

IN THE MATTER OF THE CORNWALL PUBLIC INQUIRY
The Honourable G. Normand Glaude, Commissioner

FINAL SUBMISSIONS OF JACQUES LEDUC

Marie Henein

**Henein & Associates
445 King Street West
Suite 202
Toronto, ON
M5V 1K4**

and

**Steven Skurka
Skurka Spina Cugliari LLP
970 Lawrence Ave. W.
Suite 205
Toronto, Ontario
M6A 3B6**

PART 1—EXECUTIVE SUMMARY

JURISDICTION AND MANDATE

The mandate of the Cornwall Public Inquiry is set out in the Order in Council. In summary, the mandate requires the Commissioner to inquire into institutional response in the form policies and practices – past, present and future and to report on systemic failures in that response. As articulated by the Court of Appeal, it is not within the Inquiry’s mandate to make findings with respect to individuals who are not part of institutions or make findings with respect to individualized errors or misconduct that are not systemic in nature. To do so would exceed the jurisdiction accorded by the Order in Council.

Mr. Leduc was never an institutional actor. He acted from time to time as counsel for the Diocese of Alexandria Cornwall. He was never an employee or a member of that institution. The revenue generated by Diocese files was not significant as Mr. Leduc, as a courtesy, would either not charge a fee or reduce his fee when dealing with matters on behalf of the Diocese. Mr. Leduc was never retained or instructed to act in the capacity of a compliance officer to ensure that the Diocese was abiding by whatever internal guidelines they may have in place at any given time. As is evident in the uncontradicted evidence of Bishop Larocque at no time did Mr. Leduc have control, direction, involvement in and provide advice in relation to systemic church policy in respect to responses to allegations of child abuse.

At all relevant times Bishop Larocque had complete, exclusive and final authority in all matters within the Diocese and in particular in its dealings with historical allegations of sexual abuse.

THE FATHER DESLAURIERS CASE

Bishop Larocque first became aware of the allegations against Father Deslauriers in January of 1986 and did not retain the services of Mr. Leduc until 3 months after the allegations had been brought to his attention. In the interim, Bishop Larocque had a number of dealings regarding the issue of Father Deslauriers with the following people without the knowledge or assistance of Mr. Leduc: Father Bissaillon, Msg. Guindon, Father Vaillancourt, Father Thibault, Bishop Proulx, Father Menart and the Brisson family. Mr. Leduc was never provided with an update, notes or a summary of the internal discussions that Bishop Larocque had in respect of this matter.

Mr. Leduc was retained by the Diocese as counsel on the Ad Hoc Committee on April 3, 1986. The retainer was very specific and limited. Mr. Leduc was not retained to provide Bishop Larocque with general advice regarding the matter or to provide input into the appropriate institutional response. Indeed, beyond his functions on the Ad Hoc Committee, Msg. Larocque did not retain Mr. Leduc to provide legal advice on the issues facing him with respect to the removal of Father Deslauriers from ministry, the referral of Father Deslauriers to psychiatric

care, or the transfer of Father Deslauriers to another Diocese. The Ad Hoc Committee was merely an advisory committee with no power or jurisdiction to summons witnesses, enforce recommendations or enforce penalties. It was comprised of Monsignor Guindon, the Chairman of the committee and the Vicar General of the Diocese as well as Sister Pilon. Mr. Leduc participated in the Committee hearings commenced on April 3, 1987 and the preparation of the Ad Hoc Committee report was completed on May 23, 1986. His retainer in respect of the Ad Hoc Committee ended with the submission of the report. Mr. Leduc was never instructed to follow up on the Committee's recommendations nor did he have any jurisdiction whatsoever to compel Bishop Larocque to accept any of the recommendations.

Mr. Leduc did not advise either the police or the Children's Aid Society (hereinafter the CAS) about the allegations against Father Deslauriers. To do so would have been a grave breach of solicitor client privilege and the duty of confidentiality to a client. There was no authority or jurisdiction to ensure that a client report the matter to the CAS. Reporting the matter in April of 1986 would also have been contrary to the wishes of the victims and their families who were hoping for a speedy and effective internal resolution to the Father Deslauriers problem. ***Any finding that Mr. Leduc should have breached his ethical duties as counsel in order to report the Deslauriers allegations to the CAS or to the police, would be a misapprehension of the fundamental importance the solicitor client relationship is accorded within the Canadian system. Such a finding would be an error.***

Mr. Leduc cannot recall what advice he gave his client regarding any duty to report the allegations to the CAS. The matter is academic, since, by the time the Ad Hoc Committee submitted its report on May 23, 1986, the Brisson family had publicized their allegations on CTV and had reported the abuse to the Cornwall Police Service. ***Any finding that Mr. Leduc should have advised his client via the Ad Hoc Committee report to notify the CAS or the police would be a misapprehension of the evidence, which clearly shows that the matter had already been reported and was public by the time Mr. Leduc submitted his report. Such a finding would be an error.*** In addition, even if Mr. Leduc failed to advise his client to report the matter to the CAS, this is the conduct of an individual counsel, not part of an institutional response, and cannot be the subject matter of any finding of misconduct. Furthermore, Mr. Leduc was not retained to provide the Diocese with advice at large as to what reporting obligations, if any, they had to the police or the CAS. There was no request from the client that Mr. Leduc inform himself of these obligations and provide a legal opinion to the client as to their obligation to do so.

Mr. Leduc was retained by the Diocese to provide legal advice to the Bishop and to the priests should they request it during the course of the police investigation of Father Deslauriers. Once again, Mr. Leduc as was his legal obligation, acted in accordance with the specific and limited retainer of his client. In the course of that retainer, Mr. Leduc attended police interviews with witnesses that requested his presence. Mr. Leduc facilitated Father Thibault's eventual desire to tell the police that he had also been abused by Father Deslauriers. In addition, at the request of his client, Mr. Leduc also gave Bishop Larocque legal advice regarding the Bishop's adamant refusal to agree to a police interview. Mr. Leduc properly advised the Bishop that in law, there was no legal privilege that would shield any communications between the Bishop and the priests. In addition, Mr. Leduc advised that should Bishop Larocque be subpoenaed to court,

a failure to answer questions about these communications would result in a finding of contempt and a possible custodial sentence. After receiving this legal advice, Bishop Larocque chose to reject it, as is a client's prerogative, and advised the police that he would rather go to jail than answer any police questions. As with the Ad Hoc committee, Mr. Leduc had no authority to compel Bishop Larocque to act in accordance with his advice or to enforce any of his personal views on the institution.

There is no evidence that the police ever requested any documents or recordings from Mr. Leduc regarding Father Deslauriers. There is no evidence that the police ever requested that Mr. Leduc divulge the findings of the Ad Hoc Committee. Had Mr. Leduc provided any of these items to police he would have been in serious breach of the solicitor client relationship and the duty of confidentiality. Furthermore, the evidence is that the police, in a meeting with Bishop Larocque prior to the involvement of Mr. Leduc as counsel, were advised of the existence of the Ad Hoc Committee and the report. In fact, Bishop Larocque told the police the length of the report and where it was stored. The police had all legal avenues available to them, including a search warrant, to obtain the report or any other documents that they wished to obtain. It is not for counsel to disclose documents in the possession of their clients. Indeed, to do so would constitute professional misconduct. ***Any finding that Mr. Leduc failed to cooperate with police by not sharing his knowledge of the findings of the Ad Hoc Committee report would be a serious misapprehension of the fundamental importance the role the solicitor-client relationship is accorded within the Canadian system. Such a finding would also be contrary to the evidence of the Cornwall Police Service who found Mr. Leduc to be of assistance to them. Such a finding would be an error.***

Mr. Leduc was also retained to maintain what is commonly known as a watching brief of the proceedings at the *R. v. Deslauriers* preliminary inquiry and reported to the Bishop on matters that affected the Diocese's interest.

Mr. Leduc could not recall whether he had a file or notes with respect to the Father Deslauriers matter. Had he kept notes or a file, Mr. Leduc would not have been under any obligation to have maintained them to present day, now over 20 years later. Mr. Leduc never received instructions from his client regarding notes or record keeping. Mr. Leduc was never retained as an archivist for the Diocese. Nor is the quality of a lawyer's notetaking within the purview of this Commission's mandate. This Commission heard absolutely no evidence regarding professional obligations, rules or norms regarding note-taking or file retention. The absence of notes or a file in the Deslauriers matter did not affect the Diocese institutional response in any way whatsoever. ***Any finding that Mr. Leduc failed to develop or follow practices and procedures which would have ensured that files, notes and records of allegations of clergy sexual abuse were properly opened, kept and stored, and were retrievable would be made without a proper evidentiary foundation. In addition, such a finding has no bearing on institutional actors or the institutional response of the Church.***

THE FATHER MACDONALD/DAVID SILMSER CASE

Sometime in December of 1992, Mr. Leduc became aware of the allegation made by David Silmsler against Father MacDonald. He merely advised Bishop Larocque to follow the church protocol for dealing with such matters. Mr. Leduc also indicated to Rev. Bryan that the Diocesan insurers should be notified. Mr. Leduc was not retained by the Diocese to do any work in relation to the Silmsler complaint until sometime later, he was retained to sit on the Phase 4 Committee pursuant to the protocol to meet and interview Mr. Silmsler. At the meeting on February 9, 1994, Mr. Silmsler advised the Phase 4 Committee that he was either going to the police or had gone to the police. Mr. Leduc participated in that Committee and advised the Bishop's delegate, Msg. McDougald as well as Father Vaillancourt to prepare minutes of the meeting and report to the Bishop. The proper protocol was not adhered to by the Diocese in dealing with Mr. Silmsler's complaint. Mr. Leduc's client did not instruct or expect that Mr. Leduc act as a compliance officer and ensure that the Diocese was following its own protocol, nor did they retain him to follow up on the report to the Bishop.

Mr. Leduc advised his client to follow the protocol. Pursuant to the protocol, the Diocese is required to contact the CAS. The failure of the Diocese to follow their own internal protocol cannot be placed at the feet of their counsel. It is all academic however, since Mr. Silmsler had made his complaint to the Cornwall Police Service 2 months prior to the Phase 4 Committee meeting. ***Any finding that Mr. Leduc failed to ensure that the Silmsler matter was reported to the CAS or the Police would be a grave misapprehension of the evidence. The evidence shows that Mr. Leduc repeatedly advised the Diocese to follow its protocol. Further, Mr. Leduc had no instructions from his client to ensure compliance with the protocol.***

Mr. Leduc attended the Bishop's office along with Malcolm MacDonald on two occasions for the purposes of canvassing the possibility of a civil resolution of Mr. Silmsler's claim. Bishop Larocque authorized Mr. Leduc to represent the Diocese and enter into a civil settlement with Mr. Silmsler. Mr. Leduc assisted the preparation of the settlement documentation by providing a draft Release and Undertaking as well as a Certificate of Independent Advice. Indeed, it was Mr. Leduc who insisted that Mr. Silmsler obtain independent legal advice before signing the agreement. Due to Mr. MacDonald's admitted criminal conduct, the final draft of the Release and Undertaking contained a provision obstructing the criminal process. Mr. MacDonald, counsel for Father MacDonald, was the individual who also prepared a direction that was executed by Mr. Silmsler and sent to the Cornwall Police requesting that his file be closed. Mr. Leduc had no knowledge of this document. Mr. Leduc had no reason to doubt either the competence and good faith of Malcolm MacDonald, a senior lawyer and former Crown Attorney. Mr. Leduc did not attend at Malcolm MacDonald's office for the execution of the documents in question. This Commission heard no evidence regarding any professional rules and norms as to the appropriate division of labour between co-counsel entering into a civil settlement. ***Any finding that Mr. Leduc was negligent for having delegated the handling of the settlement to Malcolm MacDonald, counsel for Father Charles MacDonald would be made without a proper evidentiary foundation.***

Mr. Leduc insisted that Mr. Silmsler obtain independent legal advice. Mr. Silmsler selected his own counsel, Mr. Sean Adams. Mr. Leduc had no reason to doubt Mr. Adams'

competence or good faith. Mr. Leduc provided funds to Malcolm MacDonald to be held in escrow until such time as he was provided with the final executed documents. Mr. Leduc had no reason to doubt Mr. MacDonald's good faith in holding the Diocese funds in escrow. Both Mr. Silmsler and Mr. Adams signed a Certificate of Independent Legal Advice. This Commission heard absolutely no evidence of any professional rules and norms as to the type of inquiries to make of counsel acting in the capacity of independent legal advisors, nor did this Inquiry hear any evidence of any professional rules and norms as to the necessary steps to take to ensure funds are held in escrow pending the receipt of documents. ***Any finding that Mr. Leduc failed to ensure David Silmsler retained independent legal advice and that the certificate of independent legal advice was properly executed before the Release and Undertaking was signed and the settlement funds released would be made without a proper evidentiary basis. Indeed, there is no obligation to require a self-represented individual in a civil case to seek and retain counsel.***

Upon learning of the provision in the Release and Undertaking which stated that criminal proceedings would be terminated as part of the civil settlement, Mr. Leduc immediately informed his client and withdrew from the file. Mr. Leduc provided a comprehensive statement to his client's new solicitors and made public statements in the form of a national press conference announcing the existence of the clause #2. Mr. Leduc was under no obligation to notify anyone but his client. ***Any finding that Mr. Leduc was negligent because he failed to notify the appropriate authorities once it became apparent that the settlement contained an illegal provision and was void for public policy would be a gross misapprehension of the evidence. Mr. Leduc did indeed notify not only his client but publicly at a press conference that was attended by numerous media outlets.***

Mr. Leduc did not keep a file on the Silmsler matter. Had Mr. Leduc kept notes or a file, Mr. Leduc would not have been under any obligation to have maintained them to present day, now over 15 years later. Mr. Leduc never received instructions from his client regarding notes or record keeping. Mr. Leduc was never retained as an archivist for the Diocese nor were his notes sought by the Diocese for review. This Commission heard absolutely no evidence regarding professional obligations rules or norms to be followed regarding lawyers notes or files. The absence of notes or a file in the Silmsler matter did not affect the Diocese institutional response in any way whatsoever. ***Any finding that Mr. Leduc failed to develop or follow practices and procedures which would have ensured that files, notes and records of allegations of clergy sexual abuse were properly opened, kept and stored, and were retrievable would be made without a proper evidentiary foundation and has no bearing on the institutional response.***

THE LEDUC TRIAL

The Leduc trial was marred by untimely disclosure, delay and the obstructive conduct of Mr. Dunlop. For the most part, those issues have been litigated in the courts. Mr. Leduc welcomes the Commission's recommendations on how policies and procedures surrounding disclosure can be improved to ensure that the *Charter* rights of accused persons are best protected.