

**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 90

Held at :

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

Tuesday, February 06, 2007

Tenue à:

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

Mardi, le 6 février 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
M ^e Simon Ruel	Commission Counsel
Ms. Raiji Pulkkinen	
Ms. Louise Mongeon	Registrar
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Mark Crane	
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Suzanne Costom	
Mr. David Rose	Ontario Ministry of Community
Mr. Joe Neuberger	and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Steven Canto	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Dominic Lamb	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association
Ms. Jennifer Birrell	Catholic District School Board
Mr. Clinton H. Culic	Mr. David Silmser

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1 --- Upon commencing at 9:33 a.m./

2 L'audience débute à 9h33

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning all.

11 So where we left off, I guess, is with Mr.
12 Lamb. We can catch up where we were yesterday. I was
13 asking you about the scope of your examination; where
14 you're going; and how long -- I mean, where are you in your
15 cross-examination?

16 How much time do you think you've got to
17 cross-examine?

18 **MR. LAMB:** I've got a chance to go through,
19 again, in light of your comments ---

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

21 **MR. LAMB:** --- and the numerous
22 interjections by Commission counsel and Mr. Culic
23 yesterday, Mr. Commissioner, and I am not going to be very
24 long. I have a few salient points ---

25 **THE COMMISSIONER:** Okay.

1 **MR. LAMB:** --- three or four I want to
2 address.

3 **THE COMMISSIONER:** All right.

4 So, are we -- need I concern myself about
5 the issue of guilt and innocence again or ---

6 **MR. LAMB:** No. And I think if -- just to
7 briefly address Your Honour's comments as to what's the
8 relevance to my client's standing ---

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

10 **MR. LAMB:** --- of my line of questioning. I
11 suppose that was in particular to the memory of this
12 witness in particular yesterday. The mandate of the
13 Inquiry is to inquire into events surrounding allegations
14 of abuse ---

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

16 **MR. LAMB:** --- and then examine the response
17 of the justice system and other public institutions to the
18 allegations.

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

20 **MR. LAMB:** It was my position and it remains
21 my position that, as the accused person, in terms of the
22 allegations of -- one of the accused persons in terms of
23 the allegations of abuse, my client is in a position where
24 the response of certain public institutions affected him
25 obviously.

1 **THE COMMISSIONER:** Right.

2 **MR. LAMB:** There were numerous
3 investigations by numerous police forces which led to no
4 charges being laid on several occasions. The fourth
5 investigation led to charges being laid.

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

7 **MR. LAMB:** And so there is an intersection
8 between -- in my respectful submission, between the public
9 institutions and, I think, it was your Honour's point
10 yesterday; that's:

11 "You're asking questions, Mr. Lamb,
12 that relate to what the public
13 institutions should be addressing with
14 Mr. Silmser."

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

16 **MR. LAMB:** But it was my submission -- Oh!
17 Yeah -- there is an intersection there, but ---

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

19 **MR. LAMB:** --- my client is in a position
20 where he has to show that his interests are exactly the same in
21 some situations.

22 **THE COMMISSIONER:** He has to show?

23 **MR. LAMB:** Well, we want to show the
24 Inquiry, Your Honour ---

25 **THE COMMISSIONER:** That what?

1 **MR. LAMB:** That, in some instances, the
2 institutional response was appropriate. If I look to the
3 end of what the mandate of this Commission is, if it's the
4 Commissioner and your exercise making determinations with
5 regard to response, you determine that a response is
6 perhaps inadequate by certain institutions.

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

8 **MR. LAMB:** What then, I ask you Mr.
9 Commissioner, does public opinion conclude with regard to
10 my client?

11 **THE COMMISSIONER:** Oh! Oh! No.

12 This is a public inquiry, and what I have
13 said right from the beginning is to dispel any rumours and
14 innuendos is "We're going to deal with facts."

15 All right?

16 And so, in the end, the public has been
17 invited to look here and if an informed public has looked -
18 - all right -- they know that your client's guilt or
19 innocence is not an issue here.

20 In fact, I have stated perhaps a little
21 boldly that no one here, not the victims or alleged victims
22 and even bothered. They understood it quite well what the
23 role of this Inquiry is; it's not to deal with the guilt or
24 innocence.

25 That's why we use the word "allege"; that's

1 why your client has standing and your client has proclaimed
2 his innocence; has very skillfully and articulately made
3 arguments about that and that, I would suggest, is the role
4 of counsel to do that, and so there is no one here who is
5 going to say that Father Charles MacDonald is guilty or
6 innocent. In fact, his innocence is proclaimed.

7 **MR. LAMB:** But this witness, Mr.
8 Commissioner ---

9 **THE COMMISSIONER:** Yes.

10 **MR. LAMB:** In-chief ---

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

12 **MR. LAMB:** --- made statements that Father
13 Charles MacDonald is a criminal.

14 **THE COMMISSIONER:** Right.

15 **MR. LAMB:** He made statements with regards
16 to allegations of abuse with regard to my client.

17 **THE COMMISSIONER:** Sure, and that's his
18 opinion. And, in argument, you can come back and say "Look
19 it, you know, Your Honour, that he is not guilty because
20 the charges were stayed."

21 **MR. LAMB:** In terms of fairness though, Mr.
22 Commissioner ---

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

24 **MR. LAMB:** --- to deny my client's right to
25 simply put to this witness that he had a failing memory,

1 that there were other issues that arose out of the things
2 he said over time to different police forces, to the
3 courts, for example, in the preliminary hearing or in the
4 civil context and discoveries; to not allow me to do that
5 is to take away the tool, the only tool I have left to
6 ensure that my client's rights are -- his interests are
7 protected in this hearing.

8 **THE COMMISSIONER:** Well, no.

9 Just a second now!

10 Mr. Silmsen called your client a criminal.

11 **MR. LAMB:** Yes.

12 **THE COMMISSIONER:** All right.

13 And what did I do after he said that?

14 **MR. LAMB:** And ---

15 **THE COMMISSIONER:** What did I do?

16 **MR. LAMB:** I agree ---

17 **THE COMMISSIONER:** What did I do?

18 **MR. LAMB:** You did make it clear, Mr.

19 Commissioner, that upon -- and, with respect, upon my
20 urging to Commission counsel, that it should be -- I did
21 ask Commission counsel during the lunch break that it
22 should be made clear that there is -- that was his opinion.

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

24 So, I don't see any problems with you saying
25 "Look it, you called my client a criminal." That's your

1 opinion.

2 All right?

3 And isn't it true that there is a stay
4 outstanding and that's the end of the matter?

5 He might not like that, but that's life.
6 And that's the law.

7 And so, all I am going to say -- and I am
8 not going to make a ruling at this point -- all I am going
9 to tell you is that your client has instructed counsel to
10 make a very big point of proclaiming his innocence, which
11 is correct. He has been stayed in law.

12 All right?

13 Now to come back and end, time and again,
14 have come up and said "This is not a trial." I can tell
15 you that if I sense that what you are really doing is
16 articulating a cause by going through the backdoor to do
17 that, I will stop you.

18 Is that clear?

19 **MR. LAMB:** And that has been made clear
20 yesterday, Mr. Commissioner.

21 **THE COMMISSIONER:** Okay.

22 **MR. LAMB:** And given the comments, given
23 what has happened, I am not going back to memory. I am
24 moving on ---

25 **THE COMMISSIONER:** Okay.

1 **MR. LAMB:** --- and I certainly hope that I
2 will be brief and there won't be any ---

3 **THE COMMISSIONER:** All the while -- now, I
4 am going to change my hat and say "You are permitted to
5 cross-examine this witness on issues that are relevant to
6 this Inquiry." And I am not -- I do not want to be seen to
7 bring me to curtail your cross-examination on items that
8 are relevant.

9 All right?

10 **MR. LAMB:** Sure.

11 **THE COMMISSIONER:** Thank you.

12 Let's call the witness.

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

14 **DAVID SILMSER, Resumed/Sous le même serment:**

15 **THE COMMISSIONER:** Good morning Mr. Silmser.
16 How are you doing?

17 **MR. SILMSER:** Okay.

18 **THE COMMISSIONER:** All right.

19 So you understand you are still under oath?

20 **MR. SILMSER:** Yes, I do.

21 **THE COMMISSIONER:** All right.

22 So Mr. Lamb has a few more questions to ask
23 of you and then we will go on to the next party.

24 All right?

25 **MR. SILMSER:** Thank you.

1 **THE COMMISSIONER:** Do you have any questions
2 today or anything?

3 **MR. SILMSER:** No.

4 **THE COMMISSIONER:** Ready to go?

5 **MR. SILMSER:** Yes.

6 **THE COMMISSIONER:** Let me know if you need a
7 break or if there is anything that you need.

8 All right?

9 **MR. SILMSER:** Okay.

10 **THE COMMISSIONER:** All right.

11 Mr. Lamb.

12 **MR. LAMB:** Thank you Mr. Commissioner.

13 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LAMB**
14 **(Cont'd/suite):**

15 **MR. LAMB:** Good morning, Mr. Silmsers.

16 The first thing I'd like to start with this
17 morning is a letter that you wrote to Father Charles
18 MacDonald from jail, the Brampton Jail I believe, and I am
19 going to refer to -- the document number, Madam Clerk, is
20 715090.

21 Oh! It is an exhibit already.

22 Sorry.

23 **THE COMMISSIONER:** I thought it was ---

24 **MR. LAMB:** I don't think it was.

25 **THE COMMISSIONER:** It isn't?

1 Okay.

2 (SHORT PAUSE/COURTE PAUSE)

3 THE COMMISSIONER: Thank you.

4 Exhibit number 309 is a letter.

5 I don't know that it has a date on it, but
6 you're saying this is a letter to Father MacDonald from Mr.
7 Silmsers?

8 MR. LAMB: That's correct.

9 THE COMMISSIONER: Okay.

10 That's how we will identify it for the time
11 being.

12 Okay?

13 --- EXHIBIT NO./PIECE NO P-309:

14 (715090) Letter from David Silmsers to
15 Charles MacDonald - Undated.

16 MR. LAMB: Mr. Silmsers, do you recall
17 writing this letter?

18 MR. SILMSER: Yes, I do.

19 MR. LAMB: Okay.

20 And do you recall what year it was you wrote
21 it?

22 MR. SILMSER: I was in early -- I was 16,
23 17, somewhere in there; I think 16.

24 MR. LAMB: And at the time you were in
25 Brampton ---

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

2 **MR. LAMB:** --- in custody?

3 **MR. SILMSER:** That's correct.

4 **MR. LAMB:** And the letter begins"

5 "Dear Chuck..."

6 Was that a name that you commonly referred
7 to Father MacDonald as?

8 **MR. SILMSER:** Yes. I think most people did
9 at that time.

10 **MR. LAMB:** Okay.

11 Now, sir, that letter looks to me and, have
12 you had a chance -- I know you've seen the letter before,
13 but have you got a chance to recall the contents of it or
14 would you like a chance to go through those this morning?

15 **MR. SILMSER:** I've read the letter a few
16 times, yes.

17 **MR. LAMB:** Okay.

18 So it looks very much like a letter to a
19 friend.

20 **MR. SILMSER:** That's correct.

21 **MR. LAMB:** Okay.

22 And, sir, you'll agree with me that you
23 don't say anything about abuse of any type in that letter.

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

25 **MR. LAMB:** And this letter was written long

1 after the alleged abuse you spoke of during your evidence
2 in-chief is alleged to have occurred.

3 Correct?

4 **MR. SILMSER:** M'hm, quite a period, yes.

5 **MR. LAMB:** Okay.

6 **MR. SILMSER:** I was still young at the time.
7 The reason this letter was written was because of the
8 abuses, I blamed myself, somewhat. I was still a child and
9 I was ashamed of what had happened, and Charles MacDonald
10 always portrayed himself as my best buddy, and I had very
11 few friends back then, and the abuses I blocked out of my
12 head, and the only person I could talk to at the time
13 basically was him.

14 I -- later on through the years I had a hard
15 time with this letter. Why I'd write a letter like this,
16 and I had a few counsellors and a few psychologists explain
17 it to me. They said it's very normal that an abused victim
18 would write a letter like this, and I think if you want
19 anymore information on this, I think you'd have to ask an
20 expert and he would explain it to you a little bit better.

21 **MR. LAMB:** M'hm.

22 Yes, I didn't need any more information than
23 that.

24 **MR. SILMSER:** Okay.

25 Thank you.

1 **MR. LAMB:** I am going to turn now, sir, to -
2 - I will find the document number here, bear with me.

3 Madam Clerk, if I could ask you to retrieve
4 document number 738199.

5 **(SHORT PAUSE/COURTE PAUSE)**

6 **MR. LAMB:** Thank you.

7 This is a document entitled 'Transcript of
8 Telephone Message of David Silmsers'.

9 **THE COMMISSIONER:** Sorry. Yes.

10 Exhibit Number 310 is exactly that. It
11 purports to be a transcript of a telephone message of David
12 Silmsers dated August 11.

13 It doesn't say the year though, does
14 it?

15 **--- EXHIBIT NO./PIÈCE NO 310:**

16 (738199) David Silmsers - Transcript of
17 Telephone Message - August 11

18 **MR. LAMB:** It doesn't, Mr. Commissioner.

19 **THE COMMISSIONER:** Fine!

20 Maybe we'll be able to flush that out.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **THE COMMISSIONER:** Okay.

23 **MR. LAMB:** Okay?

24 Thank you.

25 Mr. Silmsers, do you recall leaving this

1 message for Mr. Anniss?

2 MR. SILMSER: I don't recall it, no.

3 MR. LAMB: Do you dispute the contents of it
4 at all?

5 MR. SILMSER: I guess I don't remember.

6 MR. LAMB: The document purports to be a
7 transcript of a message that you left with Mr. Anniss, who
8 at the time was counsel to the Diocese of Alexandria-
9 Cornwall.

10 THE COMMISSIONER: Well, it purports to be a
11 transcript of a telephone message by someone who identifies
12 himself as David Silmsers?

13 MR. LAMB: Yes.

14 THE COMMISSIONER: Okay.

15 MR. SILMSER: Is my lawyer -- my lawyer at
16 the time was phoning Mr. Anniss. So I just don't remember
17 this phone call. I don't even remember ever phoning Mr.
18 Anniss.

19 MR. LAMB: Do you recall, sir, that you
20 wanted to settle this matter at this time period?

21 MR. SILMSER: No, I don't.

22 MR. LAMB: You don't.

23 And, sir, do you recall ever seeking to
24 settle it in somewhere around the \$75,000 mark?

25 MR. SILMSER: No, I don't.

1 **MR. LAMB:** Now, do you recall ever stating
2 that you -- or have a feeling at that time that you wanted
3 out of this lawsuit, you were going to ---

4 **MR. LAMB:** We're going this letter piece-by-
5 piece. I'm telling you, I don't remember anything of this
6 letter right through.

7 **MR. LAMB:** Yes, and I'm not talking about
8 the letter right now.

9 What I'm asking you is: Do you recall at
10 any time, in your individual recollection, wanting to
11 settle the lawsuit?

12 **THE COMMISSIONER:** Can you help situate me a
13 little bit?

14 I don't know what year this is in. I don't
15 know where to situate myself with --

16 **MR. LAMB:** Certainly!

17 I can do that.

18 **THE COMMISSIONER:** Okay.

19 Excuse me, you're standing?

20 You want to say something?

21 **MR. CULIC:** My understanding is that
22 mathematically if you go back, 1997's the only year that an
23 August 11 ends on a Monday.

24 **THE COMMISSIONER:** Say that again.

25 **(LAUGHTER/RIRES)**

1 **THE COMMISSIONER:** August 11 ---

2 **MR. CULIC:** You can attempt to work the year
3 backwards.

4 **THE COMMISSIONER:** Right.

5 **MR. CULIC:** You can attempt to find out how
6 many years August 11 occurs on a Monday.

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

8 **MR. CULIC:** I think my friend ---

9 **THE COMMISSIONER:** And you've done that?

10 **MR. CULIC:** Yes, it's 1997. That's when
11 August 11 occurred on a Monday. But, again, that's just
12 working it out through a calendar.

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

14 Okay.

15 **MR. CULIC:** There's no other independent
16 evidence as far as I know, other than the fact that if you
17 go back through the period of time, through the calendars,
18 August 11, in 1997, was on a Monday.

19 **THE COMMISSIONER:** Okay.

20 Mr. Engelmann?

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

22 **MR. ENGELMANN:** We can do this much less
23 sophisticated than my friend opposite. There are documents
24 in the record to suggest that this would have occurred on
25 August the 11th, '97.

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

2 **MR. ENGELMANN:** What I'm not sure is, and
3 I'm doing this somewhat reluctantly because I got up once
4 yesterday and I've been told I did it numerous times.

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

6 **MR. ENGELMANN:** So what?

7 Someone wanted to settle a lawsuit at some
8 point. I mean, I think most litigants want to settle a
9 lawsuit at some point. I don't see this line of
10 questioning going anywhere.

11 **THE COMMISSIONER:** Okay.

12 Thank you.

13 Relevance?

14 **MR. LAMB:** That's the objection -- is
15 relevance?

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

17 And your response?

18 **MR. LAMB:** Yes, Mr. Commissioner, should --
19 there's a monetary interest with regard to the -- the
20 monetary interest of this witness with regard to
21 allegations against my client. Something that has already
22 been established in-chief, that there was a settlement and
23 this documentation shows that.

24 **THE COMMISSIONER:** And we're leading to?

25 **MR. LAMB:** It leads no further than ---

1 **THE COMMISSIONER:** Okay.

2 **MR. LAMB:** --- than simply putting it out
3 there; simply putting it out the evidence as the record is
4 there before the Commission of Inquiry.

5 **THE COMMISSIONER:** Fine!

6 Okay.

7 Thank you.

8 **MR. LAMB:** So, Mr. Silmsers, if I can go back
9 to where I was.

10 Do you have an independent recollection of
11 advising Mr. Robichaud or anyone, that you wanted to settle
12 this outstanding lawsuit in 1997?

13 **MR. SILMSER:** I can't remember the exact
14 conversations I had with Mr. Robichaud.

15 **MR. LAMB:** Do you have any recollection of
16 wanting to settle the matter at that time?

17 **MR. ENGELMANN:** Again, I apologize. I
18 thought my friend was going to move on.

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

20 **MR. ENGELMANN:** A person files a lawsuit
21 because they want something. We have that. We have that
22 already. Whether at some point a litigant wants to settle
23 a lawsuit or not, again, there's no relevance here.

24 Obviously, someone files a lawsuit they want
25 something as a result of or they wouldn't file the lawsuit.

1 We have that. We have that in the record that Mr. Silmsers
2 has filed a lawsuit against Father MacDonald and the
3 Diocese. That was in the record.

4 We also know that it was dismissed by --
5 because of delay. Wasn't adjudicated. We know there was a
6 lawsuit filed against the Ministry of Corrections and it
7 was settled. We know there was no lawsuit filed against
8 Lalonde or the school board.

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

10 **MR. ENGELMANN:** So we have those facts;
11 that's established.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Lamb, I'm sorry, but I was under the
14 impression that you were going to move on because you have
15 entered this as an exhibit now and we know it's there and
16 we know -- for what it's worth because he doesn't remember
17 it. We have this transcript that says that it's Mr.
18 Silmsers who's calling and I don't know really what more we
19 can do on that.

20 **MR. LAMB:** Perhaps if I can be allowed to
21 put a couple more questions and I will be brief, with
22 regard to the document on whether ---

23 **THE COMMISSIONER:** Well, let's see what
24 questions you have.

25 **MR. LAMB:** Well, my first question would be,

1 in 1997, I would ask -- and if you'll just hold off ---

2 **THE COMMISSIONER:** Just hold on!

3 **MR. LAMB:** --- before ---

4 **THE COMMISSIONER:** He's going to ask a
5 question. Just hold on.

6 **MR. LAMB:** Was Alain Robichaud your lawyer -
7 - your civil lawyer?

8 **THE COMMISSIONER:** Yes. Go ahead.

9 **MR. SILMSER:** I believe he was.

10 **MR. LAMB:** Okay.

11 Was the civil lawsuit involving the Diocese
12 and Father MacDonald still outstanding in August of 1997?

13 **MR. SILMSER:** That I don't know.

14 **MR. LAMB:** You can't remember if that lawsuit
15 was outstanding at the time?

16 **MR. SILMSER:** No, I don't know.

17 **MR. LAMB:** Would you agree with me that in
18 1997 it was five years since you had originally made your
19 allegations?

20 **MR. SILMSER:** Yes.

21 **MR. LAMB:** Approximately.

22 **MR. SILMSER:** Approximately, yes.

23 **MR. LAMB:** And, finally, would you agree
24 with me that this is the second time you attempted to
25 settle a lawsuit for a cash settlement?

1 **MR. SILMSER:** I think the first lawsuit was
2 null and void because the obstruction of justice with
3 Malcolm MacDonald.

4 **MR. LAMB:** Understood, Mr. Silmsers. I'm not
5 going to argue with -- but what I'm saying is, this is the
6 second time that you attempted to settle a lawsuit for a
7 cash settlement?

8 **MR. SILMSER:** I'm not sure the police
9 settlement came in before that or after that.

10 **THE COMMISSIONER:** If the what?
11 If the police settlement came in before
12 that.

13 Oh!

14 **MR. SILMSER:** I'm not sure.

15 **THE COMMISSIONER:** Well, in fairness to the
16 witness, if my understanding of the evidence is correct,
17 it's Mr. Malcolm MacDonald that phoned him to talk about a
18 settlement.

19 And so if you're going to make something of
20 who's initiating what calls, then the first call on the
21 first settlement was from Malcolm MacDonald to him. So he
22 would not have technically brought on the settlement and,
23 on this case, if he is the one who made the phone call,
24 well he initiated the phone call.

25 So, I don't know that technically your

1 question is fair.

2 MR. LAMB: May I rephrase?

3 THE COMMISSIONER: M'hm.

4 This was the second time a lawsuit involving
5 you.

6 THE COMMISSIONER: No.

7 MR. LAMB: No.

8 THE COMMISSIONER: No lawsuit. The first
9 one was not a lawsuit. I don't think there was any action.
10 In fact, I think the evidence was that things had lulled
11 for a while, and I don't want to put words in -- but out
12 the blue, Malcolm MacDonald phones him and talks
13 settlement. I think that's the way the evidence went.

14 MR. LAMB: Okay.

15 THE COMMISSIONER: Well, okay.

16 You have to be careful because you are
17 cross-examining and you have, to be fair to the witness, to
18 put it correctly.

19 MR. LAMB: This is the second time that the
20 allegations that you made ended up in a cash settlement.

21 THE COMMISSIONER: No.

22 MR. SILMSER: No.

23 THE COMMISSIONER: He didn't receive any --
24 did he receive \$75,000?

25 MR. LAMB: Fair enough.

1 **THE COMMISSIONER:** Well, this is the second
2 time that the issue of allegations of sexual abuse was the
3 subject matter of a potential settlement in your favour.

4 Is that fair?

5 **MR. LAMB:** Sounds fair to me.

6 **THE COMMISSIONER:** Okay.

7 Is that correct?

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

9 Can I ask what's so funny?

10 **THE COMMISSIONER:** No, no. No, no. It's
11 okay.

12 **MR. LAMB:** I'm certainly not laughing. I'm
13 laughing at my own inability to cross-examine you in any
14 broad sense.

15 **THE COMMISSIONER:** Yes. Mr. Silmsers, don't

16 ---

17 **MR. LAMB:** None to do with you, Mr. Silmsers.

18 **THE COMMISSIONER:** I know. We're having a
19 difficult time making sure the question is correct. So
20 don't - please, don't take anything untoward as to Mr.
21 Lamb.

22 **MR. SILMSER:** Okay.

23 **THE COMMISSIONER:** All right.

24 Thank you.

25 **MR. LAMB:** Sir, is it not true that you

1 attempted to get Ken Seguin to pay you to settle
2 allegations you were making against him also?

3 **MR. SILMSER:** There was a conversation with
4 Ken Seguin to come forward and tell the truth of what
5 happened. Malcolm MacDonald is the one that asked "What
6 will we be looking for in a cash settlement?" He's the one
7 that promoted that.

8 **MR. LAMB:** But it's true, sir, that you
9 called Ken Seguin. You called him up suggesting that an
10 arrangement could be made rather than you making
11 allegations -- that would stop you making allegations with
12 regard to Mr. Seguin.

13 **MR. SILMSER:** No, I don't believe so. It
14 didn't work that way. First, I wanted Mr. Seguin to come
15 out and tell the truth as to what had happened. He
16 disagreed with that, and Malcolm MacDonald got in touch
17 with me to offer some type of settlement financially.

18 **MR. LAMB:** So you spoke with Malcolm
19 MacDonald?

20 **MR. SILMSER:** That's correct.

21 **MR. LAMB:** And you ---

22 **MR. ROSE:** May I just rise for a moment,
23 please?

24 **THE COMMISSIONER:** Yes.

25 **MR. ROSE:** Sorry to interrupt.

1 **THE COMMISSIONER:** Okay.

2 **MR. ROSE:** Just in an effort to try and
3 smooth things or keep them going, I'm going to deal with
4 this area in my cross-examination as it bears on my
5 interests with both the Ministry.

6 **THE COMMISSIONER:** Right.

7 **MR. ROSE:** So I'm going to cover this and it
8 might be more fruitful to just leave to my cross-
9 examination and then we can move through this a little bit
10 quicker. That's just my suggestion.

11 **THE COMMISSIONER:** Yes.

12 Mr. Lamb.

13 **MR. LAMB:** Well, that's fair.

14 I had one other area to cover, but I'm not
15 going to cover it. Those are all the questions I have.

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

17 Who is next now?

18 Mr. Sherriff-Scott?

19 **MR. SHERRIFF-SCOTT:** Yes.

20 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

21 **SHERRIFF-SCOTT:**

22 **MR. SHERRIFF-SCOTT:** Good morning, Mr.

23 Silmsers.

24 I am David Sherriff-Scott. I represent the
25 Diocese of Alexandria-Cornwall. Just give me a moment to

1 get my papers sorted out and we'll begin.

2 Now, sir ---

3 Is the microphone all right?

4 Yes.

5 Mr. Silmsers, I want to start with the
6 original chronology, back in 1992, to situate you back
7 there when you first began telling your story. I'll just
8 pick up a few points to situate you and then we'll move on.

9 So, back in 1992, as I understand it, the
10 first person you told about your allegations regarding
11 Father Charles and Mr. Seguin was an OPP officer who had
12 sometime during that year arrested you for impaired.

13 Is that correct?

14 **MR. SILMSER:** That's correct.

15 **MR. SHERRIFF-SCOTT:** Okay.

16 And you told the OPP officer that you had
17 been abused by Charles MacDonald. I don't know about Mr.
18 Seguin, and you can't remember that officer's name?

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

20 **THE COMMISSIONER:** Mr. Silmsers, you may have
21 to come closer or speak a little louder so that we can tape
22 it.

23 **MR. SHERRIFF-SCOTT:** We both have to get on
24 the microphone because they're recording it.

25 And that was before you met with Monsignor

1 Schonenbach in Ottawa.

2 This is sometime in 1992, but you can't
3 recall, but before December?

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

5 **MR. SHERRIFF-SCOTT:** Okay.

6 And that OPP officer then referred you to
7 what I'll call the CPS, the Cornwall Police Service.

8 Is that correct?

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

10 **MR. SHERRIFF-SCOTT:** And I think your
11 evidence was also that your view was, at least, the OPP
12 also contacted the CPS to speak to them about your report.

13 **MR. SILMSER:** The OPP?

14 **MR. SHERRIFF-SCOTT:** Called the CPS about
15 your report to them.

16 **MR. SILMSER:** I have no knowledge of that.

17 **MR. SHERRIFF-SCOTT:** Okay.

18 I thought that was your evidence last day
19 that you were under the impression that the officer at the
20 OPP that you had met, in addition to referring you to the
21 Cornwall Police, also contacted them to make mention of
22 your potential coming since you said that the CPS guy
23 wasn't surprised when you called.

24 **MR. SILMSER:** Okay.

25 That's correct.

1 **MR. SHERRIFF-SCOTT:** Is that fair?

2 **MR. SILMSER:** Yes.

3 **MR. SHERRIFF-SCOTT:** Okay.

4 So it seems like, at least, the police
5 forces communicated about you on this issue some time
6 before December of 1992.

7 Fair?

8 **MR. SILMSER:** Okay.

9 **MR. SHERRIFF-SCOTT:** All right.

10 Now, on December 9th, 1992, and some people
11 have touched on this and I'm not going to go over it in
12 detail, but if we could turn up Exhibit 293. I think
13 you've seen this little note before, sir, but I just wanted
14 to ask you a couple of discreet questions about it.

15 Do you have that, sir?

16 **MR. SILMSER:** Yes, I do. Yes, I do.

17 **MR. SHERRIFF-SCOTT:** And that's the note by
18 Officer Nakic of the Cornwall Police Service which purports
19 to record a conversation with you on December 9th of that
20 year and it looks like -- first of all, you don't -- this
21 appears to be the best reconstruction of events as we can
22 tell.

23 Is that fair?

24 In other words, do you have any doubt about
25 the accuracy of the officer's notes?

1 Is there any concern you have here?

2 **MR. SILMSER:** I haven't read it. Just ---

3 **MR. SHERRIFF-SCOTT:** Okay.

4 You go ahead.

5 (SHORT PAUSE/COURTE PAUSE)

6 **MR. SILMSER:** Okay.

7 I've read it.

8 **MR. SHERRIFF-SCOTT:** Okay.

9 Now, you may not have an independent
10 recollection of the discussion, but do you have any reason
11 to doubt the accuracy of the officer's notes, sir?

12 **MR. SILMSER:** No.

13 **MR. SHERRIFF-SCOTT:** Okay.

14 That's fair.

15 So it looks like the best reconstruction we
16 can get of the conversation.

17 Fair?

18 **MR. SILMSER:** Yes.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 Now, it appears you tell him two things at
21 least, that you were sexually assaulted (a) by a priest
22 named Father Charles MacDonald; and (b) by a probation
23 officer named Ken Seguin.

24 Correct?

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

1 **MR. SHERRIFF-SCOTT:** And it looks like he
2 called you back and discussed the possibility of arranging
3 a meeting.

4 Is that fair?

5 **MR. SILMSER:** That's correct.

6 **MR. SHERRIFF-SCOTT:** Okay.

7 So at least before you met with any church
8 official, you had alerted the police generally to the
9 complaint and the names of the alleged perpetrators.

10 Correct?

11 **MR. SILMSER:** Actually, this is wrong.

12 **MR. SHERRIFF-SCOTT:** Okay.

13 **MR. SILMSER:** The first person I contacted
14 was when I was in jail.

15 **MR. SHERRIFF-SCOTT:** No, no. I'm not
16 talking about back then. I'm talking about 1992. I'll get
17 to the jail thing, and I remember your evidence when you
18 testified about that.

19 What I'm talking about ---

20 **MR. SILMSER:** You're saying -- you're saying
21 the first time I ever said anything about the abuse?

22 **MR. SHERRIFF-SCOTT:** No. No, no, no. I
23 don't want to put that suggestion to you and I don't want
24 you to feel that I'm unfairly suggesting that you had never
25 before reported this and then I'm going to turn around and

1 say "Ha, ha." That's not what I'm planning to do here.

2 What I simply want to do is situate you in
3 the chronology of your communications with police in 1992
4 and following.

5 Okay?

6 **MR. SILMSER:** Okay.

7 **MR. SHERRIFF-SCOTT:** All right.

8 So what I said to you at the end was you
9 told them the name of Charles MacDonald, the name of Ken
10 Seguin -- thank you -- and there was discussion about a
11 potential meeting.

12 And then I said in terms of communications
13 with the police specifically, it appears that you had done
14 that much and alerted the police to the general nature of
15 your complaint including the names of your perpetrators
16 before you met with a church official from the Diocese in
17 Ottawa or in Cornwall.

18 Is that fair?

19 **MR. SILMSER:** Again, I met -- when I was in
20 jail previous there was a priest in the jail which I had
21 told.

22 **MR. SHERRIFF-SCOTT:** I'll come to that. I'm
23 talking about 1992, sir.

24 **MR. SILMSER:** In that year?

25 **MR. SHERRIFF-SCOTT:** Yes, in that year.

1 MR. SILMSER: Okay.

2 MR. SHERRIFF-SCOTT: Is that fair?

3 MR. SILMSER: I agree.

4 MR. SHERRIFF-SCOTT: Okay.

5 Now, if we can turn to document number
6 110167, a letter dated December 11th, 1992 from Monsignor
7 Schonenbach to Don McDougald. If we could mark that as the
8 next exhibit when the time is appropriate?

9 THE COMMISSIONER: All right.

10 So that will be Exhibit No. 311.

11 -- EXHIBIT NO./PIÈCE NO P-311:

12 (110167) Letter from Msgr. Peter
13 Schonenbach to Msgr. McDougald -
14 December 11, 1992

15 MR. SILMSER: Three-eleven (311),
16 Commissioner?

17 THE COMMISSIONER: Three one one (311).

18 MR. SHERRIFF-SCOTT: Thank you.

19 Do you have that before you, Mr. Silmsers?

20 MR. SILMSER: Yes, I do.

21 MR. SHERRIFF-SCOTT: Okay.

22 Why don't you scan that for a moment and
23 tell me when you're ready, please?

24 (SHORT PAUSE/COURTE PAUSE)

25 MR. SHERRIFF-SCOTT: Are you ready, sir?

1 **MR. SILMSER:** No, no. It's too small to
2 read on the paper. I'll have to read it off the screen.

3 **MR. SHERRIFF-SCOTT:** Well, why don't we do
4 it paragraph by paragraph?

5 I only have -- I really want to situate you
6 contextually here as opposed to putting specific things to
7 you to adopt or not.

8 Okay?

9 So if we can look at the first paragraph, he
10 says here he met with you on December 10th of 1992.

11 Do you have any reason to doubt that day?

12 **MR. SILMSER:** No, I don't.

13 **MR. SHERRIFF-SCOTT:** Okay.

14 And I think your evidence last week was that
15 you dropped into an office in the south end of the downtown
16 of Ottawa somewhere?

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

18 **MR. SHERRIFF-SCOTT:** Okay.

19 So that appears to have happened December
20 10th and that's our best record of that meeting.

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

22 **MR. SHERRIFF-SCOTT:** Okay.

23 And you told them your story or an outline
24 of it as best you could?

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

1 **MR. SHERRIFF-SCOTT:** Okay.

2 It doesn't appear that you told him you had
3 already spoken to police.

4 Did you do that or do you remember?

5 **MR. SILMSER:** I can't remember.

6 **MR. SHERRIFF-SCOTT:** Okay.

7 And what's clear in your mind though as I
8 take it from your evidence is that he then referred you to
9 Don McDougald as the person in this region who would deal
10 with your issue.

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

12 **MR. SHERRIFF-SCOTT:** Okay.

13 Now, if we can move on to Document 110163
14 which is a letter of December 21st, 1992 to Monsignor
15 MacDougald from A.M. MacDonald, Q.C. and when appropriate
16 mark that?

17 **THE COMMISSIONER:** Exhibit 312.

18 --- **EXHIBIT NO./PIÈCE NO. P-312:**

19 (110163) Letter from A.M. MacDonald, Q.C. to
20 Msgr. Donald MacDougald - December 21, 1992.

21 **THE COMMISSIONER:** You might want to -- it's
22 small writing there, Mr. Silmsers, so you might want to ---

23 **MR. SHERRIFF-SCOTT:** The type isn't so good
24 and I don't expect you to have seen this letter before, but
25 it's important that you see some things that come out of it

1 for what follows, all right?

2 In other words, I don't expect you to have
3 personal recollections. But what appears here is that
4 Charles MacDonald very quickly became aware of your
5 allegations because his lawyer, Malcolm MacDonald -- and
6 you knew at least back then he was acting for Charles
7 MacDonald. Correct?

8 **MR. SILMSER:** I knew?

9 **MR. SHERRIFF-SCOTT:** Eventually you knew he
10 was acting for Charles MacDonald?

11 **MR. SILMSER:** Eventually, yes.

12 **MR. SHERRIFF-SCOTT:** Yes, okay.

13 It says here a number of things. If you
14 look at the second full paragraph he says:

15 "I wish at this time to go on record as
16 to our position in this matter. Most
17 of these points were raised at our
18 meeting. First, Charles MacDonald
19 adamantly denies the allegations set
20 out in your letter of December 11th."

21 And second, he says here:

22 "I have one problem that I raised at
23 the meeting. The allegations are,
24 frankly, very vague. In order to
25 answer any allegations we would require

1 a disclosure -- a detailed statement
2 from the complainant. This statement
3 should be like a disclosure in a
4 criminal matter."

5 And he goes on to talk about that. Okay, do
6 you see that?

7 **MR. SILMSER:** What meeting was this?

8 **MR. SHERRIFF-SCOTT:** This is a meeting that
9 took place between others that you weren't at. I just want
10 to situate you for what follows, and what follows is
11 something that did involve you specifically, okay? All
12 right?

13 **MR. SILMSER:** You wouldn't be reading this
14 paragraph unless it concerned me. That's why I was
15 wondering what ---

16 **MR. SHERRIFF-SCOTT:** Of course it concerns
17 you in a general fashion. What I meant to say specifically
18 is you wouldn't have been at the meeting?

19 **MR. SILMSER:** I was just asking what meeting
20 was this?

21 **MR. SHERRIFF-SCOTT:** This was a meeting
22 between others, Monsignor MacDougald apparently and Malcolm
23 MacDonald.

24 **MR. SILMSER:** Just the two of them?

25 **MR. SHERRIFF-SCOTT:** No, probably Charles

1 MacDonalld as well, where the allegations were put to him.

2 MR. SILMSER: M'hm.

3 MR. SHERRIFF-SCOTT: Okay. Now, this is
4 contextual for you. What comes is the question about your
5 involvement that follows. Okay, are you with me?

6 MR. SILMSER: So far.

7 MR. SHERRIFF-SCOTT: All right.

8 So what appears from this letter is it looks
9 like Charles MacDonalld has counsel and he is denying the
10 allegations, okay?

11 All right. Now, the next document is
12 December 29th, 1992, document 109639, which is a memorandum
13 or a fax from Monsignor Schonenbach to Angus MacDonalld.

14 And if we can mark that 313?

15 THE COMMISSIONER: Exhibit 313.

16 --- EXHIBIT NO./PIÈCE NO. P-313:

17 (109639) Memo from Peter Schonenbach to
18 Angus MacDonalld - December 29, 1992.

19 (SHORT PAUSE/COURTE PAUSE)

20 MR. SHERRIFF-SCOTT: Tell me when you've
21 read that, sir.

22 MR. SILMSER: I have read it.

23 MR. SHERRIFF-SCOTT: Okay. You'll see
24 Monsignor Schonenbach says:

25 "I called the complainant..."

1 That's you:

2 "...under the circumstances outlined he
3 does not want to cooperate further,
4 intends taking the matter to the
5 police."

6 Now, I suggest to you the circumstances --
7 first of all, I suggest to you that Monsignor Schonenbach
8 called you back with information about a number of facts;
9 one, that Charles MacDonald refused to acknowledge your
10 allegations as being true.

11 **MR. SILMSER:** I don't remember this letter
12 at all. I don't remember his phone call whatsoever.

13 **MR. SHERRIFF-SCOTT:** Do you deny the phone
14 call or you just have no memory of it?

15 **MR. SILMSER:** I'd like to deny it but it was
16 so long ago I'll just say I have no memory of it.

17 **MR. SHERRIFF-SCOTT:** All right.

18 What appears from this, sir, is that there
19 were communications after your meeting with Mr. Schonenbach
20 in Ottawa and that he informed you of a number of things.
21 Let's just see if this jogs your memory:

22 "... a denial by Father Charles and
23 thus, it would appear no apology would
24 be forthcoming at least from him.

25 Two, that he had his own lawyer at this

1 discussions between the complainant and others where
2 details of these discussions are referred to. This is the
3 first document in that line of those documents.

4 The next document I'm referring to is one of
5 those; in other words, the police station which -- police
6 statement which records discussions purported to be given
7 to the police officer by Mr. Silmsier regarding what was
8 told to him and the exchange between Monsignor Schonenbach
9 and him and they are perfectly consistent with this note
10 and what I'm putting to the witness.

11 **MR. ENGELMANN:** Perhaps my friend could just
12 take him there then. It might be more useful.

13 **MR. SHERRIFF-SCOTT:** Perhaps I'll do it at
14 my own pace, if my friend doesn't mind. I really wish to
15 just do this in a meaningful way without interruption. I'm
16 not being unfair to the witness. I'm trying to let him see
17 if I can jog his memory and put some various propositions
18 to him which are clear from the documents that follow.

19 **THE COMMISSIONER:** First of all, when
20 someone gets up, it's for a reason. You get up from time
21 to time.

22 **MR. SHERRIFF-SCOTT:** I do.

23 **THE COMMISSIONER:** You come to the dais and
24 you were heard. I will ask you to exercise the same
25 patience as everyone else does when you come to the dais to

1 object. Is that clear?

2 **MR. SHERRIFF-SCOTT:** That's fine, sir.

3 **THE COMMISSIONER:** Fine.

4 Now, that having been said, the objection
5 was valid in the sense. You've given the explanation.
6 I'll permit you to continue.

7 **MR. SHERRIFF-SCOTT:** Thank you, sir.

8 Where we were, Mr. Silmsers, is I was putting
9 to you as a proposition to see if I could refresh your
10 memory, that there were discussions between you and
11 Monsignor Schonenbach following your meeting in which you
12 were told at least a number of things. And I put to you
13 that there was a denial which is consistent with what
14 Schonenbach appears to have been told by MacDougald and
15 MacDonald that there was counsel engaged by Father
16 MacDonald at least towards the end of December and that you
17 would have known that.

18 Do you have any memory of that, sir?

19 **MR. SILMSER:** No, I don't.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 If we can turn to the next document, then,
22 which is Document number 101549, and these are notes of
23 Heidi Sebalj.

24 **THE REGISTRAR:** One-zero-one-five (1015)?

25 **MR. SHERRIFF-SCOTT:** Sorry, 101549.

1 **THE COMMISSIONER:** Thank you. Exhibit 314.

2 **--- EXHIBIT NO./PIÈCE NO. P-314:**

3 (101549) Handwritten Notes of Heidi Sebalj -
4 January 28, 1993.

5 **MR. SHERRIFF-SCOTT:** Thank you.

6 **THE COMMISSIONER:** It says "Notes of first
7 meeting with Silmsers, January 28th, 1993."

8 **MR. SHERRIFF-SCOTT:** Yes, and specifically
9 Bates page 1025513. It's the last page of the document,
10 1025513.

11 **THE COMMISSIONER:** Mr. Silmsers, right at the
12 back.

13 **MR. SHERRIFF-SCOTT:** At the bottom, Mr.
14 Silmsers, it looks like -- above the word "Zoran" -- Z-O-R-
15 A-N.

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

17 **MR. SHERRIFF-SCOTT:** And below "Father
18 Paul". Okay?

19 **MR. SILMSER:** Okay.

20 **MR. SHERRIFF-SCOTT:** Now, this is Heidi
21 Sebalj's note of your meeting of January 28th and she was
22 there on the 28th of January when you first met with the
23 CPS. Correct?

24 **MR. SILMSER:** Okay.

25 **MR. SHERRIFF-SCOTT:** Is that fair?

1 **MR. SILMSER:** Okay.

2 **MR. SHERRIFF-SCOTT:** Okay. And she was, in
3 your view, taking notes? She wasn't doing the active
4 questioning but taking notes at this meeting?

5 **MR. SILMSER:** That I don't remember.

6 **MR. SHERRIFF-SCOTT:** All right.

7 What she says here is -- and this is
8 purported to be attributed to you:

9 "Called Archbishop and met at his --
10 went to his house three weeks before
11 Xmas. Told someone about ride in the
12 car. He called me back and said priest
13 denied it, got a lawyer and for me to
14 get a lawyer."

15 Now, that as I read it, purports to be a
16 recollection of yours being given to the officer about what
17 you had as a verbal exchange with Monsignor Schonenbach
18 following your meeting.

19 **MR. SILMSER:** Monsignor Schonenbach, is he a
20 bishop?

21 **MR. SHERRIFF-SCOTT:** I think you were
22 calling him something like that at the time. He is a
23 "monsignor" which means a senior priest, but he is not a
24 bishop nor is he an archbishop.

25 **MR. SILMSER:** I don't think this would have

1 any meaning because I was calling him a bishop so it looks
2 like ---

3 **MR. SHERRIFF-SCOTT:** Well, he is not a
4 bishop, sir.

5 **MR. SILMSER:** So why do you say that I was
6 calling Monsignor Schonenbach?

7 **MR. SHERRIFF-SCOTT:** So you deny that this
8 would refer to Schonenbach?

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

10 **MR. SHERRIFF-SCOTT:** Did you talk to any
11 archbishop other than -- well, did you talk to an
12 archbishop at any time in Ottawa?

13 **MR. SILMSER:** In Ottawa? Cornwall, I tried
14 to get in touch with the bishop in Cornwall.

15 **MR. SHERRIFF-SCOTT:** Did you talk to an
16 archbishop or a bishop in December of 1992 or before
17 January 28th, 1993?

18 **MR. SILMSER:** I made a lot of phone calls
19 back then.

20 **MR. SHERRIFF-SCOTT:** The most probable thing
21 here is that you are referring to Schonenbach, isn't it?

22 **MR. SILMSER:** I don't believe so.

23 **MR. SHERRIFF-SCOTT:** That's your evidence,
24 sir?

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

1 **MR. SHERRIFF-SCOTT:** Okay.

2 **THE COMMISSIONER:** First of all ---

3 **MR. KOZLOFF:** It's very difficult for those
4 of us parties in the room to follow this cross-examination,
5 we don't have the document to which the witness is being
6 referred.

7 **THE COMMISSIONER:** It's on the ---

8 **MR. KOZLOFF:** It's not on our screen. The
9 portion which is being referred to is not on our screen.

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

11 Madam Clerk, could you scroll down to the
12 bottom?

13 **THE REGISTRAR:** I need the Bates number.

14 **MR. SHERRIFF-SCOTT:** It's 1025513. It's the
15 very last page of the document and it's at the bottom of
16 that page.

17 **(SHORT PAUSE/COURTE PAUSE)**

18 **THE COMMISSIONER:** All right.

19 So we're all on the same page so to speak.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **THE COMMISSIONER:** Here we go.

22 **MR. SHERRIFF-SCOTT:** It's the portion above
23 "Z-O-R-A-N" in upper case, bold, on the bottom of the page.

24 **THE COMMISSIONER:** That's it right there.

25 **MR. SHERRIFF-SCOTT:** All right.

1 So you made a lot of phone calls at the time
2 but you wouldn't have any knowledge of speaking to an
3 archbishop anywhere else?

4 **MR. SILMSER:** I don't remember.

5 **MR. SHERRIFF-SCOTT:** Okay. Is that the nub
6 of it; that you don't remember?

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

8 **MR. SHERRIFF-SCOTT:** Okay. So this is a
9 possibility?

10 **MR. SILMSER:** No, I don't think it is a
11 possibility that I spoke to Monsignor Schonenbach ever
12 again.

13 **MR. SHERRIFF-SCOTT:** Okay. All right.

14 Now, I'd like to refer to Constable Sebalj's
15 notes at Exhibit 297. This is the typed version.

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

17 **MR. SHERRIFF-SCOTT:** Mr. Silmsen, there is a
18 typed version of the officer's notes recording her
19 interactions with you.

20 **THE COMMISSIONER:** Exhibit 297. You are
21 there?

22 **MR. SILMSER:** Yes, I am.

23 **THE COMMISSIONER:** Okay. What page did you
24 want to go to?

25 **MR. SHERRIFF-SCOTT:** The first page,

1 Commissioner.

2 **THE COMMISSIONER:** Okay.

3 **MR. SHERRIFF-SCOTT:** Do you have that, Mr.
4 Silmsers?

5 **MR. SILMSER:** Yes, I do.

6 **MR. SHERRIFF-SCOTT:** It's under the January
7 13th entry, and you'll see towards the sort of halfway point
8 in the textual portion under the underline, "13:15
9 telephone call to victim" and it refers to "being reluctant
10 to speak to a female" and you testified about that.

11 And down two lines is what I'm interested
12 in.

13 **MR. SILMSER:** On the next page?

14 **MR. SHERRIFF-SCOTT:** No, sir, the same page.
15 Okay.

16 "V advised he has..."

17 Do you see that?

18 **MR. SILMSER:** Yes. Just a second. Yes,
19 okay.

20 **MR. SHERRIFF-SCOTT:**

21 "V advised he has spoken to
22 and met with Bishop in Ottawa who
23 apparently filed a report and spoke
24 with suspect who is said to have
25 retained counsel. V very angry with

1 priest; wanted only an apology for his
2 acts but was told to file a complaint
3 with police if need be. Now do you
4 have any knowledge as to the identity
5 of this person called a Bishop in
6 Ottawa as being anyone other than
7 Monsignor Schonenbach?"

8 **MR. SILMSER:** This is Heidi Sebalj's notes?

9 **MR. SHERRIFF-SCOTT:** That is correct.

10 Recording what you purportedly told her.

11 **MR. SILMSER:** I told her I had a meeting
12 with Schonenbach in his office in Ottawa. Whatever she
13 wrote after that, I have no idea or why she would write
14 what she wrote.

15 **MR. SHERRIFF-SCOTT:** What she wrote after
16 that, and she wrote the Bishop in Ottawa, and surely you
17 agree with me the most likely person she is referring to is
18 Schonenbach since that's the only person of a clergy man
19 that you met with in Ottawa.

20 Isn't that right?

21 **MR. SILMSER:** I can't comment on Heidi
22 Sebalj's notes. Sorry. I don't know what she'd say or
23 what she wouldn't say in her notes.

24 **MR. SHERRIFF-SCOTT:** Okay.

25 And that she says:

1 "He filed a report and spoke with
2 suspect."

3 This is coming from you:

4 "He said you have retained counsel."

5 **MR. SILMSER:** This is coming from her saying
6 what I say?

7 **MR. SHERRIFF-SCOTT:** That's correct sir.

8 **MR. SILMSER:** Okay.

9 **MR. SHERRIFF-SCOTT:** Do you have any reason
10 to doubt that she recorded accurately what you told her?

11 **MR. SILMSER:** What would I tell her here?

12 **MR. SHERRIFF-SCOTT:** It says it right here
13 that you advised that you had spoken to and met with Bishop
14 in Ottawa who apparently filed a report and spoke with
15 suspect who is said to have retained counsel.

16 **MR. SILMSER:** Yes. I don't remember ever
17 saying something like that.

18 **MR. SHERRIFF-SCOTT:** So do you deny that or
19 is that a possibility?

20 **THE COMMISSIONER:** Okay.

21 I'm sorry.

22 **MR. SILMSER:** I deny that.

23 **THE COMMISSIONER:** Can I stop you for a
24 second?

25 **MR. SHERRIFF-SCOTT:** Yes, sir.

1 **THE COMMISSIONER:** All right.

2 I am a little confused and the notes --
3 Exhibit 314 talks about notes on first meeting with Silmsers
4 on January 28, 1993.

5 **MR. SHERRIFF-SCOTT:** I am sorry
6 Commissioner, I am at Exhibit 297 ---

7 **THE COMMISSIONER:** No, I understand that ---

8 **MR. SHERRIFF-SCOTT:** Yes.

9 **THE COMMISSIONER:** --- I understand that.
10 But here it says January 13th, 1993 ---

11 **MR. SHERRIFF-SCOTT:** Yes.

12 **THE COMMISSIONER:** --- and we go through
13 that. And so if the notes on January 28th, 1993 are the
14 first meeting with Silmsers, there is something weird here.

15 **MR. SHERRIFF-SCOTT:** No, no. You'll see
16 what follows here. This is the telephone contact with Mr.
17 Silmsers which is the first telephone contact, and then
18 there follows a number of, what I describe as false starts
19 between the police and Mr. Silmsers. They're trying to
20 arrange the meeting of January 28th. In other words it's
21 not convenient for one or the other, and some dates are
22 rearranged and, ultimately, they meet on the 28th.

23 **THE COMMISSIONER:** Yes.

24 **MR. SHERRIFF-SCOTT:** Okay.

25 So this is just -- what happened here in the

1 chronology of what I put to the witness was Schonenbach's
2 facts, then I put Sebalj's 28th memorandum of what he said
3 on the later meeting ---

4 **THE COMMISSIONER:** Right.

5 **MR. SHERRIFF-SCOTT:** --- and now I am just
6 going back to the beginning of her notes and this is the
7 first time she spoke to him on the phone.

8 **THE COMMISSIONER:** Okay.

9 **MR. SHERRIFF-SCOTT:** Okay?

10 So you'll see what follows, is it comes to
11 January 28th, a couple of pages later.

12 **THE COMMISSIONER:** All right, sir.

13 And now, help me a little bit.

14 **MR. SHERRIFF-SCOTT:** Yes.

15 **THE COMMISSIONER:** Have you confirmed that -
16 - the recollection of the first phone call?

17 **MR. SHERRIFF-SCOTT:** I'll do that right now.

18 **THE COMMISSIONER:** Okay.

19 **MR. SHERRIFF-SCOTT:** That's fine.

20 Thank you, sir.

21 **THE COMMISSIONER:** Okay.

22 Sorry.

23 **MR. SHERRIFF-SCOTT:** I am not sure you'd
24 have specific recollections about all your phone calls with
25 Ms. Sebalj because I know you testified last week you had

1 many of them.

2 Right?

3 **MR. SILMSER:** That's right.

4 **MR. SHERRIFF-SCOTT:** Okay.

5 So is it roughly comport with your recollection that before
6 you met with the three officers at the end of January of
7 1993, she would have contacted you by phone at least in
8 order to touch base and arrange a meeting?

9 **MR. SILMSER:** I don't know who arranged that
10 meeting.

11 **MR. SHERRIFF-SCOTT:** Okay.

12 Do you have any reason to doubt the
13 officer's notes that she called you and you had this
14 discussion?

15 **MR. SILMSER:** What discussion is that?

16 **MR. SHERRIFF-SCOTT:** The discussion I just
17 put to you about January 13th referring to the person in
18 Ottawa, the report, the priest denying, you and he having
19 retained counsel, et cetera?

20 **MR. SILMSER:** Like, I don't remember this.

21 So.

22 **MR. SHERRIFF-SCOTT:** That's fine.

23 Okay.

24 I appreciate that. It's a long time ago and
25 I only want you to say to me one of two things, either you

1 -- this didn't happen or you simply don't remember and it's
2 a possibility.

3 **THE COMMISSIONER:** Or that he remembers.

4 **MR. SHERRIFF-SCOTT:** Pardon me?

5 **THE COMMISSIONER:** Or that he remembers.

6 **MR. SHERRIFF-SCOTT:** Or that he remembers
7 it.

8 Exactly!

9 **MR. SILMSER:** I just don't remember.

10 **MR. SHERRIFF-SCOTT:** Okay.

11 That's fine.

12 Well, what I am going to suggest to you
13 though is by early January of 1993, before you met with the
14 police on the 28th, you knew a number of things: Number
15 one, that Charles MacDonald was not accepting your
16 allegations and was denying them; number two that he had a
17 lawyer.

18 Is that fair?

19 **MR. SILMSER:** No it's not.

20 How would I know that?

21 How would I know anything about Charles
22 MacDonald, what he was saying or what he wasn't saying?

23 **MR. SHERRIFF-SCOTT:** Okay.

24 If we follow her notes to the next page,
25 sir, page 2 of 64 ---

1 **MR. SILMSER:** This is Heidi Sebalj's notes
2 again?

3 **THE COMMISSIONER:** The typed ones.

4 **MR. SHERRIFF-SCOTT:** Yes, they are.

5 **THE COMMISSIONER:** The typed ones.

6 **MR. SHERRIFF-SCOTT:** The typed version of
7 her notes.

8 **MR. SILMSER:** Okay.

9 **THE COMMISSIONER:** So, just turn the page.
10 If you look at the bottom, it says page 2 of 64, in real
11 small letters and numbers.

12 **MR. SHERRIFF-SCOTT:** You'll see a number of
13 dates in the right marginal column: 18 Jan., 19 Jan., 26
14 Jan. What it looks like, and you tell me if you remember
15 this, and this is really just context before I get to the
16 28th, is that you and she tried to arrange a number of
17 meetings by telephone which for various and sundry reasons
18 didn't happen until the 28th of January.

19 **MR. SILMSER:** You have to go into specifics
20 because I don't remember this. So.

21 **MR. SHERRIFF-SCOTT:** If you don't remember
22 that, that's fine. She just says that she tried to arrange
23 a meeting with you and for various reasons you couldn't
24 make it on various occasions until January 28th. That's all
25 the specifics we need to discuss. If you don't recall

1 that, that's fine.

2 **MR. SILMSER:** I don't recall it, no.

3 **MR. SHERRIFF-SCOTT:** You don't recall?

4 **MR. SILMSER:** No.

5 **MR. SHERRIFF-SCOTT:** I can't hear you. I am
6 sorry, Mr. Silmser.

7 **MR. SILMSER:** No, I don't -- I don't recall.

8 **MR. SHERRIFF-SCOTT:** Thank you.

9 Sorry.

10 It's the microphone. You were just looking
11 down. I didn't hear your answer.

12 Okay.

13 Now, if we look over to her note, the next
14 page, page 3 of 64, there is reference to January 28th in
15 the right marginal columns, sort of about a third of the
16 way down the page.

17 Do you see that?

18 **MR. SILMSER:** Yes, I do.

19 **MR. SHERRIFF-SCOTT:** And you do know that
20 you met with the CPS on January 8th, 1993.

21 Correct?

22 **MR. SILMSER:** Yes, I do.

23 **MR. SHERRIFF-SCOTT:** Okay.

24 And there were a number of officers there;
25 you remember her. I don't know if you said you remembered

1 Malloy or whether you couldn't remember Malloy or Lefebvre.

2 Who do you remember being there
3 specifically?

4 **MR. SILMSER:** I remember Heidi Sebalj and
5 Malloy.

6 **MR. SHERRIFF-SCOTT:** Okay.

7 The first thing I'd like to do -- as I
8 understand it, this is a detailed interview you gave to the
9 Cornwall police about your allegations?

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

11 **MR. SHERRIFF-SCOTT:** Okay.

12 They then, before the meeting closed, asked
13 you to write it out and return it at a later time.

14 **MR. SILMSER:** That's correct.

15 **MR. SHERRIFF-SCOTT:** Okay.

16 Now, if I could turn to Officer Malloy's
17 notes, document 711540.

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

19 **MR. SHERRIFF-SCOTT:** Does the witness have
20 that?

21 **THE COMMISSIONER:** No, No. Not yet.

22 **MR. SHERRIFF-SCOTT:** Oh!

23 Thank you.

24 **THE COMMISSIONER:** Exhibit 315, these are
25 police officer's notes of Constable Malloy?

1 --- EXHIBIT NO./PIÈCE NO P-315:

2 (711540) Handwritten Officer Notes of Kevin
3 Malloy - January 27, 1993.

4 **MR. SHERRIFF-SCOTT:** Malloy, yes.

5 Now, Mr. Silmsers, what I want you to do on
6 this document is turn to the second last page, which is
7 Bates page 7043884, February 1 entry and I'm going to read
8 from that. You follow me along:

9 "Telephone message to call Malcolm
10 MacDonald. I returned his call re
11 Silmsers matter."

12 **MR. SILMSER:** Excuse me. I don't know where
13 I am right now.

14 **MR. SHERRIFF-SCOTT:** You're at the top of
15 the page, on the February 1, '93 entry.

16 Do you see that?

17 It's the second last page of the document.

18 **MR. ENGELMANN:** Perhaps we could just be
19 clear for the record. I had understood this was the
20 January 28th notes; these are running notes.

21 **MR. SHERRIFF-SCOTT:** They are the notes.

22 **MR. ENGELMANN:** Oh! That's correct.

23 **THE COMMISSIONER:** All right.

24 **MR. SHERRIFF-SCOTT:** These are the officer's
25 -- my friend used the expression 'running notes', Mr.

1 Silmsers, which means, he keeps a diary of interaction on
2 the same file. So he's got a notebook and when he has a
3 call or something, he puts it in that notebook with date
4 entries.

5 Okay?

6 So this is his running notebook of February
7 1st and I just want to read to you, you follow along:

8 "13:17, telephone message to call
9 Malcolm MacDonald. I returned his call
10 re Silmsers matter. I advised him that
11 this matter was assigned to Constable
12 Sebalj. He was requesting info. I
13 advised him that Mr. Silmsers had
14 attended HQ January 28th, 1993 and was
15 interviewed. Mr. MacDonald advised me
16 that he had received a phone call late
17 Thursday night, Jan. 28, '93, 22:00-
18 22:30 hours from Seguin and Monsignor
19 MacDougald. They were apparently
20 called by Mr. Silmsers and indicated
21 that he sounded intoxicated".

22 Now, in terms of your interactions here,
23 were you calling Mr. Seguin around this time to discuss
24 issues pertaining to this -- your allegations?

25 **MR. SILMSER:** First, I'd like to know who

1 the police -- why the police officer was phoning Malcolm
2 MacDonald?

3 **MR. SHERRIFF-SCOTT:** Well, he wasn't.

4 **MR. SILMSER:** It says right here:

5 "Telephone message to call Malcolm
6 MacDonald".

7 **MR. SHERRIFF-SCOTT:** Yes. What that means
8 is, I take it sir, is that he got a message from the man
9 asking for him to return the call and that's what he did.
10 So when someone calls him, he calls back. So it looks like
11 this is a callback ---

12 **MR. SILMSER:** Okay.

13 **MR. SHERRIFF-SCOTT:** --- in response to a
14 message left by Malcolm MacDonald.

15 Okay?

16 **MR. SILMSER:** Okay.

17 **MR. SHERRIFF-SCOTT:** Leaving that aside, and
18 now that we are oriented on it, were you calling Mr. Seguin
19 around this time to discuss your complaints?

20 **MR. SILMSER:** I don't even know when this
21 time was.

22 **MR. SHERRIFF-SCOTT:** February 1st and it
23 refers to you doing that on January 28th, which is the same
24 day you met with the CPS.

25 **MR. SILMSER:** I don't remember this. No.

1 **MR. SHERRIFF-SCOTT:** You don't remember
2 calling Mr. Seguin around this time even?

3 **MR. SILMSER:** No.

4 **MR. SHERRIFF-SCOTT:** Do you remember calling
5 Father MacDougald around this time?

6 **MR. SILMSER:** I called Father MacDougald
7 numerous times.

8 **MR. SHERRIFF-SCOTT:** Numerous times.
9 Okay.

10 If we can turn to the last page of that
11 document.

12 **THE COMMISSIONER:** And ---

13 **MR. SHERRIFF-SCOTT:** I'm sorry, sir.

14 **THE COMMISSIONER:** I just want to point out
15 that there is asterisks at the bottom of the notes and it
16 says:

17 "Non-validated info at this time".

18 **MR. SHERRIFF-SCOTT:** Yes, of course. Yes.

19 **THE COMMISSIONER:** All right.

20 **MR. SHERRIFF-SCOTT:** And I'll come to that
21 as I explore the thing with the witness. I do appreciate
22 it wasn't the discussion with him directly.

23 **THE COMMISSIONER:** Right.

24 **MR. SHERRIFF-SCOTT:** Mr. Silmsen, the next
25 entry, the next page, you'll see the top of it again, it

1 says 13:40 hours.

2 Do you see that, 13:40; do you see the
3 reference on the left at the top?

4 **MR. SILMSER:** Oh! Yes.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 "Returned a call from David Silmsers,
7 advised me he had been contacted by
8 Monsignor MacDougald to attend a
9 meeting between himself, three priests
10 and their legal representative to
11 discuss this matter. Meeting not yet
12 been arranged. I advised him to hold
13 off until Constable Sebalj is informed
14 and the matter is discussed. He
15 agreed. Statement not yet ready".

16 Now, do you remember discussing this kind of
17 issue with Sergeant Malloy?

18 **MR. SILMSER:** No, I don't.

19 **MR. SHERRIFF-SCOTT:** Would it be fair to say
20 that before the meeting with the Diocese that you would
21 have known that their legal counsel was going to be present
22 when it happened?

23 **MR. SILMSER:** I don't remember.

24 **MR. SHERRIFF-SCOTT:** No.

25 Would you have anticipated Monsignor

1 MacDougald to have been there before you went?

2 MR. SILMSER: Actually, I didn't know who
3 would be there.

4 MR. SHERRIFF-SCOTT: Okay.

5 MR. SILMSER: But it was no surprise that
6 Father MacDougald would be there for me.

7 MR. SHERRIFF-SCOTT: All right.

8 So you have no memory of telling the police
9 office that you knew there was going to be a lawyer there
10 representing the Diocese as well?

11 MR. SILMSER: I said that?

12 MR. SHERRIFF-SCOTT: That's what it appears
13 to say from the note. He is recording, I assume, what you
14 told him.

15 MR. SILMSER: I don't know. I don't
16 remember ever saying that to him. I don't even remember
17 phoning Mr. Malloy.

18 MR. SHERRIFF-SCOTT: Okay.

19 MR. SILMSER: In fact, the only time I ever
20 remember Mr. Malloy was once with Heidi Sebalj in her
21 office. And then after that, I have never seen him again.

22 MR. SHERRIFF-SCOTT: Okay.

23 Surely it's possible you talked to Officer
24 Malloy around this time?

25 MR. SILMSER: Like I said, the only time I

1 ever remember Mr. Malloy was once in the office, at the
2 Cornwall police station, with Heidi Sebalj and I never seen
3 him after that again.

4 **MR. SHERRIFF-SCOTT:** Okay.

5 I am not talking about seeing him. I am
6 talking about the possibility of speaking to him on the
7 phone thereafter.

8 **MR. SILMSER:** I don't remember.

9 **MR. SHERRIFF-SCOTT:** Okay.

10 And I want to make sure that's what you're
11 saying; you don't remember versus you deny it ever
12 happened.

13 **MR. SILMSER:** I am not going to deny
14 anything happened so long ago.

15 **MR. SHERRIFF-SCOTT:** I know that and that's
16 why I am asking for that information.

17 **MR. SILMSER:** To my best knowledge, I don't
18 remember ever talking to Mr. Malloy.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 That's fine.

21 When you were examined by Commission
22 counsel, you indicated in your direct testimony that before
23 you met with the Diocese on February 9th, he asked you:

24 "Did you speak to the CPS about it?"

25 And you said:

1 "Yes, I spoke to Heidi. I let her know
2 everything was going on. I would
3 inform her about what things were
4 happening."

5 So is it fair to say at least that you would
6 have called Constable Sebalj about the upcoming meeting at
7 the Diocese?

8 **MR. SILMSER:** It was either a call or a
9 meeting with Heidi Sebalj. I can't remember which one it
10 was.

11 **MR. SHERRIFF-SCOTT:** Okay.

12 And if we can just return to Exhibit 297,
13 the typed version of Officer Sebalj's notes.

14 **MR. SILMSER:** I have too many notes here.

15 **THE COMMISSIONER:** No, just ---

16 **MR. SHERRIFF-SCOTT:** No. They will put it
17 in front of you.

18 **MR. SILMSER:** That's it.

19 Okay.

20 **THE COMMISSIONER:** What page?

21 **MR. SHERRIFF-SCOTT:** Page 4 of 64, the
22 February 3rd entry.

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

24 **MR. SHERRIFF-SCOTT:** Okay.

25 Mr. Silmsers, this is the February 3rd entry.

1 It's a bit small on the screen at the moment.

2 And, thank you.

3 Do you see that?

4 **MR. SILMSER:** Yes.

5 **MR. SHERRIFF-SCOTT:** And it looks like, from
6 the chronology, if you accepted Malloy's notes, that you
7 would have been contacted about going to this meeting. It
8 wasn't scheduled and then when it was scheduled you told
9 Constable Sebalj -- it says here:

10 "11:15 telephone call. The victim
11 requests he contact school board to
12 obtain records. The victim advises he
13 has been contacted by Diocese. Want to
14 have a meeting with the victim. Stated
15 he wasn't sure if he was going though
16 they should know. That way it's out."

17 I'm not sure what that means.

18 Do you know what that means?

19 **MR. SILMSER:** No.

20 **MR. SHERRIFF-SCOTT:** "Stated he wanted to
21 see what they'll do. Advises the
22 meeting is February 9th, Montreal Road,
23 etc. Doug asked him to drop by the
24 meeting."

25 So, does this jog your memory that you would

1 have called her and told her about the upcoming meeting?

2 MR. SILMSER: Again, I don't remember
3 calling her about a meeting.

4 MR. SHERRIFF-SCOTT: Okay.

5 MR. SILMSER: It could have been a drop-in
6 on the way down to her office. It could have been in her
7 office.

8 MR. SHERRIFF-SCOTT: All right.

9 MR. SILMSER: I just can't remember.

10 MR. SHERRIFF-SCOTT: Okay.

11 THE COMMISSIONER: You can't remember how
12 you told her, but do you remember advising her?

13 MR. SILMSER: Advising her, yes.

14 MR. SHERRIFF-SCOTT: All right.

15 Fair enough.

16 So there was communication between you and
17 her about the upcoming meeting with the Diocese people?

18 MR. SILMSER: That's correct.

19 MR. SHERRIFF-SCOTT: Okay.

20 Now, switching gears for a moment, I want to
21 just change the subject before I come back to that meeting.

22 Okay?

23 And I want to talk about the damage to you
24 as a person in connection with the abuses.

25 All right?

1 **MR. SILMSER:** Okay.

2 **MR. SHERRIFF-SCOTT:** That's what I'm going
3 to talk about now. So I am just switching subjects, to
4 alert you to, I'm moving off Sebalj's notes here.

5 All right?

6 And I just want to put some general
7 propositions to see where you are at. One of the things I
8 think you say has been an impact on your life is that there
9 has been and, at least way back in 1992, there would have
10 been a very acute lack of trust for people in positions of
11 authority.

12 Is that a fair statement?

13 **MR. SILMSER:** It depends on which time in my
14 life. It depends on who it was. There is a lot of factors
15 involved there.

16 **MR. SHERRIFF-SCOTT:** All right.

17 When your lawyer filed your funding
18 application he said that you trust virtually no one.

19 Is that a fair statement?

20 **MR. SILMSER:** My lawyer?

21 **MR. SHERRIFF-SCOTT:** Yes.

22 **MR. SILMSER:** Who is my lawyer?

23 **MR. SHERRIFF-SCOTT:** He is sitting right
24 beside me.

25 **MR. SILMSER:** Okay.

1 I just wanted to make sure it was somebody -
2 --

3 **MR. SHERRIFF-SCOTT:** No, no. That's all
4 right.

5 **MR. CULIC:** Perhaps my friend can put that
6 in context.

7 **MR. SHERRIFF-SCOTT:** That's fine.

8 No one but Mr. Culic.

9 I am just trying -- I'm struggling with the
10 sort of perceptions you have about people in positions of
11 authority and his letter presumably was talking about the
12 present circumstances.

13 Do you acknowledge that?

14 **MR. SILMSER:** Again, there is a lot of
15 factors involved.

16 **MR. SHERRIFF-SCOTT:** All right.

17 Back in 1992, this would have been something
18 that was more acute.

19 **MR. SILMSER:** Definitely!

20 **MR. SHERRIFF-SCOTT:** Okay.

21 And when I talk about distrust of people in
22 positions of authority, I take it you say that because
23 people in positions of a trusted authority, a clergyman, a
24 teacher and a probation and parole officer, all of whom are
25 supposed to be looking after you, abused you thus

1 heightening your distrust of those in authoritative
2 positions.

3 **MR. SILMSER:** That's correct.

4 **MR. SHERRIFF-SCOTT:** Okay.

5 And so can I take it that it wouldn't just
6 be for probation officers and priests and teachers, that
7 this issue that impacted you emotionally and
8 psychologically in terms of trust and suspicion would have
9 spread to other people in positions of authority:
10 doctors, lawyers, psychiatrists, whatever.

11 Is that fair?

12 **MR. SILMSER:** I think you are putting too
13 much of a blanket on it. That's maybe anybody I was
14 involved with like police. I wouldn't put doctors
15 involved.

16 **MR. SHERRIFF-SCOTT:** Okay.

17 Well, let me just -- I want to talk to you
18 about something that you said at one point.

19 Whenever you feel a break is warranted is
20 fine?

21 **THE COMMISSIONER:** I was going to say
22 whenever you want to; whenever it's a good time for you.

23 **MR. SHERRIFF-SCOTT:** Well, this a break
24 point that's logical if you ---

25 **THE COMMISSIONER:** All right.

1 **MR. SHERRIFF-SCOTT:** So, do you need a
2 break?

3 **THE COMMISSIONER:** Let's take the morning
4 break.

5 Oh! I'm sorry?

6 **MR. ENGELMANN:** Mr. Commissioner ---

7 **THE COMMISSIONER:** Yes.

8 **MR. ENGELMANN:** --- excuse me.

9 **THE COMMISSIONER:** Just a second.
10 Before we rise there is ---

11 **MR. ENGELMANN:** Yes. I see Mr. Ruel is
12 here. So.

13 **THE COMMISSIONER:** Mr. Ruel enters on cue.

14 **MR. ENGELMANN:** Okay.

15 **MR. RUEL:** Good morning, Mr. Commissioner.

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

17 **MR. RUEL:** We -- for the next witness, there
18 will be -- Commission counsel will present a
19 confidentiality request. This individual is alleging abuse
20 by a member of a public institution in Cornwall. He never
21 reported the matter to the police. There has never been
22 any police investigation. There has never been any trial.
23 So he feels that he will suffer tremendous prejudice if he
24 is called to testify publicly.

25 So, for those reasons, he would - he accepts

1 to testify before the Commission, but he wants to do it in
2 camera.

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

4 **MR. RUEL:** Parties have been advised,
5 counsel have been advised, the media have been advised of
6 this request that we would make on his behalf. There is
7 apparently no objection. But if you want me to give you
8 some more details I guess we will have to go in camera to
9 hear this request.

10 **THE COMMISSIONER:** All right.

11 No objections to having an in camera hearing
12 to determine whether or not the evidence will be held in
13 camera?

14 All right.

15 So I take it you are doing this so that when
16 -- to save some time. And we are going to take the morning
17 break and you want to do it after the morning break?

18 **MR. RUEL:** Yes.

19 **THE COMMISSIONER:** All right.

20 Okay.

21 So, sir, you're going to have a longer break
22 than usual.

23 And how long do you think the in camera
24 hearing will take?

25 **MR. RUEL:** Five minutes.

1 **THE COMMISSIONER:** Five minutes.

2 All right.

3 So what I'm going to do is we are going to
4 take the morning break. Then, during that time, we are
5 going to setup for the in camera hearing which has nothing
6 to do with you. So you're going to have a break. I'll
7 deal with the in camera hearing. Then we'll come back on
8 and I will advise what happened during the in camera
9 hearing and then we're going to call you back.

10 **MR. SILMSER:** All right.

11 How is that?

12 All right?

13 Thank you.

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

16 The hearing will resume at 11:15.

17 --- Upon recessing at 10:56 a.m./

18 L'audience est suspendue à 10h56

19 --- Upon resuming at 11:45 a.m. /

20 L'audience est reprise à 11h46

21 **THE REGISTRAR:** This hearing of the Cornwall
22 Public Inquiry is now in session.

23 Please be seated. Veuillez vous asseoir.

24 **THE COMMISSIONER:** Thank you.

25 For members of the public and for those on

1 the webcast, I wish to report to you that there was an in
2 camera hearing dealing with the witness that will be coming
3 up very shortly, and the request was that the evidence of
4 that person be given in an in camera hearing, and that
5 there be a publication ban on the name of the person and
6 any of the identifiers that could tend to identify that
7 person.

8 The reasons put forward were that this was
9 not a matter that had come -- surfaced to the public's
10 attention, that there would be grievous harm to this person
11 in the sense that his friends, relatives do not know about
12 the incidents to which he will be testifying, and most of
13 the parties either consented or did not oppose that motion,
14 including the CBC and the Freeholder, representatives for
15 them.

16 So balancing the interest of a public
17 inquiry versus the interest of protection of that
18 individual's privacy in applying the test as we've done
19 throughout, the legal test, I have ruled that that evidence
20 will be given in camera. And, accordingly, when we come to
21 identify that person, we will advise people on webcast that
22 it is going to be an in camera hearing and we will also ask
23 the members of the public who are not authorized to stay to
24 leave.

25 Of course, that will not prevent the media

1 from reporting the essence of the testimony and so the
2 public will, of course, be apprised of the gist of what the
3 testimony was in due course.

4 That having been said, we can continue with
5 the cross-examination.

6 Mr. Sherriff-Scott.

7 **MR. SHERRIFF-SCOTT:** Yes.

8 **THE COMMISSIONER:** And the witness.

9 **(SHORT PAUSE/COURTE PAUSE)**

10 **THE COMMISSIONER:** Can you give me some
11 indication of how much time you are going to be on cross-
12 examination?

13 **MR. SHERRIFF-SCOTT:** Well, sir, the pace
14 depends on Mr. Silmsers responding. I'd say another hour
15 and a half.

16 **THE COMMISSIONER:** All right.

17 **MR. SHERRIFF-SCOTT:** But it could be
18 shorter; just depends on ---

19 **THE COMMISSIONER:** No, no. It's just to
20 give me an idea.

21 All right.

22 Mr. Silmsers, so we've dealt with the other
23 witness who is going to come and now we are prepared to
24 resume your testimony.

25 All right?

1 **MR. SILMSER:** Thank you.

2 **DAVID SILMSER, Resumed/Sous le même serment:**

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

4 **SHERRIFF-SCOTT, (cont'd/suite):**

5 **MR. SHERRIFF-SCOTT:** All set?

6 **MR. SILMSER:** Yes, I am.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 When we left off, we were discussing the
9 damage that you have experienced in terms of your level of
10 trust of people in authority.

11 Do you remember where I was trying to
12 situate in that discussion?

13 **MR. SILMSER:** Yes.

14 **MR. SHERRIFF-SCOTT:** Okay.

15 And I think you agreed with me in fairness
16 that in '92-'93, that problem was more acute for you than
17 it is today.

18 **MR. SILMSER:** Yes.

19 **MR. SHERRIFF-SCOTT:** And you thought I had
20 gone too far in terms of a blanket and it depended on the
21 circumstances.

22 **MR. SILMSER:** I agree.

23 **MR. SHERRIFF-SCOTT:** Okay.

24 So now, what I wanted to do is just refer
25 you to something that you had said earlier and get your

1 reaction to it. And this, Madam Clerk, is Bates doc 738155
2 and this is the examination for discovery of yourself, Mr.
3 Silmsers, of December 14th, 1995; 738155. This is a
4 transcript.

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: All right.

7 So this is Exhibit 316 which is a transcript
8 of an Examination for Discovery?

9 MR. SHERRIFF-SCOTT: Yes, December 14th,
10 1995.

11 THE COMMISSIONER: Thank you.

12 --- EXHIBIT NO./PIÈCE NO P-316:

13 (738155) Ontario Court (General
14 Division) D.S. -and- Father Charles
15 MacDonald, Bishop Adolphe Proulx and
16 the Roman Catholic Episcopal
17 Corporation for the Diocese of
18 Alexandria-Cornwall in Ontario -
19 December 14, 1995

20 MR. SHERRIFF-SCOTT: Thank you.

21 Madam Clerk, if you could refer the witness
22 to Bates page 7164894, which -- okay, it's 259, question
23 1366.

24 THE COMMISSIONER: Page 259.

25 MR. SHERRIFF-SCOTT: It starts at question

1 1366, Commissioner.

2 THE COMMISSIONER: M'hm.

3 MR. SHERRIFF-SCOTT: Does Mr. Silmsers have
4 it?

5 MR. SILMSER: One three six six (1366), yes,
6 I do.

7 MR. SHERRIFF-SCOTT: Yes.

8 Thank you.

9 Now, just to put you in context, Mr.
10 Silmsers, this was your Examination for Discovery by the
11 civil lawyers in the claim that was commenced in 1994 by
12 Mr. Geoffrey.

13 Okay?

14 MR. SILMSER: Okay.

15 MR. SHERRIFF-SCOTT: And what they're
16 talking about here is what kind of treatment that you've
17 had up to this point in time; that is to say the point in
18 time at which the Examination for Discovery takes place.

19 Okay?

20 MR. SILMSER: Yes.

21 MR. SHERRIFF-SCOTT: Okay.

22 And I just want to run through some things
23 with you, starting at 1366. We'll just read this together.

24 The questioner says:

25 "We were just talking a little bit

1 about your claim for damages here and
2 what I would like to know is have you
3 been hospitalized in the last, I don't
4 know, say, 5 years or so or 10 years?"

5 "No."

6 "Did you have a family doctor? And I
7 guess we can go back all the way there
8 -- or here, it doesn't sound like you
9 did, but when you were at home living
10 with your parents?"

11 "Yes, it was Dr. McEwen."

12 "Do you know if he is still alive?"

13 "No, he isn't."

14 "And after Dr. McEwen, you got into
15 your situation where you were living on
16 the street, et cetera. Did you have a
17 family doctor during that period?"

18 "I haven't found a doctor since."

19 Question:

20 "So in terms of being hospitalized and
21 things like that, you haven't been
22 hospitalized then and you haven't been
23 seeing doctors since then during this
24 period of time?"

25 Answer:

1 "No."

2 "Other than perhaps your treatment of
3 alcohol which was referred to earlier
4 in the transcript."

5 And I don't know if you remember that exchange but we'll
6 just press on.

7 "Were there any doctors seen for the
8 purpose of your alcohol treatment in
9 any form or fashion?"

10 "No."

11 Question:

12 "And the psychologist, we have been
13 through those and there may have been
14 something."

15 And you say:

16 "Excuse me. There is a reason for that
17 though, because I don't trust doctors,
18 I don't trust anybody in authority. I
19 don't trust psychologists and I don't
20 trust anybody with authority."

21 Now, the explanation you were giving here is
22 the rationale for why you hadn't seen a lot of people and
23 that wasn't a criticism. They were just trying to get the
24 chronological interface between you and doctors or
25 counsellors or psychologists up to this point in time.

1 Is that a fair sort of statement of your
2 state of mind back then?

3 **MR. SILMSER:** I suppose it was, yes.

4 **MR. SHERRIFF-SCOTT:** Okay.

5 And, in fact, if we can go back to Exhibit
6 297, which are the constable's notes, Ms. Sebalj, at page 2
7 of 64, and I'm not sure you'll remember this particular
8 exchange, but I know you'll recognize this reference as a
9 fact because it's been discussed with you many times.

10 On page 2 of 64, this is January 13th and
11 it's about six lines from the top of the page, the third
12 bullet down, Mr. Silmsler, 'v' that's you,

13 "...states he had tried counselling but
14 left off as mad as he was told he was
15 good looking."

16 And I remember in the transcripts, and you
17 can help me with this, that you had an incident where you
18 saw a psychologist or a psychiatrist at the ROH and that
19 you had this exchange and it made you very angry because
20 you felt that you weren't well served.

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

22 **MR. SHERRIFF-SCOTT:** Okay.

23 And that was debated with you in some of the
24 other transcripts.

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

1 **MR. SHERRIFF-SCOTT:** Okay.

2 And so that incident that happened that is
3 referred to here as being reported by you to Constable
4 Sebalj certainly didn't enhance your trust of that kind of
5 professional at the time.

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

7 **MR. SHERRIFF-SCOTT:** Okay.

8 I think there is even a reference where you
9 said to Mr. Neville "The ROH psychologists might be a bunch
10 of idiots."

11 Do you remember that exchange?

12 **MR. SILMSER:** No, I don't.

13 **MR. SHERRIFF-SCOTT:** Okay.

14 So really the purpose of my question is back
15 in '92-'93, seeing this kind of consultant for you was
16 something that was difficult; you didn't have a lot of
17 trust for these people at the time.

18 Correct?

19 **MR. SILMSER:** That's fair.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 Now, in fact, when you ultimately got the
22 \$32,000 in the end of or towards the end of 1993 in
23 September, that money wasn't used for counselling, was it?

24 **MR. SILMSER:** It was some of it.

25 **MR. SHERRIFF-SCOTT:** That's your evidence,

1 sir?

2 **MR. SILMSER:** That's my evidence.

3 **MR. SHERRIFF-SCOTT:** All right.

4 Now, when you went to the meeting on
5 February 9th with people from the Diocese, I think that you
6 told us that Monsignor McDougald was definitely there.

7 Correct?

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

9 **MR. SHERRIFF-SCOTT:** Jacques Leduc was
10 there.

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

12 **MR. SHERRIFF-SCOTT:** Okay.

13 And the other individual that I know was
14 there from the records, but you may not recognize his name
15 was Chancellor -- a chancellor of Diocese. His name was
16 Denis Vaillancourt.

17 Does that ring any bells?

18 **MR. SILMSER:** No, it doesn't.

19 **MR. SHERRIFF-SCOTT:** All right.

20 Well, I just want to take you to
21 something he said to see if I can ask you about what you
22 recall in terms of the details of the meeting. And that is
23 document number 714941 and this is a statement of Denis
24 Vaillancourt dated June 1st, 2000; 714941.

25 **THE COMMISSIONER:** Thank you.

1 Exhibit Number 317.

2 --- EXHIBIT NO./PIÈCE NO P-317:

3 (714941) Interview Report of Denis
4 Vaillancourt - September 29, 1994.

5 **MR. SHERRIFF-SCOTT:** Thank you.

6 Now, Father Vaillancourt here was at the
7 meeting with you whether you recall or not, I'm not sure,
8 but at the bottom of page 3 of 11 he says something and I
9 want to see if it refreshes your memory.

10 Do you have page 3 of 11 up before you?

11 You see that 3 of 11 is in the right-hand
12 bottom of the page.

13 **MR. SILMSER:** I think I'm on the right page.

14 **MR. SHERRIFF-SCOTT:** Okay.

15 And you'll see the word 'Father MacDonald'
16 and 'David Silmsers' towards the bottom of the page?

17 **THE COMMISSIONER:** I'm sorry.

18 Now I'm the one who's lagging.

19 What page?

20 **MR. SHERRIFF-SCOTT:** Page 3 of 11,
21 Commissioner.

22 **THE COMMISSIONER:** Thank you.

23 **MR. SHERRIFF-SCOTT:** The Bates pages
24 7051862.

25 **MR. SILMSER:** Well, then, I don't have the

1 right one here.

2 **MR. SHERRIFF-SCOTT:** You may have a
3 different copy. It's page 3 of 11. Are you on -- there
4 are two of these statements so I don't think you're on the
5 right one.

6 Just hang on.

7 This is the statement of June 1st, '02 -- or
8 '00.

9 **THE COMMISSIONER:** No, this is 29th
10 September, '94.

11 **MR. SHERRIFF-SCOTT:** I'm sorry.

12 I've given you the wrong number. My
13 apologies. It's 713456.

14 **THE COMMISSIONER:** Will you be putting this
15 as an ---

16 **MR. SHERRIFF-SCOTT:** It doesn't matter. It
17 can stay as an exhibit. I won't be referring to it, but --
18 -

19 **THE COMMISSIONER:** Okay.

20 Any comments, Mr. Engelmann?

21 **MR. ENGELMANN:** There are going to be a lot
22 of documents, and we've had this discussion before about
23 institutional response documents, but if my friend is
24 trying to refresh this witness' memory using institutional
25 response documents, that's fine. I'm just hopeful later on

1 we're going actually have some of these witnesses. So.

2 **THE COMMISSIONER:** Oh!

3 **MR. ENGELMANN:** Otherwise these documents
4 aren't that useful.

5 **THE COMMISSIONER:** Oh! They're not.

6 Until they've been established we're just
7 using them for cross-examination purposes. So it can be
8 Exhibit 318.

9 --- **EXHIBIT NO./PIÈCE NO P-318:**

10 (713456) Audio Taped Interview Report -
11 Reverend Denis G. Vaillancourt - June 1,
12 2000.

13 **MR. SHERRIFF-SCOTT:** Thank you.

14 I'm sorry, Mr. Silmsers, what you need to do
15 is turn. You'll see that they have page references on this
16 one at the bottom of the page and it's page something of 11
17 and I want you to turn to page 3 of 11.

18 Are you okay?

19 I gave it -- I read it up.

20 Okay.

21 So I'm down towards about the last quarter
22 or fifth of the page and you'll see after the uppercase,
23 bold, "**MacDonald**" two lines down, starts "We..".

24 See that?

25 **MR. SILMSER:** No, I don't.

1 Okay, yes.

2 **MR. SHERRIFF-SCOTT:** Okay.

3 We'll just wait for the screen to follow us
4 because the others want it. There we go, down towards the
5 bottom of the page. That's fine.

6 "We, if I remember correctly, suggested
7 that if David Silmsers wanted any
8 psychiatric help or psychologic help,
9 the Diocese would be willing to pay
10 because that's what we did in the case,
11 remember, with 1986 Father
12 Deslauriers".

13 Does that refresh your memory?

14 You had this exchange with Mr. Engelmann
15 about whether or not they offered you some assistance in
16 that regard.

17 **MR. SILMSER:** I just didn't remember that.

18 **MR. SHERRIFF-SCOTT:** Okay.

19 That's fine.

20 Now ---

21 **MR. SILMSER:** Are these notes that were
22 taken from --

23 **MR. SHERRIFF-SCOTT:** This is a statement
24 given by Chancellor Vaillancourt to the OPP in the context
25 of your investigations.

1 **MR. SILMSER:** Chancellor Vaillancourt is
2 who?

3 **MR. SHERRIFF-SCOTT:** Denis Vaillancourt is a
4 priest at the Diocese who attended the meeting with you on
5 February 9th.

6 **MR. SILMSER:** And he gave this document to
7 the OPP?

8 **MR. SHERRIFF-SCOTT:** No. They interviewed
9 him and took a statement. It was audio-taped report.

10 **MR. SILMSER:** This is audio-taped?

11 **MR. SHERRIFF-SCOTT:** Yes.

12 **MR. SILMSER:** I was audio-taped?

13 **MR. SHERRIFF-SCOTT:** No, no, no, Mr.
14 Silmsers, you were not.

15 This is the statement given by Denis
16 Vaillancourt to the OPP in which he tells them ---

17 **MR. SILMSER:** So he's just doing this out of
18 his own memory.

19 **MR. SHERRIFF-SCOTT:** Yes, he's doing that
20 out of his own memory.

21 **MR. SILMSER:** Okay.

22 **MR. SHERRIFF-SCOTT:** Okay?

23 Now, back to Exhibit 297.

24 **MR. SILMSER:** Two ninety-seven (297)?

25 **MR. SHERRIFF-SCOTT:** Yes, at February 9th

1 entry at page 4 of 64.

2 Then just scroll down to the -- that's it.

3 Do you have that, Mr. Silmsers.

4 **MR. SILMSER:** I'm looking.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 **MR. SILMSER:** Yes, I do.

7 **MR. SHERRIFF-SCOTT:** All right.

8 This is following the meeting. She says:

9 "Meet with victim in youth office. Has
10 no statement. Advised not yet
11 completed."

12 As of that time, that was correct, wasn't
13 it? February -- your statement had not yet been rendered
14 for the police in writing?

15 **MR. SILMSER:** I -- now, you're going to have
16 to -- I don't know exactly where you are here.

17 **MR. SHERRIFF-SCOTT:** Under the February 9th,
18 1993 entry, the first entry is:

19 "10:46 a.m. Meet with victim..."

20 Which 'v' is for victim.

21 "... in youth office. Victim has no
22 statement. Advised he has no completed
23 it yet."

24 Should be "not".

25 **MR. SILMSER:** So, this is Heidi Sebalj's

1 notes?

2 **MR. SHERRIFF-SCOTT:** These are her notes of
3 her discussion with you on that day.

4 **MR. SILMSER:** Okay.

5 **MR. SHERRIFF-SCOTT:** Okay?

6 That was correct?

7 You hadn't given the written statement in
8 yet?

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

10 **MR. SHERRIFF-SCOTT:** Okay.

11 "I asked him about names of people
12 present at the meeting. Could only
13 name McDougald and knows lawyer was
14 present."

15 **MR. SHERRIFF-SCOTT:** So McDougald was there
16 and there was a lawyer present.

17 Correct?

18 **MR. SILMSER:** I have to -- my statement in
19 -- my first statement I didn't hand in yet.

20 Is that what you're saying?

21 **MR. SHERRIFF-SCOTT:** No, I'm not saying you
22 hadn't given your story to the police in an interview.

23 **MR. SILMSER:** Right.

24 **MR. SHERRIFF-SCOTT:** Remember when they left
25 you on January 28th, they asked you to write out your

1 statement?

2 MR. SILMSER: Yes.

3 MR. SHERRIFF-SCOTT: And that came later in
4 March as the chronology goes. So you hadn't given it back
5 to her by this time.

6 MR. SILMSER: Okay.

7 Because I just don't know exactly what day I
8 gave it to her.

9 MR. SHERRIFF-SCOTT: It's in March.

10 MR. SILMSER: Perfect!

11 MR. SHERRIFF-SCOTT: Okay.

12 All right.

13 So she says here:

14 "They wanted V to provide details of
15 the assault. They believed me."

16 And if I can just ask you, sir, one of the
17 things the Diocese asked for, was it not, were more details
18 pertaining to your allegations?

19 MR. SILMSER: This was the first meeting,
20 right, at the Diocese?

21 MR. SHERRIFF-SCOTT: Yes, sir.

22 MR. SILMSER: Yes, Jacques Leduc wanted to
23 know about what had happened to me; about the -- you know,
24 about the abuses.

25 MR. SHERRIFF-SCOTT: No, but it was more

1 than that, wasn't it?

2 They wanted more detail than you had given
3 them, didn't they?

4 **MR. SILMSER:** No, I don't believe so.

5 **MR. SHERRIFF-SCOTT:** Well, if we look back
6 at this thing, it looks like to me -- you tell me if I'm
7 wrong -- that when you're contacted -- you contact
8 Schonenbach who gets back to you and says that they want
9 more detail, at least Malcolm MacDonald does, and at this
10 meeting, as we'll come to another statement ---

11 **MR. SILMSER:** Yeah. I had ---

12 **MR. SHERRIFF-SCOTT:** Just wait.

13 There's a concern about absence of detail.
14 Does that comport with your recollection?

15 **MR. SILMSER:** Absent of detail for who?

16 **MR. SHERRIFF-SCOTT:** From you.

17 **MR. SILMSER:** Who's saying there's absence
18 of detail?

19 **MR. SHERRIFF-SCOTT:** The Diocese. They
20 wanted more information from you than you had given them at
21 the meeting.

22 **MR. SILMSER:** No, I believe they were quite
23 happy with all the information they had at the meeting.

24 **MR. SHERRIFF-SCOTT:** Okay.

25 **MR. SILMSER:** I don't think they would let

1 me go.

2 **MR. SHERRIFF-SCOTT:** We can just go back to
3 the statement by Mr. Vaillancourt, tab -- excuse me, the
4 document that I just made an exhibit.

5 **THE COMMISSIONER:** Three-eighteen (318).

6 **MR. SHERRIFF-SCOTT:** Yes.

7 Thank you.

8 Page 3 of 11 again.

9 **THE COMMISSIONER:** Okay.

10 **MR. SILMSER:** All right.

11 **MR. SHERRIFF-SCOTT:** Okay.

12 It says here, in the middle of the page:

13 "...and what Mr. Silmsers wanted from the
14 church. In his, in the interview, he
15 was very evasive as far as when Mr.
16 Leduc tried to ask him the exact nature
17 of the sexual aggressions. He did not
18 want to respond and then when he said
19 that he taken a ride with Father
20 MacDonald in the country, again, when
21 he was asked to describe the area north
22 of Cornwall in the country, he did not
23 go into details as to what concession,
24 was it in the woods, was it in the
25 field, was it a backyard somewhere? So

1 the whole thing was very vague, and we
2 asked him what he wanted at that time,
3 et cetera."

4 You don't remember them pressing you for
5 more information and detail?

6 **MR. SILMSER:** No. I think they were very
7 happy with the information I gave them. The -- Mrs. -- I
8 think -- Deslauriers putting a spin on it at the time
9 because what I had told them was I did not know what part
10 of the country it was in. I knew it was in the bush. I
11 didn't know what township it was in. I told the police
12 that right from the beginning. I didn't know what township
13 it was in, but it was north of Cornwall somewhere. So I
14 think that's just Mr. Deslauriers putting a spin on that.

15 **MR. SHERRIFF-SCOTT:** You mean Mr.
16 Vaillancourt.

17 **MR. SILMSER:** Or Mr. Vaillancourt or
18 whoever, putting a spin on that one.

19 **MR. SHERRIFF-SCOTT:** A spin.
20 What do you mean by that?

21 **MR. SILMSER:** Somebody's just telling the
22 police that I was not co-operative when I was co-operative.

23 **MR. SHERRIFF-SCOTT:** I see.
24 He's not being ---

25 **MR. SILMSER:** I don't think I would have

1 went to the meeting if I wouldn't have been co-operative.

2 **MR. SHERRIFF-SCOTT:** All right.

3 If we could turn to document 714942.

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

5 **MR. SHERRIFF-SCOTT:** This is a one-page
6 summary of the meeting prepared by Mr. Vaillancourt --
7 Chancellor Vaillancourt again.

8 **THE COMMISSIONER:** Exhibit 319?

9 **--- EXHIBIT NO./PIÈCE NO P-319:**

10 (714942) Report in the Case of C.F.
11 MacDonald - undated.

12 **MR. SHERRIFF-SCOTT:** And just down towards
13 the -- the second last paragraph, Mr. Silmsers, is what I'd
14 like you to look at when you -- do you have that document?

15 **MR. SILMSER:** Yes.

16 I don't know nothing about this document.

17 **MR. SHERRIFF-SCOTT:** Yes, I know that.

18 This document was prepared by Mr.
19 Vaillancourt, recording what happened at the meeting.

20 **MR. SILMSER:** Who is Mr. Vaillancourt?
21 Does he handle this type of thing or --

22 **MR. SHERRIFF-SCOTT:** Denis Vaillancourt is a
23 chancellor at the Diocese and so he was involved in the
24 meeting.

25 **MR. SILMSER:** I see.

1 **MR. SHERRIFF-SCOTT:** Okay.

2 **MR. SILMSER:** All right.

3 **MR. SHERRIFF-SCOTT:** When asked to describe
4 the aggression -- are you going to rise?

5 **MR. ENGELMANN:** Well, you know, I might as
6 well since -- this is a document that I have been wondering
7 about for some time because it's undated and, again, it's a
8 question as to when Father Vaillancourt is writing this up.

9 We know that Mr. Silmsers wasn't provided
10 notes of the meeting at the time and we know apparently
11 that if there were notes taken they were not kept. So it's
12 important to know -- and if Mr. Sherriff-Scott can help us
13 with this now, I think that would be important to put that
14 to the witness.

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

16 **MR. ENGELMANN:** He was kind enough to
17 explain that the first document he cross-examined on was a
18 statement that Father Vaillancourt gave to the OPP in the
19 year 2000, which is seven years after the meeting took
20 place.

21 It would be helpful to know about this one.

22 **THE COMMISSIONER:** Okay.

23 There's something at the top -- well, can
24 you help us?

25 **MR. SHERRIFF-SCOTT:** Yes, it says "best

1 reconstruction of the meeting". As I understand it, he --
2 this was in his computer and was subsequently retrieved at
3 a request in the late 1990's.

4 **THE COMMISSIONER:** Well, I've seen "Mr.
5 David Scott, 12 September..." Might be '98?

6 **MR. SHERRIFF-SCOTT:** Yes.
7 David's my partner.

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

9 **MR. SHERRIFF-SCOTT:** And so there -- you'll
10 -- well, what follows is there was an interview and these
11 notes were given at the request of the police at a later
12 time.

13 **THE COMMISSIONER:** Okay.
14 Can I just take a moment and read through?

15 **MR. SHERRIFF-SCOTT:** Yes, please.

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

17 **THE COMMISSIONER:** All right.

18 Thank you.

19 I'm sorry. Go ahead.

20 **MR. SHERRIFF-SCOTT:** Thank you,
21 Commissioner.

22 Sir, at the bottom of the page, Father
23 Vaillancourt refers again to this issue and says:

24 "When asked to describe the aggression
25 David refused. When the question was

1 placed in another form he refused to
2 answer. He was also asked to be more
3 specific about the place in North of
4 Cornwall but David couldn't remember
5 much of the details and could not
6 establish possible location of alleged
7 aggression..."

8 Et cetera.

9 So does this -- sir, I'm suggesting to you,
10 sir, that they were focused on getting more detail to you -
11 - from you which you either could not or would not provide
12 at that time.

13 **MR. SILMSER:** No, I did give them full
14 information on it. The only thing I couldn't provide was
15 the exact place out in the bush, what part of the township
16 was. That's the only thing. I told them everything else.

17 **MR. SHERRIFF-SCOTT:** So you don't accept
18 that they were looking for more detail on various things
19 including the things that Mr. Vaillancourt has referred to?

20 **MR. SILMSER:** I don't believe so.

21 **MR. SHERRIFF-SCOTT:** All right.

22 Now, in terms of this information request
23 from the Diocese, you have debated here a question of
24 memory with respect to details on dates and times, et
25 cetera, which has always been an issue.

1 **MR. SILMSER:** It's been an issue for the
2 police; it has been an issue for other people; never an
3 issue for me.

4 **MR. SHERRIFF-SCOTT:** I understood that was
5 your testimony.

6 And when Mr. Neville cross-examined you at
7 the preliminary inquiry these things with respect to dates
8 and times became a big deal, at least from his point of
9 view.

10 Correct?

11 **MR. SILMSER:** A big deal for who?

12 **MR. SHERRIFF-SCOTT:** It became a big deal in
13 the preliminary inquiry. A lot of time was spent on it.

14 **MR. SILMSER:** With Mr. Mike Neville, yes.

15 **MR. SHERRIFF-SCOTT:** Yes.

16 Okay.

17 And I ---

18 **MR. SILMSER:** I think he asked me 15 times
19 if I was an altar boy in grade 5 or 6.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 I'd like to turn to the preliminary inquiry
22 transcript of September 10th, 1997, which is -- let me find
23 the document number -- exhibit number.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MR. SHERRIFF-SCOTT:** Exhibit 291.

1 **THE COMMISSIONER:** Do you have that, Mr.
2 Silmsers?

3 **MR. SILMSER:** Yes, I have it.

4 **THE COMMISSIONER:** All right.

5 Thank you.

6 Okay.

7 So 291, all right.

8 What page?

9 **MR. SHERRIFF-SCOTT:** Just a moment, sir,
10 just trying to find my note.

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

12 **MR. SHERRIFF-SCOTT:** Okay.

13 The exchange starts at line 20 at page 15.

14 And we'll just read, if you just follow me
15 along, Mr. Silmsers, for context. This is in connection with
16 the St. Andrew's issue and it runs as follows, and then
17 it's revisited again on page 50 of line 2 and following,
18 and I'll read it to you.

19 Question:

20 "So then one presumes that this
21 incident at St. Andrew's would have
22 occurred either when you completed
23 grade 6 or when you completed grade 7?

24 Answer:

25 "I don't know. It could have been

1 grade 8. I don't know."

2 "Well, if it wasn't the summertime, Mr.
3 Silmsers, and you indicated in your
4 evidence that you were only an altar
5 boy, if at all, for grade 8 for a very
6 short time period of time..."

7 **MR. SILMSER:** Excuse me for a second.

8 This is the St. Andrew's retreat you're
9 talking about?

10 **MR. SHERRIFF-SCOTT:** Yes, that's right.

11 **MR. SILMSER:** This is totally different from
12 when I was an altar boy in the beginning. This is at a
13 much -- this is at a later date.

14 **MR. SHERRIFF-SCOTT:** Well, let's just focus
15 on this is an allegation of abuse and they're trying to pin
16 down when St. Andrew's happened here.

17 Okay?

18 **MR. SILMSER:** Just the St. Andrew's one
19 happened?

20 **MR. SHERRIFF-SCOTT:** That's right.

21 **MR. SILMSER:** That's fine.

22 **MR. SHERRIFF-SCOTT:** Pardon me?

23 **MR. SILMSER:** That's fine.

24 **MR. SHERRIFF-SCOTT:** Okay.

25 So just follow me through here. And we flip

1 up to the top of the next page:

2 "I take it from that, that it would
3 have had to have been prior to grade 8
4 in the summer after you finished grade
5 7 at the latest?"

6 Answer:

7 "Do you have a date on the retreat?"

8 "No, I don't."

9 Answer:

10 "Well, we should get it."

11 And then there is an exchange, if you go
12 down to question at 15:

13 "We also have, as we pointed out to you
14 yesterday, the police took a statement
15 from your sister Donna who after, it
16 appears, some degree of thought and
17 calculation, thought the retreat took
18 place coinciding with her birthday of
19 14, June 2nd, 1973, correct? You talked
20 about that yesterday and you suggested
21 that she had been wrong. But what --
22 that's what she told them. Right?"

23 Answer:

24 "I suggest she probably made a
25 mistake."

1 **THE COMMISSIONER:** I submit she probably
2 made a ---

3 **MR. SHERRIFF-SCOTT:** Yes, she probably made
4 a mistake.

5 Thank you.

6 "That's what she chooses to say but I
7 know your position is she has to be
8 wrong."

9 Answer:

10 "I said she probably made a mistake,
11 yes."

12 "Based on your answers that we have
13 just gone through why is she wrong,
14 because on your answers, and I have got
15 it written down now how many different
16 dates we've got just from you, and I'm
17 up to nine."

18 Answer:

19 **MR. SILMSER:** Excuse me?

20 **MR. SHERRIFF-SCOTT:** Yes.

21 **MR. SILMSER:** Where are you reading that?

22 **MR. SHERRIFF-SCOTT:** I'm down at line 25,
23 thereabouts on page 16.

24 **MR. SILMSER:** And you said something about
25 nine different answers?

1 **MR. SHERRIFF-SCOTT:** Yes. Just follow along
2 here at the question.

3 "Based on your answers that we have
4 just gone through..."

5 **MR. SILMSER:** Yes.

6 **MR. SHERRIFF-SCOTT:**

7 "...why is she wrong, because on your
8 answers and I have now written down how
9 many different dates we've got just
10 from you and I'm up to nine."

11 Answer:

12 "Between the years of?"

13 Question:

14 "You're asking him?"

15 **MR. SILMSER:** That's Mike Neville saying
16 this.

17 Right?

18 **MR. SHERRIFF-SCOTT:** That's correct, sir.

19 "And we have got it happening anywhere
20 from 1968 just on your answers?"

21 Answer:

22 "Okay."

23 "Anywhere from '68 to the summertime of
24 '72?"

25 Answer:

1 "Okay."

2 "Four different years."

3 Answer:

4 "Three years actually."

5 Answer:

6 "Four."

7 **THE COMMISSIONER:** We have someone rising.

8 **MR. CULIC:** I'm just wondering where my
9 friend is going with what seems to be a recap of his
10 favourite hits at the cross-examination of this particular
11 witness by Mr. Neville. Just before he gets all of this
12 into the record, I'm just wondering how this relates to the
13 Diocese' institutional response.

14 **THE COMMISSIONER:** Thank you.

15 **MR. ENGELMANN:** Just before Mr. Sherriff-
16 Scott responds, I am having trouble understanding the
17 relevance myself. It seems as if he is picking up where
18 Mr. Lamb left off and if that's his purpose, that's not the
19 purpose of this Inquiry.

20 We went through a couple of exhibits that he
21 put in from Father Vaillancourt from late '98 or sometime
22 in '98 apparently and another one sometime in 2000 dealing
23 with an incident, a fourth incident which, of course,
24 Father MacDonald wasn't even charged with. And talking
25 about detail on that and not on the other three, now we are

1 into dates. Mr. Silmsers has already told us he has
2 difficulty with dates and he had difficulty with dates. We
3 know there was a committal after this trial.

4 I'm not sure where we are going. Are we
5 going to establish perhaps that the Diocese cooperated with
6 the police in giving them dates when there were retreats at
7 St. Andrew's to try and pin this down, or are we trying to
8 attack this witness' credibility on the charges themselves?

9 I'm not sure, and I hope we are going to get
10 an explanation.

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

12 **MR. SHERRIFF-SCOTT:** Mr. Commissioner, I'm
13 not comfortable doing this in front of the witness.

14 **THE COMMISSIONER:** That's fine.

15 Thank you.

16 So, sir, we are going to have a discussion
17 in your absence.

18 In fact, why don't you come back at 2:00 because it's
19 lunchtime now in any event?

20 All right?

21 **MR. SILMSER:** Okay.

22 **THE COMMISSIONER:** Thank you.

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

24 **THE COMMISSIONER:** Go ahead, sir.

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

1 As will appear, as we get along here, my
2 client as -- in terms of my view of the evidence, they were
3 asking for detailed statements from Mr. Silmsier as early as
4 December of 1992 whether he accepts that or not. I'm
5 entitled to put that to him. There was an expression of
6 significant concern by Mr. Vaillancourt whether my -- I'm
7 not trying to enter it as evidence. I'm using it as an aid
8 to cross-examination, which I'm surely entitled to do --
9 that this was extremely vague; that they asked for details;
10 that they were concerned that it was vague; the police
11 officer records that we asked for details.

12 There are further references in the police
13 officer's notes that there is concern about this at the
14 Diocese. And then you'll see there is concern about it
15 expressed in the police officer's notes by the police.

16 And so from my point of view, it's very
17 important that the response that happens at the Diocese
18 level, because we are criticized for doing nothing between
19 February and September, is informed by the fact that the
20 man couldn't provide details, I submit, and the fact that -
21 - I'm not attacking his credibility.

22 What I want to show, as a demonstrated
23 point, is that these issues were very serious from the
24 point of view of the public institutions. All of them,
25 with respect, grappled with this problem including the

1 Diocese. The entire preliminary inquiry was about this, as
2 you'll see if I am permitted to cross-examine, is a whole
3 issue of recovered memory. Additional incidents keep
4 coming up.

5 He testifies that his memory was completely
6 eradicated until a certain point of time. This becomes the
7 entire major thread, not only from my client's point of
8 view, but from throughout the thread of the investigations
9 that follow, and I submit I should be entitled to ask him
10 about it. I'm not trying to challenge his credibility or
11 retry the case.

12 What I want to situate here for you is what
13 the parties had to deal with. And what they had to deal
14 with were a series of difficulties and changes and
15 inability to provide information when it was requested, or
16 inconsistencies that I'm not offering to impeach him. I
17 have about three examples here that I am going to go
18 through and then I'm going to leave it.

19 So I am not trying to pick my favourite
20 points or anything of that nature. I want to be fair. I
21 want to ensure that the Inquiry has the full picture of
22 what had to be dealt with.

23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Yes, sir?

1 **MR. CULIC:** I think everyone has made their
2 points with regard to the memory. What has me concerned
3 the most about this particular line of examination and why
4 this particular incident brought me to my feet is I long
5 ago stopped being naive enough to believe things such as
6 examining on the one incident he was not charged with; the
7 one incident that, potentially at law, Father MacDonald is
8 still exposed to criminally is just a coincidence. That
9 really has me concerned.

10 This strikes me as the next stage in
11 preparation for what they may be afraid is coming next, and
12 that's not what this is about at all. And if the points my
13 friend is trying to make are truly the points he is trying
14 to make, he has made them, and he hasn't necessarily made
15 them in an appropriate fashion as far as I am concerned,
16 and I'm not sure that belabouring the point will make them
17 anymore efficiently and will do much more than agitate this
18 very fragile witness.

19 **THE COMMISSIONER:** Mr. Engelmann, any
20 further comments?

21 **MR. ENGELMANN:** Certainly different ones.
22 I was just listening to my friend, Mr.
23 Sherriff-Scott, and my client -- my terms -- and my client
24 was seeking a detailed statement in late '92. And you
25 know, I guess we'll see this develop, and I'm looking

1 forward to seeing it develop, but what we have, and I think
2 -- I'm just trying to get the exhibit.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. ENGELMANN: My friend put it in, Exhibit
5 312.

6 Because what we're really hearing now is
7 very interesting and I'm not sure it's at all set out in
8 the documents that the Diocese is seeking detailed
9 statements in 1992.

10 Mr. Sherriff-Scott put in a letter where
11 clearly Angus Malcolm MacDonald is seeking detailed
12 statements and he is suggesting a way this should be run.
13 Now, if he is running the Diocese' institutional response,
14 then I concur with what Mr. Sherriff-Scott has just said,
15 that the Diocese was seeking detailed statements, but
16 that's not clear to me.

17 What is clear is a meeting took place on
18 February 9, 1993, and we haven't heard anything about Mr.
19 Silmsier being asked to leave a written statement or give a
20 written statement to the Diocese. We have heard some vague
21 notion that in statements given years later Father
22 Vaillancourt is suggesting there wasn't enough detail on
23 the fourth incident and the fourth incident, we know, is
24 something that was not in fact, ended up in a charge
25 against Father MacDonald.

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

2 **MR. ENGELMANN:** So I'm really unclear where
3 my friend is going if he's -- there is no suggestion -- or
4 there is no evidence that I'm aware of, at least yet, that
5 the Diocese is actually seeking detailed statements. As I
6 said, we have a letter where Malcolm MacDonald, on behalf
7 of Father MacDonald, presumably, is suggesting how the
8 Diocese might want to approach this.

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

10 **MR. ENGELMANN:** And then there -- the
11 Diocese of Alexandria-Cornwall, presumably, and then we
12 have a priest in Ottawa apparently making a call and Mr.
13 Sheriff-Scott takes us to that, and that's Exhibit 313.

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

15 **MR. ENGELMANN:** So I'm a little confused
16 about how this is coming together, and I'm looking forward
17 to hearing about that, but vagueness on a fourth incident,
18 this witness has already admitted in cross-examination and,
19 quite frankly, in examination in-chief ---

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

21 **MR. ENGELMANN:** --- that he has trouble with
22 dates.

23 If we are going to go through the full
24 preliminary inquiry transcript, and go through how many
25 times he was asked how old he was when he ended being an

1 altar boy, and we can count, there is probably about 15
2 times. Or if we want to ask him how young he was when he
3 started being an altar boy that was done on numerous
4 occasions. There is no question that there were several
5 issues about the dates dealing with the St. Andrew's
6 retreat.

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

8 **MR. ENGELMANN:** And there is no question
9 that he had some difficulty remembering the dates. That's
10 been established.

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

12 **MR. ENGELMANN:** But I don't think it's
13 helpful to take the witness through -- I don't think it's
14 helpful to the Inquiry nor do I think it's helpful for this
15 witness or for anybody here to take him through and to read
16 what Mr. Neville is then saying about how "Oh! That makes
17 nine times by my account that you haven't gotten this
18 right," or whatever. That's not helpful. It's not helpful
19 to the Inquiry; it's not helpful to this victim; it's not
20 helpful to the Diocese, in my respectful submission.

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

22 **MR. ENGELMANN:** So if he has a few pointed
23 questions about dates and he is going to get presumably the
24 same answers that have already been given "Yes, I'm not
25 that good with the dates," then that's fine.

1 But, you know, I think the reading of this
2 transcript in great detail just to highlight a few points
3 and to mention what defense counsel said at the time --
4 very able defense counsel said at the time is not helpful.

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

6 **MR. ENGELMANN:** And that's the reason for my
7 objection. If my friend is going to be wrapping this up
8 quickly and is not going to go into the details, and we
9 didn't go into the details, and he is just going to cover
10 up a few questions on dates, that's fine. But reading *ad*
11 *nauseum* from the transcript is not helpful.

12 **THE COMMISSIONER:** All right.

13 What about the issue that Mr. Culic raises
14 about the last -- the incident for which no charges were
15 brought?

16 **MR. ENGELMANN:** I really have no comment on
17 that. Just my point was I can understand if he is being
18 asked about a lack of detail on the fourth charge, and it's
19 the lawyer for the Crown Attorney here saying, and if Mr.
20 Silmsers had complained about that fourth charge not going
21 ahead and he said "Gee, the institutional response was not
22 appropriate; they should have gone ahead on that fourth
23 charge," I can understand counsel for institutions saying
24 and wanting to grill him on that and saying "Well, you
25 didn't give us enough information; didn't give us enough

1 information to proceed with that fourth charge." But I
2 didn't even hear that as a concern of his when he gave his
3 evidence in-chief.

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

5 **MR. ENGELMANN:** And it's certainly not a
6 concern vis-à-vis the Diocese.

7 **THE COMMISSIONER:** Well, in assessing -- if
8 you look at it at the beginning -- I mean, later on whether
9 the charge -- no charges had been laid at this early stage
10 in any event.

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

12 **THE COMMISSIONER:** Okay.

13 **MR. ENGELMANN:** In fact, it was several
14 years later.

15 **THE COMMISSIONER:** Yes. So the Diocese
16 would have to look at -- there were four?

17 **MR. ENGELMANN:** Yes.

18 **THE COMMISSIONER:** They would have to look
19 at all four equally.

20 **MR. ENGELMANN:** What?

21 In engaging their institutional response?

22 **THE COMMISSIONER:** Yes.

23 **MR. ENGELMANN:** Yes, yes. And, you know, we
24 have a letter from Malcolm MacDonald to MacDougald ---

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

1 **MR. ENGELMANN:** --- at the end of December
2 and then we know of a meeting that he has with the Diocese
3 in February.

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

5 **MR. ENGELMANN:** And my friend says "We're
6 trying to get detailed information. I look forward to
7 hearing about that detailed information," because it's not
8 clear what, if any, contact there is other than the phone
9 calls with Father MacDougald and Mr. Silmser.

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

11 **MR. ENGELMANN:** So I just -- I'm just
12 concerned about the premise for which the questions are
13 being asked and that the premise hasn't been established or
14 that the premise isn't really a good foundation for the
15 questions.

16 **THE COMMISSIONER:** Thank you.

17 Yes, sir.

18 **MR. CALLAGHAN:** I'm somewhat concerned
19 insofar as any ruling here might affect future cross-
20 examinations.

21 Each of these institutions was grappling
22 with a changing landscape moment-to-moment.

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

24 **MR. CALLAGHAN:** A moment ago he just said,
25 for example, on the stand, that St. Andrew's didn't happen

1 when he was an altar boy, which contradicts every statement
2 he gave to the Cornwall Police.

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

4 **MR. CALLAGHAN:** I think -- my point is this,
5 is that when institutions are going forward and backwards
6 trying to establish for the Commission, for the public what
7 kind of stories are coming out, I think it's important
8 because it informs what was going on at the time and let's
9 them know why don't you have reasonable probable grounds;
10 how is it that you had to ask the Crown for reasonable
11 probable grounds? Maybe it's because in the fourth
12 incident you told the police he didn't penetrate you.
13 Maybe it's because you then did a statement saying he
14 penetrated you on the stomach.

15 All these go into how these institutions
16 respond, and if we sanitize this to the point where we
17 can't get to that, I fear that we're not going to be able
18 to understand the institutional response and I understand
19 there is a concern and I think that -- I think people have
20 been trying to be very delicate about it.

21 You know, Mr. Neville's transcript is not
22 being put out there to impeach. It's a fact. What
23 happened in the prelim is a fact for this Inquiry to take
24 into consideration.

25 It may be that at the end of the day we just

1 need to refer to it and we don't have to put it to him.

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

3 **MR. CALLAGHAN:** But I think it's appropriate
4 for all of us to have an ability to do that and I'd hate to
5 see a ruling as a result of this request bind any of the
6 other institutions.

7 Thank you.

8 **THE COMMISSIONER:** I don't think you need
9 fear being bound by anything.

10 **MR. CALLAGHAN:** All right.

11 Thank you.

12 **THE COMMISSIONER:** I can always change my
13 mind.

14 **MR. ENGELMANN:** I certainly wasn't
15 suggesting what he said then wasn't important, and more
16 that we wouldn't be using these transcripts and various
17 other things and statements when we are getting to the
18 institutional response. Not at all. I'm just trying to
19 hamper that.

20 I am just wondering how effective and how
21 useful and how necessary it is in certain detail with this
22 witness now.

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

24 Mr. Culic.

25 **MR. CULIC:** Just one last comment which I'm

1 hoping verges on the trite.

2 The entire purpose behind Mr. Neville's
3 skillful cross-examination on the transcript was to impeach
4 this witness. That's what it was done for. That's what
5 it's there for. You're ignoring the elephant in the room
6 when you make the argument that that's not the purpose
7 behind putting the transcript to this witness.

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

9 **MR. SHERRIFF-SCOTT:** Very assertive
10 comments, but my response is this. The letter in December
11 is from Malcolm MacDonald and he refers to the issue as
12 being vague. He writes to Monsignor MacDougald. It's
13 clear that MacDougald and/or MacDonald and Schonenbach have
14 discussions. It's clear, I submit -- whether I'm right or
15 wrong -- is to follow down the line from the evidence that
16 will develop, that Schonenbach calls him back and puts that
17 to him as a premise -- I may be right. Maybe I'm wrong,
18 but I may be right -- and he says "Not interested in
19 cooperating further if I've got to provide details."
20 That's my interpretation of it and that may well be borne
21 out by the evidence.

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

23 **MR. SHERRIFF-SCOTT:** Then there is a meeting
24 at which -- it's criticized as being superficial because
25 they are long after the fact, but the fact is an individual

1 has taken the trouble to give a statement to the police
2 presumably knowing the gravity of what he says, and
3 indicates there is a very significant concern about the
4 absence of detail. I'm not interested in whether this was
5 the charge or not the charge. I have two or three examples
6 and my example on this one is the only one on this one. I
7 could care less about debating whether or not that should
8 have been a charge or not. That's someone else's oar to
9 pull; not mine.

10 But what is a concern to my client here, and
11 I think is borne out and will be borne out, is that there
12 was a serious absence of detail and they wanted it and they
13 asked for it and they didn't get it.

14 And what I want to put to him is not that he
15 was impeached, but that some of the versions were different
16 and changed and that was difficult for people, including my
17 client.

18 That's it!

19 And I have, I can tell you, three examples.
20 I'm not here to batter the witness with the transcript, and
21 I hope I've been fair so far.

22 **THE COMMISSIONER:** Okay.

23 You have articulated a reason, that being in
24 order for this Inquiry to gauge your institutional response
25 I have to see what was coming at you from this gentleman.

1 And in that regard I think that's fair. As you know, there
2 is an overlapping as to the credibility issue. I'm going
3 to permit you to continue.

4 **MR. SHERRIFF-SCOTT:** Thank you.

5 **THE COMMISSIONER:** I'm going to remind you
6 that there is a fine line between what you are attempting
7 to do, which you have articulated to do, and what Mr. Culic
8 says is impugning his credibility.

9 In the end, it's my decision and I think
10 that unless -- no, let's leave it at this that I will let
11 you continue.

12 **MR. SHERRIFF-SCOTT:** Thank you.

13 **THE COMMISSIONER:** And I will stop you if I
14 think that there is something wrong.

15 **MR. SHERRIFF-SCOTT:** Do you want to rise for
16 the lunch break?

17 **THE COMMISSIONER:** Yes.

18 **MR. SHERRIFF-SCOTT:** It's 20 to 1:00.

19 **THE COMMISSIONER:** Yes, and then come back
20 at 2:00.

21 Thank you.

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

24 The hearing will resume at 2:00.

25 --- Upon recessing at 12:39 p.m. /

1 L'audience est suspendue à 12h39

2 --- Upon resuming at 2:07 p.m. /

3 L'audience est reprise à 14h07

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

6 This hearing of the Cornwall Public Inquiry
7 is now in session. Please be seated. Veuillez vous
8 asseoir.

9 **DAVID SILMSER, Resumed/Sous le même serment:**

10 **THE COMMISSIONER:** Good afternoon.

11 Mr. Engelmann.

12 **MR. ENGELMANN:** Good afternoon, Mr.
13 Commissioner.

14 Mr. Commissioner, Mr. Culic reminded me of
15 something that he had told me some time ago, and that is
16 that he has a matter scheduled on Thursday; has had that
17 scheduled for some time.

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

19 **MR. ENGELMANN:** So I'm hopeful, in any
20 event, that we'll be done Mr. Silmsers' cross-examination
21 at the end of the day tomorrow.

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

23 **MR. ENGELMANN:** I just wanted to raise this
24 in case it is a slightly longer day tomorrow or,
25 alternatively, we might have to look at another date.

1 **THE COMMISSIONER:** No. Well, I would hope
2 that we can finish this off either tonight -- either
3 sitting longer tonight or tomorrow. Maybe at the afternoon
4 break we can re-canvass counsel to see ---

5 **MR. ENGELMANN:** Where we're at.

6 **THE COMMISSIONER:** --- where we're at.

7 **MR. ENGELMANN:** Okay.

8 Thank you.

9 **THE COMMISSIONER:** Thank you.

10 **MR. ENGELMANN:** And we do have another
11 witness, obviously, available on Thursday.

12 **THE COMMISSIONER:** All right.

13 Thank you.

14 Yes, sir.

15 **MR. SHERRIFF-SCOTT:** Good afternoon, Mr.
16 Silmsers; Commissioner.

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

18 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
19 **SHERRIFF-SCOTT (cont'd/suite):**

20 **MR. SHERRIFF-SCOTT:** Where we left off, Mr.
21 Silmsers, was with a transcript and it was Exhibit 291, page
22 16.

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

24 **MR. SHERRIFF-SCOTT:** And if we can just run
25 to the bottom of the page, line 30.

1 Okay.

2 So we'll just read. Just follow me along,
3 Mr. Silmsers, if you can. We'll have to flip the page very
4 shortly. And you answer:

5 "Between the years of?"

6 Question:

7 "We've got it happening anywhere from
8 1968..."

9 Just up to the next page:

10 "... just on your answers."

11 Answer:

12 "Okay."

13 "Anywhere from 1968 to the summer of
14 1972."

15 Answer:

16 "Okay."

17 "Four different years."

18 Answer:

19 "Three different years actually."

20 Question:

21 "No, four; '68, '69. Actually, it's
22 five. It could have been sometime in
23 '68 because one time you said you were
24 10 when it happened. It could be '69
25 because you said you could have been

1 11. It could be '70 June, that's in
2 your statement. It could be late '69
3 based on the four months followed by a
4 year. It could be '68 or '69 whether
5 you were 10 or 11. It could be
6 September '70 based on the calculating
7 from your dates. It could be '71 in
8 the summer after grade 7 or it could be
9 the summer of '72 after grade 8."

10 Answer:

11 "Okay."

12 Question:

13 "That's nine different dates."

14 Answer:

15 "Okay.

16 "Plus your sister's...."

17 "Okay."

18 "...June '73. That's 10."

19 "Okay."

20 "Confusing, isn't it?"

21 And then you said:

22 "It's not confusing to me."

23 But in reality here, not asking you to ---

24 Sorry.

25 Did you have a comment?

1 **MR. CULIC:** You think that maybe we're -- --
2 he said all of that?

3 **MR. SHERRIFF-SCOTT:** Well ---

4 **THE COMMISSIONER:** Just -- whoa! Whoa!
5 Whoa!

6 Just a second, sir.

7 No, no, no. There are rules here. You want
8 to get up and object, he'll back away and you can come
9 over.

10 You have to go to the microphone.

11 **MR. CULIC:** Mr. Commissioner, I didn't rise.
12 I didn't make an effort to object ---

13 **THE COMMISSIONER:** You did or did not?

14 **MR. CULIC:** I did not rise.

15 **THE COMMISSIONER:** Okay.

16 **MR. CULIC:** I did not make an effort to
17 object. I think my friend is just a touch sensitive at
18 this stage.

19 **THE COMMISSIONER:** Possible.

20 Mr. Sherriff-Scott?

21 **MR. SHERRIFF-SCOTT:** I thought my friend was
22 going to rise because I heard him sounding like he was
23 going to.

24 **THE COMMISSIONER:** All right.

25 **MR. SHERRIFF-SCOTT:** So I just assumed that

1 he had the floor and I was going to back away from the
2 podium.

3 **THE COMMISSIONER:** All right.

4 **MR. SHERRIFF-SCOTT:** Thank you.

5 **THE COMMISSIONER:** Now, where were we?

6 **MR. SHERRIFF-SCOTT:** We finished that
7 transcript.

8 **THE COMMISSIONER:** Okay.

9 **MR. SHERRIFF-SCOTT:** Mr. Silmsers, I am not
10 asking you when it happened.

11 Okay?

12 And it doesn't matter from the point of view
13 of where -- what questions I am asking you. What I am
14 really only interested in getting you to acknowledge is
15 that, because of memory issues, there was a very
16 significant spread of time in which it could have happened
17 and that was debated with you at length at the preliminary
18 inquiry.

19 **MR. SILMSER:** I think Mr. Neville is making
20 more of a point of it than I was. I said I was a child at
21 that age, of a certain age, and he is the one that made all
22 this dates.

23 And, at the time, I was getting very
24 frustrated, and I was just agreeing with him sometimes
25 because you have to -- there is 20,000 questions in a

1 three-day period here that Mr. Neville asked me, and with
2 very little breaks, with no objections from the Crown for
3 any of these. And I was just being hounded, and I was
4 frustrated, and that's maybe for some of the fast okays.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 That's fine.

7 I understand your response. Really, only I
8 was trying to get you to acknowledge that there was an
9 elaborate debate about this which ran over a potential
10 fairly lengthy period of time, that's all.

11 **MR. SILMSER:** I don't think there was so
12 much of a debate; it was Mr. Neville making these
13 assumptions.

14 **MR. SHERRIFF-SCOTT:** Okay.

15 Now when you first -- when you testified
16 last week, you talked about the fact that you said your
17 memory on dates and times was not so good, but that, you
18 know, you were always clear on the incidents of abuse.

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

20 **MR. SHERRIFF-SCOTT:** Okay.

21 Can I ask you to turn up document 101549,
22 which is Exhibit ---

23 **THE COMMISSIONER:** Oh!

24 It is an exhibit?

25 **MR. SHERRIFF-SCOTT:** I think it's -- it's

1 Ms. Sebalj's notes; not her typed version, but her notes
2 taken from January 28th ---

3 **THE REGISTRAR:** Three fourteen (314).

4 **MR. SHERRIFF-SCOTT:** Three fourteen (314).

5 Thank you.

6 **MR. SILMSER:** Do I have a copy?

7 **THE COMMISSIONER:** They are now in the book.

8 Yes, 314.

9 **MR. SHERRIFF-SCOTT:** This is just the issue
10 with respect to the incidents in the sacristy as reported
11 by you to the officer at your meeting at the CPS on Jan.
12 28.

13 **MR. SILMSER:** Now, this is 314 you're
14 saying?

15 **MR. SHERRIFF-SCOTT:** Exhibit 314.

16 **THE REGISTRAR:** They are handwritten notes.

17 **MR. SHERRIFF-SCOTT:** Yes. They are
18 handwritten notes of Ms. Sebalj's. It starts at the bottom
19 of the second page.

20 Do you have that?

21 **MR. SILMSER:** No, I don't.

22 Sorry.

23 **MR. SHERRIFF-SCOTT:** That's okay.

24 **MR. SILMSER:** I may be looking at the wrong
25 thing.

1 **THE REGISTRAR:** He's referring you to this
2 part right here.

3 **MR. SILMSER:** Okay.

4 **MR. SHERRIFF-SCOTT:** Does he have it?

5 **MR. SILMSER:** Are you going to go into the
6 abuse?

7 **MR. SHERRIFF-SCOTT:** No. I just want you to
8 read to yourself down at the bottom of the page where it
9 says "First incident," and then over to sort of two-thirds
10 of the way down on the next page. And then I'll have a
11 question about something that's not related to the details.

12 **(SHORT PAUSE/COURTE PAUSE)**

13 **MR. SILMSER:** Okay.

14 **MR. SHERRIFF-SCOTT:** Have you read over the
15 next page?

16 **MR. SILMSER:** Oh! You want me to read over
17 ---

18 **MR. SHERRIFF-SCOTT:** Yes, if you can keep
19 reading over at the page that's got the scribbled three on
20 the middle of the top down to -- you'll see a large
21 scrolling 'F' towards the bottom.

22 **MR. SILMSER:** Okay.

23 **MR. SHERRIFF-SCOTT:** Okay.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MR. SILMSER:** Okay.

1 **MR. SHERRIFF-SCOTT:** Okay.

2 The only question that I wanted you to
3 acknowledge is that when you gave your interview here to
4 the CPS on January 28th, there was one incident described in
5 the sacristy.

6 Correct?

7 **MR. SILMSER:** I would imagine there was,
8 yes.

9 **MR. SHERRIFF-SCOTT:** Okay.

10 I am not trying to be cute with you.

11 **MR. SILMSER:** No, no.

12 **MR. SHERRIFF-SCOTT:** I just wanted you to
13 acknowledge what's in the document is -- to be fair.

14 And if we could now go to Exhibit 262. This
15 is your undated statement that you gave to the Cornwall
16 Police Service, that Mr. Engelmann entered into the
17 evidence.

18 And so this follows your interview with the
19 CPS and it is, we established from the chronology,
20 sometimes in March, and you refer to the sacristy point
21 here again at page 2.

22 So if we can scroll over to page 2, you will
23 see about the middle of the page. It says:

24 "Father MacDonald had asked me to sit
25 down on the bench".

1 I guess I was just going to ask you the same
2 question. You've had a read through the incident as it's
3 described. It's a single incident in the sacristy that's
4 described. I just want you to acknowledge that.

5 (SHORT PAUSE/COURTE PAUSE)

6 MR. SILMSER: Okay.

7 MR. SHERRIFF-SCOTT: I am right?

8 There is only one incident described there.
9 Correct?

10 MR. SILMSER: Yes.

11 MR. SHERRIFF-SCOTT: Okay.

12 Now, the preliminary inquiry transcript 290
13 is the exhibit number, page 10, please.

14 THE COMMISSIONER: Exhibit 290, it's right
15 at the front I believe.

16 MR. SILMSER: Okay.

17 What page?

18 MR. SHERRIFF-SCOTT: Page 10 Mr. Silmsers.

19 Now, this is your examination-in-chief by
20 the Crown during the preliminary inquiry.

21 MR. SILMSER: Okay.

22 MR. SHERRIFF-SCOTT: Do you have page 10
23 there?

24 MR. SILMSER: Yes, I have.

25 MR. SHERRIFF-SCOTT: Okay.

1 You see the question starts "Now, we've
2 discussed"?

3 Are we on the same page?

4 **MR. SILMSER:** Yes.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 Scrolling down a bit the word "But" in the
7 right-hand margin of that paragraph, two lines down:

8 "But in relation to the incident in the
9 sacristy..."

10 This is Crown Pelletier putting this
11 question to you:

12 "Is this the only such time that such
13 an incident happened in the sacristy or
14 to your recollection did this ever
15 happen on other occasions?"

16 And you answered here:

17 "It happened on other occasions."

18 Question:

19 "In the sacristy".

20 Answer:

21 "In the sacristy."

22 "Okay. You understand though that I am
23 telling you that any other incidents in
24 the sacristy are not the subject of any
25 charges before this court right now?"

1 Answer:

2 "That's right."

3 "But you're saying there were other
4 similar incidents in the sacristy?"

5 "Yes."

6 "Was this on one or more than one
7 occasions?"

8 Answer:

9 "More than one occasion."

10 Question:

11 "Are you able to tell us how many such
12 episodes were in the sacristy?"

13 Answer:

14 "I would imagine five or six times."

15 Question:

16 "They were of a similar nature, was
17 there anything in particular or
18 different?"

19 Answer:

20 "Similar."

21 I know this is the first time this evidence
22 came out during the preliminary inquiry.

23 Correct?

24 **MR. SILMSER:** There is lots, like I said
25 there is 20,000 questions. So I don't really know.

1 **MR. SHERRIFF-SCOTT:** I am not trying to
2 trick you up on it. I haven't found anything else in --
3 that's what I understand to be the case.

4 But do you have any other recollections of
5 telling of five or six incidents?

6 Before, your statements don't contain it.
7 And the Crown appears to be surprised to hear when you're
8 saying it in the prelim.

9 **MR. SILMSER:** Like I said, I just don't
10 remember ---

11 **MR. SHERRIFF-SCOTT:** Okay.
12 That's fair.

13 **MR. SILMSER:** --- who I told to or didn't
14 tell.

15 **MR. SHERRIFF-SCOTT:** No problem.

16 Now, page 158 of the same transcript, if I
17 can flip you to that, please, towards the bottom of the
18 page, starting around line 26.

19 **THE COMMISSIONER:** Which ---

20 **MR. SHERRIFF-SCOTT:** Same exhibit
21 Commissioner, page 158 of the transcript.

22 **THE COMMISSIONER:** Well, I've got to 122.

23 **THE REGISTRAR:** Number 290.

24 **THE COMMISSIONER:** I am sorry?

25 **THE REGISTRAR:** Number 290.

1 **MR. SHERRIFF-SCOTT:** Yes, I was on 290.

2 **THE COMMISSIONER:** Sorry.

3 Merci.

4 Okay.

5 I'll do it here.

6 **MR. SHERRIFF-SCOTT:** Does everyone have
7 that?

8 Mr. Silmsers, I am interested in the passage
9 that starts down below; we're at the bottom of the page:

10 "Now you told the court this morning
11 that there were other occasions in the
12 sacristy that it was more than once; it
13 was five or six. I would imagine
14 that's what you told the court this
15 morning?"

16 Answer:

17 "Yes."

18 If we can just read over to page 159.

19 Now would you agree with me that when we
20 look at your statement, Ms. Sebalj's statement, there is no
21 reference to more than one and we've already established
22 that just now, you and I and you say

23 "I remembered that at a later date."

24 Question:

25 "When did you remember it?"

1 Answer:

2 "Can't tell you exactly when but it was
3 a later date."

4 "Well let me help you when you
5 remembered."

6 He says:

7 "You remembered it about a week and a
8 half or two weeks before your
9 examination for discovery. That's when
10 you remembered it."

11 You said:

12 "How do you know this?"

13 "Because I'm going to read it to you."

14 Then if you go over to the next page after
15 one of the exchanges you had with Mr. Neville, we flip over
16 to page 161. And it starts with the question "Let me just
17 back up" and then he quotes.

18 Do you see that?

19 Are you with me, sir?

20 **MR. SILMSER:** You're on page 161?

21 **MR. SHERRIFF-SCOTT:** Yes, sir.

22 **MR. SILMSER:** Okay.

23 **MR. SHERRIFF-SCOTT:**

24 "Let me just back up."

25 And he quotes:

1 "For some odd reason I don't even
2 know..."

3 And he is quoting from your discovery
4 transcript:

5 "...why I am blanking it out of my head.
6 Maybe I'll know in the future. There
7 is still things that I just two weeks
8 ago..."

9 And this is when you're being examined for
10 discovery:

11 "...just remembered another incident
12 where I was sexually abused by him.
13 Things are still coming out in my head.
14 I don't know why I am blanking that
15 retreat out."

16 It's what you're talking about here are not
17 dates and details, but things coming out of your head that
18 were incident-based.

19 Correct?

20 You were remembering more incidents even at
21 discovery or shortly there before.

22 **MR. SILMSER:** I would say it's fair to say I
23 was remembering incidents around the abuses. They were
24 basically trying to -- especially at the retreat; they
25 wanted to know which the priest turned, left or right; they

1 wanted to know the colour of the walls; they wanted to know
2 so many details. And things were just slowly starting --
3 you know, I started to remember all those facts ---

4 **MR. SHERRIFF-SCOTT:** I know you get feeling
5 hammered by the barrage of detailed questions when you're
6 being cross-examined.

7 But really what I am asking you here, is
8 this is in relation to a question that was put to you by
9 the Crown, and you said, although your statement originally
10 said one incident, you'd gone at the preliminary inquiry
11 for the first time to five or six and Neville's cross-
12 examining you on why you'd gone to five or six and how that
13 progressed in your memory. And that's why you're saying
14 here that you were still remembering incidents, not details
15 or dates, but incidents, in fact ---

16 **MR. SILMSER:** In the sacristy?

17 **MR. SHERRIFF-SCOTT:** Yes.

18 **MR. SILMSER:** Yes, there were incidents
19 like, when we -- I don't want to get into the incidents ---

20 **MR. SHERRIFF-SCOTT:** I don't either sir. I
21 just want you to acknowledge that your memory it was an
22 evolving work in progress as opposed to something that was
23 fixed. When you started out, it was one and you kept
24 remembering things even up to the preliminary inquiry.

25 **MR. SILMSER:** The major incidences that

1 happened to me, I remember. I basically got them out with
2 Heidi Sebalj in my statement. The smaller things -- well,
3 not smaller things, I consider them smaller things maybe, I
4 started to remember later.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 Well, let's just read on and see what you
7 say here:

8 "And Neville says after he has quoted
9 you about the retreat, now two weeks
10 ago, would you have, roughly the 1st of
11 December that year, all right but you
12 go on. The lawyer says and these are
13 the questions and answers at discovery
14 that are being transcribed and put to
15 you again. Are you telling me now that
16 two weeks ago you recall another
17 incident of abuse that you had never
18 recalled before?"

19 Answer:

20 "Yes."

21 Okay now, this is when you're at discovery:

22 "And it was in the sacristy also, it
23 was the same idea with him touching me
24 but a little bit more than the first
25 incident."

1 "Was that before or after this incident
2 that we just spoke of?"

3 And your answer is:

4 "It was after, not much after, but I
5 remember another incident where he
6 grabbed me into a little corner, et
7 cetera."

8 And then, over the top of the next page,
9 162:

10 "Did it happen immediately after the
11 first?"

12 "That I can't remember; it was the next
13 incident".

14 So what had happened by is you remembered
15 another incident of abuse in the sacristy whereas your
16 reports to the police in the first instance were one.

17 Isn't that fair?

18 **MR. SILMSER:** I would say that's fair, yes.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 I mean I can take you to the next page where
21 you acknowledge it specifically, but that's fine. I'm
22 really trying to focus on how the thing evolved as opposed
23 to, you know, trying to attack anything on whether it
24 happened or not. I just want to get the progress of the
25 thing.

1 All right?

2 Now, ---

3 **MR. SILMSER:** My problem is I don't know how
4 that's institutional response -- has anything to do with
5 the institutional response.

6 **MR. SHERRIFF-SCOTT:** Well, we've debated
7 that and it's been agreed that I'm allowed to ask the
8 question. So that's the Commissioner's call.

9 Okay.

10 So now, I'm just going to switch subjects
11 here.

12 **THE COMMISSIONER:** And just to make it
13 clear, yes, we did have a discussion in your absence and I
14 find that it has some relevance to the institutional
15 response. It has nothing -- and that's the only way I'm
16 going to interpret this evidence.

17 All right?

18 **MR. SILMSER:** Is through my credibility or
19 something?

20 **THE COMMISSIONER:** No. Oh! No, no, no. It
21 has nothing to do with your credibility.

22 **MR. SHERRIFF-SCOTT:** Okay.

23 Now, I'm going to leave these things from
24 the transcript and switch to another related subject.

25 Okay?

1 Last week, on Monday, you reviewed with the
2 Commission counsel various contacts or meetings or
3 correspondence that you'd had with Charles MacDonald after
4 the abuse had stopped over the years.

5 All right.

6 Do you need a break?

7 **MR. SILMSER:** No.

8 **MR. SHERRIFF-SCOTT:** Okay.

9 Do you remember discussing that with Mr.
10 Engelmann?

11 I'm just trying to situate you now. There
12 were questions pertaining to what happened after the abuse
13 and in particular what the rationale was for why you had
14 continuing contact albeit limited.

15 **THE COMMISSIONER:** With Father MacDonald?

16 **MR. SHERRIFF-SCOTT:** With Father MacDonald.

17 Do you remember those questions?

18 **MR. SILMSER:** Yes. Limited questions, yes.

19 **MR. SHERRIFF-SCOTT:** Yes, I understand.

20 Now, the rationale you gave for that last day -- I just
21 want to refresh your memory -- is that the transcript -- I
22 can read it or we can call it up. It's ---

23 **THE COMMISSIONER:** Madam Clerk, can we call
24 it up?

25 **MR. SHERRIFF-SCOTT:** It's page 64 of

1 Monday's transcript, Volume 85.

2 **THE REGISTRAR:** Which page?

3 **MR. SHERRIFF-SCOTT:** Sixty-four (64).

4 Okay.

5 At the top of the page, you had been asked
6 why you had these continuing contacts and I'm not talking
7 about the number or trying to suggest they were frequent,
8 but you contended:

9 "Very few friends. I always found the
10 winter time the hardest because you had
11 to stay warm. These are the only
12 people that would help. I always
13 thought they were my best buddies.
14 They always said they would help me out
15 and be my best buddy and my best
16 friend.

17 And even though I was ashamed of the
18 abuses, you still had to survive; you
19 still had to feed yourself. And I
20 fought back many a time, trying to not
21 let it happen, but they were -- when
22 you're that age, you're so mixed up and
23 these people are so powerful and you're
24 walking in a trance. You're doing
25 things that you never thought, you

1 know, you're stealing, you know, to
2 feed yourself. You never thought you'd
3 be there, but you are there. It was
4 basically survival."

5 Do you remember that exchange?

6 **MR. SILMSER:** Yes.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 And over at page 73, Mr. Engelmann asked you
9 one more question which was:

10 "Did you have any other contact..."

11 "No."

12 So then he says:

13 "So you've talked to us about three
14 individuals you alleged abused you when
15 you were a young person.

16 Did you tell anybody about it at that
17 time?"

18 Answer:

19 "No, I didn't."

20 "And the reasons for that, sir?"

21 "I was ashamed."

22 That is your answer. Okay?

23 **MR. SILMSER:** Okay.

24 **MR. SHERRIFF-SCOTT:** All right.

25 Now, I just want to now return to a

1 different document which is, I believe at this point not
2 marked yet, Commissioner. It is the transcript from
3 discovery of December 13th, 1995, and it is document 738154.
4 And if we could mark that, I don't believe it's marked yet.

5 **THE COMMISSIONER:** No. It will be Exhibit
6 320.

7 --- **EXHIBIT NO./PIÈCE NO P-320:**

8 (738154) Ontario Court (General Division)
9 D.S. -and- Father Charles MacDonald, Bishop
10 Adolphe Proulx and the Roman Catholic
11 Episcopal Corporation for the Diocese of
12 Alexandria-Cornwall in Ontario - December
13 13, 1995

14 **MR. SHERRIFF-SCOTT:** Thank you.

15 **THE COMMISSIONER:** So an Examination for
16 Discovery ---

17 **MR. SHERRIFF-SCOTT:** December 13th, 1995.

18 **THE COMMISSIONER:** Thank you.

19 What page did you want to go to?

20 **MR. SHERRIFF-SCOTT:** One one three (113),
21 Bates 7164745.

22 **THE COMMISSIONER:** One one three (113).

23 Are you there?

24 **MR. SILMSER:** What page?

25 **MR. SHERRIFF-SCOTT:** Page 113, Mr. Silmsers.

1 **MR. SILMSER:** One one three (113)?

2 **MR. SHERRIFF-SCOTT:** Yes, page 113. You'll
3 see the pages are marked in the upper right corner.

4 **MR. SILMSER:** Okay.

5 **MR. SHERRIFF-SCOTT:** Okay.

6 Basically the same questions were put to you
7 there at 778:

8 "Did you have any contact with Charles
9 MacDonald after the last assault?"

10 Answer:

11 "Two or three."

12 "Could you describe those?"

13 Answer:

14 "Yes, but you have to understand why I
15 saw him."

16 Question:

17 "Well, perhaps you can tell us why in
18 the context of describing your contacts
19 with him."

20 Answer:

21 "For one thing, I blocked out what he
22 did to me. I blocked it out what he
23 did to me and many times I was living
24 on the street. The first time was
25 probably when I was 16 or 17."

1 "Okay. If I could just stop you there,
2 so between the last incident that
3 occurred when you were 13 or 14 until
4 the incidents you are now going to
5 describe to me at approximately age 16,
6 am I to understand that you hadn't any
7 contact with Charles in that period?"

8 "No."

9 Now, if we can go over to page 120 and you
10 just follow me forward, they return to this subject and it
11 begins at page -- question 819:

12 "Other than the two letters, did you
13 have other telephone contacts with
14 Charles MacDonald?"

15 "Not that I can remember."

16 "Then you indicated that you thought
17 you blocked it out of your mind but by
18 the time the last incident occurred,
19 you were I think you said 13, 14. When
20 did it next come into your mind after
21 you had blocked it out?"

22 Answer:

23 "The sexual abuses?"

24 "Yes."

25 "When did it come to my mind?"

1 Answer:

2 "Yes."

3 "Right after I wrote the last letter in
4 jail. That was the last time I was in
5 jail approximately eight to ten years
6 ago."

7 This is eight to ten years prior to '95 when
8 the discovery is taking place.

9 "Ten years ago was the last time I was
10 still in jail."

11 Question:

12 "So from the time that these incidents
13 occurred up to eight or ten years ago,
14 you hadn't given any thought whatsoever
15 to these incidents during that period
16 of time."

17 Answer:

18 "I blocked out the sexual abuse. I
19 acted differently though. You know, it
20 affected me. I know it affected me."

21 "Well, we'll get into that and I
22 understand it, Mr. Silmsers, but to put
23 your mind now if you're thinking about
24 it, you had no thoughts of these
25 incidents between the time they

1 occurred and eight or ten years ago."

2 Answer:

3 "That's right."

4 "Okay. At that point eight or ten
5 years ago when you began to think about
6 these things, you would have been at
7 the age of 22 but I think then you see,
8 Mr. Silmsers, they agree you were 27 if
9 you do the math."

10 Okay?

11 So what happened here in terms of your
12 evidence as I understand it is that these memories came
13 back to you at a much later time in your life after having
14 blocked them out, from what I can tell here, completely
15 from the time they happened until you were 27ish in jail.

16 **MR. SILMSER:** Most of them, yes.

17 **MR. SHERRIFF-SCOTT:** And that was a big deal
18 at the prelim, wasn't it?

19 **MR. SILMSER:** I don't know.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 I suggest that if you remember it clearly,
22 you'll acknowledge that there was a great deal made of the
23 fact that you were still recovering memories and that these
24 were the reasons for inconsistencies, the fact that the
25 memories were recovered.

1 **MR. SILMSER:** I couldn't tell you.

2 **MR. SHERRIFF-SCOTT:** Okay.

3 **MR. SILMSER:** All I can tell you is even
4 through that -- through that meeting I had at the Diocese
5 that they did believe me or they wouldn't have paid me the
6 \$32,000.

7 **MR. SHERRIFF-SCOTT:** Well, we'll get to that
8 point later on, but if you can just flip the page.

9 **MR. SILMSER:** What page?

10 **MR. SHERRIFF-SCOTT:** One twenty-two (122).

11 **MR. SILMSER:** On the same document?

12 **MR. SHERRIFF-SCOTT:** Yes.

13 It starts:

14 "I started trying to remember
15 everything that happened to me in my
16 past. I had to go through all my -
17 like, what I did wrong to people. Then
18 when I started getting further and
19 further back, I started remembering me
20 as an altar boy and that's when
21 everything started to come clear. I
22 started to remember all the incidents.
23 I was so shocked at first when I
24 remembered. I told somebody in jail."

25 And this is where you get to Mr. Chauvin.

1 But the fact that you had these memories for the first time
2 here in jail, in your evidence, was shocking to you. It
3 was a revelation.

4 Correct?

5 **MR. SILMSER:** I don't know like all the
6 revelation, but I was -- I started remembering it. Yes.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 Now, if we can just return to Exhibit 290.

9 **THE COMMISSIONER:** And this is the third
10 example?

11 This is -- I thought you had three examples
12 and then you'd get on to something else?

13 **MR. SHERRIFF-SCOTT:** Yes, this is the third
14 example.

15 **THE COMMISSIONER:** All right.

16 **MR. SHERRIFF-SCOTT:** And this is Exhibit
17 290, at page 109.

18 Do you have that, sir?

19 **MR. SILMSER:** Yes, I do.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 Around line 20, starting with "Okay."

22 Why don't you just read from "Okay" to the
23 bottom of the page and I'll ask you a question?

24 **MR. SILMSER:** Read from where?

25 **MR. SHERRIFF-SCOTT:** "Okay. And you're

1 telling us that at this point in 1987,
2 what -- you what? Suddenly remembered
3 that you had been an abused victim?"

4 Answer:

5 "Yes."

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

7 **MR. SILMSER:** Yes.

8 **MR. SHERRIFF-SCOTT:** So as I understand your
9 evidence, you certainly had to work at this to get it back.
10 In other words, you had to think about this a lot to
11 recover these memories.

12 **MR. SILMSER:** No. Actually, they came and
13 flooded back pretty fast.

14 **MR. SHERRIFF-SCOTT:** Okay.

15 Can I just ask the Registrar to turn to the
16 transcript from January 31st, at 230?

17 **THE COMMISSIONER:** It's on the screen now,
18 Mr. Silmser.

19 **MR. SHERRIFF-SCOTT:** Thank you.

20 Starting with Mr. Lee down towards the
21 bottom of the page, Madam Clerk? Yes.

22 "The third point notes that, in
23 relation to the most serious
24 allegation, they pressed you for
25 explicit details, and you claimed to

1 have blanked this from your memory."

2 Mr. Silmsers, this is your last week.

3 Okay?

4 "I explained it to them, and I
5 explained what happened and they did
6 not want to charge on that charge, and
7 they never explained why. I told them
8 exactly what happened there."

9 Mr. Lee says:

10 "So as far as you are concerned, you
11 didn't blank anything out of your
12 memory."

13 Answer:

14 "That's right."

15 But as we look back over the evidence and
16 see how it unfolded, in fact, you did have a lot of things
17 that were recovered that had been blanked out for many
18 years.

19 **MR. SILMSER:** No. He was explaining
20 something totally different. He was explaining the fourth
21 abuse of Charles MacDonald about the sexual abuse where I
22 was unconscious. That's what he was talking about. I
23 blanked out. I was unconscious.

24 **MR. SHERRIFF-SCOTT:** No.

25 **MR. SILMSER:** Yes, it was.

1 **MR. SHERRIFF-SCOTT:** He was -- I'm sorry.

2 **MR. SILMSER:** Yes, it was.

3 **MR. SHERRIFF-SCOTT:** Let me finish, sir.

4 **MR. SILMSER:** No, no. Don't say no to me.

5 When I say something, you have to -- I say, yes, it was.

6 **MR. SHERRIFF-SCOTT:** Well, that's fine.

7 **MR. SILMSER:** If you've got another comment,
8 make another comment. Don't say no to me.

9 **MR. SHERRIFF-SCOTT:** I'm going to make my
10 comment.

11 All right?

12 And I'm asking you to wait and let me get it
13 out. I understand your view that's what had happened. In
14 fact, what he was doing is putting Peter Griffiths' letter
15 to you, the Crown Attorney, which had a number of points
16 about why they would not charge on the third investigation
17 by the OPP, and one of them was that you had had a problem
18 with memory ---

19 **MR. SILMSER:** No.

20 **MR. SHERRIFF-SCOTT:** --- and blanked ---

21 Okay.

22 Well, we have a different view. So we'll
23 disagree.

24 **MR. SILMSER:** No, no. It was because I was
25 unconscious in the third -- on the fourth abuse, and that's

1 why they did not charge and that's where you're getting
2 this wrong.

3 **MR. SHERRIFF-SCOTT:** All right.

4 You've got your view and we disagree. So
5 that ---

6 **MR. SILMSER:** No, that is the view.

7 **MR. SHERRIFF-SCOTT:** Well, that's your view
8 and -- so we can respectfully disagree with one another.

9 **MR. SILMSER:** I'm not going to respect your
10 view at all.

11 **MR. SHERRIFF-SCOTT:** That's fine.

12 Now, I suggest to you what happened here in
13 terms of your interaction with public institutions is that
14 this issue with respect to recovered memory was really the
15 driving force behind why there were so many difficulties,
16 for example, at the preliminary inquiry.

17 **MR. SILMSER:** Absolutely not!

18 **MR. SHERRIFF-SCOTT:** Okay.

19 Now, on Monday last, you also said that in
20 addition to telling Mr. Chauvin -- do I have that right,
21 Chauvin?

22 Is it Chauvin or is it another
23 pronunciation?

24 **MR. SILMSER:** No, Chauvin.

25 **MR. SHERRIFF-SCOTT:** You said you also told

1 "a minister in jail." Do you remember that?

2 MR. SILMSER: That's correct.

3 MR. SHERRIFF-SCOTT: Okay.

4 Now, I'm going to take you back to another
5 transcript.

6 This is Exhibit 320 at page 123.

7 (SHORT PAUSE/COURTE PAUSE)

8 THE COMMISSIONER: I'm sorry.

9 What is it?

10 MR. SHERRIFF-SCOTT: I'm sorry, 320.

11 Commissioner, it's the discovery transcript of December
12 13th.

13 THE REGISTRAR: Page 123?

14 MR. SHERRIFF-SCOTT: One twenty three (123),
15 yes.

16 THE COMMISSIONER: All right.

17 One twenty three (123)?

18 MR. SHERRIFF-SCOTT: Yes, Commissioner; 122,
19 my apologies.

20 (SHORT PAUSE/COURTE PAUSE)

21 MR. SHERRIFF-SCOTT: There is a debate here
22 that runs a number of pages, Mr. Silmsen, and we can read
23 all of them if you need me to do that, but the chronology
24 was, you'll see at page 122, the first person you described
25 as telling was Gordie Chauvin.

1 Does that comport with your recollection?

2 **MR. SILMSER:** That's correct.

3 **MR. SHERRIFF-SCOTT:** Okay.

4 Now if you go over to page 123 at question
5 833?

6 **MR. SILMSER:** You want me to go to page 123?

7 **MR. SHERRIFF-SCOTT:** Page 123, question 833.

8 **MR. SILMSER:** Eight thirty three (833).

9 **MR. SHERRIFF-SCOTT:** And it says here --
10 now, the examiner has moved off Mr. Chauvin and says:

11 "Okay. If we move along then from that
12 point onwards into 1992, when is the
13 first time you actually told someone
14 about these events?

15 "I believe it was my brother."

16 There was no description of any minister in
17 your evidence at discovery.

18 **MR. SILMSER:** That was a mistake.

19 **MR. SHERRIFF-SCOTT:** It was a mistake?

20 **MR. SILMSER:** Yes.

21 **MR. SHERRIFF-SCOTT:** Okay.

22 Can we go to Exhibit 316, please?

23 That's the discovery of the 14th December,
24 page 214.

25 **(SHORT PAUSE/COURTE PAUSE)**

1 THE COMMISSIONER: Okay.

2 So that's in the next day?

3 MR. SHERRIFF-SCOTT: Correct.

4 THE COMMISSIONER: And what page?

5 MR. SHERRIFF-SCOTT: Two one four (214),
6 Commissioner.

7 THE COMMISSIONER: All right.

8 MR. SHERRIFF-SCOTT: Question 1285 down.
9 You can scroll down.

10 It starts here. It's a short exchange but
11 it goes over:

12 "And during any of your stays..."

13 Sorry?

14 "...during any of your stays in jail,
15 not necessarily Collin's Bay, but any
16 institution, did you undergo any
17 therapeutic counselling as a result of
18 all or at all, first of all, did you
19 have any therapeutic counselling?"

20 Question: (sic)

21 "I can't remember any."

22 Question:

23 "You don't remember speaking to any
24 psychologist, psychiatrist, counsellor
25 or any person like that during any of

1 your stays in prison?"

2 Answer at the top:

3 "If I did it would be just very, very
4 limited. I think everybody has to
5 speak to a psychologist or something
6 when they go into a penitentiary."

7 "But didn't you..."

8 "But you didn't ever undergo any
9 counselling?"

10 Answer:

11 "I don't believe so."

12 And then they refer to testing. But down to

13 Mr. Anniss, at line 11, he says:

14 "I think what the witness is saying is
15 that he can't recall a lot of things.
16 Where we are heading -- to Mr. Geoffrey
17 it seems quite plain."

18 "What I would like -- and I think that
19 we all want here is an undertaking to
20 give us access to the penitentiary
21 files with respect to this gentlemen
22 and this is one of the problems I think
23 we have when we have an emotional or
24 shock-type case. Basically, it's wide
25 open because we are going to pursue it

1 further..."

2 Et cetera.

3 And then he goes down:

4 "We would like to say any testing,
5 counselling or psychological reports."

6 Mr. Powers say:

7 "Penitentiary and reformatory?"

8 "Yes, the whole thing."

9 And Mr. Geoffrey at the top of the next
10 page says:

11 "Did you ever tell anybody in there
12 about what happened to you with either
13 Ken Seguin or Father Charles?"

14 And your answer was:

15 "No."

16 **MR. SILMSER:** That was a mistake.

17 **MR. SHERRIFF-SCOTT:** That's a mistake?

18 **MR. SILMSER:** Yes.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 **MR. SILMSER:** You have to understand through
21 this discovery, this was the discovery with Bryce Geoffrey
22 and Leduc.

23 Right?

24 **THE COMMISSIONER:** Yes. Yes.

25 **MR. SHERRIFF-SCOTT:** Nineteen ninety-five

1 (1995), yes.

2 MR. SILMSER: Right.

3 I was so sick that day I could hardly keep
4 my head up.

5 MR. SHERRIFF-SCOTT: Okay.

6 MR. SILMSER: And they all knew it, and even
7 at the end I told them two or three times I was sick and I
8 couldn't hear nothing. My eyes were stuffed right out and
9 my ears were plugged and my chest was full. I was super,
10 super sick and they kept this discovery going. Finally, I
11 said "My head feels like mush," at the end and I finally
12 put an end to it.

13 MR. SHERRIFF-SCOTT: Can I suggest to you --
14 I'll suggest this to you then. The first time you ever
15 said anything about a Minister ---

16 MR. SILMSER: No. No, no.

17 MR. SHERRIFF-SCOTT: --- is last week.

18 MR. SILMSER: No, no, no. It wasn't.

19 MR. SHERRIFF-SCOTT: Okay.

20 Did you want to break or shall I press on?

21 THE COMMISSIONER: Oh!

22 MR. SHERRIFF-SCOTT: It's up to you.

23 THE COMMISSIONER: No, no. No, no.

24 MR. SHERRIFF-SCOTT: Just asking.

25 THE COMMISSIONER: No, no. We'll go to

1 3:00.

2 MR. SHERRIFF-SCOTT: Okay.

3 Now, I'm going to leave this subject, sir,
4 and return to the timeframe of February 1993.

5 Excuse me.

6 (SHORT PAUSE/COURTE PAUSE)

7 MR. SHERRIFF-SCOTT: And if we could turn to
8 your statement which is document -- I'm sorry -- I don't
9 think it's been marked -- 715498 in the Commission's
10 notice.

11 THE COMMISSIONER: And what exhibit?
12 Is it an exhibit yet?

13 MR. SHERRIFF-SCOTT: It may be.
14 I'm sorry.

15 I don't know if it was marked.

16 THE REGISTRAR: Exhibit 271.

17 MR. SHERRIFF-SCOTT: Two seven one (271).
18 Thank you.

19 THE COMMISSIONER: Okay.

20 So 271.

21 MR. SILMSER: I might have this.

22 THE COMMISSIONER: Yes, 271.

23 (SHORT PAUSE/COURTE PAUSE)

24 MR. SILMSER: It just takes me a little
25 longer.

1 (SHORT PAUSE/COURTE PAUSE)

2 MR. SHERRIFF-SCOTT: Okay.

3 Now, this is a statement that you gave us,
4 was identified I believe, by Commission counsel on November
5 26th, 1993.

6 Right, Mr. Silmser?

7 MR. SILMSER: I'm just checking out the ---

8 MR. SHERRIFF-SCOTT: Okay.

9 Sure.

10 MR. SILMSER: This is the one that was taken
11 by Chris McDonell, the cousin of the priest?

12 MR. SHERRIFF-SCOTT: Does that make a
13 difference?

14 MR. SILMSER: Big difference.

15 MR. SHERRIFF-SCOTT: You wrote it out,
16 didn't you?

17 MR. SILMSER: I didn't write this.

18 MR. SHERRIFF-SCOTT: All right.

19 Is that your signature on each page?

20 MR. SILMSER: Yes, it is, but I didn't write
21 it.

22 MR. SHERRIFF-SCOTT: Okay.

23 So we can't rely on this statement, is that
24 what you're saying?

25 MR. SILMSER: I wouldn't rely on anything

1 Chris McDonell said to this whole procedure.

2 MR. SHERRIFF-SCOTT: All right.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. SHERRIFF-SCOTT: Now, if I can ask you
5 to turn to page 2 there is something that I want to ask you
6 about here.

7 You did sign this statement, sir, did you
8 not?

9 MR. SILMSER: That page has been signed.

10 MR. SHERRIFF-SCOTT: All the pages were
11 signed, were they not?

12 MR. SILMSER: Yes, they were.

13 MR. SHERRIFF-SCOTT: Did you not sign them
14 as an acknowledgement that this is what you were trying to
15 tell the officer?

16 MR. SILMSER: Mmphm.

17 MR. SHERRIFF-SCOTT: Or are you suggesting
18 he made an interlineation, which means he inserted
19 something on his own?

20 MR. SILMSER: I think they are trying to put
21 a lot of things in their own words too in this thing.

22 MR. SHERRIFF-SCOTT: Okay.

23 Well, let's go to page 2 at the bottom. Go
24 at the bottom. And it starts with:

25 "Around April I got fed up with

1 waiting."

2 Can you see that?

3 **MR. SILMSER:** No, I don't -- the
4 handwriting.

5 **MR. SHERRIFF-SCOTT:** It's about four inches
6 from the bottom of the page.

7 **MR. SILMSER:** Okay.

8 **MR. SHERRIFF-SCOTT:** Okay.

9 Let's just see if we can agree whether or
10 not this comports with your recollection of what you would
11 have written here.

12 **MR. SILMSER:** I did not write this.

13 **MR. SHERRIFF-SCOTT:** You did not write that.
14 That's fine.

15 What was told to the officer:

16 "Around April I got fed up with
17 waiting. I wanted to get this thing
18 over with."

19 Is that consistent with what you were
20 thinking at the time?

21 **MR. SILMSER:** I have no idea what this
22 concerns?

23 **THE COMMISSIONER:** Then let's maybe situate
24 this.

25 **MR. SHERRIFF-SCOTT:** Well, the discussion

1 here that follows talks about your meetings with the
2 Diocese and how and why that happened.

3 **THE COMMISSIONER:** Okay.

4 Bear with me!

5 **MR. SHERRIFF-SCOTT:** Yes.

6 **THE COMMISSIONER:** We are going back to
7 November 26 of 1993, which is the date of the interview.

8 All right?

9 That's where we are, back in 1993.

10 So if that is November of 1993, if I'm
11 reading this it says around April of 1993. So back in the
12 spring of 1993. What is written here is saying that you
13 would have told whoever wrote this that you got fed up with
14 waiting, and you want to get this over with, and then you
15 phone Father MacDougald.

16 Does that help you a little bit?

17 **MR. SILMSER:** I still don't know what it
18 concerns. So that's ---

19 **THE COMMISSIONER:** Well, that's what Mr.
20 Sherriff-Scott will ask you and ---

21 **MR. SILMSER:** Okay.

22 **THE COMMISSIONER:** --- we'll see where it
23 goes.

24 **MR. SHERRIFF-SCOTT:** Does this sound -- what
25 it concerns is why you had a meeting with the Church. The

1 date is clearly wrong; April. It was February; we know you
2 met with the Church or the Diocese. But the indication
3 here is an expression from you -- at least, it's attributed
4 to you, not written by you as you say, that around that
5 time you got fed up with waiting and wanted to get things
6 over with, as you used your expression. So you phoned
7 Father MacDougald, and asked him what type of
8 responsibility the Church would have for what Father
9 Charles MacDonald had done to you.

10 Is that consistent with your recollections
11 of what you would have been feeling or talking about to the
12 police?

13 **MR. SILMSER:** I honestly can't remember that
14 phone call, but I did phone Father MacDougald ---

15 **MR. SHERRIFF-SCOTT:** Okay.

16 And he said he would ---

17 **MR. SILMSER:** --- at times.

18 **MR. SHERRIFF-SCOTT:** Sorry.

19 Go ahead.

20 **MR. SILMSER:** I did phone Father MacDougald
21 up at times, yes.

22 **MR. SHERRIFF-SCOTT:** Yes, I remember you
23 saying that last week that you phoned him a number of
24 times.

25 "He said we would have a meeting at the

1 Diocese and see what we can do. I went
2 to a meeting in Cornwall on Montreal
3 Road."

4 And that's the meeting in February.
5 Isn't that right?

6 **MR. SILMSER:** Yes, it was.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 "There was Father MacDougald, the
9 lawyer of the Diocese. There was
10 another reverend under the Bishop.
11 They asked me my story and I told them.
12 The lawyer was writing. The lawyer
13 said 'You must be angry.' I said
14 'Yes.' He said 'You have all the right
15 to be angry.' That was it. They said
16 they would be in touch with me. I kept
17 Heidi Sebalj informed."

18 That paragraph, that we just read together,
19 is that consistent with what you might have told the police
20 as is recorded here?

21 **MR. SILMSER:** I forget what I told the
22 police.

23 **MR. SHERRIFF-SCOTT:** All right.

24 We turn to Exhibit 316, please; 316. We're
25 still in the February timeframe I'm going to be asking you

1 about.

2 Okay?

3 (SHORT PAUSE/COURTE PAUSE)

4 THE COMMISSIONER: Okay.

5 Where is 316?

6 MR. SHERRIFF-SCOTT: Okay.

7 THE COMMISSIONER: Okay.

8 So now, we're back to the Examinations for
9 Discovery that occurred in 1995.

10 MR. SHERRIFF-SCOTT: Yes, but the evidence I
11 am going to ask the witness about is still pertaining to
12 the February 1993 time period frame and his answers relate
13 to that.

14 This is at page 299, sir, question 1575.
15 Now, what's described in the debate here that follows is a
16 discussion you may have had with Mr. Seguin around the end
17 of January of '93. And the question starts at 1575:

18 "Now, as well, what Mr. Seguin
19 indicated was that on January 28th he
20 said that at approximately 11:30 p.m.
21 [so this is very late at night] he
22 received a call from you at home."

23 And you indicated:

24 "You have that in front of you there,
25 that paragraph."

1 And your lawyer answers:

2 "I have it now, yes."

3 "The call awakened me from sleep and it
4 was difficult to comprehend what was
5 happening. He stated that he had been
6 drinking heavily. He was talking very
7 hard and he said that he was going to
8 sue the Diocese for big money."

9 Your lawyer interjects, to finish the
10 statement.

11 Question:

12 "For big money because Father Charles
13 had sexually assaulted him when he was
14 an altar boy at St. Columban's Parish
15 and he went on to yell at me saying
16 that I had a -- I was a rotten
17 probation officer who didn't help him
18 enough with his problems when he needed
19 lodgings, et cetera. He said I must be
20 very stupid not to recognize people's
21 problems when I see them."

22 He goes on then to say,

23 "I was in shock."

24 Blah, blah, blah.

25 "First of all, did you phone Ken Seguin

1 late at night when, I guess, you had
2 been drinking?

3 Answer:

4 "I can't remember if I did or I
5 didn't."

6 Question:

7 "It may very well have happened?"

8 Answer:

9 "It's possible."

10 "And that would have been after you had
11 given your complaint to the police? So
12 you were all revved up after that? Do
13 you remember that sort of thing?"

14 Geoffrey:

15 "He says he doesn't remember."

16 Do you remember calling Mr. Seguin at the
17 end of January?

18 **MR. SILMSER:** I don't understand this whole
19 thing here.

20 You're saying Mr. Geoffrey.

21 I phoned Mr. Geoffrey?

22 **MR. SHERRIFF-SCOTT:** No, sir.

23 What this records here is you're cross-
24 examined on something Mr. Seguin said to the police. He
25 said that you called him on January 28th and that you had an

1 animated exchange, in which you told him you were going to
2 sue the Diocese for big money, and it's put to you ---

3 **MR. SILMSER:** Who's saying that?

4 **MR. SHERRIFF-SCOTT:** That's the question
5 that's put to you on Examination for Discovery. It's based
6 on a statement that's read to you at that time and the
7 answer, when it says, first of all:

8 "Did you phone Ken Seguin late at
9 night? When I guess you had been
10 drinking."

11 And your answer was:

12 "I can't remember if I did or I
13 didn't". "It may well have happened?"
14 said the cross-examiner and you said:

15 "It's possible".

16 So my question to you is: Do you remember
17 speaking to Mr. Seguin in/or around the time you first met
18 with the Cornwall Police at the end of January, 1993?

19 **MR. SILMSER:** No, I don't remember that.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 **MR. SILMSER:** I still don't understand this
22 document, but ---

23 **MR. SHERRIFF-SCOTT:** We go to Exhibit 3 ---

24 **MR. SILMSER:** I don't understand it.

25 **MR. SHERRIFF-SCOTT:** Time, 18 ---

1 **THE COMMISSIONER:** I'm sorry.

2 Do you want to a break?

3 **MR. SHERRIFF-SCOTT:** Do you need some time?

4 **MR. SILMSER:** Yes.

5 **THE COMMISSIONER:** It's time for the
6 afternoon break in any event. So let's take a break.

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

9 The hearing will resume at 3:15 p.m.

10 --- Upon recessing at 2:57 p.m. /

11 L'audience est suspendue à 14h57

12 --- Upon resuming at 3:16 p.m. /

13 L'audience est reprise à 15h16

14 **THE REGISTRAR:** This hearing of the Cornwall
15 Public Inquiry is now in session. Please be seated.
16 Veillez vous asseoir.

17 **THE COMMISSIONER:** Estimate of time; are we
18 going to finish today?

19 **MR. SHERRIFF-SCOTT:** I'll probably will
20 finish the day.

21 **THE COMMISSIONER:** You will finish today?

22 **MR. SHERRIFF-SCOTT:** No, I probably will
23 finish the day. In other words, I'll probably be another
24 hour and a half.

25 **THE COMMISSIONER:** All right.

1 Thank you.

2 DAVID SILMSER, Resumed/Sous le même serment:

3 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.

4 SHERRIFF-SCOTT: (Cont'd/Suite):

5 MR. SHERRIFF-SCOTT: Okay.

6 When we left off, Mr. Silmsers, we were
7 talking about -- we'd just referred to a transcript about a
8 possible phone discussion with Mr. Seguin towards the end
9 of January, 1993, and I asked you if you had been calling
10 him about that time and I think your answer was that you
11 don't remember.

12 MR. SILMSER: That's correct.

13 MR. SHERRIFF-SCOTT: Okay.

14 If we could turn to Exhibit 297, please?
15 These are Heidi Sebalj's notes, typed, at
16 page 5 of 64.

17 MR. SILMSER: Okay.

18 MR. SHERRIFF-SCOTT: And you'll see the
19 February 10th entry. It says:

20 "10.39: TC telephone call from victim.
21 Advises he called Seguin who is running
22 scared. Advised he's only laying
23 charges on MacDonald. Stated he's
24 getting very mad."

25 And my question is, would you -- what would

1 Mr. Seguin be running scared about?

2 MR. SILMSER: I don't remember this
3 conversation.

4 MR. SHERRIFF-SCOTT: This is consistent with
5 you calling Mr. Seguin around the time?

6 MR. SILMSER: I don't remember calling him
7 at that time.

8 MR. SHERRIFF-SCOTT: You don't.

9 MR. SILMSER: No.

10 MR. SHERRIFF-SCOTT: Ms. Sebalj is mistaken?

11 MR. SILMSER: I said I don't remember this.

12 MR. SHERRIFF-SCOTT: Okay.

13 It's possible you could have called?

14 MR. SILMSER: I said I don't remember this.

15 MR. SHERRIFF-SCOTT: I understand your
16 answer, sir.

17 MR. SILMSER: Okay.

18 MR. SHERRIFF-SCOTT: Is it possible you
19 could have called him?

20 MR. SILMSER: I said I don't remember.

21 MR. SHERRIFF-SCOTT: All right.

22 At the Diocese meeting of February 9th, did
23 you tell -- well, there's no record of you telling them --
24 but did you tell the Diocese people that you had been to
25 the police?

1 **MR. SILMSER:** You're asking me what now?

2 **MR. SHERRIFF-SCOTT:** The February 9th meeting
3 at the Diocese where Father McDougald was there, Jacques
4 Leduc, et cetera, did you tell them, at that time, you had
5 been to the police already?

6 **MR. SILMSER:** I don't remember.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 And then staying with Ms. Sebalj's notes,
9 sir, flipping back a page, to page 4 of 64, which is the
10 February 9th, 1993 entry.

11 **MR. SILMSER:** Where are we going now?

12 **MR. SHERRIFF-SCOTT:** Page 4 of 64, and the
13 entry is 09 February, 1993.

14 **THE COMMISSIONER:** It's at the bottom of the
15 page; page 4 of 64.

16 **MR. SILMSER:** Okay.

17 **MR. SHERRIFF-SCOTT:** Do you see the heading
18 "February 9" towards the bottom of the page?

19 **MR. SILMSER:** Yes, I do.

20 **MR. SHERRIFF-SCOTT:** Okay.

21 And this is what Ms. Sebalj reports to
22 record based on you going back and telling her about the
23 meeting, and we talked about this a little bit, but the
24 last entry here is:

25 " Suggested he may go civilly after

1 criminal process is completed".

2 MR. SHERRIFF-SCOTT: Do you remember Ms.
3 Sebalj that you were contemplating a lawsuit at that time?

4 MR. SILMSER: No, I don't.

5 MR. SHERRIFF-SCOTT: Do you agree with me
6 that it would certainly be consistent with telling Ken
7 Seguin you were going to sue Charles MacDonald, that you
8 were talking to the police about the prospect of a lawsuit?

9 MR. SILMSER: I don't remember that also.

10 MR. SHERRIFF-SCOTT: Okay.

11 The next entry ---

12 Pardon me.

13 THE COMMISSIONER: No. He said "I don't
14 remember that also."

15 MR. SHERRIFF-SCOTT: Okay.

16 Sorry.

17 I thought you said something else.

18 The next entry is February 16th which is at
19 page 5 of 64. It's about a quarter of the way down the
20 page.

21 It says:

22 "09:55: Unscheduled visit from victim.
23 Provided statement. Says F. McDougald
24 called last night, Feb. 15. Wanted to
25 discuss settlement. V did not

1 entertain conversation. I advised him
2 I would be interviewing family members.
3 V satisfied I requested school
4 records".

5 Now, I just want to, in terms of that
6 exchange with the officer, if you remember it happening,
7 there's one thing I want to put to you in terms of
8 discussion, and that is Exhibit 292, and that is at page
9 15.

10 Just a moment while I find my copy.

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

12 **MR. SHERRIFF-SCOTT:** It's page 15 of Exhibit
13 292, and this is -- during the Preliminary Inquiry, there's
14 a discussion about this entry in the police officer's notes
15 of the February date we just looked at about you having a
16 discussion with Father McDougald and it says "Okay" at the
17 top of the page, because here is what you tell her was the
18 contact for McDougald. This is what McDougald says:

19 "Want to discuss a settlement. Victim
20 did not entertain conversation. I
21 advised him I would be interviewing
22 family members. Victim satisfied..."

23 Et cetera.

24 Answer:

25 "I think that's wrong..."

1 Now, this is your evidence.

2 "I think I don't think Father McDougald
3 had anything to do with the settlement.

4 It was Malcolm MacDonald.

5 Question:

6 "So you dispute her recording you
7 saying that the call came from Father
8 McDougald?

9 Answer:

10 "I don't ever remember saying that
11 unless I was mistaken at the time".
12 Does that help your memory on that point,
13 sir?

14 **MR. SILMSER:** No, it doesn't.

15 **MR. SHERRIFF-SCOTT:** You would have been
16 mistaken as to Father McDougald calling you and raising
17 that issue?

18 **MR. SILMSER:** Raising what issue?

19 **MR. SHERRIFF-SCOTT:** The issue of
20 settlement.

21 **MR. SILMSER:** I don't understand.

22 **MR. SHERRIFF-SCOTT:** Okay.

23 Well, the cross-examination note puts the
24 officer's note to you and then you say:

25 "I think that's wrong".

1 In other words ---

2 MR. SILMSER: Just a sec. I have to get my
3 bearings straight here because I'm going from document, to
4 document to document, to document. I have to know what
5 document I'm sitting at; whose document this is.

6 MR. SHERRIFF-SCOTT: Okay.

7 Well this is why I try to orientate you with
8 the police officer's notes.

9 Okay?

10 First of all, this is your evidence from the
11 transcript of the Preliminary Inquiry that's up on the
12 screen right there.

13 Okay?

14 And what I did first of all was, I took you
15 to Sebalj's notes in February ---

16 MR. SILMSER: Okay.

17 MR. SHERRIFF-SCOTT: --- where it was
18 recorded that you had had a discussion with Father
19 McDougald about settlement, and I took you to your evidence
20 here ---

21 MR. SILMSER: Yes.

22 MR. SHERRIFF-SCOTT: --- which is at the
23 Preliminary Inquiry about the very same note.

24 Excuse me.

25 MR. SILMSER: But there was never a

1 discussion with Father McDougald about settlement.

2 **MR. ENGELMANN:** That's just -- I think it's
3 very important -- excuse me -- when Mr. Sherriff-Scott does
4 this, he has to be very accurate.

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

6 **MR. ENGELMANN:** So, again, if we go back to
7 the original document with the original documents and
8 that's Heidi Sebalj's note, it says:

9 "9:55, unscheduled visit from V.
10 Provided statement. States F.
11 McDougald called last night, 15 Feb.
12 Wanted to discuss settlement".

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

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

15 **THE COMMISSIONER:** But where are we now
16 again?

17 **MR. ENGELMANN:** Well, that's in -- that's
18 the first document he took the witness to ---

19 **THE COMMISSIONER:** I know. I know ---

20 **MR. ENGELMANN:** --- which is Exhibit 297.

21 **THE COMMISSIONER:** Right.

22 **MR. ENGELMANN:** The typewritten ---

23 **THE COMMISSIONER:** In what version?

24 **MR. ENGELMANN:** The version of Heidi
25 Sebalj's notes.

1 **THE COMMISSIONER:** And that's February ---
2 Right.

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

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

5 **MR. ENGELMANN:** So, according to that, there
6 is a call coming in from McDougald ---

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

8 **MR. ENGELMANN:** --- to Mr. Silmsers and it's
9 Mr. McDougald who wants to discuss -- Father McDougald who
10 wants to discuss settlement.

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

12 **MR. ENGELMANN:** Then what happens two years
13 later in the context -- I don't know why we need this
14 detail, but in the context of -- I'm sorry -- four years
15 later, in the context of the preliminary inquiry, then he
16 is being asked:

17 "That's what you tell her. The contact
18 was from McDougald".

19 This is what McDougald says:

20 "He wanted to discuss a settlement." Et
21 cetera. And the answer:

22 "I think that's wrong. I think -- I
23 don't think Father McDougald had
24 anything to do with the settlement. It
25 was Malcolm MacDonald".

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

2 **MR. ENGELMANN:** "So do you dispute her
3 recording? Are you saying that the
4 call came from Father McDougald?"
5 "I don't ever remember saying that
6 unless I was mistaken at the time".

7 **MR. ENGELMANN:** Okay?

8 I just wanted to make sure it was clear.

9 **THE COMMISSIONER:** Okay.

10 **MR. SHERRIFF-SCOTT:** I think Mr. Silmsers got
11 my point and your response, if I'm not mistaken, was that
12 Father McDougald -- you didn't have that discussion with
13 Father McDougald.

14 Am I right?

15 **MR. SILMSER:** I don't believe I did, no.

16 **MR. SHERRIFF-SCOTT:** Okay.

17 Thank you.

18 **THE COMMISSIONER:** Well, you know, I don't
19 know if we're going to start splitting hairs.

20 **MR. SHERRIFF-SCOTT:** Well, I put all of what
21 Mr. Engelmann said to him in terms of the record of the
22 officer's notes from the 15th. This transcription of
23 quotation, here at the top of the page in the transcript,
24 is from her notes as well.

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

1 **MR. SHERRIFF-SCOTT:** And then the witness
2 was asked at the preliminary inquiry whether or not that,
3 basically, was consistent with what he recalled and he said:

4 "I think that's wrong."

5 And so I'm not sure where the inconsistency
6 is in terms of what I'm trying to present.

7 **THE COMMISSIONER:** No. No, no, no. I'm
8 reading the preliminary inquiry and his answer is:

9 "I think that's wrong. I don't think
10 Father McDougald had anything to do
11 with the settlement. It was Malcolm
12 MacDonald."

13 All right?

14 **MR. SHERRIFF-SCOTT:** Yes.

15 **THE COMMISSIONER:** Well, then I would -- I
16 don't think we're -- we may not necessarily be comparing
17 apples and apples.

18 **MR. SHERRIFF-SCOTT:** All right.

19 Well, let me ask him this.

20 Sir, do you remember Father McDougald
21 calling you and talking about settlement or would that have
22 been Malcolm MacDonald that called you?

23 **MR. SILMSER:** I don't remember Father
24 McDougald calling me.

25 **THE COMMISSIONER:** At all. At all?

1 MR. SILMSER: At all.

2 THE COMMISSIONER: Okay.

3 MR. SHERRIFF-SCOTT: Okay.

4 THE COMMISSIONER: All right.

5 MR. SHERRIFF-SCOTT: Now, when you said at
6 the preliminary Inquiry:

7 "... unless I was mistaken at the time."

8 Were you mistaken because it was, in fact,
9 Malcolm MacDonald that had phoned you at that time in
10 February?

11 MR. SILMSER: The -- now ---

12 MR. SHERRIFF-SCOTT: Nineteen ninety-three
13 (1993).

14 MR. SILMSER: Where is this written or where
15 is this?

16 MR. SHERRIFF-SCOTT: Well, remember at the
17 end of the transcript portion that I put to you, it said:

18 "So you dispute her recording. Are you
19 saying that the call came from Father
20 McDougald?"

21 And you said:

22 "I don't ever remember saying that
23 unless I was mistaken at the time."

24 And my question to you is, were you mistaken
25 because it was Malcolm MacDonald calling you as opposed to

1 Father McDougald?

2 MR. SILMSER: Or she was mistaken.

3 MR. SHERRIFF-SCOTT: All right.

4 Was it Malcolm MacDonald calling you at that
5 time?

6 MR. SILMSER: I believe so, yes.

7 MR. SHERRIFF-SCOTT: Okay.

8 Certainly, if we go to Exhibit 320 at page
9 154.

10 THE COMMISSIONER: Three twenty (320), it's
11 not in the book, Mr. ---

12 MR. SHERRIFF-SCOTT: No, it's this
13 morning's.

14 THE COMMISSIONER: Okay.

15 What page?

16 MR. SHERRIFF-SCOTT: One five four (154),
17 Commissioner.

18 (SHORT PAUSE/COURTE PAUSE)

19 Just tell me when you've got that turned up
20 Mr. Silmsers.

21 MR. SILMSER: I have it here.

22 MR. SHERRIFF-SCOTT: Okay. I suggest to you
23 what follows here, and I'll read it to you, is consistent
24 with what we just exchanged questions on.

25 At 966:

1 "If we can just go back a bit, a little
2 bit, after you met with the three
3 individuals on February 3rd, and it's
4 clear that it was what should have been
5 the 9th, I believe it was of 1993, three
6 church individuals, Father
7 Vaillancourt. What was the next
8 contact you had with the church after
9 that?"

10 Answer:

11 "Probably Father McDougald."

12 Question:

13 "Was that in terms of telephone
14 conversations?"

15 Answer:

16 "I would believe so, yes."

17 Question:

18 "You don't recall any further meetings
19 with church individuals?"

20 "No"

21 "The conversation with Father
22 Vaillancourt, were you calling him?"

23 Answer:

24 "Father McDougald you mean?"

25 You correct the questioner.

1 Question:

2 "Excuse me. Father McDougald?"

3 Answer

4 "I'm not sure if he called me or I
5 called him. We spoke on the phone
6 saying the apology, they wouldn't give
7 me an apology and he also advised me
8 the priest's lawyer was Malcolm
9 MacDonald."

10 "And did they suggest that you get in
11 touch with them?"

12 You said:

13 "Yes."

14 And question:

15 "Did you do so?"

16 Answer:

17 "Yes".

18 "When was that?"

19 -- the question was --

20 "Sometime in the same time frame,
21 February-March 1993?"

22 Answer:

23 "I believe so, yes."

24 Question:

25 "And did you know Malcolm MacDonald?"

1 "No, I didn't."

2 Question:

3 "At that point, where were you living;
4 still in Bourget?"

5 "Yes, I was."

6 And then you'll see over at page 157,
7 question 991, it says:

8 "What did you understand Malcolm
9 MacDonald's role to be?"

10 Answer:

11 "The priest's lawyer."

12 Does that refresh your memory about the
13 exchange of telephone conversations and contact dates?

14 **MR. SILMSER:** Somewhat, yes.

15 **MR. SHERRIFF-SCOTT:** Okay. Now, if we can
16 just return to the officer's notes.

17 **THE COMMISSIONER:** I'm sorry. When was the
18 settlement?

19 **MR. SHERRIFF-SCOTT:** September.

20 **THE COMMISSIONER:** In September?

21 **MR. SHERRIFF-SCOTT:** Yes.

22 **THE COMMISSIONER:** Okay.

23 **MR. SHERRIFF-SCOTT:** Just returning to the
24 officer's notes, Mr. Silmsers, which is Exhibit 297.

25 **MR. SILMSER:** Okay. This is the

1 preliminary, right?

2 **THE COMMISSIONER:** No, this is the
3 transcribed notes of the statement of the 13th of January
4 1993 on the conspiracy to obstruct charges.

5 **MR. SHERRIFF-SCOTT:** I want to turn to page
6 8 of 64.

7 **THE COMMISSIONER:** I am sorry. They are
8 Heidi Sebalj's notes.

9 **MR. SILMSER:** Okay.

10 **MR. SHERRIFF-SCOTT:** Thank you,
11 Commissioner.

12 **THE COMMISSIONER:** And 8 of 64?

13 **MR. SHERRIFF-SCOTT:** Eight of 64. There is
14 a long note here of a discussion recorded with Ms. Sebalj
15 which appears to be dated February 18th at the top of the
16 page. The time and date is at the bottom of the page
17 preceding; we don't need to go to.

18 But it looks like there is a call from you
19 and I just want to ask you a few questions. You advised
20 that you talked about school records and then it says:

21 "You advised you had retained a lawyer.
22 Got drunk; met Don Johnson at a bar.
23 States he knows him for some time.
24 Told him the story. He never
25 questioned it. Didn't ask for any

1 money. Said I'll take the case. He
2 advises he wants Don to go to the
3 Diocese and go through their lawyers re
4 settlement. Wants to know what they
5 are offering. Not taking settlement;
6 will pursue it after all. Criminal
7 charges. Wants Don to know what's
8 going on. Then stated we want to take
9 them to the cleaners, going for the
10 full amounts strong and hard."

11 Is that consistent with your recollection of
12 what you may have told Ms. Sebalj?

13 **MR. SILMSER:** Absolutely not.

14 **MR. SHERRIFF-SCOTT:** No?

15 **MR. SILMSER:** No.

16 **MR. SHERRIFF-SCOTT:** You did meet with Don
17 Johnson as you told Mr. Engelmann?

18 **MR. SILMSER:** Yes.

19 **MR. SHERRIFF-SCOTT:** And there was a
20 discussion with him about his potential taking the case on?

21 **MR. SILMSER:** I asked him in a restaurant.

22 **MR. SHERRIFF-SCOTT:** He said yes?

23 **MR. SILMSER:** He said he would think about
24 it.

25 **MR. SHERRIFF-SCOTT:** Okay. So there was a

1 discussion about potential litigation between you and Don
2 Johnson, casual as you described it?

3 **MR. SILMSER:** That's correct.

4 **MR. SHERRIFF-SCOTT:** Okay.

5 **MR. SILMSER:** Nobody was drunk; so I don't
6 know where that came from?

7 **MR. SHERRIFF-SCOTT:** Well, it's in her
8 notes. I'm not particularly concerned about that one from
9 the point of view of a question. It's something that's
10 recorded there.

11 **MR. SILMSER:** But I am because if these
12 notes are incorrect, a lot of her notes may not be correct
13 all the way through here.

14 **MR. SHERRIFF-SCOTT:** We'll hear about more
15 later on from Ms. Sebalj, but right now, we will just press
16 on here and look at the 22nd of February and there is a
17 discussion there again with her talking about scheduling
18 and school records and over at the top of the next page, it
19 says:

20 "Advised he fired Don Johnson on
21 Friday. Says he was doing things
22 without his approval. States he will
23 get a lawyer when the criminal work is
24 done and will retain an Ottawa lawyer".

25 Is that consistent with your recollection?

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

2 **MR. SHERRIFF-SCOTT:** Okay. Then on the 24th,
3 there are some more discussions here about a meeting and
4 you asked her:

5 "V. questions when charges would be
6 laid. Advised investigation just
7 beginning. Will try Thursday afternoon
8 in terms of another time".

9 So she was telling you at the time that they
10 were just getting under way when you were inquiring about
11 status?

12 **MR. SILMSER:** Can you repeat this? I've
13 lost you here.

14 **MR. SHERRIFF-SCOTT:** Okay. I am sorry. The
15 February 24th entry ---

16 **MR. SILMSER:** There are two of them.

17 **MR. SHERRIFF-SCOTT:** There are -- yes, and I
18 am over at -- I'm at the one at page 9 of 64 in the middle
19 of the page.

20 **MR. SILMSER:** Yes.

21 **MR. SHERRIFF-SCOTT:** She suggests that there
22 was a surprise visit and you asked her when the charges
23 would be laid and she said she advised you the
24 investigation was just beginning. And I am asking you if
25 you remember making inquiries about status and being told

1 towards the end of February that the thing was just getting
2 under way, the investigation?

3 MR. SILMSER: We had many meetings during
4 that time. I just don't remember that one.

5 MR. SHERRIFF-SCOTT: Okay. If we could go
6 to page 17 of 64?

7 MR. SILMSER: Okay, I'm there.

8 MR. SHERRIFF-SCOTT: And now I'm at the very
9 last line on that page, it starts "16:50 TC from V".

10 MR. SILMSER: Yes.

11 MR. SHERRIFF-SCOTT:

12 "Good mood. Asked when he next
13 expected to be in Cornwall."

14 And up to the next page:

15 "Stated money-wise he was kind of
16 broke, expecting a refund from H&R
17 \$3,500. Now have to file and wait.
18 Then I asked if it had to be done right
19 away and I advised that is to say
20 getting together that it was a priority
21 with me. Then victim stated I am not
22 in a rush anymore. If it takes three,
23 six, eight months, it doesn't matter to
24 me."

25 And I am wondering why if you remember this,

1 why you would not have been in a rush to get this going at
2 this juncture? In other words, why were you not expressing
3 concern about the thing not moving forward rapidly?

4 **MR. SILMSER:** I don't remember this
5 conversation with her.

6 **MR. SHERRIFF-SCOTT:** Is it possible you had
7 this discussion?

8 **MR. SILMSER:** I don't remember it.

9 **MR. SHERRIFF-SCOTT:** Had you begun
10 discussing this with Malcolm MacDonald by this time?

11 **MR. SILMSER:** I don't believe so, but maybe.
12 I don't know. I don't know what date.

13 **MR. SHERRIFF-SCOTT:** Okay. If we can just
14 turn ahead -- flip ahead rapidly on these notes to page 39.
15 This records a March 10th meeting at your house. Do you
16 remember the officers coming to your house at one point?

17 **MR. SILMSER:** Yes, I do.

18 **MR. SHERRIFF-SCOTT:** Okay. And this is when
19 you -- looks like signed your statement and discussed
20 things. And they say:

21 "Discussed statement and need for
22 details."

23 Do you see that?

24 **MR. SILMSER:** No, I don't.

25 **MR. SHERRIFF-SCOTT:** It's the third line

1 down on the March 10th, 1993 entry, third bullet:

2 "Discussed statement and need for
3 details."

4 **MR. SILMSER:** Ninety-three ('93). It's '93
5 you're saying?

6 **MR. SHERRIFF-SCOTT:** Nineteen ninety-three
7 (1993), March 10th, page 39 of 64.

8 **MR. SILMSER:** Okay.

9 **MR. SHERRIFF-SCOTT:** The third bullet says:
10 "The officers discussed statement..."
11 -- that is your statement --

12 "...and need for details."

13 See that?

14 **MR. SILMSER:** Yes.

15 **MR. SHERRIFF-SCOTT:** Okay. So I suggest to
16 you that the officers at that time were still asking you
17 for more details about your complaint information.

18 **MR. SILMSER:** Okay.

19 **MR. SHERRIFF-SCOTT:** Okay. Do you accept
20 that?

21 **MR. SILMSER:** Yes.

22 **MR. SHERRIFF-SCOTT:** Okay. So
23 notwithstanding Mr. Engelmann's suggesting there were no
24 further discussions, at least the officers here are
25 expressing that they need more information.

1 **THE COMMISSIONER:** No. No, no, no. You
2 know, we're trying to put some sense to discussed statement
3 and need for details.

4 **MR. SHERRIFF-SCOTT:** Yes.

5 **THE COMMISSIONER:** All right. That's at the
6 same time that there coming over to ask him to sign his
7 statement. So you know, it can lead -- maybe they are
8 saying the reason why we need you to sign this is because
9 we need this statement and we need these details.

10 **MR. SHERRIFF-SCOTT:** Well, we'll leave it at
11 that then.

12 **THE COMMISSIONER:** Well, sir, you know,
13 we've got to be fair.

14 **MR. SHERRIFF-SCOTT:** Well, that's fine.
15 That's a fair comment. I didn't think I was going wrong
16 but I read that as they were asking for details beyond his
17 statement and others don't. So ---

18 **MR. ENGELMANN:** I was asking the witness
19 here and I am certainly not suggesting that there wasn't a
20 thorough interview that day. My comment, if Mr. Sherriff-
21 Scott's referring to my earlier comment, it was with
22 respect to the Diocese asking for details, certainly not
23 the Cornwall Police Service. So I do take exception to
24 that comment.

25 **THE COMMISSIONER:** All right. Well, it is

1 getting late in the afternoon. I'm having some difficulty.
2 It's blurring now as to the reason for all of these
3 questions and to gauge an institutional response is one
4 thing and that's the focus of what we're supposed to be
5 doing.

6 **MR. SHERRIFF-SCOTT:** But what happens in
7 three months, four months if there is this much debated
8 settlement and ---

9 **THE COMMISSIONER:** What did we say? When
10 was it signed again?

11 **MR. SILMSER:** September.

12 **THE COMMISSIONER:** September; so six months.

13 **MR. SHERRIFF-SCOTT:** Five, six months,
14 whatever, I am sorry. I am not trying to be parsing the
15 dates. The dates are what they are and that follows here
16 and that's where I'm going.

17 And the reason I was asking, for example,
18 about the earlier dates of discussions of when these things
19 were initiated, with whom and when money was being
20 discussed, aside from the last note, those were the points
21 I was trying to make.

22 **THE COMMISSIONER:** Okay.

23 **MR. SHERRIFF-SCOTT:** So this is the March
24 10th thing which appears to be one of the last discussions
25 before we get to August, which is where I am going.

1 **THE COMMISSIONER:** Okay.

2 **MR. SHERRIFF-SCOTT:** Now, sir, you were
3 asked about discussions with Father McDougald and you
4 talked about that last week and you said, I think, that you
5 had many phone discussions with him.

6 Do you remember that?

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

8 **MR. SHERRIFF-SCOTT:** Okay. And I just want
9 to refer you to some things to clarify what might have been
10 going on at that juncture and that is Exhibit 320.

11 **THE COMMISSIONER:** And that's the one we had
12 today here. It's the preliminary inquiry? No, it's an
13 examination for discovery, sorry, examination for discovery
14 held in 1995, December.

15 **MR. SHERRIFF-SCOTT:** Yes.

16 **THE COMMISSIONER:** What page?

17 **MR. SHERRIFF-SCOTT:** December 13.

18 **THE COMMISSIONER:** Yes.

19 **MR. SHERRIFF-SCOTT:** It's page 138.

20 **THE COMMISSIONER:** One thirty-eight (138).

21 **MR. SHERRIFF-SCOTT:** You'll remember
22 earlier, Mr. Silmsen, there was a discussion about
23 potentially having called Mr. McDougald, Father McDougald,
24 when you had some -- when you had been drinking. And there
25 is a debate about it here and I just wanted to get your

1 reaction to it.

2 MR. SILMSER: I don't recall that when I was
3 drinking. You never asked me that question.

4 MR. SHERRIFF-SCOTT: No, what I was -- well
5 I did, actually. I put to you there was a reference in a
6 transcript earlier on ---

7 MR. SILMSER: Okay.

8 MR. SHERRIFF-SCOTT: --- to the fact that
9 you may have had a discussion with Mr. Seguin and Father
10 McDougald way back on January 28th.

11 MR. SILMSER: And I said, I didn't remember
12 that.

13 MR. SHERRIFF-SCOTT: I believe that was your
14 evidence, yes.

15 MR. SILMSER: Yes.

16 MR. SHERRIFF-SCOTT: Okay. And the point
17 was, however, they contended that when you called, which
18 you don't remember, that there was a question of
19 intoxication. All right?

20 So what I'm going to put to you here is your
21 interactions with Father McDougald. All right? And it
22 starts at page 137. Sorry, yes, the last question:

23 "Did you ever phone the municipality
24 when you were drinking or the church
25 when you were drinking?"

1 Answer:

2 "Yes, the church."

3 Question:

4 "Father McDougald, for example?."

5 Answer:

6 "Father McDougald, yes, not the
7 church."

8 Question:

9 "You spoke to him a number of times?"

10 Answer:

11 "Probably around four times."

12 "Did you call the bishop?"

13 "No, I called the bishop's house asking
14 to speak to him but I never talked to
15 the bishop."

16 "And when you phoned Father McDougald,
17 would you recall how many times you
18 would have called him?"

19 And the answer was you said:

20 "Four. I think I said four times."

21 "And were you drunk every time or just
22 once?"

23 -- which was probably not a fair question.

24 "I was never drunk. I had a few
25 drinks, but when I spoke to somebody on

1 the phone, I was never drunk. I knew
2 what I was saying."

3 "The purpose of the calls?"

4 "anger, lots of anger inside me the way
5 they handled this thing all the way
6 through."

7 Is that consistent with your recollection
8 that when you called Father MacDougald you would have been
9 expressing anger on some of these issues?

10 **MR. SILMSER:** I expressed frustration
11 sometimes, yes.

12 **MR. SHERRIFF-SCOTT:** Okay.

13 **MR. SILMSER:** I don't believe if ever I was
14 drinking.

15 **MR. SHERRIFF-SCOTT:** Okay.

16 **MR. SILMSER:** Even once when they had the
17 meeting at the Diocese I went in and had lunch and had one
18 beer and I walked back into the meeting at the Diocese and
19 I believe his notes were later that I was drunk at the
20 Diocese in the meeting.

21 **MR. SHERRIFF-SCOTT:** I don't think that
22 happened but ---

23 **MR. SILMSER:** No, it did happen.

24 **MR. SHERRIFF-SCOTT:** I'm not suggesting you
25 didn't have a drink. My recollection of Father

1 MacDougald's notes is not that he accused you of doing
2 that, but those aren't in the records.

3 MR. SILMSER: Oh, they are in the records.

4 MR. SHERRIFF-SCOTT: Well, they are not in
5 the record before us here today.

6 MR. SILMSER: Okay.

7 MR. SHERRIFF-SCOTT: Okay?

8 MR. SILMSER: I just believe that they were
9 always using that as an excuse.

10 MR. SHERRIFF-SCOTT: Okay. Exhibit 316.

11 There is another exchange here at page 337.

12 (SHORT PAUSE/COURTE PAUSE)

13 MR. SHERRIFF-SCOTT: Let me just put this to
14 you generally before we go to the transcript to see if we
15 can short circuit the thing. If we can't we'll read it.

16 Is it fair to say that beyond sort of
17 general expression of frustration with Father MacDougald
18 you wouldn't remember what you were saying to him now these
19 years later?

20 MR. SILMSER: You're saying do I remember
21 every conversation I had with Father MacDougald?

22 MR. SHERRIFF-SCOTT: No, no, no. I'm saying
23 can you -- aside from an expression of frustration that you
24 may have uttered from time to time, do you have specific
25 recollections of what you talked about?

1 **MR. SILMSER:** With Father MacDougald?

2 **MR. SHERRIFF-SCOTT:** Yes.

3 **MR. SILMSER:** Yes.

4 **MR. SHERRIFF-SCOTT:** Okay. I'm just -- the
5 reason I asked that is it appears from the transcript that
6 you didn't at discovery.

7 **MR. SILMSER:** Again, this discovery I was
8 really, really sick that day.

9 **MR. SHERRIFF-SCOTT:** Okay, that's fair.

10 All right. So what now I'm going to do is
11 go back to Officer Sebalj's notes and we are going to get
12 to talk about the issue and the settlement that occurred
13 between you and the Diocese and Father MacDonald. All
14 right?

15 **MR. SILMSER:** Okay.

16 **MR. SHERRIFF-SCOTT:** So Constable Sebalj's
17 notes at Exhibit 297, and I'd like to turn to August 24th
18 which is page 62. Do you remember talking to Constable
19 Sebalj sometime late summer about the status of your case,
20 late summer '93?

21 **MR. SILMSER:** About what?

22 **MR. SHERRIFF-SCOTT:** About the status of
23 your investigations and so forth.

24 **MR. SILMSER:** We've had many meetings with
25 Heidi Sebalj. I don't know which one you're talking about.

1 **MR. SHERRIFF-SCOTT:** I'm talking now --
2 well, let's see if we can refresh your memory with her note
3 of August 24th, 1993, page 62.

4 **MR. SILMSER:** Okay.

5 **MR. SHERRIFF-SCOTT:** And she says here:
6 "12:09 Returned TC to Dave Silmser.
7 Requesting progress report; advised
8 simply awaiting meeting with out of
9 town Crown to review and I asked him if
10 he pursued counselling. He stated,
11 'No, church won't help him, et cetera.
12 Our Ottawa is a bunch of idiots'

13 And that's what I was referring to earlier
14 in the day.

15 "Asked for his school marks. Stated
16 we'd check on progress. Very good mood.
17 Advised he was not in any hurry; don't
18 care if takes another four months."

19 Would you be expressing that sentiment at
20 that time, sir that you were not concerned about the pace
21 of the investigation and it didn't matter to you if it took
22 another four months, et cetera?

23 **MR. SILMSER:** Well, I believe at that time -
24 - I don't remember saying four months, but I believe at
25 that time Heidi Sebalj had said that the investigation had

1 completely stopped.

2 MR. SHERRIFF-SCOTT: Well, you see, the
3 trouble I have with that is that's not consistent with what
4 her notes say.

5 MR. SILMSER: Well, she is just covering
6 herself up, as far as I can see. You would have to ask
7 her.

8 MR. SHERRIFF-SCOTT: Okay.

9 MR. SILMSER: When I was talking to her she
10 said the investigation had ended. So if they had any
11 further information you'd probably have to ask her.

12 MR. SHERRIFF-SCOTT: Okay. Would you know
13 why you would have been expressing the point about you
14 didn't care if it took another four months?

15 MR. SILMSER: I didn't.

16 MR. SHERRIFF-SCOTT: So you categorically
17 deny saying that to her?

18 MR. SILMSER: That's right.

19 MR. SHERRIFF-SCOTT: All right.
20 You didn't know the investigation was alive
21 at that point?

22 MR. SILMSER: No, it was ended. She had
23 told me the investigation had ended.

24 MR. SHERRIFF-SCOTT: Why was she talking to
25 you about an outside Crown, do you know?

1 **MR. SILMSER:** No idea.

2 **MR. SHERRIFF-SCOTT:** She was the one that
3 told you about that, wasn't she?

4 **MR. SILMSER:** She said there was always a
5 possibility of an outside Crown coming in, but she says as
6 far as she is concerned the investigation was ended.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 You didn't understand her to be saying that
9 she was putting it to an outside Crown for a decision on
10 your charges?

11 **MR. SILMSER:** No.

12 **MR. SHERRIFF-SCOTT:** That's not possible
13 from your point of view?

14 **MR. SILMSER:** No. She said I was the only
15 one that ever came forward on this situation so there was
16 no case and that was the end of it.

17 **MR. SHERRIFF-SCOTT:** Now, Mr. Wardle in his
18 examination of you put to you letters from the Cornwall
19 Police Service to the Crown and the Crown's response
20 talking about what to do in view of your settlement. That
21 doesn't appear to be consistent with the thing having been
22 wrapped up, does it?

23 **MR. SILMSER:** Mr. who?

24 **MR. SHERRIFF-SCOTT:** Mr. Wardle for the
25 Community -- Citizens for Community Renewal.

1 **THE COMMISSIONER:** The first person who
2 cross-examined you.

3 **MR. SILMSER:** Okay. He asked what?

4 **MR. SHERRIFF-SCOTT:** He showed you some
5 documents and the documents were letters from the Cornwall
6 police to the Crown Attorney's office and then a letter
7 from the Crown Attorney back to the Cornwall police which -
8 - the first letter was what do we do in view of the
9 settlement with this issue and the Crown wrote back and
10 said that they wouldn't prosecute in view of the
11 settlement. And what I'm suggesting to you is that's not
12 consistent with the thing having been terminated or
13 abandoned and that you're mistaken on this point.

14 **MR. SILMSER:** Yes, I've never seen those
15 letters.

16 **MR. SHERRIFF-SCOTT:** Okay.

17 **MR. SILMSER:** There is one letter I did see
18 and it was Murray MacDonald who wrote it and he said that
19 he could not go with any more charges.

20 **MR. SHERRIFF-SCOTT:** Is that the letter you
21 saw last day when you were cross-examined?

22 **MR. SILMSER:** No.

23 **MR. SHERRIFF-SCOTT:** You don't know when
24 that would have been?

25 **MR. SILMSER:** Heidi Sebalj put it on her

1 desk and she slid it over to me, said "I'm not supposed to
2 show you this but look at it."

3 **THE COMMISSIONER:** You have to speak in the
4 microphone.

5 **MR. SILMSER:** Okay. She slid it over on her
6 desk, said look at it, and it said that Murray MacDonald
7 was closing the case for lack of evidence or whatever it
8 was and then she said, "You're not supposed to see this"
9 and she slipped it back. That's all I know about it.

10 **MR. SHERRIFF-SCOTT:** Well, I -- that's the
11 first time I've heard that description. Have you told
12 anybody that before?

13 **THE COMMISSIONER:** In relation of sliding
14 over the paper and ---

15 **MR. SHERRIFF-SCOTT:** Well, the whole thing.

16 **THE COMMISSIONER:** Yes.

17 **MR. SILMSER:** I think I've told a few
18 people, police officers and a few other people.

19 **MR. SHERRIFF-SCOTT:** Did you tell Mr.
20 Engelmann that?

21 **MR. SILMSER:** I can't remember.

22 **MR. SHERRIFF-SCOTT:** Okay.

23 Okay. Now, just to get to the settlement, I
24 wanted to talk to you about a couple of brief points and I
25 actually think I'll wrap up before 4:30.

1 If we can return to Exhibit 320 again?

2 **THE COMMISSIONER:** Three-twenty (320) is the

3 ---

4 **MR. SHERRIFF-SCOTT:** December 13th.

5 **THE COMMISSIONER:** It's in -- I'm sorry.

6 It's not in there.

7 (SHORT PAUSE/COURTE PAUSE)

8 **MR. SHERRIFF-SCOTT:** And I'd like to start
9 at page 167.

10 **MR. SILMSER:** Okay.

11 **MR. SHERRIFF-SCOTT:** Oh, I'm sorry. Let's
12 start at 169. You can go back as far as you want, but this
13 is the salient passage here at the top. And this is
14 pertaining to why you needed to get in touch with Sean
15 Adams and it says:

16 "I was just told by Malcolm MacDonald
17 that my lawyer had to sign a release
18 form."

19 Question:

20 "Your lawyer had to sign a release form
21 for the payment?"

22 "Yes."

23 "Did you understand that you had to
24 sign it?"

25 "No."

1 "So you attended on Mr. Adams in his
2 office before you went over to Malcolm
3 MacDonald's office?"
4 "I believe that's how it happened,
5 yes."
6 "And do you have any other recollection
7 of what was discussed at that point in
8 time?"
9 "With who?"
10 "With Sean Adams."
11 "Just I told him I needed a lawyer to
12 sign some papers and he would go over
13 but it would cost me some money."
14 "All right."
15
16 "He wasn't going to do it for nothing
17 and, yes, he would."
18 "And did you discuss what it was all
19 about with him?"
20 "Yes, I told him it was for a
21 settlement from the church and told him
22 what happened."
23 "You told him about the various
24 incidents?"
25 "I told him I was abused."

1 "Did you tell him about the four
2 incidents?"

3 "I don't believe I -- so in detail, no.
4 I just told him that I was sexually
5 abused by the priest."

6 "And that was in the meeting at his
7 office. Did you tell him that you had
8 met with Malcolm?"

9 "I didn't meet with Malcolm, only over
10 the phone."

11 "Excuse me, you had spoken with
12 Malcolm?"

13 "Yes."

14 "And you told him a settlement had been
15 arrived at?"

16 "Yes."

17 "Did you have any discussions with
18 respect to amounts?"

19 Answer:

20 "Sean Adams, yes."

21 "He says you could think about it
22 more."

23 "I think what he said at the time was,
24 'You don't have to settle now. We can
25 study this a little closer.' I said I

1 would rather get over with today. He
2 said 'Fine.'".

3 And so I suggest what happened here is that
4 you met with Mr. Adams at his office. You had this
5 discussion with him about the issue of the settlement. He
6 cautioned you to take more time and you refused and then
7 you went to Malcolm MacDonald's office.

8 Isn't that what happened?

9 **MR. SILMSER:** No, actually, actually it's
10 not. I was mistaken here.

11 **MR. SHERRIFF-SCOTT:** All right.

12 **MR. SILMSER:** Malcolm -- Sean Adams met me
13 at Malcolm MacDonald's office.

14 **MR. SHERRIFF-SCOTT:** Yes, that's what you
15 said last week.

16 **MR. SILMSER:** Yes.

17 **MR. SHERRIFF-SCOTT:** But 11 years ago you
18 said something different and I'm trying to find out which
19 version ---

20 **MR. SILMSER:** Again, this is the -- this is
21 where I was very sick again. This is the same -- same
22 discoveries and my mind might not have been as clear as it
23 should have been but my knowledge of it today is we met at
24 Malcolm MacDonald's office. I'm sure Sean Adams would
25 admit to that too when you bring him in and if you bring

1 him in. I don't think there is any dispute there that we
2 met at Malcolm MacDonald's office.

3 **MR. SHERRIFF-SCOTT:** So we are not to rely
4 on anything you said in this transcript because you were
5 ill?

6 **MR. SILMSER:** This transcript, I'm not
7 saying you can't rely on everything. I'm just saying this
8 was a discovery that -- that I was very, very ill that day
9 and I had warned all the parties at that time that I was
10 ill.

11 **MR. SHERRIFF-SCOTT:** Okay.

12 You admit, though, Mr. Adams told you that
13 you could study the matter a little more closely; correct?

14 **MR. SILMSER:** I -- Mr. Adams said that he
15 would -- he could not look at it more closely but that I
16 didn't have to settle right this second that we could
17 settle at a later date.

18 **MR. SHERRIFF-SCOTT:** Well, why would you do
19 that unless you were going to consider the matter more
20 closely?

21 **MR. SILMSER:** I wasn't -- I wasn't wanting
22 to settle at a later date.

23 **MR. SHERRIFF-SCOTT:** I got that point but he
24 would have been telling you that doing it at a later date
25 would facilitate more inquiry, more analysis; more

1 discussion. Isn't that fair?

2 MR. SILMSER: And possibly more money.

3 MR. SHERRIFF-SCOTT: Exactly, right?

4 MR. SILMSER: But that's not what I was
5 looking for.

6 MR. SHERRIFF-SCOTT: Okay. No, I understand
7 that too, and I was just trying to get to the point of why
8 he was telling you that and I think we agree with each
9 other. So it's all right.

10 I want to just move you forward to page 173.

11 THE COMMISSIONER: Can I just stop?

12 MR. SHERRIFF-SCOTT: Yes, sir.

13 THE COMMISSIONER: Was it considered -- when
14 you said more money did you mean that it was possible that
15 you would get more money or that he'd charge you more
16 money?

17 MR. SILMSER: No, what Malcolm MacDonald had
18 said to me was in cases like this you'd get a lot more.
19 You could get a lot more money.

20 THE COMMISSIONER: Malcolm said that?

21 MR. SILMSER: Yes, he did.

22 THE COMMISSIONER: MacDonald?

23 MR. SILMSER: Yes, he did.

24 MR. SHERRIFF-SCOTT: Sean Adams or Malcolm?

25 MR. SILMSER: Malcolm.

1 **MR. SHERRIFF-SCOTT:** Okay.

2 So just coming back from the Commissioner's
3 point, if I rightly interpret it, the concern that he
4 expressed, Sean Adams told you "Hold off. You can consider
5 this more if you wish" and that might facilitate more money
6 or you might study it from some other vantage point. I
7 don't know, but that's what he was telling you, right?

8 **MR. SILMSER:** Possibly, yes.

9 **MR. SHERRIFF-SCOTT:** Okay, that's fine.

10 **THE COMMISSIONER:** Okay.

11 **MR. SHERRIFF-SCOTT:** Mr. Commissioner,
12 sorry?

13 **THE COMMISSIONER:** No, that's fine. I said
14 "Okay".

15 **MR. SHERRIFF-SCOTT:** Page 173, sir, if we
16 can just flip ahead to there?

17 When you talked to Mr. Engelmann about these
18 documents that you signed and there was a description of
19 your evidence that you didn't read any of them, and I just
20 want to make sure I understand your evidence.

21 Page 173, question 1100:

22 "And there's a document entitled 'Full
23 Release and Undertaking Not to
24 Disclose' that appears at Tab 5 of
25 Exhibit 6. You have -- just have a

1 look at that.

2 Now, did you have an opportunity to
3 review that document?"

4 Answer:

5 "I read it fast, yes."

6 Question:

7 "Did your lawyer read it?"

8 Answer:

9 "I believe so."

10 There is exchange over the top of the next
11 page, sir, if we can just go through that at question 1103:

12 "I was just going to get into that.

13 Did the lawyer read it out to you? Mr.
14 Adams, did he read it out to you?"

15 "I can't remember."

16 "Can you recall him reading it through
17 -- reading it though himself? Did you
18 see him read it?"

19 "I'm sure I saw him look it over."

20 "And you are not sure whether he read
21 it to you."

22 "I'm pretty sure he read it but I'm not
23 at 100 percent."

24 And then the question is whether he read it
25 out loud and whether he read it, but then in question at

1 1107:

2 "But you certainly read it?"

3 Answer:

4 "Yes."

5 Now, last week you said you didn't and,
6 again, 11 years ago, you said you did, albeit with some
7 speed.

8 Did you read it or not?

9 **THE COMMISSIONER:** Standing, yes, sir?

10 **MR. CULIC:** If my friend could go on just a
11 little bit further on that transcript?

12 **THE COMMISSIONER:** M'hm. What page again?

13 **MR. CULIC:** "And you understand that?"

14 "Understood what? No, I don't know.
15 When it comes to documents like that,
16 lawyer talkings, I left it to Sean to
17 read and tell me if there was anything
18 wrong with it."

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

20 **MR. CULIC:** "Did Sean tell you that this
21 was a release and you were releasing
22 the church and the priest from all
23 liability as a result of these
24 incidents. Did you understand that?"

25 Answer:

1 "I don't ever remember him saying
2 that."

3 "Did you understand that?"

4 "No, I didn't understand any of the
5 legal part of it."

6 **THE COMMISSIONER:** Okay. That's fine.

7 **MR. SHERRIFF-SCOTT:** If we can go to --
8 thank you -- page 175, it says:

9 "Did you think at 1111, one-one-one-
10 one, the 32,000 you were getting was
11 the final settlement; in other words,
12 they were going to give you 32,000..."

13 I'm just coming back to my first question,
14 I'm sorry, before I interrupted.

15 Did you read the documents or not because
16 many years ago, you know, you said you did and last week
17 you said you didn't and this transcript says you did? So
18 I'm confused.

19 **MR. SILMSER:** No, I didn't read the
20 documents.

21 **MR. SHERRIFF-SCOTT:** You didn't?

22 **MR. SILMSER:** No.

23 **MR. SHERRIFF-SCOTT:** No? Okay.

24 Over at 175:

25 "Did you think that the 32,000 you were

1 getting was a final settlement; in
2 other words they weren't going to give
3 you 32,000 today and have you come back
4 the next week and ask for another?
5 That was the end of it, wasn't it?"

6 Answer:

7 "As far as it was in my head, yes."

8 "Okay. So the 32,000 was final payment
9 for what you had alleged had happened
10 to you at that point in time?"

11 Answer:

12 "That's right."

13 Do you remember that exchange?

14 **MR. SILMSER:** Yes.

15 **MR. SHERRIFF-SCOTT:** So as far as you went
16 on the transcript, you understood that the civil end of it
17 was gone.

18 **MR. SILMSER:** That's correct.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 **MR. SILMSER:** Until it became illegal.

21 **MR. SHERRIFF-SCOTT:** No, no. You later
22 disclosed your change and your view on that.

23 **MR. SILMSER:** No, no, I changed the view on
24 everything because they wanted the \$32,000 back.

25 **MR. SHERRIFF-SCOTT:** Well, I don't see that

1 anywhere on the record but I heard you say that the other
2 day and I think there's a bit ---

3 **MR. SILMSER:** Actually, it was Peter Anniss
4 that said it in discoveries.

5 **MR. SHERRIFF-SCOTT:** I think there's a
6 debate in the transcripts. See if I can refresh your
7 memory. There's a debate in the transcripts, sir, where
8 there is a discussion about how to calculate damages and
9 it's right in the transcript. And your lawyer says "On a
10 global award in this new lawsuit, there would be a credit
11 for the \$32,000".

12 Doesn't that refresh your memory about how
13 that happened?

14 **MR. SILMSER:** No. What happened he said
15 that because they had asked for the \$32,000 back.

16 **MR. SHERRIFF-SCOTT:** And you never got an
17 offer to settle from the Diocese, did you?

18 **MR. SILMSER:** No.

19 **MR. SHERRIFF-SCOTT:** Okay.

20 **MR. SILMSER:** Neither did I get an apology.

21 **MR. SHERRIFF-SCOTT:** I know that.

22 Now, the timing of the settlement, sir, is -
23 - the cheque was cashed on September 3rd. Do you remember
24 that?

25 **MR. SILMSER:** I don't know what the exact

1 date was I cashed it.

2 MR. SHERRIFF-SCOTT: Do you dispute that?

3 MR. SILMSER: Do I dispute it? I just don't
4 know what day it was.

5 MR. SHERRIFF-SCOTT: Okay. That's fine.
6 The banker's cash is on September 3rd, if we can look at
7 documents just to confirm it. It's document 738168.

8 THE COMMISSIONER: You don't have that, sir.

9 MR. SHERRIFF-SCOTT: Seven-three-eight-one-
10 six-eight (738168).

11 (SHORT PAUSE/COURTE PAUSE)

12 MR. SHERRIFF-SCOTT: Do you see the cheque,
13 sir?

14 THE COMMISSIONER: Hold on.

15 MR. SHERRIFF-SCOTT: Is it up yet?

16 MR. SILMSER: No.

17 MR. SHERRIFF-SCOTT: Okay.

18 THE COMMISSIONER: Exhibit 321.

19 --- EXHIBIT NO./PIÈCE No. P-321:

20 (738168) Photocopy of Settlement Cheque
21 - \$32,000 - September 2, 1993.

22 MR. SHERRIFF-SCOTT: Can you just scroll
23 down at the cashier's stamps?

24 Do you see there September 3rd, Mr. Silmsers?

25 MR. SILMSER: That's right.

1 **MR. SHERRIFF-SCOTT:** I'm sorry. Do you have
2 -- do you see the cheque?

3 **MR. SILMSER:** Yes, I do.

4 **MR. SHERRIFF-SCOTT:** Okay. Do you see the
5 cashier's stamp there of September 3rd?

6 **MR. SILMSER:** Yes, I do.

7 **MR. SHERRIFF-SCOTT:** Okay. Is that
8 consistent with you cashing it on that day?

9 **MR. SILMSER:** Yes, I do.

10 **MR. SHERRIFF-SCOTT:** Okay.

11 **MR. SILMSER:** Yes, it is.

12 **MR. SHERRIFF-SCOTT:** We'll just back to Ms.
13 Sebalj's notes. And now back in settlement, this is
14 approximately 10 days before the letters between the
15 Cornwall police and the Crown Attorney discussing what to
16 do in view of your settlement.

17 **THE COMMISSIONER:** Where are you?

18 **MR. SHERRIFF-SCOTT:** Well, I'm just putting
19 it to the witness. Do you remember Mr. Wardle took you to
20 those letters to the police that were dated around
21 September 9th and following?

22 **MR. SILMSER:** Who is Mr. Wardle?

23 **MR. SHERRIFF-SCOTT:** He was the lawyer for
24 the Citizens Community Renewal.

25 **MR. SILMSER:** Okay.

1 **MR. SHERRIFF-SCOTT:** So if we can go to Ms.
2 Sebalj's September notes, which is Exhibit ---

3 **THE COMMISSIONER:** The typed ones?

4 **MR. SHERRIFF-SCOTT:** Yes, 297.

5 **THE COMMISSIONER:** Two ninety-seven (297).

6 **MR. SILMSER:** Two ninety-seven (297)?

7 **MR. SHERRIFF-SCOTT:** Yes. Now, if we can go
8 to September 29th?

9 **THE REGISTRAR:** On what page?

10 **MR. SHERRIFF-SCOTT:** On page 63.

11 This is where you met with Ms. Sebalj at the
12 end of September to discuss ---

13 **MR. SILMSER:** I still don't have the proper
14 page, sir.

15 **MR. SHERRIFF-SCOTT:** It's at page 63 of 64.
16 It's the second-last page.

17 **MR. SILMSER:** It's so small I can't see.

18 **THE COMMISSIONER:** It's up on the screen
19 too.

20 **MR. SILMSER:** Okay.

21 **MR. SHERRIFF-SCOTT:** Okay. You'll remember
22 you talked about meeting with her on this day and you have
23 the handwritten note. Do you remember that?

24 **MR. SILMSER:** Yes.

25 **MR. SHERRIFF-SCOTT:** Okay. And the

1 reference is here about what she's recording you're telling
2 her is that one of the points which is about the sixth from
3 the top:

4 "You don't know how it would go in
5 court and therefore took the given."

6 Do you see that?

7 **MR. SILMSER:** Yes, I see it. That's her
8 handwriting. That's her notes. That's not mine.

9 **MR. SHERRIFF-SCOTT:** Does that mean it's
10 unreliable because it's hers?

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

12 **MR. SHERRIFF-SCOTT:** So you didn't say that
13 to her?

14 **MR. SILMSER:** I don't believe so, no.

15 **MR. SHERRIFF-SCOTT:** Because I suggest to
16 you that's inconsistent with the matter having been wrapped
17 up.

18 **MR. SILMSER:** No. I didn't say anything
19 about courts.

20 **MR. SHERRIFF-SCOTT:** All right.

21 **MR. SILMSER:** As far as she was concerned,
22 the investigation was ended. She even told me that day
23 too.

24 **MR. SHERRIFF-SCOTT:** Okay. Over to the next
25 page, sir, I apologize for the amount of work entailed.

1 Would that have happened?

2 **MR. SILMSER:** I liked Heidi Sebalj. I felt
3 sorry for her too. She did a lot of work on it and if
4 there was no charges coming, then a lot of useless work
5 gone down the drain.

6 **MR. SHERRIFF-SCOTT:** Did you apologize to
7 her for that?

8 **MR. SILMSER:** I can't remember if I did or
9 not but ---

10 **MR. SHERRIFF-SCOTT:** I suggest you did and
11 that was inconsistent again with it being wrapped up
12 because you stimulated at her here, in her view, and you
13 were expressing apology for having stimulated that thing
14 being terminated.

15 **MR. SILMSER:** No, I don't. I think you're
16 putting a spin on it. No, if I apologized, it's only
17 because of all the work she had done on it and it went
18 nowhere.

19 **MR. SHERRIFF-SCOTT:** What did you have to
20 apologize about if you weren't involved in bringing it to
21 an end?

22 **MR. SILMSER:** I liked Heidi, again, and I
23 think her hands were being tied on this.

24 **MR. SHERRIFF-SCOTT:** That's not something
25 for you to apologize about, isn't it? It's some

1 institutional ---

2 MR. SILMSER: It was something I just did.

3 MR. SHERRIFF-SCOTT: All right. So you did
4 apologize?

5 MR. SILMSER: I can't remember if I did or
6 not, but I would -- it wouldn't surprise me if I did.

7 MR. SHERRIFF-SCOTT: Okay.

8 "Stated he weighed the options and
9 chose the sure thing."

10 Do you remember saying that?

11 MR. SILMSER: No.

12 MR. SHERRIFF-SCOTT: Again, that's
13 inconsistent with the thing having been wrapped up if you
14 said that. Do you agree with that?

15 MR. SILMSER: No.

16 MR. SHERRIFF-SCOTT: You never said that?

17 MR. SILMSER: No.

18 MR. SHERRIFF-SCOTT: Now, at a later time,
19 you gave a statement to the CAS at Exhibit 270.

20 MR. SILMSER: What's the number?

21 MR. SHERRIFF-SCOTT: Two-seven-zero (270).
22 That's the exhibit. This is your statement to the CAS.
23 That's a transcript of your interview.

24 Do you have the document, sir?

25 MR. SILMSER: I hope it's not the first page

1 because there's nothing on it.

2 **THE REGISTRAR:** What page is it?

3 **MR. SHERRIFF-SCOTT:** Twenty-five (25).

4 **THE COMMISSIONER:** Yes, the first page
5 doesn't have anything on it.

6 **MR. SHERRIFF-SCOTT:** Yes, it's just a cover.
7 It looks like a project folder or something. Anyway, I
8 want to turn to page 25 if you have the document.

9 **(SHORT PAUSE/COURTE PAUSE)**

10 **MR. SILMSER:** Okay.

11 **MR. SHERRIFF-SCOTT:** Now, you're here
12 explaining the reasons for the settlement at page 25 and
13 it's starting at line 614. Do you see the line references
14 in the left marginal column?

15 **MR. SILMSER:** Yes.

16 **MR. SHERRIFF-SCOTT:** A614:

17 "All I asked for was an apology for
18 what he did to me and a letter, a
19 letter of apology. You know, it's not
20 a verbal. A letter of apology, that's
21 all I asked for and they wouldn't give
22 it to me. So then I said screw it."

23 This is a transcript of what you said.

24 "I'll take you right to court and put
25 you in jail and there was a police

1 investigation but within three or four
2 weeks, they -- they had said they'll
3 settle for 32,000. Why settle? There
4 was a big -- a real big -- I didn't
5 know if I should settle or if I
6 shouldn't settle. I wanted to take
7 them to court but financially I was a
8 bit -- a little bit behind and 32,000 I
9 figured would be a great help
10 especially in the times right now. So
11 I took it."

12 So there is no explanation here that they
13 had wrapped the investigation when you're telling the CAS
14 what had happened, is there?

15 **MR. SILMSER:** There's no what?

16 **MR. SHERRIFF-SCOTT:** You didn't explain to
17 the CAS that they had wrapped up the police investigation
18 when you gave this transcript taped interview as to your
19 reasons for settlement?

20 **MR. SILMSER:** I can't remember talking about
21 this, but ---

22 **MR. SHERRIFF-SCOTT:** Okay.
23 Commissioner, if I can just have a moment,
24 please?

25 **THE COMMISSIONER:** Sure.

1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: We'll be finishing for
3 the day shortly.

4 MR. SHERRIFF-SCOTT: Yes, thank you. There
5 is just an area pertaining to Mr. Seguin that I'm going to
6 leave to my friend at ---

7 THE COMMISSIONER: M'hm.

8 MR. SHERRIFF-SCOTT: He will deal with it,
9 which will shorten the time here.

10 And so that will just bring to a last couple
11 of points. Briefly, sir, you had an exchange with Mr.
12 Engelmann and if we could turn up Exhibit 235, which was
13 entered during your examination in-chief?

14 Mr. Silmsers, just to orient you on these
15 questions, they're pretty straightforward. I think there
16 won't be any debate about it, but what happened here is
17 this is the incident about you calling Father Maloney in
18 1995 in the summer, August, shortly after you rekindled
19 your contact with John MacDonald.

20 MR. SILMSER: Okay.

21 MR. SHERRIFF-SCOTT: Okay. And your
22 evidence to Mr. Engelmann was that you said the reason
23 Kevin Maloney was "so upset" was that because you and John
24 MacDonald and Bryce had been in the basement of St.
25 Columban's reviewing parish bulletins or documents. In

1 fact it was parish bulletins ultimately.

2 MR. SILMSER: Yes, we had a court order. We
3 could do it.

4 MR. SHERRIFF-SCOTT: Yes, but what I'm going
5 to suggest to you is that your chronology about why Father
6 Kevin was so upset about getting the police to ask you to
7 stop calling, and the reason that you gave from it is
8 impossible from a timing point of view.

9 Now, let me see if I can jog your memory.

10 In August, 1995, you rekindle your
11 relationship with John MacDonald for the very first time in
12 many years.

13 MR. SILMSER: Right.

14 MR. SHERRIFF-SCOTT: Okay.

15 You meet on/or around, say, the 19th, 20th,
16 21st of August, according to Mr. MacDonald's chronology. I
17 can put it to you if you want.

18 MR. SILMSER: No, no. That's fine.

19 MR. SHERRIFF-SCOTT: And he testified about
20 this.

21 He doesn't even retain Mr. Geoffrey until
22 September of that year to start a lawsuit when you went to
23 the office with him and there was a meeting with Mr.
24 Geoffrey on September 11th ---

25 MR. SILMSER: Okay.

1 **MR. SHERRIFF-SCOTT:** Okay.

2 You accept that?

3 **MR. SILMSER:** Yes.

4 **MR. SHERRIFF-SCOTT:** And sometime later in
5 the fall, Mr. MacDonald launched his lawsuit against
6 Charles MacDonald and the Diocese.

7 **MR. SILMSER:** Okay.

8 **MR. SHERRIFF-SCOTT:** Okay.

9 So it would have been impossible for a court
10 order in the two lawsuits to have been given for you to be
11 searching records within virtually 72 to a 100 hours of you
12 making the phone calls to Father Kevin.

13 Surely you accept that?

14 **MR. SILMSER:** Well, it's possible that was
15 it, yes. It's possible.

16 **MR. SHERRIFF-SCOTT:** I mean, I can
17 demonstrate it to you definitively on the ---

18 **MR. SILMSER:** No, no.

19 **MR. SHERRIFF-SCOTT:** -- chronology of your
20 friend ---

21 **MR. SILMSER:** Yes.

22 **MR. SHERRIFF-SCOTT:** --- but I'm suggesting
23 you were mistaken about that because John MacDonald didn't
24 have a lawsuit until well after August.

25 In fact, the parish bulletin issue didn't

1 arise until discoveries in '95 and you did go there, no
2 doubt about it, but it was 1996.

3 **MR. SILMSER:** Okay.

4 **MR. SHERRIFF-SCOTT:** You accept that?

5 **MR. SILMSER:** I accept that.

6 **MR. SHERRIFF-SCOTT:** What I wanted to just
7 get you to clarify is -- my suggestion to you is, you said
8 to Mr. Engelmann in the summer of 1995:

9 "There was a lot of anger in me."

10 And the reason that Kevin Maloney called the
11 police to ask you to stop calling is, as you may have done
12 from time-to-time when you called him, you were giving rein
13 to your frustration and that's what stimulated him.

14 **MR. SILMSER:** I think that Father Maloney --
15 I think there was one phone call maybe two at the most.

16 **MR. SHERRIFF-SCOTT:** I think that's what you
17 said last week, yes.

18 **MR. SILMSER:** Yes, and if anything's out of
19 frustration would somebody come forward and at least talk
20 to us about it and he wasn't willing to do that, and so I
21 kind of left it at that, and the next thing I know I had a
22 phone call from the Cornwall Police saying that I can't
23 phone Father Maloney anymore or I would be charged.

24 **MR. SHERRIFF-SCOTT:** All right.

25 I understand that, and what I'm suggesting

1 to you is the explanation you gave to my friend, Mr.
2 Engelmann, for why Father Maloney did that was wrong on the
3 chronology ---

4 **MR. SILMSER:** That's possible. I may have
5 made a mistake on that one.

6 **MR. SHERRIFF-SCOTT:** --- and my suggestion
7 to you is what -- the reason it happened is because you
8 were expressing frustration, perhaps in an animated way,
9 which caused him to go off and do that.

10 Isn't that fair?

11 **MR. SILMSER:** I just think that they just
12 didn't want to talk to us -- Period! -- about anything.
13 They wanted to keep it hush-hush, kept it quiet, and
14 basically that's why they phoned the police.

15 **MR. SHERRIFF-SCOTT:** But there's no question
16 you would have been phoning about John MacDonald. It was
17 within days of your first meeting of -- that's the reason
18 you would have been calling Kevin Maloney.

19 Right?

20 **MR. SILMSER:** I don't know why. Honestly,
21 just to get at somebody to listen to us.

22 **MR. SHERRIFF-SCOTT:** All right.

23 And so you weren't expressing frustration
24 with him?

25 Surely that's possible.

1 **MR. SILMSER:** I was listening for -- I don't
2 believe I was. I think I was just looking for somebody to
3 listen to us ---

4 **MR. SHERRIFF-SCOTT:** Right.

5 **MR. SILMSER:** --- and he was not willing to
6 do that.

7 **MR. SHERRIFF-SCOTT:** Okay.

8 **MR. SILMSER:** He was ready to keep it hush-
9 hush.

10 **MR. SHERRIFF-SCOTT:** He didn't say that to
11 you?

12 You didn't even talk to him, did you?

13 **MR. SILMSER:** I didn't talk to him?

14 **MR. SHERRIFF-SCOTT:** You didn't talk to him,
15 did you?

16 **MR. SILMSER:** Talk to Father Maloney?

17 **MR. SHERRIFF-SCOTT:** Yes.

18 Did he tell you he wanted to keep it hush-
19 hush?

20 That's your interpretation, surely.

21 **MR. SILMSER:** Well, that's what it seemed
22 like to me.

23 **MR. SHERRIFF-SCOTT:** Okay.

24 Well, that's your opinion, I understand
25 that.

1 Thank you.

2 MR. SILMSER: If somebody doesn't want to
3 talk to you about it, then they want to keep it hush.

4 MR. SHERRIFF-SCOTT: All right.

5 Well, I have your view on it and I
6 understand that's your view.

7 Thank you.

8 Now, you had a debate about Mr. Wardle --
9 with Mr. Wardle, the lawyer for the Citizens for Community
10 and Renewal.

11 MR. SILMSER: I know who he is now.

12 MR. SHERRIFF-SCOTT: Well, I'm trying to --
13 there's a lot of people in the room. So it took me a long
14 time to get to know their names, but that's -- and he said
15 to you:

16 "Would it surprise you to know that
17 Malcolm MacDonald acted for the Diocese
18 before 1993, as if that somehow is a
19 fact that springs into existence as
20 persuasive as he may be?"

21 Now, you don't have any evidence to
22 substantiate that, do you?

23 MR. SILMSER: No.

24 MR. SHERRIFF-SCOTT: Okay.

25 Now, I know Mr. Wardle is a very persuasive

1 guy, but my client will deny that. In any event, the same
2 goes for Sean Adams.

3 **THE COMMISSIONER:** Would deny what?

4 That he's persuasive, or ---

5 **MR. SHERRIFF-SCOTT:** Persuasive, yes.

6 Same goes for Sean Adams. You wouldn't know
7 anything about him acting for the Diocese before 1993?

8 **MR. SILMSER:** No.

9 **MR. SHERRIFF-SCOTT:** Now, you finished up
10 last time with something about Marcel Lalonde. You said he
11 was connected with some youth group at St. Columban's.

12 You don't know when that would have been, do
13 you?

14 **MR. SILMSER:** I don't know the exact date,
15 no.

16 **MR. SHERRIFF-SCOTT:** All right.

17 Thank you.

18 Those are my questions.

19 **THE COMMISSIONER:** Thank you.

20 I think we will call it a day.

21 Again, as I have reminded other people when
22 we were dealing with facts or trials or anything like that,
23 that at some point Father MacDonald was not on trial.
24 Today, you're not on trial, sir. The questions, as far as
25 I'm concerned, and I'm the one who's is going to write up

1 the report. So -- is that the questions were geared to
2 gauge the institutional response and nothing further.

3 All right?

4 **MR. SHERRIFF-SCOTT:** Thank you, Mr. Silmsers.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Engelmann has a final shot.

7 **MR. ENGELMANN:** You may want to -- I don't
8 know if we need to do this in the presence of the witness,
9 but --

10 **THE COMMISSIONER:** Okay.

11 **MR. ENGELMANN:** --- we may want to discuss
12 with counsel the remaining length of time.

13 **THE COMMISSIONER:** Right. Sure.

14 **MR. ENGELMANN:** But just before Mr. Silmsers
15 goes --

16 **THE COMMISSIONER:** Oh!

17 **MR. ENGELMANN:** --- his counsel will remain,
18 we can discuss it.

19 **THE COMMISSIONER:** All right.

20 **MR. SILMSER:** Can I go?

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** I had tried to get a gauge
23 as to length of time for the remaining cross and maybe I'll
24 just let counsel come forward. That might be easier.

25 **THE COMMISSIONER:** Sure.

1 **MR. ENGELMANN:** And have them explain it.

2 **THE COMMISSIONER:** Mr. Callaghan?

3 **MR. CALLAGHAN:** I had estimated two hours,
4 but I'm afraid Mr. Sherriff-Scott's gone through a lot of
5 the notes. So I'm going try to read and deal with that
6 this evening ---

7 **THE COMMISSIONER:** Okay.

8 So you are looking at the outside two hours?

9 **MR. CALLAGHAN:** I hope.

10 **THE COMMISSIONER:** Wait a minute now!

11 Does that mean that because of Mr. Sherriff-
12 Scott's cross-examination, you may be longer?

13 **MR. CALLAGHAN:** Well, when I actually digest
14 what Mr. Sherriff-Scott does at any time, one doesn't know
15 whether one's going to have indigestion or not. We might
16 have to go back and digest it.

17 The problem is if I say two hours and you
18 say "Well, Mr. Callaghan, it's two hours."

19 **THE COMMISSIONER:** No.

20 **MR. CALLAGHAN:** I don't know the interchange
21 is going to be -- I hope -- my estimation is two hours.
22 There was a lot covered that I hope I can sort of glance
23 over for ---

24 **THE COMMISSIONER:** Look, Mr. Sherriff-Scott
25 said he would be an hour and a half and he was three.

1 **MR. CALLAGHAN:** You know, I can't trust the
2 man.

3 **THE COMMISSIONER:** I don't ---

4 **(LAUGHTER/RIRES)**

5 **THE COMMISSIONER:** I'm not going to hold
6 anybody. Just logistically we're trying to make things ---

7 **MR. CALLAGHAN:** I understand.

8 **THE COMMISSIONER:** --- easier for the
9 witnesses.

10 **MR. CALLAGHAN:** I understand. Two (2)
11 hours.

12 **THE COMMISSIONER:** Two (2) hours.

13 All right.

14 Not a minute more.

15 **(LAUGHTER/RIRES)**

16 **THE COMMISSIONER:** OPP?

17 **MR. CULIC:** I'll hold you to that.

18 **MR. KOZLOFF:** I would estimate three to four
19 hours.

20 **THE COMMISSIONER:** Okay.

21 **MR. KOZLOFF:** I should say this, sir.

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

23 **MR. KOZLOFF:** Mr. Silmser is a seminal
24 witness in these proceedings.

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

1 **MR. KOZLOFF:** In my submission, his role
2 informs a great deal of the institutional response.

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

4 **MR. KOZLOFF:** And does so from December of
5 1992 until at least 2002.

6 His evidence is very important. He has now
7 been on the stand through six days.

8 **THE COMMISSIONER:** Six days?

9 **MR. KOZLOFF:** I believe so.

10 **THE COMMISSIONER:** Okay.

11 **MR. KOZLOFF:** That is a great strain on any
12 individual.

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

14 **MR. KOZLOFF:** I will attempt to be focussed
15 in my cross-examination, I assure you.

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

17 **MR. KOZLOFF:** I only want to put to him
18 those matters which I believe will assist you.

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

20 **MR. KOZLOFF:** I don't believe we will be
21 well-served by forcing this individual, with his particular
22 characteristics, to sit late tomorrow. I know that's been
23 mentioned and I'm simply putting that out there as my
24 submission.

25 Thank you.

1 **THE COMMISSIONER:** Thank you.
2 I'm glad I only asked you how long you'd be.

3 **(LAUGHTER/RIRES)**

4 **THE COMMISSIONER:** OPPA?

5 **MR. WALLACE:** At this time, I think probably
6 about an hour.

7 **THE COMMISSIONER:** Thank you.
8 The Catholic District School Board?
9 Ms. Birrell.

10 **MS. BIRRELL:** I think I have the best news
11 of the day. I don't anticipate any cross-examination of
12 this witness.

13 **THE COMMISSIONER:** Thank you.
14 That takes care of everyone?
15 Or re-examination.

16 **MR. ROSE:** Probation.

17 **THE COMMISSIONER:** Oh! I'm sorry.
18 Probation, yes.
19 Okay, so ---

20 **MR. ROSE:** I believe about an hour and a
21 half.

22 **THE COMMISSIONER:** All right.
23 So in any event, what is tomorrow?

24 **MR. ENGELMANN:** Tomorrow is Wednesday.

25 **THE COMMISSIONER:** Tomorrow is Wednesday.

1 **MR. ENGELMANN:** I know that.

2 **THE COMMISSIONER:** Okay.

3 So it's obvious that if we're anywhere close
4 to -- we're not going to be finishing tomorrow.

5 **MR. ENGELMANN:** Maybe I can pose a question
6 to Mr. Kozloff, just to have him address it.

7 There was some discussion as to whether or
8 not during the course of his cross-examination, there was a
9 notice that he wanted to play a videotape interview; the
10 interview that we have the audio tape or the transcript of.
11 It's an exhibit already. I don't have the number in front
12 of me, but it's the interview of February 22nd, 1994.

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

14 **MR. ENGELMANN:** And it's two hours long.

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

16 **MR. ENGELMANN:** And I just want to get a
17 sense from him now whether or not that has to be part of
18 his cross-examination, and that might be something that we
19 need to speak to before he cross-examines Mr. Silmsen,
20 because if he is intent to do that, I'd certainly like him
21 to set out all of the reasonings why before we do that, as
22 Commission is not sure if that is, in fact, the OPP's
23 intention whether we'll be objecting.

24 **THE COMMISSIONER:** Okay.

25 **MR. ENGELMANN:** Perhaps we could find that

1 out now because, obviously, that's two hours and if he is
2 counting that as part of his three to four hours, it might
3 make a difference as well.

4 **THE COMMISSIONER:** Mr. Kozloff, are you
5 prepared to comment at this point or do you wish to be ---

6 **MR. KOZLOFF:** I'll say what I have to say
7 tomorrow, sir.

8 **THE COMMISSIONER:** Okay.

9 Fair enough.

10 So, on that note, we'll call it a day and
11 we'll resume at 9:30.

12 Thank you.

13 **REGISTRAR:** Order; all rise.

14 The hearing is now adjourned. L'audience
15 est ajournée.

16 --- Upon adjourning at 4:27 p.m./

17 L'audience est ajournée à 16h27

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C E R T I F I C A T I O N

1
2
3 I, Sean Prouse a certified court reporter in the Province
4 of Ontario, hereby certify the foregoing pages to be an
5 accurate transcription of my notes/records to the best of
6 my skill and ability, and I so swear.

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8 Je, Sean Prouse, un sténographe officiel dans la province
9 de l'Ontario, certifie que les pages ci-hauts sont une
10 transcription conforme de mes notes/enregistrements au
11 meilleur de mes capacités, et je le jure.

12
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