

**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 160

Held at :

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

Thursday, November 15 2007

Tenue à:

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

Jeudi, le 15 novembre 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Ms. Raija Pulkkinen	Commission Counsel
Mr. Peter Manderville Ms. Reena Lalji	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze Ms. Leslie McIntosh	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Ian Paul	Mr. Carson Chisholm
Mr. Ronald G. McClelland	Mr. Sean Adams

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

2 L'audience débute à 9h34

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning. all.

11 Mr. Engelmann?

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

13 Commissioner.

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

15 **MR. ENGELMANN:** The next witness for the
16 Commission is Mr. Sean Adams.

17 **THE COMMISSIONER:** Yes.

18 **MR. ENGELMANN:** And I'd ask that Mr. Adams
19 come forward if he could. His counsel, Mr. McClelland is
20 here.

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

22 **MR. ENGELMANN:** Sir, I'd ask that the
23 witness be sworn and I'm going to ask him some questions
24 about his background. And before we get into any
25 discussion about involvement with Mr. Silmser, we will have

1 to have a discussion. Mr. McClelland is concerned about
2 potential issue of solicitor-client privilege.

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

4 **MR. ENGELMANN:** And so what I'd like to do
5 is have Mr. Adams sworn, ask him some questions about his
6 background and before we go into areas that I'd like to
7 cover with him about his interaction with Mr. Silmser, we
8 could deal with a short motion issue.

9 **THE COMMISSIONER:** Very well. Thank you.

10 **---SEAN ADAMS, Sworn/Assermenté**

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

12 **MR. ADAMS:** Good morning, Mr. Commissioner.

13 **THE COMMISSIONER:** Have a seat, sir.

14 **MR. ADAMS:** Thank you.

15 **THE COMMISSIONER:** Yeah, you have to bring
16 down the microphone. There's water there if you so desire
17 and I guess we'll get on with the preliminary questions and
18 then we'll deal with whatever concerns you.

19 **MR. ADAMS:** Very well. Thank you.

20 **THE COMMISSIONER:** Thank you.

21 **--- EXAMINATION IN CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**
22 **ENGELMANN:**

23 **MR. ENGELMANN:** Mr. Adams, good morning.

24 **MR. ADAMS:** Good morning.

25 **MR. ENGELMANN:** If you can't hear me, there

1 is a little speaker to your immediate left.

2 MR. ADAMS: It's fine.

3 MR. ENGELMANN: And there's a screen there
4 if and when we get to some documents.

5 MR. ADAMS: Thank you.

6 MR. ENGELMANN: Mr. Commissioner, the
7 principal reason the Commission is calling Mr. Adams deals
8 with his role in a settlement that you've heard some
9 evidence about.

10 THE COMMISSIONER: Yes.

11 MR. ENGELMANN: But before I get there and
12 before we deal with the solicitor-client issue -- matter, I
13 just want to ask Mr. Adams some preliminary questions.

14 THE COMMISSIONER: Okay.

15 MR. ENGELMANN: Sir, you're a Cornwall
16 native?

17 MR. ADAMS: That is correct.

18 MR. ENGELMANN: And you've lived here all or
19 most of your life?

20 MR. ADAMS: Other than being away at
21 university and practicing law in Ottawa for a few years,
22 I've been here all my life.

23 MR. ENGELMANN: All right. And you attended
24 school here then?

25 MR. ADAMS: That is correct.

1 MR. ENGELMANN: And you continue to live in
2 Cornwall today?

3 MR. ADAMS: I do.

4 MR. ENGELMANN: When were you called to the
5 Bar sir?

6 MR. ADAMS: In 1984 -- sorry, graduated from
7 law school in '84, called to the Bar in '86.

8 MR. ENGELMANN: And I think you told us you
9 attended law school at the University of Ottawa?

10 MR. ADAMS: That is correct.

11 MR. ENGELMANN: Did you article here in
12 Cornwall or in the city of Ottawa?

13 MR. ADAMS: No, I articulated with a firm at
14 that time called Seguin, Landriault & Lamoureux.

15 MR. ENGELMANN: What type of a practice did
16 they have, sir?

17 MR. ADAMS: I think they had a varied
18 practice, general practice. It was about an eight-man firm
19 and they carried on a general practice.

20 MR. ENGELMANN: All right. And did you
21 continue to work there after your articles?

22 MR. ADAMS: I did.

23 MR. ENGELMANN: And for approximately how
24 long?

25 MR. ADAMS: I came back to Cornwall in

1 January of 1990.

2 **THE COMMISSIONER:** So about four years?

3 **MR. ADAMS:** That is correct.

4 **MR. ENGELMANN:** And when you came back to
5 Cornwall, which firm did you join?

6 **MR. ADAMS:** With my father's firm, Adams,
7 Sherwood, Swabey & Follow.

8 **MR. ENGELMANN:** And have you been with that
9 firm ever since?

10 **MR. ADAMS:** I have.

11 **MR. ENGELMANN:** All right. And can you give
12 us a sense, just a general sense, of the type of practice
13 that you've had since returning to Cornwall in 1990?

14 **MR. ADAMS:** A solicitor's practice,
15 primarily real estate, all forms of real estate from
16 residential to commercial to industrial, purchases, sales,
17 financing, a lot of wills and power of attorneys. I did a
18 fair bit of estate work, but my sister who practices with
19 me is doing most of the estate work now; and corporate
20 commercial.

21 **MR. ENGELMANN:** Okay. Sir, your practice
22 over the last 17 years then has been a solicitor's
23 practice?

24 **MR. ADAMS:** That is correct.

25 **MR. ENGELMANN:** And from time-to-time, have

1 you had barristers in practice with you?

2 **MR. ADAMS:** Absolutely, the -- when I first
3 came back to Cornwall, the firm, I think, had approximately
4 10 lawyers. So they had lawyers who did only -- unlike
5 most firms in Cornwall where the lawyers carried on general
6 practices, they dabbled in everything, our firm
7 specialized.

8 So we had a lawyer that did only criminal
9 law; a lawyer that did mostly civil litigation; a lawyer
10 that did family law; a lawyer that did a lot of landlord
11 and tenants. So we've sort of had lawyers that practiced
12 in specific areas as opposed to each lawyer practicing in
13 all areas.

14 **MR. ENGELMANN:** And has that changed over
15 time, sir, with respect to the size of the firm and the
16 areas of practice?

17 **MR. ADAMS:** Yeah, the size of the firm has
18 shrunk as lawyers have passed away, retired and moved on.
19 There is just my sister and I now.

20 My sister does only -- I don't want to say
21 only, but primarily estate work. Up until a few years ago,
22 she did primarily only family law and I would say she does
23 no family law now, only estate work.

24 **MR. ENGELMANN:** So the firm now does
25 solicitor's work?

1 **MR. ADAMS:** Only solicitor's work, yes.

2 **MR. ENGELMANN:** And, sir, aside from a law
3 practice, I understand that you're quite involved in
4 community events and community services?

5 **MR. ADAMS:** Yes.

6 **MR. ENGELMANN:** Can you give us some
7 examples of what you do, aside from work, here in the
8 Cornwall community?

9 **MR. ADAMS:** Sure. I sit on a number of
10 boards for charitable organizations and ad hoc committees
11 and do a fair amount of volunteer fundraising. I've been
12 involved in minor hockey, minor lacrosse coaching, that
13 type of stuff.

14 **MR. ENGELMANN:** So charitable and sports
15 work here in the community?

16 **MR. ADAMS:** Yeah, volunteer work I would
17 characterize it as.

18 **MR. ENGELMANN:** And, sir, we haven't met to
19 prepare evidence or meet to go through documents with you?

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

21 **MR. ENGELMANN:** And -- although you have
22 been provided with documents by the Commission?

23 **MR. ADAMS:** I received a binder within the
24 last week or so and a package of some further documents
25 this morning.

1 **MR. ENGELMANN:** All right. And you've
2 retained Mr. McClelland to deal with a solicitor-client
3 issue that involves your issues with Mr. Silmser. Is that
4 correct?

5 **MR. ADAMS:** That is correct.

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

7 Mr. Commissioner, perhaps ---

8 **THE COMMISSIONER:** Yes?

9 **MR. ENGELMANN:** --- I'd ask that Mr. Adams
10 stand down. I don't know how you wish to do this. I can
11 let you know that Mr. McClelland advised me that his client
12 had some concerns about testifying as a result of
13 solicitor-client privilege.

14 I know as well that I gave Mr. McClelland
15 Mr. Culic's coordinates and he attempted to have Mr. Culic
16 and his client, Mr. Silmser, sign a release. They refused
17 to do so. I, myself, have contacted Mr. Culic since then
18 to let him know that this matter would be argued this
19 morning.

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

21 **MR. ENGELMANN:** Mr. Culic told me -- he
22 thanked me for the notice and told me to carry on; that
23 neither he nor his client would be participating.

24 **THE COMMISSIONER:** All right.

25 **MR. ENGELMANN:** So they certainly have

1 notice of what's going on. It will be the position of the
2 Commission that solicitor-client privilege has been waived,
3 both voluntary waiver by Mr. Silmsler and waiver by
4 implication.

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

6 **MR. ENGELMANN:** I am in your hands, sir. If
7 you want me to proceed and explain why, or whether I should
8 let Mr. McClelland simply assert the privilege.

9 **THE COMMISSIONER:** No, I think it would be
10 up to Mr. McClelland unless anyone else has any comments on
11 procedure? If it's his motion then I think he should
12 present it.

13 Sir, you can stand down.

14 **MR. ENGELMANN:** Mr. Adams, you can stand
15 down.

16 **THE COMMISSIONER:** Good morning. sir.

17 --- MOTION ON SOLICITOR-CLIENT MATTERS BY/REQUÊTE EN
18 MATIÈRE DE SOLICITEUR-CLIENT PAR PAR MR. McCLELLAND:

19 **MR. McCLELLAND:** Good morning, sir.

20 As it's been indicated this morning, Mr.
21 Commissioner, I represent Sean Adams who has been summoned
22 to testify and has commenced his testimony here.

23 As my friend, Mr. Engelmann, mentioned, he
24 had provided me with some documentation and had given me as
25 well an outline of the areas in which he expected to lead

1 testimony.

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

3 **MR. McCLELLAND:** As a result of that
4 information being received and having been retained by Mr.
5 Adams, I discussed with him the issue of solicitor-client
6 privilege, and as has also been just indicated to you, an
7 attempt was made to obtain from the client an express
8 waiver of that solicitor-client privilege because none was
9 indicated to me that this had occurred and the concern, of
10 course is Mr. Adams, as the client's solicitor at the time,
11 is bound as you know by solicitor-client privilege, that
12 privilege being the privilege of the client not the
13 solicitor ---

14 **MR. ENGELMANN:** M'hm.

15 **MR. McCLELLAND:** --- and the solicitor is
16 duty bound to maintain it.

17 The issue then was because we did not have
18 an express waiver, the issue then seem to travel to the
19 issue of whether the solicitor-client privilege had either
20 been lost or waived and the difficulty with that is when
21 one goes to the case law, there seems to be a -- I'm going
22 to say a grey area -- there's no cut-and-dried issue that
23 Mr. Adams could be assured that if he testified in the
24 circumstances, he would not be exposed to either a
25 complaint to the Law Society of Upper Canada for breaching

1 the rules of professional conduct or he could be further
2 subjected to a lawsuit seeking damages ---

3 **THE COMMISSIONER:** Yes.

4 **MR. McCLELLAND:** --- as a result and because
5 of that, because there was no protection, I was unable to
6 advise him that you can go and testify with -- with no
7 qualms with impunity.

8 **MR. ENGELMANN:** M'hm.

9 **MR. McCLELLAND:** So I had indicated to my
10 friend, Mr. Engelmann, that I would raise this issue before
11 you ---

12 **MR. ENGELMANN:** M'hm.

13 **MR. McCLELLAND:** --- because I understand,
14 in some way, it might go a great deal to adding Mr. Adams
15 that protection.

16 I wish to assure you, at the outset, that
17 this motion is not brought because Mr. Adams has any
18 reservation or any hesitancy about testifying; that's not
19 his point. His point is only to protect him from a client
20 who has indicated, I'm not signing any waiver and I still
21 believe that you're covered by that so ---

22 **THE COMMISSIONER:** I don't know that the
23 evidence is that -- I don't know that there's any evidence
24 before me that Mr. Silmsler is saying that I insist on you
25 retaining the solicitor-client privilege.

1 MR. McCLELLAND: I didn't catch your last
2 point.

3 THE COMMISSIONER: I don't know that there's
4 -- what you just said ---

5 MR. McCLELLAND: Yes.

6 THE COMMISSIONER: --- was not only is Mr.
7 Silmsen not signing but he has instructed your client to
8 maintain his solicitor-client privilege.

9 MR. McCLELLAND: Yes.

10 THE COMMISSIONER: Is there any evidence of
11 that?

12 MR. McCLELLAND: Well, again, it's a
13 question of chicken-and-egg evidence before, but I do have
14 the correspondence -- I do have the email ---

15 THE COMMISSIONER: M'hm.

16 MR. McCLELLAND: --- from Mr. Culic.

17 THE COMMISSIONER: Okay.

18 MR. McCLELLAND: I have a number of copies.
19 I believe I -- yes, I have the copies that I can distribute
20 here. I was told not to do that before but I have them
21 here ---

22 THE COMMISSIONER: Fine.

23 MR. McCLELLAND: --- and it does have the --
24 I would like to provide that to you ---

25 THE COMMISSIONER: M'hm.

1 MR. McCLELLAND: --- if I might.

2 THE COMMISSIONER: Thank you.

3 MR. MCCLELLAND: If I may just have a
4 moment?

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: So this should be marked
7 as an exhibit on this motion, Mr. Engelmann?

8 MR. ENGELMANN: Yes.

9 THE COMMISSIONER: All right. What's -- we
10 have a specific designation for motions, don't we?

11 MR. ENGELMANN: I don't think we've been
12 totally consistent, sir. We can either make this the next
13 exhibit or -- I'm just going to check with the Registry
14 Officer --

15 THE COMMISSIONER: Okay.

16 MR. ENGELMANN: So it would be motion --
17 just one moment.

18 (SHORT PAUSE/COURTE PAUSE)

19 MR. ENGELMANN: Perhaps this could be marked
20 as M-10.1?

21 THE COMMISSIONER: M-10-A1, I'm told.

22 MR. ENGELMANN: Okay, thank you.

23 ---EXHIBIT NO./PIÈCE NO. M-10-A1:

24 Solicitor-Client Privilege Claim re:

25 Sean Adams and David Silmsner - Nov 15,

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THE COMMISSIONER: All right.

So in that document we have a letter from Mr. McClelland dated August -- October 26th to Mr. Clinton H. Culic together with draft express waiver and release of solicitor-client privilege and confidentiality, together with a -- what appears to be an email response from Mr. Culic to Mr. McClelland, copy to Mr. Engelmann, saying:

"It seems that David is going to refuse to sign anything and that he further feels he has not waived any privilege or confidentiality that he has vis-à-vis Sean Adams."

And then there's part of that material is a letter dated November 9, 2007 to Mr. McClelland from Mr. Engelmann with an outline of areas to be canvassed during the evidence of Sean Adams. Fair enough?

MR. McCLELLAND: Yes, Your Honour.

THE COMMISSIONER: Thank you. Okay.

So there -- in that -- what I was questioning was whether or not Mr. Silmsler -- what position he took and it's quite clear that he feels that the solicitor-client relationship is maintained and certainly is not waived.

MR. McCLELLAND: Yes, Mr. Commissioner, and

1 the point that was of concern to Mr. Adams was that there
2 was a distinction in the response. The response could have
3 been just, I'm not signing anything or no response, but it
4 came back -- he was stronger to say I'm still maintaining -
5 --

6 **THE COMMISSIONER:** Yes.

7 **MR. McCLELLAND:** --- so, in my submission,
8 it's not only an indication about non-waiver, but it's a
9 strong expression that privilege is being claimed.

10 **THE COMMISSIONER:** Very well. So I
11 understand your client's position.

12 **MR. McCLELLAND:** Okay.

13 **THE COMMISSIONER:** Or predicament, I
14 suppose.

15 **MR. McCLELLAND:** I think predicament is
16 probably the better way of saying it because he would like
17 to be able to testify ---

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

19 **MR. McCLELLAND:** --- but he is concerned
20 that there is this exposure.

21 I understand, Mr. Commissioner, that
22 previously before you there was reference to four cases and
23 I've referred them -- mentioned them to my friend recently
24 and I understand that it's been, again, thanks to my
25 friend, emailed to the other counsel that are here and I

1 will make brief reference to those but I'm not -- I'm
2 hopefully not going to repeat everything that was argued
3 before you before.

4 **THE COMMISSIONER:** No, but I don't have
5 them. Again, I don't have the four copies of the cases, or
6 do I?

7 **MR. ENGELMANN:** I'm not sure if there are
8 hard copies for you, sir. They are on the screen. I think
9 the Registry Officer has -- yes ---

10 **THE COMMISSIONER:** Ah, there we go. Thank
11 you.

12 All right, sir, go ahead.

13 **MR. McCLELLAND:** It did give me pause, Mr.
14 Commissioner, but ---

15 **THE COMMISSIONER:** Okay.

16 **MR. McCLELLAND:** --- the difficulty, and it
17 may be relevant to those decisions, Mr. Commissioner, is
18 the fact that Mr. Adams considers himself to be in
19 possession of information that may be helpful, but he's
20 concerned not in providing that information, exposing
21 himself to risk from the client.

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

23 **MR. McCLELLAND:** The brief passages that I
24 wish to refer to in those decisions, sir, firstly with the
25 -- and I'm probably going to mispronounce it but *Descôteaux*

1 *v. Mierzwinski*, (70) 2 CCC 385.

2 **THE COMMISSIONER:** Okay, I'm going to have
3 to stop you. All I have is The Law of Evidence, Witnesses
4 by Mr. Mewett, QC, Rules of Professional Conduct and *Smith*
5 *et al v. Smith*.

6 **MR. McCLELLAND:** Those are the additional
7 materials that I brought this morning.

8 **THE COMMISSIONER:** Okay, well whatever. Put
9 it on the -- okay, we have it on the screen, so *Descôteaux*
10 *v. Mierzwinski*?

11 **MR. McCLELLAND:** Yes, I can see I'm going to
12 have a difficulty in referring to my paragraphs because I
13 see on the screen it's page 1 of 18 and my copy from Quick
14 Law has it up to 25, so there may be some - let me see if
15 there's -- and there's no paragraphs; that doesn't help us.

16 If I could go, on my copy if would start at
17 page 9, which is the reference to the "Right to
18 Confidentiality", at least that's the heading ---

19 **THE COMMISSIONER:** Confidentiality in the
20 Case at Bar?

21 **MR. McCLELLAND:** No, I believe it's before
22 that.

23 **THE COMMISSIONER:** So it's called the "Right
24 of Confidentiality"?

25 **MR. McCLELLAND:** Yes, it ---

1 **THE COMMISSIONER:** Page 6, would that be it?

2 **MR. McCLELLAND:** That might be it. Yes.

3 **THE COMMISSIONER:** All right.

4 **MR. McCLELLAND:** And I think it might go
5 faster, Mr. Commissioner, if I don't read the paragraphs to
6 you but just mention them, that I'm relying upon, and it's
7 that first paragraph under that heading on that page.

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

9 **MR. McCLELLAND:** And then the quotation as
10 well from Mr. Justice Dickson's "One may depart".

11 The point that I was relying upon it on this
12 case for was to establish that this former rule of evidence
13 has been raised by the Supreme Court of Canada to a
14 substantive right but more than that, in my submission, it
15 places a burden on those attacking solicitor-client
16 privilege, firstly to support it and not to fritter it
17 away.

18 And, again, it might be a little lower on
19 the next page, there's a paragraph that starts -- perhaps a
20 little further? No, before that. Yes, it's halfway --
21 farther up that page before the heading "Substantive Rule"
22 and I can't find it. It starts with:

23 "No person bound to professional
24 secrecy by law."

25 No, I've missed it again. I don't see it.

1 In my copy of the document, Mr.
2 Commissioner, it's page 10, which is about a half-a-page
3 after the part that I read before. No, it's a bit before
4 then.

5 In any event, if I just may read it to you,
6 Mr. Commissioner.

7 "No person bound to professional
8 secrecy by law and no priest or other
9 minister of religion may, even in
10 judicial proceedings, disclose
11 confidential information revealed to
12 him by reason of his position or
13 profession unless he's authorized to do
14 so by the person who confided such
15 information to him or by an express
16 provision of law. The tribunal must ex
17 *officio* ensure that professional
18 secrecy is respected."

19 And that is the first submission I make, is
20 that there is an obligation to support and enforce the
21 solicitor-client privilege.

22 And just before that, there is a heading on
23 my page 11, it's called, "The Substantive Rule"; it's in
24 the left part of the column.

25 **THE COMMISSIONER:** Yes, page 7?

1 **MR. McCLELLAND:** Yes. And three paragraphs
2 above that it says:

3 "Where legal advice of any kind is
4 sought from a professional legal
5 advisor in his capacity as such, the
6 communications relating to that purpose
7 made in confidence by the client are,
8 at his instance, permanently protected
9 from disclosure by himself or by the
10 legal advisor except if the protection
11 be waived."

12 And that may be the issue before us.

13 It might be on your page 8, Mr.
14 Commissioner, it's above the heading "The Rule of
15 Evidence".

16 **THE COMMISSIONER:** Yes.

17 **MR. McCLELLAND:** And there are some numbered
18 paragraphs there ---

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

20 **MR. McCLELLAND:** --- that I ask you to refer
21 to and then right after is the rule of evidence on Cross.
22 Those are standard rules and I won't repeat them.

23 But the point that was made by the Supreme
24 Court of Canada, in my submission, which supports my
25 earlier submission, is found at least on page 15 of my

1 decision, which is probably about 10 or 11 of yours, and
2 the quotation there is:

3 "The privilege protecting from
4 disclosure communications between
5 solicitor and client is a fundamental
6 right, as fundamental as the right to
7 counsel itself since the right can
8 exist only imperfectly without the
9 privilege."

10 And it's the next sentence that I ask you to
11 take into serious consideration:

12 "The court should be astute to protect
13 both."

14 The next decision is *Regina v. Campbell*
15 (1999), 1 SCR 565.

16 **THE COMMISSIONER:** Thank you.

17 **MR. McCLELLAND:** And, again, I'm not certain
18 about the page number, but at least this case has
19 paragraphs, Mr. Commissioner, and I would be referring to -
20 - it's on page 28 of 32 in my copy.

21 **THE COMMISSIONER:** Why don't we just refer
22 to the paragraphs, please.

23 **MR. McCLELLAND:** Sixty-seven (67) ---

24 **THE COMMISSIONER:** Thank you.

25 **MR. McCLELLAND:** --- is the paragraph

1 number.

2 THE COMMISSIONER: M'hm.

3 MR. McCLELLAND: And it's at the bottom of
4 that paragraph.

5 THE COMMISSIONER: M'hm.

6 MR. McCLELLAND: It's actually the last
7 sentence:

8 "At the same time, if the legal advice
9 were intentionally disclosed outside
10 the RCMP, even to a department or
11 agency of the federal government, such
12 disclosure might waive the
13 confidentiality depending on the usual
14 rules governing disclosure to third
15 parties by a client of communication
16 from a solicitor."

17 The key part that I ask -- it's the
18 intentional part that I'm worried about in that respect.

19 And paragraphs 70 and 71 relate to the
20 factual basis in that case for the finding as to the
21 waiver.

22 The next decision is *Blank v. Canada*
23 (2006), Decision 2 SCR 319, decision of the Supreme Court
24 of Canada. Again we're -- at least I'm fortunate that in
25 my copy I have paragraphs and I'd refer to paragraph 24 and

1 it's making reference to the *Descôteaux* case there and they
2 also refer, in the bottom part of that paragraph, to a
3 quoted passage from another case and the wording there is,
4 speaking for the court -- Major, J, speaking for the court,
5 stated in *McClure* that:

6 "Solicitor-client privilege must be as
7 close to absolute as possible to ensure
8 public confidence and retain
9 relevance."

10 I'm submitting that that reference makes it
11 a high standard and raises the bar with respect to the
12 protection that is accorded solicitor-client privilege.

13 I also note, Mr. Commissioner, that that
14 decision refers to the difference -- two types of
15 privilege, one being solicitor advice privilege and the
16 other being litigation privilege.

17 In this case, it's going to be my
18 submission, sir, that it's not the litigation privilege
19 that's being advanced but the other more rigorous one.

20 I ask you also to look at paragraph 50 of
21 that decision, which indicates that solicitor-client
22 privilege is broadly interpreted by the court and the
23 reference is made to litigation privilege but, on my
24 submission, that comment also relates to litigation -- or
25 legal advice privilege.

1 So the first two submissions I'm making are
2 that the solicitor-client privilege is a fundamental right;
3 it's very important. It's broadly -- and to be interpreted
4 broadly and to be jealously enforced by the tribunals or
5 courts at which time it's advanced.

6 And the last of those four decisions we wish
7 to make reference to is *Souter v. 375561 B.C. Ltd.*, (1995),
8 BCJ 2265, a decision of the British Columbia Court of
9 Appeal. Once again I'm fortunate, there are paragraph
10 numbers.

11 This is an example of one of the instances,
12 Mr. Commissioner that raises -- usually raises the issue of
13 waiver when the client places in the litigation between the
14 client and the lawyer or the lawyer and the client, the
15 issue of legal advice and how the client is generally
16 estopped from relying on solicitor-client advice when he or
17 she has placed into the list between the parties that
18 advice and is seeking to prevent the lawyer from having an
19 opportunity to respond.

20 I have no argument and take no issue with
21 that position because that position by the court with
22 respect to estoppel has long been held as a barrier to the
23 client's insistence on retaining and relying upon
24 solicitor-client privilege.

25 This, I can indicate to you, Mr.

1 Commissioner, is found in my respectful submission in
2 paragraphs 22, 23 and 24 and some factual issues are shown
3 in paragraphs 31 and 32. There is a comment in that
4 decision at paragraph 35 about the solicitor-client
5 privilege being all-embracing.

6 One of the matters, and I'm sure it comes as
7 no surprise to the Commission, is that there is -- Mr.
8 Adams is also bound as a solicitor by the rules of
9 professional conduct for barristers and solicitors in the
10 Province of Ontario. Now we're known as licensee's number
11 one and I believe, Mr. Commissioner, you have a copy of the
12 excerpt ---

13 **THE COMMISSIONER:** Yes.

14 **MR. MCCLELLAND:** --- as do I hope all my
15 colleagues.

16 Under Rule 2.03 Confidentiality, and I ask
17 you to appreciate from Mr. Adams' point of view that he's
18 bound not only by a duty to protect the client's
19 information on the basis of solicitor client privilege,
20 he's also required to maintain a strict confidence. So
21 there's a confidentiality issue as well that many times is
22 broader than the issue of solicitor-client privilege alone.

23 I do bring to your attention -- the page
24 number at the bottom left is 16, it's about the third page
25 in and the paragraph is Rule 2(2) -- 2.03, sorry, sub (2)

1 under the heading Justified or Permitted Disclosure and it
2 says:

3 "When required by law or by order of a
4 tribunal of competent jurisdiction, a
5 lawyer shall disclose confidential
6 information but the lawyer shall not
7 disclose more information than is
8 required."

9 Now, the difficulty there, of course, as
10 I've explained to Mr. Adams, might be that in circumstances
11 when a court made an erroneous order against the law or not
12 in keeping with the law and compelling the solicitor to
13 testify, there would be a question then of whether that
14 order was effective and whether it shielded the lawyer from
15 risk of reprisal by the client.

16 In my submission, and again it's on the
17 basis of the information that I received from counsel for
18 the Commission and on the basis of the exhibit that was
19 tendered this morning, that there is a solicitor-client
20 relationship, or at least there was many years ago, and
21 that that privilege will be impacted upon and called into
22 play with the communications in facts about which Mr. Adams
23 is going to be questioned and it's my submission that they
24 will fall within that umbrella of solicitor-client
25 privilege.

1 Firstly, I've provided, Your Honour -- Mr.
2 Commissioner, I've provided excerpts from two textbooks.
3 One is the Law of Evidence in Canada, Second Edition, John
4 Sopinka and Mr. Lederman and Mr. Bryant. The other one is
5 a book from -- excerpt from a book entitled Witnesses by
6 Alan Mewett and Peter Sankoff, Volume 2.

7 My submission in that respect and on those
8 authorities, is that if there is an express waiver then
9 counsel is released from the obligation pursuant to the
10 terms of that express waiver, but it's my submission we
11 don't have one.

12 So going to those two authorities, the only
13 way that it can then be resolved, other than the witness
14 not testifying, is that there has to be a waiver by
15 implication or it must fall within one of the exceptions to
16 that rule.

17 I've included, perhaps, more information
18 than might be necessary for you, Mr. Commissioner, but in
19 reading those passages in those books at least under the
20 title of waiver, if one reads certain excerpts from them
21 it's my submission to you that you gain not the full
22 picture of the way in which solicitor-client privilege may
23 be lost or waived.

24 For example, in the Law of Evidence by
25 Sopinka at page 756, there is a reference to the disclosure

1 -- for the disclosure by the client having to be voluntary
2 or he consents and there has to be knowledge -- he has to
3 be informed and when I looked at the case in support of
4 that that was cited in the text which was *Smith et al v.*
5 *Smith*, and I've provided a copy of that decision to you as
6 well -- yes, it didn't do well, did it -- that case, when I
7 read it, Mr. Commissioner, seemed to indicate that it was
8 simply the same old problem of the client putting the
9 matter into evidence and so forth and didn't really support
10 the statement that's made in the text.

11 There's a reference, Mr. Commissioner, at
12 page 757 which is paragraph 14.98, and I believe this
13 passage may have been cited to you previously in this
14 Inquiry, but I would ask you to understand or accept from
15 that that if the -- in the middle sentence:

16 "If the client merely testifies as a
17 witness to the facts in issue, that
18 will not constitute a waiver of
19 privilege."

20 It is unclear, in my submission, from that
21 statement whether the authors meant that the testimony from
22 the client would be just as to the facts but not covering
23 the facts of the solicitor-client communications.

24 But it can be taken from that that if the
25 client simply testifies about that legal advice, then that

1 is not to be taken as a waiver of the solicitor-client
2 privilege.

3 I draw page 758 as well to your attention,
4 that in paragraph 14.103 on page 758 it refers to the
5 notion of fairness:

6 "As being invoked as a basis for waiver
7 and the party directly raises in a
8 pleading or proceeding the legal advice
9 that he or she received, thereby
10 putting that advice in issue"

11 That was a concern I had with these
12 proceedings, Mr. Commissioner, is this -- I could not find,
13 although I did search for, any authorities that dealt with
14 a circumstance in a public inquiry whereby a former client
15 had testified and then the issue was that the same ground
16 was going to be canvassed with the solicitor with no waiver
17 of solicitor-client privilege.

18 It's my submission that this proceeding is
19 significantly different from a civil lawsuit or a criminal
20 proceeding, and in those cases, when they talk about
21 waiver, they talk about the client putting that legal
22 advice in issue.

23 And once it's in issue by the client in
24 those proceedings, then the solicitor -- and again, it's
25 not a general release; only to the extent that it's

1 released is the solicitor free to respond because
2 otherwise, in fairness of course, going back to the
3 estoppel position is the client is free to attack the
4 lawyer and the lawyer is hampered by his obligation to the
5 client not to respond and defend himself or herself.

6 And this may be the case; I don't know. I
7 wasn't here when the client testified, but depending on
8 whether the inquiry has heard matters that place the client
9 in conflict with the lawyer as a result of the testimony of
10 the client, then that issue may become relevant. But
11 again, the factual basis would have to be determined by
12 yourself, Mr. Commissioner.

13 But there is a concern at the outset, from
14 where I stand this morning, that this proceeding, as I
15 said, is not a civil lawsuit. It's not a criminal
16 proceeding where that case law would be applicable. This I
17 understand does not have the same -- the mandate does not
18 have the same direction as a civil trial or a criminal
19 prosecution. And therefore, these cases may not be helpful
20 with respect to the issue of waiver.

21 There is an exception under solicitor-client
22 privilege if the evidence of the solicitor-client
23 communications are required, if the client's state of mind
24 is an issue, but I submit on the information that I have to
25 date, I have no such information that that's a question for

1 this Commission.

2 **THE COMMISSIONER:** You've had an opportunity
3 to review the transcripts?

4 **MR. McCLELLAND:** Some of them, yes.

5 The ones that were provided to me, the
6 excerpts and the directions, I went to those, yes.

7 Now, when you say I've had an opportunity, I
8 understand that it is on the screen but I didn't review all
9 of them.

10 **THE COMMISSIONER:** It's available to the
11 public?

12 **MR. McCLELLAND:** Yes, I understand that.

13 The second reference is the excerpt from the
14 text called "Witnesses".

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

16 **MR. McCLELLAND:** And the passages there that
17 I wish to make reference to are on page 15-49. The
18 paragraph numbers are 15.3, and up to pages 15-52, and
19 that's just again a general repetition of the general
20 nature of legal advice privilege.

21 I also make reference, Mr. Commissioner, to
22 page 15-69 and the communications again must be in the
23 course of the solicitor-client relationship. But I ask you
24 to take into consideration the passages from 15-70 at the
25 bottom of that page, through to the next page which, again,

1 doesn't make the task any easier because it appears that
2 the authors are saying that there's a blur between the
3 distinction between communications and facts covered by
4 legal advice privilege and it's not an easy one to draw.

5 The scope of the limitation is subject to
6 some doubt and on the next page they indicate even an
7 example that if the disclosure is enough to provide anyone
8 looking at the matter with the ability to discern what the
9 legal advice was, then those events should also be covered
10 with solicitor-client privilege or legal advice privilege.

11 At page 15-74, the portion of this text
12 commences with respect to the issue of waiver. At 15-76
13 they deal with express waiver.

14 The other matter I would ask you to
15 consider, Mr. Commissioner, is whether -- because this on
16 page 15-77 is a point at which it appears the writers are
17 addressing the issue of whether -- if you -- whether
18 privilege is waived in a prior proceeding, whether that
19 same privilege or same waiver applies to a subsequent
20 proceeding.

21 **THE COMMISSIONER:** And there, the general
22 approach seems to be if you've waived it at a former
23 proceeding, then it's waived for any subsequent
24 proceedings.

25 **MR. McCLELLAND:** That appears to be the

1 general rule.

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

3 **MR. McCLELLAND:** The concern I would ask you
4 to address as well, Mr. Commissioner, though is whether
5 that waiver was voluntary at the outset or whether it was
6 compelled. There are references as to implied waiver, loss
7 of confidentiality. That's at 15-84.

8 There's reference to inadvertent disclosure
9 on page 15-87. They refer again to involuntary disclosure.
10 That's at top of 15-88, and implied waiver, lost
11 confidence, deliberate disclosure to third parties on 15-
12 89.

13 My submission, Mr. Commissioner, is that the
14 client was summonsed here to testify. He did answer
15 questions. As I understand it, he had no list to raise.
16 This wasn't a civil lawsuit between these parties. My
17 information is that during his testimony, the client was
18 not asked at this inquiry to waive that solicitor-client
19 privilege.

20 In my submission, that was the time to
21 address that issue and the inquiry must have known that Mr.
22 Adams was going to testify and the issue was not addressed
23 in the client's earlier testimony.

24 **THE COMMISSIONER:** So is that fatal?

25 **MR. McCLELLAND:** It's a factor to -- with

1 respect to solicitor-client privilege, that's one of my, I
2 guess you'd say, subsidiary submissions that I don't
3 believe that there's too many issues where they can say
4 it's fatal, or whether it is or it's not. But I'm saying
5 there was an opportunity for that waiver to be addressed
6 and to be raised, but it wasn't. It doesn't mean that it
7 can't be raised today. That's not my submission.

8 **THE COMMISSIONER:** Okay.

9 **MR. McCLELLAND:** My submission was though
10 that when that client was testifying, that could have been
11 asked and the voluntariness issue could have been discussed
12 and so forth and that would have taken those issues away
13 from my submissions today.

14 I'm not aware of whether there is any issue
15 by the client against the lawyer who is here today to
16 testify, but the fact is we have the evidence that the
17 client is not waiving that privilege.

18 In my submission, Mr. Commissioner, the
19 questioning that is expected to be asked of Mr. Adams does
20 not fall with any of the exemptions or exclusions with
21 respect to the solicitor-client rule. And so today it
22 falls to be decided on whether that has been waived or
23 lost.

24 So in summary, if I may, it's my submission
25 firstly that the communications and perhaps some facts

1 connected with those communications, the scope is going to
2 be difficult but that they're subject to solicitor-client
3 relationship between Mr. Adams and his former client.

4 There's evidence before you that there was
5 no express waiver and the client is still maintaining that
6 privilege.

7 The solicitor-client privilege is the
8 privilege of the client only, and only the client may waive
9 it and there is a clear duty on Mr. Adams to observe,
10 uphold and protect that privilege. For there to be implied
11 waiver, I submit that there has to be voluntary, informed,
12 waiver without coercion.

13 In two instances I'm aware that the client
14 testified under summons. I'm further informed that the
15 solicitor, Mr. Adams, provided a statement but I'm -- in my
16 submission, it's in the context of possible criminal
17 charges and there was some element of lack of voluntariness
18 there. It's my submission that both of the -- of the
19 information on which the waiver is based or alleged
20 contained an element of coercion or compulsion, absence of
21 voluntariness. In my submission, the courts are growing
22 reluctant to restrict but are in favour of expanding and
23 preserving solicitor-client privilege, not wearing it down.

24 I ask you, Mr. Commissioner, to -- on the
25 basis of the authority that I've provided, to jealousy

1 guard this privilege here at this tribunal and I ask the
2 Inquiry to protect Mr. Adams by not requiring him to breach
3 solicitor-client privilege.

4 Thank you.

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

6 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:**

7 **MR. ENGELMANN:** I just want to say at the
8 outset I take no issue with many of the principles my
9 friend stated about the importance of solicitor-client
10 privilege, the fact that it should be jealousy guarded, and
11 that it's a fundamental right.

12 I would like to start though, right from the
13 get-go, with my advice to my friend and some of what I
14 tried to explain to him about why the Commission views this
15 is both a voluntary waiver and a waiver by implication.

16 And my friend and his client are well aware
17 because Mr. Adams was third-party in a lawsuit in the mid-
18 90s; that Mr. Silmsler in a very voluntary way waived his
19 privilege right in the course of examinations for discovery
20 where he put the advice, or lack of advice, he got from Mr.
21 Adams with respect to the settlement in issue.

22 That was back in 1995 and I'll be referring
23 to some of that, but this is really a factual question,
24 sir, whether or not there's been a voluntary waiver or a
25 waiver by implication. There's certainly no express waiver

1 and there's certainly a relationship, a solicitor-client
2 relationship, so the question really is, on a factual
3 basis, whether or not there has been a voluntary waiver or
4 waiver by implication.

5 So I just want to take you through perhaps
6 some of the facts and these are in exhibits.

7 I certainly agree with the conclusion that
8 once a person waives privilege, the privilege is waived you
9 can't try and grab it back and what -- what we'll see here,
10 on a number of occasions, is a waiver of the privilege by
11 Mr. Silmsler. An examination for discovery in 1995, a
12 preliminary inquiry in 1997, numerous statements both --
13 not just to people who can compel him to give a statement
14 or to police officers, but also there was the statement he
15 gave to Carson Chisholm and others. And then, of course,
16 his evidence before this Inquiry where he's represented by
17 counsel and does not assert any privilege and, again, goes
18 into great detail about advice he receives from Mr. Adams
19 or about advice he doesn't receive.

20 So I think there are -- the -- we've seen a
21 consistent waiver of privilege by Mr. Silmsler. The only
22 thing that's inconsistent is his recent refusal to
23 expressly waive when -- assents and documentation.

24 Perhaps we could start with Exhibit 316 and
25 this is an examination for discovery transcript from

1 December 14th, 1995. Mr. Silmsler at this time is being
2 represented by Bryce Geoffrey and this is a lawsuit filed
3 against Father MacDonald, the Diocese and Jacques Leduc is
4 a first third party and Malcolm MacDonald and Sean Adams
5 are second third parties. They are all represented.

6 Now, I'm just going to give you a few
7 examples. As I said, Mr. Adams was represented at this
8 time and Mr. Silmsler's putting this in issue. You could
9 start, sir, at Bates page 7164970. It is also the
10 transcript reference page 336.

11 I'm not going to read the references, sir,
12 I'm going to just leave them with you if I can; line 16
13 through 21 on page 338 or Bates page 7164972.

14 **THE COMMISSIONER:** Well ---

15 **MR. ENGELMANN:** I'm sorry.

16 **THE COMMISSIONER:** I think it might be
17 constructive --

18 **MR. ENGELMANN:** I'll read some it ---

19 **THE COMMISSIONER:** Please do.

20 **MR. ENGELMANN:** So:

21 "Mr. Geoffrey: I think the second dealt
22 with Mr. Adams witness?"

23 "Yes, Mr. Adams wasn't -- we should
24 hold off for more money, it was hold
25 off so that he could review, look at

1 the situation a little closer."

2 So this is Mr. Silmsler talking about advice he receives
3 from Mr. Adams. On the page 7164972 ---

4 **THE COMMISSIONER:** I'm sorry, what page
5 again?

6 **MR. ENGELMANN:** It's Bates page 7164972.

7 **THE COMMISSIONER:** Okay. I'm not -- I'd
8 just prefer ---

9 **MR. ENGELMANN:** Oh, page 338 of the
10 transcript, sir.

11 **THE COMMISSIONER:** Right. Okay.

12 **MR. ENGELMANN:** Question 1724 ---

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

14 **MR. ENGELMANN:** -- is directly about his
15 discussions with Mr. Adams and his answer:

16 "I was never satisfied with the
17 32,000."

18 Next question:

19 "Well, on the statement there's a
20 suggestion there that you -- that he
21 said 'well, you know you could hold out
22 maybe for more and could get more' and
23 he's saying that he never said that to
24 you."

25 "No."

1 And it goes on onto the next page -- sorry,
2 let's turn to page 348 and this is Mr. Geoffrey
3 interceding, he's saying:

4 "Okay, next the release document
5 itself. You understand I take the
6 position that it's illegal and the
7 entire document is void for illegality
8 and it's non-severable and then the
9 Independent Legal Advice from Sean
10 Adams -- I think his advice was
11 negligent, that he failed to note the
12 legality of the agreement. I think he
13 was in a conflict position due to his
14 previous retainer by the Church."

15 And then there's a question:

16 "Mr. Ennis: Can I ask -- can I just
17 ask you if Mr. Adams had discharged his
18 duty and told you Mr. Silmsler, you
19 can't sign this because this agreement
20 would be bad because you can't agree et
21 cetera."

22 And he goes on. This is a situation where
23 Mr. Silmsler's lawyer is putting the advice into issue in
24 the action between them. Again, he's asked a question at
25 the bottom of page 349:

1 "But you're an intelligent man, Mr.
2 Silmser..."

3 On the 3rd of September:

4 Answer: "No, no, no, you're an
5 intelligent man..."

6 "I did not think about. I took the
7 32,000. I walked in only thinking,
8 'Taking 32,000's going to be a slap on
9 the hand for the Church, so that they
10 can turn around investigate the
11 priest'. That's not all I thought of,
12 then I went in and read the document.
13 I didn't read it real fast. My lawyer,
14 Sean Adams, read it and said, 'It looks
15 fine to me, sign it'. That's when I
16 signed it."

17 So, again, referring to the -- the advice
18 that he suggests that he got.

19 An interjection by Mr. Power, who I
20 believe's acting for Mr. Leduc; this is on page 354, sir.

21 "I definitely agree with that. One of
22 it's defences is that Sean Adams had a
23 conflict of interest, therefore, the
24 agreement's invalid even though he was
25 the one who retained Sean and not the

1 Church. That's one of Bryce's
2 arguments."

3 -- Bryce being Geoffrey.

4 There's a discussion between the counsel on
5 page 355, just about this advice, between Mr. Ennis
6 representing the Diocese and Mr. Geoffrey and about -- and
7 then at page 378 of the transcript, sir, again, question
8 1865:

9 "Sean Adams never told you that the
10 effect of this document was that you
11 couldn't sue anybody for these
12 assaults."

13 **THE COMMISSIONER:** Just a second now.
14 You're at page 378?

15 **MR. ENGELMANN:** Yes, question 1865.

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** "Sean Adams never told you
18 that the effect of this document was
19 that you couldn't sue anybody for these
20 assaults?"

21 "Oh, he never said that."

22 "He never told you that?"

23 "No."

24 "So in your mind, the deal was this;
25 you would get 32 grand, right?"

1 "Right."

2 Et cetera. And again, and this is Mr. Adams
3 -- sorry, this is Mr. Silmsler talking about his advice from
4 Mr. Adams at the bottom of page 380:

5 Question:

6 "And that's why you sued them?"

7 Eighteen seventy-five (1875). Question:

8 "That's why you sued them? They
9 haven't done that. Is that why you
10 sued them?"

11 Answer:

12 "I sued them because I wasn't properly
13 represented and my..."

14 Question:

15 "By Sean Adams?"

16 "By Sean Adams, by everybody, by the
17 church. I wasn't properly treated."

18 So there are many more references like this;
19 some as well as in - sorry, in Exhibit 320, which is the
20 day before, December 13th, 1995. I'll just give you a
21 couple more if I may?

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

23 **MR. ENGELMANN:** Page 169; those following on
24 the Bates page, 7164801. It starts at question 1068 and it
25 carries on, but just to give you the flavour:

1 "So you attended on Mr. Adams in his
2 office before you went over the Malcolm
3 MacDonald's office?"

4 Answer:

5 "I believe that's how it happened,
6 yes."

7 Question:

8 "And do you have any recollection of
9 what was discussed at that point in
10 time?"

11 Answer:

12 "With who?"

13 Question:

14 "With Sean Adams?"

15 Answer:

16 "Just I told him I needed a lawyer to
17 sign some papers. He said he would go
18 over, but it would cost me some money."

19 Question:

20 "All right. He wasn't going to do it
21 for nothing and, yes, he would. And
22 did you discuss what it was all about
23 with him?"

24 Answer:

25 "Yes, I told him it was a settlement

1 from the church and told him what
2 happened."

3 "You told him about the various
4 incidents?"

5 Answer:

6 "I told him I was abused. There were
7 four instances."

8 "Did you tell him about the four
9 incidents?"

10 "I don't believe so in detail, no. I
11 just told him I was sexually abused by
12 the priest."

13 It goes down a bit further at 1077:

14 "You told him the settlement had been
15 arrived at?"

16 "Yes."

17 "Did he have any discussion with you
18 with respect to the amount?"

19 Answer:

20 "Sean Adams?"

21 "Yes."

22 Answer:

23 "He says you could think about it more.
24 I think what he said at the time was
25 you don't have to settle now. We can

1 study this a little closer. Said I'd
2 rather get it over with today. He
3 said, 'Fine'."

4 "Did he ever suggest to you that you
5 request an increased amount of money?"

6 "No."

7 "But he did suggest to you that you not
8 settle, right, in such a hurry; is that
9 fair to say?"

10 Answer:

11 "Yes. Well, he said you don't have to
12 settle today, but you can settle later
13 on."

14 It goes on and it carries on for the next
15 couple of pages thereafter. And, sir, I think, as I said,
16 multiple references in an Examination for Discovery. I
17 advised my friend I thought that in this sense there would
18 be no question about a compulsion. There's no question
19 about a summons. He's there with counsel. Mr. Adams is
20 there with counsel. The issue is voluntarily waived or
21 it's waived by implication right then and there.

22 There are many other examples and you heard
23 the evidence here at the inquiry, of course.

24 Just by way of another example, we've got
25 Exhibit 287, which is one of the notice documents that was

1 given. This is a statement given by David Silmser to
2 Carson Chisholm on August 14th, 1996 in Spencerville and, as
3 I said, it's Exhibit 287 or Document No. 123025. It's the
4 second page.

5 Question:

6 "Do you have any comment on the \$32,000
7 payment made by the church?"

8 Answer:

9 "I took the 32,000..."

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

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

12 **THE COMMISSIONER:** Page 2?

13 **MR. ENGELMANN:** Of the typewritten. It's at
14 the back.

15 **THE COMMISSIONER:** Yes. Okay. Page 2, all
16 right. M'hm.

17 **MR. ENGELMANN:** "I took the 32,000 because
18 Heidi Sebalj, the investigating
19 officer, told me they were not going to
20 lay charges on the priest and I morally
21 believed I had to do something about
22 the situation to deter the priest from
23 doing it again or maybe the church
24 would investigate the priest themselves
25 if it cost them \$32,000. My lawyer

1 Sean Adams in Cornwall looked over the
2 agreement, told me that everything was
3 proper and that I wouldn't even have to
4 go down to the police station and tell
5 them in writing to end the
6 investigation if I was to receive any
7 money. I did this because I knew that
8 no charges were being laid. I found
9 out later that Sean Adams had
10 represented the church in the past and
11 felt betrayed because I felt he was
12 part of keeping me quiet about the
13 truth."

14 And it goes on. So again, voluntary
15 statement if you can call it that, but, as I said, I think
16 given the law, there was waiver with the Examination for
17 Discovery itself. I've unfortunately -- I'll just be one
18 moment.

19 (SHORT PAUSE/COURTE PAUSE)

20 MR. ENGELMANN: Again, sir, perhaps just to
21 refresh your memory about some of what Mr. Silmser
22 testified about here.

23 THE COMMISSIONER: M'hm.

24 MR. ENGELMANN: As you know, he had counsel
25 throughout.

1 I'm looking at Volume 86 of the transcript,
2 page 55, and we're ---

3 **THE COMMISSIONER:** Okay, go ahead. Say
4 again, volume?

5 **MR. ENGELMANN:** Eighty-six (86), page 55.
6 This is January 30th, 2007.

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

8 **MR. ENGELMANN:** If you scroll down in this
9 answer that he's giving starting on line 7:

10 "No, I believe he showed me a document.
11 And then Sean came in. Sean went into
12 Malcolm MacDonald's office without me.
13 I went back into the waiting room.
14 They discussed for a little while.
15 Sean came back out into the waiting
16 room, told me to look at the agreement.
17 I was a little frustrated, a little --
18 not frustrated, but a little shocked
19 that Charles MacDonald had just walked
20 into his office. And I just wanted to
21 get out of that office. So I basically
22 just -- I didn't read the document. I
23 put my trust in Sean. He would be the
24 one to read it and so I didn't have
25 to."

1 More of the same on page 62 starting at
2 about line 13:

3 "I just want to go through the document
4 quickly if we can, but perhaps not as
5 quickly as you did the first time. You
6 say you didn't read the document that
7 day?"

8 Answer:

9 "No, I didn't."

10 "You believed Mr. Adams did?"

11 "Yes."

12 "I think you told us why you didn't
13 read it."

14 "I trusted Sean Adams to make sure it
15 was proper."

16 It goes on. Page 65, question at 4:

17 "All right. Now, was the scope of that
18 release, was that explained to you?"

19 Mr. Silmsen:

20 "Like I said, the release was never
21 explained to me by Sean Adams or by
22 Malcolm MacDonald."

23 A little later on he again says:

24 "None of the document was explained to
25 me."

1 Page 66:

2 "I just thought it was another piece of
3 paper I had to sign to get to put a
4 finish to it, for the \$32,000
5 settlement. Like none of these
6 documents were ever explained to me. I
7 just had the papers in front of me on
8 his desk to sign."

9 A little later on at page 68:

10 "Were you told that you had to sign
11 Exhibits 265 and 266 to get your
12 settlement?"

13 Silmser:

14 "Yes, I did."

15 Questions about the relationship, page 69:

16 "Did you give those names to Mr. Adams
17 or Mr. MacDonald to put in this
18 document?"

19 "No, I didn't."

20 "Mr. Adams didn't have anything to do
21 with this case before September 2nd?"

22 "He didn't know nothing about it, I
23 believe."

24 Other transcript references you may wish to
25 note, sir, page 76, there's a reference to an interview

1 that Mr. Silmsler had given with Detective Inspector Smith
2 starting at line 14.

3 It carries onto page 77 where I take him
4 through the statement, and then near the bottom, Mr.
5 Silmsler:

6 "Do I remember saying that?"

7 Mr. Engelmann:

8 "Yes."

9 Mr. Silmsler:

10 "I remember there was some discussion
11 but I don't know exactly what the
12 discussion was but it was very minimal.
13 They never elaborated much on it."

14 So again, all of page 78:

15 "...nor do I remember saying that."

16 "Mr. Engelmann: Yes."

17 "Mr. Silmsler: I remember there was
18 some discussion but I don't remember
19 exactly what the discussion was but it
20 was very minimal. They never
21 elaborated much on it."

22 So, again, all of page 78, page 83 from line
23 17:

24 "So did Mr. Adams or Mr. MacDonald
25 advise you that you had to go down to

1 the police station?"

2 "Mr. Silsmer: I believe it was Mr.
3 Adams."

4 "All right. Was that advice similar to
5 what we see in this letter?"

6 "Mr. Silsmer: "I had to do it in my
7 own handwriting at the police station."

8 Sir, there are a number of other references.
9 I don't want to belabour the point too much but, I think as
10 I said, just on the law very briefly, my friend referred to
11 excerpts from Sopinka and Lederman. Perhaps I'll go there
12 for a moment; under the caption "Voluntary Waiver" on page
13 756 at paragraph 1497:

14 "An obvious scenario of waiver is if
15 the holder of the privilege makes a
16 voluntary disclosure or consents to
17 disclosure of any material part of a
18 communication."

19 In my respectful submission, that's happened
20 here in spades starting as I said in December of 1995.

21 The reference on page 757 that my friend,
22 Mr. McClelland, has already given to you:

23 "Similarly, if a client testifies on
24 his or her own behalf and gives
25 evidence of a professional confidential

1 communication, he or she will have
2 waived the privilege shielding all of
3 the communications relating to the
4 particular subject matter."

5 That was the reference that he said
6 footnoted *Smith et al v. Smith*. I have a slightly
7 different take on that case than he does. I would simply
8 suggest, sir, if you're looking at the case, and it's from
9 the High Court of Justice from 1957, it's the reference on
10 page 136 which is the second page and I think this is what
11 was being picked up on by the authors Sopinka and Lederman.
12 The paragraph, it's the fourth paragraph down:

13 "There's a dearth of authority on the
14 point in our courts but in Wigmore on Evidence, Third
15 Edition at page 214 of the supplement:

16 "Recent American authorities are cited
17 for the proposition that where a client
18 voluntarily testifies as a witness to
19 confidential communications made by him
20 to his attorney, he thereby waives the
21 privilege character of such
22 communications and then both he and his
23 attorney may be fully examined in
24 relation thereto."

25 That's exactly what happened, sir, back in

1 1995, so I think the reference to Sopinka is still
2 accurate.

3 As well, sir, at 1498 on page 757 of the
4 text:

5 "If the communication is elicited in
6 cross-examination of the client, it
7 seems that unless it can shown that the
8 witness was misled or did not
9 comprehend what was being asked of him
10 or her, the assertion of the
11 communication would amount to a
12 waiver."

13 Again, that has happened here.

14 Lastly, sir, and in the alternative, if you
15 find that there was no voluntary waiver I would submit that
16 there was waiver by implication. Again, the authors
17 Sopinka and Lederman set this out starting on page 758
18 where, at caption 14-100 -- paragraph 14-100:

19 "It is also been said that clear
20 intention is not in all cases an
21 important factor. In some
22 circumstances, waiver may occur even in
23 the absence of any intention to waive
24 the privilege. There may also be
25 waiver by implication only."

1 And in paragraph 14-103:

2 "The notion of fairness has always been
3 invoked as a basis for waiver when the
4 party directly raises in a pleading or
5 proceeding the legal advice that he or
6 she received thereby putting that
7 advice in issue."

8 Now, that happened here back in 1995. I
9 would submit it has also happened here at this Public
10 Inquiry and whether this Public Inquiry -- clearly it's not
11 a civil proceeding nor a criminal matter but the principles
12 are the same and I would submit that's exactly what's
13 happened from 1995 right up until this past year when Mr.
14 Silsmer has continued to put the advice or non-advice that
15 he received, using his terms, into issue.

16 Sir, the two cases, which unfortunately I've
17 handed out my copies, but just from the head note
18 themselves, *R. v. Campbell* and the *Souter* case are -- I had
19 a miscommunication with my friend about copies and I --
20 yeah, the RCMP case is the *Campbell* case, and I would
21 submit on the facts the waiver is even much clearer here
22 than in the *R. v. Campbell* case.

23 The other case where I think it really talks
24 about waiver is *Souter* and, again, I think one need to look
25 no further than the head note where it says:

1 "Where a party identified as solicitors
2 responsible for a material mistake in
3 an affidavit sworn by that party and
4 then claims solicitor-client privilege
5 in respect of his knowledge and that of
6 his solicitor, he was attempting to use
7 the confidentiality protected by
8 privilege as a sword rather than a
9 shield."

10 It goes on.

11 That's what took place back in 1995 in the
12 discovery.

13 So those are my brief submissions, sir. It
14 is really a factual matter. I have also advised my friend,
15 Mr. McClelland, that section 9 of the *Public Inquiries Act*
16 does provide some protection to witnesses at inquiries and
17 this is on the issue of, first of all, your making a
18 ruling, and if you make a ruling that there has been a
19 voluntary waiver or a waiver my implication.

20 I was trying to suggest to him and I will
21 submit that Mr. Adams is not at risk. There would be a
22 decision by you in your quasi-judicial function as the
23 Commissioner of a public inquiry and in addition section 9
24 of the *Public Inquiries Act*:

25 "(1) A witness at an inquiry shall be

1 deemed to have objected to answer any
2 question asked him or her upon the
3 ground that his or her answer may tend
4 to incriminate the witness or may tend
5 to establish his or her liability to
6 civil proceedings at the instance of
7 the Crown or of any person and no
8 answer given by a witness at an inquiry
9 shall be used or be receivable in
10 evidence against him or her in any
11 trial or other proceedings against him
12 or her thereafter taking place other
13 than a prosecution for perjury in
14 giving such evidence."

15 So I hope that is of some comfort. Whether
16 it is on the basis of the confidential information argument
17 from the Law Society rules being broader than solicitor-
18 client privilege or not, in my respectful submission, we
19 have had a waiver of privilege and you should rule in that
20 way.

21 I'm sure some of my friends will have
22 submissions as well.

23 **THE COMMISSIONER:** I'm sure. Thank you.

24 Mr. Manson do you have any comments and how
25 long will you be?

1 MR. MANSON: Five minutes.

2 THE COMMISSIONER: All right.

3 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

4 MR. MANSON: Mr. Commissioner, I'm conscious
5 that there are public perceptions and public misperceptions
6 about the conduct of this Inquiry and I think solicitor-
7 client privilege is a fundamental concept and we ought to
8 just take a second to go back and look at its underlying
9 rationale.

10 I fear that submissions and arguments made a
11 few weeks ago were subject to misperception and I want to
12 just say the underlying rationale for the fundamental
13 protection of solicitor-client communications is as an
14 aspect of the rule of law, it's to ensure that individuals
15 can have frank and candid discussions with lawyers seeking
16 legal advice without any fear that those discussions will
17 compulsorily be disclosed. However, as Mr. McClelland
18 pointed out, it's the client's privilege.

19 Once a client discloses the subject matter
20 of the advice and he uses that advice in their perceived
21 self-interest, Mr. Commissioner, the genie is out of the
22 bottle and what we're seeing now, in my respectful
23 submission, is an effort years later to put the genie back
24 in the bottle and that's not about solicitor-client
25 privilege.

1 I fully agree with Mr. Engelmann that this
2 is either an example of voluntary waiver or implied waiver.
3 You will recall a few weeks ago I stood here and attempted
4 to persuade you that there was an implied waiver by Mr.
5 Dunlop with respect to the question of the construction of
6 litigation documents by his lawyer and I had almost two
7 dozen references from various cross-examinations of Mr.
8 Dunlop during applications for stays in both the MacDonald
9 and Leduc matter.

10 And partway through my survey of those
11 references, Mr. Commissioner, you stopped me and said, "But
12 he was being cross-examined and he was unrepresented."

13 I think you were quite proper to point those
14 factors out. This situation today, as Mr. Engelmann
15 explained, is the antithesis of that.

16 We have Mr. Silmser freely, from his own
17 mouth and through his counsel, raising the subject of his
18 discussions with Mr. Adams and the advice received or not
19 received from Mr. Adams. He did it in the examinations for
20 discovery in 1995 as part of his assertions of a civil
21 claim. And he certainly did it here in this inquiry last
22 January, Mr. Commissioner, in his efforts to explain his
23 own actions.

24 On both of those occasions, he was
25 represented by counsel. On neither of those occasions was

1 there any suggestion that he wanted to keep these
2 communications and this advice privileged. In fact, he
3 wanted to freely raise it and he did so.

4 It's our position, Mr. Commissioner, that if
5 that doesn't constitute voluntary waiver, certainly it's
6 waiver by implication.

7 If I can just refer you very briefly to the
8 Sopinka, Lederman and Bryant text, paragraph 14.96.

9 "It was once thought that ..."

10 Under the subheading "Voluntary".

11 "It was once thought that certain
12 requirements should be established in
13 order for waiver of the privilege to be
14 established. For example, the holder
15 of the privilege must possess knowledge
16 of the existence of the privilege which
17 he or she is foregoing; have a clear
18 intention of waiving the exercise of
19 his or her right of privilege, and a
20 complete awareness of that result.

21 But, as will be pointed out, other
22 considerations unique to the
23 adversarial system such as fairness to
24 the opposite party and consistency of
25 positions have overtaken these

1 factors."

2 And then if we turn to the next paragraph,
3 we have the concern that Your Honour raised about answers
4 elicited in cross-examination, which is not the case here
5 with Mr. Silmsler.

6 If we turn the page to 758 and move over to
7 waiver by implication, paragraph 14.101, a quotation from
8 Wigmore, just the last line:

9 "He cannot be allowed, after disclosing
10 as much as he pleases, to withhold the
11 remainder. He may elect to withhold or
12 disclose but after a certain point, his
13 election must remain final."

14 In my submission, Mr. Commissioner, Mr.
15 Silmsler has chosen for his own reasons -- and I'm not being
16 critical of those reasons, has chosen to openly, freely and
17 consistently discuss and use his communications, advice or
18 lack of advice received from Mr. Adams.

19 This last communication, as Mr. Engelmann
20 said, is the only inconsistency. The genie can't be put
21 back in the bottle, Mr. Commissioner.

22 Those are our submissions.

23 **THE COMMISSIONER:** Thank you. We'll take
24 the morning break.

25 **THE REGISTRAR:** Order; all rise. À l'ordre;

1 veuillez vous lever.

2 This hearing will resume at 11:15.

3 --- Upon recessing at 10:58 a.m. /

4 L'audience est suspendue à 10h58

5 --- Upon resuming at 11:18 a.m. /

6 L'audience est reprise à 11h18

7 **THE REGISTRAR:** This hearing is now resumed.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Mr. Paul?

10 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PAUL:**

11 **MR. PAUL:** Your Honour, I'll be brief in my
12 submissions.

13 I have heard some of the submissions of the
14 last group, Citizens for Community Renewal, on the webcast
15 and basically, our position is similar in the sense that we
16 have the position that there has been a waiver based on the
17 extensive nature of the evidence from Mr. Silmsner when he
18 testified, going I would argue beyond, for example, what
19 Mr. Dunlop was arguably referring to in his preliminary
20 inquiry evidence, suggesting in his case that he received
21 possibly bad advice, or advice he didn't think -- he
22 thought in hindsight was bad advice.

23 In this case, in the case of Mr. Silmsner, he
24 really went beyond a mere comment about the advice. He
25 went into some detail with respect to the advice.

1 I think that the details included suggestion
2 that Mr. Adams did indicate to him that -- this is his
3 evidence I believe -- he indicated that Mr Adams suggested
4 that possibly he could go into more detailed advice about
5 the agreement if there was more time.

6 And Mr. Silmsner also commented on the extent
7 of the detail that was given of the advice and I would
8 suggest that given the amount of comments that Mr. Silmsner
9 had going into details with respect to the legal advice, I
10 would suggest it is in fact a waiver.

11 And also, the only other comment I have is
12 with respect to not only advice but issues surrounding a
13 retainer. I would suggest the issues surrounding a
14 retainer come out in the civil documents and the pleadings
15 and also in Mr. Silmsner's evidence.

16 And I would suggest that it should be open
17 to cross-examine with respect to how the retainer took
18 place in terms of whether the retainer is through Malcolm
19 MacDonald or through Mr. Silmsner, and the extent of the
20 retainer and the purpose whether it's for Independent Legal
21 Advice or whether it's beyond that to speak to the police
22 and contact them and have activities such as that and
23 present letters to them. I would suggest those are open
24 issues as well.

25 So I would suggest there has been a waiver,

1 both in respect to issues of advice and retainer.

2 Those are my comments.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Lee, do you wish to add anything?

5 **MR. LEE:** Nothing to add, sir.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Bennett is not here. Mr. Chisholm,
8 anything to add?

9 **MR. CHISHOLM:** No, sir. Thank you.

10 **THE COMMISSIONER:** Thank you.

11 Mr. Neville is absent. Mr. -- I'm sorry,
12 Rouleau?

13 **MR. ROULEAU:** Nothing to add, sir.

14 **THE COMMISSIONER:** Thank you.

15 Mr. Kloeze?

16 **MR. KLOEZE:** No, thank you, sir.

17 **THE COMMISSIONER:** Thank you.

18 Ms. Robitaille?

19 **MS. ROBITAILLE:** Nothing; thank you, sir.

20 **THE COMMISSIONER:** Mr. Sherriff-Scott?

21 **MR. SHERRIFF-SCOTT:** No. Thank you, sir.

22 **THE COMMISSIONER:** Thank you.

23 Mr. Manderville?

24 **MR. MANDERVILLE:** Nothing to add, Mr.

25 Commissioner.

1 **THE COMMISSIONER:** Ms. Lahaie or Mr.
2 Kozloff?

3 **MR. KOZLOFF:** We support the position of
4 Commission counsel.

5 **THE COMMISSIONER:** Thank you.
6 Mr. Carroll?

7 **MR. CARROLL:** Nothing to add.

8 **THE COMMISSIONER:** Thank you.
9 That's it. All right.

10 Mr. McClelland, any last words from you in
11 reply?

12 **MR. McCLELLAND:** No, Mr. Commissioner.

13 --- RULING ON MOTION OF SOLICITOR-CLIENT MATTERS BY THE
14 COMMISSIONER/DÉCISION PAR LE COMMISSAIRE SUR LA REQUÊTE EN
15 MATIÈRE DE SOLICITEUR-CLIENT:

16 **THE COMMISSIONER:** Thank you.

17 All right. We have the witness here before
18 me who is Mr. Adams who was a formerly retained and had a
19 solicitor-client relationship with Mr. Silmsler.

20 And the issue before me is whether or not
21 the solicitor-client relationship persists, and whether or
22 not and to what extent, if any, Mr. Adams can be compelled
23 to testify with respect to, not only his retainer but the
24 advice he gave or didn't give and the circumstances
25 surrounding all of his actions and interactions with Mr.

1 Silmser.

2 It is clear and it has been brought home to
3 me and I certainly endorse and recognize that solicitor-
4 client privilege is a mainstay. It is essential to the
5 proper administration of justice, to the proper ordering of
6 citizen's affairs in Canada, and it's a fundamental right.
7 It should be construed broadly and jealously guarded and
8 that, of course, is a pillar of law in Ontario.

9 There are, of course, exemptions and those
10 should be interpreted narrowly. They should be interpreted
11 with knowing that the public policy is to protect
12 solicitor-client privilege and should be used sparingly.

13 In this case, I can understand Mr. Adams'
14 position that he certainly wants to ensure that if he is
15 asked to testify that he does so after having explored all
16 of the alternatives and having obtained a ruling from this
17 Inquiry as to whether or not solicitor-client privilege is
18 maintained.

19 In order to look and unveil that
20 communication, I must find that it was either a voluntary
21 waiver or a waiver by implication. It is clear that the
22 case law indicates that once disclosed the -- as Mr. Manson
23 has indicated, the genie is out of the bottle and cannot be
24 re-contained.

25 What is before me is that the argument that

1 Mr. Silmsler has, through his discourse in different arenas,
2 voluntarily waived that privilege or waived it by
3 implication. I am brought to transcripts of examinations
4 for discovery where Mr. Silmsler started a civil law suit
5 and whereby his former lawyer, Mr. Adams, was third-
6 partied.

7 And it is clear that during that examination
8 for discovery Mr. Silmsler, who was at all times represented
9 by counsel, freely and willingly discussed all aspects of
10 his retainer, of the retainer with Mr. Adams, and the
11 discussions that took place and the circumstances under
12 which all of the settlement was done.

13 Mr. Engelmann has provided me with ample
14 indications and directed me to different pages of that
15 examination for discovery, which is Exhibit 316, and
16 amongst others, pages 336, 348, 349 and 378. I was also
17 directed to Exhibit 287 which is a document that -- a
18 statement that Mr. Silmsler would have given to Carson
19 Chisholm in which he, again, goes to the topic of the
20 nature of his retainer and what occurred with Mr. Adams.

21 And, finally, in the evidence that he gave
22 before me here, again with counsel representing his
23 interests, in Volume 86 at page 55, page 76 and page 83,
24 amongst others, have indicated whether or not --
25 circumstances of his retainer and his relationship with Mr.

1 Adams.

2 I've indicated previously that someone who
3 uses the sword and uses the relationship that he's had and
4 circumstances behind that to either start at lawsuit or to
5 pursue some self-interest, cannot then use the solicitor-
6 client privilege as a shield from further investigation in
7 a sense of not permitting his lawyer to close off or not
8 testify to matters that the client has opened and raised
9 either in examinations for discovery or in a voluntary
10 statement to an individual or in evidence before this
11 Inquiry.

12 Mr. McClelland has raised the issue as to
13 whether or not the fact that this is an Inquiry, as opposed
14 to a civil litigation or a criminal process, is any
15 different and whether it should be treated differently. I
16 find that it should not.

17 That as a matter of public policy this
18 Inquiry is here to delve into matters that are of public
19 interest. That Mr. Silmser, in my view, has brandished his
20 sword to such a degree, and with the luxury of having a
21 lawyer with him, that I cannot in any way find that other
22 than he has brandished his sword in a voluntary and
23 informed fashion and that, at this point, to indicate that
24 it was not voluntary would be a serious miscarriage of
25 justice.

1 And, accordingly, in my view, the waiver has
2 been clear and cannot have been any clearer than the facts
3 upon which I rely to find that the solicitor-client
4 privilege has been waived.

5 So on those facts, I find that Mr. Adams can
6 and ought to be examined and cross-examined about not only
7 the retainer that he had and the nature of his retainer,
8 but the actions taken in surrounding the advice given and
9 the circumstances of the signing of any and all documents
10 relating to that settlement.

11 Accordingly, Mr. McClelland, I am going to
12 order your client to testify in this matter. You indicated
13 at some point, and I don't know if you wish to seek an
14 adjournment to appeal this matter, but I'm certainly opened
15 to any comments you may have with respect -- in that
16 regard.

17 **MR. McCLELLAND:** I can indicate to you, Mr.
18 Commissioner, that I had that communication with my client
19 before we came in this morning ---

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

21 **MR. McCLELLAND:** --- and we're prepared to
22 proceed based on your ruling.

23 **THE COMMISSIONER:** Thank you very much.

24 Mr. Engelmann, I understand that I'm called
25 into a meeting at 12 o'clock and so we should break at 12

1 and come back at 2:00 p.m. so that'll give you some idea of
2 where we're going with respect to time this morning.

3 **MR. ENGELMANN:** Thank you, sir. I'll watch
4 the clock.

5 If Mr. Adams could retake the witness stand?

6 **THE COMMISSIONER:** Thank you.

7 Mr. Adams, you were present when I gave my
8 ruling; I hope that you understand the breadth of it. If
9 you have any questions or doubts at any point, your lawyer
10 is here. I don't know -- will you be staying, sir?

11 **MR. McCLELLAND:** Well, that's part of my
12 retainer, Mr. Commissioner.

13 **THE COMMISSIONER:** All right. So if you
14 have any questions at any time or you feel uncomfortable,
15 please raise the issue and then we'll deal with it on that
16 stage-by-stage basis.

17 **MR. ADAMS:** Very well. Thank you.

18 **THE COMMISSIONER:** Thank you.

19 **SEAN ADAMS, Resumed/Sous le même serment:**

20 --- **EXAMINATION IN-CHIEF/INTERROGATOIRE EN-CHEF PAR MR.**
21 **ENGELMANN:**

22 **MR. ENGELMANN:** Mr. Adams, I just want to
23 confirm; you have had an opportunity, I hope, to review
24 some documentation?

25 **MR. ADAMS:** Yes, I have. I reviewed the

1 original binder you provided me with last week. I started
2 reviewing the documents you provided me with this morning.
3 I did not get through them and some of them I had a hard
4 time actually reading, to be honest with you.

5 MR. ENGELMANN: I think some of those were
6 police officer notes and or other handwritten notes.

7 MR. ADAMS: Yes, that's correct.

8 MR. ENGELMANN: I may not even go to them.

9 MR. ADAMS: Okay.

10 MR. ENGELMANN: You did have an opportunity
11 to look at some of the transcript of Mr. Silmsen's
12 evidence?

13 MR. ADAMS: Yes, I have the binder here.
14 Would you like me to ---

15 MR. ENGELMANN: No. I'll be referring you
16 to documents ---

17 MR. ADAMS: Okay.

18 MR. ENGELMANN: --- from time-to-time.
19 You'll either get a hard copy -- you'll probably get a hard
20 copy and also it will be put up on the screen for you;
21 whichever is easier to read.

22 MR. ADAMS: Perfect.

23 MR. ENGELMANN: You also had an opportunity
24 to review the statements you gave to the OPP ---

25 MR. ADAMS: That is correct.

1 **MR. ENGELMANN:** --- back in September '94.

2 And perhaps we should enter that as an exhibit.

3 Madam Clerk, if you could pull Document
4 Number 714957. Mr. Commissioner, it's an interview report
5 of Sean Adams' lawyer; present Tim Smith, Detective
6 Inspector, Criminal Investigation Branch and Mike Fagan,
7 Detective Constable. This was an interview that took place
8 at the Long Sioux Detachment of the Ontario Provincial
9 Police on the 13th of September, 1994.

10 **THE COMMISSIONER:** Thank you. That will be
11 Exhibit Number 849.

12 **---EXHIBIT NO./PIÈCE NO. P-849:**

13 (714957)Sean Adams Interview Report - Sean
14 Adams with Det. Insp. Tim Smith - 13 Sep, 94

15 **MR. ENGELMANN:** Thank you.

16 And, Mr. Adams, I just want to be clear.
17 This is the only interview you had with the police force
18 regarding this matter?

19 **MR. ADAMS:** That is correct.

20 **MR. ENGELMANN:** All right. This is the only
21 one I have so I was hoping that was the answer.

22 **MR. ADAMS:** Yeah. No, it is.

23 **MR. ENGELMANN:** And I just wanted to ask you
24 about your previous solicitor-client relationship with Mr.
25 Silmser because as I understand it, the first one wasn't

1 the Independent Legal Advice issue, there had been a matter
2 some years before?

3 **MR. ADAMS:** Yes, it's my recollection when
4 David called me to retain me and I was reluctant to act for
5 him, he told me that I was the only lawyer he knew in
6 Cornwall. I asked him how he knew me and he told me that I
7 had acted for him when I was practising in Ottawa on the
8 purchase of a home.

9 **THE COMMISSIONER:** Why were you reluctant to
10 act for him?

11 **MR. ADAMS:** Because I'm a solicitor, I don't
12 do any litigation or that type of work.

13 **THE COMMISSIONER:** Okay.

14 **MR. ENGELMANN:** Okay. And in your
15 statement, at page 27 -- oh, sorry, page 23, I believe you
16 mentioned something about this in the answer you give at
17 the bottom of the page.

18 **MR. ADAMS:** Yes, I had acted for a father
19 and son who owned several mobile home parks. I acted for
20 them when they purchased them and there were some problems
21 that arose that delayed the purchase and involved me having
22 to go down and attend at the Larose Forest Mobile Home Park
23 with my clients and I think that is the connection to Mr.
24 Silmser.

25 He was the property manager or caretaker

1 there and I think that's the only connection to David
2 Silmser. He remembers or got my name because I acted for
3 his employers. I don't -- I do not believe I ever acted
4 for him in the purchase of a home in Ottawa.

5 **MR. ENGELMANN:** All right. I was just going
6 to ask that. Did you actually do a real estate
7 transaction, but it appears you were acting for his
8 employer and ---

9 **MR. ADAMS:** Yeah, as far as I know I never
10 acted for him on a real estate transaction.

11 **MR. ENGELMANN:** All right. And that would
12 have been some time before 1990 -- or '91.

13 **MR. ADAMS:** I came back -- I came back to
14 Cornwall in January of 1990, to the best of my
15 recollection. So it would have been before then.

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

17 **MR. ADAMS:** And I started practising in
18 Ottawa in '86; so sometime between '86 and 1990.

19 **MR. ENGELMANN:** Fair enough. So it would
20 have been perhaps just a one-time meeting.

21 **MR. ADAMS:** Yeah, I don't even recall the
22 meeting at all but he recalled it. He recalled it.

23 **MR. ENGELMANN:** All right. And that's how
24 he had your name.

25 **MR. ADAMS:** Yes, I believe so.

1 **MR. ENGELMANN:** Now, I'll be making a few
2 references to Volume 86 which is one of those transcripts I
3 would have indicated of Mr. Silmser's evidence. And he
4 gave some evidence and I just want to ask you whether you
5 agree or disagree with some of what he said. And I'm not
6 sure if we have a hard copy available.

7 Mr. Adams, if you still have the hard copy
8 that would have been provided, feel free to pull it out.

9 **MR. ADAMS:** Okay. It would be in that pink
10 binder?

11 **MR. ENGELMANN:** It was given to you; I'm not
12 sure ---

13 **THE COMMISSIONER:** It will be on the screen
14 in any event.

15 **MR. ENGELMANN:** Yes, it will be on the
16 screen as well.

17 I'm just going to refer you to Volume 86 at
18 page 53. And I just -- there are some inconsistencies on
19 when you first met Mr. Silmser in other words and I'm
20 talking about in or around the late summer of 1993.

21 On this page there's an indication that --
22 and I'm looking at page 53 -- that he calls you and asks
23 you to come down and meet with him at Malcolm MacDonald's
24 office; right?

25 **MR. ADAMS:** Right.

1 **MR. ENGELMANN:** There's also indications
2 elsewhere that he might have met with you the day before
3 and what I'd like to know from you, sir, is when you
4 believe you first met with him about the settlement.

5 **MR. ADAMS:** M'hm. Again, I'm not going to
6 be very accurate because this was such a long time ago and
7 in preparation for today I've looked at a lot of the
8 inconsistencies.

9 The best I can say -- and this is just a
10 recollection -- is that I received a call from him probably
11 the night before this meeting at Mr. MacDonald's office.
12 But again, that is just a recollection. I don't believe I
13 met with him. I don't believe he came to my office. It
14 was a phone call.

15 **MR. ENGELMANN:** All right. So and it was a
16 -- and it's your recollection that it was a phone call from
17 Mr. Silmsler that first alerted you to this?

18 **MR. ADAMS:** That is correct.

19 **MR. ENGELMANN:** Okay. Did Mr. MacDonald,
20 Malcolm MacDonald -- I'd better use first names -- did Mr.
21 Malcolm MacDonald also call you before you attended at his
22 office on September 2nd, 1993, about these issues?

23 **MR. ADAMS:** Not about these issues, no. He
24 did call me and again I won't be clear on time but I would
25 imagine it was within a couple of hours of my attending,

1 just to confirm that I was coming.

2 MR. ENGELMANN: Okay. So he would have
3 called the morning of.

4 MR. ADAMS: The morning of, yes.

5 MR. ENGELMANN: All right. But you had
6 already been contacted by Mr. Silmsen the night before?

7 MR. ADAMS: That is correct.

8 MR. ENGELMANN: All right.

9 So what, if anything, do you recall of the
10 conversation you would have had with Mr. Silmsen the night
11 before you attend with him at Malcolm MacDonald's office?

12 MR. ADAMS: My recollection was he discussed
13 the settlement that he had negotiated, that he could not
14 receive the settlement funds without having a lawyer
15 witness a release. In essence, that was the gist of the
16 discussion.

17 I would have explained to him that I was the
18 wrong lawyer to give him proper advice; that perhaps I
19 could recommend a lawyer that could delve into quantum,
20 those types of issues. I recall that he was -- careful how
21 I choose my words -- but perhaps anxious to have this
22 matter settled as soon as possible.

23 I again -- again, I can't recall verbatim
24 what was discussed but that's the gist of the conversation
25 when he explained to me that he knew no other lawyers in

1 Cornwall. I was the only lawyer he knew that was
2 comfortable and wanted me to attend.

3 I either put him on hold or had him call me
4 back and I went to speak to one of my partners, Tom Swabey,
5 and explained that I had this individual calling me or on
6 hold, explained the circumstances, explained that he didn't
7 want a lawyer to delve into the facts and research quantum;
8 what should I do.

9 He seemed quite anxious and upset with the
10 manner that this all had -- the settlement had all come to
11 this stage and Mr. Swabey said, "Well, if that is all he
12 wishes you to do, that he doesn't expect you to provide him
13 any advice as to quantum and those types of issues, ask him
14 if he's prepared to limit your retainer to just that".

15 And Mr. Swabey, I'm not going to say
16 dictated but told me what type of acknowledgement or
17 retainer should be drafted.

18 I would have gone back to my office,
19 explained that to Mr. Silmsler and he would have said that's
20 fine, that's all I want is a lawyer to witness my signature
21 so that I can complete my settlement and get on with
22 healing.

23 I may have -- and I think I did use an
24 example of you may be entitled to substantially more, but
25 in his mind he just needed this to get on with his life.

1 He had exhausted himself and wished to finish the matter.

2 MR. ENGELMANN: All right. So you think you
3 might have put him on hold or you might have called him
4 back.

5 MR. ADAMS: Yeah, I cannot recall, but it
6 was something like that.

7 MR. ENGELMANN: All right. And at that
8 point in time, did you have several colleagues?

9 MR. ADAMS: There probably would have been
10 seven, or eight or nine lawyers in the office at that time.

11 MR. ENGELMANN: And Mr. Swabey did different
12 work than you did?

13 MR. ADAMS: Yeah, Mr. Swabey was a senior
14 partner. He had been a judge, well respected in all areas
15 of law but he did a lot of civil litigation. He did an
16 awful lot of work for the Anglican Church and may have been
17 an Elder, so I felt comfortable in going to him and seeking
18 his advice.

19 MR. ENGELMANN: Is he still alive, sir?

20 MR. ADAMS: No, he passed away a number of
21 years ago.

22 MR. ENGELMANN: Okay. Excuse my ignorance.
23 I -- you had said he was no longer with your firm and ---

24 MR. ADAMS: Yeah.

25 MR. ENGELMANN: So let me get a sense then -

1 - you've told us little bit about what you said to Mr.
2 Silsmer. I wanted to get a sense about what he said to you
3 in that first call. You've indicated that immediately you
4 were reluctant?

5 MR. ADAMS: M'hm.

6 MR. ENGELMANN: And one of the reasons you
7 said, or the reason you gave, was because this wasn't your
8 area of practice?

9 MR. ADAMS: M'hm.

10 MR. ENGELMANN: Your area of practice in
11 1993 was exclusively solicitor's work?

12 MR. ADAMS: The same as today, yes.

13 MR. ENGELMANN: Yes. And so you wouldn't be
14 involved with any criminal litigation? You wouldn't have
15 been involved in any civil litigation?

16 MR. ADAMS: No. None whatsoever.

17 MR. ENGELMANN: Would you ever as a
18 solicitor, and again excuse my ignorance, but would you
19 ever as a solicitor have been involved in giving these
20 Certificates of I.L.A. or Independent Legal Advice?

21 MR. ADAMS: Very rarely. I mean, they do
22 come up when husbands and wives are borrowing money from a
23 bank and the money may be for the husband's business and
24 their using the matrimonial home as security, so in those
25 types of circumstances you do have to give Independent

1 Legal Advice from time to time.

2 MR. ENGELMANN: So in financial or
3 commercial situations ---

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: --- family situation, but
6 never in the context of a civil settlement?

7 MR. ADAMS: That's correct.

8 MR. ENGELMANN: All right. That night when
9 he called you and you said you were reluctant, would he
10 have told you what it was about?

11 MR. ADAMS: Yes.

12 MR. ENGELMANN: All right. And would he
13 have told you that it involved an allegation of sexual
14 abuse when he was a young person?

15 MR. ADAMS: I don't know if he said when he
16 was a young person, but he would have said he -- it
17 involved sexual abuse, yes.

18 MR. ENGELMANN: Yes, and he would have told
19 you who the alleged abuser was?

20 MR. ADAMS: I don't recall. He may have but
21 I don't recall.

22 MR. ENGELMANN: Well, would he not have ---

23 MR. ADAMS: I knew it was a priest and had
24 to do with the Church, yes, but I don't know if he named
25 the abuser.

1 MR. ENGELMANN: You didn't at that time?

2 MR. ADAMS: No. I know now, yes, but ---

3 MR. ENGELMANN: So he would have told you
4 that it would have been a settlement that he'd need advice
5 on involving a priest and the Diocese?

6 MR. ADAMS: Again, I don't know if I'd use
7 the word "advice".

8 MR. ENGELMANN: All right. He needed a
9 lawyer to help him sign documents?

10 MR. ADAMS: That is correct.

11 MR. ENGELMANN: Is that fair?

12 MR. ADAMS: Yes.

13 MR. ENGELMANN: He needed an Independent
14 Legal Advice?

15 MR. ADAMS: That is correct.

16 MR. ENGELMANN: Or a Certificate of
17 Independent Legal Advice?

18 MR. ADAMS: That is correct.

19 MR. ENGELMANN: He would have told you that
20 he had gone to the police about this?

21 MR. ADAMS: I don't know if he did at that -
22 - during that conversation.

23 MR. ENGELMANN: All right. That would have
24 come up the next day at Mr. MacDonald's office?

25 MR. ADAMS: Yes.

1 **MR. ENGELMANN:** All right. So what you
2 would have known is sexual abuse allegation, a priest, a
3 local Church ---

4 **MR. ADAMS:** Probably amount.

5 **MR. ENGELMANN:** Okay. Did he tell you
6 approximately when this all happened?

7 **MR. ADAMS:** Again, I can't recall.

8 **MR. ENGELMANN:** Well, would he have told you
9 if it was recent abuse or whether it happened much earlier
10 historically?

11 **MR. ADAMS:** I can assume that he -- it
12 wouldn't have been recent but I can't recall that. I mean,
13 I can't recall the discussion.

14 **MR. ENGELMANN:** All right. Well, did he
15 tell you that it occurred when he was an altar boy, for
16 example?

17 **MR. ADAMS:** Again, I know that now but I
18 don't know if my memory is tainted by what I've seen or --
19 I -- I honestly don't recall.

20 **MR. ENGELMANN:** Yeah, and I'm asking you
21 what you knew as a result of the first call?

22 **MR. ADAMS:** I can say I assume he did tell
23 me when he was an altar boy, but I truly cannot recall.

24 **MR. ENGELMANN:** Okay. So you're not sure if
25 it happened that night or perhaps the next morning when you

1 were at Mr. Macdonald's office ---

2 MR. ADAMS: Yeah ---

3 MR. ENGELMANN: --- Malcolm MacDonald's
4 office?

5 MR. ADAMS: That could be, yeah.

6 MR. ENGELMANN: All right. Now, there were
7 at that time as there are today, many other lawyers in
8 Cornwall?

9 MR. ADAMS: M'hm.

10 MR. ENGELMANN: Is that fair?

11 MR. ADAMS: As many as today or ---

12 MR. ENGELMANN: Yes.

13 MR. ADAMS: Almost.

14 MR. ENGELMANN: And many of them, unlike
15 you, would do litigation practice?

16 MR. ADAMS: That's correct.

17 MR. ENGELMANN: And you would know some of
18 them; yes?

19 MR. ADAMS: Probably all of them.

20 MR. ENGELMANN: Okay. And certainly Mr.
21 Swabey would have known all of them?

22 MR. ADAMS: Yes.

23 MR. ENGELMANN: So one possibility was to
24 simply to say, "No, this isn't my area of practice" and let
25 him get other counsel?

1 **MR. ADAMS:** Sure. Yes.

2 **MR. ENGELMANN:** And I just want to go back
3 to the transcript for a minute about some of the other
4 things Mr. Silsmer said and I just want to go to a few of
5 them, if I can.

6 He indicates that he arrived at Malcolm
7 MacDonald's office before you and that you then met him
8 there. Do you recall that order?

9 **MR. ADAMS:** Actually, again, my recollection
10 was that he called me when he was at Malcolm's to wonder
11 when I would be there.

12 **MR. ENGELMANN:** All right. So there was --
13 you had a second call from him?

14 **MR. ADAMS:** That would have been that day
15 and my recollection is that Malcolm called shortly
16 thereafter to see if I was on my way.

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

18 **THE COMMISSIONER:** But you indicated that
19 Malcolm phoned you a couple of hours before?

20 **MR. ADAMS:** Sorry? Oh, sorry. I wondered
21 where that voice was coming from. I apologize.

22 **THE COMMISSIONER:** It's okay. In any event,
23 sir -- but you already testified that Malcolm MacDonald
24 would have called you ---

25 **MR. ADAMS:** No.

1 THE COMMISSIONER: --- two hours before?

2 MR. ADAMS: No.

3 THE COMMISSIONER: That's not correct?

4 MR. ADAMS: No.

5 THE COMMISSIONER: Okay.

6 MR. ADAMS: The only -- I think the only
7 conversation I had with Malcolm was when David Silsmer was
8 at his office just calling to confirm that I was on my way.

9 MR. ENGELMANN: All right. And did you in
10 fact then meet Mr. Silsmer for the first time at Malcolm
11 MacDonald's office, excluding the one time you may have met
12 at a mobile home park?

13 MR. ADAMS: Again, to the best of my
14 recollection, yes.

15 MR. ENGELMANN: All right. And when would
16 you have first seen any of the documents that were signed
17 that day?

18 MR. ADAMS: At that meeting.

19 MR. ENGELMANN: And were those documents
20 prepared in your presence or had they been prepared prior
21 to your arrival? Or was it a little bit of both?

22 MR. ADAMS: I think they were prepared and
23 ready for my arrival.

24 MR. ENGELMANN: Now, at page 55 of Volume
25 86, Mr. Silsmer says -- he's talked about the fact that

1 Charles MacDonald, and I don't know if you found out that
2 day who the priest was that allegedly abused him ---

3 MR. ADAMS: Yes.

4 MR. ENGELMANN: Did you find out that
5 morning ---

6 MR. ADAMS: Yes.

7 MR. ENGELMANN: --- presumably?

8 MR. ADAMS: Again, I may have found out when
9 he first called. I don't recall.

10 MR. ENGELMANN: All right. He's talking
11 about the fact that Charles MacDonald has already been
12 there and -- at Malcolm MacDonald's office -- and this is
13 before you arrive, sir, and then he says:

14 "Then Sean came in. Sean went into
15 Malcolm MacDonald's office without me.
16 I went back into the waiting room.
17 They discussed for a little while.
18 Sean came back out into the waiting
19 room and told me to look at the
20 agreement."

21 So do you remember that order of proceedings
22 or can you remember the order of things that happened when
23 you arrived at Malcolm MacDonald's office?

24 MR. ADAMS: I don't recall. I mean, again,
25 my memory has probably been tainted because I've read

1 different versions in preparing for today, but I don't know
2 if I met with David in Malcolm's office -- in his waiting
3 room or if I went into Malcolm's office to get the
4 documents first. I don't recall.

5 **MR. ENGELMANN:** He's suggesting that you had
6 a meeting with Malcolm MacDonald in his office first while
7 he waited in the waiting room?

8 **MR. ADAMS:** Again, I don't recall.

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

10 **MR. ADAMS:** I mean I can say perhaps Malcolm
11 brought me in to show me the documentation ---

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

13 **MR. ADAMS:** --- but I don't recall.

14 **MR. ENGELMANN:** And then he told us that --
15 and I'm looking at page 56, for example, and this is not
16 the first time he says it but he says:

17 "And you're discussing the document --
18 the document with Sean Adams in the
19 waiting room?"

20 "Yes."

21 "Of Malcolm MacDonald's office?"

22 "Yes."

23 "You're not in a private office?"

24 "No, the same room the secretary's in."

25 So do you remember sort of the layout of

1 Malcolm MacDonald's office?

2 MR. ADAMS: Vaguely.

3 MR. ENGELMANN: Okay.

4 MR. ADAMS: I think it was a basement
5 office.

6 MR. ENGELMANN: And there was -- he had a
7 private office?

8 MR. ADAMS: I think there was just a private
9 office and just a waiting room.

10 MR. ENGELMANN: Right.

11 MR. ADAMS: I believe -- again, I'm not
12 crystal clear but I think so.

13 MR. ENGELMANN: And do you recall whether or
14 not Mr. Silmsen's accurate on this that you would have
15 discussed, for example, the release documents in the
16 waiting room with him?

17 MR. ADAMS: Again, I don't recall that.

18 MR. ENGELMANN: All right. You don't -- you
19 don't recall where you did it?

20 MR. ADAMS: No.

21 MR. ENGELMANN: It was somewhere in ---

22 MR. ADAMS: In my mind, it would have been
23 in Malcolm's office, but I'm not sure if it was in his
24 private office or in the waiting room.

25 MR. ENGELMANN: Well, do you recall if you

1 had an opportunity to actually meet with David Silmser
2 privately, not in the presence of Malcolm MacDonald?

3 **MR. ADAMS:** Absolutely, yes.

4 **MR. ENGELMANN:** All right. And he says a
5 little later on on that page -- I asked him:

6 "Does he read the document?"

7 He says:

8 "I have no idea. He didn't read it in
9 the waiting room. He might have
10 skimmed through it, but I figured he
11 had time to read it in Malcolm
12 MacDonald's office."

13 So does that accord with your recollection
14 or do you remember whether or not you actually read the
15 document with Mr. Silmser or perhaps you simply read it in
16 Malcolm's offices, he seems to suggest here?

17 **MR. ADAMS:** Again, I can't recall exactly,
18 but I -- oh I -- no sense telling me what I would assume
19 but I don't recall exactly.

20 **MR. ENGELMANN:** All right. Well, sir, you
21 did read the document at some point?

22 **MR. ADAMS:** I would have, yes.

23 **MR. ENGELMANN:** Whether it was in Malcolm's
24 office with him, whether it was in the waiting room with
25 David Silmser, you did read it at some point before you

1 gave your initial ---

2 MR. ADAMS: I assume I would have read it
3 with David, either in Malcolm's office or in the waiting
4 room.

5 MR. ENGELMANN: But, in any event, you know
6 you read it?

7 MR. ADAMS: Yes.

8 MR. ENGELMANN: And do you have any sense
9 for how long you would've met with Mr. Silmsler to discuss
10 the document?

11 MR. ADAMS: I don't.

12 MR. ENGELMANN: All right. And he was
13 anxious, as you say. He was anxious the night before?

14 MR. ADAMS: I sensed he was anxious, yes.

15 MR. ENGELMANN: Yeah. And when you say
16 anxious, anxious to have it done?

17 MR. ADAMS: I think to have it done, yes.

18 MR. ENGELMANN: Yeah. And the night before
19 when you talked to him -- and I forgot to ask you this --
20 it was clear to you that whatever he had negotiated he had
21 done that on his own; right?

22 MR. ADAMS: That's what he had told me, yes.

23 MR. ENGELMANN: Yeah, no lawyer?

24 MR. ADAMS: That's correct.

25 MR. ENGELMANN: And did he tell you at the

1 time that Malcolm MacDonald was a lawyer that he had
2 negotiated this with?

3 MR. ADAMS: I don't -- I do not recall.

4 MR. ENGELMANN: All right. Did he mention
5 to you the name of Jacques Leduc who was acting for the
6 Diocese?

7 MR. ADAMS: Again, I don't recall. I mean,
8 it's -- after the fact I've certainly known that but I
9 don't recall from that meeting.

10 MR. ENGELMANN: All right. Do you know if
11 that would have come up the morning of, or the day of, when
12 you were in Malcolm's office, that Malcolm's simply acting
13 for the individual priest and that Mr. Leduc is acting for
14 the Diocese?

15 MR. ADAMS: Again, I don't recall.

16 MR. ENGELMANN: All right. You do know
17 however, sir, that both the Diocese and the priest were
18 named in the release?

19 MR. ADAMS: Yes.

20 MR. ENGELMANN: So they were both parties,
21 if I can ---

22 MR. ADAMS: Yes.

23 MR. ENGELMANN: --- call them that. All
24 right.

25 Now, just want to take you to a couple of

1 documents, if I can, so find Exhibits 263 and 264. Two-
2 sixty-three (263) is the full release and undertaking not
3 to disclose ---

4 MR. ADAMS: M'hm.

5 MR. ENGELMANN: --- and that's certainly a
6 document that you would have read over?

7 MR. ADAMS: Yes.

8 MR. ENGELMANN: And it's a document -- do I
9 understand you correctly, that would have been prepared
10 before your arrival?

11 MR. ADAMS: That is correct.

12 MR. ENGELMANN: And would the same be true
13 of document 264?

14 MR. ADAMS: Yes.

15 MR. ENGELMANN: All right. Now, sir, I know
16 it's just about noon, so I'm just going break in a moment,
17 but the dates on these documents, when I've looked at them
18 sometimes I see a two and sometimes I see a three and it's
19 been a puzzle to me because I don't have very good copies.

20 MR. ADAMS: M'hm.

21 MR. ENGELMANN: And, unfortunately, from
22 time-to-time in this hearing, we don't have the best copies
23 so we're not sure about some of the dates.

24 I would have asked you some time ago and
25 also in a letter to your counsel -- that's part of Exhibit

1 M-10-A1 -- whether or not to pull your file for your
2 dealings with Mr. Silmser. Did you have an occasion to do
3 that, sir?

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: And did you bring it with
6 you today?

7 MR. ADAMS: Yes.

8 MR. ENGELMANN: Okay. I'm wondering would
9 you have a better copy, do you know, of these documents?

10 MR. ADAMS: I have an original copy, yes.

11 MR. ENGELMANN: Oh, wonderful. I'm
12 wondering if it would be possible for me to examine the
13 file over the lunch break?

14 THE COMMISSIONER: Well, he's subpoenaed to
15 come with his documents ---

16 MR. ENGELMANN: Yes, he is. Yeah.

17 THE COMMISSIONER: --- so you're being
18 overly kind but ---

19 MR. ENGELMANN: Well, I'd like to look at
20 it. In my letter to Mr. McClelland, I said, "Look, I
21 understand you're asserting a privilege claim so I can't
22 have access to it before, but I'd certainly like to see it
23 immediately thereafter".

24 THE COMMISSIONER: No, now ---

25 MR. ENGELMANN: Maybe we could break here

1 and I'll try and have a look at it briefly over the lunch
2 hour.

3 **THE COMMISSIONER:** Thank you. We'll see you
4 at 2.

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

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

8 This hearing will resume at 2:00 p.m.

9 --- Upon recessing at 12:01 p.m./

10 L'audience est suspendue à 12h01

11 --- Upon resuming at 2:02 p.m./

12 L'audience est reprise à 14h02

13 **THE REGISTRAR:** This hearing is now resumed.
14 Please be seated. Veuillez vous asseoir.

15 **MR. ENGELMANN:** Good afternoon, Mr.
16 Commissioner. Good afternoon, Mr. Adams.

17 **MR. ADAMS:** Good afternoon.

18 **MR. ENGELMANN:** I'll just be one moment.

19 **THE COMMISSIONER:** Yes.

20 (SHORT PAUSE/COURTE PAUSE)

21 **MR. ENGELMANN:** Mr. Commissioner, I've had
22 an opportunity over the lunch break to examine Mr. Adams'
23 file ---

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

25 **MR. ENGELMANN:** --- which he kindly provided

1 and made some photocopies for my friends. The documents
2 are arguably relevant. If I could just have one moment?

3 And in my rush to please my friends, I
4 distributed copies shortly before two of what we had and by
5 accident we copied one document twice and didn't copy
6 another document, so I'm just going to pass something out
7 to them so that they're fully apprised.

8 I understand that we may have document
9 numbers already for these documents. If we aren't able to
10 put them up on the screen, I'll just proceed, sir, with
11 hard copies.

12 **THE COMMISSIONER:** Thank you.

13 **MR. ENGELMANN:** I just want to advise
14 counsel that they did not get a copy of the Certificate of
15 Independent Legal Advice and they got two copies, by
16 mistake, of the full release. So if you could just please
17 destroy the one copy of the full release that you were
18 given by mistake, you should have two, and accept the copy
19 that's coming around.

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

21 **MR. ENGELMANN:** So, Mr. Adams, just before
22 we broke for lunch, I was showing you what our Exhibits 263
23 and 264 ---

24 **MR. ADAMS:** Yes.

25 **MR. ENGELMANN:** --- perhaps we could just

1 look at those again. If you could turn to 263.

2 MR. ADAMS: Okay.

3 MR. ENGELMANN: And, Madam Clerk, if you
4 could put that on the screen, please?

5 And, sir, just -- I've noticed something for
6 the first time today just by having looked at this document
7 a number of times, there is a Social Insurance Number that
8 needs to be redacted. And I'm sure that we had agreements
9 very early on in this matter that things of that nature
10 should be redacted from documents.

11 THE COMMISSIONER: Absolutely.

12 MR. ENGELMANN: So that will be redacted
13 from Exhibit 263. As well, I'd like to show the witness --
14 and I don't know Mr. Adams if you've received your original
15 file back yet?

16 MR. ADAMS: No.

17 MR. ENGELMANN: You'll receive it shortly.
18 I'd just like to show the witness a copy of the original of
19 263 that I have from his file and it is now Document Number
20 200177, so if counsel could make note of that, 200177.

21 (SHORT PAUSE/COURTE PAUSE)

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

23 THE COMMISSIONER: M'hm.

24 MR. ENGELMANN: Found it.

25 THE COMMISSIONER: Thank you.

1 (SHORT PAUSE/COURTE PAUSE)

2 MR. ADAMS: Thank you.

3 MR. ENGELMANN: Mr. Commissioner, do you
4 have a copy of the new document?

5 THE COMMISSIONER: Yes, I do.

6 MR. ENGELMANN: Mr. Adams?

7 MR. ADAMS: Yes.

8 MR. ENGELMANN: All right.

9 THE COMMISSIONER: So this should be an
10 exhibit now?

11 MR. ENGELMANN: Yes.

12 THE COMMISSIONER: Oh, 850.

13 MR. ENGELMANN: Sir, I'm wondering, and I'm
14 just thinking out loud, perhaps this should be 263A?

15 THE COMMISSIONER: If you wish; 263A Madam
16 Clerk.

17 ---EXHIBIT NO./PIÈCE NO P-263A

18 (200177) Sean Adams, David Silmsler - Full
19 Release and Undertaking Not to Disclose
20 September 3, 1994

21 MR. ENGELMANN: Mr. Adams, your document,
22 the document you have in hand, clearly indicates that this
23 full release and undertaking not to disclose was signed on
24 the 3rd of September, 1993?

25 MR. ADAMS: That is correct.

1 **MR. ENGELMANN:** And you'd agree with me that
2 the one in your exhibit book or the one on the screen
3 appears to have that number changed to a two?

4 **MR. ADAMS:** I would agree with that.

5 **MR. ENGELMANN:** All right. And I've just
6 checked over the lunch hour and September 3rd was a Friday.
7 Now, I'm just trying to -- I know this is a long time ago;
8 this is some 14 years ago. Do you have a recollection as
9 to the day of the week you would have attended at Malcolm
10 MacDonald's office?

11 **MR. ADAMS:** I'm sorry, I don't.

12 **MR. ENGELMANN:** It was a week-day
13 presumably?

14 **MR. ADAMS:** I would assume it was a week
15 day, yes.

16 **MR. ENGELMANN:** M'hm. All right. So do you
17 have any knowledge as to why someone would have written
18 over the "3rd" and replaced it with "2nd"?

19 **MR. ADAMS:** None whatsoever.

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

21 **THE COMMISSIONER:** Was it you?

22 **MR. ADAMS:** I don't believe so. Well, I
23 mean, I'm looking at this one that says "3rd".

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

25 **MR. ADAMS:** And I think that's my writing.

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

2 **MR. ADAMS:** The 2nd, I'm not so sure, you
3 know, but I think I'm pretty sure that 3rd is my writing ---

4 **THE COMMISSIONER:** Yes.

5 **MR. ADAMS:** --- but this is certainly the
6 release that I've had in my files since that time.

7 **THE COMMISSIONER:** All right.

8 **MR. ENGELMANN:** So what I'd like to ask you,
9 sir, is do you know how many originals were signed?

10 **MR. ADAMS:** I'm sorry, I don't.

11 **MR. ENGELMANN:** Was there more than one
12 signed?

13 **MR. ADAMS:** I would believe there was. I
14 don't recall, but I'm sure there must have been more than
15 one.

16 **MR. ENGELMANN:** All right. Well, on the
17 settlement, if I can call it that, on the full release,
18 we've got Father Charles MacDonald listed. We've got
19 Reverend Eugene P. LaRocque, the Bishop, listed. You have
20 a copy in your file. Do you know if they all had
21 originals? Do you have some sense?

22 **THE COMMISSIONER:** Well, just to be
23 complete, there's not only those two persons ---

24 **MR. ENGELMANN:** Plus the Diocese.

25 **THE COMMISSIONER:** --- the Roman Catholic

1 Episcopal Corporation for the Diocese of Alexandria-
2 Cornwall.

3 MR. ENGELMANN: Right.

4 MR. ADAMS: I do not have any recollection,
5 but I would assume each and everyone of them got an
6 original, I would assume.

7 MR. ENGELMANN: And do you know if an
8 original was given to Mr. Silmser?

9 MR. ADAMS: Again, I can't recall. I think
10 it would be reasonable to assume that one was but I don't
11 recall.

12 MR. ENGELMANN: All right. But you did keep
13 the original on your file?

14 MR. ADAMS: Yes, this would be an original.

15 MR. ENGELMANN: All right. And you have no
16 knowledge as to why or who would have written over the 3rd
17 with 2nd?

18 MR. ADAMS: No, none.

19 MR. ENGELMANN: Perhaps we could just go
20 through the same exercise with Exhibit 264 and that is the
21 Certificate of Independent Legal Advice.

22 I'll just be a moment.

23 (SHORT PAUSE/COURTE PAUSE)

24 THE COMMISSIONER: So you want that to be
25 264A, Mr. Engelmann?

1 MR. ENGELMANN: I do.

2 THE COMMISSIONER: Thank you.

3 ---EXHIBIT NO./PIÈCE NO. P-264A:

4 (200178) Sean Adams, David Silmsler -
5 Certificate of Independent Legal Advice -
6 September 3, 1994

7 MR. ENGELMANN: Mr. Adams, do you now have
8 the Certificate of Independent Legal Advice ---

9 MR. ADAMS: I do.

10 MR. ENGELMANN: --- from your file -- the
11 photocopy from your file?

12 MR. ADAMS: I do.

13 MR. ENGELMANN: All right. And you'd agree
14 with me, again, that it appears that the Certificate of
15 Independent Legal Advice was signed on the 3rd?

16 MR. ADAMS: The copy I have in my hand says
17 the 3rd, yes.

18 MR. ENGELMANN: Which is a copy of your
19 original?

20 MR. ADAMS: That is correct.

21 MR. ENGELMANN: All right. And the copy on
22 the screen, again we appear to have a two written over the
23 three?

24 MR. ADAMS: Yeah. Again, this 3rd looks like
25 my writing, the 2nd, I am not sure, but I mean, what could

1 have happened because it's happened with me before, I could
2 have thought that it was the 3rd and marked the 3rd and
3 someone pointed out it was the 2nd.

4 Because when I look in the body of that
5 certificate, it talks about the -- "Consult in my
6 professional capacity" and the next, "Full and final
7 undertaking not to disclose" dated the 2nd of September. So
8 someone may have corrected me, saying it's the 2nd and I may
9 have written over the 2nd on the other copies and my file
10 copy just kept it the 3rd. But I ---

11 **MR. ENGELMANN:** Or perhaps another
12 explanation, sir, was that the documents themselves were
13 prepared on the 2nd, it was anticipated they'd be signed on
14 the 2nd, but they actually weren't signed until the 3rd?

15 **MR. ADAMS:** Could be, sure, yeah. I don't
16 recall but that could an explanation.

17 **MR. ENGELMANN:** All right. But one thing is
18 certain, you have original documents?

19 **MR. ADAMS:** That is correct.

20 **MR. ENGELMANN:** Right. And on your original
21 documents, at least, these two exhibits, 263A and 264A,
22 both are signed apparently on the 3rd?

23 **MR. ADAMS:** That is correct.

24 **MR. ENGELMANN:** Then, sir, if we could take
25 a look at Exhibits 266 and this is a direction to the

1 Cornwall City Police.

2 (SHORT PAUSE/COURTE PAUSE)

3 THE COMMISSIONER: So that will be Exhibit
4 266A, the original from Mr. Adam's file.

5 --- EXHIBIT NO./PIÈCE NO. P-266A:

6 (200176) Sean Adams, David Silmsler -
7 Statement - September 3, 1994

8 MR. ENGELMANN: Now, sir, clearly again on
9 the original from your file the date is the 3rd?

10 MR. ADAMS: That is correct.

11 MR. ENGELMANN: This one's a little harder
12 to make out, I'm not sure if it's a two or a three on the -
13 - on the document on the screen. You have a hard copy in
14 front of you?

15 MR. ADAMS: Yeah, well you can certainly see
16 a three but I would think that that looks more like an "n"
17 than an "r", but I'm not sure either.

18 THE COMMISSIONER: Well, it looks like it's
19 been changed ---

20 MR. ADAMS: That's correct, yeah.

21 MR. ENGELMANN: And, Mr. Adams, lastly I'd
22 like you to have a look at Exhibit 265 which is a document
23 entitled "An Acknowledgement".

24 THE COMMISSIONER: And we will make the
25 other 265A.

1 **MR. ENGELMANN:** Thank you.

2 **--- EXHIBIT NO./PIÈCE NO. P-265A:**

3 (200175) Sean Adams, David Silmser -
4 Acknowledgement - September 2, 1994

5 **MR. ENGELMANN:** Now, Mr. Adams, in this case
6 the document we have from your file is identical to the
7 document -- well the -- the text is identical?

8 **MR. ADAMS:** I would agree with that.

9 **MR. ENGELMANN:** Okay. The signature might
10 be somewhat different but, again, there would have been
11 perhaps more than one copy of this signed?

12 **MR. ADAMS:** I would think this copy, there
13 wouldn't have been as many copies. This is between David
14 and myself, so there may have been two copies. You know,
15 this is just something for the file.

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

17 **MR. ADAMS:** Yeah, so, no, this would have
18 been circulated to the other parties.

19 **MR. ENGELMANN:** All right. So this -- this
20 one perhaps wouldn't have been given to the other parties?

21 **MR. ADAMS:** I'm sure -- I'm not absolutely
22 sure but I'm pretty sure of that.

23 **MR. ENGELMANN:** All right. Do you know,
24 sir, if when you were interviewed by the OPP or -- when you
25 were interviewed if you would have turned over copies of

1 these documents?

2 **MR. ADAMS:** I don't recall.

3 **MR. ENGELMANN:** Okay. Do you recall ever
4 being asked to provide photocopies of any of the four
5 documents I've just shown you?

6 **MR. ADAMS:** Perhaps to Bryce Geoffery, you
7 know, from the file but I don't -- I don't recall from the
8 OPP.

9 **MR. ENGELMANN:** All right. Now, sir, the
10 Acknowledgement Document 265, either 265 or 265A, you said
11 that that would be something just between you and your firm
12 and Mr. Silmser?

13 **MR. ADAMS:** That is correct.

14 **MR. ENGELMANN:** That appears to be similar
15 to what you would have suggested your partner asked you to
16 have?

17 **MR. ADAMS:** That's -- he would have advised
18 me to prepare this.

19 **MR. ENGELMANN:** All right. So this document
20 would not have been prepared by Malcolm MacDonald?

21 **MR. ADAMS:** No ---

22 **MR. ENGELMANN:** Or by someone else? It
23 would have been prepared by someone in your office?

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

25 **MR. ENGELMANN:** All right. So given that

1 this document appears to have been signed on the 2nd of
2 September, is it possible, sir, that Mr. Silmsler would have
3 actually met with you on the 2nd and signed this
4 acknowledgement before you met at Malcolm MacDonald's
5 office the next day and signed the settlement on September
6 3rd?

7 **MR. ADAMS:** It -- I guess -- I suppose it's
8 possible, I don't recall. Like my recollection was that he
9 called, we prepared this and I met him the next day, but I
10 think it's possible.

11 **MR. ENGELMANN:** All right. So either you
12 met him on the 2nd and you signed it off at your office or
13 you had prepared this at your office on the 2nd and you
14 signed it off the next day when you signed the settlement?

15 **MR. ADAMS:** One of those two, yes.

16 **MR. ENGELMANN:** Assuming that the settlement
17 was signed on the 3rd as it's indicated?

18 **MR. ADAMS:** Yes.

19 **MR. ENGELMANN:** Now, what was the purpose of
20 this document, 265?

21 **MR. ADAMS:** Two-sixty-five (265)? Well, as
22 I explained earlier, I wasn't in a position to help Mr.
23 Silmsler by providing him advice on whether the settlement
24 amount was appropriate under those circumstances.

25 Just from the discussion I had with him on

1 the phone and his tone and the urgency, I wanted to help
2 him. I went to Mr. Swabey and explained the circumstances
3 and he said, well, as long as your retainer is limited to
4 attending and witnessing and giving him an ILA with respect
5 to release so he can get the settlement and he's prepared
6 to sign something along these lines, he saw no reason why I
7 couldn't attend.

8 **MR. ENGELMANN:** All right. You'd agree with
9 me that this acknowledgement was really is for your benefit
10 or your firm's benefit, not for Mr. Silmer's?

11 **MR. ADAMS:** Absolutely.

12 **MR. ENGELMANN:** And would he have been told
13 that he would have had to sign this document if you wanted
14 him to sign the other document?

15 **MR. ADAMS:** Yes.

16 **MR. ENGELMANN:** So if I read the document
17 correctly, what you're saying is the full extent of the
18 legal advice you're offering is only to review and explain
19 the nature of the full release and undertaking not to
20 disclose; correct?

21 **MR. ADAMS:** That is correct.

22 **MR. ENGELMANN:** And you are not going to
23 provide any other legal services to Mr. Silmser?

24 **MR. ADAMS:** That is correct.

25 **MR. ENGELMANN:** All right. And did you have

1 any formal retainer agreement or would this really ---

2 MR. ADAMS: This would be the extent of it.

3 MR. ENGELMANN: All right. And you'd agree
4 with me, sir, that if that is the only advice that you were
5 providing to Mr. Silmsler, it would be incumbent upon you to
6 fully explain the release and the undertaking?

7 MR. ADAMS: Yes.

8 MR. ENGELMANN: I want to ask you then about
9 266 and, again, it could be either 266A or 266.

10 Do you know who prepared that document?
11 This is the direction to the Cornwall City Police.

12 MR. ADAMS: Again, I don't recall, but in
13 reviewing the documentation, I would say Malcolm MacDonald
14 had prepared this.

15 MR. ENGELMANN: Okay. Well, it wasn't you.
16 Is that what you're telling us?

17 MR. ADAMS: I don't believe so, yes.

18 MR. ENGELMANN: All right. Well, at some
19 point on -- and you signed this document?

20 MR. ADAMS: Yes.

21 MR. ENGELMANN: Why did you sign this
22 document?

23 MR. ADAMS: I don't know -- it appears as a
24 witness ---

25 MR. ENGELMANN: You ever seen a document

1 like this before, sir?

2 MR. ADAMS: No.

3 MR. ENGELMANN: I'm just wondering why you
4 would sign it. You're giving advice on a settlement and we
5 seem to have this loose document. You'd agree with me that
6 Mr. Silmsen would have been told that he would have had to
7 sign this document to get his money?

8 MR. ADAMS: I believe so, yes.

9 MR. ENGELMANN: All right. And would this
10 have been a document that might have been prepared in your
11 presence by Mr. Malcolm MacDonald when Mr. Silmsen was
12 waiting in the waiting room? Are you able to tell us that?

13 MR. ADAMS: I don't recall that.

14 MR. ENGELMANN: All right.

15 MR. ADAMS: I doubt -- I doubt that, but I
16 don't recall.

17 MR. ENGELMANN: You think it was prepared
18 before you were there?

19 MR. ADAMS: I think so.

20 MR. ENGELMANN: All right. And the document
21 not only lists the Cornwall City Police but it lists two
22 officers of the Cornwall City Police; correct?

23 MR. ADAMS: That is correct.

24 MR. ENGELMANN: Were either of them known to
25 you, sir?

1 MR. ADAMS: I think I probably knew Sergeant
2 Luc Brunet, but I didn't know Heidi Sebalj, that name would
3 have meant nothing to me.

4 MR. ENGELMANN: And do you know why their
5 names are on this document?

6 MR. ADAMS: I do not, no.

7 MR. ENGELMANN: And did you know that day?

8 MR. ADAMS: I don't believe so.

9 MR. ENGELMANN: So I'm just wondering why it
10 is that you and Mr. Silmsler are signing this document?

11 MR. ADAMS: Well again, I think David felt
12 he had exhausted the criminal proceedings. He had met with
13 police over a number of -- over a period of time and I
14 think was frustrated with the lack of action there,
15 frustrated with the lack of getting an apology.

16 THE COMMISSIONER: Well, did he tell you ---

17 MR. ADAMS: Sorry?

18 THE COMMISSIONER: Did he tell you that?

19 MR. ADAMS: I can't recall.

20 THE COMMISSIONER: Well, then.

21 MR. ENGELMANN: Okay. Just what you know.

22 MR. ADAMS: I can't recall ---

23 MR. ENGELMANN: All right.

24 MR. ADAMS: --- about this.

25 MR. ENGELMANN: Do you remember him talking

1 to you about the fact that he had gone to the Cornwall
2 police?

3 MR. ADAMS: Again right now I don't recall,
4 sorry.

5 MR. ENGELMANN: All right. Would it be fair
6 to say that there would have had to have been some contacts
7 between him and the Cornwall city police or there would
8 have been no purpose for this document?

9 MR. ADAMS: Yes, it's fair to say that.

10 MR. ENGELMANN: And Mr. Silmsen indicated to
11 us that he was told if he didn't sign this document, he
12 wouldn't get his money; this document, being 266.

13 MR. ADAMS: Okay.

14 MR. ENGELMANN: And is that how you recall
15 it, sir that he had to sign all of these documents if he
16 was going to get paid?

17 MR. ADAMS: Yes, when one looks at the
18 release that he signed; he agreed not to pursue civil or
19 criminal action.

20 MR. ENGELMANN: Right.

21 MR. ADAMS: But I would say it is fair, yes.

22 MR. ENGELMANN: And this would be consistent
23 with not pursuing the criminal action?

24 MR. ADAMS: That is correct.

25 MR. ENGELMANN: Now at the time, when you

1 were doing this, did you ever suggest to Mr. Silmsen that
2 that was wrong, having to give up a complaint of a criminal
3 nature?

4 **MR. ADAMS:** I don't recall -- sorry?

5 **THE COMMISSIONER:** Wrong and illegal.

6 **MR. ADAMS:** Illegal.

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

8 **MR. ADAMS:** No, I don't. I don't recall
9 ever telling him that.

10 **MR. ENGELMANN:** Did you ever consider that,
11 at the time, sir?

12 **MR. ADAMS:** No.

13 **MR. ENGELMANN:** That what he was signing
14 wasn't a legal settlement?

15 **MR. ADAMS:** No, I did not.

16 **MR. ENGELMANN:** Did it occur to you to ask
17 for some advice about that?

18 **MR. ADAMS:** No, it did not obviously occur
19 to me at that time.

20 **MR. ENGELMANN:** Now, in addition to signing
21 the full release and undertaking, which said he would
22 terminate a criminal action and in addition ---

23 **THE COMMISSIONER:** Sorry, sorry, I don't
24 think it's -- what did you say?

25 **MR. ENGELMANN:** "Terminate".

1 **THE COMMISSIONER:** Two six-six (266), the --

2 -

3 **MR. ENGELMANN:** No, I'm talking about the
4 release now.

5 **THE COMMISSIONER:** The full release doesn't
6 say "terminate".

7 It says:

8 "He hereby undertakes not to take any
9 legal proceedings, civil or criminal."

10 **MR. ENGELMANN:** It goes further, sir.

11 **THE COMMISSIONER:** Oh, it does? Okay.

12 **MR. ENGELMANN:** "... and it will immediately
13 terminate any actions that may now be
14 in process."

15 **THE COMMISSIONER:** Okay, yes, you're right.
16 Sorry.

17 **MR. ENGELMANN:** Mr. Adams, you were aware,
18 were you not, sir, that there was no civil action in
19 process?

20 **MR. ADAMS:** I don't know if I was aware of
21 that or not.

22 **MR. ENGELMANN:** Well, if there had been a
23 civil action in process there would have been a court file
24 number; is that fair?

25 **MR. ADAMS:** There would have been a sorry?

1 **MR. ENGELMANN:** A court file number?

2 **MR. ADAMS:** I'm sure there would have been,
3 yes.

4 **MR. ENGELMANN:** Yeah. And none of these
5 documents talk about a court file number or a Notice of
6 Discontinuance or a withdrawal of an action; do they?

7 **MR. ADAMS:** None of them do, just from what
8 I can see.

9 **MR. ENGELMANN:** All right. So isn't it fair
10 to say that at that time you would have known that there
11 was no civil action; that it had already been started?

12 **MR. ADAMS:** If the question is "Should I
13 have", perhaps.

14 "Did I?" I can't say I ---

15 **MR. ENGELMANN:** Okay, well if there had been
16 a civil action started, there would have been something in
17 these documents ---

18 **MR. ADAMS:** It would have been reasonable to
19 expect that, yes.

20 **MR. ENGELMANN:** --- that would terminate the
21 civil action?

22 **MR. ADAMS:** Yes.

23 **MR. ENGELMANN:** All right. Just as there's
24 something in the documents to terminate the criminal
25 action; ---

1 MR. ADAMS: Yes.

2 MR. ENGELMANN: --- the direction to the
3 police?

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: So -- sorry, I'm just trying
6 to remember my thought -- there's a full release and
7 undertaking not to disclose, which includes a phrase that
8 says "terminate a criminal action", there's the direction
9 to the police to close the file and stop proceedings and,
10 in fact, there's yet a third thing; there's a requirement
11 that he attend at the police station; correct?

12 MR. ADAMS: Again, I know that from reading
13 through, so I'll agree with that.

14 MR. ENGELMANN: But that was a requirement
15 that he was told about when he signed the settlement?

16 MR. ADAMS: It's probably fair to say that,
17 yes.

18 MR. ENGELMANN: And, in fact, it was a
19 requirement that he had to act upon if he wanted to keep
20 the \$32,000?

21 MR. ADAMS: That's fair to say.

22 MR. ENGELMANN: If Mr. Adams could be shown
23 Document number 716213? This may be an exhibit, I
24 apologize. It's a letter dated September 2nd to Mr. Adams
25 from A.M. MacDonald.

1 **THE COMMISSIONER:** Thank you.

2 Exhibit number 850 is the letter from Angus
3 Malcolm MacDonald to Mr. Sean Adams dated September 2nd,
4 1993.

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

6 **MR. ENGELMANN:** Mr. Adams, have you seen
7 this letter before?

8 **MR. ADAMS:** I have.

9 **MR. ENGELMANN:** Okay. I don't think I saw
10 it in your file.

11 **MR. ADAMS:** I was going to ask you if it was
12 in my file; I don't know if it was in my file.

13 **MR. ENGELMANN:** Do you have it back now?

14 **MR. ADAMS:** I don't have my file back, no.

15 **THE COMMISSIONER:** Thank you.

16 **MR. McCLELLAND:** Could I just have a moment?

17 **(SHORT PAUSE/COURTE PAUSE)**

18 **MR. ENGELMANN:** Mr. Adams, it's not in your
19 file; your lawyer was kind enough to tell me that he had
20 made a copy but earlier. I reviewed it at lunch and I
21 didn't see this letter either.

22 **MR. ADAMS:** Okay.

23 I -- I think I must have seen it in the
24 package you ---

25 **MR. ENGELMANN:** Yes, ---

1 MR. ADAMS: --- gave to me.

2 MR. ENGELMANN: --- it was in the package I
3 gave you.

4 MR. ADAMS: Yeah, yeah.

5 THE COMMISSIONER: Mr. McClelland, you're
6 standing; could you approach the microphone, please?

7 MR. McCLELLAND: It's just that when my
8 friend says I made a copy of it, I made a copy of the file
9 but that letter wasn't in the file so I hadn't made a copy
10 of that letter.

11 THE COMMISSIONER: Okay.

12 MR. ENGELMANN: That's what I meant.

13 MR. McCLELLAND: Just to be clear.

14 MR. ENGELMANN: Yeah, that's what I meant.
15 And I apologize if I wasn't clear.

16 THE COMMISSIONER: No, you weren't.

17 MR. ENGELMANN: Yeah. So this letter that's
18 in our database is not in your file but you -- and when you
19 said you believe you've seen a copy, is it because it was
20 in ---

21 MR. ADAMS: No.

22 MR. ENGELMANN: --- the package I had given
23 you recently?

24 MR. ADAMS: That's correct, yes.

25 MR. ENGELMANN: All right. I'm asking you

1 to think back to that time, because the letter actually is
2 a letter to you from -- I assume this is Malcolm MacDonald?
3 Angus Malcolm MacDonald?

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: And it says he's enclosing
6 his trust cheque, payable to David Silmser, and he's
7 enclosing it on a condition that the cheque is being given
8 to you and to be held in escrow until we are advised by the
9 city police that David Silmser has attended at the police
10 station and he advised them that he does not want to
11 proceed with any of these charges.

12 MR. ADAMS: Yes.

13 MR. ENGELMANN: All right. So first of all,
14 are you at all able to tell us why this is not in your
15 file?

16 MR. ADAMS: I don't recall ever receiving it
17 and I assume it's not in my file because I never received
18 it.

19 MR. ENGELMANN: All right.

20 THE COMMISSIONER: Just to correct, we
21 initialled it as Exhibit 850, but it really is Exhibit 268.

22 MR. ENGELMANN: I thought I'd seen it
23 before, too.

24 THE COMMISSIONER: All right.

25 MR. ENGELMANN: Two-six-eight (268). So

1 help me out if you can. The cheque which was supposed to
2 be enclosed with the letter, did it flow through your
3 office?

4 MR. ADAMS: I don't believe it ever flowed
5 through the office or through my hands. That's not a
6 recollection from that period, but I think in the OPP
7 questioning of me, I remember reading something to that
8 effect.

9 MR. ENGELMANN: All right, you ---

10 MR. ADAMS: Sorry, I think the cheque went
11 directly to David Silmser.

12 MR. ENGELMANN: Right. Do you recall there
13 being some problem with his cashing the cheque?

14 MR. ADAMS: I do.

15 MR. ENGELMANN: All right. And that you and
16 Malcolm MacDonald had to get involved to assist with that?

17 MR. ADAMS: I don't know if I had to get
18 involved ---

19 MR. ENGELMANN: All right.

20 MR. ADAMS: --- but I do remember hearing
21 about it.

22 MR. ENGELMANN: All right. So do you
23 recall, sir, being reminded that Mr. Silmser had to go down
24 to the police station and do -- get that third condition we
25 talked about? One was terminate and release. Two was the

1 direction. And three was actually to attend at the police
2 station and sign something there?

3 MR. ADAMS: Yeah, I don't recall from that
4 period, but I think there was a note or message in my file.
5 Was there a pink slip from Mr. MacDonald?

6 MR. ENGELMANN: Yes, there is a pink slip in
7 your file.

8 MR. ADAMS: Yes, and I think it's mentioned
9 that, so I remember seeing that just in the last day or so.

10 (SHORT PAUSE/COURTE PAUSE)

11 MR. ENGELMANN: We're working on the fly,
12 but I apologize. I have just handed up what was a
13 photocopy of a pink telephone slip ---

14 THE COMMISSIONER: M'hm.

15 MR. ENGELMANN: --- that was in Mr. Adams'
16 file. It will be given Document Number 200182, by the way.
17 If it could be shown to the witness?

18 THE COMMISSIONER: Thank you.

19 MR. ENGELMANN: Thank you.

20 THE COMMISSIONER: So this is going to be
21 Exhibit 850?

22 MR. ENGELMANN: That's right.

23 THE COMMISSIONER: So it's dated September
24 2nd, 1993.

25 ---EXHIBIT NO./PIÈCE NO. P-850:

1 (200182) Sean Adams - Telephone message from
2 Malcolm MacDonald to Sean Adams - September
3 2, 1993

4 **MR. ENGELMANN:** Yes, we have various
5 documents now dated the 2nd and other dated the 3rd.

6 Mr. Adams, the document appears to be a
7 message from Malcolm MacDonald to you, a phone message?

8 **MR. ADAMS:** Yes, it does.

9 **MR. ENGELMANN:** And someone appears to have
10 written a note. Is that your handwriting?

11 **MR. ADAMS:** The top part. The message part
12 is not mine.

13 **MR. ENGELMANN:** Yes?

14 **MR. ADAMS:** But everything below the boxes
15 of -- telephone call box where it says "Message".

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

17 **MR. ADAMS:** That is my handwriting.

18 **MR. ENGELMANN:** Now, would this have been --
19 would you have called Malcolm MacDonald back and then
20 written a note about the conversation?

21 **MR. ADAMS:** I think it's fair to say that.

22 **MR. ENGELMANN:** All right. So what you've
23 written here is:

24 "Sergeant Brunet, Murray MacDonald,
25 Crown, wants Silmsler to go in and see

1 Sergeant Brunet."

2 **MR. ADAMS:** That's correct.

3 **MR. ENGELMANN:** So this would be related to
4 you by Malcolm MacDonald?

5 **MR. ADAMS:** I would think so, yes.

6 **MR. ENGELMANN:** You didn't have any
7 independent knowledge of that?

8 **MR. ADAMS:** No.

9 **MR. ENGELMANN:** And then it says:

10 "Call Heidi..."

11 **MR. ADAMS:** No, I think that's "Constable".

12 **THE COMMISSIONER:** No, it's ---

13 **MR. ENGELMANN:** I'm sorry, "Constable
14 Heidi".

15 **MR. ADAMS:** "Sebalj", I guess. I didn't ---

16 **MR. ENGELMANN:** Okay:

17 "Away 'til Monday."

18 **MR. ADAMS:** Yes.

19 **MR. ENGELMANN:** And then there is writing on
20 the back as well. Is that correct?

21 **MR. ADAMS:** That is correct.

22 **MR. ENGELMANN:** And it says:

23 "Problem with Sergeant Brunet. Heidi
24 moved. Sold house yesterday. Off 'til
25 tomorrow. Meet next week. Short..."

1 THE COMMISSIONER: "Statement."

2 MR. ADAMS: "Statement."

3 MR. ENGELMANN: Okay:

4 "...to effect that no longer wishes to
5 proceed crim."

6 MR. ADAMS: Criminal, yes. Crim.

7 MR. ENGELMANN: "Reluctant to get involved
8 now because no contact to date.
9 Constable Heidi Sebalj."

10 MR. ADAMS: Yes, I guess what he was
11 suggesting was that Sergeant Brunet was reluctant to get
12 involved now because it was Constable Heidi Sebalj's file.

13 MR. ENGELMANN: All right then ---

14 MR. ADAMS: That's the way I interpret that.

15 MR. ENGELMANN: But this is all being
16 related to you by Malcolm MacDonald?

17 MR. ADAMS: That is correct.

18 MR. ENGELMANN: All right. So essentially
19 he's giving you a message that he wants you to pass on to
20 David Silmsner?

21 MR. ADAMS: I would think so, yes.

22 MR. ENGELMANN: Sir, did Mr. MacDonald,
23 Murray MacDonald, ever have any direct conversation with
24 you about this matter as Mr. Silmsner's lawyer?

25 MR. ADAMS: With me as Mr. Silmsner's -- no.

1 **MR. ENGELMANN:** No, all right. And do you
2 recall having a conversation with either Heidi Sebalj or
3 Sergeant Brunet back in September of 1993?

4 **MR. ADAMS:** Again, I recall just by
5 reviewing for today.

6 **MR. ENGELMANN:** Yes? And so what do you
7 recall from that review?

8 **MR. ADAMS:** In some of the documents I
9 recall them perhaps calling me to see if I could track down
10 David Silmser concerning an investigation with Ken Seguin.
11 Again, if memory serves me right.

12 **MR. ENGELMANN:** Well, in your statement ---

13 **THE COMMISSIONER:** I'm sorry, you said with
14 Ken Seguin?

15 **MR. ADAMS:** Yes.

16 **MR. ENGELMANN:** In your statement of
17 September 13th, 1994 ---

18 **MR. ADAMS:** What statement? Is that to the
19 police?

20 **MR. ENGELMANN:** Your statement to the
21 police.

22 **MR. ADAMS:** Okay.

23 **MR. ENGELMANN:** Yes, that we looked at this
24 morning, you should have it. It's Exhibit ---

25 **THE REGISTRAR:** Eight-forty-nine (849).

1 MR. ENGELMANN: Eight-forty-nine (849)?

2 Really?

3 THE CLERK: It is.

4 MR. ENGELMANN: Yes.

5 THE CLERK: It is.

6 MR. ADAMS: Oh, that's in this pink binder?

7 In here?

8 MR. ENGELMANN: It may already be in the
9 exhibit book, sir, I'm not sure. It's 849.

10 MR. ADAMS: My exhibit book only goes up to
11 200 and something.

12 MR. ENGELMANN: All right.

13 MR. ADAMS: Thank you. What page do you
14 wish me to look at?

15 MR. ENGELMANN: I'll just be a moment. Page
16 12. If you want to start on page 11, sir?

17 MR. ADAMS: Okay. Do you want me to read it
18 myself or are you going ---

19 MR. ENGELMANN: Yes. Just have a look at it
20 yourself.

21 MR. ADAMS: Okay.

22 (SHORT PAUSE/COURTE PAUSE)

23 MR. ENGELMANN: So, Mr. Adams, it appears
24 that Detective Inspector Smith is showing you a document
25 that you haven't seen before?

1 MR. ADAMS: Okay.

2 MR. ENGELMANN: It's a handwritten note. Do
3 you see that?

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: From your statement?

6 MR. ADAMS: I do.

7 MR. ENGELMANN: And ,in fact, Madam Clerk,
8 if you could show the witness Exhibit 269?

9 MR. ADAMS: Thank you.

10 MR. ENGELMANN: Do you have it, sir?

11 MR. ADAMS: I do.

12 MR. ENGELMANN: Yes. Is this the document
13 that you were being shown by Detective Inspector Smith?

14 MR. ADAMS: I assume it is, yes.

15 MR. ENGELMANN: And you tell him you hadn't
16 seen it before?

17 MR. ADAMS: That's correct.

18 MR. ENGELMANN: And then you talk about a
19 discussion, on the following page and I'm just reading:

20 "Again, from recollection it seems to
21 me that they're -- and again I'm not
22 sure of the dates I'm not sure if it
23 was, this is dated September 29th, not
24 sure if it was after September 29th or
25 shortly after September 2nd; but I do

1 remember receiving calls from either
2 Sergeant Brunet or Constable Heidi
3 Sebalj."

4 Do you see that?

5 **MR. ADAMS:** I do see that.

6 **MR. ENGELMANN:** So that's the memory that
7 was refreshed?

8 **MR. ADAMS:** I would say that, yeah, at this
9 time, this is the memory that was refreshed and I would
10 rely on that statement.

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

12 Now, do you recall, sir, instructing Mr.
13 Silmser to go down and do this as the last part of the
14 settlement?

15 **MR. ADAMS:** At the later date or ---

16 **MR. ENGELMANN:** No, at or around September
17 2nd or 3rd?

18 **MR. ADAMS:** I -- again, I don't recall, but
19 I assume it would be reasonable to believe that I did.

20 **MR. ENGELMANN:** As I said, he had indicated
21 to us that you had asked him to do that.

22 **MR. ADAMS:** Okay.

23 **MR. ENGELMANN:** Now, we talked a little
24 earlier about difficulties, about the cheque and again in
25 your statement, Exhibit 849, at page 15, you talk a little

1 bit about that; is that fair? Just have a look at it.

2 MR. ADAMS: Okay.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. ADAMS: Okay. I've reviewed it.

5 MR. ENGELMANN: All right.

6 So it appears that you did get involved to
7 some extent to help him get his cheque cashed?

8 MR. ADAMS: It appeared I may have called
9 the bank.

10 MR. ENGELMANN: All right.

11 So let's go back to Exhibit 263, which is
12 the full release and undertaking not to disclose. And we
13 know from your acknowledgement that this is all you're
14 going to give advice about.

15 MR. ADAMS: Yes.

16 MR. ENGELMANN: Fair enough?

17 MR. ADAMS: Yes.

18 MR. ENGELMANN: You're not going to give him
19 advice about the quantity of the settlement, the quantum or
20 things of that nature. You're just giving him advice about
21 the full release and undertaking not to disclose?

22 MR. ADAMS: Yeah. I mean, I wasn't aware
23 nor am I aware today of the facts surrounding the
24 circumstances of ---

25 MR. ENGELMANN: But you were aware of some

1 facts. You were aware that it was a sexual abuse
2 allegation?

3 MR. ADAMS: Yes, not the specifics.

4 MR. ENGELMANN: Okay. And you were aware
5 that it was against a priest?

6 MR. ADAMS: I was. That's correct.

7 MR. ENGELMANN: And you were aware that the
8 Diocese was involved?

9 MR. ADAMS: That is correct.

10 MR. ENGELMANN: And the bishop?

11 MR. ADAMS: That is correct.

12 MR. ENGELMANN: And you were aware that the
13 Cornwall Police were involved to some extent?

14 MR. ADAMS: That is correct.

15 MR. ENGELMANN: And you did or did not know
16 that this involved alleged abuse when he was an altar boy
17 or a young person?

18 MR. ADAMS: I'm sure I must have known that
19 it was sexual abuse by a priest while he was an altar boy.

20 MR. ENGELMANN: All right.

21 And you had no idea, would it be fair to
22 say, about what something like this would be worth as far
23 as quantum of settlement?

24 MR. ADAMS: None whatsoever. Thirty-two
25 thousand (32,000) seemed low to me.

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

2 And might you have asked him if he should
3 think about it a little longer and perhaps not rush into
4 it?

5 **MR. ADAMS:** I'm sure I did that during the
6 phone call the first time I ever spoke to him and at this
7 time as well.

8 **MR. ENGELMANN:** Okay. Would you have
9 explained to him why the Bishop would have been named in
10 the settlement?

11 **MR. ADAMS:** I doubt it.

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

13 Would you have talked at all about the
14 concept of vicarious liability?

15 **MR. ADAMS:** I'm sure I did not.

16 **MR. ENGELMANN:** Did you explain the full and
17 final nature of paragraph 1?

18 **MR. ADAMS:** I'm sure I would have in simple
19 terms.

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

21 What about the provisions at the end
22 including "all damage, loss or injury not now known or
23 anticipated but which may arise in the future"?

24 **MR. ADAMS:** Again, I don't recall the
25 specifics. I doubt I would have gone into much detail

1 about that.

2 MR. ENGELMANN: And what, if anything, would
3 you have told him about the second paragraph other than the
4 requirement that we now know that he signed a direction to
5 the police and that he attended the police? What, if
6 anything else, would you have said about that paragraph?

7 MR. ADAMS: Again, I'd be guessing. I mean,
8 I could surmise what I may have said, but I don't recall.

9 MR. ENGELMANN: All right.

10 But you would not have seen settlement
11 documents often ---

12 MR. ADAMS: No.

13 MR. ENGELMANN: --- given your area of
14 practice?

15 MR. ADAMS: I don't want to say I'd never
16 but not very often.

17 MR. ENGELMANN: I would suggest to you that
18 you had never seen one before that required the termination
19 of a criminal matter.

20 MR. ADAMS: You're probably right.

21 MR. ENGELMANN: I'd also suggest you've
22 never seen one since?

23 MR. ADAMS: You're absolutely right.

24 MR. ENGELMANN: And you've already told us
25 that you didn't tell him that this was an illegal

1 provision.

2 MR. ADAMS: That is correct.

3 MR. ENGELMANN: And that didn't come to your
4 attention at that time?

5 MR. ADAMS: No.

6 MR. ENGELMANN: When you spoke to Malcolm
7 MacDonald that day, the day you signed the settlement, did
8 you ask him about paragraph 2?

9 MR. ADAMS: I don't recall.

10 MR. ENGELMANN: Did you ever ask him about
11 why the direction to the police -- why the necessity for
12 Mr. Silmsler to go to the police?

13 MR. ADAMS: Again, I don't recall. But from
14 that, you know, phone message, I think that was the ---

15 MR. ENGELMANN: That would have been the
16 explanation?

17 MR. ADAMS: --- settlement, yeah.

18 MR. ENGELMANN: What about paragraph 3, the
19 non disclosure provision? Again, you've told us you're not
20 experienced in this area and that you haven't seen many of
21 these releases, but I assume you might have seen a non
22 disclosure provision before?

23 MR. ADAMS: I think that's fairly
24 reasonable. In business law we see it often.

25 MR. ENGELMANN: All right.

1 Would you agree with me, sir, that non
2 disclosure provisions normally, in a civil matter, only
3 deal with the terms and conditions of the settlement?

4 **MR. ADAMS:** Again, I couldn't comment on
5 that. I don't know.

6 **MR. ENGELMANN:** Well, this particular non
7 disclosure not only talks about the terms and conditions of
8 the settlement but it says:

9 "Not to disclose or permit disclosure
10 directly or indirectly of any of the
11 terms of this settlement or of any of
12 the events alleged to have occurred."

13 So it's an across-the-board non disclosure;
14 is that fair?

15 **MR. ADAMS:** M'hm.

16 **MR. ENGELMANN:** Can't even talk about any of
17 the allegations?

18 **MR. ADAMS:** I would say that's fair.

19 **MR. ENGELMANN:** And in fact, to reinforce
20 that, the next sentence says:

21 "A breach of this undertaking will
22 constitute a breach of settlement
23 agreement as evidenced by this release,
24 and I will refund all amounts paid to
25 me forthwith."

1 That's a pretty strong clause.

2 **MR. ADAMS:** I would say that's a strongly-
3 worded clause.

4 **MR. ENGELMANN:** And I assume because you
5 were providing advice on this document, you would have
6 advised him that if he talked about these allegations or
7 disclosed them, that he would have to refund the money?

8 **MR. ADAMS:** I assume I would have read this
9 to him and asked him if he had any questions, did he
10 understand it before he signed.

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

12 Do you think you went a little further
13 though and actually said to him, "David, you can't talk
14 about this in any way or you're going to have to refund
15 this money," because that is what this clause says?

16 **MR. ADAMS:** Yeah. I don't recall the
17 specifics. I know that I thought he should really consider
18 strongly, longly before accepting this settlement.

19 **MR. ENGELMANN:** And, sir, this settlement is
20 a one-sided one perhaps in -- well, I'm not going to give
21 it a value judgment. The settlement only requires one
22 party not to talk.

23 **MR. ADAMS:** That, I don't know.

24 **MR. ENGELMANN:** Well, it doesn't say that
25 all of the parties have to agree not to disclose. It's Mr.

1 Silmser that has to agree not to disclose.

2 MR. ADAMS: You're probably right in that
3 regard.

4 MR. ENGELMANN: Was there any discussion at
5 all about what no admission of liability was meant or can
6 you recall?

7 MR. ADAMS: I unfortunately cannot recall.

8 MR. ENGELMANN: Was there an explanation --
9 I'm looking at paragraph 7 -- sorry, paragraph 6:

10 "I hereby authorize and direct the
11 releasees to pay the said consideration
12 to me."

13 Was there any breakdown of what each of the
14 releasees were to pay?

15 MR. ADAMS: Not to my knowledge.

16 MR. ENGELMANN: All right. So you don't
17 remember if Father Charles MacDonald was to pay a certain
18 sum; if the Bishop was to pay a certain sum; the Diocese
19 was to pay a certain sum?

20 MR. ADAMS: To the best of my recollection
21 even today I don't know, no.

22 MR. ENGELMANN: All right. Now, sir, the
23 certificate of Independent Legal Advice which is
24 Exhibit 264; I believe you told us earlier that you signed
25 these on occasion but in different circumstances?

1 MR. ADAMS: Yeah, if I had, and they would
2 be in the real estate.

3 MR. ENGELMANN: Right. It was rare and it
4 was in a different area?

5 MR. ADAMS: M'hm.

6 MR. ENGELMANN: Real estate law, financing
7 issues, husband and wife?

8 MR. ADAMS: Mostly, yes.

9 MR. ENGELMANN: Did you explain to Mr.
10 Silmsen why it was he needed to have a certificate of
11 Independent Legal Advice to get his money?

12 MR. ADAMS: Explain in what sense?

13 MR. ENGELMANN: Well, did you explain to him
14 why it was necessary to have a lawyer sign ---

15 MR. ADAMS: I don't know if I went into
16 those details.

17 MR. ENGELMANN: --- this certificate?

18 MR. ADAMS: Yeah. He certainly knew that he
19 could not receive the \$32,000 unless he had a lawyer with
20 him to witness and explain this to him; that was the
21 purport of his call to me.

22 MR. ENGELMANN: All right. Well, did you
23 tell him that that was likely because he didn't have a
24 lawyer when he negotiated and, therefore, it was important
25 for the validity of this settlement?

1 **MR. ADAMS:** I don't recall if I went into
2 that detail.

3 **MR. ENGELMANN:** All right. Now the document
4 says in it, the certificate -- and I assume it's a fairly
5 standard form, but you said you didn't prepare it; it was
6 prepared by ---

7 **MR. ADAMS:** No.

8 **MR. ENGELMANN:** --- someone before you got
9 there?

10 **MR. ADAMS:** That is correct.

11 **MR. ENGELMANN:** It says, about halfway
12 through:

13 "... that I acted solely for him,
14 explained fully to him the nature and
15 effect of the said full release and
16 undertaking."

17 Now, you've talked to us about what you can
18 remember explaining ---

19 **MR. ADAMS:** Yes.

20 **MR. ENGELMANN:** --- so I don't want to go
21 back over it, but acting solely for him. Mr. Adams, did
22 you ever disclose to Mr. Silmsen that you acted for the
23 Diocese of Alexandria-Cornwall from time to time?

24 **MR. ADAMS:** I don't believe I've ever acted
25 for the Diocese of Cornwall-Alexandria.

1 **MR. ENGELMANN:** You've never acted for the
2 Diocese of Alexandria-Cornwall?

3 **MR. ADAMS:** I don't believe so.

4 **MR. ENGELMANN:** Sir, I thought that you've
5 acted for them on an ongoing basis ---

6 **MR. ADAMS:** Not ---

7 **MR. ENGELMANN:** --- since before you would
8 have dealt with Mr. Silmsler on this day and right up until
9 the present.

10 **MR. ADAMS:** I don't think I've ever acted
11 for the Diocese.

12 **MR. ENGELMANN:** I don't mean to split hairs.
13 You never do work for the bishop or priests of the Diocese?

14 **MR. ADAMS:** I've done work for priests and
15 for St. Clements's Church which is my parish.

16 Ever since I've been -- ever since I moved
17 back to Cornwall, I've done, many times, any issue comes
18 up, I'll help and offer my services on a *pro bono* basis,
19 but I've never been the lawyer for the Diocese.

20 **MR. ENGELMANN:** Well, have you worked for
21 the current bishop or previous bishops from time to time,
22 sir?

23 **MR. ADAMS:** Not to my knowledge: No.

24 I mean not to my knowledge, the answer is
25 "No."

1 **MR. ENGELMANN:** If the witness could be
2 shown, it's Document number 738028; it's an excerpt of that
3 document, Bates page 7162086.

4 Mr. Adams, this was a document in the
5 package that would have been provided. It's a letter from
6 Mr. Adams to Reverend Father Gary Ostler dated June 25th,
7 1992.

8 **MR. ADAMS:** It's in this package here?

9 **MR. ENGELMANN:** It was in the package I
10 provided.

11 **MR. ADAMS:** I have it.

12 **THE COMMISSIONER:** Exhibit 851 is the letter
13 to the St. Columban's Catholic Church from Sean Adams dated
14 June 25th, 1992.

15 **---EXHIBIT NO./PIÈCE NO P-851:**

16 (738028) 7162086 - Sean Adams - Letter from
17 Sean Adams to Reverend Father Gary Ostler -
18 25 Jun, 92

19 **MR. ENGELMANN:** Mr. Adams, this is just a
20 document that was in our database; I'm not sure who gave it
21 to us, but this is just one example I wanted to refer you
22 to.

23 This is apparently some work that you do to
24 assist the St. Columban's Parish Hall in getting a liquor
25 licence?

1 MR. ADAMS: That is correct.

2 MR. ENGELMANN: All right.

3 MR. ADAMS: Again last night, based on Mr.
4 McClelland's advice, I called Father Gary Ostler and he
5 gave me permission to discuss this and any work I've done
6 for the church but this is ---

7 MR. ENGELMANN: Sir, I'm not going to get
8 into specifics about the work.

9 MR. ADAMS: Okay.

10 MR. ENGELMANN: I don't want to violate any
11 privilege.

12 I thought that from some of the documents in
13 our database that it was clear that you've done some work
14 for the Diocese, but maybe I mistakenly said the "Diocese"
15 and I should have said "various parishes in the Diocese".

16 MR. ADAMS: Yeah, so this was applying for a
17 liquor licence for the St. Columban's Parish for their
18 church hall and, again, I would have done this on a
19 *pro bono* basis ---

20 MR. ENGELMANN: Yeah.

21 MR. ADAMS: --- for them.

22 MR. ENGELMANN: Sir, I'm not suggesting that
23 you ever charged the Diocese ---

24 MR. ADAMS: No. No, no.

25 MR. ENGELMANN: --- or the priests or ---

1 MR. ADAMS: No.

2 MR. ENGELMANN: --- or the parish; it's just

3 ---

4 THE COMMISSIONER: Sorry, it is copied.

5 MR. ENGELMANN: Absolutely. That's ---

6 THE COMMISSIONER: The letter is copied to
7 the Diocese.

8 MR. ADAMS: Yes. And that would have been
9 at Father Gary's instruction, to send them a copy.

10 MR. ENGELMANN: All right. So this is June
11 '92; you're doing some work for Father Ostler and St.
12 Columban's?

13 MR. ADAMS: Yes.

14 MR. ENGELMANN: You're copying the Diocese?

15 MR. ADAMS: That is correct.

16 MR. ENGELMANN: Sir, in August of 1995, you
17 did some work for Father Maloney -- Kevin Maloney?

18 MR. ADAMS: Yes. I know what you're getting
19 at, yes.

20 MR. ENGELMANN: All right. And where was he
21 a priest at that time?

22 MR. ADAMS: St. Columban's.

23 MR. ENGELMANN: All right. And that was
24 dealing with issues that he had with both David Silmser and
25 John MacDonald?

1 **MR. ADAMS:** I think there were two
2 incidents, eh? Yeah.

3 But I guess phone calls he was getting and -
4 - yes.

5 **MR. ENGELMANN:** Were there concerns about
6 them picketing the church because they were concerned about
7 sexual abuse and things were not getting done?

8 **MR. ADAMS:** I don't recall that.

9 I know he was getting -- again, I called him
10 last night at Mr. McClelland's suggestion, and he said I
11 could discuss it but I -- and he refreshed my memory, but I
12 think he had -- I don't even know if he ever spoke to them
13 but they had left some messages on his answering machine.
14 He wanted it to stop so he asked the police if they would
15 call and if I would help him to get the police to ask these
16 two individuals to stop making the calls.

17 **MR. ENGELMANN:** And you attended -- well,
18 the police attended upon him in your presence?

19 **MR. ADAMS:** At the rectory across from the
20 church, yes.

21 **MR. ENGELMANN:** Did you ever advise him that
22 you had acted for him? Did you ever -- sorry ---

23 **THE COMMISSIONER:** "Did you advise him";
24 who's "him"?

25 **MR. ENGELMANN:** Father Maloney that you had

1 acted for David Silmser?

2 MR. ADAMS: I don't recall. I doubt it.

3 MR. ENGELMANN: All right. And ---

4 MR. ADAMS: I don't even know if I knew it
5 was David Silmser.

6 MR. ENGELMANN: Okay. And what about John
7 MacDonald, had you provided him with some assistance, at
8 some point, reviewing some letters of his?

9 MR. ADAMS: Well again in reading this, it
10 appears he was working at the office one day and asked me
11 what he should do and, again, I advised him that I didn't
12 practice in that area; I could help him get a lawyer and --
13 -

14 MR. ENGELMANN: But the matter you assisted
15 Father Maloney with was a conflict he was having with these
16 two individuals?

17 MR. ADAMS: That's what it appears, yes.

18 THE COMMISSIONER: Time for a break, Mr.
19 Engelmann.

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

22 This hearing will resume at 3:20

23 --- Upon recessing at 3:05 p.m./

24 L'audience est suspendue à 15h05

25 --- Upon resuming at 3:25 p.m./

1 L'audience est reprise à 15h25

2 **THE REGISTRAR:** This hearing is now resumed,
3 please be seated. Veuillez vous asseoir.

4 **THE COMMISSIONER:** Mr. Engelmann.

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

6 Yes sir.

7 **MR. ENGELMANN:** Mr. Adams, I just want to
8 take you through, very quickly, some documents from your
9 file just so we have a sense as to what you had.

10 Madam Clerk, if the witness could be shown,
11 it's Document number 200171.

12 It's actually a photocopy of the cover. I
13 have copies.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **THE COMMISSIONER:** Thank you. Exhibit 852
16 is the cover of the Silmsers file.

17 **--- EXHIBIT NO/PIÈCE No. P-852:**

18 (200171) Sean Adams - Photocopy of
19 cover of the Silmsers File.

20 **MR. ENGELMANN:** So this is just a photocopy
21 of the cover of the original file; is that correct?

22 **MR. ADAMS:** That's correct.

23 **MR. ENGELMANN:** And you would agree with me
24 the file was quite thin?

25 **MR. ADAMS:** I would agree.

1 **MR. ENGELMANN:** Okay. And the re: clause is
2 Roman Catholic Episcopal Corporation for the Diocese of
3 Alexandria-Cornwall?

4 **MR. ADAMS:** That is correct.

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

6 And, sir, if I could then show you -- it's
7 Document Number 200180. This is a -- sir, something from
8 the file. It has a matter number, a last name, et cetera.
9 It appears to be a short form file opening sheet, if I can
10 call it that. I'll just have it handed up.

11 Thank you.

12 **--- EXHIBIT NO/PIÈCE No. P-853:**

13 (200180) Sean Adams - Matter Fact Sheet
14 Re: David Silmser

15 **THE COMMISSIONER:** Thank you.

16 **MR. ADAMS:** Yes, this would be the form we
17 were using back then, the first step to opening up a file.

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

19 And, sir, the date it appears to be opened,
20 is that September 11th?

21 **THE COMMISSIONER:** No.

22 **MR. ADAMS:** I think it's September ---

23 **MR. ENGELMANN:** September 15th.

24 **MR. ADAMS:** I think it's September 15th, '93.

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

1 **THE COMMISSIONER:** And then there's a
2 September 11th, '95 after that on top?

3 **MR. ADAMS:** That's correct, yes. I think
4 there were some other forms that we had received from Bryce
5 Geoffrey, so my secretary probably put them in this file
6 and just marked that date. I don't ---

7 **THE COMMISSIONER:** All right.

8 **MR. ADAMS:** You had those other letters I
9 gave you.

10 **MR. ENGELMANN:** Yes.

11 **MR. ADAMS:** I don't know about the dates,
12 but that's ---

13 **MR. ENGELMANN:** They're in '94.

14 **MR. ADAMS:** Okay. I don't -- I have no idea
15 what that date is.

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

17 But the file was officially opened
18 apparently on September 15th, '93?

19 **MR. ADAMS:** I would think so, yes.

20 **MR. ENGELMANN:** After the bulk of the work
21 was done?

22 **MR. ADAMS:** Yes, and that's not unusual. I
23 mean, they'll get the file folder and when they get around
24 to opening the file ---

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

1 And, sir, the next, Document Number 200181,
2 it appears to be a receipt. The amount is \$400. It's a
3 receipt from David Silmsler. And I'm just wondering, sir,
4 if you can help me with the date, and you might have to
5 look at the original.

6 **THE COMMISSIONER:** Thank you. Exhibit 854
7 is a receipt.

8 **MR. ADAMS:** Thank you.

9 **---EXHIBIT NO./PIÈCE No. P-854:**

10 (200181) Sean Adams - Cheque from David
11 Silmsler to Sean Adams in the amount of
12 400\$

13 **MR. ENGELMANN:** Are you able to tell us the
14 date on Exhibit 854, Mr. Adams? It appears to be a 4, but
15 I can't ---

16 **MR. ADAMS:** Either a 4 or a 7, but I would
17 think it's a 4.

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

19 **MR. ADAMS:** September 4th.

20 **MR. ENGELMANN:** So you would have received
21 \$400 from Mr. Silmsler either on the 4th or 7th of September -
22 --

23 **MR. ADAMS:** Yes, this ---

24 **MR. ENGELMANN:** --- 1993?

25 **MR. ADAMS:** This would be my secretary's

1 writing and she would have received the \$400.

2 MR. ENGELMANN: All right.

3 THE COMMISSIONER: Well, didn't we say the
4 3rd was on a Friday?

5 MR. ENGELMANN: It was, actually.

6 THE COMMISSIONER: So are you open on
7 Saturdays regularly?

8 MR. ADAMS: Not too often, Your Honour.

9 MR. ENGELMANN: It's more likely then this
10 was on the 7th, sir?

11 MR. ADAMS: More than likely, yes.

12 MR. ENGELMANN: Sir, the next document is an
13 invoice dated September 16th. It's Document Number 200179.

14 MR. ADAMS: Thank you.

15 THE COMMISSIONER: Exhibit 855.

16 --- EXHIBIT NO./PIÈCE No. P-855:

17 (200179) Sean Adams - Invoice to David
18 Silmser from Sean Adams - 16 Sep, 93

19 MR. ENGELMANN: It would appear, Mr. Adams,
20 that you would have billed Mr. Silmser on the 16th of
21 September, 1993?

22 MR. ADAMS: Yes.

23 MR. ENGELMANN: And you would have simply
24 billed out the money that you had in trust?

25 MR. ADAMS: That is correct.

1 **MR. ENGELMANN:** And that was it for your
2 work for Mr. Silmser?

3 **MR. ADAMS:** That is correct.

4 **MR. ENGELMANN:** You never charged him for
5 any work subsequent to that?

6 **MR. ADAMS:** Again, in just preparing for
7 today, there were some nominal accounts to Bryce Geoffrey
8 for service of some documents in a later lawsuit.

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

10 **MR. ADAMS:** So I guess that would have been
11 on behalf of David Silmser. But for this incident, this
12 was it.

13 **MR. ENGELMANN:** Would it be fair to say
14 then, sir, that your work -- and you had your retainer and
15 the acknowledgement earlier -- was effectively done?

16 **MR. ADAMS:** Yes.

17 **THE COMMISSIONER:** But it doesn't say
18 anything about "To meeting with you; to going over to
19 Malcolm MacDonald's office."

20 **MR. ADAMS:** No, this is just a generic --
21 which is often the case in real estate -- accounts. The
22 computer prints it out as such. So it's not a detailed
23 account, Your Honour.

24 **MR. ENGELMANN:** So you never tracked any
25 time, sir?

1 **MR. ADAMS:** No. No.

2 **THE COMMISSIONER:** And the Law Society is
3 okay with that?

4 **MR. ADAMS:** Pardon me?

5 **THE COMMISSIONER:** Well, that's okay. It's
6 1993.

7 **MR. ENGELMANN:** I've seen them in all
8 fashions.

9 So, sir, we're not able to tell from your
10 invoice when you actually put your time in on this file?

11 **MR. ADAMS:** No. I have never docketed time
12 as solicitors work. I don't docket my time.

13 **MR. ENGELMANN:** All right. So this doesn't
14 help us with our confusion earlier about September 2nd and
15 September 3rd?

16 **MR. ADAMS:** Unfortunately not.

17 **MR. ENGELMANN:** I'll make a comment about
18 not wanting to docket time, but -- all right.

19 We were talking a little earlier about work
20 for either priests, parishes, or dioceses, and we talked a
21 little bit, sir, about work you had done for St-Columban's
22 parish in '92, some work you did for Father Maloney in '95.
23 And have you done work on an ongoing basis for that parish?
24 That's the parish you were a member of?

25 **MR. ADAMS:** St-Columban's, yes.

1 **MR. ENGELMANN:** Yes. And did you speak to
2 Mr. Silmsler about where the alleged sexual abuse occurred?

3 **MR. ADAMS:** I don't recall. I don't believe
4 so.

5 **MR. ENGELMANN:** You wouldn't have talked to
6 him about the fact that it might have been at St-Columban's
7 parish?

8 **MR. ADAMS:** I don't recall.

9 **MR. ENGELMANN:** And you never would have
10 disclosed to him that you did work for St-Columban's
11 parish?

12 **MR. ADAMS:** I ---

13 **MR. ENGELMANN:** Or did you?

14 **MR. ADAMS:** I don't recall, but I doubt it.

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

16 And did you disclose to him that you would
17 work for individual priests from time to time?

18 **MR. ADAMS:** I'm sure I did not.

19 **MR. ENGELMANN:** Did you not think that was
20 an important thing to do?

21 **MR. ADAMS:** No.

22 **MR. ENGELMANN:** You've had a look at some of
23 the documents, sir. You'd agree that both he and certainly
24 Mr. MacDonald were somewhat upset about the fact that they
25 didn't realize you were working for the parish or for

1 Father Maloney, for example?

2 MR. ADAMS: Yes.

3 MR. ENGELMANN: Is that fair?

4 MR. ADAMS: Yes.

5 MR. ENGELMANN: So in hindsight, do you
6 think you should have disclosed?

7 MR. ADAMS: In hindsight, disclosed what?

8 MR. ENGELMANN: That you worked for
9 individual priests and/or the parish?

10 MR. ADAMS: I guess in hindsight. I don't
11 know if it happened again today without this hindsight, I
12 don't imagine I would have done it, no. And they were not
13 related. I don't see a conflict, myself.

14 MR. ENGELMANN: If we could turn back to
15 Exhibit 266 for a minute? That's the direction to the
16 Cornwall Police. Do you know who was responsible, sir, for
17 giving this to the Cornwall Police?

18 MR. ADAMS: I don't recall, but I think in
19 reading this it may have been Mr. Silmsen.

20 MR. ENGELMANN: That he was to deliver it
21 himself?

22 MR. ADAMS: I don't recall.

23 MR. ENGELMANN: All right. The witness can
24 be shown Exhibit 299.

25 Again, Mr. Adams this would have been in the

1 package. It's just a one-page letter. It's a letter from
2 Malcolm MacDonald to Sergeant -- Detective Sergeant Luc
3 Brunet?

4 **MR. ADAMS:** Okay.

5 **MR. ENGELMANN:** Would you have seen this
6 letter at or about that time?

7 **MR. ADAMS:** This letter?

8 **MR. ENGELMANN:** Yes.

9 **MR. ADAMS:** I don't believe so.

10 **MR. ENGELMANN:** Right. This letter had
11 attached to it, or enclosed with it, Exhibit 266. That's
12 the direction to the Cornwall City Police, Detective
13 Sergeant Luc Brunet and Constable Heidi Sebalj.

14 **MR. ADAMS:** Okay.

15 **MR. ENGELMANN:** Okay. In the letter, Mr.
16 MacDonald's writing:

17 "This will confirm our telephone
18 conversation this morning. I'm
19 enclosing a statement prepared by Sean
20 Adams, solicitor for David Silmsler and
21 signed by David Silmsler."

22 Okay?

23 **MR. ADAMS:** Yeah.

24 **MR. ENGELMANN:** So Mr. MacDonald is writing
25 to the police saying that you prepared Exhibit 266 for Mr.

1 Silmser. Is that accurate?

2 **MR. ADAMS:** Again, I have no recollection,
3 but I don't see why he would say that I prepared it if I
4 hadn't prepared it, so it could very well be. I have no
5 recollection.

6 **MR. ENGELMANN:** All right. So you may well
7 have prepared Exhibit 266?

8 **MR. ADAMS:** I may have.

9 **MR. ENGELMANN:** It also says:

10 "I understand that Mr. Adams was
11 advised by you ..."

12 -- in other words, Luc Brunet:

13 " ...that David Silmser should speak to
14 Constable Sebalj personally and I
15 understand that the constable will not
16 be back until some time next week.
17 David Silmser indicated to Mr. Adams
18 that he would be available any time she
19 wants to see him."

20 And we had that note earlier, but do you
21 know if you actually spoke to Detective Sergeant Luc Brunet
22 about this and about the direction?

23 **MR. ADAMS:** Again, I have no recollection,
24 but I would assume that that statement is correct. I mean,
25 there's no reason for me to doubt it, but I don't recall

1 having a conversation.

2 **MR. ENGELMANN:** All right. If I could just
3 show you briefly, sir, it's Exhibit -- sorry -- it is
4 Document Number 722869. It would have been in the package
5 as well. It's an affidavit of a Luc Brunet.

6 **MR. ADAMS:** In this ---

7 **MR. ENGELMANN:** It should be in the book
8 that I sent you. I understand from your counsel, it's Tab
9 13 in your book.

10 **MR. ADAMS:** Thirteen? Okay.

11 **MR. ENGELMANN:** Madam Clerk, do we have that
12 document?

13 **THE COMMISSIONER:** Thank you.

14 Exhibit 856 is a Board of Inquiry affidavit
15 dealing with the DS complainant and Constable Perry Dunlop
16 affidavit of Luc Brunet dated and sworn 14th of September,
17 1994.

18 --- **EXHIBIT NO./PIÈCE NO. P-856:**

19 (722869) Sean Adams - Affidavit of Luc
20 Brunet

21 **MR. ENGELMANN:** Mr. Adams, I'd just like you
22 to take a look at paragraph 6. It's at the bottom of page
23 2 and on to the top of page 3.

24 **MR. ADAMS:** I've read it.

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

1 Brunet, about a year after this, is suggesting that you
2 called him on September 3rd. Does that refresh your memory
3 at all about whether you would have done that?

4 MR. ADAMS: It doesn't refresh my memory,
5 but I would have no reason to doubt the ---

6 MR. ENGELMANN: All right. Do you know why
7 it's you contacting the Cornwall Police?

8 MR. ADAMS: I don't know.

9 MR. ENGELMANN: You obviously agreed to do
10 that if ---

11 MR. ADAMS: Obviously.

12 MR. ENGELMANN: Now, a little later on that
13 year your retainer had finished. Is that fair? In
14 September?

15 Certainly by the time that Mr. Silmsler went
16 in to the police station and fulfilled all of the terms of
17 the settlement. He signed the release clause, he signed
18 the direction to the Cornwall City Police and he'd attended
19 at the Cornwall City Police on the 29th and wrote out the
20 note. At that point in time, you would have had no further
21 dealings or no need to have further dealings with him?

22 MR. ADAMS: No. But, again, I don't think
23 in retainers -- I mean, if David had called ---

24 MR. ENGELMANN: Yes.

25 MR. ADAMS: --- subsequently, I mean, I'm

1 not like a taxi driver where the clock would have been
2 ticking. I would ---

3 MR. ENGELMANN: Fair enough.

4 MR. ADAMS: --- have accepted his call.

5 MR. ENGELMANN: Fair enough. But ongoing
6 work with the police or the Children's Aid Societ?

7 MR. ADAMS: I don't think I've done any work
8 for the Children's Aid Society.

9 MR. ENGELMANN: No, with respect to this
10 matter?

11 MR. ADAMS: Oh, o. I don't recall.

12 MR. ENGELMANN: So you wouldn't have called
13 them purporting to act for David Silmser? They might have
14 called you?

15 MR. ADAMS: Yeah, I don't have any
16 recollection about that at all.

17 MR. ENGELMANN: All right. But you
18 mentioned something about Ken Seguin earlier in a question
19 -- it might have been from the Commissioner in fact --
20 where does that come up?

21 MR. ADAMS: I thought that I may have been
22 wrong in reading -- or my recollection of the transcript of
23 the OPP questioning of me -- I thought that was the call
24 that I received from either Sergeant Luc Brunet or
25 Constable Sebalj.

1 MR. ENGELMANN: Okay.

2 MR. ADAMS: Wondering if I could -- and
3 something tells me in the back of the mind and something
4 I've read that at some point in time they had called me to
5 see if I could get in touch with Mr. Silmsen ---

6 MR. ENGELMANN: Okay.

7 MR. ADAMS: --- to help them locate him to
8 see if he wanted to pursue that.

9 MR. ENGELMANN: All right. So and -- and
10 you believe it was pursue something dealing with Ken
11 Seguin?

12 MR. ADAMS: Again, I'm just going by my
13 recollection, reading through all these documents in the
14 last couple of days.

15 MR. ENGELMANN: Would you remember Mr.
16 Silmsen actually coming to you and saying, "I was also
17 abused by Ken Seguin"?

18 MR. ADAMS: No.

19 MR. ENGELMANN: All right. So you wouldn't
20 have discussed that with him?

21 MR. ADAMS: I don't believe so.

22 MR. ENGELMANN: And do you recall if the
23 Children's Aid Society would have contacted you when they
24 were investigating allegations vis-à-vis Father Charles
25 MacDonald?

1 **MR. ADAMS:** Again, I don't recall anything,
2 but maybe in the documents you gave me this morning there
3 was some handwritten notes by someone to that affect that I
4 remember browsing through, but other than that, I have no -
5 --

6 **MR. ENGELMANN:** Mr. Greg Bell, does that
7 ring a bell at all?

8 **MR. ADAMS:** The name means nothing to me,
9 no.

10 **MR. ENGELMANN:** Okay. And, again, if they
11 did contact you, might it have been to try and locate Mr.
12 Silmser?

13 **MR. ADAMS:** I have no idea.

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

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

16 **MR. ENGELMANN:** And, sir, speaking of the
17 Children's Aid Society, did you ever contact them about
18 this issue? When I say "this issue" I mean -- you're told
19 about allegations of sexual abuse against a young person;
20 you're told who the alleged abuser is, Father MacDonald;
21 you're involved in a meeting on September 2nd or possibly
22 September 3rd now. Did you contact the Children's Aid
23 Society at all about Father MacDonald?

24 **MR. ADAMS:** I don't -- I don't recall, but I
25 doubt it very much.

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

2 **THE COMMISSIONER:** Did you know Father
3 MacDonald at the time?

4 **MR. ADAMS:** Did I know -- Father MacDonald
5 would have been the parish priest at St. Clement's when I
6 was young. I don't ever remember meeting him or talking to
7 him, but I think he was a parish priest at St. Clement's
8 Church at some point during my childhood.

9 **THE COMMISSIONER:** M'hm. Okay.

10 **MR. ENGELMANN:** He was also a parish priest
11 still in 1993.

12 **MR. ADAMS:** At St. Clement?

13 **MR. ENGELMANN:** No, in the Diocese.

14 **MR. ADAMS:** That could -- I don't know.
15 Well, I mean -- my understanding is, yes. I think he was
16 let go after this.

17 **MR. ENGELMANN:** Do you know if he would have
18 ever discussed with Malcolm MacDonald or with Jacques Leduc
19 any responsibility any of you might have had with respect
20 to reporting to the Children's Aid Society?

21 **MR. ADAMS:** I'm sure that never -- I would
22 never have discussed that, no.

23 **MR. ENGELMANN:** But you were aware that the
24 Children's Aid Society was investigating this issue vis-à-
25 vis Father MacDonald in the fall of 1993 and they were

1 looking to contact Mr. Silmser?

2 MR. ADAMS: I don't recall that -- but I
3 can't say I did. No.

4 MR. ENGELMANN: So you don't recall why they
5 were looking to contact him?

6 MR. ADAMS: I don't even know that they were
7 trying to contact him.

8 MR. ENGELMANN: Fair enough. Now, in or
9 around January of 1994 or perhaps earlier, did you become
10 aware that a Cornwall City police officer had turned over
11 information about these allegations to the Children's Aid
12 Society and this had become public?

13 MR. ADAMS: Well, yeah, I'm sure -- if what
14 was in the newspapers and that, I would have known about it
15 through that, yes.

16 MR. ENGELMANN: Right.

17 And you would have known that that was the
18 settlement that you had been involved in?

19 MR. ADAMS: I'm sure, yes.

20 MR. ENGELMANN: Okay. And in fact, when
21 this matter became public, you were consulted about it by
22 Mr. Leduc about a draft press release?

23 MR. ADAMS: Yes.

24 MR. ENGELMANN: Because the Diocese wanted
25 to respond to the publicity surrounding this disclosure.

1 **MR. ADAMS:** That is correct.

2 **MR. ENGELMANN:** And you have a couple of
3 documents dealing with that in your file?

4 **MR. ADAMS:** That is correct.

5 **MR. ENGELMANN:** I'll just be one moment.

6 So if the witness could be shown -- it's
7 document number 200174. It is a fax coversheet with five
8 additional pages. It's to Sean from J. Leduc with a
9 handwritten note at the bottom.

10 **THE COMMISSIONER:** How familiar were you
11 with Malcolm MacDonald at that point, in 1993?

12 **MR. ADAMS:** How -- Oh, I knew Malcolm.

13 I mean Malcolm didn't practise in the same
14 area of law as me, but I knew Malcolm.

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

16 And what about Monsieur Leduc?

17 **MR. ADAMS:** I knew -- Jacques used to work
18 for our firm. So he articulated and worked for several years
19 again, before I was a lawyer but you know years ago. He
20 articulated for my father and then worked for the firm.

21 **THE COMMISSIONER:** Okay.

22 **MR. ENGELMANN:** I was going to come to ---

23 **THE COMMISSIONER:** I'm sorry.

24 **MR. ENGELMANN:** --- some of that in just a
25 bit, sir.

1 **THE COMMISSIONER:** Page 57 is Leduc,
2 Lafrance, Cardinal coversheet of a fax to Sean from J.
3 Leduc dated January 13th, 1994.

4 **--- EXHIBIT NO./PIÈCE No. P-857:**

5 (200174) Sean Adams - Fax from Jacques Leduc
6 to Sean Adams re: Press Release -
7 14 Jan 94

8 **MR. ENGELMANN:** Now, sir, you would have
9 received this fax from Mr. Leduc?

10 **MR. ADAMS:** Yes.

11 **MR. ENGELMANN:** Presumably, he would have
12 had some conversation with you before this?

13 **MR. ADAMS:** I don't recall, but that would
14 be reasonable to suspect.

15 **MR. ENGELMANN:** Well, at some time between
16 either September -- well, approximately September 3rd and
17 January of 1994, would you have had a discussion with Mr.
18 Leduc about the settlement?

19 **MR. ADAMS:** No, I don't believe so.

20 **MR. ENGELMANN:** Were you aware that he was
21 acting for the Diocese with respect to the settlement?

22 **MR. ADAMS:** Yes.

23 **MR. ENGELMANN:** And how did you become aware
24 of that? Was that through Mr. MacDonald or was that
25 through other ---

1 **MR. ADAMS:** I would think it was through Mr.
2 MacDonald and Mr. Silmser at the time that the settleme4nt
3 was entered into.

4 **MR. ENGELMANN:** All right. So you knew he
5 was involved. He just wasn't present.

6 **MR. ADAMS:** Yeah. He was never present at
7 that time.

8 **MR. ENGELMANN:** All right.
9 And why was it he was sending you this?

10 **MR. ADAMS:** I don't know if it was as a
11 matter of courtesy. I don't know why he sent it.

12 **MR. ENGELMANN:** Now, there's a note at the
13 bottom. Is that your handwriting?

14 **MR. ADAMS:** That is my handwriting.

15 **MR. ENGELMANN:** And that's -- you're saying
16 that you spoke to Jacques and he agreed to delete reference
17 to Sean Adams, and he said, "Don't worry" he would take
18 care of it?

19 **MR. ADAMS:** That's correct.

20 **MR. ENGELMANN:** So you did not want a
21 reference to your name in the press release?

22 **MR. ADAMS:** Well, again, I don't recall the
23 chronology but around this time, I had a flurry of calls
24 from Bryce Geoffrey who was David Silmser's lawyer and ---

25 **MR. ENGELMANN:** Right.

1 MR. ADAMS: --- and Jacques and -- so I
2 think Bryce must have received a copy of this.

3 MR. ENGELMANN: Yes.

4 MR. ADAMS: And the perception was that, in
5 reading this, that David Silmsler had Independent Legal
6 Advice throughout the negotiations, which was not the case.

7 MR. ENGELMANN: Right.

8 MR. ADAMS: And I ---

9 MR. ENGELMANN: And that's what we see on
10 page 4, right?

11 MR. ADAMS: That's correct.

12 MR. ENGELMANN: Where it says ---

13 MR. ADAMS: "Subsequent the Complainant
14 represented by counsel Sean Adams
15 agreed to accept compensation during
16 these negotiations. All parties were
17 represented by counsel."

18 MR. ENGELMANN: Yes.

19 MR. ADAMS: And that was not correct.

20 MR. ENGELMANN: Right.

21 So you wanted that changed?

22 MR. ADAMS: Well, I agreed -- Mr. Geoffrey
23 wanted that removed. I agreed with him. I think I
24 probably played telephone tag or had difficulty reaching
25 Mr. Leduc and, obviously, finally late at night, 9:28 p.m.,

1 I spoke to him and he agreed to make the changes.

2 **MR. ENGELMANN:** Okay, well let's look at the
3 next document then. It's document number 200173.

4 And it is another fax from Mr. Leduc to
5 yourself. It appears to be at 4:23 in the afternoon; the
6 first one having been at 2:41 p.m.

7 **THE COMMISSIONER:** Thank you. Exhibit
8 number 858.

9 **--- EXHIBIT NO./PIÈCE No. P-858:**

10 (200173) Sean Adams - Fax from Jacques
11 Leduc to Sean Adams re: final version
12 of press release - 13 Jan 94

13 **MR. ADAMS:** Thank you.

14 **MR. ENGELMANN:** I'm sorry sir? Eight ---

15 **THE COMMISSIONER:** Eight fifty-eight (858).

16 **MR. ENGELMANN:** All right. So on the third
17 page of the Settlement with the number four at the bottom,
18 there's no longer a reference to the complainant having
19 legal representation throughout.

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

21 **MR. ENGELMANN:** Having said that, on the
22 following page, there is still a reference to you being the
23 person that he obtained Independent Legal Advice from?

24 **MR. ADAMS:** That is correct.

25 **MR. ENGELMANN:** And then, sir, we know that

1 that evening, Mr. Leduc agreed to drop your name from the
2 press release.

3 MR. ADAMS: I believe so, yes.

4 MR. ENGELMANN: That's what your note
5 indicates?

6 MR. ADAMS: Yes.

7 MR. ENGELMANN: And as well, sir, there was
8 a letter in your file from Mr. Geoffrey, it's document
9 number 200172. It's a letter dated January 13th, 1994 to
10 you from Mr. Geoffrey.

11 MR. ADAMS: Thank you.

12 MR. ENGELMANN: Would you have received that
13 letter, sir?

14 MR. ADAMS: Yes.

15 MR. ENGELMANN: All right and it indicates
16 that that would have come in at around 4:37 in the
17 afternoon.

18 MR. ADAMS: That's correct.

19 --- EXHIBIT NO./PIÈCE No. P-859:

20 (200172) Sean Adams - Fax from Bryce
21 Geoffrey to Sean Adams re: Davis
22 Silmser - 13 Jan 94

23 MR. ENGELMANN: And you've clearly had some
24 discussions with him and he's indicating that in the
25 letter?

1 MR. ADAMS: Yes.

2 MR. ENGELMANN: And he's expressing concerns
3 about your appearing at the press conference?

4 MR. ADAMS: That is correct.

5 MR. ENGELMANN: And that's something that
6 you didn't want to do in any event; is that fair?

7 MR. ADAMS: If memory serves me right, I
8 would have told Jacques that if he didn't make those
9 changes, I would have to attend and clarify that I was not,
10 in fact, acting for Mr. Silmsen during that period, during
11 the period he was negotiating the settlement.

12 MR. ENGELMANN: All right.

13 And so, he was attempting to -- he says:

14 "...attempting to rectify inaccuracies in
15 the press release."

16 MR. ADAMS: That would be fair.

17 MR. ENGELMANN: And then there's another
18 letter attached to this, and that's a letter that he would
19 have sent to Jacques Leduc and presumably, sir, someone
20 provided you with a copy of that letter?

21 MR. ADAMS: I think it came at the same
22 time, if you look at the number of pages, yes.

23 MR. ENGELMANN: Fair enough; yeah.

24 Now, Mr. Adams, just a couple of things.
25 You've talked to us about the fact that you were doing some

1 work for the St. Columban's Parish and or individual
2 priests, and that that's something you didn't disclose to
3 Mr. Silmser. Correct?

4 MR. ADAMS: That is correct.

5 MR. ENGELMANN: You told us that you didn't
6 practise civil litigation or criminal law; correct?

7 MR. ADAMS: That is correct.

8 MR. ENGELMANN: And that's something that
9 you did disclose to Mr. Silmser or not?

10 MR. ADAMS: I mean during the -- I -- my
11 recollection serves me right, and again I can't recall the
12 specifics, but during that first telephone conversation, I
13 would have told him that I was not the right lawyer for the
14 job.

15 MR. ENGELMANN: All right. And you'd agree
16 that the settlement, and a settlement of this nature
17 certainly were outside of your practice areas?

18 MR. ADAMS: Yes.

19 MR. ENGELMANN: And you told us that you
20 didn't review the documents in advance?

21 MR. ADAMS: That is correct.

22 MR. ENGELMANN: And I believe you said --
23 did you have any discussion with other counsel involved
24 about the documents in advance, that you can recall?

25 MR. ADAMS: Other counsel being?

1 **MR. ENGELMANN:** Either Mr. Malcolm MacDonald
2 or Mr. Jacques Leduc.

3 **MR. ADAMS:** No. I never spoke to Jacques
4 about them, and I never discussed them with Malcolm until I
5 attended at his office.

6 **MR. ENGELMANN:** And sir, you told us that
7 three of the four documents were prepared before you got
8 involved.

9 **MR. ADAMS:** That is correct.

10 I think my recollection was ---

11 **MR. ENGELMANN:** But that's what you
12 initially told us ---

13 **MR. ADAMS:** Yeah.

14 **MR. ENGELMANN:** But let me -- to be fair,
15 you've now told us that the full release and Undertaking
16 not to disclose had been prepared before you got involved?

17 **MR. ADAMS:** That is correct.

18 **MR. ENGELMANN:** And the Certificate of
19 Independent Legal Advice?

20 **MR. ADAMS:** That is correct.

21 **MR. ENGELMANN:** But you've acknowledged that
22 the Acknowledgement was something that was prepared by you
23 or your office?

24 **MR. ADAMS:** It appears to be.

25 **MR. ENGELMANN:** The one that says September

1 2nd?

2 MR. ADAMS: Yes.

3 MR. ENGELMANN: And that it appears now that
4 the direction to the police ---

5 MR. ADAMS: Sorry; the acknowledgement was
6 prepared by my office.

7 MR. ENGELMANN: Yes.

8 MR. ADAMS: It appears that the direction to
9 the police was based on that letter.

10 THE COMMISSIONER: Well, based on the
11 letter, assuming there wasn't an error made in the letter
12 or ---

13 MR. ADAMS: Yes. I have no recollection.

14 THE COMMISSIONER: All right.

15 MR. ENGELMANN: So you're not sure.

16 MR. ADAMS: I'm not sure.

17 MR. ENGELMANN: There was correspondence at
18 the time that suggested you prepared it, but you're not
19 sure.

20 MR. ADAMS: That's why I'm making that
21 statement, but I am not sure.

22 MR. ENGELMANN: So given all of these facts,
23 either the night before on the telephone or the day before
24 when you met Mr. Silmsler or when you arrive at Malcolm
25 MacDonald's office, why don't you simply say that you won't

1 do it or that you can't do it?

2 **MR. ADAMS:** Yes, in hindsight, that would
3 have been a wise thing to do, but I still think that in my
4 mind I was helping him and he truly wanted his \$32,000. He
5 was satisfied with it and that would start the healing
6 process and he could get on with his life.

7 **MR. ENGELMANN:** But, sir, there were a great
8 number of lawyers here in the City of Cornwall; I'm sure
9 lawyers who practised in this area; lawyers who had nothing
10 to do with the Catholic Church, parish individuals; lawyers
11 who knew something about settlements of this nature.
12 Surely ---

13 **THE COMMISSIONER:** A junior in your firm?

14 **MR. ADAMS:** M'hm. But, again, just to
15 recap, when he called he made it clear that he didn't want
16 to be referred to another lawyer. He had done all of the
17 negotiating himself. He was satisfied. He didn't want
18 anyone to delve into research and advise him about quantum.

19 He just wanted the lawyer to sign so he
20 could get his \$32,000.

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

22 **MR. ADAMS:** Otherwise, I never would have
23 taken this on.

24 **MR. ENGELMANN:** You'd agree with me that
25 doing ILA work is not a financial windfall.

1 **MR. ADAMS:** Absolutely not.

2 **MR. ENGELMANN:** And in fact you billed all
3 of \$400 for your work?

4 **MR. ADAMS:** Absolutely.

5 **THE COMMISSIONER:** Well, wait a minute now.
6 This is 1993 ---

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

8 **THE COMMISSIONER:** All right.

9 From what I gather, you get a phone call
10 from Silmser. Was the amount ever negotiated for the fee?

11 **MR. ADAMS:** Never. I read something in some
12 of the documents that I told him that it would cost him but
13 -- I mean, I don't recall, but I doubt that very much. I'm
14 ---

15 **THE COMMISSIONER:** What was your hourly rate
16 then?

17 **MR. ADAMS:** Back in '93, \$250 an hour.

18 **THE COMMISSIONER:** All right.

19 So from what I can gather is you take a
20 phone call from him. You set up a date to go to
21 MacDonald's office. How far is it from your office to his
22 office? Did you walk, take a car?

23 **MR. ADAMS:** No, I would have taken my car.
24 It would be three blocks west and three blocks north, so
25 six blocks.

1 **THE COMMISSIONER:** So a five-minute drive.

2 **MR. ADAMS:** A five-minute drive.

3 **THE COMMISSIONER:** You walk in the office.
4 You look at the documents. So you're there how long in
5 all?

6 **MR. ADAMS:** I don't recall. I read, again,
7 in some of the transcripts Malcolm said I spent a half hour
8 to 45 minutes with David reviewing it. I don't know how
9 long I was.

10 **THE COMMISSIONER:** Then you go back to your
11 office. As far as you're concerned, end of story.

12 **MR. ADAMS:** Yes, that's correct.

13 **MR. ENGELMANN:** Sir, on top of everything
14 else, you've got a provision in the settlement that says he
15 needs to terminate a criminal action as a direction to the
16 police to stop working on a criminal file, and there's a
17 condition that your client attend and give a further
18 direction to the police not to act or take any further
19 actions.

20 So whether or not you practice civil
21 litigation or criminal law, do you not agree with me that a
22 warning light should have come on with those types of
23 conditions, particularly when you're dealing with
24 allegations of sexual abuse against a young person
25 involving a person in a position of trust and a public

1 institution like the Church?

2 MR. ADAMS: Again, in hindsight, knowing
3 everything I know today, but at that time I thought I was
4 doing him a favour. That's what he wanted. He had
5 canvassed all those issues and so, no, at that time.

6 MR. ENGELMANN: Okay. Now, you knew Jacques
7 Leduc before September 2nd ---

8 MR. ADAMS: Yes.

9 MR. ENGELMANN: Or September 3rd, 1993?

10 MR. ADAMS: Yes.

11 MR. ENGELMANN: And he was a senior lawyer
12 at the bar or more senior than you?

13 MR. ADAMS: He was more senior than me. At
14 that time I don't think he was a senior lawyer at the bar.

15 MR. ENGELMANN: All right.
16 And he had worked at your father's firm?

17 MR. ADAMS: He had.

18 MR. ENGELMANN: And was he working there
19 when you articulated?

20 MR. ADAMS: No.

21 MR. ENGELMANN: Is that what you said or --

22 -

23 MR. ADAMS: No, long before I was even in
24 law school.

25 MR. ENGELMANN: All right.

1 So he's -- well, then he must be many years
2 your senior?

3 **MR. ADAMS:** Jacques would be 10 years my
4 senior, I would think, maybe -- 10 years.

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

6 And you had practice areas in common?

7 **MR. ADAMS:** Again, I would think Jacques was
8 more of a general practitioner ---

9 **MR. ENGELMANN:** Yes.

10 **MR. ADAMS:** --- but he did a fair bit of
11 real estate.

12 **MR. ENGELMANN:** That's what I meant.

13 **MR. ADAMS:** Yes.

14 **MR. ENGELMANN:** So he would have been on the
15 other side of real estate files?

16 **MR. ADAMS:** He would have, yes.

17 **MR. ENGELMANN:** Not like Malcolm MacDonald?

18 **THE COMMISSIONER:** First name basis.

19 **MR. ADAMS:** That's correct.

20 **THE COMMISSIONER:** First name basis.

21 **MR. ADAMS:** No, that's correct. Oh,
22 absolutely, absolutely. Almost every lawyer in Cornwall. I
23 mean, it's small enough that we're all on a first name
24 basis.

25 **MR. ENGELMANN:** So you practise the same

1 type of law. Did you know that he did work for the
2 Diocese?

3 MR. ADAMS: Yes, I think that was common
4 knowledge.

5 MR. ENGELMANN: And did he do work for some
6 individual parishes as well?

7 MR. ADAMS: That, I don't know.

8 MR. ENGELMANN: All right.

9 Were you both involved in social and/or
10 other types of activities together?

11 MR. ADAMS: No. I mean, we didn't socialize
12 or anything like that. We would -- I mean, if there was a
13 Christmas party for the SD&G Law Association, we'd bump in,
14 but we didn't socialize.

15 MR. ENGELMANN: All right.
16 Fundraising activities or other charitable
17 events?

18 MR. ADAMS: No. No.

19 MR. ENGELMANN: What about your relationship
20 with Malcolm MacDonald?

21 MR. ADAMS: Again, on a day-to-day basis I
22 rarely had contact with Malcolm because our areas of law
23 weren't the same, but I would probably have lunch with
24 Malcolm once or twice a year.

25 MR. ENGELMANN: All right.

1 And did you know him through your father or
2 did you know him just from -- on your own?

3 **MR. ADAMS:** No, no. I knew -- I mean, I
4 knew all the lawyers through my father and I would have
5 known Malcolm through my father.

6 When my -- I came back to Cornwall and made
7 a point of going out with all the senior lawyers.

8 **MR. ENGELMANN:** Yes.

9 **MR. ADAMS:** Duncan MacDonald, Hugh Doncos,
10 introducing myself and having lunch and reminiscing about
11 what it was like practising law in the early days and
12 hearing stories about my father, and I enjoyed that.

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

14 And he would have been quite a bit senior at
15 the Bar?

16 **MR. ADAMS:** Yes, I would consider him a
17 senior member of the bar.

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

19 Now, there's some suggestion in some
20 documents that Mr. MacDonald -- Malcolm MacDonald actually
21 retained you or asked you to act for Mr. Silmser.

22 **MR. ADAMS:** Yeah, that never occurred.

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

24 For example, sir -- and this is document
25 113568. It's a third-party claim. This would have been a

1 document filed by Father MacDonald's counsel. This is in a
2 lawsuit that Mr. Silmser brought against Father MacDonald
3 and Bishop Adolphe Proulx and the Diocese and you were
4 named as a third party. Do you recall that?

5 **MR. ADAMS:** Yes, I do recall that.

6 **MR. ENGELMANN:** Madame Clerk, do you have
7 that document? It was in the cross documents.

8 **THE COMMISSIONER:** Thank you. Exhibit
9 number 860 is a statement of -- a third-party claim in the
10 Ontario Court General Division, D.S. et al and the third
11 party is against Malcolm MacDonald and Sean Adams.

12 **--- EXHIBIT NO./PIÈCE No. P-860:**

13 (113568) Sean Adams - Third Party Claim
14 re: David Silmser

15 **MR. ENGELMANN:** So this is a, as I said, a
16 third-party claim by Father MacDonald adding you and
17 Malcolm MacDonald as third parties?

18 **MR. ADAMS:** That is correct.

19 **MR. ENGELMANN:** And in paragraph 8, Father
20 MacDonald's counsel is asserting at the bottom of paragraph
21 8:

22 "Father MacDonald further states that
23 Sean Adams was retained by M. MacDonald
24 and did provide Independent Legal
25 Advice to the Plaintiff herein prior to

1 refers to you is paragraph 7, right at the bottom of the
2 first page.

3 This is a statement that Malcolm MacDonald
4 writes on June 20th, '94. He says:

5 "I then contacted Silmser and told him
6 the Diocese was willing to pay. I told
7 him he would have to (sign) a
8 release..." --

9 It says "sing", but I'm sure it means "sign",

10 "...a release form and have Independent
11 Legal Advice. Since he did not have a
12 lawyer acting for him and I knew he had
13 contacted Sean Adams, a Cornwall
14 lawyer, earlier, concerning this
15 matter, I asked Sean Adams to give him
16 Independent Legal Advice and both he
17 and Adams agreed."

18 So, sir, what the statement suggests is that
19 he knew that Silmser had contacted you earlier about this
20 and then he says:

21 "I asked Sean Adams to give him
22 Independent Legal Advice and both he
23 and Adams agreed."

24 Can you tell me why he would have thought
25 that you had been contacted earlier by Mr. Silmser; do you

1 have any knowledge as to why he would make that statement?

2 MR. ADAMS: David must have told him.

3 Again, I was not involved in any of those
4 negotiations.

5 MR. ENGELMANN: At that point in time, in or
6 around September of '93, you would have had files with Mr.
7 Leduc ---

8 MR. ADAMS: I can assume so.

9 MR. ENGELMANN: --- possibly?

10 MR. ADAMS: Possibly, yes.

11 MR. ENGELMANN: All right.

12 Would you have had any files with Malcolm
13 MacDonald at or about that time?

14 MR. ADAMS: I may have, but I doubt it. I
15 mean, he may have done the odd real estate deal but ---

16 MR. ENGELMANN: All right.

17 MR. ADAMS: --- I doubt it.

18 MR. ENGELMANN: Aside from this case, have
19 you ever been involved in a case where both Jacques Leduc
20 and Malcolm MacDonald were counsel?

21 MR. ADAMS: I don't believe so. I doubt it
22 very much.

23 MR. ENGELMANN: Right. They did different
24 areas of law?

25 MR. ADAMS: Yes.

1 **MR. ENGELMANN:** And certainly at that point
2 in time, you weren't working on anything with both of them?

3 **MR. ADAMS:** Again, I doubt it very much.

4 **MR. ENGELMANN:** What about Duncan MacDonald,
5 you mentioned his name and he's also mentioned in your OPP
6 statement, as a senior lawyer that you would talk to from
7 time to time?

8 **MR. ADAMS:** M'hm.

9 **MR. ENGELMANN:** Is that true, that you would
10 talk to him from time to time, sir?

11 **MR. ADAMS:** Oh sure, yeah.

12 **MR. ENGELMANN:** And how did you know him?

13 **MR. ADAMS:** Well, again, I would say he was
14 a senior member of the Bar, at the senioest level with
15 Hugh Dancause and Pat Rudden -- age-wise.

16 A gentleman who was a general practitioner
17 but did mostly real estate; had offices in Alexandria and
18 Glengarry and was someone that I enjoyed -- I mean, we
19 would have files together but someone I enjoyed going out
20 for lunch and ---

21 **THE COMMISSIONER:** I'm sorry; who are we
22 talking about now?

23 **MR. ADAMS:** Duncan.

24 **MR. ENGELMANN:** Duncan MacDonald.

25 **THE COMMISSIONER:** Okay, yes, yes, yes.

1 **MR. ADAMS:** So he was one of those senior
2 lawyers that I would go out and have lunch with and enjoy
3 his company.

4 **MR. ENGELMANN:** And you would have several
5 files with him?

6 **MR. ADAMS:** Oh, I'm sure. More files with
7 him than I think any of the lawyers you've mentioned now.

8 **MR. ENGELMANN:** All right.
9 And he was well-respected in the community?

10 **MR. ADAMS:** Very well-respected.

11 **MR. ENGELMANN:** Do you agree with me that
12 he would be viewed as an ethical person?

13 **MR. ADAMS:** I would consider him very
14 ethical.

15 **MR. ENGELMANN:** Were you aware of his
16 involvement in the church?

17 **MR. ADAMS:** What involvement in the church?

18 **MR. ENGELMANN:** That he was a practicing
19 Catholic?

20 **MR. ADAMS:** As far as I know, he was a
21 practicing Catholic, yes.

22 He was a fine man whose wife had been ill
23 for a long, long time; was in a home and he would go and
24 meet with her daily; feed her.

25 I can think of no finer gentleman.

1 **MR. ENGELMANN:** And did others consult with
2 him from time to time because of his senior status in the
3 Bar?

4 **MR. ADAMS:** Well, I wouldn't consider what I
5 was doing "consult", but I think he was well-liked by
6 everyone.

7 I don't know if lawyers would consult him
8 for advice but maybe junior lawyers would have.

9 **MR. ENGELMANN:** Would you ever see him for
10 advice, sir?

11 **MR. ADAMS:** No.

12 I had approached him a couple of times about
13 him joining our firm and retiring and working lesser hours
14 as senior counsel and -- and -- but, no, I would never have
15 -- we had enough lawyers in the office that there was no
16 need for that.

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

18 Sir, it's my understanding that he's
19 deceased?

20 **MR. ADAMS:** That is correct.

21 **MR. ENGELMANN:** And he died in approximately
22 1997?

23 **MR. ADAMS:** I wouldn't venture a guess, but
24 it's been a while.

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

1 But he was certainly alive and still
2 practicing actively in the summer of 1993?

3 **MR. ADAMS:** I believe so. Again, I'm not
4 sure the date, but I would think so.

5 **MR. ENGELMANN:** And, sir, it's my
6 understanding that he had a meeting with both Malcolm
7 MacDonald and Jacques Leduc that summer, after which he was
8 very upset; I'm wondering if he ever spoke to you about
9 that?

10 **MR. ADAMS:** No. That's the first to hear of
11 that.

12 **MR. ENGELMANN:** I also understand that
13 immediately after that meeting, he advised his staff that
14 you would likely call the next day and that he didn't want
15 to speak to you.

16 **MR. ADAMS:** I would like to call him?

17 **MR. ENGELMANN:** That you would likely be
18 calling him the next day ---

19 **MR. ADAMS:** Oh.

20 **MR. ENGELMANN:** --- and that he did not want
21 to speak to you.

22 **MR. ADAMS:** That's news to me. I'm not
23 aware of that.

24 **MR. ENGELMANN:** I'm also led to understand
25 that you attempted to contact him several times the next

1 day and several times the day after and he didn't take your
2 call.

3 **MR. ADAMS:** Again, I have no recollection of
4 that.

5 **MR. ENGELMANN:** You don't recall trying to
6 reach him several times over a two-day period, sir, in the
7 summer of 1993?

8 **MR. ADAMS:** I'm sure over the years I've
9 tried to reach him on many occasions on files, but
10 pertaining to Jacques -- a meeting with Jacques Leduc and
11 Malcolm MacDonald, no, I do not remember that at all. I
12 don't recall and I don't think it ever happened.

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

14 Well, perhaps just to try and refresh your
15 memory, it's my understanding that Mr. MacDonald -- Duncan
16 MacDonald not only advised his staff that he didn't want to
17 speak to you after this meeting with Malcolm and Jacques,
18 but also that as a practicing Catholic, his belief in the
19 institution had been shaken, an institution that he had
20 believed in all of his life. And it was just after that
21 meeting that he ordered both Mr. MacDonald -- Malcolm
22 MacDonald and Jacques Leduc to leave his office, and at
23 that same time, he indicated to his staff that he didn't
24 want to take your calls.

25 **MR. ADAMS:** So when -- what was the date of

1 this? Was this right after ---

2 **MR. ENGELMANN:** In the summer of 1993.

3 **MR. ADAMS:** And was this after this
4 settlement had become public knowledge or something along
5 those lines?

6 **MR. ENGELMANN:** No, the summer of 1993.

7 **THE COMMISSIONER:** Mr. Engelmann, just
8 again.

9 Thank you.

10 **MS. ROBITAILLE:** Mr. Commissioner, I'm
11 concerned that Commission counsel is giving evidence.

12 **THE COMMISSIONER:** He's giving evidence?

13 **MS. ROBITAILLE:** And his questions seem
14 rather lengthy and filled with alleged facts.

15 I'd like to see the basis for the
16 information he's relating to the witness.

17 **THE COMMISSIONER:** All right. Thank you.
18 Mr. Engelmann.

19 **MR. ENGELMANN:** I can assure my friend that
20 I would not be asserting facts that I don't have.

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

22 **MR. ENGELMANN:** And we will be putting this
23 forward, in the form of a witness, in the very near future.

24 **THE COMMISSIONER:** All right.

25 So on that basis, continue.

1 **MR. ENGELMANN:** Still no recollection, sir?

2 **MR. ADAMS:** No. So I mean certainly if
3 Duncan was upset because of my -- so you're saying this was
4 before the settlement?

5 **MR. ENGELMANN:** I'm saying -- all I can tell
6 you, sir, it was in the summer of 1993.

7 **MR. ADAMS:** Yeah, certainly I -- this is the
8 first I hear that Duncan was ever upset with me and I'm
9 surprised. I mean, until his dying day I had no knowledge
10 of that and this is the first I hear of it.

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

12 Let me try and refresh your memory one more
13 time with one other fact -- one other alleged fact.

14 Within one or two weeks after that first
15 visit to Mr. Duncan MacDonald by Malcolm MacDonald and
16 Jacques Leduc he has another visit and on this occasion
17 Malcolm MacDonald and Jacques Leduc, a young man that was
18 not known to the staff and you, Sean Adams, arrive at Mr.
19 Duncan MacDonald's office unannounced, the four of you
20 waiting in his waiting room. Do you recall going to see
21 him with Malcolm MacDonald and Jacques Leduc and someone
22 else?

23 **MR. ADAMS:** No. I can't even ever remember
24 going to Duncan. I mean, we had a lot of transactions
25 together but I never go and close my own real estate

1 transactions; I have staff -- so no, I don't remember that
2 and I don't -- can't even say I remember going to Duncan's
3 office ever. I knew where his office was but, no, I don't
4 ever recall going with Malcolm, Jacques and some young
5 fellow.

6 **MR. ENGELMANN:** So you don't remember being
7 present in his office when he arrives?

8 **MR. ADAMS:** No.

9 **MR. ENGELMANN:** And he sees you; and he walks
10 by; doesn't even say, "Hello"?

11 **MR. ADAMS:** No.

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

13 **MR. MANDERVILLE:** Mr. Commissioner, I'm a
14 little concerned about the rule in *Brown v. Dunn* here and
15 I'm going to suggest that perhaps my friend ought to at
16 least indicate the source of this information.

17 It may well be that Mr. Adams needs to seek
18 limited standing when that witness comes forward,

19 **THE COMMISSIONER:** I'm sorry, he needs what?

20 **MR. MANDERVILLE:** It may well be that Mr.
21 Adams needs to seek limited standing when that witness, who
22 is apparently going to come forward, comes forward.

23 **THE COMMISSIONER:** Okay.

24 Mr. McClelland?

25 **MR. McCLELLAND:** Mr. Commissioner, in the

1 documentation that was provided to me by Commission
2 counsel, I didn't receive any information concerning this
3 line of questioning. And certainly if it's going to be
4 cross-examined -- and that's what I see -- with respect to
5 particulars of a statement, I haven't received any
6 indication of what this is. And certainly in my respectful
7 submission, I mean no disrespect to my friend, but I have
8 the sense from the question that's going forward that my
9 client's being somewhat ambushed by this and it would be
10 helpful if -- if there is such a statement for this witness
11 that's going to -- I'm just informed is going to be called
12 -- be appreciated perhaps if before any further question
13 goes along this line; that my client at least has an
14 opportunity to view the statement before he's questioned on
15 it. We haven't had any disclosure in this regard.

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

17 Oh, hang on, Mr. Engelmann.

18 **MS. ROBITAILLE:** Just quickly, Mr.

19 Commissioner, I also have no notice of this. I do feel
20 ambushed and I suggest that it's procedurally unfair.

21 **THE COMMISSIONER:** Procedurally unfair?

22 **MS. ROBITAILLE:** That this witness would be
23 questioned about allegations of some sort of meeting; that
24 I would have no notice of it. It's not in the areas of
25 evidence to be canvassed that was disclosed to the parties.

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

2 **MS. ROBITAILLE:** Those are my submissions.

3 **THE COMMISSIONER:** All right.

4 Mr. Engelmann?

5 **MR. ENGELMANN:** Sir, Commission counsel has
6 only met with the witness recently ---

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

8 **MR. ENGELMANN:** --- and we have not been
9 able to speak to Mr. Adams about various things involving
10 this, given his privileged claim.

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

12 **MR. ENGELMANN:** So we haven't done that.

13 I don't understand my friend, Ms.
14 Robitaille's, objection. She'll have an opportunity when
15 the witness comes forward and we'll provide an AE in the
16 normal course.

17 **THE COMMISSIONER:** Right.

18 **MR. ENGELMANN:** Mr. Adams is represented. I
19 think he has counsel here.

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

21 **MR. ENGELMANN:** If he wishes to seek some
22 limited form of standing when we call this witness, his
23 counsel can do so.

24 **THE COMMISSIONER:** Okay, but what about the
25 submission that you should put to this gentleman your

1 source of -- you know, where is this coming from?

2 MR. ENGELMANN: I have indicated, sir, it's
3 former staff ---

4 THE COMMISSIONER: M'hm.

5 MR. ENGELMANN: --- of Duncan MacDonald. I
6 thought that was clear from the line of questioning.

7 THE COMMISSIONER: No.

8 MR. ENGELMANN: All right.

9 THE COMMISSIONER: No, it wasn't so, okay.
10 Anybody else wish to comment at this time?
11 No. Okay.

12 MR. ENGELMANN: So just to get back to my
13 question, then ----

14 THE COMMISSIONER: Whoa, whoa -- just a
15 minute. I should make a ruling or something here.

16 MR. ENGELMANN: Oh, I apologize.

17 THE COMMISSIONER: Yeah.

18 MR. ENGELMANN: I ---

19 THE COMMISSIONER: So they're talking about
20 ambush. So I can understand from ---

21 MR. ENGELMANN: Ambush of whom?

22 THE COMMISSIONER: I don't know. From
23 certainly this witness, I guess, but he didn't want to meet
24 with you before. But they're saying, "Well, it's not even
25 in the disclosure". So ---

1 **MR. ENGELMANN:** Well, it certainly -- I
2 talked about areas to be canvassed in evidence. That's all
3 I could do.

4 **THE COMMISSIONER:** Yes. And is this area --
5 -

6 **MR. ENGELMANN:** I didn't have any ---

7 **THE COMMISSIONER:** All right. And is this
8 in there?

9 **MR. ENGELMANN:** I certainly talked about
10 contacts he had with these lawyers and other lawyers in
11 Cornwall.

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

13 **MR. ENGELMANN:** That's where I'm going.

14 **THE COMMISSIONER:** All right. So put it to
15 him ---

16 **MR. ENGELMANN:** And the reference to Duncan
17 MacDonald was in his OPP statement.

18 **THE COMMISSIONER:** M'hm. Okay. Go ahead.

19 **MR. ENGELMANN:** So, sir, going back to my
20 last question, do you recall being in the waiting room of
21 Duncan MacDonald's office with Mr. Leduc, Malcolm
22 MacDonald, another man ---

23 **MR. NEVILLE:** Excuse me.

24 **THE COMMISSIONER:** Mr. Neville's going to
25 take a ---

1 **MR. NEVILLE:** Mr. Commissioner, I'd like to
2 suggest -- it's twenty after four. I'd like to suggest we
3 adjourn until -- I'd like to suggest we adjourn until
4 tomorrow.

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

6 **MR. NEVILLE:** I'd like to meet with Mr.
7 McClelland. I don't agree with what's happening here.

8 **THE COMMISSIONER:** I don't understand?

9 **MR. NEVILLE:** I think he is being ambushed.
10 The reference in his OPP statement is the
11 fact that Duncan MacDonald was a senior counsel with whom
12 he occasionally had lunch and enjoyed his company talking
13 about his father.

14 To say that that in some way notified this
15 man that this line of questioning would be used?

16 **THE COMMISSIONER:** Well, first of all ---

17 **MR. NEVILLE:** Suggesting that something
18 improper has happened and that Duncan MacDonald took this
19 man and others to task over it. None of us in this room,
20 sir, know what they're talking about.

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

22 **MR. NEVILLE:** Nobody.

23 I bet in particular, this man, the witness -
24 --

25 **THE COMMISSIONER:** Okay, well ---

1 **MR. NEVILLE:** --- nor his counsel. To
2 suggest that because there was a legitimate exercise of a
3 concern about privilege would prevent Mr. McClelland
4 knowing that this line of questioning, which has nothing to
5 do with privilege, is not a surprise, sir, I suggest is not
6 fair. And I think we should all take some time to look at
7 it and, perhaps, be given some form of disclosure as to
8 what's happening because none of us knows.

9 And those are my comments and I think we
10 ought to take a bit of time.

11 **THE COMMISSIONER:** Are you finished now?

12 **MR. NEVILLE:** I am finished. Thank you.

13 **THE COMMISSIONER:** Thank you.

14 First of all, my understanding is that this
15 gentleman would not meet and was claiming his right to
16 privilege and that's fine. That maybe his obligation to
17 respond to that.

18 But if Commission counsel hasn't had an
19 opportunity to meet with him, which is becoming all too
20 routine, then there is a bit of a risk to the witness
21 himself. And so I don't know that I have that much
22 sympathy for the witness and in this case -- and I don't
23 mean that badly because he is exercising a right to protect
24 his client -- but he has not met with Commission counsel,
25 so I don't know about that.

1 This is the third lawyer to come in. Mr.
2 McClelland is representing his client ably; he's made his
3 representations. So unless it affects your limited
4 interest in this area, I don't know what the comment is.

5 Mr. Engelmann, do you have any further
6 comments?

7 **MR. ENGELMANN:** There's ---

8 **THE COMMISSIONER:** And I -- there's no AE --
9 -

10 **MR. ENGELMANN:** I'm almost finished.

11 **THE COMMISSIONER:** There's no AE because the
12 witness wasn't made available for an AE.

13 **MR. ENGELMANN:** It was a short-form -- areas
14 to be canvassed during the evidence of -- and it included a
15 reference to the nature of contacts ---

16 **THE COMMISSIONER:** What are you showing me?

17 **MR. ENGELMANN:** It's in the exhibit.

18 **THE COMMISSIONER:** Okay. Then I'll see it,
19 yeah.

20 **MR. ENGELMANN:** "The nature of contacts
21 Adams had with Silmser and anyone else
22 involved in the Silmser settlement
23 before, during and after its
24 execution."

25 This information has recently come to our

1 attention and that's why I'm putting it to this witness.

2 THE COMMISSIONER: All right.

3 MR. ENGELMANN: I would have preferred to
4 put it to him a couple of weeks ago, but ---

5 THE COMMISSIONER: Right.

6 MR. ENGELMANN: --- we are where we are.

7 THE COMMISSIONER: Okay. So how long do you
8 think you're going to be to complete?

9 MR. ENGELMANN: I'm almost finished.

10 THE COMMISSIONER: All right.

11 Mr. McClelland?

12 MR. McCLELLAND: May I correct one thing
13 that ---

14 THE COMMISSIONER: Oh, sure.

15 MR. McCLELLAND: --- it's been stated that
16 my client refused to meet.

17 THE COMMISSIONER: M'hm. Well ---

18 MR. McCLELLAND: That, if I may, it's not
19 very accurate in that respect because I think we had a
20 couple of meetings scheduled but for one reason or another
21 we couldn't go forward.

22 THE COMMISSIONER: M'hm.

23 MR. McCLELLAND: Just couldn't get together.
24 But I don't believe we've ever refused to meet, but we did
25 indicate that there was a privilege problem. So if ---

1 **THE COMMISSIONER:** That's fine. That's
2 fine. But you did meet?

3 **MR. ADAMS:** We did meet. Excuse me, sir.

4 **THE COMMISSIONER:** You did meet?

5 **MR. ADAMS:** We did meet.

6 Mr. Engelmann cancelled one meeting. He --
7 something came up at the last minute but I did meet with
8 Mr. Engelmann and one of his investigators.

9 **THE COMMISSIONER:** All right. Good.

10 **MR. McCLELLAND:** So the difficulty I have in
11 that respect -- and I hear what you're saying, Mr.
12 Commissioner, but still this area, from what I have, is
13 completely alien to anything that we had been given to
14 understand would come forward. So in that sense, my
15 understanding would be that if there were areas that we
16 were going to canvass, this would be it.

17 To say that -- to say that in the statement
18 we received other lawyers would be mentioned, in my
19 submission this is going far beyond that. This is like a
20 whole new area that doesn't come under that, so I do repeat
21 my submission that it is unfair to this witness then --
22 it's against any rule of evidence I know; that if you're
23 going to cross-examine someone you show them what you're
24 cross-examining on. We haven't seen anything yet.

25 **THE COMMISSIONER:** Well, no, no. Just a

1 minute.

2 You're quite right in the sense that Mr.
3 Engelmann should be saying, "Look it, this is what we think
4 this witness is going to say or if this witness says this,
5 what do you think? What do you say about it?"

6 All right. Well ---

7 **MR. McCLELLAND:** But that's not the way I've
8 been hearing the questioning.

9 **THE COMMISSIONER:** Okay.

10 **MR. McCLELLAND:** And so it's been -- so I
11 get the sense that my client is going to say these things
12 and then somebody else is going to come forward later and
13 say something different perhaps. But I don't know that
14 because none of this has been made available to us, but the
15 way that the questioning is being asked ---

16 **THE COMMISSIONER:** All right.

17 **MR. McCLELLAND:** --- certainly begs that
18 question.

19 **THE COMMISSIONER:** All right.

20 **MR. McCLELLAND:** And, therefore, I thank Mr.
21 Neville for standing forward, but I submit it's the same
22 submission I made to you before. This questioning, in my
23 submission, should not be allowed.

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

25 Well, I thought that it may have been worded

1 better in the sense that I thought that it's coming from --
2 I don't know if we said a former employee of Duncan
3 MacDonald's.

4 So if he puts it that way, then the rule in
5 *Dunn v. Brown* is being met and he's saying, "Look it, this
6 is what I think this witness is going to say".

7 I mean, we've heard from all of the Church
8 and from the Cornwall Police saying, "If this witness comes
9 up and says this, what do you think about it?".

10 Now maybe, Mr. Engelmann -- so I think it's
11 similar to that. So you're going to finish off?

12 **MR. ENGELMANN:** I can and of course the
13 questions -- if it wasn't clear I expect this former
14 staffer to come forward and say what I've just put to this
15 witness.

16 **THE COMMISSIONER:** Well ---

17 **MR. ENGELMANN:** Mr. ---

18 **THE COMMISSIONER:** Yes, sir?

19 **MR. MANDERVILLE:** I apologize Mr.
20 Commissioner.

21 **THE COMMISSIONER:** Don't apologize.

22 **MR. MANDERVILLE:** I'm not sure why this
23 anonymous witness can hide behind a cloak of anonymity
24 when, by all accounts, they're making some perhaps fairly
25 serious allegations against Mr. Adams. We're all officers

1 of the court here. That's why I stepped forward.

2 Disclosure would be one issue and the name
3 of this person so that he knows the case he has to meet
4 would be something of interest rather than former staffer.
5 We've got lots of people hiding behind a cloak of anonymity
6 through the course of this Inquiry and that's my point.

7 **THE COMMISSIONER:** I will bite my tongue
8 about that, but what's good for the goose is good for the
9 gander sometimes.

10 Mr. Engelmann, are you in a position to
11 disclose the name of that person?

12 **MR. ENGELMANN:** Not at this time.

13 **THE COMMISSIONER:** Oh. Why not?

14 **MR. ENGELMANN:** The person has asked for
15 some anonymity. I've only had one -- we've only had one
16 meeting with her.

17 **THE COMMISSIONER:** Right.

18 **MR. ENGELMANN:** We're going to ask her to
19 come forward publicly ---

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

21 **MR. ENGELMANN:** --- if we can. She may or
22 may not want a moniker and I don't want to disclose the
23 name at this time.

24 I -- you know, we'll give due notice and
25 we'll give notice to Mr. McClelland as well and we'll give

1 notice in the normal course. I'm not going to do this on a
2 webcast at this time.

3 **THE COMMISSIONER:** Okay.

4 **MR. ENGELMANN:** What I've asserted is what I
5 expect this person will say.

6 **THE COMMISSIONER:** Okay.

7 So we know it's a former employee ---

8 **MR. ENGELMANN:** Yes.

9 **THE COMMISSIONER:** --- of a lawyer in ---

10 **MR. ENGELMANN:** Yeah, and to be fair, I
11 didn't mean to suggest that Mr. Adams refused to meet with
12 me. I, in fact, met with Mr. Adams but we couldn't get
13 into anything ---

14 **THE COMMISSIONER:** Right.

15 **MR. ENGELMANN:** --- because he indicated
16 that he needed to seek counsel.

17 **THE COMMISSIONER:** Right. And I think in
18 fairness what I tried to say was he had a good -- he had an
19 articuable reason. He was protecting the solicitor- client
20 and just unfortunate, but these things happen and this is
21 the situation we're in.

22 All right. Can you finish off quickly there
23 and then we can go home?

24 **MR. ENGELMANN:** So, sir, the facts that I
25 put to you that I expect a former staffer of Mr. Duncan

1 MacDonald to say here -- the last fact was you, Mr. Leduc,
2 Malcolm MacDonald and another young man -- a young man who
3 is unidentified are present at his office. He walks in and
4 doesn't say hello and then asks his staff to ask the four
5 of you to leave.

6 That -- you have no recollection of that,
7 sir?

8 **MR. ADAMS:** Let me be unequivocal. I have
9 no recollection. I do not believe it ever happened. To
10 the day that Duncan MacDonald died I considered him a
11 friend. He never conveyed to me, ever, that he was upset
12 with me. Is that clear enough?

13 **MR. ENGELMANN:** Well, part of it's clear.

14 **MR. ADAMS:** What isn't clear?

15 **MR. ENGELMANN:** The word "recollection",
16 sir.

17 **MR. ADAMS:** I'm telling you, unequivocally,
18 I do not recall. It didn't happen. What more do you want
19 me to say?

20 **MR. ENGELMANN:** You're saying here,
21 unequivocally, you were never at Duncan MacDonald's office
22 with Jacques Leduc, Malcolm MacDonald and another man.
23 That's what you're saying?

24 **MR. ADAMS:** That's what I'm saying, yes.

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

1 Sir, were you ever involved in the
2 prosecution or investigation of the attempt of obstruct
3 justice with Malcolm MacDonald?

4 **MR. ADAMS:** What do you mean?

5 **MR. ENGELMANN:** Were you ever contacted to
6 be a witness or to be involved in the investigation and-or
7 prosecution of Malcolm MacDonald on the attempt to obstruct
8 justice charge?

9 **MR. ADAMS:** I don't believe so. I was
10 questioned by the OPP.

11 **MR. ENGELMANN:** But after that there was no
12 contact by the OPP that you recall?

13 **MR. ADAMS:** I don't recall. I don't recall
14 any.

15 **THE COMMISSIONER:** Did you ever have any
16 discussions with Malcolm MacDonald about the obstruct
17 justice?

18 **MR. ADAMS:** No.

19 **MR. ENGELMANN:** Those are my questions.
20 Thank you.

21 **THE COMMISSIONER:** We'll see you tomorrow
22 morning at nine-thirty, sir.

23 **MR. ADAMS:** Thank you.

24 **THE COMMISSIONER:** What I propose to do
25 tomorrow is run from nine-thirty to one-thirty with the

1 appropriate breaks but -- so if some of you need a sugar
2 treat or something to keep you going till one-thirty, make
3 sure you bring some along.

4 Thank you.

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

7 This hearing is adjourned until tomorrow
8 morning at 9:30 a.m.

9 --- Upon adjourning at 4:32 p.m. /

10 L'audience est ajournée à 16h32

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C E R T I F I C A T I O N

I, Sean Prouse 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, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM