

**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 218

Held at :

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

Wednesday, April 23 2008

Tenue à:

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

Mercredi, le 23 avril 2008

ERRATA

Appearance List

Volume 1 to 217

Mr. John E. Callaghan	Cornwall Community Service and
Mr. Mark Crane	Cornwall Police Service Board
Mr. Peter Manderville	

Should have read

Mr. John E. Callaghan	Cornwall Community Police
Mr. Mark Crane	Service and Cornwall Police
Mr. Peter Manderville	Service Board

Appearances/Comparutions

Ms. Julie Gauthier	Registrar
Ms. Karen Jones	Commission Counsel
Ms. Janie Larocque	
Mr. Mark Crane	Cornwall Community Police
Mr. Peter Manderville	Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Ian Paul	
Mr. Kevin Malloy	Mr. Kevin Malloy

Table of Contents / Table des matières

	Page
List of Exhibits :	iv
KEVIN MALLOY, Resumed/Sous le même serment	1
Examination in-Chief by/Interrogatoire en-chef par Ms. Karen Jones(cont'd/suite)	1
Cross-Examination by/Contre-interrogatoire par Ms. Helen Daley	50
Cross-Examination by/Contre-interrogatoire par Mr. Ian Paul	164
Cross-Examination by/Contre-interrogatoire par Mr. Dallas Lee	200
Cross-Examination by/Contre-interrogatoire par Mr. Michael Neville	240
Cross-Examination by/Contre-interrogatoire par Mr. Peter Chisholm	252
Cross-Examination by/Contre-interrogatoire par Mr. Stephen Scharbach	258
Cross-Examination by/Contre-interrogatoire par Mr. Peter Manderville	276
Re-Examination by/RÉ-Interrogatoire par Ms. Karen Jones	299

LIST OF EXHIBITS/LISTE D' EXHIBITS

NO.	DESCRIPTION	PAGE NO
P-1501	(738224) -7163633-37 - Kevin Malloy Notes of Malcolm MacDonald dated 16 Dec 92 to 24 Aug 92	33
P-1502	(722892) - Kevin Malloy Standard-Freeholder news clipping "Brother MacDonald knighted into the Order of St.John dated 16 Oct 93	45
P-1503	(734877) - Kevin Malloy Internal Correspondence from Kevin Malloy to B. Wells dated 13 Jan 89 Kevin Malloy Internal Correspondence from Kevin Malloy to B. Wells dated 13 Jan 89	69
P-1504	(734872) - Kevin Malloy Note of Kevin Malloy Re IC-58	75
P-1505	(739308) - Kevin Malloy Notes of T. O'Brien dated 21 Aug 89 to 21 Feb 90 re: Jeannette Antoine	93
P-1506	(740558) - Notes of Kevin Malloy dated 26 Sep. 89 to 05 Feb. 90	173
P-1507	(737822) - Kevin Malloy Notes of Kevin Malloy dated 09 Jan 89 to 23 Jan 89	195
P-1508	(734874) - Kevin Malloy Notes of Kevin Malloy dated Feb 81	205
P-1509	(739080) - Kevin Malloy Witness Statement by Kevin Malloy dated 07 Feb 94	278
P-1510	(739093) - Kevin Malloy Envelope addressed to Kevin Malloy	289
P-1511	(734868) - Kevin Malloy General Occurrence Report re: IC-57	291
P-1512	(734875) - Kevin Malloy Note of Kevin Malloy dated Feb. 81	294

1 --- Upon commencing at 9:34 a.m./

2 L'audience débute à 9h34

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. Malloy, how are you doing today?

12 **MR. MALLOY:** Fine, sir.

13 **THE COMMISSIONER:** Good.

14 Ms. Jones, ready to get going?

15 **MS. JONES:** Thank you, Mr. Commissioner.

16 **THE COMMISSIONER:** Okay.

17 **KEVIN MALLOY, Resumed/Sous le même serment:**

18 --- CROSS-EXAMINATION BY/COURTE INTERROGATOIRE PAR MS.

19 **JONES:**

20 **MS. JONES:** When we left yesterday, Officer
21 Malloy, we were starting the Antoine investigation.

22 **MR. MALLOY:** Yes.

23 **MS. JONES:** I just want to divert just
24 slightly that at a certain point you had also spoken to her
25 sister. Do you recall that -- or had contact with her

1 sister in a written form or a verbal form?

2 MR. MALLOY: Which sister, Suzanne Lapointe?

3 MS. JONES: Yes, that's right.

4 MR. MALLOY: Yes. A phone call, yes.

5 MS. JONES: Okay.

6 MR. MALLOY: Yes.

7 MS. JONES: And I understand, according to
8 my notes here anyway, it was approximately August 13th,
9 1992. Is that about the date?

10 MR. MALLOY: That's about the date, sure.

11 MS. JONES: Right. In Document 739092 ---

12 THE COMMISSIONER: Fourteen-sixty-six
13 (1466)?

14 MS. JONES: I apologize, it's 1456 exhibit.

15 THE COMMISSIONER: Oh, yes, I do have it.

16 Sorry.

17 (SHORT PAUSE/COURTE PAUSE)

18 MS. JONES: Do you see that document in
19 front of you?

20 MR. MALLOY: Yes.

21 MS. JONES: Yeah, that's the letter that was
22 written to you by Suzanne Lapointe. It also makes
23 reference to your phone conversation on August 13th, '92.
24 Now, the letter is dated February 19th, 1993.

25 MR. MALLOY: That's correct.

1 **MS. JONES:** You recall, though, this
2 conversation with her on the phone?

3 **MR. MALLOY:** No. I remember calling her but
4 not the full conversation.

5 **MS. JONES:** Okay. And you didn't have any
6 notes of that conversation?

7 **MR. MALLOY:** No.

8 **MS. JONES:** No. Now, I understand that at
9 that point Officer Derochie got involved in about 1994 with
10 the matter. Are you familiar with that contact with Mr.
11 Derochie about the letter from Susan Lapointe?

12 **MR. MALLOY:** I can't remember if it was
13 Staff Sergeant Derochie or Staff Sergeant Brunet.

14 **MS. JONES:** Okay. Do you remember having a
15 conversation with Officer Brunet about the letter? This
16 would be approximately 1994.

17 **MR. MALLOY:** It's hard to recall because I
18 was injured and Staff Sergeant Brunet was coming almost
19 two, three times a week to the house about cases that were
20 still open and Staff Sergeant Derochie was looking at the
21 Antoine matter. So I can't recall which one.

22 **MS. JONES:** Do you recall possibly --
23 because we have heard from Staff Sergeant Brunet here at
24 the Inquiry and apparently there was a conversation with
25 you about this particular letter and that you had actually

1 advised Staff Sergeant Brunet that this letter was in the
2 office at Cornwall Police.

3 **MR. MALLOY:** Okay.

4 **MS. JONES:** Do you recall that, having that
5 conversation with Staff Sergeant Brunet? In other words do
6 you recall assisting him in helping to find the letter?

7 **MR. MALLOY:** Yes, yeah.

8 **MS. JONES:** In some form.

9 **MR. MALLOY:** Yeah, whether he had the file
10 with him or he brought the file to the house I don't
11 remember.

12 **MS. JONES:** Okay.

13 After this particular conversation that you
14 had with her in August -- you see this letter is dated some
15 months later -- was there any other sort of follow up that
16 you did with respect to Suzanne Lapointe?

17 **MR. MALLOY:** No, I was waiting for her to
18 correspond with me. That's about it.

19 **MS. JONES:** Now, apparently I understand
20 that Officer Sebalj interviewed Suzanne Antoine later on.
21 Did Officer Sebalj discuss her interactions with Antoine at
22 any time?

23 **MR. MANDERVILLE:** I'm sorry. I'm not sure
24 if my friend means Ginette Antoine or Suzanne Lapointe.

25 **MS. JONES:** I believe I mean Antoine

1 actually. If I said Lapointe I'm sorry.

2 With regards to Antoine?

3 **MR. MALLOY:** No.

4 **MS. JONES:** You don't recall any discussion
5 with Officer Sebalj about the Antoine matter at any point?

6 **MR. MALLOY:** No.

7 **MS. JONES:** So with respect to the Antoine
8 matter then, if you could just briefly remind us why it was
9 that it just never proceeded anywhere from your point of
10 view, I mean.

11 **MR. MALLOY:** From my point of view?

12 **MS. JONES:** Yes.

13 **MR. MALLOY:** First, I had credibility
14 issues.

15 **THE COMMISSIONER:** I'm sorry, credibility?

16 **MR. MALLOY:** Credibility issues, changing
17 her story, just getting her to come into the office to
18 begin with and a lot of what was called back then corporal
19 punishment was used. She didn't want to do anything with
20 the -- she didn't want to deal with any of the sexual
21 allegations at all which I kind of found strange. So I
22 went to seek advice from the Crown attorney.

23 **MS. JONES:** Sir, in your viewpoint then, to
24 use a typical phrase, you didn't think there was a
25 reasonable prospect of conviction on the physical abuse?

1 **MR. MALLOY:** I didn't think there was, no.

2 **MS. JONES:** At that point I guess it would
3 be lack of reasonable and probable grounds. That would be
4 the phrase that would have been used back then?

5 **MR. MALLOY:** Yeah, and it was -- if it was
6 corporal punishment and if it did cross the line to a
7 common assault there was a six month statute of
8 limitations, so ---

9 **MS. JONES:** Explain about the six months
10 statute of limitations. What do you mean by that?

11 **MR. MALLOY:** Well, back then according to
12 the Criminal Code you had within six months to file a
13 complaint to the police and the police to lay a charge.

14 **MS. JONES:** But obviously, historical
15 matters were well beyond six months. The Crown would just
16 proceed by way of indictment on those matters?

17 **MR. MALLOY:** We discussed that before and I
18 have not heard of that before.

19 **MS. JONES:** Well, in other historical sexual
20 assaults that are clearly well beyond the six months how
21 would you then proceed with those? They would proceed by
22 way of indictment, I assume?

23 **MR. MALLOY:** Well, most of the sexual
24 offences were dual procedure.

25 **MS. JONES:** But you wouldn't proceed

1 summarily on historicals because they are well beyond the
2 six months.

3 MR. MALLOY: Well, that would be a Crown
4 decision but common assaults, if I remember correctly, were
5 strictly summary conviction with a six month limitation.

6 MS. JONES: Was that understanding at the
7 time?

8 MR. MALLOY: That was my understanding, yes.

9 MS. JONES: Did you consult anybody about
10 that?

11 MR. MALLOY: The Crown attorney.

12 MS. JONES: And you specifically discussed
13 the limitation period?

14 MR. MALLOY: Yes, and whether this was just
15 corporal punishment or if it crossed the line. Obviously,
16 if there was bodily harm there wouldn't be a question
17 there. It was ---

18 THE COMMISSIONER: Are you saying that in
19 those days the assault charge was a straight summary
20 conviction offence?

21 MR. MALLOY: Yes, Your Honour.

22 MS. JONES: Did you understand that Ms.
23 Antoine was complaining of a broken wrist as part of her
24 injury that she had sustained back then?

25 MR. MALLOY: Yes. It was in her handwritten

1 statement, I believe.

2 MS. JONES: And from your perspective you
3 considered that to be a common assault, a purely summary
4 matter?

5 MR. MALLOY: No, that would have been bodily
6 harm.

7 MS. JONES: So what was it about the common
8 assault then? I guess I'm not understanding then because
9 if a broken wrist is more than common assault you're saying
10 it was common assault. So how do you reconcile that?

11 MR. MALLOY: Yes, that was my dilemma with
12 everything in her statement. That's why I needed some
13 advice from a Crown attorney. I didn't know where to go.
14 I didn't know how to proceed or where to go.

15 MS. JONES: But your position was even
16 though she sustained a broken wrist that you thought this
17 was a common assault, a summary conviction?

18 MR. MALLOY: No, the other -- the corporal
19 punishment, the physical discipline but not the ---

20 MS. JONES: But the broken wrist was ---

21 MR. MALLOY: No, I had -- there was no
22 question in my mind about the broken wrist. It was the
23 whole package together that I was kind of ---

24 MS. JONES: But you understand that the
25 broken wrist was part of the physical abuse that she was

1 alleging, not the sexual abuse. Correct?

2 **MR. MALLOY:** The physical, yes, that's
3 correct.

4 **MS. JONES:** But you've also said that you
5 think the broken wrist would be bodily harm so it wouldn't
6 be common assault?

7 **MR. MALLOY:** That's correct, yeah.

8 **MS. JONES:** So did you bring that to the
9 table when you talked to the Crown attorney?

10 **MR. MALLOY:** Oh, yeah, he read -- oh, but he
11 read the whole statement. As a matter of fact, he sent a
12 copy of the statement to the Regional Director ---

13 **MS. JONES:** M'hm.

14 **MR. MALLOY:** --- of Crown Operations.

15 **THE COMMISSIONER:** That's two different
16 wavelengths here. Did he discuss with you the issue of the
17 broken wrist?

18 **MR. MALLOY:** No, sir.

19 **THE COMMISSIONER:** So really, you don't know
20 if he really tuned in to the broken wrist.

21 **MR. MALLOY:** No, all I can say, sir, is he
22 read -- I met with him and he read the statement.

23 **THE COMMISSIONER:** Right. So I guess the
24 bottom line is all right, so if she only wants to deal with
25 the assaults and if most of them are summary conviction, is

1 what you're saying, what about the broken wrist?

2 **MR. MALLOY:** M'hm.

3 **THE COMMISSIONER:** Would you not go on the
4 broken wrist alone?

5 **MR. MALLOY:** Well, that's why I was seeking
6 Crown advice.

7 **THE COMMISSIONER:** Okay.

8 **MR. MALLOY:** Oh no, I -- I real -- yeah, I
9 know ---

10 **THE COMMISSIONER:** No, then if that's what
11 you're seeking the Crown advice for, why then did you
12 mention to the Crown, specifically, there's a broken wrist
13 here so it's ---

14 **MR. MALLOY:** M'hm.

15 **THE COMMISSIONER:** --- not a summary
16 conviction ---

17 **MR. MALLOY:** M'hm.

18 **THE COMMISSIONER:** --- offence. Did you do
19 that?

20 **MR. MALLOY:** I can't -- I can't remember if
21 I did or not.

22 **MS. JONES:** But just to be clear though, you
23 would agree that a broken wrist is not just a common
24 assault, just a summarily proceeding offence, even at that
25 time.

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

2 **MS. JONES:** And also too at the time -- I'd
3 mentioned briefly yesterday, you had joined the CAS Board
4 at some time. I've got here that you were a member of the
5 Board from April 24th, 1991 to March 1992; does that gel
6 with your recollection of that?

7 **MR. MALLOY:** That'd be about correct, I
8 think. I think yesterday I said it was -- I thought it was
9 around '92.

10 **MS. JONES:** All right. And now we're moving
11 on to the Derochie investigation and as you know, he did an
12 internal investigation as to the conduct of the CPS into
13 the Antoine matter and do you recall speaking with Officer
14 Derochie giving a statement either on one occasion or more
15 than one occasion, certainly one on the phone; do you
16 recall that?

17 **MR. MALLOY:** I remember speaking with Staff
18 Sergeant Derochie, yes.

19 **MS. JONES:** Okay, I'm just going to refer
20 you to a document that I think might help you. It's in the
21 cross binder. Document 739111.

22 **THE REGISTRAR:** Thirteen thirty-seven
23 (1337).

24 **MS. JONES:** I'm sorry about that. Exhibit
25 1337.

1 **THE COMMISSIONER:** What page, please?

2 **MS. JONES:** Thirteen thirty-seven (1337).

3 **THE COMMISSIONER:** No, that's the exhibit.

4 **MS. JONES:** Exhibit, yes.

5 **THE COMMISSIONER:** What page?

6 **MS. JONES:** On page -- I'm just going to
7 wait until -- on page 7175673.

8 **THE COMMISSIONER:** Six (6) ---

9 **MS. JONES:** It's marked as page 18 on the
10 handwritten portion. The B.P. number is 7175673.

11 **THE COMMISSIONER:** Page 18?

12 **MS. JONES:** It's handwritten page 18 if that
13 helps you.

14 **THE COMMISSIONER:** So it's -- are you at the
15 exhibit, sir? Exhibit is 1337. These are written notes of
16 Constable Derochie -- Staff Sergeant Derochie.

17 **MR. MALLOY:** Oh, yes sir. Yeah.

18 **THE COMMISSIONER:** And we're on page 18.

19 **MS. JONES:** I'm just referring, actually, to
20 the first paragraph. It just refers to your phone call.
21 I'll just let you read over that first paragraph to refresh
22 your memory.

23 **MR. MALLOY:** Yes.

24 **MS. JONES:** It appeared from these notes
25 that you were quite upset with what was going on in the

1 phone call conversation; do you recall that?

2 MR. MALLOY: Yes.

3 MS. JONES: And without going into too much
4 detail about what was going on, could you just explain why
5 this was the reaction that you had?

6 MR. MALLOY: I had had a back surgery -- I'm
7 trying to remember the year. I'm going to say about a year
8 prior to that ---

9 MS. JONES: M'hm.

10 MR. MALLOY: --- and -- I'm sorry prior to
11 the 8th of March, '93 and surgery I was off for about eight
12 weeks. I was injured -- injured on the 8th of March, '93; I
13 ruptured a disc in my back and subsequently, I was off for
14 three years and had three more back surgeries and after
15 going through a homicide with an 11-year-old victim and the
16 preliminary hearings and the workload and then this injury,
17 I was completely drained; emotionally, mentally, and
18 physically.

19 MS. JONES: Were you on any kind of
20 medication that ---

21 MR. MALLOY: Yes.

22 MS. JONES: --- would also have -- cause
23 that to happen?

24 MR. MALLOY: Yes. Now, there were,
25 obviously, some problems with the Antoine investigation

1 that Staff Sergeant Derochie investigated, that's why there
2 was an internal review of this. And some of these issues
3 were that the complaint that you had taken initially from
4 Ms. Antoine was never registered on OMPPAC and no incident
5 was ever created and reports were not submitted; do you
6 agree with that?

7 **MR. MALLOY:** That's correct, yes.

8 **MS. JONES:** Derochie also concluded that you
9 had not conducted a thorough investigation and had not kept
10 proper notes of your involvement with the matter; would you
11 agree with that finding?

12 **MR. MALLOY:** I would agree that it was -- it
13 was my responsibility to ensure I transcribed the rough
14 notes into my notebook and I didn't do it. I didn't finish
15 them. I don't know -- I can't recall why. I got called
16 away or -- but it was my responsibility to finish them and
17 I didn't. I didn't get back to them.

18 **MS. JONES:** Also, too, Officer Derochie
19 found that although all officers in the chain of command
20 that you were accountable to, from Staff Sergeant to Chief
21 of Police, had various degrees of knowledge of the
22 investigation that you were undertaking, no one appeared to
23 be monitoring the investigation's progress and no one
24 noticed that reports had not been submitted by you, would
25 you agree with that?

1 **MR. MALLOY:** Yes.

2 **MS. JONES:** And one of the other findings
3 Derochie made was that no one appeared to recognize the
4 sensitivity of the subject matter and the potential
5 consequences that an improper investigation might have on
6 the outside agencies that were involved, would you agree
7 with that as well?

8 **MR. MALLOY:** Sure, yeah.

9 **MS. JONES:** Now, when you spoke with Staff
10 Sergeant Derochie, you had indicated to him that typically
11 your note keeping is very good and I think other people
12 actually endorsed that as well that worked with you, your
13 colleagues, and that this was an anomaly; this was unusual
14 for this to have happened. Could you just flesh that out a
15 little bit? Is that true? Could you just describe what
16 typically you would do and what you failed to do in the
17 Antoine situation?

18 **MR. MALLOY:** No, I -- I mean, I took pride
19 in my work; I took pride in my note taking. This one --
20 sometimes this lady had me completely confused; I didn't
21 know where I was going. I did take notes when -- during my
22 interview with her, the rough notes. I was transcribing
23 them into my notebook and I didn't finish and that's --
24 that's my responsibility and I take responsibility for that
25 which is unusual.

1 **THE COMMISSIONER:** Is that why there was
2 void in your notes so that you could finish them up?

3 **MR. MALLOY:** That's correct, sir.

4 **THE COMMISSIONER:** Is that appropriate
5 practice?

6 **MR. MALLOY:** No, sir, I should have finished
7 them at the time.

8 **THE COMMISSIONER:** Or not let the boy
9 continued on with your other notes in your notebook?

10 **MR. MALLOY:** Oh I see, yes, sir, yeah, yeah.

11 **MS. JONES:** Did you always conduct yourself
12 that way, doing the rough notes and then transcribing it to
13 the next? Was that your regular routine of what you did in
14 all your investigations?

15 **MR. MALLOY:** It eventually got to that stage
16 because you just couldn't keep up. Couldn't keep up, you'd
17 scribble things down on the file folder or inside.

18 **MS. JONES:** Now, yet again, we have a
19 situation where somebody's made a complaint about someone
20 with a bit of a prominent position in society i.e. someone
21 affiliated with the CAS, a professional person. Did this
22 influence you in any way in the conduct that you took with
23 respect to this investigation?

24 **MR. MALLOY:** Absolutely not. You don't base
25 investigations on who the suspect is and what position they

1 hold; that meant nothing to me, where he worked or who he
2 was.

3 **MS. JONES:** Would you agree that there
4 should have been a better investigation of the Antoine
5 matter by yourself?

6 **MR. MALLOY:** In what way?

7 **MS. JONES:** Perhaps not doing the proper
8 follow-ups or proper note-keeping. Do you agree that that
9 could have been improved by you in hindsight?

10 **MR. MALLOY:** I have to say -- I have to say
11 no, not with what I had to deal with.

12 **MS. JONES:** Do you think you had the
13 necessary training in order to do the investigation
14 thoroughly?

15 **MR. MALLOY:** Well, this is a job where you -
16 - I mean, you can take courses but that you learn by doing
17 and I don't know if anybody has all of the courses and
18 education and experience to conduct different
19 investigations, but you learn as you go.

20 And, I don't know, I thought I was
21 investigating it properly.

22 **MS. JONES:** Would you describe your attitude
23 towards Ms. Antoine, either when you had contact with her -
24 - I know that you found her to be difficult to deal with --
25 but would you say that there somewhat of an attitude of

1 indifference when you dealt with her?

2 MR. MALLOY: Oh, no. No, no.

3 I always treated Mrs. Antoine with respect,
4 as I did all of my complainants.

5 MS. JONES: And I understood that you were
6 sanctioned, in part, by Officer Derochie, at least there
7 were suggestions for sanctions such as counselling,
8 perhaps, and training.

9 Can you describe what exactly you had to do
10 as ordered by Staff Sergeant Derochie or CPS?

11 MR. MALLOY: I was counselled by Staff
12 Sergeant Derochie about note-taking.

13 MS. JONES: Can you describe that? How many
14 hours was it or days?

15 MR. MALLOY: Oh, it's not a counselling
16 session. He'd had by order of the Chief spoke to me.

17 MR. MANDERVILLE: Officer Malloy was off on
18 disability at the time. How many days could he lose if
19 he's off on disability?

20 THE COMMISSIONER: No, but it -- well, first
21 of all, I don't think, unless I'm very wrong, that Ms.
22 Jones was talking about how many days he would be off for
23 disability. I think she was talking about how long was he
24 on counselling?

25 MS. JONES: Yes.

1 **MR. MANDERVILLE:** I appreciate that and I
2 believe my friend is speaking in terms of days paid,
3 penalty or hours lost penalty, and he's on disability.

4 **THE COMMISSIONER:** No, no, were you talking
5 about that?

6 **MS. JONES:** No, I was wondering how much
7 time did he spend with Officer Derochie getting trained or
8 counselled on note-taking.

9 **MR. MANDERVILLE:** My apologies.

10 **THE COMMISSIONER:** Thank you.

11 So your discussion with Derochie lasted how
12 long?

13 **MR. MALLOY:** Probably about half-an-hour.

14 **THE COMMISSIONER:** All right.

15 And after that, was there anything else to
16 come out of this other than your counselling on how to take
17 better notes?

18 **MR. MALLOY:** No -- well, no, sir, in our job
19 when you get counselled you get counselled and you don't do
20 it again.

21 **THE COMMISSIONER:** No, no, I understand
22 that.

23 Ms. Jones' question is, she was trying to
24 figure out what kind of counselling as is in did you take a
25 course or anything like that?

1 **MR. MALLOY:** No, sir.

2 **THE COMMISSIONER:** So we've established that
3 what counselling means is just a fireside chat on not to do
4 this and how to do it better, but following that was there
5 any other -- did you have to take any courses or was that
6 end of the matter?

7 **MR. MALLOY:** That was the end of the matter,
8 sir.

9 **THE COMMISSIONER:** Thank you.

10 **MS. JONES:** Had you ever, before this
11 Antoine situation, had you ever had to have counselling
12 before with regards to any other investigation?

13 **MR. MALLOY:** No.

14 **MS. JONES:** And is that what is meant by
15 "counselling", that you have this fireside chat with the
16 senior officer about don't do this again and let's do
17 better next time or words to that effect.

18 That's what's meant by "counselling"?

19 **MR. MALLOY:** Yes.

20 **THE COMMISSIONER:** So just to be very clear
21 here. I used the expression "fireside chat" and I don't
22 want that to come back and be used for what exactly is
23 "counselling".

24 I take it that you were told in no uncertain
25 terms that this is the procedure and that you may have

1 failed and we want you to do it correctly?

2 MR. MALLOY: That's correct, sir.

3 THE COMMISSIONER: Okay.

4 MS. JONES: Okay. I'm going to move on now
5 to your involvement with the Silmsler investigation and I
6 understand you became aware of this for the first time on
7 approximately January 28th, 1993, and Constable Sebalj and
8 Sergeant Lefebvre were assigned to the investigation and on
9 the day that they were interviewing Mr. Silmsler, you were
10 asked to come along, basically to be a scribe during the
11 interview?

12 MR. MALLOY: That's correct.

13 MS. JONES: You recall that.

14 As the interview went on you took notes and
15 when the interview was completed, you basically returned to
16 your ongoing caseload?

17 MR. MALLOY: That's correct.

18 MS. JONES: And in your notes you said that
19 initially Mr. Silmsler had a problem with the female officer
20 being there and she explained the importance for her to
21 stay in the room while she gave the interview but there
22 were two other male officers; you were one of those people.

23 And when you were finished with that
24 particular interview, you obviously know that Officer
25 Sebalj is assigned this interview as one of her cases, did

1 you see at any point where Officer Sebalj was given
2 assistance or support during the complaint process?

3 **MR. MALLOY:** Well, she was being assisted by
4 Sergeant Lefebvre. Other than that, that basically ended
5 my involvement with that matter.

6 **MS. JONES:** Now, you were there at the same
7 time when this has happened. Did you, yourself, offer her
8 any assistance; did she come to you for help?

9 **MR. MALLOY:** Not that I can recall.
10 This was in good hands with Heidi and
11 Sergeant Lefebvre.

12 **MS. JONES:** And I also understand that when
13 you first met with Mr. Silmsler, you had come to the
14 conclusion that he was playing games?

15 **MR. MALLOY:** Yeah, I remember you mentioning
16 that.

17 I don't remember using that terminology but
18 it would have been after the two phone calls I received
19 after. I mean, I kind of got the feeling there was
20 something going on behind the scenes. I don't recall
21 saying that though.

22 **MS. JONES:** Okay.

23 **MR. MALLOY:** Well, I certainly wouldn't have
24 said it to him.

25 **MS. JONES:** You said you had a feeling

1 something wasn't quite right?

2 MR. MALLOY: Yeah, I didn't -- in my
3 opinion, it wasn't a free-flowing statement; it was -- my
4 recollection was it was like pulling teeth.

5 MS. JONES: And what about the money issue.
6 Did you have a gut feeling about that when you first met
7 with Mr. Silmsen?

8 MR. MALLOY: I don't think I knew about
9 that. I don't think that was ---

10 MS. JONES: Did you think he was doing this
11 to get some sort of financial advantage?

12 MR. MALLOY: Oh, I'm not sure what it was.
13 I just felt there was something going on behind the scenes
14 that was affecting the investigation.

15 MS. JONES: Okay, that's what I want to
16 delve into. What did you think was going on behind the
17 scenes?

18 MR. MALLOY: My personal opinion?

19 MS. JONES: Yes.

20 MR. MALLOY: Probably money.

21 THE COMMISSIONER: So you thought that at
22 the time when the first statement was taken?

23 MS. JONES: No, well after the two -- the
24 subsequent ---

25 THE COMMISSIONER: Right.

1 **MR. MALLOY:** --- phone calls after that, I
2 said there's something going on here.

3 **THE COMMISSIONER:** Okay. And the two
4 subsequent phone calls that you were involved in were
5 shortly after the statement was taken?

6 **MR. MALLOY:** Yes, sir, I believe they were
7 just a couple of days ---

8 **THE COMMISSIONER:** Okay.

9 **MR. MALLOY:** --- couple of days later.

10 **MS. JONES:** Do you recall Staff Sergeant
11 Brunet specifically requesting that you provide Officers
12 Lefebvre and Sebalj with help in the Silmsier matter?

13 **MR. MALLOY:** Yes. Yeah, I was to be a
14 scribe and offer any assistance, sure, to them.

15 **MS. JONES:** So you were then specifically
16 tasked then to assist with that?

17 **THE COMMISSIONER:** With what?

18 **MS. JONES:** With assisting Officers Lefebvre
19 and Sebalj.

20 **THE COMMISSIONER:** In taking the interview
21 or the whole investigation?

22 **MS. JONES:** In the Silmsier matter, as it was
23 ongoing.

24 **MR. MALLOY:** Well, I remember him mentioning
25 that I was to be a scribe and offer any assistance but, I

1 mean, I wouldn't have to be tasked for that. I would have
2 done that.

3 MS. JONES: I meant ---

4 MR. MALLOY: But it was ---

5 MS. JONES: --- following the interview, the
6 ensuing investigation.

7 MR. MALLOY: Oh. Oh, I'm sorry, I thought
8 you meant during the interview.

9 I don't recall any specific direction after
10 that, but I wouldn't have to have been told that.

11 But with Ron Lefebvre, it was in good -- it
12 was in good hands with Ron Lefebvre.

13 MS. JONES: So is the answer you don't
14 recall Staff Sergeant Brunet specifically asking you to
15 assist?

16 MR. MALLOY: I guess my answer would be if I
17 was asked for assistance, I would give it. I don't
18 remember being specifically told "assist them", but that's
19 -- if I would have been asked I would have -- that's
20 certainly what I would have done.

21 MR. COMMISSIONER: Well, what I'm trying to
22 understand in this.

23 There's a difference between getting three
24 people together or at the different times but saying you're
25 going to work on this project as a team as opposed to

1 "Officer Malloy, can you assist them in taking the
2 statement" and that.

3 You see so the focus is much narrower on
4 "Help them out with taking the statement" as opposed to
5 "Help them out with the case".

6 MR. MALLOY: Oh, I see.

7 THE COMMISSIONER: All right?

8 MR. MALLOY: My understanding was it was for
9 the interview because I had -- actually Ron and I both had
10 just come off I think the second half of a homicide prelim
11 and my cases were just sitting there, so it was help out
12 and then get on with your caseload.

13 MS. JONES: Do you recall having a meeting
14 with Staff Sergeant Brunet and Officer Sebalj in the youth
15 office where the three of you discussed strategies in the
16 Silmsers matter?

17 MR. MALLOY: We me?

18 MS. JONES: Yes.

19 MR. MALLOY: No, no.

20 MS. JONES: Do you recall having a meeting
21 with Officers Brunet and Sebalj where you had actually said
22 that they should be careful about soliciting complaints but
23 should contact altar boys that had been serving at the same
24 time as Silmsers. Do you recall comments like that?

25 MR. MALLOY: No, not at all.

1 **MS. JONES:** Now, there's the last area of
2 questions that I want to deal with dealing with a person
3 Malcolm MacDonald. You are familiar with who is person is?

4 **MR. MALLOY:** Defence lawyer -- deceased,
5 yeah.

6 **MS. JONES:** And you knew him as a defence
7 lawyer because you became a uniform in 1980. Is that
8 right?

9 **MR. MALLOY:** That's correct. Yes.

10 **MS. JONES:** And he would have been Crown
11 Attorney I believe in the '60s or early '70s or so. Well
12 before your time anyway.

13 **MR. MALLOY:** Well before my time.

14 **MS. JONES:** So you just knew him as a
15 defence lawyer, local defence lawyer here in Cornwall. Was
16 it your understanding that he just did criminal law?

17 **MR. MALLOY:** I don't really know, I mean I
18 really don't the man. I just knew he was up in court with
19 criminal cases. I'm not sure if he handled civil matters
20 or ---

21 **MS. JONES:** Okay. But you had a fair number
22 of cases that would go to trial. You would see Mr.
23 MacDonald there at the court house?

24 **MR. MALLOY:** Oh, yeah, he'd be upstairs.
25 Sure.

1 **MS. JONES:** And I understand that on
2 February 1st, '93 you actually returned a telephone call to
3 Silmser and talked to him about the fact that Monsignor
4 Donald McDougald had contacted him and he was asked to
5 attend a meeting between himself and three priests. This
6 was the phone call that you just mentioned briefly there.
7 Do you recall that?

8 **MR. MALLOY:** Yes.

9 **MS. JONES:** And do you recall that you
10 advised him to hold off until Sebalj had been
11 informed ---

12 **MR. MALLOY:** Absolutely.

13 **MS. JONES:** --- about this?

14 Now, on that same day, I just want to put it
15 into perspective -- on that same day, do you recall
16 speaking to Malcolm MacDonald by telephone?

17 **MR. MALLOY:** Yes. It was the same date.

18 **MS. JONES:** Do you recall that?

19 **MR. MALLOY:** I'm pretty sure it was the same
20 date, yeah.

21 **MS. JONES:** Okay.

22 **MR. MANDERVILLE:** Mr. Commissioner, there's
23 actually notes on this that might be useful for the
24 witness.

25 **MR. COMMISSIONER:** Yeah, I think we should

1 be reviewing those.

2 MS. JONES: Yes. That's fine.

3 Looking at document -- I'll just confirm
4 that. Sorry, it's an exhibit, Exhibit 315.

5 MR. COMMISSIONER: Whose notes are these?

6 MR. MALLOY: These are mine, Your Honour.

7 THE COMMISSIONER: All right.

8 What page do you want to refer to?

9 MS. JONES: I'm looking at the second page
10 which is Bates page 7043884.

11 MR. COMMISSIONER: What exhibit are we at?

12 MS. JONES: It's Exhibit 315, the second
13 page of the notes, 7043884.

14 MR. COMMISSIONER: No. That's not the
15 number I have. It's 872 I have.

16 MR. MANDERVILLE: I have the same Bates age
17 as my friend but the document I've got is Document 711540.

18 MR. COMMISSIONER: That's the one.

19 MR. MANDERVILLE: And it would be ---

20 MS. JONES: Is it?

21 MR. MANDERVILLE: And it would be, I
22 believe, at page 14 of the notes.

23 MR. COMMISSIONER: I'm sorry. The Bates
24 page again then?

25 MS. JONES: It's 7043884.

1 **MR. COMMISSIONER:** So it's near the back.

2 You have it, sir.

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

4 **MR. COMMISSIONER:** All right.

5 **MS. JONES:** It's about three pages from the
6 back. Mine actually is a brief version obviously of that
7 document.

8 Have you got that Mr. Malloy? At the top
9 it's dated 01 Feb '93.

10 **MR. MALLOY:** Yes.

11 **MS. JONES:** And that's a summary of what the
12 telephone call was to Malcolm MacDonald. It would appear
13 that he did most of the talking. Is that fair to say?

14 **MR. MALLOY:** I just let him speak. Yes.

15 **MS. JONES:** And in that phone call he was
16 basically saying some -- not very kind things, shall we
17 say, about Mr. Silmser. He seems to talk -- or
18 involvement in embezzlement and saying all these sorts of
19 things about it. You had stated that at the bottom, to
20 quote:

21 "Non-validated info at this time."

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

23 **MS. JONES:** You just had this as your source
24 in other words?

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

1 **MS. JONES:** And you also said at the bottom
2 of -- quote:

3 "I advised Mr. MacDonald I would pass
4 this info onto Constable Sebalj on
5 Wednesday."

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

7 **MS. JONES:** Now, we don't have confirmation
8 note-wise that you actually did do that or that not. You
9 have nothing to state that you actually did that in any
10 event. Would it have been your understanding that you did
11 that?

12 **MR. MALLOY:** Oh, absolutely.

13 **MS. JONES:** Now ---

14 **MR. COMMISSIONER:** What did you think of
15 this phone call? Did you make anything of it?

16 **MR. MALLOY:** I was kind of surprised that a
17 defence lawyer would call and normally you don't get that
18 type of a phone call. It's usually in court under
19 examination or cross examination, but not a personal call.
20 So I just let him talk and I wrote down what he was saying
21 but it was strange.

22 **MS. JONES:** And that was actually my next
23 question basically.

24 You're saying that you didn't have a
25 relationship with Malcolm MacDonald at that time such that

1 he would call you frequently or socialize or whatever.

2 MR. MALLOY: No.

3 MS. JONES: But didn't it strike you as odd
4 that he was calling you out of the blue on this
5 investigation?

6 MR. MALLOY: Again, I'm not -- if I may
7 explain.

8 We didn't have the phone system that we have
9 now back then. We had -- telephone messages were written
10 down on the carbon copy telephone pads. I don't know if he
11 called me or it was a call to the Youth Bureau and Heidi
12 was off. I'm not sure what day the 1st of February was, but
13 she was off 'til Wednesday. We just returned phone calls
14 so we could let people know that we got their message and
15 if it wasn't me it was Heidi would get back to them. So
16 I'm not sure if it was directed to me or the Youth Bureau
17 or if he knew that Heidi was investigating this.

18 MS. JONES: Well, I'll just refer to
19 Document 738224.

20 MR. COMMISSIONER: But you'll agree with me
21 that his comments are shedding some unfavourable light on
22 Mr. Silmsen?

23 MR. MALLOY: That's correct, sir. Yes.

24 MR. COMMISSIONER: All right. Exhibit
25 number 1501.

1 there's maybe a photocopy irregularity here. I was
2 wondering if I could just have a brief recess to get a copy
3 of that?

4 **THE COMMISSIONER:** Thank you.

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

7 This hearing will resume at 10:25.

8 --- Upon recessing at 10:15 a.m. /

9 L'audience est suspendue à 10h15

10 --- Upon resuming at 10:25 a.m. /

11 L'audience est reprise à 10h25

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

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

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

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

18 **THE COMMISSIONER:** So where are we now?

19 **MS. JONES:** Just to clarify, there was just
20 -- I apparently have a document in here that nobody else
21 had. We're looking at an excerpt of 738224 and
22 specifically Bates page 7163633 and 7163634.

23 **THE COMMISSIONER:** And what exhibit is that,
24 Madam Clerk?

25 **MS. JONES:** Exhibit 1501. I believe it

1 would be part of that.

2 THE COMMISSIONER: Okay.

3 MS. JONES: It actually -- the Bates pages
4 are not in chronological order. This is why there was a
5 bit of confusion on that.

6 THE COMMISSIONER: Okay. That's fine.

7 KEVIN MALLOY, Resumed/Sous le même serment:

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

9 JONES (cont'd/suite):

10 MS. JONES: So, Mr. Malloy, we're looking at
11 the Bates page 7163633. At the top it says December 16th
12 1992.

13 MR. MALLOY: Yes.

14 MS. JONES: Do you see that?

15 MR. MALLOY: Yes.

16 MS. JONES: Okay. I'm just looking down at
17 the very bottom, two entries, and it's written "Sunday
18 26th". Do you see that?

19 MR. MALLOY: Yes.

20 MS. JONES: The handwritten note there?

21 I believe he's talking about meetings with
22 the Diocese at that point. And then "January 28", could
23 possibly be 7th, it's hard to say, "Call from DR and Ken.
24 David [something] had been to police..."

25 Or something of that nature. I'm only doing

1 this because the next date is out of sequence and I think
2 it was written incorrectly.

3 **THE COMMISSIONER:** I'm sorry; whose notes --
4 these are Malcolm MacDonald's notes?

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

6 **THE COMMISSIONER:** Okay.

7 **MS. JONES:** Then if you got to Bates page --
8 the next page, 7163634, you can see -- it says "December
9 28th" but with the chronology, I think that's actually an
10 error. I think it's supposed to be January 28th.

11 **THE COMMISSIONER:** Well -- okay.

12 **MS. JONES:** Because that makes sense with
13 the chronology of things.

14 Do you see where I am, Mr. Malloy?

15 **MR. MALLOY:** Yes. Yes.

16 **MS. JONES:** Okay.

17 **MR. MALLOY:** I'm just trying to read this.

18 **MS. JONES:** And it makes sense with your
19 notes as well, quite frankly, that it would be January 28th
20 not December 28th.

21 Do you see where I am?

22 **MR. MALLOY:** Of the phone call?

23 **MS. JONES:** Of the phone -- about the phone
24 call.

25 **MR. MALLOY:** The phone call I received was

1 the 1st of February.

2 MS. JONES: Correct.

3 MR. MALLOY: I'm sorry.

4 MS. JONES: But looking at Mr. MacDonald's
5 handwritten notes, the entry that says "December 28th" is
6 likely January 28th. He's likely made an error.

7 And then it says, "Called Kevin Malloy." Do
8 you see that?

9 MR. MALLOY: Well, the December 28th entry
10 and then the February 1st entry, yes.

11 MS. JONES: And then the February 1st follows

12 ---

13 MR. MALLOY: Yes.

14 MS. JONES: --- right after.

15 MR. MALLOY: Yeah.

16 MS. JONES: That's why I'm saying December
17 28th is probably an error. It's probably January 28th and
18 he's mistakenly written "December."

19 But that entry, anyway, whatever date it is,
20 states, "Called Kevin Malloy."

21 Do you see that?

22 MR. MALLOY: I see Kevin. I'm trying to
23 make out -- it has to be me. It doesn't' look like Malloy,
24 but it's -- the handwriting is hard to ---

25 THE COMMISSIONER: Okay. So that's --

1 MS. JONES: Well ---
2 THE COMMISSIONER: --- on the December 28th -
3 --
4 MS. JONES: Entry.
5 THE COMMISSIONER: --- entry, it says:
6 "Call Kevin [somebody]. Not in. Other
7 officer not available."
8 MR. MALLOY: Not available.
9 THE COMMISSIONER: Do we agree on that?
10 MR. MALLOY: Yes.
11 MS. JONES: Right.
12 THE COMMISSIONER: Okay.
13 MS. JONES: And then it has:
14 "February 1st, talked to Kevin
15 [somebody]..."
16 Which I'm saying is Malloy.
17 THE COMMISSIONER: Well, that's a little
18 closer to Malloy ---
19 MS. JONES: Yeah.
20 THE COMMISSIONER: --- I think.
21 So it says, "Advised" what?
22 MS. JONES: "Advised had seen David on
23 Thursday. Asked for more..."
24 I think it means "...info concerning a
25 statement," or something of that nature.

1 But do you see the entry there? He says,
2 "Talked to Kevin Malloy."

3 **MR. MALLOY:** Yes.

4 **MS. JONES:** Okay. That matches up with your
5 recollection and your notes ---

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

7 **MS. JONES:** --- that he had, in fact,
8 talked.

9 So this is the other half of the
10 conversation.

11 **MR. MALLOY:** Okay.

12 **MS. JONES:** That's what I'm trying to get
13 at.

14 **MR. MALLOY:** Okay.

15 **MS. JONES:** Okay?

16 **MR. MALLOY:** Yes.

17 **MS. JONES:** Would you agree that it appears
18 that this is the other half anyway of the conversation that
19 you had with Malcolm MacDonald on that day?

20 **MR. MALLOY:** Yes.

21 **MS. JONES:** If you accept that these are his
22 notes about that.

23 The thing that is curious is that if you
24 look at the December 28 entry, where he said:

25 "Called Kevin Malloy and not

1 available..."

2 Left you a message. You actually had said
3 on the February 1st notes that you were returning a call to
4 Malcolm MacDonald.

5 MR. MALLOY: "Telephone message to call
6 Malcolm MacDonald."

7 Yes.

8 MS. JONES: Okay. So that makes sense,
9 doesn't it? It sounds like he left you a message and then
10 you returned the call on February 1st.

11 MR. MALLOY: It doesn't -- the December 28th
12 entry doesn't say that he left a message ---

13 MS. JONES: No, it doesn't.

14 MR. MALLOY: --- on that day.

15 MS. JONES: No, it doesn't.

16 MR. MALLOY: I'm sorry -- okay.

17 MS. JONES: But your notes -- it's
18 consistent with him having left a message because you're
19 returning a call to Malcolm MacDonald, you state.

20 MR. MALLOY: To him, yeah.

21 MS. JONES: So ---

22 MR. MALLOY: My concern was that I wasn't
23 sure of the phone call, but now it's obvious from this
24 December 28th entry that he called to speak to me.

25 MS. JONES: M'hm.

1 **MR. MALLOY:** I wasn't sure if he had called
2 to speak to me on the 1st of February or Heidi.

3 **MS. JONES:** Right.

4 **MR. MALLOY:** But now I'm -- according to
5 this, he did call the office to speak to me.

6 **MR. MANDERVILLE:** Sorry to interrupt, Mr.
7 Commissioner. It occurs to me that there is another Kevin
8 in this piece and that is Father Kevin Maloney, and it's
9 hard to distinguish from either noted entry who that might
10 be.

11 **THE COMMISSIONER:** Yes. Well, I -- let's
12 put it this way. On the December 28th notation, it -- I
13 think it's fair to say, "Called Kevin. Not in. Other
14 officer not available."

15 **MR. MANDERVILLE:** I think I agree with you,
16 sir.

17 **THE COMMISSIONER:** That's fair.

18 **MR. MANDERVILLE:** Yeah.

19 **THE COMMISSIONER:** On the other one, we
20 don't know.

21 **MR. MANDERVILLE:** I think that's fair too.

22 **MS. JONES:** But the only point I'm trying to
23 make from this, from Malcolm MacDonald's notes, because
24 obviously we can't get any further information on that, it
25 seems consistent that he left you a message that you

1 returned on February 1st?

2 MR. MALLOY: Correct.

3 MS. JONES: And that's consistent with your
4 notes, and it seems to be consistent with what he wrote.

5 MR. MALLOY: Correct.

6 THE COMMISSIONER: Okay.

7 MS. JONES: And my question is that if
8 you're saying that you didn't really have any sort of a
9 relationship with Mr. MacDonald beyond a professional one,
10 obviously, but if you weren't a person in continual contact
11 with him, why would he be phoning you on a matter that
12 you're actually not the investigator on?

13 MR. MALLOY: Well, I had been in -- there's
14 only two of us in that unit, and I don't know how he -- he
15 must -- he would have been directed to call the Youth
16 Bureau. I'm not sure if he knew Heidi was investigating
17 this or not.

18 But there's only two of us there, so that's
19 -- that was my point about trying to figure out if he
20 called me directly or if he called the Youth Bureau or
21 called the front desk and they left a message for somebody
22 to call him back.

23 MS. JONES: M'hm.

24 MR. MALLOY: But there's only two of us in
25 there.

1 MS. JONES: Okay.

2 MR. MALLOY: And I would suspect he knew me
3 more than he knew Heidi because I had been there longer.
4 That's the only reason.

5 MS. JONES: And just building on what the
6 Commissioner asked earlier, it would have been highly
7 unusual, wouldn't it have been, for a defence lawyer to be
8 calling you, certainly about a matter where no charges had
9 even been laid yet?

10 MR. MALLOY: Well, it's unusual to get a
11 phone call from a defence lawyer and have him start
12 verbalizing what he verbalized to me.

13 MS. JONES: M'hm.

14 MR. MALLOY: That was kind of out of the
15 ordinary.

16 MS. JONES: But not only that, just to have
17 a defence lawyer call about someone, regardless of what he
18 was actually saying, but just to call the police before
19 charges have been laid against anybody?

20 MR. MALLOY: I mean, it did happen, but it
21 was unusual. They would usually go through the Crown
22 Attorney or ---

23 MS. JONES: M'hm.

24 MR. MALLOY: --- deal with the other
25 solicitor.

1 **MS. JONES:** And you said that you would
2 undertake to tell Officer Sebalj, but would this have been
3 something that you would have, or perhaps even should have
4 told your supervisors that this person's phoning you about
5 this situation?

6 **MR. MALLOY:** I'm not sure that I didn't, but
7 it would be my responsibility to give it to the
8 investigating officer, who was Heidi.

9 **MS. JONES:** It doesn't show any notation
10 that you were going to be talking to the supervisors about
11 it, that you were only going to be telling ---

12 **MR. MALLOY:** Heidi.

13 **MS. JONES:** --- Officer Sebalj.

14 **MR. MALLOY:** Yeah.

15 **MS. JONES:** Do you have any recollection if
16 you did tell your supervisors about it?

17 **MR. MALLOY:** I don't recall. I may have,
18 but I'd certainly told Heidi. It was her case.

19 **MS. JONES:** Again, this is a very high-
20 profile sort of situation. Allegations were being made
21 against a priest in the community.

22 **MR. MALLOY:** M'hm.

23 **MS. JONES:** Again, a prominent member of
24 society. Did you conduct yourself any differently because
25 of the fact this person was a prominent member in this

1 society?

2 MR. MALLOY: No.

3 MS. JONES: I understand you're Roman
4 Catholic as well, sir?

5 MR. MALLOY: Yes.

6 MS. JONES: And you belong to the Knights of
7 Columbus?

8 MR. MALLOY: Yes.

9 MS. JONES: And how long have you belonged
10 to the Knights of Columbus?

11 MR. MALLOY: October 1992, I believe it was.

12 MS. JONES: And did you know Malcolm
13 MacDonald from your affiliation with the Knights of
14 Columbus?

15 MR. MALLOY: No.

16 MS. JONES: You've never heard of him
17 through that?

18 MR. MALLOY: Not that I can recall.

19 MS. JONES: If I could refer, please, to
20 Document 722892?

21 (SHORT PAUSE/COURTE PAUSE)

22 THE COMMISSIONER: Exhibit 1502 is a
23 newspaper clipping from -- it looks like it's the
24 Freeholder and the date that is written on it is October
25 16th, 1993.

1 --- EXHIBIT NO./PIÈCE NO. P-1502:

2 (722892) - Kevin Malloy - Standard-
3 Freeholder news clipping "Brother
4 MacDonald knighted into the Order of
5 St. John" dated October 16, 1993

6 MS. JONES: I don't know if you've ever seen
7 that article before, Mr. Malloy?

8 MR. MALLOY: No.

9 MS. JONES: I'll just give you a minute to
10 review it.

11 (SHORT PAUSE/COURTE PAUSE)

12 MS. JONES: So, Officer Malloy, not being a
13 member of the Knights of Columbus myself, I glean from this
14 article that being knighted into the Order of St. John is a
15 rare honour, as stated in the newspaper. Do you have an
16 understanding of that as well?

17 MR. MALLOY: Just from this article. I've
18 never heard of the order before.

19 MS. JONES: No?

20 MR. MALLOY: The St. John Ambulance I've
21 heard of but not this.

22 MS. JONES: Apparently it's quite a big deal
23 to have this happen to you as the Knights of Columbus
24 member?

25 MR. MALLOY: Apparently.

1 MS. JONES: Apparently?

2 MR. MALLOY: From the article it looks like
3 it.

4 MS. JONES: So you weren't aware that
5 Malcolm MacDonald had been knighted into this rare
6 situation at all?

7 MR. MALLOY: No.

8 MS. JONES: There's various Knights of
9 Columbus organizations in each parish, I understand, in
10 Cornwall. Is that how it works?

11 MR. MALLOY: Oh, yes. Eventually the bishop
12 decided that each parish would have its own council instead
13 of one or two major ones in the area.

14 MS. JONES: So it's linked in some ways to
15 the parish or the diocese for that area, is that how it
16 works.

17 MR. MALLOY: The council I belong to? Yes,
18 it's a parish council.

19 MS. JONES: Those are my questions, thank
20 you.

21 (SHORT PAUSE/COURTE PAUSE)

22 MS. DALEY: Officer Malloy, my name is Helen
23 Daley. I'm counsel to the Citizens for Community Renewal
24 and that's the local group in Cornwall whose interest is in
25 promoting the reform of institutions so as to protect

1 children.

2 **MR. MANDERVILLE:** I'm sorry, Mr.
3 Commissioner, and I don't want to interrupt my friend's
4 cross before she starts.

5 **THE COMMISSIONER:** I thought maybe you were
6 objecting to her ---

7 **MR. MANDERVILLE:** Her title?

8 **THE COMMISSIONER:** Yeah.

9 **(LAUGHTER/RIRES)**

10 **THE COMMISSIONER:** I know you're on your
11 feet a lot, Mr. Manderville.

12 **MR. MANDERVILLE:** I have been and I
13 apologize for that.

14 As you know, typically witnesses are asked
15 if they have any recommendations ---

16 **THE COMMISSIONER:** Yeah.

17 **MR. MANDERVILLE:** --- or how this may have
18 impacted them and my friend didn't ---

19 **THE COMMISSIONER:** Yeah, all right.

20 **MS. JONES:** I'm happy if we do that now.

21 **THE COMMISSIONER:** Yes, yes, yes.

22 **MS. JONES:** I'll be back.

23 **(LAUGHTER/RIRES)**

24 **MS. JONES:** Officer Malloy, do you have any
25 recommendations then on your conduct with respect to the

1 investigations and the entire role that you would have had
2 within Cornwall Police Service through this experience?

3 **THE COMMISSIONER:** Well, I think given your
4 experience in the Cornwall Police and in this community, do
5 you have any recommendations that you want me to consider
6 when I'm writing up my report about this whole thing?

7 **MR. MALLOY:** I think the only thing I can
8 say, Your Honour, is workload and the number of human
9 resources that we have to do the workload.

10 I don't know if it's still the same as it
11 was in the past but if memory serves me the *Police Services*
12 *Act* limited the number of police officers to the size of
13 the community. In my opinion they should limit the size of
14 the police force to the amount of activity in the city, not
15 based on population. It's just workload, Your Honour, just
16 swim to keep your head above water.

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

18 **MS. JONES:** And this is my final question.
19 What sort of impact if any has your role here in the
20 Inquiry had on you personally?

21 **MR. MALLOY:** Well, after four back surgeries
22 and a fight with the ladder that the ladder won this past
23 year, I've just been living on a daily basis with varying
24 levels of pain and it's just worn me down.

25 All I can say is that, as I told Your

1 Honour, this is you jumping feet first and you learn as you
2 go. Did I make some mistakes? Yes, I did, but I'd like to
3 think that I improved. You go in it. You have to work
4 every day and you hear stories from kids about sexual
5 abuse. You hear it day -- on a day-by-day-by-day basis.
6 You investigate a crib death. You investigate a child that
7 choked to death. A suicide at the jail that I investigated
8 turned into a coroner's inquest that the coroner made me
9 the Coroner's Constable which -- then they had the homicide
10 of an 11 year-old mentally handicapped little girl. It
11 just drains you and I'd like to think that I did the best
12 job I could.

13 I guess I could say I'm a -- I take
14 everything to heart and it's -- I don't like to think that
15 I made mistakes and if I do I beat myself up more than
16 anything else.

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

18 **MR. MALLOY:** So I just said, it's been with
19 -- this for the past year it's been stressful.

20 **MS. JONES:** Thank you, officer.

21 **MR. MALLOY:** Thank you.

22 **THE COMMISSIONER:** Okay.

23 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

24 **DALEY:**

25 **MS. DALEY:** On that last note, Officer, I

1 expect I might be some time with you. If you feel you need
2 a break by reason of back pain or anything else, do not
3 hesitate to let me know, all right?

4 **MR. MALLOY:** Thank you.

5 **MS. DALEY:** The other thing I want to say to
6 you before I begin is that my objective is not to beat you
7 up over mistakes anybody thinks you've made in the past.
8 To the extent that in my questions I am going to go over
9 some of your past investigations, that's not the objective.
10 The objective is through your testimony to help us all
11 about further improvements in the future that we can arrive
12 at in terms of investigating and dealing with historical
13 sexual assaults, all right?

14 Let me just at the outset ask you a few
15 brief questions about your training. You were fairly clear
16 to us that when you entered the Unit in January of 1989 you
17 received no training specific to a sexual assault
18 investigation.

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

20 **MS. DALEY:** And I thought you said that to
21 your knowledge there was no training available at that
22 time?

23 **MR. MALLOY:** No specific training for sexual
24 assaults that I was aware of, no.

25 **MS. DALEY:** If we move forward a number of

1 years, and I'm thinking in particular the early '90s and by
2 1993, did you have knowledge that there were any specific
3 training courses available for sexual assault in that later
4 timeframe?

5 **MR. MALLOY:** I think the only course that
6 would come close to that, and that would be the General
7 Investigative Technique course or the CIB course that would
8 touch on various criminal matters but not specifically for
9 sexual assaults. I don't remember there being a specific
10 course for sexual assaults.

11 **MS. DALEY:** Certainly there was nothing that
12 was offered to you by your Service in the early '90s?

13 **MR. MALLOY:** Well, I went on the General
14 Investigative Technique course.

15 **MS. DALEY:** Yes, that was in 1991.

16 **MR. MALLOY:** Oh, was it? Sorry.

17 **MS. DALEY:** Yeah.

18 **MR. MALLOY:** Sorry. Ninety (90) ---

19 **MS. DALEY:** What I meant by my question was,
20 you were not offered any course that was specific to the
21 investigation of sexual abuse or historic ---

22 **MR. MALLOY:** No.

23 **MS. DALEY:** --- sexual abuse. All right.
24 Whether or not one existed, we -- you don't know, but if it
25 did, it wasn't offered to you. All right.

1 And you refer in your testimony in-chief to
2 your involvement with two cases that you categorized as
3 historic sexual assault. I take it those would be the
4 cases involving Jeannette Antoine as complainant and Marcel
5 Lalonde as accused, correct?

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

7 **MS. DALEY:** I want to talk to you about some
8 concepts and principles that my advisors tell me are -- are
9 relevant to a sexual assault investigation; I want to know
10 if you agree with these. I take it one of the foremost
11 issues in an investigation of this sort is the credibility
12 of the victim, would you agree with that?

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

14 **MS. DALEY:** And that is because these events
15 are not witnessed and it's always one word against another
16 person's word.

17 **MR. MALLOY:** In most cases, yes.

18 **MS. DALEY:** And in particularly -- in
19 particular for historic occurrence, the passage of time is
20 a factor that defence counsel is going to use to try to
21 impugn the credibility of the victim; is that fair?

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

23 **MS. DALEY:** And just in general terms, any
24 defence counsel doing his or her job is going to focus the
25 defence on the victim's credibility; that will be the most

1 salient feature of the prosecution, agreed?

2 MR. MALLOY: That's correct.

3 MS. DALEY: Would you agree with this
4 concept, sir, when an officer's assigned to investigate
5 sexual abuse or historic sexual abuse, it's important for
6 him or her to develop a rapport with the victim and a trust
7 relationship?

8 MR. MALLOY: Yes.

9 MS. DALEY: And would you agree that it's
10 important to establish that relationship before the
11 investigator gets into detailed disclosure of the incident.

12 MR. MALLOY: In some cases, it would take a
13 little time to -- for the person to feel comfortable to
14 talk to you, let's say.

15 MS. DALEY: All right.

16 MR. MALLOY: Sometimes, it's just about
17 automatic.

18 MS. DALEY: Obviously though, the more the
19 victim feels comfortable talking to you, the more you can
20 expect he or she is going to be able to give you a full and
21 complete description of what happened.

22 MR. MALLOY: That's correct.

23 MS. DALEY: And tying back to point one,
24 credibility, it's very important that you obtain a full and
25 complete statement from the victim for the purpose of

1 assisting them in being credible witnesses down the road.

2 MR. MALLOY: That's correct.

3 MS. DALEY: Would you agree with me that in
4 order to enhance credibility to the extent possible, a
5 victim should be cautioned about making disclosures to
6 other parties outside of the investigating officer?

7 MR. MALLOY: I'm not -- I'm not ---

8 MS. DALEY: Let me -- let me clarify. If a
9 victim -- if a victim is now a witness at trial and he or
10 she has made four statements about the same occurrence, the
11 probability is higher that he or she may be successfully
12 impugned on inconsistencies in those statements.

13 MR. MALLOY: That's correct, yeah.

14 MS. DALEY: Right. So the -- so we want to
15 avoid that by limiting the other -- the disclosures that a
16 victim makes to the police so the police can control the
17 statement and they know there's only one statement out
18 there; would you agree with that proposition?

19 MR. MALLOY: I would agree with that, sure.

20 MS. DALEY: And I know this is an aspect
21 that arose particularly in the Silmser matter, but if the
22 victim has a preference as to whether they disclose to a
23 female or a male officer, would you agree that should be
24 honoured so as to enhance the process and the victim's
25 ability to tell you his story?

1 **MR. MALLOY:** I suppose in a -- in a large
2 metropolitan police service, you can do your best to
3 accommodate that, but in a small service -- I don't want to
4 say human resources are limited.

5 **MS. DALEY:** Would you agree with the notion
6 that subject to the human resources constraints, the
7 victim's preference should be honoured?

8 **MR. MALLOY:** It should be taken into
9 consideration and given thought, yes.

10 **MS. DALEY:** All right. Because again, the
11 more comfortable the victim is, the better the rapport, the
12 more comprehensive the statement you're going to receive,
13 correct?

14 **MR. MALLOY:** Sure.

15 **MS. DALEY:** Are there any other key concepts
16 or principles that relate to sexual assault investigations
17 that, in your experience, should be mentioned here? I've
18 outlined a few, are there others?

19 **MR. MALLOY:** I can't think of any specifics,
20 no.

21 **MS. DALEY:** One just came to my mind; I want
22 to see if you agree with this.

23 In a historic abuse case, and again, I'll
24 use Mr. Silmsler as an example, the disclosure is coming
25 many, many years after the event, in his case 20 years,

1 correct?

2 MR. MALLOY: Correct.

3 MS. DALEY: Is it important for the
4 investigating officer to explore with the victim the
5 question "why now"? In other words, "Why have you come to
6 the police now with this disclosure?" Is that an important
7 thing to talk to the victim about?

8 MR. MALLOY: I would suggest that it would
9 be because it'll certainly be brought up by defence.

10 MS. DALEY: Precisely. So if you are able
11 to determine from the victim why he's coming forward now,
12 it may assist in enhancing his credibility in the
13 statement-taking process and for other purposes.

14 MR. MALLOY: That's possible, right.

15 MS. DALEY: The question why he's coming
16 forward now, of course, that would go to his motivation
17 potentially and that could be an area in which he's
18 impugned in cross-examination by defence counsel, just to
19 connect those dots, would you agree with that?

20 MR. MALLOY: I'm not -- could you explain
21 that again to me, please?

22 MS. DALEY: In my way of thinking -- I want
23 to know if you agree -- the reason why you want to know why
24 the victim is coming forward now is that it speaks to his
25 motive which can be a subject matter for cross-examination.

1 **MR. MALLOY:** Oh, yes, yes, yes, yeah.

2 **MS. DALEY:** All right. Now, let's turn to
3 the first of the historical sexual abuse investigations
4 that you were involved in and that's the one relating to
5 Marcel Lalonde, if that's all right. Do you have the
6 moniker list handy because I ---

7 **MR. MALLOY:** I do, yes.

8 **MS. DALEY:** All right. And what I want to
9 address with you first is your dealings with your primary
10 complainant who was C-57.

11 **MR. MALLOY:** Yes.

12 **MS. DALEY:** All right. Give me one second.
13 You might like to have Exhibit 1491 handy
14 because these are your notes of the interview with C-57. I
15 might need to refer you to some aspects of those notes.

16 **THE COMMISSIONER:** I'm sorry? Fourteen (14)
17 ---

18 **MS. DALEY:** I'm sorry? The exhibit number?

19 **THE COMMISSIONER:** Yeah.

20 **MS. DALEY:** Fourteen ninety-one (1491).

21 **THE COMMISSIONER:** All right.

22 **MS. DALEY:** And I'm at the very first page
23 of that exhibit.

24 **THE COMMISSIONER:** Okay.

25 **MS. DALEY:** Do -- do you have that, Officer?

1 **MR. MALLOY:** Yes.

2 **MS. DALEY:** And the -- what I want to
3 explore with you is an aspect of this scenario that I -- I
4 don't know if you considered or not, but I just want to ask
5 you some questions and see if this was on your radar.

6 Your complainant was 16 years of age at the
7 time of the events of which he complained.

8 **MR. MALLOY:** M'hm.

9 **MS. DALEY:** Is that correct, sir?

10 **MR. MALLOY:** He was 16 year old -- 16 years
11 old when they occurred, yes.

12 **MS. DALEY:** When they occurred ---

13 **MR. MALLOY:** Yeah, yeah.

14 **MS. DALEY:** --- correct? And the person who
15 he alleges abused him, on my calculation, was about 33
16 years of age at that time. And I can help you with Marcel
17 Lalonde's date of birth, if you want to check that, that is
18 recorded by you in Exhibit 1495. Let me just save time,
19 his date of birth, which I assume you have correct, is
20 November 4th, '48.

21 **MR. MALLOY:** Forty-eight (48)?

22 **MS. DALEY:** So in 1981, he was a 33-year-old
23 man.

24 **MR. MALLOY:** Yes.

25 **MS. DALEY:** All right. And I don't see

1 reference to it in your notes, but I'm wondering if you
2 obtained any information from C-57 about the role that
3 Marcel Lalonde was playing in this dramatic production that
4 this teenager was involved in; did you know anything about
5 the role that Lalonde had?

6 MR. MALLOY: In the play?

7 MS. DALEY: Yes.

8 MR. MALLOY: In the theatre production? No.

9 MS. DALEY: When I say role, I don't mean
10 what role he played in a particular production, but was he
11 directing, in any fashion, the performance or ---

12 MR. MALLOY: Oh, I see ---

13 MS. DALEY: --- was he giving ---

14 MR. MALLOY: --- right was he giving
15 direction to the students? Do you know about that?

16 MR. MALLOY: Not that I'm aware of, no.

17 MS. DALEY: All right.

18 Can you tell me what you understood his
19 function to be when he first encountered Mr. C-57?

20 MR. MALLOY: My impression is they were just
21 both actors rehearsing for a play.

22 MS. DALEY: Could I ask you to look at the
23 bottom of the first page of Exhibit 1491 and your very last
24 bullet point gives some information about C-57's
25 unfortunate family situation.

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

2 **MS. DALEY:** And then your note says:

3 "Suspect looked up to as an adult he
4 could trust and help him with problems.
5 Impressed by the fact an adult would
6 treat him as an equal."

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

8 **MS. DALEY:** That's something that C-57 told
9 you about?

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

11 **MS. DALEY:** And you can understand how a 16-
12 year old boy might feel that way about a 33-year old man,
13 right?

14 **MR. MALLOY:** M'hm.

15 **MS. DALEY:** Did you turn your mind at all to
16 the fact that perhaps there was a trust relationship in
17 play between C-57 and Marcel Lalonde that was underlying
18 the occurrence that C-57 discussed with you?

19 **MR. MALLOY:** I looked at it more as a
20 friendship.

21 **MS. DALEY:** But not a friendship of equals?

22 **MR. MALLOY:** No, not of equal age.

23 **MS. DALEY:** You in your own mind knew that
24 whatever label to attach they weren't equals. They weren't
25 equals in experience. They weren't equals in age.

1 **MR. MALLOY:** Right.

2 **MS. DALEY:** They weren't equals in life
3 smarts, if we can put it that way. Would you agree with
4 that?

5 **MR. MALLOY:** Sure.

6 **MS. DALEY:** And would you agree that C-57 as
7 you have recorded rightly or wrongly looked up to Lalonde
8 and trusted him?

9 **MR. MALLOY:** That's correct.

10 **MS. DALEY:** You accepted his word at that, I
11 take it? You didn't doubt what he said?

12 **MR. MALLOY:** C-57?

13 **MS. DALEY:** Yeah.

14 **MR. MALLOY:** No.

15 **MS. DALEY:** And you in your own experience
16 can see how that was quite likely?

17 **MR. MALLOY:** Sure.

18 **MS. DALEY:** One other -- did that factor
19 into your thinking at all as to whether or not what
20 happened between Lalonde and C-57 might in fact constitute
21 an offence, the trust relationship?

22 **MR. MALLOY:** No, he wasn't a person in
23 authority. It was more of a friendship and he was
24 supplying alcohol.

25 **MS. DALEY:** On that very point, of course,

1 that was a criminal offence was it not? C-57 wasn't legal
2 to drink.

3 **MR. MALLOY:** No.

4 **MS. DALEY:** Did you turn your mind to the
5 fact that Lalonde was supplying alcohol to a minor?

6 **MR. MALLOY:** Well, that's a provincial
7 Act. It was a *Liquor Licence Act*. That was nine years
8 earlier, eight years earlier.

9 **THE COMMISSIONER:** No, but not necessarily
10 that it was a provincial offences Act. I mean, do you not
11 agree that a 33-year old giving alcohol to a 16-year old
12 raises questions?

13 **MR. MALLOY:** Yes, sir.

14 **MS. DALEY:** Wouldn't it in your mind raise
15 questions about what Lalonde's intentions were vis-à-vis
16 this young person? And in fairness, as counsel pointed out
17 to you yesterday, some of the other people you talked to
18 were also under age and had been supplied alcohol by
19 Lalonde.

20 So putting those together did that move you
21 anywhere towards seeing the charges were appropriate?

22 **MR. MALLOY:** It was a factor in the thinking
23 -- my thinking but that's -- as I say before, this was my -
24 - I'm not making excuses. This was the first one I
25 investigated and that's why I sought advice from the Crown.

1 **MS. DALEY:** All right. I appreciate that.
2 I will come back to your role with the Crown in a moment.

3 And again, as I said to you at the outset,
4 I'm not trying to make you feel bad for mistakes. I'm just
5 trying to help us all so that you know we think about
6 things in an appropriate way in the future.

7 The other question I had for you about this
8 statement is -- and you spoke to this yesterday. This
9 witness, C-57, told you that there was photographic
10 evidence that Mr. Lalonde had involving other people. Do
11 you recall that?

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

13 **MS. DALEY:** And you knew Lalonde's address?

14 **MR. MALLOY:** Yes.

15 **MS. DALEY:** Did you give any thought to a
16 search warrant to obtain that evidence?

17 **MR. MALLOY:** Absolutely.

18 **MS. DALEY:** I assume you didn't seek a
19 search warrant?

20 **MR. MALLOY:** I didn't have the grounds to
21 get a search warrant.

22 **MS. DALEY:** And that was because?

23 **MR. MALLOY:** I had no evidence, nothing to
24 lead me towards reasonable probable grounds.

25 **MS. DALEY:** All right.

1 **THE COMMISSIONER:** Nothing to lead you to
2 reasonable probable grounds of what?

3 **MR. MALLOY:** That a criminal offence had
4 taken place. In order to get my search warrant I just -- I
5 canvassed that with the Crown attorney also.

6 **THE COMMISSIONER:** Okay.

7 **MS. DALEY:** I think the gist of his answer
8 was that he didn't feel he had RPG as to the existence of
9 an offence.

10 And in your mind that made it impossible for
11 you to seek a search warrant to obtain evidence?

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

13 **MS. DALEY:** A bit of a catch-22.

14 **MR. MALLOY:** Absolutely.

15 **MS. DALEY:** Because if the evidence was
16 there not only did it corroborate what C-57 had told you
17 but it opened the door to other victims, correct?

18 **MR. MALLOY:** Correct.

19 **MS. DALEY:** Did you seek advice from the
20 Crown about the search warrant?

21 **MR. MALLOY:** Absolutely.

22 **MS. DALEY:** Just help me, the advice you
23 received was?

24 **MR. MALLOY:** I didn't have the grounds to
25 get ---

1 **MS. DALEY:** To get a warrant?

2 **MR. MALLOY:** --- to get a warrant.

3 **MS. DALEY:** If you could look at page number
4 4, your handwritten numbering of Exhibit 1491?

5 I gather, sir, that as you told us in-chief,
6 your understanding about Mr. Lalonde was that he was an
7 elementary school teacher at this point; correct, not a
8 high school teacher?

9 **MR. MALLOY:** That's correct.

10 **MS. DALEY:** So what I wanted to take you to
11 is your fourth bullet point that says:

12 "Culprit had moved to Millville
13 Avenue."

14 **MR. MALLOY:** Right.

15 **MS. DALEY:**

16 "Victim attended by invitation and saw
17 two males in his backyard. Told victim
18 they were two of his students. They
19 were enjoying themselves, calling him
20 Marcel, drinking beer. UK...

21 Which I guess means unknown...

22 "...if any sexual acts had taken
23 place."

24 That's what I want to focus you on. If
25 these two males were in fact students they were primary

1 school students of Mr. Lalonde, correct?

2 MR. MALLOY: Yes.

3 MS. DALEY: And therefore they were
4 certainly underage to be drinking alcohol.

5 MR. MALLOY: Yes.

6 MS. DALEY: And it would be kind of an
7 unusual circumstance that they are socializing with a
8 teacher and calling him by his first name. They would have
9 to be very young kids, right?

10 MR. MALLOY: Yes. I'm not sure of the ages
11 but yes.

12 MS. DALEY: But give or take if they are
13 public school kids in the ordinary course they would be
14 years of age or younger?

15 MR. MALLOY: Correct.

16 MS. DALEY: And again I'm not -- I don't
17 want to be a critic but that circumstance I take it didn't
18 trigger you to consider that this needed to be reported to
19 the CAS?

20 MR. MALLOY: No.

21 MS. DALEY: And I take it, in addition, it
22 didn't bolster your feeling any further that Mr. Lalonde
23 was very likely committing offences with young boys?

24 MR. MALLOY: I would suggest that I was very
25 anxious to charge this person, but I had nothing to go

1 with.

2 MS. DALEY: One final point and I guess this
3 ties to one of the general points that we made earlier but
4 at the bottom of page 4 of your notes, sir -- I'm really
5 looking at the last five bullets. What's happening here, I
6 take it, is that C-57 is explaining to you his life
7 circumstances and why he is bringing this forward now as
8 opposed to eight years earlier when it happened.

9 He is saying he had many problems including
10 alcohol and drugs. He finally got some treatment. He
11 wasn't ready to face up to it but he had further
12 discussions with a friend A.A. and that helped him come
13 forward.

14 I mean this is an explanation from C-57 as
15 to why he is coming forward now.

16 MR. MALLOY: Correct.

17 MS. DALEY: And I take it that would be
18 relevant to you because that's a pretty sound reason for
19 why he's waited so long, would you agree?

20 MR. MALLOY: Sure.

21 MS. DALEY: It's a sympathetic reason.

22 MR. MALLOY: Yes.

23 MS. DALEY: It's certainly not something
24 that would impair his credibility if he were cross-examined
25 about it. Correct?

1 **MR. MALLOY:** I would agree with that, yeah.

2 **MS. DALEY:** I want to see if you can help me
3 with one other thing, sir.

4 And Madam Clerk, if you could show Officer
5 Malloy Document 734877?

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

7 **THE COMMISSIONER:** Thank you.

8 Exhibit Number 1503 is an internal
9 correspondence to Sergeant B. Wells from Constable Kevin
10 Malloy, January 13th, 1989.

11 **--- EXHIBIT NO./PIÈCE NO. P-1503:**

12 (734877) - Kevin Malloy - Internal
13 Correspondence from Kevin Malloy to B.
14 Wells dated January 13, 1989

15 **MS. DALEY:** Just take a moment and look at
16 that, sir, if you would for me, please.

17 **MR. MALLOY:** Yes.

18 **MS. DALEY:** Occurrence 9618/88, this is the
19 Lalonde occurrence that we've been talking about involving
20 C-57; correct?

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

22 **MS. DALEY:** And I take it what's happening
23 is that you're asking your supervisor to extend your
24 reporting date on this case due to further investigation
25 you're doing and then you say:

1 "Case involves possibly four victims of
2 a sexual assault."

3 MR. MALLOY: Correct.

4 MS. DALEY: In your mind, who were the
5 possible four victims?

6 MR. MALLOY: Well, it would have been the
7 names listed on the ---

8 MS. DALEY: Can I help you?
9 Was C-59 one of them?

10 MR. MALLOY: I'm trying to remember the
11 names on my list, his name was on that, C-58 ---

12 MS. DALEY: Yes.

13 MR. MALLOY: --- C-60 and C-65, I believe.

14 MS. DALEY: The primary reason I asked the
15 question is I wondered if you considered that the two
16 students that C-57 told you about were two possible
17 victims. I take it you didn't?

18 MR. MALLOY: No, I don't -- if memory
19 serves, they weren't -- they were never identified.

20 MS. DALEY: That confuses me a bit because I
21 thought that those were the names that C-57 subsequently
22 gave you when he looked at a high school yearbook. Cm I
23 wrong about that?

24 MR. MALLOY: The names of the ---

25 MS. DALEY: I thought I had understood from

1 your testimony in-Chief, but perhaps I didn't hear it
2 correctly, that C-57 did identify those students of Mr.
3 Lalonde to you from looking at yearbook?

4 **MR. MALLOY:** Yeah, initially I think he told
5 me he could identify them and then ---

6 **MS. DALEY:** And then he did.

7 **MR. MALLOY:** He did, but I can't remember
8 the two names.

9 **MS. DALEY:** I take it you never contacted
10 them?

11 **MR. MALLOY:** I made attempt -- I spoke to
12 some of the people on the list I had on the Project name
13 index.

14 **MS. DALEY:** Exhibit 1493?

15 **MR. MALLOY:** I'm not sure what the number
16 is.

17 **MS. DALEY:** Maybe you should just look at
18 that for a second.

19 I want to clarify some confusion in my mind
20 because what I want you to tell me is, to the best of your
21 ability, whether the people named on 1493 included the two
22 students.

23 Can you -- do you have that in your binder,
24 Officer?

25 **THE COMMISSIONER:** Yes, yes, it's just two

1 down.

2 MR. MALLOY: Okay.

3 THE COMMISSIONER: So the question is, on
4 that list there are a number of names. Can you help us as
5 to whether or not those names include the two young fellows
6 that were drinking beer in his backyard and calling him
7 Marcel?

8 MR. MALLOY: I can't say with certainty; I
9 didn't mark it down.

10 MS. DALEY: All right.

11 And just wondering, when you spoke to your
12 superior about possible four victims, if you considered
13 those two young students to be possible victims but I'm
14 taking that you're not really sure one way or the other?

15 MR. MALLOY: The four victims I would be
16 referring to would be from this list, C-60 ---

17 MS. DALEY: Yes.

18 MR. MALLOY: --- C-61, C-58 and C-65.

19 MS. DALEY: All right, thank you.

20 Can you help me because I can't piece this
21 together from the documents we have, how you came to know
22 about C-58 because he was not mentioned by C-57?

23 Do you have a recollection of that, sir, or
24 is there anything that would help you?

25 MR. MALLOY: No. My suggestion would be

1 that that would be one of the people he identified in the
2 yearbook, but that's ---

3 **MS. DALEY:** You're not positive one way or
4 the other?

5 **MR. MALLOY:** Not with certainty.

6 **MS. DALEY:** That fine; I know it's a long
7 time ago.

8 Just a few questions about the handwritten
9 statement that C-58 provided to you and, sir, that was
10 Exhibit 1494 and I don't know if you can help me, but
11 there's two features of this that I find odd and maybe you
12 can help. Two aspects in addition to the fact that it
13 appears to be addressed to a judge.

14 If you notice on the first page he records
15 the date and time at 1:00 p.m. and if you look at the last
16 page, under his signature, he records the date and the time
17 finished at 1:33. So he's, for some reason, being very
18 precise about the length of time he took writing that
19 statement.

20 Would you agree that that's somewhat
21 unusual? Or have you any explanation for why it happened
22 that way?

23 **MR. MALLOY:** I have no -- that was delivered
24 to me through the mail so I I don't know if he wrote this
25 in private or if there was any input from anyone or what

1 the circumstances were surrounding the writing of that
2 statement.

3 MS. DALEY: I take it you had no input into
4 this statement at all?

5 MR. MALLOY: No, that's the young fellow
6 that didn't want to -- was not ready to proceed with this
7 matter but he said it would make him feel better if he
8 wrote me a letter.

9 MS. DALEY: The other aspect of his letter
10 that I found a lot is that he refers to Lalonde as the
11 "accused"?

12 MR. MALLOY: He never mentions his name in
13 there.

14 MS. DALEY: He doesn't mention the name, no,
15 I appreciate that, but he ---

16 MR. MALLOY: Yeah.

17 MS. DALEY: --- he refers to him as the
18 "accused", which suggests that he thinks there's criminal
19 charges afoot.

20 Can you offer us any explanation as to why
21 he'd think that?

22 MR. MALLOY: No.

23 MS. DALEY: All right.

24 I wonder if you would be kind enough to have
25 a look at 734872?

1 (SHORT PAUSE/COURTE PAUSE)
2 THE COMMISSIONER: Thank you.
3 Exhibit 1504.
4 I take it, those are your notes, sir?
5 MR. MALLOY: Yes, they are, sir, yes.
6 THE COMMISSIONER: Constable Malloy's notes.
7 No, not dated.
8 --- EXHIBIT NO./PIÈCE NO. P-1504:
9 (734872) - Kevin Malloy - Notes of
10 Kevin Malloy re C-58 (undated)
11 MS. DALEY: These notes though are part of
12 the investigation we've been discussing are they not, sir?
13 MR. MALLOY: Yes.
14 MS. DALEY: And I'm inferring from this that
15 these notes perhaps reflect your first telephone
16 conversation with C-58?
17 MR. MALLOY: I would say that's correct,
18 yes.
19 MS. DALEY: Was he a cab driver or do you
20 recall?
21 THE COMMISSIONER: Does it matter?
22 MS. DALEY: No.
23 THE COMMISSIONER: Okay, well ---
24 MS. DALEY: All right.
25 THE COMMISSIONER: --- let's not identify

1 any ---

2 MS. DALEY: What I'm interested in is this,
3 sir, your note stated:

4 "I am conducting an investigation which
5 involves the sexual conduct of a
6 teacher."

7 I take it that's something you told Mr. C-
8 58? That's you speaking?

9 MR. MALLOY: Yes, yes.

10 MS. DALEY: And he immediately replied:

11 "Let me guess, Marcel Lalonde."

12 MR. MALLOY: That's correct.

13 MS. DALEY: And this is an accurate record
14 of that conversation I take it, sir?

15 MR. MALLOY: Yes.

16 MS. DALEY: Did it not impress you that he
17 identified the very person you were going to ask him about?

18 MR. MALLOY: Well, sure, led to credibility
19 as far as I'm concerned.

20 MS. DALEY: Was there more to this
21 conversation that you didn't take notes of, sir?

22 MR. MALLOY: No, I just would have said it -
23 - told him I wanted to speak to him and set up a time and
24 date for him to come in.

25 THE COMMISSIONER: So this was over the

1 telephone?

2 MR. MALLOY: That's a telephone call, sir.

3 MS. DALEY: All right. We'll agree that
4 your note doesn't indicate that his attitude is that he
5 doesn't want to be involved? You did note that.

6 MR. MALLOY: Not with the telephone call,
7 no.

8 MS. DALEY: And similarly in the statement
9 that he provided to you, sir, Exhibit 7, the handwritten
10 statement that you say came in the mail, he doesn't say in
11 here he doesn't wish to be involved?

12 MR. MALLOY: He doesn't, no.

13 MS. DALEY: Any time, Mr. Commissioner, that
14 you want the morning break, let me know, because our ---

15 THE COMMISSIONER: Health break time. Thank
16 you.

17 MS. DALEY: Is now a good time?

18 THE COMMISSIONER: Yes, thank you.

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

21 This hearing will resume at 11:30.

22 --- Upon recessing at 11:15 a.m./

23 L'audience est suspendue à 11h01

24 --- Upon resuming at 11:30 a.m./

25 L'audience est reprise à 11h24

1 **THE REGISTRAR:** This hearing is now resumed.
2 Please be seated. Veuillez vous asseoir.

3 **KEVIN MALLOY, Resumed/Sous le même serment:**

4 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

5 **DALEY (cont'd/suite):**

6 **MS. DALEY:** Officer, I'm afraid I might have
7 misheard something that you said earlier. And I just want
8 to make absolutely clear on this point.

9 Is it your testimony that C-57 did in fact
10 or was, in fact, able to identify the students who were
11 drinking in Lalonde's back yard?

12 **MR. MALLOY:** I can't say that for sure.

13 **MS. DALEY:** If you could take a quick look
14 at Exhibit 1492, the last page. That's his statement, sir.

15 **THE COMMISSIONER:** 1494?

16 **MS. DALEY:** Sorry, 92.

17 **THE COMMISSIONER:** No, his statement is 94.
18 What ---

19 **MS. DALEY:** Sorry.

20 **THE COMMISSIONER:** Exhibit 1492 is -- oh, a
21 statement of a witness. Right.

22 **MS. DALEY:** Yes. Yes.

23 **THE COMMISSIONER:** Okay.

24 **MS. DALEY:** That's C-57's statement, is it
25 not, sir?

1 **MR. MALLOY:** Yes.

2 **MS. DALEY:** And if I could just direct you
3 to the very last portion of that statement.

4 **MR. MALLOY:** Oh, okay, yes, I'm sorry.
5 Yeah.

6 **MS. DALEY:** Are we now clear as best you can
7 recall it that C-57 did provide you those names?

8 **MR. MALLOY:** Yes.

9 **MS. DALEY:** Thank you. Now, you recall
10 telling my friend yesterday that when you sought permission
11 to put this file in abeyance -- and I'm quoting from your
12 document, sir -- it was "for a short period of time to
13 allow writer to interview suspect Lalonde." You recall
14 that, sir?

15 **MR. MALLOY:** Yes.

16 **MS. DALEY:** Why did you not in fact
17 interview Marcel Lalonde?

18 **MR. MALLOY:** I wouldn't interview him unless
19 I had somebody that was willing to come forward and give me
20 a statement that I could form reasonable grounds then I
21 would speak to him.

22 **MS. DALEY:** Why did you tell your superior
23 that you needed a short period of time to interview him?
24 This is Document 1495 exhibit.

25 **MR. MALLOY:** Yes.

1 MS. DALEY: You recall that?

2 MR. MALLOY: I believe as I said yesterday
3 it was probably wishful thinking on my part that somebody
4 would be coming forward fairly soon.

5 MS. DALEY: Well, sir, by this time which is
6 June 22nd, 1989, let's just review who you had information
7 from concerning Lalonde.

8 You had information from C-57, correct?

9 MR. MALLOY: Yes.

10 MS. DALEY: And he wasn't reluctant to
11 proceed, correct?

12 MR. MALLOY: C-57?

13 MS. DALEY: Yes.

14 MR. MALLOY: Not at that time, no.

15 MS. DALEY: All right. You had information
16 from C-58.

17 MR. MALLOY: Yes.

18 MS. DALEY: Although you say he did not want
19 to be involved at that point.

20 MR. MALLOY: That's correct.

21 MS. DALEY: You had information about C-59
22 from C-57's statement.

23 MR. MALLOY: Just by name.

24 MS. DALEY: Right. You had information from
25 Mr. C-60. Did you not have that also, sir?

1 **MR. MALLOY:** Yes.

2 **MS. DALEY:** And as my friend put to you
3 yesterday, there were common elements to every -- these
4 people's stories. Common elements being alcohol, in some
5 instances a sexual assault that starts when they're
6 sleeping.

7 I'm having difficulty understanding why you
8 felt you couldn't interview Marcel Lalonde in light of that
9 information.

10 **MR. MALLOY:** All I can say it was a decision
11 I made at that time that I thought was correct.

12 **MS. DALEY:** All right.

13 **THE COMMISSIONER:** Sir, could it be -- and
14 I'm going to invite you correct me if I'm wrong but could
15 it be that your supplementary report is you're overworked,
16 you've got a lot of files. This one's sitting there, as
17 far as you're concerned it's not going anywhere. So your
18 supervisor -- you've got to come up with something. You
19 come and say look let's just put this in abeyance in the
20 back burner and -- because I've got more things to do.

21 **MR. MALLOY:** That's fair, sir, yes. Keep it
22 in abeyance and ---

23 **THE COMMISSIONER:** Thank you.

24 **MS. DALEY:** Is it factual that you had way
25 too much on your plate to deal further with this

1 investigation in July of '89?

2 MR. MALLOY: Oh, I had lots to do. I had --
3 yeah.

4 MS. DALEY: But you felt you couldn't deal
5 further with this investigation?

6 MR. MALLOY: Not at that point.

7 MS. DALEY: Did you tell Officer Wells that,
8 Staff Sergeant Wells that you just couldn't go further
9 because you didn't have the time?

10 MR. MALLOY: It wasn't a time issue. It was
11 a witness and evidence issue. I ---

12 MS. DALEY: Well, what Mr. Commissioner has
13 suggested to you, though, is that this was a way for you
14 to, I guess, put the file in abeyance because you didn't
15 have the time to go further with the people that you did
16 know about.

17 MR. MALLOY: Well, I had tried to locate the
18 three people that had no information on there. I couldn't
19 locate them and it came to a point where you have -- you
20 put a report in and request that it just be held in
21 abeyance until further evidence comes in.

22 MS. DALEY: I understand that one of the
23 people that you've said here that you couldn't locate was
24 named on Exhibit 1493, Mr. C-61.

25 MR. MALLOY: Yes, he was away at school.

1 **MS. DALEY:** I want you to help me with
2 something, sir. Exhibit 1497 is Mr. -- sorry, Officer
3 Desrosiers' occurrence report. I need you to have a look
4 at page 1 of that report, please.

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

6 **MS. DALEY:** And the first item of -- sorry,
7 I should -- do you have it?

8 **MR. MALLOY:** Yes.

9 **MS. DALEY:** The first item of information is
10 to the effect that C-61 was interviewed in the Lalonde
11 matter sometime between 1989 and 1990. He received a call
12 from a police officer of the Cornwall P.S. and had been
13 interviewed in reference to Marcel Lalonde.

14 **THE COMMISSIONER:** Let's be careful with the
15 names, please.

16 **MS. DALEY:** I'm sorry.

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

18 **MS. DALEY:** I'm sorry.

19 **THE COMMISSIONER:** So ---

20 **MS. DALEY:** But you see that, sir?

21 **MR. MALLOY:** Yes.

22 **MS. DALEY:** Was there anyone apart from
23 yourself who was working on this investigation between 1989
24 and 1990?

25 **MR. MALLOY:** Not that I was aware of.

1 **MS. DALEY:** Does looking at this record
2 assist you at all in recollecting whether or not in fact
3 you did make contact with Mr. C-61?

4 **MR. MALLOY:** I did not get in contact with
5 him personally but his name would have initiated a card in
6 our records bureau back then.

7 **MS. DALEY:** Well, the exhibit we're looking
8 at suggests that Mr. C-61 was interviewed.

9 **MR. MALLOY:** I never remember interviewing
10 that person. I remember speaking to his mother and telling
11 him -- telling -- asking her to have him call me back when
12 he got back from school.

13 **MS. DALEY:** Did you hear that any other
14 officer of the Force had interviewed C-61 in relation to
15 Lalonde?

16 **MR. MALLOY:** No.

17 **MS. DALEY:** And when you put this
18 investigation in abeyance, sir, did you consider asking for
19 it to be re-assigned or for it to be given to someone who
20 had the ability to devote more time to it?

21 **MR. MALLOY:** As I say it wasn't a time
22 issue. It was an evidence issue and I was asking that the
23 file be placed in abeyance in the hopes that evidence would
24 be forthcoming, people would be -- the word would get out
25 or somebody would come forward and say I want to file a

1 complaint and I'm willing to take part in the process.

2 MS. DALEY: Maybe we're going to disagree
3 about this, I don't know, but when you say it's an evidence
4 issue, to me that's also a time issue because it takes time
5 to interview people and procure evidence, correct?

6 MR. MALLOY: That's correct, yeah.

7 MS. DALEY: But I gather you're thinking at
8 the time -- and I'm not trying to be critical, your
9 thinking at the time was, I'll put the file n abeyance;
10 I'll hope someone comes forward voluntarily to talk to me?

11 MR. MALLOY: That's correct.

12 MS. DALEY: I had another question for you
13 about the document that we have up on the screen right now,
14 and that's Exhibit 1497, and if you read further the author
15 has met with Debbie -- is the second -- Madam Clerk, it's
16 the second main section of page 1. Perfect.

17 Derochie has asked Ms. Parisien to search
18 records and what I take from this is there were seven
19 entries of -- sorry, seven entries of recorded incidents
20 pertaining to Lalonde, dating between May 1, '84 and April
21 19, '89?

22 MR. MALLOY: I'm sorry.

23 MS. DALEY: Did you see that, sir?

24 MR. MALLOY: Yes.

25 MS. DALEY: Does that not suggest that prior

1 to your involvement in 1989, Lalonde had come to the
2 attention of the CPS in May of 1984?

3 MR. MALLOY: Well, those cards are created
4 for just anybody that files a complaint of a barking dog,
5 we'll say. Their name will go on a card and placed in the
6 records bureau. I'm not sure what the specific incidents
7 are that they're speaking about. He could ---

8 MS. DALEY: My question is, when you were
9 dealing with the Lalonde investigation were you aware that
10 he'd had prior contact with the police and did you attempt
11 to find out what it had been about?

12 MR. MALLOY: I can't recall.

13 MS. DALEY: It's possible it was with
14 respect to a sexual incident, but we don't know?

15 MR. MALLOY: I don't know what the specifics
16 are of the entries, no.

17 MS. DALEY: Was that a resource that was
18 available to you as an investigator? In other words, would
19 it be a matter of course when you hear allegations against
20 a particular suspect to try and determine if he or she has
21 come to the attention of the police previously?

22 MR. MALLOY: Yes.

23 MS. DALEY: And did you have -- did the
24 service have a reliable record-keeping component that would
25 allow you to find earlier records?

1 **MR. MALLOY:** I would say it was reliable,
2 sure.

3 **MS. DALEY:** All right.

4 But for whatever reason -- again, not to be
5 a critic -- you didn't consider doing that with respect to
6 Lalonde and prior incidents of any sort didn't become known
7 to you?

8 **MR. MALLOY:** I'm not saying that I did; I'm
9 not saying I didn't.

10 When I first got CIB, the practice that
11 generally was used was to place case notes in files and
12 make entries in your notebook, keep statements. So whether
13 I did -- I know at the bottom of this report is says what
14 Constable Derochie found in the file folder.

15 **MS. DALEY:** Yes.

16 **MR. MALLOY:** I guess I'm saying that's what
17 was found in there. I don't know if that was necessarily
18 what was in there whenever I was injured and my files were
19 -- I never saw my files again after that date.

20 **MS. DALEY:** I understand that.

21 Do you recognize the items that he lists as
22 items that were, in fact, in your file at one time?

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

24 **MS. DALEY:** All right.

25 I want to change to a different topic now,

1 sir. I think I'm finished with Lalonde.

2 I want you to focus on the period of time
3 when you worked sexual assaults in the Youth Bureau. So
4 that would be January to '93 -- January '89 up to March of
5 '93 when your accident occurred; so roughly a four-year
6 window. And I wonder if you can help me with this.

7 What was your understanding of the
8 respective roles of the police on the one hand and the
9 Crown's office on the other pertaining to the laying of
10 charges? In other words, whose responsibility was it and
11 based upon what to decide whether or not there was a basis
12 for a charge? Can you explain what you understood about
13 that?

14 **MR. MALLOY:** Well, ultimately, it's the
15 police officer that makes the decision if there's
16 reasonable and probable grounds ---

17 **MS. DALEY:** Based upon ---

18 **MR. MALLOY:** --- to lay the ---

19 **MS. DALEY:** Sorry, based upon what?

20 **MR. MALLOY:** Their investigation.

21 **MS. DALEY:** Right.

22 **MR. MALLOY:** At some investigations, you're
23 not sure if there's anything there or if there's -- if
24 we're missing something so that's when you would seek legal
25 advice.

1 I don't think it's the Crown's position to
2 say, lay this charge, lay that charge. They can't form
3 your reasonable grounds for you; you have to do that on
4 your own. It's to give direction.

5 **MS. DALEY:** And you had, obviously as you've
6 testified to, a number of conversations with Crown Johnson,
7 for example, the outcome of which is you didn't lay
8 charges. Lalonde is an example and there are others.

9 I don't understand and I want you to help me
10 if you can. What's his input into whether or not you have
11 reasonable and probable grounds? What is it that the Crown
12 tells you that assists your decision?

13 **MR. MALLOY:** When he would tell me there's
14 nothing here, it's not prosecutable.

15 **MS. DALEY:** And Johnson does that based on
16 the fruits of your investigation which you give him?

17 **MR. MALLOY:** That's correct.

18 **MS. DALEY:** Is there any other thing you can
19 tell us about that interaction; that is to say police
20 versus Crown responsibility?

21 I guess I would have thought this, sir. If
22 you're looking at the fruits of investigation and you say
23 to yourself, I'm just not sure, does it not follow from
24 that that you don't, in fact, have RPG? What I'm ---

25 **MR. MALLOY:** Well, we ---

1 **MS. DALEY:** --- really struggling with is
2 how the Crown helps you decide, in your mind, whether you
3 have RPG or not. He in his mind can say you don't, but you
4 in your mind have to come to a conclusion. How does his
5 thought process help you?

6 **MR. MALLOY:** I would say it would be a
7 second check to make sure I'm not missing something.
8 That's about the only way I can explain that.

9 **MS. DALEY:** All right.

10 So if I've understood that correctly then
11 you go to Johnson because, in fact, you don't have RPG,
12 you're not convinced and you're hoping he'll tell you,
13 well, maybe you've missed something. Is that really the
14 help you're seeking from him?

15 **MR. MALLOY:** That maybe I missed something?

16 **MS. DALEY:** Right. If I've understood your
17 last ---

18 **MR. MALLOY:** M'hm.

19 **MS. DALEY:** --- answer, you say you use him
20 as a second check, so does it follow from that when you go
21 to him, in your mind, you do not have TPG but you want to
22 know whether you've missed something and you want his eyes
23 on your file to tell you that. Is that it?

24 **MR. MALLOY:** Yes, yeah, sure.

25 **MS. DALEY:** All right.

1 Let's talk for a bit about Jeannette Antoine
2 and I'm going to be reviewing with you as we do this -- I
3 guess it's not an exhibit, Document 739308.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **THE REGISTRAR:** Seven-three-nine-three-zero-
6 eight (739308)?

7 **MS. DALEY:** Yes.

8 **THE REGISTRAR:** I don't have that.

9 **MS. DALEY:** Seven-three-nine-three-zero-
10 eight (739308)? These are the notes that the CAS generated
11 in relation to Antoine and in relation to their dealings
12 with the Cornwall Police Service if you don't have that
13 available. Do you have it by another number?

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **MS. DALEY:** I'm sorry for the delay. I did
16 give notice on the document. I don't know how to manage
17 it, I only have one copy available.

18 **THE COMMISSIONER:** Do we have it on the
19 screen?

20 **MS. DALEY:** I'm concerned it may be an
21 identical document under a different number somewhere, but
22 I ---

23 **THE COMMISSIONER:** No, no, that's okay.

24 **MS. DALEY:** I've made -- it's Exhibit 1284.

25 **THE COMMISSIONER:** Exhibit 1284.

1 **MS. DALEY:** My apologies for the confusion.

2 I don't know if you've had a chance to
3 review this, the particular aspects of this that relate to
4 the CAS and the Cornwall Police Service in relation to Ms.
5 Antoine, and if you haven't had a chance to see it
6 recently, perhaps I can direct you to portions of it.

7 **THE REGISTRAR:** Twelve-eighty-four (1284)?

8 **THE COMMISSIONER:** Twelve-eighty-four
9 (1284). There you go. All right.

10 **MS. DALEY:** It's on the screen.

11 **THE REGISTRAR:** I have 1284.

12 **MS. DALEY:** I'm sorry, Madame Clerk, I'm
13 going to try this one more time.

14 **THE COMMISSIONER:** You're saying this isn't
15 the document?

16 **MS. DALEY:** No, no, sir, I'm afraid it's
17 not. Could you please try 739038? And that is Exhibit
18 1284, but it is not the document I'm looking for
19 unfortunately.

20 I'm sorry, if we don't have this, perhaps we
21 could take an early lunch -- a short lunch -- and I'll make
22 copies of this.

23 **THE REGISTRAR:** It's on the screen.

24 **MS. DALEY:** Thank you. You found it. Thank
25 you. All right.

1 **THE COMMISSIONER:** So this will be our next
2 exhibit.

3 **MS. DALEY:** Yes.

4 **THE COMMISSIONER:** Which is what?

5 **THE REGISTRAR:** Exhibit 1505.

6 **THE COMMISSIONER:** It's Exhibit 1505, but
7 what is this document?

8 **MS. DALEY:** Sir, this document is Mr.
9 O'Brien, who was the former head of the CAS's notes in
10 relation to Jeannette Antoine.

11 **THE COMMISSIONER:** Okay.

12 **MS. DALEY:** His interaction with the
13 Cornwall Police.

14 **THE COMMISSIONER:** Fine. Okay. My need is
15 to be able to identify the exhibit for record. So can you
16 come up -- bring it up to the top, please, Madam Clerk? So
17 what I try to do -- that's it? Okay. So the first entry
18 is August 21st, 1989.

19 **MS. DALEY:** Correct. Would it help you to
20 have a hard copy, sir, because we do have one available?

21 **THE COMMISSIONER:** All right. Maybe you
22 could give it to the witness.

23 --- **EXHIBIT NO./PIÈCE NO. P-1505:**

24 (739308) - Kevin Malloy Notes of T.

25 O'Brien dated 21 Aug 89 to 21 Feb 90

1 re: Jeannette Antoine

2 MS. DALEY: And as I said to you, Officer
3 Malloy, what I might suggest you do is just read certain
4 portions of this which I will identify for you and then I
5 do have some questions about whether you knew anything
6 about these occurrences. So if you would be kind enough to
7 read the entries starting September 25th, '89 and ---

8 THE COMMISSIONER: I'm sorry; February ---

9 MS. DALEY: September 25, '89.

10 THE COMMISSIONER: Oh, September. Right.
11 Okay.

12 MS. DALEY: That's it. And review the
13 entries on the following page, the following two pages.
14 That would be very helpful to me.

15 THE COMMISSIONER: Can you scroll down,
16 Madam Clerk, the next page?

17 (SHORT PAUSE/COURTE PAUSE)

18 THE COMMISSIONER: Can you scroll down
19 again, Madam Clerk? You want us to read until?

20 MS. DALEY: If you could read, for present
21 purposes, to the bottom of Bates page 235. That's the
22 entry of October 23rd.

23 THE COMMISSIONER: Okay. What's the exhibit
24 number -- 1285? No, no. Madame Clerk, what exhibit number
25 is it supposed to be?

1 **THE REGISTRAR:** Fifteen-zero-five (1505).

2 **THE COMMISSIONER:** Pardon?

3 **THE REGISTRAR:** Fifteen-zero-five (1505).

4 **THE COMMISSIONER:** Okay. Do you want this
5 back? Thank you, 1505. Okay.

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

7 **THE COMMISSIONER:** Are you ready Sir?

8 **MR. MALLOY:** Yes.

9 **MS. DALEY:** Have you made your way through
10 it, sir?

11 **MR. MALLOY:** Yes.

12 **MS. DALEY:** My objective in these questions
13 is to try to determine how much of the information in the
14 documents that are referred to here you knew about during
15 the course of your investigation of Ms. Antoine's
16 complaint. So that's why I've directed you to this
17 document.

18 Sir, let me start by asking you whether --
19 and if you look at -- if you look at the entry under --
20 sorry -- the materials you've read suggest that Ms. Antoine
21 had given a written statement to the CAS. You saw a
22 reference to that at the third page of the document?

23 **MR. MALLOY:** Yes.

24 **MS. DALEY:** Was that ever provided to you in
25 the course of your investigation of Ms. Antoine's

1 complaints?

2 MR. MALLOY: No.

3 MS. DALEY: Did you know it existed?

4 MR. MALLOY: No.

5 MS. DALEY: If I could direct you to the
6 passage under September 28th, 1989, the second full
7 paragraph? Now, this is of course an internal discussion
8 at the CAS, but I want to know whether you had this
9 information available.

10 He says here, briefly:

11 "We went over some of the detail in
12 Jeannette's handwritten note and I
13 advised that while there were some
14 truth in what she was saying, some of
15 it was untrue and other allegations
16 were exaggerated."

17 I take it you weren't aware of this
18 statement itself. You obviously weren't aware of any CAS
19 attitude about Ms. Antoine's statement?

20 MR. MALLOY: No.

21 MS. DALEY: Were you generally aware about
22 the CAS attitude about the statement she gave you?

23 MR. MALLOY: No.

24 MS. DALEY: So you didn't know, I take it,
25 that someone at the CAS had reviewed her story, if you

1 will, found it true in part, untrue and exaggerated in
2 others?

3 MR. MALLOY: No.

4 MS. DALEY: You knew that -- did you know,
5 sir, that the person she complained about, Bryan Keough,
6 was a current employee of the Children's Aid Society?

7 MR. MALLOY: Yes.

8 MS. DALEY: Did you know the capacity in
9 which he worked there?

10 MR. MALLOY: No.

11 MS. DALEY: You didn't know whether or not
12 he was involved in the direct care of children?

13 MR. MALLOY: No.

14 MS. DALEY: I'd like you to look, please, at
15 the entry under September 29th, 1989 and in particular the
16 second paragraph which states:

17 "The main reason for going back to the
18 police would not be because of the
19 issue of corporal punishment but rather
20 because of the information contained in
21 Susie Robinson's notes which suggest
22 inappropriate sexual behaviour by our
23 staff when the group home was in
24 operation."

25 Did anyone ever direct you to focus

1 attention on inappropriate sexual behaviour when the Second
2 Street group home was in operation?

3 MR. MALLOY: Not to my recollection.

4 MS. DALEY: Did you ever receive any notes
5 from Suzy Robinson as referenced here?

6 MR. MALLOY: No.

7 MS. DALEY: Do you know who she was?

8 MR. MALLOY: No.

9 MS. DALEY: I take it in your dealing with
10 the Antoine matter that that name never came up nor any of
11 her information came to you?

12 MR. MALLOY: No.

13 MS. DALEY: And at page 4, your name is
14 mentioned in -- page 4 of the document, sir, your name is
15 mentioned in the second paragraph there, if I could just
16 direct you there for a second.

17 And what that suggests to me, reading it at
18 its face is on October 2nd '89, that's the entry date, your
19 Deputy Chief and your direct supervisor, Staff Sergeant
20 Wells received all of the written documentation in the
21 Children's Aid Society's possession.

22 You see that reference there, sir?

23 MR. MALLOY: Yes.

24 MS. DALEY: And just to help you with what
25 that was, I take it -- I need to take you back to September

1 29th, 1989. But there the CAS people are saying that it was
2 agreed that they should contact the police, give them
3 copies of Jeannette's notes, Suzy's notes, the minutes of
4 the different Personnel Committee meetings. And then they
5 say minutes would only be released after discussion with
6 the President but then the ensuing notes suggest that
7 permission was granted.

8 So this package of material is -- seems to
9 include Jeannette's notes, the notes of Suzy Robinson which
10 we've just talked about relating to sexual activity and
11 minutes of meetings. And as, just to tie it together for
12 you, or try to, then we see over on page 4 of the document,
13 that the author records these were given to your Deputy
14 Chief and your direct supervisor, Officer Wells?

15 **MR. MALLOY:** Yes.

16 **MS. DALEY:** Did you know anything about
17 that?

18 **MR. MALLOY:** No.

19 **MS. DALEY:** Did you ever come across any
20 materials that fit the description of what we see here?

21 **MR. MALLOY:** No.

22 **MS. DALEY:** It goes on to say that Wells
23 will read the material, discuss it with the Deputy Chief
24 and if it is to be investigated, will be probably be given
25 to Detective Malloy.

1 Did you know that prior to receiving this
2 assignment, Staff Sergeant Wells had read material and
3 discussed it with the Deputy Chief?

4 **MR. MALLOY:** No.

5 **MS. DALEY:** Continuing on -- and I think the
6 next paragraph is fairly important for my understanding
7 what's happening here. It says:

8 "The Deputy Chief is surprised that
9 they're coming back to the police."

10 But then the author says:

11 "I pointed out that the allegations in
12 the social worker's case notes about
13 inappropriate sexual behaviour was what
14 was prompting me to return, and not the
15 information in Jeannette's handwritten
16 notes."

17 And, sir, I take it that the social worker
18 referred to is Suzy Robinson. Would you agree that that's
19 what follows from the document?

20 **MR. MALLOY:** Based on the entry of September
21 29th, I would say it's probably the same person.

22 **MS. DALEY:** Yes?

23 **MR. MALLOY:** Yes.

24 **MS. DALEY:** Was it ever made known to you,
25 whether by Staff Sergeant Wells or anyone else, that the

1 concern here is contained in the social worker's notes and
2 it relates to sexual conduct, or misconduct potentially, at
3 the group home? Was that ever made known to you?

4 MR. MALLOY: No.

5 MS. DALEY: Would it have affected your
6 investigation had you known it?

7 MR. MALLOY: It would depend on the content
8 of the notes and Jeannette Antoine made the same
9 allegations in her -- in her statement.

10 MS. DALEY: I take it though, you weren't
11 able to compare Ms. Antoine's allegations with any
12 information that Suzy Robinson had available ---

13 MR. MALLOY: No.

14 MS. DALEY: --- because you didn't know she
15 was a potential witness?

16 MR. MALLOY: That's correct.

17 MS. DALEY: Now the passage that we've just
18 been looking at concludes with the statement:

19 "If the police have to question Mr.
20 Keough, they will advise me in advance
21 of doing so."

22 I take it -- I'm assuming that you never
23 questioned Bryan Keough about Ms. Antoine's allegations?

24 MR. MALLOY: No.

25 MS. DALEY: Is there a reason why not?

1 **MR. MALLOY:** Again -- no, I wouldn't speak
2 to him unless I had credible evidence to proceed with the
3 case.

4 **MS. DALEY:** And you felt you didn't so you
5 didn't contact Mr. Keough?

6 **MR. MALLOY:** Well, I had gone to the Crown
7 attorney -- I was waiting for an answer back from the
8 Crown, so I basically finished what I could get, met with
9 the Crown attorney and that's when he said he was going to
10 write the Regional Director of Crown Operations and I was
11 waiting for an answer back.

12 **MS. DALEY:** All right. So, so that's the
13 occurrence that died on the vine, so to speak, and you
14 never did hear back?

15 **MR. MALLOY:** I did not hear back, no.

16 **MS. DALEY:** So essentially you abeyanced
17 your file as well for Ms. Antoine?

18 **MR. MALLOY:** Yes.

19 **MS. DALEY:** Sir, bear with me one moment.
20 The page we've been looking at of this Exhibit 1505; if I
21 could ask you just briefly to direct your attention to the
22 October 23rd entry which has to do with the assignment of
23 the file to you.

24 **MR. MALLOY:** M'hm.

25 **MS. DALEY:** And I take it that -- is that

1 date roughly correct as to when you received this
2 assignment from Staff Sergeant Wells?

3 MR. MALLOY: M'hm, I'm not sure of the exact
4 date.

5 MS. DALEY: I guess what this indicates --
6 and you feel free to disagree, it's not your document, but
7 this indicates that, as of October 24th '89, Wells had
8 indicated to Mr. O'Brien of the CAS that the case has been
9 turned over to yourself.

10 Does that sound more or less like what
11 happened?

12 MR. MALLOY: That it had been turned over to
13 me?

14 MS. DALEY: Yes?

15 MR. MALLOY: Yes.

16 MS. DALEY: I'm wondering, sir, when -- did
17 Staff Sergeant Wells sit down with you when he gave you
18 this assignment and give you any background information or
19 any direction as to what you were to be investigating?

20 MR. MALLOY: Not that I can recall, no.

21 MS. DALEY: And you've confirmed that you
22 don't recall receiving any written material of any sort
23 pertaining to Mr. Keough, whether it be a statement by
24 Antoine or a social worker's notes?

25 MR. MALLOY: That's correct.

1 **MS. DALEY:** Now I need you to move forward
2 in this exhibit with me for a moment and please look at the
3 entry of December 22, '89, and that's Bates page ending
4 236. Let me know when you've had a chance to review that,
5 sir.

6 Have you had a chance to take a look at
7 that, sir. This suggests that, to paraphrase, Mr. O'Brien
8 had spoken to you twice in the month of December, 1989.
9 That you had advised him that he had approached Antoine
10 concerning her wishes to carry matter further. And she
11 advised you she'd like to think about it.

12 Stopping there, is that information correct
13 and is that something that you said to Mr. O'Brien?

14 **MR. MALLOY:** I'd have to agree with that,
15 yes.

16 **MS. DALEY:** All right.

17 **MR. MALLOY:** Yeah.

18 **MS. DALEY:** That suggests to me -- and maybe
19 I'm wrong -- but that suggests to me that you had in fact
20 had contact with Jeanette prior to December 22nd, 1989.

21 **MR. MALLOY:** Yes.

22 **MS. DALEY:** All right. And that the state
23 of affairs is that she wants to think about what she's
24 going to do, fair?

25 **MR. MALLOY:** Correct.

1 **MS. DALEY:** And he then says that you
2 advised him that the police would "close out the case
3 before Christmas" but then in a second conversation between
4 yourself and O'Brien it's suggested that you told O'Brien
5 that you hadn't had time to close it out but you'll do so
6 very early in January of 1990.

7 And again stopping there is that in fact
8 correct information about how you were seeing the
9 investigation?

10 **MR. MALLOY:** No, I don't recollect that
11 conversation at all.

12 **MS. DALEY:** All right. So you would say
13 that what's attributed here to you was not said to Mr.
14 O'Brien of the CAS?

15 **MR. MALLOY:** Not to my knowledge.

16 **MS. DALEY:** I guess the reason I'm focusing
17 there -- and I want to take you back to a phrase that you
18 used in-chief yesterday.

19 I take it you thought that what was
20 happening with the Antoine matter was that you knew that
21 O'Brien was retiring and that someone else would take over
22 his role as Executive Director and I think you said that
23 O'Brien wanted to leave with a clean slate.

24 **MR. MALLOY:** That was my opinion, yeah.
25 Sure.

1 **MS. DALEY:** That that was your best
2 understanding of what was happening here, correct?

3 **MR. MALLOY:** Sure.

4 **MS. DALEY:** Does that suggest O'Brien wanted
5 this matter closed out? In other words, he wanted no
6 finding that any further step was necessary concerning
7 Keough?

8 **MR. MALLOY:** I would suggest that he wanted
9 to retire and was hoping to get an answer one way or the
10 other on this matter before he left and his replacement
11 took over.

12 **MS. DALEY:** You didn't feel he was looking
13 for a particular answer which is that there's nothing to
14 concern themselves with?

15 **MR. MALLOY:** Oh, no, absolutely not.

16 **MS. DALEY:** All right. In any event this
17 notion that you're telling him you're going to close your
18 file, that didn't happen as best you recall?

19 **MR. MALLOY:** No.

20 **MS. DALEY:** I don't know if you're aware of
21 this information but if you look to the bottom of that page
22 under January 23rd -- and again this is an internal CAS
23 issue so you may or may not know -- but it says that:

24 "Certain people met to discuss how they
25 would handle Brian Keough's application

1 to be a foster parent with a view to
2 adopting a specific child."

3 And that's obviously a matter that is of
4 concern at that time to the CAS. Did you know that
5 circumstance, sir?

6 **MR. MALLOY:** No.

7 **MS. DALEY:** And please then go over to the
8 next item and would you just read the -- sorry, the
9 February 7th, 1990 entry?

10 **MR. MALLOY:** Yes.

11 **MS. DALEY:** Have you had a chance to look at
12 that?

13 **MR. MALLOY:** Yes.

14 **MS. DALEY:** This attributes to you, as of
15 February 7th, 1990 the view that there is not sufficient
16 evidence on which the police could proceed, and that the
17 Crown had agreed with that decision.

18 It suggests that that's something that you
19 told Mr. O'Brien on February 7th, 1990. Is that correct,
20 sir?

21 **MR. MALLOY:** I would have to agree based on
22 his note, not by my recollection.

23 **MS. DALEY:** I'm not sure exactly where that
24 leads us. Are you suggesting that we should rely upon his
25 note as an accurate statement that you gave him that

1 information that date?

2 MR. MALLOY: I'm -- I can't confirm the date
3 but I can say that he did speak to me a few times.

4 MS. DALEY: Yes.

5 MR. MALLOY: And I was -- basically told him
6 right now there's nothing to proceed with but I'm waiting
7 for an answer back from the Crown.

8 MS. DALEY: This suggests that what you tell
9 him is you don't have sufficient evidence and that by
10 telephone the Crown had agreed with your decision as of
11 February 7th, 1990.

12 Can you say if that's correct or not?

13 MR. MALLOY: I met with the Crown attorney
14 in person on this file not over the telephone.

15 MS. DALEY: All right. So is it just that
16 aspect of the statement that's wrong? Had you, in fact,
17 been told by the Crown that they agreed with your thoughts
18 as of February 7th, 1990?

19 MR. MALLOY: Again I can't remember the date
20 but the Crown was also of the opinion that he required a
21 legal direction and that's why he wrote to the Regional
22 Director of Crown Operations.

23 MS. DALEY: The reason I'm kind of focusing
24 on the date, sir, is that as I have understood the evidence
25 Antoine attended unannounced and -- at the station and she

1 gave you her written statement on February 5, 1990.

2 We're agreed that that's what happened?

3 **MR. MALLOY:** I'd have to review the date
4 again but ---

5 **MS. DALEY:** Okay, well let me help you with
6 that. I took that information from Officer Desrosiers'
7 report which is Exhibit 1286. And in particular the fourth
8 page of that exhibit, Bates page ending 643. And in fact
9 the third paragraph on that page, sir, I'll just read it to
10 you:

11 "The case apparently remained inactive
12 until February 5, 1990 when Antoine
13 came into the police station with a
14 handwritten statement. Malloy had not
15 heard from Antoine in the interim and
16 was surprised by her visit. She was
17 interviewed at length, et cetera."

18 That's why I'm fixing February 5, 1990 as
19 the date she gave the statement and was interviewed. Do
20 you have any reason to think that's incorrect?

21 **MR. MALLOY:** No.

22 **MS. DALEY:** Is it right to take from these
23 two documents that two days later, by February 7th, you had
24 determined there was no basis whatsoever for charges and
25 had told the CAS that?

1 **MR. MALLOY:** What date I met with the Crown?

2 **MS. DALEY:** Is it possible you met with the
3 Crown more than once concerning Antoine is it not?

4 **MR. MALLOY:** Yes, yes. And I had met her
5 prior also when Mr. Bell urged her to tell me what -- her
6 history of ---

7 **MS. DALEY:** Right.

8 **MR. MALLOY:** --- foster homes so ---

9 **MS. DALEY:** Right. And then there's a
10 hiatus and then she comes in with a statement on February
11 5th, 1990.

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

13 **MS. DALEY:** Correct?

14 **MR. MALLOY:** Right.

15 **MS. DALEY:** Had you asked her to bring the
16 written statement in?

17 **MR. MALLOY:** I don't recall asking her to
18 write a statement. I was just trying to get her to come
19 in, period.

20 **MS. DALEY:** In any event whether you asked
21 or not, she brought you the written statement February 5.

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

23 **MS. DALEY:** Well, I guess to go back to my
24 question, not to belabour it, is it possible that between
25 receiving her statement on February 5 and interviewing her

1 and February 7th, you had concluded there was no basis for
2 any charges?

3 MR. MALLOY: I had questions and concerns, I
4 would say, that's why I went to see the Crown. I didn't
5 feel I had any charges at that point, no.

6 MS. DALEY: How long was the interview with
7 Jeannette; do you remember?

8 MR. MALLOY: No.

9 MS. DALEY: Did you have difficulty dealing
10 with her? Did you find her difficult to deal with?

11 MR. MALLOY: Yes.

12 THE COMMISSIONER: In what way?

13 MR. MALLOY: Credibility, that would -- just
14 her -- her story was -- sorry -- was kind of
15 helter skelter, in my mind.

16 MS. DALEY: Well, did you sit with her and
17 by virtue of question and answer, elicit from her a
18 coherent, chronological story about what happened?

19 MR. MALLOY: I tried, yes.

20 MS. DALEY: I'm getting the impression that
21 you really didn't have much sympathy for her, her
22 statement; is that a fair way to look at it?

23 MR. MALLOY: No.

24 MS. DALEY: All right.

25 MR. MALLOY: No.

1 **MS. DALEY:** Did you ever try to locate or
2 interview any of the people named in her statement?

3 **MR. MALLOY:** No.

4 **MS. DALEY:** And one incident in particular I
5 just want to take you to: Ms. Antoine's statement is --
6 one second -- Exhibit 505.

7 **THE COMMISSIONER:** Well, can we -- before we
8 go there, in that same paragraph, Officer Derochie says --
9 he says this:

10 "It would appear that Malloy adopted an
11 attitude of Antoine was not a
12 cooperative victim ... he had plenty of
13 victims who were cooperating and he
14 could not afford to be running after
15 Antoine. She was reporting something
16 which had occurred in 1975/76. He had
17 cases in which victims were in
18 immediate danger and thus justified his
19 inattention to Antoine's complaint."

20 Is that how you felt?

21 **MR. MALLOY:** Not to that degree, Your
22 Honour.

23 I would say I tried a number of times to get
24 her to come in and there were only a number of phone calls
25 I could make and then I had other cases to work on, so --

1 but I don't believe I was inattentive or not interested in
2 the case.

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

4 Thank you.

5 **MS. DALEY:** Did you ever develop the
6 impression that Ms. Antoine was uncomfortable speaking to a
7 male about these occurrences?

8 **MR. MALLOY:** No.

9 **MS. DALEY:** She didn't express that to you?

10 **MR. MALLOY:** No.

11 **MS. DALEY:** Have you, in your experience as
12 a sexual assault investigator, seen the phenomena where
13 some of -- victims of abuse are sometimes, unfortunately,
14 saddled with emotional and psychological difficulties as a
15 result? I'm sure you've seen that happen?

16 **MR. MALLOY:** Yes.

17 **MS. DALEY:** Did it ever occur to you that
18 maybe some of your difficulty with Ms. Antoine was because
19 of that reason?

20 **MR. MALLOY:** I would say it played a part,
21 sure.

22 **MS. DALEY:** Did that suggest that perhaps
23 putting the ball in her court was not the best way forward;
24 in other words, expecting her to come to you was perhaps
25 not the best way to contact her or to deal with her issue?

1 **MR. MALLOY:** In what way?

2 **MS. DALEY:** Well, you may be -- may disagree
3 with me; feel free to -- but it seems to me that your
4 approach to Antoine is to keep the ball in her court, that
5 until you hear from her, you're not going to take a
6 proactive step. I'm just wondering whether, in hindsight,
7 you think that was the best approach?

8 **MR. MALLOY:** I spoke to her in person.

9 **MS. DALEY:** Yes.

10 **MR. MALLOY:** And I told her when she was
11 ready -- she didn't know if she wanted to proceed. I said,
12 "When you're ready to proceed, come in and see me."

13 And then some calls after that.

14 And I was just waiting.

15 **MS. DALEY:** All right.

16 So I take it then by February 5, '90, she's
17 ready to proceed because she's there with her statement?

18 **MR. MALLOY:** With her statement, yes.

19 **MS. DALEY:** All right.

20 Now, I wanted to take you to a particular
21 portion of her statement and it's Exhibit 505.

22 And in particular, I'd just like you to look
23 over the page that she has numbered by hand number "4";
24 it's Bates page 630.

25 And the reason I'm directing you here is

1 she's referring to another resident of the group home,
2 named "Sandy" and she -- I'd like you to read the portion
3 that starts "One time Sandy and I were sleeping when Bryan
4 came into the room", just if you could read the balance of
5 that statement and let me know when you've had a chance to
6 do that.

7 (SHORT PAUSE/COURTE PAUSE)

8 MS. DALEY: Did you have a chance to read
9 that page, sir?

10 MR. MALLOY: Yes.

11 MS. DALEY: All right.

12 So making allowances for the spelling
13 mistakes, what Antoine is saying here is that there was, in
14 fact, sexual impropriety that she knows about between Bryan
15 and a fellow resident named "Sandy" and that the beatings
16 that Jeannette received from Bryan Keough, according to
17 her, might have stopped if she had had sex with Bryan
18 Keough; that's what she's stating here.

19 MR. MALLOY: M'hm.

20 MS. DALEY: You remember reading that part
21 of her statement?

22 MR. MALLOY: Yes.

23 MS. DALEY: And just to remind you that,
24 although you didn't know about it, the CAS was, in fact,
25 interested in knowing whether or not sexual improprieties

1 involving Mr. Keough had, in fact, occurred, right?

2 MR. MALLOY: right.

3 MS. DALEY: That's what the social worker,
4 Suzy Robinson, had notes about, unbeknownst to you.

5 When you read this statement, did you make
6 any effort to find out who "Sandy" was and to speak with
7 her about Ms. Antoine's allegation?

8 MR. MALLOY: No.

9 MS. DALEY: Is there a reason why not?

10 MR. MALLOY: No.

11 MS. DALEY: Clearly that didn't depend on
12 the veracity of Ms. Antoine; if Sandy had verified that
13 occurrence, that's exactly what the CAS was concerned to
14 know about; correct?

15 MR. MALLOY: That's correct.

16 MS. DALEY: Just to take you back to some
17 comments that Staff Sergeant Derochie made in his report on
18 the occurrence and just to remind you, sir, that is
19 Exhibit 1286.

20 And I'm going to ask you to look at page
21 number 7 of Derochie's report; it's Bates page 646.

22 I'll wind up this section quickly, sir, so
23 we can take our break.

24 MR. MALLOY: I'm sorry; what tab number
25 would that be?

1 **THE COMMISSIONER:** One two eight six (1286).

2 **MR. MALLOY:** Oh, sorry, I have the wrong
3 binder.

4 **THE COMMISSIONER:** What page, please?

5 **MS. DALEY:** Page 7 of the report; Bates page
6 ending 646.

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

8 **MS. DALEY:** And I wonder -- I want to know
9 if you agree or disagree with some of Derochie's
10 conclusions on that page. But in the third paragraph he
11 says:

12 "There's no activity on this case after
13 April 10th by the Crown's office or by
14 the Police Service."

15 I take it, you would agree with that?

16 **MR. MALLOY:** I'm sorry; I was on the wrong
17 page.

18 **MS. DALEY:** Sorry, I'll let you catch up.
19 It's page number 7, in the right-hand
20 corner.

21 **MR. MALLOY:** Okay, sorry.

22 **MS. DALEY:** All right.

23 Look at the third paragraph, please, no
24 activity after April 10th by either the Crown or the police.

25 **MR. MALLOY:** Yes.

1 **MS. DALEY:** I take it you can confirm that,
2 right?

3 **MR. MALLOY:** Yes.

4 **MS. DALEY:** Because if I've understood it,
5 you were still waiting to hear from the Crown and you never
6 did?

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

8 **MS. DALEY:** And then if you look at the
9 fifth full paragraph, I want to know if you would agree or
10 not that with what he says there concerning Ms. Antoine.

11 He indicates that:

12 "In October of '91, Antoine has
13 contacted Abell; indicated she's not
14 satisfied. She told Abell that no one
15 believes her..."

16 Just stopping there. I take it she'd be
17 right to believe that you didn't believe her.

18 **MR. MALLOY:** No.

19 **MS. DALEY:** She ---

20 **MR. MALLOY:** I didn't tell her, I never told
21 Mrs. Antoine I didn't believe her.

22 **THE COMMISSIONER:** No.

23 **MS. DALEY:** No, that's not the ---

24 **THE COMMISSIONER:** Go ahead.

25 **MS. DALEY:** I appreciate you didn't tell her

1 that. Whether you did or not though she has concluded that
2 you didn't believe her and in fact you didn't believe her?

3 MR. MALLOY: I had credibility issues with
4 her statement I would say, yes.

5 MS. DALEY: Does that mean you didn't
6 believe her?

7 (SHORT PAUSE/COURTE PAUSE)

8 MR. MALLOY: I guess I could say I believed
9 parts of her statement. I think some of them were -- may
10 have been over-exaggerated.

11 MS. DALEY: Which was the CAS's conclusion
12 too evidently, right?

13 MR. MALLOY: From reading this
14 documentation, yes.

15 MS. DALEY: All right.

16 Well, so you say that Ms. Antoine is wrong.
17 You believe part of what she said?

18 MR. MALLOY: Yes.

19 MS. DALEY: But not a part that could lead
20 to any further police action?

21 MR. MALLOY: Well, I believed in the
22 corporal punishment and that was going on and but nothing
23 that could lead me to lay a charge, no.

24 MS. DALEY: All right.

25 On that very point I just want to clarify

1 one thing. You were quite aware I think that indeed the
2 corporal punishment was well-documented at this group.
3 Like, that was a fact was it not? Did you know that?

4 **MR. MALLOY:** No.

5 **MS. DALEY:** Did you know that the CAS had
6 closed the home and fired all employees but for Mr. Keough
7 as a result of corporal punishment?

8 **MR. MALLOY:** Just from reading documentation
9 not at the time of the investigation.

10 **MS. DALEY:** The time of the investigation
11 you didn't have that information?

12 **MR. MALLOY:** No.

13 **MS. DALEY:** All right. One final question
14 before we break.

15 And, again, I'm in paragraph 5 of Officer
16 Derochie's report and Ms. Antoine is saying to Abell, "No
17 one believes me" and that the police had discouraged her
18 from pursuing the matter. And is that in fact correct?

19 **MR. MALLOY:** No.

20 **MS. DALEY:** Can you understand, based on the
21 circumstances, that you participated in why she would feel
22 that?

23 **MR. MALLOY:** No.

24 **MS. DALEY:** All right.

25 And then she says that she's going public

1 and ultimately she does. Do you know about that? You're
2 off on sick leave when that happens?

3 **MR. MALLOY:** That's correct, yes.

4 **MS. DALEY:** But did you -- was it made known
5 to you in fact in January of '94 she did go public?

6 **MR. MALLOY:** Yes.

7 **MS. DALEY:** All right.

8 **MR. MALLOY:** Yeah.

9 **MS. DALEY:** Perhaps we should have our lunch
10 break then.

11 **THE COMMISSIONER:** Thank you; come back at
12 2:00.

13 **THE REGISTRAR:** Order; all rise. Veuillez
14 vous lever.

15 This hearing will resume at 2:00 p.m..

16 --- Upon recessing at 12:33 p.m./

17 L'audience est suspendue à 12h33

18 --- Upon resuming at 2:07 p.m./

19 L'audience est reprise à 14h07

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

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

24 **THE COMMISSIONER:** Good afternoon, sir.
25 Ms. Daley.

1 **MS. DALEY:** Thank you, sir.

2 Officer Malloy, just a few more questions
3 concerning Jeannette Antoine and then I'll finish by
4 talking to about your brief role on Silmser.

5 You recollect that the name of the so-called
6 suspect in Antoine's matter was Bryan Keough?

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

8 **MS. DALEY:** Did you know him?

9 **MR. MALLOY:** No.

10 **MS. DALEY:** You'd never crossed paths with
11 him growing up in Cornwall?

12 **MR. MALLOY:** No.

13 **MS. DALEY:** I'd like to talk to you now
14 about the letter that Crown Johnson sent to you, and one
15 place where we find that is in Officer Derochie's report,
16 Exhibit 1286.

17 And if you look at Bates page -- one second
18 -- his page numbered 5, Bates page 644, he has extracted in
19 totality the letter that Crown Johnson sent to the Director
20 of Crown Attorneys, Norman Douglas, of April 4th '90. Do
21 you see that, sir?

22 **MR. MALLOY:** Yes.

23 **MS. DALEY:** And you received a carbon copy
24 of this letter at the time, right?

25 **MR. MALLOY:** Yes.

1 **MS. DALEY:** Now there's two aspects of the
2 letter I want to address, and just have a look if you would
3 with me at the second paragraph in which he says there:

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

11 And I think you were taken to this passage
12 in your examination-in-Chief, but do you recall this aspect
13 of the letter?

14 **MR. MALLOY:** Yes.

15 **MS. DALEY:** As I interpret that, his
16 thinking is that there is some factual support but lack of
17 detail. Is that how you read this?

18 And in particular the detail he says is
19 lacking are names and addresses of people who could
20 substantiate what Ms. Antoine has told you?

21 **MR. MALLOY:** Correct.

22 **MS. DALEY:** That detail is lacking.

23 So my question to you, sir, is this.
24 Between the date you received her statement on February 5th,
25 1990 and April 4th, 1990, two months, I have two questions.

1 First of all, did you ever ask Jeannette
2 Antoine for the names and addresses of her fellow residents
3 of the group home?

4 **MR. MALLOY:** No.

5 **MS. DALEY:** And did you ever ask the
6 Children's Aid Society for the names and addresses of the
7 children who were known to be residents at this group home
8 at the time of her allegations?

9 **MR. MALLOY:** No.

10 **MS. DALEY:** Would you agree that Antoine had
11 provided you with obviously the address of the group home.
12 You knew which home was in question here; correct?

13 **MR. MALLOY:** I believe so, yes, yeah.

14 **MS. DALEY:** And I don't know if you were
15 aware of this but this is the home that the Children's Aid
16 Society itself closed down at a particular point-in-time.

17 So I assume had you asked the Children's Aid
18 Society for this information it would have been available?

19 **MR. MALLOY:** Oh yes, yeah.

20 **MS. DALEY:** All right.

21 And my other question about the document, if
22 I could take you to the last paragraph, he says

23 "I have not brought up the matter of
24 laying charges with the Cornwall Police
25 as names and dates are not available."

1 Now is that correct, sir? As of April 4th,
2 1990 is that statement factually correct?

3 **MR. MALLOY:** From my conversation with Mr.
4 Johnson I would say that there was nothing here at that
5 time to proceed. That's why he was seeking direction.

6 **MS. DALEY:** Well he says:
7 "I have not brought up the matter of
8 laying charges with Cornwall police."
9 And I take it that's you because ---

10 **MR. MALLOY:** Yes, it is, yes.

11 **MS. DALEY:** --- you were the investigator?

12 **MR. MALLOY:** Yeah.

13 **MS. DALEY:** So is it correct that the matter
14 of laying charges had not been dealt with between you and
15 Johnson as of the date of this letter?

16 **MR. MALLOY:** Yes.

17 **MS. DALEY:** All right.

18 The reason that confuses me is that I
19 thought from your prior evidence that by this time you had
20 talked to him about it and he'd told you there's nothing we
21 can do?

22 **MR. MALLOY:** Yes. That ---

23 **MS. DALEY:** Do you appreciate the
24 contradiction?

25 **MR. MALLOY:** Absolutely, but I mean I --

1 that's -- those are his words not mine. From what I can
2 recall of the conversation with Mr. Johnson was, on the
3 face there was nothing to proceed with but I'm going to
4 write to the Regional Director of Crown Operations.

5 **MS. DALEY:** Well, set aside his letter for a
6 second, sir. Just relying on your memory, is it your
7 memory that he told you he was worried about not knowing
8 names and dates?

9 **MR. MALLOY:** I don't recall him mentioning
10 that to me, no.

11 **MS. DALEY:** All right.

12 Because if he'd done that I assume you
13 probably would have done what I referred to which is
14 contact the Children's Aid Society because the information
15 was there. Right?

16 **MR. MALLOY:** Yes.

17 **MS. DALEY:** And if the CAS had been able to
18 provide you, for example, with the name of the young woman
19 that Ms. Antoine refers to, I've forgotten her name, I know
20 it started with an "S"?

21 **MR. MALLOY:** Sandy.

22 **MS. DALEY:** If the CAS had been able to give
23 you her last name, you as an investigator could have tried
24 to find her and speak to her, right?

25 **MR. MALLOY:** Yes.

1 **MS. DALEY:** And I assume that that's
2 something you would have done if you'd wanted to advance
3 this investigation? It's one of the things that you could
4 have done?

5 **MR. MALLOY:** One of the things I could have
6 done, yes.

7 **MS. DALEY:** All right. Almost finished on
8 this topic.

9 There's one thing that you didn't quite
10 address in-chief, that Officer -- Staff Sergeant
11 Derochie's noted and I wanted to talk to you
12 about it.

13 At page 8 of his report which is Bates page
14 674, at the very bottom he makes some observations. Do you
15 see the passage, the last paragraph?

16 And the first item he -- he mentions is that
17 this complaint was never registered on OMPAC, no incident
18 was created, reports were not submitted.

19 **MR. MALLOY:** Could you give me that page
20 number again, please? I'm sorry.

21 **MS. DALEY:** I'm sorry. It's page 8 of the
22 report and the Bates number ends with the digits 647.

23 **MR. MALLOY:** Oh yes. Okay, sorry.

24 **MS. DALEY:** And what I want to draw your
25 attention to right now is his little paragraph number one

1 at the bottom, to the effect that this matter was not
2 registered on OMPPAC, no incident was created, reports
3 weren't submitted.

4 And obviously, you agree. That's something
5 that you didn't do. You didn't put the Antoine matter on
6 OMPPAC?

7 **MR. MALLOY:** I didn't file a report, that's
8 correct.

9 **MS. DALEY:** Now we know that OMPPAC was very
10 new at this point in time?

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

12 **MS. DALEY:** But was it clearly understood
13 within the service, sir, that even though this was a new
14 thing, every new investigation needed to be registered on
15 OMPPAC with an Incident Report?

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

17 **MS. DALEY:** And you were aware of that?

18 **MR. MALLOY:** I was aware -- I think in the
19 back of my mind, I figured there was already a number
20 assigned to it because other people had looked into it, but
21 it was my responsibility to put a report on it.

22 **MS. DALEY:** I see.

23 **MR. MALLOY:** Yes.

24 **MS. DALEY:** The other people who'd looked
25 into it were your Staff Sergeant Wells? To try to

1 understand, who else did you believe had looked into
2 Antoine before you did?

3 **MR. MALLOY:** Just the Deputy Chief and --
4 I'd have to go back, I can't remember. One of the
5 Inspectors; Inspector Trew, I think.

6 **MS. DALEY:** All right.

7 In any event, you knew that these senior
8 officers had had some dealings so perhaps you assumed
9 they'd opened an Incident Report or an OMPPAC incident?

10 **MR. MALLOY:** Yes.

11 **MS. DALEY:** What I want to know is this;
12 scrolling forward to the year 1993, the Force has now been
13 using OMPPAC for about four years.

14 What was your habit in 1993 concerning
15 OMPPAC; your personal habit?

16 **MR. MALLOY:** I would ---

17 **MS. DALEY:** Can you explain how you used
18 OMPPAC and what you did?

19 **MR. MALLOY:** I would normally input the
20 reports myself.

21 **MS. DALEY:** Would you input information into
22 OMPPAC as a matter progressed? In other words, just for an
23 example, if you did an interview on day five of an
24 investigation, would you put that into OMPPAC as soon as
25 possible after that interview?

1 **MR. MALLOY:** That would be the suggested
2 practice, yes.

3 **MS. DALEY:** Was that a practice that you
4 were able to in fact implement?

5 **MR. MALLOY:** I can't say I did it all the
6 time because of the workload but I did my best to keep
7 everything up to date.

8 **MS. DALEY:** All right. And you understood
9 that was the expectation?

10 **MR. MALLOY:** Yes.

11 **MS. DALEY:** And I take it -- and perhaps
12 help me with this because I may be getting it wrong, but in
13 circumstances where your police force is, for example,
14 looking for possibly other victims of a suspected
15 perpetrator -- let's take Marcel Lalonde just for an
16 example -- if information was entered into OMPPAC about
17 your investigation, that would be accessible to all of the
18 member police services who used OMPPAC. Correct?

19 **MR. MALLOY:** The police services that had
20 OMPPAC.

21 **MS. DALEY:** Yes.

22 **MR. MALLOY:** Not every police service in the
23 province had OMPPAC.

24 **MS. DALEY:** I appreciate -- but the ones who
25 did ---

1 **MR. MALLOY:** Yes.

2 **MS. DALEY:** --- municipal and provincial
3 would be able to see an Incident Report and would be able
4 to know for example, "Hey, Cornwall Police is investigating
5 Marcel Lalonde. I've heard something in my jurisdiction
6 about him" and could connect the dots.

7 Is that how it's meant to work?

8 **MR. MALLOY:** Yes.

9 **MS. DALEY:** And so amongst other things,
10 that's the benefit of inputting information into OMPPAC as
11 your policy required it. Correct?

12 **MS. MALLOY:** That's correct.

13 **MS. DALEY:** And I guess the other important
14 reason for inputting information into OMPPAC is it enables
15 your supervisor to know where you're at with every
16 investigation. Correct?

17 **MR. MALLOY:** That's correct.

18 **MS. DALEY:** So it also is a supervision
19 tool?

20 **MR. MALLOY:** That's correct.

21 **MS. DALEY:** All right. Now, just before we
22 conclude on Antoine, I have a -- I'll take you to page --
23 I'm sorry, to page 9 of this exhibit, sir.

24 And -- one second. Sir, I take it you knew
25 that by 1994, when Derochie was speaking with Ms. Antoine,

1 that he's told her that there will be an investigation of
2 her allegations and that Shawn White will do it, correct?

3 MR. MALLOY: I'm not sure when I got that
4 information but I did know that it was going to be
5 reinvestigated.

6 MS. DALEY: All right. You probably
7 received that information at some time when you were off on
8 your medical leave?

9 MR. MALLOY: That's correct.

10 MS. DALEY: My question is this; I take it
11 you would agree that the gap in time between October '89 or
12 the early months of 1990 when you were first involved and
13 the investigation which is now going to start at some point
14 in 1994, roughly a five year gap, it follows that that gap
15 may have prejudiced Mr. White's or Officer White's
16 investigation?

17 I'll give you an example. Maybe between
18 those two dates, some of the residents of the group home
19 had died or had disappeared, such that they were no longer
20 located. The passage of time could prejudice the
21 investigation?

22 MR. MALLOY: It's a possibility.

23 MS. DALEY: And another way in which that
24 might happen of course is the memories, such as they are,
25 that these potential witnesses have, will have faded over a

1 further five year gap. Is that not fair? That's a
2 possibility?

3 MR. MALLOY: It's poss -- I mean, incidents
4 that take place in 1975 and then come to light in '89, I
5 suppose an extra five years may affect their memory. I'm
6 not sure.

7 MS. DALEY: It a possibility. I'm not
8 putting it higher than that.

9 MR. MALLOY: It's a possibility -- yeah,
10 it's possible, yes.

11 MS. DALEY: You -- thank you.

12 You said something that I should have, and I
13 meant to, come back to earlier this morning but I just want
14 to do it now.

15 And, I'm sorry, I don't mean to jump
16 backwards but you recall we talked about C-57 who at the
17 time you talked to him was a willing witness and
18 complainant against Marcel Lalonde. You recall that?

19 And in your testimony to me you said that he
20 was willing at that time, the time you dealt with him.
21 Correct?

22 MR. MALLOY: Yes.

23 MS. DALEY: And did you come to learn that
24 at a later point in time, when Officer Desrosiers was
25 investigating Marcel Lalonde, C-57 was no longer willing to

1 be involved?

2 MR. MALLOY: No.

3 MS. DALEY: You didn't know that? Sorry,
4 are you aware of that?

5 MR. MALLOY: To the best of my knowledge, he
6 agreed to participate as a similar-act witness.

7 MS. DALEY: Give me just one second. I just
8 want to check a document. I'll come right back to you.

9 MR. MALLOY: Sure.

10 (SHORT PAUSE/COURTE PAUSE)

11 MS. DALEY: All right. I want to ask you --
12 sorry. I need you to look back at Exhibit 1497, and that
13 was Desrosiers' Occurrence Report.

14 And I'm going to direct you to the last
15 page, the last paragraph.

16 Do you have that, sir? The very last
17 sentence?

18 MR. MALLOY: Page 7136842?

19 MS. DALEY: Yes. Do you see the last
20 sentence there, sir?

21 MR. MALLOY: Yes, yeah.

22 MS. DALEY: And that is -- that was your
23 witness, C-58, correct?

24 MR. MALLOY: That's correct.

25 MS. DALEY: And so by the time Desrosiers is

1 dealing with him, he does no longer wish to proceed with
2 charges and that's the end, correct?

3 MR. MALLOY: According to Constable
4 Desrosiers, yes.

5 MS. DALEY: Right. You have no reason to
6 think that Desrosiers is inaccurate in what he's reported?

7 MR. MALLOY: Oh, no, no.

8 MS. DALEY: All right. So are we agreed
9 that between the time you dealt with C-57 and the time of
10 the Exhibit 1497, this particular victim/witness has
11 changed his mind; he's no longer prepared to be involved,
12 correct?

13 MR. MALLOY: That's correct, yes.

14 MS. DALEY: And so that's another way in
15 which the delay and the passage of time can impair an
16 investigation; is that not correct?

17 MR. MALLOY: It's possible, sure.

18 MS. DALEY: All right. Let's move to some
19 questions about your role in the Silmser investigation.
20 And I appreciate your role is limited, but I do have some
21 questions for you about it and I wonder if you can just
22 help me better understand; I take it you knew nothing about
23 this matter prior to January 28th, 1993, when you were asked
24 to sit in on the interview?

25 MR. MALLOY: That's correct.

1 **MS. DALEY:** You had zero knowledge?

2 **MR. MALLOY:** No.

3 **MS. DALEY:** How was it brought to your
4 attention on that day, do you recall?

5 **MR. MALLOY:** Just that Staff Sergeant Brunet
6 realized that I'd -- I'd just come off the prelim, the
7 homicide prelim, but he asked me to sit in as a scribe.

8 **MS. DALEY:** And did he give you any other
9 directives about your role in either that particular
10 interview or the ongoing investigation of Mr. Silmser's
11 allegations?

12 **MR. MALLOY:** Just offer any assistance if
13 the -- if it was required.

14 **MS. DALEY:** What I'm not -- what I want to
15 see if you can help me with is this -- or sorry, let me ask
16 another question first.

17 Do you know if Officer Lefebvre was given
18 any more specific direction than that?

19 **MR. MALLOY:** I have no knowledge of that.

20 **MS. DALEY:** All right, that's fine.

21 In terms of the direction that you were
22 given, did you understand it to mean that you were to be
23 involved if and when Constable Sebalj asked you for it,
24 asked you for help?

25 **MR. MALLOY:** No, that wasn't my

1 understanding.

2 My understanding was just to offer any
3 assistance in this interview, act as a scribe and then get
4 on with my caseload.

5 **MS. DALEY:** Oh, so you understood that after
6 the interview you didn't -- you weren't meant to have an
7 ongoing role?

8 **MR. MALLOY:** In this investigation?

9 **MS. DALEY:** Yes.

10 **MR. MALLOY:** No. No, it was assigned to
11 Heidi and Sergeant Lefebvre.

12 **MS. DALEY:** All right, thank you; that's
13 helpful. I wasn't -- I wasn't sure if you thought you
14 needed to have an ongoing role helping her or not.

15 **MR. MALLOY:** Okay. No.

16 **MS. DALEY:** Certainly it wasn't suggested to
17 you that you'd be a resource for her, as matters unfolded?
18 You thought it was Officer Lefebvre who would play that
19 role?

20 **MR. MALLOY:** Well, he -- he was assisting
21 her but I was there as a resource if she needed it, sure.

22 **MS. DALEY:** Precisely. But not with any
23 specific directive to go offering your help to her after
24 the first interview?

25 **MR. MALLOY:** No, my role was to scribe the

1 interview and then get on with my caseload.

2 MS. DALEY: Thank you.

3 Based on her experience, do you agree with
4 the premise that Constable Sebalj needed help with this
5 investigation or can you comment?

6 MR. MALLOY: All I can say, in my opinion is
7 that Constable Sebalj was a competent police officer and
8 with Sergeant Lefebvre assisting her, it was in good hands.

9 MS. DALEY: Was it ever brought home to you
10 that Silmsers' allegations were serious and that it would
11 be a high profile investigation because he was alleging
12 abuse by a priest and a probation officer?

13 MR. MALLOY: Sure.

14 MS. DALEY: Was that just obvious to you,
15 based on what you saw or did somebody flag that for you and
16 say, "Kevin, you know, this is a very serious high profile
17 case"?

18 MR. MALLOY: No, no, that was -- it was
19 obvious, sure.

20 MS. DALEY: Did you personally know either
21 Ken Seguin or Father Charles MacDonald?

22 MR. MALLOY: No -- well, Father MacDonald,
23 just from church but other than that ---

24 MS. DALEY: You didn't have a personal
25 relationship?

1 **MR. MALLOY:** No, no.

2 **MS. DALEY:** I want to focus on the victim's
3 request for a male interviewer and perhaps the best way to
4 do this -- and these haven't been marked yet but I'm going
5 to refer you to your notes of the interview you sat in on,
6 sir, and that is Exhibit 315.

7 **MR. MALLOY:** Oh, sorry.

8 **MS. DALEY:** At the very bottom of the first
9 page of your notes deals with this subject and you note
10 that you're present in the Youth Office with Lefebvre,
11 Sebalj and the witness and your notes says:

12 "Initially had a problem with Heidi
13 being in the room.

14 Heidi explained the importance of her
15 being here and he stated, 'I'll try.

16 It was hard for me even to tell my
17 wife.'" "

18 And I take it, that's an accurate record of
19 that part of the conversation?

20 **MR. MALLOY:** Yes.

21 **MS. DALEY:** Would you agree with me that, as
22 I interpret this, Silmsen is saying, "I still have a
23 difficulty with this lady being here. I find it hard to
24 talk to a woman that I'm very, very close to." Is that how
25 you interpreted what he was saying?

1 **MR. MALLOY:** Sure.

2 **MS. DALEY:** In other words, he's expressing
3 difficulty with her being there, correct?

4 **MR. MALLOY:** Correct.

5 **MS. DALEY:** Perhaps we're applying
6 hindsight, but is there a reason why he couldn't have
7 spoken either with you alone, or with Lefebvre alone, or
8 both of you, both being male investigators?

9 **MR. MALLOY:** All I can say is that she was
10 there under the direction of Staff Sergeant Brunet. I
11 mean, I -- I have no control over ---

12 **MS. DALEY:** I understand that. I'm not
13 criticizing you for what happened.

14 **MR. MALLOY:** No.

15 **MS. DALEY:** I'm just -- do you have some
16 understanding as to, or do you recall her explanation to
17 him as to why she needed to be there?

18 **MR. MALLOY:** She was the assigned
19 investigator.

20 **MS. DALEY:** I understand that.

21 Did you understand that Silmsner had actually
22 contacted the Chief prior to this interview and requested a
23 male inter- ---

24 **MR. MALLOY:** No.

25 **MS. DALEY:** --- investigator?

1 **MR. MALLOY:** No.

2 **THE COMMISSIONER:** What about using, you
3 know, one of those one-way mirrors, have her sit outside
4 and listen to everything and see him and have you two
5 inside, did you have that kind of facility at the time?

6 **MR. MALLOY:** Not -- no, sir, not that I'm
7 aware of.

8 **THE COMMISSIONER:** You didn't have an
9 interview room with a ---

10 **MR. MALLOY:** A two-way glass?

11 **THE COMMISSIONER:** Yes.

12 **MR. MALLOY:** No, sir, no.

13 **MS. DALEY:** Was there any facility available
14 to you, whether in the court office or elsewhere where that
15 could have happened?

16 **MR. MALLOY:** No.

17 **MS. DALEY:** All right.

18 **MR. MALLOY:** Actually the Youth Office was
19 the -- probably the quietest office in the building.

20 **MS. DALEY:** Maybe we've been watching too
21 much American television, but that -- that facility just
22 wasn't there; you couldn't ---

23 **MR. MALLOY:** No.

24 **MS. DALEY:** --- you couldn't do that. All
25 right.

1 In your judgment as an experienced sexual
2 assault investigator, would you agree with my thought that
3 the victim's preferences here should have outweighed
4 Heidi's argument as to why she should be there?

5 **MR. MALLOY:** Like I said this morning, I
6 mean in a large metropolitan police service those options
7 are available; in a smaller police services, you have to
8 and I mean no disrespect, you get what you get. I mean
9 there's only limited manpower to go around and Sergeant
10 Brunet was -- Staff Sergeant Brunet was well aware of the
11 fact that Ron and I just come off the, I believe it was the
12 second half of the homicide prelim and I wasn't certainly
13 able to take on another case; I had to get going on my own
14 caseload and the only one that was left was -- was Heidi.

15 **MS. DALEY:** I appreciate -- I'm not
16 suggesting that the investigation should have been taken
17 away from her; I'm suggesting that in the circumstances her
18 wish to be present because she's the investigating officer,
19 should have given way to the victim's needs; would you
20 agree with that or not?

21 **MR. MALLOY:** Should have given way to that?

22 **MS. DALEY:** Should have given way to; in
23 other words, your victim's strong desire to speak to males
24 should have dictated that Heidi not be present in the room.

25 **MR. MALLOY:** I don't know if I can offer an

1 opinion on that, it wasn't my decision.

2 MS. DALEY: Understood.

3 THE COMMISSIONER: Couldn't there not have
4 been -- she takes over one of your cases and you take over
5 that one? Would that have been a possibility?

6 MR. MALLOY: Not at that point in time, Your
7 Honour, no.

8 THE COMMISSIONER: Why not?

9 MR. MALLOY: I was swamped.

10 THE COMMISSIONER: No, no, no. So she takes
11 some of your swamped assignments and you take this one on.
12 I mean, to you it doesn't matter which file you had.
13 You've got a whole bunch of work to do, right?

14 MR. MALLOY: Well, most of them I had
15 completed work on.

16 THE COMMISSIONER: Yeah.

17 MR. MALLOY: You know, so ---

18 THE COMMISSIONER: So you're telling me you
19 never get switched off and said "Okay, you've got to do
20 this one now instead of that one"?

21 MR. MALLOY: When new cases come in ---

22 THE COMMISSIONER: Right.

23 MR. MALLOY: --- you know, when I get called
24 in at two o'clock in the morning on the weekends and
25 unfortunately they have to take priority.

1 **THE COMMISSIONER:** Let's put it this way.
2 When you went on sick leave, somebody took over your files?

3 **MR. MALLOY:** Oh, yes, yes.

4 **MS. DALEY:** I want to point out another
5 piece of information that came up at the interview, and if
6 you look at the second page of your notes, it's Bates page
7 872, and I'm going to concentrate on your second bullet
8 point, which is:

9 "Dave stated that Father Charlie
10 MacDonald's lawyer had called him."

11 And just read that passage of the notes for
12 -- if you would for a second.

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

14 **MS. DALEY:** Sir, I take it what you are
15 learning here is that your victim is making disclosures
16 about his alleged abuse by Father Charles to the Church --
17 to representatives of the Church; correct?

18 **MR. MALLOY:** Yes.

19 **MS. DALEY:** Not only to representatives of
20 the Church directly but to the prospective accused's
21 lawyer, Malcolm MacDonald, right?

22 **MR. MALLOY:** I wasn't aware that Malcolm
23 MacDonald was the -- was Father MacDonald's lawyer.

24 **MS. DALEY:** But you say:

25 "Dave stated that Father Charlie

1 MacDonald's lawyer..."

2 **MR. MALLOY:** I'm sorry, yes, yes.

3 **MS. DALEY:** Do you see that?

4 **MR. MALLOY:** Yeah. Yeah. Sorry.

5 **MS. DALEY:** So the morning of the interview,
6 Father Charles' lawyer is calling your victim witness at
7 home and presumably there is discussion about this very
8 matter; correct?

9 **MR. MALLOY:** Correct.

10 **MS. DALEY:** Now, I appreciate your role here
11 was to just write things down. You didn't take part in the
12 interview. You didn't make any comments or ask any
13 questions?

14 **MR. MALLOY:** Not that I'm aware of.

15 **MS. DALEY:** You said that you wanted -- you
16 were told to be a scribe, which to me means just a note
17 taker.

18 **MR. MALLOY:** That's correct.

19 **MS. DALEY:** Was that principally your role?

20 **MR. MALLOY:** That's correct.

21 **MS. DALEY:** Would it have been a good idea
22 to speak with Mr. Silmsler right then and there about the
23 danger of making disclosures to third parties, particularly
24 to what I would call the other side of his complaint, the
25 alleged perpetrator?

1 **MR. MALLOY:** Right at that moment?

2 **MS. DALEY:** Yes.

3 **MR. MALLOY:** I suppose it would have been a
4 good idea.

5 **MS. DALEY:** the subject came up, right.

6 **MR. MALLOY:** It did, yes.

7 **MS. DALEY:** To your knowledge, was Silmsen
8 ever cautioned in this interview about not making
9 disclosures to third parties, whether they be the Church or
10 any one else?

11 **MR. MALLOY:** Not that I'm aware of, no.

12 **MS. DALEY:** I take it, in hindsight, you
13 would have -- you would agree he perhaps should have been
14 so as to eliminate potential inconsistent statements?

15 **MR. MALLOY:** I would have to agree with
16 that, yes.

17 **MS. DALEY:** And the other thing that I
18 wanted to -- I want your thoughts on is this. You
19 understood at this interview -- you were not the only note
20 taker. Ron Lefebvre and Constable Sebalj also took notes;
21 correct?

22 **MR. MALLOY:** I believe so, yes.

23 **MS. DALEY:** And this interview was not
24 recorded, was it?

25 **MR. MALLOY:** No.

1 **MS. DALEY:** But it could have been tape
2 recorded, had you chosen? You had that ability?

3 **MR. MALLOY:** No, we only had the small
4 little pocket recorders, that I recall -- the small little
5 -- the room was not set up for recording, no.

6 **MS. DALEY:** Well, could he have been
7 interviewed in a room in which you could have made a
8 recording of everything he said?

9 **MR. MALLOY:** We didn't have a room equipped
10 back then, that I can recall.

11 **MS. DALEY:** I just mean an audio recording,
12 not video, just a tape recorder.

13 **MR. MALLOY:** Yeah. It's possible. It could
14 have been taped, I suppose, if we -- they would have used
15 little pocket recorders.

16 **MS. DALEY:** All right.

17 I take it none of the note takers were
18 attempting to make a verbatim record of what Silmsen was
19 saying. Is that correct?

20 **MR. MALLOY:** Well, I tried my best.

21 **MS. DALEY:** Fair enough, but ---

22 **MR. MALLOY:** Well, not quotes, no.

23 **MS. DALEY:** Not a verbatim, word-for-word
24 transcription of what he said.

25 **MR. MALLOY:** No, no.

1 **MS. DALEY:** You weren't trying to do that;
2 correct?

3 **MR. MALLOY:** No.

4 **MS. DALEY:** And of course there were parts
5 of the interview where you had to exit and come back. So
6 you weren't able to make a verbatim record, and to the best
7 of your knowledge, Heidi and -- sorry -- Constable Sebalj
8 and Officer Lefebvre, they weren't making a verbatim record
9 either. They weren't trying to?

10 **MR. MALLOY:** I'm not sure. I didn't view
11 their notes.

12 **MS. DALEY:** All right.

13 Well, would you agree with this proposition
14 that at the end of this interview you had three officers
15 with three sets of notes about this gentlemen's story;
16 correct?

17 **MR. MALLOY:** Correct.

18 **MS. DALEY:** And all of those notes would
19 have been disclosable to the defence in the event of a
20 criminal charge; correct?

21 **MR. MALLOY:** Correct.

22 **MS. DALEY:** And would you agree -- and I
23 don't want to take the Commission's time to compare your
24 notes to Officer Lefebvre's, but you would agree there is a
25 high probability that you and he have recorded Silmser's

1 statements slightly differently?

2 MR. MALLOY: It's possible.

3 MS. DALEY: Because you're not -- right,
4 because you're not trying to be verbatim. So that would
5 give rise to potentially three slightly differing
6 statements all attributed to David Silmser; correct?

7 MR. MALLOY: Correct. It's possible, sure.

8 MS. DALEY: And would you agree that that's
9 a circumstance that perhaps should have been avoided if the
10 object is to enhance this persons' credibility as a
11 prospective witness at a criminal trial?

12 MR. MALLOY: No, I see nothing wrong with
13 three people taking notes in case one person misses
14 something, or if there is a discrepancy then that's
15 something that would have to be explained, but I don't see
16 ---

17 MS. DALEY: Would you agree that if the
18 objective is to be as completely correct as possible, the
19 only way to really do that is to transcribe the interview -
20 - transcribe it on -- record it on tape and transcribe it?

21 MR. MALLOY: Transcribe it, sure.

22 MS. DALEY: All right.

23 Now, I understand then that this interview
24 lasted, I guess, about three hours? You can check your
25 notes on that. But I think you testified to that effect

1 in-chief. If it starts at 9:20; it finishes at about
2 12:31. That's on Bates Page 882.

3 (SHORT PAUSE/COURTE PAUSE)

4 MS. DALEY: Is that correct, sir?

5 MR. MALLOY: Yeah, well, you know, probably
6 around 12:25, I would say.

7 MS. DALEY: All right.

8 So you and three officers were with him for
9 approximately three hours?

10 MR. MALLOY: Correct.

11 MS. DALEY: And at the end of that period of
12 time he is given a blank statement form and told to go home
13 and write his own statement; correct?

14 MR. MALLOY: Correct.

15 MS. DALEY: And I take it that wasn't your
16 idea?

17 MR. MALLOY: No.

18 MS. DALEY: Do you recall who it was that
19 gave him that direction?

20 MR. MALLOY: I'm not sure, but I think we
21 all -- all three of us agreed that that was the best option
22 at that point. This was -- I would say this was a jog-
23 your-memory interview.

24 MS. DALEY: Yes.

25 MR. MALLOY: And then sometimes the best

1 scenario is to get -- go home; relax and again try to put
2 things in chronological order and write out the statement.

3 **MS. DALEY:** Did I understand you correctly
4 in-chief to say that giving the victim a blank form and
5 expecting him or her to create their own statement, that's
6 not the best practice? I thought that was your general
7 view.

8 **MR. MALLOY:** Right.

9 **MS. DALEY:** I'm wondering if sending
10 Mr. Silmsner away with a form to create his own statement --
11 did that arise from a resource problem? In other words,
12 did you just not have the time for an officer to spend more
13 hours with him and take the statement from him directly?

14 **MR. MALLOY:** I don't think that was the --
15 like he said, he wanted to return after lunch but he had to
16 go to Ottawa to pick his wife up and that's when the
17 agreement was made to give him some blank forms and fill
18 them out.

19 **MS. DALEY:** So potentially if he'd been
20 available later that day, his statement might have been
21 taken directly by an officer.

22 **MR. MALLOY:** That's possible, sure.

23 **MS. DALEY:** And in your experience, would
24 that not be the preferable way?

25 **MR. MALLOY:** Preferably, that's the way it's

1 done, sure.

2 MS. DALEY: Did you -- I don't know if you
3 ever bothered doing this or had the occasion to, did you
4 ever compare the statement he eventually wrote to your
5 notes of what he said?

6 MR. MALLOY: No.

7 MS. DALEY: Would it surprise you to learn
8 that are discrepancies?

9 MR. MALLOY: In the statement he wrote
10 compared ---

11 MS. DALEY: Versus ---

12 MR. MALLOY: --- to the interview?

13 MS. DALEY: --- versus what's recorded.

14 MR. MALLOY: I wouldn't be surprised, no.

15 MS. DALEY: Are we agreed that allowing the
16 victim or witness to control his own statement without any
17 guidance increases the probability that there might be
18 discrepancies between that statement and a previous
19 statement to a police officer?

20 MR. MALLOY: Sure.

21 MS. DALEY: Which, of course, is a factor
22 that impairs credibility.

23 MR. MALLOY: Sure.

24 MS. DALEY: I've reviewed the notes, and I
25 think you'll agree with me, I don't believe whoever asked

1 him the questions in this interview -- was that Officer
2 Lefebvre? Did ---

3 MR. MALLOY: Yes.

4 MS. DALEY: --- Lefebvre guide the
5 interview?

6 MR. MALLOY: Yes, yes, yes.

7 MS. DALEY: It doesn't appear to me that
8 Silmsler was asked to explain why he's coming forward at
9 this time given the 20-year gap. Is that the -- is that
10 your recollection also; he was not asked to explain himself
11 on that front?

12 MR. MALLOY: Not to my knowledge or I would
13 have had it in my notes.

14 MS. DALEY: All right. Give me a second or
15 two, if you would, sir.

16 THE COMMISSIONER: Certainly.

17 (SHORT PAUSE/COURTE PAUSE)

18 MS. DALEY: Do you recall knowing, sir, that
19 in -- in the context of this investigation, at or around, I
20 guess, the time of this interview, not exactly at the same
21 time, but do you recall knowing that Malcolm MacDonald, the
22 lawyer, spoke with Constable Sebalj and offered that Father
23 Charles would take a polygraph? Did you ever know that?

24 MR. MALLOY: I can't -- I can't recall
25 speaking about it, no.

1 **MS. DALEY:** All right. Is it -- is it your
2 evidence that apart from this one interview and the two
3 conversations on the phone I might talk to you about
4 shortly, that's the sum total of the involvement you had
5 prior to your injury?

6 **MR. MALLOY:** That's my recollection, yes.

7 **MS. DALEY:** And so there was no time when
8 Officer Sebalj ever asked you for your thoughts on
9 anything, or nor did anyone else.

10 **MR. MALLOY:** Not that I can recollect, no.

11 **MS. DALEY:** Before I forget, I -- there's
12 another aspect of the statement that was taken; I just want
13 to direct you to -- if you can go back to Exhibit 315 for a
14 second and I'm not going to direct a lot of questions to
15 this, but at Bates page 878, I guess, at about 10:54 or :57
16 a.m., the conversation turns to David Silmser's criminal
17 record; the fact he's been on probation and he starts to
18 then describe his allegations pertaining to Ken Seguin. Do
19 you see that?

20 **MR. MALLOY:** I'm sorry? What page number
21 are you on?

22 **MS. DALEY:** It's Bates number 878.

23 **MR. MALLOY:** Eight seven eight (878) okay so

24 ---

25 **MS. DALEY:** Correct.

1 MR. MALLOY: Yeah.

2 MS. DALEY: You might just take a second
3 and, you know, cast your eyes at that because we haven't
4 spoken about this yet.

5 (SHORT PAUSE/COURTE PAUSE)

6 MS. DALEY: I don't expect you to read every
7 word, but you actually have four pages of notes capturing
8 what Silmsler has said about his abuse by Ken Seguin.

9 MR. MALLOY: Correct.

10 MS. DALEY: And ---

11 MR. MALLOY: Yeah.

12 MS. DALEY: --- I think you'll agree with
13 me. He's given a very detailed account of those
14 allegations; would you agree?

15 MR. MALLOY: Sure.

16 MS. DALEY: Including such details as where
17 Seguin lives, what car he was driving at the time; highly
18 detailed.

19 MR. MALLOY: Yes.

20 MS. DALEY: Are you in agreement?

21 MR. MALLOY: Sure.

22 MS. DALEY: And he's also given an
23 explanation, a context to what happened so he says he's
24 living on the street at this time, he's without food,
25 without shelter and that he ends up in a situation where

1 he's giving sexual favours to her, his probation officer in
2 exchange for the necessities of life, correct?

3 MR. MALLOY: Yes.

4 MS. DALEY: Do you recall that part of his
5 interview? Apart from your notes, do you recall sitting
6 there and hearing that story?

7 MR. MALLOY: Well, yes. Yeah, I made the
8 notes, sure.

9 THE COMMISSIONER: No, no, no. That's not
10 what she's saying. The notes are there, but if you shut
11 your eyes, can you remember being there and hearing Silmsen
12 talk about the abuse he suffered at the hands of Ken
13 Seguin?

14 MR. MALLOY: Yes.

15 MS. DALEY: Did you think that a somewhat
16 compelling and disturbing set of facts, if correct ---

17 MR. MALLOY: Yes.

18 MS. DALEY: --- what he was telling you?
19 And I'm not going to elevate that over the Father MacDonald
20 allegation, but these allegations of a probation officer
21 doing these things to a person who works in the justice
22 field, that would be very concerning, would it not?

23 MR. MALLOY: Sure.

24 MS. DALEY: And did the other officers react
25 the same way? Did you talk with Sebalj and Lefebvre after

1 Silmsers had left and just chat about what you'd heard?

2 MR. MALLOY: We must have. I don't remember
3 -- I don't remember the conversation, but ---

4 MS. DALEY: All right. Do you remember any
5 impression that they also felt that, frankly, this was a
6 very disturbing thing to hear about a colleague in a
7 justice field?

8 MR. MALLOY: Sure.

9 MS. DALEY: And did his allegations on that
10 subject have a ring of truth to you?

11 MR. MALLOY: I formed no opinion about the
12 validity of the statement; I just took the notes.

13 MS. DALEY: All right.

14 MR. MALLOY: I can't say that I formed an
15 opinion.

16 MS. DALEY: In any event, did you learn or
17 come to learn that the complaint against Ken Seguin was
18 essentially not investigated by Officer Sebalj; did you
19 ever learn that?

20 MR. MALLOY: Not to my recollection, no. I
21 was off after that so ---

22 MS. DALEY: Officer, I know that you were on
23 sick leave and you weren't directly involved with the
24 Ottawa Police Service review of Silmsers, but there's
25 something I just want to -- I want to draw to your

1 attention to see if you agree or disagree; it's a statement
2 that's attributed to you. So if you'd be kind enough to
3 have a look at Exhibit 1208, these are the notes of William
4 Blake who was one of the two Ottawa Police investigators.

5 **MR. MALLOY:** I'm sorry, would that be tab
6 1208?

7 **MS. DALEY:** It should be, I think.

8 **THE COMMISSIONER:** And what page are you
9 going ---

10 **MS. DALEY:** I'm going to ask you to look at
11 Bates page 773. Do you have that, Officer?

12 **MR. MALLOY:** Yes.

13 **MS. DALEY:** And if you look at his note of
14 March 4, 1993, obviously, you were still on duty at that
15 time; correct? And I think all that's happening here is
16 Officers -- Officer Blake's trying to construct the
17 sequence of events based on what he's being told. His note
18 for the date states:

19 "Brian Snyder examines statement;
20 feels he is credible."

21 And then it says:

22 "(no follow-up, polygraph considered
23 and discarded because of perception of
24 weak case by Malloy)."

25 Do you see that, sir?

1 MR. MALLOY: I do, yes.

2 MS. DALEY: All right.

3 MR. MALLOY: Yeah.

4 MS. DALEY: So let me ask you a few
5 questions. Did you know that when Silmser in fact returned
6 with his handwritten statement, it was given to Officer
7 Snyder for analysis?

8 MR. MALLOY: No.

9 MS. DALEY: All right.

10 And did you express to anyone your
11 perception that this was a weak case?

12 MR. MALLOY: Not to my knowledge, no. I
13 don't know where that opinion came from honestly.

14 MS. DALEY: Well, did you in fact hold that
15 opinion that it was a weak case?

16 MR. MALLOY: I think my opinion was that
17 they were going to have a hard time with this one because I
18 felt with the two phone calls after the initial interview
19 that there was something going on behind the scenes.

20 MS. DALEY: Let me turn ---

21 MR. MALLOY: But a ---

22 MS. DALEY: --- I'm sorry.

23 MR. MALLOY: --- but a weak case? I don't
24 ever -- I formed no opinion as far as the strength of the
25 case.

1 **MS. DALEY:** I take it though the problems
2 that you thought would exist were problems of credibility
3 pertaining to the complainant; correct? Is that correct?

4 **MR. MALLOY:** The activity in the background
5 I think was the problem.

6 **MS. DALEY:** Yes, right.

7 And the reason that activity was a problem
8 was because it suggested that perhaps your complainant had
9 a self-interested motive and wasn't being truthful, to
10 connect the dots. Is that your reasoning?

11 **MR. MALLOY:** That would be part of the
12 problem, sure.

13 **MS. DALEY:** All right.

14 I want to take you to the notes you made of
15 your conversation with Mr. Silmser and, sir, this is in
16 Exhibit 315 if you can flip back there.

17 And I'm going to ask you to look at I think
18 it's the very last page of the document, Bates page 885 and
19 it's the top of the page. That's perfect, Madam Clerk.

20 We didn't look at this with you in-chief,
21 but is this in fact your note of the one conversation you
22 had with Mr. Silmser following your interview?

23 **MR. MALLOY:** That's correct.

24 **MS. DALEY:** And as I read it correctly, you
25 return his call, he tells you he had been contacted by

1 Monsignor McDougald to attend a meeting between himself,
2 three priests and others; meeting hadn't been arranged.
3 And your advice to him was to hold off until Constable
4 Sebalj could be told about it?

5 MR. MALLOY: That's correct.

6 MS. DALEY: And he also tells you his
7 statement isn't ready yet?

8 MR. MALLOY: That's ---

9 MS. DALEY: Do you see that?

10 MR. MALLOY: --- that's correct.

11 MS. DALEY: Now, if this is an accurate note
12 of what's being said, this is the Church contacting Silmser
13 not vice versa; correct?

14 MR. MALLOY: Correct.

15 MS. DALEY: And inviting him to a meeting?

16 MR. MALLOY: Correct.

17 MS. DALEY: What is it about this
18 conversation that in your mind potentially impaired Mr.
19 Silmser's credibility or the veracity of his complaint
20 about Father Charles?

21 MR. MALLOY: I just felt it was suspicious
22 that they wanted to meet with him. I don't know what their
23 motive was, if it was to withdraw the case or resolve it
24 amongst themselves, I'm not sure. I don't know what their
25 motive was but I felt I had to tell him not to go. It was

1 up to him, he could go if he wanted to ---

2 MS. DALEY: Right.

3 MR. MALLOY: --- but ---

4 MS. DALEY: But in fact he says he's
5 accepting your advice. He ---

6 MR. MALLOY: He did, yeah.

7 MS. DALEY: --- he decides not to go. So he
8 was guided by you in that respect?

9 MR. MALLOY: Right.

10 MS. DALEY: And presumably that wouldn't be
11 a black mark on his character or motive ---

12 MR. MALLOY: Yeah.

13 MS. DALEY: --- would it? All right.

14 And the only other conversation that you had
15 subsequent to your participation in the interview is on the
16 preceding page, and that is the phone call you receive on
17 February 1 from Malcolm MacDonald?

18 MR. MALLOY: That's correct.

19 MS. DALEY: And Malcolm MacDonald fills you
20 up with information to the effect that Silmsen is a smooth
21 talker, has been involved in embezzlement et cetera. et
22 cetera and you were taken to that in-chief.

23 Is that not the information you were
24 reacting to when you decided that perhaps there was a
25 problem with this victim?

1 **MR. MALLOY:** No. I paid little mind to what
2 -- I just let him talk and and wrote down what he was
3 saying.

4 **MS. DALEY:** All right.

5 **MR. MALLOY:** I just felt there was backroom
6 pressure to resolve this without the police investigating
7 it.

8 **MS. DALEY:** But that pressure could have
9 been coming from the Church for all you know; correct?

10 **MR. MALLOY:** Oh correct, sure.

11 **MS. DALEY:** And if it was that wasn't Mr.
12 Silmser's fault was it?

13 **MR. MALLOY:** No.

14 **MS. DALEY:** Just give me one second.

15 Those are my questions. Thank you very
16 much.

17 **MR. MALLOY:** Okay, thank you.

18 **THE COMMISSIONER:** Mr. Paul, how long do you
19 think you're going to be?

20 **MR. PAUL:** Probably just a half-an-hour to
21 45 minutes.

22 **THE COMMISSIONER:** Okay. We'll take the
23 afternoon break then. Thank you.

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

1 This hearing will resume at 3:15.

2 --- Upon recessing at 2:58 p.m./

3 L'audience est suspendue à 14h58

4 --- Upon resuming at 3:19 p.m./

5 L'audience est reprise à 15h19.

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

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

10 **THE COMMISSIONER:** Mr. Paul?

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

12 **PAUL:**

13 **MR. PAUL:** Good afternoon, Constable Malloy.

14 **MR. MALLOY:** Sir.

15 **MR. PAUL:** I appear for the Coalition for
16 Action which is a citizen's group that was involved in
17 advocating for this Inquiry.

18 I'd like to direct your mind at outset to
19 the Antoine case again.

20 **MR. MALLOY:** Yes.

21 **MR. PAUL:** And looking back at that case,
22 obviously your memory of the events would be better back in
23 '89 to '90 than it is today?

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

25 **MR. PAUL:** And in particular your ability to

1 articulate the reasonable probable grounds was better back
2 around 1990 when you met the Crown than it would be today?

3 MR. MALLOY: No, I wouldn't agree with that.

4 MR. PAUL: Your recollection of the events
5 when you met the Crown was better back at the time that you
6 actually met the Crown than it is today?

7 MR. MALLOY: It was fresh, sure.

8 MR. PAUL: All right.

9 And when you did meet the Crown, you met the
10 Crown once on the issue of probable grounds in the case of
11 Antoine?

12 MR. MALLOY: Yeah and legal direction as far
13 as corporal punishment and ---

14 MR. PAUL: All right.

15 And you had one meeting on those issues?

16 MR. MALLOY: I can't remember if it was once
17 or twice.

18 MR. PAUL: Okay. To your recollection, the
19 meeting or meetings resulted in the letter from the Crown
20 to the Regional Crown?

21 MR. MALLOY: That's correct, yes.

22 MR. PAUL: And the purpose of those meetings
23 and the resulting correspondence was to look at the issues
24 of grounds to lay charges?

25 MR. MALLOY: That means -- the Crown

1 Attorney's office doesn't create your grounds for you but
2 provide you direction I suppose, yes.

3 MR. PAUL: Okay. But that was a -- I'm not
4 saying that they were making the decision ---

5 MR. MALLOY: Okay.

6 MR. PAUL: --- but that was the topic that
7 was being discussed?

8 MR. MALLOY: That was the purpose of it,
9 yes.

10 MR. PAUL: Okay. And to deal with that
11 issue you tried to give the Crown in question as much
12 information as you could on that topic of probable grounds?

13 MR. MALLOY: That's correct.

14 MR. PAUL: And neither Crown as a result
15 sent out correspondence, which is at -- if I could show the
16 witness Exhibit 1499.

17 Now, I think you already asked and you
18 already agreed that that letter had a cc. to you at the
19 end?

20 MR. MALLOY: That's correct.

21 MR. PAUL: And as a result of getting any
22 copy of that letter, you didn't make any objection to Crown
23 along the lines that the letter didn't represent what was
24 done or discussed at the meetings? You don't recall making
25 any objection to ---

1 MR. MALLOY: No.

2 MR. PAUL: --- the Crown?

3 MR. MALLOY: No.

4 MR. PAUL: Okay. And you didn't recall
5 taking any further action as a result of getting that
6 letter, such as going out and investigating for names and
7 dates?

8 MR. MALLOY: No, I didn't, no.

9 MR. PAUL: I want to ask you a few questions
10 about -- I've asked you about -- a few questions about the
11 contents of the letter. I just want to ask you a few
12 things about what perhaps I should suggest is not in the
13 letter.

14 First of all, you've already had a chance to
15 read through the whole letter?

16 MR. MALLOY: Yes.

17 MR. PAUL: And would you agree that there's
18 no reference in that letter to anything about a six-month
19 time limitation in summary conviction proceedings as being
20 a topic of concern.

21 MR. MALLOY: That's correct.

22 MR. PAUL: Okay. And is it possible given
23 that some of the allegations in this case involve charges
24 that were obviously potentially indictable such as a sexual
25 assault and potentially assault causing bodily harm, is it

1 possible that that topic of summary conviction, common
2 assaults really didn't come up in the conversation?

3 MR. MALLOY: I can't remember.

4 MR. PAUL: But it's possible it wasn't ---

5 MR. MALLOY: It's possible, sure.

6 MR. PAUL: Another area I would suggest that
7 does not seem to be raised by the Crown in the letter is
8 the general topic of credibility of the complainant. I
9 mean, isn't it obvious that that topic is nowhere referred
10 to in that letter?

11 MR. MALLOY: That's correct, yeah.

12 MR. PAUL: So as far as the concern about
13 the complainant having a different version of the events,
14 that's not referred to in the Crown's letter?

15 MR. MALLOY: That's correct.

16 MR. PAUL: And you would agree that you only
17 really received one written statement back at that time
18 from the complainant?

19 MR. MALLOY: That's correct.

20 MR. PAUL: And as far as whatever any
21 discrepancies may be, you don't have a good recollection
22 today of precisely what those discrepancies would be?

23 MR. MALLOY: What they were, no.

24 MR. PAUL: Okay. You basically have no idea
25 what they were?

1 **MR. MALLOY:** I can just remember her
2 changing her story, but I can't remember what the ---

3 **MR. PAUL:** Okay. So given that you don't
4 have a good recollection of what those discrepancies were,
5 firstly, and secondly, given that the topic is not in that
6 letter, is it possible that those discrepancies, if they
7 were discussed in that meeting, were very minor?

8 **MR. MALLOY:** I don't recall discussing the
9 discrepancies at that meeting.

10 **MR. PAUL:** Okay. So is it possible then
11 that the discrepancies were so -- of such a minor nature
12 that they were not worthy of bringing up with the Crown
13 Attorney at this meeting where reasonable and probable
14 grounds were the actual topic?

15 **MR. MALLOY:** I can't say that for sure.

16 **MR. PAUL:** Okay. But it's possible they
17 were too innocuous or minor to actually bring up to a Crown
18 Attorney?

19 **MR. MALLOY:** Well, in -- a discrepancy is a
20 discrepancy, in my mind. I mean, minor or major, I would
21 have discussed them, I suppose.

22 **MR. PAUL:** All right.

23 And at this point you can't say ---

24 **MR. MALLOY:** I can't.

25 **MR. PAUL:** --- whether it's major or minor?

1 **MR. MALLOY:** No.

2 **MR. PAUL:** Another topic I suggest that
3 wasn't in any way referred to in that letter is the issue
4 of corporal punishment. By corporal punishment you would
5 mean whether as a -- some form of parental type figure over
6 Ms. Antoine, whether they had the right to discipline her?
7 That was the topic you were concerned with?

8 **MR. MALLOY:** With corporal punishment, sure.

9 **MR. PAUL:** Right.

10 Now, you would agree that certainly there
11 seemed to be some aspects of her statement -- and I'm
12 referring to aspects of potentially a broken wrist, sexual
13 touching in a bedroom and, thirdly, some aspects that
14 arguably are humiliation of the complainant.

15 Do you agree that there are some aspects
16 that certainly seem to go way beyond corporal punishment?

17 **MR. MALLOY:** Sure.

18 **MR. PAUL:** And would you agree, given that,
19 given the fact that there seemed to be aspects that go way
20 beyond corporal punishment, would you agree that perhaps
21 you discounted the idea of corporal punishment and didn't
22 raise it with the Crown?

23 **MR. MALLOY:** No, that was the purpose of my
24 meeting was whether it constituted an assault or if charges
25 could be laid or if it was just classified as corporal

1 punishment.

2 MR. PAUL: But certainly there were aspects
3 that you perhaps had already decided were obviously not
4 appropriate punishment?

5 MR. MALLOY: Sure.

6 MR. PAUL: Another area perhaps I'd suggest
7 that doesn't come up in that correspondence and stands out
8 is whether the complainant wanted to proceed with
9 proceedings. There's nothing in the Crown's letter
10 suggesting that while we are not proceeding on the sexual
11 assault aspect because the complainant doesn't want to
12 proceed on that.

13 MR. MALLOY: Well, it was in her statement.

14 MR. PAUL: There's nothing in the discussion
15 with the Crown about that, you'd agree?

16 MR. MALLOY: No, he read her statement. Her
17 statement said that she wasn't -- she was more interested
18 in the physical.

19 MR. PAUL: Okay. I wanted to refer you to a
20 document. I believe it's 7390804. I'm not sure if I have
21 the right document. I'm sorry. I'm sorry; I believe it's
22 739080. I believe it's Exhibit 504.

23 THE COMMISSIONER: This is the statement of
24 Jeannette Antoine?

25 MR. PAUL: Yes. Would this be the statement

1 you're referring to?

2 **MR. MALLOY:** Well, it's a typed version.

3 **MR. PAUL:** I'm sorry, yes, the typed
4 version.

5 **MR. MALLOY:** I believe the ---

6 **MR. PAUL:** Five-zero-five (505) would be the
7 handwritten version.

8 Does she indicate at some point in this
9 statement that she -- "Well, I'm really only mad about the
10 beating"? Is that what you're referring to?

11 **MR. MALLOY:** Oh, no, that would have been in
12 my notes when I went over the statement with her.

13 **MR. PAUL:** Do you recall her making a
14 statement, "I'm really only concerned about the beating?"

15 **MR. MALLOY:** Yes. Yeah. They were in --
16 I'm not sure what exhibit number that would be. I'm pretty
17 sure they're in the notes that I made when I was talking
18 with her.

19 **MR. PAUL:** I want to understand if you're
20 saying that -- did she actually say clearly that she did
21 not want to proceed with the sexual assault or did she just
22 indicate that she was more concerned with the physical
23 assault?

24 **MR. MALLOY:** If I -- do you know what tab
25 number my notes would be under -- 740?

1 **MR. PAUL:** Five-five-eight (558).

2 **THE COMMISSIONER:** Thank you. Exhibit
3 number 1506 is Officer Malloy's notes. The first date on
4 top is the 26th of September, '89.

5 **--- EXHIBIT NO./PIÈCE NO. P-1506:**

6 (740558) - Notes of Kevin Malloy dated
7 26 Sep. 89 to 05 Feb. 90

8 **MR. PAUL:** Bates page 7181256?

9 **THE COMMISSIONER:** Say again?

10 **MR. PAUL:** Bates page 7181256.

11 **THE COMMISSIONER:** Yes, okay.

12 **MR. PAUL:** At the bottom.

13 **THE COMMISSIONER:** Okay. So you -- go
14 ahead.

15 **MR. PAUL:** Just the reference to, "Well, I'm
16 really only mad about the beatings," is that your
17 recollection of why you believe she didn't want to proceed
18 with the sexual assault?

19 **MR. MALLOY:** It says:

20 "On questioning Jeannette, I asked more
21 details in the sexual grabbing or
22 rubbing and she stated 'well I'm really
23 only mad about the beatings.'"

24 **MR. PAUL:** And did you explore that any
25 further or ask any further questions of what she meant by

1 that?

2 MR. MALLOY: No, I just found it kind of --

3 -

4 MR. PAUL: You assumed from that that she
5 did not want to proceed at all with the sexual assault?

6 MR. MALLOY: That's correct.

7 MR. PAUL: Given that she seems to be saying
8 she's more concerned with the physical assault but doesn't
9 come right out and say "I don't want to proceed in Court
10 with the sexual assault? Did you believe that it might be
11 appropriate to clarify and ask some more questions?

12 MR. MALLOY: Well I took it at face value.
13 I found it kind of strange that she would say that but I
14 didn't -- I didn't explore it further, no.

15 MR. PAUL: And that issue, again going back
16 to the Exhibit 1499, the letter from the Crown, that issue
17 doesn't seem to arise in that correspondence?

18 MR. MALLOY: No.

19 MR. PAUL: Given it doesn't arise, is it
20 possible that that topic either wasn't discussed or was
21 given little weight during that discussion?

22 MR. MALLOY: I'd have to say I gave Mr.
23 Johnston all the details that I could.

24 MR. PAUL: Okay. One other aspect of the
25 correspondence from the Crown, would you agree that it

1 doesn't come right out and say any kind of conclusion about
2 reasonable probable grounds?

3 MR. MALLOY: That's correct, yes.

4 MR. PAUL: Did you find that surprising? I
5 mean, I guess I should ask you, did you recall receiving
6 the copy of that letter?

7 MR. MALLOY: Of this first letter?

8 MR. PAUL: The c.c., yes?

9 MR. MALLOY: His letter to the Regional
10 Crown? Yes.

11 MR. PAUL: Okay.

12 Did you find it surprising when it came back
13 to you that the purpose of the meeting really was to look
14 at probable grounds and that topic doesn't seem to be
15 clearly in the letter?

16 Was that surprising to you?

17 MR. MALLOY: It was surprising, sure.

18 MR. PAUL: But you didn't raise any issue --

19 -

20 MR. MALLOY: No.

21 MR. PAUL: --- or objection with the Crown?

22 MR. MALLOY: Not that I can recall, no.

23 MR. PAUL: Another point. Just the topic
24 that actually does seem to focus on the names and dates.
25 I'm going to ask you about the issue of dates.

1 Did you find it surprising that the letter
2 from the Crown seemed to put so much emphasis on dates
3 being important in the case; that you wouldn't proceed
4 because you don't have dates when the offence occurred?

5 **MR. MALLOY:** Well I mean, normally you try
6 to narrow down as closely as possible the date of the
7 offence. Sometime you can use between-between if it's a
8 season, or ---

9 **THE COMMISSIONER:** Did you discuss the issue
10 of dates and times with the Crown?

11 **MR. MALLOY:** I don't recall that, Your
12 Honour.

13 **THE COMMISSIONER:** So did you find it
14 surprising that he put it in?

15 **MR. MALLOY:** Yes.

16 **MR. PAUL:** All right.

17 Because you'd agree that, while dates in an
18 historical sexual assault case can be important, they're
19 not necessarily a critical fact that can defeat a
20 prosecution.

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

22 **MS. DALEY:** Because you agree that, in those
23 types of cases, often a complainant who is talking about
24 things a long time ago when they were a youth, they won't
25 necessarily remember dates very well.

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

2 **MR. PAUL:** It's something you'd try to get
3 some information on generally, such as what grade they were
4 in. Correct?

5 **MR. MALLOY:** Correct.

6 **MR. PAUL:** In this case did you do that?

7 **MR. MALLOY:** No.

8 **MR. PAUL:** And that's not something the
9 Crown directed you do?

10 **MR. MALLOY:** No.

11 **MR. PAUL:** I want to refer you to a portion
12 of the report of Staff Sergeant Derochie. It is Exhibit
13 1286, page 13.

14 There's a quotation there in the middle
15 where -- do you see the middle paragraph, the third
16 paragraph? It refers to perhaps the failure to recognise
17 the politically sensitive -- or high profile and
18 politically sensitive nature of the allegation?

19 **MR. MALLOY:** Yes.

20 **MR. PAUL:** Was that something that was
21 discussed in the meeting, the sensitive nature of the
22 allegation?

23 **MR. MALLOY:** No.

24 **MR. PAUL:** Do you think that that's
25 something that was missed at the time?

1 **MR. MALLOY:** I don't think it entered my
2 thought process.

3 **MS. PAUL:** In terms of both yourself and the
4 Crown, was that something that potentially was overlooked?

5 **MS. MALLOY:** I can't say I agree with that.
6 I mean, as I said -- I think I said prior, the police don't
7 do -- base our investigation on who the suspect is or what
8 position they hold.

9 **MR. PAUL:** I want to ask you about,
10 generally, about your experience level at the time. At the
11 time of this particular investigation, how many years had
12 you been in this particular unit?

13 **MR. MALLOY:** Less than a year.

14 **MR. PAUL:** And so your level of experience
15 wasn't much more than, for example, when you were in the
16 Lalonde case, towards the beginning?

17 **MR. MALLOY:** Yeah.

18 **MR. PAUL:** And do you agree that perhaps
19 both the Lalonde and Antoine cases were potentially fairly
20 complicated cases?

21 **MR. MALLOY:** I would agree with that, sure.

22 **MR. PAUL:** Do you agree that the Silmsler
23 case as well was a potentially very complicated case?

24 **MR. MALLOY:** Potentially, sure.

25 **MR. PAUL:** None of those cases, Lalonde,

1 Antoine and Silmsers, given the potential for a number of
2 victims, none of them were routine or easier types of
3 investigations?

4 MR. MALLOY: They weren't easy, no.

5 MR. PAUL: Do you think there was, in
6 hindsight, in terms of your level of experience with
7 Lalonde and Antoine, and Constable Sebalj's level of
8 experience with Silmsers, do you think it was a bad practice
9 within the Cornwall Police Force to assign those types of
10 cases to people who were more junior?

11 MR. MALLOY: No.

12 MR. PAUL: You don't think those cases
13 deserved the involvement of someone who had been in the
14 unit a longer period of time?

15 MR. MALLOY: No, I'd have to disagree. We
16 had people that we could speak to about these things.

17 MR. PAUL: I'm going to ask you another
18 general comment about those three cases. You've already
19 been asked about the fact that in Lalonde the accused was
20 never interviewed?

21 MR. MALLOY: That's correct.

22 MR. PAUL: And similarly in the Antoine
23 case, the accused was never interviewed?

24 MR. MALLOY: That's correct.

25 MR. PAUL: And in the Silmsers case, you're

1 aware that the accused target individuals were never
2 interviewed in that case as well?

3 **MR. MALLOY:** I have no knowledge of that.

4 **MR. PAUL:** I mean, I'm just going to ask
5 you; is it your understanding that there's a greater
6 reluctance within the Cornwall Police to require prominent
7 individuals to be interviewed in sensitive sexual assault
8 cases?

9 **MR. MALLOY:** No.

10 **MR. MANDERVILLE:** Mr. Commissioner, I want
11 to voice a concern.

12 **THE COMMISSIONER:** Yes?

13 **MR. MANDERVILLE:** We keep hearing,
14 "prominent individuals," and I don't know that that's a
15 defined term. Cornwall has many teachers, a number of
16 priests. I'm not sure how we get prominent individuals
17 bandied about all the time. We're not talking about the
18 Prime Minister.

19 **THE COMMISSIONER:** What does the Order-in-
20 Council -- or was it Project Truth that talked about
21 prominent people?

22 Mr. Manderville? Somebody uses that term
23 "prominent." Or was it the Court of Appeal?

24 **MR. MANDERVILLE:** During Constable Malloy's
25 testimony, he's been questioned numerous times about how

1 high profile investigations, prominent people and ---

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

3 **MR. MANDERVILLE:** --- there are prominent
4 people and there are just ordinary citizens who are alleged
5 to commit crimes, and I think we should be careful about
6 who we label as a prominent person.

7 **THE COMMISSIONER:** I don't know, I think
8 that word prominent has been used either by the Court of
9 Appeal or in Project Truth, so I'll let him use the word he
10 wants to use.

11 **MR. PAUL:** Now, I just wanted to go back;
12 you were asked at one point about whether you had any
13 association with the Catholic Church and Knights of
14 Columbus. I just want to ask you. Is there a particular
15 branch that you're associated with?

16 **MR. MALLOY:** Council at St. Columban's.

17 **MR. PAUL:** And is that the branch you've
18 always been in?

19 **MR. MALLOY:** Yes.

20 **MR. PAUL:** And to clarify another point, you
21 said that -- you had said you knew who Charlie MacDonald
22 was. I didn't understand this. Was he your priest or do
23 you just know him because of the association with the
24 Church?

25 **MR. MALLOY:** As a priest, yes.

1 **MR. PAUL:** And, with respect to Knights of
2 Columbus and involvement in the St. Columban's branch, do
3 you have any familiarity with -- you've already indicated
4 you didn't know Malcolm MacDonald well?

5 **MR. MALLOY:** I knew him as a defence lawyer
6 but that was the extent of it.

7 **MR. PAUL:** And what about the lawyers who
8 were involved in the civil settlement, Jacques Leduc and
9 Sean Adams? Would those be people you would socialize
10 with?

11 **MR. MALLOY:** No.

12 **MR. PAUL:** What about Ron Adams; did you
13 ever know him?

14 **MR. MALLOY:** No.

15 **MR. PAUL:** I just want to ask you some
16 general background about the Antoine case. I understand
17 that you began the investigation in '89 and you realized
18 that this was an investigation that was looking back into
19 events back -- maybe back in the 1970s.

20 **MR. MALLOY:** Correct.

21 **MR. PAUL:** And you knew that it involved
22 incidents where there were some form of -- potentially,
23 some form of complaint back in the '70s that didn't result
24 in a complaint to the police but was kept internally in the
25 Children's Aid?

1 **MR. MALLOY:** I did -- I didn't know that
2 then.

3 **MR. PAUL:** Okay. Did you know that Ms.
4 Antoine -- whether Ms. Antoine had any objection to the way
5 it was handled in the 1970s?

6 **MR. MALLOY:** I don't believe she brought
7 that up to me, no.

8 **MR. PAUL:** Okay. You indicated that you
9 were in the police or sorry, in the Children's Aid Society
10 Board, but that was in 1991.

11 **MR. MALLOY:** Ninety-one ('91) ---

12 **MR. PAUL:** Ninety-one ('91) to ---

13 **MR. MALLOY:** Ninety-two ('92).

14 **MR. PAUL:** --- ninety-two ('92), okay. Is
15 that '91 to '92?

16 **MR. MALLOY:** I'm -- I was told that; I can't
17 remember what year it was.

18 **MR. PAUL:** April '91 to March '92.

19 **MR. MALLOY:** Okay.

20 **MR. PAUL:** Okay. Now, is it your
21 understanding that generally, as a practice, there was
22 always somebody from the Cornwall Police appointed to the
23 Children's Aid Board?

24 **MR. MALLOY:** Normally, the junior person in
25 the Youth Bureau was appointed, sure.

1 **MR. PAUL:** So in '89 to '90, while you're
2 investigating the Antoine matter, is somebody else in your
3 branch on the Board?

4 **MR. MALLOY:** You know what, I'm not sure.

5 **MR. PAUL:** Okay.

6 **MR. MALLOY:** I'm not sure if Bob Trottier
7 was on the Board then or not. I'm not sure.

8 **MR. PAUL:** And you don't know if that
9 practice went back to the 1970s?

10 **MR. MALLOY:** Oh, I have no idea.

11 **MR. PAUL:** Okay. And as far as he -- going
12 back to the 1970s, were you aware of who was on the
13 Children's Aid Society Board back in the 1970s when the
14 Antoine matter originally came up?

15 **MR. MALLOY:** As of back then?

16 **MR. PAUL:** Yes.

17 **MR. MALLOY:** No.

18 **MR. PAUL:** I just want to refer the witness
19 to one part of Staff Sergeant Derochie's report which is
20 Number 739110. It's Exhibit 1286, I believe.

21 **THE COMMISSIONER:** Yes, it is.

22 **MR. PAUL:** Page 10.

23 **MR. MALLOY:** I'm sorry; what's the exhibit
24 number?

25 **MR. PAUL:** Exhibit 1286, page 10 towards the

1 bottom of the page. I was going to direct you towards the
2 bottom of the page, the paragraph indicating the CAS Board
3 of Directors.

4 **MR. MALLOY:** I apologize; can you give me
5 the tab number again, please?

6 **MR. PAUL:** It's Exhibit 1286.

7 **MR. MALLOY:** Okay, sorry.

8 **MR. PAUL:** There's a portion towards the
9 bottom indicating:

10 "The CAS Board of Directors elected not
11 to inform the police and to deal with
12 it internally.

13 The CAS Board of Directors is made up
14 of prominent members of the community.

15 The CAS ought to have advised the
16 police of the allegations so that they
17 could have been investigated
18 thoroughly."

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

20 **MR. MALLOY:** Oh, yes. Okay, sorry.

21 **MR. PAUL:** Were you aware of that situation,
22 that there was some issue as referred to by Sergeant --
23 Staff Sergeant Derochie that there was a failing to report
24 to the police back when the incident first arose in the
25 1970s?

1 **MR. MALLOY:** No.

2 **MR. PAUL:** So you weren't aware that there
3 was -- if your investigation proceeded, there might be some
4 potential for there to be some kind of negative
5 implications on the Children's Aid Society.

6 **MR. MALLOY:** Because of their investigation
7 in the '70s?

8 **MR. PAUL:** Yes.

9 **MR. MALLOY:** I don't -- I don't know.

10 **MR. PAUL:** You weren't aware of that as a
11 potential result?

12 When you did -- when you did pursue with the
13 Antoine investigation, Mr. Bell from the Children's Aid
14 Society assisted you?

15 **MR. MALLOY:** Yes.

16 **MR. PAUL:** And, in effect, it was in the
17 nature of a joint police-Children's Aid Society
18 investigation? You worked together?

19 **MR. MALLOY:** Well, yeah. He was on -- one
20 of the four people I worked with on the Emergency Response
21 Team, sure.

22 **MR. PAUL:** I'm just going to ask you, if you
23 had known this information which Staff Sergeant Derochie
24 refers to about this issue going back to 1970s, would that
25 have changed the way you have -- you would have

1 investigated the matter in the sense of whether you would
2 have done matters jointly with the Children's Aid Society?

3 MR. MALLOY: Do you mean would I have chosen
4 not to work with them because of this?

5 MR. PAUL: Well, would you -- would it
6 appear to be a conflict in a way to work that closely
7 together with them as a joint investigation?

8 MR. MALLOY: No.

9 MR. PAUL: You still would have done it the
10 same ---

11 MR. MALLOY: Oh, absolutely. Yeah.

12 MR. PAUL: Do you know who the legal adviser
13 was for the Children's Aid Society back in the 1970s when
14 the Antoine matter arose?

15 MR. MALLOY: No.

16 MR. PAUL: I ---

17 THE COMMISSIONER: Your answer's no?

18 MR. MALLOY: Oh, I'm sorry. Yes, sir.

19 THE COMMISSIONER: You have to vocalize.

20 MR. MALLOY: I'm sorry.

21 MR. PAUL: You're not aware whether it was a
22 Mr. Ron Adams; whether he was your legal adviser back then?

23 MR. MALLOY: No.

24 MR. PAUL: Was he, in fact -- when the
25 Antoine matter came up in '89, was he Chair of the Police

1 Commission?

2 MR. MALLOY: I'm not sure.

3 MR. PAUL: All right. If that were the
4 circumstance, if someone was a legal adviser for the
5 Children's Aid Board back in the '70s when the matter arose
6 and was then Chair of the Police Commission would that, in
7 your mind, raise any conflict in terms of Cornwall Police
8 addressing the issue?

9 MR. MALLOY: Not in my mind, no.

10 MR. PAUL: All right. I wanted to ask you a
11 few questions about the Silmsler investigation. I believe
12 we're looking at a few questions about your notes which I
13 believe are Exhibit 315.

14 I wanted to ask -- the first part I wanted
15 to ask you about was, I believe it's the second page, in
16 the corner it's 7043872. Do you have that page?

17 MR. MALLOY: Thirty-eight seventy-two
18 (3872)?

19 MR. PAUL: Seven zero four three eight seven
20 two (7043872), yes.

21 MR. MALLOY: Yes, yes.

22 MR. PAUL: Towards the middle there, I
23 believe there's a reference to:

24 "Spoken with Father MacDougald and told
25 him all he wanted was a letter of

1 apology from him, what had happened in
2 the past."

3 Is that something that you're -- information you're
4 receiving from Mr. Silmsers?

5 **MR. MALLOY:** That's from Mr. Silmsers, yes.

6 **MR. PAUL:** And so there's some indication
7 from him that originally he was looking for an apology as
8 opposed to a civil settlement.

9 **MR. MALLOY:** That's correct.

10 **MR. PAUL:** And does that have any impact on
11 your views of Mr. Silmsers in terms of his credibility?

12 **MR. MALLOY:** No.

13 **MR. PAUL:** Okay. I want to ask you about
14 towards the end of the notes, 7043882, there's an entry in
15 the middle indicating:

16 "Willing to go to Court. Will support
17 a prosecution 100 percent."

18 Is that what Mr. Silmsers's telling you?

19 **MR. MALLOY:** I'm just trying to find the
20 page, sorry.

21 **MR. PAUL:** It's 7043882.

22 **MR. MALLOY:** Three eight eight two (3882).
23 Okay, sorry. Yes.

24 **MR. PAUL:** Now, that's Mr. Silmsers
25 indicating to you that he's 100 percent behind the

1 prosecution.

2 MR. MALLOY: That's correct.

3 MR. PAUL: And at this point, he's already
4 explained -- this is towards the end of the interview.

5 MR. MALLOY: Correct.

6 MR. PAUL: And he's already explained both
7 the incidents of Charles MacDonald and Ken Seguin, right?

8 MR. MALLOY: Correct.

9 MR. PAUL: And he doesn't distinguish
10 between the two when he says he's behind it 100 per cent?

11 MR. MALLOY: Correct.

12 MR. PAUL: So your understanding is he's
13 prepared to go to court on both 100 per cent?

14 MR. MALLOY: Correct.

15 MR. PAUL: You indicated -- you did indicate
16 that you had the sense that getting this information was
17 something like pulling teeth?

18 MR. MALLOY: Not free-flowing, yes.

19 MR. PAUL: Okay. And while you get this
20 sense that it's like pulling teeth, is Constable Sebalj
21 present in the room?

22 MR. MALLOY: Yes.

23 MR. PAUL: Okay. So at the time when you
24 view him as being somewhat reluctant and it would be like
25 pulling teeth, there's a female officer in the room and

1 he's expressed at least some concerns at some point about
2 that, correct?

3 MR. MALLOY: Initially, yes.

4 MR. PAUL: Okay. And you don't necessarily
5 attribute the pulling like -- like pulling teeth perhaps
6 being due to the fact that he has some embarrassment over
7 saying this in front of a female officer? You can't read
8 his mind? That's possible, correct?

9 MR. MALLOY: No.

10 MR. PAUL: Correct?

11 MR. MALLOY: That's true, yes.

12 MR. PAUL: Okay. And even apart from that
13 issue that he's clearly raised at some point about being
14 concerned about a female officer, you would also agree that
15 just by the nature of the facts that he's relating, sexual
16 assault complainants can find it difficult to talk about
17 that type of information, correct?

18 MR. MALLOY: Yes.

19 MR. PAUL: And you wouldn't necessarily
20 disbelieve a complainant only because they find it
21 difficult to talk about ---

22 MR. MALLOY: No.

23 MR. PAUL: --- that subject, correct?

24 MR. MALLOY: No.

25 MR. PAUL: I think you did agree that your

1 involvement, for the most part, was attending the interview
2 and a few brief telephone conversations after?

3 MR. MALLOY: That's correct.

4 MR. PAUL: And you would also agree that you
5 had no involvement in comparing your notes to Mr. Silmsers
6 written statement?

7 MR. MALLOY: That's correct.

8 MR. PAUL: And it wasn't your investigation,
9 so you weren't involved in analyzing probable grounds?

10 MR. MALLOY: That's correct.

11 MR. PAUL: You weren't involved in
12 discussing that with other officers?

13 MR. MALLOY: No.

14 MR. PAUL: And prior to -- from the time the
15 interview was done until the Silmsers matter/ settlement
16 became public later in the fall of '93, you didn't show
17 your notes or produce your notes to any other officers?

18 MR. MALLOY: No, sir.

19 As of the 8th of March of '93, I was no
20 longer in the building.

21 MR. PAUL: Okay. So you, yourself, didn't
22 provide your notes to anybody?

23 MR. MALLOY: No.

24 MR. PAUL: And where would your notes have
25 been stored?

1 **MR. MALLOY:** In my desk. On my desk.

2 **MR. PAUL:** And you have no knowledge of
3 Constable Sebalj ever asking or getting a copy of your
4 notes?

5 **MR. MALLOY:** I have no knowledge of that,
6 no.

7 **MR. PAUL:** Okay. In the normal practice,
8 would it be that once a charge is laid, the investigating
9 officer would then gather copies of the notes at that
10 point?

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

12 **MR. PAUL:** So as far as you know, it's very
13 possible when she was looking at the case whether she had
14 probable grounds, she might not even have had your notes?
15 That's possible?

16 **MR. MALLOY:** It's possible.

17 **MR. PAUL:** Constable Sebalj, were you on
18 good terms with her?

19 **MR. MALLOY:** Oh, yes.

20 **MR. PAUL:** And so you were in the office
21 with her up until March of '93?

22 **MR. MALLOY:** The 8th of March, correct.

23 **MR. PAUL:** Okay. And as far as her
24 situation, were you ever aware whether there was any
25 pressure asserted on her not to proceed with the case?

1 **MR. MALLOY:** No.

2 **MR. PAUL:** And were you ever aware whether
3 any of her superiors ever had any bias for any reason in
4 favour of the accused persons, Mr. Seguin and Mr.
5 MacDonald?

6 **MR. MALLOY:** I'm sorry?

7 **MR. PAUL:** Were you ever aware whether there
8 was any bias by any of her superiors in favour of the
9 accused persons?

10 **MR. MALLOY:** Oh, no.

11 **MR. PAUL:** Are you aware whether Chief
12 Shaver had any personal connection to any of the parties,
13 such as Ken Seguin, Malcolm MacDonald or Father Charles
14 MacDonald?

15 **MR. MALLOY:** No.

16 **MR. PAUL:** I had a few questions for you
17 about the Marcel Lalonde case.

18 The Marcel Lalonde case, I understand in
19 that case you would have contacted the same Crown Attorney,
20 I believe?

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

22 **MR. PAUL:** And you spoke to him on one
23 occasion about the case?

24 **MR. MALLOY:** Twice, I believe.

25 **MR. PAUL:** And do you have notes in relation

1 to both occurrences?

2 MR. MALLOY: Of both meetings?

3 MR. PAUL: Yes.

4 MR. MALLOY: I'm sure I've recorded the
5 dates that I met with him.

6 MR. PAUL: All right.

7 If I could refer you to your notes at
8 737822?

9 THE COMMISSIONER: Exhibit Number 1507 is
10 notes from Officer Malloy. The first date is -- is that 01
11 or 09 January, '89?

12 MR. MALLOY: I believe it's 09, Your Honour.

13 THE COMMISSIONER: "09", thank you.

14 --- EXHIBIT NO./PIÈCE NO P-1507:

15 (737822) - Kevin Malloy Notes of Kevin
16 Malloy dated 09 Jan 89 to 23 Jan 89

17 MR. PAUL: I believe on the second page
18 there's a reference to attending Crown's office?

19 MR. MALLOY: Yes.

20 MR. PAUL: And is that the only reference in
21 the notes?

22 THE COMMISSIONER: I'm sorry; where do you
23 see that?

24 MR. PAUL: Page 2, in the middle.

25 THE COMMISSIONER: Page 2? I've got a

1 blank. Oh, no, right. Okay. I see what you're saying,
2 yes.

3 MR. MALLOY: There's one entry, yes.

4 MR. PAUL: One entry.

5 And given we're going back to 1989, your
6 memory is really -- in terms of meetings is probably based
7 on what's exclusively on your notes at this point?

8 MR. MALLOY: I would -- based on memory, I'm
9 sure I met him twice on this case. I may be mistaken.

10 MR. PAUL: Okay. So it's possible it was
11 only once?

12 MR. MALLOY: It's possible.

13 MR. PAUL: And if there was a second
14 meeting, you have no idea when that was?

15 MR. MALLOY: No.

16 MR. PAUL: Now, as far as the meeting you
17 did attend, it indicates -- appears to indicate the 10th of
18 January; is that correct?

19 MR. MALLOY: I'm not sure if it's a "10th" or
20 "16th".

21 MR. PAUL: All right.

22 MR. MALLOY: It may be the 10th.

23 MR. PAUL: There's blacked-out portions, I
24 understand?

25 MR. MALLOY: Yeah.

1 **MR. PAUL:** And are the blacked-out portions
2 those that relate to unrelated cases?

3 **MR. MALLOY:** That's correct, yes.

4 **MR. PAUL:** So essentially, as far as the
5 meeting with the Crown, you have no notes on what happened
6 at the meeting?

7 **MR. MALLOY:** No.

8 **MR. PAUL:** And the notes with respect to the
9 meeting would relate to ---

10 **THE COMMISSIONER:** Well, he has no notes.

11 **MR. PAUL:** I'm sorry, the notes "attended
12 Crown's office", that note ---

13 **THE COMMISSIONER:** Okay.

14 **MR. PAUL:** --- comes immediately after
15 meeting C-60, which is referred to on page 1; is that
16 correct?

17 **MR. MALLOY:** That's correct.

18 **MR. PAUL:** And the -- am I correct to say
19 that the meeting with C-57, in terms of sequence, seems to
20 come after the meeting with the Crown?

21 **MR. MALLOY:** Yes.

22 **MR. PAUL:** So in relation to that meeting on
23 page 2, perhaps you had -- there wouldn't be necessarily
24 any discussion with C-57; is that correct?

25 **MR. MALLOY:** No, that's why I'm saying I had

1 to have met him twice -- the Crown twice because I know I
2 discussed that ---

3 MR. PAUL: Okay.

4 MR. MALLOY: --- case with him.

5 MR. PAUL: But you have no note of any
6 meeting with the Crown with regard to C-57; correct?

7 MR. MALLOY: That's correct, when I was
8 asked to provide notes, if I was going through my whole
9 notebook and I may have missed an entry, I'm not sure.

10 MR. PAUL: All right.

11 Now, with respect to C-57, if you did meet
12 the Crown with respect to that, one of the issues you would
13 want to discuss was the issue of consent?

14 MR. MALLOY: Correct.

15 MR. PAUL: And did you indicate at some
16 point that the complainant was indicating to you that there
17 was intoxication?

18 MR. MALLOY: Correct.

19 MR. PAUL: But you had doubts about the --
20 about believing the complainant's version of the extent of
21 the intoxication?

22 MR. MALLOY: The level of intoxication, yes.

23 MR. PAUL: Okay. Now, if you had those
24 types of concerns that there was intoxication but you had
25 doubts about the level, would that not be a reason to

1 conduct an interview of the accused person?

2 **MR. MALLOY:** I wouldn't have spoken to the
3 accused until I had some strong evidence to go and speak to
4 him about.

5 **MR. PAUL:** But if the complainant is saying
6 lack of consent based on alcohol and you have doubts about
7 the extent of the alcohol, wouldn't your grounds be greater
8 if your interview of the accused actually confirmed the
9 extent of the alcohol if the accused agreed to that?

10 **MR. MALLOY:** No.

11 **MR. PAUL:** It wouldn't have any effect?

12 **MR. MALLOY:** No.

13 **MR. PAUL:** I just want to ask you, did you
14 consider other offences such as offences that may have
15 existed back at the time of that historical assault but not
16 necessarily existed in '89? Did you consider that?

17 I'm thinking, for example, of gross
18 indecent. Did you consider that?

19 **MR. MALLOY:** I had researched all the --
20 what I thought were the applicable section numbers in force
21 at that time.

22 **MR. PAUL:** Was there any discussion with the
23 Crown Attorney about gross indecent as a possible charge?

24 **MR. MALLOY:** Oh, I can't recall. I know I
25 had researched and written down the section numbers.

1 **MR. PAUL:** If I can just have a moment ---

2 **THE COMMISSIONER:** Certainly.

3 **MR. PAUL:** --- Mr. Commissioner? I may be
4 finished.

5 **(SHORT PAUSE/COURTE PAUSE)**

6 **MR. PAUL:** Those are my questions.

7 Thank you.

8 **MR. MALLOY:** Thank you.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Lee. Can you give me an estimate of
11 time, sir?

12 **MR. LEE:** I would hope no more than 20 to 30
13 minutes.

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

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

16 **MR. LEE:** Constable Malloy, my name is
17 Dallas Lee. I'm on for the Victims Group.

18 You've discussed your involvement in three
19 investigations so far: Lalonde, Antoine and Silmsler.

20 **MR. MALLOY:** That's correct.

21 **MR. LEE:** Just so you know right off the
22 bat, I believe for my purposes we have your evidence as it
23 relates to Antoine and Silmsler. So I don't intend at this
24 point to ask any questions about those. So I'm going to
25 focus on the Lalonde investigation.

1 And what I very much am going to try to
2 avoid doing is duplicating anything you've talked about so
3 far and going back over things, but there's going to be a
4 little bit.

5 I have an easier time thinking
6 chronologically, and I want to use the notes that were just
7 entered a moment ago by Mr. Paul to look at chronologically
8 what you did in this investigation and ask you some
9 questions as we go. Okay?

10 **MR. MALLOY:** Okay.

11 **MR. LEE:** Now, if we can turn up Exhibit
12 1507? You may have that up already. That's the last
13 document that was entered, your notes.

14 Do you have that, sir?

15 **MR. MALLOY:** Yes.

16 **MR. LEE:** And so this is a notebook, a
17 standard police notebook. Is that right?

18 **MR. MALLOY:** Yes.

19 **MR. LEE:** And notes in this book would have
20 been made as you went along on various cases. Is that
21 right?

22 **MR. MALLOY:** Yes.

23 **MR. LEE:** So if at 1:00 o'clock you worked
24 on case "A" you would make a note and right below that if
25 you worked on case "B" you would make a note. Is that

1 right?

2 MR. MALLOY: Sure.

3 MR. LEE: And hence we have some redactions
4 here that have absolutely nothing to do with what we're
5 talking about?

6 MR. MALLOY: Correct.

7 MR. LEE: Is that right?

8 Do you know whether -- would you have been
9 involved in the process of reviewing this notebook for the
10 purposes of this Inquiry to figure out what was relevant
11 and what wasn't?

12 MR. MALLOY: Yes. Well, I had -- I would
13 request for notes for specific incident numbers or ---

14 MR. LEE: What I'm asking is, I don't know
15 how this process worked with the CPS team getting ready for
16 the Inquiry. For all I know, Mr. Derochie looked at
17 everybody's notebooks and did all that himself or maybe the
18 individual officer did.

19 In your case, were you provided at some
20 point with the original copy of your notebook and asked to
21 look for things relevant to this Inquiry?

22 MR. MALLOY: Yes.

23 MR. LEE: So that was you that did that?

24 MR. MALLOY: Yes.

25 MR. LEE: Okay. Now, if we look at the

1 first page of this excerpt ending in Bates page 012, this
2 is the 9th of January 1989. Do you see that up at the top?

3 MR. MALLOY: Yes.

4 MR. LEE: And as Mr. Paul said to you, at
5 1:55 we have an interview with C-60, possible victim, and
6 you have an occurrence number there. Do you see that?

7 MR. MALLOY: Correct.

8 MR. LEE: And while we're on that occurrence
9 number, can you just flip over to the next page, and that's
10 the note on the 10th or the 16th of January, you weren't sure
11 which, at 9:50 it looks like, "Attended Crown's office
12 re:..." -- an incident number that I don't recognize, and the
13 one below that.

14 Would you agree with me that seems to be the
15 same incident number as the one ---

16 MR. MALLOY: Yes.

17 MR. LEE: --- on the previous page?

18 MR. MALLOY: Yes.

19 MR. LEE: So we know that -- it would appear
20 anyways, when you attended the Crown's office on that date
21 you dealt with two matters, one of them seemingly unrelated
22 to the Inquiry and then one relating to Marcel Lalonde?

23 MR. MALLOY: Correct.

24 MR. LEE: Is that right?

25 And can you help me out with how that would

1 have worked at the time in terms of Marcel Lalonde? As you
2 go along and various people come forward, witnesses,
3 potential complainants, complainants who don't want to
4 proceed, would there have been a separate incident number
5 or occurrence number for each of those individual people or
6 would you just sort of umbrella it under one Marcel Lalonde
7 occurrence number?

8 MR. MALLOY: It would have been one master
9 occurrence.

10 MR. LEE: So this is the Marcel Lalonde
11 case?

12 MR. MALLOY: That's the occurrence ---

13 MR. LEE: Rather than the victim "A", victim
14 "B", victim "C" case?

15 MR. MALLOY: Having separate case numbers?

16 MR. LEE: Yeah.

17 MR. MALLOY: Oh, no, they'd all be under the
18 same case number.

19 MR. LEE: Okay. So the entry we have on
20 page 012 is with C-60. We have an interview beginning at
21 13:55 and left residence at 14:30. Do you see that?

22 MR. MALLOY: Correct.

23 MR. LEE: So about 35 minutes?

24 MR. MALLOY: Correct.

25 MR. LEE: Does that seem about right to you

1 when you look back on it, that length of time?

2 MR. MALLOY: Sure.

3 MR. LEE: That seems reasonable to you?

4 And these notes would have been made very
5 close to that time?

6 MR. MALLOY: Yes.

7 MR. LEE: And in this notebook we have no
8 other details provided at all. Is that right?

9 MR. MALLOY: That's correct.

10 MR. LEE: Can I ask you to look at -- this
11 is a new document -- Document Number 734874?

12 THE COMMISSIONER: Thank you.

13 Exhibit 1508 are notes of Officer Malloy
14 with the title -- the title of the page is "Victim".

15 --- EXHIBIT NO./PIÈCE NO. P-1508:

16 (734874) - Kevin Malloy Notes of Kevin
17 Malloy dated Feb 81

18 MR. LEE: Do you have that in front of you,
19 Constable Malloy?

20 MR. MALLOY: Yes, I do.

21 MR. LEE: And these are -- this is your
22 handwriting?

23 MR. MALLOY: It is.

24 MR. LEE: And if you look down below mid-
25 page in a box we have C-60's name. Do you see that?

1 **MR. MALLOY:** Correct.

2 **MR. LEE:** And we have some contact
3 information and it looks like a date of birth and his age
4 and things along those lines?

5 **MR. MALLOY:** Correct.

6 **MR. LEE:** And below that -- tell me if I'm
7 reading this correctly -- is that first word "occurred"?

8 **MR. MALLOY:** Occurred, yes.

9 **MR. LEE:** "Occurred, 15 years old - woke
10 up - culprit..."

11 And then a description of a sex act.

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

13 **MR. LEE:** Is that right?

14 And so can I assume then that description
15 there relates to C-60, based on how this is ---

16 **MR. MALLOY:** Yes.

17 **MR. LEE:** So I take it then that C-60 is
18 telling you that the incident he is telling you about
19 occurred when he was 15 years old?

20 **MR. MALLOY:** That's correct.

21 **MR. LEE:** That he woke up and that the
22 culprit -- I presume Marcel Lalonde he would have told you
23 ---

24 **MR. MALLOY:** Yes.

25 **MR. LEE:** --- was performing this act on

1 him. Is that right?

2 MR. MALLOY: Correct.

3 MR. LEE: Now, these are the only notes that
4 I have access to through this Inquiry. Do you have any
5 recollection of having other notes in relation to this
6 interview?

7 MR. MALLOY: No.

8 MR. LEE: And so after this -- again, moving
9 chronologically, if we turn the page over we have the
10 meeting with the Crown.

11 Do you have any specific recollection of
12 having discussed C-60's allegations with the Crown at that
13 meeting?

14 MR. MALLOY: I think at that point in the
15 Youth Bureau -- this was the first historical sexual --
16 actually, the first sexual assault -- the first historical
17 sexual assault I investigated.

18 MR. LEE: Right.

19 MR. MALLOY: So I think I was looking for
20 directions from the Crown about historicals. I didn't -- I
21 had very little knowledge about ---

22 MR. LEE: So is it fair for me to summarize
23 what you just said there as you were assigned a case; you
24 spoke to a victim and right away you went to the Crown to
25 figure out what you were supposed to do next?

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

2 **MR. LEE:** First case makes sense, right?

3 **MR. MALLOY:** Yes.

4 **MR. LEE:** Now, if you turn the page over,
5 again, it looks like we have some redactions on page 013,
6 but the only date we have is that January 10th or 16th,
7 whatever it happens to be, and we have an entry on page 014
8 of 140. Do you see that?

9 **THE COMMISSIONER:** Where are you now?

10 **MR. LEE:** Page 014.

11 **MR. MALLOY:** The back of this is blank.

12 **MR. LEE:** I have -- Madam Clerk, I have what
13 should be Exhibit 1507, Document Number 737822.

14 **THE COMMISSIONER:** Hold it.

15 **MR. LEE:** And my document is five notebook
16 pages.

17 **THE COMMISSIONER:** Oh, okay. Yeah, m'hm.
18 So you are referring to Exhibit 1507?

19 **MR. LEE:** Fifteen-zero-seven (1507), Bates
20 Page 7159014.

21 **THE COMMISSIONER:** Okay. Do you have it,
22 Officer?

23 **MR. MALLOY:** Yes, sir.

24 **MR. LEE:** Okay. And I should say that my
25 friend Ms. Jones, I can tell you, has just checked a

1 calendar while we've been sitting here and she advises that
2 January 10th, 1989 was a Tuesday. The 16th would have been a
3 Monday, for what that's worth. So it appears that that may
4 well be the 10th, not the 16th. I'm not sure anything turns
5 on it, but for clarity I think it may have been the 10th.

6 **THE COMMISSIONER:** Thank you.

7 **MR. LEE:** Constable Malloy, do you
8 understand what I'm saying there, sir?

9 **MR. MALLOY:** Oh yes, sorry. Yes.

10 **MR. LEE:** So if we're on page 014 we have
11 the entry at 1340 hours. Do you see that?

12 **MR. MALLOY:** Yes.

13 **MR. LEE:** And it reads:

14 "Began interview with C-57."

15 Is that right?

16 **MR. MALLOY:** Correct.

17 **MR. LEE:** And "Completed interview at
18 15:35."

19 Do you see that?

20 **MR. MALLOY:** Correct.

21 **MR. LEE:** So it looks like about an hour and
22 55 minutes. Is that right?

23 **MR. MALLOY:** Right.

24 **MR. LEE:** And Exhibit 1491 we've already
25 looked at are the notes that you took of that interview.

1 And those are the lengthy notes that span over many pages.

2 You can turn those up if you like, 1491.

3 I believe that would have been in one of your binders.

4 (SHORT PAUSE/COURTE PAUSE)

5 MR. MALLOY: There I go. Sorry, yes.

6 MR. LEE: Do you see those? And we have up
7 at the top -- well, there you go, January 10th, 1989 with an
8 interview with C-57 starting at 13:40.

9 MR. MALLOY: Right.

10 MR. LEE: Do you see that?

11 MR. MALLOY: Yes.

12 MR. LEE: So obviously the entry in your
13 notebook relates to this statement here; is that right, or
14 these notes here?

15 MR. MALLOY: Correct.

16 MR. LEE: Now, we have an hour and fifty-
17 five minute interview and we have about five pages of notes
18 and in the earlier 35-minute one we had about one page of
19 notes. So those are -- those don't seem wildly off to you,
20 do they? That makes sense that you would have more notes
21 for a two-hour interview than you would have for a 35-
22 minute interview?

23 MR. MALLOY: Sometimes it takes 15-20
24 minutes talking with the person before they'll ---

25 MR. LEE: It all depends.

1 **MR. MALLOY:** --- feel comfortable with you,
2 sure.

3 **MR. LEE:** And one of the things that we have
4 early on in this at Exhibit 1491 is -- the first hyphen, I
5 suppose, is the name of C-60. Do you see that?

6 **MR. MALLOY:** Correct.

7 **MR. LEE:** So we have right off the bat
8 you've interviewed two people and the second person has
9 given you the first person's name. Is that right?

10 **MR. MALLOY:** Can you repeat that again?
11 Sorry.

12 **MR. LEE:** You interviewed C-60 first?

13 **MR. MALLOY:** Yes.

14 **MR. LEE:** And then you interview C-57.

15 **MR. MALLOY:** Yes.

16 **MR. LEE:** And based on the sequencing of
17 your notes, one of the first things C-57 talks to you about
18 is C-60.

19 **MR. MALLOY:** Correct.

20 **MR. LEE:** And you would have taken note of
21 that obviously, I take it?

22 **MR. MALLOY:** Yes.

23 **MR. LEE:** And so that would have tended to
24 lend some corroboration to the fact that C-60 was at least
25 around Marcel Lalonde. Is that right?

1 **MR. MALLOY:** Correct.

2 **MR. LEE:** And one of the things that C-57
3 tells you about is about Marcel Lalonde wanting to take
4 photographs of him. Is that right?

5 **MR. MALLOY:** Correct.

6 **MR. LEE:** And more than that, though, he
7 tells you about a photo album of pictures of other males.
8 Is that correct?

9 **MR. MALLOY:** That's correct.

10 **MR. LEE:** And he also tells you that he
11 can't be sure whether or not Lalonde may have photographed
12 him while he was sleeping?

13 **MR. MALLOY:** Correct.

14 **MR. LEE:** And he mentions -- if you can turn
15 to page 762 of that, page 4, he talks about a bartender
16 that he had worked with at a specific bar at some point and
17 that person tells him a story about having gotten drunk and
18 falling asleep at Lalonde's home and woken up when the
19 culprit grabbed him.

20 **MR. MALLOY:** Correct.

21 **MR. LEE:** Is that right?

22 So we have another incidence here where
23 somebody is telling you about being asleep and waking up to
24 some kind of sexual act. Is that right?

25 **MR. MALLOY:** Correct.

1 **MR. LEE:** So I take it you would agree, at
2 least in those cases, with the people who are asleep, there
3 is no issue with consent there?

4 **MR. MALLOY:** Correct.

5 **MR. LEE:** And there is no issue with consent
6 with somebody being photographed nude while sleeping?

7 **MR. MALLOY:** While sleeping, yes.

8 **MR. LEE:** But your evidence, as I understand
9 it, as it relates to C-7 is that you had an issue with
10 consent?

11 **THE COMMISSIONER:** C who?

12 **MR. LEE:** C-57, I'm sorry. I don't want to
13 drag C-7 into this.

14 **THE COMMISSIONER:** No.

15 **MR. LEE:** C -57.

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

17 **MR. LEE:** Do I understand your evidence to
18 be that you didn't disbelieve him that the -- of what had
19 happened; you just were worried about consent?

20 **MR. MALLOY:** That's correct.

21 **MR. LEE:** And you told us yesterday that you
22 thought that this act had happened but that he did it
23 voluntarily?

24 **MR. MALLOY:** Correct.

25 **MR. LEE:** Now, do I understand you -- well,

1 I suppose a better question is what do you mean by
2 voluntarily?

3 MR. MALLOY: Where he says he voluntarily
4 removed his clothing.

5 MR. LEE: Was it ---

6 MR. MALLOY: With protest, I think he said.

7 MR. LEE: So can I assume by voluntarily you
8 mean without the use -- Mr. Lalonde didn't need to use
9 physical force?

10 MR. MALLOY: That's correct.

11 MR. LEE: Was that a distinguishing factor
12 in your mind, the use of physical force?

13 MR. MALLOY: If he would have used physical
14 force to remove the clothing?

15 MR. LEE: Well, it's more I'm thinking of it
16 more in the other way. Was it your understanding at that
17 time that absent the use of physical force there was
18 consent?

19 MR. MALLOY: That was my opinion, yes.

20 MR. LEE: In this case it was your opinion,
21 but would that have -- can you -- can you imagine a
22 situation back at that time where you would have -- you
23 would have not been concerned about consent even though
24 there was no physical force?

25 What I'm wondering -- I'm not sure I worded

1 that properly. What I'm wondering is must you have
2 physical force for something to be involuntary? Was that
3 your thinking back at the time?

4 **MR. MALLOY:** Yes.

5 **MR. LEE:** And the fact that there was
6 alcohol involved didn't affect your opinion on that point?

7 **MR. MALLOY:** Well, I came to the conclusion
8 he wasn't that intoxicated. That's my opinion. But
9 alcohol certainly played a factor, sure.

10 **MR. LEE:** One thing that I want to clear up
11 relates to Exhibit 1503. This was entered today, so it
12 will likely be in a loose volume or a loose sheet. I think
13 Ms. Daley brought you to it.

14 This is the internal correspondence from you
15 to Staff Sergeant Wells asking for an extension, 1503. And
16 this is the document where you note that the case involves
17 possibly four victims of a sexual assault.

18 **THE COMMISSIONER:** The clerk would have put
19 it in a three-ring binder, but it's the latest three ring
20 binder. So the thinnest one, I guess.

21 **MR. LEE:** Fifteen-zero-three (1503).

22 **THE COMMISSIONER:** One-five-zero-three
23 (1503).

24 **MR. MALLOY:** I'm sorry, sir; you said 1503?

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

1 **MR. LEE:** That's right.

2 **MR. MALLOY:** Yes.

3 **MR. LEE:** So this is the one where you say
4 that the case involves possibly four victims of a sexual
5 assault?

6 **MR. MALLOY:** Correct.

7 **MR. LEE:** and Ms. Daley asked you earlier
8 today who you thought those four victims were, and the
9 reason I'm asking again is that she asked you the question
10 twice and you gave her a different list the two times,
11 according to my notes. Both times you told her -- do you
12 have your moniker list there, sir?

13 **MR. MALLOY:** Yes.

14 **MR. LEE:** Both times you told her C-60 was
15 one of the four, the first person you had interviewed.

16 **MR. MALLOY:** Right.

17 **MR. LEE:** And both times you told her that
18 C-65 was one of the four.

19 **MR. MALLOY:** Right.

20 **MR. LEE:** But then you diverge a little bit.
21 The first time you told her C-57 was one of them.

22 **MR. MALLOY:** Okay.

23 **MR. LEE:** And that C-59 was one of them.
24 So C-57 was your second interview and C-59 was one of the
25 persons named by C-57.

1 **MR. MALLOY:** Okay.

2 **MR. LEE:** Okay. Are you with me on that?

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

4 **MR. LEE:** The second time you told her that
5 you thought C-58 was one of them and C-61 was the other.
6 So I'm just asking you if you can clarify for me; C-60 is
7 the first person that you interviewed?

8 **MR. MALLOY:** Yes.

9 **MR. LEE:** He would have been one of those
10 four ---

11 **MR. MALLOY:** Yes.

12 **MR. LEE:** --- that were in your mind. We
13 know that. What about C-60 -- or, sorry, C-57, the second
14 person you interviewed? He would have been one of them?

15 **MR. MALLOY:** Yes.

16 **MR. LEE:** Okay. So that's two. C-59 is
17 mentioned by C-57. Would he have been one of them?

18 **MR. MALLOY:** That's possible, sure.

19 **MR. LEE:** Okay. And then we have a couple -
20 - we have C-61 and C-65. Do you have -- between the two of
21 them, do you know who you might have been thinking of?

22 **MR. MALLOY:** I can't remember if I was
23 talking about the four victims or the two people that were
24 possibly interviewed in the yearbook photos.

25 **MR. LEE:** The ones that were identified as

1 having been in the backyard drinking?

2 **MR. MALLOY:** That's correct. Yeah.

3 **MR. LEE:** Okay.

4 **MR. MALLOY:** I think that's maybe where my
5 confusion is.

6 **MR. LEE:** So at this point, would you agree
7 with me that we might have as many as five here, the two
8 people you've actually interviewed, the two people in the
9 backyard that were identified in the yearbook and C-59?

10 **MR. MALLOY:** That's possible, sir.

11 **MR. LEE:** Okay.

12 And then if we go back to your notes at
13 Exhibit 1507 -- your notebook, sorry -- you have an entry
14 on January 17th, 1989 -- are you there, sir?

15 **MR. MALLOY:** Yes.

16 **MR. LEE:** Where you interview C-58.

17 **MR. MALLOY:** Correct.

18 **MR. LEE:** You see that? And that looks to
19 be about a 50 -- 5-0 minute interview. Do you see that?

20 **MR. MALLOY:** Correct.

21 **MR. LEE:** And we have some notes of that at
22 Exhibit -- and you don't necessarily need to turn them up -
23 - at Exhibit 1504, and that's where you have the quote
24 where you say that you stated, "I am conducting an
25 investigation which involves a sexual conduct of a teacher"

1 and he immediately replied, "Let me guess, Marcel Lalonde."

2 MR. MALLOY: Correct.

3 MR. LEE: Okay.

4 And we know that C-58 is ultimately a
5 complainant in the Lalonde prosecution years later. You're
6 aware of that?

7 MR. MALLOY: I believe so.

8 MR. LEE: Okay. Well you testified there,
9 didn't you, sir?

10 MR. MALLOY: I'm sorry?

11 MR. LEE: You testified there, did you not?

12 MR. MALLOY: At the trial?

13 MR. LEE: Yes.

14 MR. MALLOY: Yes. Yes.

15 MR. LEE: And you were asked questions about
16 your involvement with C-58 back in this era. Is that
17 right? Do you recall that?

18 My information -- I can tell you, my
19 information of this is based on a media report of your
20 testimony at the trial that says ---

21 MR. MALLOY: Okay.

22 MR. LEE: --- that you would have told the
23 court that C-58 -- at this -- when you were doing your
24 investigation, was not willing to proceed and wouldn't give
25 you a statement.

1 **MR. MALLOY:** Was not willing -- not
2 emotionally ready to proceed.

3 **MR. LEE:** Right.

4 **MR. MALLOY:** Yes.

5 **MR. LEE:** Right.

6 Do you recall that?

7 **MR. MALLOY:** Yes.

8 **MR. LEE:** So at this point then, once you've
9 interviewed this person we have up to six -- not dealing
10 with whose going to come forward and whose not going to
11 come forward, but at this point we have six potential
12 victims?

13 **MR. MALLOY:** Potential, yes.

14 **MR. LEE:** Yes. And then if we conclude with
15 your notes, we go over to the final page -- oh, yes, we
16 have on January 23rd, '89 at 10:45 you have the occurrence
17 number and address and it says "Interview possible victim."

18 **MR. MALLOY:** Yes.

19 **MR. LEE:** Do you see that?

20 **MR. MALLOY:** Yes.

21 **MR. LEE:** And would it have been your
22 standard practice at this time, sir, not to have the name
23 of somebody like that in your notes?

24 **MR. MALLOY:** I'm not sure if I had his name
25 at that time or just the address, but it was C-65.

1 **MR. LEE:** Well, I mean, certainly you would
2 have had his name. The next entry is "11:30, completed
3 interview."

4 **MR. MALLOY:** Correct.

5 **MR. LEE:** So at that point you clearly would
6 have known his name and could have put it in there?

7 **MR. MALLOY:** Oh, yes.

8 **MR. LEE:** And the reason I ask is that it
9 certainly complicates my life a little bit having note
10 keeping like this because I have to go try to chase down to
11 figure out who this is. Normally you'd put the name and
12 the contact information, wouldn't you?

13 **MR. MALLOY:** Correct.

14 **MR. LEE:** And you said that this person was
15 C-65. Is that right?

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

17 **MR. LEE:** And we have another document --
18 you don't have to turn it up -- Exhibit 1493, that chart of
19 different names and that matches that it says on that date
20 that's who you interviewed.

21 And I want to ask you about that, because
22 one of the things you told us in-chief was that C-65 was so
23 nervous talking to you that he almost passed out. That was
24 your language?

25 **MR. MALLOY:** That's my recollection, yeah.

1 **MR. LEE:** And you have a clear recollection
2 of that?

3 **MR. MALLOY:** Oh, yeah.

4 **MR. LEE:** Is it typical for most people you
5 contact to be that nervous that they almost pass out?

6 **MR. MALLOY:** Well, dealing with a situation
7 like this I would say so. Normally victims of these types
8 of offences will make the emotional effort and come to the
9 police. It's different when a police officer shows up at
10 the door and says "Hi, I want to talk to you."

11 **MR. LEE:** I take it you have to be careful
12 with something like that; you don't want to do more harm
13 than good?

14 **MR. MALLOY:** Oh, no, absolutely.

15 **MR. LEE:** And based on your recollection of
16 your dealings with C-65, did he present himself to you --
17 did you get the impression that he may well have been a
18 victim of Marcel Lalonde when you were speaking to him?

19 **MR. MALLOY:** I couldn't get any -- I don't
20 recall getting any response from him.

21 **MR. LEE:** Did his reaction peak your
22 interest?

23 **MR. MALLOY:** Sure.

24 **MR. LEE:** Pretty odd, wasn't it?

25 **MR. MALLOY:** I'm sorry?

1 **MR. LEE:** It was pretty odd, wasn't it, that
2 he was that nervous that he almost passed out?

3 **MR. MALLOY:** Sure.

4 **MR. LEE:** Because what you have written at
5 Exhibit 1493 is that:

6 "No assault or attempts took place with
7 the person; was aware of his sexual
8 preferences."

9 **MR. MALLOY:** Okay.

10 **MR. LEE:** So what I'm wondering is, did you
11 let the shock of the situation, I suppose, set in a little
12 bit with C-65 and go back to him later on?

13 **MR. MALLOY:** No, I just stayed there with
14 him.

15 **MR. LEE:** No, but I mean he -- what I can't
16 reconcile is the fact that he tells you nothing happened, I
17 don't have any information to give you; I don't know how
18 you reconcile that with the fact that he's so nervous he
19 almost passes out.

20 Did it seem to you at the time that there
21 may have been an untold story there?

22 **MR. MALLOY:** Well, I stayed with him until
23 he settled down. I was talking to him and ---

24 **MR. LEE:** Okay.

25 **MR. MALLOY:** --- then ---

1 **MR. LEE:** Okay, I understand what you're
2 saying.

3 **MR. MALLOY:** Yeah.

4 **MR. LEE:** My question is did you follow-up
5 at a later time to see if he had anything more to say to
6 you?

7 **MR. MALLOY:** No.

8 **MR. LEE:** Okay.

9 And then one of the things I was interested
10 in is that after January of 1989 we have a gap in your
11 investigation. The next document we have is the April
12 handwritten statement addressed to "Your Honour."

13 **MR. MALLOY:** Yes.

14 **MR. LEE:** Okay. So there is a gap there.

15 And what you told us at the very beginning
16 of your chief is that you arrived in the Youth Bureau at
17 the beginning of January '89; you stayed for five weeks.
18 Is that correct?

19 **MR. MALLOY:** Yes.

20 **MR. LEE:** And then you were transferred back
21 to uniform for six weeks.

22 **MR. MALLOY:** Correct.

23 **MR. LEE:** Is that right?

24 So if you look at -- you don't have it in
25 front of you but I last night looked at the calendar for

1 1989 and we have the weeks of January 2nd, the 9th, the 16th,
2 the 23rd and the 30th. Those are the first five weeks of
3 January, so it flows into the start of February. And then
4 you would have gone back for six weeks into uniform. Is
5 that right?

6 MR. MALLOY: Correct.

7 MR. LEE: And that coincides fairly well,
8 you'll agree with me, that end of January date, of when
9 there's some real inactivity on this file?

10 MR. MALLOY: Right.

11 MR. LEE: Do you recall working on this file
12 at all during your time in uniform?

13 MR. MALLOY: No.

14 MR. LEE: Would that have even been
15 possible, given workload and uniform?

16 MR. MALLOY: No.

17 MR. LEE: Do you recall whether or not this
18 file was reassigned or given to somebody to keep an eye on
19 at least while you were in uniform?

20 MR. MALLOY: No.

21 MR. LEE: So you had carriage of it but it
22 was in name only essentially? You couldn't have done
23 anything on it if you wanted to. Is that right?

24 MR. MALLOY: No.

25 MR. LEE: I am correct?

1 **MR. MALLOY:** Oh, I'm sorry; yes, yes, you're
2 correct.

3 **MR. LEE:** Is it possible that this file just
4 got lost in the shuffle while you were out of the Youth
5 Branch, in the sense that when you came back to the Youth
6 Branch it had been dormant for awhile and it wasn't your
7 top priority and it just sort of got shuffled to the back?

8 **MR. MALLOY:** Well, I wouldn't say it wasn't
9 my top priority. At that point I had spoken to people and
10 was hoping they were going to come forward.

11 **MR. LEE:** So by the time you left the Youth
12 Branch you were content that the file was where it could be
13 and there's nothing more you could do about it?

14 **MR. MALLOY:** Well, I wasn't content with it.

15 **MR. LEE:** But you were satisfied that was
16 the case?

17 **MR. MALLOY:** No, I certainly was not content
18 that ---

19 **MR. LEE:** No, I didn't mean to infer
20 anything by the word "content."

21 **MR. MALLOY:** Okay.

22 **MR. LEE:** Your understanding and your
23 opinion at that point was that there was nothing else you
24 could do with the file?

25 **MR. MALLOY:** Up to that point, yes.

1 **MR. LEE:** And so as I said, the next
2 document we get is the document from C-58 that was
3 addressed to "Your Honour."

4 And Ms. Daley in her cross-examination asked
5 you about the fact that he uses the language "the accused"
6 in there and that that might suggest that he was
7 anticipating criminal charges.

8 Do you recall that, her asking you that?

9 **MR. MALLOY:** Yes.

10 **MR. LEE:** And don't you think that the fact
11 that he relates or he addresses it to "Your Honour" may
12 also lead us to believe that he may have been anticipating
13 that a judge would be involved at some point?

14 **MR. MALLOY:** As I've said, I can't -- I
15 don't know why he labelled it "Your Honour." He said he
16 would write me a letter because it would make him feel
17 better.

18 **MR. LEE:** Is it possible that you gave C-58
19 the impression that charges would be laid?

20 **MR. MALLOY:** Based on his evidence?

21 **MR. LEE:** Yes.

22 **MR. MALLOY:** If he was willing to proceed,
23 sure.

24 **MR. LEE:** Well, based on what -- based on
25 the contacts you had with him?

1 **MR. MALLOY:** Sure.

2 **MR. LEE:** We don't have any entry in your
3 notebook about you having contacted C-58 after having
4 received the "Your Honour" statement. Do you have any
5 recollection of having done that?

6 **MR. MALLOY:** No.

7 **MR. LEE:** You don't recall calling him to
8 ask why it was addressed to "Your Honour"?

9 **MR. MALLOY:** No.

10 **MR. LEE:** Why "the accused" was written as
11 it was?

12 **MR. MALLOY:** No.

13 **THE COMMISSIONER:** Is it you don't remember
14 or you didn't do it?

15 **MR. MALLOY:** No, I don't recall, sir. I
16 don't remember calling him back saying "I got your letter."

17 **THE COMMISSIONER:** Okay.

18 **MR. LEE:** I got the impression from your
19 evidence, and I want you to -- I want to make this clear.
20 My understanding is that you believed that Marcel Lalonde
21 was up to no good but you just couldn't do anything about
22 it.

23 **MR. MALLOY:** Correct.

24 **MR. LEE:** Is that right?

25 And I think you went so far as to tell us

1 that you wanted somebody to come forward and you wanted to
2 lay a charge but you just couldn't?

3 **MR. MALLOY:** Right.

4 **MR. LEE:** That was your feeling?

5 **MR. MALLOY:** Right.

6 **MR. LEE:** Given everything else that you
7 knew with the number of possible victims that you had and
8 the evidence that you'd had and the similarities between
9 it, did any of that tend to support, in your mind, the
10 laying of the charge in relation to C-57, the one who
11 wanted the charge to go forward?

12 **MR. MALLOY:** I'm not sure what you're
13 getting at.

14 **MR. LEE:** If you look at C-57's allegation
15 in isolation, there's a consent issue. When you take it
16 out of isolation and you consider it with everything else
17 you knew at that time, does it change your opinion at all,
18 given the type of person that you were fairly certain
19 Marcel Lalonde was?

20 **MR. MALLOY:** Sure. I wanted these people to
21 come forward and say, "I want to take part in the process."

22 **MR. LEE:** That's not my question, though.

23 My question is C-57; he's the one you had
24 there.

25 **MR. MALLOY:** Right.

1 **MR. LEE:** And you're telling me even with
2 everything else you knew and even with the very serious
3 concerns you had about Marcel Lalonde, you couldn't get
4 past the fact that you thought that C-57 consented and
5 behaved voluntarily?

6 **MR. MALLOY:** Correct.

7 **MR. LEE:** That's your evidence.

8 You're aware that later on when Rene
9 Desrosiers conducted the investigation into Lalonde, that
10 his investigation did, in fact, turn up nude pictures at
11 Mr. Lalonde's home; are you aware of that?

12 **MR. MALLOY:** Turned up, which, I'm sorry?

13 **MR. LEE:** Nude pictures?

14 **MR. MALLOY:** I believe so, yes. Yeah.

15 **MR. LEE:** You're aware of that, aren't you?

16 **MR. MALLOY:** Yes, yeah.

17 **MR. LEE:** And would you agree with me that
18 evidence like that would have been very helpful to your
19 investigation?

20 **MR. MALLOY:** Sure.

21 **MR. LEE:** And would you agree that the
22 existence of evidence like that would have a fairly
23 significant affect on the likelihood of a conviction?

24 **MR. MALLOY:** If charges were laid, sure.

25 **MR. LEE:** And would you agree with me that

1 the likelihood of conviction is something that a victim or
2 alleged victim may be turning his mind to in deciding
3 whether or not to proceed?

4 MR. MALLOY: If a victim is assured of a
5 conviction?

6 MR. LEE: Not assured of a conviction, but
7 has it been your experience that victims are more willing
8 to come forward and to proceed with -- through the criminal
9 process if they think there's a good chance that it's going
10 to be successful in the end?

11 MR. MALLOY: That's possible, sure.

12 MR. LEE: Do you think that had you had
13 those photos at the time of your investigation, they may
14 have impacted upon your assessment of C-57's situation?

15 MR. MALLOY: No, I was still of the opinion
16 that it was a seduction and a consensual act.

17 MR. LEE: So by the end of your efforts in
18 January of 1989 -- or sorry, let's take the end of April,
19 '89, when you've now received the "Your Honour" statement,
20 okay? You have as many again -- I'm using, as you insist,
21 the word "possible" victims, okay? As many as seven by my
22 count: You have C-57, you have C-58, you have C-59, you
23 have C-60, you have the two people from the yearbook and
24 you have C-65, the one who almost passed out.

25 MR. MALLOY: Right.

1 **MR. LEE:** Right?

2 And so do I understand your evidence is it
3 being likely that once you had all of that information
4 collected, you met with Crown Attorney Don Johnson for a
5 second time?

6 **MR. MALLOY:** Well, my recollection is I met
7 with him after I completed the -- speaking to the four
8 people, met with him again. I met initially to get some
9 direction as far as historical go and then a second time,
10 because I know I brought up the photograph book, but ---

11 **MR. LEE:** Let me stop back for a moment;
12 have I accurately set out all of the information that you
13 had by the end of April 1989?

14 **MR. MALLOY:** I believe so, yes.

15 **MR. LEE:** What I want to know is, did you go
16 to the Crown at some point after that with all of the
17 information you ever had about this matter and get an
18 opinion?

19 **MR. MALLOY:** Yes.

20 **MR. LEE:** That's your -- that's your
21 evidence?

22 **MR. MALLOY:** Yes, it is, yes.

23 **MR. LEE:** We know we have a notebook entry
24 for the January 10th meeting and, as Mr. Paul took you
25 through, we didn't -- we don't have documents for any of

1 that. Is it your evidence -- and would it have been Don
2 Johnson?

3 **MR. MALLOY:** Yes.

4 **MR. LEE:** Both times?

5 **MR. MALLOY:** Yes.

6 **MR. LEE:** And your evidence is that Don
7 Johnson did not recommend getting a search warrant for the
8 Lalonde's home?

9 **MR. MALLOY:** That's my recollection, yes.

10 **MR. LEE:** Your recollection is you asked him
11 about it and he advised you it wasn't possible?

12 **MR. MALLOY:** Yeah.

13 **MR. LEE:** And he didn't suggest that you
14 interview Marcel Lalonde?

15 **MR. MALLOY:** No.

16 **MR. LEE:** And he didn't suggest that you
17 contact the Children's Aid Society?

18 **MR. MALLOY:** No.

19 **MR. LEE:** Nor the school board?

20 **MR. MALLOY:** No.

21 **MR. LEE:** He didn't put anything in writing
22 to you?

23 **MR. MALLOY:** No.

24 **MR. LEE:** You didn't prepare a Crown Brief
25 for him?

1 MR. MALLOY: No.

2 MR. LEE: You didn't take any notes of the
3 meeting?

4 MR. MALLOY: No.

5 MR. LEE: Of either meeting?

6 MR. MALLOY: No.

7 MR. LEE: And what you told us yesterday was
8 that the reason you didn't take any notes was because you
9 weren't permitted to?

10 MR. MALLOY: Correct.

11 MR. LEE: Because of solicitor/client
12 privilege?

13 MR. MALLOY: Correct.

14 MR. LEE: So was it your understanding in
15 1989, that police officers were expected to remember
16 everything told to them by a Crown during a meeting?

17 MR. MALLOY: Yes.

18 MR. LEE: You couldn't take notes?

19 MR. MALLOY: No.

20 MR. LEE: So you had to remember the advice
21 you were given?

22 MR. MALLOY: Correct.

23 MR. LEE: You had to remember items that the
24 Crown attorney had asked you to follow up or clarify?

25 MR. MALLOY: Correct.

1 **MR. LEE:** And you had to remember these
2 things for each of your cases?

3 **MR. MALLOY:** Correct.

4 **MR. LEE:** Could you go back to the office
5 after the meeting and write these things down or would that
6 be a bad idea, as well?

7 **MR. MALLOY:** You could probably -- I would
8 say "on the advice of" or "after the meeting this aspect
9 would be investigated" or ---

10 **MR. LEE:** Sir, to be perfectly frank with
11 you, that makes absolutely no sense to me whatsoever. I
12 can't fathom that the -- that police officers in Cornwall
13 in 1989 were not taking notes of meetings with Crown
14 attorneys. Is it possible you're wrong on that?

15 **MR. MALLOY:** No.

16 **MR. LEE:** So your practice was not to take
17 notes of meetings with a Crown?

18 **MR. MALLOY:** It's the practice that I have
19 today.

20 **MR. LEE:** So -- well, you're -- okay.

21 **MR. MALLOY:** But the officers will vet -- if
22 they do make ---

23 **MR. LEE:** So the officers will take -- what
24 do you mean by "vet"?

25 **MR. MALLOY:** Black out.

1 **MR. LEE:** Directly in their notebooks?

2 **MR. MALLOY:** Or in a photocopy.

3 **THE COMMISSIONER:** When you're providing
4 disclosure for -- to the defence?

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

6 **MR. LEE:** Well, that's kind of what I'm
7 driving at, Constable Malloy, that you take the notes and
8 then you vet them for disclosure purposes.

9 **MR. MALLOY:** Now.

10 **MR. LEE:** But back then you didn't even take
11 any notes?

12 **MR. MALLOY:** Back then you didn't take
13 notes.

14 **MR. LEE:** Okay.

15 Sir, I'm going to suggest to you that it is
16 inconceivable that you could have presented all of the
17 information we've talked about after April 1989 to an
18 experienced Crown attorney and have him tell you that there
19 was nowhere left to go with this investigation. And I'm
20 going to suggest to you that he would not have told you not
21 to get a search warrant and he would not have told you to
22 just sit back and wait, with this matter in abeyance.

23 Sir, can you concede that that meeting did
24 not take place?

25 **MR. MALLOY:** No, it took place.

1 **MR. LEE:** Would you -- I want to be very
2 clear that I'm asking you in hindsight here, okay? In
3 hindsight, would you agree with me that you were not ready
4 to take on this investigation in January of 1989?

5 **MR. MALLOY:** It was certainly something I've
6 never done before.

7 **MR. LEE:** And the reason I ask in hindsight
8 is that I don't want to suggest to you and I don't want you
9 to be given the impression that I have a picture in my mind
10 of you, in 1989, being fully aware and fully cognizant of
11 the fact that you're in over your head, okay? That's why I
12 say "in hindsight."

13 Sitting here today with the experience
14 you've had since then, looking back on it, you'd agree with
15 me, wouldn't you, that you probably shouldn't have been
16 handed that investigation?

17 **MR. MALLOY:** I would say that the Staff
18 Sergeant that assigned it to me had faith in my
19 investigative skills and I would be able to do it.

20 **MR. LEE:** You had no specific sex abuse
21 training, by that point?

22 **MR. MALLOY:** No.

23 **MR. LEE:** It was your first week in the
24 Youth Branch. There was no mentorship program in place?

25 **MR. MALLOY:** No.

1 **MR. LEE:** The onus was put on you to seek
2 assistance if you felt you needed it?

3 **MR. MALLOY:** Correct.

4 **MR. LEE:** Would you agree with me that with
5 respect to that last point, that assumes that you were
6 experienced enough to realize you were in trouble?

7 **MR. MALLOY:** That I was in trouble?

8 **MR. LEE:** Well, it seems to me there's a
9 flaw with the system that says to the new guy, "Let us know
10 if you're having any trouble," because it's entirely
11 possible the new guy might not recognize that he's having
12 trouble; he doesn't know what he's doing.

13 **MR. MALLOY:** Well, I had been on the job for
14 10 years at that point. You know, I've, in uniform,
15 investigated matters where I have asked for advice or
16 looked advice or knew I didn't know something, so you ask.

17 **MR. LEE:** The three cases you've talked
18 about here are the Marcel Lalonde case, the David Silmsler
19 case and the Jeannette Antoine case; would you agree with
20 me that those are a different ball of wax than what you
21 were used to dealing with before you got into the Youth
22 Branch?

23 **MR. MALLOY:** Yes.

24 **MR. LEE:** And you told us that you were not
25 being actively supervised by Officers Wells or Trew, ---

1 was that correct, in the sense of them coming and asking
2 for updates, asking how the file was going, asking what you
3 were up to?

4 **MR. MALLOY:** That's fair, sure.

5 **MR. LEE:** Sitting here today looking back on
6 it do you think you were treated unfairly by being given
7 this assignment?

8 **MR. MALLOY:** That's a hard question to
9 answer.

10 **MR. LEE:** I know it is, sir. But I have to
11 tell you I'm sitting here and this isn't the first case
12 we've looked at from the CPS where a junior officer has
13 been handed a case that turns out to be rather complex, and
14 turns out to be difficult and doesn't end up with the best
15 result.

16 And I'm asking you whether or not, in
17 hindsight, you think that you got a bit of a raw deal being
18 handed this case, given your experience level in the Youth
19 Branch?

20 **MR. MALLOY:** I would have to say no.

21 **MR. LEE:** No.

22 Constable Malloy, I appreciate your time.
23 Those are my questions.

24 **MR. MALLOY:** Thank you.

25 **THE COMMISSIONER:** All right.

1 So who's next? Mr. Neville? You're going
2 to ask questions of the witness?

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

4 **THE COMMISSIONER:** You weren't here for the
5 examination-in-chief, were you?

6 **MR. NEVILLE:** I followed it, sir. I've been
7 here since 2:00 and I followed it all morning.

8 **THE COMMISSIONER:** Terrific. Good.

9 **MR. NEVILLE:** And I expect to be less than
10 ten minutes. If you wish me to start I'll do it, sir.

11 **THE COMMISSIONER:** You're going.

12 **MR. NEVILLE:** Thank you, sir.

13 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
14 **NEVILLE:**

15 **MR. NEVILLE:** Constable, I wasn't sure about
16 one of your answers with Ms. Daley, and that has to do with
17 the actual written statement by David Silmser.

18 **MR. MALLOY:** Yes.

19 **MR. NEVILLE:** Do I understand it correctly
20 that you actually did see it?

21 **MR. MALLOY:** I did not see it.

22 **MR. NEVILLE:** You never saw the written
23 statement?

24 **MR. MALLOY:** The written statement, no.

25 **MR. NEVILLE:** Okay. Could I refer the

1 witness, Commissioner, to Exhibit 1244, please?

2 Now, I know you were off on an extended
3 leave at some point. I think it was starting in March you
4 told us, Constable?

5 **MR. MALLOY:** Yes, of '93, yes.

6 **MR. NEVILLE:** Okay. Did you become aware
7 through your colleagues or the grapevine or whatever that
8 eventually there were internal investigations into the
9 Silmsler matter?

10 **MR. MALLOY:** Just by the media, my
11 recollection.

12 **MR. NEVILLE:** All right.

13 And we know that Officer Derochie did an
14 internal investigation and because of a Silmsler complaint
15 Staff Sergeant Wells did one.

16 And just so you know, this is a statement
17 prepared as part of Staff Sergeant Wells' investigation
18 done by Constable Sebalj. All right?

19 **MR. MALLOY:** Okay.

20 **MR. NEVILLE:** If I could refer,
21 Commissioner, the witness to ---

22 **THE COMMISSIONER:** Paragraph 4.

23 **MR. NEVILLE:** It would be the -- page 2 of
24 the text.

25 **THE COMMISSIONER:** Okay.

1 **MR. NEVILLE:** The question in the middle of
2 the page, she's asked the following, Constable:

3 "Constable Sebalj, who did you allow to
4 view the victim's statement."

5 Now, just so you understand, Constable, the
6 complaint here by Mr. Silmsler was that his statement -- and
7 by that I mean his written one that he eventually did --
8 got out into the public domain including into the media.

9 So we're not talking about police interview
10 notes such as your own, Lefebvre's, or hers. We're talking
11 about the actual statement that sometime later, we
12 understand around the 16th of February, he brought in.

13 **MR. MALLOY:** Right.

14 **MR. NEVILLE:** And we know and perhaps you
15 know through various sources that that document was the one
16 that Perry Dunlop took to Childrens Aid and eventually it
17 appeared on television, right?

18 **MR. MALLOY:** Right.

19 **MR. NEVILLE:** So that's what she's being
20 asked about here.

21 **MR. MALLOY:** Okay.

22 **MR. NEVILLE:** All right.

23 And her answer given in February of '94 was
24 as you can see in front of you:

25 "Constable Kevin Malloy, Sergeant Ron

1 Lefebvre, Constable Brian Snyder,
2 Constable Perry Dunlop and Staff
3 Sergeant Garry Derochie to view the
4 victim's statement."

5 **MR. MALLOY:** Right.

6 **MR. NEVILLE:** So does that help you at all
7 in recalling?

8 **MR. MALLOY:** No.

9 **MR. NEVILLE:** All right.

10 So your position, as you personally recall
11 it, is although you sat in on the 28th of January interview,
12 you take the position, today at least, you never saw what
13 he brought in. Is that fair?

14 **MR. MALLOY:** That's correct.

15 **MR. NEVILLE:** All right.

16 **THE COMMISSIONER:** We see in her statement
17 in paragraph 4, though, it says:

18 "A number of officers had the
19 opportunity to view the victim's
20 statement."

21 So that's an opportunity. It may have been
22 open to this gentleman but that's what she says in her
23 thing. And then the back, she says "Who did you allow to
24 view the victim's statement."

25 **MR. NEVILLE:** Yes.

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

2 **MR. NEVILLE:** I agree, sir. I took her to
3 be telling Staff Sergeant Wells that the document -- if you
4 look, sir, you will see that we know, for example, that
5 Officer Snyder was given a copy.

6 **THE COMMISSIONER:** Yes.

7 **MR. NEVILLE:** You know the history.

8 **THE COMMISSIONER:** Yeah.

9 **MR. NEVILLE:** So I've taken the answer to
10 mean on its face that the witness, in her view, was allowed
11 to see the document. His position is he wasn't.

12 **THE COMMISSIONER:** Well, there's a
13 difference in semantics about allowed to see and whether he
14 took the opportunity. I mean, the file might have been
15 there with the statement right there and in his vicinity
16 and maybe he didn't take the opportunity to see the
17 statement.

18 **MR. NEVILLE:** Yes, Commissioner, it could be
19 read that way.

20 Now, just look at your notes, if you could,
21 Exhibit 315, Constable. And I just want to try to clarify
22 briefly the point of the fact that Mr. Silmsler is given a
23 blank statement form.

24 **MR. MALLOY:** Just give me two seconds, sir.

25 **MR. NEVILLE:** Certainly, sir. It's exhibit

1 315. It's your duty book or original notes and if you need
2 a Bates page reference it's -- the last digits, 3882.

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

4 **MR. NEVILLE:** And the entry is at 12:25.

5 **MR. MALLOY:** Yes.

6 **MR. NEVILLE:** And if I understand what
7 happens here is, the suggestion is made that a break would
8 take place essentially for lunch and the offer is made to
9 Mr. Silmsner, have the break, have some lunch -- meaning he
10 and you folks -- and come back and carry on.

11 **MR. MALLOY:** Correct.

12 **MR. NEVILLE:** And it's when that offer is
13 made that he mentions that his time is short because he has
14 to pick up his wife.

15 **MR. MALLOY:** Correct.

16 **MR. NEVILLE:** Now, I take it, as Ms. Daley
17 had you confirm, it would have been preferable to carry on
18 and do the formal statement. There's certainly enough time
19 in the day.

20 **MR. MALLOY:** It would have been.

21 **MR. NEVILLE:** Okay. And that's why I take
22 it we see the entry at 12:26:

23 "Myself, Lefebvre and Sebalj left room;
24 agreement made."

25 So it sounds like the three of you went out,

1 talked it over, in his absence ---

2 MR. MALLOY: M'hm.

3 MR. NEVILLE: --- said "All right, how do we
4 deal with this", and the solution that was arrived at was
5 let's give him a form and have him fill it out.

6 MR. MALLOY: Correct.

7 MR. NEVILLE: All right.

8 Now, if we can turn to -- it would be
9 actually the -- over two pages to the notes for February
10 the 1st. And this is the contact you had by phone with
11 Malcolm MacDonald.

12 MR. MALLOY: Correct.

13 MR. NEVILLE: And you knew Malcolm MacDonald
14 through the courts as an active defence lawyer?

15 MR. MALLOY: That's correct.

16 MR. NEVILLE: Had you had any actual cases
17 in which he was the defence counsel?

18 MR. MALLOY: No.

19 MR. NEVILLE: Okay. So had you ever had any
20 professional dealings with him directly?

21 MR. MALLOY: No.

22 MR. NEVILLE: All right.

23 You certainly knew of him?

24 MR. MALLOY: Yes.

25 MR. NEVILLE: All right.

1 And so he calls and ends up speaking with
2 you on the 1st of February.

3 Now, you've told the Commissioner that from
4 your standpoint Heidi Sebalj was a competent investigator.

5 **MR. MALLOY:** In my opinion, yes.

6 **MR. NEVILLE:** With integrity?

7 **MR. MALLOY:** Yes.

8 **MR. NEVILLE:** Likewise Officer Lefebvre?

9 **MR. MALLOY:** Yes.

10 **MR. NEVILLE:** More experience than she but
11 competent and a man of integrity?

12 **MR. MALLOY:** Yes.

13 **MR. NEVILLE:** All right.

14 And would you agree with me, Constable,
15 that a competent investigator is not going to be deterred
16 from doing a proper job, one of integrity simply because
17 they have contacts with a defence lawyer?

18 **MR. MALLOY:** Sure.

19 **MR. NEVILLE:** Now, let's just look for a
20 moment here. Mr. MacDonald speaks to you and he tells you
21 that -- just back up for a minute -- you had done the
22 interview, you and the other two officers with Mr. Silmser,
23 on the 28th.

24 **MR. MALLOY:** Correct.

25 **MR. NEVILLE:** And it appears, according to

1 these notes, that the night of the interview it --
2 according to these notes -- it's Mr. Silmser who calls
3 Malcolm MacDonald.

4 About ten lines from the top:

5 "Mr. MacDonald advised me that he
6 [MacDonald] had received a phone call
7 late Thursday night from Seguin and
8 MacDougald..."

9 Sorry I misstated.

10 "...were apparently called by Mr.
11 Silmser".

12 I didn't mean MacDonald; I meant to say
13 Father MacDougald and Seguin.

14 That's what he's telling you; is that on the
15 night of the interview he gets a phone call from a Mr.
16 Seguin -- we'll take that to be Ken Seguin -- and Msg.
17 MacDougald. They -- those two men -- were apparently
18 called by Mr. Silmser. That he sounded intoxicated.
19 That's what he's telling you?

20 **MR. MALLOY:** Correct.

21 **MR. NEVILLE:** All right.

22 Then he goes on to tell you that Mr. Silmser
23 he describes as a smooth talker, and he describes an
24 incident in Mr. Silmser's past involving a fairly
25 significant offence, and he tells you that he -- meaning

1 Silmsner -- was apparently returned by St Columban's and
2 Father Charles MacDonald drove him to Ottawa to turn
3 himself in.

4 MR. MALLOY: Correct.

5 MR. NEVILLE: Now, you quite rightly put an
6 asterisk, non-validated information, and indicated you'd
7 pass it on to Heidi Sebalj.

8 MR. MALLOY: Correct.

9 MR. NEVILLE: All right.

10 Now, would you agree with me, sir, that non-
11 validated or not, it's a piece of potentially relevant
12 information?

13 MR. MALLOY: Sure.

14 MR. NEVILLE: Right.

15 And you were asked questions about, for
16 example, inconsistencies or discrepancies. Inconsistencies
17 and discrepancies can be verbal. Things said inconsistent.

18 MR. MALLOY: Okay.

19 MR. NEVILLE: They can be written. They're
20 inconsistent, right?

21 MR. MALLOY: Correct.

22 MR. NEVILLE: And inconsistencies can be in
23 someone's conduct. They do things inconsistent with other
24 things they're claiming.

25 MR. MALLOY: Okay.

1 **MR. NEVILLE:** Right?

2 Now in Mr. Silmser's interview that you
3 participated in, right? He had told you and your fellow
4 officers that as a result of the alleged conduct by Father
5 MacDonald, he hated everything that had to do with the
6 Church and anyone with authority.

7 **MR. MALLOY:** Okay.

8 **MR. NEVILLE:** Right?

9 And here we have an instance where he is, in
10 fact, brought in to be turned in by Father MacDonald,
11 Right?

12 **MR. MALLOY:** Right.

13 **MR. NEVILLE:** Now, does that not strike you
14 as unusual?

15 **MR. MALLOY:** Sure. It would depend when
16 that incident occurred.

17 **MR. NEVILLE:** Absolutely.

18 **MR. MALLOY:** Sure.

19 **MR. NEVILLE:** And what you could do with
20 that information is go to his criminal record and very
21 quickly determine when that offence happened, what the date
22 of it was ---

23 **MR. MALLOY:** Right

24 **MR. NEVILLE:** --- and very easily determine
25 what it is that Mr. Silmser is being turned in to custody

1 in Ottawa by Father MacDonald.

2 MR. MALLOY: Right.

3 MR. NEVILLE: Is that not helpful in some
4 degree?

5 MR. MALLOY: Sure.

6 MR. NEVILLE: Have you ever heard the
7 phrase, sir, during your police career, "There's no
8 property in a witness"?

9 MR. MALLOY: No.

10 MR. NEVILLE: "There's no property in a
11 witness."

12 MR. MALLOY: No property in a witness?

13 MR. NEVILLE: Yes, no party, Crown or
14 defence, owns a witness.

15 MR. MALLOY: No.

16 MR. NEVILLE: You've heard that? You knew
17 that?

18 MR. MALLOY: It's the first I hear that.

19 MR. NEVILLE: It's just a phrase some
20 lawyers use.

21 Let me ask you this, sir. If you're in
22 charge of a file, it's your case -- now as a detective --
23 although I guess at the moment you're not active -- would
24 you ever tell a witness on one of your files -- a
25 complainant or any other material witness -- not to talk to

1 a defence lawyer or simply tell him, you have a choice?

2 MR. MALLOY: You have a choice, sure.

3 MR. NEVILLE: You would surely not tell them

4 "Do not talk to

5 Mr. Neville or whomever?"

6 MR. MALLOY: No. I mean, they're allowed to
7 speak to who they wish, sure.

8 MR. NEVILLE: Absolutely. That's my point.

9 MR. MALLOY: Sure.

10 MR. NEVILLE: You would not tell him not to?

11 MR. MALLOY: Not to, no, but they have the
12 choice. It's their choice.

13 MR. NEVILLE: Yes.

14 Thank you, those are my questions.

15 THE COMMISSIONER: Thank you.

16 Mr. Chisholm?

17 MR. CHISHOLM: Thank you, sir.

18 THE COMMISSIONER: Yes, sir.

19 So how long do you think you're going to be?

20 MR. CHISHOLM: Less than 10 minutes.

21 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

22 CHISHOLM:

23 MR. CHISHOLM: Good afternoon, Constable

24 Malloy. You know who I am?

25 MR. MALLOY: Yes, sir.

1 **MR. CHISHOLM:** I act for the Children's Aid
2 Society.

3 **MR. MALLOY:** Yes.

4 **MR. CHISHOLM:** I'm going to limit my
5 questions to the area of Jeannette Antoine.

6 If I could take you please to Exhibit 1498,
7 please, and Bates page 7175522, the bottom of the -- the
8 last quarter of that page, Constable Malloy.

9 **MR. MALLOY:** I'm sorry; the page number
10 again, sir?

11 **MR. CHISHOLM:** It's Bates page 7175522.

12 **MR. MALLOY:** Okay.

13 **MR. CHISHOLM:** And the last quarter of that
14 page makes reference to an investigation that you conducted
15 in tandem with Greg Bell.

16 **MR. MALLOY:** Right.

17 **MR. CHISHOLM:** Do you see that?

18 **MR. MALLOY:** Yes.

19 **MR. CHISHOLM:** And how -- do you have any
20 advice to us with respect to how Mr. Bell was to work with
21 in terms of his -- in terms of his co-operation with the
22 police or his investigative abilities?

23 **MR. MALLOY:** Couldn't ask for better.

24 **MR. CHISHOLM:** And if you look on the last
25 four lines of that page, there's a reference to September

1 26th, 1989:

2 "Constable Malloy and Mr. Bell met with
3 Miss Antoine and explained the results
4 of the investigation."

5 And turning the page is:

6 "At this time, September 26th, 1989,
7 that Jeannette Antoine, at the urging
8 of Mr. Bell, tells Constable Malloy
9 about her childhood experiences with
10 the CAS and the abuse she suffered."

11 Would you agree, Constable Malloy, with
12 respect to the use of words "the urging by Mr. Bell" that
13 it was Mr. Bell that prompted Miss Antoine to tell you of
14 the allegations?

15 **MR. MALLOY:** Yes.

16 **MR. CHISHOLM:** During Mr. Paul's cross-
17 examination this afternoon he suggested to you that you and
18 Greg Bell were involved in a joint investigation with
19 respect to the Second Street Group Home allegations.

20 Do you recall Mr. Bell ---

21 **MR. MALLOY:** Yes.

22 **MR. CHISHOLM:** That's not correct in terms
23 of your involvement with Mr. Bell. There was no joint
24 investigation with you and Greg Bell with respect to Miss
25 Antoine's allegations of the events on the Second Street

1 Group Home. Is that right?

2 MR. MALLOY: No. There was a joint
3 investigation where he had -- at his urging that she told
4 me and then ---

5 MR. CHISHOLM: That investigation though was
6 -- the joint investigation is what we just went through on
7 Bates page 7175522.

8 MR. MALLOY: Correct.

9 MR. CHISHOLM: And it's at that point that
10 the Second Street Group Home allegation comes out, right?

11 MR. MALLOY: Correct.

12 MR. CHISHOLM: But there's never a joint
13 investigation by Mr. Bell with respect to the allegations
14 from the Second Street Group Home?

15 MR. MALLOY: No.

16 MR. CHISHOLM: Okay.

17 Now, if I could take you please to Exhibit
18 1505 that was entered today. And these are the notes of
19 Thomas O'Brien, the Executive Director of the Children's
20 Aid Society at the time in question.

21 Constable Malloy, have you had the
22 opportunity to look at this document today?

23 MR. MALLOY: Portions, yes.

24 MR. CHISHOLM: And the portions that you
25 looked at, and your recollection of your dealings with Mr.

1 O'Brien back in 1989 and into the early part of 1990, would
2 you agree with me that the CAS wanted the allegations
3 brought forth by Miss Antoine to be investigated?

4 MR. MALLOY: Yes.

5 MR. CHISHOLM: There's no doubt in your mind
6 about that?

7 MR. MALLOY: No.

8 MR. CHISHOLM: Did you make any notes with
9 respect to your dealings with Mr. O'Brien at the time, in
10 terms of telephone conversations that you may have had with
11 him with respect to -

12 MR. MALLOY: No.

13 MR. CHISHOLM: No?

14 MR. MALLOY: But I remember him calling me,
15 yes.

16 MR. CHISHOLM: On more than one occasion.
17 Is that fair to say?

18 MR. MALLOY: Yes.

19 MR. CHISHOLM: So in terms of -- in terms of
20 a record of the events, all we have would be Mr. O'Brien's
21 notes. Nothing from you in terms of for instance -- for
22 instance if I take you to page 5 of Exhibit 1505 which is
23 Bates page 7177236, the December 22, 1989 reference.

24 You would have no notes with respect to the
25 two occasions within the past two weeks that Mr. O'Brien

1 speaks of in having the chance to speak with you, right?

2 MR. MALLOY: Yes.

3 MR. CHISHOLM: And upon reviewing this
4 document, would you agree that the staff at various levels
5 throughout the CAS took Miss Antoine's allegations
6 seriously and acted appropriately?

7 MR. MALLOY: Yes.

8 MR. CHISHOLM: Thank you, Constable, those
9 are my questions.

10 THE COMMISSIONER: Thank you.

11 Maître Rouleau?

12 MR. ROULEAU: I ---

13 THE COMMISSIONER: Okay. Mr. Scharbach, how
14 long do you think you're going to be?

15 MR. SCHARBACH: As a guess ---

16 THE COMMISSIONER: M'hm.

17 And let's see, Mr. Manderville?

18 MR. MANDERVILLE: I should think that 10
19 minutes ---

20 THE COMMISSIONER: Okay.

21 And the OPP? Mr. Carroll?

22 MR. CARROLL: I ---

23 THE COMMISSIONER: Okay. Why don't we take
24 a 10-minute break and then we'll continue on.

25 THE REGISTRAR: Order; all rise. À l'ordre;

1 veuillez vous lever.

2 This hearing will resume at 5:15.

3 --- Upon recessing at 5:05 p.m./

4 L'audience est suspendue à 17h05

5 --- Upon resuming at 5:14 p.m./

6 L'audience est reprise à 17h15

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

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

11 **THE COMMISSIONER:** Mr. Scharbach.

12 **MR. SCHARBACH:** Good afternoon, Mr.
13 Commissioner.

14 **THE COMMISSIONER:** Yes, sir.

15 **KEVIN MALLOY, Resumed/Sous le même serment:**

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

17 **MR. SCHARBACH:**

18 **MR. SCHARBACH:** Good afternoon, Constable
19 Malloy.

20 **MR. MALLOY:** Yes, sir.

21 **MR. SCHARBACH:** My name is Stephen
22 Scharbach; I'm counsel with the Ministry of the Attorney
23 General.

24 **MR. MALLOY:** Yes.

25 **MR. SCHARBACH:** And I have a few questions

1 concerning your contacts with Crown Don Johnson.

2 MR. MALLOY: Okay.

3 MR. SCHARBACH: But I have a couple of
4 background questions first.

5 We've heard that when you first started with
6 the Youth Bureau, you were relatively inexperienced with
7 respect to sexual assault investigations?

8 MR. MALLOY: That's correct.

9 MR. SCHARBACH: Although you had been on the
10 force I think you said for about 10 years?

11 MR. MALLOY: Since 1980, yeah.

12 MR. SCHARBACH: But you were working in the
13 Youth Bureau with more experienced officers who could
14 provide you with advice and ask ---

15 MR. MALLOY: Yeah.

16 MR. SCHARBACH: --- answer your questions as
17 you saw fit; correct?

18 THE COMMISSIONER: Well, first of all, you
19 used the word "officers", plural, and how many people were
20 in the unit?

21 MR. MALLOY: Two of us, sir.

22 THE COMMISSIONER: And who was the other
23 officer?

24 MR. MALLOY: At that time it was Sergeant
25 Trottier.

1 **THE COMMISSIONER:** Okay. Was he junior or
2 senior to you?

3 **MR. MALLOY:** Senior.

4 **THE COMMISSIONER:** Okay. That's one.

5 **MR. SCHARBACH:** Okay, thank you.

6 But I understood you to say yesterday in
7 your examination in-chief that Officers Trew and Wells were
8 available to you as a resource?

9 **MR. MALLOY:** Sure.

10 **MR. SCHARBACH:** And they made it clear, I
11 think you mentioned, that they were available for you to
12 answer your questions, provide you with advice on your
13 investigation?

14 **MR. MALLOY:** Sure.

15 **MR. SCHARBACH:** And you knew that with
16 respect to questions on your investigation, there were
17 resources within the Police Force to go to, and I'm talking
18 about questions such as what witnesses to talk to,
19 investigative leads to be pursued, how to approach
20 witnesses, whether or not to approach the suspect and so
21 on?

22 **MR. MALLOY:** Correct, that's an avenue I
23 could have taken, sure.

24 **MR. SCHARBACH:** Right. But if you needed
25 questions answered concerning legal aspects of your case,

1 you had resource, e Crown was available to you. Is that
2 correct?

3 **MR. MALLOY:** That's correct.

4 **MR. SCHARBACH:** The Crown though didn't --
5 doesn't direct your investigation?

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

7 **MR. SCHARBACH:** Would you agree with that?
8 He would be available to answer your legal
9 questions concerning your investigation but he doesn't
10 direct your investigation and he doesn't tell you how to
11 conduct your investigation; correct?

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

13 **MR. SCHARBACH:** And I understood you to say
14 -- and just confirm this for me, please -- you didn't go to
15 the Crown on every investigation, you only went to the
16 Crown on those occasions where you needed some legal
17 advice; correct?

18 **MR. MALLOY:** That's correct.

19 **MR. SCHARBACH:** Now, as an officer, you
20 would have been aware that before you could lay a charge
21 you needed to have reasonable and probable grounds?

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

23 **MR. SCHARBACH:** And ultimately that's your
24 decision to make; correct?

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

1 **MR. SCHARBACH:** You have to be in a position
2 to be able to swear that you have reasonable and probable
3 grounds?

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

5 **MR. SCHARBACH:** And that's not the Crown's
6 decision, and he can't direct you to lay a charge in any
7 particular case?

8 **MR. MALLOY:** No.

9 **MR. SCHARBACH:** Would you agree?
10 Although he can sometimes give you legal
11 advice that will assist you in coming to your own
12 conclusions on reasonable and probable grounds; correct?

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

14 **MR. SCHARBACH:** Now, with respect to the
15 Lalonde investigation, correct me if I'm wrong, but I got
16 the impression, through your testimony that throughout the
17 course of your investigation you never got to the point
18 where you had reasonable and probable grounds?

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

20 **MR. SCHARBACH:** But at some point, you
21 needed some input from the Crown on legal aspects connected
22 with your investigation; correct?

23 **MR. MALLOY:** Correct.

24 **MR. SCHARBACH:** And if I understood you
25 correctly, you had two contacts with Crown Johnson, once

1 was very early in your investigation?

2 MR. MALLOY: Correct.

3 MR. SCHARBACH: And I think that was the one
4 that is noted in your notes ---

5 MR. MALLOY: Correct.

6 MR. SCHARBACH: --- on, I believe, January
7 the 10th, 1989?

8 And I think you mentioned that that was a
9 very early meeting where you wanted a little bit of advice
10 concerning the approach to take in historical sexual
11 assault investigations; correct?

12 MR. MALLOY: Correct.

13 MR. SCHARBACH: And then later you had a
14 second meeting with him after the investigation was more
15 complete, after you had interviewed the complainant, gotten
16 a statement from him and interviewed some of the other
17 witnesses; correct?

18 MR. MALLOY: Correct.

19 MR. SCHARBACH: And am I correct in saying
20 that at that point your investigative leads, as far as you
21 were concerned, had been exhausted?

22 MR. MALLOY: Yes.

23 MR. SCHARBACH: You had conducted all the
24 investigation that you could think of to ---

25 MR. MALLOY: As far as I could go, yes.

1 **MR. SCHARBACH:** And am I correct in saying
2 that there were two issues that you wanted to discuss with
3 Crown Johnson. One was the issue of consent and one was
4 the issue of the possibility of obtaining a search warrant;
5 correct?

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

7 **MR. SCHARBACH:** And when you -- just before
8 you met with Crown Johnson, would you have discussed your
9 investigation with whoever was supervising you at that
10 time? I take it would be either Sergeant Wells or
11 Inspector Trew?

12 **MR. MALLOY:** All I -- it's possible. I -- I
13 don't recall but it's possible.

14 **MR. SCHARBACH:** Well, I'm wondering whether
15 you would have gone over the facts of your investigation
16 with officers within the Force and discussed with them the
17 fact that you had apparently exhausted all the avenues of
18 investigation and now you needed input from the Crown?

19 **THE COMMISSIONER:** So it's still possible
20 that you spoke to him but you're not sure?

21 **MR. MALLOY:** It's possible, yes.

22 **MR. SCHARBACH:** Okay. But you don't know,
23 you don't recall ---

24 **MR. MALLOY:** No.

25 **MR. SCHARBACH:** --- a meeting with those

1 officers?

2 MR. MALLOY: No.

3 MR. SCHARBACH: Now, I think it's clear that
4 you don't recall the date of that second meeting with ---

5 MR. MALLOY: That's correct.

6 MR. SCHARBACH: --- with Crown Johnson and
7 there's no note of that; correct?

8 MR. MALLOY: Correct.

9 MR. SCHARBACH: And your recollection of
10 what you discussed with him comes from your memory today
11 unaided by any notes?

12 MR. MALLOY: That's correct.

13 MR. SCHARBACH: And do you recall how long
14 the meeting lasted?

15 MR. MALLOY: I have no idea.

16 MR. SCHARBACH: And no Crown brief was
17 prepared?

18 MR. MALLOY: No, no charges were laid so,
19 no.

20 MR. SCHARBACH: Sorry, no Crown brief was
21 prepared in the sense that a package of materials was
22 prepared for Mr. Johnson to view, perhaps beforehand?

23 MR. MALLOY: Well, any documentation I would
24 have in my possession I would have brought to him.

25 MR. SCHARBACH: You would have taken it

1 along with the meeting?

2 MR. MALLOY: Sure.

3 MR. SCHARBACH: You wouldn't have provided
4 it to him before the meeting; correct?

5 MR. MALLOY: Before the meeting?

6 MR. SCHARBACH: Yeah.

7 MR. MALLOY: No.

8 MR. SCHARBACH: You took it along with you
9 to the meeting?

10 MR. MALLOY: Yes.

11 THE COMMISSIONER: Nor would you have left
12 him with a copy of it?

13 MR. MALLOY: No, sir, no.

14 MR. SCHARBACH: Now, I take it you didn't
15 have RPG -- you didn't have reasonable and probable grounds
16 to lay a charge before you went into the meeting and that
17 didn't change as a result of your discussion with Crown
18 Johnson. Is that correct?

19 MR. MALLOY: That's correct.

20 MR. SCHARBACH: And did you discuss the
21 results of your meeting with Crown Johnson with your
22 supervisors? Within the Police Force, I mean.

23 MR. MALLOY: Yes.

24 MR. SCHARBACH: And in that -- well, could
25 you tell us about that discussion. What occurred? What

1 did you discuss?

2 MR. MALLOY: My recollection was with
3 Inspector Trew, when I said I met with the Crown and I
4 couldn't develop reasonable grounds and I was a little
5 frustrated.

6 MR. SCHARBACH: Did Inspector Trew suggest
7 any additional avenues of investigation to pursue?

8 MR. MALLOY: Not that I can recall, no.

9 MR. SCHARBACH: And did he agree with you at
10 that point -- did he agree with your approach, at that
11 point?

12 MR. MALLOY: As far as I know, he did, yes.

13 MR. SCHARBACH: And your approach at that
14 point was to put the file in abeyance in the hopes that
15 eventually more information would come forward ---

16 MR. MALLOY: That's correct.

17 MR. SCHARBACH: --- that would allow the
18 investigation to proceed farther. Am I correct?

19 MR. MALLOY: That's correct.

20 MR. SCHARBACH: Now, I want to turn now to
21 the Antoine investigation.

22 You also discussed the results of your
23 investigation in this case with Crown Johnson; correct?

24 MR. MALLOY: Correct.

25 MR. SCHARBACH: And who supervised your work

1 within the Police Force at the time that you did the
2 Antoine investigation, would it also be Inspector Trew?

3 MR. MALLOY: I believe so. I believe it was
4 still Staff Sergeant Wells and Inspector Trew.

5 MR. SCHARBACH: Okay. And am I right in my
6 understanding that you had one meeting with Crown Johnson
7 with respect to the Antoine investigation?

8 MR. MALLOY: I'm trying to remember.

9 One meeting, he was going to write the
10 letter and then would get back to me when he got a response
11 from the Regional Director.

12 MR. SCHARBACH: So I'm getting the sense
13 that you remember one meeting?

14 MR. MALLOY: Yes.

15 MR. SCHARBACH: And you're not quite sure if
16 there was more than one?

17 MR. MALLOY: No.

18 MR. SCHARBACH: Telephone conversations with
19 Crown Johnson?

20 MR. MALLOY: Me calling him to see if he had
21 heard anything back.

22 MR. SCHARBACH: Okay. When you went to see
23 Crown Johnson or arranged for the meeting with Crown
24 Johnson, did you let Inspector Trew know that you were
25 going to have that meeting?

1 **MR. MALLOY:** Oh, I can't recall.

2 **MR. SCHARBACH:** So you don't -- and would I
3 be right in assuming that at this point you felt that all
4 the investigative avenues -- all your leads with respect to
5 Jeannette Antoine had been exhausted as well?

6 **MR. MALLOY:** That was at the point I was at
7 when I went to go see Mr. Johnson, yes.

8 **MR. SCHARBACH:** Right.

9 And I'm just wondering; would you have
10 discussed with Inspector Trew or anyone else in the
11 Cornwall Police your belief that your investigation had
12 pretty much been exhausted at that point?

13 **MR. MALLOY:** I can remember having
14 discussions with Inspector Trew about this case, but
15 whether it was after that meeting or not, I'm not sure.

16 **MR. SCHARBACH:** Now, before the meeting with
17 Crown Johnson, you hadn't come to the conclusion that you
18 had reasonable and probable grounds; correct?

19 **MR. MALLOY:** I had not come to that
20 conclusion. That's correct, yes.

21 **MR. SCHARBACH:** And as a result of the
22 meeting, your conclusions or your belief in that regard
23 didn't change; correct?

24 **MR. MALLOY:** No.

25 **MR. SCHARBACH:** After your meeting with

1 Crown Johnson, did you have a discussion with Trew to let
2 him know what had occurred in your meeting? I'm just
3 wondering if you discussed your investigation with
4 Inspector Trew at that point after your meeting with Crown
5 Johnson and, in particular, I'm wondering whether you
6 discussed with him whether or not there was any additional
7 investigation that could be considered or avenues to be
8 pursued at that point?

9 MR. MALLOY: My memory is I did and it was
10 at the point where he was -- he had written a letter and I
11 was waiting for a response, but I -- specifically, I can't
12 recall.

13 MR. SCHARBACH: So after the meeting with
14 Crown Johnson, your investigation pretty much was held in
15 abeyance until you received a response from the Crown;
16 correct?

17 MR. MALLOY: That's correct.

18 MR. SCHARBACH: Okay. I'm wondering if we
19 could pull up Exhibit 1499, please?

20 Constable Malloy, we've looked at this
21 letter before today. This is the letter from Crown Johnson
22 to Norm Douglas, the Director of Crown Attorneys, on April
23 4, 1990, and I would like to direct you to the second
24 paragraph. You'll see in that paragraph, and I'll read it:

25 "Although there appears to be some

1 factual basis for a further
2 investigation, I cannot find any
3 indication of specific dates when the
4 alleged incident occurred or any names
5 and addresses of any witnesses who may
6 substantiate the allegation."

7 Now, this letter was cc'd to you. You would have -- I
8 think you've mentioned that you got a copy ---

9 **MR. MALLOY:** Yes.

10 **MR. SCHARBACH:** --- of this letter shortly
11 after it was sent.

12 Correct me if I'm wrong, but my impression
13 is that Crown Johnson seems to be saying not that there is
14 no room for further investigation; in fact, he seems to be
15 suggesting the opposite. He's saying that there is some
16 factual basis for further investigation. Would you agree
17 with me?

18 **MR. MALLOY:** Well, I would say that's not
19 the impression I got in the conversation.

20 **MR. SCHARBACH:** In your conversation at the
21 meeting that you had beforehand?

22 **MR. MALLOY:** Yes.

23 **MR. SCHARBACH:** All right.

24 What was said at that meeting that gave you
25 a different impression?

1 **MR. MALLOY:** I can just remember him saying
2 he doesn't think there's anything here, but he was going to
3 write to the Regional Director for direction.

4 **MR. SCHARBACH:** Okay. And if we go to the
5 bottom of the page ---

6 **MR. MALLOY:** Yeah.

7 **MR. SCHARBACH:** --- in the second last
8 paragraph Chief -- sorry, Crown Johnson says:

9 "I'm forwarding this information to you
10 because of the climate with respect to
11 alleged child abuse cases from the past
12 which seem to be on the upswing."

13 And then I'll skip to the next paragraph:

14 "I have not brought up the matter of
15 laying charges with the Cornwall Police
16 as names and dates are not available.
17 Should you wish to discuss the
18 possibility of laying charges, I would
19 request an interview with Constable
20 Malloy [or] myself."

21 Would you agree with me ---

22 **THE COMMISSIONER:** No, "and myself".

23 **MR. SCHARBACH:** --- Constable ---

24 **THE COMMISSIONER:** --- and myself.

25 **MR. SCHARBACH:** Sorry, "and myself."

1 Would you agree with me, Constable Malloy,
2 that what Crown Johnson is saying to the Regional Crown is
3 that although he's not recommending charges at the present
4 time, should you wish to discuss them, he would like to
5 have an interview? He's not saying the investigation will
6 stop pending any direction from the Regional Crown.

7 **MR. MALLOY:** He's not saying that it will
8 stop?

9 **MR. SCHARBACH:** No.

10 **MR. MALLOY:** I'm not sure what you mean.

11 **MR. SCHARBACH:** Well, I got the impression
12 from your evidence earlier that your investigation was held
13 in abeyance pending a direction from the Regional Crown.

14 **MR. MALLOY:** Oh, yes, yes -- sorry, yeah.

15 **MR. SCHARBACH:** And what I'm suggesting to
16 you is that Crown Johnson's letter seems to be saying that
17 no charges will be laid at the present time, or he's not --
18 he said -- to put it in his words, he says:

19 "I've not brought up the matter of
20 laying charges with the Cornwall
21 Police."

22 **THE COMMISSIONER:** It wasn't even on the
23 radar, that discussion, not that there were not going to be
24 any charges or that there were going to be charges. It
25 simply was not discussed.

1 **MR. SCHARBACH:** Right. But Crown Johnson
2 seems to be saying, "Should you wish to discuss the
3 possibility of laying charges;" that is, if the Regional
4 Crown wishes to discuss the possibility of laying charges,
5 he'd like to have a meeting with the Regional Crown and you
6 present.

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

8 **MR. SCHARBACH:** That's basically what the
9 letter says?

10 **MR. MALLOY:** Yes.

11 **MR. SCHARBACH:** And in the second paragraph,
12 I'm suggesting the letter also seems to say that there's a
13 factual basis for further investigation.

14 **MR. MALLOY:** Yes.

15 **MR. SCHARBACH:** And out of that, I guess my
16 question to you is how did you get, out of that, that you
17 needed some direction or you were waiting for some
18 direction from the Regional Crown to continue with the
19 investigation?

20 **MR. MALLOY:** I just took the opinion that I
21 was going to wait until the Regional Director got back to
22 the Crown.

23 **MR. SCHARBACH:** Right. Now, you got a copy
24 of this letter?

25 **MR. MALLOY:** Of this letter, yes.

1 **MR. SCHARBACH:** And do you remember
2 discussing this with your supervisor, Inspector Trew?

3 **MR. MALLOY:** No.

4 **MR. SCHARBACH:** Okay. And this letter is
5 dated April the 4th, I believe.

6 **MR. MALLOY:** Nineteen ninety (1990), yes.

7 **MR. SCHARBACH:** And did you do any follow-up
8 with Crown Johnson with respect to this letter?

9 **MR. MALLOY:** A number of phone calls, yes.

10 **MR. SCHARBACH:** Okay. And none of those
11 phone calls are noted in your notes, I take it?

12 **MR. MALLOY:** No, that's correct. Yes.

13 **MR. SCHARBACH:** Okay. And sometime later
14 you saw the reply that came back from the Regional -- the
15 Regional Director of Crown Operations; correct?

16 **MR. MALLOY:** Yeah, during the internal
17 investigation, yes.

18 **MR. SCHARBACH:** Okay. And perhaps we could
19 pull that up on the screen. It's Exhibit 1500.

20 Mr. Douglas seems to be saying to Mr.
21 Johnson that these matters have to be treated carefully and
22 he suggests that Crown Johnson make sure the police begin
23 an investigation if they've not already done so and perhaps
24 Constable Malloy can dig a little deeper to secure
25 specifics.

1 MR. MALLOY: Correct.

2 MR. SCHARBACH: Now, an investigation, of
3 course, was already begun.

4 MR. MALLOY: Correct.

5 MR. SCHARBACH: Did it occur to you on your
6 own though to dig a little deeper to get the specifics that
7 Crown Johnson was referring to in his letter?

8 MR. MALLOY: No, I made the decision just to
9 stop and wait until I ---

10 MR. SCHARBACH: Okay.

11 MR. MALLOY: --- got advice again.

12 MR. SCHARBACH: And that decision wasn't
13 discussed with Inspector Trew or was it agreed to by
14 Inspector Trew?

15 MR. MALLOY: Oh, that I have like no -- I
16 can't remember.

17 MR. SCHARBACH: Okay. Those are all my
18 questions. Thank you.

19 MR. MALLOY: Thank you.

20 THE COMMISSIONER: Thank you.

21 Mr. Manderville?

22 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

23 MANDERVILLE:

24 MR. MANDERVILLE: Good evening, Constable
25 Malloy.

1 **MR. MALLOY:** Good evening.

2 **MR. MANDERVILLE:** I want to start, sir, by
3 talking a little bit about the Antoine investigation, and
4 I'd ask -- and sorry, Mr. Commissioner; I'm not sure if
5 this document is an Exhibit, yet. It's Document 739080.

6 I'm told it's Exhibit 505 -- thank you.
7 Five-oh-four (504), I'm sorry.

8 **THE COMMISSIONER:** I think we have it.

9 **MR. MANDERVILLE:** That should be a
10 transcription of a witness statement by Constable Malloy
11 regarding the Jeannette Antoine investigation?

12 No, that -- what's on the screen is not the
13 correct document, sir. Seven three nine zero eight zero
14 (739080).

15 **THE COMMISSIONER:** Zero.

16 Would it be the handwritten one of this?

17 **MR. MANDERVILLE:** What I've got -- what I
18 see on the screen, or saw on the screen, was the statement
19 by Antoine herself.

20 **THE COMMISSIONER:** Yes.

21 **MR. MANDERVILLE:** What I'm looking for is
22 the statement of Malloy, but taken in the context of the
23 Derochie internal investigation.

24 **THE COMMISSIONER:** Terrific, thank you.

25 Exhibit 1509 is a witness statement of

1 Constable Malloy, taken by Staff Sergeant Derochie on the
2 7th of February 1994, I believe.

3 --- EXHIBIT NO./PIÈCE No. P-1509:

4 (739080) - Kevin Malloy Witness

5 Statement by Kevin Malloy dated 07 Feb
6 94

7 MR. MANDERVILLE: Do you have that in front
8 of you, Constable Malloy?

9 MR. MALLOY: Yes, sir.

10 MR. MANDERVILLE: Now, I have a few specific
11 areas I want to refer you to within the statement but you
12 tell me if you'd like to read it all now. Because ---

13 MR. MALLOY: Yeah.

14 MR. MANDERVILLE: --- I take it you haven't
15 seen it in some time.

16 MR. MALLOY: No, it's Okay.

17 MR. MANDERVILLE: If you turn to page 4 of
18 the document, which would be Bates page 7175542.

19 Are you there, Officer ---

20 MR. MALLOY: Yes, sir.

21 MR. MANDERVILLE: --- Malloy?

22 Now, you told Ms. Daley that you couldn't
23 recall if you asked Ms. Antoine to provide you with any
24 names, addresses of possible witnesses, and I suggest to
25 you that page 4 towards the top of the statement Ms.

1 Antoine gives you two names; one being the aforementioned
2 Sandy and the other one being a Mr. -- another person.

3 She indicates that the remaining persons are
4 whereabouts unknown. Sandy is critically ill with cancer
5 and may be in Calgary -- sorry, the other person is in
6 Calgary; that she doesn't know Sandy's married name and
7 she'd moved out west, somewhere?

8 **MR. MALLOY:** Correct.

9 **MR. MANDERVILLE:** Further along on that same
10 page, you make mention that:

11 "I recall receiving a number of phone
12 calls from the then-Director of CAS,
13 Mr. Tom O'Brien, with regards to the
14 status of the investigation. I also
15 recall receiving photocopies of
16 pertinent CAS files, made during the
17 time period in question. However, I do
18 not recall who gave them to me. I am
19 pretty sure that I did not get them
20 from Mr. O'Brien, but from a senior
21 member of the police service."

22 Do you see that?

23 **MR. MALLOY:** Yes, sir.

24 **MR. MANDERVILLE:** Now, you told Ms. Daley
25 earlier today that you didn't believe you received any CAS

1 file. Given that this statement is taken 14 years ago now,
2 do you believe it's likely the case that you did, indeed,
3 receive a CAS file?

4 **THE COMMISSIONER:** Excuse me -- yes?

5 **MS. JONES:** I'm just objecting to -- I don't
6 want counsel to be suggesting answers to this witness. I
7 think that it's -- there's obviously a suggestion what the
8 answer's supposed to be here to Officer Malloy. I don't
9 really think that's appropriate questioning ---

10 **MR. MANDERVILLE:** Why?

11 **MS. JONES:** --- by counsel because this
12 officer has given testimony already as to that question,
13 certainly he could be brought to the document.

14 But this is supposed to be examination, not
15 cross-examination and if the witness has already made an
16 answer to that question, then it's not up to counsel to
17 suggest an alternative answer. It's up to Officer Malloy
18 to discuss what his answer is.

19 **MR. MANDERVILLE:** Well, I'm attempting to
20 refresh Officer Malloy's memory. Officer Malloy is not my
21 witness; he is Commission counsel's witness.

22 If Commission counsel elected not to put
23 this to him, that's Commission counsel's choice.

24 **THE COMMISSIONER:** Well, true, Mr.
25 Manderville that this witness is not your witness.

1 However, we can certainly understand that you are
2 representing him here at this Inquiry.

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

4 **THE COMMISSIONER:** And that you're right,
5 you can cross-examine all you want except that the value of
6 the evidence will be greatly diminished in my eyes.

7 But that's up to you.

8 **MR. MANDERVILLE:** Well sir, here could be my
9 dilemma, then.

10 Ms. Daley -- and in fairness to Ms. Daley
11 she didn't appreciate this statement was out there, because
12 I spoke with her about it.

13 **THE COMMISSIONER:** No ---

14 **MR. MANDERVILLE:** Asked Mr. Malloy, "Did you
15 receive this information?" Officer Malloy could not recall
16 receiving it. I am attempting to refresh his memory, (a),
17 and clarify the record, (b); (b) being rather more
18 important for clarity purposes. And that's what I'm trying
19 to do.

20 **THE COMMISSIONER:** Just a second, now.

21 Okay. Have you finished?

22 **MR. MANDERVILLE:** I am, sir.

23 **THE COMMISSIONER:** Okay.

24 I agree 100 percent that you can do that.
25 The manner in which you ask the question is where I think

1 you might want to change that part of it. But other than
2 that, I agree 100 percent that you can ask him, having
3 reviewed this, "Does this refresh your memory as to whether
4 or not you ever got any notes from the Children's Aid
5 Society?"

6 **MR. MANDERVILLE:** Officer Malloy, could you
7 read the entirety of your statement to yourself, please?

8 **MR. MALLOY:** That whole page?

9 **MR. MANDERVILLE:** The whole document.

10 **THE COMMISSIONER:** No, she wants the whole
11 thing.

12 **MR. MALLOY:** All of it.

13 **MR. MANDERVILLE:** Because I might have some
14 questions from it, and I don't dare lead you.

15 **THE COMMISSIONER:** Mr. Manderville.

16 **MR. MANDERVILLE:** Yes, sir?

17 **THE COMMISSIONER:** I thought I was being
18 rather fair.

19 **MR. MANDERVILLE:** You are, sir. You always
20 are.

21 **THE COMMISSIONER:** You just ---

22 **MR. MANDERVILLE:** And it's getting late in
23 the day.

24 **THE COMMISSIONER:** So do you really want him
25 to read the whole three pages? Or maybe you could bring

1 him to those sections and leave it open to him, to comment
2 on it. But that's up to you.

3 So you want him to read the whole thing?

4 **MR. MANDERVILLE:** Officer Malloy, I would
5 like you to read, in particular, all of pages 4 and 5 of
6 the document.

7 **(SHORT PAUSE/COURTE PAUSE)**

8 And let me know, sir, when you're ready to
9 proceed.

10 **THE COMMISSIONER:** Okay; he's ready to go.

11 **MR. MANDERVILLE:** Okay. Thank you.

12 Now, in particular, two-thirds of the way
13 down page 4 of the statement you make reference to CAS
14 files. I'm curious whether what is in the statement
15 refreshes your memory as to whether or not you would have
16 received any files from CAS regarding the Antoine matter?

17 **MR. MALLOY:** I'm sorry, I just don't recall
18 getting anything.

19 **MR. MANDERVILLE:** Similarly, at the bottom
20 of page 4 you make reference to going to see Crown Attorney
21 Don Johnson. At the bottom of page 4, does that assist you
22 in refreshing your memory as to what you would have
23 provided Crown Attorney Don Johnson by way of information?

24 **MR. MALLOY:** I'm stating that he reviewed
25 the file that I would have taken with me which would have

1 been statements, any documentation that I would have had.

2 **THE COMMISSIONER:** Keep reading on top of
3 page 5.

4 **MR. MALLOY:** And a photocopy of Mrs.
5 Antoine's statement.

6 **THE COMMISSIONER:** So did you leave -- does
7 that refresh your memory? Did you -- do you recall now
8 leaving a copy of his statement with him?

9 **MR. MALLOY:** I believe he attached a copy of
10 that statement to the letter to the Regional Director now,
11 yes.

12 **MR. MANDERVILLE:** And at this point you
13 can't recall if your file including the CAS file copies or
14 not?

15 **MR. MALLOY:** I can't recall.

16 **MR. MANDERVILLE:** And at the top of page 5
17 right after the portions that the Commissioner directed you
18 to, you make reference to advice from Mr. Johnson. Does
19 reviewing your statement refresh your memory as to what Mr.
20 Johnson suggested to you?

21 **MR. MALLOY:** Yes, that insufficient evidence
22 existed and he was going to have to correspond with the
23 Regional Crown.

24 **MR. MANDERVILLE:** Further on, page 5 of that
25 document where you state -- about the sixth line of the

1 page:

2 "I left Mr. Johnson's office with the
3 knowledge that he would get back to
4 me."

5 Do you see that?

6 **THE COMMISSIONER:** About six lines.

7 **MR. MALLOY:** Yes. Yes.

8 **MR. MANDERVILLE:** Immediately thereafter in
9 your statement you make reference to contacts with your
10 supervisors. Does reading that refresh your memory as to
11 whether or not you had any contacts with your Staff
12 Sergeant Brendon Wells and your Inspector Trew concerning
13 this matter?

14 **MR. MALLOY:** I would say now that I've read
15 that it would confirm that. I couldn't remember if I had
16 spoken to him about it, but obviously I did.

17 **MR. MANDERVILLE:** I'd ask that Constable
18 Malloy be provided with a copy of Exhibit 1337, they're
19 Officer Derochie's notes concerning his Antoine internal
20 investigation.

21 **THE COMMISSIONER:** So 1339?

22 **MR. MANDERVILLE:** One three three seven
23 (1337), sir.

24 **THE COMMISSIONER:** Okay. That's where I am.
25 What page?

1 **MR. MANDERVILLE:** In particular beginning at
2 Bates Page 7175700.

3 **THE COMMISSIONER:** Five seven seven zero
4 (5770), okay, it's near the end.

5 **MR. MANDERVILLE:** No, not 70, sir; 700.

6 **THE COMMISSIONER:** Oh, sorry. So it's page
7 number 45.

8 **MR. MANDERVILLE:** Officer Malloy, I'd ask
9 you to read to yourself the second half of what Officer or
10 Staff Sergeant Derochie has noted there on that page.

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

12 **MR. MANDERVILLE:** On reading that passage,
13 Officer Malloy, does that assist your memory in recalling
14 as to whether or not CAS could provide any addresses or
15 names of possible additional witnesses to assist
16 Ms. Antoine?

17 **MR. MALLOY:** I don't remember asking them.

18 **MR. MANDERVILLE:** Sorry?

19 **MR. MALLOY:** CAS. I don't remember asking
20 CAS.

21 **MR. MANDERVILLE:** So what Staff Sergeant
22 Derochie notes here that you told him, that doesn't assist
23 you in refreshing your memory?

24 **MR. MALLOY:** No, sir. I'm sorry.

25 **MR. MANDERVILLE:** I'll ask you to turn to

1 the following page, which would be page 46 at the top. You
2 go down to the last paragraph on that page.

3 MR. MALLOY: Yes.

4 MR. MANDERVILLE: And again, does that
5 assist your recollection as to whether or not you would
6 have kept your supervisors apprised of things?

7 MR. MALLOY: I was sure I did but now this
8 would confirm it, sure.

9 MR. MANDERVILLE: Lastly with this document,
10 sir, I would ask you to turn to the following page which
11 would be page 47 at the top, and read the first full
12 paragraph on that document.

13 (SHORT PAUSE/COURTE PAUSE)

14 MR. MALLOY: Yes.

15 MR. MANDERVILLE: Does that accord with your
16 recollection, sir?

17 MR. MALLOY: Yes.

18 MR. MANDERVILLE: That you had no other
19 witness that you could locate?

20 MR. MALLOY: That's correct.

21 MR. MANDERVILLE: And that Ms. Antoine, in
22 your mind, only wanted to proceed with the physical -- the
23 allegations of physical abuse?

24 MR. MALLOY: That's correct.

25 MR. MANDERVILLE: I'd ask that Officer

1 Malloy be shown Exhibit 1286, please.

2 THE COMMISSIONER: What page?

3 MR. MANDERVILLE: This, Mr. Commissioner,
4 should be Staff Sergeant Derochie's report.

5 THE COMMISSIONER: Yes.

6 MR. MANDERVILLE: And I'd ask you to turn to
7 page 6 of that, please.

8 (SHORT PAUSE/COURTE PAUSE)

9 MR. MANDERVILLE: You see the first entry on
10 that page, Officer Malloy?

11 MR. MALLOY: Yes.

12 MR. MANDERVILLE: Is that consistent with
13 your understanding that Mr. Johnson felt he had never
14 received a reply from the Regional Crown to his inquiry.

15 MR. MALLOY: That's my -- yeah, that's my
16 perception. Yeah.

17 MR. MANDERVILLE: Certainly if Mr. Johnson
18 didn't receive a reply, you didn't receive a reply?

19 MR. MALLOY: That's correct.

20 MR. MANDERVILLE: I'd like to turn to the
21 Suzanne Lapointe matter. Commission counsel showed you
22 Exhibit 1456 that being Ms. Lapointe's letter to you dated
23 February 19, 1993.

24 MR. MALLOY: Yes, sir.

25 MR. MANDERVILLE: Just by way of follow-up

1 to that, Mr. Commissioner, Document 739093 is pertinent and
2 we have copies for everyone. It would be a new Exhibit.

3 **THE COMMISSIONER:** What is it?

4 **MR. MANDERVILLE:** It is the envelope in
5 which the letter arrived along with a notation on the
6 envelope.

7 **THE COMMISSIONER:** Okay.

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

9 **THE COMMISSIONER:** Exhibit Number 1510 is a
10 photocopy of an envelope addressed to Constable Malloy,
11 Personal and Confidential, with a receipt dated February
12 26th, 1993.

13 **--- EXHIBIT NO./PIÈCE NO. P-1510:**

14 (739093) - Kevin Malloy - Envelope
15 addressed to Kevin Malloy

16 **MR. MANDERVILLE:** Now, Officer Malloy, to
17 assist you I have determined that February 19th, '93 was a
18 Friday. You have that -- do you have the Exhibit 1510 in
19 front of you?

20 **MR. MALLOY:** Yes, sir.

21 **MR. MANDERVILLE:** February 19th, '93 was a
22 Friday. This was received on February 26th or it indicates
23 received on February 26th. That would also be a Friday.

24 **MR. MALLOY:** Okay.

25 **MR. MANDERVILLE:** If you turn to the next

1 page on that document, is that your handwriting, sir?

2 MR. MALLOY: It is.

3 MR. MANDERVILLE: And what does it say?

4 MR. MALLOY: "Third of March, '93 called
5 Rick Abell, CAS. Will look up records
6 and get back to me."

7 MR. MANDERVILLE: To the best of your
8 recollection, what records were you seeking to have looked
9 up?

10 MR. MALLOY: I believe it was the records
11 mentioned in her letter.

12 MR. MANDERVILLE: Records of her foster
13 care?

14 MR. MALLOY: That's correct, yeah.

15 MR. MANDERVILLE: To the best of your
16 recollection, did you hear back from Mr. Abell?

17 MR. MALLOY: No.

18 MR. MANDERVILLE: And March 3rd of '93 would
19 have been a Wednesday and you injured yourself the
20 following Monday?

21 MR. MALLOY: On the 8th.

22 MR. MANDERVILLE: And never returned to
23 active duty at the police station?

24 MR. MALLOY: No, sir.

25 MR. MANDERVILLE: I want to talk with you a

1 little bit about the Marcel Lalonde - C-57 investigation.
2 And, again, Mr. Commissioner, there's a few documents I'd
3 like to enter as exhibits for completeness of the record.

4 One being Document 734868. That is a
5 general occurrence report and supplementary reports
6 concerning that investigation.

7 **THE COMMISSIONER:** Exhibit Number 1511 is a
8 general occurrence report. Do you have a date on this
9 document someplace?

10 **MR. MANDERVILLE:** It appears to be, sir --
11 at least the following page would indicate 13 December,
12 '88.

13 **THE COMMISSIONER:** All right.

14 Well, let me then just identify it. Exhibit
15 1511 is a general occurrence report with the occurrence
16 number being 9618-88.

17 --- **EXHIBIT NO./PIÈCE NO. P-1511:**

18 (734868) - Kevin Malloy - General
19 Occurrence Report re: C-57

20 **MR. LEE:** Sir, just on a procedural point.

21 **THE COMMISSIONER:** Yes.

22 **MR. LEE:** My understanding is that when a
23 party intends to rely on a document that it hasn't provided
24 Rule 38 notice on, they must bring copies for everybody as
25 CPS has done.

1 **THE COMMISSIONER:** Yes.

2 **MR. LEE:** My understanding is regardless of
3 how late they realize they want to rely on the document, an
4 e-mail must also be sent?

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

6 **MR. LEE:** The entire Rule 38 list?

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

8 **MR. LEE:** I've never seen this document.
9 I'm not objecting to it going in but I may have well wanted
10 to put some questions on it myself once I realized it
11 existed.

12 And I certainly would have liked to have
13 reviewed it before Mr. Manderville started asking questions
14 on it. Just from a general procedural point of view, I
15 think it would be helpful to ---

16 **THE COMMISSIONER:** Fine. Your ---

17 **MR. LEE:** --- as a reminder that that
18 happens.

19 **THE COMMISSIONER:** Your comment is noted.
20 Okay, go ahead.

21 **MR. MANDERVILLE:** Okay. Officer Malloy, I
22 understand that this general occurrence was prepared by
23 Officer Bannerman; correct?

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

25 **MR. MANDERVILLE:** And he would be the intake

1 officer when the complaint first comes in?

2 MR. MALLOY: The uniform officer, yes.

3 MR. MANDERVILLE: Okay. And that's before
4 it's actually assigned to you?

5 MR. MALLOY: That's correct.

6 MR. MANDERVILLE: I didn't propose to go any
7 further with that, Mr. Commissioner. I wanted it in for
8 the completeness of the record and all.

9 Next, sir, I'd ask that Officer Malloy be
10 provided with Document 734875; that's in the cross
11 documents. It should be a one-page document referencing
12 certain monikered names in connection with that
13 investigation?

14 MR. MALLOY: Yes.

15 THE COMMISSIONER: Exhibit 1512. Are these
16 your notes, sir?

17 MR. MALLOY: Yes, they are, sir.

18 THE COMMISSIONER: All right.

19 --- EXHIBIT NO./PIÈCE NO. P-1512:

20 (734875) - Kevin Malloy - Note of Kevin
21 Malloy dated February, 1981

22 MR. MANDERVILLE: You just took my next
23 question. And, Officer Malloy, I take it this is an
24 indication of your contacts with these various people?

25 MR. MALLOY: Yes.

1 **MR. MANDERVILLE:** Mr. Lee asked you
2 questions pertaining to Exhibit 1508. And I'd ask that
3 that be shown to Officer Malloy.

4 **THE COMMISSIONER:** Fifteen-zero-eight
5 (1508). What page?

6 **MR. MANDERVILLE:** And again, Officer Malloy,
7 that's a one-page document relating to your contact with C-
8 60.

9 **MR. MALLOY:** I'm sorry, I don't have the
10 right document I don't think -- okay, sorry. Yes.

11 **MR. MANDERVILLE:** And at the top of that
12 document you've got Section 156 *Criminal Code* or CC.

13 **MR. MALLOY:** Correct.

14 **MR. MANDERVILLE:** I take it, or can I take
15 it, that you are concerned to determine what the state of
16 the law was back in 1981 when the acts occurred?

17 **MR. MALLOY:** That's correct.

18 **MR. MANDERVILLE:** And it was important then
19 to know what the *Criminal Code* said at that time?

20 **MR. MALLOY:** Yes, sir.

21 **MR. MANDERVILLE:** What was the age of
22 consent back in 1981, Officer Malloy, to your knowledge?

23 **MR. MALLOY:** Fourteen.

24 **MR. MANDERVILLE:** Fourteen?

25 **MR. MALLOY:** Fourteen.

1 **MR. MANDERVILLE:** And was there any charge
2 or offence at law known as sexual exploitation back then?

3 **MR. MALLOY:** No.

4 **MR. MANDERVILLE:** And you went to see Don
5 Johnson on two occasions. One to get his advice on how to
6 deal with a historical sexual assault. Is that correct?

7 **MR. MALLOY:** Correct.

8 **MR. MANDERVILLE:** And do you recall what his
9 advice was on that?

10 **MR. MALLOY:** No.

11 **MR. MANDERVILLE:** And the second occasion
12 that you sought his advice on what?

13 **MR. MALLOY:** I would have brought him all
14 the statements or all the information I had had and I
15 remember asking him about the grounds for a search warrant
16 for this photo album and as a result of that meeting I felt
17 I didn't have the grounds.

18 **MR. MANDERVILLE:** Were you seeking any other
19 advice from him other than grounds for a search warrant?

20 **MR. MALLOY:** I can't recall.

21 **MR. MANDERVILLE:** What was his opinion to
22 you?

23 **MR. MALLOY:** No. I didn't have -- there
24 were no grounds to get a search warrant issued.

25 **MR. MANDERVILLE:** Did he give you any other

1 opinion on laying the charge or to use your terminology
2 yesterday, it is the terminology we use nowadays,
3 reasonable prospects of conviction.

4 **MR. MALLOY:** No, I had no willing victims to
5 come forward -- that wanted to come forward.

6 **MR. MANDERVILLE:** So what would -- coming
7 away from your meeting with Don Johnson, what was your
8 understanding of his opinion as to the offence or whether
9 an offence had been committed?

10 **MR. MALLOY:** That there was no offence with
11 ---

12 **MR. MANDERVILLE:** C-57?

13 **MR. MALLOY:** --- C-57.

14 **MR. MANDERVILLE:** What do you recall of his
15 views as to why that was?

16 **MR. MALLOY:** He was in agreement that this
17 was a -- with my assessment that it was -- looked like a
18 consensual act.

19 **MR. MANDERVILLE:** And I take it, in your
20 experience, when a Crown tells you there's no basis to
21 proceed, the officer doesn't proceed?

22 **MR. MALLOY:** No.

23 **MR. MANDERVILLE:** Ms. Daley, earlier today,
24 asked you about contact cards, and we saw from Exhibit 1497
25 there was reference to there being some previous contacts

1 with Marcel Lalonde.

2 Am I correct that a contact card would be
3 generated from any contact at all with police?

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

5 **MR. MANDERVILLE:** Regardless of whether the
6 contact arises from someone as a complainant, or a suspect,
7 or a possible witness?

8 **MR. MALLOY:** Witness, correct.

9 **MS. JONES:** Objection. I've been sitting
10 here letting some of these questions go, but I think,
11 again, we're falling into counsel suggesting all of the
12 answers on issues that are actually quite critical to some
13 of these points. Some things I don't mind, but I think
14 that on some of these points that he shouldn't be led quite
15 along so much.

16 **MR. MANDERVILLE:** I apologize, Mr.
17 Commissioner. I hadn't appreciated contact cards were
18 critical to this Inquiry, but I'll move on.

19 I want to talk to you a little bit about the
20 David Silmsen investigation and, in particular, I'd like to
21 refer you to Exhibit 1208, which are the notes of Officer
22 Blake, I believe, from the Ottawa Police.

23 **MR. MALLOY:** Yes, sir.

24 **MR. MANDERVILLE:** And I'd ask you to turn to
25 Bates page 1025773, which would be page 5 of the document,

1 I believe.

2 MR. MALLOY: Yes, sir.

3 MR. MANDERVILLE: And it's turning your
4 attention to the excerpt that I believe it was Ms. Daley
5 took you to.

6 MR. MALLOY: Oh, yes. Yeah.

7 MR. MANDERVILLE: In your experience,
8 Officer Malloy, what is the practice about carrying out a
9 polygraph on a victim or a potential victim?

10 MR. MALLOY: A victim of a sexual assault?

11 MR. MANDERVILLE: Yes.

12 MR. MALLOY: It's not looked upon
13 favourably.

14 MR. MANDERVILLE: And I take it if you
15 conducted a polygraph examination on a victim, the
16 polygraph results would have to be disclosed, would they
17 not?

18 MR. MALLOY: I believe so, yes.

19 MR. MANDERVILLE: Admissibility is another
20 issue, but ---

21 MR. MALLOY: Okay.

22 MR. MANDERVILLE: --- your understanding is
23 the polygraph results would have to be disclosed to the
24 defence?

25 MR. MALLOY: That's my understanding, yes.

1 **MR. MANDERVILLE:** And could that possibly
2 undermine the victim's credibility?

3 **MR. MALLOY:** Quite possibly, sure.

4 **THE COMMISSIONER:** How could it undermine --
5 you mean at the trial?

6 **MR. MANDERVILLE:** No, just in general, sir.
7 I agree with you, it wouldn't be admissible
8 at trial.

9 **THE COMMISSIONER:** No, but -- okay.

10 **MR. MANDERVILLE:** In your mind, Officer
11 Malloy, would polygraphing a victim be an indication of a
12 view that the police had a weak case with that victim?

13 **THE COMMISSIONER:** Have you ever been
14 involved in a polygraph of a victim or an alleged victim, a
15 complainant?

16 **MR. MALLOY:** No, sir.

17 **THE COMMISSIONER:** Okay. So how would he
18 know?

19 **MR. MANDERVILLE:** Thank you, Officer Malloy.
20 That's all I have.

21 **THE COMMISSIONER:** Thank you.

22 Ms. Jones, do you have any questions?

23 ---RE-EXAMINATION BY/RE-INTERROGATOIRE PAR MS. JONES:

24 **MS. JONES:** Just while it's fresh in my
25 memory, I believe this was the latest exhibit, the 1511,

1 the one that was just brought by CPS counsel?

2 THE COMMISSIONER: Yes.

3 MS. JONES: Just so that I'm clear, this
4 would have been the uniformed officer that would have
5 started the whole process involving C-57?

6 MR. MALLOY: That's correct.

7 MS. JONES: And this is the officer that put
8 the occurrence report number on that file?

9 MR. MALLOY: That's correct.

10 MS. JONES: Is that right?

11 And would you have read this over as a
12 matter of course when you took over this investigation?

13 MR. MALLOY: Sure.

14 MS. JONES: And I just want to refer you to
15 Bates page 713645, about midway through the bundle.

16 MR. MALLOY: Four-five (45) are the last
17 numbers?

18 THE COMMISSIONER: Yes.

19 MS. JONES: Do you see that, Officer Malloy?

20 MR. MALLOY: Yes.

21 MS. JONES: I'm just referring to the very
22 last paragraph. Could you read that over?

23 THE COMMISSIONER: "Although the victim is
24 perfectly willing to testify in court
25 against culprit and to relate this

1 incident, his prime motivation is to
2 prevent the culprit from preying upon
3 other confused youths and using his
4 position of authority to gain their
5 trust."

6 **MR. MALLOY:** Yes, sir.

7 **THE COMMISSIONER:** That's what it says? All
8 right.

9 **MS. JONES:** Do you see that paragraph?

10 **MR. MALLOY:** Yes, sir -- yes, Ma'am.

11 **MS. JONES:** Yes.

12 Would you agree with me that that would have
13 been one of the factors that you would consider in deciding
14 whether or not there was a consensual issue between C-57
15 and Mr. Lalonde?

16 **MR. MALLOY:** No.

17 **MS. JONES:** You would have disregarded that
18 paragraph?

19 **MR. MALLOY:** Well, he was perfectly willing
20 to testify, but there were no charges going to be laid ---

21 **MS. JONES:** No, I understand that.

22 **MR. MALLOY:** --- based on his evidence.

23 **MS. JONES:** But this particular paragraph,
24 it wasn't necessarily a paragraph or a statement he made to
25 you directly when you interviewed him on the 10th of January

1 1989.

2 MR. MALLOY: M'hm.

3 MS. JONES: So that's why I'm asking. Would
4 the fact that this paragraph exists in this document, in
5 the general occurrence report, have been a factor that you
6 would have considered when looking at the consent issue?

7 THE COMMISSIONER: In the sense that he's
8 alluding to the fact that they were confused youths and
9 that the people in position of authority gaining their
10 trust.

11 MR. MALLOY: No.

12 MS. JONES: You would not have used that?

13 MR. MALLOY: No.

14 MS. JONES: Even the word "preying upon" was
15 not consistent with C-57 coming forward and saying "This
16 happened to me without my consent"?

17 Sorry, have you answered the question? I
18 believe I missed it.

19 MR. MALLOY: No, I haven't, no.

20 MS. JONES: Okay. I just wanted to know if
21 I had missed it or not.

22 MR. MALLOY: Could you repeat that again for
23 me, please?

24 MS. JONES: In that last paragraph ---

25 MR. MALLOY: Yes.

1 **MS. JONES:** --- C-57 used the verb "preying
2 upon" as symbolic of how he had this experience with Mr.
3 Lalonde ---

4 **MR. MALLOY:** Right.

5 **MS. JONES:** --- and he said "My prime
6 motivation is that" he doesn't want him to prey upon other
7 confused youths -- sort of using that verb to describe what
8 had happened to him.

9 Would you consider that verb alone even to
10 be important in considering whether or not C-57 had
11 consented to whatever had been entered into with Mr.
12 Lalonde?

13 **MR. MALLOY:** I would say it's an important
14 word, but from my investigation I still say it was a
15 consensual act.

16 **MS. JONES:** I'm going to suggest to you, you
17 actually didn't really use that whole paragraph when you
18 made that decision. Could that be a possibility?

19 **MR. MALLOY:** That's the first time I've read
20 it in -- since the report was written. I can't remember.

21 **MS. JONES:** I just want to clarify, because
22 I was getting very confused about a certain issue and I'll
23 try to be as brief as I can on this. The famous letter to
24 the Crown Attorney Norm Douglas, which is Exhibit 1499,
25 that says "I would like to have an opinion from you on

1 this, please" and the date of that letter is April 4th.

2 And what I find confusing is that in Exhibit
3 1505, which is the report from Mr. O'Brien -- that's the
4 CAS report ---

5 **MR. MALLOY:** Okay.

6 **MS. JONES:** --- you previously agreed with
7 counsel that on February 7th there's a notation here that --
8 and it says -- perhaps you should have the document in
9 front of you. It's, as I said earlier, Exhibit 1505, Bates
10 page 7177237. It's the second last page.

11 **THE COMMISSIONER:** Okay, second-last page.

12 **MS. JONES:** And it's the diary date of
13 February 7th that I'm concerned with here.

14 **THE COMMISSIONER:** Okay.

15 **MS. JONES:** We've heard that you talked to
16 the Crown attorney possibly two occasions on this matter.

17 Is that correct?

18 **MR. MALLOY:** The February 7th, 1990 entry?

19 **MS. JONES:** Yes?

20 **MR. MALLOY:** Okay.

21 **MS. JONES:** The confusion I have here is
22 that if you read the first paragraph, it says that
23 apparently that you'd been advised by telephone by the
24 Crown. I understand your testimony was you don't recall
25 any telephone conversation?

1 **MR. MALLOY:** No.

2 **MS. JONES:** That it was in person?

3 **MR. MALLOY:** No.

4 **MS. JONES:** But certainly Mr O'Brien's
5 impression seems to be, from this paragraph, that you have
6 discussed it with him in any event. You said you don't
7 think there's going to be charges proceeding but it's the
8 next paragraph that catches my attention, and that is:

9 "Detective Malloy is to meet with the
10 Crown attorney to go over the evidence
11 in the case and expects to be advised
12 in writing of the Crown's agreement
13 that no further action is necessary."

14 So it would appear from that paragraph you
15 hadn't actually met with the Crown yet and gone over your
16 evidence but you anticipated that when you did, the Crown
17 would be saying, "We're not going to proceed."

18 **MR. MALLOY:** I don't know where he's getting
19 that from.

20 **MS. JONES:** You have no idea?

21 **MR. MALLOY:** I don't -- no, I don't
22 understand the chronology of that.

23 **MS. JONES:** Because the letter actually
24 isn't sent out till April 4th.

25 **MR. MALLOY:** April 4th.

1 **MS. JONES:** Which is almost a month later.

2 **MR. MALLOY:** Right.

3 **MS. JONES:** So, when you read that and
4 realise this letter isn't sent for another month, it would
5 appear ---

6 **THE COMMISSIONER:** Two months.

7 **MS. JONES:** Or two months, actually. One
8 would think that perhaps you hadn't actually met the Crown
9 yet when you were having this conversation on February 7th
10 with Mr. O'Brien?

11 **MR. MALLOY:** I don't know if he was talking
12 about me or the meetings that he had with the Crown
13 attorney and the police officials from our -- from my
14 business. I mean, I'm certainly not ---

15 **MS. JONES:** Well he says right in the second
16 sentence, "Today Kevin Malloy advised me..." That's in the
17 second sentence. It seems that you had a conversation with
18 him on that day.

19 **MR. MALLOY:** Okay. I don't recall having a
20 telephone conversation with the Crown and, I mean, I
21 wouldn't discuss that over the phone.

22 **MS. JONES:** I understand that. My concern
23 is actually that second paragraph. It would appear that
24 you had told Mr. O'Brien that you hadn't actually met with
25 the Crown yet to go over the evidence. That's the point

1 I'm trying to make.

2 MR. MALLOY: Okay. So I don't recall the
3 chronology.

4 MS. JONES: You don't recall the chronology?

5 MR. MALLOY: I don't recall, no.

6 MR. MALLOY: So it is possible then you told
7 Mr. O'Brien something that actually hadn't happened yet,
8 i.e., that you'd met with the Crown, gone over the evidence
9 ---

10 MR. MALLOY: Well no, I'm not going to tell
11 him I'd met with the Crown when I didn't.

12 MS. JONES: It's here that you're saying you
13 didn't meet with the Crown.

14 MR. MALLOY: I realise that. I don't
15 remember speaking with the Crown over the telephone about
16 this.

17 MS. JONES: Okay. You also said something
18 quite interesting. This is in the context of Silmsler but I
19 think it's very applicable to every person that you talked
20 about, every complainant. And you said something to the
21 effect that you really didn't have an opinion as to whether
22 or not, in this case it was Mr. Silmsler was telling the
23 truth or not. That after you had had that interview, that
24 -- I had the impression that you didn't feel that that was
25 part of your job, to determine if someone was telling you

1 the truth or not at the interview stage.

2 Is that what your position is? I just need
3 a clarification on that.

4 **MR. MALLOY:** In the Silmsers interview?

5 **MS. JONES:** Yes.

6 **MR. MALLOY:** I -- I didn't form any opinion
7 as far as grounds went, or ---

8 **MS. JONES:** I wasn't asking about grounds.
9 The question was did you think Mr. Silmsers was telling the
10 truth? And you said, "I didn't have any opinion on the
11 truth."

12 I just want a clarification. Do you think
13 that, as a police officer, you are not to form an opinion
14 about someone telling you the truth or not?

15 **MR. MALLOY:** Oh, absolutely. This wasn't my
16 case.

17 **MS. JONES:** So just on the Silmsers then, you
18 were not going to be forming an opinion on the truth or
19 not?

20 **MR. MALLOY:** I just took the notes and as far
21 as I was concerned, I was done with it.

22 **MS. JONES:** Okay.

23 I'm trying not to skip around.

24 Unfortunately some of the questions are a bit out of order.

25 On the 10th of January '89, that's when you

1 met with C-57 for the first time, you recall that. In your
2 notes it states that the time of that interview was
3 sometime in the morning -- I'm sorry, in the afternoon,
4 something like 1340 hours. But we've established that
5 earlier that same day, on January 10th, you happened to have
6 met with the Crown concerning that same occurrence report,
7 which is at -- I'll give you the two exhibit numbers. The
8 first one is 1491 which is your notes. Fifteen oh seven
9 (1507) are your notes with respect to the time and Exhibit
10 1491 is the interview you have with C-57.

11 And just to get the chronology that my co-
12 Counsel was trying to do earlier. On B.P. 71509013 you
13 have the time as 09:52:

14 "Attended Crown's office re: the
15 occurrence number for that incident
16 involving C-57."

17 Correct?

18 **MR. MALLOY:** Right. Well it was involving
19 that incident.

20 **MS. JONES:** In the incident?

21 **MR. MALLOY:** Yes.

22 **MS. JONES:** But if you didn't actually speak
23 to C-57 until 13:40 that same day, you clearly only must
24 have had what we were just disclosed a moment ago, the
25 general Occurrence Report.

1 **MR. MALLOY:** No, on the 9th of January, I had
2 spoken with C-60.

3 **MS. JONES:** So you spoke to C-60 before you
4 spoke to C-57?

5 **MR. MALLOY:** Yes.

6 **MS. JONES:** So therefore you could not have
7 gotten C-60's name from C-57?

8 **MR. MALLOY:** That's correct. I'm not -- I
9 can't remember where I got it.

10 **MS. JONES:** That was my next question
11 because your evidence to date has been that C-57 provided
12 you with several names, one of them being C-60.

13 **MR. MALLOY:** I said 57 gave me 60's name?

14 **MS. JONES:** Well, I can see that he gave you
15 C-60's name because it's written in the first paragraph of
16 your notes.

17 **MR. MALLOY:** M'hm.

18 **MS. JONES:** And that has been your testimony
19 to date, that he gave you that name. It would actually
20 appear that you've got C-60 written down on the previous
21 page.

22 **MR. MALLOY:** Yes.

23 **MS. JONES:** So in actual fact, you actually
24 had spoken, or put your mind to C-60 before any other
25 person?

1 I'm just given the -- this is the new
2 document, Exhibit 1511 which is the document you were just
3 handed from counsel, it's free. You may have got the name
4 for the Occurrence Report. Is that a possibility, that you
5 read over the Occurrence Report? Because it is mentioned
6 in the Occurrence Report.

7 MR. MALLOY: That's where I would have
8 gotten it from, then.

9 MS. JONES: All right then. And do you
10 recall what the situation was with C-60, about proceeding
11 or not?

12 MR. MALLOY: Oh, he barely wanted to talk to
13 me.

14 MS. JONES: So at that time, though, when
15 you attended the Crown's office, you hadn't actually talked
16 to C-57 at that point?

17 MR. MALLOY: That's correct.

18 MS. JONES: And you said that you wanted to
19 talk to the Crown on that day just generally about
20 historical sexual assaults?

21 MR. MALLOY: Correct.

22 MS. JONES: And it's curious that, again --
23 it would seem to me that if I was new in an office, the
24 first person that I'd go to would be the supervisors or my
25 colleagues rather than all the way up to the Crown

1 attorney's office. It seems rather curious.

2 Is it possible that the practice there was
3 actually not to consult with other people; that you did
4 actually go to the Crown's office if you needed guidance?

5 **MR. MALLOY:** That was our best source of
6 information, legal information, legal advice.

7 **MS. JONES:** And that was what everybody did?

8 **MR. MALLOY:** Oh, as far as -- I don't know.
9 I can't remember.

10 **MS. JONES:** I'm just talking about the
11 general conduct or practice in the office when you first
12 joined.

13 **MR. MALLOY:** Oh sure, we saw the Crown
14 Attorney, sure.

15 **MS. JONES:** Now, we talked -- there had been
16 a bit of an issue -- it's just my last area of questioning,
17 actually -- there had been a bit of an issue as to the use
18 of the phrase "prominent people" and whether or not we
19 should be using that word, if that's appropriate or not.

20 But just based on that, I mean, this is one
21 of the reasons why we're here even today. Did you ever
22 hear when you were in the office there, in the Youth
23 Bureau, any mention of a clan of pedophiles or a ring of
24 pedophiles and that this was a larger issue that was
25 perhaps initially anticipated when you would get one of

1 these historical sexual assaults? Was this ever discussed
2 while you were there?

3 **MR. MALLOY:** No.

4 **MS. JONES:** Those are all my questions.

5 Thank you.

6 **THE COMMISSIONER:** Thank you.

7 Thank you very much for spending a couple of
8 days with us. I appreciate your testimony and I certainly
9 will consider it.

10 Thank you. We will rise for the day. Come
11 back at 9:30, please.

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

14 This hearing is adjourned until tomorrow
15 morning at 9:30 a.m.

16 --- Upon adjourning at 6:25 p.m./

17 L'audience est ajournée à 18h25

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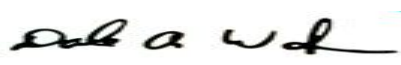
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C E R T I F I C A T I O N

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