

**THE CORNWALL
PUBLIC INQUIRY**



**L'ENQUÊTE PUBLIQUE
SUR CORNWALL**

Public Hearing

Audience publique

Commissioner

The Honourable Justice /
L'honorable juge
G. Normand Glaude

Commissaire

VOLUME 346

Held at :

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

Monday, February 23, 2009

Tenue à:

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

Lundi, le 23 février 2009

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Lori Beaudette	Registrar
Mr. John E. Callaghan Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. David Rose Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Ms. Leslie McIntosh	Ministry of the Attorney General
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Ms. Helen Daley Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. David Bennett	The Men's Project
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Frank T. Horn Mr. Ian Paul	Coalition for Action

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DESCRIPTION

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

2 L'audience débute à 9h33.

3 **THE REGISTRAR:** Order. All rise. À
4 l'ordre. Veuillez vous lever.

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you. Good morning
10 all.

11 Mr. Engelmann?

12 **MR. ENGELMANN:** Good morning, Mr.
13 Commissioner. I just wanted to talk about the schedule for
14 the day, sir. I understand it will start with a statement
15 from yourself opening this phase of the Inquiry. After
16 your statement, Ms. Daley will start on behalf of her
17 client, the Citizens for Community Renewal; they are
18 scheduled from 9:30 until 11:30 this morning.

19 Then after a short break at 11:45, we have
20 the Coalition for Action, Mr. Paul is here and will be
21 commencing those oral submissions at 11:45.

22 And sir, we have presently scheduled a one-
23 hour lunch break from 12:45 to 1:45, with the Coalition
24 continuing with their submissions until 2:45. An afternoon
25 break again, 15 minutes, and then at 3:00 o'clock,

1 submissions from the Victims' Group; Mr. Lee is present and
2 those submissions are scheduled until 5:00 o'clock today.

3 Then from 5:00 to 5:15, Mr. Bennett is
4 present, was of a minute ago, for the Men's Project and has
5 submissions of about 15 minutes in length.

6 So it's a full day. That's what we have
7 scheduled for today, and I understand, sir, you have a
8 statement to make.

9 ---STATEMENT BY THE COMMISSIONER/DÉCLARATION PAR LE
10 COMMISSAIRE:

11 THE COMMISSIONER: Thank you.

12 Welcome back, everyone.

13 Before starting the process for receipt of
14 oral submissions today, I want to take some time to confirm
15 the processes for this week.

16 Although counsel are aware of these details,
17 not everyone in the gallery or viewing by web site from
18 home may understand what will happen during submissions
19 this week.

20 One of the governing principles of this
21 inquiry has been public access and transparency, so I'm
22 pleased that the technology we have permits members of the
23 public to participate by hearing oral submissions via
24 Webcast and by reading the written submissions made by the
25 parties posted on our web site.

1 I see that members of the public have come
2 to listen in person and I particularly welcome you here
3 today.

4 This morning, we will start with Phase 1,
5 oral submissions. This will continue for the next three
6 days and will finish on Thursday, February 26th, 2009.
7 Today, written Phase 1 submissions by all parties will be
8 posted on our Inquiry web site, so members of the public
9 may read them. We asked parties to create a 10-page
10 Executive Summary for their submissions to facilitate
11 review by the public. These summaries will also be posted.

12 Parties in Phase 1 were asked if they
13 intended to give written submissions, and if they intended
14 to give oral submissions. All parties have confirmed their
15 intentions to give oral submissions. All parties except
16 the Men's Project have filed written submissions. As a
17 result, the schedule for giving Phase 1 testimony
18 submissions must be strictly followed to ensure all those
19 entitled to speak will proceed on the day and time set
20 aside for them.

21 The days for each party are posted on our
22 web site. The maximum period given any party is two hours.
23 Some parties were given less time based on their interests.
24 In all cases, I will enforce time limits in the interest of
25 fairness to all. The lunch breaks will be kept to one

1 hour. We will take short breaks during the day as needed.

2 Oral submissions can be made by more than
3 one representative of any party. I do ask each person
4 speaking to identify themselves and the party they
5 represent for those watching at home, in the gallery or for
6 the media.

7 Je rappelle que, pendant les observations
8 orales, nous n'afficherons aucun document sur nos écrans
9 publics dans la salle d'audience. Comme d'habitude, nous
10 offrons des services de traduction simultanée et une
11 transcription des instances de chaque jour sera affichée
12 sur notre site web.

13 Je passe maintenant à l'aspect logistique de
14 la phase 2. Demain le 24 février, les observations écrites
15 de la phase 2 figureront sur notre site web pour que les
16 membres du public puissent les consulter. Comme sur la
17 phase 1, nous avons demandé aux parties de préparer un
18 résumé de 10 pages de leurs observations.

19 Les auditions des observations concernant la
20 phase 2 commenceront à 9h30 le vendredi, 27 février, et
21 s'achèveront ce même jour. Nous avons demandé aux parties
22 si elles souhaitaient saisir l'occasion pour faire des
23 observations écrites ou orales au sujet de la phase 2.
24 Plusieurs parties ont décidé de se concentrer sur la phase
25 1 et ne pas présenter d'observations sur la phase 2, ou de

1 se limiter à des observations écrites. Les noms des
2 parties qui feront des observations orales concernant la
3 phase 2 vendredi figurent sur notre site web.

4 La période maximale qui est allouée à une
5 partie pour des observations sur la phase 2 est de 30
6 minutes. Là encore, je verrai à ce que ce temps soit
7 respecté dans les meilleurs intérêts de tous.

8 I would like to mention that on Friday, I
9 will be welcoming several members of my Advisory Panel who
10 will attend to hear Phase 2 submissions in person. I would
11 also like to reiterate some of the information already
12 given on Phase 2, Public Submissions.

13 Members of the public were given the
14 opportunity to make written submissions on Phase 2.
15 Fifteen (15) individuals or organisations took this
16 opportunity before the deadline of February 12th, 2009. All
17 parties have received copies of these submissions and they
18 are available for viewing here at the Commission's offices.

19 I consider the receipt of submissions to be
20 a very important part of the work of this Inquiry. I look
21 forward to hearing from everyone who will speak this week.
22 I assure you that what is said this week and the contents
23 of the extensive written submissions will be weighed very
24 seriously and reviewed with care as I move to the writing
25 of my report to the Government of Ontario.

1 I do want to explain to everyone here in
2 person, and at home, that the submissions of the parties
3 represent their views, from their perspective and based on
4 their interests. While parties may urge me to make certain
5 findings, submissions are not, and I repeat, are not
6 evidence. My findings, conclusions and recommendations
7 will only be set out in detail in my report to the
8 Government of Ontario, after I have carefully considered
9 and weighed all of the evidence adduced at this inquiry.

10 My report will be the culmination of the
11 work of this Inquiry, thoroughly addressing important
12 matters both for this community and for the public policy
13 throughout Ontario. As I have in the past, I ask everyone
14 to maintain an open mind and wait for that report before
15 reaching any final conclusions.

16 We have a busy week ahead, so we will now
17 start with the Phase 1 submissions from the Citizens for
18 Community Renewal.

19 Ms. Daley?

20 --- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MS.

21 DALEY :

22 MS. DALEY: Good morning, sir.

23 THE COMMISSIONER: Good morning.

24 MS. DALEY: And in accordance with your
25 instructions, I am Helen Daley. I appear on behalf of the

1 Citizens for Community Renewal, and I would like to use my
2 time with you and the public, sir, in the following
3 fashion.

4 What I propose to do is this: our written
5 submissions represent our best effort to put before you the
6 critical pieces of evidence that we think are germane to
7 the findings you need to make. I'm not going to utilise my
8 oral submissions to that end.

9 What I am going to do is this, sir, I am
10 going to, I think for about 10 minutes, maybe, give an
11 overview statement of how Citizens for Community Renewal
12 sees the events and circumstances that bring us here, what
13 we're hoping for in the report and just a general view of
14 how we see things.

15 From that, I want to step into a bit of an
16 historic look at what I say are patterns of weakness in the
17 institutions in this town, that have, in part, driven us
18 towards the place that we got to.

19 And in that portion of the submission, sir,
20 I'm going to be looking at events and circumstances that
21 occurred before David Silmsler in December of 1992, because
22 of course Mr. Silmsler was not the first person to ever come
23 forward with an allegation of historic sexual abuse.

24 Having, I hope, highlighted what I see to be
25 the embedded weaknesses if you will, in these institutions.

1 I will then use the balance of the submissions to outline,
2 from CCR's perspective, the Silmsler narrative, the key
3 elements of the Silmsler story, and again how and why it
4 occurred that the charges failed to be tried and that the
5 community ended up with the views and concerns that it
6 still has.

7 So having given you that brief outline, let
8 me just give you my overview comments and submissions on
9 behalf of the CCR. To this end, sir, I found it useful to
10 go back to the CCR's Standing Application and what it said
11 at that time -- it's interesting, it's focal point would be
12 -- because luckily for us I think I can say that this has
13 held up fairly well and it does create the platform for the
14 submissions I want to make today.

15 What CCR had told you right back at the
16 beginning was that it had experience to bring, or it had
17 experienced a progressive loss of community confidence in
18 Cornwall's most fundamental institutions, and those were
19 the police, other governmental agencies, the church and
20 other law enforcement institutions. And, in particular, it
21 was CCR's view at the outset that a lack of information and
22 misinformation about significant events contributed to this
23 unfortunate diminution of public confidence in these
24 institutions.

25 What we said at that time as well was that

1 our interest was in examining the manner in which
2 information about allegations of historical abuse of minors
3 and the investigation and prosecution of such was reflected
4 back to the community over this span of time, and the
5 extent to which that communication, or perhaps lack of it,
6 exacerbated the loss of confidence. So, going in, that's
7 how we saw things.

8 I used a phrase in the written submissions
9 and the phrase we used at the time, sir, was "a social and
10 legal emergency". That's what CCR identified. I continue,
11 after three years of evidence, to believe that that's an
12 appropriate label. Another term that I used for that in
13 our written submissions was "a moral panic" and I want to
14 just spend a moment and draw out that concept.

15 I've used that term and I think it's
16 applicable because the term "panic" connotes a fear that is
17 exaggerated and has been wrongly directed somehow. Moral
18 panics, believe it or not, are not unique to Cornwall.
19 There are many instances, and there is a sociologist who's
20 written on this subject named Philip Jenkins, but suffice
21 to say that community fears about sexual offences,
22 particularly sexual offences against children, have in the
23 past and in different North American communities given rise
24 to a moral panic.

25 What the literature would suggest is that

1 one of the things that is characteristic of that phenomenon
2 is the use of extreme language to portray the problem. So,
3 for example, men who are sexually attracted to teenagers,
4 which in the main is what we've been looking at here, are
5 perhaps mislabelled. They're mislabelled paedophiles or
6 molesters or child abusers or any of a number of other
7 terms, but suffice to note that the terms applied are
8 strong, emotive terms. They engage people's root fears of
9 harm to the completely vulnerable child.

10 I'm making this point, sir, for a reason,
11 and although I don't think that -- and I am going to tell
12 you what I think the moral panic is truly about. There's
13 definitely a veneer of it that is about a fear of
14 paedophilia but, as we said in our written submissions, a
15 more accurate way to describe the sexual offences that were
16 occurring here was not paedophilia at all but another term,
17 which is perhaps not as well used because it's hard to
18 pronounce, but it's "ephebophilia" and that does relate to
19 men who are sexually attracted to teenagers; that is people
20 over puberty.

21 I'm simply making the point that the
22 community chose to see what it was dealing with as a
23 paedophile epidemic but, in reality, the community deceived
24 itself a little bit about that too. But I think the more
25 important point to take from this is, what was the panic in

1 Cornwall and what was the social and legal crisis about?
2 And, sir, as I hinted to you, on the surface, yes, it's
3 about sexual offences. It's about paedophilia and harm to
4 young people.

5 But the more I thought about it, the more I
6 thought beneath that surface really what this panic was
7 about was a fear that the local institutions were somehow
8 covering up paedophile activity of one another's prominent
9 men, and when I say that I mean men that are connected with
10 institutions, be they Probation and Parole or other ones,
11 and the fear that law enforcement -- the frontline law
12 enforcement, that is the Cornwall Police Service, was
13 somehow covering this up and not dealing with it properly.

14 I think that is what the community really
15 did fear, and when you turn your mind to that you
16 appreciate that that can be a strong fear, an intense fear.
17 That's the kind of fear that can motivate a lot of
18 different actions, some of them fairly extreme.

19 Again, and this is overview as opposed to
20 details, but when we thought about that what occurred to us
21 is that that fear that local institutions were covering up
22 this type of behaviour by one another's members, that fear
23 pre-existed Mr. Leroux by three years. That fear was out
24 there -- I would say perhaps pre-existed by two-and-a-half
25 years. That fear was out there in the community probably

1 as early as 1994 because the message that gave rise to it
2 was out there.

3 The fear became concrete at a later point-
4 in-time because Mr. Leroux put details to it. The details
5 he put to it were the details of a somewhat secret clan,
6 secret meetings on an island, that these were dangerous
7 people who were planning hits on one another et cetera,
8 et cetera, et cetera.

9 Leroux supplies those details and, in my
10 respectful submission, as he has indicated here, those
11 details are not accurate, but it's probably not surprising
12 that someone came along and invented details like that
13 because, sir, my strong feeling is that the fear was
14 already out there. The belief was there. It didn't have
15 necessarily a structure to it but the belief, the fear that
16 there had been a cover-up, was there. I think we see that
17 reflected, by the way, sir, in many, many different aspects
18 of this situation.

19 And, again, when I thought about what the
20 defining moments and the key events were, what occurred to
21 me is this. The defining moment on that front, the thing
22 that begins to undermine if not completely destroy
23 confidence in institutions, occurs in 1994 when -- the
24 beginning of the year when the media, both print and
25 broadcast, delivers on people's doorsteps the story that

1 there have been allegations against a priest; that those
2 allegations were effectively not properly investigated or
3 in any event there were no charges; that the complainant
4 had been paid off \$32,000, which is not a trivial amount of
5 money by local standards at that time; that the Bishop, who
6 was a community leader, had suggested that that payoff
7 wasn't really what he wanted to do but nonetheless he
8 didn't want to hinder a criminal investigation.

9 We learned that there was a probation
10 officer who had committed suicide who had also been the
11 subject of allegations of this individual which had not
12 been investigated, and then as the narrative unfolds the
13 Bishop comes back and tells us, "Oh gosh, I was wrong. The
14 settlement that we did enter into with this fellow did
15 terminate the police investigations. We got it all wrong."

16 Now, if you just step back for a second and
17 try to imagine yourself as a member of this community who
18 would otherwise have a neutral view about the whole thing,
19 what we're being told at that point-in-time are in fact
20 real facts. It's not fantasy, it's not a Stanley (sic) and
21 Helen conspiracy meeting, but these are underlying facts
22 that have occurred. What you might draw from learning this
23 is that at least three pillars of authority in this
24 community -- and that would be the clergy, probation and
25 police -- looks as though they have behaved, if not

1 illegally, dishonourably, in a way that they regret; in a
2 way that they, who I think would all say, does not
3 represent their finest hour.

4 And of equal importance, sir, this story
5 tells us that these institutions have seemingly -- have, in
6 fact, interacted in relation to the Silmsler issue. So it's
7 not just one institution has done something, but these
8 institutions together seem to be involved with Mr. Silmsler
9 and his allegations and a failure to deal with them in an
10 appropriate way and an admitted, unintended, cover-up of
11 his criminal complaint.

12 So I think that -- just stopping there for a
13 second -- rational, sensible, unbiased people in this
14 community would be concerned, would be deeply concerned
15 about that information because of what it suggests. And it
16 does certainly suggest that there is something to talk
17 about here in terms of how these agencies have been engaged
18 with Mr. Silmsler and his allegations.

19 But just carrying forward, sir, into this
20 scenario then steps the local hero and that's, of course,
21 Officer Dunlop, and he is on the outs with his own force
22 over its handling of this situation or at a certain point-
23 in-time becomes so; that becomes part of the story. If
24 your perspective on this is that perhaps local policing has
25 not done what it should be doing, then you are going to

1 side with the critic, and that's Mr. Dunlop, but I think
2 most importantly from the outset he seemed to be on the
3 right side of the issue because of the disposition of the
4 *Police Services Act* charges that are mounted against him.

5 So what you then have is concern about how
6 institutions have behaved, a charismatic figure who stands
7 apart from that -- stands apart from it as a critic; a
8 person who has to that point done the right thing in terms
9 of putting the information about Silmsner's complaints in
10 the right place, that is, in the hands of the Children's
11 Aid Society and been penalized for it.

12 So how does this then reflect itself in the
13 community and how the community acts and responds? And,
14 again, I think what happens at this point is truly
15 interesting and it's truly important to understand -- to my
16 understanding at least, of why at a much later point-in-
17 time, the Project Truth prosecutions failed.

18 So here's what happens, sir. The local hero
19 and his supporters then become the alternate constabulary
20 if you will. They become the alternate people to whom one
21 goes to report abuse. They become the people to whom one
22 goes for support -- moral support, just humane treatment.
23 And they become the parallel or the alternate people to
24 whom one goes for investigation of an allegation.

25 And I find it absolutely fascinating that

1 although it may be correct to say that by that point-in-
2 time, which is now the 1996 and '97 timeframe, Officer
3 Dunlop, as we know, is still on sick leave throughout most
4 of '96 and it may more likely than not be the case that in
5 part what he's doing is also garnering out as were his
6 lawsuit, but the fact is I think more important than that
7 is that the role that he is playing as the alternate
8 investigator, the alternate person to go to, the alternate
9 authority, the extent of which that idea catches on is
10 fascinating because that idea catches on in a big and a
11 deep way and that concept is still with us now. When I say
12 "catches on", what I mean is that if you look at the
13 individuals who alleged abuse and you look at the
14 individuals on whose allegations charges were laid, there's
15 very few of those people who did not have, at some point-
16 in-time, contact with Officer Dunlop; not very many.

17 So now, sir, so as I see it and as CCR sees
18 it, for this to have happened, for it to have occurred that
19 the official authority lost its moral authority and folks
20 went elsewhere, for that to have happened, argues a
21 critical lack of confidence in the real authority. And it
22 is a reflection, I think, of that attitude and view, but it
23 has a secondary significance in my submission and that's
24 this, it foreshadows -- it very clearly foreshadows the
25 forensic problems that occur at a later point-in-time when

1 the OPP has brought charges and is prosecuting sexual
2 offences. It foreshadows it absolutely because this
3 parallel role is the source of the disclosure problems and
4 everything else.

5 So, again, I think that from a community
6 perspective what it tells us is for this to have happened,
7 he did have a deep distrust of local institutions, but it
8 was also a very early warning for the people who did become
9 involved in law enforcement in the '94 timeframe and again
10 in '97 under Project Truth, that there was an element out
11 there that was clearly going to be the source of disclosure
12 problems.

13 And, sir, I guess the next thing that I
14 consider significant and that I feel is meaningful here to
15 talk about is, in the face of that moral panic, in the face
16 of that deteriorated trust of local institutions, what
17 unfortunately occurs, it seems to me, is that the
18 legitimate authority then decides that it's appropriate to
19 have the Dunlop group steer the police agenda, and I'm now
20 referring to the Fantino brief.

21 The Fantino brief, of course, represents the
22 work that Dunlop -- that Officer Dunlop did up to the end
23 of 1996, but for the authority -- for the OPP and the Crown
24 to have essentially allowed that document to steer the
25 ongoing police agenda, I think is intriguing, but in some

1 ways forms part of the problem. And, sir, my submissions
2 on that point are twofold.

3 I have no criticism to make of the actual
4 investigations that occurred under the Project Truth
5 umbrella of individuals who came forward alleging abuse.
6 That's typical police business and they did it well. They
7 investigated well. They treated people well. They laid
8 charges.

9 The critique that we would offer in terms of
10 Project Truth has nothing to do with that, but it does have
11 to do with the other component of Project Truth which was
12 the paedophile ring conspiracy component and I think in
13 many ways, you can put those two things together. And when
14 you think about that, you realize that in 1997 when Leroux
15 material comes forward that appears to provide a factual
16 support for that whole notion, I'm critical, frankly, of
17 the fact that that was taken as a rational and a reasonable
18 way to deal with the problem.

19 And the problem certainly, sir, I would say
20 is this. At that point, the police activity begins to look
21 politicized. It begins to look politicized because it is
22 pursuing allegations that are not directly *Criminal Code*
23 offences such as a paedophile ring.

24 Of equal importance though, it is re-
25 pursuing allegations that have already been looked at in

1 the past and found to be unmeritorious and that's the
2 conspiracy concept. So that if you as a citizen stand back
3 and look at that component of what then happens in Project
4 Truth, you say to yourself, well, you know what, you laid a
5 bunch of charges; that's good, that addresses individual
6 situations, but the community situation hasn't been
7 materially improved or changed because somehow what you're
8 telling us doesn't quite add up about your paedophile ring
9 investigation and about your conspiracy. You know, it
10 seems to us as though you're telling us something that we
11 want to hear, that we shouldn't be worried about these
12 things, but you have not, in a policing fashion,
13 investigated them perhaps the way you suggest and you know,
14 quite frankly, sir, all of these thoughts lead me to think
15 that at a much earlier point-in-time, the correct response
16 -- the response that would have helped the community is
17 really quite a different one.

18 And my ultimate submission is going to be
19 that if you scroll it all back in time to that -- what I
20 call the defining moment in '94 when the information is in
21 the press and the panic starts, that what that truly called
22 for at that time was someone to think, and I would have
23 suggested it was primarily Cornwall Police Service that
24 needed to do this thinking, but someone needed to think
25 along these lines. They needed to say to themselves "What

1 are the facts on the ground that have caused people to
2 think that we covered this up? What are the defects in our
3 investigation that have led people to think that? Why do
4 people believe this? Rather than chasing a media
5 allegation and purporting to investigate that, let's ask
6 ourselves why this belief exists. And then let us, in an
7 open and a different way, address that belief and that
8 concern directly." And by that I mean, sir by means of
9 communication and community outreach, not necessarily yet
10 another police investigation.

11 And I'll develop that point a little bit
12 later but essentially that is -- I think that is a
13 legitimate insight: That a lot of policing activity was
14 directed at this very community fear and yet it failed to
15 address it.

16 Obviously we know that individual charges
17 are brought; that the two that are most important to this
18 community unfortunately, the Leduc and MacDonald matters,
19 flounder and -- flounder primarily on disclosure issues
20 which relate back to Dunlop and what I call the alternate
21 constabulary point.

22 So at the conclusion of the Project Truth
23 cases, there is unfortunately no conclusion. There is no
24 judicial findings on the merits of the key local cases.
25 And on the way through to that result, you've got another

1 curious circumstance and that is what I call an alternate
2 media; and that is the website. You have people who, at
3 that point, year 2000 and beyond, have decided to take it
4 into their own hands to disseminate information about the
5 so called paedophile ring in the individuals and are using
6 shock tactics to do that. And by shock tactics, I mean the
7 publishing of names of business people, of clergy, of other
8 individuals who, there is no reason to think, had anything
9 to do with these events but because, perhaps, someone
10 thinks they're homosexuals, let's throw their names in an
11 affidavit and let's put it on the website.

12 And that was so wrong, it could never be
13 right. That caused huge additional harm to the individuals
14 named but it also fed what I have said is the very harmful
15 belief that we have a widespread *sub rosa* community of sex
16 offenders in this town. It wasn't correct. But again,
17 what's fascinating about it, sir, I think, from the broader
18 perspective is, as with Officer Dunlop and his alternate
19 network, this became an alternate media. This became an
20 alternate way of communicating what was happening and
21 unfortunately because it didn't adhere to any media
22 standards or ethics, it became a paedophile smear campaign.

23 Now all of that does nothing to alleviate
24 the fear in this community that I've spoken about from the
25 outset that we have ineffective law enforcement or that we

1 have law enforcement that is covering things up. And
2 again, by this point in time, sir, by the time we're in the
3 Project Truth era, you have some influential voices, who
4 I've spoken about in the written material, who are
5 promoting that very idea, that being Mr. Guzzo.

6 So here we are at the Inquiry, that on the
7 way through, what we've seen is progressive loss of
8 confidence, the development of alternate institutions if
9 you could, for want of a better word: Mr. Dunlop and his
10 group, Mr. Nadeau and his website. Those alternate
11 institutions and approaches wouldn't have existed if the
12 real ones, I think, were functioning better.

13 As CCR sees it here, at the Inquiry, our
14 overall hope is that this Inquiry does restore, to the
15 extent it's legitimate, confidence in local institutions
16 and we think that the best way to do that is to probe the
17 institutional conduct quite deeply. And I would say
18 particularly those that are closest to the subject matter.
19 And by that I mean the local institutions who are the more
20 frontline law enforcement vehicles.

21 And the object of doing this, I think sir,
22 is to critically identify the institutional failures, and
23 I'm putting the stress there, that caused this result. The
24 courts have made findings about Constable Dunlop and his
25 failures to disclose. I think that that's really not the

1 point here at all. I think, looking at this objectively,
2 that Constable Dunlop lost his way. He lost his way, but
3 no one individual, no matter how misguided or how committed
4 to a misguided path, should have caused this result. No
5 one individual should have caused the failure of these
6 charges. No one individual could or should have caused the
7 lack of confidence that existed.

8 And the analogy that I think about is --
9 it's like the *Walkerton* situation. And it's as though we
10 reasoned that the Koebel brothers who were running the
11 local water supply were a bunch of negligent goofs and the
12 entire cause of what had happened at Walkerton was their
13 almost criminal negligence, the fact they didn't do their
14 jobs properly.

15 Well, that's true but it's not meaningful.
16 And I think equally it can be said here that while it's
17 true that the role that Dunlop played wittingly or
18 otherwise was a negative one for these prosecutions. I
19 don't think it's meaningful. I think what we need to focus
20 on are the things that failed around Constable Dunlop
21 because, as I've said, no one individual could have caused
22 that result but for the fact that the institutions around
23 him failed to deal properly with him and with what was
24 going on.

25 And that means, I think, we have to look

1 critically at the internal control of his actions, the fact
2 that notwithstanding everybody foresaw a problem from the
3 outset, no force controlled it properly. And I also think
4 it's fair to say that police communication around that
5 situation was not what it should have been. It could have
6 been explained differently to people.

7 So to come to the final point, I think that
8 this Inquiry helps move things forward by holding the
9 institutional -- the institutions accountable in their
10 proper degree and Dunlop in his. But keep in mind that
11 Constable Dunlop doesn't live here anymore, as they say,
12 and my clients do and the rest of this community does, and
13 that the fix for them is an institutional fix. And it does
14 require, sir, in my respectful submission, a nuanced and a
15 sound set of factual findings about the role played by
16 Dunlop but the focal point in all of that has to be on the
17 institutions.

18 So that was a bit of a lengthy overview to
19 how we see things. Hopefully, it provides a bit of a
20 framework. What I wanted to do next was just to step back
21 into the pre-1992 institutional evidence that we have. And
22 my object in doing this, sir, is to hope you appreciate
23 that the moral panic, the lack of confidence in the
24 institutions didn't arise overnight. There are reasons for
25 it. I think, sir, there are patterns of weakness in how

1 the institutions here historically responded and that that
2 is the background that we have to have in our minds before
3 we turn to Silmsen.

4 So in a very brief way, and obviously our
5 written submission provide more details in terms of this
6 evidence but let me just address four components that I
7 think are factual, represent a fair critique of the
8 institutions, and most importantly if one is a citizen of
9 this town, would inform your view about how these
10 institutions were in fact responding and whether or not it
11 was reasonable to think they could have been covering
12 something up.

13 So I've broken this into four sections.
14 Section number 1 or the first basket if you will, is
15 institutions that don't go to the police. And rather
16 astonishing to me or it was to learn in this Inquiry that
17 there are a number of local institutions who did receive
18 information about sexual -- potential sexual offences by
19 members of their own organization who did not go to the
20 police, and those would include the Children's Aid Society,
21 and you'll remember the evidence of Mr. Towndale and others
22 about that situation. The Children's Aid Society on more
23 than one occasion had information available about abusive
24 practices on young girls and physical -- harsh physical
25 punishment, but their attitude always was to bypass the

1 police and talk to the Crown. And the problem with that --
2 and I appreciate that they may say, well, we had
3 legislation that suggested that.

4 But there's a fundamental problem with that,
5 and the fundamental problem is that there's no point going
6 to a Crown when there is no investigation upon which a
7 Crown can opine. In other words, it completely short-
8 circuits the entire purpose of the exercise, to go speak to
9 a Crown who will tell you, guess what, you have no
10 evidence.

11 Now, of course, you have no evidence because
12 you've not gone to the police because the police are the
13 bodies who investigate. So there's that, but Probation and
14 Parole in 1982 also do not go to the police.

15 **THE COMMISSIONER:** That's on the Barque
16 matter?

17 **MS. DALEY:** Yes.

18 **THE COMMISSIONER:** Was there any law broken?
19 Did Mr. Barque break any laws?

20 **MS. DALEY:** Well, sir, I think that what we
21 had was something that should have been investigated as a
22 police matter because I think potentially what you had in
23 that circumstance, if the evidence had been developed more
24 fulsomely, is you had a potential gross indecency charge
25 with complainants who are under the age of 21.

1 **THE COMMISSIONER:** Okay.

2 **MS. DALEY:** But again, you know, we've heard
3 plenty of evidence about that. The Ministry looked at the
4 situation. Certainly Mr. Sirrs examined it. He got the --
5 he developed the facts. I don't quarrel with that but,
6 ultimately, that institution also chose to keep the matter
7 internal as opposed to going to the police. And when it
8 does go to the Crown, it's my submission and as you've seen
9 in the written materials, that the Crown is not really
10 engaged with the right question because the Crown seems to
11 think that because Barque has resigned, the problem has
12 been solved.

13 So, again, that suggests an internal
14 problem-solving, a desire to keep it close, to not let it
15 get out, to not have it investigated.

16 And, of course, we've made detailed
17 submissions about the Diocese. I won't go over that with
18 you orally, sir, but again you have instances there where
19 the Diocese's preferred response and preferred solution is
20 to stay internal and quietly resolve it at that level.

21 So under this heading, sir, institutions
22 that don't go to the police, the point I'm making is that
23 there was unfortunately a bit of a culture in this town in
24 some of these institutions when matters of this sort came
25 to their attention to keep it quiet, to not investigate it.

1 And, of course, if it's not investigated, then almost by
2 definition it can never be the subject matter of a criminal
3 charge. It can never be something that rises to be decided
4 by a judge. So that was category 1.

5 Category 2, which is also interesting, sir,
6 are institutions that do go to the police but that the
7 investigative result is not effective. And, again, this is
8 simply an example. There are -- there's more than one
9 example, but an example that I chose to look at was the
10 Children's Aid Society in 1989 and 1990.

11 And you recall, sir, that that was at the
12 very end of Mr. O'Brien's tenure, that although his initial
13 hope was to close the book on Ms. Antoine, eventually
14 Children's Aid Society workers present him with information
15 that went beyond Ms. Antoine altogether and that referred
16 to sexual issues. He felt something needed to be done. He
17 brings in the police and the Crown. Now, what do we learn
18 from that situation? And I think unfortunately we learn in
19 that situation that the police did not, in fact, do an
20 effective investigation of what Ms. Antoine had to say.

21 Most importantly -- set aside Ms. Antoine
22 for a moment because people are going to say, rightly or
23 wrongly, that she's a problematic character. Not
24 everything that she says is -- seems like it's true, but
25 she's clearly a person who has also suffered a lot in her

1 life and has been victimized. So set her aside.

2 The bigger failure here was a failure of
3 Officer Malloy -- or his force, his senior officers -- to
4 engage with the sexual allegations that had nothing to do
5 with Ms. Antoine. She may have been the vehicle, but the
6 information that the Children's Aid Society had developed
7 by that point suggested that there was inappropriate sexual
8 behaviour going on between male staff and female wards;
9 that there was sexual abuse that was going on amongst
10 wards; that there was generally a climate and behaviour
11 that was potentially criminal but certainly concerning to
12 the CAS, and the CAS wanted it looked at and that was not
13 effectively investigated or at all.

14 And I suppose, sir, another thing that pops
15 up from this is that if you're Ms. Antoine and you have
16 persistently tried to knock on doors and get people to pay
17 attention to something that you know happened in your past
18 and this is the response that you get, what message is
19 there? And I think the message is, "We're not interested.
20 We don't particularly care to deal with you because you're
21 not dealing with us on our terms. You don't -- you know,
22 you don't come to me as when you say you will. You're
23 difficult. We don't know how to interpret your wishes."

24 But, you know, perhaps most importantly,
25 there just didn't seem to be an appetite to take seriously

1 what was being said by Ms. Antoine in 1989 and 1990 by the
2 Cornwall Police. And I won't put it any higher or
3 differently than that. That is very unfortunate because a
4 citizen who knows about that is going to say, well, you
5 know what when we do bring our complaints to the police,
6 they don't particularly care. Ms. Antoine was -- that was
7 an historic matter.

8 Let's now look at complainants, individuals
9 who go to the police contemporaneously and who allege abuse
10 by a prominent person. And I think this is a really good
11 litmus test for showing the institutional weaknesses.

12 The best examples of that frankly, sir, are
13 C-51, who was a complainant about Earl Landry, Jr. in 1985,
14 and although I didn't develop this comparison in my
15 submission, my written submissions, I want to contrast that
16 with Bernie Campbell. And you remember that name as an
17 individual who also in or about '85-'86 was prosecuted, was
18 also dealt with by the Children's Aid Society in a very
19 swift and sharp manner -- probably an effective manner --
20 for precisely the same behaviour as was alleged against
21 Earl Landry, Jr. in a very similar setting.

22 Mr. Campbell, as you remember, was a
23 volunteer, worked with kids in a park. Mr. Landry, Jr. was
24 employed as the caretaker of the park and the custodian of
25 the clubhouse where the kids played. So let's contrast how

1 those two individuals were dealt with.

2 And when you do that, unfortunately, sir,
3 what you come away with is two completely different ways of
4 treating individuals who are similarly situated but for one
5 factor, and that is Mr. Landry, Jr.'s relationship with the
6 former chief.

7 And I think it's also fair to say that in
8 both of those cases, the Children's Aid Society reacted in
9 a completely different way as well. In other words,
10 whereas they did no investigation or they took no step as a
11 result of learning about C-51's allegation against Landry,
12 Jr., they certainly acted very swiftly in relation to Mr.
13 Campbell.

14 And I just brought with me, just for
15 interests sake, a document that they wrote to him. It's
16 part of the record here in February ---

17 **THE COMMISSIONER:** That they?

18 **MS. DALEY:** That the Children's Aid Society

19 ---

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

21 **MS. DALEY:** --- Mr. Dupuis the social worker
22 wrote to Mr. Campbell in the early months of '86 verifying
23 that they have indeed -- that they have verified abuse on -
24 - by him of six individuals; that they have in fact
25 notified his employer, and that they're dealing with him on

1 a -- as a child abuse registry issue.

2 So they -- sir, the allegations against Mr.
3 Campbell were really no different than the ones C-51
4 brought against Mr. Landry, Jr., but the difference in how
5 those cases are treated leads one to an almost inescapable
6 conclusion that the identity of the alleged offender made
7 the difference as otherwise there's very little rational
8 explanation. There's just no rational way to distinguish
9 them.

10 And again, as you know, sir, we heard lots
11 of evidence here about Earl Landry, Jr. and the 1985 events
12 and circumstances, but at the end of that I think where
13 we're left is with the thought -- and as I said in my
14 submissions, that somehow that investigation did not
15 proceed the way it should have; that there was -- I'm not
16 trying to elevate this to a criminal issue, sir, but that
17 the former Chief made it known that he didn't think his son
18 had had anything to do with this and this just couldn't be
19 right, and it ended there and then.

20 Curiously, police had no difficulty with C-
21 51 as a complainant against a neighbour, a "Mr. Nobody",
22 Gary Seguin -- no difficulty with him as a complainant
23 against Gary Seguin, but somehow we just can't accept that
24 he'd be able to give evidence against Earl Landry, Jr.

25 The problem with all of this evidence, as I

1 say in the written submissions, sir, is that it just
2 doesn't stand up. You can't look at that after the fact
3 and say, "Yep, I'm satisfied. You did a good investigation
4 and it terminated for an appropriate reason." You can't
5 say that.

6 Again I make the point, and I've used that
7 as an illustration, that is an example of differential
8 treatment based on who you are and who you're associated
9 with. These things happen. These happen in small towns,
10 they happen in large towns; they happen. But it happened
11 here and it happened in relation to an allegation about
12 sexual abuse of a youngster.

13 And again, as I said to you at the outset, I
14 find it curious that C-51 is almost the only individual who
15 is truly a child in relation to his allegations. I mean
16 there's no question that this kid is eight or nine years
17 old, and that's how he was treated.

18 So if you are the kid of a family that's
19 perhaps struggling, as I think his family was -- his family
20 was trying hard to raise their kids appropriately; they
21 were having difficulties. The CAS was providing them
22 services on another basis. You send your kids to the park.
23 Your kid comes home and he tells you that Big Earl has
24 molested him. You do the right thing as a parent and you
25 take him to the police station and this is what happens.

1 Within 48 hours nothing further, radio
2 silence, and Mr. Landry, Jr. is out there for many years
3 after that. And, again, as I pointed out in the written
4 submissions, as a matter of fact chronologically his abuse
5 of C-54 happens after this.

6 So I don't think you can suggest that the
7 Cornwall citizens sort of jumped irrationally to the
8 conclusion that perhaps prominent citizens were getting
9 differential treatment, because there's an excellent
10 example of it.

11 And I guess the fourth basket that I have to
12 fill here are complainants who go to the police alleging
13 historic abuse, and I gave a few examples of that in the
14 written submissions but there are two examples of that that
15 that again show, I would say, systemic weaknesses in
16 institutional responses.

17 The 1989 complainants who go and speak to
18 Cornwall Police about Marcel Lalonde are people who alleged
19 historic abuse, and again I don't think that that -- that
20 investigation simply again cannot withstand scrutiny. If
21 you recall, that's the situation in which Officer Malloy
22 eventually just puts the file in abeyance on the basis that
23 he will go talk to Mr. Lalonde. Never does, and forgets
24 about it.

25 The difficulty with that, sir, is that -- is

1 twofold. One, that's a case where you had numerous
2 complainants with very similar fact evidence to offer and
3 that's also a case where you had willing complainants
4 because at a much, much later point in time some of those
5 individuals are and remain and are still willing to stand
6 up in court and give evidence against Mr. Lalonde.

7 So the fact that charges do not result in
8 1989 is in fact very concerning. That was -- how do we
9 explain that? Well, there was an element in Officer
10 Malloy's evidence that struck me as a contemporaneous
11 allegation would always have been more important to him.
12 So in other words he felt that, "Look, it's history, so
13 I'll get to it when I can get to it." And unfortunately he
14 didn't get to this.

15 There is an element of that, but I guess
16 there's also just an element in the Lalonde investigation
17 as well of failing to recognize just how very important
18 this was. This was a fellow who was still teaching.
19 Officer Malloy knew that. The people who reported abuse
20 had met him or had been introduced to him in a teaching
21 context. They had information to give him that suggested
22 that Lalonde looked to his pupils as his recruiting
23 grounds, if you will, and all of this was on the table in
24 1989 about Marcel Lalonde, and yet we have an investigation
25 that terminates prematurely.

1 A second example of that that I'm going to
2 mention is C-52, who is an Earl Landry, Jr. complainant,
3 but by the year 1996 he's an historic Earl Landry, Jr.
4 complainant, meaning that he's alleging -- he's referring
5 to things that happened to him as a child 10 or more years
6 previous.

7 Ultimately Officer Snyder engages with C-52,
8 ultimately charges get brought, ultimately Earl Landry, Jr.
9 admits that he did victimize C-52. So it has a happy
10 ending but you have to look at what happens before you get
11 there, because unfortunately C-52, when he comes forward in
12 I believe '96, goes through a period of about a year and a
13 half in which his matter is not investigated.

14 It's assigned to Officer Hanton and nothing
15 happens. It's reassigned to Officer Bough; nothing
16 happens. It's reassigned to Officer Snyder; nothing
17 happens because Snyder has been told that C-52 can't
18 identify the perpetrator, which is a falsehood.

19 So what C-52 does, not unnaturally, is say
20 to himself, "Well, gosh, what do I have to do to get people
21 to pay attention to me? Maybe I should suggest I'm going
22 to go to the press if they don't." And he does make that
23 statement. He does say that this is what he'll do and, as
24 a result of that, Officer Snyder engages with his case and
25 investigates it thoroughly and does realize, "Oh gosh, yes,

1 you can identify your perpetrator. Let's go." But it's
2 very unfortunate that it took an individual over a year of
3 frustration dealing with them and saying, "I'm going to go
4 to the media," to get that level of attention paid to his
5 complaint.

6 So those are, I think, the four baskets into
7 which the pre-Silmser matters can be slotted. The pattern
8 I see here, and I think the pattern that citizens would
9 see, is we want to keep it inside to the full extent
10 possible. Our last resort is to go to the police --
11 referring to some of the institutions. When we do go to
12 the police it makes a difference as to whether we're
13 alleging abuse by Mr. Campbell who's nobody or Mr. Landry,
14 Jr. who's a somebody.

15 When we do go to the police with historic
16 matters -- and we have Antoine, Lalonde and others, and
17 those people were dealt with by Officer Malloy but I don't
18 think that Malloy is unique in this way. He just fails to
19 take them seriously, fails to appreciate what they're
20 telling him, maybe can't -- in the case of Ms. Antoine I
21 think maybe can't deal with the fact that her personality -
22 - there are certain impediments to how she communicates.
23 There's no question about that but he can't see through
24 that or past that to the key items that the CAS wanted him
25 to investigate.

1 And again, you have a very unfortunate
2 failure as an investigator to connect all the Lalonde dots
3 and to have done the right thing about that matter at that
4 time. I think it was ripe for charges to have been laid
5 and they could have been.

6 So it's not, sir, irrational, I don't think,
7 for the community to think that there is -- there's
8 something lacking. There are weaknesses in how all of
9 these institutions deal with allegations of abuse, how they
10 investigate them, and the outcome. And, sir, I'll make the
11 point -- and I firmly believe this -- in each of the
12 instances I gave you, each of those instances, I would be
13 arguing that the standards of the time required something
14 better and different.

15 So in other words, no institution can look
16 at that and say, "Well, wait a second. That was then, this
17 is now."

18 I strongly feel that the standards of the
19 day were breached in each of those categories, each of
20 those examples that I gave you, and I don't think that it
21 needs hindsight; in other words, I don't think it needs the
22 perspective of the year 2008 on sexual abuse to identify
23 why these things were wrong and why these weaknesses were,
24 in fact, weaknesses not just a matter of us, in a hindsight
25 way, mis-applying our present day standards. They were

1 wrong by the standards that applied at the time.

2 These are all circumstances, sir, that would
3 tend to discredit law enforcement in the eyes of the
4 community. And they would certainly discredit the other
5 institutions who keep allegations of abuse by their
6 employees out of the law enforcement channel and out of the
7 public domain.

8 And of course, once you start thinking about
9 that, it's just a step away from that to say, "Well,
10 keeping it quiet, keeping it out of the public realm,
11 avoiding scandal, that's another way of saying suppressing
12 the allegations."

13 And it's interesting that, I think the other
14 institutions who behaved that way fell victim to the law of
15 unintended consequences, because I believe they kept it in
16 internal out of a desire to protect their reputation in the
17 community but it had exactly the opposite effect. I think
18 the approach had a very detrimental effect and it hurt
19 their reputation to have reacted in that way.

20 So as I've said and reiterated this morning,
21 we -- what's happening is a progressive loss of community
22 confidence in local institutions, and I do believe, sir,
23 that when you reflect on the pre-Silmser evidence that
24 we've heard at this Inquiry, there are legitimate reasons
25 for that.

1 Now, ---

2 **THE COMMISSIONER:** Excuse me? Just --
3 you're saying that these pre-'92 incidents was eating away
4 at public confidence. The public really wasn't aware of
5 these things, really.

6 **MS. DALEY:** Well, I reflected on that ---

7 **THE COMMISSIONER:** The parties ---

8 **MS. DALEY:** --- the parties are aware and --
9 but here's what I feel about that, sir.

10 We haven't seen a lot of media around these
11 other events, although we did see some media around
12 Deslauriers, which is a terrific example, but I reflect on
13 it this way.

14 This is "Tiny Town," right? This is a place
15 where people who associate with one another know one
16 another quite intimately and I think know one another's
17 business. And I think it must have been the case, it just
18 must have been the case, that the people who had these
19 experiences, who had matters not properly investigated or,
20 you know -- the people who had the experiences -- C-51's
21 mother -- they have contacts; they talk about what's
22 happening. I can see it getting out in that fashion, I
23 absolutely can. I think this is a place where people keep
24 an eye to one another fairly well. I think that anybody
25 who had an awareness of any of those facts would have,

1 would have some qualms, and I suspect that there's other
2 stuff that we, you know, that we haven't necessarily heard
3 about.

4 I mean, the problem with an inquiry is, we
5 only know what we know and we're looking at fairly, you
6 know, fairly narrow events, but I think anybody who came by
7 knowledge of that, even if it's through informal channels,
8 not a direct media channel, would have concerns. And I
9 think it's interesting for us and the Inquiry to also see
10 those were the weaknesses in place. That was the reality.
11 That's how people were being served.

12 **THE COMMISSIONER:** But do we have any
13 evidence, though, that that was going on, that Mum was
14 telling everybody and ---

15 **MS. DALEY:** We haven't heard directly from
16 those people. I'm filling that in with inferences, sir,
17 right?

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

19 **MS. DALEY:** But I don't think it's an
20 unreasonable or untoward inference.

21 **THE COMMISSIONER:** All right.

22 **MS. DALEY:** All right. Now let's just -- in
23 my concluding time, I want to speak to, then, the events
24 that are put in motion as a result of Mr. Silmsen's
25 complaint. And it would be my thought, sir, that, to the

1 extent that this background feeling was there, it was
2 certainly intensified as a result of the handling of these
3 allegations. And I think the important way to think about
4 this aspect of things is in this fashion, sir: if the 1993
5 investigation of Mr. Silmser's allegations by the Cornwall
6 Police had had a different conclusion, in other words, had
7 charges either been laid or had that investigation come to
8 a very firm conclusion that there shouldn't be charges, we
9 likely wouldn't be talking about certain failures.

10 For example, we likely wouldn't be concerned
11 about the reassignment of this file at the outset. We
12 likely wouldn't be as concerned about the fact it wasn't
13 properly reflected on OMMPAC. We likely wouldn't be quite
14 as concerned about the unusual role that the Crown played
15 in actually supervising the officers. Those things would
16 fall away if there were either charges or very cogent
17 reasons for there not to be charges articulated in '93.

18 So that leads me to think, let's focus on
19 the elements of that investigation that rise to a higher
20 level, that disclose a systemic failure. And in my
21 submission, sir, there are two key elements there that I
22 think both rise to the systemic level and are important and
23 connect back to my theme to you, sir, about the loss of
24 confidence.

25 The two elements are this: What had

1 occurred with Mr. Silmser's complaint is that, essentially,
2 he has been allowed to determine the fate of his complaint
3 and the progress of the investigation. As we have the gist
4 of the police evidence, although this is not, frankly,
5 consistent with Mr. Silmser, but according to the police
6 he's calling the shots and they have done nothing to
7 investigate serious allegations pertaining to Mr. Seguin as
8 a result of Silmer's wishes. Right? And this is so
9 notwithstanding that the allegations that Silmser brings
10 against Seguin stem from approximately the same timeframe
11 as Barque, and CPS knows about that, and that is a
12 situation known to them, and that's a very, very serious
13 allegation about a law enforcement officer, it's as serious
14 as the priest, if not more so. The end result here is that
15 we therefore end up with an un-investigated allegation of
16 abuse by a person in authority; that's what we have. And
17 in my respectful submission, sir, the CPS created that.
18 They created that monster; didn't have to.

19 Presumably, you know, Mr. Silmser, could --
20 one could have tried to persuade him to talk about Seguin
21 and to deal with Seguin right then and there. But even if
22 that, frankly, didn't work, why they were taking no steps -
23 - why they allowed that situation to exist, an allegation
24 on their books, very serious, completely un-investigated,
25 person in authority -- it's a monster that they didn't have

1 to create and they did, and I think that is something that
2 rises to a level that we have to look at here because we
3 have to appreciate how that fed into the view of
4 ineffective law enforcement and frankly, corruption, who
5 you know -- who you know depends on whether you get
6 investigated or not.

7 So there's that failure that comes to the
8 surface, but the other aspect of this case that I think is
9 very important and is unfortunately not handled is the fact
10 that the Silmsler criminal matter is connected to a civil
11 claim and I think that is another area where Cornwall
12 Police somehow just failed to appreciate what that meant
13 and failed to deal with that in the way that they needed
14 to: That was an elephant in the room in this investigation
15 and it was an elephant in the room that had many different
16 possible explanations.

17 Possibly Mr. Silmsler was manipulating the
18 police, possibly he was being manipulated by the church.
19 The fact that he was pursuing negotiations clearly
20 undermined the investigating officers' belief in his
21 veracity, but it needn't have. And that's, I think, the
22 circumstances that causes that investigation to stall, like
23 to completely stall in neutral.

24 I think when you look at the evidence
25 fairly, you realize, particularly in Mr. MacDonald's

1 evidence, Crown MacDonald, you realize that for all the
2 work she did, that Officer Sebalj was never at a point
3 where she had RPG. And thinking critically about the
4 evidence, I think the reason why not has to do with
5 Silmsers involvement in negotiations.

6 Now, that shouldn't have been -- that should
7 have been something that they -- that I think CPS could
8 have understood or appreciated in a different manner, a
9 different way, but at a minimum, it was an elephant in the
10 room, and it should have been looked at directly. It could
11 have been looked at directly.

12 Had it been looked at directly, I venture to
13 think that someone would have ultimately come to some
14 conclusions that either this is not a factor that should
15 impair us our belief in Silmsers or it is. Either Silmsers
16 manipulating or he is being manipulated. We end up after
17 all this time with a grey fog around Mr. Silmsers and his
18 complaint, and I think that is the reason why. We didn't
19 look with a -- in a critical way at what was at the heart
20 of that situation.

21 So what -- understanding that those are
22 perhaps the highest and the most significant Cornwall
23 Police failures, then let's carry this story forward from
24 there and try to examine what happens next.

25 What happens next, as I said at the outside,

1 is this all then comes into the public domain in the early
2 months of January of 1994, and the OPP is requested to
3 investigate. Interestingly, what they're requested to
4 investigate, amongst other things, are media allegations of
5 an alleged conspiracy between themselves and the Diocese to
6 effect this settlement. That's Exhibit 2558.

7 Other -- three other -- two other items are
8 also looked at. One of them, of course, is Silmsler himself
9 but, again, that is still re-looking at the same situation
10 and I think a failure to totally understand the role that
11 the civil matter has played in Silmsler as a potential
12 victim. But the important thing is that understanding that
13 now that this is out there, there are -- there's a belief
14 in conspiracy, there's a belief in corruption, there is a -
15 - there are fears and concerns. What happens?

16 Well, at that point, Acting Chief Johnston
17 essentially says to the public, Exhibit 1518, that we're
18 going to try to examine these allegations of conspiracy
19 between the police and the Diocese. And he says to the
20 public, "There are questions that the public have that need
21 to be responded to".

22 And stopping there, I agree absolutely with
23 what he says. What I question is whether it was an
24 appropriate investigation mandate for the Ontario
25 Provincial Police to be looking at. And I think, frankly,

1 sir, again everybody is focussed on the same pieces of the
2 puzzle because in Exhibit 1518, he also focuses on the
3 civil settlement.

4 So it's out there, but it then gets
5 transformed into a mandate that's given to Officer Smith to
6 look at. So what then happens? The guts of what then
7 happens on the conspiracy point, as he testified here
8 before us, is that Officer Smith comes to the conclusion,
9 primarily focussed on his knowledge of the Bishop's
10 relationship with Chief Shaver, that that didn't happen.
11 Not a conspiracy because these folks don't like each other.
12 Having decided that there is no conspiracy for primarily
13 that fundamental reason, the message then comes out -- or
14 the implicit message is, "Well, there's no conspiracy, so
15 it's all okay. Stop worrying about these things. Don't
16 you understand Shaver and the Bishop can't stand each
17 other; there's nothing here."

18 With the greatest of respect to Smith and
19 others, that was a banal conclusion. It just -- it was
20 true the Bishop and Shaver didn't like each other but it
21 wasn't on the point. I mean, there's no reason why people
22 who dislike each other can't be conspirators if they have a
23 common interest.

24 So it was banal. It didn't satisfy, it
25 didn't really make good on Johnston's promise that the

1 public has questions that need to be responded to. That's
2 not, again with all respect, a response. It's certainly
3 not a persuasive response. And here's where I would stop
4 and say that a different and a better approach could have
5 been adopted and primarily, sir, this is where I'm going to
6 rest my key submissions about recommendations.

7 The different and a better approach, if
8 you'd stop the music right then and there, would have been
9 to put on their thinking caps, to say really if there is
10 allegations in the media about conspiracy, what are the
11 facts that have given rise to that appearance? What has
12 occurred in the CPS investigation that gives rise to that
13 appearance? What has occurred in the settlement that gives
14 rise to that appearance?

15 Those are the facts that we need to explore
16 in depth and in detail. So to the extent that we're
17 investigating facts and that we don't know them all, that's
18 the area we need to look at. That would take you directly
19 to the settlement which is an element of what the OPP
20 looked at.

21 But the majority of the facts, I think, that
22 gave rise to that appearance had to do, quite frankly, with
23 the ineffective CPS investigation, the findings of Ottawa.
24 And if that is -- if those are the facts that have driven
25 the belief, my submission is although it would have been

1 hard, the right thing to do would have been to say so in no
2 uncertain terms. If you need to investigate something
3 else, by all means, do it, but don't make the OPP the proxy
4 for what needs to happen because what needed to happen at
5 that point, sir, in my respectful view, is an open and
6 honest piece of communication by the local force that,
7 essentially, the investigation misfired. And if that meant
8 disclosing the Ottawa report in its entirety, that's what
9 they should have done. It's exactly what they should have
10 done.

11 And I can't think of a reason, sir. why not.
12 And, again, I say that's -- it's the law of unintended
13 consequences. It's the same problem that the Bishop had in
14 1986 when he tried to protect his church's reputation
15 around Father Deslauriers. It has the opposite effect of
16 that desired. You may well think that, you know, "Gosh, if
17 I expose my weaknesses out there, I'm going to lose respect
18 in the community". Ironically, it's the opposite. It's
19 the opposite that happens. And sharing of that information
20 at that time, I think would have gone a long way to
21 dispelling a conspiracy notion.

22 But I think that another perhaps more
23 critical point here, also to the extent that there is
24 something that needs to be investigated, is to ask yourself
25 why is it that people think something went on between

1 police and the Diocese. Well, what we should be looking at
2 there are the interactions between the officer and Malcolm
3 MacDonald, quite frankly, because there were many
4 interactions. She did get information from him. She was
5 told certain things by him.

6 If you're going to look at the premise that
7 perhaps the police and the Diocese have done something
8 inappropriate, you might be looking at the officers
9 involvement with the suspect's lawyer. But oddly enough,
10 she was never a suspect in Smith's mind. So again ---

11 **THE COMMISSIONER:** "She" ---

12 **MS. DALEY:** "She" being Officer Sebalj.

13 He made it very clear to us. He never
14 remotely considered her to be a suspect but, again, short-
15 sighted view, because if you were to look at the facts with
16 a critical mind, that's what you'd be looking at. You'd be
17 looking at that aspect of what -- how Malcolm had
18 influenced her investigation, what he had told her, why,
19 what the result of all of that was, but again, Smith didn't
20 look at that.

21 So I suppose the final point I would make
22 about that is that if not conspiracy, what? In other
23 words, let's say you get to a point where you say, "Well, I
24 just don't buy the theory that people are conspiring," but
25 that doesn't mean that there's nothing to talk about. That

1 doesn't mean that it's therefore all good, go back to
2 sleep, stop worrying about this, local citizens, because
3 not only are there potentially other offences, but more
4 importantly, short of conspiracy, there are other critiques
5 of the situation that need to be offered and need to be
6 shared. Again, that takes me back to saying that at a
7 minimum, the Ottawa Police report should have been out
8 there in the public domain quite openly. But again, the
9 critique goes past just the Cornwall Police. The critique
10 at that point includes the Diocese, includes everybody
11 who's acted in that situation. There is a legitimate
12 social critique to be made of their action even if it is
13 not a criminal offence or a police matter.

14 So again, people, unfortunately, are not
15 thinking in large enough terms, I don't think, to address
16 this situation. Everybody is thinking in accordance with
17 their own institution's mandate, their own way of doing
18 business and in an ordinary situation, there's nothing
19 wrong with that, sir, but if you have a social emergency of
20 the sort we had here, if you have that level of distrust
21 and disconnect between people and their institutions, it
22 can't be business as usual and it does call for a
23 completely different realm of response. And again, sir, so
24 that is why I would, frankly, at this point, stress that
25 the institutions who traditionally are not in the business

1 of communicating -- and those are the law enforcement
2 institutions and we've heard from them why and we know what
3 the limitations are ---

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

5 **MS. DALEY:** --- but I think that those
6 limitations can be -- those limitations are not a reason
7 not to communicate with the media, nor is it a reason to
8 have the idea that you have to, you know, somehow be
9 chasing the media around. All that needed to happen in
10 this situation was a public meeting in which some honesty
11 and some accountability and some openness was offered by
12 the police. It would have gone a long, long distance.
13 Instead, I think what you have is the OPP being used in a
14 somewhat political manner, quite frankly, and I don't think
15 that that was the right tool. It wasn't the best tool. It
16 wasn't ultimately an effective tool to persuade people that
17 they had no fears because it didn't directly confront the
18 fears that they did have and it didn't directly answer
19 them.

20 **THE COMMISSIONER:** Well, just a minute. Let
21 me follow the thread. You're saying that after the
22 Cornwall -- the Ottawa Police comes in, right, and what
23 they recommended was that there be another investigation
24 because the other one hadn't been satisfactory, in their
25 view. So you're saying that the calling in of the OPP was

1 not the way to go?

2 **MS. DALEY:** No, sir, again, I'm focusing on
3 what I'm going to call the other piece of that mandate.

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

5 **MS. DALEY:** I don't disagree that you --
6 that we look at Silmser. The other piece of the mandate
7 though, at that time ---

8 **THE COMMISSIONER:** Right.

9 **MS. DALEY:** --- was the conspiracy. It was
10 the allegation about police and the Church having acted
11 jointly to bring about the end of this. That's the part of
12 it that I think would have been dealt with better in a
13 different manner than by means of the investigation that
14 Officer Smith undertook because, essentially, it's right to
15 re-look at Silmser. If that was not done correctly, no
16 complaint with that. It's similar to my thoughts on
17 Project Truth. If you're investigating an individual
18 allegation with a complainant, you know what the offence
19 is. You know what tools you bring to bear on it. You do
20 that; that's your job.

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

22 **MS. DALEY:** I guess what I'm questioning is
23 giving Smith the mandate to try and deal with this
24 conspiracy allegation because in the circumstances, he
25 didn't deal with it effectively.

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

2 **MS. DALEY:** He tried and he did reflect to
3 the community a finding that, yeah, no conspiracy, no
4 concern, but ultimately, sir, it didn't persuade and
5 amongst other reasons that's why we're here. Why did it
6 not persuade? Well, I think it was the wrong tool for the
7 right problem. I think the problem was understood.

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

9 **MS. DALEY:** The tool was the wrong tool.

10 **THE COMMISSIONER:** So do you have any
11 suggestions about a right tool?

12 **MS. DALEY:** Yeah, I think the right tool,
13 sir, would be the communications strategy and approach that
14 I spoke to. I think the right tool would have been, in
15 addition to an outside force re-looking at Silmsler, the
16 local force in an honest, a searching way, sitting down
17 with the community in the right context, in a town hall
18 meeting, a community meeting and disclosing its perspective
19 on what went wrong with Silmsler. In other words, being
20 honest about its warts, being honest about the Ottawa
21 report, saying, "Look at, you folks all think these things
22 were conspiratorial, but let me explain. Here's the
23 sequence of the investigation. Here's what happened.
24 Here's where we went wrong. Here's why we went wrong."

25 **THE COMMISSIONER:** And some folks would say

1 that, well, wait a minute now, there's an ongoing OPP
2 investigation on the Silmsler complaint so we can't really
3 talk about ---

4 **MS. DALEY:** So maybe the way to have made
5 that possible would have been to prioritize the Silmsler
6 complaint; get to the bottom of that as quickly as you
7 possibly can and then in, a fulsome, detailed way, the
8 local force tells its community, "Here's where we went
9 wrong, here's why we went wrong. You know, it's a failure
10 on our part, but we were not part of a conspiracy with
11 somebody else." That's -- I think that's the point. And
12 perhaps that could have been a joint session with the
13 Bishop. I mean, there's all sorts of possibilities and
14 opportunities that existed, I think, to correctly explain
15 to the community why that investigation had failed so that
16 they didn't have to resort to the conspiracy explanation in
17 their minds.

18 **THE COMMISSIONER:** What about just saying,
19 listen the Ottawa report is in. They found there's no
20 conspiracy, but they found that -- and I don't have the
21 exact words, but the investigation was inept and their
22 recommendation is it should be started all over and that's
23 what we're doing. Would that have opened up the door
24 there?

25 **MS. DALEY:** I think it would have been more

1 helpful than what did get said in that press release ---

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

3 **MS. DALEY:** --- because I don't think there
4 was ever any acknowledgement that -- of the Ottawa
5 critique.

6 **THE COMMISSIONER:** No.

7 **MS. DALEY:** There just wasn't, and there
8 should have been. And that, I think, could have opened the
9 door; could have been the edge of the wedge that eventually
10 allows people to understand that, "We really were inept and
11 ineffective and here's how."

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

13 **MS. DALEY:** And, you know, people can
14 understand that. I mean, one of the funny things in life
15 is that if you -- when you fail and you explain you fail,
16 for the most part, people understand that because we all
17 fail. That was an explanation in human terms and I think
18 would and could have been accepted. But unfortunately,
19 that opportunity is lost, and by the time the OPP comes in
20 and does its work again, there's less communication there
21 than one might have wanted, too. You know, you have that
22 little tombstone announcement at the end of the year in
23 1994, but it's not satisfying because there are still
24 questions in peoples' mind, there are still doubts about
25 whether, you know, is it an answer to say no conspiracy

1 because Shaver and the Bishop don't like each other? Well,
2 probably not. That's not a highly persuasive thing, but
3 again, unfortunately you have an unresolved belief and it
4 continues past that year. It's not materially assuaged by
5 what the OPP does.

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

7 **MS. DALEY:** In the years, you know, that
8 follow, the years between that and the commencement of
9 Project Truth; obviously, you have many of the other events
10 that I spoke about earlier unfolding. You now have a hero
11 story and you now have a villain and you now have a police
12 force, that is the CPS, which seems to be reactive --
13 reacting to things that Dunlop is saying and doing and you
14 have the very unfortunate optics that they have tried to
15 persecute him for doing -- prosecute him for doing the
16 right thing. You have, frankly, a David and Goliath type
17 of story which the media always love, and it's not at all
18 surprising I don't think when you think about all the
19 elements in play, that the predominant picture that comes
20 from that is, as I said, the local hero versus the corrupt
21 force. And for a period of time while Officer Dunlop is on
22 sick leave, that story is out there. Meanwhile, as I said
23 in my opening, people are starting to come to him as the
24 lightning rod because they have been persuaded that he is
25 the better place to go to, unfortunately.

1 As time goes by, we're now in the Project
2 Truth era, what I think is a very critical failure and a
3 large contributor to the ultimate result is this, and I
4 think it is simply the failure to appropriately deal with
5 the problem that had been generated by that circumstance.
6 I've reflected on this long and hard, and the situation is
7 skewed because although it's the OPP who laid those
8 charges, it was the Cornwall Police Service that had
9 authority over Constable Dunlop.

10 So the OPP had the responsibility for
11 disclosure but not the tools. The Cornwall Service had the
12 tools, at least to the extent that they had a direct
13 relationship with Officer Dunlop, but not the
14 responsibility. What I think is a very, very unfortunate
15 occurrence and set of circumstances is this. I think that
16 it was known from the outset to the OPP in structuring
17 Project Truth that Dunlop had played a material role. The
18 Fantino brief was the fruits of his investigation, so from
19 moment one Crown and OPP know that we have an officer who
20 on an unofficial basis has taken statements and has
21 involved himself in these criminal allegations.

22 If we are to ultimately lay charges as a
23 result of any of the people he's spoken to, or others that
24 he's spoken to, we know at the outset that we have an issue
25 with Dunlop because he has communicated with them. The

1 nature of his communications is going to be in issue. We
2 also know -- and I'm using the police "we" here -- by this
3 point, Dunlop has fired the big gun. He's brought his
4 lawsuit, he's made his allegations, and as somebody once
5 told me in a completely different context, "You know,
6 Helen, if you sue me in the morning lunch is off".

7 And so I think applying that here, you have
8 a situation in which the force had been sued. The force
9 had an attitude about Officer Dunlop as a result of that
10 and I think the attitude was, "You are not one of us. You
11 are antagonistic to us. You are making claims about us
12 that are false. You're doing that to your own personal
13 benefit. We don't think there's any veracity to the
14 allegations you make. You've put yourself beyond the
15 pale." I think quite frankly that is in all likelihood how
16 CPS senior managers viewed his claim and viewed Officer
17 Dunlop.

18 Now, assuming that they look at him through
19 that eyes and through that perspective, rightly or wrongly
20 that's their attitude, the fact is that from the early
21 moments, even before he was back on the force, charges had
22 been laid by Cornwall Police, those being the Lalonde
23 charges, in relation to which he'd spoken to victims and
24 witnesses, or alleged victims and witnesses.

25 Once Project Truth got operational, it was

1 obvious to Officers Smith and Hall from the get-go that
2 that was the case because that was the content of the
3 Fantino brief. The ultimate difficulties in obtaining
4 disclosure and in getting Officer Dunlop's cooperation were
5 completely foreseeable from moment one. Unfortunately,
6 as it played out, it was left to the Cornwall Service to
7 get his cooperation, which was not forthcoming. Absent his
8 cooperation, it was left to the Cornwall Service to get his
9 disclosure by some other means, but that wasn't
10 unfortunately really pursued either. Three years sort of
11 slip by while charges are being investigated and laid, and
12 the clock is ticking for delay purposes. Three years slip
13 by before -- almost three years before the final order is
14 even rendered to Officer Dunlop. That's the order of
15 January 2000.

16 By that time, sir, it's completely
17 foreseeable that even if he were to cooperate immediately,
18 which he didn't necessarily -- it took another four-month
19 window -- that you had generated a problem for the Crown
20 making disclosure. You have generated a set of
21 circumstances that will give rise to an 11(b) argument.

22 Why did it unfold this way and who has the
23 ultimate responsibility and the ultimate blame on that?

24 I've got to say, again, Cornwall Police had
25 the tools. Why they didn't use the tools has always been a

1 mystery to me. I think in part it could be because they
2 were -- they had borne the brunt of such negative media
3 around the Dunlop story that they were afraid to engage him
4 again?

5 I don't know, I just -- whatever the mindset
6 was, it was the wrong institutional response and decision
7 and strategy to sort of continue to pretend as though you
8 thought that he was going to cooperate, when he was pretty
9 clearly signalling that there were limits to what he was
10 going to hand over, rightly or wrongly. There were
11 things that could have been done, sir, to penetrate his
12 excuses, to penetrate his privilege claim. There were
13 things that could have been done, you know, of perhaps more
14 aggressive interaction with him, but a search warrant,
15 further discipline -- there were all sorts of tools that
16 existed but were not used.

17 Again, that's why I said at the outset
18 although Dunlop's role is an important one, the failure was
19 the failure around him; the failure to procure what was
20 needed to keep those prosecutions alive in the absence of
21 his cooperation. As I said in my outline, there were means
22 and tools, and if you had started earlier I think the
23 result could well have been different.

24 The final area I want to talk to you a
25 little bit about is again what I'll call the other half of

1 Project Truth, the part that is supposed to be looking at
2 the paedophile ring allegation and the conspiracy. Again,
3 unfortunately, that investigation at the end fails to
4 convince people as well, and why does it fail and how could
5 that have been different?

6 I outlined some detailed reasons in my
7 written submissions but I think overall, sir, it's an
8 iteration of the same problem that existed in '94. That is
9 to say, we're trying to use a police investigation to
10 persuade the public that really they shouldn't be as
11 concerned as they seemingly are about these issues. In
12 other words, we're trying through a police investigation to
13 restore public confidence.

14 With respect, again, I think that was the
15 right problem but the wrong tool, and I think you see
16 reflected in the evidence of Pat Hall in particular why
17 that was the wrong tool, particularly in relation to the
18 community's notion of a ring of connected people who were
19 operating jointly. The ironic fact is that if you look at
20 the Project Truth charges and the Lalonde charges together,
21 what you do see are connections amongst alleged
22 perpetrators and connections amongst complainants. There's
23 no question about that.

24 What appears to have been -- sorry, I'll
25 come at this another way. What Project Truth does is that

1 it lays charges, it prosecutes charges, each one on its own
2 merits. Obviously, many of them are tried collectively but
3 that's how it's viewed. Those are how the cases are
4 framed. Beyond that, to suggest that there was an
5 additional layer or level of investigation about the
6 connections amongst these people, it's kind of erroneous
7 because as we've heard the evidence it didn't really
8 happen.

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

10 **MS. DALEY:** It could have happened. But it
11 didn't really happen. It didn't really happen, sir because
12 as Pat Hall himself said, a paedophile ring concept how do
13 I investigate that? Where do I start? What does it look
14 like? What's the crime? What's the offence?

15 Again there was a lack of clarity, in my
16 respectful view, at the very outset, the inception of
17 Project Truth as to what was to be investigated, what were
18 the offences, what were the element of the offences?

19 If we really do think that there is a
20 substantial probability of a ring or a conspiracy, what are
21 the relevant offences, how would they be investigated, what
22 evidence would be probative of the offences, where do we
23 look?

24 That thinking did not occur at the outset of
25 Project Truth. That thinking should have occurred. I

1 think the Crown could have been helpful to the OPP in doing
2 that.

3 Again I think it is a reflection of a need
4 to persuade a community that the conspiracy hasn't occurred
5 and the ring isn't still a threat that Project Truth gets
6 up and running and off it goes, but what it doesn't do at
7 the outset -- again it's the critical thinking of if this
8 is actually a police investigation, what offences, what
9 evidence, what persons of interest, what suspects, "How
10 would we prove it? Let's go do it."

11 And for all the evidence that we heard about
12 Project Truth -- and it did terrific work with the
13 individual allegations but it didn't do that other piece.
14 And yet Officer Smith when he retires says publicly and in
15 the exhibit that we reference that, "There's no ring, we're
16 satisfied." Again, go home, stop worrying about it.

17 So once again, sir -- I'm going to conclude
18 shortly, but once again although there was a recognition by
19 intelligent people of this moral panic that I've talked
20 about, about this prevailing attitude and fear, again and
21 again it seems to me at least that the response to it is to
22 engage the OPP to try and come to town and make us all --
23 make us feel better about what's going on but without
24 really penetrating through to the underlying facts.

25 And again, time and again what I keep coming

1 back to is the need for the institutions and that --
2 encompass the OPP at the end because it was being
3 criticized as well for conducting an improper
4 investigation.

5 The need for openness and transparency, the
6 need within the parameters of what can be publicly said, to
7 tell the public, "This is what we're doing, this is why
8 we're doing it. This is what we're not doing. This is why
9 we're not doing it."

10 One thought that occurred is that as we
11 heard through Mr. McConnery, Crown McConnery, at a certain
12 point in time the conspiracy allegation became a product of
13 Mr. Leroux, Mr. Leroux alone; that was the source.

14 Why couldn't you at the outset -- because
15 you had the Fantino brief, you saw that's his allegation.
16 Now in fairness, you would want to determine whether or not
17 that panned out by talking to other people. But one of the
18 things that you could have done at the outset, particularly
19 if your mindset is that this is a theory that's being
20 promoted by our enemy, Mr. Dunlop, well, at the outset
21 could you not have sat down and decided which of those
22 allegations were investigatable, which ones merited
23 investigations?

24 Maybe what you could have done is said at
25 the very outset, all right look at this allegation about

1 Stanley Island is really very serious; that's the nub of
2 conspiracy. Let's proceed in this fashion, let's talk to
3 Mr. Leroux immediately. Let's talk to Mr. Leroux first,
4 let's get to the bottom of that and if there's nothing
5 there let's tell the public there's nothing there.

6 And we could -- we, I think, could have done
7 that in a pretty quick way. Didn't -- it didn't take, you
8 know, two years of investigation to realize that Leroux's
9 the guy to speak to first. You decide that you think he's
10 credible or you don't. Even if you think he's not
11 credible, talk to the other people he said went to the
12 island, hear what they have to say. Sir, you could
13 probably have done that within a period of a couple of
14 months. And you could probably have reported back to the
15 community that, "Listen, even though Officer Dunlop says
16 this, this is the evidence of Mr. Leroux. We have
17 investigated. We're satisfied. If you want to come and
18 talk to us, ask us questions about that, come on down.
19 We'll answer your questions."

20 But I think what needed to happen, sir, was
21 some critical thinking about those allegations and how they
22 would be investigated and whether they would be
23 investigated.

24 Again, as I've said before, I don't fault
25 the OPP for the actual investigations based upon

1 allegations of complainants. But to the extent that they
2 were trying to address the community attitude, with the
3 greatest of respect, I don't think it was the right
4 approach. Again the right approach, the better approach
5 throughout would have been more direct communication, more
6 open communication about what we think, why we think it,
7 what we're investigating and what we're not.

8 And that's my time and those are my
9 submissions, sir.

10 **THE COMMISSIONER:** All right.

11 **MS. DALEY:** Thank you.

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

13 Mr. Engelmann, so we'll take a break and
14 we'll come back at -- well, what time are we -- we're
15 supposed to come back here at 11:30, right? No.

16 **MR. ENGELMANN:** Sir, we had originally
17 talked about breaking at 11:30 to 11:45.

18 **THE COMMISSIONER:** Right.

19 **MR. ENGELMANN:** Do you want to break perhaps
20 for 20 minutes at this time.

21 **THE COMMISSIONER:** Yeah. Let's break for 20
22 minutes.

23 **THE REGISTRAR:** Order; all rise. This
24 hearing will resume at 11:40 a.m.

25 --- Upon recessing at 11:19 a.m./

1 L'audience est suspendue à 11h19

2 --- Upon resuming at 11:42 a.m./

3 L'audience est reprise à 11h23

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

6 This hearing is now resumed. Please be
7 seated. Veuillez vous asseoir.

8 **THE COMMISSIONER:** So I understand you're
9 going to be going for an hour, Mr. Paul?

10 **MR. PAUL:** Yes, Mr. Commissioner.

11 **THE COMMISSIONER:** Okay.

12 --- **FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES MR. PAUL:**

13 **MR. PAUL:** My name is Ian Paul. I appear
14 for the Coalition for Action. And yes, Mr. Commissioner,
15 the plan is for myself to start initially and I would hope
16 to be covering the areas of the -- primarily with the
17 Ontario Provincial Police, the Cornwall Police, and the
18 Diocese.

19 And then to be followed by Mr. Horne who is
20 going to focus mainly on Children's Aid, the Attorney
21 General, and Minister of Community and Correctional
22 Services.

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

24 **MR. PAUL:** Now, Mr. Commissioner, our
25 organization was given standing approximately a year and a

1 half ago and in your Decision there was some reference to
2 issues of conspiracy and cover-up being relevant to our
3 application for standing.

4 And certainly those are issues that our
5 group is very interested in and certainly it's an issue
6 that I think that in terms of whether there was any
7 conspiracy or cover-up, it's an important question
8 obviously the public should have an answer to and would
9 probably like to have an answer to. Whether there is a
10 clear definitive answer to that is another question, I
11 think.

12 Some of the institutions certainly are
13 taking the position that the -- they're taking the position
14 that the various investigations of the Ottawa Police and
15 the Ontario Provincial Police have indicated that there was
16 no evidence of such a conspiracy or cover-up.

17 Our group is certainly taking issue with the
18 nature of the investigations and whether there was
19 sufficient and whether there is a clear answer and whether
20 there was ever a sufficient investigation of the issue of
21 conspiracy and cover-up.

22 The issue in terms of attributing any
23 possible fault as to why we might not have an answer to
24 that issue, I would suggest, would be two-fold. One would
25 be in terms of the actual evidence of the Diocese and the

1 evidence of the Cornwall Police which, arguably, would be
2 taking the position at least in terms of the core area
3 around the Silmser settlement and the -- a situation
4 leading up to the settlement and the aftermath of what
5 transpired after, we would be taking the position that the
6 evidence of those key institutions is not particularly
7 credible in terms of the conduct and what we would call
8 circumstantial evidence of how they conducted themselves.

9 And secondly in terms of looking at those
10 events as a part of the conspiracy investigations -- cover-
11 up investigations that took place later, I'll be going into
12 more detail but bottom line is our position will be that
13 that those investigations were certainly deficient,
14 particularly the initial investigations by the Ontario --
15 sorry, the Ottawa Police initially and the first 1994
16 Ontario Provincial investigation I'll be outlining in more
17 detail but we'd be taking a position that those are
18 certainly too cursory and didn't get into the issues in the
19 depth that they should have gone into.

20 In terms of the final investigation, we'll
21 be raising some issues in terms of whether it's -- in the
22 context of what is a difficult issue to investigate, a
23 conspiracy at any time, at that point-in-time whether there
24 is some evidence that's lost and becomes more difficult to
25 investigate at such a later point-in-time when we're in the

1 Project Truth investigations that are going to start around
2 '97, but then there's further delays again because I think
3 we've heard evidence that the sexual assault cases were
4 given priority.

5 And, secondly, the final investigation, we'd
6 certainly take the view while there were a number of
7 witnesses interviewed, a large number, we'll have some
8 issue in terms of the approach and how vigorous it was to
9 some of the key witnesses.

10 I'd like to point out that because we're
11 taking a position that the ultimate investigation of the
12 conspiracy was deficient in many ways, we're taking the
13 position that there's a need for a number of reforms, and
14 for that reason we put forward 10 recommendations in the
15 hope that, in terms of the Silmsler case, that one could
16 perhaps in terms of the impact on the community, almost
17 regard as a disaster or a fiasco the illegal settlement and
18 what transpired.

19 Our hope is that the recommendations being
20 put forward will assist in perhaps preventing such a
21 similar situation from occurring, first of all and,
22 secondly, if such a circumstance were to unfortunately
23 occur, our hope is that an investigation of it would be
24 done in a different manner in the future.

25 So, just briefly, in terms of those

1 recommendations, we did put forward 10 recommendations.
2 The first one deals with the manner of investigating
3 conspiracies, and it is our position that there is a need
4 for some new format or new method of investigating the very
5 unusual type of conspiracies that involved allegations
6 against high-level public officials.

7 We're suggesting that in those unusual
8 circumstances, which are not going to be hopefully very
9 common, that consideration be given to some other method,
10 such as an investigation perhaps by an out-of-province
11 police force. We give that as an option. Another option
12 we gave would be some kind of judicial oversight over the
13 investigation to see that it gets a priority and focus that
14 it deserves. As another possibility, we give another
15 possibility of a defined unit or a different entity to
16 investigate those types of activities.

17 The second recommendation we gave dealt with
18 the Diocese, and that dealt with the type of auditing
19 procedures of the Diocese. We certainly recommend that the
20 Diocese has made some changes in their procedures that
21 we've actually referred to, internal and external audits in
22 their present guidelines.

23 Our impression is that the focus may be more
24 on auditing the guidelines in terms of once one gets a
25 complaint, and we'd like perhaps an expansion of the

1 auditing process to include aspects of auditing of
2 publicity of policies, training personnel, criminal record
3 checks, all the kinds of things that would go into
4 detecting incidents prior to the actual occurrence. And
5 we've made some comment as well that perhaps consideration
6 should be given to the independent audit aspect of
7 involving some form of government agency being involved in
8 that.

9 Our third recommendation deals with
10 confidentiality clauses and settlement agreements, and
11 certainly we recognize that the ability to contract and
12 settle disputes is important to avoid litigation. That's
13 an important factor but, on the other hand, we take the
14 position that public knowledge of certain types of
15 incidents of sexual abuse is also important, that there's a
16 public interest at stake and one would hope that the types
17 of sexual assault allegations involving public institutions
18 would be the rare exception to sexual abuse cases and those
19 particular types of cases.

20 It would be our position that
21 confidentiality clauses should be banned in terms of the
22 institution relying upon them. We certainly take the view
23 that the victim should retain the right to publicize
24 matters or keep them unpublicized, and the victim should be
25 able to keep confidentiality through contract if they wish

1 but they should have the right to waive it if they wish.

2 Our fourth recommendation dealt generally
3 with cooperation among authorities. Certainly, there has
4 been some evidence with respect to the level of information
5 that flowed in various cases between Probation Services,
6 the Cornwall Police and the Children's Aid, and certainly
7 we would like to see mechanisms to try to improve the flow
8 of information to institutions and situations involving
9 sexual abuse allegations against public authorities.

10 Two other recommendations dealt more
11 specifically with the police. It dealt with conflict of
12 interest issues with respect to police agencies, and we
13 certainly raise that in light of the cases of Earl Landry,
14 Jr., Keith Oullette, the Price case. There were a number
15 of cases where Cornwall Police appeared to be either
16 investigating original allegations or conducting reviews of
17 situations where they're directly involved allegations,
18 sometimes very serious allegations such as Mr. Oullette
19 directed right at the police force; situations where
20 arguably there should be some form of conflict of interest
21 guideline that leads to them not being involved. Perhaps a
22 conflict of interest guideline that is publicized, made
23 available to the public, and some form of remedy where a
24 complaint can be made if they're not following the
25 guidelines.

1 The other type of recommendation that
2 applies to the police would be whistleblowers. I think we
3 certainly recognize that there is protection in place under
4 the *Public Service Act* but we're not at all convinced that
5 that would necessarily apply to the situation of Mr.
6 Dunlop, and I would suggest that that perhaps needs to be
7 clarified.

8 There are four other recommendations that
9 apply more to the institutions that Mr. Horn will be
10 dealing with. Access to Children's Aid Society records:
11 that was canvassed by the Coalition with Mr. Carriere and I
12 believe it also was dealt with by other counsel, or any
13 recommendations that Mr. MacLean made in his evidence, and
14 we'd suggest that some form of record processing under
15 Freedom of Information be enacted. Something even similar
16 to what's already in the legislation but not yet enacted in
17 force.

18 Duty to report: suggest that any lack of
19 clarity in the duty to report in cases of historical sexual
20 abuse should be clarified in the legislation, perhaps
21 specifically the Divisional Court case involving Mr.
22 Dunlop. The ruling there should be codified into the
23 legislation.

24 With respect to Probation Services, we have
25 made recommendations. We acknowledge that a large part of

1 those have been adopted by Probation Services. I believe
2 the recommendation was with respect to audits if there's
3 any difficulty with allegations against a probation officer
4 has, I believe, been implemented.

5 I believe we also were taking the view that
6 in terms of allegations, significant allegations of sexual
7 abuse against a probation officer, should perhaps be
8 reportable to the Minister himself. That was one of our
9 recommendations.

10 **THE COMMISSIONER:** Say that again?

11 **MR. PAUL:** Reportable to the Minister.

12 **THE COMMISSIONER:** Any allegations of sexual
13 abuse ---

14 **MR. PAUL:** Against a probation officer.

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

16 **MR. PAUL:** We make that recommendation
17 because of the concern about the delay between 1993 to
18 2000, when it wasn't apparent that there was a lot being
19 done in relation to the situation involving Ken Seguin.

20 Finally, we have a recommendation with
21 respect to criminal proceedings and standing, and we've
22 suggested in our last recommendation that in some very
23 unusual cases -- certainly I don't think it would be common
24 -- but in very unusual cases where there's an issue in
25 terms of a serious allegation against a public official,

1 Mr. Dunlop being an example, where his integrity is being
2 challenged in the context of a criminal case, to the extent
3 that it may involve an issue of whether a charge could be
4 stayed or not, in a case such as that if there becomes some
5 kind of conflict in terms of the duties with respect to the
6 Crown and that individual -- if a conflict arises, there
7 should be some consideration to standing.

8 I don't think that would be a common case,
9 but in a case where disclosure issues arise -- and the
10 disclosure issues could involve the Crown Attorney, they
11 could involve the police force, they could involve Mr.
12 Dunlop. There could potentially be issues of conflict and
13 how one portrays it, and I think that in some unusual
14 circumstances it might be appropriate to offer standing to
15 someone like Mr. Dunlop.

16 Now, I have indicated in terms of the
17 conspiracy investigation that our position is that in terms
18 of the Cornwall Police and Diocese evidence, we have a
19 number of concerns about their evidence, particularly in
20 the timeframe around the Silmsler settlement.

21 **THE COMMISSIONER:** Now, you're talking about
22 a conspiracy to complete a settlement with Silmsler?

23 **MR. PAUL:** Yes.

24 **THE COMMISSIONER:** All right.

25 **MR. PAUL:** And I'd like to try to summarize

1 what the evidence would be that we would rely upon for
2 having those concerns in terms of the Cornwall Police first
3 of all.

4 First of all, it has to be remembered that
5 in terms of Chief Shaver, Chief Shaver is a fairly
6 experienced officer, he's a Chief of Police, had been Chief
7 of Police for some time, was actually someone who trained
8 chiefs of police at the police college. He was also an
9 individual that had had some experience in undercover work,
10 in training in undercover work, and he was also someone
11 that had been referred to by Inspector Smith at some point
12 as a micro-manager.

13 And we do know that Chief Shaver appeared to
14 be involved, in some respect, in the case from early on,
15 near the beginning, around the time when the case was
16 assigned. So in terms of that situation, it seems somewhat
17 difficult to accept the level of difficulties that were
18 associated with that case that came out on the Ottawa
19 Police investigation.

20 As a particular example, I'd suggest the
21 failure to conduct a polygraph, failure to interview or
22 attempt to interview Charles MacDonald. Now, I realise
23 that there have been explanations given for that, that that
24 could be put off to the end of the investigation, but I
25 would strongly suggest that by the time fall is

1 approaching, that that investigation in terms of evidence
2 gathering was in effect over. There wasn't much done from
3 April to September in that case that can be pointed to.

4 And I believe when Chief -- former Chief
5 Shaver was cross-examined and asked, well, in terms of
6 tying the hands of the Cornwall Police and the Diocese's
7 actions tying your hands, what particular investigative
8 step was stopped in the fall of '93? And indeed the only
9 thing he could refer to was the contact with a Crown
10 Attorney, an outside Crown Attorney which, I would suggest,
11 is not really an investigative step. It's not an evidence-
12 gathering step and Chief Shaver could point to no
13 particular step in the investigation.

14 In fact, it would make sense that a
15 polygraph or an interview of a suspect would be done prior,
16 as a last stage, prior to contact with any Crown Attorney.
17 I think Chief Shaver certainly agreed that the results of
18 contact or interviews or polygraphs with a suspect would
19 certainly be something that might be relevant to reasonable
20 probable grounds when one is contacting a Crown Attorney.

21 So I'd simply point out that the failure to
22 do that, of no indication of any other steps in the
23 investigation that were coming, is somewhat of a problem,
24 particularly given the level of experience of the
25 individuals involved.

1 Secrecy in the case in terms of the issues
2 surrounding the OMPPAC and project file. Again, there had
3 been explanations that there was a need to protect the
4 integrity of the investigation, but I would suggest that
5 it's somewhat suspicious in terms of the timing that it is
6 done towards the end of the investigation, and again, at
7 the time it's done there's really no other investigative
8 steps that are pointed to that can be done at that point or
9 planned at that point in the case.

10 It's also of note that the case seems to be
11 of -- certainly of knowledge to the suspect, Father
12 MacDonald. There's a number of interactions with his
13 lawyer, so in terms of protecting what they're doing,
14 certainly it's not obvious that it's protecting the
15 integrity of the investigation at that point. It seems to
16 be -- most obviously it seems to be done to protect the
17 suspects or their reputations.

18 **THE COMMISSIONER:** Okay, okay, just -- I'll
19 stop you there for a minute.

20 What you're talking about is -- and that's
21 what I want to see. Officer Lortie -- the evidence as I
22 recall is, the Chief tells Lortie, "You've got this file
23 and put it in the project file". He goes through surgery,
24 it's reassigned, it's never put on the OMPPAC until
25 Sergeant (sic) Sebalj puts it on the OMPPAC and then it

1 goes into a project file after the disclosure by Dunlop.

2 So would it not be a fair inference to say
3 that the Chief knows that someone has gone out of his force
4 to give some material? So would it not be wise on his part
5 to have a project file, to make sure there are no more
6 leaks? Would that not be another reason why, that would
7 maybe negate the issue of conspiracy or explain, a rational
8 explanation why he would be doing it?

9 **MR. PAUL:** Right. I think in terms of the
10 information that's gone to another public institution --
11 the Children's Aid -- which arguably wasn't the proper
12 thing to do, it certainly has not gone out as I think some
13 of the witnesses believed. Inspector Smith had a concern
14 it would go out in coffee shops around the city; that
15 hasn't happened. It's gone to another public institution
16 that presumably would have safeguards in terms of release
17 of information and would presumably act in an appropriate
18 way.

19 I realise what you're saying, Mr.
20 Commissioner, in terms of it going beyond the Cornwall
21 Police, but nevertheless I also point out that in terms of
22 protecting an investigation or the -- because I think that
23 was given at times as a rationale in terms of protecting
24 the investigation, it's not clear what investigation is
25 being protected at that point.

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

2 **MR. PAUL:** In terms of other circumstantial
3 evidence, I would suggest the morning meeting where Staff
4 Sergeant Lortie attends is of some concern. There's
5 different accounts about what is said. There was some
6 reference I believe to the Deputy Chief of believing, at
7 some point, that the word "cover-up" was used. Staff
8 Sergeant Lortie I believe himself referred to the word
9 "shame" as being a word that was used.

10 But, nevertheless, I would point out that
11 Staff Sergeant Lortie does appear to raise concern with the
12 case. He was the original person assigned as an
13 investigator. It's not obvious why one would not want to
14 give him information, why one would want to restrict access
15 to information about the settlement of the matter, about
16 the opinion letter from the Crown Attorney at that point.

17 Why would it would not be accessible to
18 senior officers, in particular Staff Sergeant Lortie who
19 had actually been at the early stages assigned as the
20 investigator? Not only is he not really told the status of
21 the investigation, it's suggested by some of the witnesses
22 that it comes across as a criticism of Staff Sergeant
23 Brunet, but nevertheless nobody comes to the defence of
24 Staff Sergeant Brunet in any way. And I would suggest
25 again that that is somewhat of a suspicious chain of

1 events.

2 Another factor to be considered is the fact
3 that at one point there is contact by -- between Ken Seguin
4 and David Silmsler early on in the investigation. I believe
5 there's a suggestion in Ms. Sebalj's notes that there's a
6 telephone conversation, communication. As a result, Mr.
7 Silmsler indicates he doesn't want to proceed at that point
8 in relation to the Ken Seguin aspect of the case.

9 Certainly of interest in terms of a
10 potential investigation either by the Ottawa Police or the
11 Ontario Provincial Police, why there were no efforts really
12 of any substance to find out precisely what happened in
13 that telephone conversation and precisely why Mr. Silmsler
14 was choosing not to proceed.

15 And I believe that was put to Mr. Shaver in
16 cross-examination by the Coalition, and he indicated that
17 the reasons or the explanation for why the complainant was
18 not wishing to proceed at the time were not something that
19 he wanted to find out at that time.

20 Similarly, in terms of events that might be
21 construed as being suspicious, is just the fact that one
22 has the settlement coinciding with the withdrawal of the
23 criminal charges and the way that it occurred, and nobody
24 sees fit to open up an investigation for obstruction of
25 justice, which I believe on the evidence of Staff Sergeant

1 Lortie he felt that that may have been appropriate. And I
2 believe in addition to that, Inspector Wells indicated that
3 the sequence of events was something that would cause him
4 concern in terms of potential for obstruction.

5 So I would suggest that the fact that there
6 wasn't an opening of an investigation at that point of
7 obstruction for justice (sic) again is another aspect of
8 circumstantial evidence that should have been open for the
9 authorities to consider. Contact with Probation Services is
10 another troubling area.

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

12 **MR. PAUL:** I think we know that for some
13 reason, the first person I believe that contacted Probation
14 Services about the allegations of Mr. Silmser, I believe
15 was Mr. Silmser himself.

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

17 **MR. PAUL:** And in terms of the Cornwall
18 Police explanation that there were concerns about
19 contacting an employer, we've heard that as an explanation,
20 but I think we've also heard Crown Attorney, Mr. MacDonald,
21 indicate that he specifically discussed the aspect of
22 contacting Children's Aid and Probation with Chief Shaver,
23 and his expectation was that that was going to be done.

24 So I think it's troubling that there wasn't
25 any effort to contact, and I believe that was -- I have

1 that in Volume 327, page 8 to 9 ---

2 THE COMMISSIONER: M'hm.

3 MR. PAUL: --- of the evidence of Murray
4 MacDonald.

5 I think it's troubling that that wasn't
6 followed up by Chief Shaver. It's -- he did contact
7 Children's Aid, but it's obvious at that point that
8 Children's Aid is aware of the situation because of the
9 actions of Mr. Dunlop, but the authority that is not aware,
10 despite the contact with the Crown Attorney, despite the
11 comments of the Crown Attorney, there's no efforts to
12 contact Probation Services.

13 There's some evidence of efforts, I would
14 suggest, by Chief Shaver to attribute blame to other
15 parties. We've heard from Mr. Abell that there seemed to
16 be some suggestion which, I believe in fairness Chief
17 Shaver may have denied, who -- we still have the evidence
18 that has to be considered, Mr. Abell suggesting that there
19 was some deficiencies with the other officers, and I
20 believe that there was a newspaper article that I put to
21 him in a cross-examination suggesting that there was some
22 fault in the middle of the chain.

23 And also there was some effort also to
24 attribute some problem with the Diocese, that the Diocese
25 tied their hands which is somewhat -- well, one can

1 understand that the settlement perhaps caused difficulty
2 for the Cornwall Police in terms of cooperation of a
3 complainant but, on the other hand, there were no obvious
4 steps that the Cornwall Police were planning at that point.
5 If it tied their hands, why had they not interviewed
6 Charles MacDonald -- attempted to interview him or gone
7 through with the polygraph?

8 In terms of the notification or the dealings
9 with Children's Aid, there's also the failure to contact
10 Children's Aid at any point during the investigation prior
11 to Mr. Dunlop's intervention, and I certainly understand
12 the Cornwall Police trying to explain that or put forward
13 an explanation that there's confusion or lack of certainty
14 in terms of the reporting, where all Mr. Silmsen an adult
15 at that point, but I would certainly ask you, Mr.
16 Commissioner, to consider not only the fact that there's a
17 failure to contact the Children's Aid.

18 Also ask you, Mr. Commissioner, to consider
19 also the interaction of the Cornwall Police and the
20 Children's Aid after the settlement goes through, in terms
21 of any difficulty with Children's Aid after that. and I'm
22 pointing to two complainants. I believe there was a
23 failure to give the names of two complainants.

24 **THE COMMISSIONER:** By the Cornwall Police to
25 the ---

1 MR. PAUL: Yes.

2 THE COMMISSIONER: --- to the Children's Aid
3 Society?

4 MR. PAUL: And while the Cornwall Police is
5 suggesting an explanation of confidentiality, I would
6 suggest that the only thing that would have been
7 conceivably confidential would be the information those
8 individuals related and, certainly, those individuals did
9 not come forward and give their names. Miss Sebalj found
10 their names and there was nothing in terms of
11 confidentiality in their names.

12 In addition, there's some suggestion in
13 terms of Mr. Abell's evidence -- I believe that there was
14 some questioning -- perhaps a questioning of his authority
15 in a sense -- and Mr. Abell's evidence if he referred it to
16 as Chief Shaver saying that there was -- be an issue
17 whether they could rely upon what he called "other channel
18 information", so I suggest that that -- perhaps those two
19 factors -- the two other complainants and the reference to
20 "other channel information" gives some support for the idea
21 that there's some greater issue in terms of interaction
22 with the Children's Aid and just the failing to report
23 before, and that gives context to perhaps the reasons
24 behind it.

25 There's certainly as well the evidence of

1 association between Mr. Shaver and Ken Seguin that was
2 heard and Mr. Shaver has denied that, and I point out in
3 terms of a conspiracy, certainly whether there was a ring
4 of paedophiles is certainly not the only basis for a
5 conspiracy. If there was an association between -- simply
6 an association, a friendship or a contact or association
7 between Chief Shaver and Ken Seguin that is potentially
8 another source of motive as well. And I think that
9 unfortunately I'll be referring to the OPP investigation
10 later, but they referred to the investigation of Ken Seguin
11 as a possibility of conspiracy as reaching for stars.

12 And I think that was an unfortunate
13 reference given the level of evidence that has come out
14 from, for example, Gerald Renshaw. We had evidence not
15 only from C-8 and C-10; I believe there was evidence from
16 Gerry Renshaw. There was also evidence from a Carole
17 Hesse. In terms of Carole Hesse, there's some suggestion
18 by the Cornwall Police in their written materials that she
19 was inconsistent in her evidence and I believe that's
20 pointing out to the fact that there's some issue of whether
21 she sees Mr. Shaver when he's arriving or leaving in the
22 vehicle in terms of moving the vehicle.

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

24 **MR. PAUL:** I think she does reply that she
25 was there twice and she doesn't acknowledge that that's an

1 inconsistency. I don't think on that sequence of events,
2 it's even clearly established that there's an
3 inconsistency. I would certainly suggest that there's no -
4 - I would suggest there's no obvious motive for either
5 Gerry Renshaw or Carole Hesse to fabricate against Chief
6 Shaver. I'd simply also point out that it's been made a
7 point of that Gerry Renshaw in his evidence, I believe, did
8 not know that his statement was part of a civil case ---

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

10 **MR. PAUL:** --- so I'm just not sure what the
11 relevance of raising that. I would simply point out that
12 perhaps it even gives a less motive if he's not even aware
13 that it's connected to a financial claim, even less of an
14 argument of any motive on his part.

15 So I suggest in terms of the Cornwall Police
16 evidence, and there was a substantial body of evidence --
17 of circumstantial evidence, and I would suggest that you
18 can categorize it in a number of areas.

19 There's a category of secrecy that deals
20 with both within and without the Cornwall Police. There's
21 a -- the evidence that the morning meeting with Staff
22 Sergeant Lortie failing to advise him what's going on.
23 There's the project file. Outside of the Cornwall Police,
24 there's the contacts or lack of contacts with Children's
25 Aid and Probation Services; probation Services, even after

1 contact with the Crown, so I would suggest secrecy is a
2 real theme in terms of the circumstantial evidence.

3 Another theme is inept or negligent
4 investigation as far as circumstantial evidence.

5 A third aspect is the failure to take any
6 positive action when one suspected there may have been a
7 possibility of obstruction of justice in terms of the
8 settlement.

9 And the fourth aspect is whether Mr. Shaver,
10 in fact, was associated with Ken Seguin.

11 And so I'd suggest that there are three or
12 four themes that are strong ones that certainly should have
13 been followed more vigorously by the Ontario Provincial
14 Police.

15 In terms of the Diocese, I already referred
16 to the recommendations. I'd simply like to point out some
17 difficulties with their evidence in terms of the secrets of
18 the Silmsler settlement.

19 Firstly, in terms of contact with insurers
20 or auditors, I believe the Diocese has given some
21 explanation in relation to insurers, but I'm not sure that
22 the explanation to me is as clear in relation to auditors,
23 who I believe on Mr. Bryan's evidence was not clear that
24 the auditors would have been fully informed in terms of the
25 settlement, and that's significant because the auditors

1 prepare financial statements that I believe on his evidence
2 went to parishioners and the auditor certainly would be
3 expected to have information about potential liabilities.

4 Secondly, in terms of their filing system,
5 Mr. Bryan, I believe agreed that the natural place to file
6 the settlement documents for security or the best place
7 would have been the Bishop's filing system where nobody
8 essentially had access other than the Bishop. In terms of
9 the office filing system that was used, there were more
10 people had access.

11 Thirdly, and maybe more significantly, Mr.
12 Bryan's testimony in some respects provided an
13 inconsistency in terms of why the documents were filed the
14 way they were. And it was put to him that there was a news
15 conference, it was publicized and it was publicized in the
16 newspaper, that the purpose for filing the documents was
17 because that was the way they were normally filed; it was a
18 standard practice. However, in his evidence, it was clear
19 that that really was not accurate; that the purpose was
20 because Jacques Leduc had given him a specific instruction
21 that that was I think in fact the first time it had been
22 done that way.

23 Jacques Leduc had actually given him a
24 specific instruction. He was doing it on the basis of
25 Jacques Leduc's directions and at the second news

1 conference with Jacques Leduc sitting beside him, he
2 doesn't say it was filed that way because Jacques Leduc
3 "told me to do that". He said that was the normal
4 practice.

5 So I'd suggest that certainly in terms of
6 circumstantial evidence, I have great concern that we go
7 through all the sequence and we get to a first news
8 conference and there's admittedly a major misrepresentation
9 at the first news conference. The second news conference
10 one would think is believed to correct the
11 misrepresentation to the public from the first one and it
12 would appear that the misrepresentations continued at the
13 second news conference, which I would suggest would be very
14 troubling, particularly given the sequence of events which
15 also are somewhat troubling in terms of how it arises prior
16 to the first news conference. One has the Bishop having
17 very significant and high-level contacts with firstly Chief
18 Shaver, then some of the highest officials in the
19 Children's Aid Society prior to a first news conference.
20 On his evidence and the Diocese's evidence, they don't at
21 any point get out the actual file documents and review
22 them. That explanation, inadvertence, might make
23 more sense if it wasn't for the fact that I believe at some
24 point prior to the first news conference, the Children's
25 Aid Society is specifically asking, I believe Jacques

1 Leduc, for a copy of the settlement documents and they
2 can't get them from him. They have to get them from I
3 believe Mr. MacDonald.

4 So having been specifically asked for the
5 documents, having high-level government contacts, the idea
6 that they would not be aware of the actual documents when
7 they go to a public news conference is somewhat difficult
8 to accept.

9 Finally, in terms of credibility, Mr. Talach
10 in his cross-examination brought out some various aspects
11 of mental reservation that were admittedly used at times by
12 the Bishop. I also point out that there is certainly some
13 background before the Silmsler case that I would suggest
14 demonstrates somewhat of a questionable record, even the
15 Bishop's own response ultimately in the cross-examination
16 by Mr. Talach about whether the response to sexual abuse
17 was poor.

18 I think he acknowledges it could have been
19 better and I suggest it can be assumed that they may refer
20 in part to the Stone and Deslauriers cases; the Stone case
21 where Father Stone was admitted into the country with the
22 assistance of high-level government contacts, despite quite
23 a long history including a conviction in New York State, I
24 believe it was.

25 Father Deslauriers, the Bishop certainly

1 suggested that he was under the influence or control of
2 Father Deslauriers but he also confirmed in cross-
3 examination by the Coalition that that control certainly
4 ended at the moment that he was told to leave the area and
5 left to the Hull area, and that control seemed to end at
6 that point. Notwithstanding the end of the control or
7 spell that Deslauriers had over the Bishop, there seemed to
8 be a lack of positive action towards whatever was happening
9 with Father Deslauriers in the Hull area in terms of
10 disciplining him or controlling what he could or could not
11 do in that jurisdiction.

12 So I would suggest on the evidence that I've
13 referred to, I would suggest that the explanation for the
14 Diocese in terms of the unfolding of the settlement,
15 leading up to it, what happened after the settlement is of
16 great significance, particularly leading up to the first
17 and the second news conference and the explanations. I
18 would suggest those explanations are difficult to accept
19 and they're not particularly credible explanations.

20 And that, I would suggest, is background
21 that I would suggest would justify our conclusions with
22 respect to our recommendations with respect to the Diocese,
23 and they also form the basis of our suggestion that the
24 subsequent investigations -- some of these areas I would
25 suggest were not pursued vigorously enough by the police

1 forces that were conducting the conspiracy investigations,
2 which would take me to the next area, which would be the
3 first of those investigations and possibly the most cursory
4 of those, the Ottawa Police investigation.

5 I point out that during that investigation I
6 believe there were no formal recorded interviews. They
7 were more in the nature of informal interviews. It was
8 admitted that there was no interview of Perry Dunlop, no
9 interview of David Silmsler and no interview of Staff
10 Sergeant Lortie. I think key to that investigation is the
11 fact that the notes of the investigators actually refer and
12 confirm that they had knowledge that there was some
13 suggestion that the word "cover-up" was used at a morning
14 meeting.

15 When confronted in cross-examination by the
16 Coalition on that point, well, why didn't they follow up on
17 that, at least interview Staff Sergeant Lortie if not
18 everybody at that meeting, my recollection of the response
19 on that is essentially they had made up their mind that
20 there wasn't a conspiracy so they didn't have to look at
21 that.

22 I don't know that much more has to be said
23 about that investigation than that. I would suggest that
24 sort of sums up that investigation as a completely
25 inadequate investigation in terms of the conspiracy because

1 of that particular decision.

2 That would bring us to the next
3 investigation in time, would be the first conspiracy
4 investigation by the Ontario Provincial Police in 1994 by
5 Inspector Smith. In terms of what one has available, I'd
6 certainly appreciate that an investigation of a conspiracy
7 at that point would not be an easy task. You're dealing
8 with an alleged conspiracy that would likely be completed
9 in time and, if it surrounds the Silmsker settlement, not
10 necessarily talking about an ongoing conspiracy at that
11 point. So there are certain techniques, surveillance and
12 wiretap, that may or may not be as much of assistance as
13 opposed to an ongoing conspiracy that's known to be ongoing
14 anyways.

15 You're left with perhaps an investigation
16 where the only real way to uncover a conspiracy, if it can
17 be uncovered at that point in 1994, is to find as much
18 circumstantial evidence as possible and go to the witnesses
19 and particularly the suspects and go at them very
20 vigorously in terms of their explanations for the
21 circumstantial evidence in terms of interrogation because
22 likely the only way at that point to -- the most likely way
23 to solve the matter at that point is if one of the
24 participants turns to the side of the police and willingly
25 gives information, or if one does it through some kind of

1 very vigorous interrogation.

2 In terms of the 1994, in terms of the
3 Cornwall Police, it's clear that investigation I would
4 suggest certainly of the Cornwall Police individuals was
5 not very vigorous at all. It started and ended with Chief
6 Shaver in some form of informal interview, and the
7 conclusion was essentially that because there was not a
8 motive with respect to Bishop Larocque, that there wasn't
9 the need to pursue Chief Shaver or the Cornwall Police any
10 further.

11 It completely ignored the fact that the
12 actual charges involved -- or as far as suspects involved
13 Ken Seguin and Charles MacDonald, obviously not Bishop
14 Larocque, and ignored those avenues as possible motives.
15 We certainly know now that there are a number of
16 individuals who have alleged contact between Ken Seguin and
17 Chief Shaver.

18 So the suggestion by Inspector Smith to
19 consider Ken Seguin as a motive as to Bishop Larocque to be
20 reaching for stars, I would suggest, is certainly a bad
21 decision in terms of investigation tactics and he should
22 have left open all avenues, particularly the avenues of
23 looking at whether there was some bias in favour of any of
24 the actual suspects, and there were two suspects including
25 Ken Seguin.

1 In terms of the circumstantial evidence, I
2 did put it to Inspector Smith in cross-examination that
3 circumstantial evidence could include the aspect of a poor
4 investigation, and I think that in terms of the Ottawa
5 Police, Superintendent Skinner readily acknowledged that
6 that was potentially circumstantial evidence of both
7 negligence and conspiracy. Inspector Smith, I would
8 suggest, was less willing to acknowledge that. He did
9 indicate that that form of poor investigation evidence
10 would not necessarily make a conspiracy.

11 In terms of the polygraph issue that was put
12 to him, he indicated that a polygraph should have been done
13 but he wasn't sure at what stage it should have been done,
14 and I would suggest that at the stage that investigation
15 was at, where nothing had been done since around April of
16 '93, certainly it was time to do that and there was never
17 any indication of other investigative steps that were put
18 forward by Chief Shaver as possible steps.

19 In terms of a project file, Inspector Smith
20 indicated that a project file would be valuable in that
21 type of case, particularly in the early stages of
22 investigation, and I would suggest again that that ignored
23 the actual stage of the investigation it was at. Inspector
24 Smith did agree that a lack of cooperation with Children's
25 Aid would have been relevant but I believe his evidence was

1 he did not have that information before him.

2 He also indicated that too many people in
3 the Cornwall Police knew about the investigation for it to
4 be a conspiracy, and I would point out that knowledge of an
5 investigation does not in any way indicate knowledge of why
6 the investigation concluded, and everybody in the Cornwall
7 Police could know that investigation ended but obviously
8 they wouldn't necessarily know why it ended or the
9 circumstances of how it ended, and it's obvious that
10 everybody in the Cornwall Police did not know the
11 circumstances because it was raised by Staff Sergeant
12 Lortie. And when I put that to Inspector Smith, he really
13 didn't have an answer to that question. I would suggest --
14 and I would suggest that that was a suggestion that
15 everybody knew we could not -- we should not investigate
16 because everybody knew it certainly was not a valid
17 conclusion based on Staff Sergeant Lortie's evidence.

18 He also indicated that reasons for not
19 interviewing Constable Dunlop with respect to Constable
20 Sebalj, she did have interaction but I would suggest it's -
21 - the evidence I would suggest would point to him not
22 interviewing her on aspects of any conspiracy or pressure,
23 I would suggest, he did not interview her on that aspect.
24 He indicated that they could contact him. And I would
25 suggest that in the environment that existed with Constable

1 Dunlop facing discipline proceedings that that was not a
2 realistic approach to take.

3 He also gave a number of reasons, other
4 reasons, for not interviewing Constable Dunlop. He
5 indicated that Constable Dunlop would not have any
6 information and I believe it was pointed out by yourself,
7 Mr. Commissioner, that how would he know that unless he
8 actually conducted an interview. He also pointed out that
9 later on, his impression was when Constable Dunlop was
10 interviewed later on, that he did not have a great amount
11 of information at that point on his evidence. And,
12 certainly, I would point out that whatever happened in --
13 later on, in the late '90s, is no justification for not
14 interviewing Constable Dunlop in '94.

15 He also indicated sick leave as a reason,
16 that was his I believe his fourth reason, and I suggest
17 that would not justify -- not at least put in the option to
18 Constable Dunlop if he wished to participate in an
19 interview. And I would suggest the merits of that
20 explanation are dubious, given that Constable Sebalj was
21 not pursued vigorously for a lengthy period of time until
22 she had already gone off on sick leave and then Inspector
23 Hall was unable to interview her at that point.

24 Also point out that another reason given by
25 Inspector Smith was the fact that if he participated with

1 Constable Dunlop, he'd be participating somebody that was
2 challenging his own police force. And I pointed out in
3 cross-examination that would not be making Constable Dunlop
4 a party investigation. It would be making him a witness.
5 And I would suggest perhaps that was the real reason
6 Constable Dunlop wasn't contacted because, in fact, he was
7 perceived as challenging his own police force and it
8 demonstrated perhaps a bias towards Chief Shaver who he did
9 contact in a bias against Constable Dunlop.

10 Significantly, also there was no attempt to
11 interview again, similar to the Ottawa Police
12 investigation, there's only an attempt to interview Staff
13 Sergeant Lortie who indicated concerns during the morning
14 meeting. And, again, that's another flaw in terms of the
15 second police investigation and the first one by the
16 Ontario Provincial Police.

17 So I'd suggest that the conspiracy
18 investigation in terms of the Cornwall Police never got off
19 the ground, it never went beyond Chief Shaver, and it was
20 seriously deficient. There was contact with Diocese --
21 officials of the Diocese, but there were a number of areas
22 where they weren't challenged as vigorously as I'd suggest
23 they could have been challenged in terms of some of the
24 areas I've brought up earlier, particularly the sequence of
25 events, contact with officials, failure to give documents

1 to the Children's Aid in leading up to the first press
2 conference, and the suggestion I'd made in terms of an
3 inconsistency at the second news conference. There are a
4 number of areas that were not addressed in those
5 interviews.

6 So I'd suggest essentially the first OPP
7 investigation as a seriously flawed investigation. And by
8 the time we get to the second investigation, there's some
9 question whether they can ever recover, given the passage
10 of time. By the time the second investigation occurs, at
11 that point Charles MacDonald, I believe on the evidence, is
12 refusing to be interviewed. Perhaps if the first
13 investigation had taken advantage of the opportunity to
14 interview Charles MacDonald in going beyond the sexual
15 assault allegations and extended into conspiracy issues,
16 that opportunity would have been -- would not have been
17 lost. But it was lost by the time Inspector Hall is
18 involved.

19 Similarly, Constable Sebalj and the
20 opportunity to obtain evidence from her is lost by 1998
21 when she's on sick leave and not cooperating.

22 I also point out that there seems to be a
23 position being taken at the time the second -- the second
24 conspiracy investigation, that the sexual assault
25 allegations were to take precedence and the conspiracy

1 would be put on a backburner. So, again, it's delayed
2 further by that decision.

3 And there's also some suggestion in the
4 evidence that the Crown is actually more partial to the
5 possibility of a conspiracy than Inspector Hall. I'm
6 talking about Crown Godin who seems to be putting forward
7 at least some form of theory of grooming in terms of the
8 Marleau investigations. And I can point to the cross-
9 examination by Mr. Lee of Inspector Hall and the reference
10 to a CBC reporter, Brosnahan, and there is some concern
11 that maybe the OPP at that point was downplaying to some
12 extent the idea of a conspiracy even before it's fully
13 investigated.

14 In terms of the actual investigation, I
15 realize that there were extensive numbers of witnesses
16 interviewed, but one has to look at, at that point, the
17 lost opportunities in terms of Ms. Sebalj, the lost
18 opportunity in terms of possibly interviewing Charles
19 MacDonald.

20 And also even at the point when they're
21 interviewing extensive numbers of witnesses, I would
22 suggest that if one looks closely at the interviews of some
23 of the key individuals, Chief Shaver, Bishop LaRocque, that
24 one sees a sort of laundry list of names of people and
25 places and denials, but I would suggest it's not

1 necessarily a vigorous interrogation in terms of pieces of
2 circumstantial evidence. Particularly with Chief Shaver, I
3 would suggest the types of circumstantial evidence I point
4 to are not vigorously used to confront Chief Shaver.

5 I appreciate that in relation to Bishop
6 LaRocque, the Ontario Provincial Police have at their
7 disposal the previous interview by Inspector Smith of
8 Bishop LaRocque, where some aspects of those issues are
9 confronted with Bishop LaRocque. But I would suggest
10 they're not fully confronted and there are aspects that are
11 not confronted with Bishop LaRocque and it's not as
12 vigorous as it could have been even with Bishop LaRocque.

13 So I would suggest what one has at the end
14 of the day is no clear investigation of the conspiracy
15 aspects even after the third investigation. And I would
16 suggest that the extent that there are not clear answers in
17 terms of the conspiracy. The fault lies with the state of
18 the evidence of the Diocese, the state of the evidence of
19 the Cornwall Police and finally the delays, the lack of a
20 prompt, appropriate, investigation of conspiracy early on
21 and even at the end of the day in the final investigation.
22 a lack of a complete and full investigation.

23 Just briefly I want to point out in the time
24 I've left and make a few comments about two other Cornwall
25 Police investigations.

1 One, Earl Landry, Jr. In terms of that
2 investigation, I point out that it seems to underscore the
3 need to have conflict of interest guidelines and point out
4 that there seems to be difficulties in terms of the notes
5 of Sergeant Lefebvre and subsequent statements in the
6 review by Sergeant Snyder at a later point on issues of
7 arrest of the suspect and identification process. There
8 seems to be discrepancies on those pieces of evidence.
9 There also seems to be direct contact with the suspect's
10 father and at a point soon after that, ex-Chief Landry's
11 involvement may have well resulted in the calling off of
12 the polygraph, is my recollection of the evidence.

13 There is also contact with Chief Shaver and
14 former Chief Landry in reference to consoling him over the
15 events. There seems to be certainly some evidence of
16 partiality, or at least an appearance of partiality, and
17 certainly I would take the position that matter should
18 never have been investigated by the Cornwall Police.

19 In terms of the other case that I want to
20 comment on, Jeannette Antoine, that particular case was
21 investigated by Constable Malloy who gave a number of
22 reasons for problems with the evidence. He referred to
23 six-month limitation period despite the fact that it gives
24 the appearance of some aspects of assault bodily harm or
25 potential injuries, and sexual aspects he referred to in

1 the same way to potential for defensive discipline in a
2 case where potentially may have been injuries, a sexual
3 aspect and an aspect of humiliation that would go way
4 beyond defensive discipline.

5 He made reference to inconsistencies or
6 difficulties in her story changing, but in his evidence
7 under cross-examination, couldn't point to any one
8 particular one whatsoever.

9 He pointed to the wishes of the complainant,
10 but it's of note that all he could point to, I believe,
11 would be the fact that Ms. Antoine was only mad about the
12 beatings, and I would suggest that that was not a
13 categorical statement saying that she did not want to
14 proceed on the sexual aspect.

15 And finally, he referred to a lack of
16 reasonable and probable grounds.

17 It's of note that not one single one of
18 those five items could be found in the correspondence from
19 the Crown to the Regional Crown, which made unusual
20 references to the fact that there was a lacking of
21 information on names of CAS personnel and dates,
22 information that would seem to be the kind of information
23 that could have been found with further work and was
24 totally inconsistent with the reasons given by Constable
25 Malloy, all, I would suggest, leaving the impression that

1 for some reason, the authorities did not seem to want to
2 assist or give Ms. Antoine the assistance that she should
3 have been given.

4 Just finally a few general comments in
5 relation to Perry Dunlop. Mr. Horn will have further
6 information -- further submissions on this.

7 I briefly just want to indicate in terms of
8 the original contact with the Children's Aid, we would
9 certainly take the position that the initial contact with
10 the Children's Aid and the release of information to them
11 about the Silmsler statement was an appropriate thing to do
12 in the circumstances.

13 **THE COMMISSIONER:** Was an appropriate thing?

14 **MR. PAUL:** An appropriate thing, yes.

15 In terms of the subsequent events, I point
16 out that, first of all, there's a long track record, I
17 would suggest, of questionable actions by some of the
18 institutions and authorities that went back long before any
19 involvement by Mr. Dunlop; in particular, as I've just
20 related, the Landry and Antoine cases, the Cornwall Police,
21 the issues with respect to Ken Seguin and the Probation
22 Office and with the Diocese, the Deslauriers and Stone
23 cases.

24 There is a track record there, and in terms
25 of what happened after, I would suggest a large number of

1 the Project Truth cases that arguably were not impacted a
2 great deal by Mr. Dunlop. The two that one can point to
3 would be the Leduc and Father MacDonald cases.

4 And the Father MacDonald cases, I would ask
5 you to consider, Mr. Commissioner, the aspect of joinder
6 and the joinder of the charges as being a factor that had a
7 major impact in terms of delay issues.

8 And I would also ask you to consider the
9 fact that no one thought it appropriate to bring a third-
10 party application in terms of records that were in the
11 possession of Mr. Bourgeois at the time.

12 I also point out that in terms of the Leduc
13 case, certainly our position would be that a large part of
14 the fault of any in terms of disclosure issues should be
15 considered in relation to the Ontario Provincial Police and
16 the Attorney General in that regard.

17 Finally, I would suggest that Mr. Dunlop's
18 involvement, certainly in terms of the conspiracy aspect of
19 it and the Fantino Brief, I would suggest that certainly
20 one can conclude that perhaps if not for his involvement in
21 taking up a matter that was, I would suggest, investigated
22 by the Ontario Provincial Police in '94 and by the Ottawa
23 Police and their investigation only in a very cursory and
24 ineffective manner, I would suggest that if it had not been
25 for Mr. Dunlop's intervention with the Fantino Brief,

1 perhaps there would have never been any further
2 investigation of the matter at that time.

3 And I would suggest, Mr. Commissioner, you
4 should consider the fact that perhaps Mr. Dunlop's
5 intervention in that regard, in terms of the conspiracy
6 investigation, would not even have been necessary if there
7 had been a full and an appropriate investigation of the
8 conspiracy aspect by either the Ottawa Police or by the
9 Ontario Provincial Police early on, which was not done, and
10 I would suggest even in the final stages, when Inspector
11 Hall was done, I would suggest again that that was not a
12 complete and full investigation at that point.

13 And that would bring me to a conclusion.

14 **THE COMMISSIONER:** All right. Thank you.

15 So we'll continue with Mr. Horn at a quarter
16 to 2:00. Thank you.

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

19 This hearing will resume at 1:45 p.m.

20 --- Upon recessing at 12:41 p.m./

21 L'audience est suspendue à 12h41

22 --- Upon resuming at 1:46 p.m./

23 L'audience est reprise à 13h46

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

1 This hearing is now resumed. Please be
2 seated. Veuillez vous asseoir.

3 **THE COMMISSIONER:** Thank you.

4 Good afternoon, Mr. Horn.

5 **--- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**

6 **HORN:**

7 **MR. HORN:** Yes. Frank Horn, Coalition for
8 Action.

9 **THE COMMISSIONER:** Yes, sir.

10 **MR. HORN:** And I will be doing the next
11 portion of our submissions -- oral submissions.

12 First of all, I'd like to thank everybody
13 that is here. We've all been participating in a joint
14 venture to bring to light many things that had to be done,
15 and I think Cornwall should be very proud of the fact that
16 something like this was held in this city, and probably
17 something like this has never been done anywhere else in
18 the world, where something as crucial at this time in
19 history was done. And I would like to congratulate all the
20 men and the women that are here and the fact that we all
21 jointly worked together in trying to bring some truth to a
22 very grave situation that is facing many, many communities
23 around the world.

24 So I just want to say that this is a -- was
25 a worthy endeavour. Some people were here for three years.

1 Ian Paul and I only were here for a year and a half, but in
2 that period of time, we got to know some of the other
3 colleagues that are here and we felt that everyone that is
4 here was very dedicated in what they were pursuing and what
5 they were doing, and all I can say is I thank them for
6 giving me the friendship and the things that I had in the
7 period of time that I was here and Mr. Paul was here.

8 So now, the first thing I'd like to say is
9 that as you know, the Coalition for Action came about as a
10 result of a situation that was seen by certain individuals
11 in this city, and they felt almost immediately that
12 something had to be done.

13 I know that Perry Dunlop seen a very bad
14 situation. He seen something that was not right and he
15 immediately made a decision that he was going to do
16 something about it, and he has never changed his position.
17 No matter what happened, he just said, "It was wrong and
18 I'm not going to back down on what I believe was wrong and
19 has to be straightened out."

20 And in the process, what it has resulted in
21 is this Public Inquiry in which I believe will be a
22 watershed report for not just Cornwall but for all cities
23 and towns, all over the world who are seeing these kinds of
24 things occurring, and it was brought to light here and it
25 has been dealt with, and all the interested parties have

1 been represented very ably, and I believe that something
2 very wonderful is going to come out of this.

3 Now, first of all, what I would like to say
4 is there was one situation which really took my attention
5 more than anything. I'm a family man. I have five
6 children. I have four grandchildren. And when I heard the
7 story of what was going on at the Second Street Group Home
8 and when Ms. Antoine, Jeannette Antoine felt so strongly
9 about doing something about that in 1989, I know what she
10 must have really felt at that time. I know that it stemmed
11 from a dispute she was having with the Children's Aid
12 Society at that time because of her own child, and she was
13 very angry that some organization would come to her and say
14 "We're going to investigate you over your daughter," and
15 that sort of thing. It really riled her up to think that
16 some organization that she knows, in 1976 -- she knows for
17 13 years ago there was a situation that she lived through
18 and she was very angry about it, and that was what spun her
19 to do something.

20 In 1976 it seems that what we had was a new
21 experiment that was being done in which they were opening
22 up group homes, Children's Aid Societies, and one of the
23 things that was -- how it started out was very good because
24 a Mr. Rabey and his wife opened up the group home and they
25 were very -- the children loved them and it seemed like it

1 was really working out well.

2 Then all of a sudden there was tragedy
3 struck in which the father -- I mean Mr. Rabey suddenly
4 died, and Ms. Antoine described that that was a very, very
5 -- turning point in her life, and some of the things that
6 happened afterwards, particularly at the funeral of Mr.
7 Rabey, who she loved so much, where there was a -- it
8 seemed like there was some kind of a dispute between her
9 and Mr. Keough in which he was trying to force her to touch
10 the body, and it was really a very, very horrible situation
11 that occurred there.

12 Then afterwards the things that happened in
13 that home, where Mr. Tenger and Mr. Keough and other staff
14 members were -- things happened there which were not very
15 nice. I won't go into the detail but there were things
16 that were -- that resulted in these children becoming very
17 fearful, to the point that Ms. Antoine, who became the
18 leader of this group of children, ran away and they went to
19 Summerstown. They were there and they said, "We're not
20 going back," and somehow they contacted the Children's Aid
21 Society and came in and her, as leader, spoke to the people
22 at the Children's Aid Society and said, "Something's got to
23 be done about this group home."

24 And what happened was the details of what
25 occurred at the group home came out and there was meetings

1 of the committee -- of one of the committees that dealt
2 with hiring of staff, and they -- once they realized how
3 bad the situation was in the group home, they took the --
4 they received the resignation of the staff and the group
5 home was basically phased out from that point on. It was
6 taken over by somebody else but eventually, within the
7 year, it didn't exist anymore.

8 Ms. Antoine was very upset at one of the
9 things that happened to her. It seemed like they wanted to
10 get her out of the picture. I think that she felt when she
11 was taken to Minden and put into a group home on the other
12 side of Toronto that somehow, because she was kind of like
13 the leader of this group, they wanted to get her out of the
14 picture. She was taken to Minden and for 13 years nothing
15 was done.

16 This was something that was -- first of all
17 there was a committee which consisted of some very
18 prominent people in the city, one of them being a Crown
19 Attorney. He may not have been Crown Attorney at the time
20 but he may have become Crown Attorney shortly afterwards,
21 but he was on the committee that received the resignation.

22 **THE COMMISSIONER:** And that being?

23 **MR. HORN:** That was Mr. DiMarco. Mr.
24 DiMarco, Guy DiMarco, was there and Mr. Don Johnson was, at
25 that time, the Crown Attorney, I think from my recall. He

1 was the only Crown Attorney that was in the office at the
2 time and he was working with some part-time Crowns that
3 would come in, and Mr. DiMarco soon afterwards came on
4 board and he became part of the staff.

5 The evidence seems -- from Mr. Johnson was
6 that he was never told about what happened at the group
7 home. He was very insistent that he had never been told
8 about what had happened in 1976, and in 1989 he said that
9 was the first time he'd heard about it at all. And yet in
10 all those years there was a lot of people who did know
11 about it. There was -- first of all there was the Board of
12 Directors. There was also some staff at the CAS -- Mr.
13 Townsdale, is it? Mr. O'Brien, at least he would know for
14 sure, and these individuals were aware of this and it was
15 something that was -- basically never got out.

16 **THE COMMISSIONER:** Mr. O'Brien was on leave.

17 **MR. HORN:** I know. He came back. He came
18 back and he found out about it afterwards and he basically
19 had to deal with the problem afterwards in 1989, but he
20 must have dealt with it back then because he came back
21 earlier than that.

22 So what we have is a situation in which
23 there's a Crown Attorney who was there for 13 years and he
24 wasn't -- he says that nobody told him about it. There was
25 a Crown Attorney that was in his office who knew all about

1 it because he was on the committee that received the
2 resignations, and also there was other -- in fact the
3 lawyer that was giving advice to the Board was Mr. Ron
4 Adams and he would be aware of all that was going on, and
5 there was other very prominent people that were in the
6 group home.

7 So what we're really dealing with is for a
8 long period of time there was something that happened and
9 almost it looked like they closed it gradually to a little
10 while -- closed the group home and hopefully it was going
11 to go away. It didn't go away because Ms. Antoine said in
12 '89, when she was not a young girl anymore; she was not a
13 kid. Now she is like about 30 years of age and she became
14 very upset with what had happened to her when she was quite
15 young.

16 She was very upset about what not only
17 happened to her but what had happened to a number of other
18 young people that she was with. And I think even her own
19 sister was there too for a while, and also there was
20 another individual who -- I forgot her. She was
21 interviewed later on. I think it's C-87, who was also
22 there during that period of time.

23 So the house was open for a very short
24 period of time and during that period of time a lot of
25 things happened. It only came out in '89 because

1 Ms. Antoine made it a point that she was not going to be
2 denied; she was going to do something about the situation,
3 and she wanted something. She wanted an investigation, she
4 wanted charges laid, and what really upset her more than
5 anything was that Mr. Keough was not fired at that
6 resignation. He continued to work in the group home,
7 whereas all the rest of them had been fired or had gone,
8 but he was still there for that whole period of time and
9 what really upset her is that she felt that he was one of
10 the main guys that had abused her back in the past, and he
11 was still working for the Children's Aid. That really was
12 an upsetting thing for her.

13 At that point in time Mr. Johnson, who was
14 the Crown Attorney, had discussions with Tom O'Brien and
15 some of the staff at the Children's Aid Society. Police
16 officers were called in. They had meetings. I believe
17 that Mr. St. Denis was at one of those meetings and there
18 was discussions as to what they were going to do with this
19 situation that seems to be -- could blow up into a big
20 situation.

21 One of the words that was used is that,
22 "We've got to not disseminate or distribute this damaging
23 information." The word "damaging" was used. Now, that's a
24 very -- to me that was a very important word because
25 "damaging" means it was damaging to somebody. Who was it

1 damaging to? All the people who knew about what had
2 happened 13 years ago and didn't do anything about it for
3 13 years.

4 It would have been damaging to any of those
5 people. That's why it was so damaging.

6 So Mr. Johnson said, "What am I going to do
7 with this situation?" He was working with Constable
8 Malloy. It was an investigation -- there was a statement
9 that was taken from Ms. Antoine. That statement came to
10 him. They looked at it, put it on a letter and it was sent
11 up to Ottawa to the -- I think Norm Douglas, and Norm
12 Douglas had to deal with it now, and it was basically put
13 into the hands of upper management or upper-level Crown
14 Attorneys in the region, the Eastern Region, and something
15 had to be done about it.

16 What happened was a letter was written back
17 to Mr. Johnson, and Mr. Johnson has said that he never
18 received that letter back.

19 But basically what it said is, "Dig deeper.
20 Don't just leave it. Get to the bottom of this situation.
21 I want to know what's going on." And that's the letter,
22 but it never got -- Mr. Johnson said he never received the
23 letter and he says he doesn't know anything about where it
24 went.

25 So we have a situation in 1989 in which Mr.

1 Johnson is saying that he had sent a letter off. And what
2 I was suggesting to Mr. Johnson was -- I mean, what it
3 looked like to an observer of the situation, the Children's
4 Aid Society were running a group home and nothing was done
5 for that period of time, and Mr. O'Brien was retiring soon,
6 and basically he says, "Can you give me a letter, an
7 opinion letter" -- that's from Mr. Johnson -- "telling me
8 what we should do about this?"

9 Mr. Johnson then takes that request and
10 says, "I'll give it to my boss. I'll let him make the
11 decision."

12 So I was suggesting that really what they
13 were doing was they were passing the buck or passing a hot
14 potato around, as if, "Who's going to deal with this?"
15 They figured it's going to -- eventually, one of these days
16 it's going to blow up in somebody's face.

17 Ms. Antoine was giving all indication that
18 she was not going to stop. I think even she had a meeting
19 with Mr. Abell and he talked to her, and she was insistent
20 that she was going to do something. She was going to go to
21 the press. She was going to do a lot of things, and
22 everybody knew something had to be done. Something had to
23 be done.

24 So that's when another letter was sent to
25 Regional Crown. It was no longer Norm Douglas. Now it was

1 Mr. Peter Griffiths. He was the Regional Crown for the
2 region and he now receives a request to give an opinion.

3 As my friend Mr. Paul indicated, there was
4 more than just mere discipline and more than just mere
5 simple assault, but there's some suggestion because of the
6 -- there was some suggestions there was a broken wrist and
7 there was some sexual things that had happened in the
8 bedroom. These are the things that did not qualify as
9 being just summary conviction offences that they only have
10 a six-month period before they drop.

11 If they're indictable, they go on for -- you
12 know, they can be charged at any time. So what was -- the
13 opinion that was basically given was the charges do not
14 warrant them being considered as being indictable so that
15 they only had a 6-month limit period, and as a result, we
16 can't lay charges 13 years later.

17 So it was there that it basically ended.
18 And so what we -- what Ms. Antoine is left with is a
19 situation in which she feels something has got to be done.

20 Now, what was interesting was Constable
21 Sebalj became interested in this case and she started to
22 dig into it a little bit. And she went to the Children's
23 Aid Society and she knew somebody in there who was a very
24 good interrogator or somebody that could really -- and she
25 was called "Digger" Fitzpatrick -- Geraldine "Digger"

1 Fitzpatrick because she was -- had that reputation of not
2 being satisfied with being given an answer. She wants to
3 get to the bottom of things.

4 And so Ms. Antoine was being interviewed by
5 a police officer and somebody from the Children's Aid
6 Society. Now, they were not telling anybody they were
7 doing this. It was almost like it was a clandestine
8 meeting they were having. They were interviewing Ms.
9 Antoine.

10 So what we have is a police officer and
11 somebody at the Children's Aid Society who were getting
12 statements from Ms. Antoine, and one of the things that
13 came out in one of the interviews was very interesting.
14 When the name Ken Seguin was mentioned to Antoine, she went
15 white. And later on she told -- I believe she told Sebalj
16 -- Constable Sebalj, she said, "Yes, he was my probation
17 officer back then", back then in '76, when all this was
18 going on.

19 All of a sudden, Ms. Sebalj was taken off
20 the case and it was handed to Shawn White. Shawn White was
21 now the one doing the investigation.

22 And one of the interesting things that came
23 up in the investigation by Shawn White was that he
24 interviewed this girl, C-86. C-86 -- oh, 87, I'm sorry --
25 C-87, and she indicated to Mr. White -- Constable White or

1 Detective White, that Mr. Ken Seguin was going to the group
2 home to pick her up and was having sexual relationships
3 with her and was even taking pictures of her, of them --
4 whatever they were doing. And those pictures were later on
5 used in order to put pressure on her because she was now
6 married and she was living down in the United States, and I
7 believe the pictures were sent there. And then when she
8 divorced her husband, she came back and the pictures were
9 still down there. But these were pictures that were very,
10 very damaging to her.

11 So what -- it told us a lot about the way in
12 which Mr. Ken Seguin operated. He's a probation officer.
13 He's the probation officer of Ms. Antoine. He's doing
14 these things -- I mean, that is if we believe both of them,
15 I mean, Antoine and C-87. But, I mean, they're saying this
16 and they said this is what happened to them back then.

17 It means that Mr. Seguin had a lot on --
18 that a lot of stuff that he had against the Children's Aid
19 Society that the Children's Aid Society would not want
20 anybody to know about.

21 **THE COMMISSIONER:** Say that again?

22 **MR. HORN:** That means he had certain inside
23 information about things that were going on at the group
24 home which the CAS had hidden, and Mr. Seguin was aware of
25 these things because he was the probation officer of Ms.

1 Antoine and he was also doing some bad things with one of
2 the girls that were there.

3 **THE COMMISSIONER:** Okay. Right.

4 **MR. HORN:** So if that's the kind of
5 information that he had and if anybody was aware of that at
6 the Children's Aid Society, they would be very much afraid
7 of Mr. Ken Seguin.

8 That may be one of the reasons why they were
9 very reluctant to touch Mr. Seguin because of his position,
10 when he was at the Probation office, and he was -- there
11 was reluctance to go against him. They only went up
12 against Father Charlie with the -- nobody wanted to go
13 against Ken Seguin because here's a guy, you go against
14 him, look at the stuff that he's got. I mean he was doing
15 some stuff over at the Children's Aid Society. He could
16 embarrass a lot of very prominent people in the city, so
17 it's a -- you know, he didn't -- nobody wanted to mess with
18 him.

19 That's what my suggestion is but, I mean,
20 I'm just suggesting that as a theory of one of the reasons
21 why there was very great reluctance to go against Mr.
22 Seguin.

23 What was interesting too was the --
24 initially when Mr. Dunlop -- because they knew each other,
25 Mr. Dunlop and Mr. Abell, who was now the Director at the

1 Children's Aid Society. They were friends. Mr. Dunlop had
2 the report -- I mean the statement from Mr. Silmsler and he
3 gave it to Mr. Abell because they were friends, and plus he
4 was at Children's Aid and Perry knew that he had a duty to
5 disclose this historical abuse, and he gave it to Mr. Abell
6 and initially Mr. Abell was very supportive of Mr. Dunlop
7 and what he had done.

8 But it was an interesting thing that
9 happened later on in which he -- like, he could back up his
10 decision of reporting because he did get a legal opinion
11 from Ms. McLellan, who was the lawyer for the CAS. She
12 gave her legal opinion and said yes, he had a duty to
13 report. I know they had a meeting and she gave that
14 opinion, and she was the lawyer for the Society.

15 And so Mr. Abell was on strong grounds to
16 say yes, they had a duty to report, but later on in a
17 newspaper article he backed off on that. He backed off on
18 his initial position and he more or less said it's kind of
19 discretionary. If a police officer or anybody knows about
20 it, it's discretionary because the police officer doesn't
21 know the details of it and, as a result, it's -- no, that's
22 not the point.

23 The police officer cannot make a decision
24 because he has to weigh things before he makes that
25 decision. It's not like something that's absolutely

1 necessary. It's something that became discretionary on his
2 part, whether he had to or not. I know that you questioned
3 him on that very point when he was on the stand, and that
4 was a very crucial point as to whether it was discretionary
5 or not.

6 **THE COMMISSIONER:** I thought it was -- what
7 the issue with discretion was, whether it was discretionary
8 that they investigate.

9 **MR. HORN:** They investigate, but he ---

10 **THE COMMISSIONER:** He, Mr. Abell?

11 **MR. HORN:** Yes, Mr. Abell was saying to
12 investigate, but the position that he initially said is
13 there was an obligation to report.

14 **THE COMMISSIONER:** Right, but I think
15 there's two things there. There's an obligation to report,
16 that's from outside people. And I thought, and I stand to
17 be corrected, that it was a discretionary part on the
18 Children's Aid part as to if and how and what degree they
19 were going to investigate that, in the sense that if it's
20 an historical assault, historical sexual assault, and the
21 accused is 99 years old and restricted to a wheelchair,
22 well then there wouldn't be much to do.

23 **MR. HORN:** Okay, I understand that, but what
24 I was saying is if a police officer read the newspaper
25 article that Mr. Abell was saying, he would then think that

1 would the head of this Children's Aid Society -- what he
2 was really saying is it's now discretionary and it's no
3 longer mandatory that there be reporting of historical
4 sexual abuse, and I think that what our Coalition for
5 Action is saying is that he has backed off from his initial
6 position because he backed up Perry. What he did, he said
7 Perry was doing the right thing by just reporting it to the
8 Children's Aid Society, and now he's saying no, it's
9 discretionary.

10 So what we're suggesting is there must have
11 been something that happened that caused him to back away
12 from his initial position, and our position -- and I'm
13 talking about the Coalition's position is the reason why he
14 backed off was because of the fear of the fact that you
15 open up the Antoine situation, Ken Seguin -- he knows all
16 of this stuff. It's a can of worms that's being opened up
17 and he now realizes it could really hurt the Children's Aid
18 Society, and now they're saying they're no longer really
19 supporting Mr. Dunlop the way they did initially and
20 they've backed away from that initial position.

21 What we believe caused that was because of
22 the vulnerable position the Children's Aid Society found
23 themselves in for sitting on something for 13 years and
24 doing nothing, and there's people out there that could use
25 it and they were afraid. And that's one of the reasons why

1 they didn't go against Mr. Seguin when he was working for
2 Probation.

3 A little bit of evidence that came out which
4 indicates that Mr. Seguin was getting some very special
5 treatment -- I mean, like he was allowed to live with a
6 former probationer, and that was allowed. That was okayed.
7 This probationer was his probationee about three years
8 before and now they were living together and it was okayed,
9 plus there was an incident that took place in which he was
10 supplying beer at his house, the Varley situation, and it
11 never went anywhere and Mr. Ken Seguin just kind of like
12 walked away from those very, very bad situations.

13 So there was -- the feeling that our
14 organization had is that people were afraid to go against
15 him because he was a probationer and he had too much
16 information on the Children's Aid and he may have known a
17 lot of things, and that's one of the reasons why they're
18 afraid to go against him, because of this kind of inside
19 information that he gets as a probationer -- I mean
20 probation officer.

21 Okay, now I'd like to get into another area
22 and that's the prosecutions that took place, particularly
23 Ms. Hallett. It would seem that she was chosen to
24 prosecute these sexual charges, historical sexual assault
25 matters, because she has had a lot of experience. She's

1 somebody who kind of specializes in that kind of work, and
2 when she came to the prosecutions she realized what she was
3 getting herself in -- I mean, like they're not easy
4 prosecutions because you're coming into a small town, these
5 are sensational allegations and she knows that they're not
6 easy and they're very difficult prosecutions.

7 What Ms. Hallett was doing was she was --
8 one of the things that makes me very -- well, our
9 organization very suspicious is that she was given two
10 major prosecutions against Leduc and Father MacDonald.
11 Also, she was requested, while she's doing those, to do
12 five opinion letters, and she was being pressured all at
13 the same time while she's preparing these two major cases.

14 And then she's -- she is basically working
15 with a police officer -- I'm talking about Pat Hall -- who,
16 for one thing, he called her a princess, and I don't know
17 what that really means other than the fact that it's not --
18 he's not calling her Ms. Hallett. He's calling her -- I
19 would think that was a derogatory remark about her, and it
20 may show -- in fact, it was -- in cross-examination I
21 wanted to find out if there was any chauvinism that was
22 involved, and Mr. -- is it McConnery, I believe, said he
23 doesn't know. He just knows that she was called a
24 princess. And it seems like the police officers were
25 complaining because she was asking them to pick her up at

1 the train station and do a lot of different things, and
2 they didn't like it too much.

3 And it seems that there may have been a
4 problem, Mr. Pat Hall and working with her, because she's a
5 woman and it was a lot easier when she was replaced by
6 somebody else. It was easier to work with Mr. McConnery.

7 **THE COMMISSIONER:** Sorry ---

8 **MR. HORN:** I believe it was Mr. McConnery
9 that took over, and he seemed -- I asked him; I said, "Was
10 it easier to work with her because you were a man?" And he
11 didn't want to say it, but he did say she was called a
12 princess.

13 But what was really interesting is during
14 all of this, there's the Dunlop factor. Now, in a
15 nutshell, what we have is Perry Dunlop has a lot of
16 material that the police wanted to get their hands on.
17 They said, "We've got to get that stuff. We know he's got
18 it." Perry, I believe, was afraid to just give it to them
19 because he didn't know if they were going to use it or if
20 they were going to lose it.

21 So in order to protect himself, he made a
22 whole bunch of copies, I think about five copies, and he
23 took them to -- and what he did was he took one to the
24 Attorney General. He took one to Fantino. He took one to
25 -- he tried to drop one off at the Solicitor General's

1 office. So he wanted to protect himself. He wanted to
2 make sure that it's going to get to where it's supposed to
3 go because he was afraid that if he gave it to somebody
4 that was -- that he didn't trust -- he didn't trust
5 anybody. He said, "If I give it to them, how do I know
6 it's going to get to the right people?" So he went to the
7 Attorney General, "Give me a receipt. I'm going to give it
8 to you. Give me a receipt." He goes to Fantino. Fantino
9 is a high-profile police officer in London. He gives it to
10 him, figuring that he's going to get it to the right
11 people, and then he goes to Ms. Hallett, actually. He even
12 went to her office in Toronto. He went there and he gave
13 her -- I don't know if he gave her the full amount, but he
14 gave her a lot of the stuff that he had. He gave it to her
15 because he says, "I trust you. I trust you."

16 So obviously he was trying to protect
17 himself. He gave it to her because he trusted her. He
18 went to the Attorney General's office, got a receipt
19 because he wanted to make sure that he wasn't going to be
20 accused later on of withholding evidence. And so he, in
21 order to protect himself, was doing all of this.

22 Now, we're hearing all of this stuff that he
23 is supposed to have done, withholding information. He
24 makes five copies of the stuff and he gives it to all these
25 people who he knows if it goes into their hands, they've

1 got to account for it, and they're going to have to make
2 sure it's going to go to the right people. He was
3 protecting himself. He realized the danger that he had
4 with the material that he had.

5 He had a lot of enemies out there. A lot of
6 people didn't like him, but he wanted to make sure that
7 they can't say that he didn't do his best to get that
8 information to where it was supposed to go so that it would
9 get into the hands of the prosecutors.

10 And during this whole time there's
11 tremendous pressure going on by Mr. Guzzo. He's at the
12 legislature. He's trying to get a bill through to have a
13 public inquiry. I mean, there's petitions going on in
14 Cornwall. One of them was -- they got 10,000 signatures to
15 say, "Did Dunlop do the right thing when he gave the
16 material to the CAS?" and then later on the Public Inquiry
17 -- I think 13,000 people signed. So there was a lot of
18 pressure that was being put on everyone and they knew that
19 there's probably going to be a public inquiry.

20 Well, it did happen, didn't it? We have a
21 public inquiry now. We're sitting in on it and all of the
22 documents that are here, everybody's looking at them and
23 it's on the web. So there is an inquiry, and Mr. Guzzo,
24 Mr. Dunlop, his wife Helen and Carson Chisholm were the
25 ones that were spearheading that whole thing. They

1 agitated for it. They got petitions. They had their
2 organization out there getting people to sign the petition,
3 and they were putting a lot of pressure on because they
4 said, "There's a bad situation in Cornwall. It's got to be
5 corrected and we're not just going to sit back and just
6 allow it to go away."

7 And this is what Carson Chisholm did, Helen
8 Dunlop, Perry Dunlop and Mr. Guzzo.

9 I'm going to tell you, an old man like Mr.
10 Guzzo, I really admire him for what he did. He's what --
11 he's in his seventies, I think? And he had a lot of spunk.
12 He was up there in Toronto in the legislature, pushing
13 through against his own party to push through a bill, and
14 his Premier didn't want it. They didn't want it. And yet
15 he kept persisting and finally he got the thing through,
16 and now there's a public inquiry. And I've got to
17 congratulate Mr. Guzzo. And I don't care what anybody
18 says, and our organization is going to say the same thing,
19 we admired that man.

20 How the whole -- why he got so interested?
21 He had some friends here, two lawyers here that used to sit
22 on the Board over at Laurencrest, and they'd tell him,
23 "We've got a problem here. These are Catholics." He's a
24 Catholic. These are older lawyers. I think Mr. Duncan
25 MacDonald and there was another -- McDarby, was it? They

1 were both very concerned and they said something's got to
2 be done about this situation.

3 And Mr. Guzzo, they said, "You're the man.
4 You're in Toronto. You love the Catholic Church. You want
5 to clean it up and we want to clean it up. We don't like
6 what's going on in the City of Cornwall." And he went and
7 pushed through this thing, and I've got to really give it
8 to that man for what he did to get this thing off -- into
9 that -- through the legislature and to get to the point
10 where there's a public inquiry.

11 **THE COMMISSIONER:** But just to make it clear
12 though, his Private Member's Bill never succeeded and it
13 was another government ---

14 **MR. HORN:** That's right.

15 **THE COMMISSIONER:** --- that appointed ---

16 **MR. HORN:** It was another government, but he
17 was the one that was pressuring all that time.

18 **THE COMMISSIONER:** No, all right. I
19 understand. Okay.

20 **MR. HORN:** And he faced a lot of opposition.

21 And I was really -- what really interested
22 me was when Pat Hall and I think it was Lewis went into his
23 office after they had done this investigation and they were
24 mad at some of the things he was saying, and they come in
25 there and they said, "Now, we've done investigations and

1 this is the truth. And what you're saying is not the
2 truth. So we want you to kind of change your story." And
3 they got Mr. Guzzo to back off a little bit for a while.

4 But the guy's got a lot of spunk and he came
5 back later and he kept fighting. He never quit, and
6 neither did Mr. Dunlop and neither did Carson Chisholm and
7 neither did Helen, neither did any of the group that they
8 were with. They just kept pushing for this Inquiry. They
9 just kept making sure that something is going to be done
10 about a situation because they said, "We're going to clean
11 up the Church. We're going to clean up the police
12 department. We're going to clean up these things. They're
13 not doing the job right and they allowed this sort of thing
14 to happen in the City of Cornwall and we wanted something
15 to be done about it. And that's why you're here."

16 You're here really because of what this
17 small group -- and plus, they were going out and getting
18 people to give witness statements. They were getting
19 victims and people were going to them. They had all kinds
20 of information and the police wanted to get their hands on
21 that information because they said these people, they trust
22 Perry and Helen and they trust them, but they don't trust
23 us so we want to get that information that he's got and
24 it'll help our investigation. And I think that they needed
25 Perry and they needed Helen and they needed Carson. They

1 needed them. Without them they would have had nothing, so
2 Perry Dunlop -- and I've got to give them -- him and his
3 small little group of workers and hard, dedicated workers,
4 I've got to give them a lot of credit for what they did and
5 all the work they did and -- now I'm not critical of this
6 Commission. I think that something good is going to come
7 out of it and I think that we have to give credit where
8 it's due. Mr. Dunlop did a wonderful job and so did all of
9 the other people that were working with him. And for him
10 to be criticized and said that he held up material, here he
11 is; he goes to Toronto, gives all the material he has -- he
12 hands it over to people. He thinks it's going to get to
13 the right people. What more do you expect from the man?

14 And I think that -- my secretary ---

15 **THE COMMISSIONER:** Sorry?

16 **MR. HORN:** --- she started typing some of
17 the stuff that I was doing -- almost cried at what Mr.
18 Dunlop has gone through.

19 I know that you believe that Mr. Dunlop when
20 he was in British Columbia and he was supposed to testify
21 that he should have come earlier and I know you believe
22 that, but we have to look back at the situation at that
23 time.

24 **THE COMMISSIONER:** Just a second. Just a
25 second. You may think you know what I'm thinking, but you

1 don't because I haven't come to any conclusions yet.

2 MR. HORN: All right. Okay.

3 Mr. Dunlop came from British Columbia.

4 THE COMMISSIONER: M'hm.

5 MR. HORN: Comes in on a Sunday.

6 THE COMMISSIONER: M'hm.

7 MR. HORN: Monday morning he's going to be
8 put on the witness stand. They send him some documents out
9 there, said, "Read this." He doesn't know what documents
10 the defence counsels have. He doesn't know what he's going
11 to be cross-examined on. He doesn't know if that's the
12 only documents that he's going to have. What else do they
13 have that they're going to bring up on him? He's going to
14 walk onto that stand cold; totally unprepared. He's going
15 to be standing there and he's going to -- he has to answer
16 questions. And I asked Ms. Narozniak, how long did it take
17 you to learn and all of the details of the documents that
18 you had? She said it took her awhile. It wasn't easy to
19 learn all that. So he's going to be put on the stand.

20 Meanwhile, there's a police officer sitting
21 in the courtroom watching and listening to every word that
22 Mr. Dunlop is saying so that he could catch him on
23 something so that he could be charged with perjury. Later
24 on that police officer -- and I'm talking about Sergeant
25 Snyder -- writes a letter to Ms. Narozniak and asks her for

1 an opinion, "Should we or do we have the right to charge
2 Mr. Dunlop for perjury?" He was put up there unprepared.
3 This is after he wrote a letter to Murray Segal -- he wrote
4 a letter to Murray Segal. He said -- it included a lot of
5 things, but one of them, he says, "Hey, can you get your
6 Crowns to consult with me before they use me?" He writes
7 back and he said, "Well, if you go on the stand for Ms.
8 Hallett, we'll make sure that you're going to be seen a few
9 days before and we'll work with you."

10 Ms. Hallett wasn't there anymore. She was
11 replaced now by Ms. Narozniak. That promise was no more
12 good. I think as far as Perry was concerned, that was a
13 blanket promise from the Attorney General's office; he
14 says, "Anytime you're going to be standing on that -- on
15 the stand and you're going to be a witness, we're going to
16 make sure that you're going to be properly protected and
17 we're going to make sure that you're not going to be
18 abused." And I think that that is the understanding that
19 Perry must have had. I'm not Perry, but I would say that
20 that's the -- because of the letter that he got from Mr.
21 Segal.

22 There's a lot of mistakes that were made
23 over this period of time. I can understand people
24 pressured and so forth, but one of the most -- the big
25 mistake that was really made was in the prosecution of Mr.

1 -- or Father Charlie was when they consolidated those
2 charges in which new charges were now consolidated and put
3 together with old ones that were on the verge of being
4 stayed because of the 11(b) and all of a sudden you put to
5 them some new charges, they're all together and when the
6 old ones went down, they took down the new ones too and so
7 now there was nobody has a charge against Mr. -- Father
8 Charlie. And I think that when they consolidated those
9 charges the way they did, either somebody made a very, very
10 bad blunder -- I know that Robert Pelletier says it was a
11 calculated risk -- I think it was a calculated risk or
12 whatever, but it was a risk, but, you know, the head of my
13 organization that I represent went there and he said he
14 knew it was going to go down; just the way things were
15 going. And I want to say that Mr. Carson Chisholm was
16 right; it did happen the way he thought it was going to
17 happen, that things fell and the charges were stayed.

18 And then later on, there was another
19 individual came forward and said -- I think his name was
20 Albert Lalonde wanted new charges, they said, no they
21 didn't want lay those charges so what happens is now
22 there's no charges. They're gone. Victims are there.
23 You've got no remedies. They're just -- well, they could
24 sue, I guess, but as far as getting, you know, criminal
25 charges; it's gone, that's it.

1 So we're looking at victims now and I say I
2 feel sorry for them. I feel very badly for them. They
3 feel that the justice system let them down, but they're
4 hoping that you are not going to let them down; that
5 something's going to come out of this that's going to help
6 the victims.

7 And I think Alain Godin made the best
8 analysis of how Mr. Dunlop was used. He said that he was a
9 red herring that was being used by the defence. It was
10 like blowing smoke into the face of the judge, and I
11 believe that that's how he was being used.

12 And the only other area that I want to cover
13 is Malcolm MacDonald. He does mention that he was having
14 conversations with the local Crown, Murray MacDonald. And
15 it was almost like they were talking about the deal.
16 That's what Malcolm was saying; that they were talking
17 about the deal. And Mr. Paul and I, we were trying to
18 figure out was there something to that, and what we felt
19 was being attempted was they were hoping that they were
20 going to be able to use that later on as a defence, that
21 they were being misled by the Crown because the Crown knew
22 everything. He sanctioned the deal then it was officially
23 induced error, and that's what we thought probably they
24 were trying to do.

25 They were trying to get the Crown to be

1 implicated and kind of just sort of okay a deal, a sweet
2 deal -- that eventually it became a sweet deal. I mean, he
3 got an absolute discharge and the community was in uproar
4 over that, that he got such a sweet deal.

5 There's one other thing that not only the
6 family but other supporters of Mr. Dunlop want to say, and
7 they want me to say that for what he's done and all the
8 things he's gone through, they want me to say that he needs
9 an apology from somebody in a high position for what he
10 went through.

11 That's all. Thank you.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Lee.

14 **MR. LEE:** Do you need a break, sir?

15 **THE COMMISSIONER:** Would you prefer a break?

16 **MR. LEE:** The schedule calls for a break but
17 I'm fine, sir.

18 **THE COMMISSIONER:** Mr. Engelmann?

19 **MR. ENGELMANN:** Yes, if we have a 15-minute
20 break now, then 3:00 to 5:00 Mr. Lee, and a few minutes
21 after that for Mr. Bennett.

22 **THE COMMISSIONER:** Right, okay. Thank you.

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

25 The hearing will resume at 3:00 p.m.

1 --- Upon recessing at 2:42 p.m./

2 L'audience est suspendue à 14h42

3 --- Upon resuming at 3:04 p.m./

4 L'audience est reprise à 15h04

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

7 This hearing is now resumed. Please be
8 seated. Veuillez vous asseoir.

9 --- **FINAL SUBMISSIONS BY/REPRESENTATIONS FINALES PAR MR.**

10 **LEE:**

11 **MR. LEE:** Good afternoon, sir.

12 **THE COMMISSIONER:** Good afternoon, Mr. Lee.

13 **MR. LEE:** For the record, my name is Dallas
14 Lee and I'm on for the Victims Group.

15 Mr. Commissioner, I struggle to some extent
16 with the question of how I should use my two hours in oral
17 submissions before you, specifically with the question of
18 whether I should focus on looking back at what has happened
19 or looking forward to the future and how we can improve the
20 system, and I've decided that I'm going to do some of both,
21 but I do need to focus to a fairly significant extent on
22 the institutional responses that we've examined.

23 Your findings are extremely important to my
24 clients, all of whom obviously, by virtue of being members
25 of a group called the Victims Group, allege that they've

1 been wronged in some way at some point. You obviously will
2 be looking at the institutions they've dealt with and
3 whether or not any have been wronged by them.

4 We're hopeful that your report will leave no
5 doubt that these institutions have failed in many respects
6 and that my clients, other victims of abuse in the
7 community, have suffered as a result. And as has been
8 articulated to me by clients more frequently lately, my
9 clients believe that they require answers about what
10 happened in the past before they can continue to move
11 forward.

12 Before I start, I also need to say that my
13 clients feel that we're here giving submissions a little
14 bit sooner than we should be. The Amended Order-in-Council
15 made our submissions process extremely challenging. We
16 have done our best to assist you to the extent possible in
17 our written submissions, but we recognize that they're not
18 as comprehensive as they should be and they're not as
19 comprehensive as we would have liked, and we hope that they
20 will be of some assistance to you nonetheless.

21 **THE COMMISSIONER:** Thank you.

22 **MR. LEE:** In terms of my oral submissions, I
23 intend to begin by summarizing some of the evidence that
24 you've heard about the effects of sexual abuse on its
25 victims and I want to take time to do that for two reasons.

1 First, we all need to remember what we're
2 here to prevent and we need to understand why sexual abuse
3 is so horribly destructive. And, second, you're going to
4 hear from several institutions that their efforts were
5 frustrated by people who were at times unreasonable or
6 angry or difficult to manage, and I think that a little bit
7 of perspective is in order.

8 Although I know that you by virtue of being
9 here have come to appreciate to the extent possible what it
10 can mean to be a victim of abuse, the public has not been
11 here every day and I think this is a useful exercise for
12 them as well. It's important that people understand that
13 being sexually abused is not like breaking a leg, for
14 example, and these wounds don't heal and you don't end up
15 as good as new in time.

16 Very early on in the Inquiry we heard from
17 two expert witnesses, Dr. David Wolfe and Dr. Peter Jaffe,
18 and we heard about the fact that acute symptoms of sexual
19 abuse can give way to secondary symptoms which involve the
20 factors that affect mental health over time, and that the
21 nature of child sexual abuse is that it interferes with the
22 ongoing development of the child, which makes it more
23 difficult for the child to adjust or adapt.

24 Without supportive relationships, family
25 stability and personal coping resources, the consequences

1 of child sexual abuse for later mental health and
2 adjustment are substantial and according to Dr. Wolfe there
3 are five typical outcomes of child sex abuse in adulthood.
4 What we've done in our written submissions and what I'll do
5 here today is try to tie the evidence of Dr. Wolfe and his
6 description of what he would typically see as an outcome of
7 childhood sexual abuse to some of the evidence we've heard
8 here from victims and alleged victims.

9 The first typical outcome identified by Dr.
10 Wolfe was that children who were sexually abused had
11 difficulty trusting others, especially if the abuser was
12 someone they trusted, cared about or was a valued member of
13 the community; for example, a person in a position of trust
14 or authority. And in particular he told us the abused
15 often cannot trust anyone and they come to feel that people
16 will only betray them. This loss of being able to trust
17 others can lead not only to lifelong feelings of guilt,
18 self-doubt and self-blame, but also authority problems that
19 can lead to conflict with their employers and difficulties
20 maintaining gainful employment.

21 Further, he told us sexual abuse by a
22 trusted member of the community, for example a member of
23 the clergy or a teacher, may undermine the victim's ability
24 to trust the institutions that are highly valued within a
25 community. Many of the witnesses that we heard from here

1 reported difficulties trusting others, problems with
2 authority figures, a loss of faith or a sense of being
3 betrayed by the church, for example.

4 We heard evidence of that nature from David
5 Silmser, Albert Roy and C-10, who all stated that at
6 various times they were fearful and are mistrustful of
7 people in authority and those close to them. C-10, André
8 Bissonnette and Keith Oullette noted that they had
9 difficulties holding onto jobs. Other witnesses testified
10 that they felt betrayed by the church and withdrew from the
11 church or lost their faith altogether. And I think
12 you'll recall, Mr. Commissioner, rather emotional testimony
13 from Lise Brisson, the mother of Benoit Brisson, who is a
14 devout Catholic to this day and who testified that five of
15 her seven children lost their faith because they felt
16 betrayed by the church, and Ms. Brisson did what she could
17 to help us understand why that was so devastating to her.

18 Second, adults who were sexually abused as
19 children tend to suffer from being unable to control their
20 behaviour at times. Dr. Wolfe told us that for men this
21 inability to self-control can lead to criminal involvement
22 and anger management problems. His research showed that
23 men who were abused in a residential religiously affiliated
24 institution had some substantial criminal histories
25 including property crime, substance-related crimes and a

1 history of anger and violence.

2 And consistent with that testimony, many of
3 the victims who testified here reported substance abuse
4 problems and engaging in criminal activities. The very
5 first victim witness we heard from, Larry Seguin, noted
6 that he started using drugs at a very young age, which led
7 him into shoplifting and committing property crimes.
8 Robert Renshaw testified that he was doing "a hell of a lot
9 of drugs" and often expressed himself through anger and
10 spent time in jail.

11 Keith Oullette stated that he had both done
12 drugs and sold drugs and that he'd been to anger
13 management. Fern Vivarais, one of the witnesses you heard
14 from as an example of a victim who did not disclose to
15 authorities early on testified that he would constantly
16 fight and hurt others for no reason because of his anger.

17 The third observation made by Dr. Wolfe is
18 that adults who were abused as children may have difficulty
19 coping with the post-traumatic symptoms they're
20 experiencing, which include intrusive memories of the
21 events surrounding the abuse and the associated physical
22 symptoms of tension, panic and nightmares. He told us that
23 the way men try to cope with these aversive symptoms is
24 through the abuse of alcohol and that men tend to have
25 substance abuse problems. If they've been abused as

1 children, it rates higher than the norm. As I noted
2 earlier, we certainly heard some evidence of that.

3 Another category identified by Dr. Wolfe was
4 the tendency of victims of sexual abuse to suffer from
5 anxiety and mood problems such as panic attacks, depression
6 and suicidal ideation.

7 Roberta Archambault, one of my clients,
8 testified that her panic attacks are so bad that she cannot
9 take the bus in Cornwall, as an example, and that she
10 cannot do her banking and groceries on the same day because
11 it takes her a full day to recovery from the anxiety
12 experienced from doing either activity.

13 Other victims reported that they required
14 psychiatric help in order to manage their depression.
15 Others testified of thoughts of suicide or even attempted
16 suicide, and we also heard evidence of victims of sexual
17 abuse experiencing confusion about their sexual identity
18 and orientation.

19 My recollection is that Jamie Marsolais,
20 another one of my clients, was the last victim witness to
21 testify, and he told us that around the time of the abuse
22 he knew he was attracted to females, but he kept on saying
23 to himself, "I must be gay because I allowed it to happen".
24 And he explained that as a result, his teenage years were a
25 really rough stretch.

1 Sir, what all of this tells us is that
2 sexual abuse is, in some ways, the perfect crime. It can
3 so thoroughly devastate its victims that investigation and
4 prosecution become more difficult.

5 The difficulties caused, however, are known
6 to police officers and they're known to Crown Attorneys,
7 and they must be expected to adapt. They need to take the
8 victims and alleged victims that they deal with as they
9 find them and argue time and again that it's just too
10 difficult to investigate or prosecute these cases is not
11 good enough.

12 We also heard evidence about barriers to
13 disclosing sexual abuse and the factors contributing to
14 under-reporting. And Dr. Wolfe identified a number of
15 these barriers, including a lack of societal understanding,
16 the presence of positive feelings for the abuser,
17 embarrassment or fear over the victimization and being
18 blamed by others for the abuse as well as the stigma of
19 homosexuality.

20 He spoke of the considerable embarrassment
21 and fear that comes from disclosing that one has been
22 sexually abused, and he told us that it is difficult and
23 painful both for children who attempt to disclose abuse and
24 for adults who attempt to disclose abuse much later.

25 We heard ample evidence from victims of

1 abuse directly and indirectly. We heard from police
2 officers and CAS workers about delayed disclosure and
3 incremental disclosure.

4 And given those phenomenon, institutional
5 responses that are seen as sensitive and appropriate are
6 especially important. Victims do not come forward until
7 they're comfortable doing so, and believing that they will
8 be met with hostility or disbelief by an institution is
9 fatal to any victim's willingness to disclose.

10 So that gives you some context of what we're
11 dealing with here and some of the issues that my clients
12 have faced and others.

13 I intend to, time permitting, try to comment
14 on each of the institutions that have been examined during
15 the course of the Inquiry.

16 I obviously am not going to be able to
17 comment on every investigation or allegation, and I won't
18 try to. I'm going to attempt to simply touch on issues
19 important to my clients.

20 And I have selected some issues that I
21 thought were less likely to be discussed in detail by
22 either of the parties preceding me, but I've also decided
23 to weigh in, however briefly, on a few of the major issues
24 that you're tasked with reporting on.

25 I'll try, as much as possible in each of

1 these sections, to cut to the chase and it may result in me
2 being blunt at times, but I'm okay with that.

3 The first institution that we examine in our
4 written submissions is the Ministry of Community Safety and
5 Correctional Services, and we submit that it's apparent
6 when you look at the whole of the evidence over the past 25
7 years, there were several key events that should have
8 triggered a full-scale, thorough, investigation of the
9 Cornwall Probation Office, its employees and its practices.

10 Specifically, we have the 1982 investigation
11 of Nelson Barque; the '93 complaint by David Silmser, and
12 the 2000 administrative review by Paul Downing. And we
13 submit that the Downing review in particular uncovered so
14 many red flags that it is unconscionable that the Ministry
15 did not take steps to investigate each situation as
16 aggressively as possible.

17 We also submit to you that prior to Barque's
18 exposure in 1982 through to Ken Seguin's death in late
19 1993, highly suspicious and irregular behaviours by both
20 probation officers should have been reported and
21 investigated by local management and the Ministry, and we
22 submit that when Paul Downing concludes in his
23 administrative review that many workers in the Probation
24 Office ought reasonably to have known that Barque and
25 Seguin were contravening Ministry rules, that is a gross

1 understatement.

2 You heard considerable evidence about poor
3 management at the local level and about tension within the
4 office, in particular tension with Peter Sirrs as area
5 manager and then later with Émile Robert. And those
6 certainly would have deterred information sharing and
7 disclosures of abuse.

8 The local management was further handicapped
9 by the fact that activities by both Barque and Seguin were
10 known to police. And yet information was never provided to
11 the area managers, and I think the most poignant evidence
12 on that point came from Peter Sirrs, the first
13 institutional witness who, I think it would be fair,
14 presented as irate that he didn't receive some of the
15 information known to both RCMP officers and Cornwall Police
16 officers about Nelson Barque at the time.

17 When it's compared to the examination of
18 other institutions at the Inquiry, the Ministry of
19 Corrections' story seems to be relatively clear, by
20 comparison at least. And I don't intend to, therefore,
21 spend a whole lot of time going through all of these
22 various issues in detail.

23 I would, however, like to respond to the
24 submissions of other parties as they relate to the Ministry
25 of Corrections' response on a few key points.

1 So if we skip to the -- in our written
2 submissions we set out what we say was information known
3 about Barque prior to 1982. We set out for you the
4 involvement -- or the knowledge apparently had by -- known
5 to police officers at the time, and if we skip ahead to
6 1982, there are a number of issues that arise at that time.
7 And I don't intend to go back over all of those facts, but
8 you'll recall that the 1982 situation relates to abuse by
9 Barque of two men, C-44 and Robert Sheets, both of whom are
10 my clients.

11 And what's important to understand to begin
12 the analysis is that C-44 commenced a nine-month probation
13 period in January of 1980 when he was 18 years old. He was
14 convicted again in December of 1980 and was sentenced to
15 one month in jail and 19 months of probation. The
16 conditions that were imposed upon him included to abstain
17 from the use of alcohol and non-medicinal drugs. He was
18 convicted about one year later of theft under \$200 and was
19 given additional probation. Again, a condition was to
20 refrain from the use of alcohol and non-medicinal drugs.

21 Robert Sheets was convicted in January of
22 1982 when he was 19 years old. His conditions included not
23 to enter any licensed premises, save restaurants, not to
24 purchase alcoholic beverages, to refrain from the non-
25 medical use of drugs and the consumption of all alcoholic

1 beverages.

2 You know what comes later in terms of
3 Barque's involvement with them and specifically the
4 provision of alcohol and money for drugs. And that's
5 important when we take a look at the conditions that are
6 imposed upon these men by courts who have clearly
7 recognized the trouble that both of them have had with
8 drugs and alcohol and have imposed specific restrictions on
9 them.

10 By the time that Barque's activities are
11 fully exposed and that he's admitted to the Ministry that
12 he's had sexual relationships with both of these men, he
13 told the Ministry that they had been going on for one year.
14 And if we use the timing of the statement and we go back a
15 year, C-44 and Robert Sheets would have both been 19 years
16 old when the abuse started.

17 And I won't get back into it; Ms. Daley
18 suggested to you earlier today that younger than 21 or
19 older than 21 was a relevant consideration for the police
20 investigation as well as the Crown review and some errors
21 were made there that we set out in our written submissions.

22 Peter Sirrs was asked during his testimony
23 about the decision to permit Nelson Barque to resign
24 quietly. He spent a fair amount of time in cross-
25 examination asking questions about other options that were

1 available, and what Mr. Sirrs told us was that the decision
2 to allow Barque to resign was the most expeditious way to
3 proceed following the investigation.

4 And he also told us that he had ample
5 grounds to terminate Barque's employment, but that he let
6 him resign instead, in part because termination raises
7 serious issues, both legal and under the grievance process
8 with the Employees Association.

9 More importantly, Sirrs told us that the
10 Ministry had a process to continue in the community, and he
11 told us there was concern for the prestige and position of
12 probation services in the community. It was clear from his
13 testimony that he was concerned for the public image of the
14 Probation Office.

15 The Ministry, in its written submissions,
16 writes that it simply cannot be said that the Ministry was
17 trying to hide the event from public scrutiny.

18 And our submission is that not only can it
19 be said that the Ministry was trying to hide it from public
20 scrutiny, the area manager at the time, who had originally
21 handled the investigation and who was involved in the
22 entire affair has conceded here that part of his rationale
23 was the fact that the Ministry had a process to continue
24 and that it had a certain reputation to maintain in the
25 community.

1 And we submit that none of the reasons that
2 Mr. Sirrs gave for allowing Mr. Barque to resign are in any
3 way justifiable and that that decision compromised the
4 safety of the community for the perceived benefit of an
5 expedient resolution and the protection of the Ministry
6 from scrutiny.

7 And the gist of the evidence of Peter Sirrs,
8 we submit, is that it was simply easier to allow Barque to
9 resign, rather than to fire him and to possibly draw the
10 ire of the union or to generate negative publicity in the
11 community.

12 And we say this is the earliest example of a
13 situation where the Ministry opted for the path of least
14 resistance when they should have not concerned themselves
15 with what would be difficult or what would be easy but,
16 rather, getting to the truth, regardless of inconvenience.

17 Another issue that has been raised time and
18 again, and it's canvassed in some detail in the submissions
19 of many parties, is the question of whether or not a
20 complete review of Nelson Barque's caseload should have
21 been conducted at the time of his resignation from the
22 employ.

23 And we know now, as an example, that Albert
24 Roy, a witness at this Inquiry, was not aware of the
25 allegations against Barque in 1982, and that he first

1 learned about them in 1994 during one of his meetings with
2 Constable Sebalj.

3 He confirmed during his testimony that he
4 was not contacted by anybody from Probation Services, the
5 Ministry, or any police service, at any time in the spring
6 of 1982 or thereafter.

7 And what we can't get away from, sir, is the
8 fact that had a thorough review of Barque's caseload, past
9 and present, been conducted in 1982, it is entirely
10 possible that Roy would have been identified, that he would
11 have been contacted, and that he would have exposed not
12 only the extent of Barque's criminal behaviour, but also
13 the fact that Ken Seguin was an abuser, in 1982, sir. Ken
14 Seguin died in late 1993.

15 And if we shift the focus back to Barque,
16 had that investigation been conducted, had the thorough
17 file review been done, it is impossible to believe that
18 Barque would have been permitted to resign quietly and then
19 go on to hold other jobs involving children in the
20 community for the next 12 years.

21 In its submissions, as I read them, the
22 Ministry seems to struggle with conceding that a full file
23 review should have been done and that it would have been a
24 worthwhile process.

25 And we submit that your findings on that

1 point should be unequivocal and you should find that the
2 Ministry should have conducted a full review of Barque's
3 files, past and present, in 1982, to the fullest extent
4 possible.

5 And Peter Sirrs was, as I noted a minute
6 ago, the first institutional witness to testify and was, in
7 our impression, brutally honest throughout. He seemed to
8 have no regard for protecting his own reputation. He
9 seemed to have no regard for protecting the Ministry at all
10 costs. There were various answers that he gave that I
11 disagree with, but I got the impression that he genuinely
12 believed the truth of the answer he was giving us.

13 And one of the things he told us was that he
14 did not want to contact any other probationers, when he
15 investigated the initial complaint against Barque, because
16 they would give him unreliable information and take
17 advantage of the situation. And the honesty of that answer
18 jumps out at you and the fact that he would testify to
19 that, but it gives us some insight into what the attitude
20 in that office was like at the time, and why the Barque
21 1982 situation was handled in the way it was.

22 Very, very briefly, the Ministry, in its
23 submissions, seeks to place some blame on Pierre Landry,
24 who was a subsequent employer to Nelson Barque at L'Équipe
25 psycho-sociale. The Ministry suggests that the letter

1 provided by Sirrs is far from a letter of reference and,
2 given its brevity, Landry ought to have been alert to an
3 undisclosed issue surrounding Barque's departure from the
4 Ministry, that he ought to have taken steps to secure a
5 release, and that a greater onus should be placed on Pierre
6 Landry to have taken fuller steps to determine not -- why
7 no reference was actually provided.

8 And our submission to you is, that let us
9 not lose sight of the fact that Sirrs was the one who had
10 the information about Barque's wrongdoing. He was the
11 former employer. He had conducted an investigation, and to
12 suggest that Landry is in some way more culpable than Sirrs
13 in this situation is to put the onus on the new employer to
14 read between the lines, rather than on the former employer
15 to provide accurate information. And we say that
16 submission is not reasonable.

17 The Ministry also submits that there was no
18 knowledge on the part of probation and parole staff during
19 Ken Seguin's lifetime that he was sexually abusing
20 probationers. And while you'll see in our written
21 submissions that the evidence does indeed suggest that
22 Seguin's coworkers knew or suspected that he was sexually
23 involved with probationers, even if you find otherwise,
24 your scrutiny must not stop there.

25 Both Barque and Seguin's actions were such

1 that they clearly created suspicions of inappropriate
2 behaviour and, if you find non-sexual, that's fine, yet
3 still inappropriate behaviour.

4 And so those suspicions, whether of sexual
5 activity or fraternization or friendship or whatever,
6 should have been reported. And had they been reported, and
7 had an appropriate investigation been conducted, the sexual
8 abuse would then have been exposed.

9 So it's not a response to say that the
10 Ministry didn't know that Sequin was sexually abusing
11 probationers, and therefore they acted reasonably. Ministry
12 employees clearly suspected that Sequin was up to something
13 inappropriate, and they did nothing about it.

14 **THE COMMISSIONER:** Can I just stop you there
15 for a second? One of the problems I have is this. You
16 know, you're saying, well, Sequin was outside smoking
17 cigarettes with the boys at the office.

18 **MR. LEE:** Yes.

19 **THE COMMISSIONER:** And, you know, in my
20 history, one would encourage like a probation officer to go
21 out and play basketball with his probationers.

22 You see drop-in centres where police
23 officers are there playing basketball with suspects. Well,
24 I mean, not suspects, but people that are known to the
25 police.

1 **MR. LEE:** Yes.

2 **THE COMMISSIONER:** I mean, should we not be
3 encouraging our probation officers to try to bring kids to
4 do things that -- like basketball games? I mean, are we
5 not saying -- then you're saying you are not to communicate
6 with these people, you are not to do those things? And
7 oftentimes you learn a lot about kids when you're out
8 there, when they're smoking a cigarette.

9 **MR. LEE:** There surely has to be ---

10 **THE COMMISSIONER:** Where's the balance?
11 Where's the balance?

12 **MR. LEE:** There surely has to be some value
13 in developing a rapport ---

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

15 **MR. LEE:** --- with probation clients when
16 you're a probation officer, with getting to know them,
17 becoming friendly with them. Taken in isolation, I don't
18 think anybody can criticize the practice of Ken Seguin
19 having a cigarette ---

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

21 **MR. LEE:** --- in front of his office with
22 probationers.

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

24 **MR. LEE:** It's the number of events. It's
25 the number of activities. It's the fact that all of the

1 evidence we have from all of the various coworkers suggests
2 that at various times they raised an eyebrow ---

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

4 **MR. LEE:** --- and they thought it was too
5 much.

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

7 **MR. LEE:** He was too close. He went too
8 far. He was too involved. There seemed to be a general
9 standard of conduct amongst all of the other probation
10 officers that Sequin deviated from.

11 And it didn't go to the point -- he was
12 known as "Mr. Probation." We've had -- we had evidence
13 from a number of witnesses who say that, you know, his work
14 was impeccable and all of those things, but it's too easy,
15 sir, to say that if you take each one of those events
16 individually, it doesn't amount to anything, because
17 they're not individual.

18 And we have, I say, as we set out in the
19 written submissions, strong evidence of the fact that the
20 other probation officers suspected that something was going
21 on.

22 We have two probation officers following
23 him; surveilling him. I mean, it's -- the evidence that we
24 have just doesn't add up to the idea that there was nothing
25 going on there and that nobody suspected anything. If you

1 find that none of them knew that he was sexually abusing
2 clients ---

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

4 **MR. LEE:** --- as I said a moment ago, that
5 doesn't end the analysis. Did they know that he may have
6 been up or was likely up to something inappropriate? Was
7 he too close to clients? Was he becoming friends with
8 them? Was he -- if nothing else, was he being too lenient
9 because of relationships that he had developed with clients
10 outside of the office? All of those things were matters to
11 be scrutinized and to be reported and to be cleared up.

12 Very briefly, you've heard a lot of evidence
13 about Gerry Renshaw living with Ken Seguin and I don't
14 intend to go over it in any detail. The Ministry, in its
15 submissions, seems to think that -- or seems to suggest
16 rather that the fact that Roy Hawkins thought that Ken
17 Seguin was simply advising Robert of the situation rather
18 than asking him permission is relevant in some way. We
19 submit this is inconsequential and if anything should have
20 concerned the Ministry more than a flat request, the fact
21 that Seguin apparently was simply advising them of acts he
22 had already taken rather than asking in advance, and the
23 idea that the Ministry's hands were tied in some way
24 doesn't make any sense.

25 Also, you'll notice when you review the

1 Ministry's submissions that Emile Robert is a fairly clear
2 target of criticism and of blame and we submit that Robert
3 is an easy target and he makes for a convenient, but not
4 entirely appropriate scapegoat.

5 You need to remember when you're assessing
6 what Emile Robert did and what he knew that he was not in
7 that office in 1982. He didn't have the advantage of
8 experience and he didn't have the advantage of being burned
9 by a co-worker who had violated essentially every rule of
10 professional conduct relating to a probation officer.

11 We submit that every worker in that office
12 should have been very, very, very, very cognizant of any
13 signs of impropriety, of anything going on out of the
14 ordinary, given what they had been through with Barque and
15 Robert wasn't one of those people.

16 Roy Hawkins testified here that he thought
17 that Robert was a flat manager and he told us that he felt
18 the managerial competence was considered to be low. Yet,
19 in the next breath, Hawkins told us about feeling that once
20 Robert made a decision, Hawkins' hands were tied despite
21 the fact that he was his supervisor. You need to be
22 careful when you scrutinize these submissions of the
23 Ministry that you pay careful attention to the fact that
24 it's too easy to say that it's all Robert's fault. Robert
25 went to Hawkins on the Renshaw thing. Robert went to

1 Hawkins about Varley and Hawkins comes to a public inquiry
2 years later and essentially throws Robert under the bus,
3 but doesn't take any responsibility on his own shoulders
4 for having failed as Robert's manager.

5 The last issue I want to comment on relating
6 to the Ministry is that it leaves out in its submission
7 what it refers to as a "factual mosaic". And as part of
8 that, it identifies a theme that emerges from the victim
9 evidence being that the lack of reporting to the civil
10 authorities during the time of the abuse.

11 And it notes, as an example, Benoît Brisson,
12 who doesn't allege victimization on the part of Nelson
13 Barque, but sort of an inappropriate encounter involving
14 pornography being shown to him at the Probation and Parole
15 office. And the Ministry quite rightly notes that Mr.
16 Brisson didn't report to Probation and rather to Father
17 Deslauriers. And they also note that Albert Roy did not
18 disclose Mr. Barque's abuse until many years after the
19 fact.

20 And the argument then, presumably, is that
21 the Ministry response was harmed as a result of the fact
22 that probationers abused by their POs did not disclose the
23 abuse in a timely way and I've two comments to make in
24 relation to that.

25 First, Brisson and Roy did report what

1 happened in a timely fashion. Albert Roy did exactly what
2 any one of us would have hoped he would do. He reported
3 the abuse to who he thought was Barque's supervisor. The
4 fact that Seguin was who he thought was a supervisor was
5 also an abuser speaks volumes to what was going on in that
6 office at the time. And Brisson identified the behaviour
7 to a trusted authority figure in his life, Father
8 Deslauriers, who we now know was a notorious abuser.

9 And at some point, it needs to be
10 acknowledged that what was going on in this town as
11 demonstrated by these two situations was not typical. And,
12 you know, this is -- to have two victims come forward and
13 tell us that they specifically reported abuse and in both
14 cases the people they reported abuse to were abusers; I
15 mean, the odds are staggering, sir.

16 We spent a fair amount of time in our
17 written submissions dealing with some of the failures of
18 the Children's Aid Society and we begin by noting that
19 since the 50s and 60s and 70s, society has become more
20 vigilant in protecting children from harm, but we also note
21 that that's cold comfort for three of our clients who
22 testified here; Cathy Sutherland, Roberta Archambault and
23 C-14. And we take particular issue with the constant
24 argument of institutions that "we didn't know any better
25 back then".

1 Inasmuch as I would like to take you through
2 a detailed re-telling of what happened in each of those
3 cases, it's obviously not possible. But when you sit down
4 to review the evidence and when you look at case files of
5 these people, one of the things that you're going to
6 notice, sir, is the differences in the quality of the
7 record-keeping and file notations.

8 When you look at the Archambault file and
9 when you look at the C-14 file, you're going to recognize
10 that they're very similar to most of the other CAS files
11 that we've looked at where you don't have caseworker notes
12 per se, but rather you have recordings that were done,
13 perhaps on a monthly basis, maybe twice a year, maybe once
14 a year depending on the case.

15 The Sutherland file, on the other hand, is
16 the complete opposite, and for her we have not only a child
17 file, we have a family file relating to her birth parents;
18 we have other files. And the caseworkers who dealt with
19 her during her childhood oftentimes made detailed
20 recordings of their observations at the time it occurred,
21 seemingly. And so with her file, it's possible to read and
22 to know exactly what information the caseworker had and
23 what observations she's made. The caseworker, at times,
24 notes conversations with family members or doctors and, at
25 times, the caseworker even lays out for us her thought

1 process.

2 And I'm going to suggest to you, sir, and
3 I'm going to submit that as you review the Sutherland file,
4 it's all but impossible -- let me put it this way, sir.
5 The incompetence of the CAS's handling of Cathy
6 Sutherland's file shines through on virtually every page of
7 those files. And I don't believe that the language is too
8 strong for me to say that the CAS's dealings with
9 Sutherland as a child were disgraceful. And I'm not going
10 to attempt to put words in your mouth, but I suggest that
11 your findings in relation to Sutherland should be very
12 strongly worded, sir. And I also submit to you, sir, that
13 when you read the Sutherland file, it will be impossible
14 for you to conclude that the argument that "we didn't know
15 any better back then" holds any water in that case.

16 Sutherland's mother was a diagnosed
17 psychopath -- not my word -- at the time of the CAS's
18 involvement and that's recorded. As family members and
19 doctors implored them to take action, they did nothing.
20 The caseworker wrote of injuries and neglect and the
21 mother's seeming joy in what was happening and the CAS did
22 nothing. When the CAS did intervene, the caseworker
23 continued to take notes about how Cathy had transformed
24 almost immediately into a healthy, happy child in foster
25 care.

1 CAS then put her back with her mother and
2 watched her go back to being a tortured little girl. And
3 back and forth it went. When she was away from her mother,
4 growing and eating and laughing and happy. And when she
5 was with her mother and described a mite, skeletal, and
6 only weeks from death at one point according to a medical
7 record. The worker went so far at one point to speculate
8 that Cathy's mother may be trying to poison her. And all
9 this, sir, is recorded and catalogued in the CAS file. And
10 we submit that the CAS completely and utterly failed to
11 protect Cathy from her mother throughout her childhood.

12 When Cathy grew older she was placed into
13 the Virgin foster home where she alleges that she was
14 sexually abused, and she goes further than simply alleging
15 abuse. She alleges that she disclosed the abuse to CAS
16 workers.

17 We submit that it is unconscionable that
18 when she was old enough to articulate her abuse in the
19 Virgin home, unlike she'd been able to do in her younger
20 years, that she was still ignored by workers who were
21 supposed to ensure her wellbeing.

22 You heard here from a man monikered as C-14,
23 one of my clients, about extensive brutal physical abuse he
24 suffered at the hands of his foster parents, the Barbers,
25 and he also told us about his caseworker Bryan Keough's

1 knowledge of the abuse and even his encouragement of the
2 physical punishments at times. You were taken in some
3 detail, as was Mr. Keough, through his case notes at the
4 time that suggested the Barbers' breaking point was very
5 low, that the punishments were sometimes too harsh for the
6 crimes, things along those nature.

7 To put it succinctly, sir, we have much
8 evidence of what went on in the Second Street Group Home
9 which seemingly had nothing to do with C-14 other than the
10 fact that Bryan Keough was involved there. He was involved
11 with C-14's supervision.

12 There can be no doubt, we submit, based on
13 what happened in the Second Street Group Home, that Keough
14 was a strong supporter of excessive physical abuse -- or
15 excessive physical discipline, rather, and that that
16 amounted to abuse. He not only permitted the children
17 under his supervision to be abused by foster parents and
18 group home workers, he condoned it. When it comes weighing
19 credibility, sir, between Bryan Keough and any other
20 witness, we submit Bryan Keough comes out on the losing
21 end.

22 C-14 also spoke of being abused in a later
23 foster home by a man named Frank Rolland, and you heard
24 about the CAS permitting Mr. Rolland to take C-14 outside
25 of province, about Ian MacLean having met with Mr. Rolland

1 exactly once, about not having checked references or done
2 anything else really to investigate who this man was. We
3 submit that in cases of wardship the CAS becomes a *de facto*
4 parent to the child and has an obligation to safeguard the
5 child from harm. No parent would let a stranger take their
6 child to Montreal for the weekend and the CAS should not
7 have either.

8 Perhaps most shocking of all in the C-14 and
9 Rolland situation is that Rolland approaches the CAS at one
10 point and makes fairly startling allegations about C-14
11 having been essentially a sexual deviant, and that C-14 had
12 physically assaulted Rolland, who was an older gentleman at
13 the time. CAS witnesses here conceded that they did not
14 follow up on that information in any way. They did not do
15 anything to ensure C-14's wellbeing, they didn't seek
16 treatment for him, they didn't seek counselling for him.

17 That, we submit, was wildly inappropriate
18 but not entirely out of character, given that after C-14
19 reported physical abuse at the Barber home, which you'll
20 recall the allegations being -- I mean steel-toed boots and
21 belts and I mean horrific, horrific abuse. CAS witnesses
22 here conceded that there was no medical attention sought
23 for C-14.

24 Very, very briefly, you also heard from
25 Roberta Archambault. I don't feel that I necessarily have

1 a need to go into any of the failings of the CAS in
2 relation to the Lapensée home. They were canvassed
3 extensively with you. There were many admissions from CAS
4 witnesses. Suffice it to say that Roberta was placed in
5 harm's way time and again long after the CAS knew of the
6 Lapensée family home problems, with their complete
7 inability in particular to control Brian Lapensée, and we
8 submit that there is no excuse for what happened in that
9 home and that you should not accept any excuse that is
10 offered.

11 Finally, in relation to the CAS, you've
12 heard a lot of evidence about record disclosure, both from
13 persons who sought the disclosure of records and from CAS
14 workers who attempted to explain what went so wrong with
15 the record disclosure process.

16 We, to my very, very great dismay, did not
17 have time in our written submissions to give you the
18 detailed comparison of CAS files that we now have courtesy
19 of the Inquiry process as compared to what was given to
20 wards during their disclosure. You'll recall there were a
21 lot of summaries. At various points in time wards were
22 given redacted copies of their files. Cathy Sutherland,
23 for example, was permitted to actually see some of her file
24 when it was brought to Hamilton.

25 We urge you, in the strongest possible

1 terms, sir, to pull some of those files from your Exhibit
2 Register and take a good hard look at the information in
3 the CAS files and what was provided to wards. And while
4 you're doing that, sir, it is fairly simple to trace the
5 history of requests. Cathy Sutherland I think is probably
6 the best example of somebody who wrote countless letters,
7 it seemed, seeking disclosure and perhaps is the most
8 egregious example of a failed response from the CAS to
9 provide adequate disclosure.

10 Our submission, sir, is that when you
11 undertake that comparison and see what the CAS had,
12 compared to what they gave, you're going to be left with
13 the inevitable conclusion that there was a very great
14 amount of self-protection involved and that there was
15 rampant nondisclosure. The CAS will argue that they were
16 hampered by resources and that they had child protection
17 matters to deal with and not the time to deal with file
18 disclosure issues.

19 We submit that when you look at the hoops
20 the CAS jumped through to mislead these people and to
21 provide inadequate information and incorrect information,
22 simply producing the files would have taken a fraction of
23 the time, so we urge you to reject the resource argument.

24 I am going to address you very briefly on
25 the role of Perry Dunlop and I am going to read it verbatim

1 from our submissions because it's as concise as it can be
2 and it sets out for you our submission.

3 **THE COMMISSIONER:** And what page is that on?

4 **MR. LEE:** Sir, I have absolutely no idea.
5 If you give me one second I can find it. I'm working from
6 sort of a truncated -- 145 I believe, sir.

7 **THE COMMISSIONER:** You're right, it is.

8 **MR. LEE:** And for the public's benefit I'll
9 read it, sir.

10 **THE COMMISSIONER:** And for the interpreters
11 you'll do it slowly.

12 **MR. LEE:** I will do my best. They are not
13 fond of me, sir.

14 **THE COMMISSIONER:** They love you.

15 (LAUGHTER/RIRES)

16 **MR. LEE:** "Perry Dunlop filled a hole
17 created by inept, ineffective,
18 incompetent and corrupt public
19 institutions in Cornwall. He emerged
20 as a trusted figure to whom victims of
21 abuse could turn in the hopes that
22 someone would listen with compassion
23 and understanding. The fact that
24 victims of abuse flocked to disclose
25 their abuse to Dunlop, having never

1 reported to the police or any other
2 agency, should be taken as a scathing
3 indictment of those institutions.
4 Perry Dunlop's greatest affront to any
5 of the institutions being examined at
6 the Cornwall Public Inquiry is not that
7 he caused problems but rather that he
8 exposed them. The Victims Group has
9 throughout the Inquiry resisted the
10 attempts of many parties to turn the
11 Inquiry into an examination of Dunlop
12 and his activities.
13 It is apparent that for some parties
14 the best defence was deemed to be
15 distraction. By shifting the focus to
16 Dunlop, parties hoped that their own
17 inadequacies and failings would somehow
18 escape the full scrutiny of the
19 Commissioner and the public. We are
20 hopeful that it has become apparent
21 that those efforts have failed."

22 I'll skip a paragraph in the interest of

23 time:

24 "We are hopeful and confident that the
25 Commission will carefully consider and

1 reflect upon why the community embraced
2 Dunlop as it did and the position he
3 found himself in as his own police
4 force pursued him more aggressively
5 than it did alleged abusers.
6 The reasons that Dunlop and the
7 community lost faith in their
8 institutions and the effects of that
9 lost faith is the real issue."

10 And that takes us then, sir, to Mr. Dunlop's
11 former employer, the Cornwall Community Police Service. As
12 we set out in our written material, sir:

13 "Throughout the entirety of the time
14 that you were examining here at the
15 Inquiry, the CPS was a force that was
16 not lacking in resources. It compared
17 favourably to forces and communities of
18 similar size and officers had amongst
19 the highest salaries in the Province,
20 according to the evidence we've heard.
21 Despite the resources that were
22 available, however, numerous
23 inspections reports set out the fact
24 that the Force was an organization in
25 trouble. There were longstanding

1 issues with leadership and with morale.
2 There is abundant evidence of
3 dissention, and the quality of policing
4 as it related to the investigation of
5 allegations of historical sexual abuse
6 was often abysmal."

7 And while these factors alone, to the
8 exclusion of the others I'll discuss, would have impacted
9 on the CPS' ability to appropriately investigate
10 allegations of historical sexual abuse, the situation must
11 be viewed from a wider perspective in that the issues
12 facing the CPS went beyond poor management.

13 And what you need to consider, sir, is the
14 leader of the pack at the CPS during much of the relevant
15 time, Claude Shaver. You had the benefit of his testimony
16 here and assessing his credibility and the role that he
17 played in many of these investigations that you're looking
18 at.

19 In very brief summary, some of the more
20 remarkable situations relating to Shaver include the fact
21 that he was asked to resign by his own senior management.

22 His deputy chief testified ---

23 **THE COMMISSIONER:** Well, just a second. Not
24 to split hairs, but there was the union people that asked
25 for his resignation. There was the management folks that

1 stopped short of asking for his resignation and said,
2 "Let's do something else." Wouldn't that be fair?

3 **MR. LEE:** My recollection was that -- my
4 recollection was it was an either/or situation.

5 **THE COMMISSIONER:** Okay.

6 **MR. LEE:** It was either resign or call
7 somebody in to take a good, hard look at what's going on
8 here.

9 **THE COMMISSIONER:** Okay. Fair enough.

10 **MR. LEE:** And his Deputy Chief St. Denis
11 testified that he counselled Shaver to change, that there
12 were vicious rumours about Shaver while Chief and that they
13 had a blow-up that led to the Chief threatening the Deputy
14 Chief with *Police Service Act* charges for taking his
15 concerns outside the chain of command.

16 The City investigated Shaver and ultimately
17 offered him a hefty compensation package to retire early.

18 He was investigated by his own Force in
19 relation to obstruction of justice in the Earl Landry, Jr.
20 matter and he was investigated by other police forces for
21 alleged obstruction of justice in relation to the Silmsen
22 matter.

23 We heard evidence from Deputy Chief St.
24 Denis in particular of the strict chain of command
25 structure within the Force and Deputy Chief St. Denis

1 explained that it was his role to oversee operational
2 matters and investigations, not Shaver's.

3 Despite that fact, we have evidence of
4 Shaver involving himself in important investigations,
5 bypassing the chain of command almost entirely at times,
6 and we have evidence that Shaver's interference in at least
7 two of those cases led to disastrous results in both, being
8 Landry, Jr. and Silmser.

9 In relation to the Landry, Jr. situation,
10 it's been discussed by both Ms. Daley and Mr. Paul, and we
11 suggest to you that the evidence shows, sir, that the
12 actions of Shaver went beyond interfering in the police
13 investigation by contacting Landry, Sr. The failure to
14 take any further steps in the investigation following his
15 visit to Landry, Sr. suggest direct interference in
16 stopping the investigation.

17 At the time of Landry, Sr.'s telephone call
18 to Stan Willis, Officer Lefebvre had worked diligently to
19 gather evidence, and it is inconceivable that he would have
20 terminated his investigation at the time he did without
21 some pressure or influence being exerted upon him.

22 And the only reasonable explanation, we
23 submit, is that Lefebvre's investigation was terminated by
24 Shaver and Willis, both friends of the Landry family.

25 The Landry investigation raises a number of

1 very serious concerns. The first is that the CPS never
2 should have investigated the allegation in the first place
3 given the identity of Earl Landry, Jr. and his father's
4 stature.

5 The second major issue is Shaver's habit of
6 involving himself in serious sex abuse investigations where
7 he had no legitimate role to play.

8 And as we sum up in our written submissions,
9 while there may be many possible explanations to why Shaver
10 did what he did, what he discussed with Landry, Sr., what
11 Landry, Sr. discussed with Stan Willis during their
12 telephone call and what discussions were had between
13 Lefebvre, Willis, and Shaver, there could be absolutely no
14 doubt that something very wrong occurred here.

15 And as we submit, we have been unable to
16 find any valid reason that that investigation was
17 terminated in the manner that it was.

18 We set out in our -- I'm conscious of the
19 time -- we set out in our written materials the issues with
20 the 1999 internal administrative review into the Landry,
21 Jr. matter, as well as the dual role played by Staff
22 Sergeant Derochie in not only conducting an internal review
23 of the matter but also -- rather, an internal review of the
24 matter but also being the liaison on the Cornwall Police's
25 defence of the Statement of Claim issued against it.

1 And we point to this as one of the better
2 examples, yet only one of many, of a situation where the
3 CPS should have stepped back entirely and turned an
4 investigation of its members and a thorough review of its
5 internal workings over to an external police force or
6 agency.

7 CPS, during its evidence, I think it's fair
8 to say, claimed to be oblivious to any possible perception
9 of conflict or bias.

10 Exhibit 1366, we submit, blows that idea out
11 of the water, sir. A lawyer for the Plaintiffs in relation
12 to the litigation I just mentioned wrote to the CPS at one
13 point, and wrote:

14 "To that end, I'm curious as to why the
15 CPS would investigate itself given the
16 rather severe nature of the allegations
17 put forward in the Statement of Claim.
18 Surely in this case it is the Ontario
19 Provincial Police that ought to
20 investigate this matter if there are
21 any facts to ascertain whether there's
22 a potential for an obstruction of
23 justice charge."

24 Given that letter, we submit the CPS cannot
25 argue that it simply did not consider whether another Force

1 should be brought in. Instead, it had clear notice of the
2 fact that its behaviour was suspect and questionable, and
3 yet it carried on.

4 The management problems at the CPS that I've
5 alluded to are numerous. They're well documented.
6 They're, I would hope, embarrassing to the Force, and yet
7 there seems to be no acknowledgement from the CPS that any
8 of these had anything to do with anything and that they
9 contributed in any way to the problems that we've seen
10 here. And I would suggest, sir, that in your final report,
11 you should come to the opposite conclusion.

12 The investigation of Silmsers's complaint is
13 problematic on more levels than I have time to get into,
14 sir.

15 Chief Shaver's involvement from the outset
16 is documented to a certain extent and was testified to by
17 many witnesses, including Shaver himself. His initial
18 insistence that the matter be placed in a confidential
19 project file, his bypassing of the chain of command, his
20 insistence on having Heidi Sebalj investigate the matter
21 despite a complaint from David Silmsers that he did not wish
22 to deal with a female officer, his ridiculous attempts,
23 after the investigation has collapsed and the CPS'
24 incompetence has been exposed, to make it look as though
25 he's concerned and make it look -- it goes on and on, sir.

1 We've set it out in some detail in our written submissions.

2 One of the issues that's addressed by the
3 CPS that I specifically want to comment on is the question
4 of when Silmsler first advised Constable Sebalj that he only
5 wished to deal with one matter at a time. You'll recall
6 eventually in the end, Silmsler does indeed say that he
7 doesn't think he can deal with both matters at once and he
8 prefers to deal with Father MacDonald first, leaving Ken
9 Seguin aside.

10 The Cornwall Police suggest that this first
11 occurred on February 10th, 1993. And we have a note in
12 Heidi Sebalj's notebook that reads:

13 "Telephone call from victim. Advises
14 he called Seguin, who is running
15 scared. Advised him he is only laying
16 charges on MacDonald. Stated he's
17 getting very mad."

18 CPS points to that -- they did during cross-
19 examination, and I believe they do in their submissions --
20 as evidence of the fact that Sebalj had notice from Silmsler
21 at that point, on February 10th, that he was no longer
22 willing to proceed against Seguin.

23 The reason this is relevant -- we say the
24 date is March 10th. The reason this is relevant is that
25 there's an extra 30 days there where we say the Cornwall

1 Police had no good reason whatsoever to not be actively
2 investigating Ken Seguin.

3 The note that I just read you, sir, doesn't
4 suggest for a second that Silmsers was telling Sebalj that
5 he was no longer willing to deal with Seguin. We have the
6 very extraordinary situation where the alleged victim is
7 contacting the alleged perpetrator and is reporting back to
8 the police that he's running scared.

9 There's, we submit, obviously some kind of
10 game playing going on here between Mr. Silmsers and Mr.
11 Seguin, and there's little doubt that Mr. Silmsers is
12 contacting Mr. Seguin to put him on edge. There's no other
13 reason for that call, and what we have there does not
14 amount in any way to anything that Ms. Sebalj could take as
15 an indication from Silmsers that he's no longer willing to
16 proceed against Seguin.

17 That's confirmed by the fact that less than
18 a week later, Silmsers attends at the CPS station and
19 provides Sebalj with his handwritten statement that
20 includes allegations against Silmsers -- or against Seguin,
21 rather.

22 On March 10th, when Silmsers does indeed tell
23 Sebalj that he only wishes to proceed with an investigation
24 of MacDonald at that time, we submit that that should have
25 in no way prevented the CPS from taking steps to ensure

1 that Seguin was not a risk to children or young people.

2 And we say that armed with the knowledge
3 that Seguin may have used his authority as a probation
4 officer in the past to obtain sexual favours from the
5 probationer, the CPS was duty-bound to act. It had not
6 acted on the Seguin allegation in any way after receiving
7 it for the first time in December of 1992. It hadn't acted
8 on it by February 10th, when the CPS says that they were
9 told to call off the investigation. They hadn't done it by
10 March 10th, and when Seguin died in November of 1993, still
11 nothing from the CPS.

12 The Silmsler settlement matter is
13 complicated, I suppose. It can get confusing. We have a
14 tonne of evidence relating to it. There are many, many
15 different arguments advanced in the various submissions
16 that you've received.

17 One of the questions that needs to be asked,
18 and when later police investigations were looking at
19 whether or not there had been a cover-up and whether or not
20 anything improper had happened in relation to the Cornwall
21 Police, obviously there were concerns about Shaver and the
22 investigating officer was Sebalj, so she obviously had to
23 be looked at, and Brunet was her supervisor and he had to
24 be looked at.

25 The evidence sets out that in relation to

1 Brunet, he was the one who received from Malcolm MacDonald
2 the letter enclosing the written direction from Silmsers to
3 Sebalj stating that the criminal proceeding -- or to stop
4 any further proceedings.

5 And what we submit, sir, is that it's
6 inconceivable that senior members of the CPS could have
7 been so oblivious to what was happening at that time, as
8 they suggest that they were.

9 Brunet, who was the officer in charge of the
10 CIB at the time, hardly a rookie officer, was told by
11 defence counsel that Silmsers had just concluded a civil
12 settlement with the Diocese. In that same call he was told
13 by defence counsel that Silmsers no longer wished to pursue
14 a criminal investigation. He then, shortly thereafter,
15 received a letter from defence counsel enclosing a written
16 direction to the police from the complainant directing them
17 to close their file and stop further proceedings.

18 And we set out in our submissions a number
19 of questions that we say any officer in Brunet's position
20 would have asked, and they include, "Why is defence counsel
21 calling the police to advise of a civil settlement? Why
22 would this former Crown Attorney, Malcolm MacDonald, and
23 senior criminal lawyer think a civil settlement would be
24 relevant to the police investigation? Why does defence
25 counsel have information about the complainant's wishes

1 with respect to the criminal investigation? Why is defence
2 counsel communicating on behalf of the
3 complainant/plaintiff and his lawyer? Why does defence
4 counsel have a copy of a direction from the complainant to
5 the police relating to a criminal investigation?" And
6 finally, and most importantly, "Is it a condition of the
7 civil settlement that the plaintiff withdraws his criminal
8 complaint?"

9 And when he was here, Officer Brunet
10 testified that he did indeed have a concern about the civil
11 settlement because, as he put it, it is not supposed to
12 affect a criminal investigation. Even so, he did not ask
13 Sebalj to obtain copies of the settlement documents, nor
14 did he ask Adams or MacDonald -- Malcolm MacDonald -- both
15 of whom he was in contact with.

16 And what was especially interesting, sir,
17 when you -- you at some point are going to have to assess
18 what a reasonable police officer, at the time, would have
19 done, and one of the officers that we heard from was Claude
20 Lortie, and you'll recall that he was the officer who was
21 originally tasked with the investigation, the information
22 officer who reported directly to Shaver.

23 During examination-in-chief by Commission
24 counsel Stauffer, Lortie suggested that he had some
25 concerns right off the bat upon learning of the settlement.

1 And things went on for a little while, and
2 on page 42 of Volume 215, after having received the
3 somewhat surprising information you had from Lortie, you
4 ask:

5 "Sir, are you saying that when you
6 spoke to Staff Sergeant Derochie, that
7 the light had gone on in your head that
8 the payout was illegal?"

9 And his response was:

10 "Oh, it didn't go on at that point,
11 sir. As soon as I found out that there
12 had been a payout, there was something
13 wrong."

14 And you go on to ask him:

15 "All right. And did you discuss that
16 conclusion that there was something
17 wrong with anybody else in the police
18 force?"

19 And Mr. Lortie tells us:

20 "Nobody was talking to me at that
21 point, sir. I think people were upset
22 that I brought it up."

23 And so we have not only in this brief
24 exchange between yourself and Officer Lortie his
25 confirmation that as soon as I found out that there had

1 been a payout there was something wrong, but also, we have
2 compelling evidence of the dysfunction of the Cornwall
3 Police Service at the time, where Officer Lortie apparently
4 is not very popular for having raised questions about the
5 propriety of the CPS' investigation.

6 A very brief point about Dunlop's
7 introduction, I suppose, into the Silmsler narrative, within
8 days of learning of Silmsler's allegations, Dunlop had
9 turned the statement over to the CAS.

10 Officers -- this is the best list I could
11 come up with -- Shaver, St. Denis, MacDonald, Brunet,
12 Lortie, Lefebvre, Malloy and Sebalj, at the very least, had
13 knowledge of Silmsler's allegations as early as December of
14 1992, but not a single one of them took steps to advise the
15 CAS of the potential danger to children and young people
16 posed by Father MacDonald and Ken Seguin. Not a single one
17 of these officers took steps to ensure the protection of
18 children and young people.

19 We submit that every officer of the CPS who
20 was aware of the allegations had a statutory duty to report
21 the information to the CAS, as did Dunlop, and we submit to
22 you that this is not a complicated issue, as several
23 institutions will argue. The duty to report existed
24 throughout the entire period, from December '92 to the end
25 of '93.

1 A Board of Inquiry in the Divisional Court
2 ruled that Dunlop was bound by that duty, and it flows from
3 those decisions that every other officer that had the same
4 knowledge that Dunlop did was similarly bound.

5 With respect to the Ottawa Police Service
6 Report, we set out in our submissions a fairly lengthy
7 bulleted list of conclusions of the Ottawa Police that we
8 agree with.

9 The point that I want to make, though, and
10 that we make in our written submissions is that while we
11 agree with many of the conclusions about the sufficiency of
12 the investigation itself and the problems with it, it's
13 very important to understand that the Ottawa Police
14 officers did not in any way investigate whether or not any
15 members of the CPS made an effort to conceal or downplay
16 the Silmsler allegations, and whether that was or was not
17 contemplated as part of their mandate, the fact remains
18 that analysis didn't happen.

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

20 **MR. LEE:** Officer Skinner told us, when he
21 testified here, that he did not seek to determine whether
22 Shaver involved himself in the investigation, much less why
23 he did so. Skinner admitted, when he was here, that he
24 never turned his mind to the idea that Shaver may have been
25 involved in some kind of cover-up. When he interviewed

1 Shaver, Skinner did not question him about his relationship
2 with Charles MacDonald, Ken Seguin, Malcolm MacDonald or
3 the local Diocese.

4 Similarly, the Ottawa Police did not
5 interview Officers Lefebvre, Malloy, Dunlop, Silmsers or any
6 person from the Diocese, nor did the Ottawa Police ever
7 examine the settlement documents.

8 Claude Lortie, you'll recall, is at the
9 centre of an issue about whether or not he alleged a cover-
10 up at a morning meeting. Some say he did. He says he
11 didn't. He was not interviewed as part of the Ottawa
12 Police investigation.

13 The point of me telling you all of that,
14 sir, is that the Ottawa Police investigation should not in
15 any way be taken as some sort of confirmation of the fact
16 that another force had investigated the Silmsers matter and
17 cleared the CPS of wrongdoing. That's not what the Ottawa
18 Police did in terms of the cover-up, in terms of the
19 conspiracy.

20 The Ottawa Police went in and looked at the
21 investigation as an investigation without all of those
22 peripheral issues on why the investigation may have been
23 incompetently handled; simply was it good police work? And
24 that's all the Ottawa Police report, we say, can be used
25 for.

1 **THE COMMISSIONER:** Okay. I'm just -- they
2 did find that there was no cover-up.

3 **MR. LEE:** They didn't investigate it. What
4 we're saying is this.

5 **THE COMMISSIONER:** No, no, I understand, but
6 the ---

7 **MR. LEE:** When the CPS inevitably gets up
8 and says not only did the OPP look at it but so did the
9 Ottawa Police, I'm saying to you the Ottawa Police didn't
10 look at it. That's the gist of my submission on that.

11 Because they so directly involve two of my
12 clients, sir, I want to comment to you on two
13 investigations conducted by CPS Officer Jeff Carroll. The
14 first was his investigation of allegations made by Marc
15 Latour against a schoolteacher named Gilf Greggain, and the
16 second is a reinvestigation of allegations against Father
17 Charles MacDonald made by Albert Lalonde.

18 I would submit to you that cross-examination
19 by Mr. Paul and by myself revealed that Officer Carroll was
20 extremely busy at the time that he was assigned the
21 Greggain investigation and that perhaps as a result of his
22 other duties occupying too much of his time, his
23 investigation was superficial and half-hearted. During
24 his testimony, Officer Carroll conceded that he did not
25 pursue many avenues of investigation including he did not

1 interview former teachers or principals at the school. He
2 did not interview any former classmates or friends of
3 Latour. He did not obtain a search warrant for class
4 lists. He did not ask Latour for names of former
5 classmates. He did not ask Greggain for names of former
6 students. He did not speak with any of Latour's siblings
7 other than one sister. He did not ask the CAS whether they
8 had a file open for Greggain.

9 He did not investigate whether Jules Tyo, a
10 potential witness, had had a falling-out with anyone at the
11 School Board, as Don Delorme, another witness, had
12 suggested. He did not obtain Tyo's employment file,
13 despite already having a signed authorization from Tyo
14 permitting him to do so.

15 He did not conduct an audio or a video
16 interview with Delorme, preferring to simply speak with him
17 over the phone. He did not confront Tyo with Delorme's
18 information to seek clarification or response, and he did
19 not submit a signed authorization that he had Latour's
20 sister Joan sign it.

21 What I submit to you, sir, is that Carroll's
22 testimony must be read in its entirety to fully appreciate
23 that even in May of 2008, when he testified here years
24 after his investigation, he remained completely incapable
25 of articulating to you why he did not form reasonable and

1 probable grounds and why he failed to complete a thorough
2 investigation.

3 Carroll told us he did not doubt Latour's
4 sincerity and that he had serious concerns about Greggain's
5 response to the allegations.

6 Carroll confirmed that Greggain was indeed
7 Latour's teacher at the times he said he was. He had
8 statements from Latour's sister and a janitor that
9 corroborated in some way the possibility that Greggain was
10 indeed a physical and sexual abuser of children.

11 And why I'm focusing, sir, on these two
12 investigations in particular conducted by Jeff Carroll is
13 that he presented as an intelligent and thoughtful police
14 officer, which we say makes his failed investigation all
15 the more perplexing and troubling.

16 He did not take time to conduct a thorough
17 investigation of these serious allegations. He did not act
18 on information that Greggain continued to work with
19 vulnerable children, even at the time of the complaint from
20 Latour and the subsequent investigation. He remains unable
21 or unwilling to explain what happened here. And regardless
22 of why the investigation failed, there's no doubt that
23 justice was not well served in this case. You got some
24 sense, during the testimony of Mr. Latour, of the effect
25 that that failure has had on him.

1 Albert Lalonde is a -- the Albert Lalonde
2 matter globally from start to finish is a complicated one.
3 There are a lot of issues. There are a lot of officers
4 involved. There are a lot of records. There are medical
5 issues. There are recovered memory issues. There are
6 delayed disclosure issues.

7 Mr. Lalonde comes to the police, advising
8 them that he first had a recollection of his abuse by
9 Charles MacDonald when he was watching a news story where a
10 lawsuit of \$2 million was mentioned. It's a complicated
11 case. When we narrow it down though, sir, to Jeff
12 Carroll's involvement in the Lalonde case, it comes in 2002
13 after the MacDonald stay.

14 **THE COMMISSIONER:** After the MacDonald ---

15 **MR. LEE:** The Charles MacDonald stay of
16 proceedings.

17 **THE COMMISSIONER:** Yes.

18 **MR. LEE:** Lalonde was not one of the
19 original complainants in that matter because his
20 allegations had been investigated in '95 by the OPP and
21 they had made a decision not to lay charges.

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

23 **MR. LEE:** In 2002, after the stay, Mr.
24 Lalonde comes back to the CPS and Officer Carroll is
25 assigned the investigation.

1 One of the issues we raise briefly in our
2 written submissions is the propriety of the CPS handling
3 anything to do with Charles MacDonald after what had gone
4 on earlier, but I won't address that in any detail today.

5 So in May of 2000 Carroll interviews Lalonde
6 and we submit that the major problem with the Carroll
7 investigation in 2000 is that he relies almost entirely on
8 the earlier OPP investigation.

9 And as a result of having the statements
10 from that investigation and having spoken to the officers
11 and being aware of their findings earlier, we suggest that
12 Carroll doesn't do a true reinvestigation and he doesn't
13 make his own honest assessment.

14 Again, Mr. Paul and I both spent a fair
15 amount of time with Mr. Carroll during cross-examination
16 and we submit that from those cross-examinations you can
17 get an appreciation of how horribly this investigation was
18 handled. The problems included that Carroll failed to
19 appreciate that there was no evidence whatsoever of
20 tainting by Carson Chisholm, Dick Nadeau or Perry Dunlop.
21 He failed to discuss with the Crown or even consider the
22 science relating to recovered memory syndrome.

23 No efforts were made to interview C-4 or his
24 brother, both of whom were identified as persons who may
25 have pertinent information and/or be potential

1 complainants. No efforts were made to determine the
2 identity of a hairdresser who may have been a potential
3 complainant. No efforts were made to contact another
4 potential complainant, even though Carroll was aware that
5 Nadeau had contact with this person's mother.

6 Carroll did not have access to any of the
7 investigative material from the previous investigations of
8 Father MacDonald, nor did he request same, and what I'm
9 speaking of there, sir, is the previous CPS investigation
10 of Father MacDonald, his own Force. He had access to none
11 of those materials. He didn't request them and they
12 weren't provided. He made no efforts to interview Father
13 MacDonald.

14 Mr. Lalonde identified four doctors that may
15 have relevant information. The police chose two and
16 interviewed only them. Officer Carroll did not obtain a
17 copy of Dr. Clements' file. He did not obtain a copy of
18 Lalonde's school records. No efforts were made to contact
19 altar boys identified by Lalonde. And when Carroll was
20 provided with a copy of a photograph showing Father
21 MacDonald and Lalonde at a wedding, which was pertinent to
22 the investigation, Carroll failed to seize it.

23 In November of 2002, the Crown Attorney who
24 provided the opinion wrote back to Carroll that his
25 position -- that he agreed with his position that there was

1 no RPG.

2 We submit that the Crown was based on the
3 materials before him, which were incomplete and deficient,
4 and whether charges in this case would have ultimately been
5 warranted is a question that you will not be able to answer
6 because of the fatal flaws with the investigation.

7 You can, however, report on the
8 investigation itself and you can also report on Officer
9 Carroll's outright refusal during his testimony to concede
10 that he should and could have done much more during this
11 case.

12 To close off the Cornwall Police, I want to
13 comment very briefly on their submissions and I would ask
14 you to turn your mind, as you read their submissions and as
15 you listen to their oral submissions, to what lessons the
16 CPS appears to have learned from the past 15 years or so.
17 Ask yourself what has changed and ask yourself whether
18 there's any reason to believe that anything is different
19 now within the CPS than it was in 1993.

20 I challenge you to try to find admissions or
21 concessions from the CPS on any key points. And when you
22 review their submissions, Mr. Commissioner, pay attention
23 to how clearly the disdain that the CPS has for anyone who
24 dares challenge the CPS comes through in their words. Note
25 how victims and alleged victims are introduced to the

1 reader by reference to criminal records or to the fact that
2 they are purported to be mentally challenged, or about how
3 they may have abused their own children at some point in
4 time.

5 When the CPS, in their submission, writes
6 that someone has admitted to lying, I strongly suggest you
7 pull the transcript and read it for yourself. When the CPS
8 suggests at page 310 and 311 of his submissions, for
9 example, that C-10 agreed with their suggestion that he
10 lied calmly even in the face of irrefutable facts, I urge
11 you to pull the transcript and watch the video of his
12 testimony, sir.

13 Turning to the Diocese of Alexandria-
14 Cornwall, I cannot possibly even begin to do justice to
15 what we heard during the institutional response of the
16 Diocese and what we say are the obvious conclusions to be
17 drawn for it -- from it in the time I have here. We've
18 gone to some pains during the preparation of our written
19 submissions to comment on a great many of the matters
20 dealing with the Diocese. We've spent a fair amount of
21 time going through the Silmser settlement and what we say
22 that evidence leads you to.

23 And we start our Diocese analysis by
24 speaking of canon law and other documents and the culture
25 within which the Diocese operates. And we point out themes

1 of secrecy, obstruction, and non-compliance. And we submit
2 to you, right away, during our written submissions on the
3 Diocese, that there was a culture of sexual abuse within
4 this Diocese and that it did not just have one or two
5 fallen priests, rather sexual abuse was a systemic problem.

6
7 You heard contextual evidence from Tom Doyle
8 and Father Frank Morrissey relating to the Church.
9 Morrissey, for lack of a better word I suppose, the Church
10 expert, and Doyle called to counteract some of what
11 Morrissey had to say.

12 Father Morrissey, the Church expert,
13 explained part of the church's motivation for silence is
14 the fear of scandal. He told us the belief is that the
15 church is a moral authority in society and when there's
16 public knowledge of a priest sexually abusing a child or
17 youth, it has a negative impact on the church as a whole.

18 We say that it is precisely because a church
19 sells itself as a moral authority that the silence and
20 intentional avoidance of scandal is all the more
21 concerning.

22 We identify in our written submissions
23 several examples that we call obstruction where Diocesan
24 actors work in order to prevent matters of sexual abuse by
25 a priest from becoming public knowledge, and we say that

1 this is most frequently demonstrated in the transferring of
2 offender priests from jurisdiction to jurisdiction in order
3 to prevent the matter from becoming public and to avoid
4 prosecution of the priest. The Inquiry examined several
5 instances where that was the case within this Diocese.

6 Another concern is the church's failure to
7 report matters to secular authorities or to assist those
8 authorities when they become involved in dealing with
9 sexual offences by priests. The priority has been to
10 protect the priest rather than to assist the victims, the
11 police and other institutions in effectively dealing with
12 these crimes. We say there are no known examples of this
13 Diocese notifying the police of reports or allegations of
14 abuse of minors in their jurisdiction, despite having a
15 long, storied, documented history of priests engaging in
16 such behaviour.

17 We say when the police did become involved,
18 the Diocese either refused to provide assistance altogether
19 or attempted to be seen as cooperating while in fact
20 sheltering relevant information not specifically requested
21 by investigators who could not possibly know of its
22 existence.

23 As an example, sir, you heard about Father
24 Lucien Lussier and you read a letter from 1967 where a
25 parishioner settled his concerns with Father Lussier's

1 inappropriate behaviour in relation to a young boy. The
2 Diocese had knowledge of Father Lussier's inappropriate
3 relations with at least that boy as early as 1967. There's
4 no evidence that the Diocese followed up with that boy or
5 that it took steps to address the concerns of parishioners.
6 Instead, the Diocese opted to simply transfer Lussier to
7 another parish and to do nothing. We say that pattern
8 repeated itself throughout his career and even decades
9 later, a new Bishop, LaRocque, granted Lussier a posting
10 after learning of his admitted sexual relationships with
11 young men.

12 The testimony of Claude Marleau raised a
13 great, great many issues for you to consider, certainly in
14 relation to the police who ultimately investigated the
15 allegations and in relation to the Crown Attorneys who
16 prosecuted when charges were laid, but I think most
17 significantly, sir, Marleau raised serious issues about the
18 Diocese's response to allegations of abuse.

19 And as we state in our written submissions,
20 secrecy and non-compliance create an environment in which
21 sexually abusive priests feel safe. We learned through the
22 examples of other cases that no meaningful action will be
23 taken against them. In such an environment, they feel safe
24 enough to communicate with like-minded individuals and to
25 coordinate their efforts and the outcome of such comfort

1 and coordination amongst abusive priests is the sharing of
2 victims. Marleau, you will recall, testified that he was
3 sexually abused by eight men between the ages of 11 and 17
4 and of the eight accused, five were priests.

5 The centre, I suppose, of the Lapierre ring
6 of abusers was Paul Lapierre and you heard from Bishop
7 LaRocque about having received an admission from Lapierre
8 that served to exonerate another priest of the Diocese ---

9 **THE COMMISSIONER:** Father Dube?

10 **MR. LEE:** --- Father Dube.

11 And what we know was that Bishop LaRocque
12 failed to alert the authorities when he had an admission of
13 sexual abuse by a priest incardinated in his Diocese. When
14 Lapierre was charged with crimes, LaRocque stood by while
15 he was acquitted. And despite having that admission, he
16 failed to remove Lapierre from duty.

17 We also though, sir, need to speak a word of
18 caution about accepting the evidence of Bishop LaRocque on
19 that point at face value. His evidence about that
20 admission from Paul Lapierre is convenient in that it
21 allows for the exoneration of one priest, Dube, in exchange
22 for placing the blame on a priest who had other allegations
23 surrounding him, being Don Scott. And that evidence has to
24 be assessed in the overall framework of his credibility --
25 LaRocque's credibility, I mean.

1 What is most striking about the LaRocque
2 situation and the story he relates about Lapierre, however,
3 is that as Mr. Talach put it to him in the cross-
4 examination, that if you accept that evidence from Bishop
5 LaRocque, it means that he essentially sat quiet with
6 information that could have exonerated Dube ---

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

8 **MR. LEE:** --- because seemingly it would
9 have harmed two other priests, and we suggest to you that
10 if you accept that evidence, the only conclusion you can
11 draw is that Bishop LaRocque recognized that harming one
12 priest was better than harming two priests; guilty or
13 innocent.

14 We heard a lot of evidence about Don Scott,
15 another priest of the Diocese. We set out in our written
16 submissions a number of letters that go back-and-forth
17 between Father Scott and Bishop LaRocque and we submit that
18 this gives us unique insight into the Bishop's relationship
19 with his priests, and that the documented evidence of a
20 strong and honest relationship between LaRocque and Father
21 Scott is irrefutable.

22 Scott's writings are emotional and as he put
23 it, "I've never been less than honest with you". We say
24 that when you read these letters in their entirety, there
25 can be no doubt that LaRocque knew of Scott's sexual

1 deviancies and that he took no steps whatsoever to protect
2 those he knew to be in harm's way. Scott's letters
3 explain, in fact, that it was Scott himself who took steps
4 to remove himself from temptation and to leave Cornwall for
5 fear of harming the faithful.

6 LaRocque's specific knowledge of wrongdoing
7 in the admission from Lapierre that he and Scott had abused
8 Marleau, did nothing to compel the Bishop to action. The
9 police were not advised of Scott's activities and he was
10 not investigated by police before he died.

11 You also heard about allegations being made
12 about -- against Father Romeo Major, about the fact that he
13 was charged and that charges were ultimately dropped
14 because the complainant was too ill to testify. You heard
15 about LaRocque writing a letter shortly after the charges
16 were withdrawn indicating that it was with joy that he was
17 returning Major to his function as a pastor and that after
18 a year-and-a-half, the court found that there was no case.

19 LaRocque conceded here that he never
20 consulted with anyone else in the Diocese about the re-
21 instatement, nor was there any form of internal
22 investigation concerning these allegations. As a result,
23 Major returned to ministry with the Bishop having no
24 knowledge of the truth and falsity of the allegations
25 against him. No investigation was conducted, no canonical

1 process was invoked. Instead, he expressed his great joy
2 and turned over a parish to a priest who had not only been
3 accused but also charged by the police.

4 And we submit that at some point in the
5 analysis, any argument that Bishop Larocque was from a
6 bygone generation or that he was bumbling or that he simply
7 didn't know any better has to give way to a recognition
8 that he knew exactly what he was doing and he makes no
9 apologies for it. Larocque did not offer any reasonable
10 explanation for his actions in this case and you should not
11 exert your energy looking for one.

12 The Gilles Deslauriers case and the
13 Diocese's handling of that was disastrous, sir, from the
14 outset to its conclusion. Despite being canvassed
15 extensively at the Inquiry, we find it difficult to point
16 to a single positive or appropriate step taken by the
17 Diocese. A non-Diocesan priest attempting to assist the
18 family of a victim, the Brissons, in dealing with the
19 Diocese became so frustrated that he gave up and advised
20 the family to report the matter to the police. The
21 perpetrator was transferred to a Diocese even less well
22 equipped to handle him, given Bishop Proulx' friendship
23 with Deslauriers. The Bishop boldly declared that he would
24 rather go to prison than assist the police with their
25 investigation. And Lise Brisson's twice repeated pleas for

1 help for her son were flatly refused.

2 The -- sir, even attempting to get in to the
3 Father Carl Stone debacle right now is not going to do it
4 any justice at all. We've said it out in detail in our
5 written submissions. I say to you that this is a
6 definitive and conclusive case that demonstrate Bishop
7 Larocque's character. Frankly, I'm not sure you need to go
8 much further than the Carl Stone case to know exactly what
9 kind of man Bishop Larocque was, what kind of Bishop he
10 was. His complete and outer disregard for the safety of
11 children, his -- the Diocese's handling of the Stone matter
12 was despicable, sir.

13 And I say that the Diocese and its Bishops,
14 because there was more than one Bishop involved with Stone,
15 are exposed through this case as concerning themselves only
16 with the protection of the Church, their Diocese and their
17 priests with no regard whatsoever to parishioners or
18 children or the community.

19 In relation to -- I apologize for going
20 quickly, sir, I very much want to get to recommendations
21 because I know how important that is to you. As I said, my
22 clients very desperately are looking forward to findings of
23 fact, they're looking forward to findings of misconduct,
24 frankly, and it's not out of some desire of revenge or
25 spite but the fact that they need some acknowledgement that

1 what they've alleged for a very long time to have gone
2 wrong in Cornwall did indeed go wrong.

3 In relation to the Diocese's role in the
4 settlement, I have a number of findings that I believe are
5 supported by the evidence and I am hopeful you'll make in
6 your final report. I'm going to give them to you quickly
7 and I'm going to move on.

8 We ask you to find that the Diocese
9 initiated settlement discussions with Silmsler and not the
10 other way around. We ask you to find that Malcolm
11 MacDonald, Jacques Leduc and Bishop Larocque met together
12 on February 22nd, 1993 within a week of Silmsler being
13 approached about settlement. That by August 23rd, '93,
14 Malcolm believed that Father Charles would be arrested and
15 was taking steps to make arrangements with Sebalj to have
16 him surrender himself. That two days later, on August 25th,
17 '93, Malcolm met again with Larocque and Leduc to again
18 discuss the pay off.

19 That Leduc, by his own admission, hoped the
20 settlement would resolve both the civil and criminal
21 matters. That the Canadian Conference of Catholic Bishops
22 strongly urged Larocque not to pay off Silmsler because it
23 would be interfering with the process. That both Malcolm
24 and Leduc advised Murray MacDonald of the settlement in
25 advance of its completion. That any reasonable Crown

1 attorney would have been suspicious of the contacts with
2 him regarding his civil settlement. That by late August of
3 1993, Silmser, unlike Malcolm MacDonald, believed that
4 charges would not be laid against Father MacDonald.

5 That the evidence of Karen Derochie was
6 truthful and plausible and that the encounter she described
7 between Duncan MacDonald and the pay-off conspirators did
8 occur. That Duncan MacDonald's faith was shaken as a
9 result of learning to some extent of what these
10 conspirators had planned. That Leduc and Malcolm worked
11 together to draft the illegal settlement document. That,
12 as conceded by Leduc, he saw the draft containing the
13 illegal clause and discussed same with MacDonald.

14 That Sean Adams was retained by Malcolm
15 MacDonald on behalf of Father Charles MacDonald and not to
16 represent David Silmser.

17 The Diocese's insurers were not put on
18 notice of Silmser's allegations or the potential claim, nor
19 were they asked to contribute to the settlement because
20 Larocque and Leduc both knew it to be illegal. That for
21 the same reason, the settlement was not brought before the
22 Diocese finance committee. And that the explanation
23 proffered here during testimony by Larocque, Leduc, and
24 Adams of the circumstances surrounding the Silmser payoff
25 were utterly unbelievable.

1 You'll see when you review our submissions
2 that we concur in large part with the submissions of both
3 the CCR and the Coalition as it relates to the Ontario
4 Provincial Police. And what we say is their -- I was going
5 to say their failed investigation of the conspiracy but I
6 don't believe that the investigation failed because I don't
7 believe it was ever attempted.

8 You've heard submissions from them on the
9 failings of that and the problems that Ms. Daley spoke to
10 you about, potentially the fatal flaw at the very outset to
11 clearly identify what they were doing and to put together
12 any kind of game plan regardless of what happened and why
13 it happened, and we gave you some thoughts in our
14 submissions. We say that the allegations of conspiracy
15 that were purportedly investigated by the OPP were not and
16 they have still never been fully investigated by any police
17 force.

18 And while we have obvious concerns with the
19 fact that the conspiracy investigation never happened as it
20 should have. The real concern we have is that the
21 community was repeatedly told that it was. And the belief
22 has always been until, I say, it was exposed here through
23 testimony that the conspiracy allegations had been fully
24 investigated. And I say that if the OPP did not intend to
25 fully investigate the conspiracy for whatever reason, they

1 should have simply said so. And if, again, the allegations
2 be totally incredible and not worthy of investigation, that
3 they should have stood up and said so. And to purport to
4 investigate the conspiracy allegations when, in fact, they
5 were not, was not proper.

6 With respect to the Ministry of the Attorney
7 General, we set out in our written submissions, what we
8 call recurring problem. These relate, as Ms. Daley spoke
9 to earlier today, the practice of providing opinions based
10 on incomplete information. And we point to the Murray
11 MacDonald's contacts with the Cornwall police in the
12 context of the Father MacDonald investigation. And also to
13 CAS case, such as the Cieslewicz' home and the Lapensée
14 case where we submit that through the cross-examination of
15 Tom O'Brien, it was fully revealed that the CAS had
16 provided misleading information to the Crown; that the
17 Crown provided opinions on information that was nowhere
18 near thorough. And we say the Crown would have been well
19 aware at the time that they didn't have all the
20 information, or at least should have been.

21 Ms. Daley also spoke very, very briefly at
22 least in reference to the fact that there are some concerns
23 with Murray MacDonald during the course of Heidi Sebalj's
24 investigation playing more of a supervisory role than
25 anything else. We submit that she was providing -- he was

1 more of a supervisor during that investigation that Luc
2 Brunet was. And we submit there are some fairly
3 significant problems with that.

4 Another issue that we identify with the
5 Attorney General's response is its willingness to let
6 itself be used as a crutch by police forces in terms that
7 we say there were a great many Crown opinions sought that
8 should not have been, that were meaningless and that never
9 had any possibility of going any direction other than
10 supporting the conclusion of the officer.

11 We also have some concerns about Crown
12 Attorneys not reviewing the sufficiency of investigations
13 despite the fact that they claim that they had. And we
14 submit that -- I'll get to it in recommendations, actually,
15 sir.

16 I spoke to you a moment ago about Jeff
17 Carroll's investigation of the allegations against Gilf
18 Greggain made by Marc Latour. Another one of the
19 institutions we have at this Inquiry is the Catholic
20 District School Board of Eastern Ontario, and I submit to
21 you, sir, that the institutional response of that Board was
22 made almost impossible as it related to Gilf Greggain as a
23 result of the inadequate investigation of Carroll.

24 Much of the information that we might have
25 gathered and that might have permitted us to assess that

1 institutional response, we simply don't have, and I say
2 that lies on Carroll and on the CPS.

3 As a result, we have superficial
4 information. We have Marc Latour's memory of conversations
5 he overheard between parents and conversations he didn't
6 overhear between parents and principals. It's difficult to
7 follow. Mr. Latour's evidence can certainly go to assess
8 the institutional response of the CPS. It makes it
9 extremely difficult to assess the Board's.

10 But as we set out in our submission, we say
11 you have enough there to piece together a part of the story
12 and to recognize that there were some problems with that
13 response.

14 The other school board, and the last
15 institution, is the Upper Canada District School Board, and
16 the key matter that we dealt with there was the Robert
17 Sabourin situation.

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

19 **MR. LEE:** And I have to admit, sir, that
20 when it came time to write submissions, I went in thinking
21 that we had only had one -- we had a Mr. Thomas, I believe,
22 who spoke to -- didn't speak to anything historic and was
23 concerned with looking forward. So we only had the one
24 witness, Jean-Paul Scott, and when I sat down to write
25 submissions, I thought, well, I'm not going to be able to

1 do much with only one witness.

2 To my surprise, I don't think we need any
3 more to assess the Sabourin situation. We have Jeanine
4 Seguin's statements, one to the police, one to her own
5 lawyer, and we have Mr. Scott who confirms much of what is
6 in those statements, and they -- we say his testimony,
7 along with the documents, confirm that the response of the
8 school board to the allegations of Sabourin was entirely
9 inappropriate.

10 I provide to you in our submissions -- my
11 submissions are very brief in relation to the school board
12 -- but I provide you a bulleted list of the key points, and
13 I summarize by saying, and I stand by it today, it is
14 difficult to imagine a more inept or unacceptable response
15 to allegations of abuse than what occurred in that case.
16 And this is another example of where officials had specific
17 knowledge of abuse and yet did nothing to expose the
18 perpetrator, nothing to protect children, and nothing to
19 heal the victims.

20 By my count, sir, I have 13 minutes left,
21 and I'd like to talk about recommendations.

22 **THE COMMISSIONER:** Yes.

23 **MR. LEE:** Are you okay to go ahead without a
24 break?

25 **THE COMMISSIONER:** Oh, I'm fine. Actually,

1 we started three minutes later, so you probably have 15.

2 MR. LEE: Okay. Given what I've just tried
3 to rush through in the last hour-and-three-quarters, I now
4 come to the point where I acknowledge one of the
5 institutions for doing well.

6 We, on the last day of testimony, filed
7 documents -- we, I mean the Commission -- received
8 documents relating to the Ministry of Community Safety and
9 Correctional Services' efforts to respond to several issues
10 raised during its institutional response evidence.

11 In hindsight, given what came of it, I think
12 it was quite helpful to have a Deputy Minister called
13 because when she makes recommendations, things get done.

14 What the MCSCS did was provide to us,
15 essentially, a few documents that set out the exact wording
16 of the recommendation made by Ms. Newman and the response
17 to it and their effort to have something positive come of
18 that.

19 And, as I state in my written submissions,
20 Exhibit 3430 sets out five specific recommendations that
21 they made and the steps taken in relation to each. And I
22 can tell you here that we support each recommendation set
23 out in the document, but we also suggest that specific
24 recommendations from you relating to each may help
25 facilitate their implementation and the allocation of

1 resources required to ensure that the changes are
2 effectively implemented.

3 In essence, what I'm saying there, sir, is
4 that your recommendation may carry some weight and may help
5 money flow a little bit easier than it would without your
6 specific recommendation.

7 We set out for you, I think, minor changes
8 in relation to each of the recommendations. And as I said,
9 when an institution does something right, we'll acknowledge
10 it, and we acknowledge that there seems to have been a very
11 genuine effort on the part of that Ministry to get the ball
12 rolling before the end of the Inquiry, and we commend them
13 on that.

14 With respect to the Children's Aid Society,
15 we heard a lot of evidence, especially early on in the
16 Inquiry, about IPCA, the Institute for the Prevention of
17 Child Abuse, and we heard about a program that was called
18 Investigation of Sexual Offences Against Children, and
19 several witnesses recommended that this program be
20 reinstated.

21 Bill Carriere told us that it involved basic
22 training for new workers and that half of the participants
23 were police officers with the other half being CAS workers.

24 Our recommendation to you is that you is
25 that you recommend the implementation of a course similar

1 to the IPCA course that would be mandatory for all police
2 officers and CAS workers, and we suggest perhaps the
3 delivery of the course at police colleges would be
4 appropriate and would ensure that all the officers and CAS
5 workers are offered the same level of training, and we saw
6 as a bi-product of that the opportunity to foster stronger
7 working relationships between police officers and CAS
8 workers, particularly earlier in their career when they're
9 going through much of their training.

10 And with specific reference to the matters
11 we're dealing with here, we suggest that the course should
12 deal directly with matters related to the investigation of
13 historical abuse, including the proper investigation of
14 those matters and how to effectively and compassionately
15 deal with victims of historic abuse.

16 And while we don't offer you any brilliant
17 insight or any specific recommendations, we try, in our
18 recommendations, to set out for you the fact that we've
19 heard repeatedly from institutional witnesses, particularly
20 those higher up the food chain, of the problem with
21 resources and the problem with funding, and the problem
22 that if they want to do something new, they need to stop
23 doing something old, and that there isn't enough money to
24 go around.

25 We urge you, when you're making your

1 recommendations, to turn your mind to whether it would be
2 useful to set out why the recommendation you're making, if
3 implemented, would be so important and the difference it
4 would make and the failings that could be avoided if it
5 were done so.

6 So anything you can do, sir, in your final
7 report to help satisfy somebody in a position of influence
8 to loosen the purse strings a little bit and get these
9 things done would be tremendously helpful.

10 Ian MacLean testified here on behalf of the
11 CAS, and as I commented to him at the time, made very
12 thoughtful recommendations relating to file disclosure.
13 Specifically, he suggested that the Ministry require the
14 CAS to release to all Crown wards leaving their care, a
15 record of their updated social history, their full medical
16 history, the contact information of professionals who have
17 done tests or produced reports on the youth, a list of
18 schools, a list of foster home placements, a list of
19 churches, clubs and certificates and the like. And Mr.
20 Maclean's suggestion was that would be done as a matter of
21 course at the time the ward leaves the care of the CAS,
22 each time and every time.

23 We, as I stated then, wholeheartedly endorse
24 the recommendation and we suggest that a formal policy be
25 enacted requiring every CAS in Ontario to provide all

1 relevant information to its wards as they leave care. We
2 suggest that this be done in all cases without requiring
3 the wards to specifically request their files.

4 So in other words, it's not -- the question
5 should not be asked of the ward, "Would you like your
6 file?" It should simply be done.

7 That, however, does not help former wards
8 who return to the CAS as Cathy Sutherland and C-14 and
9 Roberta Archambault did.

10 We urge you, Mr. Commissioner, to recommend
11 that steps be taken to enact legislation compelling CASes
12 to release to former wards, upon request, all the
13 information in its possession that is not expressly
14 prohibited by law. We say it's time that the legislature
15 recognize the unique position that former Crown wards are
16 in when they request their CAS file.

17 As we heard from witnesses at this Inquiry,
18 the problems that resulted in many children being
19 apprehended are not suddenly washed away at the time they
20 come into care. Many have difficult childhoods and find
21 themselves without the typical remembrances that more
22 fortunate adults enjoy of their youth. CAS files provide
23 an invaluable source of information about who these wards
24 are and where they come from.

25 We say that the privacy interests of birth

1 parents and those who agree to take children into their
2 homes to care for them must give way to the interests of
3 former wards in piecing their lives together and in
4 understanding who they are and why. We say that record
5 disclosure must be timely, efficient, and as hassle-free as
6 possible, and we say that the overriding principles should
7 be that the CAS files should be treated as belonging to the
8 wards, not the CAS.

9 We encourage you at Recommendation 4 of the
10 CAS section to recommend that there be a clarification
11 regarding the CAS's duty to notify an accused or suspected
12 person's employer regarding an allegation of sexual abuse.
13 We provide a recommendation about clarifying the
14 legislative term "caregiver" and there was quite a lot of
15 time spent with Bill Carriere about who is a caregiver and
16 who is not, and some of the confusion on that.

17 We recommend that random home checks be
18 incorporated expressly into the service agreement that the
19 CAS has with all foster parents and we suggest that the
20 *Child and Family Services Act* be amended to incorporate a
21 section similar to that which exists in Manitoba that
22 provides for a right of entry; a statutory right of entry.

23 In relation to the duty to report, I think
24 everybody has made some kind of recommendation or
25 suggestion in relation to the duty to report, which we say

1 is a fairly clear indication of the problems with that
2 section and the fact that some reform is needed. Currently
3 the section uses the phrase "the child." We suggest you
4 turn your mind to considering a recommendation that the
5 phrase "the child" be replaced with "any child" for
6 increased clarity.

7 We also ask that -- there is a provision
8 under Section 72 that calls for some repercussions to
9 people who breach the duty to report. I questioned Bill
10 Carriere on that to some extent and he told us that the
11 local CAS at the very least has typically used a breach of
12 the duty as an educational opportunity.

13 And while we certainly can't disagree with
14 Mr. Carrier that educating somebody who has breached is
15 something that should happen, the section needs teeth, sir,
16 and the section needs to be enforced to the full extent of
17 the law every time, and it needs to be drilled into the
18 heads of professionals, and anybody else bound by the duty,
19 that it is to be taken extremely seriously and that there
20 will be dire consequences if not.

21 In relation to the Diocese of Alexandria-
22 Cornwall, I can't take credit for those recommendations.
23 Mr. Talach spent a long evening, I believe, coming up with
24 those. They're set out in our materials and the first
25 recommendation is sure to ruffle some feathers at the LG, I

1 think, where we call for government intervention into the
2 Diocese's response to clergy sexual abuse.

3 Mr. Talach sets out, as an example, the fact
4 that we recommend the implementation of legislation that
5 would prevent clergy charged or convicted of a criminal
6 offence involving sexual conduct with minors from
7 exercising public ministry, and we set out for you Section
8 170 of the *Education Act*, which applies to teachers and is
9 to that effect. We argue that there are similar concerns
10 with clergy having continued access to children and youth
11 when they are charged or convicted and are in a position of
12 trust or authority.

13 We also ask you to recommend that there be a
14 restatement and application of the principles set out in
15 "From Pain to Hope" by this Diocese. We ask you to
16 recommend a public commitment from the local Diocese and
17 ideally all dioceses in Canada to report allegations of
18 clergy sexual abuse to police and/or appropriate
19 authorities.

20 We ask that you recommend that the Diocese
21 formalize sexual abuse protocols by making them part of the
22 local Diocesan law. You heard some evidence from Morrissey
23 for sure, and I think Doyle as well, about the difference
24 between local laws and others. We ask you to recommend
25 that they formalize a pronouncement that offending priests

1 will not be returned to parishes or other ministry.

2 Given what occurred, particularly in the
3 Father Stone case, we ask for a recommendation that there
4 be a provincial consultation with the federal government in
5 relation to the immigration of priests convicted of sexual
6 offences. And we ask that you recommend a review of all
7 priest personnel files and the report of any further
8 allegations of abuse to the Children's Aid Society and the
9 police by this local Diocese.

10 In relation to the police forces, to wrap
11 up, we make a number of recommendations about specialized
12 training and about policies and procedures that could
13 assist victims in coming forward. We also make a
14 recommendation about adequate provincial funding and
15 resources for victim services, and that's been sort of an
16 ongoing theme throughout the Inquiry about some of the
17 problems there.

18 We also have a grave concern about the
19 design and implementation of electronic databases that are
20 shared among all police forces nationally without
21 exception. We don't think there should ever be an excuse
22 for a police force anywhere in Canada to have information
23 that is not readily available to any other police force in
24 Canada about sexual abuse.

25 In relation to the Ministry of the Attorney

1 General, our recommendations focus primarily on the idea of
2 a dedicated Crown Attorney who should be assigned to major
3 cases to avoid some of the problems that we identified
4 here.

5 We also make a recommendation about trying
6 to avoid 11(b) applications -- well, I suppose trying to
7 avoid successful 11(b) applications by trying to increase
8 the oversight of trial Crowns by more senior Crowns,
9 specifically with an eye towards avoiding delay, ensuring
10 that matters move along as expeditiously as possible, and a
11 real and genuine commitment to the fact that sexual abuse
12 cases take priority.

13 **THE COMMISSIONER:** Over what?

14 **MR. LEE:** Over other -- it is unacceptable,
15 sir, for a sexual abuse case to be stayed; absolutely
16 unacceptable. My clients, appreciating who I'm on for
17 obviously, I think would -- whether -- there needs to be a
18 recognition that everything possible in every single sexual
19 abuse case will be done to ensure that it is moved forward
20 as quickly as possible.

21 I'm not saying unfairly, I'm not saying
22 there should be strict deadlines. It needs to be as
23 quickly as it can possibly be done and there needs to be an
24 avoidance of any kind of situation like we ended up with in
25 MacDonald or Leduc.

1 Quite literally at the end of my time, sir,
2 that concludes my role in Phase 1. I want to wish you the
3 best of luck with your task. Given what all of us went
4 through over the last three weeks or so, I don't envy the
5 position you're in over the next few months.

6 On a personal note I want to say that it's
7 been my great honour to represent the Victims Group for the
8 past three years and also that it's been a pleasure to
9 appear before you throughout this process, and so I will be
10 back before you briefly on Friday in terms of Phase 2 but
11 otherwise I'll be a passive observer for the rest of this.
12 Thank you, sir.

13 **THE COMMISSIONER:** Thank you.

14 Thank you, let's take a short 10-minute --
15 I'm sorry, just a second. Just a second. You're not going
16 to be long? Okay, come on.

17 **MR. BENNETT:** Very brief, sir.

18 **THE COMMISSIONER:** All right.

19 Don't worry, Mr. Lee, the applause was for
20 me.

21 **(LAUGHTER/RIRES)**

22 **MR. LEE:** I thought it was welcoming Mr.
23 Bennett to the podium.

24 **THE COMMISSIONER:** Okay, well, there you go.
25 That's even better.

1 Mr. Bennett, good afternoon.

2 **--- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**
3 **BENNETT:**

4 **MR. BENNETT:** I guess there's advantages to
5 not appearing here for quite a while.

6 I also would like to echo Mr. Lee's comments
7 about your daunting task. I just looked at the -- I've
8 been looking with awe at all the material in front of you
9 on your desk up there and I'm glad we can still see you. I
10 see why they need to end the Inquiry or we wouldn't be able
11 to see you up there any longer.

12 I just have very brief comments today, as I
13 was informed by Commission counsel most of the issues that
14 I want to address are more appropriate on Friday. I will
15 be making much more detailed comments about everything I'm
16 addressing this afternoon.

17 I did want to mention them, however, so they
18 don't get lost. I'm concerned that Phase 1 may take
19 priority in some people's mind, not in yours, but in the
20 public or elsewhere. So I just wanted to comment about
21 what we will be talking about on Friday.

22 And I'd also like to comment that, quite
23 frankly, I believe the recommendations we'll be making on
24 Friday have as much appropriateness for Phase 1. I've
25 always had a difficulty trying to figure out where the

1 Men's Project fit in in terms of whether it was Phase 1 or
2 Phase 2 recommendations.

3 **THE COMMISSIONER:** That's why we gave you
4 standing in both.

5 **MR. BENNETT:** Thank you very much and
6 especially for closing submissions.

7 For example, the things that we will be
8 talking about on Friday or some of them that I believe are
9 just appropriate here, are issues of counselling, province-
10 wide training, an ombudsman, apologies and confidentiality.

11 For example, for provincial-wide training,
12 if institutions knew how to deal with survivors, it
13 probably would have made their work a lot easier. And I
14 would like to actually refer you to page 287 in the
15 Ministry of Corrections' brief where they have acknowledged
16 this. Where they've said the Ministry identified the need
17 for provincial training in areas of male sexual
18 victimization.

19 And they, ahead of this Inquiry, have
20 developed a new three-day awareness teaching course working
21 with male victims of sexual abuse. The course was
22 developed with the assistance of the Men's Project, and
23 they intend to use it for all their probation and parole
24 officers so that they have the tools that are necessary to
25 effectively deal with disclosure. And I would suggest that

1 all institutions should be following this type of training
2 so that they all have people who are capable of dealing
3 with this.

4 Similarly, one of the themes we've heard
5 and, again, I'm going to go in much more detail on Friday,
6 is the lack of access to counselling for men who are
7 survivors of sexual abuse. And I would -- we heard that
8 from many witnesses. We wished we had somewhere where to
9 send people.

10 And this would have also assisted the
11 institutions in being able to deal with people as they came
12 forward because they wouldn't have had to deal with all the
13 difficulties that these -- and challenges that these men
14 presented. They would have been able to deal with what
15 their mandate and would have been able to say, "Here's
16 someone else who's professionally trained who can deal with
17 this". And I would also suggest that it would have made
18 some of the witnesses possibly more stable as they were
19 going through the processes.

20 In terms of an ombudsman, which again I will
21 detail on Friday, having some type of oversight might have
22 assisted a lot of these institutions and maybe even avoided
23 some of the difficulties that we ended up having an Inquiry
24 about.

25 Finally, I would like to say that in some

1 ways, the work of this Inquiry has modelled and set some
2 precedents for both institutions and the justice system and
3 for both future commissions of inquiry and other
4 organizations going forward.

5 And I'd like to commend you and your staff
6 for the fact that you started with an awareness and a
7 commitment to minimizing any negative impact on survivors.
8 And I think by having that awareness right from day one and
9 moving forward with that is an example that everybody
10 should look at. And I'm talking about providing
11 counselling to anyone who might be affected by this
12 Inquiry.

13 The witness support, the way that it was
14 done in a very professional and supportive manner, not only
15 to survivors but to witnesses from all parties to this.

16 And I'd also like to make comment about
17 Commission counsel in the way that they did whatever they
18 could. They were very respectful to survivors and whenever
19 accommodation was needed, from our perspective, they tried
20 to bend over backwards to make accommodation. And I think
21 they should be recognized for that.

22 The Commission should be and you should take
23 the examples of the things that went very well for this
24 Commission and highlight them in your report. And that's
25 why I'm making these submissions because these are very

1 important things and model that for the Province of
2 Ontario.

3 And those are my comments for today.

4 **THE COMMISSIONER:** Thank you very much, sir.

5 **MR. BENNETT:** Thank you.

6 **THE COMMISSIONER:** Thank you. We will
7 resume tomorrow at 9:30.

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

10 This hearing is adjourned until tomorrow
11 morning at 9:30 a.m.

12 --- Upon adjourning at 5:07 p.m./

13 L'audience est ajournée à 17h07

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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM