there's media here, I don't see any more, okay, ... (inaudible) yeah, [redacted] he's already aware of that publication ban, quite, I'm quite certain. So thank you.

CROSS-EXAMINATION

MR. HOWE: So Ms. Rees, when information comes to your attention that forms the basis of or at least an allegation of misconduct on the part of a lawyer, there are certain obligations that you have to act on that information, correct?

A. It would depend on the nature of the information.

Q. Okay. So if the information was a statement from another lawyer alleging misconduct on the part of a lawyer, you'd have a duty to act on that information, correct?

A. Not necessarily. It would depend on the context of the allegation, whether it was in the course of litigation, whether it involved a heated debate between adversaries in litigation, whether it's a question of a lawyer seeking ethics advice versus a complaint, whether ... There are a whole lot of reasons why I have that kind of information and don't act on it.

Q. Okay. And you've already stated before that the Bar

Society tends to deal with complaints proactively as a ...

A. No, actually, I said we don't.

Q. Oh, sorry. In fairness, you're correct about that. You stated that the Bar Society deals with things reactively as opposed to proactively?

A. Yes.

Q. Okay. And reactively meaning once information is brought to your attention, you ... you would then determine if it's appropriate to do a further investigation, correct?

A. Yes.

Q. So you don't go looking for information where there is no complaint, correct?

A. If there is information where concerns have been raised, we will then decide how to proceed with an investigation, and that may ... So if a complaint comes to us, a concern comes to us, we then respond by going out and looking for information, yes.

Q. Okay. And am I correct that either in your direct or ... I believe it was in your direct examination, did you not state the words, "I don't go out looking for information?"

A. I don't go out looking for complaints.

Q. Okay. All right. And if it's brought to your

attention, then you would investigate, if it's appropriate to do so?

A. If it's appropriate to do so, yes.

Q. In terms of my transcript from my trial, you've reviewed that transcript, correct?

A. I have not. Somebody in my office did.

Q. Did somebody in your office review it at your behest?

A. Yes, and the behest of our counsel.

Q. And ...

THE CHAIR: And so when you're saying your transcript, what do you mean by that?

MR. HOWE: Okay. My transcript ... my transcript from my trial for the sexual assault, correct?

A. Yes.

Q. So after my trial had been and concluded, you would have obtained the transcript and then somebody from your office reviewed that information?

A. Yes.

Q. And after a review of that information, an inquiry was made as to whether I misled the Court during my trial, correct?

A. We raised this with you in the March 31st interview, canvassed that with you and asked you to provide any additional

information you had, which resulted in this letter of April 13th, I believe.

Q. Okay. So as a result of obtaining the transcript, that's where this letter came from, to you ...

A. As a result of our interview of March 31st.

Q. Okay. And if we can ... I'm not going to read the entire letter, but I'm going to go over some highlights some parts. If I put to you that this formed an actual complaint, the misleading the Court was an actual complaint as opposed to just a request for information, do you disagree with that?

A. I disagree.

Q. Okay. So this was never an actual complaint?

A. No.

Q. Okay. All right. So just to give some background, and I'm sure ... I'm confident that the Panel would have reviewed this.

THE CHAIR: Yes.

MR. HOWE: Okay. Just by way of background, essentially the allegation is that I misled the Court in terms of describing whether or not I made blocked calls to a complainant?

A. We asked you those questions in the interview and asked you to respond, and you did.

Q. Okay.

A. We then determined not to proceed with any complaints in relation to that.

Q. Right. And if we look just under the direct testimony... So when we say direct testimony, you understood this to mean when my lawyer asked me questions to provide evidence to the Court, correct?

A. Yes, yeah.

Q. And in direct testimony, one of my answers to those questions was, "I don't believe that I made blocked call numbers to [redacted] I certainly didn't make a number of blocked calls." Correct?

A. That's what it says.

Q. Did you review the transcript to see if it was ...

A. I did not review the transcript.

Q. Did anybody at your office look at what I allege to have happened in my direct evidence versus what really did happen?

A. All I can tell you is that Catherine Turcotte Roy in our office reviewed the transcripts completely.

Q. Okay. And if there was any information that the response that I made on April 13, 2015, if there was any information that that

response was inaccurate, you would have done something about that, correct?

A. If there was any information that what you were telling us in this letter was inaccurate?

Q. Yes.

A. There ... We ... we didn't conduct any further investigation, no.

Q. So not even as much as going back and looking at the transcript to determine if it matches up with what I say?

A. We determined that we weren't going to investigate further anything to do with your criminal trial.

Q. So what changed from the time when, March of 2015, you said, "Give us some response to the misleading piece," and April 13, 2015, when you said, "We're not going to investigate this any further?"

A. Well, I was ... we discussed it with my, our counsel, Marjorie Hickey. We considered that this matter was under appeal and felt that that was the appropriate jurisdiction and it wasn't necessary for the Bar Society to proceed in that regard.

Q. Okay. If I said to you that this misleading the Court was actually, was sent to the CIC and that we did make a formal

complaint, you would disagree with that, correct?

A. Yes.

Q. Okay. In terms of ...

THE CHAIR: Mr. Howe, you've made a suggestion that it was sent to the CIC. Do you have a good faith basis for making that suggestion?

MR. HOWE: I have. My ... my co-counsel is actually looking for that.

THE CHAIR: Okay.

MS. HICKEY: What is Mr. Howe saying was sent to the CIC?

MR. HOWE: Well, I'm not giving evidence, but I put to her that if I did tell you that it was sent to the CIC...

MS. HICKEY: If it was ...

MR. HOWE: The misleading element ...

THE CHAIR: If you're going to ask a question, if you're going to ask a question, as I told you, you should have a good faith basis for putting it that way.

MR. HOWE: I understand that.

THE CHAIR: Okay.

MR. HOWE: Ms. McCarthy is working on that.

THE CHAIR: Okay.

MS. REES: I can actually tell you whether it was put to the CIC or not, because I have the memo here.

MR. HOWE: Okay. I'm actually looking at the memo, as well. If I could point you to the second paragraph. Is this memo before the Court?

MS. HICKEY: No, it isn't. Before this Panel? No, it is not.

MR. HOWE: I don't know that it's appropriate to put it in front of the Panel, but perhaps we could just use it as an *aide memoire*.

THE CHAIR: What are we talking about?

MR. HOWE: This is a memorandum of the Complaints Investigation Committee.

MS. REES: No, it's a memorandum that I prepared for the Complaints Investigation Committee.

MR. HOWE: Yes, that's correct.

A. Dated April 16th, 2015, summarizing the complaints and the investigations.

THE CHAIR: So I assume that's part of disclosure?

MS. HICKEY: It's part of the disclosure, yes.

THE CHAIR: Okay. So, so perhaps we ... I mean, it's certainly fair to ask Ms. Rees was this matter ever referred to the

CIC.

MR. HOWE: Right. And I believe your evidence was no, it was not, correct?

A. (No verbal response.)

MR. MURRAY: She disagreed when you asserted that you had sent, she had sent the complaint to the CIC.

THE CHAIR: Right.

MR. HOWE: Okay. So, in fairness, on April 16th, 2015, paragraph 2, the second sentence down, "Most complaints were dismissed, with one resulting in ..."

A. Sorry, what page are you on?

Q. Page 1. And I don't, you know what, I don't know that that actually speaks to what we're looking for.

A. No. I think what you're looking for is the bottom of page 9 of the memorandum, where I actually refer to this letter, generally, and in terms of being complete, I said,

> Mr. Howe provided a detailed excerpt from the transcript and submits that, 'During the course of cross-examination, it is clear from the Crown's rendition of my direct testimony that the first and second points are inconsistent;

however, as can be clearly noted in my direct testimony, I was not inconsistent.' He submits that, 'The Crown unfairly changed my testimony by making it sound like I testified in direct testimony...' et cetera.

So I just repeated for them the benefit of what you had explained.

Q. Right. And in terms of whether or not it went to the CIC, we might have a different definition of that, but this memorandum did go to the CIC?

A. This memorandum did, this letter did not.

Q. Okay. And if you look at page 10 of that same memorandum...

A. Yes.

Q. Please refer to the opinion of McInnes Cooper in respect of potential violations of the **Code of Conduct** by Mr. Howe as it relates to his conduct with the victim and his testimony in court, which conduct may demonstrate examples of conduct unbecoming.

A. Yes.

Q. So although it wasn't put to them as a complaint in the

sense that the letter didn't go there, certainly the CIC had an opportunity to consider this evidence of whether I misled the Court or not?

A. They ... they had asked for an opinion from Ms. Hickey with respect to a variety of things relating to the evidence, including whether or not the evidence from your criminal trial demonstrated any example of professional conduct unbecoming and, ultimately, concluded that that was not something that was going to form the basis of charges.

Q. Okay. So when you said that it didn't go to the CIC, what you meant was this particular letter didn't, but they had the facts to consider?

A. Yes. You asked me whether the complaint...

Q. Okay.

A. It was not a complaint. This letter did not. The fact, to be fair to you, that you provided this information was recited in the memo.

Q. Okay. Okay. So if we can turn back to ... I don't know which exhibit this is, but the, the letter of April 13th, 2015.

MS. HICKEY: I don't believe it's been marked as an exhibit.

THE CHAIR: It's not been marked. Actually, we, we should

mark it as an exhibit. That's my, my oversight. What are we on?

MR. MURRAY: 9.

EXHIBIT 9 - LETTER, APRIL 13, 2015, FROM LYLE HOWE TO VICTORIA REES

MR. HOWE: At what point does a complaint get a C number through the Bar Society?

MS. HICKEY: I'm sorry, Mr. Howe, I didn't hear that.

MS. HOWE: A C, a C number, C as in Charles.

A. Either when a matter comes in in the proper format of a complaint, which we determine to deal with as a complaint - sometimes we mediate or resolve informally - or when the Executive Director, pursuant to Regulation 9.2.3, determines that a matter should, should be investigated, a C number can be opened.

Q. Okay. So I talked to you briefly about proactive versus reactive. Would you agree that, with respect to my transcript of my trial, there wasn't a complaint in front of the Bar Society at the point ...

A. Yes, there was.

Q. Okay.

THE CHAIR: Sorry, I didn't hear the question. There was a what?

MR. HOWE: Okay. One second here.

THE CHAIR: You asked her would you agree that, and I didn't hear what your question was.

MR. HOWE: My question was was there a complaint related to my sexual assault trial in front of the CIC ...

THE CHAIR: Okay.

MR. HOWE: ... or in the Bar Society, let's say, as of April 13th, 2015?

A. Yes. On June 6th, 2014, you were advised that we opened complaint C-5652, which was as a result of your criminal conviction.

Q. Okay. I understand. All right. If we could turn back to the April 13th letter... Sorry, which exhibit was that?

MS. HICKEY: 9.

THE CHAIR: 9.

MS. HOWE: 9. So in direct examination, I stated to you, "I don't believe that I made a number of ... I made a blocked call number, blocked number calls to [redacted] I certainly didn't make a number of blocked calls to [redacted] Do you see that?

A. Yes, you stated that to the Court, not to me.

Q. All right. And then under cross-examination, which is on the next page, if you look under the second Q, this is a question in cross-examination, "Sometimes you work your way to, to that, though. In direct testimony you said, and I quote, 'I don't believe I made blocked calls to [redacted] I certainly didn't make blocked calls to [redacted] Do you see that?

A. Yes.

Q. Okay. So this information, it's clearly inconsistent in terms of what was said versus what was quoted by the Crown, according to me, in this, in this letter, correct?

A. Yes, according to you.

Q. Okay. And given that this information was in front of the Society and that I put this in writing, was there any duty on your part to go and investigate that complaint?

A. None at all. The fact is that these were statements made in Court that you had an opportunity to respond to, and you had this matter under appeal. It would not have been appropriate for us to get into that.

Q. Okay. That's exactly why you didn't proceed with the investigation ...

A. I didn't consider it as a complaint. It wasn't clear at

all to me. It was a response to our questions to you, not a complaint.

Q. Does it constitute an investigation to tell me to respond to that issue?

A. No ... Sorry?

Q. Does it constitute an investigation to ask me to respond to this misleading issue?

MS. HICKEY: I don't understand the question.

MR. HOWE: Okay. I was asked to respond in writing to whether or not I mislead the Court during my trial, correct?

A. We weren't ... It says at the top - this is you speaking - "I was asked a series of questions regarding the transcript of my criminal proceedings. It was suggested that I was misleading the Court." You chose to follow up on that issue with us.

Q. And you don't know whether or not you asked me to follow up?

A. It's possible.

Q. Okay. And you didn't ask the Crown involved to follow up?

A. That would not have been appropriate. There was no investigation of the Crown.

Q. Okay. So you're aware that, that I have a mistrust for

various members of the Bar?

A. You've expressed that to me, yes.

Q. And I've got ... I've got a mistrust for Crown Attorneys, in particular?

A. You've expressed that to me.

Q. And you're aware that I actually have a lawsuit pending against the Crown Attorneys' office, Public Prosecution Service?

A. I wasn't aware of that, specifically.

Q. Okay.

A. I don't know the status of that. I wasn't even aware for a long time that it was a fact.

Q. When did you become aware?

A. I don't remember.

Q. Would it have ...

A. You mentioned it to me in a phone call.

Q. Okay.

A. But I ... I never heard anything before or since then, until you raised it today.

Q. And when I mentioned it to you in the phone call, do you remember what day that was?

A. It would be in my notes. I think that's Exhibit 5, is

it?

MS. HICKEY: Tab 5.

MS. REES: Okay, tab 5. It was the same conversation where I talked about it being important for you to try and rebuild rather than burn bridges or something. It was something around that. Because I remember having a long conversation with you and trying to ... I think it was after the, the second set of charges, and I was really concerned about your stress level and, and just trying to offer some support. And I think during that you were expressing to me your frustration with the police and with the Crown, and you mentioned then, and I can't be specific, but I feel like it was in that December '11/January '12... That's just my recollection.

MS. HOWE: So December 2011 to January 2012 ...

A. Somewhere in there, I think.

Q. So you would have been aware of this in the sense that I told you that I had a lawsuit?

A. Yes.

Q. Okay. So you've indicated that part of your role is to offer support to lawyers, correct?

A. Not formally, no. It's just something I tend to do in the course of dealing with members.

Q. And you would agree that the Nova Scotia Barristers' Society and you as an agent for them, you aim to be culturally competent, correct?

A. Yes.

Q. Okay. And part of being culturally competent is considering the policy objectives under the Nova Scotia regulatory objectives, correct?

A. Not at that time, we didn't have Regulatory objectives.

Q. At what time?

A. Our... At the time that I guess you're speaking about, when I was dealing with you. Those came into effect last year.

Q. Okay.

A. But I would agree that we would strive to be culturally competent at all times.

Q. And one of the things in this very room and really point 5, which is, "Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system," correct?

A. Yes.

Q. And you would agree that both myself and Robert Wright indicated that, basically, I have a mistrust and I felt like I was

being mistreated by certain individuals in the criminal justice system, correct?

A. That's what you and he reported, yes.

Q. In terms of Emma Halpern, is her position the Equity Committee?

A. No, she's the Equity Officer.

Q. Equity Officer.

A. And currently the Equity and Access Officer.

Q. So is she precisely who somebody would go to if they're an equity seeking member that's expressing concerns about discrimination?

A. She certainly is a resource in that area for our lawyers, yes.

Q. And in addition to her, are there other resources?

A. You could speak with our Professional Responsibility Counsel, you could speak with the Lawyers Insurance Association Risk in Practice Manager, the Lawyers Assistance Program.

Q. But just in the Bar Society?

A. Those are all within the Bar Society, yes.

Q. Okay. You would agree that, at the point that I was charged by the Bar Society...

A. Yes?

Q. I believe that was June of this year, May of this year?

A. May 28th you were served.

Q. At that point, is it your view that I'd be conflicted out from speaking with any of the individuals at the Bar Society in terms of seeking support for discrimination issues?

A. I ... I don't think I can comment on that.

Q. Are you aware of whether I tried to contact Emma Halpern, in particular?

A. I'm aware that you've had conversations with her. I don't know when.

Q. And are you aware of whether Emma Halpern advised me, "I can't speak with you. There's a conflict of interest because I work for the Bar Society?"

A. I'm not aware of that.

Q. Okay. And you didn't hear that?

A. I may have.

Q. You may have?

A. I may have. It sounds familiar, but I don't know when or in what context.

Q. Okay. So Exhibit 7, tab 45, please.

A. Yes, March 3rd, 2014, letter?

THE CHAIR: Okay, which exhibit?

MR. HOWE: Exhibit 7 is the Volume 1 green book.

THE CHAIR: Exhibit 2?

MR. HOWE: Exhibit 2, I'm sorry.

A. But there was ... Ms. Hickey mentioned that there was something omitted from that and entered as Exhibit 7.

Q. Okay.

A. Yes, today? Today.

MR. MURRAY: What was tab 45 originally is now Exhibit 7.

MR. HOWE: So I want to make sure that I remember your evidence from this morning. This morning did I ask you if you gave decisions or judgments or findings of guilt with respect to complaints?

A. I have the authority to dismiss complaints, to dismiss with letters of advice, to conduct investigations and, if there appears to be evidence of any violations of the rules, to provide that information to the Complaints Investigation Committee to make a determination.

Q. So in terms of, in judgment, decisions, or findings of guilt, that's not a part of your role?

A. No.

Q. Okay. So Exhibit, so we're talking about Exhibit 7. Okay, if you look at page 2 on Exhibit 7, so this was the letter to you, from you to Robert Wright, correct?

A. No. This is the March 3rd letter to you.

Q. Okay. I'm sorry. Oh, I see, okay, yeah, I understand. So in terms of the second page, this is where we discuss Dr. Wright or we refer to him as Dr. Wright, but he's Mr. Wright, correct?

A. Yes.

Q. And that's the third paragraph?

A. On page 2, yes.

Q. And if we look at the second, the third sentence in that paragraph, "It is important that in developing requirements to try to put you on a path, back on the right path professionally, if CIC is aware of any cultural factors which may be impacting your judgment, decision-making and ability to adhere to any requirements set," correct?

A. Yes, that's what it says.

Q. So from this perspective, your words seem to have made a judgment that I ... there's something that may be impacting my judgment, correct?

A. This was me speaking on behalf of the CIC, under their

direction, and trying to explain why they wanted to attempt to do something very unique, because they couldn't understand why you weren't able to follow the rules.

Q. Okay. So in terms of the cultural competence piece, your perspective of cultural competence is to determine whether the member may be acting a certain way because of cultural factors, correct?

A. I think that's fair.

Q. Okay. As opposed to how a member is treated, correct?

A. Well, by under ... It isn't our job, I don't see it as my job to try to deal with the kind of systemic race issues that you raised as a concern. My job and the CIC's job was to try and understand your behavior and factors that might lead to your behavior to help us understand how to begin to correct that behavior.

Q. So the target there was my behavior as opposed to discriminatory factors?

A. Yes.

Q. Okay. So if I said I have some discrimination issues, and to seek to alleviate that, that should be a part of your cultural competence in your position, would you agree with that?

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

Q. My question is if I ... if I were to put to you that a lawyer came to you and said discrimination and bias is what I'm dealing with in the legal profession in Nova Scotia, is it your position that that's not something that you would deal with, not something you would address?

A. I would certainly put that forward to the Complaints Investigation Committee as a statement you've made, which I have done, which you believe is relevant to your actions.

Q. What about an investigation into whether there's any accuracy to what I've stated in terms of bias, that's not something you would do?

A. I would say it's beyond the parameters for me to investigate whether or not there's systemic racism in the administration of justice.

Q. Okay. And if we look back to point 5 on the Nova Scotia regulatory matters, regulatory objectives...

A. Again, those were not in place at the time of this letter.

Q. Okay. And this letter was March 3rd, 2014?

A. Yes.

Q. Okay. Do you remember when precisely they came into place?

A. Council approved them in principle ...

MS. HICKEY: Mr. Pink is suggesting it was November. I don't think there was any controversy over that.

THE CHAIR: Yeah, whatever the fact is.

MS. REES: November of 2014, in principle.

MR. HOWE: Okay. November, 2014?

A. Yes.

Q. Okay. All right. If we look at ... So we're back on the paragraph where we're talking about Robert Wright in the letter that you drafted to me, which is tab 45, or Exhibit 7. So if we look at the paragraph, it starts towards the right end of the paragraph, and it's a little bit more than halfway down, it says, "As a psychologist, he is uniquely able to conduct these assessments, which have previously been applied in the criminal justice context." Correct?

A. That's what it says.

Q. So we're looking at things that impact my judgment and we bring in a person that's applied it in the criminal justice context? Correct?

A. Yes.

Q. And you could understand that the fact that you're

bringing in a psychologist to assess if my culture is impacted by or my judgment is impacted by my culture, and you bring in somebody that deals with criminals, you could see how that would give me the feeling that there may be some bias or at least decision-making on your part?

THE CHAIR: With respect, Mr. Howe, I don't believe that's what the letter says. I think it says that he works in the criminal justice context.

MR. HOWE: Right. In terms of what he does in the criminal justice context, does he assess criminals?

A. I don't know what he does. I know that a copy of his *C.V.* is attached, and I'm aware that he did at least one previous impact of race and culture assessment that was tendered as evidence in a criminal trial to explain some mitigating factors around somebody who'd been charged with an offence.

Q. Okay.

A. Which you were at this time.

Q. Okay. If you can turn now to page, tab 47 in the green Volume book.

MR. MURRAY: I'd ask you just, Mr. Howe... I'm trying to catch up with my notes.

MR. HOWE: Yes. No problem.

MR. MURRAY: You made reference, sorry?

MR. HOWE: It was tab 47, which is a letter that I believe Ms. Rees wrote to Robert Wright.

MR. MURRAY: Okay. So Exhibit 2, tab ... Okay.

MR. HOWE: I have one point that I'd like to make before I deal with that. It's tied into my ... my last one. So I asked you if you viewed it as your prerogative or your, part of your job description to address discrimination, and I believe you had indicated that an investigation in that regard is outside of the scope of ... of your job description, essentially, correct?

A. Yes, unless it's a specific complaint of discrimination by an individual against... by a lawyer against another individual.

Q. So in other words, systemic racism is not dealt with by the professional discipline ...

A. Not through my process, no.

Q. Okay. Through what process is it dealt with?

A. It's a priority and has been for a number of years for Council and the Executive and our Equity Office.

Q. Would systemic racism, in your mind, violate the **Code of Conduct**?

A. Systemic racism is, unfortunately, too broad a matter to constitute a complaint that I could investigate.

Q. Okay. So back to the letter to Robert Wright from yourself. The bottom paragraph ...

A. Yes?

Q. ... on page 2, it says, "It is the CIC ..."

A. On page 2?

Q. Yes, the bottom paragraph on page 2.

A. Yes.

Q. "It is the CIC's hope that with the benefit of your assessment they will be able to better understand the range of factors contributing to Mr. Howe's conduct and poor judgment to demonstrated cultural competency and sensitivity as appropriate." Correct?

A. Yes.

Q. That just ties into my last point that really what we're trying to look at is how is my poor judgment and conduct affected by cultural factors?

A. It's exploring whether or not there are mitigating factors that would assist us in developing the right program to assist you in adhering to the rules.

Q. Would systemic racism be a mitigating factor?

A. I think we would need, it would need to be more specific than systemic racism. If you were able to point to specific incidents of racism that had a nexus to your conduct, then the Committee would have considered that, yes.

Q. So general bias or a general feeling of being under attack is not something that, you know, if a member is putting it forward as systemic racism, that's not something the CIC would be concerned about?

A. I can't say that they wouldn't be concerned, but they have limited authority or jurisdiction to deal with such an issue.

Q. Is it something that they'd like to be aware of before dealing with ...

A. I would say they were, because that's why they asked for this assessment.

Q. Okay. So I ... I put to you that there's a difference between determining if somebody acts a certain way because of cultural factors versus if somebody is treated a certain way because of cultural factors. You see that distinction, correct?

A. I understand what you're saying, yes.

Q. And you would agree that your letter to Mr. Wright seems to address how I act, correct?

A. It suggests that we're trying to better understand a range of factors contributing to your conduct and poor judgment.

Q. So otherwise, in other words, whether there's cultural factors that impact how I act, correct?

A. Yes.

Q. But you didn't ask Mr. Wright to consider whether there's cultural factors that determine how I'm treated, correct?

A. Well, no, I didn't ask him to do that. We certainly gave you the opportunity and you did express that any number of times at interviews and otherwise, all of which was put before the CIC.

Q. And despite the fact that I mentioned it numerous times, that's not something that you'd say to Mr. Wright, "I'd like your assessment, your cultural competency assessment which should address how he perceives he's treated or how others do, in fact, treat him?"

A. Ultimately, the report did address that.

Q. Okay. But it's not something that you sought out?

A. I didn't specifically ask him for that, no.

Q. Okay. Okay. So I pointed you to the Nova Scotia regulatory objectives, which you've indicated, through some assistance, that came into place in November of 2014, correct?

A. In principle, yes.

Q. The Nova Scotia Barristers Society Visions and Values, those have been around a lot longer than the regulatory objectives, correct?

A. You're referring to the regulations or the ... What are you referring to?

Q. I can show it to you. I refer to it as the Nova Scotia Barristers Society Vision and Values. I'm just going to show this to the witness, if I could.

A. Yes.

Q. So that's been around a lot longer than November 2014?

A. Yes.

Q. And this particular version of the Nova Scotia Barristers Society Vision and Values had been around a lot longer than November of 2014, correct?

A. That's my recollection, yes.

Q. Okay. So in terms of the section that speaks to diversity, you would agree that part of the vision and values of the Barristers Society is to "promote equality and encourage the profession to embrace the value of diversity. We are inclusive and supportive of women and men from diverse backgrounds..." Correct?

A. That's what it says, yes.

Q. So if a member is suggesting there's systemic racism and I'm not treated like white lawyers are, do you not think that the values of the Nova Scotia Barristers Society should make it such that a cultural competency assessment should address how the lawyer is treated?

A. I understand the point that you're making. I'm ... I'm not sure how to answer that, because I didn't have really much background in what a racist culture impact assessment involved, and I had to stay focused on facts, and it was for you to bring forward your defences and your concerns, which were put before the Complaints Committee. And I'm not sure if you're suggesting that the Complaints Committee should have felt that the violations of the rules that they believe occurred should not result in charges because you feel that you've been treated in a racist manner. I'm just not following you.

Q. I can help you there. I'm not suggesting that a blind eye should be turned to a violation of the rules. What I'm suggesting is part of the impetus for a practice review was the, the quantity of complaints at an early state in my career, correct?

A. Yes, the first practice review, yes.

Q. The first practice review. There are five complaints,

four of them were dismissed and one of them led to a letter, correct?

A. From counsel, yes.

Q. So I understand that, subsequent to that, you did an investigation to determine if my actions are affected by cultural issues, correct?

A. In 2014, yes.

Q. Right. And what we didn't do ever - when I say we, I mean in regard to the cultural competency assessment - is view maybe he's getting more complaints because of his vulnerability? You never explored that, correct?

A. You've never raised it in that context.

Q. I've never raised ...

A. No. No, you, you ... Sorry, let me retract that statement and put it this way: First of all, this assessment was consensual. You were not ordered to do it; you were asked to do it, and at the time that you were asked to do it, you were provided with Mr. Wright's credentials. You did not, you did not suggest or ask that the parameters for his assessment should be expanded or re-articulated in any way, and I certainly didn't think to do that, although the expectation was that any issues around race would be brought forward by Mr. Wright as they're appropriate and he did so.

Q. Okay. So I did raise that issue with you, though, that I felt targeted?

A. You certainly raised that issue, yes.

Q. Okay. And when I say that issue, I mean I feel targeted and I feel that individuals are more inclined to lay a charge against me, correct?

A. You have said that more than once, yes.

Q. And I've indicated to you that part of the reason was the media attention that I received for two criminal, three criminal offences, correct?

A. Three?

Q. Well, uttering threats, sexual assault, and administration of a ...

A. Two Informations, yes.

Q. Yeah, two Informations.

A. Yes, you've said that.

Q. And I said I also think that I'm not treated the same as white lawyers?

A. You've said that.

Q. In terms of the benefit of the doubt that I get? I've stated that, correct?

A. Yes.

Q. And in terms of how receptive I think individuals would be to complaints about me, correct?

A. You've said that, yes.

Q. And despite that, that's not something that's in your letter, to say let's, let's investigate whether he is, in fact, treated differently?

A. No, I didn't say that. I've already answered that.

Q. Okay. Thank you. I'm going to have this marked as an exhibit. It does have my notes on it, just one note and some highlighting, but it's ... it's the Nova Scotia Barristers Society ...

THE CHAIR: We'll need a clean copy of that. It's on the website, as well. And I don't think we need to mark that as an exhibit. We can take notice of it.

MR. HOWE: Judicial notice. Thank you. So in terms of Anne Malick, prior to Anne Malick being determined to be a mentor for me, I would have expressed to you that I don't feel comfortable with Anne Malick, correct?

A. No. You raised that afterwards.

Q. Okay. And did I indicate that I had very few past

dealings with Ms. Malick but they were negative?

A. I don't recall that, no.

Q. Okay. Did I indicate that there was other individuals that I wanted to use as a mentor as opposed to Anne Malick?

A. You did make some suggestions, yes.

Q. Okay. If I could get you to turn to the blue book, that's Exhibit 3.

A. Yes.

Q. So this is the interview with Ms. Buckle and myself?

A. Yes.

Q. And if I could get you to turn to page 202.

A. Okay.

Q. If you'd look at line 7.

A. Yes.

Q. So this is me talking about Ms. Malick. In fairness, you should look at line 4 first.

MR. MURRAY: What page?

MR. HOWE: Page 202.

A. Yes.

Q. "So, so what's your impression of Ms. Malick in terms of, you know, her experience and ability?"

And I said,

> I think she's smart, she's a smart lady. I think she knows her stuff. I wouldn't question for a minute that she has experience. The very first interaction that I had with Ms. Malick, though, Anne Malick, though, was her telling me that I shouldn't take on a file, and I think it was a fraud file in Truro. But I have some trust issues, right, and I've expressed this numerous times. There are certain people at the criminal bar that I do not trust, or that I do trust, and not to her fault, she wouldn't be at the top of my list, just because of my perception of things.

Do you see that?

A. Yes.

Q. And then if you start at paragraph 20, "I'll accept mentoring from her, but if I am going ... but if I am looking for advice on a specific point, it's probably not Anne Malick that I'm going to call. That would be somebody that I'm more comfortable with."

So, clearly, I expressed to you that I did not want to proceed with Ms. Malick as a mentor, correct?

A. This was well after we had engaged Ms. Malick to be your practice mentor, and, in fact, at line 17, I say, "So why didn't you say to us, 'That's not somebody I'm comfortable meeting with?'"

Q. Right.

A. So this, in fact, occurred after, and this was the first time I heard you express any discomfort with Ms. Malick.

Q. Okay. You'd agree with me that I made at least several ethical calls to the Nova Scotia Barristers Society seeking advice, correct?

A. Yes.

Q. And lawyers are told that this advice is confidential, correct?

A. Yes. Well, I don't know what they're told. I ... I don't know what you were told, actually.

Q. Do you know if it's the Bar Society's position that the information is confidential?

A. It's our position that it's confidential except and until it relates to evidence of potential misconduct.

Q. Do you agree that it's mitigating that a lawyer would seek

ethical advice?

A. I think it's very positive that a lawyer contacts us for ethical advice.

Q. Okay. And you're aware that I spoke with other informal mentors, correct?

A. You said you did.

Q. Okay. Rocky Jones is one of the individuals that I stated that I sought informal mentoring, before, before he passed, correct?

A. You said that, yes.

Q. Did Mr. Jones express that to you, as well, "Lyle comes to my house and speaks with me and he asks for advice on things?"

A. He didn't say that, no. He contacted me and offered to be a ... somebody to work in your office to help you through things while you were under your criminal charges.

Q. Sorry. I'm looking for something in the exhibit here. So if you turn to the blue exhibit, page 21, or 91, sorry.

A. Yes.

Q. When I said, at the top, start at the first sentence, second sentence,

> I was never charged with a criminal offence in my life and within a span of a week I got charged

with three and accused of two others. I was, like, when I went to talk to Rocky, I really felt like I was under attack, and when I told Rocky that I felt sort of vulnerable, that I was afraid of what was going to happen, I wasn't talking about the files I was dealing with, I was talking about the other crap.

Correct?

A. That's what it says.

Q. So in fairness, it doesn't speak to the mentoring, but if we turn to the green book, Volume 1. It's a reference to Rocky but I don't think it's necessary ... in terms of the, some of the charges that are before the Panel, in particular, the ones that deal with documentation of files and that deal with court bookings and double-booking, okay?

A. Yes.

Q. You would agree that in order to determine if I breached a standard ... That's what we're trying to do, first of all, right, is determine if a standard was breached?

A. A rule of ethics.

Q. A rule of ethics was breached. Does consideration of

a breach of a rule of ethics require a determination of standards or base lines?

A. So for example... Some do and some don't.

Q. Okay.

A. So for example, the rule 3.1 relating to competence has to be assessed in relation to a series of factors that are outlined in that rule, and the Committee takes into consideration the level of seniority of a lawyer, whether they knew or ought to have known how to do something, those sorts of things. So sometimes there is a standard that needs to be applied at some level. They ... they try to apply the standard of a reasonably competent lawyer throughout application of the rules.

Q. Okay. And in terms of determining who's reasonably competent, you have to determine a standard or a base line to some, to some degree, correct?

A. I think the rules are pretty clear.

Q. Okay. If we look at reporting letters, for instance.

A. Yes?

Q. The degree to which you do reporting letters and file documentation, is it your view that you're in breach if you don't meet the standard of perfection?

A. No.

Q. So there is a standard, there's some wiggle room?

A. I think the rules state very clearly that the rules do not expect a standard of perfection.

Q. Right.

A. But they look for whether or not there's evidence of gross negligence, and so in assessing the standard, if I can call it that for a moment, we look at whether or not there's been harm to a client.

Q. Right.

A. And all the other factors that might lead to determining whether or not a lawyer has applied the best practices or even a reasonably competent standard.

Q. And in terms of determining what the standard is ... Because I think we're in agreement that there is a, some sort of determination of a standard here, correct?

A. You keep asking that question, and I think I've answered it. It depends on the rule. Some rules are very explicit, such as whether or not you approach a client when they're already represented, and other rules have room for judgment.

Q. Okay. If we deal with the second charge... I'm not sure if you have all the charges?

A. I do have it, yes. Yes.

Q. And in particular, we deal with 2(iii)...

A. Yes.

Q. Communicated at all relevant stages of a matter in a timely fashion and effective manner to keep clients reasonably informed.

A. Yes.

Q. Would you agree that that requires an assessment of a standard?

A. That requires an assessment of the client's needs, the nature of the matter, whether or not they felt they were reasonably informed, what evidence is on the file that documents communications, and so on.

Q. In terms of ...

A. The standard varies, depending on all of those matters.

Q. Okay. And in terms of exploration of what the relevant standards are, that's not something that's easy to do by the Professional Discipline Committee, correct?

A. I can't say that, generally speaking.

Q. Okay. Okay. In terms of proportion, in your direct evidence you gave some information about complaints that go to the

Hearing Panel versus complaints that are dealt with informally before they go to the Hearing Panel, some have components that don't necessarily get investigated, and you gave some numbers, in terms of proportion. Do you remember that?

A. Yes, yes.

Q. In terms of my ... my case, would you say that it's proportional in terms of the number of complaints that I had versus the number of complaints that went to the CIC? I don't ... I know you probably didn't have time to assess that.

A. Well, in the first year you had five complaints and four were dismissed.

Q. Right.

A. That would be consistent with the general statistics.

Q. Okay. In terms of the proportion of complaints that come from clients ...

THE CHAIR: I'm sorry, Mr. Howe. Consistent with general statistics: Every lawyer gets five complaints in the first year, or consistent with ...

MS. REES: I'm just trying to answer the question. Like, I don't have ...

THE CHAIR: No, I understand that, but I just want to make

sure I understand the answer.

MS. REES: So I had, in my testimony, I said that approximately 85 percent of written complaints are dismissed.

THE CHAIR: Right. And so...

MS. REES: Generally. So if I'm looking at four out of five of his complaints in 2011 were dismissed, there's, not that it means anything, but a level of consistency.

THE CHAIR: Right. Okay. So in relation to the number of complaints, those that were dismissed and those that weren't, that's about normal?

MS. REES: Right.

THE CHAIR: But my question was did you mean, as well, that that's normal for a first year lawyer?

MS. REES: Not at all.

THE CHAIR: You didn't mean that?

MS. REES: I did not mean that.

THE CHAIR: Would it be normal for a first year lawyer?

MS. REES: It would absolutely not.

THE CHAIR: Okay.

MR. HOWE: Okay. In terms of ... part of the reason that that's not normal is it takes a while to build up ... to build a practice,

to have enough clients to make complaints, correct?

A. There are many lawyers who build practices without any complaints.

Q. Okay. My question was a follow-up to the Chairperson's question, whether you'd expect as many complaints at this ... at an early stage in a lawyer's career. Is it your understanding that part of the reason that lawyers don't get complaints earlier to the degree that I did, does it have to do with building a practice first to get complaints?

A. I've never looked at it that way.

Q. Okay. In terms of the proportion of complaints that came from clients versus lawyers and judges...

A. Yes?

Q. Do ... do my numbers seem to match up with what you see from other lawyers?

A. None of your numbers match up with other lawyers.

Q. And in particular, there seems to be more complaints from lawyers and judges in proportion to clients, correct?

A. Well, you ... you've had quite a number of complaints from clients - one, two, three, four, five, six, seven, eight, nine - I mean, that's a lot.

Q. Okay.

A. I'm not sure what you're asking.

Q. The proportion between ...

A. But it, it's ... it's hard to measure.

Q. I understand. Okay. If we could get you to turn to the red book, the red exhibit.

A. Yes.

Q. Tab B. Before I point you to the specific section, you agree that during the interview on March 31st, 2015, I took offence to an accusation that you made? Do you remember that?

A. I think it was your interpretation of something as a threat, and you took offence to that, yes.

Q. Okay. And I wasn't charged with threatening anybody during that interaction that you spoke of in the interview, correct?

A. You weren't charged by who?

Q. Okay. If we go through these here ... So, in particular, your allegation was that I ... I could, it could be perceived that I threatened Brian...

A. Can you point to the page in the ...

Q. Sure.

A. So we can be specific.

Q. 108, please.

THE CHAIR: What tab in that, Tab A?

MR. HOWE: Tab B, please.

THE CHAIR: Tab B.

MR. HOWE: For the benefit of the Panel, this isn't in front of the ... this allegation (is it?) So this is ... this is you questioning me during this interview, correct?

A. Yes.

Q. And if you look at line 19.

A. Yes.

Q. "And I'm going to let you speak to all of this. One can say communicating with a client in an offensive manner by potentially threatening the client if he went ahead with the appeal on the grounds that he was suggesting, so those are our concerns." See that?

A. Yes.

Q. And then the answer, line 3 on 109, "I just have a question. Do you take..." And this is me, correct?

A. Yes.

Q. "Do you take [redacted] or who purports to be Mr. [redacted] in this complaint to be suggesting that I threatened him to not do an appeal, because I didn't read that?"

You see that, correct?

A. Yes.

Q. So that's the interaction that we're talking about, where I thought that you were implying that I threatened [redacted] correct?

A. I was suggesting... I was characterizing his allegation, yes.

Q. Okay. And, essentially, his allegation was that I told him he could, he could file a complaint, sorry, not a complaint, that he could file an appeal, because he wanted to appeal a conviction, correct?

A. Well, what I said next is what I was intending. "It's a suggestion that you said to him, 'Don't file an appeal based on incompetent counsel. It would be bad for me, and you could end up worse off.' One could say that's factually correct, and somebody else could say that's a threat."

Q. Okay. Obviously, you don't still interpret that to be a threat, correct, or potentially a threat?

A. We didn't proceed with that as a charge, no.

Q. But did you consider that to be potentially a threat?

A. If the facts had borne out that you did, in fact, say what

[redacted] alleged you said, it could be characterized as a threat, yes.

Q. And just to be clear on what [redacted] said, one part of it was he could do an appeal on an aggravated assault charge or assault causing bodily harm charge, correct?

A. I don't remember.

Q. Okay. If I told you that I put to him that if he appealed the conviction, he could end up worse off because they could charge him with what he was initially charged with, potentially, does that ring a bell?

THE CHAIR: Mr. Howe, what is the relevance of this? I'm looking at the formal part of any charge ...

MR. HOWE: I'm going to leave this line of questioning alone.

THE CHAIR: Okay.

MR. HOWE: In terms of [redacted] there was, at one point, an accusation by the Bar Society that, essentially, I stole a client from Luke Craggs, correct?

A. That was an issue that came up in the investigation of [redacted] complaint, based on his allegations, yes.

Q. Okay. And it wasn't just ...

A. But this relates to the charge that was withdrawn.

Q. Correct. And with respect to that charge, you'd agree with me if I said that I stated in an interview with you - I believe it was in the March interview - that [redacted] never even met Luke Craggs.

A. Did you say that?

Q. If you'd turn to ...

THE CHAIR: Well, I'm going to ask again, what's the relevance of this?

MR. HOWE: The relevance of this is I've been attempting to demonstrate bias, and I think, as I stated, I've started to establish a foundation for that. I was accused of something where I'm going to suggest there was no investigation and the charge was dropped yesterday. I think that that highlights the bias.

THE CHAIR: So you're saying ...

MS. HICKEY: Just to correct that factually, the charge was offered to have been dropped earlier and there was no response communication from my friends.

THE CHAIR: Okay. So you're saying that there was a charge based on allegations made by [redacted] you're saying that there was no investigation done on it?

MR. HOWE: Yes.

THE CHAIR: And I ... I don't ... Sorry, I guess when you put it that way, you're saying there was an allegation made by [redacted] there was no investigation on it and yet the Society laid a charge, and you're saying that's evidence of bias?

MR. HOWE: I'll go further than that.

THE CHAIR: Okay.

MR. HOWE: I don't believe there was an allegation. I believe that the allegation came from Ms. Rees and that the client never alleged that I had stolen him from Luke Craggs, and that nobody did, and there was no investigation to speak with Luke Craggs or [redacted]

THE CHAIR: So it's ... All right. Okay.

MR. MURRAY: Why don't you just ask her?

MR. HOWE: Okay.

THE CHAIR: Yeah, why don't you just ask.

MR. HOWE: That's fine, I can ask that. So in terms of what I just stated, am I correct that there was an allegation from you that I had, that I tried to steal [redacted] from Luke Craggs?

A. I don't make allegations. I am trying to explore facts based on information before us. I'm going to look at the ... the report that went to the Complaints Investigation Committee which

summarizes the investigation of the [redacted] matter. We ... we quite extensively investigated [redacted] complaint. So you're suggesting that we didn't investigate enough...

Q. Could I address that issue?

MR. MURRAY: Well, wait until she's finished with your question.

MR. HOWE: Okay.

A. So you were asked for a response to the affidavit from [redacted] provided to us by Peter Mancini. You provided a response July 25th. We reviewed the client file. We interviewed the individuals at the Halifax Refugee Clinic. You were asked to provide a more substantive response on September 16.

We explored with you, on March 31st, how you came to represent [redacted] Specifically, you were asked why you approached [redacted] at all when he was already represented by counsel, Luke Craggs. You first indicated that you were in the cells speaking with another client and you didn't remember whether you first spoke with [redacted] or the other way around. I go into the exchange that we had, which is part of this transcript of March 31st. Then we had a general discussion about how you approach clients, that you felt that you had a duty to improve the administration of justice and give

potential clients an option and that this ethical duty was more important than the ethical duty not to approach such individuals. It was the conclusion of the Complaints Investigation Committee, after reviewing all of the information from the investigation, that that was an appropriate charge.

Q. Okay. So in terms of this specific charge...

A. Which has been withdrawn.

Q. Okay. The solicitor/client relationship is really what's important because that's what's being interfered with, allegedly, correct?

A. I ... I guess so, the specific rule that if some, if a person is represented by counsel, they're not to be approached by another counsel.

Q. You'd agree that you never spoke with Luke Craggs about whether he was retained by [redacted]

MS. HICKEY: Mr. Chair, I'm just going to interrupt here. This is a charge that has been withdrawn. Mr. Howe's own interview, in the red book, makes reference to what [redacted] told him and that he's conveyed to the Society with respect to the approach involving Luke Craggs. It's on page 78, under tab B. There's specific evidence given by Mr. Howe on that point. I'm concerned

that we're wasting time that's very precious on a charge that has been withdrawn on a matter that has no longer any relevance.

THE CHAIR: Well, I think the relevance is in relation to his allegation of bias. I do appreciate that you obviously have material there that would be very relevant on, I guess, a re-direct examination. I do appreciate you pointing out ... You're pointing out a page reference?

MS. HICKEY: Yes, page 78 in the red book, tab B.

THE CHAIR: All right. Let's have a look at that.

MR. HOWE: In fairness, I only have maybe 30 seconds worth of questions about this point to this witness, and I don't know that it's appropriate that Ms. Hickey interject to point us to where she wants us to look, when I'm questioning the witness on this point.

THE CHAIR: Well, I've had a look at page 78, Mr. Howe, because if, quite frankly, you're putting questions or suggestions to Ms. Rees that don't fairly represent the evidence in the transcript. I do think that that's relevant.

MR. HOWE: Okay. Page 78?

THE CHAIR: Yes.

MS. HICKEY: Starting at line 8. I'm simply referring to Mr. Howe's own reference to Mr. Craggs' involvement. Perhaps even

more pointedly, Mr. Chair, in the affidavit of [redacted] that's in the material, at page 612, under tab 75, 72, sorry. There's again direct evidence ...

MR. HOWE: I think that she's misinterpreting my question. I'm going to establish that (a) [redacted] and Luke Craggs never met, so there was no solicitor/client relationship; number 2, Luke Craggs and [redacted] never signed a retainer agreement; number 3, Ms. Rees never spoke to [redacted] or Luke Craggs; number 4, I told Victoria Rees in March that Luke Craggs and [redacted] had never met, and then the charge still proceeds until yesterday. So I understand that Ms. Hickey is pointing to some information in the transcript that seems to suggest that I was aware that Luke Craggs existed and that he was being referred a matter, but there was no solicitor/client relationship.

MR. MURRAY: No, but a moment ago, Mr. Howe, you suggested that Ms. Rees just kind of made this up.

MR. HOWE: Well, I suggested she made up the allegation.

MR. MURRAY: That's right. That's right. So what's your evidence that she made this up? Put that to her.

MR. HOWE: Okay. In terms of the solicitor/client relationship, in order for that to have been breached, it would have

had to have existed, correct?

A. Yes.

Q. And it didn't exist, correct?

A. I don't know. I ... I understood that Luke Craggs represented [redacted] in court, once did appear in court, and I didn't know that you had to have met the client, if you're duty counsel, in order to represent them and for there to be that relationship, but I ... I could be wrong.

Q. But you had no evidence that Luke Craggs was duty counsel, correct?

MS. HICKEY: Mr. Chair, I have to refer again to [redacted] affidavit, which formed the basis for the investigation by the Bar Society, under tab 72, at page 612.

MR. HOWE: There's an issue with that affidavit.

MS. HICKEY: It ... this is not a question about the issue of the affidavit. It's what was the evidence before the Society upon which the investigation proceeded, which is the very point that you seem to be raising, Mr. Howe.

MR. HOWE: The affidavit is not evidence. There's not a witness to swear this in.

THE CHAIR: Mr. Howe, you have said to this Panel, you made

a very significant allegation - you've suggested, essentially, that the Society, through a variety of people, made up an allegation against you, and yet you're asking questions and we're seeing evidence that just doesn't bear that out.

MR. HOWE: If I could ...

THE CHAIR: And I'm sorry, but I think it is important for us to understand the context, because your questions seem to be more, contrary to what is obvious evidence that we're hearing from these people, and I'm ... we're going to listen to that. Okay?

MR. HOWE: I understand that. And I ...

THE CHAIR: So just be patient and allow me to find that.

MR. HOWE: That's fine.

MS. HICKEY: It's tab 72, Mr. Chair, Volume 2, page 612, paragraph 11.

THE CHAIR: And, Ms. Rees, I'm going to ask you a question. Where did you get ... where did this affidavit come from?

MS. REES: It was provided to us by Peter Mancini, who [redacted] approached with his complaint and concerns about representation by Mr. Howe.

THE CHAIR: Okay. All right. Just give me a moment. Mr. Howe, I'm not going to allow you to ask questions on this, this...

MR. HOWE: I understand, I understand that, Mr. Chair.

THE CHAIR: I do not see any factual basis for your ...

MR. HOWE: I'll just point to one thing in this affidavit without questioning this witness.

THE CHAIR: And what would that be?

MR. HOWE: If we look at paragraph 10, sorry, 11...

THE CHAIR: Oh, I understand that he may have said that to you, but I mean, what I'm ... The Society had evidence before them that Mr. Craggs represented this gentleman.

MR. HOWE: Okay. I think it just turns on the definition of representation. My point was simply that he'd never met this individual, there's no retainer, there's no solicitor/client relationship.

... (inaudible - talkover)

THE COURT: Ms. Rees.

MS. REES: Sorry.

THE CHAIR: He ... in this affidavit, he swore to the Society that Mr. Craggs appeared with him in court. Well, that, to me, is evidence that the Society can certainly proceed on, and it does not sustain the basis for the question, line of questioning that you've asked.

MR. HOWE: I take your point. I'll move on.

THE CHAIR: And I'm going to shut that questioning down.

MR. HOWE: Okay. With respect to ... And just to take a look at the clock, it's closing in on 4:30, Mr. Chairperson. I don't know how long ...

THE CHAIR: Yes, right around 4:30. If there's something you can do quickly, that would be appreciated.

MR. HOWE: Okay. With respect to the complaint from Michelle James that later was forwarded by Adrian Reid.

A. Yes.

Q. Okay. Is it your view that, at your behest, Ms. James was to go and seek out information from other Crowns supporting the basis of her complaint?

A. Ms. James, as I recall, without having my emails in front of me, because I know you do - they've been disclosed to you - she contacted me with concerns and she said that others were having similar concerns about your conduct, and I said, "If that's the case, then you need to provide that information to me."

Q. So is it fair to say that she did that at your behest?

A. I didn't ask her to go and do it. I said, If you want to make a complaint and if you want this complaint to represent the

views of others, then you need to provide that evidence.

Q. So if we look at ... This is the last question and then I'll stop after this, or last line of questions. This is in the disclosure, I believe. And I'll put this to the witness, and provide copies for the Panel. There's just one line. I know this is a rather long memo, but there's one line in this memo that I'd like to point to, Mr. Chairperson.

THE CHAIR: Okay.

MR. HOWE: So you've seen this ...

MR. MURRAY: Are you going to exhibit it?

MR. HOWE: Oh, sorry.

THE CHAIR: We should mark it as exhibit. That would be 10.

EXHIBIT 10 - MEMO, SEPTEMBER 24, 2013, TO "[redacted] FILE" BY MICHELLE JAMES (MARKED AND ENTERED)

MR. HOWE: So you've seen this exhibit before, correct?

A. Yes.

Q. And this was something that was sent to you from Michelle James?

A. I don't recall if it was advanced by Mr. Reid as part of the complaint or whether ... I ... I think it was that, rather than it ... I don't remember.

Q. Okay. If we turn just to very last line.

A. On page 2?

Q. Yes. Maybe not the last line; we'll look at the last paragraph though. If you look at two paragraphs, three paragraphs in.

A. Sorry, where are we?

Q. Three sentences in on the last paragraph of the memo.

A. Okay.

Q. Three sentences in. So this is Ms. James saying, Lyle told the Court that I was potentially out to get him and that I'd even gone so far as to canvass every Crown in Dartmouth about issues they had with him. After Court was finished, I told him that it was done not of my own accord but at the behest of the Bar Society, and he needed to get his facts straight.

A. Yes.

Q. Do you agree with Ms. James's statement that it was not

done of her own accord but at the behest of the Bar Society?

A. No, I don't.

Q. Thank you. I think we can stop there, if the Panel agrees.

MR. MURRAY: Are, are you done?

MR. HOWE: No, I'm not done.

THE CHAIR: How much more do you think you have for Ms. Rees?

MR. HOWE: I'm loathe to say but quite a bit, at least a couple of hours.

THE CHAIR: Okay. Then this is a good time to stop.

MS. HICKEY: Mr. Chair, in light of Mr. Rees's responsibilities in her role at the Society and the continuation of this matter in January, I'd like the opportunity to be able to confer with Ms. Rees, not about her testimony in any way recognizing she is still subject to cross-examination, but it creates significant difficulties for the Society if I'm unable to consult with Ms. Rees about the ongoing planning and continuation of this hearing in January. Where we have a gap in time now, between now and the resumption of the ... of the matter in January... I know exceptions of this nature can be made when witnesses are under oath, and I think

this is an appropriate situation for that to occur, giving my undertaking that I will not be discussing Ms. Rees's testimony with her in any way in the context of the preparation for the resumption of this matter.

(Background comments)

THE CHAIR: Mr. Burke is suggesting is it possible we can find a couple of hours in the week of December 20th to finish Ms. Rees off.

MS. HICKEY: That would certainly be preferred, sooner rather than later.

MR. HOWE: I ... I didn't even bring my agenda. I didn't expect to set dates here. I don't have it.

MS. HICKEY: Does Ms. McCarthy have access to that?

MS. McCARTHY: Not his paper calendar. He's ordered to have a separate calendar, by the CIC.

MS. REES: I'm quite prepared to stay all night, if we want to get this done tonight.

MS. HICKEY: I'm certainly prepared to stay late, as well.

MR. HOWE: I've got child care duties and I don't know that I necessarily can stay all night.

THE CHAIR: There's no way that you can ... Is there anybody

at your office where you could access your calendar?

MR. HOWE: I would think we just missed them. I could try, I could try them.

THE CHAIR: All right. Why don't we try that?

MS. McCARTHY: One thing I should probably advise is I have a matter starting on Monday that is to extend through to the 23rd of December in Supreme Court.

THE CHAIR: Okay. Well, we'll wait and see what Mr. Howe has to say.

MS. SUMBU: And I can say that I'm in court until the 21st, so after that ...

HEARING RECESSED (TIME: 4:34 p.m.)

HEARING RESUMED (TIME: 4:36 p.m.)

MR. HOWE: ... office, and the problem is they don't see my calendar, so there's a chance that it's at my house in my briefcase. I apologize.

THE CHAIR: Okay. So what's your schedule today?

MR. HOWE: Today?

THE CHAIR: Um-hmm.

MR. HOWE: Well, my son's at basketball. I really should ... Normally, I take him ... Or he's going to basketball. Normally I

take him, but I at least have to care for him when I pick him up. I ... I don't have any issue, by the way, with Ms. Hickey speaking with Ms. Rees about matters that don't pertain to her cross-examination.

MS. HICKEY: But aside from that, it's a very lengthy time for Ms. Rees to have to wait to resume cross-examination in what's obviously difficult circumstances. So the sooner it could be completed, the better.

MR. HOWE: I understand that.

THE CHAIR: Yeah, that would be great if we could get it done before Christmas. So I guess all we can do at this point, considering Mr. Howe's child care situation, which, to be fair, everyone was expecting to break at 4:30, is to canvass this by ... I would ask both parties then to, to send me their schedule, and I'll distribute to the other Panel to see if we can't find something in that week just prior to Christmas. We'd need a morning or an afternoon.

MS. REES: Or an evening.

THE CHAIR: Or an evening.

MS. HICKEY: And I, you know, I don't think that's out of the question in this context, Mr. Chair, to attempt to look for an

evening.

THE CHAIR: Yes. And in the meantime, certainly you can have the opportunity to speak with Ms. Rees about ongoing preparation with the file, so long as it doesn't impact upon the evidence she's giving in this proceeding.

MS. HICKEY: Understood.

THE CHAIR: Okay. So with that understanding that I will hear from the parties by way of email, we will break now. We are scheduled, at the very least, to be back here at 9:30 on January 4th, correct?

MS. HICKEY: Correct. Mr. Chair, may I suggest that we have a deadline of noon on Monday to provide you with our schedules?

THE CHAIR: That would be great, noon on Monday. Thank you. Okay. Thank you.

HEARING ADJOURNED **(TIME: 4:38 P.M.)**