

**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 101**

**Held at :**

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

Wednesday, March 28, 2007

**Tenue à:**

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

Mercredi, le 28 mars 2007

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Mr. Pierre R. Dumais	Commission Counsel
Ms. Raija Pulkkinen	
Ms. Julie Gauthier	Registrar
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Mark Crane	
Ms. Peter Manderville	
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Joe Neuberger	
Ms. Judie Im	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Peter Wardle	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Giuseppe Cipriano	The Estate
Mr. William Carroll	Ontario Provincial Police
Mr. Mark Wallace	Association
Ms. Jennifer Birrell	Catholic District School Board

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

2 L'audience débute à 9h36

3 **THE REGISTRAR:** This hearing of the Cornwall  
4 Public Inquiry is now in session. The Honourable Mr.  
5 Justice Normand Glaude, Commissioner, presiding.

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you.

8 Good morning all.

9 Mr. Engelmann.

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

12 There are two matters, we might call  
13 preliminary matters, to deal with this morning. As you  
14 know, we had intended to start with the narratives or oral  
15 presentations; the substitute process or alternative  
16 process with respect to Mr. Silmser's evidence.

17 **THE COMMISSIONER:** Yes.

18 **MR. ENGELMANN:** There were two issues we set  
19 over for first thing this morning, and the first was an  
20 issue dealing with an affidavit filed by a member of the  
21 Victims' Group, C10 ---

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

23 **MR. ENGELMANN:** --- and the second issue is  
24 a letter that was received by the Commission, addressed to  
25 your, sir, on Monday, March 26<sup>th</sup>. So I would propose that

1 we deal with the matter dealing with the affidavit first.  
2 I had confirmed with counsel on Monday that we would be  
3 dealing with this on the 26<sup>th</sup> -- sorry -- on the 28<sup>th</sup>, which  
4 is today, at 9:30. Mr. Cipriano was and he is here for  
5 that purpose. So I would like to deal with that matter  
6 first.

7 **THE COMMISSIONER:** Thank you.

8 **MR. ENGELMANN:** And, what I propose doing is  
9 I mentioned to you, I believe on Monday, when we addressed  
10 this matter briefly, that we received a letter from Mr. Lee  
11 on behalf of the Victims' Group dated March 21<sup>st</sup>. It didn't  
12 arrive -- it wasn't seen by Commission staff until first  
13 thing in the morning on the 22<sup>nd</sup>.

14 We also received a letter from Cipriano on  
15 behalf of his client, Father MacDonald, that morning. I  
16 wrote to all counsel that afternoon, and all of the  
17 affidavits in support of the Victims' Group application for  
18 both standing and funding were temporarily removed from our  
19 website so this matter could be dealt with before they are  
20 put back up, or whatever you decided to do with them, sir.

21 We also received correspondence from Mr.  
22 Callaghan on behalf of the Cornwall Police Service, on  
23 Friday, March 23<sup>rd</sup> on this issue.

24 So what I anticipate is that those three  
25 parties, the Victims' Group, Father MacDonald and Cornwall

1 Police Service, will have submissions to make. I have been  
2 advised by one or two other counsel they may have  
3 submissions as well.

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

5 **MR. ENGELMANN:** What I propose is perhaps we  
6 start with Mr. Lee who can set out some of what has been  
7 discussed in this correspondence, from his perspective,  
8 from his client's perspective, and then we call upon Mr.  
9 Cipriano, Mr. Callaghan and any others who wish to comment,  
10 and perhaps we give Mr. Lee an opportunity to reply.

11 Commission counsel may have some brief comments at the end.

12 I have my colleague, Maître Dumais, with me  
13 this morning as he is leading the evidence of C-10.

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

15 **MR. ENGELMANN:** He may have some brief  
16 comments.

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

18 **MR. ENGELMANN:** So perhaps we could use that  
19 process on the first matter?

20 **THE COMMISSIONER:** Yes.

21 **MR. ENGELMANN:** And then we will deal with  
22 the letter after that.

23 **THE COMMISSIONER:** Thank you.

24 **MR. ENGELMANN:** I'll turn it over to Mr.  
25 Lee.



1                   **THE COMMISSIONER:** Thank you.

2                   Mr. Lee?

3 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

4                   **MR. LEE:** Good morning, Mr. Commissioner.

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

6                   **MR. LEE:** As Mr. Engelmann stated, this  
7 deals with one of the affidavits that was sworn in support  
8 of the victims group's application for standing and funding  
9 at the beginning of the Inquiry process, specifically, the  
10 specific affidavit we are dealing with was sworn October  
11 18<sup>th</sup> of 2005.

12                   As Mr. Engelmann said, the person that we  
13 are dealing with here has been granted confidentiality. By  
14 your order, he is to be referred to "C-10" here.

15                   C-10 is scheduled to testify tomorrow at the  
16 Inquiry. As part of my preparation for that testimony, I  
17 reviewed, obviously, the documents that I thought were  
18 relevant and then as you know Rule 38 provides that other  
19 parties at the Inquiry are to provide notice of any  
20 documents to be used during the course of cross-  
21 examination.

22                   We made our way through those and one of  
23 those documents that was identified was identified as the  
24 Victims' Group affidavit.

25                   When I reviewed that document, it was

1       apparent to me that there were errors in it. I immediately  
2       wrote to Commission counsel and copied all parties, and I  
3       believe it was actually addressed to Mr. Engelmann and Mr.  
4       Callaghan, with a copy to other parties, since Mr.  
5       Callaghan is the one who had given notice that he intended  
6       to use that document.

7                As Mr. Engelmann stated, we almost  
8       immediately received a response from Mr. Cipriano, and I  
9       will leave him to discuss that with you, and Mr. Callaghan  
10      followed up with a letter of his own after which Mr.  
11      Engelmann wrote asking us to speak to this matter.

12              On March 26<sup>th</sup>, so a couple of days ago, after  
13      various discussions I had at the hearings with counsel, I  
14      thought it best to provide counsel with some kind of  
15      explanation of the process surrounding the creation of the  
16      affidavits in general. So I did that by letter dated March  
17      26<sup>th</sup>.

18              The key point I would like to make at the  
19      outset is that as soon as the error with Mr. C-10's  
20      affidavit was recognized, counsel were advised.

21              What I would like to do, Mr. Commissioner,  
22      as I mentioned, I have been urged to provide some kind of  
23      explanation of the process surrounding the creation of  
24      these affidavits. I would like ---

25              **THE COMMISSIONER:** What's the nature of the

1 errors?

2 Am I entitled to know that or ---

3 **MR. LEE:** You are ---

4 **THE COMMISSIONER:** --- should I know that?

5 **MR. LEE:** The concern I have, sir, is --  
6 well, I suppose now that they have been taken off the  
7 website -- the concern I have is if I start talking about  
8 the affidavit everybody is going to run to the website and  
9 figure out who C-10 is, but now that they are off the  
10 website, that is not a concern.

11 There are three errors contained in the  
12 affidavit. They are -- if I can find the affidavit here --  
13 at paragraph -- do we have a copy for the Commissioner? I  
14 mean, I can summarize what the errors were. I think I can  
15 generally summarize the errors without much difficulty.

16 **MR. ENGELMANN:** I believe the clerk does  
17 have a copy of the affidavit. If I could just have a  
18 moment to approach and I ---

19 **THE COMMISSIONER:** All right.

20 (SHORT PAUSE/COURTE PAUSE)

21 **THE COMMISSIONER:** Do you have a copy now,  
22 sir?

23 **THE COMMISSIONER:** Well, I have it down on  
24 the screen.

25 **MR. LEE:** Okay.

1                   If we can go to paragraph 2. In paragraph  
2                   2, C-10 states the approximate dates of his abuse and  
3                   various individuals that he was abused by. The third name  
4                   listed there is Father Charlie MacDonald. So the first  
5                   error in this affidavit is that C-10 was not abused by  
6                   Father Charles MacDonald. He has never alleged abuse by  
7                   Father MacDonald. He has never made a complaint of abuse  
8                   by Father MacDonald. This is -- and I'll get into exactly  
9                   how this error happened.

10                   **THE COMMISSIONER:** So he erroneously accused  
11                   Father Charlie MacDonald of sexually abusing him is what  
12                   you're saying?

13                   **MR. LEE:** In this affidavit ---

14                   **THE COMMISSIONER:** In this affidavit?

15                   **MR. LEE:** Yes, sir.

16                   If I can have you next turn to paragraph  
17                   4(b) on the second page -- perhaps at the bottom of the  
18                   first page we should begin. It reads:

19                                    "As a victim of sexual abuse, my  
20                                    perspective includes the  
21                                    following..."

22                   And then there are two sub-points. Sub-  
23                   point (b) reads:

24                                    "(b) A civil action resulted from the  
25                                    sexual abuse I suffered. I felt

1                   betrayed by the outcome in that  
2                   although a monetary sum was settled  
3                   upon, no humanitarian efforts were made  
4                   on the part of the Diocese of  
5                   Alexandria-Cornwall in terms of  
6                   offering counselling or support for  
7                   what would be an ongoing struggle with  
8                   the effects of the abuse."

9                   Mr. C-10 did not bring a civil action  
10                  against the diocese. He has brought two other civil  
11                  actions in his lifetime, but he has not sued the Diocese.

12                  **THE COMMISSIONER:** And what about the terms  
13                  that:

14                                 "...no humanitarian efforts were made on  
15                                 the part of the Diocese..."

16                  So ---

17                  **MR. LEE:** The ---

18                  **THE COMMISSIONER:** --- does that stand or is  
19                  that erroneous as well?

20                  **MR. LEE:** "...on the part of the Diocese..." is  
21                  erroneous. My understanding -- we will have to have C-10  
22                  speak to this when he testifies -- but my understanding is  
23                  that we could -- a different institution should have been  
24                  named at that point, not the Diocese of Alexandria-  
25                  Cornwall.

1                   **THE COMMISSIONER:** Okay.

2                   But just so I have it straight. What you  
3                   are saying though is that in that affidavit, there is blame  
4                   put to the diocese of not having made any humanitarian  
5                   efforts ---

6                   **MR. LEE:** In the context of a civil action  
7                   and that is incorrect.

8                   **THE COMMISSIONER:** In the context of a civil  
9                   action.

10                  **MR. LEE:** C-10 will have to speak to himself  
11                  as to whether he felt the Diocese should have made  
12                  humanitarian efforts without being sued, or if they did or  
13                  if they didn't, I don't know that, sir.

14                  This paragraph is wrong because he did not  
15                  sue the Diocese of Alexandria-Cornwall at any point.

16                  **THE COMMISSIONER:** Okay.

17                  Thank you.

18                  **MR. LEE:** And, finally, paragraph 11 on the  
19                  third page, sir.

20                  It reads:

21                                 "At no time have I ever been offered  
22                                 any psychological counselling or  
23                                 support by the Diocese of Alexandria-  
24                                 Cornwall to help me deal with the  
25                                 consequences of the abuse that I

1                                   suffered at the hands of Father Gilles  
2                                   Deslauriers."

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

4                                   **MR. LEE:** Again, Mr. C-10 has not had any  
5                                   contact with Father Gilles Deslauriers. He has not been  
6                                   abused by Father Gilles Deslauriers. He has never in the  
7                                   past claimed abuse by Gilles Deslauriers. That name should  
8                                   not have appeared in this affidavit.

9                                   **THE COMMISSIONER:** Well, then, should the  
10                                   whole paragraph be out because it's two things?

11                                   First of all, it is accusing Father  
12                                   Deslauriers of having sexually abused him, and it's saying  
13                                   that the Diocese has never offered him any psychological  
14                                   counselling or support?

15                                   **MR. LEE:** In relation to that abuse. I  
16                                   think the entire paragraph has to be wrong because the  
17                                   Diocese could not possibly be expected to respond to abuse  
18                                   by Gilles Deslauriers that didn't happen and was never  
19                                   alleged.

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

21                                   **MR. LEE:** Those are the errors and obviously  
22                                   they are significant errors.

23                                   **THE COMMISSIONER:** To say the least.

24                                   **MR. LEE:** Indeed.

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

1                   **MR. LEE:** What I propose to do -- as I said,  
2 I don't want to speak for Mr. Cipriano or Mr. Callaghan or  
3 any other party. I'm not sure what they are here to  
4 propose or what their take on this is.

5                   What I would like to do is -- I don't  
6 intend, Mr. Commissioner, to stand up here and make excuses  
7 for this error and I don't intend to explain to you or the  
8 parties how C-10 could have sworn this affidavit. He is  
9 going to have to do that and I fully expect that he will be  
10 asked about that.

11                   What I do intend to do is lead you through  
12 the process that my firm used in creating these affidavits  
13 and the process within which Mr. C-10 would have been  
14 brought in to swear the affidavit, just to give you some  
15 understanding of what happened here.

16                   As you know, Ledroit Beckett is a firm  
17 located in London, Ontario. We were asked by, initially, a  
18 smaller number of victims than we ended up with to  
19 represent them at the Cornwall Inquiry as the Victims'  
20 Group. We have been involved in Cornwall for some time  
21 prior to the Inquiry representing victims of abuse here.

22                   When we were ultimately asked, officially if  
23 you will, to represent the Victims' Group at the Inquiry,  
24 we immediately began, and in quite short order, tried to  
25 start putting together our application. One part of that



1 application was to have any victim of abuse in Cornwall  
2 that wished to be represented by us swear an affidavit.

3 The purpose of these affidavits -- the  
4 specific purpose was to identify these people to the  
5 Commission as victims of abuse in Cornwall, who had various  
6 issues with the institutions being examined and the second  
7 part, obviously, was that we were also applying for funding  
8 and so the affidavits contain some details of these  
9 individuals' financial situations to attest to the fact  
10 that they would not otherwise be able to fund counsel.

11 One (1) of the early steps that we had --  
12 obviously, we had had some contact with victims of abuse in  
13 Cornwall, as I said, that we represented otherwise.

14 At the time that this occurred, we had a  
15 victim support worker employed by the firm by the name of  
16 John Swales. Mr. Swales had established a relationship  
17 with many of our clients at that time and was tasked with  
18 handling the job of coming to Cornwall, talking to people,  
19 spreading the word that this Inquiry was going on, and that  
20 we were going to represent victims of abuse, and that  
21 anybody that was interested should contact us.

22 He was asked to elicit general details,  
23 certainly not great detail of anything but the basic, "Were  
24 you a victim of abuse?" "When do you say you were abused?"  
25 "Do you have any problem with an institution?" If it was a

1 victim of abuse who never complained or whatever the case  
2 may be, we would want to know that.

3 A basic affidavit template was created by a  
4 lawyer at our firm. A quick glance at the affidavit shows  
5 that they are very similar and the relevant details are  
6 kind of plugged in. Mr. Swales would then have transmitted  
7 these basic details to the law clerk who would have done  
8 the first draft of the affidavit based on those details.  
9 The drafts were intended to allow for fairly quick  
10 revisions. That is the initial process; that all takes  
11 place really via telephone mostly to the office in London.

12 Once that initial process was complete, Mr.  
13 Swales travelled to Cornwall with hard copies of the  
14 affidavits -- of the first drafts of the affidavits and he  
15 did his best to organize a large meeting of victims of  
16 abuse here in Cornwall so that these affidavits could be  
17 reviewed and commissioned.

18 I travelled to Cornwall as I said. I was  
19 here on October 18<sup>th</sup>, 2005. The meeting occurred at the  
20 Ramada Inn with as many victims of abuse as we could find  
21 at the time, who had indicated they were interested in  
22 being represented by us and who had the affidavit.

23 The plan was to have Mr. Swales provide each  
24 of these victims of abuse with a hard copy of the  
25 affidavit, and to review the affidavit with that person.

1           They would then say either, "Everything's fine, looks  
2           great. I'm ready to swear the affidavit." Or they would  
3           say, "Oh hold on, there's a problem." Whatever that might  
4           have been: spelling errors, substantive problems, whatever  
5           that may have been.

6                        Upwards of three dozen members, of what is  
7           now the victim's group, met at the Ramada Inn on that date.  
8           Clearly given the problems that have now arisen with the  
9           affidavit of C-10, it does not appear that all of these  
10          affidavits were reviewed completely and thoroughly.

11                      As I said at the beginning, I'm not going to  
12          speculate on what happened with Mr. C-10. He's going to  
13          have to be asked here whether he was given a copy of the  
14          affidavit, whether he reviewed it, and what happened there.  
15          What I would like to point out is that we had -- some of  
16          the challenges that we faced in organizing this many people  
17          at the time that we did, given that they were all victims  
18          of abuse, they all were dealing with various issues at the  
19          time. On top of that, we were asking them to come and tell  
20          us, virtual strangers in most cases, tell us details of  
21          their abuse, although not great details, details  
22          nonetheless.

23                      We -- as I said, I commissioned upwards of  
24          three dozen affidavits on that date. I don't know exactly  
25          how many. Many other people weren't living in Cornwall at

1 the time, or were not available, and they would have  
2 commissioned them at City Halls in Kingston, or Ottawa. I  
3 believe we had one client who's incarcerated at the time  
4 and had his commissioned by a Commissioner while he was in  
5 a prison somewhere.

6 C-10, I can tell you, met with -- at the  
7 Ramada Inn in Cornwall on October 18<sup>th</sup> and had his affidavit  
8 commissioned by me.

9 We -- as I said, we did not recognize the  
10 error into a while ago we wrote to the parties. That's the  
11 general process. I'm obviously willing to answer any  
12 questions you have. I would then suggest that any of the  
13 parties that want to speak to -- I know some have an idea  
14 of what should be done about this situation, in relation to  
15 C-10 and perhaps generally. I'd like a chance to respond  
16 to whatever suggestions they put to me.

17 **THE COMMISSIONER:** Thank you.

18 **MR. LEE:** Thank you.

19 **THE COMMISSIONER:** Mr. Cipriano?

20 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CIPRIANO:**

21

22 **MR. CIPRIANO:** Good morning Mr.

23 Commissioner.

24 I'm going to start off by saying that, it's  
25 our submission that the explanation provided is not

1 sufficient.

2 The errors that have been pointed out are  
3 not simply a typographical error. There was clear and  
4 unequivocal statements made in that affidavit, sworn to be  
5 true, that we now know are false. This is not a situation  
6 in which a person walks into a lawyer's office and says, "I  
7 need an affidavit commissioned", and then walks out and  
8 that ends the relationship. This is an affidavit from Mr.  
9 Lee's client. It's an affidavit that was used, in this  
10 proceeding, tendered as evidence in support of standing and  
11 funding. In that circumstance, all lawyers are under a  
12 professional responsibility, and an ethical one, that  
13 evidence that they tender is accurate and not misleading  
14 and doesn't contain false allegations.

15 In that circumstance, it's our submission  
16 that counsel for C-10 had an obligation to determine  
17 whether the allegations and statements contained, as fact,  
18 were in fact true or not. By saying that they didn't have  
19 time to check, or verify, the factual assertions made in  
20 the affidavit is saying that they have not met or -- that  
21 they have tendered evidence that they have not bothered to  
22 check the veracity of.

23 The fact that it took over one year to  
24 realize this error is, in my submission, even worse.  
25 Problems were raised with another affidavit, Mr. Renshaw's

1 affidavit, last spring when a motion was argued over these  
2 affidavits. At the very least, in my submission, at that  
3 point something should have been done by counsel for these  
4 individuals to determine if other affidavits contained  
5 errors.

6 Mr. Lee has stood here on prior occasions  
7 advocating that this inquiry is about getting at the truth,  
8 about separating fact from fiction. In my submission,  
9 affidavits like this only add to some of the rumours and  
10 innuendos that we're here trying to separate as fact from  
11 fiction.

12 Mr. Commissioner you have said, and we all  
13 agree, that the inquiry is an important one, but it is also  
14 a difficult one for parties. A lot of scars can be re-  
15 opened. Old wounds are resurfaced. And on behalf of my  
16 client, he had fought for over a decade to defend himself  
17 against serious criminal allegations. Now, recently, he  
18 learns that there is a false allegation that has been made  
19 publicly, that was posted on the website. That's not the  
20 Commission's fault, but the prejudice that's now suffered  
21 is above and beyond what we feel is acceptable.

22 It's not unusual for counsel to draft  
23 affidavits on behalf of their clients, but the information  
24 therein, that's drafted, is taken from the client and when  
25 that information is then tendered as evidence, someone

1           should be accountable as to who provided that information.  
2           Was there a problem with the client who misled the lawyer?  
3           Or was it the counsel who didn't verify the veracity of  
4           that affidavit?

5                       Our concerns are that the inquiry -- you Mr.  
6           Commissioner and everyone here, is owed a further  
7           explanation as to what exactly occurred in the drafting of  
8           this affidavit. It could raise some more problems, we  
9           don't know. We are, at this point, satisfied with the  
10          interim relief that the affidavits have been taken off the  
11          website. We believe further investigation ought to be  
12          conducted as to what exactly went wrong. I know other  
13          counsel have some submissions with respect to some other  
14          remedies, and we support those as well, but I'll let them  
15          speak to them.

16                      Ultimately, we believe that a further  
17          investigation is required as to what went wrong. We don't  
18          believe that the -- simply that the affidavit was done in a  
19          quick manner, is a sufficient explanation. Affidavits  
20          tendered as evidence ought not to be produced in a careless  
21          manner, and we believe, at this point, that is what has  
22          occurred.

23                      Subject 25, those are my submissions.

24                      **THE COMMISSIONER:** Just a second, just a  
25          second.

1 I guess that I should ask -- so your client  
2 didn't find out about it until recently?

3 **MR. CIPRIANO:** No.

4 **THE COMMISSIONER:** All right. So, I guess  
5 we're talking about obligations. Wouldn't -- and seeing as  
6 we knew about other problems with affidavits, Mr. Renshaw  
7 as you stated, wouldn't there be a duty or an obligation on  
8 Father McDonald or his lawyer to look at those things and  
9 say, "Oh my god, there's something wrong here." And nip  
10 that right in the bud?

11 **MR. CIPRIANO:** Well, as Mr. Lee stated, Mr.  
12 C-10 is right now scheduled to testify, and there would  
13 have been cross-examinations, and so on, as to whether that  
14 allegation was in fact true or not. And --

15 **THE COMMISSIONER:** But you know, you know --  
16 if I'm correct, I mean, Mr. C-10 might come in and say,  
17 "It's absolutely correct." And then we would be looking  
18 pretty funny here. But let's assume for a moment that C-  
19 10's going to say, "That's not correct". All right. And  
20 that, "Father MacDonald never abused me, and for whatever  
21 reason, it's there but it's not true". All right. What  
22 obligation -- I would have thought that Father MacDonald,  
23 with all of the interest that he's shown in protecting his  
24 name and things like that, through his counsel, would have  
25 looked at these affidavits -- and I understand the process,



1 in the sense that when the application for standing was  
2 brought, they were not distributed to all the other people  
3 who were granted -- who were seeking standing because they  
4 weren't parties. So obviously, it's clear that you  
5 wouldn't have had no responsibly to see these things.

6 So when they were posted, one would think  
7 that, okay, maybe they were just for standing, nobody  
8 really needed to look at them, and I would say, "Okay."  
9 And then I look at - well, when the problems came up with  
10 another affidavit that the bell would have rung and you  
11 would have said, "Well, I better look at all of those  
12 affidavits to make sure."

13 Without excusing you know what apparently  
14 may have happened here, I find it a little strange that  
15 Father MacDonald would come up -- and I think he's correct  
16 if it's not true, that he certainly has a right to be  
17 concerned. But, you know, you people didn't look at it  
18 either. So how do I talk about your obligation to protect  
19 your client's interests, and his obligation to protect his  
20 interests.

21 **MR. CIPRIANO:** I don't think that this is an  
22 issue of timing. The affidavits -- an affidavit is a sworn  
23 document to be true --

24 **THE COMMISSIONER:** Oh, absolutely --

25 **MR. CIPRIANO:** The only remedy is to cross-

1       examine the affiant. The affiant is being produced to  
2       cross-examine. We would have cross-examined him, but --  
3       once they were tendered into evidence, we were left with  
4       the affidavits. We brought a motion about -- concerning  
5       the allegations that were made in those affidavits --

6                   **THE COMMISSIONER:** In all of them?

7                   **MR. CIPRIANO:** The ones that affected our  
8       client. And this was one of them.

9                   **THE COMMISSIONER:** Okay, so you knew back  
10      then that that was false? Not that the -- that the  
11      allegation -- that there was never any allegation made by  
12      C-10 against Father MacDonald. You knew that way back  
13      when?

14                  **MR. CIPRIANO:** No. What I'm saying is we  
15      brought an affidavit concerning -- we brought a motion  
16      concerning these affidavits and that they were on, posted  
17      public on the website.

18                  **THE COMMISSIONER:** Right.

19                  **MR. CIPRIANO:** Some of them, containing  
20      incorrect or false information.

21                  **THE COMMISSIONER:** Well --

22                  **MR. CIPRIANO:** And --

23                  **THE COMMISSIONER:** It seeing that Father  
24      MacDonald is denying all allegations, that's one thing.  
25      So, if you're saying he was denying all of the allegations,

1 I would have thought then, and maybe I'm wrong, that you  
2 would have said, "Not only are there issues about us -- my  
3 client rightfully denying all of the allegations, but  
4 there's one in here that doesn't even fit." Did you bring  
5 that to my attention then?

6 **MR. CIPRIANO:** No. I don't believe that  
7 it's something -- I believe that's something that counsel  
8 for C-10 should have brought to your attention. It's their  
9 obligation to provide evidence that is not misleading or  
10 false. If -- we don't have access to C-10 --

11 **THE COMMISSIONER:** But you have access to  
12 Father MacDonald.

13 **MR. CIPRIANO:** Yes. Mr. Lee has access to  
14 C-10 and to the words that have been sworn as true by C-10,  
15 and if Mr. Lee or C-10 had information that could support  
16 that allegation, even - I'm now speaking generally, if a  
17 person makes an allegation, not to a public authority, but  
18 simply makes an allegation to someone that something  
19 happened -- we don't know whether that information existed,  
20 that C-10 may have relied upon in swearing that affidavit.  
21 We don't have access to that information, so it's not our  
22 obligation. I think it's counsel for C-10's obligation,  
23 when they tender and rely on certain pieces of evidence,  
24 that that evidence not be misleading. And so, I would  
25 submit it's not an obligation on behalf of counsel for

1 other parties to do the work for counsel for C-10.

2 **THE COMMISSIONER:** No. I miss -- I was  
3 thinking more, I suppose, in back to my civil litigation  
4 days of mitigating your damages, I suppose, and if --  
5 Father MacDonald is focused on preserving his good  
6 reputation, that one of the things I would have thought  
7 that he would have done is looked at these affidavits and  
8 said, "Wait a minute here, you know, I've been charged for  
9 this, I've been interviewed for this, and this and this,  
10 and this one is coming right out of the blue. I have  
11 never, ever had any communication with anybody alleging  
12 that that has happened."

13 **MR. CIPRIANO:** Well, with -- the problem  
14 is, is that, that doesn't stop an individual from making an  
15 allegation. Just because he didn't report it to a public  
16 agency, doesn't mean that when they swear an affidavit  
17 making an allegation it's incorrect.

18 **THE COMMISSIONER:** Okay.

19 **MR. CIPRIANO:** And so, that's why I say,  
20 "We're at a vacuum with information".

21 **THE COMMISSIONER:** Okay. I understand what  
22 you're saying. Thank you.

23 **MR. CIPRIANO:** Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Callaghan?

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:

2 MR. CALLAGHAN: Mr. Commissioner, good  
3 morning.

4 THE COMMISSIONER: Good morning.

5 MR CALLAGHAN: I got into this situation  
6 because the letter that was originally sent was addressed  
7 to me and Mr. Engelmann. We had given notice on the  
8 affidavit. And I must say, it doesn't deal with  
9 allegations regarding the Cornwall Police, but it's  
10 troubling. And it was troubling to me for a number of  
11 reasons.

12 First, it was troubling because it was an  
13 affidavit, not in an ancillary proceeding. It's an  
14 affidavit filed in this proceeding.

15 THE COMMISSIONER: M'hm.

16 MR. CALLAGHAN: It's an affidavit which you  
17 relied upon to provide standing. And it's troubling  
18 because that's not the first affidavit filed by Ledroit  
19 Beckett that you relied on for standing that was wrong.  
20 When Mr. Renshaw testified, we heard that there were false  
21 allegations in his affidavit; one dealing with the Cornwall  
22 Police and the other one dealing with the Diocese. So  
23 that's two.

24 It seems to me that the process of the  
25 Inquiry was predicated on ending the -- as we called it the

1 swirl of innuendo and rumour. And it is not going that way  
2 when these types of affidavits are filed.

3 So I wrote a letter asking for an  
4 explanation as to how this should happen. One wasn't  
5 forthcoming until yesterday. My letter was dated last  
6 week. The explanation, as I understand it, is, "Oh! A  
7 wayward clerk in our office".

8 And you know I have been at the Bar a long  
9 time. It's not something we proffer to be blunt. It was  
10 commissioned by counsel, counsel at this Inquiry.

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

12 **MR. CALLAGHAN:** It wasn't the first time  
13 they had an opportunity to check the veracity of the  
14 affidavit.

15 It's disconcerting because there are -- I  
16 don't know the number -- I have 26, 46, somewhere in  
17 between there I'm sure -- affidavits filed. I think remedy  
18 number one should be Ledroit Beckett should be ordered to  
19 verify the veracity of each and every affidavit they filed  
20 in this proceeding, so that there would be some measure of  
21 confidence that your word on standing and funding has some  
22 basis, and I'm not saying in all, we've already heard from  
23 some witnesses, but it's disconcerting.

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

25 **MR. CALLAGHAN:** I asked in my letter whether

1 or not Commission counsel had the predicate confidence and  
2 the credibility of C-10 to allow and to testify. I wonder  
3 now whether that's -- we've gone that far. And I am  
4 surprised that, in fact, counsel for the Parties is raising  
5 this issue because it deals really with the credibility of  
6 the process, and I'm not really involved other than I got  
7 the letter. I shouldn't be the one up here talking about  
8 the credibility of the process, but it looks to me like  
9 there's a real issue as to whether C-10 should be permitted  
10 to testify.

11 **THE COMMISSIONER:** Why is that?

12 **MR. CALLAGHAN:** Well, he's sworn a false  
13 affidavit in this proceeding. We have a situation wherein  
14 you have other ways to get to what the necessary evidence  
15 is and for whatever purpose. We are not calling every  
16 case. It's pretty clear that not every case that was  
17 involved in either Project Truth has been called; not every  
18 case investigated antecedent to Project Truth has probably  
19 been called. Lots of cases are. It's a smorgasbord of  
20 cases, and why this case has to be called is an issue. But  
21 it seems to me there's a process here. There's an issue as  
22 to the Commission's process that has to be addressed. I  
23 just offer that as one issue.

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

25 **MR. CALLAGHAN:** Clearly, I think those who

1 have been maligned in the affidavit are entitled to a  
2 public statement from the Commission that it's false, not  
3 just from Ledroit Beckett. The public should be aware  
4 they're false.

5 It's unfortunate that C-10 is entitled to  
6 confidentiality, to be blunt, in light of the fact that his  
7 affidavit was on the website with his name, with the  
8 allegations, and now he gets to come under the cloak of  
9 confidentiality. It's unfortunate because it makes it  
10 difficult for you to deal with that, but it is something I  
11 think that, to cleanse the process, has to be done.

12 We have talked about allegations against Mr.  
13 Cipriano's client, for example, or others and we've talked  
14 about them in terms of allegation. We try to be very good.  
15 These affidavits are in black and white. They're not --  
16 and I don't expect the victims to say it in any other way  
17 than black and white, but it's unfortunate unwittingly the  
18 Commission has published them through its website and it  
19 now requires, I think, a statement, a warning to the public  
20 that they're false and that it's known.

21 I have a hard time figuring out what the  
22 proper remedy in all this is, but I think your concern,  
23 sir, should be with the process and to make sure going  
24 forward, it's protected because at the end of the day the  
25 integrity of this Inquiry, and in the integrity of this



1 Inquiry we have some very unusual things happening. We  
2 have what is going to happen next with respect to a witness  
3 who doesn't want to be cross-examined.

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

5 **MR. CALLAGHAN:** Oh, I think you're going to  
6 hear he doesn't want to be cross-examined in a moment.

7 **THE COMMISSIONER:** Okay.

8 Well, but so far, I have a mental report ---

9 **MR. CALLAGHAN:** Right.

10 **THE COMMISSIONER:** --- that says that he is  
11 unable.

12 **MR. CALLAGHAN:** Right, and the winds change,  
13 sir. We will hear about how the winds change in a moment  
14 on that issue.

15 **THE COMMISSIONER:** Yes.

16 Okay.

17 **MR. CALLAGHAN:** But let's take the point who  
18 is unable to present himself for cross-examination.

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

20 **MR. CALLAGHAN:** We have had witnesses  
21 speaking to victims -- or people speaking to witnesses  
22 while they're under cross-examination. We have had counsel  
23 speaking to witnesses while they're under cross-  
24 examination.

25 **THE COMMISSIONER:** But ----

1                   **MR. CALLAGHAN:** Mr. MacDonald's counsel  
2 prepared his reply while under cross-examination. You will  
3 recall when I asked a question to Mr. MacDonald, his answer  
4 says:

5                               "I'll deal with that and reply. My  
6                               counsel and I have talked about it."

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

8                   **MR. CALLAGHAN:** That's an irregularity shall  
9 we call it.

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

11                   **MR. CALLAGHAN:** And I'm just saying that at  
12 some point, things have to get back on track so that  
13 everybody has confidence in the process. This is just one  
14 more issue to cause me to come up. I'm not directly  
15 involved in this, but it causes me to come up and say,  
16 "We've got to address this." And that's all the  
17 information and advice I can give you.

18                   **THE COMMISSIONER:** Thank you.

19                               All right.

20                               Anyone else?

21                               Mr. Carroll?

22                   **MR. CARROLL:** Good morning.

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

24                   --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CARROLL:

25                   **MR. CARROLL:** Two observations. Counsel

1 have, I think, probably inadvertently referred to the  
2 obligation of the lawyer to verify the truth of the  
3 contents of an affidavit, but first we know ---

4 **THE COMMISSIONER:** The accuracy.

5 **MR. CARROLL:** Well, and even the accuracy --  
6 I think the issue is addressed when the deponent is asked  
7 under oath, you know, do you swear the contents of this  
8 document is true? That's the lawyer's obligation, not to  
9 go and check the factual allegations contained in the  
10 affidavit.

11 For example, in a land transfer, and  
12 somebody says they're married or not married, as long as  
13 there is swearing that the affidavit is true, the lawyer  
14 doesn't have to go out and confirm the veracity. So that's  
15 one observation.

16 The other one, sir, and ---

17 **THE COMMISSIONER:** Can I stop you there for  
18 a second sir?

19 **MR. CARROLL:** Sure.

20 **THE COMMISSIONER:** Is there an obligation on  
21 a lawyer who is dealing with let's say a vulnerable person,  
22 someone who has trouble reading, depending on the facts I  
23 guess, to at least read it out to them or ensure that they  
24 understand what is written in there?

25 **MR. CARROLL:** Well those, certainly -- but I

1 haven't heard that as an explanation for what happened  
2 here.

3 **THE COMMISSIONER:** Right.

4 **MR. CARROLL:** I can imagine all kinds of  
5 circumstances where there's more of an obligation than just  
6 asking if the contents are the truth; certainly.

7 **THE COMMISSIONER:** Sure.

8 **MR. CARROLL:** And the second observation I  
9 would make is that where this seems to be going, to me at  
10 least, would probably warrant C-10 getting independent  
11 counsel.

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

13 **MR. CARROLL:** I see this unfolding in ways  
14 that may not be -- well, I'll just leave it at that. It's  
15 my view that that should be.

16 **THE COMMISSIONER:** Okay.

17 **MR. CARROLL:** Thank you, sir.

18 **THE COMMISSIONER:** Mr. Sherriff-Scott.

19 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

20 **MR. SHERRIFF-SCOTT:** Good morning, sir.

21 **THE COMMISSIONER:** Good morning.

22 **MR. SHERRIFF-SCOTT:** My only comment is  
23 pertaining to paragraph 4(b) of the affidavit.

24 **THE COMMISSIONER:** It's 4(b); Madam Clerk,  
25 can you put it up please?

1                   **MR. SHERRIFF-SCOTT:** That's the no-  
2 humanitarian thing.

3                   **THE COMMISSIONER:** Right.

4                   Is it 4(b)?

5                   **MR. SHERRIFF-SCOTT:** I believe it is.

6                   **THE COMMISSIONER:** Madame Clerk, my screen  
7 is not on.

8                   **MR. SHERRIFF-SCOTT:** Yes, it is.

9                   **THE COMMISSIONER:** Four (4(b)), sorry. I  
10 had it under paragraph 11 for some reason.

11                   **MR. SHERRIFF-SCOTT:** It might have been  
12 another affidavit.

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

14                   **MR. SHERRIFF-SCOTT:** Just kidding, sir.

15                   **(LAUGHTER/RIRES)**

16                   **THE COMMISSIONER:** Actually, it's the one  
17 you sent me.

18                   **(LAUGHTER/RIRES)**

19                   **MR. SHERRIFF-SCOTT:** Yes, I haven't sworn  
20 anything yet in an affidavit, but ---

21                   Okay.

22                   **THE COMMISSIONER:** Okay, 4(b).

23                   **MR. SHERRIFF-SCOTT:** Four (4(b)), yes, sir.

24                   C-10, as will appear to you, so there's a  
25 bit of forward-looking here, in his written statements that

1 have been disclosed and which the Commission will file,  
2 mentioned that he had a single abuse occasion with a priest  
3 of the Diocese, but the main abuse was by Mr. Seguin. He  
4 also said that he never told anyone about that, and it came  
5 out in Project Truth.

6 So my client would never have heard of this  
7 because Mr. Scott was long dead by that point. So the  
8 police obviously took no action because the alleged  
9 perpetrator had been dead nearly ten years.

10 **THE COMMISSIONER:** Okay.

11 **MR. SHERRIFF-SCOTT:** So I would have thought  
12 that this would be an opportunity to unequivocally withdraw  
13 this statement, as opposed to the sort of middle ground  
14 that happened when Mr. Lee was before you, and that surely  
15 in order to avoid unnecessary cross-examination, which we  
16 had a great discussion about, maybe it's an opportunity for  
17 Mr. Lee to say to the man -- to talk to him about it and  
18 have it withdrawn before he testify, so that we don't get  
19 into more needless cross-examination that may traumatise  
20 the witness, because he may have inadvertently sworn this.  
21 I don't know.

22 So those are my only comments. I just think  
23 that there's an opportunity here to be more unequivocal  
24 given the nature of the allegations.

25 Thank you.

1                   **THE COMMISSIONER:** Thank you.

2                   Yes?

3                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:**

4                   **MR. NEUBERGER:** Good morning, Mr.  
5 Commissioner.

6                   **THE COMMISSIONER:** Good morning.

7

8                   **MR. NEUBERGER:** Two (2) things not directly  
9 related to my client, but since we are all counsel at this  
10 Commission, I think it's an issue that bears comments from  
11 most of us who are here.

12                   When I was listening to the exchange with  
13 Mr. Cipriano, I would like to emphasise that in  
14 circumstances of any allegation of criminal conduct,  
15 particularly heinous criminal conduct, there is an absolute  
16 and clear onus on the Party asserting it ---

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

18                   **MR. NEUBERGER:** --- to be as accurate as  
19 possible, and the accused bears no onus in that regard.

20                   And although this is not a criminal  
21 proceeding, it is a proceeding of public opinion and Mr.  
22 Cipriano's client, who's in an exceptionally difficult  
23 position in responding to allegations for which they cannot  
24 directly challenge, in my opinion, suffers no blame in this  
25 regard.

1                   **THE COMMISSIONER:** I wasn't getting into  
2 suggesting any blame in the sense of the accuracy. What  
3 I'm saying is -- I guess I am looking at it on a holistic  
4 approach in the sense that when you're looking at the  
5 affidavits, right, I don't expect you -- you as solicitor  
6 for Corrections -- to get up and say, "This is obviously in  
7 error."

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

9                   **THE COMMISSIONER:** --- because you would  
10 have no interest and no knowledge.

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

12                   **THE COMMISSIONER:** What I'm saying though is  
13 that if we are going to look at it, and not on onuses for  
14 anybody, but its incumbent on people to help me.

15                   **MR. NEUBERGER:** Absolutely.

16                   **THE COMMISSIONER:** And so all I guess I was  
17 saying is on something like this I would have hoped that  
18 Father MacDonald would have come forward and said, "Look  
19 it, you know, I'm accused of a lot of things here, but this  
20 one here is right out in left field". That is what I'm  
21 trying to say.

22                   **MR. NEUBERGER:** I hear you and I recognize,  
23 first of all, for Mr. Lee to come forward and address this  
24 Commission is not an easy task.

25                   **THE COMMISSIONER:** No.



1                   **MR. NEUBERGER:** It's a difficult one and I'm  
2                   sure it falls heavily on his shoulders.

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

4                   **MR. NEUBERGER:** But you are assisted by  
5                   Commission counsel.

6                   **THE COMMISSIONER:** Yes.

7                   **MR. NEUBERGER:** And their job also is to  
8                   ensure accuracy of documents which were tendered and made  
9                   public.

10                  **THE COMMISSIONER:** Absolutely.

11                  **MR. NEUBERGER:** And those are people  
12                  directly related to assisting.

13                  **THE COMMISSIONER:** All right.

14                  **MR. NEUBERGER:** And although we bear the  
15                  onus as well, I think Commission counsel bears onus here.

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

17                  **MR. NEUBERGER:** And I want to make this  
18                  other point. There is a fine balance, in my opinion ---

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

20                  **MR. NEUBERGER:** --- between ensuring that  
21                  witnesses are able to come forward and give their evidence  
22                  in a manner where they are not re-victimized and free to  
23                  give us relevant, important evidence, but also not creating  
24                  an environment in which allegations can go unchallenged,  
25                  which are false.

1                   And this leads me, I think, to the segue of  
2                   what you are about to address with respect to Mr. Silmsler,  
3                   that cross-examination is an important aspect of dealing  
4                   with these types of inaccuracies and when we are looking  
5                   for a remedy with respect to C-10, I think one of the best  
6                   remedy is his cross-examination, and Mr. C-10 is no longer  
7                   Mr. C-10. His name should be out there publicly and he  
8                   should be publicly cross-examined definitely with respect  
9                   to a false assertion he made in an affidavit. And that  
10                  will ensure that the falsity is dealt with in the public  
11                  realm clearly for everybody to view.

12                   Thank you very much.

13                   **THE COMMISSIONER:** Thank you.

14                   Anyone else?

15                   Mr. Lee?

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

17                   **--- REPLY BY/RÉPLIQUE PAR MR. LEE:**

18                   **MR. LEE:** A few things to respond to there I  
19                   think. I'll start, I suppose, with paragraph 4b raised by  
20                   Mr. Sherriff-Scott. I thought I was unequivocal but  
21                   apparently I was not. I cannot answer for -- as I said, I  
22                   don't know if at some point in his life C-10 is going to  
23                   suggest that the Diocese should have known something and  
24                   should have given him support.

25                   In paragraph 4b it is stated that as a

1 result of a civil action the Diocese failed to give him  
2 support. That is not true. That is not the case. He did  
3 not sue the Diocese and so 4b is not accurate, and I've  
4 said that. It may well be that Mr. C-10 will tell us that  
5 he feels that the name of another institution should be  
6 substituted there and those contentions would apply to that  
7 institution but they do not apply to the Diocese.

8 The next point I'd like to respond to is Mr.  
9 Callaghan suggested that I was up here scapegoating a  
10 wayward clerk, as he put it, at my firm. That is not the  
11 case. I am telling you as a matter of fact that these were  
12 physically prepared by a clerk and I'm not suggesting that  
13 the clerk had some obligation to ensure accuracy, whether  
14 the clerk is in some way to blame. I'm telling you that a  
15 clerk put them together into an affidavit and I can imagine  
16 1000 different reasons that an error could have been made.  
17 Perhaps the phone rang and she came back to it thinking she  
18 was done the first four paragraphs and in fact she had only  
19 finished the first three. I have no idea. It's not the  
20 clerk's fault. I'm telling you there may well have -- when  
21 it was presented -- clearly when our typed up version was  
22 presented to Mr. C-10 there were errors in it and I'm not  
23 suggesting that a clerk is to blame for that. I was simply  
24 trying to give you some idea of the process that we used.

25 **THE COMMISSIONER:** Well, you know, I had a

1 judge once who heard an argument that you know, the  
2 secretary must have misunderstood the instructions or  
3 something like that and he rather forcefully indicated that  
4 the ultimate responsibility is the lawyers and the law  
5 firms. So that by using -- I think what he meant was you  
6 don't blame secretary and support staff for something that  
7 is ultimately your responsibility.

8 **MR. LEE:** And that is not what I am here  
9 doing, sir.

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

11 **MR. LEE:** The next issue, Mr. Callaghan  
12 suggested that he has concerns with C-10 even appearing to  
13 testify at this Inquiry and I can tell you I have concerns  
14 about that suggestion. It is obviously my position that  
15 Mr. C-10 should be called to testify as he's been scheduled  
16 to do. I agree with Mr. Neuberger that if parties have an  
17 issue with the affidavit that he swore, he should be asked  
18 about it under cross-examination and we won't object to him  
19 being cross-examined on that affidavit.

20 I have to admit that I'm somewhat surprised  
21 that a public institution being funded by taxpayers would  
22 suggest here publicly that a victim of abuse who has made  
23 an error in an affidavit should be precluded from  
24 participating in this process.

25 **MR. CALLAGHAN:** That comment is entirely

1           unfair. The suggestion was that this process requires some  
2           integrity. I did not respond. I responded, sir, because  
3           you wrote me a letter. I was asked for my views. I gave  
4           my views. And I think it's totally unfair to cast it  
5           against a public institution trying to prevent someone from  
6           testifying.

7                           **THE COMMISSIONER:** Okay. Thank you.

8                           Mr. Lee.

9                           **MR. LEE:** The other two issues that I want  
10          to deal with, Mr. Neuberger suggested that he proposes that  
11          C-10 be allowed to testify but that he be stripped of the  
12          confidentiality measures that he was granted because this  
13          needs to be done in full public view for what I assume are  
14          obvious reasons. I disagree with that. The  
15          confidentiality measures were issued. If that's something  
16          you intend to open up again for discussion I think we need  
17          to be given time to consider that. I need to be given time  
18          to seek instructions from my client. And I think we need  
19          to be responding to a proper motion, a vary order.

20                          And finally it was suggested that C-10 may  
21          need independent counsel by Mr. Carroll. I'm somewhat  
22          concerned by that comment and I think frankly that I have  
23          some obligation to raise it with my client and I'm content  
24          to do so. The fact that C-10 is scheduled to begin  
25          testifying tomorrow, I don't know if that's in the cards

1 now or not given everything that you're hearing today, but  
2 obviously that would not be able to occur and I think  
3 that's something that we need to discuss as well, sir.

4 As I said at the start, Mr. Commissioner, I  
5 am here to offer you an explanation of the process that was  
6 used. I can't speak for C-10 and I have no intention of  
7 pretending to know exactly what happened and why he swore  
8 the affidavit. I propose that he be asked the questions on  
9 the stand.

10 Subject to any questions you have I don't  
11 have anything else to say about this.

12 **THE COMMISSIONER:** Thank you.

13 Gentlemen.

14 --- **HOUSEKEEPING MATTERS BY/QUESTIONS D'ORDRE ADMINISTRATIF**  
15 **PAR MR. DUMAIS:**

16 **MR. DUMAIS:** Briefly Commissioner, as you've  
17 heard previously I am calling C-10 tomorrow and I did  
18 prepare his evidence and reviewed his AE with him.

19 My involvement with this matter started when  
20 we received the Ledroit Beckett correspondence on March  
21 22<sup>nd</sup>. Immediately or as soon thereafter as we could, when  
22 we noted the inaccuracies in the affidavit they were pulled  
23 from the website.

24 I had already a scheduled meeting with C-10  
25 on the Friday and the purpose of that meeting was to review

1 the cross documents.

2 So all the second 38 notices have been  
3 received by the office, one of which was on the affidavit  
4 that C-10 had signed.

5 I did meet with C-10 on Friday. We went  
6 through the affidavit and noted that there were  
7 inaccuracies in the affidavit.

8 So my intention, Commissioner, is -- because  
9 there's been some suggestion, I guess, firstly, that the  
10 matter be dealt with publicly. I'm making reference to Mr.  
11 Cipriano's suggestion in his March 21<sup>st</sup>, 2007  
12 correspondence. I'll just read it out. So he is  
13 requesting that it be placed on the record during the  
14 evidence of C-10 that he was not sexually abused by Father  
15 MacDonald and that this part of his affidavit is not true.

16 Just so that you know, Commissioner, my  
17 intention before we start dealing with the summary of  
18 anticipated evidence of C-10 that we deal firstly with the  
19 affidavit. So I intend to go through 1) the process of the  
20 signing of the affidavit itself, so when it was signed, who  
21 was there, who went through it or not. So we'll deal with  
22 that firstly. And I think because of what has arisen here  
23 today I will not only deal with paragraphs 2, 4b and 11,  
24 but I'll go through each and everyone of the paragraphs of  
25 the affidavit. So that is the process I'm suggesting

1 tomorrow.

2 There's been some suggestion that because of  
3 this issue that C-10 should not be called. Despite this  
4 issue, Commissioner, I believe that C-10 still has relevant  
5 evidence to give that will help this Commission to fill its  
6 mandate so it's still our intention to call him.

7 **THE COMMISSIONER:** Thank you.

8 I'll provide my comments after we've taken a  
9 break.

10 But the next issue is ---

11 **MR. ENGELMANN:** Mr. Commissioner, it's the  
12 issue of the letter to Mr. Simser.

13 **THE COMMISSIONER:** Why don't -- I thought  
14 maybe of hearing all the submissions and then taking a  
15 break but I think I want to deal with one issue at a time.  
16 So I'll take a short break and ponder the situation and  
17 come back, let's say, at 11:00 and then we'll see where we  
18 go with that issue and then we'll deal with the other one.

19 **MR. ENGELMANN:** Thank you, sir.

20 **THE REGISTRAR:** Order. All rise. À  
21 l'ordre/veuillez vous lever.

22 This hearing will resume at 11:00.

23 --- Upon recessing at 10:30 a.m./

24 L'audience est suspendue à 10h30

25 --- Upon resuming at 11:00 a.m./



1 L'audience est reprise à 11h00

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

4 **THE COMMISSIONER:** Thank you.

5 This morning we heard submissions with  
6 respect to certain inaccuracies that may or may not have  
7 been contained in certain affidavits that were submitted by  
8 the Victims Group by Ledroit Beckett the law firm acting  
9 for them in their application for standing and funding.

10 With respect to C-10, there are, from what I  
11 can see in any event, and we are going to have to wait  
12 until that person testifies to have it on the record  
13 whether or not these inaccuracies are true, in the sense  
14 that he seems to have named a person, Father Charles  
15 MacDonald, as his abuser when in fact it may well not be  
16 the case.

17 There have been other inaccuracies, in that  
18 he has indicated that the Diocese has not responded with  
19 counseling and assistance for his abuse at the hands of  
20 Father Deslauriers, which it appears he will indicate never  
21 occurred and was in error in having put into the affidavit,  
22 and also that the Diocese failed to respond and provide  
23 counseling, et cetera, amongst other errors.

24 We have had an indication that there were  
25 other errors in those affidavits in the past. Counsel for

1       Ledroit -- well, not counsel for Ledroit Beckett, counsel  
2       from the firm of Ledroit Beckett provided some explanations  
3       as to the process which they used in obtaining these  
4       affidavits. I don't know that it is necessary for me to  
5       rule as to whether or not the adequacy of that process or  
6       to lay blame at the hands of any one. The reason for that  
7       is very simple and it's that enough is enough.

8                 Given the subject of this Inquiry, it's  
9       important and I would say maybe it's vital, that we get  
10      things right. We are looking at institutions and looking  
11      at their response and how they dealt with alleged victims  
12      and the whole process. And I would hope that we are all  
13      learning a very important lesson in all of that, and from  
14      the victims' point of view and their law firm that they  
15      must understand as well that swearing an affidavit is a  
16      very serious matter and that it has consequences.

17                And I can say that with respect to Mr.  
18      Callaghan's comment that it is affecting the integrity of  
19      this Inquiry, I differ in that opinion, in the sense that,  
20      first of all, the affidavits that are the subject matter of  
21      this discussion were affidavits that were prepared for the  
22      funding and standing application. As far as I'm concerned,  
23      with respect to the issue as to whether they should get  
24      funding or standing, what was important to know was that  
25      they were -- the affiants, the people who swore these

1 affidavits, were alleging that they were victims; that they  
2 had some concerns about institutional response and that  
3 they wanted to participate in healing, counseling and that  
4 kind of thing.

5 And so I don't know that -- well, I'm  
6 confident that even with these serious errors, if they are  
7 determined to be serious errors, that they would not have  
8 affected --- my granting these alleged victims, finding and  
9 standing in this matter. However, what we're dealing with  
10 now and I think folks may have thought "Well those are  
11 matters for standing and funding" has nothing to do with  
12 the Inquiry proper. And it clearly is not the case in a  
13 sense that if people swear affidavits, same things, they  
14 are subject to cross-examination.

15 As well, I am concerned that this Inquiry  
16 proceed and it will proceed. I'm ruling that C-10 will  
17 testify on Thursday, that questions will be asked and  
18 permitted to be asked about those affidavits and he will  
19 explain his position with respect to the contents of that  
20 affidavit.

21 I've given the concerns that we've raised  
22 with respect to the accuracies or non accuracies of those  
23 affidavits generally. I'm ordering the firm of Ledroit  
24 Beckett and their clients to review each and every  
25 affidavit and to report back to this Inquiry within the

1 next 30 days and we will set a date that's appropriate for  
2 a report. And I want them to re-canvass those affidavits  
3 and to ensure that any shortcomings are brought to my  
4 attention or to counsel's attention and that they're dealt  
5 with.

6 I also wish to indicate that, in my view,  
7 Ledroit Beckett will do so at no cost to the taxpayers, at  
8 no cost to their clients. Is that clear Mr. Lee?

9 **MR. LEE:** It is sir.

10 **THE COMMISSIONER:** Thank you. With respect  
11 to C-10, I'm not in a position to pass judgment on his  
12 affidavit. Because it's always important to hear the story  
13 before you make a decision.

14 With respect to any harm, if I can put it  
15 that way, that these falsities may have occurred -- caused,  
16 I will, and once I've made a determination with respect to  
17 certain matters, again, make it very public that what my  
18 findings are with respect to those matters. So that if  
19 anyone feels aggrieved, they will have an immediate remedy  
20 as far as I can give them and publicly indicate what the  
21 truth of the matter is with respect to those allegations;  
22 having said that I think that that's all that we can do  
23 now.

24 I'm intent on having this Inquiry proceed  
25 and hear witnesses and accordingly I see no reason why we

1 cannot hear from Mr. C-10 tomorrow. Right.

2 That having been said, unless there are any  
3 further comments, I will hear the second issue for today's  
4 sittings.

5 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:**

6 **MR. ENGELMANN:** Thank you Mr. Commissioner.  
7 I just want to comment some counsel, comments on  
8 confidentiality issues with respect to the next witness.  
9 And just to be perfectly clear, it is my understanding that  
10 although the witness will be referred to by a moniker, the  
11 evidence is public.

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

13 **MR. ENGELMANN:** So the web cast will be on  
14 this whole issue about the allegations and I know some  
15 counsel, and I think Mr. Cipriano was one, said "I want to  
16 make sure this is done publicly". It will be done  
17 publicly.

18 **THE COMMISSIONER:** Yes. Thank you very much  
19 for underlining that. I should have indicated that as  
20 well.

21 **MR. ENGELMANN:** Mr. Commissioner that leaves  
22 us with the issue of a letter that was received by  
23 Commission staff addressed to you, a letter dated March  
24 26<sup>th</sup>. A letter was received on March 26<sup>th</sup>, I am not sure if  
25 that was the date of the letter. No, the date of the

1 letter is March 22<sup>nd</sup> and it was received in our offices on  
2 the 26<sup>th</sup> of March.

3 Yesterday afternoon, we left this matter to  
4 the parties to mull over. They had only received notice at  
5 the mid-morning break yesterday when I provided a letter --  
6 I read that letter into the record.

7 Essentially there were two issues, whether  
8 the letter should be shown to you, and if so, how we should  
9 deal with the letter. And then a number of the counsel, in  
10 discussions that were held during breaks, indicated to  
11 Commission counsel they had some concerns that the content  
12 of the letter might have an impact on their participation  
13 in the narrative process or alternative process that we had  
14 all agreed to try as a substitute for the continued cross-  
15 examination of Mr. Silmsen.

16 As a result, matter was put over till this  
17 morning to be spoken to. I understand a number of counsel  
18 met to discuss this either last night or this morning and  
19 one or more of them have some views on how the letter could  
20 be addressed. I'll let them speak to that.

21 Having reflected upon this myself, I see  
22 there are several options. And I want to just outline some  
23 of those possible options to you and obviously counsel will  
24 have an opportunity to comment on this. And I am not  
25 trying to suggest that any counsel whose presence shouldn't

1 participate in this discussion. There are the five counsel  
2 that have not had the right to cross-examine. Others did,  
3 but some of them may have comments as well.

4 So if you're to read the letter as the  
5 Commissioner in a public inquiry, in my view, the letter  
6 should be an exhibit. And as I see it, there is the normal  
7 course where the letter becomes an exhibit. There can be  
8 some discussion about whether the letter is a public  
9 exhibit or a confidential exhibit, is clear for discussions  
10 and feedback. I've had from Mr. Silmser's lawyer that he  
11 is not seeking confidentiality measures on the letter.  
12 Other parties may have views on that but there is no  
13 request by Mr. Silmser through his counsel to have any form  
14 of confidentiality measure should the letter be made an  
15 exhibit. So the letter can be made an exhibit in the  
16 normal course either a "P" or "C".

17 A second option could be the letter could be  
18 marked for identification purposes. And then again, you  
19 could consider whether it should be a public or  
20 confidential exhibit. The letter was never then verified  
21 by its author at some later date here, it would never be a  
22 formal exhibit so there wouldn't be any weight attached to  
23 it in the course of any findings you might make.

24 A third option would be that you do not read  
25 the letter; that it's not marked as any form of exhibit

1       either in the normal course or for identification purposes  
2       only; and in that case, presumably counsel will make  
3       submissions to you, paraphrasing portions of the letter in  
4       order for you to make a decision on what to do with it.

5               There may well be other options sir. Those  
6       are three that I can think of off the top of my head. But  
7       I don't intend that to be an exhaustive list. Those were  
8       just some thoughts that I had reflected upon.

9               The other issue, and perhaps we can leave it  
10       until the discussion of the letter is over, is what role,  
11       if any, Mr. Silmsler's counsel continues to have.

12              So there's the use of the letter, what, if  
13       any, impact the letter has on our narrative process and  
14       then thirdly, the issue of Mr. Culic's ongoing involvement.

15              **THE COMMISSIONER:** Okay.

16              **MR. ENGELMANN:** And I appreciate if counsel  
17       would address, with your blessing, what to do with the  
18       letter and what, if any, impact it might have on our  
19       narrative process.

20              **THE COMMISSIONER:** Thank you.

21              **MR. ENGELMANN:** I don't know if we have any  
22       order. We had an order for ---

23              **THE COMMISSIONER:** I propose to go down just  
24       the list and see where people go.

25              **MR. ENGELMANN:** Okay.



1                   **THE COMMISSIONER:** Thank you.

2                   Mr. Wardle, do you have any comments?

3                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WARDLE:**

4                   **MR. WARDLE:** Mr. Commissioner I was privy to  
5 a number of discussions of counsel which took place last  
6 night and this morning, and as I understand it from those  
7 discussions, the difficulty with the letter is this: the  
8 letter contains some information about whether or not Mr.  
9 Silmsler intends to come back and participate in this  
10 Inquiry. Matters which are germane to what we do today.

11                   It also contains, I think it's fair to say,  
12 a great deal of opinion by Mr. Silmsler about various  
13 matters including events which have taken place at the  
14 Inquiry to date. There are some counsel in the room on  
15 behalf of their parties who are very uncomfortable with  
16 that information coming into the public record, the way it  
17 would if the letter was marked as a full exhibit.

18                   On the other hand, we did canvass last  
19 night, a number of us, whether some kind of summary or  
20 précis of the letter could be negotiated amongst counsel so  
21 that we wouldn't have to actually have the letter marked in  
22 any way before you today. Unfortunately those efforts came  
23 to not because as you can anticipate, with so many  
24 different counsel involved, many of them have different  
25 views about the import of the letter. So there was no

1 resolution reached on that issue.

2 So, in my submission, I prefer the course of  
3 the three options suggested by Mr. Engelmann. I think we  
4 should have the letter marked in some fashion so that we  
5 can frame our arguments around the document.

6 But at the same time, I share the concerns  
7 of other counsel that it is -- it would be premature and  
8 perhaps unwise to have it marked as a public exhibit at  
9 this point. So my recommendations would be that it simply  
10 be marked for identification.

11 **THE COMMISSIONER:** And what do I do with it?  
12 Do I read it?

13 **MR. WARDLE:** Then you would be able to read  
14 it sir, but it would not become part of the public record  
15 and depending on your decision on the subject matter of the  
16 letter and what happens today, it might never become part  
17 of the public record.

18 **THE COMMISSIONER:** Okay.

19 Mr. Lee?

20 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

21 **MR. LEE:** I was not privy to the discussions  
22 last night and learned this morning that there were some  
23 attempts made to come up with some consensus within the  
24 parties. I was one of the counsel who didn't agree to what  
25 was being proposed. I have concerns with any attempt to

1 paraphrase the letter or to otherwise summarize the letter;  
2 I think you need to read if we're going to talk about it  
3 and so I am in favour of having it marked as an exhibit.

4 **THE COMMISSIONER:** As an exhibit?

5 **MR. LEE:** As an exhibit.

6 **THE COMMISSIONER:** Okay.

7 **MR. LEE:** As Mr. Engelmann pointed out, Mr.  
8 Silmsler raised no objections to this letter being made  
9 public and I believe actually his intention was to have it  
10 being made public.

11 **THE COMMISSIONER:** But his intention is just  
12 one part of the whole ---

13 **MR. LEE:** It is.

14 **THE COMMISSIONER:** --- decision.

15 **MR. LEE:** My point is that the default is  
16 for exhibits to be public and unless you hear arguments  
17 that convince you otherwise, that it should be public.

18 **THE COMMISSIONER:** Thank you.

19 Mr. Bennett is not here. So Mr. Cipriano?

20 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CIPRIANO:**

21 **MR. CIPRIANO:** I don't have anything to add.  
22 I agree with what Mr. Wardle has said. I wasn't privy to  
23 the discussions but I do agree with the approach that was  
24 proposed.

25 **THE COMMISSIONER:** Thank you.

1 All right. Mr. Chisholm?

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:

3 MR. CHISHOLM: Mr. Commissioner, I have  
4 reviewed the letter and I saw the summary that, I believe,  
5 Mr. Rose had prepared and distributed this morning. My  
6 client was in agreement with respect to the summary. It  
7 appears that that is off the table now. With respect to  
8 the letter, ---

9 THE COMMISSIONER: No, just a minute. It's  
10 off the table, nothing's off the table. This is not Meech  
11 Lake or anything like that.

12 MR. CHISHOLM: It appears that there is no  
13 agreement with respect to the summary.

14 THE COMMISSIONER: All right.

15 MR. CHISHOLM: For the record, my client  
16 would be prepared to adopt that summary.

17 My view of the letter, Mr.  
18 Commissioner, is that it contains quite a bit of opinion on  
19 the part of Mr. Silmsler with respect to public  
20 institutions. The difficulty, it would appear, given what  
21 we know so far with respect to Mr. Silmsler's attendance  
22 that he would not be available to be cross-examined on this  
23 letter. And it would be my position that it not be made an  
24 exhibit given the fact that he is not available for cross-  
25 examination and would further exacerbate the situation the

1 difficulties that we have with respect to what a number of  
2 our public institutions are going to have to do now with  
3 respect to -- presumably what they had planned to do with  
4 respect to their narrative of the cross-examination.

5 Subject to your questions, sir, those would  
6 be my comments.

7 **THE COMMISSIONER:** Thank you very much.

8 **MR. CHISHOLM:** Thank you.

9 **THE COMMISSIONER:** Mr. Neuberger or Rose,  
10 whichever?

11 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:**

12 **MR. NEUBERGER:** Thank you, Mr. Commissioner.

13 **THE COMMISSIONER:** Thank you.

14 **MR. NEUBERGER:** Having been part of the  
15 discussions last night, I am in favour of providing you,  
16 Mr. Commissioner, with a summary and it's not so much, of  
17 course, the concern about your review of it is the  
18 dissemination of the content in public.

19 I believe the prudent approach would be, if  
20 the summary is not providing you with sufficient content to  
21 assist in this, I guess, issue that has arisen, then the  
22 prudent approach would be to mark it for identification, so  
23 that you can review it, but it does not become part of the  
24 public record. We can then revisit that issue afterward --

25 -

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

2                   **MR. NEUBERGER:** --- should there be some  
3                   necessity to do that. Again, I want to emphasize it is not  
4                   to shield something from the public. The public has as  
5                   much an interest in the ongoings of this Inquiry as any of  
6                   the counsel or parties, but it is because there is much  
7                   content which is opinion and in my respectful submission of  
8                   absolutely no moment in this ultimate process that we are  
9                   doing here.

10                                So, that is my suggestion.

11                                Thank you very much.

12                   **THE COMMISSIONER:** Thank you.

13                                Ms. Im?

14                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. IM:**

15                                **MS. IM:** I endorse the position that has  
16                   been taken by Mr. Wardle. I, myself, haven't seen the  
17                   summary. So should at some point that be revisited by the  
18                   other parties, I will be more than happy to review it and  
19                   provide my position on the summary at that time.

20                                Thank you.

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

22                                Thank you.

23                                Mr. Sherriff-Scott?

24                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:**

25                                **MR. SHERRIFF-SCOTT:** Thank you,

1 Commissioner.

2 I have to say there are two questions. Can  
3 you see it and should you enter it?

4 Can you see it? I would say, of course, you  
5 can. You have the discretion to determine whether a piece  
6 of evidence is admissible and to make that determination  
7 you have to see it, otherwise it's guessing in the dark.

8 Moreover, I think you have to see it because  
9 it potentially affects your process in a manner which could  
10 be serious in your view, and so it's imperative I think  
11 that you read it, and see it in order to inform the  
12 discussion, and for you to make a determination about its  
13 larger admissibility on other issues.

14 So I would adopt my friend Mr. Wardle's  
15 submission that we mark it for identification and then at  
16 the end of the discussion of the process implications that  
17 flow from that, you can make a determination on  
18 admissibility.

19 Thank you.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Callaghan?

22 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:**

23 **MR. CALLAGHAN:** A moment ago on C-10, we had  
24 an entire argument about letters that were never filed. We  
25 had discussion about letters that were sent, explanations

1 that were given by letter, and we never filed them.

2 In respect of this situation, obviously,  
3 there are others who are more concerned about the content  
4 issue. I don't see a difficulty with arguing it in the  
5 absence of the letter. The idea, as I understood it for  
6 the summary, was that the discussion that followed would be  
7 premised on an agreed accuracy as to what people thought  
8 was important for you to know so that you can make the  
9 decision.

10 It seems to me that to file the letter puts  
11 the cart before the proverbial horse unless you have had  
12 that discussion, and that the summary was a way to ensure  
13 that we were all speaking about the same relevant facts  
14 that were of concern. So, I don't see a problem with that.

15 I think the public ought to know that in the  
16 course of our work things like *voir dire*, things to have --  
17 these issues are dealt with ---

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

19 **MR. CALLAGHAN:** --- in litigation and we  
20 have situations where we have this and you as Mr.  
21 Commissioner do every day in your job here things that you  
22 later do not consider, and that's just the way the system  
23 is designed and it works well. So, I don't see a problem.

24 If, in fact, the letter is to be filed,  
25 obviously, it should be filed as an identification purpose



1 and I think until issues are resolved, it ought to be left  
2 in the -- as a P or a C document, or confidential document,  
3 so it's outside the public realm because you can't  
4 obviously make that determination at this stage.

5 Thank you.

6 **THE COMMISSIONER:** Mr. Kozloff?

7 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF:

8 **MR. KOZLOFF:** Good morning, sir.

9 **THE COMMISSIONER:** Good morning.

10 **MR. KOZLOFF:** Mr. Commissioner, we have now  
11 been mulling this issue over for the last 24 hours and we  
12 have examined it from almost a remarkable number of facets,  
13 and I'm not sure that we are any further ahead now than we  
14 were when we first found out about it yesterday.

15 The first thing I think I would like to say  
16 is that what is at stake here is the integrity of your  
17 process ---

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

19 **MR. KOZLOFF:** --- and as counsel for the  
20 Ontario Provincial Police, the integrity of your process is  
21 a matter of ongoing concern and responsibility of every  
22 counsel in this room and myself included. So what I have  
23 to say is intended to assist you in maintaining and  
24 promoting the integrity of your process.

25 It strikes me -- and you pointed it out

1           yourself yesterday in perhaps educating the public at the  
2           outset with respect to this issue ---

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

4                           **MR. KOZLOFF:** As a judge, as a commissioner,  
5           letters come addressed to you which you don't necessarily  
6           read.

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

8                           **MR. KOZLOFF:** Were you sitting on a trial in  
9           this room rather than on a public inquiry and a witness who  
10          had testified and then left the stand before completing his  
11          evidence, for whatever reason, chose to write you a letter  
12          in which he commented on a number of things and expressed a  
13          number of opinions, I would not expect you to make that  
14          letter an exhibit in the trial, nor would I expect you to  
15          read the letter necessarily.

16                          The problem here goes back to what happened  
17          in the course of Mr. Silmser's evidence. Mr. Silmser  
18          walked off the stand before you received any medical  
19          evidence. He walked off the stand, stormed out of the room  
20          and has never returned.

21                          One of the issues that remains to be  
22          determined is whether we are going to pursue the process  
23          which we were required to cobble together as a result of  
24          the extraordinary circumstance of a witness leaving the  
25          stand before his process of cross-examination was complete.

1                   And one of the problems that we are  
2                   faced with here is that the letter, without going into the  
3                   details, addresses Mr. Silmser's capacity to return here as  
4                   a witness, and for that reason it strikes me -- and I agree  
5                   with Mr. Sherriff-Scott -- for that reason alone, you have  
6                   to read the letter, because you may take the position as  
7                   the Commissioner of this Inquiry and as the ultimately  
8                   responsible individual for the integrity of this process,  
9                   that you may have to revisit the issue of Mr. Silmser's  
10                  return.

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

12                  **MR. KOZLOFF:** Regarding whether the letter  
13                  is made an exhibit or a public exhibit or otherwise, on the  
14                  one hand it would create, in my respectful submission, an  
15                  unacceptable precedent to allow an individual, whether it  
16                  be somebody in the unique situation of Mr. Silmser who has  
17                  testified and then left the stand before his evidence is  
18                  completed, or any member of the public ---

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

20                  **MR. KOZLOFF:** --- to write you a letter with  
21                  the expectation or potential that that letter becomes an  
22                  exhibit in this Inquiry. I don't believe that your rules  
23                  contemplated receiving evidence in that fashion.

24                  There are some very flexible means for this  
25                  Commission to receive and hear evidence. That, so far as I

1 am aware having reviewed the rules, is not one of them.  
2 So, that's a complicating factor here, sir.

3 As for the publication of the letter, my  
4 instincts tell me that Mr. Silmser may have kept a copy  
5 around and that it may find its way into the public domain  
6 in some fashion other than through this Commission.

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

8 **MR. KOZLOFF:** But the reality, sir, is that  
9 when it comes from the Commission, it is in perhaps some  
10 way or in some eyes cloaked with legitimacy, and I'm not  
11 sure that you, in controlling your process, want to afford  
12 any mark of legitimacy or approval or otherwise to a  
13 document which has come in through -- for want of a better  
14 way of putting it -- the backdoor.

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

16 **MR. KOZLOFF:** So I suppose just to  
17 summarize, I think you should read the letter and I think  
18 you need to think about what we do next before you make the  
19 decision that we are going to implement the process which  
20 we have spent -- at least I can tell you on my own behalf -  
21 - a great deal of time ---

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

23 **MR. KOZLOFF:** --- and effort in preparing  
24 for.

25 I don't know that I have been of any

1 assistance because ---

2 **THE COMMISSIONER:** Yes.

3 **MR. KOZLOFF:** --- I told you at the outset  
4 of my submissions, sir, I have had 24 hours to think about  
5 this and I am not sure I am any further ahead, but ---

6 Thank you.

7 **THE COMMISSIONER:** We'll muddle through.

8 **MR. KOZLOFF:** Thank you.

9 **THE COMMISSIONER:** Mr. Carroll, or Mr.  
10 Wallace?

11 Sorry.

12 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:

13 **MR. WALLACE:** Good morning, sir.

14 **THE COMMISSIONER:** Good morning.

15 **MR. WALLACE:** As far as reading the letter,  
16 I think it's not only desirable but absolutely necessary  
17 that you, in fact, read the letter.

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

19 **MR. WALLACE:** At this stage at least, I  
20 would be asking that it not be made an exhibit ---

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

22 **MR. WALLACE:** --- and perhaps -- and I offer  
23 this up at this stage simply for your consideration --  
24 after having read the letter, may consider treating the  
25 summary as the exhibit.

1 THE COMMISSIONER: M'hm.

2 MR. WALLACE: Thank you.

3 THE COMMISSIONER: Thank you.

4 Ms. Birrell?

5 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. BIRRELL:

6 MS. BIRRELL: Good morning, Mr.

7 Commissioner.

8 THE COMMISSIONER: Good morning.

9 MS. BIRRELL: I wasn't part of the  
10 discussions last evening but I was updated this morning,  
11 and I was provided a copy of the summary prepared by  
12 counsel, and I indicated this morning that I was in  
13 agreement to have that put before you.

14 THE COMMISSIONER: Okay.

15 MS. BIRRELL: If that summary is  
16 insufficient or if you require additional information to  
17 decide the second issue, then I would be in agreement with  
18 the approach endorsed by Mr. Wardle this morning.

19 THE COMMISSIONER: Thank you.

20 MS. BIRRELL: Thank you.

21 THE COMMISSIONER: All right, well, this  
22 part of this issue is simple for me to decide.  
23 I am going to read the letter and I am also going to ask  
24 for a copy of the summary so that I can consider different  
25 alternatives. I don't think it's appropriate for this

1 document to be marked as an exhibit at this time. I think  
2 it should be marked for identification purposes and, after  
3 reading it, I will hear further comments as to what and  
4 where we want to go with this matter.

5 I can tell you that -- and just to situate  
6 everyone who may be listening -- Mr. Silmsler testified for  
7 several days here and left in an emotional state and later,  
8 a medical report was obtained and that medical report  
9 indicated that he should not, for medical reasons, return  
10 and could not in the near future.

11 So one of the myths, I guess, I want to  
12 dispel at this time and before I go is that whether or not  
13 Mr. Silmsler returns is not in his hands right now.

14 The initial response or decision is mine and  
15 so -- I say that now -- he then forwarded a letter to me,  
16 addressed to me, which as I have indicated yesterday,  
17 process has been made. And I can tell you it's no secret  
18 that in courts we do the same thing in the sense that the  
19 mail with respect to these kinds of matters are looked at  
20 by my clerk, and when there is some issue we have -- and  
21 especially in a trial -- we have a process whereby counsel  
22 are advised and the letter is given to counsel for them to  
23 decide.

24 It is more often than one would think that I  
25 do receive letters in family matters where one of the

1 parents writes to me after they've testified and so this is  
2 not rewriting the books, so to speak. And in those  
3 letters, what I normally do is have counsel review them.  
4 Invariably I get to read them and invariably there are a  
5 lot of opinions in there.

6 And one has to know that in life maybe as a  
7 judge and as a parent, we sometimes disabuse our minds,  
8 which means that we set aside the opinions that children  
9 and that witnesses make and that we narrow the issue to  
10 what really must be decided. And so it is not something  
11 that only judges do. I think we all do that in our lives,  
12 and so I'm not a stranger to this type of situation.

13 So I will read the letter in the summary.  
14 We will come back let's say at noon and, of course, Mr.  
15 Engelmann is going to provide me with some other issues  
16 that we have to deal with.

17 Mr. Sherriff-Scott, yes?

18 **MR. SHERRIFF-SCOTT:** Sir, I don't wish to  
19 make submissions. I just wish to advise my friend of  
20 something.

21 **MR. ENGELMANN:** I am advised by my friend,  
22 Mr. Sherriff-Scott, that the letter is already in the  
23 public domain in one fashion or another. So Mr. Kozloff's  
24 comments were very appropriate on that point.

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



1                   **MR. ENGELMANN:** Just for our record, before  
2 you read the letter, sir, I just -- perhaps the letter  
3 could be made Exhibit A for identification purposes.

4                   **THE COMMISSIONER:** Right.

5                   **MR. ENGELMANN:** The summary which I received  
6 from Mr. Rose this morning, Exhibit B for identification  
7 purposes.

8                   **THE COMMISSIONER:** Okay.

9                   **MR. ENGELMANN:** And is it my understanding,  
10 sir, that you would want a temporary C ---

11                   **THE COMMISSIONER:** Yes.

12                   **MR. ENGELMANN:** --- on these documents until  
13 such time as you decide what you are going to do with them?

14                   **THE COMMISSIONER:** Certainly.

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

16                   **THE COMMISSIONER:** And my last passing  
17 comment is that, originally, when I've asked people who  
18 care about this Inquiry and who want to follow it, that  
19 final decisions are made at the end of the Inquiry, and  
20 that there will be a lot of documents floating around, and  
21 a lot of opinions everywhere. And the fact of the matter  
22 is that what really counts is what hear here, and what we  
23 read here, and the decisions that we make here.

24                   Accordingly, if people really care about  
25 this Inquiry, I think they'll hold off on passing any

1 judgment until everything is said and done.

2 So maybe 15 minutes.

3 All right.

4 Thank you.

5 **THE REGISTRAR:** Order; all rise.

6 À l'ordre; veuillez vous lever.

7 --- Upon recessing at 11:44 a.m./

8 L'audience est suspendue à 11h44

9 --- Upon resuming at 12:09 p.m./

10 L'audience est reprise à 12h09

11 **THE REGISTRAR:** This hearing is now resumed.

12 Please be seated. Veuillez vous asseoir.

13 **THE COMMISSIONER:** Thank you.

14 All right.

15 So I have read the letter dated March 22<sup>nd</sup>

16 2007, which purports to be signed by David Silmser and I

17 have read the summary of the letter of March 22<sup>nd</sup> prepared

18 by counsel.

19 It seems to me there are two questions now

20 that have arisen. The first one is from Mr. Engelmann's

21 comments. I take it there might be some submissions to

22 make as to any consequences arising out of this letter and

23 second of all, the final issue is whether it should be an

24 exhibit or whether it should be public or confidential.

25 Is there anything arising out of this that

1 people suggest would affect that we propose to do or do  
2 people have any comments?

3 Mr. Wardle.

4 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WARDLE:

5 MR. WARDLE: Mr. Commissioner, because I  
6 think I anticipate from discussions I've had with other  
7 counsel that you may have different views as to what should  
8 take place now, ---

9 THE COMMISSIONER: Right.

10 MR. WARDLE: I am going to just simply  
11 review the background and make a number of points about the  
12 letter.

13 THE COMMISSIONER: Yes.

14 MR. WARDLE: And let me start by just saying  
15 this. I wasn't present for all of Mr. Silmsers evidence,  
16 but you will recall that Mr. Silmsers gave his evidence in-  
17 chief; that Mr. Lee and I completed our cross-examinations;  
18 that there was an event that took place while that was  
19 ongoing; that Mr. Silmsers left at one point and came back.  
20 As I understand it, after I left, Mr. Sherriff-Scott was  
21 able to complete his cross-examination of Mr. Silmsers and  
22 then matters bogged down at that point.

23 THE COMMISSIONER: M'hm.

24 MR. WARDLE: And it put all of us in a very  
25 difficult position not only counsel who had not yet cross-

1 examined Mr. Silmser, but counsel like myself who have  
2 because in some ways we're in the position of having gotten  
3 an unfair advantage; our evidence was in the can, and we  
4 hadn't yet heard from the public institutions that were  
5 going to respond.

6 So there were a series of communications in  
7 early February involving many of the counsel in this room  
8 and a very creative proposal was derived as a result of  
9 this consultation process to solve this roadblock and allow  
10 the Commission to get on with its work. A number of people  
11 played an important role in that, including your own  
12 counsel.

13 That process, in my submission, was very  
14 creative and very consistent with the way in which you have  
15 been asking counsel for the parties to approach their  
16 mandate in this matter. I know that many of the counsel  
17 who were involved have since spent an enormous amount of  
18 time getting ready for the process that was going to start  
19 today. I know that because I've seen some of the material  
20 they've prepared as they've circulated it to the other  
21 parties.

22 We then have this letter, and I would just  
23 like to make the following points about the letter. First  
24 of all, the letter, it's unorthodox in a number of senses.  
25 One of the things that is troubling about it is that Mr.

1 Silmser has a lawyer. And his lawyer -- it's unclear  
2 whether his lawyer had any involvement in this letter, and  
3 his lawyer is not present today.

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

5 **MR. WARDLE:** Secondly, the letter comments  
6 on the process that has been set up, and it has some very  
7 specific negative comments about the process and some very  
8 personal comments. One could say, for example, that it  
9 seems to have become personal between Mr. Silmser and Mr.  
10 Kozloff. That's unfortunate.

11 Secondly, there are comments in the letter,  
12 which appear to comment on the process generally, and again  
13 it's quite unorthodox for a witness, in my experience, to  
14 make these kinds of submissions by letter.

15 Next, it is silent about Mr. Silmser's  
16 present medical condition. If you look at the first  
17 paragraph of the letter, you'll see there is a reference in  
18 the first sentence to his decision and subsequent medical  
19 approval not to appear at the Inquiry. But that's all  
20 there is. It doesn't say anything about Mr. Silmser's  
21 current medical condition.

22 And then the letter goes on to say in  
23 various ways and in various places that Mr. Silmser could  
24 return but he has made a decision not to return, and you'll  
25 see that particularly on page 3, about three-quarters of

1 the way down.

2 There are a number of comments throughout  
3 the letter, and I just draw your attention to one on the  
4 final page. There is a paragraph, and I'm just going to  
5 quote its one sentence:

6 "And so, Mr. Commissioner, I will not  
7 return to take the stand and subject  
8 myself to further abuse from a panel of  
9 lawyers whose sole purpose is to  
10 discredit me by any means possible in a  
11 misguided effort to protect the  
12 interests of either abusers or  
13 institutions that were aware of abuse  
14 but failed to act."

15 Now, in my submission, that's a very unfair  
16 comment not only about the lawyers, and this isn't about  
17 the lawyers -- the lawyers are people who are, you know,  
18 they can look after themselves -- but about the process  
19 because it's your process it's the Commission's process;  
20 and you were at some pains during Mr. Silmsler's evidence to  
21 assure him from time to time that the process was fair to  
22 him and that his interests were being protected.

23 Now, we have a larger concern with this  
24 letter, and I'll be quite blunt about it. It is unclear at  
25 this point, in my submission, whether Mr. Silmsler had some

1 assistance in writing this letter and who that assistance  
2 may have been from.

3 As everyone in this room is aware, there is  
4 an individual called Sylvia MacEachern who runs a website.  
5 Some of the language of this letter is very consistent with  
6 Ms. MacEachern's language. Ms. MacEachern has made it  
7 clear in the past that she has an agenda to subvert the  
8 work of this Commission, and it wouldn't surprise us or my  
9 clients in the slightest that Ms. MacEachern had some input  
10 or involvement into this letter.

11 So that brings me back to the alternatives,  
12 and what we should do, and let me suggest this based on my  
13 discussions with counsel over the last 24 hours.

14 There are really three alternatives; there  
15 may be more than three alternatives, but there are three  
16 main alternatives that have been discussed. The first is  
17 that, as Mr. Silmsler himself suggests, and I'm not sure  
18 whether this is serious or tongue-in-cheek, that his  
19 evidence be expunged, and in my submission that would be a  
20 great shame. It would be a great shame for a number of  
21 reasons; one, as everyone knows, Mr. Silmsler is a central  
22 figure before this Inquiry in many ways because he was the  
23 pebble, which sort of started the whole -- what became an  
24 avalanche at the end of the day. So he is a central figure  
25 and his evidence, for whatever it may be worth and whatever

1 weight you may give to it at the end of the day, his  
2 evidence and his involvement is important.

3 So that is not an alternative, in my  
4 submission, that the Commission should be seriously  
5 considering and, in some ways, it would, I suggest, play  
6 into Mr. Silmsler's hands because he is really sort of  
7 saying, you know, "I've been here; all these bad things  
8 have happened and now the best thing to do is to sort of  
9 sweep it all away and pretend it never happened."

10 The second alternative is that you take some  
11 steps, based on this letter and based on what has taken  
12 place over the last month, to ask Mr. Silmsler to re-attend  
13 to explain himself. To take the kind of steps that you  
14 might take in a criminal trial. He was brought here under  
15 summons. You have powers available to you. In my  
16 submission, that is not an appropriate way to proceed  
17 either. Mr. Silmsler has made it clear time and time again  
18 for various reasons that he is not going to participate.  
19 It would in a sense turn this into a bit of a circus to  
20 allow him a further platform to espouse his views.

21 In my submission, where we should end up is  
22 precisely where we were before this letter was written,  
23 that is let's get on with the process that had been  
24 planned. Mr. Silmsler's counsel, Mr. Culic, had an  
25 opportunity to participate in this event today. For



1 reasons which I'm not clear about, he is not here. We  
2 should simply get on, get the job finished and move on to  
3 other business of the Commission and allow the counsel who  
4 have been waiting their chance to get on with their  
5 presentations, to give them. In my submission, that's the  
6 most appropriate course for us to pursue.

7 Thank you very much, sir. Those are all of  
8 my submissions.

9 **THE COMMISSIONER:** Thank you very much Mr.  
10 Wardle.

11 Mr. Lee.

12 --- SUBMISSIONS BY/REPRESENTATIONS PAR MR. LEE

13 **MR. LEE:** I largely agree with what Mr.  
14 Wardle had to say. I agree that where we are now is that  
15 we should proceed with the presentations as originally  
16 scheduled.

17 I do have a bit of concern about his last  
18 comment about Mr. Culic and the fact that he had an  
19 opportunity to be here. I don't know that to be the case.  
20 It's entirely possible. I don't know. My understanding  
21 was that Mr. Culic was unavailable today and it's undecided  
22 at this point if he has any role to play in the  
23 presentations or if he doesn't and my understanding was  
24 that might be addressed at some later time. And  
25 essentially, Mr. Commissioner, I'm just not sure that we

1 have all the information we need -- or that you've been  
2 afforded the opportunity of hearing submissions on whether  
3 Mr. Culic has a role here or whether Mr. Silmsler has any  
4 further role here.

5 **THE COMMISSIONER:** We're not there yet.

6 **MR. LEE:** Excellent. Thank you.

7 **THE COMMISSIONER:** Mr. Cipriano, any  
8 comments?

9 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CIPRIANO:**

10 **MR. CIPRIANO:** Thank you, Mr. Commissioner.

11 I don't have much to say other than I agree  
12 with counsel who expressed a concern with the process and  
13 that Mr. Silmsler ought not to be allowed to come and go as  
14 he pleases and then seek protection from a process in which  
15 some parties have been put in a position to employ as a  
16 result of occurrences that he was responsible for.

17 Those are my submissions.

18 **THE COMMISSIONER:** Thank you.

19 Mr. Chisholm.

20 **MR. CHISHOLM:** Thank you, Mr. Commissioner.

21 The position of my client would be that the  
22 other parties prepared their alternative measures to  
23 proceed and they should be permitted to do so at this time.

24 Thank you.

25 **THE COMMISSIONER:** Thank you.

1 Mr. Neuberger.

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:

3 MR. NEUBERGER: Thank you, Mr. Commissioner.

4 There's not much I can add to Mr. Wardle's  
5 comments. I agree. If I can just for a moment talk about  
6 the letter. It's unfortunate. I think the content is  
7 quite unfortunate. In no way do I think it reflects the  
8 process which has been ongoing.

9 I also have a concern about the comments in  
10 the letter about "that I could return and that I won't  
11 return". The decision is yours.

12 THE COMMISSIONER: M'hm.

13 MR. NEUBERGER: And I don't want it to be  
14 viewed in any way as undermining your authority in that  
15 way, because that's important. You've mentioned it, and  
16 the fact that this letter is already on that website and I  
17 think it bears comment from you, Mr. Commissioner, that  
18 although you have a medical letter certainly the content of  
19 this letter does call into question the medical reason for  
20 him not returning. I think that undermines the medical  
21 letter. But more importantly it is a decision that you  
22 make as to when a witness completes their evidence or not,  
23 and I think it's important for you to restate that.

24 I think that given all that has happened  
25 with Mr. Silmsler the most prudent approach is to continue

1 with the alternative process which we have suggested, and  
2 at the outset if you should agree with that and we  
3 continue, then I'll have just a brief comment about it  
4 before I begin my presentation today, and I'm prepared to  
5 go.

6 If I may, just for one second, talk about  
7 Mr. Culic's role.

8 **THE COMMISSIONER:** Right.

9 **MR. NEUBERGER:** I would rather move that to  
10 the forefront than to the back end of the presentations and  
11 this is why: there's been, at least to some extent, a  
12 conscious decision by the witness not to attend. The  
13 counsel for the witness has a limited role in the process.

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

15 **MR. NEUBERGER:** It would be in my opinion  
16 unfortunate if he were able to continue in the process by  
17 way of either some form of re-examination through comments  
18 or submissions or presentation and somehow continue to  
19 represent the interest of his client when the witness has  
20 chosen to not attend.

21 **THE COMMISSIONER:** Well, okay, can I stop  
22 you there for a moment?

23 **MR. NEUBERGER:** Sure.

24 **THE COMMISSIONER:** This keeps coming up that  
25 he has chosen not to attend -- re-attend. He left. That's

1 true.

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

3 **THE COMMISSIONER:** He left in a huff and a  
4 puff. That's true too. However, we do have a letter from  
5 a medical person saying that he should not return and  
6 should not return in the foreseeable future.

7 **MR. NEUBERGER:** I agree and I'm prepared to  
8 debate that a bit with you simply because the letter itself  
9 I think speaks of his volition, and the medical letter  
10 itself is quite wanting. It really doesn't indicate a  
11 proper diagnosis. It doesn't indicate dosages. And  
12 frankly the line-up of the medication is, in my opinion,  
13 not something which would sufficiently prevent him from  
14 participating in these proceedings. It's not a report,  
15 it's barely a letter from a doctor.

16 I've seen medical reports 14 years in my  
17 career. I sit on the Ontario Review Board which deals with  
18 issues with respect to medical psychiatric issues and this  
19 letter is poor in that regard. And I think we have to be  
20 concerned about the well-being of all witnesses, as, Mr.  
21 Commissioner, you are.

22 And in that regard, purely on the medical  
23 letter itself we must go out of our way to accommodate the  
24 needs, the special needs of witnesses. I understand that.  
25 But when it's cobbled together with a letter that I think

1 challenges the process and challenges your authority in  
2 having a witness continue with their evidence, I think we  
3 have to take a harder look at that type of medical  
4 evidence, and in my respectful opinion that medical letter  
5 is quite poor.

6 **THE COMMISSIONER:** Well, okay, but ---

7 **MR. NEUBERGER:** That's where I differ. And  
8 when that flows into Mr. Culic, regardless, when he's no  
9 longer a participant by way of being a witness, Mr. Culic's  
10 role is at an end, in my respectful submission.

11 **THE COMMISSIONER:** Well, okay, I don't want  
12 to debate it with you, but how about if you looked at this  
13 letter from this way. We know that Mr. Silmsler is very  
14 articulate and able to respond in certain situations, and  
15 that, I think we've seen it, and that if we hit on  
16 something which might not be there for us, he does respond  
17 in a very explosive fashion.

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

19 **THE COMMISSIONER:** And so if you look at the  
20 letter, could we not look at it and say "Well, he's now in  
21 a good space and he's able to write this" whether or not he  
22 had assistance or not. But my concern is could we not read  
23 that as that's what he's doing? He's in a good space. But  
24 if we put him back there and put him under the pressure,  
25 then we'd be right back where we were and that he would

1 sustain some harm to himself.

2 And so I don't know that his comments that  
3 "I'm going to be -- I could go back but I'm not going back"  
4 can be really taken -- it could be taken as bravado.

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

6 **THE COMMISSIONER:** It could be taken as a  
7 person who's in a good space then but might not be when he  
8 comes back.

9 **MR. NEUBERGER:** If I could just make a  
10 comment. The letter that he wrote I don't think is  
11 evidence of him being in a good space because I think many  
12 of the comments in his letter are unfortunate and frankly  
13 do not bear any sort of resemblance to the process. So I  
14 think he's still, in that respect, in a bad space.

15 **THE COMMISSIONER:** Well, there you go then.

16 **MR. NEUBERGER:** But I don't think it's a  
17 space which prevents him from having the capacity to attend  
18 and answer questions. I think that's a choice that he is  
19 making and I think the letter ---

20 **THE COMMISSIONER:** Well ---

21 **MR. NEUBERGER:** I think the letter doesn't  
22 assist that much in alleviating him from that obligation.  
23 But I do believe and I do endorse the Commission's desire  
24 to accommodate the needs of witnesses, and when there is a  
25 balance that can further testimony, would harm the witness,

1 do we err on the side of caution, I am strongly in favour  
2 of that, but I don't want to be seen as allowing what, in  
3 my opinion, is not very compelling medical evidence to just  
4 simply alleviate the witness from attending and then  
5 allowing a counsel to attend and otherwise take the  
6 position of the witness. That's what I'm chiefly concerned  
7 about.

8 So I don't want to force him back.

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

10 **MR. NEUBERGER:** I don't want to harm him any  
11 further. But I don't want his counsel to be able to come  
12 here and undermine an alternative process for which we are  
13 undertaking, for which at this state we don't even know  
14 what weight we can attach to it, because at the end of the  
15 day many people have remarked that these are submissions.  
16 They're not submissions. We're just making a presentation  
17 that's in lieu of a cross-examination and six months, a  
18 year from now we're going to have an opportunity to address  
19 once we have all of the evidence, what weight we attach to  
20 various portions of evidence.

21 So all it is is really just something in  
22 replace of his testimony, and for him to come forward and  
23 get into -- Mr. Culic to come forward and somehow engage in  
24 this alternative process, which really is just -- it's not  
25 satisfactory. It's the best we can do in the



1           circumstances. In my opinion, I think it would be  
2           inappropriate. And that's the best I can say on the  
3           matter.

4                       **THE COMMISSIONER:** All right.

5                       But let's assume for a minute, and humour me  
6           for a minute.

7                       **MR. NEUBERGER:** I'd be more than delighted  
8           to humour you.

9                       **THE COMMISSIONER:** That Mr. -- that a  
10          witness testifies and is run over by a car and is in a coma  
11          and the likelihood of them testifying, coming back, and so  
12          we adopt this process. If it was neutral, and I know you  
13          have difficulty with that but maybe I don't have as much  
14          difficulty.

15                      **MR. NEUBERGER:** Okay.

16                      **THE COMMISSIONER:** Would it not be proper  
17          for the lawyer of record to have some limited standing to  
18          make some limited comments given the fact of this amended  
19          procedure? I'm not saying -- in the same way I guess Mr.  
20          Silmser in his letter says that erroneously, that you  
21          people in your presentation are going to put words in his  
22          mouth as to what he would have said to that, which is  
23          clearly ---

24                      **MR. NEUBERGER:** Well, I originally planned  
25          on sitting there but I guess I won't do that now.

1                   **THE COMMISSIONER:** Careful now.

2                   **MR. NEUBERGER:** I'm just kidding.

3                   **THE COMMISSIONER:** I know, but this is  
4 broadcast in humour I've been told is not -- we do that way  
5 ---

6                   **MR. NEUBERGER:** It's important to have it,  
7 but we have no intent of putting words in his mouth  
8 whatsoever.

9                   **THE COMMISSIONER:** Okay. But that's my  
10 point. And so that would take care or cut off Mr. Culic's  
11 comments with respect to that because we have no intention  
12 of doing that.

13                   **MR. NEUBERGER:** But that's the fallacy in  
14 his argument if he seeks to come here at all, because we  
15 simply cannot and should not put words in his mouth. The  
16 best we can do is go to secondary sources of information to  
17 support an assertion that we put forward to you. And Mr.  
18 Engelmann, who is Commission counsel, will be in a position  
19 to re-direct with respect to other documents or other  
20 contents of those documents with a view to the presentation  
21 to its completeness in that regard. But we are in no way  
22 supplanting Mr. Silmser's evidence and so Mr. Culic's role  
23 is nil because we're not doing that. And I want to be  
24 clear. I'm not joking about it. I'm very serious about  
25 it.

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

2                   **MR. NEUBERGER:** We're just simply not doing  
3 that. We're doing the best we can in difficult  
4 circumstances for which we're just going by secondary  
5 sources.

6                   **THE COMMISSIONER:** All right.

7                   But what I'm saying is you understand that,  
8 I certainly understand it, but if someone's in a coma some  
9 place would they not have a right to have their lawyer here  
10 and seek permission to make submissions? He may not have  
11 any submissions after he sees what we're going to do here,  
12 but would he not have the opportunity to rise and say "Look  
13 it, I want to address the Commission on these issues and  
14 seek leave to", you know, and at some point, you know, I  
15 might say "No, I don't need to hear from you on that." But  
16 to preclude him, that's a pretty drastic measure.

17                   **MR. NEUBERGER:** Well, maybe. And I  
18 understand your argument and I appreciate it. It's a  
19 compelling way to look at it. I prefer to deal  
20 contextually in the sense that I want to take one scenario  
21 at a time. Qualitatively I see a difference between Mr.  
22 Silmsers situation and God forbid an accident that befalls  
23 a witness who comes ---

24                   **THE COMMISSIONER:** Sure.

25                   **MR. NEUBERGER:** --- and the circumstances of

1 which the evidence unfolds.

2 **THE COMMISSIONER:** Right.

3 **MR. NEUBERGER:** I think he's injected a  
4 certain attitude and content into his evidence that takes  
5 us out of that scenario and I think that whatever may come  
6 out by way of evidence that needs to be slightly corrected  
7 or maybe appear a bit erroneous, we have that very well  
8 covered by Commission counsel. And I just think  
9 qualitatively we're in a different circumstance.

10 **THE COMMISSIONER:** Okay. Thank you.

11 **MR. NEUBERGER:** Thank you very much.

12 **THE COMMISSIONER:** Thank you, Mr. Neuberger.

13 Ms. Im.

14 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. IM :

15 **MS. IM:** Thank you.

16 So the Ministry has had an opportunity to  
17 cross examine David Silmser, as you're well aware, and in  
18 that we're content with that, and so the Ministry has no  
19 intention of participating in an alternative process.  
20 However, in so much as parties who haven't had the benefit  
21 of cross-examination endorse that process. We fully  
22 support that endorsement.

23 **THE COMMISSIONER:** Thank you.

24 Mr. Sherriff-Scott.

25 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

1                   **MR. SHERRIFF-SCOTT:** I agree with some of  
2 what Mr. Wardle said but not all of it. My instinct is  
3 let's just get on with it. We agreed on a process, to  
4 follow it without prejudice to the expungement issue and in  
5 order to forestall a motion on that question. So we've all  
6 -- sort of everybody's done that without prejudice. So I  
7 say let's go ahead. And we can wait until it's all in the  
8 can, as my friend described it, and take counsel and decide  
9 what to do at that point, all without prejudice, as we  
10 articulated at the outset.

11                   And on the subject of his counsel, if he  
12 wants to come let him come. Let's not undermine this  
13 process anymore, because you know what's going to happen if  
14 you don't, he's going to stand up and say "Worthless  
15 process because my lawyer wasn't allowed to be here."  
16 Let's keep the integrity of the process and make sure that  
17 there's not going to be any further criticism.

18                   **THE COMMISSIONER:** I agree to a certain  
19 point with you, Mr. Sherriff-Scott, in the sense that --  
20 but I will not be held ransom to anybody ---

21                   **MR. SHERRIFF-SCOTT:** No, no.

22                   **THE COMMISSIONER:** --- who wants to come in  
23 and ---

24                   **MR. SHERRIFF-SCOTT:** I think that in  
25 fairness, let Mr. Culic come if he wants to be here and

1 make a submission fine, and I'd just be concerned that if  
2 he were precluded then it would just raise other arguments  
3 that are unnecessary to deal with.

4 Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Callaghan?

7 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:

8 **MR. CALLAGHAN:** I think it's worth re-  
9 casting this in a slightly different light. The Supreme  
10 Court of Canada has said, on a number of occasions, that  
11 those who may be subject to criticism, notices of  
12 misconduct, are entitled to procedural fairness. We've  
13 discussed, and one of the bulwarks works of our system is  
14 cross-examination. I -- we're left in this unfortunate  
15 position, either for medical reasons or out of some other  
16 reason, that the witness is not here. I think that it has  
17 to be noted that the procedure that has been suggested is,  
18 and I think Mr. Manderville said, "I wasn't here last day",  
19 is an inadequate substitute for cross-examination. I don't  
20 think anyone's going to doubt that.

21 We have Mr. Silmsler in his letter saying,  
22 "Don't let people put words in his mouth." Well  
23 regrettably, he doesn't want to put them in his own mouth,  
24 or he can't. But that still leaves the whole host of those  
25 individuals, whose conduct is being examined into-- I think

1 that as Mr. Sherriff-Scott says, that this sort of tepid,  
2 half-way point was designed so that, at least you, Mr.  
3 Commissioner can get a flavour of some of the concerns.

4 I don't think we're ever going to get any  
5 true answer as to what Mr. Silmsler would, or would not have  
6 said. Which leaves his evidence, in my respectful  
7 submission, in limbo in large measure. Even honest people  
8 often change their answers on cross-examination when  
9 confronted with facts. And we've seen that in this  
10 inquiry. And that is not going to happen from the sounds  
11 of it.

12 The issue seems to me to be -- at this  
13 stage, whether the predicate upon which you -- endorse  
14 might be the wrong word, but sort of -- we cobbled together  
15 this alternate without prejudice process, is now in  
16 question. And that is, "Is he not here because he chooses  
17 not to be here, or is he not here truly for a medical  
18 reason?" I know you've just gone over that. I don't  
19 intend to engage you with Mr. Neuberger, but I can tell you  
20 there are those whom I speak to who wonder whether or not  
21 re-jigging the order of cross-examination, and putting the  
22 institutions at the back, and letting most everybody else  
23 go, whether that raises an issue.

24 But I think the question that you have to  
25 ask --

1                   **THE COMMISSIONER:**  Woah, woah, woah.  Just a  
2                   second now.  Are you saying that that's an issue of bad  
3                   faith or good faith by the inquiry, or by the parties?

4                   **MR. CALLAGHAN:**  I don't think the -- I think  
5                   -- no, no.  I think that what the decision at the time --  
6                   what was presented was a way to keep it going.  But all I'm  
7                   saying is that an objective observer, looking at the  
8                   matter, would say, "Isn't it interesting that we're now in  
9                   a position where the institutions who are most discussed,  
10                  wish to challenge the assertions."  We're not going to be  
11                  able to.  And this process is not going to permit us to do  
12                  it.  It'll only give us a flavour, as I will later say, as  
13                  to what might have been.

14                  I think, no -- there is the perspective --  
15                  there are others out there who are watching this, who are  
16                  individuals, whose conduct is being inquired into, who are  
17                  wondering from that perspective.  Not just from the  
18                  victim's perspective, from that perspective.  It is -- the  
19                  Supreme Court of Canada, when they talked about the process  
20                  were talking about those individuals.

21                  And I will win this position.  I think the  
22                  only decision, Mr. Commissioner, is whether or not the  
23                  letter, and the assertions in the letter, change your view  
24                  as saying, "Unfortunately, we're in this position, this  
25                  cobbled together process, for whatever it's worth, should



1 continue or not continue". I think that's a decision,  
2 frankly, for you, Mr. Commissioner, to make. I think  
3 that's the only decision that has to be made.

4 As to whether the letter should be filed, I  
5 do think that there is some merit in -- you're either in  
6 the process or you're not in the process. And having  
7 exited the process, I don't think it's free for them to  
8 then file letters, which frankly are evidentiary in nature,  
9 as exhibits in the process proper. I just don't think  
10 that's appropriate.

11 I think you've also heard from Mr. Wardle,  
12 some very -- some concerns as to who is behind some of  
13 these letters. At the break, others were able to get on  
14 that website. And lo and behold, the letter on the website  
15 is an unsigned letter. Pause for consideration.

16 E-mails sent from Commission are on that  
17 website, relative to this letter. How did they get there?  
18 We don't know. Is there -- are there people using an  
19 alternative process to conduct a parallel inquiry? That's  
20 fine. But the problem is, is where -- when letters like  
21 this are coming, who's controlling what process? Or who's  
22 trying to control what process. Ultimately you're going to  
23 control the process. Those points have to be brought to  
24 your attention, and ultimately we're confident that you're  
25 going to control the process. But without the information

1           you can't. The only decision at the moment, it seems to  
2           me, is whether the letter changes your original view that  
3           the alternative process, for what it's going to be worth at  
4           the end of the day, is a worthy thing to consider.

5                           Thank you

6                           **THE COMMISSIONER:** Okay.

7                           Mr. Kozloff?

8           **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF:**

9                           **MR. KOZLOFF:** One of the advantages of going  
10           tenth or eleventh is that you get to hear the wise heads in  
11           advance.

12                           I agree with virtually everything that Mr.  
13           Wardle said.

14                           I agree with virtually all of Mr.  
15           Neuberger's comments.

16                           I agree with what Mr. Callaghan had to add.  
17           In particular, I think the comment about the order of  
18           cross-examination, at the very least, completes what was  
19           otherwise a very excellent summary of the events.

20                           But it is rather ironic that this process  
21           began with what was presented to counsel, by counsel for  
22           Mr. Silmsen, as a bonafide effort to keep him in the  
23           witness stand doing his job as a witness. We were  
24           encouraged to change an order of examination, which had  
25           been followed in each and every case from the beginning of

1 the process, to accommodate Mr. Silmsler. His appreciation  
2 for that is reflected in the contents of the letter that he  
3 has addressed, apparently, to you, whether with assistance  
4 or not, and regarding whose assistance, frankly, I don't  
5 care.

6 I'll re-iterate that the only purpose that  
7 that letter should be used for, by this Commission, is for  
8 you to determine whether you wish to revisit your original  
9 decision about whether or not Mr. Silmsler is going to be  
10 required to return.

11 Mr. Sherriff-Scott's generosity, in  
12 indicating that Mr. Culic should be welcomed back to  
13 provide whatever insights he wishes, I'm afraid I can't  
14 bring myself to agree because, ultimately, it's the  
15 integrity of the process which counts, and the point has  
16 been made that, for whatever reason, whether medical or  
17 otherwise, Mr. Silmsler has absented himself from the  
18 process, with your approval.

19 You're now being asked by his counsel, who I  
20 might add, unlike, for instance, if it was a client of Mr.  
21 Lee, Mr. Silmsler's not a party. You're being asked by  
22 counsel for a witness who has a discreet role to play in  
23 the inquiry, for the opportunity to come and make  
24 submissions as if he were a party, or counsel to a party in  
25 the commission. In my submission, there has to be, at the

1 very least, it's a matter for your discretion, and in this  
2 particular case, in my submission, your discretion should  
3 be informed by all of the factors which have led up to this  
4 point where we are entering, or about to enter, depending  
5 on your decision, into an extraordinary process to  
6 compensate for what a number of public institutions have  
7 been deprived of.

8 I know we've addressed this back at the time  
9 when we were trying to come up with the process that we  
10 did. Aside from Mr. Callaghan's reference to the Supreme  
11 Court of Canada, and obviously he says that in the context  
12 of what you will do with Mr. Silmsler's evidence at the end  
13 of the day. I fully appreciate the role that you are in  
14 and what you said earlier today about not making any  
15 decisions about anything until all the cows have come back  
16 into the corral.

17 If we're going to enter into this process,  
18 Mr. Silmsler having interjected himself by way of this  
19 letter, at the very least, perhaps you should revisit the  
20 issue of whether or not Mr. Silmsler will ever be permitted  
21 to return as a witness. He seems -- I guess my opinions of  
22 what he's doing in the letter are probably not of any great  
23 assistance to you, so I'll keep my own counsel on that.

24 Thank you.

25 **THE COMMISSIONER:** I appreciate that. Thank

1           you.

2                           Mr. Wallace?

3           **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:**

4                           **MR. WALLACE:** Mr. Commissioner, it is our  
5           position that the inquiry should move forward in the  
6           fashion that the parties had proposed earlier.

7                           In my respectful submission, the letter  
8           itself, throws into question the basis for why we embarked  
9           upon this alternative proposal. However, I don't think  
10          that any inquiry, by yourself at this point in time, would,  
11          in my respectful submission, be a prudent use of time and  
12          resources and I would suspect that ultimately, at the end  
13          of the day, as you've postulated to other counsel up here,  
14          that we would -- may well be back where we are now.  
15          Therefore, I would endorse moving forward as we had  
16          proposed originally.

17                          Thank you.

18                          **THE COMMISSIONER:** Thank you.

19                          Ms. Birrell?

20           **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. BIRRELL:**

21                          **MS. BIRRELL:** Thank you Mr. Commissioner.

22                          I just want to respond to one aspect of the  
23          letter, and it's been stated already by other counsel, but  
24          the letter indicates that Mr. Silmsler could return and in  
25          it it suggests some reasons which other than medical for

1 him not returning to present himself for cross-examination.

2 The point I want to raise as a concern for  
3 all parties here is the integrity of that process and the  
4 expectation that every witness who presents themselves for  
5 Evidence in-chief will be subject to have that evidence  
6 tested on cross-examination ---

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

8 **MS. BIRRELL:** --- and Mr. Silmser suggests  
9 that his evidence on its own should just stand without that  
10 cross-examination or simply be expunged.

11 We're not going to be taking a position or  
12 recommending that you -- or submitting that you ought to  
13 take one approach, we would just ask that in your ruling  
14 that that expectation be highlighted and that concern be  
15 addressed, that if a witness is going to be presenting  
16 themselves for Examination in-chief, it would be the  
17 expectation that they be cross-examined. That evidence  
18 would be thoroughly tested through the best way of  
19 measuring that, through cross-examination.

20 **THE COMMISSIONER:** I agree with you ---

21 **MS. BIRRELL:** M'hm.

22 **THE COMMISSIONER:** --- however, I hasten to  
23 add that subsequent to Mr. Silmser's departure we dealt  
24 with matters of how to cross-examine. We have heard other  
25 witnesses who have stayed and submitted themselves to

1 cross-examination and I think your point is well taken.  
2 It's a question of education in the sense that the more  
3 witnesses understand that cross-examination is not an  
4 assault on them personally, what we're doing here is  
5 looking at the institutional response. I think we have  
6 gone a long way down that road and I will underline that as  
7 you suggested, but I think most witnesses -- no, all  
8 witnesses now are being prepared and dealt with in a  
9 slightly different way to accommodate that concern.

10 **MS. BIRRELL:** Thank you.

11 **THE COMMISSIONER:** Thank you very much.

12 Mr. Engelmann?

13 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:**

14 **MR. ENGELMANN:** When you started, sir, you  
15 talked about the fact that we deal with things in two  
16 stages and those two stages have been collapsed as a result  
17 of some of the submissions of counsel.

18 Both the impact, if any, of this letter on  
19 the alternative process and the issue of Mr. Culic's right  
20 to re-attend, I know Mr. Lee didn't comment on that and had  
21 reserved the rights -- I just make that point -- I didn't  
22 read an e-mail or the pertinent part of an e-mail that Mr.  
23 Culic sent at 9:53 this morning. I was going to wait for  
24 the second phase. I think I had better read it now.

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

1                   **MR. ENGELMANN:** It says:  
2                    "As per my 'right' to appear, that  
3                    depends upon whether the process  
4                    designed around David's testimony is  
5                    truly designed to emulate what should  
6                    have occurred or not. If David had  
7                    completed his testimony, I would have  
8                    had final reply on his behalf. Since a  
9                    full cross-examination process is being  
10                   engaged in, or at least attempted, it  
11                   is only fair that I be allowed a final  
12                   reply at the end. It has always been  
13                   my intention to make a final reply if  
14                   appropriate to do so but I saw no use..."

15                -- and I'm just going to read it --

16                   "...in grinding out billable hours before  
17                   the Inquiry, waiting while the process  
18                   was resolved. That was particularly so  
19                   given that expungement was a real  
20                   option, in which case there would be no  
21                   reply. It is my strong preference that  
22                   my status before the Inquiry be  
23                   determined before I travel to Cornwall.  
24                   I have booked out April 17<sup>th</sup> for the  
25                   purpose of this attendance (as



1 suggested) so that is plenty of time to  
2 deal with the issue."

3 I should point out that I mentioned to Mr.  
4 Culic that I wasn't sure whether he would be permitted an  
5 opportunity to participate. I think he has perhaps used  
6 the wrong choice of words when he talks about a "reply".

7 In the past, whether they have been  
8 witnesses for parties or witnesses for the individual in  
9 question, they have the right -- or had the right to ask  
10 some questions at the end of the cross-examination process  
11 and before Commission counsel re-examines.

12 Mr. Culic was surely aware of that and is  
13 repeating -- I think that's what he means by "his final  
14 reply". And obviously this is a different process because  
15 it's not a true cross-examination. I indicated to Mr.  
16 Culic that if he wished to attend to speak to this matter,  
17 he could. He has chosen to speak through his e-mail for  
18 now. I have indicated to him that we are if -- if the  
19 narrative process continues, that he would have to make  
20 himself available, you know, when we were hearing this  
21 matter and that the Inquiry wouldn't wait for his  
22 availability. We have many, many people involved here and  
23 this is a process that needs to move.

24 So I just wanted to read that in. I don't  
25 know if any counsel wish to comment on that. These are

1 some very brief comments, sir.

2 **THE COMMISSIONER:** Thank you.

3 Do you wish to say anything, Mr. Lee, with  
4 respect to Mr. Culic's continued involvement?

5 --- **REPLY BY/RÉPLIQUE PAR MR. LEE:**

6 **MR. LEE:** I, frankly, was going to make a  
7 comment similar to what Mr. Culic apparently has made to  
8 Mr. Engelmann in the sense that if it's -- this is going to  
9 approximate cross-examination, he would have the right to -  
10 - whether it be reply or submissions at the end in the  
11 normal course, he should have that right here if he chooses  
12 to make himself available and if Mr. Silmser instructs him  
13 to do so.

14 So Mr. Culic has spoken for himself and I'm  
15 content to leave it at that.

16 **THE COMMISSIONER:** Thank you.

17 All right, so now that all is said and done,  
18 we will take the afternoon lunch break. We will come back  
19 at 2:30.

20 What I would suggest is that -- I don't know  
21 if I will -- I want to start the process. I guess we can  
22 give you that decision now about the process that we have  
23 instigated. I don't know if I will be prepared to give all  
24 of the reasons for coming to that decision but I think  
25 there are some comments that need to be made and I might

1 have to reflect upon that and write that up in such a way.  
2 So I don't know that I will be able to do that at 2:30, but  
3 barring any further submissions, that is what I want to get  
4 done is start on the alternative procedure.

5 All right? Thank you.

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

8 The hearing will resume at 2:30 p.m.

9 --- Upon recessing at 12:56 p.m. /

10 L'audience est suspendue à 12h56

11 --- Upon resuming at 2:35 p.m. /

12 L'audience est reprise à 14h35

13 **THE REGISTRAR:** This hearing is now  
14 resumed. Please be seated; veuillez vous assoier.

15 **THE COMMISSIONER:** Mr. Neuberger?

16 --- **NARRATIVE BY/NARRATIF PAR MR. NEUBERGER:**

17 **MR. NEUBERGER:** Good afternoon, Mr.  
18 Commissioner and thank you.

19 I was able last week to send a narrative to  
20 Mr. Engelmann and have it circulated to everybody so that  
21 they would be on the same footing as I am.

22 **THE COMMISSIONER:** Right.

23 **MR. NEUBERGER:** So hopefully that will be of  
24 assistance to people.

25 As I indicated when I was making submissions

1 earlier, the following is simply a narrative which I am  
2 providing, highlighting certain assertions had Mr. Silmser  
3 been present that I would have put to him. I have omitted  
4 various areas that I would have covered in cross-  
5 examination simply because I cannot relate it to a specific  
6 document and I didn't think it would be fair for me to  
7 postulate right now, although as you can appreciate that is  
8 a part I would have had in the dynamic of the cross.

9 **THE COMMISSIONER:** Yes.

10 **MR. NEUBERGER:** Now, the premise of my  
11 cross-examination would have sought to establish that in  
12 Mr. Silmser's case, in dealing with the abuse he alleges  
13 that Mr. Seguin committed against him ---

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

15 **MR. NEUBERGER:** --- that he had made a  
16 decision to seek a financial settlement rather than pursue  
17 an investigation with the Ministry or the Police or the  
18 Children's Aid Society, and the reason I mention the Police  
19 and the Children's Aid Society will become sort of evident  
20 as I go through the narrative, but the main thrust was that  
21 by the time he came to the Ministry in December of 1993,  
22 the decision in his mind was that primarily he was seeking  
23 a financial settlement and not to pursue an investigation  
24 of the allegations.

25 So where I start is the January 28<sup>th</sup> 1993

1 interview that Mr. Silmsers had with Constable Sebalj,  
2 Sergeant Lefebvre and Constable Malloy, and the document  
3 that I am looking at is document number 711540. Those are  
4 the notes of Constable Malloy and the page number -- the  
5 Bates page is 7043878 -- so maybe I will just wait ---

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

7 **MR. NEUBERGER:** --- till the document comes  
8 up. Thank you, and so ---

9 **THE COMMISSIONER:** Wait a minute. Is this  
10 an exhibit yet? It is, Madam Clerk?

11 **THE REGISTRAR:** It is.

12 **THE COMMISSIONER:** Three-fifty (350)? All  
13 right, thank you.

14 **MR. NEUBERGER:** And the Bates page is  
15 7043878, Madame Clerk. Thank you.

16 And so what I would just like to set out is  
17 by way of reminder, the chronology is that on January 28<sup>th</sup>  
18 Mr. Silmsers met and had a verbal discussion with these  
19 three officers.

20 Starting at 10:57, which you can see at the  
21 left-hand margin, during that paragraph and subsequent  
22 paragraphs, Mr. Silmsers begins his discussion about the  
23 allegations against Ken Seguin.

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

25 **MR. NEUBERGER:** The last page, 7043882,

1 establishes the completion time of 12:25 p.m.

2 And so for a better part of an hour-and-a-  
3 half, Mr. Silmsler is engaged in discussing his allegations  
4 against Mr. Seguin. At the conclusion, as highlighted on  
5 the last page, Mr. Silmsler -- it's agreed that Mr. Silmsler  
6 would prepare a written statement to allow him so that he  
7 can provide this in writing at a subsequent time, and that  
8 is noted down at 12:26 hours in the notes.

9 Between this meeting and the time that Mr. Silmsler produces  
10 a statement, reduced to writing, which I think we can all  
11 agree on is February 16<sup>th</sup> 1993, and I will take you to that  
12 document in a moment. But between that intervening time  
13 period Mr. Silmsler contacts Ken Seguin directly in February  
14 of 1993 in relative close proximity to February 10<sup>th</sup>, 1993  
15 and the documents I am relying on in that respect is  
16 Exhibit 295, that being the notes of Constable Sebalj.

17 **THE COMMISSIONER:** All right. What exhibit  
18 number is that, Exhibit 29 ---

19 **MR. NEUBERGER:** Two nine five (295).

20 **THE COMMISSIONER:** Sorry, yes.

21 **MR. NEUBERGER:** And the Bates page is  
22 7063735. This highlights what has already been cross-  
23 examined on and that Mr. Silmsler contacts the person he  
24 alleges was the abuser directly himself; has a conversation  
25 ---

1                   **THE COMMISSIONER:** I am sorry, where do you  
2 see that now?

3                   **MR. NEUBERGER:** February 10<sup>th</sup> ---

4                   **THE COMMISSIONER:** Yes.

5                   **MR. NEUBERGER:** Nineteen ninety three (1993)  
6 from victims advises he called Seguin, he's running scared,  
7 advised he's laying charge on MacDonald; stated his getting  
8 very mad.

9                   The point of what I'm establishing is  
10 situating in time that Mr. Silmsler himself, subsequent to  
11 meeting with the police on January 28<sup>th</sup> sometime prior to  
12 February 10<sup>th</sup>, either the day before or in close proximity,  
13 he contacts Mr. Seguin directly himself.

14                   I would have asserted in the cross that  
15 something obviously was said during that meeting or sorry,  
16 that telephone conversation to cause Mr. Seguin, sorry, to  
17 cause Mr. Silmsler to comment that Mr. Seguin was running  
18 scared.

19                   This was an area which was covered in cross  
20 I believe by Mr. Wardle and others and there was no content  
21 offered by Mr. Silmsler so I have nothing in that regard to  
22 rely on. I simply would have been asserting that something  
23 more had to have been said to reflect the remark that was  
24 made in the notes or recorded in the notes of February 10<sup>th</sup>  
25 by Constable Sebalj.

1                   For a back up document which is also from  
2                   Constable Sebalj, is her own statement which is Document  
3                   725203.

4                   **THE COMMISSIONER:** Is this an exhibit?

5                   **MR. NEUBERGER:** I don't think so. This is  
6                   Constable Sebalj's statement and I could be corrected.  
7                   Yes, it's not an exhibit yet.

8                   **THE COMMISSIONER:** So it's going to be now?

9                   **MR. NEUBERGER:** Yes, it's going to be now,  
10                  with your permission, of course Mr. Commissioner.

11                  **THE COMMISSIONER:** Yes.

12                  **MR. NEUBERGER:** This to assist ---

13                  **THE COMMISSIONER:** So, Exhibit 371 is the --  
14                  I am sorry, is the report from Heidi Sebalj, oh, okay, it's  
15                  her interview report ---

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

17                  **THE COMMISSIONER:** --- dated July 20<sup>th</sup>, is  
18                  that July? 1994.

19                  --- **EXHIBIT NO./PIÈCE No. P-371:**

20                                 Interview Report of Heidi Sebalj dated  
21                                 July 20<sup>th</sup>, 1994.

22                  **MR. NEUBERGER:** Correct. So that's Exhibit  
23                  371, thank you very much Mr. Commissioner.

24                                 So this document is a statement prepared by  
25                                 Heidi Sebalj, it's an interview. And in that, at page 4 of



1 the document -- you'll see Madame Clerk, in the top right-  
2 hand corner the page numbers -- page 4, it's the middle  
3 paragraph if you can just drop down slightly, the paragraph  
4 that starts

5 "On the 10<sup>th</sup> of February 1993, DS  
6 contacted me; advised that he had  
7 called Ken Seguin and told him that he  
8 was only laying charges on Father  
9 MacDonald. DS described Seguin as  
10 'running scared'."

11 Below that on February 16, 1993:

12 "Silmser attended headquarters and  
13 provided me with his written  
14 statement."

15 I can just pause there for a moment. So in  
16 keeping with my theory, what I can at least discern from  
17 both the relatively contemporaneous notes of Constable  
18 Sebalj as well as her subsequent statement provided to the  
19 Ontario Provincial Police, she indicates that there was a  
20 conversation she had with Mr. Silmser on February 10<sup>th</sup> where  
21 she describes what Mr. Silmser indicated was his  
22 conversation with Mr. Seguin. And again, it's my assertion  
23 that something was said to cause him to remark that Mr.  
24 Seguin was running scared.

25 And what we've established from this

1 document as well as -- maybe I don't need to go back to  
2 Exhibit 295 -- just for reference for everybody, it's Bates  
3 page 7063735, that's the notes that Constable Sebalj where  
4 it indicates that on February 16<sup>th</sup>, Mr. Silmsers provided his  
5 written statement.

6 So we know that this is the date that he  
7 provides his own written statement about the allegations.  
8 That statement would have been a subject of some  
9 questioning by me just to put into context the difference  
10 between the January 28 statement and his written statement.

11 So if we can go to that document, if you  
12 indulge me, it's Exhibit 262. This document which is  
13 already an exhibit is the handwritten statement prepared by  
14 Mr. Silmsers and on page 8 of that document -- one more  
15 page, perfect, thank you, if you can just scroll down a  
16 little bit so you get midway through the page -- the  
17 paragraph, the line starting

18 "I was caught and Detective... something  
19 had charged me; was placed on probation  
20 at 14, just the beginning of 15 with  
21 Ken Seguin. Later Seguin repeatedly  
22 sexually assaulted me also as I ---

23 **THE COMMISSIONER:** Learned.

24 **MR. NEUBERGER:** --- learned he was  
25 MacDonald's beer friend."

1 Thank you for the help sir -- or "best  
2 friend". Sorry.

3 You know in spite of 14 years of reading  
4 police officers' notes, I'm not still any better at it.

5 This is the end of the statement. There is  
6 no other detail of the allegations against Mr. Seguin. And  
7 my questioning would have focused on the difference between  
8 the January 28<sup>th</sup> verbal meeting with the officers versus his  
9 written statement, why the truncated version? In keeping  
10 with my theory that, at that stage, Mr. Seguin was no  
11 longer in Mr. Silmsers' mind as somebody he wanted to  
12 pursue an investigation against, but simply wanted to  
13 obtain money from.

14 If we go back to the statement of Constable  
15 Sebalj which is now 371. Page 4 please Madame Clerk. It's  
16 the paragraph where it starts at the bottom third of the  
17 page "On February 16, 1993, Silmsers attended headquarters  
18 ...", I've referred to that previously.

19 **THE COMMISSIONER:** Well, it says the 10<sup>th</sup>,  
20 but -- oh no, right, on February 16 ---

21 **MR. NEUBERGER:** Yes.

22 **THE COMMISSIONER:** Following pair, yes?

23 **MR. NEUBERGER:** Right. The statement -- I'm  
24 reading from Constable Sebalj's statement -- the statement  
25 describes the sexual assaults involving Father MacDonald.

1 The statement also contains a brief mention of Ken Seguin's  
2 allegation or of Ken Seguin alleging sexual assaults. And  
3 she quotes from that statement.

4 So I am just providing you with a secondary  
5 source of Constable Sebalj's recollection wherein the  
6 statement provided by Mr. Silmser is a rather brief mention  
7 of the allegations against Mr. Seguin.

8 If I can then ask you to jump ahead to  
9 Document 725203, page 6.

10 **THE COMMISSIONER:** What -- I'm sorry, I go  
11 run by exhibits, so ---

12 **MR. NEUBERGER:** Three seventy-one (371), the  
13 same one ---

14 **THE COMMISSIONER:** Okay. Sorry.

15 **MR. NEUBERGER:** --- page 6. Sorry, I am  
16 just stating it for the record, maybe I should just say  
17 Exhibit 371. It's the -- one, two, I guess it's the third  
18 paragraph, where it starts "On March 10<sup>th</sup>".

19 **THE COMMISSIONER:** Yes.

20 **MR. NEUBERGER:** Just above there. I see  
21 where you're creating the box, if you can just go up one  
22 please? On March 10<sup>th</sup>, yes, thank you.

23 "On March 10<sup>th</sup>, 1993 Sergeant Lefebvre  
24 attended with Constable Sebalj Mr.  
25 Silmser's residence ..."

1                   And you can see from the notes  
2                   " ... for the purpose of clarifying his  
3                   written statement. During the meeting,  
4                   I questioned DS's intentions regarding  
5                   Seguin and DS confirmed that he could  
6                   not deal with both Father MacDonald and  
7                   Ken Seguin at once. DS suggested that  
8                   he wanted to deal with Father MacDonald  
9                   first."

10                  She then goes on to indicate  
11                  "I didn't have any other -- any more  
12                  contact with him until August 24<sup>th</sup>,  
13                  1993."

14                  If I can just stop there for a moment. The  
15                  chronology as I understand that has come through Mr.  
16                  Silmsers evidence thus far is that at least by March 10<sup>th</sup>,  
17                  there is contemporaneous notes of the officers indicating  
18                  Mr. Silmsers desire to pursue criminally, Father MacDonald  
19                  and not at that time Mr. Seguin.

20                  Just prior to that meeting -- and if I could  
21                  maybe get you to back up please to page 5, Madame Clerk of  
22                  the same exhibit -- and it's the entry that starts the  
23                  second full paragraph "On February 18<sup>th</sup>, 1993". Just down a  
24                  little bit, right there "On February", thank you.

25                  "On February 18<sup>th</sup>, 1993, DS contacted me

1 and states that he had retained the  
2 services of a lawyer. He advised that  
3 he was not taking a settlement, however  
4 would pursue the civil matter after the  
5 criminal investigation was completed.  
6 DS then stated and I quote 'I want to  
7 take them to the cleaners, going for  
8 the full amount, strong and hard'."

9 So if I can just put this in context for a  
10 moment. I am not suggesting that he had necessarily  
11 retained counsel then because there are many remarks Mr.  
12 Silmsler may have made. And whether he had retained counsel  
13 or not, what I would be relying on that and keeping with  
14 the March 10<sup>th</sup> entry by Constable Sebalj is that there is at  
15 least evidence to support an inference that Mr. Silmsler had  
16 decided to pursue civilly both individuals but at least by  
17 the 10<sup>th</sup> to pursue certainly Mr. Seguin for financial  
18 settlement and not criminal allegations.

19 And if financial settlement civilly was  
20 something which was prominent in his mind, at least in  
21 February and March of 1993. Between January 28<sup>th</sup>, 1993 and  
22 December 15<sup>th</sup>, 1993, the time period that Mr. Seguin was  
23 alive and still employed as a probation officer, Mr.  
24 Silmsler did not contact the Ministry and by that I mean  
25 obviously my client, the Ministry of Corrections, if I can

1 truncate it that way, with a view to making a formal  
2 complaint.

3 And during that time period from the notes,  
4 it appears that Mr. Silmsler did not pursue -- it would have  
5 been my assertion -- a criminal charge against Mr. Seguin.  
6 In September of 1993, Mr. Silmsler has contact with the  
7 Diocese and on September 29<sup>th</sup>, he, we know, settles with the  
8 Diocese. And if we could go to Madam Clerk please, again  
9 Exhibit 295, Bates page 7063839.

10 **MR. NEUBERGER:** If I can just give myself a  
11 second to catch up please.

12 **THE REGISTRAR:** Can you repeat that number  
13 please?

14 **MR. NEUBERGER:** Seven-zero-six-three-eight-  
15 three-nine (7063839).

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

17 **THE COMMISSIONER:** Do we have it?

18 **MR. NEUBERGER:** Yes, that looks right.

19 And I think I'm looking at the time 9:32 or  
20 9:39. If you could just go down to the second sort of  
21 bullet area.

22 This is the notes of Constable Sebalj about  
23 her discussion with Mr. Silmsler about his settlement and  
24 that he was concerned about how court would go and what his  
25 options were, and he chose the sure thing.

1                   He stated that he was not prepared to talk  
2                   to anybody about this and essentially we know from the  
3                   other evidence that's come before that he settled with the  
4                   Diocese and eventually signs a letter or a document to  
5                   Constable Sebalj requesting that the case does not go  
6                   forward. But he seems to indicate at least in the notes of  
7                   Constable Sebalj here that his concern was how the case  
8                   would unfold in the court and therefore took the sure  
9                   thing.

10                   So I'd ask you to move forward in time and  
11                   just for reference, we don't have to necessarily go to it,  
12                   but ---

13                   **THE COMMISSIONER:** Can I stop you just for a  
14                   second?

15                   **MR. NEUBERGER:** Sure.

16                   **THE COMMISSIONER:** He had been advised that  
17                   criminal charges would not be proceeding.

18                   **MR. NEUBERGER:** He did. Mr. Silmsen ---

19                   **THE COMMISSIONER:** He had been advised by  
20                   that.

21                   **MR. NEUBERGER:** Yes.

22                   **THE COMMISSIONER:** Okay.

23                   **MR. NEUBERGER:** But ---

24                   **THE COMMISSIONER:** I'm sorry?

25                   **MR. CALLAGHAN:** That's a matter of dispute



1 as to whether he was advised.

2 **THE COMMISSIONER:** Well, okay. All right.  
3 His testimony ---

4 **MR. NEUBERGER:** His testimony indicates ---

5 **THE COMMISSIONER:** His testimony was that he  
6 had been advised that no charges would be laid. Is that  
7 correct?

8 **MR. NEUBERGER:** I believe that's his  
9 testimony.

10 **THE COMMISSIONER:** Right, okay.

11 **MR. NEUBERGER:** I think it's to come out  
12 through other ---

13 **THE COMMISSIONER:** Sure.

14 **MR. NEUBERGER:** --- submissions that there  
15 is some debate on that.

16 **THE COMMISSIONER:** So far though that's what  
17 his testimony was. Okay.

18 **MR. NEUBERGER:** Now, if I can -- and just as  
19 additional reference -- Exhibit 371, which is the ---

20 **THE COMMISSIONER:** Yes.

21 **MR. NEUBERGER:** --- statement of Constable  
22 Sebalj, page 7. Thank you. It's the paragraph that starts  
23 halfway through on September 29, 1993. That's the  
24 paragraph where she is re-iterating what she has:

25 "D.S. did meet with me and confirmed

1                   that [I quote] I wish this matter  
2                   against Charles MacDonald be closed.  
3                   Silmsers indicated to me that his lawyer  
4                   should be contacted if the need for  
5                   further information should arise. As a  
6                   result of the complaint by D.S. to the  
7                   Cornwall Police Service and naming you  
8                   for criminal charges..."

9                   This goes on, but I'm not going to get into that right now,  
10                  but this just reflects the same content of the notes that  
11                  Constable Sebalj has about September 29th. So without me  
12                  dealing with necessarily something contradicting what Mr.  
13                  Silmsers's evidence was about his advice on the MacDonald  
14                  matter, at least for my purposes, there is evidence that he  
15                  had concern about the criminal matter in the court and took  
16                  a settlement between now September 29th and November 4th,  
17                  if I have that date correct. That is a period of time  
18                  where again there's nothing in addition coming forth  
19                  regarding Mr. Seguin and if I can ask you to please jump  
20                  ahead please to Exhibit 296, this is an Occurrence Report.

21                                I'll just wait until it is called up. This  
22                                is a Supplementary Report or an Occurrence Report as I  
23                                refer to it, which is routinely put into the computer  
24                                record of a case. This is completed by Constable Sebalj.  
25                                At the bottom of the document, it indicates "Incident

1 Project Silmser". This document -- if I can just look at  
2 it in entirety please -- so I'll start at the top:

3 "On the above-noted date and time,  
4 Constable Sebalj received a telephone  
5 call from David Silmser, the victim in  
6 the incident. Silmser was quite  
7 guarded and advising that he had heard  
8 that his file was being audited.  
9 Silmser questioned the need for this  
10 audit and questioned why people had  
11 access to the investigator's files.  
12 Further, Silmser advised that CAS  
13 [Children's Aid Society] had contacted  
14 him. Silmser questioned how CAS would  
15 have come to learn of his name and  
16 voiced great discontent at being  
17 called. Silmser once again re-iterated  
18 to Constable Sebalj that he did not  
19 want to talk to anyone about this,  
20 confirming that he had dealt with it  
21 and now wanted to [quote] 'bury the  
22 issue'. Silmser suggested if other  
23 victims came forward that he would  
24 gladly assist as a witness. However,  
25 he did not want to be any part of

1 agencies' fishing trip. Silmsen  
2 further advised that his lawyer had  
3 contacted him on behalf of the police  
4 to inquire as to his intentions with  
5 Ken Seguin. At this, Constable Sebalj  
6 asked Silmsen if he wished to pursue  
7 that matter and, as before, Silmsen  
8 declined. Silmsen made himself very  
9 clear he no longer wanted to talk about  
10 all this."

11 As of November 4th, in my submission then, I  
12 would have sought to establish through cross-examination  
13 that Mr. Silmsen continues to be of the mind that he did  
14 not want to pursue an investigation into the allegations  
15 that he had against Mr. Seguin. The timeliness of this in  
16 relation to my theory is also of some moment that we know  
17 from -- and if I can now ask Madam Clerk Exhibit 270 please  
18 -- we know that he was contacted by Children's Aid and on  
19 November 2nd of 1993, Mr. Silmsen met with Mr. Bell and Mr.  
20 DeBellis from the Children's Aid Society and had an  
21 interview with them. From that document, from pages 2 and  
22 3 of the document, we know that they had approached him to  
23 understand past events to help other persons that may have  
24 been abused and to protect others that were still being  
25 abused.

1                   By page 43 -- Madam Clerk if I could get you  
2                   to turn page 43 up for me -- we know Mr. Silmsler indicates  
3                   to the Children's Aid Society that he needs a few days to  
4                   think about things. And if we back up on page 44, they're  
5                   talking about -- sorry, page 42 -- and they talk about for  
6                   many pages the events and the recollection. And I would  
7                   have cross-examined Mr. Silmsler about the fact that he goes  
8                   into the allegations in a very cursory way and throughout  
9                   the reading of the transcript, I think it is fair to say  
10                  that he talks about his lack of faith in various  
11                  institutions and that's why he doesn't feel comfortable  
12                  talking about it.

13                  Page 43 indicates he needs a few days to  
14                  think about it. In other words to have more dealings with  
15                  CAS.

16                  Of interest to me then would be his decision  
17                  after that meeting, and his decision was -- and again I  
18                  would have asserted that this was a decision made much,  
19                  much earlier in 1993 -- but his decision was then to sue  
20                  Ken Seguin and get money from him rather than pursue an  
21                  investigation.

22                  Exhibit 271, which I am going to ask Madam  
23                  Clerk to turn up for us please, is a handwritten statement  
24                  of David Silmsler dated November 26th 1993. This is a  
25                  statement obtained the day after Mr. Seguin commits

1 suicide. Page 4 -- and I'll try and focus it -- really,  
2 it's in the body of the second paragraph, he talks about --  
3 if I can do it this way:

4 "About three weeks ago, Gregory Bell phoned me and said he  
5 was doing an investigation on Father Charles MacDonald and  
6 Ken Seguin, and he wanted to see me. I told him everything  
7 was settled and I didn't really want to talk to him. He  
8 kept calling me back and told me with their policy I would  
9 be protected and that I would be protecting children. I  
10 finally agreed to go in. I told him my story. I left out  
11 some detail about the sex. I started thinking again about  
12 what had happened to me. I had put..." ---

13 **THE COMMISSIONER:** "One man".

14 **MR. NEUBERGER:** --- "...one man in his place  
15 and that's when I decided to go after Seguin for what he  
16 had done to me."

17 And I am going to refer to it later, but for  
18 the purpose of cohesion, maybe if I could just continue to  
19 read:

20 "I phoned Malcolm MacDonald and asked him if he was  
21 representing Ken Seguin. He said, 'No, not at this time.'  
22 I phoned Ken Seguin around a week or so ago at work..."

23 So this is November 26<sup>th</sup>. So sometime around  
24 November 18<sup>th</sup> or 19<sup>th</sup>; somewhere around there.

25 "... I told him that I wanted a

1 settlement from him also for what he  
2 had done to me. He told me to go talk  
3 to Malcolm MacDonald, his lawyer. I  
4 called Malcolm. He asked me if I had a  
5 lawyer. I said, 'No'. He said he  
6 would not be involved in the case if I  
7 had a lawyer. Then he asked me how  
8 much I wanted. I didn't tell him until  
9 the next day I wanted \$100,000.

10 **THE COMMISSIONER:** Madam Clerk, can you  
11 bring it, scroll it down please?

12 **MR. NEUBERGER:** Sorry, I'm reading from my  
13 highlighted version.

14 **THE COMMISSIONER:** No, that's fine.

15 **MR. NEUBERGER:**  
16 "Malcolm had said that this was a lot of money. I said  
17 that if he didn't have the money, I was going to sue the  
18 Ministry of Probation and Parole, and that was it for the  
19 conversation."

20 If I can just pause for a moment.

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

22 **MR. NEUBERGER:** So in keeping with my  
23 theory, my assertions that although my argument would have  
24 been and will be at a later date that a decision was made  
25 by Mr. Silmsler to pursue a financial settlement, we know by

1 his own handwriting or his own statement of November 26<sup>th</sup>,  
2 1993, that after he had the meeting with the Children's Aid  
3 Society, he wanted to sue Mr. Seguin for money, and he took  
4 steps to contact Mr. Seguin directly. Again, the person,  
5 who he alleged, abused him.

6 There is no mention, in the November 26<sup>th</sup>  
7 statement, of wanting an apology from Mr. Seguin, as Mr.  
8 Silmsler had asserted in his *viva voce* evidence before the  
9 Commission.

10 On November 23<sup>rd</sup>, 1993, and again I'm still  
11 referring to this document. Next page, page five.

12 I just want to read it for a second to --  
13 I'll just start reading from the top:

14 "Malcolm said he would call me back on  
15 Wednesday the 24<sup>th</sup> or Friday the 26<sup>th</sup>,  
16 with an answer from Ken Seguin.

17 Malcolm said he had a doctor's  
18 appointment on a Thursday. I didn't  
19 hear anything Wednesday, so I phoned  
20 Ken Seguin at his home between seven  
21 and nine p.m.. I asked him if he was  
22 going to make a settlement by Friday,  
23 or not. Ken said I don't think I can  
24 come up with that type of money. He  
25 said Malcolm would call me first thing



1 Thursday morning. I said you have  
2 until Friday to get a settlement, or I  
3 will be getting a lawyer and suing.  
4 There was no response for three or four  
5 seconds, and I said goodbye."

6 I believe, from other sources, but the exact  
7 date is -- I think it's November 23<sup>rd</sup>, 1993, maybe November  
8 24<sup>th</sup>, that we know from this statement that Mr. Silmsler  
9 contacts Mr. Seguin again and inquires about settlements,  
10 which in my position, can only mean money. Nothing other  
11 than money considering they're talking about that type of  
12 money.

13 We know that from an incident report,  
14 document, Madame Clerk, 714011 -- and I'm sorry if I'm  
15 going a bit slow, I just want to flesh it out as I go  
16 along.

17 **THE COMMISSIONER:** No, I think you're doing  
18 fine.

19 Thank you. So that's exhibit 372.

20 --- **EXHIBIT NO./PIÈCE NO P-372**

21 Supplementary Report of Sgt. Dupuis  
22 Dated November 24, 1993

23 **MR. NEUBERGER:** Thank you very much.

24 **THE COMMISSIONER:** Which is a supplementary  
25 report -- right, let's see -- 24<sup>th</sup> of November, 2100 hours.

1 Thank you.

2 **MR. NEUBERGER:** Thank you very much.

3 This supplementary report is filed by  
4 Officer Dupuis -- Sergeant Dupuis. The document reads:

5 "At 2100 hours, on November 24<sup>th</sup>, 1993,  
6 Sergeant Dupuis received a phone call  
7 from a male person identifying himself  
8 as David Silmsler. He indicated that he  
9 was close to settling a civil suit  
10 within the next 48 hours involving a  
11 sexual abuse case. He requested that a  
12 report be submitted indicating that,  
13 should anything happen to him, that Ken  
14 Seguin or Charlie MacDonald were to be  
15 considered suspects. Sergeant Dupuis  
16 asked the caller if he had been  
17 threatened or intimidated in any way,  
18 to which he replied: "No". The caller  
19 did not sound to be paranoid. He also  
20 stated: "Maybe I'm overreaching, but  
21 there's a lot of money at stake and a  
22 lot of people's reputations". He  
23 stated: "If they don't pay, right or at  
24 the next 48 hours he would be going to  
25 the press with his story."

1 The following page:

2 "He indicated that there were many  
3 people involved in this matter."

4 I'm just going to stop at that point for my  
5 purposes.

6 Again, it would have been an assertion in my  
7 cross-examination that his state of mind at the time --  
8 first of all, I would have asked him if he was the caller.  
9 Of course. I'm not in a position to say that he is, but in  
10 relying on the document, it has information which is  
11 strikingly similar to the notes which I've reviewed  
12 indicating that at least two days before the Friday the  
13 26<sup>th</sup>, when he was supposed to be settling, in his mind, he  
14 certainly thought there was a lot of money at stake, and  
15 that's what he was contemplating.

16 Through the course of documents, which I  
17 have referred to, my assertion was, and remains, that Mr.  
18 Silmsler chose to pursue allegations in the method of  
19 directly contacting Mr. Seguin and then negotiating with  
20 his lawyer for financial settlement, and not through a  
21 criminal investigation.

22 Most notably, not contacting my client's  
23 ministry during that nine and a half or 10 month time  
24 period. We do know, Mr. Commissioner, that on December 15<sup>th</sup>  
25 1993, Mr. Silmsler contacted the Ministry, and again I'll

1 refer to probation and parole. This being some, I guess  
2 three weeks after Mr. Seguin's death. I am referring --  
3 the document that I primarily refer to is a statement of  
4 Bill Roy. Document, Madame Clerk, 715286.

5 This is not an exhibit, I believe.

6 **THE COMMISSIONER:** It's exhibit 373. It's  
7 an interview report of William H. Roy. Date of the  
8 interview March 1<sup>st</sup>, 1994.

9 --- **EXHIBIT NO. / PIÈCE NO P-373**

10 Interview Report of William Roy dated  
11 March 1<sup>st</sup>, 1994

12 **MR. NEUBERGER:** Thank you, Mr. Commissioner.  
13 This is a four page document.

14 It wants to hide. It doesn't want to come  
15 up. There we go.

16 This is a four page document. It's an  
17 interview with Bill Roy. Mr. Roy was an employee of the  
18 Ministry. He was a regional manager for six offices,  
19 including Cornwall. This interview, as you've indicated  
20 Mr. Commissioner, is March 1<sup>st</sup>, 1994.

21 Now I'm going to be referring to this  
22 document for the most part for my following submissions.  
23 But we know from the chronology on page one of this  
24 document that Mr. Silmsler makes a phone call on December  
25 15<sup>th</sup>. He leaves a message. I'm not quite sure if he calls

1 back on the 16<sup>th</sup>, or Mr. Roy calls back on the 16<sup>th</sup>, but it's  
2 stated on a note that the person was very upset. He said  
3 that:

4 "The Ministry was supposed to get back  
5 to him regarding his complaint."

6 He said that:

7 "He hasn't been taken seriously, and  
8 that he was going to the Citizen."

9 He also said that:

10 "You'd have a half a million dollar  
11 lawsuit on your desk tomorrow."

12 Then below that it indicates the December  
13 15<sup>th</sup>, 11 p.m. telephone call received by Louise MacGillvray  
14 about the suicide.

15 The contents of the next couple of pages  
16 outline Mr. Bill Roy's recounting, at that time, of his  
17 conversation with Mr. Silmsler. It's at this point that  
18 there is a direct communication to the Ministry about the  
19 allegations, at least in relation to Mr. Silmsler, as  
20 perpetrated by Ken Seguin.

21 I would have sought to establish that's the  
22 first notice that we can pinpoint in time to my client.

23 Reading from the second page. It indicates:

24 "Age 35, former probationer in  
25 Cornwall. I had a fairly lengthy

1 conversation with Silmser. Told him of  
2 the I.I.U."

3 The Independent Investigation Unit, that what  
4 it stands for.

5 "And asked if he had ever complained.  
6 He said "Yes" to Police in Cornwall in  
7 December of 1992"

8 I assume that's what he recalls --

9 "But the case was going nowhere. Also  
10 complained about a priest, also going  
11 nowhere, so he decided to go the civil  
12 route. He said he had been able to  
13 settle for 30,000 dollars."

14 Now if I can just pause for a second, I'm  
15 going to read through this. Out of fairness to Mr.  
16 Silmser, I would have -- in order to comply with my  
17 obligations, certainly if we're going to be hearing from  
18 Mr. Roy and I want to assert certain inferences arising  
19 from this, would put this version of the conversation to  
20 Mr. Silmser.

21 As I was indicating:

22 "He settled for 30,000 dollars from the  
23 priest. This was done through lawyers.  
24 He wanted a large sum from Ken Seguin,  
25 also through lawyers, but Seguin had

1 killed himself. (He seemed genuinely  
2 angry). He spoke with Seguin on  
3 Wednesday and Seguin said he wasn't  
4 sure the deal would go through. He  
5 could not come up with the money.  
6 Seguin died Thursday. On Friday,  
7 Silmsler called Seguin's lawyer, Malcolm  
8 MacDonald for the answer to his  
9 demands. MacDonald said, "Things have  
10 changed. Ken is dead", and hung on  
11 Silmsler. Silmsler said he thought about  
12 what to do for a couple of weeks, then  
13 decided to call the Ministry to demand  
14 help for others like him who were  
15 abused by this man (Seguin). I said I  
16 would call back later that day. I  
17 would notify I.I.U. and that they might  
18 look into his complaint. I telephoned  
19 him at 5 and said, "I have made the  
20 calls. Not everyone was available, but  
21 I was taking the call seriously". He  
22 said there was no hurry as long as  
23 something got done. At 3:45 the next  
24 day, December 16<sup>th</sup>, Silmsler called P.  
25 and P.. Secretary took the calls, they

1                   were covering during the office X-mas  
2                   lunch,        meaning Christmas."  
3                   "He was very upset according to L.K.  
4                   and that the Ministry was to get back  
5                   to him, his complaint that day. He  
6                   said he was going to the Citizen and  
7                   threatened a half a million dollar  
8                   lawsuit. On December 17<sup>th</sup> I spoke with  
9                   Lenna Bradburn --"

10                   This might not have -- that particular piece  
11                   of evidence might not, at that point have been in Mr.  
12                   Silmsers's mind, but continuing with the sentence:

13                   "I called Silmsers at 5 approximately,  
14                   and had a very short conversation.  
15                   Silmsers said that he was not an asshole  
16                   sitting by the phone, and again  
17                   threatened to call the Citizen. I left  
18                   a record of these calls on Linda's  
19                   voice mail. Also that he really did  
20                   not want to hear from me again , since  
21                   he expected an investigator to call.  
22                   Ministry people contact on December 15<sup>th</sup>  
23                   and 16<sup>th</sup> include: --"

24                   And he lists out the people.

25                   So, he contacted, in my theory, the ministry



1 and to be fair to him, I would certainly include where he  
2 says to get help for others, but my assertion would have  
3 been essentially two-fold.

4 One, his primary purpose was to try and  
5 collect, when he couldn't collect from Mr. Seguin because  
6 he had died.

7 And two, that, subsequent to this  
8 conversation, he didn't take any steps, by way of providing  
9 a written complaint to either the I.I.U or other division  
10 of the Ministry. In fact, there was no further follow-up  
11 from him with the Ministry.

12 I would have also indicated that during  
13 these conversations with Mr. Roy, he did not provide an  
14 address where we -- where the Ministry could have written  
15 him back.

16 I would have also conceded to Mr. Silmsler,  
17 out of fairness, that in fact, he did not get a call from  
18 an investigator, but that in 2001 he sued the Ministry, and  
19 that action was eventually settled.

20 I'm getting very close to the end.

21 **THE COMMISSIONER:** Okay. Because --

22 **MR. NEUBERGER:** I won't be much longer.

23 **THE COMMISSIONER:** All right.

24 **MR. NEUBERGER:** I just want to address a  
25 couple issues of credibility.

1                   What I would have tried to cast is the tenor  
2 of the conversation with Mr. Roy. The way I view the  
3 evidence of Mr. Silmsler would have been that essentially  
4 Mr. Roy was not overly inviting with this conversation. So  
5 I would have sought to rebut that by -- not, not that Mr.  
6 Roy was not defensive or unwilling to take action, but in  
7 fact took his complaint seriously and spoke with him. So I  
8 would have sought to lay a foundation to prefer the  
9 evidence of Mr. Roy over that of Mr. Silmsler based upon the  
10 content of that conversation.

11                   Further, I would have attempted to assert  
12 that Mr. Silmsler had certainly left the impression with Mr.  
13 Roy that he had contacted an appropriate authority with  
14 view to a complaint, an investigation.

15                   **THE COMMISSIONER:** Meaning --

16                   **MR. NEUBERGER:** And would have left -- I'm  
17 sorry?

18                   **THE COMMISSIONER:** Meaning the Cornwall  
19 Police?

20                   **MR. NEUBERGER:** Correct, and had indicated  
21 to Mr. Roy that that investigation was going nowhere, and  
22 that's why he chose to go "the civil route". And so, I  
23 would have sought to take Mr. Silmsler's view and Mr. Roy's  
24 and try and undermine Mr. Silmsler's view to establish that  
25 Mr. Roy felt that an investigation had been ongoing

1 regarding Mr. Seguin.

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

3 **MR. NEUBERGER:** That for whatever reason he  
4 chose to go the civil route, and that with having provided  
5 Mr. Roy with the information about that the impression  
6 certainly was there that Mr. Roy would be under the belief  
7 that he was seeking a financial settlement to the  
8 particular issue.

9 I want to just address briefly when it comes  
10 to that issue of credibility -- Exhibit 267 please, Madam  
11 Clerk.

12 Maybe three minutes more, Mr. Commissioner.

13 **THE COMMISSIONER:** Yes, that's fine.

14 **MR. NEUBERGER:** Thank you.

15 This is an interview with the Ontario  
16 Provincial Police February 22<sup>nd</sup>, 1994. I'm going to ask  
17 please if you could turn up page 45. And on this page you  
18 can see almost at the top where Mr. Silmsler talks about  
19 going civilly, talks about the conversation with Malcolm  
20 MacDonald, shocked about the death. And the question from  
21 Smith is:

22 "Was your intention with Seguin, were  
23 you going to go back to the police and  
24 file a complaint with them?" Silmsler:  
25 "Inaudible."

1 Smith:  
2 "I'm just asking. I'm just asking the  
3 question."  
4 Silmsers:  
5 "No, the police weren't doing nothing  
6 in the first place. I was handling it  
7 all by myself the whole time you know."  
8 "Okay".  
9 Silmsers:  
10 "I didn't have a lawyer. I didn't have  
11 nothing. I was handling it. I was  
12 trying to put a stop to these men."  
13 Smith:  
14 "Okay. So what you tell us here is  
15 that if you..." ---  
16 **THE COMMISSIONER:** Can you slow down, Madam  
17 Clerk. Thank you.  
18 Sorry.  
19 **MR. NEUBERGER:** "Okay. So what you tell  
20 us here is that if they want to give  
21 you a settlement that's fine, if not  
22 you are going to proceed civilly?"  
23 Answer:  
24 "Yes."  
25 Smith:

1 "Is that correct?"  
2 Silmser:  
3 "And my main goal here was to put a  
4 stop to their actions. I'm sure they  
5 were still doing it."  
6 "Okay."  
7 "And I even told the Ministry of  
8 Probation and Parole after Seguin  
9 killed himself and said 'You better go  
10 through his files and check to see how  
11 many kids they've hurt'."

12 And he goes on to talk about the Ministry.

13 I would have asserted to -- I would have  
14 questioned Mr. Silmser on this because Bill Roy's notes  
15 don't indicate a quote to go through the files. And I  
16 think I would have tried to cast a little bit that Mr.  
17 Silmser -- and if I can do it this way, and again, I don't  
18 want to seem insensitive, but he at times tries to couch  
19 his actions in more altruistic reasons than what simply  
20 maybe just he was seeking money. And there are  
21 inconsistencies between what he told Mr. Roy and what he  
22 tells the police later on, and it's clear that it has  
23 always been in his mind to have a settlement in the matter  
24 and any criminal investigation was secondary. But more  
25 importantly I don't think it is or would have been an

1       assertion in my cross that the police weren't in the  
2       situation where they were doing nothing. That wasn't --  
3       that was the way he was casting it. And when you compare  
4       that, just briefly in closing, to two transcripts ---

5                   **THE COMMISSIONER:** Can I stop you for a  
6       second?

7                   **MR. NEUBERGER:** Sure.

8                   **THE COMMISSIONER:** First of all, could it  
9       not be said that the police -- with respect to Seguin ---

10                  **MR. NEUBERGER:** Yes.

11                  **THE COMMISSIONER:** --- the police really  
12       hadn't done anything, not because -- well, we'll see about  
13       whether they should have been doing something even though  
14       Mr. Silmsler was saying no ---

15                  **MR. NEUBERGER:** Right.

16                  **THE COMMISSIONER:** --- but as far as we see  
17       so far Silmsler has always said "Do not proceed with respect  
18       to Seguin."

19                  **MR. NEUBERGER:** I understand.

20                  **THE COMMISSIONER:** So ---

21                  **MR. NEUBERGER:** We're off ---

22                  **THE COMMISSIONER:** Pardon me?

23                  **MR. NEUBERGER:** We're ---

24                  **THE COMMISSIONER:** Then we'll see what the  
25       police have to say about that later on.

1                   But the other thing is you say "an  
2                   inconsistency". I don't know that we can say that there's  
3                   an inconsistency from the fact that Silmsler says -- and if  
4                   that's what you're talking about -- that "I told Probation  
5                   to go and check to see how many kids were hurt." I don't  
6                   know that that's an inconsistency simply because Mr. Roy  
7                   doesn't have it in his notes. I mean, that's going to come  
8                   through his testimony if he testifies or whatever.

9                   **MR. NEUBERGER:** Right. I would have tried  
10                  to assert that with him in cross.

11                  **THE COMMISSIONER:** Right.

12                  **MR. NEUBERGER:** He would have given me his  
13                  answer and then I'd try and establish it through Mr. Roy.

14                  **THE COMMISSIONER:** Right.

15                  **MR. NEUBERGER:** I think the other thing that  
16                  I wanted to attack was ---

17                  **THE COMMISSIONER:** I'm sorry, the other  
18                  thing is because Mr. Silmsler's not here, and we'll deal  
19                  with that, but who says that -- you know, he might have  
20                  said "No, I didn't talk to Mr. Roy about that I talked to  
21                  somebody else."

22                  **MR. NEUBERGER:** You're right. There could  
23                  be a variation on it. Absolutely true.

24                  **THE COMMISSIONER:** Okay.

25                  **MR. NEUBERGER:** That's true.

1 I think the other thing that I would look at  
2 is where he says "I was trying to put a stop to these men."  
3 You know, a small point but there was no communication with  
4 their client very clearly that it would have established  
5 through Mr. Silmser for that 10 month period when Mr.  
6 Seguin was alive.

7 **THE COMMISSIONER:** Right.

8 **MR. NEUBERGER:** And I query that that -- I  
9 would have queried that with him whether that really was  
10 his intention.

11 **THE COMMISSIONER:** All right.

12 **MR. NEUBERGER:** And if I can just take you  
13 for a moment to two transcripts, and that's the last two  
14 documents I'm going to refer to. The first one is document  
15 number 123072. I sure hope I have that right.

16 **THE COMMISSIONER:** Thank you.

17 So this is an examination for discovery  
18 document dated July 23<sup>rd</sup> and 24<sup>th</sup>, 2003, Plaintiff's Mr.  
19 Silmser, David and Pam Silmser, and Her Majesty the Queen  
20 and the Ministry of Correctional Services in the State of  
21 Pennsylvania.

22 Okay. What page?

23 **MR. NEUBERGER:** Correct. Page number 184.  
24 And I don't believe this is an exhibit.

25 **THE COMMISSIONER:** It is now. It's ---



1                   **MR. NEUBERGER:** It's not but it is now.

2                   **THE COMMISSIONER:** Exhibit 374.

3                   **---EXHIBIT NO./PIÈCE NO P-374:**

4                   Examination for discovery of David Silmser  
5                   dated July 24, 2003

6                   **MR. NEUBERGER:** Thank you very much. Let me  
7                   just write it down.

8                   So I'm looking at page 184, question 906,  
9                   1147153. Sorry.

10                  **THE REGISTRAR:** One-one-seven ---

11                  **MR. NEUBERGER:** It's 1147153. There we go.  
12                  If there's one thing, I'm much better with the Bates pages  
13                  now. Question 906:

14                                 "Do you recall asking Mr. Seguin for  
15                                 money?"

16                                 Answer:

17                                 "Never."

18                                 Question:

19                                 "You deny this is your evidence under  
20                                 oath, Mr. Silmser?"

21                                 Answer:

22                                 "Yes, it is."

23                                 Question:

24                                 "Do you deny that you ever asked Mr.  
25                                 Seguin to give you money?"

1 Answer:  
2 "That's my knowledge. I denied ever  
3 asking him for money."  
4 Question:  
5 "Do you deny asking Mr. Seguin to pay  
6 you an annual sum of money?"  
7 Answer:  
8 "No."  
9 Question:  
10 "And if I understand correctly you are  
11 now denying under oath ever being  
12 investigated by the police?"

13 And it goes on and I don't think I need to mention that  
14 portion. It's not relevant for my consideration. But the  
15 context of the question is that he denies ever pursuing Mr.  
16 Seguin for money.

17 That is similarly repeated with document  
18 number -- I think it's Exhibit 316. This is the transcript  
19 of the discovery with the Diocese. And this is a discovery  
20 where there are questions asked about Mr. Seguin at page  
21 324 and I believe it's Bates page 7164958. This is an  
22 exchange about telephone conversations with Mr. Seguin. It  
23 starts at 323 but if I could just start, for my purposes,  
24 at the question at 1678:

25 "Well did you call? You think you

1 phoned Mr. Seguin November of 1993?"

2 Answer:

3 "I said I don't know if I did or did  
4 not."

5 Question:

6 "Well, now this. I mean, you settled  
7 with the church?"

8 Answer:

9 "No. If I tell you yes, I did phone  
10 him I could be lying because I don't  
11 know. I don't want to lie to you. I  
12 don't know if I phoned him on that  
13 day."

14 Question:

15 "Well, Mr. Silmser, do you remember  
16 basically going after Mr. Seguin for  
17 some money?"

18 Answer:

19 "Never. Never did I go after Mr.  
20 Seguin for some money."

21 Question:

22 "No suggestions that there was anything  
23 there, you were going to sue him or do  
24 anything along that line?"

25 Answer:

1 "Never."

2 So the purpose of me referring to those two  
3 transcripts were to attempt to undermine Mr. Silmsker's  
4 credibility on the issue of his intentions in approaching  
5 the Ministry and the manner in which he went about to  
6 address the abuse that he alleged he suffered from Mr.  
7 Seguin. Again, to establish that his main focus and sole  
8 focus was a financial settlement and not pursuing, when Mr.  
9 Seguin was alive, any sort of an investigation about his  
10 acts, and similarly once Mr. Seguin had passed away that it  
11 was not his intent to pursue an investigation with the  
12 Ministry, it was not to try and protect other people but  
13 simply to try and collect when Mr. Seguin had passed away.

14 That is the conclusion of my presentation.  
15 Thank you very much for your patience.

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

17 Let's take the afternoon break. We'll come  
18 back in 15.

19 **THE REGISTRAR:** Order. All rise. À  
20 l'ordre/veuillez vous lever.

21 The hearing will resume at 3:50.

22 --- Upon recessing at 3:38 p.m./

23 L'audience est suspendue à 15h38

24 --- Upon resuming at 3:55 p.m./

25 L'audience est reprise à 13h55

1                   **THE REGISTRAR:** This hearing is now resumed.

2                   Please be seated. Veuillez vous asseoir.

3                   **THE COMMISSIONER:** Thank you.

4                   I'm sorry. Mr. Kozloff, I couldn't see you  
5                   there.

6                   --- **NARRATIVE BY/NARRATIF PAR MR. KOZLOFF:**

7                   **MR. KOZLOFF:** Good afternoon, Mr.  
8                   Commissioner.

9                   **THE COMMISSIONER:** Good afternoon, sir.

10                  So last I recall you indicated that your  
11                  presentation might be behind two and four hours.

12                  **MR. KOZLOFF:** Correct.

13                  **THE COMMISSIONER:** And I just want to help -  
14                  - if you can help me out I'll help you out. It's 4:00 so  
15                  if you could give me some idea of how long you'll be and  
16                  maybe you can tailor your presentation for the first half  
17                  hour then we'll continue whenever.

18                  **MR. KOZLOFF:** Perfect.

19                  **THE COMMISSIONER:** All right.

20                  **MR. KOZLOFF:** My submissions are divided  
21                  into 11 sections.

22                  **THE COMMISSIONER:** Yes.

23                  **MR. KOZLOFF:** And those are areas of Mr.  
24                  Silmser's evidence with which I on behalf of the Ontario  
25                  Provincial Police either take issue or which in my

1 submission requires some clarification or which I can  
2 perhaps point to some evidence that amplifies or clarifies  
3 or corrects something which Mr. Silmser may have  
4 inadvertently stated.

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

6 **MR. KOZLOFF:** And what I have tried to do,  
7 sir, is to identify the evidence of Mr. Silmser. Unlike  
8 Mr. Neuberger's narrative I'm not operating on a premise.  
9 What I'm trying to do is identify the evidence as it  
10 unfolded in-chief and in parts of his cross-examination  
11 that touches on my client and your mandate and respond with  
12 documents and with submissions in order to assist the Court  
13 in so far as I can.

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

15 **MR. KOZLOFF:** The first area that I deal  
16 with is the initial disclosure to the Ontario Provincial  
17 Police.

18 The evidence of Mr. Silmser was at Volume  
19 eighty -- excuse me, is it 85 -- Volume 85, which January  
20 the 29<sup>th</sup>, 2007 and it begins at page 77.

21 **THE COMMISSIONER:** Okay.

22 **MR. KOZLOFF:** And Mr. Engelmann at line 3  
23 says:

24 "All right.

25 So let's then start with when it was

1                   you first told someone about the  
2                   alleged child sexual abuse."

3           Answer:

4                   "I told the OPP officers in Long  
5                   Sault."

6                   "Mr. Engelmann: Okay.

7                   Now, it's my understanding that it was  
8                   sometime in 1992.

9                   Is that correct?"

10                  "Mr. Silmser: That's correct."

11                  "Mr. Engelmann: And this relates to  
12                  being arrested for a driving  
13                  infraction, a driving offence?"

14                  "Mr. Silmser: Yes, it was."

15                  "Mr. Engelmann: Okay.

16                  I want you to think back. You were  
17                  incarcerated in the mid to late '80s in  
18                  Ottawa..."

19                  And this is an area that I'm not particularly concerned  
20                  with.

21                  So he comes back at page 79, line 21.

22                  Question:

23                  "Mr. Engelmann: Next person you told,  
24                  was that the OPP officer or might that  
25                  have been your wife, or do you recall,

1 or did she come later?"

2 Answer:

3 "That's a good question. I don't  
4 really know."

5 Up to the top, page 80:

6 "All right. You do recall saying  
7 something to an OPP officer?"

8 **MR. KOZLOFF:** Sorry? Oh, I beg your pardon.

9 Answer:

10 "Yes."

11 "Mr. Engelmann: All right.

12 Can you describe for us the  
13 circumstances? How does it come  
14 about?"

15 "Mr. Silmser: I was pulled over north  
16 of Cornwall. It was -- they brought me  
17 in for a breathalyser. The charges  
18 were -- they had me in the office down  
19 there and I was ---"

20 "Mr. Engelmann: Office down where?"

21 "Mr. Silmser: Down OPP station in Long  
22 Sault."

23 "Mr. Engelmann: Do you recall whether  
24 there was one officer or two?"

25 "Mr. Silmser: I believe there was one



1 officer."  
2 "Mr. Engelmann: Male or female?"  
3 "Mr. Silmser: Male."  
4 "Mr. Engelmann: Okay."  
5 "Mr. Silmser: And I started to talk to  
6 him and saying 'I have to get my life  
7 together,' and I told him about the  
8 abuse and saying, 'This is why my life  
9 is screwed up."  
10 "Mr. Engelmann: Right."  
11 "Mr. Silmser: I just -- I can't get  
12 over it; I can't get my life over that  
13 hurdle."  
14 "Mr. Engelmann: And this conversation  
15 occurs when and where?  
16 At the station?"  
17 "Mr. Silmser: Yes, it does."  
18 "Mr. Engelmann: All right.  
19 Do you remember when this was,  
20 approximately?"  
21 "Mr. Silmser: Probably around '92 --  
22 somewhere in '92."  
23 "Mr. Engelmann: All right.  
24 We know, Mr. Silmser, that you have  
25 some contact with the Cornwall Police

1 Service and also with the Diocese in  
2 Ottawa in early December of '92.  
3 So this discussion with the OPP officer  
4 the night of your arrest, that precedes  
5 that.

6 Is that fair?"

7 "Mr. Silmser: Okay."

8 "Mr. Engelmann: Do you know by how  
9 many weeks or months?"

10 "Mr. Silmser: No, I don't."

11 "Mr. Engelmann: So do you have a sense  
12 sir whether you gave much details that  
13 night to the officer?"

14 "Mr. Silmser: I gave some details; I  
15 don't know how much. I can't remember.  
16 But I remember him writing it down on a  
17 piece of paper. But I don't know."

18 "Mr. Engelmann: All right.

19 And do you remember whether you  
20 mentioned one or more of the  
21 individuals ---"

22 "Mr. Silmser: I can't remember."

23 "Mr. Engelmann: --- you alleged were  
24 abusing you?"

25 "Mr. Silmser: I can't remember."

1 "Mr. Engelmann: All right.  
2 Do you know if you gave any names?"  
3 "Mr. Silmser: Oh! Yes. I definitely  
4 gave Charles MacDonald's name."  
5 "Mr. Engelmann: All right."  
6 "Mr. Silmser: Ken Seguin's, I am not  
7 sure if I went into that."  
8 "Mr. Engelmann: Marcel Lalonde?"  
9 "Mr. Silmser: I don't believe so; not  
10 at that time."  
11 "Mr. Engelmann: Okay.  
12 Do you know whether you would have  
13 given any details about where it  
14 occurred or what occurred?"  
15 "Mr. Silmser: I told him it happened  
16 in Cornwall."  
17 "Mr. Engelmann: All right."  
18 "Mr. Silmser: So it was out of their  
19 jurisdiction they said the next -- or  
20 whenever they called me back."  
21 "Mr. Engelmann: All right.  
22 So did he tell you that right then or  
23 did he tell you that at a later time?"  
24 "Mr. Silmser: He told me that at a  
25 later time."

1 "Mr. Engelmann: And how was that told  
2 to you?"

3 "Mr. Silmser: Through the telephone."

4 "Mr. Engelmann: All right.  
5 So you received a phone call?"

6 "Mr. Silmser: Yes. Yes, I did."

7 "Mr. Engelmann: And you were told that  
8 it wasn't their jurisdiction?"

9 "Mr. Silmser: That's correct."

10 "Mr. Engelmann: And were you told  
11 where you could go?"

12 "Mr. Silmser: The Cornwall police."

13 And then later at page 84, line 9:

14 "Do you have a sense of how much time  
15 would have passed between the time you  
16 made your comments to this police  
17 officer and the time you later got a  
18 phone call back?"

19 "Mr. Silmser: No, I don't."

20 "Mr. Engelmann: All right. Now, did  
21 you, in fact, sir, follow up and  
22 report..."

23 And that is effectively the portion of Mr.  
24 Silmser's evidence that deals with how he initially  
25 reported the matter to the OPP.

1           To summarize his evidence, he is telling the  
2 Commission that the first report was in Long Sault; that he  
3 was brought in for a breathalyser; that he gave some  
4 details; that he definitely gave Charles MacDonald's name;  
5 that he wasn't sure about Ken Seguin; and that he didn't  
6 believe he had given Marcel Lalonde's name.

7           The first document that I would ask to be  
8 brought up would be document 200085.

9           **THE COMMISSIONER:** Exhibit 375 is a Will Say  
10 of Constable Peter Robertson. No date. But it is ---

11           **MR. KOZLOFF:** It's a will say, but it  
12 addresses the events that took place in April of 1992.

13           **THE COMMISSIONER:** Right, but ---

14           **MR. KOZLOFF:** For your assistance, Mr.  
15 Commissioner.

16           **THE COMMISSIONER:** Yes.

17           **MR. KOZLOFF:** There were requests received  
18 by my client from the Commission.

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

20           **MR. KOZLOFF:** With respect to whether or not  
21 there was any evidence that would support the proposition  
22 that Mr. Silmsler had made a complaint to the Ontario  
23 Provincial Police in 1992. A special canvas was done of  
24 officers in East Region. Fortuitously, Constable Robertson  
25 is still on the job with the Ontario Provincial Police. He

1 recalled the incident, and he prepared this will say and  
2 also provided his notes, which were provided by me to Mr.  
3 Engelmann as soon as I received them.

4 The will say indicates that on the 24<sup>th</sup> of  
5 April 1992, Constable Robertson was conducting a RIDE,  
6 which is Reduced Impaired Driving Everywhere, for those who  
7 are not familiar with RIDE, at the corner of Highway 138  
8 and Cornwall Centre Road north of the city limits of  
9 Cornwall. And he had occasion to pull over a vehicle being  
10 operated by Mr. Silmsler. He formed the opinion that Mr.  
11 Silmsler's capacity to operate a motor vehicle was impaired.  
12 He placed him under arrest, and he recalls Mr. Silmsler  
13 stating:

14 "I'm all fucked up because I was abused  
15 by a priest when I was young."

16 And I am going to be very careful with what  
17 I say about this in fairness to Mr. Silmsler.

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

19 **MR. KOZLOFF:** There is nothing in Constable  
20 Robertson's will say or in his notes, which reflect the  
21 specific conversation in a verbatim sense.

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

23 **MR. KOZLOFF:** There is nothing in the will  
24 say or the notes that identifies the priest by name.

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

1                   **MR. KOZLOFF:** And there is no mention in the  
2 will say or the notes of Mr. Seguin or Mr. Lalonde.

3                   Owing to Mr. Silmser's condition at the  
4 time, insofar as the consumption of alcohol was concerned,  
5 the officer told him that if he wanted to make a report  
6 about the matter that he was referring to, namely being  
7 abused by the priest when he was young, he should attend  
8 the police detachment when he was sober.

9                   I wonder if document 200085 could be made an  
10 exhibit, sir.

11                   **THE COMMISSIONER:** Exhibit 375 and for  
12 purposes of identification, Bates page number 7174432.  
13 Okay.

14 --- **EXHIBIT NO./PIÈCE NO P-375:**

15                   Will Say of Constable Peter Robertson,  
16 undated (200085, Bates page 7174432).

17                   **MR. KOZLOFF:** Now ---

18                   **MR. ENGELMANN:** Mr. Kozloff is right. This  
19 -- in a sense this document was something that we had  
20 specifically requested of the OPP. If they could look for  
21 anything that verified the first report.

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

23                   **MR. ENGELMANN:** And for the life of me, I  
24 can't remember when we received it. I know it was late in  
25 the day and obviously soonest they were able to get it to

1 us. But I'm just again, just trying to see if we could --  
2 whether this would have been prepared in 2007 or 2006, and  
3 I just want to get an approximate date for the actual  
4 preparation of the will say. That was all.

5 I have no objection to it becoming an  
6 exhibit.

7 **MR. KOZLOFF:** The notes, which were also  
8 provided, together with the will say, and which do not  
9 refer to this conversation, were prepared at the time,  
10 which would be the 24<sup>th</sup> and the 25<sup>th</sup> of April, 1992.

11 **THE COMMISSIONER:** This will state?

12 **MR. KOZLOFF:** No.

13 **THE COMMISSIONER:** No.

14 **MR. KOZLOFF:** The officer's notebook.

15 **THE COMMISSIONER:** Right.

16 **MR. KOZLOFF:** Which was provided to my  
17 friend together with the will say do not make any mention  
18 of this conversation.

19 **THE COMMISSIONER:** Of the ---

20 **MR. KOZLOFF:** Correct.

21 **THE COMMISSIONER:** Okay.

22 **MR. KOZLOFF:** Of the conversation "I'm all  
23 fucked up because I was abused by a priest when I was  
24 young."

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



1                   **MR. KOZLOFF:** The officer was, as every  
2 other officer in East Region, subjected to a special canvas  
3 ---

4                   **THE COMMISSIONER:** Okay.

5                   **MR. KOZLOFF:** --- by my client in 2007.

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

7                   **MR. KOZLOFF:** And the canvas was with  
8 respect to whether anybody who was on the job at the time  
9 had come into contact with Mr. Silmsler in the year leading  
10 up to December of 1992 and had some sort of a conversation  
11 at the time that he was being dealt with for a driving  
12 offence.

13                   **THE COMMISSIONER:** Right.

14                   **MR. KOZLOFF:** Constable Robertson recalled  
15 that incident. Constable Robertson's notes don't reflect  
16 this conversation, but his memory recalled the  
17 conversation, which is why I couched my comments about this  
18 will say the way I did.

19                   **THE COMMISSIONER:** Right. Okay, that's  
20 fair, but I guess Mr. Engelmann is wondering when was this  
21 will say ---

22                   **MR. KOZLOFF:** And I'm about to address that.

23                   **THE COMMISSIONER:** Okay.

24                   **MR. KOZLOFF:** In 2007.

25                   **THE COMMISSIONER:** Thank you.

1                   MR. KOZLOFF: So the notes are at a time ---

2                   THE COMMISSIONER: Yes.

3                   MR. KOZLOFF: --- the will say, which he had  
4 no reason to prepare until the canvas, which didn't take  
5 place until 2007.

6                   THE COMMISSIONER: Right.

7                   MR. KOZLOFF: The will say was prepared in  
8 2007.

9                   THE COMMISSIONER: Thank you.

10                  MR. KOZLOFF: The next document is document  
11 123472. Constable Robertson was the arresting officer on  
12 the 24<sup>th</sup> of April 1992, and on the 25<sup>th</sup> of April shortly  
13 after midnight, Mr. Silmsler was turned over by Constable  
14 Robertson to Constable Van Dusen. Then Constable Van  
15 Dusen, now Constable Radmore. Constable Van Dusen was a  
16 qualified breathalyser technician in the employ of the  
17 Ontario Provincial Police on the 25<sup>th</sup> of April 1992. She is  
18 now a qualified breathalyser technician in the employ of  
19 the Ottawa Police Service.

20                                "As a result of the special survey that  
21 turned up Constable Robertson, I then  
22 instructed or requested that my client  
23 make efforts to find out if there was a  
24 breathalyser technician in the station  
25 that night to see whether or not Mr.

1 Silmser had said anything further. And  
2 we found Constable Radmore of the OPS,  
3 the Ottawa Police Service, who was good  
4 enough to provide the alcohol influence  
5 report that was prepared that night in  
6 relation to Mr. Silmser.

7 A review of it sir, would indicate that  
8 there is nothing mentioned to Constable Van Dusen, now  
9 Constable Radmore about being assaulted by a priest when he  
10 was young or anything else in relation to whatever abuse he  
11 had suffered.

12 She describes him as obviously under the  
13 influence of alcohol or I should say that he was obviously  
14 impaired by the consumption of alcohol. He was polite, co-  
15 operative, talkative, crying. He indicated he'd had a  
16 considerable amount to drink and I put that in only for the  
17 purpose of supporting Constable Robertson's advice to Mr.  
18 Silmser that he should come back and report the matter when  
19 he was sober.

20 I wonder if that document could be the next  
21 exhibit, sir?

22 **THE COMMISSIONER:** Exhibit 376.

23 **--- EXHIBIT NO./PIÈCE No. P-376:**

24 Alcohol Influence Report dated April  
25 25, 1992.

1                   **MR. KOZLOFF:** Now, insofar as Mr. Silmsers  
2 evidence that he told them that it happened in Cornwall and  
3 that it was out of their jurisdiction and they said that  
4 the next whenever they called him back, said he told me  
5 that at a later time through the telephone that he wasn't  
6 sure how much time passed between initial comments and the  
7 later phone call.

8                   What we have is we have the contact with  
9 Constable Robertson on the 25<sup>th</sup> of April 1992. Then we have  
10 a contact with Sergeant Nakic of the Cornwall Police  
11 Service on December the 9<sup>th</sup>, 1992.

12                   There is no record of any phone call/phone  
13 conversation between Mr. Silmsers and the Ontario Provincial  
14 Police or any member thereof between the 25<sup>th</sup> of April 1992  
15 and the 9<sup>th</sup> of December 1992. If the phone call that Mr.  
16 Silmsers describes took place and I have no reason to  
17 suggest that it didn't.

18                   In my submission, it's reasonable to suggest  
19 that the conversation took place between the 25<sup>th</sup> of April  
20 1992 and the phone call to Sergeant Nakic on the 9<sup>th</sup> of  
21 December 1992.

22                   In my submission, secondly, it's reasonable  
23 to suggest that it took place closer to the 9<sup>th</sup> of December  
24 than to the 25<sup>th</sup> of April.

25                   Given Constable Robertson's advice to Mr.

1 Silmser, and I can tell you that Constable Robertson has no  
2 recollection of calling Mr. Silmser, it was likely, given  
3 that he recalls the conversation with Mr. Silmser on the  
4 25<sup>th</sup> of April, it's likely Mr. Silmser called the Ontario  
5 Provincial Police which was the advice he had received from  
6 Robertson. And that he called them. And when he called  
7 them, he was told given the jurisdiction, to call the  
8 Cornwall police.

9 This is further supported by the opening  
10 paragraph of Mr. Silmser's statement of November the 26<sup>th</sup>,  
11 1993. And that is Exhibit 271. This is the statement sir,  
12 that he makes to Constable Millar and Constable McDonnell  
13 who are investigating the sudden death of Ken Seguin on the  
14 26<sup>th</sup> of November 1993 and if I may just read the opening  
15 paragraph, it states:

16 "In December of 1992, I telephoned Long  
17 Sioux OPP to report being sexually  
18 assaulted when I was younger. I was  
19 told because of where the offence took  
20 place I would have to go to Cornwall  
21 City Police. This was done by  
22 telephone. I waited a few days, then I  
23 telephone Cornwall City Police and gave  
24 the same report."

25 Now, just to complete the record, on the 30<sup>th</sup>

1 of January, that's volume 86, at page 124 -- if you go down  
2 a little bit further -- question by Mr. Engelmann, just to  
3 put it in context, let's start at line 14:

4 "And in the interview, it appears you  
5 give them some background as to about  
6 when you came forward with your  
7 allegations.

8 Mr. Silmser:

9 "Okay."

10 Mr. Engelmann:

11 "It starts and I'm just looking at the  
12 first page you talk about in this case,  
13 you say, 'Telephoned Long Sioux OPP'".

14 Mr. Silmser:

15 "No, that wasn't correct."

16 So, in fairness to Mr. Silmser, he is now  
17 taking issue with what he states at the beginning of  
18 Exhibit 271, at pages 94 and 95 of Volume 85 is evidence of  
19 the 29<sup>th</sup> -- we scroll to the bottom. He says:

20 "Who would have told you that they  
21 already had knowledge?"

22 This is referring to the Cornwall Police  
23 having knowledge when he called them, they already had  
24 knowledge.

25 Answer:

1                    "The officer that told me that set up a  
2                    meeting."

3                    Mr. Engelmann:

4                    "All right. That was the second call?"

5                    Mr. Silmser:

6                    "That was the first call".

7                    Mr. Engelmann:

8                    "Well, you had a call. We believe it  
9                    was with a fellow by the name of  
10                    Constable Nakic."

11                    Mr. Silmser:

12                    "Okay."

13                    Mr. Engelmann:

14                    "December the 9<sup>th</sup>."

15                    Mr. Silmser:

16                    "Okay."

17                    Mr. Engelmann:

18                    "And then there is a record of a  
19                    Sergeant Lortie calling you back on  
20                    December the 14<sup>th</sup>."

21                    Mr. Silmser:

22                    "Okay."

23                    Mr. Engelmann:

24                    "And speaking to you about setting up a  
25                    meeting in mid-January."

1 Mr. Silmser:

2 "Okay."

3 So to summarize, Mr. Silmser appears to be  
4 telling you that he had told -- that he called to report  
5 the matter to the CPS, the Cornwall Police Service. But I  
6 think they already were previously notified by the OPP that  
7 I was a victim of child sexual abuse.

8 In response to that I have the following to  
9 suggest to you sir. First, there is no other evidence from  
10 anyone either at the OPP or at the Cornwall Police Service  
11 that the OPP notified the Cornwall Police Service in  
12 advance of Mr. Silmser calling the Cornwall Police Service.

13 Secondly, there was no reason for the  
14 Ontario Provincial Police to call the CPS or notify them  
15 regarding Mr. Silmser.

16 Thirdly, everything in the evidence suggests  
17 that this didn't happen except for Mr. Silmser's thought  
18 that it did. And I point to Constable Robertson's will say  
19 and to Sergeant Nakic's recording of his notes of the 9<sup>th</sup> of  
20 December 1992 phone call.

21 I'm going to suggest sir that what occurred  
22 in all probability is -- and I am saying this not to  
23 contradict Mr. Silmser but to clarify the evidence. What  
24 occurred is that when Lortie called Silmser back to arrange  
25 the meeting, he referred to a previous call. "He" being



1 Lortie referred to a previous call.

2 The call he was referring to was the call  
3 that Mr. Silmsler had made to Sergeant Nakic on the 9<sup>th</sup> of  
4 December. And that Silmsler may have thought he was  
5 referring to the call that Silmsler had made to the OPP  
6 several days before that, which he refers to in his  
7 statement of the 26<sup>th</sup> of November 1993, which at that point  
8 was approximately 11 months after the event; a lot closer  
9 in time than now.

10 That covers the first area. I can probably  
11 get through the second area by 4:30.

12 **THE COMMISSIONER:** All right.

13 **MR. KOZLOFF:** All right. The second area  
14 concerns -- well, actually, I refer to a number of exhibits  
15 but ---

16 **THE COMMISSIONER:** A note.

17 **MR. KOZLOFF:** I believe the expression in  
18 French is something about un voyage.

19 **THE COMMISSIONER:** Not at all. All right.  
20 Thank you very much. So what we're going to do is we're  
21 going to continue -- oh right, one of the things you didn't  
22 do, Mr. Kozloff is tell me how much time you think now that  
23 you started that you'll need for the next day?

24 **MR. KOZLOFF:** I will need -- I would expect  
25 I will need between three and four hours.

1                   **THE COMMISSIONER:** All right. And that will  
2 be recommencing ---

3                   **MR. ENGELMANN:** Mr. Commissioner, with  
4 respect to this evidence, we have some in camera evidence  
5 to deal with the afternoon of the 16<sup>th</sup> ---

6                   **THE COMMISSIONER:** Yes.

7                   **MR. ENGELMANN:** --- which I anticipate with  
8 the cross-examination should take no longer than an hour.

9                   **THE COMMISSIONER:** Yes.

10                  **MR. ENGELMANN:** That would leave us about  
11 and hour and a half that afternoon.

12                  **THE COMMISSIONER:** Okay.

13                  **MR. ENGELMANN:** Maybe Mr. Kozloff wants to  
14 speak to that.

15                  **MR. KOZLOFF:** Just to assist, there is a  
16 portion of my presentation that involves the playing of a  
17 video.

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

19                  **MR. KOZLOFF:** And that video should be  
20 played in camera because it contains names at the very  
21 least which are the subject matter of publication bans by  
22 yourself. It also contains information which is  
23 unnecessary to my presentation and which reflects directly  
24 on the subject matter of this submission which is -- I  
25 don't wish to go through in a public ---

1                   **THE COMMISSIONER:** Right. What we'd have to  
2 do then is make ---

3                   **MR. KOZLOFF:** --- fashion.

4                   **THE COMMISSIONER:** --- you know, make an  
5 application so that we can deal with the Dagenais/Mentuck  
6 test and the CBC and they may have some interest -- the  
7 media as to whether or not they want to object and that  
8 kind of thing.

9                   **MR. ENGELMANN:** If I can just speak to that  
10 sir. Mr. Kozloff and I had some discussions about the  
11 playing of this videotape and there's no need to go back  
12 there. I certainly advised him of my position that, if he  
13 was not seeking confidentiality measures, I had concerns  
14 about the playing of this tape. I think it's clear from a  
15 letter that you read earlier today that Mr. Silmsen himself  
16 has some concerns about the playing of that tape publicly.

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

18                   **MR. ENGELMANN:** I advised the press, the  
19 local press as we have, I also contacted counsel for the  
20 CBC to advise him that I expected that Mr. Kozloff would be  
21 making an application to have this matter heard in camera.  
22 Perhaps what we can do on the 16<sup>th</sup> then is if this is  
23 suitable for Mr. Kozloff, we could carry on with the  
24 sections of his presentation that pre-date the tape, then  
25 we could speak to the confidentiality measures as well ---

1 THE COMMISSIONER: M'hm.

2 MR. ENGELMANN: --- and then, if in fact  
3 those measures are applied, and you rule that as  
4 appropriate, that this go on, we could start with that the  
5 morning of the 17<sup>th</sup>. So that if the tape is played, that  
6 it's played all at the same time.

7 THE COMMISSIONER: Right.

8 MR. ENGELMANN: Given in camera issues, et  
9 cetera.

10 THE COMMISSIONER: Sure. Okay. Thank you.

11 So tomorrow morning we are going back to  
12 witness testimony but that will -- okay, so what we have  
13 is, it will not be in camera will be a public hearing ---

14 MR. ENGELMANN: That's right.

15 We have a witness who has a monitor. C10,  
16 but the Hearing is public ---

17 THE COMMISSIONER: M'hm.

18 MR. ENGELMANN: --- and will be web-cast.

19 THE COMMISSIONER: Thank you.

20 All right, so let's see ---

21 MR. ENGELMANN: Oh, yes, Mr. Lee has  
22 reminded me as in the case of Mr. Silmsen, this witness did  
23 not want the camera on his person, so we have the audio; we  
24 have the video of you, sir; and counsel asking questions,  
25 but ---

1                   **THE COMMISSIONER:** It will mostly be counsel  
2 asking questions, I suspect.

3                   **MR. ENGELMANN:** That's how I understand that  
4 works, yes.

5                   **THE COMMISSIONER:** Perfect.  
6 Thank you very much. We'll see you tomorrow  
7 morning.

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

10                   This hearing is adjourned until tomorrow  
11 morning at 9:30 a.m.

12 --- Upon adjourning at 4:29 p.m. / L'audience est ajournée à  
13 16h29

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C E R T I F I C A T I O N

I, Jamie Savard 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, Jamie Savard, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.

*Jamie Savard*

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Jamie Savard, CR