



Inquiry Committee
concerning
the Hon. Lori Douglas

Comité d'enquête
au sujet de
l'hon. Lori Douglas

**EXCERPTS
of the
Transcript
of the hearing of
16 July 2012**

**EXTRAITS
du
Procès-verbal
de l'audition du
16 juillet 2012**

(v. originale en anglais)

By order of the Committee,
the transcript of oral testimony
will be published after all
witnesses are heard

Par ordre du Comité,
le procès-verbal des témoignages
sera publié lorsque tous les
témoins auront été entendus

THE CANADIAN JUDICIAL COUNCIL

IN THE MATTER OF AN INQUIRY COMMITTEE CONSTITUTED
PURSUANT TO SECTION 63 OF THE JUDGES ACT R.S.C.
1985, C. J-1 AS AMENDED INTO THE CONDUCT OF THE
HONOURABLE ASSOCIATE CHIEF JUSTICE LORI DOUGLAS OF
THE COURT OF QUEEN'S BENCH OF MANITOBA

HELD BEFORE THE HONOURABLE CATHERINE FRASER
(CHAIRPERSON),
THE HONOURABLE DEREK GREEN,
THE HONOURABLE JACQUELINE MATHESON,
BARRY ADAMS, AND MARIE-CLAUDE LANDRY
at Court of Queen's Bench
363 Broadway, 4th Floor, Winnipeg, Manitoba
on Monday, July 16, 2012 at 10:00 a.m.

APPEARANCES:

Guy Pratte, Q.C. Kirsten Crain	Independent counsel appointed pursuant to the Complaints Procedure
Sheila Block Molly Reynolds	For The Honourable Associate Chief Justice Lori Douglas
Rocco Galati Dushahi Sribavan	For Alex Chapman
George Macintosh, Q.C.	For the Inquiry Committee
Ed Ratushny, Q.C.	Consultant to the Inquiry Committee

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1 --- Upon resuming on July 16, 2012 at 10:02 a.m.

2 THE CHAIR: Thank you, please be
3 seated. Good morning, counsel, ladies and
4 gentlemen. We're ready to proceed to continue
5 with the hearing of this inquiry committee, and
6 before we begin, are there any preliminary
7 matters that counsel wish to raise at this time?
8 Ms. Crain.

9 MS. CRAIN: Yes, we have the --
10 I'm not sure if we've got sound here. We have
11 two pieces of written evidence that we were going
12 to hand out this morning. I don't know if you
13 want to deal with that now or if you would like
14 to deal with that at some later point in the day.

15 THE CHAIR: What does it relate
16 to?

17 MS. CRAIN: Two things. The
18 first is the agreed evidence of selected
19 witnesses, which is the document we provided by
20 e-mail on Friday to Mr. Macintosh. What we have
21 here are the documents which are referred to in
22 that statement. We've just bound it and have
23 copies for the committee. So in terms of the
24 substance of the witness statements, these are
25 the same that were circulated to you on Friday.

1 THE CHAIR: Okay. I believe your
2 first witness this morning was to be Mr. Chapman,
3 and I don't believe any of that relates directly
4 to his evidence, correct?

5 MS. CRAIN: Right.

6 THE CHAIR: I think that perhaps
7 we'll have an opportunity first thing this
8 afternoon to deal with some procedural matters
9 and perhaps it might be best to leave that until
10 that time. We did receive the document in
11 question; in other words, the summary, if you
12 will, of some of the evidence, and one of the
13 issues we'd like you to address this afternoon
14 before you present that to us or at the same time
15 as you do is whether or not the witnesses who are
16 referred to therein have adopted these summaries,
17 if you will, of the evidence that they're to give
18 in those statements. So that's one piece. And
19 is there a second piece of evidence, then?

20 MS. CRAIN: There is. We've also
21 prepared an agreed statement about which pictures
22 have been available on the internet since
23 September 2011, and this is a document that we
24 have agreed to with counsel for Justice Douglas,
25 and we're happy to hand that up when it suits the

1 committee. I know Ms. Block has some submissions
2 to make about whether or not that should be filed
3 confidentially or not.

4 THE CHAIR: And, again, I think
5 it's best if we defer that until this afternoon
6 to deal with that as part of the procedural
7 issues as well that we will deal with immediately
8 after the lunch break, and by the way, the first
9 of those items will include scheduling matters
10 for the rest of the week as well and next week.
11 Okay? So then --

12 MS. CRAIN: The only other matter
13 is whether or not we actually had an order
14 excluding witnesses. Did we make one before we
15 left? I know we discussed it, but I'm not sure
16 we actually made an order.

17 THE CHAIR: I don't believe that
18 we made an order.

19 MS. BLOCK: I actually can't
20 figure out how that works in a proceeding like
21 this where everything is on the internet, where
22 the press is obviously covering it, and you will
23 have more experience than I in this sort of
24 situation. I'm more A versus B, and we can
25 exclude witnesses, and that's it. So I'm not

1 sure how it works. I mean, do we then tell
2 people who are going to be witnesses, do not read
3 any newspaper accounts or -- I just raise that.
4 It seems to be a bit of a tilting of windmills to
5 exclude witnesses. If they shouldn't be in here,
6 maybe ask them not to read the actual
7 transcripts, but they're going to hear about the
8 case because it's widely covered, as you know.

9 THE CHAIR: Ms. Crain?

10 MS. CRAIN: I certainly agree
11 with Ms. Block that there are some challenges
12 with actually making that work; however, there
13 are credibility issues in this case, and I think
14 it would be preferable to start with an order
15 excluding witnesses. Maybe Mr. Pratte wants to
16 add something to that.

17 MR. PRATTE: As usual, Ms. Block
18 makes a good point, but even in highly publicized
19 trials, when there are credibility issues, it's
20 not unusual to have an order excluding witnesses,
21 and it also means, for example, if a lawyer
22 representing a witness happens to be here, he or
23 she will know that she's not supposed to tell the
24 witness what happened. So not perfect, but in my
25 respectful submission -- and we have some lawyers

1 who will be witnesses. We expect that being
2 apprised of that order will mean that they will
3 understand. They shouldn't take active steps to
4 familiarize themselves with the evidence. Will
5 it be perfect? No. But is it prudent? In my
6 respectful submission it would be.

7 THE CHAIR: Now, one question
8 that flows from that is an obvious one, which is
9 the point that Ms. Block has raised. I take it,
10 it follows, therefore, that none of this evidence
11 should be put on the public website until we've
12 heard the witnesses. In other words, how would
13 we -- we're making an order excluding witnesses,
14 but if witness number 10, who is not here today,
15 is reading the evidence as it's published each
16 day on the transcript -- as the transcript goes
17 on the website, how would that work?

18 MR. PRATTE: Well, in the same
19 way, in my respectful submission. The first
20 thing that should go on the website is that there
21 is an order excluding witnesses and it would mean
22 to invite people who might be witnesses, they
23 should not review it. Can you enforce it and
24 know if people tell you -- you know, maybe the
25 first question is, Mr. So and so, have you taken

1 active steps to familiarize yourselves with the
2 evidence, without a publication order, and then
3 we'll know from these people. But in my
4 respectful submission, prudence would dictate, as
5 in any highly publicized trial, the same problem
6 always happens. The orders are still made, and
7 it's counsel of prudence, not perfection. So I
8 would say the first thing you should do is put an
9 order excluding witnesses on the website and
10 alerting -- I'm sure your counsel can assist you
11 in that -- the witnesses as to the meaning of
12 that, and their counsel, should they be so
13 advised.

14 THE CHAIR: I guess the one
15 difference, though, here is that in a highly
16 publicized trial, we are not publishing daily
17 transcripts of the evidence, so the question I
18 have for all of you is whether or not we should
19 simply refrain from publishing the evidence of
20 the witnesses until the conclusion of the
21 hearing.

22 MR. PRATTE: I would support
23 that. I don't see any real need to have public
24 reporting because the media is here. In my
25 respectful submission, it's highly unusual that

1 the immediate daily transcripts would be
2 available anyway, so the public is not hurt by
3 that consequent order, if I could call it that.

4 THE CHAIR: Thank you.

5 Mr. Galati.

6 MR. GALATI: I very briefly
7 suggest, just as my client is concerned, because
8 he is the first witness, I agree that the
9 transcripts -- I agree with Ms. Block that the
10 transcripts should not be published until all the
11 evidence is out if there is an exclusion of
12 witness order.

13 THE CHAIR: Ms. Block, anything
14 that you wish to say about the proposition of not
15 publishing the evidence on the council website
16 until the conclusion of the evidence?

17 MS. BLOCK: No. I just don't
18 have the background to be able to help you. I'd
19 be speculating, so I'll leave it to -- I mean,
20 Mr. Pratte has been in every highly publicized
21 case I know of, and so I'd stick with his advice.
22 But in terms of --

23 MR. PRATTE: The charm is already
24 out.

25 MS. BLOCK: But in terms of the

1 media coverage, so, you know, you can't open the
2 Winnipeg Free Press without seeing this story.
3 Are we going to tell, you know, Chief -- former
4 Chief Justice Monnin he can't read his newspaper
5 or -- it just seems a bit impractical. And we've
6 all had -- in this case unusually we've had
7 extensive disclosure of what the witnesses are
8 going to say because my friend has interviewed
9 them, Ms. Hickey has interviewed them. You know,
10 the credibility issues really don't involve most
11 of the -- most of the witnesses, so --

12 THE CHAIR: Well, are you
13 suggesting, then, that you don't want an order
14 excluding witnesses?

15 MS. BLOCK: Well, I'm just
16 suggesting that there's an impracticality about
17 it unless we're telling -- unless we contact
18 every witness and say, do not read anything in
19 the paper or listen to the radio about this. I
20 think that's unrealistic. That was my only
21 point, and it's a practical point, and I have no
22 -- unfortunately no experience to help you with
23 sorting that out.

24 (Off the Record Momentarily)

25 THE CHAIR: Thank you, counsel.

1 We are all agreed that there should be an order
2 excluding witnesses from this courtroom until
3 they have given their evidence in the
4 proceedings, and there will be no publication on
5 the Canadian Judicial Council website of the
6 transcripts -- the daily transcripts of the
7 evidence of the witnesses until all of the
8 evidence has been heard. Thank you. And if any
9 counsel are here representing any particular
10 witnesses, we would ask that you communicate the
11 order that we've given to your clients. Thank
12 you.

13 And one other point I'd just like
14 to make. You've probably noticed, as have we,
15 that there is a jackhammer out there, and so if
16 you could speak up, it would really be helpful
17 because sometimes on occasion your voices are
18 dropping, you're not speaking into the mics, and
19 we're having difficulty hearing here.

20 MS. BLOCK: And if I -- just on
21 the exclusion of witnesses, if I can make a point
22 that that would not apply to Associate Chief
23 Justice Douglas, I assume, as the Respondent in
24 this -- in this proceeding. She should know what
25 the evidence is.

1 MR. PRATTE: I agree with that
2 proposition, Chief Justice.

3 MR. GALATI: I'm sorry, Chief
4 Justice, for interrupting you, but I'd like to
5 weigh in for two seconds on that. I strenuously
6 object to her exclusion to that. She's
7 considered one --

8 THE CHAIR: You'll have to speak
9 up, Mr. Galati, there is no way -- some of my
10 colleagues are having difficulty hearing you.

11 MR. GALATI: All right. I thank
12 the court staff for the Danny Devito lectern to
13 my height here. I'm saying that --

14 THE CHAIR: Just take your
15 microphone and move it up like that.

16 MR. GALATI: All right. On
17 behalf of my client, my friend Ms. Block's
18 proposition that Associate Chief Justice Douglas
19 be exempted from that exclusion, I would object
20 because, I mean, she's at the other bookend of
21 the -- what my independent counsel friends are
22 saying is the crucial credibility battle at this
23 inquiry, and this is not a criminal trial as has
24 been pointed out many times. She is not accused
25 criminally; therefore, it should also apply to

1 her.

2 THE CHAIR: Mr. Pratte.

3 MR. PRATTE: With the greatest of
4 respect, fairness dictates that the party whose
5 interest is at stake is entitled to hear all of
6 the evidence. That's true in criminal cases,
7 civil cases, and any administrative proceedings.
8 In my respectful submission, there is no law that
9 supports Mr. Galati's proposition.

10 THE CHAIR: Thank you. Anything
11 by way of reply, Mr. Galati, to that?

12 MR. GALATI: No. There's very
13 little law on these proceedings, very, very
14 little. I think circumstances dictate that the
15 rulings be made to ensure fairness of the hearing
16 for all those involved as articulated by your
17 previous ruling.

18 THE CHAIR: Thank you.

19 (Off the Record Momentarily)

20 THE CHAIR: Counsel, we are
21 entirely satisfied that the order for exclusion
22 of witnesses does not apply to Associate Chief
23 Justice Douglas. Under the Canadian Judicial
24 Council bylaws, the judge is entitled to know the
25 case that she has to meet, and under these

1 circumstances, that would necessarily include the
2 evidence of the witnesses in the hearing before
3 us. That's our decision, and we are now ready to
4 proceed, I believe, with the first matter this
5 morning. I believe you're going to call your
6 first witness. Is that so?

* * *

PORTION OF TRANSCRIPT HELD FOR FUTURE PUBLICATION, AS PER ORDER OF THE COMMITTEE

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4 --- Upon resuming at 1:35 p.m.

5 THE CHAIR: Counsel, before we
6 begin to resume hearing evidence in this matter,
7 we have a number of procedural issues that we
8 thought we could get your assistance on, and you
9 mentioned a couple this morning.

10 The first one is the issue of
11 scheduling, and I wanted to know whether counsel
12 had any submissions that you wish to make in
13 terms of timing of the hearings and so on.

14 MR. PRATTE: If I might, Chief
15 Justice. In terms of how things are progressing,
16 we provided a roadmap. I think it's fair to say
17 that maybe it's going a little slower, as is
18 often the case, when you have the first witness.
19 That being said, we think it might be prudent to
20 try to find a bit more time, if there is any, to
21 have a realistic hope of finishing within the two
22 weeks.

23 The options would be to maybe add
24 Saturday as had been suggested to us, and in my
25 respectful submission we would prefer that not be

1 done if it can be avoided. On the other hand or
2 in addition, to try to add a bit to your day, I
3 appreciate that it's a lot harder to listen to
4 lawyers than for lawyers to talk to judges, and
5 with that in mind, though, I've spoken to
6 Ms. Block and I haven't spoken to Mr. Galati, but
7 I at least have this from counsel -- independent
8 counsel's point of view. Whatever time you can
9 add on any day within the limits of human
10 toleration, I'm sure we would accommodate you so
11 we build a bit of a buffer. And I think --
12 Ms. Block and I, I think we are willing to start
13 at any time and finish at any time, but I leave
14 it to your discretion. If we could add an hour a
15 day or half hour, whatever it is, Chief Justice,
16 I realize it is very difficult to concentrate for
17 that long. So that's where we're at, and I leave
18 it to your discretion.

19 THE CHAIR: Ms. Block and
20 Mr. Galati, you're in agreement with that, I
21 assume.

22 MR. GALATI: I'm not. I'm in
23 agreement to abide by my friend's suggestion.
24 I've been in a lot of big trials, some of them
25 going a year, two years. I always say, okay,

1 let's extend the day, but my experience is that
2 less is done during an extended day because
3 people -- everyone gets tired, witnesses,
4 counsel, and if the day is kept shorter,
5 everybody is more focused. I would prefer to add
6 a Saturday. I think more would get done that way
7 than extending eight hours during the week, quite
8 frankly. But I leave it to -- obviously it's in
9 the committee's hands but that's my experienced
10 view on long proceedings.

11 THE CHAIR: Thank you.

12 (Off the Record Momentarily)

13 THE CHAIR: I think we have an
14 agreement amongst us that hopefully will be
15 acceptable to counsel. We're very mindful of the
16 fact that there were concerns from counsel -- or
17 some counsel about sitting on the Saturday, and
18 while we were prepared to do so and are prepared
19 to do so, we recognize that those concerns are
20 entirely valid. And so we think perhaps the best
21 way to handle it is to extend the hours, and we
22 were going to suggest 9:45 to 4:30, so that adds
23 45 minutes a day.

24 MR. PRATTE: Thank you, Chief
25 Justice.

1 THE CHAIR: So we'll try that and
2 see how that works out as things progress.

3 Now, Mr. Pratte, could you help
4 us on the issue of the scheduling of witnesses
5 for this week and just let us know which
6 witnesses you plan on hearing from this week.

7 MR. PRATTE: Thank you, Chief
8 Justice. So after Mr. Chapman, we expect to call
9 Mr. Sinclair former managing partner of TDS,
10 then -- and he shouldn't be a very long witness.
11 Then Mr. King. By the way, if it assists, Ms.
12 Crain is to lead Mr. Sinclair's evidence. Then
13 Mr. King, and I will be leading his evidence, and
14 then Mr. Histed, who was Mr. Chapman's lawyer,
15 and I guess is -- still is in some capacity. And
16 then if we magically had time left over on
17 Friday, then we would call Justice Monnin, who
18 told us he would be available if required. So
19 that's the line-up for this week, Chief Justice.

20 THE CHAIR: Thank you. That's
21 very helpful. So I think that that takes --
22 Mr. Galati, sorry. I'm so sorry.

23 MR. GALATI: I'm sorry to
24 interrupt. On the issue of Mr. Sinclair, there
25 was correspondence between myself and the -- oh,

1 I'm sorry. On the issue of Mr. Sinclair, there
2 was correspondence between independent counsel
3 and myself. I was going to be seeking leave of
4 the committee to cross-examine him. My view was
5 that I thought the order would have covered him
6 because he -- his evidence all goes to allegation
7 number 1, but my friends are opposing my
8 cross-examination. It's my -- I'm not going to
9 be long. It's my respectful submission that
10 given that he is giving evidence about his
11 conversations with Jack King and Associate Chief
12 Justice Douglas about the Chapman matter, that I
13 should have the right to cross-examine him.

14 THE CHAIR: Thank you.

15 Mr. Pratte.

16 MR. PRATTE: Chief Justice, I'm
17 not sure that we had finalized our position, but
18 in any event, Chief Justice, my view is that
19 maybe that's premature. Mr. Galati should wait
20 to see what independent counsel does. Our
21 general goal, as you know, is to cover all the
22 issues as best we humanly can, and if there's
23 really something very significant that he needs
24 to do, then maybe he can renew his application at
25 that time as opposed to deciding this now in a

1 bit of a vacuum.

2 THE CHAIR: Does that make sense
3 to you, Mr. Galati?

4 MR. GALATI: It does and it
5 doesn't. That would mean that I'd have to do my
6 preparation on the fly. If I had the right to
7 cross-examine, I'd do a full prep and delete
8 anything I didn't need to cover. To do it the
9 other way puts me at a disadvantage.

10 THE CHAIR: All right. Ms.
11 Block, any submissions you wish to make on this
12 issue?

13 MS. BLOCK: I had understood your
14 ruling that you had indicated which witnesses
15 Mr. Galati could cross-examine, that he had
16 limited standing, he's not here on everything or
17 for all purposes, but you were balancing an
18 issue, and so I would oppose it, but it's
19 obviously your order, so I hope it stands.

20 THE CHAIR: I guess that -- I
21 should invite -- if there are any further
22 submissions on this, you should make them now.
23 One thing that should be made very clear is that
24 when we made the order regarding which witnesses
25 could be cross-examined by Mr. Galati, we had not

1 at that point seen the evidence from
2 Mr. Sinclair. That came after. And now having
3 seen that evidence, it's -- speaking only for
4 myself, there is an issue of whether or not
5 Mr. Galati should be cross-examining Mr. Sinclair
6 and should be given leave to do so. So if you
7 have any further submissions to make, either one
8 of you -- if you just hang on a moment. There is
9 -- in terms of timing, when was it you were
10 thinking that Mr. Sinclair's evidence would be
11 led and what kind of gap might there be between
12 your point, Mr. Pratte, having an opportunity to
13 consider whether there is any further questions
14 to ask and Mr. Galati's asking those questions
15 and renewing his application? In other words, if
16 the timing were such that you anticipated
17 finishing with Mr. Sinclair at the end of one
18 day, one could then see there would be adequate
19 time to renew an application and prepare any
20 further -- if any further questions were
21 warranted, it could continue the next day.

22 MR. PRATTE: Well, yes, I would
23 have thought just immediately, but Mr. Sinclair
24 is not going to be a long witness. Mr. Galati
25 has his -- basically knows what the issues are

1 going to be, and if he wants to tell us what --
2 the things he's interested in, we could tell him
3 what we intend to cover. So to have to decide
4 after an examination whether you have any
5 questions, in my respectful submission, is not a
6 huge hardship. So in my respectful submission,
7 it's not a huge hardship for him to wait to see
8 what we do. We'll not -- we can tell him
9 generally the areas we want to cover. He can
10 tell us what areas he thinks we should cover, and
11 if there's something left, there might be -- I
12 can't imagine it will be two hours. It might be
13 15 minutes unless we're really not doing our jobs
14 here.

15 (Off the Record Momentarily)

16 THE CHAIR: Are there any further
17 submissions to be made? I take not on this
18 issue. We're all agreed that Mr. Galati should
19 have the right to cross-examine Mr. Sinclair with
20 respect to any matters involving allegation 1.
21 We also assumed from the representations you've
22 made, Mr. Galati, that this is the only witness
23 in respect of whom you will be seeking a further
24 right of cross-examination. Is it so?

25 MR. GALATI: No, there is also

1 Mr. William Gange, but he's scheduled for next
2 week. He also is giving evidence on allegation
3 number 1. Those are the two witnesses that I was
4 seeking. Oh, I'm sorry. There is also
5 Mr. William Gange, and the third witness would be
6 Mr. Justice Joyal because he speaks to the
7 credibility of my client's sincerely held belief
8 of why he came out with the reporting in 2010
9 following his police lawsuit. It goes to
10 Mr. Justice Joyal's testimony. Maybe the
11 committee hasn't -- hasn't seen all the evidence
12 or disclosure yet, but maybe I should make my
13 pitch at that juncture next week.

14 Those are the three witnesses
15 that I was seeking to -- and that's not
16 suggesting it's going to be lengthy
17 cross-examination.

18 THE CHAIR: Thank you, Mr.
19 Galati. Mr. Pratte, you were going to say
20 something?

21 MR. PRATTE: On the Justice
22 Joyal, as the roadmap indicated, we haven't
23 decided whether to call him or not. We put him
24 there and still don't know. At least in respect
25 of Justice Joyal, I would say the application is

1 premature at this stage.

2 THE CHAIR: Okay, counsel.
3 Anything that you wish to add, Ms. Block, on this
4 point?

5 MS. BLOCK: Yes, thank you.
6 Mr. Gange has been called about the photos being
7 put on the internet. That's not count 1.

8 THE CHAIR: Mr. Galati?

9 MR. GALATI: Very -- very
10 briefly. The reason why I'm seeking to
11 cross-examine Mr. Gange is that in reviewing the
12 entries of Associate Chief Justice's diary,
13 Associate Chief Justice Douglas had constant and
14 lengthy conversations and meetings with respect
15 to the settlement between Mr. King and
16 Mr. Chapman that's been put into issue vis-à-vis
17 my client's credibility. So that goes right to
18 the core of allegation number 1, and that's why
19 I'm seeking to examine him on that restricted
20 basis.

21 THE CHAIR: Well, we're all of
22 the view that it's premature to deal with the
23 issue of cross-examination both of Mr. Gange and
24 Chief Justice Joyal and that those issues should
25 be left for a later time.

1 Mr. Pratte had earlier invited
2 you to raise with him any issues and areas you
3 wanted him to explore as independent counsel, and
4 perhaps this is an issue that could be resolved
5 by you working with independent counsel and Ms.
6 Block to sort this out in a different way. So
7 we'll leave those two applications then for now.

8 So that takes us, then, to the
9 next issue, which is the agreed statement that
10 you have. I have four here, and not in any
11 particular order, but the second one I have on my
12 list is the agreed statement that you wanted to
13 submit concerning certain photographs on the
14 internet. Ms. Crain.

15 MS. CRAIN: Yes, this simply is
16 an agreed statement as between independent
17 counsel and counsel for Justice Douglas about
18 which photos were available on the internet from
19 September 2011 onwards. And the way we've
20 addressed it in this statement is the photos have
21 not been -- there are no descriptions of the
22 photos, we have not attached the photos, but we
23 do refer to them by file name, and we expect to
24 be filing at some point shortly the photos
25 themselves with the file name listed on top so

1 that the committee will be available to have this
2 document in front of it and cross-reference and
3 see which photos were on the internet in the last
4 year.

5 THE CHAIR: Okay. There is two
6 issues here. One is whether or not all the
7 photos we have are then referenced as being on
8 the internet. That's one issue. The other
9 question is whether there is anything on the
10 internet that is a photo that we have not already
11 seen, whether there are other photos on the
12 internet besides those that have been provided
13 and disclosed to us.

14 MS. CRAIN: I don't believe there
15 are any new photos. It's just a question of --
16 of the photos, which ones were still available on
17 the internet as of last fall and carried through
18 to present.

19 THE CHAIR: Okay.

20 MS. CRAIN: And, Madam Chair,
21 just to clarify, the reason we crafted it this
22 way, by not putting descriptions of photos in
23 this document or by attaching photos, was at the
24 request of counsel for Justice Douglas so that
25 this would be clean of those details, so to

1 speak, but it does mean that there would be
2 cross-referencing required on the committee's
3 part. But our intention in doing it that way was
4 so that this could be made public because there
5 is no descriptions of photos or photos attached,
6 and I understand counsel for Justice Douglas is
7 still not comfortable having this filed as a
8 public exhibit, but that's something that, I take
9 it, you'll ask for submissions on from her.

10 THE CHAIR: Can I ask the obvious
11 question? There have been certain photos that
12 have been disclosed to the committee and will you
13 be at some stage indicating how many of those are
14 presently on the net and how many are not?

15 MS. CRAIN: And that is what this
16 document will show. So this document will detail
17 which of the photos were available from September
18 onwards with file names.

19 THE CHAIR: I understand that,
20 but let's assume there were -- I'm picking a
21 number -- ten photos, and that shows there's
22 eight on the net. Then you would say to the
23 inquiry committee, there were ten and you had ten
24 disclosed, and of those ten, eight remain on the
25 net, and here is the numbers. You can check

1 which ones if you wish to do so. So I'm just
2 asking about are you going to be making a
3 submission on numbers that we had disclosed to us
4 and how many of those remain on the net, or do we
5 have to go and check each one out according to
6 your list?

7 MS. CRAIN: Maybe I'll approach
8 it this way: We have imperfect information about
9 what has been on the internet over the years.
10 The only thing that we can tell you today is that
11 when we were retained, we had searches carried
12 out to ascertain what was available then.

13 I expect that you will hear from
14 Mr. Chapman and from others what they found on
15 the internet in 2003 and at different points in
16 time. This document does not address that. All
17 this attempts to do is to capture what was
18 available from September onwards. So it's a
19 small piece of evidence, but it goes to count 3.

20 THE CHAIR: All right. Well, I
21 think we all agree that this would be useful to
22 have, and if we feel that we need any further
23 information to clarify numbers and what this
24 translates to, we'll ask, then. Thank you so
25 much, Ms. Crain.

1 MS. CRAIN: Thank you.

2 THE CHAIR: So that will be
3 marked as Exhibit 5. Are we up to that? And is
4 there any suggestion that this has to be kept
5 confidential? You alluded to that.

6 MS. REYNOLDS: Chief Justice,
7 with the description as you described it in the
8 current document, we have no objection to it
9 being filed publicly as long as it remains with
10 the descriptions of the names and no other
11 documents are attached.

12 THE CHAIR: Thank you, Ms.
13 Reynolds. So that will be marked, then, as
14 Exhibit 5.

15 EXHIBIT 5:
16 AGREED STATEMENT BETWEEN INDEPENDENT
17 COUNSEL AND COUNSEL FOR JUSTICE DOUGLAS
18 ABOUT WHICH PHOTOS WERE AVAILABLE ON THE
19 INTERNET FROM SEPTEMBER 2011 ONWARDS

20 THE CHAIR: Counsel, that then
21 takes us to the next issue on my list, which is
22 the question of the chronology of the events.
23 And as I understand it, there has been agreement
24 reached in terms of a general chronology as
25 between independent counsel and counsel for the

1 judge, and Mr. Galati still has some concerns,
2 however, with respect to the chronology. So
3 perhaps you just might let us know where we
4 are -- where you are on this, and if the only
5 issue is Mr. Galati's concerns, I think this --
6 it would be useful to hear them at this time.

7 MS. CRAIN: Well, I can tell you
8 that there has been a lot of effort put into this
9 chronology and there were e-mails flying as late
10 as midnight last night and passed, and we had
11 hoped that we would be able to come to you with a
12 document, but there are still some issues that
13 we're working through with Mr. Galati, and our
14 hope is that we can continue to work through
15 those and have something ready for tomorrow
16 morning.

17 THE CHAIR: Well, that would be
18 -- that's excellent. If that's the case, we
19 don't want to press you. We certainly don't need
20 it today, so why don't we simply leave that until
21 tomorrow and you can let us know if it remains an
22 issue at that time?

23 MS. CRAIN: Thank you.

24 THE CHAIR: Then the last thing I
25 have on my list, subject to any other items you

1 wish to add, is the question of the notes of
2 Dr. Sellick, the psychologist. Have I got the
3 name right? And I realize that there is an issue
4 with respect to his report and the underlying
5 notes, and so the underlying notes or records are
6 what's in issue, and if you could let us know
7 what it is that you'd want advice on and a
8 decision on we'd appreciate it.

9 MS. BLOCK: We would ask for that
10 until tomorrow. We're going to try and get some
11 instructions and make a proposal to my friend and
12 perhaps we won't have to trouble you.

13 THE CHAIR: Good luck. That's
14 excellent. Are there any other procedural issues
15 you wish to raise at this time?

16 MS. CRAIN: Well, I almost hate
17 to bring it up because things are going so well,
18 but there is the Agreed Evidence of Selected
19 Witnesses documents.

20 THE CHAIR: The -- so that's the
21 agreed -- what are you calling that, the agreed
22 or selected evidence or --

23 MS. CRAIN: Well, we used to call
24 it an Agreed Statement of Facts. Now we called
25 it the Agreed Evidence of Selected Witnesses.

1 THE CHAIR: All right. And where
2 does that stand in terms of the various witnesses
3 and whether or not you want to file that, and I
4 assume it's for the purpose of having that
5 introduced as evidence for certain individuals
6 who are not going to be called to give oral
7 evidence. And so the first question that we
8 would have is whether or not the people who are
9 identified in terms of what their evidence is
10 have adopted those statements that you have
11 included in the Agreed Evidence of Selected
12 Witnesses?

13 MS. CRAIN: Yeah, and the answer
14 to that is with a few exceptions, no. What this
15 was intended to be -- as it currently stands
16 there are 13 individuals whose information is
17 contained in this document. What we have tried
18 to do as counsel is streamline the oral portion
19 of this hearing by committing those that we think
20 didn't need to be called orally to paper with the
21 understanding that, of course, the committee may
22 have a different view and may look at something
23 like this and say thank you, but we would like to
24 hear from X, Y, and Z, in which case we will call
25 them. But what this represents is our effort to

1 streamline the hearing.

2 There are 13 individuals whose
3 information is contained in this document. We
4 are very hopeful that we can add one more to that
5 shortly, and that is Mr. Cotler who was then the
6 Minister of Justice. We just weren't able to get
7 that finalized on Friday.

8 The reason we changed the name
9 and we called it now the Agreed Evidence of
10 Selected Witnesses is that initially our
11 intention was not to have these filed as sworn
12 affidavits or anything but to simply have an
13 agreement before you to say, you can take it, but
14 as between counsel, we are content that this is
15 the factual background and nothing -- nothing
16 more is going to be gained by actually hearing
17 from the witnesses. Counsel are satisfied that
18 this is a representation of the information they
19 could give to this committee.

20 We have interviewed all of these
21 individuals, and I believe Ms. Block has as well,
22 and there has been very significant back and
23 forth in terms of the language that's in here, so
24 it's been subject to a lot of discussion and
25 scrutiny by counsel.

1 Justice MacInnes and Justice
2 Mercier have actually signed off on their
3 portions of it. They wanted that involvement and
4 we welcomed it. The others have not actually --
5 you know, we've not asked them to sign off on it
6 or anything. It's a document created by counsel
7 as we've said on the footnote on the first page.

8 THE CHAIR: What is your
9 proposal? What is it that you're proposing then?
10 I mean, what you seem to be saying is the only
11 people who have signed off on what the evidence
12 is are Justices MacInnes and Mercier, correct?

13 MS. CRAIN: Yeah. We are
14 proposing that the committee simply take this as
15 an Agreed Statement of Facts. This is done in
16 Ontario as a background document which we put to
17 the Court and say this is the background that we
18 have agreed to and you can accept as true.
19 Again, we're in your hands.

20 We're trying to streamline this
21 to make it -- to get through this hearing. If
22 you're telling us that you're not happy with this
23 format and you'd like it to be more of an
24 affidavit format where witnesses sign off on it,
25 we're in your hands; we will do that. But

1 certainly as between counsel, there has been a
2 lot of effort to commit these -- these statements
3 to writing, and we are satisfied that this is --
4 we're comfortable putting this before the
5 committee.

6 THE CHAIR: Ms. Block.

7 MS. BLOCK: As I understand the
8 purpose of the document, my friends have
9 interviewed all these people, provided us with
10 statements, we've had the opportunity to talk
11 through those statements with people. There have
12 been some changes made that were reviewed with
13 all these people, and you'll see when you read
14 it, there are internal inconsistencies because
15 we're talking about people remembering things
16 from 2003 or 2005 without any notes. People who
17 had notes shredded the notes. Particularly the
18 JAC process, you don't keep anything.

19 So different people remember
20 different things. This is what they remember.
21 So that's what we're providing you with after
22 we've had a very fair opportunity to -- on each
23 side to talk with these witnesses, and this is
24 what we say they would say if they were called.
25 So instead of calling them, here it is.

1 So that's why we were hopeful
2 that it would -- I mean, if we have to call all
3 these people, we got to add another -- I don't
4 even want to speculate. But that was the purpose
5 of it, and recognizing that people do have
6 different memories from, you know, past events
7 where they don't have specific documents to go
8 and refresh their memory with, this is what they
9 believe they remember, and I think we're happy
10 with that.

11 THE CHAIR: The problem is that
12 they've not adopted it, so, you know, ordinarily
13 you have an Agreed Statement of Facts and you're
14 not purporting necessarily to say what somebody
15 else thought. And I guess the thing that's
16 troubling me, speaking only for myself, is that
17 apart from 2 people of the 13, 11 of them have
18 not signed off that your collective efforts to
19 produce what it is they said is what they
20 remember.

21 And I am thinking -- and Ms.
22 Crain having said there was a significant back
23 and forth, well, is this what they remember or is
24 it what you decided they remember by
25 characterizing it a certain way? And you being

1 obvious question is why would the witnesses not
2 all be asked to sign off that this is an accurate
3 reflection of what their testimony would be. I
4 should be asking Mr. Pratte that, not you, Ms.
5 Block.

6 MS. BLOCK: It really was a
7 timing thing. They didn't officially sign off,
8 but we did -- we did go through this process with
9 all of them. So, I mean, if you need it
10 officially signed off, it will take some time to
11 go back to the witnesses and have them sign. I
12 think some of them, like Mr. Lawrencel (ph) did
13 provide his notes, and we built them in. And
14 Mr. Fineblit all but one last issue, which I
15 think we're comfortable that's what he told us,
16 we've come back to him on one particular point,
17 but we could do that.

18 So, you know, it's -- really,
19 it's just been a question of timing. We had a
20 lot of people to deal with and sort out. So I
21 defer to Ms. Crain, if she thinks the process is
22 anything different than what I've described, but
23 that's what we've been trying to achieve as
24 opposed to line them all up to say, well, this
25 is -- this is the best I can do for you from this

1 many years ago without any notes. This is how I
2 remember it. We've just tried to put that on
3 paper for you.

4 THE CHAIR: Okay. Ms. Crain?

5 MS. CRAIN: Just to be clear,
6 other than Justice MacInnes and Justice Mercier,
7 I have not provided these 13 individuals with
8 this form of the information that we are
9 attributing to them. We interviewed people, we
10 did memos to file on the information they gave
11 us. We never sent those interview notes to the
12 individuals and asked them to sign off on them.
13 These were our own investigative notes that we've
14 disclosed to Ms. Block in the process.

15 Some of these witnesses have
16 received those notes just because we were trying
17 to really clarify things and pin them down, but
18 consistently they have all received that
19 information. I just wanted to be clear on that,
20 although I think certainly all of the JDC
21 witnesses have received those notes.

22 But, again, we're in the
23 committee's hands. We will do whatever you think
24 is most useful with this information.

25 HON. JUSTICE GREEN: Ms. Crain,

1 the concern I have -- the concern I have is that
2 this purports to be an Agreed Statement of
3 Evidence as opposed to be an Agreed Statement of
4 Facts. In a civil case, it's frequent, of
5 course, that counsel will stipulate that certain
6 facts are agreed and from which then the judge
7 can make certain finding. But this is not this.
8 This is -- you're stipulating what individuals
9 will say from which arguments may be addressed to
10 us, we should draw certain inferences and certain
11 conclusions.

12 Well, I don't want to be in the
13 situation where -- for example, if former
14 Minister Cotler commits to writing something and
15 then we say as part of our ruling that, you know,
16 well, Mr. Cotler knew this or he didn't know
17 that, if, in fact, he's not in agreement with it.
18 I wouldn't want after the fact for him to be
19 saying, well, that's not what I said.

20 So, to me, it seems to me that
21 there's something more here than just simply an
22 Agreed Statement of Facts that we need to pin
23 down.

24 THE CHAIR: The bottom line is
25 this simple. If this is agreed evidence of

1 selected witnesses, then the witnesses are going
2 to have to say, I agreed that that is, in fact,
3 my evidence, and if they've not been provided
4 with a copy of it, I'm not sure how they would
5 possibly be able to do that.

6 MS. CRAIN: Well, we're happy
7 to -- we're in your hands. We're happy to have
8 them sign it, we're happy to call which of -- you
9 know, whomever of these witnesses that you would
10 like to hear from orally. As I said, we always
11 expected that, you know, this isn't the end
12 product. This is starting the conversation with
13 the committee and you will tell us what you
14 require.

15 So we can start by having these
16 individuals sign off on these pieces of
17 information, and we'll also obviously take
18 direction from you if you'd like us to call some
19 of them on top of that once you've had a chance
20 to digest some of this information.

21 THE CHAIR: It may be that we
22 will wish to hear from one or more of the
23 individuals, but this starting point at this
24 stage could be and should be to give them a copy
25 of what it is that you have agreed reflects their

1 evidence and see whether they agree.

2 I guess you'll find out when you
3 submit the copies to them whether any further
4 refinements are required to the Agreed Evidence
5 of Selected Witnesses.

6 So if you could do that, I think
7 it would be very useful. At least then we have a
8 starting point.

9 MS. CRAIN: Yeah, no, I think
10 we'll do that. And I think to your point, Chief
11 Justice, I mean, this is something that really
12 did evolve. I mean, it started with the concept
13 of an Agreed Statement of Facts, but, frankly,
14 one of the tricky issues, as Ms. Block alluded
15 to, is the members of the JAC remembered things
16 differently.

17 So at the end of the day, you
18 will have to make findings and struggle with
19 these different recollections of event, which is
20 why we couldn't call it an Agreed Statement of
21 Facts because you still need to find those facts
22 based on this -- on this evidence.

23 So we will do that. We will go
24 back, we will get individuals to sign off on
25 this. Hopefully we won't have to revise any of

1 it, and hopefully we can do it quickly.

2 Perhaps we should withdraw it
3 right now then and we will deal with it quickly.

4 THE CHAIR: I don't believe that
5 we've received the copies to be marked in any
6 event, have we? We have what you've provided to
7 us, but we've already got a copy of that and have
8 read it, but you've not introduced anything for
9 today so I think we're fine.

10 MS. CRAIN: Good.

11 THE CHAIR: Sorry, Mr. Galati. I
12 didn't see that you were attempting to make
13 submissions on this issue.

14 MR. GALATI: My life story, I'm
15 only 5 foot 3. I'm easy to miss. Very briefly.

16 Two of the witnesses concern
17 allegation 1; Mr. Fineblit and Mr. Lambkin. I
18 was not in the loop to these discussions when my
19 friend -- when my friend sent me a copy of the
20 PDF without the attachments, and I apologize to
21 her for it. I think my response -- my response
22 was a strenuous objection.

23 The -- what they are, in my
24 respectful view -- I'm speaking to Mr. Fineblit
25 and Mr. Lambkin because that's -- that's the only

1 two witnesses that concern Mr. Chapman.

2 Mr. Lambkin's evidence speaks
3 directly to the credibility of Mr. Chapman with
4 respect to the allegation --

5 THE CHAIR: I'm sorry,
6 Mr. Lambkin's evidence?

7 MR. GALATI: Speaks directly to
8 the credibility that will be attacked by my
9 friend Ms. Block of my client Mr. Chapman, and
10 Mr. Fineblit, half of his evidence goes in the
11 same direction. He actually sat down and took my
12 client's complaint.

13 The problem I see with these --
14 with these statements as they are now is that
15 they're not statements. They're simply a
16 distilled perception of independent counsel's
17 view of what the evidence was during their
18 interviews of them, and I've said respectfully to
19 my friends before, I understand that independent
20 counsel was appointed, but they're not anointed.
21 And so -- and so I would like to be kept in the
22 loop on any discussions about those two witnesses
23 because they speak directly to my client's issues
24 in allegation number 1. I've got an electronic
25 version. I don't have the attachments of

1 Mr. Fineblit.

2 And two or three of the issues
3 we're having with the chronology relates to those
4 two witnesses, to Mr. Fineblit's testimony and
5 documents pertaining to his testimony.

6 But I don't think the chronology
7 should be a problem, but I'm raising that I ask
8 the committee perhaps that -- request that my
9 friends keep me in the loop on those two
10 statements it may -- those statements beg for
11 questions of clarification.

12 THE CHAIR: Well, those two
13 sometimes -- as I understand it, that when you
14 say keep me in the loop, what is now going to
15 happen is that independent counsel is going to
16 provide those statements as they currently exist
17 to the witnesses to ask them to confirm that that
18 is, in fact, their evidence on this issue.

19 If it is not their evidence and
20 further refinements are required, presumably that
21 would take place as between independent counsel
22 and the individual witness. And then at that
23 stage, I'm assuming that those revised statements
24 of their evidence would be provided to Ms. Block,
25 certainly for the judge, and you're saying to you

1 for Fineblit and Lambkin. Is that your position?

2 MR. GALATI: Correct, yes.

3 THE CHAIR: One moment.

4 (Off the Record Momentarily)

5 THE CHAIR: I would like to
6 hear -- or we would like to hear from both
7 independent counsel and Ms. Block as to why
8 Mr. Galati should not be in the loop for the
9 presentation of the agreed evidence of witnesses
10 Fineblit and Lambkin. Is there any concern on
11 that front?

12 MS. CRAIN: We don't have any
13 concerns with that. In fact, I told Mr. Galati
14 that I'm happy to sit down with him prior to
15 circulating those to Mr. Fineblit and Lambkin and
16 taking any suggestions he has, incorporating
17 them, and then putting them to the witness and
18 signing off on them. I'm quite comfortable doing
19 that.

20 THE CHAIR: Ms. Block, any
21 concerns that you have?

22 MS. BLOCK: That he see the
23 documents? No.

24 THE CHAIR: All right. Then
25 thank you. We're all in agreement, then, that

1 with respect to the agreed evidence of witnesses
2 Fineblit and Lambkin, that Mr. Galati will be
3 "kept in the loop" as those are developed. So we
4 look forward -- and we so order. We look forward
5 to receiving, then, the finalized version of the
6 Agreed Evidence of Selected Witnesses, and as I
7 said earlier, we've obviously not prejudged any
8 of this, but we reserve our right to call as
9 witnesses -- or have you call as witnesses, I
10 should say, any of those individuals should we
11 consider that necessary. Thank you.

12 I take it that that then allows
13 you, Ms. Crain, to continue with your examination
14 of Mr. Chapman?

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