

EXECUTIVE SUMMARY

The Ministry of the Attorney General for Ontario was granted standing for the purpose of both Phase 1 and Phase 2 of the Inquiry, because the Attorney General is responsible for superintending all matters connected to the administration of justice in Ontario, and in particular because Crown Attorneys are agents of the Attorney General for the purpose of criminal prosecutions.

PHASE 1 SUBMISSIONS

The Phase 1 submissions are divided into seven main sections: Fundamental Principles, Pre-Project Truth Investigations and Prosecutions, Project Truth, Non-Project Truth Investigations and Prosecutions, Response to Institutional Issues, Phase 1 Policy Submissions, and Phase 1 Recommendations.

1. Fundamental Principles

Six fundamental principles are discussed in this section. The first is the role of the Crown Attorney in the criminal justice system. The office of Crown Attorney is a quasi-judicial office. Courts have repeatedly emphasized that it is not the role of the Crown Attorney to secure a conviction, but rather to assist the judge and jury in ensuring that the fullest possible justice is done.

The second fundamental principle is the immunity from review of the exercise of discretion by the Crown Attorney. Because of the role of the Crown Attorney, the

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law protects the exercise of core Crown discretion from scrutiny by courts or tribunals, except in the case of malice. As a result, the law recognizes that "reasonable Crown counsel will reasonably differ" about the exercise of discretion from time to time and honest exercises of Crown discretion should not be "second-guessed".

The third fundamental principle that is explored is the relationship between Crown Attorneys and the police. The Crown Policy Manual contains a policy on the relationship between the police and the Crown.

The fourth fundamental principle is disclosure obligations. Again, the Crown Policy Manual addresses disclosure obligations, as have a number of recent reports such as the LeSage-Code Report.

The fifth and sixth sections are overviews of the Cornwall Crown Attorney's office and of current Ministry policies.

2. Pre-Project Truth Investigations and Prosecutions

Under this heading, four matters are examined: three investigations into the complaint made by David Silmser, that is, the 1993 Cornwall Police Service investigation, the 1994 Ottawa Police Service Investigation, and the 1994 OPP investigation; and the prosecution of Malcolm Macdonald for attempting to obstruct justice.

3. Project Truth

The third main section of the Phase 1 submissions is "Project Truth". This section deals with two main topics: (i) the inception of Project Truth, including the resourcing of Project Truth, the loss of the binders that were delivered to the Ministry by Perry Dunlop of the CPS, and the involvement of Garry Guzzo, MPP; and (ii) various prosecutions including the Leduc and Father Macdonald prosecutions, the issue of providing opinions on police briefs, and other investigations and opinions.

The Ministry's position with respect to the first topic is: (i) the Project Truth prosecutions were resourced in a manner consistent with the practice for resourcing other prosecutions at that time. Now, Project Truth would likely be treated as a "major case" within the meaning of the Major Case Management Protocol which was established in 2001.

With respect to the second topic, the Ministry submits: (ii) the loss of the Dunlop binders was an isolated event. The Ministry made a number of efforts to locate the Dunlop binders. When the binders could not be located, Ministry officials ensured that the OPP had received all of the materials from other sources. None of the investigations was compromised by the loss of the Dunlop binders.

Both the Leduc and the Macdonald cases were dismissed for delay under s.11(b) of the *Charter*. On June 3, 2008, the Ontario government launched the Justice

on Target strategy. The Justice on Target strategy seeks to achieve faster, focused justice by targeting a 30 per cent reduction in the average number of days and court appearances needed to complete the type of cases that make up over 90 percent of the caseload - by 2012. By reducing the delay associated with the cases that make up the vast majority of the workload, the Ministry will be able to focus resources in a manner that is proportional to the seriousness of the case.

4. Non-Project Truth Investigations and Prosecutions

Five main topics are canvassed in this section of the Phase 1 submissions, including advice given by Crown Attorneys to the Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry; the 1982 investigation into the allegations against Nelson Barque, a probation officer; and some other prosecutions that were contemporaneous to, but were not classified as Project Truth by the OPP.

5. Response to Institutional Issues

The Commission has raised ten institutional issues with the Ministry. They are:

- (i) whether Crowns provided advice to government agencies without proper and sufficient investigations by police authorities.

The Ministry's response is:

- (i) In the 1980's, both the Ministry of Correctional Services and the Children's

Aid Society of the United Counties of Stormont, Dundas and Glengarry approached the Cornwall Crown Attorney directly for advice. Generally speaking those agencies now receive advice from their own lawyers. MAG now has a Practice Memorandum that requires that when Crown Attorneys give advice on the decision to charge in difficult, complex or potentially controversial cases (including historical sexual assault cases), that they do so on the basis of a full written investigative brief.

The second issue is:

- (ii) whether the Ministry failed to ensure that notes and records were properly kept and stored, that opinions provided to police and other agencies were properly recorded and that files were opened with respect to allegations of sexual assault.

The Ministry's response is:

- (ii) MAG now has a Practice Memorandum that requires that when Crown Attorneys give advice on the decision to charge in difficult, complex or potentially controversial cases (including historical sexual assault cases), that they do so on the basis of a full written investigative brief. With respect to other issues, such as the elements of criminal offences, it is entirely appropriate for Crowns to continue to give informal advice to police officers. Such advice would generally be recorded in the police officers' notes.

The third issue is:

- (iii) whether adequate and appropriate resources were allocated to the prosecution of criminal charges arising from the Project Truth investigation, including but not limited to, failing to assign a team of dedicated Crown Attorneys to the prosecutions and failing to provide the assigned Crown Attorneys adequate office, staff and other resources.

The Ministry response is:

- (iii) The Project Truth prosecutions were resourced in a manner consistent with the practice for resourcing other prosecutions at that time. The ultimate size of Project Truth was not known from the outset. Project Truth grew incrementally. With the benefit of hindsight, Project Truth would likely be characterized as a "major case" within the meaning of the Major Case Management Protocol that was established in 2003

The fourth issue raised by the Commission is:

- (iv) whether there was unreasonable delay in assigning Crown Attorneys to the prosecution of criminal charges arising from the Project Truth investigations.

The Ministry's response to this issue is:

- (iv) Prosecutors were assigned to the Project Truth prosecutions in a timely manner, often even before charges were laid, as the Crowns who were responsible for reviewing the briefs prepared by the police often took over the prosecutions after providing their advice to the police.

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The fifth issue is:

- (v) why materials delivered to the Ministry of the Attorney General on April 7, 1997 by Perry Dunlop were not properly kept and stored and why the appropriate police authorities were not advised of the receipt of the materials.

The Ministry's response is:

- (v) The loss of the Dunlop binders was an isolated event. The Ministry made a number of efforts to locate the Dunlop binders. When the binders could not be located, Ministry officials ensured that the OPP had received all of the materials from other sources. None of the investigations was compromised by the loss of the Dunlop binders.

The sixth issue is:

- (vi) whether there was a system to manage and track disclosure in the Project Truth prosecutions.

The Ministry's response is:

- (vi) The Crowns and the police worked together to handle the administrative aspects of their disclosure obligations in these cases. The Crown Policy Manual addresses the disclosure obligations of Crowns.

The seventh issue is:

- (vii) whether the Ministry responded in an appropriate and timely way to the posting of victim statements and other sensitive materials on the internet.

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The Ministry's response is:

- (vii) In the judgment of Ministry officials, the proper course of action in this case was to seek publication ban at the outset of the prosecution and enforce the publication ban by means of contempt proceedings. The Ministry's decision appropriately balanced various factors, including the protection of victims' privacy and freedom of speech.

The eighth issue is:

- (viii) whether Crown opinions on investigative briefs prepared in the course of Project Truth were provided to police authorities in a timely fashion.

The Ministry submits:

- (viii) There was some delay in providing Crown opinions on some police briefs, because the Crown assigned was engaged in a major Project Truth prosecution. The delay was not significant, because in each case, the police had already determined that there were no reasonable and probable grounds to lay charges and were simply seeking a confirming opinion from the Crown.

The ninth issue is:

- (ix) whether the Ministry ensured that proper processes and procedures were in place to identify and appropriately respond to conflicts of interest.

In response, the Ministry submits:

- (ix) The Ministry of the Attorney General has well-established policies to prevent any potential conflict of interest in prosecutions.

The final issue raised by the Commission is:

- (x) whether adequate support and access to resources were provided to victims of historical sexual abuse.

The Ministry's response is:

- (x) At the time the charges were laid in Project Truth there was no Victim Witness Assistance Program office in Cornwall. However, the VWAP office in Ottawa did provide services, including the appointment of a dedicated staff member to Project Truth, by August 2000. A VWAP office opened in Cornwall in October 2001. Every region in the Province now has VWAP services.

6. Phase 1 Policy Issues

The Ministry addresses three Phase 1 policy issues in these submissions: (i) various issues involving children's aid societies, including the duty to report historical allegations of child abuse, and issues regarding the child abuse register; (ii) issues regarding the media; and (iii) issues regarding school boards.

7. Phase 1 Recommendations

The Ministry's Phase 1 recommendations are:

- (i) The Ministry's Major Case Management project is currently considering the criteria for designating a case as a major case, strategies for ensuring optimal working relationships with the police and other partners in the administration of justice, and the resourcing of major cases. The Ministry will review the MCMP in light of any recommendations from the Inquiry.

- (ii) The Crown Policy Manual is reviewed and updated regularly to reflect best practices. The responsibility for this rests with an entire Branch within the Criminal Law Division – the Criminal Law Policy Branch. The Ministry will review the Crown Policy Manual and other Ministry policies in light of any recommendations from the Inquiry.

- (iii) The OVSS Protocol for the Development & Implementation of a VWAP in Multi-Victim Multi-Perpetrator Prosecutions is being reviewed and if necessary updated to reflect current practices and circumstances

PHASE 2 SUBMISSIONS

The Ministry addresses two Phase 2 policy issues in these submissions. The first is services for male victims of sexual assault. The second is apologies legislation.