

**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 332**

**Held at :**

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

Monday, January 12, 2009

**Tenue à:**

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

Lundi, le 12 janvier 2009

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Suzanne Sinnamon	Commission Counsel
Mr. John E. Callaghan	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
Ms. Leslie McIntosh	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 <sup>e</sup> 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
M <sup>e</sup> Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Paul D. Stern	Stern, Landesman, Clark
Assoc. Chief Justice Peter Griffiths	

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1 --- Upon commencing at 9:47 a.m./

2 L'audience débute à 9h47

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

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

8 Please be seated. Veuillez vous asseoir.

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

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

13 Just before we start, a couple of  
14 housekeeping matters, if I may?

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** I want to introduce a new  
17 face, Mr. Paul Stern, who is counsel for Justice.

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

19 **MR. ENGELMANN:** In addition, sir, I have two  
20 brief matters.

21 One is Ms. Levesque has asked me to allow  
22 her to make some very brief submissions to you about a  
23 matter that arose, I think, during her cross-examination of  
24 a previous witness.

25 **THE COMMISSIONER:** Yes, m'hm.

1                   **MR. ENGELMANN:** And just before I do that,  
2                   though, sir, Mr. Strawczynski for the CCR has raised an  
3                   issue on transcript errata perhaps and has indicated to me  
4                   that, according to -- he says he was preparing exhibit  
5                   numbers and the exhibits jumped from 3002 to 3013 and it  
6                   appears to be -- and that's in the transcript record,  
7                   apparently.

8                   **THE COMMISSIONER:** Right.

9                   **MR. ENGELMANN:** So he wants to bring this to  
10                  all of our attention. Perhaps that's just something we  
11                  could look at and if that's still an issue at the break I  
12                  can have him actually speak to it. That was an issue just  
13                  referenced in the last volume of the transcript. That was  
14                  the transcript with Prosecutor Flanagan. So we'll have a  
15                  look at that with the reporters and if there's still an  
16                  issue after the morning break, I'll bring it back up.

17                  **THE COMMISSIONER:** So what do we do in the  
18                  meantime with new exhibits?

19                  **MR. ENGELMANN:** I think the Exhibit Registry  
20                  is correct.

21                  **THE COMMISSIONER:** All right.

22                  **MR. ENGELMANN:** It's just the reference to  
23                  the exhibits in the official transcript that will need to  
24                  be corrected.

25                  **THE COMMISSIONER:** Okay, thank you.

1                   **MR. ENGELMANN:** All right.

2                   I'll turn it over to Ms. Levesque before we  
3 call our next witness.

4                   **THE COMMISSIONER:** Thank you.

5                   Ms. Levesque.

6                   --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. LEVESQUE:**

7                   **MS. LEVESQUE:** Good morning, Mr.  
8 Commissioner.

9                   On Friday, January 9<sup>th</sup>, I was prevented from  
10 terminating my cross-examination of Mr. Curt Flanagan. I  
11 had intended to put some documents as exhibits to Mr.  
12 Flanagan. My cross-examination has nothing to do with  
13 exonerating Romeo Major. It has to do with evaluating the  
14 Bishop's decision to reinstate Romeo Major ---

15                   **THE COMMISSIONER:** Yeah.

16                   **MS. LEVESQUE:** --- which we know is under  
17 review.

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

19                   **MS. LEVESQUE:** The Bishop's evidence before  
20 this Inquiry was that C-111 had the illness before she  
21 lodged her complaint. C-111 was interviewed on November  
22 14<sup>th</sup>, 2000 by Constable Genier and Crown Breault, then  
23 Wilhelm, and memory problems were noted at that time.

24                   **THE COMMISSIONER:** Yes.

25                   **MS. LEVESQUE:** So C-11 had difficulty with

1 her memory long before September 19<sup>th</sup> and 20<sup>th</sup>, 2001. And  
2 these documents, which I would request be entered as  
3 exhibits, will show that to be the case. So I respectfully  
4 request that this evidentiary vacuum be cured by entering  
5 three exhibits.

6 **THE COMMISSIONER:** Well, I totally agree  
7 with you. What I disagreed with you was putting it to the  
8 witness who had no knowledge whatsoever, and so on my drive  
9 back on the weekend I thought that it might be wise for you  
10 to do that as well. Thank you. I appreciate that.

11 **MS. LEVESQUE:** To enter the exhibits?

12 **THE COMMISSIONER:** Yeah, yeah.

13 **MS. LEVESQUE:** The first document, Madam  
14 Clerk, is Number 707641. I have copies. I don't know --  
15 these are Officer Genier's notes which are annotated that  
16 he has provided a copy to Crown Wilhelm personally on March  
17 16, 2001. They contain the notes of an interview of C-111  
18 on November 14<sup>th</sup>.

19 **THE COMMISSIONER:** Exhibit 3018.

20 --- **EXHIBIT NO./PIÈCE NO. P-3018:**

21 (707641) - Notes of Don Genier dated  
22 November 14, 2000

23 **THE COMMISSIONER:** Okay. You said you had  
24 three?

25 **MS. LEVESQUE:** Yes. The next document is

1 Number 102594, and this document is entitled "Main Points".  
2 It's a document prepared presumably by Crown Wilhelm in  
3 preparation for the preliminary inquiry.

4 **THE COMMISSIONER:** Okay, it'll be Exhibit --  
5 -

6 **MS. LEVESQUE:** Yeah.

7 **THE COMMISSIONER:** --- Exhibit 3019.

8 --- **EXHIBIT NO./PIÈCE NO. P-3019:**

9 (102594) - Main Points - Don Genier notes  
10 re: C-111, various dates

11 **MS. LEVESQUE:** And the last exhibit, Mr.  
12 Commissioner, is a certified copy of the information with  
13 regards to Romeo Major. It's Number 116167. It shows the  
14 various court appearances and the outcome of the  
15 proceedings.

16 **THE COMMISSIONER:** Thank you. That'll be  
17 Exhibit 3020.

18 --- **EXHIBIT NO./PIÈCE NO. P-3020:**

19 (116167) - Court Appearances re: Romeo Major  
20 dated June 7, 2006

21 **MS. LEVESQUE:** Thank you, Mr. Commissioner.

22 **THE COMMISSIONER:** Thank you.

23 **MR. ENGELMANN:** Just before we leave that  
24 issue, sir, my friend on a couple of occasions said "C-11"  
25 I think she meant ---

1                   **THE COMMISSIONER:** Right.

2                   **MR. ENGELMANN:** --- throughout C-111.

3                   **THE COMMISSIONER:** Yes.

4                   **MR. ENGELMANN:** Just for the record.

5                   **THE COMMISSIONER:** Thank you.

6                   **MR. ENGELMANN:** And C-11 has nothing to do  
7 with Romeo Major.

8                   **THE COMMISSIONER:** Exactly.

9                   **MR. ENGELMANN:** Sir, I believe that was all  
10 the housekeeping matters this morning.

11                   The next witness for the Commission is Peter  
12 Griffiths.

13                   **THE COMMISSIONER:** Thank you.

14                   **MR. ENGELMANN:** He is present and is coming  
15 forward.

16                   **ASSOCIATE CHIEF JUSTICE PETER GRIFFITHS, Sworn/Assermenté:**

17                   **THE COMMISSIONER:** Thank you.

18                   Good morning, Justice Griffiths.

19                   **MR. JUSTICE GRIFFITHS:** Mr. Commissioner.

20                   **THE COMMISSIONER:** How are you doing? The  
21 usual, there is fresh water, glasses. I'd ask you to speak  
22 into the microphone. If documents are shown to you they  
23 will be in hard copy and on the computer. At any time if  
24 there is anything you don't feel comfortable with, let me  
25 know and we'll take a break.

1                   **MR. JUSTICE GRIFFITHS:** Thank you, Mr.  
2 Commissioner.

3                   **THE COMMISSIONER:** Thank you.  
4 Mr. Engelmann.

5                   **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**  
6 **ENGELMANN:**

7                   **MR. ENGELMANN:** Good morning, Justice  
8 Griffiths.

9                   **MR. JUSTICE GRIFFITHS:** Sir.

10                   **MR. ENGELMANN:** Sir, what I'd like to do is  
11 ask you a few questions about your background to start.

12                   And for that purpose, if the witness could  
13 be shown -- sorry -- Document Number 200345?

14                   **THE COMMISSIONER:** Thank you.

15                   Exhibit 3021 will be a profile of Mr.  
16 Griffiths' work and education.

17                   **--- EXHIBIT NO./PIÈCE NO. P-3021:**

18                   (200345) - Career Profile of Peter Griffiths

19                   **MR. ENGELMANN:** Justice Griffiths, I just  
20 want to very quickly take you through your background, if I  
21 may, and if you wish to have reference to this profile.  
22 This is a document you've reviewed and confirmed it is  
23 accurate, sir?

24                   **MR. JUSTICE GRIFFITHS:** Yes.

25                   **MR. ENGELMANN:** All right.

1                   And, sir, I understand you were called to  
2                   the Bar in approximately 1976?

3                   **MR. JUSTICE GRIFFITHS:** Yes.

4                   **MR. ENGELMANN:** And following which you  
5                   worked in private practice for a few years?

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. ENGELMANN:** And in approximately May of  
8                   1979 you joined the Crown office in Toronto?

9                   **MR. JUSTICE GRIFFITHS:** Yes.

10                  **MR. ENGELMANN:** And you commenced working as  
11                  an Assistant Crown Attorney there?

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. ENGELMANN:** And you did that until  
14                  around 1989?

15                  **MR. JUSTICE GRIFFITHS:** That's correct.

16                  **MR. ENGELMANN:** And in 1989 you were  
17                  appointed the Crown Attorney for the Metro West Etobicoke  
18                  region?

19                  **MR. JUSTICE GRIFFITHS:** Yes.

20                  **MR. ENGELMANN:** I understand, sir, that  
21                  approximately four years later you were appointed the  
22                  Acting Regional Senior Crown in about March of '93?

23                  **MR. JUSTICE GRIFFITHS:** Yes.

24                  **MR. ENGELMANN:** And you were in this  
25                  position and this was made permanent in or around June of

1 '94?

2 MR. JUSTICE GRIFFITHS: That's correct.

3 MR. ENGELMANN: All right.

4 And, sir, I understand you continued as the  
5 Regional Senior Crown until approximately May of 1998 with  
6 the exception of a six-month period during which you were  
7 appointed Acting Assistant Deputy Attorney General in  
8 Toronto?

9 MR. JUSTICE GRIFFITHS: That's correct.

10 MR. ENGELMANN: And, sir, I understand that  
11 you were appointed to the Ontario Court of Justice in May  
12 of 1998?

13 MR. JUSTICE GRIFFITHS: That's correct.

14 MR. ENGELMANN: And that you spent  
15 approximately four years sitting in the Brockville area?

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. ENGELMANN: Sir, after that,  
18 approximately 9 to 12 months -- well, for approximately 9  
19 to 12 months you were a local administrative judge here in  
20 Cornwall?

21 MR. JUSTICE GRIFFITHS: That's correct.

22 MR. ENGELMANN: And you transferred to  
23 Ottawa in 2003?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. ENGELMANN: And, sir, in 2005 I

1 understand you were appointed the Regional Senior Judge for  
2 the East Region?

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. ENGELMANN: And then in July of 2007  
5 appointed as the Associate Chief Justice of the Court?

6 MR. JUSTICE GRIFFITHS: You make it sound as  
7 though I can't keep a job.

8 (LAUGHTER/RIRES)

9 MR. ENGELMANN: Well, I was about to ask you  
10 about that.

11 No, you've certainly held a number of  
12 positions both as a Crown Attorney and, more recently, as a  
13 judge of the Ontario Courts of Justice.

14 MR. JUSTICE GRIFFITHS: That's correct.

15 MR. ENGELMANN: Sir, you spent approximately  
16 19 years working for the Ministry of the Attorney General?

17 MR. JUSTICE GRIFFITHS: Yes.

18 MR. ENGELMANN: And during that time would  
19 you have had a fair bit of trial experience as a  
20 prosecutor?

21 MR. JUSTICE GRIFFITHS: Yes, most of my  
22 trial experience would have come in the first 10 years.

23 MR. ENGELMANN: All right.

24 MR. JUSTICE GRIFFITHS: Once I was appointed  
25 the Crown Attorney in Metro West, I would have been

1 spending increasing amounts of time in administration as  
2 opposed to trial work.

3 MR. ENGELMANN: All right.

4 Well, during your tenure with the Ministry,  
5 you would have provided legal opinions ---

6 MR. JUSTICE GRIFFITHS: Yes.

7 MR. ENGELMANN: --- to police officers and  
8 others?

9 MR. JUSTICE GRIFFITHS: Yes, I did, sir.

10 MR. ENGELMANN: And would those be both in  
11 written and/or verbal form?

12 MR. JUSTICE GRIFFITHS: Yes, sir.

13 MR. ENGELMANN: All right.

14 And sir, you would have -- at least in those  
15 first 10 years handled -- or litigated a number of cases  
16 including major cases?

17 MR. JUSTICE GRIFFITHS: Yes.

18 MR. ENGELMANN: Did you handle some sexual  
19 assault cases, sir?

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. ENGELMANN: And were any of those sexual  
22 assault cases involving victims who were children and/or  
23 youth?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. ENGELMANN: And sir, would you have any

1 experience with historical reported cases?

2 MR. JUSTICE GRIFFITHS: I prosecuted some of  
3 those, yes.

4 MR. ENGELMANN: Any particular difficulties  
5 when we have historical reporting or the prosecution of  
6 cases involving children and/or youth from your own  
7 experience as a trial attorney?

8 MR. JUSTICE GRIFFITHS: Absolutely.

9 MR. ENGELMANN: Can you give us some  
10 examples? Not of names or anything, but ---

11 MR. JUSTICE GRIFFITHS: No, no, I  
12 understand.

13 The older a case is, the harder it can be to  
14 find confirmatory evidence; the harder it can be to  
15 pinpoint the times and locations where the offence is  
16 alleged to have taken place which can make it more  
17 difficult to prove. Historical sexual assaults, in  
18 particular, tend to -- tend to have victims that are very  
19 vulnerable. You think of little children as very  
20 vulnerable; well, these are -- these are adults who have  
21 often been stuck in one place because of horrific incidents  
22 in their youth that have prevented them from being the  
23 people that they want to be.

24 MR. ENGELMANN: Okay.

25 Would you have had experiences with delayed

1 and/or incremental disclosure ---

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: --- by some of these  
4 victims?

5 MR. JUSTICE GRIFFITHS: Yes.

6 MR. ENGELMANN: All right.

7 Sir, I want to talk to you then specifically  
8 about a case you would have had some involvement in; that's  
9 a case involving an accused by the name of Charles  
10 MacDonald. He was a local priest.

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. ENGELMANN: And sir, I'm just trying to  
13 pinpoint when it is you might have first been involved in  
14 that case and just to refresh your memory -- if I may  
15 because it's a long time ago -- we know that he was  
16 investigated by the Cornwall police as a result of  
17 allegations by a fellow named David Silmsler in the calendar  
18 year 1993.

19 MR. JUSTICE GRIFFITHS: Yes.

20 MR. ENGELMANN: And we also know that the  
21 matter was reinvestigated in 1994 by Tim Smith on behalf of  
22 the OPP.

23 MR. JUSTICE GRIFFITHS: Yes.

24 MR. ENGELMANN: And do you recall -- I  
25 realize it's a long time ago and you've, I know, refreshed

1       your memory by looking at some documents more recently, but  
2       do you recall whether this matter would have first come to  
3       your attention while it was with the Cornwall Police  
4       Service or perhaps more -- later with the Ontario  
5       Provincial Police?

6                   **MR. JUSTICE GRIFFITHS:** My recollection is  
7       it first came to my attention while it was with the  
8       Cornwall Police Service.

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

10                  Do you have some sense, sir, as to how it  
11       may have come to your attention?

12                  **MR. JUSTICE GRIFFITHS:** Mr. Engelmann, I --  
13       I've tried to remember that, whether it came to my  
14       attention through Murray MacDonald or through the  
15       investigator from Cornwall. My -- my recollection now, 15  
16       years later, is that Murray MacDonald would have called me,  
17       reviewed on the phone the -- a brief outline of the  
18       investigation, of the difficulties that he was aware of  
19       with the prosecution and asked me what my opinion was with  
20       respect to proceeding with the Church.

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

22                  Were you familiar with the investigating  
23       Officer, Constable Sebalj?

24                  **MR. JUSTICE GRIFFITHS:** I hadn't met her  
25       before that time, no.

1                   **MR. ENGELMANN:** All right.

2                   Did -- had you done some work with the  
3 Cornwall Police Service?

4                   **MR. JUSTICE GRIFFITHS:** Not that I recall.

5                   **MR. ENGELMANN:** All right.

6                   **MR. JUSTICE GRIFFITHS:** I was newly in the  
7 region at that time.

8                   **MR. ENGELMANN:** Right.

9                   So it's likely a phone call from the local  
10 Crown attorney, Murray MacDonald?

11                   **MR. JUSTICE GRIFFITHS:** That's what I'm  
12 thinking, yes.

13                   **MR. ENGELMANN:** All right.

14                   And sir, from time to time, the Crown  
15 attorneys you would be responsible for in the East Region;  
16 would they seek this type of advice from you?

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. ENGELMANN:** And would it have often been  
19 of an informal nature as in a phone call or did you also  
20 get this in a written form from time to time?

21                   **MR. JUSTICE GRIFFITHS:** Our consultations  
22 with Crown attorneys tended to be informal; tended to be  
23 with a phone call or what do you think of this as opposed  
24 to asking me for a written opinion.

25                   **MR. ENGELMANN:** All right.

1                   We know that in mid-September, sir -- and I  
2                   don't think we have to look at the document, but we know in  
3                   mid-September of 1993 that Mr. MacDonald wrote a letter to  
4                   the Cornwall Police Service concerning this matter -- these  
5                   allegations by Mr. Silmsers.

6                   And he gave an opinion that charges should  
7                   not be proceeded with for a couple of reasons: 1) the fact  
8                   that the complainant did not want to cooperate or stay  
9                   involved in the matter and 2) that in any event, there was  
10                  a lack of R&GP. Is it likely that your phone call from him  
11                  would have been before he would have rendered that opinion  
12                  or are you able to help us?

13                  **MR. JUSTICE GRIFFITHS:** I really can't -- I  
14                  really can't recall the timing. I -- I do know because I  
15                  remember discussing the \$32,000 settlement. I remember  
16                  discussing Mr. Silmsers' unwillingness to testify and  
17                  inquiring as to whether there was any other evidence -- we  
18                  don't always have to have a victim to proceed and -- but I  
19                  don't know the timing.

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

21                  In any event, at that time, you would not  
22                  have been provided with any written documentation?

23                  **MR. JUSTICE GRIFFITHS:** No.

24                  **MR. ENGELMANN:** And certainly wouldn't have  
25                  been provided with a copy of any kind of minutes of

1 settlement ---

2 MR. JUSTICE GRIFFITHS: No.

3 MR. ENGELMANN: --- or released

4 documentation?

5 MR. JUSTICE GRIFFITHS: My understanding at  
6 the time was it was a civil settlement.

7 MR. ENGELMANN: All right.

8 But it's -- and you would have been apprised  
9 of the fact that it was a settlement between the  
10 complainant, the Diocese and the individual priest or do  
11 you recall?

12 MR. JUSTICE GRIFFITHS: I can't recall the  
13 specifics.

14 MR. ENGELMANN: All right.

15 But you know that an individual was paid ---

16 MR. JUSTICE GRIFFITHS: I know the Diocese  
17 was involved ---

18 MR. ENGELMANN: Yeah.

19 MR. JUSTICE GRIFFITHS: --- and the  
20 complainant was involved.

21 MR. ENGELMANN: Right and he was paid  
22 \$32,000.

23 And would it have only been later that you  
24 would have been apprised of the fact that he had to  
25 terminate his criminal complaint to receive this money?

1                   **MR. JUSTICE GRIFFITHS:** Much later.

2                   **MR. ENGELMANN:** Yes, all right.

3                   And would you have become aware of that --  
4                   we know there was wide -- widespread media attention about  
5                   that during the month of January of 1994; is that likely  
6                   how you would have become aware of that or through a policy  
7                   agency thereafter?

8                   **MR. JUSTICE GRIFFITHS:** That's likely around  
9                   the time that I would have become aware of it; January-  
10                  February when Inspector Smith became involved.

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

12                  Now, we know that the OPP were brought in to  
13                  reinvestigate this matter in early 1994 and it appears, at  
14                  least, and we've reviewed notes from Officer Smith ---

15                  **MR. JUSTICE GRIFFITHS:** Yes.

16                  **MR. ENGELMANN:** --- Detective Inspector Tim  
17                  Smith ---

18                  **MR. JUSTICE GRIFFITHS:** Yes.

19                  **MR. ENGELMANN:** --- and it appears that you  
20                  were involved at least in a liaison capacity with Detective  
21                  Inspector Smith who was charged with reinvestigating.

22                  **MR. JUSTICE GRIFFITHS:** Yes.

23                  **MR. ENGELMANN:** Would that be fair?

24                  **MR. JUSTICE GRIFFITHS:** That's fair.

25                  **MR. ENGELMANN:** All right.

1                   Was it -- was it beyond that, sir, or were  
2                   you just to be available for him for consultations during  
3                   the course of that investigation?

4                   **MR. JUSTICE GRIFFITHS:** Just so I  
5                   understand, what do you mean by beyond that?

6                   **MR. ENGELMANN:** Well, liaison -- I'm just --  
7                   we're aware that one of the reasons why the local Crown  
8                   wouldn't have been involved is that, to some extent,  
9                   Detective Inspector Smith was investigating him or at least  
10                  investigating his knowledge ---

11                  **MR. JUSTICE GRIFFITHS:** Yes.

12                  **MR. ENGELMANN:** --- of this illegal  
13                  settlement or illegal clause in the settlement.

14                  **MR. JUSTICE GRIFFITHS:** Yes.

15                  **MR. ENGELMANN:** So what did you understand  
16                  your role would be during 1994?

17                  **MR. JUSTICE GRIFFITHS:** So as a result of  
18                  that, any -- any assistance that he would need in the  
19                  normal course of his investigation from a Crown would come  
20                  to me, not to the local Cornwall office.

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

22                  **MR. JUSTICE GRIFFITHS:** And that was our  
23                  arrangement.

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

25                  Sir, I'm wondering -- Madam Clerk, if the

1 witness could be shown -- I believe it's Exhibit 1226A.  
2 Counsel, it's Document Number 727834.

3 **MR. JUSTICE GRIFFITHS:** You're doing all the  
4 hard work. Thank you so much.

5 Yes, sir, I have that.

6 **MR. ENGELMANN:** Justice Griffiths, this is a  
7 news release that was put out by the Cornwall Police  
8 Service on or about the 2<sup>nd</sup> of February, '94. And in the  
9 release -- towards the very end -- this is about the fact  
10 that they've announced that the Ottawa Police Service has  
11 come in to reinvestigate or look at their investigation at  
12 least to some extent. And they're talking about the fact  
13 that the Ontario Provincial Police has been asked to come  
14 in and look at this matter and reinvestigate.

15 In your reference at the very end of this  
16 matter, it says:

17 "Cornwall Police Service personnel and  
18 any other investigative agency  
19 assisting our police service in such  
20 investigations will liaise with Mr.  
21 Peter Griffiths, East Regional Director  
22 of Crown Attorneys."

23 Do you know if you had been give some kind  
24 of a heads-up that ---

25 **MR. JUSTICE GRIFFITHS:** Oh, I'm sure I would

1 have.

2 MR. ENGELMANN: All right.

3 MR. JUSTICE GRIFFITHS: They wouldn't have  
4 put that in there without giving me ---

5 MR. ENGELMANN: All right. In references  
6 that you were going to be liaising with Cornwall Police  
7 Service personnel, any other investigated agency assisting  
8 our police service, et cetera, do you recall, sir, if you  
9 had any involvement with the Cornwall Police Service or if  
10 really your liaison was strictly with Tim Smith and his  
11 team from the OPP?

12 MR. JUSTICE GRIFFITHS: Any -- prior to this  
13 time or?

14 MR. ENGELMANN: During the course of the OPP  
15 reinvestigation from February until approximately December  
16 of '94.

17 MR. JUSTICE GRIFFITHS: No, I think my  
18 involvement was with Inspector Smith and Inspector  
19 Hamelink.

20 MR. ENGELMANN: Fair enough. All right. So  
21 the reference "to other agencies", as far as you were  
22 concerned, you were really dealing with the OPP?

23 MR. JUSTICE GRIFFITHS: That's correct.

24 MR. ENGELMANN: You didn't deal with the  
25 local CAS who were also investigating and/or others?

1                   **MR. JUSTICE GRIFFITHS:** No.

2                   **MR. ENGELMANN:** All right.

3                   And Detective Inspector Smith has testified  
4 here. We have some notes from him and maybe we'll turn  
5 those up because I am going to refer them to you from time  
6 to time.

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** Madam Clerk, that's Exhibit  
9 1803. Counsel, the Document Number is 111109.

10                   Just before we bring them, Detective  
11 Inspector Smith has testified here, and he did testify to a  
12 number of contacts with you, some in person, some over the  
13 phone?

14                   **MR. JUSTICE GRIFFITHS:** Yes.

15                   **MR. ENGELMANN:** You have some recollection  
16 of meetings with him or conversations with him during the  
17 calendar year 1994, sir?

18                   **MR. JUSTICE GRIFFITHS:** Yes, although I  
19 think his notes probably constitute a more accurate record  
20 than my memory at this point.

21                   **MR. ENGELMANN:** Yes, and it is my  
22 understanding, sir, that you don't have notes of your own?

23                   **MR. JUSTICE GRIFFITHS:** That's correct.

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

25                   So from time to time, we will simply be

1 looking at his notes in an effort to refresh your memory.

2 MR. JUSTICE GRIFFITHS: Thank you.

3 MR. ENGELMANN: If you do have any  
4 difficulty with those notes, you should let us know.

5 All right.

6 MR. JUSTICE GRIFFITHS: Thank you.

7 MR. ENGELMANN: So if we look at those  
8 notes, and if you want to start right near the beginning,  
9 the Bates page number at the top left, ---

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: --- should end with the  
12 three digits 213.

13 MR. JUSTICE GRIFFITHS: Yes.

14 MR. ENGELMANN: And I'm just going to catch  
15 up with you. This is the first reference, sir, that ---

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. ENGELMANN: --- he talks on the previous  
18 page about making a call, but the first actual note of a  
19 call was on February 8<sup>th</sup>, and you'll see the time; I believe  
20 it's 10:01 a.m. It's about a third of the way down ---

21 MR. JUSTICE GRIFFITHS: Yes, I have the  
22 portion.

23 MR. ENGELMANN: --- the handwritten portion.

24 MR. JUSTICE GRIFFITHS: Thank you.

25 MR. ENGELMANN: And if you have difficulty

1 reading, we are going to -- Madam Clerk is just going to  
2 blow up Detective Inspector's -- not literally -- blow them  
3 up, but make them larger.

4 **MR. JUSTICE GRIFFITHS:** I can see it fine  
5 here. Thank you very much.

6 **MR. ENGELMANN:** Yes, it's a bit easier to  
7 read this way.

8 So apparently he says:

9 "Call Peter Griffiths. Advised I am  
10 starting the investigation. Update  
11 that we plan to commence investigation  
12 from the start. Stated I'd like to get  
13 a copy of the settlement Silmsler and  
14 Church. He advises he will attempt to  
15 get copy of settlement from lawyer for  
16 Church. Call him back later this week  
17 re same."

18 All right? So it appears that -- and do you  
19 any reason to doubt the accuracy of this note?

20 **MR. JUSTICE GRIFFITHS:** None. This -- I've  
21 looked at the notes, this or any other note of Inspector  
22 Smith.

23 **MR. ENGELMANN:** All right. You may not  
24 actually remember, but you don't dispute the note itself?

25 **MR. JUSTICE GRIFFITHS:** Correct.

1                   **MR. ENGELMANN:** All right. So it appears --  
2                   and, sir, had you worked with Detective Inspector Smith  
3                   before this investigation?

4                   **MR. JUSTICE GRIFFITHS:** Not like this, but  
5                   certainly with Alfred, I was aware of Inspector Smith and,  
6                   again, remember, I'm still fairly new to the region at that  
7                   point.

8                   **MR. ENGELMANN:** Your previous dealings with  
9                   him, any difficulties?

10                  **MR. JUSTICE GRIFFITHS:** No, absolutely not.

11                  **MR. ENGELMANN:** Any concerns?

12                  **MR. JUSTICE GRIFFITHS:** No, absolutely not.

13                  **MR. ENGELMANN:** Professional?

14                  **MR. JUSTICE GRIFFITHS:** Professional, yes.

15                  **MR. ENGELMANN:** All right. So he indicates  
16                  about getting a copy of the actual settlement document, and  
17                  this would be something that you would have been interested  
18                  in looking at presumably yourself?

19                  **MR. JUSTICE GRIFFITHS:** Yes.

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

21                  And on Bates page 214, which is the next  
22                  page, there's a reference to a call on February 10<sup>th</sup> of 1994  
23                  and it appears, at that call, that you're advising him that  
24                  an Ottawa lawyer by the name of Peter Annis is the lawyer  
25                  for the Church.

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** And that he will be giving  
3 us a copy of the settlement with Silmser?

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. ENGELMANN:** And had you contacted  
6 someone from that firm to find that out and pass that  
7 information on?

8                   **MR. JUSTICE GRIFFITHS:** I spoke to Mr.  
9 Annis.

10                  **MR. ENGELMANN:** All right. And they were  
11 the lawyers, at least civilly, for the Diocese?

12                  **MR. JUSTICE GRIFFITHS:** That was my  
13 understanding.

14                  **MR. ENGELMANN:** Yes. And sir, then again on  
15 Bates page 215, just to follow up on the settlement issue,  
16 on February 14<sup>th</sup>, 1994, he's got a reference to calling you  
17 and advising you that he has received the settlement and  
18 that he'd like to discuss it with you?

19                  **MR. JUSTICE GRIFFITHS:** Yes.

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

21                                So it appears that he would have obtained  
22 the copy of the settlement directly, and you didn't have to  
23 make any efforts to get it from the counsel?

24                  **MR. JUSTICE GRIFFITHS:** No, I had arranged  
25 for the counsel to give it to ---

1                   **MR. ENGELMANN:** Okay. Now, do you recall,  
2                   sir, if you were provided a copy of that at that time or  
3                   would that have only come later with their Crown or police  
4                   brief?

5                   **MR. JUSTICE GRIFFITHS:** I don't recall  
6                   whether I saw it then or not, but this is a police  
7                   investigation. I'm not a police officer.

8                   **MR. ENGELMANN:** Fair enough. It is likely  
9                   you would have had some discussion with Detective Inspector  
10                  Smith about the contents of the settlement at some point  
11                  during the course of his investigation?

12                  **MR. JUSTICE GRIFFITHS:** I can't recall.

13                  **MR. ENGELMANN:** All right.

14                  Now, it appears from the notes again on  
15                  Bates page 215 that there is a discussion or a meeting with  
16                  you on February 21<sup>st</sup>, 1994?

17                  **MR. JUSTICE GRIFFITHS:** Yes.

18                  **MR. ENGELMANN:** All right. And we'll  
19                  discuss that in a bit more detail later. You recall, that  
20                  time -- you're not sure whether or not the settlement came  
21                  up at that time?

22                  **MR. JUSTICE GRIFFITHS:** Well, there's a  
23                  reference to it in his notes how the settlement come about.

24                  **MR. ENGELMANN:** Right.

25                  **MR. JUSTICE GRIFFITHS:** So there would have

1           been some discussion, I take from that.

2                       **MR. ENGELMANN:**   Okay, fair enough.   Fair  
3           enough.   Now, during the course of the calendar year 1994,  
4           you have further contacts with Detective Inspector Smith,  
5           and I just want to take you to a few of those, if I may?

6                       **MR. JUSTICE GRIFFITHS:**   Yes, sir.

7                       **MR. ENGELMANN:**   Bates page 221, there's a  
8           reference to April 26<sup>th</sup>, 1994.

9                       **MR. JUSTICE GRIFFITHS:**   Yes.

10                      **MR. ENGELMANN:**   And it's the second  
11           paragraph on the page.

12                      **MR. JUSTICE GRIFFITHS:**   Yes.

13                      **MR. ENGELMANN:**   I believe what it says is:  
14                                       "Call Peter Griffiths and update on  
15                                       investigation to date.   We will put  
16                                       brief together and arrange to meet with  
17                                       him near the end of May.   Appointment  
18                                       will be made with his secretary."

19                      So it appears that Detective Inspector  
20           Smith, at least at this point in time, believes he's well  
21           into his investigation because he's going to want to meet  
22           with you, get a brief together and that's the end of it,  
23           when he puts the brief together.   Is that fair?

24                      **MR. JUSTICE GRIFFITHS:**   I think.

25                      **MR. ENGELMANN:**   All right.

1                   And this would -- he was investigating  
2                   Father Charles MacDonald in the Silmsers investigations  
3                   among other things ---

4                   **MR. JUSTICE GRIFFITHS:** I think there were  
5                   three investigations he was conducting at that time.

6                   **MR. ENGELMANN:** The David Silmsers  
7                   allegations, concerns about an attempt to obstruct justice  
8                   given the wording of the settlement agreement.

9                   **MR. JUSTICE GRIFFITHS:** Right.

10                  **MR. ENGELMANN:** And conspiracy collusion  
11                  possibly with the Diocese, the police and the local Crown?

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

13                  **MR. ENGELMANN:** All right. And you were  
14                  aware that there was a concurrent investigation going on by  
15                  an inspector by the name of Hamelink?

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. ENGELMANN:** Dealing with possible  
18                  extortion by Mr. Silmsers on a -- well, on a deceased  
19                  probation officer?

20                  **MR. JUSTICE GRIFFITHS:** Yes.

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

22                                 Now, later down on the page, Bates page 221,  
23                                 there's a reference to June 16<sup>th</sup>, 1994 and according to that  
24                                 note, again there's an update being provided on the  
25                                 investigation, and he tells you about a statement of

1 Malcolm MacDonald to his colleague, Mike Fagan.

2 I'm just going to try to get that blown up a  
3 bit if we can -- little lower -- "call from Peter  
4 Griffiths". Time is 12:25, near the bottom, right there.

5 **MR. JUSTICE GRIFFITHS:** Right there.

6 **MR. ENGELMANN:** "Update reinvestigation.

7 Statement of Malcolm MacDonald to Fagan  
8 re Crown aware of settlement prior to  
9 being settled."

10 Of course, the Crown would be Murray  
11 MacDonald, correct?

12 **MR. JUSTICE GRIFFITHS:** Correct.

13 **MR. ENGELMANN:** All right.

14 And it also says:

15 "Bishop alleging Father MacDonald  
16 admitted to sex assault Silmser. Told  
17 this to Chief Shaver. Also call from  
18 Silmser re he has three more victims.  
19 Threatening me of my job if we don't  
20 get to him. Advised Griffiths as  
21 agreed to with Geoffrey."

22 Geoffrey being the name of Mr. Silmser's  
23 civil counsel at the time.

24 **MR. JUSTICE GRIFFITHS:** Thank you.

25 **MR. ENGELMANN:** Bryce Geoffrey, re -- and it

1 goes on to the next page, sir.

2 **THE COMMISSIONER:** Is it "because of"?

3 **MR. ENGELMANN:** Yes, "because of previous  
4 difficulty..."

5 **THE COMMISSIONER:** "...but would" what?

6 **MR. ENGELMANN:** It's hard to read sometimes.

7 **THE COMMISSIONER:** "...but would deal with  
8 Silmsen through Geoffrey."

9 **MR. JUSTICE GRIFFITHS:** That's what I have.

10 **MR. ENGELMANN:** "Geoffrey on holidays."

11 There's a date.

12 "Investigation is still going. More  
13 interviews. Don't know when will be  
14 finished but we will keep him updated.  
15 Griffiths content with this. Finish  
16 telephone call."

17 So it appears by June you're not getting  
18 this brief any time soon because there are other  
19 developments and he's still investigating this matter?

20 **MR. JUSTICE GRIFFITHS:** Yes.

21 **MR. ENGELMANN:** All right, and he's  
22 providing you with an update?

23 **MR. JUSTICE GRIFFITHS:** Yes.

24 **MR. ENGELMANN:** And I'm not sure if you  
25 initiate the call or he does, but one of you got this

1 forward so that there is some regular contact, if I can ---

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: All right.

4 Do you recall -- I mean, he's got this  
5 reference to -- and I would have read it out:

6 "Bishop alleging Father MacDonald  
7 admitted to sex assault. Silmsner told  
8 this to Chief Shaver."

9 Do you recall any discussion with Tim Smith  
10 about the significance of that?

11 MR. JUSTICE GRIFFITHS: No.

12 MR. ENGELMANN: Okay, and whether or not  
13 that was important or significant to follow up?

14 MR. JUSTICE GRIFFITHS: I have no  
15 recollection. It might have happened but I have no  
16 recollection.

17 MR. ENGELMANN: All right.

18 And would Tim Smith, in providing you with  
19 information from time-to-time, ask you for any guidance or  
20 -- do you have some recollection of this with respect to  
21 where he might go or what he might do with respect to his  
22 investigation?

23 MR. JUSTICE GRIFFITHS: He wasn't asking --  
24 he's an experienced investigator.

25 MR. ENGELMANN: Yes.

1                   **MR. JUSTICE GRIFFITHS:** He wasn't asking me  
2                   for guidance. He'd told me the brief would be ready by the  
3                   end of May and he's calling me now and saying it won't be  
4                   and here's why.

5                   **MR. ENGELMANN:** Fair enough.

6                   **MR. JUSTICE GRIFFITHS:** That's my  
7                   understanding ---

8                   **MR. ENGELMANN:** Okay.

9                   **MR. JUSTICE GRIFFITHS:** --- of those  
10                  conversations.

11                  **MR. ENGELMANN:** All right. So the  
12                  information is going to you. You're not directing the  
13                  investigation ---

14                  **MR. JUSTICE GRIFFITHS:** No.

15                  **MR. ENGELMANN:** --- in any way?

16                  **MR. JUSTICE GRIFFITHS:** I am not directing  
17                  the investigation in any way.

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

19                  Now, did you have any concerns about the  
20                  time this was taking at that time, come June of 1994, do  
21                  you recall?

22                  **MR. JUSTICE GRIFFITHS:** No, although I think  
23                  subsequently I expressed some concerns.

24                  **MR. ENGELMANN:** Yes, okay. So let's move  
25                  ahead then if we can.

1                   There is a reference on August 11 and that's  
2           Bates page -- just find it -- Bates page 227.

3                   **MR. JUSTICE GRIFFITHS:** Yes.

4                   **MR. ENGELMANN:** And it's right next to  
5           August 11<sup>th</sup> and, again, Madam Clerk, if you could help us  
6           with the print.

7                               "Call Peter Griffiths. Update on  
8                               investigation to date."

9                   **MR. JUSTICE GRIFFITHS:** "Bishop yet to be  
10                               interviewed."

11                   **MR. ENGELMANN:** Thank you.

12                               "Awaiting..."

13                   **THE COMMISSIONER:** "...word from..."

14                   **MR. ENGELMANN:** "...word from lawyer  
15                               Annis when bishop will meet with us."

16                               And then he sets out -- and I think these  
17           are the three matters he's investigating:

18                               "1. Silmsler complaint investigation  
19                               almost complete. R&PG??

20                               2. Cornwall Police. Crown MacDonald  
21                               [something] to not lay charge."

22                   I knew that a while ago. All right:

23                               "...conspire to not lay charge [or  
24                               something] to not lay charge."

25                               That was the conspiracy collusion issue?

1 MR. JUSTICE GRIFFITHS: Yes.

2 MR. ENGELMANN: It says:

3 "No evidence to indicate same."

4 MR. JUSTICE GRIFFITHS: Yes.

5 MR. ENGELMANN: All right? Then:

6 "3. Obstruct justice. Still  
7 investigating same. Not sufficient  
8 evidence at present. All subject to  
9 interview of lawyer, Adams, and bishop.  
10 May be looking at Law Society  
11 complaints re. conduct of lawyers."

12 THE COMMISSIONER: "We will prepare  
13 complete brief when all in full and  
14 investigation is complete and forward  
15 for recommendations."

16 MR. ENGELMANN: Then he explains about being  
17 on holidays and he sets a target date for the end of  
18 September.

19 So, again, he's giving you that regular  
20 interval update, giving you some information about all  
21 three, and this is all in an oral report?

22 MR. JUSTICE GRIFFITHS: That's correct.

23 MR. ENGELMANN: And at this point-in-time,  
24 at least with respect to the Silmsler allegations, he's  
25 questioning whether or not there is sufficient for

1 reasonable and probable grounds?

2 **MR. JUSTICE GRIFFITHS:** Yes.

3 **MR. ENGELMANN:** All right. Do you recall  
4 any discussion of pros and cons of that issue of reasonable  
5 and probable grounds during the course of his  
6 investigation?

7 **MR. JUSTICE GRIFFITHS:** No.

8 **MR. ENGELMANN:** All right.

9 Sir, then on Bates page 228 there's a  
10 reference to September 12<sup>th</sup>. There's a note where he  
11 discusses the meeting he has with Bishop LaRocque and his  
12 lawyer, David Scott, and near the end of the note Smith  
13 writes that:

14 "Scott requests copies of statements  
15 from Malcolm MacDonald and Jacques  
16 Leduc to the police."

17 And it says:

18 "Advise Mr. Scott we will seek  
19 direction of Peter Griffiths."

20 Do you recall, sir, Detective Inspector  
21 Smith seeking any advice or direction from you as to what  
22 he can turn over to the Bishop's counsel?

23 **MR. JUSTICE GRIFFITHS:** No, which is not to  
24 say he didn't. I just have no recollection of that.

25 **MR. ENGELMANN:** All right.

1                   **MR. JUSTICE GRIFFITHS:** I don't believe  
2                   there's a note of that.

3                   **MR. ENGELMANN:** I'm sorry?

4                   **MR. JUSTICE GRIFFITHS:** Is there a note of  
5                   that?

6                   **MR. ENGELMANN:** Not at that time. There's a  
7                   note later about Mr. Scott, in particular, and that you may  
8                   have called him, but that's about what we've got.

9                   Sir, then there's a further follow-up at  
10                  Bates page 231, and that's October 11<sup>th</sup>, 1994. This is now  
11                  a bit after when he said he'd get something to you, and the  
12                  reference reads:

13                                 "Call from Peter Griffiths..."

14                  **THE COMMISSIONER:** Whoa, whoa, just a  
15                  minute. So now we're on page ---

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

17                  **THE COMMISSIONER:** --- 231?

18                  **MR. ENGELMANN:** Bates page 231.

19                  **THE COMMISSIONER:** Right.

20                  **MR. ENGELMANN:** The reference is 11 October,  
21                  '94, 12:05.

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

23                  **MR. JUSTICE GRIFFITHS:** Yes.

24                  **MR. ENGELMANN:** "Call from Peter Griffiths  
25                  Re. update on investigation. Requests

1 we finish same soon. It has been  
2 dragging. Advise we will expedite and  
3 have same forwarded by 4<sup>th</sup> November,  
4 '94."

5 So this appears to be the first indication  
6 that you have some concern and you're expressing some  
7 concern to him about the length of the investigation?

8 **MR. JUSTICE GRIFFITHS:** I think it's the  
9 first time I called him.

10 **MR. ENGELMANN:** Okay.

11 **MR. JUSTICE GRIFFITHS:** Yes.

12 **MR. ENGELMANN:** And what is your concern at  
13 that time, sir?

14 **MR. JUSTICE GRIFFITHS:** It's been dragging.

15 **MR. ENGELMANN:** All right. And is there a  
16 timeline that you have for these types of things or ---

17 **MR. JUSTICE GRIFFITHS:** No. It depends on  
18 the charges and the circumstances, but I just felt that it  
19 was time to move this along.

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

21 **MR. JUSTICE GRIFFITHS:** I couldn't say why  
22 it was taking so long at that point.

23 **MR. ENGELMANN:** Do you recall anybody  
24 expressing a concern to you before you then expressed a  
25 concern to Inspector Smith, or would this just have been

1 something that came to your mind?

2 **MR. JUSTICE GRIFFITHS:** The internal clock.

3 **MR. ENGELMANN:** Fair enough.

4 At the following Bates page, sir, there's a  
5 reference and I can't ---

6 **THE COMMISSIONER:** Just stop for a second.

7 You said "the internal clock". Were you  
8 keeping a diary or ---

9 **MR. JUSTICE GRIFFITHS:** No, sir.

10 **THE COMMISSIONER:** --- was this just your  
11 mental clock?

12 **MR. JUSTICE GRIFFITHS:** Yes, sir.

13 **THE COMMISSIONER:** All right. Thank you.

14 **MR. ENGELMANN:** Sir, at the top of the next  
15 page -- and I can't read the date -- it's sometime, I  
16 believe, in November of '94.

17 **THE COMMISSIONER:** It's 21<sup>st</sup> of November or  
18 thereabouts.

19 **MR. ENGELMANN:** There's a reference:

20 "15:50. Call Peter Griffiths. Advise  
21 him briefs complete. I am getting  
22 final typing done and hope to have it  
23 by Friday. If not, it will be at his  
24 office on..."

25 **THE COMMISSIONER:** "...November 7<sup>th</sup> or

1 8<sup>th</sup>."

2 **MR. ENGELMANN:** It says "7<sup>th</sup> or 8<sup>th</sup>" so I'm  
3 suspecting the date actually might be the 1<sup>st</sup>, sir.

4 **THE COMMISSIONER:** All right. Fair enough.

5 **MR. ENGELMANN:** "It will take a few weeks  
6 to review. He will call me. Will  
7 meet, discuss and finalize."

8 So it appears, sir, at this point that  
9 Detective Inspector Smith is aiming to get his final briefs  
10 to you on the 7<sup>th</sup> or 8<sup>th</sup> and you're advising him that it's  
11 going to take you a few weeks ---

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. ENGELMANN:** --- to get back to him.

14 Is that the norm? I know you had a lot of  
15 other work. You would have advised Detective Inspector  
16 Smith you would need some time to review these briefs?

17 **MR. JUSTICE GRIFFITHS:** Yes.

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

19 Now, there's some reference to missed calls  
20 between you, and I think Detective Inspector Smith  
21 testified he was very busy, indicated that he was advised  
22 that you were very busy at this time as well, and then it  
23 appears you finally connect to have a substantive call the  
24 20<sup>th</sup> of December.

25 **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** And there is some outline of  
2                   that that I'd like to take you through.

3                   Now, Detective Inspector Smith testified  
4                   about these notes and what he indicated to us was he was  
5                   writing down what you were telling him orally about the  
6                   brief, okay?

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** And regarding -- it starts  
9                   at -- I believe the time is 9:45 on the 20<sup>th</sup>.

10                  **MR. JUSTICE GRIFFITHS:** Is that Bates page  
11                  232?

12                  **MR. ENGELMANN:** It is, sir, yes, right at  
13                  the bottom third, if I can call it that. It says:

14                                 "Peter Griffiths called priest, RPG  
15                                 objectively enough credible evidence,  
16                                 subjectively not on his belief."

17                  **MR. JUSTICE GRIFFITHS:** Yes.

18                  **MR. ENGELMANN:** Okay?

19                  **MR. JUSTICE GRIFFITHS:** Yes.

20                  **MR. ENGELMANN:** And then it says:

21                                 "Credibility Silmser problem; Murray  
22                                 MacDonald no problem."

23                  This is, no doubt, the conspiracy collusion  
24                  aspect we talked about.

25                                 "Obstruct lawyer."

1                   Maybe "lawyers". I'm not sure.

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

3                   **MR. ENGELMANN:** "Appropriate to contact Law  
4                                   Society. Obstruct justice less than  
5                                   criminal but unprofessional."

6                   All right? So it appears -- and it carries  
7                   onto the next page. But it appears at that time -- this is  
8                   what he tells us you're giving him this advice orally and  
9                   that you advised him you're going to follow up with  
10                   something in writing shortly thereafter.

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. ENGELMANN:** Would that have been common  
13                   for you to do, sir, to provide oral information and then  
14                   follow up with a letter?

15                   **MR. JUSTICE GRIFFITHS:** I can't say whether  
16                   it was common.

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

18                   **MR. JUSTICE GRIFFITHS:** I did it in this  
19                   case.

20                   **MR. ENGELMANN:** You did it in this case;  
21                   fair enough.

22                   So do you recall expressing these opinions  
23                   to Detective Inspector Smith?

24                   **MR. JUSTICE GRIFFITHS:** No, but I don't  
25                   doubt it.

1                   **MR. ENGELMANN:** All right.

2                   And you recall perhaps expressing some  
3 concerns about the credibility of that complainant, ---

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. ENGELMANN:** --- Mr. Silmsen? And you do  
6 follow up with something in writing about that, sir?

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** All right. And it appears  
9 on the obstruct charge at least, you're not -- you're not  
10 sure whether this is a criminal matter at this point or  
11 simply a Law Society matter?

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

13                   **MR. ENGELMANN:** But there is a concern?

14                   **MR. JUSTICE GRIFFITHS:** That's correct.

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

16                   **MR. JUSTICE GRIFFITHS:** It's fair.

17                   **MR. ENGELMANN:** Then on the following page,  
18 sir -- again, this is that same conversation rolling onto  
19 Bates page 233, and this may be -- I believe this is him  
20 reporting to you now. It says:

21                               "Contact Silmsen before press release."

22                   Oh, boy.

23                   **THE COMMISSIONER:** What's that now?

24                               "Extensive investigations ..."

25                   **MR. ENGELMANN:** "And interview" something

1 "and witness victims"?

2 **THE COMMISSIONER:** "Victims" maybe.

3 **MR. ENGELMANN:** "Police satisfied and legal  
4 advice. No R&GP to lay charge. No  
5 obstruct justice following complete  
6 investigation. Received ..."

7 **MR. JUSTICE GRIFFITHS:** "Advised" -- I don't  
8 know?

9 **MR. ENGELMANN:** Yeah, it says:  
10 "... with Regional Crown Peter Griffiths.  
11 Will send the letter of his  
12 recommendation and draft of [something]  
13 to release to press as we do not ..."

14 **MR. JUSTICE GRIFFITHS:** "Conflict".

15 **MR. ENGELMANN:** Yeah:  
16 "... so we do not conflict. I will check  
17 ...

18 **THE COMMISSIONER:** "Over."

19 **MR. ENGELMANN:** "... make any changes and send  
20 to him ..."

21 **MR. JUSTICE GRIFFITHS:** "... until we're all  
22 satisfied."

23 **MR. ENGELMANN:** Yes.  
24 "I will then advise Silmsers and his  
25 lawyer and then release to press."

1                   Okay? So it seems to be a discussion you're  
2                   having with him about how you'll proceed from that point  
3                   on.

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. ENGELMANN:** All right.

6                   Now, sir, on the following Bates page, there  
7                   is a note at 15:05. And it's suggesting that Detective  
8                   Inspector Smith receives a call from, I believe, a reporter  
9                   at the Ottawa Citizen, and there is a reference there to --  
10                  it says:

11                                 "Peter Griffiths' office says results  
12                                 have been given and what they are.  
13                                 Advised I spoke with Mr. Griffiths  
14                                 today and written recommendation should  
15                                 be available by Friday, at which time a  
16                                 news release will be made as to the  
17                                 results of the investigation."

18                   And sir, that's later on the 20<sup>th</sup> of  
19                   December. It would appear at least from his notes that  
20                   you've been -- your office at least has been contacted by  
21                   the local newspaper in Ottawa and some information has been  
22                   provided to them and Detective Inspector Smith is  
23                   confirming it.

24                   **MR. JUSTICE GRIFFITHS:** Yes, the newspapers  
25                   were impatiently awaiting the outcome. I can't say whether

1 I -- how much I would have said to Ms. Abraham, how much  
2 she was trying to pry the information out of Detective  
3 Smith.

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

5 But you were aware as with, no doubt, some  
6 of your other cases that there was some media interest in  
7 this file?

8 **MR. JUSTICE GRIFFITHS:** Absolutely.

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

10 And that would have been a concern perhaps  
11 about getting this matter done and having it resolved as  
12 well?

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. ENGELMANN:** All right.

15 Now, sir, as well on that page -- and this  
16 is a reference I might have made earlier -- at the very  
17 bottom, 15:55.

18 **MR. JUSTICE GRIFFITHS:** Right.

19 **MR. ENGELMANN:** "Advised David Scott no  
20 charges in case. Requests of us [oh,  
21 boy] if we will release any information  
22 of investigation. I say no, asked  
23 about lawyer."

24 There is some reference then to "told" or:

25 "... Law Society will be made aware.

1 Said he will be in touch with Peter  
2 Griffiths. Asked about news release  
3 naming Bishop. Advised him news  
4 release would be ..."

5 Yeah, okay. So it's not about you.

6 But there is a reference here, sir, that Mr.  
7 Scott's advising Detective Inspector Smith that he's going  
8 to be getting in touch with you about this matter. Do you  
9 have any recollection of dealing with counsel for the  
10 Diocese or the Bishop at/or about this time?

11 **MR. JUSTICE GRIFFITHS:** No, but my  
12 experience with Mr. Scott is if he says he is going to do  
13 something, he does it.

14 **MR. ENGELMANN:** All right.

15 So you may well have had follow-up from him,  
16 you just don't recall?

17 **MR. JUSTICE GRIFFITHS:** May very well have.

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

19 Now, sir, you did follow up with two letters  
20 to Detective Inspector Smith the next day, December 21<sup>st</sup>,  
21 1994.

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. ENGELMANN:** Madam Clerk, if we could  
24 look at one of those it's Exhibit 1147?

25 Counsel, the Document Number is 111153.

1 This is a letter from Peter Griffiths to Tim Smith dated  
2 December 21<sup>st</sup>, 1994.

3 Mr. Commissioner, for context, this is the  
4 letter wherein Mr. Griffiths at that time is writing to  
5 Detective Inspector Smith about the Father Charles  
6 MacDonald investigation.

7 **THE COMMISSIONER:** Okay.

8 **MR. JUSTICE GRIFFITHS:** Thank you.

9 Thank you very much.

10 **MR. ENGELMANN:** Just after if you've had a  
11 chance to look at that, Justice Griffiths, I would ask you  
12 to confirm that that is in fact the letter?

13 **MR. JUSTICE GRIFFITHS:** That is in fact the  
14 letter.

15 **MR. ENGELMANN:** Okay. So that's with  
16 respect to Silmsers' allegations against MacDonald,  
17 correct?

18 **MR. JUSTICE GRIFFITHS:** Mr. Silmsers'  
19 allegations, yes.

20 **MR. ENGELMANN:** Yes.

21 Sir, at the outset of your letter, you  
22 indicate that you were provided with a two-volume brief of  
23 the police investigation into allegations of indecent  
24 assault made by Silmsers against Father MacDonald.

25 And so I would ask, you would have gotten

1           this sometime -- and I believe you say in November or mid-  
2           November. Would you have an opportunity or would you have  
3           had an opportunity to thoroughly review that two-volume  
4           brief?

5                       **MR. JUSTICE GRIFFITHS:** Yes.

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

7                       And do you know, sir, at the time there is a  
8           reference to a charge of indecent assault.

9                       **MR. JUSTICE GRIFFITHS:** Yes.

10                      **MR. ENGELMANN:** Was that the only charge  
11           that was being contemplated at that time; in other words,  
12           was there any consideration of charging Father MacDonald  
13           with gross indecency or anything else or are you able to  
14           help us?

15                      **MR. JUSTICE GRIFFITHS:** There were no limits  
16           placed on the charges in their request for advice. The  
17           advice that was sought is: Are there reasonable and  
18           probable grounds to laying criminal charges?

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

20                      So the actual framing of indecent assault  
21           whether or not the police send it to you that way, you  
22           would consider any possible criminal charge on those facts?

23                      **MR. JUSTICE GRIFFITHS:** Yes.

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

25                      In your letter you go through four incidents

1           that Mr. Silmsner complained of to the police.

2                       So for example, on the second page, Bates  
3           page 101, you talk about the first incident -- the second  
4           paragraph from the bottom?

5                       **MR. JUSTICE GRIFFITHS:** Yes.

6                       **MR. ENGELMANN:** You talk about the second  
7           incident, the retreat issue, in the final paragraph ---

8                       **MR. JUSTICE GRIFFITHS:** Yes.

9                       **MR. ENGELMANN:** --- and on to the next page?

10                      Then on the second paragraph of page 3,  
11           Bates page 102, you refer to the third incident which is  
12           another touching issue as with the first one, and then in  
13           the following paragraph you refer to the fourth incident  
14           which is the ride out into the country?

15                      **MR. JUSTICE GRIFFITHS:** Yes.

16                      **MR. ENGELMANN:** All right. So those are the  
17           four incidents. Fair enough?

18                      **MR. JUSTICE GRIFFITHS:** Yes.

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

20                      Regarding the second incident, at the bottom  
21           of Bates page 101, and this is -- you refer to the fact  
22           that Father MacDonald's walking through the boy's dorm at a  
23           retreat naked telling dirty jokes.

24                      Sir, in the statements that we have on this  
25           file that are in the record, it's fairly clear that Mr.

1 Silmser's relating this and having heard this from others,  
2 and you would have reviewed the statements that were  
3 provided at the time as part of the brief?

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** And you write at the top of  
6 the page, sir:

7 "This is an event so astonishing that,  
8 had it occurred, it doubtless would  
9 have been recalled by other young  
10 people attending the retreat. Not only  
11 did they not recall it happening, they  
12 have a positive recollection that it  
13 did not happen."

14 And you go on to say that:

15 "In the face of that evidence, it  
16 cannot be said that the objective  
17 standard of R&GP has been met with  
18 respect to that particular allegation."

19 Is that fair?

20 **MR. JUSTICE GRIFFITHS:** Yes.

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

22 Now, would the fact that this information  
23 was said by others, for example, by Mr. Silmser's sister,  
24 possibly another person rather than Mr. Silmser, would that  
25 change your opinion at all with respect to this particular

1 incident?

2 **MR. JUSTICE GRIFFITHS:** It's been 15 years  
3 since I've seen the brief. I -- all I can tell you today,  
4 Mr. Engelmann, I read the briefs carefully as I set out in  
5 the letter here and that my opinion is set out in this  
6 letter and that which I based my opinion on. So I don't  
7 know if I can say anymore than that.

8 **MR. ENGELMANN:** All right. This was an  
9 issue though that made you have questions about the  
10 complainant's credibility? There may have been others, but  
11 this was one?

12 **MR. JUSTICE GRIFFITHS:** With respect to that  
13 allegation. It was four allegations ---

14 **MR. ENGELMANN:** Yes.

15 **MR. JUSTICE GRIFFITHS:** --- you deal with  
16 them each. That allegation; that's my concern.

17 **MR. ENGELMANN:** Sir, your opinion letter  
18 does not refer ---

19 **THE COMMISSIONER:** Mr. Engelmann.

20 **MR. ENGELMANN:** Oh, I'm sorry.

21 **MR. CALLAGHAN:** I think in fairness to the  
22 witness, it's -- David Silmser did say that Father Charlie  
23 was sitting beside his bed in the nude ---

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

25 **MR. CALLAGHAN:** --- and laughing.

1                   Well, it's not exactly as described. I  
2                   think the witness should be aware that those facts were  
3                   David Silmser's facts and not the facts of anybody else.  
4                   That's what he had told the officers. So he was there in  
5                   the nude laughing by his bedside.

6                   **THE COMMISSIONER:** Okay.

7                   **MR. ENGELMANN:** I don't dispute that, sir.  
8                   The reference to him walking through the dormitory though -  
9                   --

10                  **MR. CALLAGHAN:** Yes.

11                  **MR. ENGELMANN:** --- is what I was referring  
12                  to.

13                  **MR. CALLAGHAN:** Thank you.

14                  **MR. ENGELMANN:** And I think -- I think in  
15                  reading this, that was found to be astonishing by -- by Mr.  
16                  Griffiths at the time.

17                  **MR. JUSTICE GRIFFITHS:** Right.

18                  **MR. ENGELMANN:** Because he would have been  
19                  walking by a lot of people.

20                  **MR. JUSTICE GRIFFITHS:** The specific  
21                  reference that's been made is also in my letter. Mr.  
22                  Silmser alleges that Father MacDonald came naked to his bed  
23                  and grabbed his genitals.

24                  **MR. ENGELMANN:** Yes, yes, and that was in  
25                  his statement.

1                   **MR. JUSTICE GRIFFITHS:** Thank you.

2                   **MR. ENGELMANN:** Sir, your opinion letter  
3 does not refer to -- and this was -- I don't know if I want  
4 to call it an admission, but something we looked at from  
5 Tim Smith -- that was this issue about Chief Shaver telling  
6 him -- Smith -- that the Bishop told him that Father  
7 MacDonald admitted the assault of David Silmser.

8                   Whether that is true or not, given your  
9 knowledge of it or at least the fact that it had been  
10 brought to your attention, was it something worth  
11 commenting on or following up on in your view? It's not in  
12 your letter.

13                   **MR. JUSTICE GRIFFITHS:** I didn't comment on  
14 it, and would triple hearsay be worthwhile commenting on?  
15 You know, you say on my one hand I shouldn't have commented  
16 on it here and on the other hand, why didn't I comment on  
17 it. I -- it's not in my letter.

18                   **MR. ENGELMANN:** All right.  
19                   Sir, in the last paragraph on Bates page  
20 102, you write that the evidence does not reach the  
21 threshold of objective R&GP ---

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

23                   **MR. ENGELMANN:** --- in addition to the  
24 police lacking subjective belief?

25                   **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** This appears to be somewhat  
2                   different from the verbal advice that Detective Inspector  
3                   Smith says you gave him on December 20<sup>th</sup>. We looked at  
4                   those notes.

5                   It appeared at that point that he was  
6                   advised objectively, enough credible evidence;  
7                   subjectively, not honest belief.

8                   **MR. JUSTICE GRIFFITHS:** I agree.

9                   **MR. ENGELMANN:** Can you help us at all to  
10                  why there might be a difference because that was just the  
11                  day before?

12                  **MR. JUSTICE GRIFFITHS:** First of all, my  
13                  opinion is the -- is the opinion that is set out in writing  
14                  and delivered to the police.

15                  Inspector Smith is a very experienced  
16                  officer. You know that, you've examined him here, you know  
17                  his credentials from his work both in Alfred and in  
18                  Cornwall, and he was expressing a view that there was not  
19                  RPG and, in fact, I think you would have seen that.

20                  **MR. ENGELMANN:** We looked at a note earlier.  
21                  Is that what you're referring to, sir?

22                  **MR. JUSTICE GRIFFITHS:** Yes, sir.

23                  **MR. ENGELMANN:** In 1803, where I believe  
24                  that was in June -- sorry, August 11<sup>th</sup>.

25                  **MR. JUSTICE GRIFFITHS:** Bates 233?

1                   **THE COMMISSIONER:** Yeah, m'hm.

2                   **MR. JUSTICE GRIFFITHS:** At the top of the  
3 page; it's the same conversation.

4                   **MR. ENGELMANN:** Yes.

5                   **MR. JUSTICE GRIFFITHS:** In there it says:  
6                    "No RPG to lay charge."

7                   **MR. ENGELMANN:** Right.

8                   **MR. JUSTICE GRIFFITHS:** Well, obviously,  
9 we're having a conversation about it, but when I -- when I  
10 -- with the benefit of that discussion with this  
11 experienced officer, I came back to review the file again  
12 and formulated this opinion.

13                   **MR. ENGELMANN:** Okay. The reason I asked is  
14 because there is a difference. It's the next day and it's  
15 on the objective test.

16                   **MR. JUSTICE GRIFFITHS:** I understand. It's  
17 perfectly ---

18                   **MR. ENGELMANN:** And ---

19                   **MR. JUSTICE GRIFFITHS:** --- appropriate to  
20 ask.

21                   **MR. ENGELMANN:** --- and when he was here, he  
22 told us that this was a very close case for him, at that  
23 time, on the issue of the subjective belief. I don't know  
24 if he would have advised you of that or not, but that's  
25 what he told us here.

1                   **MR. JUSTICE GRIFFITHS:** I think it was a  
2 close case on every aspect of the test.

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

4                   Now, at the very end of the letter, you  
5 indicate that the letter is your opinion only and it's not  
6 binding on the police and that they're entitled to lay  
7 criminal charges if they see fit without the approval of a  
8 Crown Attorney.

9                   **MR. JUSTICE GRIFFITHS:** That's correct.

10                  **MR. ENGELMANN:** Is that standard wording  
11 that you used at the time or was that something you thought  
12 was important to emphasize here?

13                  **MR. JUSTICE GRIFFITHS:** Is it standard  
14 wording? No, because there's other letters where I don't  
15 use those -- that wording, but I can't tell you why I put  
16 it in this letter, but that is the practice in Ontario by  
17 the Crowns and the police and I think our common  
18 understanding of what our mutual roles are.

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

20                  So at the end of the day, the final decision  
21 on R&GP is that of the police?

22                  **MR. JUSTICE GRIFFITHS:** Absolutely.

23                  **MR. ENGELMANN:** Sir, if we could look  
24 briefly at -- it's Exhibit 2566. It's the synopsis that I  
25 believe was prepared on the Crown brief dealing with Father

1 MacDonald.

2 I don't know if you have the binder for  
3 that, Justice Griffiths, but it's -- it'll be provided.  
4 Counsel, it's Document Number 714779.

5 **THE COMMISSIONER:** Two-five-six-six (2566)?

6 **(SHORT PAUSE/COURTE PAUSE)**

7 **MR. ENGELMANN:** I just want to confirm a  
8 couple of things, is I may, sir?

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. ENGELMANN:** This appears to have been  
11 the synopsis for the Crown brief with respect to the  
12 Silmser allegations against Father MacDonald. Would that  
13 be fair?

14 **MR. JUSTICE GRIFFITHS:** It appears to be.

15 **MR. ENGELMANN:** Yeah.

16 And, sir, was it common for a police officer  
17 to provide some sort of synopsis or summary in the police  
18 or Crown briefs ---

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MR. ENGELMANN:** --- that they would prepare  
21 for you?

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. ENGELMANN:** Was this of assistance to  
24 you in most cases with respect to navigating through Crown  
25 briefs?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** All right. And you would  
3 review this in the course of your thorough review of the  
4 Crown brief?

5                   **MR. JUSTICE GRIFFITHS:** Yes.

6                   **MR. ENGELMANN:** And, sir, there are  
7 concerns, for example, on page 5 of that brief, Bates page  
8 549, for example, at the bottom:

9                                 "Were there concerns expressed by the  
10 officers about the complainant's  
11 credibility? And that's one of the  
12 reasons they find it difficult to  
13 obtain the necessary reasonable grounds  
14 to believe these events took place as  
15 indicated."

16                   **MR. JUSTICE GRIFFITHS:** "Credibility and  
17 selective memory" is that the phrase?

18                   **MR. ENGELMANN:** Yes.

19                   **MR. JUSTICE GRIFFITHS:** Yes.

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

21                                 And again, he seems to give you a similar  
22 ending to your letter as well, in the sense that he says:

23                                 "Should on review of all of the  
24 evidence by the prosecutors indicate  
25 the investigators have misinterpreted

1                   the evidence obtained and there exists  
2                   probable grounds, charges may still be  
3                   preferred."

4                   So he's leaving himself that opening as well

5                   ---

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. ENGELMANN:** --- with respect to your  
8                   review?

9                   **MR. JUSTICE GRIFFITHS:** Yes.

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

11                  And, sir, just back to those notes again if  
12                  I can, I hope you still have the binder with his notes?  
13                  It's Exhibit 1803.

14                  **MR. JUSTICE GRIFFITHS:** I do.

15                  **MR. ENGELMANN:** If we just follow this  
16                  matter a little bit further past December 20<sup>th</sup>, and the  
17                  Bates page, sir, would be Bates page 236. The date is  
18                  December 23<sup>rd</sup>, 1994.

19                  **MR. JUSTICE GRIFFITHS:** Yes.

20                  **MR. ENGELMANN:** So we are a couple of days  
21                  now after your opinion. There's a reference to the time  
22                  13:00 on December 23<sup>rd</sup> about the press release.

23                  **THE COMMISSIONER:** Hang on there.

24                  **MR. ENGELMANN:** And it says:

25                               "Press release sent to CIB, Long Sault

1 Detachment and Cornwall Police Force.  
2 Media Relations has copy. Peter  
3 Griffiths read same and agrees. Agency  
4 is notified. Cornwall Police Force in  
5 Long Sault will release immediately to  
6 press with copies to Chief."

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MR. ENGELMANN:** Okay? So there's some  
9 reference there, sir, to the fact that they're running this  
10 by you as well.

11 **MR. JUSTICE GRIFFITHS:** Yes.

12 **MR. ENGELMANN:** All right. And would that -  
13 - again, I don't know if there is a standard procedure, but  
14 when there is media interest in a file from time to time,  
15 if you have some involvement, are you asked to comment on a  
16 press release?

17 **MR. JUSTICE GRIFFITHS:** You know, I don't  
18 think I've ever been involved in a press release before.  
19 It probably showed in ---

20 **MR. ENGELMANN:** Okay.

21 **MR. JUSTICE GRIFFITHS:** --- the press  
22 release that I had worked on, but ---

23 **MR. ENGELMANN:** So this wasn't part of your  
24 normal work?

25 **MR. JUSTICE GRIFFITHS:** No.

1                   **MR. ENGELMANN:** All right. Fair enough.  
2                   If we could just look briefly at 2670, it's  
3 Exhibit 2670. It's Document Number 720774. I'm just going  
4 to find my copy, sir.

5                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

6                   **MR. ENGELMANN:** Okay. What we have here,  
7 Justice Griffiths, and this would be in the package of  
8 documents you may have seen somewhat recently, we have an  
9 initial press release and we purged that. This was one  
10 drafted by Detective Inspector Smith?

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. ENGELMANN:** And that forms the first two  
13 pages and then what he advised us is that the document that  
14 starts at Bates page 073 is what he got back from you?

15                   **MR. JUSTICE GRIFFITHS:** Yes.

16                   **MR. ENGELMANN:** All right. Does that at all  
17 ring a bell that he would have sent something to you and  
18 you might have sent him a somewhat modified version back?

19                   **MR. JUSTICE GRIFFITHS:** I think that was the  
20 plan and yes.

21                   **MR. ENGELMANN:** All right. There was some  
22 urgency to do this because they wanted to get it out that  
23 day.

24                   **MR. JUSTICE GRIFFITHS:** Yes.

25                   **MR. ENGELMANN:** So I'm not sure how much

1 time you had to look at it, sir, but it appears you sent  
2 back a modified version.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. ENGELMANN: All right.

5 And, sir, these documents, whether it's his  
6 or yours, refer to the issue of the charges against Father  
7 MacDonald from David Silmser and the fact that there is no  
8 R&GP and they also refer to the conspiracy/collusion issue  
9 saying that there was no evidence of it. And your letter  
10 is maybe a bit toned down from his in the sense that I  
11 think he says "absolutely no evidence;" you say "no  
12 evidence."

13 But in any event, they're dealing with those  
14 two of the three investigations that Detective Inspector  
15 Smith is involved with; correct?

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. ENGELMANN: There's no reference to the  
18 other investigation, the attempt to obstruct justice;  
19 correct?

20 MR. JUSTICE GRIFFITHS: I agree.

21 MR. ENGELMANN: All right.

22 Do you why there wasn't at that time?

23 MR. JUSTICE GRIFFITHS: No.

24 MR. ENGELMANN: Okay.

25 MR. JUSTICE GRIFFITHS: I think -- I'm not a

1 media relations person. I don't think we turned our head  
2 to it, our minds to it.

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

4 These two certainly leave the impression  
5 with the reader that there's no issue. In other words,  
6 there's no R&GP with respect to Father MacDonald and  
7 there's no evidence of conspiracy/collusion?

8 **MR. JUSTICE GRIFFITHS:** I think so.

9 **MR. ENGELMANN:** Yeah.

10 **MR. JUSTICE GRIFFITHS:** I don't think either  
11 one of these was ever released.

12 **MR. ENGELMANN:** No, sir, I just want to show  
13 you what I believe was the final version.

14 **MR. JUSTICE GRIFFITHS:** Oh, yes.

15 **MR. ENGELMANN:** And that's Tab -- sorry,  
16 that's Exhibit 1000.

17 I want to ask you if you had any input into  
18 that final cut.

19 **MR. JUSTICE GRIFFITHS:** No, I did not.

20 **MR. ENGELMANN:** All right. Let's just have  
21 a quick look at it though. It's Exhibit 1000. Counsel,  
22 it's Document Number 720738.

23 **MR. JUSTICE GRIFFITHS:** I think the input  
24 was the exchange between Inspector Smith and I. And then  
25 he forwarded the material ---

1                   **MR. ENGELMANN:** Do you recall, sir, whether  
2                   you were asked to make any comments to the press at that  
3                   time or was that something the OPP were simply going to  
4                   deal with?

5                   **MR. JUSTICE GRIFFITHS:** I don't recall being  
6                   asked, but it wouldn't surprise me. There was a lot of  
7                   press interest at the time that my office was called, but  
8                   it isn't an interview that I would give.

9                   **MR. ENGELMANN:** All right, but if you were  
10                  asked directly, you wouldn't have ducked it at the time  
11                  either?

12                  **MR. JUSTICE GRIFFITHS:** No, but I -- I can't  
13                  recall.

14                  **MR. ENGELMANN:** Fair enough. Fair enough.  
15                  So what we are looking at, sir, at Exhibit  
16                  1000, is the final version.

17                  **MR. JUSTICE GRIFFITHS:** Yes.

18                  **MR. ENGELMANN:** It says "No charges laid in  
19                  alleged conspiracy."

20                  And it talks about the fact that an  
21                  investigation -- a nine-month investigation has been  
22                  completed. They've consulted with you, the Regional  
23                  Director of Crown attorneys, and decided there are no  
24                  grounds to lay criminal charges against the Cornwall police  
25                  in an alleged assault nor to lay charges in the alleged

1       improper relationship between the Diocese and the Cornwall  
2       police.

3                   **MR. JUSTICE GRIFFITHS:** Correct.

4                   **MR. ENGELMANN:** All right, and it talks  
5       about a team of officers. You are not referenced by name.  
6       Did you have any -- as I asked earlier -- any further input  
7       into that final version or would that have been something  
8       done by the OPP?

9                   **MR. JUSTICE GRIFFITHS:** That was the OPP  
10       media office.

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

12                   Do you recall seeing it once it was  
13       released? Or is that something that you would be following  
14       up on?

15                   **MR. JUSTICE GRIFFITHS:** No, but ---

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

17                   And sir, it's our information, and we know  
18       this from Tim Smith's notes and from his conversations with  
19       you, that the attempt obstruct brief is still being  
20       reviewed and you're still considering whether or not to lay  
21       charges?

22                   **MR. JUSTICE GRIFFITHS:** Under active  
23       consideration, yes, sir.

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

25                   And let's just, before we go to that one, I

1 want to ask you a little bit about another investigation  
2 being the extortion investigation. This is Mr. Silmser as  
3 an alleged -- as a suspect.

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** As opposed to an alleged  
6 victim.

7 This was being done, sir, at the same time  
8 as the Father MacDonald investigation. Is that fair?

9 **MR. JUSTICE GRIFFITHS:** It's my  
10 understanding.

11 **MR. ENGELMANN:** During the calendar year  
12 1994, and just by way of context, this investigation began  
13 after the suicide of Mr. Ken Seguin, who was a probation  
14 officer whom Mr. Silmser had also made allegations against  
15 of a sexual nature, and there had been some allegations  
16 coming forward that Mr. Silmser had attempted to extort  
17 money from Mr. Seguin.

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. ENGELMANN:** And that would have been  
20 brought to your attention?

21 **MR. JUSTICE GRIFFITHS:** That was the  
22 allegation.

23 **MR. ENGELMANN:** Okay. And again, as with  
24 those other three, you were, given the issue with Murray  
25 MacDonald, you were the Crown attorney assigned, perhaps by

1       yourself, to assist the police if they had liaison issues  
2       or other issues?

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

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

5                   And we've heard testimony from some of the  
6       officers involved; in fact, from Inspector Smith and  
7       Inspector Hamelink, that this was a rather -- I don't know  
8       if I should use the word "unique", but it wasn't a normal  
9       situation with Mr. Silmsler being both, an alleged victim in  
10      one investigation and a suspect in another, both being  
11      conducted at the same time.

12                  Would that have been rather unusual from  
13      your own experience, sir?

14                  **MR. JUSTICE GRIFFITHS:** Are you -- well,  
15      that, yes.

16                  **MR. ENGELMANN:** All right. And do you  
17      recall at the time any discussions -- well, let's go to his  
18      notes first before I ask you.

19                  Again, 1803, and I'm interested, sir, in  
20      looking at -- it's a reference to February 10<sup>th</sup>, so it will  
21      be right near the beginning. The Bates page is ---

22                  **MR. JUSTICE GRIFFITHS:** Of '94?

23                  **MR. ENGELMANN:** Yes. Yes.

24                  This is -- sorry, the Bates page is 214.

25                  **THE COMMISSIONER:** Two one four (214)?

1                   **MR. ENGELMANN:** Yes, 214 are the last three  
2                   digits, sir. It's 1054214.

3                   **THE COMMISSIONER:** Okay.

4                   **MR. ENGELMANN:** Again, if we could have that  
5                   a little -- it's about a third of the way down the --  
6                   sorry, it's about -- yeah, about a third of the way down  
7                   the page. It's 10 February.

8                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

9                   **MR. ENGELMANN:** In fact the portion I'd like  
10                  is about halfway down the page. It says:

11                                 "Discuss method of interview with  
12                                 Silmser and whether he should be  
13                                 cautioned re possible extortion. Don't  
14                                 know if what he's alleged to do with  
15                                 Seguin is extortion per *Criminal Code*.  
16                                 Peter Griffiths to research and advise.  
17                                 He will know next Tuesday or Wednesday.  
18                                 I will call."

19                                 All right? And, sir, this is -- these two  
20                   inspectors have just been assigned; Hamelink on one, Smith  
21                   on the three. And we know, sir, that they have a meeting  
22                   with you on the 21<sup>st</sup> of February. We looked at that note.  
23                   And we also know that they interview Silmser for the first  
24                   time on February 22<sup>nd</sup>, the day after the meeting in your  
25                   office.

1                   We've also heard from them that Detective  
2                   Inspector Hamelink wasn't visibly present at that  
3                   interview. He was behind a one-way mirror and Detective  
4                   Inspector Smith was asking questions principally about the  
5                   allegations against Father MacDonald but there were also  
6                   some questions interwoven with respect to Mr. Silmser's  
7                   contact with Mr. Seguin.

8                   Okay, that's just by way of context. So  
9                   February 10<sup>th</sup> there's this reference to discussing methods  
10                  of interviewing with Silmser and there's some reference to  
11                  the fact, sir, that you are going to do some research and  
12                  advise.

13                  I'm just wondering if you can help and  
14                  expand upon that in any way, if that refreshes your memory  
15                  about a legal point or some form of direction that you were  
16                  going to provide to one or both of these officers.

17                  **MR. JUSTICE GRIFFITHS:** I think the  
18                  reference was to whether or not what is alleged to have  
19                  happened was an extortion under the *Criminal Code*.

20                  **MR. ENGELMANN:** Okay.

21                  **MR. JUSTICE GRIFFITHS:** Not about interview.

22                  **MR. ENGELMANN:** Not about the cautioning or  
23                  about the interview?

24                  **MR. JUSTICE GRIFFITHS:** Right.

25                  **MR. ENGELMANN:** Just about whether or not --

1 -

2 **MR. JUSTICE GRIFFITHS:** I mean that's -- and  
3 to be fair I think, as I said to you before, I don't have  
4 an independent recollection of the conversation, the  
5 meeting, and I take Inspector Smith's notes in that regard.  
6 So that's how I would read those notes.

7 **MR. ENGELMANN:** All right. And given your  
8 practice, sir, about not giving investigative-type advice,  
9 you believe it would have been legal-type advice as to  
10 whether or not, even if true, that meets the extortion  
11 definition or something to that effect?

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. ENGELMANN:** All right.

14 In fact when Detective Inspector Smith  
15 testified, he told us he couldn't remember whether he  
16 received any feedback on the issue of whether Mr. Silmsen  
17 should be cautioned, because that was an issue for him.

18 **MR. JUSTICE GRIFFITHS:** And the last  
19 reference is "I will call." I don't think he does.

20 **MR. ENGELMANN:** No, I don't think there's a  
21 reference to it. What happens, sir, is -- and we looked at  
22 -- if you turn the page, there's a reference to a call on  
23 the 14<sup>th</sup>, so that could be around that time. It says, "Call  
24 Peter Griffiths," and this is where he advises you that  
25 he's received the settlement. And then the next reference

1 is the 21<sup>st</sup> which, is I said, is the day before the  
2 interview where they have the meeting at your office.

3 MR. JUSTICE GRIFFITHS: Right.

4 MR. ENGELMANN: Okay. Do you have any  
5 recollection at all about that meeting on the 21<sup>st</sup> of  
6 February?

7 MR. JUSTICE GRIFFITHS: No, not beyond  
8 what's here.

9 MR. ENGELMANN: All right.

10 MR. JUSTICE GRIFFITHS: Sorry.

11 MR. ENGELMANN: And were you aware at all  
12 about the strategy that was going to be employed by the  
13 police with respect to Hamelink being there but not visibly  
14 there and how they were going to ask some questions about  
15 the extortion issue during the course of the other  
16 investigation?

17 MR. JUSTICE GRIFFITHS: No.

18 MR. ENGELMANN: All right. I mean, if you  
19 were advised, you don't recall?

20 MR. JUSTICE GRIFFITHS: If I was advised,  
21 they wouldn't have done that.

22 MR. ENGELMANN: In what sense, sir?

23 MR. JUSTICE GRIFFITHS: With Hamelink behind  
24 a one-way mirror -- with the criminal investigation against  
25 Silmsler, watching him without Silmsler being cautioned or

1 aware that he was there. If I was asked whether that was  
2 an appropriate procedure, I can't imagine saying yes.

3 **MR. ENGELMANN:** All right. You would have  
4 had them caution him?

5 **MR. JUSTICE GRIFFITHS:** Yes.

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

7 **MR. JUSTICE GRIFFITHS:** Or Hamelink not be  
8 there.

9 **MR. ENGELMANN:** Fair enough.

10 **THE COMMISSIONER:** Sir, can you bring the  
11 microphone over

12 **MR. JUSTICE GRIFFITHS:** I beg your pardon.  
13 Thank you.

14 **THE COMMISSIONER:** Thank you.

15 **MR. ENGELMANN:** I think people have it.

16 His notes of that meeting are fairly brief.  
17 I believe it's, "Interview Silmser. All sexual allegations  
18 and how did settlement come about." So you can't really  
19 tell us more than that?

20 **MR. JUSTICE GRIFFITHS:** No.

21 **MR. ENGELMANN:** Okay. And Smith did, when  
22 he testified, say that the extortion issue came up at the  
23 meeting. Again I don't have much more than that.

24 Just give me a moment, sir.

25 **MR. JUSTICE GRIFFITHS:** Absolutely.

1                   **MR. ENGELMANN:** Well, in fact,  
2                   Mr. Commissioner, is it time for the morning break?

3                   **THE COMMISSIONER:** Thank you.

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

6                   This hearing will resume at 11:20 a.m.

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

8                   L'audience est suspendue à 11h03

9                   --- Upon resuming at 11:23 a.m./

10                  L'audience est reprise à 11h23

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

13                  This hearing is now resumed. Please be  
14                  seated. Veuillez vous asseoir.

15                  **THE COMMISSIONER:** Thank you.

16                  **MR. ENGELMANN:** Mr. Commissioner, just  
17                  before I commence with my questioning again, I just, I  
18                  think, have discovered the confusion about the document  
19                  numbers or exhibit numbers in the transcript, and I thank  
20                  you for that.

21                  The reason is, I understand, several  
22                  exhibits were entered in an in-camera session last Friday  
23                  with Mr. Flanagan. So that's why the numbering is the way  
24                  it is in the transcript. And I apologize for any  
25                  inconvenience that may have caused to our clerk and/or our

1 court reporters. We'll leave it there.

2 **THE COMMISSIONER:** All right.

3 **ASSOCIATE CHIEF JUSTICE PETER GRIFFITHS,**

4 **Resumed/Sous le même serment:**

5 **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR**

6 **MR. ENGELMANN (cont'd/suite):**

7 **MR. ENGELMANN:** Justice Griffiths, I was in  
8 the process of asking you a few questions about the  
9 concurrent investigation, the matter that was being  
10 investigated by Inspector Hamelink.

11 **MR. JUSTICE GRIFFITHS:** Yes.

12 **MR. ENGELMANN:** And as part of that, I  
13 wanted to show you a letter.

14 It's actually not in evidence yet,  
15 Mr. Commissioner. It's Document Number 715872.

16 Justice Griffiths, this is a letter from a  
17 fellow by the name of Douglas Seguin to yourself. It's  
18 dated March 18<sup>th</sup>, '94.

19 **THE COMMISSIONER:** Thank you.

20 Exhibit Number 3022 is a letter dated March  
21 18<sup>th</sup>, 1994 addressed to Peter Griffiths from Douglas Seguin.

22 **--- EXHIBIT NO./PIÈCE NO. P-3022:**

23 (715872) - Letter from Douglas Seguin to  
24 Peter Griffiths re: Broadcasting Complaint  
25 dated 18 Mar 94

1                   **MR. ENGELMANN:** And again just by way of  
2 context, this fellow, Doug or Douglas Seguin, is the  
3 brother of the deceased probation officer, Ken Seguin.  
4 He's writing you a letter on -- I believe it's March the  
5 18<sup>th</sup>, 1994 and you, in fact, respond to that letter as well.  
6 Maybe we'll have both letters before you before I ask you  
7 any questions, sir.

8                   **MR. JUSTICE GRIFFITHS:** Thank you.

9                   **MR. ENGELMANN:** There's a letter you write  
10 back.

11                   And Madam Clerk, that is Document Number  
12 715871 and it's a letter that's dated March 24<sup>th</sup>, 1994.

13                   Mr. Commissioner, this is from Mr. Griffiths  
14 to Mr. Smith.

15                   **THE COMMISSIONER:** Thank you.

16                   That will be Exhibit Number 3023. Thank  
17 you.

18                   **--- EXHIBIT NO./PIÈCE NO. P-3023:**

19                   (715871) - Letter from Peter Griffiths to  
20 Tim Smith re: Kenneth Seguin dated 24 Mar 94

21                   **MR. JUSTICE GRIFFITHS:** Thank you.

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

23                   **(SHORT PAUSE/COURTE PAUSE)**

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

25                   So we have Mr. Seguin's letter to you; we

1 have your letter back to him. And in his letter to you,  
2 sir, there's a reference that says:

3 "I have enclosed my response to a  
4 February 14<sup>th</sup> CJOH TV letter in which  
5 they responded to my above broadcast  
6 and complaints."

7 And just to complete the record if the  
8 witness could be shown -- it's Exhibit Number -- sorry,  
9 Document Number 715873?

10 **THE COMMISSIONER:** Thank you.

11 Exhibit 3024 is a letter dated March 1<sup>st</sup>,  
12 1994 addressed to Jennifer Wilson, Correspondence and  
13 Complaints Division of the CRTC, from Mr. Seguin. Copies  
14 to Keith Spicer, Peter Griffiths and the Canadian Broadcast  
15 Standards Council.

16 --- **EXHIBIT NO./PIÈCE NO. P-3024:**

17 (715873) - Letter from Douglas Seguin to  
18 Jennifer Wilson dated March 1, 1994

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

20 Justice Griffiths, do you have the three  
21 documents?

22 **MR. JUSTICE GRIFFITHS:** I do.

23 **MR. ENGELMANN:** All right. So let's try and  
24 just piece this together.

25 The first document, 3022, is Mr. Seguin's

1 letter to you?

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: Okay. And as I understand  
4 it, sir, 3024 which is a letter that he writes on -- sorry  
5 -- a letter of March 1<sup>st</sup>, 1994, would have been an  
6 attachment to his letter to you March 18<sup>th</sup>?

7 MR. JUSTICE GRIFFITHS: Yes.

8 MR. ENGELMANN: All right. And that it's  
9 your understanding it came as a package?

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: All right.

12 So do you recall receiving correspondence  
13 from him? Do you have any recollection of this?

14 MR. JUSTICE GRIFFITHS: I have no  
15 independent recollection.

16 MR. ENGELMANN: All right. Your  
17 recollection is simply from the documents themselves?

18 MR. JUSTICE GRIFFITHS: Yes.

19 MR. ENGELMANN: And what, if anything, does  
20 that refresh with respect to your involvement here, sir,  
21 other than that you responded about a week later?

22 MR. JUSTICE GRIFFITHS: I can't expand on  
23 the documents that are here.

24 MR. ENGELMANN: All right.

25 Well, you write to Inspector Smith after

1 getting these documents from Mr. Seguin?

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: But you copy Mr. Seguin, so  
4 you're referring it to him presumably because you're  
5 expecting he's going to do something with this or he's  
6 going to investigate this?

7 MR. JUSTICE GRIFFITHS: Well, Mr. Seguin, in  
8 his letter to me dated March 18<sup>th</sup>, indicates he's forwarding  
9 this to me as it may be of some assistance in the police  
10 investigation, he believes. So I forward them in turn to  
11 the investigating police.

12 MR. ENGELMANN: All right. Because you  
13 thought since they had an investigation going on in this  
14 matter that they should follow up on it and not yourself?

15 MR. JUSTICE GRIFFITHS: That's correct.

16 MR. ENGELMANN: All right.

17 And do you know, sir, you sent this to  
18 Detective Inspector Smith. Did this not really have more  
19 to do with the extortion side of things?

20 MR. JUSTICE GRIFFITHS: It may have. I  
21 didn't turn my mind to that.

22 MR. ENGELMANN: All right.

23 So perhaps it should have been sent to  
24 Detective Inspector Hamelink?

25 MR. JUSTICE GRIFFITHS: Perhaps, indeed.

1                   **MR. ENGELMANN:** All right.

2                   **MR. JUSTICE GRIFFITHS:** As you've noticed,  
3 most of my conversations were with Inspector Smith.

4                   **MR. ENGELMANN:** Right, right, but whether --  
5 okay. And you don't know whether Smith would have turned  
6 this over to Hamelink or not?

7                   **MR. JUSTICE GRIFFITHS:** I don't know.

8                   **MR. ENGELMANN:** Fair enough.

9                   Sir, as with the letters you wrote to  
10 Detective Inspector Smith, you did write a letter, opinion  
11 letter, to Detective Inspector Hamelink about the extortion  
12 investigation?

13                   **MR. JUSTICE GRIFFITHS:** I believe so.

14                   **MR. ENGELMANN:** And, sir, if -- Madam Clerk,  
15 if the witness could be shown -- it's Exhibit 2574. I'm  
16 not sure if that binder is up already or not. It's a  
17 letter dated October 12<sup>th</sup>, 1994, Justice Griffiths. It's a  
18 letter you would have written to Fred Hamelink.

19                   **MR. JUSTICE GRIFFITHS:** Yes.

20                   **MR. ENGELMANN:** And again, sir, as with the  
21 others, would it be fair to say you would have received  
22 some kind of a brief, whether we call it a police brief or  
23 a Crown brief, from Detective Inspector Hamelink and you  
24 would have reviewed it before providing him with this  
25 opinion?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** And you refer to the fact  
3 again that there was a two-volume brief left with you to  
4 comment on?

5                   **MR. JUSTICE GRIFFITHS:** Correct.

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

7                   And, sir, just to have a look at his notes  
8 very briefly if we can, they are -- it's Exhibit -- Madam  
9 Clerk, Exhibit 1031.

10                   Counsel, this is Document Number 725119.

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

12                   **MR. ENGELMANN:** A couple of very brief  
13 references, sir, that I want to take you to.

14                   **MR. JUSTICE GRIFFITHS:** Yes.

15                   **MR. ENGELMANN:** If you could turn -- the  
16 last three digits of the Bates page are 284 and at the  
17 bottom of that page ---

18                   **MR. JUSTICE GRIFFITHS:** I'm sorry, the?

19                   **MR. ENGELMANN:** Two-eight-four (284), sir.  
20 It's page 34 of his handwritten numbers at the top.

21                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

22                   **MR. ENGELMANN:** At the very bottom of that  
23 page there's a reference to Wednesday, September 28, '94,  
24 1430:

25                                   "Met with Detective Constable McDonell.

1 Arrangements made for a meeting...."

2 We flip over to the next Bates page:

3 "...with Peter Griffiths in Ottawa 29  
4 September '94, 1400 hours. The brief  
5 into the Silmsler investigation was  
6 complete."

7 And he references, sir, Thursday, September  
8 29<sup>th</sup>, '94, 1400, with P.C. McDonell, "Met" -- and I think  
9 that should say "P" instead of "B" but:

10 "Met Mr. Griffiths at his Ottawa  
11 office. He was given an oral summary  
12 of our investigation together with a  
13 brief for his consideration. At the  
14 conclusion of our meeting, Mr.  
15 Griffiths indicated he would require at  
16 least two weeks before making a  
17 decision."

18 All right?

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MR. ENGELMANN:** So it appears they would  
21 have given you the brief, there would have been a meeting,  
22 some comments, and you're asking for a couple of weeks?

23 **MR. JUSTICE GRIFFITHS:** Yes.

24 **MR. ENGELMANN:** All right. And, again,  
25 approximately two weeks later you provide your opinion

1 letter, the letter we just looked at?

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: Sir, this is -- you're  
4 receiving this brief in late September. You don't get the  
5 other briefs from Detective Inspector Smith until mid-  
6 November, approximately five or six weeks later.

7 Were you aware, sir, at all of an  
8 arrangement between these detective inspectors that they  
9 were to share their briefs and then deliver them to you  
10 after that in some form of concurrent way?

11 MR. JUSTICE GRIFFITHS: I'm aware of that  
12 through reviewing the notes of Detective Smith -- or  
13 Inspector Smith.

14 MR. ENGELMANN: Do you know if you were  
15 aware of it at the time?

16 MR. JUSTICE GRIFFITHS: Again, sorry, I  
17 don't have an independent recollection of that.

18 MR. ENGELMANN: Okay.

19 MR. JUSTICE GRIFFITHS: It appears from the  
20 early meeting in February of 2004 that that was -- I'm  
21 sorry.

22 MR. ENGELMANN: 1994?

23 MR. JUSTICE GRIFFITHS: Yes, '94 ---

24 MR. ENGELMANN: Yes.

25 MR. JUSTICE GRIFFITHS: --- that that was

1 discussed.

2 **MR. ENGELMANN:** Yes.

3 When Detective Inspector Smith testified he  
4 said that -- it was his understanding that he would  
5 continue his investigation to the point where he was  
6 satisfied that they'd got as much as they could and then --  
7 in other words, he would start first and then Detective  
8 Inspector Hamelink would proceed and when the  
9 investigations were complete, the two of them would get  
10 together, compare notes, and then go to you with their  
11 briefs for recommendations. That was sort of a summary of  
12 his evidence.

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. ENGELMANN:** And he did tell us that some  
15 of this would have been discussed with you at that first  
16 meeting on February 10<sup>th</sup>, I believe. You just don't  
17 remember now?

18 **MR. JUSTICE GRIFFITHS:** I don't remember now  
19 but I don't dispute it.

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

21 When Detective Inspector Hamelink  
22 testified,4 he said that at the meeting with you it was  
23 decided that once they had their information together the  
24 briefs would go to you for your analysis and to give  
25 recommendations.

1                   So if you were made aware of this  
2                   arrangement, that would have likely been right at the  
3                   beginning in February of '94?

4                   **MR. JUSTICE GRIFFITHS:** I believe so.

5                   **MR. ENGELMANN:** Okay.

6                   We know from his evidence that Detective  
7                   Inspector Smith was not aware that Detective Inspector  
8                   Hamelink had completed his investigation in September and  
9                   provided you with the brief when he did, and he was quite  
10                  surprised and somewhat upset about the fact that that had  
11                  gone first.

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. ENGELMANN:** Do you recall him bringing  
14                  that to your attention during your discussions in November  
15                  or December?

16                  **MR. JUSTICE GRIFFITHS:** No.

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

18                  Sir, if we could go back then to his notes  
19                  for a minute. That's Exhibit 1803.

20                  **MR. JUSTICE GRIFFITHS:** I'm sorry, which  
21                  "his"?

22                  **MR. ENGELMANN:** "His" being Detective  
23                  Inspector Smith. It's Exhibit 1803. I hope you still have  
24                  the binder.

25                  **MR. JUSTICE GRIFFITHS:** I do.

1 Yes.

2 MR. ENGELMANN: And, sir, if I could take  
3 you to Bates page 231. And we looked earlier at a note on  
4 October 11<sup>th</sup>, 1994, and this is when you call him, "him"  
5 being Smith, and you're concerned about the delay.

6 MR. JUSTICE GRIFFITHS: Yes.

7 MR. ENGELMANN: Okay. We went there. This  
8 call is the day before you write your opinion letter to  
9 Inspector Hamelink; correct?

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: Do you have any idea, sir,  
12 whether you would advised Detective Inspector Smith at that  
13 time that you had received the brief from Hamelink and in  
14 fact you were just finishing your opinion?

15 MR. JUSTICE GRIFFITHS: I don't. I assume  
16 if I told him that that he would have -- he's a careful  
17 note-taker. He'll have noted that.

18 MR. ENGELMANN: All right.

19 MR. JUSTICE GRIFFITHS: I think in all  
20 likelihood the call from me saying "hurry up" was probably  
21 prompted by the fact that I had the Hamelink brief.

22 MR. ENGELMANN: All right. And it would  
23 appear then that you didn't advise him of that and he  
24 certainly didn't recall you advising him of it. Do you  
25 have any idea why you wouldn't have mentioned it?

1                   **MR. JUSTICE GRIFFITHS:** No.

2                   **MR. ENGELMANN:** Or did you just assume that  
3 they were talking?

4                   **MR. JUSTICE GRIFFITHS:** I can't tell you.

5                   **MR. ENGELMANN:** Fair enough.

6                   **MR. JUSTICE GRIFFITHS:** I have no  
7 recollection.

8                   **MR. ENGELMANN:** All right.

9                   Now, just going back to your opinion letter  
10 for a minute if we can. That's the one that you write to  
11 Detective Inspector Hamelink.

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. ENGELMANN:** I'll just be a moment, sir.  
14 That is Exhibit 2574.

15                   It was your opinion, sir, that you did not  
16 believe there was sufficient evidence to provide reasonable  
17 and probable grounds to support a criminal charge of  
18 extortion against Mr. Silmsen?

19                   **MR. JUSTICE GRIFFITHS:** Yes.

20                   **MR. ENGELMANN:** All right. And that was the  
21 view of the officers, and you concurred with that  
22 assessment?

23                   **MR. JUSTICE GRIFFITHS:** Yes.

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

25                   Sir, another matter you were involved in in

1 1994 was Detective Inspector Smith's investigation of  
2 conspiracy or collusion vis-à-vis the Cornwall Police  
3 Service, the Diocese and the local Crown.

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** And if we could look briefly  
6 at another letter you would have written on December 21<sup>st</sup>,  
7 1994. It is Exhibit 1148. Counsel, it's Document Number  
8 111152.

9 Sir, this is the letter you write to  
10 Detective Inspector Smith. On that very same day that you  
11 write vis-à-vis Father Charles MacDonald, you write about  
12 the conspiracy or collusion investigation.

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. ENGELMANN:** If we could just have that  
15 provided to the witness.

16 **MR. JUSTICE GRIFFITHS:** Are there any books  
17 we don't need here?

18 **(LAUGHTER/RIRES)**

19 **MR. ENGELMANN:** Probably several. I  
20 apologize, sir. I wish that table was bigger. One should  
21 always keep Detective Inspector Smith.

22 The others may well be free to go.

23 **MR. JUSTICE GRIFFITHS:** Thank you.

24 Yes.

25 **MR. ENGELMANN:** Now, you've referred to this

1 as -- this is the opinion letter that you would have  
2 provided to Detective Inspector Smith with respect to this  
3 aspect of his investigation?

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** And you've called it  
6 "alleged collusion" and we've heard the term "alleged  
7 collusion", "alleged conspiracy". Was there a distinction  
8 there?

9 **MR. JUSTICE GRIFFITHS:** Not in my mind.

10 **MR. ENGELMANN:** All right. And this was  
11 with respect to alleged conspiracy or collusion to attempt  
12 to obstruct justice ---

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. ENGELMANN:** --- if I can use the term?  
15 All right. And your conclusion in this letter was that the  
16 evidence that had been provided to you did not reveal  
17 criminal activity.

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. ENGELMANN:** Right. And at Bates page  
20 098 which is the second page of your opinion, when you're  
21 referring to "parties" in that third paragraph, I'm  
22 assuming we're talking about the Cornwall police, the  
23 Diocese and the local Crown.

24 **MR. JUSTICE GRIFFITHS:** Yes.

25 **MR. ENGELMANN:** Right. And you say later on

1 in that paragraph:

2 "There's no evidence that any  
3 representative of the Church contacted  
4 the Crown attorney or the officers in  
5 charge of that investigation to  
6 improperly influence either of those  
7 individuals to stop a valid  
8 investigation."

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. ENGELMANN:** All right. And really the  
11 only direct evidence of anything here would have been the  
12 release itself, correct; the release between the Diocese,  
13 Father MacDonald and Silmsler?

14 **MR. JUSTICE GRIFFITHS:** Yes.

15 **MR. ENGELMANN:** And sir, if the agreement  
16 between the Diocese and Silmsler resulted in him requesting  
17 the police to stop the investigation, it had the same  
18 effect as one of those parties contacting the police; did  
19 it not?

20 **MR. JUSTICE GRIFFITHS:** The same outcome?

21 **MR. ENGELMANN:** Yeah.

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. ENGELMANN:** All right. In other words,  
24 he terminates or withdraws his criminal complaint.

25 **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** All right. It can only  
2 amount to collusion or conspiracy, however, between the  
3 Diocese and the police and/or Crown if the police or Crown  
4 had some knowledge of the wording of that particular  
5 release, presumably?

6                   **MR. JUSTICE GRIFFITHS:** A conspiracy is an  
7 agreement that is an unlawful agreement between parties.  
8 There is no evidence of an agreement between the parties to  
9 obstruct justice. Maybe that's a clearer form of words.

10                   **MR. ENGELMANN:** All right. Sir, you  
11 mentioned giving some brief advice, some telephone advice  
12 to Murray MacDonald back in 1993.

13                   **MR. JUSTICE GRIFFITHS:** Yes.

14                   **MR. ENGELMANN:** I'm just wondering. Did you  
15 consider not commenting on this aspect because of that;  
16 because you'd looked at, in a sense, his work earlier, or  
17 did that cross your mind at the time?

18                   **MR. JUSTICE GRIFFITHS:** No. The information  
19 I had in the fall of '93, ---

20                   **MR. ENGELMANN:** Yes.

21                   **MR. JUSTICE GRIFFITHS:** --- was that there  
22 was an allegation by Mr. Silmsler of sexual misconduct from  
23 Father MacDonald in the '70s; that Mr. Silmsler had pursued  
24 a civil settlement with the Diocese, had been paid \$32,000  
25 pursuant to that settlement; and that Mr. Silmsler was no

1 longer cooperating with the police and did not wish to  
2 testify or to proceed any further.

3 The question was, in that set of  
4 circumstances; could the matter -- could a charge be laid?  
5 Could the matter proceed? And my advice was I did not see  
6 how -- the only information of criminal misconduct was  
7 coming from Mr. Silmsler. There was no independent evidence  
8 of that and, absent Mr. Silmsler's corroboration or  
9 testimony, that there would be no RPG to proceed.

10 **MR. ENGELMANN:** And we've gone through this  
11 before, but at that time, you had no knowledge of the  
12 wording of this particular release document?

13 **MR. JUSTICE GRIFFITHS:** That's correct.

14 **MR. ENGELMANN:** And would you have had any  
15 knowledge at that time of the fact that two of the lawyers  
16 involved, Jacques Leduc and Malcolm MacDonald, had had  
17 discussions with Murray MacDonald about the settlement;  
18 either before, during or after it was signed off?

19 **MR. JUSTICE GRIFFITHS:** No.

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

21 **MR. JUSTICE GRIFFITHS:** But that wouldn't  
22 shock me.

23 **MR. ENGELMANN:** No, that issue arose and was  
24 in the information. I think that was before you in '94.

25 **MR. JUSTICE GRIFFITHS:** Right.

1                   **MR. ENGELMANN:** When you were looking at  
2 this.

3                   **MR. JUSTICE GRIFFITHS:** Right. I mean,  
4 victims of crime whether they are sexual crimes or crimes  
5 of violence not infrequently have civil remedies that they  
6 pursue quite properly. They have suffered damages. The  
7 two can run side by side with a criminal investigation or  
8 prosecution without impediment.

9                   **MR. ENGELMANN:** Sir, the other matter you  
10 looked at in '94 was the attempt obstruct justice. We know  
11 from Detective Inspector Smith's notes that your review of  
12 that flows into the next calendar year as well.

13                   **MR. JUSTICE GRIFFITHS:** Yes.

14                   **MR. ENGELMANN:** And just -- we've looked at  
15 a few of his notes on this. I want to look at a couple  
16 more if we can.

17                   So back to 1803 if we can, and let's start  
18 at Bates page 235 with the date of December 22<sup>nd</sup>, 1994.

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

20                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

21                   **MR. ENGELMANN:** The note is about a quarter  
22 of the way down the page.

23                   Madam Clerk, starting at 22 December '94,  
24 there is a reference to:

25                   "Call from Peter Griffiths re

1 investigation and recommendations.  
2 Problem with Malcolm MacDonald.  
3 Possible obstruct. Further  
4 consultations to be done possibly."

5 And there are some telephone numbers there.

6 So it appears that you're having a  
7 discussion with Detective Inspector Smith about this  
8 outstanding matter at that time.

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. ENGELMANN:** Then, sir, the following day  
11 and the following Bates page, if we could flip to the 23<sup>rd</sup> -  
12 - and sir, sorry, on the 22<sup>nd</sup>, there's some concern about  
13 Malcolm MacDonald, obviously, from those notes.

14 **MR. JUSTICE GRIFFITHS:** Yes.

15 **MR. ENGELMANN:** And again, sir, you may not  
16 remember that but you don't dispute the note, you said?

17 **MR. JUSTICE GRIFFITHS:** No. I know there  
18 were concerns.

19 **MR. ENGELMANN:** Yes, okay, fair enough. And  
20 the concern was about a possible or an attempt to obstruct  
21 justice?

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. ENGELMANN:** All right.

24 And then there is a further reference to  
25 this on the next page and that is December 23<sup>rd</sup>. But just

1 before we go there, sir, in fact I believe you had  
2 expressed concerns about this much earlier in the year and  
3 there is an article that's not yet in evidence that I'd  
4 like to put in. And it's Document Number 728397.

5 It's an Ottawa Citizen article from January  
6 25, 1994. So Justice Griffiths, this would be very early  
7 on, I think, when you're being asked to be involved.

8 **MR. JUSTICE GRIFFITHS:** Yes.

9 **MR. ENGELMANN:** So January 25<sup>th</sup>, 1994, Ottawa  
10 Citizen article, "Top Attorney Questions Church's Payment  
11 to Abuse Complainant."

12 **THE COMMISSIONER:** Exhibit 3025.

13 --- **EXHIBIT NO./PIECE NO. P-3025:**

14 (728397) - Ottawa Citizen article "Top  
15 attorney questions church's payment to abuse  
16 complainant dated 25 Jan 94

17 **MR. ENGELMANN:** Sir, the article starts with  
18 the comment:

19 "Eastern Ontario's top Crown attorney  
20 says he wants to know whether justice  
21 was obstructed by an out-of-court  
22 \$32,000 settlement between the Roman  
23 Catholic Church and a sexual abuse  
24 complainant."

25 **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** And you are then quoted in  
2                   the next column:

3                                   "Peter Griffiths, Eastern Ontario's  
4                                   Chief Crown Attorney said, 'It's  
5                                   certainly a question I would ask the  
6                                   (Ottawa) officers to consider in their  
7                                   investigation whether there was an  
8                                   obstruction of justice.' But Griffiths  
9                                   said it's too early to say whether the  
10                                  settlement obstructed Cornwall police."

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. ENGELMANN:** So would it be fair to say,  
13                   sir, that early on, this was a key issue for you?

14                   **MR. JUSTICE GRIFFITHS:** Yes.

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

16                                   And whether it's the Ottawa police who had a  
17                   very brief stay here or the longer stay by the OPP, this  
18                   was something you wanted the police to look at?

19                   **MR. JUSTICE GRIFFITHS:** Yes.

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

21                                   Sir, I note as well -- I'm just looking at  
22                   the article -- there is a reference to Mr. Silmsler's lawyer  
23                   briefly and to Bishop Larocque and there's also a comment  
24                   at the end about Malcolm MacDonald.

25                   **MR. JUSTICE GRIFFITHS:** In the article, yes.

1                   **MR. ENGELMANN:** Yeah:

2                                 "Asked whether this was the case about  
3                                 who drafted it, MacDonald said,  
4                                 'Several people had their hands in  
5                                 it'."

6                                 So again, this was an issue that you were  
7                                 hoping or you wanted the police to look at in the course of  
8                                 their 1994 investigation?

9                   **MR. JUSTICE GRIFFITHS:** Correct.

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

11                                 Now, back to 1803, sir, and Bates page 326  
12                                 if we may -- sorry, 236.

13                   **MR. JUSTICE GRIFFITHS:** Yes.

14                   **MR. ENGELMANN:** We have references to this  
15                                 matter in January of '95, middle of the page, January 6,  
16                                 '95:

17   "Call Peter Griffiths, Don McDougald".

18                   **MR. JUSTICE GRIFFITHS:** McDougald, no "D".

19                   **MR. ENGELMANN:** Oh, McDougald.

20   "Crown review file and should have  
21   recommendation by end of month."

22                                 Can you explain to us who he is, sir, and  
23                                 why he would be involved?

24                   **MR. JUSTICE GRIFFITHS:** Yes. The issue was  
25                                 not whether the release was a lawful document but whether a

1 criminal offence had been committed in the creation of the  
2 document.

3 I was troubled by that, as was Inspector  
4 Smith, and it's clear that both of us were struggling with  
5 that issue. I think I would have had an informal  
6 conversation and -- by informal I mean informal, just  
7 chatting with another Crown attorney and said, "Well, in  
8 this set of circumstances, what do you think?" And I get a  
9 third opinion.

10 Don McDougald recently retired from the  
11 Crown attorney's office in Ottawa, was a very senior Crown;  
12 at that time would have had about 20 years of experience.  
13 He subsequently spent a period of time with the federal  
14 Department of Justice on international war crimes. He is a  
15 highly respected very careful Crown attorney and I think  
16 you referred to my role as liaison. I think that's  
17 probably a good word. I wanted another opinion.

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

19 **MR. JUSTICE GRIFFITHS:** And I thought that  
20 Mr. McDougald would be the best one to give it to me.

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

22 So just to summarize again, if I may, there  
23 is no doubt in your mind about the illegality of the  
24 clause. The question was whether or not individuals had  
25 committed a criminal charge who might have been involved?

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

2           **MR. ENGELMANN:** All right.

3           And McDougald is a second opinion for you?

4           **MR. JUSTICE GRIFFITHS:** That's correct.

5           **MR. ENGELMANN:** And in fact, in these notes  
6           there is a reference to the fact that on January 30<sup>th</sup> --  
7           towards the bottom of the page ---

8           **MR. JUSTICE GRIFFITHS:** Yes.

9           **MR. ENGELMANN:** --- it appears that you're  
10          advising Detective Inspector Smith that Don McDougald  
11          advises you that there is in fact R&GP to believe Malcolm  
12          MacDonald did attempt to obstruct justice and that there  
13          exists a reasonable prospect of conviction and that it is  
14          in the public interest to prosecute?

15          **MR. JUSTICE GRIFFITHS:** Yes.

16          **MR. ENGELMANN:** And he would have provided  
17          that advice to you and you would have advised Detective  
18          Inspector Smith?

19          **MR. JUSTICE GRIFFITHS:** Correct.

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

21          And sir, his notes also indicate on the  
22          following page -- sorry, just so we can carry it from the  
23          bottom:

24                        "Mr. Griffiths advised of release ..."

25          Not sure what that says -- something sent?

1                   **MR. JUSTICE GRIFFITHS:** I can't help you.

2                   **MR. ENGELMANN:** Yeah, okay -- "sent" -- and  
3 then if we follow onto the next page, Bates page 237:

4                   "... by Leduc to MacDonald and no mention  
5 of criminal matters were contained  
6 within. Mr. Griffiths advised he would  
7 ..."

8 Clean -- clean or clear up?

9                   **MR. JUSTICE GRIFFITHS:** I think it's draw  
10 up.

11                   **MR. ENGELMANN:** Draw up?

12                   **MR. JUSTICE GRIFFITHS:** It's a wording of  
13 the information.

14                   **MR. ENGELMANN:** Fair enough:

15                   "... draw up contents of the information  
16 for the charge and if I call him at 10  
17 o'clock tomorrow, he will have same  
18 available."

19                   And then there is a reference to calling you  
20 the next day, and he gets a call back from you. He's  
21 advised by you that Curt Flanagan will be the Crown  
22 assigned?

23                   **MR. JUSTICE GRIFFITHS:** Yes.

24                   **MR. ENGELMANN:** And that you'd be faxing  
25 wording for the charge?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** All right. And did you, in  
3 fact, provide some wording for the charge, sir, to your  
4 knowledge?

5                   **MR. JUSTICE GRIFFITHS:** I did.

6                   **MR. ENGELMANN:** Okay. And if we could look  
7 at -- it's Document Number 715828. It's not an exhibit  
8 yet.

9                   This appears to be a note to file, if I can  
10 call it that. It's dated 1 February 95, so it would be the  
11 following day, sir, and it has Detective Constable Mike  
12 Fagan.

13                   **THE COMMISSIONER:** Exhibit 3026.

14                   **--- EXHIBIT NO./PIÈCE NO. P-3026:**

15                   (715828) - Note to File re: Malcolm  
16 MacDonald dated February 1, 1995

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. ENGELMANN:** Sir, prior to your recent  
19 preparation for giving evidence here, would you have seen  
20 this document or do you know?

21                   **MR. JUSTICE GRIFFITHS:** No.

22                   **MR. ENGELMANN:** All right. It does refer to  
23 attached wording for the charge and perhaps we can just  
24 pull up one more document, if I may. It's Document Number  
25 715829.

1           It's a typewritten paragraph, sir, with some  
2           handwriting on it. Maybe you can help us with  
3           that to identify it. It's again not yet an  
4           exhibit.

5           **THE COMMISSIONER:** Thank you.

6           Exhibit 3027.

7           **--- EXHIBIT NO./PIÈCE NO. P-3027:**

8           (715829) - Wording of Charge re: Malcolm  
9           MacDonald, undated

10          **MR. JUSTICE GRIFFITHS:** Thank you.

11          **MR. ENGELMANN:** Sir, do you know if you've  
12          ever seen this document before and when I say "before",  
13          before the last few days or weeks?

14          **MR. JUSTICE GRIFFITHS:** I can't recall.  
15          None of the handwriting is mine.

16          **MR. ENGELMANN:** All right. Might this have  
17          been the wording that you would have provided?

18          **MR. JUSTICE GRIFFITHS:** It might have been.

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

20          **MR. JUSTICE GRIFFITHS:** Is this the wording  
21          that was used?

22          **MR. ENGELMANN:** I believe so, sir.

23          **MR. JUSTICE GRIFFITHS:** Okay.

24          **MR. ENGELMANN:** These are not your  
25          handwritten notes though in any event?

1                   **MR. JUSTICE GRIFFITHS:** No.

2                   **MR. ENGELMANN:** All right.

3                   And, sir, it's my understanding that unlike  
4 those other two -- the other three investigations, the  
5 Father MacDonald charges from Silmsen, the conspiracy  
6 collusion and the extortion issue, you provided written  
7 opinions in all of those cases.

8                   **MR. JUSTICE GRIFFITHS:** Yeah.

9                   **MR. ENGELMANN:** And we know that in none of  
10 those cases did charges follow.

11                   In this case where we have charges, you do  
12 not provide a written opinion, and I just wanted to know  
13 why you wouldn't have provided a written opinion on the  
14 charges involving attempt obstruct.

15                   **MR. JUSTICE GRIFFITHS:** All three briefs  
16 were delivered at the same time, as you know.

17                   **MR. ENGELMANN:** Yes.

18                   **MR. JUSTICE GRIFFITHS:** And I think it's  
19 clear from the conversation of December 20<sup>th</sup> with Inspector  
20 Smith that it was the expectation that all three would be  
21 written by me and delivered by me.

22                   **MR. ENGELMANN:** Yes.

23                   **MR. JUSTICE GRIFFITHS:** When I continued to  
24 have difficulty with the obstruct charge and it was  
25 referred to Mr. McDougald, I didn't get a written opinion

1 from McDougald. I got an oral opinion from him that was  
2 thorough but oral. I didn't reduce that to writing.  
3 That's all I can say.

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

5 **MR. JUSTICE GRIFFITHS:** I don't think  
6 anything turned on it in my mind but ---

7 **MR. ENGELMANN:** Were you asked for a written  
8 brief on that one or do you recall; a written opinion back?

9 **MR. JUSTICE GRIFFITHS:** I wasn't asked for a  
10 written opinion on any of them. I was asked for an  
11 opinion, and I provided the opinion.

12 **MR. ENGELMANN:** At that time ---

13 **MR. JUSTICE GRIFFITHS:** I think the better  
14 practice would be to do it in writing.

15 **MR. ENGELMANN:** Well, that's a good thing  
16 you did. We have some record of your work. So your  
17 practice at the time was -- it wasn't uniform?

18 **MR. JUSTICE GRIFFITHS:** It wasn't uniform.

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

20 **MR. JUSTICE GRIFFITHS:** But I'm glad I did.

21 **MR. ENGELMANN:** Sir, just one other document  
22 that I would show you on this, if I may, and that is  
23 Document Number 715774.

24 I jumped too soon, one other that's not an  
25 exhibit. I don't believe it's an exhibit, I don't believe

1       this one in with Detective Inspector Smith. It's a -- I  
2       may be wrong on this -- it's dated February 3<sup>rd</sup>, 1995,  
3       Document Number 715774. It's from Detective Inspector  
4       Smith to the Director of the Criminal Investigations  
5       Branch. It's providing an overview of the obstruct justice  
6       investigation of Malcolm MacDonald, sir.

7                   **THE COMMISSIONER:** So it's not an exhibit  
8       yet?

9                   **MR. ENGELMANN:** I don't believe it is, sir.

10                   **THE COMMISSIONER:** It is now; 3028,  
11       Memorandum dated February 3<sup>rd</sup>, 1995 from Detective Inspector  
12       Smith to the Director of CIB.

13       **--- EXHIBIT NO./PIECE NO. P-3028:**

14                   (715774) - Memorandum to Director, Criminal  
15                   Investigation Branch from Tim Smith, dated  
16                   February 3, 1995

17                   **MR. ENGELMANN:** Sir, this does not reference  
18       you being copied. I don't know at this stage whether you  
19       have any recollection as to whether you would have been. I  
20       do want to ask you a couple of questions about it, if I  
21       may.

22                   **MR. JUSTICE GRIFFITHS:** I don't believe I  
23       was. I haven't seen this document before but go ahead.

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

25                   On the second page, sir, Bates page 631, it

1 sets out in the last two paragraphs your opinion, I  
2 believe. If you could just have a look at those.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. JUSTICE GRIFFITHS: Yes.

5 MR. ENGELMANN: Does that accurately set out  
6 your views, sir?

7 MR. JUSTICE GRIFFITHS: I believe so.

8 MR. ENGELMANN: All right.

9 And, sir, my understanding is that you would  
10 have received a Crown brief or a police brief as you did  
11 with the other two matters that Detective Inspector Smith -  
12 --

13 MR. JUSTICE GRIFFITHS: They were all  
14 delivered in November.

15 MR. ENGELMANN: In November, yes.

16 And you would have received again probably a  
17 brief synopsis about this matter?

18 MR. JUSTICE GRIFFITHS: I'm sure.

19 MR. ENGELMANN: And that, sir, is -- Madam  
20 Clerk, it's Exhibit 1164, and that may be in the binder  
21 that's there. Counsel, that's Document Number 714916.

22 And I just want to refer you to one  
23 reference in there, if I may, sir.

24 Justice Griffiths, I believe you have a  
25 binder.

1                   **MR. JUSTICE GRIFFITHS:** It's on the screen.

2                   **MR. ENGELMANN:** If you want, you can do it  
3 on the screen, sir, or ---

4                   **MR. JUSTICE GRIFFITHS:** Let's do it on the  
5 screen.

6                   **MR. ENGELMANN:** All right. It is the third  
7 page. It's Bates page 039.

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. ENGELMANN:** If you could just have a  
10 look at the top two paragraphs, sir.

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. ENGELMANN:** And he essentially says --  
13 and this document is referring to the release document:

14                                 "It was prepared and reviewed by three  
15 practising lawyers for the Province of  
16 Ontario. It is difficult to understand  
17 how three knowledgeable and experienced  
18 solicitors could condone and approve of  
19 such a document not realising Section 2  
20 of the contract clearly obstructs  
21 justice."

22                   Now, this is the view he's expressing in his  
23 synopsis?

24                   **MR. JUSTICE GRIFFITHS:** Yes.

25                   **MR. ENGELMANN:** And at that point-in-time,

1 Detective Inspector Smith appears to have concerns about  
2 all three of these lawyers?

3 MR. JUSTICE GRIFFITHS: Except the next  
4 paragraph.

5 MR. ENGELMANN: All right.

6 Yes -- no, and he says -- fair enough, that  
7 their explanations of their part:

8 "...in this process is one of  
9 negligence rather than wilfully and  
10 wantonly attempting to terminate a  
11 criminal investigation and/or  
12 subsequent prosecution."

13 Okay.

14 MR. JUSTICE GRIFFITHS: Correct.

15 MR. ENGELMANN: Now, my point, sir, if I  
16 may, is it doesn't appear that, at least in the synopsis,  
17 he's singling out one of them because clearly by late  
18 December and into January there's a focus on Malcolm  
19 MacDonald. Fair enough?

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. ENGELMANN: And he's, in fact, the only  
22 one that's charged.

23 MR. JUSTICE GRIFFITHS: Yes.

24 MR. ENGELMANN: And I'm wondering if there's  
25 anything that changes between mid-November and

1 January/February when you're looking at this and the focus  
2 is clearly on Malcolm MacDonald, any new information  
3 brought to your attention by Detective Inspector Smith or  
4 it's simply the brief as is?

5 **MR. JUSTICE GRIFFITHS:** No, there's no  
6 additional information that I'm aware of. It's the brief  
7 as is.

8 **MR. ENGELMANN:** All right.

9 **MR. JUSTICE GRIFFITHS:** This is his  
10 synopsis. It's in the brief.

11 **MR. ENGELMANN:** Fair enough. And, of  
12 course, you have statements and many other documents in the  
13 brief?

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

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

16 Again, sir, with respect to this one, there  
17 was a press release issued. I want to turn to it briefly.  
18 It's Exhibit 2671.

19 **THE COMMISSIONER:** I have it. You can just  
20 put it on the screen.

21 **MR. ENGELMANN:** It's only one page.

22 Justice Griffiths, it's a press release  
23 relating to Malcolm MacDonald ---

24 **MR. JUSTICE GRIFFITHS:** Yes.

25 **MR. ENGELMANN:** --- and the fact that he was

1 charged and was to appear in court -- as you'll see at the  
2 bottom -- on February 24<sup>th</sup>, 1995.

3 And I'm just wondering if you have any  
4 recollection, sir, of being asked to have any input or  
5 involvement in this particular press release?

6 **MR. JUSTICE GRIFFITHS:** No.

7 **MR. ENGELMANN:** All right.

8 And sir, you're aware of the outcome of this  
9 particular prosecution that Mr. MacDonald pleaded guilty;  
10 received an absolute discharge?

11 **MR. JUSTICE GRIFFITHS:** Yes.

12 **MR. ENGELMANN:** And you would have been  
13 aware of that at the time?

14 **MR. JUSTICE GRIFFITHS:** Yes.

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

16 And would you have any -- had any  
17 discussions, at the time, with the prosecutor handling this  
18 matter for you, Mr. Flanagan, about this guilty plea and/or  
19 sentence before the appearance before then Justice Lennox?

20 **MR. JUSTICE GRIFFITHS:** I don't recall. He  
21 might have -- he might have called me and told me this was  
22 going to happen, but -- as a courtesy, but I don't recall.  
23 I mean, the case was assigned to a Crown attorney to carry  
24 through to whatever conclusion he felt was appropriate.

25 **MR. ENGELMANN:** All right.

1                   And that wouldn't normally be something that  
2                   your advice would be sought on if -- if someone like Mr.  
3                   Flanagan was handling this matter at that time?

4                   **MR. JUSTICE GRIFFITHS:** He would only seek  
5                   my advice if he wanted my advice.

6                   **MR. ENGELMANN:** Fair enough.

7                   **MR. JUSTICE GRIFFITHS:** And he -- he did  
8                   not.

9                   **MR. ENGELMANN:** You can't recall him doing  
10                  that?

11                  **MR. JUSTICE GRIFFITHS:** No.

12                  **MR. ENGELMANN:** Yeah.

13                  Sir, I want to ask you about a couple of  
14                  letters; an exchange of correspondence you would have had  
15                  with an individual by the name of John MacDonald ---

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. ENGELMANN:** --- dealing with this  
18                  matter, ---

19                  **MR. JUSTICE GRIFFITHS:** Yes.

20                  **MR. ENGELMANN:** --- the MacDonald guilty  
21                  plea and sentence.

22                  **MR. JUSTICE GRIFFITHS:** Yes.

23                  **MR. ENGELMANN:** The first one is Exhibit  
24                  221. So this is a completely different binder. It would  
25                  have come up in Mr. MacDonald ---

1                   **MR. JUSTICE GRIFFITHS:** I -- I can see them  
2                   on the screen ---

3                   **MR. ENGELMANN:** Okay.

4                   **MR. JUSTICE GRIFFITHS:** --- if it's  
5                   convenient to -- Commissioner.

6                   **THE COMMISSIONER:** That's good for you? I  
7                   sometimes need them because I make notes.

8                   **MR. ENGELMANN:** It's a letter dated October  
9                   24<sup>th</sup>, 1995. It's the first one, sir, that starts this off.  
10                  This is a letter from Mr. MacDonald to the Attorney  
11                  General.

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. ENGELMANN:** I'm not really going to go  
14                  into any detail so perhaps, it can just be on the screen.

15                  **MR. JUSTICE GRIFFITHS:** Yes.

16                  **MR. ENGELMANN:** But just by way of  
17                  background, were you aware that he was one of the -- at  
18                  this point, in any event, by October 24<sup>th</sup>, 1995, that he had  
19                  just come forward as another alleged victim of Father  
20                  MacDonald?

21                  **MR. JUSTICE GRIFFITHS:** I was only aware of  
22                  what was contained in the letters.

23                  **MR. ENGELMANN:** All right.

24                  Well, he's writing to the Attorney General  
25                  expressing some concerns about what happened with respect

1 to the Malcolm MacDonald prosecution.

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: All right.

4 And this letter would then have been  
5 referred to you by someone at the Attorney General's office  
6 in Toronto to write a response?

7 MR. JUSTICE GRIFFITHS: Yes.

8 MR. ENGELMANN: And you, in fact, write a  
9 response. It should be the next exhibit, 222.

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: And it's a letter, sir, that  
12 you write. It's two pages. It's a letter you write to Mr.  
13 MacDonald on December 1<sup>st</sup>, 1995. If I could just have a  
14 moment.

15 (SHORT PAUSE/COURTE PAUSE)

16 MR. ENGELMANN: And sir, just -- just on  
17 your previous question about what you might have known  
18 about John MacDonald ---

19 MR. JUSTICE GRIFFITHS: There's a reference  
20 here.

21 MR. ENGELMANN: Oh, oh, there is already,  
22 okay.

23 MR. JUSTICE GRIFFITHS: Well, it's just --  
24 he must have brought it to my attention in his letter  
25 because there's a sentence:

1                    "This was over six months prior to the  
2                    time you provided a written statement  
3                    to the Cornwall police."

4                    **MR. ENGELMANN:** Right.

5                    I was just going to tell you that in his  
6                    letter, he expressed that he's the second victim that came  
7                    forward and -- with respect to Father MacDonald. Okay.

8                    So according to the first sentence in your  
9                    letter, the Attorney General requested that you respond,  
10                   and aside from refreshing your memory from this, I'm not  
11                   sure if you have any independent recollection of doing  
12                   this.

13                   **MR. JUSTICE GRIFFITHS:** No, but this was a  
14                   normal part of my job was to address correspondence.

15                   **MR. ENGELMANN:** Right.

16                   And you would have done that in this region  
17                   ---

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** --- on behalf of the  
20                   Attorney General?

21                   **MR. JUSTICE GRIFFITHS:** Yes.

22                   **MR. ENGELMANN:** All right.

23                   And would you have had some discussions with  
24                   someone at the Toronto office concerning this letter or  
25                   would it really be your call as to what you wrote?

1                   **MR. JUSTICE GRIFFITHS:** It's really my call.

2                   **MR. ENGELMANN:** All right.

3                   Now, in your letter, you say that the  
4 sentence that was received by Malcolm MacDonald is  
5 commensurate with other similar cases decided in courts in  
6 other provinces.

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** And I'm just wondering, at  
9 the time, would you have done any research or had any  
10 research done to come up with that conclusion?

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. ENGELMANN:** Okay.

13                   **MR. JUSTICE GRIFFITHS:** I mean, was I making  
14 that up, you mean or are there other cases? There is a  
15 case in Saskatchewan.

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

17                   And -- and that would have been something --  
18 -

19                   **MR. JUSTICE GRIFFITHS:** I was aware of at  
20 the time.

21                   **MR. ENGELMANN:** --- that was recently  
22 current at that time in ---

23                   **MR. JUSTICE GRIFFITHS:** I don't know how  
24 current it was. I mean, I guess 15 years ago, you're lucky  
25 I remember it was in Saskatchewan. But ---

1                   **MR. ENGELMANN:** All right.

2                   **MR. JUSTICE GRIFFITHS:** --- I know there was  
3 a case out West.

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

5                   And sir, were you personally comfortable  
6 with the disposition of that case at that time in your role  
7 as -- as the attorney responsible here in Eastern --  
8 Eastern Region?

9                   **MR. JUSTICE GRIFFITHS:** I'm -- I was  
10 personally comfortable that I had put this in the hands of  
11 a senior, experienced Crown attorney to prosecute; that it  
12 was pre-tried between the -- in front of the Regional  
13 Senior Justice and that, as a result of -- of discussions  
14 that this was the result. I didn't go behind that.

15                   **MR. ENGELMANN:** Sir, your reference ---

16                   **MR. JUSTICE GRIFFITHS:** And I believe that  
17 the case out West was also resolved by way of a discharge.

18                   **MR. ENGELMANN:** And was that involving a  
19 former Crown prosecutor?

20                   **MR. JUSTICE GRIFFITHS:** It was involving a  
21 lawyer.

22                   **MR. ENGELMANN:** All right.

23                   You -- you were aware that Malcolm MacDonald  
24 had been Crown attorney here provincially. I don't know if  
25 you were also aware that he was a federal agent.

1                   **MR. JUSTICE GRIFFITHS:** I was aware of that.

2                   **MR. ENGELMANN:** All right.

3                   **MR. JUSTICE GRIFFITHS:** I -- I hadn't had  
4 then nor have I now ever met Mr. MacDonald.

5                   **MR. ENGELMANN:** Fair enough.

6                   **MR. JUSTICE GRIFFITHS:** Well -- because of  
7 my role as a Crown, there may be a thought that I had some  
8 relationship and I -- and I have never met Mr. MacDonald.

9                   **MR. ENGELMANN:** Well, it's my understanding  
10 that he left the employ of the Attorney General of Ontario  
11 back in 1971. And that would have been, perhaps, before  
12 your time. It was before your time.

13                   **MR. JUSTICE GRIFFITHS:** It was before my  
14 time.

15                   **MR. ENGELMANN:** Sir, you make a reference at  
16 the bottom of the page. You say:

17                                   "There was no obstruction of justice  
18                                   with respect to the Ontario Provincial  
19                                   Police investigation."

20                   Now, I'm wondering why you would have made a  
21 reference to that in this letter and if you could just  
22 reflect upon that for a minute. I'm just wondering why --  
23 why you would have referenced that.

24                   **MR. JUSTICE GRIFFITHS:** I -- I don't know.  
25 I haven't got the other letter in front of me from Mr.

1 MacDonald. Was that an issue that he raised? Other than  
2 that, I can't tell you why I would have referenced it.

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

4 So unless it's -- unless it's there in that  
5 letter, you couldn't help us?

6 **MR. JUSTICE GRIFFITHS:** No.

7 **MR. ENGELMANN:** Because the allegation  
8 clearly was an attempt to obstruct during the course of a  
9 Cornwall Police Service investigation; the charge he  
10 pleaded guilty to.

11 **MR. JUSTICE GRIFFITHS:** Yes.

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

13 Now, he wrote back to you after this and  
14 it's Exhibit 213.

15 **MR. JUSTICE GRIFFITHS:** Yes.

16 **MR. ENGELMANN:** And it's a one-page letter.  
17 Perhaps, we can just have that on the screen.

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

19 **MR. ENGELMANN:** In his letter -- and this is  
20 now January 8<sup>th</sup> of 1996 -- he asked you to provide him with  
21 copies of the other decisions to which you made reference  
22 to in your letter and to be provided with all rulings used  
23 to decide the Malcolm MacDonald case. He also requests  
24 transcripts from Malcolm MacDonald's case. Do you ever  
25 respond to this letter, sir?

1                   **MR. JUSTICE GRIFFITHS:** I do not.

2                   **MR. ENGELMANN:** Did you ask anyone else to  
3 respond on your behalf?

4                   **MR. JUSTICE GRIFFITHS:** I don't. I'm sure I  
5 didn't.

6                   **MR. ENGELMANN:** All right.  
7 And why not?

8                   **MR. JUSTICE GRIFFITHS:** I think there's --  
9 there's three reasons. First, Mr. MacDonald was not a  
10 party to the -- any of the offences. I had responded to  
11 his initial inquiry and in my mind, at that time, I thought  
12 that was sufficient.

13                               Secondly, the 8<sup>th</sup> of January is actually  
14 about the time that I was seconded to be the Acting  
15 Assistant Deputy Attorney General. I was working in  
16 Toronto. And, frankly, I had a lot of other things on my  
17 mind at the time.

18                               And the third thing is, in retrospect, if I  
19 had it to do again, I would have answered him if only to  
20 say, "I'm sorry, I can't help you any further." It was not  
21 appropriate not to answer the second letter.

22                   **MR. ENGELMANN:** Okay. The reason I was  
23 going to ask you is you would have known that he was  
24 another alleged victim of the priest who was somewhat  
25 involved in this. And I was just going to ask you if you

1 considered acknowledging receipt of his letter and ---

2 MR. JUSTICE GRIFFITHS: Oh, absolutely ---

3 MR. ENGELMANN: --- or explaining that you  
4 couldn't provide the material requested, or advising him  
5 how he might go about getting it?

6 MR. JUSTICE GRIFFITHS: I absolutely should  
7 have done that.

8 MR. ENGELMANN: Sir, with respect to Father  
9 MacDonald then, if we could go back, you're aware, sir,  
10 that after the initial determination that there weren't  
11 sufficient grounds in late December that Mr. MacDonald and  
12 another individual came forward in the following year and  
13 that the investigation of allegations against him  
14 continued.

15 MR. JUSTICE GRIFFITHS: Yes.

16 MR. ENGELMANN: All right. And the OPP  
17 would have kept you in the loop, at least to some extent,  
18 with respect to their ongoing investigation. Is that fair?

19 MR. JUSTICE GRIFFITHS: Yes.

20 MR. ENGELMANN: All right.

21 And again, if we go back to Exhibit 1803 for  
22 a minute ---

23 MR. JUSTICE GRIFFITHS: Yes.

24 MR. ENGELMANN: --- Detective Inspector  
25 Smith's notes, let's look at Bates page 246. I'm just

1 going to catch up.

2 There's a reference, and I believe the date  
3 should be May 19<sup>th</sup>, right, because there's a date of May 10<sup>th</sup>  
4 a little higher, but it's at least a day in May that ends  
5 with "9".

6 **MR. JUSTICE GRIFFITHS:** Yes.

7 **MR. ENGELMANN:** And this is May of '95.

8 **MR. JUSTICE GRIFFITHS:** Yes.

9 **MR. ENGELMANN:** "14:25. Call to Peter  
10 Griffiths. Update re Silmsers matter."

11 **THE COMMISSIONER:** "New allegations."

12 **MR. ENGELMANN:** "New allegations. He  
13 advised I speak to Silmsers and lawyer  
14 under caution. Suggests not to pursue  
15 polygraph matter as it will not provide  
16 any conclusive evidence one way or  
17 another for court purposes."

18 Sir, I'm not -- I don't know if you're aware  
19 of this now but back around that time, there was a fellow  
20 by the name of Brian Simser, who was David Silmsers's  
21 cousin, who had suggested to both the Cornwall police and  
22 the OPP that his cousin, David Silmsers, had lied about this  
23 and not told the full truth to the police.

24 Does that perhaps refresh your memory as to  
25 what you're referring to there about a polygraph?

1                   **MR. JUSTICE GRIFFITHS:** It was why they  
2                   asked me about a polygraph.

3                   **MR. ENGELMANN:** Fair enough.

4                   **MR. JUSTICE GRIFFITHS:** And I said, "Don't  
5                   do it."

6                   **MR. ENGELMANN:** All right.  
7                   For the reasons set out here?

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. ENGELMANN:** Perhaps others, but at least  
10                  these?

11                  **MR. JUSTICE GRIFFITHS:** Yes.

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

13                  Then, sir, on Bates page 252, there's a  
14                  reference, January 3<sup>rd</sup>, '96: "Call to Peter Griffiths."  
15                  It's about a third of the way down the page, sir.

16                  **MR. JUSTICE GRIFFITHS:** I'm sorry, two five  
17                  ---

18                  **MR. ENGELMANN:** Two five two (252), 03 Jan,  
19                  '96.

20                  **MR. JUSTICE GRIFFITHS:** Yes.

21                  **MR. ENGELMANN:** I believe the time is 9:40.

22                  **MR. JUSTICE GRIFFITHS:** Yes.

23                  **MR. ENGELMANN:** And there's just a note that  
24                  he's calling you with an investigation update. And it  
25                  appears that he's telling you the police felt that with the

1 two additional victims that they R&GP to lay indecent  
2 assault charges.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. ENGELMANN: And he notes that you advise  
5 him that you're going to review this and possibly have Bob  
6 Pelletier's office prosecute it.

7 MR. JUSTICE GRIFFITHS: Correct.

8 MR. ENGELMANN: Again this -- there would  
9 have still been a concern about having the local Crown  
10 prosecute, given what had happened in the past?

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. ENGELMANN: So you would have had to  
13 find another prosecutor in the East Region to do this?

14 MR. JUSTICE GRIFFITHS: Yes.

15 MR. ENGELMANN: All right.

16 And you recall being advised of additional  
17 victims and this information about R&GP?

18 MR. JUSTICE GRIFFITHS: Yes.

19 MR. ENGELMANN: And also lining up  
20 Mr. Pelletier if necessary to prosecute charges if they go  
21 forward?

22 MR. JUSTICE GRIFFITHS: Yes, and I think  
23 again I'd moved. I'm no longer in Ottawa at this point.  
24 And I really don't have the time to be -- to do the kind of  
25 review that's necessary. So although the words used is

1 "possibly have" it may be because I hadn't told Bob  
2 Pelletier the good news yet, but it was my intention to  
3 refer this to Justice Pelletier and have him handle both  
4 the -- whatever opinion or advice was sought by the police  
5 and to ultimately prosecute the case.

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

7 Sir, we have some notes from Officer Fagan.  
8 I don't really know if I want to go them, other than he  
9 says he drops off a brief to you on/or about the 10<sup>th</sup> of  
10 January of '96. You recall getting some further  
11 information about this matter?

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. ENGELMANN:** And, sir, would you have  
14 then had discussions with Mr. Pelletier at/or about that  
15 time?

16 **MR. JUSTICE GRIFFITHS:** Yes.

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

18 And you would have asked him to look at this  
19 matter and consider prosecuting it if it was going ahead?

20 **MR. JUSTICE GRIFFITHS:** Absolutely.

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

22 **MR. JUSTICE GRIFFITHS:** Mr. Pelletier was --  
23 Justice Pelletier was one of the most experienced Crows in  
24 the province with historical sexual assaults, and  
25 particularly involving young boys and young men and church

1 figures as a result of his work in Alfred. He had worked  
2 for many years with Inspector Smith in those prosecutions  
3 and had been very successful in those prosecutions. He, I  
4 thought, was the perfect person to do this.

5 MR. ENGELMANN: All right. There's another  
6 reference to this at the bottom of that Bates page, 252.  
7 January 16<sup>th</sup>, '96, "P.C. Fagan advises he spoke briefly to  
8 Peter Griffiths," and there's one other, this is a third  
9 complainant ---

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: --- known here as C-3.

12 MR. JUSTICE GRIFFITHS: Yes.

13 MR. ENGELMANN: "Indecent assault when" -- I  
14 believe it says "16".

15 MR. JUSTICE GRIFFITHS: "Is considered  
16 consensual."

17 MR. ENGELMANN: Okay.

18 MR. JUSTICE GRIFFITHS: "No charge."

19 MR. ENGELMANN: "Fondling prior. Will be  
20 reviewed by Bob Pelletier who will get the brief" -- if we  
21 go over to the next page.

22 MR. JUSTICE GRIFFITHS: Yes.

23 MR. ENGELMANN: All right. So after you've  
24 assigned this matter to Robert Pelletier ---

25 MR. JUSTICE GRIFFITHS: Yes.

1                   **MR. ENGELMANN:** --- and aside from what  
2 happens later with Project Truth. Do you really have  
3 anything more to do with the Silmsler allegations and the  
4 prosecution of them?

5                   **MR. JUSTICE GRIFFITHS:** No, not until April  
6 of '97.

7                   **MR. ENGELMANN:** Okay, and that's the -- when  
8 you're looking at this in sort of a broader way ---

9                   **MR. JUSTICE GRIFFITHS:** Yes.

10                  **MR. ENGELMANN:** --- with respect to new  
11 allegations by Officer Dunlop?

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. ENGELMANN:** All right.

14                               And sir, although maybe not direct  
15 involvement, you might have been kept in the loop with  
16 respect to some memos or notes, and I just want to show you  
17 one and that is -- it's Exhibit C394. And this is a memo  
18 from Robert Pelletier to Detective Inspector Smith.

19                               Sir, I don't want to spend any time on this,  
20 other than to say this is March 5<sup>th</sup> of 1996; Detective  
21 Inspector Smith is getting this memo from Robert Pelletier  
22 about his recommendations. You're copied on it. I'm just  
23 wondering, at or about that time, March of '96, whether you  
24 would have had any involvement in the decision to actually  
25 prosecute, or whether that was really Mr. Pelletier's

1 decision?

2 MR. JUSTICE GRIFFITHS: That was  
3 Mr. Pelletier's decision.

4 MR. ENGELMANN: All right.

5 MR. JUSTICE GRIFFITHS: The copy was as a  
6 courtesy.

7 MR. ENGELMANN: All right.

8 Sir, then I want to ask you a few questions  
9 about your role in the setting up of what became known as  
10 the Project Truth investigation.

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. ENGELMANN: And I understand that prior  
13 to a meeting that was held in your office on April 24<sup>th</sup>,  
14 1997, you would have received a briefing note or a memo  
15 from Robert Pelletier outlining some of what he had gleaned  
16 from the Dunlop or Fantino brief, as it's been called here.

17 MR. JUSTICE GRIFFITHS: Yes.

18 MR. ENGELMANN: And that would be Exhibit  
19 Number 228. It's a letter dated April 2, 1997.

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. ENGELMANN: And you might want to have  
22 this in hard copy form, sir. It's a bit longer.

23 MR. JUSTICE GRIFFITHS: Thank you.

24 THE COMMISSIONER: To me too.

25 MR. ENGELMANN: It's Exhibit 228. Counsel,

1 it's Document Number 113942.

2 (SHORT PAUSE/COURTE PAUSE)

3 THE COMMISSIONER: What's the problem?

4 MR. ENGELMANN: Mr. Stern has kindly offered  
5 to provide his copy. There's no writing on it.

6 THE COMMISSIONER: All right.

7 MR. ENGELMANN: Just a couple of questions  
8 about it, Justice Griffiths, that I just wanted to cover.

9 MR. JUSTICE GRIFFITHS: Thank you.

10 MR. ENGELMANN: Do you recall receiving this  
11 document or at least a briefing note or a memo from Robert  
12 Pelletier?

13 MR. JUSTICE GRIFFITHS: I do.

14 MR. ENGELMANN: Okay. And in it, at the  
15 very end, he actually refers to:

16 "I wish to confirm, finally, that a  
17 meeting will take place."

18 And he sets it out and it's three weeks  
19 after the date of this letter.

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. ENGELMANN: So would it be fair to say  
22 you would have had some conversations with him and either  
23 you asked him to prepare this note or he volunteered to, to  
24 give you some background on what was going to be happening  
25 on the 24<sup>th</sup>?

1                   **MR. JUSTICE GRIFFITHS:** Yes, I think -- I  
2 think the memo starts off on page 1 as saying "as  
3 requested" and that would have been my request.

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

5                   And you were aware that he was going through  
6 this brief in some detail.

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** And that was something that  
9 you weren't doing?

10                  **MR. JUSTICE GRIFFITHS:** Not at that time.

11                  **MR. ENGELMANN:** No. And you got this report  
12 from him. Several of the things set out in here I would  
13 suggest to you, you would have already had knowledge of.  
14 For example, on the second page in the first two paragraphs  
15 there's references to these 1994 investigations that you  
16 would have received briefs on?

17                  **MR. JUSTICE GRIFFITHS:** Yes.

18                  **MR. ENGELMANN:** But the actual content here,  
19 you had no say as to what was written? This was something  
20 -- this was Mr. Pelletier's work?

21                  **MR. JUSTICE GRIFFITHS:** Yes.

22                  **MR. ENGELMANN:** All right.

23                                 Just if we could turn briefly to Bates page  
24 951.

25                  **THE COMMISSIONER:** Page 9 of the document?

1                   **MR. ENGELMANN:** Yes, page 9.

2                   **MR. JUSTICE GRIFFITHS:** Thank you.

3                   **MR. ENGELMANN:** Just a couple of questions  
4 from that page, if I may.

5                   In the third paragraph, he says:

6                   "Ultimately, a decision will have to be  
7 taken whether or not to recommend  
8 further charges against Charles  
9 MacDonald in relation to the new  
10 complainants."

11                   There were some new complainants that were  
12 set out in this Dunlop brief, if I can call it that:

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

21                   So this is a concern by some that are  
22 writing that things aren't being dealt with.

23                   And then he says:

24                   "It is in this connection that my  
25 personal as well as professional

1 affiliations with Murray MacDonald  
2 become a complicating factor. Your  
3 views in this regard would of course be  
4 very much appreciated."

5 Do you recall Mr. Pelletier bringing this  
6 issue up with you?

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MR. ENGELMANN:** And what was your  
9 understanding of the issue as raised here by Mr. Pelletier?

10 **MR. JUSTICE GRIFFITHS:** The materials in the  
11 Dunlop brief contain allegations of conspiracy to obstruct  
12 justice against Murray MacDonald. And Murray MacDonald and  
13 Bob Pelletier have been friends for many years and he did  
14 not feel that he should be the Crown responsible for  
15 looking into these new allegations, and I agreed with him.

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

17 He was still -- so the question wasn't one  
18 about legal conflict but a perception issue. Is that ---

19 **MR. JUSTICE GRIFFITHS:** He wasn't  
20 comfortable doing it.

21 **MR. ENGELMANN:** He was uncomfortable doing  
22 it?

23 **MR. JUSTICE GRIFFITHS:** Yeah.

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

25 And was there some thought ---

1                   **MR. JUSTICE GRIFFITHS:** And I respected  
2                   that.

3                   **MR. ENGELMANN:** And was there some thought  
4                   then given to transferring the prosecution in Father  
5                   MacDonald to another prosecutor at that time?

6                   **MR. JUSTICE GRIFFITHS:** No. And I think --  
7                   well, all of these matters were referred to the meeting of  
8                   April the 24<sup>th</sup> for ---

9                   **MR. ENGELMANN:** Yes.

10                  **MR. JUSTICE GRIFFITHS:** --- discussion and  
11                  consideration as to how to proceed. The Dunlop brief fell  
12                  like a bomb in the middle of the preliminary hearing of  
13                  Father MacDonald, which at that point was ---

14                  **MR. ENGELMANN:** We know that that happened  
15                  in late February of '97.

16                  **MR. JUSTICE GRIFFITHS:** Right, and we are  
17                  now ---

18                  **MR. ENGELMANN:** Early April.

19                  **MR. JUSTICE GRIFFITHS:** --- 13 months, 14  
20                  months since Mr. Pelletier's initial involvement in  
21                  February of '96 and the onset of the charges. So time it  
22                  ticking with respect to that preliminary hearing with those  
23                  three complainants. And a decision was taken to keep Mr.  
24                  Pelletier in place to the conclusion of that preliminary  
25                  hearing so that there would be no loss of time on that.

1                   **MR. ENGELMANN:** This is the preliminary on  
2                   the three initial complainants?

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

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

5                   **MR. JUSTICE GRIFFITHS:** And at that point,  
6                   when that was completed, that he would no longer be  
7                   involved. That's my recollection.

8                   **MR. ENGELMANN:** All right.

9                   And that's something that would have been  
10                  discussed probably at the April 24<sup>th</sup> meeting if not  
11                  otherwise?

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

13                  **MR. ENGELMANN:** All right.

14                  Sir, I note the time. Is this the proper  
15                  time for our lunch?

16                  **THE COMMISSIONER:** Thank you. We'll take  
17                  lunch until two o'clock.

18                  **MR. JUSTICE GRIFFITHS:** Thank you.

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

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

22                  --- Upon recessing at 12:33 p.m./

23                  L'audience est suspendue à 12h33

24                  --- Upon resuming at 2:06 p.m. /

25                  L'audience est reprise à 14h06

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

3                   This hearing is now resumed. Please be  
4                   seated. Veuillez vous asseoir.

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

6                   **MR. ENGELMANN:** Good afternoon, Mr.  
7                   Commissioner.

8                   Good afternoon, Justice Griffiths.

9                   **MR. JUSTICE GRIFFITHS:** Good afternoon.

10                  **ASSOCIATE CHIEF JUSTICE PETER GRIFFITHS,**

11                  **Resumed/Sous le même serment:**

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

14                   **MR. ENGELMANN:** Sir, when we left off before  
15                   lunch, we were looking at a document that's Exhibit 228. I  
16                   believe you had a loose letter -- a loose copy of the  
17                   letter.

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** It's a letter from Mr.  
20                   Pelletier to yourself dated April 2<sup>nd</sup> '97.

21                   We looked at a couple paragraphs ---

22                   **THE COMMISSIONER:** Thank you.

23                   **MR. ENGELMANN:** Exhibit 228, sir.

24                   **THE COMMISSIONER:** Yes.

25                   **MR. ENGELMANN:** Madam Clerk, perhaps Mr.

1 Stern can get his copy back?

2 It's the very last page, sir. This was the  
3 reference to the meeting coming up on the 24<sup>th</sup> and it also  
4 says that a complete copy of the Dunlop brief will be  
5 forwarded to your office "by courier this week"?

6 **MR. JUSTICE GRIFFITHS:** Yes.

7 **MR. ENGELMANN:** Do you recall actually  
8 receiving the material?

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. ENGELMANN:** And did it come to you in  
11 one binder?

12 **MR. JUSTICE GRIFFITHS:** I don't know.

13 **MR. ENGELMANN:** Yeah.

14 **MR. JUSTICE GRIFFITHS:** One or two. I just  
15 -- I don't know.

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

17 And do you know, sir, if it was referred to  
18 as the Dunlop or the Bourgeois or the Fantino brief at that  
19 time or, in any event, as the material that had been  
20 delivered by Mr. Dunlop to Chief Fantino?

21 **MR. JUSTICE GRIFFITHS:** It was the material  
22 delivered to me by Justice Pelletier.

23 **MR. ENGELMANN:** All right. Good answer.

24 **THE COMMISSIONER:** Hereinafter called the  
25 Griffiths brief.

1 (LAUGHTER/RIRES)

2 MR. ENGELMANN: Oh, I don't -- I'm not going  
3 to go there.

4 All right. And you don't remember the  
5 package?

6 MR. JUSTICE GRIFFITHS: No, I don't know the  
7 antecedents of the package.

8 Mr. Pelletier brought it to my attention.  
9 He forwarded to me the documents.

10 MR. ENGELMANN: Would you have reviewed the  
11 package before the April 24<sup>th</sup> meeting?

12 MR. JUSTICE GRIFFITHS: Yes, sir.

13 MR. ENGELMANN: So in addition to  
14 Mr. Pelletier's summary of it, you would have at least done  
15 some sort of a review?

16 MR. JUSTICE GRIFFITHS: Yes, sir.

17 MR. ENGELMANN: Maybe not detailed, but some  
18 sort of review of the documents?

19 MR. JUSTICE GRIFFITHS: Yes, sir.

20 MR. ENGELMANN: And had a sense as to what  
21 was in there? All right.

22 Sir, in addition to the Dunlop brief, if I  
23 can use that term ---

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. ENGELMANN: --- I understand you also

1 had a letter that he would have written to the then  
2 Solicitor General, Mr. Runciman.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. ENGELMANN: And that letter is Exhibit  
5 730. If we could just have that up for a minute? It's a  
6 letter dated April 7<sup>th</sup>, 1997.

7 MR. JUSTICE GRIFFITHS: Yes. I don't know  
8 what the timing is of my receipt of this letter, when it  
9 came into my office, but ---

10 MR. ENGELMANN: Would it be fair to say it  
11 would have come in before the April 24<sup>th</sup> meeting?

12 MR. JUSTICE GRIFFITHS: I don't know.

13 MR. ENGELMANN: Okay.

14 MR. JUSTICE GRIFFITHS: I know I  
15 subsequently replied to this letter ---

16 MR. ENGELMANN: Yes.

17 MR. JUSTICE GRIFFITHS: --- so I know I had  
18 it.

19 MR. ENGELMANN: All right.

20 Again, the letter itself refers to a number  
21 of attachments and if you look at the very last page of the  
22 letter, he says in his final paragraph:

23 "I'm sending you all relevant documents  
24 connected with this case. Please be  
25 assured that I will provide whatever

1 information and assistance that I can  
2 and to whomever you designate to  
3 investigate this matter."

4 And then under the signature block, it says  
5 "enclosure" and among other things it has four volumes of  
6 documents, including press releases, correspondence from  
7 lawyers to Cornwall Police Service, statements and  
8 affidavits, amended statement of claim, court decisions  
9 et cetera; right?

10 So he's talking about four volumes of  
11 material and we know, sir, that in addition to the material  
12 that was given to Chief Fantino in December of '96 that was  
13 then turned over to the OPP, that Mr. Dunlop on April 7<sup>th</sup>  
14 served the Ministry of the Attorney General, attempted to  
15 serve the Solicitor General, it went to OCCOPS, and the  
16 material on April 7<sup>th</sup> included some additional statements --  
17 a few additional statements from alleged victims and a  
18 couple of binders of materials dealing with his *Police*  
19 *Services Act* charges, which proceeded in '94 and into '95,  
20 finally with a decision by the Divisional Court.

21 It's my understanding that you would not  
22 have received more than the Dunlop brief as at '97, unless  
23 you can enlighten us otherwise.

24 **MR. JUSTICE GRIFFITHS:** I don't recall  
25 material with respect to the *Police Services Act* charges.

1                   **MR. ENGELMANN:** All right.

2                   **MR. JUSTICE GRIFFITHS:** It's the other  
3 matters of the allegations of a paedophile ring that I  
4 recall.

5                   **MR. ENGELMANN:** Right. And some references  
6 to a court action and a statement of claim or amended  
7 statement of claim ---

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. ENGELMANN:** --- against the Cornwall  
10 Police and others?

11                   **MR. JUSTICE GRIFFITHS:** Yes.

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

13                   And, sir, you responded to this -- and this  
14 letter sets out some background on the *Police Services Act*  
15 charges and his lawsuit and some of the concerns he has  
16 about paedophiles and a number of alleged victims in the  
17 Cornwall area?

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** And you in turn then  
20 respond, I believe sometime in June?

21                   **MR. JUSTICE GRIFFITHS:** Yes.

22                   **MR. ENGELMANN:** And that is Exhibit 2673.  
23 It's a one-page letter.

24                   **MR. JUSTICE GRIFFITHS:** I don't think it's  
25 2673.

1                   **MR. ENGELMANN:** Oh? No, I've got the wrong  
2                   number then: 2637. I apologize.

3                   Madam Clerk, 2637. Counsel, Document Number  
4                   703635.

5                   Sir, is this the letter you would have  
6                   written in response to Mr. Dunlop's April 7<sup>th</sup> letter?

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** And you tell him, sir, that  
9                   you were assured by the OPP that all allegations of sexual  
10                  assault against various young persons in the Cornwall area  
11                  are being actively investigated?

12                  **MR. JUSTICE GRIFFITHS:** By various persons.

13                  **MR. ENGELMANN:** Sorry, by various persons,  
14                  yes. And by this point-in-time what becomes known as the  
15                  Project Truth investigation is ongoing?

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. ENGELMANN:** This is June of '97.

18                  **MR. JUSTICE GRIFFITHS:** Yes.

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

20                  And you also indicate, sir, that the Fantino  
21                  brief, if I can use that term, has been brought to the  
22                  attention of the investigators in the case?

23                  **MR. JUSTICE GRIFFITHS:** Yes.

24                  **MR. ENGELMANN:** Sir, I want to just then ask  
25                  you a few questions about what happens on April 24<sup>th</sup>, if I

1           may, at your office.

2                       **MR. JUSTICE GRIFFITHS:** Yes, sir.

3                       **MR. ENGELMANN:** And again, if you wish,  
4           Inspector Smith's notes may be of some assistance. Again,  
5           that's Exhibit 1803, Document Number 111109.

6                       **MR. JUSTICE GRIFFITHS:** This page or ---

7                       **MR. ENGELMANN:** The Bates page, sir, is I  
8           believe 263.

9                       **MR. JUSTICE GRIFFITHS:** Thank you.

10                      **MR. ENGELMANN:** I'll just confirm that.

11           Yes.

12                      According to his notes, in attendance at the  
13           meeting, including both Detective Inspector Smith and  
14           yourself, are Robert Pelletier, Murray MacDonald, Don  
15           Genier, Pat Hall and Mike Fagan?

16                      **MR. JUSTICE GRIFFITHS:** Yes.

17                      **MR. ENGELMANN:** Did you know these police  
18           officers. You knew Detective Inspector Smith?

19                      **MR. JUSTICE GRIFFITHS:** Yes.

20                      **MR. ENGELMANN:** What about Pat Hall, Don  
21           Genier and Mike Fagan?

22                      **MR. JUSTICE GRIFFITHS:** Pat Hall I believe I  
23           knew at that time from other matters. Mike Fagan and  
24           Genier, he's actually not included in that list but ---

25                      **THE COMMISSIONER:** I'm sorry, Genier was --

1 he's not in the five, and so that ---

2 MR. ENGELMANN: It's a mistake.

3 THE COMMISSIONER: It's a mistake, says Don  
4 Genier.

5 MR. JUSTICE GRIFFITHS: Thank you.

6 I think we're in and out of the office  
7 delivering briefs or on other occasions in prior  
8 investigations.

9 MR. ENGELMANN: The one you knew best would  
10 be Smith?

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. ENGELMANN: All right. And of course  
13 you'd worked with him on this matter in '94.

14 MR. JUSTICE GRIFFITHS: Yes.

15 MR. ENGELMANN: Did you have any involvement  
16 in choosing the people who should attend the meeting?

17 MR. JUSTICE GRIFFITHS: Yes, I think in a  
18 generic way I would have said, "Let's get everybody in  
19 who's involved".

20 MR. ENGELMANN: Would you have relied on  
21 Detective Inspector Smith to know which police officers ---

22 MR. JUSTICE GRIFFITHS: Yes.

23 MR. ENGELMANN: --- to bring with him?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. ENGELMANN: And you decided to bring or

1 to have Bob Pelletier and Murray MacDonald at the meeting?

2 MR. JUSTICE GRIFFITHS: That's fair.

3 MR. ENGELMANN: All right.

4 And, sir, the purpose of the meeting as you  
5 now may remember it, either being refreshed from these  
6 notes or just looking at these document, was what?

7 MR. JUSTICE GRIFFITHS: Purpose of the  
8 meeting was to determine how to proceed in light of the  
9 Dunlop brief; the sweeping new allegations that were  
10 contained in that brief; the fact that some of those  
11 allegations involved Mr. MacDonald personally -- and in  
12 light of those allegations and in light of the ongoing  
13 prosecution.

14 MR. ENGELMANN: The ongoing prosecution of  
15 Father MacDonald?

16 MR. JUSTICE GRIFFITHS: Yes. So there were  
17 quite a number of issues that were raised by the brief.

18 MR. ENGELMANN: All right.

19 So Murray MacDonald is raised. There are  
20 some allegations made in the brief?

21 MR. JUSTICE GRIFFITHS: Yes.

22 MR. ENGELMANN: Why was he then invited to  
23 the meeting, sir? Because part of what you're going to be  
24 talking about is investigating him or looking at that  
25 issue.

1                   **MR. JUSTICE GRIFFITHS:** He was invited  
2 because this was his jurisdiction.

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

4                   **MR. JUSTICE GRIFFITHS:** He was invited so  
5 that the instructions as to how this was to proceed were  
6 quite clear to him; that there was to be no involvement of  
7 himself or the Crown Attorney's Office in Cornwall with  
8 respect to this new investigation that would come out of  
9 the Dunlop brief. And to, I guess, make sure everybody  
10 understood that this was to be a thorough investigation of  
11 all of the allegations. There was to be no cover-up, no  
12 whitewash, no anything. It was all above-board, a thorough  
13 investigation, including the allegations involving Murray  
14 MacDonald.

15                   **MR. ENGELMANN:** All right. We see from  
16 Detective Inspector Smith's notes that the meeting took  
17 almost two hours.

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** Do you recall if  
20 Mr. MacDonald, Murray MacDonald, was present for the whole  
21 meeting?

22                   **MR. JUSTICE GRIFFITHS:** I don't recall that.  
23 I've seen part of his evidence where he said that he was  
24 actually there for a very short time but I have no specific  
25 recollection.

1                   **MR. ENGELMANN:** All right.

2                   Yes, when he testified he said that when he  
3 arrived the meeting had already started, but you don't  
4 remember the length of time he was there?

5                   **MR. JUSTICE GRIFFITHS:** No, I don't.

6                   **MR. ENGELMANN:** Or what may have been said  
7 in his presence and what may have been said when he wasn't  
8 there?

9                   **MR. JUSTICE GRIFFITHS:** I'm quite sure in  
10 his presence it was said that his office was to have no  
11 involvement.

12                   **MR. ENGELMANN:** Right. And that he would be  
13 investigated?

14                   **MR. JUSTICE GRIFFITHS:** And that the matter  
15 would be thoroughly investigated, including the allegations  
16 involving him.

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

18                   And they would not be involved in providing  
19 any legal advice to the OPP officers on this investigation?

20                   **MR. JUSTICE GRIFFITHS:** That's correct, sir.

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

22                   So in the notes, there's a reference to  
23 "review allegations and investigation to date"?

24                   **MR. JUSTICE GRIFFITHS:** Yes.

25                   **MR. ENGELMANN:** So presumably there was some

1 background given as to what had happened in '94 and perhaps  
2 something about MacDonald since those charges were before  
3 the court?

4 MR. JUSTICE GRIFFITHS: Yes.

5 MR. ENGELMANN: "Reviewed Dunlop brief and  
6 allegations". You had at least done a cursory review,  
7 perhaps even a larger review?

8 MR. JUSTICE GRIFFITHS: Yes, sir.

9 MR. ENGELMANN: You had Mr. Pelletier's  
10 memo?

11 MR. JUSTICE GRIFFITHS: Yes, sir.

12 MR. ENGELMANN: Do you have a sense that the  
13 police officers had had an opportunity to look at the  
14 document or can you recall -- or documents?

15 MR. JUSTICE GRIFFITHS: I'm sure they had.

16 MR. ENGELMANN: Okay. And then it says,  
17 "Decision, finish preliminary witnesses". I'm not sure if  
18 there's a gap there "finish preliminary witnesses" but you  
19 have told us that there was a preliminary inquiry ongoing?

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. ENGELMANN: Of Father MacDonald, and we  
22 know that it started in February and it finished in the  
23 fall?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. ENGELMANN: With those three initial

1 complainants. Oh, sorry:

2 "Finish preliminary, witnesses  
3 MacDonald and Silmser."

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** All right. So they were two  
6 of the three original complainants.

7 "Ask for adjournment prior to..."

8 **MR. JUSTICE GRIFFITHS:** "...decision."

9 **MR. ENGELMANN:** "Decision"?

10 Can you help me there at all or presumably  
11 that's something to do with the MacDonald matter?

12 **MR. JUSTICE GRIFFITHS:** These were issues  
13 with respect to disclosure.

14 **MR. ENGELMANN:** All right.

15 **MR. JUSTICE GRIFFITHS:** And if there's an  
16 ongoing investigation, I mean, we're disclosing the brief  
17 but not disclosing the day-by-day results of the  
18 investigation. So if there is further material that comes  
19 out prior to the end of the preliminary hearing, some of  
20 that may well be material required to be disclosed.

21 So prior to the completion of the  
22 preliminary inquiry, it may need to be adjourned. I mean,  
23 we didn't know how long this was going to all take prior to  
24 the judge making his decision for the purposes of  
25 disclosure.

1                   **MR. ENGELMANN:** All right.

2                   **MR. JUSTICE GRIFFITHS:** That's my  
3                   recollection.

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

5                               "Police investigate new allegations.  
6                               Disclosure Dunlop brief to Neville."

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. ENGELMANN:** You were aware at that time,  
9                   all of you, that Mr. Neville was acting for Father  
10                   MacDonald?

11                   **MR. JUSTICE GRIFFITHS:** I was aware of that.

12                   **MR. ENGELMANN:** "Investigate all  
13                               allegations. Letter of..."

14                   **MR. JUSTICE GRIFFITHS:** "Request."

15                   **MR. ENGELMANN:** "...request to be made to  
16                               Superintendent Larry Edgar by Peter  
17                               Griffiths."

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** I'm not sure what it says  
20                   under that.

21                               "Speak" maybe "MacDonald next court date".  
22                   I'm not sure if we're in the right spot. Just a little --  
23                   oh, no, there it is at the top, yes.

24                               Maybe that's "agreed"; I'm not sure.

25                               In any event:

1 "MacDonald next court date 9 May '97,  
2 to be spoken to. Finish meeting."

3 Okay?

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. ENGELMANN:** Anything else that comes to  
6 mind about that meeting and what was discussed?

7 **MR. JUSTICE GRIFFITHS:** No.

8 **MR. ENGELMANN:** All right. You do recall  
9 agreeing, I don't know if it was your suggestion or someone  
10 else's, to writing to a superintendent of the OPP?

11 **MR. JUSTICE GRIFFITHS:** That was --  
12 Inspector Smith ---

13 **MR. ENGELMANN:** All right.

14 **MR. JUSTICE GRIFFITHS:** --- requested that.

15 **MR. ENGELMANN:** And, in fact, did you write  
16 a letter to him approximately a month later?

17 **MR. JUSTICE GRIFFITHS:** I did.

18 **MR. ENGELMANN:** And if we could look at  
19 Exhibit 2680 for that purpose, Document Number 103212.

20 I'll just be a moment, sir.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. ENGELMANN:** So the letter is on the  
23 screen. This is a letter of May 27, 1997.

24 And, sir, it's your recollection that  
25 Detective Inspector Smith asked you to write this?

1 MR. JUSTICE GRIFFITHS: Yes.

2 MR. ENGELMANN: Had you done something like  
3 this before?

4 MR. JUSTICE GRIFFITHS: Not that I recall.

5 MR. ENGELMANN: And the purpose of the  
6 letter appears to be to request that he assign or have  
7 Detective Inspector Smith investigate this Dunlop/Bourgeois  
8 brief?

9 MR. JUSTICE GRIFFITHS: Yes.

10 MR. ENGELMANN: And was this, in your view,  
11 a request or was it a demand or did you feel you had the  
12 power to make a demand for that matter?

13 MR. JUSTICE GRIFFITHS: I didn't see it as a  
14 demand. There was -- I saw there was a request and,  
15 frankly, my recollection is Inspector Smith suggested this  
16 is the way to go. I had not done this before but was glad  
17 to accede to that request.

18 MR. ENGELMANN: All right.

19 MR. JUSTICE GRIFFITHS: And it worked.

20 MR. ENGELMANN: Were you, sir -- it did?

21 MR. JUSTICE GRIFFITHS: It worked.

22 MR. ENGELMANN: Yes.

23 Were you, sir, at that time aware of any  
24 statutory authority you might have as a Regional Crown to  
25 make such a request?

1                   **MR. JUSTICE GRIFFITHS:** No.

2                   **MR. ENGELMANN:** And when you wrote the  
3 letter, did you have an expectation that the Ontario  
4 Provincial Police would agree to your request?

5                   **MR. JUSTICE GRIFFITHS:** Yes.

6                   **MR. ENGELMANN:** And this is because of  
7 Detective Inspector Smith's advice to you?

8                   **MR. JUSTICE GRIFFITHS:** Yes.

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

10                   Did you have any, sir, thinking back on  
11 this, any discussions with him, Detective Inspector Smith,  
12 either on the 24<sup>th</sup> of April at the meeting or before you  
13 wrote this letter, about the scope of the planned  
14 investigation and, in particular, the size of the OPP team  
15 that might be required, the length of time the  
16 investigation might take, things of that matter?

17                   **MR. JUSTICE GRIFFITHS:** The size of the team  
18 and the length of time that the investigation would take  
19 are uniquely police matters. I would have no idea what to  
20 say about that.

21                   **MR. ENGELMANN:** Do you recall having been  
22 advised about that though?

23                   **MR. JUSTICE GRIFFITHS:** Prior to writing  
24 this letter?

25                   **MR. ENGELMANN:** Yes.

1                   **MR. JUSTICE GRIFFITHS:** No, I have no recall  
2                   of that.

3                   **MR. ENGELMANN:** All right. As for the  
4                   scope, sir?

5                   **MR. JUSTICE GRIFFITHS:** The scope was to  
6                   investigate the Dunlop brief. I mean, those were the new  
7                   matters. That was what the additional resources would be  
8                   required for.

9                   **MR. ENGELMANN:** Sir, did you have any sense  
10                  when you wrote this that this might involve an  
11                  investigation that took several -- would take several  
12                  years, involve hundreds of interviews, over 30 police Crown  
13                  briefs, et cetera?

14                  **MR. JUSTICE GRIFFITHS:** No.

15                  **MR. ENGELMANN:** Sir, what if any involvement  
16                  would you have had after writing this letter in the Project  
17                  Truth investigation or giving advice?

18                  **MR. JUSTICE GRIFFITHS:** It was fairly  
19                  minimal, I believe.

20                  **MR. ENGELMANN:** Okay.

21                  **MR. JUSTICE GRIFFITHS:** Would you have been  
22                  asked at some point-in-time, possibly, about the assignment  
23                  of a Crown to assist; things of that matter?

24                  **MR. JUSTICE GRIFFITHS:** I believe  
25                  contemporaneous with this and perhaps even on the April 24<sup>th</sup>

1 meeting, I don't know, but roughly contemporaneous, Curt  
2 Flanagan was asked to be the liaison person if there were  
3 questions. It was not to be Pelletier because, as I've  
4 indicated, Justice Pelletier indicated his discomfort and  
5 we agreed with that.

6 So we needed somebody else that could fulfil  
7 that function. Mr. Flanagan had some prior experience  
8 because of the Malcolm MacDonald prosecution, and I believe  
9 he was asked to do that.

10 **MR. ENGELMANN:** We understand that he was  
11 unable to fulfil that function perhaps as a result of other  
12 responsibilities and that no one really was dedicated for  
13 that task.

14 Was it your initial thought that someone  
15 should be dedicated to that task, given what you've said  
16 about Curt Flanagan?

17 **MR. JUSTICE GRIFFITHS:** Yes.

18 **MR. ENGELMANN:** Okay. There were issues  
19 that arose in 1998, and it may well have been after you  
20 assumed your new responsibilities?

21 **MR. JUSTICE GRIFFITHS:** I mean, I -- the  
22 police routinely investigate complex, multi-faceted  
23 criminal allegations without the involvement of a Crown.  
24 So they could well have undertaken this and never call the  
25 Crown because they didn't have the need for Crown advice.

1                   On the other hand, I know that there are  
2                   police that call the Crown on a very regular basis. So the  
3                   extent to which they would need the assistance of a Crown  
4                   was unclear at the time, but I asked that they use Mr.  
5                   Flanagan for those occasions when advice was needed.

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

7                   Let's then switch to another matter.

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. ENGELMANN:** And that is a matter  
10                  involving a woman who has testified here as an alleged  
11                  victim by the name of Jeannette Antoine.

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. ENGELMANN:** And we know that aside from  
14                  being in foster care for many years, she was also a  
15                  resident at something known as the Second Street Group Home  
16                  here in Cornwall and there were a number of allegations  
17                  about this group home in the mid '70s.

18                  It was shutdown shortly thereafter, staff  
19                  were released. And many, many years later, this matter was  
20                  looked at by then Constable Malloy of the Cornwall Police  
21                  in the late '80s. And then another look was taken at/or  
22                  about the time the OPP are reinvestigating the Silmsier  
23                  matter in 1994.

24                  **MR. JUSTICE GRIFFITHS:** Yes.

25                  **MR. ENGELMANN:** So there's a constable by

1 the name of Sean White who was involved in looking at this  
2 issue. And, initially, it's looking at Jeanette Antoine's  
3 allegation against a particular CAS worker and it turns  
4 into a fairly broad investigation where a number of wards  
5 of the CAS are investigated and there are a number of  
6 allegations that arise as a result.

7 And sir, there was a lengthy brief prepared  
8 by Officer White and we understand it was sent to you for  
9 you to review and form a legal opinion as to whether or not  
10 reasonable and probable grounds existed for the prosecution  
11 of any charges based on information contained in the brief.

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. ENGELMANN:** And sir, this is -- Madam  
14 Clerk, it's Exhibit 2210. Counsel, it's Document Number  
15 739043.

16 **THE COMMISSIONER:** I don't think you'd have  
17 it, sir.

18 **MR. JUSTICE GRIFFITHS:** Thank you.

19 I'll just go on the screen.

20 **MR. ENGELMANN:** I'm really not going to get  
21 into much detail on the brief itself but just if we look at  
22 the cover page. It's about 150 pages long and it's our  
23 understanding from Officer White that this brief was  
24 provided to you.

25 **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** Do you have some  
2                   recollection of this matter, sir?

3                   **MR. JUSTICE GRIFFITHS:** Some.

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

5                   And you would -- you prepared an opinion  
6                   letter on this and, presumably, given your past practice,  
7                   you would have reviewed this brief in a thorough fashion  
8                   before writing something?

9                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

10                  **MR. ENGELMANN:** And sir, do you recall why  
11                  it is you're being asked to get involved in this matter and  
12                  not the local Crown's office?

13                  **MR. JUSTICE GRIFFITHS:** Well, I don't think  
14                  the local Crown's office was precluded from involvement.  
15                  In fact, I think there was a meeting after I reviewed the  
16                  brief with Murray MacDonald and with Sean White.

17                  **MR. ENGELMANN:** Sorry, sir, you were not --  
18                  they were not precluded. That's my mistake.

19                  Do you know why you were brought in, because  
20                  there was a meeting that you and Murray MacDonald had with  
21                  Officer White in mid-October of '94?

22                  **MR. JUSTICE GRIFFITHS:** Specifically -- I  
23                  don't have any specific recollection. But, as I've told  
24                  you, where somebody is having a difficult time in making a  
25                  decision as to whether there is reasonable and probable

1 grounds, reasonable prospects of conviction, it's not  
2 unusual to get a second opinion.

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

4 **MR. JUSTICE GRIFFITHS:** And I think I was  
5 that second opinion.

6 **MR. ENGELMANN:** Right. And as the local  
7 Crown, Mr. MacDonald could call upon you as the regional  
8 Crown to do just that?

9 **MR. JUSTICE GRIFFITHS:** Yes, sir.

10 **MR. ENGELMANN:** Either give it to him  
11 directly or assign someone else to do that?

12 **MR. JUSTICE GRIFFITHS:** Yes, sir.

13 **MR. ENGELMANN:** All right.

14 And maybe it'll help if we locate your  
15 letter back, and that is Exhibit 1339. Again, this is an  
16 occasion where you would have provided a written legal  
17 opinion.

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. ENGELMANN:** The Document Number is  
20 739150.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. ENGELMANN:** And at the very first page  
23 of the letter, sir, you indicate a meeting at your office  
24 on October 19<sup>th</sup>, '94 about five days before you write this  
25 letter.

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** It's my understanding that  
3 during the course of the meeting, you would have expressed  
4 some views orally and told them that you would be getting  
5 back to them in writing.

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. ENGELMANN:** Now, with respect to her  
8 allegations, you set out on the second page of the opinion  
9 -- and that's Bates page 883 that:

10                               "Given the nature of this allegation,  
11                               the age of the complaint and the lack  
12                               of confirmatory evidence, it is my  
13                               opinion that you do not have reasonable  
14                               and probable grounds for the laying of  
15                               any charges arising out of this  
16                               complaint."

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. ENGELMANN:** And sir, as I understand it,  
19 that was the officer's view and you were concurring with  
20 it?

21                   **MR. JUSTICE GRIFFITHS:** That was my opinion  
22 and, yes, the officer agreed.

23                   **MR. ENGELMANN:** Right. And sir, you state  
24 after that:

25                               "Allegations that report sexual

1 misconduct suffered by other victims  
2 subject to several apparently  
3 insurmountable impediments, I  
4 understand none of the victims wish to  
5 make a formal complaint to the police  
6 about any sexual assault suffered by  
7 them in the '70s, notwithstanding that  
8 they have had every opportunity and  
9 encouragement to do so during the  
10 course of this investigation and,  
11 indeed, the last 15 years."

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. ENGELMANN:** "Some of the victims have  
14 been adamant to the point of hysteria  
15 on this instruction to the police."

16 **MR. JUSTICE GRIFFITHS:** Yes.

17 **MR. ENGELMANN:** There was clearly some --  
18 there were a number of individuals spoken with other than  
19 Ms. Antoine?

20 **MR. JUSTICE GRIFFITHS:** Yes.

21 **MR. ENGELMANN:** And several of those  
22 individuals expressed in strong terms that they didn't want  
23 to get involved with the police.

24 **MR. JUSTICE GRIFFITHS:** That's my  
25 understanding.

1                   **MR. ENGELMANN:** All right. You say:

2                   "The second great impediment is that  
3                   the memories of the various victims are  
4                   severely impaired. They appear to have  
5                   a very limited ability to even recall  
6                   the outline of these events complained  
7                   of. They are incapable of identifying  
8                   their abusers, naming a time or place  
9                   for the alleged offences or providing  
10                  the most straightforward details that  
11                  can be used to support their  
12                  allegations."

13                  **MR. JUSTICE GRIFFITHS:** Yes.

14                  **MR. ENGELMANN:** Okay. Now, both those  
15                  comments are referring to several of the individuals  
16                  involved. And I don't know if you can recall this, sir,  
17                  but there are individuals who do name individuals, times,  
18                  places and, in fact, there are some who actually suggest  
19                  that they do want to be further involved or want to take  
20                  some action.

21                  And I'm just, sir, wondering if -- you would  
22                  have reviewed the brief thoroughly at that time -- and you  
23                  have not done so since and, I presume, not even for the  
24                  preparation of your evidence. It's a long document, a 150-  
25                  page brief. You were aware in looking at it at the time

1           that the individuals making these allegations were wards of  
2           the CAS for the most part?

3                       **MR. JUSTICE GRIFFITHS:** Yes.

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

5                       And that some of them were complaining about  
6           either physical or sexual assaults by either CAS workers,  
7           group home workers or foster parents?

8                       **MR. JUSTICE GRIFFITHS:** Yes.

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

10                      And sir, I'm wondering, the first  
11           impediment, the fact that -- and you say I understand that  
12           none of the victims wish to make a formal complaint. Do  
13           you recall if that's something that the officer would have  
14           indicated to you?

15                      **MR. JUSTICE GRIFFITHS:** I expect so.

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

17                      But you would have reviewed the brief as  
18           well?

19                      **MR. JUSTICE GRIFFITHS:** Well, the brief  
20           wouldn't tell me necessarily whether they wish to proceed  
21           further.

22                      **MR. ENGELMANN:** All right, fair enough.

23                      **MR. JUSTICE GRIFFITHS:** The frailty of some  
24           of the victims who were adamant about not proceeding  
25           further that would have come from the officer and the fact

1 that people didn't wish to just generally proceed further  
2 would have come from the officer.

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

4 Because there certainly are a couple of  
5 examples and when the officer was here and, I think, when  
6 Murray MacDonald was here as well, one of my friends for  
7 the Victims Group particularly took Mr. MacDonald through  
8 some of these and on a couple of occasions suggested to him  
9 without much pushback that in fact, yes, that was a victim  
10 who might have wanted to proceed.

11 But your thinking back now is that on the  
12 "no victims wanting to proceed," that's something that  
13 would have been communicated to you by the officer?

14 **MR. JUSTICE GRIFFITHS:** That's information  
15 that's given to me by the officer.

16 **MR. ENGELMANN:** All right, fair enough.

17 **MR. JUSTICE GRIFFITHS:** And this letter was  
18 written after the meeting with the officer.

19 **MR. ENGELMANN:** Yes -- no, a few days later,  
20 yeah.

21 Sir, we've done a rough tally of going  
22 through this brief and there are at least five individuals,  
23 these wards, who made allegations of physical abuse, and at  
24 least 11 who made allegations of some kind of sexual abuse.

25 This does not include individuals named by

1 others but only those who are recounting their own stories  
2 and their own alleged abuse. All of this alleged abuse  
3 happens when these individuals are under the age of 18 and  
4 it's allegedly by persons in some positions of authority  
5 while they're in the care of the CAS.

6 I know, sir that you do not recommend  
7 criminal charges because of the lack of R&GP, and that's  
8 set out in your opinion. Did you consider at the time  
9 addressing a letter or a report to director of the local  
10 Children's Aid Society? Just because of the widespread  
11 allegations of, for lack of a better word, systemic  
12 failures ---

13 **MR. JUSTICE GRIFFITHS:** Thank you.

14 **MR. ENGELMANN:** --- with respect to what  
15 they were doing?

16 **MR. JUSTICE GRIFFITHS:** No. It's a good  
17 question. No, I did not.

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

19 **MR. JUSTICE GRIFFITHS:** I viewed this, I  
20 guess, in retrospect, too narrowly. I was being consulted  
21 about a specific issue. I thought I was responding to that  
22 issue in returning the material to Officer White. I think  
23 that the reporting obligations of all of us have been  
24 further clarified since that time, and I would hope if this  
25 came to me today it would be reported to the CAS.

1                   **MR. ENGELMANN:** One of the reasons I asked  
2                   that, sir, is when the director -- the former Executive  
3                   Director of the CAS, a fellow by the name of Richard Abell  
4                   -- was here, he said that he felt that the brief prepared  
5                   by Mr. White, or Police Officer White, is something that he  
6                   would have liked to have reviewed so that he could have  
7                   taken some steps to look at perhaps some of his workers,  
8                   some of his former workers, workers who may be employed  
9                   elsewhere, foster parents.

10                   **MR. JUSTICE GRIFFITHS:** Or some of the  
11                   children.

12                   **MR. ENGELMANN:** Exactly. And to see if some  
13                   support or some other counselling could be offered to some  
14                   of those former wards.

15                   **MR. JUSTICE GRIFFITHS:** Yeah.

16                   **MR. ENGELMANN:** I take it from your answer  
17                   that in hindsight that is something that perhaps you might  
18                   have wanted to do at the time or suggested that the police  
19                   might do.

20                   **MR. JUSTICE GRIFFITHS:** In hindsight, yes.

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

22                   Sir, the last area I wanted to cover with  
23                   you involves a former probation officer by the name of  
24                   Nelson Barque. Mr. Barque was a colleague of Ken Seguin's.  
25                   You've heard about him.

1                   The issue with Nelson Barque arises in 1996  
2                   and there's a couple of documents on this that I'd like to  
3                   show to you. Again it's my understanding you were asked  
4                   for an opinion and in this occasion, you would have  
5                   rendered something orally.

6                   **MR. JUSTICE GRIFFITHS:** M'hm.

7                   **MR. ENGELMANN:** First off, sir, Exhibit 917.  
8                   Counsel, this is Document Number 703134.

9                   **MR. JUSTICE GRIFFITHS:** Thank you.

10                   Yes.

11                   **MR. ENGELMANN:** Sir, this is a letter from  
12                   Murray MacDonald to Constable Sebalj wherein he refers to a  
13                   memo she writes to him of February 7<sup>th</sup>, 1996. And he says  
14                   that he forwarded the materials to your attention for your  
15                   opinion and that he's received it. And then he outlines  
16                   very briefly the, I believe, oral opinion you would have  
17                   provided back to him.

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. ENGELMANN:** Now, again, would this be  
20                   one of those cases where, as you say, sometimes a local  
21                   Crown might call upon you for a second opinion?

22                   **MR. JUSTICE GRIFFITHS:** It may be. I can't  
23                   really tell you. Again, this is the time period when I was  
24                   Acting Assistant Deputy Attorney General in March of '96.  
25                   Mr. MacDonald may have been calling on me because of my

1 familiarity with the other outlying issues.

2 MR. ENGELMANN: All right.

3 Sir, it's my understanding that if we look  
4 back one exhibit -- and I don't know if you have the binder  
5 or if we're just on the screen, but ---

6 MR. JUSTICE GRIFFITHS: I have it.

7 MR. ENGELMANN: --- Exhibit 916 is the  
8 letter or report, if I can call it, that Constable Sebalj  
9 is sending to Murray MacDonald.

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. ENGELMANN: And I understand -- and,  
12 sir, this would have been sent on to you ---

13 MR. JUSTICE GRIFFITHS: Yes.

14 MR. ENGELMANN: --- by Mr. MacDonald.

15 And in this report, she's providing  
16 background concerning allegations of sexual assault against  
17 Nelson Barque made by an individual referred to here as C-  
18 44.

19 MR. JUSTICE GRIFFITHS: Is there ---

20 MR. ENGELMANN: That's the moniker for the  
21 fellow whose name is ---

22 MR. JUSTICE GRIFFITHS: Okay, yes.

23 MR. ENGELMANN: --- in the "re: clause" ---

24 MR. JUSTICE GRIFFITHS: Yes, thank you.

25 MR. ENGELMANN: --- right at -- yeah. So

1       that's the number I'll use.

2                   **MR. JUSTICE GRIFFITHS:** Thank you.

3                   **MR. ENGELMANN:** Sir, this would have been  
4 provided to you in order that you could provide the oral  
5 opinion?

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. ENGELMANN:** All right. In the first few  
8 paragraphs she talks about an earlier investigation during  
9 -- and this is about a year and a half before -- during the  
10 calendar year 1994. This was an earlier investigation by  
11 the OPP where Nelson Barque was charged for sexual offences  
12 against another individual.

13                   **MR. JUSTICE GRIFFITHS:** Yes.

14                   **MR. ENGELMANN:** All right. And just by way  
15 of context, this is a former probation officer who is  
16 allowed to resign from the Probation Office in 1982. The  
17 individual who is charged with in 1994, who's listed here  
18 and there's no moniker for, Albert Roy, was a former  
19 probationer and allegations while he was on probation. C-  
20 44, also a former probationer; allegations that there was  
21 abuse while he was assigned to Mr. Barque as his probation  
22 officer.

23                   **MR. JUSTICE GRIFFITHS:** Yes.

24                   **MR. ENGELMANN:** Sir, it's not mentioned  
25 here, but I'm wondering if you were aware at the time that

1 Mr. Barque was convicted of the charge involving the other  
2 probationer, Mr. Roy, in 1995.

3 MR. JUSTICE GRIFFITHS: No. The information  
4 that I had is what was contained in Constable Sebalj's  
5 letter and brief material, so I was not aware that there  
6 was a conviction.

7 MR. ENGELMANN: Would that have been  
8 important for you to know at the time?

9 MR. JUSTICE GRIFFITHS: Couldn't hurt, but  
10 each case has to turn on its own facts and I don't know  
11 whether that would have had an impact on the ultimate  
12 decision.

13 MR. ENGELMANN: Do you know if it's  
14 something that you asked for?

15 MR. JUSTICE GRIFFITHS: No.

16 MR. ENGELMANN: Okay.

17 MR. JUSTICE GRIFFITHS: I didn't ask anybody  
18 for anything. I was given material and said, "Based on  
19 this material, what's your opinion?"

20 MR. ENGELMANN: All right.

21 MR. JUSTICE GRIFFITHS: That's what I gave.

22 MR. ENGELMANN: She also provides  
23 information in her report about a 1982 investigation  
24 conducted by the Ministry of Correctional Services. And  
25 we've looked at this in the context of this Inquiry, and

1 she apparently encloses a copy of that report.

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. ENGELMANN: So you would have -- in  
4 addition to her brief report, she would have enclosed that  
5 report? And, sir, she also indicates that she encloses a  
6 copy of the statement of C-44.

7 MR. JUSTICE GRIFFITHS: The statement?

8 MR. ENGELMANN: Right.

9 MR. JUSTICE GRIFFITHS: From 1982?

10 MR. ENGELMANN: No, but also, as I  
11 understand it, she encloses -- if you look at the bottom of  
12 the first page she says, "On December 21<sup>st</sup> ---"

13 MR. JUSTICE GRIFFITHS: Sorry, yes.

14 MR. ENGELMANN: "--- I conducted an  
15 audiotaped interview with C-44."

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. ENGELMANN: "He recounted the sexual  
18 activities he and his probation  
19 officer, Nelson Barque, engaged in  
20 while he was on probation."

21 MR. JUSTICE GRIFFITHS: Yes.

22 MR. ENGELMANN: Talks about the sexual acts.

23 MR. JUSTICE GRIFFITHS: Yes.

24 MR. ENGELMANN: You would have been provided  
25 with a copy of that statement?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. ENGELMANN:** All right. So you would  
3 have reviewed her memo, the 1982 report and the 1995  
4 audiotaped statement?

5                   **MR. JUSTICE GRIFFITHS:** Whatever she says  
6 she provided here, I reviewed it.

7                   **MR. ENGELMANN:** All right. Well,  
8 Mr. MacDonald testified and said he believed he would have  
9 referred all of those materials to you, asking you for your  
10 opinion. And other than simply giving him your opinion, do  
11 you recall having other discussions with Mr. MacDonald  
12 about this matter?

13                   **MR. JUSTICE GRIFFITHS:** No.

14                   **MR. ENGELMANN:** All right. Did you ever  
15 speak directly with Constable Sebalj about some of this  
16 information, to your knowledge?

17                   **MR. JUSTICE GRIFFITHS:** I don't believe so.

18                   **MR. ENGELMANN:** All right. And you  
19 concluded, sir, in your opinion that the -- if the summary  
20 is accurate, that the charge of indecent assault could not  
21 be laid because certain essential elements were lacking?

22                   **MR. JUSTICE GRIFFITHS:** Yes.

23                   **MR. ENGELMANN:** All right.

24                   Do you know, sir, whether -- and again, I  
25 think you've answered this on another matter, but would you

1 have considered other charges such as gross indecency or  
2 other charges not just indecent assault?

3 **MR. JUSTICE GRIFFITHS:** I think I was asked  
4 to -- I'm sure I would have. I'm sure I would have.

5 **MR. ENGELMANN:** Okay. And the three  
6 essential elements that you say that you're attributed as  
7 saying are missing are assaultive behaviour, coercion or  
8 threats used to compel C-44's consent and the fact that C-  
9 44 was beyond the age of consent.

10 **MR. JUSTICE GRIFFITHS:** Yes.

11 **MR. ENGELMANN:** Right.

12 Given the relationship between C-44 and Mr.  
13 Barque, probation officer, individual on probation, would  
14 actual threats be necessary to show coercion?

15 **MR. JUSTICE GRIFFITHS:** No.

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

17 Coercion could be apparent simply because of  
18 the vulnerability of C-44 and the trust relationship?

19 **MR. JUSTICE GRIFFITHS:** Well, I don't know  
20 that I'd call it a trust relationship but because of the  
21 power imbalance.

22 **MR. ENGELMANN:** Yes, all right. Fair  
23 enough.

24 And the actual statement is Exhibit 1276,  
25 and that's Document Number 737029. And I just want to

1 touch upon a couple of things from it. I'm not going to go  
2 into any detail.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. ENGELMANN: It is 1276.

5 And one of the things I just wanted to take  
6 you to, sir, is ---

7 THE COMMISSIONER: So again, this is a  
8 statement from C-44.

9 MR. ENGELMANN: Yes, this is the statement  
10 that was audiotaped by Constable Sebalj, sir, in December  
11 of '95, and this is a transcript of that.

12 And just a couple of examples, Justice  
13 Griffiths, at Bates page 977, which is page 15, he's  
14 talking about what's going on. At the bottom of the page,  
15 she says:

16 "After this first time did it repeat  
17 itself?"

18 "Yes, it was ongoing for about a year;  
19 lasted about a year."

20 "Can you tell me why it lasted about a  
21 year?"

22 "I was scared."

23 "Tell me about that."

24 "I was afraid maybe, you know, if I  
25 went and said something to his

1                   superiors there or mentioned to  
2                   anybody, word get around, I'd get  
3                   breached on probation. I would have  
4                   went back to jail. I didn't want to go  
5                   back to jail. That's the last thing,  
6                   you know."

7                   And there is a couple of other examples of  
8                   this where he is talking about being afraid of being sent  
9                   back to jail and also a couple of other things.

10                  At Bates page 982, he talks about the fact  
11                  that Mr. Barque is giving him money for cigarettes, for  
12                  drugs, things of that nature.

13                  And at Bates page 992, which is page 30, the  
14                  last third of the page:

15                         "It started happening and then I just  
16                         kept going back because I was scared.  
17                         You know, like, I didn't know what was  
18                         going on. I didn't understand all  
19                         this. To me, I probably thought it was  
20                         a normal part of life. We never talked  
21                         about homosexuals or gays or stuff like  
22                         that when I grew up. I didn't even  
23                         know anything about sex until I was  
24                         17."

25                  Goes on, saying again:

1 "I didn't want to go back to jail."

2 Et cetera. So he clearly had some fear of  
3 if he disclosed anything about this relationship that he  
4 might be going back to jail.

5 Would you agree at least now in looking back  
6 that this might indicate some degree of coercion in that  
7 particular relationship ---

8 **THE COMMISSIONER:** Excuse me. Ms. McIntosh?

9 **MR. ENGELMANN:** Oh, I'm sorry.

10 **MS. McINTOSH:** I'm just rising because I  
11 think that this is a very selective bit from this statement  
12 where there are also obviously a lot of -- this is about  
13 fear of reporting where there are a lot of other portions  
14 of the statement dealing with the fact that Mr. Barque is  
15 afraid of Mr. -- of C-44.

16 And so I'm just concerned that to put just  
17 that selection from the statement to the witness gives a  
18 bit of an unfair picture for a witness who might not  
19 remember the full contents of the statement at this stage  
20 of the proceedings.

21 **THE COMMISSIONER:** All right.

22 Do you want to -- maybe you should review  
23 the whole statement then. Do you want to do that or ---

24 **MR. ENGELMANN:** Ms. McIntosh will have an  
25 opportunity to ask some questions ---

1                   **THE COMMISSIONER:** Right.

2                   **MR. ENGELMANN:** --- of Justice Griffiths and  
3 perhaps she could put some other areas. I just wanted to  
4 give some examples of what might be considered coercion and  
5 just ask the witness if he agreed.

6                   **THE COMMISSIONER:** Okay.

7                   **MR. ENGELMANN:** That's all.

8                   **THE COMMISSIONER:** Carry on.

9                   **MR. ENGELMANN:** And quite frankly, that's  
10 all I have.

11                   **MR. JUSTICE GRIFFITHS:** I agree with you  
12 that taken in isolation, those things indicate a concern --  
13 indicates that there could be some coercion. But I also  
14 agree with Ms. McIntosh that you can't pick and choose. I  
15 mean I'm looking at the statement as a whole.

16                   **MR. ENGELMANN:** Yes.

17                   **MR. JUSTICE GRIFFITHS:** Where, as you say,  
18 he is also going to the probation officer and demanding  
19 money that the probation officer knows they're for drugs  
20 and booze. I mean, if he is going to get ---

21                   **MR. ENGELMANN:** And he is -- that's one of  
22 the conditions of his probation, actually.

23                   **MR. JUSTICE GRIFFITHS:** Of his probation.  
24 The probation officer knows this. So how afraid is he of  
25 this fellow? He steals his car and there is reference to

1 that in the statement of the -- the monikered individual  
2 steals the probation officer's car and clearly thinks that  
3 he's safe from being reported.

4 So I think -- my view, looking at the  
5 statement as a whole, was that coercion was not a factor,  
6 notwithstanding what those individual statements say.

7 **MR. ENGELMANN:** All right.

8 **MR. JUSTICE GRIFFITHS:** Or if it was a  
9 factor it wasn't something that I could prove.

10 **MR. ENGELMANN:** Sir, when Mr. MacDonald,  
11 Murray MacDonald testified, he talked about an arrangement  
12 he made with the Cornwall police concerning Perry Dunlop  
13 and this was after Mr. Dunlop came off his leave and  
14 started working again as a police officer in the spring of  
15 1997. We know that either late '97 or early '98, he makes  
16 an arrangement so that he doesn't have to deal with Mr.  
17 Dunlop or, then, Constable Dunlop directly.

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. ENGELMANN:** And I think there was an  
20 arrangement made with the Cornwall police that if Officer  
21 Dunlop wanted or needed to consult with a Crown attorney,  
22 he would speak with Guy Simard and that Officer Dunlop  
23 would be accompanied by either his supervisor or Constable  
24 Malloy when he met with the Crown.

25 **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. ENGELMANN:** He said that he conferred  
2                   with you about this issue and that the two of you agreed  
3                   that Guy Simard should provide legal advice to Dunlop if he  
4                   needed to consult with the Crown.

5                   Do you have any recollection of having to  
6                   put some kind of a system in place because of the  
7                   allegations that were outstanding, the fact that you had a  
8                   local Crown and a local police officer where there was that  
9                   kind of tension?

10                   **MR. JUSTICE GRIFFITHS:** No.

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

12                   **MR. JUSTICE GRIFFITHS:** Beyond what you've  
13                   said here, no.

14                   **MR. ENGELMANN:** Okay.

15                   Sir, we've asked all witnesses who have  
16                   attended here for their comments on personal effects, if  
17                   any, that doing this type of work may have had on them,  
18                   their colleagues, their employees, this type of work  
19                   dealing with the difficult issue of abuse of children,  
20                   particularly sexual abuse of children, whether there are  
21                   historical reports or current.

22                   And so I just want to give you the  
23                   opportunity to comment if you wish to on personal effects  
24                   this may have had on you personally and/or some of your  
25                   staff in dealing with these types of cases.

1                   **MR. JUSTICE GRIFFITHS:** Thank you.

2                   As you've noted or as is obvious, my  
3 involvement in these matters was twice removed from the  
4 individuals who were most affected. So because of my  
5 remoteness from them physically, this did not have adverse  
6 impact on me. But the investigation and prosecution of  
7 instances of child abuse, child sexual abuse are very  
8 difficult. It's not uncommon to have adverse impacts on an  
9 individual.

10                  **MR. ENGELMANN:** Sir, the other question  
11 we've asked all witnesses is, given the type of work we're  
12 doing here, the importance of the report in dealing with  
13 institutional response, whether they have some  
14 recommendations or suggestions for us.

15                  I understand, sir, that in your current role  
16 as Associate Chief Justice that you believe it might be  
17 inappropriate for you to make those types of  
18 recommendations to this Inquiry. I don't know if I have  
19 used the word correctly.

20                  **MR. JUSTICE GRIFFITHS:** No, with great  
21 respect, Mr. Engelmann, I do think it's inappropriate for  
22 me in my present role and I would decline to make those  
23 comments.

24                  Thank you for the opportunity.

25                  **MR. ENGELMANN:** You are very welcome.

1 Sir, I'm not sure if the Commissioner  
2 intends to take a break now but I'm done. And I thank you.

3 **MR. JUSTICE GRIFFITHS:** Thank you, Mr.  
4 Engelmann.

5 **MR. ENGELMANN:** You're welcome.

6 Counsel will be -- my friends will be cross-  
7 examining you. They will identify themselves and they will  
8 indicate to you which party they represent.

9 **MR. JUSTICE GRIFFITHS:** Thank you.

10 **THE COMMISSIONER:** So in the afternoon  
11 break, I'd like you to canvas the parties to see how much  
12 time we should set aside and see if there's any possibility  
13 of finishing this witness today.

14 **MR. ENGELMANN:** Absolutely.

15 **THE COMMISSIONER:** All right, good. Thank  
16 you.

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

19 This hearing will resume at 3:15 p.m.

20 --- Upon recessing at 2:59 p.m./

21 L'audience est suspendue à 14h59

22 --- Upon resuming at 3:18 p.m./

23 L'audience est reprise à 15h18

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

1                   **THE COMMISSIONER:** Thank you.

2                   Yes, sir?

3                   **MR. ENGELMANN:** Sir, just before I turn it  
4 over, I wanted to report the estimate was between two hours  
5 and twenty minutes and two hours and forty-five minutes.

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

7                   **MR. ENGELMANN:** And I would hope that we  
8 could try and push ahead and finish ---

9                   **THE COMMISSIONER:** Hope so.

10                  **MR. ENGELMANN:** --- if it's possible.

11                  Sir, as well, I -- I neglected to put in one  
12 document that I had on my list that I think should be in  
13 evidence for the record.

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

15                  **MR. ENGELMANN:** They're notes of Officer  
16 Fagan during the period '95-'96; Officer Fagan being with  
17 the Ontario Provincial Police and there are some references  
18 to Justice Griffiths and contacts. I don't want to go  
19 there in questions, but I'd just like to put the document  
20 in evidence ---

21                  **THE COMMISSIONER:** That's fine.

22                  **MR. ENGELMANN:** --- for completion, sir.  
23 Madam Clerk, it is Document 714974. These are notebook  
24 contacts, Michael Fagan, January 10<sup>th</sup>, 1996.

25                  **THE COMMISSIONER:** All right, thank you.

1                   **MR. ENGELMANN:** If that could simply be made  
2                   an exhibit. As I said, there are a couple of references to  
3                   phone or in-person contacts with Justice Griffiths and  
4                   certainly with many others.

5                   **THE COMMISSIONER:** Thank you. Exhibit  
6                   Number 3029 will be notes of Officer Fagan and the first  
7                   date is the 14<sup>th</sup> of August 1995.

8                   All right. There you go.

9                   **--- EXHIBIT NO./PIÈCE NO. P-3029:**

10                                   (714974) - Notes of Mike Fagan dated 14 Aug  
11                                   95

12                                   **MR. ENGELMANN:** Thank you, sir. I will  
13                   turn it over.

14                                   **THE COMMISSIONER:** Thank you.

15                                   Good afternoon, sir.

16                   **PETER GRIFFITHS, Resumed/Sous le même serment:**

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

18                   **STRAWCZYNSKI:**

19                                   **MR. STRAWCZYNSKI:** Good afternoon, Mr.  
20                   Commissioner.

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

22                                   **MR. STRAWCZYNSKI:** Good afternoon, Justice  
23                   Griffiths. My name is Juda Strawczynski and I represent  
24                   the local citizens' group here by the name of Citizens for  
25                   Community Renewal. It's a group of local citizens who are

1 primarily interested in promoting institutional reform to  
2 ensure the protection of children and justice for all. And  
3 I have a few questions on many of the areas we've already  
4 reviewed today, sir.

5 I wanted to start with the Jeannette Antoine  
6 Second Street Group Home brief. Mr. Engelmann had  
7 mentioned that there were some specific instances that he  
8 was not going to get into, but that had been reviewed  
9 previously with Crown MacDonald and I would like to just go  
10 through two of the cases with you that are more detailed in  
11 the brief just to have your comments.

12 So you'll recall, sir, that ---

13 **MR. JUSTICE GRIFFITHS:** I don't have the  
14 brief in front of me.

15 **MR. STRAWCZYNSKI:** Well, I'll -- I'll take  
16 you to the references.

17 **MR. JUSTICE GRIFFITHS:** Thank you.

18 **MR. STRAWCZYNSKI:** I'd like to start with  
19 one individual who at this Inquiry is known as C-84.

20 **THE COMMISSIONER:** Madam Clerk will show you  
21 ---

22 **MR. STRAWCZYNSKI:** There's a witness  
23 statement that formed a part of Officer White's Crown brief  
24 which is Exhibit 2210. For counsel, that's 739043 and the  
25 Bates page on this particular statement is 5409.

1 And as that's being put together, ---

2 **THE COMMISSIONER:** Whoa, whoa, whoa -- okay.

3 **MR. STRAWCZYNSKI:** --- I just wanted to  
4 remind you, sir that we went to your Crown opinion earlier  
5 and if I have it correctly; primarily, there were no  
6 reasonable, probable grounds for conviction because  
7 firstly, none of the alleged victims wished to make a  
8 formal complaint to the police.

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. STRAWCZYNSKI:** And I understood your  
11 evidence to be that was what you had understood from  
12 Officer White?

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. STRAWCZYNSKI:** And then secondly, that  
15 many of these individuals were unable to recall important  
16 details?

17 **MR. JUSTICE GRIFFITHS:** Yes.

18 **MR. STRAWCZYNSKI:** So if we have a look at  
19 C-84's statement, this individual -- primarily his  
20 complaint -- or this individual's complaint is related to  
21 physical abuse. Now, at the bottom of this page, you'll  
22 see that he is reporting that other kids were given the  
23 strap and then goes on to say:

24 "I, myself was given the strap to the  
25 point of blistering and bruising."

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. STRAWCZYNSKI:** If we then move on to  
3                   Bates page 5410, the next page, we have one particular  
4                   incident and I believe that it involves, again, physical  
5                   abuse. And this individual describes being lifted off the  
6                   ground and put through the wall or put through the hallway  
7                   right into the living room at which time this individual  
8                   suffered from bruising. And I believe this individual was  
9                   able to identify who was responsible for this act.

10                                 And then if we move on to Bates page 5411,  
11                   again, this is a form of physical assault. In the middle  
12                   of the page, we learn of allegations where this individual  
13                   is subjected to a form of stress position and is kept in  
14                   isolation as well. He's forced to kneel on the floor with  
15                   an object or objects under his knees; made to stand in a  
16                   cold garage with only socks and pants on and would be there  
17                   for hours.

18                                 Now, at the end of the statement, at Bates  
19                   page 5412, sir, the officer asks whether the individual  
20                   believes this was abuse and if so, in what way or abusive  
21                   and if so, in what way. And the answer is:

22   "Yes, I do not believe that any child,  
23   regardless of his or her actions,  
24   should be hit with a belt until he or  
25   she bruises, blisters or bleeds. I

1 don't believe for whatever the reason a  
2 child, as in my case, should be put  
3 from one room to the other by being  
4 thrown right through the wall."

5 And at the bottom, we have a question:

6 "Is there anything else you would like  
7 to tell me?"

8 And the answer is:

9 "At this time, I feel I've told you all  
10 I know or remember through counselling.  
11 I may remember more and at such time if  
12 I feel it would help, will contact you,  
13 but this is all there is at this time."

14 So my first question, Justice Griffiths, at  
15 the bottom here, it appears as though we have a willing  
16 individual. It does not appear, from this statement, that  
17 this individual is unwilling to come forward.

18 **MR. CALLAGHAN:** That doesn't accord with the  
19 evidence of Shawn White who was taken to that very  
20 statement by Ms. Daley ---

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

22 **MR. CALLAGHAN:** --- and who advised that  
23 this person had emotional difficulty in coming out with  
24 these allegations. Shawn White got him counselling and he  
25 didn't feel he was strong enough to proceed.

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

2                   **MR. CALLAGHAN:** So to suggest that on the  
3 statement or otherwise not to put to him that the  
4 complainant wasn't in a position to proceed.

5                   **THE COMMISSIONER:** Well, it depends now what  
6 information this witness had. If he had just the four  
7 corners of the pages of the statement, that's what he had.  
8 Now, is there any evidence that this witness knew of what  
9 you have said?

10                  **MR. CALLAGHAN:** Well, I don't know. I just  
11 think that we have to set the whole story out here so the  
12 witness knows that -- I mean the witness -- there was a  
13 meeting with the witness -- it's in the notes ---

14                  **THE COMMISSIONER:** There was a meeting with  
15 the witness ---

16                  **MR. CALLAGHAN:** --- wherein they said --  
17 where it's reported Shawn White says there was no one who  
18 wants to go ahead formally.

19                  **THE COMMISSIONER:** Right.

20                  **MR. CALLAGHAN:** I don't know what we'll hear  
21 from the Chief Justice when -- when we hear from him, but  
22 the point being is it's not just this piece of paper. We'd  
23 had evidence from Shawn White ---

24                  **THE COMMISSIONER:** Yeah, well, just a minute  
25 ---

1                   **MR. CALLAGHAN:** --- as to just his  
2 understanding of this person.

3                   **THE COMMISSIONER:** Right. Except that -- if  
4 -- if this witness is giving an opinion ---

5                   **MR. CALLAGHAN:** Right.

6                   **THE COMMISSIONER:** --- right and if he  
7 doesn't know what you've just said then I don't think we  
8 should put it to him that way. I think he should be --  
9 given what he knew at the time and what his -- what his  
10 evidence is as to his opinion and then if you want to, in  
11 your cross-examination, give him what -- what came  
12 afterwards; that's fine.

13                   **MR. CALLAGHAN:** All right.

14                   But the suggestion that he wants to proceed  
15 when she's implying from the information which isn't what  
16 it says is inappropriate when he knows that the evidence is  
17 to the contrary.

18                   **MR. STRAWCZYNSKI:** That's ---

19                   **THE COMMISSIONER:** No, no, if that's what  
20 he's doing; correct, but if he's asking this gentlemen how  
21 -- what was the basis of his opinion and if he had not that  
22 knowledge at the time, then it's irrelevant.

23                   **MR. CALLAGHAN:** Well, we'll see how it plays  
24 out. I agree.

25                   **THE COMMISSIONER:** Right, thank you.

1                   **MS. McINTOSH:** I have a different objection.

2                   **THE COMMISSIONER:** All right.

3                   **MS. McINTOSH:** The -- the premise seems to  
4 be that the opinion letter was based on unwillingness to  
5 proceed in the case of physical assaults ---

6                   **THE COMMISSIONER:** Right.

7                   **MS. McINTOSH:** --- and as I read the opinion  
8 letter, the -- the assault was based on basically the  
9 limitation period and the unwillingness to proceed went to  
10 the sexual misconduct so again, I think the premise that to  
11 take a physical assault and say, so isn't -- isn't your  
12 opinion that you can't proceed in the face -- because there  
13 was no-one willing to proceed. That's a wrong premise to  
14 put to the witness.

15                   I'm sorry, I'm not saying this very  
16 elegantly, but the -- as I understand the question from my  
17 friend, it is to suggest that there was someone willing to  
18 proceed with the physical abuse cases.

19                   **THE COMMISSIONER:** Correct.

20                   **MS. McINTOSH:** And as I understand the  
21 opinion, the willingness to proceed issue only came up  
22 under the sexual abuse issues, and so it's a false premise  
23 that's being put to the witness, as I understand it.

24                   **THE COMMISSIONER:** Well, I think the witness  
25 will take of himself.

1                   So where are you going though, sir? You  
2 understand that I'm concerned with Mr. Callaghan's  
3 objection.

4                   **MR. STRAWCZYNSKI:** I understand both, I  
5 believe, Mr. Commissioner.

6                   The first, I had just asked whether there  
7 was anything to indicate, in this particular statement,  
8 whether there was any indicia that the individual was not  
9 willing to come forward. That was going to be the first  
10 question.

11                  **THE COMMISSIONER:** Right.

12                  **MR. STRAWCZYNSKI:** And as for the other  
13 objection, I believe we can deal with that as we proceed  
14 further.

15                  **THE COMMISSIONER:** Okay, but you're going to  
16 have to ascertain from this witness what knowledge he had  
17 in whether or not Officer White added anything.

18                  **MR. STRAWCZYNSKI:** Of course, and that's  
19 where I was heading.

20                  **THE COMMISSIONER:** All right. Go ahead.

21                  **MR. STRAWCZYNSKI:** So, Your Honour, my first  
22 question was whether you would agree with me that on the  
23 statement as provided to you, there's nothing here  
24 indicating that this individual was not willing to come  
25 forward per se?

1                   **MR. JUSTICE GRIFFITHS:** I agree.

2                   **MR. STRAWCZYNSKI:** And did Officer White  
3                   communicate with you specifically with respect to this  
4                   individual, C-84, as to other information that might lead  
5                   you to believe that he would not be willing to proceed at  
6                   this time?

7                   **MR. JUSTICE GRIFFITHS:** No. He communicated  
8                   to me collectively that all of the complainants, other than  
9                   Ms. Antoine, were unwilling to proceed.

10                  **MR. STRAWCZYNSKI:** Thank you.

11                  Just to assist, I don't want to go back to  
12                  the record unless you believe it would be of assistance to  
13                  you, sir, but on page 2 of your opinion letter on this  
14                  matter you had mentioned that none of the victims wished to  
15                  make a formal complaint to the police about any sexual  
16                  assault, so I did clarify that this particular individual  
17                  is primarily making comments or exclusively making comments  
18                  relating to physical assault.

19                  And one question I had is, given the  
20                  instances of alleged abuse that we just reviewed together,  
21                  were those, in your view, tantamount to a form of common  
22                  assault or would there be another charge that could have  
23                  been appropriate at that time?

24                  **THE COMMISSIONER:** As in assault causing  
25                  bodily harm, which would not be subject to a limitation

1 period if an election was made?

2 **MR. JUSTICE GRIFFITHS:** Certainly, beating a  
3 child to the point where there are blisters and blood is --  
4 could well be assault bodily harm.

5 **MR. STRAWCZYNSKI:** Thank you.

6 I'd like to move on to a second individual  
7 who was subject to this investigation and in this Inquiry  
8 the individual is referred to as C-86.

9 **THE COMMISSIONER:** Just a second. Madam  
10 Clerk, could you show him who C-86 is?

11 **MR. JUSTICE GRIFFITHS:** Could I have on the  
12 screen my opinion letter? If you're going to be referring  
13 back to it, I'd like to be able to look at it as we go  
14 along, if that's agreeable.

15 **MR. STRAWCZYNSKI:** The opinion letter is at  
16 Exhibit 1339.

17 **MR. JUSTICE GRIFFITHS:** Thank you. I've got  
18 it. Thank you.

19 **THE COMMISSIONER:** Okay. Do you have your  
20 opinion letter, sir; 1339? I don't have it. Thank you.  
21 Okay.

22 **MR. JUSTICE GRIFFITHS:** Mr. Strawczynski, I  
23 think my answer is the same for all of these. I was told  
24 globally that there were no people who were willing or able  
25 to testify, other than Ms. Antoine.

1                   **MR. STRAWCZYNSKI:** Okay. Well, then perhaps  
2 we don't need to go through this exercise with C-86.

3                   One question I would have then is, you  
4 concluded and noted that -- and I'll take you back to your  
5 brief.

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. STRAWCZYNSKI:** At page 3, the last  
8 paragraph, you've written:

9                                 "Regretfully, notwithstanding a most  
10                                thorough investigation, I am of the  
11                                opinion that there are no reasonable  
12                                and probable grounds to warrant the  
13                                laying of criminal charges with respect  
14                                to any of the allegations contained in  
15                                the investigation brief."

16                   Now, my question, sir, is whether Officer  
17 White ever came back to you to discuss any frustrations he  
18 may have been having or any difficulties he may have been  
19 having in having witnesses come forward, whether that was  
20 something that was discussed between you, and whether you  
21 had discussed with Officer White whether it might be  
22 possible for him to attempt, via other means, to try to  
23 have individuals come forward?

24                   **MR. JUSTICE GRIFFITHS:** No, there was no  
25 conversation of that kind.

1           Mr. Strawczynski, just one other thing, if I  
2           can back -- because you rightly point out that on page 2 of  
3           my opinion letter, the last paragraph, having dealt with  
4           the issues in the letter involving Ms. Antoine, I then turn  
5           to the issues involving the others.

6                        That last paragraph just refers to  
7           allegations that report sexual misconduct, and I think  
8           that's a misrepresentation, a mistake. I misspoke myself.  
9           It should have included both physical abuse and sexual  
10          abuse and, in fact, on page 1 of my letter I specifically  
11          refer to allegations of physical abuse and sexual abuse.

12                       So my opinion should not be read as simply  
13          dealing with the allegations of sexual misconduct but also  
14          the allegations of physical abuse. I just wanted to clear  
15          that up.

16                       **MR. STRAWCZYNSKI:** Thank you, Your Honour.

17                       **MR. JUSTICE GRIFFITHS:** Thank you.

18                       **MR. STRAWCZYNSKI:** With that, I'm going to  
19          move to another area, and that is the OPP reinvestigation  
20          of Father Charles MacDonald in the pre-Project Truth era.

21                       **MR. JUSTICE GRIFFITHS:** Yes.

22                       **MR. STRAWCZYNSKI:** If I understood your  
23          evidence correctly, there was a discussion this morning  
24          about whether Inspector Smith was expressing to you that he  
25          did not believe that he had RPG in this case, and I believe

1       it was your evidence that he told you in quite clear terms  
2       that he did not think he had reached RPG.

3                   **MR. JUSTICE GRIFFITHS:** That's correct. He  
4       said he did not have personal -- he did not have a  
5       subjective belief, and you need both an objective and a  
6       subjective belief to have RPG. So that's correct.

7                   **MR. STRAWCZYNSKI:** And do you recall having  
8       any discussions with him where that might have been a  
9       somewhat more ambivalent stance that he was taking, whether  
10      he at any point communicated to you that he thought he  
11      might have believed the victim at heart but wasn't sure  
12      which parts of the testimony to believe?

13                   **MR. JUSTICE GRIFFITHS:** Yes, I think that's  
14      in his notes.

15                   I should tell you, Mr. Strawczynski, that  
16      nobody that I talked to -- police officers, Murray  
17      MacDonald, nobody that I talked to around this, did not  
18      believe that something happened that was inappropriate  
19      between David Silmser and people in authority. The  
20      question was whether it could be specific enough to found a  
21      criminal charge.

22                   **MR. STRAWCZYNSKI:** And I take it that that  
23      would have assisted in you forming your basis for your  
24      opinion of December 21<sup>st</sup>, 1994, which is at Exhibit 1147?

25                   **MR. JUSTICE GRIFFITHS:** My opinion then was

1           that there was no RPG.

2                       **MR. STRAWCZYNSKI:** I take it's now Justice  
3           Pelletier.

4                       **MR. JUSTICE GRIFFITHS:** Yes.

5                       **MR. STRAWCZYNSKI:** In 1996 he ends up, for a  
6           lack of a better term, distinguishing your opinion and  
7           recommending laying charges with respect to Father Charles  
8           MacDonald?

9                       **MR. JUSTICE GRIFFITHS:** Yes.

10                      **MR. STRAWCZYNSKI:** If we could go to his  
11           opinion, it's at C0394, Document Number 113943.

12                      **MR. JUSTICE GRIFFITHS:** I guess that's why  
13           they call them opinions.

14                      **MR. STRAWCZYNSKI:** On page 2 of the opinion,  
15           at the bottom, Justice Pelletier is reviewing the opinion  
16           that you had provided, and summarizes:

17                                "A decision was then made by Peter  
18                               Griffiths, Regional Director of Crown  
19                               Attorneys, not to proceed, given the  
20                               general lack of detail, corroboration  
21                               and similar-fact evidence. That  
22                               situation has changed somewhat, given  
23                               that there now exists two complainants  
24                               who provide, if there accounts are  
25                               believed at trial, corroboration of the

1 Silmsers complainant in the nature of  
2 similar-fact evidence."

3 Now, as we review this paragraph, sir, I  
4 guess the real question is whether just similar-fact  
5 evidence alone, absent any other new evidence, would lead  
6 to the concerns you had raised about vagueness of the  
7 statements being a barrier that is no longer one that would  
8 lead necessarily to a finding of no reasonable and probable  
9 grounds of conviction?

10 **MR. JUSTICE GRIFFITHS:** Clearly, Mr.  
11 Pelletier felt that his review of the subsequent  
12 investigation that he had overcome those difficulties. I  
13 think he indicates as well that it is the thinnest case.

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

15 **MR. JUSTICE GRIFFITHS:** It is the thinnest  
16 of cases. It was not a strong Crown case.

17 **MR. STRAWCZYNSKI:** Thank you.

18 I'm just going to move to a new area and  
19 this is with respect to the OPP dual investigations that  
20 are happening with respect to the Silmsers extortion matter.

21 **MR. JUSTICE GRIFFITHS:** Yes.

22 **MR. STRAWCZYNSKI:** Where Mr. Silmsers is a  
23 suspect and the reinvestigation of the Father Charles  
24 MacDonald complaints where again, obviously, Mr. Silmsers is  
25 the complainant.

1                   And I took it from your evidence that you  
2                   would not necessarily have been aware of the agreement in  
3                   place between -- or you would not have been aware that  
4                   Officer Smith and Officer Hamelink had not had the  
5                   opportunity to review each other's briefs prior to  
6                   providing them to yourself; correct?

7                   **MR. JUSTICE GRIFFITHS:** Correct.

8                   **MR. STRAWCZYNSKI:** When you ended up  
9                   reviewing the brief provided by Inspector Smith, did you  
10                  have the opportunity to review the Hamelink brief at the  
11                  same time?

12                  **MR. JUSTICE GRIFFITHS:** I don't recall  
13                  having them both on my desk and looking at them together.

14                  **MR. STRAWCZYNSKI:** I take it, sir, you  
15                  wouldn't have gone through methodically to determine  
16                  whether there were any inconsistencies as between the two  
17                  investigations, any statements that were taken or anything  
18                  of that nature?

19                  **MR. JUSTICE GRIFFITHS:** That's fair.

20                  **MR. STRAWCZYNSKI:** So Inspector Smith  
21                  indicated when he was here that one difficulty that arose  
22                  as between the two investigations is those two officers  
23                  didn't have the opportunity to review for inconsistency and  
24                  that gap might not have come to your mind as you had not  
25                  been informed?

1                   **MR. JUSTICE GRIFFITHS:** That's fair. I just  
2                   don't think it -- I was informed that they were going to --  
3                   oh, sorry, Mr. Kozloff.

4                   **MR. KOZLOFF:** I rarely interrupt judges as  
5                   Justice Glaude would tell you.

6                   I'm not sure inconsistency is the point that  
7                   Detective Inspector Smith was making. I think the point  
8                   that he was making was that he would have liked to have had  
9                   the fruits of Detective Inspector Hamelink's investigation  
10                  to make sure that he had all of the information possible at  
11                  his disposal in order to provide the best possible product  
12                  for an opinion, and I think he felt the same that Hamelink  
13                  would have benefited from having the benefit of his work as  
14                  well. I think that's the point rather than  
15                  inconsistencies.

16                  **THE COMMISSIONER:** Okay. What do you have  
17                  to say, sir.

18                  **MR. STRAWCZYNSKI:** That's fine. I think  
19                  that when you have two investigations involving one  
20                  individual and there's some overlap, it would be helpful  
21                  for both and there is a risk of inconsistency as well. So  
22                  I don't think we need to go into further detail with the  
23                  witness.

24                  **THE COMMISSIONER:** Okay.

25                  **MR. STRAWCZYNSKI:** Just moving on to the

1 extortion opinion that you provided, which is at Exhibit  
2 2574 on page 2 ---

3 **MR. JUSTICE GRIFFITHS:** You're ahead of me.

4 **THE COMMISSIONER:** It's the exuberance of  
5 youth.

6 (LAUGHTER/RIRES)

7 **THE COMMISSIONER:** What page, sir?

8 **MR. STRAWCZYNSKI:** Page 2, Mr. Commissioner.

9 **THE COMMISSIONER:** Thank you.

10 **MR. JUSTICE GRIFFITHS:** Yes.

11 **MR. STRAWCZYNSKI:** You've mentioned that the  
12 only witness statement that you could find that provides  
13 any evidence of an extortion threat comes from Malcolm  
14 MacDonald, and I understand that caused some concern for  
15 you, understandably so.

16 One question I have is whether the police  
17 who provided you with the Crown brief provided you with any  
18 indicator that one of their own officers had had a  
19 telephone conversation with Mr. Silmsler the day prior to  
20 Mr. Seguin's suicide?

21 **MR. JUSTICE GRIFFITHS:** What I had was the  
22 Crown brief.

23 **MR. STRAWCZYNSKI:** I can be corrected ---

24 **MR. JUSTICE GRIFFITHS:** That was delivered,  
25 and I reviewed it and I wrote the opinion.

1                   **MR. STRAWCZYNSKI:** It would have only been a  
2 one- or two-page note if it was in the brief, and I did  
3 review the brief and could not find it, but -- and I'm sure  
4 counsel will correct me if it was in the brief.

5                   But if there was communication between David  
6 Silmser and an officer of the local police department in  
7 which Mr. Silmser explains -- I should give you the  
8 background here.

9                   David Silmser calls the police. The police  
10 take a note to file indicating that Mr. Silmser has  
11 indicated he's in the middle of a civil settlement, that he  
12 is hoping to obtain money within the next day or so.  
13 Should anything happen to him, here are the following  
14 suspects, and he names two individuals.

15                   **THE COMMISSIONER:** Mr. Seguin and Mr.?

16                   **MR. STRAWCZYNSKI:** I believe Mr. MacDonald  
17 as well.

18                   **THE COMMISSIONER:** Mr. Malcolm MacDonald?

19                   **MR. STRAWCZYNSKI:** That would be Father  
20 MacDonald, but I ---

21                   **THE COMMISSIONER:** Okay.

22                   **MR. STRAWCZYNSKI:** In any event, sir, would  
23 that have been something that would have been of interest  
24 to you in preparing your brief?

25                   **MR. JUSTICE GRIFFITHS:** Yes, it could have

1           been. Clearly, it supports the opinion that I give here  
2           that Mr. Silmsler is not -- that there are no grounds to  
3           charge Mr. Silmsler with extortion.

4                   **MR. STRAWCZYNSKI:** And the reason being?

5                   **MR. JUSTICE GRIFFITHS:** The reasons that are  
6           set out in the brief, in my opinion letter.

7                   **MR. STRAWCZYNSKI:** I'm going to move on  
8           again, sir, to a new area. It's the Malcolm MacDonald  
9           attempt to obstruct justice file.

10                   Now, Commission counsel has taken us through  
11           some of Tim Smith's notes, which served as a form of aide-  
12           memoire. If we've missed some of this, just let me know,  
13           but I believe that what we went through with respect to the  
14           obstruct justice is that in December '94, you had a phone  
15           call with Tim Smith. You indicated that for Murray  
16           MacDonald, it might be appropriate or is appropriate to  
17           contact the Law Society, but on the issue of obstruct  
18           justice it's less than criminal but certainly  
19           inappropriate.

20                   **MR. JUSTICE GRIFFITHS:** No.

21                   **MR. STRAWCZYNSKI:** I apologize -- I was  
22           referring to Malcolm MacDonald.

23                   **MR. JUSTICE GRIFFITHS:** Yes.

24                   **MR. STRAWCZYNSKI:** Do you recall ---

25                   **MR. ENGELMANN:** In fairness to the witness,

1 perhaps counsel should take him to the page. It's December  
2 20<sup>th</sup>, and I can't remember the Bates page. It's 1803.

3 **THE COMMISSIONER:** Of the notes, December  
4 20<sup>th</sup> of '97? What year, Mr. Engelmann?

5 **MR. JUSTICE GRIFFITHS:** It's got to be '94,  
6 I think, Mr. Commissioner.

7 **THE COMMISSIONER:** Ninety-four ('94), okay.

8 **MR. JUSTICE GRIFFITHS:** December the 20<sup>th</sup>.

9 **THE COMMISSIONER:** So that would be around  
10 432 -- 232, sorry. The 20<sup>th</sup> of December?

11 **MR. JUSTICE GRIFFITHS:** Yes, sir, 233.

12 **THE COMMISSIONER:** Two thirty-four (234) --  
13 and 234, yes, m'hm.

14 **MR. JUSTICE GRIFFITHS:** Right.

15 **MR. STRAWCZYNSKI:** I apologise. The line  
16 just above says "Murray MacDonald, no problem".

17 The next line, which I take it to be for a  
18 separate investigation:

19 "Obstruct lawyers, appropriate to  
20 contact Law Society, obstruct justice,  
21 less than criminal but inappropriate."

22 Do you see that sir?

23 **MR. JUSTICE GRIFFITHS:** Yes.

24 **MR. STRAWCZYNSKI:** Then a couple of days  
25 later, on Bates page 235, I believe it's December 22<sup>nd</sup>, '94

1 at 9:30, there's the call from Peter Griffiths:

2 "Problem with Malcolm MacDonald,  
3 possible obstruct..."

4 **MR. JUSTICE GRIFFITHS:** "Further  
5 consultations."

6 **MR. STRAWCZYNSKI:** That's correct.  
7 "Further consultations" and eventually a  
8 charge is laid?

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. STRAWCZYNSKI:** What wasn't clear, at  
11 least to me from the evidence given so far today, was  
12 whether you ever had any discussions with Officer Smith  
13 about the possibility of charging the other two lawyers who  
14 were involved in this matter?

15 **MR. JUSTICE GRIFFITHS:** All three lawyers  
16 were included in the brief. I was only -- I was only  
17 having difficulty with Malcolm MacDonald, but the whole  
18 brief was forwarded to Don McDougald for his opinion.

19 **MR. STRAWCZYNSKI:** So when you say you were  
20 only having difficulties with Mr. MacDonald, is that to say  
21 that you had already determined in your mind that there was  
22 no R&PG with respect to Mr. Adams and Mr. Leduc?

23 **MR. JUSTICE GRIFFITHS:** In my mind, I  
24 thought there was no RPG with respect to those gentlemen.

25 **MR. STRAWCZYNSKI:** And do you recall

1 specifically whether Crown McDougald reported back orally  
2 to you with respect to Mr. Leduc and Mr. Adams' involvement  
3 in this affair?

4 **MR. JUSTICE GRIFFITHS:** I guess indirectly.  
5 He only recommended the charges against Malcolm MacDonald.

6 **MR. STRAWCZYSNKI:** Thank you.

7 And in terms of the Crown McDougald opinion,  
8 I take it that you gave him the facts or whatever documents  
9 you had and ---

10 **MR. JUSTICE GRIFFITHS:** I have him the  
11 brief.

12 **MR. STRAWCZYSNKI:** --- and it was an  
13 entirely independent third opinion at that point?

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

15 **MR. STRAWCZYSNKI:** Thank you.

16 **MR. JUSTICE GRIFFITHS:** This wasn't an oral  
17 report. It was from me to him. It was -- he had the whole  
18 brief.

19 **MR. STRAWCZYSNKI:** Now, we've just gone to  
20 Tim Smith's notes where initially the concern was that the  
21 lawyer's conduct was less than criminal but inappropriate  
22 and there was some discussion about contacting the Law  
23 Society of Upper Canada.

24 And I'm wondering, sir, whether your office  
25 ever did contact the Law Society of Upper Canada with

1           respect to any of these lawyers?

2                   **MR. KOZLOFF:** I'm not sure anything really  
3           turns on this but just to keep the record accurate, the  
4           word in Detective Inspector Smith's notes, which I take it  
5           is quoting the witness, is "unprofessional".

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

7                   **MR. KOZLOFF:** Not "inappropriate".

8                   **THE COMMISSIONER:** Right.

9                   **MR. STRAWCZYSNKI:** I apologize. I should  
10          get my glasses checked but I believe that would be correct.

11                   **THE COMMISSIONER:** Okay, so the question,  
12          again?

13                   **MR. STRAWCZYSNKI:** The question, again, sir,  
14          is whether the Crown office ever did make a call or a  
15          complaint to the Law Society with respect to any of these  
16          three lawyers?

17                   **MR. JUSTICE GRIFFITHS:** No.

18                   **MR. STRAWCZYSNKI:** Do you know why?

19                   **MR. JUSTICE GRIFFITHS:** Because ultimately  
20          there was a criminal charge that was laid.

21                   **MR. STRAWCZYSNKI:** I take it that a  
22          condition of the criminal charge or one reason for an  
23          absolute discharge that was provided to the Court by Curt  
24          Flanagan during that proceeding was that the Law Society  
25          would receive a complaint and that, in fact, it already may

1 have received one. But to the best of your knowledge it  
2 was not the Crown office who would have complained?

3 **MR. JUSTICE GRIFFITHS:** I did not file a  
4 complaint with the Law Society. I did not.

5 **MR. STRAWCZYSNKI:** And to the best of your  
6 knowledge, none of your colleagues had either?

7 **MR. JUSTICE GRIFFITHS:** I'm not aware of it.

8 **MR. STRAWCZYSNKI:** Thank you.

9 In terms of the absolute discharge, I  
10 understand from your evidence that you did not directly  
11 supervise Crown Flanagan on this matter and that the  
12 absolute discharge was commensurate with other decisions on  
13 this -- in this sort of environment. That said, I was  
14 wondering whether you were aware of the media coverage  
15 locally or elsewhere with respect to the attempt to  
16 obstruct justice charge or the subsequent reaction when  
17 there was an absolute discharge?

18 **MR. JUSTICE GRIFFITHS:** I guess I was part  
19 of the media coverage the year before. And I raised  
20 publicly that I was concerned about it.

21 **MR. STRAWCZYSNKI:** And when you did raise  
22 that publicly, was there some particular moment or some  
23 particular issue that made you decide that this required  
24 public comment from the Crown?

25 **MR. JUSTICE GRIFFITHS:** No, Mr.

1 Strawczynski, and if I had -- I'm very leery of contact  
2 with the media and as a Crown I was very leery and, I  
3 think, rightfully so. I suspect that my contact with the  
4 media in '95 arose because the media were calling me, not  
5 because I was calling the media.

6 **MR. STRAWCZYSNKI:** You don't have an  
7 independent recollection of who called who, I assume, at  
8 this point?

9 **MR. JUSTICE GRIFFITHS:** Mike Blanchard, I  
10 think, was the by-line on that article that was shown to  
11 me. I don't recall but I think that was it. He was a  
12 regular court reporter in the Ottawa courts.

13 **MR. STRAWCZYSNKI:** But again, I might have  
14 misunderstood, you still don't recall whether he would have  
15 called you or you would have voiced this concern  
16 independently to him?

17 **MR. JUSTICE GRIFFITHS:** I can tell you  
18 categorically, I did not call the media.

19 **MR. STRAWCZYSNKI:** In terms of the community  
20 concern, I take it you were somewhat aware of some of the  
21 fallout locally. Just for the record, I wanted to add a  
22 few articles into the record.

23 I don't really have any questions for you,  
24 sir, other than whether you were aware that there was some  
25 concern in the local community that Malcolm MacDonald had

1 got off "scot-free" was what one individual had suggested,  
2 and others had suggested that he was simply just taking the  
3 fall.

4 **MR. JUSTICE GRIFFITHS:** No, I'm not aware of  
5 it. I did not read any of the media articles at that time.  
6 And, frankly, the media comment on things that happened in  
7 the courts all the time. And often, they are singularly  
8 uninformed about what goes on in the courts. So I would  
9 not have been moved by that.

10 **MR. STRAWCZYSNKI:** Mr. Commissioner, I'd  
11 just like to pass up three articles. One is Document  
12 115591, the second is Document 729472 and the final article  
13 is 729473.

14 **THE COMMISSIONER:** Okay.

15 Did you become aware, sir, shortly after the  
16 sentencing that there were protests here in Cornwall over  
17 the sentencing?

18 **MR. JUSTICE GRIFFITHS:** No, I was not aware  
19 of that.

20 **THE COMMISSIONER:** Okay.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **THE COMMISSIONER:** Exhibit Number 3030 is a  
23 newspaper article in the Seaway News dated October 22<sup>nd</sup>,  
24 1995; Exhibit 3031 is an article that was featured in the  
25 Standard Freeholder on Friday, October 20<sup>th</sup>, 1995; and the

1 last one is Exhibit 3002 which is an article -- well, it's  
2 an opinion piece I suppose from Claude McIntosh, Saturday,  
3 October 21<sup>st</sup>, 1995.

4 --- EXHIBIT NO./PIÈCE NO. P-3030:

5 (115591) - Seaway News Article 'Priest's  
6 Lawyer Pleads Guilty But Gets Off Scot-Free  
7 dated 22 Oct 95

8 --- EXHIBIT NO./PIÈCE NO. P-3031:

9 (729472) - Standard-Freeholder Article  
10 'Priest's lawyer fall guy in sex abuse case:  
11 counsel dated 20 Oct 95

12 --- EXHIBIT NO./PIÈCE NO. P-3032:

13 (729473) - Standard-Freeholder Article 'This  
14 roller-coaster ride doesn't want to stop'  
15 dated 21 Oct 95

16 **THE COMMISSIONER:** Okay, go ahead.

17 **MR. JUSTICE GRIFFITHS:** Would that be in the  
18 Freeholder as well, Mr. Commissioner, the last one?

19 **THE COMMISSIONER:** Yeah.

20 **MR. JUSTICE GRIFFITHS:** Thank you.

21 **THE COMMISSIONER:** Go ahead.

22 So you don't have any questions?

23 **MR. STRAWCZYSNKI:** I don't have any  
24 questions for this witness, Your Honour.

25 **THE COMMISSIONER:** Yeah.

1                   **MR. STRAWCZYSNKI:** Mr. Commissioner. And  
2                   Your Honour, the last area that I'd like to take you to is  
3                   generally towards Project Truth and how it was created.

4                   I'd like to first start off by going to  
5                   Exhibit 0228 and this would have been the memo that was  
6                   prepared for you by Robert Pelletier.

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. STRAWCZYSNKI:** Now, if we review this  
9                   memo, first off let me just state that when I get through  
10                  these questions, they are just for the purpose of  
11                  understanding the steps that were taken and the processes  
12                  he's taken. It's not necessarily that the group that I  
13                  represent ascribes to the allegations as contained in the  
14                  Fantino brief or in this memo.

15                  **MR. JUSTICE GRIFFITHS:** I understand.

16                  **MR. STRAWCZYSNKI:** We're aware by the time  
17                  that this memo was created that Perry Dunlop has already  
18                  commenced his civil action.

19                  **MR. JUSTICE GRIFFITHS:** Yes.

20                  **MR. STRAWCZYSNKI:** And although the local  
21                  Crown is not named as a defendant, Mr. Pelletier, now  
22                  Justice Pelletier, explains that the Crown attorney for the  
23                  United Counties of Glengarry, Stormont and Dundas,  
24                  including the City of Cornwall is named in various  
25                  paragraphs in the context of various clandestine meetings

1 and arrangements involving certain named defendants and  
2 others.

3 **MR. JUSTICE GRIFFITHS:** Yes.

4 **MR. STRAWCZYSNKI:** Then we move on. At page  
5 5, there are references to meetings held or a meeting held  
6 at Stanley Island and it's alleged that the Crown was there  
7 as well as other members of the Cornwall community.

8 **MR. JUSTICE GRIFFITHS:** Yes.

9 **MR. STRAWCZYSNKI:** At page 6, we have Crown  
10 Pelletier, as he was then, taking us to the most recent  
11 allegations. It's the bottom paragraph.

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. STRAWCZYSNKI:** Against Father Charles  
14 MacDonald specifically, and you'll see that there is an  
15 exhaustive brief with new individuals and -- and this is  
16 key:

17 "A perceived conspiracy conducted by  
18 the alleged 'clan' to cover up these  
19 allegations."

20 **MR. JUSTICE GRIFFITHS:** Yes.

21 **MR. STRAWCZYSNKI:** And at page 9, we have  
22 Mr. Pelletier indicating that he is not convinced that  
23 these allegations are well founded.

24 **MR. JUSTICE GRIFFITHS:** Yes.

25 **MR. STRAWCZYSNKI:** Sir, obviously these

1       allegations that are disclosed in the Fantino brief, or  
2       however we want to describe it, were rather explosive  
3       materials; correct?

4                   **MR. JUSTICE GRIFFITHS:** I agree.

5                   **MR. STRAWCZYNSKI:** And at this time, the  
6       community was already concerned as to how -- or parts of  
7       the community had been concerned as to how the institutions  
8       were responding to allegations of historic sexual abuse;  
9       correct?

10                   **MR. JUSTICE GRIFFITHS:** I think that's  
11       correct.

12                   **MR. STRAWCZYNSKI:** And I take it from your  
13       comments about the April '97 meeting that these sorts of  
14       allegations would have caused grave concern to yourself and  
15       to others who were looking to properly respond to the  
16       claims?

17                   **MR. JUSTICE GRIFFITHS:** Well, grave concern  
18       because of the nature of the allegations and because of the  
19       impact on the ongoing prosecution. So there's two separate  
20       areas both of which are important.

21                   **MR. STRAWCZYNSKI:** So the first was whether  
22       or not ---

23                   **MR. JUSTICE GRIFFITHS:** The nature of the  
24       allegations.

25                   **MR. STRAWCZYNSKI:** The nature of the

1       allegations; and the second, obviously as discussed, was to  
2       not interfere with the current prosecutions that are  
3       ongoing.

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. STRAWCZYNSKI:** Now, I guess one question  
6       I have is, given the nature of the allegations, why was it  
7       felt that there was a need to necessarily investigate all  
8       the contents of the brief at the outset?

9                   **MR. JUSTICE GRIFFITHS:** Mr. Strawczynski, it  
10       never occurred to me not to investigate all the contents of  
11       the brief. I'm in no position to say, "Look at that  
12       allegation in that paragraph 22." This brief is presented  
13       as a whole of a conspiracy, very serious allegations. I  
14       don't know how it would be parched in any other way. There  
15       is the whole brief; investigate it all.

16                   **MR. STRAWCZYNSKI:** And when you receive  
17       private citizen investigations, is it standard practice for  
18       the Crown and police to set up ground rules at the  
19       beginning or was this a unique type of situation?

20                   **MR. JUSTICE GRIFFITHS:** It's unique in my  
21       experience, and this was not a private citizen. This was a  
22       police officer.

23                   **MR. STRAWCZYNSKI:** I understand that. I  
24       guess I was meaning to say that this individual was  
25       conducting investigations on his own time, not as an

1 official member of the Cornwall Police Service; correct?

2 MR. JUSTICE GRIFFITHS: I understand that.

3 And, as you say -- and there was a considerable amount of  
4 concern in the community about what Officer Dunlop was  
5 saying and doing.

6 MR. STRAWCZYNSKI: Was the idea at the time  
7 that there needed to be a strong public response from the  
8 institutions at this time, given the nature of the  
9 allegations?

10 MR. JUSTICE GRIFFITHS: No.

11 MR. STRAWCZYNSKI: It was simply ---

12 MR. JUSTICE GRIFFITHS: I had no concern  
13 about protecting institutions and making strong public  
14 responses. My concern was serious criminal allegations  
15 that needed to be investigated.

16 MR. STRAWCZYNSKI: We've talked a bit about  
17 what the actual mandate of Project Truth was and in your  
18 letter to Superintendent Edgar at Exhibit 2680 ---

19 MR. JUSTICE GRIFFITHS: Yes, sir.

20 MR. STRAWCZYNSKI: Sir, was this letter to  
21 Superintendent Edgar your understanding of all the matters  
22 that were to be investigated under Project Truth?

23 MR. JUSTICE GRIFFITHS: My understanding of  
24 what was being investigated was the contents of the Fantino  
25 brief. If I didn't express that with clarity or precision,

1 the fault is mine.

2 MR. STRAWCZYNSKI: Well, it's just that if  
3 we move to Exhibit 0331, which is a Project Truth mandate  
4 sheet ---

5 MR. JUSTICE GRIFFITHS: I'm sorry, just  
6 before we leave my ---

7 MR. STRAWCZYNSKI: Of course.

8 MR. JUSTICE GRIFFITHS: --- letter to  
9 Superintendent Edgar, I think the last paragraph, I say:  
10 "Given the very serious allegations, I  
11 would request Detective Inspector Smith  
12 be assigned to investigate the  
13 Dunlop/Bourgeois brief."

14 Those are -- that was the request.

15 MR. STRAWCZYNSKI: And when we look to  
16 Exhibit 0331, we have a description of Project Truth. And  
17 the description includes "an investigation into paedophile  
18 activity, both historic and ongoing, in Cornwall". You see  
19 that, sir?

20 MR. JUSTICE GRIFFITHS: I see that. I've  
21 never seen this document before.

22 MR. STRAWCZYNSKI: I'll give you a second to  
23 read it. It's quite short.

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. STRAWCZYNSKI: I take it from this

1 description of the mandate that there are two things that  
2 are being reviewed. One is allegations of pedophile  
3 activity and the second, in the second paragraph, really  
4 deals with obstruction of justice and attempts to terminate  
5 investigations; correct?

6 **MR. JUSTICE GRIFFITHS:** That's what it says.

7 **MR. STRAWCZYNSKI:** And in this mandate,  
8 there's no discussion about a clan of pedophiles or  
9 breaking a pedophile ring per se; is there?

10 **MR. JUSTICE GRIFFITHS:** It speaks for  
11 itself.

12 **MR. STRAWCZYNSKI:** And in your letter or in  
13 your understanding of what was contained in the  
14 Dunlop/Bourgeois brief, did you believe that the OPP would  
15 investigate the potential existence of pedophile rings?

16 **MR. JUSTICE GRIFFITHS:** I believed that they  
17 would investigate the allegations contained in the  
18 Dunlop/Bourgeois brief.

19 **MR. STRAWCZYNSKI:** And that would include  
20 the possible existence of a clan of pedophiles or a ring of  
21 pedophiles?

22 **MR. JUSTICE GRIFFITHS:** I don't mean to  
23 mince words with you, Mr. Strawczynski, but I gave them the  
24 brief; I said, "Investigate this."

25 **MR. STRAWCZYNSKI:** I guess what I'm getting

1 towards is in terms of the allegations that there was a  
2 pedophile ring in Cornwall, we've heard from Officer Pat  
3 Hall that -- or Inspector Hall that the OPP was intending  
4 to investigate a pedophile ring and that the OPP had made  
5 public statements about there not being a pedophile ring in  
6 town.

7 He explained the methodology of trying to  
8 determine whether there was the existence of a ring, and I  
9 believe it was his evidence that in order to start, he  
10 first needed a conviction from one individual who is  
11 alleged to have engaged in historic sexual assault or  
12 current sexual assault, and then determine whether there  
13 was a second individual who would have known that person,  
14 in order to start to build the chain, if you will.

15 And I'm wondering, sir, whether the method  
16 of investigation of a pedophile ring was discussed either  
17 in your first meetings of April, '94 -- or, sorry, in your  
18 first meetings or otherwise.

19 **THE COMMISSIONER:** Mr. Carroll?

20 **MR. CARROLL:** Sir, my recollection of  
21 Officer Hall's evidence is that from his perspective, he  
22 would need two convictions of persons in relationship to  
23 found a public statement; not one and then knowing someone  
24 else.

25 **MR. STRAWCZYNSKI:** We can accept that as the

1 evidence. So you would need to wait until there were two  
2 convictions and then you'd start to look, Your Honour, to  
3 determine whether there were interconnections between those  
4 two to establish whether there might have been some sort of  
5 other relationships. And I'm wondering whether that was  
6 ever discussed with the Crown as to whether or not that was  
7 the proper way of investigating a pedophile ring.

8 **MR. JUSTICE GRIFFITHS:** It was not discussed  
9 with me.

10 **MR. STRAWCZYNSKI:** Do you know if in the --  
11 at the outset whether the Crown went through the brief to  
12 try to, I guess, trouble-shoot and determine what sort of  
13 charges might be raised by the allegations that are being  
14 made by Mr. Dunlop?

15 **MR. JUSTICE GRIFFITHS:** I did not do that.

16 **MR. STRAWCZYNSKI:** Did any other Crown, to  
17 your knowledge?

18 **MR. JUSTICE GRIFFITHS:** I'm not aware of  
19 that. Nor was there any request that we do so.

20 The line between the responsibilities of  
21 Crown prosecutors and responsibilities of the police is  
22 blurry but present throughout this. The police  
23 investigate. And if they have a question that hinges on  
24 legal issues, they can ask for advice from the Crown, but  
25 basically the investigations are run by the police. That's

1 their job and their expertise.

2 **MR. STRAWCZYNSKI:** And in terms of the  
3 investigating officers, we know that it was Inspector Smith  
4 who was going to lead this group, and I take it that it was  
5 on his suggestion that you wrote your letter to  
6 Superintendent Edgar; correct?

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MR. STRAWCZYNSKI:** Why was -- was there any  
9 discussion about whether having Tim Smith as the head  
10 investigator -- whether that would be appropriate in this  
11 case? And if you'd like, I can back up and express some of  
12 the concerns ---

13 **MR. JUSTICE GRIFFITHS:** No, I don't think  
14 there was any discussion about whether it was appropriate.  
15 That's your question?

16 **MR. STRAWCZYNSKI:** Yes.

17 **MR. JUSTICE GRIFFITHS:** No, I don't believe  
18 there was.

19 **MR. STRAWCZYNSKI:** Because at this time, you  
20 were aware that Tim Smith and his officers had already  
21 investigated some of the allegations that would have been  
22 contained in the Dunlop and the Fantino brief; correct?

23 **MR. JUSTICE GRIFFITHS:** Yes.

24 **MR. STRAWCZYNSKI:** He would have already  
25 come to you and found that there was no RPG with respect to

1 Father Charles MacDonald; correct?

2 MR. JUSTICE GRIFFITHS: Once, yes.

3 MR. STRAWCZYSNKI: And once he also would  
4 have looked into the concern of cover-up or conspiracy and  
5 would have found that there was no reasonable grounds for a  
6 conviction in that area as well; correct?

7 MR. JUSTICE GRIFFITHS: On the evidence that  
8 he had at that time, Mr. Strawczynski, I mean, one of the  
9 earlier questions that I was asked here was my familiarity  
10 with historical sexual assault and how evidence can come  
11 out in bits and pieces over time.

12 And clearly, people that the police spoke to  
13 and were aware of in the community in earlier  
14 investigations who were not prepared to come forward and  
15 give testimony, subsequently were. So the fact situation  
16 changed overtime.

17 I had and have enormous confidence in  
18 Inspector Smith as a result of his work in Alfred and as a  
19 result of his work in Cornwall in his judgment and in his  
20 abilities as an investigator.

21 MR. STRAWCZYSNKI: Was it your view at the  
22 time, sir, or if it wasn't contemplated that would be fine  
23 as well, but did you contemplate whether having had  
24 Inspector Smith already having reviewed these areas, it  
25 would actually be of benefit to have him investigate them

1 again?

2 **MR. JUSTICE GRIFFITHS:** Well, I think that's  
3 fair.

4 **MR. STRAWCZYSNKI:** One other area which I'd  
5 like to take you to is the allegations that come up in the  
6 Pelletier memo explaining that although the local Crown is  
7 not named as a defendant per se, he is named as an  
8 individual who is alleged to have engaged in various  
9 clandestine meetings.

10 **MR. JUSTICE GRIFFITHS:** Yes.

11 **MR. STRAWCZYSNKI:** And it's on page 4 of  
12 Justice Pelletier's memo.

13 I'm wondering whether, aside from going  
14 outside to another Crown for these sorts of instances, when  
15 there is an institutional attack against the Crown whether  
16 there were any protocols in place to try to find another  
17 group that could be tasked with providing some sort of  
18 advice?

19 **MR. JUSTICE GRIFFITHS:** Another group who  
20 were not Crown attorneys?

21 **MR. STRAWCZYSNKI:** If there was any  
22 possibility, depending on the severity of the allegation,  
23 to go to a Crown in another jurisdiction, in another  
24 province for example?

25 **MR. JUSTICE GRIFFITHS:** Was there a

1 possibility, yes, and I've done that before.

2 MR. STRAWCZYSNKI: Was that considered for  
3 this particular case?

4 MR. JUSTICE GRIFFITHS: No.

5 MR. STRAWCZYSNKI: In this case, the  
6 complainants are of the view that the Crown has engaged in  
7 an obstruction of justice, effectively and a collaboration.  
8 And it was your view at the time then, sir, that having  
9 another Crown from another jurisdiction to oversee this  
10 matter would satisfy the naysayers? Or allow me to  
11 rephrase that.

12 Having a Crown from an outside jurisdiction  
13 would provide sufficient procedural fairness or would give  
14 a reasonable bystander the view that this is being handled  
15 professionally as required by the Crown?

16 MR. JUSTICE GRIFFITHS: Well, I've got four  
17 questions. Can I pick which one I answer?

18 (LAUGHTER/RIRES)

19 MR. STRAWCZYSNKI: I misspoke more than  
20 once, by all means if you'd like to.

21 MR. JUSTICE GRIFFITHS: Mr. Strawczynski, I  
22 did not take it to -- outside of the province or to another  
23 area of the province. Whether -- and that was -- that was  
24 my decision at the time and I don't resile from that  
25 decision now.

1                   My understanding of the allegations of Mr.  
2                   MacDonald were that they were allegations that he was  
3                   covering up illicit or illegal activities. My experience  
4                   with Mr. MacDonald throughout these matters -- just leave  
5                   it at these matters -- was that in fact he was very  
6                   forthcoming. He was the one who first brought it to my  
7                   attention that he was not somebody who was covering  
8                   anything up.

9                   Notwithstanding that, I directed that he be  
10                  thoroughly investigated by the police. I named him  
11                  specifically or his office in the letter to Superintendent  
12                  Edgar. I cut him no breaks in this and caused him, I'm  
13                  sure, no end of difficulties in his community as a result.  
14                  But I did not go outside of the jurisdiction of Eastern  
15                  Ontario for a prosecutor.

16                  **MR. STRAWCZYSNKI:** Sir, one final question.  
17                  Commission counsel has led you through your  
18                  understanding of how long the Project Truth investigations  
19                  would last and how time consuming they would become.

20                  I guess one concern or question that we have  
21                  is whether rather than starting with the large scale  
22                  investigation, the investigation could have started at the  
23                  core of the complainants, of these new complainants by  
24                  starting with having them interviewed right upfront and  
25                  starting from there to see whether their allegations could

1 at all be considered credible.

2 **MR. JUSTICE GRIFFITHS:** I'm really not  
3 qualified to answer your question. As I've said, I'm not  
4 an investigator. And I can't answer you as to alternative  
5 forms of investigation.

6 **MR. STRAWCZYSNKI:** So when you wrote the  
7 letter to Mr. Edgar, it was basically an open question as  
8 to how from there the police would handle the  
9 investigation?

10 **MR. JUSTICE GRIFFITHS:** I think so. I  
11 didn't direct them.

12 **MR. STRAWCZYSNKI:** Okay.  
13 Justice Griffiths, those are my questions.  
14 Thank you for your time.

15 **MR. JUSTICE GRIFFITHS:** Thank you sir.

16 **THE COMMISSIONER:** Thank you.

17 Mr. Horn?

18 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.  
19 HORN:

20 **MR. HORN:** Frank Horn.

21 **MR. JUSTICE GRIFFITHS:** Mr. Horn.

22 **MR. HORN:** Coalition for Action. And there  
23 is a couple of areas that I'm interested in or our  
24 organization is interested in.

25 In the opinion letter that you did on the

1 Antoine investigation on the Second Street Group Home, I  
2 understand that you had two documents. Was it the Crown  
3 brief confidential from Shawn White -- is that the one?

4 MR. JUSTICE GRIFFITHS: Yes.

5 MR. HORN: And it was quite a lengthy  
6 document including a number of interviews with a series of  
7 people that he went out and interviewed?

8 MR. JUSTICE GRIFFITHS: Yes.

9 MR. HORN: Okay. And then also his notes.  
10 Was that also included?

11 MR. JUSTICE GRIFFITHS: I can't recall what  
12 was in the brief. They may well have been but I can't  
13 recall.

14 MR. HORN: Okay. There is a document -- I'm  
15 just wondering if you recognize this document, number --  
16 Exhibit Number 2214 -- if that was also included?

17 MR. JUSTICE GRIFFITHS: I can't recall what  
18 was in the brief.

19 MR. HORN: Okay, all right.

20 Do you remember if it included previous  
21 investigations?

22 MR. JUSTICE GRIFFITHS: I can't recall what  
23 was in the brief.

24 MR. HORN: Okay. Did you know that there  
25 were previous investigations by Constables Malloy, Sebalj

1 and that there was a letter from Don Johnston that was sent  
2 to the Crown -- I think it's Norman ---

3 **THE COMMISSIONER:** Douglas.

4 **MR. HORN:** Norman Douglas -- was that part  
5 of the brief?

6 **MR. JUSTICE GRIFFITHS:** I believe so.

7 **MR. HORN:** Okay. And you had an opportunity  
8 to read that letter which contained a reference to a  
9 statement from Ms. Antoine?

10 **MR. JUSTICE GRIFFITHS:** I read the brief.

11 **MR. HORN:** You read the brief. Do you  
12 remember the statement from Ms. Antoine that was attached  
13 to the letter that was sent by Don Johnston to Norman  
14 Douglas?

15 **MR. JUSTICE GRIFFITHS:** Let me put that  
16 another way. I read the brief 15 years ago.

17 **MR. HORN:** Okay, all right.

18 Why I'm asking that is because if you did  
19 read -- I mean, if you did get it, that was included. That  
20 letter or that statement by Ms. Antoine, at the very end of  
21 her statement she mentions that -- let me just ---

22 **MR. JUSTICE GRIFFITHS:** Is this from 1988?

23 **MR. HORN:** 1989.

24 **MR. JUSTICE GRIFFITHS:** Eighty nine ('89),  
25 yes.

1                   **MR. HORN:** Yes, 1989, yes.

2                   **MR. JUSTICE GRIFFITHS:** Yes.

3                   **MR. HORN:** There was a reference to a --  
4 hang on a second -- she was talking about the children from  
5 the group home ran away, and the last words that she said  
6 was:

7                                   "On the day that we all ran away, I had  
8                                   a broken wrist that was never healed or  
9                                   casted."

10                   Those were the last words that she said in  
11 her statement.

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. HORN:** Now, if you read that back then -  
14 --

15                   **MR. JUSTICE GRIFFITHS:** Yes.

16                   **MR. HORN:** --- would that be an assault  
17 causing bodily harm?

18                   **MR. JUSTICE GRIFFITHS:** What?

19                   **MR. HORN:** A broken wrist?

20                   **MR. JUSTICE GRIFFITHS:** A broken wrist in  
21 and of itself is not an assault causing bodily harm. It's  
22 an -- no.

23                   **MR. HORN:** If it was mentioned that there  
24 was a broken wrist and that the allegations are that they  
25 were due to something that happened at the group home in

1       which someone that worked there caused it, would that be --  
2       and these were the allegations against that individual.  
3       Would that be assault causing bodily harm?

4                   **MR. JUSTICE GRIFFITHS:** If an individual was  
5       named in the circumstances that led to the breaking of the  
6       wrist were consistent with an assault, then that would be  
7       of great interest to me.

8                   **MR. HORN:** That would be of great interest  
9       to you?

10                  **MR. JUSTICE GRIFFITHS:** Absolutely.

11                  **MR. HORN:** Okay.

12                  Now, in your opinion letter, you indicate  
13       that one of the problems was the six-month limitation  
14       period.

15                  **MR. ENGELMANN:** I just -- the witness should  
16       have ---

17                  **MR. HORN:** Oh, yes.

18                  **MR. ENGELMANN:** It's Exhibit 1339.

19                  **MR. JUSTICE GRIFFITHS:** Thank you very much.

20                  **MR. HORN:** Okay, yes.

21                  **THE COMMISSIONER:** So 1339.

22                  **MR. HORN:** Thirteen thirty-nine (1339).

23                  **MR. JUSTICE GRIFFITHS:** Yes.

24                  **MR. HORN:** Yes. You indicate in there that  
25       one of the problems was the six-month limitation period

1 because you only ---

2 MR. JUSTICE GRIFFITHS: Is that page 2?

3 MR. HORN: Yes, page 2 in the first  
4 paragraph.

5 MR. JUSTICE GRIFFITHS: Thank you, I recall  
6 that.

7 MR. HORN: About halfway down, in the first  
8 paragraph.

9 MR. JUSTICE GRIFFITHS: Yes, I recall that.

10 MR. HORN: And, yes, they may have resulted  
11 in charges of common assault. Common assault has a six-  
12 month limitation period.

13 MR. JUSTICE GRIFFITHS: Yes.

14 MR. HORN: And this -- so there was a  
15 problem there?

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. HORN: You're saying that the injuries  
18 were just common assault?

19 MR. JUSTICE GRIFFITHS: Yes.

20 MR. HORN: But if the document that was  
21 attached to Don Johnson's letter indicated a broken wrist,  
22 that may have been an assault causing bodily harm that  
23 would have caused that?

24 MR. JUSTICE GRIFFITHS: But just saying a  
25 broken wrist doesn't lead to -- who broke the wrist and

1 under what circumstances? Did she break it falling down?  
2 Was she in a fight with somebody?

3 I mean, I don't know anything about how the  
4 wrist was broken and there's no allegation from Ms. Antoine  
5 as to how the wrist was broken. So, no, I have no evidence  
6 of assault causing bodily harm.

7 **MR. HORN:** Okay.

8 Now, the other documents that I'm referring  
9 to, the investigation by Constable Malloy and Constable  
10 Sebalj, those two investigations do refer to instances of  
11 things that were more than just common assault. They were  
12 actually more serious.

13 **MR. JUSTICE GRIFFITHS:** With Ms. Antoine?

14 **MR. HORN:** Yes, with Ms. Antoine.

15 **THE COMMISSIONER:** Are you going to show the  
16 witness?

17 **MR. HORN:** Yes.

18 **MR. JUSTICE GRIFFITHS:** She needs to be able  
19 to say who did something to her and not that she was beaten  
20 and it was blistered, but who did the beating. Otherwise,  
21 a criminal charge doesn't exist in the air, Mr. Horn. It  
22 has to be tied into, as you know, to a named individual and  
23 a date.

24 **MR. HORN:** Okay, I understand that, but I'm  
25 just -- I gather that you did not get this document that

1 I'm going to refer to.

2 Exhibit Number 1285, which is the statement  
3 that was taken by Constable Sebalj.

4 **THE COMMISSIONER:** Okay, so what part of the  
5 statement, sir?

6 **MR. HORN:** It would be page 3 at the top.

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MR. HORN:** At the top there, there's a  
9 broken wrist, fingers, split lips. Would that have been  
10 enough?

11 **MR. JUSTICE GRIFFITHS:** Who do I charge?

12 **MR. HORN:** Well, there's reference to ---

13 **MR. JUSTICE GRIFFITHS:** No, no, no.

14 With respect to the broken wrist and  
15 fingers, who broke the wrist? Who broke the fingers?

16 **MR. HORN:** The ---

17 **MR. JUSTICE GRIFFITHS:** That's what I would  
18 be concerned with.

19 **MR. HORN:** Okay. I understand that, but  
20 what -- I'm saying if you take the entire -- the statement  
21 as a whole ---

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. HORN:** --- she is making references to  
24 the things that happened to her while she was at the group  
25 home and the two people that she -- she points out that

1           they had problems with was Mr. Tenger and Mr. Keough.  
2           Those were the main people that she had had problems with  
3           and, as you said earlier in your testimony, that you have  
4           to look at the entire document. You don't just take one  
5           area. You have to look at the entire document.

6                           And if you look at the entire document, it  
7           would seem that she's making these allegations particularly  
8           against Mr. Keough.

9                           **MR. JUSTICE GRIFFITHS:** I read the entire  
10          brief that was prepared and given to me and I formed the  
11          opinion that you have in my written letter.

12                          **MR. HORN:** Okay. I understand that.

13                          **MR. CHISHOLM:** Excuse me, sir.

14                          **MR. HORN:** Yes?

15                          **MR. CHISHOLM:** Perhaps Mr. Horn can direct  
16          the witness to this particular passage of the statement  
17          that suggests the allegation's being made against Mr.  
18          Keough.

19                          **MR. HORN:** I don't think that it directly  
20          gives -- it says that -- that was from me. She's saying  
21          that these are the things that happened while she was in  
22          the group home and that she mainly alleges that it's Mr.  
23          Keough that was involved in that.

24                          What I'm asking you is, if you would have  
25          had that information ---

1                   **MR. CHISHOLM:** I'm sorry to interrupt again.  
2                   Again, perhaps Mr. Horn can show the witness where the  
3                   allegation's made mainly against Mr. Keough.

4                   **MR. HORN:** Well, there's another statement.  
5                   It's a later statement that was made to Sebalj and  
6                   Fitzpatrick. I'm just ---

7                   **THE COMMISSIONER:** Let ---

8                   **MR. HORN:** I just want to find out if you  
9                   would have had this information, because right now it seems  
10                  that you didn't get that information?

11                  **MR. JUSTICE GRIFFITHS:** I don't know that,  
12                  as I've said over and over. I don't know what was in the  
13                  brief. I received the brief.

14                  **MR. HORN:** Okay.

15                  **MR. JUSTICE GRIFFITHS:** This may well have  
16                  been in there.

17                  **MR. HORN:** You don't remember if you got a  
18                  statement from Constable Sebalj or ---

19                  **MR. JUSTICE GRIFFITHS:** I don't recall what  
20                  was in the brief.

21                  **MR. HORN:** --- Constable Malloy.

22                                 If you would have gotten it, I would suggest  
23                                 to you that there are statements in there which make these  
24                                 kinds of allegations.

25                                 Now, from the way it looks, the only

1 information you did receive was -- what's his name -- Shawn  
2 White, and these were the only information that you  
3 received.

4 He did an investigation and there were his  
5 own notes plus there was also typewritten notes that were  
6 also sent to you. It looks like that that's all you got.

7 **THE COMMISSIONER:** Mr. Horn, it may well be.  
8 He doesn't know. The witness doesn't know.

9 **MR. HORN:** I know he doesn't know. I just  
10 want to know if ---

11 **THE COMMISSIONER:** Can we get to the  
12 questions.

13 **MR. HORN:** The question is, if he was only  
14 given half the information ---

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

16 **MR. HORN:** --- about what really happened  
17 there, do you think that your opinion then is actually  
18 valid? You can -- is valid?

19 I mean, if you were only given half the  
20 information by the police department and you're not given  
21 the whole -- and you're only given part of it and not all  
22 the information, do you think that that's a valid opinion?

23 **MR. JUSTICE GRIFFITHS:** Mr. Horn, my opinion  
24 is based on the information I was provided.

25 **MR. HORN:** Okay, so you're depending

1 totally, completely, on what you're given by the police  
2 officers who give you the -- their investigation?

3 **MR. JUSTICE GRIFFITHS:** I am dependent  
4 largely -- in this particular case, different from the  
5 other consultations, there was also a meeting with Mr.  
6 White and Mr. MacDonald in which Officer White gave me some  
7 further information about the unwillingness of complainants  
8 to testify and cooperate with the police. So I relied on  
9 that information as well as what was contained in the  
10 brief.

11 **MR. HORN:** Does that include Ms. Antoine?

12 **MR. JUSTICE GRIFFITHS:** In terms of  
13 willingness to cooperate?

14 **MR. HORN:** Willingness to come forward.

15 **MR. JUSTICE GRIFFITHS:** No.

16 **MR. HORN:** Pardon?

17 **MR. JUSTICE GRIFFITHS:** No.

18 **MR. HORN:** That doesn't include -- oh, it's  
19 the other witnesses then?

20 **MR. JUSTICE GRIFFITHS:** Yes.

21 **MR. HORN:** So Ms. Antoine was willing to  
22 come forward?

23 **MR. JUSTICE GRIFFITHS:** That was my  
24 understanding and she'd come forward repeatedly.

25 **MR. HORN:** Okay, so she's the one that was

1 really adamant that she wanted something done? But you ---

2 **MR. JUSTICE GRIFFITHS:** I understand that.

3 **MR. HORN:** And the other witnesses that were  
4 in the brief, as far as you understood, none of them wanted  
5 to come forward?

6 **MR. JUSTICE GRIFFITHS:** That's what I was  
7 given to understand.

8 **MR. HORN:** Do you think that one individual  
9 giving statements and willing to go all the way for  
10 prosecution is usually good enough?

11 **MR. JUSTICE GRIFFITHS:** Yes, if there is  
12 reasonable and probable grounds.

13 **MR. HORN:** And so there's not reasonable and  
14 probable grounds even though that individual is willing to  
15 go and have the police lay charges and is willing to  
16 testify at a trial? You're saying first of all there has  
17 to be reasonable and probable grounds that the police would  
18 lay charges?

19 **MR. JUSTICE GRIFFITHS:** Yes, sir.

20 **MR. HORN:** Okay, so Shawn White is the one  
21 that made that decision or you advised him?

22 **MR. JUSTICE GRIFFITHS:** Shawn White went to  
23 Murray MacDonald and the two of them came to me.

24 **MR. HORN:** And they asked you ---

25 **MR. JUSTICE GRIFFITHS:** For my advice as to

1           whether or not there was sufficient evidence to support a  
2           criminal charge.

3                   **MR. HORN:** Okay. So if you had had not only  
4           the statements that were given to you from Shawn White but  
5           also the other statements, let's say from Constable Malloy,  
6           Sebalj, Ms. Fitzpatrick and also the letter that was given  
7           to Don Johnson with the attached -- if that had all been  
8           given to you and it did say that there was assault causing  
9           bodily harm, would you have given that opinion?

10                   **MR. CHISHOLM:** Sorry to interrupt. In  
11           fairness to the witness -- Mr. Horn has made reference to a  
12           number of statements -- in fairness to the witness, he may  
13           want to put those statements to him so we're not operating  
14           a vacuum.

15                   **MR. HORN:** Okay.

16                   **THE COMMISSIONER:** No, but -- okay, that's  
17           number 1.

18                   **MR. CALLAGHAN:** It's hypothetical, trying to  
19           get all of this, "If you had, if you had, if you had, if  
20           you" -- the witness testified what he's testified to.

21                   **MR. HORN:** Well, he doesn't remember.

22                   **MR. CALLAGHAN:** You got the evidence. There  
23           you go. Now we can move on.

24                   **MR. HORN:** He doesn't remember what he got.

25                   **THE COMMISSIONER:** Mr. Horn. Mr. Horn, he

1           can't tell you whether he had all the material that you've  
2           said or not. It's not going to get any better. It's just  
3           there.

4                   **MR. HORN:** So really then what we're saying  
5           is that you depended totally on the police in what they  
6           gave you.

7                   **MR. JUSTICE GRIFFITHS:** I always do. I'm  
8           not an independent investigator. They brought me a brief.  
9           He had some additional information about the willingness of  
10          some of the witnesses to testify.

11                   **MR. HORN:** And I'm suggesting to you that  
12          they only gave you what they wanted you to hear, and I'm  
13          suggesting that they withheld information and not gave you  
14          the whole story.

15                   **MR. JUSTICE GRIFFITHS:** No ---

16                   **MR. HORN:** And that's what I'm suggesting if  
17          that happened ---

18                   **MR. CALLAGHAN:** I thought we had time to  
19          argue later.

20                   **MR. HORN:** Okay.

21                   **MR. CALLAGHAN:** I mean, come on!

22                   **THE COMMISSIONER:** Mr. Horn, Mr. Horn.

23                   **MR. HORN:** That's my suggestion.

24                   **THE COMMISSIONER:** Mr. Horn, it's not a  
25          valid question.

1                   **MR. HORN:** Okay. All right.

2                   There was another interesting area and it  
3 was regard to the parallel investigation by Hamelink and  
4 the -- Smith.

5                   **MR. JUSTICE GRIFFITHS:** Yes.

6                   **MR. HORN:** Okay. And Hamelink was doing the  
7 one on the extortion?

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. HORN:** Okay. And Smith was doing -- and  
10 his people were doing the one on the other three ---

11                   **MR. JUSTICE GRIFFITHS:** Inspector Smith was  
12 doing ---

13                   **MR. HORN:** Yeah.

14                   **MR. JUSTICE GRIFFITHS:** --- the other three.

15                   **MR. HORN:** The other three investigations,  
16 yes.

17                   Now, you indicated and you would -- if you  
18 had been there giving your opinion, you would not have  
19 given advice for them to have Mr. Hamelink behind a one-way  
20 mirror, watching what was going on while they were  
21 investigating -- interviewing Mr. Silmsen?

22                   **MR. JUSTICE GRIFFITHS:** Yes.

23                   **MR. HORN:** Would it be because ---

24                   **THE COMMISSIONER:** Why was it? Why don't  
25 you just ask him why?

1                   **MR. HORN:** Why would that be wrong?

2                   **MR. JUSTICE GRIFFITHS:** Well, it's my view,  
3                   Mr. Horn, that Mr. Silmser is giving a statement to the  
4                   officer as a victim, and somebody is investigating him as  
5                   an accused and overhearing that. That just -- it doesn't  
6                   seem fair or appropriate to me. Now, I understand that --  
7                   anyway, that's my answer.

8                   **MR. HORN:** Okay. What about the fact that -  
9                   - the fact that there was the same police force doing both  
10                  investigations in which one was the -- he was the victim,  
11                  and the other one he is a complainant.

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. HORN:** Do you think that it's  
14                  appropriate for the same police department to be doing both  
15                  investigations?

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. HORN:** It's okay?

18                  **MR. JUSTICE GRIFFITHS:** Yes.

19                  **MR. HORN:** So that ---

20                  **MR. JUSTICE GRIFFITHS:** Clearly, they didn't  
21                  communicate.

22                  **MR. HORN:** Pardon?

23                  **MR. JUSTICE GRIFFITHS:** Clearly, they didn't  
24                  communicate very well. I mean, there were firewalls  
25                  between them. They both went off and conducted their

1 investigations.

2 **MR. HORN:** Okay. Do you think it's possible  
3 that it puts the complainant in a very, very awkward  
4 position because he's now an accused or a potential  
5 accused, and he's going to -- his lawyer and he are going  
6 to have to negotiate with this -- the Crown and the police  
7 force, and they are able to put pressure on him to ease up  
8 on his other allegations.

9 **MR. JUSTICE GRIFFITHS:** Pardon?

10 **MR. HORN:** I'm just suggesting to you that  
11 there's a possibility that there could be pressure put on  
12 him to back off on his -- and give in on the extortion if  
13 he backs off on the other three charges.

14 **MR. CARROLL:** That's an interesting  
15 hypothetical, but given that there is no factual foundation  
16 anywhere in the evidence, to my knowledge, it's an  
17 inappropriate question and I think he should move on.

18 **THE COMMISSIONER:** Well, I think we're  
19 talking about conflicts of interest and that kind of thing,  
20 so in the generality of the thing, he can ask the question.  
21 But you're right, there's nothing in here that ---

22 **MR. CARROLL:** There's not anything in the  
23 record that would suggest the proposition that he was about  
24 to put.

25 **THE COMMISSIONER:** Absolutely.

1                   MR. CARROLL: All right.

2                   THE COMMISSIONER: Absolutely.

3                   MR. HORN: Would you agree that that's one  
4 of the problems in this situation?

5                   MR. JUSTICE GRIFFITHS: I didn't see that as  
6 a problem.

7                   MR. HORN: You didn't see that?

8                   MR. JUSTICE GRIFFITHS: No.

9                   MR. HORN: No?

10                  MR. JUSTICE GRIFFITHS: I don't see that as  
11 a problem. I didn't see that as a problem.

12                  MR. HORN: Okay, so I just -- when I first  
13 saw it, that was my first impression -- is that it would be  
14 -- put him in -- put Mr. Silmsers in a real awkward  
15 position.

16                  MR. JUSTICE GRIFFITHS: I have no -- I have  
17 no quarrel that Mr. Silmsers was in an awkward position, and  
18 so were the police officers, when somebody is both an  
19 accused and a victim. I've seen that happen before in  
20 other situations and it's very difficult for everybody to  
21 keep the separate roles and understand the separate roles.

22                  MR. HORN: In particular, in this situation,  
23 in which the -- Mr. Hamelink was trying to get information  
24 against Mr. Silmsers while he's being interviewed by the  
25 other investigating officers, and it was done in a very,

1 very sneaky way. It was a very, very ---

2 **THE COMMISSIONER:** Mr. Horn, we've heard the  
3 evidence from the officers. It will be up to me to decide  
4 whether it was sneaky or not ---

5 **MR. HORN:** Okay.

6 **THE COMMISSIONER:** --- if I have to go  
7 there. And I think you should move on.

8 **MR. HORN:** Well, I mean, you know, it was  
9 putting Mr. Silmsler in a very, very tough spot. And I'm  
10 saying that ---

11 **THE COMMISSIONER:** Mr. Horn, it may have ---

12 **MR. HORN:** There's an impression that's  
13 being giving. There's an impression that's being given.  
14 There's that -- that this could be done and that nobody is  
15 going to say anything about it.

16 **THE COMMISSIONER:** Mr. Horn, the fact is  
17 Mr. Silmsler was not charged with extortion. The fact is  
18 the charges against Father MacDonald went forward.

19 **MR. HORN:** Okay.

20 **THE COMMISSIONER:** There you go. So had it  
21 been that Mr. Silmsler had been charged and then the charges  
22 withdrawn and the complaint withdrawn against Mr. -- Father  
23 Charles MacDonald, you might have something to hang your  
24 hat on, but ---

25 **MR. HORN:** Well ---

1                   **THE COMMISSIONER:** So far so good. Next  
2                   area.

3                   **MR. HORN:** It still doesn't look good.

4                   **THE COMMISSIONER:** Next area.

5                   **MR. HORN:** Okay.

6                   In the conspiracy investigation ---

7                   **THE COMMISSIONER:** Which one?

8                   **MR. HORN:** The -- well, the ---

9                   **THE COMMISSIONER:** The big one?

10                  **MR. HORN:** Yes, the investigation that was  
11                  done -- I'm suggesting to you that when you were asked to  
12                  give your opinion on the conspiracy between the three  
13                  parties -- the Crown ---

14                  **MR. JUSTICE GRIFFITHS:** This was -- this was  
15                  the '94 investigation by Inspector Smith?

16                  **MR. HORN:** Yeah and you're -- they were  
17                  asking you for your opinion on that?

18                  **MR. JUSTICE GRIFFITHS:** Yes.

19                  **MR. HORN:** Did you get a chance to look at  
20                  the -- the Ottawa Police Department's investigation of the  
21                  ---

22                  **MR. JUSTICE GRIFFITHS:** I looked at the  
23                  brief that was provided to me by Inspector Smith, I think,  
24                  in several volumes.

25                  **MR. HORN:** And when you -- when you looked

1 at it, did you see the fact that the -- that it seemed like  
2 the Ottawa police felt that there was an inexperienced  
3 police officer that was assigned to do the investigation;  
4 Sebalj?

5 MR. JUSTICE GRIFFITHS: If that was in the  
6 brief, I would have seen that.

7 MR. HORN: You would have seen that.  
8 And there was poor record keeping?

9 MR. JUSTICE GRIFFITHS: If that was in the  
10 brief, I would have seen that.

11 MR. HORN: And Mr. Murray MacDonald, even  
12 though he was in conflict was -- continued to give advice  
13 to Sebalj.

14 MR. JUSTICE GRIFFITHS: If that was in the  
15 brief, I would have seen that.

16 MR. HORN: And there was the suggestion that  
17 polygraph could have been used and it wasn't.

18 MR. JUSTICE GRIFFITHS: We can do this all  
19 day, Mr. Horn. I don't know whether the Ottawa police  
20 report was in the brief. If it was in the brief, I read,  
21 as I set out in my letter, the entire brief in forming my  
22 opinions.

23 But 15 years later, I don't know what was in  
24 ---

25 MR. HORN: I know.

1                   **MR. JUSTICE GRIFFITHS:** --- those briefs.

2                   **MR. HORN:** But I mean, you -- you must have  
3 done conspiracy investigations or been involved and you  
4 know how difficult it is to prove.

5                   **MR. JUSTICE GRIFFITHS:** Very difficult.

6                   **MR. HORN:** Because you've got to prove --  
7 it's an agreement basically.

8                   **MR. JUSTICE GRIFFITHS:** A particular  
9 agreement.

10                  **MR. HORN:** That's right.

11                  And that really, in order to prove something  
12 like this, they -- you would have had to have  
13 circumstantial evidence which would point to the fact that  
14 there was some sort of an agreement between these parties.

15                  **MR. JUSTICE GRIFFITHS:** That's often the  
16 case.

17                  **MR. HORN:** And that you would have to take  
18 into consideration something that was done by the Ottawa  
19 police and then they did their own investigation and you  
20 would have -- from that, you would see that there was --  
21 there was something amiss; not right.

22                  **MR. JUSTICE GRIFFITHS:** The fact that  
23 Constable Sebalj was an inexperienced officer would lead me  
24 to believe there was a conspiracy. Is that the suggestion,  
25 Mr. Horn?



1                   **MR. LEE:** Sir, good afternoon. My name is  
2 Dallas Lee. I'm counsel for the Victims' Group here.

3                   **MR. JUSTICE GRIFFITHS:** Yes, Mr. Lee.

4                   **MR. LEE:** I have just a few areas that I'd  
5 like to canvas with you and I would appreciate it if you  
6 would indulge for a moment and go over a few things that  
7 may seem obvious, but I'd like to get the answers anyways.

8                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

9                   **MR. LEE:** Your opinions as a Crown Attorney  
10 were based on the information that you were provided?

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

12                   **MR. LEE:** And if further information were  
13 provided, they may have changed those opinions?

14                   **MR. JUSTICE GRIFFITHS:** Might have.

15                   **MR. LEE:** And if you didn't have  
16 information, obviously, you couldn't analyze it or form an  
17 opinion in relation to it?

18                   **MR. JUSTICE GRIFFITHS:** That's true.

19                   **MR. LEE:** Speaking generally, if an alleged  
20 victim's statement that you receive as part of a Crown  
21 brief is ambiguous or unclear in some way; would it be open  
22 to you to request that the police follow-up or investigate  
23 further?

24                   **MR. JUSTICE GRIFFITHS:** It could. Mr.  
25 Pelletier did.

1           **MR. LEE:** Had you ever done that before?

2           **MR. JUSTICE GRIFFITHS:** I preferred not to.

3           **MR. LEE:** Had you ever done it before?

4           **MR. JUSTICE GRIFFITHS:** Mr. Lee, sitting  
5 here now, I can't recall. I may have. I can't recall.

6           **MR. LEE:** And why -- why do you say you  
7 would have preferred not to?

8           **MR. JUSTICE GRIFFITHS:** Because I do  
9 distinguish between my role as a -- as a lawyer, as a Crown  
10 and the police role as investigators. And if there is  
11 something that there's a clear deficit in the  
12 investigation, you need this kind of evidence, I have told  
13 people in the past, "Go get that kind of evidence" or "Your  
14 identification evidence isn't strong enough."

15           But basically, my opinion letter sets out  
16 where I think there are weaknesses in the case. And if  
17 they think that they can bolster up those weaknesses, then  
18 they can go address that in further investigation.

19           **MR. LEE:** Speaking generally as a Crown  
20 attorney reviewing a Crown brief to provide an opinion, did  
21 you see it as part of your role to scrutinize the  
22 sufficiency of the police investigation?

23           **MR. JUSTICE GRIFFITHS:** No, sir.

24           **MR. LEE:** You worked with what you had? You  
25 worked with what you had before you?

1                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

2                   **MR. LEE:** In relation to the obstruct  
3 justice investigation that came out of the illegal  
4 settlement involving David Silmser ---

5                   **MR. JUSTICE GRIFFITHS:** Yes.

6                   **MR. LEE:** --- the one where Malcolm  
7 MacDonald was ultimately charged; am I correct that all of  
8 the documents on all of the information that you would have  
9 had upon which to base your opinion would have come from  
10 the OPP?

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. LEE:** And you obviously didn't conduct  
13 any investigation of your own?

14                   **MR. JUSTICE GRIFFITHS:** No.

15                   **MR. LEE:** And do you recall having received  
16 materials from any other source, other than the OPP?

17                   **MR. JUSTICE GRIFFITHS:** No.

18                   **MR. LEE:** Just very briefly with respect to  
19 the Antoine/Second Street Group Home ---

20                   **MR. JUSTICE GRIFFITHS:** Except for Mr.  
21 Seguin which I then referred to the OPP.

22                   **MR. LEE:** Doug Seguin?

23                   **MR. JUSTICE GRIFFITHS:** Yes.

24                   **MR. LEE:** Yes, okay.

25                   With respect to Antoine and the Second

1 Street Group Home investigation, you were asked about --  
2 during cross by the CCR, you said that Officer White had  
3 communicated to you that all complainants, collectively,  
4 other than Ms. Antoine did not wish to proceed.

5 **MR. JUSTICE GRIFFITHS:** Yes, I think that's  
6 in my opinion letter.

7 **MR. LEE:** Do you have a specific  
8 recollection of Officer White having told you that?

9 **MR. JUSTICE GRIFFITHS:** Today? No.

10 **MR. LEE:** During your examination in-chief,  
11 you were asked a number of questions by Mr. Engelmann  
12 relating to correspondence back and forth between yourself  
13 and John MacDonald. Do you recall is that related to his  
14 displeasure with the Malcolm MacDonald absolute discharge?

15 **MR. JUSTICE GRIFFITHS:** Yes, sorry. Yes.

16 **MR. LEE:** And the -- the exhibits relating  
17 to that begin with Exhibit 221 and that -- I'm not sure I  
18 need you to turn that up, but 221 is the October 24<sup>th</sup>, '95  
19 letter to the Attorney General of Ontario from Mr.  
20 MacDonald ---

21 **MR. JUSTICE GRIFFITHS:** Yes.

22 **MR. LEE:** --- where he outlines his  
23 displeasure and the fact that he's the second victim --  
24 alleged victim of Charles MacDonald to come forward. Do  
25 you recall that?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. LEE:** And you respond to him on December  
3                   1<sup>st</sup>, 1995, and you write:

4                               "The sentence received by Mr. MacDonald  
5                               upon his plea of guilty to the charge  
6                               of obstructing justice is commensurate  
7                               with other similar cases that have been  
8                               decided by courts in other provinces."

9                   **MR. JUSTICE GRIFFITHS:** Yes.

10                   **MR. LEE:** Do you recall that?

11                               And you told us -- you specifically today  
12                   referenced a case you can recall in Saskatchewan.

13                   **MR. JUSTICE GRIFFITHS:** That was my recall  
14                   today.

15                   **MR. LEE:** And do you recall whether or not  
16                   there were any other cases that you referred to? In your  
17                   letter you say "...similar cases that have been decided by  
18                   courts in other provinces." in the plural.

19                   **MR. JUSTICE GRIFFITHS:** Today, I recalled  
20                   the one that dealt with a lawyer specifically was from  
21                   Saskatchewan, but there's other obstruct justice cases and  
22                   the person who would have been doing the research on that  
23                   clearly was the Crown assigned to it.

24                   **MR. LEE:** Mr. Flanagan?

25                   **MR. JUSTICE GRIFFITHS:** Yeah.

1                   **MR. LEE:** Do you have any -- when you write  
2 to Mr. MacDonald that his plea -- the sentence he received  
3 was "commensurate with other similar cases", I take it  
4 you'd agree with me that the Malcolm MacDonald situation is  
5 somewhat unique?

6                   As an example, he's a former Crown attorney,  
7 very senior member of the Bar. Here the obstruct justice  
8 relates to an alleged victim of an historic sexual abuse at  
9 the hands of a priest being paid money, not only to abandon  
10 a civil claim, but to abandon a criminal proceeding.

11                   **MR. JUSTICE GRIFFITHS:** Yes, Mr. Lee, every  
12 case is unique to the people involved in that case.

13                   **MR. LEE:** I -- I suppose when I -- when I  
14 use the word "unique", I may have instead used the word  
15 "outrageous", given the facts of this case. Mr. MacDonald  
16 pleads guilty to being part of a settlement that requires  
17 David Silmser to attend at the police station with a  
18 direction to stop a criminal investigation. You'd agree  
19 with me that that's rather unique?

20                   **MR. JUSTICE GRIFFITHS:** I didn't disagree  
21 with you.

22                   **MR. LEE:** And I take it, you don't have a  
23 recollection, necessarily, of any of these other cases that  
24 you're referring to where an absolute discharge was granted  
25 being quite of the severity of Mr. MacDonald's case?

1                   **MR. JUSTICE GRIFFITHS:** I know that the case  
2                   from Saskatchewan involved a lawyer.

3                   I can't give you any further details about  
4                   it right now because I don't recall right now, but  
5                   certainly, Mr. Lee, you have the capacity to research that.

6                   **MR. LEE:** You'd be surprised, with the pace  
7                   of this proceeding, how little capacity I have for  
8                   research, sir, but we'll -- we will take a look. You don't  
9                   have any -- beyond what you've told us, you have no  
10                  recollection of it?

11                  **MR. JUSTICE GRIFFITHS:** No, sir.

12                  **MR. LEE:** And moving to the Nelson Barque  
13                  situation, you were asked for an opinion about a  
14                  complainant who is monikered here C-44. You'll recall  
15                  who's the moniker?

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. LEE:** And did you consider, in giving  
18                  your opinion, whether Mr. Barque's position as a probation  
19                  officer and C-44's position as the probationer may have  
20                  vitiating any consent?

21                  **MR. JUSTICE GRIFFITHS:** Yes.

22                  **MR. LEE:** You did turn your mind to that?

23                  **MR. JUSTICE GRIFFITHS:** Yes.

24                  **MR. LEE:** And I take it by 1996, when you  
25                  were reviewing this matter, you would have been aware of

1 cases where people like schoolteachers or step-parents and  
2 employers and doctors had been found to be in authority in  
3 the context of vitiating consent?

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. LEE:** And that was something you  
6 considered here?

7 **MR. JUSTICE GRIFFITHS:** It was a part of the  
8 brief, part of the facts.

9 **MR. LEE:** And would it -- do you recall at  
10 that time your opinion being that it would be possible, in  
11 the case of a probation officer/probationer relationship,  
12 to have a position of authority where consent could be  
13 vitiating?

14 **MR. JUSTICE GRIFFITHS:** If you're asking me  
15 whether -- my opinion whether, in law at that time, it was  
16 possible, the answer is yes.

17 **MR. LEE:** I suppose that wasn't worded very  
18 well, but did you consider the possibility that a probation  
19 officer could be in a position of authority over a  
20 probationer?

21 **MR. JUSTICE GRIFFITHS:** Yes.

22 **MR. LEE:** And so it was the application of  
23 the facts of this case ---

24 **MR. JUSTICE GRIFFITHS:** The facts of this  
25 case.

1                   **MR. LEE:** --- where that fell apart?

2                   **MR. JUSTICE GRIFFITHS:** Yes, sir. That was  
3 my view.

4                   **MR. LEE:** You obviously understood that C-44  
5 was not simply a probationer in that office; he was Mr.  
6 Barque's probationer.

7                   **MR. JUSTICE GRIFFITHS:** Yes.

8                   **MR. LEE:** And you would have understood, and  
9 I think we looked at it a little bit today with  
10 Mr. Engelmann, that C-44 was provided with money for  
11 alcohol and drugs ---

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. LEE:** --- by Mr. Barque?

14                   And you would have understood that at the  
15 time of your review that C-44 had some history with  
16 alcohol, a history of troubles with alcohol?

17                   **MR. JUSTICE GRIFFITHS:** I think that was in  
18 the material.

19                   **(CELL PHONE RINGING)**

20                   **(LAUGHTER/RIRES)**

21                   **THE COMMISSIONER:** Let the record show ---

22                   **MR. JUSTICE GRIFFITHS:** I don't think that  
23 was a signal to you, Mr. Lee.

24                   **MR. LEE:** No.

25                   **THE COMMISSIONER:** No, it was a hook.

1                   **MR. LEE:** Mr. Engelmann took you earlier  
2                   today to the will say of C-44. That was the statement that  
3                   was taken December 21<sup>st</sup>, '95.

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. LEE:** If we can turn that up, please,  
6                   it's Exhibit 1276.

7                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

8                   **MR. LEE:** And I recall Ms. McIntosh's  
9                   objection and your agreement with it that you can't look at  
10                  a statement in isolation and pick certain parts out, and I  
11                  appreciate that. I want to take you to a couple of  
12                  sections Mr. Engelmann didn't, and I'll get to the point at  
13                  the end with that objection in mind.

14                  If we look, Madam Clerk, at page 6; that's  
15                  the one there; in the middle of the page C-44 says,  
16                  beginning, "He used to get me wine and give me money."

17                  **MR. JUSTICE GRIFFITHS:** Yes.

18                  **MR. LEE:** A few more lines down, Madam  
19                  Clerk. Just there, yes. Okay, the Bates page on that ends  
20                  968, for the record.

21                                 "He used to get me wine and give me  
22                                 money. We used to go up to his place  
23                                 there. There was residents and I was  
24                                 scared. You know, I couldn't say  
25                                 anything to anybody. There was nothing

1 I could do. I felt there was nothing I  
2 could do. The guy is superior, you  
3 know, and I don't know how long it went  
4 on for."

5 You see that there, sir?

6 **MR. JUSTICE GRIFFITHS:** Yes.

7 **MR. LEE:** And if we turn the page over,

8 Madam Clerk, to Bates 969 at the very bottom. C-44 says:

9 "Back at his place, I was watching  
10 pornography films, videos, and I was  
11 under the influence of wine. Lots of  
12 wine back then there. He used to give  
13 me money before it led up to this  
14 there. He used to give me money there  
15 so I could purchase narcotics and stuff  
16 like that there. Just back at this  
17 place, one day it happened."

18 You see that, sir?

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MR. LEE:** And he goes on. I'm not going to  
21 -- I won't take you through every single one of these  
22 references. He talks about having just come out of jail  
23 and being a kid and not knowing what he's doing, and things  
24 along those lines. And Mr. Engelmann took you, again, to  
25 talking about his fear of being breached from his probation

1 and ending up back in jail.

2 In a case like this, is it a -- something  
3 that you considered in your role as a Crown? We have C-44  
4 here making allegations, saying explicitly in a statement  
5 that he's scared; that he feels that he's been manipulated;  
6 he feels he's been abused; things along those lines. Do  
7 you consider at any point, as a Crown attorney, that  
8 perhaps this is a case best left to a judge or jury?

9 **MR. JUSTICE GRIFFITHS:** If I don't feel that  
10 there's reasonable and probable grounds, then there is no  
11 basis in law for the laying of a charge, you know, so --  
12 no.

13 **MR. LEE:** Is it ever a consideration that  
14 the case is so close to the line, one way or the other that  
15 you're better to err on the side of charge?

16 **MR. JUSTICE GRIFFITHS:** Could be.

17 **MR. LEE:** And this one obviously didn't  
18 amount to that in your mind.

19 **MR. JUSTICE GRIFFITHS:** In my mind, it did  
20 not, Mr. Lee. I mean, as you say, the money and the wine  
21 at Mr. Barque's residence preceded the sexual contact.

22 **MR. LEE:** I don't know how to word this  
23 question. Why do you consider that to be relevant sir?

24 **MR. JUSTICE GRIFFITHS:** I think because -- I  
25 mean, the implication is that -- and what Mr. ---

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

2                   **MR. JUSTICE GRIFFITHS:** What the complainant  
3 says is that he is afraid of Mr. Barque because of his  
4 position. And yet this person who he's afraid of he's also  
5 breaching his probation with, he's getting money from.  
6 He's going to his residence. He has this person in his  
7 pocket.

8                   **MR. LEE:** C-44 has Barque in his pocket is  
9 what you're saying?

10                  **MR. JUSTICE GRIFFITHS:** Well, that was my  
11 view as I read this. Notwithstanding the words of C-44,  
12 when I looked at the statement as a whole, I had genuine  
13 concerns about that.

14                  **THE COMMISSIONER:** I guess the opposite or  
15 the alternative argument is that what the probation officer  
16 was doing was grooming and setting him up for that.

17                  **MR. JUSTICE GRIFFITHS:** Could have been.

18                  **THE COMMISSIONER:** Could have been.

19                  **MR. JUSTICE GRIFFITHS:** Absolutely.

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

21                  **MR. LEE:** And, sir, I take it, given your  
22 experience, that by 1996, you would have appreciated that  
23 oftentimes in historical sexual abuse cases in particular  
24 there are actions by victims that are difficult to  
25 understand after the fact?

1                   **MR. JUSTICE GRIFFITHS:** Well, certainly, Mr.  
2                   Lee. There's actions by all of us that are difficult to  
3                   understand.

4                   **MR. LEE:** You would have, I take it, in your  
5                   experience seen cases, as an example, where a victim of  
6                   abuse returns years later and continues a -- I don't mean a  
7                   sexual relationship; some kind of relationship. Re-  
8                   initiates contact with an abuser.

9                   **MR. JUSTICE GRIFFITHS:** In domestic assault,  
10                  there's a whole syndrome about that, so certainly.

11                  **MR. LEE:** I have a problem with a leaky cup  
12                  here. Excuse me.

13                  Changing topics, if we can look -- again,  
14                  you've been here a couple of times -- to Exhibit 228. This  
15                  is the April 2<sup>nd</sup>, '97 memo to yourself from Robert  
16                  Pelletier.

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

18                  **MR. LEE:** And Mr. Pelletier begins with:

19                                 "As requested, the following is a  
20                                 summary and chronology of events  
21                                 related to the above-captioned matter."

22                  And you understood that Mr. Pelletier was  
23                  attempting to give you a fairly thorough summary of what  
24                  had gone on this matter, and where the matter stood at this  
25                  point?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. LEE:** And on page 2, you'll see in the  
3 bottom paragraph, it reads:

4                                "As a result of the statements taken  
5                                from [somebody we refer to here as C-3]  
6                                and John MacDonald, the matter was  
7                                reinvestigated and reassigned to myself  
8                                in order to make recommendations with  
9                                regards to possible charges."

10                   You see that?

11                   **MR. JUSTICE GRIFFITHS:** Yes.

12                   **MR. LEE:** And you would have known by this  
13 time that Mr. Pelletier had indeed given an opinion in  
14 relation to the charges against Father MacDonald?

15                   **MR. JUSTICE GRIFFITHS:** Yeah. I think this  
16 is a year later now.

17                   **MR. LEE:** And if we look, Madam Clerk, at  
18 Exhibit 394. That's the one.

19                                This is a memorandum from Robert Pelletier  
20 to Tim Smith which is essentially his opinion letter in  
21 relation to the allegations by those three men. And if we  
22 look at the last page, you're one of the people who's  
23 copied on this opinion.

24                   **MR. JUSTICE GRIFFITHS:** Yes.

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

1 the hard copy in front of you, sir, or do you ---

2 MR. JUSTICE GRIFFITHS: I don't. Do I ---

3 MR. LEE: It's Exhibit 3 -- and I'd like you  
4 to read the document before I ask you questions on it.

5 It's about three pages long.

6 MR. JUSTICE GRIFFITHS: Which one?

7 MR. LEE: Exhibit 394.

8 THE COMMISSIONER: It'll come.

9 MR. JUSTICE GRIFFITHS: Is this the Smith --

10 -

11 MR. LEE: Yes, this is the memo from  
12 Pelletier to Smith.

13 THE COMMISSIONER: Three-nine-four (394)?  
14 Okay.

15 So while we're waiting for the Clerk it's  
16 five o'clock. How long do you think you're going to be,  
17 Mr. Lee?

18 MR. LEE: Fifteen (15) minutes maybe.

19 THE COMMISSIONER: M'hm. And are we falling  
20 behind, Mr. Engelmann? Are we falling behind in the time  
21 somewhat or I don't know how long the witness wants to go  
22 and I don't know how long I can carry on to sit -- very  
23 interesting.

24 MR. ENGELMANN: Not to name names, but we  
25 fell behind on our first person.

1 (LAUGHTER/RIRES)

2 MR. ENGELMANN: That was 55 minutes and Mr.  
3 Horn was actually 5 minutes under his target.

4 THE COMMISSIONER: There you go.

5 MR. ENGELMANN: Not that I keep track.  
6 Mr. Lee might be a bit over.

7 I've got -- if you can just give me a  
8 moment, sir?

9 THE COMMISSIONER: Yeah.

10 MR. ENGELMANN: I have ---

11 THE COMMISSIONER: Did you want to give the  
12 witness the document, 324?

13 MR. ENGELMANN: --- 10 minutes for Mr.  
14 Neville; 10 minutes from Madame Levesque; 30 to 45 minutes  
15 for Mr. Callaghan; nothing from Mr. Chisholm. I had 5  
16 minutes from Mr. Carroll; 5 minutes from Mr. Kozloff; 5  
17 minutes -- 3 minutes from Ms. Robitaille, and Ms. McIntosh  
18 had not weighed in -- oh, so far so good.

19 THE COMMISSIONER: Okay. So we've got  
20 another hour to go at least.

21 How are you set for time, sir?

22 MR. JUSTICE GRIFFITHS: I'm at your  
23 disposal, Mr. Commissioner, whatever works well for you.

24 THE COMMISSIONER: Okay, thank you.

25 Well, let's finish Mr. Lee and we'll see

1 where we go.

2 MR. JUSTICE GRIFFITHS: Thank you.

3 MR. LEE: Sir, do you have Exhibit 394 in  
4 front of you?

5 MR. JUSTICE GRIFFITHS: I now have it, yes.

6 MR. LEE: Have you had an opportunity to  
7 read that while we were having our debate there?

8 MR. JUSTICE GRIFFITHS: No, I just got it  
9 now.

10 MR. LEE: If not, could you read that over,  
11 please?

12 MR. JUSTICE GRIFFITHS: Thank you.

13 (SHORT PAUSE/COURTE PAUSE)

14 THE COMMISSIONER: So I think what we'll do,  
15 sir -- while he's reading -- we'll finish your cross-  
16 examination. We'll take a five-minute health break and  
17 then we'll go 'til six and then at six if we're not done,  
18 well, we'll see where we go.

19 MR. JUSTICE GRIFFITHS: Mr. Lee, what is  
20 your question?

21 MR. LEE: If you look at page 2, please, the  
22 third paragraph you can see that Mr. Pelletier writes:

23 "Based on the foregoing, it is my  
24 considered opinion that reasonable and  
25 probable grounds exist for the laying

1 of a total of seven counts of indecent  
2 assault with respect to the three  
3 complainants."

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. LEE:** And he writes at the next  
6 paragraph, it's his view that:

7 In the event that the complainants  
8 testify in a forthright and credible  
9 manner, there exists reasonable  
10 prospects of conviction in respect to  
11 each charge."

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. LEE:** And you'll agree that Mr.  
14 Pelletier outlines his reasoning here for how the situation  
15 has changed and why he is now recommending charges when  
16 previously there were no charges in relation to Mr. Silmser  
17 in particular?

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. LEE:** And you'll agree with me that in  
20 this opinion letter he is no way critical of any of the  
21 three complainants?

22 **MR. JUSTICE GRIFFITHS:** He doesn't appear to  
23 be. I agree with you.

24 **MR. LEE:** And at page 2 in the paragraph I  
25 just read to you, he writes that in his view providing they

1       testify in a forthright and credible manner there may exist  
2       reasonable prospects of conviction. He appears to even be  
3       -- not necessarily optimistic, perhaps, but he seems to  
4       think that convictions are a real possibility here?

5                   **MR. JUSTICE GRIFFITHS:** Yes.

6                   **MR. LEE:** And so if we flip back to Exhibit  
7       228, the April 2<sup>nd</sup> '97 memo to yourself ---

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. LEE:** --- and you turn to page 3,  
10       please.

11                   Again, this is where he's giving you a  
12       rundown on what's happened in relation of Father MacDonald  
13       allegations over the years.

14                   If you look at the top paragraph, about  
15       halfway through at the start of the line you have, "1970."  
16       And then we have a new sentence ---

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. LEE:** --- that reads:

19                   "The decision to recommend charges was  
20                   made on the slimmest possible  
21                   reasonable prospect of conviction test  
22                   being met."

23                   Do you see that?

24                   **MR. JUSTICE GRIFFITHS:** Yes.

25                   **MR. LEE:** And you didn't see any wording to

1           that effect in the opinion we just looked at, did you?

2                   **MR. JUSTICE GRIFFITHS:** No.

3                   **MR. LEE:** And he writes at the end of that  
4 paragraph:

5                                "It was decided that at very least the  
6 complainants would be given an  
7 opportunity to testify at the  
8 preliminary inquiry and the reasonable  
9 prospects of conviction could be  
10 assessed thereafter."

11                   Do you see that?

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. LEE:** And that's information that wasn't  
14 provided in the original opinion we just looked at?

15                   **MR. JUSTICE GRIFFITHS:** I thought that  
16 paragraph 4 would have covered that.

17                   **MR. LEE:** Sorry, that's ---

18                   **MR. JUSTICE GRIFFITHS:** That if they testify  
19 in a forthright and credible manner that there would be a  
20 reasonable prospect of conviction.

21                   **MR. LEE:** What he seems to suggest in the  
22 final lines of page 3 here, as we have on the screen, is  
23 that the Crown is intending to go through a prelim and see  
24 how it goes and then to reassess.

25                   **MR. JUSTICE GRIFFITHS:** I think that's fair.

1                   **MR. LEE:** And that wasn't necessarily what  
2 he was suggesting in the first opinion. Do you recall that  
3 he simply says that if they testify in a forthright manner  
4 we'll proceed?

5                   **MR. JUSTICE GRIFFITHS:** Well, yes, and I  
6 took the obverse of that as well, that if they didn't, he  
7 wouldn't.

8                   **MR. LEE:** My understanding is that -- my  
9 impression anyways from the various Crown opinions I've  
10 read during the course of this proceeding, is that  
11 sometimes Crowns strategize a little bit and think -- and  
12 seem to suggest that the prelim is really going to be a way  
13 to vet this thing and to see whether or not we're on the  
14 right track, and other times they're confident and they  
15 don't necessarily communicate to police officers that the  
16 preliminary is really going to be the test to see whether  
17 this proceeds. Do you agree with that?

18                   **MR. JUSTICE GRIFFITHS:** That could well be.

19                   **MR. LEE:** Do you recall when you read  
20 Exhibit 228 at the time being concerned at all that Mr.  
21 Pelletier's tone seems to have changed somewhat in relation  
22 to the three initial complainants against Father MacDonald?

23                   **MR. JUSTICE GRIFFITHS:** No.

24                   **MR. LEE:** That wasn't something that jumped  
25 out at you?

1                   **MR. JUSTICE GRIFFITHS:** I don't recall.

2                   **MR. LEE:** And in the first full paragraph on  
3 page 3 that begins "A complicating factor" ---

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. LEE:** --- he speaks of Mr. Dunlop.

6                   **THE COMMISSIONER:** Mr. Lee, the soft steps  
7 of Mr. Neville.

8                   **MR. NEVILLE:** I'm not sure whether His  
9 Honour is aware, Commissioner, but by the time this  
10 document is authored by Mr. Pelletier, C-3 has testified in  
11 full and John MacDonald is partway through his cross-  
12 examination. So that document on April '97 is written in a  
13 somewhat different context than the original one. I'm not  
14 sure whether His Honour is aware of that.

15                   **MR. JUSTICE GRIFFITHS:** Thank you.

16                   **MR. LEE:** I would say it's being written in  
17 an entirely different context because they have the Fantino  
18 brief by this point as well. I mean, the world has changed  
19 from Mr. Pelletier's point-of-view, certainly.

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

21                   **MR. LEE:** What I'm asking this witness is  
22 whether or not having been copied on the original opinion  
23 and now receiving this one, he turned his mind to the fact  
24 that there seems to be a little bit less confidence, shall  
25 we say, in the potential success of the prosecutions in

1 relation to those three complainants, and he's told us that  
2 that wasn't something that he turned his mind to.

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

4 **MR. LEE:** The next paragraph, we have Mr.  
5 Dunlop was exonerated by the *Police Services Act* court and  
6 has since begun a crusade aimed at exposing what he  
7 perceived to be a conspiracy in Cornwall. Do you see that,  
8 sir?

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. LEE:** And crusade is rather strong  
11 wording, wouldn't you say?

12 **MR. JUSTICE GRIFFITHS:** I don't think he was  
13 writing this to you.

14 **MR. LEE:** To?

15 **MR. JUSTICE GRIFFITHS:** You.

16 **MR. LEE:** No, I don't think he was.

17 And you've been taken by Mr. Engelmann and  
18 Mr. Strawczynski a little bit to the various references to  
19 Murray MacDonald in here, and Mr. Pelletier sets out in  
20 some detail the allegations that are made against Murray  
21 MacDonald in the Fantino brief and the Dunlop statement of  
22 claim.

23 **MR. JUSTICE GRIFFITHS:** Yes, sir.

24 **MR. LEE:** In some of the statements, Mr.  
25 Pelletier references the fact that not only is Murray

1 MacDonalld being accused of being a clan member and being  
2 accused of being on an island, but his father is also  
3 brought into things given his history.

4 And you were aware at the time of this that  
5 Mr. Pelletier had been good friends with Murray MacDonalld  
6 for some time?

7 **MR. JUSTICE GRIFFITHS:** Yes, sir.

8 **MR. LEE:** What was your relationship with  
9 Mr. MacDonalld? Anything other than professional -- did you  
10 socialize at all?

11 **MR. JUSTICE GRIFFITHS:** At this time, I  
12 think I'd been to his home once for dinner. I had never  
13 met him before coming to Ottawa in 1993 and he was one of  
14 nine Crowns that worked for me; Crown Attorneys as opposed  
15 to assistants.

16 **MR. LEE:** What about Mr. Pelletier and  
17 yourself? Were you friends; did you socialize?

18 **MR. JUSTICE GRIFFITHS:** Yes, although I  
19 don't know whether that was before or after this. We went  
20 skiing a few times together and socialized to that extent.  
21 Were we friends? Yes, he replaced me on an interim basis  
22 on two occasions and that was at my request. I had  
23 sufficient confidence in his judgment and his ability that  
24 I thought that he would be the one that should replace me.

25 **MR. LEE:** And if we look at page 9, after

1 setting out all of the information at his disposal for you,  
2 Mr. Pelletier writes in the second paragraph:

3 "Needless to say, I'm not convinced  
4 that these allegations are well  
5 founded."

6 **MR. JUSTICE GRIFFITHS:** Yes.

7 **MR. LEE:** Do you see that?

8 **MR. JUSTICE GRIFFITHS:** Yes, I do.

9 **MR. LEE:** Do you recall raising your  
10 eyebrows a little bit to that line, "needless to say"?

11 **MR. JUSTICE GRIFFITHS:** No. No.

12 **MR. LEE:** And he goes on in that paragraph  
13 to speak of three unfortunate coincidences involving Murray  
14 MacDonald. Do you see that?

15 **THE COMMISSIONER:** It's in the first  
16 paragraph.

17 **MR. JUSTICE GRIFFITHS:** Yes, I see that.

18 **MR. LEE:** And, finally, as has been noted a  
19 couple of times now, he speaks of his personal and  
20 professional affiliations with Murray MacDonald becoming a  
21 complicating factor.

22 **MR. JUSTICE GRIFFITHS:** Yes, sir.

23 **MR. LEE:** Just above that, in that middle  
24 paragraph, he writes that:

25 "A decision to recommend charges would

1                   lend credence to these individual's  
2                   claims, including the conspiracy  
3                   theory. A decision not to recommend  
4                   charges would, in all likelihood, be  
5                   seen as the latest in the obstructive  
6                   measures employed by those in  
7                   authority."

8                   Do you see that?

9                   **MR. JUSTICE GRIFFITHS:** Yes.

10                  **MR. LEE:** Is that a valid consideration to  
11                  be taken when assessing RPG or reasonable prospect of  
12                  conviction?

13                  **MS. McINTOSH:** I don't think that that's the  
14                  context in which that remark is made. The remark is made  
15                  about why Justice Pelletier needs to -- Mr. Pelletier as he  
16                  then was -- needs to excuse himself. He's not taking it  
17                  into account in assessing RPG as I understand.

18                  **MR. JUSTICE GRIFFITHS:** Yeah, I agree with  
19                  that. He was saying in light of that he couldn't make the  
20                  right decision here, he'd have to step back.

21                  **MR. LEE:** And if I can for a moment just  
22                  take you to the paragraph above when I pointed you a moment  
23                  ago to three unfortunate coincidences you pointed out ---

24                  **MR. JUSTICE GRIFFITHS:** Yes.

25                  **MR. LEE:** --- the third unfortunate

1 coincidence is Malcolm MacDonald's conviction for  
2 obstructing justice.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. LEE: Did you discuss with Mr. Pelletier  
5 why he considered that to be an unfortunate coincidence?

6 MR. JUSTICE GRIFFITHS: No.

7 MR. LEE: You've told us that in relation to  
8 what Mr. Pelletier refers to as "a complicating factor",  
9 being his relationship with Mr. Murray MacDonald, he told  
10 you essentially that he needed to step back?

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. LEE: And you agreed with that?

13 MR. JUSTICE GRIFFITHS: Yes.

14 MR. LEE: What did you understand that he  
15 would be stepping back from, specifically?

16 MR. JUSTICE GRIFFITHS: The Dunlop brief.

17 MR. LEE: The Fantino brief?

18 MR. JUSTICE GRIFFITHS: The Fantino brief.

19 MR. LEE: Fantino/Dunlop/Bourgeois, whatever  
20 we're going to call it, brief?

21 MR. JUSTICE GRIFFITHS: Yes, sir.

22 MR. LEE: Certainly any allegations  
23 involving Murray MacDonald in any way?

24 MR. JUSTICE GRIFFITHS: Yes. Well, that's  
25 the Dunlop brief. I mean, he's continuing -- he is going

1 to continue with the preliminary hearing to its conclusion  
2 because ---

3 **MR. LEE:** The Charles MacDonald prelim?

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. LEE:** What about ---

6 **MR. JUSTICE GRIFFITHS:** And then he will be  
7 -- and then that's all for him.

8 **MR. LEE:** What about anything coming out of  
9 the Dunlop allegations, including any dealings with Dunlop  
10 himself? Was Mr. Pelletier to step back from that?

11 **MR. JUSTICE GRIFFITHS:** He wasn't -- I think  
12 I mentioned that Curt Flanagan was to be the contact if the  
13 police had any questions.

14 **MR. LEE:** Yes.

15 **MR. JUSTICE GRIFFITHS:** So there was no  
16 indication of continued involvement of Mr. Pelletier in the  
17 investigation of the Fantino brief, but there is an ongoing  
18 preliminary hearing and I know that Officer Dunlop from  
19 time-to-time would show up in the corridors of that  
20 preliminary hearing. Mr. Pelletier would have no control  
21 over that.

22 **MR. LEE:** Mr. Pelletier wasn't removed  
23 entirely from anything having to do with Project Truth, as  
24 an example?

25 **MR. JUSTICE GRIFFITHS:** No.

1                   **MR. LEE:** And if we go ---

2                   **MR. JUSTICE GRIFFITHS:** Sorry, go ahead.

3                   **MR. LEE:** We know ---

4                   **MR. JUSTICE GRIFFITHS:** Was he involved in  
5 anything involving Project Truth?

6                   **MR. LEE:** If we look very briefly at --  
7 Madam Clerk, Exhibit 2806?

8                   I think we can probably just look at this on  
9 the screen, sir.

10                   **MR. JUSTICE GRIFFITHS:** Thank you.

11                   **MR. LEE:** I don't have a document number but  
12 I have the first Bates page, if that helps. It's 1055110.

13                   This is a May 7<sup>th</sup>, 1998 memo from Mr.  
14 Pelletier to Mr. Smith, subject Project Truth, giving his  
15 opinion on allegations against seven suspects. Do you see  
16 that?

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. LEE:** And perhaps one more document,  
19 Madam Clerk, Exhibit 2769, which is what I am particularly  
20 interested in.

21                   **MS. McINTOSH:** Sorry to rise again during my  
22 friend's cross-examination but we know, and I'm not sure  
23 the witness does, that Project Truth ended up being about  
24 more than the Dunlop brief. So to put this to the witness  
25 and suggest that this was something that was part of the

1 Dunlop brief if that's -- I think the distinction should be  
2 drawn for the witness, is all I'm saying.

3 **THE COMMISSIONER:** Okay.

4 **MR. LEE:** I don't believe I did suggest  
5 that. I asked specifically whether or not he had been --  
6 the witness told me ---

7 **MR. JUSTICE GRIFFITHS:** This is following my  
8 appointment to the Bench. I've never seen that memo  
9 before.

10 **MR. LEE:** The one on the screen now?

11 **MR. JUSTICE GRIFFITHS:** The one you just  
12 showed from the 7<sup>th</sup> of ---

13 **MR. LEE:** May 7<sup>th</sup>, 1998.

14 **MR. JUSTICE GRIFFITHS:** (Ninety-eight) '98  
15 and the same with December 22<sup>nd</sup>, '98.

16 **MR. LEE:** Ms. McIntosh is quite right that  
17 Project Truth expanded beyond the Fantino brief and other  
18 allegations were -- my question for you was there was not -  
19 - you did not instruct Mr. Pelletier to remove himself  
20 entirely from Project Truth for its duration?

21 **MR. JUSTICE GRIFFITHS:** I was gone.

22 **MR. LEE:** You were?

23 **MR. JUSTICE GRIFFITHS:** Gone.

24 **MR. LEE:** But at the outset you didn't  
25 instruct him that he would have nothing to do with Project

1 Truth?

2 **MR. JUSTICE GRIFFITHS:** No, he would have  
3 nothing to do with anything involving Murray MacDonald and  
4 those allegations that involve Murray MacDonald. But I  
5 didn't specifically say stay away from all Project Truth  
6 matters. He was continuing for one thing with the  
7 preliminary hearing, as we've set out.

8 **MR. LEE:** And the document now on the  
9 screen, I understand that you were on the Bench by this  
10 point, but it's an opinion letter from Mr. Pelletier to  
11 Detective Sergeant Pat Hall relating to allegations of a  
12 conspiracy to commit murder and death threats against Perry  
13 Dunlop and his family, and Mr. Pelletier is giving the  
14 opinion on that.

15 **MR. JUSTICE GRIFFITHS:** Right.

16 **MR. LEE:** And I take it, again, you did not  
17 instruct Mr. Pelletier at the outset in April of 1997 that  
18 he'd have nothing to do with anything touching Perry Dunlop  
19 in any way?

20 **MR. JUSTICE GRIFFITHS:** No.

21 **MR. LEE:** In April of 1997, after having  
22 reviewed Mr. Pelletier's memorandum to you and having had  
23 an opportunity to review the Fantino brief yourself, was it  
24 your opinion that the allegations in the Fantino brief of a  
25 conspiracy and of a clan of paedophiles were not well-

1       founded, or perhaps better wording, they were unlikely to  
2       be true?

3                   **MR. JUSTICE GRIFFITHS:** There were some of  
4       the paragraphs that I recall, and don't ask me to say which  
5       numbers now because I don't think I could -- that seemed to  
6       me to be -- I think he used the word "outrageous". It just  
7       didn't have a ring of truth about them. On the other hand,  
8       stranger things have happened in the world and that's why I  
9       asked that the entire brief be investigated.

10                  **MR. LEE:** Did you at any point consider it  
11       even possible that the allegations relating to Murray  
12       MacDonald, as an example, could be true?

13                  **MR. JUSTICE GRIFFITHS:** No.

14                  **MR. LEE:** Was there any thought given at any  
15       point to -- you suggested earlier you could not parse the  
16       brief. Is that answer a result of having reflected on the  
17       point? Did you consider at any point going through the  
18       Fantino brief and identifying the allegations you consider  
19       to be obviously outrageous?

20                  **MR. JUSTICE GRIFFITHS:** No.

21                  **MR. LEE:** Do you think in hindsight that may  
22       have been a good idea?

23                  **MR. JUSTICE GRIFFITHS:** I don't know. I  
24       didn't consider it.

25                  **MR. LEE:** Did you have any reservations

1 about asking Tim Smith to investigate these matters ---

2 MR. JUSTICE GRIFFITHS: No.

3 MR. LEE: --- given his prior investigation?

4 MR. JUSTICE GRIFFITHS: No.

5 MR. LEE: Did you believe that it was  
6 possible that Tim Smith would find evidence where he had  
7 found none before and recommend -- and charge at this time?

8 MR. JUSTICE GRIFFITHS: I believe that  
9 Inspector Smith was a professional, competent, capable  
10 police officer who would do a professional job in reviewing  
11 and investigating that brief.

12 MR. LEE: And you recall that in December of  
13 1994 you were the Crown Attorney to give Mr. Smith an  
14 opinion relating to the collusion between -- the alleged  
15 collusion between the Cornwall Police, the Diocese and the  
16 Crown?

17 MR. JUSTICE GRIFFITHS: Yes.

18 MR. LEE: And you believe that Mr. Smith  
19 would be comfortable charging despite the earlier opinion?

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. LEE: And I understand, I should say,  
22 that there was new information, obviously, and that it was  
23 a new investigation.

24 MR. JUSTICE GRIFFITHS: That's right, and  
25 he'd already shown that with new information he was

1 comfortable with charging. He charged Father MacDonald  
2 after there were two prior opinions that he not charge  
3 Father MacDonald.

4 MR. LEE: Did you -- you suggested a little  
5 while ago that -- essentially that your request for the  
6 Project Truth investigation was not a public relations  
7 exercise.

8 MR. JUSTICE GRIFFITHS: Yes.

9 MR. LEE: Was part of your goal, sir, to  
10 restore public confidence in the police and the local  
11 Crown?

12 MR. JUSTICE GRIFFITHS: No.

13 MR. LEE: That wasn't something that entered  
14 your mind?

15 MR. JUSTICE GRIFFITHS: Might have entered  
16 my mind but it wasn't part of my goal.

17 MR. LEE: Was that something that you  
18 communicated to the police officers, that the goal of their  
19 investigation should be to restore confidence?

20 MR. JUSTICE GRIFFITHS: No. I investigated  
21 them -- that all the matters in the brief should be  
22 investigated if they were serious allegations.

23 MR. LEE: And was public perception  
24 something that you turned your mind at the time?

25 MR. JUSTICE GRIFFITHS: About what, Mr. Lee?

1                   **MR. LEE:** Public perception about the scope  
2 of Project Truth and the officers assigned to Project  
3 Truth.

4                   **MR. JUSTICE GRIFFITHS:** No, sir.

5                   **MR. LEE:** Thank you, sir, those are my  
6 questions.

7                   **MR. JUSTICE GRIFFITHS:** Thank you, Mr. Lee.

8                   **THE COMMISSIONER:** Let's take a very short  
9 five-minute health break and then we'll come back and see  
10 where we go.

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

13                   This hearing will resume at 5:25 p.m.

14 --- Upon recessing at 5:19 p.m./

15                   L'audience est suspendue à 17h19

16 --- Upon resuming at 5:27 p.m./

17                   L'audience est reprise à 17h27

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

20                   This hearing is now resumed. Please be  
21 seated. Veuillez vous asseoir.

22                   **MS. ROBITAILLE:** Good evening,  
23 Mr. Commissioner.

24                   **THE COMMISSIONER:** Good evening.

25                   **MS. ROBITAILLE:** Mr. Neville has graciously

1 allowed me to go ahead of him in the order.

2 THE COMMISSIONER: M'hm.

3 ASSOCIATION CHIEF JUSTICE PETER GRIFFITHS,

4 Resumed/Sous le même serment:

5 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

6 ROBITAILLE:

7 MS. ROBITAILLE: Good evening, Mr. Justice  
8 Griffiths. We've met earlier today. My name is Danielle  
9 Robitaille and I represent Mr. Jacques Leduc here at the  
10 Inquiry.

11 MR. JUSTICE GRIFFITHS: Yes.

12 MS. ROBITAILLE: Just a couple of questions  
13 about your review of the obstruct justice brief in 1994-  
14 '95. Just a couple of points I'd like to have you confirm  
15 for me.

16 When you reviewed this brief, it wasn't with  
17 tunnel vision; that is to say that you considered the  
18 conduct of Malcolm MacDonald to the exclusion of the other  
19 actors involved?

20 MR. JUSTICE GRIFFITHS: I looked at the  
21 entire brief.

22 MS. ROBITAILLE: And so you considered the  
23 conduct of Jacques Leduc, for example, and Sean Adams?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MS. ROBITAILLE: You were alive to the

1 question of whether or not Mr. Leduc, as counsel for the  
2 Diocese, obstructed justice?

3 **MR. JUSTICE GRIFFITHS:** I -- yes.

4 **MS. ROBITAILLE:** And you considered whether  
5 or not there was RPG and RPC to lay a charge against  
6 Jacques Leduc?

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MS. ROBITAILLE:** And neither you or Crown  
9 McDougald recommended a charge be laid against Mr. Leduc?

10 **MR. JUSTICE GRIFFITHS:** That's true.

11 **MS. ROBITAILLE:** And no charges were laid?

12 **MR. JUSTICE GRIFFITHS:** That's true.

13 **MS. ROBITAILLE:** Thank you.

14 **MR. JUSTICE GRIFFITHS:** Thank you.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Neville?

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

18 **NEVILLE:**

19 **MR. NEVILLE:** Good afternoon again,  
20 Your Honour. We know each other, obviously, for a number  
21 of years. I represent, as you also know, Father Charles  
22 MacDonald and, as you may not know, the Estate of Ken  
23 Seguin, his brother and their family. And I just have a  
24 couple of brief areas of questioning for you.

25 Could we look, Your Honour, at Exhibit 2574,

1           which is your opinion on the extortion brief compiled by  
2           Inspector Hamelink?

3                       **MR. JUSTICE GRIFFITHS:** Yes.

4                       **MR. NEVILLE:** And if we could look, please,  
5           at the second page of the letter. When we look at that  
6           particular page, Justice Griffiths, you point out that, as  
7           provided to you in material to review, the essence of the  
8           allegation of extortion came down to a statement by Malcolm  
9           MacDonald.

10                      **MR. JUSTICE GRIFFITHS:** Yes.

11                      **MR. NEVILLE:** And one of the problems  
12           therein of course is that Malcolm MacDonald was quoting in  
13           a hearsay form his late client, Ken Seguin.

14                      **MR. JUSTICE GRIFFITHS:** Yes.

15                      **MR. NEVILLE:** So that would have raised all  
16           kinds of questions. Apart from what you talked about in  
17           the lack of certainty to some degree in Malcolm MacDonald,  
18           we would get into all kinds of areas about the  
19           admissibility of so-called reliable hearsay as a  
20           foundation, among other things.

21                      **MR. JUSTICE GRIFFITHS:** And I don't think  
22           that test had been set out the Supreme Court of Canada yet.

23                      **MR. NEVILLE:** Well, I'm coming to things  
24           like that. So there are lot of complicating factors here;  
25           right?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. NEVILLE:** Now, can we look briefly then  
3 at Exhibit 2580, which is Document 715137. And what you  
4 have on the screen there, Justice Griffiths, is the index  
5 to the Hamelink brief; all right?

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. NEVILLE:** And you'll see the witness  
8 statements is item I and they're numbered. If we just --  
9 if Madam Clerk would just scroll through, there's quite a  
10 number of names listed.

11                   There's more. There we go.

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. NEVILLE:** I believe there should be at  
14 least one more page.

15                   There we are.

16                   Now, one of the names -- when one looks in  
17 the brief, if you accept my word for it at the moment,  
18 consistent with the index there is not a statement,  
19 apparently from a Staff Sergeant D'Arcy Dupuis of the  
20 Cornwall Police Service. One of the witnesses listed early  
21 in the list is a Staff Sergeant Brunet of the CPS and he  
22 quotes the fact that he received a report from Staff  
23 Sergeant Dupuis of a call Mr. Dupuis received from David  
24 Silmser the night that Ken Seguin committed suicide.

25                   **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. NEVILLE:** So with that context, can we  
2 now look, please, at 71 -- at Exhibit 372. The Document  
3 Number for other counsel is 714011.

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. NEVILLE:** This is Staff Sergeant Dupuis'  
6 report of his conversation with Mr. Silmsler. And, as best  
7 I can determine, Justice Griffiths, this was not a piece of  
8 material -- potential evidence that you were provided to  
9 look at.

10                   If you look at the bottom, he describes his  
11 conversation with Mr. Silmsler. If you look in the last  
12 three lines, "He", meaning Silmsler, "stated that if they  
13 don't pay within the next 48 hours, he will be going to the  
14 press with his story".

15                   Now, this is Sergeant Dupuis repeating words  
16 spoken to him, apparently directly, by Mr. Silmsler.

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. NEVILLE:** Would you agree with me though  
19 that on the basis of that, there might be a different  
20 interpretation as to whether there's extortion?

21                   **MR. JUSTICE GRIFFITHS:** I'd have to see it  
22 in the context of the whole.

23                   **MR. NEVILLE:** All right. Well, it appears  
24 that this is what he -- all he says. You have it there.  
25 You can take a look at the statement.

1                   **MR. JUSTICE GRIFFITHS:** I understand ---

2                   **MR. NEVILLE:** Fair enough.

3                   **MR. JUSTICE GRIFFITHS:** --- what you're  
4 saying but I can't sit here and second-guess ---

5                   **MR. NEVILLE:** Absolutely ---

6                   **MR. JUSTICE GRIFFITHS:** --- the ---

7                   **MR. NEVILLE:** No, no. All I'm saying to you  
8 is, you had, for the foundation of your opinion, an  
9 apparent statement by Malcolm MacDonald quoting his late  
10 client.

11                   **MR. JUSTICE GRIFFITHS:** Right.

12                   **MR. NEVILLE:** You did not have, it would  
13 appear, this statement.

14                   **MR. JUSTICE GRIFFITHS:** Right.

15                   **MR. NEVILLE:** As you've said in your letter  
16 of opinion, threatening civil action is no extortion.

17                   **MR. JUSTICE GRIFFITHS:** Right.

18                   **MR. NEVILLE:** But threatening other things,  
19 including going to the police, is extortion.

20                   **MR. JUSTICE GRIFFITHS:** Could be.

21                   **MR. NEVILLE:** All right. We'll just leave  
22 it at that.

23                   One final matter, sir. Could we look  
24 briefly at Exhibit 2637?

25                   **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MR. NEVILLE:** This is your letter to  
2                   Mr. Dunlop effectively replying to his letter to the  
3                   Solicitor General.

4                   **MR. JUSTICE GRIFFITHS:** Yes.

5                   **MR. NEVILLE:** Now, we know that you went to  
6                   the bench in May of 1998, so you were still in practice as  
7                   a Crown attorney for about 10 months following this letter.

8                   **MR. JUSTICE GRIFFITHS:** Yes.

9                   **MR. NEVILLE:** And you close the letter by  
10                  asking or inviting Mr. Dunlop, if he has any concerns or  
11                  wishes to discuss anything further, to contact you.

12                  **MR. JUSTICE GRIFFITHS:** Yes.

13                  **MR. NEVILLE:** In that 10 months before your  
14                  appointment, did he ever contact you to discuss matters or  
15                  get advice or see you at all?

16                  **MR. JUSTICE GRIFFITHS:** No.

17                  **MR. NEVILLE:** Those are my questions. Thank  
18                  you.

19                  **MR. JUSTICE GRIFFITHS:** Thank you.

20                  **THE COMMISSIONER:** Thank you.

21                  Mr. Chisholm?

22                  **MR. CHISHOLM:** No questions, sir, thank you.

23                  **THE COMMISSIONER:** Thank you.

24                  Ms. Levesque?

25                  --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

1           **LEVESQUE:**

2                           **MS. LEVESQUE:** Good afternoon, Mr. Justice  
3           Griffiths.

4                           **MR. JUSTICE GRIFFITHS:** Ms. Levesque.

5                           **MS. LEVESQUE:** My name is Gisèle Lévesque.  
6           I represent the Diocese of Alexandria-Cornwall.

7                           **MR. JUSTICE GRIFFITHS:** Yes.

8                           **MS. LEVESQUE:** I just have three very brief  
9           areas I wanted to cover with you this afternoon.

10                           The first relates to the settlement  
11           agreement that was provided in the notes, just to put the  
12           matter in context, in Tim Smith's notes, which were  
13           reviewed with you this morning.

14                           **MR. JUSTICE GRIFFITHS:** Yes.

15                           **MS. LEVESQUE:** You had a call with him and  
16           Tim Smith indicated he wanted to obtain a settlement  
17           agreement and your evidence this morning was that you  
18           advised him that you would provide it?

19                           **MR. JUSTICE GRIFFITHS:** Yeah, I would call  
20           the lawyer. I think I called Mr. Annis, and Mr. Annis  
21           provided it.

22                           **MS. LEVESQUE:** Correct. If I can just take  
23           you to Mr. Smith's, Tim Smith's notes, which is Exhibit  
24           1803.

25                           **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MS. LEVESQUE:** And at Bates page 215 -- 214  
2                   rather -- the entry at 15:25, there's a note there. It  
3                   says that you spoke with Inspector Smith earlier that  
4                   afternoon. This is the 10<sup>th</sup> of February. So Tim Smith  
5                   records:

6                                   "Above info from Gordon Bryan. Will  
7                                   cooperate fully. Anything we need he  
8                                   will assist."

9                   And then if we turn to the next page, which  
10                   is Bates page 215, on the 14<sup>th</sup> of February at 14:00 hrs,  
11                   there's a note again, "Called Peter Griffiths" and Tim  
12                   Smith advises you that he has received the settlement  
13                   agreement; correct?

14                                   **MR. JUSTICE GRIFFITHS:** Yes.

15                                   **MS. LEVESQUE:** So the settlement agreement  
16                   was received and Mr. Tim Smith's evidence before the  
17                   Inquiry was that he and Constable Fagan attended upon Gord  
18                   Bryan and obtained a copy of the settlement agreement and  
19                   the envelope, and he said that Mr. Bryan was completely  
20                   cooperative, extremely cooperative.

21                                   You have no recollection of ever being  
22                   advised that Gord Bryan was uncooperative?

23                                   **MR. JUSTICE GRIFFITHS:** No.

24                                   **MS. LEVESQUE:** You received the agreement?

25                                   **MR. JUSTICE GRIFFITHS:** Yes.

1                   **MS. LEVESQUE:** And you're not suggesting  
2                   that the Diocese obstructed your ability to obtain the  
3                   agreement or the envelope?

4                   **MR. JUSTICE GRIFFITHS:** No.

5                   **MS. LEVESQUE:** Okay.

6                   The next area I wanted to canvas with you is  
7                   the statement, the request by David Scott for a copy of the  
8                   statements. At the time that that request was made, no  
9                   charges had been laid?

10                  **MR. JUSTICE GRIFFITHS:** This is the 20<sup>th</sup> of -  
11                  - the 21<sup>st</sup> of December 1994?

12                  **MS. LEVESQUE:** This would have been the 12<sup>th</sup>  
13                  of September '94 ---

14                  **MR. JUSTICE GRIFFITHS:** Okay.

15                  **MS. LEVESQUE:** --- when the Bishop was  
16                  interviewed, I believe.

17                                 Just bear with me here.

18                                 Just bear with me a moment. I'm just  
19                                 looking for the exact reference; 12<sup>th</sup> of September '94 would  
20                                 have been when -- this would have been when Bishop LaRocque  
21                                 was interviewed by Tim Smith and Constable Fagan.

22                  **MR. JUSTICE GRIFFITHS:** Yes.

23                  **MS. LEVESQUE:** Okay.

24                                 So at that time, no charges had been laid,  
25                                 still investigating; correct?

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

2                   **MS. LEVESQUE:** Okay. And no charges were  
3                   laid; correct?

4                   **MR. JUSTICE GRIFFITHS:** That's correct.

5                   **MS. LEVESQUE:** And had someone been charged,  
6                   you would have been duty-bound to provide those statements;  
7                   would you not?

8                   **THE COMMISSIONER:** To the accused or his  
9                   solicitor.

10                  **MS. LEVESQUE:** Defence, correct, yes.  
11                  Correct?

12                  **MR. JUSTICE GRIFFITHS:** The Crown attorney  
13                  who had carriage of the action, yes.

14                  **MS. LEVESQUE:** And there's nothing unusual  
15                  with a defence lawyer asking for statements which may  
16                  affect the interests of his clients; correct?

17                  **MR. JUSTICE GRIFFITHS:** It doesn't usually  
18                  happen in the middle of a criminal investigation. It  
19                  usually happens at the end of the criminal investigation  
20                  when charges are laid.

21                  **MS. LEVESQUE:** Okay, but it's not unusual  
22                  for a request to be made?

23                  **MR. JUSTICE GRIFFITHS:** It is in my  
24                  experience.

25                  **MS. LEVESQUE:** It is?

1                   **MR. JUSTICE GRIFFITHS:** Yeah.

2                   **MS. LEVESQUE:** The last area I wanted to  
3 look at with you is there was a reference to Bishop  
4 alleging that Father Charles MacDonald admitted to sex  
5 assault, which were made by Shaver.

6                   **MR. JUSTICE GRIFFITHS:** Yeah, I remember  
7 that.

8                   **MS. LEVESQUE:** You recall that?

9                   **MR. JUSTICE GRIFFITHS:** I don't remember  
10 where, but I remember that.

11                   **MS. LEVESQUE:** Okay.

12                   **MR. JUSTICE GRIFFITHS:** Around May, I think,  
13 but go ahead.

14                   **MS. LEVESQUE:** Okay. I have June 16<sup>th</sup> but  
15 what I really would like to do ---

16                   **MR. JUSTICE GRIFFITHS:** Yes.

17                   **MS. LEVESQUE:** --- is maybe take you to  
18 Bishop LaRocque's statement, which is Exhibit 1790. And it  
19 would be at Bates page 1432 which is page 27 of the  
20 statement.

21                   So if you look at the top of the page, it  
22 starts Tim Smith is asking a question. This is where  
23 essentially Tim Smith put the exact issue to Bishop  
24 LaRocque. It starts with the fourth line down. It's in  
25 quotation marks.

1                   **THE COMMISSIONER:** Okay. So, again, why are  
2 we doing this?

3                   **MS. LEVESQUE:** Just in context.

4                   **THE COMMISSIONER:** What are we doing; what  
5 do you want to ask this witness? If you want to rehash the  
6 fact that the Bishop came here and testified and Mr. Shaver  
7 testified, and everybody -- then there's no necessity for  
8 that unless you want to ask this witness a specific  
9 question about that, and I don't know if he had any  
10 knowledge about it.

11                   **MS. LEVESQUE:** Well, he would have reviewed  
12 the Crown briefs in order to make the recommendation, and  
13 that statement would have been part of the Crown brief. So  
14 he would have ---

15                   **THE COMMISSIONER:** This one here?

16                   **MS. LEVESQUE:** Yes.

17                   **THE COMMISSIONER:** Okay.

18                   **MS. LEVESQUE:** He would have had that before  
19 him. Correct?

20                   **MR. JUSTICE GRIFFITHS:** Yes.

21                   **MS. LEVESQUE:** When you made the  
22 recommendation. So you've had an opportunity to read the -  
23 - if Madam Clerk can scroll down to the Bishop's answer.  
24 So if we look at the Bishop's answer to Mr. Smith's  
25 question, he says:

1 "M'hm, well, he couldn't have admitted  
2 to the assault because he never has and  
3 even after his treatment in Southdown,  
4 the same thing. He never has admitted  
5 to the incident and relations with  
6 teenagers."

7 Do you see that?

8 **MR. JUSTICE GRIFFITHS:** Yes.

9 **MS. LEVESQUE:** And you would have had that  
10 statement when you gave your recommendations?

11 **MR. JUSTICE GRIFFITHS:** Yes.

12 **MS. LEVESQUE:** And that essentially  
13 marginalized the issue; correct?

14 **MR. JUSTICE GRIFFITHS:** What issue?

15 **MS. LEVESQUE:** The issue of the Bishop  
16 alleging that Father Charles MacDonald had admitted to sex  
17 assault on David Silmser. He denies -- the Bishop denies  
18 saying that?

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MS. LEVESQUE:** It would have marginalized  
21 that issue; correct?

22 **MR. JUSTICE GRIFFITHS:** Yeah, I didn't see  
23 it as an issue.

24 **MS. LEVESQUE:** Okay, and if Chief Shaver, in  
25 any event, had an interest in pursuing that, would he not?

1                   **MR. JUSTICE GRIFFITHS:** I don't know what  
2 Chief Shaver would have had an interest in.

3                   **MS. LEVESQUE:** If, in fact, ---

4                   **MR. JUSTICE GRIFFITHS:** I don't know what  
5 Chief Shaver would have an interest in.

6                   **MS. LEVESQUE:** Okay. Those are my  
7 questions.

8                   **MR. JUSTICE GRIFFITHS:** Thank you.

9                   **MS. LEVESQUE:** Thank you.

10                  **THE COMMISSIONER:** Thank you.

11                  Mr. Callaghan, how long do you think you can  
12 be?

13                  **MR. CALLAGHAN:** Oh, I feel the heat, sir.  
14 I'll be as quick as I can.

15                                   **(LAUGHTER/RIRES)**

16                  **THE COMMISSIONER:** I thought it was a dinner  
17 bell we were listening to.

18                  **MR. CALLAGHAN:** The last time I stood  
19 between these fellows and the Best Western. I will be as  
20 quick as I can.

21                  **THE COMMISSIONER:** Well, well, as soon as  
22 you can; that's ---

23                  **MR. CALLAGHAN:** Well, no, I'm not going to  
24 be as long as I had indicated earlier.

25                  **THE COMMISSIONER:** All right. That sounds

1 better.

2 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

3 CALLAGHAN:

4 MR. CALLAGHAN: Chief Justice Griffiths, my  
5 name is John Callaghan. I represent the Cornwall Police  
6 Services.

7 MR. JUSTICE GRIFFITHS: Yes, sir.

8 MR. CALLAGHAN: The first area I'm going to  
9 start with is a very odd area. You are not related to one  
10 David Griffiths of the Court of Appeal?

11 MR. JUSTICE GRIFFITHS: No, I'm not.

12 MR. CALLAGHAN: All right.

13 And the reason I ask is that he gave  
14 opinions as a retired Justice of the Court of Appeal.

15 MR. JUSTICE GRIFFITHS: M'hm.

16 MR. CALLAGHAN: But you know who he is?

17 MR. JUSTICE GRIFFITHS: I know who he is.

18 MR. CALLAGHAN: And by reputation, he's an  
19 esteemed jurist?

20 MR. JUSTICE GRIFFITHS: He certainly is.

21 MR. CALLAGHAN: One of the best we've  
22 produced in the last 20 years?

23 MR. JUSTICE GRIFFITHS: He's an esteemed  
24 jurist.

25 MR. CALLAGHAN: All right. Given the number

1 of judges in the room, we don't want to compare.

2 So what I wanted to do is I want to just  
3 touch base with you with respect to the inter-relationship  
4 between obviously the Crown and the police. And I'm just  
5 going to -- you talked about advice that you've given to  
6 police over this Inquiry.

7 And I just want to make some observations  
8 and see if you agree that the investigation of historic  
9 sexual assault cases are complicated by the fact that the  
10 legislation and procedures surrounding the sexual assault  
11 incidents has been amended over time. In other words, ---

12 **MR. JUSTICE GRIFFITHS:** Yes.

13 **MR. CALLAGHAN:** --- the *Criminal Code* has  
14 been amended.

15 And that for the public, they should  
16 understand that criminal offences do not apply  
17 retroactively. You have to go back to the offence at the  
18 date.

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MR. CALLAGHAN:** Right. So in the case of  
21 Mr. Silmsler you're going back to the early seventies.

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. CALLAGHAN:** Right. And that there's a  
24 little distinction, and it's always a little complicated,  
25 which is that the law regarding evidence and procedure

1 ordinarily is the law when the -- the dates of the charge.  
2 In other words, they can apply retroactively.

3 **MR. JUSTICE GRIFFITHS:** Yes.

4 **MR. CALLAGHAN:** And that's an issue that's  
5 taken a while to work out in the law; correct?

6 **MR. JUSTICE GRIFFITHS:** I think that's fair.

7 **MR. CALLAGHAN:** And over your period, for  
8 example, issues as to whether or not, when they amended the  
9 *Criminal Code* regarding corroboration, whether that was a  
10 substantive amendment or a procedural amendment, took some  
11 time to work out as it wound its way up to the Supreme  
12 Court of Canada?

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. CALLAGHAN:** And indeed, some of the  
15 issues that people have spoken to you about which may  
16 appear clear now may not have been at the time. For  
17 example, we saw the case with regards to Mr. Barque and the  
18 issue of coercion. That is coercion to vitiate consent;  
19 correct?

20 **MR. JUSTICE GRIFFITHS:** Yes.

21 **MR. CALLAGHAN:** And there -- for example,  
22 there was amendments to the *Criminal Code* in about 1988  
23 that if you were the age -- between the ages of 14 and 18  
24 and a person of authority was involved, then that would  
25 vitiate consent; correct?

1                   **MR. JUSTICE GRIFFITHS:** Yes.

2                   **MR. CALLAGHAN:** And of course in the case of  
3                   the person being examined in this case, in the Barque case,  
4                   he was over the age of 18, so you had to look at whether --  
5                   what the issue of coercion was; correct?

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. CALLAGHAN:** And that has always been a  
8                   difficult issue as to whether or not -- what level of  
9                   coercion is required. And in fact it becomes a legal  
10                  determination at the end of the day; correct?

11                  **MR. JUSTICE GRIFFITHS:** Can be.

12                  **MR. CALLAGHAN:** Right. And so consequently  
13                  those are the areas where you would expect police often to  
14                  come to you; not always but often to come to you.

15                  **MR. JUSTICE GRIFFITHS:** Yes, could be.

16                  **MR. CALLAGHAN:** Right. And, for example, we  
17                  saw the comment in one of the allegations regarding  
18                  Mr. Silmsler that you didn't think it amounted to an  
19                  indecent assault. That would be the first incident. I  
20                  don't know if you recall that was your opinion.

21                  **MR. JUSTICE GRIFFITHS:** Yes.

22                  **MR. CALLAGHAN:** Right. And in some  
23                  instances it would not be uncommon for a Crown to tell the  
24                  officer, "Indecent assault will require you to get further  
25                  evidence about, say, touching the genitalia as opposed to

1 touching the thigh." Correct?

2 MR. JUSTICE GRIFFITHS: Could.

3 MR. CALLAGHAN: Right and that may lead to  
4 further investigations.

5 MR. JUSTICE GRIFFITHS: Yes, sir.

6 MR. CALLAGHAN: Right. And to the extent  
7 that people would question the interrelationship between  
8 the Crown and the police at these pre-charge stage, you  
9 were interviewed by Chief Justice LeSage -- Retired Chief  
10 Justice LeSage and Michael Code for their report on major  
11 cases; correct?

12 MR. JUSTICE GRIFFITHS: Yes.

13 MR. CALLAGHAN: Right. And you're familiar  
14 with their report that was released in November of this  
15 year -- somewhat?

16 MR. JUSTICE GRIFFITHS: Yes.

17 MR. CALLAGHAN: Right. And you know that in  
18 fact more corroboration between the police and the Crown at  
19 an early stage is being suggested, correct, in that report?

20 MR. JUSTICE GRIFFITHS: For major cases?

21 MR. CALLAGHAN: Yes.

22 MR. JUSTICE GRIFFITHS: Yes.

23 MR. CALLAGHAN: And in fact you're probably  
24 familiar with the Attorney General has -- has now got  
25 police officers in some -- pardon me, Crowns in police

1 stations in Toronto, Brampton and a few other areas;  
2 correct?

3 **MR. JUSTICE GRIFFITHS:** On guns and gangs  
4 issues, I think.

5 **MR. CALLAGHAN:** Guns and gangs, and then  
6 generally in November there was a press release. Were you  
7 familiar with that?

8 **MR. JUSTICE GRIFFITHS:** I missed the press  
9 release.

10 **MR. CALLAGHAN:** All right. Well, all I'm  
11 trying to illustrate is that the work you were doing in  
12 your region is accepted. That is, working with police in  
13 the pre-charge stage; correct?

14 **MR. JUSTICE GRIFFITHS:** Yes.

15 **MR. CALLAGHAN:** And when we talked about the  
16 Antoine case, for example, you had indicated that you had  
17 met with Officer White, and you'd indicated that your  
18 letter may not have reflected your true understanding in  
19 respect of the willingness of victims; correct?

20 **MR. JUSTICE GRIFFITHS:** I think it does  
21 understand my -- sorry, state my understanding that the  
22 witnesses were not willing. That's what I was told.

23 **MR. CALLAGHAN:** Right. But your letter  
24 states -- which is consistent with Constable White's notes  
25 -- that they weren't willing to come forward with the

1 sexual assault.

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. CALLAGHAN: Right. Did you ever issue a  
4 second opinion or speak to Shawn White thereafter?

5 MR. JUSTICE GRIFFITHS: No.

6 MR. CALLAGHAN: All right.

7 MR. JUSTICE GRIFFITHS: I wasn't asked for a  
8 second opinion.

9 MR. CALLAGHAN: No. I'm just reflecting the  
10 comment that you made, that's all, that you made -- I think  
11 it was to Mr. Lee you might have said -- or someone  
12 earlier, that there might have been an alteration to that  
13 paragraph.

14 MR. JUSTICE GRIFFITHS: No, the only  
15 alteration was that the paragraph makes reference to sexual  
16 allegations, and I said it should also include allegations  
17 of assault bodily harm.

18 MR. CALLAGHAN: Oh that's -- this was  
19 Exhibit 1339, I don't intend to go there at the moment. I  
20 just wanted to clarify whether there was any follow-up.

21 I frankly, sir, don't recall what Constable  
22 White said. His notes might indicate that he was advising  
23 you that they didn't want to proceed in respect of sexual  
24 assaults, but you have a recollection that he might have  
25 said something broader?

1                   **MR. JUSTICE GRIFFITHS:** I think it was with  
2                   respect to assaults and sexual assaults.

3                   **MR. CALLAGHAN:** Right. Well, okay. If we  
4                   just take a look at his notes, which is ---

5                   **MR. JUSTICE GRIFFITHS:** The people who he  
6                   investigated, other than Ms. Antoine, with respect to  
7                   whatever allegations they made did not wish to come forward  
8                   and testify.

9                   **MR. CALLAGHAN:** Right, and in any event ---

10                  **MR. JUSTICE GRIFFITHS:** That's kind of a big  
11                  blanket statement.

12                  **MR. CALLAGHAN:** But you went on to look at  
13                  the allegations in any event because you spoke about the  
14                  limitation, and that's where you in fact talk about the  
15                  fact that you have to apply the law as it was at the time.

16                  **MR. JUSTICE GRIFFITHS:** Yes.

17                  **MR. CALLAGHAN:** Right. And even though you  
18                  had -- you knew they didn't want to go ahead on the  
19                  physical assault issues, you actually gave an opinion;  
20                  correct?

21                  **MR. JUSTICE GRIFFITHS:** Yes.

22                  **MR. CALLAGHAN:** All right.

23                                 In speaking with Mr. Engelmann you had said  
24                                 that you had wished that maybe you should have reported --  
25                                 you would have reported it -- these incidents to the

1 Children's Aid Society but the duty to report issue wasn't  
2 clear in 1994 in your mind; correct? And you wouldn't be  
3 the first one to say that here, by the way.

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. CALLAGHAN:** All right.

6 The question asked by Mr. Engelmann seemed  
7 to imply that as an employer the CAS should have been told.  
8 We have heard from countless police officers that unless  
9 you charge you're not at liberty to go out advising the  
10 fruits of your investigation to employers. Is that  
11 something that you agree with? That ---

12 **MR. JUSTICE GRIFFITHS:** I have no idea.

13 **MR. CALLAGHAN:** All right.

14 **MR. JUSTICE GRIFFITHS:** I have to give you a  
15 short answer. My reflection, that that's the kind of  
16 information you wish the CAS had and that I'd given to  
17 them, is a reflection of reading those allegations and  
18 thinking somebody in charge should know. What are the  
19 limitations of communications to protect people who are  
20 falsely charged, who are innocent is something that -- if I  
21 ever found myself in that situation again I would want to  
22 look at before acting.

23 **MR. CALLAGHAN:** Okay. Just to be clear in  
24 your answer, there are two parts to that answer. The one  
25 part is with respect to the issue of children in need of

1 protection which is a statutory duty you say it wasn't  
2 entirely clear to you that -- when the duty to report  
3 arose; correct?

4 MR. JUSTICE GRIFFITHS: Yes.

5 MR. CALLAGHAN: All right. So the second  
6 aspect, just to be clear -- I hear what you're saying and I  
7 just want to be clear because it comes up. What you're  
8 essentially saying is you're not a *Police Services Act*  
9 expert; you're not an expert on privacy when it comes to  
10 policing and you don't -- you're not offering an opinion  
11 that they should have told an employer like CAS. It just -  
12 --

13 MR. JUSTICE GRIFFITHS: Correct, particular  
14 back in '94. I don't know what the obligations were.

15 MR. CALLAGHAN: All right.

16 MR. JUSTICE GRIFFITHS: Or '95 or '96.

17 MR. CALLAGHAN: Moving swiftly along, if I  
18 can ask you to turn up your opinion, Exhibit 1147, and I'm  
19 at the third page.

20 MR. JUSTICE GRIFFITHS: Yes.

21 MR. CALLAGHAN: And the first -- these are  
22 the -- you're now talking about the last couple of  
23 incidences and you say in your opinion -- and it's at the  
24 third paragraph:

25 "Neither of these allegations at this

1 late date are capable of corroboration  
2 by the usual means of recent complaint,  
3 medical evidence or physical evidence."

4 **MR. JUSTICE GRIFFITHS:** Yes.

5 **MR. CALLAGHAN:** "Both the dates when the  
6 events are said to have occurred and  
7 the events themselves are extremely  
8 vague in the recollection of David  
9 Silmser. It is not uncommon for  
10 individuals who have survived very  
11 stressful events to block out part or  
12 all of the memory of those events, but  
13 the absence of those specific memories  
14 make it all but impossible to commence  
15 prosecutions. The lack of detail,  
16 specific recollections with respect to  
17 those two events, creates significant  
18 problems in reaching an objective  
19 standard of reasonable and probable  
20 grounds."

21 Do you see that?

22 **MR. JUSTICE GRIFFITHS:** Yes.

23 **MR. CALLAGHAN:** All right, so just so we're  
24 clear. The fact that you might have an understanding why  
25 somebody can't come up with a detailed complaint doesn't

1           excuse your ability to be able to prove it in court.

2                       **MR. JUSTICE GRIFFITHS:** Right.

3                       **MR. CALLAGHAN:** Right. And that was a  
4           stumbling block you saw when you reviewed the Silmser case?

5                       **MR. JUSTICE GRIFFITHS:** Yes.

6                       **MR. CALLAGHAN:** Right. And then you go on to  
7           say:

8                                "It is my advice, based on the material  
9                                provided in the police investigation  
10                              brief, that the vagueness of the  
11                              allegations, the difficulty in placing  
12                              them within a reliable timeframe, and  
13                              the lack of corroboration all combine  
14                              to prevent the evidence from reaching  
15                              the threshold of objective, reasonable  
16                              and probable grounds. In addition, as  
17                              I understand from your materials, you  
18                              are not personally or subjectively  
19                              satisfied that you have reasonable and  
20                              probable grounds to lay criminal  
21                              charges, since the subjective belief is  
22                              an essential element in the swearing of  
23                              an information. It is my advice that  
24                              absent that belief, charges cannot be  
25                              laid by you."

1 To be clear, you're giving a legal opinion  
2 on the objectivity of the RPG; correct?

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. CALLAGHAN: And a constituent element of  
5 RPG is the subjective element of a police officer?

6 MR. JUSTICE GRIFFITHS: Yes.

7 MR. CALLAGHAN: You're not opining on  
8 whether the officer has a subjective element, you're  
9 relaying the fact that they don't and that in itself  
10 doesn't meet the test; correct?

11 MR. JUSTICE GRIFFITHS: Yes.

12 MR. CALLAGHAN: Right.

13 MR. JUSTICE GRIFFITHS: And he's told me he  
14 doesn't.

15 MR. CALLAGHAN: I know and I'm reading this  
16 just to be clear.

17 And the subjective element of a police  
18 officer is of the police officer's own domain. You're not,  
19 as a Crown, able to tell a police officer, "You've got  
20 objective grounds here. You must find it to be a  
21 subjective -- you must find subjectively to find this"?

22 MR. JUSTICE GRIFFITHS: No, that's true.

23 MR. CALLAGHAN: That's one of the  
24 protections in the system, that there's this check and  
25 balance that the officer has to have a subjective -- he has

1 to stand there and swear in front of a JP to get the  
2 information sworn; correct?

3 **MR. JUSTICE GRIFFITHS:** That's true.

4 **MR. CALLAGHAN:** Sorry for speaking quickly  
5 but we're trying to make headway here.

6 The next thing I'd like to cover is Exhibit  
7 1148 which is your opinion on the investigation done by Mr.  
8 Smith into the issue of collusion.

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. CALLAGHAN:** And, again, I'm going to  
11 take you to sort of the key opinion part which is the  
12 second page. In this, you're reviewing now Tim Smith's  
13 investigation, third paragraph:

14 "Upon a review of your brief, it would  
15 appear that there is no evidence,  
16 direct or indirect, of any agreement  
17 between those parties. The  
18 investigation by the Cornwall Police  
19 Service of the original allegations  
20 made by David Silmser in December of  
21 '92 was not a sham. The investigation  
22 was extensive, involved dozens of  
23 witnesses and lasted over a period of  
24 months. During the course of that  
25 investigation, the Crown Attorney was

1 informally consulted on numerous  
2 occasions. From the earliest  
3 consultation it was clear that both the  
4 Crown and the police were concerned  
5 about the sufficiency of the evidence.  
6 There's no evidence that any  
7 representative of the Archdiocese  
8 contacted the Crown Attorney or the  
9 officers in charge of that  
10 investigation to improperly influence  
11 either of those individuals to stop a  
12 valid investigation.  
13 I agree with your assessment that  
14 objectively there are no reasonable and  
15 probable grounds to warrant the laying  
16 of any charges arising out of these  
17 allegations. You have indicated that  
18 you believe subjectively that there is  
19 no evidence and you have set out that  
20 belief in your memorandum to me.  
21 Under the circumstances, I can advise  
22 you that without the subjective belief  
23 it is my opinion that charges cannot be  
24 laid."

25 Now, sir, that was your opinion at the time?

1                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

2                   **MR. CALLAGHAN:** And I take it, with all you  
3 learned later, that opinion never changed?

4                   **MR. JUSTICE GRIFFITHS:** It doesn't really  
5 matter. The important time is at the time that the opinion  
6 is expressed. On the information that I had before me,  
7 that was the opinion.

8                   **MR. CALLAGHAN:** Right. And if I might then,  
9 sometime thereafter things seemed to heat up with respect  
10 to involvement of Mr. Dunlop and I want to show you a  
11 letter, Document 122746. Well, perhaps we can put it on  
12 the screen. Notice was given, I'm certain of it. Perhaps  
13 we can put it on the screen. It's one paragraph. I think  
14 it's of interest. It was in the other documents and I'm  
15 certain we gave notice. If I didn't, I didn't.

16                   **MR. CALLAGHAN:** Now, this is a letter, sir,  
17 to you from Charles Bourgeois.

18                   **MR. JUSTICE GRIFFITHS:** Yes.

19                   **MR. CALLAGHAN:** And might I read this, Mr.  
20 Commissioner? This is -- perhaps we can make this an  
21 exhibit and hold it and bring the exhibit tomorrow?

22                   **THE COMMISSIONER:** Exhibit -- what number,  
23 Madam Clerk -- 30?

24                   **MR. ENGELMANN:** If I may, just a reminder to  
25 counsel. I've said this about 10 times but if it's on the

1 other list, they're not prepared for the hearing, they have  
2 to give notice.

3 **MR. CALLAGHAN:** Well, a notice was given.

4 **MR. ENGELMANN:** No, it wasn't.

5 **THE COMMISSIONER:** Okay, okay.

6 Ladies and gentlemen ---

7 **MR. CALLAGHAN:** Sorry.

8 **THE COMMISSIONER:** -- you guys can work that  
9 out after.

10 **MR. CALLAGHAN:** We'll have an arm wrestle  
11 later.

12 **THE COMMISSIONER:** Right.

13 So what is the exhibit number?

14 **THE REGISTRAR:** It's 3033.

15 **THE COMMISSIONER:** So 3033 is a letter dated  
16 July 17<sup>th</sup>, 1996 addressed to Peter Griffiths from Charles  
17 Bourgeois.

18 --- **EXHIBIT NO./PIÈCE NO. P-3033:**

19 (122746) - Letter from Charles Bourgeois to  
20 Peter Griffiths re: *R. v. Malcolm MacDonald*  
21 dated July 17, 1996

22 **MR. CALLAGHAN:** All right.

23 So, sir, this is a letter to you from  
24 Charles Bourgeois and the essence of it, and I'm sure  
25 you've had a chance to read it in that interim, is he wants

1       you to take steps to save the Malcolm MacDonald file. Do  
2       you see that?

3                   **MR. JUSTICE GRIFFITHS:** Yes.

4                   **MR. CALLAGHAN:** Did you have any discussions  
5       with Charles Bourgeois?

6                   **MR. JUSTICE GRIFFITHS:** I don't recall any.

7                   **MR. CALLAGHAN:** Do you recall this letter at  
8       all?

9                   **MR. JUSTICE GRIFFITHS:** I don't. I don't  
10       doubt I got it. I don't recall it.

11                   **MR. CALLAGHAN:** But do you recall whether  
12       you had any communication from Charles Bourgeois? This is  
13       in July '96 to the point when the Fantino brief comes up,  
14       which would be the next spring.

15                   **MR. JUSTICE GRIFFITHS:** No.

16                   **MR. CALLAGHAN:** I then -- in the sequence  
17       I'd like to then take you to Document -- Exhibit 1822.

18                   **THE COMMISSIONER:** Eighteen-twenty-two  
19       (1822) is in your book if you want to -- okay?

20                   **(SHORT PAUSE/COURTE PAUSE)**

21                   **MR. CALLAGHAN:** So do we all have that?

22                   **THE COMMISSIONER:** No, not on the screen  
23       yet.

24                   **MR. CALLAGHAN:** And just while they put it  
25       on the screen, Chief Justice, this is a letter from Tim

1 Smith to Tony Repa and it thanks him for providing a demand  
2 for particulars. And in the second paragraph, you'll see:

3 "I have reviewed these documents and  
4 note several allegations which appear  
5 to be criminal in nature. I'm already  
6 aware of several of these allegations  
7 and prior to you notifying me of your  
8 concerns, I had already arranged a  
9 meeting with the Regional Director of  
10 Crown Attorneys, Peter Griffiths, in  
11 Ottawa for April 24<sup>th</sup>, 1997."

12 Do you see that?

13 **MR. JUSTICE GRIFFITHS:** Yes.

14 **MR. CALLAGHAN:** So this is all happening  
15 simultaneously, that Chief Repa is giving you documents  
16 arising out of the civil lawsuit and, at the same time,  
17 you're getting word of the Fantino brief?

18 **MR. JUSTICE GRIFFITHS:** No.

19 **MR. CALLAGHAN:** No? Maybe you could help  
20 me.

21 **MR. JUSTICE GRIFFITHS:** I'm not receiving  
22 documents from Chief Repa but I am getting notice from  
23 Bourgeois.

24 **MR. CALLAGHAN:** Oh, Tim Smith didn't show  
25 you the demand for particulars, or do you recall?

1                   **MR. JUSTICE GRIFFITHS:** I don't recall  
2                   seeing that before.

3                   **MR. CALLAGHAN:** And the demand for  
4                   particulars would have set out sort of allegations that  
5                   were being proffered and asking for proof of them. It was  
6                   done by, I believe, the Diocese at the time and a response  
7                   was given by Charles Bourgeois.

8                   None of that was stuff that you were aware  
9                   of at the time?

10                  **MR. JUSTICE GRIFFITHS:** No.

11                  **MR. CALLAGHAN:** All right.

12                  I had wanted to present to you Document  
13                  116242 if I could and Madam Clerk has them. They're rather  
14                  large.

15                  It's the Fantino brief. It's the large  
16                  material, yeah. And Mr. Engelmann congratulates me for  
17                  having given notice on that one.

18                  **THE COMMISSIONER:** And that's because you  
19                  didn't want to photocopy the pages.

20                                   **(LAUGHTER/RIRES)**

21                  **MR. CALLAGHAN:** Now, sir, whilst Madam Clerk  
22                  gets those ready, I can advise that these came from the  
23                  Ministry of the Attorney General production. This is the  
24                  Fantino brief and I'm not sure whether you're going to be  
25                  able to ascertain that or not, but I would like you to take

1 a quick look at it and see if you can.

2 We have many of these documents in the  
3 record, Mr. Commissioner. We haven't put them in as one  
4 document. So that when you come to write your report, Mr.  
5 Commissioner, you can actually say, "Okay, I know here's  
6 where it is".

7 **THE COMMISSIONER:** Okay. So Exhibit 3034 is  
8 going to be a document called what?

9 **MR. ENGELMANN:** Let's call it the Fantino  
10 brief ---

11 **THE COMMISSIONER:** The Fantino ---

12 **MR. ENGELMANN:** --- or the Dunlop brief, if  
13 you prefer?

14 But I don't -- Mr. Callaghan mentioned this  
15 to me earlier -- I certainly didn't review this document  
16 with Justice Griffiths nor did we give it to him to review.  
17 So I don't know if he can really help too much on this  
18 other than a very brief or cursory review.

19 I think it should go in. I agree with Mr.  
20 Callaghan.

21 **THE COMMISSIONER:** Okay.

22 --- **EXHIBIT NO./PIECE NO. P-3034:**

23 (116242) - Fantino Brief dated March 5, 1999

24 **MR. ENGELMANN:** I don't know if we need to  
25 spend a lot of hearing time by asking Justice Griffiths to

1 try and recollect whether it's what he received or not.

2 MR. CALLAGHAN: And I think that would  
3 probably be a difficult task.

4 THE COMMISSIONER: Mr. Neville, though, is  
5 coming up behind you.

6 MR. CALLAGHAN: Yes, there are likely  
7 publication ban issues.

8 THE COMMISSIONER: Oh, yes.

9 MR. ENGELMANN: Of course.

10 MR. CALLAGHAN: And, Mr. Commissioner, just  
11 for the record, I think all these documents are in one  
12 after another but not in as the brief which makes it a  
13 little difficult to piece them back together. You do have  
14 the index. And I don't know if any of that triggers your  
15 memory, Chief Justice, but you'll see that, for example,  
16 there are photographs in there and there are statements of  
17 -- police statements. You're not able to confirm, I  
18 suppose that it's exactly it, but would you accept that  
19 that looks something like what you got?

20 MR. JUSTICE GRIFFITHS: Sure.

21 MR. CALLAGHAN: Thank you. Those are my  
22 questions.

23 THE COMMISSIONER: All right.

24 Thank you. You need not read that, sir.

25 Mr Kozloff?

1                   **MR. CARROLL:** (Inaudible).

2                   **THE COMMISSIONER:** Yeah. Well, am I  
3                   planning to -- well, come forward, please. I was told you  
4                   had no questions.

5                   **MR. CARROLL:** No, you weren't.

6                   **THE COMMISSIONER:** Five (5) minutes. Mr.  
7                   Carroll, five minutes.

8                   **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**  
9                   **KOZLOFF:**

10                  **MR. KOZLOFF:** Just after listening to Mr.  
11                  Callaghan cross-examine, my head hurts.

12                  Good afternoon, Justice Griffiths.

13                  **MR. JUSTICE GRIFFITHS:** Mr. Kozloff.

14                  **MR. KOZLOFF:** We know each other for some  
15                  period of time.

16                  **MR. JUSTICE GRIFFITHS:** Yes, sir.

17                  **MR. KOZLOFF:** I represent the Ontario  
18                  Provincial Police, for the record. I just have a couple of  
19                  questions.

20                  If I could ask you to look at Exhibit 111109  
21                  -- sorry that's Document 111109 which is Exhibit 1803; the  
22                  notes of Detective Inspector Smith.

23                  **MR. JUSTICE GRIFFITHS:** Yes, I have them.

24                  **MR. KOZLOFF:** Just to clarify something.

25                  **MR. JUSTICE GRIFFITHS:** Yes, sir.

1                   **MR. KOZLOFF:** At Bates page 232, his note of  
2           December the 20<sup>th</sup> ---

3                   **MR. JUSTICE GRIFFITHS:** Yes.

4                   **MR. KOZLOFF:** --- it's the entry -- I think  
5           it's 14:45. It says, "Peter Griffiths called."

6                   **MR. JUSTICE GRIFFITHS:** Yes.

7                   **MR. KOZLOFF:** And the first thing he has is  
8           "Priest, RPG, objectively enough credible evidence."

9                   **MR. JUSTICE GRIFFITHS:** Yes.

10                  **MR. KOZLOFF:** And I'm going to try to  
11           clarify this with you. Let's just talk about what's going  
12           on here. He's waiting for an opinion from you.

13                  **MR. JUSTICE GRIFFITHS:** Yes.

14                  **MR. KOZLOFF:** This is your first opportunity  
15           to impart that opinion to him orally?

16                  **MR. JUSTICE GRIFFITHS:** Okay.

17                  **MR. KOZLOFF:** Fair?

18                  **MR. JUSTICE GRIFFITHS:** Yes, I think so.

19                  **MR. KOZLOFF:** In other words, he hasn't got  
20           your written opinion yet.

21                  **MR. JUSTICE GRIFFITHS:** No, he hasn't.

22                  **MR. KOZLOFF:** That doesn't come until the  
23           next day.

24                  **MR. JUSTICE GRIFFITHS:** That's right.

25                  **MR. KOZLOFF:** You don't write it until the

1 next day.

2 MR. JUSTICE GRIFFITHS: That's correct.

3 MR. KOZLOFF: Okay.

4 And so I'm going to suggest to you what he's  
5 doing is writing down what you're saying to him ---

6 MR. JUSTICE GRIFFITHS: I think ---

7 MR. KOZLOFF: --- what you're telling him.

8 MR. JUSTICE GRIFFITHS: --- I think that's  
9 fair.

10 MR. KOZLOFF: And so I'm going to suggest to  
11 you that he's left out a word and that's the word "not."

12 MR. JUSTICE GRIFFITHS: He might have.

13 MR. KOZLOFF: And I'm going to suggest to  
14 you that the word "not" should appear after the word  
15 "objectively."

16 MR. JUSTICE GRIFFITHS: Mr. Kozloff, I was  
17 aware of the difference between the two. I don't know  
18 whether he left a note -- a "not" out or whether after  
19 talking to him and this experienced officer says he doesn't  
20 have an honest belief, whether that made me go back and re-  
21 look at my -- at the materials. I mean, I honestly don't  
22 know, Mr. Kozloff.

23 MR. KOZLOFF: Well, I think if you look at  
24 the opinion letter you wrote, you're pretty strong on the  
25 issue of there is not -- there isn't the objective

1 evidence.

2 **MR. JUSTICE GRIFFITHS:** It didn't seem  
3 wishy-washy to me ---

4 **MR. KOZLOFF:** No.

5 **MR. JUSTICE GRIFFITHS:** --- but ---

6 **MR. KOZLOFF:** So my suggestion to you; the  
7 more likely version is that either you misspoke yourself  
8 and said, "there is credible evidence" when you intended to  
9 say "there is not" or he missed a word; one of the two.

10 **THE COMMISSIONER:** Or he changed his mind.  
11 Or he did say ---

12 **MR. KOZLOFF:** Or he changed his mind.

13 **THE COMMISSIONER:** -- it was -- when he said  
14 that there may be enough credible evidence and he changed  
15 his mind when he wrote it up.

16 **MR. KOZLOFF:** I'm trying to convince him  
17 that he didn't change his mind.

18 **THE COMMISSIONER:** I know that.

19 **MR. JUSTICE GRIFFITHS:** I can't.

20 **MR. KOZLOFF:** I know it's ten after six, but  
21 ---

22 **MR. JUSTICE GRIFFITHS:** Mr. Kozloff, I'm  
23 sworn to tell the truth and the truth is, I can't recall.

24 **MR. KOZLOFF:** Fair enough.

25 Let's go back to what happened on the 10<sup>th</sup> of

1 February and that's at Bates page 214 of Detective  
2 Inspector Smith's notes. It says:

3 "Discuss method of interview with  
4 Silmser and whether he should be  
5 cautioned re possible extortion."

6 This is a telephone call between you and  
7 Detective Inspector Smith and he's not the officer  
8 investigating the extortion; correct?

9 **MR. JUSTICE GRIFFITHS:** Yes.

10 **MR. KOZLOFF:** Right.

11 And -- but he -- you and he are alive to  
12 that issue because, as you have said yourself today, David  
13 Silmser was a rather unusual situation, in that, you were  
14 dealing with an individual who was an alleged victim of an  
15 historic sexual assault and an individual who the OPP was  
16 requested to and were, in effect, investigating for an  
17 alleged extortion.

18 **MR. JUSTICE GRIFFITHS:** Yes.

19 **MR. KOZLOFF:** And so the officers, as you've  
20 very fairly put it this afternoon, were in an equally  
21 uncomfortable position as was Mr. Silmser although Mr.  
22 Silmser just didn't know it.

23 **MR. JUSTICE GRIFFITHS:** I agree.

24 **MR. KOZLOFF:** All right.

25 And so I'm going to suggest to you that

1 Detective Inspector Smith, who is a very experienced  
2 criminal investigator at that point, and Detective  
3 Inspector Hamelink, who is a new -- he was new to the job  
4 of Detective Inspector, but nevertheless, a very competent  
5 officer, were doing their best to address a rather unique  
6 situation. Is that fair?

7 MR. JUSTICE GRIFFITHS: I don't doubt it.

8 MR. KOZLOFF: And one of the things that  
9 came out of their evidence was that Hamelink was going to  
10 hold off in respect of certain aspects of his  
11 investigation.

12 MR. JUSTICE GRIFFITHS: I understand that.

13 MR. KOZLOFF: And do you recall discussing  
14 that with the officers?

15 MR. JUSTICE GRIFFITHS: I think there's  
16 reference to that here ---

17 MR. KOZLOFF: Yeah.

18 MR. JUSTICE GRIFFITHS: --- from an earlier  
19 date in February.

20 MR. KOZLOFF: I'm going to bring -- I'm  
21 going to bring you to that, but so here we have ---

22 MR. JUSTICE GRIFFITHS: I don't -- I don't  
23 have an independent recollection ---

24 MR. KOZLOFF: I appreciate ---

25 MR. JUSTICE GRIFFITHS: --- but I don't -- I

1 don't doubt the note.

2 **MR. KOZLOFF:** Okay.

3 Here we have in Smith's notes:

4 "Discuss method of interview with  
5 Silmser re whether he should be  
6 cautioned."

7 And you, at that point, indicate that you're  
8 going to give it some thought. You're going to research  
9 it.

10 **MR. JUSTICE GRIFFITHS:** Well, there's an  
11 intervening sentence.

12 **MR. KOZLOFF:** Yes, "Don't know if what he's  
13 ..." -- oh, okay, fair enough.

14 "Don't know if what he's alleged to do  
15 if Seguin is extortion per *Criminal*  
16 *Code*. Peter Griffiths to research and  
17 advise."

18 Are you suggesting that you were going to  
19 research and advise with respect to whether this amounted  
20 to an extortion?

21 **MR. JUSTICE GRIFFITHS:** If it wasn't an  
22 extortion in the *Criminal Code*, that kind of ends the  
23 matter.

24 **MR. KOZLOFF:** That's right, okay.

25 But nevertheless, Hamelink and his officers

1 from East Region, Chris McDonell; were you familiar with  
2 McDonell at that time?

3 **MR. JUSTICE GRIFFITHS:** Yeah, I may have met  
4 him. You know, I can't say.

5 **MR. KOZLOFF:** McDonell and Genier spend nine  
6 months on an investigation and provide you with a brief.

7 **MR. JUSTICE GRIFFITHS:** Yes.

8 **MR. KOZLOFF:** And you've indicated in your  
9 evidence today that -- that it -- you didn't consider it a  
10 part of your function to assess sufficiency. I'm going to  
11 suggest to you, sir, that the brief and its contents was,  
12 in fact, a very full and -- a full effort at investigating  
13 the matter.

14 **MR. JUSTICE GRIFFITHS:** That's fair.

15 **MR. KOZLOFF:** And I'm going to suggest to  
16 you that it wasn't insufficient in any way.

17 **MR. JUSTICE GRIFFITHS:** As a brief?

18 **MR. KOZLOFF:** Yes.

19 **MR. JUSTICE GRIFFITHS:** Yes.

20 **MR. KOZLOFF:** Yeah.

21 And now we get to the meeting of the 21<sup>st</sup>.  
22 And this is an opportunity for you to meet with all of the  
23 officers; Fagan, who's going to be working with Smith and  
24 McDonell and Genier who are going to be working with  
25 Hamelink and with those two detective inspectors; correct?

1 And this is at Bates page 215.

2 MR. JUSTICE GRIFFITHS: Yes.

3 MR. KOZLOFF: And it says there -- Detective  
4 Inspector Smith not only writes very small, but he tends to  
5 be terse in his entries -- it says:

6 "Interview Silmser all sexual  
7 allegations and how did settlement come  
8 about."

9 Right?

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. KOZLOFF: Now, can you recall or do you  
12 have any recollection at that meeting of discussing how  
13 this issue was going to be dealt with; this unique issue of  
14 Silmser *qua* victim and Silmser *qua* suspect?

15 MR. JUSTICE GRIFFITHS: No.

16 MR. KOZLOFF: Your evidence today, if I  
17 understood you correctly -- your evidence today is you have  
18 no recollection of discussing whether or not Detective  
19 Inspector Hamelink should attend the interview of Mr.  
20 Silmser. Is that fair?

21 MR. JUSTICE GRIFFITHS: I -- I said that ---

22 MR. KOZLOFF: Yeah.

23 MR. JUSTICE GRIFFITHS: --- and that's fair.

24 MR. KOZLOFF: Okay.

25 MR. JUSTICE GRIFFITHS: I think I said that

1 I can't imagine giving advice that he should be behind a  
2 one-way mirror, listening in without Silmsers knowing about  
3 it or being cautioned.

4 **MR. KOZLOFF:** All right.

5 I'm trying to understand what your concern  
6 was about Detective Inspector Hamelink being behind a one-  
7 way mirror. In other words, what's the ---

8 **MR. JUSTICE GRIFFITHS:** No, I didn't have  
9 any ---

10 **MR. KOZLOFF:** Just a minute.

11 What's the difference between him observing  
12 the interview as it's going on and him observing the  
13 interview which was videotaped at some future date?

14 **MR. JUSTICE GRIFFITHS:** Maybe none.

15 **MR. KOZLOFF:** Okay.

16 **MR. JUSTICE GRIFFITHS:** It just doesn't feel  
17 right to me, Mr. Kozloff.

18 **MR. KOZLOFF:** I appreciate that.

19 **MR. JUSTICE GRIFFITHS:** Frankly, it's ---

20 **MR. KOZLOFF:** But again, you'll agree with  
21 me these officers were confronted with a rather unique  
22 situation and were trying their best to figure a way of  
23 dealing with it, and I'm going to suggest to you that the  
24 overriding concern that day was treating Mr. Silmsers as a  
25 victim.

1                   In other words, Smith was concerned that --  
2                   that he wanted to get as much as he could from Mr. Silmsen  
3                   as a victim before Hamelink's investigation could  
4                   compromise that effort.

5                   **MR. JUSTICE GRIFFITHS:** I think Inspector  
6                   Smith said that when he was interviewing Mr. Silmsen, he  
7                   had no evidence that Mr. Silmsen had been involved in any  
8                   criminal activity.

9                   **MR. KOZLOFF:** Right.

10                  **MR. JUSTICE GRIFFITHS:** If, during the  
11                  course of his interview, Mr. Silmsen said something which  
12                  would cause him concern for Mr. Silmsen's rights, he would  
13                  stop the interview and caution him.

14                  **MR. KOZLOFF:** Right.

15                  **MR. JUSTICE GRIFFITHS:** And that never  
16                  arose.

17                  **MR. KOZLOFF:** Right.

18                  **MR. JUSTICE GRIFFITHS:** So he was alive to  
19                  the issue, and that's how he chose to deal with the issue,  
20                  and I think that was entirely appropriate way to deal with  
21                  the issue; to caution him when there was some evidence or  
22                  some indication of -- that the caution was necessary.

23                  **MR. KOZLOFF:** Okay. It was -- I'm going to  
24                  take you to another area and that's Exhibit 1164, that's  
25                  the synopsis.

1                   **MR. JUSTICE GRIFFITHS:** Yes, sir.

2                   **MR. KOZLOFF:** And it was -- the paragraph --  
3 the synopsis, as I understand it, was prepared by Detective  
4 Constable Fagan under the supervision of Detective  
5 Inspector Smith. This is the synopsis on the attempt to  
6 obstruct justice.

7                   **MR. JUSTICE GRIFFITHS:** Okay.

8                   **MR. KOZLOFF:** In relation to Malcolm  
9 MacDonald. And in that synopsis, Mr. Engelmann brought you  
10 to the quotation regarding I can't imagine how three  
11 experienced lawyers ---

12                   **MR. JUSTICE GRIFFITHS:** Yes.

13                   **MR. KOZLOFF:** --- could have done what they  
14 did.

15                   **MR. JUSTICE GRIFFITHS:** Yes.

16                   **MR. KOZLOFF:** I'm paraphrasing it.

17                   **MR. JUSTICE GRIFFITHS:** Yes.

18                   **MR. KOZLOFF:** And it was then suggested to  
19 you, well, you know, there were three lawyers being  
20 identified at that point, how do we get down to one? I'm  
21 going to suggest to you there was a process that you went  
22 through where you were struggling with the issue.

23                   **MR. JUSTICE GRIFFITHS:** Yes.

24                   **MR. KOZLOFF:** And that process took you from  
25 an examination of the brief to a discussion with Detective

1 Inspector Smith that led to you seeking an outside opinion  
2 from Mr. McDougald?

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. KOZLOFF: And it was only when you  
5 received the opinion from Mr. McDougald that you were  
6 comfortable in providing an opinion to Detective Inspector  
7 Smith that Mr. MacDonald be charged. Is that fair?

8 MR. JUSTICE GRIFFITHS: Yes.

9 MR. KOZLOFF: Okay.

10 If I could just have your very brief  
11 indulgence, sir; a little more than five minutes.

12 THE COMMISSIONER: A little more than five  
13 minutes.

14 MR. KOZLOFF: But you got me going. Thank  
15 you, sir.

16 MR. JUSTICE GRIFFITHS: Thank you.

17 THE COMMISSIONER: All right.

18 Ms. McIntosh? Oh, I'm sorry, Mr. Carroll,  
19 sorry.

20 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

21 CARROLL:

22 MR. CARROLL: Good evening.

23 MR. JUSTICE GRIFFITHS: Mr. Carroll.

24 MR. CARROLL: My name is Carroll, as you  
25 know, and I represent the Ontario Provincial Police

1 Association, and I have just one area that I want to ask  
2 you about, and that's a little bit about Pat Hall.

3 MR. JUSTICE GRIFFITHS: Yes.

4 MR. CARROLL: You told us about your  
5 familiarity with Tim Smith's work.

6 MR. JUSTICE GRIFFITHS: Yes.

7 MR. CARROLL: And I just wanted to speak to  
8 you a bit about Hall. He was at your meeting on April the  
9 24<sup>th</sup>, '97; correct?

10 MR. JUSTICE GRIFFITHS: Yes.

11 MR. CARROLL: But that was not the first  
12 time you had dealt with the then Detective Hall; is that  
13 correct?

14 MR. JUSTICE GRIFFITHS: I don't think it  
15 was.

16 MR. CARROLL: If I suggest to you that you  
17 prosecuted a fellow who's the ex-mayor of Brockville on  
18 charges and Pat was the investigator; does that ring a  
19 bell?

20 MR. JUSTICE GRIFFITHS: There you go.

21 MR. CARROLL: There you go.

22 And you knew him to be from outside the  
23 Cornwall area?

24 MR. JUSTICE GRIFFITHS: Yes.

25 MR. CARROLL: He was not stationed in this

1 area, right?

2 MR. JUSTICE GRIFFITHS: No, that's correct.

3 MR. CARROLL: And, sir, in terms of  
4 evaluating now retired Detective Inspector Hall's work,  
5 would you agree with me that he was, in all respects,  
6 professional and thorough in carrying out the duties that  
7 were assigned to him that you were aware of?

8 MR. JUSTICE GRIFFITHS: In my experience,  
9 that's true.

10 MR. CARROLL: Thank you, sir. That's the  
11 only area. Thank you very much.

12 MR. JUSTICE GRIFFITHS: Thank you.

13 THE COMMISSIONER: Thank you.

14 Ms. McIntosh? How long do you think you are  
15 going to be?

16 MS. McINTOSH: I think I have two or three  
17 questions at most. Thank you.

18 THE COMMISSIONER: How long are they going  
19 to be?

20 (LAUGHTER/RIRES)

21 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

22 McINTOSH:

23 MS. McINTOSH: Just arising out of the --  
24 I'm Leslie McIntosh from the Ministry of the Attorney  
25 General.

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Just arising out of the issue that Mr. Neville identified to you about Officer Dupuis' note of his conversation with Mr. Silmser, and it occurred to me looking again, as Mr. Kozloff invited you to do, at Officer Smith's notes when it says in his notes, don't know if what he alleged to do with Seguin amounted to extortion per *Criminal Code* or words to that effect, what was that about; what was the issue? What amounting to extortion; what conduct? Do you recall?

**MR. JUSTICE GRIFFITHS:** I'm sorry, no. I don't know where we are. I've lost my spot here. Which --  
-

**MS. McINTOSH:** All right. It's and I'm sorry, I was trying to avoid taking you.

**MR. JUSTICE GRIFFITHS:** I appreciate it.

**MS. McINTOSH:** It's in Officer Smith's notes, which is Exhibit 1803.

**MR. JUSTICE GRIFFITHS:** I have the notes. I just need the ---

**MS. McINTOSH:** Yes. And it's Bates page 214, Bates page 214.

**MR. JUSTICE GRIFFITHS:** Thank you.  
I have page 214.

**MS. McINTOSH:** Yes, and the entry we've been

1 looking at, at 1210.

2 MR. JUSTICE GRIFFITHS: Yes. "Discuss  
3 method of interview" is that it?

4 MS. McINTOSH: Yes, and right after that, it  
5 says, "don't know if what he alleged to do with Seguin  
6 extortion per *Criminal Code*."

7 MR. JUSTICE GRIFFITHS: Yes.

8 MS. McINTOSH: And so I wondered whether you  
9 recalled what the issue was there; what it was that you  
10 were wondering amounted to extortion?

11 MR. JUSTICE GRIFFITHS: I think that's  
12 Inspector Smith's note. So he's wondering whether it  
13 amounted to extortion, and I said that I would research and  
14 advise.

15 MS. McINTOSH: Okay, and so do you know what  
16 it was? I mean what I'm getting at, I'm sorry to be  
17 obscure here, but it seemed to me there were three  
18 possibilities; that as Mr. Neville said to you, if Mr.  
19 Silmsler said I'm going to commence a civil action, it  
20 seemed pretty clear that it wasn't extortion.

21 MR. JUSTICE GRIFFITHS: Yes.

22 MS. McINTOSH: If he said, "I'm going to go  
23 to the police", it seemed pretty clear that he was -- was  
24 extortion under the Code. And so the other choice is what  
25 Officer Dupuis says in his notes, which is I'm going to go

1 to the press with this story. Was that the issue that you  
2 were wondering whether that amounted ---

3 **MR. JUSTICE GRIFFITHS:** No. No, it was not,  
4 and I think that note comes long after. And what's clear  
5 to you after being here for 'til 6:30 for two years, it was  
6 not clear to me. And I have to research things as I go  
7 along.

8 **MS. McINTOSH:** That's all I wanted to ask.  
9 Thank you.

10 **MR. JUSTICE GRIFFITHS:** Thank you.

11 **THE COMMISSIONER:** Thank you.

12 Did you have any questions?

13 **MR. STERN:** Yes, just one, Mr. Commissioner.

14 **THE COMMISSIONER:** One, that's fine.

15 **MR. STERN:** Thank you very much

16 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

17 **STERN:**

18 **MR. STERN:** Associate Chief Justice  
19 Griffiths, a number of people, many years ago, made  
20 complaints which are at the root of the events which bring  
21 all of us here today. Is there anything which you would  
22 like to say in relation to those people, in relation to  
23 those complainants?

24 **MR. JUSTICE GRIFFITHS:** Thank you. Yes, I  
25 would.

1                   First of all, I'm sorry for their pain. I  
2                   appreciate I'm talking to an empty room here, but I'm  
3                   hoping that there are people out there who would hear this,  
4                   I'm sorry for their pain.

5                   What many of these people have been through,  
6                   not only at the initial stages of abuse when they were  
7                   children and young adults, but through the last 10 years of  
8                   living this over and over again in the press, must be  
9                   extraordinarily difficult, and I deeply regret that.

10                  I know that as a Crown attorney for many  
11                  years how difficult it can be, in my interviewing of  
12                  witnesses, for folks to understand the difference between  
13                  the reality of what happens to them and what can be proven  
14                  in a court room and the two are often very different, so --  
15                  as my opinions would indicate happened here.

16                  And there were a number of paragraphs in my  
17                  opinions that were not throwaway lines in which I expressed  
18                  my concern for the victims and for the circumstances in  
19                  which they find themselves.

20                  I'm pleased, ultimately, that they have been  
21                  able to find, Mr. Commissioner, a place to share their pain  
22                  with you and with the larger community, to help us to have  
23                  greater understanding of those issues.

24                  So, to end as I began; I deeply regret the  
25                  pain that the victims have suffered through this.

1                   **THE COMMISSIONER:** Thank you.

2                   **MR. STERN:** Those are my only questions.

3 Thank you, Mr. Commissioner.

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

5                   **MR. ENGELMANN:** I've nothing arising.

6                   And just again, want to thank Justice  
7 Griffiths for staying late.

8                   **MR. JUSTICE GRIFFITHS:** Thank you.

9                   **MR. ENGELMANN:** And thank you,  
10 Mr. Commissioner, for doing likewise.

11                   **THE COMMISSIONER:** Thank you very much for  
12 your attendance, sir.

13                   **MR. JUSTICE GRIFFITHS:** Mr. Commissioner,  
14 thank you.

15                   **THE COMMISSIONER:** Thank you. Let's call it  
16 a day.

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

19                   This hearing is adjourned until tomorrow  
20 morning at 9:30 a.m.

21 --- Upon adjourning at 6:27 p.m. /

22                   L'audience est ajournée à 18h27

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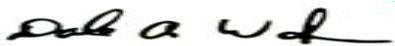
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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



---

Dale Waterman, CVR-CM