirators was -- were members of the
14 Cornwall Police Service and the Cornwall police generally?

15 MR. STEWART: I'm not sure I was. I knew
16 there was a group of people in the community.

17 MR. CALLAGHAN: All right. And you directed
18 this matter, I think you said, to Crown Garson because of -
19 --

20 MR. STEWART: No, Dunlop I did.

21 MR. CALLAGHAN: Right.

22 MR. STEWART: Not, not -- we were just
23 talking about conspiracy a minute ago.

24 MR. CALLAGHAN: Well I'm talking about the
25 letter at 1326 ---

1 **MR. STEWART:** Yes.

2 **MR. CALLAGHAN:** --- the issues about Dunlop.

3 **MR. STEWART:** About Dunlop.

4 **MR. CALLAGHAN:** But you realise -- then you
5 mustn't have appreciated that Dunlop in some respects also
6 dealt with information relative to the alleged conspiracy
7 about the Cornwall police, from what you're answering?

8 **MR. STEWART:** Well no. I knew -- I knew he
9 was making certain allegations. I remember hearing a tape
10 of him speaking on CBC and he made allegations against a
11 group of people, that they were all involved in something.

12 **MR. CALLAGHAN:** And I think you said to Ms.
13 Daley that you don't generally get into the business
14 advising the police how to deal with the *Police Service*
15 *Act*, but I believe you were about to say that if there was
16 an obstruct justice, a Crown would engage an issue?

17 **MR. STEWART:** If a matter was investigated
18 and they came to us and asked for an opinion in regards to
19 it, of course we'd look at it.

20 **MR. CALLAGHAN:** And if the Crowns were aware
21 themselves of an obstruct justice, what would their
22 obligation be?

23 **MR. STEWART:** Well I mean, they can become a
24 complainant in regards to it. If a police service is aware
25 of it, the police service will investigate it.

1 **MR. CALLAGHAN:** Right. But you would expect
2 one of your Crowns, if they're aware of an obstruct justice
3 in the course of one of their cases, that they would take
4 steps to be a complainant?

5 **MR. STEWART:** Not if the police were just
6 sitting right there with them, no.

7 **MR. CALLAGHAN:** No?

8 **MR. STEWART:** No. I mean, if I'm sitting
9 and a policeman is beside me and he just saw a crime
10 committed, or thinks there's a crime committed or decides -
11 - for example, I've got one letter from Hall saying, well
12 the Cornwall police are aware of this situation. There's
13 sometimes in certain circles sort of a mistaken belief that
14 we direct the police.

15 **MR. CALLAGHAN:** No, no, and I'm not
16 suggesting that.

17 **MR. STEWART:** Yeah, or that whatever, and
18 the police investigate matters. If they're aware of
19 something in their jurisdiction, well they investigate. We
20 don't direct them to do that, sir.

21 **MR. CALLAGHAN:** We understand that.

22 **MR. STEWART:** Okay.

23 **MR. CALLAGHAN:** What I'm getting at is if a
24 Crown is involved in a case and if they were under the
25 belief there is an obstruct justice, would you not expect

1 there to be a discussion about the issue?

2 **MR. STEWART:** Maybe. It may be that they're
3 dealing with a case that's in front of them.

4 **MR. CALLAGHAN:** You wouldn't expect them to
5 have a discussion?

6 **MR. STEWART:** What do you mean, "a
7 discussion", sir?

8 **MR. CALLAGHAN:** Well at least bring it up
9 and say, "Look, I think that there's an issue here.
10 Somebody should deal with it". You don't expect the Crown
11 attorney, in the middle of a trial, if they are of the
12 belief there's an obstruct justice, that somebody should be
13 given a complaint to address it?

14 **MR. STEWART:** Well ---

15 **MR. CALLAGHAN:** You don't think the Crown
16 has that obligation?

17 **MR. STEWART:** Well if I have a police
18 officer that's aware of it sitting beside me, then I'd
19 leave it up to the police officer.

20 **MR. CALLAGHAN:** You'd have to -- would you
21 not have to discuss it with the police officer, to make
22 sure they're aware of the issue ---

23 **MR. STEWART:** Well, I'm -- this, this isn't
24 -- Mr. Callaghan, that isn't the fact situation here.

25 **MR. CALLAGHAN:** Well we'll get to the fact

1 situation.

2 MR. STEWART: Well, okay.

3 MR. CALLAGHAN: As a general issue, I would
4 have thought that that wouldn't be that contentious.

5 MR. STEWART: Well, I mean, but I'm not
6 going to deal with sort of a half-baked hypothetical.

7 MR. CALLAGHAN: All right. Well let's
8 continue that.

9 And in Exhibit 1326, Crown Garson, at page
10 3, is referring to the issue of disclosure, and he says in
11 the middle of the paragraph, middle of the page I should
12 say, the paragraph:

13 "Should full compliance not be
14 forthcoming, we would urge you to speak
15 to the assigned Crown with a view to
16 bringing the matter before a judge or
17 justice for a formal judicial review of
18 these disclosures."

19 Do you see that?

20 MR. STEWART: M'hm.

21 MR. CALLAGHAN: All right. Now this letter
22 was copied to Crown Wilhelm who was involved in one of the
23 prosecutions.

24 MR. STEWART: M'hm.

25 MR. CALLAGHAN: And I take it, the Crown

1 would be -- Crown Wilhelm who would have to -- who had this
2 letter who would -- could make the decision whether to
3 proceed before a court to get a formal judicial review?

4 **MR. STEWART:** Yes, if the police brought it
5 to her attention.

6 **MR. CALLAGHAN:** Well, she knew about it.
7 You were aware that Crown Wilhelm was part of the
8 discussions to deal with Dunlop?

9 **MR. STEWART:** No.

10 **MR. CALLAGHAN:** You weren't? Okay.

11 **MS. McINTOSH:** Well and that's not what the
12 letter says. The letter urges the action in the above
13 paragraphs and then says: "If this doesn't work, speak to
14 the Crown."

15 **MR. CALLAGHAN:** Well what I'm trying to
16 articulate here is -- the witness has said it was only the
17 police. I'm trying to indicate here that, in fact, advice
18 was discussed with Crown Wilhelm and part of it comes from
19 the letter of Garson addressing this issue of formal
20 judicial review. And I take it that is an issue for the
21 Crown and not for the police outside lawyer.

22 **MR. STEWART:** The bottom line is, if there
23 is grounds for an obstruction, the police investigate, the
24 Crown will look at it and will give an opinion about the
25 charge. That's the bottom line.

1 **MR. CALLAGHAN:** That may be the bottom line,
2 but I'm actually talking about disclosure here, and about
3 the issues of disclosure. And this letter which seems to
4 indicate the Crown would bring, or could have the
5 possibility of bringing a formal judicial review, not an
6 outside lawyer retained by the police, that it would be the
7 Crown. Is that correct?

8 **MR. STEWART:** Well I don't know. I -- the
9 reality is, Garson gave this opinion in regards to the
10 police and dealt with it. I don't know if the police felt
11 there wasn't full compliance and they, in fact, talked to
12 the assigned Crown and asked them to bring it to the
13 judge's attention. I don't know if they did that or not.

14 **MR. CALLAGHAN:** Okay. And I recognise we
15 haven't had Crown Garson or Crown Wilhelm here, so you're
16 the closest we have. So let me ask you this. Were you
17 aware that Crown Wilhelm was involved in reviewing and
18 making suggestions to the order that was given to Dunlop
19 under the *Police Service Act* which resulted in disclosure?

20 **MR. STEWART:** No, no.

21 **MR. CALLAGHAN:** Would that surprise you?

22 **MR. STEWART:** Well I wasn't aware of it.
23 I'd have to sit down and figure out what she was told, what
24 she wasn't in regards to it before I give an answer to
25 that.

1 **MR. CALLAGHAN:** No, but I'm trying to
2 articulate, in response to what you said, that the police
3 should go get their own lawyers to deal with this issue.
4 This is a Crown prosecution, this is happening in the
5 context of a Crown prosecution.

6 **MR. STEWART:** No, but the issue -- the issue
7 was in regards to *Police Service Act* and somebody not
8 complying of that. Then my answer to that was clearly, the
9 Crown doesn't get involved in that. That is between the
10 police service and the individual.

11 **MR. CALLAGHAN:** But in the post-charge
12 stage, they would get involved in insuring full disclosure;
13 correct?

14 **MR. STEWART:** Oh, we didn't have control
15 over this person. Your police service didn't either.

16 **MR. CALLAGHAN:** I appreciate that. I think
17 what I'm trying to be clear is that -- is that other
18 evidence has come out that there was cooperation between
19 the Crown and the police to address the issue.

20 Some of it dealt with going the *Police Act*
21 route, some of it dealt with not taking the advice of
22 having the Crown go to a judicial review. And all I'm
23 trying to indicate is, when your answers came, it almost
24 indicated that you wouldn't be involved. But this of
25 course is a Crown prosecution, and you'd expect the Crown

1 to be involved in ensuring these issues when they're risen
2 are dealt with; correct?

3 MR. STEWART: You would expect the Crown to
4 be involved in what, sir? I don't understand your
5 question.

6 MR. CALLAGHAN: Well the issue -- the issues
7 which we reviewed in Garson's letter which is ensuring the
8 disclosure, either by way of judicial review, whatever that
9 might be or in terms of *Police Act* when in fact they were
10 the ones that vetted the order.

11 MR. STEWART: Is that a question?

12 MR. CALLAGHAN: Well it's a question in the
13 sense that I take it you would agree with me that that is
14 not to be seen to be unusual. I mean, outside -- correct?

15 MR. STEWART: The Crown did not have control
16 over Mr. Dunlop, sir. All right? There were certain
17 aspects, and you have the transcripts of where he was
18 called, a judicial officer surely in regards to what he
19 did.

20 Now, my -- my point is that in regards to
21 whether he's obstructing justice or he's not, if the
22 Cornwall police felt strongly, get an independent force,
23 investigate it; we'll have an independent Crown decide
24 whether we should prosecute it.

25 MR. CALLAGHAN: All right. And if we can go

1 then to your letter -- to Chief Repa's letter of -- Exhibit
2 1412?

3 Were you aware, sir -- and I take it ---
4 Exhibit 1412? Sorry.

5 Prior to receiving this letter, do you have
6 a call with Murray MacDonald?

7 **MR. STEWART:** Might have.

8 **MR. CALLAGHAN:** You don't recall?

9 **MR. STEWART:** No.

10 **MR. CALLAGHAN:** All right. And are you
11 aware that the Cornwall police were not given any
12 specificity as to the allegations? They weren't told what
13 it was, the concerns the Crown and Inspector Hall had?
14 Were you aware of that?

15 **MR. STEWART:** Was I aware?

16 **MR. CALLAGHAN:** Well, you say -- you see, it
17 says, in the second paragraph:

18 "These allegations have not been
19 forwarded to us in a formal manner,
20 but, rather, we have been put on notice
21 that allegations have been made."

22 Do you see that?

23 **THE COMMISSIONER:** No.

24 **MR. STEWART:** No, I don't see it.

25 **THE COMMISSIONER:** Wait a minute. Which

1 letter? Wait a minute. What letter are we looking at?

2 MR. STEWART: Yes.

3 MR. CALLAGHAN: This is the June 3rd, 2003,
4 letter. I think you've got the right one. The third last
5 -- the second last paragraph ---

6 THE COMMISSIONER: Oh, the last paragraph.

7 MR. STEWART: I've got the wrong page.

8 MR. CALLAGHAN: "These allegations ---"

9 THE COMMISSIONER: Whoa, whoa.

10 MR. CALLAGHAN: "--- have not been" -- you
11 have the right one.

12 THE COMMISSIONER: Hold on.

13 MR. CALLAGHAN: The second last paragraph on
14 the page. "These allegations," right at the bottom. There
15 you go.

16 MR. STEWART: It's the same.

17 MR. CALLAGHAN: "These allegations have
18 not been forwarded to us ---"

19 MR. STEWART: Oh, okay.

20 MR. CALLAGHAN: "--- in a formal manner,
21 but, rather, we've been put on notice
22 that the allegations have been made.
23 We are now waiting the decision and
24 guidance of the Crown attorneys
25 involved in the criminal proceedings."

1 Did you inquire into whether there were any
2 formal allegations?

3 **MR. STEWART:** Pardon?

4 **MR. CALLAGHAN:** Did you inquire into whether
5 there were any formal allegations? He's telling you they
6 don't have formal allegations. They don't have a
7 complainant, is what he's trying to tell you.

8 **MR. STEWART:** Okay.

9 **MR. CALLAGHAN:** All right. Were you aware
10 that they didn't have a complainant? That the Cornwall
11 police didn't have a complainant?

12 **MR. STEWART:** Well, I -- I don't think I was
13 aware. I mean, the bottom line is when -- when you start
14 talking -- he wants clarification as to whether or not
15 allegations of criminal misconduct occurred in matters "I
16 have a duty to bring these matters to your attention." And
17 I go back to him and say, you know, "If you've got -- got
18 that kind of thing, investigate it and get back to us."

19 **MR. CALLAGHAN:** But I think what your letter
20 says is, you can't investigate it for Garson's letter. The
21 Cornwall police, you can't investigate this, because you're
22 in a conflict.

23 **MR. STEWART:** Right.

24 **MR. CALLAGHAN:** Right. And I'm just trying
25 to -- trying to suggest to you, sir, that you've been told

1 they don't have the basis of allegations. They're being
2 told by your Crown attorneys and by the OPP that
3 something's happened.

4 **MR. STEWART:** Okay.

5 **MR. CALLAGHAN:** And they're not being given
6 formal allegations, and you're telling them "I won't deal
7 with this until I get a Crown brief."

8 We don't have the allegations, your Crowns
9 know about it, and the OPP know about it.

10 And, what I'm suggesting, sir, is, did you
11 take any steps to have your Crowns disclose to the Cornwall
12 police, or another police service, any details of any of
13 the obstruct justice that's been alleged in this letter?

14 **THE COMMISSIONER:** Ms. McIntosh?

15 **MS. McINTOSH:** Well, the letter says that as
16 a result of the Project Truth criminal trials, staff of the
17 OPP reported to members of our service that incidents
18 involving Mr. Perry Dunlop occurred with our jurisdiction,
19 which they allege could be criminal in nature, were further
20 informed that the concerns relative to Mr. Dunlop's office
21 were also shared by Crown attorneys. So they've got
22 information.

23 I mean, I think it's disingenuous to suggest
24 they didn't know what -- what was going on with Mr. Dunlop
25 at these trials. And I'm not sure this witness can help us

1 any further, but I think the questions are beating a dead
2 horse.

3 **MR. CALLAGHAN:** Well, my friend wasn't here.
4 The evidence was clear.

5 Staff Sergeant Derochie asked Pat Hall, over
6 and over again. He was asked if he would give a witness
7 statement. Pat Hall first said yes, then he was told that
8 he couldn't do it, on instructions, until the end of the
9 Leduc matter.

10 And what I'm trying to get at is, we have
11 the Crown then telling us, "Send us a brief." The Crown
12 knows that we are not permitted to investigate, because
13 we're in a conflict.

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

15 **MR. CALLAGHAN:** I'm just trying to ascertain
16 whether the person that wrote this, the subsequent letter
17 and the follow-up to that, Mr. Stewart, was aware of this.

18 **MR. STEWART:** The bottom line, you need an
19 investigator. You need a policeman to investigate.

20 **MR. CALLAGHAN:** Right.

21 **MR. STEWART:** The bottom line is that if you
22 can't do it yourself, if you're the host -- or using a
23 colloquial expression, "It's on your patch."

24 As a police officer, and you're there, and
25 you can't do it, then you'd better get somebody else to do

1 it. So your job then is to invite another police service.

2 So I would have expected -- the normal
3 course would be that when the Cornwall got a letter from
4 myself about this -- and we know from the subsequent email
5 that the chief indicated to Murray MacDonald he was getting
6 the RCMP -- that an RCMP officer would come down, or a team
7 ---

8 **MR. CALLAGHAN:** Well ---

9 **MR. STEWART:** Just let me finish -- that the
10 RCMP would come down and they would investigate, and then
11 they would go to witnesses, and they would find
12 transcripts, or put it all together.

13 Once they got that together, then they'd
14 come and see us, and I'd assign somebody that didn't know
15 anybody, didn't know Dunlop, didn't know what -- anything.

16 **MR. CALLAGHAN:** Have you heard of a
17 situation where you don't have a complainant, where you
18 just show up and say, "I've just heard these things?"

19 We've asked -- you appreciate they asked Pat
20 Hall for the will say, and didn't get it? And he says
21 because he was told not to do it until the Leduc
22 prosecutions were over? Were you aware of that?

23 **MR. STEWART:** I can't -- I have no -- no
24 power over Pat Hall.

25 **MR. CALLAGHAN:** What about your Crowns? It

1 says there was supposed to be a meeting amongst Crowns.

2 Did you ever discuss this with the Crowns
3 dealing with the Leduc matter, and with the ---

4 **MR. STEWART:** Well, sir ---

5 **MR. CALLAGHAN:** --- with the ---

6 **MR. STEWART:** --- sir, you didn't even have
7 an investigator.

8 **MR. CALLAGHAN:** Did you -- I didn't ask
9 that. I asked you ---

10 **MR. STEWART:** No, I know.

11 **MR. CALLAGHAN:** --- whether ---

12 **THE COMMISSIONER:** Just a sec. Whoa. Just
13 a minute -- one at a time, please.

14 **MR. CALLAGHAN:** I asked whether or not you
15 ever spoke to any of your Crowns as to whether there was
16 the meeting as suggested in the letter.

17 **MR. STEWART:** No, I -- I didn't, sir. I
18 don't remember that, but you didn't even have an
19 investigator, so I don't know what you're talking about ---

20 **MR. CALLAGHAN:** Of course, it wasn't an
21 allegation that we had, and what I'm trying to ask you ---

22 **MR. STEWART:** Well, no ---

23 **MR. CALLAGHAN:** --- is what you did ---

24 **THE COMMISSIONER:** Whoa, whoa.

25 **MR. STEWART:** Yeah. You have a non-existent

1 investigator who has a conflict. I don't think that's the
2 first step, sir.

3 It's very simple. You get an outside force
4 to investigate. They come in. Ottawa had done it before.
5 In fact, the OPP did it in Project Truth.

6 It wasn't complicated, what the Cornwall
7 police were to do as the result of my letter. I mean, it -
8 - it's fundamental, sir.

9 **MR. CALLAGHAN:** It's fundamental?

10 **MR. STEWART:** Fundamental.

11 **MR. CALLAGHAN:** To what?

12 **MR. STEWART:** You get an outside force; you
13 investigate it; you go and talk to people.

14 That's the bottom line, and I don't know any
15 outside force that came in and interviewed Pat Hall or the
16 Crowns.

17 **MR. CALLAGHAN:** I'm sorry, you don't ---

18 **MR. STEWART:** Maybe they -- if it happened,
19 I didn't know it.

20 **MR. CALLAGHAN:** Okay. And, sir, can you
21 tell me why you responded to this letter, if you didn't
22 respond to the earlier one because you were in a conflict?

23 Why didn't you send your -- this letter to
24 another Crown to answer? In 1999, you said you were in a
25 conflict and gave it to Garson. On this one, you answered.

1 **MR. STEWART:** Well, no, no. No. I don't
2 think you understand, Mr. Callaghan, at all, what that
3 letter says.

4 The letter says, you do a proper
5 investigation; you give us a brief. We'll have an
6 independent Crown -- that's why I had Garson. I'd have
7 somebody else -- as soon as the next investigation came in,
8 it would be an independent Crown.

9 You want me to send this letter that -- when
10 I -- well, it's almost a form letter back, "Look,
11 investigate it," like it's been done all over the Province,
12 "and once you've done the brief, we'll have an independent
13 prosecutor to" -- but to farm out that letter makes no
14 sense, sir. It makes no sense.

15 **MR. CALLAGHAN:** Thank you.

16 **THE COMMISSIONER:** Great.

17 Mr. Kozloff?

18 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

19 **MR. KOZLOFF:**

20 **MR. KOZLOFF:** Good afternoon, Mr. Stewart.

21 **MR. STEWART:** Good afternoon.

22 **MR. KOZLOFF:** Mr. Stewart, I have three
23 discreet issues.

24 I'm Neil Kozloff; I represent the Ontario
25 Provincial Police ---

1 - I'm constantly being called upon to defend Mr. Carroll,
2 and I do so proudly.

3 **THE COMMISSIONER:** Well, I -- and that's
4 acknowledged.

5 (LAUGHTER/RIRES)

6 **MR. KOZLOFF:** In any event, you'll see that
7 on the 23rd of May, you are asked -- or you ask -- you ask
8 Mr. McConnery to review the six briefs; correct?

9 **MR. STEWART:** Yes.

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

11 And that's in your capacity as the Director
12 of Crown Operations East Region, yes?

13 **MR. STEWART:** Yes. And I have no
14 independent recollection of the -- I've never seen these
15 notes before the Inquiry. But I'm sure that I ask Mr.
16 McConnery to do this and I have no quarrel with the date or
17 anything like that.

18 **MR. KOZLOFF:** And then at Bates page 909 at
19 the bottom, you were taken to a meeting on the 4th of June.
20 You and Mr. McConnery meet. You discuss the Project Truth
21 investigation in order to be able to brief Mr. Segal, and
22 then you attend at a meeting at 1:00 p.m. with Mr. Segal,
23 at which time he indicates to you his desire that he would
24 like to have a review of these briefs done in about 30
25 days?

1 **MR. STEWART:** I take no quarrel. I have no
2 independent recollection of this, but I take no quarrel
3 with Mr. McConnery's notes.

4 **MR. KOZLOFF:** All right.

5 And you were asked by Mr. Engelmann whether
6 there was any pressure applied given the fact that Mr. Mr.
7 McConnery's opinions were rendered on the 15th of August,
8 which would be about 75 days from that day; correct? You
9 had no recollection of any pressure?

10 I just wanted to take you to some further
11 references in Mr. McConnery's notes which may put that into
12 context.

13 If you turn to Bates page 913, at the
14 beginning, you'll see, sir, notes of Mr. McConnery. And by
15 this point, he has begun his review of the various briefs.
16 You'll see that he began with the Ostler brief on the 5th
17 and then he reviewed the LaRocque brief on the 7th and the
18 8th, the 11th and the 12th. On the 13th he had a meeting with
19 the officers. On the 13th of June he had a meeting with the
20 officers to discuss the conspiracy brief. And then he
21 spent a week, the 18th to the 22nd, reviewing the conspiracy
22 brief. The 25th to the 27th, he continues to review that.
23 And then on the 3rd of July, he completes his review with
24 Mr. Phillips.

25 And then you'll see at the bottom of the

1 page -- that's Bates page 913 -- there's a meeting at Long
2 Sault with Pat Hall, indicates that he wants some further
3 investigation and materials.

4 And then finally, he has a meeting with Mr.
5 Segal, and that's at Bates page 916. It would appear to be
6 on the 8th of July, at which time they have further
7 discussion and he's given some advice with respect to what
8 other information he requires from the police.

9 Do you see that?

10 **MR. STEWART:** Yes.

11 **MR. KOZLOFF:** All right.

12 And then he continues on the 9th, which is
13 the last page we have of his notes in this particular
14 document. In any event -- he continues his review by
15 reviewing the extortion brief.

16 So in fairness to Mr. McConnery, while it
17 was Mr. Segal's indication that 30 days was desirable, in
18 fact, given the amount of material he had to review and the
19 fact that he wanted further investigation done by the
20 police, it took 75 days; correct?

21 **MR. STEWART:** I have no independent
22 recollection. I have no reason to doubt Mr. McConnery's
23 notes, sir.

24 **MR. KOZLOFF:** All right.

25 I want to take you back to the exhibit Mr.

1 Callaghan had you looking at, and that's Exhibit 1326. And
2 again, this is the 19th of November '99. You are the
3 Director of Crown Operations for East Region at this point?

4 **MR. STEWART:** Yes.

5 **MR. KOZLOFF:** And the letter is written by
6 Mr. Garson to Staff Sergeant Derochie in relation to a
7 specific case, Marcel Lalonde, and the issue of disclosure
8 arising as a result of information that came to the
9 attention of the Crown and the police regarding Mr. Dunlop.

10 But I'd ask you to look at the last issue
11 addressed, and that's at Bates page 1108363, page 5 of Mr.
12 Garson's letter, what are the next steps to be taken. Mr.
13 Garson begins by addressing the issue of Constable Dunlop's
14 involvement in the case despite verbal direction to cease
15 contact with any complainants or witnesses, and he says:

16 "As indicated earlier, it is not the
17 role of the Crown to advise police how
18 to regulate the conduct of an
19 individual officer. However, it is our
20 view that such conduct may have the
21 effect of adversely affecting the
22 constitutional rights of persons
23 charged with criminal offences in
24 relation to these complainants."

25 And he goes on to encourage Staff Sergeant

1 Derochie to meet with Mr. Dunlop or have the officer in
2 charge meet with Mr. Dunlop as soon as possible to address
3 the issue of disclosure.

4 And then I'd ask you to look at the
5 penultimate paragraph:

6 "Should any further disclosure be
7 forthcoming from Constable Dunlop and
8 should this disclosure be material or
9 relevant to other persons charged with
10 offences, we ..."

11 **MR. STEWART:** Well sir, where are you? I
12 lost you.

13 **MR. KOZLOFF:** I'm sorry. It's the
14 penultimate paragraph, the second-last paragraph on page 5.

15 **MR. STEWART:** Okay.

16 **MR. KOZLOFF:** Where the cursor is on the
17 left?

18 **MR. STEWART:** Yes.

19 **MR. KOZLOFF:** "Should any further
20 disclosure be forthcoming from
21 Constable Dunlop and should this
22 disclosure be material or relevant to
23 other persons charged with offences..."

24 And I take it from that that Mr. Garson is
25 referring to persons other than Mr. Lalonde. Would you

1 agree that that's a fair inference?

2 **MR. STEWART:** Yes.

3 **MR. KOZLOFF:** All right.

4 "We recommend that you ensure such
5 additional disclosure is provided to
6 the appropriate Crown counsel."

7 Now, you're aware of the fact, sir, that as
8 a result of this letter, a written order was issued by the
9 Cornwall police to Mr. Dunlop and that as a consequence of
10 that, he provided a 110-page will say and a considerable
11 number of pages of notes which had been, until that point
12 in time, not disclosed? Are you aware of that?

13 **MR. STEWART:** I'm not sure I was aware of
14 that.

15 **MR. KOZLOFF:** All right.

16 In any event, sir, my question is this. And
17 I appreciate that you were in a kind of a unique situation
18 as a Director of Crown Law Operations for East Region.
19 There were investigations and prosecutions going on in your
20 jurisdiction with essentially three Crowns, Ms. Wilhelm,
21 who is one of your Crowns, yes?

22 **MR. STEWART:** Yes.

23 **MR. KOZLOFF:** Ms. Hallett, who belongs to
24 the Special Prosecutions Unit and therefore is one of Mr.
25 Corelli's Crowns of the day; correct?

1 **MR. STEWART:** Yes.

2 **MR. KOZLOFF:** And Monsieur Godin, who is a
3 Crown from the north and belonged to Mr. Fitzgerald ---

4 **MR. STEWART:** Correct.

5 **MR. KOZLOFF:** --- your colleague in the
6 north; correct?

7 **MR. STEWART:** Yes.

8 **MR. KOZLOFF:** And so while they, on paper,
9 answer to their supervisor; namely, Mr. Corelli and Mr.
10 Fitzgerald respectively, in effect, they're prosecuting
11 cases in your jurisdiction; correct?

12 **MR. STEWART:** Yes, but Ms. Hallett is not
13 reporting to me.

14 **MR. KOZLOFF:** I appreciate that, although
15 there's a fair amount of communication between the two of
16 you?

17 **MR. STEWART:** I wouldn't say a fair amount.
18 There's the odd time.

19 **MR. KOZLOFF:** All right.

20 Who was going to bring that particular
21 matter to her attention? Because I see you are copied on
22 this letter.

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

24 **MR. KOZLOFF:** And Ms. Wilhelm is copied on
25 this letter. So that takes care of the East Region Crown.

1 Who's going to bring it to the attention of Monsieur Godin
2 and Ms. Hallett?

3 **MR. STEWART:** What, the extra disclosure?

4 **MR. KOZLOFF:** The advice of Mr. Garson:

5 "Should any further disclosure be
6 forthcoming from Constable Dunlop and
7 should this disclosure be material or
8 relevant to other persons charged with
9 offences, we recommend that you ensure
10 such additional disclosure is provided
11 to the appropriate."

12 **MR. STEWART:** Yeah, the police. The police
13 would do that.

14 **MR. KOZLOFF:** Okay. Did you see to it that
15 this was copied to Ms. Hallett and Monsieur Godin?

16 **MR. STEWART:** No, but I would expect that if
17 there was any additional -- any additional disclosure at
18 all from Dunlop to the police, the police are going to make
19 sure the Crowns involved have it.

20 **MR. KOZLOFF:** Thank you.

21 The last document I want to take you to is
22 Document 123043, which is Exhibit 3115. This is the
23 statement of Ms. Hallett to the York Regional Police
24 investigators, Detective Constable Kelly and Detective
25 Sergeant Denise LaBarge. It's a lengthy document. What I

1 wanted to refer you to was the last three pages.

2 **THE COMMISSIONER:** It might be best to get
3 the hard copy.

4 **MR. KOZLOFF:** And this is Bates pages forty
5 -- sorry, 1145910, 911 and 912.

6 **THE REGISTRAR:** What's the exhibit number,
7 please?

8 **MR. KOZLOFF:** I beg your pardon. It's
9 Exhibit 3115.

10 **MR. STEWART:** I'm sorry, what's the number?
11 Because I've got a couple of things here.

12 **MR. KOZLOFF:** Exhibit 3115, sir.

13 **MR. STEWART:** Three-one-one-five (3115).

14 **THE COMMISSIONER:** All right. And you say
15 the three last pages?

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

17 And, essentially, Ms. Hallett is addressing
18 an issue raised in the course of the interview, and that's
19 her preparedness for court. You'll see, sir, at page
20 1145910 her second comment on that page, "My preparedness
21 for court". That's the one thing -- sorry, I'll wait for
22 you to get that, Mr. Stewart.

23 **MR. STEWART:** Yes.

24 **MR. KOZLOFF:** And she goes on to provide an
25 explanation for some of the difficulties that she had in

1 conducting the prosecutions. I take you to page 911.

2 She begins by saying:

3 "My main concern was certainly being
4 prepared for the witnesses and the
5 law."

6 And then she says at line 4 on page 911:

7 "But also I had no office made
8 available to me with my own telephone
9 and chairs and a desk to interview
10 witnesses and speak with officers at
11 that courthouse. I was given a
12 cloakroom with four chairs in it that
13 we all had to share in terms of leaving
14 our coats, leaving our materials,
15 leaving our purses, having a washroom.
16 That wasn't an adequate office for a
17 case of this nature and I had requested
18 an office of the Crown."

19 She says:

20 "I'm not being critical of them."

21 And so what I want to address with you is,
22 who would be responsible for providing resources of the
23 kind that Ms. Hallett is addressing in a situation such as
24 this where outside Crowns -- and you've discussed it
25 yourself, having been involved in murder trials in outside

1 jurisdictions.

2 But here we have a situation, sir, where the
3 Crowns -- Ms. Hallett was assigned to, at one point, four
4 prosecutions. Two of the individuals died prior to their
5 preliminary hearing. Monsieur Godin was assigned to five
6 or six prosecutions, so they were here on a more or less
7 continuously intermittent basis, I guess is the fairest way
8 of putting it.

9 MR. STEWART: Continually intermittent?

10 MR. KOZLOFF: Yes. Well, would you agree,
11 sir, they were here -- the man had to do -- Monsieur Godin
12 had to do five preliminary hearings and five trials.
13 Ms. Hallett would have had to do, had everybody lived and
14 had she survived on the file -- she would have had to do
15 four trials of some considerable length.

16 Was there any thought given to providing
17 more secure or permanent facilities, more effective
18 resources for Ms. Hallett and Monsieur Godin, who were
19 coming from out of town to prosecute cases here?

20 MR. STEWART: I'm ---

21 MR. KOZLOFF: And ---

22 MR. STEWART: Sorry.

23 MR. KOZLOFF: And perhaps I should ask you
24 first, is that in your are of responsibility as a Director
25 of Crown Operations, given that Mr. MacDonald, for obvious

1 reasons, had to keep an arm's length from the prosecution
2 of these cases?

3 **MR. STEWART:** Well, first of all, I don't
4 know what facilities the OPP had. They had a team down
5 here and I don't know what facilities they had or whether I
6 was under the impression that some of the interviewing of
7 witnesses, for example, would take place on OPP turf.

8 As I explained this morning, the Cornwall
9 courthouse was quite problematic in regards to space, and
10 almost every courthouse that I know of in Ontario, it's a
11 problem, and I've encountered the very same problem
12 Ms. Hallett is talking about prosecuting policemen.

13 When you come into a jurisdiction, that I
14 did for -- around the province for a couple of years, you
15 walk in and you're in no-man's-land often in regards to it.
16 I have to say I don't -- do not remember directing my
17 attention to it. She may have brought it to my attention
18 but I -- it wasn't something that I had really considered
19 because they were coming and going in regards to it.

20 Obviously, in hindsight, it would be a good
21 thing but you would have to have a location that's
22 somewhere proximate to the courthouse ---

23 **MR. KOZLOFF:** Right.

24 **MR. STEWART:** --- or it doesn't work. And
25 that sometimes becomes a problem but I agree, you have to

1 have a room to meet, to do things. There's no question of
2 that.

3 **MR. KOZLOFF:** Okay. And ---

4 **MR. STEWART:** I have to say I've never read
5 her statement, this particular statement that we've got. I
6 may have glanced but I never remember actually seeing it or
7 her statement on -- to the York Police.

8 **MR. KOZLOFF:** And just to confirm Detective
9 Sergeant Hall's notes for the assignment -- or Detective
10 Inspector at the time -- Hall's notes for the assignment of
11 the review of briefs initially, if you look at 10 lines
12 from the bottom of that same page, she says:

13 "In terms of the delegation of labour
14 in this case I -- yes, I took on the
15 responsibility for the additional
16 Project Truth briefs at Jim Stewart's
17 request and Bob Pelletier's, but it was
18 a very unwieldy -- I wasn't aware of
19 what I was getting into, frankly. I
20 didn't know how much there would be
21 involved and I didn't realize all of
22 the distractions..."

23 And she refers to the rogue police officer,
24 Dunlop, the kind of work that he would generate from time-
25 to-time; the distractions also with respect to Nadeau, who

1 was the owner of the website.

2 In any event, she's indicating that she
3 received that assignment directly from you -- the review of
4 the five ---

5 **MR. STEWART:** Of the extra briefs?

6 **MR. KOZLOFF:** Yes, the conspiracy brief and
7 the five additional priests.

8 **MR. STEWART:** She may very well have.

9 **MR. KOZLOFF:** And that would be in the
10 ordinary course in your capacity as Director of Crown
11 Operations?

12 **MR. STEWART:** Yes.

13 **MR. KOZLOFF:** All right.

14 And, finally, if you look at the last page,
15 and this is the issue of ---

16 **MR. STEWART:** If I can just stop there. I
17 don't remember that. If there's some witness contradicts
18 me, I don't remember it specifically. I'm not saying I
19 didn't.

20 **MR. KOZLOFF:** I can tell you, no witness
21 contradicts you, except that Ms. Hallett has a recollection
22 that Pat Hall asked her to do it. In her evidence here she
23 said that Pat Hall asked her directly and it was suggested
24 to her that in fact it was you who had asked her to do it.

25 **MR. STEWART:** I don't remember.

1 **MR. KOZLOFF:** Fair enough.

2 The last page, sir, and this deals with the
3 issue of dedicated -- dedicated, as opposed to designated -
4 - team. You were asked about that earlier by Mr. Engelmann
5 this morning, and I believe your answer was that, "The
6 prosecutions were up and running at the time I assumed my
7 position, with capable Crowns assigned", and then you used
8 the word "incremental". That's the word that I've got, and
9 that's fair.

10 If you look at Mr. -- her quote. She's
11 quoting Mr. Flanagan at Bates page 912. Let me read it and
12 then I'll ask for your comment:

13 "Curt Flanagan, who's the Crown
14 Attorney in Brockville, he said very
15 early on in the Project Truth
16 investigations he had recommended that
17 because he -- his -- part of his staff
18 was asked to do them -- that a team of
19 three Crowns be devoted exclusively and
20 simultaneously to the preparation of
21 the Project Truth cases and the
22 prosecution of them. Instead of having
23 a Crown up in North Bay or Rainy River,
24 one in Brockville, neither of whom I
25 knew and then myself from Toronto, all

1 doing different cases, all having
2 different responsibilities in terms of
3 disclosure, why wasn't there a special
4 team that was set aside for that, you
5 know, that seems obvious right now."

6 So this is Ms. Hallett reflecting in the
7 summer of 2001 on what she seems to think is obvious at
8 that point.

9 So I'll ask you if you have any comment on
10 whether, in retrospect, it would have been helpful,
11 effective, more efficient, to have a dedicated team of
12 prosecutors assigned?

13 **MR. STEWART:** I think the Curt Flanagan
14 reference was early on. I think Curt Flanagan, to my
15 understanding, and again everybody's been here listening to
16 the evidence, Curt Flanagan, there was some discussion
17 between him and Peter Griffiths in regards to this.

18 And I guess I hearken back to what I said
19 earlier. You had to look at what Peter Griffiths, Judge
20 Griffiths, saw at that point-in-time when he first got this
21 in, that he gave opinions on certain matters. It seemed to
22 be that between him and Justice Pelletier, they had things
23 covered.

24 Of course, in hindsight, as I sit here, when
25 we talk about -- I'm repeating myself, but the Dunlop issue

1 going on and on and on, if we knew everything that we knew
2 right now, of course we would approach it differently.

3 **MR. KOZLOFF:** Let me just put one assertion
4 to you.

5 My understanding, sir, is that Mr. Flanagan,
6 his involvement is actually initiated in 1998. And what
7 happened here is in 1997, Regional -- I was going to call
8 him Regional Senior Crown; maybe that's a little parlance -
9 - but the Director of Crown Operations for East Region,
10 then Peter Griffiths, requested that the Ontario Provincial
11 Police conduct an investigation which became known as
12 Project Truth.

13 And the initial stages of that investigation
14 involved the investigation of the Dunlop brief and the
15 allegations of various individuals against Father
16 MacDonald, who was already before the courts.

17 But within a few months, there were
18 individuals who were not identified in the Dunlop brief who
19 were completely unrelated to the Dunlop brief, who came
20 forward; Mr. Marleau in July of 1997 and matters mushroomed
21 from that point on. So that by 1998, sir, there were a
22 number of cases which came to the point where an opinion
23 was required and that opinion was rendered by your
24 predecessor, now Justice Pelletier, and there were a number
25 of arrests made in mid-1998.

1 So by that point, it was clear that what
2 started as an investigation of an alleged conspiracy and a
3 ring of paedophiles and a number of individuals making
4 allegations against Father Charles, had mushroomed into a
5 much larger, multiple-accused, multiple-victim situation.

6 I am going to suggest to you that by mid-
7 '98, that's when Flanagan addresses the issue that there
8 should be a dedicated team, once this thing has mushroomed,
9 and you're in the seat about six months later.

10 Does anybody bring that to your attention
11 when you assumed the position?

12 **MR. STEWART:** I do not remember ever having
13 any discussion with Flanagan, and I have discussions quite
14 often with him. Although I have to say at that point-in-
15 time, we may not have been discussing certain things, but
16 in '98, I have to think back to who would be the Director
17 at that point-in-time?

18 **MR. KOZLOFF:** It's Justice Pelletier.

19 **MR. STEWART:** He would have been for the
20 nine months after Griffiths, and obviously he made the
21 decision based on what he knew at the time.

22 **MR. KOZLOFF:** Well ---

23 **MR. STEWART:** You'd have to ask him what he
24 thought.

25 **THE COMMISSIONER:** No, the question was, did

1 Mr. Flanagan ever discuss it with you when you came in?

2 **MR. KOZLOFF:** Or Mr. Pelletier.

3 **THE COMMISSIONER:** Or anyone -- did anyone
4 ever talk to you about having ---

5 **MR. STEWART:** The team?

6 **THE COMMISSIONER:** --- having a dedicated --

7 -

8 **MR. STEWART:** I do not remember that. I do
9 not remember that.

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

11 Thank you, sir. Those are my questions.

12 **MR. STEWART:** Thank you.

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

14 **MR. ENGELMANN:** I'm just wondering if we
15 could have a two-minute health break perhaps.

16 **THE COMMISSIONER:** Sure. Sorry. Thank you.

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

19 This hearing will resume at 5:45 p.m.

20 --- Upon recessing at 5:38 p.m./

21 L'audience est suspendue à 17h38

22 --- Upon resuming at 5:45 p.m./

23 L'audience est reprise à 17h45

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

1 Please be seated. Veuillez vous asseoir.

2 **THE COMMISSIONER:** Thank you.

3 Mr. Carroll?

4 **MR. CARROLL:** Good evening, sir.

5 **JAMES STEWART:** Resumed/Sous le même serment

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

7 **CARROLL:**

8 **MR. CARROLL:** Good evening, Mr. Stewart.

9 **MR. STEWART:** Good evening.

10 **MR. CARROLL:** As you know, my name is
11 Carroll and I'm counsel for the Ontario Provincial Police
12 Association, and I expect to be a real 15 minutes.

13 In listening to your evidence today and for
14 the purposes of reviewing a transcript for submissions, I
15 just want to be clear on a phrase you used a number of
16 times. You used the phrase "revisionist memory".

17 **MR. STEWART:** Yes.

18 **MR. CARROLL:** Is that an attempt to
19 reconstruct events where you really don't have an
20 independent recollection?

21 **MR. STEWART:** I want -- yes, I want to be
22 fair and the best example was, for example, the recusal
23 with Justice Charbonneau. On reading Kevin Phillips'
24 memorandum and reviewing other things, I obviously was the
25 one that dealt with it or I went and recruited Kevin

1 Phillips, but as I sit here, I don't remember.

2 MR. CARROLL: Fair enough; I just wanted to
3 understand ---

4 MR. STEWART: That's what I meant.

5 MR. CARROLL: --- what you meant by that
6 phrase. All right.

7 MR. STEWART: I was filling in the blanks.

8 MR. CARROLL: Okay.

9 A couple of questions with respect to Ms.
10 Hallett and your position.

11 Did you have overall supervisory role of
12 these prosecutions as they went forward from the time you
13 became Regional Senior? Is that the way you would look at
14 your role?

15 MR. STEWART: It was sort of dual in the
16 sense that Shelley Hallett reported to Mr. Corelli and
17 obviously the Assistant Deputy Minister was aware of what
18 was going on in this thing. And because of the allegations
19 against Mr. MacDonald, I was -- I had to watch that I
20 wasn't in a conflict. And so, for example, the issue of
21 Mr. Dunlop, as we know I farmed it out, and we would make
22 sure that we had -- Miss Hallett was prosecuting a lawyer
23 and when you do that out of Special Prosecutions, you're
24 not answering to the local regional director because I did
25 that for a couple of years. And I would go prosecute a

1 policeman in Chatham, well, I didn't phone the regional
2 director there.

3 **MR. CARROLL:** All right. She wasn't
4 answerable to you, but were you responsible for making sure
5 that she was, insofar as humanly possible, adequately
6 staffed, did not have too much work on her plate, and that
7 kind of thing?

8 **MR. STEWART:** Yes and no. I'd be one of the
9 -- no, because I'd be one of the people that she could talk
10 to.

11 **MR. CARROLL:** Oh.

12 **MR. STEWART:** I mean, she wasn't calling me
13 once a week or once a month or anything like that. When I
14 became aware that there was a problem, the personality
15 issue between her and Mr. Hall, I got in the car and came
16 down here.

17 **MR. CARROLL:** No, I wasn't asking you about
18 personalities so much, we're going to get to that in a
19 minute.

20 What I meant was, did you monitor the
21 situation to see did she have too much on her plate, did
22 she have adequate staffing and personnel, did she have
23 adequate office; did you monitor that?

24 **MR. STEWART:** When you say "monitor", she
25 had a junior with her. I didn't realise reading this

1 statement that she has about the office space and ---

2 MR. CARROLL: Right.

3 MR. STEWART: --- knowing what I know about
4 that, that is something I perhaps should have been aware of
5 and should have dealt with.

6 MR. CARROLL: Okay, and what about the
7 number of files that she had at any one time. Did she ever
8 complain to you?

9 MR. STEWART: I don't know that. If she's
10 testified that she did, I can't say that she didn't. I
11 don't remember.

12 MR. CARROLL: All right.

13 Did you see, sir, a need for Crown Attorneys
14 in Eastern Ontario to keep an arm's length from these
15 prosecutions? Was that something that -- I thought I heard
16 you say that earlier but I wasn't sure.

17 MR. STEWART: Well, you try to do it, but I
18 mean the reality is on a couple of them, Claudette Wilhelm
19 dealt with it and Curt Flanagan, and they're in the East
20 Region.

21 MR. CARROLL: Right.

22 MR. STEWART: But the majority of these --
23 Mr. Godin had been recruited from the north and he was -- I
24 don't think he was in North Bay then. I think he was the
25 other side of Thunder Bay.

1 **MR. CARROLL:** In Fort Frances, yeah.

2 **MR. STEWART:** That's a long, long hike.

3 **MR. CARROLL:** Yeah.

4 **MR. STEWART:** And of course Shelley and Ms.
5 Tier.

6 **MR. CARROLL:** All right. So there was no
7 edict about Eastern Ontario Crowns staying out of this
8 then; nothing came down from 720?

9 **MR. STEWART:** No, but Mr. Pelletier realised
10 that he had a conflict and he self-identified ---

11 **MR. CARROLL:** Oh, that was a direct
12 conflict?

13 **MR. STEWART:** Yeah, and he self-identified
14 it.

15 **MR. CARROLL:** I want to ask you a little bit
16 about what the matter you just raised which is you getting
17 in the car and coming down here and we know from documents
18 that that was the 21st of February.

19 **MR. STEWART:** Okay.

20 **THE COMMISSIONER:** And in your earlier
21 evidence you'd said that you received a phone call and you
22 weren't sure if it was either from Pat Hall or from Shelley
23 Hallett; ---

24 **MR. STEWART:** Or both.

25 **MR. CARROLL:** --- it was from one of the two

1 ---

2 MR. STEWART: Or both.

3 MR. CARROLL: --- or both.

4 MR. STEWART: I don't remember. I know
5 there was some issue and I think I've been corrected as I
6 sit here. I thought that was the "scratch the eyes" thing
7 that was ---

8 MR. CARROLL: No.

9 MR. STEWART: --- and okay, I'm wrong, but
10 it was some issue ---

11 MR. CARROLL: Well, the way you described it
12 earlier was you gathered from what you were being told that
13 they were not getting along.

14 MR. STEWART: Or something.

15 MR. CARROLL: Something had happened.

16 MR. STEWART: That's the way I recall it
17 now.

18 MR. CARROLL: All right.

19 You thought it of sufficient importance to
20 come down here and see if you could straighten it out.

21 MR. STEWART: Well, and it was time, maybe,
22 just to come down just to see how things were.

23 MR. CARROLL: Well, I -- may I suggest to
24 you that you didn't have plans to come down and see how
25 things were until this issue arose and you thought, I'd

1 better see if I can do something with this. That's -- at
2 least that's what you told us the reason you went in.

3 MR. STEWART: That's the way I remember it.

4 MR. CARROLL: All right.

5 MR. STEWART: The only wrinkle I have with
6 my memory is the "scratch the eyes", but I've got the
7 timing wrong on that. But it -- it wasn't just -- I seem
8 to recall there was an issue ---

9 MR. CARROLL: Sure.

10 MR. STEWART: --- and I came down on it. It
11 wasn't just a random ---

12 MR. CARROLL: No.

13 MR. STEWART: --- go to Cornwall for the
14 night ---

15 MR. CARROLL: No.

16 MR. STEWART: --- not any disrespect to
17 Cornwall.

18 MR. CARROLL: All right.

19 And it was clearly an issue as between -- or
20 issues between the two of them. It didn't seem to involve
21 anybody else that your memory serves you now ---

22 MR. STEWART: Don't think so.

23 MR. CARROLL: --- correct? Okay.

24 So you come down and you're having -- we
25 know you were having dinner with Hallett and Tier -- Ms.

1 Hallett and Ms. Tier -- so you would have spoken with them;
2 right?

3 MR. STEWART: M'hm.

4 MR. CARROLL: When did you speak to Pat Hall
5 ---

6 MR. STEWART: He came over to the table.

7 MR. CARROLL: --- about that? You know,
8 about this apparent problem that you were coming down to
9 try ---

10 MR. STEWART: Must have ---

11 MR. CARROLL: --- and resolve?

12 MR. STEWART: --- must have been the phone
13 call. Must have been from him. Again, we're back to
14 revisionist. I don't know that, but he came over to the
15 table. They seemed to be getting along. I thought, okay,
16 this was just one of those things. Whatever the issue was
17 that I can't remember now and I hopped back in the car and
18 drove home.

19 MR. CARROLL: So there was no separate
20 conversation that you recollect ---

21 MR. STEWART: No.

22 MR. CARROLL: --- having with Mr. Hall to
23 see what may have been the problem.

24 MR. CARROLL: I don't recall having a
25 separate ---

1 **MR. CARROLL:** Fair enough.

2 **THE COMMISSIONER:** Did you have any
3 discussion with Ms. ---

4 **MR. CARROLL:** That's where I was going.

5 **THE COMMISSIONER:** Oops, sorry. Go ahead
6 then.

7 **MR. CARROLL:** Thank you, sir. With Ms.
8 Hallett? Did -- I know you were having dinner with Ms.
9 Hallett ---

10 **MR. STEWART:** Okay ---

11 **MR. CARROLL:** --- and Ms. ---

12 **MR. STEWART:** --- we weren't sitting quiet.

13 **MR. CARROLL:** What?

14 **MR. STEWART:** We weren't all sitting there
15 not talking, but ---

16 **MR. CARROLL:** No, no, I ---

17 **MR. STEWART:** --- I can't tell you what we
18 talked about.

19 **MR. CARROLL:** When I talk about a
20 discussion, you know what I mean. I mean, I'm talking
21 about why you came down here. Did Ms. Hallett voice to you
22 any concern about her working relationship with any of the
23 Truth team members? To you, did she say that during that
24 dinner?

25 **MR. STEWART:** No, you'd have to ask Ms.

1 Tier; I don't remember that or Ms. Hallett. I don't
2 remember ---

3 MR. CARROLL: No, I'm asking you.

4 MR. STEWART: --- okay, well, I have no
5 independent recollection ---

6 MR. CARROLL: Okay.

7 MR. STEWART: --- right now of what we
8 talked about.

9 MR. CARROLL: And so ---

10 MR. STEWART: So I can't eliminate anything
11 and I can't say we did and didn't talk; I don't know.

12 MR. CARROLL: And had there been -- had she
13 voiced an issue -- a problem between her and Hall or
14 something Hall had done that she didn't like, I presume you
15 would have tried to have done something to fix it up;
16 something to address it, if in fact she had said anything
17 about the conduct of Detective Inspector Hall.

18 MR. STEWART: Depends on the -- whether it
19 was something minor.

20 MR. CARROLL: Serious; assuming it was
21 something serious.

22 MR. STEWART: Something serious ---

23 MR. CARROLL: Yeah.

24 MR. STEWART: --- that's fair -- it's a fair
25 question. I -- I'd probably act on it if it was something

1 serious. But if it's something that they weren't getting
2 along or -- and sometimes these long cases that, that
3 happens.

4 **MR. CARROLL:** Yeah, I'm aware of that and
5 rather than generalize, I just need you to focus on that
6 conversation and I think you've answered me that you have
7 no recollection of Ms. Hallett saying anything being
8 unhappy with the conduct of Detective Inspector Hall in
9 relation to this prosecution. Have I got that right?

10 **MR. STEWART:** I have no recollection of the
11 conversation.

12 **MR. CARROLL:** So I have it right.

13 **MR. STEWART:** Well, no. I have no ---

14 **MR. CARROLL:** Oh?

15 **MR. STEWART:** --- I'm not trying to be
16 whatever, I don't remember the conversation and -- and
17 other people may say there were other things said and I
18 can't contradict -- I don't remember.

19 **MR. CARROLL:** I'm not asking you to
20 contradict and don't worry about what other people said --

21 **MR. STEWART:** No.

22 **MR. CARROLL:** --- I'm just asking you for
23 your recollection.

24 **MR. STEWART:** My recollection is I don't
25 remember what was said ---

1 MR. CARROLL: Fair enough.

2 MR. STEWART: --- about anything.

3 MR. CARROLL: All right.

4 MR. STEWART: I just remember that Paul came
5 over the table, that it was pleasant; there was no --
6 nothing ---

7 MR. CARROLL: No acrimony.

8 MR. STEWART: --- no ---

9 MR. CARROLL: Yeah.

10 MR. STEWART: --- at that point there
11 wasn't.

12 MR. CARROLL: Did you -- by this point in
13 time, Mr. Stewart, the cards are on the table from the
14 defence perspective in the sense that there's -- there's
15 letters of disclosure that have been produced or generated
16 to the Crown. And clearly, from the letters, it's apparent
17 they are -- the defence is alleging wilful withholding of
18 disclosure by the police. Did Ms. Hallett share those
19 issues with you and ask, perhaps, for your advice?

20 MR. STEWART: I -- I don't know.

21 MR. CARROLL: One of the issues that we've
22 been discussing here over the last week or so with various
23 witnesses -- and you've made reference to it -- was this
24 meeting that the police had with the defence lawyers prior
25 to the testifying. I just want to ask you a series of

1 questions about your state of your knowledge.

2 Were you aware that they were defence
3 witnesses on the application?

4 **MR. STEWART:** That they're defence
5 witnesses?

6 **MR. CARROLL:** Yeah, on the application.

7 **MR. STEWART:** Well, there's ---

8 **MR. CARROLL:** Were you aware of that, sir?

9 **MR. STEWART:** Well, they were going to
10 called by the defence.

11 **MR. CARROLL:** Well, yes, that -- that's --
12 all right, yes.

13 **MR. STEWART:** No, I don't ---

14 **MR. CARROLL:** Defence witnesses.

15 **MR. STEWART:** --- I wasn't -- well, I -- no,
16 I wouldn't have been aware of it. I guess I'd assume it
17 because if you're making the motion, you're going to have
18 to call evidence ---

19 **MR. CARROLL:** Right.

20 **MR. STEWART:** --- and it'd be the police.

21 **MR. CARROLL:** Were you aware that the
22 purpose of going to see the -- the defence lawyers by the
23 police as expressed here was to find out what they were
24 going to be asked so they could be prepared to answer the
25 questions? Were you aware of that?

1 **MR. STEWART:** I found it very unusual.

2 **MR. CARROLL:** No, I asked you a specific
3 question. Were you aware that that's the -- the stated
4 reason why they went?

5 **MR. STEWART:** I heard that was the stated
6 reason. I heard that.

7 **MR. CARROLL:** You heard it?

8 **MR. STEWART:** Yeah, somebody told me that at
9 some point in time.

10 **MR. CARROLL:** And were you aware that they
11 went and spoke to Ms. Hallett before going to the meeting
12 and told her what they intended to do? Were you aware of
13 that?

14 **MR. STEWART:** I'm not sure if -- if I was
15 aware that -- I'm not sure I was aware of that.

16 **MR. CARROLL:** Were you aware that Ms.
17 Hallett sanctioned them going there and in fact, referred
18 to it here as a reconnaissance mission? Did you know that?

19 **MR. STEWART:** No.

20 **MR. CARROLL:** And you know what I mean by a
21 reconnaissance mission; find out what's going on so we'll
22 be in a better position; right?

23 **MR. STEWART:** I've never done that.

24 **MR. CARROLL:** No, I'm not asking if you've
25 done it. I asked you if you were aware that she had termed

1 it that.

2 **MR. STEWART:** Well, no, but I -- in dealing
3 with it, no, I'd remember that because that's something
4 I've never heard of. Where you're going to send a
5 reconnaissance mission to talk to the defence counsel about
6 how they're going to cross-examine you on an abuse motion;
7 never heard of it.

8 **MR. CARROLL:** Well, first of all, it was an
9 examination and not a cross-examination because they were
10 defence witnesses.

11 **MR. STEWART:** Okay.

12 **MR. CARROLL:** All right.

13 And you've never heard of witnesses trying
14 to find out what they're going to be asked?

15 **MR. STEWART:** When you're the subject of the
16 abuse motion; no, I haven't. And you're the police
17 officer, I -- I've never heard of that. I -- I found it
18 extremely unusual.

19 **MR. CARROLL:** And -- and did you ever say
20 that to Ms. Hallett?

21 **MR. STEWART:** Well, no, I think it was
22 already done deal at that point. I don't know.

23 **MR. CARROLL:** So you didn't express any
24 comment until you got here about that? About it being
25 unusual?

1 **MR. STEWART:** No, as I said, I don't
2 remember the conversation I had with Ms. Hallett about
3 this.

4 **MR. CARROLL:** All right.

5 **MR. ENGELMANN:** I just ---

6 **MR. CARROLL:** Sorry. Okay.

7 **MR. ENGELMANN:** I just -- Ms. Hallett also
8 commented about how she said it was unusual and hadn't
9 experienced it as well so ---

10 **MR. CARROLL:** Okay, okay.

11 **MR. ENGELMANN:** --- let's just be clear.

12 **MR. CARROLL:** Yeah, unusual, but sanctioned
13 and ---

14 **THE COMMISSIONER:** Let's go on. Thank you.

15 **MR. CARROLL:** The -- you were aware and I
16 think you've made reference to it; the fact that, at some
17 point, a letter authored by Ms. Hallett was turned over to
18 -- to the defence team.

19 **MR. STEWART:** Yes.

20 **MR. CARROLL:** A letter that was written July
21 of 2000. Exhibit 2623, I don't know that we need to turn
22 it up. Are you aware of the contents of that letter, sir?

23 **MR. STEWART:** It said something about she
24 was coming down to -- or she was reviewing a file and going
25 to be reviewing the MacDonald file.

1 **MR. CARROLL:** So you've reviewed -- you've
2 had a look at that letter ---

3 **MR. STEWART:** Somewhere along the way ---

4 **MR. CARROLL:** --- quite recently?

5 **MR. STEWART:** --- I did.

6 **MR. CARROLL:** All right.

7 And are you aware that Ms. Hallett made
8 submissions to the court on February the 14th -- days before
9 the letter was turned over -- to the same effect; in other
10 words, the content of the letter, she acknowledged that in
11 court?

12 Did you know that? Not the existence of the
13 letter, but the -- the information that was contained
14 therein; she made submissions acknowledging the very
15 contents of that letter. Did you know that?

16 **MR. STEWART:** Might have been. I don't
17 know. I don't remember what my state of knowledge was just
18 after this occurs.

19 **MR. CARROLL:** Did you know that until I just
20 told you?

21 **MR. STEWART:** I might have. It's vague. It
22 was funny when you -- when you said it, it kind of
23 refreshed -- I'm not sure, though.

24 **MR. CARROLL:** Did you -- I think you were --
25 alluded to an issue of some kind of -- and I'm going to --

1 these are my words, some kind of deal that the police may
2 have made with the defence. Do you ---

3 **MR. STEWART:** No, I -- I never stated that.

4 **MR. CARROLL:** So you -- and you had no
5 knowledge of any suggestion to that effect? In other
6 words, that the turning over of the letter resulted in some
7 quid pro quo?

8 **MR. STEWART:** I never testified to that.

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

10 **MR. CARROLL:** No.

11 **THE COMMISSIONER:** He's asking you were you
12 ever aware, did anything ever come into your consciousness
13 ---

14 **MR. STEWART:** Yes.

15 **THE COMMISSIONER:** --- that, you know, there
16 was a deal, the police officers went in, gave them the
17 letter, and then the focus changed from wilful
18 non-disclosure from the police over to the Crown?

19 **MR. STEWART:** I may have saw that in written
20 materials later, from somebody, but I -- I don't -- I mean,
21 you know, when -- when I was aware of that, it could have
22 been months later, I don't know that.

23 **MR. CARROLL:** One final question in that
24 area; that will conclude my cross-examination. And, that
25 is, sir, did you read the transcript of the submissions of

1 Mr. Campbell, and what he was submitting to the judge on
2 the issue of police conduct? Did you read those
3 submissions?

4 MR. STEWART: Did I read submissions?

5 MR. CARROLL: Of Mr. -- that Mr. Campbell
6 made about the police conduct and wilful failure to
7 disclose by the police? Did you read ---

8 MR. STEWART: No.

9 MR. CARROLL: --- those submissions?

10 All right. Thank you, sir.

11 THE COMMISSIONER: Thank you.

12 Ms. McIntosh?

13 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

14 MS. McINTOSH:

15 MS. McINTOSH: Mr. Stewart, I'm Leslie
16 McIntosh, on for the Ministry of the Attorney General, for
17 the public who is, maybe, still with us at this hour.

18 You said that Terry Cooper worked in your
19 office. How did he become involved in these matters?

20 MR. STEWART: Well, I think he was involved
21 with the -- the Dunlop matter and disclosure.

22 He -- he's regional counsel out of the
23 office, and so that -- he does a bunch -- bunch of things,
24 and there's a couple of letters of correspondence that he
25 was involved in, but he wasn't -- and he was, sort of -- he

1 would have been around a little bit in the summer, when I
2 wasn't there, also when Mr. McConnery and Mr. Phillips were
3 -- were working out of -- out of the boardroom.

4 **MS. McINTOSH:** All right. So did you ask
5 him to ---

6 **MR. STEWART:** Yes.

7 **MS. McINTOSH:** --- sort of, run the ship? I
8 think he ---

9 **MR. STEWART:** Well, he -- he would have been
10 helping out there.

11 When I would be away, as a regional
12 director, there would always be somebody in that seat.
13 There would be -- but it wouldn't be Terry Cooper, it would
14 be a Crown attorney from one of the offices around.

15 **MS. McINTOSH:** Okay. Now, this morning you
16 had a discussion -- I think the Commissioner asked you a
17 question, and you said, "Well, we're not like firemen, sort
18 of waiting around."

19 And the Commissioner made a suggestion about
20 having the capacity to deal with these cases, and you said
21 you'd get back to that when you were talking about major
22 cases.

23 And I -- and when you were talking to
24 Mr. Engelmann about major cases, you mentioned two
25 prosecutors in your region. Is that -- is that the

1 reference that you were going to get back to with the
2 Commissioner? Or have I ---

3 **MR. STEWART:** Well, certainly in regards to
4 major cases, there's been a lot of things change in the
5 last four years. One of them was, as a result of the Jane
6 Creba shooting in Toronto, they established a "Guns and
7 Gangs."

8 Because, before that, some of these
9 projects, Project Cartoon -- there was a few -- two or
10 three of them, were depleting any resources they had.

11 They then put together 60 Crown attorneys in
12 Toronto that are dealing with -- with massive projects.
13 And that's -- that was part of it.

14 When I said -- and I wasn't being glib when
15 I said that we -- we don't have firemen sitting around.
16 Most Crown attorneys are, in fact, assigned to certain
17 cases. We have regional Crowns that have come in, regional
18 "Guns and Gangs" Crowns.

19 So, for example, we have a very senior
20 prosecutor -- well, two senior prosecutors, out of the
21 office now, that we move around the region. In fact, one
22 of them is down here doing a double homicide in -- in the
23 Cornwall area. And -- and that -- those two Crowns move
24 around the region, to assist local offices, and other
25 jurisdictions have that also, with the regional counsel.

1 **MS. McINTOSH:** Thank you. Those are my
2 questions.

3 **THE COMMISSIONER:** Thank you.
4 Mr. Engelmann?

5 **MR. ENGELMANN:** I have nothing arising, sir.
6 I just wanted to thank Mr. Stewart for his attendance.

7 **THE COMMISSIONER:** Mr. Stewart, thank you
8 very much for attending. You're welcome to stay and listen
9 to publication ban issues that are ---

10 **MR. STEWART:** You know, I wanted to, I
11 really did.

12 **(LAUGHTER/RIRES)**

13 **THE COMMISSIONER:** --- starting at 7:00.

14 **MR. STEWART:** I'm not under oath any more?

15 **THE COMMISSIONER:** No.

16 **MR. ENGELMANN:** Sir, will we be on the
17 record or off the record?

18 **THE COMMISSIONER:** Yes. My understanding is
19 we're going to be on the record, live, so that we can
20 discuss issues of interim or permanent bans, and a number
21 of things. Maître Dumais is -- supposedly has everything
22 under control.

23 **MR. ENGELMANN:** Right, and I've indicated to
24 counsel that he's available to speak to you right now, so -
25 --

1 **THE COMMISSIONER:** Right. So I expect all
2 of the counsel to be here, of course.

3 **MR. ENGELMANN:** Seven o'clock (7:00), sir?

4 **THE COMMISSIONER:** Seven o'clock (7:00).

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

6 **THE COMMISSIONER:** Thank you.

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

9 This hearing will resume at 7:00 p.m.

10 --- Upon recessing at 6:04 p.m. /

11 L'audience est suspendue à 18h04

12 --- Upon resuming at 6:57 p.m. /

13 L'audience est reprise à 18h57

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

16 This hearing is now resumed. Please be
17 seated. Veuillez vous asseoir.

18 **THE COMMISSIONER:** Thank you. Good evening
19 everyone.

20 **MR. DUMAIS:** Good evening, Mr. Commissioner.

21 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DUMAIS:**

22 **MR. DUMAIS:** So as we've alluded to
23 previously, the next item on our agenda is, we want to make
24 some clarifications on the record with respect to some
25 exhibits, as well as some publication bans that have been

1 issued over the last couple of years.

2 We're going to need to go in-camera at one
3 point in time this evening, but I think that most of it can
4 be done on the public record.

5 So the first items I want to start with is
6 clarifying the status of some exhibits.

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

8 **MR. DUMAIS:** In other words, to clarify
9 whether or not they are public or confidential exhibits,
10 and deal with 1-I as in "To be identified."

11 So what we've done over time is, when we
12 weren't sure about an exhibit and how it was to be filed,
13 it was filed as an "I" exhibit.

14 So the first one is Exhibit 103, and that's
15 Document Number 107776, and essentially this exhibit was
16 entered in October 19th, 2006, as a "P" exhibit.

17 During the cross-examination by the
18 Children's Aid Society, it was referred to as a "C"
19 exhibit.

20 We have received an inquiry to confirm
21 whether or not this is ---

22 **THE COMMISSIONER:** Can you put it on the
23 screen, Madam Clerk?

24 **MR. DUMAIS:** --- a "P" or a "C" exhibit, so
25 we've gone back and looked at when the exhibit was entered,

1 and it's actually a "P" exhibit, so the only thing I want
2 to do is confirm that it is a "P" exhibit.

3 **THE COMMISSIONER:** All right, no, then I
4 don't need it, thank you.

5 **MR. DUMAIS:** Okay. So the next exhibit is
6 Exhibit C-199 and C-201, and these are excerpts of a larger
7 document.

8 These exhibits were entered on December 12th,
9 2006, as Interim C exhibits. When we entered these
10 documents, we asked for the Interim C status so we could
11 sort out publication ban issues.

12 **THE COMMISSIONER:** Right.

13 **MR. DUMAIS:** The persons we're concerned
14 about have been put on the record in subsequent
15 proceedings. Furthermore, documents identical, or similar,
16 were subsequently filed as public exhibits.

17 So this was early in our process,
18 Mr. Commissioner, December 12th, 2006. So therefore existing
19 publication ban orders apply and these can be converted to
20 "P" exhibits, where one or more publication ban apply.

21 **THE COMMISSIONER:** Okay.

22 **MR. DUMAIS:** So my suggestion with that
23 document is that they be converted to Exhibit 199, Exhibit
24 201, with -- stamped with a publication ban on them.

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

1 **MR. DUMAIS:** There is one outstanding issue
2 with respect to these documents, and I'm going to have to
3 deal with that issue in the in-camera session.

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

5 **MR. DUMAIS:** The next couple of exhibits are
6 Exhibits C-332 and C-333.

7 These exhibits were entered on February 8th,
8 2007. The transcript lists them as P-332 and P-333.
9 However, they have been listed on the unofficial exhibit
10 list as C-332 and C-333.

11 This appears to have been a mistake that --
12 that we made when we filed -- when the exhibits were
13 listed. So these exhibits should be public exhibits, with
14 a publication ban.

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

16 **MR. DUMAIS:** There are a number of other
17 exhibits in the next class. They are exhibits C-394, C-398
18 through to C-404, as well as C-407.
19 These exhibits were entered on April 18th and 19th, 2007, as
20 Interim C exhibits.

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

22 **MR. DUMAIS:** They were entered during the
23 alternative process for the cross-examination of Mr. David
24 Silmser. These were entered as Interim C until publication
25 bans could be addressed. A publication ban order should

1 suffice and we intend to confirm on the record that these
2 can be "P" exhibits with a publication ban.

3 **THE COMMISSIONER:** Thank you.

4 **MR. DUMAIS:** The next two exhibits are C-
5 492A and C-492B. These two documents were entered on May
6 31st, 2007, at Volume 112 as Interim C exhibits.

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

8 **MR. DUMAIS:** Mr. Lee was asked by the
9 Commission to speak to his client regarding his wishes for
10 confidentiality regarding these two documents. Mr. Lee has
11 confirmed to the Commission that his client is satisfied
12 with a publication ban order. So we can therefore convert
13 these documents from "C" exhibits to public exhibits,
14 subject to a publication ban if you agree, and we will put
15 the name of the person on the record today as part of the
16 in-camera session as well.

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

18 **MR. DUMAIS:** The next exhibit is I-558,
19 which is Document Number 200143. This exhibit was entered
20 on June 25th, 2006. At the time, this document was referred
21 to in evidence. There was discussion as to whether or not
22 it should be an exhibit, and the consensus among the
23 parties was not to enter it. However it has been listed as
24 an "I" exhibit on our exhibit list.

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

1 **MR. DUMAIS:** This appears to have been an
2 error on our part once again. So given the discussion
3 amongst counsel, and I think the transcripts are fairly
4 clear on that issue, and everyone was in agreement that
5 that exhibit, that document, 200143 should not be filed as
6 an exhibit, so we are striking it from the exhibit list.

7 **THE COMMISSIONER:** Well, lets -- what number
8 is it?

9 **MR. DUMAIS:** That is Exhibit I-558.

10 **THE COMMISSIONER:** Can I see it?

11 Thank you.

12 Mr. Lee?

13 ---**SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

14 **MR. LEE:** Sir if I can speak to this one?
15 I'm unclear as to how your binders are organised but I
16 suspect you may not have a document at that tab.

17 **THE COMMISSIONER:** Yeah, I do.

18 **MR. LEE:** Okay. This was -- this is the
19 Examination for Discovery transcript from civil litigation
20 regarding Gerald Renshaw, one of my clients.

21 **THE COMMISSIONER:** Right.

22 **MR. LEE:** When he was here, Mr. Sherriff-
23 Scott first brought him to that document during his cross-
24 examination and before it could be entered as an exhibit, I
25 objected not to production of the document obviously, given

1 that I had produced it, or necessarily to its use but
2 rather to it being entered as an exhibit.

3 And Mr. Sheriff-Scott proposed at the time
4 that he could proceed by simply reading in questions and
5 answers, I think largely to pacify me and avoid a lengthy
6 argument on the subject. You were content to proceed that
7 way; we have transcripts that reflect this.

8 It rose again during David Rose's cross-
9 examination on behalf of the Ministry of Community --
10 MCSCS, whatever that stands for, and it, again, I rose and
11 noted my concern about having the document marked and again
12 Mr. Rose was content to proceed without it being marked an
13 exhibit.

14 And I went back there in my re-examination
15 of Mr. Renshaw and again, put on the record the fact that
16 all parties were content not to have it as an exhibit and
17 that's how it was left.

18 My understanding of why Mr. Dumais is
19 referring to it as Exhibit I-558 is that, I presume the
20 clerk at the time, or perhaps in the back office, noted it,
21 saved that spot for it and slotted it in there, perhaps
22 because they were unclear on exactly what had happened.

23 But the transcripts make it clear that it
24 was not entered as an exhibit and that the parties agreed
25 at the time and that cross-examination proceeded without

1 further objection from me on that point, because we had
2 agreed, with your consent as I understood it, to not mark
3 that document.

4 **THE COMMISSIONER:** Okay. Fine. So it was
5 filed as an Interim Exhibit?

6 **MR. LEE:** Yes.

7 **THE COMMISSIONER:** And so, fine. So what
8 we'll do is we'll withdraw it from the exhibit.

9 I think that what we'll do for the record is
10 indicate that Exhibit I-558 has been, which was an
11 Examination for Discovery of Gerald Wesley Renshaw,
12 December 17th, 2003, with that note there, so if anybody in
13 the next few years wants to review that, and sees that the
14 exhibit is missing, they will have an explanation for it.

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

16 **THE COMMISSIONER:** Thank you.

17 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DUMAIS:

18 **MR. DUMAIS:** The next two exhibits are C-
19 577A and C-577B. So these exhibits were entered on June
20 28, 2007 as Interim C exhibits. At the time, we asked them
21 to be Interim C because they had been disclosed the day
22 before. Some of the parties were unable to review them
23 before they were dealt with in the Hearings Room.

24 We believe that these now can be converted
25 to public exhibits with a publication ban. The persons to

1 be covered in these documents are already subject to other
2 publication bans.

3 **THE COMMISSIONER:** Thank you.

4 Moving right along.

5 **MR. DUMAIS:** I'm just -- I was just trying
6 to determine whether or not I could do this in the public
7 forum, Mr. Commissioner, but I think I'm going to wait for
8 the in-camera session.

9 So the next exhibits are Exhibits IC-771,
10 IC-776, IC-789, IC-790, IC-791B, IC-793, IC-805, IC-811B
11 and IC-833.

12 So these exhibits were entered on October
13 31st, 2007. The transcript is at Volume 156, and they were
14 entered as Interim C exhibits. We have reviewed these
15 documents and believe that they can now be public exhibits
16 with publication bans. The persons covered by the
17 publication bans are those that are already subject to bans
18 in place.

19 **THE COMMISSIONER:** Thank you.

20 **MR. DUMAIS:** The next three exhibits are C-
21 848A, C-848B and C-848C, and these were some of Mr. Garry
22 Guzzo's handwritten notes, Mr. Commissioner.

23 **THE COMMISSIONER:** Right.

24 **MR. DUMAIS:** These exhibits were entered on
25 November 13th and 14th, 2007. They were made "C" exhibits at

1 the time because we were dealing with the issue of who's
2 named in the notes and other issues of identification as
3 well. We believe that the publication ban orders that were
4 granted, whom already have been assigned monikers, are
5 sufficient and these documents can be made public documents
6 with publication bans applicable to them.

7 **THE COMMISSIONER:** Thank you.

8 **MR. DUMAIS:** The next exhibit was entered in
9 a motion, so it's Exhibit M9-A3. And that was the motion
10 that was brought by, I believe, counsel from the Diocese to
11 exclude Father Thomas Doyle. And the Diocese filed, in its
12 motion material, this document -- or sorry -- this exhibit
13 and this exhibit included Document Number 122991.

14 And given the nature of the document and
15 submissions made with respect to this document, this should
16 be part of the evidentiary record. Therefore we are asking
17 that Document Number 122991 be entered as the next exhibit
18 number, and that -- and I do have copies for Madam Clerk.

19 And perhaps I should have explained at the
20 beginning, Mr. Commissioner, that before starting this
21 whole process, we did send a letter, which is dated
22 September 25th, 2008, to all the parties, advising them what
23 our intentions were and if they had any objections, that
24 they should communicate with us, and no one had any
25 objections to this document being filed.

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

2 So this is now Exhibit 3335, which is a
3 document called "Project Truth 2".

4 **--- EXHIBIT NO./PIÈCE NO. P-3335:**

5 (122991) Project Truth 2

6 **MR. DUMAIS:** Thank you.

7 **THE COMMISSIONER:** And is there a
8 publication ban? There must be.

9 **MR. DUMAIS:** Yes, Mr. Commissioner.

10 **THE COMMISSIONER:** Yes, publication ban will
11 issue.

12 **MR. DUMAIS:** So the next items that I want
13 to address with you are a number of publication ban issues.
14 The first one is Exhibit 906. That exhibit was entered on
15 November 19, 2007 with an interim publication ban order.
16 At that time there was some confusion as to whether or not
17 the *Criminal Code* publication ban had been lifted.

18 We can confirm that the ban has been lifted
19 and there no longer needs to be a publication ban order on
20 this document, and that was the transcript of the
21 proceeding where Mr. Nelson Barque had entered a guilty
22 plea to the charges.

23 **THE COMMISSIONER:** Very well.

24 **MR. DUMAIS:** The next issue is moniker C-22.

25 **THE COMMISSIONER:** Yes.

1 **MR. DUMAIS:** And that is a moniker that was
2 put in place for Stuart Labelle. So the *Criminal Code*
3 publication ban with regards to Stuart Labelle was lifted
4 on February 9, 2007. The Commission inadvertently extended
5 the 486(3) ban for Mr. Stuart Labelle on October 31st, 2007
6 and assigned him moniker C-22.

7 **THE COMMISSIONER:** All right.

8 **MR. DUMAIS:** Given that the publication ban
9 has been lifted and Mr. Labelle has signed a written
10 consent, that I have here, we can discontinue any
11 publication ban on Stuart Labelle.

12 **THE COMMISSIONER:** Thank you.

13 **MR. DUMAIS:** The next matter is the matter
14 of John MacDonald. On November 2nd, 2006 John MacDonald's
15 name is mentioned in relation to the names on Exhibit 108
16 which had been marked as interim "C" at that time. The
17 discussion regarding those names was in regards to whether
18 or not confidentiality need apply. To ensure that the
19 record is clear, there is no *Criminal Code* publication ban
20 for John MacDonald and as, Mr. Commissioner, you know, he
21 has testified openly here, there is no need for a
22 publication ban for him in these proceedings.

23 **THE COMMISSIONER:** All right.

24 **MR. DUMAIS:** The next individual is Steven
25 Tyo. On January 14, 2008 Commission counsel asked for a

1 publication ban on the name of Steven Tyo. Upon review, it
2 appears that this person is not identified as an alleged
3 victim or a victim. Therefore, we don't believe that we
4 can meet the Dagenais/Mentuck test and we're therefore
5 seeking to lift that publication ban.

6 **THE COMMISSIONER:** So ordered.

7 **MR. DUMAIS:** The next monikers that I want
8 to deal with are monikers C-20 through to C-40. So these
9 monikers, Mr. Commissioner, were applied to a number of
10 people during the issue of Mr. Guzzo's notes.

11 **THE COMMISSIONER:** Right.

12 **MR. DUMAIS:** So you may remember that we
13 were faced with a number of non-identifiable names, so
14 first names only or family names only ---

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

16 **MR. DUMAIS:** --- or surnames.

17 So the only thing we wish to confirm on the
18 record is that these monikers apply to these persons in
19 relation to these notes only for the proceedings on that
20 day dealing with Mr. Guzzo.

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

22 **MR. DUMAIS:** Just as an example -- and I'm
23 not referring to any specific name in his notes -- there
24 was a name in his notes that was just identified as
25 "Pierre" without a family name. So we don't want the name

1 "Pierre" to be redacted anywhere else in these proceedings.

2 **THE COMMISSIONER:** All right.

3 So the "C" designation remains, but only for
4 that document or the monikers remain?

5 **MR. DUMAIS:** The monikers remain but only
6 with respect to these notes, these specific notes.

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

8 Mr. Lee?

9 **MR. LEE:** May I have one moment, please,
10 sir?

11 **THE COMMISSIONER:** Sure.

12 **(SHORT PAUSE/COURTE PAUSE)**

13 **MR. DUMAIS:** Mr. Lee was suggesting that
14 perhaps we should identify the document for greater
15 certainty ---

16 **THE COMMISSIONER:** Right.

17 **MR. DUMAIS:** --- which these monikers apply
18 to, and we're going to do one more clean-up session for a
19 publication ban either late tomorrow or Thursday afternoon,
20 and then perhaps I can identify the document for the
21 record.

22 **THE COMMISSIONER:** Very well. So put that
23 on the to-do list.

24 **MR. DUMAIS:** The next moniker is C-15. So
25 on September 19th, 2007 Commission counsel asked for a

1 moniker to be assigned for an alleged victim under the
2 moniker C-15. We had reason to believe that this person
3 wished confidentiality. We have been unable to speak to
4 him. Although Mr. Lee does not represent C-15, he has
5 heard from family members that this person wishes
6 confidentiality.

7 Although the information is not direct, we
8 believe, therefore, that this person should be confirmed as
9 an alleged victim who wishes confidentiality, and we're
10 therefore asking that the publication ban and moniker
11 continue on that understanding.

12 There's one issue with respect to C-15 that
13 was brought up by counsel for the Diocese, who was
14 originally objecting to us continuing this moniker for this
15 individual.

16 I did speak to Mr. David Sherriff-Scott and
17 he is content to withdraw his objection once I confirm on
18 the record that publication bans issued by the Inquiry are
19 meant to prevent the publication of information and
20 dissemination of the information in documents that come
21 from the Inquiry and that the publication ban would not
22 apply to documents or information that are in the public
23 record.

24 **THE COMMISSIONER:** Fine.

25 **MR. DUMAIS:** And I indicated to

1 Mr. Sherriff-Scott that that was my understanding. So just
2 as an example for greater certainty, if there is a civil
3 litigation and a number of pleadings that have been filed
4 without -- with a court without any type of publication ban
5 or confidentiality measure, the fact that we're issuing a
6 ban because we're using the document in these proceedings
7 does not mean that someone can't obtain the information
8 from the courthouse and use that information, et cetera.

9 **THE COMMISSIONER:** I think you may have put
10 too strict an interpretation to what a moniker means here -
11 --

12 **MR. DUMAIS:** Yes.

13 **THE COMMISSIONER:** --- in a publication ban.
14 It means that his name or any identifiers in the document
15 cannot be published, but the information itself is free to
16 be published, right?

17 **MR. DUMAIS:** Agreed.

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

19 **MR. DUMAIS:** So the next item is Exhibit
20 228. This exhibit was entered on December 14, 2006. At
21 the time of entry, the Commissioner granted -- or you
22 granted an interim publication ban on four names. Three of
23 those names were Ron Leroux, Gerald Renshaw and Robert
24 Renshaw.

25 The interim publication ban on the Ron

1 Leroux and Gerald Renshaw names have been *de facto* lifted
2 as both these persons have testified at the Inquiry in open
3 court.

4 Robert Renshaw's *Criminal Code* publication
5 ban was lifted on February 9th, 2007 and he also testified
6 openly.

7 **THE COMMISSIONER:** All right.

8 **MR. DUMAIS:** So, therefore, for the sake of
9 the record, we wish to confirm that there are no
10 publication bans in place for these three persons.

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

12 **MR. DUMAIS:** Also, at the time Exhibit 228
13 was entered, counsel for the Diocese asked for a temporary
14 publication ban for one of its employees.

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

16 **MR. DUMAIS:** That's the fourth name.

17 At the time, Mr. Sherriff-Scott asked for a
18 temporary order:

19 "And we'll deal with it when the issue
20 comes up in a complete way so that we
21 can argue it in an appropriate
22 fashion."

23 And I'm quoting from Mr. Sherriff-Scott, and
24 that's from Volume 79, page 55.

25 I have since spoken to him and the name here

1 that he was alluding to was Bishop LaRocque. And, again,
2 Bishop LaRocque has testified here in open court and I am
3 advised by counsel for the Diocese that the ban on his name
4 can be lifted as well.

5 **THE COMMISSIONER:** Okay.

6 **(SHORT PAUSE/COURTE PAUSE)**

7 **MR. DUMAIS:** So the next moniker is C-56.
8 C-56 has been referred to on December 14th, 2006 and again
9 on February 14th, 2008. At this later date, we assigned
10 this person moniker C-56. However, you asked us at that
11 time whether he had been -- whether or not we had been in
12 contact with him. At the time, we weren't sure.

13 We can report that one of our investigators
14 has spoken with C-56 regarding potential participation. He
15 did not want to participate in this Inquiry. This person
16 has not pursued criminal charges either and his name, as
17 far as we know, is not in the public.

18 So we are therefore seeking to confirm the
19 publication ban on this person on the basis that he has
20 requested confidentiality.

21 **THE COMMISSIONER:** Confirmed.

22 **MR. DUMAIS:** The next document is Exhibit
23 1557. This exhibit was entered on May 1st, 2008. This
24 exhibit contained a list of alleged victims of Lucien
25 Labelle. The first ten were minors and the last three were

1 adults.

2 We do not have the Crown file for this
3 prosecution, but we assume that a *Criminal Code* publication
4 ban would have been applied for the 10 minor alleged
5 victims.

6 **THE COMMISSIONER:** What year? What year was
7 the prosecution? Within recent memory? Since 486(3) was
8 put in the Code?

9 **MR. DUMAIS:** Perhaps we can get back to it,
10 Mr. Commissioner. We'll try and find out the information.

11 **THE COMMISSIONER:** Okay. The only reason
12 I'm asking is that the *Criminal Code* provision for
13 protection of their names is under the previous section
14 486(3) and, you know, we should, if we're going to be using
15 that as your conclusion ---

16 **MR. DUMAIS:** Yes.

17 **THE COMMISSIONER:** --- we ---

18 **MR. DUMAIS:** Fair enough.

19 **THE COMMISSIONER:** Okay. Good enough.

20 Thank you.

21 **MR. DUMAIS:** So if we can just table that
22 for now and we'll find the information.

23 **THE COMMISSIONER:** Yes.

24 **MR. DUMAIS:** So the next items are interim
25 monikers IC-41 and IC-43. These interim monikers were

1 assigned during the issues that arose with Mr. Guzzo's
2 notes.

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

4 **MR. DUMAIS:** That's at Volume 159 and Volume
5 -- at Volume 159 and Volume 159 in camera, sorry.

6 Our position is that IC-41 should become C-
7 41 ---

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

9 **MR. DUMAIS:** --- and remain under a
10 publication ban and IC-43 should be C-43, however,
11 recognizing that the issuance of the moniker was for a
12 limited purpose ---

13 **THE COMMISSIONER:** Yes.

14 **MR. DUMAIS:** --- that has now expired.
15 These monikers should apply for the proceedings on that
16 date only.

17 **THE COMMISSIONER:** Right.

18 **MR. DUMAIS:** The next item is C-42. So for
19 clarification regarding moniker C-42, we wanted to confirm
20 that moniker C-42 was not an interim moniker on the list
21 that Commission staff maintains and distributes to counsel.
22 It has been listed as IC-42, where the "I" usually
23 indicates that it is "interim". However, upon review, we
24 realized that the moniker was not ordered as an interim
25 moniker. So we're just confirming that it is actually C-

1 42.

2 **THE COMMISSIONER:** That's the way it is on
3 my list.

4 **MR. DUMAIS:** And we've changed the list.
5 Okay.

6 **THE COMMISSIONER:** Okay.

7 **MR. DUMAIS:** Thank you.

8 The next monikers are IC-57 to IC-65.

9 **THE COMMISSIONER:** Well, actually, number 58
10 is just a "C", but that's probably -- you're probably going
11 to cover that.

12 **MR. DUMAIS:** Yes. That was, at one point in
13 time, changed. So these interim monikers were assigned on
14 April 22nd, 2008.

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

16 **MR. DUMAIS:** You indicated at that time that
17 we needed to get more information regarding these persons,
18 and that is why they had been assigned an interim moniker.

19 We are now in a position to argue that three
20 of these monikers meet the Dagenais/Mentuk test. We are
21 seeking to confirm them as permanent monikers with
22 publication bans.

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

24 **MR. DUMAIS:** We have information that
25 indicates that two of these three people testified at the

1 criminal trial of Marcel Lalonde.

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

3 **MR. DUMAIS:** Although we don't have any
4 documents confirming this, we believe that all three of
5 these persons likely testified. So we're not able to
6 confirm the third one.

7 And, as such, they were likely granted bans
8 under the *Criminal Code* provisions and therefore we're
9 seeking to extend those likely bans here. Those three
10 monikers are IC-57, IC-59 and IC-61 which should be
11 converted to C-57, 59 and 61.

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

13 **MR. DUMAIS:** Three other persons would be
14 described as persons of interest and will not meet the
15 test. We therefore think that these three monikers should
16 be discontinued.

17 These people are of marginal relevance to
18 these proceedings. Their names have not come up anywhere
19 else, and although there is no need to have a publication
20 ban on them, I don't think we need to name them here
21 either.

22 So I am simply suggesting that monikers IC-
23 62, IC-63 and IC-64 be discontinued.

24 **THE COMMISSIONER:** Yes, but for the record,
25 how are we going to know -- someone reading, how are they

1 going to be able to know who, in the previous record, IC-64
2 was if we don't have it put on the record someplace?

3 **MR. DUMAIS:** Well, they were identified in
4 an in camera session.

5 **THE COMMISSIONER:** Oh, okay, they were?
6 Okay, fine. Thank you very much.

7 Well, still, how is a member of the public
8 reading this, is going to come up to the record, the public
9 record, and he's going to read somebody, IC-64, for example
10 ---

11 **MR. DUMAIS:** Because he would not have
12 access to the in camera?

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

14 **MR. DUMAIS:** Fair enough. I can't meet the
15 test, so I'm just going to ---

16 **THE COMMISSIONER:** So ---

17 **MR. DUMAIS:** C-62 was Rodney Benoit; C-63,
18 Bobby Cadieux; C-64 was Michael Sturgeon.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Lee?

21 **MR. DUMAIS:** So the Lucien Labelle -- I'll
22 come back to the Lucien Labelle trial.

23 **THE COMMISSIONER:** Okay. So that ---

24 **MR. DUMAIS:** Actually, we're there now, Mr.
25 Commissioner.

1 So if I can just get back then to the issue
2 that had been tabled.

3 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

4 MR. LEE: Can I interrupt, sir?

5 THE COMMISSIONER: Sure.

6 MR. LEE: What was decided in relation to
7 IC-61 and IC-65?

8 THE COMMISSIONER: I don't know. We haven't
9 gotten there.

10 MR. LEE: They were part of the same group
11 of persons as ---

12 THE COMMISSIONER: We dealt with three that
13 should have ---

14 MR. LEE: Right.

15 THE COMMISSIONER: --- and three that
16 shouldn't have or a number that shouldn't have, but now
17 there's a balance we have to address.

18 MR. DUMAIS: That's why I have a note on my
19 notes, "look at Mr. Dallas Lee's letter", which I didn't
20 do. That perhaps -- do you want to address that one?

21 MR. LEE: Sure. Sir, IC-61 and IC-65 deal
22 with the Marcel Lalonde matter as well.

23 THE COMMISSIONER: M'hm.

24 MR. LEE: And you recall during the evidence
25 of Constable Malloy from the Cornwall Police Service, we

1 looked in some detail at his original investigation
2 concerning Marcel Lalonde.

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

4 **MR. LEE:** Do you recall? He investigated
5 originally. Charges were not laid. There was no
6 prosecution. Years later, Rene Desrosiers, from the
7 Cornwall Police received a new complaint; had no knowledge
8 at all of Constable Malloy's earlier investigation.
9 Through his research ---

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

11 **MR. LEE:** --- came to discover it, went
12 back, pulled files, found some -- some limited materials
13 and went from there.

14 During my cross-examination of Constable
15 Malloy, in particular, based on the materials that we had,
16 I very much suggested to him that it was likely that IC-60
17 and IC-65 were victims of -- of Mr. Lalonde or -- or at
18 very least should have been pressed and interviewed to a
19 greater extent than he did. And I most certainly through
20 my cross-examination attempted to demonstrate that there
21 was a likelihood that they would have had information to
22 give.

23 I think as a result of that obviously having
24 been done publicly that through my actions, I placed them
25 in the position of being, perhaps, alleged victims and so I

1 think that they fall into the same category as some of
2 these other persons who ultimately didn't lead -- didn't
3 become complainants in the criminal action, but there may
4 be reasons for that that we examined with Constable Malloy
5 and I think -- I think they should be treated as alleged
6 victims here about whom we don't know their wishes; we
7 don't know their desires. They haven't been contacted as
8 far as I know, so I think they're in that camp where, out
9 of an abundance of caution, a moniker should remain and it
10 should go from being an IC to a -- to a pure moniker for 60
11 and 65.

12 **THE COMMISSIONER:** Thank you.

13 Do you agree with that, Mr. Dumais?

14 ---**SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DUMAIS:**

15 **MR. DUMAIS:** Yes, I do.

16 **THE COMMISSIONER:** So ordered.

17 **MR. DUMAIS:** So the issue -- the matter that
18 had been tabled, Mr. Commissioner, that was Exhibit 1557.

19 I've now been able to confirm that the
20 Lucien Labelle matter was in 1985 and the matter was dealt
21 through -- in the Appellate Court as well in '86, '87, '88.

22 The only thing I can't confirm right now
23 because I don't have my Code is when the provisions of
24 486(3) were put in place. I'm going to need five minutes.
25 And that's the last issue I need to deal with in the public

1 session.

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

3 **MR. DUMAIS:** I have three or four other
4 matters to deal in the in camera hearing.

5 **THE COMMISSIONER:** And then you'll be done?

6 **MR. DUMAIS:** As well, I want -- pardon me?

7 **THE COMMISSIONER:** And then we would be
8 done?

9 **MR. DUMAIS:** Then we'd be done then, Mr.
10 Commissioner.

11 **THE COMMISSIONER:** Terrific.

12 **MR. DUMAIS:** And then I need to identify
13 some monikers as well that we've dealt with over the last
14 six weeks and -- and then we're done.

15 **THE COMMISSIONER:** All right.

16 So we are now prepared to go into in camera
17 session.

18 **MR. DUMAIS:** Yes.

19 **THE COMMISSIONER:** So we'll close for now.
20 We'll come back in 15 so for members of the public, we will
21 be in camera, but it will be simply to confirm much of as
22 we've now so ---

23 **MR. DUMAIS:** Correct, thank you.

24 **THE COMMISSIONER:** All right.

25 And we have Mr. Lee overseeing the operation

1 so we know we're in good hands.

2 All right, so let's close and as soon as we
3 can turn it into an in camera, let me know.

4 **MR. DUMAIS:** Thank you.

5 **THE COMMISSIONER:** Thank you.

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

8 This hearing will resume at 7:50 p.m.

9 --- Upon recessing in public at 7:35 p.m./

10 L'audience publique est suspendue à 19h35

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

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

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



Dale Waterman, CVR-CM