

**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 302**

**Held at :**

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

Wednesday, November 12, 2008

**Tenue à:**

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

Mercredi, le 12 novembre 2008

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Kelly Doctor	Commission Counsel
Mr. Peter Manderville Ms. Reena Lalji	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Kevin Hille	Attorney General for Ontario
Ms. Michele R.J. Allinotte	The Children's Aid Society of the United Counties
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M <sup>e</sup> Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDougald
M <sup>e</sup> Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Ian Paul	Coalition for Action
Mr. Larry O'Brien	Mr. Randy Millar
Mr. Timothy Smith	

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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, and good  
10 morning.

11 Good morning, Mr. Smith.

12 **MR. SMITH:** Good morning.

13 **THE COMMISSIONER:** You understand you're  
14 still under oath, sir?

15 **MR. SMITH:** Yes, sir.

16 **THE COMMISSIONER:** Thank you.

17 Mr Engelmann.

18 **MR. ENGELMANN:** Good morning, Mr.  
19 Commissioner.

20 **THE COMMISSIONER:** Good morning.

21 **TIMOTHY SMITH, Resumed/ Sous le même serment:**

22 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.

23 **ENGELMANN (Cont'd/Suite):**

24 **MR. ENGELMANN:** Good morning, Mr. Smith.

25 **MR. SMITH:** Good morning, sir.

1                   **MR. ENGELMANN:** Sir, I'd like to turn back  
2 to a document we were looking at towards the end of the day  
3 and it is the index of the Crown brief for the Father  
4 MacDonald investigation and the Exhibit Number is 2562. I  
5 believe the most current exhibits will be ---

6                   **(SHORT PAUSE/COURTE PAUSE)**

7                   **MR. SMITH:** Thank you. Yes, sir.

8                   **MR. ENGELMANN:** Mr. Commissioner, out of an  
9 abundance of caution I referred Mr. Smith to a couple of  
10 names yesterday ---

11                   **THE COMMISSIONER:** Yes.

12                   **MR. ENGELMANN:** --- and I think they should  
13 be monikered, in the event they are used. Mr. Smith, you  
14 have the one in front of you of the Crown brief of  
15 witnesses?

16                   **MR. SMITH:** Yes, I do.

17                   **MR. ENGELMANN:** And just to refresh your  
18 memory, number three is C-3, number four is C-56. And Mr.  
19 Commissioner, with your permission, numbers two and five  
20 are alleged victims and I'm wondering if they could be  
21 monikered. Number two if he could be given the moniker --  
22 I believe it's C-88.

23                   **THE COMMISSIONER:** Yes, it is.

24                   **MR. ENGELMANN:** And if number five could be  
25 given the moniker C-89?

1                   **THE COMMISSIONER:** Any objections from  
2 anyone? I don't think so. So ordered.

3                   **MR. ENGELMANN:** Sir, at some point I'll go  
4 in camera and I'll deal with that.

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

6                   **MR. ENGELMANN:** So I just wanted to say that  
7 those four individuals now have the moniker that we've been  
8 using here. And the reason for that, sir, is this webcast  
9 so we don't want to publish the name.

10                   And these, to your knowledge, these four  
11 individuals, all alleged victims of Father MacDonald in  
12 addition to Mr. Silmser; correct?

13                   **MR. KOZLOFF:** Mr. Commissioner?

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

15                   **MR. KOZLOFF:** I took the liberty last night  
16 of reviewing the statements of C-88 and C-89.

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

18                   **MR. KOZLOFF:** It's my ---

19                   **THE COMMISSIONER:** Can you get closer to the  
20 mic when you ---

21                   **MR. KOZLOFF:** Sorry. It's my position that  
22 to describe the event as a sexual assault and to refer to  
23 them as victims is potentially misleading.

24                   **THE COMMISSIONER:** Okay. Where are the  
25 statements?

1                   **MR. ENGELMANN:** Sir, I can give you document  
2 numbers.

3                   **THE COMMISSIONER:** Exhibit numbers or have  
4 they been made ---

5                   **MR. ENGELMANN:** No, I'll give you the  
6 document numbers, sir.

7                   **THE COMMISSIONER:** Okay.

8                   **MR. KOZLOFF:** C-80 ---

9                   **MR. ENGELMANN:** It's okay. I'll take care  
10 of it.

11                   **MR. KOZLOFF:** I was on my feet, if I could  
12 just address it?

13                   C-88, sir, is Document Number 111038 and C-  
14 89 is Document Number 714998.

15                   **(SHORT PAUSE/COURTE PAUSE)**

16                   **MR. ENGELMANN:** They weren't -- they're not  
17 on the list. I hadn't intended to go to them. I didn't  
18 expect this. We'll have to pull them up on the screen,  
19 sir. And I have different document numbers, that's why I  
20 wanted to give you my own but, in any event.

21                   **THE COMMISSIONER:** So I'll be reading it,  
22 Madam Clerk, so can you -- yeah, please scroll down?

23                   Okay. Next page, please?

24                   **MR. ENGELMANN:** Scroll down for a bit.

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



1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: Go ahead. All right.

3 MR. ENGELMANN: That's the one.

4 THE COMMISSIONER: M'hm. So let's go back  
5 to the top. Well, we might as well make it an exhibit now.  
6 So go back to the top, Madam Clerk.

7 MR. ENGELMANN: And this is C-88.

8 THE COMMISSIONER: Right.

9 No, on top, Madam Clerk, so I can identify  
10 the exhibit. All right. So keep going. Thank you.

11 This is an interview report of C-88 taken on  
12 the 5<sup>th</sup> of April, 1984.

13 Can you go back to the second page, please,  
14 Madam Clerk?

15 MR. ENGELMANN: And this should be C-88.

16 THE COMMISSIONER: Okay.

17 MR. ENGELMANN: Let me just make sure. Just  
18 go back to the top again?

19 THE COMMISSIONER: She changed -- she  
20 changed the document.

21 MR. ENGELMANN: Yeah, this is C-88.

22 THE COMMISSIONER: This is the one I just  
23 read?

24 MR. ENGELMANN: Right.

25 THE COMMISSIONER: Okay. So this is going

1 to be Exhibit Number 2563. It is an interview report of C-  
2 88 taken on the 27<sup>th</sup> of March '94.

3 --- EXHIBIT NO./PIÈCE NO. P-2563:

4 (111038) - Interview Report of C-88 dated  
5 March 27, 1994

6 THE COMMISSIONER: Now, Madam Clerk, can you  
7 go down to the second page so I can characterize this?

8 MR. ENGELMANN: I think the pertinent part  
9 is at the bottom half of the page.

10 THE COMMISSIONER: Yeah, I know. Okay.

11 So, for the record, it says that C-88 was on  
12 a trip to Florida with Father Charlie MacDonald.

13 Can you scroll back up, Madam Clerk?

14 Okay -- wherein he describes that on the  
15 trip they're both in a room and they are on single beds and  
16 -- here we go:

17 "We got into a bit of a wrestling  
18 match. I end up laying facedown on my  
19 bed and he was lying far down on my  
20 back. He attempted to go between my  
21 hip and the bed and touch my penis. I  
22 put all my weight on my hip so he could  
23 move his hand. He got off me and went  
24 to bed. I don't think he said  
25 anything. We were both in our

1 underwear during this."

2 Okay. Now, go back down, right at the ---

3 "During the incident..."

4 Scroll up a little bit:

5 "...I knew what he was trying but I  
6 didn't let myself believe it until I  
7 thought about it. I have not spoken to  
8 my mother about this but my wife has  
9 and my mother noticed a difference in  
10 my attitude when I got back from  
11 Florida."

12 So let's qualify it then as being a  
13 perceived unwanted sexual advance by a priest on an adult.

14 **MR. ENGELMANN:** I'm not sure if we have the  
15 age. I think it's 19 years.

16 **THE COMMISSIONER:** On a well, a young adult.  
17 Okay, next one?

18 **MR. ENGELMANN:** Sir, I have a different  
19 document number again, so I'm not sure of the document  
20 number my friend gave. The document number I have is  
21 110226.

22 **THE COMMISSIONER:** All right.

23 So this will be the interview report of C-89  
24 taken on the 5<sup>th</sup> day of April, '94.

25 Can we scroll through that, Madam Clerk?

1 Scroll down, please. Keep going down. Go ahead. Is that  
2 the end of the statement? All right, so on this one can  
3 you scroll back down to the -- or up, whatever. Go back  
4 down.

5 Did I give an exhibit number to this thing  
6 yet? What number should ---

7 **THE REGISTRAR:** Two-five-six-four (2564).

8 **THE COMMISSIONER:** Two-five-six-four (2564).

9 All right.

10 --- **EXHIBIT NO./PIÈCE NO. P-2564:**

11 (110226) Interview Report of C-90 dated  
12 April 5, 1994

13 **THE COMMISSIONER:** In this interview, the  
14 gentleman indicates that at one time -- can you scroll  
15 down, please -- he describes that he was over at Father  
16 Charlie's, he was sitting on a couch in the living room,  
17 they had a couple of drinks.

18 "Father Charlie started to rub my leg.  
19 I let him -- under my pants, pulled my  
20 fly down, took my penis out and jerked  
21 me off. I had an erection but I didn't  
22 think I ejaculated. This lasted less  
23 than half an hour. I can't remember if  
24 he said anything. I got up, pulled my  
25 pants up and left and went home. I

1                   have not told anyone about this."

2                   So on this one, we can say that it is not a  
3                   complaint. It's a description of an alleged incident that  
4                   would have occurred between Father Charles MacDonald and C-  
5                   89 who at that time was an adult, was he?

6                   **MR. ENGELMANN:** Would have been 19, I guess.

7                   **THE COMMISSIONER:** Nineteen (19), a young  
8                   adult. Okay.

9                   **MR. ENGELMANN:** Or 20.

10                  **THE COMMISSIONER:** Well, 19 or 20, there's  
11                  not much of a difference so we'll call him a young adult;  
12                  okay?

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

14                  **THE COMMISSIONER:** I know, yes, publication  
15                  ban.

16                  So it's a tie, I think one of which -- one  
17                  describes an allegation wherein it was an unwanted sexual  
18                  advance perceived by the alleged victim -- or the  
19                  complainant, I would say, who was complaining about. And  
20                  the second one is a neutral event in the sense that it  
21                  doesn't sound like a complaint necessarily. And there it  
22                  is.

23                  Okay, now that we've characterized that  
24                  properly ---

25                  **MR. ENGELMANN:** I just want to know how

1 Inspector Smith at the time characterized that, so ---

2 **THE COMMISSIONER:** Exactly.

3 **MR. ENGELMANN:** Mr. Smith, when you looked  
4 at the brief and when you were considering the evidence  
5 against Father MacDonald, you had the evidence of  
6 Mr. Silmsler and you've told us about that.

7 Did you at the time believe that there were  
8 four other victims of alleged sexual assault or sexual  
9 abuse?

10 **MR. SMITH:** As a result of these statements  
11 that we took?

12 **MR. ENGELMANN:** Well, these are -- there are  
13 21 names on the registry here, the list of 2562.

14 **MR. SMITH:** Those are put in the brief to  
15 send to the Regional Director, Crown Attorney's for  
16 recommendations.

17 The one alleged offence took place in the  
18 United States, of which we would have no jurisdiction. I  
19 believe that's the one that's in Pennsylvania, if you look  
20 further, on the way down to Florida. And the other one  
21 appeared to be consensual.

22 **MR. ENGELMANN:** Sir, I'm not asking about  
23 whether you laid charges, I'm asking you whether or not you  
24 considered that you had at least four or five other alleged  
25 victims of Father MacDonald back in -- at the time you were

1 putting this brief together -- you and Detective Constable  
2 Fagan were putting this brief together. And, if so, were  
3 these the individuals?

4 MR. SMITH: They were persons of interest to  
5 send to the Regional Director for recommendations, whether  
6 they were going to be used as similar fact or whether they  
7 were going to be victims. I would classify one, as the  
8 Commissioner has, as a possible victim and the other one as  
9 a possible consent, but I would like to have the Crown's  
10 opinion on that.

11 MR. ENGELMANN: Well, on the possible  
12 consent, you would have liked to explore that a bit more  
13 than what we saw in that statement, would you not, about  
14 what happened?

15 MR. SMITH: By "explore", what do you mean  
16 by that? Further ---

17 MR. ENGELMANN: Ask a few questions.

18 MR. SMITH: I didn't take those statements.

19 MR. ENGELMANN: All right, but if you had --

20 -

21 MR. SMITH: And I think we've been in that  
22 before, sir. The statements that I take personally are  
23 different than those.

24 MR. ENGELMANN: Okay, and you would have  
25 asked a few more questions, would you not have, with

1 respect to what happened?

2 MR. SMITH: I would, yes.

3 MR. ENGELMANN: Yeah, okay. So what I'm  
4 suggesting to you at the time is -- I understood that at  
5 the time, back in 1994 when you were doing this  
6 investigation, you were of the view that you had at least  
7 four or possibly five other alleged victims, other than  
8 David Silmsen?

9 MR. SMITH: Possible alleged victims, yes.

10 MR. ENGELMANN: Right. The reason I say  
11 that is because you used those terms yourself back then.  
12 So let's not talk about terms that are being used today,  
13 let's talk about terms that were being used back then, and  
14 I'll just take you to a statement if I can.

15 And that is -- it's Exhibit 1790. This is  
16 an interview, sir, you have with Bishop LaRocque.

17 MR. SMITH: Okay.

18 MR. ENGELMANN: And his counsel is present.  
19 I was going to come to this later but, given the  
20 introduction, I'd like to go to it now. The Document  
21 Number is 703764.

22 MR. SMITH: Yes, sir.

23 MR. ENGELMANN: And I'd like you to turn,  
24 Mr. Smith, to Bates page 7011444. It is also -- well, that  
25 -- it's page 39 of the typed statement.



1                   **MR. SMITH:** Yes, sir.

2                   **MR. ENGELMANN:** And about halfway down the  
3 page, you say:

4                                "You have copies of them, don't you?  
5                                Okay, at this point, then I think I can  
6                                tell you where our investigation has  
7                                gone with Father Charles. Still  
8                                incomplete..."

9                   By the way, this is September 12<sup>th</sup>, '94, all  
10 right.

11                               "...and I don't think we'll find any  
12                               more people that will come forward with  
13                               allegations other than the five we've  
14                               indicated, and that evidence will be  
15                               reviewed with Mr. Griffiths at the  
16                               completion of our entire investigation.  
17                               The recommendations that he gave to us  
18                               will..."

19 et cetera.

20                               So at this point you're indicating to Bishop  
21 LaRocque that you've got five, right, and I just want to  
22 make sure I've got the right five. Maybe there's others on  
23 that list that you can help me with because there seems to  
24 be some dispute as to whether some of these people are part  
25 of the five.

1 So if we could go back to 2562 ---

2 MR. SMITH: I say "five people" not "five  
3 victims".

4 MR. ENGELMANN: What were you attempting to  
5 refer to there, sir, if you weren't referring to ---

6 MR. SMITH: Well, initially, sir, you said  
7 that I said that there were five victims.

8 MR. ENGELMANN: That's how I read ---

9 MR. SMITH: Well, my statement says "any  
10 more" ---

11 THE COMMISSIONER: "...will come forward  
12 with allegations, other than the five  
13 we've indicated."

14 MR. SMITH: Yes.

15 THE COMMISSIONER: So there are five that  
16 have come forward with allegations?

17 MR. SMITH: Yes.

18 THE COMMISSIONER: Are we splitting hairs  
19 here?

20 MR. SMITH: Well, I guess so. Initially you  
21 say that I have victims that are not victims.

22 MR. ENGELMANN: No, sir, I wasn't saying  
23 that. I wasn't saying that. I was saying that my  
24 understanding was back when you did this investigation in  
25 1994 you believed that in addition to Mr. Silmsler you had

1 four or five other alleged victims, and I took you to this  
2 because we seemed to have some dispute about a couple of  
3 statements just now.

4 So what you've said here -- and I don't want  
5 to split hairs at all. What you've said here is:

6 "Still incomplete; I don't think we'll  
7 find anymore people that will come  
8 forward with allegations other than the  
9 five we've indicated."

10 And I'm assuming what you're saying is five  
11 individuals who've come forward with allegations, vis-à-vis  
12 Father Charlie; that there's been some kind of sexual  
13 misconduct on his part.

14 Do I have that wrong?

15 **MR. SMITH:** No, I'll agree with that.

16 **MR. ENGELMANN:** Okay. That's all I was  
17 trying to ---

18 **MR. SMITH:** Okay. And ---

19 **MR. ENGELMANN:** So if we go back to the list  
20 ---

21 **THE COMMISSIONER:** Hold it. He wants --  
22 there's an "and."

23 **MR. ENGELMANN:** Sorry. I apologize.

24 **MR. SMITH:** I agree with what you said  
25 there. Now, as far as going back to list which ones they

1 are, I can't remember, sir.

2 MR. ENGELMANN: Oh, okay. Because what I  
3 wanted to do, if we just looked at 2562 for a minute ---

4 MR. SMITH: If I may, yesterday I indicated  
5 that this portion of the investigation was conducted by --  
6 the lead investigator was Mike Fagan.

7 MR. ENGELMANN: Yes.

8 MR. SMITH: I'm supervisor of it. As the  
9 supervisor I'm not fully aware of everything that is done  
10 in his investigation. If he were to be called he's  
11 probably the better one to ask about a number of these  
12 things than myself many years after. But ultimately I'm  
13 still responsible for the file but the fine questions I'm  
14 having difficulties with those, sir, with memory.

15 MR. ENGELMANN: All right.

16 And clearly your memory was better then than  
17 it is today?

18 MR. SMITH: Oh, definitely.

19 MR. ENGELMANN: Okay. But at the time,  
20 given the comment you made to Bishop LaRocque -- and you  
21 weren't being dishonest with him then?

22 MR. SMITH: I tried not -- I never try to be  
23 dishonest with anybody that I interview.

24 MR. ENGELMANN: Fair enough.

25 So at the time you'd obviously read some of

1 the statements that your colleague had taken or you'd had  
2 discussions with him about them.

3 MR. SMITH: Yes.

4 MR. ENGELMANN: And you formed the belief --  
5 -

6 MR. SMITH: Yes, sir.

7 MR. ENGELMANN: --- that there were five  
8 individuals who had made allegations.

9 MR. SMITH: Yes, sir.

10 MR. ENGELMANN: All right.

11 So you can't tell us today whether the five  
12 are numbers one to five on this list?

13 MR. SMITH: No, I can't, sir.

14 MR. ENGELMANN: They could be other numbers?

15 MR. SMITH: There could be -- they could be.

16 MR. ENGELMANN: Or perhaps they're not even  
17 on this list?

18 MR. SMITH: That's possible also.

19 MR. ENGELMANN: All right.

20 And just with respect to the Crown brief,  
21 you have indicated that certainly for this part of the  
22 investigation Detective Constable Fagan took most of the  
23 interviews?

24 MR. SMITH: Yes, with the exception of, I  
25 think, the Bishop. He and, I think, Chris McDonnell took

1 some of the statements.

2 MR. ENGELMANN: And it would appear -- yeah.  
3 But would it be fair to say that before the Crown brief is  
4 submitted to the regional Crown in this case, that you  
5 would have reviewed the brief?

6 MR. SMITH: I would review all of the  
7 statements.

8 MR. ENGELMANN: Yes.

9 MR. SMITH: The brief itself I may not, the  
10 introduction. But I would review all the statements. And  
11 my recollection is that the briefs were put together -- and  
12 I can see by the holes on the side that we had a machine in  
13 Ottawa that made the briefs.

14 MR. ENGELMANN: Yes.

15 MR. SMITH: I was rarely there in Ottawa.  
16 So I imagine that -- I'm sure that Michael Fagan went back  
17 and prepared the briefs there ---

18 MR. ENGELMANN: Okay.

19 MR. SMITH: --- and then delivered them to  
20 the regional Crown.

21 I don't know if I reviewed the briefs  
22 completely.

23 MR. ENGELMANN: But the index of the brief  
24 is 2562. So we have a synopsis of statements. We have a  
25 Crown brief synopsis of the Cornwall police investigation.

1 Then we have a number of statements.

2 MR. SMITH: Now, before we put a brief  
3 together usually -- in most cases what we do is we put it  
4 together roughly ---

5 MR. ENGELMANN: Yes.

6 MR. SMITH: --- and then put it in order. I  
7 would look at it and then I would indicate to Fagan, okay,  
8 have it put together and deliver it.

9 MR. ENGELMANN: Okay.

10 MR. SMITH: So I would review the contents  
11 pretty well of all the briefs in rough.

12 MR. ENGELMANN: Okay.

13 MR. SMITH: And I may not have read them  
14 when they were prepared because I wasn't in Ottawa, and  
15 that's where they were going.

16 MR. ENGELMANN: Given that you were only two  
17 on this ---

18 MR. SMITH: Yes.

19 MR. ENGELMANN: --- it's probably fair to  
20 assume that you would have reviewed his work in some  
21 detail?

22 MR. SMITH: Yes.

23 MR. ENGELMANN: All right.

24 And it would be unlikely after you reviewed  
25 his work that he would put either new documents into the

1 brief or he'd extract documents from it?

2 MR. SMITH: I would hope not.

3 MR. ENGELMANN: Fair enough. All right.

4 Now, if we could go back then, again looking  
5 at 2562, you did not speak to either number three, who is  
6 C-3, or number four, who is C-56?

7 MR. SMITH: At some time I did speak to  
8 number three but that was later.

9 MR. ENGELMANN: Right.

10 MR. SMITH: But not during this portion, in  
11 '94.

12 MR. ENGELMANN: Yeah, I think we talked  
13 about that yesterday.

14 MR. SMITH: Yeah.

15 MR. ENGELMANN: I'll just be one moment,  
16 sir.

17 (SHORT PAUSE/COURTE PAUSE)

18 MR. ENGELMANN: I think perhaps, sir, to  
19 avoid any controversy about what might have been alleged,  
20 the statements from both of these individuals should go in.  
21 I don't want to have any trouble ---

22 THE COMMISSIONER: Which statements?

23 MR. ENGELMANN: C-3 and C-56 that were given  
24 to -- that were taken by Constable Fagan.

25 THE COMMISSIONER: They're not exhibits



1           already?

2                           **MR. ENGELMANN:** No.

3                           **THE COMMISSIONER:** All right.

4                           Do you have them here?

5                           **MR. ENGELMANN:** I'm sorry ---

6                           **THE COMMISSIONER:** I thought ---

7                           **MR. ENGELMANN:** I'm sorry; C-3's is.

8                           **THE COMMISSIONER:** Yeah.

9                           **MR. ENGELMANN:** It's Exhibit 419.

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

11                          **MR. ENGELMANN:** I apologize I hadn't given  
12 notice on these.

13                           C-56 is 716014.

14                          **THE COMMISSIONER:** Do we have these  
15 documents?

16                           Why don't we wait till we get the hard --  
17 are you going to put it to this gentleman?

18                          **MR. ENGELMANN:** He may want to have it  
19 handy. I'm going to ask a couple of questions ---

20                          **THE COMMISSIONER:** Sure.

21                          **MR. ENGELMANN:** --- and I don't want to have  
22 any ---

23                          **THE COMMISSIONER:** No. No, no, no, quite  
24 right.

25                           So you want to put --- there's one then.

1                   **MR. ENGELMANN:** Hopefully we have the  
2                   Exhibit 419.

3                   **THE COMMISSIONER:** We do. We do.

4                   **MR. ENGELMANN:** The document number for 419  
5                   first, which is C-3, is 716012. The document number for C-  
6                   56 is 716014.

7                                   **(SHORT PAUSE/COURTE PAUSE)**

8                   **MR. ENGELMANN:** Mr. Smith, you're able to  
9                   read Constable Fagan's writing?

10                   **MR. SMITH:** It's trying, but yes.

11                   **MR. ENGELMANN:** We can put it up on the  
12                   screen for you.

13                   **MR. SMITH:** I can read it.

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

15                   **MR. SMITH:** I can get through it, yes.

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

17                   **THE COMMISSIONER:** Is the other document an  
18                   exhibit yet?

19                   **MR. ENGELMANN:** No, the other document for  
20                   C-56 ---

21                   **THE COMMISSIONER:** Do we have it, Madam  
22                   Clerk?

23                   **MR. ENGELMANN:** Yes, we'll have it on the  
24                   screen only, sir. I apologize.

25                   **THE COMMISSIONER:** Oh, I thought you had

1 received some document there. Okay, fine. So let's put it  
2 on the screen.

3 **MR. ENGELMANN:** It is 716014.

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

5 **MR. ENGELMANN:** So maybe I could just ask --  
6 oh, sorry -- have you had an opportunity to look at Exhibit  
7 419, sir?

8 **MR. SMITH:** Yes, sir.

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

10 And would -- this would have been something  
11 you would have seen at some point in 1994, likely?

12 **MR. SMITH:** I can't remember, but possibly.

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

14 So it appears that your colleague would have  
15 called -- I thought we had 419 on the screen.

16 **THE COMMISSIONER:** No, that's not the right  
17 one.

18 **MR. ENGELMANN:** I just want to make sure  
19 we're all working off ---

20 **THE COMMISSIONER:** That's C-56. That's not  
21 the one you want. You want C-89 which is number five.

22 **MR. ENGELMANN:** No, sir. I'm looking for --  
23 I'm looking for Exhibit 419.

24 **THE COMMISSIONER:** Oh, okay, I'm sorry.

25 **MR. ENGELMANN:** Which is C-3.

1                   **THE COMMISSIONER:** Yeah.

2                   **MR. ENGELMANN:** I believe, Mr. Smith, you  
3 just had an opportunity to read that document?

4                   **MR. SMITH:** Yes, I read the hard copy.

5                   **MR. ENGELMANN:** If you could pull it up on  
6 the screen for me? All right.

7                   So it would appear that your colleague has a  
8 telephone call with this individual on February 16<sup>th</sup>, 1994?

9                   **MR. SMITH:** That's correct.

10                  **MR. ENGELMANN:** So even before you meet with  
11 Mr. Silmsler, Constable Fagan is calling C-3?

12                  **MR. SMITH:** Yes.

13                  **MR. ENGELMANN:** And he has about a 10-minute  
14 call with him? I'm just looking at the date and the time;  
15 correct?

16                  **MR. SMITH:** Yes.

17                  **MR. ENGELMANN:** All right. And whether you  
18 saw the document at the time or not, would you have been  
19 advised by Constable Fagan that C-3 didn't want to get  
20 involved or words to that effect?

21                  **MR. SMITH:** I was aware that he did not want  
22 to become involved. Now, whether I saw this or I was told,  
23 I don't know. It could be one or the other.

24                  **MR. ENGELMANN:** All right. Now, were you  
25 also told that C-3 had indicated to Constable Fagan that he

1 had written to the Bishop outlining some of the abuse that  
2 he claims to have suffered?

3 MR. SMITH: I don't remember. I don't  
4 remember that.

5 MR. ENGELMANN: All right, because it says  
6 in this statement that C-3 relates that to Constable Fagan;  
7 correct?

8 MR. SMITH: Yes.

9 MR. ENGELMANN: And then Constable Fagan  
10 asks him for a copy of the letter he wrote to the Bishop?

11 MR. SMITH: That's correct.

12 MR. ENGELMANN: And C-3 says he doesn't have  
13 it any longer?

14 MR. SMITH: That's correct.

15 MR. ENGELMANN: But then C-3 volunteers that  
16 the Bishop actually wrote back to him; correct?

17 MR. SMITH: Yes.

18 MR. ENGELMANN: Thanking him for writing and  
19 letting him know that Father MacDonald would not be sent  
20 back to another parish.

21 MR. SMITH: That's what the statement says,  
22 yes.

23 MR. ENGELMANN: So in other words, he's  
24 thanking this alleged victim for having written and  
25 assuring him that your suspect is not going to be in active

1 ministry?

2 MR. SMITH: That's what the statement says,  
3 yes.

4 MR. ENGELMANN: Right. And it doesn't  
5 appear that Constable Fagan asked for a copy of that letter  
6 from C-3.

7 MR. SMITH: It's certainly not in the  
8 statement.

9 MR. ENGELMANN: Okay. Would you agree, sir,  
10 that that would have been something that could be useful to  
11 you in your investigation, to get a copy of the letter from  
12 the Bishop and, in fact, a copy of the letter from C-3 to  
13 the Bishop?

14 MR. SMITH: Yes.

15 MR. ENGELMANN: Would you also agree that if  
16 Constable Fagan had met with C-3 to obtain that letter and  
17 had a further discussion with C-3, there might have been a  
18 possibility that he would have become involved or would  
19 have been willing to become involved?

20 MR. SMITH: It's a possibility, yes.

21 MR. ENGELMANN: Yeah, because you know  
22 yourself that he did become involved about a year later?

23 MR. SMITH: Yes. Later, yes.

24 MR. ENGELMANN: And the letter that he  
25 writes to the Bishop might give you some further

1 information as to his alleged abuse?

2 MR. SMITH: Yes, it would. He didn't want  
3 to report it to us.

4 MR. ENGELMANN: And ---

5 THE COMMISSIONER: Just a minute, just a  
6 minute.

7 So he didn't want to report to you is one  
8 thing.

9 MR. SMITH: Yes.

10 THE COMMISSIONER: All right. But going to  
11 the Bishop and saying, "Can I have that letter?" ---

12 MR. SMITH: M'hm.

13 THE COMMISSIONER: --- the complaint, would  
14 that not have given you some idea of the type of complaint  
15 and then you get to see whether or not there's similar  
16 facts or if there is anything like that, Mr. -- yes?

17 MR. KOZLOFF: Mr. Commissioner, I agree if  
18 the fact is that C-3 had already provided the details to  
19 Heidi Sebalj.

20 THE COMMISSIONER: I'm sorry?

21 MR. KOZLOFF: He had already provided those  
22 details to Heidi Sebalj a year earlier.

23 THE COMMISSIONER: Right.

24 MR. KOZLOFF: And indicated to her that he  
25 didn't want to get involved.

1                   **THE COMMISSIONER:** Yeah.

2                   **MR. KOZLOFF:** And then when Fagan approaches  
3 him in February of 1994, repeats that he doesn't want to  
4 get involved.

5                   **THE COMMISSIONER:** No, I understand that,  
6 Mr. Kozloff, but that's not the point.

7                   **MR. KOZLOFF:** I know, but you're asking him  
8 whether that would have provided him with the details that  
9 he didn't have.

10                  **THE COMMISSIONER:** Right.

11                  **MR. KOZLOFF:** That's pre-supposing that  
12 there would have been details provided by C-3 to the OPP  
13 that hadn't already been provided a year earlier by an  
14 unwilling witness to the Cornwall Police. That's my point.

15                  **THE COMMISSIONER:** Right, okay. Then, my  
16 next point then is, did he have that because if he didn't  
17 have that, then there's another little ---

18                  **MR. KOZLOFF:** That, sir, is an excellent  
19 question.

20                  **THE COMMISSIONER:** Well, thank you.

21                  **MR. KOZLOFF:** You're welcome.

22                  **THE COMMISSIONER:** Thank you.

23                                   **(LAUGHTER/RIRES)**

24                  **THE COMMISSIONER:** Thank you.

25                                   So did you have Sebalj's notes and



1 complaints with respect to this guy, C-89 -- C-3?

2 MR. SMITH: I can't remember.

3 THE COMMISSIONER: C-3.

4 MR. SMITH: I can't remember, sir.

5 MR. ENGELMANN: Well, there was a summary in  
6 the Crown brief, if I can call it that, that was prepared  
7 in October after the investigation by the CPS. There was a  
8 Crown summary prepared and I believe you were given a copy  
9 of that, sir. That would have been ---

10 MR. SMITH: October '93.

11 MR. ENGELMANN: October 6<sup>th</sup> of '93. And I'll  
12 just see if I have a copy of it here for you.

13 THE COMMISSIONER: Well, while we're going  
14 there, regardless of whether Sebalj had it in their notes,  
15 would you not agree that it would have been handy just to  
16 see what was going on, what C-3 would have said to the  
17 Bishop in his writings?

18 MR. SMITH: Yes.

19 THE COMMISSIONER: Well, okay. Let's go  
20 with that.

21 MR. ENGELMANN: And, in fact, just by way of  
22 reference, if the witness could be shown, it's Exhibit 416,  
23 sir. It's close to where you are.

24 THE COMMISSIONER: Four-one-six (416).

25 MR. ENGELMANN: Document Number 738039.

1                   **THE COMMISSIONER:** Well, wait a minute.

2                   Okay. So this is the letter that he sent?

3                   **MR. ENGELMANN:** Yeah.

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

5                   **(SHORT PAUSE/COURTE PAUSE)**

6                   **MR. SMITH:** Yes, sir.

7                   **MR. ENGELMANN:** All right. So there's some  
8 description of a concern but not a lot of detail ---

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

10                  **MR. ENGELMANN:** --- in this particular  
11 letter. Is that fair?

12                  **MR. SMITH:** Yes.

13                  **MR. ENGELMANN:** And the Crown brief, if I  
14 can call it that, that was prepared by Ms. Sebalj, and I  
15 believe you would have been provided a copy of this, sir.  
16 That is Exhibit 1249.

17                   Counsel, it's Document Number 728535.

18                   **(SHORT PAUSE/COURTE PAUSE)**

19                  **MR. SMITH:** Yes, sir.

20                  **MR. ENGELMANN:** Bates page 7113698. He's  
21 described on that page as number 8. I believe there's a  
22 little more detail here.

23                   **(SHORT PAUSE/COURTE PAUSE)**

24                  **MR. SMITH:** Yes, that's familiar. I've read  
25 that before.

1                   **MR. ENGELMANN:** Okay. And there's certainly  
2 more detail of the one act in Apple Hill than in his letter  
3 to the Bishop?

4                   **MR. SMITH:** Yes.

5                   **MR. ENGELMANN:** There's discussions about  
6 what happens earlier when he's an altar boy in both;  
7 correct?

8                   **MR. SMITH:** Yes.

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

10                   And, sir, irrespective of what information  
11 is in one and what information is in another, as a police  
12 officer coming back and investigating this matter after the  
13 Cornwall Police have looked at it and the Ottawa Police  
14 have looked at that investigation briefly, you would agree,  
15 would you not, that it would be important to try and obtain  
16 all the information you could from alleged victims of  
17 Father MacDonald?

18                   **MR. SMITH:** That's correct.

19                   **MR. ENGELMANN:** All right, and therefore  
20 obtaining C-3's letter to the Bishop and the response would  
21 have been useful in this investigation?

22                   **MR. SMITH:** Yes, sir.

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

24                   **MR. SMITH:** I may be able to help you out on  
25 this a little bit and shorten things up.

1 I don't remember this brief at all. It  
2 should have been part of this brief that went to the -- in  
3 its entirety to the Regional Crown. Why it wasn't, I don't  
4 know. Ultimately, I'm responsible for the investigation.  
5 If it didn't go, then that's my responsibility.

6 **MR. ENGELMANN:** Sir, I'm not sure if it  
7 didn't. If you look at 2562 -- do you have that handy?  
8 That's the index.

9 **MR. SMITH:** I think I lost it.

10 **THE COMMISSIONER:** It's around some place.

11 **MR. SMITH:** Yes, I've got it.

12 **MR. ENGELMANN:** B ---

13 **MR. SMITH:** Twenty-five-sixty-two (2562)?

14 **MR. ENGELMANN:** Yeah. It's the one we were  
15 looking at earlier when I was asking you about the four  
16 names.

17 **MR. SMITH:** Yes, I've got it here. Yes.

18 **MR. ENGELMANN:** I believe, but I don't know  
19 this for a fact, but I believe that B ---

20 **MR. SMITH:** The Crown brief synopsis of  
21 Cornwall Police -- yes.

22 **MR. ENGELMANN:** --- may have been what I  
23 just showed you.

24 I'm like you, Mr. Smith, I like to actually  
25 see things in the files, I know. So that may be what that

1 is, I don't know.

2 MR. SMITH: I can't say for sure but I would  
3 -- if you can assume that that would be it.

4 MR. ENGELMANN: All right.

5 MR. SMITH: And that makes me happier.

6 MR. ENGELMANN: All right.

7 But in any event, just to get back to my  
8 point dealing with C-3, an opportunity to have another  
9 meeting, maybe to get the letter, maybe to see if he'd be  
10 involved at that time, that all would have been something  
11 you would have preferred to have done?

12 MR. SMITH: Yes, and maybe I can expand a  
13 little bit on some of these cases that we've had in the  
14 past when we have a Crown Attorney.

15 We'll send our brief to the Crown Attorney  
16 for recommendations. Quite often within those  
17 recommendations he will indicate to us -- or she -- that  
18 they request further investigation or you missed this or  
19 you missed that.

20 When we get those instructions, we do it.  
21 Ideally, we should think of it in the first place but it's  
22 sort of a double-check.

23 MR. ENGELMANN: Yeah.

24 MR. SMITH: I can see portions of what went  
25 in this brief, that things by a Crown Attorney should have

1           been brought to our attention if he wasn't satisfied and we  
2           would have done it, but we should have had them there in  
3           the first place.

4                   **MR. ENGELMANN:** But that didn't happen here,  
5           did it?

6                   **MR. SMITH:** I don't ---

7                   **MR. ENGELMANN:** You weren't asked for  
8           follow-up from the Crown?

9                   **MR. SMITH:** I don't think so.

10                   **MR. ENGELMANN:** I didn't see it but, I mean  
11           ---

12                   **MR. SMITH:** But I don't recall that we got  
13           further instructions.

14                   **MR. ENGELMANN:** Sir, just one last thing on  
15           this, if I may, and that's Exhibit 419, so if you could  
16           just turn back a couple of tabs.

17                   **MR. SMITH:** Four-nineteen (419)?

18                   **MR. ENGELMANN:** Yeah. This is the C-3 phone  
19           call with Detective Constable Fagan.

20                   **MR. SMITH:** Yes.

21                   **MR. ENGELMANN:** There's one other comment  
22           that I just want to take you to. It's at the top of the  
23           second page. He says:

24                                    "He then received a call from the  
25                                    Bishop again thanking him for the

1 letter and wanting to know if..."

2 I think it says:

3 "...if he wanted Father Charlie to  
4 write him."

5 **MR. SMITH:** That's the way I read it.

6 **MR. ENGELMANN:** Almost suggesting that  
7 perhaps the Bishop is going to have Father MacDonald write  
8 to this person.

9 **MR. SMITH:** That appears to be, yeah.

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

11 Then with respect to C-56 -- and I think we  
12 might actually have a hard copy now.

13 **THE COMMISSIONER:** Thank you. Yes, we do  
14 have a copy of Exhibit 2565.

15 --- **EXHIBIT NO./PIÈCE NO. P-2565:**

16 (716014) Interview Report of C-56 dated 19  
17 Mar, 94

18 **MR. SMITH:** Thank you.

19 **MR. ENGELMANN:** I'm sorry, sir, 25 ---

20 **THE COMMISSIONER:** Six-five (65).

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

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** And just to complete the  
24 record, Exhibit 1249 again, which is the work of Ms.  
25 Sebalj, there is a reference to this -- to a statement he

1 would have given to them at page -- it's Bates page  
2 7113710. It's page 18 of that synopsis.

3 MR. SMITH: Yes, I see a statement here.

4 MR. ENGELMANN: The reference is perhaps the  
5 fourth paragraph from the bottom.

6 MR. SMITH: Yes, sir.

7 MR. ENGELMANN: And it gives a little more  
8 detail about the impact. Do you see that?

9 (SHORT PAUSE/COURTE PAUSE)

10 MR. SMITH: Yes, sir.

11 MR. ENGELMANN: So sometimes even one act  
12 and the touching or whatever does have impact on  
13 individuals.

14 MR. SMITH: Oh, definitely.

15 MR. ENGELMANN: Yeah. And again, in this  
16 case whether he is 17, 18 as described in the statement  
17 with Constable Fagan or he's 18 as described in the  
18 statement, I believe given to Constable Sebalj, it would  
19 appear that this was unwanted?

20 MR. SMITH: Yes, uninvited. Yes.

21 MR. ENGELMANN: Now, in this -- at the time  
22 when he gave the statement to Constable Fagan it appears he  
23 came in to the station in Ottawa. If I'm reading that  
24 right it says Ottawa something brackets?

25 MR. SMITH: Any brackets.



1                   **MR. ENGELMANN:** Would that be an OPP  
2                   station?

3                   **MR. SMITH:** Yes, that was on Bell's Corners.

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

5                   So he comes in and speaks with Constable  
6                   Fagan for about half an hour, according to the document;  
7                   correct?

8                   **MR. SMITH:** Well, at least half an hour,  
9                   yes.

10                  **MR. ENGELMANN:** Okay. I'm just looking at  
11                  the time. It says 10:00, 10:30.

12                  **MR. SMITH:** Well, usually the time started  
13                  and the time finished but there's usually some preamble  
14                  before.

15                  **MR. ENGELMANN:** Okay.

16                  **MR. SMITH:** And there might be some after so  
17                  ---

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

19                  **MR. SMITH:** --- there would be at least a  
20                  half an hour, sir.

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

22                  And he's restating a similar allegation to  
23                  the one that was given to the Cornwall Police Service?

24                  **MR. SMITH:** That's correct.

25                  **MR. ENGELMANN:** And he, like C-3, is a

1 former altar boy?

2 MR. SMITH: Correct.

3 MR. ENGELMANN: At St. Columban's right  
4 around the same time as Mr. Silmser?

5 MR. SMITH: And he refers to Mr. Silmser, I  
6 believe.

7 MR. ENGELMANN: Okay. And during the Sebalj  
8 investigation this individual had indicated that he wanted  
9 -- he did not want to file a formal complaint but was  
10 willing to testify as a witness. I haven't seen anything  
11 here that would suggest that he had changed his mind on  
12 that; in other words, that he would be involved but not as  
13 a formal complainant.

14 Were you aware of that, sir?

15 MR. SMITH: I can't remember.

16 MR. ENGELMANN: All right.

17 Well, at least in his statement he's  
18 certainly not suggesting he's unwilling; correct?

19 MR. SMITH: No, I don't see anything in his  
20 statement that indicates that's he's not willing.

21 MR. ENGELMANN: And unlike C-3 he agrees to  
22 go down to the station and do it in person?

23 MR. SMITH: That's correct.

24 MR. ENGELMANN: All right.

25 Now, just to go back to your notes then, if

1 we can, sir, 1803?

2 By the way, the last one we've looked at,  
3 the 2565, the interview date was March 19<sup>th</sup> '94, okay, for  
4 C-56. So we seem to have interviews taking place in  
5 February, in March, and then there was one in early April.

6 **MR. SMITH:** Okay.

7 **MR. ENGELMANN:** This is Constable Fagan's  
8 work on the possible sexual assault.

9 **MR. SMITH:** Of Father Charles, yes.

10 **MR. ENGELMANN:** Yes. And in your notes you  
11 indicate at Bates page 221, the date is 25 April '94 ---

12 **MR. SMITH:** Yes.

13 **MR. ENGELMANN:** --- "Speak with Mike Fagan,  
14 meet tomorrow to prepare brief on  
15 Silmser complaint."

16 I'm not sure what the next word is. Is it  
17 transcript?

18 **MR. SMITH:** "...transcript re interview of  
19 Silmser proofread and submitted for  
20 typing."

21 **MR. ENGELMANN:** And you talked to us  
22 yesterday about some of the delay in getting that done.

23 **MR. SMITH:** I had a lot of difficulties.  
24 The Premier the day had decided to cut funding in  
25 secretaries throughout all the government agencies and I

1           imagine yours if you were there was one of them.

2                   **MR. ENGELMANN:** Social contract days.

3                   **MR. SMITH:** Exactly, and the first ones to  
4 go were our secretaries.

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

6                   **MR. SMITH:** We scrambled.

7                   **MR. ENGELMANN:** But it appears from this  
8 note, and also a note we looked at yesterday, that  
9 Inspector Hamelink had written that you were preparing or  
10 anticipating that this brief would be finished sometime  
11 around late April or May.

12                   **MR. SMITH:** Yes, at that time but then,  
13 again, as I said yesterday, with sexual abuse you never  
14 know. You can't put a deadline on things. You can say,  
15 "I'd hoped to have it done by such and such a time" but I  
16 think I had indicated that realistically that by Christmas  
17 we would have it wrapped up.

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

19                   **MR. SMITH:** I was prepared for lulls, hoping  
20 that the press might generate some people come forward  
21 because I know that they were listening to the press and as  
22 a result we did have some people call.

23                   **MR. ENGELMANN:** But I believe by this point  
24 in time the alleged victims, if I can use that term, or the  
25 five people you referred to that alleged some impropriety,

1           they had already come in by then.

2                   **MR. SMITH:** I think so, yes.

3                   **MR. ENGELMANN:** Right. And you had not yet  
4 interviewed Father MacDonald ---

5                   **MR. SMITH:** No.

6                   **MR. ENGELMANN:** --- because that happens in  
7 June.

8                   **MR. SMITH:** And he was in Southdown.

9                   **MR. ENGELMANN:** Yeah.

10                  **MR. SMITH:** We had discussed that yesterday.

11                  **MR. ENGELMANN:** Yes, we did. And you had  
12 not started your interviews on the obstruct justice issue  
13 with the lawyers? I think they all happened later?

14                  **MR. SMITH:** I believe so, yes.

15                  **MR. ENGELMANN:** Right, okay. And you had  
16 not yet met Chief Shaver?

17                  **MR. SMITH:** No.

18                  **MR. ENGELMANN:** You indicated that you at  
19 least wanted to speak to him about the conspiracy issue.

20                  **MR. SMITH:** Yes. It seems that I recall  
21 that he was down south at that time and he wouldn't be back  
22 until perhaps -- I think it was June or July.

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

24                  **MR. SMITH:** Tampa, I believe.

25                  **MR. ENGELMANN:** I think Florida is probably

1 a safe bet given ---

2 MR. SMITH: I think it was Tampa.

3 MR. ENGELMANN: All right.

4 Now, we understand that these three  
5 investigations, the briefs on these investigations, were  
6 all submitted together, I believe in November of '94?

7 MR. SMITH: Yes.

8 MR. ENGELMANN: Or thereabouts?

9 MR. SMITH: Thereabouts, yes.

10 MR. ENGELMANN: Yeah. And you received  
11 responses on at least two of them shortly before Christmas?

12 MR. SMITH: Yes.

13 MR. ENGELMANN: And on a third one it's  
14 delayed, I believe, until the following year?

15 MR. SMITH: Yes.

16 MR. ENGELMANN: And we discussed the time of  
17 these briefs. And had you -- you had confirmed with the  
18 fellow inspector, Hamelink, that you were going to try and  
19 do these together late in the year or had that been  
20 confirmed by this time?

21 MR. SMITH: Actually, what happened was that  
22 I called. I've got notes on it. I think it was the 27<sup>th</sup> of  
23 November. Let me check.

24 MR. ENGELMANN: Well, if it's that late,  
25 sir, we can come to it a bit later. I won't forget.

1           **MR. SMITH:** Well, you're asking the question  
2           and it goes in around that -- in that period, I believe, of  
3           what you want ---

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

5           **MR. SMITH:** --- answer for me about that.

6           **MR. ENGELMANN:** All right. The 27<sup>th</sup> of  
7           November?

8           **MR. SMITH:** Was it 27<sup>th</sup>, okay.

9           **THE COMMISSIONER:** And are you referring to  
10          your notes now?

11          **MR. SMITH:** Yes.

12          **THE COMMISSIONER:** In what exhibit?

13          **MR. SMITH:** I'm sorry.

14          **MR. ENGELMANN:** Eighteen zero three (1803).

15          **MR. SMITH:** Once I find it ---

16          **THE COMMISSIONER:** Eighteen zero three  
17          (1803), no, no, that's fine.

18          **MR. ENGELMANN:** It's 1803.

19          **THE COMMISSIONER:** Okay.

20          **MR. ENGELMANN:** You have a reference to it  
21          at the top of Bates page 232 talking to Peter Griffiths.

22          **MR. SMITH:** Actually on the 6<sup>th</sup> -- 4<sup>th</sup> of  
23          October, and that's Bates 1054231 at the top of the page.

24          **MR. ENGELMANN:** Yes.

25          **MR. SMITH:** Second paragraph of the entry:

1 "Call from Peter Griffiths re update on  
2 investigation. Request we finish  
3 same."

4 **THE COMMISSIONER:** "Soon."

5 **MR. SMITH:** "... soon. It has been  
6 dragging. Advised we will expedite and  
7 have same forwarded to him by the 4<sup>th</sup> of  
8 November."

9 So at that point -- I don't have a note of  
10 it but I recall either that date or within a day or two I  
11 contacted Inspector Hamelink in regard to comparing our  
12 briefs and statements.

13 **MR. ENGELMANN:** So that would have been in  
14 early November?

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** Right after the call with  
17 Griffiths?

18 **MR. SMITH:** Probably that day or when I got  
19 off the phone, I would imagine. And it was indicated to me  
20 that his investigation was complete, that Mr. Griffiths had  
21 reviewed it and that there were to be no charges. Mr.  
22 Griffiths hadn't told me that -- hadn't told me that.

23 **MR. ENGELMANN:** So that came as a surprise  
24 to you?

25 **MR. SMITH:** Yes.



1                   **MR. ENGELMANN:** And what was your  
2 understanding of how that was supposed to work?

3                   **MR. SMITH:** My understanding was that before  
4 it went to Mr. Griffiths that we were to meet and compare  
5 the briefs and see if there was anything that related to  
6 both of them.

7                   **MR. ENGELMANN:** And one of the things I  
8 think you told us you had hoped to do was have an  
9 opportunity to review each and every one of his statements  
10 and for him to do the same with yours.

11                   **MR. SMITH:** Well, yes, get together and  
12 compare everything that we had to see that we didn't --  
13 that I didn't have something that he required or vice  
14 versa.

15                   **MR. ENGELMANN:** So that you would capture  
16 things like one of those statements I showed you yesterday,  
17 the one from Jos van Diepen, for example.

18                   **MR. SMITH:** Hopefully, yes.

19                   **MR. ENGELMANN:** So you never had an  
20 opportunity to do that?

21                   **MR. SMITH:** No, sir.

22                   **MR. ENGELMANN:** All right. And I presume at  
23 that time that was something that was disappointing, if I  
24 can use that term?

25                   **MR. SMITH:** To put it mildly, yes.

1                   **MR. ENGELMANN:** All right. Did you express  
2 your displeasure about what had happened to your fellow  
3 inspector at that time?

4                   **MR. SMITH:** He was -- yes, very much so.

5                   **MR. ENGELMANN:** And did you follow that up  
6 with a discussion with a superior because you were of equal  
7 rank?

8                   **MR. SMITH:** Yes, I did.

9                   **MR. ENGELMANN:** When would that have been,  
10 sir?

11                   **MR. SMITH:** That would be within a few days  
12 or that day.

13                   **MR. ENGELMANN:** And who would you have  
14 spoken to about it?

15                   **MR. SMITH:** Superintendent Edgar or, at the  
16 time, maybe Chris Lewis.

17                   **MR. ENGELMANN:** Okay.

18                   **MR. SMITH:** I didn't make a note of it but I  
19 -- they were definitely made aware of it.

20                   **MR. ENGELMANN:** All right. And what would  
21 you have told one of your supervisors about that?

22                   **MR. SMITH:** About my displeasure that the  
23 agreement that we'd had wasn't lived up to and that I was  
24 bitterly disappointed.

25                   **MR. ENGELMANN:** Do you think, sir -- I don't

1 know if the brief had gone off and -- his brief had gone  
2 off. Was it possible for you still at that point to  
3 extract or get his brief so that you could review it for  
4 your own purposes?

5 **MR. SMITH:** My understanding was that it was  
6 with Mr. Griffiths, so that being the case I would expedite  
7 ours and he could review both of them to see if there was  
8 anything there.

9 **MR. ENGELMANN:** But he'd already made a  
10 decision on the extortion issue.

11 **MR. SMITH:** On extortion, but there may have  
12 been something else in there that he would see. He may  
13 have picked up that.

14 **THE COMMISSIONER:** So did you write to  
15 Mr. Griffiths and say, "Listen, this is what happened, and  
16 so I want you to look at both of them because I had planned  
17 to do that and I can't. So you have them both. Please do  
18 that"?

19 **MR. SMITH:** I don't think I -- I don't  
20 recall writing to him, sir.

21 **THE COMMISSIONER:** Calling him, advising  
22 him?

23 **MR. SMITH:** I may have when the brief was --  
24 I have a call on the 8<sup>th</sup> of November, and advised him that  
25 the briefs were complete and I'm getting further typing

1 done and that they would be coming as soon as I could get  
2 that done. And then again I called him on the 8<sup>th</sup> of  
3 December.

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

5 **MR. SMITH:** They were done, or they'd be  
6 done by Friday. Then I called him again on the ---

7 **THE COMMISSIONER:** Somewhere in December  
8 there.

9 **MR. SMITH:** I made a mistake on that. I  
10 don't know the exact date that they were delivered. I'd  
11 have to read my notes.

12 **(SHORT PAUSE) / (COURTE PAUSE)**

13 **MR. ENGELMANN:** So sir, is it likely that  
14 the individual you would have contacted about your concerns  
15 would have been Detective Superintendent Larry Edgar?

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** And he might have taken that  
18 up with Chris Lewis?

19 **MR. SMITH:** I think Chris Lewis was the  
20 Deputy Director then at that time -- or acting.

21 **MR. ENGELMANN:** And excuse my ignorance but  
22 would that mean he would have been the supervisor of Mr.  
23 Edgar?

24 **MR. SMITH:** Oh no, he's an inspector. He's  
25 one rank below -- he's the -- Larry Edgar ---

1                   **MR. ENGELMANN:** I should know this by now.

2                   **MR. SMITH:** Superintendent Edgar is the  
3                   Director.

4                   **MR. ENGELMANN:** Yes.

5                   **MR. SMITH:** The Deputy Director is an  
6                   inspector.

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

8                   **MR. SMITH:** Same rank as I am ---

9                   **MR. ENGELMANN:** Okay.

10                  **MR. SMITH:** --- but he's an administrative  
11                  officer that takes calls, and in the absence of the  
12                  Director he takes over that position.

13                  **MR. ENGELMANN:** So Mr. Edgar may have asked  
14                  Mr. Lewis to try and work this issue out between you and  
15                  your colleague, Mr. Hamelink?

16                  **MR. SMITH:** He could have.

17                  **THE COMMISSIONER:** Okay, but getting to my  
18                  question, I know you phoned Griffiths, all right, but my  
19                  question is did you advise him of the situation and say,  
20                  "Listen, Mr. Griffiths, I wanted to look at the other brief  
21                  so that I can see if there's anything overlapping.  
22                  Unfortunately the brief went to you, so I'm sending you my  
23                  brief. Could you please look at it as a global thing to  
24                  make sure that all the angles are covered?"

25                  **MR. SMITH:** I can't recall, sir.

1                   **THE COMMISSIONER:** Thank you.

2                   **MR. ENGELMANN:** Now, in this particular  
3 investigation, unlike the one done by the Cornwall police,  
4 there was an interview with Father Charles MacDonald;  
5 correct?

6                   **MR. SMITH:** Yes, Fagan conducted one. Yes.

7                   **MR. ENGELMANN:** Right. And that would have  
8 taken place in June of 1994, I believe. And if we look at  
9 your notes, sir, at -- just to refresh your memory, it's  
10 Bates page 221. Can you just tell us ---

11                   **MR. SMITH:** Yes, sir.

12                   **MR. ENGELMANN:** --- what we see at June 6<sup>th</sup>  
13 and June 7<sup>th</sup>?

14                   **MR. SMITH:** Yes.

15                   **MR. ENGELMANN:** Can you just read that for  
16 us? It's a bit difficult to read.

17                   **MR. SMITH:** "Fagan to interview MacDonald,  
18 Malcolm and Charlie, tomorrow at Long  
19 Sault. Questions to ask prepared.  
20 Hope to video same."

21                   And on the 7<sup>th</sup>:

22                   "Fagan advises MacDonald will not  
23 consent to video but audio. Okay to be  
24 done at 1400 hours this date. Will  
25 advise."

1 Or take -- he'll advise me how ---

2 MR. ENGELMANN: All right. So just a couple  
3 of questions then.

4 The interview did take place on June 7<sup>th</sup>;  
5 correct?

6 MR. SMITH: Yes.

7 MR. ENGELMANN: You were not involved?

8 MR. SMITH: No.

9 MR. ENGELMANN: It says on June 6<sup>th</sup>,  
10 "Questions" -- again, sir, I'm sorry, "Questions prepared"  
11 or "Questions ---"

12 MR. SMITH: Yes.

13 MR. ENGELMANN: What's between "Questions"  
14 and "prepared"?

15 THE COMMISSIONER: "Questions to ask"?

16 MR. SMITH: "Questions to ask."

17 MR. ENGELMANN: Prepared, all right.

18 So sir, would Constable Fagan have sent you  
19 the questions that he was going to be asking Father  
20 MacDonald?

21 MR. SMITH: No, I think I made -- I know I  
22 made up a list and I faxed it to him, I believe.

23 MR. ENGELMANN: So you would have given him  
24 some questions?

25 MR. SMITH: It's an exhibit someplace.

1 MR. ENGELMANN: Okay.

2 MR. SMITH: I've seen it.

3 MR. ENGELMANN: Okay.

4 THE COMMISSIONER: Well, you've seen it in  
5 your package of documents in preparation. Is that what  
6 you're saying?

7 MR. SMITH: Well, it was given to me.

8 THE COMMISSIONER: Right, right, not -- it's  
9 not necessarily in the exhibit.

10 MR. SMITH: Oh, I'm sorry. I've seen it.

11 THE COMMISSIONER: It's in the database  
12 someplace. And we may well be an exhibit. I don't know  
13 yet.

14 MR. SMITH: I'm sorry.

15 THE COMMISSIONER: No, no.

16 MR. SMITH: I've seen it in preparation for  
17 the hearing.

18 MR. ENGELMANN: Okay. Well, Exhibit --  
19 sorry, Document Number 110195 is the document I'd like to  
20 show you. You don't have it yet, sir.

21 This is a statement of Father Charles  
22 MacDonald.

23 THE COMMISSIONER: I'm sorry?

24 MR. ENGELMANN: Two two five one (2251).

25 THE COMMISSIONER: Two two five one (2251).



1 MR. ENGELMANN: It's not in here.

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. ENGELMANN: I believe this was entered  
4 when the ODE was entered of Father MacDonald. Yeah.  
5 So it's Exhibit 2251, Document Number  
6 110195.

7 MR. SMITH: Yes, I have it.

8 MR. ENGELMANN: All right.

9 And you've seen this document before, sir?

10 MR. SMITH: Yes, sir.

11 MR. ENGELMANN: And you believe you'd seen  
12 another document that set out some prepared questions  
13 before as well?

14 MR. SMITH: Yes, sir.

15 MR. ENGELMANN: All right.

16 It appears that this interview was conducted  
17 by Mike Fagan?

18 MR. SMITH: Yes, sir.

19 MR. ENGELMANN: And that there was another  
20 police officer there by the name of Norman Hurtubise?

21 MR. SMITH: That's correct.

22 MR. ENGELMANN: And who is he, sir?

23 MR. SMITH: He's another officer at Long  
24 Sault Detachment.

25 MR. ENGELMANN: Okay. And do you remember

1           why you were not present for this interview, sir?

2                       **MR. SMITH:** I was either in Windsor or in  
3           Kingston -- not -- Windsor or Whitby. I was at the --  
4           sitting on a panel in around that period on the Ontario  
5           Association of Community Living; it was a conference. Or I  
6           was at Whitby Court for one of the Brothers that were  
7           charged at St. John's training centre.

8                       It was my intention to be there for the  
9           interview but for some reason or other I couldn't make  
10          that.

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

12                      **MR. SMITH:** But for that reason I wasn't  
13          there. That's why I prepared some questions that I wanted  
14          Fagan to address.

15                      **MR. ENGELMANN:** Okay. Because you told us  
16          yesterday that it was important for you to be at the  
17          important interviews. I believe when you used that term  
18          you talked about with the lawyer, when lawyers were present  
19          with some of the lawyers on the obstruct you wanted to be  
20          part of those interviews.

21                      **MR. SMITH:** That was my intention, yes.

22                      **MR. ENGELMANN:** Yeah. You'd agree that this  
23          was an important interview, the interview of Father  
24          MacDonald?

25                      **MR. SMITH:** Yes, but let me expand that. I

1        tried to conduct interviews of a number of religious people  
2        in the past and basically all I got from them was denial  
3        and self-serving statements. But what we did get mostly  
4        was that there was a knowledge between themselves and the  
5        victim which I was -- that helped -- that assisted.

6                    **MR. ENGELMANN:** Right.

7                    **MR. SMITH:** So I got -- and I felt that  
8        Fagan was fully capable of conducting these interviews.  
9        He's done them before with a number of people. He was with  
10       me for three years. We discussed this before and I said  
11       had I been there the interview would have been conducted  
12       differently, that Malcolm MacDonald wouldn't control it.

13                   **MR. ENGELMANN:** It does seem just from  
14       reviewing it that he intervenes very often.

15                   **MR. SMITH:** I wouldn't permit that myself if  
16       I was to conduct that interview.

17                   **MR. ENGELMANN:** Even though you were likely  
18       to get a denial, based on your experience, and that was  
19       your belief, you did say you could confirm some important  
20       facts?

21                   **MR. SMITH:** Yes.

22                   **MR. ENGELMANN:** The relationship?

23                   **MR. SMITH:** Yes.

24                   **MR. ENGELMANN:** In this case the fact that  
25       Father MacDonald was in charge of altar boys, Mr. Silmsen

1 was an altar boy, some of these other individuals were an  
2 altar boy. Some of these questions obviously were  
3 important to put to Father MacDonald; correct?

4 MR. SMITH: Yes. Do you have the list of  
5 questions that I ---

6 MR. ENGELMANN: I don't have it handy, sir.

7 THE COMMISSIONER: We'll find it on the  
8 break.

9 MR. ENGELMANN: Yeah, I'll get it at break.

10 MR. SMITH: That may be helpful ---

11 MR. ENGELMANN: Okay.

12 MR. SMITH: --- for further questions  
13 because those are the questions, the main ones that I would  
14 have asked.

15 MR. ENGELMANN: All right.

16 MR. SMITH: The other thing that you can get  
17 quite often from interviews and -- lawyers talk quite a bit  
18 when you do interviews, a number of them, and you can pick  
19 up possibly their defence.

20 MR. ENGELMANN: But you would agree with me  
21 that in cases of historical importance, sexual assault,  
22 sexual abuse, often there are no witnesses to the actual  
23 acts; correct?

24 MR. SMITH: The ones that I was involved in  
25 prior to this, very often we had witnesses because they

1           were institutional.

2                       **MR. ENGELMANN:** All right, in a non-  
3           institutional setting.

4                       **MR. SMITH:** Well, this was the first time  
5           that I had done investigations of a non-institution  
6           historical, male -- male on male.

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

8                       **MR. SMITH:** I don't think that I was  
9           qualified at that time to make a statement such as that.

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

11                      Well, you didn't have any witnesses to the  
12           allegations of Mr. Silmsler in this case -- any eye  
13           witnesses. I apologize. Maybe I'm not making myself  
14           clear.

15                      **MR. SMITH:** Well ---

16                      **MR. ENGELMANN:** Possible exception of people  
17           who were at this retreat.

18                      **MR. SMITH:** At the retreat there could be,  
19           yeah.

20                      **MR. ENGELMANN:** Okay.

21                      **MR. SMITH:** Yeah, there could be.

22                      **MR. ENGELMANN:** Okay. But the other three  
23           allegations he made?

24                      **MR. SMITH:** They were without anybody  
25           present, yes.

1                   **MR. ENGELMANN:** Right. And typically in a  
2 historical case you're not going to have forensic evidence?

3                   **MR. SMITH:** No, that would be long gone.

4                   **MR. ENGELMANN:** Right. And therefore  
5 credibility issues come into play?

6                   **MR. SMITH:** Yes.

7                   **MR. ENGELMANN:** An effort to find perhaps  
8 other victims or alleged victims ---

9                   **MR. SMITH:** Correct.

10                  **MR. ENGELMANN:** --- either for further  
11 complainants or similar fact evidence?

12                  **MR. SMITH:** Correct.

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

14                                 And therefore, the interview of the suspect  
15 might have a significant impact on the case?

16                  **MR. SMITH:** More likely to happen without  
17 the presence of the lawyer.

18                  **MR. ENGELMANN:** Fair enough; fair enough.  
19 And there was no question that this fellow had a lawyer?

20                  **MR. SMITH:** Well, he did all the talking.

21                  **MR. ENGELMANN:** Yeah.

22                                 And did you think about possibly  
23 rescheduling this interview because of your unavailability?  
24 Do you recall?

25                  **MR. SMITH:** No. I think there was some

1 period of time I had been attempting to get Father  
2 MacDonald and I was anxious to have that interview done.

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

4 **MR. SMITH:** And I had faith that Detective  
5 Fagan could conduct the interview.

6 **MR. ENGELMANN:** Okay. Did you have any  
7 discussion with Detective Inspector Hamelink before to see  
8 if there were some questions that he might want to put to  
9 Father MacDonald?

10 **MR. SMITH:** No.

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

12 But you certainly either prepared questions  
13 or had input into questions that Detective Constable Fagan  
14 was to ask?

15 **MR. SMITH:** I've said that.

16 **MR. ENGELMANN:** Yeah.

17 **MR. SMITH:** Two times, yes, sir.

18 **MR. ENGELMANN:** And those questions could  
19 have included not just -- not just questions about the  
20 allegations against him but also some questions about the  
21 conspiracy case and/or the obstruct justice with the  
22 settlement?

23 **MR. SMITH:** I can't recall. Those were on  
24 the list of questions that I gave to him.

25 **MR. ENGELMANN:** Fair enough, but those were

1 all issues that questions could have been asked of Father  
2 MacDonald?

3 **MR. SMITH:** They could be, but my  
4 understanding of this is that he had little if anything to  
5 do with the settlement other than being -- I think  
6 contributing some money.

7 **MR. ENGELMANN:** Fair enough, but if he is  
8 contributing some money he's got a lawyer, he's the  
9 principal.

10 **MR. SMITH:** Yeah.

11 **MR. ENGELMANN:** He's going to have some  
12 knowledge of the settlement which might be relevant to you  
13 on your obstruct justice investigation.

14 **MR. SMITH:** It could. Ultimately, the  
15 obstruct justice was laid and there was a conviction or a  
16 finding of guilty.

17 **MR. ENGELMANN:** It was laid against one  
18 person?

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** It wasn't laid against any  
21 of the principals and it was only laid against one of the  
22 lawyers; correct?

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

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

25 Now, in addition to preparing questions,



1 would you have reviewed some of the background facts with  
2 Constable Fagan before he went in to do the interview?

3 **MR. SMITH:** I would imagine we did, yes.

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

5 And just looking at the statement then.

6 **(SHORT PAUSE/COURTE PAUSE)**

7 **MR. ENGELMANN:** In the statement, at page --  
8 Bates page 258, it's the third page, Constable Fagan, in  
9 answer to a question from the lawyer, Malcolm MacDonald,  
10 says the year he was an altar boy between 1968 and 1972,  
11 four years. Do you see that?

12 **MR. SMITH:** Yes.

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

14 And do you recall, sir, in the videotaped  
15 interview that Mr. Silmsner would have given to you, there  
16 was some confusion about how old he was and when he became  
17 an altar boy?

18 **MR. SMITH:** Yes.

19 **MR. ENGELMANN:** In his handwritten statement  
20 in his own words, he said:

21 "In 1969, at the age of 11, my family  
22 moved from [and he gives two different  
23 addresses in Cornwall]. That year I  
24 started grade 5 at St. Columban's  
25 School so Perry was a year back. I

1 finished the year with excellent marks.  
2 When I started grade 6 at the age of  
3 12, I joined the altar boys at St.  
4 Columban's."

5 And it goes on. So in his handwritten  
6 statement, it suggests that he doesn't become an altar boy  
7 until he's 12 and that would be 1970.

8 Now, would you agree with me that there  
9 would be ways to determine when he moved, what years he was  
10 at different schools, and when he became an altar boy? In  
11 other words, to clarify the distinction between the two  
12 versions you had from Mr. Silmsner ---

13 **MR. SMITH:** I believe ---

14 **MR. ENGELMANN:** --- his handwritten  
15 statement and the videotape?

16 **MR. SMITH:** I believe there was an attempt  
17 to do that.

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

19 And, sir, the other thing that you could  
20 verify is when Father MacDonald was a priest at St.  
21 Columban's.

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** Okay. And we know from  
24 documents here that he becomes a priest at St. Columban's  
25 in 1969.

1                   **MR. SMITH:** That's correct.

2                   **MR. ENGELMANN:** So the age issue and some of  
3 the background fact-checking would be important, would it  
4 not, before putting facts to Father MacDonald in an  
5 interview if you're hoping to even establish the dates, the  
6 times, et cetera that he'd be involved with Mr. Silmser?

7                   **MR. SMITH:** It would be helpful, yes.

8                   **MR. ENGELMANN:** Yeah. And it appears that  
9 what's put to him by Mr. -- sorry, Constable Fagan is that  
10 he's an altar boy in '68 and then I believe within about  
11 four months, there's a suggestion that Father MacDonald has  
12 done something to him?

13                   **MR. SMITH:** Well, where do I see that, sir?

14                   **MR. ENGELMANN:** Well, if you look at the  
15 bottom of Bates page 257, this is Mr. Fagan -- Constable  
16 Fagan -- second page.

17                   The first allegation is that Mr. Silmser  
18 reports that he was an altar boy at St. Columban's Parish  
19 in Cornwall, Ontario and at the time "you were in charge of  
20 the altar boys".

21                   The first assault, he indicates, occurred  
22 approximately four months after becoming an altar boy.  
23 This takes place in the sacristy on an after-Sunday mass.  
24 He indicates you were sitting on a wooden bench et cetera,  
25 and this is very -- this is described in the handwritten

1 statement from Mr. Silmser?

2 MR. SMITH: I recall, yes.

3 MR. ENGELMANN: Yeah and it's described  
4 elsewhere too.

5 And then Malcolm MacDonald interjects ---

6 MR. KOZLOFF: I'm sorry. May I?

7 THE COMMISSIONER: Yes, certainly.

8 MR. KOZLOFF: If you look at Exhibit 267,  
9 sir.

10 THE COMMISSIONER: Two-sixty-seven (267).

11 Okay. Yes, what page?

12 MR. KOZLOFF: Bates page 804.

13 THE COMMISSIONER: M'hm, yes.

14 MR. KOZLOFF: Right about the middle of the  
15 page.

16 THE COMMISSIONER: M'hm.

17 MR. KOZLOFF: "Smith: Can you tell us what  
18 year you -- we'll have to speak up here  
19 too -- what year did you become an  
20 altar boy?

21 Okay, that would be early grade 5. It  
22 would be...

23 Smith: Can you put a year to that? It  
24 was -- how old was I? I was 10-11, so  
25 the year would be '68 was it or the '70

1                                   or probably more like 60 -- '67  
2                                   wouldn't it, says Silmser."

3                                   So grade 5 -- 10 -- 1968.

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

5                                   **MR. KOZLOFF:** To put, you know, his  
6                                   handwritten statement where he says it was '69 and then --  
7                                   I mean, he's told this officer in an interview it was 1968.  
8                                   And, frankly, 14 years after the fact, we're talking about  
9                                   nuances in dates and how Fagan, you know, may have  
10                                   mischaracterized the beginning of the allegation. It's  
11                                   right there in what he told Smith and Fagan in the  
12                                   interview.

13                                   Forget about what he handwrote to the  
14                                   Cornwall Police for a minute, this is what he told these  
15                                   officers. How do you castigate Fagan for using the  
16                                   information Silmser provided to them in February of 1994 in  
17                                   an interview of MacDonald in June?

18                                   **THE COMMISSIONER:** Okay, thank you.

19                                   **MR. KOZLOFF:** That's my point.

20                                   **THE COMMISSIONER:** Mr. Engelmann?

21                                   **MR. ENGELMANN:** I had pointed out ---

22                                   **THE COMMISSIONER:** Mr. Neville is behind you  
23                                   now.

24                                   **MR. NEVILLE:** Don't mind. It goes on,  
25                                   Commissioner -- thank you, Mr. Kozloff for your

1 intervention -- page 11, using the numbering of the  
2 transcript ---

3 **THE COMMISSIONER:** What ---

4 **MR. NEVILLE:** --- or Bates page ---

5 **THE COMMISSIONER:** What exhibit, sir?

6 **MR. NEVILLE:** Same one, sir. The same taped  
7 interview with Mr. Silmsler.

8 **THE COMMISSIONER:** Two-sixty-seven (267)?

9 **MR. NEVILLE:** M'hm. It's Bates page 807.  
10 Sorry, on 807.

11 **THE COMMISSIONER:** M'hm, where?

12 **MR. NEVILLE:** Yes, I just lost my place.  
13 Yes, page 11 of the transcript, but it's Bates page 812.

14 **THE COMMISSIONER:** Okay.

15 **MR. NEVILLE:** A very specific and direct  
16 question is asked as to the age of commencing being an  
17 altar boy is at age 10.

18 **THE COMMISSIONER:** M'hm. Mr. Engelmann?

19 **MR. ENGELMANN:** I'm not sure I understand  
20 the objection, sir. I don't know if it is an objection.

21 I put to the witness that there are  
22 discrepancies between the alleged victim's handwritten  
23 statement that he writes in February 16<sup>th</sup> of 1993 ---

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

25 **MR. ENGELMANN:** --- and the interview that

1 is taken by the OPP in February of 1994.

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

3 **MR. ENGELMANN:** I then indicate ---

4 **THE COMMISSIONER:** Just a second, Mr.  
5 Kozloff. Let him speak.

6 **MR. KOZLOFF:** Thank you, sir.

7 **MR. ENGELMANN:** --- the witness agreed that  
8 there were some confusion by Mr. Silmser about his dates.  
9 And I didn't take him to the page, but it's there; he's not  
10 sure if he's 10 or he's 11.

11 What I said to him then was that there were  
12 ways to objectively verify these facts and that it would be  
13 important -- I would think it would be important before  
14 interviewing the suspect to get the facts straight.

15 I'm sorry to raise my voice. I apologize.  
16 But I asked him if there were ways to verify and to clarify  
17 which would be correct.

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

19 **MR. ENGELMANN:** We went through that. He  
20 moved; there would be ways to check those facts out ---

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

22 **MR. ENGELMANN:** --- with his parents, with  
23 registry records. He starts a new school; there would be  
24 ways to check that out. There would be ways to check out  
25 when he became an altar boy.

1                   And my point is -- and whether it's to  
2                   Constable Fagan or to Inspector Smith -- that it would be  
3                   important to verify or clarify those facts to the best of  
4                   their ability before they start asking questions to Father  
5                   MacDonald. And they did know -- and I'm assuming you did  
6                   know this, sir -- that Father MacDonald became a priest  
7                   only in 1969. And Mr. Silmsen is saying that when I became  
8                   an altar boy it was four months after that that the first  
9                   act occurred.

10                   So if there's differences between the  
11                   statements and there's differences between dates elsewhere  
12                   that this is one of the most important things to get right,  
13                   right at the beginning ---

14                   **THE COMMISSIONER:** Okay.

15                   **MR. ENGELMANN:** --- and would he not agree.

16                   And so again, I thought I was fair. I said  
17                   there were discrepancies, and I wouldn't expect if you  
18                   knew, sir, about some of the differences from before, when  
19                   he gives a handwritten statement in '93, et cetera, that if  
20                   there's some differences a year later with these dates that  
21                   you'd want to have that as clear as possible before  
22                   interviewing the alleged suspect.

23                   **MR. KOZLOFF:** I'm wondering if he might now  
24                   put the speech in the form of a question so that the  
25                   officer could either answer it or not.



1                   That was about a two minute summation that -  
2                   --

3                   **THE COMMISSIONER:** Well, it goes to counter  
4                   I guess the ---

5                   **MR. KOZLOFF:** I appreciate that but he  
6                   changed his -- well, he went from a submission to you to a  
7                   question. I'm not sure what the question is. I'm sure the  
8                   witness doesn't either.

9                   **THE COMMISSIONER:** Oh, I don't know.  
10                   Can you succinctly put the question again?

11                   **MR. ENGELMANN:** Give the witness some  
12                   credit, sir.

13                   **THE COMMISSIONER:** I know.

14                   **MR. ENGELMANN:** I don't ---

15                   **THE COMMISSIONER:** I know.

16                   **MR. KOZLOFF:** Probably it's just me, sir.

17                   **MR. ENGELMANN:** Fair enough.

18                   **THE COMMISSIONER:** So for Mr. Kozloff, go  
19                   ahead.

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

21                   Let's go back and revisit some of those  
22                   questions I asked earlier. There's a difference between --  
23                   there was some confusion with the dates by Mr. Silmsen when  
24                   you interviewed him in February of 1994; correct?

25                   **MR. SMITH:** Yes.

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

2                   He does give some very specific dates in his  
3                   handwritten statement that he writes up in February of  
4                   1993.

5                   **MR. SMITH:** Yes.

6                   **MR. ENGELMANN:** And those dates are  
7                   different than the dates in your entry.

8                   **MR. SMITH:** Yes.

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

10                  And would you agree, sir, that there are  
11                  ways to verify when individuals move?

12                  **MR. SMITH:** If they own the place, yes.

13                  **MR. ENGELMANN:** Yes, certainly. There may  
14                  be other ways, through utility records and certainly by  
15                  talking to parents; correct?

16                  **MR. SMITH:** Yes.

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

18                  And there's also ways to verify when people  
19                  start at a new school?

20                  **MR. SMITH:** Yes.

21                  **MR. ENGELMANN:** Okay. And there's also, if  
22                  the parish and/or Diocese is cooperative, often some  
23                  evidence as to when individuals are altar boys or altar  
24                  servers?

25                  **MR. SMITH:** It's possible, yes.

1                   **MR. ENGELMANN:** So there were a number of  
2 ways to verify some of this distinction before questioning  
3 the alleged suspect?

4                   **MR. SMITH:** A long time ago, and I'm going  
5 back from memory, but I believe that Silmsers mother was  
6 interviewed prior to Father Charlie and I think if you look  
7 in that statement there may be some indication.

8                   **THE COMMISSIONER:** Okay. But I just want to  
9 go -- from an institution or investigative way of looking  
10 at things, would you agree that in historical sexual abuse  
11 situations that when a person, such as Silmsers, and any  
12 complainant, is talking about years back, especially when  
13 they were youngsters, that it would be useful for an  
14 investigator to nail down as best as possible those dates  
15 to make sure that what the complainant is saying jives with  
16 what you can figure out is reality, with respect to dates?

17                   **MR. SMITH:** Yes, sir.

18                   **THE COMMISSIONER:** Mr. Engelmann, we're  
19 going to take the morning break.

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

21                   **THE COMMISSIONER:** Thank you.

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

24                   This hearing will resume at 11:25 a.m.

25 ---Upon recessing at 11:11 a.m./

1 L'audience est suspendue à 11h11

2 ---Upon resuming at 11:30 p.m./

3 L'audience est reprise à 11h30

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

6 This hearing is now resumed. Please be  
7 seated. Veuillez vous asseoir.

8 **THE COMMISSIONER:** Thank you.

9 Go ahead.

10 **TIMOTHY SMITH, Resumed/Sous le même serment:**

11 ---EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.  
12 **ENGELMANN (Cont'd/Suite):**

13 **MR. ENGELMANN:** Mr. Smith, just when we  
14 broke you had indicated that perhaps we -- you had asked  
15 for a couple of things that I've tried to find. I can't  
16 find questions in our database. So we'll keep looking for  
17 them but ---

18 **MR. SMITH:** Okay.

19 **MR. ENGELMANN:** --- I'm not sure if they  
20 were turned over.

21 You think you've seen them recently?

22 **MR. SMITH:** Within the last day or two. I  
23 read them in the material that I have.

24 **MR. ENGELMANN:** All right. I just -- they  
25 may be documents ---

1                   **MR. SMITH:** There's no date on it and  
2                   there's no heading, it's just a number of questions.

3                   **MR. ENGELMANN:** All right. Well, perhaps at  
4                   the lunch break I can get the document number from your  
5                   counsel, because I have not been able to find them.

6                   All right?

7                   **MR. SMITH:** Yeah.

8                   **MR. ENGELMANN:** There are a lot of documents  
9                   in our database, sir, and we tried to identify all those  
10                  that we thought ---

11                  **MR. SMITH:** I can imagine.

12                  **MR. ENGELMANN:** --- were relevant and  
13                  sometimes we don't get everything.

14                  Sir, you had suggested as well before the  
15                  break that there may have been some dates or some way to  
16                  verify dates. I had suggested to you one of the things to  
17                  do sometimes is to talk to the parents or family.

18                  **MR. SMITH:** Yes.

19                  **MR. ENGELMANN:** And you had suggested back  
20                  that you believed there had been some statements taken of -  
21                  --

22                  **MR. SMITH:** Mrs. Silmser.

23                  **MR. ENGELMANN:** Yeah.

24                  **MR. SMITH:** Yes.

25                  **MR. ENGELMANN:** And ---

1           **MR. SMITH:** And his sister, I believe.

2           **MR. ENGELMANN:** Right. So if -- I'll just  
3 take you there.

4           **MR. SMITH:** Okay.

5           **MR. ENGELMANN:** Again, sir, I'm going to  
6 give you the dates that would have been from Ms. Sebalj's  
7 investigation, but I'm pretty sure that you had that.

8           **MR. SMITH:** That's fine.

9           **MR. ENGELMANN:** And that was -- it's Exhibit  
10 1249. I'm not sure if you still have that binder. I don't  
11 think you do.

12          **MR. SMITH:** No.

13          **THE COMMISSIONER:** Exhibit number again?

14          **MR. ENGELMANN:** Twelve forty-nine (1249),  
15 sir. Counsel, the Document Number is 728535.

16          **MR. SMITH:** Yes, sir.

17          **MR. ENGELMANN:** All right. If you'll turn  
18 to Bates page 7113711; it's page 19 of her brief. It's  
19 captioned "Will-say/Statement Jodoin, Donna."

20          **MR. SMITH:** That's correct.

21          **MR. ENGELMANN:** That is the -- that's Mr.  
22 Silmser's sister, is it not, sir?

23          **MR. SMITH:** I don't know.

24          **MR. ENGELMANN:** Okay. All right. Well,

25 ---

1           **MR. SMITH:** If you say so I'll accept it.

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

3           **THE COMMISSIONER:** Well, it says, "My Mum  
4 and I have talked about it..."

5           **MR. ENGELMANN:** Fair enough.

6           Sir, right at the bottom:

7                     "I remember David being an altar boy.

8                     I think he was in Grade 7 at the time."

9           Now, it doesn't say that's when he started  
10 but that could be a marker. Is that fair?

11           **MR. SMITH:** Yes, it's ambiguous in a way.  
12 It could be either side.

13           **MR. ENGELMANN:** But she's saying:

14                     "I think he was in grade 7 at the time.

15                     He used to say he wanted to be a  
16 priest, then suddenly he didn't want to  
17 be an altar boy any more."

18           **MR. SMITH:** Correct.

19           **MR. ENGELMANN:** "Then he started getting  
20 in trouble, all mixed up."

21           **MR. SMITH:** Yes.

22           **MR. ENGELMANN:** Okay. And then the mother  
23 is on the next page and she's confirming what he's  
24 confirming about when he started at St. Columban's West at  
25 10?

1                   **MR. SMITH:** Yes.

2                   **MR. ENGELMANN:** And remember what he's said  
3                   in his statement the year before, the handwritten one, they  
4                   move, he spends a year at school, and then in the following  
5                   year in grade 6 he becomes an altar boy, and then things  
6                   happen four months after he becomes an altar boy.

7                   She's putting it even later. She's saying:  
8                    "He did very well, was a happy boy.  
9                    When he completed grade 6 he then  
10                  entered Bishop Macdonell Junior High  
11                  for grade 7 and 8. It was at this time  
12                  that he asked his dad and I if he could  
13                  be an altar boy. We gave him our  
14                  permission and he was a happy, good  
15                  altar boy."

16                  Okay?

17                  **MR. SMITH:** Yeah.

18                  **MR. ENGELMANN:** So she's suggesting grade 7  
19                  or so as well. Is that fair?

20                  **MR. SMITH:** Yes, 7 and 8.

21                  **MR. ENGELMANN:** Right. So we know from  
22                  that, sir, that clearly when he's 10 and in grade 5 his  
23                  handwritten statement, his mother's comment, his sister's  
24                  comment, are all suggesting that the date he gave to you in  
25                  the interview on February 22<sup>nd</sup>, 1994 was too early. Fair



1 enough?

2 MR. SMITH: According to what they say, yes.

3 MR. ENGELMANN: Yes, and according to his  
4 previous statement.

5 MR. SMITH: Yes.

6 MR. ENGELMANN: My point earlier was -- and  
7 let's just deal with the issue. And the issue is this is  
8 an historical report, so what we're talking about is  
9 allegations from quite a long time ago. Fair enough?

10 MR. SMITH: Yes, sir.

11 MR. ENGELMANN: And one of the first things  
12 that you're going to want to try and do is get some markers  
13 and pin down the dates to the best of your ability. Is  
14 that fair?

15 MR. SMITH: That's fair, yes.

16 MR. ENGELMANN: And to do this it would be  
17 important, after getting some information which is  
18 uncertain -- and that's in February of '94 -- to confirm  
19 that with other information you already have; his  
20 handwritten statement, the statements that have been given  
21 to Heidi Sebalj et cetera and, in addition, try and get  
22 some objective facts such as time of move, time of starting  
23 new school, time of starting as altar boy, school yearbooks  
24 etc. Fair enough?

25 MR. SMITH: That would be helpful, yes.

1                   **MR. ENGELMANN:** Right. And, in fact, it  
2 would be helpful even to explore some of those issues  
3 before the interview on February 22<sup>nd</sup>, 1994?

4                   **THE COMMISSIONER:** With Father Charles  
5 MacDonald?

6                   **MR. ENGELMANN:** No, no, the officers. What  
7 I'm saying is it would be helpful for the officers to --  
8 for you and your colleague to have reviewed some of that  
9 background information before you do your first interview  
10 with Mr. Silmsler on February 22<sup>nd</sup>, '94?

11                   **MR. SMITH:** Yes.

12                   **MR. ENGELMANN:** Right. And then, in  
13 addition, after you've done that interview and before you  
14 interview the alleged suspect, given some of the  
15 discrepancies it would be important to try and clarify or  
16 verify some of those dates before interviewing the suspect?

17                   **MR. SMITH:** That would be helpful, yes, sir.

18                   **MR. ENGELMANN:** And, in particular, when you  
19 know that the suspect starts at this particular church  
20 sometime in 1969; correct?

21                   **MR. SMITH:** Yes.

22                   **MR. ENGELMANN:** Okay. Because by starting  
23 with a date that is 1968, I would suggest to you that the  
24 denial you anticipated would be very easy to give in the  
25 sense that the alleged suspect would simply say, "Well, I

1           wasn't even there"?

2                       **MR. SMITH:** Yes.

3                       **MR. ENGELMANN:** Okay. And then, again, if  
4 you start with that date and that date is two or three  
5 years too early, then your other dates are going to be  
6 wrong as well?

7                       **MR. SMITH:** Yes.

8                       **MR. ENGELMANN:** Because instead of 1968 to  
9 '72, the dates may have been more accurately 1970 to '74?

10                      **MR. SMITH:** I believe that, yes.

11                      **MR. ENGELMANN:** Yeah, all right. And in  
12 fact -- I don't want to spend a lot of time on it, but you  
13 had said yourself that you thought the retreat issue was  
14 probably in about 1972. You said that yesterday and you  
15 thought that Heidi Sebalj had verified that?

16                      **MR. SMITH:** Yes, I felt it was in that  
17 period, yes.

18                      **MR. ENGELMANN:** But yet, in this interview,  
19 when Constable Fagan is asking Father MacDonald questions,  
20 he starts with '68 as the first incident and then suggests  
21 that the retreat is in 1970?

22                      **MR. SMITH:** Well, that's his interview, sir.

23                      **MR. ENGELMANN:** But, sir, you had some input  
24 before.

25                      **MR. SMITH:** In a perfect world, yes, but not

1 to that degree.

2 MR. ENGELMANN: All right.

3 MR. SMITH: If you're trying to say that  
4 these things should have been done or should have been  
5 looked at, I agree with you, sir.

6 MR. ENGELMANN: All right.

7 MR. SMITH: And I can save you all that  
8 time, if you wish. I'm not arguing with you at all.

9 MR. ENGELMANN: And I'm not trying to argue  
10 with you, sir.

11 MR. SMITH: No, you're taking a lot of time  
12 on it, but ---

13 MR. ENGELMANN: I'm doing that ---

14 MR. SMITH: If I can expedite things, sir,  
15 if you want to put those questions to me you don't have to  
16 drag them right out. Did we do it? Did we not? I'll  
17 agree with you -- if I agree. And if there's a dispute  
18 then we can drag it out, but if you wish to move along,  
19 yes, there are a lot of things we should have done; maybe  
20 we could have done.

21 The difference in this -- and again this is  
22 the first time that I've done a case of sexual assault,  
23 historical, outside of an institution. Now, when I had an  
24 institution, sir, I had records -- unbelievably -- and I  
25 could -- I had no difficulty on that.

1                   You've brought to my attention now some of  
2                   the things that we missed or maybe we should have thought  
3                   about, and I agree with you.

4                   **MR. ENGELMANN:** Okay, that's fine. I didn't  
5                   mean to drag it out. There were ---

6                   **MR. SMITH:** But ---

7                   **MR. ENGELMANN:** I'm just dealing with some  
8                   objections and I think we've gone for ---

9                   **MR. SMITH:** I'm not going to disagree with  
10                  you on that, sir.

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

12                  Sir, just a couple of other areas, and I  
13                  recognize you didn't do this interview, but aside from  
14                  Father MacDonald being able to deal with the date issue  
15                  quite easily because at least with the first one he wasn't  
16                  even there, there were some questions that were put to him  
17                  about C-3 and C-56 and I just -- I want to take you to it  
18                  very briefly, if I may. I'll just be a moment, sir.

19                  Yes, it's at the bottom of page 261. Mr.  
20                  Smith, I'm in Exhibit 2251. I'm sorry, this is the  
21                  statement with Father Charles MacDonald.

22                  **MR. SMITH:** Two-two-five-one (2251)?

23                  **MR. ENGELMANN:** Yes. I apologize, I thought  
24                  you had it open.

25                  **THE COMMISSIONER:** And what page again?

1                   **MR. ENGELMANN:** Sorry, it's Bates page -- it  
2 ends in 261. It's the sixth page of the interview.

3                   **THE COMMISSIONER:** M'hm. It's on the  
4 screen, okay.

5                   **MR. SMITH:** I didn't have it.

6                   **MR. ENGELMANN:** Madam Clerk, if you could  
7 scroll to the bottom, please. All right.

8                   So you'll see at the bottom of the page the  
9 last question by Constable Fagan. He's asking if Father  
10 MacDonald is familiar with a person by the name of -- and  
11 that's C-3?

12                   **MR. SMITH:** Yes, yes.

13                   **MR. ENGELMANN:** And then the answer is:  
14 "Yes, he was in the parish when I was  
15 there."

16                   **MR. SMITH:** Yes.

17                   **MR. ENGELMANN:** And then the next question:  
18 "Are you familiar with a person by the  
19 name of...?"

20                   **MR. SMITH:** Yes, I see that.

21                   **MR. ENGELMANN:** And he puts C-56.

22                   "He was also a member of the parish --  
23 inaudible -- years."

24                   Okay?

25                   **MR. SMITH:** Yes.

1                   **MR. ENGELMANN:** And that's it with respect  
2 to those two individuals. There's no exploration of any of  
3 the allegations or anything further.

4                   **MR. SMITH:** I don't see any.

5                   **MR. ENGELMANN:** There isn't in this  
6 statement.

7                   Would you not have tried to explore that a  
8 little further, sir?

9                   **MR. SMITH:** Had I taken the statement,  
10 certainly.

11                   **MR. ENGELMANN:** And, sir, there's no  
12 questions put about his relationship or knowledge of C-88  
13 or C-89. Those are the two individuals that you would have  
14 interviewed -- sorry, he would have interviewed in March  
15 and April, they were on the list.

16                   **MR. SMITH:** The one in New Brunswick?

17                   **MR. ENGELMANN:** Yeah, the one in New  
18 Brunswick and the other one that was here; we gave them  
19 monikers this morning.

20                   **MR. SMITH:** Yes.

21                   **MR. ENGELMANN:** I don't want to use their  
22 names.

23                   **MR. SMITH:** Yes, I won't.

24                   **MR. ENGELMANN:** Yeah, but he doesn't ask a  
25 question about either of those ---

1                   **MR. SMITH:** I don't see those there, sir.

2                   **MR. ENGELMANN:** -- even to establish if he  
3 knows them. Nor does he ask about an incident in  
4 Williamstown which would have been known to you by this  
5 point in time; correct?

6                   I'm just telling you it's not in the  
7 statement.

8                   And I'm wondering if you would agree, sir,  
9 that questions at least to establish a relationship and  
10 perhaps put an allegation to him with respect to the two  
11 other potential complainants and the third anonymous  
12 complainant might have been helpful.

13                   **MR. SMITH:** Certainly, sir.

14                   **MR. ENGELMANN:** Sir, in the -- at this point  
15 in time -- this is now June of '94 -- I don't believe you  
16 have the information yet from Chief Shaver about what he  
17 heard from the Bishop about an admission. So I don't think  
18 that could have been put to Father MacDonald. You didn't  
19 have that information, I don't think, by June 7<sup>th</sup>.

20                   **MR. SMITH:** I think the interview we had  
21 with him was later than that.

22                   **MR. ENGELMANN:** The interview with Chief  
23 Shaver was July 13<sup>th</sup>, '94.

24                   **MR. SMITH:** Yes. No, I -- I can't remember  
25 but there's something -- I recall something of -- it may



1 have been from Nancy Seguin about the Bishop saying  
2 something to her about Father Charlie. There might have  
3 been something there.

4 **MR. ENGELMANN:** Okay. I think there might  
5 have been something there perhaps with respect to the  
6 obstruct or conspiracy. There would have been something in  
7 Rick Abell's notes about this. And I don't know whether  
8 you would have had an opportunity or Constable Fagan would  
9 have had an opportunity. But in the notes that Rick Abell  
10 has with the Bishop, the Bishop is telling him that Father  
11 MacDonald has admitted to having sex with teens.

12 **MR. SMITH:** Maybe that's where I saw it, but  
13 I think I've seen that recently. I don't think I knew it  
14 then.

15 **MR. ENGELMANN:** Okay. That was something  
16 that was in their notes. It would have been useful to have  
17 it and to put questions?

18 **MR. SMITH:** Yes, yes.

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

20 He also talks about -- and this is at the  
21 bottom of Bates page 263 and onto 264 -- he quotes a local  
22 columnist, Claude McIntosh. He says:

23 "I think it explained it very well, the  
24 article in the Freeholder some months  
25 ago, about how -- why one would do

1                   that.  Sometimes people in high profile  
2                   positions panic at the thought of their  
3                   name being publicly connected to a  
4                   crime, especially sexual assault.  
5                   Rather than going through the agony of  
6                   proving their innocence and enduring  
7                   the stigma they are willing to buy the  
8                   accuser's silence.  I couldn't say it  
9                   better myself.  I didn't like it  
10                  though..."

11                 I'm not sure if there is something wrong  
12                 there:

13                         "...it goes against my principle to pay  
14                         money.  On the other hand, I had an  
15                         excellent reputation so..."

16                         He's talking about buying his accuser's  
17                         silence and, sir, I'm wondering again whether some follow-  
18                         up questions could have been put there with respect to  
19                         either the -- well, particularly the obstruct justice issue  
20                         and his knowledge of the settlement, because none of those  
21                         questions seemed to have been put.

22                         **MR. SMITH:**  Yes, they could have.

23                         **MR. ENGELMANN:**  Yes.  And it doesn't appear  
24                         at all that Father MacDonald is asked any questions about  
25                         conversations he had with the Bishop's delegate and/or the

1 Bishop in their -- if I can call it internal investigation  
2 or under their protocol. And sir, I'm going to suggest to  
3 you that those questions might have been helpful to you.

4 MR. SMITH: Well, I don't see it in the  
5 state -- I haven't seen the whole statement but you're  
6 telling me that that doesn't appear in there?

7 MR. ENGELMANN: Yes.

8 MR. SMITH: I'll accept that.

9 MR. ENGELMANN: All right.

10 And you certainly took the Bishop through  
11 the protocol in a rather rigorous manner when you  
12 interviewed him and that appeared to be important to you,  
13 the internal investigation?

14 My point is simply, sir, that questions  
15 about that could and perhaps should have been put to Father  
16 Charles MacDonald?

17 MR. SMITH: Yes.

18 MR. ENGELMANN: All right.

19 Now, when would you have first reviewed this  
20 statement?

21 MR. SMITH: What was the date of the  
22 statement, sir?

23 MR. ENGELMANN: Okay. And would it be fair  
24 to say, sir, that you would have noted at least some of the  
25 deficiencies ---

1                   **THE COMMISSIONER:** Wait a minute. The  
2 question was: What is the date of the statement?

3                   **MR. ENGELMANN:** No, when would you have  
4 first reviewed this statement?

5                   **THE COMMISSIONER:** No, he asked ---

6                   **MR. ENGELMANN:** Oh, I'm sorry.

7                   **THE COMMISSIONER:** --- what was the date of  
8 the statement which ---

9                   **MR. ENGELMANN:** I misheard you.

10                   **THE COMMISSIONER:** --- June 7<sup>th</sup>, 1994 is what  
11 is typed on the top of the statement.

12                   **MR. SMITH:** Probably I would have reviewed  
13 it within two weeks.

14                   **MR. ENGELMANN:** Okay. And sir, we talked  
15 about some of the deficiencies or things that might have  
16 been done better, and I'm wondering would you have noted at  
17 least some of those when you would have reviewed it at the  
18 time?

19                   **MR. SMITH:** I can't remember but I may not  
20 have.

21                   **MR. ENGELMANN:** Okay. I'm just wondering if  
22 any thought was given to doing a second interview.

23                   **MR. SMITH:** No. No, I wasn't going to do a  
24 second interview. I didn't do a second interview.

25                   **MR. ENGELMANN:** Sir, would you agree that

1           this is perhaps an interview you should have done yourself?

2                       **MR. SMITH:** In hindsight, yes. Maybe I --  
3           seeing what happens now I wasn't really particularly aware  
4           of it at the time and the deficiencies that you brought to  
5           my attention over the past two days in some of the  
6           statements perhaps -- you know, I take responsibility for  
7           that. I could have had a better interviewer assigned to  
8           this case.

9                       **MR. ENGELMANN:** Let's look at the conspiracy  
10          investigation, Mr. Smith, if we can?

11                      We've had a few different descriptions of  
12          the subject of that investigation. So maybe I can just  
13          take you back through that very briefly.

14                      In your notes on the very first page, 1803,  
15          it's described as:

16                                "Was there a conspiracy between  
17                                Cornwall Police and Catholic Diocese to  
18                                affect a civil settlement with alleged  
19                                victim, thus terminating criminal..."

20                      **MR. SMITH:** "Proceedings."

21                      **MR. ENGELMANN:** "...proceedings."

22                      Okay? That's how it's first described, and  
23          that's very similar to the letter, one of the letters we  
24          looked at from ---

25                      **MR. SMITH:** Yes.

1                   **MR. ENGELMANN:** --- Acting Chief Johnston?

2                   **MR. SMITH:** Yes.

3                   **MR. ENGELMANN:** Yeah. And sir, in the Crown  
4 brief synopsis -- I'll just be a moment.

5                                   **(SHORT PAUSE/COURTE PAUSE)**

6                   **MR. ENGELMANN:** This is a new document so it  
7 will just be a moment, 714779.

8                   **THE COMMISSIONER:** Thank you. Exhibit  
9 Number 2566 is a synopsis. Is this a Crown synopsis, Mr.  
10 Engelmann, do you know?

11                   **MR. ENGELMANN:** I think what it's called is  
12 a Crown brief synopsis.

13                   **THE COMMISSIONER:** Oh, Crown brief synopsis,  
14 okay.

15                   **MR. ENGELMANN:** I may have the terminology  
16 wrong but I think that's ---

17                   **THE COMMISSIONER:** It's a Crown brief and  
18 this is the synopsis.

19                   **MR. ENGELMANN:** All right. And our exhibit  
20 number?

21                   **THE COMMISSIONER:** Two five six six (2566).

22                   **--- EXHIBIT NO./PIÈCE NO. P-2566:**

23                                   (714779) - Crown Brief Synopsis of Charles  
24 MacDonald

25                   **MR. ENGELMANN:** Sir, if we could turn to the

1 second page, which is Bates page 705546, the wording for  
2 the conspiracy investigation is now listed to be:

3 "Did the police, Church and Crown agree  
4 not to lay charges where evidence  
5 existed that charges should be laid?"

6 Do you see that?

7 **MR. SMITH:** Yes, sir.

8 **MR. ENGELMANN:** So we start with:

9 "A conspiracy between Cornwall Police  
10 Service and the Catholic Diocese to  
11 effect a civil settlement with alleged  
12 victim, thus terminating criminal  
13 proceedings."

14 And now it is:

15 "Did the police, Church and Crown..." -  
16 - so the Crown's involved.

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** "...agree not to lay  
19 charges..."

20 -- and then this is new as well:

21 "...where evidence existed that charges  
22 should be laid?"

23 So it appears, sir, that the question that  
24 was asked has changed somewhat; that the issue has changed  
25 somewhat?

1                   **MR. SMITH:** I would agree because the -- the  
2                   only way that that could happen is if all three were  
3                   involved in ---

4                   **MR. ENGELMANN:** Okay.

5                   **MR. SMITH:** Yeah.

6                   **MR. ENGELMANN:** So it was thought that there  
7                   had to be some involvement by Crown; that you couldn't just  
8                   look at a conspiracy if it was just the Police and the  
9                   Church?

10                  **MR. SMITH:** Yes, you could, but then I was  
11                  aware then that the Crown was involved somewhat in that,  
12                  also that Malcolm had had some dealings with them. Malcolm  
13                  MacDonald had some dealings with the Crown and then the  
14                  Police had had some dealings with the Crown in regard to  
15                  the charges, and then there was conversations back and  
16                  forth between all three parties.

17                  **MR. ENGELMANN:** Okay, but you're not saying  
18                  that it was necessarily a prerequisite that the Crown be  
19                  involved? That's just where your evidence took you? Is  
20                  that what you're saying?

21                  **MR. SMITH:** Yes.

22                  **MR. ENGELMANN:** Okay. Because you could  
23                  have had a conspiracy just between the Police and the  
24                  Diocese.

25                  **MR. SMITH:** Yes, sir.



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

2                   And then the other addition, if I can, is  
3                   where evidence indicated charges should have been laid and  
4                   prosecuted.

5                   **MR. SMITH:** Okay.

6                   **MR. ENGELMANN:** That's a new requirement as  
7                   well, I think.

8                   **MR. SMITH:** I should have inserted the word  
9                   "where if" -- or "if" evidence existed, that charges should  
10                  have been laid, rather than "where".

11                  **MR. ENGELMANN:** But even if you didn't meet  
12                  that threshold of reasonable and probable grounds or  
13                  whatever the threshold may be, couldn't individuals either  
14                  from two or three groups conspire?

15                  **MR. SMITH:** Yes, two or more.

16                  **MR. ENGELMANN:** So, again, it seems to be a  
17                  higher test here than when you started out at the  
18                  beginning. You were going to -- (1), now the Crown has to  
19                  be involved; and (2), it has to be clear that the evidence  
20                  indicated charges should have been laid and ---

21                  **MR. SMITH:** I think that's not the intent of  
22                  everything. If we go back to it, if the Church and the  
23                  Police were involved, fine, that could be a conspiracy. If  
24                  all three were involved, that could be a conspiracy.  
25                  Basically, was there a conspiracy? Period. There had to

1 be two of them at least.

2 MR. ENGELMANN: All right. It just seemed  
3 that there were more elements to the issue ---

4 MR. SMITH: Well ---

5 MR. ENGELMANN: --- that seemed to be  
6 required.

7 MR. SMITH: Maybe I didn't express it ---

8 MR. ENGELMANN: All right.

9 MR. SMITH: --- that well in that area of  
10 concern.

11 MR. ENGELMANN: All right.

12 Would it have been sufficient to establish  
13 an intention that for unlawful reasons a halt was being put  
14 to an ongoing police investigation?

15 MR. SMITH: That's another possibility, yes.

16 MR. ENGELMANN: Okay. And I'm just  
17 wondering if you had determined that there were reasonable  
18 and probable grounds to lay charges against Father  
19 MacDonald in 1994, would that have affected your thinking  
20 on this conspiracy allegation?

21 MR. SMITH: Can you repeat that again?

22 MR. ENGELMANN: Yeah.

23 MR. SMITH: I'm having difficulty. I'm  
24 trying to get around that.

25 MR. ENGELMANN: Sorry. I have trouble with

1       this myself believe me, but it -- because of the change or  
2       the morph of the wording, it now says -- the end of it. It  
3       said before:

4                       "Conspiracy between Cornwall Police  
5                       Service and the Catholic Diocese to  
6                       effect a civil settlement with alleged  
7                       victim, thus terminating criminal  
8                       proceedings."

9                       It now says:

10                      "Did the Police, Church and Crown agree  
11                      not to lay charges where evidence  
12                      indicated charges should have been laid  
13                      and prosecuted?"

14                      What I'm wondering, sir, is if you had  
15                      determined reasonable and probable grounds in 1994, would  
16                      that have affected your thinking on the conspiracy  
17                      allegations?

18                      **THE COMMISSIONER:** Reasonable and probable  
19                      grounds to believe that Father Charles MacDonald had  
20                      committed a criminal sexual assault. So if you would have  
21                      made that determination, would that have affected your --  
22                      the way you worked or the extortion part of it? Not  
23                      extortion, breach of ---

24                      **MR. ENGELMANN:** The conspiracy.

25                      **THE COMMISSIONER:** Conspiracy, sorry.

1                   **MR. SMITH:** Even if he was charged and I  
2 could prove a conspiracy that they attempted, I could still  
3 proceed with conspiracy and the charge against him.

4                   **MR. ENGELMANN:** Fair enough, but was that --  
5 was the finding of reasonable and probable grounds an  
6 important factor as to whether or not you were going to  
7 find that there was any evidence to the conspiracy theory?

8                   **MR. SMITH:** I don't know how to answer that.

9                   **MR. ENGELMANN:** You did -- your brief  
10 suggested that there were no reasonable or probable grounds  
11 to proceed with any kind of a conspiracy charge; correct?

12                   **MR. SMITH:** In the brief that I sent to  
13 Peter Griffiths?

14                   **MR. ENGELMANN:** Yes.

15                   **MR. SMITH:** Yeah, I felt that there wasn't,  
16 yeah.

17                   **MR. ENGELMANN:** I'm just curious if that  
18 would have changed at all if you had found, at least at  
19 that time, that there were reasonable and probable grounds  
20 to proceed on the charges against Father MacDonald?

21                   **MR. SMITH:** What charges against Father  
22 MacDonald? The conspiracy or the ---

23                   **MR. ENGELMANN:** No.

24                   **MR. SMITH:** Or the ---

25                   **MR. ENGELMANN:** The assault charges.

1                   **MR. SMITH:** I'm not trying to be difficult  
2                   here.

3                   **MR. ENGELMANN:** No.

4                   **MR. SMITH:** I'm confused, sir, and ---

5                   **THE COMMISSIONER:** Can I help you out a  
6                   little bit?

7                   **MR. SMITH:** Yes.

8                   **THE COMMISSIONER:** Okay.

9                   So you're trying to decide whether or not  
10                  you want to or you will go through with the conspiracy  
11                  charge. What he's asking you is, up here did it make a  
12                  difference whether or not you were proceeding against  
13                  Father Charles MacDonald on the sexual assault charges?

14                  So obviously at this point the answer was,  
15                  no, you didn't, and so was that like, "Well, if I don't  
16                  have sufficient here, how does that affect the conspiracy  
17                  charge?"

18                  **MR. SMITH:** No, no. The conspiracy charge  
19                  could be laid whether we were going to charge Father  
20                  MacDonald or not. Is that what you're ---

21                  **THE COMMISSIONER:** No, no, but yeah, but  
22                  what he wants to know is, did the fact that you weren't  
23                  charging Father Charles MacDonald with sexual assault have  
24                  any effect on the conspiracy?

25                  **MR. SMITH:** I don't think so.

1                   **MR. ENGELMANN:** So I just want to go through  
2 then some of your investigation on that -- your joint  
3 investigation with Constable Fagan.

4                   **MR. SMITH:** Okay.

5                   **MR. ENGELMANN:** We talked about it a little  
6 bit yesterday and I wanted to do very briefly is deal with  
7 your strategy in your investigation of the Cornwall Police  
8 Service.

9                   I think you advised us yesterday that it was  
10 your view that Chief Shaver had to be involved for an  
11 offence to have been committed -- on the conspiracy?

12                   **MR. SMITH:** Yes, I would agree with that.

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

14                   And, essentially, after you met with Chief  
15 Shaver and because you accepted his version of events with  
16 respect to his dealings with the Bishop in particular, you  
17 saw no need to conduct any investigation into other members  
18 of the CPS?

19                   **MR. SMITH:** That was my feeling at the time,  
20 yes.

21                   **MR. ENGELMANN:** I'm just trying to summarize  
22 what you told us yesterday.

23                   **MR. SMITH:** Yes, okay. As far as the police  
24 were concerned, yes.

25                   **MR. ENGELMANN:** Okay. I'm just talking

1 about your strategy with respect to the police.

2 MR. SMITH: Yeah, yeah.

3 MR. ENGELMANN: So you saw no need to take -  
4 - to interview or take a statement from any other officers  
5 as a result of your interaction with Chief Shaver?

6 MR. SMITH: And other things that came into  
7 play also, you know.

8 MR. ENGELMANN: Such as?

9 MR. SMITH: Well, we discussed that  
10 yesterday that for all three or even two -- for two, for  
11 example, for Father -- for Charles MacDonald and the Police  
12 to agree not to lay charges, the Chief had to be involved.  
13 He's the one that assigned everything.

14 MR. ENGELMANN: He assigned it initially?

15 MR. SMITH: Well, he'd keep -- yeah, he was  
16 what I refer to as a micromanager and rather than delegate  
17 down, he would -- he was a hands-on Chief. I'm of the  
18 understanding that Luc Brunet or Sebalj could not make that  
19 decision on their own with the Diocese to ---

20 MR. ENGELMANN: All right.

21 MR. SMITH: --- to ---

22 MR. ENGELMANN: If it's ---

23 MR. SMITH: --- to not lay the charge and --  
24 and I don't have any -- despite that, I did speak to them  
25 and when you speak to people there's -- you get a feeling

1 of credibility from them and they were very credible as to  
2 what went on.

3 **MR. ENGELMANN:** And you found that with  
4 Chief Shaver?

5 **MR. SMITH:** Yes, for all that's been said  
6 about him, I believed him in regard to the dealings that he  
7 had with the Bishop and that they were not on the best of  
8 terms at that time.

9 **MR. ENGELMANN:** All right. But if you were  
10 wrong about him micromanaging or the fact that you're aware  
11 he assigned the file back in January?

12 **MR. SMITH:** Yes.

13 **MR. ENGELMANN:** And you're aware of his  
14 reaction when he finds things out in late September?

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** That if, in fact, the matter  
17 had been effectively terminated by an exchange between  
18 Brunet and Murray MacDonald, he may not have had anything  
19 to do with the charges coming to an end. Do you understand  
20 my point?

21 **MR. SMITH:** Well, Brunet and Sebalj, I  
22 suggest to you, sir, would not do -- make any decision on  
23 their own in regard to that for fear of reprisal from --  
24 from Shaver.

25 **MR. ENGELMANN:** Okay.



1           **MR. SMITH:** And there's no doubt in my mind  
2 he would come down on them like a ton of bricks if -- if  
3 they did any of that.

4           **MR. ENGELMANN:** So you're of the belief then  
5 that he must have been consulted before that investigation  
6 ---

7           **MR. SMITH:** Was terminated ---

8           **MR. ENGELMANN:** --- yeah.

9           **MR. SMITH:** --- yes.

10          **MR. ENGELMANN:** Okay.

11          **THE COMMISSIONER:** Did you know Chief Shaver  
12 before this?

13          **MR. SMITH:** No, but I -- I knew of his  
14 reputation.

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

16          **MR. SMITH:** In police circles, Mr.  
17 Commissioner, there's a fair amount of gossip and it was  
18 not a secret the difficulties that Cornwall was suffering  
19 within ---

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

21          **MR. SMITH:** --- from management for all  
22 police around the area. But, certainly, his honesty was  
23 never questioned as far as I heard or ever saw.

24          **MR. ENGELMANN:** So we've heard during the  
25 course of the evidence of the Cornwall Police Service, that

1           there were a number of officers, aside from Chief Shaver,  
2           who had some information concerning the Silmsers  
3           investigation and they would include an officer by the name  
4           of Nakic who took the initial complaint; an officer by the  
5           name of Stuart McDonald who then referred it to the Chief;  
6           a sergeant by the name of Lefebvre who interviewed Silmsers  
7           on two occasions; a constable by the name of Malloy who was  
8           present for the interview of Silmsers with another officer by  
9           the name of Heidi Sebalj; an officer by the name of Lortie  
10          who was first assigned, was asked to put it on a project  
11          file had concerns about the investigation; a staff sergeant  
12          by the name of Derochie who did review or reinvestigation  
13          and investigated Mr. Dunlop; an officer by the name of St.  
14          Denis who was the Deputy Chief who reassigned the file from  
15          the Intelligence Officer -- that was Lortie ---

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

17                       **MR. ENGELMANN:** --- but then was kept out of  
18          the loop, to use those words, and, of course, Heidi Sebalj  
19          and Luc Brunet.

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

21                       **MR. ENGELMANN:** You decided because of,  
22          presumably, your interaction with Claude Shaver, that it  
23          wasn't necessary to interview or take formal statements  
24          from any of those officers?

25                       **MR. SMITH:** There were other things too.

1 I've been involved in internal investigations within police  
2 forces in the past; in particular, Niagara Regional Police  
3 Force.

4 In a number of the cases that we had down  
5 there, we didn't approach officers and get interviews from  
6 them in regard to some of the things that were going on for  
7 fear of reprisal.

8 One reason -- another reason is that they  
9 wouldn't tell us anything, but if we were around, we used  
10 to get notes slipped under our door or back at your hotel  
11 room or you would get some indication as to what was going  
12 on and where to look. In this case -- and we waited quite  
13 a period of time and the police department knew what we  
14 were there for -- we didn't get one, what we call a kite or  
15 a note or a telephone call or anything dropped off, an  
16 envelope, from anybody in regard to this. I would have  
17 expected something with the troubles they were having  
18 internally, that somebody would send us something if there  
19 was a conspiracy going on. There were too many people --  
20 just too many people knew what was going on to really carry  
21 on, in my opinion, a conspiracy.

22 **MR. ENGELMANN:** Well, sir, just on that, the  
23 brown envelope that you didn't get, you were aware, were  
24 you not, that Constable Dunlop had released Silmsers  
25 statement to the CAS in the fall of '93?

1                   **MR. SMITH:** Yes.

2                   **MR. ENGELMANN:** And were you not aware that  
3 during the course of your investigation, he was being  
4 investigated under the *Police Services Act*?

5                   **MR. SMITH:** Yes, I was.

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

7                   **MR. SMITH:** Okay.

8                   **MR. ENGELMANN:** So there was at least,  
9 perhaps, some fear or some anxiety with respect to people  
10 coming forward; going to outside agencies with information.  
11 There might have been some chill about that at the time?

12                   **MR. SMITH:** If the CAS had not acted on that  
13 and told the Chief, maybe something may have come forward  
14 to us, but we weren't the CAS. If it came to us, I don't  
15 necessarily have to go to that individual. I can -- I can  
16 find out from that information where I should go if  
17 something exists.

18                   **MR. ENGELMANN:** Maybe I wasn't clear. What  
19 I was trying to suggest is perhaps there were reasons why  
20 officers at Cornwall Police Service wouldn't want to  
21 release information to a third-party agency?

22                   **MR. SMITH:** I ---

23                   **MR. ENGELMANN:** Constable Dunlop was being  
24 investigated and then he was charged under the *Police*  
25 *Services Act*. Constable Sebalj was being investigated.

1                   **MR. SMITH:** M'hm.

2                   **MR. ENGELMANN:** There were -- there were  
3                   complaints.

4                   **MR. SMITH:** But they don't have -- they  
5                   don't have to know where it comes from.

6                   **MR. ENGELMANN:** Okay.

7                   **MR. SMITH:** When -- in those previous  
8                   investigations I have had -- not necessarily on the same  
9                   issue of obstruct justice or what we're dealing with here,  
10                  but other issues -- I've -- quite often, I've got  
11                  information from -- from officers.

12                  **THE COMMISSIONER:** Anonymously?

13                  **MR. SMITH:** And yes, without ---

14                  **THE COMMISSIONER:** Yeah.

15                  **MR. SMITH:** --- where to look and where to  
16                  go.

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

18                  **MR. SMITH:** And what I'm saying in this case  
19                  is that after six months or seven months, of all the  
20                  publicity that we had and all of the allegations that were  
21                  going back and forth in the press, not one person left us a  
22                  message of any kind that indicated that there was a  
23                  conspiracy between the Police and the Church to not lay  
24                  charges or to suppress them.

25                  And had there been a conspiracy, I'm sure

1           that I would have got -- there's enough -- there are enough  
2           people in the police force that are unhappy or whatever  
3           that I would have got something.

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

5                   Well, I'm just ---

6                   **MR. SMITH:** That not the only reason ---

7                   **MR. ENGELMANN:** Yeah.

8                   **MR. SMITH:** --- but that's one part of it.

9                   **MR. ENGELMANN:** Fair enough.

10                  So I just again want to go through what you  
11                  did and it may be useful for the other investigations as  
12                  well so ---

13                   **MR. SMITH:** In hindsight, again, it would  
14                  have probably been beneficial to go and get statements from  
15                  all of these other people. The Ottawa Police had spoken to  
16                  people -- a number of them -- and I think they were of the  
17                  opinion that there was not a conspiracy in their report if  
18                  I'm correct.

19                   **MR. ENGELMANN:** Sir ---

20                   **MR. SMITH:** So that was -- that would be  
21                  part of it, you know.

22                   **MR. ENGELMANN:** Sir, I tried to suggest  
23                  earlier, I don't really want to go into it, but that that  
24                  part of their report -- the bulk of their report was  
25                  dealing with issues of perhaps competency or effectiveness?

1                   **MR. SMITH:** They did, but they did mention  
2                   that though didn't they?

3                   **MR. ENGELMANN:** No, there's a -- there's ---

4                   **MR. SMITH:** So that would ---

5                   **MR. ENGELMANN:** --- a line at the end.

6                   **MR. SMITH:** --- that would play some part in  
7                   my decision.

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

9                   **MR. SMITH:** If you're getting at --- I can  
10                  save you all kinds of time, sir, if you're getting at the  
11                  fact, the what if, that if I was to interview all these  
12                  people, would it have helped? Yes.

13                  **MR. ENGELMANN:** Okay.

14                  I want to just ask a few questions about a  
15                  couple of other things you -- there was an interview of  
16                  Heidi Sebalj?

17                  **MR. SMITH:** Not formally. There were  
18                  discussions with Heidi as to what she had done in her notes  
19                  and everything else.

20                  **MR. ENGELMANN:** That was -- you had a short  
21                  meeting with her, and that's in your notes.

22                  **MR. SMITH:** Well, yes, but I'd spoken to her  
23                  on a few occasions.

24                  **MR. ENGELMANN:** Okay. But I believe  
25                  Constable Fagan actually met with her, and I just wanted to

1 take you there briefly. It's Exhibit 1242.

2 THE COMMISSIONER: You might -- do you have  
3 that book?

4 MR. SMITH: Yes, I think I have it here.

5 THE COMMISSIONER: Thank you.

6 MR. ENGELMANN: It's not long.

7 MR. SMITH: Yes, I see one here, yes.

8 MR. ENGELMANN: And, again, I'm not exactly  
9 sure which part of the -- I assume this was part of the  
10 investigation on the conspiracy issue but I'm not positive.

11 THE COMMISSIONER: Well, who took the ---

12 MR. ENGELMANN: It's Constable Fagan.

13 THE COMMISSIONER: No -- oh, is that Fagan?

14 MR. ENGELMANN: I believe so.

15 Is that correct, Mr. Smith?

16 MR. SMITH: I'd have to read it to see.

17 THE COMMISSIONER: No, look at his name on  
18 the interview sheet.

19 MR. SMITH: This is Fagan's writing.

20 THE COMMISSIONER: Okay.

21 MR. SMITH: I'm very familiar with it.

22 MR. ENGELMANN: That was my question.

23 MR. SMITH: I'm sorry.

24 MR. ENGELMANN: Okay. So it's not long.

25 I'm going to try and read it:



1 "During your sexual assault  
2 investigation involving David Silmser  
3 you spoke with Crown attorney Murray  
4 MacDonald?"

5 Correct?

6 **MR. SMITH:** Yes.

7 **MR. ENGELMANN:** "Yes, he is the Crown  
8 attorney in Cornwall and I kept him up  
9 to speed on the investigation. I never  
10 had any formal meeting but we would  
11 talk in the hallway at court."

12 All right?

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** So this would go to there's  
15 no formal meeting, there's no Crown brief; all right?

16 "When I was getting close to the end of  
17 the investigation I spoke with Crown  
18 MacDonald. He told me he had a  
19 conflict but did not expand upon it.  
20 He wanted to be kept up to speed and  
21 indicated when it came down to a final  
22 review and decision, an outside Crown  
23 would be contacted but I never spoke to  
24 an outside Crown. I recall receiving a  
25 call from Staff Sergeant Brunet while I

1 was on holidays and that a meeting was  
2 set up with Crown Bob Pelletier. He  
3 told the staff I was in the middle of  
4 moving and could not attend. I have  
5 never spoken to Bob Pelletier about the  
6 case."

7 MR. SMITH: Yes.

8 MR. ENGELMANN: Okay. I think I got that  
9 right.

10 MR. SMITH: Yes.

11 MR. ENGELMANN: So ---

12 MR. SMITH: And I believe Pelletier has some  
13 correspondence also that indicates that he was never  
14 consulted.

15 MR. ENGELMANN: Right.

16 So just a few things. She talks about  
17 keeping the Crown -- the local Crown up on an  
18 investigation. She talks about no formal meetings but  
19 discussions in the hallway at court; that the local Crown  
20 tells her he has a conflict; that an outside Crown's going  
21 to be contacted when it comes to a final review and  
22 decision.

23 MR. SMITH: M'hm.

24 MR. ENGELMANN: And you know that didn't  
25 happen?

1 MR. SMITH: Yes.

2 MR. ENGELMANN: Not just from her statement.

3 MR. SMITH: Yes.

4 MR. ENGELMANN: And it appears really that  
5 this statement is focused more on the Crown and the Crown's  
6 involvement perhaps than on her own. Is that fair?

7 MR. SMITH: It appears to be, yes.

8 MR. ENGELMANN: Because she's not asked, for  
9 example, whether she felt she had reasonable and probable  
10 grounds at any point in time.

11 MR. SMITH: No. No.

12 MR. ENGELMANN: She's not even asked whether  
13 she thought her investigation was concluded.

14 MR. SMITH: No.

15 MR. ENGELMANN: And there's some issue about  
16 that come September because in her notes she's talking  
17 about waiting for an outside Crown and she's talking about  
18 it here as well.

19 MR. SMITH: That's correct.

20 MR. ENGELMANN: There's no discussion with  
21 her about her dealings with Silmsen either before or after  
22 what we now know is an illegal settlement; correct?

23 MR. SMITH: Yeah.

24 MR. ENGELMANN: There's no conversations --  
25 no discussion about her conversations with Malcolm

1 MacDonalld, and we know he had several contacts with her?

2 MR. SMITH: No.

3 MR. ENGELMANN: There's nothing in here  
4 about conversations she would have had with Brunet or  
5 Shaver about the settlement or those times?

6 MR. SMITH: No.

7 MR. ENGELMANN: And there's no questions  
8 about her views on any possible conspiracy or cover-up?

9 MR. SMITH: That's correct.

10 Another aspect of conspiracy, sir, is that  
11 you look at motive and reward in conspiracies. And one of  
12 the things I'm looking at, okay, what is it in for the  
13 police not to lay a charge against Father MacDonalld? What  
14 is in it for Murray MacDonalld to not lay a charge against a  
15 priest that he doesn't know? And I'm aware a few months  
16 later that he turns in his own father.

17 These are issues also that I was aware of  
18 when this brief was put together. They play a part in this  
19 conspiracy not to lay charges.

20 MR. ENGELMANN: Okay. If I can just -- some  
21 of this information may be useful not just for this  
22 investigation but for -- you were doing three  
23 investigations. And one of the things that I noted here,  
24 and you certainly noted yourself, was the fact that it  
25 doesn't really appear she ended; there was no final review

1 of her work.

2 MR. SMITH: Yes, I see that.

3 MR. ENGELMANN: Yeah.

4 MR. SMITH: And ---

5 MR. ENGELMANN: And what then seems to  
6 occur, sir -- and I don't know if you'll agree with me --  
7 that it seems to be taken away essentially because of the  
8 settlement. There's no longer a complainant available and  
9 that is essentially what Mr. MacDonald recommends then.

10 MR. SMITH: Well, that's the letter that he  
11 sends to them ---

12 MR. ENGELMANN: Yeah.

13 MR. SMITH: --- and for whatever reason,  
14 Pelletier is not notified. I don't know. I know we asked  
15 Mr. Pelletier and he provided a letter and he said he was  
16 never notified. But I know that Crown attorneys are in  
17 touch with each other back and forth.

18 So the answer to that probably would be  
19 better asked to them when they testify.

20 MR. ENGELMANN: Fair enough.

21 MR. SMITH: But I go back, sir, that when  
22 people commit crimes it's for gain, whether it be physical  
23 or for favours or whatever, for some reason. I couldn't  
24 understand what gain the police would have in this case for  
25 not charging Father MacDonald.

1                   Secondly, ---

2                   **MR. ENGELMANN:** Well, by the time ---

3                   **THE COMMISSIONER:** No.

4                   **MR. ENGELMANN:** Sorry. Sorry, go ahead.

5                   **MR. SMITH:** Secondly, I couldn't get around  
6 the fact what was in it for Murray MacDonald, the Crown  
7 attorney, with everybody knowing what was going on here, to  
8 not lay a charge if the evidence supported it, or stop an  
9 investigation for a priest that he did not know, and yet a  
10 few months later turn in his own father.

11                   I had to look at the big picture of  
12 everything, not just little parts and pieces. And that  
13 played in part of my decision that there really wasn't a  
14 conspiracy.

15                   **THE COMMISSIONER:** At that time were there  
16 allegations of Murray MacDonald being a child molester?

17                   **MR. SMITH:** As Father?

18                   **THE COMMISSIONER:** No, no, Murray MacDonald?  
19 At that time that hadn't come out yet?

20                   **MR. SMITH:** I don't think so.

21                   **MR. ENGELMANN:** No, and ---

22                   **MR. SMITH:** I don't think so, Mr.  
23 Commissioner.

24                   **MR. ENGELMANN:** I don't think that ever -- I  
25 think what came out much later was that he was friends with

1 ---

2 THE COMMISSIONER: Right. Sorry. I'm  
3 sorry.

4 MR. SMITH: No, that was never -- I don't  
5 think it was ever said that he was ---

6 THE COMMISSIONER: No, no, I'm sorry; I  
7 misspoke.

8 MR. SMITH: Yeah.

9 THE COMMISSIONER: But did you ever think of  
10 maybe because of his ties to the Catholic Church that he  
11 would want to not cast any scandal on the Church?

12 MR. SMITH: No. He prosecuted -- and both  
13 Bob Pelletier prosecuted a number of Christian brothers  
14 that were in Alfred.

15 THE COMMISSIONER: M'hm.

16 MR. SMITH: They're both Catholics.

17 Bob Pelletier's children were baptized in  
18 that church where actual sexual offences occurred and he  
19 was a member of that church. And that didn't affect any  
20 decisions they made, Mr. Commissioner.

21 THE COMMISSIONER: Okay.

22 MR. ENGELMANN: Sir, would you agree that --  
23 sir, Staff Sergeant Brunet was, as I understand it,  
24 interviewed by the Hamelink team in the extortion  
25 investigation. I don't know if you were aware of that or

1 not or if you remember being advised of that at the time.

2 MR. SMITH: I can't remember, sir.

3 MR. ENGELMANN: All right.

4 But he was not interviewed in your  
5 investigation. And again you've told us ---

6 MR. SMITH: Not formally, not formally.

7 MR. ENGELMANN: No? Okay.

8 MR. SMITH: No.

9 MR. ENGELMANN: And you can't tell us now  
10 whether you would have been advised of -- or had an  
11 opportunity to review the statement that Detective  
12 Inspector Hamelink's team might have taken?

13 MR. SMITH: I can't remember.

14 MR. ENGELMANN: That's fine.

15 Now, with respect to Mr. Shaver again, you  
16 met with him on July 13<sup>th</sup>, 1994, according to your notes.

17 MR. SMITH: From two o'clock to four  
18 o'clock, I believe.

19 MR. ENGELMANN: Yeah, 1803 if you have it  
20 handy.

21 MR. SMITH: Yes.

22 MR. ENGELMANN: I'll give you the Bates page  
23 in just a moment, sir.

24 MR. SMITH: Yes, I have the page now.

25 MR. ENGELMANN: I think it's 224.



1                   **MR. SMITH:** The 13<sup>th</sup> of July, yes, sir.

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

3                   So just to recall that day for a minute, if  
4 we can, do you have some independent recollection of that  
5 meeting?

6                   **MR. SMITH:** Yes, I remember that meeting  
7 very vividly.

8                   **MR. ENGELMANN:** Okay.

9                   **MR. SMITH:** He was wearing short pants and a  
10 golf shirt. I believe he returned from golf. It was a  
11 beautiful sunny day and we went into his sunroom and sat on  
12 wicker chairs, where we took the interviews.

13                   **MR. ENGELMANN:** Had the meeting been set up  
14 much in advance or was it set up on very short notice?

15                   **MR. SMITH:** Short notice. We'd had a  
16 cancellation, he was available.

17                   **MR. ENGELMANN:** He'd just come in from a  
18 round of golf?

19                   **MR. SMITH:** Beg your pardon?

20                   **MR. ENGELMANN:** Had he just come in from a  
21 round of golf?

22                   **MR. SMITH:** I believe he'd golfed that  
23 morning and just finished his lunch.

24                   **MR. ENGELMANN:** Because, sir, if we look at  
25 your notes, this was a day when you had anticipated meeting

1 with Bishop LaRocque, I believe.

2 MR. SMITH: That's correct.

3 MR. ENGELMANN: And there's some exchange  
4 between you and Mr. Annis, his counsel at the time ---

5 MR. SMITH: That's correct.

6 MR. ENGELMANN: --- about the fact that  
7 Bishop LaRocque wanted to have a lawyer present and that  
8 Mr. Annis -- neither Mr. Annis nor someone from his firm  
9 was available.

10 MR. SMITH: That's correct. They cancelled  
11 at pretty well the last minute.

12 MR. ENGELMANN: Right. And so in its place  
13 you set up a meeting with Chief Shaver?

14 MR. SMITH: Yes, it was ---

15 MR. ENGELMANN: All right.

16 MR. SMITH: He was available and we could go  
17 and see him.

18 MR. ENGELMANN: All right. And I think you  
19 told the Commissioner earlier you had heard some things  
20 about him and perhaps some of the difficulties with the  
21 management at the Cornwall Police Service from others, but  
22 you'd never personally spoken to him or met him? Is that  
23 right?

24 MR. SMITH: That was the first time I'd ever  
25 spoken to him personally.

1                   **MR. ENGELMANN:** All right. And just so we  
2                   have it clear you -- in your notes it says "1405."

3                   **MR. SMITH:** Yes.

4                   **MR. ENGELMANN:** And it goes to 1605?

5                   **MR. SMITH:** Yes.

6                   **MR. ENGELMANN:** So it's about two hours?

7                   **MR. SMITH:** Yes, I believe it was ---

8                   **MR. ENGELMANN:** And can you just read for us  
9                   what your note says?

10                  **MR. SMITH:** "With Fagan, speak with  
11   ex-Chief Claude Shaver, residence..."  
12                  His address:  
13   "...regarding statement he provided re  
14   incident. No notes re conversation  
15   with Bishop re Father Charles admitting  
16   sexual assault x 1 on Silmser."

17                  **MR. ENGELMANN:** Okay, all right.  
18                  So the reference to, "regarding statement he  
19                  provided re incident" do you recall, sir, whether or not  
20                  you would have received a statement, perhaps sometime in  
21                  June, from Mr. Shaver, and that you were now going to talk  
22                  to him about that statement?

23                  **MR. SMITH:** I believe we got that statement  
24                  the following day from his lawyer.

25                  **MR. ENGELMANN:** Okay, I just ---

1                   **MR. SMITH:** And if you look at it you'll see  
2                   a date on it, and I think it's the next day that it was --  
3                   and it's got Fagan's name on it, received. What happened  
4                   on that day is that with Chief Shaver -- he's a hard  
5                   interview. We discussed this before, that he's a very  
6                   dynamic individual and he takes over a conversation, and  
7                   I've always been of the adage that you learn more listening  
8                   than talking.

9                   So I listened and he went through all the  
10                  problems that he'd had within the department, and he went  
11                  through his training and his career, and he talked  
12                  virtually for a few hours. We had very few questions that  
13                  we put in. He wasn't -- he didn't want us to take any  
14                  notes. He said, "I will provide you with a statement."

15                  So one of the reasons I wanted to see Mr.  
16                  Shaver that day in particular was that the issue of the  
17                  conversation that he had with the Bishop in regard to  
18                  Silmser, and that I'd received -- there was other  
19                  information from Nancy Seguin in regard to maybe what the  
20                  Bishop had said to her, admitting that Father Charles had  
21                  sexually assaulted Silmser. So at this meeting he doesn't  
22                  have -- he didn't have any notes of that but he remembered.  
23                  He said yes, he said that. I was very interested in that.

24                  As far as the other issues were going, we  
25                  talked about the conspiracy and about the Dunlop problems

1 and -- well, we didn't talk; he told us about everything.  
2 He would provide me a statement the next day. The next day  
3 he provided that report, I guess, that he submitted.

4 **MR. ENGELMANN:** Okay, sir. Given what  
5 you've said though in the note, it says, "regarding  
6 statement he provided," I'm just wondering if you might be  
7 mistaken in the sense that maybe the date -- and we'll look  
8 at it. It's Exhibit 1789. This is the Shaver statement.  
9 There is a handwritten note on it.

10 **MR. SMITH:** And does it say a date on that?

11 **MR. ENGELMANN:** It has a date but it's a bit  
12 ambiguous and I think it might say June 14<sup>th</sup> instead of July  
13 14<sup>th</sup>.

14 **MR. SMITH:** Well ---

15 **MR. ENGELMANN:** Let me just tell you why I  
16 think that, but I want you to see it first.

17 **(SHORT PAUSE/COURTE PAUSE)**

18 **MR. SMITH:** That's definitely Fagan's  
19 writing.

20 **MR. ENGELMANN:** Yes.

21 **MR. SMITH:** And ---

22 **MR. ENGELMANN:** Do you see what I mean about  
23 it might be ambiguous ---

24 **MR. SMITH:** Yes, sir.

25 **MR. ENGELMANN:** --- as to whether it's ---

1                   **MR. SMITH:** Maybe if we went to his notes  
2                   and looked at his notes, and he marks the dates down and we  
3                   can see how he does "July" and "June" but I'm very sure  
4                   that this -- we got this the next day because he said he  
5                   was going to provide us with it.

6                   **MR. ENGELMANN:** Okay, let me just try and  
7                   take you to your notes first, because I was trying to find  
8                   something and ---

9                   **MR. SMITH:** There wasn't.

10                  **MR. ENGELMANN:** Well, I did find something.

11                  **MR. SMITH:** Oh.

12                  **MR. ENGELMANN:** I found something last night  
13                  that I think was earlier, but let's just look at your notes  
14                  -- 1803. Because I was concerned about -- regarding the  
15                  statement he provided.

16                  **MR. SMITH:** What page?

17                  **MR. ENGELMANN:** Well, if we look at the same  
18                  page we were on, on July 14<sup>th</sup>, you're meeting with Crown  
19                  attorney Murray MacDonald.

20                  **MR. SMITH:** Yes.

21                  **MR. ENGELMANN:** Okay, and there's nothing  
22                  there about the statement. Having said that, the statement  
23                  was apparently given to Constable Fagan, not to yourself.

24                  **MR. SMITH:** Yeah.

25                  **MR. ENGELMANN:** Right?

1                   **MR. SMITH:** Yes.

2                   **MR. ENGELMANN:** But if we turn back to June  
3 and look at Bates page 221, right at the bottom -- maybe we  
4 could have that enlarged on the screen.

5                   **MR. SMITH:** "Review all ---"

6                   **MR. ENGELMANN:** It starts with:  
7                   "Call from Peter Griffiths. Update re  
8                   investigation. Statement of Malcolm  
9                   MacDonald [something] Fagan."

10                  **THE COMMISSIONER:** Can you just ---

11                  **MR. ENGELMANN:** We're just about to get it  
12 blown up for us.

13                  **THE COMMISSIONER:** It's at the bottom part  
14 of that ---

15                  **MR. SMITH:** The allegations? Is that what -  
16 --

17                  **MR. ENGELMANN:** Yeah.

18                   "Call from Peter Griffiths. Update re  
19                   investigation. Statement of Malcolm  
20                   MacDonald to Fagan re Crown aware of  
21                   settlement prior to being settled."

22                   Then it's the next part:

23                   "Bishop alleging Father MacDonald  
24                   admitted to sex assault, Silmser. Told  
25                   this to Chief Shaver. Also call from

1 Silmsen re he has three more victims."

2 All right?

3 **THE COMMISSIONER:** What's this:

4 "Threatening me of my job...?"

5 **MR. ENGELMANN:** Yeah:

6 "Threatening me of my job if we don't  
7 get to him."

8 **MR. SMITH:** Oh, I'm on the wrong page.

9 Okay, I'm sorry.

10 **MR. ENGELMANN:** Okay. So ---

11 **THE COMMISSIONER:** Hold on, hold on. Let  
12 him catch up to us.

13 **MR. SMITH:** Okay. Now, if you over to the  
14 previous two pages.

15 **MR. ENGELMANN:** Yes.

16 **MR. SMITH:** I think I'd have to look through  
17 this but Nancy Seguin has something to say, I think, that  
18 the Bishop said to her about the chief, if I'm not  
19 mistaken.

20 **MR. ENGELMANN:** She gives you a fairly  
21 lengthy interview.

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** Well, I mean, this is one  
24 that's written up in your notes.

25 **MR. SMITH:** Yes.



1                   **MR. ENGELMANN:** More like some of the notes  
2 we normally see; it's descriptive. I don't think it talks  
3 about this issue. It does talk about some other things  
4 that are interesting. I'm just going to find it for you.  
5 It starts at the bottom of page 217.

6                   **(SHORT PAUSE/COURTE PAUSE)**

7                   **MR. ENGELMANN:** And I believe this may be  
8 more interesting for the obstruct justice than it is for  
9 the Silmsner allegation.

10                   Are you able to read it, sir? It starts at  
11 the bottom of page 217.

12                   **MR. SMITH:** Yes.

13                   **MR. ENGELMANN:** You don't need to read it  
14 aloud but just want to make sure you were able to read it.

15                   **MR. SMITH:** No, I don't see it in there.  
16 But I'm going to take you back to Chief Shaver. I am sure  
17 that we got that statement the next day because when we  
18 were at his house, "No need to take notes," he said, "I'll  
19 provide you with the report from my lawyer." And I'm sure  
20 the next day -- that's the 14<sup>th</sup> -- at 1140 Fagan gets that  
21 from somebody. He doesn't say who he received it from.

22                   **MR. ENGELMANN:** I'll tell you what. I'll  
23 try and find something over the lunch break, sir, if I can.

24                   **MR. SMITH:** M'hm.

25                   **MR. ENGELMANN:** But I'm just wondering if we

1 look at your note on page 221 ---

2 MR. SMITH: Yes.

3 MR. ENGELMANN: --- that I took you to it  
4 says:

5 "Bishop alleging Father..."

6 You see right at the bottom:

7 "...alleging Father MacDonald admitted  
8 to sex assault Silmser. Told this to  
9 Chief Shaver."

10 I'm wondering how you would have gotten that  
11 information if it wasn't from this statement because if  
12 this statement was given to Fagan on -- to Constable Fagan  
13 on June 14<sup>th</sup> the statement that we're looking at, 1789, does  
14 include that reference; correct?

15 MR. SMITH: Yes.

16 MR. ENGELMANN: So if you didn't get that  
17 information from the statement it must have been either  
18 from Chief Shaver directly and it couldn't be that because  
19 you hadn't spoken to him yet.

20 MR. SMITH: Yeah, I ---

21 MR. ENGELMANN: And I'm just -- like I'm  
22 trying to figure out how you could have got that  
23 information if you hadn't spoken to him yet unless you had  
24 that statement. Because in that statement ---

25 MR. SMITH: Yes, it does say there. Yeah,

1 it does.

2 MR. ENGELMANN: On Bates page 715 that's  
3 where it says:

4 "The Bishop contacted me later and  
5 advised that the priest had admitted  
6 the assault."

7 MR. SMITH: Yes.

8 MR. ENGELMANN: And it was an isolated  
9 incident.

10 MR. SMITH: I may have heard that somewhere  
11 from Mr. Abell.

12 MR. ENGELMANN: Okay, fair enough.

13 MR. SMITH: I think Mr. Abell made reference  
14 that the chief had had a meeting with him and that there  
15 was an admission there.

16 MR. ENGELMANN: Because we have looked at --  
17 -

18 MR. SMITH: And I don't know when that was.

19 MR. ENGELMANN: No, no, we've looked at Mr.  
20 Abell's notes and he -- when he met with the Bishop there  
21 was the acknowledgement that the Bishop had been told by  
22 Father Charlie about sex with teens.

23 MR. SMITH: M'hm.

24 MR. ENGELMANN: But then if we look a bit  
25 further in his notes when he's having a conversation with

1 Jacques Leduc and he's asked if there was any admission he  
2 says, "Yes, from Bishop directly about teens" and he says  
3 "From Chief Shaver, admit assaults."

4 So there was something in those notes.

5 **MR. SMITH:** But that might be it, sir.

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

7 Well, I'll see if I can find anything with  
8 Constable Fagan over the lunch break.

9 **MR. SMITH:** Fourteen (14), 15 years ago I --

10 -

11 **MR. ENGELMANN:** No, but you seem pretty  
12 certain that you got a statement the next day.

13 **MR. SMITH:** Well, I was pretty sure because  
14 -- I can't say with absolute certainty but my recollection  
15 is that that was provided the next day. I could be wrong  
16 but to the best of my recollection it was the next day.

17 **THE COMMISSIONER:** All right. Well, we're  
18 not going to be wrong about this. We're going for lunch.

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

20 **THE COMMISSIONER:** Thank you. Come back at  
21 two.

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

24 The hearing will resume at two p.m.

25 --- Upon recessing at 12:41 p.m. /

1 L'audience est suspendue à 12h41

2 --- Upon resuming at 2:06 p.m./

3 L'audience est reprise à 14h06

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

6 This hearing is now resumed. Please be  
7 seated. Veuillez vous asseoir.

8 **THE COMMISSIONER:** Good afternoon, all.

9 **MR. ENGELMANN:** Good afternoon,  
10 Mr. Commissioner.

11 **THE COMMISSIONER:** Mr. Engelmann.

12 **TIMOTHY SMITH Resumed/Sous le même serment:**

13 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR**  
14 **MR. ENGELMANN (Cont'd/Suite):**

15 **MR. ENGELMANN:** Good afternoon, Mr. Smith.

16 **MR. SMITH:** Good afternoon, sir.

17 **MR. ENGELMANN:** Just a couple of  
18 housekeeping matters, if I may today, sir.

19 **THE COMMISSIONER:** Certainly.

20 **MR. ENGELMANN:** I have spoken to the witness  
21 and he's informed me that the day has been long and he's  
22 been tired, so we've had a discussion about possibly ending  
23 a bit earlier than we normally do today.

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

25 **MR. ENGELMANN:** The witness has also

1 indicated to me that he doesn't mind a 9 o'clock start if  
2 that's acceptable to you, sir.

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

4 **MR. ENGELMANN:** As you may know, he's back  
5 here on the 24<sup>th</sup> and with that in mind, sir, I'm wondering  
6 if we might take that into consideration this afternoon and  
7 start with him again at 9 o'clock on the 24<sup>th</sup> ---

8 **THE COMMISSIONER:** Certainly.

9 **MR. ENGELMANN:** --- when we finish off.

10 **THE COMMISSIONER:** Certainly, sir. Thank  
11 you for pointing that out.

12 **MR. ENGELMANN:** And, sir, another  
13 housekeeping matter if I may.

14 We do have some things we can do to fill  
15 some extra time this afternoon. Mr. Manderville is  
16 present, so we'll bring on the motion for the Cornwall  
17 Police Service dealing with the issue of Ron Lefebvre.

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

19 **MR. ENGELMANN:** And I'll just be one other  
20 moment, if I can.

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

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **MR. ENGELMANN:** Perhaps it's a matter we can  
24 address. Some of the counsel are indicating they weren't  
25 aware of the possibility of the Lefebvre motion going this

1 afternoon. I know one of my colleagues had spoken to Mr.  
2 Manderville about that; perhaps had not spoken to some  
3 other counsel. Having said that, I know that we had set  
4 timelines for written submissions to be in, but anyway  
5 perhaps I'll speak to counsel at the afternoon break and  
6 see if we can make use of the time.

7 **THE COMMISSIONER:** Good. Thank you.

8 **MR. ENGELMANN:** We've been busy over the  
9 lunch hour and, Mr. Smith, I'm hopeful to put some clarity  
10 to a confusing situation with respect to the statement of  
11 Mr. Shaver and when you might have received it.

12 Mr. Commissioner, I have some notes. I've  
13 not given notice, so we've given copies to all the parties.  
14 These are excerpts of the notes of Constable Mike Fagan.  
15 They're excerpts only. I think we've got the relevant  
16 portions. These were from the MAG disclosure, not the OPP  
17 disclosure, and therefore some of these notes were not  
18 redacted to take out extraneous investigations, so  
19 therefore I -- given the pressing time, I just wanted to  
20 take excerpts.

21 So there's an excerpt we've given and I  
22 think there was an excerpt that was listed by the Diocese  
23 in their cross documents, so I'd just like to put them  
24 together as -- even though they're two excerpts from the  
25 same document, can they be entered as one exhibit?

1                   And the Document Number, sir, is 111115.  
2           The Bates pages that I'm going to be referring to and  
3           entering are 434 through 436, so that's 1054434 to 36. And  
4           then, sir, 1054439 to 40, and then again 1054424 and 4425.

5                   So I guess there are three excerpts from  
6           Document Number 111115, and I hope this will help clear up  
7           the record and I'll just take the witness through these in  
8           a minute if I can.

9                   **THE COMMISSIONER:** Certainly.

10                   **MR. ENGELMANN:** I've only given out copies  
11           of the new documents. The other excerpts were in the cross  
12           documents, the section 38 notice of the Diocese.

13                   **THE COMMISSIONER:** Thank you.

14                   Exhibit 2567 will be excerpts of the  
15           documents as noted by Mr. Engelmann.

16                   **--- EXHIBIT NO./PIÈCE NO. P-2567:**

17                               (111115) - (1054424-25; 1054434-36; 1054439-  
18                               40) - Notes of Mike Fagan dated June 14,  
19                               1994

20                   **MR. ENGELMANN:** Again, Mr. Smith, you're  
21           familiar with Constable Fagan's handwriting?

22                   **MR. SMITH:** Yes, sir.

23                   **MR. ENGELMANN:** And this is what we're  
24           looking at then here?

25                   **MR. SMITH:** Yes.



1                   **MR. ENGELMANN:** The first page that I have  
2                   is 1054424 and it indicates, I believe, a date of 14 June  
3                   94, and you'll see at about the third line from the top ---

4                   **MR. SMITH:** Yes.

5                   **MR. ENGELMANN:** It's hard to read but we'll  
6                   blow it up a little bit. I'll just be a moment, sir.

7                   If you'll look just a little further down  
8                   the page, Mr. Smith, at 11:20.

9                   **MR. SMITH:** Yes, "Phone Chief Shaver"?

10                  **MR. ENGELMANN:** Yes. Is that, "Phone Chief  
11                  Shaver re interview"?

12                  **MR. SMITH:** That appears to be what it says,  
13                  yes, sir.

14                  **MR. ENGELMANN:** All right. And then at  
15                  11:30 I believe it says -- maybe we could blow it up on the  
16                  -- can't blow it up? Okay.

17                                 "At Shaver residence."

18                  **MR. SMITH:** Yes.

19                  **THE COMMISSIONER:** "Requested notes."

20                  **MR. ENGELMANN:** Yes:

21                                 "Requested notes of his involvement  
22                                 with Silmsers ..."

23                  **MR. SMITH:** Yes.

24                  **MR. ENGELMANN:** "...with Silmsers case and  
25                  meeting with Bishop. He indicated his

1 lawyer..."

2 MR. SMITH: Yes.

3 MR. ENGELMANN: "...Colin MacKinnon had  
4 his notes."

5 MR. SMITH: Yes.

6 MR. ENGELMANN: I'm just trying to read the  
7 next line, sir.

8 THE COMMISSIONER: "And I needed..."

9 MR. SMITH: Is that "Request them there  
10 would be a problem."?

11 MR. ENGELMANN: "And if I requested them  
12 there would be no problem getting  
13 them."

14 MR. SMITH: Yes.

15 MR. KOZLOFF: Looks like, "If I needed  
16 them".

17 MR. ENGELMANN: Okay.

18 MR. KOZLOFF: "If I needed them there  
19 would be no problem getting them."

20 MR. ENGELMANN: I'm not really sure after  
21 that. There's something I think:

22 "Needed them be turned over..."

23 MR. SMITH: "Seven pages".

24 MR. ENGELMANN: "A seven-page document he  
25 had prepared regarding the case and his

1 involvement with..."

2 MR. SMITH: "With the Bishop".

3 MR. ENGELMANN: "With the Bishop. Page 4,  
4 para 2, Bishop advises priest had..." -

5 - or "has":

6 "...admitted assault. I asked if he  
7 questioned this and Shaver  
8 indicated..."

9 -- something:

10 "...not as Silmser had withdrawn the  
11 complaint."

12 "He had not as Silmser had withdrawn  
13 the complaint."

14 Something like that.

15 MR. SMITH: Yes.

16 MR. ENGELMANN: Okay.

17 MR. SMITH: And that's on the 14<sup>th</sup> of June.

18 MR. ENGELMANN: That's the 14<sup>th</sup> of June and,  
19 sir, I believe if we turn to 1789, if you have them both  
20 open ---

21 (SHORT PAUSE/COURTE PAUSE)

22 MR. SMITH: Yes, sir.

23 MR. ENGELMANN: All right.

24 First of all, the very top hand, right  
25 corner ---

1                   **MR. SMITH:** Yeah.

2                   **MR. ENGELMANN:** --- you weren't sure if that  
3 was a June or a July and if you look actually at the first  
4 page of 2557 and the way he's written the June -- see the  
5 "14 June '94" in both?

6                   Let me just put a couple of things to you.  
7 It looks very similar. The time is 11:40 which would be  
8 consistent with his notes because he says he's at the  
9 Shaver residence at 11:30. He refers to a seven-page  
10 document. This is a seven-page document and he refers to  
11 page 4, para 2. And if we look at page 4, para 2 of 1789,  
12 which is Bates page 7058715, we have that paragraph that  
13 he's referencing where he says the priest had admitted the  
14 assault.

15                   **MR. SMITH:** So that would appear that he  
16 received those on the 14<sup>th</sup>.

17                   **MR. ENGELMANN:** Yes.

18                   **MR. SMITH:** Prior to us going over to ---

19                   **MR. ENGELMANN:** About a month before you go  
20 to see him.

21                   **MR. SMITH:** Okay.

22                   **MR. ENGELMANN:** And I believe that might  
23 explain, if you go to your notes, which is Exhibit 1803 ---

24                   **MR. SMITH:** Page?

25                   **MR. ENGELMANN:** I'll just be a moment.

1 I believe it's 224 -- no, 221.

2 MR. SMITH: Yes, I see it.

3 MR. ENGELMANN: Remember we were looking at  
4 the reference on June 16?

5 MR. SMITH: Yes.

6 MR. ENGELMANN: And we were wondering how  
7 you would have known that information. You speculated that  
8 it might have come through a review of Mr. Abell's notes.

9 MR. SMITH: Yes.

10 MR. ENGELMANN: Or discussion with him, but  
11 it would appear that it's perhaps more likely that upon  
12 receipt of this statement, Constable Fagan would have  
13 reported this to you.

14 MR. SMITH: I agree.

15 MR. ENGELMANN: Okay. This would be pretty  
16 significant, the chief telling him this and providing the  
17 statement.

18 MR. SMITH: Yes.

19 MR. ENGELMANN: So it's likely something he  
20 would have brought to your attention?

21 MR. SMITH: Yes.

22 MR. ENGELMANN: All right.

23 So if I could just have a moment, I think  
24 there's another reference in these notes that I wanted to  
25 take you to, the notes being the new exhibit, 2557. I'll

1 just be a moment, sir.

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. ENGELMANN: All right.

4 If we turn to -- it's Bates page 1054439 and  
5 about two-thirds of the way down the page this is the new  
6 document, sir, Constable Fagan's notes.

7 MR. SMITH: These ones?

8 MR. ENGELMANN: I apologize, yes.

9 MR. SMITH: Could you -- I'm sorry. Could  
10 you repeat that?

11 MR. ENGELMANN: Yeah, if you look at -- it's  
12 Bates page 1054439. We have a reference to the date July  
13 13, '94 and there is a reference -- and these are his notes  
14 from the morning and they deal with Bishop LaRocque, the  
15 issue that we talked about earlier, and then if you turn  
16 over the page I believe it says -- if you look at 10  
17 o'clock, sir:

18 "Meet Inspector Smith."

19 MR. SMITH: Yes.

20 MR. ENGELMANN: "Review statement."

21 MR. SMITH: Yes.

22 MR. ENGELMANN: And then there's a lunch and  
23 then it says:

24 "Proceed to Chief Shaver's residence."

25 MR. SMITH: Yes.

1                   **MR. ENGELMANN:** And at:  
2                   "...1405 with Inspector Smith, Claude  
3                   Shaver's residence re statement.  
4                   Bishop called Shaver..."  
5                   **MR. SMITH:** "...and stated..."  
6                   **MR. ENGELMANN:** "...stated priest admitted  
7                   the assault. It was an isolated  
8                   incident. Shaver no notes on  
9                   conversation with Bishop."  
10                  **MR. SMITH:** Yes, okay.  
11                  **MR. ENGELMANN:** All right.  
12                  So it would appear from his notes both from  
13                  June and July ---  
14                  **MR. SMITH:** Yes.  
15                  **MR. ENGELMANN:** --- that he received the  
16                  seven-page statement from the chief in June.  
17                  **MR. SMITH:** Yes.  
18                  **MR. ENGELMANN:** That the morning of the 13<sup>th</sup>  
19                  he would have reviewed it with you ---  
20                  **MR. SMITH:** Yes.  
21                  **MR. ENGELMANN:** --- at least for some time  
22                  and then the two of you met with Chief Shaver. The note he  
23                  has is very similar to this.  
24                  **MR. SMITH:** I agree.  
25                  **MR. ENGELMANN:** All right.

1                   **MR. SMITH:** So I was wrong when I said that  
2 I received it after that.

3                   **MR. ENGELMANN:** Yeah. I don't think  
4 anything much turns on it but I just want to try, and I  
5 know this may be difficult to reconstruct what happened  
6 with Claude Shaver because it would appear that if you had  
7 the statement, which now it appears you did have and you  
8 would have reviewed it with Constable Fagan, presumably you  
9 would have asked Chief Shaver some questions about the  
10 seven-page statement.

11                   **MR. SMITH:** I would imagine, yes, I did.

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

13                   **MR. SMITH:** I recall specifically that the  
14 part that I was interested in was the admission, that  
15 Father Charles had made this admission to the Bishop.

16                   **MR. ENGELMANN:** Right.

17                   **MR. SMITH:** And then the Bishop had said  
18 that to Mr. Shaver.

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

20                                 And do you have some actual independent  
21 recollection of Chief Shaver expressing that to you when  
22 you were there?

23                   **MR. SMITH:** Just that short note that I had  
24 and, yes, that was important to us.

25                   **MR. ENGELMANN:** Okay. And was he -- because



1 I know when you later questioned Bishop LaRocque ---

2 MR. SMITH: Yes.

3 MR. ENGELMANN: --- you used words like, "He  
4 was explicit, a vivid recollection" or words to that  
5 effect.

6 MR. SMITH: Yes, and it was in his  
7 statement.

8 MR. ENGELMANN: All right.

9 MR. SMITH: Yes.

10 MR. ENGELMANN: So did he suggest at anytime  
11 when you met with him that day that there was anything  
12 inaccurate about what was said in that paragraph at -- and  
13 I'm looking at his statement, 1789. It's Bates page 8715,  
14 the paragraph that reads:

15 "The Bishop contacted me later and  
16 advised that the priest had admitted  
17 the assault and that it was an isolated  
18 incident and he was prepared to leave  
19 for the treatment/assessment centre  
20 immediately."

21 MR. SMITH: He stuck to that story at that  
22 point.

23 MR. ENGELMANN: All right.

24 MR. SMITH: Yes. Now, I recall that there  
25 was some discussion of that at some later time, that maybe

1           that wasn't the case because the Bishop denied that.

2                       **MR. ENGELMANN:** Well, the Bishop -- you put  
3           this to the Bishop, and we'll come there.

4                       **MR. SMITH:** Yeah.

5                       **MR. ENGELMANN:** And he said that didn't  
6           happen or words to that effect.

7                       **MR. SMITH:** Yes, yes.

8                       **MR. ENGELMANN:** And when Chief Shaver was  
9           here he suggested to us that he might have said that but  
10          that he actually then said that the Bishop paused after  
11          saying admitted the assault and then said something like  
12          admitted he was homosexual. So he recanted from this to  
13          some extent here.

14                       **MR. SMITH:** Well, he didn't tell us that,  
15          sir.

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

17                       Just what's important to us is what he told  
18          you, and he would have told you that in July of 1994.

19                       **MR. SMITH:** That's correct. I see that  
20          Constable Fagan also has that in his notes.

21                       **MR. ENGELMANN:** He does.

22                       **MR. SMITH:** And I think I have some excerpt  
23          of that also.

24                       **MR. ENGELMANN:** Yes, you do. You both do.

25                       **MR. SMITH:** Yeah.

1                   **MR. ENGELMANN:** And it's the assault times  
2                   one.

3                   **MR. SMITH:** Yes.

4                   **MR. ENGELMANN:** So I guess that would  
5                   explain the isolated incident.

6                   **MR. SMITH:** One time.

7                   **MR. ENGELMANN:** Now, do you recall if Chief  
8                   Shaver had any significant additions or corrections to -- I  
9                   mean, it may be difficult because you don't recall the  
10                  statement itself but do you recall him wanting to change  
11                  anything else about what he might have said?

12                  **MR. SMITH:** No, he -- my recollection of the  
13                  time that we spent with him, and he did pretty well all the  
14                  talking was that he stood by pretty well what was -- well,  
15                  I didn't see anything glaring that was different in the  
16                  statement and what he said, other than he went through his  
17                  career with us and ---

18                  **MR. ENGELMANN:** Some of the difficulties  
19                  within the Force?

20                  **MR. SMITH:** Yes, and some of the things that  
21                  he was proud of in his teaching professions and things of  
22                  that nature. He was -- I shouldn't say, but he -- modesty  
23                  wasn't one of his virtues, so to speak.

24                  **MR. ENGELMANN:** Okay. Certainly after the  
25                  interview with the Chief and you have this statement from

1 him ---

2 MR. SMITH: M'hm.

3 MR. ENGELMANN: --- if there had been any  
4 significant differences between what he had told you and  
5 what you read in the statement, would you have followed  
6 that up with him?

7 MR. SMITH: If there was something that  
8 appeared different than what I was aware of, yes, I would  
9 speak to him.

10 MR. ENGELMANN: And my understanding is you  
11 didn't have a follow-up meeting with Chief Shaver, you just  
12 had the one?

13 MR. SMITH: No, that was the one and only  
14 time, sir, yes.

15 MR. ENGELMANN: Was there any follow-up  
16 phone call or was that it as far as you know?

17 MR. SMITH: I think that was my one and only  
18 contact with ex-Chief Shaver.

19 MR. ENGELMANN: And given his significance -  
20 - and you told us how significant he was with respect to  
21 your investigation of the CPS ---

22 MR. SMITH: M'hm. Yes.

23 MR. ENGELMANN: --- if there had been  
24 something significantly different, that would have been  
25 something to come back to him on, clearly?

1                   **MR. SMITH:** Yes.

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

3                   Now, I just want to ask you a little bit  
4                   about your thought process just in reviewing this  
5                   statement, and that's 1789. And I think you told us  
6                   earlier that to some extent, at least at times in this  
7                   investigation, you thought maybe he micromanaged.

8                   In the first paragraph of his statement --  
9                   and that's 1789 -- he's talking about that he's assigning  
10                  the complaint to his Intelligence Unit, to Sergeant Claude  
11                  Lortie, and that the information was to be kept  
12                  confidential under a project file. Do you see that?

13                  **MR. SMITH:** Yes.

14                  **MR. ENGELMANN:** So he's directly involved,  
15                  at least at the beginning?

16                  **MR. SMITH:** Yes.

17                  **MR. ENGELMANN:** And do you know if there was  
18                  any discussion about why this was to be kept confidential  
19                  or in what he calls a project file? Do you have any  
20                  recollection of that?

21                  **MR. SMITH:** No.

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

23                  He then says a little later in the paragraph  
24                  that the matter was reassigned out of the Intelligence Unit  
25                  by Deputy Chief St. Denis.

1                   Were you aware at all of any conflict  
2           between these men about the assignment of this file?

3                   **MR. SMITH:** Not at that time.

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

5                   Now, a little later on -- right about the  
6           middle of the page -- what he says is:

7                                "I became aware that the DS case for  
8                                all intents and purposes was over when  
9                                the Crown Attorney Murray MacDonald  
10                              sent a letter to the police service  
11                              dated the 14<sup>th</sup> of September, '93  
12                              advising us we could not proceed with  
13                              the investigation as DS had withdrawn  
14                              his complaint."

15                   Do you see that?

16                   **MR. SMITH:** Yes.

17                   **MR. ENGELMANN:** And he says:

18                              "I was not satisfied with the decision;  
19                              immediately called the Crown for an  
20                              appointment to discuss this matter."

21                   And then he says:

22                              "I met with the Crown on the 30<sup>th</sup> of  
23                              September, '93 and he explained we  
24                              could not proceed based on the  
25                              information at his disposal."

1                   This was something I tried to cover with you  
2                   earlier.

3                   **MR. SMITH:** Yes.

4                   **MR. ENGELMANN:** Because it almost appears  
5                   what the Chief is saying here is that this wasn't his  
6                   decision; he wasn't happy about it; the Crown was saying he  
7                   couldn't go ahead and he wasn't happy with that; he goes  
8                   back to the Crown and again the Crown says you can't go  
9                   ahead?

10                  **MR. SMITH:** That's correct.

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

12                  So it doesn't seem perhaps like a normal  
13                  police review where you'd have a final review, you'd have  
14                  some decision on RP&G, and then you'd have the Crown  
15                  review. It appears that what we're seeing here is the  
16                  Crown saying no because there's no complainant. At least  
17                  that's how he's recounting it?

18                  **MR. SMITH:** Yes, but I -- was there not some  
19                  conversation with Heidi Sebalj prior to that about RP&G and  
20                  ---

21                  **MR. ENGELMANN:** Well, we did look at that  
22                  earlier today where she had some concerns ---

23                  **MR. SMITH:** Yes.

24                  **MR. ENGELMANN:** --- but she was hoping for a  
25                  review by an external Crown?

1                   **MR. SMITH:** Correct.

2                   **MR. ENGELMANN:** And that didn't happen?

3                   **MR. SMITH:** No.

4                   **MR. ENGELMANN:** Then, sir, there's the  
5 reference to -- on the following page -- his meeting with  
6 Richard Abell on October 1<sup>st</sup> and the fact that he's upset  
7 that this matter has gone to the Children's Aid Society.

8                   Do you recall, sir, if that was still an  
9 issue for Mr. Shaver when he met with you in the summer of  
10 '94, the issue of Dunlop going to the third party?

11                   **MR. SMITH:** Yes, he wasn't pleased about it.

12                   **MR. ENGELMANN:** And, sir, a little further  
13 down on the page at the bottom he's discussing the meeting  
14 with the Papal Nuncio, Archbishop Carlo Curis?

15                   **MR. SMITH:** Yes, with Staff Sergeant Brunet.

16                   **MR. ENGELMANN:** Right.

17                   **MR. SMITH:** Yes.

18                   **MR. ENGELMANN:** And he's using an expression  
19 that he used here as well:

20                   "I explained that the church had tied  
21 the hands of the police as we could not  
22 longer proceed with our investigation  
23 as the complainant had withdrawn his  
24 allegations."

25                   So, again, sir, just from that, presumably



1 he did not say anything differently to you on that issue?

2 MR. SMITH: No.

3 MR. ENGELMANN: And he was concerned about  
4 the actions of the Church?

5 MR. SMITH: Yes.

6 MR. ENGELMANN: All right.

7 And, again, it sounds like this  
8 investigation's being taken away from him; that it's sort  
9 of beyond his control. It doesn't sound like a normal case  
10 that is finished with a finding of no RP&G?

11 MR. SMITH: Yes, I agree with that.

12 MR. ENGELMANN: All right. And it looks  
13 like there's this settlement that the Church has gotten  
14 involved in with the complainant and it's taken it away  
15 from us?

16 MR. SMITH: Yes, as it goes down the line a  
17 little bit with another -- the final letter that comes with  
18 Silmser. Later on I believe he delivers a letter after the  
19 settlement's made.

20 MR. ENGELMANN: Right.

21 MR. SMITH: Later in September.

22 MR. ENGELMANN: He comes in and signs a  
23 notebook saying he doesn't want to proceed?

24 MR. SMITH: Yes.

25 MR. ENGELMANN: But, of course, as you know

1 from that settlement that he entered into, that wasn't  
2 looked at the time ---

3 MR. SMITH: No.

4 MR. ENGELMANN: --- he had to do that?

5 MR. SMITH: Yes.

6 MR. ENGELMANN: That was part of the deal?

7 MR. SMITH: Yeah.

8 MR. ENGELMANN: It wasn't legal but that was  
9 part of the deal?

10 MR. SMITH: M'hm.

11 MR. ENGELMANN: Again, he talks about  
12 meeting with Bishop LaRocque, and that's on the next page.  
13 And he's using that expression again, about a third of the  
14 way down:

15 "I explained to him the actions of the  
16 church had tied the hands of the police  
17 and in my view the church should have  
18 cooperated with the police to get to  
19 the truth."

20 So again we have that same expression, that  
21 it's this settlement that's taken this away from the  
22 police?

23 MR. SMITH: Correct.

24 MR. ENGELMANN: And the statement then goes  
25 on to say that -- he says:

1                    "The Bishop explained he'd gone against  
2                    his better judgment."

3                    et cetera:

4                    "I explained I disagreed with that  
5                    view. The lawyers had convinced him  
6                    this was in the best interest of all  
7                    concerned. I explained I disagreed  
8                    with that view and that the payment by  
9                    the church would come back to bite both  
10                    the church and the police."

11                    Do you recall if there was any elaboration  
12                    on that by Claude Shaver, this biting both the Church and  
13                    the Police?

14                    **MR. SMITH:** No.

15                    **MR. ENGELMANN:** You don't recall if that was  
16                    something you would have explored with him?

17                    **MR. SMITH:** In our conversation, he  
18                    addressed that, but he pretty well stuck to the script all  
19                    the way through. And I was -- he didn't vary from the  
20                    script at all. I was satisfied with what he was telling  
21                    me.

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

23                    **MR. SMITH:** You know, that he was upset  
24                    about it and he didn't like it, and he made no bones about  
25                    that at all.

1                   **MR. ENGELMANN:** What about the issue of the  
2 money, sir? You'll see that on page -- and I know this is  
3 something you explored to some extent later.

4                   **MR. SMITH:** M'hm. Yes.

5                   **MR. ENGELMANN:** He's telling you -- or at  
6 least in his statement, he says:

7                                   "I asked where the money was raised and  
8 he explained the Diocese had  
9 contributed \$10,000, the priest  
10 contributed \$10,000, and another  
11 \$12,000 came from another unnamed  
12 source."

13                   Was that of some interest to you at that  
14 time?

15                   **MR. SMITH:** Yes, because I think I know  
16 where the other -- I had a feeling where the other money  
17 came from.

18                   **MR. ENGELMANN:** And what was your thought at  
19 that time?

20                   **MR. SMITH:** Malcolm MacDonald.

21                   **MR. ENGELMANN:** Okay.

22                                   Now, sir, you didn't know it at the time but  
23 -- or did you know at the time that Malcolm MacDonald was  
24 also the lawyer for Ken Seguin or had been the lawyer for  
25 Ken Seguin?

1                   **MR. SMITH:** No, but it wouldn't surprise me.  
2                   They worked out of the same office pretty well, or beside  
3                   the same office.

4                   **MR. ENGELMANN:** Okay.

5                   **MR. SMITH:** I can't remember but ---

6                   **MR. ENGELMANN:** That certainly comes out in  
7                   the Hamelink extortion investigation, his involvement  
8                   there, and it is something that I believe you become aware  
9                   of when you interview Malcolm MacDonald later that year in  
10                  the fall?

11                  **MR. SMITH:** I can't remember but it ---

12                  **MR. ENGELMANN:** Well, why was it that you  
13                  had thought that the money might have come from Malcolm  
14                  MacDonald at that time?

15                  **MR. SMITH:** I believe I'd interviewed the  
16                  Bishop prior to this and I think the Bishop may have  
17                  volunteered something in his statement indicating that  
18                  Charles didn't have -- Father Charles didn't have enough  
19                  money.

20                  **MR. ENGELMANN:** Okay. I think the interview  
21                  with the Bishop is later.

22                  **MR. SMITH:** Is it?

23                  **MR. ENGELMANN:** And I think at that point  
24                  you were given different information about the source of  
25                  the money because we go from Shaver saying three sources of

1 money ---

2 MR. SMITH: Yes.

3 MR. ENGELMANN: --- and then repeating that  
4 story to Rick Abell, and that's right after the discussion  
5 with the Bishop in October of '93.

6 MR. SMITH: Okay.

7 MR. ENGELMANN: So within approximately a  
8 month of the settlement.

9 Then the following year when you're  
10 following the money, so to speak, you're told first by the  
11 -- I believe it's by the Bishop, in your statement with  
12 him, it's 22 from the Diocese and 10 from Father MacDonald.

13 MR. SMITH: Yes.

14 MR. ENGELMANN: And then a little later when  
15 you interview the bursar he says, "Well, I cut a cheque for  
16 27,000; sent it over to Jacques Leduc". So a suggestion  
17 was that it was 27 and 5 at that point.

18 MR. SMITH: Okay.

19 MR. ENGELMANN: Okay. But at least at this  
20 point-in-time, very close to the time of the settlement,  
21 you're hearing this from Claude Shaver, the Chief of  
22 Police, that the Bishop's told him this?

23 MR. SMITH: Yes.

24 MR. ENGELMANN: And you interview the  
25 Bishop, I believe, a couple months later on September 12<sup>th</sup>,

1 '94. This is July 13<sup>th</sup> when you're meeting with Claude  
2 Shaver. You had a concern, presumably, about a third  
3 unnamed source contributing to this settlement?

4 **MR. SMITH:** Yes.

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

6 **MR. SMITH:** Yeah, I guess. I still think,  
7 even though they say -- I still think that -- and I don't  
8 think I was able to prove it, but Malcolm MacDonald  
9 contributed in there somewhere.

10 **MR. ENGELMANN:** One of the things we find  
11 out later is that there is an extra thousand dollars above  
12 the 5,000 that is paid through Malcolm MacDonald's trust  
13 account from Father Charlie, so it's up to 6,000, but there  
14 are still issues about these numbers?

15 **MR. SMITH:** Yeah. The only firm issue that  
16 I thought that I could really prove was the 32,000.

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

18 **MR. SMITH:** And there was more than one  
19 person contributing, and I still think three people  
20 contributed.

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

22 Now, was this at all an issue when you were  
23 thinking about obstruct justice and/or possible conspiracy;  
24 the fact that there might be three payers on the  
25 settlement?

1                   **MR. SMITH:** Not really because the amount  
2                   had been brought up by Mr. Silmsen himself. He wanted  
3                   32,000. It's not unreasonable to expect the Diocese to  
4                   contribute money for a priest within the Diocese.

5                   **MR. ENGELMANN:** Right.

6                   **MR. SMITH:** It's not unusual for Father  
7                   MacDonald to have some money, and somewhere it was  
8                   indicated that he -- it was indicated to me he had no  
9                   money.

10                  **MR. ENGELMANN:** Yes.

11                  **MR. SMITH:** He was broke. And it didn't  
12                  surprise me that the third person would be Malcolm  
13                  MacDonald, who is known to have -- was known to have money  
14                  and was a close friend of Father Charles.

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

16                  **MR. SMITH:** So they would all help out  
17                  Father Charles.

18                  **MR. ENGELMANN:** And at that point-in-time,  
19                  Malcolm MacDonald was not yet someone you were looking at  
20                  as an alleged perpetrator; not of the obstruct but of child  
21                  sexual abuse?

22                  **MR. SMITH:** No. We may have had some  
23                  suspicion but, no, we didn't have any complaints.

24                  **MR. ENGELMANN:** Now, just to carry on with  
25                  the statement, a couple of other points, if I may.



1                   At the bottom of that page there's a  
2           reference to -- it says:

3                   "I further questioned the Bishop on  
4                   what action he was prepared to take  
5                   should he ascertain that the priest had  
6                   committed the alleged assault(s). He  
7                   advised the priest would be removed  
8                   from the parish and sent to a special  
9                   treatment program immediately. I  
10                  advised this action was agreeable as  
11                  the police are concerned for future  
12                  victims, especially children, although  
13                  we had not uncovered any complaints  
14                  other than those which date back to the  
15                  seventies."

16                  Do you see that?

17                  **MR. SMITH:** Yes.

18                  **MR. ENGELMANN:** And I'm wondering if you  
19                  would have questioned Mr. Shaver at all about that  
20                  approach?

21                  **MR. SMITH:** Well, in any of the previous  
22                  other dealings I had with clergy, when it was brought to  
23                  their attention that the clergy was involved in this type  
24                  of activity, or suspected, they were removed from their  
25                  position and sent to Southdown.

1                   **MR. ENGELMANN:** So you'd had -- you  
2 investigated priests or clergy that had been sent to  
3 Southdown before?

4                   **MR. SMITH:** Yes, sir.

5                   **MR. ENGELMANN:** And this was out of Alfred?

6                   **MR. SMITH:** Mainly St. John's.

7                   **MR. ENGELMANN:** St. John's, okay.

8                   **MR. SMITH:** A training school in Uxbridge.

9                   **MR. ENGELMANN:** But did this concern you at  
10 all, the Chief of Police setting out what appears to be an  
11 agreement that he has with the Bishop that if the priest  
12 admits this to you tonight, or whenever, you send him to  
13 the special treatment program and that's that?

14                   **MR. SMITH:** In the absence of anything else  
15 that was being done, and I guess the Chief -- I know that  
16 he hasn't got very much investigative background,  
17 criminally anyway -- that this was probably the best-case  
18 scenario he could make since the case had been closed on  
19 him. The allegation dates -- only one allegation dates  
20 back to the seventies, which would be 20-some odd years  
21 prior, and this priest would be taking treatment. That  
22 seems reasonable to me at that -- you know, at that  
23 juncture.

24                   **MR. ENGELMANN:** Is that an admission that  
25 might cause a police chief to reopen an investigation, in

1 your view?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: And we know that didn't  
4 happen here?

5 MR. SMITH: It seemed to fade off into the  
6 sunset, yes.

7 MR. ENGELMANN: All right.

8 And then we have the paragraph that we read  
9 before about the admission and, again, you would have gone  
10 through that with him, and he was quite explicit or -- I  
11 think you used the term "vivid recollection" with respect  
12 to that and you both note that in your notes. This is the  
13 paragraph where it says ---

14 MR. SMITH: Yeah, if anything stands out  
15 from that whole statement it's that admission.

16 MR. ENGELMANN: All right. And, again,  
17 presumably even after that admission, the course of action  
18 is still the agreed-upon course of action, that the priest  
19 is sent to Southdown; police don't reopen the  
20 investigation?

21 MR. SMITH: Well, I wouldn't go that far,  
22 "don't reopen the investigation". I don't see that  
23 anywhere.

24 MR. ENGELMANN: No. What I'm saying is what  
25 happened -- even -- he tells you about that admission?

1                   **MR. SMITH:** Yes.

2                   **MR. ENGELMANN:** And it appears the course of  
3                   action that they follow is what they had talked about, that  
4                   the priest is sent off to the special ---

5                   **MR. SMITH:** The priest went off, yes. And I  
6                   couldn't find any more -- I might be wrong but I couldn't  
7                   find anything else that would show that they were  
8                   investigating Silmsers' complaint because I think, again,  
9                   after this date or prior to this date he didn't want  
10                  anything more to do with it.

11                  **MR. ENGELMANN:** Yeah, he came in on the 29<sup>th</sup>  
12                  ---

13                  **MR. SMITH:** Yes.

14                  **MR. ENGELMANN:** --- and signed the notebook.

15                  **MR. SMITH:** A few days just prior.

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

17                  You were aware at this time -- just be one  
18                  moment -- you were aware at this time that -- and "this  
19                  time" being in during your investigation and then forward -  
20                  - that Perry Dunlop had found out about the decision to  
21                  terminate the FCM, the investigation of Father Charles  
22                  MacDonald by the Cornwall Police?

23                  **MR. SMITH:** Yes.

24                  **MR. ENGELMANN:** And as a consequence, he  
25                  felt that the matter was being covered up by his own police

1 force and that's why he then released a statement, the  
2 Silmsler statement to the CAS?

3 MR. SMITH: Yes.

4 MR. ENGELMANN: Did you become aware, sir,  
5 at some point by reviewing CAS notes, notes from Mr. Bell,  
6 that Mr. Dunlop was also mentioning, as early as the end of  
7 November of 1993, the existence of a pedophile ring in the  
8 City of Cornwall?

9 MR. SMITH: I can't remember when that  
10 started but, no, I don't remember that particular thing.

11 MR. ENGELMANN: All right. He was alleging  
12 at that time that Malcolm MacDonald was a member.

13 MR. SMITH: I thought that the first time I  
14 saw this or heard that it was something in the press.  
15 That's my recollection.

16 MR. ENGELMANN: Would that have been much  
17 later dealing with a fellow by the name of Ron Leroux?

18 MR. SMITH: I don't know what the -- my  
19 first indication, I think, sir, was -- well, I'm sure it  
20 was something in the press.

21 MR. ENGELMANN: All right.

22 MR. SMITH: About a ring.

23 MR. ENGELMANN: So you don't recall reading  
24 CAS notes?

25 MR. SMITH: No.

1                   **MR. ENGELMANN:** The reason I ask is from  
2                   about late November until sometime, at least until early  
3                   1994, CAS officials were trying to get Mr. Dunlop to come  
4                   in and give them this information. He'd made these  
5                   allegations and, you know, he'd given them the Silmser  
6                   statement earlier and they were asking him to give them  
7                   some information, some facts behind the allegations. They  
8                   weren't able to get him to come back in.

9                   **MR. SMITH:** I'm aware of that, later on,  
10                  yes.

11                  **MR. ENGELMANN:** All right. But you weren't  
12                  aware of it at the time, you don't think?

13                  **MR. SMITH:** I can't remember.

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

15                  Sir, neither you nor Constable Fagan  
16                  interviewed Perry Dunlop during the 1994 investigations.  
17                  Am I right?

18                  **MR. SMITH:** That's correct.

19                  **MR. ENGELMANN:** And I just want to know why  
20                  you wouldn't have done that because he's someone who is  
21                  alleging a cover-up. I'm wondering why you wouldn't have  
22                  considered speaking to him?

23                  **MR. SMITH:** He was a police officer and he  
24                  was on sick leave and if I was to interview him I wanted  
25                  another police officer present. And he wasn't interviewed.

1                   **MR. ENGELMANN:** You're right. He was on --  
2                   you're right -- he was on sick leave throughout the time of  
3                   your investigation in 1994.

4                   **MR. SMITH:** Yes. When he returned, we spoke  
5                   to him at length about his investigations and requested all  
6                   of his material.

7                   **MR. ENGELMANN:** Yes.

8                   **MR. SMITH:** And ---

9                   **MR. ENGELMANN:** You had a couple of meetings  
10                  with him in 1997 that we'll get to.

11                  **MR. SMITH:** Yes.

12                  **MR. ENGELMANN:** I'm wondering about 1994.  
13                  Was that a conscious decision? I know officers on sick  
14                  leave, there are issues and rules, but is it something you  
15                  attempted to do?

16                  **MR. SMITH:** I know I had a conversation with  
17                  him in '94 in the fall.

18                  **MR. ENGELMANN:** Well, you have a note of a  
19                  call with his lawyer that I was able to find and that's on  
20                  Bates page 225. It's Exhibit 1803.

21                  **THE COMMISSIONER:** You also told us of a  
22                  conversation yesterday when you started off this project --  
23                  -

24                  **MR. SMITH:** Yes.

25                  **THE COMMISSIONER:** --- where he wanted to

1           congratulate you.

2                       **MR. SMITH:** Yeah, and was glad to see  
3           somebody was going to do something. And that was in the  
4           early stages.

5                       **MR. ENGELMANN:** That's right.

6                       **MR. SMITH:** It was a short, short call.

7                       **MR. ENGELMANN:** Okay. Is that the call you  
8           recall now? Or are you thinking of something else?

9                       **MR. SMITH:** I think that's the call.

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

11                      Because in your notes at Bates page 1054225,  
12           July 20<sup>th</sup>, '94 ---

13                      **MR. SMITH:** Yes.

14                      **MR. ENGELMANN:** --- I'm not sure what the  
15           first -- "Page to call"?

16                      **MR. SMITH:** Yeah, I received a page to call  
17           Al O'Brien.

18                      **MR. ENGELMANN:** Right.

19                      **MR. SMITH:** The phone number, the lawyer for  
20           Perry Dunlop.

21                                "Called O'Brien and he requested the  
22                                mandate of my investigation if I would  
23                                be finished before October. I advised  
24                                the mandate which did not include how  
25                                Silmsers's statement was made public."



1                   And that was an agreement that I had with  
2                   Chief Johnston that I wasn't going to do anything with the  
3                   Police Act or what went out. I wanted to separate Mr.  
4                   Dunlop's problems with the police from my investigation and  
5                   he agreed on that.

6                   **THE COMMISSIONER:** But you didn't answer --  
7                   I don't know, maybe I missed the answer. Why is it that  
8                   you didn't speak to Dunlop at the time?

9                   **MR. SMITH:** I don't know. I don't know.

10                  **THE COMMISSIONER:** Fair enough.

11                  **MR. ENGELMANN:** Because you clearly speak to  
12                  his lawyer, and I understand not wanting to overlap and  
13                  deal with ---

14                  **MR. SMITH:** Yes.

15                  **MR. ENGELMANN:** --- the same issue that's  
16                  before the *Police Services Act*.

17                  **MR. SMITH:** If I could add at this time, I  
18                  was of the opinion that he was being dealt with harshly,  
19                  from the knowledge that I had, for releasing that to the  
20                  CAS. And I felt that at that time he was getting a raw  
21                  deal. So what, he released it to the CAS? What's the  
22                  problem?

23                                He had difficulties with the Police  
24                                Department and his wife was involved and I didn't -- my  
25                                concern was the allegations and not his problem with the

1 Police Force, but afterwards it became the overriding issue  
2 of everything else and seemed to take the forefront rather  
3 than -- the victims were lost in the shuffle, so to speak -  
4 - of his Police Act and hearings and appeals and everything  
5 else. And I wanted to avoid that if I could.

6 MR. ENGELMANN: All right.

7 Let's turn to another individual that you  
8 would have dealt with, and that's Murray MacDonald.

9 MR. SMITH: Yes, sir.

10 MR. ENGELMANN: He was the local Crown  
11 prosecutor.

12 MR. SMITH: Yes.

13 MR. ENGELMANN: Now, he was familiar to you  
14 already?

15 MR. SMITH: Yes.

16 MR. ENGELMANN: From some of the Alfred  
17 prosecutions?

18 MR. SMITH: And I believe I'd worked on a  
19 homicide with him at one time.

20 MR. ENGELMANN: All right. And, yeah, I  
21 think you told us when you came down to the east region in  
22 the late '80s that you might have ---

23 MR. SMITH: Yes. He and Guy Simard  
24 prosecuted a homicide that I worked with.

25 MR. ENGELMANN: All right.

1                   So it appears, at least from your notes, and  
2           I'm in 1803 at Bates page 224, that ---

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

5                   **MR. SMITH:** I'm sorry, sir. Again, the  
6           page?

7                   **THE COMMISSIONER:** Two-two-four (224).

8                   **MR. ENGELMANN:** That's fine. The last three  
9           digits are 224.

10                  **MR. SMITH:** Yes.

11                  **MR. ENGELMANN:** And if you look down at the  
12           bottom of the page this is the day after you meet with  
13           Chief Shaver. It says:

14                                "14 July: Meet with Crown Attorney,  
15                                Murray MacDonald."

16                  **MR. SMITH:** Yes.

17                  **MR. ENGELMANN:** And that's:

18                                "Coffee, cigarette, general  
19                                discussion."

20                  **MR. SMITH:** Yes, I smoked at the time, yes.

21                  **MR. ENGELMANN:** Okay. Did you all?

22                  **MR. SMITH:** Well, I quit when I retired. I  
23           didn't want to get sick on my own time.

24                                        **(LAUGHTER/RIRES)**

25                  **MR. ENGELMANN:** All right. This Inquiry has

1           caused counsel to go back to smoking.

2                   **MR. SMITH:** I've approached certain counsel  
3           about that and fellow officers.

4                   **MR. ENGELMANN:** There's only so much you can  
5           push.

6                   It appears at 10:15:

7                            "Interview re Silmsler complaint and  
8                            surrounding circumstances."

9                   **MR. SMITH:** Yes.

10                   **MR. ENGELMANN:** "Whole discussion tape  
11                            recorded."

12                   **MR. SMITH:** That's correct.

13                   **MR. ENGELMANN:** And then it says:

14                            "Complete..."

15                   **MR. SMITH:** "...two breaks in between."

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

17                            "Total tape approximately one hour and  
18                            fifteen minutes."

19                   **MR. SMITH:** Yes.

20                   **MR. ENGELMANN:** All right. So you and  
21           Detective Constable Fagan would have interviewed Murray  
22           MacDonald?

23                   **MR. SMITH:** Yes, and I believe that was in  
24           the boardroom at the Long Sault Detachment.

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

1                   If we can have a look at Exhibit 1233. It's  
2                   an interview report at the Long Sault Detachment.

3                   **MR. SMITH:** Yes.

4                   **MR. ENGELMANN:** Now, presumably, given what  
5                   you were investigating -- and I'm not sure if the  
6                   conspiracy issue had changed from just the Police and the  
7                   Diocese already, but we know by the end of the Crown brief,  
8                   it was the Police, the Diocese and the Crown, but we do  
9                   know that right from the start, the obstruction part of the  
10                  investigation you were looking at two lawyers who had  
11                  consulted with the Crown. So at least indirectly, the  
12                  Crown -- the local Crown was involved in your obstruct  
13                  investigation?

14                  **MR. SMITH:** Two lawyers? Can you help me?  
15                  The two lawyers -- I know that one was Malcolm; was the  
16                  other ---

17                  **MR. ENGELMANN:** Well ---

18                  **MR. SMITH:** --- Malcolm MacDonald?

19                  **MR. ENGELMANN:** --- if you look at the first  
20                  page of your notes, 1803...

21                  **MR. SMITH:** M'hm.

22                  **THE COMMISSIONER:** Exhibit 1803.

23                  **MR. ENGELMANN:** The very first page of your  
24                  notes ---

25                  **MR. SMITH:** Yes, I'm sorry.

1                   **THE COMMISSIONER:** It's a question of  
2                   finding your binders, I guess.

3                   **MR. SMITH:** Yes, first page.

4                   **MR. ENGELMANN:** "Number 2: Was there  
5                                   obstruction of justice by lawyer who  
6                                   brought about..."

7                   **MR. SMITH:** Yes.

8                   **MR. ENGELMANN:** "...civil settlement of  
9                                   assault victim..."

10                  **MR. SMITH:** So it would be that person ---

11                  **MR. ENGELMANN:** "...which resulted in  
12                                   termination of police investigation  
13                                   upon consultation..."

14                  **MR. SMITH:** Yes.

15                  **MR. ENGELMANN:** "...with local Crown  
16                                   Attorney."

17                  **MR. SMITH:** Yes.

18                  **MR. ENGELMANN:** And, sir, I don't know if  
19                   it's close at hand, but the letter of January 31<sup>st</sup>, '94,  
20                   which is Exhibit 2558.

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

22                  **MR. SMITH:** Yes.

23                  **MR. ENGELMANN:** On the second page, and I  
24                   believe this is what the obstruct is referring to:

25                                   "There has been a suggestion that

1 police should consider whether there  
2 was an obstruction of justice when two  
3 lawyers, one acting on behalf of the  
4 alleged sexual assault victim, the  
5 other on behalf of a local Diocese,  
6 worked to bring about a cash settlement  
7 which resulted in the termination of  
8 the Police investigation upon  
9 consultation with the local Crown  
10 Attorney."

11 I think there may have been a mistake there

12 ---

13 **MR. SMITH:** Yeah.

14 **MR. ENGELMANN:** --- because the two lawyers,  
15 at least you were first looking at, were not -- there was  
16 no lawyer, really, for the alleged sexual assault victim  
17 until the last day. So you were really looking at the  
18 lawyer for the Diocese, Jacques Leduc, and a lawyer for the  
19 priest, Malcolm MacDonald. Is that right; on the obstruct  
20 justice, at least initially?

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** And -- but we see this:

23 "Upon consultation with local Crown."

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** So at least, indirectly, the

1 local Crown could be considered, I guess, a possible  
2 suspect in your obstruct justice investigation?

3 MR. SMITH: Yes.

4 MR. ENGELMANN: And if we look at -- just  
5 staying on that letter for a minute -- on the conspiracy  
6 issue, it's written up as number 1 there:

7 "Media allegations of alleged  
8 conspiracy between the Cornwall Police  
9 and the local Catholic Diocese to  
10 effect a civil settlement with the  
11 alleged victim thus terminating  
12 criminal proceedings."

13 And we know, sir, from discussion earlier  
14 this afternoon that when you write up the Crown brief,  
15 you're looking on the conspiracy issue at the Police, the  
16 Diocese and the Crown?

17 MR. SMITH: Yes.

18 MR. ENGELMANN: So my -- I guess, just to  
19 give you that context, Murray MacDonald was a suspect,  
20 perhaps, on either the conspiracy or the obstruct justice?

21 MR. SMITH: In my mind, yes.

22 MR. ENGELMANN: Is that fair?

23 MR. SMITH: Yes.

24 MR. ENGELMANN: Okay.

25 Now, in your interview with him, you do not



1           caution him. At least, not to my knowledge?

2                   **MR. SMITH:** No.

3                   **MR. ENGELMANN:** Why not?

4                   **MR. SMITH:** I can put questions to anybody -  
5           - a suspect or anybody until such time as they may  
6           incriminate themselves, then I would caution him.

7                   **MR. ENGELMANN:** And I remember asking you  
8           this yesterday and I can't remember -- we were talking  
9           about your interview -- it might come to me. Oh, of yes,  
10          of David Silmsen ---

11                   **MR. SMITH:** Yes.

12                   **MR. ENGELMANN:** --- and the fact that you  
13          were asking some questions about the extortion  
14          investigation.

15                   **MR. SMITH:** Yes.

16                   **MR. ENGELMANN:** And I'd asked you why not  
17          caution and I think you gave me a similar answer.

18                   **MR. SMITH:** Yes, sir.

19                   **MR. ENGELMANN:** Having said that though,  
20          sir, and we'll come to a statement that you take from  
21          Malcolm MacDonald and I believe also a statement you take  
22          from Sean Adams, and in both those cases you decide to  
23          caution them right at the beginning and I'm just wondering  
24          about the difference?

25                   **MR. SMITH:** I believe there was an utterance

1       there in a few cases where I -- I'm going by memory now --  
2       with Sean Adams. I indicated to him at the start, I'm  
3       going to ask him these questions and if I feel that  
4       somewhere there that he might intimidate (sic) himself, I'm  
5       going to stop and caution him.

6                   **THE COMMISSIONER:** Incriminate?

7                   **MR. SMITH:** Incriminate, yes.

8                   **MR. ENGELMANN:** Okay. Well, you know what,  
9       let's wait until we get to them and I'll just ask you that  
10      question when we get there because it appears at least --  
11      and by memory -- that was Sean Adams; and with Malcolm  
12      MacDonald, you give the caution right at the beginning.  
13      Whereas, with Murray MacDonald ---

14                   **MR. SMITH:** M'hm.

15                   **MR. ENGELMANN:** --- there's no caution ---

16                   **MR. SMITH:** No.

17                   **MR. ENGELMANN:** And I think with Jacques  
18      Leduc, there's no caution?

19                   **MR. SMITH:** No.

20                   **MR. ENGELMANN:** I just -- anyway, I'm going  
21      to ask you about why the difference, but let's go through  
22      the statement and maybe when we get there.

23                   So with Murray MacDonald, one of the issues  
24      that comes up is a possible conflict. We've seen that  
25      before that there might be some conflict.

1                   **MR. SMITH:** M'hm.

2                   **MR. ENGELMANN:** And, sir, at Bates -- I'm  
3 just going to try to find the Bates page. I'll just be a  
4 moment.

5                   Yes, he talks about the work he's done with  
6 the local Diocese and this is a long, very long answer. It  
7 starts on Bates page 838, which is the fourth page of the  
8 statement, but it starts really at the bottom of Bates page  
9 839 and then on to the next page or two.

10                  **MR. SMITH:** Yes.

11                  **MR. ENGELMANN:** And he's explaining his  
12 involvement with something called "Ecclesia 2000" ---

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

14                  **MR. ENGELMANN:** --- which is, I think, some  
15 form of study group and he's indicating too -- and I'm  
16 paraphrasing -- that he's participating in writing  
17 recommendations about the church and how they should move  
18 away from cover-ups or backroom deals, and that everything  
19 should be transparent and done with the full cooperation of  
20 police and CAS. Do you -- is that ---

21                  **MR. SMITH:** Yes, that's my understanding,  
22 yeah.

23                  **MR. ENGELMANN:** Okay. And we'll see some of  
24 this. He says at the bottom of page 840:

25                                 "The recommendation I participated in

1 writing, and I must say that I was the  
2 only lawyer on this particular  
3 subcommittee so I had a considerable  
4 involvement in writing that one  
5 particular recommendation, and that one  
6 particular recommendation was  
7 philosophical in nature, saying we had  
8 to get away from cover-ups, backroom  
9 deals, everything should be put out in  
10 the open, full cooperation,  
11 particularly with the CAS and the  
12 police, as well as being upfront with  
13 the media, media relations, internal  
14 church, et cetera."

15 He says:

16 "Our subcommittee recommendations were  
17 in a sense to open things up, air  
18 things out, in such a way as to have  
19 the appearance of always being on high  
20 ground, always taking the high ground,  
21 getting away from the old days of  
22 priests being shuffled away in the dark  
23 of the night, neighbouring parishes or  
24 neighbouring diocese whatever. So that  
25 was the paper that I was involved in

1 writing."

2 He goes on:

3 "Subcommittees went to a sort of mini-  
4 parliament and some things were pushed  
5 through, some were not."

6 He talks about other recommendations, including whether a  
7 priest should marry, et cetera, and this goes on for some  
8 time but he describes this at length.

9 And is this the conflict issue that he was  
10 concerned about, from your recollection? The fact that  
11 he'd been involved in this Diocesan committee ---

12 **MR. SMITH:** Yes.

13 **MR. ENGELMANN:** --- and how that might come  
14 out later if ---

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** --- he's involved in the  
17 prosecution of one of these complaints?

18 **MR. SMITH:** Yes.

19 **MR. ENGELMANN:** And I believe you ask him --  
20 and it's at Bates page 844 -- whether he's doing this in  
21 his role as a prosecuting attorney. Do you see that?

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** It's on 844 ---

24 **MR. SMITH:** Yes, I've seen it, yes.

25 **MR. ENGELMANN:** --- near the bottom?

1                   **MR. SMITH:** Yes.

2                   **MR. ENGELMANN:** Sorry, I'm in Exhibit 1233,  
3 Document Number 7055846.

4                   So was the -- do you recall ---

5                   **MR. SMITH:** Twelve (12)?

6                   **MR. ENGELMANN:** It's the document we've been  
7 looking at ---

8                   **THE COMMISSIONER:** One-two-three-three  
9 (1233).

10                  **MR. ENGELMANN:** --- the one we put up on the  
11 screen. Exhibit 1233.

12                  **MR. SMITH:** Yeah, I'm at 1233 but ---

13                  **THE COMMISSIONER:** Page 12.

14                  **MR. SMITH:** Page 12. Okay, next page.

15                  Yes, sir.

16                  **MR. ENGELMANN:** So do you recall, sir, was  
17 his issue about conflict, was there a concern of possible  
18 bias one way or the other by his participation in this  
19 committee?

20                  **MR. SMITH:** I'm sorry, I don't quite  
21 understand the question.

22                  **MR. ENGELMANN:** Okay. He's brought up an  
23 issue about a conflict?

24                  **MR. SMITH:** Yes, he did, yes.

25                  **MR. ENGELMANN:** All right, and I think that

1 was one of the reasons why Heidi Sebalj was to seek an  
2 opinion from an external Crown?

3 MR. SMITH: Yes.

4 MR. ENGELMANN: And do you recall having  
5 discussion with Mr. MacDonald, perhaps off the tape, where  
6 he would have explained why this conflict could be an issue  
7 if he prosecutes one of these cases or if he's involved in  
8 the prosecution of one of these cases?

9 MR. SMITH: I don't recall any conversation  
10 off-tape.

11 MR. ENGELMANN: All right. Okay. Sometimes  
12 you have a discussion before you get started on the  
13 interview?

14 MR. SMITH: Well, a preamble sometimes.

15 MR. ENGELMANN: Yeah.

16 MR. SMITH: We sit down, "Okay, this is what  
17 I'm going to ask. We'll take it -- we'll tape it -- you  
18 agree to it," et cetera, but I try to get our full  
19 conversation ---

20 MR. ENGELMANN: All right.

21 MR. SMITH: --- taped.

22 MR. ENGELMANN: Fair enough. Sir, at page  
23 14 of the statement; it's Bates page 848.

24 THE COMMISSIONER: Given that we're  
25 finishing at 4:00, sir, do you want to take a short break

1 now?

2 **MR. ENGELMANN:** Sure, maybe take a few  
3 minutes.

4 **MR. SMITH:** Thank you.

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

7 This hearing will resume at 3:25 p.m.

8 --- Upon recessing at 3:10 p.m./

9 L'audience est suspendue à 15h10

10 --- Upon resuming at 3:30 p.m./

11 L'audience est reprise à 15h30

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

14 This hearing is now resumed. Please be  
15 seated. Veuillez vous asseoir.

16 **TIMOTHY SMITH Resumed/Sous le même serment:**

17 --- **EXAMINATION BY/INTERROGATOIRE PAR**

18 **MR. ENGELMANN (Cont'd/Suite):**

19 **MR. ENGELMANN:** Mr. Commissioner, I've  
20 spoken to the parties -- just for a housekeeping matter for  
21 a moment, Mr. Smith -- concerning the motion.

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

23 **MR. ENGELMANN:** What I would propose we do  
24 is at 4 o'clock we break with Mr. Smith. We then go in  
25 camera. I don't know, sir, unless you need that to be re-



1 argued, but when the motion was originally argued  
2 Mr. Manderville had asked that the matter be argued in  
3 camera and that's what happened.

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

5 **MR. ENGELMANN:** So I propose that we break,  
6 we go in camera, we come back at 10 or quarter after. Mr.  
7 Manderville is prepared to speak to the motion. Mr. Lee  
8 and Mr. Paul will be responding -- would like to respond in  
9 the morning; they don't have their briefs with them.

10 I would propose we start at 9:00 and we  
11 start in camera in the morning, and then if they're done in  
12 20 minutes or so then we could start with our next witness,  
13 Detective Inspector Hamelink, right at 9:30.

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

15 **MR. ENGELMANN:** I don't know if any other  
16 counsel are speaking to the motion. It's just Mr. Lee and  
17 Mr. Paul who are opposing, I believe, and Mr. Manderville  
18 in favour. I don't know if anybody else is speaking. I  
19 see no nods, so if that's acceptable to you, sir, I propose  
20 that form of action.

21 **THE COMMISSIONER:** Certainly.

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

23 So Mr. Smith, we were -- just before the  
24 break, we were looking at the interview report that you and  
25 Detective Constable Fagan took of Murray MacDonald in the

1 summer of 1994, and I just wanted to highlight a few points  
2 and ask perhaps a couple of questions about them.

3 One of the issues that you were trying to  
4 cover with Constable Sebalj is the contacts that she had  
5 with Murray MacDonald?

6 **MR. SMITH:** Correct.

7 **MR. ENGELMANN:** Because she had -- or you --  
8 it had come to your attention through her report that she  
9 had talked about some regular contacts with him, albeit  
10 hallway-type contacts?

11 **MR. SMITH:** Yes, sir.

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

13 And I believe that this comes up, and  
14 there's very long answers by Mr. MacDonald and they're not  
15 always obvious from the question, but the issue I think  
16 starts on Bates page 847. All right?

17 And he appears confirming what she has said,  
18 that the first contact is a hall-type conversation, and  
19 there's some discussion about a sensitive case and a high-  
20 profile member of the community, a local priest, and I'm  
21 just flipping on to the next Bates page, 848.

22 He comments, amongst other things on that  
23 page, that she -- about halfway down:

24 "She'd clearly not reached a point of  
25 reasonable and probable grounds at that

1 point, indeed was seeking -- she was  
2 asking for my direction."

3 And he says:

4 "I may have -- suggestions I may have  
5 for assisting her in determining  
6 whether or not she had the necessary  
7 grounds."

8 Now, I think we've been through this before,  
9 but your view on this -- police officers determine  
10 reasonable and probable grounds; sometimes consult with the  
11 Crown but that is a police decision?

12 **MR. SMITH:** Yes. The final decision on  
13 whether to lay a charge or not rests with the police. The  
14 decision whether they prosecute or not is the Crown.

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

16 **MR. SMITH:** However, if you're having  
17 difficulties or if you don't know if you have enough or you  
18 need more evidence, consultation with the Crown is  
19 recommended for their legal opinion.

20 **MR. ENGELMANN:** Right. And certainly a  
21 younger officer would have either the assistance of a more  
22 senior officer to consult with, her supervisor, and/or a  
23 Crown in these circumstances?

24 **MR. SMITH:** Yes, that should be ---

25 **MR. ENGELMANN:** Those are both options?

1                   **MR. SMITH:** Those are both options, but in  
2 cases like this I would always consult the Crown.

3                   **MR. ENGELMANN:** Now, you ask at Bates page  
4 850, page 16, about the civil settlement and his knowledge;  
5 about two-thirds of the way down the page.

6                   **MR. SMITH:** Yes.

7                   **MR. ENGELMANN:** And this was important with  
8 respect to your obstruction investigation because the  
9 advice you had that at least the lawyers involved, Malcolm  
10 MacDonald and Jacques Leduc, had both consulted with Murray  
11 MacDonald about this settlement?

12                   **MR. SMITH:** I know that Malcolm did and I  
13 can't place whether Mr. Leduc did or not.

14                   **MR. ENGELMANN:** I'm not sure if "consulted"  
15 is the proper term but I believe that both of them  
16 indicated in statements to you that they would have spoken  
17 with Murray MacDonald about the settlement prior to it  
18 being entered into.

19                   **MR. SMITH:** Right now I can't remember, but  
20 if you say so that's ---

21                   **MR. ENGELMANN:** Fair enough. We'll come to  
22 it.

23                   In any event, you know that Malcolm  
24 MacDonald had suggested that he had spoken to the local  
25 Crown about this deal beforehand?

1                   **MR. SMITH:** Yes.

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

3                   Now, it appears -- and I'm just looking  
4 again at the bottom of page 850 -- he's relating to you  
5 that Constable Sebalj -- and this is right towards the  
6 bottom of the page:

7                   "She knew that he was going to or had  
8 attempted contacting the Church to seek  
9 a civil settlement for damages."

10                   Do you see that?

11                   **MR. SMITH:** Yes.

12                   **MR. ENGELMANN:** I'm just wondering -- again  
13 your information on this. You had some information from  
14 Mr. Silmser and you certainly had information from  
15 Constable Sebalj's notes about some of the contact that Mr.  
16 Silmser was advising her about vis-à-vis the Church; the  
17 fact that he had a meeting with the Church officials in  
18 February of 1993, and some of those contacts?

19                   **MR. SMITH:** Yes.

20                   **MR. ENGELMANN:** That would have been ---

21                   **MR. SMITH:** Yes. I'd be aware of that, yes.

22                   **MR. ENGELMANN:** Now, at page 852 -- and it  
23 really starts a page before, 851. He says at the middle of  
24 the page:

25                   "However, whenever Constable Sebalj

1 told me that the Church was talking  
2 with this person [this being Silmser]  
3 at that point it crossed my mind I'd  
4 been involved in this Ecclesia 2000  
5 paper and I'd expressed a  
6 dissatisfaction and bad taste for these  
7 types of settlements."

8 And you asked:

9 "Did you bring this to the attention of  
10 Constable Sebalj?"

11 "I did."

12 "That you sat on this committee."

13 And it goes on and he says:

14 "I wanted to cover my tail if this ever  
15 was raised at the trial, particularly  
16 if I prosecuted and this went to trial  
17 -- the charges went to trial if I  
18 prosecuted, that I wanted an outside  
19 Crown to have confirmed the charge or  
20 reviewed the charge after it was laid."

21 Okay?

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** So he appears to be himself  
24 recommending that she seek the approval of an outside Crown

25 ---

1           **MR. SMITH:** That's correct.

2           **MR. ENGELMANN:** --- with respect to  
3           proceeding.

4                     He does say, however, that although there  
5           was an issue with an outside Crown for determining perhaps  
6           or giving advice on the RPG that if it came to a trial --  
7           if we look at the bottom of 854, he's still of the view  
8           that he could prosecute it.

9           **MR. SMITH:** A lot of reading here. What  
10          page?

11          **MR. ENGELMANN:** It's page 20.

12                     "I never thought of passing this off to  
13           an outside Crown for prosecution. I  
14           did want to pass it off to an outside  
15           Crown to get that confirmatory opinion  
16           but I never frankly addressed my mind  
17           as to who was going to prosecute it."

18          **MR. SMITH:** Yes, I see that.

19          **MR. ENGELMANN:** Did that strike you as at  
20          all strange that he thought that he should have a  
21          confirmatory opinion on whether or not to proceed, whether  
22          or not to proceed with the case, but yet no issue with  
23          respect to actually prosecuting it?

24          **MR. SMITH:** No, not really. Somebody else  
25          would make the call as to whether or not there was RPG and

1 then the charge was laid and it comes to his jurisdiction  
2 and he would prosecute.

3 I doubt if he meant -- I think he's meaning  
4 his office ---

5 **MR. ENGELMANN:** His office.

6 **MR. SMITH:** --- will prosecute it.

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

8 **MR. SMITH:** I don't think that he would  
9 personally take that. He would assign that to one of his  
10 Crowns. I think he had four at the time, if I'm not  
11 mistaken.

12 **MR. ENGELMANN:** He did have other Crowns,  
13 yes.

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** And you mentioned one of  
16 them earlier, a Guy Simard for one.

17 **MR. SMITH:** Yes, Guy. Yes.

18 **MR. ENGELMANN:** Yeah. Okay.

19 **MR. SMITH:** Lynn Robinson I think was  
20 another one there at the time.

21 **MR. ENGELMANN:** Yes.

22 **MR. SMITH:** And White was a fellow who was  
23 there, I think.

24 **MR. ENGELMANN:** There were several Crown  
25 prosecutors.



1           Okay. Now, you also wanted to ask him about  
2 obviously his contacts with Malcolm MacDonald, given the  
3 obstruction charge you were investigating. Fair enough?  
4 And if we look at -- it's page 28 of your transcript, sir,  
5 Bates page 862. You're asking him questions at or about  
6 the time that the settlement is coming up in August-  
7 September of 1993.

8           **MR. SMITH:** Yes.

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

10           And the issue here, is it not, is to what  
11 Murray MacDonald was actually told about the settlement  
12 ---

13           **MR. SMITH:** Yes.

14           **MR. ENGELMANN:** --- and/or whether he would  
15 have reviewed the settlement?

16           **MR. SMITH:** I don't know about reviewing the  
17 settlement. I'd have to read all through this. I can't  
18 remember. But I wanted to know what did he know about the  
19 settlement ---

20           **MR. ENGELMANN:** Right.

21           **MR. SMITH:** --- and what were his views on  
22 it, and did he feel that that would affect a criminal  
23 prosecution.

24           I knew that he was aware of settlements that  
25 we'd had before with St. Joseph's and that those

1 settlements didn't affect any of the criminal trials.

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

3 Well, if he'd actually reviewed the wording  
4 of the statement -- of the settlement -- that would have  
5 been of concern to you?

6 **MR. SMITH:** Oh, without a doubt.

7 **MR. ENGELMANN:** So he's indicating to you at  
8 least, on page 28, that he says, "I think about a month  
9 before the settlement has been finalized" -- he's talking  
10 about being contacted by Malcolm MacDonald. And it says,  
11 "He was negotiating with this person."

12 So Murray MacDonald has been advised that  
13 Malcolm MacDonald is negotiating something with David  
14 Silmsner.

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** And apparently he gets a  
17 call from Malcolm:

18 "You know that investigation the  
19 Cornwall police are or have undertaken  
20 with regards to Father MacDonald?' I  
21 said, 'Yes, Malcolm, I'm aware of it.'  
22 'I just want you to know that it's --  
23 from our perspective it's unfounded but  
24 we're negotiating with this fellow.  
25 Settle with him. Either call it a

1 nuisance claim or words to that  
2 effect.'"

3 All right?

4 **MR. SMITH:** Yes.

5 **MR. ENGELMANN:** So it doesn't appear, at  
6 least as he's relating this to you, that he has the wording  
7 of the settlement from Malcolm MacDonald.

8 **MR. SMITH:** No.

9 **MR. ENGELMANN:** There doesn't seem to be any  
10 indication that he's being told by Malcolm MacDonald about  
11 the wording of paragraph 2, for example?

12 **MR. SMITH:** No. No. I think ---

13 **MR. ENGELMANN:** Sorry.

14 **MR. SMITH:** The interpretation I give it,  
15 sir, is that Malcolm is informing that they're working out  
16 a civil arrangement settlement, and just for his  
17 information, period.

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

19 Did you think it was unusual, sir, that  
20 Malcolm MacDonald, in the role as the defence counsel,  
21 would be alerting the local Crown about civil negotiation  
22 or settlement negotiations with an alleged victim?

23 **MR. SMITH:** No, I didn't. In a small town -  
24 - no.

25 **MR. ENGELMANN:** Okay.

1                   **MR. SMITH:** As a police officer, sir, I've -  
2                   - I know very little about civil law but about criminal law  
3                   I know that I'm not always privy to the conversations  
4                   between Crown attorneys and defence counsel, but I know  
5                   that it does go on and it could go on on street corners,  
6                   "How about this file or that? Would you consider this or  
7                   consider that?" and in a small town there's always  
8                   negotiations going on between lawyers and the Crown.

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

10                  **MR. SMITH:** So that wouldn't be unusual.  
11                  And I imagine it goes on in large cities too, sir.

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

13                  Now, you have a discussion with him,  
14                  starting primarily on page 30, Bates page 864, about the  
15                  fact that in other cases you've been involved in there have  
16                  been concurrent civil and criminal cases.

17                  **MR. SMITH:** Yes.

18                  **MR. ENGELMANN:** And you're citing some of  
19                  the Alfred investigations as an example. Is that what  
20                  you're doing?

21                  **MR. SMITH:** Yes.

22                  **MR. ENGELMANN:** Okay. And Mr. MacDonald  
23                  seems to suggest that that's a different situation, if I'm  
24                  understanding his answer to you on page 30.

25                  **MR. SMITH:** Yes.

1                   **MR. ENGELMANN:** And I'm just wondering, was  
2 this a concern of his that there were discussions with Mr.  
3 Silmsler going on at the same time as the police were  
4 investigating his case? Does it strike you that that was a  
5 concern that he had?

6                   **MR. SMITH:** No, I don't think so, sir. He's  
7 talking about the Alfred prosecutions ---

8                   **MR. ENGELMANN:** Yes.

9                   **MR. SMITH:** --- and the civil things and  
10 indicating that the charges have been laid first. Well,  
11 that's correct but, in addition, there was a second round  
12 of charges too, and the negotiations are still going on and  
13 I recall in St. John's Training School there were ongoing  
14 charges being laid at the same time that there were civil  
15 settlements being arranged. So I wasn't overly concerned  
16 with that.

17                   **MR. ENGELMANN:** I know you weren't because  
18 you've told us that already, but was he? Was he concerned?  
19 Did you think that he felt less of Mr. Silmsler or less of  
20 Mr. Silmsler's credibility because of the fact that there  
21 was this negotiation?

22                   **MR. SMITH:** If he did I can't remember. I  
23 know there was some -- with his conversations with Heidi  
24 Sebalj there was some difficulty in credibility. I think  
25 that that issue had come up.

1                   And we ran into that also in St. Joseph's  
2                   and St. John's in some cases where -- for example, I'll  
3                   tell you and just briefly, we were merrily going along with  
4                   our investigation when the government was -- announced all  
5                   types of settlements. And in their wisdom they put down 10  
6                   scenarios and even the name of one brother, and they gave  
7                   dollar amounts.

8                   We were inundated with phone calls the next  
9                   day and suddenly we had a number of people who said, "I  
10                  didn't tell you everything. I'm number 9 and number 10".  
11                  And so that caused us great difficulty in the changes. And  
12                  I think he might be thinking about that, that there might  
13                  be some money aspect to this.

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

15                  And Mr. MacDonald, as did you, had some  
16                  involvement in some of those prosecutions?

17                  **MR. SMITH:** Not many, but he did have some  
18                  and I'm sure that he was aware of those difficulties that  
19                  we encountered.

20                  **MR. ENGELMANN:** All right. Now, at the  
21                  bottom of page 867, which is page 33, he's indicating --  
22                  just after the call from Malcolm MacDonald he gets a call  
23                  from Heidi Sebalj and he says it's on the eve of the  
24                  settlement. So presumably this is right at the end of  
25                  August or early September of '93.

1                   And he's indicating to her some indication  
2                   that the target of the investigation, Father MacDonald, may  
3                   have had, you know, homosexual tendencies. And this was  
4                   from someone else who was reluctant, I believe, to go to  
5                   assist to get to -- to assist in the police investigation.  
6                   She did say that he had homosexual contact with the priest  
7                   and he says:

8                                    "This was the first time in many  
9                                    contacts I have had with Constable  
10                                  Sebalj where it seemed to be or where  
11                                  there was something in favour of the  
12                                  complainant as opposed to against his  
13                                  credibility."

14                   **MR. SMITH:** I'm sorry to interrupt you, sir,  
15                   but I can't find the page. What page?

16                   **MR. ENGELMANN:** Oh, I'm sorry. I'm on page  
17                   34.

18                   **MR. SMITH:** Oh, I was on 33 and I couldn't -  
19                   - I couldn't find it.

20                                    Yes, I see that. Yes.

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

22                                    So apparently just before this settlement he  
23                   says that Ms. Sebalj comes to him and says there's some  
24                   evidence of homosexual tendencies but it's apparently  
25                   someone who is reluctant to get involved.

1 MR. SMITH: Yes.

2 MR. ENGELMANN: See that?

3 MR. SMITH: Yes.

4 MR. ENGELMANN: Now, homosexual tendencies  
5 is certainly not similar fact evidence in a case like this.

6 MR. SMITH: I hope not. I hope not.

7 MR. ENGELMANN: No.

8 MR. SMITH: No.

9 MR. ENGELMANN: But if there is unwanted  
10 same-sex assault, that may well be.

11 MR. SMITH: That could be an assault, yes.

12 MR. ENGELMANN: Right.

13 MR. SMITH: Yes.

14 MR. ENGELMANN: But to describe something as  
15 homosexual tendencies and to say something is in favour,  
16 would you agree that that's somewhat unusual, is it not?

17 MR. SMITH: Could you repeat that, sir?

18 MR. ENGELMANN: Well, to suggest that the  
19 fact that someone who is an alleged suspect may have  
20 homosexual tendencies, I don't understand how that would be  
21 in favour or in support of an allegation unless the  
22 homosexual tendencies were in the form of some form of  
23 assault.

24 MR. SMITH: Yes, I'd agree with that.

25 MR. ENGELMANN: All right.



1                   **MR. SMITH:** It would be the same as  
2                   heterosexual.

3                   **MR. ENGELMANN:** Yes.

4                   **MR. SMITH:** Yes, okay. Is that the analogy  
5                   that you're making?

6                   **MR. ENGELMANN:** Yes.

7                   **MR. SMITH:** Yeah, I agree, sir.

8                   **MR. ENGELMANN:** And you'd agree with me,  
9                   sir, that what was described at least by C-3 and C-56, the  
10                  two witnesses that had come forward with Heidi Sebalj, and  
11                  then you had had some involvement with them again in your  
12                  investigation, those were examples not of consensual sex  
13                  but allegations of non-consensual sex; C-3 and C-56?

14                  **MR. SMITH:** One yes and one no, I think.

15                  **MR. ENGELMANN:** They weren't the two new  
16                  ones from today.

17                  **THE COMMISSIONER:** Correct.

18                  **MR. ENGELMANN:** They were the ones ---

19                  **THE COMMISSIONER:** Maybe you should look at  
20                  -- Madam Clerk, show him who C-3 and C ---

21                  **MR. SMITH:** If I'm not mistaken in that, Mr.  
22                  Commissioner, is that the ones that you were talking about  
23                  yesterday that you said that one appeared that the -- you  
24                  were in agreement with the ---

25                  **THE COMMISSIONER:** That was today.

1                   **MR. ENGELMANN:** That was C-88 and C-89.

2                   **MR. SMITH:** I'm sorry.

3                   **THE COMMISSIONER:** Yeah, that was C-88 ---

4                   **MR. ENGELMANN:** I'm sorry.

5                   **MR. SMITH:** I'm confused.

6                   **THE COMMISSIONER:** No, no, right.

7                   Two other fellows; we'll give you their  
8                   names, C-3 and C-?

9                   **MR. ENGELMANN:** Fifty-six (56).

10                  **THE COMMISSIONER:** Fifty-six (56).

11                  **MR. SMITH:** Okay.

12                  **MR. ENGELMANN:** I have those ---

13                  **MR. SMITH:** Okay, I know that one, yeah.  
14                  Okay, okay, yeah.

15                  Yes, okay.

16                  **MR. ENGELMANN:** Those were both alleged  
17                  assaults in those cases.

18                  **MR. SMITH:** Yes. One related to the letter  
19                  to the Bishop?

20                  **MR. ENGELMANN:** That's right.

21                  **MR. SMITH:** Oh, yes. Okay, I'm okay with  
22                  that now.

23                  **MR. ENGELMANN:** Yeah, yeah. So it wasn't  
24                  homosexual sex there. It was an allegation of a sexual  
25                  assault.

1           **MR. SMITH:** Yes, yes.

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

3           **MR. SMITH:** I was confused with the other  
4 two.

5           **MR. ENGELMANN:** That's fine.

6           And just after that -- I'll just be a  
7 moment.

8                           **(SHORT PAUSE/COURTE PAUSE)**

9           **MR. ENGELMANN:** Then just if I'm reading the  
10 rest of that page, page 34, he says:

11                           "As it turned out, I asked the police  
12                           was this alone sufficient to give them  
13                           RPG. They didn't feel..."

14           And he's referring to "they". I don't know  
15 if he's talking about both Brunet and Sebalj.

16           **MR. SMITH:** I would expect that to be the  
17 case.

18           **MR. ENGELMANN:** Yeah:

19                           "...because they didn't feel that at  
20                           that point -- still didn't feel they  
21                           had enough to believe the complainant  
22                           to the point of reasonable grounds and  
23                           of course by that time they had a  
24                           complainant who was telling them to go  
25                           away anyway."

1                   So we seem to have this convergence of  
2                   perhaps not reasonable and probable grounds yet and a  
3                   settlement, and after the settlement a complainant who  
4                   doesn't want to be involved.

5                   **MR. SMITH:** M'hm. But if my memory serves  
6                   me correct, prior to this -- the settlement -- did not  
7                   Mr. Silmser approach Heidi Sebalj and say, "Look, take all  
8                   the time you want. Everything's fine."

9                   **MR. ENGELMANN:** There's a reference in the  
10                  note at the end of August to that effect.

11                  **MR. SMITH:** But I think negotiations were  
12                  going on at that time.

13                  **MR. ENGELMANN:** Sir, that note is made after  
14                  about a four or five-month gap in her notes ---

15                  **MR. SMITH:** Oh, okay.

16                  **MR. ENGELMANN:** --- where there doesn't seem  
17                  to be any activity.

18                  **MR. SMITH:** Okay.

19                  **MR. ENGELMANN:** And it appears, at least  
20                  from her notes, that after the March 10<sup>th</sup> meeting with  
21                  Silmser, the next call is August 24<sup>th</sup>, when he calls them to  
22                  ask what's happening. And I think it's around then where  
23                  there's this comment about, "Take as much time."

24                  **MR. SMITH:** And there was also at the same  
25                  time, wasn't it, that Malcolm said, "If you're going to

1       arrest my ---"

2                   **MR. ENGELMANN:** Yes, exactly.

3                   **MR. SMITH:** "--- client". So right at that  
4       period of time I've got -- Malcolm is under the impression  
5       that Father MacDonald may be arrested.

6                   **MR. ENGELMANN:** That's what her notes would  
7       appear to suggest.

8                   **MR. SMITH:** Yes.

9                   **MR. ENGELMANN:** But it's also at a time when  
10      he seems to be telling people that there's nothing to this  
11      and there's no need, essentially, to pay money but, "We're  
12      going to give a nuisance settlement," or words to that  
13      effect.

14                  **MR. SMITH:** But he still thinks that his  
15      client may be arrested.

16                  **MR. ENGELMANN:** That's true. That's what  
17      her notes suggest, yeah.

18                  **MR. SMITH:** Okay.

19                  **MR. ENGELMANN:** Okay. So at Bates page 870,  
20      in fact, Murray MacDonald is describing the second contact  
21      he has with Malcolm MacDonald, and again we'll see that  
22      described. It's page 36 of your transcript.

23                  **MR. SMITH:** Yes, I see.

24                  **MR. ENGELMANN:** And he talks about  
25      "nuisance, easily discredit him", et cetera. Again, there

1 doesn't appear to be any reference to the withdrawal of  
2 criminal charges or anything of that nature.

3 **MR. SMITH:** No.

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

5 **MR. SMITH:** And that's where you're saying  
6 there's nothing to it; that's a nuisance complaint.

7 **MR. ENGELMANN:** But to some extent he seems  
8 to be suggesting that the criminal matter is not going to  
9 be proceeding.

10 **THE COMMISSIONER:** Who is "he"?

11 **MR. ENGELMANN:** Because he says -- "he"  
12 being Malcolm. He says:

13 "I believe he said to me that second  
14 time he could have easily discredited  
15 him in a criminal trial."

16 The way it's written seems to suggest that  
17 it's not going to happen but if it did happen it wouldn't  
18 have been difficult.

19 **MR. SMITH:** Well, I -- it could be  
20 interpreted either way, sir. It could be interpreted that  
21 it was in the past, and it could be interpreted also that  
22 should it proceed he could defend it.

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

24 **MR. SMITH:** That's pretty fine picking, I  
25 think.

1                   **MR. ENGELMANN:** Okay.

2                   Maybe we should leave it there,

3                   Mr. Commissioner.

4                   **THE COMMISSIONER:** All right, sir. We'll  
5                   see you on the 24<sup>th</sup> at nine o'clock in the morning.

6                   In the meantime we'll take a break. We'll  
7                   go into an in-camera session and we'll deal -- members of  
8                   the public, we'll deal with -- so that you know -- with  
9                   some monikers, and we'll also deal with the conclusion of  
10                  the argument on motion to have Officer Lefebvre excluded  
11                  for medical reasons.

12                  All right? Thank you. See you then.

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

15                  This hearing will resume in camera at  
16                  4:10 p.m.

17                  --- Upon recessing at 4:00 p.m./

18                  L'audience est suspendue à 16h00

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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