

**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 328

Held at :

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

Tuesday, January 6, 2009

Tenue à:

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

Mardi, le 6 janvier 2009

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
Ms. Karen Jones	Commission Counsel
Ms. Jamie Liew	
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Donald Johnson	

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

2 L'audience débute à 9h35

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning, all.
10 Welcome back. I hope everyone had a great holiday season,
11 and all the best for the new year. And on that note, Ms.
12 Jones.

13 **MS. JONES:** Yes. Good morning. I'd like to
14 call Donald Johnson to the stand, please.

15 **THE COMMISSIONER:** Thank you.

16 **DONALD W. JOHNSON, Sworn/Assermenté:**

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

18 **MR. JOHNSON:** Good morning, Your Honour.

19 **THE COMMISSIONER:** You have some fresh
20 water, fresh glasses, and I'd ask you to speak into the
21 microphone. We'll be no doubt giving you some documents to
22 review. You can either review them on the screen or in
23 hard copy.

24 **MR. JOHNSON:** Thank you.

25 **THE COMMISSIONER:** If at any time you have

1 any questions or you feel that there's something that you
2 don't -- you're not comfortable with, let me know and we'll
3 take a break or iron things out.

4 **MR. JOHNSON:** Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Ms. Jones?

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

8 **MS. JONES:**

9 **MS. JONES:** Yes. Good morning, Mr. Johnson.

10 **MR. JOHNSON:** Good morning, Ms. Jones.

11 **MS. JONES:** The first thing I'm going to do
12 is just outline basically the topics or the areas that
13 we're going to cover this morning from my perspective. And
14 we're going to go over your background, then we're going to
15 be talking about Nelson Barque and your involvement with
16 him, both as a Crown attorney and as defence counsel.

17 We're also going to be looking at the Jean-
18 Luc Leblanc prosecution from 1986 and we're going to look
19 briefly at the Gilles Deslauriers prosecution, again in
20 1986. We're going to touch on Earl Landry, Jr. prosecution
21 in 1999 and ending with matters that involve the CAS --
22 various foster homes and group homes that you had some
23 dealings with back in the '80s when you were Crown
24 attorney.

25 Now, the first thing I'd like to do is just

1 go very briefly over your background, and I understand that
2 you were called to the Ontario bar as a barrister and
3 solicitor on March 22nd, 1968.

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

5 **MS. JONES:** And you were assistant Crown
6 attorney in Toronto from 1968 to 1970.

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

8 **MS. JONES:** You were a senior assistant
9 Crown attorney in Sault Ste Marie for the next two years
10 until '72, and from 1972 to 1991, you were the Crown
11 attorney here in Cornwall.

12 **MR. JOHNSON:** No, from '72 to '74, I was an
13 acting Crown attorney. There was another individual in the
14 office by the name of Mr. Percy Milligan that was there,
15 but he was very seldom in the office so I acted as the
16 Crown attorney and I got appointed in 1974.

17 **MS. JONES:** Okay.

18 And you left the Crown Attorney's Office in
19 1991 and to the present time, you currently still are in
20 Cornwall practising as a criminal defence lawyer.

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

22 **MS. JONES:** And I understand you're a sole
23 practitioner as well.

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

25 **MS. JONES:** And I'm wondering, during that

1 period of time when you were -- we're most interested in
2 your time as a Crown attorney here in Cornwall during those
3 years, and during those particular years, did you receive
4 any sort of specialized training in prosecution of sexual
5 assaults, specifically historical sexual assaults, of any
6 sort?

7 **MR. JOHNSON:** Never.

8 **MS. JONES:** Were any sort of training
9 courses offered at that time by the Attorney General, do
10 you recall?

11 **MR. JOHNSON:** The only training we got
12 basically was when we had our annual conferences. We'd
13 review the law, they'd review procedure, they'd review
14 situations that developed et cetera, but nothing to any
15 great extent, no.

16 **MS. JONES:** Okay.

17 Now, the first thing that I'm going to be
18 touching on was your dealings with Nelson Barque as a Crown
19 attorney, which was back in 1982. And the first document
20 I'd like to put to you, please, is Document Number 115960.
21 It's Exhibit 903.

22 **MR. JOHNSON:** Okay. I've looked at it. I
23 don't recall receiving this, but if they sent it to me, I
24 assume I received it.

25 **MS. JONES:** I just want to clarify what it

1 is for the record. In this particular letter, it's dated
2 June 14th, 1982, and it's a letter written to you from a
3 person called McMaster, and it was a request by McMaster,
4 who worked for the Ministry of Correctional Services, for
5 you to look over an investigative file that they had
6 compiled on Nelson Barque, who was a probation officer.

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

8 **MS. JONES:** Is that basically what the
9 letter is requesting? Okay.

10 So you say you don't recall receiving this
11 letter. Do you recall dealing with -- is it a
12 Mr. McMaster?

13 **MR. JOHNSON:** No, I don't recall. If
14 Mr. McMaster walked through the door, I wouldn't recognize
15 him. I have no -- I don't recall dealing with him.

16 **MS. JONES:** Do you recall being asked for
17 this opinion at that time in 1982?

18 **MR. JOHNSON:** I'm sorry, asked ---

19 **MS. JONES:** Do you recall being asked for
20 this opinion in 1982?

21 **MR. JOHNSON:** No.

22 **MS. JONES:** And do you recall, around that
23 period of time when you were Crown attorney, was it
24 commonplace for the Probation Office to request something
25 such as this; an opinion from the Crown attorney concerning

1 one of their probation officers?

2 MR. JOHNSON: Not that I can recall. If it
3 happened, it probably was the first time I've ever had an
4 contact in this particular way.

5 MS. JONES: Now, assuming -- and we'll go to
6 other documents to verify that you did actually have
7 contact and you did provide an opinion.

8 MR. JOHNSON: Okay.

9 MS. JONES: If you were asked for such an
10 opinion from an organization such as a ministerial
11 department, would you have opened a file on that matter?

12 MR. JOHNSON: Not usually, no.

13 MS. JONES: And why is that?

14 MR. JOHNSON: Well, basically because the
15 fact if they have any complaints with respect to alleged
16 criminal activity, my only suggestion would be, "If you
17 have your evidence, go see the police and let the police
18 investigate these matters." I mean, I was a Crown
19 attorney. I wasn't an investigator.

20 MS. JONES: But if you're being asked for a
21 legal opinion ---

22 MR. JOHNSON: Yeah.

23 MS. JONES: --- on a certain person or
24 certain matter, there was no system in place then to see
25 and verify if in fact you'd had dealings with this

1 particular person?

2 **MR. JOHNSON:** Not -- no, there wasn't. I
3 can tell you, Ms. Jones, at that time we were doing
4 somewhere between 35 to 4500 cases a year. I think at that
5 time I had myself and probably two assistant Crown
6 attorneys and we were pretty well occupied with trying to
7 keep the courts running and keep the prosecutions going.

8 **MS. JONES:** Was there any system in place
9 where you would have had a card index, for example, that
10 you're being asked about a question about Nelson Barque?

11 **MR. JOHNSON:** No. If we opened a file in
12 anything, the office -- the secretary that would open the
13 file we would have there. And when time had gone by it
14 would be shipped down to Toronto, I understand, and at that
15 point they would deal with it. But I don't see any file
16 that was actually opened up, unless there's something here
17 that ---

18 **MS. JONES:** Had you had previous dealings
19 with Nelson Barque before 1982 ---

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

21 **MS. JONES:** --- when this opinion was asked
22 for?

23 **MR. JOHNSON:** Yeah.

24 **MS. JONES:** And what was that experience?

25 **MR. JOHNSON:** He was a probation officer.

1 He dealt with individuals who pleaded guilty or were found
2 guilty, and requests for pre-sentence reports. He would
3 prepare the pre-sentencing reports and if there was any
4 issues with regards to the contents, he would come to court
5 and attempt to clarify it. But the only contact I ever had
6 with him was on a professional basis.

7 **MS. JONES:** So there was no personal
8 relationship?

9 **MR. JOHNSON:** No, no.

10 **MS. JONES:** Was there any concern that you
11 may have had at the time -- I don't know if you can recall
12 this or not, but with the fact that there may be a
13 potential conflict of interest; the fact that you did know
14 Nelson Barque in a professional capacity and now you're
15 being asked for an opinion about him?

16 **MR. JOHNSON:** Well, if there was an opinion
17 requested in those circumstances, and if the police had
18 done an investigation, certainly my office would never have
19 prosecuted him.

20 **MS. JONES:** Okay.

21 If we could please go to Document ---

22 **THE COMMISSIONER:** Before we stop that
23 though.

24 **MS. JONES:** I'm sorry.

25 **THE COMMISSIONER:** Had they investigated and

1 proffered a brief for your opinion, would that have been
2 different?

3 **MR. JOHNSON:** No, Mr. Commissioner, it
4 wouldn't have been. Still -- that would have still -- see,
5 this is -- I'm sorry -- "This is what you've got. Go to
6 the police. Let them do the investigation."

7 **THE COMMISSIONER:** No, I understand that,
8 but let's assume the police had made an investigation. I
9 just want to see when you'd cut off the conflict issue.

10 **MR. JOHNSON:** Oh yeah. Well, the police had
11 done at that point -- the conflict would have been there
12 and it would have been moved on to another office.

13 **THE COMMISSIONER:** To another office
14 completely.

15 **MR. JOHNSON:** Yeah.

16 **THE COMMISSIONER:** Thank you.

17 **MS. JONES:** If we could please go to
18 Document 115951, please.

19 **MR. JOHNSON:** Is that in this binder here?

20 **THE COMMISSIONER:** No.

21 **MS. JONES:** No ---

22 **THE COMMISSIONER:** No, no, hold on.

23 **MS. JONES:** --- it's not.

24 **THE COMMISSIONER:** New documents.

25 Thank you. Exhibit Number 2940 is a

1 document dated May 31st, 1982 to Mr. A. Campbell, Deputy
2 Minister from S. Teggart.

3 **MS. JONES:** Thank you.

4 **--- EXHIBIT NO./PIÈCE NO. P-2940:**

5 (115951) Investigation Report re:
6 Investigation of unprofessional conduct of
7 Nelson Barque - Probation Officer dated 31
8 May 82

9 **THE COMMISSIONER:** Okay, so Exhibit 2940.

10 **MR. JOHNSON:** Okay.

11 **MS. JONES:** You can see that this seems to
12 be a cover letter for an investigation report and the very
13 bottom paragraph, it states:

14 "Mr. Barque submitted his resignation
15 prior to the conclusion of this
16 investigation with an effective date of
17 May 4th, 1982. This concludes our
18 investigation and no further action is
19 necessary by this branch."

20 So just to get clarified then, he had
21 resigned on May 4th. The date of this report is May 31st,
22 1982 and when they're talking about "investigation", just
23 to clear, they're talking about the probation investigation
24 not a police investigation?

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

1 **MS. JONES:** Okay.

2 If we could please go to Document 115936.

3 **THE COMMISSIONER:** Thank you.

4 Exhibit Number 2941 is an investigation
5 report dated May 13th, 1982 to Mr. S. Teggart from -- I
6 don't know -- to the ---

7 **MS. JONES:** I think the Inspector is
8 McMaster. The Director is Teggart.

9 **THE COMMISSIONER:** Okay, right, the
10 Inspector -- from McMaster then, okay.

11 **--- EXHIBIT NO./PIÈCE NO. P-2941:**

12 (115936) - Investigation Report re:
13 Allegation of unprofessional conduct of
14 Nelson Barque - Probation Officer dated 13
15 May 82

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

17 **MS. JONES:** Yes.

18 Mr. Commissioner, this document should be
19 stamped as well. It contains reference ---

20 **THE COMMISSIONER:** Yes.

21 **MS. JONES:** --- to C-44.

22 **THE COMMISSIONER:** Thank you. It will. A
23 publication ban stamp will be put on that document.

24 **MS. JONES:** I'm wondering if the witness
25 could please be shown who C-44 is.

1 **THE COMMISSIONER:** Yes.

2 So if reference is made to that name, sir, I
3 prefer that we use the moniker C-44.

4 **MR. JOHNSON:** C-44.

5 **THE COMMISSIONER:** That's right.

6 **MS. JONES:** Okay.

7 There's two individuals named here that came
8 up with allegations surrounding Mr. Barque at that time;
9 one of them is C-44 ---

10 **MR. JOHNSON:** All right.

11 **MS. JONES:** --- and the other one is Robert
12 Sheets. We can use Mr. Sheets name.

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

14 **MS. JONES:** Now, if we would go to the
15 second page of this which is Bates page 5218. I'm just
16 waiting for it to go on the screen. Thank you.

17 About two-thirds of the way down, it starts
18 with "According to these police officers ..."

19 **MR. JOHNSON:** Yeah.

20 **MS. JONES:** In this particular section here,
21 it's stated that there were three police officers. Further
22 up, it says:

23 "All three of these officers confirmed
24 that they had heard rumours about Mr.
25 Barque and his relationship with some

1 probationers, in particular, Robert
2 Sheets."

3 And then a couple of paragraphs later:

4 "According to these police officers,
5 Mr. Barque's name has come up different
6 times in the past while they have been
7 investigating occurrences. This caused
8 them to have strong suspicions, but
9 were never able to take any direct
10 action regarding Mr. Barque."

11 Then it goes on to say:

12 "Sergeant Masson did relate about one
13 incident which occurred in August 1981.
14 Sergeant Masson was investigating an
15 incident and Robert Sheets was
16 interfering with him to the point where
17 he placed Sheets under arrest for
18 obstruct police. According to Sergeant
19 Masson, Mr. Barque attempted to
20 interfere on Sheets behalf and had to
21 be warned to stay out of it or be
22 arrested as well. Although Sheets was
23 not on probation at that time, it was
24 most imprudent for Barque to get
25 involved."

1 So that would appear to be one of the
2 concerns that the police had had about Mr. Barque over a
3 period of time rather than, say, one isolated incident.
4 Would you agree with me on that?

5 **MR. JOHNSON:** Yeah, they had suspicions it
6 says here, yeah.

7 **MS. JONES:** Right, but it happened over a
8 period of time rather than there being one isolated
9 incident.

10 **MR. JOHNSON:** Well, this is a letter written
11 by who?

12 **THE COMMISSIONER:** An investigator, Mr.
13 McMaster, I believe.

14 **MR. JOHNSON:** Okay.

15 I never saw this, by the way. I don't
16 really have any recollection of this -- this information at
17 all. I don't think it was ever sent to me.

18 **THE COMMISSIONER:** Well, if we look at
19 Exhibit 903, sir, which is the letter that was sent to you
20 back in June 14th, 1982; it says, "I've enclosed a copy of
21 the investigation report."

22 **MR. JOHNSON:** Oh, I see. Okay. All right.
23 I don't -- I don't recall seeing this, but
24 yes, go ahead.

25 **MS. JONES:** Okay.

1 I need you to at least consider. Do you
2 think that this is the investigation report that looks as
3 if it was attached to the cover letter in Exhibit 903?

4 **MR. JOHNSON:** Okay.

5 Okay, it was attached. I won't -- I won't
6 disagree with you. It was attached.

7 **MS. JONES:** All right.

8 So in other words, you would have had access
9 then to this investigation report in order to form your
10 opinion which you -- which I will get to in just a moment.

11 **MR. JOHNSON:** If it was attached to it, yes,
12 I guess I would have had this information, yeah.

13 **MS. JONES:** Now, if we could please go to
14 Document 115961 which is Exhibit 904.

15 **THE COMMISSIONER:** Okay, sorry. Nine zero
16 four (904), sir, if you want, the hard copy is in your book
17 under tab 904 if you want it -- there you go.

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

19 **MR. JOHNSON:** That page 5, it says
20 "residence", what's the last line supposed to say?

21 **MS. JONES:** "Contributed money to the
22 purchase of beer by C-44."

23 **MR. JOHNSON:** Okay. And that's -- all ---

24 **MS. JONES:** "All of these."

25 **MR. JOHNSON:** Oh, okay.

1 Now what is the last line on page 6 supposed
2 to say?

3 **MS. JONES:** I don't know; I don't have that
4 either.

5 **THE COMMISSIONER:** Hang on. Just a second.
6 The last line of page 6.

7 **MS. JONES:** On Bates page 5294, the very
8 last line obliterated.

9 **THE COMMISSIONER:** I don't know. In this
10 case -- if this were a case where it was something that Mr.
11 Barque -- best we can do.

12 Oh, hang on. Okay, I guess it's -- "If this
13 were a case where it was that" -- I suspect by reading the
14 second page was "encouraging to violating conditions of
15 probation". Then it could be possible to proceed in the
16 supervisory capacity.

17 So my best guess is that they're talking
18 about whether or not Mr. Barque was providing incentives to
19 breach his probation order.

20 **MR. SCHARBACH:** Mr. Commissioner, I've taken
21 in the document from a different the document from a
22 different location ---

23 **THE COMMISSIONER:** Okay.

24 **MR. SCHARBACH:** --- in the database and my
25 version contains that last line.

1 **THE COMMISSIONER:** Good.

2 **MR. SCHARBACH:** I can read it to you.

3 **THE COMMISSIONER:** Yes, please. Just read
4 it out.

5 **MR. SCHARBACH:** I'll start at the beginning
6 of the sentence.

7 "If this were a case where it was
8 suggested that Mr. Barque had only
9 overlooked a probationer violating
10 conditions of probation then it could be
11 possible to proceed..."

12 And so on.

13 **THE COMMISSIONER:** Okay, thank you very
14 much.

15 **MR. SCHARBACH:** Thank you.

16 **MS. JONES:** Do you recall receiving or
17 reading this report at the time that you would have formed
18 the opinion?

19 **MR. JOHNSON:** I'm sorry, I don't, Ms. Jones.
20 I don't recall that at all.

21 **MS. JONES:** Would you agree that a lot of
22 the substance of this report is actually found in Mr.
23 McMaster's report that you've also read here this morning?

24 **MR. JOHNSON:** I suppose you can take the
25 paragraphs and compare them, say that there's similarities,

1 yeah.

2 **MS. JONES:** Okay. So if we could go back
3 then to Exhibit 2941 which is Mr. McMaster's report that
4 you received there this morning.

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

6 **MS. JONES:** A couple of other items that are
7 of significance in the report can be found on page 4 which
8 is Bates page 5220.

9 **THE COMMISSIONER:** Before last page, sir.

10 **MS. JONES:** The second-last page.

11 **THE COMMISSIONER:** He's got a page 4, at the
12 top right-hand corner.

13 **MR. JOHNSON:** I have to apologize, Mr.
14 Commissioner, are we talking of the same document?

15 **THE COMMISSIONER:** I don't know. Which
16 exhibit Madam Clerk, Madam ---

17 **MS. JONES:** Exhibit 2941.

18 **THE COMMISSIONER:** Yes.

19 **MS. JONES:** It's the investigative report by
20 Mr. McMaster.

21 **MR. JOHNSON:** This one here?

22 **MS. JONES:** Yes.

23 **MR. JOHNSON:** Okay, what about it?

24 **MS. JONES:** The second-last page, which is
25 page 4 or Bates page 5220.

1 **MR. JOHNSON:** Starting with "In addition"?

2 **THE COMMISSIONER:** That's it.

3 **MS. JONES:** That's correct.

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

5 **MS. JONES:** The investigator or someone had
6 spoken to both C-44 and to Mr. Sheets and received a fair
7 amount of information from them, such as the fact that Mr.
8 Barque was supplying them with alcohol and one of the
9 persons had actually said they were in a homosexual
10 relationship. And one of the people had said that they had
11 not been in a homosexual relation with Mr. Barque.

12 But then Mr. Barque was interviewed and the
13 result of the interview was actually summarized about half-
14 way down the page and it states:

15 "Mr. Barque readily admitted that for
16 approximately one year he had been
17 homosexually involved with two of his
18 probationers, Robert Sheets and C-44.
19 He further admitted that because of
20 this involvement he supplied them with
21 liquor upon their request, intimating
22 it was a form of blackmail"

23 And it also states in the report that both
24 of these probationers were on terms of -- were on a
25 condition that they were not to consume alcohol. Can you

1 gleam that from the report as well?

2 **MR. JOHNSON:** I do.

3 **MS. JONES:** So during the time Mr. Barque
4 was giving them alcohol they were actually on conditions
5 not to consume alcohol. Will you agree that's also
6 contained in the report?

7 **MR. JOHNSON:** It appears to be. Yeah.

8 **MS. JONES:** Okay. Now, the cover letter
9 states that he enclosed a copy of the investigation report.
10 And again, you probably aren't able to answer this but do
11 you recall whether or not the actual statements taken of
12 both Mr. Sheets, C-44, and Nelson Barque were attached to
13 that?

14 **MR. JOHNSON:** The statements?

15 **MS. JONES:** The actual statements or will
16 say of the people.

17 **MR. JOHNSON:** Will says of Nelson Barque?

18 **MS. JONES:** And of the two individuals
19 involved?

20 **MR. JOHNSON:** I don't recall seeing anything
21 like that. I have no memory of that whatsoever.

22 **MS. JONES:** Okay. If we could please go to
23 Document 115945, Exhibit 897.

24 **THE COMMISSIONER:** Eight nine seven (897) is
25 in your same book, sir.

1 MR. JOHNSON: Eight -- I'm sorry?

2 THE COMMISSIONER: Eight nine seven (897).

3 MR. JOHNSON: Okay.

4 MS. JONES: This is a statement of C-44.

5 MR. JOHNSON: M'hm.

6 MS. JONES: Unfortunately it's undated but
7 in the context of the other statements I would wager a
8 guess it's about early May 1982 that this statement's been
9 given.

10 And again, it appears by the person
11 conducting the interview which is Inspector McMaster which
12 can be seen on the second page.

13 "During the time you were on probation
14 has Mr. Barque provided you with
15 liquor?"

16 "Yes, quite often."

17 "Why did he not breach you for drinking
18 or why would he allow you to drink?"

19 Answer:

20 "He just didn't stop me; he is afraid
21 of me."

22 Question:

23 "Have you been involved with Mr. Barque
24 homosexually?"

25 Answer:

1 "Yes."

2 So it would appear that that was this
3 particular version which did appear in Mr. McMaster's
4 report, would you agree with me on that?

5 **MR. JOHNSON:** Yeah, I don't recall ever
6 seeing anything like this, let me tell you that.

7 **MS. JONES:** Would you agree though that the
8 content of that statement is summarized accurately in Mr.
9 McMaster's report?

10 **MR. JOHNSON:** Yeah.

11 **MS. JONES:** And would you also agree that in
12 this particular question and answer scenario the issue of
13 consent to this relationship with Mr. Barque is actually
14 not raised?

15 **MR. JOHNSON:** The issue of consent? I'm
16 sorry.

17 **MS. JONES:** The issue of consent on C-44's
18 part, with regards to the relationship with Mr. Barque is
19 never actually raised. He's never asked if he consented to
20 the relationship.

21 **MR. JOHNSON:** Yeah, that's correct.

22 **MS. JONES:** Would you agree with me on that?

23 **MR. JOHNSON:** I see word "consent" never
24 appears.

25 **MS. JONES:** No. And you'd agree with me the

1 word "consent" doesn't appear in his report either?

2 **MR. JOHNSON:** No.

3 **MS. JONES:** Now if we could please go to
4 Document 100273. This is a new document.

5 **THE COMMISSIONER:** Thank you.

6 Exhibit 2942 is a document dated May 4th,
7 1982, a statement of Mr. Robert Sheets.

8 --- **EXHIBIT NO./PIÈCE No. P-2942:**

9 (100273) Statement of Robert Sheets re:
10 Investigation of Nelson Barque dated 04 May
11 82

12 **MS. JONES:** Now, this is the reason why I
13 anticipated the other statement was given around the same
14 time period, because it appears that's when the
15 investigation was being done. But again, this is a
16 statement taken ---

17 **MR. JOHNSON:** Can I just ask you a question,
18 Ms. Jones?

19 **MS. JONES:** Sure.

20 **MR. JOHNSON:** Who were these statements
21 given to?

22 **MS. JONES:** The first one was given to
23 Mr. McMaster.

24 **THE COMMISSIONER:** He's the fellow who did
25 the investigation for ---

1 **MR. JOHNSON:** Right.

2 **THE COMMISSIONER:** And the second one ---

3 **MS. JONES:** The second one doesn't say.

4 **THE COMMISSIONER:** --- doesn't say, but it
5 says, "In respect to investigation of Mr. Nelson Barque,
6 probation officer, Cornwall, Ontario," and again May 4th,
7 1982 is the timeframe in which there is some correspondence
8 sent to you.

9 **MR. JOHNSON:** Okay.

10 **MS. JONES:** Have you read this over, sir?

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

12 **MR. JOHNSON:** Yeah.

13 **MS. JONES:** And in this statement it's
14 consistent with C-44 in the fact that it appears Mr. Barque
15 was also providing him with alcohol and drinking with him
16 when he was on a condition not to.

17 **MR. JOHNSON:** Well, not according to the
18 report. It says in the last question, "Anything further
19 you wish to say?" "I was a friend of Nelson Barque. He
20 never bought me booze."

21 **MS. JONES:** If you go to the bottom of the
22 first page, the question is ---

23 **MR. JOHNSON:** Oh, I see, yeah.

24 **MS. JONES:** ---"Did Barque drink with you
25 and provide you with drinks?" The answer was, "During the

1 summer."

2 MR. JOHNSON: During the summer, okay.

3 MS. JONES: So there may be an inconsistency
4 there, but the other noteworthy point too is that there's a
5 denial that there was any homosexual relationship with Mr.
6 Barque.

7 MR. JOHNSON: That's correct.

8 MS. JONES: That basically comes out of that
9 as well.

10 If we could please go to Document 115943,
11 Exhibit 895. You should have that in your binder,
12 Mr. Johnson.

13 MR. JOHNSON: Eight nine five (895). Okay.

14 MS. JONES: And this is the statement of
15 Nelson Barque dated May 6, 1982, presumably after the other
16 two had been interviewed.

17 MR. JOHNSON: Yeah.

18 MS. JONES: And again this statement was
19 taken by Inspector McMaster, and that's stated on the
20 second page. Have you read over the statement, sir?

21 (SHORT PAUSE/COURTE PAUSE)

22 MR. JOHNSON: Yeah.

23 MS. JONES: Now, a couple of things that
24 come out of this statement. First of all, he does agree
25 that he did knowingly drink alcohol with his probationers

1 that he knew were on terms not to consume alcohol.

2 MR. JOHNSON: It seems he makes statements -
3 - that he's asked the question; he gives a reply, yeah.

4 MS. JONES: Well, he's asked a direct
5 question, "Did you provide these probationers with
6 alcoholic beverages?" The answer was, "Yes."

7 MR. JOHNSON: Yeah.

8 MS. JONES: So there doesn't seem to be any
9 uncertainty about that one.

10 MR. JOHNSON: Okay.

11 MS. JONES: He was also asked who instigated
12 the sexual relationships with Mr. Sheets and C-44, and he
13 answered he did.

14 MR. JOHNSON: M'hm.

15 MS. JONES: So there doesn't seem to be any
16 unclarity about that either.

17 MR. JOHNSON: Okay.

18 MR. SCHARBACH: Mr. Commissioner, may I make
19 a quick objection at this point?

20 THE COMMISSIONER: Sure, as long as you
21 speak into the microphone.

22 MR. SCHARBACH: Thank you.

23 There doesn't seem to be any connection --
24 there may be a connection between these statements and the
25 report, but as far as we've heard so far, Mr. Johnson

1 doesn't know whether or not these reports were with the
2 investigation report -- whether the statements, I should
3 say ---

4 **THE COMMISSIONER:** Right.

5 **MR. SCHARBACH:** --- were with the
6 investigation report.

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

8 **MR. SCHARBACH:** He says he doesn't recall
9 seeing the investigation report.

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

11 **MR. SCHARBACH:** And he doesn't know whether
12 these statements were connected to the investigation
13 report.

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

15 **MR. SCHARBACH:** He hasn't seen them before.
16 He seems to be being asked questions concerning the content
17 of the statements by Nelson Barque and the two
18 probationers, presumably to assess his institutional
19 response to that material, whereas there seems to be no
20 connection between Mr. Johnson and those statements.

21 **THE COMMISSIONER:** Well, okay, let me try
22 this then. Oh, I'm sorry; Ms. Jones?

23 **MS. JONES:** It would appear from the cover
24 letter that Mr. Johnson did receive the investigative
25 report. All I'm doing -- this is the last statement, by

1 the way.

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

3 **MS. JONES:** I'm trying to confirm that the
4 contents of the statements are accurately reflected in
5 Mr. McMaster's report which it looks as if Mr. Johnson did
6 actually receive. I just want to be clear that there
7 wasn't information in the statements that did not make it
8 in the report or that was inaccurately reflected. That's
9 the point I'm trying to make.

10 **THE COMMISSIONER:** Thank you.

11 Yes, sir?

12 **MR. MANDERVILLE:** The only other thing I
13 would add, Mr. Commissioner, is that we have three
14 investigative reports in the material so far. There's no
15 indication in the letter to Mr. Johnson which report is
16 included, so we don't know.

17 **THE COMMISSIONER:** Right. Okay. Well, what
18 about this? I look at it and I see three issues here, and
19 I don't know -- do we have a response from Mr. Johnson to
20 corrections? So we're going to see what he says in there.

21 So I guess a number of things show up.
22 Number 1 is that what were the procedures back in those
23 days with the material that the Crown attorney would have
24 received; right. And if there was a clerical way of -- the
25 evidence is they were very busy and he probably sent the

1 material back. Then we can look at have those things, as
2 an institutional response, improved, changed in any way?
3 So that's one thing.

4 Number 2 is in fairness to this Crown
5 attorney, maybe the Crown -- the material sent by
6 Corrections should have been more detailed or more
7 complete. So that's another institutional response.

8 And the third one is regardless of what he
9 got, if he got an investigative document that said that Mr.
10 Barque was providing alcohol to a probationer who had in
11 his order, "You shall not drink alcohol" -- what his
12 institutional response was. And I guess we're going to get
13 the letter which I take it says no charges should be laid,
14 and I think that has to be looked to as well.

15 So in that context, I'm not for one moment
16 saying that he got all this material. The Crown -- the
17 Commission counsel is just showing everything that there is
18 there, and then, I suppose he's going to be asked some
19 questions about that.

20 So on that basis, you're absolutely right
21 that we don't know what he received but we have to see what
22 was there, and then probably in cross-examination or by Ms.
23 Jones somebody is going to say, "Well, had you had all of
24 this material, would it have changed you?" All right?
25 Thank you.

1 **MS. JONES:** Thank you. This is the last
2 statement.

3 With regards to Mr. Barque's statement as
4 well, one noteworthy point of course is that he does state
5 he had a homosexual relationship with Mr. Sheets, whereas
6 it's clear in Mr. Sheets' statement, he denied having such
7 a relationship.

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

9 **MS. JONES:** So that's also another fact that
10 comes out.

11 **MR. JOHNSON:** Okay.

12 **MS. JONES:** And would you agree that that
13 fact is actually also stated in Mr. McMaster's
14 investigative report?

15 **MR. JOHNSON:** I think it does, yeah.

16 **MS. JONES:** Okay. These appear to be the
17 statements that were collected, and would you agree with me
18 in Mr. McMaster's report -- and when I refer to that, the
19 one I'm referring to is Exhibit 2941.

20 **MR. JOHNSON:** Two nine four one (2941).
21 Yeah, okay.

22 **MS. JONES:** Okay. There doesn't seem to be
23 any follow-up by Mr. McMaster in the sense that he went
24 back to Mr. Sheets and said, "You know, Mr. Barque has said
25 actually that there was a homosexual relationship." There

1 doesn't seem to be any sort of follow-up information on
2 that in the report. Mr. Barque's interview is the last
3 one.

4 **MR. JOHNSON:** In 2941?

5 **MS. JONES:** In 2941.

6 **MR. JOHNSON:** Yeah, that's correct.

7 **MS. JONES:** Okay.

8 So in that respect as well, when
9 Mr. McMaster was interviewing Mr. Sheets, again the issue
10 of consent never came up because he denied he'd had any
11 sort of relationship.

12 **MR. JOHNSON:** That's correct, yeah.

13 **MS. JONES:** Now we'll get to your response,
14 which is Document 115948, Exhibit 899. You should have
15 that with you, sir.

16 **MR. JOHNSON:** Eight nine nine (899). Okay.

17 **MS. JONES:** If I could go to the third page,
18 please.

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

20 **MS. JONES:** Okay, now this is your opinion
21 letter that you wrote back to Mr. McMaster on June 22nd,
22 1982. And if I could just go over some of the words that
23 you used in your letter; you stated:

24 "Further to your letter of June 14th,
25 please be advised that I have reviewed

1 the material in this matter."

2 So if we are to believe that Mr. McMaster
3 sent you the investigative report that we've been referring
4 to as Exhibit 2941, it states in your first opening letter
5 -- line that you have reviewed the material he sent you.

6 **MR. JOHNSON:** Okay.

7 **THE COMMISSIONER:** He said "Okay".

8 **MS. JONES:** Would you -- I'm sorry?

9 **MR. JOHNSON:** Yeah. I said okay.

10 **MS. JONES:** Yes, okay.

11 And your second paragraph starts off:

12 "I have come to the conclusion that in
13 the circumstances, criminal charges
14 would not be warranted. My decision is
15 based on the fact that Mr. Barque, when
16 confronted with the allegations,
17 resigned immediately."

18 **MR. JOHNSON:** Yeah.

19 **MS. JONES:** Could you please explain how Mr.
20 Barque's resignation impacts on a decision whether or not
21 criminal charges could be laid, please?

22 **MR. JOHNSON:** Well it was -- from what I can
23 determine from this correspondence, there'd been an
24 internal investigation conducted by the Probation Services
25 with an experienced investigator and with that letter of

1 Mr. McMaster where he says: "This concludes our
2 investigation and no further action is necessary by this
3 branch" that would be one of the determining factors that I
4 would -- that I placed on the table.

5 **MS. JONES:** But you had said earlier that if
6 there were possible criminal allegations or investigations
7 to be done it would be the police that would be doing the
8 investigation.

9 **MR. JOHNSON:** Well are you referring to the
10 statement that Mr. Barque gave, Ms. Jones?

11 **MS. JONES:** No, I'm referring to the
12 investigative report ---

13 **MR. JOHNSON:** Yeah.

14 **MS. JONES:** --- prepared by Mr. McMaster in
15 which he describes what Mr. Barque said in his statement.

16 **MR. JOHNSON:** Okay. And I said that to be
17 no criminal charges laid, that doesn't mean that they could
18 have proceeded under the *Liquor Licence Act* or something
19 along that line with supplying alcohol.

20 **MS. JONES:** But if your evidence earlier
21 today is, if there's possible criminal charges they should
22 be investigated by the police.

23 **MR. JOHNSON:** That's correct, yeah.

24 **MS. JONES:** Then we're not really talking
25 about liquor licence charges here, we're only talking about

1 criminal charges, correct?

2 MR. JOHNSON: Okay. Yeah.

3 MS. JONES: Okay. And one of the reasons
4 that you've given for the decision that criminal charges
5 are not warranted is the fact that Mr. Barque resigned.

6 MR. JOHNSON: Yeah.

7 MS. JONES: I'm wondering if you could just
8 explain the connection between the two because even though
9 the probation investigation may be completed; surely that's
10 not the same as a police investigation.

11 MR. JOHNSON: That's correct and I agree
12 with that. And as far as I can see, all I can tell you is
13 that what I was informed, with the information that I did
14 have that criminal charges weren't warranted in the
15 circumstances that's all.

16 MS. JONES: That is the first line that you
17 give.

18 MR. JOHNSON: Yeah.

19 MS. JONES: But how is that connected to the
20 second line, i.e. that he resigned.

21 MR. JOHNSON: The fact that he resigned?

22 MS. JONES: Yes.

23 MR. JOHNSON: I assumed in the circumstances
24 the fact that (a) that there is an issue of consent because
25 of the age of 21; second of all, one of them I believe --

1 one of the individuals denied any allegations of homosexual
2 activity and also the fact that the statement that Mr.
3 Barque gave probably is not admissible in evidence.

4 **MS. JONES:** Okay those are reasons actually
5 that are not listed as part of your reason. I'm still
6 going back to ---

7 **MR. JOHNSON:** I'm sorry ---

8 **MS. JONES:** -- the issue of resignation.
9 I'm just trying to do this one step at a time.

10 **MR. JOHNSON:** Sorry, maybe I should have
11 included that in the letter. I apologize for not putting
12 it in the letter. But certainly there was an issue with
13 regards to the admissibility of that statement in the fact
14 that maybe it was one of the classes I attended in law
15 school, on evidence, with regards to admissibility of
16 evidence; statements not admissible if it's given under
17 threats, compulsion, inducement or violence.

18 And certainly in this case, I think we have
19 a situation and I should have put it in the letter, I agree
20 with you. But I didn't put it in. But I would certainly
21 not have prosecuted a case where they would -- that
22 statement would have tried to be entered in as exhibit.
23 Anybody out of law school, first year, could have knocked
24 that one through the wall without any problem.

25 **MS. JONES:** If we could just go back though

1 to the question that I asked which was what does the
2 resignation of Mr. Barque have to do with whether criminal
3 charges are warranted? Could you please answer that
4 question?

5 **MR. JOHNSON:** Certainly. I should have
6 expanded on it, I'm sorry. I should have said that, not
7 only the fact that he resigned but the evidence in the
8 circumstances probably is -- not probably, in all
9 likelihood inadmissible evidence.

10 **MS. JONES:** I'm going to suggest that
11 actually the fact that Mr. Barque resigned really has
12 nothing to do with whether criminal charges should be
13 investigated.

14 **MR. JOHNSON:** I'm sorry?

15 **MS. JONES:** I'm going to suggest to you that
16 the fact that Mr. Barque resigned actually has nothing to
17 do with whether or not criminal charges should be
18 investigated. Do you agree with that?

19 **MR. JOHNSON:** Not necessarily, no.

20 **MS. JONES:** So how then is it significant
21 that Mr. Barque's resignation meant criminal charges were
22 not warranted?

23 **MR. JOHNSON:** Well I got the impression, I
24 would assume, from the correspondence from Mr. McMaster
25 that they were quite satisfied with the fact that Mr.

1 Barque had resigned and that was it; that was a fait
2 accompli at that point.

3 **MS. JONES:** But if you agree with me that a
4 probation investigation is not the same as a police
5 investigation because police investigate criminal charges;
6 how is it significant that Probation are happy about it?
7 How does that impact on the fact that criminal charges
8 could still be investigated?

9 **MR. JOHNSON:** Well they could be
10 investigated. I'm not saying they couldn't be. I mean if
11 they weren't satisfied with my letter, they could have
12 walked on to the Cornwall Police Department and said "Look
13 it, this is what we got, we want further investigation and
14 charges laid."

15 **MS. JONES:** Would you agree with me that --
16 actually the way that you've written it there that one of
17 the factors is his resignation actually does not impact on
18 whether there should be a criminal investigation?

19 **MR. JOHNSON:** I suppose you can interpret it
20 that way, yes.

21 **MS. JONES:** Okay.

22 The next sentence:

23 "It appears also that one of the
24 homosexual relationships involved an
25 individual who is 21 years of age

1 therefore, a charge under a *Criminal*
2 Code would not succeed."

3 **MR. JOHNSON:** And that ---

4 **MS. JONES:** That's your next reason why
5 criminal charges would not be warranted. Do you see that?

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

7 **MS. JONES:** Would you agree with me that the
8 issue of consent, however, was not one that was raised by
9 Mr. McMaster?

10 **MR. JOHNSON:** The word "consent" never
11 appeared, that's correct.

12 **MS. JONES:** So the fact that someone is 21
13 or 20 years old or above the age of consent is irrelevant
14 if consent is actually an issue.

15 **MR. JOHNSON:** I would assume consent would
16 be an issue. I mean if I was defending in that particular
17 case, the issue of consent would certainly have surfaced,
18 yes.

19 **MS. JONES:** So would you agree with me that
20 even in this case consent would be an issue, regardless of
21 the fact that the two probationers may have been 20 or 21
22 years old?

23 **MR. JOHNSON:** Yeah.

24 **MS. JONES:** Okay. And you'd agree with me
25 that that issue is not discussed either by yourself or Mr.

1 McMaster?

2 **MR. JOHNSON:** It doesn't appear to be, no.

3 **MS. JONES:** In the next paragraph, you
4 stated:

5 "Dealing with the other individual, Mr.
6 Robert Sheets, the fact that he denies
7 any homosexual relationship with Mr.
8 Barque, although Mr. Barque admits to
9 it, there is no support, evidence, and
10 I feel it would be fruitless to proceed
11 with any charge."

12 Do you see that?

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

14 **MS. JONES:** It would appear that you are
15 picking up on points that were written in the report which
16 we have here as Exhibit 2941. Would you agree with me that
17 you seem to be hitting on points that were raised in that
18 actual report by McMaster?

19 **MR. JOHNSON:** It appears that way, yeah.

20 **MS. JONES:** Okay. It appears too that you
21 did not, for example, suggest that maybe Mr. McMaster
22 revisit or perhaps even the police revisit Mr. Sheets to
23 see if in fact when confronted with the evidence given by
24 Mr. Barque that perhaps there might be something else going
25 on there?

1 **MR. JOHNSON:** No, I didn't. I didn't follow
2 it up, no.

3 **MS. JONES:** Did it strike you as unusual in
4 any way whatsoever that Mr. Barque, the probation officer,
5 with obviously a lot to lose, admitted the homosexual
6 relationship and yet Mr. Sheets denied it?

7 **MR. JOHNSON:** Could you rephrase that? I'm
8 sorry.

9 **MS. JONES:** Did you find it unusual in any
10 way that the probation officer, Mr. Barque ---

11 **MR. JOHNSON:** Yeah.

12 **MS. JONES:** --- who frankly had everything
13 to lose, actually admitted the homosexual relationship with
14 a probationer and Mr. Sheets denied it? Did that not
15 strike you as a bit unusual?

16 **MR. JOHNSON:** Well, I don't know what goes
17 in the minds of individuals I can tell you that but to me -
18 - no, I don't think -- no that's not unusual to that
19 extent. I mean I've often had cases where individuals have
20 admitted to crimes and other persons have said they never
21 did it.

22 **THE COMMISSIONER:** No but I guess the irony
23 here is the alleged victim is saying it never happened and
24 the alleged perpetrator is saying "Yeah, it did". So you
25 know, it's ---

1 **MR. JOHNSON:** Well it happens all the time.
2 I mean you have -- Like I mean if you want an example, for
3 example in domestic -- sorry, in domestic situations,
4 you'll have an original complaint and all of the sudden the
5 complainant says "No, no it didn't happen that way" and the
6 accused maybe said "Well I did do this, I did do that".

7 No, that's not unusual.

8 **MS. JONES:** We're not talking about a
9 domestic situation here are we?

10 **MR. JOHNSON:** No, I understand that.

11 **MS. JONES:** We're talking about a serious
12 breach of trust. We're talking about a homosexual
13 relationship. We're talking about people in a
14 probation/probation officer relationship. It's not a
15 domestic assault situation.

16 **MR. JOHNSON:** Yeah.

17 **MS. JONES:** So would you agree in this
18 particular case, it's quite unusual that you would have
19 that?

20 **MR. JOHNSON:** So what you're suggesting is
21 the fact that the complainant says it didn't happen --
22 you've got the accused or alleged -- an alleged accused
23 saying that it did happen that something should have been
24 done?

25 **MS. JONES:** No, did it strike you as

1 unusual?

2 **MR. JOHNSON:** No, I'm sorry, it didn't. I
3 apologize to you.

4 **MS. JONES:** Then you stated:

5 "At present, I feel there is
6 insufficient evidence to proceed with
7 any charges against Mr. Barque."

8 At this particular stage, in your role as a
9 Crown attorney, is it not the decision of the police
10 authority to make decisions about charges rather than the
11 Crown attorney?

12 **MR. JOHNSON:** The role of the Crown attorney
13 is to advise them -- advise police officers or other
14 individuals of the public on matters of procedure and
15 evidence, not to institute charges and not to do anything.
16 So in this particular case, based on the evidence, that's -
17 - that's the statement that I made.

18 **MS. JONES:** Is it not, though, up to the
19 police to investigate to decide whether there's charges
20 that are laid, not a Crown attorney?

21 **MR. JOHNSON:** Yeah, I agree with that, yeah.

22 **MS. JONES:** "Should further evidence come
23 to light in future with respect to
24 other members of the probation staff,
25 the matter will be looked into with

1 respect to proceeding with criminal
2 charges."

3 The way that that sentence reads is if other
4 members of the probation office, i.e., not Mr. Barque;
5 correct?

6 **MR. JOHNSON:** Yeah.

7 **MS. JONES:** Okay.

8 "I thank you for the information
9 supplied to me in this matter and your
10 concern with respect to the Probation
11 and Parole Services as offered in the
12 City of Cornwall."

13 And then that's your signature?

14 **MR. JOHNSON:** It's a rubber stamp.

15 **MS. JONES:** It's a rubber stamp.

16 "P.S. I am returning your
17 documentations in this matter at this
18 time."

19 So again, that confirms you did receive
20 something at least ---

21 **MR. JOHNSON:** Yeah.

22 **MS. JONES:** --- from the Probation Office.
23 Okay.

24 Would you agree with me, in your letter, you
25 do not deal with the issue of alcohol -- providing alcohol

1 ---

2 MR. JOHNSON: No, it wasn't ---

3 MS. JONES: --- or consuming alcohol with
4 probationers?

5 MR. JOHNSON: --- it wasn't mentioned in the
6 letter. I agree.

7 MS. JONES: No.

8 Is it fair to say that that was not
9 something that was first and foremost in your mind given
10 that it wasn't even mentioned in your letter?

11 MR. JOHNSON: Well, I got the impression
12 that the concern in this situation from whatever
13 information I received the homosexual relationship was the
14 prime directive. That's what my impression was anyways.
15 If I erred and made a mistake, but that was my impression
16 that the -- the concern was the alleged homosexual activity
17 in the circumstances.

18 MS. JONES: Would you also agree, though,
19 the issue of drinking was the other concern, it would
20 appear from Mr. McMaster, as he brought that up with both
21 probationers; with Mr. Barque and featured rather
22 prominently in his report?

23 MR. JOHNSON: Yeah.

24 MS. JONES: Would you agree that it's
25 possible that there could be a consideration of a criminal

1 charge; for instance, a party to an offence on the part of
2 Mr. Barque?

3 **MR. JOHNSON:** Could be a possibility of a
4 breach of probation if they were on probation with a term,
5 yeah.

6 **MS. JONES:** I'm talking with respect to Mr.
7 Barque ---

8 **MR. JOHNSON:** Yeah.

9 **MS. JONES:** --- supplying the alcohol.

10 **MR. JOHNSON:** Yeah, that would be under the
11 *Liquor License Act*, I would assume.

12 **MS. JONES:** Is it possible that there's a
13 criminal charge; for example, being a party to an offence
14 that could be considered with regards to Mr. Barque by
15 supplying the alcohol?

16 **MR. JOHNSON:** I wasn't aware of any
17 provision in the *Criminal Code* that there's an offence to
18 supply liquor to an individual. I mean, the only term
19 would be -- the only suggested violation would have been a
20 breach of probation.

21 **MS. JONES:** So that was not a consideration
22 on your part then?

23 **MR. JOHNSON:** No.

24 **MS. JONES:** Did you discuss anything
25 further, do you recall, with the Ministry about this;

1 whether there should be any further action taken against
2 him?

3 **MR. JOHNSON:** Not that I can recall, Ms.
4 Jones.

5 **MS. JONES:** Would you agree that even if you
6 felt that there were no criminal charges warranted at this
7 time that the actions of Mr. Barque were completely
8 inappropriate?

9 **MR. JOHNSON:** If they were founded, yeah,
10 they would be inappropriate. I mean, if there was evidence
11 that admissible -- legally admissible evidence, yeah, if it
12 could be proven.

13 **MS. JONES:** Well, even based on Mr. Barque's
14 own words that his actions were inappropriate.

15 **MR. JOHNSON:** You see, my -- my issue with
16 that is that whatever Mr. Barque may have said, I wasn't
17 there when that statement was given so I don't know under
18 what conditions that statement was given; whether he was
19 promised anything, whether he was induced to say something,
20 whether something was offered to him that if you resign,
21 you know, nothing's going to happen. I wasn't there for
22 that so now the only transcript I got or you showing me is
23 this last statement he gave. So I can't -- I can't answer
24 that question. I'm sorry.

25 **MS. JONES:** Would you agree if, in fact,

1 these issues are found to be true about supplying the
2 alcohol and having the relationship with the probationers
3 at the very least it's a breach of trust on Mr. Barque's
4 part?

5 **MR. JOHNSON:** I don't think I'd go as far as
6 a breach of trust.

7 **MS. JONES:** Pardon me?

8 **MR. JOHNSON:** I don't know if I'd go as far
9 as a breach of trust. It might be inappropriate, but I
10 don't know if I'd go so far as a breach of trust.

11 **MS. JONES:** Now, in 1995 -- I'm sorry, 1994,
12 ---

13 **MR. JOHNSON:** Yeah.

14 **MS. JONES:** --- you started to represent Mr.
15 Barque, now as your role as defence counsel, on criminal
16 charges of historical sexual abuse. Is that correct?

17 **MR. JOHNSON:** That's correct, yeah.

18 **MS. JONES:** Okay.

19 And if we could please go to Document 114249
20 which is Exhibit 112.

21 **THE COMMISSIONER:** I'll get that for you,
22 sir. One twelve (112)? Yeah, sorry.

23 **MR. JOHNSON:** Just excuse me for a second
24 while I move these binders around.

25 **THE COMMISSIONER:** Yeah.

1 **MS. JONES:** Sure.

2 **THE COMMISSIONER:** Occupational hazard here.

3 Okay, so now, sir, we're moving into the
4 area where you were representing ---

5 **MR. JOHNSON:** I was a defence lawyer, yeah.

6 **THE COMMISSIONER:** All right.

7 So do you have any recollection of that?

8 **MR. JOHNSON:** Well, I do have a little
9 recollection of that, yeah.

10 **THE COMMISSIONER:** Good. So we're looking
11 at Exhibit ---

12 **MR. JOHNSON:** I apologize, Mr. Commissioner,
13 but, of course, if I was going to be asked of any
14 discussions between myself and Mr. Barque that I recall, I
15 would certainly indicate that without Mr. Barque, who's now
16 deceased, there'd be a solicitor/client privilege.

17 **THE COMMISSIONER:** Absolutely. We'll work
18 around that and we'll see where we go with that of course,
19 but that's on the table. Thank you very much for saying
20 it.

21 All right, so there's the letter.

22 **MS. JONES:** And that's a letter from then
23 Crown attorney, Murray MacDonald, dated January 16th, 1985
24 and it states in the second paragraph:

25 "As I indicated in conversation with

1 you, there may be an appearance of
2 conflict with you as counsel in light
3 of the fact that you were consulted by
4 probation authorities in respect to
5 charges against the above-noted
6 individual during your tenure as Crown
7 attorney. You have indicated to me
8 that a plea is anticipated in which
9 case you feel a potential conflict is
10 not an issue."

11 Do you see that?

12 **MR. JOHNSON:** Yes, I do.

13 **MS. JONES:** Okay.

14 Now, presumably, after you left the Crown's
15 office -- Cornwall is a small community -- there would have
16 been several times where people that perhaps had come
17 through your office when you were Crown attorney now were
18 turning to you for assistance as a ---

19 **MR. JOHNSON:** They still do, Ms. Jones. I
20 can tell you that.

21 **MS. JONES:** Pardon me?

22 **MR. JOHNSON:** They still do.

23 **MS. JONES:** Okay.

24 And this was one of those times.

25 **MR. JOHNSON:** Yeah.

1 **MS. JONES:** Is that correct?

2 **MR. JOHNSON:** Pardon?

3 **MS. JONES:** Is that correct; this was one of
4 those times?

5 **MR. JOHNSON:** That's correct, yeah.

6 **MS. JONES:** Okay.

7 Did you consult with the Law Society at all
8 about that particular issue?

9 **MR. JOHNSON:** No, I didn't; not to that
10 extent. No, I -- I just -- I looked up the rules and my
11 interpretation of the rules was that there would not be a
12 conflict if the matter was resolved by way of a plea.

13 **MS. JONES:** Now, I'm wondering if you could
14 please explain how it is that you feel that there's no
15 conflict if there's a plea, but there would be a conflict
16 if it went to trial.

17 **MR. JOHNSON:** Same way as our criminal
18 system works now, Ms. Jones. Basically, what happens in
19 the criminal law, we have now a situation or a procedure
20 called judicial pre-trials where you sit down with the
21 defence lawyer and the Crown sits down and there's a judge
22 present. You -- we look at the factual situation; you see
23 what the strength of the Crown's case is.

24 At that point, discussions take place. The
25 judge sits there and listens to what happens then you would

1 make submissions as to what you feel would be a possible
2 resolution. The Crown makes their position as to a
3 possible resolution. The judge then says if the matter is
4 resolved and the accused enters a plea before me, this is
5 what I would give them, okay? This is what my sentence
6 would be.

7 At that point, the judge then says, if
8 there's a trial, I cannot hear the trial so that's the
9 procedure that I feel indicates that there is no conflict
10 as long as a plea would be entered.

11 **MS. JONES:** Well, perhaps I'm
12 misunderstanding you. You're describing when a judge might
13 reclude him ---

14 **MR. JOHNSON:** Yeah.

15 **MS. JONES:** -- or herself from a potential
16 conflict. I'm looking for you, as a defence lawyer ---

17 **MR. JOHNSON:** Yeah.

18 **MS. JONES:** --- and your role as a lawyer
19 representing someone on a trial versus a plea; why a
20 conflict exists for you if it's a trial and not a plea.

21 **MR. JOHNSON:** Because I don't believe a
22 conflict existed. If there was conflict and there was
23 concern for the administration of justice, the Crown
24 attorney has the power and the capability of make a formal
25 application before a judge to have me removed as counsel

1 which they've done on many occasions down here.

2 And I mean, I've been kicked off of murder
3 cases because of -- witnesses were being called by the
4 Crown and they'd made an application and I voluntarily
5 removed myself in the circumstances.

6 **MS. JONES:** But assuming that this did not
7 involve witnesses that would put you in a potential
8 conflict ---

9 **MR. JOHNSON:** Yeah.

10 **MS. JONES:** --- purely by representing Mr.
11 Barque, I still don't understand what your answer is; how
12 there is a conflict going to trial and is not a conflict on
13 a plea.

14 **MR. JOHNSON:** Well, if issues arise with
15 regards to going to trial and certain evidence would be
16 called, if the Crown attempted to call in this evidence
17 from a prior occasion et cetera, having been involved with
18 it, as you've indicated to me in my documentation,
19 certainly I'd have a conflict in that case. That's why I
20 dealt with the Crown Attorney's Office on that basis, that
21 there wouldn't be a conflict if the accused entered a plea
22 of guilty. There would be no issue with regards to
23 evidence.

24 **MS. JONES:** Were you put on notice that Mr.
25 Sheets and C-44 were going to be called as witnesses on

1 this particular matter?

2 **MR. JOHNSON:** No.

3 **MS. JONES:** So how would that conflict then
4 have arisen?

5 **MR. JOHNSON:** You mean -- well, you mean in
6 the Crown disclosure? Is that what you're talking about?

7 **MS. JONES:** Well, you gave an example of a
8 conflict, saying if Mr. Sheets or C-44 were called as
9 witnesses ---

10 **MR. JOHNSON:** Yeah.

11 **MS. JONES:** --- you would be in a conflict.

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

13 **MS. JONES:** Did you have notice that
14 Mr. Sheets and C-44 ---

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

16 **MS. JONES:** --- were going to be called as
17 witnesses ---

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

19 **MS. JONES:** --- in this matter?

20 **MR. JOHNSON:** No, no.

21 **MS. JONES:** So therefore that could not have
22 been a possible conflict.

23 **MR. JOHNSON:** Not at that point, it wouldn't
24 have been, no.

25 **MS. JONES:** At this particular point.

1 **MR. JOHNSON:** Yeah.

2 **MS. JONES:** So where was the conflict then
3 if it went to trial and not if it was a plea?

4 **MR. JOHNSON:** Conflict would have been, I
5 would assume, that the Crown decided they wanted to call
6 similar-fact evidence. They would have given me notice
7 that they had then and I would voluntarily step off the --
8 stepping off the batter's box and let somebody else go to
9 bat.

10 **MS. JONES:** Okay. Did they give you notice
11 of that?

12 **MR. JOHNSON:** No, they never did.

13 **MS. JONES:** So therefore, in this particular
14 case, that would not then have presented a conflict for
15 you?

16 **MR. JOHNSON:** In my opinion, no.

17 **MS. JONES:** Okay.

18 So then now let's go back to Mr. Barque
19 here. Where was the conflict if you went to trial? If you
20 don't have any indication from the Crown that Mr. Sheets or
21 C-44 are going to be called as witnesses, where was the
22 conflict if you went to trial but not if you pleaded?

23 **MR. JOHNSON:** Well, basically, we're at the
24 preliminary stage of the criminal proceeding. Crown
25 disclosure comes in, says this is what the Crown alleges in

1 the circumstances, "This is the evidence that we have in
2 relation to this charge." Now, the Crown determines what
3 kind of evidence they will subsequently call.

4 They can later on, in the proceedings, then
5 say, "Oh, by the way, now we're going to be calling" --
6 they don't give you that information right at the
7 beginning. As the trial is proceeding, then they give you
8 notice. That's very common practice down here.

9 **MS. JONES:** Well, sir, at this point though
10 you said you had no indication they were going to call ---

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

12 **MS. JONES:** --- the people from 1982.

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

14 **MS. JONES:** This is a completely different
15 victim.

16 **MR. JOHNSON:** Well, I can't tell the Crown
17 how to prosecute a case. I mean if they decide that, "Oh,
18 wait a minute, we now want to call these two witnesses as
19 part of similar-fact evidence," and they give me notice of
20 that, then I do have a conflict.

21 **THE COMMISSIONER:** Can I just stop there for
22 a minute.

23 If I look at Exhibit 112, which is a letter
24 to this gentleman from Murray MacDonald on January 16th,
25 1995, right.

1 The Crown is saying to you, "Listen, there
2 may well be an appearance, and if you -- if there's not a
3 plea of guilty, we're going to take the position that you
4 can't hear this thing because" -- in the last paragraph it
5 says:

6 "If a plea of guilt is not forthcoming,
7 please advise at your earliest
8 convenience in order that disclosure
9 may be forwarded to new counsel."

10 So I think we're putting -- we're jumping
11 ahead a little bit in the sense that this never
12 materialized because there was a plea of guilt.

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

14 **THE COMMISSIONER:** So I think the way I look
15 at it in any event at this point, subject to any questions
16 other people may have, is that the Crown is putting this
17 gentleman on notice, right off the bat, of this potential
18 of a conflict. And so, "If this arises we will discuss it.
19 If it doesn't arise we won't discuss it." And it didn't
20 arise.

21 **MR. JOHNSON:** It didn't -- never arose
22 because the matter was resolved.

23 **THE COMMISSIONER:** Yeah.

24 **MS. JONES:** Sir, could you just speak into
25 the microphone?

1 **MR. JOHNSON:** Oh, I'm sorry. I apologize.

2 **MS. JONES:** The point I'm trying to make
3 here is I actually completely understand if it went to
4 trial, if there was a potential of conflict. Maybe I'll
5 rephrase it. What I'm not understanding is how you felt
6 there was not a potential of conflict if it went by way of
7 a guilty plea. I do understand ---

8 **MR. JOHNSON:** All I can tell you, Ms. Jones,
9 in my opinion at the time, I did not feel I had a conflict
10 of interest. That's -- I can't give you an ironclad reason
11 but what I knew of the case, Mr. Barque was my client. Mr.
12 Barque came into my office -- and I won't advise you of
13 what we discussed and stuff like that. The matter was
14 resolved by way of a judicial pre-trial. He was aware of
15 what the situation was going to be upon a plea, and that
16 was it.

17 **MS. JONES:** Okay.

18 You mentioned that the Crown's Office has
19 had you removed from cases in the past. Did that ---

20 **MR. JOHNSON:** I beg your pardon. They
21 haven't had me removed. They've told me of a possible
22 conflict and I have agreed and I said, "Fine, I'm off the
23 case. We'll get another lawyer for this person."

24 **MS. JONES:** Oh, all right. I thought you
25 said that there was -- something about a murder case that -

1 --

2 MR. JOHNSON: Well, there was a murder case

3 ---

4 MS. JONES: --- they had you removed.

5 MR. JOHNSON: --- quite a while, few years
6 ago, where one of my clients was going to be a Crown
7 witness. They told me that he was going to be a witness
8 and I said, "Fine. I'm off the case. I won't bother
9 going." And they never even called him as a witness.

10 MS. JONES: Did this happen from the time
11 you started as a defence lawyer at 1991, or has this been a
12 more recent sort of a thing?

13 MR. JOHNSON: No, it's from the day from --
14 from the get-go. I mean there's no doubt -- I mean as a
15 defence lawyer -- I mean I think I have the ability to
16 determine when there's a conflict and there's going to be a
17 conflict and when there's not.

18 And I've turned down cases where I've
19 realized that I'd have a conflict, rather than go through
20 the procedure of getting off the case and me bringing in a
21 new lawyer. I've told the client, "Look, you know, move
22 on. You're going to have to find somebody else." It's
23 particularly where the complainant is -- may have been a
24 former client of mine.

25 MS. JONES: Okay.

1 If we could move on to Document 114256.

2 It's a new document, Mr. Johnson.

3 **THE COMMISSIONER:** Thank you. Exhibit 2943
4 is a letter dated February 14th, 1995 to Mr. Johnson from
5 Guy Simard.

6 **--- EXHIBIT NO./PIÈCE NO. P-2943:**

7 (114256) Letter to Donald Johnson from Guy
8 Simard - dated 14 Feb 95

9 **MS. JONES:** I'm only entering this in to
10 show that the file is now being passed on to Mr. Simard.

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

12 **MS. JONES:** And he basically says the same
13 thing; there could be an apparent conflict of interest if
14 it goes to trial, but been advised your client wishes to
15 resolve it by a guilty plea.

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

17 **MS. JONES:** Okay.

18 And if we could please go to Document
19 114255.

20 **THE COMMISSIONER:** New document.

21 **MS. JONES:** New document is 114255.

22 **THE COMMISSIONER:** Thank you. Exhibit 2944
23 is a letter addressed to Mr. Murray MacDonald from Mr.
24 Johnson.

25 **MS. JONES:** Dated February 27th, 1995.

1 **THE COMMISSIONER:** Sorry, yes. Thank you.

2 **MS. JONES:** And again confirming if it does
3 go to trial you'll have a conflict of interest but it
4 appears it's going to be a guilty plea.

5 Did you have any other discussions with Mr.
6 Simard about any potential conflict or is this -- that was
7 about it?

8 **MR. JOHNSON:** I don't believe so, Ms. Jones.

9 **MS. JONES:** Okay, thank you.

10 So on this date then you wrote to Murray
11 MacDonald, requested the matter be resolved by plea after
12 appearing at a pre-trial, and the pre-trial was ---

13 **MR. JOHNSON:** I'm sorry, I apologize. There
14 is a note at the top here that says to Guy, "Please contact
15 Johnson. Set up a pre-trial and settle by way of POG.
16 Thanks, Murray."

17 **MS. JONES:** Yeah.

18 **MR. JOHNSON:** Okay.

19 **MS. JONES:** Yeah.

20 So the pre-trial was heard before Justice
21 Renaud?

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

23 **MS. JONES:** And on July 10th, 1995 Mr. Barque
24 pleaded guilty and the matter was put over for sentencing
25 on August 18th.

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

2 **MS. JONES:** There was an issue, when you put
3 in the plea, that there was actually not a pre-sentence
4 report ordered but when you went for the sentencing there
5 was actually a pre-sentence report prepared.

6 **MR. JOHNSON:** I think that -- yeah, I
7 believe that was the situation.

8 **MS. JONES:** If we could please go to the
9 transcript of the sentencing now. It's Exhibit 114, so you
10 may have it in your documents.

11 **THE COMMISSIONER:** Yes, he does.

12 **MR. JOHNSON:** Here we go.

13 **MS. JONES:** And it's Document 116129.

14 **MR. JOHNSON:** He spelt -- my name is spelled
15 wrong, by the way, there.

16 **MS. JONES:** It is. That's right.

17 Now, as I said just a moment ago, a lot of
18 time was spent on the issue of the pre-sentence report
19 because one had not officially been ordered on the record
20 but it appeared one had actually been ordered to do, and
21 Justice Renaud made a ruling on that that it would be
22 considered as part of the sentencing submissions.

23 There's nothing in the transcript about this
24 but had you and Mr. Simard discussed the pre-sentence
25 report at any time?

1 **MR. JOHNSON:** No.

2 **MS. JONES:** And had there been -- again,
3 it's not on the record in the sentencing, but had there
4 been any discussion or concerns raised by Mr. Simard or
5 yourself outside the courtroom with the fact that the
6 Probation Office had done a probation -- a pre-sentence
7 report on a former probation officer?

8 **MR. JOHNSON:** Well, I think that's beyond my
9 -- that would be within the jurisdiction, I think, of the
10 Court if they're going to order a pre-sentence report.
11 They have the authority to say, you know, this Probation
12 Office should not do the pre-sentence report but it should
13 be farmed out to somebody else, yeah.

14 **MS. JONES:** I agree. I'm just asking if you
15 and Mr. Simard ---

16 **MR. JOHNSON:** No, no, no.

17 **MS. JONES:** --- had any discussions about
18 that.

19 **MR. JOHNSON:** No, not that I'm aware of.

20 **MS. JONES:** Now, at Bates page 5725.

21 **THE COMMISSIONER:** Okay, just a second, I'll
22 give you the page number, sir ---

23 **MS. JONES:** And that I can tell you -- the
24 page number is 49.

25 **THE COMMISSIONER:** And just for a moment

1 there, Exhibit 2944 is already Exhibit 2931, which is
2 Document 114255, so we can keep track of those things.

3 Okay, page 45?

4 **MS. JONES:** Forty-nine (49).

5 **THE COMMISSIONER:** Forty-nine (49). Sorry.

6 **MS. JONES:** And these are your submissions,
7 Mr. Johnson, or Mr. Johnston as they are calling you there.

8 **MR. JOHNSON:** Yeah.

9 **MS. JONES:** Starting with the paragraph that
10 starts, "Your Honour, I had occasion ..."

11 **MR. JOHNSON:** Where are we here?

12 **MS. JONES:** On page 49, it's the bottom
13 paragraph.

14 **THE COMMISSIONER:** The full paragraph.
15 "Your Honour", it starts.

16 **MR. JOHNSON:** Okay.

17 **MS. JONES:** Sometimes it's helpful to watch
18 the screen, Mr. Johnson, it's a bit bigger on the screen if
19 you look at that ---

20 **MR. JOHNSON:** Okay.

21 **MS. JONES:** --- if that's helpful to you?

22 **MR. JOHNSON:** All right.

23 **MS. JONES:** Always worried about telling
24 someone to read the screen, but --

25 You stated there:

1 "Your Honour, I had occasion when I was
2 Crown prosecutor in this area, to deal
3 with Mr. Barque on a level, as he was
4 then a Probation Officer, and the only
5 submission I would have, Your Honour, I
6 found that each time that Mr. Barque
7 was involved with the reporting to the
8 court of a pre-sentence report, that
9 each report was submitted to the court
10 containing precisely and accurately and
11 objectively all factors which the court
12 asked him to do, and to consider with
13 regards to the type of the sentence the
14 court was to impose upon an individual.
15 He was most cooperative with all of the
16 officials of the court and when called
17 upon to testify, he gives evidence in a
18 straightforward, objective manner,
19 never playing once side against the
20 other, nor did he accentuate in his
21 report, one side or the other's report
22 and I think that speaks very highly of
23 him with regards to the way he
24 approached and took his job in the
25 manner and the professionalism that he

1 handled himself."

2 Do you see that? I'm just going to stop
3 there.

4 **MR. JOHNSON:** Yeah.

5 **MS. JONES:** Given the information that you
6 had in your role as a Crown attorney back in 1982 about Mr.
7 Barque, would you agree that it could be considered to be
8 less than professional to provide probationers with
9 alcohol?

10 **MR. JOHNSON:** Well ---

11 **MS. JONES:** When engaged in relationship
12 with them?

13 **MR. JOHNSON:** Well, my submissions on that
14 particular part were dealing with his attendances in the
15 preparation of pre-sentence report, had nothing to do, as
16 far as I could determine, or what I was trying to transfer
17 to the court was that, as a professional, when he was asked
18 to do his job as a professional for court purposes, that's
19 what I was trying to send -- the message to the court.

20 **MS. JONES:** The concern is with the very
21 last sentence. It could be interpreted as to mean that the
22 preparation of his pre-sentence reports are an example of
23 the way that he took his job and the professionalism with
24 which he handled himself. Can you see how the last
25 sentence could be -- the larger picture in the pre-sentence

1 report is an example of that?

2 MR. JOHNSON: Words can be interpreted any
3 way you want, Ms. Jones. Yes, I agree.

4 MS. JONES: And could it be perceived, again
5 with this information that you had as the Crown attorney,
6 that possibly the way that he dealt with Mr. Sheets and C-
7 44 as a probation officer could have been less than
8 objective, professional or straightforward, as you've
9 described there?

10 MR. JOHNSON: It could be looked at that
11 way, I suppose. Yeah.

12 MS. JONES: Did you ever read a probation
13 report that he prepared on Mr. Sheets or C-44?

14 MR. JOHNSON: Do you have one there? I
15 don't recall ever seeing a probation report on those
16 individuals, not as a Crown attorney, you know.

17 MS. JONES: Now in the next paragraph, it
18 states:

19 "In the course, Your Honour, of his
20 work as a Probation Officer, he ran
21 afoul on this one occasion with --"

22 I'm sorry, I don't know, is this person

23 ---

24 THE COMMISSIONER: That's fine.

25 MS. JONES: It's fine?

1 "-- one occasion with Mr. Roy and of
2 course it's going to be accentuated
3 that he was in a position of trust when
4 the incident occurred, and as I would
5 ask the court to consider and
6 accentuate also that the incident was
7 one incident in 1977 which was more or
8 less held in abeyance for 17 years and
9 then surfaced in 1994."

10 Now in that particular paragraph, it's Mr.
11 Roy that is the subject matter of this particular
12 prosecution; correct?

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

14 **MS. JONES:** Would it be fair to say that the
15 way that you're classifying this incident with Mr. Roy is,
16 to use your words, "he ran afoul on this one occasion",
17 when in fact you were aware of previous occasions in 1982?

18 **MR. JOHNSON:** I was only speaking in
19 relation to the crime to which he pleaded guilty to at that
20 time. And I take it what -- if you're suggesting that I
21 was trying to conceal from the court something else, I
22 wasn't attempting, I was only dealing with the incident
23 involving Mr. Roy on the sentence.

24 I was not suggesting that Mr. Barque had not
25 been involved in the other matters. I was only dealing

1 with the incident involving Mr. Roy.

2 MS. JONES: Can you see how that can be
3 interpreted, however?

4 MR. JOHNSON: Oh, I definitely can see that,
5 yes, I can see that.

6 MS. JONES: And you also state: "Mr. Roy
7 was also a probationer at the time, of Mr. Barque's."
8 Correct?

9 MR. JOHNSON: I'm sorry, I don't know. I
10 apologize, I ---

11 MS. JONES: You have put here that ---

12 MR. JOHNSON: Oh, you mean, when this was --
13 when this crime was committed?

14 MS. JONES: Yes.

15 MR. JOHNSON: Oh yeah, okay, yes. That's
16 correct, yeah.

17 MS. JONES: Okay.

18 So you state in your submissions that, when
19 this happened to Mr. Roy, that you agreed that Mr. Barque
20 was in a position of trust? Correct?

21 MR. JOHNSON: Yes.

22 MS. JONES: And that is an aggravating
23 circumstance for any judge that's sentencing?

24 MR. JOHNSON: Certainly is, yeah. Yeah, I
25 was placed -- at the judicial pre-trial too.

1 **MS. JONES:** And yet, earlier when asked
2 about the involvement with Mr. Sheets and C-44, I had
3 specifically asked you, did you think that was a breach of
4 trust and you said no, it was not.

5 **MR. JOHNSON:** I said, in my interpretation
6 at the time, I said yes, it could possibly not be a breach
7 of trust, yeah. I never said it wasn't. I said there's a
8 possibility it wasn't a breach of trust.

9 **MS. JONES:** Earlier today, I asked you this
10 specific question, was it a breach of trust and you had
11 said no.

12 **MR. JOHNSON:** I believe I answered and I
13 said that in my opinion at the time, I didn't believe it
14 was a breach of trust.

15 **MS. JONES:** Okay.

16 So could you please explain, then, how it
17 was not a breach of trust with Mr. Sheets and C-44 and yet
18 you agree it is a breach of trust with Mr. Roy?

19 **MR. JOHNSON:** Well the difference is I
20 believe in this case that Mr. Roy was a willing,
21 cooperative individual who came forth with the allegations.
22 Mr. Barque admitted to it and in that case, yes, that's why
23 I'm saying it would be a definite breach of trust there,
24 whereas in the other case, we had a problem with respect to
25 the cooperation of the witnesses and the issue of consent,

1 et cetera.

2 **MS. JONES:** Well in 1982, there is no lack
3 of cooperation from C-44.

4 **MR. JOHNSON:** I'm sorry?

5 **MS. JONES:** In 1982, there was no lack of
6 cooperation from C-44?

7 **MR. JOHNSON:** What were the allegations
8 involved in C-44?

9 **MS. JONES:** Well there were basically two;
10 he said he was involved in a homosexual relationship with
11 Mr. Barque and that liquor had been supplied to him while
12 he was on a term not to consume it.

13 I'm also wondering why the cooperation of
14 the victim is significant in determining if there's a
15 breach of trust? Surely the breach of trust arises by
16 virtue of the fact that Mr. Barque is a probation officer
17 and has actually nothing to do with the victim being
18 cooperative.

19 **MR. JOHNSON:** Well if you look at the - the
20 legal situation as it was back in 1998 -- 1982, excuse me,
21 the law has evolved to a great extent since that time with
22 regards to breaches of trust, et cetera. There's been a
23 stronger definition placed upon what a breach of trust is.
24 There's been more determination as to what circumstances
25 involve breach of trust.

1 We didn't have that problem. I don't think
2 we had that back in 1982 when these incidents were arising
3 -- they allegedly arose.

4 **MS. JONES:** You're saying in 1982, there was
5 not the concept of breach of trust?

6 **MR. JOHNSON:** I'm not saying it was a breach
7 of trust, Ms. Jones. I'm saying that the law has evolved
8 now, and again this -- given the circumstances, if it had
9 occurred now as compared to 1982, probably there would be
10 stronger evidence of a breach of trust with the law as it
11 stands now, yes.

12 **MS. JONES:** So now you're saying that there
13 was a possible breach of trust back in 1982 with regards to
14 Mr. Sheets and C-44?

15 **MR. JOHNSON:** No. I'm not saying - I'm
16 saying if we had the law that is now in breach of trust
17 situations, if we had that back in 1982, I would probably
18 say, yes, there would have been a breach of trust. But as
19 my interpretation at the time was that I was probably in a
20 quandary as to whether or not there was actually a breach
21 of trust back in 1982.

22 **MS. JONES:** The second part of that
23 paragraph as well, when you stated, "Also that the incident
24 was one incident in 1977 which is more or less held in
25 abeyance for 17 years and then surfaced in 1994."

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

2 **MS. JONES:** Are you just referring to Mr.
3 Roy's situation?

4 **MR. JOHNSON:** That's all I'm referring to
5 there. And I realize the interpretation could be that, but
6 no, I was only referring to Mr. Roy.

7 **MS. JONES:** Okay, so just to be clear
8 though, it could be interpreted through ---

9 **MR. JOHNSON:** Oh certainly it could be.

10 **MS. JONES:** --- that you're not making any
11 reference to the 1982 situation ---

12 **MR. JOHNSON:** No.

13 **MS. JONES:** --- which of course is another
14 incident.

15 **MR. JOHNSON:** That could be interpreted;
16 I'll agree with you.

17 **MS. JONES:** Thank you.

18 And would you agree with me as well that --
19 we can go to the facts but if you recall the facts
20 concerning Mr. Roy, there's quite a few similarities; there
21 was -- he was on probation; Mr. Barque gave him alcohol,
22 and the type of sexual acts being complained of are very
23 similar to the acts complained of by Mr. Sheets and C-44.

24 **MR. JOHNSON:** I don't recall specific facts,
25 Ms. Jones, but if you say so I won't disagree with you.

1 **MS. JONES:** Well, I'll refer you then to
2 Bates page 5701.

3 **THE COMMISSIONER:** He's not disagreeing with
4 you.

5 **MS. JONES:** Oh, okay.

6 Were you -- you're aware that, I believe
7 that there were subsequent charges against Mr. Barque in
8 1998?

9 **MR. JOHNSON:** Yeah, I think I was. Yeah. I
10 didn't represent him though.

11 **MS. JONES:** That was my next question.
12 Okay.

13 Were you aware they involved, actually, Mr.
14 Sheets and C-44?

15 **MR. JOHNSON:** I'm sorry, no I didn't. Did
16 those matters ever go -- they never went to court I don't -
17 -

18 **MS. JONES:** No, Mr. Barque died shortly
19 after that.

20 **MR. JOHNSON:** No, I didn't not represent him
21 in those situations. I believe I was approached but I said
22 I didn't want to -- I don't remember -- I don't know if
23 somebody asked me to represent him or he spoke to me but I
24 know I never represented him. I was never retained in the
25 circumstances.

1 **MS. JONES:** All right.

2 This might be a good place to stop.

3 **THE COMMISSIONER:** Before we stop though,
4 another note, Exhibit 2943 is also Exhibit Number 2930
5 which is Document 114256; so just to keep the record as
6 clean as possible.

7 All right, we'll take our morning break;
8 we'll see you back in 15 minutes.

9 **THE REGISTRAR:** Order. All rise. À
10 l'ordre. Veuillez vous lever.

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

12 --- Upon recessing at 10:57 a.m. /

13 L'audience est suspendue à 10h57

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

15 L'audience est reprise à 11h18

16 **THE REGISTRAR:** Order. All rise. À
17 l'ordre. Veuillez vous lever.

18 This hearing is now resumed. Please be
19 seated. Veuillez vous asseoir.

20 **DONALD JOHNSON, Resumed/Sous le même serment:**

21 **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MS.**

22 **JONES (continued/suite):**

23 **MS. JONES:** There's a couple more questions
24 on this issue before we leave it.

25 If we go back to your letter ---

1 **MR. JOHNSON:** I'm sorry; somebody took the
2 letters away from me.

3 **THE COMMISSIONER:** No, they put them in the
4 most recent book, right?

5 **MS. JONES:** Yeah. It's Exhibit 899.

6 **MR. JOHNSON:** Oh.

7 **MS. JONES:** We're going back to the 1982
8 issue of Mr. Barque.

9 **THE COMMISSIONER:** Eight-nine-nine (899)
10 again is the letter.

11 **MS. JONES:** This is your letter to Mr.
12 McMaster. Correct?

13 **MR. JOHNSON:** Okay.

14 **MS. JONES:** Just one point that I just want
15 to clarify. The second paragraph, when it gives your
16 reasons why there wouldn't be criminal charges warranted.
17 In the second paragraph it states that:

18 "One of the homosexual relationships
19 involved an individual who was 21 years
20 of age, therefore, a charge under the
21 *Criminal Code* would not succeed."

22 Do you see that?

23 **MR. JOHNSON:** Yeah.

24 **MS. JONES:** So that essentially confirms
25 that at that time, 21 was the legal age of consent. So if

1 someone was 21 and older and it was a consensual
2 relationship ---

3 **MR. JOHNSON:** Yes, that's correct.

4 **MS. JONES:** --- that's not an issue.

5 But obviously if someone was under the age
6 of 21, that's under the age of consent?

7 **MR. JOHNSON:** Yeah, I neglected to mention
8 the name of the individual that was over the age of 21,
9 that's correct.

10 **MS. JONES:** Okay but you'll agree with me
11 the reason why you said that in your letter is because when
12 someone is 21 and older and they've consented to the
13 relationship there is no criminal charge?

14 **MR. JOHNSON:** To the best of my knowledge,
15 as the law was at that time, that's correct.

16 **MS. JONES:** So someone under the age of 21,
17 consent's actually not an issue because that ---

18 **MR. JOHNSON:** It could be an issue.
19 Consent, I believe, at that time -- but again, I'm sorry; I
20 don't have the Code with me at this time as to what the law
21 was.

22 **MR. NEVILLE:** Commissioner, I believe
23 there's confusion arising here between indecent assault and
24 gross indecency and the age of 21.

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

1 **MS. JONES:** The point that I'm trying to
2 make here is that, for you, a trigger seemed to be the age
3 of 21, whether you're regarding indecent assault or gross
4 indecent.

5 **MR. JOHNSON:** It appears that way, yes.

6 **MS. JONES:** And you're the Crown attorney so
7 you obviously know that at that point.

8 **MR. JOHNSON:** Well I hope so, that's why I
9 was getting paid.

10 **MS. JONES:** That's right.

11 So if we look back then at the statement --
12 just a moment please -- of C-44 which is Exhibit 897.

13 **MR. JOHNSON:** Eight ninety-seven (897).
14 M'hm.

15 **MS. JONES:** You'll see that the ---

16 **MR. JOHNSON:** I'm sorry, what number is
17 that? I'm sorry.

18 **THE COMMISSIONER:** Eight nine seven (897).

19 **MS. JONES:** Eight nine seven (897). We have
20 it in front, on the screen for you as well, sir.

21 We have here, at the top of the page, the
22 age of this individual is 21 years old and -- I'm not sure
23 I actually gave notice on Exhibit 896.

24 **THE COMMISSIONER:** Well, it's still there.

25 **MS. JONES:** Which is the one before that;

1 just to confirm a date of birth for this person.

2 If we just look at the statement itself,
3 anyway, if he's saying he's 21 years old and that the
4 relationship was about a year, which is something that Mr.
5 Barque actually confirmed as well.

6 MR. JOHNSON: Yeah.

7 MS. JONES: Do you see that, sir?

8 MR. JOHNSON: Yeah.

9 MS. JONES: So it would appear that C-44 may
10 actually have been under the age of 21 when the
11 relationship started.

12 MR. JOHNSON: Well I didn't have this, okay,
13 Ms. Jones. I don't recall seeing this particular
14 transcript, okay. So the information that I may have been
15 provided with may have led me to believe that these
16 individuals were over the age of 21, that this individual
17 was over the age of 21.

18 MS. JONES: Well you do make reference in
19 your letter that one of the homosexual relationships
20 involve someone who is 21 years of age which means that you
21 did, it would appear, have access to either dates of birth
22 or ages at the time.

23 MR. JOHNSON: Yeah.

24 MS. JONES: Correct?

25 MR. JOHNSON: That's correct. Yeah.

1 **MS. JONES:** So I don't know if you had just
2 the information in the investigative report but it would
3 appear that C-44 was very likely under the age of 21 when
4 this relationship happened.

5 **THE COMMISSIONER:** Well, I don't know. If
6 we read both paragraphs together it says:

7 "It appears also that one of the
8 homosexual relationships involved an
9 individual who was 21 years of age,
10 therefore a charge under the *Criminal*
11 *Code* would not proceed."

12 Dealing with the other individual, Mr.
13 Robert Sheets, so from what I can see, would you not read
14 that, that the 21 is referring to C-44 and the other
15 individual who -- with the age -- do you read that that
16 way, I don't know?

17 **MR. JOHNSON:** My -- I say, I apologize.
18 That's one interpretation I would have, yeah. But -- I'm
19 sorry, I lost that question, Ms. Jones, I'm sorry.

20 **MS. JONES:** If C-44 is actually under the
21 age of 21 ---

22 **MR. JOHNSON:** If, yeah, okay.

23 **MS. JONES:** --- then the issue of consent
24 really doesn't become an issue anymore.

25 **MR. JOHNSON:** It could come into play.

1 **MR. LEE:** Mr. Commissioner, just to assist;
2 C-44's birth date is May 13, 1961. May 13, 1961.

3 **THE COMMISSIONER:** That's?

4 **MR. LEE:** C-44.

5 **THE COMMISSIONER:** Yeah.

6 **MS. JONES:** So it would appear then, given
7 that date of birth, that he turns 21 shortly after the
8 investigation starts which would make him under 21 at the
9 time.

10 **MR. JOHNSON:** If your numbers are right;
11 yeah, it does.

12 **MS. JONES:** I suppose the concern I have is
13 that an earlier question was, was consent ever an issue for
14 you? You said you did not consider that.

15 **MR. JOHNSON:** Okay, if I said that, fine. I
16 don't recall saying that but that's fine.

17 **MS. JONES:** Earlier this morning.

18 **MR. JOHNSON:** Okay.

19 **MS. JONES:** Would you agree with me that if
20 in fact the law that you were considering at the time,
21 whatever it is, because you actually don't state it here,
22 that the issue of consent seems to be 21 years of age?

23 **MR. JOHNSON:** Yeah, I believe the section
24 was consenting adults 21 years of age or older. Yeah.

25 **MS. JONES:** Okay. It would appear now that

1 actually C-44 may have been under the age of 21.

2 **MR. JOHNSON:** May have been, but I don't
3 think I was ever told the exact birth date. I think the
4 impression I had was that the individuals were 21. Like I
5 say, I didn't have birth dates. I didn't -- I don't think
6 I had that kind of information.

7 **MS. JONES:** Is that not something that
8 perhaps could have been explored? Because it seems awful
9 close to the age of consent, does it not, if you didn't
10 have that information?

11 **MR. JOHNSON:** It could have been explored
12 but I'd assume the investigators would have explored that
13 and provided that information.

14 **MS. JONES:** Would you agree with me that if
15 you had been informed that C-44 was under the age of 21
16 that might have changed your perspective?

17 **MR. JOHNSON:** It may have changed it. It
18 quite well might have changed it. That's correct.

19 **MS. JONES:** Now I'm going to move on to the
20 next prosecution, which is Jean-Luc Leblanc.

21 **MR. JOHNSON:** Okay.

22 **MS. JONES:** And he first ---

23 **MR. JOHNSON:** Jean-Luc Leblanc?

24 **MS. JONES:** Jean-Luc Leblanc.

25 **MR. JOHNSON:** Okay.

1 **MS. JONES:** And the first document I'll put
2 in front of you, sir, is Exhibit 1562, which is Document
3 114263.

4 **THE COMMISSIONER:** One five five two (1552)?

5 **MS. JONES:** Six two (62).

6 **THE COMMISSIONER:** Six two (62), all right.

7 **MS. JONES:** Yeah.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **MS. JONES:** So that's the Crown brief then
10 on Jean-Luc Leblanc. Now, that is your name on the front
11 and I appreciate that maybe all Crown briefs had your name
12 at the front ---

13 **MR. JOHNSON:** Yeah.

14 **MS. JONES:** --- at that time. But I just
15 want to, in fairness to you, bring you to a transcript
16 which is Volume 224 page 75, and that's the evidence of
17 Officer Payment, Brian Payment from Cornwall police.

18 **THE COMMISSIONER:** Thank you.

19 **MS. JONES:** Page 75.

20 **MR. JOHNSON:** Did I prosecute this case?

21 **THE COMMISSIONER:** No, we're trying to lay
22 out some documents so you can refresh your memory and see
23 if you can -- so on page 75 of the transcript.

24 **MS. JONES:** Yes, the transcript, and this is
25 the evidence given by Mr. Payment here at the Inquiry, and

1 if you look at page 75 about halfway down.

2 MR. JOHNSON: Okay.

3 MS. JONES: And Ms. Simms starts by saying:

4 "So I'm going to ask you to look at the
5 next page of your notes, Mr. Payment,
6 and your note -- I guess you're on the
7 afternoon shift? Right, they start at
8 1:00 p.m."

9 I can say the notes -- as I check the
10 exhibit, this is actually dated January 27th, 1986. It
11 doesn't say that in the transcript but the document bears
12 that date out, and the document is referred down below.
13 It's Bates page 020 of Exhibit 1558, and I can say it's
14 Document 737823 as well.

15 But he discusses the notes in which he
16 states that he noted a meeting with Crown Don Johnson. Mr.
17 Payment said, "Yes."

18 And if we go to the next page, page 76, Ms.
19 Simms:

20 "So you're meeting with Don Johnson
21 about the Leblanc case. Is that
22 right?"

23 Mr. Payment:

24 "Yes."

25 Ms. Simms:

1 "Okay. And it notes that 'Mr. Johnson
2 read the statements.' Would those be
3 the four statements we were
4 discussing?"

5 "Yes."

6 Ms. Simms:

7 "And what was your discussion with Mr.
8 Johnson about this case?"

9 Mr. Payment:

10 "Having shown him the statements, then
11 it was a discussion of what appropriate
12 charges we would lay."

13 Ms. Simms:

14 "Okay. And it appears that you agree -
15 - you and Mr. Johnson agree to a charge
16 of gross indecency. Is that right?"

17 Mr. Payment:

18 "Yes."

19 Ms. Simms:

20 "Do you have a discussion with Mr.
21 Johnson about the mention of anal sex
22 in Dawn Raymond's statement to those
23 allegations."

24 Mr. Payment:

25 "Not that I can recall."

1 Ms. Simms:
2 "Okay, but do you recall specifically
3 whether he would have read Dawn
4 Raymond's statement?"

5 Mr. Payment:

6 "He did read it."

7 And then Mr. Payment says further:

8 "He read the statements and then we
9 decided -- or he indicated to me that
10 charges of gross indecency would be
11 appropriate."

12 So does that refresh your memory at all ---

13 **MR. JOHNSON:** Not at all, Ms. Jones.

14 **MS. JONES:** --- Mr. Johnson?

15 Is it possible that you did have these
16 meetings as described by Mr. Payment?

17 **MR. JOHNSON:** I don't recall that meeting.
18 I can advise you of that. No.

19 **MS. JONES:** Now, in this particular Crown
20 brief, there are four statements here, given by various
21 people, and I'm wondering if you are able to explain or not
22 whether you can describe your decision-making abilities
23 back then as to why there was only one count of gross
24 indecency for each of the victims.

25 **THE COMMISSIONER:** Well, first of all, hold

1 on. Hold on.

2 Do you recall any of this?

3 **MR. JOHNSON:** I don't, no, Mr. Commissioner;
4 I'm sorry.

5 **THE COMMISSIONER:** So have you had a chance
6 -- have you reviewed any of these documents, sir?

7 **MR. JOHNSON:** This?

8 **THE COMMISSIONER:** Yes.

9 **MR. JOHNSON:** No.

10 **MS. JONES:** You haven't read this Crown
11 brief before coming here today?

12 **MR. JOHNSON:** I was given a binder. I don't
13 recall seeing this. I may have seen it.

14 **THE COMMISSIONER:** Well, then I think you
15 might -- what I'd like you to do is -- we'll take a break,
16 I guess. Go through it. See if it refreshes your memory.

17 **MR. JOHNSON:** Pardon?

18 **THE COMMISSIONER:** See if it refreshes your
19 memory.

20 **MR. JOHNSON:** Certainly.

21 **THE COMMISSIONER:** And if it does, fine; and
22 if it doesn't, then we'll go on to something else. So
23 let's take 10 minutes and then we'll come back.

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

1 This hearing will resume at 11:45 a.m.

2 --- Upon recessing at 11:33 a.m./

3 L'audience est suspendue à 11h33

4 --- Upon resuming at 11:46 a.m./

5 L'audience est reprise à 11h46

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

8 This hearing is now resumed. Please be
9 seated. Veuillez vous asseoir.

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

11 **THE COMMISSIONER:** All right, Mr. Johnson,
12 have you had an opportunity to review ---

13 **MR. JOHNSON:** I have, Mr. Commissioner.
14 Thank you.

15 **THE COMMISSIONER:** Okay. Does that refresh
16 -- I take it you were provided with that some time ago
17 though.

18 **MR. JOHNSON:** I must have been, yeah.

19 **THE COMMISSIONER:** Okay.

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

21 **MS. JONES (cont'd/suite):**

22 **MS. JONES:** Does that refresh your memory in
23 any way that you had dealings with this case?

24 **MR. JOHNSON:** No, it doesn't, Ms. Jones; not
25 in any respect. I mean I probably read over 100,000 Crown

1 briefs in my life, and this doesn't really refresh my
2 memory to any extent. But if it's sent to me, I must have
3 got it. If Constable Payment said I looked at it, I did.
4 That's all I can tell you.

5 **MS. JONES:** Okay.

6 So you're not disagreeing with Officer
7 Payment's description of the meeting; that he'd met with
8 you and you had decided on the charges?

9 **MR. JOHNSON:** If he says he met with me, he
10 probably did meet with me. I've known Mr. Constable
11 Payment, as he then was, for a few years and if he said we
12 had a meeting, we had a meeting; the best I can tell you.

13 **MS. JONES:** All right.

14 Now, when you read over the four statements
15 of the people that we have there, which is Jody Burgess,
16 Scott Burgess, Jason Tyo and Dawn Raymond ---

17 **MR. JOHNSON:** Yes.

18 **MS. JONES:** --- it would appear from Officer
19 Paiement's notes and testimony that he gave in the Inquiry
20 that it was your decision that one count of gross indecency
21 for each of the three victims should be laid.

22 **MR. JOHNSON:** Based on the evidence that he
23 gave me in the Crown brief, I felt -- I had obviously
24 advised him that the strongest evidence he had was gross
25 indecency.

1 **MS. JONES:** Would you agree with me that --
2 now refreshing your memory and reading those statements
3 over, that these -- there were continual acts that had
4 happened over a longer sort of a period of time? It wasn't
5 a one-off situation.

6 **MR. JOHNSON:** It doesn't appear like that in
7 the Crown brief. That's correct.

8 **MS. JONES:** That it actually appears that it
9 happened over an extended period of time?

10 **MR. JOHNSON:** It appears that that's the
11 information they had, yeah.

12 **MS. JONES:** And there were multiple counts?

13 **MR. JOHNSON:** According to the information,
14 it says between the 30th of June, 1981 and the 1st of
15 November, '85.

16 **MS. JONES:** So it's ---

17 **MR. JOHNSON:** That's the way they framed the
18 informations.

19 **MS. JONES:** Okay, but as I say, so it's a
20 period of four years, but there's multiple counts during
21 those four years?

22 **MR. JOHNSON:** Yeah.

23 **MS. JONES:** And would you also agree with me
24 that on at least -- in at least one of these statements,
25 there's a reference made to anal penetration?

1 **MR. JOHNSON:** Yeah, by Dawn Raymond.

2 **MS. JONES:** Right.

3 **MR. JOHNSON:** It says she received some
4 information from a -- from an individual ---

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

6 **MR. JOHNSON:** Yeah.

7 **THE COMMISSIONER:** From one of the victims.

8 **MR. JOHNSON:** Yeah.

9 **THE COMMISSIONER:** I don't know ---

10 **MS. JONES:** Yeah. So would you agree with
11 me that the seriousness of the offences is consistent with
12 all four of the statements, that they seem to be outlining
13 quite a serious situation here?

14 **MR. JOHNSON:** The strength seems to be that
15 there's allegations of oral sex, yeah.

16 **THE COMMISSIONER:** I guess -- I guess maybe
17 what -- just to cut to the chase is, they have dates
18 between the 30th of June in '81 and '85, but then they say,
19 "Did commit an act of gross indecency" as opposed to acts
20 of gross indecency.

21 **MR. JOHNSON:** I didn't draft that
22 information so I don't know -- I have no idea. That's the
23 way they drafted the information, I assume, that he's
24 committed an act, yeah.

25 **MS. JONES:** Okay, but it would appear that

1 that's consistent with what Mr. Payment said that there
2 would be one count of gross indecency ---

3 **MR. JOHNSON:** Covering that time period,
4 yeah.

5 **MS. JONES:** --- which is consistent with
6 what the information says.

7 **MR. JOHNSON:** Yeah, covering that time
8 period.

9 **MS. JONES:** Okay.

10 But as Mr. Commissioner said, an act ---

11 **MR. JOHNSON:** Yeah.

12 **MS. JONES:** --- versus multiple acts.

13 **MR. JOHNSON:** Yeah.

14 **MS. JONES:** So would you ---

15 **MR. JOHNSON:** That's the way -- that's the
16 way they drafted the information. That's how the officer -
17 - whoever swore the information out -- typed it out; put a
18 word in "an act." That's correct, yeah.

19 **MS. JONES:** Would you agree, though, a Crown
20 Attorney can review that and have that amended in court
21 very easily ---

22 **MR. JOHNSON:** Yeah.

23 **MS. JONES:** --- if it's not reflective of
24 what the evidence is; correct?

25 **MR. JOHNSON:** The Crown can do practically

1 anything in a -- with proper procedure, yeah.

2 MS. JONES: Okay.

3 And you'd agree with me that certain sexual
4 acts are more serious in nature and consequence than
5 others; for example, anal penetration?

6 MR. JOHNSON: Yeah, if the -- if it could be
7 shown there was anal penetration, it would probably be more
8 serious than gross indecency, yeah.

9 MS. JONES: Okay.

10 But the information doesn't really reflect
11 that; does it?

12 MR. JOHNSON: There's no -- there's no
13 charge of anal intercourse; that's correct.

14 MS. JONES: Correct.

15 Now, the other issue I'd like to draw your
16 attention to, as well, is still with the Crown brief which
17 is Exhibit 1562 and it is the 10th page; Bates page 1673.
18 And this is the undertaking of the release that would have
19 been signed by Mr. Leblanc when he was released by J.-P.
20 Jodoin which is signed at the bottom.

21 The clause that I wish to draw your
22 attention to is actually clause d) ---

23 MR. JOHNSON: Yeah.

24 MS. JONES: --- where it states that someone
25 on an undertaking or any sort of a release abstain from

1 communication with -- which is a very common term -- and
2 then it's blank so it appears that on the undertaking, Mr.
3 Leblanc, he was not restricted in any way with his
4 activities with regards to contact the alleged victims or
5 any child under the age of consent. Can you see that?

6 **MR. JOHNSON:** Yeah.

7 **MS. JONES:** Okay.

8 Is there a reason why the -- as a Crown
9 Attorney, there would not be an insistence that such a term
10 be put in such a nature of a case as this?

11 **MR. JOHNSON:** I wasn't in court. I don't --
12 I don't know if I was in court the day when this release
13 was done or whether it was -- what the situation was. I
14 can tell you now that those terms are put in automatically.
15 They're included in the release documents. Why it wasn't
16 put in on this one, I don't know. I can't give an
17 explanation for that.

18 **MS. JONES:** Well, as the -- as the Crown
19 Attorney of the day, at that time, are you saying it was
20 not a standard term in offences such as these where you
21 have a person who is committing sexual assaults allegedly
22 on young children that there would not at least be a term
23 that he not contact the alleged victims?

24 **MR. JOHNSON:** That was not the practice in
25 those days. No, we would have included that term, yeah.

1 It would seem to be an automatic thing to include.

2 MS. JONES: Sir ---

3 MR. JOHNSON: If it wasn't included in this
4 one, I don't know why.

5 MS. JONES: So I'm sorry, I'm not clear on
6 what your evidence is.

7 MR. JOHNSON: I'm saying that ---

8 MS. JONES: Was it an automatic term?

9 MS. JONES: --- yeah, if it -- if there was
10 concern with respect and there was a request that those
11 terms be included, we would include it, but it wasn't
12 included in this -- in this particular document and I don't
13 know why.

14 MS. JONES: Okay.

15 As the Crown Attorney, though, was it a
16 policy of your office to include a term, first of all that
17 ---

18 MR. JOHNSON: Oh, yes.

19 MS. JONES: --- someone remain away from
20 victims?

21 MR. JOHNSON: Yeah. Oh, definitely, yeah.

22 MS. JONES: And was it the policy that if
23 someone is accused of sexual assault on children that a
24 term be included that they remain away from children under
25 a certain age?

1 **MR. JOHNSON:** Yeah, if there was concern
2 with respect to that. I mean, sometimes you learn the
3 problems with respect of family who have children, the
4 accused is there and you get all kinds of input from them
5 that say, look 'it, you know, he's got children or she's
6 got children and we -- there'd have to be some kind of
7 contact so that would be -- that would be part of the
8 decision, yeah.

9 **MS. JONES:** And reading over the Crown
10 brief, would you agree with me it would be completely
11 appropriate for Mr. Leblanc to have not had contact with
12 the victims?

13 **MR. JOHNSON:** It certainly should have been
14 an included term; I agree with that.

15 **MS. JONES:** And would you agree with me that
16 it should have also included that he not have contact with
17 any children under the age of, say, 18?

18 **MR. JOHNSON:** If there was some concern of
19 it, yeah, that would have been -- should have been
20 included, yeah.

21 **MS. JONES:** Well, having read the Crown
22 brief, would you agree that would be an ---

23 **MR. JOHNSON:** Yeah.

24 **MS. JONES:** --- appropriate term?

25 **MR. JOHNSON:** Yeah, I won't disagree with

1 you.

2 **MS. JONES:** You state that, at the time, you
3 may or may not have been the Crown Attorney in court on
4 that particular issue. I don't -- I don't have any
5 information to show that you were or you were not, but you
6 will agree with me that at some point this undertaking
7 would have been before a Crown Attorney from your office --
8 -

9 **MR. JOHNSON:** It would have been ---

10 **MS. JONES:** --- at some point?

11 **MR. JOHNSON:** --- yeah. Yeah.

12 **MS. JONES:** Okay.

13 Was it not the policy -- especially given
14 the serious nature of this type of offence -- for Crowns to
15 check over things like release terms on people to catch
16 errors like this?

17 **MR. JOHNSON:** I don't think I know if I can
18 answer that question or not. I -- if you get the
19 opportunity when you're running through about 80-90 cases
20 at a time and you figure you can jump in and take a look at
21 the information, I would certainly think that, yeah, you
22 could probably check it out and say, wait a minute, I want
23 to amend this and put in these particular terms. Yeah, you
24 can do that.

25 **MS. JONES:** I understand you could do that,

1 sir ---

2 **MR. JOHNSON:** Yeah.

3 **MS. JONES:** --- my question, if you could
4 please listen carefully, was it any sort of a policy that
5 if this information or undertaking was before a court, that
6 the Crown would look at the undertaking to ensure it had
7 the appropriate release terms? Was that a policy of your
8 office at all?

9 **MR. JOHNSON:** At that time, I don't believe
10 that there was a policy to that effect. I think it
11 depended upon the individual who was in court.

12 **MS. JONES:** Was there any sort of policy
13 formulated by yourself, as the Crown Attorney of Cornwall
14 at that time period that you were the Crown Attorney, with
15 regards to historical sexual assaults specifically or
16 sexual offences against children?

17 **MR. JOHNSON:** A policy, I'm sorry, of?

18 **MS. JONES:** In your time as -- in tenure as
19 the Crown Attorney for Cornwall ---

20 **MR. JOHNSON:** Yeah.

21 **MS. JONES:** --- was there any sort of policy
22 in place with regards to release terms on people charged
23 with historical sexual assaults or sexual assaults against
24 children?

25 **MR. JOHNSON:** The policy basically would be

1 that the -- if the person was to be released on conditions,
2 we would request the -- whatever conditions we deemed to be
3 appropriate be placed in there, yeah.

4 **MS. JONES:** So in a case like this where
5 clearly the terms were not put in, was there any sort of a
6 check and a balance system to be sure an error such as this
7 had been caught?

8 **MR. JOHNSON:** Obviously, there wasn't.

9 **MS. JONES:** I know it wasn't done in this
10 time, but was there a policy in place to ensure that that
11 didn't happen of any sort or it was just chance if a Crown
12 Attorney happened to look at it?

13 **MR. JOHNSON:** See at that time, there was
14 myself and probably two assistant Crown Attorneys. We
15 relied an awful lot with regards to input from the police
16 department. Had they felt certain terms had been -- should
17 be included, we would suggest them to the Justice of the
18 Peace to put those terms into the release. We didn't have
19 a Victim Witness Coordinator. We didn't have the
20 facilities that are now available to the Crown's office.
21 What we were working with was a high wire with no net and
22 we would go in there and we'd walk in there and the
23 officer, like, they had these little sheets -- I believe
24 they had sheets -- suggested terms of release and they
25 would be the ones that would suggest the terms of release.

1 **MS. JONES:** But sir, I understand how -- how
2 it works when people are released; that police are the
3 first people to come up with terms ---

4 **MR. JOHNSON:** Yeah.

5 **MS. JONES:** --- but surely you're not
6 suggesting that the Crown Attorneys don't have input into
7 terms of release.

8 **MR. JOHNSON:** No, I'm not suggesting that in
9 the slightest, but I'm just suggesting to you is that we
10 relied an awful lot upon terms suggested by the police
11 officers so if we didn't -- if it didn't go in there, you
12 know, I mean, the buck stopped, obviously, within the
13 Crown's office, at least anybody wanted it to stop there so
14 we didn't put -- we did have a policy, as far as I
15 remember, that if the officer suggested certain terms with
16 regards to contact, non-contact, abstention from alcohol
17 and stuff like that, abstention -- abstention from drugs,
18 yeah, we would ask for those terms.

19 **MS. JONES:** It would also appear too, there
20 didn't seem to be any sort of policy that cases such as
21 these, i.e., offences against children, were given any sort
22 of special priority.

23 **MR. JOHNSON:** Obviously not, no.

24 **MS. JONES:** Okay.

25 **MR. JOHNSON:** Again, all I can tell you is

1 how we were working at that time. We didn't have what they
2 have now.

3 **MS. JONES:** If I could please go to Exhibit
4 1565 which is Document 114261.

5 **THE COMMISSIONER:** That should be in your
6 second -- 1565 should be in another binder, that should be
7 right beside you.

8 **MR. JOHNSON:** One five six five (1565),
9 okay.

10 Yeah.

11 **MS. JONES:** Now, this letter, dated May 13,
12 1986 is from Tilton Donihee and he's requesting disclosure
13 for Jean-Luc Leblanc. And he indicated further that he
14 would recommend that his client plead guilty to only one of
15 the charges if the other two charges were withdrawn. And
16 he also mentioned that his client had an appointment with
17 Dr. Bradford up at the Royal Ottawa Hospital to discuss
18 treatment programs; correct?

19 **MR. JOHNSON:** Yeah.

20 **MS. JONES:** I just want to draw your
21 attention to the second paragraph where he states:

22 "I am prepared to recommend to my
23 client a guilty plea under one count in
24 relation to Jody Burgess if the other
25 two charges were withdrawn. I feel

1 that the sentence Mr. Leblanc would
2 receive would be the same whether there
3 would be one, two or three counts in
4 light of the fact that the alleged
5 incidents took place during the same
6 timeframe."

7 Was that the general sort of understanding
8 when you were Crown attorney and you're reading something
9 like that. Was that the general understanding that if
10 someone came with a client with one, two or three charges
11 of this nature that the sentencing would be pretty well the
12 same?

13 **MR. JOHNSON:** Yeah, he's a defence lawyer,
14 he has the privilege to -- the right to defend his clients
15 as best he can. And they make those offers all the time.
16 They were making them all the time. I did it myself.

17 **MS. JONES:** But is that consistent with how
18 the sentencing was proceeding when you were Crown attorney?

19 **MR. JOHNSON:** Each case depended upon its
20 own facts and what the strength of the case was, that's how
21 we decided.

22 **MS. JONES:** Now, if we could please go to
23 Document 114262. It's a new document.

24 **THE COMMISSIONER:** Thank you.
25 Exhibit 2943 is a letter ---

1 **MR. JOHNSON:** Thank you.

2 **THE COMMISSIONER:** --- to Mr. Donihee, dated
3 August 28th, 1986 from Mr. Johnson, Q.C.

4 **MR. JOHNSON:** Yeah.

5 **MS. JONES:** It would appear that you're
6 responding to the letter of May 13th, as it states in your
7 first sentence.

8 "Please be advised that I have occasion
9 to peruse the Crown brief, a copy of
10 which I enclosed."

11 And then you stated:

12 "I would suggest that the accused enter
13 a guilty plea to two counts of gross
14 indecent involving Jody Burgess and
15 Jason Tyo. I feel these are two
16 separate and distinct incidences and
17 should be treated as such."

18 **MR. JOHNSON:** Those -- I'm sorry, those
19 names don't have any numbers to them?

20 **THE COMMISSIONER:** No.

21 **MS. JONES:** No.

22 **MR. JOHNSON:** Okay.

23 **MS. JONES:** No, these names don't.

24 **MR. JOHNSON:** Okay.

25 **MS. JONES:** So it appeared that you had

1 decided that the charge involving Scott Burgess would not
2 be proceeding.

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

4 **MS. JONES:** Do you recall why you would have
5 chosen that particular person?

6 **MR. JOHNSON:** It may have been done as a
7 result of some consultation with the investigating officer
8 as to the strength of Mr. -- is it Scott Burgess?

9 **MS. JONES:** Burgess, yeah.

10 **MR. JOHNSON:** Yeah, Scott Burgess -- as to
11 the strength with regards to how he would hold up under
12 testimony and particularly direct examination and cross-
13 examination. And that probably would have been some input
14 by the police officer in that case.

15 **MS. JONES:** All right.

16 The next paragraph:

17 "With respect to sentence, as indicated
18 in my conversation, it is the Crown's
19 position that the accused was not in a
20 position of trust with respect to these
21 victims and that the victims willingly
22 cooperated with the act."

23 I just want to deal with the first half of
24 that sentence. I sound a bit like a broken record, I'm
25 sure to you but could you explain why you felt Mr. Leblanc

1 was not in a position of trust with regards to these
2 children?

3 **MR. JOHNSON:** Well he wasn't in a position,
4 as I understood the position of trust, has to have some
5 type of moving authority over the individual, et cetera.
6 And that I understand it these individuals who are just
7 friends, like they knew him through a friendship or
8 something like that. That's what I read in the Crown brief
9 when I just read it now.

10 **MS. JONES:** So in your explanation then,
11 just because it's an adult with a child; that's not
12 sufficient to evoke a concept of position of trust?

13 **MR. JOHNSON:** That was my decision, Ms.
14 Jones, and I made that decision in those circumstances that
15 I felt that I couldn't prove a position of trust.

16 **MS. JONES:** Do you now feel ---

17 **MR. JOHNSON:** And obviously that's when I
18 wrote the letter.

19 **MS. JONES:** Do you now feel that perhaps an
20 adult who's sexually abusing a young child is in a position
21 of trust?

22 **MR. JOHNSON:** Well given the right
23 ingredients and the right circumstances now, yes. Having
24 gone through numerous trials involving adults and young
25 children and the way the case laws evolve, yeah, I would

1 think that there's a -- that the law is that there can be
2 indications where an adult with a young child can be in a
3 position of trust, yes.

4 **MS. JONES:** And this clearly was one of the
5 two factors that you gave as a reason for -- part of your
6 sentencing submissions, what you were going to be
7 proposing, you're telling this to the defence lawyer. Do
8 you see that?

9 **MR. JOHNSON:** Yes, I do.

10 **MS. JONES:** So it's fair to say at that
11 point in time, whether or not Mr. Leblanc was in a position
12 of trust was an important factor to you because it's the
13 first one that you actually list there?

14 **MR. JOHNSON:** Yeah.

15 **MS. JONES:** Okay.

16 The second reason you give: "That the
17 victims willingly cooperated with the act."

18 **MR. JOHNSON:** Yeah.

19 **MS. JONES:** I'm wondering if you could
20 please explain what you meant by that?

21 **MR. JOHNSON:** Well, when I read the Crown
22 brief, and again, we never had the opportunity to -- in
23 those -- when I was in the -- at the Crown's office in
24 those days, to actually have a victim/witness coordinator
25 who would sit down and talk with the complainants, et

1 cetera or the alleged victims to give that.

2 I relied heavily, very heavily upon what was
3 contained in the Crown brief and from what I read and I
4 interpreted in the Crown brief, it appeared to me that
5 there was a cooperative aspect to these acts, even though
6 the individuals met the criteria for the prosecution.

7 **MS. JONES:** But these victims are children,
8 as young as 12 years old.

9 **MR. JOHNSON:** Yeah. Well I can tell you I
10 did a prosecution many years ago in Toronto where the same
11 situation arose and the judge acquitted an individual based
12 upon the fact that there was cooperation. And that was
13 before I realized that.

14 **MS. JONES:** Well, sir, that clearly is not
15 relevant to what we're talking about right now.

16 **MR. JOHNSON:** I realize that.

17 **MS. JONES:** But ---

18 **MR. JOHNSON:** But I took the position,
19 obviously, based upon what I read in the Crown brief and
20 the circumstances surrounding it, that there was some
21 aspect of cooperation which, if they went to a jury, the
22 jury might consider that as an indication; depending on the
23 instructions received from the judge.

24 **MS. JONES:** The phrase that you're using
25 with regards to cooperation, are you paralleling that to

1 the issue of consent?

2 **MR. JOHNSON:** Well I'm equating that to the
3 fact that there didn't appear to be any violence involved
4 and that the individuals were there, they knew what was
5 going to be happening, it appears from the Crown brief, et
6 cetera.

7 That's basically what I was relying upon, I
8 guess when I used the word "cooperation".

9 **MS. JONES:** And there's no violence when a
10 grown man forces children to perform sexual acts?

11 **MR. JOHNSON:** Again, it depends on the
12 circumstances, Ms. Jones.

13 **MS. JONES:** On the circumstances and the
14 statements provided to you, those are the circumstances
15 we're talking about, sir. We're not talking about
16 generalities.

17 **MR. JOHNSON:** Okay. Well ---

18 **MS. JONES:** Do you want to reread the
19 statements to confirm?

20 **MR. JOHNSON:** As I understand it, there was
21 no violence involved, was it?

22 **MS. JONES:** I suppose it's your definition
23 of violence but by what you're saying then you do not feel
24 that performing or forcing children to perform sexual act
25 on a grown man then is an act of violence, according to

1 your definition?

2 **MR. JOHNSON:** Well, as the law has now
3 developed, Ms. Jones, and if I was the Crown attorney and
4 the law was in the situation as it is now, I definitely
5 would agree with you.

6 That was the situation then.

7 **MS. JONES:** But at the time when you were
8 the Crown attorney in Cornwall and you had Crown briefs
9 such as this ---

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

11 **MS. JONES:** --- in your opinion then, that
12 would not be considered an act of violence?

13 **MR. JOHNSON:** Obviously I made that
14 decision, I felt that it wasn't.

15 **MS. JONES:** Pardon me?

16 **MR. JOHNSON:** I made the decision; I felt
17 that it wasn't a crime of violence at that time.

18 **MS. JONES:** If we go to the Crown brief
19 which is Exhibit 1562.

20 **MR. JOHNSON:** One five six two (1562).

21 **THE COMMISSIONER:** Madam Clerk?

22 **MS. JONES:** And we're specifically looking -

23 --

24 **THE COMMISSIONER:** Hang on. Hold on, hold
25 on.

1 You have that book, sir?

2 **MR. JOHNSON:** I so, sir.

3 **THE COMMISSIONER:** Do I have that book?

4 Yes, I do. Okay.

5 **MS. JONES:** Madam Clerk, I'm looking at
6 Bates page 1665.

7 **THE COMMISSIONER:** And that would be page 2
8 on that ---

9 **MS. JONES:** Page 2.

10 **THE COMMISSIONER:** --- document, sir, which
11 is case history. Do you have it?

12 **MR. JOHNSON:** Thank you.

13 **MS. JONES:** Correct.

14 Now, on this document here there's some
15 handwriting. Can you see that?

16 **MR. JOHNSON:** I see the DOB ---

17 **MS. JONES:** It says, "Jody 17, Scott 14, Tyo
18 13." Do you see that?

19 **MR. JOHNSON:** It's not my writing.

20 **MS. JONES:** That was my question. Okay.

21 Do you by any chance know whose writing that
22 is? Do you recognize that at all?

23 **MR. JOHNSON:** It looks familiar to me. I
24 can tell you that.

25 **MS. JONES:** Okay. The reason I ask is

1 because if those are the ages that were being relied on,
2 they're actually incorrect. But if you weren't the one who
3 ---

4 **MR. JOHNSON:** I'm sorry?

5 **MS. JONES:** The ages as listed there are
6 actually incorrect.

7 **MR. JOHNSON:** They are correct?

8 **MS. JONES:** They are not correct. But if
9 you didn't write them then I'll just leave that.

10 **MR. JOHNSON:** All right. No, not mine.

11 **MS. JONES:** The end result was that
12 Mr. Leblanc received three years of probation for these
13 offences and no incarceration, and it would appear as well
14 that the Crown did not appeal the sentence. So it was
15 felt, I would assume from that, that you agreed that that
16 was an appropriate sentence.

17 **MR. JOHNSON:** Yes, I did; obviously, yeah.

18 **MS. JONES:** Okay. Would you agree that the
19 amount of offences that actually were borne out in the
20 statements by the victims that possibly incarceration would
21 be appropriate?

22 **MR. JOHNSON:** It certainly was on the table.

23 **MS. JONES:** You know that for certain?

24 **MR. JOHNSON:** I would think so, yeah.

25 **MS. JONES:** How do you ---

1 **MR. JOHNSON:** I think that in this -- is
2 this the case where there was a report from a Dr. Bradford?

3 **MS. JONES:** Yes.

4 **MR. JOHNSON:** Yeah, okay. So I think a copy
5 was provided to me, I believe -- Dr. Bradford's report.

6 **MS. JONES:** Yes, we have Dr. Bradford's
7 report.

8 **MR. JOHNSON:** Okay. And as a result of
9 reading that, that had a very strong influence in the
10 position that I did take eventually with regards to
11 resolution.

12 **MS. JONES:** All right. We can go to that
13 report if you like. It's Document 114259.

14 **THE COMMISSIONER:** Have we not filed that
15 already? Has that not been made an exhibit yet?

16 **MS. JONES:** I don't have that marked as a
17 previous exhibit, no, sir.

18 **THE COMMISSIONER:** Okay.

19 Thank you. Exhibit Number 2944 is a report
20 dated October 30th, 1996 to Mr. Donihee re Jean-Luc Leblanc
21 and from Dr. Bradford.

22 **--- EXHIBIT NO./PIÈCE NO. P-2944:**

23 (114259) Letter from John Bradford to Fulton
24 [sic] Donihee re: Jean-Luc Leblanc dated 30
25 Oct

1 **MS. JONES:** So could you please point us to
2 the portion of this report that supported your contention
3 that probation was actually an appropriate disposition,
4 please?

5 **MR. JOHNSON:** Conclusions and
6 Recommendations:

7 "Mr. Jean-Luc Leblanc is a 42 year-old
8 male who clearly has egocentonic
9 homosexuality ..."

10 **MS. JONES:** I'm sorry, where are you reading
11 from, sir?

12 **MR. JOHNSON:** The last page, number 4.

13 **MS. JONES:** And where? Oh, at -- under
14 Conclusions and Recommendations.

15 **MR. JOHNSON:** Yeah.

16 **MS. JONES:** I'm sorry; okay.

17 **MR. JOHNSON:** And he goes through it, it
18 says:

19 "Against this background, I would
20 humbly recommend at the discretion of
21 the Court that he is fit to proceed
22 with trial and assist in his own
23 defence according to the usual
24 criteria. There is no evidence that he
25 comes within Section 16 of the *Criminal*

1 *Code of Canada* with regard to criminal
2 responsibility. I believe a
3 noncustodial disposition with a
4 probation order, possibly with
5 conditions of psychiatric treatment to
6 allow more formal monitoring, is likely
7 the appropriate disposition in this
8 case."

9 **MS. JONES:** So by what you're saying then,
10 it sounds like you did the sentencing, and you actually
11 have a recollection of that?

12 **MR. JOHNSON:** No. That's what the -- that's
13 what's contained in that letter. You asked me about -- you
14 asked me before why we didn't appeal.

15 **MS. JONES:** Okay. No, but now I'm asking
16 you though -- just a moment ago you said you did recall
17 that Dr. Bradford's report was helpful to you when you did
18 the sentencing.

19 **MR. JOHNSON:** No, I didn't do the
20 sentencing. I didn't do -- didn't do Jean-Luc Leblanc. I
21 said it was helpful in assisting me -- whoever did this
22 sentencing, whoever did it -- with regards to what the
23 Crown's recommendation would be.

24 **MS. JONES:** Okay. And just to get it clear
25 though, are you saying that you do recall Dr. Bradford's

1 report in 1986, around that time period, with regards to
2 the sentencing of Mr. Leblanc?

3 **MR. JOHNSON:** No, I don't recall actually a
4 report at this time, but having looked at it, I'm basing
5 then my -- basing on the -- based upon the contents of the
6 report that I am -- I took the position or felt that in the
7 circumstances that his recommendations would be appropriate
8 for a sentencing hearing.

9 **MS. JONES:** Okay.

10 If we could go to Document 114258, please.
11 I'm sorry, I'm just looking at the time.

12 **THE COMMISSIONER:** Yes.

13 **MS. JONES:** I still have a few questions in
14 this area.

15 **THE COMMISSIONER:** Oh, we're supposed to
16 break at 12:15 for ---

17 **MS. JONES:** Yeah.

18 **THE COMMISSIONER:** All right. So how much
19 time do you think you're going to require to finish?

20 **MS. JONES:** I'd say possibly two hours.

21 **THE COMMISSIONER:** We'll talk about that.
22 All right, so we have to take a lunch break now.

23 **MR. JOHNSON:** Can I just ask a question,
24 Mr. Commissioner?

25 **THE COMMISSIONER:** Yes.

1 **MR. JOHNSON:** Does that mean I will not -- I
2 will be coming back tomorrow?

3 **THE COMMISSIONER:** I don't know yet.

4 **MR. JOHNSON:** Because I have to make -- I
5 have some matters in court tomorrow that ---

6 **THE COMMISSIONER:** Okay. Well, you speak to
7 Mr. Scharbach. He'll give you -- and can we get some idea
8 of cross-examination times? I'm prepared to sit late
9 tonight, sir, to accommodate -- no?

10 **MR. JOHNSON:** I have four people -- I have
11 four appointments scheduled for this evening from 5:00 on.

12 **THE COMMISSIONER:** All right, that's fine.
13 If that inconveniences you then we'll see what we can do.
14 So speak to Mr. Scharbach about that matter only, of
15 course, and let's see where we go. So can we -- we'll come
16 back at 2:00. Is that the idea? Thank you.

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

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

20 --- Upon recessing at 12:15 p.m./

21 L'audience est suspendue à 12h15

22 --- Upon resuming at 2:03 p.m./

23 L'audience est reprise à 14h03

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

1 This hearing is now resumed. Please be
2 seated. Veuillez vous asseoir.

3 **THE COMMISSIONER:** Thank you.

4 Good afternoon all. Good afternoon sir.

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

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

7 **MS. JONES (cont'd/suite):**

8 **MS. JONES:** I wonder if we could please go
9 to Document 114258.

10 **THE COMMISSIONER:** Okay.

11 **MS. JONES:** It's a Crown brief cover.

12 **THE COMMISSIONER:** Crown brief cover,
13 Exhibit 2945. It's Crown brief cover of Jean-Luc Leblanc.

14 **MS. JONES:** That's right.

15 **--- EXHIBIT NO./PIÈCE NO. P-2945:**

16 (114258) Crown Brief Cover of Jean-Luc
17 Leblanc dated 1986

18 **MS. JONES:** Now, you can see from the
19 typewritten version anyway on the right-hand side,
20 Mr. Johnson, you'll see it says "Jean-Luc Leblanc, 1986".

21 **MR. JOHNSON:** Yeah.

22 **MS. JONES:** Okay. I understand this is the
23 Crown brief -- a photocopy of the Crown brief of Jean-Luc
24 Leblanc's file. And you can see that obviously Crowns or a
25 Crown has written on the back of there, and it has the

1 sentence portion there handwritten. I don't know if that's
2 your handwriting or not.

3 **MR. JOHNSON:** It's not mine.

4 **MS. JONES:** Okay. But this would appear to
5 be the sentence that was given. It is consistent with the
6 information that we have as well. And it states:

7 "Three years probation. Engage in
8 counselling programme as recommended
9 and ---

10 **THE COMMISSIONER:** Arranged.

11 **MS. JONES:** --- arranged."

12 Presumably that would be the Dr. Bradford's

13 ---

14 **MR. JOHNSON:** I assume it would have been.
15 That's correct.

16 **MS. JONES:** --- situation.

17 There doesn't appear to be any provision
18 here in the probation for a non-contact provision.

19 **MR. JOHNSON:** No.

20 **MS. JONES:** And I'm wondering would that not
21 have been a typical provision that would be put into a case
22 such as Mr. Leblanc's?

23 **MR. JOHNSON:** I assume that the sentence was
24 endorsed by the judge.

25 **MS. JONES:** M'hm.

1 **MR. JOHNSON:** All I know is that whoever the
2 Crown attorney was -- and I think I know who the Crown may
3 have been on this case.

4 I believe it may have been Alan Ain who is
5 now dead. I don't know if Alan asked for it or not.

6 **MS. JONES:** Okay.

7 I'm looking to you as the Crown attorney of
8 the time. Was there any sort of a policy that you had
9 dictated concerning offenses of this nature, that such a
10 provision should be put into a probation order?

11 **MR. JOHNSON:** Yeah, I assume that there
12 would have been, there would have been a policy in effect
13 at that time that there'd be a no contact type of clause,
14 yeah, and counseling with regards to contact with children,
15 yeah.

16 **MS. JONES:** Okay. You agree the undertaking
17 or the release term did not contain that provision?

18 **MR. JOHNSON:** It's correct. I think we
19 reviewed that, yeah.

20 **MS. JONES:** And that was something that, at
21 one stage, you probably would have been involved in, as you
22 stated that you read the Crown brief at some point?

23 **MR. JOHNSON:** Yeah.

24 **MS. JONES:** This would be consistent,
25 actually, with the release terms. And I'm just wondering,

1 was there any sort of check and balance system within the
2 Crown's office that would have ensured that a term such as
3 non contact with the victims or children under a certain
4 age should be in an offence such as this?

5 **MR. JOHNSON:** Oh, Mr. Ain at that time had
6 been with me I think for -- this is 1986 -- it was probably
7 dealt with -- was this dealt with in '87?

8 **THE COMMISSIONER:** No, I think it was dealt
9 with in '86.

10 **MS. JONES:** Eighty-six ('86).

11 **THE COMMISSIONER:** But I may be wrong.

12 **MS. JONES:** Yeah.

13 **MR. JOHNSON:** Mr. Ain had been with me ---

14 **MS. JONES:** The end of '86.

15 **MR. JOHNSON:** Yeah. Mr. Ain had been in the
16 office for about nine years. He was an experienced,
17 intelligent Crown prosecutor. I would have left it in his
18 hands to see that the situation would have been done.

19 **MS. JONES:** So is your answer, no, there's no
20 check and balance system, usually as Crown attorney's do?

21 **MR. JOHNSON:** No. There wasn't at this
22 time. I didn't inquire, I didn't inquire into it to see
23 whether or not it had been done, that's correct. I
24 probably didn't.

25 **MS. JONES:** Okay.

1 If I could please go to a transcript in
2 Volume 60, page 52?

3 **THE COMMISSIONER:** Thanks. Page 62.

4 **MS. JONES:** Page 52.

5 **THE COMMISSIONER:** Page 52? Okay.

6 **MS. JONES:** Yes.

7 Thank you very much.

8 This is the transcript of Scott Burgess.
9 He's one of the victims of Mr. Leblanc that we just spoke
10 about.

11 **MR. JOHNSON:** Okay.

12 **MS. JONES:** And on page 52, Mr. Burgess is
13 actually being cross-examined by Mr. Scharbach, and this
14 provided a pretty good summary anyway.

15 Mr. Scharbach, about line 7, saying:

16 "I'm summing it up a little bit, but a
17 lot of your concerns involved a lack of
18 communication between the prosecutor
19 and yourself?

20 Mr. Burgess: Yes.

21 Mr. Scharbach: For example, you didn't get
22 a chance to meet with the prosecutor. You weren't told
23 that the charge that involved you was withdrawn?

24 Mr. Burgess: Correct.

25 Mr. Scharbach: You weren't told of the

1 sentencing hearing and you didn't
2 attend? I take it you didn't have a
3 chance to attend the sentencing hearing
4 because you weren't informed of it, is
5 that correct?

6 Mr. Burgess: Correct.

7 Mr. Scharbach: And that prosecution
8 took place in 1986?"

9 Just to confirm that we're talking about
10 this particular prosecution here.

11 So, this is the person whose charge was
12 actually not proceeded with because you had agreed to
13 proceed only on the charges involving Jody Burgess and
14 Jason Tyo. This is the one that was dropped along the way.

15 **MR. JOHNSON:** Okay.

16 **MS. JONES:** He was concerned when he
17 testified here, as you can see by his testimony, that he
18 had had no contact, nobody consulted him concerning the
19 fact that his charge was withdrawn, he had -- it appears he
20 had no knowledge about that. Do you have any comments as
21 to why he was not contacted?

22 **MR. JOHNSON:** In those days, we first of all
23 did not have a victim/witness program in the Crown
24 Attorney's office. The only victim/witness coordinator
25 that I knew of that was involved in these types of

1 prosecutions would have been the investigating officer.

2 And they took care of the case from their
3 investigation. I assume, I don't know what the Cornwall
4 Police Policy was at the time with respect to contacting
5 victims et cetera, but we had nothing in line at that time,
6 such as a victim/witness coordinator who would advise
7 complainants or victims to come to court for sentencing
8 hearings, give victim impact statements, et cetera, we
9 didn't have that. I don't believe it was legislated in the
10 *Criminal Code* at that time either.

11 **MS. JONES:** For the 19 years you were the
12 Crown attorney here in Cornwall, it's fair to say there was
13 not a policy in place where you ensured the victim was
14 contacted if the charges involving that victim were dropped
15 somewhere along the line?

16 **MR. JOHNSON:** There was no written policy or
17 specific policy. That's correct.

18 **MS. JONES:** And there was no policy, I take
19 it, from the Ministry of the Attorney General to you saying
20 that victims must be contacted along the way, to inform
21 them of what's happening with their particular charges?

22 **MR. JOHNSON:** Not that I can recall, Ms.
23 Jones.

24 **MS. JONES:** Would you agree with Mr.
25 Burgess' classification that there was no communication

1 between anyone from the prosecution office and himself
2 concerning his charge? At that stage it would have been
3 yourself, actually.

4 **MR. JOHNSON:** Unless I can have the file
5 involving Mr. Leblanc, take a look at it and see whether or
6 not Mr. Ain had contacted him or spoke to him, I don't know
7 if there was --I assume that there might have --I really
8 can't tell you.

9 **MS. JONES:** But as far as you're concerned?

10 **MR. JOHNSON:** As far as I'm concerned?

11 **MS. JONES:** M'hm.

12 **MR. JOHNSON:** If Mr. Burgess said that there
13 was no contact, okay, I guess I'll have to agree with that.

14 **MS. JONES:** But you don't disagree with
15 that? I just want to be clear about that.

16 **MR. JOHNSON:** See, I wasn't there for the
17 sentencing. I didn't do the sentencing so I don't know.

18 **THE COMMISSIONER:** You're not in position to
19 tell?

20 **MR. JOHNSON:** No.

21 **THE COMMISSIONER:** All right. He's not in
22 position to tell.

23 **MS. JONES:** But just to be clear. You were
24 the one who made the decision to proceed just on two
25 charges, i.e., Jody Burgess and Jason Tyo and Scott

1 Burgess' charge was going to be dropped, that was ---

2 MR. JOHNSON: That's correct.

3 MS. JONES: --- in your correspondence?

4 MR. JOHNSON: Yes, that's correct.

5 MS. JONES: So presumably, at the
6 sentencing, it was already decided that his charge was not
7 proceeding, so just involving your participation, it would
8 appear to be your decision not to proceed with the Scott
9 Burgess charge.

10 Would you agree that you made that decision
11 without consulting Mr. Burgess?

12 MR. JOHNSON: Yes, after consultation, I
13 would assume, with the investigating officer. I would
14 assume the officer would have advised him. I obviously
15 didn't -- I don't know if he'd contacted him or not.

16 MS. JONES: But as far as you're concerned,
17 you had no contact with Mr. Burgess?

18 MR. JOHNSON: I had no contact.

19 MS. JONES: To ask him or to find out his
20 views on it?

21 MR. JOHNSON: No, I don't believe I did, no.

22 MS. JONES: Okay.

23 Could we please go to Transcript Volume 63,
24 page 42?

25 (SHORT PAUSE/COURTE PAUSE)

1 **THE COMMISSIONER:** Okay. Page 62 or 42?

2 **MS. JONES:** Forty-two (42).

3 **THE COMMISSIONER:** Forty-two (42), okay.

4 Okay. We're there. Thank you. Go ahead.

5 **MS. JONES:** Thank you.

6 On line 5, Mr. Engelmann is asking Mr.

7 Burgess a question.

8 "After January 25th, 1986, until the
9 time you heard that Mr. Leblanc had
10 received probation and been through the
11 court, do you know if there were ever -
12 - if you were ever interviewed or
13 called by anyone from the police
14 department?

15 Mr. Burgess: No."

16 Further down he says, "No, I wasn't".

17 So at line 17:

18 "And Mr. Leblanc's case was in -- we
19 know that he pleaded guilty in November
20 of 1986 and I believe you told us you
21 had no discussions with the Crown
22 prosecutor in 1986.

23 Mr. Burgess: No."

24 And that was the charge that was proceeded
25 with and that was the charge -- one of the charges Mr.

1 Leblanc pleaded guilty to. Just from your own experience,
2 did you have any contact with Mr. Jody Burgess at all of
3 your time dealing with the Leblanc matter?

4 **MR. JOHNSON:** Well, Mr. Engelmann's question
5 was, "you told us you had no discussions with a Crown
6 prosecutor". I don't recall having any conversation with
7 Jody Burgess. Maybe Mr. Ain did, I don't know.

8 **MS. JONES:** I know that you can't speak for
9 Mr. Ain but, as far as you're concerned, in your context?

10 **MR. JOHNSON:** I don't recall any
11 conversation.

12 **MS. JONES:** Okay. Thank you very much.

13 We're going to move on the Gilles
14 Deslauriers prosecution, and I'll just give a few facts,
15 just to get us up to speed as quickly as possible.

16 On July 2nd, 1986, apparently you met with
17 Cornwall police investigators and charges were laid against
18 Father Gilles Deslauriers.

19 On August 25th, 1986 Bruce Young, Deputy
20 Director of Crown Attorney's confirmed with yourself that
21 Rommel Masse would be prosecuting the Deslauriers
22 proceeding because he was a bilingual Crown and it was
23 going to be a bilingual proceeding.

24 **MR. JOHNSON:** Yeah and Mr. -- well he's not
25 Judge Masse, he was the Crown attorney in L'Original in

1 Hawkesbury.

2 **MS. JONES:** Right. So it was requested that
3 you forward the Crown brief on to him and then he took over
4 the case. So you were not actually involved in the
5 prosecution or the pre-trials or the prelim's or ---

6 **MR. JOHNSON:** No, nothing at all like that.

7 **MS. JONES:** Okay. I also understand you
8 actually didn't attend the proceedings at all, you didn't -
9 - the prosecution was held in another building and you just
10 carried on with what you were doing; you were not involved
11 in that at all.

12 **MR. JOHNSON:** That's correct. Yeah.

13 **MS. JONES:** If we could please go to
14 Document 114303, please.

15 **THE COMMISSIONER:** Thank you.

16 Exhibit Number 2946 is a letter addressed to
17 the Crown attorney in Cornwall, dated September 11th, 1981 -
18 - is that '81?

19 **MS. JONES:** It's '86 actually.

20 **THE COMMISSIONER:** Eighty-six ('86).

21 **MS. JONES:** Yes.

22 **THE COMMISSIONER:** All right, and from?

23 **MS. JONES:** It's from a person Peter Ayling,
24 A-Y-L-I-N-G.

25 **THE COMMISSIONER:** All right.

1 **--- EXHIBIT NO./PIÈCE NO. P-2946:**

2 (114303) Letter from Peter Ayling to The
3 Crown Attorney dated 11 Sep 86

4 **MS. JONES:** I'm just showing this letter
5 because this actually caused you to write a letter in
6 response to this. But this was a concerned -- I believe a
7 concerned citizen who wanted to ensure that the jury was
8 made up of people other than just solely Roman Catholics
9 because of course the person accused was a priest and this
10 was a concern for him and he sent you this letter.

11 And I just want to take you to your letter
12 which is a bit in response to that and that's Document
13 114302.

14 **THE COMMISSIONER:** So bottom line, this
15 letter is from a gentleman who is indicating that with
16 respect to the charges against -- I don't know if he
17 mentions anybody but, that he wants the Crown to ensure
18 that Protestants are included in the composition of the
19 jury.

20 **MS. JONES:** Right.

21 **THE COMMISSIONER:** Thank you.

22 And 2947 is a letter addressed to Mr. Masse,
23 dated September 17th, 1986 from Mr. Johnson, Q.C.

24 **--- EXHIBIT NO./PIÈCE NO. P-2947:**

25 (114302) Letter from Don Johnson to R. Masse

1 re: R. v. Deslauriers dated 17 Sep 86

2 **MS. JONES:** So this is just referring to Mr.
3 Ayling's letter in a sense, you enclose, it would appear,
4 Mr. Ayling's letter and sent it on to Mr. Masse.

5 And the middle paragraph says: "It appears
6 this trial has taken on religious overtones."

7 **MR. JOHNSON:** Yeah.

8 **MS. JONES:** If you can see.

9 Do you recall having any face-to-face
10 discussions with Mr. Masse regarding the -- what you would
11 classify as religious overtones of the particular trial?

12 **MR. JOHNSON:** No, I just -- my
13 interpretation of this letter, it appears that there was --
14 some citizen was concerned that they put Catholics on the
15 jury without Protestants that -- because it was a priest
16 that there may -- didn't think that justice would be done,
17 I assume.

18 That's why I just sent the letter on to Mr.
19 -- excuse me -- Judge Masse, Mr. Masse at the time and
20 asked him if he felt it was necessary to contact Mr. Ayling
21 and see what the problem was.

22 I mean I wasn't involved in this prosecution
23 because once I gave to -- Mr. Masse accepted it, it was in
24 his hands at that time.

25 **MS. JONES:** As I say, my only question was

1 if you had any further discussions ---

2 MR. JOHNSON: No.

3 MS. JONES: --- or participation in anything
4 to do with the trial then.

5 MR. JOHNSON: No.

6 MS. JONES: Okay. So on September 23rd,
7 1986, you had actually confirmed that Father Deslauriers
8 was committed to trial on November 13th, 1986. You
9 requested that Mr. Masse draft a French indictment and on
10 September 29th you'd asked the court reporter for copies of
11 the preliminary inquiry transcript.

12 On September 30th, 1986, Mr. Masse indicated
13 to yourself and he was updating you on the preliminary
14 inquiry that the proceedings began with eight charges of
15 indecent assault and eight charges of gross indecency, some
16 charges were withdrawn because of insufficient evidence and
17 at the end of the prelim, Deslauriers was committed to
18 trial on four counts of gross indecency and seven counts of
19 indecent assault.

20 MR. JOHNSON: I'm sorry, he was committed to
21 stand trial on more charges than were laid against him?

22 THE COMMISSIONER: No, no. He started off
23 with eight and it's down to four.

24 MR. JOHNSON: Oh.

25 MS. JONES: Started off with eight plus

1 eight and it went down to four and seven.

2 And just for the record, I'll just put in
3 Document 114309, please.

4 **THE COMMISSIONER:** Thank you.

5 Exhibit 2948 is a letter addressed to Mr.
6 Johnson, dated September 30th, 1986 from Rommel Masse.

7 **--- EXHIBIT NO./PIÈCE NO. P- 2948:**

8 (114309) Letter from Rommel Masse to Don
9 Johnson re: R. v. Gilles Deslauriers dated
10 30 Sep 86

11 **MS. JONES:** And that's the letter,
12 basically, that I've just summarized for you.

13 Could we go to Document 736201, please?

14 **THE COMMISSIONER:** Thank you.

15 Exhibit 2949 is a letter dated October 24th,
16 1996 (sic), addressed to Mr. Johnson from Rommel Masse.

17 **--- EXHIBIT NO./PIÈCE NO. P-2949:**

18 (736201) Letter from Rommel Masse to Don
19 Johnson re: R. v. Gilles Deslauriers dated
20 24 Oct 86

21 **MS. JONES:** So I could just summarize this
22 particular letter.

23 On October 24th, 1986, Mr. Masse wrote to you
24 saying that he had attended the pre-trial with Justice
25 Forget and the range for sentencing on a plea of guilty was

1 that he serve 15 to 30 days on each count, plus probation;
2 and this would be time served consecutive, on each counts
3 consecutively.

4 It appears defence counsel was distressed at
5 the suggestion his client would go to jail and he wanted
6 the pre-trial heard before another Trial judge, Judge
7 Gratton.

8 And at the bottom of the page, Mr. Masse
9 wrote that: "This sure looks to me as if he is forum
10 shopping" which is implying the defence lawyer is trying to
11 find an appropriate judge for a trial.

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

13 **MS. JONES:** Would you agree that's the sort
14 of connotation that that would lead one to conclude?

15 **MR. JOHNSON:** Well, I -- one of my first
16 introductions to criminal law was the phrase "forum
17 shopping" yeah, and I'm well aware what that means, yeah.

18 **MS. JONES:** All right. As it turned out,
19 Deslauriers did plead guilty to four counts of gross
20 indecency before Judge Gratton and he received a suspended
21 sentence and placed him on probation for two years with
22 conditions that he continue to take treatment with a psycho
23 therapist in Montreal and that he be supervised by Bishop
24 Proulx in the Diocese of Hull and attend for treatment with
25 Jobin and Francine Grondin. And the probation order is

1 Exhibit 1805 and the Document is 114283.

2 **THE COMMISSIONER:** Thank you.

3 One eight zero five (1805) is the exhibit
4 number?

5 **MS. JONES:** One eight zero five (1805), yes,
6 sir.

7 Now, just to provide an excellent English
8 translation of the French terms here that's been provided
9 to me, the term on the front page which is term (a) down at
10 the bottom, underneath "in addition", yes that's right,
11 Madam Clerk, where the typewritten version is.

12 I understand that in English to mean that he
13 present himself within a period of seven days to the
14 Ottawa-Carleton Probation, to an Ottawa-Carleton probation
15 officer, and afterwards at a place and time determined by
16 this person. So that's the first clause.

17 On the next page, the two terms that have
18 the X on them are terms that I mentioned earlier; that he
19 attend for counselling with Jacques Jobin and Dr. Francine
20 Grondin. And the last one I believe is Q; that he abide to
21 the directives of Monsignor Adolphe Proulx in order to
22 ensure the latter can exercise efficient supervision of the
23 accused. So it seemed to be the terms there. Do you see
24 that, sir?

25 **MR. JOHNSON:** It's not very clear here but -

1 --

2 MS. JONES: The typewritten ---

3 MR. JOHNSON: --- I'll take your word for
4 it, Ms. Jones, if you think that you're translating it
5 correctly.

6 THE COMMISSIONER: It's good enough.

7 MS. JONES: It's pretty good? Thank you.

8 The term that I'd like to ask you about is
9 Term L, which is just slightly above ---

10 MR. JOHNSON: Yeah.

11 MS. JONES: --- the others. Madam Clerk has
12 the cursor -- did have the cursor -- just the next one,
13 Madam Clerk. That's the one; thank you.

14 Again, that is not to associate or
15 communicate with anyone directly or indirectly, and again
16 this is a very common release term or probation term which
17 would often have the names of victims inserted or, if
18 involving abuse of children, to often include a term that
19 he remain away from children under a certain age. And
20 will you agree with me that again there's nothing put
21 there?

22 MR. JOHNSON: No, there's nothing there.

23 No.

24 MS. JONES: So there's nothing there to
25 prevent Father Deslauriers from contacting the victims that

1 have been the subject of this matter, as well as any other
2 -- being in the company alone of any other children under a
3 certain age; of a tender age, shall we say?

4 **MR. JOHNSON:** No, there's nothing there that
5 I can see. No.

6 **MS. JONES:** Now, it would appear that
7 Mr. Masse was keeping you up to date quite regularly on
8 what was happening on this particular file. And he kept
9 you up to date on the prelim. He kept you up to date on
10 the sentencing, all of the different provisions.

11 **MR. JOHNSON:** Yeah.

12 **MS. JONES:** And so am I correct in assuming
13 that you would have been aware of this probation order as
14 well?

15 **MR. JOHNSON:** I was aware -- I probably was
16 aware of that probation order, the sentence, yeah.

17 **MS. JONES:** And would you agree that it
18 seems to be contrary to what provisions likely should have
19 been in this sort of a circumstance, i.e. that this person
20 remain away from the victims and remain away from children
21 under the age of, say, 14 or 18?

22 **MR. JOHNSON:** Well, as I understand it, it's
23 the judge that makes the decision with regards to the
24 sentencing procedure, what terms and what the sentence will
25 be, based upon submissions made by the Crown attorney and

1 whoever prosecutes, either it be an assistant Crown or a
2 Crown attorney, and I don't -- is there transcript as to
3 what submissions Mr. Masse might have made to the judge at
4 the time?

5 **MS. JONES:** Actually we don't have that
6 right now but just wondering if this is consistent with
7 what your understanding was at the time.

8 **MR. JOHNSON:** I know Mr. Masse and I can
9 tell you that when he was a Crown attorney, he was a very
10 thorough and intensive individual with regards to the work
11 that he did, and unless somebody tells me differently I
12 would assume that he probably made those suggestions and
13 left it to the trial judge or the sentencing judge to
14 determine what terms would be appropriate.

15 **MS. JONES:** Okay.

16 Now, if we could please go to Document
17 114292.

18 **THE COMMISSIONER:** Thank you.

19 Exhibit 2950 is a letter dated November 14th,
20 1986, addressed to Mr. D. Hunt, Director of Crown Law
21 Office, Criminal, from Rommel Masse. And it is a request
22 to consider an appeal of the sentence imposed on Gilles
23 Deslauriers.

24 --- **EXHIBIT NO./PIÈCE NO. P-2950:**

25 (114292) Letter from Rommel Masse to D. Hunt

1 re: R.v. Gilles Deslauriers dated 14 Nov 86

2 **MS. JONES:** Have you read this recently, Mr.
3 Johnson?

4 **MR. JOHNSON:** Not recently, Ms. Jones. Okay
5 if I read it now?

6 **MS. JONES:** Sure.

7 (SHORT PAUSE/COURTE PAUSE)

8 **THE COMMISSIONER:** I think there should be a
9 publication stamp on the document. There are some people
10 that are named that don't appear anywhere, and I'm sure
11 there's a publication ban under the *Criminal Code* existing.

12 **MS. JONES:** Yes. Thank you.

13 **MR. JOHNSON:** Pretty potent letter.

14 **MS. JONES:** Pardon me?

15 **MR. JOHNSON:** Very potent letter.

16 **MS. JONES:** Yeah.

17 So essentially Mr. Masse was clearly not
18 very happy with the sentence that was given?

19 **MR. JOHNSON:** I would think that's pretty
20 indicative of -- yeah.

21 **MS. JONES:** Okay.

22 And the main reason he was unhappy is
23 because he felt that Father Deslauriers should have been
24 incarcerated and not received a suspended sentence and just
25 probation.

1 **MR. JOHNSON:** Yeah.

2 **MS. JONES:** Would you agree with me that he
3 doesn't actually appeal the provision of the probation
4 order, i.e. that he remain away from the victims?

5 **MR. JOHNSON:** I would have thought -- I
6 would think though that if the permission or the authority
7 had been granted to launch an appeal that there would have
8 been discussions between Mr. Masse at the time and whoever
9 was involved with the appeal to consider all aspects of the
10 sentence.

11 **MS. JONES:** Okay.

12 If we could go to the Crown checklist,
13 please. And that's Document 114293.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **THE REGISTRAR:** (Inaudible).

16 **MS. JONES:** It's not?

17 All right, if we could go to 114291.

18 **THE COMMISSIONER:** Thank you.

19 Exhibit 2951 is a letter addressed to Mr.
20 Johnson, Crown attorney, from Rommel Masse, dated November
21 19th, 1986.

22 **--- EXHIBIT NO./PIÈCE NO. P-2951:**

23 (114291) Letter from Rommel Masse to Don
24 Johnson re: R. v. Gilles Deslauriers dated
25 19 Nov 86

1 **MS. JONES:** And again he's indicating -- Mr.
2 Masse is indicating he was not satisfied with the results
3 and he's launching a Crown appeal.

4 And if we go to the next document, 114290.

5 Just so it's clear for the record, he's not
6 launching a Crown appeal; he's requesting for a Crown
7 appeal.

8 **THE COMMISSIONER:** There we go. And on
9 December 17th, 1986 Mr. Rommel Masse again wrote to Mr.
10 Johnson. Exhibit 2952.

11 **--- EXHIBIT NO./PIÈCE NO. P-2952:**

12 (114290) Letter from Rommel Masse to Don
13 Johnson re: R. v. Gilles Deslauriers dated
14 17 Dec 86

15 **MS. JONES:** And in this particular letter,
16 Mr. Masse is sharing with you that he received a response
17 from the Crown Law Office in Toronto and he was advised
18 that no appeal would be taken.

19 If we could please go to 736193.

20 **THE COMMISSIONER:** Thank you. Exhibit
21 Number 2953 is a letter dated January 21st, 1987 addressed
22 to Mr. Then from Rommel Masse.

23 **--- EXHIBIT NO./PIÈCE NO. P-2953:**

24 (736193) Letter from Rommel Masse to Mr.
25 Then re: R. v. Gilles Deslauriers Gross

1 Indecency (4 counts) dated 21 Jan 87

2 **MS. JONES:** And Mr. Masse is attempting once
3 again, it would appear, to convince the Crown Law Office of
4 an appeal based on a prosecution that took place in Ottawa
5 or in Crampton where the Crown had launched an appeal and
6 Mr. Masse was saying that it was important for the Crown to
7 be consistent on similar sorts of matters.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **THE COMMISSIONER:** Okay, so bottom line is
10 he's received the decision from Crown Law Office not to
11 appeal. He then writes again saying "I've read another
12 case and I'm asking once again, what should I say to the
13 public who are going to be asking questions about the
14 Deslauriers sentence?"

15 **MS. JONES:** Correct.

16 **THE COMMISSIONER:** Okay.

17 **MS. JONES:** And if we could please go to
18 Document 736194.

19 **THE COMMISSIONER:** Thank you.
20 Exhibit Number 2954 is a letter dated
21 January 21st, 1987 -- right, the same day, I guess.

22 **MS. JONES:** The same date as Mr. Masse.

23 **THE COMMISSIONER:** To the same person from -
24 - oh, Mr. Johnson ---

25 **MS. JONES:** To Mr. Johnson.

1 **THE COMMISSIONER:** --- this time. Sorry,
2 sorry.

3 **--- EXHIBIT NO./PIÈCE NO. P-2954:**

4 (736114) Letter from Rommel Masse to Mr.
5 Then re: R. v. Gilles Deslauriers Gross
6 Indecency (4 counts) dated 21 Jan 87

7 **MS. JONES:** So you were echoing Mr. Masse's
8 request for the Toronto office to reconsider.

9 **MR. JOHNSON:** And as you'll note also, I
10 sent copies to the Attorney General, to the Director of
11 Crown Attorneys, to the Regional Crown and to Mr. Masse.

12 **MS. JONES:** Right.

13 And if we could please -- actually at this
14 particular point, would it be fair to say that the result
15 of the Deslauriers matter had been quite publicized in the
16 press by now?

17 **MR. JOHNSON:** Yeah, I think it -- I don't
18 have any copies of the newspaper, but I think there was
19 some media reaction to it, yeah.

20 **MS. JONES:** And if we could please go to
21 Document 114287.

22 **THE COMMISSIONER:** Thank you.

23 Exhibit 2955 is a letter dated March 23,
24 1987 to Mr. Martin, QC, Director of Crown Attorneys from
25 Mr. Johnson enclosing -- is that correct?

1 **MS. JONES:** Yes, enclosing an article, it's
2 on the back.

3 **THE COMMISSIONER:** An article by Len Hooper,
4 staff writer entitled "Attorney General Won't Appeal
5 Reverend Deslauriers Sentence." Okay.

6 **MS. JONES:** Okay.

7 **--- EXHIBIT NO./PIÈCE NO. P-2955:**

8 (114287) Letter from Don Johnson to M.
9 Martin re: R. v. Gilles Deslauriers Gross
10 Indecency (4 counts) dated 23 Mar 87

11 **THE COMMISSIONER:** So bottom line in that
12 letter, you're writing to say:

13 "We've written and urge you to consider
14 an appeal. We haven't heard from you.
15 Meanwhile, we read in the newspaper
16 that the Attorney General won't appeal
17 and you are somewhat dismayed by the
18 fact that you weren't advised before
19 me."

20 **MR. JOHNSON:** Basically, that's correct, Mr.
21 Commissioner.

22 **THE COMMISSIONER:** All right. Thank you.

23 **MS. JONES:** If we could please go to
24 Transcript, Volume 241, page 145.

25 **THE COMMISSIONER:** Thank you.

1 **MR. JOHNSON:** Thank you.

2 **THE COMMISSIONER:** So just to make it clear
3 though. What happened, if I understand the article
4 correctly so I have it correctly in my mind, both priests
5 were -- one was convicted, Father Deslauriers pleaded
6 guilty. They were both given suspended sentences, but the
7 Crown Law Office decided to appeal the Crampton case and
8 not the Deslauriers case. Okay, there we go.

9 **MS. JONES:** This is actually in front of you
10 here the testimony of former Chief Shaver and he testified
11 here at the Inquiry about the timing around the Deslauriers
12 sentencing and I just wanted to put his transcript to you
13 and see if you recall this or not. According to Mr.
14 Shaver, he said that he called the Crown and he said:

15 "I believe it had to be Don Johnson.
16 I'm not sure if he handled the case."

17 And then further down:

18 "I was upset. I thought the sentence
19 was way too lenient to be honest with
20 you. You know there were so many
21 victims. I thought it was too lenient
22 a sentence."

23 And then Mr. Shaver confirmed part way down,
24 "I called Don Johnson who was your local Crown." Do you
25 recall having that conversation with former Chief Shaver at

1 all?

2 **MR. JOHNSON:** I'm sorry, Ms. Jones; I don't.
3 I don't recall at all.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **MS. JONES:** Do you ever recall discussing
6 anything with Mr. Masse about victim contact in this case;
7 in the Deslauriers matter or is that something you would
8 have left up to Mr. Masse?

9 **MR. JOHNSON:** I think that was left up to
10 Mr. Masse due to the fact that it was a French-language
11 situation and my fluency in the French language is pretty
12 well restricted to ordering beer.

13 But, no I don't -- I didn't -- I didn't
14 refuse. I didn't contact Mr. Masse because of the fact
15 that I don't think I've had much input with regards to any
16 contact with the victims.

17 **MS. JONES:** And I'm wondering too what about
18 the policies on advising victims of your desire to appeal
19 something like a sentence.

20 **MR. JOHNSON:** At that time, I don't believe
21 that there was any formal indication that -- that we were
22 going to do anything to the victims directly. I believe
23 the police knew about the fact that we were going to try
24 and request them because we were always in a -- there was
25 only a process of requesting an appeal.

1 If that was the formula that you had to
2 follow was if you were dissatisfied with a -- with an
3 acquittal or a sentence, you had to write to Toronto, get
4 there; give them the background; what you thought or why
5 you thought there should be an appeal; let them make their
6 decision and let them advise you.

7 In this case, I believe, the only contact
8 went indirectly with the victims, in this case, would have
9 been through the police officer. I don't know if he told
10 them or not or if she told them; I don't know.

11 **MS. JONES:** Okay.

12 In general terms, if you were prosecuting
13 someone affiliated with the Church, to what extent were you
14 aware, as the Crown Attorney of Cornwall, into items such
15 as ad hoc committees formulated by the Diocese to talk to
16 any priests accused of sexual misconduct. Did you -- were
17 you aware of anything like that?

18 **MR. JOHNSON:** You mean within the Diocese,
19 like a committee?

20 **MS. JONES:** Yes.

21 **MR. JOHNSON:** I was completely unaware.
22 They actually had things like that?

23 **MS. JONES:** I'm just wondering if you were
24 aware ---

25 **MR. JOHNSON:** At least ---

1 **MS. JONES:** --- of any such committees?

2 **MR. JOHNSON:** --- I was never aware of
3 anything like that, no.

4 **THE COMMISSIONER:** They did and they do.

5 **MR. JOHNSON:** I mean, I'm a Catholic and I
6 didn't know that. I'm sorry.

7 **MS. JONES:** So there was never anything in
8 your office if a priest was being charged with something to
9 go to the Diocese, for example, and make inquiries as
10 whether or not the statements had been given or any
11 investigations had been done?

12 **MR. JOHNSON:** No, I didn't -- I was complete
13 unaware of that. I'm sorry.

14 **MS. JONES:** I'm going to move on to the Earl
15 Landry, Jr. matter now.

16 **MR. JOHNSON:** Okay.

17 **MS. JONES:** And I'd like to, please, take
18 you to Document 740587.

19 **THE COMMISSIONER:** Thank you.

20 **MS. JONES:** Just a minute, I may have ---

21 **THE COMMISSIONER:** Just a minute, it's a
22 supplementary occurrence report.

23 **MS. JONES:** Just a moment.

24 Madam Clerk, I've got a little note here
25 that's Exhibit 1348, Document 731791. Is it 1338?

1 **THE COMMISSIONER:** What is it that you're --
2 -

3 **MS. JONES:** I'm sorry; I've just got a
4 little notation here that this document is also Exhibit
5 1348 and if it's already an exhibit I'd rather use that.

6 **THE COMMISSIONER:** Okay and what is the
7 document that you're -- is it a supplementary occurrence
8 report?

9 **MS. JONES:** Yes, it is.

10 **THE COMMISSIONER:** And does it say
11 "Internal" in big block letters?

12 **MS. JONES:** I'm just going to see that. I
13 don't have Exhibit 1348 in front of me that's why I'm just
14 -- I'm going to stick with my document actually. It is
15 similar but it's not identical.

16 **THE COMMISSIONER:** Okay, so Exhibit 2956 is
17 a supplementary occurrence report. The author is Mr.
18 Derochie.

19 **MS. JONES:** Yes.

20 **THE COMMISSIONER:** Officer -- I forget his
21 rank and the report time was in 2001, the third month, 28th
22 day.

23 **--- EXHIBIT NO./PIÈCE NO. P-2956:**

24 (740587) Supplementary Occurrence Report
25 Internal Correspondence of Garry Derochie

1 re: Earl Landry Jr. dated 08 Dec 99

2 **MS. JONES:** Thank you.

3 If we could please go to the second page
4 which is Bates page 1314 and it's towards the bottom and it
5 starts with the paragraph "In speaking with Lefebvre".

6 Have you read this document, sir?

7 **MR. JOHNSON:** I've never seen this document.
8 This is internal correspondence of the Cornwall police.

9 **THE COMMISSIONER:** Well, yes it is. But was
10 this provided to the ---

11 **MS. JONES:** Yes, it was.

12 **MR. JOHNSON:** It was? If it was provided
13 then I must have looked at it then. I must have reviewed
14 it with Mr. Scharbach. Okay.

15 Okay. And you're referring to the page
16 7881, 13, 14?

17 **THE COMMISSIONER:** Yes.

18 **MS. JONES:** Yes, I am.

19 **MR. JOHNSON:** Okay.

20 **MS. JONES:** I just want to, by way of
21 background, you know Earl Landry, Jr. was charged with
22 offences but when it was investigated, it turned out that
23 allegations had been made in the mid-1980s that had not
24 been properly investigated. That was the finding of ---

25 **MR. JOHNSON:** Okay.

1 **MS. JONES:** --- Officer Derochie when he did
2 his investigation.

3 **MR. MANDERVILLE:** That's completely
4 inaccurate and uncalled for. She can't make that
5 statement. There's no evidence to make that statement;
6 it's conclusory and wrong.

7 **MS. JONES:** Officer Derochie did make a
8 finding.

9 **THE COMMISSIONER:** "I've been unable to
10 uncover evidence which would suggest
11 that Early Landry, Jr. received any
12 kind of preferential treatment because
13 of his relationship with former Chief
14 Earl Landry, Sr. There does exist in
15 this matter, however, a number of the
16 same shortcomings previously identified
17 in other historical sexual assault
18 investigations. These concerns include
19 that number 1, -- that notes were
20 attached to completed investigative
21 reports and so were destroyed at the
22 end of the retention period of those
23 reports; that occurrence incidents
24 which contain allegations of historical
25 sexual assaults which could not be

1 prosecuted or pursued for any number of
2 reasons were classified as police
3 information, so had a very short
4 retention period; that historical
5 sexual assaults were -- are not pursued
6 with the same type of urgency which
7 recently occurring assaults were, are
8 given; that the case management issues
9 in CIB remain unresolved and a
10 continued source of concern.

11 Recommendation: It is my
12 recommendation that the Service develop
13 policies in the form of general orders
14 which address the issues raised in this
15 review, both with regards to the
16 investigation and records-keeping."

17 Okay, so bottom line though, sir, is we're
18 talking to you about page -- the second page and we're
19 talking about your involvement in this matter.

20 And bottom line, Officer Lefebvre indicates
21 that he most likely would have consulted the Crown attorney
22 of the day, Mr. Don Johnson.

23 Okay, so do you recall -- were you ever
24 aware of the -- of Mr. Earl Landry, Jr. charges?

25 **MR. JOHNSON:** I subsequently represented

1 him; I can tell you that, in 1990s.

2 **THE COMMISSIONER:** Right.

3 **MR. JOHNSON:** But I don't recall anybody
4 coming to me about anything in the '80s. Is this Constable
5 Lefebvre?

6 **MS. JONES:** This is Constable Lefebvre, yes.

7 **THE COMMISSIONER:** Or Sergeant Lefebvre.

8 **MS. JONES:** At the time Constable Lefebvre.

9 **THE COMMISSIONER:** Okay..

10 **MS. JONES:** Let me just take you to another
11 document too. The -- before I was interrupted, I wanted to
12 actually say, this is Officer Derochie's interpretation.
13 Officer Lefebvre actually doesn't name you as the Crown
14 attorney that he spoke to. So I wanted to point that out
15 in fairness to you.

16 This is where your name comes up and the
17 other part I wish to point out to you is transcript --
18 sorry, Document 740373, Exhibit 1350.

19 **THE COMMISSIONER:** It's already an exhibit
20 then? What exhibit?

21 **THE REGISTRAR:** One three five zero (1350).

22 **THE COMMISSIONER:** Oh, 1350, sorry.

23 **MS. JONES:** And it's the first page of that
24 exhibit.

25 **THE COMMISSIONER:** And it's the last

1 document in that binder, sir.

2 MS. JONES: And it's actually in the last
3 column and it starts with ---

4 THE COMMISSIONER: I'm sorry; 1350?

5 MS. JONES: In 1350, yes.

6 THE COMMISSIONER: Sorry, I mislead you sir,
7 it's not quite the last volume -- the last document.

8 MR. JOHNSON: Thirteen fifty (1350)?

9 MS. JONES: Thirteen fifty (1350).

10 THE COMMISSIONER: One three five zero
11 (1350). Sorry, my mistake.

12 MS. JONES: It's the first article of 1350.

13 MR. JOHNSON: Oh okay, yeah.

14 MS. JONES: In the last column, towards the
15 end of the last column, "At the time".

16 MR. JOHNSON: Yeah.

17 MS. JONES: Basically, this is when you're
18 representing Earl Landry, Jr. as a defence counsel but I
19 guess they were asking you if you recalled whether you'd
20 had contact with him as the Crown attorney back in 1985.

21 And your words at that time were that you
22 can't recall if police had approached you at that time.

23 MR. JOHNSON: Yeah.

24 MS. JONES: So ---

25 THE COMMISSIONER: And is that your position

1 today?

2 **MR. JOHNSON:** Yeah.

3 **MS. JONES:** Okay.

4 The other part to that argument, I suppose,
5 if you don't recall, is that there is a possibility that
6 you were contacted; is that fair to say?

7 **MR. JOHNSON:** I don't think I'd go far that,
8 Ms. Jones. If I don't recall I'm not going to say there's
9 a possibility, no. I'm sorry. I don't recall being
10 contacted.

11 **MS. JONES:** All right. When -- this relates
12 to the initial questioning about the very first case where
13 you're contacted about Nelson Barque by the probation
14 office.

15 Would it be fair to say that if there was
16 some sort of a system in place to see which people, perhaps
17 police or probation office had contacted you about -- if
18 there was some sort of system in place that you would be
19 able to therefore verify if in fact you had provided the
20 police with any sort of opinion on someone?

21 **MR. JOHNSON:** If there had been a system in
22 that respect, yeah, I'm sure there would have been.

23 But -- I'm just going to advise you that my
24 recollection of any contact, not particularly in this case
25 but generally speaking, any contact with police officers

1 usually was on the spur of the moment. We'd be coming and
2 going into court or coming out of court, we'd be on a
3 recess and they'd jump in front of you or stand in front of
4 you and say "Listen, what do you think about this" and you
5 get a brief summary and that might be the consultation, at
6 the best, I never had any documents, I never had anything
7 like that.

8 **MS. JONES:** But if you're approached for a
9 formal opinion and given documents to review?

10 **MR. JOHNSON:** Well, a formal opinion, I
11 would assume that the -- I'd at least be given the
12 opportunity to be presented with documentation, an
13 appointment would have been set up and the secretary in the
14 office, Mrs. Kranz (phonetic) at the time would have been
15 aware of it, we would have had some kind of notification
16 that the officer was going to be dealing with the matter.

17 **MS. JONES:** Do you recall if there was any -
18 - do you recall hearing about things concerning Earl
19 Landry, Jr. back in the '80s when you were Crown attorney?

20 **MR. JOHNSON:** I may have. Back in the early
21 '80s? You mean of a sexual nature?

22 **MS. JONES:** Yes.

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

24 **MS. JONES:** Similar to the offences you were
25 representing him on later on.

1 **MR. JOHNSON:** All I knew was that there was
2 always something with regards to his working for the city
3 and whether that -- how he got the job because his father
4 was the Deputy Chief and stuff like that. That might have
5 been some of the stuff.

6 But as to -- sorry, I -- if I did, it was
7 rumours from some -- if I did hear anything, but I can't
8 specifically pin down anything. I can't say for sure
9 exactly what I heard, whether they dealt with how he got
10 his job or whether there was something that -- about his
11 activities.

12 I'm sorry, I apologize to you. There may
13 have been rumours; there may have been locker room gossip
14 from police officers; I'm not too sure how it would have
15 worked out.

16 **MS. JONES:** Now I also have one more
17 transcript from former Chief Shaver, Volume 241.

18 **THE COMMISSIONER:** Did you know the Chief,
19 Landry, Sr.?

20 **MR. JOHNSON:** Yeah, I knew him, yeah.

21 **THE COMMISSIONER:** On a professional level
22 or personal level?

23 **MR. JOHNSON:** Oh, just professional level.

24 **THE COMMISSIONER:** Did you know his son
25 before you defended him?

1 **MS. JONES:** I knew his son, yeah, because my
2 sons used to play hockey in the arena where he used to use
3 -- run the Zamboni and stuff like that. I mean, he looked
4 so much like his father you couldn't help but realize the
5 family relationship, but ---

6 **THE COMMISSIONER:** All right. So,
7 Transcript, yes?

8 **MS. JONES:** Yes. Volume 241, I believe you
9 already have that? It's Mr. Shaver's testimony.

10 **THE COMMISSIONER:** Yeah; 241, you've got
11 this already, sir.

12 **MS. JONES:** And I'd like to go to -- start
13 at the bottom -- page 109.

14 Just to provide the background, Mr.
15 Engelmann in his question is actually referring to the same
16 passage I just referred to where Mr. Lefebvre's description
17 is done by Staff Sergeant Derochie, and claiming that he
18 spoke to you.

19 If we go to the ---

20 **MR. JOHNSON:** I'm sorry, who spoke to me,
21 I'm sorry Ms. Jones?

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

23 **MS. JONES:** In Derochie's description,
24 Derochie is describing that Lefebvre spoke to you.

25 **THE COMMISSIONER:** No, first of all,

1 Lefebvre also indicated that he most likely would have
2 consulted the Crown attorney of the day, Mr. Johnson.

3 **MS. JONES:** Even though in fairness, Officer
4 Lefebvre actually doesn't say that in his notes.

5 **THE COMMISSIONER:** We've gone over that.
6 Okay, so there's that. What else?

7 **MS. JONES:** Okay.

8 If we go to the next page, page 110, it
9 would appear that Mr. Shaver actually spoke to Mr. Ain
10 about this matter. About line 6, Mr. Engelmann said:

11 "When you spoke to Mr. Ain, did he tell
12 you that what he knew of the case came
13 from Mr. Johnson's --Johnson perhaps.
14 Do you recall?

15 Mr. Shaver said:

16 "No, he did not indicate that to me.
17 Mr. Engelmann: You never spoke to Mr.
18 Johnson about this matter?

19 Mr. Shaver: No I didn't. I never
20 have."

21 Is that consistent with your recollection
22 that you never spoke ---

23 **MR. JOHNSON:** Yeah, it is.

24 **MS. JONES:** --- to Shaver about the matter?

25 **MR. JOHNSON:** Yeah.

1 **MS. JONES:** Okay.

2 I'd now like to talk to you about
3 involvement that you've had in your role as a Crown
4 Attorney with the Children's Aid Society.

5 **THE COMMISSIONER:** And we'll do that after
6 the break.

7 Thank you.

8 **THE REGISTRAR:** Order. All rise. À
9 l'ordre. Veuillez vous lever.

10 This hearing will resume at 3:15 p.m.

11 --- Upon recessing at 3:01 p.m. /

12 L'audience est suspendue à 15h01

13 --- Upon resuming at 15:25 p.m../

14 L'audience est reprise à 15h25

15 **THE REGISTRAR:** Order. All rise. À
16 l'ordre. Veuillez vous lever.

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

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

20 **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MS.**

21 **JONES (cont'd/suite):**

22 **THE COMMISSIONER:** Thank you. Sir, I
23 understand you wish to leave around 4:15 today?

24 **MR. JOHNSON:** It would be appreciated, Mr.
25 Commissioner.

1 **THE COMMISSIONER:** All right. So what we'll
2 do, if the examination in-chief is not finished before
3 then, you will be released at 4:15 or earlier and I will
4 proceed with the McLellan decision on the Motion after
5 that, so we can keep going with the evidence here, all
6 right? Thank you, sir.

7 **MS. JONES:** Thank you. If we could please
8 go to Exhibit 1505, that's Document 739308.

9 **THE COMMISSIONER:** Okay. So now we've
10 turned our attention, sir, to some Children's Aid Society
11 files, and your interaction, if any, with those
12 proceedings. All right?

13 **MS. JONES:** Okay. Have you got the exhibit
14 in front of you, sir? I'm looking specifically at the
15 second page that deals with September 25th, 1989.

16 Now by way of background, Mr. Johnson, the
17 first area that I'm dealing with has to do with issues that
18 may have occurred at a place called the Second Street Group
19 Home. And this chronology of events, which is Exhibit 1505
20 was prepared by Tom O'Brien who I believe was the former
21 director of CAS at the time.

22 **MR. JOHNSON:** Okay.

23 **MS. JONES:** And it deals with a matter
24 involving Jeannette Antoine, and her name can be used.

25 **MR. JOHNSON:** Okay.

1 **MS. JONES:** Okay. So if we look down on the
2 second page, these apparently are notes prepared by Mr.
3 O'Brien in a fairly contemporaneous fashion. And it would
4 appear on September 25th, according to his notes, it states:

5 "A meeting with the Crown attorney and
6 the city police could not be set up
7 until today. When the meeting did take
8 place, the Crown attorney, Don Johnson
9 was present, the Deputy Chief, Joe St.
10 Denis and Inspector Rick Trew of city
11 police attended as well."

12 Do you recall having this meeting?

13 **MR. JOHNSON:** I don't recall the meeting at
14 all but if Mr. O'Brien says there was a meeting, I'll
15 certainly accept that.

16 **MS. JONES:** Okay.

17 Now obviously Mr. O'Brien kept notes of this
18 situation. We've heard from Mr. O'Brien to
19 confirm that. Again, would it be fair to say
20 that meetings of this nature were not something
21 that happened every day, because it seems quite
22 significant you would meet with the director of
23 the CAS plus high ranking police officers to
24 discuss a specific file?

25 **MR. JOHNSON:** Certainly. I agree with that.

1 **MS. JONES:** And so this would not be
2 something that you would traditionally takes notes of?

3 **MR. JOHNSON:** If I took notes, they would be
4 in a file if any charges were laid or any investigations
5 conducted. You'd have to check with the Archives to see if
6 there's anything there.

7 **MS. JONES:** Do you recall opening up a file?

8 **MR. JOHNSON:** Not at this time. I don't
9 recall.

10 **MS. JONES:** Now in this particular -- at
11 this particular meeting, just to summarize again, there
12 were no instances of any sort of sexual impropriety that
13 were discussed and it was decided by all present that there
14 was no need for police involvement at this particular time.
15 No one was sure what Miss Antoine wanted to do at this time
16 so it was suggested that she meet with the CAS director to
17 determine how she wanted to deal with this.

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

19 **MS. JONES:** So the next time, I just wanted
20 to point out you, is on Bates page 7235 which is page 4 of
21 the document.

22 And the entry pertained to October 3rd, 1989.
23 Do you see that, sir?

24 **MR. JOHNSON:** Yeah.

25 **MS. JONES:** Okay.

1 It's on the screen if you wish to look at a
2 larger version.

3 **MR. JOHNSON:** No, it's okay.

4 **MS. JONES:** I can say that on the previous
5 day, on October 2nd, 1989, Mr. O'Brien, in his notes, said
6 that he met with Deputy Chief St. Denis and Officer Wells
7 and the Deputy Chief, according to Mr. O'Brien, was
8 surprised that O'Brien was coming back to him to meet with
9 the police in view of the previous meeting with himself and
10 the Crown, but Mr. O'Brien said the allegations in the
11 social worker case notes about inappropriate sexual
12 behaviour was prompting him to return.

13 So then on October 3rd, Mr. O'Brien wrote:

14 "I was finally able to reach the Crown
15 attorney, Don Johnson, today and advise
16 him that I had gone back to the police,
17 my reasons for doing so and the kind of
18 information I had given to them. I
19 asked whether he wished a copy of this
20 material at this present time and he
21 said he did not because he felt if the
22 police were going to pursue the matter
23 further, they would be alerting him
24 with the information they had, whereas
25 if their decision was not to proceed

1 further then there was no point in
2 circulating a lot of damaging
3 documents."

4 Do you recall that conversation?

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

6 **MS. JONES:** Again by way of background, at
7 this particular stage the file actually remains inactive
8 until February 5th, 1990. And on that day Ms. Antoine -- we
9 have heard in evidence here at the Inquiry that Ms. Antoine
10 came to the police station and gave a written statement to
11 Officer Malloy, who was the officer in charge.

12 So if I could please go to Bates page 7237,
13 which is page 6 of these notes, and the date of the entry
14 is February 7th, 1990.

15 **MR. JOHNSON:** Okay.

16 **MS. JONES:** And it would appear that Officer
17 Malloy on that day advised O'Brien that they did not have
18 sufficient evidence on which the police could proceed, and
19 that by telephone the Crown attorney had agreed. Now, it
20 doesn't mention your name there but we do have
21 correspondence coming up that will likely confirm that it
22 was you that they were speaking to.

23 "Malloy said that he was to meet with
24 the Crown attorney to go over the
25 evidence in the case and expects to be

1 advised in writing of the Crown's
2 agreement that no further action is
3 necessary."

4 **MR. JOHNSON:** I'm sorry, it says
5 "Detective". Was he a detective?

6 **MS. JONES:** I don't think so. I think he
7 was just a constable at that point. It's Kevin Malloy
8 though. You're familiar with Mr. Malloy?

9 **MR. JOHNSON:** Yeah, I know Mr. Malloy.

10 **MS. JONES:** If we could please go to Exhibit
11 1499. It's Document 739102.

12 One four nine nine (1499).

13 **THE COMMISSIONER:** Do you have it, sir? One
14 four nine nine (1499) is just a couple of exhibits from the
15 back.

16 **MS. JONES:** And this is a letter -- have you
17 got the letter there, sir?

18 **MR. JOHNSON:** Yeah.

19 **MS. JONES:** Okay. And this is a letter
20 dated April 4th, written by yourself, it would appear, to
21 Norm Douglas, who was the Director of Crown Attorneys at
22 that time.

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

24 **MS. JONES:** And essentially you're stating
25 that you enclose a statement made by Constable Kevin Malloy

1 of the Cornwall police by Jeannette Antoine with regards to
2 allegations that are being made. And it says:

3 "Although there appears to be some
4 factual basis for further
5 investigation, I can't find any
6 indication of specific dates when the
7 alleged incident occurred or names and
8 addresses of witnesses. I am informed
9 an investigation was carried out by
10 senior members of the CAS in the late
11 '70s, and I understand a number of
12 individuals employed were actually
13 released. Nothing further was done
14 with respect to laying charges."

15 And then the second-last paragraph says:

16 "I am forwarding this information to
17 you because of the climate with respect
18 to alleged child abuse cases from the
19 past which seem to be on the upswing.
20 Should anything come to your attention
21 with regard to this incident, the
22 Ministry will have knowledge of the
23 incident."

24 I'm wondering if you could just flesh that
25 out a little bit -- what you meant by especially that last

1 sentence. I wasn't particularly clear what you were trying
2 to say there.

3 **MR. JOHNSON:** I think what I was trying to
4 advise Mr. Douglas at the time -- that if further
5 complaints or allegations were made with regards to the
6 investigation, the Ministry would have knowledge of it.
7 They would be given knowledge that there was the
8 possibility of criminal proceedings would be commenced.
9 That's my motive. I think I tried to ---

10 **MS. JONES:** When you're saying the Ministry
11 will have knowledge; is that pertaining -- are you
12 referring to yourself?

13 **MR. JOHNSON:** I'm referring to the Attorney
14 General because Mr. Douglas was working for the Attorney
15 General. He was the Director of Crown Attorneys, the
16 Regional -- I'm sorry, the Eastern Regional Director, I
17 apologize.

18 **MS. JONES:** I'm just -- I'm sorry, I'm still
19 not clear on what you meant by the sentence.

20 **MR. JOHNSON:** Yeah, what I'm trying to give
21 information to Mr. Douglas by that correspondence is that
22 if anything further would come out of the investigation,
23 either by the police -- the continued investigation -- or
24 by the Children's Aid Society and charges would be laid,
25 the Ministry would be aware that criminal charges were --

1 would be forthcoming.

2 **MS. JONES:** So would you inform the Ministry
3 of that? Is that what you were saying?

4 **MR. JOHNSON:** I would certainly think I
5 would be, especially in a case like this. If these
6 allegations involving -- the fact that there was a
7 Children's Aid Society was involved, that members of the
8 Children's Aid Society had been released, that could be a
9 hot topic.

10 **MS. JONES:** Okay. So you're saying then --
11 it says, "Should anything come to your attention," so if
12 you send anything on to Mr. Douglas, you would also be
13 forwarding that on to the Ministry?

14 **MR. JOHNSON:** Well, that he is the Ministry.

15 **MS. JONES:** Okay.

16 **MR. JOHNSON:** He's the Regional Director of
17 Crown Attorneys.

18 **MS. JONES:** Okay, so you're ---

19 **MR. JOHNSON:** He's the Eastern Regional
20 Director, I'm sorry.

21 **MS. JONES:** Okay, so when you say "the
22 Ministry," you're referring to Mr. Douglas?

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

24 **MS. JONES:** Okay.

25 Now, the last paragraph says:

1 "I have not brought up the matter of
2 laying charges with the Cornwall police
3 as names and dates are not available.
4 Should you wish to discuss the
5 possibility of laying charges, I would
6 request an interview with Constable
7 Malloy and myself."

8 I'm wondering what you could do to just
9 explain what you meant by that last sentence.

10 **MR. JOHNSON:** If Mr. Douglas -- if further
11 information came forth as a result of a police
12 investigation and with contact with the Children's Aid, I
13 would like to have an appointment with Mr. Douglas to
14 determine what the process would be with regards to if any
15 criminal charge would be laid, what type of charges would
16 be laid, whether my office should prosecute it or there
17 should be an outside Crown Attorney's Office involved
18 because of the fact that the Children's Aid Society in the
19 City of Cornwall may be -- could be or may be apparent
20 conflict.

21 **MS. JONES:** Was this a typical sort of
22 approach that you had with Mr. Douglas or the Ministry
23 concerning these sorts of allegations?

24 **MR. JOHNSON:** No. No, this is a very rare
25 situation; I can advise you of that.

1 **MS. JONES:** Can you explain why, then, you
2 would pick this particular case to take this particular
3 step?

4 **MR. JOHNSON:** Well, because it involved
5 another ministry of the Ontario Government. And because of
6 that, you know, the -- well, the publicity, repercussions
7 et cetera would certainly be in vulgar, so it would be the
8 situation that they should know that there might be
9 something coming up that may cause embarrassment or
10 something along that line.

11 **MS. JONES:** So that was -- so because
12 another ministry involved, that's why you were involved
13 with Mr. Douglas?

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

15 **MS. JONES:** When we first talked about
16 Mr. Barque at the very beginning of the questioning today,
17 that involved another ministry.

18 **MR. JOHNSON:** Yeah.

19 **MS. JONES:** Is there a reason why you
20 wouldn't have involved the Ministry of the Attorney General
21 for that particular one, whereas you are involving it when
22 it's CAS?

23 **MR. JOHNSON:** Well, because things were
24 developing. The things -- the process had now developed.
25 Mr. Barque was '82, this is 1990 now, and we had obviously

1 received further information -- further instructions of how
2 to deal with situations.

3 Back in '82, we probably didn't know -- we
4 didn't have that kind of directive or policy situation.
5 But as things developed with the regional Crowns, the
6 Director of Crown Attorneys et cetera, there was probably
7 some kind of information that we had to provide to the
8 directors to put them aware of situations that may be
9 developing in the area.

10 **MS. JONES:** If you had met with Officer
11 Malloy to discuss this case further, would you have felt
12 comfortable advising him to lay charges if you felt it was
13 appropriate?

14 **MR. JOHNSON:** I would never tell a police
15 officer to lay charges. What I would do is I'd say, "This
16 is the evidence you've got. This is the procedure that has
17 to be followed. You have to swear out the information or
18 you get somebody else and say we have reasonable and
19 probable grounds to swear an information." Because I would
20 not direct anybody to lay a charge against anybody, because
21 that's not my job.

22 My job is to instruct on evidence and
23 procedure. If you have enough evidence, this is what you
24 can do. That's how it works.

25 **MS. JONES:** But what about your conversation

1 with Officer Payment that we referred to earlier?

2 **MR. JOHNSON:** Well, I think that may have
3 been a misinterpretation because I wouldn't instruct them
4 to say lay charge. My information would have been to (a)
5 you've got enough information here that if you wish to you
6 can lay a charge. But I wouldn't certainly instruct
7 somebody to lay a charge. I wouldn't want to get burned in
8 that respect.

9 **MS. JONES:** Well, would you advise a police
10 officer then to lay a charge ---

11 **MR. JOHNSON:** No, I wouldn't.

12 **MS. JONES:** --- or some reasonable instruct
13 ---

14 **MR. JOHNSON:** Following *Regina v. Boucher*
15 and experiences that I've had with respect to that matter,
16 my instructions to police officers would always be the
17 same; "If you've given me this information. If you have
18 now reasonable and probable grounds to lay a charge,
19 there's a Justice of the Peace; you go out and swear the
20 information. But I'm not going to tell you to lay a
21 charge."

22 **MS. JONES:** Okay.

23 Now, if I could please go to Exhibit 1500.
24 It should be the very next exhibit.

25 **MR. JOHNSON:** Yeah.

1 **MS. JONES:** It's Document 739143. And this
2 is a letter dated April 10th, 1990. I don't know if I
3 clarified on the record that your letter to Mr. Douglas was
4 dated April 4th, 1990.

5 **MR. JOHNSON:** Okay.

6 **MS. JONES:** And this appears to be a
7 response to that letter, dated April 10th, 1990. And it
8 states the following:

9 "Thank you for your letter of April 4th,
10 1990."

11 So it appears to be the previous letter.

12 "You are quite correct that we ought to
13 be careful on these matters and have
14 the police investigate every allegation
15 of abuse. I would like you to make
16 sure the police begin an investigation
17 if they already have not done so.

18 Perhaps Constable Malloy can dig a
19 little deeper to secure specifics.

20 Thank you for keeping me advised."

21 And that was from Mr. Douglas.

22 **MR. JOHNSON:** Yeah.

23 **MS. JONES:** Now, do you recall receiving
24 this letter?

25 **MR. JOHNSON:** Ms. Jones, I have wracked my

1 brain. I do not recall receiving this letter. I know I
2 was approached as a defence lawyer some time in the middle
3 '90s by Malloy -- by Constable Malloy and Sergeant
4 Derochie. They approached me at the courthouse in Cornwall
5 as I was going from one court to another, and said "Do you
6 remember that letter you got from Douglas?" something along
7 that line and I do not recall receiving this letter. I'm
8 sorry.

9 **MS. JONES:** Now, as you sent a letter to Mr.
10 Douglas on April 4th, 1990, if you didn't receive this
11 letter or this response in a timely fashion, there was no
12 follow-up letter by you saying "Mr. Douglas, where's the
13 response to my April 4th letter".

14 **MR. JOHNSON:** If there's nothing on the file
15 then I didn't follow it up.

16 **MS. JONES:** Was there no BF system or --
17 again, check and balance system in your office to say -- a
18 little reminder saying, "Oh, haven't heard back from Mr.
19 Douglas on this matter"?

20 **MR. JOHNSON:** At that time, I don't believe
21 there was.

22 **THE COMMISSIONER:** So I take it that there
23 was no -- so no follow-up was -- the instructions given in
24 that letter were not sent to the police, is that ---

25 **MS. JONES:** That's right. We heard from

1 Officer Malloy that he had never -- that he testified here
2 that he had not learned of this letter either.

3 MR. JOHNSON: Okay.

4 MS. JONES: Where the instructions to "dig a
5 little deeper" for example.

6 MR. JOHNSON: Well I'm sure if I had gotten
7 a letter I don't think I would have tossed it in the
8 wastepaper basket I can tell you that. But I don't recall
9 receiving this letter and the circumstances.

10 MS. JONES: If we could please go to Exhibit
11 1286, it's Document 739110.

12 THE COMMISSIONER: You'd be getting that.

13 MS. JONES: Have you got the exhibit there,
14 sir?

15 THE COMMISSIONER: I'm sorry?

16 MS. JONES: I'm just wondering, do you have
17 the exhibit there?

18 MR. JOHNSON: Yeah.

19 MS. JONES: Okay. Could you please go to
20 page 11 and that's Bates page 5650.

21 THE COMMISSIONER: So you might want to tell
22 him what the general theme of this report is.

23 MS. JONES: I beg your pardon, sir?

24 THE COMMISSIONER: You might want to tell
25 him what this report's all about.

1 **MS. JONES:** Yes, I will.

2 This report is prepared by Officer Derochie
3 into the complaint made by Jeannette Antoine and the
4 handling of the investigation from start to finish and part
5 of that investigation involved Officer Malloy and also made
6 reference to the correspondence between yourself and Mr.
7 Douglas that we just reviewed.

8 And the particular part, on page 11, that
9 deals specifically with your involvement is point five,
10 down towards the bottom of ---

11 **MR. JOHNSON:** Yeah, I see that.

12 **MS. JONES:** --- Bates page 5650. And the
13 heading on that paragraph is:

14 "The CAS director's persistence in
15 checking with Officer Malloy resulted
16 in Malloy pushing the Crown attorney
17 into action."

18 And Officer Derochie states:

19 "The local Crown, in a letter to the
20 regional Crown attorney indicates that
21 Antoine's complaint appears to have
22 substance. He indicates that he has
23 not instructed the police about laying
24 charges; he suggests that should the
25 regional Crown want charges laid that

1 he and Malloy would like to meet with
2 him first.

3 It would appear strange that after
4 indicating that the complainant's story
5 had merit that the Crown would not
6 instruct Constable Malloy to follow-up
7 and gather evidence. Why would he, the
8 local Crown, send such a letter and
9 indicate that if the regional Crown
10 thought charges should be laid that
11 they should meet first."

12 And I'm wondering if you could just respond
13 to that description by Staff Sergeant Derochie?

14 **MR. JOHNSON:** Well, my response to that is
15 that's Constable Derochie's interpretation of the
16 situation.

17 **MS. JONES:** Yes.

18 **MR. JOHNSON:** If they felt that they had
19 sufficient grounds to lay charges why didn't they go out
20 and do it themselves. I mean they don't need direction
21 from me to lay the charge. As I explained to you earlier,
22 my response to that is that what they're trying to do is
23 say that it's my problem, it's my fault and, et cetera.

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

25 **MR. MANDERVILLE:** Sorry, Mr. Commissioner,

1 to interrupt. I think it's important that the witness be
2 given a little context about this and that Derochie --
3 Sergeant Derochie, and Item Number 5 in those proceeding
4 and following it prefaces it by saying, at page 9, that
5 he's playing devil's advocate in making certain
6 observations on it and I don't think that was put to the
7 witness.

8 **THE COMMISSIONER:** Fair enough.

9 **MR. JOHNSON:** I'm sorry, I apologize.

10 **THE COMMISSIONER:** In the context of this
11 report, sir, Sergeant Derochie goes through an analysis of
12 things and then goes through what he calls being the
13 "Devil's advocate" in looking at the other side of the coin
14 looking at things.

15 And also, I guess you'll get to the next
16 paragraph?

17 **MS. JONES:** Yes.

18 **THE COMMISSIONER:** Okay.

19 **MR. JOHNSON:** Okay.

20 **MS. JONES:** The point raised by Staff
21 Sergeant Derochie though is in your letter you state: "It
22 appears that there seems to be some merit to this case".

23 **MR. JOHNSON:** Right.

24 **MS. JONES:** And ---

25 **MR. SCHARBACH:** I'm sorry. The actual quote

1 from Mr. Johnson's letter is that: "Although there appears
2 to be some factual basis for further investigation"; he
3 doesn't say that there's no merit to the complaint.

4 **THE COMMISSIONER:** Yes, that's fair.

5 **MS. JONES:** That's fair. I'm just using
6 Officer Derochie's words, I suppose I shouldn't do that.

7 What he's saying here is that if there is
8 enough information to warrant a further investigation, I
9 suppose he's wondering why you're looking for direction
10 from the regional Crown on this, why you wouldn't just
11 provide that directly to the officer.

12 **MR. JOHNSON:** Well I think Mr. Derochie may
13 have been looking into his own little orbit with respect to
14 that.

15 My letter to Mr. Douglas was to put him on
16 notice that there may be problems with another ministry of
17 the provincial government and that the Cornwall police, who
18 I assume, have the authority to investigate cases, can do
19 their own investigation. That was ---

20 **THE COMMISSIONER:** Well I think ---

21 **MR. JOHNSON:** I mean this suggestion by --
22 as you referred to as the Devil's advocate, I mean it's
23 certainly is a nice phrase to use, et cetera, but you know,
24 it still gets down to the bottom line is that if they think
25 they've got an investigation, they don't need direction

1 from me because I don't wear a policeman's badge and I
2 don't get paid to be a policeman.

3 **THE COMMISSIONER:** No, I think the whole
4 issue though, really, is in the last paragraph coming up.

5 **MS. JONES:** Yeah.

6 **THE COMMISSIONER:** So just read -- I think
7 maybe we should read it all in context.

8 **MS. JONES:** All in context, that's fine.

9 **THE COMMISSIONER:** Yes.

10 **MS. JONES:** In the next paragraph, at the
11 top of the next page:

12 "The regional Crown attorney does send
13 a response to the local Crown
14 instructing him to have the police
15 continue to gather evidence."

16 The phrase is actually "dig a little
17 deeper".

18 "The local Crown states that he never
19 received a reply from the regional
20 Crown and the Regional Crown never
21 follows up."

22 Which is consistent with what you just said

23 ---

24 **MR. JOHNSON:** Yeah.

25 **MS. JONES:** --- a moment ago.

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

2 **MS. JONES:** The next paragraph, six, says:

3 "The CAS director does not hear back
4 from Constable Malloy or the Crown
5 attorney and gives up hope of ever
6 having the matter resolved to his
7 satisfaction. Constable Malloy and his
8 supervisors forget the whole matter.
9 The local Crown does not follow-up, the
10 regional Crown never follows up."

11 **MR. JOHNSON:** Yeah.

12 **MS. JONES:** Do you agree with that
13 classification?

14 **MR. JOHNSON:** Well, as I say, I don't recall
15 receiving the original -- the April 10th letter from Mr.
16 Douglas and I never did -- I didn't receive it then, I
17 never received a further correspondence from him nor did I
18 appear to have written back to him.

19 **MS. JONES:** Were you aware that such a
20 report was being prepared by Staff Sergeant Derochie?

21 **THE COMMISSIONER:** That was in 1995.

22 **MS. JONES:** Yes.

23 **THE COMMISSIONER:** Okay. Were you aware in
24 1995 ---

25 **MR. JOHNSON:** As a defence lawyer, I don't

1 think they would tell me that, no.

2 **MS. JONES:** Well you said that -- you said
3 they had a brief -- I don't know if you want to call it
4 interview but contact with them in the hallway.

5 **MR. JOHNSON:** Yeah, they cornered me, as I
6 say, I was running from one court to another trying to get
7 something done and they stopped me right in the hallway and
8 they mentioned something about, "Do you remember this" and
9 I said "No, I don't remember that" and then they moved on
10 and that was it.

11 **MS. JONES:** Okay, so you were never actually
12 interviewed for this report, in a formal sense?

13 **MR. JOHNSON:** If you want to call 20 seconds
14 in a courtroom hallway an interview, yeah, I got
15 interviewed.

16 **MS. JONES:** Okay, but besides that you never
17 had any sort of ---

18 **THE COMMISSIONER:** Not any kind of formal --
19 -

20 **MR. JOHNSON:** No. No, no, Mr. Commissioner.

21 **MS. JONES:** Okay. So you were not made
22 aware that they were writing a report that involved your
23 involvement as a Crown attorney?

24 **MR. JOHNSON:** I was never made aware of
25 that, Ms. Jones.

1 **MS. JONES:** Okay, thank you.

2 **THE COMMISSIONER:** But all I think I'm
3 trying to see here is you've got this young lady who's got
4 a complaint about the Children's Aid Society and how she
5 was dealt with. This is Ms. Antoine.

6 **MR. JOHNSON:** Yeah.

7 **THE COMMISSIONER:** Okay. So then the police
8 get involved and they're trying to look at it, and the
9 Children's Aid Society is looking at it and saying,
10 "Investigate, investigate, because I'm about to retire and
11 I'd like to clean this all up." And so the police officer
12 says, "Well, you know, what do you want me to do? I talked
13 to the Crown and he sent a letter," and so had that letter
14 from Norm Douglas come to fruition, they would have had
15 their instructions to dig deeper.

16 **MR. JOHNSON:** Okay.

17 **THE COMMISSIONER:** In the middle of all that
18 the situation is, well, if you didn't receive this letter -
19 - and you say you haven't seen it. That's fine. Could you
20 not have followed up with the B.F. system to do that?

21 **MR. JOHNSON:** Yeah.

22 **THE COMMISSIONER:** If you did get the
23 letter, then Mr. Douglas should have phoned you up and
24 said, "By the way, I sent you a letter a few months ago.
25 Whatever happened about that?" Then because of that, to a

1 certain degree, it muddles up a lot of other situations --
2 factual situations with respect to the Antoine
3 investigation.

4 **MR. JOHNSON:** I'm not going to disagree with
5 that, Mr. Commissioner, but as I say, it was not my
6 practice as a Crown attorney that if I had discussions
7 et cetera that I didn't do something about it. I can tell
8 you that.

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

10 **MR. JOHNSON:** Whether I made a right
11 decision or a wrong decision, I'd make a decision.

12 **THE COMMISSIONER:** Fine.

13 **MS. JONES:** I want to move on to another
14 foster home called the Lapensée Foster Home and I'm just
15 going to put two documents to you.

16 **MR. JOHNSON:** Lapensée?

17 **MS. JONES:** Lapensée.

18 **THE COMMISSIONER:** Just a second.

19 **MS. JONES:** I'm just going to put two
20 documents to you and I'm leading up to the third one, which
21 is actually a letter where your name is mentioned, so I
22 have to give you a bit of background so I can get to that
23 letter, so please bear with me a bit.

24 Exhibit 2394, which is Document 7170822.

25 That's not correct. It's Document 738539.

1 **THE COMMISSIONER:** Okay. It's still the
2 same exhibit?

3 **MS. JONES:** Yeah.

4 **THE COMMISSIONER:** If you give me the
5 exhibit number first ---

6 **MS. JONES:** Two three nine four (2394).

7 **THE COMMISSIONER:** --- we can get ---

8 **MS. JONES:** Yeah.

9 **THE COMMISSIONER:** --- going on this.

10 **MS. JONES:** I know there's people behind me
11 though that need the document number.

12 **THE COMMISSIONER:** Excuse me?

13 **MS. JONES:** There's people behind me ---

14 **THE COMMISSIONER:** In the order of things I
15 get the exhibit number; they get the document number.

16 **MS. JONES:** I understand.

17 **THE COMMISSIONER:** I prefer the exhibit
18 number.

19 **MS. JONES:** I believe I gave the exhibit
20 number first.

21 **THE COMMISSIONER:** No.

22 **MS. JONES:** Okay.

23 **THE COMMISSIONER:** And if you did, well,
24 congratulations. Two three nine four (2394)?

25 **MS. JONES:** Yes.

1 **THE COMMISSIONER:** All right.

2 **MS. JONES:** Document 738539.

3 **THE COMMISSIONER:** All right.

4 **MS. JONES:** Madam Clerk, could you just
5 verify this is an excerpt?

6 **THE COMMISSIONER:** It is. It is an excerpt.

7 **MS. JONES:** Okay, thank you.

8 **THE COMMISSIONER:** Of 738539, and it's a
9 Serious Occurrence Report?

10 **MS. JONES:** Yes, that's correct.

11 I just want to summarize this occurrence
12 report. As I say, I don't need you to go all the way
13 through it at this point.

14 **MR. JOHNSON:** Oh, okay.

15 **MS. JONES:** I don't know if you've seen it
16 recently or not, but it's a report that was prepared by Ian
17 MacLean, who at the time was a group home supervisor, and
18 the date of the report is December 1st, 1982, which is on
19 the back page. And essentially this report was prepared
20 concerning ---

21 **MR. JOHNSON:** I just apologize to you,
22 Ms. Jones. Was Mr. MacLean a member of the CAS?

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

24 **MS. JONES:** Yes.

25 **THE COMMISSIONER:** He's a group home

1 supervisor.

2 MR. JOHNSON: Oh, okay.

3 MS. JONES: Yeah.

4 I'm sorry, on the very last page of the
5 document you can say his name and title and the date of the
6 ---

7 MR. JOHNSON: Oh, okay.

8 MS. JONES: --- document. And essentially
9 what Mr. MacLean has done is investigate or write about
10 allegations that were made about the Lapensée Foster Home,
11 and a number of girls were making allegations against the
12 son of the foster parents, and these were -- I suppose it
13 was similar sort of a nature, and included in that was the
14 allegation that the son had impregnated a former ward. And
15 according to Mr. O'Brien, he had said that he had had
16 contact with you about this matter.

17 So I'll leave this document as it is,
18 because this is a description of the various offences that
19 were being complained of and that Mr. MacLean wrote about,
20 and I'll just direct you now to Exhibit 129, which is
21 Document 738539 as well.

22 THE COMMISSIONER: So in that regard, sir,
23 there's a letter going to the Ministry from Tom O'Brien,
24 who was the Executive Director here, and then about first
25 page, last paragraph, it says:

1 "While I do not expect any action on
2 the part of the Crown attorney or the
3 police, I have decided to discuss the
4 whole matter with the Crown attorney
5 and have made an appointment with him."

6 I think that's where we're leading up to.

7 **MS. JONES:** Correct; that's right.

8 **THE COMMISSIONER:** So next ---

9 **MS. JONES:** That's right, and if we could
10 please go to Exhibit 130, which should be the very next one
11 for you; it's still Document 738539.

12 **MR. JOHNSON:** Okay. All right. Yeah?

13 **THE COMMISSIONER:** So now when it says that
14 you had -- well, it says:

15 "The writer, Mr. O'Brien, had a meeting
16 with the Crown attorney on Monday,
17 December 6th, 1982, at 3:00 p.m. After
18 a brief discussion and perusal of the
19 report, it was felt that no further
20 legal action would be taken."

21 Right?

22 **MS. JONES:** Now, do you recall discussion
23 about any of these allegations that have been made, sir?

24 **MR. JOHNSON:** No, Ms. Jones, I don't. But I
25 can tell you at the time I think in my office there was an

1 assistant Crown attorney by the name of Guy DeMarco, who's
2 now a judge in Windsor, and he and Mr. O'Brien were quite
3 close friends. That conversation may have taken place with
4 him.

5 **MS. JONES:** Okay.

6 And the last foster home I'm looking at is
7 the -- what's called the Cieslewicz Foster Home, and if we
8 could look at Exhibit 2337, which is Document 114425.

9 **THE COMMISSIONER:** It should be in this
10 book, sir. Maybe not. And as luck would have it, it
11 isn't.

12 **MS. JONES:** Have you got that in front of
13 you, Mr. Johnson?

14 **MR. JOHNSON:** Two three three seven (2377)?

15 **THE COMMISSIONER:** No, hang on, it's coming.

16 **MS. JONES:** It's 2337.

17 **MR. JOHNSON:** Two three three seven (2337).

18 **THE COMMISSIONER:** So again we start off
19 this, sir, with the letter from the Executive Director,
20 going to the Director of Child Welfare, talking about a
21 specific foster home where there's some allegations of a
22 sexual nature against Mr. Cieslewicz.

23 **MS. JONES:** Yes, that's right.

24 **THE COMMISSIONER:** All right.

25 **MS. JONES:** At the very last paragraph it

1 says: "Over the years we've received four complaints of a
2 sexual nature --" against the person running the particular
3 home.

4 If we go to the second page, at the very,
5 very last line it says:

6 "I have contacted the Crown attorney on
7 this matter and will be meeting with
8 him today. We will keep you informed
9 as to future developments with the
10 case."

11 Now, before you respond I just want to show
12 you the follow-up letter to this, which is the very next
13 exhibit, 2338. Madam Clerk has already anticipated; well
14 done. Document 114423, and this is a letter from O'Brien
15 to Mr. Dalby at the Ministry, dated November 1st, 1978. And
16 in the first paragraph it says:

17 "After sending our letter to you
18 yesterday regarding the abovenamed
19 home, I had a meeting with the Crown
20 attorney, Mr. Don Johnston [sic]."

21 I believe that's you.

22 "Present at the meeting between
23 Mr. Johnston [sic] and myself were the
24 assistant Crown attorney, Mr. Guy
25 DeMarco, and Mr. Angelo Towndale, a

1 supervisor with this department, as
2 well. And after considering the facts
3 that we presented to him, Mr. Johnston
4 [sic] was of the opinion that there was
5 insufficient evidence to proceed with
6 any charges against Mr. Cieslewicz."

7 Do you see that, sir?

8 **MR. JOHNSON:** Yeah.

9 **MS. JONES:** Do you have any recollection of
10 this meeting?

11 **MR. JOHNSON:** No, I'm sorry, I don't,
12 Ms. Jones. I'm sorry.

13 **MS. JONES:** Just a couple of more small
14 questions to ask you. I'm leaving the CAS now and I'm
15 moving on to a person named David Silmser.

16 **MR. JOHNSON:** Yeah.

17 **MS. JONES:** And I'll go to Exhibit 295,
18 Document 717428.

19 **THE COMMISSIONER:** What is the document?

20 **MS. JONES:** Exhibit 295 ---

21 **THE COMMISSIONER:** I understand, but it's
22 just a single page document ---

23 **MS. JONES:** It's not, I have an excerpt. My
24 excerpt is 7063742.

25 **THE COMMISSIONER:** I'm just wondering ---

1 **MR. JOHNSON:** They're the notes of Heidi
2 Sebalj.

3 **THE COMMISSIONER:** Is it something we can
4 look up on the screen easily?

5 **MS. JONES:** Yes, I think so.

6 **THE COMMISSIONER:** So sir, rather than go in
7 the vault, we'll look at it here. If it doesn't work,
8 we'll get the ---

9 **MS. JONES:** I'll see if I can ask the
10 question without making reference. I have the notes here
11 in front of me.

12 Essentially, according to Officer Sebalj's
13 notes, 18th of February 1993, ---

14 **MR. JOHNSON:** I'm sorry, what date?

15 **MS. JONES:** February 18th, 1993.

16 **MR. JOHNSON:** Thank you.

17 **MS. JONES:** Mr. Silmser, according to her,
18 had told her that he had retained you as counsel and then
19 had fired you a couple of days later when he was talking to
20 her on the 22nd of February. These are her notes I'm
21 reading from:

22 "Advised he fired Don Johnson on
23 Friday, says he was doing things
24 without his approval."

25 Now, concerning any issues of privilege, I'm

1 going to allow you to make the decision if there's an issue
2 with regards to any of that, if you wish to comment on
3 that. This has just come out in the Inquiry and I -- if
4 you wish to, you can make a response.

5 **MR. JOHNSON:** This is one fact I was made
6 aware and I kept a lot of my files. I haven't destroyed
7 all of them and I do not have a file on a David Silmser, I
8 was never retained by a David Silmser. And I can tell you,
9 or you may be aware, Mr. Silmser approached me in a bar,
10 said he wanted to talk to me about something, I told him I
11 don't talk business in a bar, if he wanted to speak to me
12 he had to make an appointment. He showed up at my office,
13 told me about what his game plan was, and I asked him to
14 leave. I gave him a choice of two ways of leaving.

15 **MS. JONES:** And the very last document I
16 wish to draw to you is Document 124167.

17 **THE COMMISSIONER:** When was that, sir?

18 **MR. JOHNSON:** This was in 1993.

19 **THE COMMISSIONER:** Okay.

20 **MR. JOHNSON:** I was a defense lawyer then.
21 I was working on, I believe it was, 308 Second Street West.

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

23 **MS. JONES:** The entry in Officer Sebalj's
24 notes is the 22nd of February 1993.

25 **THE COMMISSIONER:** Okay. Exhibit 2957 is a

1 letter addressed to Mr. Murray MacDonald by Mr. Johnson,
2 dated January 27th, 1994. Two nine five seven (2957) is the
3 exhibit.

4 --- EXHIBIT NO./ PIÈCE NO. P.-2957

5 (124167) Letter from Don Johnson to
6 Murray MacDonald re: Kenneth Seguin
7 dated 27 Jan 94

8 **MS. JONES:** Now just to paraphrase, on that
9 date, you wrote to Murray MacDonald, asking that he launch
10 an inquest into the death of Ken Seguin.

11 **MR. JOHNSON:** Yeah.

12 **MS. JONES:** And you indicated in this letter
13 that you had been contacted by the Seguin family with
14 respect to this and they asked that you contact the Ontario
15 Provincial Police.

16 **MR. JOHNSON:** Yeah.

17 **MS. JONES:** And in the letter, it states
18 that Mr. MacDonald does not agree that there should be an
19 inquest and any complaints of a criminal nature should be
20 directed specifically to Randy Millar and Chris McDonell,
21 the OPP officers in charge of the investigation.

22 And were you aware -- do you recall, and
23 again this may be pursuant to solicitor/client privilege,
24 I'll let you decide that -- but were you aware at that time
25 that the Seguin family had made a complaint to

1 Superintendent Fougère a few days before the date of this
2 letter, or sorry, a few days after the date of this letter,
3 complaining about the actions of the officers involved?

4 **MR. JOHNSON:** No. The only reason I wrote
5 that letter at the request of the Seguin family was, they
6 came and asked me if I would write a letter to see whether
7 the Crown would in fact have an inquest. I said I would
8 and I wrote the letter and Mr. MacDonald made his decision,
9 and I advised them and that's the last I ever heard.

10 **MS. JONES:** Okay. Thank you.

11 Mr. Johnson, those are all my questions.

12 And at this stage, every witness is asked if
13 they have any recommendations that they wish the
14 Commissioner to consider, and also this is your opportunity
15 to describe any sort of an impact that this proceedings may
16 have had on you on a more personal level. This is your
17 opportunity.

18 **MR. JOHNSON:** Well, impact wise, all I can
19 advise you is, with regard to the recommendations, you have
20 to put everything in context. When I was asked to speak on
21 these matters, I was operating under a different umbrella
22 than is presently in vogue with regards to prosecutions in
23 the Province of Ontario.

24 We did not have the facilities at that time
25 with regards to victim/witness coordinators. We did not

1 have the availability of the access to technical matters
2 such as computers, emails, et cetera. We didn't have that.

3 That obviously has been remedied and now
4 being on the defense side, the Crown Attorney's Office has
5 much more availability to resources and they are using them
6 as required.

7 As to the impact, all I can tell you is that
8 I'm in private practice. I've lost -- this will be the
9 fourth day, I'll be back tomorrow. I've lost five days of
10 income availability. I've had to cancel at least seven
11 trials and about three or four sentencing hearings because
12 of this. I was told that I would have time set aside. I
13 set aside two days, the 15th and the 16th of December because
14 of the prolongation of other witnesses, I wasn't reached.
15 Those days were lost to my clients. I was subpoenaed by
16 two individuals who came to my office on the 17th of
17 December in separate cars, to give me a subpoena for the
18 19th. I was planning on going to Winnipeg to see my son and
19 I had to cancel that flight. And I've been here today and
20 I've had to cancel at least one trial today and I will have
21 to be here tomorrow and probably have to cancel another
22 one.

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

24 All right, so you'll be excused for today,
25 sir, we'll see you tomorrow morning at 9:30.

1 Just a minute, before you go sir. Have we
2 had - did we get an estimate of time for this gentleman, to
3 see how much he should be putting aside for tomorrow?

4 **MS. JONES:** At the lunch hour, I was able to
5 add up between four and five hours. I don't know if that's
6 changed or not.

7 **THE COMMISSIONER:** Most of the day, sir.

8 **MR. JOHNSON:** Thank you.

9 **THE COMMISSIONER:** All right. Thanks.
10 You're excused, sir. See you tomorrow
11 morning at 9:30.

12 I still have the McLellan decision to give.

13 Thank you, sir. You're excused.

14 And I know Mr. McLellan has been waiting
15 patiently on the Internet.

16 So, you're excused sir, Mr. Scharbach, if
17 you want to go with your witness.

18 **--- REASONS FOR THE RULING ON AN APPLICATION BY H. KEN
19 MACLENNAN TO OBTAIN A RECOMMENDATION FOR FUNDING BY THE
20 COMMISSIONER/RAISONS POUR LA DECISION SUR L'APPLICATION PAR
21 H. KEN MACLENNAN POUR OBTENIR DES RECOMMANDATIONS SUR LE
22 FINANCEMENT PAR LE COMMISSAIRE**

23 **THE COMMISSIONER:** So these are my reasons
24 for the ruling on an application by H. Ken McLellan to
25 obtain a recommendation for funding.

1 Mr. Ken McLellan has applied for a
2 recommendation for funding, so that he can challenge one of
3 my rulings before the Divisional Court. This application
4 comes as a result of a number of previous decisions which I
5 will outline below.

6 On November 17th, 2005, I issued a ruling
7 granting full standing to the Diocese of Alexandria-
8 Cornwall, hereinafter called the Diocese, to participate at
9 the Cornwall Public Inquiry. I did not grant them funding
10 at that time but postponed my decision and asked the
11 Diocese to reveal it's financial structure and advise
12 whether it had exhausted all means of funding available to
13 it.

14 The Diocese provided supplementary
15 submissions on the issue and on December 6th, 2005, I issued
16 a decision recommending funding for the Diocese. I noted
17 in this ruling that I considered that the religious duties
18 of the Diocese were clearly separate from its financial
19 arrangements.

20 In July 2006, Mr. McLellan brought an
21 application for standing and funding, to challenge my
22 decision to recommend funding for the Diocese. I dismissed
23 that application on August 10th, 2006, on the basis that he
24 did not meet the test for standing to participate in the
25 Inquiry. Mr. McLellan challenged this decision by way of a

1 complaint to the Ontario Judicial Council alleging judicial
2 misconduct. The OJC dismissed Mr. McLellan's application
3 on January 26, 2007.

4 Mr. McLellan now wishes to seek judicial
5 review of my decision of August 10th, 2006, dismissing his
6 application for standing and funding. Mr. McLellan asked
7 the Commission to recommend that the Attorney General
8 provide funding for his judicial review application.

9 In his submissions, Mr. McLellan raises a
10 number of arguments about why my decision to recommend that
11 the Diocese receive funding and my decision to deny him
12 standing to challenge the Diocese funding should be
13 overturned.

14 As this application is merely a request for
15 a recommendation for funding for judicial review, I will
16 not deal with the substance of Mr. McLellan's argument
17 about whether or not my decision should be set aside.
18 Rather, I will address the issue of whether Mr. McLellan's
19 application for funding to challenge this decision has
20 merit.

21 It is my view that the application for a
22 funding recommendation should be dismissed for the reasons
23 that follow.

24 In my opinion, neither the Order-in -Council
25 nor the Rules of Practice and Procedure permit me to

1 recommend funding for Mr. McLellan's challenge.

2 Although standing and recommendations for
3 funding have often been granted at or around the same time,
4 these are two separate steps in the process. According to
5 the clear and plain meaning of the Order-in-Council and the
6 Rules of Practice and Procedure, I can only recommend
7 funding for a party who has met the test for standing.
8 According to section 10 of the Order-in-Council, the
9 Commission, and I read:

10 "The Commission may make
11 recommendations to the Attorney General
12 regarding funding to parties [and I
13 stress] who have been granted standing
14 to the extent of the parties' interests
15 where in the Commission's view, the
16 party would not otherwise be able to
17 participate in the Inquiry without such
18 funding. Any such funding
19 recommendations shall be in accordance
20 with Management Board of Cabinet
21 Directives and Guidelines."

22 Section 58 of the Rules of Procedure have an
23 identical requirement. And I read:

24 "The Commission may make
25 recommendations to the Attorney General

1 regarding funding to parties [again]
2 who have been granted standing to the
3 extent of the parties' interest where
4 the Commission's view that the party
5 would not be otherwise able to
6 participate in the Inquiry without such
7 funding. Therefore, one must
8 demonstrate that one can meet the test
9 for standing in order to receive a
10 recommendation for funding."

11 There is a common explanation for this rule.
12 I will only recommend that an individual or an institution
13 receive public funding if it can successfully demonstrate
14 that it merits participation at the Inquiry process. It is
15 not in the public interest to provide funding for
16 individuals who are unable to meet the threshold test.

17 Even if I had the power to recommend funding
18 for a party without standing, I do not think that this is
19 the type of exceptional case that would permit the
20 Commission to recommend that the Attorney General fund a
21 judicial process that is external to the Inquiry.

22 The issue of whether a Commission may
23 recommend funding for the judicial review is one of its
24 decisions has been raised before. For example, on June
25 13th, 2006, I issued a ruling on the question of whether I

1 should recommend that Father Charles MacDonald receive
2 funding in order to challenge a decision to allow alleged
3 victims of historical abuse to testify before the
4 Commission. For those reasons, I determined that I was not
5 convinced that the Order-in-Council and the Rules of
6 Practice and Procedure enabled me to recommend that the
7 Attorney General provide funding for an appearance before
8 the divisional court. However, given the importance of
9 that issue at the time -- given the importance of the issue
10 to the functioning of the Inquiry at that time, I decided
11 that it would be appropriate to suggest to the Attorney
12 General that a judicial review be funded. It was essential
13 to the functioning of the Inquiry to have a definitive
14 answer on whether alleged victims of historical abuse could
15 testify so that the process could move forward.

16 The issue required an interpretation of the
17 Commission's mandate and it was a question of whether it
18 was within the jurisdiction of the Commission to hear
19 evidence of a particular nature from a particular source.
20 I indicated in my decision that this was an exceptional
21 ruling that should not be viewed as a precedent for further
22 applications of this nature.

23 In my view, Mr. McLellan's application is
24 not of such an exceptional nature that is appropriate for
25 me to suggest to the Attorney General that it receive

1 funding for judicial review. Mr. McLellan does not wish to
2 participate in the Inquiry in order to present evidence to
3 advance the Commission's mandate. He wishes to participate
4 in order to argue that another party's funding be
5 withdrawn.

6 At its core, the issue raised by Mr.
7 McLellan is the proper allocation of public funds. Even if
8 he were successful in this argument, very little would
9 change in the functioning of the Inquiry. The Diocese
10 would continue to participate. The evidence given by
11 Diocese's witnesses would stand.

12 Further, the issue raised by Mr. McLellan is
13 all but moot. I have long since made my recommendation to
14 the Attorney General that the Diocese receive funding for
15 its participation in the Inquiry. The Attorney General has
16 accepted this recommendation and has provided funding to
17 the Diocese for almost three years.

18 The amended Order-in-Council mandates that
19 the Inquiry finish hearing witnesses by January 30th, 2009
20 and that closing submissions be completed by February 27th,
21 2009. By the time Mr. McLellan's application is heard by
22 the divisional court, the process will be close to
23 completion or will be completed.

24 Mr. McLelland waited over six months to
25 bring his initial application and waited more than two

1 years for my decision to dismiss his first application to
2 bring this request for funding for judicial review. This
3 delay cannot be explained by his challenge to the OCJ as
4 this decision was received in January of 2007 almost 22
5 months ago. It is, in my view, his own delay in taking
6 action that renders his case practically moot.

7 Finally, I would note that Mr. McLellan
8 wishes to judicially review both the decisions of this
9 Commission as well as the decision of the Ontario Judicial
10 Council. Although I have ruled that exceptionally I may
11 suggest to the Attorney General that funding be provided
12 for the judicial review of one of my decisions, I do not
13 have the power to recommend funding to review the decision
14 of a separate body such as the Ontario Judicial Council.
15 To challenge the OCJ's decision has no connection to my
16 mandate and is unrelated to participation in this Inquiry.
17 Accordingly, I decline to make any recommendation or
18 suggestion to the Attorney General on this matter. This
19 application is dismissed and it's dated of today's date.

20 Thank you.

21 So we'll come back at 9:30 tomorrow morning;
22 snow permitting.

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

25 This hearing is adjourned until tomorrow

1 morning at 9:30 a.m.
2 --- Upon adjourning at 4:15 p.m./
3 --- L'audience est ajournée à 16h15

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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