

**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 312

Held at :

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

Wednesday, November 26, 2008

Tenue à:

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

Mercredi, le 26 novembre 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Kelly Doctor	Commission Counsel
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
M ^e Claude Rouleau	Ontario Minister of Communit and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Peter Wardle	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDougald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Ian Paul	Coalition for Action
Mr. Larry O'Brien	D/Insp. Randy Millar
Insp. Timothy Smith	

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1 --- Upon commencing at 9:05 a.m./

2 L'audience débute à 9h05

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

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

8 Please be seated. Veuillez vous asseoir.

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

11 Good morning, sir.

12 **INSP. SMITH:** Good morning, sir.

13 **THE COMMISSIONER:** Mr. Engelmann.

14 **MR. ENGELMANN:** Good morning, Mr.
15 Commissioner.

16 **INSPECTOR TIM SMITH, Resumed/Sous le même serment:**

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

18 **INSP. SMITH:** Good morning, sir.

19 **MR. ENGELMANN:** Sir, I canvassed counsel
20 this morning about cross-examination and the global time is
21 around 7.5 to 8 hours.

22 **THE COMMISSIONER:** All right. Good.

23 **MR. ENGELMANN:** Those were people's
24 estimates.

25 **THE COMMISSIONER:** All right.

1 --- EXAMINATION-IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.
2 ENGELMANN (cont'd/suite):

3 **MR. ENGELMANN:** Mr. Smith, as I indicated
4 last night, I have just a few more areas to cover.

5 One of the ones I wanted to ask you about
6 was the conspiracy investigation during Project Truth. And
7 it's my understanding that it was decided to leave this
8 investigation until the end and, therefore, given your
9 retirement, you probably had little to do with it?

10 **INSP. SMITH:** That would be fair to say,
11 sir.

12 **MR. ENGELMANN:** All right. Because it's my
13 understanding it doesn't commence until mid- to late- 1998
14 and, in fact, from what I know of your involvement, you
15 would have been involved in two interviews, one of Murray
16 MacDonald on December 17th, '98 and one of Bishop LaRocque
17 on December 18th, '98?

18 **INSP. SMITH:** That sounds correct.

19 **MR. ENGELMANN:** Aside from those two
20 interviews, did you have anything else to do with that part
21 of the investigation, to your knowledge?

22 **INSP. SMITH:** Not that I recall, sir. I
23 sort of stayed away from it.

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

25 Because we had heard that Detective

1 Constable Dupuis prepared some set questions that were then
2 sent to people and, typically, either he and Detective
3 Inspector Hall would meet with them and these questions
4 were asked of people?

5 **INSP. SMITH:** That may be after my time.

6 **MR. KOZLOFF:** I don't believe the evidence
7 was that they were sent to people. I believe the evidence
8 is that they were given to people immediately prior to
9 their interview.

10 **THE COMMISSIONER:** Yes. Well, except for,
11 let's say, the lady down at the Saltaire Motel.

12 **MR. ENGELMANN:** Oh, I thought they were
13 given before.

14 **THE COMMISSIONER:** Now ---

15 **MR. ENGELMANN:** I thought they were given
16 before.

17 **THE COMMISSIONER:** What was that? The
18 questions to the police officers?

19 **MR. ENGELMANN:** Well, we'll ask Detective
20 Inspector Hall.

21 **THE COMMISSIONER:** So far, the evidence was
22 that they were given those documents immediately before the
23 interview, except for Mr. Lee who is going to come and tell
24 us ---

25 **MR. ENGELMANN:** Mr. Abell, it wasn't

1 immediately before, on his evidence. I'm not sure about
2 others.

3 **THE COMMISSIONER:** Okay. We may be at
4 crossroads here.

5 **MR. LEE:** At the very least, during my
6 cross-examination we demonstrated with Officer Dupuis that
7 Ron Lefebvre would have been given the questions a couple
8 of days in advance.

9 **THE COMMISSIONER:** Okay. So ---

10 **MR. ENGELMANN:** Yeah, let's just say the --

11 -

12 **THE COMMISSIONER:** Some were, some weren't.

13 **MR. ENGELMANN:** There's some confusion in
14 the evidence.

15 **THE COMMISSIONER:** Well, I don't think
16 there's confusion.

17 **MR. ENGELMANN:** In any event, you would have
18 had nothing to do with that, sir?

19 **INSP. SMITH:** I don't know, sir.

20 **MR. ENGELMANN:** Fair enough.

21 So I just want to take you to -- and, again,
22 this matter was concluded after you had already retired?

23 **INSP. SMITH:** I imagine it was, yes.

24 **MR. ENGELMANN:** Right.

25 So I just want to take you to one interview

1 because the interview of Bishop LaRocque is essentially
2 handled by Detective Inspector Hall. You were present.
3 The interview with Murray MacDonald, I want to take you to
4 that very briefly, if I can. It is Document Number 111529.

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: Exhibit 2683 is an
7 audiotaped interview report of Murray MacDonald taken on
8 December 17th, 1998.

9 --- EXHIBIT NO./PIÈCE NO. P-2683:

10 (111529) Audiotaped Interview Report of
11 Murray MacDonald taken on December 17, 1998

12 MR. ENGELMANN: Mr. Smith, it appears from
13 just the preamble that this interview had been done before,
14 but there had been some malfunction in the tape o it had to
15 be redone?

16 INSP. SMITH: Well, what happened, I think,
17 the day before, I had had a tape recorder that I had had
18 for a number of years and the clutch let loose.

19 MR. ENGELMANN: All right.

20 INSP. SMITH: So we found that the tape
21 didn't go and we revisited Mr. MacDonald the next day.

22 MR. ENGELMANN: The questions that we see
23 essentially asked by then Detective Sergeant Hall, starting
24 on the bottom of page -- Bates pages 397, 398, 399, 400,
25 were those from a set list of questions, to your knowledge?

1 **INSP. SMITH:** I believe they were, sir.

2 **MR. ENGELMANN:** Yeah. And, sir, after he
3 finishes with the set list of questions, there's a -- and I
4 think we're on page 404, Bates page 404, near the bottom.

5 **INSP. SMITH:** Yes.

6 **MR. ENGELMANN:** He then asks if you have any
7 questions?

8 **INSP. SMITH:** Yes.

9 **MR. ENGELMANN:** And then you ask a few
10 questions of Murray MacDonald?

11 **INSP. SMITH:** That's correct.

12 **MR. ENGELMANN:** Now, he -- because of the
13 type of investigation you're doing here, he would be
14 considered a suspect, right, in the conspiracy
15 investigation?

16 **INSP. SMITH:** I don't know. At that point,
17 I don't know if in '98 I would say -- I don't know. In
18 '94, certainly.

19 **MR. ENGELMANN:** Well, this was the beginning
20 of the re-investigation on the conspiracy theory?

21 **INSP. SMITH:** Well, from my point, he
22 wouldn't be a suspect then in '98. He may have been from
23 Pat's, but from my point he wasn't.

24 **MR. ENGELMANN:** All right. I was just going
25 to ask because you're there to get answers from him about

1 his role, right?

2 **INSP. SMITH:** Mainly, the lead was Pat to
3 find out his role, and I had some other knowledge maybe Pat
4 didn't, and that's why I interjected with some questions, I
5 guess.

6 **MR. ENGELMANN:** Because it seems to me, just
7 looking at the bottom of page 408 and onto page 409, it
8 seems to me you're giving information to Murray MacDonald
9 rather than getting it from him.

10 What I mean by that is if you read some of
11 these questions, you ask a question at the top of the page
12 on 408. There was, for want of a better word, a quit claim
13 or disclaimer signed by David Silmser. He did not wish to
14 proceed any further, and then you say at the bottom:

15 "Well, the gist that I'm trying to get
16 at is that it's alleged that all of
17 this was done in secret, but there was
18 documentation both between yourself and
19 the Cornwall Police in regard to these
20 allegations...So what I'm saying is
21 that..."

22 And I'm onto page 409:

23 "...these were secret, confidential
24 type of negotiations going on between
25 yourself and the police really isn't

1 true because there's documentation that
2 exists that's available for anybody to
3 obtain if they were..."

4 And then he says:

5 "It wasn't secret."

6 So it just appears from the questions we see
7 there that you're actually giving him information as
8 opposed to getting it, and that would be an unusual way to
9 interview someone who is a suspect. Is that fair?

10 **INSP. SMITH:** But he wasn't a suspect as far
11 as I was concerned.

12 **MR. ENGELMANN:** All right. Fair enough.
13 All right.

14 Let's talk quickly about retirement. In the
15 course of your retirement or in early '99, you were asked,
16 I believe, questions about who your successor should be by
17 then Superintendent Sweeney?

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

19 **MR. ENGELMANN:** And there is a Document
20 Number 738873. This is a Will State of Leo Joseph Sweeney.

21 **THE COMMISSIONER:** Thank you.

22 Exhibit 2684 is a Project Truth Inquiry
23 Officer Report and it's the Will State of Leo Joseph
24 Sweeney taken on September 27th, 2005.

25 --- **EXHIBIT NO./PIÈCE NO. P-2684:**

1 (738873) Project Truth Inquiry Officer
2 Report - Will State of Leo Joseph Sweeney -
3 September 27, 2005

4 **MR. ENGELMANN:** Sir, if you could turn to
5 the second page, Bates page 7174098 ---

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

7 **MR. ENGELMANN:** --- there's a reference to a
8 call you have with him on February 23rd, 1999? Is that
9 correct?

10 **INSP. SMITH:** At the bottom of the page?

11 **MR. ENGELMANN:** Yes.

12 **INSP. SMITH:** Yes.

13 **MR. ENGELMANN:** And the first thing you're
14 talking about is Dunlop again, and there's a concern that
15 he's disregarding the order not to talk to the press?

16 **INSP. SMITH:** No, that's -- the first thing
17 I was talking to him about was a weapons investigation in
18 Alexandria.

19 **MR. ENGELMANN:** Oh, okay, but was that
20 related to this, sir?

21 **INSP. SMITH:** No.

22 **MR. ENGELMANN:** Oh, okay. No, I
23 just -- with respect to these matters.

24 **INSP. SMITH:** I'll tell you what this call
25 was all about. It was that I was on my way to retire, and

1 I was giving him an up-date of all the cases that I had ---

2 **MR. ENGELMANN:** Okay.

3 **INSP. SMITH:** --- the status of them. I
4 wanted to assure that at the completion of Project Truth
5 that the officers that had been assigned would at least get
6 back to their previous positions as detectives rather than
7 being put back in uniform and on traffic patrol, which had
8 happened in the past, and I didn't think that was
9 appropriate.

10 We discussed the fact of the officers,
11 if -- in my absence Pat Hall was promoted to inspector --
12 he was on the list -- should there be a sergeant put in
13 place and I'd bring in somebody else? And I said, no, it
14 would be too late. We discussed the fact should one of the
15 officers become a sergeant, and I was against that -- that
16 could have caused some dissention.

17 And we discussed the strengths and
18 weaknesses of the officers in the investigation. And
19 that -- I think that pretty well covers everything ---

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

21 **INSP. SMITH:** --- in that meeting we talked
22 about.

23 **MR. ENGELMANN:** All right, well, you
24 indicated to him, essentially, that you thought
25 Detective -- then Detective Sergeant Hall would be an

1 excellent person to replace you ---

2 **INSP. SMITH:** Yes.

3 **MR. ENGELMANN:** --- as the case manager ---

4 **INSP. SMITH:** Yes.

5 **MR. ENGELMANN:** --- of Project Truth?

6 **INSP. SMITH:** It wouldn't be his call.

7 That's not his call, but I knew that Inspector Hall was
8 going to replace me.

9 **MR. ENGELMANN:** All right. And that comment
10 is found at Bates page 099:

11 "Pat Hall would be an excellent person
12 to replace Smith."

13 **INSP. SMITH:** Yes.

14 **MR. ENGELMANN:** You would have indicated
15 that to him?

16 **INSP. SMITH:** Yes.

17 **MR. ENGELMANN:** And you said you were asked
18 to make some comments about the other officers?

19 **INSP. SMITH:** Yes.

20 **MR. ENGELMANN:** And there are some comments
21 that are there on that page?

22 **INSP. SMITH:** Yes.

23 **MR. ENGELMANN:** Would you have said things
24 of that nature to him?

25 **INSP. SMITH:** Yes.

1 **MR. ENGELMANN:** Okay. Did you have
2 any -- despite what may be said there, did you have any
3 concerns about the conduct of any of these officers during
4 the Project Truth investigation?

5 **INSP. SMITH:** None whatsoever.

6 **MR. ENGELMANN:** All right. In hindsight,
7 would you have staffed your team any differently?

8 **INSP. SMITH:** No, sir.

9 **MR. ENGELMANN:** Sir, I want to ask you a
10 couple of questions about Garry Guzzo again.

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

12 **MR. ENGELMANN:** The last few entries in your
13 notes ---

14 **INSP. SMITH:** That's the end of my career, I
15 think, my last notes.

16 **MR. ENGELMANN:** It ends with a politician.
17 You have -- and I don't want to go through
18 them in any detail, but you -- it's the last two pages of
19 your notes at Bates pages 291 and 292 -- and there's a few
20 other references, sir, to Garry Guzzo.

21 As I understand it, you had some concerns
22 about media coverage where Mr. Guzzo was being critical of
23 the Project Truth investigation ---

24 **INSP. SMITH:** Yes.

25 **MR. ENGELMANN:** --- in broad strokes?

1 **INSP. SMITH:** And in the fact that he's said
2 that the OPP were a corrupt organization. I took great
3 exception to that.

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

5 And I'm wondering if you were particularly
6 concerned about a comment that would have been attributed
7 to him, or comments attributed to him, and it's -- I'm
8 looking at Exhibit 1152 -- and this is an article by a
9 reporter named Michael Woloschuk that's in the Toronto Sun?
10 And I believe the date is March 22nd, 1999.

11 **INSP. SMITH:** May I read it?

12 **MR. ENGELMANN:** Of course. I think the
13 concerns about the OPP are primarily on the column on the
14 right.

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

16 **INSP. SMITH:** Yes, sir.

17 **MR. ENGELMANN:** Okay. You were concerned
18 about this article?

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

20 **MR. ENGELMANN:** In fact, in your notes on
21 Bates page 291, two-thirds of the way down, you say:

22 "As a former judge, I find it
23 unbelievable Guzzo would judge us based
24 on Dunlop's info alone. Call
25 Superintendent Edgar."

1 I'm not sure what it says after that.
2 "[Something] wants to interview me"
3 [or] us. Told Edgar I won't lie and
4 I'll tell them the truth in this
5 matter. It may cause Guzzo
6 embarrassment because he has definitely
7 been used and misinformed on some
8 aspects by the Dunlops. I will call
9 Murray Segal and advise him of same and
10 get his opinion."

11 And then, 23rd March, '99:

12 "Received call page at home last night
13 from Segal. He requests all..."

14 I think it says ---

15 **INSP. SMITH:** "...newspaper..."

16 **MR. ENGELMANN:** "...newspaper clippings
17 where Guzzo has been quoted. Requests
18 I fax them to him tomorrow morning."

19 **INSP. SMITH:** M'hm, that's correct.

20 **MR. ENGELMANN:** "He will review and I can
21 call him at..." Okay?

22 **INSP. SMITH:** Yes.

23 **MR. ENGELMANN:** And then you have something
24 about faxing them to him, and this is the last thing in
25 your notes?

1 INSP. SMITH: Yes.

2 MR. ENGELMANN: So you're upset about this
3 article?

4 INSP. SMITH: Yes.

5 MR. ENGELMANN: This article doesn't talk
6 about corruption, but it suggests that things aren't moving
7 at the speed they should? This article by Woloschuk?

8 INSP. SMITH: There'd been previous articles
9 by him and I think in the legislature he'd been -- had a
10 lot to say about this, and it was my understanding that
11 there had been some conversation between Frechette and
12 himself ---

13 MR. ENGELMANN: Okay, yes.

14 INSP. SMITH: --- and there'd been
15 conversations -- if not at this time, there were
16 conversations between Pat Hall and then Chris Lewis, to
17 update him on what things were.

18 He'd indicated that he'd had evidence of
19 tapes that he had and was seen in New York and they were
20 undercover and things of this nature that would help, but
21 wouldn't provide to us.

22 You had a local -- another local politician
23 by the name of Cleary who said he had 140 names or
24 something of victims in the newspaper, but when confronted
25 admitted that that was just -- he was politicking; that he

1 didn't have them.

2 But all of this did not help our
3 investigation at all, and I feel that -- I felt that Guzzo
4 was grandstanding at the expense of Project Truth.

5 **MR. ENGELMANN:** All right. And as a
6 consequence, you called Superintendent Edgar?

7 **INSP. SMITH:** Yes.

8 **MR. ENGELMANN:** And who -- whose decision
9 was it for you to call Murray Segal?

10 **INSP. SMITH:** I believe he'd received a call
11 and Gary -- and -- that Segal wanted to speak to me
12 directly.

13 **MR. ENGELMANN:** All right. And after -- and
14 your notes end here, but ---

15 **INSP. SMITH:** Yeah.

16 **MR. ENGELMANN:** --- after you got all these
17 clippings together and would have sent them over to Segal,
18 did you call him as he had requested and ---

19 **INSP. SMITH:** Yeah.

20 **MR. ENGELMANN:** --- review that with him?

21 **INSP. SMITH:** I -- I called him. I provided
22 everything. I know I was at home when I called him. They
23 were going to do some -- I -- I was upset about the whole
24 thing and ---

25 **MR. ENGELMANN:** Sure.

1 **INSP. SMITH:** --- I said, okay. Pretty well
2 that was the end of -- the end of my career. I don't want
3 anything more to do with anything.

4 **MR. ENGELMANN:** And did you have a
5 discussion with both Edgar and Segal about this request for
6 you to be interviewed and that you might, in fact, do that?

7 **INSP. SMITH:** I don't recall that, but I
8 told him -- I -- I made it abundantly clear if I was
9 interviewed, I don't -- I don't care about Guzzo, I'm not
10 ---

11 **MR. ENGELMANN:** Yeah, you weren't going to
12 hold back.

13 **INSP. SMITH:** No, I -- I wasn't going to be
14 politically correct, so to speak. I --

15 **MR. ENGELMANN:** Yeah. All right. And, in
16 fact, we know that you did get interviewed?

17 **INSP. SMITH:** Yes.

18 **MR. ENGELMANN:** There's an article to that
19 effect. It's Exhibit 2524, sir.

20 **INSP. SMITH:** Michael Harris?

21 **MR. ENGELMANN:** I'll tell you in a sec.

22 **INSP. SMITH:** I believe.

23 **MR. ENGELMANN:** Yes.

24 **INSP. SMITH:** Yes.

25 **MR. ENGELMANN:** So it wasn't the same

1 journalist, but it was the same newspaper, the Toronto Sun?

2 INSP. SMITH: Ottawa Sun.

3 MR. ENGELMANN: Oh, and maybe he writes for
4 both, but ---

5 INSP. SMITH: Yes.

6 MR. ENGELMANN: --- the one we have is ---

7 INSP. SMITH: And ---

8 MR. ENGELMANN: --- is -- it says Toronto
9 Sun?

10 INSP. SMITH: He's an author. He also
11 wrote, On Holy Orders.

12 THE COMMISSIONER: Twenty-five (25)?

13 MR. ENGELMANN: Twenty-five twenty-four
14 (2524), the Document Number is 121104.

15 INSP. SMITH: Yes, sir.

16 MR. ENGELMANN: All right. So this is a --
17 as I understand it, both you and Superintendent or
18 Detective Inspector Edgar are interviewed by Michael
19 Harris?

20 INSP. SMITH: There were four of us present.
21 There was Pat Hall.

22 MR. ENGELMANN: Okay.

23 INSP. SMITH: Marion Burns, our secretary.
24 Larry Edgar and myself when he came to our office. And
25 there was one other officer, he was our force adjudicator,

1 but I forget his name. It escapes me.

2 MR. ENGELMANN: All right. Who did the
3 majority of the talking to the reporter?

4 INSP. SMITH: I did.

5 MR. ENGELMANN: All right. And you had told
6 us yesterday that you didn't give press interviews during
7 the course of an investigation, and I want to know why this
8 was different; because clearly this wasn't your typical
9 approach.

10 INSP. SMITH: No. I didn't make the
11 request. The request came from -- from Edgar. He said
12 that Michael Harris wanted to interview me on my retirement
13 and he -- he was doing, I think a three-piece article on
14 what was going on -- going on in -- in Cornwall. I think
15 this -- he worked with the Diocese; he worked with the
16 Dunlops and I think he worked -- and this was the last part
17 -- part of it and I consented to it.

18 MR. ENGELMANN: All right. It's a long
19 interview?

20 INSP. SMITH: I think we were about three
21 hours.

22 MR. ENGELMANN: Yeah. You would have
23 reviewed it afterwards and you would have read it
24 certainly?

25 INSP. SMITH: Yes, I did.

1 **MR. ENGELMANN:** And did you have any
2 concerns with what Mr. -- how Mr. Harris had portrayed
3 things that you told him?

4 **INSP. SMITH:** No, I think the -- he's an
5 excellent investigative reporter and very fair. I feel his
6 -- the remarks that I made are accurate.

7 **MR. ENGELMANN:** All right. Did you give any
8 other interviews at that time or just the one time?

9 **INSP. SMITH:** That was it.

10 **MR. ENGELMANN:** All right. Sir, a couple of
11 years after you retired -- we're done with that.

12 **INSP. SMITH:** M'hm.

13 **MR. ENGELMANN:** A couple of years after you
14 -- unless there was something ---

15 **INSP. SMITH:** No, that's fine.

16 **MR. ENGELMANN:** A couple of years after you
17 retired, in or around February of 2001, did you become
18 aware of an issue arising in the trial of Jacques Leduc?

19 **INSP. SMITH:** Well, I was subpoenaed to come
20 to court here in Cornwall.

21 **MR. ENGELMANN:** Okay. Let me just stop you
22 for a sec. Before you were summonsed, did you receive a
23 call from Pat Hall requesting information for disclosure
24 purposes?

25 **INSP. SMITH:** I vaguely recall something

1 about notes pertaining to what Joe Dupuis had told me about
2 Dunlop speaking to the victim's mother.

3 MR. ENGELMANN: All right. That's C-16's
4 mother?

5 INSP. SMITH: Oh, right. Yeah, okay.

6 MR. ENGELMANN: Let me just show you that
7 first if I can.

8 INSP. SMITH: Yeah.

9 MR. ENGELMANN: Because I think you prepared
10 a document in response to a request?

11 INSP. SMITH: I think I did.

12 MR. ENGELMANN: Document Number 701584.

13 THE COMMISSIONER: Thank you. Exhibit 2685
14 is a statement of Tim Smith dated February 9, 2001.

15 --- EXHIBIT NO./PIÈCE No. P-2685:

16 (701584) - Statement of Tim Smith re:
17 Project Truth dated 09 Feb 01

18 MR. ENGELMANN: Sir, would this be the
19 document you would have prepared after you were required to
20 put something together dealing with the issue of the
21 meeting that Officer Dupuis would have had at C-16's mother
22 -- with C-16's mother?

23 INSP. SMITH: Yes, that appears to be what
24 the -- what ---

25 MR. ENGELMANN: And you understood that this

1 would then be disclosed to defence because issues had
2 arisen?

3 **INSP. SMITH:** Yes.

4 **MR. ENGELMANN:** And they wanted further
5 disclosure?

6 **INSP. SMITH:** Yes.

7 **MR. ENGELMANN:** All right. And shortly
8 after this, were you summonsed to be a defence witness?

9 **INSP. SMITH:** I was subpoenaed.

10 **MR. ENGELMANN:** Yes?

11 **INSP. SMITH:** To come to Cornwall and -- I
12 didn't know who was -- who had subpoenaed me, but on my
13 arrival -- I'd never spoken with Ms. Hallett before she
14 handed me a subpoena and I read it and it had, witness for
15 the defence. And I asked her what did they want and she
16 said she didn't know. And I said, well, if they're -- if
17 I'm their witness, I want to know what they're going to ask
18 me. I'd known Skurka from before in a previous trial.

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

20 **INSP. SMITH:** So I went and saw him.

21 **MR. ENGELMANN:** Okay. But just before we
22 get there, I understood you -- you came in at least on the
23 19th, I'm not sure what ---

24 **INSP. SMITH:** The night before.

25 **MR. ENGELMANN:** --- what night of the week

1 that was. And you would have had a meeting with Hallett
2 and Hall that night?

3 **INSP. SMITH:** Oh, yeah, we went to dinner.
4 Yeah.

5 **MR. ENGELMANN:** All right. And you -- you
6 did some case preparation or discussion with the two of
7 them that evening?

8 **INSP. SMITH:** Not really, we just talked in
9 generalities.

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

11 **INSP. SMITH:** I'd never met her before so we
12 talked about the case and where it was going and all about
13 the whole investigation. It was -- had a few beer in her
14 room and it was ---

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

16 **INSP. SMITH:** --- it was a nice chat, but I
17 didn't know that I was a defence witness.

18 **MR. ENGELMANN:** All right. Well, you would
19 have known that evening when you and she and then-Detective
20 Inspector Hall were meeting?

21 **INSP. SMITH:** No, no.

22 **MR. ENGELMANN:** When did you get your
23 summons?

24 **INSP. SMITH:** In the morning when I went
25 into court.

1 **MR. ENGELMANN:** Oh, the next day the ---

2 **INSP. SMITH:** Yeah, I went into court and it
3 was handed to me.

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

5 **INSP. SMITH:** Here's -- and here's your
6 subpoena and they'll pay your expenses. I'm -- I'm no
7 longer a police officer. I'm a Mister and ---

8 **MR. ENGELMANN:** We know that.

9 **INSP. SMITH:** --- and I figured, well, what
10 do they want?

11 **MR. ENGELMANN:** All right. So in ---

12 **INSP. SMITH:** So I went to see them.

13 **MR. ENGELMANN:**.. That same morning, would
14 that have been the morning that Justice McKinnon recused
15 himself in court?

16 **INSP. SMITH:** I believe so.

17 **MR. ENGELMANN:** You were there?

18 **INSP. SMITH:** I believe so.

19 **MR. ENGELMANN:** All right. And after that
20 happened in the courtroom, did you or Detective Inspector
21 Hall ask or inform Ms. Hallett that you wanted to meet with
22 defence counsel?

23 **INSP. SMITH:** Let me take you back again and
24 I'll explain it. We -- court had stopped. We were at the
25 table. I was issued the subpoena; handed it to -- by Ms.

1 Hallett. I saw that it was defence. I asked her, "What do
2 they want?" She said, "I don't know." I'm acting for
3 myself not the other officers. I said, "I'm going to go
4 and see Mr. Skurka and ask him what he wants." And she
5 said, "Well, okay." I went. I didn't know the other
6 officers were following me. I went directly to a small,
7 small office outside the hall; spoke to Mr. Skurka. He
8 asked me if I had any notes that pertained to the
9 discussion that I had with Joe Dupuis on Dunlop and the
10 victim's mother and I said, no, but I recall vividly that
11 -- what had taken place. He said, "Well, fine, he said,
12 here's my card; send your expenses to me. I don't know if
13 I'm going to call you. The room was packed, Pat Hall came
14 in and I don't know if Dupuis was there or there were
15 another -- a number of officers. They were talking to Mr.
16 Campbell; I left.

17 I went back to the courtroom, Ms. Hallett
18 was packing up her binders and everything and asked what
19 they wanted, and I said they wanted something about if I
20 had any notes pertaining to the conversation. That was it.
21 The others came back ---

22 **MR. ENGELMANN:** Let me just stop you for a
23 second cause I want to make sure ---

24 **INSP. SMITH:** Okay.

25 **MR. ENGELMANN:** --- I haven't lost

1 something.

2 Would you have discussed the document we
3 just looked at, 2685, and told them that that was what you
4 ---

5 INSP. SMITH: This?

6 MR. ENGELMANN: Yeah.

7 INSP. SMITH: No.

8 MR. ENGELMANN: Okay.

9 INSP. SMITH: No.

10 MR. ENGELMANN: So you then left the room
11 and they carried on a discussion with Pat Hall and Joe
12 Dupuis?

13 INSP. SMITH: They were still there. I came
14 back and spoke to Ms. Hallett and I said it's all about the
15 disclosure from Joe Dupuis to me. They asked me if I had
16 notes they I said no -- I said no and he gave me a card and
17 said send my expenses to him and he'd pay.

18 She then -- the rest came back, there was
19 some conversation about a meeting to take place at one
20 o'clock back at her room and we went to lunch. She went
21 somewhere else. I was back there at ten to one. Quarter
22 after one she wasn't there, no message.

23 I don't wait anymore than 15 minutes for
24 anybody. I went downstairs and ordered a beer and I left a
25 message at the front that if she's looking for me, I'm down

1 there.

2 At 1:35 Pat Hall came down and said she's
3 back. I went up, she wanted me to get my notes out of the
4 car to review my notes. We went through my notes,
5 discussed a few things for about two hours. In the
6 meantime, Joe Dupuis came in the office -- or came into her
7 room, asked for a letter, she gave him a letter of some
8 sort and away he went. We continued with my notes and at
9 four o'clock I said goodbye and that was it.

10 **MR. ENGELMANN:** All right. Were you --
11 okay.

12 So were you asked by the defence counsel
13 when you were there in the meeting with them to produce any
14 kind of documents to them, any kind of disclosure?

15 **INSP. SMITH:** No.

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

17 **INSP. SMITH:** I didn't have any.

18 **MR. ENGELMANN:** And if you had had anything
19 to disclose, would you have disclosed directly to them or
20 is that something that you would have done through Ms.
21 Hallett?

22 **INSP. SMITH:** Well, if I had it should have
23 -- they should have had it.

24 **MR. ENGELMANN:** Correct.

25 **INSP. SMITH:** So, you know, what would I

1 disclose if -- you know -- if everything I had should have
2 been in the hands of Ms. Hallett, she'd disclose it.

3 **MR. ENGELMANN:** It's because the prosecutor
4 discloses -- the police give to the prosecutor, the
5 prosecutor gives to defence?

6 **INSP. SMITH:** That's been my ---

7 **MR. ENGELMANN:** That's been your experience.

8 **INSP. SMITH:** In some cases the prosecutors
9 say -- especially in the case with Mr. Neville when all of
10 that information came through, I think we delivered that
11 directly to Mr. Neville.

12 **MR. ENGELMANN:** But you were asked to do
13 that by the prosecutor at the time?

14 **INSP. SMITH:** Yes.

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

16 Do you know why Officers Dupuis and Hall
17 came with you when you asked to meet with defence counsel?

18 **INSP. SMITH:** No, because they followed me.
19 I was first in and then they came in behind me. I don't
20 know for what reason they were there.

21 **MR. ENGELMANN:** Were they in the room when
22 you were meeting with Skurka and Campbell?

23 **INSP. SMITH:** Yes.

24 **MR. ENGELMANN:** Or you just -- did you meet
25 with Skurka or Skurka and Campbell?

1 **INSP. SMITH:** Skurka and Campbell, and then
2 shortly after I was there, they came in.

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

4 **INSP. SMITH:** But I was -- for all intents
5 and purposes I was finished. Skurka didn't want to talk,
6 he just -- he said, do you have this -- do you have notes
7 or anything of that nature, and I said no.

8 **MR. ENGELMANN:** So would you -- what would
9 you describe the length of the time you would have met with
10 them?

11 **INSP. SMITH:** Less than a minute because I
12 asked them about one of his co-counsel in the murder trial
13 I had with him, and how she was doing, Leslie Pringle, and
14 he said fine, and then his attention was drawn to Mr.
15 Campbell and away I went.

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

17 And were you advised right then and there
18 that you weren't going to be required as a witness?

19 **INSP. SMITH:** He said I probably won't call
20 you, send your expenses to me, here's my card.

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

22 **INSP. SMITH:** You have to realize, sir, I'd
23 been off the scene for two years, this is the first
24 conversation I've had with Ms. Hallett, and I wasn't -- I
25 wasn't aware of everything that's going on. Since then I -

1 - I hear that there's difficulties with letters and notes,
2 but at that time I didn't know what was going on.

3 **MR. ENGELMANN:** All right. So you didn't
4 know what transpired between the two other officers and the
5 two defence counsel after you left?

6 **INSP. SMITH:** No.

7 **MR. ENGELMANN:** And did either Officer
8 Dupuis or Hall talk to you about it afterwards?

9 **INSP. SMITH:** Yes, later. Later on they
10 said that it was -- there was a letter that indicated that
11 there was disclosure made through Dunlop I think or
12 something, his file.

13 **MR. ENGELMANN:** When would you have been
14 told that and by whom?

15 **INSP. SMITH:** Well, certainly not that date
16 because Hall -- that was his anniversary and he left around
17 two o'clock and went to Ottawa. So it may have been a week
18 or two later.

19 **MR. ENGELMANN:** And did they advise you that
20 they had turned a letter over to defence counsel directly?

21 **INSP. SMITH:** I don't recall that. The next
22 thing I recall is I'm being interviewed by two officers
23 from York Region and that I wouldn't allow them to tape
24 record.

25 **MR. ENGELMANN:** Fair enough.

1 Let's look at Document Number 123033. Do
2 you know how that came about? Do you know why the York
3 Regional Police were investigating?

4 **INSP. SMITH:** Not really. There was -- to
5 tell the truth, sir, at this point I was fed up with this
6 whole thing. I didn't want anything more to do with
7 Project Truth. I didn't want -- it was all passé as far as
8 I was concerned. I had a different life now, I wasn't a
9 police officer. I had no stress. It was wonderful. And -
10 --

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

12 So you would not have complained to your
13 superiors or anybody in the Ministry of the Attorney
14 General about Ms. Hallett's conduct?

15 **INSP. SMITH:** I didn't have any superiors
16 anymore other than my wife. I didn't have to report to
17 anybody, sir.

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

19 And you wouldn't have asked your former
20 colleague, Detective Inspector Hall, to make any complaints
21 about Ms. Hallett or her conduct?

22 **INSP. SMITH:** I didn't see any misconduct by
23 Ms. Hall (sic).

24 **MR. ENGELMANN:** Fair enough. So --

25 **INSP. SMITH:** Hallett, I'm sorry.

1 **MR. ENGELMANN:** Hallett.

2 If we could look at -- it's -- oh, sorry,
3 this is a summary of the investigation done by the York
4 Regional Police in 2001.

5 **THE COMMISSIONER:** Exhibit 2686.

6 **INSP. SMITH:** They interviewed me at
7 Napanee Detachment.

8 **MR. ENGELMANN:** Sir, if you look at the
9 bottom of Bates page 562, there are three paragraphs that
10 deal with you. If you could just read them to yourself
11 quickly.

12 **INSP. SMITH:** Yes. The comment that I made
13 there, sir, and the way I understood it at the time, was
14 that had Ms. Hallett just got up and said, "Look, we missed
15 it, the officers missed it, there was no real intent", that
16 would have been enough.

17 But I guess she got into a long -- from --
18 from what I hear, a long explanation of some sort and then
19 it was twisted around by the defences if somebody had
20 wilfully withhold it, whether it was the police or herself.

21 **MR. ENGELMANN:** All right. Would you know -
22 - were you aware, sir, if she had actually made a statement
23 in court about missing something?

24 **INSP. SMITH:** Yes. I think there was. She
25 tried to defend herself for something a week later, I think

1 it was. I wasn't there.

2 MR. ENGELMANN: All right. Well, let's --
3 let's just talk about what you do know directly.

4 INSP. SMITH: Yeah.

5 MR. ENGELMANN: Anything inaccurate about
6 those three paragraphs?

7 INSP. SMITH: I just looked at the last one.
8 No, I feel that's accurate, sir.

9 MR. ENGELMANN: And the handwritten
10 statement that is indicated there, is that the document
11 that I just showed ---

12 INSP. SMITH: I think this -- this one here,
13 yes.

14 MR. ENGELMANN: Yes. The document you would
15 have prepared on your dealings?

16 INSP. SMITH: Yes, 7004077, that appears to
17 be it, yes.

18 MR. ENGELMANN: Okay. And other than that
19 you -- anything you would have heard about what Ms. Hallett
20 did in court, you would have heard from someone else?

21 INSP. SMITH: Yes.

22 MR. ENGELMANN: All right.

23 INSP. SMITH: Now, during the meeting that
24 we did have, she did mention -- she did ask how did I get
25 along with Pat Hall. I had the feeling that there was

1 maybe some difficulties between the two of them, and I told
2 her I got along fine with Pat Hall.

3 **MR. ENGELMANN:** That you got along fine ---

4 **INSP. SMITH:** Yes.

5 **MR. ENGELMANN:** --- with Pat?

6 **INSP. SMITH:** Yes.

7 **MR. ENGELMANN:** Yes. And you couldn't
8 really comment on their relationship, because you had just
9 met ---

10 **INSP. SMITH:** I didn't know.

11 **MR. ENGELMANN:** Yes.

12 Mr. Commissioner, I apologize; a couple of
13 things. One, Document Number 123033 had already been
14 entered during the evidence of Officer Dupuis.

15 **THE COMMISSIONER:** M'hm? So we can cancel
16 Exhibit 2686 then?

17 **MR. ENGELMANN:** Yes, 2686. And any
18 reference to that document should actually be to Exhibit
19 2620.

20 **THE COMMISSIONER:** Thank you.

21 **MR. ENGELMANN:** My apologies.

22 **INSP. SMITH:** I have since read what
23 Ms. Hallett had to say about this, and I disagree, that she
24 felt that I was part of a conspiracy by the police to -- to
25 backstab her, I guess, in regard to this letter. That

1 isn't the case. She's -- she's wrong.

2 **MR. ENGELMANN:** Okay, well, you weren't in
3 the room when that letter would have been discussed with
4 the defence ---

5 **INSP. SMITH:** No.

6 **MR. ENGELMANN:** --- counsel, and ---

7 **INSP. SMITH:** And I don't -- I don't
8 think ---

9 **MR. ENGELMANN:** --- Detective Sergeant
10 Hall?

11 **INSP. SMITH:** --- I've ever seen that
12 letter, and I take exception to what she said about me.
13 I -- that's not right; that's not true.

14 **MR. ENGELMANN:** You realize, though, sir,
15 when you were being interviewed by the York Regional
16 police, they were investigating her for a possible attempt
17 of obstruct justice?

18 **INSP. SMITH:** I -- that wasn't put to me
19 that way, I don't think.

20 **MR. ENGELMANN:** Okay.

21 **INSP. SMITH:** It was that they were
22 investigating the whole matter of the disclosure, and
23 everything that went about it.

24 **MR. ENGELMANN:** All right. Sir, I just have
25 a couple more questions for you.

1 **INSP. SMITH:** Yes. You said that before.

2 **MR. ENGELMANN:** No, but I mean it this time.

3 I do mean it this time.

4 **(LAUGHTER/RIRES)**

5 **INSP. SMITH:** Okay, sir, I'll believe you.

6 **MR. ENGELMANN:** All right. And I would have
7 spoken to you about this earlier; we've asked every witness
8 who's attended here to comment, if they wish, on some of
9 the personal effects dealing with either this case,
10 particularly, or dealing with the difficult and -- well,
11 dealing with the issue of the sexual abuse of children or
12 young people.

13 Clearly, you've worked in that area, and you
14 have extensive experience in it, and I know you've told us
15 a little bit about, I think, some of the effects on your
16 colleagues.

17 **INSP. SMITH:** Yes.

18 **MR. ENGELMANN:** If you do wish to comment on
19 the effects, either on yourself or on your colleagues,
20 doing this type of work?

21 **--- STATEMENT BY/DÉCLARATION PAR INSP. SMITH:**

22 **INSP. SMITH:** Yes, I would.

23 Mr. Commissioner, this was my last
24 investigation, and when you go out, you try to do your
25 best, and you don't like to go out on an investigation like

1 this; your reputation rests on it. We made mistakes, but I
2 tried the best I could.

3 Having said that, any other discomforts that
4 I may have, in regard to this, pale in comparison to what
5 the victims have suffered and what -- those that were
6 around the accused have suffered.

7 As far as giving recommendations from a
8 police point of view, I think I'm too far removed from what
9 has happened. I've been away from that scene for ten
10 years. I think you'll have a number of officers that will
11 come forward and give you better up-to-date
12 recommendations.

13 However, I would like to flip to Phase 2.
14 And Phase 2, I'm upset that the government cut you short,
15 and I'll tell you why: I'm still in contact with victims
16 from St. Joseph's and St. John's Training School. This is
17 after 18 years. Recently, I was informed -- I asked how
18 they were doing, if they were -- they had 1,600; we were
19 aware of 1,300.

20 A number of them are now dead. I'm informed
21 that 14 or 15 more of them suicided. They obtained their
22 reconciliation package; they got some money. With the
23 majority, it's all gone; the money's all gone.

24 Their relationships with their spouses, in a
25 number of cases, have fallen by the wayside. A number of

1 them have gone back to substance abuse. A number of them
2 look 20 years older than they actually are.

3 A great number of them are on social
4 assistance or on disability pensions, and a number of them
5 have a very poor outlook on life. There's no counselling.
6 And when I look at -- when I look at alcoholism, there's
7 support by the government for alcoholism; there's support
8 for drugs; there's support for gambling; but there's no
9 support for victims, male victims, of abuse.

10 And I would strongly urge you, in your
11 recommendations, sir, to impress upon the government that
12 it is not just the right thing to do, but it's economically
13 feasible to support those groups that support male victims
14 of sexual abuse, and provide counselling to these people.

15 Some of them may only need it once or twice
16 month, once or twice a year, some of them will require it
17 for the rest of their lives, and I think that's the least
18 that can be done.

19 Thank you.

20 **THE COMMISSIONER:** Thank you.

21 **MR. ENGELMANN:** I will not ask a second
22 question.

23 Thank you, Mr. Smith, and thank you for your
24 recommendations.

25 **INSP. SMITH:** Thank you, sir.

1 **MR. ENGELMANN:** A number of counsel will
2 have questions for you.

3 **INSP. SMITH:** Yes.

4 **MR. ENGELMANN:** They will identify
5 themselves, they'll tell you who they're acting for, and
6 they will put some questions.

7 **INSP. SMITH:** Thank you.

8 **MR. ENGELMANN:** Thank you.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Wardle?

11 **MR. WARDLE:** Good morning, Commissioner.

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

13 **WARDLE:**

14 **MR. WARDLE:** Good morning, Mr. Smith.

15 **INSP. SMITH:** Good morning, sir.

16 **MR. WARDLE:** My name's Peter Wardle and I'm
17 counsel for Citizens for Community Renewal, which is an
18 organization of concerned Cornwall citizens determined to
19 promote needed institutional reform so as to ensure the
20 protection of children and justice for all, and we've had
21 standing throughout the Inquiry.

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

23 **MR. WARDLE:** I'm going to ask you, sir,
24 about three areas.

25 I'm going to switch gears from where

1 Mr. Engelmann left off, and we're going to go backwards in
2 time. I'm going to ask you some questions about the 1994
3 re-investigation of the allegations made by David Silmser;
4 I'm going to ask you about the 1994 obstruction
5 investigation; and I'm going to ask you some questions,
6 generally, about the OPP's dealing with the press.

7 So those are the three areas I'm going to
8 cover. And I want to start, if I can, with your notes at
9 Exhibit 1803, and the first page of the notes, which has
10 the three items in the -- the 1994 mandate, if I could call
11 it that. Do you have Exhibit 1803?

12 **INSP. SMITH:** Yes, I have, yes.

13 **MR. WARDLE:** And do you have the entry
14 February 3rd, 1994, and questions to answers, 1, 2, 3?

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

16 **MR. WARDLE:** So, as I understand it, the
17 third item in the mandate was:

18 "In the absence of co-operation of
19 the alleged assault victim, should
20 Cornwall police consider proceeding
21 with the prosecution against the
22 police [sorry] against the priest?"

23 Do you see that?

24 **INSP. SMITH:** Yes.

25 **MR. WARDLE:** And my copy of your notes is

1 even smaller than yours, so I'm struggling a little bit.
2 But am I right, Mr. Smith, that it was intended, or it
3 became obvious pretty clearly, that if there were going to
4 be charges laid as a result of the re-investigation, that
5 it would be your force that would be laying the charges,
6 likely not the Cornwall Police Service?

7 **INSP. SMITH:** It would be us, sir.

8 **MR. WARDLE:** Okay. And it's also clear, is
9 it not, that this was a re-investigation from top to
10 bottom? Or did that become clear as you went along?

11 **INSP. SMITH:** We would take a portion of
12 their investigation up to a certain period and -- and,
13 maybe, fine-tune it, if we -- if I may use the term.

14 **MR. WARDLE:** And we canvassed this a little
15 bit, but by the time your force gets involved, some of this
16 has spilled out into the public domain, hasn't it ---

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

18 **MR. WARDLE:** --- because of the events of
19 January ---

20 **INSP. SMITH:** Yes, sir.

21 **MR. WARDLE:** --- 1994?

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

23 **MR. WARDLE:** The public's aware at this
24 point of Mr. Dunlop's role to a certain extent?

25 **INSP. SMITH:** Yes, I believe -- I believe

1 that's correct, sir.

2 **MR. WARDLE:** And there had been the press
3 conferences given by the Bishop which I'm sure you were
4 aware of?

5 **INSP. SMITH:** Yes, I think there were two.

6 **MR. WARDLE:** Yes.

7 **INSP. SMITH:** Yes.

8 **MR. WARDLE:** And Mr. Leduc was also present
9 at those -- at least one of those press conferences so his
10 name was in the media?

11 **INSP. SMITH:** Yes, I'd have to see the press
12 conferences to recall my memory on -- on all of that.

13 **MR. WARDLE:** And, of course, the priest in
14 question would have been a person in authority and so this
15 was something would -- which would have been of concern to
16 the public; correct?

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

18 **MR. WARDLE:** And would you agree with me
19 that there was a potential, from what you knew, for
20 multiple victims?

21 **INSP. SMITH:** Yes, sir.

22 **MR. WARDLE:** And so you understood, I take
23 it, that this reinvestigation was a matter of a very
24 delicate matter that would be -- have to be handled quite
25 carefully?

1 **INSP. SMITH:** Well, initially when I looked
2 at it, it would be -- we have one suspect, one victim, the
3 possibility of more coming forward. That's why I thought
4 that one officer could handle it. He'd done a number of
5 those before. Just because he's a priest doesn't make him
6 any different than anybody else, really.

7 **MR. WARDLE:** No. No, I understand that, but
8 because the matter had been in the public domain ---

9 **INSP. SMITH:** Yeah.

10 **MR. WARDLE:** --- and because there had
11 already been an investigation by another force, it wasn't a
12 run-of-the-mill investigation?

13 **INSP. SMITH:** No.

14 **MR. WARDLE:** Is that fair?

15 **INSP. SMITH:** None of my investigations are
16 run-of-the-mill, when I get called in, sir.

17 **MR. WARDLE:** In fact that's probably the
18 reason that you were brought in because this wasn't a run-
19 of-the-mill investigation?

20 **INSP. SMITH:** I'd -- I'd agree with you.

21 **MR. WARDLE:** Okay. And we talked about this
22 already in your evidence, but you've -- you've testified
23 that individuals who suffered this kind of abuse, male
24 survivors of historic cases, are fragile individuals?

25 **INSP. SMITH:** For the most part, yes, sir.

1 **MR. WARDLE:** They're people with lifelong
2 scars?

3 **INSP. SMITH:** Yes, sir.

4 **MR. WARDLE:** And they have a tendency to
5 have some kind of abuse in their background, either alcohol
6 or drugs?

7 **INSP. SMITH:** Very often, sir.

8 **MR. WARDLE:** And they can turn to crime?

9 **INSP. SMITH:** Very often, sir.

10 **MR. WARDLE:** And, of course, you've spoken,
11 I think quite eloquently, of the fact that some of these
12 survivors end up committing suicide?

13 **INSP. SMITH:** Yes.

14 **MR. WARDLE:** That certainly was your
15 experience in Alfred?

16 **INSP. SMITH:** And St. John's, yes, sir.

17 **MR. WARDLE:** Okay. And -- and you've also
18 said that often these individuals don't give details and,
19 in fact, you said that sometimes key events would come out
20 only at the trial; do you recall saying that?

21 **INSP. SMITH:** I recall saying that. I'll --
22 I'll take you back that when they decide to disclose, for
23 the most part, they'll disclose all their victims. They
24 will withhold offences of penetration and quite often we
25 found that those came out in trial.

1 **MR. WARDLE:** And here's what I wanted to
2 just get you to reflect on. You said the other day that
3 Mr. Silmser -- and I'm going to just quote from your
4 evidence. I won't take you to it, but it's in the
5 transcript of November 24th at page 243. And what you said
6 was:

7 "Of all the victims that I have ever
8 investigated, he is the most troubled
9 individual that I'd ever had as a
10 victim."

11 And I just want to -- you know, I understood
12 the context in which you said that, but could I suggest to
13 you that Mr. Silmser's problems were consistent with other
14 individuals you'd come across in your prior investigations?

15 **INSP. SMITH:** Yes.

16 **MR. WARDLE:** Okay. And perhaps the
17 difference, if there was a difference, was that Mr.
18 Silmser's allegations had already been in the public domain
19 and he had become a public figure at that point. His
20 allegations had been spilled out in a way that probably
21 hadn't happened to some of the other individuals you'd
22 dealt with?

23 **INSP. SMITH:** That's true, sir.

24 **MR. WARDLE:** Okay. And it's also true,
25 isn't it, that you were initially under the impression that

1 Mr. Silmsen wasn't going to co-operate, but it became clear
2 early on through his counsel that he would, in fact, meet
3 with your team and give an interview?

4 **INSP. SMITH:** That's correct.

5 **MR. WARDLE:** And am I also correct that
6 generally, when you looked at a case like this, a historic
7 case, you would always be thinking in the back of your mind
8 that it would be useful to find other victims?

9 **INSP. SMITH:** Yes, ideally.

10 **MR. WARDLE:** And the reason for that, as
11 we've discussed with a number of witnesses, is because
12 these are historic cases where there's really -- it's one
13 person's word against another and it can be very difficult
14 to get a prosecution unless there are multiple victims?

15 **INSP. SMITH:** Exactly.

16 **MR. WARDLE:** So I want to just run through a
17 little bit of the investigation and get you, if I can, to
18 reflect on it. And first of all, just from your notes, it
19 appears that you become involved on October the 3rd; you
20 meet with Acting Chief of Police Carl Johnston?

21 **INSP. SMITH:** October 3rd or February?

22 **MR. WARDLE:** I'm sorry. I'm sorry, did I
23 misspeak myself? February the 3rd. You set up a meeting
24 almost immediately with the Acting Chief and from reading
25 your notes, you -- he turns over a file to you. And within

1 a relatively short period of time, two or three weeks, you
2 have an interview with Mr. Silmsers?

3 **INSP. SMITH:** That's correct, sir. I think
4 that was the first available time that we could have -- I
5 think there was one cancellation in between there. He
6 wanted his lawyer present.

7 **MR. WARDLE:** And then there are a series of
8 other steps and other interviews done during the
9 investigation, mostly, but not exclusively, by Officer
10 Fagan. And then the -- one of the last steps in the
11 investigation is the interview of Father Charles MacDonald,
12 which takes place in June?

13 **INSP. SMITH:** Yes.

14 **MR. WARDLE:** And I'm not saying the
15 investigation ended there, but that would be sort of the
16 book ends of the investigation?

17 **INSP. SMITH:** It's not unusual that we do it
18 that way. We get as many victims as we can; get their
19 statements prior to interviewing the suspect.

20 **MR. WARDLE:** And I note from your notes that
21 at some point in June, Officer Fagan is tasked with getting
22 school records, for example?

23 **INSP. SMITH:** Yes.

24 **MR. WARDLE:** There was a photograph that you
25 wanted at one of the locations?

1 **INSP. SMITH:** Yes.

2 **MR. WARDLE:** And that's part of the
3 investigation?

4 **INSP. SMITH:** Yeah, that was part of it.

5 **MR. WARDLE:** Okay. And at -- I think Mr.
6 Engelmann pointed out to you that you re-interviewed
7 everyone who had been interviewed by the Cornwall Police
8 and then you did a couple of additional interviews?

9 **INSP. SMITH:** I believe so, yes, sir.

10 **MR. WARDLE:** And just looking, thinking in
11 retrospect about Mr. Silmsers' interview and some of the
12 comments he made about the interview when he testified
13 here, do you think in retrospect it might have been better
14 to leave that interview until you had collected some of the
15 other data, for example, regarding school attendance, those
16 kinds of things?

17 **INSP. SMITH:** Well, when -- when you
18 commence an investigation, you go to the complainant first.
19 My understanding was that I was going to have complete co-
20 operation with Mr. Silmsers through his counsel and it
21 appeared that that was the case. In a number of cases in
22 the past, what we've done, we've included the victim in
23 part of our investigation; go through family albums; speak
24 to your friends; see if you can get dates; help us get your
25 school records and they feel that they become part of the

1 investigation. We found that that's helped. I thought
2 that that may have worked in this case, but it didn't seem
3 to come about.

4 And I mentioned earlier, I failed to realize
5 that this was about the sixth interview of Mr. Silmsen on
6 the same thing. And the location that I took that
7 statement probably put me on -- off on a bad foot right at
8 the start. And in hindsight, I -- I could have done
9 better. I could have found another place to take that
10 statement.

11 **MR. WARDLE:** And you said that and I think
12 we covered this with Mr. Engelmann, but if we just turn up
13 the interview, I want to go back to this. This is Exhibit
14 267.

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

16 **MR. WARDLE:** Do you have that in front of
17 you sir?

18 **THE COMMISSIONER:** It's coming.

19 **INSP. SMITH:** No. No, sir.

20 **THE COMMISSIONER:** Okay.

21 **INSP. SMITH:** Yes, sir.

22 **MR. WARDLE:** So as I understand it, you had
23 a copy of his handwritten statement from the Cornwall
24 Police Service investigation. It's not clear whether he
25 had it or had reviewed it at the time of this interview.

1 **INSP. SMITH:** My understanding, he had a
2 copy of that. His lawyer did. Whether he had it there at
3 the time, I don't know.

4 **MR. WARDLE:** Okay. So his -- you assumed
5 his lawyer had it, you don't know whether he in fact
6 reviewed it prior to the interview; is that fair?

7 **INSP. SMITH:** I would assume that if he had
8 a lawyer and that they knew several days in advance that
9 they were going to be interviewed on that statement and
10 that -- that they would have reviewed it. A good lawyer or
11 any lawyer certainly with his client would have reviewed
12 that prior to my interview.

13 **MR. WARDLE:** No, I understand that's what
14 you assume, sir, but you didn't -- you didn't ask him that
15 during the interview.

16 **INSP. SMITH:** And he didn't volunteer.

17 **MR. WARDLE:** Correct. And when I read your
18 interview it's not built on the original interview, is it,
19 it's a complete soup to nuts, let's start at the beginning
20 and go from there; correct?

21 **MR. KOZLOFF:** Sorry. May I?

22 **MR. WARDLE:** Yes.

23 **THE COMMISSIONER:** You have to share the
24 microphone.

25 **MR. KOZLOFF:** Because I get -- I get into a

1 lot of trouble, Mr. Wardle, with the people behind me.

2 **MR. WARDLE:** Yes.

3 **MR. KOZLOFF:** My friend referred to the
4 word, "interview."

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

6 **MR. KOZLOFF:** I'm not sure whether he's
7 referring to the interview conducted with Mr. Silmsers on
8 the 28th of January, or the interview conducted with the CAS
9 on the 4th of November, or in fact he mis-spoke and really
10 mean the statement written out apparently by Mr. Silmsers
11 and handed to the Cornwall Police in February.

12 **THE COMMISSIONER:** All right. So let's
13 clear that up.

14 **MR. WARDLE:** Fortunately I have Mr. Kozloff
15 to help me, and I did intend to refer to the statement, so
16 let me rephrase the question, Mr. Smith.

17 The -- you had Mr. Silmsers's handwritten
18 statement which gives certain information about the alleged
19 offences; correct?

20 **INSP. SMITH:** I had a copy of it, yes.

21 **MR. WARDLE:** And as I understand it, this
22 interview was not intended to flesh out that statement, but
23 in fact started at the beginning and worked through the
24 chronology?

25 **INSP. SMITH:** I believe so.

1 **MR. WARDLE:** Okay. And you knew that Mr.
2 Silmsler had been interviewed a number of occasions, did you
3 have all of those interviews?

4 **INSP. SMITH:** No, sir.

5 **MR. WARDLE:** Okay. Do you remember which
6 ones you had? I take it you would have had the entire
7 Cornwall Police Service file?

8 **INSP. SMITH:** I can't remember.

9 **MR. WARDLE:** Okay. And you were obviously
10 alert to the dangers of reinterviewing, because you've told
11 us about that.

12 **INSP. SMITH:** Yes, sir.

13 **MR. WARDLE:** And given the dangers here I'm
14 wondering, just in retrospect, whether you now think it was
15 a good idea to do a completely fresh interview of this
16 gentleman at this point in time, or whether in retrospect
17 you might have done it a little bit differently?

18 **INSP. SMITH:** Well, have you read his
19 statement that he provided to the police?

20 **MR. WARDLE:** Yes, I have.

21 **INSP. SMITH:** Okay.

22 **MR. WARDLE:** And we can turn it up if you
23 want to look at it, because it's here.

24 **INSP. SMITH:** No, but I -- I'll -- let me
25 tell you, sir; within that statement what he has described

1 there's insufficiency.

2 **MR. WARDLE:** Yes?

3 **INSP. SMITH:** There's no way that a charge
4 could ever be laid based on that statement. If he wanted
5 charges laid then he had to give more details on each
6 event. How am I going to get those details without
7 interviewing him?

8 **MR. WARDLE:** No, I wasn't suggesting, sir,
9 that you shouldn't interview him, I was simply asking about
10 the interviewing technique.

11 **INSP. SMITH:** Well, can you suggest to me
12 how -- I'm an experienced -- or I was an experienced police
13 officer.

14 **MR. WARDLE:** You are an experienced --
15 you're a very experienced police officer.

16 **INSP. SMITH:** Yeah, interviewing -- I've
17 interviewed thousands of suspects for murders down -- down,
18 and I'll tell you, first of all, I don't hand a piece of
19 paper to somebody and say, "Give me a statement." I'll
20 start at day one and follow then through as best I can.

21 **MR. WARDLE:** M'hm.

22 **INSP. SMITH:** But if you can suggest to me,
23 sir, how I should -- should have conducted that
24 investigation, I'll listen to you, and we'll either agree
25 or disagree.

1 **MR. WARDLE:** Well, one possible way of doing
2 it, sir, would have been to simply put the handwritten
3 statement in front of him and ask him to elaborate on some
4 of the answers he'd given.

5 **INSP. SMITH:** That's a possibility.

6 **MR. WARDLE:** And we've already talked about
7 the fact that this took place at a police station. Did you
8 think about other ways to make Mr. Silmsers comfortable
9 during this interview?

10 **INSP. SMITH:** We've alluded to that in the
11 past, and I wasn't aware of Mr. Silmsers dislike of police
12 at that point ---

13 **MR. WARDLE:** Okay.

14 **INSP. SMITH:** --- to that extent. And I
15 admitted that in hindsight I may have found somewhere else.
16 I wanted this -- I wanted this statement videotaped; 1994,
17 sir, we didn't have videotape rooms within the OPP. There
18 may have been something with the CAS in Ottawa, there may
19 have been some other location I could get, but the only
20 place at that time that I was aware of was at the Kanata
21 Ident room that we had.

22 Their poor room, their -- it's a hard
23 interview room, since that time we've learned and we have
24 what we call hard interview rooms, soft interview rooms.

25 Today if I was to interview Mr. Silmsers I

1 would use a soft interview room, off site, I would speak to
2 his lawyer and ask if he had had a chance to review all of
3 the other statements prior and then proceed from there.

4 **MR. WARDLE:** And, sir, you know, you
5 understand we're doing this with the benefit of hindsight,
6 but we're also doing it with a view to thinking about
7 recommendations for the future.

8 **INSP. SMITH:** Well, I have no difficulty
9 with that, sir.

10 **MR. WARDLE:** Okay.

11 **INSP. SMITH:** And ---

12 **MR. WARDLE:** And so, you know, you are --
13 you're an intelligent individual, you're obviously being
14 scrutinized about events that are now 14 and 15 years old -
15 --

16 **INSP. SMITH:** M'hm.

17 **MR. WARDLE:** --- but we are looking at these
18 events ---

19 **INSP. SMITH:** Okay.

20 **MR. WARDLE:** --- to some extent to think
21 about the future, not about the past.

22 **INSP. SMITH:** Well, and I appreciate that
23 and I -- I agree.

24 **MR. WARDEL:** Okay. And one other comment
25 about the interview, and just because you did indicate, and

1 you've obviously read Mr. Silmser's evidence, that he felt
2 you were pushing him. He used that expression. You spent
3 a significant amount of time exploring the last alleged
4 offence and a penetration issue.

5 **INSP. SMITH:** Yes.

6 **MR. WARDEL:** And in fact I would describe it
7 not as aggressive, but persistent, would you agree with
8 that?

9 **INSP. SMITH:** Yes.

10 **MR. WARDEL:** And do you think in retrospect
11 that that's the -- that was the appropriate technique with
12 this particular individual, or is that something that
13 perhaps you should have left and explored at another -- on
14 another occasion.

15 **INSP. SMITH:** No, I didn't want to take
16 another statement again at another location, that would
17 have been seven statements. It would be a defence
18 counsel's field day.

19 **MR. WARDEL:** So this was your opportunity,
20 that's the way you saw it?

21 **INSP. SMITH:** It was my one and only
22 opportunity, sir, because if I have to take further
23 interviews in regard to the description of the offences,
24 there are enough defence counsel I know out here that have
25 had experience with that would have a heyday with that.

1 **MR. WARDEL:** Okay.

2 **INSP. SMITH:** And make it even tougher on
3 the -- on the victim or complainant.

4 **MR. WARDEL:** Can I just take you finally to
5 one -- while we have the statement up, page 42 of the
6 statement.

7 **INSP. SMITH:** Yes, sir. Yes, sir.

8 **MR. WARDEL:** Just waiting till we get it up
9 on the screen.

10 **INSP. SMITH:** Oh, I'm sorry.

11 **MR. WARDEL:** Now, you're interview was
12 obviously focused on the alleged offences involving Father
13 Charles MacDonald; correct?

14 **INSP. SMITH:** Yes.

15 **MR. WARDEL:** But you also made sure you
16 canvassed the whole issue of the settlement and the
17 release?

18 **INSP. SMITH:** Yes.

19 **MR. WARDEL:** And on page 42 I see you ask
20 the witness about the settlement and the stipulations
21 attached to it?

22 **INSP. SMITH:** Yes.

23 **MR. WARDLE:** And I note that the witness
24 says -- you ask towards the bottom of the page:

25 "And whose idea was this?"

1 Answer:

2 "Malcolm MacDonald's and the Church's."

3 And then you say, "And the church" and then
4 the witness goes on and you go into a different area.

5 Now, I'm not sure -- did you take anything
6 from the fact that Mr. Silmser, who'd been a party to this
7 settlement, was of the view that this stipulation had been
8 the idea of Malcolm MacDonald and the Church or did you
9 think he was in a position to know much about it?

10 **INSP. SMITH:** I don't think -- he just
11 wanted the money, sir, and it was his figure, 32,000. The
12 police investigation had dragged; he wanted closure, and I
13 don't think that Mr. Silmser would realize the difference
14 between civil and criminal.

15 **MR. WARDLE:** Can I then just move on, if I
16 may, to the other individuals who you and your team
17 interviewed who made allegations involving Father Charles
18 MacDonald. And Mr. Engelmann canvassed with you that there
19 were four, one was not really an interview; this was C-3.

20 **THE COMMISSIONER:** Do you know who C-3 is?

21 **MR. WARDLE:** Perhaps we can get the moniker
22 list up for you.

23 **INSP. SMITH:** I think ---

24 **THE COMMISSIONER:** Just make sure.

25 **INSP. SMITH:** I've got to be careful; C-3, I

1 think I know who he is. Yes, there was an interview done
2 with him, sir. There was an interview done with him.

3 **MR. WARDLE:** There was an interview done
4 with C-3 but he refused to give a statement.

5 **INSP. SMITH:** There was an interview later
6 taken by C-3, sir.

7 **MR. WARDLE:** Yes, but not in 1994.

8 **INSP. SMITH:** Okay, but -- no, not in '94.
9 But you said there wasn't. I'm just ---

10 **MR. WARDLE:** Okay. I'm just -- I'm asking
11 about during the 1994 investigation of these allegations,
12 there were four individuals that you knew about ---

13 **INSP. SMITH:** Yes.

14 **MR. WARDLE:** --- who had claims of one kind
15 or another involving Father Charles MacDonald.

16 **INSP. SMITH:** Yes.

17 **MR. WARDLE:** Okay. And one of these was C-
18 3, had made allegations to the -- during -- let me back up.
19 C-3 had been contacted by the Cornwall Police Service by
20 Heidi Sebalj; correct?

21 **INSP. SMITH:** Correct.

22 **MR. WARDLE:** And, in fact, she'd met with
23 him?

24 **INSP. SMITH:** I can't remember. I know
25 there was contact between them.

1 **MR. WARDLE:** Okay. And he had made
2 allegations to her of a serious nature?

3 **INSP. SMITH:** Yes.

4 **MR. WARDLE:** But he had taken the position
5 consistently that he did not want to get involved and would
6 not give a statement. Do you recall that?

7 **INSP. SMITH:** Yes, sir.

8 **MR. WARDLE:** Okay. And the other
9 allegations, there was another individual, C-56, who'd also
10 been interviewed by Ms. Sebalj. Do you recall that?

11 **INSP. SMITH:** I'm going to need some help.
12 Yes.

13 **MR. WARDLE:** And then there were two other
14 individuals, and this was canvassed with you, C-88 and C-
15 89, who were interviewed by Officer Fagan; correct?

16 **INSP. SMITH:** Eighty-eight (88) and 89? If
17 you say so. I don't -- I didn't interview those people.

18 **MR. WARDLE:** All right.
19 They're in Exhibit 2562, which is the Crown
20 brief index.

21 **INSP. SMITH:** If you say so. The names are
22 familiar and I believe that those were consensual, if I'm
23 not mistaken.

24 **MR. WARDLE:** Well, do you recall one was a
25 consensual episode involving someone who was an adult?

1 **INSP. SMITH:** Yes.

2 **MR. WARDLE:** And do you recall one was the
3 trip to Florida and the so-called wrestling match?

4 **INSP. SMITH:** You mean Pennsylvania.

5 **MR. WARDLE:** Pennsylvania. In the hotel
6 room?

7 **INSP. SMITH:** Right.

8 **MR. WARDLE:** Okay. But you would agree, I
9 take it, that taken together these four individuals,
10 regardless of what their allegations would mean legally,
11 would provide some support, in your mind, for what Mr.
12 Silmsler was telling you?

13 **INSP. SMITH:** I have to be careful here.
14 Just because a person's a homosexual doesn't mean that he's
15 a molester.

16 **MR. WARDLE:** Absolutely.

17 **INSP. SMITH:** And so I'd have to be careful
18 in considering some of those. The other one -- and I think
19 we mentioned with Mr. Engelmann yesterday about wrestling
20 around, I have troubles with that.

21 **MR. WARDLE:** Right.

22 **INSP. SMITH:** And if I was to use those as
23 similar fact or attempt to use those as similar fact in a
24 trial, the defence counsel that I see out here would have a
25 heyday with that.

1 **MR. WARDLE:** No, and that's why I said
2 regardless of what they would mean legally, because some of
3 these incidents probably meant nothing legally. You'd
4 agree with that I think?

5 **INSP. SMITH:** Civilly they may.

6 **MR. WARDLE:** Right. But criminally they
7 probably could not be used as similar fact evidence for a
8 variety of reasons.

9 **INSP. SMITH:** Well, I would -- that's my
10 opinion. I'm not a lawyer. But I would provide that to
11 the Crown attorney and see what he says.

12 **MR. WARDLE:** But do you agree with me that
13 in total, given that you had these four individuals, that
14 it gave you some comfort that Mr. Silmser might be telling
15 the truth?

16 **INSP. SMITH:** I didn't need them. I'll tell
17 you, I'll go right back to the first thing that Mr. Silmser
18 said and I'll go right back, and he said all he wanted was
19 a letter to show his mother that these things happened and
20 that because of these things this is the way his life
21 turned out.

22 And I've said this before, I've heard that
23 at least 100 times from victims of sexual abuse, and when
24 they say that to me I know right off the bat that they've
25 been abused; I'm not saying by who but they are victims of

1 abuse.

2 **MR. WARDLE:** Okay. So given what we've
3 already established about -- in these kinds of cases, it
4 being helpful, and often the only way to get a conviction,
5 to encourage other victims to come forward. I just want to
6 explore a little bit the way you dealt with C-3, because
7 there's really only the one telephone contact with him;
8 correct?

9 **INSP. SMITH:** Yes.

10 **MR. WARDLE:** And you delegated that,
11 obviously?

12 **INSP. SMITH:** Well, that part of the
13 investigation, sir, was Fagan's. I'm a detective
14 inspector.

15 **MR. WARDLE:** Yes.

16 **INSP. SMITH:** I took the route in this
17 investigation to take care of the conspiracy end of it and
18 Fagan was going to look at that. I was to supervise it.

19 **MR. WARDLE:** I guess what I'm getting at is
20 did you see this individual, C-3, as being particularly
21 important, given you'd got the file from the Cornwall
22 Police Service; you knew he was out there; you knew he'd
23 had some communications with Heidi Sebalj and had disclosed
24 some information to her, and you knew at some point after
25 Officer Fagan speaks to him that he'd had some

1 communications with the Diocese?

2 **INSP. SMITH:** Yes, he was important, and
3 you'll see as time goes on that we did get him and ---

4 **MR. WARDLE:** Well, I'm not sure that you got
5 him but that's another question.

6 **INSP. SMITH:** Project Truth got him.

7 **MR. WARDLE:** He did eventually make his way
8 to Project Truth but how he got there is another question.

9 **INSP. SMITH:** Well, we got him. We got a
10 statement from him. He testified.

11 **MR. WARDLE:** So I guess my question is given
12 that in 1994 you saw C-3 as an important piece in the
13 puzzle, were there more efforts that perhaps should have
14 been made at that time to see if he could come forward?

15 **INSP. SMITH:** My experience has been no.
16 We've banged on doors and we've written letters and we've
17 done other things with others that were reluctant, good
18 witnesses we could have had, and they've told us, "Leave me
19 alone. Stay away from me. I've put that behind me." And
20 if you leave them alone after a while and they see some
21 things happen slowly after they'll come back; "Well, here's
22 the phone number. Give us a call."

23 **MR. WARDLE:** Okay.

24 **INSP. SMITH:** But if we hound them, sir, you
25 reopen wounds and they'll disassociate themselves from it,

1 and I can give you some examples that we had in St. Joe's
2 and St. John's. It's -- it's a balancing act, sir. You
3 walk on eggshells when you deal with these reluctant
4 victims. Sometimes you can get them; sometimes you can't.

5 **MR. WARDLE:** And I understand, sir, that
6 you've taken the position that you always left the door
7 open; that you had a sense further victims might come
8 forward?

9 **INSP. SMITH:** Well, yeah, I -- I try. Yeah.

10 **MR. WARDLE:** I understand that. Can we turn
11 then to the second part of the investigation which is
12 described in your notes, Exhibit 1803 on the first page:

13 "Was there obstruction of justice by
14 lawyers who brought about civil
15 settlement of assault victim which
16 resulted in termination of police
17 investigation upon consultation with
18 local Crown attorney?"

19 I think I've read that correctly.

20 **INSP. SMITH:** Yes.

21 **MR. WARDLE:** And I didn't quite understand
22 your evidence the other day, did you interpret this as
23 allowing you to examine whether the lawyers' principals had
24 participated in an obstruction of justice?

25 **INSP. SMITH:** The Bishop -- you're thinking

1 about the Bishop?

2 MR. WARDLE: I am thinking about the Bishop
3 and the Diocese?

4 INSP. SMITH: Yeah. I think I would include
5 that, yes, sir.

6 MR. WARDLE: Okay. And you told us in
7 connection with the conspiracy investigation that you look
8 at motive and reward?

9 INSP. SMITH: Yes, sir.

10 MR. WARDLE: And would you agree that with
11 an obstruct investigation you also look at motive and
12 reward?

13 INSP. SMITH: Yes, sir.

14 MR. WARDLE: And clearly here, Father
15 Charles MacDonald, assuming the Silmser allegations were
16 valid, would have had a motive?

17 INSP. SMITH: Yes.

18 MR. WARDLE: Correct?

19 INSP. SMITH: Yes.

20 MR. WARDLE: And potentially the Diocese and
21 the Bishop had the same -- not the same motive, but they
22 also had a motive?

23 INSP. SMITH: There was gain.

24 MR. WARDLE: There would have been gain to
25 the Diocese?

1 **INSP. SMITH:** And to Charles.

2 **MR. WARDLE:** And to Charles to end a
3 potential criminal prosecution?

4 **INSP. SMITH:** Yes.

5 **MR. WARDLE:** Okay. And in the case of the
6 Diocese that might well be to avoid damage to its
7 reputation?

8 **INSP. SMITH:** Yes.

9 **MR. WARDLE:** And would you agree that if the
10 Diocese had a motive, that might have given the lawyer for
11 the Diocese that motive as well?

12 **INSP. SMITH:** Well, they both go hand in
13 hand, sir.

14 **MR. WARDLE:** That's really what I'm
15 suggesting. So with that in mind, can we agree that at the
16 outset at least, one potential target of this investigation
17 would have been Mr. Leduc?

18 **INSP. SMITH:** Yes, sir.

19 **MR. WARDLE:** Okay. And the other targets
20 obviously would have included Malcolm MacDonald, Sean
21 Adams, potentially the Diocese?

22 **INSP. SMITH:** Well, I don't -- I'm -- not
23 Sean Adams. I've got troubles with that.

24 **MR. WARDLE:** Okay. So even at the outset
25 you thought it was unlikely that Sean Adams would have been

1 a potential target?

2 **INSP. SMITH:** If -- if you wanted a
3 conspiracy to work, then you -- that would all be set up
4 beforehand. The independent counsel would be all set up.
5 He came out of the blue.

6 **MR. WARDLE:** Okay?

7 **INSP. SMITH:** And he came actually from
8 Silmsler, not from Leduc or Malcolm MacDonald or the Bishop.

9 **MR. WARDLE:** So let me ask you now about an
10 entry in your notes, and Mr. Engelmann canvassed this with
11 you briefly, but I want to turn to it in a little more
12 detail. It's at Bates page 217 and it's the meeting with
13 Doug and Nancy Seguin.

14 **INSP. SMITH:** Yes, sir.

15 **MR. WARDLE:** And as I understand it, Mrs.
16 Seguin had had a meeting with Bishop Eugène LaRocque which
17 she told you was on the 10th of January, 1994?

18 **INSP. SMITH:** At 6:30 at night.

19 **MR. WARDLE:** Correct?

20 **INSP. SMITH:** Yes.

21 **MR. WARDLE:** And, sorry, where -- where did
22 you meet with the Seguins? At their -- at their home?

23 **INSP. SMITH:** Yes, here in Cornwall. I can
24 give you the address if you want.

25 **THE COMMISSIONER:** No, no, we'll pass on

1 that.

2 Have I got that right?

3 **INSP. SMITH:** Yes.

4 **MR. WARDLE:** Okay. And then, of course, you
5 put the asterisk beside this, and I took it you appreciated
6 that this was a significant comment if true?

7 **INSP. SMITH:** Yes. I wanted to take that up
8 with the Bishop.

9 **MR. WARDLE:** Yes. In other words, if the
10 Bishop had actually said this to Mrs. Seguin, it would
11 suggest first of all that Mr. Leduc had been part,
12 potentially, of the offensive clause in the settlement and
13 that the Bishop knew something about it?

14 **INSP. SMITH:** Now, when it says "charge",
15 that could be "charge" or "sued" ---

16 **MR. WARDLE:** Well ---

17 **INSP. SMITH:** --- not necessarily criminal.

18 **MR. WARDLE:** Correct. But clearly you
19 thought it was an important comment that's why you made the
20 asterisk, and we know you asked the Bishop about it because
21 Mr. Engelmann took you through that?

22 **INSP. SMITH:** Yes.

23 **MR. WARDLE:** Okay. So I take it that you
24 saw this as potentially some evidence of the Bishop's
25 involvement and Mr. Leduc's involvement in the obstruction?

1 **INSP. SMITH:** When I looked at it, it
2 assisted me in understanding how it came about and who was
3 involved, not necessarily who's criminally -- there's more
4 to be done than just that in ---

5 **MR. WARDLE:** Oh, I understand that but just
6 answer my question, okay?

7 **INSP. SMITH:** Well, I don't like the
8 question asked. Ask it again?

9 **MR. WARDLE:** No, I know you didn't like the
10 question.

11 When you looked at this, it was potential
12 evidence of the involvement of the Bishop and/or Mr. Leduc
13 in the obstruction that you were investigating?

14 **INSP. SMITH:** It was possible evidence.

15 **MR. WARDLE:** Okay. And so it was something
16 that you had to follow up; correct?

17 **INSP. SMITH:** Right.

18 **MR. WARDLE:** So I'm sure you already know
19 where I'm going with this, sir.

20 You then interview Mr. Leduc, and I'm going
21 to ask if we can to turn that up. It's Exhibit 1892.

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

23 **MR. WARDLE:** So this is one of the
24 interviews that you were involved in directly because you
25 were part of the investigation of the obstruct charge;

1 correct?

2 **INSP. SMITH:** Correct.

3 **MR. WARDLE:** Okay. And this is not a
4 -- what I would call a directed interview is it, sir?

5 **INSP. SMITH:** No, this is an interview to
6 obtain information.

7 **MR. WARDLE:** This is an interview where the
8 individual is simply asked what happened and he's just
9 allowed to tell you whatever he wants to tell you; correct?

10 **INSP. SMITH:** Yes.

11 **MR. WARDLE:** And, in fact, the first part of
12 the interview is, as Mr. Engelmann covered with you, only
13 nine minutes long, and then there's a discussion off the
14 record; correct?

15 **INSP. SMITH:** Yes.

16 **MR. WARDLE:** And do you have any notes of
17 that off-the-record discussion?

18 **INSP. SMITH:** No, sir.

19 **MR. WARDLE:** Okay. And would that be
20 typical, if Mr. Leduc was a potential suspect for you to
21 have an off-the-record discussion that's not documented in
22 any way?

23 **INSP. SMITH:** Well, my recollection is that
24 the interview was completed and he had second thoughts and
25 he wanted to add more, and I said, well then, okay then, if

1 that's the case then we'll put it back on tape, and that's
2 what's happened.

3 **MR. WARDLE:** So in the nine minutes, you'll
4 see of the -- there's seven -- seven pages in which Mr.
5 Leduc just gives you his recollection of events. Do you
6 see that?

7 **INSP. SMITH:** Yes.

8 **MR. WARDLE:** And there's then a few follow-
9 up questions which go from pages 8 through to 11, which
10 primarily deal with his contact with Mr. Silmser; correct?

11 **INSP. SMITH:** Yes.

12 **MR. WARDLE:** In other words, there's no
13 follow-up questions that I could tell about Mr. Leduc's
14 recollection of the drafting of the release.

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

16 **INSP. SMITH:** Is that a question?

17 **MR. WARDLE:** Yes.

18 **INSP. SMITH:** Oh. Yes.

19 **MR. WARDLE:** Okay.

20 And you don't ask him about what Nancy
21 Seguin had said? You don't put anything to him in terms of
22 any information you'd been provided by her?

23 **INSP. SMITH:** No, it doesn't appear to be
24 there, sir.

25 **MR. WARDLE:** And you don't, I'm going to

1 suggest to you, challenge in any way what he's telling you
2 about what took place?

3 **INSP. SMITH:** No, sir.

4 **MR. WARDLE:** And nor do you explore the
5 issue of motive in any way; correct?

6 **INSP. SMITH:** No.

7 **MR. WARDLE:** And I would have thought one
8 obvious question to Mr. Leduc might have been, why would
9 the church pay \$27,000, or whatever the number was, if they
10 weren't getting some satisfaction that the criminal
11 proceeding was not going to go forward? But you didn't ask
12 that question.

13 **INSP. SMITH:** No, I didn't.

14 **MR. WARDLE:** And am I right, from what
15 you've already told us, that by the time this interview
16 took place you'd already decided that Malcolm Macdonald was
17 your prime target for this part of your investigation?

18 **INSP. SMITH:** Yes, sir.

19 **MR. WARDLE:** And so when you interviewed Mr.
20 Leduc, you really weren't looking at him as a potential
21 target. Is that the correct explanation?

22 **INSP. SMITH:** He'd be -- he'd be a better
23 witness than an accused.

24 **MR. WARDLE:** Well, how would he be a --
25 how would you know whether he was a better witness when you

1 hadn't yet met him?

2 **INSP. SMITH:** When I took this -- when I
3 took the statement ---

4 **MR. WARDLE:** Right.

5 **INSP. SMITH:** --- his name didn't show up
6 anywhere in the documents, sir. If you know anything about
7 canon law, if you studied it or you looked at it, these
8 settlements are not unusual.

9 **MR. WARDLE:** Right.

10 **INSP. SMITH:** Read the book, "Lead us not
11 into Temptation," by Jason Berry, and you'll see that these
12 settlements were rampant throughout the United
13 States -- New York, Chicago ---

14 **MR. WARDLE:** Right.

15 **INSP. SMITH:** --- New Orleans.
16 This is what the church was doing back at
17 that time.

18 **MR. WARDLE:** Well, I think that's my point.
19 Given that you had that knowledge, wouldn't
20 you have questioned Mr. Leduc a little more closely about
21 his involvement in the drafting of this document?

22 **INSP. SMITH:** That document was legitimate
23 with the exception of the -- the word "criminal" in it, and
24 I'm satisfied that was put in by Malcolm MacDonald.

25 **MR. WARDLE:** And I'm asking you how you

1 became so satisfied. This interview takes place before
2 you've interviewed Malcolm MacDonald?

3 **INSP. SMITH:** Yes.

4 **MR. WARDLE:** Okay? At a time when you have
5 information from at least one individual which suggests
6 that Mr. Leduc and the Diocese are -- should be potential
7 suspects, and I'm asking you why at that early point in
8 your investigation, you had ruled Mr. Leduc out?

9 **INSP. SMITH:** I didn't rule him out. He's a
10 witness. He's a witness to what's transpired.

11 **MR. WARDLE:** Well, if he was a potential
12 target, as I suggested to you, why didn't you ask him more
13 questions?

14 **INSP. SMITH:** I didn't say he was a
15 potential target. There were only -- I didn't caution him.
16 I cautioned two people, sir.

17 **MR. WARDLE:** I know you didn't. I'm simply
18 asking, sir, about -- given what we know about the release,
19 you have this individual who you've acknowledged to me this
20 morning had a potential motive to obstruct justice, his
21 employer certainly had a motive, potentially, to obstruct
22 justice, and I'm asking why you didn't examine this issue
23 more closely when you interviewed him?

24 **INSP. SMITH:** I didn't do it.

25 **MR. WARDLE:** Okay.

1 And afterwards do you recall that your team
2 did, in fact, receive some documentation from Mr. Leduc or
3 was that dealt with by Officer Fagan?

4 **INSP. SMITH:** Fagan received a copy in
5 French of a previous settlement.

6 **MR. WARDLE:** Yes. Did he not also receive a
7 draft of the release?

8 **INSP. SMITH:** I believe -- are you talking
9 about the documents that we got from Mr. -- from the
10 bursar?

11 **MR. WARDLE:** No, I'm asking about documents
12 that were sent to you by Mr. Leduc.

13 **INSP. SMITH:** I can't recall, sir.

14 **MR. WARDLE:** Okay. But ---

15 **INSP. SMITH:** Is there a document? Show it
16 to me and I'll ---

17 **MR. WARDLE:** Let me show you, first of all,
18 Exhibit 1919.

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. WARDLE:** Now, Exhibit 1919 is just a
21 one-page letter.

22 **INSP. SMITH:** Yes.

23 **MR. WARDLE:** It indicates that something's
24 being sent to Officer Fagan.

25 **INSP. SMITH:** That's correct.

1 **MR. WARDLE:** And I'm also going to ask you
2 to just look, if you may, and I apologize because this is
3 in a sort of an awkward place, but it's Exhibit 1914, Bates
4 pages 225 and 226.

5 **INSP. SMITH:** Bates pages?

6 **MR. WARDLE:** Two-twenty-five (225) and 226 I
7 believe.

8 **THE COMMISSIONER:** It's in the same exhibit
9 book, sir, 1914.

10 **INSP. SMITH:** Oh, I see.

11 **THE COMMISSIONER:** So if you go back to
12 right at the beginning of the book.

13 **INSP. SMITH:** Two-thirty-five (235).

14 **THE COMMISSIONER:** Nineteen-fifteen (1915) -
15 - 1914, sorry.

16 **MR. WARDLE:** And I have -- I hope I have
17 this right, Mr. Commissioner.

18 **THE COMMISSIONER:** You do.

19 **MR. WARDLE:** I have it as being Bates page
20 225-226.

21 **THE COMMISSIONER:** Yeah.

22 **INSP. SMITH:** I have a bunch of newspaper
23 clippings.

24 **THE COMMISSIONER:** No, keep going.
25 Madam Clerk, can you help him?

1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: Two-two-five (225) and
3 226. It's a fax cover page and a ---

4 INSP. SMITH: Oh, okay, a fax page.

5 MR. WARDLE: So you'll see from the two
6 pages we're looking at now that it appears that Mr. Leduc,
7 or perhaps Mr. Leduc's office to be completely accurate,
8 sent a one-page French release with some words blocked --
9 blanked out to Officer Fagan on January the 6th, 1995?

10 INSP. SMITH: I recall this.

11 MR. WARDLE: Okay. So some additional
12 material came in from Mr. Leduc which I'm assuming Officer
13 Fagan reviewed with you because you're aware of it?

14 INSP. SMITH: Yes.

15 MR. WARDLE: Okay.

16 INSP. SMITH: We had to have it interpreted.

17 MR. WARDLE: But these documents, as I
18 understand them, are not drafts of what became the release?

19 INSP. SMITH: No.

20 MR. WARDLE: Okay. And in Mr. Leduc's
21 statement, you'll recall that he initially talks about the
22 drafting process, and after you go off the record he comes
23 back to correct himself to say that there was a draft that
24 went to Malcolm MacDonald and a draft that came back which
25 he thinks he saw.

1 **INSP. SMITH:** M'hm.

2 **MR. WARDLE:** Do you recall that?

3 **INSP. SMITH:** Yes.

4 **MR. WARDLE:** And you never got from him
5 those drafts; correct?

6 **INSP. SMITH:** No.

7 **MR. WARDLE:** I'm going to ask you to have a
8 look at another document -- perhaps we could do this after
9 the break -- it's Document 122598.

10 **THE COMMISSIONER:** Do you want to break now?

11 **MR. WARDLE:** Sure.

12 **THE COMMISSIONER:** Let's take the break.

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

15 This hearing will resume at 11:05 a.m.

16 ---Upon recessing at 10:50 a.m./

17 L'audience est suspendue à 10h50

18 ---Upon resuming at 11:16 a.m./

19 L'audience est reprise à 11h16

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

22 This hearing is now resumed. Please be
23 seated. Veuillez vous asseoir.

24 **THE COMMISSIONER:** Mr. Wardle?

25 **INSPECTOR TIM SMITH, Resumed/Sous le même serment:**

1 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
2 WARDLE (cont'd/suite):

3 **MR. WARDLE:** We had started just before the
4 break, Mr. Smith, to look at the document that is 122598.

5 **THE COMMISSIONER:** Sorry, 2686 is a fax
6 cover letter to Malcolm MacDonald from Leduc/Aline, and the
7 date -- do we see a date on this thing?

8 **MR. WARDLE:** It doesn't appear to be dated
9 but I -- this document was a part of the affidavit of
10 documents of Mr. Leduc in the civil proceeding.

11 **THE COMMISSIONER:** Okay.

12 **MR. WARDLE:** And I note in the database it
13 has a document date of 09/02/93.

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

15 So that's Exhibit 2686.

16 --- EXHIBIT NO./PIÈCE NO. P-2686:

17 (122598) - Fax from Jacques Leduc to Malcolm
18 MacDonald dated September 2, 2003

19 **MR. ENGELMANN:** It might be -- if it was in
20 the affidavit of documents it might be part of Exhibit
21 1914. I'm not sure.

22 **MR. WARDLE:** It is part of Exhibit 1914.

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

24 **MR. WARDLE:** So this is a document, as I
25 understand it, that your team did not receive from Mr.

1 Leduc or anyone else in the course of the obstruct
2 investigation in 1994 and 1995; correct?

3 **INSP. SMITH:** I haven't seen this document,
4 sir.

5 **MR. WARDLE:** Okay. And is it likely that if
6 Officer Fagan had received it from somebody, he would have
7 showed it to you because we know he saw the other
8 documents?

9 **INSP. SMITH:** I believe so, yes.

10 **MR. WARDLE:** And if we look at the third
11 page, you'll see from the cover sheet it appears to be a
12 draft documentation being sent from Mr. Leduc to Malcolm
13 MacDonald. Do you see that?

14 **INSP. SMITH:** Yes, sir. Three pages plus
15 the cover page.

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

17 **MR. WARDLE:** And if we look at the
18 handwritten dates that are filled in on the second page,
19 someone's filled them "September 2, 1993", which is we know
20 around the date of the settlement?

21 **INSP. SMITH:** That's middle way down the
22 page too, sir?

23 **MR. WARDLE:** Correct.

24 **INSP. SMITH:** Yes.

25 **MR. WARDLE:** So that this looks to be draft

1 documentation being exchanged in connection with the
2 Silmsler settlement. Do you agree with that?

3 **INSP. SMITH:** Yes, sir.

4 **MR. WARDLE:** And if we go to page 3, which
5 is the release, you'll see that it has some typed clauses
6 and then some handwriting.

7 **INSP. SMITH:** I don't see any handwriting on
8 page 3, sir.

9 **MR. WARDLE:** This is the page entitled --
10 yeah, it's page 3, "Full Release and Undertaking Not to
11 Disclose". The handwriting is on the left-hand side. For
12 example, some of the numbers have been crossed off.

13 **INSP. SMITH:** Oh, okay, yeah. Yes.

14 **MR. WARDLE:** And it's hard to read but it
15 looks like there's some handwritten additions in paragraph
16 1, for example. There's a couple of words which I can't
17 read. They look like "FCM" to me but I may be wrong about
18 that.

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

20 **MR. WARDLE:** And would you agree in
21 retrospect that this is a document that you would have
22 liked to have seen at some point during the obstruct
23 investigation?

24 **INSP. SMITH:** Yes, sir.

25 **MR. WARDLE:** Okay. And if we look at the

1 clauses, and I have the final version of the release, which
2 is Exhibit 263, I have that beside me. You might want to
3 just get that document out, sir. Exhibit 263.

4 **INSP. SMITH:** Full release and undertaking?

5 **MR. WARDLE:** Correct. Now, you'll see that
6 the final document has seven numbered clauses.

7 **INSP. SMITH:** Yes, sir.

8 **MR. WARDLE:** And the draft that we're
9 looking at now has six numbered clauses; correct?

10 **INSP. SMITH:** This -- this draft? Five --
11 oh, six, one on the next page, yes.

12 **MR. WARDLE:** Yes. And the typed-written ---

13 **INSP. SMITH:** Yeah.

14 **MR. WARDLE:** --- just ignoring the
15 handwriting for the time being, the typed portion of the
16 document has six clauses.

17 **INSP. SMITH:** Correct.

18 **MR. WARDLE:** And you'll see that whoever has
19 put the handwriting on the first page of the release has
20 put a number two after typed clause one.

21 **INSP. SMITH:** Yes, sir.

22 **MR. WARDLE:** And then has changed what
23 obviously was two, three, four, somebody's written, three,
24 four, five over it in handwriting; correct?

25 **INSP. SMITH:** That's right, sir.

1 **MR. WARDLE:** Okay. And that would suggest
2 that the author of this draft or the author of these
3 handwritten comments knows there's going to be an
4 additional clause added to the release and it's going to be
5 clause two.

6 **INSP. SMITH:** I agree.

7 **MR. WARDLE:** And if you'd had this document
8 at the time of your investigation in 1994 it would have led
9 you to question Mr. Leduc a little more carefully; correct?

10 **INSP. SMITH:** Yes, sir.

11 **MR. WARDLE:** You didn't receive that
12 document from him, as far as you know? You certainly
13 didn't have it at the time of the interview; correct?

14 **INSP. SMITH:** I've never seen it, sir.

15 **MR. WARDLE:** And as far as you know you
16 never got it at any time after; correct?

17 **INSP. SMITH:** This is the first time I've
18 seen it, sir.

19 **MR. WARDLE:** Okay. And as we covered, I
20 think, the other day, this was not a case where you
21 executed a search warrant and you didn't ask for Mr.
22 Leduc's file with respect to this matter?

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

24 **MR. WARDLE:** Okay. And after the criminal
25 charge was brought against Malcolm MacDonald and he had

1 pleaded guilty and received the disposition that you spoke
2 of the other day, there was never any further investigation
3 of the obstruct allegations; correct?

4 **INSP. SMITH:** Not by the police.

5 **MR. WARDLE:** Okay. Now, can I take you to
6 one final issue to close off? And I want to just review
7 some of the press releases of the OPP. And just generally,
8 Officer -- I'm sorry, Mr. Smith, former officer.

9 **INSP. SMITH:** Thank you.

10 **MR. WARDLE:** Former Inspector, I understand
11 that you weren't generally responsible for drafting press
12 releases?

13 **INSP. SMITH:** That's correct, sir.

14 **MR. WARDLE:** In some specific investigations
15 you would prepare a draft and depending on the
16 circumstances that would be reviewed by someone higher up -
17 - higher up within the OPP?

18 **INSP. SMITH:** Well, usually higher up, sir,
19 and then to the media relations people. They'd want a
20 background of what I was doing, and then from there they
21 could disseminate what they would send out.

22 **MR. WARDLE:** So I just want to get your
23 comments, if I can, on some of the issues involving public
24 perception of these events. And specifically what's been
25 referred to as a cloud over the community throughout the

1 1990s and right up until the point when this Inquiry was
2 called, that there was a paedophile ring operating in
3 Cornwall?

4 **INSP. SMITH:** Yes.

5 **MR. WARDLE:** Okay. And just reminding you
6 first of all that there are the very public events that
7 we've spoken of involving the Silmsler settlement, the
8 disclosure of that settlement to the media, the press
9 conferences the Bishop has in early 1994. At around the
10 same time there's the Ottawa Police Service investigation,
11 which you're aware of; correct?

12 **INSP. SMITH:** Yes, sir. Yes, sir.

13 **MR. WARDLE:** There's Mr. Dunlop's
14 involvement in these events. Mr. Dunlop being disciplined,
15 off on sick leave; his eventual exoneration. And then you
16 may recall his participation in a CBC Fifth Estate program,
17 "The Man Who Made Waves"; do you recall all that?

18 **INSP. SMITH:** Yes, sir.

19 **MR. WARDLE:** Okay. There is the Dunlop
20 lawsuit, which I'm sure you know a little bit about. That
21 the -- that again became the subject of some publicity.

22 **INSP. SMITH:** I came to know about it, yes,
23 sir.

24 **MR. WARDLE:** Okay. There is Mr. Leroux's
25 allegations which eventually make their way into the media;

1 correct?

2 **INSP. SMITH:** Yes, sir.

3 **MR. WARDLE:** Okay. And there are the
4 Fantino binders, which you've already spoken about in your
5 evidence, and again, a lot of that became public at one
6 point or another; correct?

7 **INSP. SMITH:** Yes, sir.

8 **MR. WARDLE:** So with that context -- and I'm
9 over-simplifying obviously -- I just want to look at some
10 of the press releases that you were involved in. First of
11 all Exhibit 1559 -- I'm sorry, 2559. Can't read my own
12 writing.

13 **THE COMMISSIONER:** Twenty-five fifty-nine
14 (2559)?

15 **MR. WARDLE:** Twenty-five fifty-nine (2559).

16 **THE COMMISSIONER:** Okay.

17 **MR. WARDLE:** Seven three three one six nine
18 (733169).

19 **THE COMMISSIONER:** One six five (165).

20 **MR. WARDLE:** One six five (165).

21 **INSP. SMITH:** Two five five nine (2559)?
22 Yes, sir.

23 **MR. WARDLE:** So, Mr. Smith, this was the
24 release at the start of the reinvestigation of the Silmsler
25 allegations against Father Charles MacDonald; correct?

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

2 **MR. WARDLE:** And I note that this release
3 does not deal with the other two facets of the
4 investigation. It doesn't deal with the conspiracy and it
5 doesn't deal with the obstruct.

6 **INSP. SMITH:** That's correct.

7 **MR. WARDLE:** And do you know if that was
8 deliberate, or do you recall?

9 **INSP. SMITH:** I -- I had no input into this,
10 sir, this was -- this was sent out on the 2nd of February,
11 I think I was assigned this investigation on the 3rd. It
12 would have preceded my assignment.

13 **MR. WARDLE:** Okay. Now, what I do have is I
14 note that -- we don't have to turn this up, that there was
15 a news conference held by the Cornwall Police Service at
16 around this time, and it's Exhibit 1518, in which Acting
17 Chief Johnston indicated that there was going to be this
18 investigation and that it would also include conspiracy
19 allegations involving the Cornwall Police Service and the
20 Church. And do you recall that the public generally was
21 aware of the subject matter of your investigation?

22 **INSP. SMITH:** I'd have to say yes. But the
23 specifics I can't ---

24 **MR. WARDLE:** Okay. And then the next press
25 release I have is Exhibit 1000, it's Document 720738.

1 **INSP. SMITH:** The number again, sir? Seven

2 ---

3 **THE COMMISSIONER:** One thousand (1000).

4 **MR. WARDLE:** Exhibit 1000.

5 **INSP. SMITH:** No charges laid?

6 **MR. WARDLE:** Correct.

7 **INSP. SMITH:** Yes. Yes, sir.

8 **MR. WARDLE:** So this is a press release that
9 you would have had some involvement in preparing?

10 **INSP. SMITH:** Yes, this was the one that we
11 worked on in late December with Peter Griffiths and myself,
12 and we sent that in to the media relations, and this is
13 what they put out.

14 **MR. WARDLE:** And this deals with two of the
15 three aspects of the '94 investigation; it doesn't deal
16 with the obstruct allegation, because that's still being
17 pursued with the Crown attorney's office at that point?

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

19 **MR. WARDLE:** Okay. And so, from the
20 public's point of view, the public would know that there
21 has been this Cornwall Police Service investigation of the
22 Silmsler complaint?

23 **INSP. SMITH:** Yes.

24 **MR. WARDLE:** They didn't know the identity
25 of Mr. Silmsler at that point, but they knew about the

1 allegations?

2 **INSP. SMITH:** Correct.

3 **MR. WARDLE:** They knew it involved a priest?

4 **INSP. SMITH:** Correct.

5 **MR. WARDLE:** They knew that the Ottawa
6 police has investigated whether there was a cover-up?

7 **INSP. SMITH:** Yes.

8 **MR. WARDLE:** Correct? And they now knew
9 that your police service had reinvestigated both the
10 original allegations and the conspiracy allegations, and
11 was not laying charges on either of those matters; correct?

12 **INSP. SMITH:** Correct.

13 **MR. WARDLE:** Yes. And then, if we go to
14 Exhibit 2671?

15 **INSP. SMITH:** Twenty-six seventy-one (2671)?

16 **MR. WARDLE:** Correct.

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

18 **MR. WARDLE:** Now, I wasn't quite clear from
19 your evidence the other day, whether this is the final
20 version of the press release, but my note was that this was
21 some -- this was a document you drafted ---

22 **INSP. SMITH:** Yes.

23 **MR. WARDLE:** --- is that correct?

24 **INSP. SMITH:** Anything that comes out of our
25 media relations branch, you'll see the number "30" at the

1 bottom. I think if you look at the previous -- it has our
2 letterhead at the top, and it has "30" at the -- the number
3 30 at the bottom of the page?

4 **MR. WARDLE:** Right.

5 **INSP. SMITH:** This would be a news release
6 that I would send to my director, who would forward it also
7 to the media relations, and this is a breakdown of what I
8 would like to see in the news release.

9 **MR. WARDLE:** So this one we're staring at
10 right now, is this the way it would go out to the public,
11 or would it ---

12 **INSP. SMITH:** No.

13 **MR. WARDLE:** --- go out with the banner and
14 everything else?

15 **INSP. SMITH:** Oh, it -- no, this wouldn't go
16 out to the public.

17 **MR. WARDLE:** Okay. So this is a -- this is
18 the text of what becomes the press release?

19 **INSP. SMITH:** Yes. They usually ask the
20 investigators, "Give us the background, give us an idea of
21 what you want to go out," and they'll -- they'll go through
22 it and they'll decide what goes out to the public.

23 Quite often, what I -- what I give them will
24 come back. They may only use three lines of that.

25 **MR. WARDLE:** So would you agree with me that

1 in this press release, assuming that this language makes
2 its way into the final version, you're reinforcing that
3 there were three aspects to your investigation. Two of
4 those are going to be closed without -- I'm not sure if the
5 word "closed" is theirs, but the findings of those
6 investigations are, in two cases there are not going to be
7 charges, but in one case there's going to be single charge
8 against Malcolm MacDonald; correct?

9 **INSP. SMITH:** Yes.

10 **MR. WARDLE:** And now if we go to Exhibit
11 2501 ---

12 **THE COMMISSIONER:** Twenty-five zero one
13 (2501).

14 **INSP. SMITH:** Yes, sir, 2501; "Priest
15 charged in sexual assault?"

16 **MR. WARDLE:** Correct. So we're moving
17 forward in time and, of course, lots of other events are
18 happening in that time period; events involving Mr. Dunlop,
19 for example?

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

21 **INSP. SMITH:** I'm sorry, did you ask a
22 question, sir? I was reading.

23 **MR. WARDLE:** It's okay. Just putting the
24 context of this, this is March '96?

25 **INSP. SMITH:** Yes.

1 **MR. WARDLE:** And as we go forward in time
2 there's a lot of other events happening. In this time
3 period between the end of '94 and March of '96, there's a
4 number of events involving Mr. Dunlop, culminating in that
5 TV program, The Fifth Estate, which I have as being
6 December of '95? So just to put that in context for you.

7 **INSP. SMITH:** Yes.

8 **MR. WARDLE:** So now the force is announcing
9 that Father Charles MacDonald has been charged, and the
10 press release indicates that -- it reiterates the
11 background of the 1994 investigation, and then indicates
12 that further complainants had come forward, essentially;
13 correct?

14 **INSP. SMITH:** Correct, sir.

15 **MR. WARDLE:** And then now, if we go one step
16 forward to Exhibit 1149 -- this is Document 726226.

17 **(SHORT PAUSE/COURTE PAUSE)**

18 **MR. WARDLE:** So this is the public release,
19 in July of 1997 confirming the existence of what becomes
20 Project Truth; correct?

21 **INSP. SMITH:** I believe that was a press
22 conference. I could be wrong.

23 **MR. WARDLE:** You may well be right, because
24 I'm going to take you in a minute to a newspaper article,
25 but it looks like a release that may have taken place in

1 conjunction with a press conference.

2 INSP. SMITH: Yes.

3 MR. WARDLE: Do you ---

4 INSP. SMITH: I think you're right, sir.

5 MR. WARDLE: It has the magic number

6 "30" ---

7 INSP. SMITH: Yes.

8 MR. WARDLE: --- on the first page.

9 INSP. SMITH: Yes.

10 MR. WARDLE: Okay. And this is a fairly

11 terse release, you'd agree?

12 INSP. SMITH: Yes.

13 MR. WARDLE: Okay. I now want to take you,
14 if I can, to Document 721061, which is, I hope, a document
15 on which notice was given.

16 INSP. SMITH: May I see the documents,
17 rather than the screen, please?

18 THE COMMISSIONER: Yes. We're -- we will do
19 that.

20 INSP. SMITH: Okay.

21 MR. WARDLE: Now, you'll see that the date
22 of this, sir, from the left-hand side, is July 28, 1997, so
23 it's the same day as the press release we just looked at?

24 INSP. SMITH: I'm just reading from the
25 screen, sir.

1 **THE COMMISSIONER:** Just a second. Do we not
2 have -- okay, so we don't have copies.

3 **MR. WARDLE:** Oh, well, then, okay.

4 **THE COMMISSIONER:** I'm sorry.

5 **MR. SMITH:** If the copy was available, I'd
6 like that, but I'll do -- in the absence, fine.

7 **THE COMMISSIONER:** Okay, but if we're
8 introducing this as an exhibit -- what's the exhibit
9 number, Madam Clerk?

10 **THE REGISTRAR:** Two six eight seven (2687).

11 **THE COMMISSIONER:** Two six eight seven
12 (2687) is a newspaper article. Is there any date on this
13 thing?

14 **MR. WARDLE:** There is, on the left-hand
15 side.

16 **THE COMMISSIONER:** July 28th, 1997.

17 **---EXHIBIT NO./PIÈCE NO P-2687:**

18 (721061) - Newspaper Article of Brockville
19 News and Times 'OPP Probe Sex Ring
20 Allegation' dated 28 Jul 97

21 **MR. WARDLE:** And you'll see it says, sir,
22 Brockville Records and Times?

23 **THE COMMISSIONER:** Okay, that's good, thank
24 you.

25 **MR. WARDLE:** So, just stopping there for a

1 minute, the public at this point understand that the OPP is
2 investigating whether there is a paedophile clan or ring in
3 the City of Cornwall. Correct?

4 **INSP. SMITH:** Yes, sir.

5 **MR. WARDLE:** Okay. And now I want to take
6 you to Exhibit 1531, and this is a document that was
7 canvassed with Mr. Engelmann.

8 **THE COMMISSIONER:** I don't think we have
9 that Madam Clerk, 1531.

10 **INSP. SMITH:** This was a news conference.

11 **MR. WARDLE:** Yes. So this is a news
12 conference in September of 1997, and I think you've already
13 indicated you weren't there?

14 **INSP. SMITH:** I was in the building but I
15 didn't attend.

16 **MR. WARDLE:** You didn't attend the
17 conference and you've explained why that made sense.

18 **INSP. SMITH:** Yes, sir.

19 **MR. WARDLE:** So that you couldn't be asked
20 about specifics of an ongoing investigation; correct?

21 **INSP. SMITH:** Exactly, sir.

22 **MR. WARDLE:** Okay. What I am interested in
23 is this; this is quite a lengthy -- compared to the other
24 press releases we've looked at, this is quite a lengthy
25 document.

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

2 **MR. WARDLE:** And I assume, I must say, that
3 this would have been provided to the press at the press
4 conference, the entire document?

5 **INSP. SMITH:** I don't believe the page 2
6 through was provided. This was provided to those -- Carson
7 Fougere for his knowledge, to answer questions that were
8 put to him.

9 **MR. WARDLE:** Okay.

10 **INSP. SMITH:** And this page 2 on would have
11 been prepared by Pat Hall and myself. Page -- the first
12 page was a news release that was prepared by the regional
13 media relation lady as a result of what these pages
14 contained.

15 **MR. WARDLE:** Okay. So let me just try to
16 get that again because I misunderstood. The release is the
17 second page of the document.

18 **INSP. SMITH:** That's my understanding, yes,
19 sir. And that would be ---

20 **MR. WARDLE:** The rest of the document is a
21 briefing note prepared for the people who are going to be
22 at the press conference ---

23 **INSP. SMITH:** Yes.

24 **MR. WARDLE:** --- and would not have been
25 shared with the press.

1 **INSP. SMITH:** It shouldn't have been, no.
2 If I can expand; we -- Pat Hall and I asked
3 for these news conferences because of all of the press that
4 had been coming along and to answer. And our force had a
5 propensity for giving out limited information, and I'd
6 indicated to my superiors, you know, that we're getting all
7 types of rumours down here, all kinds of different press,
8 we've got to do something, we have to say something. And I
9 recall some of the -- well, we don't release a lot, we
10 don't do this, we don't do that. I said "Well, then have a
11 press conference. Come down and announce it and answer
12 some of these questions because it's affecting our
13 investigation."

14 **MR. WARDLE:** Right.

15 **INSP. SMITH:** As a -- and to this date I
16 think we had done a poor job with the press.

17 **MR. WARDLE:** Well, I was coming to that,
18 because you were fighting a number of battles. I mean, you
19 had the investigations which were very complex and time
20 consuming.

21 **INSP. SMITH:** I didn't have a fun time. I
22 had battles at every corner, sir.

23 **MR. WARDLE:** You had Mr. Dunlop to deal
24 with, as you talked about with my friend Mr. Engelmann.
25 But you also had this continuous sort of background of the

1 press, rumour and innuendo around the town; correct?

2 **INSP. SMITH:** Yes. I have to admit though
3 that after a certain reporter left this town that the press
4 was a little more amenable to our investigation, let's put
5 it that way. But we still didn't, in my opinion, do a good
6 enough job of letting the public know exactly what was
7 going on.

8 **MR. WARDLE:** Well, that was really what I
9 was trying to get at. I did find a newspaper article
10 that's been put into the record already relating to this
11 press conference. It's Exhibit 1535.

12 **THE COMMISSIONER:** Fifteen thirty-five
13 (1535). Same book. There we go.

14 **INSP. SMITH:** While you're looking for it, I
15 might say that with the present Commissioner we have now --
16 or not my Commissioner but the present Commissioner, that
17 he's more open to the press than any of our previous ones
18 that -- there was always this silence that we had, and had
19 Julian Fantino, being the Commissioner of the day, I'm sure
20 that you wouldn't be asking me these questions, sir.

21 **MR. WARDLE:** Okay. So if you look at the
22 article, and this is from the Ottawa Sun, we've got your,
23 you know, one-page press release which says in the middle
24 of it -- and this is the last exhibit, Exhibit 1531. On
25 that page numbered 1 it says:

1 "At present 18 persons have had
2 allegations of sexual abuse made
3 against them by a number of
4 complainants."

5 And then we have what the Ottawa Sun does
6 with that, which is "18 Eyed in Sex Ring" and then it
7 starts off by saying, you can see:

8 "The OPP have identified 18 Cornwall
9 area public officials and Roman
10 Catholic clergy as suspected members of
11 a paedophile clan acting in the city."

12 **INSP. SMITH:** Yes.

13 **MR. WARDLE:** "Operating in the city"; I'm
14 sorry.

15 **INSP. SMITH:** That's the press saying that.

16 **MR. WARDLE:** Right.

17 **INSP. SMITH:** That's not the OPP.

18 **MR. WARDLE:** So was there a point, sir, when
19 the rumour and innuendo and whatever was sweeping through
20 the city just really got away from the OPP, in the sense
21 that whatever you said it was going to be turned into
22 there's a paedophile clan and that's what you're
23 investigating?

24 **INSP. SMITH:** It appeared that way, sir.

25 If I could -- if we went back to that

1 picture, if I see the name of the reporter, I can tell you
2 that. I know -- no, that's not the reporter that I'm
3 thinking of. But there was one reporter that was -- really
4 liked that ring thing.

5 Truthfully, I didn't know how to answer
6 these. We'd investigate, investigate, investigate; I
7 reported to our senior people that, you know, we've got to
8 do a better job with the press, getting to the people,
9 letting them know exactly what's going on. And I guess
10 these press really was a feeble attempt. There should have
11 been more.

12 **MR. WARDLE:** And I'm not suggesting -- first
13 of all, I'm not criticizing you, sir, and ---

14 **INSP. SMITH:** No, I'm saying the system.
15 I'm saying we didn't do a good job, sir.

16 **MR. WARDLE:** And I understand the dilemma
17 that you had.

18 **INSP. SMITH:** M'hm.

19 **MR. WARDLE:** I'm going to just take you to
20 one last article before I close, Exhibit 2516. This is
21 729528.

22 **THE COMMISSIONER:** I think you have it, sir.

23 **INSP. SMITH:** Oh, 2516?

24 **MR. WARDLE:** Yeah.

25 So just to give you the context for this,

1 this is a Freeholder article.

2 **INSP. SMITH:** Yes, sir.

3 **MR. WARDLE:** And this is at the time when
4 Project Truth laid the charges against the number of
5 individuals that you canvassed with Mr. Engelmann the other
6 day.

7 **INSP. SMITH:** Yes, sir.

8 **MR. WARDLE:** And you'll see that OPP
9 Superintendent Fougere in the body of the article is quoted
10 as saying that the investigation had not turned up a
11 paedophile ring. You can see that in the -- it's the sort
12 of second or third paragraph, the one starting, "Although
13 five of the men charged..."

14 **INSP. SMITH:** Yes.

15 **THE COMMISSIONER:** So in the middle
16 paragraph, Madam Clerk.

17 **MR. WARDLE:** Yes.

18 **THE COMMISSIONER:** Top. Right there. M'hm.

19 **MR. WARDLE:** And, in fact, consistently from
20 this point forward -- I'm not going to take you through all
21 this, but whenever the OPP is interviewed in connection
22 with Project Truth, the officers are always careful to
23 point out that the investigation has not uncovered evidence
24 of a paedophile ring; correct?

25 **INSP. SMITH:** That's correct, sir.

1 **MR. WARDLE:** In fact, the interview my
2 friend Mr. Engelmann took you to this morning, which I
3 think is later in time, 2001, with the investigative
4 reporter ---

5 **INSP. SMITH:** Yes.

6 **MR. WARDLE:** --- again I scrolled through
7 that article and you made the point to that reporter that
8 the evidence had not turned up evidence of a paedophile
9 ring.

10 **INSP. SMITH:** Yes, sir.

11 **MR. WARDLE:** But am I right, sir, that from
12 your perspective there came a point where you could shout
13 that from the rooftops and it wasn't clear whether anybody
14 actually believed you because there was just so much out
15 there in the public domain at that point?

16 **INSP. SMITH:** That's fair to say, yes, sir.

17 **MR. WARDLE:** Okay. And do you accept in
18 retrospect that perhaps one of the things this Commission
19 could look at is when there's a crisis in a small community
20 like this, whether there should be some coordinated
21 response to ensure that this kind of hysteria doesn't sweep
22 through a community?

23 **INSP. SMITH:** Undoubtedly.

24 **MR. WARDLE:** All right. Thank you, sir.
25 Those are all my questions for you.

1 **THE COMMISSIONER:** Thank you.

2 **INSP. SMITH:** Thank you, sir.

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

4 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. PAUL:**

5 **MR. PAUL:** Good morning. My name is Ian
6 Paul. I appear for the Coalition for Action, which is a
7 citizens group that was involved in seeking and advocating
8 an inquiry.

9 **INSP. SMITH:** Yes, sir.

10 **MR. PAUL:** The first area I wanted to ask
11 you questions about is an area that you have been
12 questioned on already by both previous counsels. So I just
13 had a few questions on this area. It would be in relation
14 to some of the statements that were taken in 1994 and
15 specifically the three witnesses associated with the
16 Diocese; Bishop Laroque, Jacques Leduc and Gordon Bryan ---

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

18 **MR. PAUL:** --- who you would have
19 interviewed in 1994.

20 And just before I get into that, your
21 understanding when you're doing these interviews that the
22 settlement would have occurred in September of '93;
23 correct?

24 **INSP. SMITH:** September 2nd, September 3rd,
25 yes.

1 **MR. PAUL:** Yes. And generally the position
2 you're getting from the Diocese, would it be that the
3 documents, the settlement documents that they had, their
4 copies, they're saying are sealed and left sealed until
5 after a news conference in January of '94?

6 **INSP. SMITH:** That's my understanding, yes,
7 sir.

8 **MR. PAUL:** And so the understanding you go
9 into with the interviews is that they're saying that it's
10 only after the first news conference it's brought to their
11 attention that there may be a misrepresentation, and then
12 they open the sealed document?

13 **INSP. SMITH:** That's my understanding.

14 **MR. PAUL:** Now, with respect to Mr. Leduc, I
15 just have a few points. One point, I understand you didn't
16 caution Mr. Leduc?

17 **INSP. SMITH:** No, I don't think I did.

18 **MR. PAUL:** And I think you indicated that
19 may have been because his writing -- or his handwriting
20 wasn't on the documents such as some of the other ones?

21 **INSP. SMITH:** And his signature did not
22 appear in the final document.

23 **MR. PAUL:** And the next question I had is my
24 understanding -- I know that you did not caution Bishop
25 LaRocque yourself, but I believe you were there when

1 Officer Fagan cautions him?

2 **INSP. SMITH:** Yes.

3 **MR. PAUL:** And I'm just wondering if the
4 position would be that Bishop LaRocque would be cautioned,
5 I'm just wondering why the same would not have been the
6 case for Mr. Leduc?

7 **INSP. SMITH:** Well, if I look -- he may have
8 instructed Leduc to do these things.

9 **MR. PAUL:** All right.

10 **INSP. SMITH:** He may have initiated these.
11 I didn't know at the time, but when in doubt, caution, you
12 know.

13 **MR. PAUL:** So I realize they occurred at
14 different times. I believe there's about a month apart ---

15 **INSP. SMITH:** Yes.

16 **MR. PAUL:** --- between the interviews, is
17 there?

18 **INSP. SMITH:** Yeah. And I've had different
19 information when I interviewed the Bishop. I've had a
20 number of people that told me certain things that I thought
21 that would have -- it was appropriate that -- that at one
22 point in the interview that he be cautioned.

23 **MR. PAUL:** So it's timing for -- perhaps if
24 Mr. Leduc had been interviewed after the Bishop, maybe he
25 would have been cautioned; that's a possibility?

1 **INSP. SMITH:** That's a possibility.

2 **MR. PAUL:** Now, with respect to Mr. Leduc, I
3 wanted to ask you if when you interviewed him were you
4 aware that there was some evidence that prior to the news
5 conference in January, the first news conference in
6 January, there had been some interaction between Mr. Leduc
7 and the Children's Aid, and specifically that the
8 Children's Aid had requested a copy of the settlement
9 documents. Were you aware of that?

10 **INSP. SMITH:** I can't remember. I think
11 subsequently it came to my attention, but at that
12 particular time it may not -- I can't remember.

13 **MR. PAUL:** If you'd known that at the
14 interview, at the time of the interview with Mr. Leduc,
15 would you have wanted to challenge him on why the documents
16 -- what his reasoning was for not giving up the documents;
17 number one and number two? So I'll let you answer that
18 first.

19 **INSP. SMITH:** Oh, the answer to that is yes.

20 **MR. PAUL:** And, secondly, perhaps you may
21 have wanted to ask him if he'd been asked specifically
22 about the documents by Children's Aid, why they wouldn't
23 have been opened at that point and left sealed?

24 **INSP. SMITH:** I would have asked that.

25 **MR. PAUL:** Yes.

1 With respect to Bishop LaRocque, I think you
2 had made a general comment that you found him truthful and
3 forthright?

4 **INSP. SMITH:** Yes.

5 **MR. PAUL:** But at the same time, you had put
6 certain comments from various people, specifically Chief
7 Shaver and Nancy Seguin, to the Bishop?

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

9 **MR. PAUL:** And there would have been --
10 you'd agree that there would have been some aspects of
11 those comments that he would not have agreed with?

12 **INSP. SMITH:** Yes, sir.

13 **MR. PAUL:** And, specifically, for example,
14 Chief Shaver, the aspect of the conversation where Chief
15 Shaver suggests you put to Bishop LaRocque that there's a
16 suggestion that Father Charlie admitted the offence.

17 **INSP. SMITH:** Yes.

18 **MR. PAUL:** And Bishop -- Bishop Shaver --
19 sorry, Bishop LaRocque does not agree with that -- with
20 that aspect of the conversation?

21 **INSP. SMITH:** That's correct.

22 **MR. PAUL:** Now, I'm just wondering, the
23 finding that Bishop LaRocque was truthful and forthright,
24 would you not have had some trouble with his response to
25 that in terms of not agreeing with what Claude Shaver said?

1 **INSP. SMITH:** It's not unusual when you
2 interview people that they have differences of opinion.
3 Slight differences of opinion.

4 **MR. PAUL:** So, I mean, you had said also
5 that you seemed to be impressed by Claude Shaver; you never
6 heard anything negative about his honesty?

7 **INSP. SMITH:** No, I -- his honesty, what
8 I've heard anyway, was never questioned. Maybe his -- some
9 other aspects, but never his honesty.

10 **MR. PAUL:** I mean, did the Bishop's response
11 on that point, do you cast doubt on Claude Shaver's
12 credibility?

13 **INSP. SMITH:** No.

14 **MR. PAUL:** But at the end of the day, it
15 would -- his answer that would leave you in some doubt as
16 to which side is telling the truth or accurate?

17 **INSP. SMITH:** I think -- and I don't have it
18 here -- but there are documents that indicated somewheres
19 that Shaver retracted that at some later point.

20 **MR. PAUL:** But at the time of the interview
21 you wouldn't have known that, I would take it?

22 **INSP. SMITH:** No.

23 **MR. PAUL:** Okay. So at the time of the
24 interview you're just left with a discrepancy -- two
25 discrepancies between what the Bishop is saying and two

1 people, Mrs. Seguin and the former Chief; correct?

2 **INSP. SMITH:** That's right.

3 **THE COMMISSIONER:** And they're not slight.

4 In this case, it's not a slight difference.

5 **INSP. SMITH:** No, there's -- one is that,
6 yes, he sexually assaulted them, and the other is is that
7 he was a homosexual.

8 **MR. PAUL:** Yes.

9 **INSP. SMITH:** So, yeah, there's -- there's a
10 difference.

11 **THE COMMISSIONER:** No, well, that's not
12 quite the way it went I think. I think the first -- and I
13 think Chief Shaver had a little note on it -- that the
14 Bishop indicated that he had spoken to Father Charles
15 MacDonald and that he had admitted that he had only -- that
16 he had had a sexual relationship with Silmser, but only
17 once.

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

19 **THE COMMISSIONER:** And the other one is that
20 he was a homosexual and had not had any relationships other
21 than consensual ones and ---

22 **INSP. SMITH:** With adults ---

23 **THE COMMISSIONER:** With adults.

24 **INSP. SMITH:** Yes. Yes.

25 **THE COMMISSIONER:** Is that fair?

1 **INSP. SMITH:** Yeah.

2 **MR. PAUL:** Now, in terms of truthfulness or
3 whether Bishop LaRocque was being forthright, did you have
4 some nagging doubts given the discrepancies between him and
5 the other two individuals you quoted?

6 **INSP. SMITH:** Well, eventually Father
7 Charles was charged in regard to Silmser, so as far as the
8 Bishop goes, he appeared -- and then I said he wasn't, I
9 didn't say he was -- he appeared to be credible. He stuck
10 to his story all the way through from day one right to the
11 end.

12 **MR. PAUL:** All right. Just in terms --
13 sorry of the general version of the events that he gave,
14 was it your understanding at the time of the interview that
15 in between the time of the settlement and the news
16 conference, the first news conference in January where the
17 Diocese is involved and presenting their version of the
18 events, in between those two timeframes, would you
19 understand that the Bishop would have met both Claude
20 Shaver and discussed the settlement and also discussed the
21 settlement with Children's Aid officials? In the fall and
22 ---

23 **INSP. SMITH:** Yes.

24 **MR. PAUL:** Okay. And I'm wondering if the
25 combination of the fact that the Bishop is meeting Chief

1 Shaver, he's meeting CAS officials, then he's going to the
2 point of even having a press conference in early January
3 about the very topic of the settlement, and the Diocese is
4 suggesting that the documents, the very documents remain
5 sealed through all that time.

6 Is that something that you as an
7 investigator looked at very suspiciously at the time?
8 That sequence?

9 **INSP. SMITH:** No.

10 **MR. PAUL:** Would you agree that looking at
11 it that way, being in contact with significant officials,
12 local officials, the chief of police, Children's Aid
13 officials, and then presenting the situation in a press
14 conference, just looking at it as an investigator, normal
15 behaviour of people, you would have expected him to open
16 the documents at some point?

17 **INSP. SMITH:** That would have been prudent.

18 **MR. PAUL:** And perhaps thinking of it that
19 way, that might be something that interviewer might have
20 wanted to challenge the Bishop forcefully and ask why in
21 those -- in that situation why the documents would not have
22 been opened at some point before the press conference?

23 **INSP. SMITH:** I think we likely approached
24 that during my interview if I'm not mistaken.

25 He was embarrassed, I recall, over the --

1 over the first news release and then subsequently found
2 that it was different -- differed from the settlement, and
3 he made a -- he recanted and gave a secondary one.

4 It's easy to be suspicious about everything,
5 but -- but people make honest mistakes.

6 **MR. PAUL:** All right. True, but the
7 scenario provided is plausible or possible; is a
8 possibility, but you'd agree that interaction with all
9 those authorities in a press conference and not opening the
10 very documents in question is something that would cause
11 some suspicion?

12 **INSP. SMITH:** Yes, it could.

13 **MR. PAUL:** I'm wondering, I realize your
14 interview was fairly lengthy and there were a number of
15 points where you challenged the Bishop on different areas,
16 but nevertheless I wanted to ask you, the presence of a
17 lawyer, did that inhibit in any way the type of practice or
18 the type of interview you would conduct?

19 **INSP. SMITH:** No. I indicated I was -- I
20 was nervous. I wanted to get as much information as I
21 could and -- even though I'd interviewed thousands before
22 that, my palms were sweaty during that one.

23 **MR. PAUL:** But is the preference generally
24 of an interrogator or investigator to conduct the
25 questioning without counsel present? Would that be

1 generally the preference?

2 **INSP. SMITH:** He -- he would speak to me on
3 the basis that his counsel was present.

4 **MR. PAUL:** Yes?

5 **INSP. SMITH:** Without him he didn't -- he
6 wouldn't speak to me. That's not unusual.

7 **MR. PAUL:** So you were stuck with that
8 situation, but you would have -- I'm just saying you would
9 have preferred to interview him alone; is that ---

10 **INSP. SMITH:** Oh, yeah, that would have been
11 wonderful.

12 **MR. PAUL:** Yeah.

13 **INSP. SMITH:** Mr. Scott, always a gentleman,
14 he allowed me a fair amount of rein and then he -- he
15 abruptly stopped me when I got a little aggressive.

16 **MR. PAUL:** In terms of being aggressive, are
17 -- were -- would that type of setup where you're stuck with
18 a situation with counsel, would that preclude some of the
19 more aggressive police interrogation tactics -- techniques,
20 such as the Reed technique or something of that nature?

21 **INSP. SMITH:** Yes.

22 **MR. PAUL:** So that's the kind of technique
23 that you might use on someone who's there without counsel,
24 but it would be pretty difficulty to use otherwise?

25 **INSP. SMITH:** I -- I don't want to give away

1 secrets, but once you've got somebody on the run, that's
2 when the fun starts and you can -- you can glean a lot of
3 information. I didn't get to that point with the Bishop.
4 Mr. Scott kind of stopped me.

5 MR. PAUL: Now, the only other individual I
6 mentioned of the three, was Gordon Bryan and you conducted
7 an interview with him as well, I believe again, without a
8 caution. He wasn't ---

9 INSP. SMITH: Yes.

10 MR. PAUL: --- viewed as a suspect?

11 INSP. SMITH: Yes.

12 MR. PAUL: And were you aware at the time
13 that he would have been involved in the second news
14 conference where the Diocese presents the documents that
15 were sealed and gives their explanation?

16 INSP. SMITH: I don't recall, sir.

17 MR. PAUL: I'm just wondering, as part of
18 the investigation, did you ever seek out news reports and
19 information from what the Diocese -- how the Diocese
20 explained it at the news conferences as to -- compared to
21 what they were saying in the interviews to see if there
22 were differences?

23 INSP. SMITH: No. I read -- I know I read
24 the newspaper clippings. We kept copies of them someplace,
25 but ---

1 **MR. PAUL:** All right. Do you ever recall a
2 suggestion or a -- a suggestion by the news media, the
3 Freeholder, that Mr. Bryan being quoted somehow as saying
4 that it was standard practice to file those type of
5 documents away and seal them that way?

6 **INSP. SMITH:** I think that's part of Canon
7 law. If you read into that, that's -- that goes into the
8 Bishop's secret file, I guess.

9 **MR. PAUL:** I'm just wondering if when you
10 interviewed Mr. Bryan, did you see -- were you aware of
11 that and did you see that as a discrepancy between his
12 assertion that it was a specific instruction from Mr. Leduc
13 to do it as opposed to a standard practice?

14 **INSP. SMITH:** I -- my belief is that he was
15 instructed by the -- by the Bishop to put it in the safe.

16 **MR. PAUL:** As opposed to a standard
17 practice?

18 **INSP. SMITH:** Well, maybe that was the
19 standard practice, I don't know, but -- but seal it and put
20 it in the safe.

21 **MR. PAUL:** I had some questions in relation
22 to your involvement with Chief Shaver.

23 **INSP. SMITH:** Yes, sir.

24 **MR. PAUL:** I would understand that you met
25 Chief Shaver in '90 -- 1994 as a result of the conspiracy

1 investigation?

2 **INSP. SMITH:** Yes, sir.

3 **MR. PAUL:** And you indicated, I think, that
4 he just finished playing golf and I wasn't sure; did you
5 meet him on a golf course or was he just ---

6 **INSP. SMITH:** I said it appeared that he had
7 returned from golf.

8 **MR. PAUL:** Okay. Where do you ---

9 **INSP. SMITH:** It was two ---

10 **THE COMMISSIONER:** At his house? You were
11 at his home; were you?

12 **INSP. SMITH:** At his -- at his residence.

13 **THE COMMISSIONER:** All right.

14 **INSP. SMITH:** Two o'clock in the afternoon.
15 A sunny day; I remember it vividly.

16 **MR. PAUL:** Now, in terms of investigating,
17 you were looking at making a preliminary review of whether
18 he would be considered as part of the review of the
19 conspiracy?

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

21 **MR. PAUL:** And I'm just wondering if you --
22 in doing that, if you assessed all the information, for
23 example, from the Ottawa Police investigation?

24 **INSP. SMITH:** Yes.

25 **MR. PAUL:** And I'm just wondering, as part

1 of that, would you have looked at whether there was
2 circumstantial evidence in the sense of a -- evidence of a
3 poor investigation might support, either negligence or, on
4 the other hand, conspiracy?

5 **INSP. SMITH:** Well, he readily admitted it
6 was a poor investigation.

7 **MR. PAUL:** All right. And ---

8 **INSP. SMITH:** But does that -- that doesn't
9 make a conspiracy.

10 **MR. PAUL:** All right. But in terms of
11 trying to establish a conspiracy, it's not necessarily an
12 easy thing to do; correct?

13 **INSP. SMITH:** Would you repeat that?

14 **MR. PAUL:** Trying to establish a conspiracy
15 is not an -- not always an easy task; correct?

16 **INSP. SMITH:** No, not at any time.

17 **MR. PAUL:** And you would look perhaps at
18 whether there's some circumstantial evidence supporting
19 that.

20 And I just want to put in a few things and
21 perhaps you can tell me whether you agree that they might
22 support some level of circumstantial evidence of a
23 conspiracy. Were you aware that in the Silmsler
24 investigation, the Cornwall Police said Father Charles was
25 not interviewed and also that there was a suggestion by his

1 counsel at the time, Malcolm MacDonald, he might be willing
2 to do a polygraph and there was neither an interview or a
3 polygraph done. Were you aware of that?

4 **INSP. SMITH:** Yes.

5 **MR. PAUL:** And there was some criticism of
6 that in the Ottawa Police report, particularly the
7 polygraph?

8 **INSP. SMITH:** No, I wouldn't do a polygraph.

9 **MR. PAUL:** All right. But in terms of -- in
10 terms of the polygraph or the failure to conduct an
11 interview of Father Charles, did you find that troubling?

12 **INSP. SMITH:** He should have been
13 interviewed, but at what stage, I don't know.

14 **MR. PAUL:** What about the level of secrecy
15 of the file that the evidence seemed to show that
16 originally it didn't appear on any OMPPAC reports and then
17 after the settlement it's put on a project file. Is that
18 something you took into account in terms of circumstantial
19 evidence of a conspiracy?

20 **INSP. SMITH:** It's not unusual when you get
21 a high-profile investigation in the early stages to give it
22 a file number, but keep it sort of under wraps that the
23 general -- the general office doesn't find it. If it ends
24 up in a typing basket, before you know it, it -- in this
25 town, you don't need a newspaper. It would be all over the

1 place and that could inhibit the investigation.

2 MR. PAUL: Ultimately, would you agree that
3 if that type of investigation was looked at thoroughly --
4 witnesses, altar boys being tracked down -- that there's a
5 very good chance as a result of the investigation itself,
6 it's going to get out in the community?

7 INSP. SMITH: Oh, it does eventually.

8 MR. PAUL: Right. Particularly in ---

9 INSP. SMITH: But not in the initial stages.

10 MR. PAUL: All right. So is there
11 necessarily a reason to keep it secret throughout the whole
12 time, not on OMPPAC and then on a project file?

13 INSP. SMITH: We kept ours under wrap --
14 Project Truth under wraps. We didn't leave that in the
15 general files for every police officer to see, to discuss
16 with his wife at night so it ends up in coffee shops all
17 over the place. And trust me, that happens. So I -- I
18 don't take great issue with that.

19 MR. PAUL: What about the fact that
20 Children's Aid and Probation were not notified? Is that
21 some cause of concern when you were looking at the file
22 that might have been something that you could have looked
23 at further?

24 INSP. SMITH: Yeah, I agree with you on
25 that.

1 **MR. PAUL:** And then subsequent, when the
2 fallout of the settlement occurs, there's some evidence
3 suggesting in the fall of '93 that there were two
4 complainants, C-56 and C-3. There was an issue that the
5 Cornwall Police did not want to give the names, for
6 confidentiality reasons, to the Children's Aid?

7 **INSP. SMITH:** I -- I would.

8 **MR. PAUL:** And there was another issue in
9 terms of the evidence. There was a suggestion the evidence
10 at the initial stages when Mr. Abell of the Children's Aid
11 meets Claude Shaver, there's some suggest in the evidence
12 that Mr. Claude Shaver may have done something to question
13 the authority or the right of the Children's Aid to
14 proceed. Is that something -- that evidence would cause
15 you some concern?

16 **INSP. SMITH:** I don't quite understand the
17 question, I'm sorry. I'm sorry, would you ---

18 **MR. PAUL:** Lack of -- if there was any
19 evidence of lack of cooperation of the Chief of Police with
20 Children's Aid authorities, would that be something you'd
21 be concerned about?

22 **INSP. SMITH:** Yes. I don't think there -- I
23 think there should be open communication both ways ---

24 **MR. PAUL:** All right.

25 **INSP. SMITH:** --- and not using an in-house

1 lawyer to say what they can release to the police or what
2 they can't. When it comes to children, I think that there
3 should be two-way complete.

4 **MR. PAUL:** In terms of your situation when
5 you met Claude Shaver in 1994, were you aware of those
6 issues, the interaction of Claude Shaver and the Children's
7 Aid at that time?

8 **INSP. SMITH:** Not as much as I am now, sir.

9 **MR. PAUL:** Do you think there was -- having
10 looked at it, do you think there was enough circumstantial
11 evidence to warrant some further inquiry by you beyond just
12 speaking to Mr. Shaver informally?

13 **INSP. SMITH:** In regard to what?

14 **MR. PAUL:** In regard to issues of whether
15 conspiracy issues with respect to the Cornwall Police.

16 **INSP. SMITH:** You've jumped from the CAS now
17 you give me another question.

18 **MR. PAUL:** I'm just asking you generally,
19 given the state of what circumstantial evidence there was
20 about the investigation and concerns, do you think there
21 was enough circumstantial evidence to warrant some more
22 inquiries in relation to Claude Shaver and the Cornwall
23 Police then simply meeting him informally?

24 **INSP. SMITH:** And inquiries in which way,
25 sir? By who and where?

1 **MR. PAUL:** Conducting further interviews of
2 other persons in the Cornwall Police beyond Claude Shaver.

3 **INSP. SMITH:** Well, we've -- I addressed
4 that earlier. When you investigate a police force, you
5 either interview everybody on the police force or nobody.

6 There were a number of officers that were
7 involved with the Cornwall Police then that had -- there
8 was dissention. And although some people may not agree
9 with me, it's been my experience that people will come
10 forward and give information if they're aware of what's
11 going on. I received no information whatsoever. The
12 second go-about there were more officers interviewed and
13 the same results came about.

14 **MR. PAUL:** Did at some point -- in '94 you
15 indicated that you had a telephone conversation with Perry
16 Dunlop?

17 **INSP. SMITH:** Yes, I did.

18 **MR. PAUL:** Did he indicate that he was
19 willing to speak to you and be interviewed?

20 **INSP. SMITH:** No.

21 **MR. PAUL:** Did he indicate to you that he
22 was willing to go to Kingston to see you?

23 **INSP. SMITH:** No.

24 **MR. PAUL:** Did you ask to meet him or
25 interview him?

1 **INSP. SMITH:** No.

2 **MR. PAUL:** Perhaps given that some of these
3 matters seemed to stem from him, would it have been
4 appropriate to, if not speaking to everybody in the
5 Cornwall Police, at least interview him and see his side of
6 it?

7 **INSP. SMITH:** He's the one that made the
8 allegations against the police force. He wanted the matter
9 investigated. We investigated. What other information did
10 he have at that point other than what I already had? And
11 that was that he disclosed the statement to the CAS and
12 that was it.

13 **MR. PAUL:** I'm just wondering if you had the
14 information in the Ottawa Police report and whatever, if
15 anything, Mr. Dunlop could give you on what he knew, could
16 that not potentially have given the basis for interview --
17 a formal interview of some of the officers in the Cornwall
18 Police -- you'd have more information to go on for a formal
19 interview?

20 **INSP. SMITH:** I don't know what he had told
21 the Ottawa Police. I can't recall. If you could show me
22 that document, I'll read it and I'll see if and what he
23 said to the Ottawa Police and respond to that.

24 **MR. PAUL:** I'm suggesting that at the time
25 when you spoke to Mr. Dunlop, you really didn't know what

1 information he had or what he could say?

2 **INSP. SMITH:** I spoke ---

3 **MR. PAUL:** When you spoke to him on the
4 phone in '94, you didn't really know what he had to offer
5 in terms of knowledge that you could use or not?

6 **INSP. SMITH:** All I knew at that point was
7 that he was facing a *Police Act* hearing or charge, whatever
8 it was, for releasing documents to the CAS.

9 **MR. PAUL:** Did you have any concern that
10 given he was facing that charge that he might be reluctant
11 to come forward on his own unless you asked or made
12 arrangements on your own?

13 **INSP. SMITH:** I didn't want to get involved
14 in that *Police Act* charge. That was completely between he
15 and them. And I said before, I thought he was getting a
16 raw deal.

17 **MR. PAUL:** All right.

18 But in terms of if he had any knowledge of
19 this conspiracy allegation, that he might be reluctant to
20 come forward and give you that information?

21 **INSP. SMITH:** He could have called me
22 anytime with information if he wanted. He found my phone
23 number. He knew where to reach me.

24 Further down in the investigation, he was
25 offered in the death investigations to be interviewed. He

1 didn't want to be interviewed.

2 **THE COMMISSIONER:** In the what?

3 **INSP. SMITH:** In the death threat.

4 **THE COMMISSIONER:** Right.

5 **INSP. SMITH:** He refused.

6 Over the period of time, we became the
7 enemy.

8 **MR. PAUL:** I'm just wondering if you had
9 developed a relationship early on and invited him for an
10 interview in '94, do you think there might have been some
11 chance that that relationship would have been better off at
12 a later point and maybe you would have gained earlier
13 access to information that you later obtained in the ---

14 **INSP. SMITH:** I don't think so.

15 **MR. PAUL:** Now, in terms of always being
16 open to receive officers' input in terms of the conspiracy
17 investigation, that would apply to Officer Sebalj as well?

18 **INSP. SMITH:** Yes.

19 **MR. PAUL:** And in terms of her situation,
20 were you aware that there was a CAS worker who testified
21 here, Ms. Fitzpatrick?

22 **INSP. SMITH:** In these hearings I heard
23 about it, yes.

24 **MR. PAUL:** And she gave some testimony that
25 --- suggesting that Ms. Sebalj seemed to open up to her and

1 make a number of complaints known to the CAS worker, Ms.
2 Fitzpatrick. Were you aware of that?

3 **INSP. SMITH:** Only from what I heard here in
4 the Inquiry.

5 **MR. PAUL:** And I'm just wondering, do you
6 think that if you had approached Ms. Sebalj and requested
7 that she provide information on an anonymous basis, do you
8 think that might have assisted the conspiracy aspect of the
9 investigation?

10 **INSP. SMITH:** Well, I don't believe Ms.
11 Fitzpatrick, to tell you the truth. Ms. Sebalj, when I did
12 speak to her and I was able to speak to her, a very honest
13 individual, very concerned, gave me everything she had. I
14 tried to get back to her when she went off on sick leave
15 and she didn't want to speak any more. She was very
16 fragile.

17 **MR. PAUL:** Did you specifically speak to her
18 about the topics that were raised by Ms. Fitzpatrick, the
19 concern she had with superiors, for example?

20 **INSP. SMITH:** No.

21 **MR. PAUL:** And given the nature of her
22 position in the police force, do you think it might have
23 assisted in seeking her out on an anonymous basis -- that
24 that information could be provided on an anonymous basis as
25 an informant or something of that nature?

1 **INSP. SMITH:** She had my phone number. She
2 called me. If she wanted to give me information she could
3 do that very easy rather than me seek it out.

4 **MR. PAUL:** All right. Did you ---

5 **INSP. SMITH:** And I had no reason to
6 disbelieve that she had any hidden agenda or any hidden
7 information.

8 **MR. PAUL:** Did you ever have a concern that
9 the Dunlop discipline proceedings might be having some
10 effect on the willingness of officers to come forward?

11 **INSP. SMITH:** No.

12 **MR. PAUL:** I mean, you did indicate, at
13 least on that part of Mr. Dunlop's case, you thought he was
14 getting a bit of a raw deal?

15 **INSP. SMITH:** No. No, I -- no.

16 **MR. PAUL:** So you didn't think that that
17 might have had a chilling effect on officers coming
18 forward?

19 **INSP. SMITH:** To speak to me when this --
20 when the investigation been called?

21 **MR. PAUL:** Yes.

22 **INSP. SMITH:** No, they'd have the blessing
23 of their superiors to cooperate with me, give me any
24 information they had.

25 **MR. PAUL:** Was that announced somehow to the

1 -- within the Cornwall Police at a meeting or somehow or
2 through publication?

3 **INSP. SMITH:** Not to my knowledge, but I'm
4 sure that with Carl Johnston they wanted to get to the
5 bottom of this. He was the Chief. I'm sure that every
6 police officer in the police department knew I was there
7 and why I was there.

8 **MR. PAUL:** I was just wondering, when you
9 say the blessing was given to the -- by the Chief at the
10 time, I mean, are you speculating on that or do you know he
11 specifically told constables and other officers to
12 cooperate?

13 **INSP. SMITH:** I don't know.

14 **MR. PAUL:** Now, I know you did indicate that
15 part of your problem with a conspiracy aspect with regards
16 to Chief Shaver was a lack of motive, and I think you made
17 that fairly clear.

18 **INSP. SMITH:** Yes.

19 **MR. PAUL:** That you didn't see him as having
20 a motive to be associated with the Bishop because of the
21 previous Deslauriers case ---

22 **INSP. SMITH:** Correct.

23 **MR. PAUL:** --- where you were at odds.

24 And I'm just wondering if you ever
25 considered that the Cornwall Police may have had -- looking

1 at motivations, the motivation may have been -- if there
2 was one -- may have been more associated with Ken Seguin as
3 opposed to Charles MacDonald. I wondered if you ever
4 considered that?

5 **INSP. SMITH:** I couldn't see that. You're
6 reaching at stars, sir, with that one.

7 **MR. PAUL:** You didn't -- were you aware at
8 the time of any connection of Ken Seguin to a group home
9 investigation involving a Ms. Antoine? I believe that
10 Shawn White was investigating while you were there?

11 **INSP. SMITH:** I can't recall.

12 **MR. PAUL:** Were you aware that Ms. Antoine
13 was making some public complaints in relation to how that
14 investigation was conducted, back in '89 and '90?

15 **INSP. SMITH:** Only what I learned here in
16 the Inquiry. I heard something about it in the Inquiry.
17 At that time, I didn't know.

18 **MR. PAUL:** All right.

19 Were you aware that -- did you ever speak to
20 Ms. Sebalj about why she was looking at the Antoine case in
21 late '93 and early '94 and asking questions about Mr.
22 Seguin's connection?

23 **INSP. SMITH:** No.

24 **MR. PAUL:** So I'm asking -- I'm wondering
25 if ---

1 **INSP. SMITH:** He was dead.

2 **MR. PAUL:** Yes. But you don't know why she
3 was looking at -- asking Ms. Antoine ---

4 **INSP. SMITH:** No.

5 **MR. PAUL:** --- what her connection was to
6 Mr. Seguin?

7 **INSP. SMITH:** You have to realize, sir, that
8 I just wasn't working on this case. I had a number of
9 homicides, a number of cases going on all over the place,
10 and my full attention was not directed at this
11 investigation. It couldn't be.

12 And so you're finding -- picking and fine-
13 tuning things that I either didn't think about or I
14 wouldn't have done.

15 **MR. PAUL:** Okay. Just wondering if the
16 Seguin association with that Antoine investigation, if any,
17 is something that would not really be apparent or brought
18 forward to you at the time?

19 **INSP. SMITH:** I don't recall at the time,
20 but I remember something in the Inquiry about it, but I
21 can't be specific.

22 **MR. PAUL:** Just generally about the
23 conspiracy investigation, I would think that in terms of a
24 conspiracy aspect of it as opposed to obstruct, you're
25 looking at -- you're investigating a fairly small group of

1 people; correct?

2 **INSP. SMITH:** Yes.

3 **MR. PAUL:** And you're looking at a situation
4 where if there was a conspiracy the object of the
5 conspiracy, the documentation is already done; correct?
6 It's already completed or -- if there's a conspiracy, it's
7 already completed and over; correct?

8 **INSP. SMITH:** Give me an example. Like what
9 do you mean by that?

10 **MR. PAUL:** Well, I'm just suggesting you may
11 have been involved in some investigation, such as a drug
12 investigation, where you're looking at an on-going
13 conspiracy. It's still going on, they're still doing
14 illegal activity.

15 Here, your impression was -- is you're
16 trying to investigate a conspiracy, whether it happened in
17 the past, but is probably not on-going; correct? Because
18 the settlement is done.

19 **INSP. SMITH:** Yes, I'd agree with that.

20 **MR. PAUL:** Okay.

21 So just in terms of investigative
22 techniques, that's why I think you may have said the other
23 day that wire tap, for example, it would be difficult to
24 obtain an authorization and may not be relevant because the
25 actual conspiracy is over. It's not on-going; correct? So

1 things like wire tap or surveillance are of limited use in
2 that case?

3 **INSP. SMITH:** No, I wouldn't consider those
4 in that.

5 **MR. PAUL:** So, really, you're in a situation
6 where unless the participants in the conspiracy admit the
7 conspiracy, you'll have a difficult time proving it;
8 correct?

9 **INSP. SMITH:** And/or documents.

10 **MR. PAUL:** Yes. In terms of documents,
11 unless they document down in writing their involvement, it
12 could be very difficult to prove?

13 **INSP. SMITH:** The -- conspiracies are always
14 difficult to prove.

15 **MR. PAUL:** So the fact -- in fact, in this
16 case, you didn't find evidence that you believe would
17 support charges of conspiracy, wouldn't necessarily mean
18 that there wasn't a conspiracy? If it was a difficult
19 case, you couldn't prove it in the circumstances?

20 **INSP. SMITH:** I didn't think there was a
21 conspiracy.

22 **MR. PAUL:** I'm just suggesting, in that type
23 of difficult situation, would you not have wanted to obtain
24 resources of Perry Dunlop and if Constable Sebalj could be
25 pushed, anything from her as perhaps the only means of

1 really uncovering whether there was a conspiracy? That
2 those were really the two angles, really? They were the
3 only ---

4 **INSP. SMITH:** How do ---

5 **MR. PAUL:** --- ones left ---

6 **INSP. SMITH:** --- I work with Perry Dunlop
7 when he's making accusations against his own police force?

8 **MR. PAUL:** Well, this was 1994.

9 **INSP. SMITH:** Ninety-four ('94), I'm
10 talking, yes, but he's making accusations against his own
11 police force of a cover-up, so I'm going to have him come
12 on my investigation to investigate them? That doesn't
13 work, sir.

14 **MR. PAUL:** Well, I'm not suggesting ---

15 **INSP. SMITH:** Well, that's what you were
16 saying.

17 **MR. PAUL:** I'm suggesting you interview him
18 and take a statement which, I would suggest, is not him
19 being on your side, it's doing the same thing you do with
20 Claude Shaver's taking a statement ---

21 **INSP. SMITH:** Well ---

22 **MR. PAUL:** --- getting the other side.

23 **INSP. SMITH:** --- that wasn't done.

24 **THE COMMISSIONER:** In other words, treat him
25 as a complainant?

1 **INSP. SMITH:** Yes. If he wanted to file a
2 complaint with me, yes, and that's what the investigation
3 was.

4 **THE COMMISSIONER:** Well, no, but I guess
5 what -- is that if he is a complainant, you'd want to sit
6 down, talk to him, and say, "Listen, give me everything
7 you've got so that I can look into it. Give me the ins and
8 outs of the Cornwall Police and I'm going to go in and do
9 an investigation"?

10 **INSP. SMITH:** I felt I had what --
11 everything he had ---

12 **THE COMMISSIONER:** How do you know ---

13 **INSP. SMITH:** --- at that point.

14 **THE COMMISSIONER:** How do you know if you
15 don't ask him?

16 **INSP. SMITH:** Well, the other thing is, what
17 did he have? I'm in the early stages. He's taken a
18 statement; he's given it to the CAS. People are trying to
19 say, "Stay out of the investigation", so all of a sudden
20 he's saying, "Okay, there's a cover-up," and away he goes
21 and that's it? Where's his evidence? I've got ---

22 **THE COMMISSIONER:** If you don't ask him, you
23 won't know.

24 **INSP. SMITH:** Well, even to this day, Mr.
25 Commissioner, when he -- when I look at everything he had,

1 I don't see -- I don't see any evidence there, 18 years, 14
2 years later.

3 **THE COMMISSIONER:** No, no, no, but at least
4 if you -- in hindsight, if you sit the fellow down and say,
5 "Give me everything you've got" and then you start picking
6 away and you say, "Okay, are you saying that the Bishop and
7 the Chief of Police were in cahoots"?

8 Okay, well, you go out and you find out that
9 a few years ago the Cornwall Police Service wiretapped or
10 put -- had somebody go in there with a recorder to talk to
11 the Bishop.

12 I mean, that doesn't show a conspiracy, it
13 shows the opposite, that the police force and the bishop
14 weren't seeing eye-to-eye about things and you kind of clip
15 them one at a time as you go down.

16 **INSP. SMITH:** That could be done, but, then
17 again, too, he was on sick leave by the time I got there,
18 and I'll tell you what happens with sick leave, is that we
19 don't -- when they go off on stress, when an officer goes
20 off on stress and there's an investigation, we wait until
21 they return.

22 I'll tell you why, is that if I went and for
23 example interviewed Perry Dunlop when he was on stress, he
24 could easily say that -- I'm not saying he would -- but it
25 could exacerbate the matter, and the next thing I know I'm

1 into a suit and I'm into difficulty in that way.

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

3 **INSP. SMITH:** I'll wait until he comes back.

4 And then I waited until he -- until he came back.

5 The issues that we spoke to him -- by that
6 time, we were well aware of what all the issues were, and
7 we addressed them there at that point.

8 **MR. PAUL:** Were you aware that at the time,
9 back in '94, when you interviewed Claude Shaver, that there
10 was some issue of a daily morning meeting where Sergeant
11 Lortie brings up some concerns about the settlement?

12 **INSP. SMITH:** Yes.

13 **MR. PAUL:** And I think there's conflicting
14 evidence about what words were used. Somehow -- we've
15 heard some reference to the word "cover-up"?

16 **INSP. SMITH:** Yes.

17 **MR. PAUL:** I believe Sergeant Lortie himself
18 said it was a shame or something of that nature.

19 **INSP. SMITH:** Yes. Yes.

20 **MR. PAUL:** But is that something that, back
21 then, deserved perhaps more investigation in terms of who
22 was at the meeting and what went on at the time?

23 **INSP. SMITH:** That's -- that's not unusual
24 in police -- in police circles, they said. If we don't do
25 this, we don't do that, that'll look like we're covering up

1 something, we're hiding something. That's said in a number
2 of investigations. There's, you know ---

3 **MR. PAUL:** Or perhaps I'm suggesting at
4 least to speak to Sergeant Lortie to get his side of what
5 he was raising, what his concerns were?

6 **INSP. SMITH:** There were -- to make that
7 conspiracy work really, there were just too many people
8 within the police department knew what was going on.

9 A conspiracy usually is kept nice and quiet
10 between the individuals that are involved -- nobody on the
11 outside -- and everybody in the police force knew what was
12 going on here. It's pretty hard to carry on a conspiracy
13 when you have 50 or 60 officers know what's going on.

14 **MR. PAUL:** You didn't think that Sergeant
15 Lortie appeared to be expressing concerns ---

16 **MR. MANDERVILLE:** Mr. Commissioner, I think
17 Mr. Paul should be perhaps thinking about putting the
18 evidence properly to Officer Smith.

19 We've heard lots of evidence that the
20 officers all thought the cover-up, if there was one, might
21 have been within the Diocese not within the Police
22 Department. I think that sort of proposition should be put
23 to Officer Smith.

24 **MR. PAUL:** Mr. Commissioner, I would suggest
25 this is cross-examination and if my friend wants to put his

1 own version to the witness, he can do that when he has his
2 turn, but I don't think that ---

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

4 **MR. PAUL:** --- that's something I would have
5 to put at this stage. I'm simply asking questions about
6 what's in evidence about a meeting with Sergeant Lortie.

7 **MR. MANDERVILLE:** I'm not challenging my
8 friend's entitlement to cross-examine Officer Smith and I'm
9 certainly not suggesting he can't spin the evidence, but
10 there has to be some evidence first. He can't make it up.

11 **MR. PAUL:** I don't know what he's talking
12 about, spinning evidence or making up evidence. I'm asking
13 him about whether he's tasked to investigate a conspiracy
14 and there's evidence at a meeting that there's concerns --
15 the witness has suggested that everybody in the police
16 force knew about the situation. I think I'm entitled to
17 ask him why then would a senior ranking officer be
18 specifically asking what's going on if everybody knew about
19 it.

20 **THE COMMISSIONER:** Go ahead.

21 **MR. PAUL:** In terms of everybody in the
22 police department knowing about what's going on, wouldn't
23 it be your impression that Sergeant Lortie was raising the
24 issue because he, in fact, appeared not to know what's
25 going on?

1 **INSP. SMITH:** Sergeant Lortie what?

2 **MR. PAUL:** Appeared not to know what's going
3 on, that's why he was asking what's going on with that
4 file.

5 **INSP. SMITH:** I'm not aware of that.

6 **MR. PAUL:** Was it your understanding that
7 Sergeant Lortie at the very beginning was assigned the
8 file?

9 **INSP. SMITH:** A number of people were
10 assigned and it got bounced around and eventually down to
11 Sebalj.

12 **MR. PAUL:** And it was your understanding
13 that Claude Shaver originally had the file and assigned the
14 file near the beginning?

15 **INSP. SMITH:** Yes.

16 **MR. PAUL:** And when you talked to him, did
17 he seem to be familiar with all the stages of the file?

18 **INSP. SMITH:** Shaver?

19 **MR. PAUL:** Did he seem to be familiar with
20 each stage of the file and how it progressed, Claude
21 Shaver?

22 **INSP. SMITH:** No, I think there were lulls,
23 in that he was away. There was a poor chain of command and
24 that was identified in the Ottawa report, and the chain of
25 command was bypassed in some areas. Some didn't know.

1 Some did know. That doesn't make a conspiracy, sir.

2 MR. PAUL: You did ---

3 INSP. SMITH: That was poor management.

4 MR. PAUL: You did make reference to Claude
5 Shaver being what you viewed as a micromanager.

6 INSP. SMITH: To me, yes.

7 MR. PAUL: I just want to clarify. Did you
8 mean that generally or did you mean that specifically to
9 the Silmsler case that he was ---

10 INSP. SMITH: I would say my impression was
11 on everything; that he had his thumb on everything and that
12 he would bypass the chain of command. He said his door was
13 always open; constables could bypass NCOs or senior
14 officers to speak to him.

15 MR. PAUL: So the information ---

16 INSP. SMITH: Can I finish?

17 MR. PAUL: Yes.

18 INSP. SMITH: And that, in effect, causes
19 difficulties within an organization when you usurp the
20 authority of NCOs and senior staff. And that was
21 identified by Ottawa and other officers that some of the
22 officers that should have known things didn't know them
23 because it was run by Shaver. And that's what I mean by a
24 micromanager.

25 MR. PAUL: You made a comment yesterday

1 about Malcolm MacDonald.

2 **INSP. SMITH:** Yes, sir.

3 **MR. PAUL:** And I think you indicated at one
4 point that you had heard from somewhere, had some
5 information that Malcolm liked boys.

6 **INSP. SMITH:** Yes.

7 **MR. PAUL:** And I'm just wondering in terms
8 of your source for that information, was that received from
9 a police force or a child protection agency?

10 **INSP. SMITH:** No, I think it was in one of
11 the statements that I read. I can't remember the
12 statement, but there was an indication he liked to go to
13 Ottawa and he liked boys.

14 **MR. PAUL:** All right.

15 So you're talking about a witness statement?

16 **INSP. SMITH:** Yes.

17 **THE COMMISSIONER:** Mr. Paul, do you know how
18 long you're going to be?

19 **MR. PAUL:** I think I only have a few
20 questions; maybe five or 10 minutes.

21 **THE COMMISSIONER:** Sure. Go ahead.

22 **MR. PAUL:** I have a few questions in
23 relation to Mr. Dunlop. Just briefly, I would understand
24 that there would appear to be a number of cases,
25 particularly cases, for example, involving Mr. Marleau

1 where Mr. Dunlop's involvement didn't seem to be as
2 significant.

3 **INSP. SMITH:** He was involved in Marleau.

4 **MR. PAUL:** All right.

5 But in terms of the ultimate results of the
6 cases, most of the cases involving Mr. Marleau went on and
7 went to a final trial; correct?

8 **INSP. SMITH:** That question I think you can
9 put to Inspector Hall; he'll be here.

10 **MR. PAUL:** All right.

11 So ---

12 **INSP. SMITH:** I think I was on my way by
13 that time.

14 **MR. PAUL:** Just a few questions in relation
15 to the MacDonald -- Charles MacDonald proceedings. In
16 terms of delay issues, I just wanted to ask you whether you
17 were ever approached or are you aware of whether the Crown
18 attorney was approached by the complainants, specifically
19 John MacDonald and David Silmsler, whether they approached
20 you and a Crown complaining that delays might cause a
21 problem for the prosecution?

22 **INSP. SMITH:** I'm not aware of it. Not me
23 personally. They may have gone somewhere but they didn't
24 come to me with that.

25 **MR. PAUL:** Were you aware of Carson Chisholm

1 ever complaining to the Crown about that issue, that the
2 proceedings might be stayed if they take too long?

3 **INSP. SMITH:** No, sir.

4 **MR. PAUL:** And just one point. In terms of
5 the -- there was some issues surrounding documents in 1997.
6 I believe Mr. Dunlop's ordered to disclose some documents
7 by the 15th of August '97 by Inspector Trew.

8 **INSP. SMITH:** Was that following our meeting
9 that he was to ---

10 **MR. PAUL:** Yes.

11 **INSP. SMITH:** --- disclose? Yes.

12 **MR. PAUL:** And then there's a delay and I
13 think you get them in October of '97 or get some documents
14 in October.

15 **INSP. SMITH:** Again, I think you better ask
16 Sergeant Hall -- or Detective Inspector Hall. I was in
17 Newfoundland at the time.

18 **MR. PAUL:** All right.

19 So you weren't aware when they -- in October
20 when the matter's -- when they're received?

21 **INSP. SMITH:** No.

22 **MR. PAUL:** Do you know if there was ever any
23 contact with the Crown about the legal issue of what to do
24 with documents that were in the possession of Mr.
25 Bourgeois, the lawyer?

1 **INSP. SMITH:** Again, Inspector Hall could
2 answer that, sir.

3 **MR. PAUL:** So you wouldn't have been
4 involved in seeking any inventory or a list of any
5 documents that were being excluded by Mr. Bourgeois?

6 **INSP. SMITH:** Again ---

7 **MR. PAUL:** All right.

8 **INSP. SMITH:** I think I'm almost out of the
9 picture at that time, sir.

10 **MR. PAUL:** All right.

11 With respect to Mr. Dunlop, just looking at
12 the obstruct investigation involving Mr. Malcolm MacDonald,
13 would you agree at least in that regard, that aspect of the
14 case, that Mr. Dunlop had a positive involvement, in a
15 sense that he assisted in bringing to light to the public
16 the settlement and that resulted in perhaps the public
17 becoming aware of the legal clause and the eventual charges
18 involving Malcolm MacDonald?

19 **INSP. SMITH:** I'll agree with you, yes, sir.

20 **MR. PAUL:** So I know you have concerns about
21 other aspects but at least that aspect there was a positive
22 effect on the community in relation to that aspect?

23 **INSP. SMITH:** Yes, sir.

24 **MR. PAUL:** The only other brief area, I just
25 wanted to ask you, the fact that there's an initiated

1 extortion investigation going on with respect to Mr.
2 Silmsler, at the same time there's a parallel investigation
3 with Silmsler as a complainant on the sexual assault with
4 Charles MacDonald -- I just wanted to ask you the parallel
5 investigations and the fact that sometimes the officers go
6 back and forth, from a practical point of view, did that
7 cause difficulty for the officers?

8 **INSP. SMITH:** I don't think the officers had
9 any difficulties, sir. The difficulties I think that arose
10 out of that was that prior to putting the briefs in that we
11 didn't get together and consult all of our investigations
12 together before they were forwarded to Peter Griffiths.

13 **MR. PAUL:** Thank you. Those are my
14 questions.

15 **THE COMMISSIONER:** Thank you.

16 Let's take the lunch break. We'll come back
17 at ten after two.

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

20 This hearing will resume at 2:10 p.m.

21 ---Upon recessing at 12:38 p.m./

22 L'audience est suspendue à 12h38

23 ---Upon resuming at 2:14 p.m./

24 L'audience est reprise à 14h14

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

1 veuillez vous lever.

2 This hearing is now resumed. Please be
3 seated. Veuillez vous asseoir.

4 **MR. ENGELMANN:** I had -- Mr. Commissioner, I
5 had advised counsel that you may want to read your decision
6 in Lefebvre motion, I understand you may want to do that
7 after the break?

8 **THE COMMISSIONER:** Yes.

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

10 **THE COMMISSIONER:** Thank you.

11 **MR. ENGELMANN:** The witness is just out of
12 the room for a moment. I'll have him brought back in.

13 **THE COMMISSIONER:** Thank you.

14 **MR. KOZLOFF:** Detrimental alliance.

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

16 **MR. KOZLOFF:** (Off mic).

17 **THE COMMISSIONER:** Ah, I see. You can get
18 your best questions in now, Mr. Lee.

19 **MR. LEE:** I could, I could.

20 I can tell you before the witness arrives
21 that Mr. Wardle and Mr. Paul have done my heavy lifting for
22 me today, so I don't expect I'll be as long as I originally
23 thought.

24 **THE COMMISSIONER:** All right. Thank you.

25 Good afternoon, Inspector.

1 **INSP. SMITH:** Good afternoon, sir.

2 **THE COMMISSIONER:** How was lunch?

3 **INSP. SMITH:** Very good, thank you.

4 **THE COMMISSIONER:** Yeah? Did Mr. Kozloff
5 pay?

6 **INSP. SMITH:** He will.

7 **(LAUGHTER/RIRES)**

8 **THE COMMISSIONER:** Of that there's little
9 doubt. All right. Mr. Lee.

10 **MR. LEE:** Thank you.

11 **INSPECTOR TIM SMITH, Resumed/Sous le même serment:**

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

13 **MR. LEE:** Mr. Smith, my name is Dallas Lee,
14 I'm counsel for the Victims' Group.

15 **INSP. SMITH:** How do you do, sir?

16 **MR. LEE:** I'm well, how are you? I wanted
17 to begin by saying that my clients appreciate the comments
18 you made at the end of your examination in-chief with
19 respect to access to counselling for male victims of abuse.
20 And I know many of my female clients would agree that they
21 don't have proper funding either, but the male victims in
22 particular ---

23 **INSP. SMITH:** Okay.

24 **MR. LEE:** --- have some major issues, and I
25 suspect your comments there may find their way into my

1 final submission, so I appreciate that.

2 **INSP. SMITH:** Well, I hope -- I hope so,
3 sir.

4 **MR. LEE:** I'd like to start, please, just
5 with a couple of quick questions that stem from the Travis
6 Varley investigation. And we know that you would have
7 instructed Randy Millar to write a letter to Emile Robert,
8 the supervisor of Mr. Seguin?

9 **INSP. SMITH:** That's correct, sir.

10 **MR. LEE:** And can you tell me whether there
11 was anything in particular about Mr. Seguin that led you to
12 believe that it was especially important that that letter
13 be sent rather than simply trusting him to advise his
14 superiors as he said he would?

15 **INSP. SMITH:** I just wanted to confirm that
16 we didn't feel it was appropriate that probationers spend
17 time at his house drinking beer, particularly on a night
18 before a pre-sentence report was to be presented before the
19 courts.

20 **MR. LEE:** And as I understand it, the
21 officers -- your officers would have been advised by Mr.
22 Seguin that he had self reported to his employer?

23 **INSP. SMITH:** Well, yes, what had happened
24 was that in the course of a homicide we -- we trace back
25 the victim and the accused, and we learned that they'd been

1 at Mr. Seguin's house the night prior. And in -- in
2 locating Mr. Seguin to get his statement, he had already --
3 he advised the officers immediately that he'd notified his
4 superior. Later that day I think it was Constable McDonell
5 was up in Lancaster and I believe one of the probation
6 officers there had said, yeah, they had heard about it in
7 the office and that -- that he'd told the boss that they'd
8 all been there the day before -- or the night before. So I
9 thought at that time that Mr. Robert would be aware that --
10 that he'd been there and that they'd been drinking beer,
11 but I found out later on I guess that he had omitted to say
12 the beer part of it.

13 **THE COMMISSIONER:** That he what?

14 **INSP. SMITH:** Beer.

15 **THE COMMISSIONER:** Oh, that he omitted to
16 say?

17 **INSP. SMITH:** Omitted.

18 **THE COMMISSIONER:** Yes.

19 **INSP. SMITH:** And so at that point like we
20 decided, well, okay, fine, he's going to be -- I expected a
21 trial in this matter, and we thought that, okay, we'll --
22 we'll let that come out at trial. He'll be called as a
23 witness.

24 A trial didn't happen. There was a plea of
25 guilty and when we found that out then I made sure that

1 that was included in the agreed statement of facts, that
2 they'd been drinking beer at his place, then we followed
3 that up with a letter.

4 **MR. LEE:** So did you come to understand
5 prior to the -- the court appearance that Mr. Seguin had
6 not advised his employer of the beer portion of the story
7 or was that after the fact ---

8 **INSP. SMITH:** That would be before the
9 trial.

10 **MR. LEE:** Okay. So you recognized that it
11 was important that there be some information flowing to
12 Corrections relating to the alcohol ---

13 **INSP. SMITH:** On the record, yes.

14 **MR. LEE:** Okay.

15 **INSP. SMITH:** Now, the -- the homicide
16 happened about six or seven hours after they'd been there.

17 **MR. LEE:** Right.

18 **INSP. SMITH:** But it isn't as if they all
19 got drunk there and he supplied them with all the alcohol
20 that led to it. I think they'd been drinking for some
21 period of time.

22 **MR. LEE:** I think we have some understanding
23 of the long chronology of that on the record here.

24 **INSP. SMITH:** Yes, sir.

25 **MR. LEE:** Can we take a look, please, at

1 Exhibit 1803? Those are your notes.

2 **INSP. SMITH:** Yes, sir. What -- what page?

3 **MR. LEE:** Bates page ending 225. Madam
4 Clerk, I'll start at the top of the page, please.

5 **INSP. SMITH:** Yes, sir.

6 **MR. LEE:** This is a July 20th, 1994, note,
7 I'll just wait for it to come up on the screen here. So
8 you see that there, sir?

9 **INSP. SMITH:** Yes.

10 **MR. LEE:** And it references a call to L.
11 O'Brien, a lawyer for Perry Dunlop.

12 **INSP. SMITH:** Yes.

13 **MR. LEE:** Do you see that?

14 **INSP. SMITH:** Yes.

15 **MR. LEE:** And if you can go down, Madam
16 Clerk, to the last paragraph visible on the screen right
17 now that begins, "told him," up a little bit, please. Up
18 just a little, very little bit. Right there.

19 You see, "told him" there, sir?

20 **INSP. SMITH:** I'm sorry, "told" yes.

21 **MR. LEE:** Yeah. And right below that I
22 believe it reads:

23 "I don't know Cornwall PFs..."

24 Presumably police forces:

25 "...but in all cases I am involved

1 where there are allegations of abuse re
2 children under 16 come to my attention,
3 I advise CAS, and if alleged offenders
4 are in position of trust and care of
5 those under..."

6 I think it says, "16 to 18..."

7 **INSP. SMITH:** Sixteen (16), yes.

8 **MR. LEE:** "...I advise their
9 superior."

10 **INSP. SMITH:** Usually, yes. Yeah.

11 **MR. LEE:** And so that's a conversation you
12 would have been having with L. O'Brien?

13 **INSP. SMITH:** That's correct.

14 **MR. LEE:** And in relaying that information
15 are you speaking generally of a practice that you support,
16 or are you speaking of your actual past practice?

17 **INSP. SMITH:** It's -- it's what I believe I
18 support. I'll go back to 1983, I was crime corporal in
19 Barrie, Ontario, Simcoe County, and we developed a policy
20 between the CAS and Simcoe County and ourselves in the
21 reporting procedure. And we felt that to be on the safe
22 side we would report all cases of abuse of under 16, and
23 either the CAS or us would report it to the supervisors.

24 **THE COMMISSIONER:** To the supervisors of?

25 **INSP. SMITH:** Of that person -- of the

1 offender, alleged offender.

2 **THE COMMISSIONER:** Yeah. I guess I had this
3 question for a long time, because there's a fellow, your
4 client -- was it your client? Anyways, he was being abused
5 by one probation officer, he goes and talks to what he
6 thinks is the supervisor, who goes on to abuse him. So are
7 you afraid sometimes that maybe you're going to be telling
8 a possible suspect?

9 **INSP. SMITH:** Well, we're talking about
10 probation officers here. I'm saying that if I get
11 somebody, for example, in the school board ---

12 **THE COMMISSIONER:** Right.

13 **INSP. SMITH:** --- a teacher.

14 **THE COMMISSIONER:** Right.

15 **INSP. SMITH:** Well, I'm going to go and tell
16 the principal.

17 **THE COMMISSIONER:** Right.

18 **INSP. SMITH:** Yes. Or if it's anybody in a
19 position of authority, but I'd never dealt before with the
20 probation office ---

21 **THE COMMISSIONER:** Right.

22 **INSP. SMITH:** --- with probation officers.

23 **THE COMMISSIONER:** It just would depend on
24 what level -- how far up you go, but in the case of back --
25 way back when, if you would have done that here you would

1 have been reporting to Mr. Seguin, blowing the whistle on
2 Mr. ---

3 **MR. LEE:** Barque.

4 **THE COMMISSIONER:** --- Barque.

5 **INSP. SMITH:** I don't know who the
6 supervisor -- was Barque the supervisor?

7 **THE COMMISSIONER:** No, no, Barque was the
8 offender and Seguin was the office supervisor kind of,
9 unofficial.

10 **INSP. SMITH:** Well, then I'd be in trouble
11 then.

12 **THE COMMISSIONER:** Yeah, okay.

13 **INSP. SMITH:** But I think you understand
14 where I'm coming from.

15 **THE COMMISSIONER:** No. No, no, I
16 understand, but I -- and a lot of people have been talking
17 about, well, go and see the employer ---

18 **INSP. SMITH:** Yeah.

19 **THE COMMISSIONER:** --- right away, and
20 things like that.

21 **INSP. SMITH:** Yeah.

22 **THE COMMISSIONER:** And I don't know if it's
23 that clear cut on occasion.

24 **INSP. SMITH:** Yeah. Back in '83 we could do
25 that, but then all of a sudden it became this freedom of

1 information and you had to have -- you had to have a
2 complaint and people were worried about being sued. I
3 don't care, I'll tell them anyway. That's why we have
4 lawyers.

5 **THE COMMISSIONER:** Okay. I'm sure everyone
6 here will be happy to hear that.

7 **INSP. SMITH:** Yeah, I'll keep them employed,
8 sir.

9 **THE COMMISSIONER:** All right. Okay.
10 Let's go back, Mr. Lee.

11 **MR. LEE:** I suspected that that may be the
12 answer you give me. I take it your attitude in this area
13 was that the protection of children is paramount?

14 **INSP. SMITH:** Yes, sir.

15 **MR. LEE:** And can we apply this -- the
16 general principle encapsulated in the note to an historical
17 sexual abuse case, because the note says:

18 "...where there are allegations
19 of abuse of children under 16..."

20 **INSP. SMITH:** Yes.

21 **MR. LEE:** What about in a historic case
22 where you receive information that a child under 16 was
23 abused, but 15 years ago, as an example?

24 **INSP. SMITH:** And -- and where is the --
25 where is the suspect then?

1 **MR. LEE:** Presumably still in a position of
2 trust.

3 **INSP. SMITH:** Well, I think they should be
4 advised. No problem.

5 **MR. LEE:** And in 1994, at the time of this
6 conversation with Mr. O'Brien, would that have been your
7 understanding?

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

9 **MR. LEE:** And we know that as an example in
10 1998, when allegations against Jacques Leduc come to your
11 attention, that you advise the Bishop because it's your
12 understanding that Mr. Leduc is working for the Diocese at
13 that point?

14 **MR. LEE:** I spoke to the Bishop because I
15 realized he was working there and I wanted to make
16 that -- because the last thing we needed was difficulties
17 going on with the Bishop and this type of thing, but I
18 wanted to know did he have access to children, and he told
19 me, no, there was no -- no way that he had access to people
20 under 16.

21 **MR. LEE:** But does this -- that flows from
22 the same principle, I take it? You considered the Bishop
23 at that point to be the employer in one way or another?

24 **INSP. SMITH:** An abundance of caution, sir,
25 yes.

1 **MR. LEE:** And that conversation with the
2 Bishop in 1998 was prior to the charges being laid
3 against Mr. Leduc?

4 **INSP. SMITH:** Yes, I told -- I asked him not
5 to say anything because we were investigating Mr. Leduc and
6 he said he wouldn't and apparently he didn't until we'd
7 progressed in our investigation.

8 **MR. LEE:** When you were first tasked in 1994
9 with coming to Cornwall to launch your three-tiered
10 investigation, did you appreciate by that point that there
11 would be media interest in the matters?

12 **INSP. SMITH:** Yes. Yes, sir, pretty well
13 every case I'm involved in there's -- there's media, but in
14 this one there was more.

15 **MR. LEE:** This was -- this was beyond the
16 norm?

17 **INSP. SMITH:** Yes, but I've had some pretty
18 big cases where there's lot of media.

19 **MR. LEE:** And you would have understood, as
20 an example, by the time you arrived in 1994 the story of
21 the Silmsler settlement had broke publicly?

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

23 **MR. LEE:** And you went through some of this
24 with Mr. Wardle during his cross-examination.

25 I take it, certainly by the time the Fantino

1 brief comes in in 1997, you're well aware of the public
2 attention on this ---

3 **INSP. SMITH:** Oh ---

4 **MR. LEE:** --- these issues?

5 **INSP. SMITH:** --- much so.

6 **MR. LEE:** And you understood, I take it,
7 while in Cornwall doing your work, that that work was going
8 to be scrutinized?

9 **INSP. SMITH:** Yes.

10 **MR. LEE:** And that you were going to be
11 watched closely?

12 **INSP. SMITH:** Yes.

13 **MR. LEE:** And I take it throughout the
14 entirety of your investigations here, you recognized the
15 importance of doing a thorough and diligent investigation?

16 **INSP. SMITH:** Yes, we tried, yes.

17 **MR. LEE:** And I'm sure the phrase wasn't put
18 to you back at the time you were doing it, but we've heard
19 here a lot about "leaving no stone unturned".

20 Is that a fair phrase for what you intended
21 to do with your investigation?

22 **INSP. SMITH:** I try to do that in all my
23 investigations if I can, but hindsight is great. Later on,
24 you always realize there's areas that you could have done
25 more.

1 **MR. LEE:** And there's probably ---

2 **INSP. SMITH:** But, I try to be thorough,
3 yes, sir. I have a reputation of being fairly thorough.

4 **MR. LEE:** Now, during the course of your
5 1994 conspiracy investigation, you had several contacts
6 with Acting Chief Johnston ---

7 **INSP. SMITH:** Yes, sir.

8 **MR. LEE:** --- of the Cornwall Police? And
9 you were taken through some of those in-chief, and is it my
10 understanding that you would have advised him at various
11 times of the status of the investigation?

12 **INSP. SMITH:** Yes. Yes, I would.

13 **MR. LEE:** And you told us during your
14 examination in-chief that you would have updated him with
15 respect to your investigation of the Silmser complaint, and
16 you also would have updated him in relation to your
17 obstruct justice investigation.

18 Mr. Engelmann asked you whether or not you
19 would have provided less information in relation to the
20 conspiracy side of the investigation given that the CPS was
21 allegedly involved in some way in that. And you said:

22 "Perhaps, but I can't say exactly.

23 See, the Chief had come in after all of
24 this had gone on, so he was sort of
25 independent of everything."

1 **INSP. SMITH:** Yes.

2 **MR. LEE:** And by that I take it you meant
3 that Acting Chief Johnston had succeeded Claude Shaver ---

4 **INSP. SMITH:** Yes.

5 **MR. LEE:** --- who was the chief in charge at
6 the time of the ---

7 **INSP. SMITH:** Yes.

8 **MR. LEE:** --- alleged ---

9 **INSP. SMITH:** Yes.

10 **MR. LEE:** --- conspiracy and the alleged
11 cover-up?

12 **INSP. SMITH:** Yes. I also knew -- I'd
13 worked with Chief Johnston when he was the Chief in
14 Collingwood, and he was highly regarded in the police
15 community as probably the straightest shooter you could
16 get, and he was concerned that this be cleaned up.

17 He was the one that requested the
18 investigation, but I -- I don't think it had -- I couldn't
19 see that he had any involvement in any of the dealings
20 prior to what I was investigating.

21 **MR. LEE:** He certainly wasn't going to be a
22 witness?

23 **INSP. SMITH:** I don't think so.

24 **MR. LEE:** But you did understand that he
25 was, at the time you were dealing with him, the Acting

1 Chief of the Cornwall Police?

2 **INSP. SMITH:** Yes, sir.

3 **MR. LEE:** And you understood that he was
4 brought in to "right the ship", I suppose?

5 **INSP. SMITH:** Yes.

6 **MR. LEE:** And that he was very much
7 interested in doing right by the Cornwall Police Service?

8 **INSP. SMITH:** Well, correcting it, the
9 difficulties that they had, yes.

10 **MR. LEE:** And I began this line of
11 questioning by asking you about your understanding of the
12 public focus on these matters and the media attention.

13 Did you have any regard during your 1994
14 investigations of what the public perception would be, if
15 it were learned that you were updating Acting Chief
16 Johnston during the course of the investigations, as an
17 example?

18 **INSP. SMITH:** Not really. I think that the
19 way I looked at it was that the public would look at it, is
20 that everything that I was investigating was prior to Chief
21 Johnston.

22 **MR. LEE:** Can you appreciate that others may
23 have looked at it as though you were sharing information
24 with a head of the force you were investigating?

25 **INSP. SMITH:** That -- that could be, yes.

1 **MR. LEE:** Did you appreciate that at the
2 time? Was that something that entered your mind?

3 **INSP. SMITH:** Not really, sir.

4 **MR. LEE:** Given what you now know about the
5 climate in Cornwall and what's gone on in years since, you
6 appreciate that looking back on it, people have pointed to
7 some of the dealings -- as an example, back on Chief
8 Johnston, the co-ordination with him as evidence that some
9 of these matters were pre-judged and that they weren't
10 objective?

11 **INSP. SMITH:** I could see that, yes.

12 **MR. LEE:** But that wasn't something you ---

13 **INSP. SMITH:** But that certainly wasn't the
14 intention or the case, but I could see -- I can see that
15 now.

16 **MR. LEE:** Mr. Wardle took you through in
17 some detail, the drafting of the release ---

18 **INSP. SMITH:** Yes.

19 **MR. LEE:** --- relating to the Silmser
20 matter?

21 **INSP. SMITH:** Yes.

22 **MR. LEE:** And I'm not going to go back to
23 that with you, but I want to talk to you about the review
24 of the document once it's been drafted, and you understand
25 that there are two different issues here?

1 One issue we need to consider is who drafted
2 it and who put the word "criminal" in.

3 **INSP. SMITH:** Yes.

4 **MR. LEE:** And the other one is after the
5 fact who knew about it?

6 **INSP. SMITH:** Yes.

7 **MR. LEE:** In terms of either prior to
8 signing ---

9 **INSP. SMITH:** Yes.

10 **MR. LEE:** --- or immediately after signin,
11 or whatever the situation is?

12 You told us during your examination in-chief
13 that when you reviewed the release, you recognized the
14 significance of paragraph 2 right away?

15 **INSP. SMITH:** That stood out, yes.

16 **MR. LEE:** And specifically the word
17 "criminal" stood out?

18 **INSP. SMITH:** That's -- that word, yes, sir.

19 **MR. LEE:** And you appreciated as a police
20 officer that that wasn't proper?

21 **INSP. SMITH:** Yes, sir.

22 **MR. LEE:** And do I understand that your
23 theory of the case is that Shawn Adams and Jacques Leduc
24 would not have been in a position to recognize that that
25 clause was improper?

1 **INSP. SMITH:** I believe that, yes, sir.

2 **MR. LEE:** Sorry?

3 **INSP. SMITH:** I believe that, yes, sir.

4 **MR. LEE:** And as I understand your theory of
5 the case, Murray MacDonald was just completely in the dark?

6 **INSP. SMITH:** He hadn't read that. Had he
7 read that, I think there would have been a big difference.

8 **MR. LEE:** And so if I've summarized your
9 thinking fairly, Adams and Leduc would have seen it but
10 wouldn't have appreciated why it was problematic, and
11 Murray MacDonald just wouldn't have seen it at all?

12 **INSP. SMITH:** Yes.

13 **MR. LEE:** And you told us that in relation
14 to Mr. Leduc, that he had no specific knowledge of criminal
15 law?

16 **INSP. SMITH:** That was my belief and that's
17 what -- what I learned from speaking to other police
18 officers around, that his practice was strictly with the
19 Diocese and civil.

20 **MR. LEE:** Real estate matters and things
21 like that?

22 **INSP. SMITH:** Yes.

23 **MR. LEE:** And he told you in your
24 interview ---

25 **INSP. SMITH:** Yes.

1 **MR. LEE:** --- that he had no experience in
2 criminal law?

3 **INSP. SMITH:** Yes, he did.

4 **MR. LEE:** Can you help me understand what
5 knowledge of criminal law you believe he would have needed
6 to appreciate -- I mean, is there a specific expertise you
7 were looking at or something you had in mind that -- that
8 only a criminal lawyer could know in order to properly
9 recognize that paragraph for what it was?

10 **INSP. SMITH:** Well, as a police officer -- I
11 don't know about lawyers, but you -- you can't buy somebody
12 off not to proceed on a criminal charge.

13 **MR. LEE:** And that was something, certainly,
14 that you were well aware of?

15 **INSP. SMITH:** Well, that's what we were
16 taught in police college and our part of the *Criminal Code*.
17 Now, they do it in the States all the time, but ---

18 **MR. LEE:** That's a whole other ---

19 **INSP. SMITH:** Well ---

20 **MR. LEE:** --- a whole other kettle of fish.

21 **INSP. SMITH:** --- a lot of people watch
22 television and knew about Michael Jackson and -- and I'll
23 tell you, sir, even in this case, when I sent it for review
24 with the Crown Attorneys, there were some Crown Attorneys
25 that felt there was no offence there.

1 **MR. LEE:** No offence at all or no offence
2 vis-à-vis Adams and Leduc?

3 **INSP. SMITH:** No offence at all.

4 **MR. LEE:** And, ultimately, that was not the
5 decision reached we know because Malcolm MacDonald was
6 charged?

7 **INSP. SMITH:** Yes. So if I got -- if I may?
8 If we have some Crown Attorneys that review
9 it and say there's -- that they don't see any criminal
10 offence there, then what are the chances of two civil
11 lawyers picking that up?

12 **MR. LEE:** Who do you -- do you recall which
13 Crown attorneys would have reviewed this?

14 **INSP. SMITH:** Well, you have to ask Peter
15 Griffiths but I know he reviewed it and he had varying
16 differences on it but he wanted a second opinion. He got
17 the opinion and he agreed that there was an offence. And I
18 think they had to go to case law, a case out of
19 Saskatchewan I believe where there were similar facts.

20 **MR. LEE:** There was -- I take it, you would
21 agree there was never any debate that a civil settlement
22 that purports to terminate criminal charges in the exchange
23 of a payment of monies was illegal? That was clear from
24 the outset, was it not?

25 **INSP. SMITH:** I'm sorry; I didn't catch the

1 whole question.

2 MR. LEE: What we have here is a settlement

3 ---

4 INSP. SMITH: Yes.

5 MR. LEE: --- that provides that an alleged
6 victim of abuse would be provided with money ---

7 INSP. SMITH: Yes.

8 MR. LEE: --- and in exchange he would not
9 bring a civil action, nor would he proceed criminally.

10 INSP. SMITH: Okay.

11 MR. LEE: Taking that in isolation, it was
12 understood by everyone involved, in terms of police and
13 Crown attorneys, that was not proper and that was illegal?

14 INSP. SMITH: I agree.

15 MR. LEE: And so if there were some debates
16 between the police or between Crown attorneys as to whether
17 an offence was here it related to the specific facts of
18 this case and who knew what and not to the document itself.
19 Is that right?

20 INSP. SMITH: I felt the document itself and
21 whose names appeared on it.

22 MR. LEE: Okay. I think we're on the same
23 page here.

24 You, during your evidence in-chief, were
25 taken to -- do you still have Exhibit 1803 in front of you

1 there, sir?

2 **INSP. SMITH:** Yes, I've got it here.

3 **MR. LEE:** And can we go to page 263, please?

4 I'll need that on the screen, Madam Clerk.

5 **INSP. SMITH:** Yes, sir.

6 **MR. LEE:** And so this is the April 24th, 1997

7 meeting.

8 Right at the top of the screen, if we can
9 have that blown up?

10 Mr. Engelmann took you to this in-chief.
11 And this is a meeting with Peter Griffiths, Bob Pelletier
12 and Murray MacDonald, Pat Hall, Mike Fagan. And this comes
13 -- having -- at the point where you've received the Fantino
14 brief.

15 **INSP. SMITH:** Correct.

16 **MR. LEE:** Is that correct?

17 **INSP. SMITH:** Correct, sir.

18 **MR. LEE:** And so this is the -- this is the
19 very beginning stages of what become Project Truth.

20 **INSP. SMITH:** Yes, sir.

21 **MR. LEE:** And you told us that Project Truth
22 was the Fantino brief.

23 **INSP. SMITH:** Yes, sir.

24 **MR. LEE:** And it says here:

25 "Review allegations and investigation

1 today. Review Dunlop brief and
2 allegations."

3 Do you see that?

4 **THE COMMISSIONER:** Top of the page.

5 **INSP. SMITH:** Yes.

6 **MR. LEE:** And so presumably that's what
7 occurred at that meeting. That's what the note indicates?

8 **INSP. SMITH:** Yes.

9 **MR. LEE:** And I take it the Fantino brief
10 would have been combed through very carefully?

11 **INSP. SMITH:** Yes.

12 **MR. LEE:** The allegations would have been
13 pulled out?

14 **INSP. SMITH:** I don't know if we've had them
15 all broken down at that point or not but they were
16 numerous.

17 **MR. LEE:** And one of the questions you were
18 asked about in-chief was whether or not you had any
19 concerns with Murray MacDonald being present at that
20 meeting.

21 **INSP. SMITH:** I didn't, sir.

22 **MR. LEE:** You did not?

23 **INSP. SMITH:** No.

24 **MR. LEE:** And the reason I'm bringing you
25 back to this is to ask, why not?

1 **INSP. SMITH:** He's the Crown attorney here
2 in Cornwall. I didn't ask him to be there. Peter
3 Griffiths was there, Bob Pelletier. I had no concerns with
4 him being there. And I think that question could be put to
5 Peter Griffiths or Bob Pelletier.

6 **THE COMMISSIONER:** No. Well, it could be
7 put to you as well, in a sense that ---

8 **MR. LEE:** I'm going to -- I want to show you
9 a document that was found in the Fantino brief.

10 **INSP. SMITH:** Okay.

11 **MR. LEE:** And it's Exhibit 564, Madam Clerk.
12 I just want to go to this for a moment.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **INSP. SMITH:** Yes, sir.

15 **MR. LEE:** So you have this, sir. This is an
16 Affidavit of Ron Leroux dated October 31, '96.

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

18 **MR. LEE:** And this -- I can tell you from my
19 review of the hard drive -- is one of the documents that
20 would have been included in the Fantino brief. Okay?

21 **INSP. SMITH:** Okay, sir.

22 **MR. LEE:** And if you look at paragraph 6 it
23 reads:

24 "I can advise of witness to clan of
25 paedophiles which were comprised of the

1 following people:..."

2 And the third last name is Murray MacDonald.

3 **INSP. SMITH:** Yes, sir.

4 **MR. LEE:** And if you look over at paragraph
5 28 it reads:

6 "Ken Seguin advised me also that Rory
7 was present as well as a bunch of VIPs.
8 He also advised that Murray MacDonald,
9 Crown attorney, was there."

10 **INSP. SMITH:** Yes, sir.

11 **MR. LEE:** And this is at the infamous island
12 meeting.

13 So as part of the Fantino brief we have an
14 allegation that Murray MacDonald was at a VIP meeting and
15 that he's a member of a clan of paedophiles.

16 **INSP. SMITH:** Yes, sir.

17 **MR. LEE:** And yet in the initial stages of
18 planning the investigation of the project -- of the Fantino
19 brief, he's at the meeting.

20 **INSP. SMITH:** Well, I can tell you this,
21 sir, that Bob Pelletier read this and so did the regional
22 director. So why are you asking me ---

23 **THE COMMISSIONER:** Your opinion, sir, as to
24 what you thought at that time with this knowledge.

25 **INSP. SMITH:** I had no difficulty with it at

1 that time. That's what I'm saying.

2 **MR. LEE:** It seems to me, sir, there are a
3 couple of ways of looking at this. The first way to look
4 at it is that the Fantino brief is going to be taken -- the
5 allegations in the Fantino brief rather are going to be
6 taken very seriously and there's going to be a full
7 independent thorough investigation.

8 **INSP. SMITH:** M'hm.

9 **MR. LEE:** Or the second way of looking at it
10 is that the allegations in the Fantino brief are going to
11 be vetted and some are going to be dismissed right offhand,
12 right at the beginning.

13 **INSP. SMITH:** Well, that wasn't the case.

14 **MR. LEE:** And I presumed that you would say
15 that and I presume that was the case, which leads me to
16 wonder, given the allegation in the brief, how it couldn't
17 have been caught in advance of the meeting I suppose that
18 MacDonald shouldn't be there, based solely on the virtue of
19 being named here, and if it wasn't caught in advance, how
20 you can tell us today that you don't have a problem with it
21 in hindsight.

22 **INSP. SMITH:** I didn't say that. I said I
23 didn't have a problem then.

24 **MR. LEE:** What about now?

25 **INSP. SMITH:** It was probably very unwise

1 for Mr. MacDonald to be there.

2 **MR. LEE:** And you also told us in relation
3 to the '94 obstruct justice investigation that you didn't
4 find it curious that Mr. Leduc and Malcolm MacDonald had
5 spoken to Murray MacDonald about the Silmsler settlement
6 before it was concluded, and you told us this is a small
7 town.

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

9 **MR. LEE:** And did you find it odd that two
10 lawyers negotiating a civil settlement would be consulting
11 with the Crown attorney who deals only with criminal acts?

12 **INSP. SMITH:** Well, I think they were both
13 aware and MacDonald was aware that there was a police
14 investigation going on at the same time and that the police
15 had consulted the Crown attorney. They were aware of that.
16 And my understanding was that they were consulting with
17 MacDonald to indicate that they were coming close to a
18 civil settlement, for his information, which shouldn't stop
19 the criminal investigation.

20 **MR. LEE:** It shouldn't have anything to do
21 with the criminal investigation.

22 **INSP. SMITH:** No.

23 **MR. LEE:** So why consult the Crown?

24 **INSP. SMITH:** Well, that was done throughout
25 the cases that we had in St. Joseph's and St. John's.

1 **THE COMMISSIONER:** With civil settlements?

2 **INSP. SMITH:** Yes, with the government and
3 with some civil settlements there was consultation with the
4 Crown attorneys.

5 **THE COMMISSIONER:** Okay.

6 **INSP. SMITH:** There was civil settlements
7 and prosecution going on at the same time.

8 **THE COMMISSIONER:** M'hm. But by the fact,
9 sir, that Murray MacDonald was at that meeting did it not
10 legitimize his position by being there and talking about
11 the investigation?

12 **INSP. SMITH:** I don't recall him talking
13 about the investigation. I recall that Mr. Griffiths --
14 actually I recall MacDonald saying that he wanted nobody in
15 his office or himself to have anything to do with this
16 case, and that's what was said at that meeting, and he had
17 nobody in his office to deal with this case.

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

19 **MR. LEE:** Having had the opportunity,
20 recently in particular, to go back and scrutinize the
21 investigative work done, would you agree with me that it
22 appears that Murray MacDonald's involvement in these
23 matters was not closely scrutinized?

24 **INSP. SMITH:** In -- in which way, sir?

25 **MR. LEE:** In relation to the obstruct

1 justice investigation and in relation to the conspiracy
2 investigation. To be blunt, I'm going to suggest to you
3 that Mr. McDonald got a pass.

4 **INSP. SMITH:** I disagree.

5 **MR. LEE:** Is it possible that the
6 determination was made early on that any allegation of
7 impropriety against Murray MacDonald was nonsense and that
8 there was no need to investigate his role closely?

9 **INSP. SMITH:** No. You've read his
10 statement, haven't you, sir? Yes?

11 **MR. LEE:** I have.

12 And as I said, sir, I started this off with
13 questions about public perception and about these
14 investigations being subject to scrutiny and subsequently
15 to some scepticism and some doubt. Your evidence in-chief
16 seemed to suggest that you had never heard anything bad
17 about Claude Shaver's honesty, as an example, so he must be
18 honest? Is that what you meant to tell us?

19 **INSP. SMITH:** I said that I have never heard
20 anybody question his honesty.

21 **MR. LEE:** Is it fair to say he had
22 a ---

23 **INSP. SMITH:** His -- his management style,
24 yes, but nowhere had any police officer that I ever spoke
25 to say that the man was dishonest.

1 **MR. LEE:** The concern I have when I hear a
2 statement like that is that Claude Shaver may have been
3 given an unusual benefit of the doubt before you ever set
4 foot inside his home to interview him.

5 **INSP. SMITH:** I don't -- no, sir. Never met
6 the man before, didn't know him.

7 **MR. LEE:** And you told us that the fact that
8 nobody from the CPS slipped a note under your hotel room
9 door contributes in some way to your feeling that there
10 could not have been a conspiracy?

11 **INSP. SMITH:** Not necessarily left a note
12 under my door. There'd be a number of other things that
13 they could have done. I think I mentioned telephone calls,
14 letters, phone calls, not necessarily notes under my door.
15 But my experience has been in dealing with other police
16 departments that if there's any controversy within or -- or
17 bad blood, I get the information, and I have in the past.
18 And in this case I never did. Unusual, sir; very unusual.

19 **MR. LEE:** And what effect did that fact have
20 on the ultimate determination you made that there were --
21 there was no conspiracy?

22 **INSP. SMITH:** It would be part of it.

23 **MR. LEE:** You -- during Mr. Paul's cross-
24 examination for the Coalition, you were asked about
25 testimony given here by Geraldine Fitzpatrick; do you

1 recall that?

2 **INSP. SMITH:** Yes.

3 **MR. LEE:** Were you present for her
4 testimony?

5 **INSP. SMITH:** No.

6 **MR. LEE:** Were you able to review her -- the
7 transcripts of that testimony?

8 **INSP. SMITH:** Yes.

9 **MR. LEE:** In their entirety?

10 **INSP. SMITH:** Yes.

11 **MR. LEE:** What about the exhibits that were
12 entered during her evidence?

13 **INSP. SMITH:** I didn't see the exhibits, you
14 can't see that on the transcripts.

15 **MR. LEE:** No, I understand. I didn't know
16 if you had been provided with them otherwise during you
17 preparation.

18 **INSP. SMITH:** No.

19 **MR. LEE:** And for example, you wouldn't have
20 read a fairly lengthy statement she gave early in 2008 to
21 members of the CAS?

22 **INSP. SMITH:** No.

23 **MR. LEE:** I was a little bit surprised to
24 hear you say that you didn't believe her, sir. And you
25 would agree with me that you came to that conclusion

1 without having fully investigated anything relating to her
2 claims?

3 **INSP. SMITH:** That's true.

4 **MR. LEE:** I want to take you to a section in
5 the transcript, just to ask you to clarify an answer.

6 It's volume 310, Madam Clerk.

7 **THE COMMISSIONER:** Hold on, sir. Thank you.

8 **MR. LEE:** Sorry; page 192, please. Are you
9 there, sir?

10 **INSP. SMITH:** Yes, sir.

11 **MR. LEE:** And Mr. Engelmann was questioning
12 you at this point in relation to the obstruct justice
13 investigation and the Silmsler settlement. And he asks you
14 at the top of the page whether it might have been helpful
15 to have the lawyers' files or precedents or other
16 information. And it continues on that it might be helpful
17 for a number of reasons to try to pin down which of the
18 lawyers knew something, or anything along those lines. And
19 at line 12 you answer:

20 "Well, I would have found that
21 out had there been a trial. I
22 had Malcolm cold."

23 And at line 17:

24 "Yeah, so that if he goes to
25 trial then, then we would go and

1 dig up all these things."

2 Do you see that?

3 **INSP. SMITH:** Yes.

4 **MR. LEE:** And let me start this way; can you
5 explain what you mean by what you would have found out had
6 there been a trial?

7 **INSP. SMITH:** If Malcolm MacDonald had gone
8 to trial we would have subpoenaed all the other lawyers.
9 They would be subject to cross-examination.

10 **MR. LEE:** And you understand he obviously
11 pled guilty and was ---

12 **INSP. SMITH:** Yes.

13 **MR. LEE:** --- did not go to trial.

14 **INSP. SMITH:** Yes.

15 **MR. LEE:** Should I take your answer as a
16 suggestion that had Malcolm gone to trial you may well have
17 uncovered evidence relating to criminal activity on the
18 part of the others?

19 **INSP. SMITH:** There may have.

20 **MR. LEE:** Isn't your job to come to that
21 determination and to charge who needs to be charged rather
22 than hoping somebody may go to trial and something may come
23 up?

24 **INSP. SMITH:** I was of the belief, sir, that
25 Malcolm MacDonald orchestrated this settlement and the

1 portion part three of that settlement without the knowledge
2 of the Bishop and without the knowledge of Jacques Leduc.
3 It was in the best interests also of his client more so
4 than I think the Diocese.

5 **MR. LEE:** The way I -- I took your comments
6 here was to suggest that all the materials set out by Mr.
7 Engelmann may well have been helpful and that you may well
8 have found something else had you had him.

9 **INSP. SMITH:** That's a possibility, yes.

10 **MR. LEE:** I just have two brief areas left,
11 sir. The -- why don't we just start.

12 Madam Clerk, if we can show the witness
13 Exhibits 2575 and 2576, please.

14 **INSP. SMITH:** Thank you. Yes, sir.

15 **MR. LEE:** Do you have those, sir? So 2575
16 is an email from Len Aitchison to Pat Hall in 2001, okay?
17 And it's in response to an earlier email from Pat Hall
18 which is the second part of the page.

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

20 **MR. LEE:** And if you look four lines from
21 the bottom Pat Hall writes:

22 "I'm told Tim Smith and Fred
23 Hamelink had a big blowup and
24 Fred concluded his investigation
25 without Tim's knowledge."

1 Do you see that?

2 **INSP. SMITH:** Yes, sir.

3 **MR. LEE:** And then if you turn over to 2576,
4 this is Will-State of Chris Lewis, Chief Superintendent
5 given in 2005 in relation to what knowledge he may have on
6 matters touching on the Inquiry, I take it. Do you see
7 that?

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

9 **MR. LEE:** And if you turn over to the second
10 page, to the first full paragraph, he writes that:

11 "In late 1995 I recall having a
12 conversation with then-director
13 of the CIB, Detective
14 Superintendent Larry Edgar
15 regarding Smith's Project Truth
16 investigation. He had become
17 aware of some alleged conflict
18 between Smith and Detective
19 Inspector Fred Hamelink who's
20 also working in the Cornwall area
21 on an investigation that I
22 believe related..."

23 And it goes on.

24 Do you see that?

25 **INSP. SMITH:** Yes, sir.

1 **MR. LEE:** "Edgar was concerned about the
2 potential implications of these two CIB
3 members not cooperating with one
4 another and asked me to go down and
5 speak to them, ensure the conflict
6 wasn't serious."

7 And then the next paragraph he speaks of
8 meeting with you in Whitby on December 6th, '95 and then
9 again the next day in Ottawa.

10 **INSP. SMITH:** I wasn't in Ottawa the next
11 day.

12 **MR. KOZLOFF:** No, no, I think it was
13 clarified that the Smith being referred to in Ottawa was
14 not Detective Inspector Smith, retired, but a Ken Smith who
15 was involved in an inquest with Detective Inspector
16 Hamelink.

17 **MR. LEE:** Yes. Okay, regardless, does the
18 Whitby on Wednesday December 6th, '95 make sense?

19 **INSP. SMITH:** I don't recall but it could
20 be. I was in Whitby at that time in St. John's Training
21 School investigations and court.

22 **MR. LEE:** Let me cut to the chase. The Pat
23 Hall email refers to a big blow up between yourself and
24 Fred Hamelink. Did any such blow up ever happen?

25 **INSP. SMITH:** I don't think it would be -- I

1 wouldn't classify it as a blow up, but I was really
2 disturbed with him.

3 **MR. LEE:** You weren't at all happy about him
4 having turned in his Crown brief prior to consulting with
5 you. Is that it?

6 **INSP. SMITH:** Not at all.

7 **MR. LEE:** And you made that clear ---

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

9 **MR. LEE:** --- to Mr. Hamelink?
10 And do you recall any discussion with Chris
11 Lewis about that matter, at any point?

12 **INSP. SMITH:** Not with Chris Lewis, but I
13 know that I reported to Larry Edgar, my Superintendent.

14 **MR. LEE:** You would have reported the fact
15 that you weren't happy with ---

16 **INSP. SMITH:** Yes.

17 **MR. LEE:** --- Inspector Hamelink ---

18 **INSP. SMITH:** Yes, I did.

19 **MR. LEE:** --- to Larry Edgar?

20 **INSP. SMITH:** Yeah.

21 **MR. LEE:** And you don't specifically have a
22 recollection of Chris Lewis having discussed this matter
23 with you?

24 **INSP. SMITH:** No.

25 **MR. LEE:** Is it possible and you just don't

1 recall it.

2 **INSP. SMITH:** It could be.

3 **MR. LEE:** Okay.

4 **INSP. SMITH:** I had other issues with
5 Hamelink afterwards anyway.

6 **MR. LEE:** Relating to this at all?

7 **INSP. SMITH:** Not related to this
8 investigation.

9 **MR. LEE:** The final area I want to ask you
10 about relates to the issue with Shelley Hallett and Steven
11 Skurka and that whole matter related to the Leduc
12 prosecution.

13 My understanding of your evidence was that
14 you didn't receive a subpoena until you were in Cornwall in
15 the courtroom. Is that correct?

16 **INSP. SMITH:** That's correct.

17 **MR. LEE:** Why were you in Cornwall otherwise
18 if you hadn't yet been subpoenaed?

19 **INSP. SMITH:** I had received a call to be
20 there, that there was a trial going on with Jacques Leduc.

21 **MR. LEE:** Were you there for the entirety of
22 the trial?

23 **INSP. SMITH:** No, just one day.

24 **MR. LEE:** I guess what I'm asking is were
25 you told to come to Cornwall once the issue with Dupuis'

1 notes arose?

2 **INSP. SMITH:** I believe that was it, yes.

3 **MR. LEE:** And who told you -- who made that
4 phone call to you?

5 **INSP. SMITH:** Pat Hall called me and said
6 that I'd be required there; there'd be a subpoena there for
7 me.

8 **MR. LEE:** So you knew you would be
9 subpoenaed you just hadn't technically ---

10 **INSP. SMITH:** Well, they'd have to subpoena
11 me, I was a civilian.

12 **MR. LEE:** Okay.

13 **INSP. SMITH:** Or I wasn't going to show up.

14 **MR. LEE:** And what did Pat Hall tell you
15 during that telephone call about what the issue was?

16 **INSP. SMITH:** It was the issue of the
17 victim's mother being contacted by Perry Dunlop and that
18 there weren't any notes and that Dupuis' notes hadn't been
19 disclosed.

20 **MR. LEE:** So if we break it down a little
21 bit, you would have been told that C-16's mother had
22 testified to the fact that she'd had contact with Perry
23 Dunlop?

24 **INSP. SMITH:** I don't know if I was told
25 that but it was in regard to disclosure of the notes.

1 **MR. LEE:** Broadly you knew an issue had
2 arisen that there were disclosure problems?

3 **INSP. SMITH:** Right.

4 **MR. LEE:** And you arrive in Cornwall and I
5 take it you're briefed a little more in detail about
6 exactly what's happened?

7 **INSP. SMITH:** Yes.

8 **MR. LEE:** And you become aware, I take it,
9 fairly shortly after your arrival that Officer Dupuis did,
10 in fact, have notes and that they, in fact, were not
11 disclosed to the defence?

12 **INSP. SMITH:** Correct.

13 **MR. LEE:** And you would have appreciated at
14 that time that there was a real problem?

15 **INSP. SMITH:** I beg your pardon?

16 **MR. LEE:** You would have appreciated when
17 you learned that information that that was potentially
18 problematic?

19 **INSP. SMITH:** Yes, I didn't think it was a
20 big issue but I thought that was a problem, yeah.

21 **MR. LEE:** And did you understand some time
22 after your arrival prior to attending court the next day
23 that the issue was likely to be framed in the sense of
24 wilful non-disclosure on the part of the OPP?

25 **INSP. SMITH:** No, I didn't know that.

1 **MR. LEE:** That wasn't something that you
2 discussed with Pat Hall?

3 **INSP. SMITH:** No.

4 **MR. LEE:** And did you appreciate, prior to
5 receiving the subpoena in the courtroom the next day, that
6 you would likely be a defence witness?

7 **INSP. SMITH:** The first time I knew I was
8 going to be a defence witness was when I was handed that
9 subpoena by Shelley Hallett.

10 **MR. LEE:** And it said on it you would be
11 ---

12 **INSP. SMITH:** And it said -- I read it, and
13 I thought it was going to be a Crown witness and I saw
14 defence on it and that surprised me.

15 **MR. LEE:** Did it concern you?

16 **INSP. SMITH:** No, but -- you know, if
17 they're calling me, what do they want?

18 **MR. LEE:** And so I understand that upon
19 receiving that subpoena you ask Ms. Hallett or you advise
20 Ms. Hallett that you wish to speak with defence counsel?

21 **INSP. SMITH:** Well, I first asked her, I
22 said "What do they want? What do they want me for?" And
23 she said "I don't know." I said "Well, I'm going to go and
24 find out."

25 **MR. LEE:** And if we stop the chronology

1 there you would have, to that point, not spoken with
2 defence counsel?

3 **THE COMMISSIONER:** Had not yet.

4 **MR. LEE:** Not yet.

5 **INSP. SMITH:** No.

6 **MR. LEE:** At that point in time when you
7 have that conversation with Ms. Hallett ---

8 **INSP. SMITH:** No, no.

9 **MR. LEE:** --- you had yet to speak with
10 either Campbell or Skurka. Is that right?

11 **INSP. SMITH:** No, I hadn't spoken.

12 **MR. LEE:** Do you know whether or not Pat
13 Hall had spoken to them prior to that moment about this
14 issue?

15 **INSP. SMITH:** He may have before some other
16 time but not that day, because I said "I'm going down" and
17 I thought I was going alone.

18 **MR. LEE:** And ---

19 **INSP. SMITH:** And when I went in the room
20 and I spoke to them, shortly after he and the other
21 officers were in behind me.

22 **MR. LEE:** So you have a very brief
23 conversation with Mr. Skurka?

24 **INSP. SMITH:** Yes.

25 **MR. LEE:** He can't commit one way or the

1 other to whether he'll need to call you?

2 **INSP. SMITH:** Basically what he -- and I'll
3 repeat what he said -- what I said to him. I said "Why are
4 you calling? What do you need?" He said "Do you have
5 notes in regard to the victim's mother being contacted by
6 Perry Dunlop?" And I said, "No." I said "Although I'm
7 aware of it. Joe told me." He said "Fine. We don't know
8 if we're going to call you or not. Here's my card. Send
9 your expenses to me."

10 In the meantime, the other officers were
11 coming in behind me and they were talking to Mr. Campbell.
12 Mr. Skurka directed his attention to those. It was a very
13 small room. I was dismissed and away I went.

14 **MR. LEE:** Can you tell us anything of the
15 conversation between Skurka, Campbell, Dupuis, and Hall?

16 **INSP. SMITH:** No.

17 **MR. LEE:** Did you thereafter meet with
18 either Steven Skurka or -- on this matter? So that's the
19 only conversation you have with Skurka?

20 **INSP. SMITH:** Well, I included before, I
21 asked him about Valerie Pringle, initially, when I went in,
22 because I had a murder with him before, as -- when I went
23 in, but that ---

24 **MR. LEE:** That's fine.

25 **INSP. SMITH:** --- that -- my conversation

1 with Mr. Skurka wouldn't have been any more than 45
2 seconds.

3 **MR. LEE:** Now, following -- you leave the
4 room; Pat Hall and Joe Dupuis stay. Following that, does
5 Pat Hall brief you on the content of their conversation?

6 **INSP. SMITH:** No. I went back and I spoke
7 to Shelley Hallett. She was packing up her briefs and
8 everything off the table in the courtroom, and she said
9 she'd like to have a meeting at one o'clock.

10 **MR. LEE:** And then you told us what happened
11 with that, about ---

12 **INSP. SMITH:** Yes.

13 **MR. LEE:** --- her not being there ---

14 **INSP. SMITH:** Yes.

15 **MR. LEE:** --- at the time?

16 **INSP. SMITH:** Yes.

17 **MR. LEE:** And you were present in
18 Ms. Hallett's room when Officer Dupuis comes to retrieve a
19 document?

20 **INSP. SMITH:** Yes.

21 **MR. LEE:** And you don't know what that's all
22 about, at the time?

23 **INSP. SMITH:** No; it was a letter.

24 **MR. LEE:** And Ms. Hallett, seemingly,
25 doesn't know what that's about?

1 **INSP. SMITH:** Well, I don't -- all I
2 remember is it was a letter and she said, "Well, go down to
3 the front office and get a photocopy of it, and bring it
4 back to me."

5 **MR. LEE:** When are you told for the first
6 time that you will not be needed to testify?

7 **INSP. SMITH:** Would not be needed ---

8 **MR. LEE:** To testify.

9 **INSP. SMITH:** That was Mr. Skurka.

10 **MR. LEE:** Well, Skurka told you he probably
11 wouldn't need you. When are you finally told, "You don't
12 need to be here any longer?"

13 **INSP. SMITH:** Well, after I had that
14 meeting with Ms. Hallett, I went home, and I never heard
15 anything any more.

16 **MR. LEE:** So you didn't stay for the next
17 day's ---

18 **INSP. SMITH:** No.

19 **MR. LEE:** And you recall Pat Hall would have
20 told you that it was okay to go home, that you wouldn't be
21 needed?

22 **INSP. SMITH:** I -- nobody said I wasn't
23 needed. He was -- he left at two o'clock; it was his
24 anniversary. He went off to -- to Ottawa at two o'clock
25 and ---

1 **MR. LEE:** The question I had, you ---

2 **INSP. SMITH:** --- and I went -- and I went
3 home, and I was never called again.

4 **MR. LEE:** And where was home at that time?

5 **INSP. SMITH:** Napanee.

6 **MR. LEE:** And how far is that from Cornwall?

7 **INSP. SMITH:** Two hundred and six (206)
8 kilometres.

9 **(LAUGHTER/RIRES)**

10 **MR. LEE:** I appreciate the precision.

11 **INSP. SMITH:** To my door.

12 **MR. LEE:** You were under subpoena. You were
13 under subpoena, and you travelled 200 kilometres. You must
14 have had some idea you wouldn't be needed?

15 **INSP. SMITH:** I was told by Mr. Skurka.

16 **MR. LEE:** So you took what he said to you
17 as a sort of a definite thing; is that right?

18 **INSP. SMITH:** Yes.

19 **MR. LEE:** Prior to all of this occurring,
20 what we've just discussed, you told us yesterday that you
21 had been sued by one of the Christian Brothers involved in
22 the Alfred prosecutions?

23 **INSP. SMITH:** Yes, and one of the victims.

24 **MR. LEE:** And you told us that it related to
25 malicious prosecution?

1 **INSP. SMITH:** Well, that's what they say.

2 **MR. LEE:** I'm simply asking you about the
3 allegation, I'm not going to ---

4 **INSP. SMITH:** Yes, that's ---

5 **MR. LEE:** --- get into the ---

6 **INSP. SMITH:** --- that was the allegation.

7 **MR. LEE:** And one of the allegations related
8 to the wilful nondisclosure of exculpatory evidence? Do
9 you recall that?

10 **INSP. SMITH:** I believe that's it.

11 **MR. LEE:** And you were named -- you
12 personally were named as a plaintiff (sic) in that Action?

13 **INSP. SMITH:** Oh, I think there were several
14 of us.

15 **THE COMMISSIONER:** You were named as a
16 plaintiff or a defendant?

17 **MR. LEE:** Sorry. Sorry, sir.

18 **INSP. SMITH:** Yes.

19 **MR. LEE:** As a defendant in the Action.

20 **INSP. SMITH:** Yes, a defendant.

21 **MR. LEE:** That would have changed the story,
22 if he had been the plaintiff, I suppose.

23 You were a defendant in the Action ---

24 **INSP. SMITH:** Yes, one of them.

25 **MR. LEE:** --- named personally? It wasn't

1 the Ontario Provincial Police named, it was you?

2 **INSP. SMITH:** It was myself and some others.

3 **MR. LEE:** And had you ever discussed that
4 action with Pat Hall?

5 **INSP. SMITH:** Being sued?

6 **MR. LEE:** Yes.

7 **INSP. SMITH:** Oh, I imagine, over the years,
8 I did, yes.

9 **MR. LEE:** Thank you very much, sir. Those
10 are my questions.

11 **INSP. SMITH:** Thank you.

12 **THE COMMISSIONER:** Thank you. Is it three
13 o'clock? Okay, let's take a break.

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

16 This hearing will resume at 3:20 p.m.

17 --- Upon recessing at 3.05 p.m. /

18 --- L'audience est suspendue à 15h05

19 --- Upon resuming at 3.57 p.m. /

20 --- L'audience est reprise à 15h27

21 **THE REGISTRAR:** This hearing is now resumed.
22 Please be seated; veuillez vous asseoir.

23 **THE COMMISSIONER:** Thank you, yes. Before
24 we hear the stirring cross-examination from -- Mr. Neville?

25 **MR. ENGELMANN:** I think Mr. Neville is next,

1 yes.

2 **THE COMMISSIONER:** Yes. We'll ---

3 **MR. ENGELMANN:** You have a decision.

4 **THE COMMISSIONER:** I have a decision to
5 give.

6 --- RULING BY THE COMMISSIONER TO EXCLUDE MR. RON

7 LEFEBVRE/DÉCISION PAR LE COMMISSAIRE POUR EXCLURE M. RON

8 **LEFEBVRE :**

9 **THE COMMISSIONER:** And this is the ruling on
10 motion by Cornwall Community Police Service to exclude Ron
11 Lefebvre.

12 So, on Wednesday, November 12th, and
13 Thursday, November 13th, I heard the continuation of a
14 motion brought by counsel for the Cornwall Community Police
15 Service and Cornwall Police Service Board for an order
16 excusing Ron Lefebvre as a witness at the Cornwall Public
17 Inquiry.

18 After reviewing the motion record of the CPS
19 and hearing brief oral arguments, I granted the motion
20 requested, and indicated that written reasons would follow
21 in due course.

22 The evidence on the motion is set out in the
23 motion record of the CPS, and they're all marked -- and
24 they're marked with -- I should indicate, tabs 2, 2A
25 through to 2E, 8, 9 and 10, marked as Confidential.

1 The motion record contains a number of
2 medical reports from Mr. Lefebvre's treating physician, and
3 one report from a medical consultant, who assessed
4 Mr. Lefebvre and spoke with his treating physician.

5 I'm satisfied that these exhibits contain
6 information of a personal and intimate nature about Mr.
7 Lefebvre and, thus, should be treated as confidential.

8 This was the second motion for an order to
9 excuse Mr. Lefebvre from participating as a witness before
10 the Inquiry.

11 On July 2nd, 2008, I declined to grant a
12 motion to excuse Mr. Lefebvre on the basis that I did not
13 have sufficient information. In that decision, I stated
14 that in order to demonstrate that the act of testifying
15 will cause harm to a witness, a medical professional's
16 evidence should indicate the nature, seriousness, and
17 likelihood of harm, and should demonstrate a thorough
18 knowledge of the Inquiry process. The medical
19 professional's views on accommodation measures that may
20 allow the witness to testify should also be included.

21 Given that Mr. Lefebvre is not permanently
22 disabled from working, and that in his work as a special
23 constable he regularly testifies at bail hearings, I
24 determined that I required additional information about the
25 nature of the medical risks inherent in Mr. Lefebvre's

1 participation as a witness. I also indicated that the
2 medical evidence should make some reference to whether and
3 how accommodation measures could mitigate the risk of harm.

4 Counsel for the moving party reviewed my
5 July 2nd reasons and presented supplementary medical
6 evidence in order to address my concerns. Counsel
7 indicated that the medical experts were of the view that
8 the act of testifying before the Inquiry could cause
9 Mr. Lefebvre serious harm, and that he could not be
10 accommodated.

11 I am of the view that the supplementary
12 medical information provided was sufficient to address the
13 concerns that I raised in my July 2nd decision.

14 I wish to emphasize that I have never
15 doubted the sincerity of Mr. Lefebvre's medical concerns.
16 The issues to be addressed in this motion were whether
17 additional medical evidence demonstrated that requiring Mr.
18 Lefebvre to appear as a witness before this Inquiry would
19 cause him harm, and whether this harm could be mitigated
20 through accommodation measures.

21 Counsel for the Coalition for Action and the
22 Victims' Group argued that the medical experts did not
23 sufficiently demonstrate the link between Mr. Lefebvre's
24 condition and his participation as a witness at the
25 Inquiry. I do not share this view. The medical evidence

1 reveals that in Mr. Lefebvre's case it is not the act of
2 testifying that would aggravate his condition, but, rather,
3 it is the subject matter of his testimony, viewed globally,
4 that is the triggering factor.

5 Notwithstanding the cause of Mr. Lefebvre's
6 condition, the medical evidence shows that the stress
7 associated with testifying about his involvement in
8 investigations into sexual abuse could cause a
9 deterioration of Mr. Lefebvre's health.

10 I, therefore, agree with the conclusions
11 reached by the two medical experts who determined that Mr.
12 Lefebvre cannot be accommodated through alternative
13 measures.

14 In closing, I want to say again that I
15 regret any extra anxiety or distress that the requirement
16 for additional medical evidence may have caused Mr.
17 Lefevre.

18 Thank you.

19 Can we get the witness up, please? I think
20 you scared him away, Mr. Neville.

21 **MR. NEVILLE:** That would be a first.

22 --- **TIM SMITH, Resumed/Sous le même serment:**

23 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

24 **MR. NEVILLE:**

25 **THE COMMISSIONER:** Mr. Smith?

1 **MR. NEVILLE:** Inspector?

2 **INSP. SMITH:** Yes.

3 **MR. NEVILLE:** We know each other?

4 **INSP. SMITH:** Yes, sir, many years.

5 **MR. NEVILLE:** Yes, sir.

6 As you know, I represent Father Charles
7 MacDonald. I also represent the Estate of Ken Seguin, his
8 brother, Douglas, and members of their family.

9 **INSP. SMITH:** Yes, sir.

10 **MR. NEVILLE:** While you were coming in to
11 join us, the Commissioner was speculating whether I had
12 scared you away. That would be a first, wouldn't it?

13 **INSP. SMITH:** Not quite, sir.

14 **MR. NEVILLE:** It would be a first.

15 All right. What I'd like to do, as a start,
16 Inspector, is just touch on some components of your notes,
17 Exhibit 1803, so if you could have those handy?

18 **INSP. SMITH:** I've got them here, sir.

19 **MR. NEVILLE:** And then I'll be focusing on
20 very specific issues after that, some of which may or may
21 not actually arise as in your notes. So can we start with
22 -- and many of these references will be brief.

23 If I could just refer you to Bates page
24 4215. The date is the 1st of March, '94.

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** Have you found it, Inspector?

2 **INSP. SMITH:** I found it on 216.

3 **MR. NEVILLE:** Well, I have it as ---

4 **INSP. SMITH:** Oh, yes, 1st of March, it
5 continues on to the next page, yes.

6 **MR. NEVILLE:** You have it?

7 **INSP. SMITH:** Yes.

8 **MR. NEVILLE:** Okay. You see at the bottom
9 of that page, the 1st of March, 9:20? This is a telephone
10 contact with Mr. Silmser.

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

12 **MR. NEVILLE:** And you had just conducted the
13 interview of him a week before, as you see in the above
14 entry?

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

16 **MR. NEVILLE:** All right. And this is an
17 instance of Mr. Silmser threatening you as to how to
18 conduct your case; correct?

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

20 **MR. NEVILLE:** More importantly, the last
21 four lines at the bottom, he indicates that he has some --
22 another victim to come forward; correct?

23 **INSP. SMITH:** Yes.

24 **MR. NEVILLE:** Could we turn over to the next
25 page?

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

2 **MR. NEVILLE:** And I'll just give you
3 continuity from the previous page.

4 "I asked if he would speak to us
5 or would David give us his name,
6 he said, no."

7 Correct?

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

9 **MR. NEVILLE:** Further stated:

10 "You better lay charges soon or we..."

11 -- whatever he means by that:

12 "are going to the press. I am pissed
13 off.

14 I tried to explain the investigation
15 [this is yourself] required some co-
16 operation on his part. He..."

17 I think it's "...interjected..."

18 **INSP. SMITH:** Yes.

19 **MR. NEVILLE:** "...and said he was pissed
20 off and hung up."

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** Now, your next entry on the 2nd
23 of March, is a contact with Mr. Geoffrey, his counsel?

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** In which he apologizes for his

1 client's conduct?

2 **INSP. SMITH:** Yes, sir.

3 **MR. NEVILLE:** Can I have you confirm,
4 Inspector, that either then or around that time you made an
5 arrangement, if that's the term, that all dealings you
6 would have henceforth with Mr. Silmsler would go through his
7 lawyer if possible?

8 **INSP. SMITH:** In around that time, I didn't
9 mind him calling me and saying what he -- what he had to
10 say, but my secretaries would complain to me ---

11 **MR. NEVILLE:** I got ---

12 **INSP. SMITH:** --- around that time of the
13 language that he'd used.

14 **MR. NEVILLE:** All right.

15 **INSP. SMITH:** So that was how that came
16 about.

17 **MR. NEVILLE:** I hear you. This same entry
18 with Mr. Geoffrey, the last four lines:

19 "Also told him to get name of
20 witness who was abused by
21 MacDonald and give to him.
22 Geoffrey will approach this
23 person to have him report this to
24 us"

25 So you're enlisting, as it were, the

1 lawyer's assistance to this other so-called victim?

2 **INSP. SMITH:** Yes.

3 **MR. NEVILLE:** All right. Can you confirm
4 for me, sir, that till the end of this portion of the
5 investigation in '94, that never happened?

6 **INSP. SMITH:** I never did get it, no, sir.

7 **MR. NEVILLE:** And we'll come to another
8 entry in your notes where Mr. Silmsers purports to have
9 three more victims; do you remember that? We'll come to it
10 in the notes.

11 **INSP. SMITH:** Yeah.

12 **MR. NEVILLE:** We'll come to it.

13 Can we look next at Bates page 4220?

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** Do you have it?

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** Do you have an entry at the
18 top of the page looks like the -- I believe it's the -- the
19 9th ---

20 **INSP. SMITH:** The 9th of March, yes.

21 **MR. NEVILLE:** Sorry?

22 **INSP. SMITH:** 9th of March.

23 **MR. NEVILLE:** Yes. Again, you're in touch
24 with Mr. Geoffrey?

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** The last four lines:
2 "Asked to get name of additional
3 alleged victim. Geoffrey advises
4 Silmser has first name and he
5 should have full particulars
6 later next week."

7 And it indicates that it's a matter
8 involving Father MacDonald; correct?

9 **INSP. SMITH:** Yes, sir.

10 **MR. NEVILLE:** Next page, 4221. This is now
11 mid-June, bottom of the page. Do you have it?

12 **INSP. SMITH:** Yes, sir.

13 **MR. NEVILLE:** The last five lines is again a
14 conversation with Mr. Silmser.

15 "Call from Silmser re. he has
16 three more victims. Threatening
17 me of my job if we don't get to
18 him."

19 **INSP. SMITH:** Is that 221, sir, or?

20 **MR. NEVILLE:** I have it as 4221. June 14th,
21 it appears to be 1994 at 12:25 or shortly thereafter.

22 **THE COMMISSIONER:** Well, it might be June
23 16th?

24 **MR. NEVILLE:** I can't tell, Commissioner. I

25 --

1 **THE COMMISSIONER:** Well, in any event, it's
2 page 221.

3 **MR. NEVILLE:** Yes, you might be right, the
4 16th, because it continues onto the next page and where the
5 date is also there, the 16th, so I think you're right.

6 **MR. NEVILLE:** Have you found the spot?

7 **INSP. SMITH:** Oh, okay, yes.

8 **MR. NEVILLE:** Okay.

9 **INSP. SMITH:** I was looking at 12:25, but
10 that was a call from Peter Griffiths ---

11 **MR. NEVILLE:** Right.

12 **INSP. SMITH:** --- but it continues down.

13 **MR. NEVILLE:** And just going back to that
14 quick reference there with Mr. Griffiths, this is now after
15 the interview of Father MacDonald, but Fagan -- sorry,
16 Detective Fagan, and also after the interview of Malcolm
17 MacDonald. And you're advising Mr. Griffiths that the
18 Crown, meaning Murray MacDonald, had been aware of the
19 settlement prior to its being done, right?

20 **INSP. SMITH:** Yes.

21 **MR. NEVILLE:** Okay. And we know from
22 evidence that we've heard that Mr. Leduc had a -- I gather
23 from the evidence, somewhat of an accidental encounter with
24 Mr. MacDonald in the courthouse, raised the topic with him
25 and apparently Malcolm MacDonald contacted Murray MacDonald

1 twice?

2 **INSP. SMITH:** That's my understanding, yes.

3 **MR. NEVILLE:** All right.

4 So here we have -- going -- coming back to
5 Mr. Silmsner, he now claims to have three more victims to
6 offer?

7 **INSP. SMITH:** Yes, sir.

8 **MR. NEVILLE:** All right. Now, if we look at
9 the next page, 4222?

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** We have an entry, again it's
12 the 16th of June. At 12:35 you're having a -- I guess a
13 huddle or a team meeting with Detective Fagan?

14 **INSP. SMITH:** Yes.

15 **MR. NEVILLE:** And there's a reference under
16 Number 1, Allegations, the potential three new victims?

17 **INSP. SMITH:** Yes.

18 **MR. NEVILLE:** Three lines from the bottom,
19 just above the word "settlement" with a question mark?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** It says, and this is after Mr.
22 -- Father MacDonald has been questioned by Detective Fagan.
23 It says, as I presume this is like a "to do" list?

24 **INSP. SMITH:** I -- it appears to be.

25 **MR. NEVILLE:** All right:

1 "Ask Charlie if there is any
2 evidence he has to corroborate he
3 didn't commit offence."

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** What did you have in mind?

6 **INSP. SMITH:** M'hm. I can't remember, but
7 it must have been something that was important.

8 **MR. NEVILLE:** Can we agree in the context of
9 criminal law and the presumption of innocence, it's a bit
10 unusual? Charles MacDonald was questioned. We'll -- we're
11 going to come back to his interview in a moment.

12 **INSP. SMITH:** Well ---

13 **MR. NEVILLE:** Protested his innocence,
14 denied any wrongdoing.

15 **INSP. SMITH:** Well, then have you got
16 anything to show me that he didn't do it?

17 **MR. NEVILLE:** Well, we'll look at
18 the ---

19 **INSP. SMITH:** I'm give -- I'm giving him the
20 offer, I believe, yes.

21 **MR. NEVILLE:** Okay. All right.

22 **INSP. SMITH:** Okay.

23 **MR. NEVILLE:** Did -- was that ever done?

24 **INSP. SMITH:** Yes, I believe it was.

25 **MR. NEVILLE:** "Provide us some

1 corroboration"?

2 **INSP. SMITH:** I think -- I believe ---

3 **MR. NEVILLE:** Corroboration of nothing
4 happening?

5 **INSP. SMITH:** I believe he did. I believe
6 he provided some stuff. So ---

7 **MR. NEVILLE:** Well, in fact you know, and
8 we'll look at it in a minute, that during the course of the
9 interview, the questioning by Detective Fagan, he or he and
10 his counsel produced a letter, the letter from prison?

11 **INSP. SMITH:** Yes.

12 **MR. NEVILLE:** That showed an ongoing contact
13 at approximately the age of 17 by Mr. Silmsers?

14 **INSP. SMITH:** Yes.

15 **MR. NEVILLE:** Okay. And we're going to look
16 at another document involving a lawyer's letter to Father
17 MacDonald showing attempts on his part to assist Mr.
18 Silmsers.

19 **INSP. SMITH:** Okay. You're going to have to
20 help me on that.

21 **MR. NEVILLE:** We'll come to it. We'll come
22 to it. Let's move on.

23 Can we look at 4229? It really is on 4230,
24 but it starts at the bottom of 4229.

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** At the bottom, it's the 19th of
2 September. It's a telephone conversation began with Mr.
3 Silmser, right? A call from David Silmser, wants to know
4 what is happening?

5 **THE COMMISSIONER:** Right on the 19th of
6 September.

7 **MR. NEVILLE:** Do you see the cursor on the
8 screen.

9 **THE COMMISSIONER:** He's on the wrong page,
10 you're on the wrong page there.

11 **MR. NEVILLE:** It's 4229.

12 **INSP. SMITH:** Oh, I see up here, yes.

13 **MR. NEVILLE:** Yes, some of it is actually
14 easier ---

15 **INSP. SMITH:** Oh, yes, I've got it here,
16 yes. Yes, I do.

17 **MR. NEVILLE:** All right. So this is --
18 he's calling yourself when you have a conversation with
19 him?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** All right. Can we go to the
22 top of the next page?

23 **INSP. SMITH:** Yes, sir.

24 **MR. NEVILLE:** You advise him that you had
25 asked his lawyer to have for a meeting -- to have a meeting

1 because of things that had come up that he had not told you
2 people, right?

3 **INSP. SMITH:** Yes.

4 **THE COMMISSIONER:** Could you turn the page,
5 Madam Clerk?

6 **MR. NEVILLE:** Do you have it, Inspector?

7 **THE COMMISSIONER:** No. It's frozen, it's
8 okay.

9 **MR. NEVILLE:** Oh, sorry.

10 **INSP. SMITH:** I've got my own here.

11 **THE COMMISSIONER:** Yeah.

12 **MR. NEVILLE:** Well, we better wait for the -

13 --

14 **THE COMMISSIONER:** No, no, it's

15 Okay. Go ahead. As well, I thought ---

16 **MR. NEVILLE:** So you have it in front of you
17 there, sir?

18 **INSP. SMITH:** Yes, sir.

19 **MR. NEVILLE:** Stated:

20 "I had asked lawyer to have him
21 meet with us because other things had
22 come up Silmsers had not told us in
23 initial interview."

24 **INSP. SMITH:** Correct.

25 **MR. NEVILLE:** "Silmsers said, 'There iss

1 lots I didn't tell you. I didn't trust
2 you or the way you conducted
3 interview'."

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** Right?

6 He then goes on -- you say to him, "Also" --
7 two lines down:

8 "...we have info Silmsers saw
9 MacDonald..."

10 That's Father MacDonald:

11 "...after the alleged abuse which
12 Silmsers didn't tell us."

13 Now, you had in mind there some of these
14 items that you -- we just touched on: the prison letter,
15 the statements by Father MacDonald that he had surrendered
16 him into custody in Ottawa and had done things to help him.

17 **INSP. SMITH:** And a photograph or a
18 newspaper ---

19 **MR. NEVILLE:** And the photograph, right.

20 **INSP. SMITH:** Newspaper ---

21 **MR. NEVILLE:** So those are the kinds of
22 things you're telling Silmsers, "Look, we have some more
23 questions now", right?

24 **INSP. SMITH:** Yes.

25 **MR. NEVILLE:** Let's see what his reaction is

1 to that:

2 "Advised Silmsers I spoke to his lawyer
3 a while back. Asked we do a re-
4 interview of things that had come up
5 but I hadn't heard from lawyer.
6 Silmsers went on he was fed up, we could
7 forget doing any more. He would handle
8 things himself. He couldn't take the
9 pressure any more, and hung up."

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** Okay? Now, you can confirm
12 for us that this re-interview of Silmsers never did take
13 place?

14 **INSP. SMITH:** No, it didn't.

15 **MR. NEVILLE:** Okay.

16 **INSP. SMITH:** But I called Mr. ---

17 **MR. NEVILLE:** Right.

18 **INSP. SMITH:** Right after that call I called

19 ---

20 **MR. NEVILLE:** Yes, yes.

21 **INSP. SMITH:** --- Mr. Geoffrey.

22 **MR. NEVILLE:** Can we turn briefly -- I just
23 want to cue you a bit -- to 4238. We're now into April of
24 1995.

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** At the bottom of the page we
2 have your investigation into the information received from
3 Brian Simser, the cousin?

4 **INSP. SMITH:** Yes, sir.

5 **MR. NEVILLE:** I don't want to dwell on that,
6 it's been covered large measure, but I want to go over, if
7 I could, to page 4244. Do you have it?

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

9 **MR. NEVILLE:** Just for context, the
10 statement by Silmsner that nothing had happened and nobody
11 could prove it and he got the money anyway, that type of
12 thing that Brian Simser said he heard.

13 **INSP. SMITH:** Yes.

14 **MR. NEVILLE:** All right? There was
15 apparently a second person there.

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** And that's reflected at the
18 bottom of the page beside -- I can't read any date -- April
19 '95, 14:47, and that's the person there?

20 **INSP. SMITH:** That would be the same date.

21 **MR. NEVILLE:** Okay.

22 **INSP. SMITH:** Yes.

23 **MR. NEVILLE:** So this is an interview of
24 this person in person?

25 **INSP. SMITH:** Yeah. He didn't want to be

1 interviewed. That's as much as I got out of him.

2 **MR. NEVILLE:** Let's just confirm what we
3 have here. We have his name, we won't use the name for
4 now, with his date of birth and an address.

5 **INSP. SMITH:** He's dead anyway, so ---

6 **MR. NEVILLE:** Yes, he died in a fire;
7 correct? Right?

8 **INSP. SMITH:** Yes.

9 **MR. NEVILLE:** All right.

10 "Refused to give written statement.
11 Does not wish to get involved. Does
12 not wish to testify in a proceedings.
13 Will only state that David Silmsler told
14 him the priest only touched his leg."

15 Right?

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** Now, these are things said to
18 you by him?

19 **INSP. SMITH:** By -- yes.

20 **MR. NEVILLE:** Now, the next sentence is
21 printed. Whose printing is that?

22 **INSP. SMITH:** That's his.

23 **MR. NEVILLE:** That's right. And below the
24 printing is his signature?

25 **INSP. SMITH:** That's correct.

1 **MR. NEVILLE:** Witnessed by you and Detective
2 Fagan?

3 **INSP. SMITH:** Yes, sir.

4 **MR. NEVILLE:** So this would be a classic
5 oral statement reduced to writing, verified, and signed by
6 this person?

7 **INSP. SMITH:** Yes, sir.

8 **MR. NEVILLE:** This person had no particular
9 axe to grind that you knew of against Mr. Silmsen? In fact
10 they were friends or at least acquaintances.

11 **INSP. SMITH:** Yes.

12 **MR. NEVILLE:** There appeared to be some
13 degree of animosity between the two cousins; none between
14 Silmsen -- Mr. David Silmsen and this man?

15 **INSP. SMITH:** Yes.

16 **MR. NEVILLE:** All right.

17 Can we next look briefly at -- it actually
18 starts, Inspector, on 4247 and these are some dealings you
19 had with John MacDonald.

20 **INSP. SMITH:** Yes, sir. Two-four-seven
21 (247)?

22 **MR. NEVILLE:** Four-two-four-seven (4247).

23 **INSP. SMITH:** Yes, sir, I got that.

24 **MR. NEVILLE:** The date I'm looking at at the
25 bottom half of the page is the 8th of November, 1995.

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

2 **MR. NEVILLE:** And this is a telephone
3 conversation that you had with him?

4 **INSP. SMITH:** Yes, sir.

5 **MR. NEVILLE:** And there were some topics
6 here of concern. One of them was the indication you were
7 getting that he, or he and Silmsen, intended to confer and
8 meet with C-3?

9 **INSP. SMITH:** Correct.

10 **MR. NEVILLE:** And you knew from your
11 experience in the courts that it was not helpful to have
12 alleged victims or complainants collaborating?

13 **INSP. SMITH:** Yes, sir.

14 **MR. NEVILLE:** It caused major difficulties
15 with credibility, even perhaps with admissibility in the
16 terms of any similar fact.

17 **INSP. SMITH:** It's happened in the past,
18 yes.

19 **MR. NEVILLE:** Exactly. So what you were
20 advising him was, "Don't do it. Leave it to us."

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** He didn't honour that advice
23 did he?

24 **INSP. SMITH:** No, sir.

25 **MR. NEVILLE:** They went right ahead, right?

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

2 **MR. NEVILLE:** Now, did -- all right.

3 Can we look at the bottom of 4248?

4 **INSP. SMITH:** Yes, sir.

5 **MR. NEVILLE:** I can't read the name,

6 Inspector. It's the bottom two lines:

7 "At Long Sault Detachment, speak to

8 John..."

9 **INSP. SMITH:** John Mesic. He was the

10 Detachment Commander.

11 **MR. NEVILLE:** Thank you.

12 **INSP. SMITH:** M-E-S-I-C.

13 **MR. NEVILLE:** Thank you.

14 And he shows you a newspaper article in
15 which Mr. MacDonald has granted an interview of some sort
16 and purports to quote you?

17 **INSP. SMITH:** Yes.

18 **MR. NEVILLE:** This was in the face of a --
19 undertaking, or whatever one should call it, that he would
20 not use the press?

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** Can we look about four lines -
23 - five lines from the top of page 4249. You've recorded
24 the following:

25 "Dunlop is now using MacDonald and

1 Silmsers to further his cause. I will
2 not be involved in case. His wife has
3 called me. I will not return her
4 calls."

5 **INSP. SMITH:** That's correct.

6 **MR. NEVILLE:** Okay. Now, this note, is this
7 just a note to yourself or is -- what is it? Or is this
8 something you're telling the officer at the detachment?

9 **INSP. SMITH:** This is all in regard to the
10 newspaper article.

11 **MR. NEVILLE:** Okay.

12 **INSP. SMITH:** And it all happens at the same
13 time. If I go to the top, I was quoted ---

14 **MR. NEVILLE:** Yes.

15 **INSP. SMITH:** --- and that continues on ---

16 **MR. NEVILLE:** Right.

17 **INSP. SMITH:** --- as part of what the
18 article was. I can't remember exactly what the article
19 was.

20 **MR. NEVILLE:** So what I'm going to suggest
21 to you is this. These four lines about Dunlop using these
22 two men, I'm going to suggest to you it's in your notes
23 because you inferred that from the article?

24 **INSP. SMITH:** Yes, I would imagine, sir.

25 **MR. NEVILLE:** It was a revelation to you

1 that, oh ---

2 **INSP. SMITH:** It was my understanding that
3 the meeting that the three of them had together was at
4 Dunlop's.

5 **MR. NEVILLE:** Okay.

6 Now, let's look briefly at 24251.

7 **INSP. SMITH:** Two-four-five-one (2451), sir?

8 **MR. NEVILLE:** Two-four-four-two-five-one
9 (244251).

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** The date is November 23rd, '95
12 at 4:20 p.m.

13 **INSP. SMITH:** Yes.

14 **MR. NEVILLE:** And you return a page or a
15 call from Mr. MacDonald and speak with him -- John
16 MacDonald?

17 **INSP. SMITH:** That's correct.

18 **MR. NEVILLE:** And you discuss with him your
19 displeasure, as your notes say, with the media coverage?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** And he accuses you of being a
22 liar?

23 **INSP. SMITH:** Yes, sir.

24 **MR. NEVILLE:** He also mentions, in
25 particular, Mr. Dunlop, right?

1 **INSP. SMITH:** I'm trying to follow.

2 **MR. NEVILLE:** Do you see the part, four
3 lines, "MacDonald said I lied"? Have you found that?

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** "I stated I did no such
6 thing and he began talking of Perry
7 Dunlop. I said I didn't want to
8 discuss his involvement in the
9 ordeal..."

10 If that's the word.

11 "...and from here on any connection..."

12 **THE COMMISSIONER:** "Conversation".

13 **MR. NEVILLE:** "...communication or
14 anything..."

15 -- yes:

16 "...he wants from me would be done
17 through his lawyer."

18 **INSP. SMITH:** Correct.

19 **MR. NEVILLE:** So this is where you tell him
20 from now on it's you through the lawyer?

21 **INSP. SMITH:** Yes.

22 **MR. NEVILLE:** All right. Triggered by these
23 events that we've just touched on?

24 **INSP. SMITH:** Yes. Anything I'd said to him
25 I would see in the press.

1 **MR. NEVILLE:** Exactly.

2 **INSP. SMITH:** And I didn't want that.

3 **MR. NEVILLE:** No, I understand.

4 Can we look now at 4252?

5 **INSP. SMITH:** Yes, sir.

6 **MR. NEVILLE:** The entry is the third from

7 the top on the left. It looks like 03/96 -- March '96. Or

8 maybe it is the 3rd of ---

9 **INSP. SMITH:** "Await..."

10 **MR. NEVILLE:** I'm sorry?

11 **INSP. SMITH:** "Await page to call office."

12 **MR. NEVILLE:** No. It's:

13 "Call Peter Griffiths re investigation

14 update."

15 **INSP. SMITH:** Oh yes, sir. Okay.

16 **MR. NEVILLE:** Do you have it?

17 **INSP. SMITH:** Yes.

18 **MR. NEVILLE:** And the fourth line down:

19 "We feel with additional two victims

20 there are RP&G to lay indecent assault

21 charges."

22 **INSP. SMITH:** Yes.

23 **MR. NEVILLE:** Is this something you're

24 telling him?

25 **INSP. SMITH:** Yes.

1 **MR. NEVILLE:** All right.

2 He then advises that Mr. Pelletier may be
3 enlisted.

4 Can we look down at the bottom of the page.
5 The entry seems to be the 16th of January '96.

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

7 **MR. NEVILLE:** This is something that your
8 colleague Detective Fagan advises you?

9 **INSP. SMITH:** Yes.

10 **MR. NEVILLE:** As follows:

11 "P.C. Fagan advises he spoke briefly to
12 Peter Griffiths. C-3, indecent assault
13 when [it looks like 16] is considered
14 consensual. No charge."

15 Correct?

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** I think the next word is,
18 "Fondling prior ---"

19 **INSP. SMITH:** M'hm.

20 **MR. NEVILLE:** "--- must be reviewed ---"

21 **INSP. SMITH:** By Bob Pelletier.

22 **MR. NEVILLE:** "--- by Bob Pelletier, who
23 will get the brief this Thursday".

24 **INSP. SMITH:** Yes.

25 **MR. NEVILLE:** All right.

1 So it would appear that that analysis or
2 assessment of part of C-3's allegations is coming from Mr.
3 Griffiths.

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** Okay.

6 Now, if we look -- and I don't want you to -
7 - we're not going to review them with you, but if you look
8 at 4255 and I guess to the top of -- no, just 4255.

9 **INSP. SMITH:** Yes, sir.

10 **MR. NEVILLE:** We see in the top half of the
11 page a number of contacts are suddenly coming to you from
12 the media.

13 **INSP. SMITH:** Yes, sir.

14 **MR. NEVILLE:** Did you come to a conclusion
15 what the source was for these calls, no charges having been
16 announced?

17 **INSP. SMITH:** Oh, I had an idea where they
18 were coming from.

19 **MR. NEVILLE:** It was the Dunlops?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** Can we look at the next item
22 briefly? The Bates page, Inspector, is 4261 and the date
23 is the 21st of March, '97.

24 Have you found it?

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** And it's the second entry from
2 the top at 9:20 a.m.

3 **INSP. SMITH:** The 21 of March?

4 **MR. NEVILLE:** Yes, sir.

5 Now, you'd mentioned this in passing with
6 one of the other counsel about Mr. Dunlop's refusal to be
7 interviewed.

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

9 **MR. NEVILLE:** Can we just look together:

10 "Call from Pat Hall. Mrs. Dunlop to be
11 interviewed this a.m. Perry Dunlop
12 does not want to be interviewed. All
13 background re threats."

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** So this is the actual notation
16 in your book about this refusal to be interviewed, about
17 threats purportedly to him and his family.

18 **INSP. SMITH:** Yes, sir.

19 **MR. NEVILLE:** Okay. Can we look at 4262?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** It's the bottom entry, the 16th
22 of April, '97 at 11:02.

23 **INSP. SMITH:** Yes, sir.

24 **MR. NEVILLE:** You're in -- you have a
25 telephone conversation with Chief Repa of the Cornwall

1 Police Service.

2 INSP. SMITH: Yes, sir.

3 MR. NEVILLE: And it appears -- and if you
4 just read it to yourself briefly I'll ask you some
5 questions in a moment.

6 INSP. SMITH: Yes, sir.

7 MR. NEVILLE: What Chief Repa is bringing to
8 your attention is Mr. Dunlop's civil action and in
9 particular the amended statement of claim from November
10 '96, about six months before, in which we see all of the
11 detailed allegations of the alleged clan and conspiracies
12 and cover-ups.

13 INSP. SMITH: Yes, sir.

14 MR. NEVILLE: And as you point out in your
15 notes, you were aware of same ---

16 INSP. SMITH: Yes.

17 MR. NEVILLE: --- because of the Fantino
18 brief ---

19 INSP. SMITH: Yes, sir.

20 MR. NEVILLE: --- in which all of that was
21 contained; right?

22 INSP. SMITH: I believe so. Yes, sir.

23 MR. NEVILLE: Right. Now, let's just
24 summarize something.

25 INSP. SMITH: But he was going to purolate

1 that to me and make sure.

2 **MR. NEVILLE:** To make sure it fits and they
3 match; right?

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** Now, let me just stop here for
6 a minute. You spent the better part of 1994 investigating
7 whether some kind of untoward conspiracy, cover-up had
8 taken place, in particular to the benefit of my client in
9 not being charged.

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** And came to the conclusion
12 there was no such conspiracy or cover-up.

13 **INSP. SMITH:** Yes, sir.

14 **MR. NEVILLE:** You then devoted from 1997
15 through to your retirement time to that topic from time to
16 time; right?

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

18 **MR. NEVILLE:** And your colleagues devoted
19 time from 1999 to 2004 to that topic.

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** And the bottom line is after
22 some eight years-plus of investigations there's no clan and
23 there's no conspiracy; right?

24 **INSP. SMITH:** That's my belief, yes.

25 **MR. NEVILLE:** Let's look at 4264. This is

1 the 14th of May, 1997.

2 **INSP. SMITH:** Yes, sir.

3 **MR. NEVILLE:** I want you to look for me --
4 at the top of the page you're attempting to arrange,
5 through Chief Repa, a meeting or interview with Mr. Dunlop;
6 right?

7 **INSP. SMITH:** Yes.

8 **MR. NEVILLE:** Right. Now, you mentioned in
9 your testimony for the Commissioner yesterday, I believe,
10 you used the phrase that when you eventually meet with
11 Dunlop for the first time in June of '97 -- you used the
12 phrase "it's to get the ground rules straight".

13 **INSP. SMITH:** That's -- yes, that's fair to
14 say.

15 **MR. NEVILLE:** I'm not criticizing. That was
16 ---

17 **INSP. SMITH:** Well ---

18 **MR. NEVILLE:** --- your colourful way of
19 putting it.

20 **INSP. SMITH:** Well, maybe I could put it a
21 better way but that's ---

22 **MR. NEVILLE:** No, no, I'm not criticizing
23 the word. I just want to refer you now to these notes, if
24 I could.

25 **INSP. SMITH:** Yes.

1 **MR. NEVILLE:** Look at the fifth line:
2 "As per instructions of regional Crown
3 ---"

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** "--- at first opportunity I
6 would like to speak to P.C. Dunlop and
7 advise him that all info re
8 investigation he may have or came upon
9 should be forwarded to investigators."

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** "Also, he should not
12 interview or speak to complainants or
13 victims of abuse in this case."

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** So those are some of the
16 topics that you cover about a month -- three weeks or so
17 later in the Dunlop interview.

18 **INSP. SMITH:** Yes, sir.

19 **MR. NEVILLE:** And the recommendation that
20 these things be done and put to Mr. Dunlop actually came
21 not just from your initiative; it came from the Crown.

22 **INSP. SMITH:** That's correct.

23 **MR. NEVILLE:** All right.

24 Let's look at the bottom, the 15th of May.
25 This is a telephone consultation with Mr. Abell, the

1 director of the CAS.

2 INSP. SMITH: Yes, sir.

3 MR. NEVILLE: If you just read the notes to
4 yourself please.

5 INSP. SMITH: Yes, sir.

6 MR. NEVILLE: What you're addressing with
7 Mr. Abell is whether he, as the head of the CAS, is aware
8 of the allegations contained in the Fantino brief.

9 INSP. SMITH: That's correct.

10 MR. NEVILLE: Allegations assembled by
11 Mr. Dunlop and his counsel.

12 INSP. SMITH: Yes, sir.

13 MR. NEVILLE: And what you raise here in
14 part with Mr. Abell -- who, I interject, was not yet aware,
15 apparently; hadn't see the brief; right?

16 INSP. SMITH: No.

17 MR. NEVILLE: What you raise with him is the
18 concept of the duty to report.

19 INSP. SMITH: Yes, sir.

20 MR. NEVILLE: And he confirmed to you that
21 neither Dunlop nor his counsel had complied with the duty
22 to report.

23 INSP. SMITH: Yes.

24 MR. NEVILLE: Correct?

25 INSP. SMITH: Yes, sir.

1 **MR. NEVILLE:** Can we look at 4266?

2 **INSP. SMITH:** Yes, sir.

3 **MR. NEVILLE:** This is -- and I'm not going
4 to go through it because we've had much of it with
5 Mr. Engelmann. I just want to touch on a couple of points.
6 This is the meeting with Mr. Dunlop on the 11th of June in
7 the presence of Inspector Trew.

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

9 **MR. NEVILLE:** Can you confirm for us,
10 Inspector, that Mr. Trew, or Inspector Trew, was there
11 because this was a different police force and there was no
12 chain of command authority on your part over Dunlop?

13 **INSP. SMITH:** That's correct.

14 **MR. NEVILLE:** You needed to have a senior
15 officer for that purpose present?

16 **INSP. SMITH:** That's correct.

17 **MR. NEVILLE:** All right.

18 And you have a conversation with Dunlop.
19 And I want you to look at about eight lines down from that
20 entry:

21 "Advised Dunlop, as a police officer to
22 police officer..."

23 So, stopping there, cop to cop ---

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** --- man to man.

1 **INSP. SMITH:** Yeah.

2 **MR. NEVILLE:** Okay.

3 "...should he have any info or any
4 victims come forward pertaining to this
5 investigation, that they be referred to
6 our investigators and not interviewed
7 by his lawyer or Mr. Chisholm."

8 Now, I take it you had some awareness at
9 this point, including from the Fantino brief, that Mr.
10 Chisholm, his brother-in-law, was doing interviews.

11 **INSP. SMITH:** In particular with John
12 MacDonald.

13 **MR. NEVILLE:** Right.

14 **INSP. SMITH:** I think before we interviewed
15 him.

16 **MR. NEVILLE:** Right. And were you aware at
17 that point that he'd also taken some kind of a statement
18 from David Silmser; did you have that one yet?

19 **INSP. SMITH:** I don't believe so, sorry.

20 **MR. NEVILLE:** All right. Fair enough.

21 Top of the next page, 4267. After you
22 present your position, the position that Mr. Griffiths
23 encouraged, you record the following; lines 2 and 3:

24 "Dunlop advised he will cooperate
25 100 percent with us and do as

1 requested."

2 All right?

3 **INSP. SMITH:** Yes, sir.

4 **MR. NEVILLE:** And people shook hands on that
5 as an understanding?

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

7 **MR. NEVILLE:** All right.

8 Let's look at 4270.

9 **INSP. SMITH:** Yes, sir.

10 **MR. NEVILLE:** This is the next meeting with
11 Mr. Dunlop.

12 **INSP. SMITH:** The 7th of August?

13 **MR. NEVILLE:** Yes, sir. At 10:15 in the
14 morning. Again, I believe Officer Trew is present, for
15 reasons of protocol.

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** And one of the first topics
18 that you're discussing with him is the problem of media.

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

20 **MR. NEVILLE:** Right?

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** Now, you express your concern
23 or displeasure and he says he will not speak to the press,
24 they caught him off guard.

25 **INSP. SMITH:** That's what he said.

1 **MR. NEVILLE:** Did you believe that, that he
2 was caught off guard?

3 **INSP. SMITH:** That's what he said.

4 **MR. NEVILLE:** Did you believe it?

5 **INSP. SMITH:** No.

6 **MR. NEVILLE:** Top of the next page.

7 Now, at the top of the next page, just to
8 set it in context, because you may have forgotten some of
9 this, and I think if I'm not correct, someone will correct
10 me, the police were operating on the belief from Mr.
11 Silmsler, that he, Silmsler, and perhaps MacDonald as well,
12 had been the target of threats. And the person they said
13 told them of the threats to them was Dunlop. And this is
14 what he's being questioned about; right?

15 **INSP. SMITH:** I seem to remember that, yeah.

16 **MR. NEVILLE:** Okay. Now, let's look at
17 Dunlop's response, it's the second line:

18 "Dunlop hedged around topic."

19 Do you see that?

20 **INSP. SMITH:** Yes.

21 **MR. NEVILLE:** Do you remember what he did by
22 way of hedging; wouldn't admit, wouldn't deny?

23 **INSP. SMITH:** Wouldn't admit, wouldn't deny.

24 **MR. NEVILLE:** Okay. The bottom line is you
25 told him to straighten it out?

1 **INSP. SMITH:** Yes.

2 **MR. NEVILLE:** Now, this is a man who'd been
3 a police officer for some considerable period of time by
4 this point to your knowledge; right?

5 **INSP. SMITH:** I believe he had about 10
6 years on or thereabouts.

7 **MR. NEVILLE:** At least. Perhaps -- I think
8 more. In any event, I think probably closer to 15.

9 You explained to him that you want his
10 notes, statements, et cetera, and they are required for
11 further investigation and possible disclosure.

12 **INSP. SMITH:** Yes, sir.

13 **MR. NEVILLE:** Did you think you had to
14 explain to such a veteran police officer about the
15 importance of disclosure? You would think he'd know it,
16 wouldn't you?

17 **INSP. SMITH:** Well, he -- he should know,
18 but I was just going to tell him anyway.

19 **MR. NEVILLE:** Sure. Can we look at page 426
20 -- so 4286, this is in July of '98?

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** Now, I'm not going to ask you
23 to give names yet, although at least one of these persons
24 had spoken about this problem of rumours. If you'd look at
25 the second-last entry from the bottom at 1510.

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

2 **MR. NEVILLE:** You have a telephone
3 discussion with a named individual.

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** And if you'd just read the
6 seven or so lines of entry for that telephone conversation.

7 **THE COMMISSIONER:** I don't know, can we read
8 that? Can ---

9 **MR. NEVILLE:** I'll read it out if you wish,
10 Commissioner. I can read it, I've gotten used to Inspector
11 Smith's writing, after practice.

12 **THE COMMISSIONER:** "He is upset"?

13 **MR. NEVILLE:** Yes.

14 **INSP. SMITH:** Yes.

15 **MR. NEVILLE:** "He is upset with
16 rumours. It is affecting his family,
17 and he was thinking of going to press.
18 I asked him how he was doing, he said
19 okay. I advised him he was not suspect
20 in sexual cases."

21 **THE COMMISSIONER:** In sexual cases.

22 **MR. NEVILLE:** "No allegations against
23 him. Told him later this week we would
24 be making press release re
25 investigation, and this should ease

1 things. Asked him not to talk
2 about..."

3 **THE COMMISSIONER:** This ---

4 **MR. NEVILLE:** --- "this mess" I think.

5 **INSP. SMITH:** "Same."

6 **MR. NEVILLE:** "Same. He stated he
7 wouldn't, thanked me for the
8 call."

9 And then he gave you the next individual's
10 phone number?

11 **INSP. SMITH:** Yes.

12 **MR. NEVILLE:** So this is an example of a
13 citizen of some prominence who was experiencing the problem
14 of unfounded rumours of sexual misconduct.

15 **INSP. SMITH:** I recall that one vividly in
16 that I had concerns ---

17 **MR. NEVILLE:** Right.

18 **INSP. SMITH:** --- over him doing something
19 foolish.

20 **MR. NEVILLE:** We're going to come to that,
21 just bear with me. That's the concern; this man was the
22 target, as he himself was aware of rumours; right?

23 **INSP. SMITH:** Yes.

24 **MR. NEVILLE:** The next individual
25 essentially is the same; right?

1 **INSP. SMITH:** Yes, I had heard he'd
2 suicided.

3 **MR. NEVILLE:** Well, let's look at the top of
4 the next page.

5 There had been rumours and indeed we've
6 heard that evidence, that there were rumours of his having
7 harmed himself.

8 If you look at the top of the next page,
9 second line.

10 **INSP. SMITH:** Yes.

11 **MR. NEVILLE:** "Both subjects appear to
12 be stable and no hint or
13 suspicion they may harm
14 themselves."

15 **INSP. SMITH:** Yes.

16 **MR. NEVILLE:** And I would suggest, if I may
17 as a compliment, so to speak, that this phone call probably
18 helped in that regard?

19 **INSP. SMITH:** No doubt in my mind.

20 **MR. NEVILLE:** Now, if we could just -- I'd
21 like to turn to, if I could briefly, Inspector, issues
22 involving the questioning of Father MacDonald by Detective
23 Fagan?

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** And the exhibits,

1 Commissioner, that I would like the witness to have are
2 2251 ---

3 **THE COMMISSIONER:** Two two (22) ---

4 **MR. NEVILLE:** Five one (51).

5 **THE COMMISSIONER:** Two two five one (2251).

6 **MR. NEVILLE:** Two two five one, (2251), it's
7 the ---

8 **THE COMMISSIONER:** No, no, hang on, hang on.

9 **MR. NEVILLE:** --- statement of Charles
10 MacDonald.

11 **THE COMMISSIONER:** Oh. No, 2251; I don't
12 have it.

13 **MR. NEVILLE:** You may have it up there
14 somewhere, sir, because it came up in the -- oh, here we
15 go.

16 And there's two others, sir, 258 and 309.

17 **THE COMMISSIONER:** Two five (25) ---

18 **MR. NEVILLE:** Two five eight (258) and 309.

19 **INSP. SMITH:** M'hm..

20 **THE COMMISSIONER:** Well, hopefully they'll be
21 in the same -- 2251, that's one. That's 2251 and then
22 we've got to get the 200 and ---

23 **MR. NEVILLE:** Two five eight (258).

24 **THE COMMISSIONER:** Two five eight (258).

25 **MR. NEVILLE:** And 309.

1 **THE COMMISSIONER:** It's ---

2 **MR. NEVILLE:** I can give doc numbers as
3 well, Commissioner, if that helps any.

4 **THE COMMISSIONER:** No, no. No no, we're
5 fine. We're fine. Okay.

6 **MR. NEVILLE:** Other -- others may wish me
7 to.

8 **THE COMMISSIONER:** Oh yes, of course.

9 **MR. NEVILLE:** There's a distinguished
10 gentleman to my right that's asked to help.

11 **THE COMMISSIONER:** No, no, that's Ms.
12 Lahaie, she's a distinguished person.

13 **MR. NEVILLE:** Indeed.
14 Seven two four three one zero (724310) is
15 Exhibit 258.

16 **INSP. SMITH:** Two fifty-eight (258)?

17 **THE COMMISSIONER:** Two fifty-eight (258).

18 **MR. NEVILLE:** Yes.
19 Seven one five zero nine zero (715090) is
20 309. And 110195 is 2251.

21 **INSP. SMITH:** I've got a -- well, the
22 binder's here, but I think I've got them, sir.

23 **MR. NEVILLE:** Let's --

24 **THE COMMISSIONER:** Which one do you want on
25 the screen?

1 **MR. NEVILLE:** 2251, sir.

2 **THE COMMISSIONER:** It's the interview of ---

3 **MR. NEVILLE:** This is the interview of
4 Charles MacDonald by Detective Fagan on the 7th of June,
5 1994, Inspector.

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

7 **MR. NEVILLE:** Now, you have, through Mr.
8 Engelmann's evidence in -- leading of your evidence in-
9 chief expressed a certain amount of criticism of how this
10 interview was conducted. Perhaps more questions could or
11 should have been asked, et cetera?

12 **INSP. SMITH:** I would have done it
13 differently, yes.

14 **MR. NEVILLE:** Okay. And Mr. Malcolm
15 MacDonald seemed to take a fairly active role, especially
16 if we look at the transcript towards the latter part.

17 **INSP. SMITH:** Yes, it was almost his
18 statement.

19 **MR. NEVILLE:** Right.

20 Now, one of the things I wanted to ask you
21 is this. You've had a chance to look through it,
22 obviously?

23 **INSP. SMITH:** Yes, sir.

24 **MR. NEVILLE:** We know from your notes that
25 heading into this interview a set of questions was

1 prepared.

2 INSP. SMITH: Yes.

3 MR. NEVILLE: Are they reflected in the
4 statement?

5 INSP. SMITH: I ---

6 MR. NEVILLE: Or do you remember?

7 INSP. SMITH: I can't remember but I know I
8 made out a list of questions.

9 MR. NEVILLE: And do you know, would it have
10 just been on a loose single piece of paper and ---

11 INSP. SMITH: Yes.

12 MR. NEVILLE: --- and given it to Detective
13 Fagan?

14 INSP. SMITH: Either faxed to him or ---

15 MR. NEVILLE: So I take it there's no
16 preserved copy of that.

17 INSP. SMITH: I've seen it in ---

18 MR. NEVILLE: Have you, somewhere?

19 INSP. SMITH: --- the documentation
20 somewhere. There's no heading on it at all. It doesn't
21 say, "List of Questions," it's just questions.

22 MR. NEVILLE: All right. Okay.

23 So you eventually learned of the content of
24 this statement, obviously.

25 INSP. SMITH: Yes, sir.

1 **MR. NEVILLE:** And if I could just refer you
2 to Bates page 259.

3 Now, just before I ask you a particular
4 question, we know the format of the statement, at least at
5 the outset, is that Detective Fagan presents each of the
6 four Silmsler allegations to Father MacDonald.

7 **INSP. SMITH:** Yes.

8 **MR. NEVILLE:** Right?

9 **INSP. SMITH:** That's my understanding.

10 **MR. NEVILLE:** Okay. And so on the page I
11 referred you to, if you just flip back one to the bottom,
12 you'll see that Officer Fagan outlines Silmsler's story
13 about the retreat.

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** Right? If you go up to the
16 top of the next page, this is Charles MacDonald answering.
17 Apart from his saying that it's false he points out the
18 dates are wrong; that it was a high school retreat and at
19 the age purportedly it happened with Silmsler he would not
20 have been in high school and, in any event, it was an open
21 dormitory. Right?

22 **INSP. SMITH:** What page is ---

23 **MR. NEVILLE:** Top of page -- it's page 4, if
24 you use the numbers of the statement.

25 **INSP. SMITH:** Okay.

1 **MR. NEVILLE:** It's 259 using Bates pages.

2 **INSP. SMITH:** Okay.

3 Yes, sir.

4 **MR. NEVILLE:** Now, those were all -- those
5 two items were items that could have led to further
6 investigation.

7 **INSP. SMITH:** Yes, sir.

8 **MR. NEVILLE:** For example, he alleges Father
9 MacDonald coming naked into this dormitory, which he
10 claimed was with cubicles which might provide some degree
11 of coverage -- no pun intended -- but certainly not an open
12 dormitory.

13 **INSP. SMITH:** That's correct.

14 **MR. NEVILLE:** Now, let's go to the next
15 page, page 5 or using the Bates, 260. Do you have it?

16 **INSP. SMITH:** Two six zero (260), yes.

17 **MR. NEVILLE:** Yes. And on this particular
18 page, Charles MacDonald explains to your colleague that the
19 last time he had any dealings or contact with David Silmsen
20 was when he drove him to Ottawa to surrender him in because
21 he'd stolen the night deposits from the Talisman Hotel
22 where he'd been working.

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

24 **MR. NEVILLE:** The last full answer at the
25 bottom, Charles MacDonald says:

1 "That he was all the time I was trying
2 to help him, and that's the last I ever
3 saw of him."

4 Right?

5 **INSP. SMITH:** Yes.

6 **MR. NEVILLE:** Now, the fact that he would
7 have taken Mr. Silmsler to Ottawa to surrender in on the
8 theft charge, at least the theft charge would appear on his
9 record -- because we know he pleaded guilty to it -- and
10 that would give you a date; right?

11 **INSP. SMITH:** Date of conviction.

12 **MR. NEVILLE:** Pardon me?

13 **INSP. SMITH:** Date of conviction.

14 **MR. NEVILLE:** Yes, date of conviction and an
15 approximate date of when Father MacDonald, as he claims,
16 would have taken him to Ottawa to surrender in to be
17 prosecuted; right?

18 **INSP. SMITH:** Yes, sir.

19 **MR. NEVILLE:** Which, if the date is in the
20 late seventies -- I'm just saying '78, for example, '79 --
21 has Mr. Silmsler being helped by Father MacDonald when he's
22 almost, if not in fact, 20 because he was born in '58.

23 **INSP. SMITH:** Fifty-eight ('58), yes.

24 **MR. NEVILLE:** Right?

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** Right.

2 Then we look at page 6, Bates 261. Do you
3 have it?

4 **INSP. SMITH:** Yes, sir.

5 **MR. NEVILLE:** It's on this particular page
6 that Charles MacDonald brings up the fact that he had
7 received friendly correspondence from Silmsers while Silmsers
8 was in jail. And you see in the middle of the page
9 Detective Fagan asks for a copy of that letter.

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** And points out that it looks
12 like it was sent in 1975. You can see that, "Mr.
13 MacDonald" mid-page?

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** All right. And you know that
16 that letter was in fact turned over.

17 **INSP. SMITH:** Yes.

18 **MR. NEVILLE:** Right? Because -- and we'll
19 turn to it in a minute; that's our Exhibit 309. It's the
20 "Dear Chuck" letter sent in 1975.

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** And the postmark on it appears
23 to be June, so Mr. Silmsers at this point is now 17.

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** Page 262 -- 8262, or 7 if you

1 use the numbering on the document. Do you have it?

2 **INSP. SMITH:** Yes, sir.

3 **MR. NEVILLE:** The last question from Officer
4 Fagan at the bottom:

5 "Why would he make these allegations
6 against you? Do you have any idea?"

7 Do you see it?

8 **INSP. SMITH:** Yes.

9 **MR. NEVILLE:** Was that a question that was
10 suggested by yourself that he should put to Charles
11 MacDonald?

12 **INSP. SMITH:** I don't know if it is, but I'd
13 ask that question.

14 **MR. NEVILLE:** Good. Let's look at the
15 answer. Charles MacDonald says:

16 "Right from the word go when he began
17 stealing, money was his prime
18 motivation. It was always -- it was
19 always money, money, money. At the
20 time he made those allegations also the
21 government and the Church are paying
22 out millions to the victims, real or
23 imagined, of Alfred et cetera."

24 Now, was that a concern to yourself, as an
25 investigator in this area in which you developed a

1 specialization, that you could have people making these
2 allegations and making claims because of the publicity of
3 settlements and the availability of money? Was that a
4 concern?

5 **INSP. SMITH:** Yeah, we had -- I had some
6 people do that in the Alfred case and St. John case.

7 **MR. NEVILLE:** Right.

8 All right, if we could just look very
9 briefly, momentarily, at Exhibits 309 and 258.

10 **INSP. SMITH:** Which one first, sir?

11 **MR. NEVILLE:** Three zero nine (309), please.
12 It's just that it's chronological.

13 **INSP. SMITH:** Yes, sir, I've got it.

14 **MR. NEVILLE:** This is the "Dear Chuck"
15 letter that you came to see through Detective Fagan?

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** Could you look now at 258
18 please; Exhibit 258?

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

20 **MR. NEVILLE:** Now, Mr. Silmser's birthday is
21 in March of 1958. This letter is February of 1976, so he's
22 almost 18; right?

23 **INSP. SMITH:** Yes, sir.

24 **MR. NEVILLE:** This is a letter from a lawyer
25 here in Cornwall to Father MacDonald. The "re" line is:

1 "David Silmsers Charged, Provincial
2 Court Cornwall - Theft."

3 Right?

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** And he sets out to Father
6 MacDonald the disposition in David Silmsers's case; correct?

7 **INSP. SMITH:** Yes.

8 **MR. NEVILLE:** Including probation, term C of
9 which is to live at the rectory as long as Father MacDonald
10 wished him to.

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

12 **MR. NEVILLE:** Right? Next page, the full
13 paragraph at the top. As was typical then and perhaps now,
14 the condition was to be amenable to Father MacDonald's
15 discipline, such as curfew and the like; right?

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** And then in the last two
18 paragraphs he thanks him for his assistance and says that:

19 "Your assistance of this young chap at
20 this time in his life speaks highly of
21 your ministry and I commend you."

22 **INSP. SMITH:** Yes.

23 **MR. NEVILLE:** Now, Mr. Silmsers at this point
24 is almost 18; right?

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** Are these circumstances that
2 you took into account in coming to your conclusion at the
3 end of '94, among others, that there was no reasonable or
4 probable grounds?

5 **INSP. SMITH:** I don't know if I had all that
6 material at that time, sir.

7 **MR. NEVILLE:** You had the letter, the "Dear
8 Chuck" letter.

9 **INSP. SMITH:** Yes, I had that. I don't
10 recall this one.

11 **MR. NEVILLE:** All right.

12 I want to talk to you now, briefly, about
13 reasonable probable grounds.

14 **INSP. SMITH:** Yes, sir. Can I close these
15 off?

16 **MR. NEVILLE:** Yes, thank you. Sorry.

17 **(SHORT PAUSE/COURTE PAUSE)**

18 Okay. Now, we know that reasonable and
19 probable grounds has a subjective component and an
20 objective component, right?

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** So let me ask you this; is
23 there a difference between subjective belief, generally,
24 and subjective belief for purposes of swearing an
25 Information? From your standpoint?

1 **INSP. SMITH:** Can you give me an example of
2 what you mean by subjective ---

3 **MR. NEVILLE:** Well, here's part of my ---

4 **INSP. SMITH:** --- rather than objective?

5 **MR. NEVILLE:** --- concern, Inspector ---

6 **INSP. SMITH:** M'hm?

7 **MR. NEVILLE:** --- you've asserted a number
8 of times in your evidence in-chief how you believed David
9 Silmsner was abused.

10 **INSP. SMITH:** Yes, sir.

11 **MR. NEVILLE:** You have some doubts in your
12 mind, I take it, by whom, when, and in what fashion.

13 **INSP. SMITH:** Yes, sir.

14 **MR. NEVILLE:** Okay. But you felt, for sure,
15 he'd been abused?

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** And, if I understand your
18 evidence, a key trigger to that belief or state of mind of
19 yourself, is the fact of wanting an apology; based on your
20 experience?

21 **INSP. SMITH:** To a large part, yes.

22 **MR. NEVILLE:** Okay. So let's look -- we
23 know, for example, in your notes, when you speak to
24 Mr. Griffiths just before Christmas, 1994 ---

25 **INSP. SMITH:** Yes, sir.

1 **MR. NEVILLE:** --- and the Bates page,
2 Commissioner, is 4232, and Exhibit 1803.

3 **THE COMMISSIONER:** Eighteen zero three
4 (1803)? Oh, yes, right. Okay.

5 **INSP. SMITH:** Yes, sir.

6 **MR. NEVILLE:** Do you have it?

7 **INSP. SMITH:** Yes.

8 **MR. NEVILLE:** The 20th of December, Peter
9 Griffiths? You have it?

10 **INSP. SMITH:** Yes.

11 **MR. NEVILLE:** The first line:

12 "Priest RPG; objectively, enough
13 credible evidence; subjectively, not
14 honest belief."

15 He's talking about you?

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** So he seemed to be under the
18 understanding that you, either by telling him or in some
19 other way, figured out that you, subjectively, did not
20 believe you could lay a charge?

21 **INSP. SMITH:** I didn't think I had enough.

22 **MR. NEVILLE:** Okay.

23 **INSP. SMITH:** Although I believed -- yes,
24 Yes.

25 **MR. NEVILLE:** Well, that's my point.

1 **INSP. SMITH:** Yes.

2 **MR. NEVILLE:** Is there some different kind
3 of subjective belief here? Some personal belief versus
4 some legal subjective belief? Is there a difference?

5 **INSP. SMITH:** I -- the way I put it,
6 Mr. Neville, is that I believed him that he'd been
7 assaulted, sexually assaulted. I didn't know where, I
8 didn't know when, and I really didn't know who, exactly.
9 I ---

10 **MR. NEVILLE:** Did you even know for sure at
11 what age?

12 **INSP. SMITH:** In one instance, yes, I was
13 content that there was something that went on in the
14 sacristy, I believe, in the church.

15 **MR. NEVILLE:** So that's Father MacDonald?

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** Based on what?

18 **INSP. SMITH:** Based on what he said, there
19 being -- and you have to go back to the statement, his
20 initial statement.

21 **MR. NEVILLE:** Well, if you subjectively
22 believe that event, why would you not lay a charge? How
23 can Mr. Griffiths have in his notes, "Subjectively, no
24 honest belief"?

25 **INSP. SMITH:** Well, there were -- no

1 corroboration whatever.

2 **MR. NEVILLE:** Well, my question to you was,
3 just to come back to ---

4 **INSP. SMITH:** Yes.

5 **MR. NEVILLE:** --- where I started, is there
6 some difference in your mind between a personal belief and
7 a subjective belief for purposes of laying a charge? Do
8 you draw a distinction?

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

10 **INSP. SMITH:** Yes, I -- I believe that -- I
11 believe that it happened, but I couldn't prove it; I didn't
12 have the evidence.

13 You can believe something, sir, but
14 not -- not be able to -- not have enough ---

15 **MR. NEVILLE:** But isn't that the ---

16 **INSP. SMITH:** --- to lay a charge.

17 **MR. NEVILLE:** --- objective? I'm sorry to
18 interrupt you.

19 **INSP. SMITH:** Well ---

20 **MR. NEVILLE:** Isn't that the objective part,
21 if you don't have the evidence?

22 **INSP. SMITH:** Yes.

23 **MR. NEVILLE:** Okay. Because we've looked
24 through your evidence in-chief, at some of these synopses,
25 some of the briefs from '94, right?

1 INSP. SMITH: Yes.

2 MR. NEVILLE: And in one of them, for
3 example, Exhibit 2669, the one into the alleged agreement
4 not to prosecute ---

5 (SHORT PAUSE/COURTE PAUSE)

6 INSP. SMITH: The synopsis part, please?

7 MR. NEVILLE: Sorry. It's Exhibit 2669.

8 THE COMMISSIONER: Yes.

9 MR. NEVILLE: Do you have it there, sir?

10 INSP. SMITH: Yes, sir.

11 MR. NEVILLE: I'm using page 4 of the
12 documents numbering.

13 INSP. SMITH: At the back, yes.

14 MR. NEVILLE: All right. The middle
15 paragraph?

16 INSP. SMITH: Yes.

17 MR. NEVILLE: "Although highly suspicious
18 of sexual misconduct on the part of
19 Father MacDonald..."

20 Let me stop there. Is there a difference
21 between suspicion and belief?

22 INSP. SMITH: Yes.

23 MR. NEVILLE: Okay:

24 "Although highly suspicious of sexual
25 misconduct on the part of Father

1 Charles MacDonald sometime in the past
2 with the complainant, insufficient
3 evidence exists to be sure the events
4 as dictated by Silmser actually took
5 place."

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

7 **MR. NEVILLE:** That was your state of mind?

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

9 **MR. NEVILLE:** Because, if we look at Exhibit
10 393, which is the opinion letter from Mr. Griffiths ---

11 **THE COMMISSIONER:** Three nine three (393).

12 **(SHORT PAUSE/COURT PAUSE)**

13 **INSP. SMITH:** Yes, sir?

14 **MR. NEVILLE:** Page 3 of the -- using the
15 pagination of the document itself, the "3" at the top, the
16 "Advice" paragraph at the bottom?

17 **INSP. SMITH:** Yes. "It is my advice...?"

18 **MR. NEVILLE:** Right. He talks initially
19 about the lack of objective grounds, and then in the last
20 five sentences writes the following:

21 "In addition, as I understand from
22 your material, you..."

23 Meaning yourself:

24 "...are not personally or
25 subjectively satisfied that you have

1 reasonable probable grounds to
2 lay criminal charges."

3 So, I take it, he got that in part by
4 reading the material and in part by talking to you?

5 **INSP. SMITH:** Yes, sir.

6 **MR. NEVILLE:** All right.

7 **INSP. SMITH:** Were talking '94 here.

8 **MR. NEVILLE:** '94.

9 **INSP. SMITH:** Yes.

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

11 **MR. NEVILLE:** Now, you mentioned to the
12 Commissioner the significance in your mind, based on
13 experience, about the fact he wanted an apology.

14 **INSP. SMITH:** Yes.

15 **MR. NEVILLE:** Can I have the witness,
16 Commissioner, see Exhibit 311, please?

17 **THE COMMISSIONER:** Three one one (311)?

18 **MR. NEVILLE:** Three one one (311).

19 **INSP. SMITH:** I might have it here.

20 **THE COMMISSIONER:** Yes, we do.

21 **INSP. SMITH:** Yes, sir.

22 **MR. NEVILLE:** Now, you knew from your
23 history on the file that Monsignor Schonenbach, who is the
24 author of this letter, was the first person, apparently, to
25 receive a disclosure from Mr. Silmsen?

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

2 **MR. NEVILLE:** We know he also called the
3 Cornwall police department, and I'll come back to that in a
4 moment. I want you to look with me at the last paragraph
5 on page 1.

6 **INSP. SMITH:** Yes:

7 "He said, for starters, I would like
8 a letter from Father MacDonald
9 acknowledging what he did, so that I
10 can show this to my mother."

11 **MR. NEVILLE:** Now, put yourself in the
12 position, Inspector, where someone comes to you with this
13 allegation and says, "For starters," I want the following.

14 **INSP. SMITH:** M'hm?

15 **MR. NEVILLE:** Would you have any questions
16 in your mind?

17 **INSP. SMITH:** Well, it -- yes. "What else?"

18 **MR. NEVILLE:** Right.

19 Can we deal, briefly, with the laying of the
20 charges against Father MacDonald in March of '96?

21 **INSP. SMITH:** I'd have to go to my notes, I
22 think, on that.

23 **THE COMMISSIONER:** That's in 1803.

24 **INSP. SMITH:** I've got my notes.

25 **MR. NEVILLE:** The document, Commissioner,

1 I'd like to start with, if I could, is Exhibit 2672.

2 **INSP. SMITH:** I don't have it.

3 **THE COMMISSIONER:** You should. Two six
4 seven two (2672) is the new one.

5 **INSP. SMITH:** I've got 291 to 350, 351
6 to 415. And, again, sir, the ---

7 **THE COMMISSIONER:** Two six seven two (2672).

8 **MR. NEVILLE:** Two six seven two (2672).

9 **THE COMMISSIONER:** Mr. Neville, do you have
10 any idea of how long ---

11 **MR. NEVILLE:** Perhaps 20 minutes, sir. Did
12 you want to take a break, for the witness?

13 **INSP. SMITH:** Twenty (20) minutes?

14 **THE COMMISSIONER:** Twenty (20) minutes?

15 **INSP. SMITH:** No, let's keep going.

16 **THE COMMISSIONER:** Okay, let's keep going.

17 **MR. NEVILLE:** Inspector, this is the summary
18 I take it of the brief, so to speak, that went for review
19 by Mr. Griffiths and ultimately by Mr. Pelletier?

20 **INSP. SMITH:** It appears to be, yes.

21 **MR. NEVILLE:** All right.

22 If I could ask you to look at the last page,
23 page 4 of the document, Bates page 6740. Do you have it?

24 **INSP. SMITH:** Yes.

25 **MR. NEVILLE:** This is dealing with the

1 complainant known as C-3.

2 **INSP. SMITH:** Yes, sir.

3 **MR. NEVILLE:** "During C-3's interview with
4 the investigators, he was asked why he
5 decided to come forward at this time.
6 He stated he had received a call from
7 John MacDonald regarding Father
8 MacDonald and also met with David
9 Silmser and John MacDonald and that his
10 complaint would corroborate their
11 statements."

12 This is what -- from your meeting with him,
13 you understood was why he was there?

14 **INSP. SMITH:** Yes, sir.

15 **MR. NEVILLE:** Can I ask you to look next,
16 please, at Exhibit 204?

17 **THE COMMISSIONER:** Two ---

18 **MR. NEVILLE:** Zero-four.

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. NEVILLE:** The Document Number,
21 Commissioner, is 737944.

22 **THE COMMISSIONER:** So while we're waiting
23 for that, Mr. Neville, if you don't mind, I just want to
24 check to see how much time we have left so I know about ---

25 **MR. NEVILLE:** Certainly.

1 **THE COMMISSIONER:** Mr. Chisholm?
2 **MR. CHISHOLM:** Two minutes, sir.
3 **THE COMMISSIONER:** All right.
4 Monsieur Rouleau?
5 **MR. ROULEAU:** Nothing so far, sir.
6 **THE COMMISSIONER:** Mr. Scharbach?
7 **MR. SCHARBACH:** About 20 minutes.
8 **THE COMMISSIONER:** Twenty (20) minutes? All
9 right.
10 Madam Robitaille?
11 **MS. ROBITAILLE:** Twenty (20) minutes.
12 **THE COMMISSIONER:** Mr. Sherriff-Scott.
13 Nobody for the Diocese.
14 Mr. Manderville?
15 **MR. MANDERVILLE:** Perhaps half-an-hour, Mr.
16 Commissioner.
17 **THE COMMISSIONER:** Okay. OPP -- oh, OPPA?
18 And -- all right -- Mr. Kozloff?
19 **MR. KOZLOFF:** Probably 15 minutes max.
20 **THE COMMISSIONER:** All right. So we've got
21 a ways to go.
22 **MR. KOZLOFF:** It depends on what my friend's
23 asking him about right now.
24 **THE COMMISSIONER:** Okay.
25 **(SHORT PAUSE/COURTE PAUSE)**

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

2 **MR. NEVILLE:** Do you have the document
3 there, sir?

4 **INSP. SMITH:** There's some handwriting, yes.

5 **MR. NEVILLE:** Yes. Do you know what these
6 handwritten pages are?

7 I can help and save time. These are a set
8 of notes that were being kept by John MacDonald.

9 You didn't know about these at the time you
10 dealt with these three and felt you had grounds to lay
11 charges, did you?

12 **INSP. SMITH:** I don't think I've ever seen
13 these.

14 **MR. NEVILLE:** Could I ask you to look at
15 Bates page ending in 684?

16 I'd asked you questions from your notes
17 about your concern about collaboration and Silmsner and
18 MacDonald meeting with C-3 and the concerns you had about
19 it?

20 **INSP. SMITH:** Yes, sir.

21 **MR. NEVILLE:** Can you look for me -- have
22 you got the page, it bears the date at the top, November
23 4th, and then below it November 11th?

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** "Met with Dave and C-3 at my

1 house, everyone hospitable. C-3 felt
2 he was being dragged into this thing.
3 Dave and I could not emphasize enough
4 that we wanted him in but only if he
5 wanted in under his own steam. He said
6 he was coming in because there could be
7 a monetary settlement."

8 Did you know that?

9 **INSP. SMITH:** No, sir.

10 **MR. NEVILLE:** That is not what you thought
11 was his motivation from the synopsis we just read, did you?

12 **INSP. SMITH:** No, sir.

13 **MR. NEVILLE:** No. Can I ask the witness to
14 next look briefly, Commissioner, at Exhibit 228?

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

16 **MR. NEVILLE:** Do you have it, Inspector?

17 **INSP. SMITH:** Yeah, a letter from Mr.
18 Griffiths from Pelletier.

19 **MR. NEVILLE:** Yes, I think this was referred
20 to you, I believe, by Mr. Engelmann in-chief.

21 Did you see this document around the time it
22 was authored by Mr. Pelletier?

23 **INSP. SMITH:** I don't recall this document,
24 sir.

25 **MR. NEVILLE:** All right. Well, let me just

1 refer you to a couple of passages in particular.

2 Can we start with page -- I'm using page 3
3 of the document. The Bates page will be 945. The Document
4 Number is 113942.

5 **INSP. SMITH:** Yes, sir.

6 **MR. NEVILLE:** Do you have it?

7 **INSP. SMITH:** Yes, sir.

8 **MR. NEVILLE:** In the preceding pages, Mr.
9 Pelletier summarizes for Mr. Griffiths the history leading
10 up to where things were in early April '97. And just
11 stopping there.

12 At that point Father MacDonald's preliminary
13 inquiry had just started, the Fantino brief had come
14 forward and plans were being made for meetings and the
15 like, right?

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** All right.

18 Can we look at page 3? Actually, it starts
19 at the bottom of page 2.

20 You'll recall I referred you to your notes
21 where Mr. Griffiths in January of '96 expressed the opinion
22 that there would not be a charge laid for a certain aspect
23 of the story of C-3 as being consensual?

24 **INSP. SMITH:** Yes, sir.

25 **MR. NEVILLE:** Starting at the bottom of page

1 2, 944 is the Bates number. The name is right there at the
2 bottom.

3 **INSP. SMITH:** Yes.

4 **MR. NEVILLE:** "C-3..." -- if you can turn
5 over.

6 **INSP. SMITH:** To the next page?

7 **MR. NEVILLE:** Yes, sir.

8 **INSP. SMITH:** Yes.

9 **MR. NEVILLE:** "...complained of two
10 specific acts of conduct, including
11 sexual relations with the accused at
12 the time when C-3 was fully of a
13 consensual age involving, by all
14 appearances, full consent."

15 Were you advised of that view by Mr.
16 Pelletier as well as by Mr. Griffiths?

17 **INSP. SMITH:** I believe I was.

18 **MR. NEVILLE:** In the middle of that
19 paragraph, he talks about arriving at the decision to
20 proceed with charges. It's about seven lines from the
21 bottom of the paragraph:

22 "The decision to recommend charges was
23 made on the slimmest possible
24 reasonable prospect of conviction test
25 being met."

1 Were you advised of that?

2 **INSP. SMITH:** Yes.

3 **MR. NEVILLE:** Let's look at the last three
4 lines of the paragraph:

5 "It was decided that at the very least
6 the complainants will be given an
7 opportunity to testify at the
8 preliminary inquiry and the reasonable
9 prospects of conviction could be
10 assessed thereafter."

11 Were you advised of that?

12 **INSP. SMITH:** I believe I was.

13 **MR. NEVILLE:** In other words, let's see how
14 they do and we'll see where we are?

15 **INSP. SMITH:** I believe that's the way it
16 was, yes.

17 **MR. NEVILLE:** All right.

18 Commissioner, there's a new document that
19 I've circulated. Madam Reporter has copies for yourself.
20 And the Document Number, sir, is 116291.

21 **THE COMMISSIONER:** Thank you.

22 Exhibit 2688, it's an Ontario Provincial
23 Police document for Crown counsel. It's called "Ontario
24 Provincial Police Investigation into Alleged Agreement.
25 Cornwall Police Service Crown Attorney Diocese of

1 Alexandria-Cornwall. Not to Proceed with Charges on
2 Complaint of David Silmsers."

3 --- EXHIBIT NO./PIÈCE NO. P-2688:

4 (116291 - "1104924-24 1105108 - 1105116 -
5 1105118-19") - Confidential for Crown
6 Counsel OPP - Investigation into Alleged
7 Agreement "Not to Proceed with Charges on
8 Complaint of David Silmsers" dated November,
9 94

10 MR. NEVILLE: And just so you know,
11 Commissioner, to save paper and trees and what have you --
12 and if it wants to be verified by yourself or anyone in the
13 room by looking at the document number I believe -- maybe I
14 should ask the witness this.

15 Does this appear to be one of your briefs
16 prepared in '94, Inspector, at least the cover and the
17 index page?

18 INSP. SMITH: It does; that's an OPP
19 Criminal Investigation Branch cover page.

20 MR. NEVILLE: Right. Well, if you look on
21 the cover page at the bottom it's yourself and Fagan.

22 INSP. SMITH: Yes.

23 THE COMMISSIONER: So what ---

24 MR. NEVILLE: Sorry, Commissioner.

25 THE COMMISSIONER: Let's get the date.

1 **MR. NEVILLE:** I'm sorry?

2 **THE COMMISSIONER:** What date would this

3 ---

4 **MR. NEVILLE:** This would have been one of
5 the briefs that went to Mr. Griffiths in November of '94.

6 **INSP. SMITH:** I believe it is. I didn't see
7 this, but it was prepared by ---

8 **MR. NEVILLE:** Okay.

9 **INSP. SMITH:** --- Mike Fagan.

10 **MR. NEVILLE:** Okay. So if you'd look at the
11 next page, which is Bates page 4925, that's the index to
12 the volume?

13 **INSP. SMITH:** Yes.

14 **MR. NEVILLE:** If you'd look you can see that
15 two of the statements in the brief, "G" is Chief Shaver.

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** And "H" is Staff Sergeant
18 Brunet.

19 **INSP. SMITH:** Yes.

20 **MR. NEVILLE:** All right.

21 And what I've done, Commissioner, to save
22 trouble and paper is gone to the Bates page for each of the
23 documents under those headings.

24 So if you look at the next page -- it's
25 Bates page 5108 -- that appears to be the start of Chief

1 Shaver's statement.

2 If we put it on the screen, Commissioner, I
3 can assure you that's what it is.

4 **THE COMMISSIONER:** I'm sorry; say again.

5 **MR. NEVILLE:** If we put the whole thing on
6 the screen I can assure you that's what this is.

7 **INSP. SMITH:** That's it. I agree, yes.

8 **MR. NEVILLE:** Okay. Now, let's look at the
9 next of the pages; it's Bates page 5116. This is --
10 appears to be a memo by Staff Sergeant Brunet to Mr. Fagan;
11 right, about his notes?

12 **INSP. SMITH:** Yes.

13 **MR. NEVILLE:** All right.

14 If we look at the next page, Bates page 5118
15 -- do you have it? It's part of the notes of Staff
16 Sergeant Brunet. And the date at the bottom of the page,
17 Bates page 5118, is Friday, October 8th, '93. Do you have
18 it?

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

20 **MR. NEVILLE:** All right.

21 I can advise you that this is -- and I can
22 tell you, Commissioner, that these notes are also an
23 exhibit in their own right, sir. They are Exhibit 1436,
24 when we had other witnesses, as you know.

25 Now, what Officer Brunet has recorded here -

1 --

2 **MR. ENGELMANN:** I'm just worried about how
3 we're doing this with this document. I don't mind saving
4 time but why don't we just take 1436 or Shaver's statement
5 -- Chief Shaver's statement of 1789. We can put the index
6 in, but I thought I did.

7 I just -- this is a very selected excerpt of
8 a Crown brief. I don't know if this is the right way to
9 put it into evidence. I'd prefer -- I mean, if ---

10 **THE COMMISSIONER:** It's in now.

11 **MR. ENGELMANN:** Well, as what?

12 **THE COMMISSIONER:** As ---

13 **MR. NEVILLE:** Well, may I explain,
14 Commissioner? I'll try to explain what I'm doing here.
15 I could produce the whole thing. It's several dozens of
16 pages.

17 Okay, what I'm trying to demonstrate here,
18 Commissioner, is that when -- Mr. Engelmann spent a great
19 deal of time on Chief Shaver's statement and whether Chief
20 Shaver was told by the Bishop that Mr. Charles MacDonald
21 made an admission.

22 **THE COMMISSIONER:** Just a second.

23 **MR. NEVILLE:** And what I'm trying to
24 demonstrate ---

25 **THE COMMISSIONER:** No, just a second, Mr.

1 Neville. The objection is one not on what you're doing but
2 the manner in which technically the documents are coming
3 in.

4 **MR. NEVILLE:** Okay.

5 **THE COMMISSIONER:** And what we have done in
6 the past is say, no, no, no, we can't just put them all
7 like this together and give you this as an affidavit -- as
8 an exhibit, you have to go to each part.

9 That's the objection.

10 **MR. NEVILLE:** Okay.

11 **THE COMMISSIONER:** Okay.

12 **MR. NEVILLE:** Well, I know we could, sir,
13 with Madam Registrar's help, we could get the whole
14 document on the screen and I could get her to go to the
15 Bates page. I mean, I'm trying to avoid doing it that way,
16 but we could.

17 **THE COMMISSIONER:** Well, ---

18 **MR. NEVILLE:** And I'll ---

19 **MR. ENGELMANN:** I'm not objecting to ---

20 **THE COMMISSIONER:** No, no.

21 **MR. ENGELMANN:** --- what Mr. Neville's
22 doing. It's just the process and the record because of how
23 we have our exhibits in.

24 Why don't you just go to Exhibit 1436?

25 **THE COMMISSIONER:** Well, for now, for this

1 time, we'll let it go with 2688, but in the future please
2 don't ---

3 **MR. NEVILLE:** Well, what I was trying to
4 demonstrate, sir, and I don't want to talk in front of the
5 witness, but is that what went in the brief ---

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

7 **MR. NEVILLE:** --- was not simply Shaver's
8 statement.

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

10 **MR. NEVILLE:** What went in the brief was
11 these notes.

12 **THE COMMISSIONER:** Sure. That's fair.

13 **MR. NEVILLE:** That's my point.

14 **THE COMMISSIONER:** Sure.

15 **MR. NEVILLE:** But when we did it, sir, with
16 Staff Sergeant Brunet they were free-standing notes of his,
17 not in the context of the brief.

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

19 **MR. NEVILLE:** I'm just simply trying to show
20 you the context from the index of the brief.

21 **THE COMMISSIONER:** I understand that. I
22 understand.

23 **MR. NEVILLE:** So may I ---

24 **THE COMMISSIONER:** Go ahead.

25 **MR. NEVILLE:** Inspector, if you look at the

1 bottom of that page ---

2 **INSP. SMITH:** I've read it.

3 **MR. NEVILLE:** So Staff Sergeant Brunet
4 appears to have a report to him the very next day after
5 Shaver's meeting with the Bishop that is a similar version
6 to what the Bishop gave you.

7 **INSP. SMITH:** That's correct.

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

9 Now, two brief matters and we're finished.
10 I'll just want to ask you briefly about your questioning in
11 particular of Murray MacDonald.

12 **INSP. SMITH:** Yes, sir.

13 **MR. NEVILLE:** Murray MacDonald was
14 questioned by yourself and I believe Detective Fagan in
15 July of '94.

16 **INSP. SMITH:** Yes, sir.

17 **MR. NEVILLE:** Okay. And that's Exhibit, for
18 the record, Commissioner, 1233. And I'm not asking the
19 witness to look at it, sir, I'm just going to see if I can
20 cover it without having to take the time.

21 And then you re-interviewed him, as Mr.
22 Engelmann dealt with briefly today, in December of '98.

23 **INSP. SMITH:** With Mr. Hall.

24 **MR. NEVILLE:** Yes.

25 **INSP. SMITH:** Yes.

1 **MR. NEVILLE:** Yes.

2 **INSP. SMITH:** Actually there were two
3 interviews, one didn't take, so --

4 **MR. NEVILLE:** I know, I understand.

5 **INSP. SMITH:** Yeah.

6 **MR. NEVILLE:** You finally got one that
7 worked.

8 **INSP. SMITH:** Yes.

9 **MR. NEVILLE:** Okay. And just to put in
10 context, when you questioned Mr. MacDonald in '94 none of
11 the Fantino brief, the Leroux allegations, were around.

12 **INSP. SMITH:** No, sir.

13 **MR. NEVILLE:** But when you see him again in
14 December '98, that's why you're there.

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

16 **MR. NEVILLE:** All right.

17 And we have the document; the interview in
18 December 98 is there. And can you agree with me, sir, that
19 one of the points he made quite forcefully, without turning
20 to the document, was why would I conspire to benefit a
21 priest I don't even know when I turned in or helped to turn
22 in my own father?

23 **INSP. SMITH:** Yes.

24 **MR. NEVILLE:** Okay. Now, can we just return
25 back to your notes briefly, 1803?

1 **INSP. SMITH:** Bates, sir?

2 **MR. NEVILLE:** Yeah, sorry.

3 **INSP. SMITH:** No problem.

4 **MR. NEVILLE:** Bates page 4277.

5 Now, when you were testifying in-chief
6 yesterday, Inspector -- and the page references,
7 Commissioner, are -- from yesterday's transcript, which is
8 volume 311, are pages 344, line 21 to 345, line 15.

9 At that point, Inspector, Mr. Engelmann was
10 asking you what you could recall, if anything, about the
11 fact that a second set of charges, Project Truth charges,
12 let's call them, were brought against Father Charles
13 MacDonald, and whether you were aware of a brief going to
14 the Crown, and you said you couldn't remember.

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

16 **MR. NEVILLE:** Okay. So let me see if I can
17 refresh your memory by using your notes.

18 Have you found that Bates page?

19 **INSP. SMITH:** I've got that page, yes, sir.

20 **MR. NEVILLE:** Do you see the date, January
21 21st, 1998?

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

23 **MR. NEVILLE:** It reads:

24 "Call from Bob Pelletier."

25 So he's calling you.

1 INSP. SMITH: Yes.

2 MR. NEVILLE: "He has reviewed brief..." ---

3 INSP. SMITH: Yes.

4 MR. NEVILLE: "...and recommends further

5 charges against Father Charles

6 MacDonald. Eight charges, five

7 victims."

8 INSP. SMITH: Yes, sir.

9 MR. NEVILLE: "Have him appear Cornwall

10 court."

11 INSP. SMITH: Yes, sir.

12 MR. NEVILLE: "Charges can be

13 transferred later hopefully to

14 marry up with present charges."

15 INSP. SMITH: Yes, sir.

16 MR. NEVILLE: These are your notes ---

17 INSP. SMITH: Yeah.

18 MR. NEVILLE: --- of what he's telling you.

19 INSP. SMITH: Yes, these are mine.

20 MR. NEVILLE: "Advise Mike Neville soon as

21 he... -- soon..." ---

22 INSP. SMITH: "...as he is aware..." ---

23 MR. NEVILLE: Oh, "...so he is aware".

24 INSP. SMITH: So he is aware.

25 MR. NEVILLE: So, in other words, make sure

1 Neville knows.

2 INSP. SMITH: Yes.

3 MR. NEVILLE: Right?

4 "...prior to pre-trial on February 6th,
5 '98."

6 INSP. SMITH: Right.

7 MR. NEVILLE: "If disclosure is
8 available he can be given same on
9 that date."

10 Right?

11 INSP. SMITH: Yes, sir.

12 MR. NEVILLE: Would you look at the next
13 Bates page, following date?

14 INSP. SMITH: The 21st -- or 22nd?

15 MR. NEVILLE: Actually I think it's the same
16 day, a continuation of it.

17 INSP. SMITH: Yes.

18 MR. NEVILLE: At the top of the
19 page ---

20 INSP. SMITH: But you're not -- you're
21 secretary -- you're in court in Smith Falls.

22 MR. NEVILLE: Right, in Smiths Falls.

23 INSP. SMITH: And I tried again the next
24 day, I guess.

25 MR. NEVILLE: And tried again the next day,

1 same result. You got a call back from my secretary asking
2 that you provide her with information as I am in Smiths
3 Falls, as to why you're trying to reach me.

4 **INSP. SMITH:** Yes, sir.

5 **MR. NEVILLE:** Right?

6 And then you have the following in line
7 four:

8 "Advised her Father MacDonald to
9 be charged, eight counts indecent
10 assault, gross indecency. Request he
11 show up Long Sault detachment,
12 Tuesday January 27th, '98 at 11:00 a.m.
13 for processing."

14
15 **INSP. SMITH:** Yes.

16 **MR. NEVILLE:** And then the court date?

17 **INSP. SMITH:** Yes.

18 **MR. NEVILLE:** "Disclosure available
19 with Crown Pelletier at pre-trial6 Feb
20 '97, she will give Neville message."

21 **INSP. SMITH:** Yes.

22 **MR. NEVILLE:** And you gave her a number
23 where you could be reached; right?

24 **INSP. SMITH:** Yes.

25 **MR. NEVILLE:** And then you advised

1 Mr. Pelletier of what you'd done in reaching -- or
2 conveying the information.

3 **INSP. SMITH:** Yes.

4 **THE COMMISSIONER:** Where are we going with
5 this, Mr. Neville?

6 **MR. NEVILLE:** I'm just going to cover, sir,
7 what he didn't cover because he couldn't remember in-chief.
8 Can we look at the Bates page 279?

9 **INSP. SMITH:** Yes, sir.

10 **MR. NEVILLE:** The date is January 26th, '98.

11 **INSP. SMITH:** Yes.

12 **MR. NEVILLE:** You and I speak that day.

13 **INSP. SMITH:** Yes, sir.

14 **MR. NEVILLE:** And you advise me of who the
15 complainants are.

16 **INSP. SMITH:** Yes.

17 **MR. NEVILLE:** Those are my questions. Thank
18 you.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Chisholm, you're -- I think we're going
21 home; right?

22 **INSP. SMITH:** If he's got five minutes, two
23 minutes, I'll do it if that's okay with you,
24 Mr. Commissioner.

25 **MR. CHISHOLM:** Tomorrow morning; whatever.

1 **THE COMMISSIONER:** No, let's do it tomorrow
2 morning.

3 **MR. CHISHOLM:** Tomorrow morning?

4 **THE COMMISSIONER:** It's 5 o'clock.

5 **INSP. SMITH:** Okay.

6 **THE COMMISSIONER:** If you're not tired, I
7 am.

8 **INSP. SMITH:** Well, it's your turn.

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

11 This hearing is adjourned until tomorrow
12 morning at 9:00 a.m.

13 --- Upon adjourning at 4:54 p.m. /

14 L'audience est ajournée à 16h54

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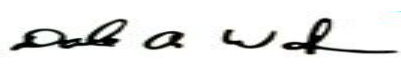
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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM