9:30? Yes, but did anybody ever go missed and have to self-rep and interview a witness?

Never, never.

So we went on to discuss the challenges that double-booking, particularly in different courthouses in different cities - which did turn out to be the case - can create for the administration of justice. So that's pretty much the extent of it.

MS. HICKEY: Thank you, Ms. Rees. Those are all my questions.

CROSS-EXAMINATION

MR. HOWE: Ms. Rees, if I could start cross-examination, I'm going to be ... it's a habit to stand up. If you'll excuse me.

THE CHAIR: Okay.

MR. HOWE: This cross-examination's going to be done by myself.

THE CHAIR: Okay.

MR. HOWE: In terms of the last point. If you could turn back to page 63.

A. Of?

Q. Of the red exhibit. Sorry, page 137.

THE CHAIR: So we're in Tab B, one- ... page 137?

MR. HOWE: Yes, please.

THE CHAIR: Okay.

MR. HOWE: So Ms. Rees, you just read an utterance by me in terms of double-bookings.

A. Yes.

Q. If you can look at ... I believe you stopped at about paragraph 8 or 9.

A. Yes.

Q. The second part of the sentence ... or I guess it's partway through a sentence on line 10.

A. Yes.

Q. "The same time unless Laura is handling one of those matters."

A. Yes.

Q. Do you see that reference there?

A. Yes.

Q. When you were just providing your direct examination, I don't know ... did I ... did you read that part onto the record?

A. No, I did not.

Q. Okay, and in terms of the double-bookings, or what you were

putting to me as double-bookings in the interview, do you recall if you distinguished dates that were set by me versus dates that were set by Laura in terms of what you determined to be double-bookings?

A. We were attempting on March the 31st interview to obtain some of that information from you, which is why, following that, we looked at a letter where you provided more information because you did explain to us that some of these were all in your calendar but were also dates that Ms. McCarthy was ...

Q. Right.

A. ... expected to appear. But that wasn't clear from your calendar.

Q. Okay. You've indicated that I stated that there were not double-bookings by me after April of 2014. Correct?

A. I think you said that were made after April the 14th, yes.

Q. And you do recognize that I went to trial on May 5th ...

A. Yes.

Q. ... 2014. So you do recognize the dates that appear to have been double-bookings would not have been set by me after April of 2014 because I didn't practise.

A. You practised until June the 2nd, effectively.

Q. Well, but I didn't set dates because I was in trial continuously from May 5th until my suspension. Correct?

A. I don't know whether you set dates or not.

Q. Okay. You're aware that I had continuous days in court at the Supreme Court.

A. Yes.

Q. And in fact, you showed up at one of the dates at the Supreme Court.

A. Yes.

Q. So you're aware that I continuously was in trial from May 5th until the 27th of May.

A. Yes.

Q. So you're aware that you can't set dates for other client matters when you're in court for yourself every day. Correct?

A. I guess so. I'm thinking of the period from April, the ... the signing of the practise agreement until you commenced your trial. I don't know what dates you did or did not set.

Q. Okay, but we're talking about after April. Because if we look at the statement that I made, I indicated I didn't set any dates after April of 2014. Correct?

A. You said that, yes.

Q. Okay. So after April we would have had May 1st, 2nd, 3rd, 4th, then I'm in trial on the 5th. Correct?

A. Yes.

Q. So I had four days to set dates, and that takes out weekends and it takes out dates that I ... that would have been in the first part of May where I actually didn't set any dates. Correct?

A. I guess, yes.

Q. So essentially, the time period with which we're talking about when I indicated to you that I didn't set any dates after April, we're talking about four days minus weekends. Correct? So let me make that question a bit more clear. So you indicated that I stated I definitely didn't set dates after April of 2014. Correct?

A. Can you point me to the transcript so that I can ...

Q. Hold on one second. Before we do that, did you not indicate to the Panel that I stated to you that no dates were set after April 2014?

A. I read from the transcript, yes.

Q. Okay. So you don't need to refer to the transcript to know that that's what you read. Correct?

A. I would prefer to clarify my answer by looking at the transcript.

Q. Okay. We can do that. I believe it's on page 120.

A. Yes.

Q. And if you start with line 1 ... actually, line 2.

A. Yeah. So it says:

> Right. You know, I think that if you look at the dates that were double-booked, there were zero ... there are zero dates that were double-booked after April, that were set after April of 2014. Zero double-booking dates that were set after April 14. I went and looked, actually.

Q. Right. So if you look at the window ...

A. Mm-hmm.

Q. ... for dates that I could have set after April of 2014, we're talking about four days in the start of May.

A. So our concern was that you signed the agreement in April and, it would appear, took no steps to deal with the double-bookings that already existed.

Q. Okay. So when we signed an agreement in April, your expectation was despite the fact that I have a trial starting at the beginning of May for sexual assault, that there would have been steps

taken for me to address double-bookings that already existed.

A. Yes, that would be in the client's interests.

Q. Okay, and this was set in mid May ... or mid April. Correct? I think it was April 17th.

A. Yes.

Q. So essentially, I have two weeks to address what you determine to be massive double-bookings.

A. As I indicated in our interview, I felt that your staff could take some steps to ...

Q. Okay.

A. ... notify the counsel, the Crown, that there were conflicts and to begin to address some of those, yes.

Q. And have you reviewed the electronic information on the computer at my office to determine that no steps were taken?

A. No.

Q. And did you review the client files to determine that no steps were taken?

A. No, I went by the experience of the receiver team.

Q. Okay. So when you say no steps were taken, you actually have zero evidence of this firsthand, that there were no steps taken, because you didn't do the investigation.

THE CHAIR: If I could intervene. I don't recall the witness saying that no steps were taken.

MR. HOWE: Okay. I can put that to the witness. Thank you, Mr. Chairperson.

Is it your view that there were no steps that were taken to address the agreement, the practise agreement, that was signed in April of 2014?

A. It's my view that based on the reports of the receiver team that, at best, insufficient steps were taken to address the vast number of conflicts that appear to be in place in June ...

Q. Okay.

A. ... and later.

Q. And you acknowledge that there's two weeks to address those, those double-bookings that you perceive. Correct?

A. No, I don't.

Q. Okay. So April 17th is when the practise agreement was signed. Correct?

A. Yes.

Q. And I went to trial May 5th?

A. Yes.

Q. So your view is that the staff should have taken the

initiative, from the time that I was in trial to the time that I was suspended, to address the double-bookings.

A. Yes, and the committee's expectation was that from the date of signing the agreement you would conduct yourself in strict accordance with the agreement.

Q. Okay. If we could take a look at the calendar. The double-booking calendar. Volume 3 green book, and I believe it's volume 117.

So first of all, who created this double-booking calendar?

A. Jennifer Pink, our acting director ... Officer of Complaints & Investigations.

Q. Okay. So you would agree that there were multiple drafts of this double-booking calendar.

A. Yes.

Q. And in subsequent drafts Ms. McCarthy had indicated to the Society which matters were hers as opposed to mine.

MR. MURRAY: Before you ask that question, you realize that if you ask that question you're creating the opportunity for Ms. McCarthy to become a witness.

MR. HOWE: I do. I don't ...

MR. MURRAY: Or perhaps the necessity for her to become a

witness.

MR. HOWE: I don't believe this to be contentious. I think Ms. Rees is going to agree to this, but I certainly take your point.

MR. MURRAY: What if she doesn't? You've lost counsel.

MR. HOWE: I can modify the question.

In terms of what I provided to you that indicated some of the dates that you perceived as double-bookings were actually Ms. McCarthy's matters. Correct?

A. Yes.

Q. And I actually highlighted for you - my staff did - matters that you thought were mine, and you thought they were double-bookings. Correct?

A. Yes.

Q. But they were actually Ms. McCarthy's matters in my agenda. Correct?

A. That's what you said to us, yes.

Q. And if I indicated to you that this double-booking calendar was actually an old version that was modified by me and by the Bar Society in terms of modifying it so that Ms. McCarthy's dates are identified, and subtracted from the double-booking calendar, would you agree with that?

A. My understanding was this was the most recent copy.

Q. Okay. If I put to you that this isn't the most recent copy and that many of these dates ... I don't know if it's safe to say many, but several, at least, of these dates are Ms. McCarthy's and not mine, would you be able to disagree with that?

A. It's certainly possible.

Q. Okay, and if I put to you that other of these dates were actually set after I was suspended by lawyers that clearly weren't me, would you agree with that?

A. Our calendar was based on the evidence that we have.

Q. Okay, and in terms of when you received the information, you continued to receive information about my calendar after I was suspended. Correct?

A. Yes.

Q. And so after I was suspended, that leaves an opportunity for other lawyers to set dates on these matters that I didn't set. Correct?

A. I don't know that.

Q. I could break that into two separate questions. So you're not of the view that I continued to practise in the sense that I didn't go to court and set dates after June 1st of 2014 ... between June

1st, 2014, and September 2015.

A. I have no reason to believe that, no.

Q. Okay. So if I put to you that many of the dates that you perceived as double-bookings that were my fault were actually set after I was suspended by other lawyers, would you disagree with that?

A. You're saying that. As I say, this is based on the evidence that we had before us. So if you provided evidence to show or demonstrate that, in fact, some dates had been set, then we would have incorporated that into this chart.

Q. Okay. So two points on that. First of all, you didn't answer the question, because my question was, would you disagree that there were dates that were set by other lawyers that you perceived as double-bookings that were my fault? Would you disagree with that?

A. Would I disagree ... would I disagree with ...

Q. With the statement that many of the dates in the double-booking calendar, as you refer to it, weren't set by me and they were, in fact, set after I stopped practising?

A. All I can say is it's ... it's certainly possible that that was the case.

Q. Okay. So if it's possible that that's the case, do you think it unfair to put a double-booking calendar in front of the Panel

and suggest that I'm to blame for dates that potentially were set by other lawyers?

A. We rely on the evidence before us, and there was clearly evidence that you did double-book.

Q. Okay.

A. And that is established by all of the evidence that's contained in here. There were certainly some dates where you were able to provide a reasonable explanation as to whether or not there was a double-booking, and our attempt was to indicate where that was the case. We understand that you say that there were matters booked after June. The fact is, though, that the receiver team went in, in June the 2nd or 3rd, and was dealing with the calendar as at that week, which showed what's indicated here.

Q. Okay. To be clear, this calendar wasn't derived solely from what the receivers had that week. Correct?

A. That's correct.

Q. So if we're talking about this calendar, that's a separate issue from what the receivers had of the date that I was suspended. Correct? So my question is - and I don't think I got an answer to this question - if we put this calendar in front of the Panel ... and what we're suggesting is this is Lyle's double-bookings. First,

we agree on that. That's your position, right? These are my double-bookings.

A. Yes.

Q. Do you think it unfair if some of these dates weren't set by me and weren't set while I was practising?

THE CHAIR: Mr. Howe.

MS. HICKEY: Yeah.

THE CHAIR: I don't think that asking her to comment on the fairness or unfairness of a document is really an appropriate question. You certainly can ask her, you know, is this accurate, is it based on all the right information, did you take into account information I gave you. Commenting on fairness or unfairness, I really think it's irrelevant.

MR. HOWE: If I could respond to that.

THE CHAIR: Certainly.

MR. HOWE: This witness is being cross-examined about information that she put in front of the Panel. I'm of the view that she put misleading information in front of the Panel and presented it as such, and I think ...

THE CHAIR: So what I would suggest to you, if that's the case, that if you have a specific example or nonspecific example ...

MR. HOWE: Okay.

THE CHAIR: ... of where she ... of where there are errors in this document that Ms. Rees has knowledge of ... and that you can ask her, Did you put those wrong entries into this document? It's up to us to determine the fairness or unfairness of those things. It's really not up for her to speak to ... she's here as a witness. She's to speak to facts. I mean, you can certainly ask her about facts that you believe would support your contention about fairness.

MS. HICKEY: Mr. Chair, if I may, Ms. Rees was ...

MR. HOWE: If I could respond to that first, Mr. Chairperson.

MS. HICKEY: If I may, Mr. Howe.

MR. HOWE: I think that's (inaudible - talkover)

THE CHAIR: I'm going to ask Ms. Hickey to have comment.

MS. HICKEY: I simply wanted to clarify. Ms. Rees was not the creator of his document. So I think questions about what went in and did not go into this document are not properly for Ms. Rees.

THE CHAIR: Okay. Well, okay, I think that's fair as well, but if Ms. Rees is aware of the creation of the document and what went into it, I think, certainly, she can speak to it to a certain extent, but certainly, if she has that deficit, I would ... I think the witness can tell us that.

MS. HICKEY: Thank you.

THE CHAIR: So that's a fair point.

MR. HOWE: In fairness, Mr. Chairperson, I will address that, but I'll address what I think to be examples of errors that Ms. Rees would have been aware of.

THE CHAIR: That's fine. You can certainly do that.

MR. HOWE: But I think it's a separate point to impeach this witness on what she's putting in front of the Panel, and that's exactly what I'm trying to do.

THE CHAIR: Well, you can do that by errors.

MR. HOWE: Okay.

THE CHAIR: But what I'm saying is, by asking, Do you think this is fair, that really is not relevant.

MR. HOWE: That's fine. Okay. I'll ...

MS. HICKEY: And I'm clarifying that this witness is not putting this document in front of the Panel because she is not the creator of this document.

THE CHAIR: That's a fair point.

MR. HOWE: In fairness, she's putting it in front of the Panel in the sense that she's giving evidence on how it was created, on what its intention is in the exhibit book, and on what she thinks

is the relevance of this document. So whether she created it is one thing. Whether she's giving evidence about the significance of it is another, and that's exactly what I'm addressing.

THE CHAIR: Well, why don't you just stick your questions to asking ...

MR. HOWE: Sure.

THE CHAIR: ... about evidence.

MR. HOWE: Thank you. In terms of an example of information in this double-booking schedule that you know to be inaccurate, I'll point you first to [redacted]...

A. I don't know any to be inaccurate.

Q. Okay, but I'll point you to [redacted] and I'll ask you some question about that example. So are you turned to the double-booking calendar?

A. Yes.

Q. Which is Tab 117. Okay. So the first matter is [redacted]. Okay?

THE CHAIR: So where are we?

MR. MURRAY: What page are we at?

MR. HOWE: This is page 117. Tab 117. I'm sorry.

MR. MURRAY: What page are we at?

MR. HOWE: Page 1432.

MR. MURRAY: Thank you.

THE CHAIR: 1432?

MR. HOWE: Okay. We can see that the [redacted] matter is the second piece of information in this double-booking calendar.

A. Yes.

Q. And in the notes it says, "A conflict, according to Mr. Howe's calendar, but the matter is not listed in the court docket." Correct?

A. That's what it says.

Q. If I put to you that [redacted] is Ms. McCarthy's matter and that I stated that to you in a letter when I responded to the allegation of double-bookings, would you agree with that?

A. It's certainly possible.

Q. Okay.

A. I don't have that letter, no.

Q. So when you say that you don't have any information that leads you to believe that this double-booking calendar is inaccurate ... you stated that. Correct?

A. I don't remember saying that.

MS. HICKEY: I don't recall the witness saying that.

MR. HOWE: I think she can answer that, Ms. Hickey.

MS. HICKEY: Well, I think it's important ...

A. I don't remember saying that.

MR. HOWE: Ms. Hickey ...

THE CHAIR: It's important that if you are going to preface a question with a restatement of evidence, that you restate the evidence accurately.

MR. HOWE: No problem.

THE CHAIR: And then Ms. Hickey is suggesting that you have stated it inaccurately.

MR. HOWE: Okay. Let me ask you this question. Is it your position that you're not aware of any information in the double-booking calendar that's inaccurate?

A. I believe I quite clearly said when I described this document that it was our best effort to compile quite a lot of information and to provide to the best of our ability your responses to that information on the right-hand column.

Q. That's not what I asked, though.

A. Is it possible there are inaccuracies? Absolutely.

Q. And one of those inaccuracies is that [redacted] was never my client. He was actually retained by Ms. McCarthy. He retained

Ms. McCarthy. You would agree with that, that that's possible.

A. It's certainly possible. That was not indicated in your calendar.

Q. Okay. If we look at [redacted] which is on the next page. Okay. Sorry. I'm going to turn you to the third page under June 12th, 2014. We see a green submission that says, "[redacted] Havelick." Do you see that? Trial.

A. Yes.

Q. If we look ...

MR. MURRAY: That's page 1434?

MR. HOWE: Yes, please. First, if I put to you that [redacted] is also Ms. McCarthy's client, that I've never represented [redacted] ... but you're suggesting that that's a double-booking of mine.

A. No, actually, in the column that explains this, it says, "Information from John Rafferty confirms that this was Laura McCarthy's file."

Q. Why would that be in a double-booking calendar for me if it's Ms. McCarthy's file?

A. I don't consider this a double-booking calendar.

Q. Okay.

A. I've never referred to it as that.

Q. Okay.

A. What this is, is a reflection of the information in your calendar, as well as the court dockets, as well as the information retained by the receiver, as well explanations on the right-hand side of where ... what might appear to be a double-booking was not, in fact, or what it appears to be a double-booking is, in fact, from the best of our knowledge based on the evidence we had.

Q. What significance to the Panel is a date that was set by Ms. McCarthy that ... for a client that I don't represent?

A. I don't know.

THE CHAIR: Well, again, again, it's not for Ms. Rees to speak on what significance this has to the Panel.

MR. HOWE: Well ...

THE CHAIR: Ms. Rees can speak to what the evidence is, and I think she's answered that, that this is a ...

MR. HOWE: All right.

THE CHAIR: ... compilation of material found in a variety of sources. That was clear when she gave her evidence originally.

MR. MURRAY: And clearly, [redacted] trial being in your calendar.

THE CHAIR: Yeah.

MR. HOWE: I'll move on from that. I appreciate that.

So in terms of the dates set after April of 2014. So you ... we've addressed that in the sense that I asked you about the window of opportunity for me to have set dates after April of 2014. Okay? Is it your position that I was misleading when I suggested that I didn't set any dates that were double-bookings after April of 2014?

A. I'm not suggesting that you've misled anybody.

Q. Okay. Are you suggesting that I was inaccurate and that I did set double-booking dates after April of 2014?

A. All I'm doing is presenting the facts.

Q. I asked you whether ... I'll modify the question. Is it your position that I set double-booking dates after April of 2014?

A. It's the position of the Complaints Investigation Committee that you did not make sufficient efforts to address conflicts that existed after you signed the agreement in April.

Q. I understand about sufficient efforts, but the question that I asked is, did I set double-bookings after April of 2014?

A. The fact is double-bookings existed. I don't know when they were set.

Q. Okay, and in terms of insufficient efforts. At any point

did you ask the receivership, We want a copy of the electronic information from Ms. McCarthy's staff computer? Did you ask for that?

A. I don't recall asking for that, no.

Q. So at any point did you ask Ms. McCarthy or myself or my staff, Demonstrate the efforts that you made after April ... or after the practise agreement was made in April of 2014. Did you say, Demonstrate what efforts you have made to avoid double-booking?

A. I would say yes, because we provided you with a complaint under 9 23 based on violation of the practise review. We had a practise agreement. We identified specifically three areas that we felt you had violated, and we gave you an opportunity to respond to those, which you did, in writing.

Q. Okay, and ... all right. That's fine. In terms of the advice that you gave in February of 2014 and then again to a lesser extent.

A. Are we finished with ... with this one?

Q. Yes.

A. Thank you.

Q. So we're going to turn to the advice that you testify that you provided in February 2014.

A. Yes.

Q. The time period between which that advice was given and the start of my trial and then ultimately my suspension would have been about February, March, April, May. Four months.

A. Yes.

Q. Okay. You would agree that after February of 2014 there were zero complaints of conflict of interest.

A. May I refer to my chronology?

Q. Yes.

A. We received a complaint from [redacted] (sp?) on April the 14th of 2015. That was recently dismissed with a letter of advice. I'm trying to recall if there was any allegation of conflict, but I don't believe there was.

Q. Okay. So you can't point to any conflicts of interest since you gave me advice in February of 2014.

A. Not that were the subject of a written complaint, no.

Q. Okay, and you pointed to conflict advice that you provided in February 2014.

A. Yes.

Q. So you're not of the view that I failed to take that advice, because you can't point to any conflicts since February 2014.

Correct?

A. That's correct.

Q. All right. If we talk about double-bookings since 2014. So I understand that there's two issues. One, how the existing conflicts are addressed. Correct? That's one issue.

A. Conflicts of interest or conflicts ...

Q. No, sorry, scheduling conflicts.

A. Scheduling conflicts.

Q. So what ...

A. So were we talking about scheduling conflicts?

Q. No, no. I was talking about conflicts of interest with the first question.

A. Okay.

Q. So that's what your answer was to. Is that correct?

A. Yes.

Q. Okay. In terms of ... now we're talking about scheduling conflicts. In terms of dates that were set by me after February 14th ... February of 2014 you'd agree that you can't point to any dates that I put myself in conflict.

A. I have no idea what you set after February 10th of 2014.

Q. So if I said to you that when you point out advice that

you gave in February of 2014, right?

A. Yes.

Q. You are suggesting that I didn't follow that advice with respect to scheduling conflicts.

A. Yes, I am.

Q. Okay, but you don't know what I did after February 14 in terms of setting dates.

A. I don't know what you did, but I know what scheduling conflicts existed from June on.

Q. And that's why I indicated that there's two separate issues. One, when the dates are set, are you putting yourself in conflict. Two, how you've addressed them. You agree that those are two separate points. Correct? One, when they're set, are you putting yourself in conflict with dates. Two, how do you address them. Those are two separate issues.

A. Okay.

Q. If we deal first with number one, when they're set. You cannot suggest to the Panel that I set any dates after February of 2014 that put myself in conflict.

A. I have no evidence one way or the other. I know that there were conflicts.

Q. So in other words, the answer is, yes, you cannot suggest that to the Panel.

A. I've given you my answer.

Q. Okay. In terms of the second issue. In terms of what was done to address existing conflicts. Okay? Sorry?

A. Yes.

Q. You agree that you've already stated the electronic information from Ms. McCarthy's office was never retrieved by ...

A. I have no information about that, no. I didn't ask for it.

Q. Right. So in terms of the efforts that were made to address existing conflicts, you really don't have any information, electronically, to suggest what was done in that regard either. Is that correct?

A. I have your written response raising these issues where you've had the opportunity, and the onus was on you to respond to those issues.

Q. That's fine. In terms of where the onus lies, that's one issue. Another issue is in terms of what information you have, and that's what I'm asking you about. So in terms of information that you have to suggest that I did not address existing conflicts after

February 2014, you really don't have any information about that, do you?

A. The information I have is what was in the calendar that Mr. Rafferty and his team acquired at the time ... the beginning of the receivership.

Q. So that's one piece of the puzzle. You would agree that another major piece of the puzzle, outside of the calendar, is what efforts were made in terms of sending letters to Crown Attorneys, sending letters to judges, and trying to deal with double-bookings. You would agree that that's an important piece of information to determine what efforts were made. Correct?

A. Yes.

Q. Okay, and you don't have any of that information.

A. I can't say that we don't have any of that information off the top of my head, no.

Q. Can you say that you do, that you do have information that efforts were not made based on the electronic ... or letters that were sent to judges? You really don't have any information other than the calendar. Is that fair?

A. We had the information from the calendar, the court dockets, the experience of the receiver in court, and the information

you were asked to provide us to respond to these issues.

Q. Okay. So is it your position that you made a negative inference based on my submissions, or lack thereof?

A. It's facts. It wasn't for me to decide one way or the other.

Q. Okay. In terms of whether it's for you to decide, you would agree that you played a role in determining that these charges get put in front of the Panel.

A. Wrong.

Q. Okay. You did the investigation.

A. Yes.

Q. You could have resolved it, and I think you stated that in direct examination yesterday, that you have various discretionary powers to resolve matters before it goes to CIC. Correct?

A. Yes.

Q. And you also determined what information is put in front of the CIC. Correct?

A. Yes.

Q. And then you helped determine what information is going to be put in front of the Panel in terms of how you compile your book of exhibits. Correct?

A. That's the role of counsel, to provide us that advice.

Q. Okay. Role of counsel is one thing, but my question is, did you play a role in compiling the information that ended up in front of the Panel?

A. Yes.

Q. So when you say it wasn't your decision to get us here, that's belied by the fact that you played ... you had a discretionary role ... or sorry, let me ask you this first. In terms of your position ... let me make sure I'm clear on this. Is it your position that you didn't make any inferences in terms of finding of guilt with respect to scheduling conflicts?

A. My role is to investigate, to put the information before the Complaints Investigation Committee. I don't draw inferences one way or another. The information was placed before them in a complete way to the best of our ability, given the enormous volume of complaints and evidence that we had, and they made the decision what to do with each of those matters and they referred it to hearing.

Q. Okay. So you don't draw any inferences, is what you just stated. Is that part of what your evidence was?

A. What kind of inferences are you suggesting?

Q. Inferences of guilt versus innocence.

A. That's not my decision to make.

THE CHAIR: Mr. Howe, what ... perhaps you could try to ... what's the relevance even if she did make some inferences? She's explained to you the process, which, of course, is set out quite clear in the Act and the regulations, and I can tell you from my own experience that it is the CIC that makes those decisions, as she's already testified. In any event, what difference does it make if she did or didn't make inferences?

MR. HOWE: I'm attempting to impeach this witness. There's a broad latitude for cross-examination. These questions go directly to the reliability of the evidence that's in front of the Panel. We have several books of exhibits that are put in front of you. At this point the only witness that we have to substantiate anything with regard to those books of exhibits is Ms. Rees.

THE CHAIR: Yeah, I appreciate the broad nature of cross-examination, but questions must go to issues that are relevant. So I want you to explain to me the relevance of her beliefs as to whether you are guilty or not guilty.

MR. HOWE: Credibility of the witness. In terms of her perspective, her perspective influences the manner in which she provides evidence to this Panel. I think that Ms. Rees' perspective

is important so the Panel can understand the manner in which this evidence was collected, the significance of this evidence, and quite frankly, Ms. Rees provided direct examination yesterday and today and essentially her direct examination is to have you understand the case that you have in front of you.

I think that an important piece of the puzzle to the case that you have in front of you is how the person that did the person that did the investigation compiled the information and then testified about its relevance. How they do the evidence is extremely important.

MS. HICKEY: Mr. Chair, if I may.

THE CHAIR: Sorry. Yes, Ms. Hickey.

MS. HICKEY: I disagree completely with Mr. Howe's assertion that Ms. Rees' views on the matters under investigation throughout have relevance at this hearing. Ms. Rees was very clear in explaining her role in the investigative process and explaining the distinction between her role and the role of the CIC, that it is the CIC's decision as to what matters are referred to a hearing. Personal views of anyone involved in an investigative process have no relevance.

THE CHAIR: Ms. ... sorry. I think it is possible that if

a person who is collecting evidence has done so with a particular bias, that that can have relevance. However, I think in this circumstance you have asked the question and she has answered it. She's explained that her role is to gather the evidence. Doesn't appear that she agreed with your suggestion that she had that bias. You, of course, are entitled to ask her questions that go to the facts. That's what we're really interested in, are facts. So I would suggest that you probably exhausted this line of question.

MR. HOWE: I won't go down the line of questioning in terms of her mental state, but what I will go down the line of questioning is in terms of her role. Although she's indicated that her role was to gather evidence, I'm not satisfied that that's her role, and I think that I can point to an exhibit that will demonstrate that.

THE CHAIR: Okay.

MR. HOWE: So is it your position that your role is to just gather evidence?

A. My role is to investigate a complaint thoroughly and to provide some guidance to the Complaints Investigation Committee in terms of the relevant rules, the assessment of evidence, and the options for action and precedent.

Q. Okay. Your role is also to provide guidance and direction

and support to the lawyers. Correct?

A. I don't provide direction. I provide guidance and support.

Q. And you also helped the CIC understand factors that might impact the judgment of a lawyer. Correct?

A. Yes.

Q. Okay.

THE CHAIR: Given the hour, it's probably a good time for a break. Why don't we take 15 minutes?

MR. HOWE: Thank you.

THE CHAIR: So we'll come back at about five to.

(OFF RECORD: 10:37 a.m.)

(ON RECORD: 10:59 a.m.)

MS. MCCARTHY: Just before we get started on that note. Just where there has been ... the way the publication ban has been worded is, Clients of Mr. Howe, and through these proceedings it's made clear that there may be conclusions of some people's names mentioned may not be his direct clients. So perhaps if we could extend the ban to individuals who are named that were clients of the firm or other names of individuals who are appearing before the Court who aren't lawyers.

THE CHAIR: I think clients of the firm ...

MS. MCCARTHY: Would be ...

THE CHAIR: ... is fine. I don't know about ... we are ... and we did say co-accused of those clients.

MS. MCCARTHY: Thank you. So we could leave it at that for this point.

THE CHAIR: Yeah. Okay.

MS. MCCARTHY: Thank you.

MR. HOWE: Okay. The Panel is ready?

THE CHAIR: Yes.

MR. HOWE: My counsel told me to slow down a little bit. So I don't know if you guys are having a hard time ...

THE CHAIR: No.

MR. HOWE: ... keeping up with the notes, but ...

THE CHAIR: Okay.

MR. HOWE: ... I'll try to keep a better pace.

In terms of the receivership that was done, could you give us an idea first how often receiverships happen. Yearly?

A. Oh, easily four times a year.

Q. Okay, and in terms of a receivership with a young lawyer, is that common?

A. Receiver and custodian because they're ... they're similar, where we take over responsibility for ...

Q. Right.

A. ... winding down a practice.

Q. Yes.

A. Could be half the time.

Q. Okay. Receivership with criminal lawyers.

A. We certainly ... I can think of two off the top of my head right away.

Q. Two off the top? And how many years between the first of those two?

A. We had two in one year.

Q. Two in one year?

A. About two to three years ago.

Q. And that doesn't include me, no.

A. No, that doesn't include you.

Q. Okay.

A. You know, there ... there are probably about one or two others in the last four, five, or six years.

Q. And are they busy criminal lawyers?

A. One was busy but he was in a firm. One was not exclusively

criminal defence.

Q. Okay.

A. So we've never taken over a practice which was exclusively criminal defence, to the best of my recollection, of a sole practitioner.

Q. Other than me.

A. Other than you.

Q. So it's unusual to take over a busy criminal practice that's exclusively criminal.

A. I don't think it's happened before, no.

Q. Okay.

A. It's not unusual to take over a busy practice, though.

Q. Okay. When they're at a firm, would you still handle it the same way as you'd handle the sole practitioner?

A. We would try to engage the firm and ... and seeing where systems could be provided in taking over some files, and that would sometimes depend on whether that lawyer or practice was the only one in the firm practising in that area, in which case nobody could take over or ... or not, in which case sometimes the firm can absorb some of the files, depending on the volume, and sometimes it's a combination of assisting and transferring out files, keeping some

in the firm, and so on.

Q. In terms of from the time that the practise agreement was met and then I was suspended. So I'm talking about the April practise agreement. You would agree that Mr. Jeffcock met with me about once or twice before the ...

A. I think twice.

Q. Okay, and you would agree that Mr. Jeffcock expressed that I seemed to be inclined to participate. Correct? With the ...

A. In the first one, yes. The second one was hard to schedule, but yes, I think, ultimately.

Q. Okay, and the one that was hard to schedule, when did that ultimately get scheduled? Is that the first or the second of the ...

A. The second one.

Q. And when was it scheduled?

A. I'd have to refer to Mr. Jeffcock's second notes of that meeting.

Q. Okay. I don't know if you have them. I mean, it was in ... if I put to you that it was in May, would you agree with that?

A. I think they both ... well, that ... that would certainly ... I think it's May 2nd, actually.

Q. May 2nd. Okay, and that's three days before my trial.
A. Yes.
Q. And you would agree, at that point I was trying to prepare for a trial, a large one. A month-long trial.
A. I would assume so.
Q. And I was also running a busy practice. Correct?
A. It would appear to be, yes.
Q. So you would agree that if the meeting was having a hard time getting set, we'll say, we were having a hard time solidifying dates, it's not because I'm avoiding Malcolm. You didn't have that impression. Correct?
A. I didn't have that impression, no.
Q. Okay, and did Malcolm express to you that he was optimistic that changes could be made but he needed time?
A. Yes.
Q. If I put to you that when the receiver arrived - I believe it was June 2nd - after my ... immediately after my suspension, I would have told them, Here's my calendar but it's a joint calendar. I would have told them that at the time. Are you aware of that?
A. I seem to recall that to be the case, yes.
Q. And when I say joint calendar, me and another lawyer at

the firm shared the calendar.

A. You and Laura, I believe.

Q. Right.

A. Ms. McCarthy, sorry.

Q. So it wouldn't have been a surprise to the receiver that some of the dates in that calendar weren't mine. Correct?

MR. MURRAY: Well, you can't really ... she can't really confirm ...

MR. HOWE: Yeah.

MR. MURRAY: ... if that wasn't a surprise to somebody.

MR. HOWE: That's fair. I'll hold that question back.

In terms of the nature of some of the matters in the ... I refer to it as a double-booking calendar. But Tab 117. Some of those matters are ... they're straightforward election and plea arraignment-type matters. Correct?

A. I don't know.

Q. Okay. When I say election and plea and arraignment, it's a quick 15-minute appearance that's expected. Are you aware of that?

A. I don't know.

Q. So when you interviewed me in March of 2015 and February of 2014, I would have explained to you the difference between a trial

and a plea, for instance. Correct?

A. Yes, I recall some of the conversations around those differences. Yeah.

Q. And for a plea, it's quite easy to send an agent, another lawyer, that can go and adjourn it because nothing substantive is going to happen at those appearances. Do you remember me explaining that to you?

A. I think so, yeah.

Q. And there's also status updates to confirm trial dates.

A. Yes, I remember that.

Q. And the same applies. You can send a junior lawyer that would go and that could deal with your matter quite easily. Correct?

A. I guess so, but I don't practise criminal defence law.

Q. Okay, but you remember me explaining that to you.

A. I remember us having that conversation, yes.

Q. So you would agree that although some of these matters appear to be double-bookings, it's my position at least - and that was expressed to you - that many of those matters could easily have been dealt with by Ms. McCarthy or another lawyer. Correct?

A. You certainly provided that explanation, yes.

Q. Did you not accept that explanation?

A. I accept that it's true ...

Q. Okay.

A. ... for what that's worth, but we're still left with conflicts, regardless.

Q. Okay. Conflicts that other lawyers could deal with.

A. I don't know.

Q. Okay, but you did accept that that was true, and when we say that, we're talking about other lawyers can deal with simple matters.

A. I would guess so.

Q. Right, and there's nothing that you have in terms of information that would suggest that with respect to some of my appearances Ms. McCarthy, or any other lawyer, for that matter, could go in and handle them if there's a double-booking. Correct?

A. I don't know. To me, just instinctively, it would depend on the nature of the matter.

Q. Right, and in addition to Ms. McCarthy, you're aware that I've retained other counsel on occasion to appear for me in court.

A. Yes.

Q. And ...

A. I don't know if you've retained them. I know that they've

shown up for you.

Q. Okay, and one of those individuals that I paid ... or that showed up for me was Kendrick Douglas. That name familiar?

A. The name is familiar, yes.

Q. And if I told you that the receiver would have reported to you that Kendrick Douglas, shortly after my suspension, made numerous appearances for me. Or actually, during my ... it would have been during my trial, sorry. During my trial. So he would have been going and trying to move dates. Are you aware of that?

A. No.

Q. Okay, and are you aware of whether Mr. Bacchus, Wayne Bacchus, would have appeared for me on occasion throughout my practice?

A. Yes.

Q. And ... okay. In terms of the creation of Tab 117, I believe that's volume 3 of the green book. So you've stated that Ms. Pink created this document. Correct?

MR. MURRAY: Are we at Tab 117 again?

MR. HOWE: Yes, 117.

MR. MURRAY: Thank you.

MR. HOWE: That's 1432.

MR. MURRAY: Thank you.

A. Yes, she did.

MR. HOWE: And Ms. Pink, you're aware, is not on the witness list. Correct?

A. That's correct.

Q. Just to advise the Panel. That's going to be an issue. I don't know if it's an issue that you'd like to deal with now, but if the person who created this document is not expected to testify, I don't understand the significance of the document. But I can finish my cross-examination and we can deal with that later. I think it's an appropriate time to deal with it now that it's on our minds, but if my friend or the Panel thinks that we should deal with it later, I'm fine with that.

THE CHAIR: I'd say we can deal with it later.

MR. HOWE: Okay. I'll just make a note of that.

So I put to you that it was April 17th that the practise agreement was met.

A. Are we done with this?

Q. Yes.

A. Okay. Yes.

Q. And you, I believe, indicated you're not a hundred percent

of the date, but that sounded right, mid April. Correct?

A. Of what?

Q. The date of the practise agreement, April of 2014. Correct?

A. April 23rd you signed the practise agreement.

Q. Okay. So when I said that it gives two weeks before the start of my trial, it's actually less than that. Correct? Little less.

A. From April 23rd to May the 5th? Yes.

Q. Okay, and it's your recollection that this was a busy time for me, and you know that because you were trying to schedule me a meeting with Mr. Jeffcock. Correct?

A. He was trying to schedule a meeting with you, yes.

Q. But you were aware of that.

A. Yes.

Q. In terms of other advice that you would have given ... and so we dealt with the scheduling conflict. We dealt with the conflict of interest. You'd agree that the other point that you gave me advice about in March of 2015 and February of 2013 was papering your file.

A. Yes.

Q. Correct?

A. Yes.

Q. And you've had discussions with Malcolm Jeffcock since my ... since he began supervision. Correct?

A. In that period of time that he began the supervision, April to May?

Q. Yes.

A. Yes.

Q. And he would have indicated to you that we have ... when I say we, the firm has a system in place now to make sure that there's reporting letters that are done. Correct?

A. If I could look at his report. I can't remember off the top of my head. I do recall that he reported made ... you made improvements for sure.

Q. Made improvements, and that was prior to May of 2014.

A. Prior to May 5th, yes.

Q. Okay. So he's indicated that I made improvements with respect to reporting letters?

A. I can't say off the top of my head. If I could ...

Q. Okay.

A. ... look at his report.

Q. If I indicated to you that with respect to papering the

file generally, improvements were made according to Malcolm, and that was expressed to you back in May of 2014.

MS. HICKEY: I think, Mr. Chair, it's appropriate that the witness be permitted ...

MR. HOWE: That's ...

MS. HICKEY: ... to refer to the notes of Mr. Jeffcock.

THE CHAIR: If she wishes, absolutely. It's Tab 55, volume ...

FEMALE VOICE: 54.

MS. HICKEY: 54 and 55.

MR. HOWE: Yes, 54 and 55 of volume 1. So 54 was the letter to Malcolm Jeffcock. Fifty- ...

A. 3.

Q. Oh, that's 53, I'm sorry. 54 was the letter from Malcolm Jeffcock.

A. I would refer to page 425, the second memo to file, which is dated May the 2nd.

THE CHAIR: Is that Tab 55?

A. That would be Tab 55.

MR. MURRAY: Yeah.

A. And it appears he says:

I reviewed a total of five files, all of which have been closed very recently and, as such, all of which should have seen some change in practise as a result of the practise reviews.

And he indicates some concerns with the files.

MR. HOWE: Sorry, where are we? Which paragraph?

A. I'm looking at the bottom paragraph on page 425 under ...

Q. Okay.

A. ... Tab 55.

Q. Yes.

A. And he says he's reviewed five files which were closed very recently ...

Q. Right.

A. ... and all of which should have seen some change in practise as a result of the practise reviews. And he goes on to express his concerns in relation to those files.

Q. Right.

A. He did review precedents that you had put in place for outcome letter, reporting letter, court date confirmation memo, file opening checklist, retainer agreements.

Q. Right. In terms of two things that I'll point you to.

First, file number 1. The funds ... the first funds came in October 5th, 2012. Correct?

A. He ... I think what he says is these files have been closed very recently and it's ...

Q. I ...

A. ... his opinion as such should have had some improvement.

Q. I understand, but there's a difference between when it was closed and when it was opened. Correct?

A. Sure.

Q. And this one was open in October 5th, 2012.

A. Yes.

Q. In fact, out of the four files that were reviewed, the only one that was in 2014, in terms of the first notes that were made, indicates that there were some handwritten notes January 4th, 2014. Correct?

A. With ...

Q. And that would be file number 2. That's January 4th, 2014, is in the second ...

A. Yes, I see that.

Q. (Opened?). So that's the only one from January. Correct? Or sorry, from 2014. As far as you can see in this letter.

I appreciate that you never drafted this letter.

MR. MURRAY: Well, in fairness, (inaudible) doesn't have any dates at all.

MR. HOWE: That's fair.

A. And then he refers to an open file which was opened May 29th of 2014.

Q. Right. Okay. Thank you. So I don't necessarily want you to give evidence for Mr. Jeffcock, but in terms of what was expressed to you, he did express that there were some improvements being made in terms of a system in place.

A. Yes.

Q. Okay, and that system was in place to ensure that there were opening letters, closing letters, and reporting letters.

A. Yes, and in fact, I think you had indicated that you'd had at least one staff person that you were having devoted to documenting the file and that sort of thing.

Q. So there was some optimism in May of 2014 in terms of potential for improvement.

A. Yes. I think that's why the Complaints Investigation Committee decided to enter into the practise agreement rather than take any other steps, because they really wanted to give you a chance

to ... to make a difference.

Q. And in terms of the opportunity to have that chance, you'd agree that I was convicted on June 2nd, the next, you know, month and a half after the practise agreement. Correct?

A. In terms of the specifics of the practise agreement, yes, I would note that a number of the items in the practise agreement reflected advice given to you by John Rafferty in 2011 and Ms. Buckle and I in February of 2014, and so it isn't completely accurate to suggest that you only had two weeks after April to put some of those things in place.

Q. Okay. That's fair. In terms of your role prior to the receivership, you would agree that you instructed the receiver to go and obtain all of the files from my office.

A. I ... yes, I guess. The receiver is very experienced, and so he ... he carries out his work in accordance with the retainer and the guidelines for receivers and custodians, and so what he actually does is somewhat at his discretion. But I seem to recall that he gathered up and took as many files as he felt were yours at the time.

Q. And in terms of your role, you would have coordinated the retainer and given instructions to the receiver to go and obtain the

files.

A. I ... yes.

Q. Okay, and you would agree that you could have given additional instructions to the receiver.

A. To do what?

Q. Obtain electronic information.

A. That's in the discretion of the receiver.

Q. Could you encourage the receiver to do so?

A. I wouldn't have known what existed.

Q. You know that we have a computer at our office, though. Correct?

A. Yes.

Q. And you didn't instruct him to go and obtain electronic information from that computer.

A. I did not, no.

Q. And he could have obtained information that suggested a system that we had in place. Correct?

A. I don't know. You'd have to ask him.

Q. Okay. I mean, it's possible that you could have, if you would have given him instructions.

A. Yes. I wouldn't normally give those kind of instructions.

Q. But in these circumstances you wanted to see that a practise agreement was being implemented. Correct?

A. At the time of the receivership our interest was to protect the interests of your clients.

Q. Okay.

A. We weren't seeking to, at that moment, investigate whether or not you were in violation. In fact, I didn't expect that you were in violation.

Q. In terms of the instructions, you could have ... if there's another practising lawyer at the firm, is it your position that if a receiver goes in, all of the information in the office is leaving if the receivership is going to receive a practice?

A. That has happened before ...

Q. Okay.

A. ... because our primary interest is to address the protection of the clients of the lawyer, and we have to assume that responsibility first and fairly quickly thereafter determine whether or not another lawyer in the firm is capable of, competent to, and otherwise experienced enough and able to take on the other files.

Q. Okay. In terms of Tab 117, volume 3 ... and I know we're probably all getting sick of this tab, but if we could turn to that

just once more. Tab 117, volume 3 in the green book, please. With respect to that ... this table, I asked you already about whether there were subsequent versions of this, and I think you indicated that you were of the view that this was the most recent version. Correct?

A. That was my understanding, yes.

Q. If I stated to you that you actually provided me an additional version and it was in a proposed agreed statement of facts and it was one that we'd worked on together, would you disagree with that?

A. I don't know that we ever worked on one together. We provided disclosure to our counsel. Our counsel created the exhibit books. Is it possible that this is not the most recent version? It is. My belief was that it is, but I ...

Q. Okay.

A. I could be wrong.

Q. Okay. In terms of your role. So I've questioned you about your role in terms of discretion, the discretionary power, and also in terms of the investigation. Correct?

A. Yes.

Q. With respect to those roles it's important to be objective

and impartial. You would agree with that. Correct?

A. Yes.

Q. And in terms of impartiality, you had concerns, that I would suggest, that you weren't impartial back in 2013. Do you agree?

A. I'm not sure what your question is.

Q. My question is, in 2013, in particular September of 2013, you had concerns that I was going to question whether you were impartial.

A. I'm not sure what you're referring to.

Q. Perhaps I can refresh your memory. I have an exhibit here. I'm going to provide a copy. This is information that Ms. Rees provided to me in disclosure, but it's not in the exhibits. I'm going to provide a copy to my friend, although I know they already have a copy, and I'll provide a copy to my ... the Panel.

MR. MURRAY: (inaudible).

MR. HOWE: Or three copies.

THE CHAIR: This will be Exhibit 8. Thank you.

EXHIBIT 8 - EMAIL EXCHANGE FROM SEPTEMBER 2013 BETWEEN VICTORIA REES AND ELIZABETH BUCKLE (MARKED AND ENTERED)

MR. HOWE: So you would agree that this was back in September 25th of 2013 and this is the email that you sent. Correct?

A. Yes.

Q. So I asked you about whether you had concerns about whether I would question your impartiality. Do you remember that?

A. Can I read this?

Q. Sure. It might assist the Panel if you read that out loud. I don't know if the Panel's in agreement, but ...

THE CHAIR: We can read it.

A. What is your question?

MR. HOWE: So my question was, in September of 2013 you were concerned about whether I would contest your impartiality.

A. Yes.

Q. Okay, and this is an email that you sent. Correct?

A. Yes.

Q. So I'm going to go through a few of the lines in this email. So it was to Elizabeth Buckle. Correct?

A. Yes.

Q. And the first line is, "I am feeling increasingly uncomfortable with my conversation with Lyle and the fact that he had his wife witness it."

A. Yes.

Q. And you were well aware back in 2013 that I was having somebody witness my conversations with you because I was concerned about your intentions.

A. No, I did not know that.

Q. So could you explain why you were concerned that my wife was witnessing our conversations?

A. I didn't understand why it was necessary.

Q. Okay, and the next line is:

> Given how he has misused our ethics advice in the past, I'm thinking that he will report to the Court that he spoke with the Society about this and they express no concern.

Correct?

A. Yes.

Q. And what we were talking about there is a complaint that I made to you about Michelle James. Correct?

A. I'm not sure because I may be referring to, in fact, ethics advice that Ms. Cumming provided you that you did not follow ...

Q. Okay.

A. ... and the representation you made for court that might

have misrepresented the advice you were given.

Q. If you look down a bit on the email. If you just review some of the email that's below the top one and just indicate if it refreshes your memory that this was about Michelle James.

A. Yes, I ... I would still say that that sentence, "Given how he has misused our ethics advice in the past," in my mind, related to the information that you obtained from Elaine Cumming.

Q. Okay. That's fine. So if we look at the bottom paragraph on the first email, it says:

> A related personal concern I have is that I would in any case like this ... as I would in any case like this, I discouraged Lyle from filing a complaint against the Crown.

Do you see that?

A. Yes.

Q. Do we not have a duty to report if we think that something unethical happened?

A. And as I indicated to you - and my notes will reflect - I did say that you certainly could file a complaint against her but at this stage, with a number of complaints we were dealing with, I felt it was in your best interest to try and resolve issues rather

than get into a situation where lawyers are filing complaints against each other.

Q. That's fine, but my question was, we do have a duty to report. Correct?

A. Yes.

Q. And you have a duty as the Director of Professional Responsibility to explain those duties to us. Correct?

A. If you ask me to.

Q. Okay, and so when you discouraged me from filing a complaint, did you indicate we do have a duty to report?

A. I can't tell you. I could probably look at my notes at that telephone conversation.

Q. Yes, please.

A. Do you know where they are?

(Inaudible background comments)

MR. MURRAY: You're ... so ...

MS. HICKEY: It's Tab 5 of ...

MR. MURRAY: Yes.

MS. HICKEY: ... exhibit book volume 1. I am concerned, Mr. Chair, about the relevance of this line of questioning.

MR. HOWE: I can address that, Mr. Chair.

THE CHAIR: At this point I think Mr. Howe should be allowed to continue.

MS. HICKEY: Okay.

THE CHAIR: At this point.

MR. HOWE: Thank you.

A. And so from my notes which appear on page 32, I have a note from my call with you on September the 25th.

Q. And you would agree that there's nothing in that note that suggested you told me about my duty to report.

A. I indicated that you should consult counsel, LAP, but that was in relation to the interview.

Q. So you would agree that there's nothing in there that ...

A. There's nothing to indicate that I indicated you had a duty to report. You were calling me, suggesting that you wanted to file a complaint, which means you, in my mind, had already thought through this duty to report. I ... I don't know that I would have jumped to the conclusion that I needed to talk to you about that, but I didn't.

Q. But you did tell me that ... you did discourage me, in fact, from reporting.

A. I discouraged you from filing a complaint. I considered

that you had already reported.

Q. Okay. Okay. If I could get you to turn to Tab 25 of volume 1 in the green book, please. Page 260.

MS. HICKEY: I'm sorry, which tab?

MR. HOWE: It's Tab 25.

A. Yes.

Q. Okay. If we could look at the second page. So it's 260. But first of all, this is a letter that you sent to me. Correct?

A. Yes.

Q. All right, and if we turn to the second page, four paragraphs down.

A. Yes.

Q. You indicated:

> I told you that you are free to file a complaint against Ms. James but that you might be better served by trying to follow a path of rebuilding trust and bridges between you, the Crown, and other lawyers.

You see that?

A. Yes.

Q. We start at the next sentence, "I suggested you contact

Denise Smith, Adrian Reid, or Martin Herschorn." Correct?

A. Yes.

Q. Okay, and Martin Herschorn is your husband. Correct?

A. Yes.

Q. And you indicated to me to call your husband about a complaint about one of his employees?

A. He's the Director of Public Prosecutions. That's the appropriate thing to do.

Q. And you would agree that at no point did you ever tell me, other than today, that Martin Herschorn is your husband.

A. That's correct.

Q. Okay. If we turn back to ... I'll slow down like my counsel told me.

MR. MURRAY: Exhibit 8?

MR. HOWE: Yes, if we turn to Exhibit 8. If we look at the second-to-last paragraph, not only did you not tell me ...

A. Sorry, Exhibit 8?

Q. Yes, Exhibit 8 is the letter from you to Elizabeth Buckle.

A. You mean Tab 8?

MR. MURRAY: No, no, exhibit that he just brought in.

MS. HICKEY: Just introduced.

THE CHAIR: The letter that ... the email, sorry?

MS. HICKEY: The emails ...

THE CHAIR: Your email to Elizabeth Buckle of September 25th, 2013.

A. Oh, I'm sorry. Yes, right.

MR. HOWE: Right. Okay. So all right. So if you look at the second-to-last paragraph and if you look three sentences down, it says, "I don't think Lyle knows Martin and I are married."

A. Yes.

Q. So not only did you not express to me that you were, you thought that I didn't know. Is that correct?

A. That's what I'm saying there, yes.

Q. Okay, and if you look at the time of this email at the top of Exhibit 8, this was at 9:11 a.m. on September the 25th. Correct?

A. Yes.

Q. So the same day as when we turn back to Tab 25 in volume 1. The same day you wrote a letter to me, telling me to speak with your husband that you thought I didn't know you were married to. Is that correct?

A. I wasn't telling you to speak with my husband. I was telling you to communicate with the Director of Public Prosecutions.

Q. Okay. So let's turn to the second page again.

A. Of?

Q. Of Tab 25. And we're four paragraphs down.

A. Yes.

Q. "I suggested you contact Denise Smith, Adrian Reid, or Martin Herschorn."

A. Yes.

Q. So when you just stated, I was telling you to speak with the Director of Public ... the Public Prosecution. Correct?

A. Yes.

Q. That also happens to be your husband.

A. Yes.

Q. So does it concern you that on the same day that you say you're uncomfortable and you don't think that I know you guys are married, you and Mr. Herschorn are married, you tell me to contact that same person rather than putting in a complaint?

A. No.

Q. Okay. Okay. If we look at the third paragraph down, and we're back on Exhibit 8. And if you look at the last paragraph.

A. Yes.

Q. It says:

I feel like he will suggest at some later date that I had ulterior motives for not taking action, as he suggested the Society should. But maybe now I'm just paranoid.

A. Yes.

Q. And I just asked you if you said you had any concerns about this, the fact that you're married to Martin, and you said no.

A. No.

Q. So you didn't have concerns ... you don't have concerns now about that. That's what we're talking about. Correct?

A. I don't have concerns about what?

Q. About the fact that you and Martin are married and you're telling me to talk to him instead of putting in a complaint against the Crown.

A. The advice that I gave you is the same advice I would give anybody who's contemplating a complaint against the Crown.

Q. That's not what I asked. I asked if right now you have concerns about the fact ... and when I say concerns, what I mean is, do you think it's inappropriate to tell me to speak to somebody who you're married to rather than putting a complaint against their employee?

A. No.

Q. Okay. That's ... right now you're not concerned.

A. No, or then.

Q. Okay. So back in 2013 you weren't concerned. That's your evidence.

A. Yes.

Q. Okay. If you look back at the last sentence of paragraph 3, "I feel like he will suggest at some later date that I had ulterior motives," doesn't that express a concern back in 2013, a concern in particular that I'm going to suggest that you had ulterior motives?

A. Yes, I was concerned that you would think that. It's not to suggest that it's accurate.

Q. Okay. So when I just asked you whether you were concerned in 2013, you said no.

A. Yes.

Q. And just a second ago you said, I did have concerns that you would think that.

A. No, that's not ...

MS. HICKEY: I don't believe that's an accurate reflection of the evidence, Mr. Chair.

THE CHAIR: I agree.

MR. HOWE: Oh.

THE CHAIR: There's ... you're mixing up two things in this file.

MR. HOWE: I will ...

THE CHAIR: One is, was she concerned about giving you that advice? She says no.

MR. HOWE: Right.

THE CHAIR: Was she concerned that she felt you might think that the advice was given for inappropriate reasons? She says, yes, she was concerned you might, but she had no concern about giving you that advice, which I do note is the same advice that Ms. Buckle gave you as well, as ...

MR. HOWE: Right.

THE CHAIR: ... noted in the email that you've given us.

MR. HOWE: That's right.

THE CHAIR: That's almost word for word.

MR. HOWE: That's fine. So I can address the distinction there. So you weren't concerned about the advice but you were concerned how I would interpret the advice.

A. I was concerned ... no, I wasn't concerned about how you would interpret the advice.

Q. So what was your concern back in 2013?

A. That at some point you would perceive that I may have given you the advice because of some relationship ... my relationship with Martin Herschorn, and I knew that not to be the case. But I knew there was a risk that you might think that.

Q. Okay. Given that risk that I might think that, how did you address that risk?

A. By asking you to deal directly with the Public Prosecution Service.

Q. Okay. Is there somebody else at your office that could have given the same advice that you gave me?

THE CHAIR: Well, Mr. Howe, Ms. Buckle did give you the same advice, as noted in the email.

MR. HOWE: She's ... in fairness, she's not at the Nova Scotia Barristers' Society, and I think that there's ...

THE CHAIR: No, that's true.

MR. HOWE: And I think that there's a difference between ...

A. If you had contacted Darrel Pink ...

Q. If I could just finish. I think that there's a difference, Mr. Chairperson, between advice from a colleague, albeit a senior colleague, and advice from the Bar Society.

THE CHAIR: Okay.

MS. HICKEY: I would simply note that Ms. Buckle was acting in a capacity as an agent of the Society.

THE CHAIR: Yeah, the Panel understands that very well.

MR. HOWE: Okay. In terms of somebody else at the Society that could have given me advice, there's other people that do the same thing that you do. Correct?

A. Yes, but you asked me.

Q. Okay, and I asked you but then you were concerned about the risk that I may believe that there was an ulterior motive. Correct?

A. Yes.

Q. Given that risk, why couldn't you say, You know what, I'm going to let you talk to somebody else about that.

A. I suppose I could have.

Q. Why didn't you?

A. Because I felt it was fairly straightforward. I gave you the advice that I felt was appropriate, which was that if you have concerns, I said (a) you could file a complaint, absolutely; and (b) normally when people contact us with complaints about the Crown, because the threshold for investigation is so high, we recommend that

you first deal with the Director of Public Prosecutions or the Deputy.

Q. Okay. I'm going to return to that threshold for investigation in just a moment, but first what I want to talk to you about is, Ms. Buckle was your lawyer ... the Society's lawyer at this point, right?

A. Yes.

Q. And you expressed your concern in an email to this lawyer.

A. Yes.

Q. So it's important enough for you to speak to your lawyer about it.

A. Yes.

Q. But it's not important enough for you to just say, You know what would be a lot easier, Lyle, I'm going to put you in touch with somebody else here that can give you advice.

A. I don't know. I didn't do that.

Q. Okay, but you could have.

A. Yes.

Q. All right. Okay. So not only did you give me advice not to file the complaint ... or discourage me from filing a complaint, in fairness. Correct?

A. Which I do whenever lawyers want to complain about each

other, yes.

Q. Did you do that to Ms. Michelle James when she indicated to you in a telephone conference that she wanted to complain about me?

A. I indicated that if she wanted to file a complaint, she had to file a complaint and to provide information.

Q. My question is, did you discourage her from filing a complaint against me?

A. Do we have the notes from my conversations with Michelle James?

Q. If I asked you a question, it might refresh your memory. Am I correct that when Michelle James raised a complaint with you, you indicated to her that she should collect evidence about this complaint and then forward it to your office?

A. That sounds right, yes.

Q. Okay. Is that discouraging Michelle James from writing a complaint against me, or is that the exact opposite?

A. I indicated if she wanted to file a complaint, she should provide information.

Q. Okay. You would agree that ...

A. The same way that I said to you. If you wanted to file

a complaint, you could file a complaint.

Q. Well, let's deal with the discouragement piece first. So you would agree that you discouraged me from filing a complaint. Correct?

A. Yes.

Q. And then when she indicated that she had information about me, you said, Collect that information and provide it to me.

A. Yes.

Q. Okay. The second of those two - i.e., how you treated Michelle - is not discouraging her to file a complaint. Correct?

A. Correct.

Q. And the first is clearly discouraging me to file a complaint. Correct?

A. Correct, because at this point in time we had so many complaints against you that it seemed appropriate for her to file information.

Q. Okay. So you determined whether or not to discourage a lawyer from filing a complaint based on how many other complaints that lawyer has?

A. It's relevant, yes.

Q. Okay. Does it ... okay. You would agree that this isn't

the first complaint that you received from Michelle James about another lawyer.

A. I can't answer that.

Q. Sorry, I'll ...

MS. HICKEY: Yeah.

THE CHAIR: That's irrelevant.

MR. HOWE: I'll leave that question alone. That's fine.

In terms of the first issue that I raised, discouraging me to complain to Michelle James, I actually did complain about one Crown Attorney in particular. In fact, a couple of Crown Attorneys. Would you agree?

A. Can you be more specific?

Q. Okay. I filed a complaint about ... hmm? About D'arcy MacPherson, who's a Crown Attorney. Correct?

A. I don't think I can confirm or deny the ... a confidential complaint.

MS. HICKEY: What is the relevance, Mr. Chair, of what ...

THE CHAIR: That's ...

MS. HICKEY: ... complaints Mr. Howe may have filed against other Crowns?

MR. HOWE: If I could respond to that, Mr. Chair.

THE CHAIR: Yes, yeah.

MR. HOWE: I am clearly arguing that there is a bias in the investigation and the way that I'm treated compared to Crown Attorneys. If I can't explore that bias by determining how she treats Crown Attorneys, then I'm left without that argument. In terms of the right to make full answer and defence, if I can't explore the bias against somebody who I'm clearly suggesting compiled a case against me in bias ... okay? If I can't establish that bias, I'm left not able to make full answer and defence. That's the relevance.

MS. HICKEY: And if I may, Mr. Chair, this Panel will recall that this very issue was raised by Mr. Howe in advance of pre-hearing conference and he had indicated he was going to be bringing an application to the Panel to address the matter of Ms. Rees and the fact that she is married to the Director of Public Prosecutions and the implications of that on this process.

MR. HOWE: If I ...

MS. HICKEY: Mr. Howe withdrew that application. So I'm very concerned that these issues are now being raised about the very same issues that he indicated were not going to be advanced.

MR. HOWE: I didn't indicate I'm not going to bring it up at the hearing.