

**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 342

Held at :

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

Monday, January 26, 2009

Tenue à:

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

Lundi, le 26 janvier 2009

ERRATA

**October 29, 2008
Volume 297**

Transcript :

Page 140, Line 7

MS. JONES: What about -- at one point when you were District Commander, Jim McQuade was the Detachment Commander at Lancaster?

Should have read:

MS. JONES: What about -- at one point when you were District Commander, Jim **McWade** was the Detachment Commander at Lancaster?

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
M ^e Pierre R. Dumais	Commission Counsel
Mr. Mark Crane	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. Giuseppe Cipriano	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. Ian J. Roland	Paliare Roland Rosenberg
Ms. Tina Lie	Rothstein
Mr. Justice Robert Pelletier	

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1 --- Upon commencing at 9:36 a.m./

2 L'audience débute à 9h36

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 **MR. DUMAIS:** Good morning.

10 **THE COMMISSIONER:** Good morning.

11 **MR. DUMAIS:** I'd like to call our next
12 witness, Mr. Justice Robert Pelletier.

13 Before he's sworn in, Mr. Commissioner, he's
14 accompanied by two counsel, Mr. Ian Roland immediately to
15 my right ---

16 **THE COMMISSIONER:** Good morning.

17 **MR. DUMAIS:** --- and Ms. Tina Lie.

18 **THE COMMISSIONER:** Thank you.

19 **MR. DUMAIS:** Thank you.

20 **MR. JUSTICE PELLETIER:** Good morning, sir.

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

22 **MR. JUSTICE ROBERT PELLETIER, Sworn/Assermenté:**

23 **THE COMMISSIONER:** Good morning, Justice
24 Pelletier.

25 **MR. JUSTICE PELLETIER:** Good morning, sir.

1 **THE COMMISSIONER:** Welcome aboard. You'll
2 have some water. There's fresh water, glasses. You'll
3 probably be given documents either in a hard copy or on the
4 computer, so use whichever -- which one you prefer. Yes, I
5 would ask you to speak into the microphone so that we can -
6 - and if you -- if at any time you have any questions or
7 any problems, just let me know and we'll take a short
8 break.

9 **MR. JUSTICE PELLETIER:** Sure. Thank you.

10 **THE COMMISSIONER:** Thank you.

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

12 **MR. DUMAIS:**

13 **MR. DUMAIS:** Good morning, Justice
14 Pelletier.

15 If we can just start off by asking Madam
16 Clerk to put a document in front of you. It's a short bio
17 that was prepared by your counsel and it's Document Number
18 200347.

19 **THE COMMISSIONER:** Thank you. Exhibit
20 Number 3291 is a bio for Justice Robert Pelletier.

21 --- **EXHIBIT NO./PIÈCE NO. P-3291:**

22 (200347) - Bio of Justice Robert Pelletier

23 **MR. DUMAIS:** So if we can just look at some
24 of the highlights.

25 I understand that you obtained your Bachelor

1 of Laws from the University of Ottawa in 1983 and that you
2 were called to the Ontario Bar in 1985.

3 **MR. JUSTICE PELLETIER:** That's correct.

4 **MR. DUMAIS:** And right after you were
5 called, you were hired as an Assistant Crown Attorney in
6 L'Orignal.

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MR. DUMAIS:** And you held that position from
9 1985 to 1989?

10 **MR. JUSTICE PELLETIER:** Yes, sir.

11 **MR. DUMAIS:** Then you became the Crown
12 Attorney for the United Counties of Prescott and Russell.

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** And you held that position
15 until 2005, when you were appointed to the Superior Court
16 of Justice.

17 **MR. JUSTICE PELLETIER:** That's correct.

18 **MR. DUMAIS:** And I understand that during
19 your time as a Crown Attorney in Prescott and Russell for
20 two short periods of time, so from May, 1997 to January,
21 1998 and then again from May, 1998 to January, 1999 you
22 also held the position of Acting Director of Crown
23 Operations for the East Region.

24 **MR. JUSTICE PELLETIER:** That's correct.

25 **MR. DUMAIS:** All right, thank you.

1 Now, Justice Pelletier, we're going to talk
2 about your involvement in some of the Project Truth
3 investigation and prosecutions, and if I can just start at
4 the beginning, so back in 1993. We've heard evidence here
5 from Murray MacDonald that he would have contacted you back
6 in 1993 regarding the Charles MacDonald investigation.

7 Do you recall -- do you have an independent
8 recollection of a telephone conversation that you would
9 have had with Mr. MacDonald at that time?

10 **MR. JUSTICE PELLETIER:** That's not something
11 I recall.

12 **MR. DUMAIS:** Okay.

13 So perhaps I can just put a document to you,
14 and that's Exhibit 2921.

15 So you'll see, Justice Pelletier, this is a
16 document that's dated September 15th, 1994, and if you look
17 at the second page it's authored by you?

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. DUMAIS:** And it's being sent to
20 Detective Inspector Tim Smith?

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. DUMAIS:** My understanding is that at one
23 point-in-time he would have called you up and asked you
24 about what -- your recollection about a telephone call that
25 you would have had with Mr. Murray MacDonald.

1 And in paragraph 1, you indicate that in the
2 summer of 1993 you would have been contacted by
3 Mr. MacDonald, and at paragraph 2, that you were informed
4 that an investigation was being conducted concerning Father
5 MacDonald and it may be necessary at some point-in-time for
6 you to review the matter to determine whether or not
7 charges should be laid.

8 At the third paragraph, you indicate there
9 that Mr. MacDonald would have discussed with you that he
10 was in some sort of a conflict of interest and could not
11 make the decision, hence why he was communicating with you.

12 Any reason why you would doubt that this was
13 an accurate reflection of the telephone call that you had
14 with Murray MacDonald back in 1993?

15 **MR. JUSTICE PELLETIER:** I have no reason to
16 doubt that this memo is accurate. Your question was
17 whether I recall speaking ---

18 **MR. DUMAIS:** Yes.

19 **MR. JUSTICE PELLETIER:** --- with
20 Mr. MacDonald in '93, and I don't recall.

21 **MR. DUMAIS:** Okay.

22 And would that have been the extent of your
23 involvement with Inspector Smith on this specific issue or
24 did you meet with him? Did he take a formal statement or
25 was that the only thing you did?

1 **MR. JUSTICE PELLETIER:** I don't believe
2 anything else came of this.

3 **MR. DUMAIS:** Okay.

4 Now, I understand that your next involvement
5 in this matter was in 1996 when you were asked by then
6 Peter Griffiths, Crown Attorney, to become involved in the
7 prosecution of this matter.

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** And if I can just ask you to
10 refer to Exhibit 2673.

11 **MR. JUSTICE PELLETIER:** Yes, sir.

12 **MR. DUMAIS:** And perhaps we can just start
13 by having you identify what this document is?

14 **MR. JUSTICE PELLETIER:** It's a note-to-file.
15 It's a note to myself.

16 **MR. DUMAIS:** All right. So it's a note to
17 yourself and these are -- you've drafted a number of them
18 and typically these are filed and kept in the -- your
19 prosecutorial file. Is that right?

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** All right.

22 So it appears that on January 15th, 1996 you
23 would have received a call from Peter Griffiths asking you
24 to become involved with this matter?

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** And then on January 18th, 1996 -
2 - and I take it you recall the date because of -- this was
3 at Judge Lennox's reception. You attended his office and
4 he provided you with the -- an initial brief?

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** And then shortly afterwards on
7 January 31st, 1996 you met with some of the investigators to
8 discuss the matter, so at that time the two officers
9 involved were Inspector Smith and Detective Constable
10 Fagan. Is that correct?

11 **MR. JUSTICE PELLETIER:** Right.

12 **MR. DUMAIS:** All right. So if we look at
13 the first line and the way you draft a note to yourself,
14 you indicate:

15 "I received a call from Peter
16 Griffiths. Requested that I conduct
17 this prosecution if charges were to be
18 laid."

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** So do you recall whether or not
21 Mr. Griffiths at that time left that with you as to whether
22 or not charges would be laid in this matter?

23 **MR. JUSTICE PELLETIER:** When I wrote this
24 memo, I'm not sure whether Mr. Griffiths had any impression
25 with regards to charges, but I think it's clear from

1 subsequent memos that that was also to be part of my
2 responsibility, determining whether and what charges should
3 be laid.

4 **MR. DUMAIS:** All right.

5 And my understanding is that in meeting with
6 the investigators they would have provided you with a
7 number of investigative briefs. The first one would have
8 been the Cornwall Police Services Investigation that had
9 been conducted by Constable Sebalj. The second set of
10 documents was a report that had been prepared by the Ottawa
11 Police Services?

12 **MR. JUSTICE PELLETIER:** Yes.

13 **MR. DUMAIS:** The third type of documents
14 were settlement materials. And the fourth were materials
15 that related to the complaint by a gentleman by the name of
16 Silmsler against the Cornwall police, ---

17 **MR. JUSTICE PELLETIER:** Yes.

18 **MR. DUMAIS:** --- the Crown attorney's office
19 in Cornwall with regards to the decision initially not to
20 lay charges.

21 **MR. JUSTICE PELLETIER:** Correct.

22 **MR. DUMAIS:** And I take it that from your
23 discussion with some of the officers, you became aware that
24 there was an additional brief that might be of use to you.
25 And I'm looking here at the last three or four lines of the

1 third paragraph. It reads as follows:

2 "What was missing from the material I
3 was provided was the brief relating to
4 an allegation of extortion concerning
5 Silmser's demand from a probation
6 officer for compensation."

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MR. DUMAIS:** And that had been explained to
9 you by the officers you were meeting, that there was this
10 additional brief as well?

11 **MR. JUSTICE PELLETIER:** I have to assume so.
12 I have no recollection of that, but I have to assume from
13 the memo that one of the other issues was Silmsers demands
14 vis-à-vis the probation officer.

15 **MR. DUMAIS:** All right.

16 So then if we can just look at the second
17 page of the memo, top of the paragraph, it reads as
18 follows:

19 "On Thursday, February 1st, 1996" --

20 So the day after you meet with the two
21 investigators, you receive a call from Colin MacKinnon,
22 counsel for Charles MacDonald with regards to possible
23 criminal charges. Is that right?

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** So were you surprised getting a

1 phone call from Father Charlie MacDonald's counsel the day
2 after you met with the officers?

3 **MR. JUSTICE PELLETIER:** I would have been
4 surprised. I would have been curious to know how come Mr.
5 MacKinnon, Justice MacKinnon, would have known that early
6 that there may be charges before I'd made any such
7 determination.

8 **MR. DUMAIS:** Yes. Because, I mean, at that
9 period of time, you had still not decided whether or not
10 you would instruct the officers to lay charges in the
11 matter?

12 **MR. JUSTICE PELLETIER:** That's correct.

13 **MR. DUMAIS:** All right. And I'm still
14 looking at the same paragraph, and I'm going to start at
15 the sentence that starts -- it's about midway through that
16 paragraph, a little higher, "I mentioned to Mr. MacKinnon".

17 **MR. JUSTICE PELLETIER:** Yes.

18 **MR. DUMAIS:** You follow me?

19 "I mentioned to Mr. MacKinnon that
20 there appeared to be certain
21 difficulties in relation to the Silmser
22 complaint. However, those would be
23 further examined prior to a decision
24 being made."

25 Do you recall what you are referring here to

1 the difficulties with Mr. Silmer?

2 **MR. JUSTICE PELLETIER:** No, I don't recall
3 what I was alluding to specifically.

4 **MR. DUMAIS:** Okay.

5 **MR. JUSTICE PELLETIER:** Certainly, I would
6 come to know that some of the Silmser -- the information
7 provided by David Silmser was, in some areas, problematic
8 so much so that, in one case, I'd recommended against
9 charges for one episode. But I can't recall specifically
10 what it is I'm alerting Mr. MacKinnon to with regards to
11 difficulties with Silmser.

12 **MR. DUMAIS:** All right. At the time of this
13 telephone call, did Mr. MacKinnon appear to be
14 knowledgeable about allegations that had been made by Mr.
15 Silmser?

16 **MR. JUSTICE PELLETIER:** I don't recall how
17 much detail we got into. So it's difficult for me to say
18 how much Mr. MacKinnon would have known at the time.

19 **MR. DUMAIS:** Okay. So I'm just looking
20 then, not at the next sentence but the one after that. You
21 put down in your note:

22 "I informed Mr. MacKinnon that I would
23 be interested in receiving copies of
24 all materials relating to the civil
25 suit brought by the three complainants

1 against Father MacDonald and the
2 Church."

3 So it appears that from your conversation
4 with Mr. MacKinnon that he would have had some involvement
5 or at least some knowledge of outstanding civil suits
6 regarding your three complainants at the time?

7 **MR. JUSTICE PELLETIER:** His firm was acting
8 for Father MacDonald on the civil action, which had already
9 begun.

10 **MR. DUMAIS:** All right.

11 And then my understanding is that shortly
12 after that, you would have received a call from another
13 counsel by the name of Mike Hébert?

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. DUMAIS:** And he was the civil counsel to
16 Father MacDonald and then, three quarters down the page,
17 you put down in your note:

18 "Mr. Hébert informed me that Silmsen
19 had been cross-examined during the
20 examination for discovery and it had
21 apparently been a rather difficult time
22 for Mr. Silmsen."

23 And then you indicate:

24 "I advised Mr. Hébert that it would be
25 my intention to review the civil

1 pleadings as well as any transcripts he
2 could obtain in determining whether
3 charges should be laid in respect of
4 Silmser. Hébert is to look into that
5 and to provide me with those materials
6 at his earliest opportunity."

7 So at this point in time, you were
8 interested in reviewing some of the transcripts from the
9 discoveries. Is that correct?

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MR. DUMAIS:** And I mean that would assist
12 you in assessing whether or not charges should be laid?

13 **MR. JUSTICE PELLETIER:** I would be one
14 consideration.

15 **MR. DUMAIS:** Okay. And then if I look at
16 the second paragraph, you have a discussion with the
17 officer, Mike Fagan, and it looks like arrangements had
18 been made to get these pleadings and these transcripts from
19 perhaps Mr. Hébert because you tell him that it's not
20 necessary for him to obtain those materials. Is that
21 correct?

22 **MR. JUSTICE PELLETIER:** Right.

23 **MR. DUMAIS:** And then if we look at the last
24 paragraph, it appears that you would have contacted -- you
25 would have mentioned to Mr. MacKinnon "Is there any middle

1 grounds here?"

2 So it looks like you're putting to him any
3 chance, if charges are laid, that your client would enter a
4 plea. Did you have any such discussion with Mr. MacKinnon
5 during that first ---

6 **MR. JUSTICE PELLETIER:** We didn't have any
7 such discussion, but I do recall raising with him that if
8 there's a manner of resolving the matter after he spoke
9 with his client, I'd want to know as soon as possible.

10 **MR. DUMAIS:** All right.

11 Now, I understand that you drafted a second
12 note to file, and that one is dated February 7th, 1996. And
13 I am going to ask you to look at Exhibit 304.

14 **THE COMMISSIONER:** Three zero four (304)?

15 **MR. DUMAIS:** Correct.

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

17 **MR. JUSTICE PELLETIER:** Yes, sir.

18 **MR. DUMAIS:** All right. So this note to
19 file starts in the first paragraph by indicating that on
20 February 7th, 1996, you are provided with additional
21 material. So I think you are referring here to the
22 extortion brief that you had previously requested from the
23 officers?

24 **MR. JUSTICE PELLETIER:** Right.

25 **MR. DUMAIS:** And then in the second

1 paragraph, you refer to a telephone conversation that you
2 would have had with Dave Silmser?

3 **MR. JUSTICE PELLETIER:** Yes.

4 **MR. DUMAIS:** And ---

5 **MR. JUSTICE PELLETIER:** Excuse me, just a
6 moment please. Yes, I'm sorry.

7 **MR. DUMAIS:** Now, would you agree with me
8 that throughout these court proceedings, you had a
9 difficult relationship with Mr. Silmser?

10 **MR. JUSTICE PELLETIER:** I would agree with
11 that.

12 **MR. DUMAIS:** And the telephone conversation
13 that you're summarising here, would this have been your
14 first contact with Mr. Silmser?

15 **MR. JUSTICE PELLETIER:** I would believe so.

16 **MR. DUMAIS:** Okay. So it looks like
17 Mr. Silmser was made aware that you're involved in this
18 matter now and that you're looking into it, trying to
19 determine whether or not charges should be laid.

20 And perhaps you can just explain to us how
21 that telephone conversation went, and what Mr. Silmser was
22 telling you and how you're responding to him?

23 **MR. JUSTICE PELLETIER:** Well, I returned Mr.
24 Silmser's call later the same day and, as set out in the
25 note-to-file, it was a very short conversation.

1 Mr. Silmsers was not happy with the way
2 things were going and I was, quite frankly, unable to
3 understand the reason for his disapproval of how things
4 were going. As the memo says, he mentioned he'd been
5 waiting a long time and he wasn't being treated properly by
6 the police.

7 And he was, as the memo says -- I don't have
8 a specific recollection of words spoken or -- or the
9 exchange itself, but certainly the tenor of his
10 conversation was very aggressive, very abrupt and, as I
11 mentioned, quite vulgar. And at one point I do recall --
12 this is something I do recall asking, "Do you speak to
13 everyone this way?, because I was quite taken aback at
14 being confronted by this -- the attitude that he was
15 showing, and that prompted Mr. ---

16 **THE COMMISSIONER:** Silmsers?

17 **MR. JUSTICE PELLETIER:** --- Silmsers saying
18 he was declaring war against the OPP and myself, and then
19 he hung up the phone.

20 **MR. DUMAIS:** All right. And I understand
21 that after this telephone conversation, you would have
22 communicated with his lawyer, which I believe was Mr. Bryce
23 Geoffrey ---

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** --- at that time? And that's

1 the third paragraph here in your note?

2 MR. JUSTICE PELLETIER: Right.

3 MR. DUMAIS: And I'm looking at the second
4 sentence, third line:

5 "I informed Mr. Geoffrey that it was
6 not my intention on speaking with Mr.
7 Silmsen any more. I explained to him
8 that the content and result of our
9 short conversation, and explained to
10 him..."

11 Sorry:

12 "...I explained to him the content and
13 result of our short conversation, and
14 informed him that in the event that his
15 client has anything to say to us, he
16 should so do through his lawyer."

17 MR. JUSTICE PELLETIER: Yes.

18 MR. DUMAIS: So you're concerned enough
19 about the telephone conversation that you had with
20 Mr. Silmsen that you set-up this line of communications
21 with his lawyer?

22 MR. JUSTICE PELLETIER: That's ---

23 MR. DUMAIS: Is that correct?

24 MR. JUSTICE PELLETIER: That's correct.

25 MR. DUMAIS: All right. And you go to

1 providing instructions with -- to "Mireille", it's
2 indicated here, and Mireille is one of your administrative
3 staff? Is that ---

4 **MR. JUSTICE PELLETIER:** Mireille Legault was
5 my secretary.

6 **MR. DUMAIS:** Okay. And you essentially
7 advise her that you would not be taking any calls from Mr.
8 Silmser. Is that correct?

9 **MR. JUSTICE PELLETIER:** That's right.

10 **MR. DUMAIS:** All right. And had
11 Mr. Geoffrey agreed with you at that time that he would
12 ensure that communications be made through him?

13 **MR. JUSTICE PELLETIER:** I don't recall
14 whether he agreed that's how it was going to be done, but
15 it -- I made it clear to him that I thought it would be --
16 it would be counter-productive if I spoke with Mr. Silmser.

17 In the long run it could result from my
18 being unable to do the case if -- if a serious conflict
19 developed and words were exchanged.

20 **MR. DUMAIS:** Okay.

21 Now, this is -- we're in the year 1996. Do
22 you recall whether or not the Victim Witness Assistance
23 Program was in place in the Cornwall area and whether or
24 not Mr. Silmser had been referred to them?

25 **MR. JUSTICE PELLETIER:** No, the Cornwall

1 area, as well as the area I was responsible for, Prescott,
2 Russell counties, were given Victim Witness Assistance
3 Programs in -- five years later in 2001.

4 **MR. DUMAIS:** Now, at the end of this note
5 you indicate that you're reserving February 14th and 15th for
6 your review of this file, and I believe you took notes
7 while reviewing this file and I'm going to ask you to --
8 Madam Clerk, to put Document Number 103351 to the witness.

9 **THE COMMISSIONER:** Thank you.

10 Exhibit Number 3292 is a document entitled
11 Pelletier's notes, *R. v. Charles Macdonald*, and should we
12 have a ---

13 **MR. DUMAIS:** Yes.

14 **THE COMMISSIONER:** --- a publication ban
15 stamp put on this.

16 **MR. DUMAIS:** Thank you.

17 **---EXHIBIT NO./PIÈCE NO. P-3292:**

18 (103351) Notes of Robert Pelletier dated
19 February, 1996

20 **MR. DUMAIS:** So am I correct, these notes
21 appear to be dated February, 1996? I'm just looking at the
22 -- your first page. There is a date there on the top
23 right-hand corner?

24 **MR. JUSTICE PELLETIER:** Yes, sir.

25 **MR. DUMAIS:** And are these notes that you're

1 making while reviewing all the documents in the briefs that
2 have been provided to you?

3 **MR. JUSTICE PELLETIER:** That's correct, with
4 a view to arriving at recommendations for charges.

5 **MR. DUMAIS:** And I'm looking at page 7 of
6 your notes, and I think you're going -- you're looking at
7 the relevant provisions at the date of the allegations
8 here.

9 And you're looking at the different relevant
10 sections, so you're looking at the indecent assault
11 section, you're looking at the section to determine whether
12 or not corroboration is required ---

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** --- historically, and you don't
15 appear to be considering in your review laying charges of
16 gross indecency?

17 **MR. JUSTICE PELLETIER:** No.

18 **MR. DUMAIS:** And I'm looking here at the --
19 your recommended charges at page 9 of your notes, and the
20 charges you're recommending for Mr. Silmser, firstly, are
21 three indecent assault charges; for Mr. Macdonald, again,
22 three indecent assault charges; and for C-3, one indecent
23 assault charge.

24 So is that correct, I understand that, that
25 you're not considering any gross indecency charge? Perhaps

1 you can just explain that to us?

2 **MR. JUSTICE PELLETIER:** Explain?

3 **MR. DUMAIS:** Why you are not instructing the
4 officer to lay a gross indecency charge, or whether or not
5 you had put any thought into it?

6 **MR. JUSTICE PELLETIER:** I had not considered
7 gross indecency charges. I felt that the indecent assault
8 charge was the appropriate one.

9 My experience had been that it was very
10 difficult to prove gross indecency. It requires something
11 other than just contacts of a sexual nature. It involved
12 contacts that was so offensive and such an affront to
13 people's sensibilities that it was a very difficult charge
14 to prove, and I felt that the information we had best
15 supported this charge.

16 And, in fact, I'm not sure that a gross
17 indecency charge would have, for instance, survived the
18 non-suit on an incident that might involve, let's say,
19 fondling over the clothes. I don't think that would have
20 fallen in the definition or the interpretation of gross
21 indecency under the Code.

22 And having prosecuted several such charges,
23 I can only actually remember ever getting one conviction
24 for it, and it involved conduct which by any standards is
25 so extraordinarily offensive that conviction was

1 registered.

2 **MR. DUMAIS:** All right.

3 Now, if I can just ask you then to look at
4 the last page? And I'm going to ask you to explain
5 something you wrote down here.

6 So, "Questions for investigators", and
7 that's -- it's the entry at number 1:

8 "Why suspicious of MacDonald meeting a
9 Silmsler return..."

10 And there's a word there, it could be "C" ---

11 **MR. JUSTICE PELLETIER:** "From B.C."

12 **MR. DUMAIS:** "...from B.C. Complaints to
13 parents, retreat in St. Andrew's."

14 So do you recall what you were thinking
15 there or what this note means?

16 **MR. JUSTICE PELLETIER:** I don't recall the
17 details of why those were concerns, but they would have
18 necessarily had to do with information provided by
19 MacDonald that made me wonder about a meeting with Silmsler,
20 about why MacDonald came back from B.C. -- some issue as to
21 the complaint to his parents; perhaps there was a different
22 indication from the parents.

23 "Retreat at St. Andrew's," might have been
24 timing issues, was he there at the right time? So I can't
25 tell you what the details were of these concerns, but this

1 is just a cataloguing of issues on my mind that need to be
2 examined before we go any further.

3 **THE COMMISSIONER:** And this is in relation
4 to John Macdonald, is it not? We have so many MacDonalds
5 here.

6 **MR. JUSTICE PELLETIER:** This would be John
7 MacDonald, sir.

8 **THE COMMISSIONER:** Thank you.

9 **MR. DUMAIS:** All right.

10 And I understand that you did write an
11 opinion as well with respect to charges and, prior to
12 writing this opinion, would have meet with Inspector Smith
13 to discuss, and Inspector Smith did take notes of that
14 meeting. And if I can just ask you to look at Exhibit
15 1803?

16 **THE COMMISSIONER:** Okay, just put it on the
17 screen.

18 **MR. DUMAIS:** The Bates page is 253, 1054253.
19 So when we're looking at notes, perhaps we're better off
20 looking at the screen? We can blow them up.

21 So it's right, Madam Clerk, right at the top
22 of the page. So it reads as follows: "Thirty-first (31st)
23 January '96, Bob Pelletier requests all civil records,
24 pleadings --- "

25 **THE COMMISSIONER:** "Discoveries, affidavits

1 ---"

2 MR. DUMAIS: "Discoveries, affidavits", and
3 then at the end of that -- those first entries, "Request
4 Geoffrey supply". And then the next entry reads as
5 follows: "Without it we cannot make a decision".

6 So -- and I'm not sure here if this is you
7 speaking, sorry if Inspector Smith is taking down your
8 words, but do you recall that, that you wanted to review
9 the civil documents before taking a decision as to whether
10 or not charges were laid?

11 MR. JUSTICE PELLETIER: My preference would
12 be to have all available information but it was not my
13 position that we were unable to make a decision without
14 first seeing those documents.

15 MR. DUMAIS: Okay. So then I understand
16 that you do eventually write an opinion and my
17 understanding is that you did so prior to the -- obtaining
18 a copy of the transcripts.

19 And if I can just ask to look at Document
20 number 109251? Actually this is a -- it's a Note to File
21 again.

22 THE COMMISSIONER: Thank you. Exhibit 3293
23 is a Note to File dated March 5th, 1996.

24 --- EXHIBIT NO. / PIÈCE NO. P-3293:

25 (109251) - Note to File re: R. v. Charles

1 MacDonalld dated 05 Mar 96

2 **MR. DUMAIS:** So essentially in the first
3 paragraph, you're indicating here that it appears that
4 you're going to be recommending a number of charges with
5 respect to all three victims here?

6 **MR. JUSTICE PELLETIER:** Yes.

7 **MR. DUMAIS:** And in the second, or sorry,
8 the third paragraph, you make reference here to three
9 telephone conversations that you would have had with a
10 number of media. So there appears to have been a call to
11 CBC, a call to a Cornwall newspaper and then -- actually
12 the third call is not to someone from the media, it's a
13 call to John MacDonald.

14 So even early on, so at the beginning of
15 1996, there was already media interest in this case. Is
16 that fair?

17 **MR. JUSTICE PELLETIER:** It would seem so,
18 yes.

19 **MR. DUMAIS:** All right. And then in the
20 last paragraph, so on March 5th, 1996, you relate that you
21 would have met with Mr. -- with Officer Mike Fagan at your
22 office and then you provided him with instructions as well
23 as a draft information with the different charges that you
24 were recommending. Is that correct?

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** And if you can just flip the
2 page and look at page 2 of your Note to File, you're
3 informed or you -- that counsel for Father MacDonald, Colin
4 MacKinnon has been appointed to the bench so that
5 essentially terminates his involvement in the file?

6 **MR. JUSTICE PELLETIER:** Yes.

7 **MR. DUMAIS:** All right. And then -- and I
8 take it that perhaps explains the delay for him not
9 returning your call. And it appears that you've decided
10 not to delay your recommendation awaiting the receipt of
11 those transcripts?

12 **MR. JUSTICE PELLETIER:** Correct.

13 **MR. DUMAIS:** And so the next document is
14 actually your opinion letter, and that's Exhibit 394.

15 **THE COMMISSIONER:** We have it. Sir?

16 **MR. DUMAIS:** Oh, sorry. So essentially you
17 start off by listing the different documents that were in
18 front of you, the briefs that you reviewed?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And then if you look at the
21 second page, you confirm in that second paragraph that you
22 had not reviewed the civil transcript at this point in
23 time.

24 And then if we look at the last paragraph of
25 that same page, you refer to a previous opinion on this

1 case, which had been drafted by Mr. Griffiths. It reads as
2 follows:

3 "So a decision was then made by Peter
4 Griffiths, Regional Director of Crown
5 Attorneys, not to proceed, given the
6 general lack of detail, corroboration
7 and similar fact evidence."

8 And I take it you're trying to distinguish
9 your opinion with his opinion and one of the factors in
10 deciding to lay charges, is the fact that you now have
11 three complainants. Do I have that right?

12 **MR. JUSTICE PELLETIER:** That's right.

13 **MR. DUMAIS:** All right. And if we look at
14 the next page, the second last paragraph, it appears that -
15 - or you provide instructions to the officer that there is
16 not a need to arrest Mr. -- Father Charlie MacDonald and
17 that arrangements can be made for -- can be made with
18 counsel for him to surrender himself. Is that correct?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And then you provide your Terms
21 of Release. So my understanding is then, shortly after
22 this memo, so the following day, an Information with seven
23 counts is sworn, so on March 6th, 1996.

24 And if I can just ask you to look at a
25 document which is dated May 31st, 1996? That's a letter

1 that you would have authored to the new counsel for Father
2 MacDonald, and that was Mr. Neville, so Document Number
3 109288?

4 **THE COMMISSIONER:** Thank you. Exhibit
5 number 3294 is the letter dated May 31st 1996 addressed to
6 Mr. Neville from Robert Pelletier.

7 --- **EXHIBIT NO. / PIÈCE NO. P-3294:**

8 (109288) - Letter from Robert Pelletier
9 to Michael Neville re: R. v. Charles
10 MacDonald dated 31 May 96

11 **MR. DUMAIS:** So I'm assuming, Justice
12 Pelletier, that at one point in time, there would have been
13 an initial first appearance on these charges but it looks
14 like very early on in the process, the matter had been set
15 for a pre-trial, so on May 30th, 1996.

16 So is that usual in this jurisdiction, that,
17 for these types of charges, the matter initially go to a
18 pre-trial?

19 **MR. JUSTICE PELLETIER:** I'm sorry, your
20 question is whether it's usual for these types of cases to
21 go to a pre-trial?

22 **MR. DUMAIS:** I'm just wondering why the
23 matter went to a pre-trial so early on in the process?

24 **MR. JUSTICE PELLETIER:** It's a very good
25 question. I'm not sure - I don't recall what the practice

1 was in '96. I know that, since '96, most jurisdictions in
2 the east require judicial pre-trials for anything that's
3 going to take more than a day in court at both -- well, at
4 the Ontario Court of Justice level. It may be that such a
5 practice was in place there and we expected a preliminary
6 inquiry to go at least a week.

7 **MR. DUMAIS:** All right.

8 Now, then there's a reference again to the
9 transcript in the civil proceeding, and perhaps I can just
10 read in the second paragraph:

11 "I would be most grateful if you could
12 obtain the transcript of those
13 discoveries and provide them to me at
14 your earliest convenience. In the
15 meantime, I will provide Judge Belanger
16 with a more complete package of the
17 matter as it presently stands in order
18 for his participation to be greater at
19 the next pre-trial, which is presently
20 scheduled for August 9th, 1996 at 9:00
21 a.m."

22 So it appears that the May 30th, 1996 pre-
23 trial was adjourned for a continuance at the end of August
24 '96 and I think Justice Belanger was requesting further
25 materials from you. Is that ---

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. DUMAIS:** All right.

3 And I understand that following this pre-
4 trial in August -- and I don't have the notes of that pre-
5 trial. Do you recall whether or not that pre-trial
6 proceeded or do you have any memory of that?

7 **MR. JUSTICE PELLETIER:** I assume it did but
8 I have no recollection of the hearing itself.

9 **MR. DUMAIS:** Okay. And do you recall
10 whether or not you ever did receive those transcripts from
11 the discoveries?

12 **MR. JUSTICE PELLETIER:** I recall receiving
13 certain portions because I have a very vivid recollection
14 of reading parts of them as they related to the subject
15 matters that formed the basis of the charges. I don't
16 believe I received everything though, but I did receive
17 certain materials.

18 **MR. DUMAIS:** All right.

19 My understanding is that shortly after this
20 pre-trial, the matter was set for a preliminary inquiry
21 and, as you indicated, one week was set aside for that
22 prelim.

23 **MR. JUSTICE PELLETIER:** Right.

24 **MR. DUMAIS:** And it was scheduled to proceed
25 in February of 1997. Is that correct?

1 **MR. JUSTICE PELLETIER:** That's correct.

2 **MR. DUMAIS:** All right. And just before we
3 go there and look at some of these transcripts, if we can
4 go back to Mr. Silmser.

5 So we had looked at your initial telephone
6 conversation with him in February of 1996 and despite your
7 arrangements with Mr. Geoffrey in advising Mr. Silmser that
8 you would not take his call, my understanding is that he
9 would have continued to call your office. Is that correct?

10 **MR. JUSTICE PELLETIER:** Yes, sir.

11 **MR. DUMAIS:** And although you did not speak
12 to him yourself, Mireille Legault would have had -- would
13 have taken his calls?

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. DUMAIS:** And if we can just have a look
16 at document -- or Exhibit Number 305.

17 **THE COMMISSIONER:** You'd have that. If you
18 look at the spine ---

19 **MR. JUSTICE PELLETIER:** Yes, I have it.
20 Thank you, sir. Yes, sir.

21 **MR. DUMAIS:** So this is a note file that
22 would have been prepared by Mireille. Is that fair?

23 **MR. JUSTICE PELLETIER:** Yes.

24 **MR. DUMAIS:** All right. And I think she's
25 referring here to a call she received from Mr. Silmser on

1 March 18th, 1996 ---

2 **MR. JUSTICE PELLETIER:** M'hm.

3 **MR. DUMAIS:** --- whereas he's indicating the
4 following:

5 "He wishes you to know that Michael
6 Fagan and Constable McDonell of the OPP
7 in Lancaster are interviewing ex altar
8 boys. Mr. Silmsers informs that
9 Constable McDonell is Father
10 MacDonald's first cousin and that
11 Constable McDonell, when interviewing
12 an ex altar boy by the name of [perhaps
13 I won't mention that name] was..."

14 He was telling this individual that Silmsers
15 was a key in bringing Silmsers down. So it appears that
16 Mr. Silmsers is concerned about comments that are apparently
17 being -- been made of him.

18 **MR. JUSTICE PELLETIER:** And of the fact that
19 the investigator may be a family member of the suspect.

20 **MR. DUMAIS:** Right.

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. DUMAIS:** And in the last paragraph, he's
23 indicating that if nothing is done that he's going to the
24 media. Is that correct?

25 **MR. JUSTICE PELLETIER:** That's what

1 Ms. Legault has put in her memo.

2 **MR. DUMAIS:** All right. And I understand
3 that you would have been made aware of this telephone call
4 from Mr. Silmser and as a result thereof you would have
5 penned a letter to his lawyer. And if I can just ask you
6 to look at Exhibit 283.

7 **MR. JUSTICE PELLETIER:** I think I called Mr.
8 Geoffrey first. And you're saying there's a letter
9 subsequently?

10 **MR. DUMAIS:** Exhibit 283.

11 **THE COMMISSIONER:** We'll need another book,
12 sir.

13 **MR. JUSTICE PELLETIER:** Right. Thank you.

14 **MR. DUMAIS:** So in the first paragraph here
15 you refer back to your initial conversation with
16 Mr. Geoffrey. He's indicating that communication had to
17 flow through him. And then in the second paragraph you
18 refer to the memo to file that Mireille had prepared, and
19 you summarize the issue that had been raised by
20 Mr. Silmser.

21 And then in the fourth paragraph you
22 indicate the following:

23 "I'm bringing these matters to your
24 attention for you to respond to
25 Mr. Silmser's concern and also to ask

1 you again to remind Mr. Silmsler that if
2 he has anything to say that he should
3 say it through you."

4 Do you recall whether or not you had asked
5 the investigators to look into Mr. Silmsler's concern and
6 what he had raised here?

7 **MR. JUSTICE PELLETIER:** That McDonell may be
8 related to the suspect?

9 **MR. DUMAIS:** Yes.

10 **MR. JUSTICE PELLETIER:** I don't recall
11 having done so.

12 **MR. DUMAIS:** All right. Do you recall
13 whether or not Constable McDonell was involved in your
14 investigation, whether or not he had any dealings with
15 interviewing altar boys?

16 **MR. JUSTICE PELLETIER:** I don't believe so.
17 There are so many McDonells, quite apart from the number of
18 MacDonalds that there are in this case, that it may be
19 difficult to determine which McDonell he is speaking of in
20 any event. But I don't recall dealing with an Officer
21 McDonell nor reviewing or receiving any materials that
22 would have been generated by a McDonell.

23 **MR. KOZLOFF:** For the assistance of the
24 witness and yourself, if you need a reminder, the
25 investigation in which Constable McDonell participated was

1 in 1994. He interviewed a number of altar boys with
2 Detective Constable Fagan as the second officer.

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

4 **MR. KOZLOFF:** So he wasn't involved in the
5 investigation thereafter. I think his involvement really
6 stops in the spring of 1994 insofar as that investigation
7 is concerned. He was the lead investigator under Detective
8 Inspector Hamelink on the extortion.

9 **THE COMMISSIONER:** Thank you.

10 **MR. DUMAIS:** And I understand that
11 Mr. Geoffrey responded to your letter and that's Exhibit
12 284?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** So in the first paragraph, he's
15 indicating:

16 "Thank you for your letter of March
17 19th."

18 So the letter we just looked at:

19 "On behalf of Mr. Silmser, I apologize,
20 however, you should understand that
21 having been a victim of Father
22 MacDonald he is easily upset from time-
23 to-time."

24 And then he refers to your previous
25 arrangement that he had with you and reads as follows:

1 "I had previously spoken to him and
2 requested that he not contact your
3 office directly. I will renew this
4 request with him as soon as I'm able to
5 contact him."

6 **MR. JUSTICE PELLETIER:** Yes.

7 **MR. DUMAIS:** And I understand that you
8 responded to Mr. Geoffrey on the same day, and that
9 document is Exhibit 285.

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MR. DUMAIS:** And in the first paragraph, the
12 second sentence, you indicate as follows:

13 "I can understand that these are very
14 trying times for Mr. Silmser and it
15 must be quite frustrating for him to
16 have to wait any longer before having
17 his day in court on these matters. I
18 feel, however, that it would be best
19 for communications to continue to take
20 place through you in order to maintain
21 a certain level of civility."

22 **MR. JUSTICE PELLETIER:** That's correct.

23 This is not something I had done before. I
24 felt that there was a significant risk that if the
25 situation deteriorated between Mr. Silmser and I, I may not

1 be able to carry on the case that I had been assigned
2 specifically to do. And so it was a somewhat extraordinary
3 measure.

4 **MR. DUMAIS:** And these arrangements to
5 communicate with Mr. Silmser through his counsel, were
6 similar arrangements had been made with the other two
7 complainants, so Mr. MacDonald and C-3?

8 **MR. JUSTICE PELLETIER:** Do you mean
9 arrangements for them to communicate through ---

10 **MR. DUMAIS:** Through their counsel?

11 **MR. JUSTICE PELLETIER:** No. Mr. MacDonald
12 may have called once, and I don't believe I ever spoke to
13 the other complainant, C-3, you're saying?

14 **MR. DUMAIS:** Yes.

15 **MR. JUSTICE PELLETIER:** I don't believe I
16 ever spoke with the gentleman, C-3, on the phone at all.

17 **MR. DUMAIS:** All right.

18 And notwithstanding these arrangements, I
19 understand that Mr. Silmser did contact your office a
20 number of times, and if I can just ask you to look at
21 Exhibits -- there are three of them -- Exhibit 286 ---

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MR. DUMAIS:** --- three zero three (303) and
24 307. So if we can look at 286 firstly.

25 **THE COMMISSIONER:** There is also 308?

1 **MR. DUMAIS:** Yes.

2 So this memo again is from Mireille and it
3 appears to be a telephone message that Mr. Silmsers left on
4 the machine at the office. And she summarised that as
5 follows:

6 "Extremely upset. Says Crown does not
7 have the right to refuse his calls. He
8 is a victim."

9 Now, if we can look then at Exhibit 303, and
10 this appears to be a further call that Mr. Silmsers made on
11 the same day -- so the memo has the same date, July 9th,
12 1996. And in this phone call, Mireille is indicating that
13 she was told that another victim had been located by a
14 private investigator.

15 And if we look at the last four lines, she
16 writes down, "He became very angry and said that he would
17 not" -- sorry;

18 "He became very angry and said that he
19 would not as it costs him money each
20 time and that he would continue to call
21 this office and that if we didn't like
22 it, there would be a public inquiry at
23 the end of the day."

24 I think he is making reference here to the
25 fact that he -- the fact that he needs to communicate with

1 your office through his lawyer is costing him money?

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MR. DUMAIS:** And finally, if we can look at
4 the last memo of that day and perhaps -- I didn't look at
5 them chronologically, but this is relating to a phone call
6 that ---

7 **THE COMMISSIONER:** What exhibit please?

8 **MR. DUMAIS:** Sorry, Exhibit 307.

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

10 **MR. DUMAIS:** So this is a phone call that
11 Mireille took at 10:00 a.m. this morning and in it, he's
12 indicating that the lawyers in Toronto say that they have
13 lost the file. That just shows how much of a cover-up is
14 going on; hopes that you're not doing the same thing.

15 Do you know what he is referring here to,
16 the fact that lawyers in Toronto say that they lost the
17 file?

18 **MR. JUSTICE PELLETIER:** I don't know what he
19 is referring to there.

20 **MR. DUMAIS:** And then the last exhibit is a
21 note to file, which has the same date, which is prepared by
22 you, and that's Exhibit 308.

23 **MR. JUSTICE PELLETIER:** Yes, I have it.

24 **MR. DUMAIS:** All right. And then if I can
25 just read from the third line on:

1 "So my concern is that if I speak with
2 Mr. Silmsler at this time, a conflict
3 will develop which will require my
4 stepping down from the case."

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** So is that your concern at this
7 time?

8 **MR. JUSTICE PELLETIER:** It was my concern
9 throughout from the very first conversation.

10 **MR. DUMAIS:** And then you continue on:

11 "Given that charges have already been
12 laid in that a new prosecutor would
13 have to be assigned, there would be a
14 considerable risk of a Section 11(b)
15 argument at some point in time in this
16 proceeding."

17 So even early on this process, you are
18 mindful of any delays that could be caused by anything in
19 this file?

20 **MR. JUSTICE PELLETIER:** Anything
21 unnecessary, yes. I'm trying to avoid that.

22 **MR. DUMAIS:** All right.

23 So then the preliminary inquiry has been set
24 to commence on February 24th, 1997. And my understanding is
25 that the first witness you recall to the stand was a

1 gentleman by the name of John MacDonald. Is that correct?

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MR. DUMAIS:** And my understanding is that
4 you completed the proceedings on that day. And something
5 occurred that night in that a gentleman who is referred to
6 here by the name of C-8 appeared on television discussing
7 his allegations against Father Charlie MacDonald?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** And can you just tell us how
10 you became aware of that, that he -- this television or
11 media story?

12 **MR. JUSTICE PELLETIER:** How I became aware
13 that the gentleman had been on the news the night before?

14 **MR. DUMAIS:** Correct.

15 **MR. JUSTICE PELLETIER:** It was the following
16 morning when Mr. Neville raised it.

17 **MR. DUMAIS:** Okay. You had not seen the
18 media story the night before?

19 **MR. JUSTICE PELLETIER:** Myself?

20 **MR. DUMAIS:** Yes?

21 **MR. JUSTICE PELLETIER:** No.

22 **MR. DUMAIS:** All right.

23 Am I correct in understanding that at this
24 point in time, so on February 25th, 1997 -- so that's the
25 following morning -- that you did not know this gentleman,

1 C-8?

2 **THE COMMISSIONER:** You might want -- I don't
3 know if a name has ever been given to him.

4 **MR. JUSTICE PELLETIER:** It has, Mr.
5 Commissioner. I'm just not able to locate it. Would
6 initials be appropriate?

7 **THE COMMISSIONER:** No. No, no. We will
8 show you the name.

9 **MR. JUSTICE PELLETIER:** Your question, Mr.
10 Dumais, whether I was previously acquainted or familiar
11 with C-8?

12 **MR. DUMAIS:** Whether you were familiar with
13 this gentleman or his name back on February 25th, 1997.

14 **MR. JUSTICE PELLETIER:** I was not.

15 **MR. DUMAIS:** All right.

16 Because what we know is that he had provided
17 a statement disclosing allegations against Father Charlie
18 MacDonald on January 23rd, 1997, that year.

19 **MR. JUSTICE PELLETIER:** I understand that
20 now, yes.

21 **MR. DUMAIS:** All right.

22 And if we can just have a quick look at the
23 transcript for that date which is not an exhibit yet, and
24 that's Document Number 111249.

25 **THE COMMISSIONER:** Thank you.

1 Exhibit Number 3295 is a transcript of the
2 preliminary inquiry of Regina v. Charles MacDonald on
3 Tuesday, February 25th, 1997.

4 **--- EXHIBIT NO./PIÈCE NO P-3295:**

5 (111249) - Preliminary Inquiry re: R. v.
6 Charles MacDonald dated 25 Feb 97

7 **THE COMMISSIONER:** What page please?

8 **MR. DUMAIS:** Page 6 of the transcript --
9 I'll use the numbering of the transcript. It might be a
10 little easier.

11 So my understanding is that this issue is
12 raised on the record and I'm looking here at your response
13 to the request for an adjournment. So the last eight lines
14 of that page and this you speaking:

15 "But with the greatest of respect, I
16 don't see how any other potential
17 witnesses at some later date has any
18 bearing on the case presently. There
19 is no indication that this particular
20 person was in any way enlisted by
21 anybody or brought forward through any
22 connection with any other person who
23 are presently involved in the present
24 preliminary inquiry."

25 So essentially my understanding is that

1 you're objecting to any form of delay because of this media
2 news story. Is that fair?

3 **MR. JUSTICE PELLETIER:** That's right.

4 **MR. DUMAIS:** All right.

5 And I understand that at one point in time
6 there is a meeting in chambers, and if we look at the last
7 two pages of that transcript, so pages 16 and 17, and the
8 request from defence counsel is that there be an
9 adjournment until the following morning. And then you take
10 the following position, that you're not strenuously
11 opposed:

12 "Of course the Crown still is
13 interested in the matter being resolved
14 entirely this week. In light of Mr.
15 Neville's concern, we are not
16 strenuously opposing an adjournment
17 until the following morning."

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. DUMAIS:** Now, I understand that at one
20 point in time you would have consulted with Constable Fagan
21 and Constable Genier, and at one point in time they made
22 you aware that the statement that C-8 had made had actually
23 been done earlier that year on January 23rd, 1997.

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** And if we can just have a quick

1 look at Constable Genier's notes for February 25th, and
2 that's Exhibit 1594.

3 **THE COMMISSIONER:** No, I don't need it.
4 Just put it on the screen there.

5 We're on what part, Monsieur Dumais?

6 **MR. DUMAIS:** Bates page 392.

7 **THE COMMISSIONER:** All right, what portion?

8 **MR. DUMAIS:** The entry under February 25th,
9 1997 at 10:05. So:

10 "Received a call from Fagan. He's in
11 court now re Father Charlie. Asked me
12 several questions pertaining to abuse
13 on ---

14 **THE COMMISSIONER:** C-8.

15 **MR. DUMAIS:** --- C-8 by Father Charlie."

16 Then Constable Fagan indicates:

17 "Fagan apologized because he thought
18 the video he received was a video
19 pertaining to Marcel Lalonde."

20 So it appears that this statement and this
21 videotape was not a part of the disclosure package that
22 either you or Mr. Neville had; correct?

23 **MR. JUSTICE PELLETIER:** It would appear so,
24 yes.

25 **MR. DUMAIS:** All right. And my

1 understanding is that then Detective Constable Genier would
2 have attended the courthouse and met with you and Officer
3 Fagan to discuss the specifics of this matter.

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MR. DUMAIS:** And I understand as well that
6 there was a meeting at one point in time which included a
7 defence counsel.

8 And on the following day, so on February
9 26th, 1997 the matter, the preliminary inquiry, was
10 continuing with the cross-examination of the first witness
11 who was Mr. John MacDonald. So my understanding is you had
12 not terminated his cross-examination.

13 **MR. JUSTICE PELLETIER:** Right.

14 **MR. DUMAIS:** And that cross was adjourned
15 and you then proceeded to call the evidence of C-3, and you
16 led that evidence in-chief and the cross-examination of C-3
17 was completed on that day as well.

18 So perhaps we can just have a quick look at
19 Exhibit 414.

20 **THE COMMISSIONER:** This is Volume 3 of the
21 preliminary inquiry transcript.

22 **MR. JUSTICE PELLETIER:** Thank you.

23 **THE COMMISSIONER:** What page?

24 **MR. DUMAIS:** Pages 108 or Bates page 012.

25 **MR. JUSTICE PELLETIER:** I'm sorry, sir, the

1 page number?

2 MR. DUMAIS: The page of the transcript is
3 108.

4 MR. JUSTICE PELLETIER: Thank you.

5 MR. DUMAIS: I'm looking at the ruling of
6 Justice Dempsey. And my understanding is after the
7 completion of the evidence of C-3, defence counsel made a
8 request for an adjournment and you opposed that adjournment
9 and this is Justice Dempsey's ruling. So five or six lines
10 down, he indicates:

11 "Until there is some concrete evidence
12 before this Court that there is some
13 connection, albeit any connection,
14 between these parties that would impact
15 upon the issues before this Court, I
16 see really no need to delay this matter
17 further. I agree entirely with counsel
18 that if there was in fact some
19 connection that would be another issue,
20 but on the submissions before me I
21 really see perhaps nothing but
22 supposition at this point."

23 And then counsel then indicated that it was
24 his intention to obtain an extraordinary remedy in the
25 nature of a prohibition order, and he indicated that on the

1 record. And, as a result of that request, the preliminary
2 inquiry was not completed and it was adjourned to permit
3 counsel to obtain instructions and file his application for
4 a prohibition order.

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** And really the only
7 significance for that is that in your mind then, from this
8 point on, at least until the preliminary inquiry is
9 resumed, the delay would be the responsibility of the
10 defence. Is that correct? Were you thinking that at the
11 time?

12 **MR. JUSTICE PELLETIER:** It had not crossed
13 my mind at the time. It may have. Clearly, however, if
14 the defence was requesting an adjournment that was denied
15 and then bringing the prerogative remedy, it would be borne
16 by the defence.

17 **MR. DUMAIS:** Because clearly at this point
18 in time, you're taking the position that this is an
19 unrelated matter and you should proceed?

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** All right.

22 **THE COMMISSIONER:** So just if I have it
23 straight. Mr. Neville was saying you can't continue the
24 preliminary inquiry because there is a connection between
25 C-8 that had popped up in the newspaper somehow, and the

1 rest of the preliminary inquiry?

2 **MR. JUSTICE PELLETIER:** I believe,
3 Mr. Commissioner, that Mr. Neville's concern was his
4 obligation to determine how C-8 came to be; to see if it
5 had any bearing on how any of the complainants came to be.
6 I don't know if it was so much communications between C-8
7 and other witnesses, but rather the genesis of the C-8 part
8 of all of this. And that was what was raised that I had
9 objected to as not being sufficiently connected to the
10 issues before Justice Dempsey at a preliminary inquiry,
11 which he agreed with, which prompted Mr. Neville to obtain
12 the prohibition order against the justice.

13 **THE COMMISSIONER:** All right.

14 **MR. DUMAIS:** Now, if we can just have a look
15 at the next document which is 109290.

16 **THE COMMISSIONER:** Thank you.

17 Exhibit Number 3296 is a letter addressed to
18 Monsieur Robert Pelletier from Michael Neville, again dated
19 March 7th, 1997. Exhibit 3296.

20 **--- EXHIBIT NO./PIÈCE NO. P-3296:**

21 (109290) - Letter from Michael Neville to
22 Robert Pelletier dated 07 Mar 97

23 **MR. DUMAIS:** So this is simply counsel's
24 request that he be advised of any developments in the
25 police investigation of the C-8 matter. And then you

1 respond to him in your own correspondence. And that is
2 Document number 109289.

3 **THE COMMISSIOENER:** Thank you.

4 Exhibit 3297 is a letter addressed to Mr.
5 Michael Neville dated March 17th, 1997 from Robert
6 Pelletier.

7 **--- EXHIBIT NO. / PIÈCE NO. P-3297:**

8 (109289) - Letter from Robert Pelletier
9 to Michael Neville dated 17 Mar 97

10 **MR. DUMAIS:** So it appears that you're
11 responding to the - his earlier correspondence, and the
12 first couple of lines read as follows:

13 "From my most recent discussions with
14 Detective Constable Mike Fagan, the
15 chief investigator in this matter, it
16 appears as though no further
17 investigation will be made into the
18 circumstances surrounding the C-8
19 complaint."

20 So do you recall what you are referring to
21 here, whether or not they're investigating this matter and
22 this complaint?

23 **MR. JUSTICE PELLETIER:** Whether?

24 **MR. DUMAIS:** Whether or not they're pursuing
25 this complaint? Whether or not they're continuing on with

1 this investigation?

2 **MR. JUSTICE PELLETIER:** Well no, the letter
3 would tend to show that they're not pursuing the C-8
4 complaint.

5 **MR. DUMAIS:** Okay. So at this point in
6 time, they're not going ahead with this investigation?

7 **MR. JUSTICE PELLETIER:** That's what this
8 letter says, yes.

9 **MR. DUMAIS:** Okay. All right.

10 So my understanding, that shortly afterwards
11 there were a number of developments. And more
12 specifically, the investigators were made aware of a brief
13 of materials that had been delivered by Constable Perry
14 Dunlop of the Cornwall Police Services to the then London
15 Chief of Police, Julian Fantino, which is -- and these
16 documents are commonly referred to here in the Hearings
17 Room as the Fantino brief.

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. DUMAIS:** And as well, I understand that
20 a complaint that had been made by a gentleman by the name
21 of Ron Leroux had been made to the headquarters in Orillia,
22 the OPP Headquarters in Orillia?

23 And if we can just have a look at Inspector
24 Smith's notes on these matters, and that's exhibit 1803 at
25 Bates page 259?

1 So this looks like, when you were first
2 advised of the existence of these documents, so his - the
3 entry on 18th of March '97: "Called Bob Pelletier re:
4 prelim and new info received from Fantino." And then
5 "Thursday --", it appears like 9:00 a.m., "Bells Corners,
6 bring the Fantino brief." So arrangements had been made to
7 meet with the officer and you advise him to bring the
8 documents with him. Is that correct?

9 **MR. JUSTICE PELLETIER:** Yes.

10 **MR. DUMAIS:** And then if we look on the
11 following page, the entry on the 20th day of March, it
12 appears that you met with Inspector Smith and Detective
13 Constable Fagan and that you would have discussed the new
14 allegations contained in both the Fantino brief and Ron
15 Leroux' statement.

16 And the notes that the Inspector took of
17 that meeting provide that you met in Ottawa, that you
18 reviewed the brief and the brief from Orillia.

19 And then there's an entry, the second bullet
20 on March 20th, 1997, so I think it reads as follows:

21 "Discussed direction of investigation
22 re: new allegations and info to be
23 discussed with Peter Griffiths."

24 So, was Peter Griffiths the Regional
25 Director of Crown or Operations at that time, so in early

1 1997?

2 MR. JUSTICE PELLETIER: Yes.

3 MR. DUMAIS: March 1997. So that's -- he
4 was -- and you took over that position in May of that year.
5 Is that right?

6 MR. JUSTICE PELLETIER: Mr. Griffiths was
7 only gone for a period of time and I took over in May of
8 '97. He left permanently May '98, I replaced him a second
9 time. At that point, we were both in and out of the
10 office, in fact.

11 MR. DUMAIS: Okay. And is it the fact that
12 he's the Regional Director that he's being apprised of
13 these developments here?

14 MR. JUSTICE PELLETIER: Yes.

15 MR. DUMAIS: All right.

16 Madam Clerk, can you blow up the note just a
17 bit? So it's the bottom of Bates page 260.

18 No, just blow it up so it's -- just the
19 entry on March 20th, 1997.

20 That's the first bullet, so the fourth line,
21 on March 20th, 1997:

22 "New information that requires
23 disclosure, copied and forwarded to Mr.
24 Neville's office with cover name [or
25 covering name]."

1 So does this essentially mean that the
2 Fantino brief had been provided to defence counsel?

3 **MR. JUSTICE PELLETIER:** I know it was at one
4 point, yes.

5 **MR. DUMAIS:** All right.

6 So if we can have a -- perhaps we can have a
7 look at your correspondence that's dated March 20th, '97?

8 **THE COMMISSIONER:** What exhibit, please?

9 **MR. DUMAIS:** Sorry. Document Number 103323.

10 **THE COMMISSIONER:** A new Exhibit.

11 Thank you. Exhibit 3298, which will have a
12 publication stamp, is a letter dated May 20th, 1997 to
13 Michael Neville from Robert Pelletier.

14 --- **EXHIBIT NO. / PIÈCE NO. P-3298:**

15 (103323) - Letter from Robert Pelletier to
16 Michael Neville dated 20 Mar 97

17 **MR. DUMAIS:** So this is on the same date, it
18 looks like you authored this letter and then you provided
19 him with -- provided counsel with disclosure, new
20 disclosure, and you list here the six items. So there's
21 the statement of Mr. Leroux and number two, the Orillia OPP
22 brief, compiled in February of 1997; an affidavit of Mr.
23 Leroux; a statement of Gerald Renshaw taken December 5th,
24 '96; an affidavit of Robert Renshaw and a copy of C-8's
25 videotaped statements.

1 And my understanding is that, following
2 these events on March 20th, 1997, you did raise the issue of
3 new allegations with Mr. Griffiths?

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MR. DUMAIS:** And that a decision was made
6 that everyone should get together so that you guys can
7 discuss what will become of these new allegations?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** And I believe a meeting was set
10 on April 24th, 1997. And prior to that meeting, I
11 understand that you prepared a memo, and that's at Exhibit
12 228, for Mr. Griffiths' benefit?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** So that memo is dated April 2nd,
15 1997 and, essentially, at pages 1 through 3 you go through
16 some of the background information, and then in the middle
17 pages, so pages 3 through 6, you set out information with
18 respect to Constable Perry Dunlop and his civil law suit?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And then at the bottom of pages
21 6 to 8, you summarize the allegations in the Fantino brief,
22 as well as in Ron Leroux's statement.

23 So if I can then just take you to page 9, so
24 these are some of the conclusions that you're drawing. So
25 in the first paragraph, you indicate as follows:

1 "So read together, the various
2 statements, affidavits, pleadings and
3 photographs paint a picture of a large
4 and organized group of homosexual
5 paedophiles involved in illegal sexual
6 activities and abuse of power."

7 And then you indicate at the top of the next
8 paragraph:

9 "Needless to say, I'm not convinced
10 that these allegations are well-
11 founded."

12 So early on in this process you had concerns
13 about some of the allegations that were being put forward
14 by Mr. Leroux and then Constable Dunlop. Is that fair?

15 **MR. JUSTICE PELLETIER:** Yes.

16 **MR. DUMAIS:** And then you refer here -- and
17 I'm still in the second paragraph. About mid-page, you
18 write down as follows:

19 "Giving three unfortunate
20 coincidences..."

21 And then you list them:

22 "...firstly, the conviction of Murray
23 MacDonald's father; secondly, Murray
24 MacDonald's decision initially not to
25 pursue criminal charges in respect of

1 David Silmser; and thirdly, Malcolm
2 MacDonald's conviction for obstructing
3 justice, the Dunlop group are convinced
4 of the existence of a conspiracy."

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** And when you're indicating here
7 "three unfortunate coincidences", you're not referring here
8 to these three events being unfortunate? Is this -- you're
9 making reference to the linkages that -- between the three
10 events?

11 **MR. JUSTICE PELLETIER:** Those three events
12 converge in what I consider an unfortunate coincidence.

13 **THE COMMISSIONER:** Mr. Lee?

14 **MR. LEE:** Sir, we've had several witnesses
15 now comment on this document. It's rather important to my
16 clients, at least, and I think perhaps if the witness could
17 simply be asked what he meant by that, rather than led?

18 **THE COMMISSIONER:** All right. He's the
19 author.

20 **MR. DUMAIS:** Fair enough.

21 **THE COMMISSIONER:** So, Justice Pelletier,
22 what did you mean by that?

23 **MR. JUSTICE PELLETIER:** Well, I consider
24 each of those matters to be unfortunate, firstly, but what
25 is unfortunate -- what makes the coincidence unfortunate is

1 that those three elements converge and, in my view, could
2 very well lead those to believe that there may be a
3 conspiracy -- to find this as confirmation. You've
4 got a Crown Attorney's father who's convicted for sexual
5 assault; you've got the same Crown Attorney who initially
6 decided there shouldn't be charges; and you've got a former
7 Crown Attorney who's convicted for obstructing justice in
8 relation to arrangements made with the same complainant.

9 So it's the convergence of those three
10 events that led me to phrase it in that way.

11 **MR. DUMAIS:** All right.

12 And if we can just have a look at the next
13 paragraph, about three lines down:

14 "A decision to recommend charges would
15 lend a credence to these individuals'
16 claims, including the conspiracy
17 theory. A decision not to recommend
18 charges would in all likelihood be seen
19 as the latest in the obstructive
20 measures employed by those in
21 authority."

22 Now, can you indicate to us what you meant
23 by that?

24 **MR. JUSTICE PELLETIER:** Well, certain
25 allegations came out of the Fantino brief and if after

1 being reviewed it was decided that charges would be laid,
2 it would validate the Fantino brief and elevate it, give it
3 a certain standing.

4 A decision not to recommend charges would
5 have the exact opposite effect and, as I say there, could
6 lead those who feel there's a conspiracy to take that as
7 the latest in the measure of -- latest in a series of
8 obstructionist measures, so it was a little bit of a
9 "darned if you do, darned if you don't".

10 **MR. DUMAIS:** All right.

11 And then at the end of that paragraph you
12 set out a concern that you had, and it reads as follows:

13 "It is in this connection that my
14 personal as well as professional
15 affiliations with Murray MacDonald
16 become a complicating factor. Your
17 views in this regard would of course be
18 very much appreciated."

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** So perhaps you can indicate
21 what you meant by that?

22 **MR. JUSTICE PELLETIER:** Well, I felt that
23 the review of the brief and any recommendations flowing
24 from it should not be done by myself.

25 **MR. DUMAIS:** And what was your concern?

1 **MR. JUSTICE PELLETIER:** That Murray
2 MacDonald's name was being mentioned in the brief as a
3 member of this group that conspired and got together
4 et cetera, and that I was very well acquainted both
5 professionally and personally with Murray MacDonald.

6 **MR. DUMAIS:** All right.

7 And so then you're essentially asking Peter
8 Griffiths to advise you on that, as to whether or not you
9 should be involved in this matter. Is that essentially
10 what you're asking?

11 **MR. JUSTICE PELLETIER:** Well, this matter --
12 specifically at this point-in-time what I'm asking
13 Mr. Griffiths to give me his instructions are -- because he
14 is my boss, is whether I should be involved in any of the
15 Fantino brief review, recommendations and so on. In my
16 view, the answer was simple. I needed to speak with him
17 and get it from him.

18 **MR. DUMAIS:** All right.

19 And just to finish off with this document,
20 and then in the fourth paragraph you indicated that:

21 "The matter is presently scheduled for
22 May 9th, 1997 to be spoken to in
23 Courtroom Number 9 at 9:30 a.m."

24 **MR. JUSTICE PELLETIER:** Right.

25 **MR. DUMAIS:** And of course you're speaking

1 here of the preliminary inquiry and ---

2 **MR. JUSTICE PELLETIER:** Which is suspended.

3 **MR. DUMAIS:** Yes, and ---

4 **MR. JUSTICE PELLETIER:** The first set of
5 charges that's in abeyance.

6 **MR. DUMAIS:** And you're attending court just
7 to set a date for a continuation.

8 **MR. JUSTICE PELLETIER:** To complete it,
9 right.

10 **MR. DUMAIS:** Perhaps we can take the morning
11 break now?

12 **THE COMMISSIONER:** Thank you. Let's take
13 the morning break.

14 **MR. DUMAIS:** Thank you.

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

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

18 --- Upon recessing at 11:03 a.m./

19 L'audience est suspendue à 11h03

20 --- Upon resuming at 11:27 a.m./

21 L'audience est reprise à 11h27

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

24 This hearing is now resumed. Please be
25 seated. Veuillez vous asseoir.

1 **MR. JUSTICE ROBERT PELLETIER, Resumed/Sous le même serment:**
2 **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR**
3 **MR. DUMAIS: (cont'd/suite)**

4 **MR. DUMAIS:** So, stice Pelletier, we're just
5 looking at some of the events leading up to the April 24th
6 meeting, and I'm just wondering whether or not from the
7 time that you write your memo, which is dated April 2nd,
8 1997, to the April 24th meeting, are you in contact with
9 Peter Griffiths? Are you guys discussing this matter, what
10 should be done, whether or not this new information can
11 affect the Father Charlie MacDonald prosecution? Is there
12 any conversation, any discussion with Mr. Griffiths?

13 **MR. JUSTICE PELLETIER:** There may have been.
14 I don't recall any specifically.

15 **MR. DUMAIS:** All right.

16 And if I can just take you to a transcript
17 of the evidence when Justice Griffiths testified here at
18 the Inquiry, and I'm looking here at Volume 332, pages 132
19 to 133.

20 **THE COMMISSIONER:** Thank you.

21 Exhibit Number -- I'm sorry, no. What page
22 of the transcript?

23 **MR. DUMAIS:** I'm looking at page 131.

24 **THE COMMISSIONER:** Yes.

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** So just to put everything in
2 context, they're looking at your April 2nd memo here and
3 they're asking questions as to what discussions you would
4 have had with Justice Griffiths, and at page 131 the
5 question being put by Mr. Engelmann is as follows:

6 "And what was your understanding of the
7 issue as raised here by Mr. Pelletier?"

8 And the answer from Mr. Justice Griffiths:

9 "The materials in the Dunlop brief
10 contained allegations of conspiracy to
11 obstruct justice against Murray
12 Macdonald. And Murray MacDonald and
13 Bob Pelletier have been friends for
14 many years, and he did not feel that he
15 should be the Crown responsible for
16 looking into these allegations, and I
17 agreed with him."

18 So do you agree so far with what Justice
19 Griffiths is saying here?

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** All right.

22 So then on the following page, so the last -
23 - the last entry, and this is, again, Justice Griffiths
24 responding, so he's saying:

25 "Thirteen months, 14 months, since Mr.

1 Pelletier's initial involvement in
2 February of 1996, in the onset of these
3 charges. So time is ticking with
4 respect to the preliminary hearing with
5 those three complainants and a decision
6 was taken to keep Mr. Pelletier in
7 place to the conclusion of that
8 preliminary hearing, so that there
9 would be no loss of time on that."

10 And then on the following page, Mr.

11 Engelmann continues:

12 "This is the preliminary on the three
13 initial complainants?"

14 "That's correct."

15 "All right. And at that point, when
16 that was completed, that he would no
17 longer be involved?"

18 "That's my recollection."

19 So do you have that recollection with
20 respect to your involvement in the prosecution of the
21 charges with -- on the three initial complainants?

22 **MR. JUSTICE PELLETIER:** My recollection
23 differs.

24 **MR. DUMAIS:** What's your recollections,
25 then?

1 **MR. JUSTICE PELLETIER:** My recollection is
2 that after our discussions, it was felt that I could
3 prosecute Father Charles MacDonald with the three
4 complainants that existed, both at the preliminary inquiry
5 and perhaps further on.

6 I don't recall there being a distinction
7 drawn that my services would terminate once the preliminary
8 inquiry was over.

9 **MR. DUMAIS:** All right.

10 **MR. JUSTICE PELLETIER:** So it's only to that
11 extent that we may have not have been understanding the
12 same things.

13 **MR. DUMAIS:** Okay. So then in April of
14 1997, you've raised the issue of a possible conflict with
15 Murray MacDonald. Your request at that time ---

16 **MR. JUSTICE PELLETIER:** As it relates to a
17 conspiracy.

18 **MR. DUMAIS:** Yes -- that you not be involved
19 in that, but certainly at this point in time, you think you
20 can continue on with the preliminary inquiry?

21 **MR. JUSTICE PELLETIER:** I felt I could.

22 **MR. DUMAIS:** All right.

23 Now, I understand then that this meeting
24 does occur on April 24th, 1997 and that Justice Giffiths is
25 present, yourself, Murray MacDonald, Inspector Smith,

1 Detective Sergeant Hall and Detective Constable Fagan.

2 Do you have a recollection of that meeting,
3 the April 24th, 1897 meeting?

4 **MR. JUSTICE PELLETIER:** Only of it taking
5 place.

6 **MR. DUMAIS:** Okay. You don't recall the
7 specifics of the discussions that day?

8 **MR. JUSTICE PELLETIER:** No, I don't.

9 **MR. DUMAIS:** Okay. Perhaps we can just look
10 at a document, and these are Inspector Smith's notes on the
11 meetings, and that's Exhibit 1803 at Bates page 263.

12 So I'm looking at the entry of April 24th,
13 '97 at 10:00 a.m. and Inspector Smith lists everyone who is
14 at the meeting. And then, further on, it looks like he's
15 listing the decisions that have been taken.

16 So the first one, I think, reads as follows:

17 "Finish preliminary witnesses MacDonald
18 and Silmsier. Ask for an adjournment
19 prior to decision."

20 So do you recall if it was decided that
21 you'd continue on with the last two complainants, and that
22 an adjournment would be requested prior to the decision,
23 I'm assuming, to commit the matters to trial?

24 **MR. JUSTICE PELLETIER:** No, I don't know
25 what that reference means at all.

1 **MR. DUMAIS:** Okay. And then the next point
2 reads as follows:

3 "Police investigate new allegations."

4 So do you recall that, that the police were
5 to investigate all new allegations?

6 **MR. JUSTICE PELLETIER:** These are Officer
7 Smith's notes.

8 **MR. DUMAIS:** Correct.

9 **MR. JUSTICE PELLETIER:** I do recall that at
10 the meeting, it was decided that the police were encouraged
11 to pursue all of the allegations in the Fantino brief.

12 So, if that's what this refers to, yes ---

13 **MR. DUMAIS:** All right.

14 **MR. JUSTICE PELLETIER:** --- that's
15 consistent with my recollection.

16 **MR. DUMAIS:** And then his next note reads as
17 follows:

18 "Disclosure Dunlop brief to Neville."

19 So do you recall that, that it was agreed
20 that -- and I think that -- I'm not exactly sure what he's
21 referring to as the "Dunlop" brief, but -- I'm assuming
22 here, maybe I'm wrong that it's the Fantino brief.

23 **MR. JUSTICE PELLETIER:** Yes.

24 **MR. DUMAIS:** Do you recall that, that the
25 Fantino brief was to be given to defence counsel?

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. DUMAIS:** All right. And my
3 understanding is that it was decided at that meeting as
4 well that Mr. Griffiths would make a request of the OPP to
5 set up a team to investigate all allegations. And that
6 this request came from Inspector Smith, and this is
7 something that Justice Griffiths testified to?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** Do you recall that, that a
10 letter would be sent to ---

11 **MR. JUSTICE PELLETIER:** Superintendent
12 Edgar.

13 **MR. DUMAIS:** ... Superintendent Edgar ---

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. DUMAIS:** --- correct, making that
16 request? Do you recall that?

17 **MR. JUSTICE PELLETIER:** Frankly, I don't
18 recall that that was discussed or agreed upon at the
19 meeting. I know that that was the result. And clearly,
20 that would have been our intention.

21 **MR. DUMAIS:** And you have no reason to
22 dispute Inspector Smith's note on this here?

23 **MR. JUSTICE PELLETIER:** No.

24 **MR. DUMAIS:** All right. And what did you --
25 did you understand that you would have then any involvement

1 in this particular investigation?

2 MR. JUSTICE PELLETIER: The Fantino
3 conspiracy et cetera ---

4 MR. DUMAIS: Yes.

5 MR. JUSTICE PELLETIER: --- part? No, I --
6 I understood clearly that I was not to be involved in that.

7 MR. DUMAIS: Okay.

8 MR. JUSTICE PELLETIER: Excuse me for just a
9 moment. I apologize for the sound effects, Mr.
10 Commissioner. It's ---

11 THE COMMISSIONER: You seem to be harbouring
12 a feisty cold.

13 MR. JUSTICE PELLETIER: There's a bit of
14 that going about.

15 MR. DUMAIS: Now, Mr. Pelletier, I'm --
16 Justice Pelletier -- sorry -- I understand that one of the
17 documents that came into the possession of the Crown was a
18 letter that had been penned by Constable Dunlop and had
19 been sent to the then Solicitor General, Bob Runciman.

20 And if I can then just take you to that
21 letter? And that's a letter dated April 7th, '97 and it's
22 Exhibit 730.

23 (SHORT PAUSE/COURTE PAUSE)

24 MR. JUSTICE PELLETIER: Thank you.

25 Yes?

1 **MR. DUMAIS:** So I'm not going to ask you to
2 go through the -- the entire contents of the letter, but
3 essentially Constable Dunlop is, sort of, explaining
4 different facts, or making his case, to -- to the
5 Honourable Robert Runciman, and if I can just ask you to
6 look at the last page of that letter?

7 And Constable Dunlop appears to be enclosing
8 the following documents to this letter; so, CBC Fifth
9 Estate, "The man who made waves" video, four volumes of
10 documents including press releases, correspondence from
11 lawyers to Cornwall Police Services, statements and
12 affidavits, amended statement of claim, court decisions,
13 pictures and synopses of individuals in the Cornwall area,
14 and several other documents that pertain to this case.

15 And this letter and these documents appear
16 to be copied to, one, the Attorney General and the Ontario
17 Civilian Commission on Police Services. And my
18 understanding is that at one point-in-time, Mr. Griffiths
19 asked you to review this letter and provide him with a
20 memo.

21 If I can just ask you to look at Document
22 Number 130695.

23 **THE COMMISSIONER:** Thank you.

24 Exhibit Number 3299 is a Memorandum to Peter
25 Griffiths from Robert Pelletier dated June 17th, 1997.

1 --- EXHIBIT NO./PIÈCE NO. P-3299:

2 (130695) - Memorandum from Robert Pelletier
3 to Peter Griffiths re: Correspondence from
4 Perry Dunlop dated June 17, 1997

5 **MR. DUMAIS:** So you're -- if you look at the
6 "Re" line, you're making reference here to the
7 correspondence from Perry Dunlop, which is dated April 7th,
8 1997; so the correspondence that we just looked at.

9 And in the first paragraph, you indicate the
10 following:

11 "I have reviewed Mr. Dunlop's
12 correspondence to the Solicitor
13 General, a copy of which was provided
14 to the Attorney General's office. The
15 letter calls for a criminal
16 investigation apparently of both the
17 complaints being made presently of
18 sexual abuse in the Cornwall area and
19 of the Cornwall City Police, as well
20 with regards to its involvement in
21 prior complaints against various
22 individuals in the Cornwall area."

23 So you appear here to be referring to the
24 letter that he wrote.

25 The first question I have for you is, do you

1 recall whether or not you had the enclosures of the Dunlop
2 letter when you're conducting a review and you're preparing
3 this memo?

4 **MR. JUSTICE PELLETIER:** No, I don't believe
5 I did. You're referring to the four boxes of documents and
6 the tape?

7 **MR. DUMAIS:** Yes.

8 **MR. JUSTICE PELLETIER:** I don't believe so.

9 **MR. DUMAIS:** All right.

10 And then you're indicating to Mr. Griffiths
11 -- I'm looking at the second paragraph, the third line:

12 "A preliminary inquiry was commenced in
13 February of this year in relation to
14 seven charges involving three
15 complainants. The preliminary inquiry
16 is scheduled to continue this fall.
17 Examination of the merits of the
18 prosecution will be conducted following
19 the preliminary inquiry."

20 So it appears that the dates for the
21 continuance of the prelim has been set for the fall of
22 1997, and you do actually complete the preliminary inquiry
23 in September of that year?

24 **MR. JUSTICE PELLETIER:** September, yes.

25 **MR. DUMAIS:** And I understand that it

1 resumed on September 8th, 1997, and you received evidence
2 for four days, and it was completed on September 11th, 1997?

3 **MR. JUSTICE PELLETIER:** Yes.

4 **MR. DUMAIS:** And then following the
5 conclusion of the evidence but prior to the matter being
6 committed to trial, there was an announcement through a
7 press conference on September 26th, 1997 setting up the
8 Project Truth. Do you recall that?

9 **MR. JUSTICE PELLETIER:** I don't recall that
10 sequence specifically.

11 **MR. DUMAIS:** Okay, but it appears that
12 you're following the plan that had originally been set out
13 on April 24th, 1997, in previous correspondence. So
14 evidence is heard on April -- until September 11th, 1997 and
15 before a final decision is made, Project Truth
16 investigation is announced; so shortly afterwards. So
17 you're referring to that in your memo to Mr. Griffiths on
18 June 17th, 1997?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And then there's the committal
21 for trial?

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MR. DUMAIS:** Do I have the sequence right?

24 Am I ---

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** All right.

2 **MR. JUSTICE PELLETIER:** My memo to Mr.
3 Griffiths was essentially as it says in the closing
4 remarks, that we're doing what I feel -- we're doing
5 everything that is expected of us.

6 **MR. DUMAIS:** All right.

7 Am I correct in understanding that the
8 defence counsel in the Father Charlie MacDonald matter
9 found out about the Project Truth investigation when it was
10 announced on September 26th, 1997? Does that make sense or
11 were you having these discussions with the defence counsel
12 that there's this investigation that's coming?

13 **MR. JUSTICE PELLETIER:** No.

14 **MR. DUMAIS:** All right.

15 **MR. JUSTICE PELLETIER:** I don't know when
16 Mr. Neville became aware of Project Truth, and in the
17 summer of 1997 I was certainly not discussing with anybody
18 anything and calling it Project Truth. I was speaking with
19 the officers occasionally, but nothing beyond that.

20 **MR. DUMAIS:** All right.

21 And aside from the documents that had been
22 forwarded to counsel -- and if you recall, we looked at
23 your March 20th, 1997 letter addressed to Mr. Neville
24 listing a number of documents that are being disclosed ---

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** --- after you reviewed the
2 Fantino brief.

3 Do you think anything else was disclosed to
4 Mr. Neville prior to September 1997? Do you recall
5 anything?

6 **MR. JUSTICE PELLETIER:** Arising out of the
7 Fantino brief or otherwise?

8 **MR. DUMAIS:** Yes.

9 **MR. JUSTICE PELLETIER:** I can't recall at
10 this point, 12 years later, if we gave him any other
11 materials.

12 **MR. DUMAIS:** Okay. The disclosure that's
13 being given to Mr. Neville in this case, who is tracking
14 that? Are you tracking any of that or is it the
15 responsibility of the investigators on the file?

16 **MR. JUSTICE PELLETIER:** The disclosure is
17 being delivered by the police, but on our instruction, and
18 we ensure that we have an exact copy of what's given and
19 the Crown keeps that on file.

20 **MR. DUMAIS:** Okay.

21 **MR. JUSTICE PELLETIER:** So they have what we
22 have.

23 **MR. DUMAIS:** Okay, and you're tracking that
24 through correspondence or are you tracking that through a
25 ledger?

1 **MR. JUSTICE PELLETIER:** No, it's simply a
2 question of the police delivering materials to the defence
3 and delivering the same materials to myself with a note,
4 usually from Inspector Smith, saying this was provided on
5 such and such a date.

6 **MR. DUMAIS:** All right.

7 So then on October 24th, '97, Father Charles
8 MacDonald is committed to trial and my understanding is
9 that on the same day, Detective Constable Dupuis spoke to
10 you about possible further charges and then you're
11 requesting disclosure as soon as it could be provided.

12 And if I can just take you to Detective
13 Constable Dupuis' notes and that's Exhibit 2609, and that's
14 at Bates page 177.

15 So the previous page sets out the dates.
16 This is October 24th, 1997 and there's been a committal on
17 all counts that you proceeded with?

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. DUMAIS:** And then at 11:10, Detective
20 Constable Dupuis writes down as follows:

21 "Meeting with Crown Attorney re
22 possible further charges. He requested
23 disclosure...?"

24 **MR. JUSTICE PELLETIER:** I'd have to say
25 that's:

1 "...disclosure as long as we can supply
2 same."

3 **MR. DUMAIS:** So Detective ---

4 **THE COMMISSIONER:** "Soon"?

5 **UNIDENTIFIED SPEAKER:** "...as soon as we
6 can supply same."

7 **MR. DUMAIS:** "...as soon as we can supply
8 same."

9 **THE COMMISSIONER:** Okay.

10 **MR. DUMAIS:** So this appears to be one of
11 the first times that additional charges are alluded to with
12 respect to Father Charles MacDonald. Is that fair?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** And shortly ---

15 **MR. JUSTICE PELLETIER:** I'm sorry. I'm
16 sorry, sir. Your question was whether this is the first
17 time that further charges are alluded to?

18 **THE COMMISSIONER:** Well, the fact that there
19 may actually be additional charges forthcoming?

20 **MR. JUSTICE PELLETIER:** Yes, there's
21 definitely a reference to further charges.

22 **MR. DUMAIS:** Yes.

23 **MR. JUSTICE PELLETIER:** It says so, "further
24 charges". But whether it's the first time that it was
25 discussed or alluded to, I don't know.

1 **MR. DUMAIS:** Fair enough.

2 And my understanding is that you signed an
3 indictment on the seven original charges on October 30th,
4 1997, and I'm not going to take you to that document.

5 So then, these took -- these charges out of
6 the Provincial Court and then into the Ontario Court
7 General Division back then, so the Superior Court today.

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** So then if we can look at your
10 involvement in the second set of charges. And my
11 understanding is that following the investigation of the
12 Project Truth officers that they had prepared and compiled
13 a brief for you to look at. And that brief or those briefs
14 had been delivered to you on January 6th, 1998.

15 **MR. JUSTICE PELLETIER:** Okay.

16 **MR. DUMAIS:** So just about two months after
17 this note from Detective Constable Dupuis.

18 Now after the committal of these charges, on
19 the first set of charges, you're continuing on with this
20 file at this point in time. Do I have that right?

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. DUMAIS:** All right. And you've
23 indicated to us that your agreement, as you understood it,
24 was that you would not have any involvement with respect to
25 the conspiracy investigation. Is that fair?

1 **MR. JUSTICE PELLETIER:** That's correct.

2 **MR. DUMAIS:** But some of these charges and
3 allegations and documents and statements with respect to
4 the five new complainants in the Father Charlie MacDonald
5 investigation came from the Dunlop documents. Is that
6 correct?

7 **MR. JUSTICE PELLETIER:** I'm not certain.

8 **MR. DUMAIS:** All right. But certainly you
9 are looking at these new charges. You're looking at this
10 brief to determine whether or not new charges should be
11 laid?

12 **MR. JUSTICE PELLETIER:** Yes.

13 **MR. DUMAIS:** All right. And I understand
14 that after you have reviewed this brief -- and perhaps I
15 can just take you to Inspector Smith's note on the matter,
16 so again that's Exhibit 1803 at Bates page 277. And that
17 is dated -- it's a note taken on the 21st day of January,
18 1998.

19 And as I understand the note, it's making
20 reference to a call that he received from you, and you
21 indicated that you have reviewed the brief and you're
22 recommending that a number of charges be laid. Is that
23 correct?

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** If you can just look at the

1 fifth line from that date, I think it reads as follows:

2 "Charges can be transferred later,
3 hopefully to marry up with the present
4 charges."

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** Is it fair to say that even
7 early on, so in January 21st, 1998, you were thinking of,
8 well, maybe at one point in time, the two sets of charges
9 will be married together?

10 **MR. JUSTICE PELLETIER:** It was in my mind
11 that early and it was my intention throughout to conduct
12 one trial with all complainants.

13 **MR. DUMAIS:** And I was not able to find any
14 type of opinion letter that you would have drafted on these
15 new charges. Do I have that right? Do you recall drafting
16 something?

17 **MR. JUSTICE PELLETIER:** I don't recall
18 drafting anything. I've been provided quite a number of
19 documents in relation to the Inquiry and I've looked
20 through them to see if they're there, and I haven't seen
21 that either.

22 **MR. DUMAIS:** All right.

23 **MR. JUSTICE PELLETIER:** I must say I'd be a
24 bit surprised if I were to make recommendations that there
25 be eight charges in respect of five complainants without it

1 being in writing. If you see the first set of charges, the
2 offence dates were specific, the statute references,
3 et cetera.

4 **MR. DUMAIS:** Yes.

5 **MR. JUSTICE PELLETIER:** And I have
6 difficulty seeing that I would simply tell the officers,
7 "Go ahead and lay these charges," since the sections had
8 changed and such. So there may have been something in
9 writing but I've not seen anything in writing.

10 **MR. DUMAIS:** All right.

11 And just before we look at your involvement
12 in these second set of preliminary inquiries, ---

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** --- I want to look at some of
15 the other opinions that you did provide to some of the
16 Project Truth investigations. As I understand it, you
17 would have been provided with a number of briefs a little
18 later on that year, so on April 1st, 1998.

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And some of the briefs that
21 were given to you were one involving Lionel Carriere, Roch
22 Landry, Paul Lapierre, Harvey Latour, George Lawrence and
23 Dr. Arthur Peachey.

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** And I understand that a couple

1 of days afterwards, on April 3rd, '98 you would have been
2 provided as well with the brief that related to allegations
3 against Father Kenneth Martin.

4 **MR. JUSTICE PELLETIER:** Kenneth?

5 **THE COMMISSIONER:** Martin.

6 **MR. DUMAIS:** Martin.

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MR. DUMAIS:** And my understanding is that
9 you're requested to look at these briefs and determine
10 whether or not charges would be laid, so charges had not
11 been laid at the time you were provided with those briefs.

12 **MR. JUSTICE PELLETIER:** Yes.

13 **MR. DUMAIS:** All right.

14 And who was assigning these tasks to you?

15 **MR. JUSTICE PELLETIER:** I was assigning them
16 to myself.

17 **MR. DUMAIS:** You were at that time the
18 Regional Director of Crown Law Operations. Is that
19 correct?

20 **MR. JUSTICE PELLETIER:** We're looking at
21 what timeframe?

22 **MR. DUMAIS:** The briefs were given to you on
23 April 1st and April 3rd of 1998.

24 **MR. JUSTICE PELLETIER:** No, I was not.
25 There was a short hiatus between my return to L'Orignal and

1 Mr. Griffiths' appointment in May of '98 but I had remained
2 the sort of point man on Project Truth up to that point.

3 **MR. DUMAIS:** Okay.

4 **MR. JUSTICE PELLETIER:** I returned to my
5 functions as the Acting Director on May 1st of '98 within a
6 few weeks of this. But at the time the matter was coming
7 to me because most of it was coming to my attention and I
8 was dealing with it.

9 **MR. DUMAIS:** Okay.

10 So if we can just look at your opinion
11 letter, which is dated May 7th, 1998, and that's Exhibit
12 176.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **MR. JUSTICE PELLETIER:** Yes, sir.

15 **MR. DUMAIS:** So essentially, if you look at
16 the first -- your opinion on -- with respect to
17 Dr. Peachey, the charges or the brief against Ken Martin
18 and Mr. Lawrence, you summarize what the evidence is. I
19 think for each of these three individuals you raise the
20 possible issues at trial being principally one of consent.

21 And notwithstanding some of these issues,
22 your opinion at this point in time is that they should at
23 the very least proceed with charges, run them through the
24 preliminary inquiry and then reassess or re-evaluate
25 afterwards?

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. DUMAIS:** All right.

3 With respect to the fourth brief that you
4 looked at, and that's the brief involving Lionel Romeo
5 Carriere and I'm just looking at the last three lines of
6 your opinion on page 2 of your opinion letter. It reads as
7 follows:

8 "There is, however, one caution I make
9 in relation to charges against Mr.
10 Carriere. This individual is presently
11 77 years old and will likely be in his
12 80s before any trial would be
13 conducted. These allegations will be
14 45 years old by the time they are tried
15 and relate to fondling-type activities
16 on a limited number of occasions."

17 And then you question whether or not it
18 would be in the public interest to proceed with charges or
19 not. And if you look then the fourth line, the sentence
20 starting with "In the event" and you indicate the
21 following:

22 "In the event that you feel that
23 reasonable and probable grounds exist
24 and that the public interest would be
25 served by a prosecution, I recommend

1 that the matter proceed to a
2 preliminary inquiry."

3 So is that issue, whether or not it is in
4 the public interest, is that a decision that a Crown
5 usually makes or can that decision as well be made by a
6 police officer?

7 **MR. JUSTICE PELLETIER:** The Crown usually
8 makes that call.

9 **MR. DUMAIS:** All right.

10 **MR. JUSTICE PELLETIER:** I should mention,
11 I'm speaking here to Tim Smith with whom I had had
12 experience of several years of work on very similar cases
13 and in that paragraph, I actually refer him to similar
14 situations we were confronted with. And so while it is the
15 prosecutor's decision -- responsibility to decide whether a
16 prosecution is in the public interest, the relationship
17 with Smith and his experience and his awareness of these
18 issues, I felt his opinion was certainly worth to --
19 attention should be paid to his opinion as well.

20 **MR. DUMAIS:** All right.

21 Because both Inspector Smith and yourself
22 had been involved in a number of prosecutions -- a number
23 of the Alfred prosecutions.

24 **MR. JUSTICE PELLETIER:** In the Alfred
25 Training School case, yes.

1 **MR. DUMAIS:** All right.

2 If I can then just ask you to look at your
3 opinion on No. 6, which is on Paul -- the Paul Lapierre
4 briefs on page 3?

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** And it's about mid-paragraph,
7 the sentence starts with "Clearly".

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** "Clearly, whether in respect of
10 the suspect Lapierre or any other
11 suspect, there is certainly no obvious
12 reason for Marleau to be coming forward
13 after all these years with these
14 allegations unless they are true."

15 And then you indicate:

16 "I am unaware of any pending civil
17 action or any prior threats or
18 prosecution made by this individual."

19 So the fact of whether or not there are any
20 pending civil action, does that factor in your assessment
21 as to whether or not these complaints are credible?

22 **MR. JUSTICE PELLETIER:** It might.

23 **MR. DUMAIS:** It might?

24 **MR. JUSTICE PELLETIER:** It would depend on
25 the circumstances.

1 **MR. DUMAIS:** All right. And certainly in
2 this case, there wasn't any outstanding civil action?

3 **MR. JUSTICE PELLETIER:** If I rely on what I
4 wrote then, I would have to say no, there was no indication
5 of Lapierre suing Father MacDonald ---

6 **MR. DUMAIS:** All right.

7
8 **MR. JUSTICE PELLETIER:** --- to my knowledge.
9 The civil action, while it might be
10 considered, I want to make it clear, is not determinative
11 in any way. It's simply one other fact to consider when
12 assessing the evidence of a witness.

13 **MR. DUMAIS:** All right.

14 And then if you look at the last paragraph,
15 so that's the next page, page 4, and you indicate here that
16 -- and it's the second line:

17 "As we have discussed, it would likely
18 be impossible for me to conduct all
19 these prosecutions particularly given
20 my present position at the regional
21 office in Ottawa."

22 Certainly, you are providing your opinion
23 here as to whether or not charges should proceed on these
24 matters, but it was never your intent to conduct the
25 prosecutions?

1 **MR. JUSTICE PELLETIER:** No, I couldn't.
2 There was no way I could undertake those cases at that
3 point in time.

4 **MR. DUMAIS:** So my understanding then is
5 that you had some involvement in trying to secure the
6 assignment of a Crown to conduct some of these
7 prosecutions, and my understanding is that you were looking
8 for a Crown that was bilingual?

9 **MR. JUSTICE PELLETIER:** Yes.

10 **MR. DUMAIS:** You were looking for someone
11 outside of this jurisdiction because of the allegations
12 that had been made against the local Crown's office here?

13 **MR. JUSTICE PELLETIER:** Yes, bilingual in
14 some of the cases, not all.

15 **MR. DUMAIS:** All right.

16 Because I think by then, you had been
17 advised that perhaps the Lionel Carriere matter was
18 proceeding in French?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** All right.

21 And as well, I take it, you were looking for
22 a Crown that was able to, if not relocate but spend a
23 certain period of time here, in Cornwall, conducting all of
24 these prosecutions?

25 **MR. JUSTICE PELLETIER:** Yes, we were looking

1 in the North Region and anyone who's had to trial in the
2 North Region to spend a lot of time in Cornwall knows that
3 there's a certain effort involved.

4 **MR. DUMAIS:** And you are at that time the
5 Acting Regional Director?

6 **MR. JUSTICE PELLETIER:** I am.

7 **MR. DUMAIS:** So is that the reason why this
8 task to find a Crown to conduct these trials your job?

9 **MR. JUSTICE PELLETIER:** It's part of my
10 responsibilities.

11 **MR. DUMAIS:** Okay.

12 And then -- so if you are looking for a
13 Crown that meets these criterias, what's the process; who
14 do you talk to to try to get someone assigned?

15 **MR. JUSTICE PELLETIER:** Well, one matter had
16 already been assigned to Shelley Hallett out of Special
17 Prosecutions.

18 **MR. DUMAIS:** Yes.

19 **MR. JUSTICE PELLETIER:** And I think fairly
20 early on, Dr. Peachey, as a former coroner who was felt as
21 a public figure might be prosecuted by Miss Hallett as
22 well.

23 **MR. DUMAIS:** Yes.

24 **MR. JUSTICE PELLETIER:** So we had two
25 individuals being prosecuted by a second prosecutor, a

1 prosecutor other than myself, which left us with six other
2 suspects. And so I would be looking with six other
3 suspects for -- given the overlap of the issues and
4 witnesses and so on, probably be looking for one other
5 prosecutor. So the process was simply a question of
6 picking up the phone, calling my colleagues in the other
7 regions and seeing if I could get somebody to do those
8 cases for us.

9 **MR. DUMAIS:** Okay.

10 So are you the one doing that; are you
11 communicating with other regional directors in the
12 province?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** Is that what you do?

15 All right.

16 So this did not fall in the hands of the
17 Crown Law Division in Toronto? You were actually doing the
18 searching yourself?

19 **MR. JUSTICE PELLETIER:** That's right. The
20 Branch of the Crown Law Division Criminal in Toronto,
21 Special Prosecutions, was giving us Miss Hallett and her
22 resources. But in terms of assigning the other cases, it
23 befell the local director.

24 **MR. DUMAIS:** Okay.

25 I'm just going to ask you to look at a

1 document which is Document Number 109265.

2 **THE COMMISSIONER:** Thank you.

3 Exhibit Number 3300 is a letter dated July
4 14th, 1998 to Ms. Ruth Neilson from Murray MacDonald.

5 **--- EXHIBIT NO./PIÈCE No P-3300:**

6 (109265) - Letter from Murray MacDonald to
7 Ruth Neilson re: Crown Briefs - Project
8 Truth dated 14 Jul 98

9 **MR. DUMAIS:** So this is a letter that Mr.
10 MacDonald wrote to Ruth Neilson and if we can just look at
11 the first paragraph, it reads as follows:

12 "Attached please find the Crown copies
13 of police briefs for the six persons
14 charged as a result of the OPP Project
15 Truth investigations. You will also
16 find covering correspondence from
17 Detective Sergeant Pat Hall. Please
18 forward these materials to Ms. Kerry
19 Hughes at your earliest convenience.
20 Kerry should be advised that ..."

21 And then it continues on. It appears from
22 this correspondence from Mr. MacDonald that, at one point
23 in time, she may have considered being involved in these
24 prosecutions. Do you recall anything to that effect?

25 **MR. JUSTICE PELLETIER:** It's funny, I have

1 no recollection of this going in the Toronto direction at
2 all. In fact, having had an opportunity of reviewing these
3 documents, it looks as though Toronto was being asked,
4 perhaps enlisted, but it didn't happen. The materials came
5 back at some point.

6 But I don't recall these efforts that were
7 taken in December of '98.

8 **MR. DUMAIS:** And at the second page of the
9 letter, the first paragraph, there's a comment about one of
10 the -- the requirement for a bilingual Crown to be involved
11 because -- and I've already alluded to this, and Mr.
12 Charlebois has indicated that he's proceeding in French ---

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** --- on the Carriere matter.

15 **MR. JUSTICE PELLETIER:** Right.

16 (SHORT PAUSE/COURTE PAUSE)

17 **MR. JUSTICE PELLETIER:** If I can just ask
18 you then to look at Exhibit 2808.

19 (SHORT PAUSE/COURTE PAUSE)

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** So this is a letter from
22 Inspector Smith addressed to yourself, and in the third
23 paragraph he indicates as follows:

24 "However, there exists ongoing problems
25 in having a prosecutor assigned to the

1 remaining cases."

2 So it appears that as of July, 1998 that
3 someone has still not been located to prosecute these
4 cases. Is that correct?

5 **MR. JUSTICE PELLETIER:** That's what it
6 appears as, yes.

7 **MR. DUMAIS:** And if I can just take you to a
8 further document and that's Document Number 109269.

9 **THE COMMISSIONER:** Thank you.

10 Exhibit Number 3301 is a document dated July
11 30th, 1998 addressed to Bob from Mireille; 3301.

12 **--- EXHIBIT NO./PIÈCE NO. P-3301:**

13 (109269) - Memo from Mireille to Robert
14 Pelletier re: Project Truth dated July 30,
15 1998

16 **MR. DUMAIS:** So this looks like, again, a
17 memo from Mireille and she's relating a telephone call that
18 she receives from Ruth Neilson, in the first paragraph.

19 And it appears as of July 30th, 1998 that
20 they're still unable to find any Crowns to be assigned to
21 these prosecutions and my understanding is that as a result
22 thereof, the disclosure of the briefs that had been
23 prepared and reviewed by you are still waiting to be
24 disclosed to defence counsel, and they are being held here
25 at the local Crown's office until such time as a Crown is

1 assigned?

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MR. DUMAIS:** And ---

4 **MR. JUSTICE PELLETIER:** This letter makes it
5 clear that we did consult with the Toronto Region. It's
6 not something I recall but obviously Ms. Neilson is saying
7 we're unable to find Crowns for you, so it stands to reason
8 that she would have been asked to do so.

9 **MR. DUMAIS:** And we know that eventually Mr.
10 Godin, Mr. Alain Godin, from the Northwest Region is
11 assigned to conduct these prosecutions. and perhaps if we
12 can just file a document, Document Number 109274.

13 **THE COMMISSIONER:** Thank you.

14 Exhibit Number 3302 is a memorandum dated
15 August 11th, 1998 to Tom Fitzgerald from Robert Pelletier.

16 --- **EXHIBIT NO./PIÈCE NO. P-3302:**

17 (109274) - Memorandum from Robert Pelletier
18 to Tom Fitzgerald re: Project Truth dated
19 August 11, 1998

20 **MR. DUMAIS:** Actually, I apologize. This is
21 prior to Mr. Godin being actually assigned.

22 So essentially in the first paragraph, so
23 you're writing to Tom Fitzgerald, you're requesting his
24 assistance to assign one of his Crowns?

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** And so you're explaining why
2 there's a necessity for someone to be outside of this
3 region and you're alluding to the fact that this Crown has
4 to be bilingual as well?

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** At least one of these trials
7 will be conducted in the French language.

8 And -- Madam Clerk, do you have the cross
9 documents with you?

10 Perhaps we can just put Document Number
11 702538 to the witness.

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

13 **THE COMMISSIONER:** Thank you.

14 Exhibit Number 3303 is a Memorandum dated
15 September 16th, 1998 to Dan Mitchell from Tom Fitzgerald.

16 **--- EXHIBIT NO./PIÈCE No. P-3303:**

17 (702538) - Memorandum from Tom Fitzgerald to
18 Dan Mitchell re: Project Truth dated
19 September 16, 1998

20 **MR. DUMAIS:** So this is mid-September and if
21 you look at the first paragraph, it reads as follows:

22 "This memo will confirm our agreement
23 that Alain Godin [I think it's 'will']
24 will take carriage of these
25 prosecutions. I would request that

1 Alain speak to Bob Pelletier to
2 determine next court appearances [I
3 can't read that word] disclosure."

4 -- et cetera.

5 So it appears that as of mid-September, Mr.
6 Godin is assigned to these prosecutions.

7 Did you ever meet with Mr. Godin to discuss
8 your opinion letter or the briefs or anything with respect
9 to these six prosecutions?

10 **MR. JUSTICE PELLETIER:** I don't believe so.

11 **MR. DUMAIS:** But certainly at one point-in-
12 time you were made aware that he was prosecuting these
13 cases?

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. DUMAIS:** Now, I understand that another
16 brief that you reviewed to provide an opinion on was the
17 death threat investigation; so death threat had been made
18 against Mr. Dunlop and his family?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And you reviewed the brief that
21 had been prepared?

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MR. DUMAIS:** And this brief -- or these were
24 allegations that essentially came from the statement given
25 by Mr. Leroux in Orillia. Is that correct?

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. DUMAIS:** And if we can have just a quick
3 look at your opinion letter, and that is Exhibit 2769.

4 So you indicating that your conclusion is
5 both in the first and last paragraph, so you indicate
6 looking at the four last lines of the first paragraph:

7 "After having reviewed the materials in
8 their entirety, I've come to the
9 conclusion that reasonable and probable
10 grounds do not exist for the laying of
11 any charges related to these
12 discussions."

13 And then you go through some of the
14 evidence. You're indicating that Mr. Leroux is sometimes
15 extrapolating, sometimes interpreting what he's heard. You
16 may ---

17 **MR. JUSTICE PELLETIER:** Actually, what I say
18 is that he refers to the expression that these individuals
19 will be taken care of and that in order to make out a
20 threat charge, it would have to be -- those comments would
21 have to be extrapolated to mean cause their death.

22 **MR. DUMAIS:** Oh, I see.

23 **MR. JUSTICE PELLETIER:** I'm not suggesting
24 Mr. Leroux is making that -- that leap. I'm saying that
25 that's a leap that would have to be made for there to be a

1 conviction.

2 **MR. DUMAIS:** Fair enough.

3 And if I can just take you to the conclusion
4 which is on the last page.

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** "As previously mentioned, I
7 do not feel that reasonable and
8 probable grounds can be said to exist
9 in the present case, nor can it be said
10 that a reasonable prospect of
11 conviction would exist if charges were
12 laid."

13 And then you indicate:

14 "In any event, given the nature of the
15 alleged comments, the lapse of time,
16 the demise of Ken Seguin, and the
17 present proceedings, I do not consider
18 the public interest to be served were
19 charges to be laid."

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** So my question is what you
22 meant by your last comment that the public interest would
23 not be served were charges to be laid?

24 **MR. JUSTICE PELLETIER:** Well, what proceeds
25 that comment is that I say:

1 "Given the nature of the alleged
2 comments, the lapse of time, the demise
3 of Ken Seguin and the present
4 proceedings..."

5 It's all of those things.

6 **MR. DUMAIS:** All right.

7 **MR. JUSTICE PELLETIER:** That is what would
8 lead me to the conclusion that there's no public good to
9 come of prosecuting these individuals for what Mr. Leroux
10 says he heard.

11 **MR. DUMAIS:** And in any event, your
12 conclusion is that there are no RPGs, no reasonable
13 prospect of conviction and your recommendation is that
14 charges are not laid and this ends your involvement with
15 this?

16 **MR. JUSTICE PELLETIER:** That's right.

17 The lack of -- or the fact that the public
18 interest isn't met is really the secondary stage of the
19 analysis of whether someone should be prosecuted.

20 **MR. DUMAIS:** Yes.

21 **MR. JUSTICE PELLETIER:** I didn't feel it
22 overcame the first hurdle; I didn't think there was a case.
23 So it is a sort of a secondary comment, saying if I'm
24 wrong, if by some means the charge would survive even a
25 non-suit. I don't see there being any public good served

1 by doing this at this point.

2 **MR. DUMAIS:** Okay.

3 Now, if we can just talk a bit about the
4 materials from the government binders and the memo that you
5 would have authored and sent to Murray Segal, and I believe
6 that was in August of 1998. And perhaps if I can put
7 everything in context?

8 So at one point-in-time in July of 1998, and
9 we've heard evidence from this from other OPP witnesses,
10 they would have met with Mr. -- or Constable Dunlop to
11 address concerns that he may have been in possession of
12 materials and documents relevant to the Project Truth
13 prosecutions. And during that meeting, it was learned that
14 Constable Dunlop had delivered four binders of materials to
15 MAG and to OCCOPS under the cover of the April 7th letter we
16 looked at earlier on, so the letter that was addressed to
17 Mr. Runciman.

18 **MR. JUSTICE PELLETIER:** Runciman.

19 **MR. DUMAIS:** Correct. And at the officer's
20 request, we know that Constable Dunlop provided Project
21 Truth with a copy of these materials, so in the summer of
22 1998. And I understand that these - all these developments
23 were outlined for you by way of a letter that had been
24 penned by Mr. -- by Inspector Hall.

25 And if we can just start with that letter

1 and look at Document Number 705346.

2 **THE COMMISSIONER:** Thank you.

3 Exhibit 3304 is a letter dated August 10th,
4 1998 addressed to M. Robert Pelletier from Detective
5 Sergeant Hall.

6 **--- EXHIBIT NO./PIÈCE NO. P-3304:**

7 (705346) - Letter from Pat Hall to Robert
8 Pelletier re: R. v. Charles MacDonald dated 10
9 Aug 98

10 **MR. DUMAIS:** So Inspector Hall is sort of
11 setting out the developments with respect to these binders.
12 So he's confirming that he's meeting with Constable Dunlop
13 on July 23rd, 1998. And that's - you address the fact that
14 on April 8th, 1997, Dunlop had delivered these four volumes
15 to each of the following locations, and he names the three
16 locations. And we know that the Ministry of the Solicitor
17 General never actually received the binders *per se*.

18 **THE COMMISSIONER:** I'm sorry? What did you
19 say?

20 **MR. DUMAIS:** That the Ministry of the
21 Solicitor General ---

22 **THE COMMISSIONER:** Yes, yes.

23 **MR. DUMAIS:** --- never received the
24 documents.

25 And if we look at your third paragraph, he

1 makes reference here to the fact that Constable Dunlop had
2 previously sent the documents to Chief Fantino in December
3 of 1996 and we spoke about that earlier on as well.

4 And then he indicates on July 31st, '98 that
5 he was provided with a copy of the four volumes by
6 Constable Dunlop. He describes what these documents are,
7 and then he indicates that he's reviewed these -- the
8 volumes, and he's providing you with the following two
9 documents. And that's the second last paragraph:

10 "The following statements were found in
11 the new material that pertains to the
12 Charles F. MacDonald case. Two copies
13 are being forwarded for your
14 information and disclosure."

15 And then he refers to the specific
16 documents, so a statement by C-8 and the affidavit of
17 Robert Renshaw which is dated February 10th, 1997.

18 Do you recall whether or not you would ever
19 have reviewed the other documents that were contained in
20 these four binders?

21 **MR. JUSTICE PELLETIER:** I don't believe I
22 did.

23 **MR. DUMAIS:** And if I can just ask Madam
24 Clerk to show you Document Number 130711?

25 **THE COMMISSIONER:** Thank you.

1 Exhibit Number 3305 is a memorandum to
2 Karakatsanis -- Mr. Karakatsanis, Deputy Attorney General,
3 from Murray Segal, Assistant Deputy Attorney General, dated
4 March 31st, 1999.

5 --- EXHIBIT NO./PIÈCE NO. P-3305:

6 (130711) - Memorandum from Murray Segal to
7 Andromache Karakatsanis dated 31 Mar 99

8 MR. DUMAIS: Okay. This -- this is a memo
9 that was prepared later on, but if we can just have a look
10 at paragraphs 2 and 3.

11 So paragraph 2 reads as follows:

12 "Sometime in the fall in October of
13 1998, the Minister provided me with a
14 letter written September 18th, 1998 by
15 Mr. Guzzo to the Premier, and copied to
16 the Attorney General and Solicitor
17 General. The Minister requested I take
18 such actions as thought necessary,
19 including contacting Mr. Guzzo."

20 And then if we go to the second paragraph:

21 "Upon reviewing the letter, I concluded
22 that it appeared that Mr. Guzzo had
23 certain questions and criticisms
24 regarding the investigation
25 prosecutions. One area of particular

1 concern was in relation to whether or
2 not the police had materials apparently
3 delivered to the Ministry in April of
4 1997 and because of my relative lack of
5 knowledge about the file, I raised the
6 issue with the Acting Regional Director
7 who prepared a report for me on
8 November 25th, 1998."

9 So do you recall Mr. Segal asking you to
10 prepare a memo with respect to this issue?

11 **MR. JUSTICE PELLETIER:** I don't remember him
12 asking me. I know there was a memo prepared ---

13 **MR. DUMAIS:** Okay.

14 **MR. JUSTICE PELLETIER:** --- but I've no
15 recollection of Mr. Segal asking me to prepare it.

16 **MR. DUMAIS:** Perhaps we can just have a
17 quick look at the memo that you prepared? That's Document
18 Number 113937.

19 **THE COMMISSIONER:** Thank you.

20 Three-three-zero-six (3306) is the next
21 exhibit which is dated November 25th, 1998, Memorandum to
22 Murray Segal from Robert Pelletier.

23 --- **EXHIBIT NO./PIÈCE NO. P-3306:**

24 (113937) - Memorandum from Robert Pelletier
25 to Murray Segal re: Allegations of Sexual

1 Assault in the Cornwall Area dated 25 Nov 98

2 **MR. DUMAIS:** So is this your memo then?

3 **MR. JUSTICE PELLETIER:** Yes.

4 **MR. DUMAIS:** And this memo sets out some of
5 the facts and circumstances that you're aware of in both
6 the Father Charlie MacDonald prosecution and the subsequent
7 disclosure of documents from Mr. Dunlop and Mr. Silmser,
8 but it does not appear from my reading of it to address the
9 specific issue that had been raised by Mr. Guzzo, the fact
10 that in 1997 Constable Dunlop had delivered a number of
11 documents at a number of locations and the issue of whether
12 or not the Project Truth officers had those documents, or
13 had been made aware that they were in existence.

14 **MR. JUSTICE PELLETIER:** I agree.

15 **MR. DUMAIS:** All right.

16 **THE COMMISSIONER:** Can we close it off
17 shortly for lunch, Mr. Dumais?

18 **MR. DUMAIS:** I was just about to return to
19 the Father MacDonald prosecution. It's the perfect time.

20 **THE COMMISSIONER:** Thank you. Let's have
21 lunch; we'll come back at 2:00.

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

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

25 --- Upon recessing at 12:30 p.m. /

1 L'audience est suspendue à 12h30

2 --- Upon resuming at 2:04 p.m. /

3 L'audience est reprise à 14h04

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

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

8 ---**SUBMISSIONS BY THE COMMISSIONER/REPRÉSENTATIONS PAR LE**
9 **COMMISSAIRE :**

10 **THE COMMISSIONER:** Yes, before we go on, I
11 have a short announcement to make.

12 As you recall, sometime last week counsel
13 for the Ontario Provincial Police, Mr. Kozloff, brought
14 forward a motion which, with the exception of the attorney
15 general and I believe counsel for Mr. Leduc endorsed, and
16 that was a motion to extend by 30 days the time by which
17 the written submissions and the oral submissions had to be
18 completed.

19 So on that date of the motion, I forwarded
20 that request to the attorney general for his consideration.
21 On today's date, I received an answer to the parties'
22 request, and that request had been denied.

23 So, accordingly, we will proceed on the date
24 set out in the amended order-in-council.

25 Thank you. Go ahead.

1 **MR. JUSTICE ROBERT PELLETIER, Resumed/sous le même serment:**
2 **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR**
3 **MR. DUMAIS (Cont'd/suite):**

4 **MR. DUMAIS:** Mr. Justice Pelletier, we just
5 finished off looking at a number of opinion letters that
6 you wrote, right before we broke for lunch. I want to take
7 you back now to the Father Charles MacDonald prosecution.

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** And where we had left off this
10 morning, we had just gone through and determined that you
11 had additional complainants and a number of new charges
12 laid on January 26th, 1998.

13 And we had just looked at, right before we
14 looked at the opinion letters, a note in a police notebook
15 indicating that even at that time, you had in the back of
16 your mind -- you were keeping in mind that you might end up
17 joining these two sets of charges?

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. DUMAIS:** Now, is this a discussion that
20 you had at any point in time with your original three
21 complainants? Were they part of that decision?

22 **MR. JUSTICE PELLETIER:** They were not part
23 of the decision. Whether they were made aware of my
24 intention to do so, I can't really say.

25 **MR. DUMAIS:** Okay. I understand that at one

1 point in time -- so in February of 1998, you did receive a
2 piece of correspondence from Mr. Robichaud, who was acting
3 for Mr. Silmsler, and I'm just going to ask Madam Clerk to
4 put Document Number 109376 to the witness.

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: Thank you.

7 Exhibit Number 3307 is a letter sent to Mr.
8 Pelletier, Robert Pelletier from Alain Robichaud.

9 ---EXHIBIT NO./PIÈCE NO P-3307:

10 (109376) - Letter from Alain Robichaud to
11 Robert Pelletier re: R. v. Charles MacDonald
12 dated 25 Feb 98

13 MR. DUMAIS: So it looks like there --
14 Mr. Silmsler has been to a recent court attendance and the
15 court appearance had been cancelled.

16 In any event, Mr. Robichaud appears to be
17 inquiring as to the status of this matter, so Mr. Robichaud
18 appears to be a new lawyer representing Mr. Silmsler.

19 And you respond to this request, and if we
20 can have a look at Document Number 113940?

21 (SHORT PAUSE/COURTE PAUSE)

22 THE REGISTRAR: The number again, please?

23 MR. DUMAIS: One one three nine four zero
24 (113940).

25 THE COMMISSIONER: Thank you.

1 Exhibit 3308 is a letter dated February 27th,
2 1998, addressed to Alain Robichaud from Robert Pelletier.

3 **---EXHIBIT NO./PIÈCE NO P-3308:**

4 (113940) - Letter from Robert Pelletier to
5 Alain Robichaud re: R. v. Charles MacDonald
6 dated 27 Feb 98

7 **MR. DUMAIS:** So essentially if you look at
8 the first paragraph, the fourth line, and you indicate as
9 follows -- so you're sort of summarizing the state of the
10 affairs for the two separate sets of charges, and I think
11 it's useful.

12 So you indicate:

13 "That matter has been the subject of a
14 preliminary inquiry and the accused was
15 committed to stand trial on all
16 charges."

17 Making reference to the initial set.

18 "Those charges were to have been the
19 subject of a judicial pre-trial in
20 General Division on February 6th, 1998,
21 however, a new date had to be arranged
22 as the judge who was to have presided
23 the pre-trial became unavailable."

24 And then, with respect to the new charges,
25 their status is being described in the second paragraph,

1 and you indicate:

2 "Eight new charges in respect of five
3 victims, a first appearance of the new
4 charges in the Provincial Division was
5 held on February 2nd, 1998. At that
6 time the matter was adjourned to March
7 2nd, 1998 for a plea."

8 By that, you're not making reference to a
9 plea of guilty; correct?

10 **MR. JUSTICE PELLETIER:** No.

11 **MR. DUMAIS:** All right. And then in the
12 next paragraph, you discuss the possibility of a joinder of
13 all counts. So, as you've indicated previously, this is
14 something in the back of your mind, at that time?

15 **MR. JUSTICE PELLETIER:** As I stated, it had
16 always been my intention to do so.

17 **MR. DUMAIS:** All right. And then you sort
18 of explain your reasoning in the last three lines:

19 "That would no doubt improve the merits
20 of the case and allow for similar fact
21 evidence, however, this would
22 necessarily result in some delays in
23 conducting the trials on the first
24 series of charges."

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. DUMAIS:** These are among the matters
2 that we -- that will be discussed at the up-coming judicial
3 pre-trial; correct?

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MR. DUMAIS:** All right. And I understand
6 that for the next couple of months there was some
7 difficulty in setting up a judicial pre-trial?

8 It had been set, for some time, in the month
9 of April of 1998. That didn't work out, and it was
10 adjourned to a date sometime in the month of May 1998?

11 **MR. JUSTICE PELLETIER:** Yes.

12 **MR. DUMAIS:** Do you recall that, having some
13 difficulty in having a pre-trial conducted?

14 **MR. JUSTICE PELLETIER:** I recall that in the
15 winter of '98, we were having a difficult time scheduling
16 the pre-trial on the first set of charges ---

17 **MR. DUMAIS:** All right.

18 **MR. JUSTICE PELLETIER:** --- in the General
19 Division, Superior Court.

20 **MR. DUMAIS:** And actually the -- some of the
21 issues that you wanted to discuss at the judicial
22 pre-trial, have been set out in a correspondence that you
23 authored, and that is Document Number 109379.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **THE COMMISSIONER:** Thank you.

1 Exhibit Number 3309 is a letter dated April
2 1st, 1998, to Mary Simpson from Robert Pelletier.

3 ---EXHIBIT NO./PIÈCE NO P-3309:

4 (109379) - Letter from Robert Pelletier to
5 Mary Simpson re: Judicial pre-trial R. v.
6 Charles MacDonald dated 01 Apr 98

7 **MR. DUMAIS:** So you're writing to Mary
8 Simpson, and I'm assuming that she's the assistant to the
9 Justice who is to hold the judicial pre-trials? Is that
10 correct?

11 **MR. JUSTICE PELLETIER:** Yes, she's the --
12 she is the scheduling clerk, in a manner of speaking ---

13 **MR. DUMAIS:** Okay.

14 **MR. JUSTICE PELLETIER:** --- in addition to
15 being the Chief Justice's assistant.

16 **MR. DUMAIS:** And then in the first
17 paragraph, you make reference there to the April 8th, 1998
18 pre-trial. So at that time that's still the scheduled date
19 for the pre-trial.

20 **MR. JUSTICE PELLETIER:** M'hm.

21 **MR. DUMAIS:** If you can just have a look
22 then at the third paragraph, the last four lines where the
23 sentence starts with "The information".

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** "The information presently

1 before the Provincial Court as well as
2 the Summary of Facts concerning the new
3 charges in the Provincial Division are
4 included for discussion as to whether
5 it is advisable to have all matters
6 tried together, given the obvious
7 overlap of issues."

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** So certainly you're identifying
10 that this is an issue that's to be discussed at the
11 upcoming judicial pre-trial.

12 **MR. JUSTICE PELLETIER:** Yes, sir.

13 **MR. DUMAIS:** And some of the other issues
14 that you've identified, that's in the next paragraph,
15 following page. So (1) credibility; (2) motive to
16 fabricate; (3) delay; (4) change of venue; (5) possible
17 charter reliefs with respect to missing evidence; and
18 finally (6) motion for severance or adjournment of counts
19 and possible delays resulting from trying all existing
20 charges together.

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. DUMAIS:** All right. And this letter is
23 being copied to counsel in the matter; Mr. Neville.

24 **MR. JUSTICE PELLETIER:** That's correct.

25 **MR. DUMAIS:** All right. Your letter is sort

1 of serving as some sort of a pre-trial brief. Is that
2 fair?

3 **MR. JUSTICE PELLETIER:** A summary of the
4 issues we're going to discuss.

5 **MR. DUMAIS:** And I understand that the
6 actual judicial pre-trial that was conducted in this matter
7 was just completed later that year, so in the month of
8 November 1998. Do you recall that?

9 **MR. JUSTICE PELLETIER:** I don't recall that
10 it was in November. I do recall it was sometime later.

11 **MR. DUMAIS:** Okay. And perhaps I can just
12 ask you to look at Exhibit 3089.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **MR. DUMAIS:** So this is a letter that you
15 sent to Mr. Neville on November 20th, 1998 and you're
16 copying Ms. Simpson, the Regional Coordinator. And if you
17 look at about halfway down the first paragraph, you
18 indicate as follows:

19 "As we know, as a result of scheduling
20 difficulties that arose in the General
21 Division pre-trial list earlier this
22 year, the judicial pre-trial could not
23 be conducted as earlier planned. You
24 will recall, no doubt, or have been
25 informed of the presiding Justice's

1 comments at the last Assignment Court
2 when it was clearly indicated that
3 these matters were to be pre-tried soon
4 in order for the matter to proceed as
5 expeditiously as possible."

6 **MR. JUSTICE PELLETIER:** Yes.

7 **MR. DUMAIS:** So certainly, again, the delay
8 was certainly in your mind at that time and certainly was
9 in the justice's mind that was at the Assignment Court.

10 **MR. JUSTICE PELLETIER:** That's correct.

11 **MR. DUMAIS:** Is that fair?

12 And if we look at the second page, the
13 second -- or the first sentence:

14 "As I've mentioned to you previously,
15 it will be my intention in any event to
16 make a motion in due course that all
17 charges presently before both levels of
18 court be heard together."

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** So I mean certainly at this
21 point in time, so in November of 1998, I think your
22 intentions are pretty clear at this point in time ---

23 **MR. JUSTICE PELLETIER:** They are.

24 **MR. DUMAIS:** --- about marrying the two sets
25 of charges.

1 **MR. JUSTICE PELLETIER:** Yes, sir.

2 **MR. DUMAIS:** And then you're explaining your
3 thoughts on this about mid-way in this paragraph. The
4 sentence starts with "Given".

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** So:

7 "Given that, practically speaking, a
8 General Division trial on the charges
9 presently before the General Division
10 would not take place for several
11 months, if not more, there may be
12 little disadvantage in further
13 adjourning the General Division matter
14 until the conduct of the preliminary
15 inquiry next spring in order to
16 determine the merits of any joinder of
17 counts motion and the wisdom of trying
18 all matters together at the same
19 time."

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** So I mean essentially we're now
22 at the end of November 1998 and we know that the
23 preliminary inquiries on the second set of charges have
24 been set in early spring 1999.

25 **MR. JUSTICE PELLETIER:** In March, I believe.

1 **MR. DUMAIS:** Yes.

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MR. DUMAIS:** And then I'm not sure if he's
4 responding to this specific letter, but if we can just have
5 a look at Exhibit 2607.

6 **THE COMMISSIONER:** That's Mr. Neville's
7 letter?

8 **MR. DUMAIS:** Correct.

9 **THE COMMISSIONER:** Okay.

10 **MR. DUMAIS:** So essentially this
11 correspondence follows the pre-trial conference that was
12 completed with Justice Desmarais, and my understanding is
13 that Mr. Neville cannot be present in court at the next
14 appearance, and he's providing you with the following
15 instructions in the last four lines:

16 "It is also my understanding that you
17 will indicate that this adjournment is
18 not to be taken as a waiver of any
19 rights that Father MacDonald may have
20 under Section 11(b) of the Charter. We
21 will advise our agent that you will be
22 making these submissions and we will
23 take no position on the record."

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. DUMAIS:** So I mean that was your

1 understanding that at least at this point in time that
2 there had been no waiver of 11(b) rights by Father Charlie
3 MacDonald?

4 **MR. JUSTICE PELLETIER:** That's correct.

5 **MR. DUMAIS:** All right. And the matter is
6 spoken to on the record, and if you can have just a quick
7 look at Exhibit 3090.

8 **THE COMMISSIONER:** What page?
9 Quelle page?

10 **MR. DUMAIS:** It's at page 1, line 14 through
11 17. So this is the appearance of January 21st, 1999. And
12 this is the agent for Mr. Neville speaking. He's
13 indicating:

14 "He has also asked me to indicate to
15 the Court that I'm not instructed and
16 he is not prepared on behalf of
17 Mr. MacDonald to waive any Charter
18 rights."

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** So as you're -- so you attended
21 a judicial pre-trial before Justice Desmarais. Whether or
22 not Father Charlie MacDonald is prepared to waive his 11(b)
23 rights, is that a point of discussion? Do you ever address
24 that during that pre-trial?

25 **MR. JUSTICE PELLETIER:** The pre-trial of?

1 **MR. DUMAIS:** The pre-trial on the first set
2 of charges that would have been conducted before Justice
3 Desmarais prior to this court appearance ---

4 **MR. JUSTICE PELLETIER:** I don't recall
5 whether we discussed delay at the pre-trial.

6 **MR. DUMAIS:** Do you recall, just generally
7 speaking, if that was a point of discussion, whether or not
8 you were requesting that or whether or not defence counsel
9 was objecting to it?

10 **MR. JUSTICE PELLETIER:** No. I don't recall
11 there being any request that he waive his client's right to
12 a trial within a reasonable time at the pre-trial, nor was
13 there ever any such waiver.

14 **MR. DUMAIS:** All right.

15 **MR. JUSTICE PELLETIER:** It would have had to
16 have come up in our discussions about the consequences of
17 doing both trials together but I can't be specific as to
18 what was said at the pre-trial.

19 **MR. DUMAIS:** Okay. Now, we have heard
20 evidence here at the Inquiry from Detective Constable
21 Dupuis and he recounted that he recalled a conversation
22 between yourself and defence counsel. And to the best of
23 Detective Constable Dupuis' recollection, this conversation
24 would have occurred sometime between the date that he
25 provided you with the brief on the new set of charges, so

1 January 6th, 1998, and the date when the information was
2 sworn; I think that's January 26th, 1998.

3 And he described the meeting or the
4 discussion as a chance meeting that you -- where you would
5 have been present, Detective Constable Dupuis and Mr.
6 Neville. He described the location of the meeting as being
7 at the courthouse in Ottawa and described it as a "hallway
8 discussion".

9 So nothing had been planned. You would have
10 bumped into each other and you would have - you would have
11 said something to the effect, "Do you want one trial or
12 two?" And he would have responded, "One". And then you
13 would have indicated, "What about delay or the 11(b)?" and
14 he would have responded something to the effect that he was
15 waiving that.

16 So do you recall this chance meeting ever
17 occurring at the courthouse in Ottawa?

18 **MR. JUSTICE PELLETIER:** No, I have no
19 recollections of that discussion taking place with Mr.
20 Neville.

21 **MR. DUMAIS:** All right.

22 **MR. JUSTICE PELLETIER:** Not saying that we
23 would not have perhaps have bumped into each other and
24 discussed the matter, but I have no recollection of either
25 it happening or what would have been said.

1 **MR. DUMAIS:** All right.

2 And my understanding is that, at one point-
3 in-time, shortly before the violation of 11(b) application
4 was argued by Mr. McConnery, that Detective Constable
5 Dupuis would have told him about this conversation, and we
6 did ask Mr. McConnery the question when he testified here.
7 He indicated when he was made aware of that he would have
8 had a meeting with you to discuss this very issue, whether
9 or not there had been this chance meeting.

10 Do you recall a meeting with Mr. McConnery?

11 **MR. JUSTICE PELLETIER:** I recall meeting
12 with Mr. McConnery to discuss that some time later.

13 **MR. DUMAIS:** All right. And what was your
14 response, or what was -- perhaps we can start -- what was
15 he asking?

16 **MR. JUSTICE PELLETIER:** Mr. McConnery was
17 curious to know whether I was aware of any discussions
18 between counsel bearing on the issue of delay and any
19 possible waiver.

20 **MR. DUMAIS:** Okay. And your response to his
21 queries were?

22 **MR. JUSTICE PELLETIER:** As it is today. I
23 had no recollection of any such discussions with Mr.
24 Neville.

25 **MR. DUMAIS:** Yeah.

1 **MR. JUSTICE PELLETIER:** At least in the
2 manner described by Constable Dupuis.

3 **MR. DUMAIS:** Okay.

4 **MR. JUSTICE PELLETIER:** Discussions at pre-
5 trials or court appearances may have taken place. We would
6 discuss the issue but certainly not any perchance meeting
7 with Mr. Neville in the courthouse halls in Ottawa.

8 **MR. DUMAIS:** All right.

9 Now, with respect to the second set of
10 charges, as you've indicated, those -- the preliminary
11 inquiry was held in March of 1999?

12 **MR. JUSTICE PELLETIER:** That's correct.

13 **MR. DUMAIS:** And I understand that on May 3rd
14 1999, Father Charles MacDonald was committed to stand trial
15 on the second set of charges?

16 **MR. JUSTICE PELLETIER:** On all charges, yes.

17 **MR. DUMAIS:** Yes. And you did prepare and
18 sign an eight-count indictment on May 5th, 1999?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. DUMAIS:** And from this point on, a
21 decision had been made by yourself -- or perhaps you can
22 just advise us on that -- to not continue further with
23 these -- with either charges. Is that correct?

24 **MR. JUSTICE PELLETIER:** I beg your pardon?

25 **MR. DUMAIS:** You're transferring the file?

1 **MR. JUSTICE PELLETIER:** The decision to
2 transfer the file came in April of 1999.

3 **MR. DUMAIS:** And can you just explain to us
4 how that came about?

5 **MR. JUSTICE PELLETIER:** How it was done?

6 **MR. DUMAIS:** Or how it was decided or ---

7 **MR. JUSTICE PELLETIER:** Or how it was
8 decided?

9 It became clear to me that certain
10 individuals in the community seemed convinced that Murray
11 MacDonald, the local Crown Attorney, may be part of a group
12 of individuals who were alleged to be undertaking some
13 campaign to obstruct justice, prevent cases from going to
14 court, prevent charges from being laid, and so on. And to
15 the extent that Murray MacDonald, now that the trials were
16 looming -- that Murray MacDonald may become a witness, it
17 became abundantly clear to me that I could not go on as
18 prosecutor.

19 **MR. DUMAIS:** Okay. So the very same issue
20 that you had identified to Mr. Griffiths back on April 2nd,
21 1997?

22 **MR. JUSTICE PELLETIER:** There's a
23 difference. When I had consulted Mr. Griffiths in April of
24 1997, my question specifically was whether I should be
25 involved with the police in any of the investigation of the

1 so-called conspiracy.

2 MR. DUMAIS: Yes.

3 MR. JUSTICE PELLETIER: Mr. Griffiths felt I
4 shouldn't and I agreed with him wholeheartedly. It was
5 also agreed that I could nonetheless continue to conduct
6 the prosecution of Charles MacDonald and we would take
7 things as they came.

8 And, as I mentioned, by the late spring of
9 1999 it became obvious that Mr. MacDonald, though not
10 necessarily, may possibly have to testify and that I could
11 not be cross-examining a colleague and good friend.

12 MR. DUMAIS: All right. And is this a
13 decision that you just took yourself or did you have any
14 discussion with your superiors at that time?

15 MR. JUSTICE PELLETIER: By the spring of
16 1999, I was being in l'Original occupying my day job as
17 Crown Attorney for Prescott-Russell. Mr. James Stewart had
18 replaced me. I had been there on an interim basis until
19 the end of '98, and the beginning of 1999, James Stewart
20 was appointed as the Director of Crown Operations for the
21 East Region, and I spoke with Mr. Stewart in April of 1999
22 about this difficulty, Mr. MacDonald's possible involvement
23 in a trial that I was going to be conducting.

24 And we travelled together to Toronto in
25 April, probably mid-April of '99, and met with the Director

1 of Special Prosecutions, John Corelli, and explained the
2 situation to him. And as between the three of us, it was
3 agreed that the case was best handled by someone other than
4 myself from that day forward.

5 **MR. DUMAIS:** All right. And were you
6 advised on that day, so at that meeting in Toronto, who
7 would take over this file?

8 **MR. JUSTICE PELLETIER:** I don't believe so.

9 **MR. DUMAIS:** At some point-in-time you found
10 out that Ms. Shelley Hallett would be taking over the
11 prosecution?

12 **MR. JUSTICE PELLETIER:** Yes, by late spring,
13 early summer, Ms. Hallett had been assigned and I was
14 meeting with her to transfer the file.

15 **MR. DUMAIS:** And so then you would have
16 transferred all the briefs you had, all of your notes, and
17 you would have some sort of briefing meeting with her?

18 **MR. JUSTICE PELLETIER:** Yes, on at least one
19 and quite possibly two occasions.

20 **MR. DUMAIS:** All right.

21 And perhaps we can have a quick look at a
22 memorandum that has been filed already. It's Exhibit 3212?
23 Doesn't look like my document. Then perhaps -- sorry, it's
24 3212. Thank you, yeah. All right.

25 So this memorandum was prepared by I believe

1 it's an articling student working with Ms. Hallett, and is
2 dated August 31st, 1999. And it appears to be notes taken
3 from a meeting you would have had with Ms. Hallett on
4 August 27th, 1999.

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. DUMAIS:** And I'm assuming that this is a
7 preparatory meeting that you're having because you have the
8 upcoming judicial pre-trial coming this fall?

9 **MR. JUSTICE PELLETIER:** September 7th.

10 **MR. DUMAIS:** Yes, thank you.

11 **MR. JUSTICE PELLETIER:** Yes.

12 **MR. DUMAIS:** And these are some of the notes
13 that are being -- or some of the issues that are being
14 discussed. And if we can just look at some -- some of the
15 issues that you're discussing, potential defence motions,
16 so that's at the bottom of the first page ---

17 **MR. JUSTICE PELLETIER:** Excuse me, sir. I'm
18 sorry.

19 **MR. DUMAIS:** No, that's fine.

20 "Potential Defence Motions." And the first
21 issue is abuse of process, but per Bob Pelletier, Mike
22 Neville was at fault here because of his *mandamus*
23 application; I believe it's prohibition application. It's
24 making reference to the prohibition application back in
25 1997.

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. DUMAIS:** So re -- C-8's allegations came
3 out during the first prelim, that's why I'm saying that.

4 **MR. JUSTICE PELLETIER:** That's right.

5 **MR. DUMAIS:** I mean, we've already discussed
6 that earlier this morning, I think.

7 And then on the second page, the issue being
8 discussed here is "Order of Witnesses to be Called". And I
9 take it you're just discussing, since you've completed all
10 these prelimins, that you're going through each and every
11 witness discussing the strength and weaknesses of each and
12 every case?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. DUMAIS:** And on the third page,
15 "Potential Expert Evidence to be Called". and there are
16 three different types of experts being discussed here. One
17 being memory experts; second, experts regarding the
18 vulnerability of complainants due to the abuse; and
19 thirdly, psychological and psychological evidence to show
20 that one can be frightened and aroused at the same period
21 of time.

22 Do you recall what your discussion was on
23 the use of experts in some of these trials?

24 **MR. JUSTICE PELLETIER:** I don't recall
25 discussing the use of experts at all. Perhaps Ms. Hallett

1 had included that in her list of possible evidence to
2 marshal at the trial but this is not something I recall
3 discussing with her, nor do I recall directing my attention
4 to that type of evidence.

5 **MR. DUMAIS:** All right.

6 So if we look at the last item, "Things to
7 be Done". So the first bullet reads as follows:

8 "Prepare the joint indictment (if
9 needed)."

10 So at this point-in-time, it's still not
11 been, I guess, firmly determined that you're proceeding
12 together on both indictments; correct?

13 **MR. JUSTICE PELLETIER:** At this point-in-
14 time being?

15 **MR. DUMAIS:** So at this meeting on August
16 27th, 1999 we still have two separate ---

17 **MR. JUSTICE PELLETIER:** Yes.

18 **MR. DUMAIS:** --- indictments in existence
19 and they have not been withdrawn and a new indictment
20 preferred. Is that fair?

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. DUMAIS:** All right, so that's still an
23 issue?

24 **MR. JUSTICE PELLETIER:** Yes, well, perhaps
25 for Ms. Hallett.

1 As I've stated on a number of occasions, in
2 my mind there was going to be a joint indictment to conduct
3 a single trial with all complainants. So you're referring
4 to the "if needed" in parenthesis and perhaps in her mind
5 it may not be needed, but I can't answer for what's she
6 written there.

7 **MR. DUMAIS:** Okay. I just want to make sure
8 that -- so in your view, the decision of withdrawing the
9 two indictments and filing a new one with all of the counts
10 has already been made. Do I have that ---

11 **MR. JUSTICE PELLETIER:** In my mind it has,
12 yes.

13 **MR. DUMAIS:** Okay.

14 **MR. JUSTICE PELLETIER:** Now bear in mind I'm
15 no longer the prosecutor on the case.

16 **MR. DUMAIS:** Yeah.

17 **MR. JUSTICE PELLETIER:** But as of the time
18 that I transferred the file to her, the intention is to
19 conduct one trial.

20 **MR. DUMAIS:** And my understanding is that
21 you do actually attend the pre-trial?

22 **MR. JUSTICE PELLETIER:** On September 7th,
23 yes.

24 **MR. DUMAIS:** And the purpose of attending
25 was to provide some sort of assistance to Ms. Hallett

1 because she had inherited the file later on in the process?

2 **MR. JUSTICE PELLETIER:** Right. Well, I want
3 the pre-trial to be productive and for continuity sake, if
4 there are any issues that arise that Ms. Hallett isn't able
5 to deal with because she's not been present during the
6 preliminary inquiries, that's why I'm there but that's
7 clearly going to be the end of my involvement.

8 **MR. DUMAIS:** Okay.

9 And perhaps I can just ask you to look
10 quickly at Exhibit 3214.

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

12 **MR. DUMAIS:** So this appears to be a
13 memorandum that again was prepared by Nadia Thomas
14 following the September 7th, 1999 pre-trial.

15 And if we look at Crown counsel, it does
16 confirm that you did attend at that pre-trial and at one
17 point-in-time you would have explained why you were no
18 longer involved in this trial and you find that -- and this
19 is you speaking at page 3.

20 So to simply confirm what you've already
21 told us, that you are no longer involved in this case
22 because of your personal relation with Murray MacDonald?

23 **MR. JUSTICE PELLETIER:** That's correct.

24 **MR. DUMAIS:** And then there is a -- there is
25 a discussion at one point-in-time on a severance motion,

1 and that's at the bottom of page 7.

2 Am I correct then that the discussion that's
3 occurring here is not whether or not you should proceed
4 separately with the two counts, but whether or not Defence
5 counsel will request a specific severance of the counts on
6 the second set of charges?

7 **MR. JUSTICE PELLETIER:** That's the way it
8 appears. The division wouldn't necessarily be on whether
9 they were first or second set charges, but rather as
10 between the eight complainants whether there were
11 distinguishing features ---

12 **MR. DUMAIS:** All right.

13 **MR. JUSTICE PELLETIER:** --- regardless of
14 the time that they were -- they were called.

15 **MR. DUMAIS:** And am I correct that your
16 attendance at this pre-trial is essentially the last --
17 your last involvement in this file?

18 **MR. JUSTICE PELLETIER:** That's right.

19 **MR. DUMAIS:** And my understanding is that
20 Ms. Hallett's -- I'm not sure if you are aware of this --
21 but signed a new indictment that actually consolidated all
22 of the charges and that was filed on I think it's September
23 10th, 1999.

24 In any event, you were made aware that there
25 was a new indictment that was prepared and filed. Were you

1 aware of this?

2 **MR. JUSTICE PELLETIER:** I was not aware. I
3 assumed it was being done, but I only became aware of it
4 when I reviewed the materials in the last three weeks,
5 these materials.

6 **MR. DUMAIS:** And it's fair to say that
7 certainly you supported that decision?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** Yes, the indictment is dated
10 September 10th, '99. All right.

11 Now, if we can then jump ahead in time a
12 bit, Justice Pelletier, I want to look at your involvement
13 into the -- an investigation into Constable Perry Dunlop
14 had been conducted by the Ottawa Police Services. And I
15 understand that at some point-in-time two officers from
16 Ottawa Police communicate with you, indicate that they
17 wanted to meet with you; correct?

18 **MR. JUSTICE PELLETIER:** I have a vague
19 recollection of that, yes.

20 **MR. DUMAIS:** Okay. And we've heard from
21 Inspector Pat Hall on this issue and he has suggested that
22 the officers should speak to you because he had heard that
23 you had some complaints about Constable Dunlop's conduct
24 when you were handling the Charles MacDonald prosecution.
25 So Inspector Hall gave evidence to the effect that that's

1 how they were made aware that you may have something to
2 say.

3 And the two officers in question were named
4 Staff Sergeant Sabourin and Sergeant Lalonde.

5 And if I can just ask you to look at
6 Document Number 114007.

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

8 **THE COMMISSIONER:** Thank you.

9 Exhibit Number 3310 is a telephone message
10 transcribed on March 20th or 30th, 2000.

11 **--- EXHIBIT NO./PIÈCE NO P-3310:**

12 (114007) - Transcription of a phone message
13 from Robert Pelletier to Shelley Hallett
14 dated 29 Mar 00

15 **MR. DUMAIS:** And I'm looking at the flip
16 page of that document, so Bates page 105, and this is the
17 transcription of a message that you left on March 29th,
18 2000.

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

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. DUMAIS:** So essentially, you're
22 indicating to her that you've been contacted by these two
23 officers who are looking into some of Dunlop's action in
24 the Lalonde trial. And I guess you want to get her views
25 on this because you are concerned about you getting

1 personally involved in this investigation and whether or
2 not this could affect the Father Charlie MacDonald
3 prosecution. Is that correct?

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MR. DUMAIS:** All right. And I understand
6 that shortly after this, you did actually meet with the two
7 investigators?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** And if I can just ask you to
10 look at Document -- sorry, it's an exhibit -- Exhibit 2819.

11 And I'm looking more specifically at the --
12 this is the investigative report that was prepared by the,
13 well, it's not signed, but I'm assuming it was prepared by
14 the two -- yeah, they are identified on the first page --
15 acting Staff Sergeant Gérard Sabourin and Sergeant Rolland
16 Lalonde of the Ottawa-Carleton Regional Police. And I can
17 just bring your attention to the second-last page, so page
18 11 of 12 of this investigative report. And if we look at
19 the top of the page, it says "Allegation No. 2". So this
20 appears to have been your concern:

21 "Information received from OPP
22 Detective Pat Hall, lead investigator
23 for Project Truth, it is his
24 information that Ottawa Crown Attorney
25 Robert Pelletier has a concern relative

1 to P.C. Dunlop's conduct at a
2 preliminary hearing, which was held in
3 Ottawa late 1997 or early 1998."

4 So this is Inspector Hall advising the
5 officers what he thought your concern was?

6 **MR. JUSTICE PELLETIER:** Yes.

7 **MR. DUMAIS:** And then they indicate that you
8 were contacted and they split up the issues in two: The
9 first issue that he remembered would have been the
10 testimony of C-8 in the Father Charles MacDonald
11 preliminary hearing.

12 "While being cross-examined by defence
13 counsel Neville, he believed that
14 Constable Dunlop would have sent C-8 to
15 look at witnesses during the
16 preliminary."

17 And it appears that they've conducted their
18 investigation and met with you, and the response is at the
19 second-last paragraph. I'm going to start reading from the
20 second line:

21 "There is nothing to indicate that C-8
22 went to look at witnesses. On the
23 contrary, he may have been directed to
24 enter the courtroom with all other
25 witnesses but when the exclusion of

1 witnesses was ordered by the judge, C-8
2 indicated at the preliminary hearing
3 that he left the courtroom."

4 So do you recall that; do you recall that --
5 whether or not this was an issue for you that you thought
6 maybe that C-8 had been in the hearings room or in the
7 courtroom?

8 **MR. JUSTICE PELLETIER:** I don't recall that
9 being an issue with me. I see that Detective Inspector Pat
10 Hall raised it on my behalf in a manner of speaking, that I
11 had that concern. I do recall at the first preliminary
12 inquiry Mr. Neville being concerned that there not be
13 anyone present who may become a witness. There was an
14 exclusion of witness order.

15 **MR. DUMAIS:** Yes.

16 **MR. JUSTICE PELLETIER:** But with regards to
17 your -- you're referring to this gentleman as C-8, ---

18 **MR. DUMAIS:** Yes, correct.

19 **MR. JUSTICE PELLETIER:** Yes, with regards to
20 Mr. or C-8 being there, being asked to leave, that's not
21 something I have any recollection of whatsoever.

22 **MR. DUMAIS:** All right.

23 And then the second issue -- so I'm going
24 back to No. 2 at the top of the page -- so when it says,
25 "Garry"; I believe it's Gerry --

1 "When Gerry Renshaw testified at the
2 preliminary hearing of Father Charles
3 MacDonald while being cross-examined by
4 defence counsel Neville, Renshaw stated
5 that he provided a statement to Dunlop
6 who was in uniform in Toronto for his
7 civil action. The statement was
8 criminal in nature."

9 And then the response to that query is in
10 the last paragraph of that page, so the second sentence:

11 "Renshaw believed that the statement he
12 was giving for the purpose of laying
13 charge against Father Charles MacDonald
14 but in reality what he gave was an
15 affidavit in furtherance of Constable
16 Dunlop's civil action."

17 **MR. JUSTICE PELLETIER:** Yes.

18 **MR. DUMAIS:** So it appears that -- that
19 actually -- possibly occurred, right?

20 **MR. JUSTICE PELLETIER:** That was explored by
21 Mr. Neville at the preliminary inquiry where Mr. Renshaw
22 was a witness in the second set of charges, so in March of
23 '99. And it was revealed that Mr. Renshaw had provided a
24 statement to Mr. Dunlop while he was in uniform, while
25 Constable Dunlop was in uniform, that Renshaw was given to

1 understand that it was for investigative purposes, that it
2 was, in fact, an affidavit that made its way into the
3 pleadings.

4 **MR. DUMAIS:** All right. Is it fair to say
5 that in this investigation that your concerns about the
6 involvement of Constable Dunlop in the preliminary hearing
7 had been addressed?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. DUMAIS:** All right.

10 **MR. JUSTICE PELLETIER:** It seems as though
11 the first concern, as I mentioned, seems to have been an
12 impression Detective Inspector Hall had ---

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

14 **MR. JUSTICE PELLETIER:** --- of a concern I
15 may have had. I don't recall having had such a concern,
16 but the second issue, definitely, the Renshaw statement.

17 **MR. DUMAIS:** All right.

18 And aside from the areas that we've
19 discussed here today, Justice Pelletier, was this -- did
20 your involvement in any of the Project Truth prosecution
21 end towards the end of 1999?

22 **MR. JUSTICE PELLETIER:** Yes, as I've said,
23 the last official duty was attending the judicial pre-
24 trial. There may have been a small amount of follow-up
25 after that but nothing of a -- nothing of a -- not as a

1 prosecutor on the case.

2 **MR. DUMAIS:** Just one last question then,
3 Justice Pelletier, and it's a question that has been put to
4 every witness that has been called here at the Inquiry.

5 If you want, you can make some comments on
6 what the impact has been of you either participating in the
7 prosecutions of Project Truth or you testifying here at
8 this Inquiry.

9 And secondly, if you are prepared or if you
10 want to give any recommendations with respect to your
11 experience in prosecuting these cases, we are going to give
12 you the opportunity to do that before we proceed with the
13 cross-examination.

14 Is there anything you want to say?

15 **MR. JUSTICE PELLETIER:** On the first issue,
16 I don't feel that there's anything that needs to be said,
17 the impact on myself, on the second issue either. I'm just
18 going to wish you all the very best in this very arduous
19 task.

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

21 **MR. DUMAIS:** Thank you, sir.

22 **THE COMMISSIONER:** Have you canvassed the
23 parties to see how long cross-examination is going to be?

24 **MR. DUMAIS:** I have not yet,
25 Mr. Commissioner.

1 **THE COMMISSIONER:** You'll do that now.

2 We'll take a short break and we'll come back.

3 **MR. DUMAIS:** Thank you.

4 **THE COMMISSIONER:** Thank you.

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

7 The hearing will resume at 3:10 p.m.

8 --- Upon recessing at 2:54 p.m./

9 L'audience est suspendue à 14h54

10 --- Upon resuming at 3:13 p.m./

11 L'audience est reprise à 15h13

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

14 This hearing is now resumed. Please be
15 seated. Veuillez vous asseoir.

16 **THE COMMISSIONER:** Ms. Daley?

17 **MR. JUSTICE ROBERT PELLETIER Resumed/Sous le même serment:**

18 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

19 **DALEY:**

20 **MS. DALEY:** Your Honour, my name is Helen
21 Daley. I am counsel for the Citizens for Community
22 Renewal, and that's a local citizens group with standing at
23 the Inquiry whose principal interest is in the reform of
24 institutions.

25 The first area I want to discuss with you is

1 Project Truth itself and the mandate for that OPP project.
2 If you recollect, you gave some evidence to my friend about
3 a meeting of April 24th, 1997. Just to refresh your mind
4 about that, you were present, as were the senior officers
5 at the OPP, and the subject discussed at that point was the
6 Fantino brief.

7 **MR. JUSTICE PELLETIER:** That's correct.

8 **MS. DALEY:** And you know what that implies
9 to us. Those are Mr. Dunlop's allegations.

10 And, sir, I wanted to focus on two aspects
11 of the Fantino brief and of the Project Truth mandate just
12 to see if you can help us further with those at all.

13 **MR. JUSTICE PELLETIER:** All right.

14 **MS. DALEY:** One obvious aspect of course was
15 that there were individual allegations of historic abuse,
16 such as those by Mr. Leroux and others, and clearly the OPP
17 could go ahead and investigate those in the ordinary
18 course; correct?

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MS. DALEY:** There were, however, two other
21 aspects to the Fantino brief allegations. One of them was
22 the conspiracy allegation, which I take it at the time
23 would have been understood to be an allegation that justice
24 officials and law enforcement had conspired to suppress
25 Mr. Silmsler's historic allegation and perhaps others as

1 well. You recollect that being part of the Fantino brief?

2 **MR. JUSTICE PELLETIER:** Right.

3 **MS. DALEY:** And that was the aspect of it
4 that caused you a potential conflict with your colleague
5 and friend, Mr. MacDonald, the local Crown here; right?

6 **MR. JUSTICE PELLETIER:** That's correct,
7 ma'am.

8 **MS. DALEY:** The third element of the Fantino
9 brief is, for want of a better word, what you might call
10 the pedophile ring allegation, and that was Mr. Dunlop's
11 allegation that apart from the conspiracy, there was a
12 fairly large circle of individuals in this town who were
13 homosexual pedophiles and who were abusing children and
14 perhaps also covering that up as well. You recall that ---

15 **MR. JUSTICE PELLETIER:** Yes.

16 **MS. DALEY:** --- element of the Fantino
17 brief?

18 **MR. JUSTICE PELLETIER:** Yes, I do.

19 **MS. DALEY:** Can I just focus your thoughts
20 on the pedophile ring allegation for a moment? I take it,
21 sir, the decision at the April '97 meeting was that
22 everything alleged in the Dunlop brief should be
23 investigated further.

24 **MR. JUSTICE PELLETIER:** As far as I
25 understood, yes.

1 **MS. DALEY:** Sir, do you recall any
2 information, guidance or advice being given at that meeting
3 to the police officers as to how they would go about
4 investigating, for instance, the pedophile ring allegation?

5 **MR. JUSTICE PELLETIER:** No, I have no
6 recollection of that.

7 **MS. DALEY:** Do you ever recall any
8 discussion about whether or not the pedophile ring was
9 amenable to investigation in the ordinary sense? In other
10 words, was it the type of matter that could be
11 investigated?

12 **MR. JUSTICE PELLETIER:** Your question is
13 whether there was any discussion bearing on the
14 "investigability"?

15 **MS. DALEY:** Yeah.

16 **MR. JUSTICE PELLETIER:** I can't recall. I
17 quite frankly don't recall a great deal of detail about the
18 meeting, other than the fact that this brief had come in
19 and that Peter Griffiths, the Director at the time, felt
20 that it should be fully investigated and that Murray
21 MacDonald would not be involved in any of that, since he
22 was named; that I would not be involved in anything other
23 than just prosecuting cases, principally the Father
24 MacDonald case. But beyond that, I'm afraid I'm unable to
25 recall any specific details ---

1 MS. DALEY: All right.

2 MR. JUSTICE PELLETIER: --- about what was
3 discussed.

4 MS. DALEY: Would it be right to take this
5 impression from that meeting: the nature of Mr. Dunlop's
6 allegations on all three of those fronts, including ---

7 MR. JUSTICE PELLETIER: Yes.

8 MS. DALEY: --- the pedophile ring, the
9 conspiracy, were so alarming that they simply had to be
10 investigated?

11 MR. JUSTICE PELLETIER: Yes. They were so
12 wide-reaching, ---

13 MS. DALEY: Yes.

14 MR. JUSTICE PELLETIER: --- so many
15 individuals named, and -- I agree with that. It couldn't
16 be left alone.

17 MS. DALEY: Had any part of it been left
18 alone, I assume perhaps the Crown and others would have
19 felt vulnerable to criticism for not picking up the brief
20 and investigating every last allegation.

21 MR. JUSTICE PELLETIER: Possibly, yes.

22 MS. DALEY: Now, I wondered if you knew at
23 this point and during your involvement with the MacDonald
24 prosecution that the matters raised by Dunlop in the
25 Fantino brief were issues of great concern to the community

1 at large, and indeed they'd been much publicized in this
2 community. Is that something that you knew about?

3 **MR. JUSTICE PELLETIER:** Yes, very much so.

4 **MS. DALEY:** And you would agree with the way
5 I characterized it: the allegations were widespread in the
6 media and had caused a lot of public concern?

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MS. DALEY:** And did you have the impression,
9 as far as that goes, that the way in which the story had
10 been accepted was that Officer Dunlop was a bit of a local
11 hero for exposing these matters and that perhaps the
12 Cornwall Police Service and other institutions were the bad
13 guys, at least in terms of how matters were being reported
14 in the press?

15 **MR. JUSTICE PELLETIER:** I'm sorry, could I
16 ask you to ask the question again, please?

17 **MS. DALEY:** Sure. In terms of the press
18 coverage of the issue and what seemed to be the local view
19 ---

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MS. DALEY:** --- was it your impression that
22 Dunlop was characterized as the hero for bringing forward
23 allegations, whereas the local police and other
24 institutions had been characterized negatively as bad guys
25 or perhaps people involved in a cover-up?

1 **MR. JUSTICE PELLETIER:** I don't honestly
2 think I can say that that was the impression I was left
3 with if you're dealing with the media reports.

4 **MS. DALEY:** All right. Do you remember what
5 your impression was, sir?

6 **MR. JUSTICE PELLETIER:** Well, that there was
7 a great deal of concern that allegations were being made.
8 But as to whether Constable Dunlop was being viewed by the
9 public or portrayed by the press as a hero and the police
10 were being portrayed as not performing -- fulfilling their
11 duties, I don't know. I didn't feel it went that far.

12 **MS. DALEY:** All right.

13 Sir, during your involvement in the
14 MacDonald prosecution and other Project Truth matters, did
15 you become aware that Officer Dunlop and his brother-in-law
16 and spouse had been in contact with a number of alleged
17 victims and their families?

18 **MR. JUSTICE PELLETIER:** It became clear to
19 me as the case was proceeding that that was taking place.

20 **MS. DALEY:** All right.

21 Sir, were you ever privy to any discussions
22 -- I'll take it in two pieces. Were there ever any
23 discussions internally at the Crown's office on that
24 aspect; that is to say Dunlop's contact with the alleged
25 victims and whether anything could or should be done about

1 that?

2 **MR. JUSTICE PELLETIER:** No, I don't recall
3 anything like that. As information came forward for us to
4 consider, one of the things we had to consider was
5 collusion or contamination of witnesses. But on a witness-
6 by-witness basis was the approach we were taking -- I was
7 taking. I was really by myself.

8 **MS. DALEY:** Did you find that in the
9 instances where collusion was being raised, it was Officer
10 Dunlop or his brother-in-law or wife who were at the centre
11 of the allegation?

12 **MR. JUSTICE PELLETIER:** I don't know if I
13 can make that conclusion. There were instances where it
14 was suggested that Constable Dunlop, who was apparently
15 interviewing witnesses on his own -- and again these are
16 suggestions that were being made -- were informing those
17 witnesses what other witnesses may have to say.

18 **MS. DALEY:** Yes.

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MS. DALEY:** So that came to your attention.
21 That would be concerning to you as a prosecutor?

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MS. DALEY:** Do you recall any discussions
24 between yourself and the police officers as to how that
25 problem could be managed? Did they -- for example, did

1 they ever ask for your guidance or your thoughts on that?

2 **MR. JUSTICE PELLETIER:** No, they never asked
3 for my guidance on that, nor do I recall us having any
4 specific conversations on how to deal with that, other than
5 to examine each complainant that we were examining with a
6 view to determining whether we felt this was a person
7 giving their own evidence.

8 **MS. DALEY:** Right.

9 **MR. JUSTICE PELLETIER:** Their own
10 independent evidence.

11 **MS. DALEY:** Did you get to the stage in the
12 MacDonald matter you were able to personally perform that
13 task with your complainants?

14 **MR. JUSTICE PELLETIER:** I felt that I was
15 able to present the eight complainants that I had without
16 any difficulties, yes.

17 **MS. DALEY:** Right.

18 **MR. JUSTICE PELLETIER:** The three initial
19 and then the five subsequent.

20 **MS. DALEY:** Meaning by that you satisfied
21 yourself that even if they had had conversation with
22 Dunlop, what you were hearing from them was their evidence
23 and not something they'd been told to say?

24 **MR. JUSTICE PELLETIER:** That's right. And
25 in order to make that determination, I was relying on the

1 preliminary inquiry process. Each witness was being
2 examined and cross-examined quite thoroughly ---

3 **MS. DALEY:** Right.

4 **MR. JUSTICE PELLETIER:** --- and I thought
5 that that would be most instructive, more than anything
6 else I could rely on.

7 **MS. DALEY:** All right.

8 One other issue on this subject, and that's
9 the term I gave you earlier, that's the pedophile ring ---

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MS. DALEY:** --- concept. Did you ever come
12 to - did you ever have the impression in your work on the
13 matter that the public was inclined to believe that perhaps
14 that could be true, that there was indeed a ring of
15 pedophiles in town?

16 **MR. JUSTICE PELLETIER:** By public do you
17 mean certain members of the public?

18 **MS. DALEY:** Let's start there. Certain
19 members of the public?

20 **MR. JUSTICE PELLETIER:** Yes. I think it's
21 quite conceivable that certain members of the public felt
22 that there was a pedophile ring.

23 **MS. DALEY:** Is that also a matter that, to
24 your knowledge, attained a fair bit of media attention,
25 that allegation about the pedophile ring?

1 **MR. JUSTICE PELLETIER:** I didn't pay
2 particular attention to the media coverage and to say that
3 it was being covered and advanced by the media, that's not
4 really something I can comment on. It was certainly being
5 mentioned in certain reports.

6 **MS. DALEY:** I wonder if you could perhaps
7 direct your mind to this and give me your comments if you
8 have any? Reviewing the MacDonald charges, and the various
9 complainants who were involved in those charges ---

10 **MR. JUSTICE PELLETIER:** Yes?

11 **MS. DALEY:** --- those people, I take it were
12 of an age at the time of the alleged offence, such that the
13 term "pedophilia" would not be appropriate had there been
14 sexual contact between themselves and the accused?

15 **MR. JUSTICE PELLETIER:** The term
16 "pedophilia" ---

17 **MS. DALEY:** That was an awkward way to put
18 the question. Were the MacDonald complainants not all well
19 over the age of puberty at the time of the alleged
20 offences?

21 **MR. JUSTICE PELLETIER:** At or near, they
22 were not toddlers, they were not young children. They were
23 for the most part young men who were between the ages of,
24 certainly not less than, and I'm going from memory here,
25 not less than nine or ten years of age and in some cases,

1 much older than that.

2 **MS. DALEY:** In your mind, sir, was the term
3 "pedophile" appropriate to -- an appropriate label, given
4 that the people who were making the allegations were of
5 that age?

6 **MR. JUSTICE PELLETIER:** If it was a "one-
7 size fits all" description, it was inaccurate.

8 **MS. DALEY:** All right. Do you -- I wonder
9 if any thought was ever given, or any attention paid, to
10 perhaps commenting that, whatever this might be, whatever
11 these allegations might be, whether they'd be accepted or
12 not in a court of law, this is not an allegation of
13 pedophilia?

14 **MR. JUSTICE PELLETIER:** Commenting to whom?

15 **MS. DALEY:** To the public generally?

16 **MR. JUSTICE PELLETIER:** By what means? I
17 mean, you're speaking to me as - vis-à-vis my role as a
18 prosecutor in the case.

19 **MS. DALEY:** I take it you wouldn't see
20 making a public comment on that type of issue as being
21 within your role as a prosecutor?

22 **MR. JUSTICE PELLETIER:** Not at all.

23 **MS. DALEY:** Were there any other players in
24 the mix who might have legitimately made that kind of
25 comment or brought that information forward, outside of the

1 Crown's office?

2 **MR. JUSTICE PELLETIER:** Well the agencies
3 involved were fairly limited. There was the prosecution
4 service, there was the investigators -- I don't know how
5 else it could have been communicated to the public
6 generally that the characterisation was inaccurate.

7 I've never had any difficulty as a
8 prosecutor speaking with the press. If it can assist in
9 matters that are matters of public domain, whether it's
10 certain court dates, number of charges, process issues, et
11 cetera, but I would never go beyond that under any
12 circumstances if the matter was before the courts.

13 **MS. DALEY:** Would you have considered it
14 problematic had any OPP officer, for example, just made the
15 general comment that whatever it is we're looking at here,
16 pedophilia isn't the correct term for it?

17 **MR. JUSTICE PELLETIER:** It would have been -
18 - it would not have been a concern of mine. They would
19 have had to have flown of their own wings.

20 **MS. DALEY:** Right.

21 **MR. JUSTICE PELLETIER:** I don't imagine that
22 they are encouraged necessarily to give lengthy interviews
23 or to qualify things in the press. It may be a question
24 best asked of the police. But your question to me, would I
25 have had a concern ---

1 **MS. DALEY:** Would that have affected your
2 job as a prosecutor had that kind of information been put
3 forward?

4 **MR. JUSTICE PELLETIER:** No, I don't think it
5 would have affected my role as a Crown.

6 **MS. DALEY:** All right.

7 Moving just to a different second topic,
8 sir. This has to do with the evidence you gave after your
9 interaction with Mr. Silmser after the charges were
10 initially laid and the difficulty ---

11 **MR. JUSTICE PELLETIER:** Yes. Excuse me just
12 one moment?

13 **MS. DALEY:** Yes, of course.

14 **MR. JUSTICE PELLETIER:** Terribly sorry. Go
15 ahead, please.

16 **MS. DALEY:** I just want to direct you back
17 to some of your encounters over the phone with Mr. Silmser
18 and ---

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MS. DALEY:** --- I guess some encounters that
21 your assist, Murielle had.

22 If you would look at Exhibit 303 with me
23 just for a moment, please? Three zero three (303). I
24 don't know if it's in the book you've got, if not ---

25 **MR. JUSTICE PELLETIER:** I have it.

1 MS. DALEY: Okay.

2 MR. JUSTICE PELLETIER: Yes.

3 MS. DALEY: And you testified about this
4 earlier. This is a phone call from Mr. Silmsers to your
5 assistant which she reports to you about in July of '96.
6 And this appears to be one of the first times that Mr.
7 Silmsers is referring to another victim who's been located
8 by a private investigator?

9 MR. JUSTICE PELLETIER: Yes.

10 MS. DALEY: And I take it Mr. Silmsers goes
11 on to tell Murielle that there has been a four and a half
12 hour statement taken from this individual?

13 MR. JUSTICE PELLETIER: Yes.

14 MS. DALEY: And you made a note, slightly
15 more detailed file note on the same day, that's Exhibit
16 308, and you reference that same incident and that
17 conversation between your assistant and Mr. Silmsers ---

18 MR. JUSTICE PELLETIER: Yes.

19 MS. DALEY: --- and in particular the second
20 paragraph, you're noting in Exhibit 308 that he's claiming
21 that there's a fourth victim who's provided a lengthy
22 statement, would like the matter investigated.

23 MR. JUSTICE PELLETIER: Yes.

24 MS. DALEY: And we know that at a later
25 point in time, in February I believe, February 26th, '97,

1 Mr. C-8 who becomes a complainant eventually in your
2 charges goes public. And he claims to be a victim of
3 Father Charles; correct?

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MS. DALEY:** It struck me that these earlier
6 exhibits in July of 1996 could well be a reference on Mr.
7 Silmsers part to C-8. In other words, did you ever come
8 to know that what Silmsers was trying to call to your
9 attention in 1996, in the summer of 1996, was the fact that
10 C-8 was out there who had allegations to make about Father
11 Charles?

12 **MR. JUSTICE PELLETIER:** I'm sorry. Did it
13 ever ---

14 **MS. DALEY:** Did it ever occur to you that
15 perhaps with hindsight, that the person that Silmsers was
16 talking about in July of 1996 was in fact was in fact Mr.
17 C-8?

18 **MR. JUSTICE PELLETIER:** No, that never
19 occurred to me.

20 **MS. DALEY:** Right. Do you know who that
21 person is that he's talking about?

22 **MR. JUSTICE PELLETIER:** No.

23 **MS. DALEY:** I take it you didn't speak
24 directly with Mr. Silmsers on that topic?

25 **MR. JUSTICE PELLETIER:** No I did not.

1 **MS. DALEY:** Your document, Exhibit 308
2 indicates that you have informed OPP Officer Fagan about
3 this occurrence? Do you see that, sir?

4 **MR. JUSTICE PELLETIER:** Yes, I told Mike
5 Fagan that there was apparently, through the intermediary
6 of Mr. Silmsler, a fourth victim to be -- a fourth potential
7 complainant.

8 **MS. DALEY:** Did you ever hear back from Mr.
9 Fagan as to what, if any, action he'd taken or what the
10 result was?

11 **MR. JUSTICE PELLETIER:** I don't know if I
12 heard back from him or not, I can't recall. I may or I may
13 not have.

14 **MS. DALEY:** All right. But I take it at no
15 later time did you or anyone else ever connect C-8 to the
16 person that Silmsler was apparently alluding to in July of
17 '96?

18 **MR. JUSTICE PELLETIER:** Is it possible to
19 just be reminded, please, of the identity of C-8?

20 **THE COMMISSIONER:** Oh, sure.

21 **MS. DALEY:** Certainly.

22 **MR. JUSTICE PELLETIER:** I don't know that
23 it's going to make any difference because this was a
24 suggestion made by Mr. Silmsler in the summer of '96 and C-8
25 surfaces mid-prelim, winter of '97.

1 **MS. DALEY:** Yes, that's correct. He gives a
2 statement in January ---

3 **MR. JUSTICE PELLETIER:** Yes. No, it never
4 occurred to me that they may be dealing with the same
5 person.

6 **MS. DALEY:** All right. Thank you.

7 Now just some questions, then, about -- oh,
8 sorry sir. One other thing I wonder if I could ask you
9 about?

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MS. DALEY:** This is a little bit out of
12 sequence but I've just had a look at one of the other
13 officers' notes who was present at the April 24th, '97
14 meeting.

15 **MR. JUSTICE PELLETIER:** Yes.

16 **MS. DALEY:** Remember that's the Project
17 Truth meeting. I just wanted to show you those and see if
18 you recollect this other topic being discussed.

19 **MR. JUSTICE PELLETIER:** Okay.

20 **MS. DALEY:** Officer Genier's notes, Madam
21 Clerk, should be Exhibit 1594, I hope?

22 **THE COMMISSIONER:** M'hm. What Bates page?

23 **MS. DALEY:** Six four zero one (6401).

24 **THE COMMISSIONER:** Six four zero one (6401).

25 All right. And which entry?

1 **MS. DALEY:** It should be the entry of
2 Thursday, April 24th, '97, the centre entry.

3 If you could expand that as much as you can,
4 and if I could ask the witness to have a read of that?

5 **THE COMMISSIONER:** "So a 10:00 meeting
6 commenced."

7 **MS. DALEY:** That's it.

8 **THE COMMISSIONER:** "Persons present,
9 Inspector Smith, Peter Griffiths,
10 Pat Hall, Murray MacDonald, Robert
11 Pelletier. Discussed Marcel Lalonde
12 issue."

13 **MS. DALEY:** That's it.

14 **THE COMMISSIONER:** "Further victims
15 disclosed by CPS. Out of town Crown
16 will be advised. Discussed disclosure
17 request by Marco?"

18 **MS. DALEY:** "Marco."

19 **MR. JUSTICE PELLETIER:** "New Crown will
20 assist once selected."

21 **MS. DALEY:** What I wanted to flag for you,
22 sir, just to see if it jogged your recollection at all. I
23 know that your memory of this is limited, but Officer
24 Genier is noting that there was also conversation about
25 Marcel Lalonde against whom charges were afoot at that

1 point. Do you recall that at all?

2 **MR. JUSTICE PELLETIER:** I don't recall that
3 being discussed.

4 **MS. DALEY:** Do you recall that there was an
5 overlap between some of the, I guess, victims so found of
6 Marcel Lalonde and some of the complainants that you were
7 working with on the MacDonald matter?

8 **MR. JUSTICE PELLETIER:** I'm not that
9 familiar with the Marcel Lalonde case at all. I'm not sure
10 when Mr. Lalonde was charged, but I don't recall ---

11 **MS. DALEY:** The person that we were just
12 speaking about, Mr. C-8 ---

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MS. DALEY:** --- was a complainant in the
15 Lalonde matter as well.

16 **MR. JUSTICE PELLETIER:** Okay.

17 **MS. DALEY:** Is that something that you knew
18 about?

19 **MR. JUSTICE PELLETIER:** No, I don't believe
20 so.

21 **MS. DALEY:** Certainly nothing that came up
22 in your discussions with C-8 or your preparation for
23 MacDonald?

24 **MR. JUSTICE PELLETIER:** I don't believe so,
25 no.

1 **MS. DALEY:** All right, thank you. I just
2 wanted to see if that ---

3 **MR. JUSTICE PELLETIER:** Right.

4 **MS. DALEY:** --- that detail helped you out
5 at all.

6 All right. So let's move away from this
7 now, and the final area I want to talk with you about are
8 the MacDonald charges, the joinder of those charges ---

9 **MR. JUSTICE PELLETIER:** Yes.

10 **MS. DALEY:** --- and that issue.

11 This is probably just my lack of
12 understanding of criminal procedure, but I'd understood
13 that the first set of MacDonald charges were brought in the
14 General Division, as it was then called, and a second set
15 was in the Provincial Division?

16 **MR. JUSTICE PELLETIER:** No. The first set
17 of charges originated in the Provincial Division ---

18 **MS. DALEY:** Yes.

19 **MR. JUSTICE PELLETIER:** --- the Provincial
20 Court, now the Ontario Court of Justice, where they are --
21 that's the intake court, if you will, for all charges.

22 When charges are indictable and an accused
23 elects to be tried by the court composed of a judge alone
24 or a judge and jury in the Superior Court, the Ontario
25 Court of Justice will conduct the preliminary enquiry, and

1 that's what they did ---

2 **MS. DALEY:** Oh, I see.

3 **MR. JUSTICE PELLETIER:** --- and that's what
4 they did in both sets of charges.

5 **MS. DALEY:** I see.

6 **MR. JUSTICE PELLETIER:** So the first set of
7 charges went to Ontario Court of Justice, the old
8 Provincial Court, as did the second set. Eventually post-
9 committal, after preliminary inquiry, they both went to ---

10 **MS. DALEY:** All right.

11 **MR. JUSTICE PELLETIER:** --- either General
12 Division or Superior Court.

13 **MS. DALEY:** So there was no difficulty in
14 those two sets of charges in terms of having them
15 ultimately in the same level of court?

16 **MR. JUSTICE PELLETIER:** No, absolutely.

17 **MS. DALEY:** All right.

18 **MR. JUSTICE PELLETIER:** They were going to
19 be. Now, there were two separate indictments. There was
20 nothing preventing the defence from electing a judge-alone
21 trial in one, and judge and jury on the other. It might
22 have complicated matters somewhat, but there was nothing
23 preventing both charges -- both sets of charges going in
24 together.

25 **MS. DALEY:** Now, I take it from your

1 testimony here, obviously, sir, that your thought
2 throughout as prosecutor was that the charges -- all
3 charges should be joined and they should be tried at the
4 same time?

5 **MR. JUSTICE PELLETIER:** I had that feeling
6 very strongly. In fact, I felt it was my duty to do so.

7 **MS. DALEY:** And I take it you felt that way
8 because in your experience the joinder of charges would
9 benefit the prosecution?

10 **MR. JUSTICE PELLETIER:** It would. It would
11 allow the prosecution to present eight -- as opposed to
12 three in one case and five in the other case -- young men
13 who were claiming to have been sexually abused by -- by the
14 accused.

15 **MS. DALEY:** All right.

16 Now, did you see any benefits to the defence
17 in having the charges tried together; any potential
18 benefits to the defence?

19 **MR. JUSTICE PELLETIER:** To be quite frank,
20 that never crossed my mind. So did I see any possible
21 benefit at the time? No. Whether there is benefit to a
22 single trial is something I could think about, but at the
23 time that never entered the equation.

24 **MS. DALEY:** One prospect from the defence
25 point of view had there been different trials, would be

1 that essentially -- as I've understood it, he would be
2 facing the same allegations from the same eight people on
3 two occasions. In the first trial the five extras would be
4 witnesses, in the second trial the first three complainants
5 would be witnesses but, in either event, all that evidence
6 would be adduced in two different trials? Is that ---

7 **MR. JUSTICE PELLETIER:** You raise a very
8 good point, ma'am. There would not have been two trials;
9 there would have been the same trial twice.

10 **MS. DALEY:** Right.

11 **MR. JUSTICE PELLETIER:** Yes.

12 **MS. DALEY:** So, subject to being able to
13 call all those witnesses, all the same -- the same eight
14 people that you've referred to would have been called to
15 give exactly the same evidence?

16 **MR. JUSTICE PELLETIER:** Exactly. Had I been
17 required to conduct two trials, I would have called the
18 three complainants in the first case, presented the other
19 five as similar fact witnesses. The court would decide
20 whether I'd be allowed to use them. I felt fairly strongly
21 that I would be able to in the state of the law in the late
22 '80s -- late '90s, on the issue of similar fact evidence,
23 and then we'd repeat the exercise on the second trial.

24 **MS. DALEY:** So, all things being equal, it
25 might benefit defence to not have to undergo that process

1 on two occasions?

2 **MR. JUSTICE PELLETIER:** Well, it's very
3 difficult for me to speak about what's best for the
4 defence. Every time a witness testifies, they give a
5 different version of what they recall.

6 **MS. DALEY:** Right.

7 **MR. JUSTICE PELLETIER:** That's human nature;
8 it's unavoidable. In fact, if it's otherwise you're
9 usually suspicious, if the script is -- is always exactly
10 the same.

11 So as a prosecutor one of my concerns is not
12 exposing complainants to more testimony than is necessary.
13 They're often interviewed three times, they testify at the
14 preliminary inquiry ---

15 **MS. DALEY:** Right.

16 **MR. JUSTICE PELLETIER:** --- and if they have
17 to testify at two trials, then the defence has five or six
18 versions with which to work.

19 **MS. DALEY:** And just to flag that point,
20 that was a live issue, I take it, sir, in the prosecution
21 that you did handle because your complainants had given, in
22 many instances, more than one statement?

23 Many of them had also been examined for
24 discovery so they had given evidence under oath on that
25 occasion, and certainly you were faced with that very

1 circumstance, which is that there were discrepancies in
2 different statements?

3 **MR. JUSTICE PELLETIER:** Yes.

4 **MS. DALEY:** Okay. Just in terms of the
5 joinder point, obviously I'm a civil -- I'm a civil lawyer
6 and not a criminal lawyer, but I know that if you want to -
7 - if you want to extract a concession sometimes it helps to
8 have some leverage.

9 Did you see that you had any -- that the
10 Crown had any leverage whereby it might be able to
11 negotiate a waiver of the 11(b) charges from the defence?

12 **MR. JUSTICE PELLETIER:** I would not engage
13 in discussions with counsel by trying to barter, as it
14 were, what form of evidence I would call in exchange for
15 what constitutional right they would waive. It would never
16 cross my mind.

17 **MS. DALEY:** So that's not something that had
18 any meaning from -- from your perspective?

19 **MR. JUSTICE PELLETIER:** In the criminal
20 setting, no, I don't think ---

21 **MS. DALEY:** Okay.

22 **MR. JUSTICE PELLETIER:** --- it's appropriate
23 at all.

24 **MS. DALEY:** All right. And there were
25 certainly no circumstances in play that you could see that

1 should legitimately have led the defence to offer a waiver?

2 **MR. JUSTICE PELLETIER:** I beg your pardon?

3 **MS. DALEY:** Did you see any circumstances
4 surrounding the joinder issue that could have made it
5 appropriate for the defence to agree to a waiver or to
6 offer to waive 11(b)?

7 **MR. JUSTICE PELLETIER:** Again, you're asking
8 me to view this case 10 or 12 years later from the
9 perspective of the defence. That's not something I did
10 then and it's not something I've done since.

11 That's a question that would best be asked
12 of a defence lawyer, whether there may be some advantage to
13 waiving the 11(b) right to trial within a reasonable time
14 for tactical reasons or otherwise at trial, I -- I don't
15 think I can answer that.

16 **MS. DALEY:** Okay.

17 As you testified at the conclusion of your
18 evidence this afternoon, sir, ultimately Ms. Hallett did
19 withdraw and then prefer an indictment in which all counts
20 and all charges were on one indictment.

21 **MR. JUSTICE PELLETIER:** That's right.

22 **MS. DALEY:** And my simple-minded question on
23 that is, had the Crown subsequently come to the conclusion
24 that it would be better to go forward with the first set of
25 charges first just to avoid the delay issue, could the

1 Crown have essentially re-severed those charges again ---

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MS. DALEY:** And how would you have gone --
4 how would a Crown have gone about doing that?

5 **MR. JUSTICE PELLETIER:** Simply filing a new
6 indictment. Once a person is committed to stand trial, the
7 Crown is not limited on how or when or even how often they
8 indict someone.

9 **MS. DALEY:** All right.

10 **MR. JUSTICE PELLETIER:** So just as the two
11 indictments were withdrawn and replaced with a new one, the
12 new one could have been withdrawn and replaced with two
13 separate ones.

14 Ultimately, it might become the subject of a
15 legal debate and result in a court ruling on how and where
16 we're going from here, but it's the Crown that makes the
17 decision as to how and when to present its case.

18 **MS. DALEY:** All right. So once there's a
19 committal, the Crown has discretion as to whether there'll
20 be one indictment or more than one. Is that generally it?

21 **MR. JUSTICE PELLETIER:** That's entirely
22 right.

23 **MS. DALEY:** Okay.

24 **MR. JUSTICE PELLETIER:** And in the
25 correspondence, either my notes to file to myself, my

1 correspondence with Mr. Neville, my notes to Ms. ---

2 **THE COMMISSIONER:** Hallett?

3 **MS. DALEY:** Hallett?

4 **MR. JUSTICE PELLETIER:** No, the trial
5 coordinator in Ottawa ---

6 **MS. DALEY:** Ms. Simpson.

7 **MR. JUSTICE PELLETIER:** --- Simpson, thank
8 you -- I referred various times to whether the court would
9 allow this or permit that and it's really an abbreviated
10 way of saying, we want the judge's views on whether that
11 person would sever the counts or require a joint trial if
12 it came to a motion for severance.

13 But up until then, it's the Crown's
14 decision. They could have been divided into eight separate
15 counts with eight trials.

16 **MS. DALEY:** All right. So we'll just unpack
17 that just for a second.

18 You were speaking as though the Crown had to
19 do something to connect the two sets of MacDonald charges,
20 but the only thing you ever had to do was prefer that
21 indictment.

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MS. DALEY:** Your issue was, well if I join
24 them all will I face a successful severance motion?

25 **MR. JUSTICE PELLETIER:** Right.

1 **MS. DALEY:** So that was the consideration.

2 **MR. JUSTICE PELLETIER:** And if a successful
3 severance motion happens six or eight months later then
4 we're back to two trials and all I've done is delay the
5 first set of trials another eight months.

6 **MS. DALEY:** Right.

7 **MR. JUSTICE PELLETIER:** So it's obviously a
8 considered opinion.

9 **MS. DALEY:** But in the MacDonald case, if we
10 take the snapshot at the point in time where we now have
11 the one indictment from September '99 onward with all the
12 counts, had a Crown considered the delay on the first set
13 was now going to become a real issue, he or she could have
14 preferred a new indictment, severed them and gone forward
15 with the first set of charges?

16 **MR. JUSTICE PELLETIER:** Could have but I
17 don't know what effect it would have had in reducing delay
18 because by then we were ready to go on all eight charges.
19 We were setting trial dates.

20 **MS. DALEY:** All right. Just one final area
21 that I'm interested in your thoughts on is this; in the
22 first set of MacDonald charges, I think all of your
23 complainants were involved as plaintiffs in civil
24 litigation by the time the charges were on foot?

25 **MR. JUSTICE PELLETIER:** I believe you're

1 right.

2 **MS. DALEY:** And obviously we've seen in the
3 exhibits that at the pre-trial conference, comment is made
4 about that circumstance by Defence counsel and, of course,
5 he's able to suggest by it that they have a motivation to
6 make up a story about Father Charles. And obviously that
7 was at least one factor that you, as the Crown, I guess,
8 had some concern about in relation to your complainants?

9 **MR. JUSTICE PELLETIER:** That they were suing
10 civilly?

11 **MR. ENGELMANN:** Yes.

12 **MR. JUSTICE PELLETIER:** It's a
13 consideration.

14 **MS. DALEY:** Is there anything that a Crown
15 can do in your mind, sir, to neutralize the impact of a
16 complainant who is also suing civilly for money damages?
17 Is there any way that Crown's typically handle that?

18 **MR. JUSTICE PELLETIER:** In a judge alone
19 trial, a judge knows well that public prosecution serves
20 the community and a lawsuit serves the plaintiff. So that
21 in a judge alone trial you would submit at the end of the
22 case and remind the judge to instruct himself or herself
23 that the financial aspect is a consideration, but there are
24 two forms of justice, as it were.

25 In a judge and jury trial, what I had done

1 in the past is call a civil lawyer to explain to a jury,
2 give a little lesson on Civil Law 101 to explain that these
3 people are entitled to sue for their personal damages.
4 It's not something the criminal courts can give them.

5 **MS. DALEY:** Right.

6 **MR. JUSTICE PELLETIER:** And distinguish the
7 two. And it worked in the case where it was used in one of
8 the Alfred training school prosecutions because a
9 compensation package was announced and it had the effect of
10 generating quite a few more complainants.

11 **MS. DALEY:** All right. Last topic; I take
12 it that you would have known, sir, that at some point
13 around the outcome of the first preliminary for Father
14 Charles -- so this is in the October '97 timeframe?

15 **MR. JUSTICE PELLETIER:** Yes.

16 **MS. DALEY:** Remember that's the preliminary
17 that's adjourned for a lengthy period ---

18 **MR. JUSTICE PELLETIER:** Right.

19 **MS. DALEY:** ---and it resumes in the fall.

20 I take it that certainly you were aware that
21 Project Truth was up and running in the fall and that
22 Project Truth and Officer Dupuis had other likely charges
23 that would be laid against Father Charles as a result of
24 his investigations?

25 **MR. JUSTICE PELLETIER:** I don't believe that

1 in the fall of '97 I knew that there were likely other
2 charges.

3 **MS. DALEY:** You knew at some point, did you,
4 sir, that other charges were imminent?

5 **MR. JUSTICE PELLETIER:** At some point later.
6 By late fall of '97 into early '98, I was being presented
7 with briefs for review for more charges, but by the end of
8 the summer into the early fall, by the time we finished the
9 first preliminary inquiry ---

10 **MS. DALEY:** Yes.

11 **MR. JUSTICE PELLETIER:** --- I don't know if
12 I was aware that there would be more charges against Father
13 MacDonald.

14 **MS. DALEY:** Remember we spoke about C-8 and
15 the fact that he'd given a statement to the OPP earlier in
16 the year 1997?

17 **MR. JUSTICE PELLETIER:** Actually, C-8 had
18 given a videotape statement in January of '97.

19 **MS. DALEY:** '97.

20 **MR. JUSTICE PELLETIER:** And it was available
21 to us but no charges were laid at that time ---

22 **MS. DALEY:** Understood.

23 **MR. JUSTICE PELLETIER:** --- with regards to
24 C-8.

25 **MS. DALEY:** Do you make a determination that

1 there should be or that it would be appropriate to lay
2 charges on C-8's Information in the latter part of the year
3 1997?

4 **MR. JUSTICE PELLETIER:** Subsequently, I
5 believe I do. I believe C-8 is named in the second ---

6 **MS. DALEY:** Yes.

7 **MR. JUSTICE PELLETIER:** --- indictment, if
8 I'm not mistaken; second Information, yes.

9 **MS. DALEY:** One of the comments that Mr.
10 Justice Chilcott made in his ruling is that the Defence was
11 not told at an earlier time that there would be subsequent
12 charges against Father Charles, that is to say that there
13 would be a second set of charges coming.

14 Can you give us any comments on that, and if
15 that's in fact the case, as I am sure it is, why it is the
16 Crown would not share that information with the Defence at
17 an earlier point in time?

18 **MR. JUSTICE PELLETIER:** All right. Well, I
19 don't have the benefit of Justice Chilcott's decision in
20 front of me. I don't know the timelines he was looking at.
21 I'm quite certain you're not asking me to comment on the
22 merits of Justice Chilcott's decision.

23 **THE COMMISSIONER:** Not at all.

24 **MS. DALEY:** No, not at all.

25 **MR. JUSTICE PELLETIER:** And so all I can say

1 is that Mr. Neville was made aware of more charges as soon
2 as I was made aware, probably the same day.

3 **MS. DALEY:** And from your experience, sir,
4 that's the appropriate way it should be done? In other
5 words, if the Crown is aware of additional charges, it's
6 incumbent on the Crown to disclose that to Defence?

7 **MR. JUSTICE PELLETIER:** Yes. In fact, I
8 told Mr. Neville prior to the new charges coming down that
9 there would likely be other charges, and we would be
10 talking about the end of '97, beginning of '98.

11 **MS. DALEY:** All right.

12 **MR. JUSTICE PELLETIER:** Mr. Neville and I
13 had had a very lengthy and very cordial professional
14 relationship dealing with a number of cases and it was not
15 inappropriate at all or unusual for me to be telling Mr.
16 Neville what was going on with the case. In any event, he
17 found out by January of '98 that there were other charges
18 coming.

19 **MS. DALEY:** Of course because they were
20 laid. In relation to the laying of those charges, are you
21 able to say, sir, when the first discussion would have
22 occurred with Defence counsel about the joinder of them?

23 **MR. JUSTICE PELLETIER:** Probably from the
24 very outset, we would have been asking ourselves that
25 question, how do we deal with this? Are we going to do one

1 trial or two?

2 MS. DALEY: All right.

3 MR. JUSTICE PELLETIER: Yes.

4 MS. DALEY: Thank you for your testimony.

5 Those are my questions.

6 MR. JUSTICE PELLETIER: Thank you, ma'am.

7 THE COMMISSIONER: Thank you. Coalition not
8 being here. Mr. Lee for the Victims' Group.

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

10 MR. LEE: Good afternoon, sir.

11 Justice Pelletier, my name is Dallas Lee
12 and, as the Commissioner said, I'm on for the Victims'
13 Group.

14 I have just a few areas; I don't expect to
15 be terribly long with you.

16 I'd like to begin asking you about your
17 contacts with David Silmser.

18 MR. JUSTICE PELLETIER: Yes.

19 MR. LEE: And as I understood your evidence,
20 you have, I think, some recollection of your first
21 telephone conversation with Mr. Silmser?

22 MR. JUSTICE PELLETIER: Yes.

23 MR. LEE: And that would fairly be described
24 as very unpleasant?

25 MR. JUSTICE PELLETIER: It was, sir.

1 **MR. LEE:** And do I understand that following
2 that very first telephone call, you decided that it would
3 be prudent to have no further contact with Mr. Silmser
4 directly?

5 **MR. JUSTICE PELLETIER:** The decision was
6 made as soon as we ended the first telephone conversation.

7 **MR. LEE:** And as I understand your concern,
8 you were worried that a further escalation of what began in
9 the first telephone call may lead to you not being able to
10 prosecute this matter; is that correct?

11 **MR. JUSTICE PELLETIER:** That's correct, sir.

12 **MR. LEE:** Can you flesh that out for me a
13 little bit? I don't understand exactly why you were
14 concerned it may lead to you having to step back from the
15 prosecution?

16 **MR. JUSTICE PELLETIER:** Mr. Silmser's tone
17 was very aggressive, very antagonistic and I had the very
18 distinct impression that if the conversation degenerated
19 any further, it might result in either some threats or
20 veiled threats being made. And in those circumstances, it
21 would be impossible for me to represent the Crown with Mr.
22 Silmser as a complainant.

23 **MR. LEE:** Did you consider at any point
24 during those early dealings with Mr. Silmser, and then Mr.
25 Geoffrey, attempting to perhaps have a meeting with Mr.

1 Silmsers with Mr. Geoffrey present?

2 **MR. JUSTICE PELLETIER:** No, I was surprised
3 that it wasn't offered by Mr. Geoffrey. I had expected
4 that Mr. Geoffrey was going to extend his client's apology
5 and undertaking not to conduct himself that way, and that
6 never came.

7 **MR. LEE:** Did you ever have that discussion
8 with Mr. Geoffrey?

9 **MR. JUSTICE PELLETIER:** No.

10 **MR. LEE:** Meaning did you ever suggest to
11 Mr. Geoffrey that you thought something like that may be
12 forthcoming?

13 **MR. JUSTICE PELLETIER:** No, I felt that if
14 Mr. Silmsers felt strongly enough, that he should be able to
15 speak with me and was prepared to do so civilly, that I
16 would be informed of that and that we could start having
17 normal conversations.

18 **MR. LEE:** Do I understand that as part of
19 your review of the original brief relating to the three
20 initial complainants against Charles MacDonald that you
21 would have reviewed the fruits of the original
22 investigation ---

23 **MR. JUSTICE PELLETIER:** Yes.

24 **MR. LEE:** --- relating to David Silmsers's
25 complaint?

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. LEE:** As part of that would you have
3 reviewed what occurred after Constable Sebalj concluded her
4 investigation dealing with Mr. Dunlop turning over Mr.
5 Silmser's statement to the CAS as an example?

6 **MR. JUSTICE PELLETIER:** I think I was aware
7 of that, yes.

8 **MR. LEE:** Do you recall whether that formed
9 part of your review or whether or not that was just
10 something you knew of?

11 **MR. JUSTICE PELLETIER:** I prepared, as I
12 recall, some fairly extensive notes on what I reviewed in
13 arriving at my recommendations on the first set of charges.

14 **MR. LEE:** Yes.

15 **MR. JUSTICE PELLETIER:** And it would be
16 borne out by that document. I would not want to, 14 years
17 later, try to recall what I had reviewed, but it's there.
18 If that document can be produced, I can tell you exactly
19 what I read.

20 **MR. LEE:** It can, if you can give me one
21 moment.

22 **MR. JUSTICE PELLETIER:** It's a handwritten
23 form of mine. It's about eight pages.

24 **MR. LEE:** The Document Number is 103351.
25 It's definitely an exhibit. I just don't have the exhibit

1 number handy. It was entered today.

2 **THE COMMISSIONER:** Yes, so it should be ---

3 **MR. LEE:** Very early in the day, I believe.

4 **THE REGISTRAR:** Three two nine two (3292).

5 **MR. LEE:** Three two nine two (3292). Should
6 the witness have that, Madam Clerk, or will that be in a
7 binder that you have?

8 (SHORT PAUSE/COURTE PAUSE)

9 **MR. JUSTICE PELLETIER:** I have the document,
10 Mr. Lee.

11 **MR. LEE:** If you can just give me one moment
12 to find it for myself.

13 **THE COMMISSIONER:** It will be up on the
14 screen momentarily.

15 **MR. LEE:** Can you flip over a page, please,
16 Madam Clerk?

17 Another page, please?

18 This is the document you're speaking of, I
19 take it, sir.

20 **MR. JUSTICE PELLETIER:** Yes, at page 6,
21 "Summary of Material". I was given six books.

22 **MR. LEE:** And, as you said, you would have
23 had some knowledge generally of the story surrounding
24 Mr. Dunlop turning over the statement to the CAS and some
25 of the fallout from that.

1 **MR. JUSTICE PELLETIER:** Yes.

2 **MR. LEE:** And would you have appreciated
3 that Mr. Silmsen's story, or statement rather, eventually
4 appeared on CJOH television?

5 **MR. JUSTICE PELLETIER:** I don't think I knew
6 that. I may have but I don't recall having that
7 information available.

8 **MR. LEE:** And I take it during your one
9 conversation with Mr. Silmsen he didn't discuss with you
10 the source of some of his anger and frustration.

11 **MR. JUSTICE PELLETIER:** No. It was a very,
12 very short conversation.

13 **MR. LEE:** Didn't get that far to ask why he
14 was so displeased?

15 **MR. JUSTICE PELLETIER:** No. The only
16 question I asked him was whether he spoke to everyone that
17 way, because I was so taken aback by the way he was
18 addressing me.

19 **MR. LEE:** Right.

20 Dealing with the Charles MacDonald
21 prosecution itself, did you at any point during your
22 handling of that matter become seriously concerned with
23 possibility of a successful 11(b) application?

24 **MR. JUSTICE PELLETIER:** During my
25 involvement of it? No, sir.

1 **MR. LEE:** Yes. So even at the point that
2 you turned that matter over to Ms. Hallett you weren't
3 concerned that an 11(b) application would likely be
4 successful?

5 **MR. JUSTICE PELLETIER:** I was not concerned
6 that it would likely be successful. The state of the law -
7 - and it hasn't changed that much but certainly then was
8 such that the time requirements inherent in the case was a
9 significant consideration, and the time requirements
10 inherent in this case were significant because of the way
11 the case had developed. And I felt that the Crown was on a
12 very solid footing on delay, at least up until the summer
13 of '99.

14 **MR. LEE:** Until when, sorry?

15 **MR. JUSTICE PELLETIER:** Until the summer of
16 '99 when we were ready to go with everything.

17 **MR. LEE:** I believe I understand your
18 evidence as relates to your desire from the outset, really,
19 to join the second set of charges with the first set of
20 charges.

21 **MR. JUSTICE PELLETIER:** Yes, sir.

22 **MR. LEE:** And that's a decision made very
23 early on, I take it.

24 **MR. JUSTICE PELLETIER:** As soon as I found
25 out there were going to be five other complainants, my mind

1 was made up to conduct one trial with eight complainants.

2 **MR. LEE:** Do you recall whether or not there
3 was any weighing in your mind of pros and cons dealing
4 specifically with the delay issue?

5 **MR. JUSTICE PELLETIER:** Well, it was
6 certainly an issue. It was certainly a risk that I was
7 taking but in my view, it was a calculated risk and one
8 that favoured the prosecution ultimately.

9 **MR. LEE:** That's one of the questions I
10 wanted to ask you. You just described that as a calculated
11 risk.

12 **MR. JUSTICE PELLETIER:** Yes.

13 **MR. LEE:** And until that answer I hadn't,
14 from any of your testimony, been given the impression that
15 you considered it much of a risk at all. Am I wrong on
16 that? Is it something that you considered to be a real
17 risk or was it something that you thought very unlikely?

18 **MR. JUSTICE PELLETIER:** I didn't think that
19 it was going to be -- I didn't think a delay application,
20 had the case proceeded to trial sometime in '99 or 2000, I
21 didn't think delay was going to be a problem, but obviously
22 there was a risk. And I calculated that risk, assessed the
23 risk and chose to proceed with what I felt would be a much
24 stronger case with eight complainants as opposed to three
25 in one case and five in the other.

1 **MR. LEE:** Ms. Daley asked you a moment ago
2 about whether you had discussions with counsel about a
3 potential waiver of 11(b) rights.

4 **MR. JUSTICE PELLETIER:** M'hm.

5 **MR. LEE:** And you told us that you wouldn't
6 engage in discussions with counsel about trading what
7 evidence you would call in exchange for waiving of a
8 constitutional right. Did I understand your ---

9 **MR. JUSTICE PELLETIER:** That's correct.

10 **MR. LEE:** --- evidence?

11 **MR. JUSTICE PELLETIER:** That's exactly what
12 I said.

13 **MR. LEE:** And I take it it would have been
14 appropriate for you to decide in this case to proceed on
15 the first set of charges to avoid a successful 11(b)
16 application down the road if you thought that was a real
17 concern.

18 **MR. JUSTICE PELLETIER:** Sure.

19 **MR. LEE:** That's fine.

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. LEE:** It's Crown discretion. It's up to
22 you whether you want to join the two or not.

23 **MR. JUSTICE PELLETIER:** Right.

24 **MR. LEE:** And would you have seen anything
25 wrong with -- or do you see anything wrong with the

1 practice of a Crown going to defence counsel and explaining
2 that while it may be desirable to join two sets of charges,
3 there's a concern about delay and therefore joinder will
4 not be done absent a waiver? Would that be appropriate?

5 **MR. JUSTICE PELLETIER:** That's not a
6 discussion I think I would have as a Crown.

7 **MR. LEE:** And why is that?

8 **MR. JUSTICE PELLETIER:** It's not a
9 concession that I would be asking the defence to make.

10 I don't think it's appropriate to be
11 exchanging what evidence will be called as against waivers
12 of constitutional rights. I don't think that it's
13 something -- discussion that I would engage in with
14 counsel.

15 **MR. LEE:** Let me put it to you this way.
16 If, in examining the situation, you came to the conclusion
17 that joining two sets of charges would inevitably lead to
18 the staying of the first set of charges ---

19 **MR. JUSTICE PELLETIER:** Yes.

20 **MR. LEE:** --- I take it it would be improper
21 to join the charges.

22 **MR. JUSTICE PELLETIER:** I wouldn't do it.

23 **MR. LEE:** You would not join the charges?

24 **MR. JUSTICE PELLETIER:** I would not join if
25 I knew that by joining them the first set of charges would

1 fall by the wayside.

2 MR. LEE: And if you found yourself in that
3 situation, I'm not certain I understand what the harm would
4 be or what would be improper about going to defence
5 counsel, explaining the situation and saying, "That being
6 said, if you prefer to have them joined, so long as you
7 waive 11(b), I'm okay to have that done."

8 MR. JUSTICE PELLETIER: So at this point,
9 Mr. Lee, you're supposing that the first set of charges are
10 already at risk?

11 MR. LEE: In the mind of the Crown, yes.

12 MR. JUSTICE PELLETIER: Yes. And I'm asking
13 the defence to agree to having all matters heard together -
14 --

15 MR. LEE: In exchange for waiving any
16 further delay on the first set of charges from that point
17 going forward.

18 MR. JUSTICE PELLETIER: There's nothing
19 preventing those sorts of discussions taking place. It's
20 all fairly hypothetical. In this case, had the case been
21 set down for trial in the fall of '99, had a date been set
22 in the fall of '99 for as soon as possible into the new
23 year of 2000, I was quite confident that we would survive a
24 delay application.

25 MR. LEE: Your indulgence for one moment,

1 sir?

2 **THE COMMISSIONER:** Sure.

3 **MR. LEE:** Sir, you're familiar with the name
4 Carson Chisholm, I take it.

5 **MR. JUSTICE PELLETIER:** I am.

6 **MR. LEE:** Mr. Chisholm testified here in
7 October of 2007 and what he told us is that he spoke with
8 you during a break, during the course of the Charles
9 MacDonald proceedings, and said to you, "Charlie is going
10 to walk under Askov," and Mr. Chisholm told us, and I
11 quote, "And he just sneered at me, 'You're delusional.'"

12 Do you have any recollection of that
13 conversation, sir?

14 **MR. JUSTICE PELLETIER:** Who was the
15 conversation between?

16 **MR. LEE:** Purportedly between Carson
17 Chisholm and yourself.

18 **MR. JUSTICE PELLETIER:** No.

19 **MR. LEE:** Wherein Mr. Chisholm suggested
20 that Father MacDonald was going to walk under Askov, and
21 you are purported to have replied, "You're delusional."

22 **MR. JUSTICE PELLETIER:** I have no
23 recollection of that conversation and I would not address a
24 member of the public by telling them they're delusional,
25 sir.

1 **MR. LEE:** Can we turn up Exhibit 228,
2 please, Madam Clerk? Should the witness have that, Madam
3 Clerk?

4 **MR. JUSTICE PELLETIER:** It's on the screen,
5 yes.

6 **MR. LEE:** You're okay with the screen, sir?

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MR. LEE:** So this is your April 2nd, 1997
9 memorandum to Peter Griffiths relating to the recent
10 developments in the Charles MacDonald matter. And you
11 recall this as the ten-page memo where you set out in some
12 detail what's gone on and you summarised to some extent the
13 allegations being made by Dunlop and others?

14 **MR. JUSTICE PELLETIER:** Yes, sir.

15 **MR. LEE:** And if we turn to the second-last
16 page, Madam Clerk, page 9, towards the top of the page is
17 fine.

18 In the second paragraph, Mr. Dumais took you
19 here earlier today, you write:

20 "Needless to say I'm not convinced that
21 these allegations are well founded.

22 The Dunlop group which involves Perry
23 Dunlop, his spouse, his brother-in-law,
24 Carson Chisholm, the various victims
25 referred to previously and ultimately

1 counsel, Charles Bourgeois, perceive a
2 conspiracy in the Cornwall area
3 involving illegal sexual activities and
4 cover-ups."

5 Do you see that?

6 **MR. JUSTICE PELLETIER:** Yes, sir.

7 **MR. LEE:** And you also reference your
8 personal affiliations to Murray MacDonald and what you
9 meant with that was your friendship. Is that correct?

10 **MR. JUSTICE PELLETIER:** M'hm.

11 **MR. LEE:** And you understood, based on your
12 review of the materials, that Mr. Dunlop and those who had
13 made the allegations to him originally were implicating Mr.
14 MacDonald in a wide-ranging conspiracy involving sexual
15 abuse of children and the subverting of justice in relation
16 to that?

17 **MR. JUSTICE PELLETIER:** Yes, sir.

18 **MR. LEE:** And I take it, in your mind, it
19 was impossible that there could be any merit to those
20 allegations as it related to Murray MacDonald at the very
21 least?

22 **MR. JUSTICE PELLETIER:** It wasn't
23 impossible, but I didn't feel it was well founded. I
24 didn't think it was a very, very strong possibility.

25 **MR. LEE:** And is it fair for me to suggest

1 that you considered the allegations being made by this
2 group of persons as malicious?

3 **MR. JUSTICE PELLETIER:** Malicious?

4 **MR. LEE:** Yes.

5 **MR. JUSTICE PELLETIER:** Well, not if they
6 believed what they were saying. If they didn't believe
7 what they were saying, it was certainly malicious.

8 **MR. LEE:** And ultimately here you don't -- I
9 suppose you don't tell Mr. Griffiths, given his position,
10 that you're no longer going to have any dealings with these
11 matters, but you suggest that in your view, it wouldn't be
12 appropriate, and you seek some input from him?

13 **MR. JUSTICE PELLETIER:** These matters being
14 the ---

15 **MR. LEE:** The conspiracy matters ---

16 **MR. JUSTICE PELLETIER:** Right.

17 **MR. LEE:** --- that involved Murray
18 MacDonald.

19 **MR. JUSTICE PELLETIER:** That's right.

20 Mr. Griffiths is my boss, and I'm asking him
21 whether -- for his views on whether I should be involved
22 and he felt I shouldn't, and I agreed entirely.

23 **MR. LEE:** And you would have appreciated at
24 this time that it was difficult to carve Murray MacDonald
25 out of this in some way. He's implicated or alleged to be

1 part of the conspiracy and, therefore, the conspiracy
2 essentially is something you shouldn't be going there; was
3 that your ---

4 **MR. JUSTICE PELLETIER:** Right. No, his
5 picture was in the brief, and his name was mentioned, and
6 certain meetings and so on.

7 **MR. LEE:** I take it that part of your
8 concern was that, as a Crown, you were looking to avoid the
9 appearance of impropriety or conflict?

10 **MR. JUSTICE PELLETIER:** That's correct.

11 **MR. LEE:** And I take it your concern in
12 relation to the Murray MacDonald allegations was that
13 assisting with the investigation or reviewing briefs or
14 anything along those lines in relation to Mr. MacDonald, in
15 your mind, could be perceived to put you in a conflict
16 position?

17 **MR. JUSTICE PELLETIER:** That's right. I
18 would never have done it.

19 **MR. LEE:** Is part of what concerns you about
20 the optics of this situation or the appearance of
21 impropriety the fact that this is -- these matters by this
22 point in time have become important to the public via the
23 media specifically?

24 **MR. JUSTICE PELLETIER:** No, it's not an
25 issue. It could have been a matter that was drawing no

1 attention. It would have had -- would have made no
2 difference.

3 **MR. LEE:** In other words, an appearance of
4 impropriety doesn't depend on the likelihood of the -- the
5 likelihood of your involvement being exposed to public
6 light. It's ---

7 **MR. JUSTICE PELLETIER:** No. Either I'm too
8 close to it or I'm not.

9 **MR. LEE:** The -- another document that Mr.
10 Dumais took you to today was Exhibit 2769, and I'm not sure
11 I need you to turn it up. I don't intend to take you to
12 the document, but it's the -- your December 22nd, 1998
13 letter to Pat Hall re allegations of conspiracy to commit
14 murder and death threats against Constable Perry Dunlop and
15 family.

16 **MR. JUSTICE PELLETIER:** Yes, sir.

17 **MR. LEE:** Now, the memo we just looked at
18 was April 2nd, '97. So this is a little more than a year
19 and a half after that time.

20 **MR. JUSTICE PELLETIER:** Right.

21 **MR. LEE:** So you've had an opportunity
22 obviously to review the Dunlop materials in April of '97
23 and now you have allegations -- rather than allegations
24 made by Dunlop, they're allegations about harm potentially
25 coming to he and his family.

1 Did you have any concerns about being the
2 Crown assigned to look at this matter, given that Perry
3 Dunlop was the one against whom threats were being made?

4 **MR. JUSTICE PELLETIER:** No, I didn't have
5 any such concerns.

6 **MR. LEE:** And I suppose, to put it bluntly,
7 if you're removing yourself from the conspiracy
8 investigation because of allegations that are being made
9 against Murray MacDonald and you have a friendship with
10 him, and the driving force, so to speak, behind those
11 allegations is Perry Dunlop, did you not have some concern
12 that there may be an appearance of conflict in that
13 presumably in some eyes you might be viewed as not being
14 terribly fond of Mr. Dunlop?

15 **MR. JUSTICE PELLETIER:** It never entered the
16 equation at all. Mr. Dunlop's conduct was not under review
17 here. Mr. Dunlop was the complainant. I was to examine
18 the comments that Mr. ---

19 **THE COMMISSIONER:** Leroux.

20 **MR. JUSTICE PELLETIER:** --- I don't know if
21 I can name this individual?

22 **MR. LEE:** Leroux, yes, that's fine.

23 **MR. JUSTICE PELLETIER:** I may -- what Mr.
24 Leroux had overheard constituted a threat legally and
25 conducted my analysis and that was it.

1 I think a point that needs to be made as
2 well, Mr. Lee, is that going to an outside prosecutor,
3 getting outside resources is something we try to do only
4 when it's absolutely necessary.

5 MR. LEE: And this, I take it, wasn't a case
6 where you thought it absolutely necessary?

7 MR. JUSTICE PELLETIER: I didn't, sir.

8 MR. LEE: Do you recall who would have
9 assigned you to review this brief? Is this one you would
10 have assigned yourself to or is this ---

11 MR. JUSTICE PELLETIER: In the fall of '98,
12 I was the Acting Director. So it came into the office
13 along with dozens of other briefs on any given day
14 completely unrelated to this, and I would assign the time
15 necessary when I could find the time to review the matter
16 and do so, and that's what happened here.

17 MR. LEE: Madam Clerk is going to be angry
18 with me, but I'm going to ask you to flip back to the last
19 Exhibit 228, page 9 again please, second-last page again,
20 Madam Clerk, in the bottom of the middle paragraph, if we
21 could.

22 Up a little bit. There, that paragraph's
23 fine. And this is where you write towards the middle of
24 that paragraph:

25 "A decision not to recommend charges

1 would in all likelihood be seen as the
2 latest in the obstructive measures
3 employed by those in authority."

4 Sorry I should have started above that:

5 "A decision to recommend charges would
6 lend credence to these individuals'
7 claims, including a conspiracy theory
8 and a decision not to recommend charges
9 would in all likelihood be seen as the
10 latest in the obstructive measures
11 employed by those in authority."

12 And I think you described that to us as a
13 little of "you're darned if you do and you're darned if you
14 don't"?

15 **MR. JUSTICE PELLETIER:** Right. The person
16 reviewing the conspiracy pedophile ring, et cetera,
17 dimension of the Fantino brief was going to have to either
18 recommend that there be charges or that there not be
19 charges. And I felt that there would be consequences in
20 either event and it was a decision best made by someone
21 other than myself.

22 **MR. LEE:** And dealing again with
23 appearances, you told us that despite this memo and
24 stepping back from the conspiracy allegations, you were
25 comfortable continuing on with the Charles MacDonald

1 prosecution?

2 **MR. JUSTICE PELLETIER:** Up to a point, yes.

3 **MR. LEE:** And with the section I just read
4 to you in mind, was there any discussion at any point or
5 did it enter your mind that some might consider that
6 Charles MacDonald being convicted of abusing young men
7 would lend some credence to the conspiracy allegations?

8 **MR. JUSTICE PELLETIER:** Not necessarily.

9 **MR. LEE:** That didn't enter your mind ---

10 **MR. JUSTICE PELLETIER:** No.

11 **MR. LEE:** --- or you don't agree with me?

12 **MR. JUSTICE PELLETIER:** No, it didn't enter
13 my mind.

14 **MR. LEE:** Not -- it's just not something
15 that was discussed or considered?

16 **MR. JUSTICE PELLETIER:** No, it was a suspect
17 religious figure with a certain number of young men as
18 complainants at that point.

19 **MR. LEE:** And do you recall there being any
20 specific discussion of the propriety of you continuing on
21 with the Father MacDonald prosecution with Peter Griffiths?

22 **MR. JUSTICE PELLETIER:** I don't recall us
23 discussing that specifically. I know that it was quickly
24 agreed upon that I shouldn't be dealing with the Fantino
25 brief materials and the conspiracy and so on, but vis-à-vis

1 Father Charles as one discrete accused with a number of
2 complainants -- only three by then. We didn't know in '97
3 there would be five other complainants -- I don't think
4 there was too much concern at that point that I would
5 continue on that case.

6 MR. LEE: Thank you, sir. Those are my
7 questions.

8 THE COMMISSIONER: Thank you.

9 MR. JUSTICE PELLETIER: Thank you, Mr. Lee.

10 THE COMMISSIONER: Mr. Cipriano?

11 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
12 CIPRIANO:

13 MR. CIPRIANO: Thank you, Mr. Commissioner.
14 Good afternoon, Your Honour.

15 MR. JUSTICE PELLETIER: Good afternoon, sir.

16 MR. CIPRIANO: We met before. My name is
17 Giuseppe Cipriano.

18 MR. JUSTICE PELLETIER: Yes.

19 MR. CIPRIANO: And I'm here on behalf of
20 Father MacDonald, the Estate of Ken Seguin as well and I'm
21 representing -- not representing them here, on behalf of
22 Mr. Neville, who could not be here today.

23 MR. JUSTICE PELLETIER: Right.

24 MR. CIPRIANO: I just wanted to pick up on
25 something that was asked of you earlier. You were asked

1 some questions earlier about the circumstances in a case
2 such as the one that you were prosecuting with respect to
3 Father MacDonald when the complainants have civil suits
4 parallel to the criminal prosecutions.

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. CIPRIANO:** And you brought up the point
7 that you thought that it was important to remind the judge
8 or jury trying the case that there are distinctions to be
9 made there and that they should disabuse themselves of that
10 because it is their right to seek civil settlements,
11 separate and apart from the prosecution?

12 **MR. JUSTICE PELLETIER:** Right. I think my
13 evidence was that it was a consideration.

14 **MR. CIPRIANO:** Yes.

15 **MR. JUSTICE PELLETIER:** So not disabuse
16 themselves or overlook or disregard that fact, but that it
17 was a consideration.

18 **MR. CIPRIANO:** It was a consideration.

19 **MR. JUSTICE PELLETIER:** Right.

20 **MR. CIPRIANO:** And I know you're not looking
21 at this from a defence perspective but a defence counsel
22 would tend to want to explore any financial motivation a
23 complainant may have in that type of prosecution.

24 **MR. JUSTICE PELLETIER:** I think they would
25 be negligent not to.

1 **MR. CIPRIANO:** Okay.

2 **MR. JUSTICE PELLETIER:** Yes.

3 **MR. CIPRIANO:** And clearly -- I'm sure we
4 all know, but for the benefit of the public, in a criminal
5 prosecution the standard is proof beyond a reasonable
6 doubt, the highest standard in our legal system.

7 **MR. JUSTICE PELLETIER:** Yes.

8 **MR. CIPRIANO:** And the standard in a civil
9 suit is balance of probabilities, which is lower.

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MR. CIPRIANO:** I suppose strategically for a
12 complainant, a conviction on a higher standard would be a
13 lot more strategic in terms of their civil settlement?

14 **MR. JUSTICE PELLETIER:** A conviction after
15 trial? I'm not convinced it would. A guilty plea would be
16 an admission of wrongdoing. A conviction after trial? I
17 stand to be corrected; I'm not sure that's admissible in a
18 civil case. I may be wrong.

19 **MR. CIPRIANO:** No, not admissible as
20 evidence.

21 **MR. JUSTICE PELLETIER:** Right.

22 **MR. CIPRIANO:** But perhaps in settlement
23 negotiations.

24 **MR. JUSTICE PELLETIER:** Yes, yes. I would
25 agree that if there's a conviction after trial in a

1 criminal case, the plaintiff *qua* complainant is certainly
2 in a position to feel their case is strong.

3 MR. CIPRIANO: Okay.

4 MR. JUSTICE PELLETIER: Right.

5 MR. CIPRIANO: As well, in your examination-
6 in-chief, we looked on the events surrounding the first
7 date of the preliminary inquiry with respect to the first
8 three complainants, that being Mr. Silmser, Mr. MacDonald
9 and I believe C-3 -- the person with the moniker by the
10 name of C-3.

11 MR. JUSTICE PELLETIER: Yes, sir.

12 MR. CIPRIANO: And we looked at a transcript
13 and that was Exhibit P-351 -- no, I'm sorry, Exhibit 3295.
14 And that's the transcript of when Mr. Neville is seeking an
15 adjournment because of this media report of C-8.

16 MR. JUSTICE PELLETIER: Yes.

17 MR. CIPRIANO: And you recall that?

18 MR. JUSTICE PELLETIER: Yes.

19 MR. CIPRIANO: If we could turn to page 5 of
20 that transcript, and near the bottom of that transcript Mr.
21 Neville is speaking and he says -- this is in and around
22 line 25 -- yes, thank you, Madam Clerk. Mr. Neville is
23 saying:

24 "Oh, sorry, end of January. The other
25 matters go back to last fall."

1 Then it says:

2 "AUDIENCE MEMBER: Supreme Court."

3 And Mr. Neville says:

4 "I'm going to ask Your Honour to have
5 this gentleman, Mr. Bourgeois, excluded
6 from the courtroom."

7 Exclamations from audience, and Mr. Neville:

8 "He is not going to continue to
9 interrupt me with the sighs under his
10 breath from behind, number 1.

11 Number 2, it is my information that he
12 is -- on the video he is a witness."

13 And if I can ask you, Your Honour, do you
14 recall whether -- do you recall that incident at all?

15 **MR. JUSTICE PELLETIER:** I do.

16 **MR. CIPRIANO:** You do? And Mr. Bourgeois I
17 think is Charlie Bourgeois, who represented Perry Dunlop?

18 **MR. JUSTICE PELLETIER:** At the time, yes.

19 **MR. CIPRIANO:** Okay. And do you recall
20 whether Perry Dunlop was in the courtroom at that time as
21 well?

22 **MR. JUSTICE PELLETIER:** I don't recall. I
23 remember the Dunlops were there ---

24 **MR. CIPRIANO:** Okay.

25 **MR. JUSTICE PELLETIER:** --- on the -- at

1 least the first day of the preliminary inquiry. I don't
2 recall whether they were in the body of the court.

3 **MR. CIPRIANO:** Okay. And do you recall that
4 Mr. Bourgeois also acted for C-8?

5 **MR. JUSTICE PELLETIER:** I can't recall that,
6 sir.

7 **MR. CIPRIANO:** Okay.

8 In any event, after -- there's about six
9 months or so that spans between this preliminary inquiry
10 and the -- when they continue later on in September of that
11 year. And in that -- in the interim basis, and I'd say
12 within weeks of this adjournment request, you and your
13 investigators receive the -- what's been referred to here
14 as the Fantino brief or the brief prepared by Mr. Dunlop
15 and his counsel.

16 **MR. JUSTICE PELLETIER:** Yes.

17 **MR. CIPRIANO:** And that brief contained
18 various statements and allegations against Father
19 MacDonald?

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. CIPRIANO:** An allegation made by Robert
22 Renshaw?

23 **MR. JUSTICE PELLETIER:** I'll have to take
24 your word for it. I haven't seen it since then.

25 **MR. CIPRIANO:** Okay.

1 **MR. JUSTICE PELLETIER:** Or since that
2 timeframe generally, so I'll have to take your word for
3 what's in there.

4 **MR. CIPRIANO:** Maybe just to refresh your
5 memory a bit, do you recall earlier we looked at some
6 disclosure letters you had sent to Mr. Neville in these
7 intervening months?

8 **MR. JUSTICE PELLETIER:** Yes.

9 **MR. CIPRIANO:** And indeed I think they were
10 coming from these briefs that ---

11 **MR. JUSTICE PELLETIER:** Right.

12 **MR. CIPRIANO:** This brief. And I think one
13 of the items that was itemized was a statement by Robert
14 Renshaw and I think a Gerry Renshaw.

15 **MR. JUSTICE PELLETIER:** Yes.

16 **MR. CIPRIANO:** As well as other things that
17 were in that brief.

18 **MR. JUSTICE PELLETIER:** Okay.

19 **MR. CIPRIANO:** And so I think you would
20 agree with me, in the interim basis between these -- the
21 initial start of the preliminary inquiry and its resumption
22 in September, this seemingly, if I could call it, not
23 simple but straightforward prosecutions, as you had three
24 complainants, was starting to snowball into a more complex
25 case or issue because of this disclosure of this Perry

1 Dunlop brief?

2 **MR. JUSTICE PELLETIER:** I'd agree with that,
3 sir.

4 **MR. CIPRIANO:** Okay.

5 And the issue of whether any of these people
6 who made allegations in that brief had colluded with
7 others, or had been present during the earlier proceedings,
8 became an issue at least that you were exploring and I
9 think Mr. Neville was exploring subsequently in the
10 preliminary inquiries?

11 **MR. JUSTICE PELLETIER:** That's correct.

12 **MR. CIPRIANO:** And I think he actually asked
13 witnesses -- and I'm thinking of Robert Renshaw in
14 particular -- whether he was present during some of the
15 evidence of Mr. Silmser.

16 **MR. JUSTICE PELLETIER:** He would have asked
17 him this at the preliminary inquiry?

18 **MR. CIPRIANO:** Yes.

19 **MR. JUSTICE PELLETIER:** Yes, quite possibly.
20 I can recall there being a great deal of cross-examination
21 of all five complainants on the second set of charges with
22 regards to their contacts, discussions, associations.

23 **MR. CIPRIANO:** Okay. And really I think he
24 was geared towards whether their statements were in any way
25 manipulated by what they have heard.

1 **MR. JUSTICE PELLETIER:** That seemed to be
2 the purpose.

3 **MR. CIPRIANO:** Okay.

4 Now, if I can say this. Your prosecution
5 proceeded in essentially two parts: the first three
6 complainants and then the next five.

7 **MR. JUSTICE PELLETIER:** That's right.

8 **MR. CIPRIANO:** And I think you already told
9 us that initially this file had had a life of its own prior
10 to you coming on and you were assigned to it by Justice
11 Griffiths, then Regional Director of Crown Operations. And
12 there were some problems when you had taken the file, in
13 the sense that there were no charges outstanding at that
14 point?

15 **MR. JUSTICE PELLETIER:** There were problems
16 that there were no charges outstanding?

17 **MR. CIPRIANO:** No, no, there were problems
18 in the evidence as it existed.

19 **MR. JUSTICE PELLETIER:** When I started the
20 case with the three complainants?

21 **MR. CIPRIANO:** Yes.

22 **MR. JUSTICE PELLETIER:** Well, there was a
23 history ---

24 **MR. CIPRIANO:** Yes.

25 **MR. JUSTICE PELLETIER:** --- to the case,

1 clearly.

2 **MR. CIPRIANO:** Okay. I would imagine that
3 you would have been apprised of any work that had been done
4 on the file when you -- once you took over the file?

5 **MR. JUSTICE PELLETIER:** Well, we'd have to
6 go back again to the document where I catalogue the six
7 books that I have and their contents.

8 **MR. CIPRIANO:** Okay.

9 **MR. JUSTICE PELLETIER:** That's what I was
10 apprised of. That's what I read in its entirety.

11 **MR. CIPRIANO:** If I could show you -- it's
12 Exhibit, Madam Clerk, 1147.

13 This appears to be a memo or a letter
14 written by Justice Griffiths, as he was acting as a Crown,
15 to Detective Inspector Tim Smith regarding the
16 investigation of Father MacDonald, and I wonder if you ever
17 had a chance to -- in your dealing with the prosecution, to
18 review this letter?

19 **MR. JUSTICE PELLETIER:** Prior to the charges
20 being laid?

21 **MR. CIPRIANO:** Yes.

22 **MR. JUSTICE PELLETIER:** I couldn't really
23 answer. I'm not sure if that correspondence formed part of
24 the initial investigation brief that I was given among
25 those six documents, those six books. So I couldn't really

1 answer whether I was given Mr. Griffiths' 1994
2 recommendations.

3 **MR. CIPRIANO:** Okay.

4 **MR. JUSTICE PELLETIER:** Excuse me for one
5 moment?

6 **MR. CIPRIANO:** Oh, no problem.

7 If I could show you Exhibit Number 3293.
8 We've looked at this earlier today.

9 **THE COMMISSIONER:** What page, sir?

10 **MR. CIPRIANO:** The second page of that
11 exhibit. No, 3293, Madam Clerk. Sorry.

12 **MR. JUSTICE PELLETIER:** Yes, sir.

13 **MR. CIPRIANO:** This was a note to file that
14 you had made regarding a number of issues but I wanted to
15 bring to your attention what you wrote about on page 2.

16 You talk about it had been your intention to
17 review the transcripts of the civil proceedings --
18 transcripts of the discoveries, and that you'd decided not
19 to delay your recommendations awaiting receipt of those
20 transcripts?

21 **MR. JUSTICE PELLETIER:** Yes, sir.

22 **MR. CIPRIANO:** That, of course, does not
23 preclude us from changing our course of conduct once
24 transcripts have been received and reviewed. And what I'm
25 asking is, you already told us that the transcripts were

1 going to be or could have been a factor in your assessment
2 of the case?

3 MR. JUSTICE PELLETIER: Yes.

4 MR. CIPRIANO: And is it fair to say that
5 there was -- when you were handling this case, there was an
6 ongoing reassessment of the case after major stages in the
7 proceedings?

8 MR. JUSTICE PELLETIER: Right.

9 MR. CIPRIANO: Okay.

10 MR. JUSTICE PELLETIER: Which is typical.

11 MR. CIPRIANO: And I think we're all aware
12 that the -- when you came on to this case, and correct me
13 if I'm wrong, there was only one complainant, that being
14 Mr. Silmser, or were there -- or were the first three
15 already there?

16 MR. JUSTICE PELLETIER: When I came onto the
17 case, I was provided information, statements, from three
18 complainants.

19 MR. CIPRIANO: From three complainants?

20 MR. JUSTICE PELLETIER: Yes.

21 MR. CIPRIANO: Okay.

22 And if I could turn your attention to
23 Exhibit 228?

24 MR. JUSTICE PELLETIER: Yes, sir.

25 MR. CIPRIANO: Page 2 of that, this is your

1 1997, April 2nd memo to Justice Griffiths.

2 MR. JUSTICE PELLETIER: Yes, sir.

3 MR. CIPRIANO: Page 2, the second paragraph
4 near the end, you're talking about why the matter with Mr.
5 Silmsler didn't proceed, that's earlier on, and you write
6 that there were questions regarding the reliability or
7 credibility of his allegations and then lack of
8 corroboration and so on. And so charges were not laid at
9 that point-in-time.

10 MR. JUSTICE PELLETIER: Yes.

11 MR. CIPRIANO: And you're just going through
12 a history of the file at that point.

13 MR. JUSTICE PELLETIER: Right.

14 MR. CIPRIANO: And I think we all know, as a
15 matter of law, corroboration is not an essential element in
16 these types of cases?

17 MR. JUSTICE PELLETIER: In -- no.

18 MR. CIPRIANO: But ---

19 MR. JUSTICE PELLETIER: Indecent assault on
20 male in the seventies did not require corroboration.

21 MR. CIPRIANO: No, and neither does it
22 currently.

23 MR. JUSTICE PELLETIER: That's correct.

24 MR. CIPRIANO: As a matter of law.

25 MR. JUSTICE PELLETIER: That's right.

1 **MR. CIPRIANO:** However, having some sort of
2 corroboration does make the prosecution's case that much
3 easier, for lack of a better term, or stronger?

4 **MR. JUSTICE PELLETIER:** Well, it tends to
5 confirm what the complainant is saying so that's a matter
6 of common sense.

7 **MR. CIPRIANO:** And in these cases often
8 there -- because of the time from the alleged date of the
9 offence to the date of the prosecution, a lot is lost in
10 terms of civilian witnesses who may remember, memory is
11 lost over years, and physical things may no longer exist,
12 and so it does create a difficulty in the prosecution of
13 the case?

14 **MR. JUSTICE PELLETIER:** And the defence.
15 Time is -- delay is harmful to everyone, there's no
16 question.

17 **MR. CIPRIANO:** Yes, okay.

18 **MR. JUSTICE PELLETIER:** Yeah.

19 **MR. CIPRIANO:** Now, it appears then that the
20 addition of the two other complainants, that being Mr.
21 MacDonald and Mr. C-3, at least gave some merit to
22 proceeding with the allegations, and with that I refer you
23 to page 3 in the middle of the first full paragraph there.

24 It says:

25 "The decision to recommend charges was

1 made on the slimmest possible
2 reasonable prospect of conviction test
3 being met. Clearly, the fact that
4 there now existed three complainants
5 alleging of a similar type of conduct
6 by the priest at a specific location at
7 a particular point-in-time, was the
8 major consideration in recommending
9 charges. It was decided that, at the
10 very least, the complainants would be
11 given an opportunity to testify and
12 that the preliminary inquiry and the
13 reasonable prospects of conviction
14 could be reassessed thereafter."

15 **MR. JUSTICE PELLETIER:** "Could be assessed
16 thereafter".

17 **MR. CIPRIANO:** Sorry, yes. My mistake.

18 **MR. JUSTICE PELLETIER:** Right.

19 **MR. CIPRIANO:** And, again, that goes -- now
20 we have three where you could use similar facts, evidence,
21 against the accused?

22 **MR. JUSTICE PELLETIER:** That was my
23 intention.

24 **MR. CIPRIANO:** Yeah, okay. And as well,
25 again there's this issue that we can see how they do at the

1 preliminary inquiry where they will be testifying under
2 oath, under cross-examination, and then again the case can
3 be reassessed?

4 MR. JUSTICE PELLETIER: Yes.

5 MR. CIPRIANO: Okay.

6 And then, of course, comes this complicating
7 factor with the disclosure of the Dunlop box or what we
8 refer to as the "Fantino brief".

9 MR. JUSTICE PELLETIER: M'hm.

10 MR. CIPRIANO: And you prosecuted the
11 preliminary inquiries with the first eight complainants.
12 We know that there was a ninth one, but you were involved
13 in the first eight?

14 MR. JUSTICE PELLETIER: Yes.

15 MR. CIPRIANO: And I think it's fair to say
16 that once the preliminary inquiries were concluded, Father
17 MacDonald was committed to stand trial on all counts, but
18 through the cross-examination you and the investigators
19 would have learned certain things that they didn't know at
20 the time, beginning prior to the preliminary inquiries?

21 MR. JUSTICE PELLETIER: Yes.

22 MR. CIPRIANO: It was brought out that there
23 were issues of collusion of witnesses?

24 MR. JUSTICE PELLETIER: Yes.

25 MR. CIPRIANO: Financial gain and

1 motivation?

2 MR. JUSTICE PELLETIER: We knew that going
3 in.

4 MR. CIPRIANO: Okay. And some, I suppose,
5 issues dealing with tampering with witnesses or Perry
6 Dunlop's involvement with the witnesses?

7 MR. JUSTICE PELLETIER: Yes.

8 MR. CIPRIANO: Eventually, when the file
9 gets turned over to Ms. Hallett, I take it she would have
10 been apprised by you, or from the file itself, of the
11 various issues that arose at the preliminary inquiry?

12 MR. JUSTICE PELLETIER: We discussed each of
13 the complainants. I think there's a listing somewhere of
14 my assessments, and she certainly had the transcripts of
15 the preliminary inquiries at her disposal to review them.

16 MR. CIPRIANO: Now, I looked at this earlier
17 and would it be fair to say that throughout your experience
18 on this file and throughout the court proceedings, this
19 case attracted a significant amount of media attention as
20 well as members of the public had their attention aroused
21 as a result of this case?

22 MR. JUSTICE PELLETIER: More than average,
23 yes.

24 MR. CIPRIANO: Okay. And it kind of became
25 an unusual case in the amount of media attention and public

1 following that it had?

2 MR. JUSTICE PELLETIER: It was unusual in
3 that sense, yes.

4 MR. CIPRIANO: Okay. And did -- I just
5 wondered if I could show you? It's not an exhibit yet;
6 it's Document 124502?

7 And while we're getting to that document, if
8 I can ask you, Your Honour, there were certainly a subset
9 of the public that were believing in the conspiracy theory
10 and clan of paedophile theory during this time?

11 MR. JUSTICE PELLETIER: Well, I don't live
12 in Cornwall. I didn't live in Cornwall then.

13 As I mentioned, I was not paying
14 particularly close attention to any media reports, so it
15 was very difficult for me to get a sense of that. At the
16 court attendances there were individuals who seemed to have
17 those feelings ---

18 MR. CIPRIANO: Okay.

19 MR. JUSTICE PELLETIER: --- fairly strongly
20 held. I'm just not in a position to really comment on its
21 extent.

22 MR. CIPRIANO: Okay. And did you ever feel
23 that that much attention could in any way jeopardise the
24 prosecution?

25 MR. JUSTICE PELLETIER: What type of

1 attention, sir, public or media?

2 **MR. CIPRIANO:** The media and the public and
3 these theories that were in the public of conspiracy
4 theories and paedophile rings.

5 **MR. JUSTICE PELLETIER:** No, I didn't think
6 it could jeopardise the prosecution at all. It might have
7 resulted in a change of venue.

8 **MR. CIPRIANO:** Okay.

9 **MR. JUSTICE PELLETIER:** But beyond that, I
10 don't think it could have placed the Crown's case at any
11 disadvantage.

12 **MR. CIPRIANO:** Okay, and I don't know if you
13 have that document in front of you, okay.

14 **THE COMMISSIONER:** Thank you. Exhibit
15 Number 3311 is a document that's entitled, "A Few Facts
16 about Justice & Cornwall."

17 **--- EXHIBIT NO./PIÈCE NO P-3311:**

18 (124502) - Article Named 'A Few Facts about
19 Justice & Cornwall' undated

20 **MR. CIPRIANO:** If I can turn Your Honour's
21 attention to the second page of that document?

22 **MR. JUSTICE PELLETIER:** Yes.

23 **MR. CIPRIANO:** Under the heading of The
24 Public Interest, it says:

25 "The 22nd of December 1998, Crown

1 Attorney Robert Pelletier advises
2 Project Truth that it would be
3 'contrary to the public interest' to
4 pursue the allegations of death threats
5 against Perry Dunlop and his family,
6 and 'I do not consider public interest
7 to be served were charges laid.'"

8 And we've seen the document in which you
9 express your opinions on that issue, but that quote is
10 really taken out of context, is it not?

11 **MR. JUSTICE PELLETIER:** Well, it doesn't
12 mention that there is no grounds for laying a charge.

13 **MR. CIPRIANO:** No, exactly.

14 **MR. JUSTICE PELLETIER:** It only mentions
15 what I mentioned afterwards, saying that if there are by
16 the slimmest margin, it would not be in the public interest
17 to pursue it.

18 **MR. CIPRIANO:** Exactly.

19 **MR. JUSTICE PELLETIER:** So it's taken out of
20 context.

21 **MR. CIPRIANO:** And we've looked at that
22 document earlier today; it's Exhibit 2769. And this
23 document is one in which you go through, in a fair amount
24 of detail, with about five bullet points, the reasons why
25 you think that you couldn't get over the first hurdle, as

1 you put it.

2 **MR. JUSTICE PELLETIER:** Right.

3 **MR. CIPRIANO:** Right, and this was just kind
4 of a subsidiary hurdle?

5 **MR. JUSTICE PELLETIER:** M'hm.

6 **MR. CIPRIANO:** Okay.

7 Now, finally, we've gone over a lot of
8 documents here with yourself, Your Honour, and throughout
9 this Inquiry, and we've seen that you have significantly
10 noted up this file when you were acting as prosecutor on
11 it.

12 **MR. JUSTICE PELLETIER:** Significantly?

13 **MR. CIPRIANO:** Significantly noting up the
14 file with ---

15 **MR. JUSTICE PELLETIER:** Noting up, yes.

16 **MR. CIPRIANO:** --- your memos and notes to
17 file and so on.

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. CIPRIANO:** And that's so there's a paper
20 record of things that transpired throughout the
21 proceedings.

22 **MR. JUSTICE PELLETIER:** Right.

23 **MR. CIPRIANO:** Not for court use but just
24 for internal benefits of the file.

25 **MR. JUSTICE PELLETIER:** Right.

1 **MR. CIPRIANO:** And you would have also
2 recorded in those memos different stages of the
3 proceedings, if a judicial pre-trial was going to occur and
4 so on.

5 **MR. JUSTICE PELLETIER:** Right.

6 **MR. CIPRIANO:** And what would have
7 transpired at the judicial pre-trial.

8 **MR. JUSTICE PELLETIER:** Yes, at times I did
9 that.

10 **MR. CIPRIANO:** Okay. And if, for instance,
11 you had received, let's say, some sort of a waiver of a
12 constitutional right by Defence counsel, would it be fair
13 to say that that's something significant enough that you
14 would have at least noted it up with an internal note to
15 file or perhaps even followed it up by a letter to Defence
16 counsel to confirm the conversations you would have had?

17 **MR. JUSTICE PELLETIER:** I would without a
18 doubt send Mr. Neville a letter confirming the waiver.

19 **MR. CIPRIANO:** Okay, and in viewing all the
20 documents that we have, there's nothing close to that in
21 this file?

22 **MR. JUSTICE PELLETIER:** No, the opposite is
23 indicated.

24 **MR. CIPRIANO:** Okay. Thank you very much,
25 Your Honour. Those are my questions.

1 **MR. JUSTICE PELLETIER:** Thank you, sir.

2 **THE COMMISSIONER:** Sir, it is 4:30, and I
3 had received some indication that the cross would be
4 completed by five o'clock. I don't know if that's still
5 the case at this point.

6 And I know that you are not feeling that
7 well. Are you prepared to stay a bit longer to complete
8 this today?

9 **MR. JUSTICE PELLETIER:** As long as you wish,
10 sir.

11 **THE COMMISSIONER:** Thank you. All right, so
12 ---

13 **MR. JUSTICE PELLETIER:** I think it sounds
14 worse than it is. I'm actually feeling quite well.

15 **THE COMMISSIONER:** You seem to be getting
16 better.

17 **MR. JUSTICE PELLETIER:** But I'm making a lot
18 of noise for which I apologize, but I'm prepared to remain
19 as long as you wish, Mr. Commissioner.

20 **THE COMMISSIONER:** Well, can I get -- now,
21 Mr. Crane, how long will you be?

22 **MR. CRANE:** Perhaps 10 or 15 minutes at the
23 most, sir.

24 **THE COMMISSIONER:** Right, and Mr. Kozloff?

25 **MR. KOZLOFF:** About the same, sir.

1 **THE COMMISSIONER:** All right. Mr. Carroll?

2 **MR. CARROLL:** Less than 10 minutes, sir.

3 **THE COMMISSIONER:** Okay, and Mr. Kloeze?

4 **MR. KLOEZE:** About five minutes, sir.

5 **THE COMMISSIONER:** All right. So maybe we
6 can give that a try.

7 Would you like a five-minute break now?

8 **MR. JUSTICE PELLETIER:** It's entirely up to
9 you, sir.

10 **THE COMMISSIONER:** Well, I will. Okay.

11 **MR. JUSTICE PELLETIER:** I'm seeing some nods
12 of "yes."

13 **THE COMMISSIONER:** Oh, yes, yes. All right,
14 why don't we take 10 minutes.

15 **MR. JUSTICE PELLETIER:** All right.

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

18 This hearing will resume at 4:50 p.m.

19 --- Upon recessing at 4:37 p.m./

20 L'audience est suspendue à 16h37

21 --- Upon resuming at 4:47 p.m./

22 L'audience est reprise à 16h47

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

25 **MR. JUSTICE ROBERT PELLETIER,** Resumed/Sous

1 le même serment:

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

3 ---HOUSEKEEPING MATTERS BY/MATIÈRES ADMINISTRATIVES PAR MR.

4 **ENGELMANN:**

5 **MR. ENGELMANN:** Good afternoon, sir.

6 I have indicated to counsel and to the
7 witness that I have a very brief housekeeping matter to
8 take care of, if I may.

9 **THE COMMISSIONER:** Yes.

10 **MR. ENGELMANN:** This relates to a document
11 that was unfortunately not available to the parties when a
12 witness by the name of Doug Seguin was in the witness box.
13 The fact that the document was not available was an
14 oversight and had nothing to do with Mr. Seguin. It was
15 not his fault in any way. It's just unfortunate we did not
16 have it in our database. The Document Number is 128561,
17 and I believe Madam Clerk has copies.

18 And sir, these are some notes that Mr.
19 Seguin had handwritten on a statement from Gerald Renshaw.

20 **THE COMMISSIONER:** Thank you. Exhibit
21 Number 3312 will be a statement called "Gerald Wesley
22 Renshaw." The date is -- well, that was his date of birth.
23 That's fine.

24 --- **EXHIBIT NO./PIÈCE NO P-3312:**

25 (128561) - Statement of Gerald Renshaw

1 dated 05 Dec 96

2 **MR. ENGELMANN:** Sir, I have spoken to Mr.
3 Lee and Mr. Cipriano about this and how we were going to
4 put this in today, they've consented to this approach, but
5 I'm not sure if they have any brief comments to make. I
6 just want to turn it over if they do.

7 **THE COMMISSIONER:** Does anyone have a
8 comment, Mr. Lee or Mr. Cipriano?

9 **MR. LEE:** Nothing, sir.

10 **MR. CIPRIANO:** No.

11 **THE COMMISSIONER:** Thank you. All right.
12 That's done.

13 **MR. ENGELMANN:** I will have Me Dumais here
14 right away. Thank you.

15 **THE COMMISSIONER:** Thank you. He's right
16 there.

17 **THE COMMISSIONER:** Mr. Crane.

18 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

19 **CRANE:**

20 **MR. CRANE:** Justice Pelletier, my name is
21 Mark Crane. I'm a lawyer representing the Cornwall Police
22 Service.

23 **MR. JUSTICE PELLETIER:** Good afternoon, sir.

24 **MR. CRANE:** Good afternoon, sir.

25 I would like to start off by discussing with

1 you the relationship between the police and the Crown and
2 to begin with, the investigation of historical sexual
3 abuses can be difficult to investigate, I take it you would
4 agree with me, given fading memories and lack of physical
5 evidence?

6 **MR. JUSTICE PELLETIER:** I agree with that.

7 **MR. CRANE:** And as you said in your words
8 "delay is harmful to everyone"?

9 **MR. JUSTICE PELLETIER:** Yes.

10 **MR. CRANE:** And these investigations can be
11 further complicated due to the evolution in the Criminal
12 Code; fair?

13 **MR. JUSTICE PELLETIER:** That can be a
14 factor, yes.

15 **MR. CRANE:** And for the benefit of the
16 public, we know that criminal offences are not
17 retrospective, so one must consider the section of the Code
18 that applied at the time of the alleged offence.

19 **MR. JUSTICE PELLETIER:** With regards to the
20 elements of the offence, yes.

21 **MR. CRANE:** With regards -- and this is set
22 out in your notes that we've reviewed with a few of counsel
23 here today.

24 **MR. JUSTICE PELLETIER:** Yes.

25 **MR. CRANE:** And in the case of Mr. Silmsen,

1 one must go back to the Criminal Code as it existed in the
2 late 1960s and the early 1970s in order to review the
3 applicable provisions in relation to Mr. Silmser's
4 allegations?

5 MR. JUSTICE PELLETIER: Right.

6 MR. CRANE: And this is one of the reasons
7 why it may be appropriate for an officer to reach out to
8 the Crown attorney in order to canvass some of these
9 issues?

10 MR. JUSTICE PELLETIER: I agree.

11 MR. CRANE: And if we can turn, Justice
12 Pelletier, to your notes, which is Exhibit 3292, Bates page
13 430, and this is a list that sets out what you are going to
14 require in order to provide an informed opinion; fair?

15 MR. JUSTICE PELLETIER: Yes.

16 MR. CRANE: And if we can turn ---

17 MR. JUSTICE PELLETIER: Well, actually, the
18 list you have in front of you on page 1, it was my to-do
19 list.

20 MR. CRANE: Your to-do list?

21 MR. JUSTICE PELLETIER: Right.

22 MR. CRANE: And these 10 elements that
23 you've listed, these are areas that you're going to have to
24 either speak with someone about or review the applicable
25 provisions, review the statements, in order to get --

1 provide a fulsome opinion.

2 MR. JUSTICE PELLETIER: Exactly.

3 MR. CRANE: If we can turn, sir, to Bates
4 page 436, which is page 7 of your notes and as we just
5 touched on a minute ago, it sets out the applicable Code
6 provisions that were in existence at various stages in the
7 1960s and '70s?

8 MR. JUSTICE PELLETIER: Yes.

9 MR. CRANE: You touch on issues of consent
10 and corroboration.

11 MR. JUSTICE PELLETIER: Right.

12 MR. CRANE: And this -- again why it may be
13 prudent for an investigator to speak with the Crown during
14 the investigative stage to help them grapple with what they
15 may need to accomplish during the investigation?

16 MR. JUSTICE PELLETIER: I agree. Some of
17 the sexual offences going back several years required
18 corroboration, so that would be an example, yes.

19 MR. CRANE: And if we can take a look at
20 Bates page 439, sir, which is your "Questions for
21 Investigators"?

22 MR. JUSTICE PELLETIER: Yes.

23 MR. CRANE: And this was a guide to the OPP
24 for what you would be required to provide an opinion?

25 MR. JUSTICE PELLETIER: Yes.

1 **MR. CRANE:** Follow-up questions? And this
2 again highlights the importance of having an on-going
3 dialogue between the police and the Crown during the
4 pre-charge stage?

5 **MR. JUSTICE PELLETIER:** That's correct.

6 **MR. CRANE:** I've got a few questions,
7 Justice Pelletier, about the investigation completed by the
8 Ottawa Police Service relating to Mr. Dunlop in 2000. And
9 you were interviewed by the Ottawa Police Service in
10 regards to that investigation?

11 **MR. JUSTICE PELLETIER:** Yes. This has to do
12 with those two areas that were -- because the Dunlop
13 investigation conducted by Ottawa Police was after I had
14 left. I really don't know anything about that.

15 I assume you're referring to those two areas
16 of concern that have been raised, that we discussed
17 together?

18 **MR. CRANE:** You're absolutely correct. And
19 the one that you have some recollection of is the matter
20 dealing with Mr. Renshaw's statement?

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. CRANE:** And, as I understood it, you had
23 concerns surrounding Mr. Renshaw's statement and his
24 understanding of why his statement was prepared?

25 **MR. JUSTICE PELLETIER:** Right.

1 **MR. CRANE:** And you related these concerns
2 to the OPP and then to the Ottawa Police Service? Do I
3 have that chronology correct?

4 **MR. JUSTICE PELLETIER:** You see, I don't
5 recall ever relaying any concerns about Mr. Dunlop's
6 conduct to anyone. It's Detective Inspector Pat Hall who
7 raised them as concerns of mine, I believe. Obviously,
8 they have to have come from somewhere ---

9 **MR. CRANE:** Right.

10 **MR. JUSTICE PELLETIER:** --- but I don't
11 recall ever actually sending them out as concerns.

12 **MR. CRANE:** And ---

13 **MR. JUSTICE PELLETIER:** In any event, they
14 are brought to the police's attention.

15 **MR. CRANE:** And did you feel it appropriate
16 that given the concerns that you had, that these were
17 relayed on to the police?

18 **MR. JUSTICE PELLETIER:** No, not
19 particularly; it didn't concern me.

20 **MR. CRANE:** And if you were -- had carriage
21 of a file and had concerns or suspicions of criminal
22 misconduct within a matter that was within your caseload,
23 would you feel it prudent to forward those on to the police
24 authorities?

25 **MR. JUSTICE PELLETIER:** If I had serious

1 concerns, yes, generally.

2 **MR. CRANE:** Thank you, sir, those are my
3 questions.

4 **MR. JUSTICE PELLETIER:** Thank you, sir.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Kozloff?

7 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

8 **MR. KOZLOFF:**

9 **MR. KOZLOFF:** Good afternoon, sir.

10 **THE COMMISSIONER:** Good afternoon.

11 **MR. KOZLOFF:** Good afternoon, Your Honour.

12 **MR. JUSTICE PELLETIER:** Good afternoon.

13 **MR. KOZLOFF:** Your Honour, I just want to go
14 through a little history and clarify a couple of things.

15 Your first involvement in this case is
16 the 15th of January, 1996. I should clarify that. Your
17 first involvement is actually the summer of '93. You get a
18 phone call from Murray MacDonald, you might be consulted,
19 you never really hear any more about it?

20 **MR. JUSTICE PELLETIER:** That's right.

21 **MR. KOZLOFF:** And then the next involvement
22 is the 15th of January, '96, and you were essentially
23 assigned to review the brief and if you approved charges
24 and charges are laid, prosecute the case against Father
25 Charles MacDonald by your supervisor at the time, Peter

1 Griffiths?

2 **MR. JUSTICE PELLETIER:** Yes, sir.

3 **MR. KOZLOFF:** And we've heard evidence from
4 Detective Inspector Smith that after the charges are laid,
5 the initial set of charges are laid involving Mr. Silmsler,
6 C-8 -- or C-3 and Mr. MacDonald, in the summer of 1996 a
7 letter was written by Mr. Bourgeois, acting as counsel for
8 Mr. Dunlop, to the Commissioner of the OPP requesting
9 disclosure of the criminal file in *R. v. Charles MacDonald*.

10 **MR. JUSTICE PELLETIER:** Yes.

11 **MR. KOZLOFF:** And that the Commissioner
12 directed the correspondence to Detective Inspector Smith
13 for response and that he consulted with you and, on your
14 instructions, responded to Mr. Bourgeois that he had
15 consulted with you and that while there was a criminal
16 investigation on-going there would be no disclosure of the
17 criminal brief. Do you recall that?

18 **MR. JUSTICE PELLETIER:** I do, sir.

19 **MR. KOZLOFF:** All right. And Ms. Daley
20 asked you whether it registered with you -- in July of
21 1996, you had received an oblique telephone message from
22 Mr. Silmsler in which he indicated there was a fourth
23 individual -- if it ever registered with you that that
24 individual was C-8.

25 **MR. JUSTICE PELLETIER:** Right, she asked me

1 that question.

2 **MR. KOZLOFF:** And you indicated that it did
3 not?

4 **MR. JUSTICE PELLETIER:** Yes.

5 **MR. KOZLOFF:** All right. And you're
6 probably not aware of the fact that in June of 1996,
7 C-8 was interviewed by a private investigator working for
8 Mr. Bourgeois who was also a former York Regional police
9 officer. Did you know that?

10 **MR. JUSTICE PELLETIER:** I didn't know that.

11 **MR. KOZLOFF:** All right.

12 **THE COMMISSIONER:** Mr. Bourgeois wasn't the
13 former police officer ----

14 **MR. KOZLOFF:** No, no, no, the -- the private
15 investigator.

16 **THE COMMISSIONER:** --- the private
17 investigator.

18 **MR. KOZLOFF:** All right. So then you -- I'm
19 going to suggest to you that what you had at this point was
20 a difficult but not complex prosecution involving the first
21 three. It's a difficult prosecution because there are
22 challenges with respect to the -- the evidence and the
23 complainants, but it's not yet complicated. Is that fair?

24 **MR. JUSTICE PELLETIER:** It's fair, and --
25 and not overly difficult either.

1 I had three adult complainants giving
2 evidence in a case, that made it less difficult, for
3 instance, than if they were very youthful witnesses.

4 **MR. KOZLOFF:** So then you get into the
5 preliminary hearing in February of 1997 ---

6 **MR. JUSTICE PELLETIER:** M'hm?

7 **MR. KOZLOFF:** --- and it commences, I think,
8 the last week of February. Is that fair?

9 **MR. JUSTICE PELLETIER:** Towards the end,
10 yes.

11 **MR. KOZLOFF:** All right.

12 And I'm going to ask you to look at Document
13 727726 because I wanted to clear something up that was said
14 this morning, and those are the notes of Detective
15 Constable Don Genier.

16 And you know now that Don Genier was the
17 officer who took the videotaped statement of C-8 on the 23rd
18 of January ---

19 **MR. JUSTICE PELLETIER:** A month earlier,
20 yes.

21 **MR. KOZLOFF:** --- 1997. All right.

22 And that fact was not known to you at the
23 beginning of the preliminary hearing?

24 **MR. JUSTICE PELLETIER:** That's correct.

25 **MR. KOZLOFF:** And if you see his notes at

1 Bates page 7106391, he mails a videotaped interview of C-8,
2 "Re. Father M." to Detective Constable Fagan?

3 MR. JUSTICE PELLETIER: Yes.

4 MR. KOZLOFF: And that became apparent to
5 you during the week of the 24th of February; correct?

6 MR. JUSTICE PELLETIER: That being the
7 existence of C-8 ---

8 MR. KOZLOFF: Yes.

9 MR. JUSTICE PELLETIER: Yes.

10 MR. KOZLOFF: Yes. And, in fact, that there
11 had been an interview of him back in January by an OPP
12 officer at Lancaster?

13 MR. JUSTICE PELLETIER: Right.

14 MR. KOZLOFF: And you indicated in a
15 response to a question just a few minutes ago, that you
16 weren't aware of whether Mr. Bourgeois was involved with C-
17 8. If you recall, sir, viewing the interview of C-8 by
18 Constable Genier, Mr. Bourgeois was in the room. Does that
19 ---

20 MR. JUSTICE PELLETIER: Yes.

21 MR. KOZLOFF: --- refresh your memory?

22 MR. JUSTICE PELLETIER: Yes. I just want to
23 go back to the premise of your question, sir.

24 MR. KOZLOFF: Yes.

25 MR. JUSTICE PELLETIER: You said that I gave

1 evidence that I was unaware that Bourgeois had some
2 involvement with C-8?

3 **MR. KOZLOFF:** Yes.

4 **THE COMMISSIONER:** That's not what he said.
5 I think it was -- oh, no, no -- yes.

6 **MR. JUSTICE PELLETIER:** I'm just trying to
7 remember what -- what area we were dealing with when ---

8 **MR. KOZLOFF:** Yes.

9 **MR. JUSTICE PELLETIER:** --- when that came
10 up.

11 I know there were quite a few questions
12 relating to whether I was aware that Silmsler's reference to
13 a fourth complainant may be C-8, but I don't know that ---

14 **MR. KOZLOFF:** Sorry, I don't mean to
15 interrupt you.

16 **MR. JUSTICE PELLETIER:** Okay, no, go ahead.

17 **MR. KOZLOFF:** The note I have is:

18 "Doesn't recall that Charlie Bourgeois
19 represented C-8."

20 **MR. JUSTICE PELLETIER:** Oh, yes, you're
21 right, that question was asked and -- that's right.

22 **MR. KOZLOFF:** Okay. So that clears that up.
23 You now recall that he -- he represented C-8?

24 **MR. JUSTICE PELLETIER:** Well, I recall now
25 that you mention it that Mr. Bourgeois is on the tape as C-

1 8's being interviewed.

2 MR. KOZLOFF: Yes.

3 MR. JUSTICE PELLETIER: Yes.

4 MR. KOZLOFF: And just to refresh your
5 memory a little further, that interview came as a result of
6 Mr. Bourgeois attending with C-8 for C-8's arrest in
7 relation to a charge of sexual assault involving his niece?

8 MR. JUSTICE PELLETIER: That's right.

9 MR. KOZLOFF: And that took place a number
10 of days earlier, and Constable Genier explained to C-8 and
11 Mr. Bourgeois, "We'll deal with your arrest on this charge
12 now. We'll deal with your complaint in relation to others
13 on another day."

14 MR. JUSTICE PELLETIER: Right.

15 MR. KOZLOFF: All right.

16 And you testified this morning, in response
17 to questions by my friend Monsieur Dumais, that -- and
18 perhaps we can get Exhibit 2297 up. That's the letter to
19 Mr. Neville from yourself dated the 17th of March.

20 THE REGISTRAR: Twenty-two ninety-seven
21 (2297)?

22 MR. KOZLOFF: I thought it was 2297.

23 THE COMMISSIONER: Do you have a Bates page
24 number?

25 MR. KOZLOFF: It might be 3297. I beg your

1 pardon. It's Exhibit 109289.

2 **THE COMMISSIONER:** There we go.

3 **MR. KOZLOFF:** The sentence that you were
4 responding to is the one that contains the words:

5 "It appears as though no further
6 investigation will be made into the
7 circumstances surrounding the [C-8]
8 complaint."

9 I beg your pardon:

10 "It appears..."

11 **THE COMMISSIONER:** It will be changed.

12 Let's not ---

13 **MR. KOZLOFF:** Thank you.

14 "...no further investigation will be
15 made into the circumstances surrounding
16 the [C-8] complaint."

17 **MR. JUSTICE PELLETIER:** Yes.

18 **MR. KOZLOFF:** And what you said this morning
19 was, "It speaks for itself. The complaint would not be
20 further investigated."

21 **MR. JUSTICE PELLETIER:** Yes.

22 **MR. KOZLOFF:** I want to clarify something.
23 You weren't suggesting this morning that the complaint of
24 C-8 against Father Charles MacDonald wouldn't be further
25 investigated? I think what you were suggesting in that

1 letter is that the circumstances surrounding the complaint
2 coming forward would not be further investigated, and I'm
3 going to show you some documents to satisfy yourself.

4 **MR. JUSTICE PELLETIER:** Well, [C-8]
5 eventually was the subject of a charge, so he was obviously
6 investigated.

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

8 **MR. JUSTICE PELLETIER:** Oh, I'm terribly
9 sorry.

10 **MR. KOZLOFF:** It's my fault. I started it.

11 **MR. JUSTICE PELLETIER:** No, that's fine.

12 **MR. KOZLOFF:** Go back, sir, to Exhibit
13 727726 to the 25th of February, and these are the notes of
14 Detective Constable Genier, who's -- I'm going to suggest
15 to you that these notes of the next three pages establish
16 that he was tasked by Detective Constable Fagan as a result
17 of requests from you to conduct an investigation into the
18 circumstances surrounding how C-8's complaint came to be
19 made. And you'll see on the 25th it says, in the middle of
20 the page at 12:55:

21 "Received page from my office to
22 contact Constable Fagan. Contacted
23 above. He requires statement from
24 which [C-8] was reading when he gave
25 video."

1 And then he meets at 1:30 that day at the
2 Ottawa Court with Fagan and yourself:

3 "Fagan had copy of [C-8's] statement.
4 Discussing [C-8's] history involving
5 me."

6 That's Genier:

7 "Advised above that [C-8] came to light
8 because of unrelated incident."

9 And then at 1345 Genier has:

10 "I answered questions for Neville and
11 Crown Pelletier regarding events
12 surrounding [C-8]."

13 And the next line at the top of the next
14 page, Bates page 393:

15 "Neville asked me if I knew how [C-8]
16 got linked up with Bourgeois."

17 And then at 1612:

18 "Received call from Detective Constable
19 Fagan at detachment. He asked if I
20 could interview Bourgeois and [C-8]
21 tomorrow."

22 And then on the following page:

23 "Received call from Fagan. Crown
24 Pelletier would like [C-8] interviewed
25 in answering the following

1 questions..."

2 And there's a series of questions, all of
3 which relate to how -- the circumstances surrounding how
4 his statement came to be made.

5 **MR. JUSTICE PELLETIER:** The video statement,
6 yes.

7 **MR. KOZLOFF:** Yes. And then at -- on the
8 14th of March:

9 "Received call from Fagan. Crown
10 Pelletier would like me to interview
11 Perry Dunlop."

12 That's at Bates page 6395. Do you see that?

13 **MR. JUSTICE PELLETIER:** Yes.

14 **MR. KOZLOFF:** All right.

15 Now, does that refresh your memory with
16 respect to your response to Monsieur Dumais this morning,
17 and would it be fair to suggest that what you really meant
18 to say was it was the circumstances surrounding the
19 complaint as opposed to the complaint itself that would not
20 be further investigated?

21 **MR. JUSTICE PELLETIER:** I'd agree with that,
22 yes.

23 **MR. KOZLOFF:** All right.

24 As of the 25th of February, what was a
25 difficult but uncomplicated prosecution became complicated,

1 I suggest to you, by the addition of the C-8 factor, which
2 ultimately revealed itself as one of a number of additional
3 counts but they came in pieces, I'm going to suggest.

4 Initially you find out about C-8. Then
5 there is some information received in March. You learn
6 from Detective Inspector Smith at a meeting on the 20th --
7 and in conversations prior to that you've been provided
8 with the Fantino brief. You learn that there are two
9 alleged victims identified in that brief of Father Charles
10 MacDonald: C-8 and Robert Renshaw; correct?

11 **MR. JUSTICE PELLETIER:** I don't recall
12 specifically, but there were other complainants that arose
13 out of the Fantino brief with regards to Father MacDonald.

14 **MR. KOZLOFF:** And whatever other
15 consequences evolve, that results in a delay of the
16 preliminary hearing from February until September, and
17 following the committal. In the meantime Project Truth has
18 begun and the police have been conducting investigations
19 and there are three additional complainants who come
20 forward, as a result of which there are five complainants
21 in the second set of charges. Fair?

22 **MR. JUSTICE PELLETIER:** I agree with
23 everything you said, except the very beginning you said
24 that the Fantino brief caused the preliminary inquiry to be
25 delayed until the fall, and I don't know that the

1 preliminary inquiry was delayed until the fall because of
2 the disclosure of the Fantino brief. I think it was a
3 question of the preliminary inquiry having been stalled,
4 and then trying to find three or four days available to
5 everybody.

6 **MR. KOZLOFF:** Fair.

7 **MR. JUSTICE PELLETIER:** So I don't know how
8 much the Fantino brief was a complicating factor in
9 scheduling but I agree with everything else you've said,
10 sir.

11 **MR. KOZLOFF:** Well, would it be fair to say
12 that you thought a week in February was sufficient to deal
13 with the three complainants that you had?

14 **MR. JUSTICE PELLETIER:** Originally I thought
15 it was more than enough time.

16 **MR. KOZLOFF:** Okay.

17 One of the changes or the consequences of
18 this new information coming forward and the nature of the
19 information that came forward, I suggest, is that what
20 initially -- initially the complication involving this case
21 was that it had to be prosecuted by a Crown not from the
22 Cornwall office; correct?

23 **MR. JUSTICE PELLETIER:** Initially the
24 complication ---

25 **MR. KOZLOFF:** Initially -- the reason that

1 you were prosecuting this case is that it couldn't be
2 prosecuted by the Cornwall Crown.

3 **MR. JUSTICE PELLETIER:** That's right.

4 **MR. KOZLOFF:** All right. And then as a
5 result of this other information coming forward that
6 involved Mr. MacDonald, and given your relationship with
7 Mr. MacDonald it became apparent that you couldn't conduct
8 this prosecution?

9 **MR. JUSTICE PELLETIER:** At a point in time,
10 yes.

11 **MR. KOZLOFF:** So that's one of the
12 complications of the nature of the information that was
13 involved in this case; fair?

14 **MR. JUSTICE PELLETIER:** That's right. Fair.

15 **MR. KOZLOFF:** And we've seen in Project
16 Truth that one of the things that happened which Detective
17 Inspector Smith indicated he expected would happen is that
18 once complainants started coming forward, there might be a
19 mushrooming.

20 And so what started out as an investigation
21 of the additional complaints of sexual -- historic sexual
22 abuse contained in the Fantino Brief and the conspiracy,
23 mushroomed into a number of prosecutions involving
24 individuals who did not appear in that brief or weren't
25 contemplated by it?

1 **MR. JUSTICE PELLETIER:** Right.

2 **MR. KOZLOFF:** And so there was a need for
3 resources and I want to ask you -- and I think His Honour,
4 that Honour will be interested in your insights.

5 I want to ask you about whether any thought
6 was given to the idea of a dedicated team of prosecutors
7 assigned to Project Truth? Because I can see in the
8 documents that we've reviewed, efforts on your part to
9 round up prosecutors to deal with this case and initially
10 it starts, you're the Director of Crown operations for East
11 Region, you're looking to assign prosecutors; fair?

12 **MR. JUSTICE PELLETIER:** Yes.

13 **MR. KOZLOFF:** And then as things become
14 complicated and you have to withdraw, you're looking for
15 people from outside the region really, aren't you?

16 **MR. JUSTICE PELLETIER:** Yes.

17 **MR. KOZLOFF:** And so there's the
18 communication with Ruth Nielson in Toronto. There's the
19 communications with Tom Fitzgerald. I take it you were
20 talking with Tom Fitzgerald because your chances of getting
21 a bilingual prosecutor were best in the north?

22 **MR. JUSTICE PELLETIER:** Well, that and it
23 always had been a very good working relationship between
24 the east and the north ---

25 **MR. KOZLOFF:** All right.

1 **MR. JUSTICE PELLETIER:** --- for these types
2 of situations.

3 **MR. KOZLOFF:** But there is an ongoing effort
4 over a number of months to get prosecutors lined up; is
5 that fair?

6 **MR. JUSTICE PELLETIER:** I don't think it was
7 a number of months. I think that if you're speaking about
8 the charges with regards to the six last individuals, I
9 started looking for the services of an out-of-region
10 prosecutor by July and by September Mr. Godin was onboard,
11 so two months.

12 **MR. KOZLOFF:** There were also, aside from
13 the prosecutions themselves, the cases that had come to
14 charges being laid and preliminary hearing dates being set
15 ---

16 **MR. JUSTICE PELLETIER:** Yes.

17 **MR. KOZLOFF:** --- and were in the system,
18 there were also a number of matters where the opinions of a
19 Crown were required?

20 **MR. JUSTICE PELLETIER:** Yes.

21 **MR. KOZLOFF:** And some of those were pretty
22 complicated. I'm not sure you're aware of the fact that,
23 for instance, the conspiracy brief eventually was nine
24 volumes. There was a lot of material to review?

25 **MR. JUSTICE PELLETIER:** Yes.

1 **MR. KOZLOFF:** And you may or may not be
2 aware that there were some -- there was a passage of time.
3 I hesitate to use the word delay. Those briefs were
4 submitted, against five priests, and -- in September and
5 December of 1999 and the opinions weren't received until
6 August of 2001.

7 **MR. JUSTICE PELLETIER:** Okay.

8 **MR. KOZLOFF:** The conspiracy brief was
9 submitted in, I believe, late summer of 2000 and the
10 opinion wasn't received until August of 2001. So that's --
11 would you agree that at least some thought should be given
12 in large prosecutions, multiple offender, multiple victim
13 cases to the dedication of a Crown -- to a team of Crowns
14 to conduct the prosecutions?

15 **MR. JUSTICE PELLETIER:** I agree with that
16 premise, particularly if you know going in what you're
17 dealing with. I think one of the complicating factors is
18 that Project Truth was a work in progress and what began as
19 three complainants against a local parish priest became a
20 complaint by dozens of people against perhaps almost as
21 many local figures.

22 The best example I could give from personal
23 experience is our experience in the Alfred Training School
24 where we knew from the very beginning that there were
25 several dozen suspects and several hundred complainants.

1 We knew that from the very, very start. So
2 we assembled a team of five prosecutors and -- locally.
3 There were no conflict issues and assigned the cases.
4 Eventually 20 were charged with 165 complainants. We
5 divided them and we did them all in three years.

6 But that was through the lens of an entire
7 package. It was the same ---

8 **MR. KOZLOFF:** Right.

9 **MR. JUSTICE PELLETIER:** --- when Detective
10 Inspector Tim Smith and I worked together, came to see me
11 with 8,000 pages of statements that my associate, Mr.
12 Laliberté and I reviewed at the very outset. So it was
13 much more orderly and foreseeable.

14 **MR. KOZLOFF:** We had the pleasure of Cosette
15 Chafe's attendance here last week.

16 **MR. JUSTICE PELLETIER:** Yes.

17 **MR. KOZLOFF:** And she addressed the fact
18 that there was a -- almost a dedicated V/WAP,
19 Victim/Witness Assistance Program Team in Alfred almost
20 from the outset.

21 **MR. JUSTICE PELLETIER:** Doing just that from
22 the beginning to the very end.

23 **MR. KOZLOFF:** All right. And I take it that
24 was of great assistance to you as a prosecutor in that
25 matter?

1 **MR. JUSTICE PELLETIER:** Enormous.

2 **MR. KOZLOFF:** And also of great assistance
3 to the police?

4 **MR. JUSTICE PELLETIER:** Without a doubt.

5 **MR. KOZLOFF:** And finally, of great
6 assistance, perhaps most importantly, to the complainants?

7 **MR. JUSTICE PELLETIER:** That's why they're
8 there, yes.

9 **MR. KOZLOFF:** And you were aware of the fact
10 that there was a V/WAP program in Ottawa and that it was
11 essentially the Ottawa office that supported the Alfred
12 prosecution?

13 **MR. JUSTICE PELLETIER:** The Alfred
14 Prosecution Victim/Witness Assistance Program was created
15 for the purposes of Alfred. It didn't impact on Ottawa's
16 own activities, with the exception that the Director,
17 Cosette Chafe, had come over to Alfred ---

18 **MR. KOZLOFF:** Right.

19 **MR. JUSTICE PELLETIER:** --- and was replaced
20 -- as I recall now, this was back in '91. We're going even
21 further back, but Ms. Chafe was -- joined the Alfred
22 Training Prosecution Team but her office kept going. The
23 team that she was given was a dedicated group for that
24 purpose.

25 **MR. KOZLOFF:** All right. When did you get a

1 V/WAP Program in L'Original?

2 MR. JUSTICE PELLETIER: 2001.

3 MR. KOZLOFF: All right. And is that around
4 the same time as Cornwall?

5 MR. JUSTICE PELLETIER: Yes, we interviewed
6 for each other's positions and, I mean, all interviews were
7 held together and we re-assigned the positions.

8 MR. KOZLOFF: Could I just have your brief
9 indulgence?

10 THE COMMISSIONER: M'hm.

11 MR. KOZLOFF: The only other area I wanted
12 to touch on with you. You indicated that either this would
13 be a joint prosecution or you would have two trials,
14 essentially calling the same witnesses?

15 MR. JUSTICE PELLETIER: That's right.

16 MR. KOZLOFF: And I'm going to suggest to
17 you that there is actually a further justification from
18 your point of view in joining the charges and that's the
19 Decision in *Regina and Goodman*. Are you familiar with that
20 case?

21 MR. JUSTICE PELLETIER: You'll have to
22 remind me what it says, please.

23 MR. KOZLOFF: That's a decision of the Court
24 of Appeal reversing a very rare event, reversing Justice
25 Galligan who at a trial had permitted similar-fact evidence

1 of an alleged victim who had testified against Mr. Goodman
2 in an earlier trial at which he was acquitted, and the
3 Court of Appeal held you could not call as similar-fact
4 evidence, evidence of a victim in circumstances where the
5 accused had been acquitted.

6 MR. JUSTICE PELLETIER: Right.

7 MR. KOZLOFF: So effectively had you
8 prosecuted the cases individually and there had been an
9 acquittal in the first set of charges, you could not have
10 called those witnesses at the second set, at the second
11 trial?

12 MR. JUSTICE PELLETIER: Right. I don't
13 think that entered my mind. When was *Goodman* decided?

14 MR. KOZLOFF: It was decided in the 1980s
15 because I was still a Crown attorney.

16 MR. JUSTICE PELLETIER: Right. No, that
17 hadn't crossed my mind. On the issue of similar fact
18 evidence, the Ontario Court of Appeal cases out of the late
19 nineties were the ones that I was relying on in deciding
20 that that was -- what was best for the case.

21 MR. KOZLOFF: Thank you very much, sir.

22 MR. JUSTICE PELLETIER: Thank you, sir.

23 THE COMMISSIONER: Thank you, sir.

24 Mr. Carroll?

25 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

1 **CARROLL:**

2 **MR. CARROLL:** Good evening.

3 **THE COMMISSIONER:** Good evening, sir.

4 **MR. CARROLL:** Hello, Your Honour. As you
5 know, my name is Bill Carroll and I'm counsel for the
6 Ontario Provincial Police Association, and I have just a
7 couple of very brief areas to canvass with you.

8 **MR. JUSTICE PELLETIER:** Yes, sir.

9 **MR. CARROLL:** I want to ask you about the
10 quality of the work of the officers that you dealt with
11 during the project, and in the course of preparing for the
12 prosecutions, you would have reviewed all of the briefs
13 that were submitted to you?

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. CARROLL:** And is it fair to say, without
16 going into each one, sir, that the briefs submitted to you
17 were prepared in a professional manner reflecting the
18 appropriate investigative steps by the officers?

19 **MR. JUSTICE PELLETIER:** I never had any
20 difficulties with any of the materials I was given.

21 **MR. CARROLL:** And if follow-up was required
22 at your direction, did the officers comply with your
23 directions in a timely and efficient manner?

24 **MR. JUSTICE PELLETIER:** That's right.

25 **MR. CARROLL:** In addition to the

1 investigatory stage, they would have assisted you from
2 time-to-time at preliminary hearings?

3 **MR. JUSTICE PELLETIER:** Yes.

4 **MR. CARROLL:** The officers?

5 And would you agree that the quality of
6 their work was of similar nature during the preliminary
7 hearing?

8 **MR. JUSTICE PELLETIER:** Right. No, they
9 took a very active role, and what I was particularly
10 grateful for because things often happened that needed to
11 be looked into overnight, and they were prepared to do so
12 when necessary. I'm thinking particularly of Fagan and
13 Dupuis.

14 **MR. CARROLL:** And as you say, you dealt with
15 Smith before?

16 **MR. JUSTICE PELLETIER:** In Alfred, yes.

17 **MR. CARROLL:** And the quality of his work
18 was beyond dispute, I take it?

19 **MR. JUSTICE PELLETIER:** Completely beyond
20 reproach.

21 **MR. CARROLL:** And Mr. Kozloff spoke to you
22 for a few moments about the lack of V/WAP facilities for --
23 while you were involved at least in the project?

24 **MR. JUSTICE PELLETIER:** Yes, sir.

25 **MR. CARROLL:** As contrasted with Alfred?

1 Did that put an extra burden on the police,
2 to perform a number of the services that the V/WAP people
3 would otherwise be engaged in?

4 **MR. JUSTICE PELLETIER:** Well, at the stage
5 that I was involved in the Father MacDonald case, initially
6 there were three complainants ---

7 **MR. CARROLL:** Right.

8 **MR. JUSTICE PELLETIER:** --- who were local,
9 because a lot of it is logistics issues, travel
10 arrangements ---

11 **MR. CARROLL:** Sure.

12 **MR. JUSTICE PELLETIER:** --- that also falls
13 under their mandate, and so certainly the services of the
14 Victim Witness Assistance Program would have been
15 appreciated, but the officers, all of us were managing
16 quite well in spite of that.

17 Even when the second set of charges came
18 along, we went back to deal with those cases in Cornwall
19 and I think we managed very well. Certainly, as the case
20 grew it would have become more and more important.

21 **MR. CARROLL:** Yeah, and my point was that
22 whatever services Victims/Witness would have provided, had
23 they been available, the slack had to be taken up by the
24 officers?

25 **MR. JUSTICE PELLETIER:** Yes, on a day-to-day

1 basis, sure.

2 MR. CARROLL: Thanks.

3 The next area; I just wanted to ask you
4 generally about the flow of these briefs as they -- when a
5 new brief would come in or when the police would submit a
6 brief, would it go to the Eastern Regional Senior Crown and
7 then on to Toronto or how did it work?

8 MR. JUSTICE PELLETIER: I'm not quite sure I
9 understand your question, sorry.

10 MR. CARROLL: All right. The way this
11 project was set up, the police would do briefs and submit
12 them for Crown opinions; correct?

13 MR. JUSTICE PELLETIER: At what stage, Mr.
14 Carroll, I'm sorry?

15 MR. CARROLL: Once the Project Truth got
16 underway?

17 MR. JUSTICE PELLETIER: Yes.

18 MR. CARROLL: The idea was they would do
19 their briefs, submit them to a Crown for an opinion ---

20 MR. JUSTICE PELLETIER: Yes?

21 MR. CARROLL: --- and then proceed from
22 there either with charges or no, depending on the results
23 of the opinion?

24 MR. JUSTICE PELLETIER: Right. The briefs
25 were delivered to the regional office, generally speaking,

1 yes.

2 **MR. CARROLL:** Right. And my question is,
3 they were then dispersed from the Regional Crown's office
4 to dedicated or to specific Crowns or did it go to Toronto
5 for further input as to who would be selected?

6 **MR. JUSTICE PELLETIER:** No, no, the decision
7 as to the recruitment came from the Regional Director.

8 **MR. CARROLL:** All right.

9 In about '99, the decision had been made
10 that you were going to remove yourself from these files?

11 **MR. JUSTICE PELLETIER:** Yes.

12 **MR. CARROLL:** And we know that, ultimately,
13 Ms. Hallett took over a number of your files.

14 **MR. JUSTICE PELLETIER:** Well, just the
15 Father MacDonald, specifically, that's the only one I had,
16 yeah.

17 **MR. CARROLL:** And how did she -- how was it
18 that she came to be chosen by you?

19 **MR. JUSTICE PELLETIER:** I can't answer that
20 question. We consulted the Director of Special
21 Prosecutions.

22 **MR. CARROLL:** So that went through Toronto?

23 **MR. JUSTICE PELLETIER:** Yes, but as an
24 example of another region, so to speak. In some cases, I
25 got Mr. Godin by begging from Tom Fitzgerald to give me a

1 good, bilingual Crown.

2 MR. CARROLL: All right.

3 MR. JUSTICE PELLETIER: In another case
4 because Dr. Peachey was coroner, a public figure, and
5 another individual whose name I don't know if it's being
6 mentioned, was a lawyer ---

7 MR. CARROLL: Was Leduc, MacDonald and
8 Peachey.

9 MR. JUSTICE PELLETIER: All right.

10 MR. CARROLL: Yeah.

11 MR. JUSTICE PELLETIER: --- would more
12 typically go not out of region but to Special Prosecutions
13 ---

14 MR. CARROLL: All right.

15 MR. JUSTICE PELLETIER: --- which was John
16 Corelli's shop and then he would assign somebody to do the
17 case.

18 MR. CARROLL: And then was it you that
19 notified Ms. Hallett or ---

20 MR. JUSTICE PELLETIER: No, no. Mr. Corelli
21 would consult with the Crowns in his Special Prosecution
22 Unit and arrive at a decision.

23 MR. CARROLL: So you did not have any direct
24 dealings with Ms. Hallett prior to her being assigned by
25 Corelli?

1 **MR. JUSTICE PELLETIER:** That's right. I met
2 with her probably a month or two after she'd been assigned.

3 **MR. CARROLL:** And that was for purposes of
4 transfer of the file?

5 **MR. JUSTICE PELLETIER:** Yes, August,
6 September '09 -- '99.

7 **MR. CARROLL:** So by the time you speak with
8 her, it's a done deal that she's going to take over your
9 prosecution?

10 **MR. JUSTICE PELLETIER:** As far as I
11 understand it.

12 **MR. CARROLL:** Did she, sir, at any time
13 during the transfer process, make comment to you about the
14 amount of work that was already on her plate and that this
15 was going to be an additional and significant burden she
16 was taking on?

17 **MR. JUSTICE PELLETIER:** No, I don't remember
18 Ms. Hallett complaining about the work.

19 **MR. CARROLL:** Thank you, sir.

20 **MR. JUSTICE PELLETIER:** Thank you, Mr.
21 Carroll.

22 **THE COMMISSIONER:** Thank you.

23 Mr. Kloeze?

24 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

25 **KLOEZE:**

1 **MR. KLOEZE:** Good afternoon, Mr.

2 Commissioner. Good afternoon, Justice Pelletier.

3 **MR. JUSTICE PELLETIER:** Good afternoon, sir.

4 **MR. KLOEZE:** You know who I am. My name is
5 Darrell Kloeze. I'm counsel -- or one of the counsel here
6 for the Ministry of the Attorney General.

7 I just have few questions following up from
8 the questions of Mr. Kozloff ---

9 **MR. JUSTICE PELLETIER:** Yes.

10 **MR. KLOEZE:** --- earlier about resourcing
11 Project Truth with Crowns, and I want to focus particularly
12 on the time that you were Acting Regional Director of Crown
13 Operations.

14 **MR. JUSTICE PELLETIER:** Yes.

15 **MR. KLOEZE:** This is a very short time that
16 I'm focussing on, which is between May 1998 to about
17 January of 1999.

18 **MR. JUSTICE PELLETIER:** Yes.

19 **MR. KLOEZE:** Now, during that time, you
20 already yourself had carriage of the Father MacDonald
21 prosecutions?

22 **MR. JUSTICE PELLETIER:** That's right.

23 **MR. KLOEZE:** And as you've just answered to
24 Mr. Carroll, you knew at that point that Ms. Hallett was
25 assigned through Special Prosecutions at 720 Bay for at

1 least two of the other ongoing prosecutions?

2 **MR. JUSTICE PELLETIER:** That's correct.

3 **MR. KLOEZE:** And that she was assigned a
4 further brief involving Malcolm MacDonald, who was a former
5 Crown Attorney, in Cornwall?

6 **MR. JUSTICE PELLETIER:** I wasn't aware of
7 that, but I knew she had other cases.

8 **MR. KLOEZE:** Okay. And you also, yourself,
9 as the Acting Director of the Crown Operations, you were
10 the one who located and got Mr. Godin to come down from the
11 Northwest Ontario to come and do about six other
12 prosecutions?

13 **MR. JUSTICE PELLETIER:** That's right.

14 **MR. KLOEZE:** So by the time that you were
15 the Acting Director of Crown Operations, by January 1999,
16 you had three Crowns, three experienced Crowns including
17 yourself, doing about 10 prosecutions?

18 **MR. JUSTICE PELLETIER:** That's correct.

19 **MR. KLOEZE:** Okay. And those were -- at
20 that point, those were the only prosecutions that had
21 arisen out of the Project Truth investigation?

22 **MR. JUSTICE PELLETIER:** To that point, yes.

23 **MR. KLOEZE:** To that point.

24 And in your opinion would you say that that
25 was adequate resourcing of those prosecutions at that time?

1 **MR. JUSTICE PELLETIER:** I think so. As I
2 mentioned a moment ago, getting bodies from another region
3 is something you do as a last resort. It's very, very
4 demanding. It's not generally in the job description that
5 you're going to go work somewhere else for six months if
6 you've got family and other commitments, and so we try to
7 keep that to a minimum.

8 So three Crowns for ten cases, if I consider
9 that there were five of us for twenty accused in the Alfred
10 Training School case involving, as I mentioned, over 150
11 complainants, I don't think that's a bad proportion of
12 resources.

13 **MR. KLOEZE:** Okay. I wanted ---

14 **THE COMMISSIONER:** Okay, just a second now.
15 In fairness, were the three Crowns dedicated -- the Crowns
16 in Alfred, were they dedicated 100 percent to those or did
17 they continue at have their regular workloads?

18 **MR. JUSTICE PELLETIER:** Four of them were --
19 I was still doing other things; the other four were doing
20 that.

21 **THE COMMISSIONER:** Okay.

22 **MR. JUSTICE PELLETIER:** Yes.

23 **THE COMMISSIONER:** Thank you.

24 **MR. KLOEZE:** You said the Alfred
25 prosecutions -- I wanted to go to the Alfred prosecutions

1 and look at the comparisons between those prosecutions and
2 the one from Project Truth.

3 In Alfred, the complaints arose and you were
4 the Crown Attorney of Prescott-Russell?

5 **MR. JUSTICE PELLETIER:** Yes.

6 **MR. KLOEZE:** And Alfred Training School was
7 located in your jurisdiction?

8 **MR. JUSTICE PELLETIER:** That's correct.

9 **MR. KLOEZE:** So you were the local Crown?

10 **MR. JUSTICE PELLETIER:** Right.

11 **MR. KLOEZE:** And in Project Truth, as I
12 understand, as we all know, the local Crown was conflicted
13 out of doing those prosecutions because of the allegations
14 -- the personal allegations against Murray MacDonald?

15 **MR. JUSTICE PELLETIER:** Right.

16 **MR. KLOEZE:** And so from the outset, you had
17 to look outside the local jurisdiction to find any Crowns
18 who could do those cases?

19 **MR. JUSTICE PELLETIER:** That's right.

20 **MR. KLOEZE:** Okay. And you mentioned
21 something else to Mr. Kozloff, I believe. You said that at
22 the outset of the Alfred prosecutions, you pretty much knew
23 the size of the brief and the number of accused and the
24 number of complainants. Can you explain that, how that
25 differs from Project Truth? What was the difference in

1 Alfred that you knew that from the outset?

2 **MR. JUSTICE PELLETIER:** In Alfred, the
3 Alfred Training School in the village of Alfred had always
4 had a reputation for being a particularly strict, somewhat
5 violent and, according to some, perhaps inappropriate
6 setting for young boys to be. It served as a detention
7 centre. At various times, it served as an orphanage
8 because there was no other place to put the children. And
9 it was run by the Christian Brothers of School -- Frères
10 des Écoles chrétiennes, and it had a reputation for being a
11 particularly strict place, and it was well known in the
12 community that it was so.

13 By the early 1990s, a reporter with the
14 Toronto Star, a gentleman by the name of Darcy Henton
15 started doing interviews with a view to writing an article
16 about the school and discovered that there were quite a few
17 individuals who were saying that they had been sexually
18 abused there and seriously physically abused causing
19 fractured bones and so on. And he felt that this should be
20 brought to the police's attention, and it was. Detective
21 Inspector Smith was assigned to investigate and he
22 investigated initially for a few months, came to see me and
23 said, "We're looking at several suspects, perhaps several
24 dozen suspects and several hundred complainants, and it
25 keeps growing every time we interview somebody new."

1 So they interviewed for about a year and a
2 year later they came to us with, as I mentioned, about
3 8,000 pages of victim statements and asked us to review
4 them with a view to recommending charges. And eventually
5 charges were laid against 20 of the Brothers in relation to
6 165 complainants.

7 So the initial investigation, the subsequent
8 investigation, the consultation, the laying of charges, the
9 prosecution, all flowed fairly seamlessly. And the charges
10 were all laid at the very beginning, and those were all the
11 charges that were laid and no other charges were ever laid,
12 so we knew going in what we were dealing with.

13 We also knew that we had absolutely no
14 prospect, Mr. Laliberté and I, of handling a case like this
15 in L'Original by ourselves. So we enlisted the services of
16 five prosecutors, including Mr. MacDonald actually, and two
17 others as well as Mr. Laliberté and myself and assigned
18 them out to each other; and then conducted a series of
19 preliminary inquiries and trials that went on for about
20 three years.

21 **MR. KLOEZE:** Okay. Those are my questions.
22 Thank you very much, Your Honour.

23 **MR. JUSTICE PELLETIER:** Thank you, sir.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Roland, did you wish to ask any

1 questions?

2 **MR. ROLAND:** Well, yeah, I was going to ask
3 for a second day because I have about eight hours of
4 questions, but I have decided that I won't ask any
5 questions.

6 **THE COMMISSIONER:** Wise move.

7 **MR. ROLAND:** Thank you.

8 **THE COMMISSIONER:** Thank you.

9 **MR. DUMAIS:** No re-examination,
10 Commissioner. Thank you.

11 **THE COMMISSIONER:** Mr. Pelletier, thank you
12 very much for taking the time. I appreciated your
13 testimony. Best of luck with your cold.

14 **MR. JUSTICE PELLETIER:** Yes, thank you. And
15 thank you, Mr. Commissioner, for accommodating my schedule.
16 I know it hasn't been easy, but it certainly hasn't been
17 overlooked. Thank you, sir.

18 **THE COMMISSIONER:** Thank you.

19 Okay, close the court.

20 **MR. DUMAIS:** Mr. Commissioner, the --

21 **THE COMMISSIONER:** Oops!

22 **MR. DUMAIS:** Perhaps we can just excuse the
23 witness. This is an unrelated matter.

24 **THE COMMISSIONER:** You can go.

25 **MR. DUMAIS:** Thank you, Justice Pelletier.

1 Counsel for the Cornwall Police Services had
2 requested a couple of minutes just to address you on the
3 issue of allotted time for submissions in February. This
4 is something that we could do now. I'm in your hands.

5 **THE COMMISSIONER:** No. We'll do it tomorrow
6 morning at 9:30.

7 **MR. DUMAIS:** Thank you, Mr. Commissioner.

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

10 This hearing is adjourned until tomorrow
11 morning at 9:30 a.m.

12 --- Upon adjourning at 5:36 p.m./

13 L'audience est ajournée à 17h36

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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM