

**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 329

Held at :

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

Wednesday, January 7, 2009

Tenue à:

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

Mercredi, le 7 janvier 2009

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
Ms. Karen Jones	Commission Counsel
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
M ^e Claude Rouleau	Ontario Ministry of Community 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. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Donald Johnson	

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

2 L'audience débute à 9h35

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning, sir. How
10 are you doing today?

11 **MR. STRAWCZYNSKI:** Good morning,
12 Mr. Commissioner. Happy new year.

13 **THE COMMISSIONER:** You too.

14 Before we begin, I want to say that given
15 the storm and the weather, what I propose to do today is
16 try to compress the lunch hour and do things then. As soon
17 as we're finished the cross-examination of this witness,
18 we're going to close down and go home. Also, feel free,
19 those of you who are from out of town, once your cross-
20 examination is finished, if you wish to leave I certainly
21 won't feel slighted about that.

22 And lastly, for those who are listening in,
23 yesterday I didn't express myself properly in the sense
24 that when we took the lunch hour counsel had asked for an
25 all-counsel meeting which is something that we do at the

1 beginning of each session, and so lest anyone thinks that
2 we're taking long lunch hours, the time was used to try to
3 condense and make things work a little easier. Thank you.

4 On that note, sir, go ahead.

5 **DONALD W. JOHNSON, Resumed/Sous le même serment:**

6 **MR. STRAWCZYNSKI:** Good morning, sir.

7 **MR. JOHNSON:** Good morning.

8 **THE COMMISSIONER:** You understand you're
9 still under oath?

10 **MR. JOHNSON:** Yes.

11 **THE COMMISSIONER:** Thank you.

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

13 **MR. STRAWCZYNSKI:**

14 **MR. STRAWCZYNSKI:** Good morning,
15 Mr. Johnson. My name is Juda Strawczynski and I'm here on
16 behalf of Citizens for Community Renewal which is an
17 organization of concerned Cornwall citizens principally
18 interested in promoting institutional reform so as to
19 ensure the protection of children and justice for all.

20 I just wanted to start with a few questions
21 related to the Deslauriers prosecution and your attempts to
22 have the sentencing appealed, and this was together with
23 Crown Masse.

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

25 **MR. STRAWCZYNSKI:** We went through some

1 letters yesterday from January 21st, 1987, both from
2 yourself forwarded to Mr. Then, and from Mr. Masse himself.
3 I can take you to the letters if you'd like, but you may
4 recall that both yourself and Mr. Masse had written up the
5 chain, so to speak, to inform them that you had been
6 receiving media enquiries as to the sentence in the
7 Deslauriers case and to seek instructions or guidance as to
8 how to respond. Do you recall that, sir?

9 **MR. JOHNSON:** All I can recall is that
10 Mr. Masse prosecuted the case. He was obviously upset with
11 the sentence. He did contact me. He did contact me and we
12 -- I took and he took the appropriate steps to request a
13 Crown appeal.

14 **MR. STRAWCZYNSKI:** Okay. Well, maybe we
15 will go to the letters then. The first is the letter from
16 Mr. Masse himself, which is at Exhibit 2953, and that is
17 Document 736193. The reference to media requests is at the
18 last page of the letter, page 3, which is Bates page ending
19 in 0431.

20 **MR. JOHNSON:** Okay, sorry, sir. What ---

21 **MR. STRAWCZYNSKI:** Do you have that in front
22 of you, sir?

23 **MR. JOHNSON:** I have -- no -- Mr. Masse's
24 letter ---

25 **THE COMMISSIONER:** It's the last page.

1 **MR. JOHNSON:** Yes.

2 **MR. STRAWCZYNSKI:** At the top of the page,
3 it says:

4 "I have already been contacted by one
5 representative of the media for my
6 reaction to the Crampton appeal, and I
7 anticipate being contacted by more."

8 You'll recall that Crampton was another case
9 involving a priest who had been sentenced and the Crown was
10 going to appeal that matter.

11 **MR. JOHNSON:** I believe that was in Ottawa,
12 that one.

13 **MR. STRAWCZYNSKI:** Thank you.

14 "In addition, it is likely that
15 victims, police officers and perhaps
16 even members of the general public may
17 approach me for clarification of the
18 Crown's position. Your comments would
19 be of considerable assistance to me in
20 formulating a response to these
21 anticipated enquiries."

22 If we go to your letter, which is Exhibit
23 2954, which is Document 736194, to the second page, Bates
24 0433, ---

25 **MR. JOHNSON:** Yeah.

1 **MR. STRAWCZYNSKI:** --- you write in the
2 second to last paragraph:

3 "As you no doubt are aware, I will most
4 likely be called upon to answer queries
5 by citizens of this community as well
6 as the media as to what principles were
7 considered with respect to these two
8 similar matters."

9 Those matters being the Deslauriers case and
10 the Crampton case.

11 "I would therefore appreciate if you
12 could advise me what principles were in
13 fact considered by the Ministry in
14 arriving at its decision, in order that
15 I may be in a better position to reply
16 to any questions on the matter. I
17 shall await your reply."

18 And you never did receive a response to that
19 letter, did you, sir?

20 **MR. JOHNSON:** No, I didn't. As ---

21 **MR. STRAWCZYNSKI:** And did you develop any
22 media response, absent comments from those above you? Do
23 you recall sitting down with Mr. Masse, for example, and
24 talking about how any media enquiries related to the
25 Deslauriers matter would be handled?

1 **MR. JOHNSON:** Not that I can recall, no.

2 **MR. STRAWCZYNSKI:** Okay. I'm going to take
3 you to some of the media -- or one article in particular
4 with respect to the Deslauriers sentencing. It's Exhibit
5 2955.

6 **THE COMMISSIONER:** We're there.

7 **MR. STRAWCZYNSKI:** You're there?

8 **THE COMMISSIONER:** Yes.

9 You want to go to the media article, Madam
10 Clerk, so it's the second page. There you go.

11 **MR. STRAWCZYNSKI:** In this article, sir,
12 there are quotes attributed to both the prosecuting Crown,
13 Masse, and from Mr. Then, Director of the Attorney
14 General's Crown Law Office. Mr. Masse is quoted as saying
15 that the Gilles Deslauriers sentence "was at the low end of
16 the scale" and that it was a light sentence.

17 And then you have Mr. Then, who is providing
18 explanations as to why the Deslauriers case differs from
19 the Crampton matter.

20 **MR. JOHNSON:** It's not too clear in the
21 binder that I have and on the screen in front of me. It's
22 ---

23 **THE COMMISSIONER:** I understand.

24 Madam Clerk, can you blow that up a little
25 bit?

1 Okay, and bring it over so we can see the
2 first paragraph. Well, okay.

3 **MR. STRAWCZYNSKI:** You'll see, for example,
4 the last sentence in the article is a quote attributed to
5 Mr. Masse saying:

6 "I thought he had to go to jail in
7 order to put out a message to the
8 public that you don't do this."

9 And this, I gather, would have been your
10 opinion at the time as well, sir.

11 **MR. JOHNSON:** That's correct.

12 **MR. STRAWCZYNSKI:** Did you know that
13 Mr. Masse was going to be giving public statements on the
14 appropriateness of the sentencing?

15 **MR. JOHNSON:** No, I didn't.

16 **MR. STRAWCZYNSKI:** Do you know why the
17 Ministry of the Attorney General would have had two
18 separate individuals giving comments on the sentencing in
19 this article?

20 **MR. JOHNSON:** No.

21 **MR. STRAWCZYNSKI:** You would agree with me,
22 though, that a member of the community, in reading this
23 article, would be left with the impression that the
24 Attorney General was internally divided in the handling of
25 the case?

1 **MR. JOHNSON:** I'm not going to speak for the
2 Attorney General back then. I don't know what the public
3 would have thought. They would have had both sides of the
4 -- well, both presentations, and I assume that's what
5 newspapers are for, to present ideas and to present
6 situations and let the public read it and come to their own
7 conclusion.

8 **MR. STRAWCZYNSKI:** Just to close up the
9 Deslauriers story, were you aware that the Court of Appeal
10 did in fact impose a more severe sentence in the Crampton
11 matter once it was appealed?

12 **MR. JOHNSON:** No, I didn't.

13 **MR. STRAWCZYNSKI:** Well, it's at Document
14 Number 718840.

15 **THE COMMISSIONER:** That's a new one, sir.
16 Thank you. Exhibit 2958 is a copy of the
17 judgment of *Regina v. Crampton* in the Ontario Court of
18 Appeal, and it's quoted [1987] O.J. No. 666.

19 **--- EXHIBIT NO./PIÈCE NO. P-2958:**

20 (718840) Supreme Court of Ontario - Court of
21 Appeal re: R. v. Crampton - 25-30 Jun, 87

22 **MR. STRAWCZYNSKI:** The final paragraph of
23 the decision at Bates page 8639 states that:

24 "For the foregoing reasons leave to
25 appeal is granted. The appeal is

1 allowed. The suspending of the passing
2 of sentence is set aside and a sentence
3 of imprisonment for eight months is
4 imposed. The probation order will
5 stand."

6 So it looks as though there is a success on
7 appeal.

8 **MR. JOHNSON:** It obviously looks like it,
9 yeah.

10 **MR. STRAWCZYNSKI:** Would you agree with me
11 that when the Court of Appeal released its decision in
12 Crampton that this would just serve to reinforce the
13 community's view here in Cornwall that the Crown ought to
14 have appealed in the Deslauriers matter as well?

15 **MR. JOHNSON:** The Appellate Division of the
16 Attorney General's Department -- I mean, at the trial
17 level, yeah. We were seeking an appeal. Obviously, Mr.
18 Masse was seeking an appeal and I supported him in that
19 application, yeah.

20 **MR. STRAWCZYNSKI:** Thank you.

21 I'm going to move to a new topic now, sir,
22 that actually was not discussed yesterday. It involves
23 allegations against an individual named Marcel Lalonde.
24 And I'm going to be taking you back to testimony by Officer
25 Malloy involving his investigation of matters involving Mr.

1 Lalonde.

2 **MR. JOHNSON:** Mr. Commissioner, may I ---

3 **THE COMMISSIONER:** Yes?

4 **MR. JOHNSON:** --- stop for a second here? I
5 don't know how to put this. I presently represent Mr.
6 Lalonde.

7 **THE COMMISSIONER:** Okay. So why don't we
8 ask you to wait outside ---

9 **MR. JOHNSON:** Okay.

10 **THE COMMISSIONER:** --- for a few minutes and
11 we'll see where we're going to go with that.

12 Mr. Scharbach?

13 **MR. SCHARBACH:** I don't know what questions
14 my friend is going to ask Mr. Johnson. It appears to me
15 the issue that's raised here is the danger that Mr. Johnson
16 may be asked to answer questions that will violate his
17 solicitor/client privilege.

18 **THE COMMISSIONER:** M'hm. Well I don't know.
19 I guess your first point -- let's find out what he's going
20 to ask, first of all. All right.

21 Yes, sir?

22 **MR. STRAWCZYNSKI:** You may recall, Mr.
23 Commissioner that Officer Malloy had testified here to
24 having had a meeting with Don Johnson with respect to his
25 investigation in June of 1989 of Mr. Marcel Lalonde. This

1 was a meeting with no notes where Mr. -- Officer Malloy
2 claimed to have taken no notes. All I wanted to know was
3 whether Mr. Johnson has any recollection of that meeting.

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

5 **MR. STRAWCZYNSKI:** And that was going to be
6 the extent of my questioning.

7 **THE COMMISSIONER:** Well and if he says
8 "yes"?

9 **MR. STRAWCZYNSKI:** If he says "yes" then I
10 would have asked what his advice was to the -- to the
11 Cornwall Police Service at that time as Officer Malloy had
12 stated that -- I believe that he had thought he was not at
13 RP&G yet and that this was confirmed by the Crown.

14 **THE COMMISSIONER:** Okay. Hang on. Mr.
15 Scharbach and then Mr. Lee.

16 **MR. SCHARBACH:** Based on what my friend
17 says, I have no objection to those questions.

18 **THE COMMISSIONER:** Right.

19 Mr. Lee?

20 **MR. LEE:** Depending on where Mr.
21 Strawczynski goes, I had also intended to ask Mr. Johnson
22 about some questions so I thought it might be best to just
23 raise it now.

24 **THE COMMISSIONER:** That's fine, thanks.

25 **MR. LEE:** Officer Malloy testified that he

1 had two meetings with Crown Johnson. The first was at the
2 very outset of his investigation. Essentially after having
3 received the complaint, he testified that it was a -- he
4 was new to the Youth Bureau; that he essentially wasn't
5 exactly sure where to go with the investigation so he went
6 and sought advice.

7 I then, in my cross-examination, took him
8 through all of the information that he had gathered
9 throughout the course of his investigation, specifically
10 put to him the question of whether or not once he had all
11 of the information gathered that he would ever have whether
12 he went back to the Crown; he testified that he did.

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

14 **MR. LEE:** My intention was going to be to go
15 with Mr. Johnson to the transcript of my cross-examination
16 of Officer Malloy, have him read to himself, perhaps, five
17 or six pages where at the end of my examination, I put a
18 number of questions to Officer Malloy about the advice he
19 claimed to have received by Mr. Johnson and I -- I
20 challenged Officer Malloy on the fact that I -- I thought
21 it unlikely that meeting had, in fact, happened and that he
22 had received that advice and I think I need to put it to --
23 -

24 **THE COMMISSIONER:** Yes.

25 **MR. LEE:** --- Mr. Johnson. I don't intend

1 to go outside of that. My concern is very specifically
2 with his dealings with Officer Malloy in 1989.

3 **THE COMMISSIONER:** Okay, anyone else have
4 any comments? Yes, sir, Mr. Manderville?

5 **MR. MANDERVILLE:** As you know, I act for
6 Officer Malloy.

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

8 **MR. MANDERVILLE:** I think the only concern
9 we should be wary of is you'll recall Officer Malloy
10 testified that in his second meeting with Mr. Johnson, he
11 expressed the view -- it was a consent issue concerning C-
12 57 and Officer Malloy expressed the view to Mr. Johnson and
13 I think there's consent. I don't think I have RP&G and it
14 is alleged that Mr. Johnson advised, yeah, I think it's
15 consent. I don't think there's anything there.

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

17 **MR. MANDERVILLE:** Given that he's now acting
18 for Mr. Lalonde, I think we should be very wary about how
19 we approach that.

20 **THE COMMISSIONER:** Right, so do you have any
21 suggestions?

22 **MR. MANDERVILLE:** Well, perhaps we better
23 not touch that specific area at all, but he will be alive
24 to the privilege aspect of things.

25 **THE COMMISSIONER:** Right, but there was no

1 privilege that attached to -- I mean it -- he was ---

2 **MR. MANDERVILLE:** Oh, no, ---

3 **THE COMMISSIONER:** --- acting as a Crown.

4 **MR. MANDERVILLE:** --- I quite agree with
5 you, sir. I'm more concerned about how it may prejudice
6 his current retainer in some fashion.

7 **THE COMMISSIONER:** Well, what happened to
8 the Lalonde matter, eventually he was found guilty; was he
9 not?

10 **MR. MANDERVILLE:** Not in respect of C-57.

11 **THE COMMISSIONER:** Ah, okay. Okay.

12 **MR. MANDERVILLE:** C-57 -- when it came to
13 light some years later, C-57 was not a complainant.

14 **THE COMMISSIONER:** Okay. Well, it would
15 depend as well -- I'm just thinking out loud now, is C-57
16 involved in -- and I don't -- we don't want the question to
17 be answered, I suppose, except that maybe you might want to
18 take care of that part, Mr. Scharbach, if he's involved in
19 these proceedings.

20 **MR. MANDERVILLE:** Correct and I don't know
21 that ---

22 **THE COMMISSIONER:** Yes.

23 **MR. MANDERVILLE:** --- and you don't as well.

24 **THE COMMISSIONER:** Yes. All right. So ---

25 **MR. SCHARBACH:** Would you like me to clarify

1 that matter now?

2 **THE COMMISSIONER:** Well, I'd like you to
3 speak at the microphone so that ---

4 **MR. SCHARBACH:** Oh, sorry.

5 **THE COMMISSIONER:** --- because those people
6 in the back there behind the windows, they start throwing
7 paper cups at me.

8 **(LAUGHTER/RIRES)**

9 **MR. SCHARBACH:** I'm sorry. Would you like
10 me to clarify that matter now, sir?

11 **THE COMMISSIONER:** Yes, I think you should
12 and -- yes, I think you should.

13 All right, so let's take a very short five
14 minutes and then let's get back to this thing. Thank you.

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

17 This hearing will resume at 10:57 a.m. --
18 9:57 a.m.

19 --- Upon recessing at 9:52 a.m./

20 L'audience est suspendue à 09h52

21 --- Upon resuming at 10:12 a.m./

22 L'audience est reprise à 10h12

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

25 This hearing is now resumed. Please be

1 seated. Veuillez vous asseoir.

2 **MR. SCHARBACH:** Mr. Commissioner, over the
3 recess, we confirmed with the Crown's office here in
4 Cornwall that the alleged victim in the current case
5 against Marcel Lalonde is not one of the victims -- or
6 alleged victims -- or complainants, I guess I should say,
7 in the investigation that was done by Constable Malloy in
8 1989.

9 **THE COMMISSIONER:** All right, good. So
10 let's continue then. Have the witness come back in.

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

12 **DONALD W. JOHNSON, Resumed/Sous le même serment:**

13 **THE COMMISSIONER:** Thank you, sir.

14 I've reviewed with counsel. There will be
15 another counsel that will also be asking you questions with
16 respect to your role as a Crown attorney with respect to a
17 Marcel Lalonde back in the '80s. Was it '80s, Mr. ---

18 **MR. STRAWCZYNSKI:** I believe it was '89.

19 **THE COMMISSIONER:** Eighty-nine ('89), all
20 right.

21 We've canvassed the position with respect to
22 your present retainer and your duty to maintain your
23 solicitor/client relationship. My understanding is that
24 the questions that will be asked will not touch on that at
25 all. However, if at any point, you feel uncomfortable with

1 it, let's stop and we'll talk about it some more. All
2 right? Thank you.

3 **MR. JOHNSON:** Thank you.

4 **THE COMMISSIONER:** Go ahead, sir.

5 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
6 **STRAWCZYNSKI (Cont'd/Suite):**

7 **MR. STRAWCZYNSKI:** Mr. Johnson, I was just
8 referring to an investigation into conduct by Marcel
9 Lalonde which took place -- the investigation took place in
10 1989 with Officer Malloy.

11 When Officer Malloy came to the Inquiry, it
12 was his evidence that he met with you to discuss an
13 investigation into allegations of sexual abuse of youth by
14 Marcel Lalonde.

15 The allegations involved an individual who
16 we're not allowed to name here, but he's known as C-57, if
17 you wanted to check the moniker list.

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

19 **THE COMMISSIONER:** Okay, so he has that.

20 **MR. STRAWCZYNSKI:** And, sir, the
21 understanding at the time was that Officer Malloy also had
22 other potential complainants who he was investigating, and
23 that he came to your office because he did not believe he
24 had reasonable and probable grounds but thought that he
25 would consult with the Crown to see whether they may be

1 formed.

2 My simple question, sir, is whether you have
3 any recollection of dealing with Officer Malloy on any
4 matter involving Marcel Lalonde from that timeframe.

5 **MR. JOHNSON:** Sir, I don't recall any
6 conversation with regards to Constable Malloy and that
7 individual, Marcel Lalonde.

8 **MR. STRAWCZYNSKI:** It was also Officer
9 Malloy's testimony that it was his understanding that at
10 this time police officers were not supposed to take any
11 notes of meetings they had with Crown attorneys. Was that
12 correct?

13 **THE COMMISSIONER:** Well, "not supposed to"?

14 **MR. STRAWCZYNSKI:** I'll rephrase. It was
15 his testimony that he did not take any notes of meetings
16 when he visited with Crown attorneys. Do you know whether
17 there was any reason why he would not be able to take notes
18 at that time?

19 **MR. JOHNSON:** Unless it was Cornwall police
20 policy not to take notes.

21 **MR. MANDERVILLE:** I'm sorry,
22 Mr. Commissioner. That wasn't quite what Officer Malloy's
23 evidence was.

24 **THE COMMISSIONER:** No, I know. I know.
25 That's why he said -- when he said "you're not supposed to"

1 I questioned him on that. I think it was just a -- there
2 was no written policy, there isn't anything like that, but
3 it was a common occurrence that they would not take notes
4 when they were speaking with Crown attorneys. Is that ---

5 **MR. MANDERVILLE:** I believe that's correct
6 and that Officer Malloy cited a solicitor/client privilege
7 issue.

8 **THE COMMISSIONER:** Okay. Mr. Lee?

9 **MR. LEE:** Just briefly, sir. At -- I don't
10 think you need to turn it up -- Volume 218 of the
11 Transcript during my cross-examination I asked Officer
12 Malloy a question:

13 "And what you told us yesterday was
14 that the reason you didn't take any
15 notes was because you weren't permitted
16 to."

17 **THE COMMISSIONER:** Oh.

18 **MR. LEE:** And the answer is, "Correct".

19 **THE COMMISSIONER:** Oh, okay.

20 **MR. STRAWCZYNSKI:** I gather, sir, it
21 wouldn't have been from your office that they were not able
22 to take notes.

23 **MR. JOHNSON:** No, definitely. No.

24 **MR. STRAWCZYNSKI:** I'm going to move on to
25 another area now, sir. I'm going to go back to the 1982

1 opinion letter that you wrote with respect to Nelson Barque
2 and it's at Exhibit 0899 which I believe is page 2 of
3 Document 115948.

4 (SHORT PAUSE/COURTE PAUSE)

5 MR. STRAWCZYNSKI: Sir, in your evidence
6 yesterday, you had stated that at the time that you wrote
7 this opinion, your office was very busy. Is that correct?

8 MR. JOHNSON: Yes.

9 MR. STRAWCZYNSKI: And that it was not
10 normal or common for the ministry to refer an internal
11 investigation of a probation officer or any other employee
12 to the Crown to determine whether charges could be laid?

13 MR. JOHNSON: That's correct.

14 MR. STRAWCZYNSKI: And that it was your
15 standard practice at the time to tell another government
16 agency coming to you with such a request that if they have
17 concerns about whether an employee may have engaged in
18 criminal conduct, that it should take the matter to the
19 police for investigation; correct?

20 MR. JOHNSON: That's correct.

21 MR. STRAWCZYNSKI: Given all these factors,
22 why did you not immediately simply refer this request to
23 the police for investigation?

24 MR. JOHNSON: Well, I thought that the
25 investigating -- the Probation Services or whoever --

1 whatever ministry was involved at the time would have
2 enough sense to say that, "Okay, fine, we'll take to the
3 police and let them do the investigation."

4 This particular -- this matter that you're
5 referring to, is this the one where Mr. Barque was
6 investigated and subsequently resigned?

7 **MR. STRAWCZYNSKI:** That's correct, sir.

8 **MR. JOHNSON:** Okay, all right. Then ---

9 **MR. STRAWCZYNSKI:** But when we're talking
10 about an investigation, for clarity this was an internal
11 investigation conducted by Probations, not by the police.

12 **MR. JOHNSON:** That's correct. Bottom line I
13 guess is the fact that they had conducted their
14 investigation. I don't know what procedures they may have
15 followed but I got the impression that Mr. McMaster had
16 come to the conclusion that they weren't going to proceed
17 any further with the matter once Mr. Barque resigned.

18 **MR. STRAWCZYNSKI:** And I understand that
19 would have been the Probations' decision not to proceed any
20 further. But, sir, the question is: if there may have
21 been any question as to criminality, why the police would
22 not be called to investigate before you write an opinion
23 letter which says that there's insufficient evidence to
24 proceed with any charges?

25 **MR. JOHNSON:** I didn't write to the -- I

1 didn't write to the Cornwall Police Department and advise
2 them that there should be further investigation, no.

3 **MR. STRAWCZYNSKI:** I understand that, sir.
4 But I guess what I'm getting to is that in the normal
5 course -- the proper course of action here at that time, to
6 determine whether criminal charges could be laid, would be
7 to send the ministry to the police and have the police
8 investigate. Isn't that correct?

9 **MR. JOHNSON:** That could be a procedure
10 followed, yeah.

11 **MR. STRAWCZYNSKI:** Now, had this happened
12 and the police had gone and commenced an investigation,
13 it's possible that they would have uncovered other
14 information. Isn't that possible?

15 **MR. JOHNSON:** Anything is possible, I
16 suppose, yeah.

17 **MR. STRAWCZYNSKI:** If they had conducted a
18 complete and thorough investigation of the policies at
19 Probations at that time, if they had gone and spoken to
20 other probationers of that era, they may have uncovered
21 other abuse.

22 **MR. JOHNSON:** As I say, anything is
23 possible.

24 **MR. STRAWCZYNSKI:** Because we do learn later
25 that there are other complainants that come forward, but

1 it's not until these matters re-surface several years
2 later, sir.

3 **MR. JOHNSON:** M'hm.

4 **MR. STRAWCZYNSKI:** So my question to you is:
5 had the police had an opportunity to investigate in 1982,
6 is it not true, sir, that there would have been at least an
7 opportunity at that point for the community to have its
8 police conduct a thorough investigation and possibly open
9 the door into allegations of historic sexual abuse at a
10 much earlier date?

11 **MR. JOHNSON:** Well, I didn't put a ban or
12 prohibition on the Probation Service's investigative team
13 not to go to the police. I never told them they couldn't
14 go there.

15 **MR. STRAWCZYNSKI:** Of course you didn't sir,
16 and I'm going to take you to that. You said in your
17 evidence yesterday that if they weren't satisfied with your
18 letter they could always go back to the police; right?

19 **MR. JOHNSON:** That's correct.

20 **MR. STRAWCZYNSKI:** The problem with that,
21 sir, is that the people at the Probations Department now
22 have a letter from you, the Crown attorney, saying there is
23 insufficient evidence to proceed.

24 You've commented that criminal charges are
25 not warranted, based on the fact that Mr. Barque has

1 already resigned. You've told them that you'd be happy to
2 assist them if other members of the probation staff, not
3 Mr. Barque, but other members, have issues arise. Given
4 this letter ---

5 **MR. JOHNSON:** Mr. Barque was no longer
6 there.

7 **MR. STRAWCZYNSKI:** Right. But given this
8 letter, sir, wouldn't it be reasonable for members of the
9 Probations office to assume that they would not be able to
10 bring any charges through the police back to you and have
11 you willing to bring this matter to the courts?

12 **MR. JOHNSON:** Well, as I've indicated in the
13 letter, based on the evidence that was presented to me,
14 including the fact that there was non-cooperation from, I
15 believe, one of the complainants and a denial by another
16 complainant, the fact that a statement allegedly given by
17 Mr. Barque is probably inadmissible. At that time, I
18 didn't feel it was warranted that there was sufficient
19 evidence to proceed with a charge.

20 **MR. STRAWCZYNSKI:** But again, sir, we're
21 dealing with evidence that was obtained for the purpose of
22 a workplace investigation. One of the problems with that
23 is you now say that one of the statements might have been
24 inadmissible, but the police were never given the
25 opportunity to conduct their own investigation to try to

1 obtain other statements that might have been incriminative.

2 MR. JOHNSON: Well, that's police
3 prerogative. If they want to do it, fine. But as what I
4 had before me at that time, sir, I took the position that
5 the evidence itself was insufficient to conduct further
6 investigations.

7 MR. STRAWCZYNSKI: Sir, my position to you
8 is that you should never have written this letter before
9 the police investigated.

10 MR. JOHNSON: Well, that may be your
11 position. It wasn't mine.

12 MR. STRAWCZYNSKI: Do you think that you
13 would write this letter if you were a Crown today, before
14 sending it off to the police?

15 MR. JOHNSON: Would I write this letter
16 today?

17 MR. STRAWCZYNSKI: Yes.

18 MR. JOHNSON: Given the same set of
19 circumstances?

20 MR. STRAWCZYNSKI: Yes.

21 MR. JOHNSON: I probably would, yeah.

22 MR. STRAWCZYNSKI: You would, even today,
23 not send this out to the police?

24 MR. JOHNSON: Well, what am I going to tell
25 the police, sir? I'm going to tell them that, "You don't

1 have any evidence to lay a charge but go ahead and conduct
2 an investigation." It doesn't make sense to me.

3 **MR. STRAWCZYNSKI:** And, sir, even though you
4 testified earlier yesterday that it was your standard
5 operating procedure to immediately send things to the
6 police, you still would write this letter today?

7 **MR. JOHNSON:** I would assume I would, in the
8 circumstances, given this same information that I had,
9 yeah.

10 **MR. STRAWCZYNSKI:** Would you open a file
11 today if you were going to take this matter in?

12 **MR. JOHNSON:** Would I open a file?

13 **MR. STRAWCZYNSKI:** Would you open a file?

14 **THE COMMISSIONER:** Well, in fairness to the
15 witness -- when did you resign as a Crown?

16 **MR. JOHNSON:** Nineteen ninety-one (1991),
17 sir.

18 **THE COMMISSIONER:** All right. So we're
19 talking about 17 years later. I think if you ask him,
20 "Would you follow the Crown procedure as it is today?" and
21 he'd probably say yes and then it falls back to what
22 policies have evolved, so I don't know about opening a
23 file.

24 **MR. STRAWCZYNSKI:** Just a couple of more
25 questions, sir.

1 Once you did make the decision to write the
2 opinion -- yesterday you acknowledged that there were
3 certain legal and factual hurdles that you were grappling
4 with in coming to your conclusion.

5 **MR. JOHNSON:** Yes.

6 **MR. STRAWCZYNSKI:** And, again, would you
7 agree with me, sir, that you could have written a more
8 qualified opinion letter outlining some of the concerns you
9 had at that time?

10 **MR. JOHNSON:** A bit more qualified opinion
11 letter?

12 **MR. STRAWCZYNSKI:** That's right, sir.

13 **MR. JOHNSON:** I thought, perhaps, in the
14 paragraphs that followed, there is an indication that if
15 there's any further problems in that matter that -- that
16 they should be looked into with regards to criminal
17 proceedings.

18 **MR. STRAWCZYNSKI:** Thank you.

19 I'm going to move now to just a few general
20 questions about your interactions with the Children's Aid
21 Society.

22 **MR. JOHNSON:** Yes.

23 **MR. STRAWCZYNSKI:** Yesterday we had
24 discussed two group home incidents involving the Lapensée
25 and Cieslewicz families.

1 **MR. JOHNSON:** Yeah.

2 **MR. STRAWCZYNSKI:** Were there frequent calls
3 from the Children's Aid Society to consult with the Crown?

4 **MR. JOHNSON:** No, I'm sorry. If there were
5 any conversations with the Children's Aid Society, they
6 were very limited situations of -- because, as far as
7 I -- I'm aware, the Children's Aid Society were not primary
8 directed into criminal investigations at all. I mean, they
9 were dealing with their jurisdiction.

10 When I did -- I did speak to them, if I did
11 speak, it was very rare.

12 **MR. STRAWCZYNSKI:** And at that time, in the
13 Lapensée and Cieslewicz matters, you did not refer them to
14 the police for investigation of those matters either, sir?

15 **MR. JOHNSON:** I believe that the
16 conversations would have taken place -- as I said, I don't
17 have a recording, I don't have a transcript, I don't have
18 any notes, but I would assume that -- my usual instruction
19 would be, "If you have sufficient evidence, please contact
20 the police."

21 **MR. STRAWCZYNSKI:** Thank you.

22 And with respect to the Second Street group
23 home which involved an individual named Jeannette Antoine,
24 so it's another matter involving ---

25 **MR. JOHNSON:** Yeah.

1 **MR. STRAWCZYNSKI:** --- the Children's Aid
2 Society ---

3 **MR. JOHNSON:** Yes.

4 **MR. STRAWCZYNSKI:** --- and in this matter,
5 there were police investigations?

6 **MR. JOHNSON:** That's correct.

7 **MR. STRAWCZYNSKI:** There is a bit of a back
8 and forth between the Cornwall Police Service internal
9 report by Staff Sergeant Derochie, and your response to
10 some of his criticisms, yesterday, that were put to you.

11 I just want to have an understanding here
12 because my understanding, from the evidence is that there
13 was a letter that you sent up your chain of command. There
14 was a response back, asking you to inform the investigating
15 officer to dig deeper. You never received that letter,
16 and, as a result, you never went back to the police;
17 correct?

18 **MR. JOHNSON:** That appears to be the
19 situation, sir, yes.

20 **MR. STRAWCZYNSKI:** And would you agree with
21 me that, although it's a clerical error, that sort of
22 miscommunication wouldn't be acceptable?

23 **MR. JOHNSON:** Oh, definitely.

24 **MR. STRAWCZYNSKI:** Okay, thank you.

25 And in terms of your interaction with the

1 police, we talked about that a little bit yesterday.

2 If I understand, the police would come to
3 you sometimes, and, from your evidence yesterday, you would
4 be there to advise them as to evidentiary matters?

5 MR. JOHNSON: And procedural matters.

6 MR. STRAWCZYNSKI: And procedural matters.

7 MR. JOHNSON: Yes.

8 MR. STRAWCZYNSKI: So would there ever be
9 cases where a police officer would come to you in an
10 investigation thinking they are at a point where they might
11 be able to lay a charge, you review it, you tell them that
12 they're actually missing a piece for the actual requirement
13 under the statute, and that if they were to further
14 investigate, they might be able to reach RP&G?

15 MR. JOHNSON: There are probably -- there
16 are situations probably that could have arisen like that,
17 yeah.

18 MR. STRAWCZYNSKI: Was that a regular back
19 and forth that you would have had in your relationship ---

20 MR. JOHNSON: No, not a ---

21 MR. STRAWCZYNSKI: --- with the police?

22 MR. JOHNSON: --- not a regular back and
23 forth, no.

24 MR. STRAWCZYNSKI: But it could have been up
25 to you to tell Officer Malloy, if you'd thought that he was

1 on the right track but did not have RP&G, that he could
2 have continued to investigate?

3 **MR. JOHNSON:** Well, as I -- the way the
4 procedure works, and following *Regina v. Boucher*, out of
5 52, out of the Supreme Court of Canada, the role of the
6 Crown attorney basically is to prosecute individuals and
7 present the evidence which will prove the case beyond a
8 reasonable doubt, and that evidence includes not only
9 "anti" the defendant, but "pro-" defendant. So that's the
10 policy that I follow.

11 With regards to your question as to what I
12 would instruct police officers to do, or assistants of
13 mine, I mean, they may have spoken to assistants.

14 I don't know what the assistants might have
15 told them, but my policy basically was, "Look it,
16 you -- this is your evidence that you have," and if it's a
17 case where it requires corroboration, you've got to find
18 independent evidence, et cetera.

19 With regards to the procedural aspect, "If
20 you need a search warrant, this is what you have to do."
21 That's the type of advice I would have given the police
22 officers.

23 **MR. STRAWCZYNSKI:** Okay. I'm going to move
24 to one more area here, which involved Jean-Luc Leblanc,
25 from 1986.

1 **MR. JOHNSON:** Okay.

2 **MR. STRAWCZYNSKI:** You wrote a letter that
3 we looked at yesterday, it's Exhibit 2943 ---

4 **MR. JOHNSON:** Yeah.

5 **MR. STRAWCZYNSKI:** --- and the Document
6 Number is 114262.

7 As you will recall, sir, this is a matter
8 involving an individual who eventually pleaded to three
9 years probation, plus counselling, for matters involving
10 children that were of a sexual nature?

11 **MR. JOHNSON:** Before you go any further,
12 sir, do you have a transcript of that plea, by any chance?

13 **MR. STRAWCZYNSKI:** Unfortunately, I do not,
14 sir; I looked as well.

15 **MR. JOHNSON:** Yeah, okay.

16 **MR. STRAWCZYNSKI:** You had mentioned, sir,
17 that it would not probably have been you who had conducted
18 the actual sentencing; correct?

19 **MR. JOHNSON:** I don't recall being in court
20 with Mr. Leblanc, I'm sorry.

21 **MR. STRAWCZYNSKI:** But you did write before
22 the sentencing hearing, and, the letter at Exhibit 2943,
23 dated August 28th, 1986, it would have been something that
24 the Crown who did go to sentencing would have reviewed?

25 **MR. JOHNSON:** I assume they would have, yes.

1 **MR. STRAWCZYNSKI:** So that Crown would have
2 already seen that you had taken the position that the
3 accused was not in a position of trust and that the victims
4 willingly cooperated with the act?

5 **MR. JOHNSON:** That -- that's what it says in
6 the letter, that's ---

7 **MR. STRAWCZYNSKI:** And that Crown also would
8 have seen that you had told defence counsel that any
9 psychiatric evidence relevant to this matter would be
10 strongly considered by the Crown?

11 **MR. JOHNSON:** That's correct. And I believe
12 -- I apologize, for a second -- yeah, that's correct.

13 **MR. STRAWCZYNSKI:** So, I put to you, sir
14 that any Crown who was going to Court for sentencing would
15 have had to take this letter and these correspondences into
16 account?

17 **MR. JOHNSON:** I assume that they would have,
18 yes, sir.

19 **MR. STRAWCZYNSKI:** Now, yesterday we did
20 talk about the phrase used here, the words that,

21 "... the victims willingly cooperated
22 with the act."

23 And, I must tell you, sir, that these words
24 were of grave concern to my clients, in particular.

25 There were some efforts to explain what was

1 meant yesterday and there seems to be -- for example, you
2 explain that these individuals may have had a cooperative
3 aspect.

4 **MR. JOHNSON:** Yeah.

5 **MR. STRAWCZYNSKI:** And you went on to say
6 that,

7 "... there didn't appear to be any
8 violence involved and the individuals
9 were there; they knew what was
10 happening."

11 Sir, the phrase "the victims willingly
12 cooperated with the act" suggests that the victims had
13 perhaps some negative role to play which contributed to
14 their becoming victims.

15 Would you agree with me that this sort of
16 language, as a Crown, in this case, minimizes the
17 experience of the victims themselves?

18 **MR. JOHNSON:** I don't believe so, but, I
19 mean, that could be your interpretation of it.

20 **MR. STRAWCZYNSKI:** Would you agree that the
21 suggestion that the victims may have contributed to the
22 wrong against them in this case, by being cooperative, was
23 a wrong consideration when it came to sentencing?

24 **MR. JOHNSON:** I believe those factors would
25 have been put forth to the judge at the time, who heard the

1 sentencing, who heard the factual situation, and would have
2 been considered by the judge, I would assume.

3 **MR. STRAWCZYNSKI:** Even prior to that,
4 though, when you're in negotiations to try to resolve this
5 matter with defence counsel, I put to you that this is a
6 wrong factor to consider at this point; is that not
7 correct?

8 **MR. JOHNSON:** Well, I -- that may be your
9 position, but, in my position as the Crown attorney at the
10 time -- as I say, I've -- involved with the administration
11 of justice.

12 I'm doing the best that I can with regards
13 to getting matters resolved, to avoid the problems of
14 victims coming into court and testifying, being subjected
15 to cross-examination, et cetera. It's not a question of
16 expediency; it's just a question with regards to the
17 administration of justice.

18 **MR. STRAWCZYNSKI:** Well, sir, when we look
19 at the administration of justice, during the period that
20 you were a Crown, the record yesterday revealed that on the
21 evidence so far, there were opinions given on matters
22 before there were police investigations; correct?

23 **MR. JOHNSON:** It appears to be that way,
24 sir.

25 **MR. STRAWCZYNSKI:** There were several

1 instances where individuals were released back to the
2 public without adequate protective terms?

3 **MR. JOHNSON:** I don't agree with the word
4 "several."

5 **MR. STRAWCZYNSKI:** There were instances
6 described yesterday where individuals were released without
7 protective terms?

8 **MR. JOHNSON:** Well, sir, you -- you can
9 mention those as much as you want, but I don't have a
10 transcript of what transpired when these individuals were
11 released. I don't have a transcript of the ---

12 **MR. STRAWCZYNSKI:** Are you denying that
13 there were these cases that we discussed yesterday?

14 **MR. JOHNSON:** No, I'm not denying it ---

15 **MR. STRAWCZYNSKI:** Okay.

16 **MR. JOHNSON:** --- but I'm just saying to
17 you, I'd like to have a transcript to see what the Crown
18 might have said at the day -- he may have put those
19 requests in, and he may have been denied.

20 **MR. STRAWCZYNSKI:** Sir, all in all, looking
21 at the wording that the Crown office was using to describe
22 victims and how they were -- how they may have contributed
23 to their own peril, looking to the lack of protective
24 terms, and looking to the investigations which were not
25 conducted by the police, would you agree with me that the

1 public perspective, looking in now at those days, might
2 have the impression that the Crown could have done better
3 with -- with regards to some of these files with respect to
4 historic sexual assault?

5 **MR. MANDERVILLE:** Mr. Commissioner, I think
6 I have to take exception to the suggestion that there were
7 investigations not conducted by the police.

8 **THE COMMISSIONER:** Well, no, that's ---

9 **MR. MANDERVILLE:** Like it's sort of an
10 assertion in the air. We don't know ---

11 **THE COMMISSIONER:** No, no. No, no, no.

12 **MR. MANDERVILLE:** --- what's being
13 suggested.

14 **THE COMMISSIONER:** Just a second now.
15 Correct me if I'm wrong; I think he's referring to the
16 Barque -- the ministry sending it over to the Crown, and
17 the Crown sending it back to the ministry and that there
18 wasn't a police investigation -- you weren't even asked to
19 do the investigation. So you're out of the wood.

20 **MR. MANDERVILLE:** You may be right.

21 **THE COMMISSIONER:** I am right.

22 **MR. MANDERVILLE:** At this moment, I don't
23 know if you are.

24 **MR. STRAWCZYNSKI:** I can clarify. I was
25 intending to refer to both the Barque and the Children's

1 Aid Society matters which came before the Crown's Office at
2 that time.

3 **THE COMMISSIONER:** Fair enough. There you
4 go. Okay.

5 **MR. STRAWCZYNSKI:** Sir, looking back on it,
6 my question is simple. Do you believe that the Crown could
7 have done better with respect to some of these matters back
8 in that time?

9 **MR. JOHNSON:** Back in that time, given the
10 development as it is now, as the matters have proceeded --
11 have developed now as to procedure-wise and stuff?

12 **MR. STRAWCZYNSKI:** At the time then or
13 whether it would be -- you believe it could have been
14 handled better now?

15 **MR. JOHNSON:** Well, at the time, sir, we
16 were operating in a system that didn't have the full
17 facilities that were available to Crown attorneys nowadays.
18 We didn't have the opportunity to sit down and, you know,
19 assign cases to Crown attorneys. I mean it was an ad hoc
20 operation, basically, that we did things.

21 And I suppose with the developments and the
22 way things are handled now, this probably would have been
23 dealt with differently in those days, yeah.

24 **MR. STRAWCZYNSKI:** Thank you, I appreciate
25 it.

1 Those are my questions.

2 **THE COMMISSIONER:** Thank you.

3 Mr. Lee, I'm going to ask that we take the
4 morning break at this time.

5 **MR. LEE:** Sure.

6 **THE COMMISSIONER:** Okay? Thank you.

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

9 This hearing will resume at 10:55 a.m.

10 --- Upon recessing at 10:37 a.m./

11 L'audience est suspendue à 10h37

12 --- Upon resuming at 10:55 a.m./

13 L'audience est reprise à 10h55

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

16 This hearing is now resumed. Please be
17 seated. Veuillez vous asseoir.

18 **THE COMMISSIONER:** Thank you. Good morning,
19 Mr. Lee.

20 **MR. LEE:** Good morning, sir.

21 **DONALD W. JOHNSON, Resumed/Sous le même serment:**

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

23 **MR. LEE:** Mr. Johnson, my name is Dallas
24 Lee. I'm counsel for the Victims Group. I have a few
25 areas I'd like to discuss with you here and I'm going to

1 start with the 1982 Nelson Barque matter.

2 So just by way of summary, we know that in
3 '82, there was no police investigation. We know that you
4 had no Crown brief. What you did have was a letter from
5 Clair McMaster, the Corrections investigator, and the
6 attached or the enclosed investigative report.

7 So my first question for you is whether or
8 not in 1982 you know of any policy about providing opinions
9 to non-policing agencies?

10 **MR. JOHNSON:** I was -- I'm not aware of any
11 policy that was in existence at that time.

12 **MR. LEE:** And are you aware of any policy
13 having been in place in 1982 about providing Crown opinions
14 in the absence of a Crown brief?

15 **MR. JOHNSON:** There was no policy with
16 respect to that.

17 **MR. LEE:** So it was permissible, as you
18 understand it, to provide a Crown brief?

19 **MR. JOHNSON:** As I understood at that time,
20 yes.

21 **MR. LEE:** And I take it the overwhelming
22 majority of situations where you would provide a Crown
23 opinion would be to a police officer.

24 **MR. JOHNSON:** Yes, the majority of times.

25 **MR. LEE:** And we've seen here, obviously,

1 you provided an opinion to the Ministry of Corrections in
2 the Barque matter and we've seen that you gave some advice
3 to the Children's Aid Society in other matters. Can you
4 recall any others outside of those where you would have
5 given a Crown opinion to a non-policing agency?

6 **MR. JOHNSON:** A non-policing agency?

7 **MR. LEE:** Yes.

8 **MR. JOHNSON:** Off the top, there may have
9 been some information given to such government ministries
10 such as the Ministry of National -- not of Revenue but
11 Ministry of Natural Resources.

12 **MR. LEE:** Okay.

13 **MR. JOHNSON:** We were also prosecuting
14 *Highway Traffic Act* matters involving the MTO, yes.

15 **MR. LEE:** And at the time you were a Crown
16 attorney you had Highway Traffic matters as well?

17 **MR. JOHNSON:** Oh yeah, we did those.

18 **MR. LEE:** And you told Ms. Jones yesterday
19 in-chief that you have some concerns about the
20 admissibility of Mr. Barque's statement to the
21 investigators.

22 **MR. JOHNSON:** That's correct, sir.

23 **MR. LEE:** And you told us something along
24 the lines of you weren't there at the time and didn't know
25 whether he had been threatened or induced or promised

1 something.

2 MR. JOHNSON: No, but what -- all I did have
3 information was that he allegedly gave a statement with
4 respect to this matter, and of course the question always
5 arises as to the voluntariness of a statement, whether it's
6 done by inducement, compulsion, threats or violence.

7 MR. LEE: And I take it that was
8 particularly concerning to you, given that the statement
9 was given to investigators for his employer.

10 MR. JOHNSON: That's correct.

11 MR. LEE: And that you knew at that time
12 that there seemed to be -- that Mr. Barque had voluntarily
13 resigned?

14 MR. JOHNSON: Yes, and I think in the back
15 of mind was -- obviously I was thinking was there may have
16 been an inducement that, "You give us -- and cooperate with
17 us, we'll see that nothing proceeds and go from there," so
18 that could have been an inducement.

19 MR. LEE: Were you told that by anybody?

20 MR. JOHNSON: No, I wasn't told that, no.
21 They just ---

22 MR. LEE: And what you had were ---

23 MR. JOHNSON: Pardon?

24 MR. LEE: You had two pieces of information.
25 You had the voluntary resignation and you had the letter

1 and investigative report where you knew that the ministry
2 was taking a position that the matter should ---

3 MR. JOHNSON: That's ---

4 MR. LEE: --- be left as it is.

5 MR. JOHNSON: That's correct.

6 MR. LEE: And so you put two and two
7 together in your mind and thought it possible that there
8 could have been a trade-off there?

9 MR. JOHNSON: I believe.

10 MR. LEE: And I take it as a Crown, you
11 typically were not concerned with issues such as those when
12 the police take a statement from an accused person?

13 MR. JOHNSON: Oh yeah, yeah. You're
14 definitely concerned about those statements taken from
15 accused by police officers.

16 MR. LEE: As a Crown attorney, you were
17 concerned that there may be statements coming in from
18 police forces where threats were issued or people were
19 induced?

20 MR. JOHNSON: Threats, inducements,
21 promises, yeah.

22 MR. LEE: That was something you commonly
23 turned your mind to?

24 MR. JOHNSON: Yeah. Especially when
25 statements are given, yeah. You always had to turn your

1 mind to that as a Crown prosecutor when a statement is
2 alleged to have been given by an accused, be it verbal or
3 be it written or videotaped.

4 MR. LEE: Sorry, I missed that last part.

5 MR. JOHNSON: Or videotaped.

6 MR. LEE: This morning, when you were being
7 cross-examined by counsel for the CCR, he asked you -- he
8 put to you that the appropriate step here would have been
9 to refer this matter to the police, and you answered that
10 that could have been an option.

11 MR. JOHNSON: That could have been an
12 option. That's correct.

13 MR. LEE: And you told us yesterday that, as
14 I have in my note, "My only advice would have been if you
15 have evidence, go and see the police. I'm a Crown, not a
16 police officer."

17 MR. JOHNSON: That's correct.

18 MR. LEE: Would you agree with me, sir, that
19 the evidence you suggested yesterday given "if you have
20 evidence, go to the police" was not one of the options; it
21 was the only appropriate option in this case?

22 MR. JOHNSON: Well, for a criminal charge it
23 would be the only option, but there could be -- there might
24 be other options too. I don't know what ---

25 MR. LEE: I'm going to suggest that when you

1 received the information you did from the Ministry of
2 Corrections and you reviewed the letter and you reviewed
3 the investigative report ---

4 **MR. JOHNSON:** Yeah.

5 **MR. LEE:** --- the proper response from you
6 at that point, the only proper response was, "This needs to
7 go to the police." Do you agree or do you disagree?

8 **MR. JOHNSON:** This is dealing with the first
9 incident involving Mr. Barque?

10 **MR. LEE:** Yes, 1982.

11 **MR. JOHNSON:** Well, with the information
12 that I had, the police may have -- they would have -- they
13 may have had a fruitless investigation. I don't know from
14 what I had, what I was provided with.

15 **MR. LEE:** But you can't know that at the
16 time, sir.

17 **MR. JOHNSON:** That's true.

18 **MR. LEE:** You ---

19 **MR. JOHNSON:** But I was asked to give -- I
20 was given information and I was asked, in the
21 circumstances, whether there was any evidence that could be
22 used here, and my opinion was that there wasn't.

23 **MR. LEE:** A typical Crown opinion is always
24 very careful to qualify the opinion, based on essentially
25 wording to the effect of, "This opinion is based on

1 information I have before me."

2 MR. JOHNSON: That's correct.

3 MR. LEE: "And if further information comes
4 to attention, the opinion may change."

5 MR. JOHNSON: Yeah.

6 MR. LEE: Something along those lines. And
7 you would have understood at that time that the job of the
8 police is to investigate and to gather evidence?

9 MR. JOHNSON: That was my understanding,
10 yes.

11 MR. LEE: And would it not have been prudent
12 then to let the police do their work in this matter?

13 MR. JOHNSON: I wasn't curtailing the police
14 from doing their work.

15 MR. LEE: Well, you were, sir.

16 MR. JOHNSON: What I indicated was that the
17 evidence that I had at that time, there was insufficient
18 evidence to proceed.

19 MR. LEE: I can't understand why you were
20 providing the opinion.

21 MR. JOHNSON: Because I was asked to give
22 it.

23 MR. LEE: When you received the -- I'm sure
24 you were asked for all kinds of things, sir.

25 When you received the information from the

1 ministry, why was your response not, "Give me a proper
2 police investigation and I'll give you an opinion on that"?

3 **MR. JOHNSON:** My response basically -- I was
4 -- what I had in front of me, that's what I used.

5 **MR. LEE:** Did you turn your mind at any
6 point to the Ministry of Corrections' self-interest in not
7 having this matter prosecuted?

8 **MR. JOHNSON:** What I had before me was the
9 ministry had conducted their own investigation. They had
10 provided whatever information they had, which I really
11 can't give you in detail right now. And I personally -- at
12 that time I assumed that they were content with what they
13 had done and that the matter was fait accompli.

14 **MR. LEE:** I'm not going to take any issue
15 with you about the fact that the ministry was satisfied
16 with what they had done. I'm more concerned about why you
17 were satisfied with what they had done.

18 And my question for you is: did you at any
19 point consider the fact that it was in the best interests
20 of the Ministry of Corrections to have this matter go away?

21 **MR. JOHNSON:** Based at that time, obviously
22 I didn't.

23 **MR. LEE:** You would have, I presume, had
24 some contact with Clair McMaster, most likely, or at least
25 somebody at the ministry prior to receiving his letter?

1 **MR. JOHNSON:** If Mr. McMaster walked into
2 this room right now, I wouldn't recognize him.

3 **MR. LEE:** I understand that. My -- in the --
4 - you don't need to turn it up; it's Exhibit 903. It's the
5 letter you received from Mr. McMaster that ---

6 **MR. JOHNSON:** Yeah.

7 **MR. LEE:** --- encloses the investigative
8 report. He says:

9 "In regard to our telephone
10 conversation of Monday, June 14th, '82,
11 I've enclosed the report."

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

13 **MR. LEE:** Do you have any recollection at
14 all of that telephone conversation?

15 **MR. JOHNSON:** I'm sorry, sir, I don't.

16 **MR. LEE:** No idea what ---

17 **MR. JOHNSON:** No.

18 **MR. LEE:** --- was discussed there?

19 Do you recall if at any point during the
20 period of time that you were dealing with this Barque
21 situation in 1982 whether you considered the possibility of
22 other victims of Mr. Barque aside from C-44 and Robert
23 Sheets?

24 **MR. JOHNSON:** No, I didn't, sir; obviously.
25 But that was the information I was given. I didn't -- I

1 didn't delve into anything further.

2 **MR. LEE:** Do you recall any discussion with
3 anybody from the Ministry of Corrections about the
4 wellbeing of C-44 and Robert Sheets about anything that the
5 Ministry would be doing for them to ensure they were okay?

6 **MR. JOHNSON:** Not that I can recall, sir.

7 **MR. LEE:** Did you, at any point, discuss
8 with the Ministry of Corrections or turn your mind to the
9 issue of poor supervision at the Ministry; meaning that Mr.
10 Barque was a probation officer and these things had
11 happened and whether there were issues above him in the
12 chain of command?

13 **MR. JOHNSON:** I don't believe that would be
14 within my prerogative.

15 **MR. LEE:** Not something you recall
16 discussing ---

17 **MR. JOHNSON:** No.

18 **MR. LEE:** -- with them at all.

19 And you've been told and we've had evidence
20 here that both C-44 and Robert Sheets had conditions
21 relating -- requiring them to abstain from alcohol and ---

22 **MR. JOHNSON:** I'd been advised of that,
23 yeah.

24 **MR. LEE:** Right.

25 And we know, obviously, that Mr. Barque had

1 supplied both with alcohol and my question for you is
2 whether or not there was any discussion of advising the
3 court of the breaches of their probation orders.

4 **MR. JOHNSON:** Breaches of probation would
5 either be investigated by the Probation Services or they
6 would go to the police and they would say that there has
7 been a breach and if there was sufficient evidence, they
8 would lay a charge of breach of probation.

9 **MR. LEE:** My question for you is whether or
10 not you recall a discussion with the ministry about that.

11 **MR. JOHNSON:** No, I don't recall any
12 discussions at all.

13 **MR. LEE:** And, obviously, you didn't refer
14 that matter to the police?

15 **MR. JOHNSON:** No, I didn't, sir.

16 **MR. LEE:** If we can briefly turn up Exhibit
17 899, please. This is your opinion letter to Mr. McMaster.

18 And a couple of issues here; we have in the
19 second paragraph, you're dealing with -- in the third
20 paragraph, you're dealing with Robert Sheets and you point
21 out to the fact that he had denied any kind of relationship
22 with Mr. Barque and that even though Mr. Barque admitted to
23 it, it would be fruitless to proceed. Do you see that?

24 **MR. JOHNSON:** Yeah.

25 **MR. LEE:** The paragraph above that, you're

1 dealing with C-44 and you say:

2 "It appears also that one of the
3 homosexual relationships involved an
4 individual who was 21 years of age,
5 therefore, a charge under the *Criminal*
6 *Code* would not succeed."

7 Do you see that?

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

9 **MR. LEE:** Leaving aside the issue of how old
10 he actually was and what that meant according to the law at
11 the time, you'll agree with me that there's nothing in that
12 paragraph at all to suggest that C-44 was uncooperative?

13 **MR. JOHNSON:** No, that's correct.

14 **MR. LEE:** Because you've made reference a
15 couple of times and earlier today you said that one of the
16 victims denied any abuse and the other was non-cooperative.
17 So we know that Mr. Sheets denied and that presumably
18 leaves C-44 as uncooperative and I'm going to suggest to
19 you, you're mistaken on that and that C-44 was not
20 uncooperative. You had an issue with his age.

21 **MR. JOHNSON:** Yeah.

22 **MR. LEE:** But I think you're mistaken when
23 you suggest that there was also an issue with him being
24 uncooperative. Is that possible, sir?

25 **MR. JOHNSON:** That's not contained in the

1 letter.

2 MR. LEE: Sorry?

3 MR. JOHNSON: Is that contained in the
4 letter?

5 MR. LEE: No, you said during your evidence
6 today that one of them denied and that's Sheets and that
7 the other one was non-cooperative.

8 MR. JOHNSON: Well, I was under the
9 impression that if the information -- if I suggested that
10 it was probably because of information I may have received
11 from somebody that the complainant in that case was -- was
12 not going to be cooperative with the investigators or with
13 the Crown.

14 MR. LEE: Do you have any -- as you sit here
15 today, do you have any specific recollection of your
16 thought processes in relation to this opinion ---

17 MR. JOHNSON: No.

18 MR. LEE: --- what factors you weighed, what
19 factors you didn't weigh, what you dismissed?

20 MR. JOHNSON: This is back in 1982, sir.
21 I'm sorry, I ---

22 MR. LEE: You're left entirely with the
23 documentary record, I take it?

24 MR. JOHNSON: That's correct.

25 MR. LEE: Do you recall -- there's a mention

1 in the investigative report and I'll just have you turn it
2 up briefly. It's Exhibit 2941.

3 If you can turn to page 3, sir, when you
4 have that.

5 **MR. JOHNSON:** Okay.

6 **MR. LEE:** At the top of page 3, Mr. McMaster
7 references interviews that were held with two members of
8 the cleaning staff at the probation offices, okay, in the
9 top paragraph. And they both recalled an incident
10 occurring late one evening last year where they observed
11 Mr. Barque coming form the washroom heading for the offices
12 carrying what appeared to be two plastic jugs of water.
13 Mr. Barque was shirtless and in bare feet at this time and
14 when he saw the two custodians, he hurried towards the
15 office.

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

17 **MR. LEE:** And one of them stated that a
18 short time later, he had occasion to pass by the office and
19 could hear voices coming from the area and it was
20 approximately 11:45 and the building was otherwise vacant.
21 Do you see that?

22 **MR. JOHNSON:** Yeah.

23 **MR. LEE:** Do you recall having a discussion
24 with Mr. McMaster or receiving any information about
25 whether efforts had been made to determine whether or not

1 Mr. Barque or Mr. Sheets -- or sorry, Mr. Sheets or C-44
2 had been in the office around that time?

3 **MR. JOHNSON:** Not that I can recall. Just
4 looking at the further paragraph though, it says:

5 "Apparently, it was not unusual for Mr.
6 Barque to tell the janitors not to come
7 in to clean as he'd be working late,
8 did not wish to be disturbed."

9 **MR. LEE:** Right.

10 My question for you is that there's
11 obviously these two -- these two custodians are concerned
12 about late-night activities in the probation office where
13 Mr. Barque is half clothed and hurrying to his office and
14 what I'm wondering is whether any effort -- if you
15 discussed whether any efforts were made to determine
16 whether the person in the office was C-44 or Mr. Sheets or
17 whether or not it could have been somebody else?

18 **MR. JOHNSON:** I don't recall that, sir.

19 **MR. LEE:** Okay.

20 And if we then move to when Mr. Barque
21 resurfaces for your purposes in 1995 ---

22 **MR. JOHNSON:** Yeah.

23 **MR. LEE:** --- when you're on the defence
24 side of things at this time. And there's been a fair
25 amount of talk about a conflict of interest and how that

1 might arise. Did you -- and as I understood your evidence,
2 at the pre-trial stage you saw no conflict; had it gone to
3 trial ---

4 **MR. JOHNSON:** Yes.

5 **MR. LEE:** --- you would have -- you would
6 have stepped -- stepped down?

7 **MR. JOHNSON:** I would have, yes, I would
8 have stepped down.

9 **MR. LEE:** And had you made that decision, if
10 it went to trial, "I'm done" or was it -- were there
11 factors that you were going to consider at the trial?

12 **MR. JOHNSON:** No, if the matter was going --
13 I advised -- I don't know how I can say that -- my position
14 was, basically, that if the matter was to proceed to trial,
15 I would not represent Mr. Barque at the trial.

16 **MR. LEE:** And did you turn your mind at all
17 to the fact that given that position, you had, in some
18 ways, an interest in the matter not proceeding to trial?
19 In other words, did you see it as a conflict that it was in
20 your best interest to have this matter resolved pre-trial?

21 **MR. JOHNSON:** My position was that -- and
22 the instructions I received -- that the matter would not be
23 going to trial.

24 **MR. LEE:** So is that to say that you knew in
25 advance that there would be no trial and ---

1 **MR. JOHNSON:** Yes, I did.

2 **MR. LEE:** --- and no matter what you did, it
3 didn't make much of a difference because it was going to be
4 resolved pre-trial anyway?

5 **MR. JOHNSON:** It was going to be resolved,
6 yeah.

7 **MR. LEE:** Ms. Jones asked you during her
8 examination in-chief about why you would be concerned about
9 a conflict of interest at trial if you had not had any
10 indication from the Crown that they may seek to introduce
11 similar fact evidence relating to C-44 and Robert Sheets.
12 Do you remember that?

13 **MR. JOHNSON:** Yeah.

14 **MR. LEE:** And I'm wondering whether the
15 answer is that you expected, once you had reviewed the file
16 -- given your previous knowledge of Mr. Barque that the
17 Crown would seek to introduce that. In other words, you
18 didn't need the Crown to tell you they were going to go
19 there because you fully assumed they would.

20 **MR. JOHNSON:** Well, you look at the law on
21 similar fact evidence, I mean, it is -- it's an area that
22 is kind of grey; in my opinion it was anyways. And that in
23 the circumstances, I didn't know whether or not the Crown
24 actually would try for similar fact evidence or not. I --
25 they didn't tell me that part.

1 I mean because it's -- I got the impression
2 from the get-go that the matter was not going to be
3 proceeding to trial; that the matter was going to be
4 resolved by way of a plea.

5 MR. LEE: Did you recognize from the get-go
6 when you turned your mind to the -- at least the
7 possibility of this proceeding to trial and the position
8 that would put you in that similar fact would be on the
9 table?

10 MR. JOHNSON: No, I would think it would
11 have been, yeah.

12 MR. LEE: And you recognize that?

13 MR. JOHNSON: Yeah.

14 MR. LEE: Do you recall whether or not you
15 ever had a specific discussion with Mr. Simard about
16 similar fact and what his intentions were in that regard?

17 MR. JOHNSON: No, that -- it may have -- it
18 may have come up at the judicial pre-trial.

19 MR. LEE: That was my next question. Do you
20 recall if it did?

21 MR. JOHNSON: I don't recall if it did.

22 MR. LEE: I'm going to leave Mr. Barque.

23 You were asked a few questions about the
24 Cieslewicz matter; one of the CAS matters.

25 MR. JOHNSON: Yeah.

1 **MR. LEE:** It was a foster home where there
2 were allegations of abuse against the foster father,
3 Mr. Cieslewicz.

4 And this is one where Mr. O'Brien, when he
5 testified here, told us that he had sought an opinion from
6 the Crown attorney about what to do, and if I can take you
7 briefly to an exhibit. It's Exhibit 2337.

8 **THE COMMISSIONER:** We'll get you another
9 book, sir.

10 Thank you.

11 **MR. JOHNSON:** Thank you.

12 **MR. LEE:** And this, sir, is a letter from
13 Mr. O'Brien, who was the Executive Director of the CAS at
14 the time, to Barry Dalby, who was the Director of Child
15 Welfare in Toronto; okay?

16 **MR. JOHNSON:** And it is marked
17 "confidential".

18 **MR. LEE:** Yes.

19 **MR. JOHNSON:** Okay.

20 **MR. LEE:** And it references -- it sets out
21 essentially the fact that a number of allegations have been
22 received by the CAS relating to the Cieslewicz foster home,
23 and it goes on to detail -- in a little bit of detail
24 anyways -- what the allegations were, and he comments on
25 the nature of the allegations, the credibility of the

1 complainants and things along those lines.

2 And in the very last line of the letter --
3 the second-last line, he writes:

4 "I've contacted the Crown attorney on
5 this matter and will be meeting with
6 him today."

7 Do you see that?

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

9 **MR. LEE:** And if you turn over to the next
10 exhibit, 2338, we have a follow-up letter sent the next
11 day, again from Mr. O'Brien to Mr. Dalby, and he says:

12 "After sending our letter to you
13 yesterday regarding the above named
14 home, I had a meeting with the Crown
15 attorney, Don Johnston [sic]."

16 Do you see that?

17 **MR. JOHNSON:** Yeah. Also present was
18 Mr. DeMarco -- Guy DeMarco, Mr. Towndale, yeah.

19 **MR. LEE:** Right. And in the second
20 paragraph:

21 "After considering the facts which we
22 presented to him, Mr. Johnston [sic]
23 was of the opinion that there was
24 insufficient evidence to proceed with
25 any charges against Mr. Cieslewicz."

1 **MR. JOHNSON:** Yeah.

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

3 **MR. JOHNSON:** Yeah.

4 **MR. LEE:** And when Mr. O'Brien was here he
5 agreed that it was very likely that the information he set
6 out in the first letter, 2337, to Mr. Dalby was the same
7 information that he provided to you; okay? That was his
8 evidence.

9 **MR. JOHNSON:** That was his evidence.

10 **MR. LEE:** And we know a few things. We know
11 that this matter was not referred to the police, so there
12 was no police investigation. We know there was no Crown
13 brief in relation to this at the time. And so I take it
14 you're not in a position to disagree with Mr. O'Brien that
15 this would have been the information you received.

16 **MR. JOHNSON:** Well, I've known Mr. O'Brien
17 for a long time and I know -- if he says we had a meeting
18 et cetera, yes, I wouldn't disagree with that. As to what
19 he says after we -- "considering the facts which we
20 presented", I'm not too sure exactly what facts he would
21 have presented. I don't know if he produced that letter to
22 me or not.

23 **MR. LEE:** I'm not sure he produced the
24 actual letter but it was the ---

25 **MR. JOHNSON:** Oh.

1 **MR. LEE:** --- facts in the letter that he
2 suggests that ---

3 **MR. JOHNSON:** Right.

4 **MR. LEE:** --- you were made privy to.

5 And we spent a fair amount of time here with
6 Mr. O'Brien, pointing out some of the problems with his
7 letter to Mr. Dalby and the information contained therein,
8 and I'm not going to go through that with you.

9 What I want to ask you is: I take it that
10 in providing your opinion to Mr. O'Brien that there was
11 insufficient evidence to proceed with any charges against
12 Mr. Cieslewicz, you would have relied entirely on the
13 information being provided to you by the CAS?

14 **MR. JOHNSON:** Oh definitely.

15 **MR. LEE:** And this was another case where
16 you didn't think it prudent to send this matter out to the
17 police?

18 **MR. JOHNSON:** Obviously whatever was
19 presented to me, and the discussions amongst ourselves --
20 and I can't tell you what took place because I don't recall
21 exactly what took place -- yeah, it wasn't sent on.

22 **MR. LEE:** And you have no recollection of
23 requesting to view the case files for yourself?

24 **MR. JOHNSON:** No, I don't, sir.

25 **MR. LEE:** Or of meeting with the girls

1 personally?

2 MR. JOHNSON: No.

3 MR. LEE: I think you told us in-chief that
4 wouldn't have been your practice to meet with complainants.

5 MR. JOHNSON: No, there's -- at that time it
6 was my -- well, still is my belief that there's some
7 difficulty with regards to speaking to individuals that
8 you're involved -- that are involved in criminal trials.

9 MR. LEE: And as I asked you in relation to
10 Mr. Barque, I'm going to ask you in relation to the CAS.
11 Did you consider at any point, in November of 1978 when you
12 were meeting with Mr. O'Brien in relation to this matter,
13 that the CAS may have some vested interest in these
14 allegations not going anywhere?

15 MR. JOHNSON: I took Mr. O'Brien as an
16 honest individual, that he was doing the best he could with
17 the resources that he had, and whatever he did present to
18 me I took it for what -- for the value that he presented to
19 me.

20 MR. LEE: You presumed the information would
21 be accurate?

22 MR. JOHNSON: Whatever he did present to me,
23 I would assume. That obviously led to my conclusion.

24 MR. LEE: You presumed it would be accurate?

25 MR. JOHNSON: I presumed it would be.

1 **MR. LEE:** And you presumed if he was seeking
2 an opinion of a Crown attorney, he would provide you with
3 all of the information he had?

4 **MR. JOHNSON:** Well, that would be my hope.
5 I don't ---

6 **MR. LEE:** You've given a little bit of
7 evidence about some of the challenges you faced as a Crown
8 attorney in terms of resources. You didn't have the
9 technology available today; things along those lines.

10 Why were you spending your time providing
11 opinions to these non-policing agencies, given the
12 caseloads you were working with?

13 **MR. JOHNSON:** Why?

14 **THE COMMISSIONER:** Oh, just a second now,
15 just a second now.

16 I think that with respect to the Children's
17 Aid Society, we saw in the Act that the director had --
18 there was a channel open there and ---

19 **MR. LEE:** There was something where he could
20 report to ---

21 **THE COMMISSIONER:** No, where he could seek
22 counsel or the advice of the Crown attorney as opposed to
23 the police.

24 **MR. LEE:** And I'm not sure anything in that
25 Act would have prevented the Crown attorney from advising

1 that the proper course was to refer the matter to the
2 police.

3 **THE COMMISSIONER:** No, but you're saying,
4 "Why were you taking up your time doing that?" Well, with
5 the CAS, I think he had an obligation to do so under the
6 Act.

7 **MR. LEE:** I'll look at the Act again.

8 **THE COMMISSIONER:** Okay.

9 **MR. LEE:** I may disagree with you on that
10 but ---

11 **THE COMMISSIONER:** Oh, I'm sure you will.

12 **MR. LEE:** --- I'll save that for ---

13 **THE COMMISSIONER:** I'm sure you'll correct
14 me but ---

15 **(LAUGHTER/RIRES)**

16 **MR. LEE:** I wouldn't go so far as to say
17 I'll correct you. I may disagree with you. That's about
18 it.

19 In relation to the Ministry of Corrections
20 then, if that makes things easier, why are you spending
21 your time on this? Why are you not simply referring it to
22 the police and saying, "If I get a Crown brief, I'll look
23 at it. Otherwise I'm not going to ---"

24 **MR. JOHNSON:** Well, basically, you say
25 wasting -- you say wasting or spending my time?

1 **MR. LEE:** No, I didn't say "wasting".

2 **MR. JOHNSON:** Spending my time?

3 **MR. LEE:** I said "why were you spending your
4 time."

5 **MR. JOHNSON:** Spending my time, because of
6 the situation. If they wanted some information with
7 regards to procedure, some information with regards to
8 evidence, that was part of the Crown's position.

9 **MR. LEE:** You told us in relation to ---

10 **MR. JOHNSON:** I mean part of my job was not
11 to conduct investigations. You have to realize that, okay.
12 I mean I did not have an investigative team, et cetera.

13 My only job as the Crown attorney was to
14 review the facts, review what the evidence is and review
15 the procedure, and that's all I gave advice on. I never --
16 so would never suggest to lay charges. I would never
17 suggest to conduct a -- that's police work.

18 **MR. LEE:** And I think that's where some of
19 the concern comes from, sir, that it is police work.
20 Police investigate, police gather evidence, and they were
21 cut out of the equation in relation to these cases.

22 **MR. JOHNSON:** They weren't cut out of the
23 equation, sir, I'm sorry.

24 **MR. LEE:** They were, sir. They absolutely
25 were.

1 **MR. JOHNSON:** That's a ---

2 **MR. LEE:** Where do you see -- you certainly
3 never referred them to the police. Your opinion in all of
4 these cases was that there was nothing -- there was
5 insufficient evidence to lay charges.

6 Did you consider it even possible that the
7 ministries in question might then go to the police after
8 they'd already received an opinion in relation to charges
9 from a Crown?

10 **MR. JOHNSON:** Well, it hasn't prevented
11 anybody in the past from getting an opinion from me and
12 proceeding on. I mean it happens -- it happened quite
13 frequently. They'd come for an opinion. If they didn't
14 like your opinion, they'd move on.

15 **MR. LEE:** Police officers?

16 **MR. JOHNSON:** Yeah.

17 **MR. LEE:** So in other words, police officers
18 would come to you about RPG. I mean I'm not exactly sure
19 what you're referring to there.

20 **MR. JOHNSON:** I mean, having done that job
21 for quite a number of years from '68 to '91, I -- there was
22 numerous occasions, both in this location -- in this
23 jurisdiction and other jurisdictions I worked in, police
24 would come to you and ask you for an opinion as a Crown
25 attorney. You would tell them what they had, but that

1 never prevented them from moving on and laying charges.

2 MR. LEE: Did you not get the impression,
3 when dealing with these agencies that their desire was that
4 you would come back with the answer that there was
5 insufficient evidence to lay charges?

6 MR. JOHNSON: Well, if they're looking for a
7 position where the buck would stop, yeah, that would
8 probably be entering my mind, yeah.

9 MR. LEE: And that was exactly what happened
10 in relation to the opinions you gave.

11 MR. JOHNSON: I guess it did, sir.

12 MR. LEE: You were asked a few questions
13 about the Lapensée foster home, another of the CAS files,
14 and you told us that you believed it may have been Guy
15 DeMarco that dealt with that file and not you.

16 MR. JOHNSON: It may have been. I don't
17 recall that. I'm sorry, sir; I apologize to you.

18 MR. LEE: The reason I ask is that when Mr.
19 O'Brien was here he believed it was you that had dealt with
20 it.

21 MR. JOHNSON: Oh?

22 MR. LEE: You have no independent
23 recollection, I take it.

24 MR. JOHNSON: No, I don't. I don't have
25 any.

1 **MR. LEE:** And I take it again if you were
2 the one dealing with the Lapensée opinion, you would have
3 expected that the CAS would provide you with accurate
4 information.

5 **MR. JOHNSON:** I believe -- I hope.

6 **MR. LEE:** And all of the information that
7 they had? That would have been your expectation?

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

9 **MR. LEE:** In relation to the Gilles
10 Deslauriers matter, you were asked during cross-examination
11 by counsel for the CCR whether or not you had received a
12 reply to Exhibit 2954.

13 **THE COMMISSIONER:** Two nine five four (2954)
14 is your letter to Mr. Then, I believe.

15 **MR. LEE:** Yeah. And you told us you had not
16 received a reply to that.

17 **MR. JOHNSON:** As far as I recall, sir, I did
18 not receive a reply to that whatsoever.

19 **MR. LEE:** And if you turn to Exhibit 2955,
20 this is your later letter to, this time, Mr. M.E. Martin,
21 the Director of Crown Attorneys ---

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

23 **MR. LEE:** --- from late March '87. In the
24 first paragraph you confirm the fact that as of that date
25 you had not received a reply to the January 21st, '87

1 letter.

2 MR. JOHNSON: That's correct.

3 MR. LEE: And my question for you is do you
4 recall receiving a reply to the March 23rd letter?

5 MR. JOHNSON: No. No, I don't.

6 MR. LEE: I hadn't been able to find it but
7 I wanted to.

8 Can we -- I want to ask you briefly about
9 the Marcel Lalonde matter. If we can -- Madam Clerk, can
10 the witness be given Volume 218 of the Inquiry Transcript,
11 please?

12 THE COMMISSIONER: Thank you.

13 MR. LEE: We'll begin at page 231.

14 Sir, Officer Kevin Malloy testified here
15 back in April of this year -- of 2008, rather.

16 MR. JOHNSON: Sir, what page are we on, sir?

17 MR. LEE: Two three one (231).

18 MR. JOHNSON: Okay.

19 MR. LEE: Okay. And what I'd like you to do
20 -- I think the easiest way to do this is to have you read a
21 few pages to yourself. I'd like you to start at line 17 of
22 page 231 and read all the way through to the end of page
23 236 if you could. This is part of my cross-examination of
24 Officer Malloy; okay?

25 (SHORT PAUSE/COURTE PAUSE)

1 **MR. JOHNSON:** Okay.

2 **MR. LEE:** So prior to this, the excerpt that
3 I've asked you to read, I had taken Officer Malloy in some
4 detail through his investigation, some of the information
5 that he had; okay?

6 And on page 32 you'll see that Officer
7 Malloy tells us that he met with you twice, once at the
8 outset of his investigation and once at the very end. And
9 I asked him, in the middle of page 232:

10 "What I want to know is did you go to
11 the Crown at some point after that with
12 all of the information you ever had
13 about this matter and get an opinion?"

14 And he replies, "Yes". Do you see that?

15 **MR. JOHNSON:** Yeah.

16 **MR. LEE:** And over on page 233, I ask:

17 "And your evidence is that Don Johnson
18 did not recommend getting a search
19 warrant for the Lalonde's home?"

20 "That's my recollection, yes."

21 "And further, your recollection is you
22 asked him about it and he advised you
23 it wasn't possible?"

24 And he replies:

25 "Yeah."

1 "And he didn't suggest that you
2 interview Marcel Lalonde?"

3 Answer:

4 "No."

5 "And he didn't suggest that you contact
6 the Children's Aid Society?"

7 Answer:

8 "No."

9 "Nor the school board?"

10 Answer:

11 "No."

12 "He didn't put anything in writing to
13 you?"

14 Answer:

15 "No."

16 "You didn't prepare a Crown brief for
17 him?"

18 Answer:

19 "No."

20 "And you didn't take any notes of the
21 meeting?"

22 And he goes on to tell us why he couldn't
23 take notes of the meeting, in his mind. Do you have any
24 recollection of any of this, sir?

25 **MR. JOHNSON:** Any recollection of that

1 meeting?

2 MR. LEE: Yes.

3 MR. JOHNSON: No.

4 MR. LEE: Do you have any recollection of
5 having learned at some point that Marcel Lalonde allegedly
6 had photographs that he had taken of boys he was abusing in
7 his home?

8 MR. JOHNSON: No.

9 MR. LEE: Do you have any recollection of
10 Officer Malloy having come to you, asking about the
11 possibility of getting a search warrant for Marcel
12 Lalonde's home to find photographs?

13 MR. JOHNSON: With the information that he
14 says he had?

15 MR. LEE: Yes.

16 MR. JOHNSON: Well, if he had have come to
17 me with -- first of all, why would he even bother coming to
18 me with all that information? I mean he's a police
19 officer. He's got a training in how to get a search
20 warrant. He doesn't need the advice of a Crown attorney to
21 get a search warrant in a case like that.

22 MR. LEE: What Officer Malloy testified to
23 here was that not only did he come to you, but that you
24 advised it was not possible to get a search warrant. I'm
25 asking simply do you have any recollection?

1 **MR. JOHNSON:** No, I don't, sir. I'm sorry.

2 **MR. LEE:** And you were asked a little bit
3 today about the note keeping issue, and Mr. Malloy seems to
4 tell us that he was not permitted to take notes of meetings
5 with Crown attorneys because of solicitor/client privilege.
6 That was his understanding.

7 **MR. JOHNSON:** Okay.

8 **MR. LEE:** Was that ever your understanding
9 in your time as a Crown?

10 **MR. JOHNSON:** No. As a matter of fact, it
11 was my understanding that, for example -- and I'll digress
12 for a minute here, but when we were applying for wire taps,
13 for example, I always had a police officer with me in the
14 room when I was making the application for a wire tap, to
15 make notes on any comments that were made during the course
16 of the application.

17 **MR. LEE:** That's a little bit different
18 though.

19 **MR. JOHNSON:** I'm sorry; I realize that,
20 sir.

21 **MR. LEE:** Officer Malloy is talking about a
22 one-on-one meeting with the Crown ---

23 **MR. JOHNSON:** Yeah.

24 **MR. LEE:** --- seeking advice.

25 **MR. JOHNSON:** It certainly wasn't my policy

1 not to make notes.

2 MR. LEE: And if you look over at page --
3 the bottom of page 234, I asked:

4 "You had to remember items that the
5 Crown attorney had asked you to follow
6 up or clarify?"

7 And the answer is:

8 "Correct."

9 And at 235:

10 "And you had to remember these things
11 for each of your cases?"

12 Answer:

13 "Correct."

14 Then I ask:

15 "Could you go back to the office after
16 the meeting and write these things down
17 or would that be a bad idea as well?"

18 And the answer is:

19 "You could probably, I would say 'on
20 the advice of' or after the meeting
21 this aspect would be investigated, or -
22 --"

23 And he trails off and I ask another
24 question.

25 Do you have any recollection of ever having

1 told a police officer, when you were Crown attorney, that
2 he would not be permitted to take notes ---

3 MR. JOHNSON: No, sir.

4 MR. LEE: --- during the course of a
5 meeting?

6 MR. JOHNSON: No, sir.

7 MR. LEE: Okay.

8 Do you have any recollection of any meeting
9 with Officer Malloy relating to Marcel Lalonde?

10 MR. JOHNSON: No, sir, I don't; I'm sorry.

11 MR. LEE: And that's not something you would
12 have any notes of?

13 MR. JOHNSON: No, sir.

14 MR. LEE: In relation to Jean-Luc Leblanc, -
15 --

16 MR. JOHNSON: Yes.

17 MR. LEE: --- you were told during your
18 examination in-chief by Ms. Jones that when Scott Burgess
19 testified at the Inquiry, he learned for the first time
20 that the charge that had been laid against Mr. Leblanc
21 relating to his abuse had been withdrawn.

22 MR. JOHNSON: That's correct.

23 MR. LEE: And you were asked some questions
24 about whose job it was to notify that, and I'm not sure if
25 it's clear on your evidence. Is your evidence that -- I

1 thought I heard you say you assumed that the investigating
2 officer would do that.

3 **MR. JOHNSON:** Yes, sir.

4 **MR. LEE:** Did you assume that for any -- was
5 there a policy in place? Was that the general practice or
6 is that just something ---

7 **MR. JOHNSON:** Well, that was our
8 communications system that was -- that we had in place at
9 the time, that the investigating officer would -- I assume
10 is going to update the victims and the complainants with
11 regards to the progress of the case as to what was
12 happening, what was transpiring.

13 **MR. LEE:** Would the investigating officers
14 typically be involved throughout a prosecution?

15 **MR. JOHNSON:** Hopefully they were, yes.

16 **MR. LEE:** Do you recall having any specific
17 conversation with Officer Payment about advising Scott
18 Burgess of the withdrawal of the charge?

19 **MR. JOHNSON:** No, I don't. I don't think I
20 prosecuted Mr. Leblanc though.

21 **MR. LEE:** The -- just generally, back in the
22 mid-1980s when you were the Crown, would you have
23 considered it part of the Crown's job, when reviewing a
24 Crown brief, to assess the sufficiency of the police
25 investigation?

1 **MR. JOHNSON:** That's what I was trained at
2 the beginning when I was the assistant Crown in Toronto was
3 to read the Crown brief, determine whether or not there was
4 sufficient evidence to prosecute and if there wasn't
5 sufficient evidence to prosecute or no reasonable prospect
6 of conviction, you would discuss that and advise the police
7 officer on what your decision was based and then go from
8 there.

9 **MR. LEE:** But let's take a case like
10 Leblanc, as an example, where there was sufficient evidence
11 to proceed, okay. You had something and charges could be
12 laid. Was it the Crown's role to assess whether or not
13 further investigative steps were necessary, further
14 interviews should be conducted, leads should be followed up
15 on; anything like that?

16 **MR. JOHNSON:** I would assume so, yes.
17 Not to conduct an investigation though.

18 **MR. LEE:** No, no, presumably to refer it
19 back to the police ---

20 **MR. JOHNSON:** Yeah.

21 **MR. LEE:** --- and outline for the police the
22 fact that there were some concerns that, perhaps, not every
23 lead had been followed or not every piece of evidence
24 gathered or something along those lines. That was
25 certainly within the Crown's right to do that?

1 **MR. JOHNSON:** Yes, I'd even advise them if
2 they were lacking evidence, this is the evidence that you
3 need, even if corroboration is required et cetera, yeah.

4 **MR. LEE:** You've told us here that your
5 recollection is that the charge relating to Scott Burgess
6 was withdrawn because of reliability issues with Mr.
7 Burgess.

8 **MR. JOHNSON:** Yes, I did. I believe I said
9 that.

10 **MR. LEE:** Do you have any specific
11 recollection of that or is that a presumption?

12 **MR. JOHNSON:** No, I -- all I can do --
13 advise you, sir, is that the decision must have been made
14 because there was an issue with regards to either credible
15 -- well, credibility and reliability.

16 **MR. LEE:** But you have no specific
17 recollection of that?

18 **MR. JOHNSON:** No, I don't, sir.

19 **MR. LEE:** Just looking back and trying to
20 put the pieces together; that's what you ---

21 **MR. JOHNSON:** No.

22 **MR. LEE:** --- presume?

23 And are you aware in having prepared for
24 your attendance here that the three victims from 19 --
25 from the mid-1980s, Jason Tyo, Jody Burgess and Scott

1 Burgess ---

2 MR. JOHNSON: This could be a problem, Your
3 Honour, again.

4 THE COMMISSIONER: Well, ask the question.

5 MR. LEE: My only question is, are you aware
6 that their allegations at the time were that they had been
7 present for each others abuses by Mr. Leblanc?

8 MR. JOHNSON: Was I aware?

9 MR. LEE: Are you aware that one of the
10 allegations that these boys made were that they had been
11 present in the room at the same time that the others were
12 being abused at various points?

13 MR. JOHNSON: I may have been. I don't
14 know.

15 MR. LEE: And did you learn, at any point,
16 that Mr. Leblanc made an inculpatory statement to Officer
17 Payment at the time of arrest?

18 MR. JOHNSON: Was that contained in the
19 Crown brief?

20 MR. LEE: I certainly would presume it was,
21 sir. My recollection is that it was.

22 MR. JOHNSON: You have a copy of the Crown
23 brief; don't you?

24 MR. LEE: I'm not sure that I do, to be
25 honest with you, sir. The -- the reason for my question is

1 simply that if you take my word for the fact that the three
2 boys said that we all saw each other being abused, and that
3 Mr. Leblanc made an inculpatory statement to Officer
4 Payment, would you agree with me that those would tend to
5 minimize any concerns you would have had about one witness'
6 reliability?

7 **MR. JOHNSON:** It would certainly have gone a
8 long way, yes.

9 **MR. LEE:** The Crown brief is Exhibit 1562.

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **MR. LEE:** Do you have that, sir?

12 **MR. JOHNSON:** Yeah.

13 **MR. LEE:** And if you look in the top left-
14 hand corner of the page, you'll see a seven-digit number on
15 every page.

16 **MR. JOHNSON:** Yes, sir.

17 **MR. LEE:** Can you turn to the one that ends
18 681.

19 **MR. JOHNSON:** Okay.

20 **MR. LEE:** And this is a will state of Jason
21 Tyo, one of the victims, and if you look mid-way through
22 the first paragraph, you'll see:

23 "All of us went into Jean-Luc's bedroom
24 and Jody and Scott were lying on his
25 waterbed."

1 And he continues on to describe abuses that
2 occurred.

3 **MR. JOHNSON:** M'hm.

4 **MR. LEE:** Do you see that in his presence?
5 And if you turn over, sir, to Bates page
6 ending 678 ---

7 **MR. JOHNSON:** Six (6).

8 **THE COMMISSIONER:** Backwards.

9 **MR. LEE:** And this is a will state of
10 Constable Brian Payment and if you look towards the end of
11 the page, seven or eight lines up:

12 "Constable Payment will further state
13 that after the release of the accused,
14 he escorted the accused home. At his
15 residence, the accused asked him 'why
16 the kids went to the police'."

17 Constable Payment answers that they didn't
18 say, but he imagined that they felt it was wrong or they
19 felt uncomfortable whereby the accused answered:

20 "If they felt uncomfortable, all they
21 had to do was tell me not to do it
22 anymore and I would have stopped right
23 away."

24 **MR. JOHNSON:** Okay.

25 **MR. LEE:** Do you see that, sir?

1 **MR. JOHNSON:** Yeah.

2 **MR. LEE:** So those are the references I was
3 making there and you've already answered my questions about
4 whether or not that would have impacted on concerns about
5 one of the witnesses' reliability and you told me it would
6 have.

7 **MR. JOHNSON:** Yeah.

8 **MR. LEE:** And I take it you don't have a
9 specific recollection of exactly why that charge was
10 dropped relating to Scott Burgess?

11 **MR. JOHNSON:** No, I don't. It must have had
12 -- there must have been some input someplace along the line
13 with respect to that.

14 **MR. LEE:** Can we -- shifting focus again,
15 sir, I only have a couple of areas left, Mr. Commissioner.

16 I'd like to ask you briefly about Jeannette
17 Antoine, another CAS-related case ---

18 **MR. JOHNSON:** Yes.

19 **MR. LEE:** --- and if you can turn to Exhibit
20 1499.

21 **THE COMMISSIONER:** Madam Clerk?

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **MR. LEE:** Do you have that, sir?

24 **MR. JOHNSON:** Yes, sir, I do.

25 **MR. LEE:** And this is your letter to Norman

1 Douglas, the Director of Crown Attorneys dated April 4th,
2 1990. And if we look at the second paragraph -- you've
3 been taken to this already, but it reads:

4 "Although there appears to be some
5 factual basis for a further
6 investigation, I cannot find any
7 indication of specific dates when the
8 alleged incident occurred or any names
9 and addresses of any witnesses who may
10 substantiate the allegations."

11 **MR. JOHNSON:** That's correct.

12 **MR. LEE:** See that?

13 And then down at the final paragraph:

14 "I've not brought up the matter of
15 laying charges with the Cornwall police
16 as names and dates are not available."

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

18 **MR. LEE:** And was it your intention to
19 suggest to Mr. Douglas that the absence of specific dates
20 when the alleged incident occurred or the names and
21 addresses of witnesses was fatal to this investigation?

22 **MR. JOHNSON:** Well, it would have caused a
23 great deal of difficulty for the Crown to prosecute a case
24 like that.

25 **MR. LEE:** And would you not agree -- what we

1 know is that at Exhibit 1500, the next exhibit, Mr. Douglas
2 writes back and says that, you know:

3 "I'd like you to make sure the police
4 begin an investigation if they already
5 have not done so. Perhaps Constable
6 Malloy can dig a little deeper to
7 secure specifics."

8 And presumably, Mr. Douglas is referring
9 back to the concerns you set out about names or about dates
10 and names and addresses of witnesses.

11 **MR. JOHNSON:** M'hm.

12 **MR. LEE:** Would it have been your
13 understanding in 1990 that complaints of historical sexual
14 abuse typically lacked specific details relating to dates?

15 **MR. JOHNSON:** On a majority of cases, they
16 do, yeah.

17 **MR. LEE:** And there are certain pieces of
18 evidence that investigators can attempt to uncover such as
19 grades at the time of the abuse?

20 **MR. JOHNSON:** Such as what? I'm sorry.

21 **MR. LEE:** The grade the child was in at the
22 time of the abuse?

23 **MR. JOHNSON:** Yes, yeah.

24 **MR. LEE:** Teachers they may have had, where
25 they were living at the time?

1 **MR. JOHNSON:** Yeah.

2 **MR. LEE:** There are certain investigative
3 steps that could be taken in order to determine a general
4 time frame?

5 **MR. JOHNSON:** That's a possibility, yeah.

6 **MR. LEE:** And would you have understood in
7 1990 that it is not fatal to an historical sexual abuse
8 prosecution to not have a specific date of abuse?

9 **MR. JOHNSON:** Well, you don't need a
10 specific date, but you have to have a time frame and a
11 location and the identification of the parties and any
12 substantiating evidence or any supporting evidence that
13 would be available, yeah.

14 **MR. LEE:** And the role of the police in the
15 judicial system is to do what they can to investigate the
16 matter and to come up with answers to some of those
17 questions?

18 **MR. JOHNSON:** I assume that that's their
19 direction.

20 **MR. LEE:** The -- we have the letter here,
21 the Exhibit 1499 and we can see what's in it and what's
22 not. I want to ask you about a couple of issues, just to
23 see if you have any recollection of them having been
24 discussed, because we don't see them in the letter at all.

25 Do you have any recollection of having a

1 discussion with anybody -- any police officer, about a six-
2 month time limitation, in some reconviction proceedings in
3 relation to assaults? Do you remember that being
4 discussed, whether or not ---

5 MR. JOHNSON: In relation to assaults?

6 MR. LEE: Common assaults, and whether or
7 not they could be proceeded with ---

8 MR. JOHNSON: Well, at one time common
9 assault was strictly a summary conviction offence.

10 MR. LEE: What I'm asking you is whether you
11 recall any conversation with ---

12 MR. JOHNSON: No, I don't recall it ---

13 MR. LEE: --- the police about that being a
14 concern?

15 MR. JOHNSON: --- no.

16 MR. LEE: And we don't see anything in the
17 letter at Exhibit 1499 relating to the complainant's
18 credibility, and I'm wondering whether you have a specific
19 recollection, sitting here today, of conversations or
20 concerns being expressed to you about credibility.

21 MR. JOHNSON: The credibility issue of the
22 complainant?

23 MR. LEE: Yes.

24 MR. JOHNSON: There's nothing in the letter
25 about that, but all my concern was the fact of a lack of

1 dates and addresses in the situation.

2 MR. LEE: And, presumably, the purpose of
3 your letter was to articulate the concerns that were in
4 your mind at the time?

5 MR. JOHNSON: That's correct.

6 MR. LEE: And, as an example, had
7 credibility been a major concern, we would expect to find
8 it ---

9 MR. JOHNSON: Yeah.

10 MR. LEE: --- in the letter? And,
11 similarly, do you recall any discussions at the time about
12 corporal punishment, and what's corporal punishment and
13 what crosses the line into something else, or anything
14 along those lines?

15 MR. JOHNSON: Who was this discussion
16 supposedly with?

17 MR. LEE: Well, I suppose it would have been
18 with the Cornwall Police Service.

19 MR. JOHNSON: No, I -- I'm sorry, I don't
20 recall that at all, sir ---

21 MR. LEE: Yes.

22 MR. JOHNSON: --- I'm sorry.

23 MR. LEE: If you don't recall, that's fine,
24 sir.

25 And do you have any recollection of any

1 discussions with the Cornwall police about whether or not
2 the complainant was willing to proceed?

3 MR. JOHNSON: The complainant in this case?

4 MR. LEE: Yes.

5 MR. JOHNSON: No, I -- I don't -- I don't
6 recall anything. Why? Was there a suggestion that she
7 didn't want to proceed?

8 MR. LEE: There have been many suggestions
9 about many things, sir.

10 MR. JOHNSON: Yeah.

11 MR. LEE: What I'm trying to pin down is,
12 presumably, things that you were concerned about would have
13 made their way into your letter?

14 MR. JOHNSON: I would have hoped so.

15 MR. LEE: And your primary concern, it would
16 appear, were the lack of specificity of the complaint?

17 MR. JOHNSON: Yeah.

18 MR. LEE: Okay. My understanding is
19 that -- how long did Guy DeMarco work with you?

20 MR. JOHNSON: I believe Mr. -- Judge DeMarco
21 came in -- let me think -- around 1977, and may have been
22 there until some -- '81; because I know I was doing a
23 murder trial in Toronto with Mr. Ain, it lasted about six
24 weeks, and I believe he may have left in '82, I'm not too
25 sure.

1 **MR. LEE:** And during that, you -- when were
2 you Crown attorney again? When did you begin as a full-
3 time Crown attorney?

4 **MR. JOHNSON:** Nineteen sixty-eight (1968).

5 **MR. LEE:** Okay, so you were ---

6 **MR. JOHNSON:** You mean here?

7 **MR. LEE:** Yes.

8 **MR. JOHNSON:** Oh, here? I came down here in
9 '72, May of '72 ---

10 **MR. LEE:** Okay.

11 **MR. JOHNSON:** --- and then I was made the
12 Crown attorney in '74.

13 **MR. LEE:** So he was your assistant Crown ---

14 **MR. JOHNSON:** He was one of ---

15 **MR. LEE:** --- the entire time he was here?

16 **MR. JOHNSON:** --- the assistant Crowns, yes.

17 Yes.

18 **MR. LEE:** And did you have a personal
19 relationship, as well as professional?

20 **MR. JOHNSON:** Oh, yeah.

21 **MR. LEE:** You were friends?

22 **MR. JOHNSON:** We were friends, yeah.

23 **MR. LEE:** Do you know whether or not
24 Mr. DeMarco was a member of the CAS board of directors at
25 any point?

1 MR. JOHNSON: No.

2 MR. LEE: That's not information you ever
3 had?

4 MR. JOHNSON: No. Was he?

5 MR. LEE: I believe he was.

6 MR. JOHNSON: Oh.

7 MR. LEE: I believe, in fact, he was a
8 member of the board of directors around the time that the
9 alleged abuses by Ms. Antoine were occurring.

10 MR. JOHNSON: Oh, okay.

11 MR. LEE: And my question is, whether or not
12 that played any role in your office's handling of the
13 complaint.

14 MR. JOHNSON: No. I didn't know that.

15 MR. LEE: During your time as -- well, let
16 me start with this actually -- can we turn, very briefly,
17 back to something I missed the first time around?

18 If you can look just very briefly at Exhibit
19 899? This is the -- I don't intend to ask about Barque,
20 but it comes out of that -- that matter.

21 So this your June 22, 1982, letter to Clair
22 McMaster from Corrections. In the second last paragraph,
23 you write,

24 "Should further evidence come to light
25 in the future with respect to other

1 members of the probation staff, the
2 matter will be looked into with respect
3 to proceeding with criminal charges."

4 Do you see that there?

5 **MR. JOHNSON:** Yes, sir.

6 **MR. LEE:** At the time you were writing this,
7 did you have any information or any suspicion that there
8 may be an issue with other members of the probation staff?

9 **MR. JOHNSON:** Not at that time, but -- no,
10 I -- that was just, I suppose, a safety net.

11 **MR. LEE:** And, specifically, given the
12 context of this Inquiry, had you ever, at any point prior
13 to 1982 and the time you drafted this letter, heard
14 anything to suggest that Ken Seguin was engaged in any kind
15 of sexual misconduct?

16 **MR. JOHNSON:** Ken -- with probationers?

17 **MR. LEE:** Yes.

18 **MR. JOHNSON:** No.

19 **MR. LEE:** You had never heard anything about
20 that?

21 **MR. JOHNSON:** No.

22 **MR. LEE:** You, obviously, since that time,
23 as of today, have ---

24 **MR. JOHNSON:** I ---

25 **MR. LEE:** --- heard those allegations?

1 MR. JOHNSON: Yeah.

2 MR. LEE: Had you ever, at any point during
3 your career as a Crown attorney, heard any allegations
4 about Ken Seguin engaging in sexual misconduct with
5 probationers?

6 MR. JOHNSON: Never.

7 MR. LEE: What about Malcolm MacDonald, when
8 you were a Crown attorney? Did you ever receive any
9 information or hear any complaints, about Malcolm MacDonald
10 engaging in sexual misconduct?

11 MR. JOHNSON: With whom?

12 MR. LEE: Young people?

13 MR. JOHNSON: No.

14 MR. LEE: What about Charles MacDonald?

15 MR. JOHNSON: Who's he?

16 MR. LEE: He's a priest.

17 MR. JOHNSON: Oh -- no.

18 MR. LEE: And I'm asking about your time as
19 Crown attorney, you never ---

20 MR. JOHNSON: As Crown attorney? No, I
21 never head anything like this.

22 MR. LEE: No rumours, no information?

23 MR. JOHNSON: No.

24 MR. LEE: And, finally, I want to ask you
25 very briefly about David Silmsler.

1 MR. JOHNSON: Yes.

2 MR. LEE: You gave a little bit of evidence
3 yesterday about contacts you had with Mr. Silmsen ---

4 MR. JOHNSON: Yeah.

5 MR. LEE: --- and, as I understood it, you
6 said that he first approached you in a bar?

7 MR. JOHNSON: That's correct.

8 MR. LEE: And you told him that you didn't
9 discuss business in a bar?

10 MR. JOHNSON: That's correct.

11 MR. LEE: And you told him -- was it clear
12 to you at that point that he was approaching you as a
13 lawyer?

14 MR. JOHNSON: I would assume he was, yes,
15 sir. I don't know if he thought I was still a Crown
16 attorney or I was in private practice, but I assume that
17 his conclusion would have been I was in private practice.

18 MR. LEE: And your impression at the time
19 was that he wanted some legal advice from you?

20 MR. JOHNSON: Well, I -- I guess I could
21 describe it as -- you could describe it as that, yes.

22 MR. LEE: I'm asking only about your
23 impression at the time.

24 MR. JOHNSON: Because -- I assumed he wanted
25 to discuss a legal situation, yeah.

1 **MR. LEE:** And you told him to come to your
2 office ---

3 **MR. JOHNSON:** Yes.

4 **MR. LEE:** --- at a later date, if he wanted
5 to do that?

6 **MR. JOHNSON:** Yeah.

7 **MR. LEE:** And he did?

8 **MR. JOHNSON:** And he did, sir, yeah.

9 **MR. LEE:** In your law office?

10 **MR. JOHNSON:** That's correct.

11 **MR. LEE:** And I don't want to ask you about
12 the advice he sought, but he consulted you for legal
13 advice?

14 **MR. JOHNSON:** Well, it wasn't so much legal
15 advice as -- as to what his -- he was -- what he wanted to
16 do. I don't know if I can say this ---

17 **THE COMMISSIONER:** Well, is this an issue of
18 whether it's solicitor/client privilege?

19 **MR. JOHNSON:** Yeah, I -- I hadn't been
20 retained by him, I can tell you that, but he did speak to
21 me.

22 **MR. LEE:** He spoke to you, in your law
23 office ---

24 **MR. JOHNSON:** Yes.

25 **MR. LEE:** -- as a lawyer?

1 MR. JOHNSON: Yeah.

2 MR. LEE: And he wanted something from you?

3 MR. JOHNSON: Well, he was ---

4 MR. LEE: Services, advice?

5 MR. JOHNSON: --- he was asking me to do
6 certain things that caused a great distaste in my mouth.

7 MR. LEE: As a lawyer he was asking you to
8 do things?

9 MR. JOHNSON: Pardon?

10 MR. LEE: He was asking you for help as a
11 lawyer?

12 MR. JOHNSON: Yeah.

13 MR. LEE: And have you contacted, prior to
14 testifying here, Mr. Silmsler or his legal counsel ---

15 MR. JOHNSON: No way.

16 MR. LEE: --- asking for a waiver of any
17 privileges?

18 MR. JOHNSON: No.

19 MR. LEE: And I take it, given your
20 hesitance to answer that question a moment ago, that you
21 recognize that some privilege exists here?

22 MR. JOHNSON: Well, I'm not -- I don't know.
23 I'm ready to give you the answers, but, subject to whatever
24 ruling I can get.

25 THE COMMISSIONER: Yes, I think -- I think

1 that's up in the air right now.

2 **MR. LEE:** I agree it's up in the air, and I
3 don't act for Mr. Silmser ---

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

5 **MR. LEE:** --- and he's not here. From what
6 I've heard, it seems that there likely is a privilege
7 claim. But I don't want to sit down and find out that
8 there's evidence that is going to be heard about his
9 contacts with Mr. Silmser. So I think we need to decide if
10 Mr. Johnson's asserting that Mr. Silmser is protected by
11 privilege here if he's not.

12 **THE COMMISSIONER:** Mr. Neville?

13 **MR. NEVILLE:** Commissioner, I do have some
14 observations on the topic for you. It might be preferable
15 if Mr. Johnson just stepped out briefly, because I may be
16 -- for the next question. I don't want to ---

17 **THE COMMISSIONER:** Yes.

18 **MR. NEVILLE:** --- offend anybody.

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

20 **MR. NEVILLE:** I think you can appreciate,
21 Commissioner, that in the course of the upcoming
22 presentation of Mr. Johnson's evidence, we did receive an
23 AE summary ---

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

25 **MR. NEVILLE:** --- and the topic of

1 Mr. Silmsers, and what happened between himself and
2 Mr. Johnson is contained therein.

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

4 **MR. NEVILLE:** It's my position, sir, that
5 what Mr. Silmsers wanted this gentleman to do, in his
6 capacity as counsel, is not subject to privilege, for a
7 number of reasons.

8 **THE COMMISSIONER:** Okay. You're about to
9 give that to me?

10 **MR. NEVILLE:** Yes.

11 **THE COMMISSIONER:** Okay. Well, before that,
12 what about notice to Mr. Silmsers? Like, if we're going to
13 argue this?

14 **MR. NEVILLE:** Well, that's a very good
15 point.

16 Obviously it's not my function to do that
17 but ---

18 **THE COMMISSIONER:** No, I understand that,
19 but rather than go through the whole thing and then at the
20 end say ---

21 **MR. NEVILLE:** Right.

22 **THE COMMISSIONER:** --- we've got to do that,
23 I think we should address that point first.

24 **MR. NEVILLE:** We could. I mean obviously in
25 the best of all worlds, sir, Mr. Silmsers should be advised

1 in some fashion, and perhaps when it was covered in Mr.
2 Johnson's interviews leading to its appearance in the AE it
3 might have happened there.

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

5 **MR. NEVILLE:** But I just want to give you a
6 sense of the picture and perhaps you can then decide where
7 we go.

8 **THE COMMISSIONER:** All right.

9 **MR. NEVILLE:** The topic of what may or may
10 not have happened between Silmser and Johnson has already
11 been elicited in front of you.

12 **THE COMMISSIONER:** Yes.

13 **MR. NEVILLE:** And is contained, as you know,
14 in Detective Sebalj's notes, Exhibit 295.

15 **THE COMMISSIONER:** Okay.

16 **MR. NEVILLE:** And that is the foundation of
17 what I would suggest respectfully to you is at least one of
18 the exceptions that removes privilege. And the exhibit,
19 sir, is 295. It's her original notes.

20 **THE COMMISSIONER:** Okay. Madam Clerk, can
21 we get that; 295?

22 Keep going.

23 **MR. NEVILLE:** And the Bates pages, sir, are
24 742 to 744.

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

1 **MR. NEVILLE:** And I'll just read to you from
2 742. It's the 18th of February '93 and I'll just deal with
3 the germane points because there are other matters there.
4 "He," meaning Silmsers, "wants Don" -- and this is Silmsers
5 telling Sebalj.

6 **THE COMMISSIONER:** Right.

7 **MR. NEVILLE:** "He wants Don to go to the
8 Diocese and go through their lawyers re
9 settlements. Wants to know what they
10 are offering. Not taking a settlement.
11 Will pursue it after all criminal
12 charges are done. Wants Don to know
13 what's going on. Then stated want to
14 take them to the cleaners, going for
15 the full amount strong and hard."

16 The next entry, sir, is on Bates page 744,
17 which is the 22nd of February.

18 **THE COMMISSIONER:** Right. The exhibit
19 again?

20 **MR. NEVILLE:** Two nine five (295).

21 **THE COMMISSIONER:** Okay, and I've got 742.

22 **MR. NEVILLE:** And I've read to you, sir,
23 from the bottom of page 742 -- Bates page ending in 742 to
24 the top of 743.

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

1 **MR. NEVILLE:** And I'm now referring, if I
2 could, sir, to 744. It actually starts at the bottom of
3 the previous page. You can see at the 22nd of February,
4 four days later, a telephone call at 13:40 hours. And if
5 you look on the next page above the date, 24 February --
6 and this is again Mr. Silmsers advising Ms. Sebalj:

7 "Advised he fired Don Johnson on
8 Friday. Says he [meaning Johnson] was
9 doing things without his approval ..."

10 Et cetera.

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

12 **MR. NEVILLE:** So in my respectful
13 submission, Commissioner, and subject to your views as to
14 what should or shouldn't be done vis-à-vis Mr. Silmsers,
15 what I understand is the anticipated evidence here is that
16 Mr. Silmsers wished Mr. Johnson as his counsel in effect to
17 trade off his criminal complaint for money.

18 **THE COMMISSIONER:** Well, okay.

19 **MR. NEVILLE:** That's my understanding of the
20 anticipated evidence.

21 **THE COMMISSIONER:** Well, okay.

22 **MR. NEVILLE:** Now, three things.

23 Firstly, sir, in my submission, this is not
24 a privileged communication between solicitor and client.

25 **THE COMMISSIONER:** Because he's waived it by

1 telling Sebalj?

2 **MR. NEVILLE:** He has -- partly in that
3 fashion. And secondly, sir, because he has purported to
4 criticize Mr. Johnson and his handling of the matter. And
5 there is an exception, as you may well know that where the
6 solicitor is attacked or criticized, he is entitled to
7 defend himself and, if necessary, by talking about what
8 might otherwise be considered privileged.

9 More fundamentally is this. A
10 solicitor/client privileged communication requires this:
11 (a) it must be a communication; (b) it must be between a
12 solicitor and a client or a potential client; (c) it must
13 be for the purpose of seeking or giving legal advice; and
14 (d) or (4) it must be intended to be confidential.

15 The essence of what I understood happened
16 here would not meet test number 4. It was not intended to
17 be confidential. It was intended, in fact, to be passed
18 on. That was the purpose of the retainer. So it may not
19 even be privileged as that term is understood.

20 Secondly, as I've just mentioned, he has
21 impugned Mr. Johnson in his comments to Ms. Sebalj and may
22 have, in any event, implicitly waived privilege by simply
23 talking about it to her at all.

24 And thirdly, and perhaps most importantly,
25 Commissioner, is this. There is a well-established

1 exception to solicitor/client privilege for what is called
2 the future crimes exception. And if the advice and
3 instructions -- advice sought and/or instructions given
4 would constitute a criminal offence, it is not privileged.

5 **THE COMMISSIONER:** All right. Well, sir ---

6 **MR. NEVILLE:** So those are the issues.

7 **THE COMMISSIONER:** Yes. Well, first of all,
8 you know, I understand your argument but in Sebalj's notes
9 it's -- he's saying, "I'm not talking settlement. Will
10 pursue after the criminal charges."

11 **MR. NEVILLE:** Right. Well, that's what he's
12 telling her, sir. The problem here is that, as I
13 understand it, from what my understanding of the situation
14 is, that would not be the version of what was going on from
15 this witness.

16 **THE COMMISSIONER:** All right. Okay.

17 **MR. NEVILLE:** So therein is the problem. If
18 what Mr. Silmsen is saying to Johnson is, "This is what I
19 want you to do for me," (a) in my view it is not a
20 solicitor/client communication; it is not intended to be
21 confidential. There is a personal attack and (3) there is
22 a future crimes exception, assuming that is my correct
23 understanding.

24 **THE COMMISSIONER:** That's a big assumption.
25 Okay.

1 **MR. NEVILLE:** Yes.

2 **THE COMMISSIONER:** Thank you.

3 **MR. LEE:** Mr. Neville has a great deal more
4 information about Mr. Johnson's anticipated evidence than I
5 do, sir.

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

7 **MR. LEE:** This made up one bullet in the AE.
8 It was nondescript and it had none of the details that Mr.
9 Neville has just provided you with, so I don't know where
10 he's getting his information but I'm concerned, frankly.

11 We have Ms. Sebalj's notes. We don't
12 Ms. Sebalj.

13 **MR. NEVILLE:** I don't know whether it's
14 accepted, sir. I won't read it out; I'll have you look at
15 it. I'm going on what's in the AE.

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

17 **MR. NEVILLE:** And I'm inviting you to look
18 at it. If you don't want me to read it out -- I'll read it
19 out.

20 **THE COMMISSIONER:** No, I don't want you to
21 read it out.

22 **MR. NEVILLE:** Well, then I'll pass it up.
23 It's highlighted.

24 **THE COMMISSIONER:** Thank you.

25 Okay, thank you.

1 **MR. NEVILLE:** Now, I thought I made it
2 pretty clear that my understanding is that this is what is
3 happening, and it's in the AE so I reject the suggestion
4 that I have no foundation for suggesting this is what's
5 happening. It's in the AE.

6 **MR. LEE:** I suppose we'll agree to disagree
7 on what that AE says, because I didn't hear Mr. Neville --
8 Mr. Neville's suggestion that Mr. Silmsler wanted Mr.
9 Johnson to trade off criminal charges for money.

10 **THE COMMISSIONER:** Well, there's the "if"
11 there in that sentence.

12 **MR. LEE:** A number of issues here, sir. As
13 I said, we have no Ms. Sebalj to tell us anything about
14 these notes. We can't cross-examine her. It's her
15 interpretation of what Mr. Silmsler told her. I don't think
16 that anything in the notes that Mr. Neville took you to
17 amount to a waiver based on the idea that he disclosed the
18 privileged information to Ms. Sebalj. We don't know --
19 Mr. Silmsler doesn't tell Ms. Sebalj explicitly, based on
20 her notes.

21 **THE COMMISSIONER:** I'm sorry, Mr. Lee, are
22 you arguing -- making the argument now or ---

23 **MR. LEE:** I don't know what we're doing,
24 sir. That's what Mr. Neville seemed to do. I think that
25 Mr. Silmsler needs to have notice. I have no confidence at

1 all that Mr. Johnson is here protecting a privilege claim
2 for Mr. Silmsler. He's quite content to tell us -- if you
3 order it; he's quite content to tell us. He doesn't seem
4 to have necessarily even turned his mind, in any great
5 detail, to whether or not privilege exists.

6 We don't have a situation where the former
7 counsel or someone approached potentially to be counsel is
8 very hesitant. He's quite content to tell us what he knows
9 if you so order.

10 You know, I don't have any knowledge of
11 whether or not Mr. Silmsler has had any notice of this or
12 Mr. Culic had notice. I have no clue. I'm not on for
13 Mr. Silmsler.

14 Based on what I've seen, I'm extremely
15 concerned that privilege applies here.

16 **THE COMMISSIONER:** Well, let's put it this
17 way. All I want to know from folks is the notice. People
18 feel we should give him notice?

19 **MR. LEE:** I say we should.

20 **THE COMMISSIONER:** All right. Mr.
21 Scharbach?

22 **MR. SCHARBACH:** I think the matter is
23 relevant. I think the information that Mr. Johnson can
24 provide you is relevant to you. However, I agree that
25 Mr. Silmsler should be given notice. This isn't an easy

1 question and there are a number of legal considerations ---

2 **THE COMMISSIONER:** Okay.

3 **MR. SCHARBACH:** --- that I think you'll need
4 to hear submissions on.

5 **THE COMMISSIONER:** Sure. So how about if we
6 do this -- I'm sorry, sir.

7 **MR. STRAWCZYNSKI:** Mr. Commissioner, the CCR
8 also supports giving notice to Mr. Silmsers.

9 **THE COMMISSIONER:** Well, I do too.

10 Okay. So what about if we finish all other
11 aspects of the cross-examination with respect to this
12 witness.

13 We give Mr. Silmsers and his lawyer notice,
14 and we work that out and then he comes back at another date
15 convenient to Mr. Johnson, so that we can deal with that
16 discrete issue. How would that go?

17 Would everybody feel comfortable with that?
18 Good.

19 All right. So, Mr. Lee, how long do you
20 have left?

21 **MR. LEE:** I may have nothing. If you can
22 give me a moment to just review my notes?

23 **THE COMMISSIONER:** Sure.

24 **MR. LEE:** I think Silmsers may have been the
25 last issue. Do you want to bring the witness back in while

1 we're ---

2 **THE COMMISSIONER:** Oh yes. Oh, no, I
3 thought maybe you'd ask him a few questions in his absence.

4 **(LAUGHTER/RIRES)**

5 **MR. LEE:** The Chair is generally very
6 cooperative.

7 **THE COMMISSIONER:** Can we -- yes, get him
8 back in.

9 **DONALD W. JOHNSON, Resumed/Sous le même serment:**

10 **THE COMMISSIONER:** Sir, what we have decided
11 is -- what I have decided is that we are going to permit
12 the cross-examination to be completed with the exception of
13 the issue of solicitor/client. I am going to give notice
14 to -- I am going to order that notice be given to Mr.
15 Silmsner so that we can argue and see whether or not
16 privilege applies.

17 If it does, that's the end of the matter.
18 If it doesn't, we are going to pick a discrete time when
19 you are available to come back and finish that off, but it
20 should take very long. All right?

21 **MR. JOHNSON:** Thank you.

22 **THE COMMISSIONER:** Thank you. Mr. Lee?

23 **MR. LEE:** That's it, sir. Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Horn?

1 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

2 HORN:

3 MR. HORN: Mr. Johnson.

4 MR. JOHNSON: Mr. Horn.

5 MR. HORN: You know that I'm representing
6 the Coalition for Action?

7 MR. JOHNSON: Yes.

8 MR. HORN: And that we have a few questions
9 to ask you. First of all, you started as Crown in Cornwall
10 in 1972?

11 MR. JOHNSON: Seventy-two ('72).

12 MR. HORN: And you became the Crown in '72
13 until '91?

14 MR. JOHNSON: I was the Acting Crown from
15 '72 to '74 because we had another gentleman in the office
16 by the name of Mr. Percy Milligan who was the former Crown
17 attorney but had been appointed to as the Commissioner of
18 the Ontario Police Commission.

19 And on his retirement, he was given back --
20 came back to Cornwall and worked in the office. He was
21 more or less the designated Crown attorney, but I was
22 actually doing the work.

23 MR. HORN: Okay, so you would have been
24 Crown in 1975 and '76?

25 MR. JOHNSON: That's correct.

1 **MR. HORN:** And at that time, you were acting
2 as Crown with how many other Crowns working with you?

3 **MR. JOHNSON:** None.

4 **THE COMMISSIONER:** Assistant Crowns?

5 **MR. HORN:** I'm talking assistant Crowns.

6 **MR. JOHNSON:** I didn't get any assistant
7 Crowns until '77.

8 **MR. HORN:** Okay, so you were working
9 completely alone in 1976?

10 **MR. JOHNSON:** Yeah, '74, '75.

11 **MR. HORN:** And ---

12 **MR. JOHNSON:** Seventy-two ('72), '73, '74,
13 '75', and '76.

14 **MR. HORN:** So you were operating with what;
15 per-diem Crowns?

16 **MR. JOHNSON:** That's correct.

17 **MR. HORN:** And that would have started only
18 in '77?

19 **MR. JOHNSON:** Yeah, I was allowed two
20 assistants at that point, and I believe it was Mr. DeMarco
21 and Mr. Eng.

22 **MR. HORN:** And they were the ones that came
23 on in '77?

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

25 **MR. HORN:** So you would have been the only

1 Crown in 1975 and '76?

2 MR. JOHNSON: That's correct.

3 MR. HORN: And so anything that would have
4 occurred in '75 and '76 in regards to the Antoine situation
5 would have been -- you would be the only individual that
6 would be involved?

7 MR. JOHNSON: I'd be the only Crown
8 attorney, yeah.

9 MR. HORN: The only Crown attorney that
10 would be involved. And so that when you wrote the letter
11 to Mr. Norman ---

12 THE COMMISSIONER: Douglas.

13 MR. HORN: --- Douglas and you mentioned --
14 you mentioned the statement by Ms. Antoine.

15 MR. JOHNSON: Sorry, which one is that?

16 THE COMMISSIONER: What exhibit are we
17 talking about?

18 MR. HORN: The exhibit number is -- well,
19 there's two of them. There's one that was attached to Mr.
20 Derochie's -- but then the letter itself.

21 THE COMMISSIONER: Mr. Chisholm, could you
22 assist?

23 MR. CHISHOLM: The first one might be 1499.

24 THE COMMISSIONER: Fourteen ninety-nine
25 (1499)?

1 **MR. CHISHOLM:** One four nine nine (1499),
2 sir.

3 **THE COMMISSIONER:** Thank you.
4 Okay.

5 **MR. HORN:** Okay.

6 **THE COMMISSIONER:** So hold on. One four
7 nine nine (1499) is the letter, Norm Douglas in 1990.

8 **MR. HORN:** That was the letter of April the
9 14th, 1990.

10 **THE COMMISSIONER:** Right.

11 **MR. JOHNSON:** April 4th.

12 **MR. HORN:** Pardon?

13 **MR. JOHNSON:** April the 4th.

14 **MR. HORN:** April the 4th, 1990.

15 **THE COMMISSIONER:** Okay, but I'm just
16 getting -- '76, and then we're in 1990?

17 **MR. HORN:** Okay. In 1976, the situation
18 involving the group home took place, in 1975 and '76. You
19 were the Crown attorney at the time?

20 **MR. JOHNSON:** Yeah, yes, I was.

21 **MR. HORN:** And Ms. Antoine came to the
22 police to want something to be done about the situation
23 that took place 13 years ago, 13 years prior.

24 **MR. JOHNSON:** In 1963?

25 **MR. HORN:** In 1973 -- '75 was when the

1 incidences took place at the group home. She came to light
2 in 1989 when you were still the Crown.

3 MR. JOHNSON: Okay, yeah.

4 MR. HORN: Okay. So when it came to light
5 at that time, you began to deal with the situation; right?

6 MR. JOHNSON: Okay, yes.

7 MR. HORN: Okay. And you were dealing with
8 something that -- in which occurred under your watch as the
9 Crown attorney?

10 MR. JOHNSON: Well, I was the Crown
11 attorney, that's right.

12 MR. HORN: Yes, at the time. Okay. And if
13 there was any discussions regarding whether charges should
14 be laid, if the police wanted to discuss it anybody, they
15 would have had to discuss it with you because you were the
16 only Crown at the time, back in 1975-76?

17 MR. JOHNSON: Yeah. Yeah.

18 MR. HORN: Okay. Now, the statement that
19 you sent off to Norman Douglas contained a lot of
20 information regarding some of the things that occurred at
21 the group home, some of the things, you attached it, so you
22 must have read it.

23 MR. JOHNSON: Yeah, I enclosed the statement
24 of Constable Malloy.

25 MR. HORN: Constable Malloy's statement from

1 Ms. Antoine?

2 MR. JOHNSON: Yeah.

3 MR. HORN: Okay. And it contained a lot of
4 very explicit information; didn't it, about what happened
5 in the group home?

6 MR. JOHNSON: I don't have that statement in
7 front of me, but ---

8 MR. HORN: There's two separate statements;
9 one of them was the typed-up version and the other version
10 is the handwritten version. The handwritten version is
11 Exhibit Number 505.

12 THE COMMISSIONER: You won't have that, sir,
13 hang on.

14 It's in the vault. I'm just checking the
15 weather. It's not very nice.

16 MR. HORN: We should get both of them.
17 There's one typewritten one and that's 505 and the other
18 one is 504. Both of them.

19 THE COMMISSIONER: They should be close
20 together.

21 How long do you think you are going to be,
22 Mr. Horn?

23 MR. HORN: Fifteen (15), 20 minutes.

24 THE COMMISSIONER: All right.

25 MR. HORN: I'll probably finish that before

1 lunch.

2 **THE COMMISSIONER:** I hope so.

3 And how are we doing with the rest of the
4 folks? Mr. Neville?

5 **MR. NEVILLE:** With the issue stood down,
6 sir, I'll be less than 10 minutes.

7 **THE COMMISSIONER:** All right. Mr. Chisholm?

8 **MR. CHISHOLM:** Roughly 10, sir.

9 **THE COMMISSIONER:** All right. Maître
10 Rouleau?

11 **MR. ROULEAU:** Ten (10) minutes, sir.

12 **THE COMMISSIONER:** Ms. Lévesque?

13 **MS. LÉVESQUE:** No questions at this time.

14 **THE COMMISSIONER:** Mr. Manderville?

15 **MR. MANDERVILLE:** Again, with the
16 qualification of Mr. Neville, probably about 10 to 15
17 minutes.

18 **THE COMMISSIONER:** Okay. Mr. Kozloff?

19 **MR. KOZLOFF:** Five minutes at the most.

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

21 **MR. CARROLL:** Unlikely any.

22 **THE COMMISSIONER:** Okay, good. Mr.
23 Scharbach?

24 **MR. SCHARBACH:** Approximately 20 minutes.

25 **THE COMMISSIONER:** All right. Thank you.

1 So maybe an hour; a little bit more.

2 Okay, thank you. So five zero -- I'm sorry.

3 **MR. HORN:** Yes, 505 or 504; 504 is easier to
4 read because it's been typed. It's the same. It's a typed
5 version of the written -- typewritten version of the
6 handwritten version. But I believe it was the handwritten
7 version that was sent on to Mr. Douglas.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **MR. JOHNSON:** Do you want me to read it?

10 **MR. HORN:** Well, if you get a chance to read
11 it. Do you recall sending not the typewritten version but
12 the handwritten version on to Mr. Douglas?

13 **MR. JOHNSON:** It says in the letter I sent
14 it, yes.

15 **MR. HORN:** Yeah, it was attached. And in
16 it, it contained quite a bit of information regarding some
17 of the things that happened at the group home. A lot of
18 them involved a belt in the face -- what, pain, tingling in
19 the side of the face; pulling down pants; in fact, there's
20 a mention of a cracked arm of one of the other -- one of
21 the girls that was living at the group home.

22 There was also talk of his -- Mr. Bryan
23 Keough rubbing his hand over the breasts of Ms. Antoine,
24 and also there was some mention of a possibility that if
25 Ms. Antoine were to comply with -- yes?

1 **MR. CHISHOLM:** Sorry to interrupt my friend.
2 I'm wondering if there's a question in that, I hear Mr.
3 Horn reciting the document, but perhaps putting a question
4 to the witness would be more beneficial.

5 **MR. HORN:** Okay, I'll do that.

6 Do you recall reading some of the facts --
7 recall the facts that were mentioned in the document?

8 **MR. JOHNSON:** I don't recall them. I'm
9 trying to refresh my memory here. But, as I said, I sent
10 that statement to Mr. Douglas. I must have sent this one
11 down -- or up to him, I'm sorry.

12 **MR. HORN:** Okay. And the document itself
13 contained information regarding some sexual play by one of
14 the workers with Ms. Antoine while she was in her bedroom,
15 and there was another incidence in which ---

16 **THE COMMISSIONER:** You're going through the
17 instances again.

18 **MR. HORN:** Okay, All right.

19 **THE COMMISSIONER:** So what's the question?

20 **MR. HORN:** Well, the question is: this
21 information contains some very, very explicit examples of
22 some of the things that happened at that group home.

23 **THE COMMISSIONER:** That were alleged to have
24 been happening.

25 **MR. HORN:** Alleged to have happened at the

1 group home, yes.

2 And you read that information?

3 **MR. JOHNSON:** I assume I did, Mr. Horn, yes.

4 **MR. HORN:** Okay. So after reading that
5 information and sending it on to Mr. Douglas, you realized
6 -- I suppose you realized how serious it was.

7 **MR. JOHNSON:** Well, that's -- I think I --
8 that's why the letter that was sent up, I believe.

9 **MR. HORN:** Pardon?

10 **MR. JOHNSON:** That's why I believe I sent
11 the letter up, because it included allegations involving
12 another ministry, and I believe at that time, after some
13 discussions and some information we received, we were told
14 that if there was another ministry involved we should
15 contact the regional director.

16 **MR. HORN:** Okay. And when you did -- when
17 you saw this information you realized that if it ever did
18 get out, it would be quite serious information to get out
19 to the public.

20 **MR. JOHNSON:** Well, any criminal charge is
21 serious information.

22 **MR. HORN:** Yeah, well, particularly where
23 Children's Aid Society has a group home in which these sort
24 of things were taking place.

25 **MR. JOHNSON:** The allegations were pretty

1 strong.

2 MR. HORN: The allegations were pretty
3 serious, weren't they?

4 MR. JOHNSON: Sure they were.

5 MR. HORN: And yet you -- and you were also
6 the Crown attorney back at that time in 1975 and '76?

7 MR. JOHNSON: Okay. Yes, I was.

8 MR. HORN: And were you never approached,
9 back then at that time, regarding whether charges should be
10 laid back in 1975 or '76?

11 MR. JOHNSON: Not that I can recall, no.

12 MR. HORN: So 13 years later, you finally
13 get wind of it?

14 MR. JOHNSON: It appears that way, yes, sir.

15 MR. HORN: Okay. And you realized that
16 13 years before, these were pretty serious charges from
17 another period of time in which you were -- you should have
18 known about it back then if you'd been told.

19 MR. JOHNSON: If I'd been told, yeah.

20 MR. HORN: If you'd been told; but you
21 weren't told?

22 MR. JOHNSON: As far as I know, I was never
23 told, no.

24 MR. HORN: Did you become concerned that you
25 weren't told about something as serious as this?

1 **MR. JOHNSON:** Did I become concerned?

2 **MR. HORN:** Did you become concerned in 1989,
3 when you got wind of this, that you weren't told about it
4 in 1975 or '76?

5 **MR. JOHNSON:** Oh, I must have, because
6 that's why I wrote the letter.

7 **MR. HORN:** Okay. And as a result of this
8 information going to Mr. Douglas, you were concerned that
9 it would be a -- it would cause a lot of controversy or a
10 lot of difficulty for you?

11 **MR. JOHNSON:** Why me?

12 **MR. HORN:** Because you were the Crown back
13 in that time.

14 **MR. JOHNSON:** Okay.

15 **MR. HORN:** And nobody approached you about
16 it.

17 **THE COMMISSIONER:** Then how could he be in
18 trouble?

19 **MR. HORN:** Well, because he was under his
20 watch. He was the Crown attorney. He would have been
21 implicated in any kind of investigation.

22 **THE COMMISSIONER:** Mr. Horn, please ---

23 **MR. HORN:** Something that would have
24 happened back then.

25 **THE COMMISSIONER:** Mr. Horn?

1 **MR. HORN:** Yes.

2 **THE COMMISSIONER:** He's not an investigator;
3 he's a Crown attorney. If and I don't know -- he says he
4 doesn't recall. So, assuming for a moment that nobody came
5 up to him and told him about this; how can he be in
6 trouble?

7 **MR. HORN:** Because Mr. DeMarco was the --
8 was on the board of directors back in 1977.

9 **THE COMMISSIONER:** Do you have proof of
10 that, sir?

11 **MR. HORN:** Pardon?

12 **THE COMMISSIONER:** Is there any proof of
13 that?

14 **MR. HORN:** That's what I understand. I
15 understand that he was ---

16 **THE COMMISSIONER:** No, no. Where do you get
17 that understanding?

18 **MR. HORN:** Pardon?

19 **THE COMMISSIONER:** Are you giving evidence
20 now?

21 **MR. HORN:** No, I'm not giving evidence. I
22 know that it's been mentioned in the past that he was --
23 during Mr. O'Brien's evidence ---

24 **THE COMMISSIONER:** Okay.

25 **MR. HORN:** --- that was mentioned.

1 **THE COMMISSIONER:** All right, and was the
2 year mentioned?

3 **MR. HORN:** Pardon? It was right after this
4 incident he became -- came on the board right after this
5 incident when the report went to the board, and he was on
6 the board at the time.

7 **THE COMMISSIONER:** Well, during the lunch
8 break, ---

9 **MR. HORN:** Yes.

10 **THE COMMISSIONER:** --- you can look over
11 that evidence and point me to where Mr. O'Brien says that,
12 so we can -- so I can get that ---

13 **MR. HORN:** Okay.

14 **THE COMMISSIONER:** --- tied up.

15 Okay, so assuming for a moment that
16 Mr. DeMarco was on the board of directors in the late '70s
17 -- '76, '77, '78 -- go ahead.

18 **MR. HORN:** That's right.

19 If he was on the board, that would implicate
20 your office; right?

21 **THE COMMISSIONER:** Implicate ---

22 **MR. JOHNSON:** Implicate my officer?

23 **MR. HORN:** That would implicate you because
24 your -- somebody from your office was on the board right
25 after this incident took place, and he was on the board

1 when the report went to the board.

2 MR. JOHNSON: I didn't even know he was on
3 the board.

4 MR. HORN: Pardon?

5 MR. JOHNSON: I didn't even know he was on
6 the board.

7 THE COMMISSIONER: You're using big words
8 like "implicate". I don't know -- "implicate". What it
9 means is that -- what you're saying, and the point I think
10 is fair, is that if Mr. DeMarco was on the board and he was
11 there when the report was done -- which you haven't
12 established quite yet but we'll get to that.

13 MR. HORN: We'll get to that.

14 THE COMMISSIONER: Then it imputes some
15 knowledge to a member of the Crown Attorney's Office; all
16 right?

17 MR. HORN: Yes.

18 THE COMMISSIONER: That's what you're trying
19 to establish; right?

20 MR. HORN: And that information would have
21 been with Mr. DeMarco from 1970 -- if he knew about it,
22 from 1977 to 1989.

23 MR. JOHNSON: You'd have to ask Mr. DeMarco
24 that.

25 MR. HORN: And during that period of time,

1 he never broached you with that information? Never told
2 you anything about that information?

3 MR. JOHNSON: No.

4 MR. HORN: Not at all?

5 MR. JOHNSON: No.

6 THE COMMISSIONER: Sir, you may want to
7 check with the CCR. They may have some information about
8 Mr. DeMarco's standing and stuff. Or with the Children's
9 Aid Society; there we go.

10 MR. CHISHOLM: Just to expedite the process,
11 sir.

12 THE COMMISSIONER: Thank you.

13 MR. CHISHOLM: I took a quick look at the
14 transcript. Volume 292, page 171 is a reference to
15 Mr. DeMarco. Perhaps if that is pulled up, that might be
16 what Mr. Horn is making reference to. It's page 171.

17 MR. HORN: Is that Mr. O'Brien's ---

18 MR. CHISHOLM: That's Mr. O'Brien's
19 transcript.

20 THE COMMISSIONER: M'hm.

21 MR. HORN: I understand you also mentioned
22 yesterday that Mr. O'Brien and Mr. DeMarco were friends.

23 THE COMMISSIONER: Okay ---

24 MR. JOHNSON: Yes, I assumed they were.

25 MR. HORN: You mentioned that yesterday?

1 **MR. JOHNSON:** Yeah.

2 **THE COMMISSIONER:** That's good. Okay.

3 **MR. CHISHOLM:** Line 21.

4 **THE COMMISSIONER:** Pardon? I'm sorry, line
5 21? Mr. Horn, "What about Mr. DeMarco?" And the answer
6 from Mr. O'Brien:

7 "Yes, as a matter of fact Mr. DeMarco
8 was on our board one time. Then he
9 went to Kingston."

10 **MS. JONES:** Yeah, I've reviewed the
11 testimony of Mr. O'Brien and all the references to Mr.
12 DeMarco. There doesn't seem to be a date attached. This
13 is the closest it comes and in both volumes of transcripts
14 there's actually no date described.

15 **MR. HORN:** Yes, I understood that it was
16 1977 right -- I understand he was on the Board at the time
17 the report came -- when the report from the CAS went to the
18 board. That's ---

19 **THE COMMISSIONER:** Well ---

20 **MR. HORN:** --- what I understood.

21 **THE COMMISSIONER:** --- well, you may be
22 wrong so ---

23 **MR. HORN:** Okay.

24 **THE COMMISSIONER:** --- we'll take the lunch
25 break now and we'll come back. Can we come back at 1:30?

1 And that way we can get this thing done and get people on
2 the road?

3 **MR. HORN:** Okay, thank you.

4 **THE COMMISSIONER:** Please check your facts
5 Mr. Horn so that we can establish one way or the other if
6 it's there.

7 **MR. HORN:** I understood that that was the
8 date. It was in '77 right after this incident took place
9 on the board.

10 **THE COMMISSIONER:** Find it for me.

11 Thank you.

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

14 This hearing will resume at 1:30 p.m.

15 --- Upon recessing at 12:24 p.m./

16 L'audience est suspendue à 12h24

17 --- Upon resuming at 1:32 p.m./

18 L'audience est reprise à 13h32

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

20 Please be seated. Veuillez vous asseoir.

21 **THE COMMISSIONER:** Thank you

22 Mr. Horn?

23 **MR. HORN:** I got some help for the
24 Commission counsel and they've located some documents that
25 confirm that Mr. DeMarco was on the Board of Directors in

1 April the 1st, 1976.

2 THE COMMISSIONER: M'hm.

3 MR. HORN: And he was also on the board on
4 May the 12th, 1976 and June the 9th, 1976.

5 THE COMMISSIONER: Okay.

6 MR. HORN: He was a -- he participated in
7 the meetings. There was a special meeting of the Board of
8 Directors ---

9 THE COMMISSIONER: Can you just file one of
10 those, sir, just so ---

11 MR. HORN: Yes, Exhibit Number 2217.

12 THE COMMISSIONER: Oh, it's already in?

13 MR. HORN: Yes.

14 THE COMMISSIONER: Okay, that's fine.

15 MR. HORN: And then there's two others, but
16 they're not exhibits yet.

17 THE COMMISSIONER: Did you want to make them
18 exhibits?

19 MR. HORN: Yes.

20 THE COMMISSIONER: Well, when do they --
21 what dates do they have?

22 MR. HORN: They're -- they've got numbers.

23 THE COMMISSIONER: Oh, they're already
24 exhibits?

25 MR. HORN: They're not exhibits, but just --

1 they've only got the number 1-2.

2 **THE COMMISSIONER:** Help me out here.

3 **MR. HORN:** Okay.

4 **THE COMMISSIONER:** What date?

5 **MR. HORN:** Yeah, yeah, okay.

6 **MS. JONES:** What we have here are three
7 minutes of three board meetings of the CAS. The minutes on
8 April ---

9 **THE COMMISSIONER:** Excuse me, sound man --
10 excuse me, sir. The interpreters are -- it's not working.

11 All right, let's continue on and I'm sure
12 that it won't take long in any event. This is an
13 administrative matter in any event ---

14 **MS. JONES:** Okay ---

15 **THE COMMISSIONER:** --- so we're not ---

16 **MS. JONES:** --- that's fine then.

17 **THE COMMISSIONER:** --- losing much on the
18 interpreters.

19 **MS. JONES:** Yes, we have minutes of the
20 Children's Aid Society on April 1st, 1976. It is already
21 entered as Exhibit 2217 ---

22 **THE COMMISSIONER:** Yeah, okay.

23 **MS. JONES:** --- and the document is 129995.
24 I do also have two other minutes dating from May 12th, 1976
25 and June 9th, 1976. These are not exhibits.

1 **THE COMMISSIONER:** We don't need them.

2 **MS. JONES:** And ---

3 **THE COMMISSIONER:** It's just ---

4 **MS. JONES:** --- it's verified that Mr.
5 DeMarco was on the board ---

6 **THE COMMISSIONER:** In that time frame, 1976,
7 okay.

8 Now, are you going to ask some questions
9 past that because I don't, you know, I don't know how long
10 Mr. DeMarco was on after that so ---

11 **MR. HORN:** Okay, now, we're dealing with the
12 issue of the group home at the time ---

13 **THE COMMISSIONER:** Yes.

14 **MR. HORN:** --- and the issue regarding Mr.
15 Tenger and the staff being fired because of the problems
16 that were there. He was on the board when that was all
17 going on. In fact, he was on the personnel committee with
18 a number of other people and ---

19 **THE COMMISSIONER:** Okay, well, when did that
20 happen and when did the report ---

21 **MR. HORN:** That was in 1976, April the 1st;
22 he was on the personnel committee.

23 **THE COMMISSIONER:** Okay and that -- those
24 minutes deal exactly with it ---

25 **MR. HORN:** That's right and it dealt --

1 yeah, I don't know if they dealt with the issue because I
2 know they dealt with it on subsequent meetings where he was
3 also there in which there was the -- a tendered resignation
4 at one of the meetings and ---

5 **THE COMMISSIONER:** Okay. Mr. Chisholm, is
6 that -- are you prepared to concur that Mr. ---

7 **MR. CHISHOLM:** Mr. Justice DeMarco.

8 **THE COMMISSIONER:** --- DeMarco was there?.

9 **MR. CHISHOLM:** I don't have any knowledge
10 beyond the four corners of this -- of this document, Mr.
11 Commissioner. The -- it certainly suggests in Exhibit 2217
12 that at the meeting present is listed Guy DeMarco.

13 **THE COMMISSIONER:** Was he listed as a
14 director or what?

15 **MR. CHISHOLM:** It would appear if you --
16 that's a -- that would be a fair assumption to make ---

17 **THE COMMISSIONER:** Okay.

18 **MR. CHISHOLM:** --- but I -- I don't want to
19 stand here today and bind my hands if down the road, I find
20 that it's -- the assumption is incorrect, but it's a fair
21 assumption ---

22 **THE COMMISSIONER:** Okay.

23 **MR. CHISHOLM:** --- to make, I would suggest.

24 **THE COMMISSIONER:** Okay.

25 This isn't a ---

1 **MS. JONES:** I know, this isn't ---

2 **THE COMMISSIONER:** --- criminal proceeding
3 here, you know ---

4 **MS. JONES:** No.

5 **THE COMMISSIONER:** --- we've jut got to ---

6 **MS. JONES:** But I -- I can say in one of the
7 minutes that is not entered as an exhibit that there is a
8 motion, for example, brought by Mr. DeMarco, seconded by
9 another board member so one could conclude from that that -
10 --

11 **THE COMMISSIONER:** Okay. And when's the
12 annual meeting of the -- or do we know that back then? No.

13 All right. Go ahead, sir.

14 **DONALD W. JOHNSON, Resumed/Sous le même serment:**

15 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. HORN**
16 **(Cont'd/suite):**

17 **MR. HORN:** Yes, so that -- okay, this was at
18 the time that he had just started, I suppose, as a ---

19 **MR. JOHNSON:** He started either '76 or '77,
20 Mr. Horn. I'm not sure.

21 **MR. HORN:** Okay. And he would be on the
22 Board of Directors as a -- was he like a brand new lawyer
23 or he'd been practicing for some time?

24 **MR. JOHNSON:** My knowledge is he'd been
25 practicing in the City of Cornwall with a firm of Mr.

1 Lamoureux, Rouleau. I forget what the other members of the
2 firm were, but I believe he was a junior in that firm.

3 MR. HORN: Okay and then when he -- so at
4 the time that he would have been on the board, you don't
5 know for sure if he was on the -- he was working for you at
6 all?

7 MR. JOHNSON: I'm not positive, no.

8 MR. HORN: So he could have been practicing
9 private practice.

10 MR. JOHNSON: He could have been, yeah.

11 MR. HORN: Could have been, but there's --
12 but there's a possibility that he was on the Board of
13 Directors in 1976 when all of the incidents took place.
14 Were you on good terms with Mr. DeMarco?

15 MR. JOHNSON: I used to talk to him, yeah.

16 MR. HORN: And something as -- as serious as
17 this -- as what happened at the group home, would that be
18 something that would be discussed with you?

19 MR. JOHNSON: No.

20 MR. HORN: He would have kept it away from
21 you?

22 MR. JOHNSON: Don't know if he kept it away
23 from me or not, but we never talked about it.

24 MR. HORN: Never discussed it with you in
25 any way whatsoever?

1 **MR. JOHNSON:** No, not that I can recall, no.

2 **MR. HORN:** Okay. So when you found out 13
3 years later that there was a statement given by Ms. Antoine
4 about what happened back then; how did you feel? How did
5 you feel about not being told about something that -- this
6 serious?

7 **MR. JOHNSON:** I didn't even know he was on
8 the Board of Directors.

9 **MR. HORN:** Pardon?

10 **MR. JOHNSON:** I didn't even know he was on
11 the Board of Directors at Children's Aid.

12 **MR. HORN:** Okay, you may not have known, but
13 now you know he was on the board.

14 **MR. JOHNSON:** Today I do, yeah.

15 **MR. HORN:** Okay, back then you didn't.

16 **MR. JOHNSON:** No.

17 **MR. HORN:** Okay, you find out now and you
18 found out 1989 that he knew a lot about what was going on
19 at that board -- at the group home.

20 **MR. JOHNSON:** Okay, but he wasn't -- he
21 wasn't in Cornwall at that time. He was long gone to
22 Windsor.

23 **MR. HORN:** Pardon?

24 **MR. JOHNSON:** He was gone to Windsor.

25 **MR. HORN:** By when?

1 **MR. JOHNSON:** Nineteen eighty-nine (1989).

2 **MR. HORN:** Okay. I understand that, but I'm
3 just saying that he was there on the board at the time
4 these things were going on.

5 **MR. JOHNSON:** Okay.

6 **MR. HORN:** And he would have been
7 participating in this -- the meetings that were going on,
8 discussing that group home.

9 **MR. JOHNSON:** I don't know.

10 **MR. HORN:** I know you don't know, but how do
11 you feel now that someone in your office, back then, didn't
12 tell you about something as serious as this?

13 **THE COMMISSIONER:** Ah, ah, ah, we don't know
14 that he was in his office at the time.

15 **MR. HORN:** Oh, I understand. I ---

16 **THE COMMISSIONER:** Well, that -- that's what
17 you asked him and he says, "I don't know if he was there."

18 **MR. HORN:** Okay. At the time, but he was
19 there in 1976 and he was there in 1976 when these things
20 were occurring.

21 **THE COMMISSIONER:** No, no, sir, sir, sir,
22 sir ---

23 **MR. HORN:** He was on the board.

24 **THE COMMISSIONER:** Oh, yes, he was on the
25 board.

1 **MR. HORN:** And he also went to work for Mr.
2 Johnson.

3 **THE COMMISSIONER:** When?

4 **MR. HORN:** Well, he -- this is information
5 that he would have; wouldn't he?

6 **THE COMMISSIONER:** Who?

7 **MR. JOHNSON:** Mr. DeMarco.

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

9 **MR. HORN:** This is information that he would
10 have had. He was there at the meetings. He knows
11 everything about what went on there.

12 **THE COMMISSIONER:** Mr. Horn, listen to me.
13 When did he start working with you?

14 **MR. HORN:** I believe '76 or early '77; I'm
15 not too sure.

16 **THE COMMISSIONER:** So you see, sir, that
17 part of the puzzle, you've got. Yes, Mr. DeMarco was there
18 on the Board. What this gentleman is saying is, I don't
19 know when he started working as a Crown.

20 So what happens if he wasn't a Crown
21 attorney when he was on the board when he found this out or
22 let's assume for a minute that he was a Crown, but he is
23 saying he started late '76, early '77.

24 **MR. HORN:** Well, I would suggest that the
25 information doesn't die when you're there as a private

1 practitioner and then you become a Crown. This is
2 information that he had, that Mr. DeMarco would have about
3 what happened at that group home.

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

5 **MR. HORN:** This is something that he would
6 have, and he never told Mr. Johnson about that.

7 **THE COMMISSIONER:** Okay. Well, let's go on.

8 **MR. HORN:** Isn't that right?

9 **THE COMMISSIONER:** Don't ask me that. I'm
10 not answering any questions.

11 **MR. HORN:** No, I mean, isn't that logical
12 that that would -- that that happened. He had that
13 information and he never told you about it?

14 **MR. JOHNSON:** Well, I never knew about it,
15 no.

16 **MR. HORN:** You didn't have any clue?

17 **MR. JOHNSON:** No.

18 **MR. HORN:** Okay, so that would be the reason
19 why you're saying in your -- when Mr. O'Brien was talking
20 about the meeting that took place on October the 3rd in
21 1989, you said you didn't want to circulate such damaging
22 documents. Remember that when Mr. -- that was mentioned
23 yesterday in-chief.

24 That was the meeting that Mr. O'Brien had.
25 He said that he had a meeting with you and a number of

1 police officers and you were supposed to have been at that
2 meeting and you were supposed to have said "there was no
3 point in circulating a lot of damaging documents". That's
4 what was attributed to you.

5 MR. JOHNSON: That was attributed to me?

6 MR. HORN: Yes.

7 MR. JOHNSON: I don't recall it, but if it
8 was attributed to me.

9 MR. HORN: Okay, if it was attributed to you
10 and I mean you indicated that you thought that if Mr.
11 O'Brien said that, it probably did happen.

12 MR. JOHNSON: Mr. O'Brien said there was no
13 sense in distributing?

14 MR. HORN: That's what you said to him.

15 THE COMMISSIONER: Mr. O'Brien testified ---

16 MR. JOHNSON: Oh, he testified to that? Oh!

17 THE COMMISSIONER: --- that you would have
18 said that. Now, Mr. Chisholm ---

19 MR. HORN: No, he not only testified but he
20 put it in his notes in the record.

21 MR. CHISHOLM: It's Exhibit 1505, Bates page
22 7177235.

23 THE COMMISSIONER: Fifteen zero five (1505).

24 MR. CHISHOLM: Exhibit 1505, Bates page
25 7177235, and it's the October 3rd, 1989 entry, first

1 paragraph entered that date:

2 "I asked whether he wished to copy this
3 material at the present time. He said
4 he did not because he felt that the
5 police were going to pursue the matter
6 further. They would be alerting him
7 with the information they had, whereas
8 if their decision was not to proceed
9 further, then there was no point in
10 circulating a lot of damaging
11 documents."

12 I believe that's the reference that Mr. Horn
13 wants to put to the witness.

14 **THE COMMISSIONER:** Right.

15 **MR. HORN:** That's right. But that was your
16 recommendation that these damaging documents should not be
17 circulated?

18 **MR. JOHNSON:** It wasn't my recommendation.
19 That's -- what I understand from this report or this
20 memorandum is that the police were going to investigate and
21 that the information could be held in abeyance pending
22 further investigation or whatever they wanted to do. I
23 didn't tell them not to circulate anything.

24 **MR. HORN:** So that isn't you giving that
25 advice to the -- at that meeting?

1 **THE COMMISSIONER:** Mr. Horn.

2 **MR. JOHNSON:** It was their decision not to -

3 --

4 **THE COMMISSIONER:** Mr. Horn.

5 **MR. HORN:** Yes.

6 **THE COMMISSIONER:** I don't know but the
7 plain reading of this thing is look it -- and I'll
8 paraphrase so we keep it simple.

9 I'm the Crown attorney. We're giving this
10 to the police. Let the police investigate it and if it
11 comes around to me, I'll get the documents like that. I
12 don't want these documents around because if nothing comes
13 of it, I don't want them.

14 **MR. HORN:** If nothing comes of it; at the
15 time, the information that you had contained a lot of very,
16 very bad information coming out of that group home; wasn't
17 it?

18 **MR. JOHNSON:** Well, there's a report.
19 There's obviously some pretty strong allegations, yeah.
20 And it was an issue with regards to places and times and
21 dates and that I believe that's why this thing started to
22 roll when I wrote up to Mr. Douglas.

23 **MR. HORN:** Okay. So this is very damaging
24 information that you had discussions about and part of the
25 summary is that we shouldn't distribute it around.

1 Who would that be distributed to?

2 MR. JOHNSON: Who they distributed?

3 MR. HORN: Yeah, who would they distribute
4 it to? Within the CAS or to the police or to the Crown's
5 office?

6 MR. JOHNSON: To be accessible to -- I
7 suppose anybody, if they wanted to get a hold of it, yeah.

8 MR. HORN: So the decision was to stop it
9 from being circulated to whom? Do you remember or you
10 don't remember the meeting?

11 MR. JOHNSON: No.

12 MR. HORN: You don't remember that meeting?

13 MR. JOHNSON: I don't recall the entire --
14 no, I don't recall that meeting at all. But if that's what
15 Mr. O'Brien says that there was no point in circulating a
16 lot of damaging documents. It's the same as a ban on
17 publication, whatever you want to refer to it as. It's
18 just the documentation is there. If charges are going to
19 be laid, then the documentation would be part of the public
20 record.

21 MR. HORN: Okay, but you did circulate it
22 later on and sent it on to Mr. -- your boss in the Attorney
23 General's Office.

24 MR. JOHNSON: In Ottawa, that's correct.
25 Yeah.

1 MR. HORN: Yes. You sent it on to him.

2 MR. JOHNSON: I sent it on to him, yeah.

3 MR. HORN: So later on, you decided ---

4 MR. JOHNSON: I sent a report. I assume I
5 sent a report up to him.

6 MR. HORN: You sent that report; not only
7 the report but the damaging information.

8 MR. JOHNSON: The statement of Ms. Antoine,
9 yes.

10 MR. HORN: That's right. And this is the
11 information that was discussed earlier on, we shouldn't
12 distribute it.

13 MR. JOHNSON: Okay.

14 MR. HORN: Now, you're saying, I'm going to
15 distribute it. I'm going to send it to Mr. Norm ---

16 MR. JOHNSON: Douglas.

17 MR. HORN: --- Douglas.

18 MR. JOHNSON: Yeah.

19 MR. HORN: So you decided that whatever was
20 decided at that meeting no longer applied?

21 MR. JOHNSON: I didn't want Mr. Douglas to
22 go into a gunfight with a knife.

23 MR. HORN: Pardon?

24 MR. JOHNSON: I didn't want him to go into a
25 gunfight with a knife.

1 should be made aware of situations.

2 MR. HORN: Okay. Now, this is in 1989.
3 When was it you decided that you were going to be leaving
4 the Crown's office?

5 MR. JOHNSON: When I decided?

6 MR. HORN: In '91 or earlier?

7 MR. JOHNSON: I left in '91. I probably
8 decided in 1990 when I was going to leave, yeah.

9 MR. HORN: Okay, so Mr. O'Brien wanted a
10 letter from you because he was leaving, and he's retiring.

11 MR. JOHNSON: M'hm.

12 MR. HORN: Because he wanted your opinion on
13 it; didn't he? And then you wanted to make sure that the
14 documents were going to be sent to somebody else. Let them
15 handle it when I leave. Is that what your decision was?

16 MR. JOHNSON: Not that I'm aware of. I
17 mean, I made the decision to leave the Crown Attorney's
18 Office for personal reasons and I had nothing to do with
19 the job or nothing to do with investigations or anything
20 like that.

21 MR. HORN: What was your feeling when you
22 found out that Ms. Antoine who was looking for justice, it
23 looked like she wasn't going to be getting any?

24 MR. JOHNSON: She wasn't going to be getting
25 justice?

1 **MR. HORN:** Justice, yes.

2 **MR. SCHARBACH:** Commissioner, I object to
3 that question. It's asking Mr. Johnson his feeling. It's
4 irrelevant to the purposes of the Inquiry.

5 **THE COMMISSIONER:** It has nothing -- well,
6 it's not founded in anything, sir. What justice? At what
7 point? I mean I understand what you are saying, but she
8 went and there was a police investigation and things like
9 that. So I don't know that it lands on his doorstep; does
10 it?

11 **MR. HORN:** I think that Mr. Derochie, in his
12 report to Mr. Carl Johnston, said she was not going to let
13 go of this.

14 **THE COMMISSIONER:** Yes.

15 **MR. HORN:** Because she wanted justice.

16 **THE COMMISSIONER:** Right.

17 **MR. HORN:** And so she was very adamant.

18 **THE COMMISSIONER:** Yes.

19 **MR. HORN:** Now, it comes into his ballpark.
20 It's in his area. Now, he's got to do something about it.
21 He wants to hand it over to somebody else because maybe
22 he's deciding he's going to be leaving the department, or
23 he's going to be leaving the Crown's office.

24 Is that possibly what you were doing?

25 **MR. JOHNSON:** No.

1 **MR. HORN:** So is everybody passing the buck,
2 passing it to somebody else?

3 **MR. JOHNSON:** Not that I'm aware of.

4 **MR. HORN:** A hot potato like this?

5 **MR. JOHNSON:** Not that I'm aware of.

6 **MR. HORN:** Pardon?

7 **MR. JOHNSON:** I wouldn't suggest that at
8 all.

9 **MR. HORN:** The Crown -- you wanted to hand
10 it to your boss. The CAS wanted to hand it to somebody
11 else and have a letter from you so that it wouldn't fall on
12 them. They wanted somebody else to take the -- because
13 they knew this was a hot situation.

14 **MR. CHISHOLM:** I object to that question,
15 sir. It didn't fall on them. That's not -- I would
16 submit, it would be a submission, but that won't be the
17 reason why the CAS wanted a letter.

18 **THE COMMISSIONER:** Well, it's cross-
19 examination. We'll leave him with that.

20 **MR. HORN:** Would you agree? Would you agree
21 with me?

22 **MR. JOHNSON:** Would you repeat that
23 question, Mr. Horn?

24 **MR. HORN:** Pardon me?

25 **MR. JOHNSON:** Would you repeat that

1 question?

2 **MR. HORN:** Would you agree that everybody
3 wanted to pass the buck? The CAS wanted you to give them a
4 letter that would be on file so that it wouldn't fall on
5 them? The responsibility for what happened at that group
6 home would be on you?

7 **MR. JOHNSON:** CAS wants to pass the buck to
8 me and then I want to pass the buck to the Regional Crown.

9 **MR. HORN:** Because they knew this was going
10 to be a very controversial situation and nobody wanted to
11 be responsible.

12 **MR. JOHNSON:** I can't agree with that.

13 **MR. HORN:** You can't agree?

14 **MR. JOHNSON:** No.

15 **MR. HORN:** So your purpose wasn't to say,
16 I'm going to give this and let Mr. Douglas handle it?

17 **MR. JOHNSON:** No. The reason I sent the
18 letter to Mr. Douglas was because, as I've indicated to
19 you, that there was some form of instructions we had that
20 if another ministry of the Ontario Government was involved
21 with the situation, that we should advise the regional
22 Crown. The regional Crown would then take the position as
23 to what steps may be taken after that. And in that case,
24 in the situation here, obviously if any charges had been
25 laid involving the Children's Aid Society in this area, my

1 office at that time would not have prosecuted because there
2 would be an obvious conflict of interest.

3 **MR. HORN:** I'm suggesting to you that you
4 did not want to get involved in the situation. You wanted
5 to hand it off because you didn't want to make trouble in
6 Cornwall with the CAS and possibly with other people in the
7 city.

8 **MR. JOHNSON:** You suggest all you want, Mr.
9 Horn, but that's not the case.

10 **MR. HORN:** Pardon?

11 **MR. JOHNSON:** You can suggest all you want
12 but that's not the case.

13 **MR. HORN:** Like Board of Directors at the
14 CAS, like Ron Adams who was also on the Police Commission
15 later on?

16 **THE COMMISSIONER:** Whoa, whoa, sir. Mr.
17 Horn, well, okay, Mr. Chisholm, you can hop in.

18 **MR. CHISHOLM:** I object. There's no
19 foundation for that question to suggest that Ron Adams was
20 a member of the Board of Directors of the CAS.

21 **MR. HORN:** No, he was giving advice to the
22 Board of Directors at the time these incidences took place.

23 **THE COMMISSIONER:** Right, but what does that
24 have to do with the Crown attorney?

25 **MR. HORN:** Well, he was the Crown at the

1 time; wasn't he?

2 THE COMMISSIONER: Yeah.

3 MR. HORN: Yes.

4 THE COMMISSIONER: So?

5 MR. HORN: And now he finds out that there
6 was a big problem under his watch when he was the Crown and
7 then later on, he finds out about it in '89, 13 years
8 later. Something that's been hidden for 13 years starts to
9 come up and all of a sudden they've got to deal with it.

10 THE COMMISSIONER: M'hm.

11 MR. HORN: He's the Crown back then. He's
12 the Crown now. This hot potato falls into his lap. What
13 am I going to do with it? I'm going to hand it off to my
14 boss. That's what it looks like.

15 Do you agree, Mr. Johnson?

16 MR. JOHNSON: No.

17 MR. HORN: Pardon?

18 MR. JOHNSON: No. I don't agree with that.
19 I spoke to Mr. Douglas with regards to this matter because
20 that was part of the instructions in this situation. So I
21 advised him of the situation and for some reason or
22 another, it got off the rails, and I don't know how it got
23 off the rails, but unfortunately it did. As a result of
24 that, I was not trying to hand off any hot potato. We had
25 -- they had a process -- they had a procedure in place that

1 would be followed and if things had gone along the way they
2 should have gone, which I had hoped they had gone along, it
3 would have been dealt with.

4 I don't understand what you're suggesting.

5 **THE COMMISSIONER:** Don't, don't -- no, don't
6 go there.

7 Sir, next question.

8 **MR. HORN:** I'm just suggesting that -- if
9 you want to know what I'm suggesting, but I'll leave it
10 there.

11 There's only one other area. Can we look at
12 733635? This is a newspaper article.

13 **THE COMMISSIONER:** A new document?

14 **MR. HORN:** Yeah, a new document, yes.

15 **THE COMMISSIONER:** Thank you. Exhibit 2957
16 is an excerpt of Document Number 733635, and they are
17 newspaper articles, letters to the Editor. And there's a
18 date there, December 17th, 1999. The Exhibit ---

19 **THE REGISTRAR:** Two nine five nine (2959)?

20 **THE COMMISSIONER:** Two nine five nine
21 (2959).

22 --- **EXHIBIT NO./PIÈCE No. P-2959:**

23 (733635) Cornwall Standard-Freeholder
24 Article re: A Good Doctor, a Good Man, 17
25 Dec 99

1 **THE COMMISSIONER:** Okay. So go ahead, sir.

2 **MR. HORN:** Yes.

3 **THE COMMISSIONER:** Get it on the screen,
4 please, Madam Clerk.

5 **MR. HORN:** This is an article by Mr. Claude
6 McIntosh. Do you know Mr. McIntosh?

7 **MR. JOHNSON:** I know him well.

8 **MR. HORN:** And do you remember the
9 circumstances of that article?

10 **THE COMMISSIONER:** Let's put it on the
11 screen and blow it up, because I'm having trouble reading
12 it as well. No, the bottom one. Okay, let's start there.

13 **MR. JOHNSON:** Okay.

14 **MR. HORN:** What I'm interested in is the
15 fact that he was the one that was recommending you to be
16 representing Mr. -- it seems suggesting that he's the one
17 that was suggesting you to be the lawyer for Dr. Peachey.
18 Is that what happened? Was he the one that arranged for
19 you to work for - to be the lawyer for Mr. Peachy.

20 **MR. SCHARBACH:** Excuse me, Mr. Horn. Mr.
21 Commissioner, I don't know what this has to do with MAG's
22 institutional response. This appears to be a question
23 directed to Mr. Johnson's activities as a private lawyer
24 after he left practice. Maybe Mr. Horn can establish some
25 link but I'm wondering.

1 **MR. HORN:** Well, as you recall, there was --
2 Miss Young testified here in regards to the Commission in
3 regards to the media and the effect of the media.

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

5 **MR. HORN:** And the issue of the conflict
6 between Mr. Roth and Mr. McIntosh was mentioned, the fact
7 that there was a fight going on between the two newspapers
8 here in Cornwall.

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

10 **MR. HORN:** Do you recall that?

11 **THE COMMISSIONER:** Yeah.

12 **MR. HORN:** And this particular exhibit
13 indicates that there was a conflict between the two right
14 there, Mr. Roth and Mr. McIntosh.

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

16 **MR. HORN:** And Mr. McIntosh has always been
17 advocating that there is no conspiracy and that this
18 Commission is just wasting a lot of money. And Mr. Roth
19 was saying there should be an investigation because there
20 was something there that had to be investigated. That was
21 the controversy between the two newspapers.

22 **THE COMMISSIONER:** Okay. So what's your
23 question, Mr. Horn?

24 **MR. HORN:** Just asking Mr. Johnson, were you
25 being asked to be the lawyer for Mr. -- an alleged

1 pedophile and was that arranged through Mr. McIntosh?

2 MR. JOHNSON: No. Dr. Peachey came to me the day he was
3 charged.

4 MR. HORN: Okay. That's all the questions I
5 have. Thank you.

6 THE COMMISSIONER: Thank you.

7 Mr. Neville?

8 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

9 NEVILLE:

10 MR. NEVILLE: Good afternoon, sir. Good
11 afternoon, Mr. Johnson. You and I know each other.

12 MR. JOHNSON: A long time, Mr. Neville.

13 MR. NEVILLE: Indeed, sir. Just for the
14 record, in case you don't know, I represent Father Charles
15 MacDonald and I also represent the Estate of Ken Seguin and
16 his family.

17 As you know from our Commissioner's comments
18 before the lunch, there's one issue we're going to perhaps
19 revisit later with you. So just two topics I want to cover
20 with you.

21 During your evidence in-chief with Ms.
22 Jones, issues came up about the question of consent and the
23 issue of consent in the context of sexual offences, all
24 right? And I just want to make it sure and clear for the
25 record and perhaps for the public's benefit, what it is

1 we're talking about here.

2 So let me just ask you this. We are talking
3 prior to 1985, when various amendments came in, and also
4 prior to 1983 when the label was changed from rape and
5 indecent assault to sexual assault in its various forms,
6 all right?

7 **MR. JOHNSON:** Which included both male and
8 female.

9 **MR. NEVILLE:** Exactly.

10 In the context of whether we call it
11 indecent assault or sexual assault, consent or non-consent,
12 to put it the other way, is an essential element the Crown
13 was required to prove beyond a reasonable doubt.

14 **MR. JOHNSON:** According to the definition of
15 assault in the Criminal Code, yes.

16 **MR. NEVILLE:** Right.

17 And what one did of the context of indecent
18 assault was looked at the assault section and added the
19 element of indecency. So the Crown had to prove non-
20 consent, right?

21 **MR. JOHNSON:** Correct. Either non-consent
22 or the fact of non-identification of the issue.

23 **MR. NEVILLE:** Oh, no, I'm just setting aside

24 ---

25 **MR. JOHNSON:** Oh, okay.

1 **MR. NEVILLE:** --- that there's non-
2 identification issue.

3 A sexual event has happened. An allegation
4 has been made. A charge has been laid. The charge was
5 indecent assault, whether it be on a male or a female and
6 non-consent is an essential element.

7 **MR. JOHNSON:** That's correct, sir.

8 **MR. NEVILLE:** And there was in law then an
9 age of consent?

10 **MR. JOHNSON:** That's correct.

11 **MR. NEVILLE:** The age then, recently
12 changed, was 14?

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

14 **MR. NEVILLE:** So setting aside issues of
15 capacity from drunkenness and the like, the Crown was
16 required to prove in the case of a complainant over the age
17 of 14 that he or she did not consent?

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

19 **MR. NEVILLE:** All right. Now in the offence
20 known at that time of gross indecency, all right, you're
21 familiar with the famous quotation from our late Prime
22 Minister and Minister of Justice, Mr. Trudeau: "The state
23 has no place in the bedrooms of the nation"; right?

24 **MR. JOHNSON:** Correct.

25 **MR. NEVILLE:** It came out in the late 60's

1 when he was Minister of Justice and he brought in an
2 amendment to what was then the gross indecency section,
3 creating an absolute defence or a statutory bar if both
4 participants in a sexual act were 21 or more?

5 **MR. JOHNSON:** And done in private?

6 **MR. NEVILLE:** Right. However, if one or
7 both were under 21 there was still an issue of consent as
8 to whether -- as a factor it was an act of gross indecency?

9 **MR. JOHNSON:** That was my interpretation,
10 Mr. Neville.

11 **MR. NEVILLE:** Exactly. And again consent
12 required that the person be of a certain age and able to
13 exercise their capacity?

14 **MR. JOHNSON:** That's what I understand.

15 **MR. NEVILLE:** All right. And such notions
16 of abusing a position of trust or authority was a
17 subsequent set of amendments that came in later?

18 **MR. JOHNSON:** It came in, yes it did, that's
19 correct, yes.

20 **MR. NEVILLE:** All right. And in addition,
21 there was no principle, certainly prior to these amendments
22 I just mentioned, that because a sexual act took place
23 between an adult, which would be somebody by definition
24 over 18 and somebody under 18, that did not by itself
25 constitute a breach of trust?

1 **MR. JOHNSON:** It was always a factual
2 situation.

3 **MR. NEVILLE:** Sure. It depended on what the
4 relationship was, whether it be a babysitter, a teacher,
5 somebody in what the law considered a classic position of
6 trust?

7 **MR. JOHNSON:** Yes, there were certain cases
8 that came out and defined what a position of trust was.

9 **MR. NEVILLE:** But age in itself did not
10 create a position of trust?

11 **MR. JOHNSON:** As far as I was aware it
12 didn't, no.

13 **MR. NEVILLE:** Now one other brief area I
14 want to cover with you, Commissioner, would be Exhibit
15 2850.

16 **THE COMMISSIONER:** You should have that,
17 sir, I believe.

18 **MR. JOHNSON:** Oh yes, I'm sorry. It's an
19 article in a newspaper?

20 **MR. NEVILLE:** Pardon me, sir.

21 **MR. JOHNSON:** It's an article in a
22 newspaper?

23 **MR. NEVILLE:** Yes, it's an article in the
24 Standard Freeholder on September 7th, 2001. The Document
25 Number is 701177 and it's our Exhibit 2850.

1 If you just take a moment and read the story
2 to yourself, Mr. Johnson. It involves yourself at one of
3 the trials under the Project Truth umbrella that you
4 participated in as defence counsel. It was the trial of
5 Father Paul Lapierre.

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

7 **MR. JOHNSON:** Yes.

8 **MR. NEVILLE:** The newspaper story discusses
9 and quotes you from the record, obviously in court, about
10 two episodes that seemed to have happened that day in
11 relation to your client's trial. The first was you raising
12 an objection with the trial judge about harassment by the
13 two named persons of your client at a court adjournment?

14 **MR. JOHNSON:** That's correct.

15 **MR. NEVILLE:** All right. And ---

16 **MS. JONES:** I believe that when Mr. Horn was
17 questioning this witness about Dr. Peachey, there was an
18 objection raised at these -- and since it happened, and
19 occurred when his client -- sorry, when this witness was
20 actually defence counsel, I'm just wondering -- I was
21 waiting to see where Mr. Neville was going with this. This
22 is solely Mr. Johnson as a defence counsel being dealt
23 with. This is an article stemming from 2001.

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

25 **MS. JONES:** And I'm wondering if Mr. Neville

1 could clarify what the link is here with this particular
2 witness because every other time he's been questioned as a
3 defence counsel there's been a link to his role as the
4 former Crown Attorney. That link does not exist here.

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

6 **MR. NEVILLE:** It's nothing to do per se with
7 Mr. Johnson as defence counsel, sir. It's the conduct of
8 certain persons, some of whom have been witnesses here,
9 either directly or through ODEs and as to their conduct.

10 **THE COMMISSIONER:** And what's the question?

11 **MR. NEVILLE:** The question was whether
12 episode one, what I call the harassment episode, is
13 accurately represented as described in the story because he
14 was there and this article has been filed through Detective
15 Hall, sir, and this was one of the actual participants who
16 was directly quote and simply Mr. Johnson to confirm if
17 this accurately summarizes that event.

18 **MR. JOHNSON:** Well I can you, Mr. Neville,
19 basically throughout the trial involving Lapierre that
20 there was all kinds of things going on. This was just one,
21 perhaps one incident.

22 **MR. NEVILLE:** Well, I was going to ask you
23 that next.

24 **THE COMMISSIONER:** Well ---

25 **MR. NEVILLE:** Just to confirm one thing,

1 sir.

2 **THE COMMISSIONER:** Just a minute. What's
3 the thing?

4 Don't answer the question, first.

5 **MR. NEVILLE:** I was simply going to have him
6 confirm, sir, which I understand would be the case that
7 neither of the individuals named here was a witness or
8 complainant in the case.

9 **THE COMMISSIONER:** Well, I think we're going
10 down the line of collateral issues at this point.

11 **MR. NEVILLE:** Well, the article went in
12 through a non-participant. I'm just simply having the
13 participant confirm the event as it's described.

14 And then the second question I wanted to
15 ask, Commissioner, was there's a second event that our next
16 witness, Mr. Godin, addresses in the article and whether
17 Mr. Johnson can help us with that one.

18 **THE COMMISSIONER:** Well, with respect to Mr.
19 Godin, we can deal with the Godin matter -- I mean there
20 are quotes there and ---

21 **MR. NEVILLE:** Right.

22 **THE COMMISSIONER:** I think we can deal with
23 it that way. And the other one, go ahead, just briefly,
24 please.

25 **MR. NEVILLE:** I will, sir.

1 Is it permissible, sir, to deal with the
2 second event now?

3 **THE COMMISSIONER:** No, let's leave it for
4 Mr. Godin.

5 **MR. JOHNSON:** I may not -- I hadn't intended
6 to be here when he gave his evidence but ---

7 **THE COMMISSIONER:** Oh, okay. Ask him, ask
8 him.

9 **MR. NEVILLE:** I only have one question
10 simply to ask, sir.

11 Mr. Godin, you've read the article, Mr.
12 Johnson, is quoted in the second column from the right is
13 saying, "We know who it is. Has the clerk identified the
14 person?" This has to do with a demeaning cartoon posted
15 outside the courtroom?

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

17 **MR. NEVILLE:** Were you aware who that person
18 was?

19 **MR. JOHNSON:** No, I wasn't, sir. I'm sorry.

20 **MR. NEVILLE:** That's all, sir.

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

22 **MR. NEVILLE:** Thank you, Mr. Johnson.

23 **THE COMMISSIONER:** All right. Mr. Chisholm?

24 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
25 **CHISHOLM:**

1 **MR. CHISHOLM:** Mr. Johnson, we know each
2 other?

3 **MR. JOHNSON:** Yes, sir.

4 **MR. CHISHOLM:** This morning Mr. Strawczynski
5 asked you about contact that you had with the CAS during
6 your tenure as Crown Attorney in this area and you stated
7 that if you had any contact it was limited; do you recall
8 that?

9 **MR. JOHNSON:** I'm sorry, sir.

10 **MR. CHISHOLM:** You told Mr. Strawczynski
11 this morning that if you had any contact with the CAS it
12 was limited?

13 **MR. JOHNSON:** It was very limited, that's
14 correct.

15 **MR. CHISHOLM:** And yesterday you told us
16 that if -- I believe you accepted Mr. O'Brien, Thomas
17 O'Brien's position that if he said you had meetings, you
18 were prepared to accept that position; is that right?

19 **MR. JOHNSON:** That's correct.

20 **MR. CHISHOLM:** You told us today that you
21 have no notes or transcripts or recordings of any meeting
22 that may have taken place between the CAS and you?

23 **MR. JOHNSON:** And if there were any, Mr.
24 Chisholm, as in my role of Crown Attorney, as I've
25 indicated they would have been kept in the office and every

1 so often they would be boxed up, sent down to Toronto for
2 the archives purposes and I haven't seen any.

3 **MR. CHISHOLM:** And just so I'm clear on your
4 recollection, do I understand that you have no recollection
5 of any meetings with the CAS with Mr. O'Brien or anybody
6 else from the CAS?

7 **MR. JOHNSON:** No, I don't, I'm sorry.

8 **MR. CHISHOLM:** Okay. And you told Mr.
9 Strawczynski this morning that you assumed that in
10 circumstances where the CAS came to you for advice that
11 your answer would have been or your suggestion would have
12 been that if you have sufficient evidence to call the
13 police. That was your evidence that you gave today?

14 **MR. JOHNSON:** That's correct.

15 **MR. CHISHOLM:** And that's based upon what
16 you believe -- believe that you would have said at the
17 time?

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

19 **MR. CHISHOLM:** You have no recollection of
20 saying that?

21 **MR. JOHNSON:** No, I don't.

22 **MR. CHISHOLM:** And I just want to take you,
23 if I can please, to Mr. O'Brien's evidence that he gave on
24 October 22nd, of 2008. It's volume 292 of the transcripts.

25 **THE COMMISSIONER:** No, you won't have that,

1 sir.

2 Thank you. What page, sir?

3 **MR. CHISHOLM:** It's page 119.

4 Do you have that, Mr. Johnson; page 119?

5 **MR. JOHNSON:** Yes, I do.

6 **MR. CHISHOLM:** And it's the top half of the
7 page I'm interested in. This is a cross-examination by Ms.
8 Daley, Mr. Strawczynski's associate or partner, and she is
9 asking -- she states to Mr. O'Brien:

10 "Let me then ask you a few questions
11 about Mr. Johnson and the evidence that
12 you gave about your dealings with him.
13 And again you have said, 'If Mr.
14 Johnson had told me to go to the police
15 I would have done that.' The question
16 that comes to my mind is that did he
17 ever tell you to go to the police?"

18 And Mr. O'Brien's response was:

19 "No, he never told me to go to the
20 police. In one instance he told me
21 that he did not need information that I
22 had given to the police because if they
23 thought he should have it they'd give
24 it to him. But no, he didn't. He
25 never told -- I don't recall him ever

1 telling me to go to the police."

2 Do you take issue with Mr. O'Brien's
3 evidence?

4 **MR. JOHNSON:** The only issue I would take is
5 that I don't have the recollection of the meeting, and Mr.
6 O'Brien says he doesn't recall me ever telling him to go to
7 the police. I may have said to him, "If you feel you have
8 sufficient evidence maybe you should go to the police."

9 **MR. CHISHOLM:** But you don't recall saying
10 that to him?

11 **MR. JOHNSON:** No, I don't. No.

12 **MR. CHISHOLM:** And would you agree with --
13 we're left with Mr. O'Brien's evidence. At the start of
14 his answer he says you never told him to go to the police,
15 and then at the end of his answer he states he doesn't
16 recall that?

17 **MR. JOHNSON:** Yeah.

18 **MR. CHISHOLM:** Thank you, sir. Those are my
19 questions.

20 **THE COMMISSIONER:** Thank you. Maître
21 Rouleau.

22 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

23 **MR. ROULEAU:**

24 **MR. ROULEAU:** Good afternoon, sir. I
25 believe you know my name.

1 **MR. JOHNSON:** Yes.

2 **MR. ROULEAU:** And you know I act for
3 Probation and Corrections?

4 **MR. JOHNSON:** Yes.

5 **MR. ROULEAU:** I want to bring you back to
6 the very beginning of your testimony yesterday, when you
7 were asked questions about your 1982 involvement with
8 Nelson Barque.

9 **MR. JOHNSON:** Yes.

10 **MR. ROULEAU:** Am I correct in saying that
11 you did not recall anything about that incident as a Crown
12 attorney? You didn't recall being asked, for example, by
13 Mr. McMaster for an opinion? You have no memory of this?

14 **MR. JOHNSON:** My memory was refreshed by my
15 -- today, I believe; something about a telephone call. I
16 don't recall the exact -- I don't recall that now at all,
17 no.

18 **MR. ROULEAU:** Okay. And you don't recall
19 being asked for the opinion at the time? I mean your
20 memory was refreshed with the documents.

21 **MR. JOHNSON:** That's correct, yeah.

22 **MR. ROULEAU:** And the only knowledge that
23 you have is from those documents; you have nothing outside
24 the documents. Is that true?

25 **MR. JOHNSON:** That's correct.

1 **MR. ROULEAU:** All right. And Mr. Lee talked
2 a bit about that. Being in a position only to have access
3 to documents or knowledge within the document, you don't
4 remember what you thought when in 1982 -- 25 years ago when
5 you actually received the documents?

6 **MR. JOHNSON:** What I thought 25 -- no, I
7 don't, sir. I'm sorry.

8 **MR. ROULEAU:** You have no idea at all?

9 **MR. JOHNSON:** No.

10 **MR. ROULEAU:** So would it be fair to say,
11 sir, that it comes as an afterthought that you now say that
12 you had in your head that they should -- that Corrections
13 should go to the police?

14 **MR. JOHNSON:** As an afterthought?

15 **MR. ROULEAU:** Yeah. I mean now you have
16 this thought but who says if it even entered your mind in
17 1982? That's what I'm suggesting to you.

18 **MR. JOHNSON:** That's a possibility.

19 **MR. ROULEAU:** You would agree with that?

20 **MR. JOHNSON:** That's a possibility, yeah.

21 **MR. ROULEAU:** Okay. And the documents you
22 looked at then certainly don't express anything about going
23 to the police.

24 **MR. JOHNSON:** You mean the letter that I
25 wrote?

1 MR. ROULEAU: Yeah.

2 MR. JOHNSON: At that point I don't believe
3 there was any -- there wasn't any mention of the police in
4 that document.

5 MR. ROULEAU: Okay.

6 How long had you been a Crown attorney in
7 1982?

8 MR. JOHNSON: Started in 1968 in Toronto.
9 In '70 I was in Sault Ste. Marie till '72. In May of '72 I
10 came to Cornwall. So '72 to '82, 10 years. No, sorry, 12
11 years.

12 MR. ROULEAU: Twelve years.

13 MR. JOHNSON: Fourteen years.

14 MR. ROULEAU: Fourteen years?

15 MR. JOHNSON: Yeah.

16 MR. ROULEAU: And would you say that that's
17 a lot of experience as a Crown attorney?

18 MR. JOHNSON: I did my fair share of
19 prosecutions, yeah.

20 MR. ROULEAU: Okay, and you've looked at
21 investigation reports before, Crown briefs, a lot of them?

22 MR. JOHNSON: Yeah, probably. As I said --
23 I think I said yesterday I probably looked at over 100,000
24 Crown briefs.

25 MR. ROULEAU: Okay.

1 Now, Mr. Lee also suggested to you that you
2 were involved -- or you were influenced by the fact that
3 Corrections may -- it was in their best interest to not see
4 charges, or see the matter go away. Remember Mr. Lee asked
5 you questions about that?

6 **MR. JOHNSON:** I don't remember the exact
7 wording of the questions but ---

8 **MR. ROULEAU:** Okay.

9 **MR. JOHNSON:** --- I have a -- yeah.

10 **MR. ROULEAU:** All right.

11 I take exception to that in the sense that
12 we don't ---

13 **THE COMMISSIONER:** Whoa, whoa.

14 **MR. ROULEAU:** We don't admit that. But for
15 the sake of argument ---

16 **THE COMMISSIONER:** No, no, no, no. Just a
17 minute. That's an argument.

18 **MR. ROULEAU:** Okay.

19 **THE COMMISSIONER:** And I don't want
20 argument.

21 **MR. ROULEAU:** All right.

22 **THE COMMISSIONER:** You can do that in the
23 submissions.

24 **MR. ROULEAU:** All right.

25 **THE COMMISSIONER:** So phrase it another way.

1 **MR. ROULEAU:** For the sake of argument,
2 okay, if it's the case ---

3 **THE COMMISSIONER:** No, no.

4 **MR. ROULEAU:** No, if it's the case.

5 **THE COMMISSIONER:** If what's the case?

6 **MR. ROULEAU:** Okay.

7 You're certainly not suggesting, sir, that
8 as a Crown attorney of 14 years experience you would have
9 been influenced in your opinion by what the Ministry may or
10 not want in terms of charges being laid? Would you agree
11 with that?

12 **MR. JOHNSON:** What I would agree with, sir,
13 is that the Ministry had conducted an internal
14 investigation. What other evidence I had, and I assessed
15 it as a Crown attorney and with the prospect of conviction,
16 the information I did have, I suggested at that time there
17 was -- I would have suggested that there was insufficient
18 evidence to prosecute with. And the letter does say, of
19 course, that Mr. Barque had resigned from the operation
20 et cetera.

21 **MR. ROULEAU:** Okay, but your opinion in
22 terms of probability of conviction is not influenced by the
23 employer of a possible suspect?

24 **MR. JOHNSON:** I hope not.

25 **MR. ROULEAU:** That's what -- that's my

1 point. All right.

2 You don't recall anything from Corrections
3 being wrong, or any suspicion of wrongdoing when you dealt
4 with this matter in '82, do you?

5 **MR. JOHNSON:** Well, as I say, the issues
6 that I had was with respect to the evidence of the
7 witnesses, and the issue that I had obviously was the
8 statement supposedly taken from Mr. Barque as to its
9 admissibility there.

10 **MR. ROULEAU:** Okay. But nothing -- you
11 didn't have the feeling -- or when it comes back to you
12 now, you didn't have the feeling that Corrections was
13 trying to hide anything or anything like that?

14 **MR. JOHNSON:** I don't think they were trying
15 to hide anything because they keenly wanted to speak to me.
16 So I don't think they were hide anything.

17 **MR. ROULEAU:** All right.

18 There's one more issue I want to raise with
19 you. It's -- bring you back to '84-'85. And I don't know
20 if you will remember that we've heard evidence here from a
21 probation officer by the name of Carole Cardinal. I don't
22 know if you know her.

23 **MR. JOHNSON:** Yeah, I know who she is.

24 **MR. ROULEAU:** Okay. And she testified that
25 she was a member of the Child Abuse Prevention Council in

1 '84-'85. Does that ring a bell?

2 MR. JOHNSON: Child Abuse Council?

3 MR. ROULEAU: Child Abuse Prevention
4 Council.

5 MR. JOHNSON: I'm sorry, no, that doesn't.

6 MR. ROULEAU: And she also explained that
7 you as a Crown would have been part of this.

8 MR. JOHNSON: Really?

9 MR. ROULEAU: Does that ring a bell?

10 MR. JOHNSON: Is this an organization?

11 MR. ROULEAU: Yeah, she -- maybe we can go
12 to the transcript, Mr. Commissioner. It's Volume 179.

13 THE COMMISSIONER: I think it was comprised
14 of a bunch of volunteers who were looking at the issue of
15 child abuse.

16 MR. JOHNSON: Oh, I see.

17 THE COMMISSIONER: So ---

18 MR. ROULEAU: That's it. And what
19 Ms. Cardinal explained -- and it's page 23.

20 THE COMMISSIONER: Twenty-three (23)?

21 MR. ROULEAU: Yeah. She explains ---

22 THE COMMISSIONER: It's page 22, right.
23 M'hm.

24 MR. ROULEAU: Yeah, 22 at the bottom.

25 Explains she was a member of the council and explaining

1 that at some point at the beginning Nelson Barque shows up
2 because he was at the time part of L'Équipe psycho-sociale.

3 **MR. JOHNSON:** Yeah, okay.

4 **MR. ROULEAU:** That rings a bell?

5 She also explains that -- and that's page 24
6 at line 60 -- Mr. Barque had volunteered himself to
7 distribute pamphlets on child abuse to the public, and she
8 explained that she took exception to that. That's line 18.
9 Monsieur Ruel then asked Ms. Cardinal, "Did you do anything
10 about that?" and she said she did. She was not happy with
11 the process and she went to you, Crown Johnson, although
12 she mentions on the top of page 25 that you may not have
13 been present at the meeting when Nelson Barque showed up,
14 but she remembered going to you.

15 **THE COMMISSIONER:** Where do you see that?

16 **MR. ROULEAU:** It's page 24.

17 **THE COMMISSIONER:** Yes.

18 **MR. ROULEAU:** Line 21.

19 **THE COMMISSIONER:** No, I understand that.

20 I'm there so:

21 "I did. I was not happy with that
22 process, Ms. Cardinal. I don't recall
23 even briefly speaking with him."

24 Then she says:

25 "The Crown attorney, Mr. Johnson, was

1 present as well."

2 So where do we have a referral that she
3 spoke to Mr. Johnson?

4 **MR. ROULEAU:** Line 628 from page 25.

5 **THE COMMISSIONER:** Oh, 25, okay.

6 **MR. ROULEAU:** Yeah.

7 **MR. JOHNSON:** I'm sorry, what page?

8 **THE COMMISSIONER:** Twenty-five (25).

9 **MR. ROULEAU:** Twenty-five (25).

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **THE COMMISSIONER:** Okay. So you should read
12 the whole page 25, sir.

13 **MR. JOHNSON:** I did, sir.

14 **MR. ROULEAU:** Okay. So she does explain
15 that she went to you to tell you about the situation. Now,
16 do you remember this meeting with Carole Cardinal?

17 **MR. JOHNSON:** I don't believe I was even at
18 the meeting because she says she doesn't recall if I was
19 there.

20 **MR. ROULEAU:** No, I understand. She talks
21 about -- the way I understand this, Mr. Johnson, is that
22 she says that the meeting where Nelson Barque shows up, you
23 may not have been there. But later on, she goes to you, as
24 explained in page 25, and tells you about Nelson Barque
25 wanting to distribute pamphlets about child abuse.

1 MR. JOHNSON: Yeah.

2 MR. ROULEAU: My question to you is do you
3 remember talking to Carole Cardinal about this?

4 MR. JOHNSON: No, I don't, sir. I'm sorry.

5 MR. ROULEAU: Okay. Do you remember being
6 on this council?

7 MR. JOHNSON: Not actually, I don't remember
8 being on that.

9 MR. ROULEAU: Okay.

10 MR. JOHNSON: I believe that there were
11 numerous things going on and they would put your name on
12 these councils -- on these meetings or these associations
13 but this specific thing, I don't recall.

14 MR. ROULEAU: Okay. Do you have any reason
15 to doubt what Carole Cardinal has said?

16 MR. JOHNSON: Oh, no, I wouldn't.

17 MR. ROULEAU: Thank you, sir.

18 THE COMMISSIONER: Thank you.

19 So Mr. Manderville?

20 MR. MANDERVILLE: Good afternoon, Mr.
21 Commissioner.

22 --- CROSS-EXAMINATION BY/COURTE-INTERROGATOIRE PAR MR.

23 MANDERVILLE:

24 MR. MANDERVILLE: Good afternoon, Mr.
25 Johnson.

1 **MR. JOHNSON:** Good afternoon.

2 **MR. MANDERVILLE:** I introduced myself to you
3 yesterday. I'm Peter Manderville. I'm counsel for the
4 Cornwall police.

5 Now, you've told us, sir, that you were a
6 Crown in Cornwall from '72 to '91; correct?

7 **MR. JOHNSON:** That's correct.

8 **MR. MANDERVILLE:** And I take it as a Crown,
9 you would provide legal advice to the police officers, be
10 it Cornwall police or OPP fairly frequently?

11 **MR. JOHNSON:** Not on a regular basis, day
12 in, day out, no. But when they did approach me either
13 spontaneously or on an ad hoc basis, I would talk to them,
14 yeah.

15 **MR. MANDERVILLE:** And I take it sometimes
16 the advice would be fairly formal but more frequently, it
17 would be rather informal?

18 **MR. JOHNSON:** Very informal.

19 **MR. MANDERVILLE:** On the fly, perhaps
20 verbal?

21 **MR. JOHNSON:** Very much so.

22 **MR. MANDERVILLE:** And I understand that as a
23 Crown, you don't direct, at least pre-charge, how an
24 investigation is to be conducted in any way, do you?

25 **MR. JOHNSON:** No, sir. No, sir, you

1 wouldn't.

2 **MR. MANDERVILLE:** Post-charge, it might
3 occur to you that I may need additional evidence and you'd
4 direct an officer to do some more digging or investigating;
5 correct?

6 **MR. JOHNSON:** That's correct.

7 **MR. MANDERVILLE:** But, again, how they
8 decide to do an investigation is up to them?

9 **MR. JOHNSON:** No, that's correct.

10 **MR. MANDERVILLE:** Now, we've talked a little
11 bit about the concept of reasonable and probable grounds.
12 And I'd take it you'd agree with me that in law that
13 concept has both a subjective component and an objective
14 component?

15 **MR. JOHNSON:** That's correct.

16 **MR. MANDERVILLE:** And no one but the police
17 officer himself or herself conducting the investigation is
18 able to determine the subjective component of reasonable
19 and probable grounds; correct?

20 **MR. JOHNSON:** The investigator?

21 **MR. MANDERVILLE:** Correct.

22 **MR. JOHNSON:** Would have subjective grounds;
23 that's correct.

24 **MR. MANDERVILLE:** And it's only that
25 investigator who is the one who is going to swear the

1 information saying that they are attesting that they
2 personally believe they have sufficient grounds to lay a
3 charge?

4 **MR. JOHNSON:** That's correct, yeah. That's
5 the way it should be, that's correct, yeah.

6 **MR. MANDERVILLE:** And I take it, it's not
7 for the Crown or anyone else to second guess the officer's
8 subjective belief?

9 **MR. JOHNSON:** Well, subjective belief is
10 pretty hard to get around, I can tell you; that's for sure,
11 yeah.

12 **MR. MANDERVILLE:** You're agreeing with me?

13 **MR. JOHNSON:** Yeah, yeah.

14 **MR. MANDERVILLE:** Conversely, we heard from
15 Murray MacDonald, and there are letters as exhibits from
16 other Crowns to the effect that the objective component of
17 reasonable and probable grounds can be reviewed by a Crown
18 or, indeed, by a court on occasion to determine the
19 reasonableness of the RP&G; correct?

20 **MR. JOHNSON:** Yes, that's correct.

21 **MR. MANDERVILLE:** I want to turn your
22 attention briefly to the Lalonde investigation back in
23 1989. And Officer Malloy testified here that he met you on
24 two occasions during the course of his investigation
25 involving a complaint by C-57.

1 **MR. JOHNSON:** Okay.

2 **MR. MANDERVILLE:** The first occasion
3 according to Officer Malloy was in January 1989, 20 years
4 ago now, very shortly after he began the investigation.
5 And this was his first historical sexual assault
6 investigation. The complaint was made in '89 but it
7 concerned events that happened in 1981 and he sought your
8 advice on the applicable law.

9 And I take it that sort of request and
10 whatever advice you gave, that would be consistent with
11 your role as Crown attorney; wouldn't it?

12 **MR. JOHNSON:** With respect to the law?

13 **MR. MANDERVILLE:** Yes.

14 **MR. JOHNSON:** Yeah.

15 **MR. MANDERVILLE:** And he also indicated he
16 met with you a second time during which, among other
17 things, he sought your advice concerning a search warrant.
18 And you talked to us a little earlier today about
19 circumstances in which you would provide advice about
20 search warrants. What sort of advice would you provide
21 officers when they came to you concerning search warrants?

22 **MR. JOHNSON:** Well, there has to be the
23 preamble to a search warrant as to the reason for the
24 search warrant. There has to be grounds for the belief of
25 issuing the search warrant. Whatever physical evidence may

1 be available to them and what they are looking for in the
2 search warrant. That it can't be a generalized search
3 warrant. That they have to attest to the truth of the
4 contents therein; that type of thing.

5 **MR. MANDERVILLE:** So in essence, and correct
6 me if I'm wrong, if they had sufficient information to go
7 forward and seek a search warrant in your view?

8 **MR. JOHNSON:** Yeah.

9 **MR. MANDERVILLE:** Changing the subject
10 again, I want to talk to you very briefly about the Landry,
11 Jr. investigation.

12 And yesterday, Ms. Jones put to you excerpts
13 of an internal Cornwall Police Service report prepared by
14 Staff Sergeant Derochie in 1999 which, among other things,
15 made reference to a complaint made in 1985 concerning Mr.
16 Landry, Jr.

17 Do you recall that discussion yesterday?

18 **MR. JOHNSON:** Yeah.

19 **MR. MANDERVILLE:** And in the report, Staff
20 Sergeant Derochie made reference to the notion that Officer
21 Ron Lefebvre may have consulted with you in 1985 concerning
22 the complaint at that time involving Mr. Landry, Jr. and
23 you couldn't recall it. You couldn't recall being
24 consulted.

25 **MR. JOHNSON:** Okay.

1 **MR. MANDERVILLE:** And we've heard evidence
2 from former Chief Shaver who testified here to the effect
3 that, in fact, it was Alan Ain who was consulted with in
4 1985.

5 So my question is, do you recall ever
6 speaking with Mr. Ain in or about 1985 concerning a
7 complaint involving Mr. Landry, Jr.?

8 **MR. JOHNSON:** No.

9 **MR. MANDERVILLE:** I want to talk to you a
10 little bit about the Jean-Luc Leblanc investigation in
11 1986.

12 Plea bargains are a very common process in
13 criminal proceedings; correct?

14 **MR. JOHNSON:** Well, it does help the system
15 move along, yeah.

16 **MR. MANDERVILLE:** And attempts to negotiate
17 a plea happen in virtually ever criminal proceeding; don't
18 they?

19 **MR. JOHNSON:** They do.

20 **MR. MANDERVILLE:** And we looked yesterday at
21 an exchange of correspondence between yourself and Mr.
22 Donihee, counsel for the accused, Mr. Leblanc.

23 **MR. JOHNSON:** That's correct, yeah.

24 **MR. MANDERVILLE:** And your negotiations as
25 Crown with defence counsel and what you proposed for a plea

1 and/or a possible sentence submission were your prerogative
2 or in your discretion as Crown; weren't they?

3 **MR. JOHNSON:** That's correct.

4 **MR. MANDERVILLE:** Officer Payment, who
5 conducted the Leblanc investigation, testified here that he
6 was not aware of the plea bargain and the agreement to drop
7 one set of charges in return for a plea on the other two
8 until after the bargain had been struck, until after the
9 fact.

10 **MR. JOHNSON:** Okay.

11 **MR. MANDERVILLE:** That was his evidence
12 here. And I'm going to suggest to you that back in 1986,
13 that that would not be uncommon for -- that is, neither the
14 investigating officer nor the alleged victim would
15 necessarily be consulted prior to a plea bargain being
16 reached?

17 **MR. JOHNSON:** When I was -- and if you were
18 plea bargaining situations what you would do is you would
19 get the position from the defence as to what they were
20 offering you. If you didn't agree with that, you would
21 counteroffer with regards to another situation. And it was
22 my general practice to confer with the investigating
23 officer to say, "Okay, this is what's been put on the
24 table. What's your position in this matter?"

25 **MR. MANDERVILLE:** And do you believe that

1 was unfailingly your practice 23 years ago?

2 **MR. JOHNSON:** I believe it was, sir,
3 especially in situations, I mean I'm not talking like
4 situations of minors -- of minor situations, such as a
5 cause disturbance or something like that, but there were
6 other situations of -- of some note.

7 Yes, I believe that was my practice and I
8 believe was the practice of whoever the Crown
9 attorney -- other Crown attorneys were in the office.

10 **MR. MANDERVILLE:** Do you recall consulting
11 with Mr. -- or Officer Payment, about this particular plea
12 agreement?

13 **MR. JOHNSON:** I don't recall consulting with
14 him about it, but, as I say, as a general practice, I
15 would -- I would speak to the investigating officer and
16 say, "Look it, this is what's on the table. What do you
17 think?"

18 **MR. MANDERVILLE:** And if he testified, as he
19 did, and I can take you to the transcript reference if we
20 need to ---

21 **MR. JOHNSON:** I'm sure.

22 **MR. MANDERVILLE:** --- he did testify that he
23 only learned about it after the fact. Is it possible he's
24 mistaken, or is it possible that on that occasion you
25 simply didn't get around to speaking with him?

1 **MR. JOHNSON:** I -- you know, I don't know,
2 sir, whether or not I prosecuted Mr. Leblanc. And whoever
3 the Crown attorney was that -- if it wasn't me, I don't
4 know. He may have not conferred with Mr. Payment; I don't
5 know.

6 **MR. MANDERVILLE:** So, in 1986 then, you
7 believe it was your practice to have done so, but you're
8 not certain as to whether or not there was a policy, per
9 se?

10 **MR. JOHNSON:** That's correct, sir.

11 **MR. MANDERVILLE:** And I do have questions
12 about the Silmsler matter, but I'll hold them down.

13 Thank you very much, Mr. Johnson.

14 **THE COMMISSIONER:** All right.

15 I'm sorry, Ms. Levesque, are you still -- no
16 questions?

17 **MS. LEVESQUE:** No questions.

18 **THE COMMISSIONER:** Thank you.

19 Mr. Kozloff?

20 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

21 **MR. KOZLOFF:**

22 **MR. KOZLOFF:** Good afternoon, sir. Good
23 afternoon, Mr. Johnson.

24 **MR. JOHNSON:** Good afternoon.

25 **MR. KOZLOFF:** We know each other? For the

1 record ---

2 MR. JOHNSON: Long time.

3 MR. KOZLOFF: For the record -- yes. For
4 the record, I represent the Ontario Provincial Police.

5 I have a couple of discreet areas that I
6 wanted to address with you.

7 The first is with respect to an answer you
8 gave yesterday at the outset about training. You testified
9 that your recollection was that the only training available
10 to Crown attorneys, back in your day, was the annual
11 conference and I'm going to suggest to you there were Crown
12 schools.

13 MR. JOHNSON: You're correct. That's -- I
14 neglected to mention that; that's right.

15 MR. KOZLOFF: And they were held on an
16 annual basis, in the summer, at ---

17 MR. JOHNSON: Usually in London, Ontario.

18 MR. KOZLOFF: --- the University of Western
19 Ontario.

20 MR. JOHNSON: M'hm.

21 MR. KOZLOFF: In fairness, though, there was
22 no specific training offered in historic sexual assault
23 prosecutions?

24 MR. JOHNSON: No. As I recall, Mr. Kozloff,
25 the training that we would -- like, the instruction that we

1 would get in the seminars that were held, were based mostly
2 on new amendments to the *Criminal Code*, matters of
3 procedure and evidence; that's basically what it was
4 centred around.

5 MR. KOZLOFF: Right. In addition to those
6 forms of training, I'm going to suggest to you that
7 somebody like you, as a senior Crown, would have been
8 available to your younger Crown attorneys, in terms of
9 advice, and training them to be courtroom lawyers?

10 MR. JOHNSON: That's correct, sir.

11 MR. KOZLOFF: All right. So those were
12 basically the three areas of training available in the '70s
13 and the '80s?

14 MR. JOHNSON: That's correct.

15 MR. KOZLOFF: All right. The other area I
16 wanted to address was something that came up today.

17 You testified -- when you were being asked
18 about the role of the Crown, you referred to the case of
19 Boucher. You suggested that it was a 1952 case.

20 MR. JOHNSON: Well, I might have been wrong
21 on the ---

22 MR. KOZLOFF: You're wrong.

23 MR. JOHNSON: Okay.

24 MR. KOZLOFF: It's a 1951, sir ---

25 MR. JOHNSON: Okay.

1 **MR. KOZLOFF:** --- Supreme Court of Canada,
2 Supreme Court Reports at 265, and, in fact, the judgment
3 was released on December the 18th, 1950.

4 I want to read something to you, and I want
5 to ask you whether it informed your conduct as a Crown
6 attorney ---

7 **MR. JOHNSON:** Okay.

8 **MR. KOZLOFF:** --- from 1968 to 1991.

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

10 **MR. KOZLOFF:** Yes, sir.

11 **THE COMMISSIONER:** If it was a 1951 case,
12 and it was released in 1950 ---

13 **MR. KOZLOFF:** No, no -- it was a 1950 case
14 released in 1951.

15 **THE COMMISSIONER:** Oh, okay.

16 **MR. MANDERVILLE:** I'm sorry -- Mr. Johnson
17 may have been referring to the Privy Council issue.

18 **MR. KOZLOFF:** He's wrong. It didn't go to
19 the Privy Council, and, in fact, he was referring to
20 Mr. Justice Rand's quotation on the role of the Crown.

21 Were you not?

22 **MR. JOHNSON:** That's correct, sir.

23 **MR. KOZLOFF:** All right.

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

25 **MR. KOZLOFF:** And I think it's instructive,

1 sir, to read it into the record. You sort of paraphrased
2 it.

3 "It cannot be over-emphasized that the
4 purpose of a criminal prosecution is not to
5 obtain a conviction, it is to lay before a
6 jury what the Crown considers to be credible
7 evidence, relevant to what is alleged to be
8 a crime.

9 Counsel have a duty to see that all
10 available legal proof of the facts is
11 presented. It should be done firmly and
12 pressed to its legitimate strength, but it
13 must also be done fairly.

14 The role of the prosecution excludes any
15 notion of winning or losing. His function
16 is a matter of public duty, than which in
17 civil life there can be none charged with
18 greater personal responsibility.

19 It is to be efficiently performed with an
20 ingrained sense of the dignity, the
21 seriousness, and the justice of judicial
22 proceedings."

23 Is that the quote that you were referring
24 to, sir?

25 **MR. JOHNSON:** Correct, that's -- that's the

1 -- Mr. -- my first boss, Mr. Henry Bolt (phonetic), made
2 sure I read that case before I even started the job.

3 **MR. KOZLOFF:** I'm going to suggest to you,
4 sir, that that was the guiding post for a Crown attorney
5 conducting his business, in the time that you were a Crown,
6 from 1968 to 1991.

7 **MR. JOHNSON:** And I hope it still is.

8 **MR. KOZLOFF:** And I was just going to
9 suggest to you that sir that nothing has really changed?

10 **MR. JOHNSON:** No, sir.

11 **MR. KOZLOFF:** All right. On a lighter note,
12 Mr. Johnson, I convey to you the regards of some of your
13 old friends in Toronto who wanted me to tell you that they
14 always loved your work on Miami Vice.

15 **(LAUGHTER/RIRES)**

16 **MR. JOHNSON:** You can tell them I bought
17 socks though.

18 **THE COMMISSIONER:** From past Crown attorney
19 to present Crown attorney.

20 Oh, I'm sorry, Mr. Carroll, of course ---

21 **MR. CARROLL:** (Inaudible).

22 **THE COMMISSIONER:** --- thank you. Yes, I
23 know, I know, I know.

24 What questions would you have of this
25 witness, sir?

1 **MR. SCHARBACH:** Just a few, and hopefully
2 they'll be quick.

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

4 **MR. SCHARBACH:**

5 **MR. SCHARBACH:** I wanted to first talk to
6 you about staffing and resources, during the time that you
7 were a Crown attorney, Mr. Johnson.

8 Now, we've heard that you were the Crown
9 from '72 to '91. Officially, you were the Crown from '74
10 to '91 ---

11 **MR. JOHNSON:** That's correct.

12 **MR. SCHARBACH:** --- is that correct?

13 **MR. JOHNSON:** Yeah.

14 **MR. SCHARBACH:** And you had no assistants,
15 no assistant Crowns, up until 1977; is that right?

16 **MR. JOHNSON:** No -- yes, I only ---

17 **THE COMMISSIONER:** No, full-time assistant
18 Crowns? Per diem Crowns though?

19 **MR. JOHNSON:** Per diem Crowns.

20 **MR. SCHARBACH:** I was going to mention that,
21 but you had access to per diem Crowns as well?

22 **MR. JOHNSON:** That's correct.

23 **MR. SCHARBACH:** Those per diem Crowns would
24 be supervised by you ---

25 **MR. JOHNSON:** That's correct.

1 **MR. SCHARBACH:** --- I take it?

2 So you were, basically, a one-man operation,
3 with the assistance of per diem Crowns from '72 up until
4 late '76 or early '77 ---

5 **MR. JOHNSON:** That's correct.

6 **MR. SCHARBACH:** --- is that correct? Okay.
7 Now, during that period of time you would have done the
8 court work yourself? I mean, appearing in court?

9 **MR. JOHNSON:** Yes, I did, sir.

10 **MR. SCHARBACH:** The trials, the sentences,
11 the bail hearings, and so on?

12 **MR. JOHNSON:** I was in court five days a
13 week.

14 In those days, we were running -- one of the
15 courts that were running was the Provincial Court. We had
16 courts in Morrisburg, Alexandria and Winchester.

17 We also had the Traffic Court that we were
18 running, and when -- I would try and get basically to the
19 -- to the main court in Cornwall, and I would use per diem
20 Crowns in any other areas.

21 **MR. SCHARBACH:** Okay. So in addition to
22 appearing in court, you would have provided advice to the
23 police ---

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

25 **MR. SCHARBACH:** --- and, apparently, others

1 at that point? You were providing advice with respect to
2 Highway Traffic matters?

3 MR. JOHNSON: That's correct.

4 MR. SCHARBACH: You were appearing on behalf
5 of ---

6 MR. JOHNSON: I used to appear in Traffic
7 Court, yeah.

8 MR. SCHARBACH: You were prosecuting other
9 provincial offences, Ministry of Natural Resources ---

10 MR. JOHNSON: Natural Resources, M.T.O.
11 matters, yeah.

12 MR. SCHARBACH: Okay. And you were also
13 supervising the per diems?

14 MR. JOHNSON: That's correct.

15 MR. SCHARBACH: And you had the office
16 administration to look after as well ---

17 MR. JOHNSON: That's correct.

18 MR. SCHARBACH: --- is that correct?
19 In 1977, you got two assistants?

20 MR. JOHNSON: Yes, Mr. DeMarco and Mr. Ain.

21 MR. SCHARBACH: And so there were three
22 Crowns in your office, from 1977, and was that the case up
23 until 1991?

24 MR. JOHNSON: To the best of my knowledge, I
25 only had two assistants during that period of time.

1 **MR. SCHARBACH:** Okay. Now, I know you're
2 not a Crown now, you haven't been for a while, but you have
3 a lot of experience in the criminal justice administration
4 system here in Cornwall.

5 Compared to the set-up as it is now, would
6 you say the workload was greater, smaller, the same?

7 **MR. JOHNSON:** I know that we used to get
8 statistics in from the Ministry of the Attorney General as
9 to the amount of cases that would go through the Cornwall
10 system, the three united counties, Stormont, Dundas and
11 Glengarry.

12 That would include the Traffic Court, it
13 would include the Criminal Court, as well as the Superior
14 Courts, and in those days there was a County Court as well
15 as the Supreme Court of Ontario, and we would get these
16 statistics in and we were averaging somewhere around 3,500
17 to 4,500 cases a year.

18 **MR. SCHARBACH:** Okay.

19 **MR. JOHNSON:** That's in total, a combination
20 of all ---

21 **MR. SCHARBACH:** Okay.

22 **MR. JOHNSON:** --- all matters.

23 **MR. SCHARBACH:** And you touched on this
24 briefly, but I am hoping you could elaborate a little bit:

25 At the time that you were a Crown, you were

1 providing Crown services in three or four different
2 locations within the area, is that correct?

3 **MR. JOHNSON:** In this particular area, yeah,
4 plus we were doing -- I was doing outside prosecutions,
5 too.

6 **MR. SCHARBACH:** And this will be Morrisburg,
7 Alexandria ---

8 **MR. JOHNSON:** No, this would be
9 jurisdictions such as Ottawa, Brockville, where the other
10 Crowns would have conflicts of interest or prosecuting
11 police officers and stuff like that.

12 **MR. SCHARBACH:** Okay. And how does that --
13 if you know -- if you don't know, that's fine -- but how
14 does that compare to the geographic area that the current
15 Crown's office provides prosecution services to?

16 **MR. JOHNSON:** I don't think the population
17 has gotten that much greater. When I was here the
18 population was about 120,000 people for the three counties,
19 and I believe it's pretty well static in those
20 circumstances.

21 **MR. SCHARBACH:** Okay.

22 I just want to move very briefly to
23 training. You mentioned that there was the Crown school
24 that took place every summer.

25 **MR. JOHNSON:** That's right.

1 **MR. SCHARBACH:** And that was a five-day
2 session. Is that correct?

3 **MR. JOHNSON:** That's correct.

4 **MR. SCHARBACH:** And Crowns were invited or
5 it was made available to Crowns to stay at the place where
6 the training was given, usually at the University of
7 Western Ontario. Is that correct?

8 **MR. JOHNSON:** That's correct.

9 **MR. SCHARBACH:** And lectures, seminars,
10 discussions would take place.

11 **MR. JOHNSON:** That's correct.

12 **MR. SCHARBACH:** And it was designed to give
13 Crowns education on legislative changes, changes in
14 jurisprudence?

15 **MR. JOHNSON:** That's correct. And I think
16 there were three levels to the -- you eventually could have
17 gotten to three levels. To start there was Crown School 1,
18 then it would be Crown School 2. Then they brought in a
19 Crown School 3 but that wasn't till later on in the system.

20 **MR. SCHARBACH:** Within your office, during
21 your years as Crown, was there a budget for educational
22 sessions?

23 **MR. JOHNSON:** No. What it was, you had to
24 apply -- like I applied a couple of times to go to various
25 conferences across Canada. I was -- I applied for and was

1 granted, I believe, in 1976, the opportunity to attend the
2 University of -- the Northwestern University Law School.
3 Myself and about four or five other Crowns went down to
4 that. But that was strictly informative sessions with
5 regard to that.

6 **MR. SCHARBACH:** Okay.

7 Now I want to ask you a few questions
8 concerning the relationship between Crown and police during
9 the years that you were a Crown.

10 You mentioned, I think -- and Mr.
11 Manderville brought you to it but I want you to elaborate a
12 little bit -- your role as you saw it at that time was
13 basically to prosecute the cases -- prosecute the charges
14 that were brought by police and to provide them with
15 advice. Is that correct?

16 **MR. JOHNSON:** That's correct.

17 **MR. SCHARBACH:** And as Mr. Manderville said,
18 the police need reasonable and probable grounds and the
19 courts have said that there's an objective and a -- and an
20 objective element to that. And your role, if I could put
21 it this way, would be sometimes to help them with the
22 objective element. Is that correct?

23 **MR. JOHNSON:** On evidential matters only,
24 yeah.

25 **MR. SCHARBACH:** Okay. And so that would

1 involve things like explaining to them the elements of the
2 offence?

3 **MR. JOHNSON:** That's correct.

4 **MR. SCHARBACH:** Admissibility of evidence?

5 **MR. JOHNSON:** That's correct.

6 **MR. SCHARBACH:** The elements of a search
7 warrant, for example?

8 **MR. JOHNSON:** Yeah.

9 **MR. SCHARBACH:** And there's probably a host
10 of others that you can think of that I can't.

11 **MR. JOHNSON:** Yeah.

12 **MR. SCHARBACH:** Okay.

13 And you've already mentioned this. You
14 didn't lay the charge. The police laid the charge. You
15 didn't do the investigations. The police did the
16 investigations.

17 **MR. JOHNSON:** No, sir, I didn't.

18 **MR. SCHARBACH:** And with respect to
19 directing the investigations, that again was not part of
20 your function. Is that correct?

21 **MR. JOHNSON:** It would be my position,
22 basically, if I directed an investigation, I would then
23 become a witness in the situation, and I certainly couldn't
24 prosecute in those cases.

25 **MR. SCHARBACH:** And if the police, you felt,

1 needed direction with respect to where their investigation
2 should go -- and I'm speaking now of who they should
3 interview, investigative leads they should follow up,
4 documents that they should get, whether they should
5 consider a search warrant. Who would they go to for that
6 kind of resource?

7 **MR. JOHNSON:** They could well come to a
8 Crown attorney and ask for that information.

9 **MR. SCHARBACH:** Okay. Would it be more
10 appropriate that they go to the supervisors within the
11 police force?

12 **MR. JOHNSON:** That would be the first
13 choice, because the police of course had more opportunity
14 and better resources in the circumstances, particularly
15 with regards to their knowledge of the situation. I always
16 felt that a police officer would only come to me if he
17 wasn't satisfied or she wasn't satisfied with what she was
18 getting else -- he or she was getting elsewhere. But
19 in the majority of the cases, I know when I was down here,
20 they had some excellent officers when I first came down
21 here, in the detectives squad, that were very knowledgeable
22 in many aspects of the law that I had a great admiration
23 for.

24 **MR. SCHARBACH:** Okay. Now, Mr. Manderville
25 touched on this but again I was hoping you'd elaborate a

1 little bit. That advice that would be sought from the
2 police officers, it could be done -- it was done on a more
3 formal basis and often on a less formal basis. Is that
4 correct?

5 MR. JOHNSON: It was on an informal basis
6 you said?

7 MR. SCHARBACH: Well, it was done
8 occasionally on a formal basis and it was done sometimes on
9 an informal basis.

10 MR. JOHNSON: Majority of time, it was
11 informally done.

12 MR. SCHARBACH: And by "informal basis" what
13 I mean is an investigative brief might have been prepared,
14 an appointment set up, where the police officer and you
15 could sit down and consider this. I see you're smiling.
16 I'm getting the impression it didn't happen very often.
17 Was that the case?

18 MR. JOHNSON: It never happened very often
19 that there was an investigative brief presented. It was
20 usually a series of little scribblings or notes and that
21 that the officer would tell you what he felt that was
22 important and leave it at that, and that's the information
23 you got.

24 MR. SCHARBACH: Did that change over the
25 years from 1972 ---

1 **MR. JOHNSON:** Yes, it has.

2 **MR. SCHARBACH:** --- to 1991? Did it get
3 more formal over the years?

4 **MR. JOHNSON:** It has gotten more formal. I
5 can tell you that. I mean I've -- I mean I envy now the
6 Crown attorneys, the way they're working now with respect
7 to the information they're provided with by the police
8 officers. I mean they do have full Crown briefs. They do
9 have -- they obviously have more assistance than I had.
10 They have I think at least seven or eight now in the
11 Crown's office in Cornwall.

12 They're all designated cases. They appoint
13 -- you know, "This case is yours." Whereas when I was
14 there, you walked into the room; that was your case, and
15 that's what you had to deal with. There was -- you
16 basically hadn't much of an opportunity to prepare
17 beforehand either.

18 **MR. SCHARBACH:** So it was very much the
19 exception, rather than the rule, that you would get a Crown
20 brief that would contain a synopsis, for example, a will
21 say, copies of documents that had been collected during the
22 investigation?

23 **MR. JOHNSON:** It would certainly be the
24 exception to the rule. I'll tell you that.

25 **MR. SCHARBACH:** Okay. So the more regular

1 occasion would be the police officer would catch up with
2 you, maybe in the courthouse hallway, before or after a
3 case and ask you his or her questions?

4 **MR. JOHNSON:** Yeah, that's correct.

5 **MR. SCHARBACH:** Okay.

6 **MR. JOHNSON:** Because when I was the Crown
7 attorney, we were operating out of 341 Pitt Street where
8 the police station was downstairs and the courtroom was up
9 on the fourth floor, and we would do the prosecutions up
10 there. We had a very tiny room up there where I would sit
11 in there with a combination of defence lawyers, police
12 officers, the court officer, sometimes the court staff, and
13 it was pretty tightly knit in there and discussions would
14 be going back and forth. And that's the type of transfer
15 of information that was given.

16 **MR. SCHARBACH:** So the fact situation would
17 be described to you verbally by the police officer in most
18 cases?

19 **MR. JOHNSON:** Yeah.

20 **MR. SCHARBACH:** And you would give your
21 advice verbally?

22 **MR. JOHNSON:** Yeah. Basically, yeah.

23 **MR. SCHARBACH:** And I get the impression
24 that for the most part, you wouldn't take notes of those
25 meetings.

1 **MR. JOHNSON:** No, I definitely didn't.

2 That's true. I never did.

3 **MR. SCHARBACH:** But the police officers may
4 or may not take notes?

5 **MR. JOHNSON:** They may have taken them; they
6 may not have taken them. I don't know.

7 **MR. SCHARBACH:** Do you recall, during your
8 years as a Crown attorney, whether or not police officers
9 generally took notes of those meetings and noted your
10 advice or not?

11 **MR. JOHNSON:** You mean in this jurisdiction?

12 **MR. SCHARBACH:** Yes. In your experience ---

13 **MR. JOHNSON:** Because I worked in Toronto
14 also. I also worked in Sault Ste. Marie.

15 **MR. SCHARBACH:** I'm sorry, I'm talking about
16 your experience as a Crown attorney in Cornwall.

17 **MR. JOHNSON:** In Cornwall, the only police
18 officers that I can recall that would do that would be the
19 members of the Detective Branch, and one in particular
20 would be Mr. Fred Seaver.

21 **MR. SCHARBACH:** Okay. Now, Mr. -- we've
22 heard Constable Malloy testified that there was -- it was
23 his understanding at least that there was a practice that
24 notes of advice from Crown attorneys would not or should
25 not be noted because of solicitor/client privilege reasons.

1 Do you -- can you shed any light on that?

2 MR. JOHNSON: I don't know where that came
3 from. I have no idea where that would have come from.

4 MR. SCHARBACH: Was that a practice, as far
5 as you're concerned?

6 MR. JOHNSON: No, no.

7 MR. SCHARBACH: Okay. Was that a directive,
8 as far as you're concerned, from the ---

9 MR. JOHNSON: Not from my office.

10 MR. SCHARBACH: I want to talk to you a
11 little bit about contact between Crowns and witnesses and
12 victims. And again I'm talking about your years as a Crown
13 here in Cornwall. During those years now, from '72 to '91,
14 I think I understood you to say that there was no Victim
15 Witness Assistance Program.

16 MR. JOHNSON: None whatsoever. The only
17 Victim Witness Assistance Program that I was aware of would
18 be between the investigating officer and maybe the court
19 officer.

20 MR. SCHARBACH: So the Victim Witness
21 Assistance Program that's in place now came into being
22 after you left the Crown's office. Is that correct?

23 MR. JOHNSON: Yes, it did.

24 MR. SCHARBACH: Now, each case would have an
25 investigating officer. Is that correct?

1 **MR. JOHNSON:** Yes.

2 **MR. SCHARBACH:** And whose responsibility was
3 it then to communicate with the victims and the witnesses
4 with respect to things such as when to show up in court,
5 where court is going to be, even things like the results of
6 plea negotiations, et cetera?

7 **MR. JOHNSON:** To my understanding, to my way
8 that I believed that we practised in those days was that it
9 was the -- it was incumbent upon the investigating officer
10 to advise the witnesses, to make sure the witnesses were
11 subpoenaed, make sure they understood what their statements
12 had -- that they testified according to their will says,
13 and that if there's anything resolved that they would be
14 contacting the victim or the complainant in the matter.

15 **MR. SCHARBACH:** And if there was a
16 discussion concerning a plea and a resolution that came out
17 of it, who would inform the victims?

18 **MR. JOHNSON:** It would be my understanding
19 it would be the investigating officer.

20 **MR. SCHARBACH:** Okay. Now, if a matter went
21 to trial, would you meet the victim generally?

22 **MR. JOHNSON:** I would meet the victim if the
23 matter actually did proceed to trial in certain matters on
24 a basis because we didn't have a victim coordinator. Like
25 for example, in a sexual assault case, I would take -- we

1 would ask the complainant to come to the office, introduce
2 the complainant to the courtroom, show them exactly where
3 they would be sitting or standing during testimony; who the
4 players were in the courtroom, et cetera.

5 And then if they had any questions with
6 regards to their testimony, we would discuss it with them,
7 yes.

8 **MR. SCHARBACH:** Yes, but that would only
9 take place if the matter was going to trial?

10 **MR. JOHNSON:** If the matter was going to
11 trial.

12 **MR. SCHARBACH:** And I take it that would
13 only take place if the trial was a serious one?

14 **MR. JOHNSON:** That's correct.

15 **MR. SCHARBACH:** We've heard -- and I want to
16 give you an example of this occurrence. We've talked a lot
17 about the Leblanc prosecution. Now, I know that you said
18 that you're not sure whether you prosecuted that case. But
19 that matter was resolved by way of plea negotiation?

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

21 **MR. SCHARBACH:** I take it you've read the
22 investigative brief and you read the materials concerning
23 Leblanc over the last couple of days. Scott Burgess was
24 one of the alleged victims in that case and his -- the
25 count concerning him was withdrawn by the Crown. And he

1 testified that he was never told of the outcome of the case
2 and he was never informed that his count was dropped.
3 According to the practice of the day, who would have had
4 the responsibility to inform Scott Burgess of that?

5 **MR. JOHNSON:** It would have been -- the
6 Crown attorney that was going into court I assume would
7 have spoken to the police officer. He would have been
8 asked to convey the thoughts or convey the result to Mr.
9 Burgess.

10 **MR. SCHARBACH:** Okay. Now, he testified --
11 Scott Burgess testified as well that he never met the
12 Crown. Was that unusual for the practice of that day?

13 **MR. JOHNSON:** It wasn't unusual, no, but I'm
14 surprised it didn't occur.

15 **THE COMMISSIONER:** Even on a plea of guilt?

16 **MR. JOHNSON:** Yeah.

17 **MR. SCHARBACH:** Okay. While we are on the
18 Leblanc case, I'm wondering if we could pull up please,
19 Madam Clerk, Exhibit 1565.

20 **THE COMMISSIONER:** One five six five (1565).

21 **MR. SCHARBACH:** I'm sorry. That's a package
22 of materials, and I'm hoping we can go to Bates page 671.

23 **THE COMMISSIONER:** One five six five (1565)
24 is one letter.

25 **MR. SCHARBACH:** Could I do it this way?

1 Could we go to Document 114263? Okay, thank you. And
2 Bates page 671.

3 **THE COMMISSIONER:** Okay, so 1562, sir?

4 **MR. SCHARBACH:** One five six two (1562).

5 **THE COMMISSIONER:** M'hm, and the Bates page?

6 **MR. SCHARBACH:** And the Bates page, the last
7 three numbers are 671.

8 **THE COMMISSIONER:** All right. So, sir, you
9 should have that book.

10 **MR. JOHNSON:** Okay.

11 **THE COMMISSIONER:** So we are looking at an
12 information?

13 **MR. SCHARBACH:** Yes, sir.

14 **THE COMMISSIONER:** Do you have that, sir?

15 **MR. JOHNSON:** Yes, sir, I do.

16 **THE COMMISSIONER:** All right.

17 **MR. SCHARBACH:** This is the information of
18 the Leblanc case, and it appears it was sworn by Constable
19 Payment. And Ms. Jones talked to you about this yesterday?

20 **MR. JOHNSON:** Yeah.

21 **MR. SCHARBACH:** If you recall that. It was
22 -- would this information have been drafted by you or
23 drafted by the officer?

24 **MR. JOHNSON:** That information would have
25 been drafted by the Cornwall Police Services.

1 **MR. SCHARBACH:** Okay, and would they draft
2 that after discussion with you?

3 **MR. JOHNSON:** I would assume they did, yes.

4 **MR. SCHARBACH:** Okay. Was it your practice
5 to give the police officer the precise wording of the
6 charge to be inserted into the information?

7 **MR. JOHNSON:** My understanding would be --
8 is that -- what they would do is that they have a copy of
9 Martin's Criminal Code and if you look at the back of
10 Martin's Criminal Code it has a wording for various
11 offences under the Criminal Code of Canada and I believe
12 that's where they get the wordings from.

13 **MR. SCHARBACH:** Okay. Now, you'll see in
14 each of the counts he refers to "an act". You see, for
15 example, in the first count, he talks about the dates, and
16 it goes on to say, "Did commit an act of gross indecency"
17 and that same wording "an act" is repeated through the
18 other counts. And it was suggested to you yesterday that
19 it would have been more appropriate to have something such
20 as "acts", which would reflect the nature of the case,
21 which involved many acts in that period rather than a
22 single act. Do you recall that?

23 **MR. JOHNSON:** Yeah.

24 **MR. SCHARBACH:** Looking at it now and
25 putting yourself back in 1986, I believe it was, would that

1 wording have improved the information? Would it have
2 improved the -- in the sense that it would have improved
3 the prosecution or the chances of a conviction or the
4 chances of getting an appropriate result, I guess, I should
5 say?

6 **MR. JOHNSON:** Well, you mean by putting the
7 word "acts" in, A-C-T-S?

8 **MR. SCHARBACH:** Yes.

9 **MR. JOHNSON:** Okay. Basically, the
10 prosecution would basically -- after the accused had been
11 arraigned and either entered a plea of not -- are you
12 talking about a plea of guilty or not guilty?

13 **MR. SCHARBACH:** This was a plea of -- this
14 was a plea of guilty to two of the counts and the ---

15 **MR. JOHNSON:** You don't have a transcript of
16 what occurred that time, I take it?

17 **MR. SCHARBACH:** No, I don't.

18 **MR. JOHNSON:** Well, it would be my
19 understanding that the accused would be arraigned. He
20 would elect trial by the Ontario Court of Justice. At that
21 time then, the facts would be read in pursuant to the Crown
22 brief.

23 **MR. SCHARBACH:** Right.

24 **MR. JOHNSON:** And that would -- because the
25 usual procedure is that when you've agreed to enter a plea

1 of guilty, you agree to having a Crown read in a summary of
2 all the facts and that's referred to as a global
3 information to the courts. So all facts are then presented
4 to the court.

5 **MR. SCHARBACH:** So assuming that was the
6 case, did the wording in this case weaken the Crown's case?

7 **MR. JOHNSON:** No because all the facts -- if
8 you don't have a -- I would assume that on the plea of
9 guilty all the facts would have been placed before the
10 court.

11 **MR. SCHARBACH:** Okay. Now, we already
12 mentioned, I already mentioned that the count involving
13 Scott Burgess was dropped, and you were asked yesterday, I
14 believe, by Ms. Jones why that happened, why it was
15 dropped. And I believe you said that you couldn't recall,
16 but you assumed that it had, after consultation with the
17 investigating officer, it may have had something to do with
18 Mr. Burgess' ability to testify or his ability to withstand
19 cross-examination.

20 Could you just elaborate on what sort of
21 factors would have been taken into account by you in
22 deciding to drop that particular allegation?

23 **THE COMMISSIONER:** Okay. Just -- I don't
24 know if it's relevant. I mean he has no memory. You put
25 to him that he would have probably talked to a police

1 officer, which we don't know, and we have Mr. Lee's cross-
2 examination talking about in the Crown brief through.

3 **MR. SCHARBACH:** Okay.

4 **THE COMMISSIONER:** So I think you're going a
5 little far.

6 **MR. SCHARBACH:** Okay. I hear you.

7 What I'm -- okay, I'll leave it at that.

8 Thanks.

9 Can we pull up Exhibit 903 please? Now, Mr.
10 Johnson, the letter, we've looked at -- you've looked at it
11 several times now, I think. It's the letter from Mr.
12 McMaster concerning the first Nelson Barque prosecution, in
13 which he encloses a copy of the report that you looked at.

14 **THE COMMISSIONER:** Well, I don't know if we
15 ever did come to a conclusion as to what investigative
16 report was actually included in there, but ---

17 **MR. SCHARBACH:** Well, that's true. Thank
18 you for reminding me, sir. There was a bit of a debate
19 about that.

20 But if I can ask you this, and I realise
21 that your memory of this is quite thin, possibly non-
22 existent. But Mr. McMaster says, in the second last line,
23 "I would appreciate being advised of your decision in this
24 matter." Do you recall what decision he was actually
25 asking you to make?

1 **MR. JOHNSON:** Not really, but I would assume
2 he would be asking me to review whatever he had and advise
3 whether or not there was going to be further discussions,
4 further investigation or would the matter be turned over to
5 the investigating officer or to an investigating officer.

6 **MR. SCHARBACH:** Okay.

7 **MR. JOHNSON:** He doesn't precisely advise me
8 whether or not he's asking for a decision on the
9 admissibility of evidence or the strength of the
10 investigation or anything like that.

11 **MR. SCHARBACH:** Okay.

12 Can you specifically recall, one way or the
13 other, whether you suggested that this matter be turned
14 over to the Cornwall police?

15 **MR. JOHNSON:** No I can't, sir. I'm sorry.

16 **MR. SCHARBACH:** Okay.

17 Can we turn please to Exhibit 899?

18 **THE COMMISSIONER:** Same book, sir.

19 Eight nine nine (899)?

20 **MR. SCHARBACH:** Eight nine nine (899), yes.

21 **THE COMMISSIONER:** Your letter, sir, of June
22 22nd, 1982.

23 **MR. JOHNSON:** Nineteen eighty-two (1982).

24 **THE COMMISSIONER:** Yes.

25 **MR. JOHNSON:** I apologize. There's a

1 notation here of PPS -1-16. That's not my writing.

2 **THE COMMISSIONER:** That's okay.

3 **MR. SCHARBACH:** I can't help you with that
4 either, Mr. Johnson, but it's not relevant to at least my
5 questions.

6 This is your response to Mr. McMaster's
7 request that we just looked at. And Ms. Jones asked you a
8 number of questions about it and I think you agreed
9 yesterday that the wording could have been better.

10 But looking at it now, and placing yourself
11 back in the context -- the legal context of 1982, do you
12 see this opinion as being correct, still, in the context of
13 the law as it was in 1982 or not?

14 **MR. JOHNSON:** My opinion would have been the
15 same, save and except I would have probably put a different
16 wording in the letter with respect to why I felt there was
17 insufficient ---

18 **MR. SCHARBACH:** Okay. And it's been
19 suggested to you I think a couple of times now that you
20 should have -- you shouldn't have provided the assistance
21 that you did to Mr. McMaster, at least insofar as you
22 should have directed him directly to the police. I think
23 that's been suggested to you in cross-examination a couple
24 of times. What do you say to that?

25 **MR. JOHNSON:** Well my context for the

1 purpose of that letter was to say, at that particular time,
2 that there was insufficient evidence, but other evidence
3 did come to light with respect to this matter that would be
4 admissible, legally admissible and that would not curtail
5 them from proceeding.

6 **MR. SCHARBACH:** Okay.

7 Those are my questions. Thank you, Mr.
8 Johnson.

9 **THE COMMISSIONER:** Thank you.

10 **--- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MS. JONES:**

11 **MS. JONES:** Just a couple of very brief
12 questions, Mr. Johnson, an issue that was raised by Mr.
13 Lee, actually.

14 If a Crown Attorney comes across a release
15 term and we talked about the undertaking, for example, of
16 Mr. Leblanc, where there is no term restricting access of
17 an alleged perpetrator to an alleged complainant, or
18 perhaps children of tender years, is there a part of the
19 system where the Crown can actually appeal that if in fact
20 they had asked for it and a JP said no?

21 **MR. JOHNSON:** There is a provision in the
22 Code, Ms. Jones, that you can apply to have conditions
23 varied, depending on the nature of their release. If it's
24 a promise to appear, it can be done before the Ontario
25 Court of Justice, or if there's been a release by an

1 Ontario Court of Justice, it has to be done in a superior
2 court.

3 MS. JONES: So then there are mechanisms in
4 place, then, if in fact, because we don't have the
5 transcripts, unfortunately, but if in fact the Crown had
6 asked for such a term, the JP said, "No, I'm not putting
7 that in," there is a mechanism where the Crown could appeal
8 that?

9 MR. JOHNSON: There is, yes, there is.

10 MS. JONES: All right.

11 And just to be clear too, just as there's a
12 mechanism for probation order that does not contain a
13 similar provision, about non-contact with the victim?

14 MR. JOHNSON: That would have to be by way
15 of an appeal.

16 MS. JONES: Right. But the Crown has the
17 ability, there's a legal ability for the Crown to vary, to
18 make an application to vary that probation order?

19 MR. JOHNSON: They can make an application
20 to appeal the sentence to include those terms, yes.

21 MS. JONES: So those mechanisms are in
22 place?

23 MR. JOHNSON: They are, yes.

24 MS. JONES And they were certainly in place
25 at that time when you were Crown attorney?

1 **MR. JOHNSON:** I think there may have been an
2 issue with respect to the recognisance or the release
3 documents as to whether or not it could be done, but
4 certainly there was an appeal process with regards to a
5 sentencing appeal.

6 **MS. JONES:** All right.
7 Thank you very much. Those are my only
8 questions.

9 **THE COMMISSIONER:** Thank you. So we'll come
10 back tomorrow morning.

11 Mr. Kosloff?

12 **MR. KOZLOFF:** I rise to apologize for having
13 mislead Mr. Johnson and yourself on the actual citation.

14 I gave you Aimé Boucher in the Supreme Court
15 of Canada, which is a seditious libel case. In fact, it's
16 Ovila Boucher from the Supreme Court of Canada which is a
17 murder case. The proper citation is 1955, SCR 16, a
18 decision was released on December 9th, 1954. You were two
19 years ahead instead of one year behind.

20 **THE COMMISSIONER:** So, the case was in '55
21 but the decision was given -- oh, the reporting of it is in
22 '55?

23 **MR. KOZLOFF:** Yes, sir.

24 **THE COMMISSIONER:** Because '54 was the year

25 ---

1 **Mr. KOZLOFF:** Because you know I don't like
2 to mislead you ever, sir.

3 **THE COMMISSIONER:** No, no, no, sir, not
4 consciously anyways. And 1954 was a vintage year: it's the
5 year I was born, Mr. Kozloff.

6 **Mr. KOZLOFF:** Thank you sir.

7 **THE COMMISSIONER:** There we go. Thank you
8 sir.

9 So I would ask you to speak with Mr.
10 Scharbach and with Ms. Jones if you have any dates, because
11 we will be coming back in the month of January, perhaps to
12 deal with the issue of solicitor/client.

13 So you might want to give us your dates so
14 that we can -- I don't think it will take more than a
15 couple of hours, we can even do it at night, if the
16 schedule doesn't fit.

17 **MR. JOHNSON:** I'm used to working late
18 anyways Your Honour.

19 **THE COMMISSIONER:** Thank you.

20 **MR. JOHNSON:** Rather Mr. Commissioner,
21 sorry.

22 **THE COMMISSIONER:** All right. So let's see
23 you all tomorrow morning at 9:30.

24 **THE REGISTRAR:** Order. All rise. À
25 l'ordre. Veuillez vous lever.

1 This hearing is adjourned until tomorrow
2 morning at 9:30 a.m.

3 --- Upon adjourning at 15:07 p.m.

4 L'audience est ajournée à 15h07.

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C E R T I F I C A T I O N

I, Marc Demers 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, Marc Demers, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Marc Demers, CM