PHASE I WRITTEN SUBMISSIONS

SUBMISSIONS MADE BY THE CITIZENS FOR COMMUNITY RENEWAL ("CCR"):

EXECUTIVE SUMMARY

The Cornwall Public Inquiry (the "Inquiry") has heard extensive evidence about sexual and physical abuse of children and young people. That evidence dates from as far back as the late 1950s and spans a roughly 40 year time period. The Inquiry has also received evidence about the manner in which local institutions responded or failed to respond to allegations of recent sexual abuse made by children and young people as well as to allegations made by adults about their prior childhood abuse. The latter will be referred to in these submissions as "historic abuse allegations", the former as "contemporaneous abuse allegations".

The institutional response evidence dates from approximately the mid 1970s (i.e. the allegations about the treatment of residents of the Second Street Group Home in Cornwall) up to and including the year 2005. We have also heard evidence from institutions as to present day practices.

The Inquiry did not receive any evidence which would allow one to compare Cornwall to other Ontario communities of a similar size so as to ascertain whether Cornwall had a relatively higher incidence rate of sexual abuse of young people than other communities similarly situated.

While this evidence is lacking, there is no doubt that many citizens of Cornwall believed during the 1990s and perhaps continue to believe that there was a sexual abuse crisis in their town, consisting of an epidemic of homosexual pedophilia. There was widespread belief that the perpetrators of acts of homosexual pedophilia were prominent members of the community, were

acting jointly, and were using their positions of influence to ensure that their activities remained undetected and unprosecuted. That belief undermined public confidence in local law enforcement institutions and in civic governance in the community at large. It is not an exaggeration to describe it as a form of "moral panic".

It is the CCR's position that there is a critical need for the community to carefully examine the evidence led at the Inquiry concerning the performance of its institutions as they responded to abuse allegations, both historic and contemporary, and to identify clearly the weaknesses in those responses, without resorting to overstatement or unsupported conspiracy theories. The Report of the Inquiry will go a long way towards restoring confidence in Cornwall institutions if its critique of the institutional response is both probing and critical while remaining faithful to the evidence.

It is the overall view of CCR that the Community's attraction to the conspiratorial "pedophile ring" concept occurred in large measure because local institutions over the period of time examined at the Inquiry **did** fail to respond appropriately when confronted with both historic and contemporaneous abuse allegations. Ironically, many historic abuse allegations in Cornwall would never have been "historic" cases at all had they been handled properly when they were first brought forward as contemporaneous allegations.

Because institutions typically tried to avoid dealing publically with abuse allegations, preferring instead to keep complaints about their employees "internal", that approach made it easier for the community to believe that they were engaged in active "cover ups". Because some of the alleged perpetrators who were not charged in the 80s or early 90s were either themselves prominent citizens or connected to prominent citizens, that made it easier to believe that law enforcement and the justice system itself was part of the "cover up".

Structure of the CCR Submissions

The first major section of these submissions will address the evidence of institutional response **prior** to the year 1992 when the historic abuse allegations of David Silmser were made. It is our submission that when the responses prior to 1992 are analysed there are patterns that can be seen as to how investigatory institutions responded (such as the CAS and the CPS) and in how institutions failed to work effectively with one another. It is CCR's submission that those patterns constitute systemic flaws in the respective institutional responses. In some cases, the same systemic flaws can be seen within different institutions.

The first section will accordingly outline several of the key narratives that were presented in evidence at the Inquiry, will identify what we contend are the key flaws or weaknesses that those narratives demonstrate and will comment on how the community viewed those events.

The second major section of these submissions will address the events put in motion by David Silmser's complaint of historic abuse by a priest and a probation officer, first made in December, 1992. This narrative encompasses the CPS investigation, the decade-long role played by Perry Dunlop and his wife and brother-in-law, the four "waves" of police investigations culminating in Project Truth, the involvement of the CAS, the Project Truth prosecutions, and the roles of Crown and police in those prosecutions.

In the second section we will also comment on the role of Gary Guzzo, Dick Nadeau, the Projecttruth.com website and the mainstream media as influencers of community opinion.

Finally, CCR will present Recommendations primarily aimed at better accountability and transparency within the institutions.

Overview

CCR will be submitting that the following patterns can be seen in the Phase I evidence:

1. Many if not all of the alleged victims of abuse were economically and socially disadvantaged people.

2. Most of the alleged perpetrators were from the opposite background: some were prominent members of the community (lawyers, probation officers, doctors, priests); others, while not being well-known names in town, were nonetheless educated and employed (school teachers, business owners, and a park caretaker who was also the son of a chief of police).

3. From the mid 1970s (and earlier) throughout the 1980s there was a prevailing community mentality that physical discipline including in some cases extremely harsh physical measures, were acceptable when employed by an adult against a disobedient child or young person. This was particularly believed to be so when the child or young adult was viewed as a "problem" case. There is no doubt but that some of this harsh physical punishment had sexual overtones, particularly when male CAS employees were disciplining female wards of the CAS. Another prevailing belief was that children who complained of harsh treatment or sexual abuse were not to be believed. Ironically, the source of this evidence is the CAS, an institution with the statutory mandate of child protection.

   While the CAS no doubt correctly stresses that "times have changed" and that that mentality is no longer operative, it is the CCR's belief that the effect of the "bad old days" still lingers, in that the victims of this treatment are now adults and parents

themselves. Most of these former wards have never received an acknowledgement that their mistreatment within CAS group and foster homes occurred, let alone an apology or counselling. In this respect, Officer Shawn White's 1995 Crown Brief paints an almost Dickensian picture of harsh physical punishment and sexual abuse by CAS workers and foster parents, practised with seeming impunity in the 1970s.

The CCR places emphasis on this situation for two reasons.

Firstly, **even as late as the mid 1990s**, the CAS did not see that "doing the right thing" by its former wards involved, at a minimum, educating itself about its institutional past, doing outreach to wards who had been improperly treated as youths and offering counselling or some other form of after-care.

The second message we see in these facts is this: for behaviour of this sort to have been the "accepted norm" as recently as 30 years ago in Cornwall, is extremely telling. If the CAS, an institution mandated to protect and care for children, treated children in the manner indicated in Shawn White's Crown Brief, then what values must have prevailed in Cornwall society at large?

It is hard to avoid the notion that, at least in the mid to late 1970s, children in foster care were "second class citizens" such that the CAS could not even intellectually entertain the notion that if they said they were abused they were possibly telling the truth. Twenty years later, the behaviour of CAS foster parents and workers concerning corporal punishment may have changed but the agency's attitude towards its past conduct remained one of denial. Even today the CAS acknowledges that it systematically fails to be able to provide former wards with records or information concerning their wardship,

notwithstanding the recognition that the receipt of such information may be critical to their psychological wellbeing.

In a similar vein, one gets the sense that the Probation Office did not have a particularly high regard for its clients, when it effectively allowed the Barque matter to be swept under the rug in 1982 without police investigation and without any effort to determine who else might have been victimized by Barque.

In both instances, the complainants start with a disadvantage: they are not "good children" from stable families and they are on the wrong side of the law. This affects how the institution responds to them.

4. Focusing briefly on the abuse of girls and young women by men, it is noteworthy that virtually all of the girls who did complain contemporaneously about sexual abuse in CAS care (no matter how credible their complaints might be) were regarded as liars who were sexually promiscuous and whose accounts could therefore not be trusted.

5. The term "pedophilia" has a generally accepted meaning, being a sexual attraction to pre-pubescent children. Intriguingly, very few of the cases with which the Inquiry has been concerned can be labelled pedophilia. In almost no cases were victims younger than puberty. (C51, the child whose mother complained of abuse by the former Police Chief's son was in fact a child in 1985 when the abuse occurred; he is one of the few exceptions.)

Notwithstanding that reality, the media and the community labelled the presumed activity that was occurring a "pedophile ring" and the Dunlops and their supporters labelled what they were doing as being "for the children". No one questioned these labels even though they did not fit the situation.

Attention must be paid to the reality that homophobia was prevalent in Cornwall. While homophobia is generally a destructive social attitude, it appears to CCR that in Cornwall the effect of that attitude reached extreme proportions. Gay or bi-sexual men took pains to keep their orientation secret. There were suicides which are almost certainly connected with the individual being publically identified as being involved in a homosexual form of sexual offense. Indeed the issue was so paramount to the OPP officers involved in Project Truth that they took pains to ensure that the individuals whom they charged in July 1998 would not attempt to commit suicide. (Even so, one of those individuals did make a suicide attempt and was hospitalized.) One of the alleged victims of Jacques Leduc, C-17, received an anonymous note after he had come forward which threatened him with death and called him a "faggot".

Reference: Exhibit 2601, bates page 342

One can only imagine the "chilling effect" that homophobia had on male victims' ability or willingness to disclose abuse. One can only imagine how vulnerable a closeted gay man in Cornwall would be to threats of being "outed" to his employer or within the community at large.

Activities that in a less homophobic community would be seen as benign, in Cornwall became evidence of a pedophile ring. For example, it is hardly abnormal for adult gay men to become friends and to socialize with one another, including vacationing together in Florida. In Cornwall however this activity **alone** became evidence in some people's minds of membership in the "pedophile ring". For this equation of homosexuality with "pedophilia" to occur in the 21st century and for people to reason that associated gay men were guilty by association is a reflection of the depth of the community's homophobia.

While it is recognized that institutional responses evolved over the 30 year time period in question, the CCR considers that the following conclusions are nonetheless valid:

1. There was relatively little contemporaneous reporting made of male on male sexual abuse allegations. As many witnesses have attested, it was and is psychologically difficult for males to make contemporaneous disclosure that they have been abused by another male. It is equally difficult for males to make disclosure of historic abuse by other males.

2. In some instances, allegations that were made contemporaneously (for example, the sexual abuse allegations made by female residents of the Ciezlowicz Foster Home etc.) were summarily dismissed by the authority to whom they were made (the Children's Aid Society, in this case) and were not brought forward to the police for investigation. This would tend to leave the impression that there's little point to making a contemporaneous complaint.

3. The institutions which did respond in some fashion often failed to treat the complaint and the complainant seriously and failed to apply their own "best practice" investigative standards. (CPS's investigation of Antoine's allegations in 1989, for instance, and the 1985 complaint of C51 against Earl Landry Jr.). In more than one instance, complainants had to threaten to go to the media before having their complaint investigated.

4. Institutions which learned of alleged abuse by their employees (either historic or contemporary) did not refer the matter to the police for proper criminal investigation. (Instances of this include the Children's Aid Society in 1976 when allegations of extreme physical abuse were made in relation to the Second Street Group Home, and the Cornwall

Probation and Parole Office in 1982.) Institutions also turned a blind eye to sexual misconduct practised by the employees of other institutions.

A very instructive example relates to Nelson Barque. While the Cornwall Police Services knew that he was inappropriately sexually involved with probationers, it did not see fit to bring this information directly to his employer. His supervisor, Peter Sirrs, was incensed that the CPS knew more than he did concerning the activities of Mr. Barque. By the same token, however, neither Sirrs nor anyone else in authority at the responsible Ministry insisted that the police actually investigate Barque's activities and lay charges if appropriate. Instead, investigation was bypassed in favour of seeking a Crown opinion. The Crown's opinion was that criminal charges were not warranted in part because Mr. Barque had resigned his position as a probation officer: a rather stunning non-sequitur coming from a Crown Attorney. There was no internal review at the Probation and Parole Office to determine if Barque was having sex with other probationers (had there been, there is at least some possibility that Albert Roy would have come to light in 1982, as opposed to being a "historic" abuse case in 1994).

As a result, Barque's sexual involvement with probationers re-surfaced again and again after it first came to light in 1982. Ironically the second set of charges which he faced in the summer of 1998 involved one of the same probationers whom he admitted having had sex with in 1982. These 1998 charges triggered Mr. Barque's suicide.

In this way the Probation Office is very similar to the Diocese: in both cases the response is to "keep it internal" at all costs and to remove the problem employee from his role.

In sum, Barque illustrates how several different law enforcement institutions who must interact with each other responsibly in order to administer justice failed to follow the most basic of their investigatory and analytic processes with catastrophic consequences to both Mr. Barque, the agency's clients and the agency's reputation in the community.

Institutions also failed to interact with one another as required by legislation. The most obvious example is the failure of the CPS to report Silmser's allegations against Father Charles MacDonald to the Children's Aid Society.

Apart from legislated interactions, there were many occasions in which different police forces were involved in related abuse investigations, including during Project Truth. Many opportunities were missed to coordinate their activities and information, which would have benefitted the investigations, the complainants and the resulting cases once they were before the Courts.

These patterns of weakness in the institutional responses prior to 1992 fed the view that institutions were covering up sexual offences by prominent people. When the Silmser story hit the press in 1994 it was not difficult for people to believe that the CPS and the Diocese of Alexandria Cornwall (the "Diocese") failed to investigate his complaint and had taken steps to suppress his allegations.

INSTITUTIONAL RESPONSES PRIOR TO THE COMPLAINT OF DAVID SILMSER

INSTITUTIONAL RESPONSE OF THE CHILDREN'S AID SOCIETY TO ALLEGATIONS OF ABUSE BY CHILD CARE WORKERS AND FOSTER PARENTS

> **"I think they need to, for starters, believe children when they say are they being abused ... I mean, even if they are making it up, at least you've gone through the steps to make sure**"
>
> **Reference:** Evidence of Jeanette Antoine, June 5, 2007, page 65, lines 25 through 66 inclusive

Second Street Group Home

1. In February, 1976 problems arose at the Second Street Group Home in Cornwall, a residence for boys and girls who were wards of the Children's Aid Society ("CAS"). At that time Derry Tenger was in charge of the Group Home. CAS had left it to Tenger to hire staff to operate the Group Home, and had accepted his choices without any review or screening. Tenger hired his own daughter as well as the brother of his close personal friend, Bryan Keough, another CAS childcare worker. Bryan Keough ("Keough") had been asked by Tenger to assist with the Group Home as needed, and he did so while maintaining his other childcare case files at the CAS.

> **Reference**: Evidence of Angelo Towndale, September 4th, 2008, page 43 at lines 11 through 24;
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> Evidence of Angelo Towndale, September 4th, 2008, page 41 at lines 10 through 20;
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> Evidence of Angelo Towndale, September 4th, 2008, page 44 at lines 16 to page 45 line 10.

2. Angelo Towndale ("Towndale") was the acting Executive Director of the CAS for three months commencing in February 1976 and he, together with certain members of the board, dealt with the Second Street Group Home situation.

Reference: Evidence of Angelo Towndale, September 4, 2008, p. 30-30

Exhibit 2209

3. Initially what attracted Mr. Towndale's attention was the fact that all staff of the Group Home dressed head to toe in black and appeared intimidating. That focus quickly shifted to their use of corporal punishment, which was being meted out to the residents of the Second Street Group Home by Tenger and Group Home staff, including Keough.

Reference: Evidence of Angelo Towndale, September 4, 2008, page 46, lines 1through 13

Exhibit 2212

4. Exhibit 2212 outlines in detail how the residents' complaints about their treatment surfaced and were dealt with, commencing on March 5th, 1976. It is a "running commentary" on what members of the CAS board learned from the residents of the Group Home as to how they had been treated, and refers to meetings with Mr. Tenger, Bryan Keough and his brother, Michael Keough, in which they admitted that the children's version of the events was true.

5. Exhibit 2212 discloses that a teenage girl, C75, had been brought to a receiving home by Bryan Keough, whereupon he bodily removed her clothing including her bra, bound her

hands and feet with nylon and left her in a room alone for six hours. At the end of that interval, she was brought to the Second Street Group Home whereupon she was strapped repeatedly, forced to remove her clothing, forced to do housework all night in her bra and panties in front of staff (including male staff) and forced to have a cold shower every hour during that night.

Reference: Exhibit 2212, bates page 1148761

6. Exhibit 2212 further records that bruises were seen on C75's buttocks one week after the strapping. It further records that, in addition to frequent strappings with a belt, residents of the Group Home were subjected to the following punishments:

(a) washing the hardwood floors with a toothbrush;

(b) shovelling large piles of snow from one side of the yard to another and back again, starting at 5:00 o'clock in the morning;

(c) kneeling for hours in a corner on a pile of uncooked beans with their arms above their heads; and

(d) discontinuing a hyperactive child's medication without doctor's orders, and instead imposing physical discipline to control his behaviour.

Reference: Exhibit 2212

7. Tenger, Bryan Keough and his brother Michael Keough, when confronted, responded as follows:

> **"They felt that their actions were justified and in their opinions, the behaviour of the children had greatly improved at home and at school. When questioned by the Committee, the staff verified that the statements of the children were true."**
>
> **Reference**: Exhibit 2212, bates page 1148763

8. Towndale testified that the CAS board was quite divided on the issue of corporal punishment, with many board members supporting its use in such settings as the Second Street Group Home. Two board members supported Mr. Towndale's view, which was that corporal punishment was not appropriate.

> **Reference**: Evidence of Angelo Towndale, September 4th, 2008, page 61, line 12 to page 62, line 2.

9. Towndale was absolutely clear in his evidence that, notwithstanding the change in standards over the past 30 years pertaining to corporal punishment, the conduct of the Second Street Group Home staff was **"very inappropriate"** by the standards of 1976. Clearly Towndale perceived that the treatment of the children could not be justified even under the label "corporal punishment".

> **Reference**: Evidence of Angelo Towndale, September 4th, 2008, page 72

10. Mr. Towndale was also quite clear in his evidence that the treatment of C75 went beyond corporal punishment and contained a component of sexual humiliation. He acknowledged that her treatment was appalling by the standards of the day.

> **Reference**: Evidence of Angelo Towndale, September 8, 2008, p.36-40

11. Mr. Towndale testified that in his discussion in early 1976 with Bryan Keough about how the children had been treated "**I said to him 'I don't treat my dog like those kids.' Those were my words to him**."

Reference: Evidence of Angelo Towndale, September 4th, 2008, page 92, lines 10 through 12

12. The CAS institutional response in March 1976 was to remove Tenger from his position running the Group Home, but to offer to return him to his former job as a Children's Aid Society childcare worker. He declined that job and left the agency, as did all of the other Group Home staff whom he had hired, with the sole exception of Bryan Keough, who remained a CAS childcare worker.

13. Towndale decided that Keough should be given a second chance. Keough was not fired, nor was there any thought given to reporting the occurrences to the police: "**It was not the practice at the time. I don't remember any case reporting to the police at the time**."

Reference: Evidence of Angelo Towndale, September 4th, 2008, page 93, lines 11 through 13

14. Mr. Towndale testified that it was also his understanding that allegations of abuse by wards were generally not reported to police.

Reference: Evidence of Angelo Towndale, September 4th, 2008, page 98, lines 14 through 23

15. Very shortly after her arrival at the Second Street Group Home, C75 was required to appear in court and her file documents suggest that she intended to tell the presiding judge about her treatment at the Group Home and at the receiving home. Towndale attended in Court on that day to speak to C75's father. At that court attendance, her wardship was terminated.

Reference: Exhibit 2212, bates page 1148764

16. There is no indication that the Court was apprised of the treatment received by C75 in either the Second Street Group Home or the CAS-operated receiving home.

17. Mr. Tom O'Brien returned from sick leave to resume his duties as Executive Director in or about April, 1976. He confirmed Towndale's evidence that when children in care complained of physical or sexual abuse, he would speak to the child, and speak to either the worker or the foster parent about whom the complaint was made. If it appeared that the complaint could be possibly true, "**Then the child was simply moved out of the home. CAS was under no obligation to report to police, (by law), the Act**."

Reference: Exhibit 2214, bates ending page 7176083

Evidence of Angelo Towndale, September 4th, 2008, page 97, lines 18 though to page 98, lines 20

18. Mr. Towndale also confirmed the truth of the following statement made by the executive director, Mr. O'Brien:

> "**O'Brien states that in the 1970s it was prevalent to take the word of worker or the foster parent. They just**

> **didn't report allegations to police and he doesn't know why**."
>
> **Reference**: Exhibit 2214, bates pages 7176083 to 7176084

19. In any event, staff were assigned to run the Second Street Group Home after the resignation of Tenger and his staff; some children were moved out of the Home and others were moved in. There is no notation in any of the residents' CAS files about their mistreatment at the Second Street Group Home. It does not appear that any follow-up work or counselling was done with the children who had been mistreated. The agency's solution to the problem was to accept the resignations of the group home staff, but not to fire Bryan Keough.

20. The following children were residents of the Home in early 1976: C75, C84, C85, C87, C86, C83, Bernard Leany, Jeanette Antoine (Lapointe)

21. No further steps were taken by the CAS in relation to the Group Home incidents until 1989 when one of the residents, Jeanette Antoine, referred to the abuse in conversation with CAS childcare workers Greg Bell and Suzy Robinson. These events will be described in paragraphs 36 and following.

Allegations of Abuse in Foster Homes

22. The CAS also received allegations of sexual abuse of girls in foster care by their foster fathers. One representative example will be outlined in these submissions, that being the Cieslewiez foster home.

23. The Cieslewiez foster home commenced operating in 1973. By 1976, Mrs. Cieslewiez had discovered that her husband had apparently engaged in sexual behaviour with a resident, C78. C78 was described as a severely retarded adolescent girl at the time of the occurrence.

Reference: Exhibit 2337, bates page 1072415

24. The situation resulted in Mrs. Cieslewiez removing the two foster children and her own natural daughter from the home for a period of time. The CAS learned at this time that "**Mrs. Cieslewiez had refused her husband sexual intercourse for the past year and a half and that she 'felt that such a decision in their marriage could be part of the cause for Mr. Cieslewiez's action' ...**".

Reference: Exhibit 2227, bates page 1072406

25. The ultimate conclusion of the CAS in relation to this incident was that

> "**It is possible that the above may have occurred, however, if so, I doubt it will ever again. ... Because of the tremendous asset this home has been to our agency in the past, I believe the man should be given the benefit of the doubt. I therefore recommend that this home remains open."**
>
> **Reference**: Exhibit 2227, bates page 1072407.

26. It appears from the above exhibit that a prior complaint of similar conduct had been made earlier by a resident known as C77. The CAS exhibit reporting on her complaint states that "**The complaint was not investigated because C77 was known to lie frequently**."

Reference: Exhibit 2227 bates page 1072407

27. Following the C78 complaint, she was removed from the home. The earlier complainant, C77, had also been removed from the home within less than a month of her arrival. Two years after the C78 incident in September of 1978, a 15 year old ward of the Province of Quebec, C79, was residing in the home and complained to her worker that Mr. Cieslewiez entered her room at night on two occasions and on the second occasion,

> **"He indicated that he wanted to have sexual intercourse with her. She refused. She then practised oral sex on him for a short time. He masturbated and ejaculated on her abdomen. She wiped the semen from her abdomen with the sleeve of her blouse which was beside the bed. The workers at the interview did observe that a certain substance had apparently dried on her sleeve. C79 said that she cooperated because she feared that Mr. C would hurt her physically if she didn't. ... C79's allegations were given some consideration but in view of her bad reputation, her allegations were not investigated."**
>
> **Reference**: Exhibit 2227, bates page 1072407

28. In the face of all of the above, the CAS employee who wrote a review of the foster home on October 5th, 1978, following the last incident, made the following comments:

> **"I realize we have had many doubts and questions about this home in the past. Nevertheless many of the kids placed here were very promiscuous, disturbed or behavioural problems."**
>
> **Reference:** Exhibit 2227, bates page 1072407

29. At some point following the C79 incident, another foster child who was mentally challenged, C76, confided to Bryan Keough that Mr. Cieslewiez

> **"had been involved with her sexually (not sexual intercourse) for some time." ... The following day Mr. Cieslewiez called Mr. Keough and asked for C76's removal. She was removed the following day."**
>
> **Reference**: Exhibit 2227, bates page 1072408

30. Coincidentally, Mr. and Mrs. Cieslewiez tendered their resignation as foster parents and operators of a receiving home on or about October 16th, 1978 (Exhibit 2421) effective November 18th, 1978.

31. They received a letter from Thomas O'Brien, the executive director, dated October 25th, 1978 which made no reference whatsoever to the alleged sexual abuse by Mr. Cieslewiez nor to the apparent decision of the CAS to close the Cieslewiez home. Instead it was a laudatory letter and concluded with the following language:

> **"Upon your resignation as receiving home parents, I wish to offer my sincerest thanks for the help you extended to us and for the capacity and tenderness you exhibited towards our children."**
>
> **Reference**: Exhibit 2360

32. The CAS did not report any of the allegations stemming from the Cieslewiez foster home to the police.

33. On October 31st, 1978 Mr. O'Brien reported to the Director of Child Welfare at the Child Welfare branch that "**I have contacted the Crown Attorney on this matter and will be meeting with him today**".

> **Reference**: Exhibit 2337, bates page 1072415

34. While there is no written documentation to support what was disclosed to the Crown Attorney, it appears that the Crown's conclusion was that "**insufficient evidence**" existed in relation to the girls' allegations against Mr. Cieslewiez. This is hardly a surprising conclusion: since there had been no actual investigation by any agency of the girls' reports of abuse, there was no prospect of gathering any evidence.

35. On that point, Mr. Towndale in his testimony acknowledged that, even in the year 1976 the fact that physical evidence may well have existed in relation to C79's complaint (being the semen-stained clothing) "**should have been flagged or looked at more seriously**".

Reference: Evidence of Towndale, September 5th, 2008, page 45, lines 1 through 7

The Return of Ms. Antoine's Allegations Concerning the Second Street Group Home: The Events of 1989 and 1990

36. A reliable source of information concerning these events is Exhibit 1505, notes prepared by the then-executive director of the CAS, Tom O'Brien, between August 21st, 1989 and February 21st, 1990.

37. Prior to August 21st, 1989, CAS workers had been dealing with Ms. Antoine as a result of a complaint made by her nine-year old daughter. In the course of those discussions, Jeanette Antoine referred to Second Street Group Home events described above and other matters which occurred during her Crown wardship.

38. Ms. Antoine had prepared and signed a statement containing her allegations.

Reference: Exhibit 1505, bates page 7177232;
Exhibit 0514

39. Upon receiving this information, Mr. O'Brien's first action was to contact Antoine and offer a meeting: "**I would be willing to discuss matters with her if she thought such discussion would be of any help**".

Reference: Exhibit 1505 bates page 7177232

40. Within her conversation with Tom O'Brien, Antoine spoke about bruises the children had received, sexual intercourse and sexual assaults. She also referred to her dislike of Bryan Keough and questioned why he had not been terminated together with the rest of the Group Home staff.

41. By September 3rd, 1989, Mr. O'Brien had spoken with Angelo Towndale and Bill Carriere and they had concluded that, amongst other things, the CAS should ask for a meeting with the City police and the Crown Attorney to get their input on action.

Reference: Exhibit 1505, bates page 7177233

42. On September 25th, 1989 a meeting occurred between Mr. O'Brien of CAS, Don Johnson (the then Crown Attorney), CPS Deputy Chief of Police Joe St. Denis, and CPS Inspector Trew.

43. The outcome of that meeting was a decision that O'Brien would send a registered letter to Antoine again inviting her to meet with him and that if she took no further steps "**There need to be nothing further done on our part**".

Reference: Exhibit 1505, bates page 7177234

44. It bears noting that the first response of both the Crown, the CPS and the CAS was to return the ball to Ms. Antoine's court and do nothing further unless she insisted upon it.

45. As a result of further meetings between himself and certain social workers as well as between himself and Messrs. Carriere and Towndale, O'Brien then decided to take a different course of action.

46. On September 29th, 1989, the decision was made to "**very quickly contact the police again**", principally

> **"because of the information contained in Susie Robinson's notes which suggested inappropriate sexual behaviour by our staff while the Group Home was in operation".**
>
> **Reference**: Exhibit 1505, bates page 7177234

47. On October 2nd, 1989, O'Brien met again with Deputy Chief Joe St. Denis and Staff Sergeant Wells of the CPS and provided them with the written documentation in possession of the CAS. He was advised that "**if it is to be investigated it will then probably be given to Detective Malloy**". It appears from Exhibit 1505 that the inappropriate sexual behaviour allegations directed at Group Home staff were stressed with the police in this meeting.

Reference: Exhibit 1505, bates page 7177235

48. It should be noted that the CAS witnesses at the Inquiry said they had no knowledge of sexual intercourse occurring between group home staff and wards in 1976, when the focus was on physical abuse. Towndale testified it wasn't until he saw the investigative work of Constable White that he learned of sexual misconduct by CAS staff with the wards.

Reference: Evidence of Angelo Towndale, September 8, 2008, p.32, lines 1-14

CPS's Response to Antoine's 1989 Allegations of Abuse

49. Constable Malloy had also been involved in the prior dealings with Ms. Antoine concerning her daughter. At the end of that investigation, the CAS worker Greg Bell told Ms. Antoine to disclose to Constable Malloy "**what she had been telling him about her history of foster homes**".

Reference: Evidence of Constable Malloy, April 22, 2008, page 248, lines 2 through 6

50. There is no evidence that Malloy at this time responded in any fashion to Ms. Antoine's allegations.

51. Malloy does acknowledge that he was assigned this case shortly after September 9th, 1989 by his superior officers.

Reference: Evidence of Kevin Malloy, April 22, 2008, page 252, lines 2 through 16

52. Although his evidence is somewhat unclear on the point, ultimately Malloy was in contact with Ms. Antoine by telephone, and found her to be uncooperative.

> **"I don't know how many times I called her just to try to get her to come into the office. If memory serves, she just showed up one day with a handwritten statement."**
>
> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 250, lines 1 through 5

53. Malloy claimed in his evidence that "**She wasn't interested in proceeding at that time. I told her that when she wanted to proceed to come in and see me and I am not sure when that was though**".

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 251, lines 10 through 13

54. As he acknowledged in his interview with Staff Sergeant Derochie approximately four years later, Malloy felt that Ms. Antoine was not cooperative: "**I don't need to go running around after you**" was his view.

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 253, lines 10 to 16
>
> Exhibit 1498, bates page 7175524

55. The Malloy investigation was completely inactive until February 5th, 1990, at which point Ms. Antoine delivered a written statement to him at the station. Malloy was surprised because he had had no contact with her between the fall of 1989 and February, 1990, and she arrived at the station with her statement without having pre-arranged the visit.

Reference: Exhibit 505, Antoine statement, January 21, 1990

56. On February 7th, 1990, two days after receipt of Ms. Antoine's statement, Exhibit 1505 reveals that Kevin Malloy advised Tom O'Brien by telephone that "**they have not sufficient evidence on which the police could proceed, and that by telephone the Crown Attorney had agreed with the police decision**".

Reference: Exhibit 1505, bates page 7177237

57. Short of passively receiving Ms. Antoine's written statement on February 5th, 1990, there is no evidence that Malloy had done anything to investigate her allegations. Between February 5th and February 7th, 1990, there was no investigation undertaken. Accordingly when he told the Executive Director of the CAS on February 7, 1990 that there was "**not enough evidence**" he did so based on no investigation of any sort. He testified at the Inquiry that he had not received Ms. Antoine's initial written statement (Exhibit 504) nor the written CAS material which O'Brien had given to St. Denis and Wells on October 2nd, 1989.

Reference: Evidence of Kevin Malloy, April 23, 2008, p.96-99

58. When Staff Sergeant Derochie reviewed the 1989/1990 Malloy investigation in 1994, he concluded (and Constable Malloy agreed) that Malloy had been deficient in the following ways:

> "**1. There was no record of Ms. Antoine's complaint ever entered on the police OMPPAC system, as required;**
>
> **2. There was inadequate note-keeping by Malloy;**
>
> **3. No thorough investigation had occurred;**
>
> **4. Malloy did not appear to have been actively supervised by any senior officer concerning this allegation, notwithstanding that the allegation was serious and was made against an existing CAS employee;**
>
> **5. There was a failure by Malloy and his superiors to recognize the seriousness of Ms. Antoine's allegations.**"
>
> **Reference**: Exhibit 1498, bates page 7175529

59. The only disciplinary action taken as a result of these deficiencies was a one-half hour counselling session which Staff Sergeant Derochie conducted with Officer Malloy.

> **Reference**: Exhibit 1498, bates page 7175536

Donald Johnson and the Role of the Crown

60. After the October 3rd, 1989 meeting at which Mr. O'Brien requested a police investigation, he spoke again with Crown Attorney Don Johnson and advised him that he had gone back to the police. He offered Johnson a copy of the written material pertaining to the Antoine allegations (both the physical and sexual abuse allegations) but Johnson declined to receive that information from him.

> **Reference**: Exhibit 1505, bates page 7177235

61. There was no direct evidence from Don Johnson to support a finding that he communicated with Officer Malloy between February 5th, 1990 (CPS' receipt of the Antoine statement) and February 7th, 1990 (Malloy's advice to O'Brien that there was insufficient evidence to lay any charges and that the Crown had verbally concurred).

62. Johnson did write to Norm Douglas, the Regional Director of Crown Attorneys for the Eastern Region on April 4th, 1990 in relation to the Antoine allegations.

Reference: Exhibit 1499

63. In that correspondence, Johnson acknowledged that "**there appears to be some factual basis for further investigation ...**" but an absence of specific dates, names and addresses of witnesses.

64. Mr. Johnson's evidence is that he wrote Exhibit 1499 so as to inform the Ministry about the Antoine matter if further complaints and allegations were made in connection with it.

Reference: Evidence of Don Johnson, January 6, 2009, page 166

65. The thrust of his evidence was that Exhibit 1499 was "head's up" to the Ministry of the Attorney General in the event that criminal charges would be forthcoming.

66. He did so because he thought that the situation "**could be a hot topic**".

Reference: Evidence of Don Johnson, January 6, 2009, page 167

67. He concludes his letter to Mr. Douglas by stating: "**I have not brought up the matter of laying charges with the Cornwall Police as names and dates are not available**."

Reference: Exhibit 1499

68. It must be noted that this conflicts with the information recorded in Exhibit 1505 that Malloy told O'Brien that he (Malloy) had consulted with Mr. Johnson on this very matter. It is respectfully submitted that the more credible the version is the one which Don Johnson reflected in his correspondence to his direct superior, Mr. Douglas, namely that he had not brought up the matter of charges with the Cornwall Police.

69. It is also interesting to note Crown Johnson's perspective on his relationship with the police generally:

> **"I would never tell a police officer to lay charges ... because I would not direct anybody to lay a charge against anybody, because that's not my job. My job is to instruct on evidence and procedure. If you have enough evidence, this is what you can do. That's how it works."**
>
> **Reference**: Evidence of Don Johnson, January 6, 2009, page 170, lines 14 through 24

70. As he reiterated,

> **"... my instructions to police would always be the same: 'If you've given me this information. If you have now reasonable and probable grounds to lay a charge, there is a justice of the peace; you go out and swear the information. But I am not going to tell you to lay a charge'."**
>
> **Reference**: Evidence of Don Johnson, January 6, 2009, page 171

71. Exhibit 1500 is Regional Crown Norman Douglas' response to Don Johnson's correspondence to him of April 4th, 1990 (Exhibit 1499).

72. Johnson was told:

> **"I would like you make sure the police begin an investigation if they already have not done so. Perhaps Constable Malloy can dig a little deeper to secure specifics."**
>
> **Reference**: Exhibit 1500

73. Johnson denies receipt of Exhibit 1500. He acknowledges that no steps were ever taken by him to follow up on his letter to Douglas, at Exhibit 1499. He never communicated with Malloy that the CPS should be "**digging deeper**" in relation to Antoine's allegations.

74. It is a reasonable inference from these exhibits and Malloy's evidence that he did not in fact investigate the allegations in Antoine's statement. The fact that two senior officers at the inception of the investigation received written materials from the CAS that were not passed on to the investigator suggests that no one in authority at the CPS took this investigation seriously and that Malloy on February 7, 1990 was simply telling O'Brian what he wanted to hear.

Antoine Returns to the CAS and CPS

75. Following her dealings with the Cornwall Police Service in 1990, Ms. Antoine turned to the CAS requesting disclosure of her case file while she was a CAS ward. This occurred in or about October, 1991.

> **Reference:** Evidence of William Carrière, transcript of September 10th, 2008, 2008, page 134 to 135;
>
> Exhibit No. 2307

76. Also in October, 1991, Jeannette Antoine met with Richard Abell, the then Executive Director of the CAS. She told him that she was dissatisfied with the progress of her complaint against CAS workers and that the police had discouraged her from pursuing it.

77. In a meeting of October 25th, 1991, Abell's message to Antoine was that she should go to the police.

> **Reference:** Exhibit 1498, page 7

78. In July, 1992 Heidi Sebalj met Ms. Antoine while Constable Sebalj was investigating an unrelated complaint. At that time Jeanette Antoine took the opportunity to mention to Sebalj her alleged abuse as a CAS ward.

79. In November, 1993, in circumstances which remain obscure notwithstanding the testimony at the Inquiry, Sebalj conducted an interview of Ms. Antoine in the presence of Geraldine Fitzpatrick, a then off-duty CAS worker. There was a lengthy interview with Ms. Fitzpatrick asking the majority of the questions.

80. Although Constable Shawn White was assigned to the Antoine matter shortly thereafter (in January of 1994), his testimony was that he had no information about the Sebalj/Fitzpatrick interview of Ms. Antoine, and did not know why it had occurred. Although the interview was taped, there was no transcript of the content of the interview. White was not aware of the content of that interview.

Reference: Evidence of Shawn White, October 20, 2008, pages 72 to 74

81. Ms. Fitzpatrick's evidence is suggestive of some concerns or suspicions on the part of Sebalj that leads her (Sebalj) to act secretively in the conduct of this interview. The Overview of Documentary Evidence tendered on behalf of Officer Sebalj does not address her motivation or reasoning in conducting this interview. Staff Sergeant Derochie speculates that Officer Sebalj may have been acting in a "tit-for-tat" manner with respect to the CAS. He speculates that she thought that the CAS had been critical of her investigation of the David Silmser complaint, and was possibly getting back at them for their own failure to act upon Ms. Antoine's complaints.

Ms. Antoine Goes to the Media: The CPS Re-investigation of 1994

82. On January 10th, 1994, the CPS received information that the media was looking into a report of police cover-up of a child abuse case. These allegations came on the heels of extensive media coverage of the Silmser investigation where again, "**police were accused of working with the Roman Catholic Diocese to cover-up an allegation of sexual misconduct by one of its priests**".

Reference: Exhibit 1286, bates page 7175640, Derochie's report to Acting Chief Carl Johnson on the media allegation of misconduct by the CPS

83. Having first examined the 1989/1990 investigation of Kevin Malloy and having drawn the conclusions listed in paragraph 58 above, Staff Sergeant Derochie notes:

> **"If one wanted to make a case for a cover-up, certainly there are more than enough elements in this incident to work with. However it is the writer's opinion that there was no such cover-up in this instance. Mistakes were made, case management and supervision was non-existing and there may even have been a degree of incompetence involved, but not a cover-up".**
>
> **Reference**: Exhibit 1286, bates page 7175651.

84. As he did in subsequent similar reviews, Staff Sergeant Derochie rejected the cover-up hypothesis for two principal reasons:

(a) he sees no motive on the part of Kevin Malloy to cover up wrongdoing by the CAS; and

(b) for a cover-up to have existed, one would have to posit a conspiracy amongst several officers of the Service, including the Chief of Police and Deputy Chief, senior management of the CAS, the CAS board of directors, the local Crown, the Regional Crown and officials within the Ministry of Community and Social Services. As he notes, "**The writer is certain that this had not occurred**", which is hardly surprising given the scope of the "conspiracy" as he has framed it.

Reference: Exhibit 1286, bates page 7175651

85. With the greatest of respect to Staff Sergeant Derochie who in many ways is an admirable officer, it is CCR's view that this reasoning is flawed: Derochie has created a straw man which is easily knocked down. Firstly, there was no need for Malloy to act concertedly with many other players in order to "cover up" Ms. Antoine's allegation. Simply by ignoring it and not investigating it, he achieved an effective "cover-up" of her allegations. By not posting it on OMPPAC (as of course also occurred in the Silmser incident) he brought about a situation in which no other CPS officer would be aware of her allegation against a CAS employee and none of his supervisors would be reminded of it so as to follow up with him or supervise him in connection with the investigation. To play "conspiracy theorists' advocate", none of the senior CPS officers needed to be involved in a concerted cover-up because (apart from Trew, Wells and St. Denis) they had no knowledge of the Antoine allegations in the first place.

86. In very simple terms, the Antoine allegation was indeed "covered up" because Malloy simply did not do his job. While it was recognized by a senior level within the Ministry of Attorney General that more investigation was required, the local Crown seemingly was never aware of this conclusion, never came to this conclusion independently or of his own initiative and never suggested further investigation to Malloy. While Crown Johnson might be right that it is "**not his job**" to tell the police to lay charges, there has been ample evidence from other Crown Attorneys [1]at the Inquiry that it is, indeed, part of their job to advise an officer if a reasonable investigation has not yet occurred and to suggest other investigatory steps. Clearly Crown Johnson did not initiate any such discussion with Malloy or, if he did, Malloy did not undertake any further steps.

1 Evidence of Lorne McConnery, for example.

87. There is no need to explain this situation by positing a vast inter-institutional conspiracy which is easily refuted. One need simply appreciate that, even though Staff Sergeant Derochie understood in 1994 the seriousness of Antoine's allegations, Malloy and Crown Johnson seem not to have done so four years prior. Malloy appears to have found Antoine somewhat distasteful to deal with principally because he found her uncooperative. He simply did not believe what she had to say, and rather than investigating her allegations further, he essentially wrote them off.

88. For its part, the CAS' internal problem was solved when Keough chose to voluntarily leave the agency and discontinue his adoption plans in early 1990.

Reference: Exhibit 1505, bates page 7177237

89. CPS failed to recognize that, setting aside Ms. Antoine's personal allegations against Bryan Keough, she had significant matters to report about the sexual abuse of her sister and fellow female residents of the Group Home, which had not been heard or considered in 1976. CAS clearly recognized that these latter allegations should be investigated, but CPS did not do so. It appears that neither agency considered conducting a joint investigation of the sexual abuse allegations against female wards, notwithstanding that the CAS (having placement and other records) was in a unique position to assist in a joint investigation and notwithstanding that the two agencies reputed a good working relationship on joint investigations.

The 1994 Investigation of Shawn White of the Cornwall Police Service

90. As a result of Ms. Antoine's going public with her allegation of abuse, she met with Staff Sergeant Derochie and Constable Shawn White was assigned to investigate her physical abuse allegation at the Second Street Group Home.

> **Reference**: Evidence of Shawn White, October 20th, 2008, page 13, lines 23 to 24

91. In the course of investigating Ms. Antoine's allegations, Shawn White interviewed many former residents of the Second Street Group Home and residents of foster homes.

92. Three adult women who had been residents of the Second Street Group Home alleged sexual abuse by a Group Home worker named John Primeau.

> **Reference**: Exhibit 2214, the investigatory notes of Shawn White at bates pages 5924, 6028 and 6086

93. In addition, White came across an individual living in Vancouver (C86) who alleged abuse by a Group Home worker at the Laurencrest Group Home in Cornwall.

94. With respect to that particular allegation, White spoke with Kevin Malloy who informed him that he knew the suspect and that it was difficult to believe that that individual would be involved in such acts.

> **Reference**: Evidence of Shawn White, October 20th, 2008, page 45, lines 2 though 10

95. Officer White testified that he believed the Vancouver complainant's information was lacking in detail and required further work before proceedings could be contemplated. He denied being influenced by Malloy's opinion of the suspect.

> **Reference**: Evidence of Shawn White, October 20th, 2008, page 46, lines 16 though 24

96. He was tasked with the investigation on January 18th, 1994; Officer White met with the Crown Attorney in June of that year.

97. He gave the following evidence when questioned as to why he had approached the Crown. He testified that it was a matter of police policy in 1994 that he required a reasonable prospect of conviction before laying a charge. He testified that:

> **"... the police force were not independent of the Crown Attorney's office ... and it was understood that if there was no – that the police had a situation where it was unlikely that the Crown would be willing to prosecute, is that it was important that the police consult with the Crown before, perhaps, laying charges in those types of circumstances and that was policy and that was understood back then."**
>
> **Reference**: Evidence of Shawn White, October 20th, pages 54 to 55

98. Officer White testified that he advised Senior Regional Crown Peter Griffiths, as he then was, of the three instances of sexual abuse alleged against Group Home worker John Primeau.

> **Reference**: Evidence of Shawn White, October 20th, page 61, lines 9 through 15

99. Inspector Trew of the Cornwall Police force was aware of these sexual abuse allegations, having been advised of same by Officer White. He seemed to have no recollection of having been made previously aware of these allegations in 1989.

100. At the conclusion of his investigation, White acknowledged that he had developed the following evidence, none of which depended upon or related to Ms. Antoine:

(a) there were three complainants from the Second Street Group Home in addition to Ms. Antoine, and they alleged sexual abuse by John Primeau;

(b) there were several complainants from the Cumberland Foster Home;

(c) there were several complaints about Laurencrest (including that of the Vancouver complainant C86);

(d) there was a complaint by C14 about physical abuse at the Barber foster home.

101. In all, Constable White acknowledged that there were six different Group Homes or foster homes that were the subject of abuse complaints, in some instances, multiple complaints.

Reference: Evidence of Shawn White, October 20th, 2008, page 60, lines 7 through 10

102. Constable White's consultation with Crown Griffiths resulted in a letter dated October 24th, 1994 written by the Regional Crown Griffiths.

Reference: Exhibit 1339

103. In Exhibit 1339, Crown Griffiths express the following opinion, in relation to the Antoine allegations, "**It is my opinion that you do not have reasonable and probable grounds for the laying of any charges arising out of this complaint**".

> **Reference**: Evidence of Mr. Justice Griffiths, January 12, 2009, page 158, lines 6 through 17
>
> Exhibit 1339, bates page 7175883

104. As Mr. Justice Griffiths testified, "That was my opinion and yes, the officer agreed". This appears to "reverse" the roles of Crown and police when it comes to determining RPG.

> **Reference**: Evidence of Justice Griffiths, January 12, 2009, page 158, lines 21 through 22

105. As to the non-Antoine allegations, Crown Griffiths was operating on the understanding that the three alleged victims of John Primeau were not prepared to come forward to make a formal complaint. It was Officer White who provided that information to then-Crown Griffiths.

> **"The frailty of some of the victims who are adamant about not proceeding further, that would have come from the officer and the fact that people didn't wish to just generally proceed further would have come from the officer."**
>
> **Reference**: Evidence of Mr. Justice Griffiths, January 12, 2009, page 161, lines 23 to page 162 line 2

106. He also rejected the laying of charges or the information of these people because he found their memories to be “severely impaired”.

Reference: Exhibit 1339

107. Within his opinion letter, Crown Griffiths made the following statement:

> **“I have no doubt that the childhood and teenage years that Ms. Antoine and her colleagues of that era lived through were lonely horrible times. I have no doubt that incalculable psychological damage was inflicted on many of the witnesses that you interviewed because of the circumstances of their upbringings.”**
>
> **Reference**: Exhibit 1339, bates page 7175884

108. Notwithstanding that sympathetic comment, Crown Griffiths took no step to address any concerns arising from White’s investigation to the local Children’s Aid Society. By that point, White had uncovered evidence suggesting a systemic failure with respect to how wards had been treated.

109. As he testified: “**I viewed this, I guess, in retrospect, too narrowly. I was being consulted about a specific issue. I thought I was responding to that issue in returning the materials to Officer White**.”

Reference: Evidence of Justice Griffiths, January 12, 2009, pages 163, lines 19 through 22

It is respectfully submitted that the following institutional weaknesses are demonstrated in the above narrative:

The CAS

110. **Once children were in the care of CAS, the CAS developed an institutional "blindness" to any complaints of sexual or physical mistreatment by the wards.**

111. **When complaints were received, the institutional "first response" was to disbelieve the complainant.**

112. **For sexual abuse complaints by girls that on the surface appeared to be credible, the institutional response was to move the girl to another foster placement. For children that had no stable family and were dependent upon the CAS for their complete care, being moved from one foster placement to another would be traumatic and disruptive. This alone might create a disincentive for children to make complaints, because no matter how bad they felt things were in their present placement, what awaited them in a future placement was unknown. Children need stability and continuity in their lives and adults provide it. In executing its child protection mandate, the CAS clearly adheres to this concept and removes children from unstable and abusive families based in part upon the child's own reports. It is ironic that once those children are in its care, the CAS can no longer accept that they may be telling the truth when they allege mistreatment by foster parents or group home workers.**

113. **The evidence suggest that the CAS was in desperate need of foster parents and therefore could not afford to close down foster homes based on allegations of abuse by the residents. This is most clearly seen in the Cieslewiez foster home investigation document. Putting the most benign interpretation forward, perhaps**

this critical need caused the CAS to resort to "wishful thinking" about its foster parents.

114. **Given the evidence from senior CAS officials that the working relationship between the CAS and the CPS was a good one , it is all the more difficult to understand why the CAS never went to the police or suggested that its wards do so when complaints were made of abuse. Instead of involving the police the CAS kept matters strictly internal and went directly to the Crown, at the direction of its responsible ministry. The Crown, of course, is not the institution which lays criminal charges.**

115. **It is difficult to understand the purpose of going to the Crown directly and bypassing the police, since there would be no investigation upon which criminal charges could possibly be laid. This approach also suggests either a concerted effort to avoid charges or a complete lack of comprehension on the part of the CAS Executive Director as to the basic functioning of law enforcement and the judicial system. From a "man on the street" perspective, it is difficult to explain how a respected community leader, like the head of the CAS, would be unaware that the police investigate crime and that the police lay charges based on the fruits of their investigation. This is a failure of such magnitude that suspicious minds could see it as evidence of institutional collusion to suppress criminal charges against persons in authority (foster parents and childcare workers).**

116. **As many witnesses have testified, historic abuse is more difficult to prove because the passage of time colours or erases memory and because the fact that the abuse was not reported contemporaneously raises questions about the motivation and integrity of the complainant.**

117. **It is admitted that CAS's "culture" was to disbelieve children in care when they did complain, thereby effectively discouraging children from reporting contemporaneous abuse.**

118. **The result was the Second Street Group Home, where the "tip of the iceberg" was seen by CAS senior management and board in 1976, but the sexual misconduct in the Home was not disclosed by the children at that time. It was only some 20 years in response to police queries that the now adult former wards disclose the sexual misconduct.**

119. **The CAS' institutional bias against believing their wards had far reaching consequences. It created an environment in which sexual abuse of young girls could occur with impunity.**

In terms of the institutional response of the CPS, the following weaknesses are evident:

120. **It took Antoine going to the media in 1994 to get a proper police investigation done.**

121. **Investigating officers (here, Malloy) quickly became frustrated with alleged victims who are unable to respond to them in the expected manner. There is the sense that historic abuse victims are of lesser importance than a person complaining about a current crime, and when the historic abuse victim has difficulty communicating or following through with the officer, he or she is quickly is blamed for such and the investigation is downgraded in the officer's mind. While this is perhaps understandable as human nature, for an abuse investigator to exhibit this tendency is concerning and will likely impair the investigation**.

122. **Antoine was allowed to essentially write her own statement. Malloy was not even aware that she had given a prior written statement. This is poor police practice, as without some form of guidance and assistance by the officer, the victim is highly likely to include erroneous or irrelevant material in the statement, or to create a document that is not internally consistent. This approach to statement taking may demonstrate a lack of respect on the part of Malloy for his alleged victim, Ms. Antoine or simply a lack of understanding that statements procured in this fashion do not allow the alleged victim to put his or her best foot forward with respect to their evidence.**

123. **The Antoine matter was not entered on OMPPAC, as it ought to have been, and hence no senior officer was reminded to monitor or supervise this investigation.**

124. **On a related point, Antoine's allegation was in fact extremely serious as it related to a present employee of a child welfare agency. For Malloy to have treated this serious allegation as superficially as he did, and for the senior officers who initially had knowledge of it (Wells, Trew, the Deputy Chief) to have done no supervision or follow-up with it, tends to suggest that, for all their lip service to the contrary, these allegations were not regarded seriously by CPS in 1989-1990.**

125. **From a community point of view, if the CPS was dealing with a relatively trivial crime such as bicycle theft, it is perhaps understandable how an investigation might fall through the cracks. The difficulty is that the Antoine investigation was not a bicycle theft and yet it completely fell through the cracks.**

CPS and Crown Interaction

126. **Although Malloy only receives Antoine's home-made handwritten statement on February 5th, by February 7th, 1990, he is telling the Executive Director of the CAS the Crown has verbally concurred in his view that there is not enough evidence to lay charges. Malloy has invoked the "talisman" of the Crown in answering to the CAS, however, the fact remains that there is "not enough evidence" because no investigation had occurred. The step which the local Crown did take in relation to Antoine suggested that the local Crown also wanted the concurrence of a "higher up" to terminate the Antoine matter without charges.**

127. **In any event, the CPS/Crown interaction demonstrates how the former used the latter to justify what was plainly a police failure to investigate.**

128. **Although Crown Johnson is right that it is not the Crown's role to tell the police to charge, the Crown does have further responsibilities.**

129. **As we have heard from other Crowns (Lorne McConnery for instance), when the police lacked RPG to lay a charge, an appropriate form of Crown review is to consider the scope of the investigation which has occurred, to assess whether the police have engaged in a reasonably thorough investigation and, if not, to direct them to do further investigation before concluding the case. This indeed is what Regional Crown Norman Douglas required to be done in his letter of April 9th, 1990. Crown Johnson testified that he never received that letter, and clearly of his own initiative, did not think to ensure that the police had conducted a proper investigation.**

130. **The investigation of Constable White in 1994 and 1995 was fairly thorough and far-ranging. Having said that, however, he seems to have potentially understated the extent to which alleged victims of abuse in fostering group homes would be prepared to be involved in legal process. White gives the Crown the impression that, apart from everything else, he had no willing complainants and no willing witnesses. However, his actual investigatory brief is not so definitive on that point. When working with people who are vulnerable and who are reporting abuse, the police needed techniques to persuade those people that they will be supported if they come forward as complainants and witnesses, and resources to back up that promise. Given how other historic abuse cases unfolded, it is likely that with further work, at least some complainants could have been persuaded to be involved in the legal process; one of the male complainants dealt with by White was clearly willing, C84.**

131. **Assuming for the moment that the decision to lay no charges in 1995 as a result of Officer White's investigation was sound, it seems to escape the attention of both the police and Crown that the information uncovered needed to be shared with the CAS and that the CAS needed to act upon it, not because it implicated any current CAS employees, but because it evidenced both the systemic failure of the agency in the past and specific individuals who had been harmed while in the care of the CAS.**

132. **A phrase one often hears is "silos" meaning that institutions become focused only on their own mandate and issues, and are blind to obvious steps that need to be taken outside of their own particular mandate and method of doing business. The 1995 Shawn White investigation is a good example of the dangers of a "silo" approach:**

since it does not result in any actionable charges, the information gathered is put to no other use.

INSTITUTIONAL RESPONSE OF THE CORNWALL POLICE SERVICE, PRIOR TO THE COMPLAINT OF DAVID SILMSER

This section will focus on two cases of sexual abuse allegations, one historic and one contemporaneous, both of which, in CCR's submissions, were mismanaged by the Cornwall Police Service ("CPS").

The 1989 Investigation of Marcel Lalonde

133. Shortly after his appointment to the Sexual Assault Unit of the CPS, Kevin Malloy received allegations of historic sexual assault by Marcel Lalonde on male teenagers, some of whom were under the age of 16. Marcel Lalonde was a public school teacher in Cornwall.

134. The first complainant with whom Constable Malloy dealt was C57. C57 provided a five-page handwritten statement describing two instances of sexual abuse by Lalonde. In both cases, he had been given alcohol when he was under age and had drunk to excess in Marcel Lalonde's company. His statement makes it clear that Lalonde used alcohol as a "hook" to keep C57 coming back to visit him. C57 also identified two other individuals, one of whom had also alleged a similar type of unwanted sexual overture by Lalonde. Finally, C57 described seeing two young boys who were students of Lalonde "**enjoying themselves, calling Marcel by his first name and drinking beer**" in the company of Marcel Lalonde. His statement indicated that "**While viewing a yearbook at the police station, I identified the two boys I had seen at Marcel's as previously mentioned**".

Reference: Exhibit 1492

135. C57 also informed Malloy that Marcel Lalonde kept a photograph album containing Polaroid photographs of nude males. C57 stated that Lalonde had asked to take his photograph but he had declined.

Reference: Exhibit 1492, bates page 7136756

136. C58 (who was not mentioned in the statement of C57), also attended the CPS office and provided a statement in his own handwriting dated April 21st, 1989. Curiously, C58's statement commences with the words "**Your Honour**" and is written as though he is addressing a third party.

Reference: Exhibit 1494

137. The statement of C58 states that he and his friend had spent the better part of a day at Lalonde's home and had been drinking heavily. C58 states he was intoxicated, fell asleep, awoke to discover that Lalonde had performed fellatio on him, and that Lalonde was crying and apologizing at the conclusion of the incident.

Reference: Exhibit 1494

138. Malloy also testified that two other individuals were spoken to about encounters with Lalonde and that both of them did not wish to be involved in any police process. One of them, whom he interviewed, "**almost passed out on me**" according to Malloy from nervousness and from the desire not to speak about the incident.

Reference: Evidence of Kevin Malloy, April 22, 2008, pages 219, lines 10 through 13 and page 222, lines 17 to 24

139. Malloy also claimed that C58, the author of Exhibit 1494, "**was not emotionally ready to proceed with anything**".

Reference: Evidence of Kevin Malloy, April 22, 2008, page 217, lines 23 through 25

140. Notwithstanding C57's statement to the effect that he was highly intoxicated and on several occasions made it clear that he did not want to engage in sexual activity with Lalonde, Malloy came to the opposite conclusion, namely that he had consented to the sexual abuse.

Reference: Evidence of Kevin Malloy, April 22, 2008, page 224, lines 7 through 25 and page 225 line 1

141. Notwithstanding the information provided by C57 as to his extreme intoxication, Malloy formed a "**personal opinion that he wasn't that intoxicated to allow that to happen**".

Reference: Evidence of Kevin Malloy, day 1 of testimony, page 224, lines 20 through 22

142. In sum, with respect to the Lalonde matter, Malloy ultimately had information from at least six individuals (some of whom would have been potential witnesses to events alleged by others). At the time of the investigation, Malloy knew that Lalonde was teaching elementary school.

Reference: Evidence of Kevin Malloy, April 22, 2008, page 234, line 1 to page 235 line 2

143. On June 22nd, 1989, Malloy authored a supplementary occurrence report which he requested the investigation to be placed in abeyance "**for a short period of time to allow the writer to interview suspect Lalonde**".

Reference: Exhibit 1495

144. Malloy received the approval of Staff Sergeant Wells to his request to put the Lalonde investigation into abeyance.

Reference: Exhibit 1495

145. There was no evidence of any investigatory activity occurring between April, 1989 and June 22nd, 1989, the date of the supplementary report.

Reference: Evidence of Kevin Malloy, April 22, 2008, page 227, lines 3 through 10

146. Malloy generated very little documentation with respect to the Lalonde matter. Exhibit 1491 is a five-page document in his handwriting summarizing the statement of C57. It does not contain any additional information which would support Malloy's conclusion that C57 had consented to sex with Lalonde.

147. Exhibit 1493 is a document entitled "Project Name Index" in Malloy's handwriting, and containing the concurrence reference number for the Lalonde matter. It contains reference to C60 with whom Malloy spoke on January 9th, 1989. The notes indicate that this individual had also been lured to Lalonde's home by promises of alcohol, had slept

and then awoken to find Lalonde performing a sexual act on him. He notes "**Reluctant to provide a lot of detail. Refuses to testify**".

148. Another individual who had been named in C57's statement, C61, was, at that time, a University of Ottawa student and Exhibit 1493 notes that Malloy was to follow up by contacting him.

149. C58 is the author of Exhibit 1494. The brief statement he gave to Malloy, as noted in Exhibit 1493, is consistent with Exhibit 1494. There is no indication in Exhibit 1493, nor in the statement, that he is not emotionally ready to proceed or would be unwilling to become involved in a police matter.

150. Exhibit 1493 notes three other names of individuals who had been referred to in other statements, but no investigative activity is recorded.

151. A final individual, C65, was interviewed January 23rd, 1989 and told Malloy that he was aware of Lalonde's sexual preferences but that no assaults or attempts had occurred with him.

152. With one exception, that being C60, Malloy's contemporaneous notes do not correspond to Malloy's evidence at the Inquiry that he had either unwilling complainants or a complainant who had actually consented to the sexual act with Lalonde.

153. Malloy testified that he consulted with Crown Attorney Don Johnson about the Lalonde investigation.

Reference: Evidence of Kevin Malloy, April 22, 2008, page 223, lines 17 to 18

154. Malloy testified that "**I didn't think I had anything with any evidence to form reasonable grounds to lay a charge. ... I wanted to get some legal advice**".

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 224, lines 2 through 6 and lines 14 through 16

155. Malloy testified at the Inquiry that he attended at Crown Johnson and took no notes of that conversation because, according to him, "**We weren't allowed to take notes**".

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 229, lines 5 through 6.

156. Malloy testified that as a result of his meeting with Crown Johnson, he made a decision not to proceed with charges against Lalonde.

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 229, lines 16 through 19

157. Don Johnson testified at the Inquiry and said that he did not recall any conversation with Constable Malloy concerning Marcel Lalonde.

> **Reference**: Evidence of Don Johnson, January 7, 2009, page 18, lines 5 through 7

158. Although Malloy claimed that he was willing to re-open the Lalonde case if further information came forward, in fact the file was put into abeyance with no bring-forward dates such that it was essentially allowed to lie dormant. The Lalonde investigation did not come to Malloy's attention or to that of his supervisors at any subsequent time.

Malloy did not interview Lalonde nor did he attempt to interview Lalonde, notwithstanding that that was the premise of putting the file into abeyance.

159. Notwithstanding his knowledge that Lalonde was a teacher at a Cornwall elementary school, Malloy did no follow-up activity with the school or school board. He did no follow-up activity with the local theatre production company under the auspices of which Lalonde had come in contact with C57. He made no report to the Children's Aid Society. His evidence in this respect suggests a misunderstanding of the duty to report:

> "**The Commissioner: Did you know you had any obligations? Children's Aid Society?**
>
> **Mr. Malloy: My understanding was people over the – at 16 years of age or over, we didn't file intake reports with CAS."**
>
> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 234, lines 16 through 20

160. He was unable to answer when asked how he came by that understanding.

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 234, line 24 to page 235, line 2

161. When asked whether he felt he should have considered informing Lalonde's employer, Malloy stated "**I didn't think I had the grounds to do that**".

> **Reference**: Evidence of Kevin Malloy, April 22, 2008, page 235, lines 21 through 22

162. It is worthy of note that the very complainant that Malloy claimed was unwilling to be involved **[C58]** was a willing participant in the charges which were brought against Marcel Lalonde ten years later.

Reference: Exhibit 1497

Evidence of Rene Desrosiers, June 2, 2008, p.72, line 22

The Second Lalonde Investigation by Cornwall Police Service

163. Allegations against Marcel Lalonde resurfaced at the Cornwall Police Service in October, 1996. Witnesses Rene Desrosiers and Brian Snyder testified about this second Lalonde investigation.

164. When Desrosiers commenced work in the Sexual Assault and Child Abuse Unit ("SACA") in October, 1996, one of his first assignments was in relation to disclosure of abuse by C68. C68 had disclosed that he was sexually abused by Marcel Lalonde as a grade 7 student at Bishop McDonell School in Cornwall to his probation officer, Sue Larivière. Ms. Larivière contacted the Cornwall Police Service and as a result, Desrosiers interviewed C68 in the Cornwall jail. He quickly gathered that C68's allegations pertained to a geographic area outside of the City of Cornwall, and accordingly advised C68 that the matter would have to be handled by the OPP. Officer Desrosiers made contact on behalf of C68 with the OPP, which took over the investigation.

165. When he dealt with C68 in October 1996, Desrosiers had no knowledge that the CPS had previously investigated allegations against Marcel Lalonde.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 55, lines 1 through 9

166. His lack of knowledge of the Malloy investigation is explained on the basis that the Malloy investigation occurred prior to the use of the OMPPAC system. Malloy would have filled out a card referencing Lalonde as a suspect, however, when Desrosiers dealt with C68 and opened his own OMPPAC file on Lalonde, he did not do a complete manual records check and so did not ascertain that the Service had in fact investigated Lalonde in 1989.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 71, line 15

167. In or about January 1997 OPP officer Genier informed Desrosiers that charges had been laid against Marcel Lalonde based upon the complaint of C68.

Reference: Exhibit 1584

168. By the early months of 1997 Desrosiers testified that he had some awareness about the commencement of Project Truth. He had not received any instructions regarding reporting historic sexual matters to Project Truth.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 52, lines 8 through 20

169. As to his knowledge of the Project Truth mandate, he didn't recall being officially advised of that mandate. His testimony was

> "**I had it in my head that it was about possibly prominent people in the community and other people. Did I see a list? I never was shown a list myself. ... But being living here, seeing things happening, being in the office, I was aware that it was to be looked into in relation to prominent people in the community, you know, business people."**
>
> **Reference**: Evidence of Officer Desrosiers, May 23, 2008, page 52, line 23 to Page 53, line 6

170. Although he worked at the SACA Unit throughout the Project Truth era, he never specifically flagged any historic sexual assault matter to raise with his supervisor or to bring to Project Truth.

> **Reference**: Evidence of Officer Desrosiers, May 23, 2008, page 53, lines 7 through 11

171. The CPS Lalonde investigation (after the referral of C68 to the OPP) resumed in late January, 1997 when OPP Officer Genier contacted Sergeant Brunet of the CPS and identified people who had come forward to the OPP after Lalonde had been charged on the information of C68.

> **Reference**: Exhibit 1584

172. Brunet was told of ten individuals who had contacted OPP or whose names had been mentioned by those who had contacted the OPP in relation to Marcel Lalonde. These names were supplied to Sergeant Brunet.

> **Reference**: Exhibit 1584

173. Further allegations against Marcel Lalonde were brought to Desrosiers' attention in January of 1997 by C45 and Kevin Upper.

Reference: Exhibit 1715

174. Although C45 had previously been in contact with the OPP and had been referred by them to CPS, Desrosiers had no knowledge of that circumstance at the time he met C45.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 70, lines 3 through 7

175. When Kevin Upper came to the CPS to give his statement concerning Lalonde, he also advised Desrosiers that he had allegations of abuse to make against Father Charles MacDonald. Desrosiers declined to take any information from Kevin Upper concerning his allegations against Father Charles MacDonald. The statement he took on February 23rd, 1997 from Kevin Upper referred solely to Marcel Lalonde.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 73, lines 5 through 24

Exhibit 494

176. When asked why he would conduct the interview in this fashion, his response was :

> **"My reasons for that, Mr. Commissioner, were that through the office there had been mentioned that OPP were going to be looking into investigations involving Father Charles MacDonald. .... And at that time that's why I told them either myself another police officer or another agency will be looking into this for you ... because I have been hearing this information at the office, that they were going to prepare to conduct a further investigation.**"

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 74, line 23 to page 75, line 5

177. To the extent that Officer Desrosiers learned anything concrete about the OPP's Father MacDonald investigation, it appears that he learned it through reading local media.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 83, line 14 to page 84, line 2

178. Desrosiers testified that he told Kevin Upper that he would not be dealing with the MacDonald allegation and that another police officer or another agency would be looking into it for him.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 75, lines 3 through 5

179. Desrosiers did this because "I had been hearing this information at the office, that they were going to prepare to conduct a further investigation".

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 75, lines 7 through 9

180. Desrosiers **did not** refer Kevin Upper directly to the OPP to make his disclosure concerning Father Charles MacDonald.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 83, lines 3 through 13

181. In addition, Desrosiers kept no notes of any sort pertaining to Kevin Upper's comments to him that he also wished to speak about abuse by Father Charles MacDonald.

Desrosiers says that he would probably have raised this topic with his supervisor, however, there is no written evidence that such occurred.

182. It is not until October 1997 (some eight months later) that Kevin Upper gives his first statement to the OPP in relation to Father Charles MacDonald.

Reference: Exhibit 498

183. As he indicated to the Project Truth officer on October 3rd, 1997, Kevin Upper contacted the OPP in the following circumstances: "**Okay, I read an article in the paper, concerning this investigation, with a telephone number, which I called, and I requested an interview.**"

Reference: Exhibit 498, bates page 7037389

184. CPS eventually brought charges against Marcel Lalonde based upon the information of Kevin Upper. While those charges were pending Kevin Upper was also a complainant in charges brought by the OPP against Father Charles MacDonald. The respective CPS and OPP officers did not know that they had the same complainant on different charges.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 85, lines 8 through 13

185. Desrosiers never became aware that the absence of any notes by him of the disclosure which Kevin Upper had made to him concerning Father Charles MacDonald on February 2nd, 1997 had arisen in the MacDonald proceedings and that Upper had been challenged on it.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 86, lines 1 through 7

186. Officer Desrosiers re-confirmed even though by February 1997 the community was well aware of the role played by Constable Dunlop and the charges against Father Charles MacDonald, he nonetheless did not see fit to make any note of Kevin Upper's comment to him regarding Father Charles MacDonald.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 87, lines 8 to 23

187. C45 (who was interviewed by CPS about Lalonde) also alleged abuse by Probation Officer Nelson Barque.

Reference: Exhibit 1716, bates page 7134948

188. With respect to his allegations against Barque, Desrosiers testified that he advised C45 that this would be dealt with by another agency as well.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 91, lines 19 to 23

189. It was not until he was being prepared to testify at the Inquiry that Desrosiers became aware that the CPS had been involved in charges against Nelson Barque prior to his interview of C45.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 92, lines 9 through 11

190. Desrosiers was unaware in February 1997, that Nelson Barque had pled guilty to a different assault on another probationer in the summer of 1995.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 92, lines 16 through 18

191. Desrosiers claims that he informed a superior about C45's allegations about Nelson Barque, however, he has no specific recollection of such.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 93, lines 3 through 14 and 18 to 20

192. Again, throughout his dealings with C45 as a complainant against Lalonde, Desrosiers had no knowledge that C45 was also a complainant in additional charges which were laid by the OPP against Nelson Barque under Project Truth.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 94, lines 1 through 4

193. C45 gave a statement to the OPP concerning Barque on October 3rd, 1997.

Reference: Exhibit 907

194. When questioned about how he came to speak with the OPP, C45 answered that he had read an article in the *Citizen* about the OPP Project Truth. C45 was not referred to the OPP concerning his Nelson Barque disclosure by Desrosiers or anyone else at CPS.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 95, lines 11 through 18

195. CPS did nothing to facilitate C45 informing Project Truth about his alleged abuse by Barque.

196. Up to early February, 1997, Desrosiers was not aware that his own supervisor, Brian Snyder, was also involved in an investigation of historic abuse allegations against Marcel Lalonde.

> **Reference**: Evidence of Officer Desrosiers, May 23, 2008, page 98, lines 5 through 9

197. Snyder was investigating allegations against Lalonde by C8, who had been referred to him by the OPP.

> **Reference**: Evidence of Officer Desrosiers, May 23, 2008, page 100, line 22 to page 101 line 2

198. The 1997 CPS investigation culminated in charges against Lalonde and his arrest on April 29th, 1997. Coincident with the arrest, CPS executed a search warrant at Lalonde's home, pursuant to which they seized several photo albums containing, amongst other things, photographs of several young nude males, together with non-nude photographs of young people socializing with Lalonde.

199. The OPP had charged Marcel Lalonde in January 1997 with sexual offences based upon the information of C68. CPS did eventually share with the OPP the photo albums seized pursuant to the search warrant.

Disclosure Issues in the Lalonde Prosecution

200. Notwithstanding that the OPP and the CPS laid different charges at different times, ultimately a new information was sworn whereby the matters proceeded together as one, with one trial.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 137, lines 6 through 12

201. Constable Genier of the OPP remained involved with the OPP Lalonde charges. Following the arrest of Marcel Lalonde, Desrosiers assumed full responsibility for the CPS charges, with Snyder functioning solely as his supervisor.

202. While initially Genier and Desrosiers made separate disclosure to the Crown, without sharing the contents of their disclosure with one another, eventually they coordinated the disclosure task. They did so because Crown Curt Flanagan ultimately began writing to them jointly, as opposed to sending separate disclosure letters to each.

203. The respective officers met together with Crown Flanagan on May 27th, 1997 in Brockville.

Reference: Exhibit 1715, bates page 7181759

204. In or about the spring of 1997, Officer Desrosiers became aware (by means of Brian Snyder) that Constable Dunlop had given a statement pertaining to C8 and C8's disclosure concerning his alleged abuse by Father Charles MacDonald and Marcel Lalonde.

205. Exhibit 1408 is a witness statement, in CPS format, dated April 16th, 1997 in which Dunlop states that C8 contacted him in June, 1996 and stated that he was a victim of sexual assault as a minor, but provided no details. It goes on to state that in January of 1997, C8 again attended Dunlop's residence, and provided disclosure that he had been sexually assaulted by Father Charles MacDonald and Marcel Lalonde. A statement was taken and C8 then proceeded to the OPP office in Lancaster.

Reference: Exhibit 1408

206. Desrosiers' evidence concerning this document is that he believed/assumed that Exhibit 1408 constituted the entirety of Dunlop's disclosure pertaining to Lalonde. He came to this belief because, as he testified, "**Dunlop is a policeman and certainly knows what is required of a police officer concerning disclosure**".

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 144, lines 7 through 17

207. To Desrosiers' knowledge, the only item of disclosure that Crown Wilhelm had relating to Dunlop as of the January 1998 preliminary hearing of Lalonde was Exhibit 1408: the ten-line will say statement.

208. Although Exhibit 1408 on its face refers to other documents (i.e. rough notes) and a statement, Desrosiers did not ask Dunlop for those materials at the time he received Exhibit 1408. He merely provided Exhibit 1408 to the Crown for disclosure purposes.

209. Desrosiers was unaware that the OPP had made a disclosure request of Dunlop in September of 1997, and was not aware that Dunlop had provided materials directly to the OPP in October 1997.

> **Reference**: Evidence of Officer Desrosiers, May 23, 2008, page 147, lines 14 through 21

210. The Lalonde preliminary inquiry occurred in January 1998. By this time there was one indictment and all charges (OPP and CPS) were on that indictment.

211. Desrosiers was present in the Court. When Dunlop testified at the preliminary, this was the first time that Desrosiers became aware that Dunlop had notes pertaining to C8 and Lalonde. He also recalled Dunlop testifying that C8 had not disclosed details of his alleged abuse by Lalonde to him between the two dates mentioned in Exhibit 1408 (June 1996 to January 1997).

> **Reference**: Exhibit 1717, being the transcript of Dunlop's testimony at the preliminary inquiry, page 93 and following

212. To stop the narrative at this point, Desrosiers was not aware of what materials were in the hands of the OPP for disclosure purposes, including which materials the OPP held from Officer Dunlop. Although we have no evidence from Officer Genier, presumably the OPP was in the same position *vis-a-vis* materials which had been disclosed by CPS on the Lalonde prosecution.

213. This occurred because of the lack of initial coordination between the two forces (whereby each of them were responding to individual disclosure requests from the Crown, putting

together their own respective disclosure packages and forwarding them directly to the Crown without providing the other a copy and without knowing what materials the other had provided).

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 139, line 22 to page 140, line 10

214. Even after the parties coordinated disclosure, it appears from Desrosiers' evidence that there were still occasions when CPS provided its disclosure directly to the Crown without incorporating OPP disclosure as a part of an overall disclosure package.

Reference: Evidence of Officer Desrosiers, May 23, 2008, page 140, line 11 to page 141, line 7

215. The overall situation is such that neither side had the "full picture" as to what Dunlop had or had not provided in relation to Lalonde, nor did they have a full picture of their non-Dunlop related disclosure items.

216. To resume the narrative, defence counsel in Lalonde wrote a letter to the Crown Attorney on March 9, 1998, after the preliminary hearing, requesting numerous items of disclosure. One section of the letter requested the disclosure of Dunlop's notes.

Reference: Exhibit 1719

217. Shortly after the conclusion of the preliminary in January of 1998, Desrosiers had asked Dunlop for his notes. As of March 9th, 1998 when defence counsel was formally requesting the notes, Desrosiers had not received notes from Dunlop. Between those two

dates, he did not take it upon himself to follow up with Dunlop and obtain the notes. He believed that Genier had done so.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 18, line 17 to page 19, line 5

218. Officer Genier's notes indicate that he reviewed Dunlop's notes and found three which related to Lalonde on or about April 24th, 1998.

Reference: Exhibit 1594, bates page 7106417 to 7106418

Evidence of Officer Desrosiers, June 2, 2008, page 21, line 2 through 9

219. Exhibit 1720 is correspondence from Genier to Tim Smith on this issue, dated April 28th, 1998.

220. It was Desrosiers' testimony that he did not make any effort to go back to Perry Dunlop to follow up on disclosure issues until September of 1999, immediately before the scheduled commencement of trial in *R. v. Lalonde* on October 4th, 1999.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 31, line 16 to page 32, line 4

Late Disclosure Causes the Lalonde Adjournment

221. In the course of preparing for trial, Desrosiers spoke to a witness, C61 who told him that he recalled speaking to the CPS many years prior about Lalonde. This prompted

Desrosiers to search with the CPS records clerk for a prior CPS investigation file. This ultimately led him to finding such materials as existed in Malloy's 1989 file.

222. Malloy's file contained a statement of C58 (a complainant upon whose information the Crown was proceeding against Lalonde) which was required to be disclosed.

223. Upon locating the Malloy file, Desrosiers opened an OMPPAC occurrence number and treated it as though it was an ongoing file, searching out the witnesses and complainants noted by Malloy in his 1989 file.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 71, lines 12 through 25

224. As a result of this exercise, Desrosiers located two individuals who became witnesses in the Lalonde trial: C59 and C57.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 72, line 22 to page 74, line 6

225. Meanwhile, shortly before the scheduled trial date, defence counsel wrote again to Crown Wilhelm asking for disclosure of specific Dunlop notes, namely notes made on September 11th, 1996 and December 12th, 1996.

Reference: Exhibit 1723

226. Although Desrosiers did come across a note made by Dunlop dated November 19th, 1996 in which details of C8's alleged abuse by Lalonde was provided, he did not recall noting

the discrepancy between the existence of that note and Dunlop's testimony to the contrary at the preliminary hearing which had occurred in January of 1998.

Reference: Evidence of Officer Desrosiers, June 2, 2008, p.59-60

227. The October 4th, 1999 trial date in Lalonde was adjourned because there had been untimely disclosure with respect to materials in the possession of Dunlop. The adjournment was to September 2000: almost 1 year later.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 62, line 5 to page 63, line 20

228. It is only after the initial trial date had been adjourned that Desrosiers first attends upon Crown Wilhelm to review the OPP materials that they (the OPP) had provided to her in relation to Lalonde.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 66, lines 3 through 13

229. Desrosiers also recalls that at this point in time "**there was talk**" of preparing another order to be served on Dunlop. He was also aware of the Ottawa Police Service investigation conducted by Officer Rolland Lalonde in relation to possible criminal charges against Dunlop.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 67, line 23 to page 68, line 25

230. After the CPS's January 10th, 2000 order was served upon Dunlop (Exhibit 1330) and his nine boxes of material was provided to CPS in or about April 2000, they were reviewed by Genier and Desrosiers. Desrosiers on his review found a few additional pieces of paper which related to Lalonde and he provided them to the Crown.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 79, lines 17 through 21

231. As previously indicated, Desrosiers was unaware of the contents of the yellow binders which were given by Perry Dunlop to the OPP on or about October 10th, 1997. He was not aware that those binders contained the Dunlop notes of September 11th, 1996 and December 12th, 1996. He was also not aware of the OPP's position that these two notes had already been disclosed to the defence in the Lalonde matter.

Reference: Evidence of Officer Desrosiers, June 2, 2008, page 95, line 5 to page 96, line 11

232. Although the December 12th, 1997 statement of C8 (which Dunlop refers to in Exhibit 1408) was discloseable within the Lalonde matter, Desrosiers had no knowledge as to how and when it was disclosed.

Reference: Evidence of Officer Desrosiers, Day 2, page 97, line 19 to page 98, line 6

233. The Lalonde charges went to trial in September, 2000, and were prosecuted by Crown Wilhelm. Desrosiers was also involved in the disclosure by C8 on the eve of trial that he had perjured himself at the preliminary inquiry by being untruthful about the alleged abuse by Lalonde on a school trip. C8 stated at that time that Officer Dunlop had told

him that it would be more helpful to him in obtaining compensation if his abuse had occurred on school property. C8 then stated falsely that he was abused by Lalonde on school trips. C8 reported to Crown McConnery being "**pressured**" and "**pushed**" by Dunlop in the Father MacDonald matter as well.

> **Reference**: Exhibit 1729, being the statement of C8 of September 7th, 2000
>
> Evidence of Desrosiers, June 2, 2008, pages 104 and 105
>
> Exhibit 3068

234. Officer Lefebvre of the CPS investigated C8 for perjury.

> **Reference**: Evidence of Officer Desrosiers, Day 2, page 108, lines 3 through 5

235. The Lalonde trial resulted in a conviction in relation to four complainants and acquittal in relation to three complainants. The complainants in respect of whom Lalonde was acquitted were C58 and C68.

> **Reference**: Exhibit 497, Reasons for Judgment, November 17, 2000

Vulnerable Witnesses Testifying Multiple Times

236. One of the Lalonde complainants whose evidence resulted in conviction is C66. In his interview by CPS, C66 also disclosed that he had been abused by Bernard Sauvé at age 14 in addition to speaking about Lalonde.

Reference: Exhibit 1586

Evidence of Brian Snyder, May 12, 2008, page 178, line 7 to page 179, line 25

237. Snyder's contemporaneous notes as well as his testimony was to the effect that he and C66 decided that C66 would return and give further details pertaining to his alleged abuse by Sauvé at a later time. Officer Snyder then testified that at a later point C66 changed his mind about proceeding with Sauvé disclosure, and accordingly did not contact Officer Snyder for that purpose. Officer Snyder acknowledged that he had no notes to support C66 communicating this change of mind to him.

Reference: Evidence of Snyder, May 12, 2008, page 180, lines 18 through 22

238. At a later point in time, being May, 1998, Officer Genier of the OPP contacted C66 to speak about Bernard Sauvé. Upon receipt of a telephone message from Constable Genier, C66 got in touch with Rene Desrosiers of the CPS and indicated that he had received this call from Genier. Exhibit 1590 is a will-say statement prepared by Desrosiers, April 14th, 2000 dealing with his discussions with C66 on this topic.

239. Brian Snyder's testimony was that he attempted to determine from Constable Genier the objective behind Genier's call to C66 so that Snyder could communicate that information back to C66. Although it appears that Snyder left a message for Genier, the two never did connect, nor did Snyder get back to C66.

240. On May 22nd, 1998 Genier conducted a videotaped interview of C66. C66 in that interview does not say anything which would suggest that he (C66) had changed his mind about bringing a Sauvé complaint to the CPS.

Reference: Evidence of Snyder, May 12, 2008, page 201, lines 18 through 21

Exhibit 1591

241. In the end, the OPP laid charges against Bernard Sauvé based on the complaint of C66 and another individual, Richard Guindon under the auspices of Project Truth.

242. CPS, for its part, laid charges against Marcel Lalonde based on part on the complaint of C66. C66 was, accordingly, a complainant/witness in both cases.

243. It is not clear that CPS had knowledge that C66 was also a complainant/witness against Mr. Sauvé in a Project Truth matter. By the same token, it is not clear that OPP had knowledge that C66 was a witness against Lalonde in a CPS matter.

244. In the end analysis, the charges against Bernard Sauvé were withdrawn. Crown Findlay, in explaining why the Crown was withdrawing those charges, informed the Court that both complainants had **'suffered extreme anxiety and stress related to court, despite the best efforts of the Crown, the police and the Victims and Witnesses office to assist them**". He went on to state that it had become apparent that the complainants "**because of their difficulties may not be able to testify; that they may not endure testifying in Court**", and that notwithstanding hopes that that might change, as of the morning of the trial it had become obvious to the Crown that "**This was not something that was going to take place".**

Reference: Evidence of Snyder, May 13, 2008, pages 24 through 25

Exhibit 1592 at bates page 1108002 - 003

245. The following Lalonde complainants were also involved in Project Truth prosecutions: C8, C45; Kevin Upper, C66.

Reference: Exhibit 2778

246. There was no coordination between the two police services in dealing with these complainants or in providing support and/or counselling resources to them.

Analysis of CPS Institutional Response

247. **In dealing with the allegations against Marcel Lalonde in 1989, Malloy justified his lack of charges by reference to the victims and their alleged inability to become involved in criminal proceedings. This evidence is highly questionable, in light of the fact that many of these people were willing participants in charges brought against Lalonde in 1997. C58 for example, whom Malloy alleges was not emotionally ready to proceed in 1989 had no such difficulty in 1997.**

248. **Even if Malloy's evidence is sound, little was done to work with people with a view to helping them become involved in legal proceedings.**

249. **The failure of the Malloy investigation in 1989 meant that by the time charges are actually before the Court (roughly ten years later) much additional time has passed**

and the witnesses' ability to recall and to testify had been weakened by the passage of an additional decade.

250. **Malloy also "blames the victim" for the lack of charges by suggesting that the primary alleged victim (C57) had "really consented" to the sexual activity with Lalonde, notwithstanding that C57 said precisely to the contrary when he was interviewed.**

251. **Interestingly, although C57 would have been a willing participant if charges had been laid in 1989, by 1997, he was no longer a willing participant. The passage of time clearly also discourages certain alleged victims from involvement.**

252. **Although these are serious allegations against a person with access to children, Malloy did not inform the CAS and had an erroneous understanding about his obligation to do so.**

253. **Although these were serious allegations about a person who was teaching public school at the time, there was no evidence of any consideration being given by either Malloy or his senior officers to informing the school board.**

254. **Although Malloy had approximately six allegations of sexual misconduct by Lalonde, he somehow could not see his way to forming RPG to laying a single charge. At the Inquiry, his rationale was to suggest that the victims were either "not ready" or actually consented. He did nothing to help them become "ready". His testimony about believing that C57 had consented flies in the face of the evidence he developed in interviewing C57. It is just not a reasonable conclusion.**

255. **There is no evidence that anyone supervised Malloy's investigation, notwithstanding the seriousness of the allegations and the number of complainants.**

256. **When the CPS investigates Lalonde for a second time commencing in the latter months of 1996, they have no "institutional memory" of the prior occurrence. This is a significant impediment to the subsequent investigation.**

257. **Even though the Malloy investigation was prior to OMPPAC, it should have been possible for Constable Desrosiers to have uncovered the 1989 investigation when he was first tasked with investigating Lalonde.**

258. **The alleged victims that the CPS sees in 1996 and 1997 of Lalonde are also alleged victims in other prosecutions, however, the two forces never coordinate information or resources pertaining to their common complainants.**

259. **In interviewing alleged Lalonde victims, the CPS stumbled upon allegations against other prominent people such as Father Charles MacDonald and Nelson Barque. The officer "on the ground", Desrosiers, did not receive these allegations (as he was in his own "silo" focusing on Lalonde) nor did he refer these individuals to the OPP. Although he had a very general understanding about Project Truth, he did not appear to have received any concrete information about its scope or mandate such that he could have made the appropriate referrals.**

260. **There is no indication that Project Truth is formally described to CPS officers nor that they received any instructions to refer people to Project Truth.**

261. **In many instances, the CPS is dealing with the same people as alleged victims as is the OPP, but neither force knows this.**

262. **Both OPP and CPS laid charges against Lalonde. Initially both forces were making independent disclosure to the Crown of their investigatory material, and neither force knew what the other had disclosed. Even when their disclosures were somewhat more coordinated, neither knew the entirety of what the other had disclosed. This became highly problematic given the involvement of Dunlop with Lalonde victims and witnesses: both in relation to Lalonde and in relation to other prosecutions within which the same people were complainants.**

263. **Desrosiers also demonstrates a "hands-off" attitude to obtaining disclosure from Dunlop: he is prepared to rely on the assumption that because Dunlop is a police officer, he will do the right thing and make disclosure. There is no follow-up by Desrosiers or anyone else directly connected to the Lalonde investigation at the CPS in relation to Dunlop's disclosure. The "tone at the top" was to treat Dunlop in a "hands off" way and the front line officers seemingly acted in the same manner.**

264. **There was a completely avoidable delay in this Lalonde prosecution due to the problems pertaining to late disclosure: while fortunately those charges proceeded on their merits, the trial was delayed from October 4th, 1999 to September, 2000, a period of time which certainly could have raised concerns about delay.**

The CPS Investigations of Earl Landry Jr.

265. On Tuesday, June 25th, 1985, CPS Officer Ron Lefebvre was called by Chief Shaver to his office and at that time learned of an alleged sexual assault on C51 by Earl Landry Jr. C51 was nine years of age and had reported to his mother that Earl Landry Jr. had been involved in sexual conduct with him at the club house at the King George Park where Landry Jr. was employed as a caretaker.

Reference: Exhibit 1660, Investigation Notes of Ron Lefebvre

266. C51's mother contacted the CPS on June 24th, 1985 and reported her son's abuse. Inspector Trew who had actually left for home at the conclusion of his shift that day was called back into the station as a result of the receipt of C51's mother's report. Trew spent approximately an hour in the station and informed both the Chief (Shaver) and the Deputy Chief of the allegation, because the suspect was the son of the recently retired CPS Chief, Earl Landry Sr.

267. Landry Sr. had retired approximately one year earlier, and had been replaced by Chief Shaver.

268. Inspector Trew was aware that Staff Sergeant Stan Willis had a close personal friendship with Earl Landry Jr.'s brother, Brian.

Reference: Evidence of Rick Trew, April 28, 2008, page 154, lines 17 through 21

269. Willis was assigned to the investigation of the Chief's other son, Earl Landry Jr., as was Ron Lefebvre.

Reference: Evidence of Rick Trew, April 28th, 2008, page, 155, lines 14 through 17

270. Trew believed that Staff Sergeant Willis assigned Lefebvre to investigate.

Reference: Evidence of Rick Trew, April 28, 2008, page 155, lines 14 through 17

271. The primary investigator of C51's allegations against Earl Landry Jr. was Ron Lefebvre. His notebook makes it clear that his investigation terminated on Thursday, June 27th, 1985, having started on Tuesday, June 25th, 1985.

Reference: Exhibit 1660

272. On the first day of his assignment, Lefebvre interviewed C51 and completed a statement. On the second day of his investigation (Wednesday, June 26th) he attended the King George Park with Sergeant Willis and identification officer, PC Lalonde.

273. They informed Earl Landry Jr. of the investigation. With his consent, they searched the club house premises, and seized a book.

274. At 11:39 a.m. that morning, they arrived with Earl Landry Jr. at CPS headquarters and placed him in the senior officers' lounge where he was interviewed by Willis and Lefebvre.

Reference: Exhibit 1660, bates page 7181059 to 060

275. Landry Jr.'s statement contained a "**strong denial**" and Lefebvre's notes also contained the entry "***polygraph*".**

Reference: Exhibit 1660, bates page 7181060

276. Chief Shaver visited Earl Landry Sr. at the latter's home on June 26th, 1985, at the same time that Earl Landry Jr. was in attendance at the CPS headquarters.

Reference: Evidence of Chief Shaver, June 10, 2008, page 64, line 16 to page 65, line 6

277. Shaver told Earl Landry Sr. that the Service had just picked up Earl Landry Jr. and he was being questioned because they thought he was involved in a sexual assault. At one point Shaver said to Landry Sr.: "**Chief, if you think he didn't do it, I can arrange a polygraph in Ottawa**".

Reference: Evidence of Shaver, June 10, 2008, page 68, lines 8 to 9

278. The following details were disclosed by Shaver to Earl Landry Sr. at this meeting:

(a) that his son was suspected of involvement in a child molestation case;

(b) that his son was, at that time, being interviewed at the station; and

(c) that Willis and Lefebvre were investigating.

Reference: Evidence of Shaver, June 10, 20008, page 68, line 17 to 70, line 12

279. Earl Landry Sr.'s reaction was to become extremely upset and start to cry. Shaver's evidence is to the effect that he then spent several hours "**consoling**" former Chief Landry.

280. Shaver did not inform the investigating officers that he had met with Earl Landry Sr.

> **Reference**: Evidence of Shaver, June 10, 2008, page 72, lines 25 to page 73, line 3

281. On the following morning, June 27th, at 7:00 a.m., Staff Sergeant Willis received a phone call from former Chief Landry and made the following notes concerning that phone call:

> "**Earl Landry Sr. Called HQ to advise me that things were happening too fast. Earl Jr. is very nervous. He relates that for the present time he will not be going to Ottawa to take a polygraph test. He states that perhaps arrangements can be made later on.**"
>
> **Reference**: Exhibit 1387, bates pages 7181118

282. On June 27th, 1985, Staff Sergeant Willis had the following notation in his book: **"June 27th/85 Sergeant Ron Lefebvre plus Sergeant Stan Willis**". The above represents the sum total of his notes that day.

> **Reference**: Exhibit 1387, bates page 7181119

283. Ron Lefebvre's notes for Thursday, June 27th read in their entirety as follows:"0700: HQ and informed by Willis that Earl Sr. phoned and Jr. has changed his mind with regards to polygraphs/does not wish to attend HQ follow-up."

Reference: Exhibit 1660, bates page 7181060

284. The CPS Occurrence Report reference number for the complaint of C51 is 4571/85. Lefebvre has no further notes pertaining to that investigation, nor does Willis.

285. Lefebvre does have notes pertaining to a separate investigation in which C51 is a complainant, being Occurrence 4667/85.

286. It is CCR's position that CPS failed to investigate the 1985 allegations of C51 against Earl Landry Jr. in anything like a responsible manner.

287. The termination of this investigation within approximately 48 hours of its commencement, following on the heels of a 7:00 a.m. phone call from the suspect's father, the former chief of police, strongly suggests that CPS was motivated not to investigate C51's allegations further. This is simply not an investigation that can withstand public scrutiny.

288. The investigatory failure is all the more concerning in that the two most senior officers involved in it (Inspector Trew and Chief Shaver) unequivocally acknowledged that it was a high profile matter; that it had the potential to embarrass the force if it wasn't addressed properly; and that it was, therefore, important to do a good job and to be seen to have done a good job.

Reference: Evidence of Rick Trew April 29, 2008, page 84, lines 3 through 22

289. Although he dressed it up in compassionate clothing, Chief Shaver's two hour visit to the former Chief ought never to have occurred. It defies belief that in two hours they did not

discuss the allegations against Earl Jr. Did the former Chief disclose that his son had such tendencies? Did he adamantly deny it? Did he say words to the effect that if Earl Jr. was charged it would "kill" his already ill mother? The problem for the CPS is that as a result of Shaver's actions a two hour "black box" was created and it is not at all unreasonable to imagine comments like these being made during that two hour meeting.

290. While it is of course appreciated that no suspect is required to undergo a polygraph test, the circumstances here were quite unusual. Shaver suggested it to former Chief Landry, and it then is discussed apparently contemporaneously by Earl Landry Jr. and Lefebvre when they meet on the afternoon of June 26th, 1985**.** At 7:00 o'clock the next morning, it is taken off the table by Landry Sr. If anything, this should have led the CPS officers to infer that maybe Landry Jr.'s vehement denial was false. It should have led them both to wonder why the ex Chief was communicating to them. Instead, they seemingly terminated the investigation that morning and took no further steps of any sort.

291. C51's family was of very modest means and C51 himself seemed to have had some developmental disabilities. The accusation he made was against the son of a very prominent Cornwall citizen involved in law enforcement. The premature termination of this investigation by the CPS cannot be defended.

292. Long after the event, CPS officers offered various excuses for why there were no charges brought against Earl Landry Jr. as a result of C51's complaint in 1985. The primary justifications centered on the position that C51 would have been a bad witness due to his perceived developmental problems.

293. On September 26th, 2000, Staff Sergeant Desrosiers interviewed Ron Lefebvre about the 1985 investigation and Lefebvre stated the following:

> "**that the victim was unable to identify Landry Jr. in a photo line-up; that they had no other evidence other than the victim's statement and that the victim was developmentally retarded and would prove to be a poor witness**".
>
> **Reference**: Exhibit 1361, bates page 7811333 and 7811334

294. In our submission, Lefebvre's statement about the photo line-up is likely false. Several years prior, in 1997, Lefebvre made the following will say statement in connection with charges against Earl Landry Jr.:

> "**information received that both ... boys, ages 8 and 10 years of age at the time of complaint, were being sexually assaulted by the park attendant at the King George Park, 7th Street West, in the City. Description of suspect fitted that of Earl Landry Jr., which I knew was employed there.**
>
> **...**
>
> **Since Landry had no criminal record, no photograph existed of him for a photo line-up and proper identification, Cst. Pierre Lalonde of our Ident Unit and I attended King George Park under the pretext of being St. Lawrence College students, met with Mr. Landry and told him we were doing a project of property damage to public property and what it cost the taxpayers. We entered the club house and I recalled the description being exactly as described by the ... complete with the famous window. We walked around the premises stopping at the scoreboard in centre field. It had been damaged enough to convince Mr. Landry to stand to the west side of it pointing to the damage. <u>Cst. Lalonde was then able to focus attention/camara [sic] of the face of Mr. Landry. A photo line-up was subsequently made and I returned to the ... where he was positively identified</u>"**

Reference: Exhibit 1626, bates pages 7179423 to 7079424 (Emphasis added)

295. The other fundamental difficulty with Lefebvre's "after the fact" position is that C51 was a complainant against another accused in 1985, G. Sauvé, and CPS brought charges against Seguin based upon C51's evidence.

296. A further difficulty is that the CAS was in possession of a letter dated September 11th, 1985 from the Children's Hospital of Eastern Ontario pertaining to C51, whom they interviewed without leading questions concerning his alleged abuse by Earl Landry Jr. The child had no difficulty in identifying his abuser as Earl Landry Jr.

Reference: Exhibit C1353

297. Regardless of his limitations, C51 clearly described to the doctor attempts at anal penetration by Earl Landry Jr. He also made statements that would tend to corroborate that the event had in fact occurred.

Reference: Exhibit C1353

298. For Lefebvre of CPS to have justified his failure to complete this investigation by referring to C51's disabilities and to fabricate an inability to identify the suspect is offensive.

299. On July 9th, 1985, Sergeant Lefebvre of CPS informed CAS that Mr. Gary Seguin was alleged to have sexually assaulted several children from around his neighbourhood. Those children included C51 and six others.

300. Gary Seguin was convicted on April 2nd, 1986 of three counts of sexual assault. The two alleged perpetrators (Seguin and Earl Landry Jr.) ought not to have been treated differently.

Reference: Exhibit 1629, bates page 7179474

Involvement of the CAS in the 1985 Earl Landry Jr. Abuse Allegations

301. Lefebvre informed the CAS of C51's allegations against both Earl Landry Jr. and Gary Seguin.

Reference: Exhibit 2297, bates page ending 979

Evidence of William Carriere, September 9, 2008, page 132, lines 13 through 23

302. The CAS did conduct an investigation of the allegations against Gary Seguin.

Reference: Evidence of William Carriere, September 9, 2008, page 134, lines 6 through 17

303. As a result of that investigation, which was conducted jointly with the CAS, charges were brought against Gary Seguin and the conviction referred to above was registered.

304. The CAS did not conduct any investigation on matters involving Earl Landry Jr.

305. When this omission was put to him, Mr. Carriere's evidence was as follows:

> **"... he was not investigated. Again, I – the only thing I remember about this situation ... comes from – well it comes from reading the file. <u>The only thing that I recall from this – is our involvement with Mr. Seguin and the</u>**

> **only – the reason I remembered that is that – a large number of victims of Mr. Seguin. Beyond that I don't have any independent recollection of this case. My thinking at the time is that Mr. Landry was not seen to be in charge of, and that therefore we didn't see him as a caregiver and we didn't proceed with the investigation, whereas Mr. Seguin was – he was in charge.**"
>
> **Reference**: Evidence of William Carriere, September 9, 2008, page 134, line 21 to page 135, line 15

306. Mr. Carriere made it clear in response to questions by the Commissioner that he did not remember the "case" involving C51 and his Earl Landry Jr. allegations.

> **Reference**: Evidence of Carriere, September 9, 2008, page 140, lines 22 and 23

307. It is respectfully submitted that the CAS' failure to investigate Earl Landry Jr. demonstrates a grave weakness in its institutional response. Whatever the "mindset**"** was at the time, it was known to the CAS (or could readily have been known upon any modicum of investigation) that Earl Landry Jr. was in contact with children who used King George Park and who played in the club house, the place where he conducted his assaults on C51 and others. Whether he was "in charge" of children becomes rather meaningless when one considers that his daily occupation put him in contact with children who (as had been the case with C51 and his brother) were sent by their parents to use the park. Had CAS ever informed itself of those basic background facts, it is hard to believe that it would not have considered it prudent to conduct an investigation of Earl Landry Jr. The allegations of C51 were, after all, contemporary, not historic. If C51's allegations could be verified, then there was a clear and present danger that Earl Landry Jr. would abuse other children using the park and the club house.

308. Mr. Carriere was fairly candid in acknowledging that he, at the Inquiry, was giving an *ex post facto* reconstruction of why Earl Landry Jr. was not investigated by the CAS "**My thinking was probably at that point a caretaker in a park didn't fit**".

Reference: Evidence of Carriere, September 9, 2008, page 145, lines through 23

309. When shown Exhibit C-1353 being the confidential letter from Dr. Park of the Children's Hospital of Eastern Ontario pertaining to C51's physical examination, Carriere had no knowledge of the document and again reiterated that he had no recollection of the case other than a recollection involving the alleged abuse of Gary Seguin.

Reference: Evidence of Carriere, September 9, 2008, pages 147 through 152

310. He did acknowledge that a letter of that nature in the normal course would have been brought by a social worker to his supervisor's attention, and that Carriere was the supervisor of the responsible social worker, Jean Dupuis.

Reference: Evidence of Carriere, September 9, 2008, page 150, lines 11 through 19

311. Having read Exhibit C1353 Mr. Carriere acknowledged that, "**It was one of the stronger letters that I have seen.**"

Reference: Evidence of Carriere, September 9, 2008, page 150, lines 23 through 25

312. Mr. Carriere also acknowledged that the police should have been informed of the doctor's letter.

Reference: Evidence of Carriere, September 9, 2008, page 151, lines 5 to 13

313. Notwithstanding the "**strength**" of the doctor's letter, it did not, from the CAS' perspective, change the situation with respect to whether they would investigate Earl Landry Jr.

Reference: Evidence of Carriere, September 9, 2008, page 152, lines 10 through 13

314. The CAS recordings made contemporaneously with C51's Gary Seguin abuse investigation contained no reference to Earl Landry Jr.; it was acknowledged by Mr. Carriere that that was a significant deficiency, even in accordance with 1985 standards.

Reference: Evidence of Carriere, September 9, 2008, page 159, lines 8 through 12

Earl Landry Jr. Allegations Re-surface: The Events of 1996 and Following

315. In the fall of 1993, the CAS became aware of an individual who had disclosed to his therapist that he had been a victim of sexual abuse by Earl Landry Jr. when he was younger. Because that individual did not wish to disclose his name, there was nothing further to be done by the CAS.

Reference: Evidence of Carriere, September 9, 2008, p.161-163, p.167-170

316. Shortly thereafter, CAS learned of another individual, C52 who was also receiving counselling and who stated that he had been abused by Earl Landry Jr. as a child.

317. CAS had to respond to this information because Landry Jr. was in the process of becoming a provisional foster parent to C54, a prior victim of familial sexual abuse. At a risk management conference CAS decided to notify Landry Jr.'s employer because he continued to work in a city park where he had access to children. This decision was later countermanded. Carriere attributes the CAS's failure to notify the employer to "tunnel vision" and the failure to appreciate that the CAS in fact had adequate evidence that Landry Jr. was an abuser and therefore should have informed the Parks and Recreation Department.

Reference: Evidence of Carriere, September 9, 2008, p.220, line 7 to p.224

318. Accordingly to Carriere, this failure occurred because CAS became **"fixated"** and **"developed tunnel vision"** around thinking that it needed the name of Earl Landry Jr.'s victim before it could or should inform his employer of the allegation. Again, correct process was not followed and there is an admitted absence of a rational explanation.

Reference: Evidence of Carriere, September 9, 2008, p. 220, line 7 to p. 224

319. CAS did refer C52 to the CPS. C52's allegation against Earl Landry Jr. was assigned to Constable Hanton on or about January 10th, 1996. It appears that Hanton interviewed C52 on or about January 18th, 1996.

320. Hanton remained responsible for this incident until March 13th, 1996 when he was transferred to Uniform Branch. Throughout the three months that he was responsible for this incident, Hanton created two pages of notes which, on their face, do not appear to have been made contemporaneously with the events recorded. Hanton's notes disclosed that on January 31st, 1996, C52 told him that there may have been other victims and he would try to locate them.

321. On February 25th, 1996, Hanton notes "**I was in contact with the accused [sic] again, he had negative results locating other possible suspects [sic]**". On its face, the notes recorded by Hanton make no sense and are internally inconsistent.

Reference: Exhibit 1613

322. On May 28, 1996 the incident involving Earl Landry Jr. was assigned to Constable Bough. Bough was transferred out of the Youth Branch on September 27, 1996. Between receipt of the file and his transfer out, Bough did absolutely nothing to investigate the allegations of C52.

Reference: Evidence of Brian Snyder, May 13, 2008, page 31, lines 17 through 19

323. On September 30th, 1996, Lucien Brunet assigned Brian Snyder to take over the Earl Landry Jr. investigation. Snyder spoke with Constable Hanton to ascertain what had happened while Hanton was responsible for this investigation. He was told that Hanton had spoken to the victim, and the victim couldn't identify the perpetrator, therefore, there was no further action possible.

Reference: Evidence of Brian Snyder, May 13, 2008, page 131, lines 19 to 20

324. If this indeed was what Hanton told Snyder, then in our submission it was false. Hanton's two pages of notes (Exhibit 1613) state "**Suspect Earl Landry Jr. dob 30 June 55**". Clearly C52 had been able to identify his alleged perpetrator.

325. Apart from his discussion with Hanton, Snyder himself did nothing on this investigation until five months later in February of 1997. At that time, he took action prompted by the fact that C52 had come to the station and had complained that nothing was being done on his investigation. Snyder testified that he (Snyder) told C52 that he understood that that was because C52 had been unable to identify his alleged assailant. C52 promptly said to Snyder "**I know who it is, it's big Earl Landry.**

Reference: Evidence of Brian Snyder, Day 2, page 150

326. Although C52 was never openly critical of Snyder's work, he did become upset with the fact that nothing had occurred between January 1996 when he first alleged abuse by Earl Landry Jr. and February, 1997 when he attended at the police station and actually spoke with Officer Snyder. He at that time threatened to bypass the police and go to the media; it was only thereafter that the CPS took action on his complaint.

Reference: Exhibit 1607

Evidence of Snyder, May 13, 2008, page 148, line 12 to page 150, line 5

327. It is a reasonable inference from the above evidence that Hanton not only did nothing to investigate Earl Landry Jr., but at a later time, when asked about his lack of action, **"**blamed the victim" by falsely alleging that the victim was not able to identify the suspect.

328. Prompted by C52's visit to the station, Snyder contacted the CAS in February of 1997, and then met with C52 on April 1st, 1997.

> **Reference**: Exhibit 1603, Snyder's notes, bates page 7179333
>
> Evidence of Snyder, May 13, 2008, page 137, lines 23 through 25

329. On May 26th, 1997 Snyder met with Earl Landry Jr. who admitted the allegations made by C52. Earl Landry Jr. was arrested on the first set of charges on or about that date.

> **Reference**: Evidence of Snyder, Day 2, page 140, lines 20 through 24

330. By the spring of 1997 Snyder had also interviewed C51 and charges had been laid against Earl Landry Jr. based upon C51's information, which was materially the same information as C51 had provided to the CPS as a child 11 years earlier in June, 1985.

331. By this time, C51 is a "historic abuse complainant". Had his complaint been properly investigated and charges laid in 1985 he would have been a contemporary abuse case, the occurrences would have been recent and his memory better.

The CPS 2000 "Criminal Investigation" of the Events of 1985

332. By memo dated August 16, 2000 (Exhibit 1358) then Chief Repa assigned Staff Sergeant Derochie to investigate the criminal allegations raised in a Statement of Claim which had been issued against the CPS and others by a victim of Earl Landry Jr., C53.

Reference: Exhibit 1359, Statement of Claim

333. The principal allegation within the Statement of Claim was that Earl Landry Sr. personally and/or in his capacity as the former Chief of Police, interfered with the investigation such that Earl Landry Jr. was "**left as a potential and real danger to other minor children, including the plaintiff C53**".

Reference: Exhibit 1359, bates page 7123259

334. We note as an aside that, in fact, C54 (who was also mentioned in the C53 Statement of Claim) was sexually abused by Earl Landry Jr. **after** C51 and his mother complained about Earl Landry Jr. to the CPS in June 1985.

335. In any event, the receipt of the Statement of Claim seemingly triggered a criminal investigation by the CPS of its own former Chief and officers who were involved in the 1985 investigation.

336. Staff Sergeant Derochie assigned the Earl Landry Sr. criminal investigation to Brian Snyder. Snyder was clear in his evidence that he considered himself to be investigating whether or not Earl Landry Sr. obstructed justice, and he considered whether anyone else

was involved (any other member of the CPS) which in his mind could lead to a conspiracy charge.

Reference: Evidence of Brian Sndyer, May 14, 2008, page 9, lines 14 through 25

337. Notwithstanding the above evidence, Snyder could not articulate in his testimony who his other suspects were in this investigation. In other words, although it was clear to him that the allegation was against Earl Landry Sr., it was not clear to him whether, had Landry Sr. attempted to obstruct justice, which other CPS officers would likely have been involved. There appears to be no working theory in Snyder's mind as to what a conspiracy would have looked like had it in fact occurred.

338. Snyder had no perception that there was a conflict involved in him investigating the ex Chief, under whom he had served for several years early in his career, and his fellow officers. This is so notwithstanding that the event which triggered his investigation was a civil suit against the Board of the CPS and other local institutions. In other words, an additional conflict or realm of bias lay in the fact that the CPS had a rational economic self-interest in disproving the wrongdoing alleged by C53 in his civil suit.

Reference: Evidence of Snyder, May 14, 2008, page 17

339. Snyder's investigation notes are contained in Exhibit 1622. As those notes disclose, his first step upon receiving the assignment was to contact the CAS (also a defendant in C53's suit and a defendant by Cross Claim at the instance of the CPS in that suit).

Reference: Evidence of Snyder, May 14, 2008, page 27

340. The next steps were to contact C53's mother (also a plaintiff in the suit) as well as the mother of C51.

341. Another curious circumstance which tends to belie that the CPS was conducting a *bona fide* criminal investigation is this: C53's mother and C53 were adverse parties to CPS in the civil suit. Upon hearing from Officer Snyder, C53's mother sought legal advice and as a result refused to be interviewed by Snyder. Had this been a real criminal investigation presumably the police would have insisted on interviewing C53's mother, had they truly believed that she had information material to a serious criminal investigation.

342. It must be noted that the allegations against Earl Landry Sr. were as serious as possible, in that he was a former Chief of Police and was being accused of obstruction of justice. By any reckoning, this would have been a major investigation and, one would have expected it to be conducted in accordance with the highest possible policing standards and best practices.

343. The Snyder investigation did not unfold in accordance with police best practice. It suffers from the following defects:

(a) He received material information that was not followed up on (see Exhibit 1622, bates page 7179305 where C54 is suggesting to Snyder that "**being related to Earl Landry Jr. and having the inside track, he was aware that 'they knew when he (Sr.) was chief'"**. On its face this suggests that Landry Sr. may have known his son had a tendency to sexually molest boys.

(b) He interviewed the CAS worker who informed him that there was no CAS investigation of Earl Landry Jr. in 1985 when C51's allegations were made known to them. Jean Dupuis was unable to provide them with any affirmative explanation as to why CAS had not conducted an investigation of Landry Jr. in 1985, and yet no adverse inference is drawn from the absence of an explanation.

Reference: Exhibit 1622, bates page 7179308

(c) Although Snyder did speak to Lefebvre, Willis and others, he did so using a list of prepared questions which required no more than yes or no responses. Had any officer responded "yes" to any of these questions, he would have been admitting complicity in wrongdoing. For instance, the investigating officer whom we know was approached by Earl Landry Sr. is Stan Willis. One would have thought that Willis would be the target of very probing questions about the 7:00 a.m. phone call he received from Earl Landry Sr. the day the investigation ended, including the length of the conversation, the details of what was said and whether Willis, who was a close friend of Landry Sr.'s family, had other communications with Senior or anyone else in the family. Claude Shaver spent two hours with Landry Sr. the day that the complaint was first made: where are the probing questions asked of him about what was communicated those two hours?

(d) Interviewees gave Snyder conflicting information which he did nothing to probe. The best example of this is Lefebvre's suggestion in January 2001 that somehow C51 could not identify Earl Landry Jr. [See Exhibit 1371]. This is in direct conflict to his 1997 will-say (Exhibit 1626) in which he suggested that there was

no problem with identification. Lefebvre's recent invention of the identification problem is also belied by exhibit 1353. Why doesn't Snyder challenge Lefebvre on these discrepancies?

(e) Is it simply coincidence that in 1996 Officer Hanton, who essentially does nothing to investigate the complaint of C52, suggests when confronted that there had been an "identification problem" in that complaint as well when clearly that was not the case?

(f) Notwithstanding a fairly lengthy investigation, Brian Snyder never interviewed Earl Landry Sr., the target of the investigation. His explanation is "**I had nothing**".

Reference: Evidence of Brian Snyder, May 14, 2008, page 121, lines 1 through 13

344. Based on Snyder's completely superficial questioning of officers and his failure to ask any probing questions, it is hardly surprising that he had **'nothing**" at the end of this investigation.

345. To sum up, the conclusion is hard to resist that CPS never entertained the possibility that Landry Sr. could conceivably have obstructed justice or that members of their service were complicit in the obstruction of justice. The repeated failures of the CPS (1985, 1996) to actively investigate their ex-Chief's son, and the complete failure of the CAS to do likewise in 1985 suggests that someone external to the investigation convinced Lefebvre/Willis that the ex-Chief's son wasn't a child molester. Rather than acknowledge that, they made up other reasons why there were no charges in 1985.

346. No one could reasonably be convinced by Snyder's "investigation" that Landry Sr. did not influence the 1985 events.

Analysis of CPS Institutional Response

347. **The failure of the CPS to investigate Earl Landry Jr. in 1985 is, in our submissions, an intentional failure. The circumstances suggest that the ex Chief and father of the alleged perpetrator, by being brought into the investigation, communicated that his son was not responsible and that that terminated the investigation.**

348. **The CPS should never have undertaken this investigation, given the obvious conflict that the accused was the son of the man who had just recently departed as Chief of the CPS. All parties involved in the "investigation" had worked under the accused's father within a 12 month period. This investigation should have been conducted by an outside service and not by the CPS.**

349. **To make matters worse, the two-hour visit between Chief Shaver and former Chief Landry Sr. is "a black box" in which, according to Shaver, nothing but "consoling" is going on. This simply not plausible. No intelligent person can look at these facts, including the fact that the investigation terminates without charges the very next day and conclude other than that the two talked about Earl Landry Jr. and the allegations against him, and that somehow the former Chief persuaded the current Chief that his son was not culpable.**

350. **The assignment of a known close personal friend of the Landry family (Sergeant Willis) to conduct the investigation of Earl Landry Jr. is completely indefendable.**

351. **The Earl Landry Jr. 1985 investigation also shows the pattern whereby the lack of charges are justified after the fact by blaming the victim. The suggestion that C51 was incapable of giving evidence in 1985 and/or did not identify Earl Landry Jr. as his abuser is just patently false. CPS brought charges based on C51's evidence in 1985 against the other abuser, Gary Sauve. They also brought charges against Earl Landry Jr. in 1997 based on the information of C51.**

352. **Documentary evidence existed in 1985 that corroborated C51's allegations of abuse and his identification of the abuser as Earl Landry Jr. While the evidence of the CAS is that Dr. Parks' letter was in its possession and as a matter of process, should have been given the CPS, there is no clear evidence that this occurred.**

353. **In 1985, this was a contemporaneous sexual abuse case. By 1997, it is historic, with all the concomitant difficulties that arise in historic cases (memory, etc.). C51's allegations would not have been a historic case if CPS had investigated properly in 1985.**

354. **Looking at these facts another way, who would be motivated to make a current complaint against a prominent person based on the treatment of C51's 1985 complaint?**

355. **The failure to prosecute in 1985 created the opportunity for Landry Jr. to continue to have access to C54 and to perpetrate abuse on him.**

356. **Although the CAS was informed about C51's allegations against Earl Landry Jr., it took no step of any sort to verify the abuse or prevent Earl Landry Jr. from abusing other children. There is no direct evidence explaining why they failed to do so. Bill**

Carriere who was involved at the time made it very clear at the Inquiry he had no independent recollection whatsoever of the Earl Landry Jr. matter. He is simply speculating when he says that he thinks the Agency's thought process at that time would not have seen Earl Landry Jr. as a "caregiver". With the greatest of respect to Mr. Carriere, that is also an *ex post facto* rationalization and it is equally possible that the CAS failed to investigate for another reason: having been assured by Lefebvre that there was no possible chance that Earl Landry Jr. was responsible for the abuse of C51.

357. **In 1996 and 1997 the actions of Officers Hanton, Bell and even Snyder initially demonstrate that they had no particular desire to investigate Earl Landry Jr. for historic sexual abuse. It was not until C52's complaint in 1996 and his threat to go to the media that there was an intervention and Snyder began to investigate in earnest.**

358. **In 2000 when Staff Sergeant Derochie and Officer Snyder are ostensibly investigating allegations that Earl Landry Sr. obstructed justice with the concurrence of CPS, the CPS has no sense that it is conflicted and should not be investigating itself.**

359. **The manner in which Snyder conducted that investigation is so far removed from investigatory best practices that it is simply not credible as a *bona fide* police investigation.**

360. **For its part, in 1996, 1997 and 1998, according to Bill Carriere, the CAS had actually decided to contact Earl Landry Jr.'s employer, which remained the Parks**

Department, and made one effort to do so, leaving a message for Sy Miller. The agency then "rethought" that position, and debated it internally virtually for years without making the phone call. Even as late as the mid to late 1990s, the CAS was departing from its child protection mandate in its dealings with Earl Landry Jr.

361. **Carriere can offer no rational explanation for this, and was driven to say that the Agency was caught up in "tunnel vision" and couldn't see its way clear to the right action.**

362. **When two different institutions failed so thoroughly in relation to one individual, and when that one individual was connected to the former Chief of Police, it is not difficult to understand why interference was suspected, particularly when neither agency can rationally defend their conduct.**

Institutional Response of the Cornwall Probation and Parole Office: How It Dealt With Allegations of Sexual Abuse by Probation Officers

363. The Area Manager of the Cornwall Probation and Parole Office ("Probation Office") became officially aware on April 8th, 1982 that Probation Officer Nelson Barque ("Barque") was involved in sexual relations with probationers. On that date, an individual, Ronald St. Louis communicated with Peter Sirrs ("Sirrs"), the Area Manager of the Probation Office, that he had serious concerns about Mr. Barque and a probationer named Robert Sheets. Mr. St. Louis advised that Sheets was using alcohol and illegal drugs to excess which Barque had provided to Sheets and that Barque was homosexually involved with Sheets and was, therefore, not properly supervising probation.

Reference: Exhibit 125, bates page 1001831

364. Sheets had been living in the St. Louis residence for several weeks at the time of this complaint, and had allegedly become violent under the influence of alcohol, had initiated a fight with C44 and another individual, and had damaged the St. Louis residence. St. Louis contacted the CPS as a result of this incident, but they took no action and instead referred St. Louis to Nelson Barque, the probation officer for Robert Sheets.

Reference: Exhibit 125, bates page 1001830

365. As of April, 1982, Sirrs had been the Area Manager at the Probation Office for approximately seven months, having commenced in September of 1981. He supervised four full-time probation officers, and two administrative staff. At that time, the Probation Office dealt with individuals 16 years of age and older.

Reference: Testimony of Sirrs, November 28, 2007, page 234, lines 9 through 20

366. In 1975 and earlier, the Cornwall probation officers also worked with youths under the age of 16.

Reference: Testimony of Sirrs, November 28th, 2007, page 235, lines 5 through 21

367. At the relevant times, Sirrs' supervision of the probation officers, Nelson Barque and Ken Seguin (who both held a P02 designation), amounted to an annual case audit whereby 10% of their files were viewed to ascertain if the paperwork was up to date and if there was evidence of compliance with the terms of the probationers' parole orders.

Reference: Evidence of Sirrs, November 28t, 2007, page 245, line 22 to page 246, line 14

368. Upon receiving the complaint of Mr. St. Louis, Sirrs went to his direct supervisor, Mr. Toffelmire, the then Regional Manager, who in turn sent him to Mr. Teggart, the Director of Investigations. Sirrs was told to do a preliminary investigation himself on the complaint.

Reference: Testimony of Sirrs, November 28, 2007, pages 271 to 272

369. In the course of his preliminary investigation, Sirrs learned that police officers seemed to be either directly aware of Barque's behaviour or had heard rumours about it. In particular, Sergeant Wayne Isbester, the Detachment Commander of the RCMP,

acknowledged to Sirrs that he (Isbester) had heard rumours that Barque was sexually involved with Sheets and had been overlooking Sheets' use of alcohol and drugs. Sheets' terms of probation required that he abstain from alcohol and drugs.

Reference: Exhibit 125, bates page 1001831

370. Members of the CPS were also aware of Barque's relationship with Sheets and Barque's failure to enforce the terms of Sheets' probation. In one instance, the police actually shared with Sirrs an Occurrence Report (Occurrence 14175/81 and 1422081) which arose out of a theft incident. Within those Occurrences, a probationer who gave a statement to police referred to the homosexual relationship between Barque and Sheets.

Reference: Exhibit 125, bates page 1001831

371. CPS Sergeant Masson took it upon himself to informally counsel Mr. Barque in October, 1981 regarding rumours of his too close association with probationers, particularly Sheets. Masson told Sirrs that Barque had acknowledged to Masson that he realized that he "**had to do something about it**".

Reference: Exhibit 125, bates page 1001832

372. In addition, Masson informed Sirrs that Barque had, on several occasions, intervened with the CPS on behalf of probationers, and used his position as a probation officer to deflect official police action. On one occasion, when Masson was laying a charge against Sheets, Barque had to be cautioned that **he** would be charged with obstruction if he persisted in interfering. This Occurrence was provided to Sirrs as an example and it was

suggested that incidents of a similar nature had occurred with other police officers. Sergeant Masson informed Sirrs that Barque was "**frequently in the company of Robert Sheets**".

Reference: Exhibit 125, bates page 1001832

373. Sirrs' preliminary investigation also led him to speak with maintenance staff who had observed Nelson Barque in the office after hours with a young male, who had found pornographic materials featuring nude males located in the secured area washroom and who had seen Barque shirtless and barefoot walking into the Probation Office after hours.

Reference: Exhibit 125, bates page 1001833

374. Sirrs himself investigated and discovered that Barque had surreptitiously installed a lock on his office door, contrary to office policy.

Reference: Evidence of Sirrs, November 28, 2007, page 252, line 21 to page 253, line 10

375. In his preliminary investigation, Sirrs talked with C44 who provided further details about Barque's knowledge of Sheets' use of alcohol and drugs. He stated that Barque had brought homemade wine to the St. Louis residence for both himself (C44) and Sheets, and also that Barque had provided him with wine when he was attending the Probation Office at 502 Pitt Street. C44 also admitted unequivocally that he had engaged in homosexual activity with Barque on several occasions, both at Barque's home and at the Probation Office.

Reference: Exhibit 125, pages 1834 and 1835

376. Sirrs testified at the Inquiry that he was "**extremely disappointed**" with police who were aware of Barque's conduct but who had failed to advise him in his capacity as Barque's supervisor and the Area Manager of the Probation Office.

Reference: Evidence of Sirrs, November 28th, 2007, page 289, lines 12 to 13

377. Sirrs agreed that all of the information he learned about Barque was extremely concerning, although he prioritized the sexual misconduct as the most concerning, given Barque's relationship of trust and authority with his probationers. While all of Barque's actions were unacceptable, Sirrs felt that Sergeant Masson's **"lack of telling me was unacceptable as well**".

Reference: Evidence of Sirrs, November 28th, 2007, page 291, lines 11 to 12

378. Apart from the "**counselling"** that Masson says he conducted with Barque, there was another occasion when Barque's conduct attracted the attention and concern of law enforcement officials. Subsequent to the April 6th, 1981 disturbance at the St. Louis residence, Barque met with Sergeant Allaire of CPS and Keith Jodoin, a Justice of the Peace and administrator at the Provincial Court. Barque at that time discouraged further police action (presumably against Sheets), indicating that he would act upon the matter and advise Sergeant Allaire. He never reported back to Allaire, however, Allaire's recollection was that Justice of the Peace Jodoin undertook to caution Barque on his seemingly inappropriate supervision of Sheets.

Reference: Exhibit 125, page 1001835

379. Based upon the evidence he collected, it would appear that Barque's sexual relationship with probationers Sheets and C44 was an "**open and notorious**" matter within the law enforcement community in Cornwall, and yet no one saw fit to inform his supervisor about it.

380. Although Sirrs agrees that ample grounds existed to terminate Barque's employment, Sirrs himself did not have that authority and also testified that having done so would have raised some serious issues, both legal and under the grievance process in the collective agreement.

Reference: Evidence of Sirrs, November 29, 2007, page 30, lines 8 through 20

381. Given the Probation Office's need to maintain a positive image in the community, Sirrs felt that it was best that Barque be allowed to resign.

Reference: Evidence of Sirrs, Day 2, page 32, lines 5 through 21

382. Notwithstanding that Sirrs complains that others did not practice transparency with him, he felt that Barque's resignation without any other consequence was the "**most expeditious route to follow, in everybody's interest**".

Reference: Evidence of Sirrs, November 29, 2007, page 33, lines 12 through 14

383. Sirrs did turn his mind to others in the Probation Office who may have been involved in similar activities as Barque. Although he turned his mind to Mr. Seguin (whom he thought might have been in a homosexual relationship with Malcolm MacDonald), he had no concrete information to suggest that Seguin was involved with probationers. He knew that Malcolm MacDonald was professionally involved with probationers.

Reference: Evidence of Sirrs, November 29, 2007, pages 59 through 60

384. Ultimately, **"Mr. Seguin had an excellent reputation in Cornwall**" and Sirrs, therefore, came to the conclusion that "**there was no foundation for my concerns**".

Reference: Evidence of Sirrs, November 29, 2007, page 64, lines 8 through 18

385. Barque tendered his resignation on May 5th, 1982.

Reference: Exhibit 894

386. In his CV, Barque named Peter Sirrs as a "**recommendation**".

Reference: Exhibit 910

387. That summer Sirrs was contacted by Pierre Landry, the Executive Director of a French language social service organization called L'Equipe Psycho-Sociale.

388. Landry and Sirrs exchanged correspondence and spoke on the phone. Although Sirrs was adamant at the Inquiry that he provided no employment recommendation for Nelson

Barque, he did in fact send a letter to Mr. Landry on August 23rd, 1982 entitled "**Re: employment Reference Nelson A. Barque**", which outlined the length of Barque's service with the Probation Office, his successful completion of probation and his reclassification as a Probation Parole Officer II.

Reference: Exhibit 869

389. Landry wrote a letter dated August 12th, 1982 to Sirrs referring to a telephone conversation of even date and stating that "**I would appreciate receiving any recommendations that you can give me concerning Nelson Barque**" who has applied for the position of social worker of our organization.

Reference: Exhibit 911

390. Sirrs testified that he did not receive Exhibit 911.

Reference: Evidence of Sirrs, November 29, 2007, page 86, lines 6 and 7

391. Sirrs testified that he did have a subsequent telephone conversation with Landry in which he stated that he (Sirrs) would not rehire Barque. Landry, who hired Barque, does not recall that statement being made.

Reference: Evidence of Sirrs, November 29, 2007, page 87 line 5 through 7

Evidence of Pierre Landry, November 30, 2007, page 18, lines 6 through 18

392. Following delivery of Sirrs' preliminary report, S. Teggart of the Inspection and Investigation Branch reviewed it and wrote a memo to A. Campbell, stating amongst other things that:

> "**investigation has clearly established that Mr. Barque did in fact supply alcoholic beverages and was homosexually involved with C44 and Robert Sheets, both probationers under Mr. Barque's supervision. Mr. Barque submitted his resignation prior to the conclusion of this investigation with an effective date of May 4th, 1982. This concludes our investigation. No further action is necessary by this Branch.**"
>
> **Reference**: Exhibit 125, bates page 1001823

393. When confronted by Ministry official Claire McMaster, Nelson Barque admitted to a homosexual relationship with both Robert Sheets and C44, and acknowledged that he had had a sexual relationship with each of them for one year as at May, 1982.

> **Reference**: Exhibit 895

394. The dates of birth of C44 and Robert Sheets were known to the Ministry; Sheets' date of birth was in 1962 and therefore he was under the age of 21 during the sexual relationship with Barque (Exhibit 896).

395. In a statement that the Ministry took from C44 in or about May of 1982, he was noted as being age 21, however both he and Barque acknowledged that their sexual relationship preceded May of 1982 by one year. Accordingly C44 was also under the age of 21 when his sexual relationship with Barque commenced.

> **Reference**: Exhibit 897

396. By letter dated June 14th, 1982, Claire McMaster of the Ministry wrote directly to Don Johnson, the Cornwall Crown Attorney, enclosing the Barque investigation report and requesting to be "**advised of your decision in this matter**".

Reference: Exhibit 903

397. Approximately one week after Exhibit 903, Crown Attorney Johnson wrote a letter to Claire McMaster re Nelson Barque. In that letter, Crown Johnson states that he has concluded that criminal charges would not be warranted: "**My decision is based on the fact that Mr. Barque when confronted with the allegations resigned immediately**". Clearly this circumstance was irrelevant to the laying of charges.

Reference: Exhibit 899, bates page 1075262

398. A secondary reason given for not bringing charges is that "**It appears also that one of the homosexual relationships involved an individual who was 21 years of age, therefore, a charge under the *Criminal Code* would not succeed**".

399. This was a reference to the then *Criminal Code* provision that created a defence to gross indecency charges in the event that the alleged victim was 21 years of age or older. As noted above, Sheets and C44 were less than 21 years of age when the sexual relationship with Barque commenced. Both C44 and Barque had so stated. Johnson's opinion was premised on a factual error.

Reference: Exhibit 899

400. The other alleged victim of Barque, Robert Sheets, initially denied being sexually involved with Barque although Barque admitted it. It is therefore difficult to understand why Crown Johnson would stress Sheet's denial in the face of an admission by the prospective accused.

401. If there was any legitimate concern about Barque's admission being admissible in evidence against him, that flows from the fact that the Ministry had usurped the police's investigatory role and had questioned Barque directly. In other words, it was a self-inflicted "wound". Had charges been brought at that time the probability is very high that Barque would have simply admitted both sets of charges and entered a guilty plea (as he in fact does some thirteen years later in charges brought in relation to Albert Roy).

402. Crown Johnson, in his opinion letter, has no regard to the evidence that Barque has seemingly aided and abetted both probationers in violating their probation orders. He does not address his mind to whether or not those admitted circumstances could constitute a criminal offence.

403. The Ministry, in going directly to Crown Johnson, by-passed a proper police investigation by the local police service. Since the CPS was already quite familiar with the circumstances of Barque and the two probationers, it is difficult to rationalize why CPS would not have been asked to investigate. Had this occurred, there is at least some possibility that the CPS would have been led to other probationers reporting similar conduct by Nelson Barque. Probationer Albert Roy, for example, did come forward to the police voluntarily more than a decade later; had CPS investigated Barque's case load to determine whether Sheets and C44 were isolated cases, it may well have learned of Albert Roy's allegations in the early 1980s, much closer in time to the incidents.

404. No step was taken by the Probation Office to contact any of Barque's other probationers in an effort to ascertain whether he had engaged in a similar pattern of behaviour with them. This failure is rather glaring in light of the evidence provided by the maintenance staff to Mr. Sirrs, some of whom had seen Barque having "**after hours**" contact with his probationers in circumstances that suggest inappropriate sexual behaviour. Sirrs must have entertained the thought that Barque's sexual misconduct might include other probationers.

405. In any event, no such police investigation occurred and no such step was taken by Probation. The Cornwall Probation Office was satisfied with Barque's resignation as, seemingly, was the Cornwall Crown Attorney. Barque's sexual misconduct with the Ministry's clients never came to light publically: not in the community generally and not specifically in the context of his re-employment by a community social work agency, *L'Equipe*.

The Sexual Assault Charges Against Barque Late in December, 1994

406. The victim in relation to these charges, one Albert Roy, was a client of the Cornwall Probation Office in 1977. Roy's date of birth is October, 1960.

Reference: Evidence of Albert Roy, November 7, 2006, page 73

407. Mr. Roy indicated that he stole a car in October, 1975, pleaded guilty to the resulting charges, and received a sentence of 18 months' probation with conditions that he abstain from drinking alcohol.

Reference: Evidence of Albert Roy, November 7, 2006, page 74, line 2 to page 76, line 17

408. Ken Seguin prepared the pre-sentence report on Roy and was initially assigned to supervise Roy's parole, for a period of about three months. At that stage, according to Roy, Seguin was going on vacation so Roy was assigned Nelson Barque as his probation officer.

Reference: Evidence of Albert Roy, November 7, 2006, page 78, line 12 to page 79, line 21

409. Albert Roy alleged that he was sexually abused by Barque while he was on probation with Barque. He testified that he reported his sexual abuse by Barque to Ken Seguin, whose response was to commence abuse of his own on Mr. Roy. Roy testified that he was abused by Seguin over a period of time. Roy also testified that he unilaterally terminated his probation by eventually confronting Seguin stating that he did not intend to return.

Reference: Evidence of Albert Roy, November 8, 2006, page35, lines 3 through 7

410. Roy did not disclose the above abuse in 1977; some years later he disclosed it both to a social worker and a hospital worker with whom he came in contact.

Reference: Evidence of Albert Roy, November 7, 2008, pages 83 to 93

411. Roy reported his abuse to Heidi Sebalj of the CPS on or about November 23rd, 1994 and attended the following day to provide a statement.

412. Roy was told that CPS would not be laying the charge because the conduct that he had disclosed which occurred in the City of Cornwall was not an offence; Roy was advised that the OPP would investigate his allegation of abuse occurring at Barque's residence, which was in OPP jurisdiction.

413. On December 6th, 1994, Roy was required to give a statement to Chris McDonell, of the Lancaster OPP (Exhibit 117). Roy testified that he felt "**scared and intimidated by this experience**"

> **Reference**: Evidence of Albert Roy, November 8, 2006, page 51, lines 4 through 10

414. He did not comprehend that the McDonell interview was part of another investigation conducted by McDonell. Notwithstanding, his December 6th, 1994 statement did make mention of his abuse by Barque.

415. Interestingly, McDonell, who was investigating the potential extortion of Ken Seguin at that time, was in possession of a statement from Jos Van Diepen which contained details of alleged sexual relationships between both Nelson and Ken Seguin and certain of their probationers. It is not known why this information was not shared with CPS nor why it was never shared with Zebruck, the OPP officer who investigated Roy's abuse by Barque.

> **Reference**: Evidence of William Zebruck, November 17, 2008, p.67, line 17 to p.68, line8

416. The OPP detachment which dealt with Roy was Long Sault, and Constable Zebruck was the responsible officer. Roy also gave a statement to Zebruck on or about December 16th, 1994.

Reference: Exhibit 121, Zebruck's notes, bates pages 1078043 to 1078044

Evidence of Albert Roy, November 8, 2006, page 71, lines 15 through 22

417. On one occasion, Roy was upset by comments Zebruck made to the effect that he (Zebruck) thought that Barque might kill himself as a result of the charges.

Reference: Evidence of Albert Roy, November 8, 2006, page 73, line 22 to page 74, line 5

418. Charges were laid against Nelson Barque based upon the information of Albert Roy on or about December 16th, 1994. Guy Simard was the Crown Prosecutor, and met with Roy after the charges had been laid.

419. Roy was advised that Barque would be pleading guilty and that although the Crown would ask for a higher sentence, it was likely that Barque would only receive four months' incarceration.

Reference: Evidence of Albert Roy, November 8, 2006, page 81, line 5 to page 82, line 11

420. Barque did plead guilty on July 10th, 1995 and returned for sentencing on August 18th, 1995.

Reference: Evidence of Don Johnson, January 6, 2009, page 60, line 23 to page 61, line 1

421. Don Johnson, who had been the Crown Attorney responding to the Ministry in the summer of 1982, acted as defence counsel to Nelson Barque in 1995 in relation to the Albert Roy charges.

422. Roy himself became aware of Johnson's prior involvement with Barque in the 1982 incidents at the Probation Office; Roy testified at the Inquiry that he perceived Johnson's role to be a conflict and he questioned the propriety of Johnson's role. Roy also questioned the propriety of the four month custodial sentence.

Reference: Exhibit 114, transcript of the Barque sentencing, at bates page 1075757

The Return of C44 in 1995

423. During her part of the Roy investigation, Sebalj became aware, through OPP Chris McDonell, of the 1982 file at the Ministry of Probation and Parole pertaining to misconduct by Barque with respect to probationers. She was also informed of Barque's resignation from his employment in 1982.

Reference: Exhibit 1236, ODE of Heidi Sebalj, paragraph 60,

424. On December 1st, 1994, Sebalj met with C44.

Reference: Exhibit 115, bates page 7008831, at the bottom

425. It appears from the relevant exhibit that Sebalj sought out C44 as a possible witness in the Roy matter. When she explained the purpose of her contact with him, he "**adamantly refused to become involved, suggesting that he had been responsible for Barque's employment being terminated at Probation and Parole Services years ago"**.

Reference: Exhibit 115, bates page 7008831

426. Following the Barque guilty plea in August of 1995, Sebalj received a telephone call from C44's adoptive father on December 20th, 1995 who stated to her that his son should cooperate with the prosecution of Barque, and when he believed his son's criminal activity was mitigated by the abuse he fell victim to while on probation.

Reference: Exhibit 1236, ODE of Heidi Sebalj, paragraph 68

Exhibits 1262 and 1283

427. Sebalj took a statement from C44 on December 21st, 1995 (Exhibit 1276). C44's statement was lengthy, consisting of 35 pages. It contained the following salient details:

(a) While on probation with Nelson, he was taken to Nelson's home and, with Nelson, drank "**a couple of bottles of wine**" and the two had a sexual encounter in the bedroom in Nelson's home (Bates 7142972);

(b) Barque would give him money from time to time (Bates 7142973);

(c) In all likelihood C44's probation order included the non-consumption of alcohol (Bates 7142973);

(d) There was a subsequent incident involving anal penetration (Bates 7142976);

428. The incident involving Barque caused stress and confusion to C44, particularly with respect to his own sexuality and his relations with women;

Reference: Exhibit 1276, bates page 7142977

429. C44 volunteered that this activity went on for approximately one year because

> "**I was scared**. **I was afraid maybe ... if I went and said something to his superiors there ... word would get around and I would get breached on probation, I would have went back to jail. I didn't want to go back to jail".**
>
> **Reference**: Exhibit 1276, bates page 7142977

430. Sebalj wrote to Crown Murray MacDonald on February 7th, 1996 seeking his advice as to laying of charges on the information of C44. She provided, amongst other things, a copy of C44's statement with that correspondence.

Reference: Exhibit 916

431. Crown MacDonald responded by letter dated March 5, 1996, in which he communicated to Sebalj Crown Peter Griffith's opinion that charges were not warranted. The Crown opinion that is communicated contradicts some of the information obtained in the investigation.

Reference: Exhibit 917

Project Truth, the 1998 Charges Against Nelson Barque and his Subsequent Suicide

432. On October 3rd, 1997, two Project Truth officers, Joe Dupuis and Steve Seguin, interviewed C45 at the Kanata Detachment, OPP.

Reference: Exhibit 907

433. C45 told the officers that he had read an article in the *Ottawa Citizen* about the OPP doing an investigation on sex abuse in Cornwall and "**some names ... in my mind come up, that might have been, connected with your investigation, so I gave you a call just to give you my side of the story. And the people that I've ran into".**

Reference: Exhibit 907, bates page 110906

434. C45 disclosed that he had been on probation for one year following a drug-related conviction. The following year, as a result of additional charges, he attended on Ken Seguin in the Probation Office to prepare a pre-sentence report, at which time both Seguin and Barque, on the pretence of measuring his penis, engaged in sexual behaviour with him.

435. Although there was no additional sexual conduct, C45 reported that on the subsequent supervision visits with both Seguin and Barque, that they would discuss sexual subjects with him. Following his probation, he had an encounter with Barque in which Barque stated that he (Barque) was bi-sexual and was attracted to C45. Nothing further ensued.

Reference: Exhibit 907, bates page 1111908

436. C45 informed the OPP that he was 14 years of age at the time of the occurrence involving Ken and Nelson.

Reference: Exhibit 907, bates page 1111908

437. C45 also informed the OPP that, following his probation, he did some work for Ken on Ken's home and that at that time was introduced to a visiting priest, Father MacDonald.

438. C45 also went on to disclose that a former teacher of his would speak at the St. Columban's Parish doing bible readings as part of the Mass. "**I have brought charges against him, as far as sexual abuse ... through the Cornwall Police, and he's been charged**" .

Reference: Exhibit 907, bates 1111912

439. C45 went on to mention that Charles MacDonald was present in the Parish when the teacher spoke.

440. At one point in response to an open ended question, C45 stated as follows:

> "**... I just feel that ... those three people that I mentioned, Marcel Lalonde, that was my teacher, and Father MacDonald and Ken Seguin knew each other, well enough through one way or another. Marcel didn't know Ken well, he knew Father MacDonald well, and Ken knew Father MacDonald well. So if Cornwall was a small town ... I got caught up in that, in the uh, circle, of the, gentlemen.**"
>
> **Reference**: Exhibit 907, bates 1111915

441. On June 2nd, 1998, Robert Sheets was interviewed by Project Truth officer Genier.

Reference: Exhibit 919

442. Sheets gave information against both Richard Hickerson and Nelson Barque in that interview. Sheets attended the interview with a written statement which he had prepared and brought to the interview.

443. Sheets had been contacted by Officer Genier and, following the initial contact, recalled details about incidents involving Hickerson and Barque and wrote them down.

444. Sheets first encountered Richard Hickerson as a special needs counsellor at Manpower, and was given $2.00 by him. Sheets was 14 or 15 years of age at that time, and Hickerson began taking him to movies and for motorcycle rides, which ended with sexual contact taking place at Hickerson's home.

445. Following the events with Hickerson, Sheets was convicted of offences and went on probation. He insisted that he told Nelson Barque about the Hickerson incidents.

Reference: Exhibit 919, bates page 7008927

446. Sheets was in fact charged and sentenced for robbing Hickerson.

Reference: Exhibit 919, bates page 7008930

447. With respect to Barque, Sheets informed the OPP that several years after Hickerson, at the age of 17 or 18, he was on probation to another probation officer and that he met Nelson Barque through a fellow probationer, C44. He also met Ken Seguin at this time. Sheets stated that he told Barque about his experience with Hickerson and that he thought

that he was possibly gay. This meeting took place in a licensed restaurant at the Galleria Mall at Cornwall.

Reference: Exhibit 919, bates page 7008934

448. Barque had provided Sheets with money and booze, "**lots of homemade wine**".

449. Sheets indicated that Barque would arrange to pick him up and they would return to Barque's home for sex. On one occasion, Barque wanted to have sex in his office but Sheets refused.

Reference: Exhibit 919, bates page 7008935

450. Sheets also commented that he was an alcoholic, and that the fact that Barque was feeding him alcohol led to an underlying fear that "**he can, he can breach me. I'm not supposed to be drinking. I'm on probation**. **So I had that hanging over my head, so as much as I didn't really like the sex with him, I kept on too**" .

Reference: Exhibit 919, bates pages 7008935-7008936

451. On June 18th, 1989, Barque met with Detective Constables Genier and Dupuis. He admitted sexual conduct occurring over a period of one year to one and one half years, and to providing Sheets with homemade wine and money. He also corroborated that Sheets had disclosed to him that he (Sheets) had been previously abused by Hickerson of Canada Manpower.

Reference: Exhibit 915

452. Barque admitted to having sex with Sheets, C44 and Albert Roy.

Reference: Exhibit 915

453. On June 18th 1998, Barque was charged with indecent assault in relation to C45 and Robert Sheets. On June 28th, 1998, Barque was found dead from a self-inflicted gunshot wound to the head.

Reference: Exhibits 918, 914, 908 and 913

Analysis of Probation Office's Institutional Response

454. **As with the CAS, the Probation Office bypasses a police investigation of Nelson Barque's conduct and the Ministry goes directly to the Crown. This leads one to question whether CAS and Probation lacked respect for the CPS.**

455. **As was the case with the Executive Director of the CAS, a senior official at the Ministry of Corrections, which is an arm of provincial law enforcement, elected to bypass the proper law enforcement step. This is highly unusual.**

456. **The fact that members of CPS and the RCMP had knowledge of Barque's improper relationship with a probationer and saw fit not to disclose it to his employer is impossible to justify. It leads one to wonder whether or not they considered the situation somehow amusing or innocuous. It suggests they did not contemplate the possible abuse of power that could arise in such a situation, or the damage generally to a probationer when the terms of his probation are not enforced. It leads one to wonder whether they thought that the "victims", being probationers, were unworthy of consideration as victims. It also shows a possible lack of respect on the part of the CPS towards the Probation Office: perhaps for example the CPS believed that since the behaviour was so open and notorious, the Probation Office was well aware of it but tolerated it.**

457. **For its part, the Ministry of Corrections was seemingly quite happy not to have public attention focused on Barque's conduct. If this was not a consideration, the Ministry might have been expected to insist on a police investigation.**

458. **The lack of investigation in 1982 ensures that when charges are eventually laid based on the 1982 probationers, they are "historic" in nature.**

459. **The sexual component of this situation dominated the field, such that the Probation Office seemingly did not perceive that Barque's behaviour was undermining its core mandate, which is to ensure compliance by probationers with the terms of their probation orders. On a more personal level, Barque's plying of C44 and Sheets with alcohol was contrary to their own best interest. Barque had completely compromised his authority with these probationers, and they also felt compromised by the fear that he would breach their probation if they were not sexually compliant.**

460. **Although Probation had wanted more candour from CPS concerning Barque, it did not practise candour in its communications with Barque's next employer, L'Equipe.**

461. **Candour was also lacking internally: the reason for Barque's resignation were not discussed with the other employees generally; for their part, staff of the Probation Office almost certainly had suspicions about Barque's sexual involvement with clients but said nothing to Sirrs or the prior manager.**

462. **Probation did no outreach to its other Barque probationers to ascertain if they were sexually abused by him.**

463. **When the first historic sexual abuse allegation surfaces against Barque in 1994, the complainant is required to give multiple statements to several different agencies. Although it is understandable why the OPP was involved, this was a victim who**

claimed to be peculiarly vulnerable and greater sensitivity could perhaps have been displayed.

464. **In addition, the practice of taking multiple statements increases the probability of generating inconsistencies which will be exploited on cross examinations at the eventual trial.**

465. **Relevant information was not before the Court in relation to Barque's sentencing in 1995, that information being the Ministry investigation which had occurred in 1982 and which had been sent to Crown Johnson as he then was. Although by 1995 the Local Crown's Office knew that former Crown Johnson had had involvement in the 1982 occurrence, it appears that the underlying Ministry report had been returned by Johnson to the Ministry and the Crown as of 1994 did not know the details of what had occurred, mostly importantly Barque's admission that he had had sex with two other probationers and had assisted them in breaching the terms of their probation. Johnson had that knowledge, however Johnson was acting for the defence in 1995. In any event, not only was the 1982 information not before the Court, the Court seemingly acted on the suggestion that Barque had not engaged in any behaviour similar to that perpetrated against Albert Roy, which was not true.**

466. **In late 1995 and 1996 when Constable Sebalj was investigating the allegations against Barque by C44, she developed evidence that would certainly have supported a charge against Barque. The Crown's response to Sebalj's is incorrect and superficial. It seems also to have been made without the background knowledge that Barque had pleaded guilty to a very similar offence less than 12 months prior to the Crown opinion.**

467. **If Crown Griffiths had actually read Sebalj's investigation brief, he would have found evidence of coercion to compel the consent of C44 as well as evidence that C44 was under 21 years of age at that time of his first sexual involvement with Barque.**

468. **Officer Sebalj's request for a Crown opinion (Exhibit 916) is curious in that she nowhere states whether or not she has on a subjective basis she has RPG to believe an offence had been committed against C44. As late as the year 1996, this Officer appears not to be able to distinguish between her role in the laying of charges and that of the Crown.**

469. **Shortly after the announcement of Project Truth, victims of Barque surfaced at the OPP. One of these victims in relation to whom the OPP lays charges against Barque (C45) actually provided evidence of a small "clan" of gay men who knew one another (Charles MacDonald, Ken Seguin and Marcel Lalonde) and indicated that he was a victim of all three. Although we will comment on the "pedophile ring" and "conspiracy" aspect of Project Truth in detail in the next section of these submissions, at this point, suffice to note that C45 was a "link" amongst three of the key names of the suspected "pedophile ring". C45 is himself an example of young people alleging abuse by older men who knew and associated with one another.**

470. **The piecemeal prosecution of Barque in 1994 and 1998 when the majority of the underlying events had been admitted to by him in 1982 is indefensible, and in all likelihood contributed to his suicide.**

INSTITUTIONAL RESPONSE OF THE DIOCESE

> **"The Diocese was a central player in the controversial history which has marked our area…"**
>
> Father Paul-André Durocher, Bishop of Alexandria-Cornwall, February 2007 (Exhibit 3500, document 742504).

471. The Diocese of Alexandria-Cornwall is an important public institution in the Cornwall community. The town if roughly 70% Catholic. The Bishop and Priests of the Diocese of Alexandria Cornwall ("Diocese") are spiritual leaders to many local Catholic faithful, and are important individuals in positions of authority within the broader local community.

> **Reference**: Evidence of Paul André Durocher, September 3, 2008, page 2, lines 5 through 6

472. The Diocese was a "central player" in the historic allegations of sexual abuse within the community. There were multiple allegations of historic sexual abuse in the Cornwall area in which the alleged perpetrators were Priests of the Diocese and in which the alleged victims complained to the Diocese. If allegations of historical sexual abuse are not handled properly by an institution such as the Diocese it can affect both the Church and its faithful and the greater Cornwall community at large.

> **Reference:** Exhibit 3500
>
> Evidence of Eugene LaRocque, August 26, 2008, page 190, lines 11, 12, 24 and 25

473. Through this Public Inquiry we have learned that the Diocese failed to properly respond in several instances to allegations of historic sexual abuse by clergy.

474. As has been recognized by the present Bishop of the Diocese, "**some young people were indeed sexually abused by priests of our diocese**". It is important to understand how the Diocese historically has responded to allegations of sexual assault involving its own clergy, and what measures have been taken to improve upon its response.

Reference: Exhibit 3500

Father Carl Stone

475. Father Carl Stone was a priest with the Montfort Fathers. Although not incardinated in the Diocese, from June 1957 to August 1963 he served as an assistant priest at St. John Bosco in Cornwall, and from December 1981 to June 1985 he served as chaplain at St. Joseph's Villa in Cornwall while also performing part-time services at Mount Carmel House, a nearby alcohol addiction treatment center.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 101 lines 15 through 18

Evidence of Eugene LaRocque, July 3, 2008, page 103 lines 18 through 19

Exhibit 2067, document 120477

Evidence of Eugene LaRocque, July 3, 2008, page 105 lines 5 through 9

476. Prior to Father Stone's first period working in Cornwall, he had held a charge at the Diocese of Ogdensburg (in upstate New York) from February 1954 to June 1957. In

August 1957, shortly after Father Stone's arrival in Cornwall, the then Bishop of the Diocese Rosario Brodeur received a letter from the Chancellor of the Diocese of Ogdensburg, informing him that Father Stone had been asked to leave the Diocese of Ogdensburg and that Father Stone had had all permanent faculties withdrawn because of his trouble with children or young adults. The letter indicated that Father Stone had a "past history" of such trouble prior to his arrival at the Diocese of Ogdensburg, that he had not yet reported to his superiors at the Montfort Fathers, and was therefore in Cornwall without the permission of his superior.

Reference: Exhibit 2065

Exhibit 2067

Exhibit 2066

Evidence of Eugene LaRocque, July 3, 2008, page 110, lines 19 through 20

Evidence of Eugene LaRocque, July 3, 2008, page 12 lines 6 through 8

477. Despite receipt of this information, in December, 1957, Bishop Brodeur informed Father Stone's superiors that Father Stone would be permitted to stay within the Diocese for one year "ad experimentum", but that he would not be incardinated. Ultimately Bishop Brodeur granted further extensions and Stone remained in the Diocese.

Reference: Exhibit 2067

478. The Diocese received a second letter of concern from the Diocese of Ogdensburg dated April 25, 1958, indicating that Father Stone had recently been seen in Malone, New York, and that there was a danger that he would be apprehended by police "**if they**

thought he was trying to contact certain young men of that community". The authorities of the Diocese of Ogdensburg requested that, if possible, the Diocese take measures to prevent Father Stone from returning to the Diocese of Ogdensburg.

Reference: Exhibit 2068

479. By letter dated May 2, 1958, Bishop Brodeur informed the Bishop of Ogdensburg that Father Stone had been warned that he should not visit the Ogdensburg Diocese.

Reference: Exhibit 2069

480. In the fall of 1958, the Chancellor of the Diocese of Ogdensburg wrote to Bishop Brodeur to report that:

> **"[T]he Reverend Carl V. Stone was in the Diocese of Ogdensburg and brought boys to his camp. They have been there at nighttime. This took place on at least two occasions during the summer and again recently. We have also been advised that the police are checking on the situation**."

Reference: Exhibit 2070

481. Despite this clear violation, Father Stone remained within the Diocese until August 1963 and Bishop Rosario repeatedly wrote the Montfort Fathers to gain further extensions from them authorizing Father Stone to remain in Cornwall.

Reference: Exhibit 2155

482. It is unclear what events ultimately lead to Father Stone's departure from Cornwall in August 1963. According to a note kept by Bishop Rosario, Father Stone left the Diocese "**sometime in August when the Cornwall Police threatened to intervene after his**

misdemeanour (*sic*)". It is unclear from Bishop Rosario's note whether the "misdemeanour" was of a sexual nature, and Bishop LaRocque had no information to offer on this point.

Reference: Exhibit 2071

Evidence of Eugene LaRocque, July 3, 2008, page 127, line 19

483. Father Stone returned to Cornwall in 1981. By this time, Bishop LaRocque had become the Bishop of the Diocese.

484. In 1981, Bishop LaRocque received a request from Father Gary Ostler that he consider permitting Father Stone to return to work in the Diocese on a temporary basis. Bishop LaRocque thereupon reviewed Father Stone's file and became aware of prior difficulties with this priest in both the Diocese and his "home" Diocese in Ogdensburg.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 71, lines 15 through 17

Evidence of Eugene LaRocque, July 3, 2008, page 106 lines 20 through 24; page 108, lines 13-18

485. Bishop LaRocque interviewed Father Stone in October 1981 and learned the following: (a) Father Stone had been sent to Southdown with respect to some form of sexual misconduct; (b) Stone had had to leave the Diocese of Albany, New York because of an affair with boys"; (c) Father Stone had been convicted in Albany of a sexual criminal offense; (d) Father Stone was required to report to a New York probation officer.

Reference: Exhibit 2072

Evidence of Eugene LaRocque, July 3, 2008, page 131, lines 5 through 6; page 132, lines 1 through 8; page 132 line 22 – page 133 line 2; page 147, lines 7 through 10

Evidence of Eugene LaRocque, August 26, 2008, page 91, lines 4 through 7; page 92 line 22 to page 93 line 1

Evidence of Eugene LaRocque, August 28, 2008, page 96 lines 5 through 11

486. Notwithstanding the above, the Bishop felt that **"[Father Stone] has undergone treatment and feels he can cope with his lifelong weakness, especially with the support of fellow priests**". The Bishop explained that his reference to Father Stone's "lifelong weakness" was in reference to Father Stone's ephebophilia and, in December 1981, officially appointed Father Stone as chaplain to St. Joseph's Villa, an old person's home, and part-time to Mount Carmel House, an adults-only alcohol rehabilitation center located at St. Raphael's, outside of Cornwall. As a condition to his appointments, Bishop LaRocque asked Father Stone "**never to be alone with a boy(s) in a room or a car**".

Reference: Exhibit 2072

Exhibit 2073

Evidence of Eugene LaRocque, July 3, 2008, page 138, lines 8 through 14, page 144, lines 17 through 19

487. Father Stone does not appear to have been required to report to anyone in particular in the Diocese; there is no evidence that his legal obligations in New York state arising from his conviction were fulfilled.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 154 line 25 to page 155 line 11

Evidence of Eugene LaRocque, August 26, 2008, page 94 line 22 to page 95 line 1

488. Bishop LaRocque took active steps to overcome any immigration issues which may have prevented Father Stone from remaining in the Cornwall area. When Father Stone's ability to remain in Canada was set to expire on October 29, 1982, Bishop LaRocque wrote to his local Member of Parliament, to seek his assistance to keep Father Stone within Canada.

Reference: Exhibit 2074

Exhibit 2075

489. The information provided did not include reference to the many incidents of concern dating back to the 1950's.

Reference: Evidence of Eugene LaRocque,, July 3, 2008, page 166, line 10 to page 167, line 9

Exhibit 2074

490. Bishop LaRocque also met with Lloyd Axworthy, then Minister of Employment and Immigration on December 22, 1982 regarding Father Stone's status in Canada. Ultimately, the Minister granted the Bishop's request to maintain Father Stone in Canada on a Minister's Permit subject to several conditions, including that Father Stone not be allowed to work with young people, that he continue to undergo therapy on a regular

basis, and that the Bishop would be personally responsible for Father Stone's behaviour in Canada. Bishop LaRocque agreed to these conditions.

Reference: Exhibit 2076
Exhibit 2077

491. Father Stone's Minister's Permit was extended on several occasions; however, when it appeared as though a further extension would not likely be approved in the winter of 1985, Bishop LaRocque again wrote to immigration authorities (in April, 1985) to explain that Father Stone has proven to be a "responsible person", who has conducted his work in an entirely satisfactory manner, and that the Bishop would take every step possible to see that Father Stone be permitted to stay in Canada to continue his ministry.

Reference: Exhibit 2078
Exhibit 2079

492. The Bishop first received complaints with respect to Father Stone in June 1985. Sister Kane from St. Joseph's Villa reported to the Bishop that Father Stone had been receiving young men in his apartment at the Villa. Bishop LaRocque met with Father Stone with respect to this complaint, but Father Stone denied the allegations. Bishop LaRocque received further particulars of allegations concerning Father Stone, including that:

- Father Stone had been seen at a local restaurant dining with a young man
- a "parade of young visitors" had visited in the Chapel

- 17-19 year old males were entering in the side door of the Villa

- Father Stone had been nude twice in front of a young girl

- That these matters had been going on for a year, and had become blatant in the past six months

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 185 line 22 to page 186 line 5; page 191, lines 16 through 23

Exhibit 2080

493. Based on this information, Bishop LaRocque wrote to Father Stone in June 1985, indicating that he was "**morally certain**" that Father Stone had lied to him when he denied the allegations against him, and stating that Father Stone no longer had faculties in the Diocese, and should leave the Villa and Canada as soon as possible.

Reference: Exhibit 2081

494. The Bishop did not contact the local police department with respect to the complaints regarding Father Stone, nor did he attempt to contact any of the young males allegedly involved in this matter. The Montfort Fathers were not contacted about the allegations against Father Stone or his departure, nor was the Bishop of Ogdensburg. Bishop LaRocque did nothing to ensure that Father Stone was not practicing active Ministry elsewhere.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 212, lines 5 through 13; page 213, lines 22 through 25; page 212, lines 14

through 16; page 214, lines 1 through 6; page 215, line 21 to page 216, line 23

Evidence of Eugene LaRocque, August 28, 2008, page 43 lines 2 through 8

495. The Bishop acted in a secretive manner with respect to Father Stone's departure in 1985 and was less than truthful with the immigration authorities.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 203, lines 2 through 7; page 210 line 2 to page 212, line 4

Exhibit 2083

496. While Bishop LaRocque acted "immediately" once he learned of the allegations concerning Father Stone, his actions simply removed the problem from his Diocese, and did nothing to alert others to Stone's ongoing sexual misconduct. He chose the approach which best avoided scandal within his Diocese.

Reference: Evidence of Eugene LaRocque, August 28, 2008, page 101, lines 9 through 12

Gilles Deslauriers

The Brisson Complaint

[W]hat two consenting adults do is fine but he took advantage of young guys, people who had confidence in him and he was suppose (sic) to be our friends. I reminded him on the fact that he was the one who married us, that he knew Ben and yet he thought that something like that would have no impact??? I told him that he had hurt Ben and by hurting him, he also hurt me.

Reference: Denyse Deslauriers, Exhibit 74, bates page 7010394

497. Father Deslauriers was the co-pastor at St. John Bosco Parish in Cornwall and the school pastor at La Citadelle High School in Cornwall. He was an exceptionally charismatic leader in the Cornwall community. He was described by those who knew him as "a **jovial person, very dedicated, hard working, and very intelligent**". Lise Brisson described the influence that Father Deslauriers had on youth in particular as follows:

> **"Tous les jeunes fréquentaient l'école La Citadelle où lui était l'aumônier pastoral, puis il faisait des fins de semaine de R-Cube avec des groupes de jeunes et puis il était leur confesseur, leur directeur spirituel. Tout le monde avait une grande confiance en lui. C'était -- il avait beaucoup de charisme. Il avait le tour avec les jeunes."** [Emphasis Added]
>
> **Reference**: Exhibit 76, bates pages 7010335-7010336 and 7010339-7010340
>
> Exhibit 1802
>
> Exhibit 2035
>
> Exhibit 2038

498. On January 9, 1986, Benoît Brisson called his parents and explained to them that he and his wife were separating because of negative experiences he had had when he was younger, with a man whose identity he did not disclose.

> **Reference**: Exhibit 0072 bates page 7167080

499. Benoît's parents turned to Father Deslauriers to discuss their son's disclosure. He offered to meet with Benoît.

Reference: Exhibit 0072, bates page 7167081

Evidence of Lise Brisson, October 5, 2006, page 87, lines 5 through 10

500. Later that month Benoît revealed to his parents that he had been sexually abused by Father Deslauriers. On January 21, 1986, Father Vaillancourt received a telephone call from Benoît's mother, Lise Brisson, and the following day Ms. Brisson and her husband met with Father Vaillancourt and explained that their son had been sexually abused by Father Deslauriers.

Reference: Exhibit 72, bates pages 7167079-7167081

501. On January 23rd, Father Vaillancourt learned that Father Bisaillon had by now also been informed by the Brissons of this matter. The next day Lise and Hubert Brisson also contacted Bernard Ménard, a Priest who, although not assigned to the Diocese, was living in a nearby community created by L'Arche.

Reference: Exhibit 72, bates page 7167082

Exhibit 76, bates page 7010348

Evidence of Bernard Menard, July 28, 2008, page 4 lines 1 through 5

Exhibit 1885

502. The Brissons outlined to these Priests how Father Deslauriers had claimed to provide 'therapy' to Benoît, and under this guise sexually abused him.

Reference: Exhibit 76, bates pages 7010337-7010339

503. On January 27th, Father Vaillancourt, Father Bisaillon and Father Ménard met to determine what should be done in the circumstances. Neither Father Vaillancourt nor Father Bisaillon wanted to become directly involved in this matter as they were colleagues of Father Deslauriers, whereas Father Ménard was not. They asked that Father Ménard not reveal to Father Deslauriers which priests were aware of the allegations, as they still had to work with Father Deslauriers.

Reference: Exhibit 72 bates page 7167083

504. That same day, Father Ménard confronted Father Deslauriers with the allegations and asked that Deslauriers speak with Bishop LaRocque with respect to these matters. Father Ménard contacted the Brissons to tell them that Father Deslauriers would be speaking to the Bishop about this matter.

Reference: Exhibit 72 bates page 7167083
Exhibit 1885, bates page 7010402

505. Bishop LaRocque testified at this Inquiry that when he first met with Gilles Deslauriers he denied the incidents, and indicated that contact was limited to superficial touching over clothes. At the time, the Bishop accepted Father Deslauriers' explanation and took no significant action.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 194, line 14 to page 195, line 4

506. On January 28, 1986, Father Ménard checked with the Bishop to make sure that Father Deslauriers had discussed the abuse with the Bishop. The Bishop confirmed that Deslauriers had, in fact, discussed the matter with him.

Reference: Exhibit 72 bates page 7167083-7167084
Exhibit 1885, bates page 7010403

507. That same day, Father Deslauriers visited Lise and Hubert Brisson and explained that their son had misunderstood the psychological therapy that Deslauriers was providing him. Just before leaving, however, he asked the Brissons for their forgiveness.

Reference: Exhibit 73, bates page 7010400-7010401

508. On January 30, 1986, Father Deslauriers contacted Denise Deslauriers, Benoît Brisson's wife. The two met that afternoon, and Father Deslauriers asked her for forgiveness. Father Deslauriers informed her that he had already discussed the matter with the Bishop and that he would be seeking help.

Reference: Exhibit 74, bates pages 7010393-7010394

509. Gilles Deslauriers did not directly contact Benoît Brisson during this period.

Reference: Evidence of Benoît Brisson, October 11, 2006, page 25 lines 9 through 12

Other Victims Come Forward

510. On February 8, 1986, Father Claude Thibault revealed to Father Vaillancourt that he had been sexually abused by Deslauriers while still a student.

Reference: Exhibit 72 bates page 7167085-7167087

511. By February 12, Father Vaillancourt had become aware of seven individuals who alleged that they had been abused by Father Deslauriers when they were younger. Father Vaillancourt updated Bishop LaRocque that day. At that point, Bishop LaRocque stated that Father Deslauriers had lied, and acknowledged that he would have to act.

Reference: Exhibit 72, bates page 7167091

512. On February 13, 1986, Lise Brisson visited the Bishop and gave him the names of other victims of Father Deslauriers. Bishop LaRocque informed Ms. Brisson that, based on all that she had told him, he concluded that Father Deslauriers is a dangerous man. He advised her that Father Deslauriers would be treated, that the Diocese would also assist those youth hurt by Father Deslauriers.

Reference: Exhibit 76, bates page 7010350
Exhibit 72, bates pages 7167163-7167164

The Secret Request that Father Deslauriers Leave the Diocese

513. On February 14, 1986, the Bishop, accompanied by Father Ménard, went to confront Deslauriers. The Bishop asked Deslauriers to leave the Diocese that very day. LaRocque

believes that he told Deslauriers at this time that he no longer had the faculties of the Diocese, meaning that he could not exercise active ministry in the Diocese. In a meeting with Father Deslauriers later that evening, the Bishop told Deslauriers that although he could no longer exercise Ministry in the Diocese, should he attend therapy, the Bishop would consider supporting his application to another Diocese.

Reference: Exhibit 1885, bates page 7010403

Evidence of Eugene LaRocque, August 26, 2008, page 198, lines 10 through 16

Exhibit 72, bates page 7167091

Evidence of Eugene LaRocque, July 29, 2008, page 98 lines 12 through 19

514. The reason behind Bishop LaRocque's request that Father Deslauriers leave the Diocese was to be kept secret. The principal at La Citadelle where Father Deslauriers had been working was not informed about why Deslauriers was leaving.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 196, lines 2 through 16

515. After being asked to leave, Father Deslauriers contacted Jeanine Seguin, the former Principal of La Citadelle High School, and stayed at Ms. Seguin's residence for two to three days. Ms. Seguin was living with Bishop Adolphe Proulx's sister at the time. Seguin arranged for Deslauriers to then stay at a cottage . At some point after staying at the cottage, Father Deslauriers made his way to the region of Ottawa-Hull.

Reference: Exhibit 1785, bates page 7010476

516. Deslauriers submitted his letter of resignation on February 24, 1986. The letter simply stated that Father Deslauriers was resigning pursuant to Bishop LaRocque's request that he resign. The letter did not outline any particulars as to why his resignation had been requested.

Reference: Exhibit 0075

517. Bishop LaRocque lost control over Father Deslauriers as soon as Deslauriers left the Diocese. Looking back, the Bishop acknowledges it would have been preferable to have kept Father Deslauriers in the Diocese. As the events following this decision show, the Bishop's failure to control Father Deslauriers would cause further harm in the following months.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 215, lines 10 through 13

Evidence of Eugene LaRocque, July 29, 2008, page 99 lines 15 through 18

The Bishop Faces Increased Pressure Regarding Father Deslauriers

518. During his February 14, 1986 meeting with Bishop LaRocque and Father Ménard, Father Deslauriers admitted to having had sexual contact with 14 youth. Both Father Vaillancourt and Father Ménard met with several victims through February 1986. However, Father Ménard learned from youth and members of the community that there might be around 40 victims in total. Facing an increasing number of potential victims, the Diocese also faced an increasing demand for action.

Reference: Exhibit 72

519. Although the Brissons were made aware that Father Deslauriers had left the Diocese, they did not know whether any further steps were being taken either for Father Deslauriers or for his victims. They learned that Father Deslauriers had been seen celebrating a mass in Hull, Quebec within one week of leaving the Diocese of Cornwall. This caused them concern as many of the alleged victims of Deslauriers lived in the Ottawa-Hull area. Father Deslauriers had also been seen at the bank in Cornwall, and at a local hospital.

Reference: Exhibit 76, bates page 7010351

520. On February 20 or 21, 1986, the Brissons met with Father Roméo Major in an effort to learn more about the situation, and to seek his advice.

Reference: Exhibit 76, bates page 7010351

521. On March 4, 1986, during a meeting of the Council of Priests, Father Major asked Bishop LaRocque how Priests should respond to inquiries into Father Deslauriers' departure from the Diocese. The minutes of the meeting indicate that Bishop LaRocque explained that people should be told that Father Deslauriers left for personal reasons ("pour des raisons personelles"). This answer given by the Bishop to other Priests and which would have been passed on to those asking about Father Deslauriers was misleading in its failure to explain that Father Deslauriers had been asked to leave the Diocese because he had sexually abused youth, lied about it to the Bishop and others, and was regarded by the Bishop as a dangerous man.

Reference: Exhibit 1850, bates page 7181425

522. On March 10, 1986, Benoît Brisson's wife, Denyse Deslauriers, met with Bishop LaRocque to determine what treatment Father Deslauriers was receiving, and to learn how the Bishop would approach the issue of the costs of treatment for Father Deslauriers' victims. The Bishop only provided vague answers.

Reference: Exhibit 72

Exhibit 76, bates page 7010351

523. On March 18, 1986, on Bishop LaRocque's instructions, Father Ménard went to Hull with the goal of providing Bishop Proulx with full information of Deslauriers' departure from the Diocese of Hull. Father Ménard explained to Bishop Proulx in an open manner about the nature of the allegations against Father Deslauriers. Bishop Proulx told Ménard that although he knew there had been difficulties with Father Deslauriers, he had no realized the full extent of the problems. Bishop Proulx told Ménard that if matters were as reported by Ménard, then Father Ménard could go discuss the matter directly with Deslauriers. Although Father Ménard met with Father Deslauriers at this time, there is no evidence to indicate that his meeting with Bishop Proulx succeeded in making Bishop Proulx accept the seriousness of the situation.

Reference: Evidence of Bernard Ménard, July 28, 2008,
page 25 line 7 to page 30 line 10

524. Although uncertain about when the meeting took place the Bishop also testified that he travelled to Ottawa and at a meeting (with Deslauriers in attendance) informed Proulx about the details of Deslauriers' sexual misconduct. LaRocque's impression was that

Proulx sided with Deslauriers and disbelieved LaRocque's report of these events, and would not impose any restrictions on Deslauriers.

Reference: Evidence of Eugene LaRocque, July 29, 2008, page 130, line 19 to page134, line 12

525. On March 21, 1986, still dissatisfied with the Diocese's response to the situation to date, Lise and Hubert Brisson wrote the pro-nuncio Palmas, to Archbishop Spence in Kingston, and to the Prefect of the Sacred Congregation of Bishops in Rome with respect to Father Deslauriers. They raised their concerns with Bishop LaRocque's handling of the Deslauriers matters. They wrote that after Bishop LaRocque had explained to them that he viewed Deslauriers as dangerous, especially as he (Deslauriers) still believed in his therapeutic methods, Father Deslauriers was seen celebrating Mass in Hull just one week after leaving Cornwall. He was also later seen on two occasions at a Cornwall bank, and at a local hospital. The Brissons forwarded this letter to Bishop LaRocque.

Reference: Exhibit 72, bates pages 7167157-7167174

526. Although the Bishop responded to the Brissons, notably absent from his reply was any explanation as to how Father Deslauriers could have ended up in Hull celebrating Mass, and what steps, if any, might be taken by Bishop LaRocque to rectify the situation.

Reference: Exhibit 85

Father Ménard Recommends Swift Action Regarding Deslauriers

527. On March 25, 1986, the gravity of the situation was spelled out in no uncertain terms by Father Ménard to Bishop LaRocque. He explained to the Bishop that the Deslauriers

matter was on the verge of bursting into the public realm, and cautioned that journalists were beginning to ask questions, and that this matter could lead to headline news. He warned that both Priests and laypersons were questioning the sudden departure of Father Deslauriers, and that rumours were circulating in public. The youth and parents involved in this matter were increasingly dissatisfied with the response taken by the Church to prevent Deslauriers from engaging in similar activity in the future. He recommended that the Diocese engage in writing in a fact-finding mission which would culminate in actionable recommendations.

Reference: Exhibit 72, bates pages 7167101-7167109

528. Father Ménard enclosed detailed recommendations which provided Bishop LaRocque with a possible road map to address the Deslauriers matter.

Reference: Exhibit 72, bates pages 7167106-7167108

529. Had the Bishop simply adopted these recommendations, it is possible that the matters involving Gilles Deslauriers could have been completely addressed at this stage.

The Bishop Establishes an Ad Hoc Committee

530. Bishop LaRocque testified at this Inquiry that as a result of Father Ménard's March 25, 1986 letter, he decided to create an Ad Hoc Committee to investigate the allegations against Father Gilles Deslauriers.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 205, lines 22 through 25 and page 206, lines 1 through 2

531. On April 3, 1986 Bishop LaRocque established the Ad Hoc Committee. Father Bernard Guindon was appointed President of the Ad Hoc Committee. Mr. Jacques Leduc, a local attorney, and sister Claudette Pilon were appointed to the Committee. The Ad Hoc Committee was tasked with reporting back from their investigation to determine the truth of the matters and to present recommendations to the Bishop. The report was to be confidential and limited to the Bishop, the Archbishop and Rome.

Reference: Exhibit 2032

Exhibit 72 bates page 7167072

Evidence of Eugene LaRocque, August 26, 2008, page 207, lines 21 to page 208, line 1; page 209, lines 1 through 4

532. That same day, Bishop LaRocque wrote to Lise and Hubert Brisson to inform them that he had created the Ad Hoc Committee. The Bishop also informed the Brissons that following a meeting with Bishop Adolphe Proulx, Father Deslauriers had been relieved of his ministry within the Diocese of Gatineau-Hull, and that Deslauriers was attending therapy to assist him in his rehabilitation.

Reference: Exhibit 82

533. On April 7, 1986 the Ad Hoc Committee commenced its investigation and reported back to the Bishop on May 23, 1986.

Reference: Exhibit 72, bates pages 7167074, 7167094, 7167261 and 7167267

534. The Ad Hoc Committee prefaced its findings by expressing a concern that it had not been fully informed of all relevant background concerning Deslauriers at the outset. It recommended the following:

(a) That Gilles Deslauriers be suspended “a divinis”;

(b) That he be excardinated from the Diocese of Cornwall and incardinated in another Diocese on the following terms:

(i) That Gilles Deslauriers continued to receive psychological therapy;

(ii) That Gilles Deslauriers be banned from performing any pastoral tasks until his rehabilitation is shown to be relevant authority; and

(iii) That Gilles Deslauriers cease to occupy his current pastoral position in the Diocese of Gatineau-Hull.

(c) That the Diocese assume the costs for therapy for those who were victims of Gilles Deslauriers; and

(d) That the recommendations of Father Bernard Ménard be seriously considered.

Reference: Exhibit 72, bates pages 7167075-7167076

The Ad Hoc Committee Process Fails to Assuage Public Concerns

535. Bishop LaRocque wrote to the Brissons and others who appeared before the Ad Hoc Committee on June 12, 1986 to thank them for coming forward and to advise them that

he had received the recommendations of the Committee. He did not disclose those recommendations or state what steps would be taken with respect to Deslauriers.

References: Exhibit 1924

Evidence of Benoît Brisson, October 11, 2006, page 33 lines 8 through 9

536. The Bishop's decision to keep the Ad Hoc Committee's report and recommendations secret ran counter to Father Ménard's recommendation that the report be distributed to Bishop Proulx and all those who know of the situation. Although Bishop LaRocque relied upon Father Ménard's advice to create the Ad Hoc Committee, he ultimately did not follow through with the advise to treat the report in a transparent manner.

Reference: Exhibit 72, bates page 7167123

537. By the time Bishop LaRocque advised the Brissons that the Ad Hoc Committee had reported back to him, the Brissons, frustrated by the inaction taken by the Diocese, and concerned that Father Deslauriers could remain in a position where he would be able to sexually abuse other youth, had decided to raise the matter outside of the Diocese. Around May 18-20, the Brissons gave media interviews, and their story was reported by television (including CJOH and Radio-Canada) and newspaper. On May 21, 1986, the Brissons reported the Deslauriers abuse to the Cornwall Police Service, and the following day Benoît made an official complaint to the police. The Brisson complaint led to an investigation by the CPS.

Reference: Exhibit 0076

Evidence of Lise Brisson, October 5, 2006, page 123 lines 12 through 22

The Diocese Remains Secretive After Finding Deslauriers' $150,000 "Nest Egg"

538. Some time in the summer or fall of 1986, the bursar for the Diocese, Father Gordon Bryan, wrote the Bishop regarding a "nest egg" of $150,000 being held by Father Deslauriers. The bursar was "morally certain that these funds were solicited and collected to assist diocesan vocations". It follows that the funds should not have been under the control of Deslauriers. The Bishop did not take any steps against Father Deslauriers with respect to the money (such as contacting the police or commencing civil proceedings). Bishop LaRocque explained that he did not take any further steps because Father Deslauriers had promised to repay the moneys and the Bishop "took his word for it". In fact, the Bishop received a letter from Deslauriers in December 1986, indicating that a cheque was enclosed from the vocations account that Deslauriers had opened at a local bank.

Reference: Exhibit 1957

Evidence of Eugene LaRocque, August 26, 2008, page 218 lines 19 through 24

Exhibit 2056

539. Ultimately, the bursar had no knowledge of Father Deslauriers repaying any of these monies, and although the Bishop was fairly certain that Father Deslauriers had taken some steps towards restitution, he could not recall what amount of repayments could be made.

Reference: Evidence of Gordon Bryan, July 23, 2008, page 84, lines 21 through 22

Evidence of Eugene LaRocque, August 26, 2008, page 217, lines 12 through 19

540. Given all that had transpired with Father Deslauriers, it is submitted that the Bishop would not have taken Father Deslauriers' word on these matters. It seems more likely that the Bishop chose not to pursue these matters further because this matter had been kept to a small group of people in an effort to avoid having the Church involved in some kind of a public scandal.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 219, lines 16 through 21

The Bishop Is Un-Cooperative During the Cornwall Police Investigation into Father Deslauriers

541. After receiving Benoît Brisson's statement, Sgt. Ron Lefebvre and Herb Lefebvre conducted an investigation with respect to allegations of sexual abuse by Father Gilles Deslauriers. Within days of interviewing Benoît Brisson, the police interviewed Father Vaillancourt, Father Bissaillon and Msgr. Guindon, and learned that Father Ménard had submitted a report to the Bishop, and that the Bishop had set up a Committee to investigate into the matters involving Father Deslauriers. The police interviewed Father Ménard on June 5, 1986.

Reference: Exhibit 0076, bates page 7010353

542. Over the course two months, the CPS interviewed ten individuals who reported having been sexually assaulted by Father Deslauriers. These individuals were all abused by a Priest who was exercising a position of trust, power and authority. Two of these

individuals reported being sexually assaulted by Father Deslauriers prior to becoming priests themselves. In two cases, the CPS interviewed complainants who were taken advantage of by Father Deslauriers shortly after the death of a parent, and during times of great stress and suffering. In one case:

> [The individual interviewed by police] was persuaded by Father Deslauriers to cease professional care he was receiving and to see Father Deslauriers instead. The sessions he had with Father Deslauriers proved futile, and only sexual in nature.
>
> **Reference**: Exhibit 76, bates pages 7010341-7010342 and 7010353-7010356

543. Over the course of their investigation, the CPS determined that Father Deslauriers was not registered as a psychologist in either Ontario or Quebec, and found no evidence that Father Deslauriers had any formal education in this field.

Reference: Exhibit 76, bates pages 7010355, 7010357

544. On July 2, 1986, informations were laid against Father Deslauriers under sections 156 and 157 of the Criminal Code of Canada, and a Warrant was issued for his arrest.

Reference: Exhibit 76, bates page 7010357

545. The Bishops involved in this matter were generally un-cooperative with CPS. Bishop Proulx was contacted by the CPS on June 27, 1986, but declined to be interviewed. Bishop LaRocque was interviewed on two occasions by the CPS. During the first interview, Bishop LaRocque confirmed discussing the allegations with Deslauriers, and ordering Deslauriers to leave the Diocese. He also confirmed having received transcripts of interviews conducted by the Ad Hoc Committee, as well as the Committee's findings

and recommendations but would not show the police the findings as he claimed they were confidential.

Reference: Exhibit 76, bates page 7010353

Exhibit 1785, bates page 7010471

546. When Bishop LaRocque was interviewed a second time by police, the Bishop declined to supply the police with any information beyond that which was public knowledge, indicated that he would not answer questions, and stated that he would even go to jail if necessary. As Sgt. Ron Lefebvre noted in his Will-State with respect to his investigation, the police's second meeting with the Bishop proceeded as follows:

> **"At approximately 1606 hours [on June 16, 1986], Mr. Jacques Leduc, Constable H. Lefebvre and myself attended Bishop LaRocque's residence at 1800 Montreal Road. Bishop LaRocque would not supply a written statement other than what was already public knowledge. He stated that he did not want to lose the trust of his priests and therefore would not answer any of our questions, and should he be called to the court, he would not answer questions. He would go to jail first. With that said, the interview was completed**."

Reference: Exhibit 76, bates pages 7010354-7010355

Exhibit 1785, bates page 7010474

547. Bishop LaRocque was issued a subpoena requesting that he appear in Court on September 15, 1986 to give evidence related to the charges against Gilles Deslauriers. On September, 3 1986, the Bishop wrote to Father Deslauriers to explain to him that he had no intention of testifying, citing the need to protect confidentiality between a Bishop and his Priests as follows:

> **"Ce matin deux officers m'ont servi une assignation pour témoigner à la demande de la Couronne. Je dois te dire qu'une telle procedure va contre toute confidentialité qui doit exister entre l'évêque et ses prêtres; je n'ai nullement l'intention de témoigner ni pour ni contre toi ou les jeunes."**
>
> **Reference**: Exhibit 2049
>
> Exhibit 2168

548. Bishop LaRocque did not deviate from this position through the Deslauriers investigation, trial and conviction. This position was maintained despite the fact that it was recognized by the Bishop's Council of Priests in a September 1986 meeting that "**According to Canadian law, we have no privilege**."

> **Reference:** Exhibit 58, Tab 5, bates page 6007616

549. The Bishop acknowledged during his testimony at the Inquiry that Jacques Leduc, the lawyer for the Diocese during the Deslauriers Ad Hoc Committee and police investigation, advised him that his conversations with other Priests were not privileged, and that should the Bishop refuse to testify after having been subpoenaed, he could be found in contempt of Court and jailed. Notwithstanding this advice the Bishop maintained his position that he would not discuss these confidential matters in Court. The Bishop testified that he now disagrees with the position he took in 1986, and believes that he should have cooperated with authorities.

> **Reference:** Evidence of Eugene LaRocque, August 28, 2008, page 161 line 16 to page 164 line 16
>
> Evidence of Eugene LaRocque, July 3, 2008, page 20, lines 3 through 16

550. At the Inquiry, Bishop LaRocque testified that, even from today's perspective, he does not regret refusing to provide the police with the report of the Ad Hoc Committee. The Bishop explained, however, that he perhaps should have, but he would have needed to consult with all persons who had given testimony before the Ad Hoc Committee so as to not have breached confidentiality.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page17 lines 17 through 24

Deslauriers Pleads Guilty

551. Gilles Deslauriers was charged with 8 charges of indecent assault on a male and eight charges of gross indecency. Following his preliminary inquiry in September 1986, he was committed to trial for 4 counts of gross indecency contrary to s.157 of the Criminal Code and 7 counts of indecent assault on a male, contrary to s.156 of the Criminal Code. At the pre-trial, held November 10, 1986, Deslauriers pled guilty to four counts of gross indecency, and the seven counts of indecent assault on a male were withdrawn.

Reference: Exhibit 2948
Exhibit 71C, bates page 1072150
Exhibit 2951

552. On November 10, 1986 Father Deslauriers received a suspended sentence and two years probation.

553. The prosecuting Crown Rommel Masse and his supervisor Don Johnson believed that the sentence in Deslauriers should have been appealed, especially since the Crown decided to

appeal the suspended sentence and probation imposed around the same period in *R v. Crampton*, with respect to an Ottawa area Priest.

Reference: Exhibit 2950
Exhibit 2953

554. However, the Crown Law Office criminal division of the Ministry of the Attorney General's office decided that the Deslauriers sentence would not be appealed.

Reference: Exhibit 2955

555. The Crown Law Office criminal division and the prosecuting Crown did not co-ordinate their public responses to the Deslauriers sentence and whether an appeal was necessary. As a result, while the prosecuting Crown publically stated that he did not agree with the sentence, while in the same media report MAG's Toronto office explained that the sentence would not be appealed.

Reference: Exhibit 2955, bates page 1071759

556. The Cornwall community was left with the impression that the views of their local Crown were trumped by those higher in the MAG chain of command.

557. In 1987, the Ontario Court of Appeal allowed the appeal in *R v. Crampton*, and set aside the suspended sentence. The Ontario Court of Appeal sentenced Crampton to imprisonment for eight months instead. In light of the Crown's success in the Crampton appeal, MAG should have appealed the sentence in Deslauriers as well.

Reference: Exhibit 2958

The Excardination of Father Deslauriers in Cornwall, and Incardination in Hull Maintains Secrecy Around Father Deslauriers' Conduct

558. Around the same time that the police were interviewing Priests with respect to their criminal investigation into Father Deslauriers, Bishop LaRocque turned his mind to the question of whether Father Deslauriers should be permitted to be excardinated from the Diocese of Cornwall in order to be incardinated in the Diocese of Hull.

559. On May 31, 1986, Father Deslauriers had requested during a meeting with the Bishop in Pierrefonds that he be excardinated from the Diocese of Alexandria-Cornwall. By letter dated June 3, 1986, Deslauriers wrote to LaRocque requesting that the Bishop follow through on his promise to assist him in being accepted into a new Diocese. On June 6, 1986, Bishop LaRocque wrote Bishop Proulx to ask whether Bishop Proulx might be open to incardinating Father Deslauriers, and under what conditions. Bishop Proulx responded by letter dated June 20, 1986, and indicated that although he was willing to incardinate Father Deslauriers once any civil claims were resolved, any process of excardination and incardination must conform to the requirements of canon law.

Reference: Exhibit 2050

Evidence of Eugene LaRocque, July 3, 2008, page 29, lines 7 through 18

Exhibit 2051

Exhibit 2005

560. On December 9, 1986, Bishop LaRocque wrote to Bishop Proulx to provide him with excardination forms, and to request that Deslauriers not exercise Ministry in any locations bordering the Diocese of Alexandria-Cornwall. The Bishop also asserted that

the fact that Deslauriers had lied to and manipulated him was more serious than any of the acts which he engaged in with youth, a comment which the Bishop acknowledges reflected his thinking at the time, but not at present.

Reference: Exhibit 2053

Exhibit 1851

Exhibit 2053

Evidence of Eugene LaRocque, July 3, 2008, page 47 lines 19 through 24

561. Bishop Proulx refused the excardination provided by Bishop LaRocque, and suggested new wording. Bishop LaRocque understood at the time that Bishop Proulx did not want any conditions attached to the excardination/incardination process.

562. In the result, LaRocque acquiesced to Proulx and the February 8, 1987 letter of excardination makes no reference to any of the sexual abuse allegations or criminal matters involving Father Deslauriers.

Reference: Exhibit 2055

Evidence of Eugene LaRocque, July 3, 2008, page 55, lines 14 through 18

Exhibit 2058

Exhibit 2059

563. Father Deslauriers was incardinated in the Diocese of Hull in February 1987. At that point, Bishop LaRocque and the Diocese of Alexandria-Cornwall no longer had any control or jurisdiction over Father Deslauriers.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 72, line 12 through 20

564. Father Deslauriers apparently left the Diocese of Hull at some point after Bishop Proulx's death in July 1987, and moved to the Diocese of Saint-Jérôme. Bishop LaRocque testified that he wrote the Bishop of the Diocese of Saint-Jérôme to warn him about Father Deslauriers, to warn him not to be manipulated.

Reference: Evidence of Eugene LaRocque, July 3, 2008, page 73, line 12 to page 74 line 7

565. As the letters of excardination / incardination contained no information regarding Father Deslauriers' criminal charges or record, once Father Deslauriers moved to the Diocese of Hull, there was a real risk that his prior criminal acts would be unknown, and that Father Deslauriers would not have any conditions imposed on him to reduce the risk of re-offending. His move to a new Diocese in 1987 would only have increased this risk.

Analysis of Institutional Response

566. **Unlike the case of Father Stone, in this case, rather than taking immediate, decisive action to prevent possible further abuse, Bishop LaRocque waited for months to see whether the allegations of abuse against Father Deslauriers would blow over. The Bishop only took steps when matters became increasingly public and risked causing scandal to the Church.**

567. **At no time did anyone, from the Bishop through to other members of the Diocese, or Father Ménard contact the police, any schools where Deslauriers had worked, or the**

Children's Aid Society. Although early on, Denis Vaillancourt recognized that there may have been an issue if any of the abuse took place at a school, he did not advise the school board of any concerns he had with Father Deslauriers.

Reference: Exhibit 72, bates page 7167087

568. **The Bishop could and should have contacted the police, the relevant school board and Children's Aid Society.**

569. **As acknowledged by Father Ménard, although reporting Deslauriers to the police was not prohibited by the Church, they wanted to prevent this matter from going public, and instead, tried to address the matter internally. Father Ménard explained that there were no policies in place at the time requiring members of the Church to report, and the Church culture required that matters such as Deslauriers' behaviour be kept internal:**

> **"Donc, l'idée de l'Aide à l'enfance nous est même pas venue comme telle. Et l'idée de rendre ça public à la police ça venait pas -- c'était pas dans -- y avait aucun protocole à ce moment-là qui était prévu dans ce sens-là. Il n'y avait pas de tradition ou autre chose et on avait confiance encore que ça pouvait se traiter à l'intérieur des mesures dans l'église."**
>
> **Reference: Evidence of Bernard Ménard, July 28, 2008, page 14 line 20 to page 15 line 3; page 20 lines 19 through 25**

570. **Once the CPS did become involved, the Bishop's lack of co-operation with their investigation did not escape notice by the CPS. Years later in 1993 after Claude Shaver learned of the Silmser complaint he (Shaver) still had a poor working**

relationship with the Bishop and still anticipated "stonewalling" by the Bishop, both as a result of the Deslauriers investigation.

571. **As nobody had informed the school boards or any other institution, Father Deslauriers could still have continued to try to work his 'therapy' on unsuspecting youth. It also meant that possible victims of Father Deslauriers would not have known that others had complained, and that their voices would be heard were they to come forward.**

572. **Internally within the Church, there were few checks on Father Deslauriers. As soon as Deslauriers left the Diocese in February 1986, the Bishop lost all effective control of him. There was little monitoring of Father Deslauriers' movements, and no real way to prevent him from contacting youth.**

573. **The fact that Father Deslauriers was able to contact the family of his victims greatly risked causing more harm, and should never have been permitted.**

574. **The Bishop and the Diocese took no steps to try to identify other possible victims of Father Deslauriers, despite the fact that they were aware that he might have abused as many as 40 youth. The Diocese did not make it generally known that therapy would be available to those victims who had come forward. Bishop LaRocque believes that he spoke to seven or eight victims of Gilles Deslauriers personally in his office but is unsure as to how many individuals actually sought and obtained counselling from the church. In sum, the Diocese failed to make efforts to identify victims or provide an easy access to support.**

575. **The Diocese had been provided with a blueprint for the creation of a simple victim-friendly system to easily enable the victims of Father Deslauriers to obtain funding for therapy. Father Ménard's recommended victim support structure was not implemented. Instead, the Diocese sent mixed messages to the families of victims as to the availability of funds for therapy. This only served to create further frustration and hardship among victims and their families. The Diocese could and should have developed easy to access support for victims.**

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 210, lines 19 through 21 and page 212, line7

576. **The Bishop did not make any public statements with respect to Gilles Deslauriers, and apologies were only given by Bishop LaRocque to individuals when they came to see him on a personal basis.**

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 212, line 22; page 213, line 11; page 213, lines 18 through 19

577. **The Bishop and the Diocese chose secrecy over transparency. Ultimately, when the allegations surfaced in a very public way through a police investigation, the laying of charges and a guilty plea, the community was left to wonder why more steps were not taken at the outset by the Diocese. This concern paved the way for grater suspicion of the Diocese's responses to allegations of sexual abuse.**

The Dioceses' Response to Allegations of David Silmser

578. In the period since the conviction of Father Deslauriers, the Church more broadly, and the Diocese of Alexandria-Cornwall, took steps to respond to a growing public concern regarding allegations of sexual abuses against children by clergy. In the early 1990s, a Committee of the Canadian Conference of Catholic Bishops ("CCCB") explored the issue of how Bishops could respond to allegations of sexual abuse. The CCCB provided Bishops with preliminary, draft recommendations as to how to respond to allegations in late 1991, and then in June of 1992, released its landmark report *From Pain to Hope, Report from the Ad Hoc Committee on Child Sexual Abuse*. This report acknowledged that:

> **"In the eyes of a good number of our fellow citizens, the Church has lost a great deal of credibility over the past few years due to these scandals and the suspicion that there were attempts to conceal these intolerable acts."**
>
> **Reference**: Exhibit 632, Tab 13, bates page 6020103

579. In *From Pain to Hope* the CCCB expressed the conviction that the Catholic Church must respond to allegations of sexual abuse in an open and truthful manner. The report recommended that each Bishop appoint a Bishop's delegate with respect to allegations of sexual misconduct (Recommendation #6), that an Advisory Committee of at least five people be referred any issue of sex abuse (Recommendation #7), and that the Committee prepare a basic protocol, to be approved by Bishop (Recommendation #8).

> **Reference**: Exhibit 632, Tab 13, bates page 6020136, 6020142-6020143

580. In the early 1990s, the Diocese started drafting its own policy to respond to allegations of sexual abuse. Although these guidelines were only publically proclaimed and sent out to media in early 1994, a protocol was in existence by the time that David Silmser complained that he had been sexually abused by Father Charles MacDonald. This protocol should have been followed by the Diocese when Silmser complained.

Reference: Exhibit 58, Tabs 25, 28

Evidence of Jacques Leduc, July 15, 2008, page 96 line 12 to page 97, line 16

Evidence of Eugene LaRocque, August 25, 2008, page 163 lines 5 through 16

581. The protocol set out the following steps upon receiving a complaint:

- The Bishop's designated person should meet with the complainant within 48 hours of receiving a complaint. This person should inform the complainant that the aggressor will be met, that an advisory committee will study the complaint, and that the CAS may need to be involved

- The designated person must file a report of the meeting

- The Bishop is informed by the designated person after the designated person has met with the complainant. This meeting is informational only.

- The designated person should convene a meeting of the advisory committee as soon as possible to assess the complaint. Minutes of the meeting are written, and the Bishop is informed of the meeting.

- At this point, the designated person notifies the CAS if necessary, and the complainant and the suspected aggressor are informed of the steps taken by the Diocese

- Investigation and decisions then become the responsibility of the CAS

Reference: Exhibit 58, Tab 25

582. David Silmser's complaint to the Diocese was the first known test of the Diocese's protocol, and the Diocese failed as it did not follow its protocol. The handling of Silmser's complaint to the Diocese can also be measured against the principles of openness and transparency promoted in *From Pain to Hope*. Contrary to those principals, the Diocese's response to the Silmser complaint was closed, secretive, misleading to the public, and essentially the antithesis to the principles espoused in *From Pain to Hope* or the written requirements of the Diocese's policy.

Silmser's First Attempts at Coming Forward with his Allegations

583. In December 1992, David Silmser first came forward to the Church with respect to his allegations that he had been sexually abused by Father Charles MacDonald when Silmser had served as an altar boy in the 1970s. Silmser also disclosed that he had also been sexually abused by his probations officer Ken Seguin.

584. Silmser first contacted the Diocese of Ottawa with respect to these matters. He spoke with Guy Levac at the Diocese of Ottawa, who instructed Silmser to contact the Diocese. Silmser phoned Levac back to say that the Diocese was not interested in helping. Although the Diocese has no record for Silmser calling it at this early stage, if such a call occurred and was handled in this manner, it would suggest a failure on the part of the Diocese to receive complaints in an open manner, and a failure to properly have complainants directed to the Bishop's Delegate, as required by the Diocese's protocol.

Reference: Exhibit 1948

585. After hearing back from Silmser, Levac then called Monsignor Peter Schonenbach, who was the Bishop's Delegate for the Diocese of Ottawa with respect to allegations of sexual abuse. Schonenbach then contacted Silmser.

Reference: Exhibit 1948

Evidence of Peter Schonenbach, July 22, 2008, page 26 lines 8 through 23

586. On December 9, 1992, Silmser disclosed to Monsignor Schonenbach that he was abused by Father Charles MacDonald when he was at St. Columban's College and that he was also abused by Ken Seguin. That same day, Schonenbach reported this matter to Father Denis Vaillancourt of the Diocese of Alexandria-Cornwall.

Reference: Exhibit 1948

Evidence of Peter Schonenbach, July 22, 2008, page 27

587. Schonenbach offered to meet with Silmser to assist the Diocese and to then send the Diocese a report. Schonenbach met with Silmser on December 10, 1992. They met alone; nobody was present to take notes. Silmser related his allegations of being sexually abused by both Father Charles MacDonald and Ken Seguin. At the conclusion of the meeting, Schonenbach informed Silmser that Father McDougald is the person in charge of these matters for the Diocese.

Reference: Evidence of Peter Schonenbach, July 22, 2008, page 32; page 37 line 16 to page 38 line 1; page 40

Exhibit 311

588. Schonenbach believed that he did not need to do anything with respect to the allegations raised against Ken Seguin for the simple reasons that these matters did not touch the Church.

> **Reference**: Evidence of Peter Schonenbach, July 22, 2008, page 40, lines 19 through 21

589. Schonenbach followed up with the Father Charles MacDonald complaint by letter dated December 11, 1992 to Father McDougald, Bishop's Delegate for the Diocese. In his letter to Father McDougald, Schonenbach assessed the situation as follows:

> **"My own knowledge of David Silmser is restricted to this one meeting. He seems like a credible person."**
>
> **Reference**: Exhibit 311

590. To a Priest outside of the Diocese, Silmser's complaint seemed credible. Monsignor Schonenbach testified that he also recognized the Silmser matter as serious. He recalled explaining to Father McDougald that this was an important matter that was not simply a nuisance matter. Despite this, Monsignor Schonenbach recalled being told by a representative of the Diocese, either Father Vaillancourt of Father McDougald that "It's simply not possible because Charles is such a wonderful priest" or words to that effect. Bishop LaRocque recalls telling Monsignor Schonenbach that his reaction to Schonenbach's letter was that it was "**utterly out of character for the Father Charles MacDonald that I knew**" or words to that effect. From the outset, disbelief of the

allegations coloured the Diocese's actions, and we submit it resulted in the abandonment of the formal protocol in this case.

Reference: Evidence of Peter Schonenbach, July 22, 2008, page 30, line 1; page 33 lines 1 through 4 and lines 8 through 13

Evidence of Eugene LaRocque, August 26, 2008, page 225, lines 8 through 15

The Diocese Does Not Follow Its Own Protocol In Receiving Silmser's Complaint

591. After receiving Schonenbach's letter, Monsignor McDougald confronted Father Charles MacDonald. MacDonald "disclaimed any responsibility" for the allegations. McDougald recommended to Father MacDonald that he obtain legal counsel, given the serious nature of the allegations.

Reference: Exhibit 1891, bates pages 7056165-7056166

Exhibit P-2435, at para. 15

592. The Diocese did not arrange for a meeting with Silmser until February 1993. Monsignor McDougald told the OPP that the meeting did not take place earlier because the Diocese was busy, and because it was not "**absolutely, ah, fundamental, that we continue at that particular time**". Thus, although Silmser had been informed that McDougald was the person responsible at the Diocese for handling his complaint, and the Diocese's policy required a meeting with the complainant within 48 hours of receipt of the complaint, the Diocese did not take any timely, pro-active steps to meet with Silmser.

Monsignor McDougald in a subsequent interview with the OPP on May 31, 2000, stated that the protocol that was in place at the time "**was followed, but maybe it was slow**".

Reference: Exhibit 2439, bates page 7037151, 7037160

593. On February 9, 1993, Silmser met with Monsignor McDougald, Father Denis Vaillancourt, and Jacques Leduc, who attended as the Diocese's lawyer. Leduc asked most of the questions.

Reference: Exhibit 1891; P-2435 at para. 19

Evidence of Denis Vaillancourt, June 27, 2008, page 82, lines 9 through 12; page 83, lines 6 through 14

594. Father Vaillancourt believed he was attending as a witness of the meeting between Silmser and the Bishop's Designate. He admitted that this (i.e. the presence of a witness) did not conform to the written protocol. Father Vaillancourt testified that he thought that the February 9, 1993 meeting was the first step of the protocol, namely, the Bishop's Delegate's meeting with the complainant. He did not understand that the February 9, 1993 meeting was part of the advisory committee process referred to in the protocol.

Reference: Evidence of Denis Vaillancourt, June 27, 2008, page 81, lines 14 through 20; page 92 line 18 to page 93 line 7

595. The fact that two additional individuals met with Silmser during the first meeting between Silmser and the Bishop's delegate failed to conform with the protocol in place. If this meeting was intended as a panel to hear Silmser's complaint, then the Diocese

failed to comply with the requirement that the Bishop's delegate first meet the complainant. Either way, the protocol was not being followed.

Reference: Exhibit 58, Tab 25

596. Contrary to the protocol, the Bishop never received any written report from either Monsignor McDougald or from any other members of the panel.

Reference: Evidence of Eugene LaRocque, August 1, 2008, page 11 lines 7 through 11

597. The evidence is clear that this "panel" had difficulty accepting Silmser's allegations. As described in Father Vaillancourt's written recollections of the meeting, Leduc, Vaillancourt and McDougald discussed Silmser's allegations immediately afterwards:

> **"After he left, we shared on what we thought of his statement. We felt that some details were not given possibly because he didn't want to or that they had slipped his mind or that perhaps many things had been dreamed up. It was thought that Fr Charles would never walk around in a group only dressed in his underwear. It was decided that we contact Fr Charles' lawyer and he could talk with the accused and possibly the Crown Attorney**." [Emphasis Added]

Reference: Exhibit 1853, bates page 7058874

598. Monsignor McDougald found certain allegations "**difficult for me to believe, because I knew Charlie to be not a violent person**." When the panel asked him more particular questions, Silmser also "**became rather disturbed**". Thus, from their first meeting, the Bishop's Delegate had some concerns as to the credibility of Silmser's allegations.

Reference: Exhibit 2439, bates pages 7037151-7037152

599. For his part Bishop LaRocque had also decided that the complainant was not credible. First, in the Bishop's view the age of the allegations or the delay before the allegations were presented pointed away from credibility. Second, Silmser was not prepared to give details of the allegations to Leduc, McDougald and Vaillancourt. Third, it seemed unlikely to him that Father Charles would be involved in a situation involving force or violence. Finally, Father Charles had denied the allegations. In hindsight, Bishop LaRocque admits, in the context of historic abuse, these factors are not necessarily indicative that the allegation is false.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 225, line 23 to page 226, line 22

600. Monsignor McDougald provided the Bishop with an update of the February 9, 1993 meeting with Silmser. After receiving this update, the Bishop was faced with the decision whether he should remove Father MacDonald from his position, even on a temporary basis, until the Bishop's advisory group or some civil authority concluded an investigation into the allegations. Bishop LaRocque decided he would not remove Father MacDonald from his priestly functions, even on a temporary basis, as he did not have the "moral certitude" that he thought he needed. For the same reason he imposed no conditions on Father MacDonald's ministry.

Reference: Exhibit 1891, bates page 7056168

Evidence of Eugene LaRocque, August 1, 2008, page 12 lines 6 through 22; page 14, lines 13 through 20; page 15, line 19 to page 16, line 1

601. Bishop LaRocque's "moral certitude" standard was too high a standard for determining when to remove a Priest from his duties. In essence, the Bishop would have needed to be satisfied that the individual was guilty of some kind of illegal act before he was prepared to remove them from their duties. No such threshold or test however existed within the Diocese's protocol.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 230 lines 16 through 21

602. The Bishop was aware that the Cornwall Police Service had received a report regarding Silmser's allegations against Father Charles MacDonald, but never contacted them, on the grounds that he "**didn't want to interfere with their process**". He never requested that his delegate contact the police. Bishop LaRocque now acknowledges that it would have been prudent to have contacted the police, if only because he had a priest in limbo, and a decision needed to be made as to how to deal with him within the Diocese. There was no communication of any sort between the Bishop and the CPS prior to October 1993. The Bishop knew he was in possession of material evidence that would be relevant to the police investigation.

Reference: Evidence of Eugene LaRocque, August 1, 2008, page 17, lines 8 through 18; page 20 lines 4 through 11; page 23, lines 1 through 6

603. Although Father MacDonald was one of two priests involved on the English language side of the Diocese's youth spiritual retreats, the Bishop never investigated or spoke to people in this youth program to see whether they reported any sexual acts by Father Charles MacDonald.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 199, lines 1 through 14, page 200, lines 14 through 20

604. Neither the Bishop nor anyone else from the Diocese contacted the Children's Aid Society with respect to Silmser's complaint of having been sexually assaulted by Father Charles MacDonald as a youth, nor did any representative of the Diocese report the allegations involving Ken Seguin. Bishop LaRocque testified that he was not even aware that this was an option.

Reference: Evidence of Eugene LaRocque, august 1, 2008, page 23 lines 11 through 20

605. In hindsight, Bishop LaRocque acknowledged that the Diocese's "investigation", amounted to Monsignor McDougald meeting with Father Charles on possibly two occasions, and Father McDougald, Father Vaillancourt and Jacques Leduc meeting with Silmser in February 1993. Clearly the participants in the February 1993 meeting were not trained to investigate sexual assault claims, and their investigation was unduly narrow.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 9 line 25 to page 10 line 4, page 11, lines 16 through 23

The Illegal Settlement – A Departure From All Professional Standards

606. The Diocese entered into a secret, illegal settlement with David Silmser in early September 1993. The illegality was that it purported to prevent Silmser from continuing his criminal complaint against Charles MacDonald in exchange for a payment.

607. As noted by the OPP in its investigation of the events leading to the illegal settlement, the conduct of all individuals involved in this matter fell well below accepted professional practices. The radical departure from the accepted standards only contributed to suspicions among certain people within the Cornwall community that there was a concerted effort to cover up allegations of historic sexual abuse involving clergy.

608. The events leading to the illegal settlement agreement are cloudy at best. It appears that David Silmser called Monsignor McDougald over the course of several months in 1993 to check in on the status of his complaint at the Diocese. The Silmser matter did not progress within Diocesan channels until Silmser called McDougald sometime in the summer of 1993 suggesting that the Diocese had done nothing with his complaint to date, and asking what the Diocese would be able to do for him. This call appears to have taken place in August of 1993. The illegal settlement document was signed by Silmser on September 3, 1993.

Reference: Exhibit 1891, bates pages 7056168 to 7056169

609. Following the Silmser phone call to McDougald, Jacques Leduc, counsel to the Bishop and the Diocese and Malcolm MacDonald, counsel to Father Charles MacDonald, became increasingly involved. Jacques Leduc and Malcolm MacDonald, had a first

meeting with Bishop LaRocque in August 1993 to discuss the possibility of settling the Silmser complaint. There are no notes available from this meeting. The Bishop's evidence at the Inquiry was that Leduc and MacDonald were recommending a settlement with Silmser at this time on the basis that civil settlements had been used to resolve other cases of a similar nature, [that it would not prohibit Silmser from pursuing a criminal complaint], and that the settlement could permit Father MacDonald to continue his ministry. The Bishop testified that he was adamantly opposed to a settlement at the time, and was concerned that any civil settlement would be perceived to be "buying off the victim".

Reference: Evidence of Eugene LaRocque, August 1, 2008, page 28, lines 21 through 24; page 29 line 22 to page 30 line 8; page 31, lines 13 through16, page 33 lines 8 through 12

610. The Bishop testified that following the above meeting he raised the Silmser situation at a closed door session of the Canadian Conference of Catholic Bishops regarding allegations of abuse by priests, and that the consensus among Bishops present was that a civil settlement should not be pursued.

Reference: Evidence of Eugene LaRocque, August 1, 2008, page 37 line 10 to page 38 line 6

611. After attending the CCCB meeting, but still during the month of August 1993, Jacques Leduc and Malcolm MacDonald visited the Bishop a second time. Once again there are no notes available of the meeting. At this meeting, it was known that Silmser was willing to settle with the Diocese and Father MacDonald for $32,000. The Bishop on this occasion agreed to settle the matter. The Bishop testified that he ultimately agreed to

settle with Silmser, despite his concerns with such a process, because wanted to keep his word that the church would help the victims.

Reference: Evidence of Eugene LaRocque, August 1, 2008, page 40 lines 9 through 11

Evidence of Eugene LaRocque, August 1, 2008, page 43 lines 4 through 9, page 47 lines 1 through 5

612. Once Bishop LaRocque approved the Diocese entering into a settlement with David Silmser, Leduc and Malcolm MacDonald began drafting the settlement agreement. Leduc provided a template for the settlement. His initial template does not appear to have included any language requiring Silmser to terminate both civil and criminal proceedings.

Reference: Exhibit 1893, bates page 1143662

613. The final release signed by David Silmser on September 2, 1993 contained a clause which required Silmser to undertake "**not to take any legal proceedings, civil or criminal, against any of the parties hereto and will immediately terminate any actions that may now be in process**" [Emphasis Added]. The reference to withdrawing criminal complaints on its face amounts to an obstruction of justice. Before signing the release, David Silmser received independent legal advice from Sean Adams.

Reference: Exhibit 1893, bates page 1143659

Exhibit 265A

614. The release signed by Silmser also contained an undertaking not to discuss. The non-disclosure provision went beyond non-disclosure of the terms and conditions of settlement, and required Silmser:

> **"Not to disclose or permit disclosure directly or indirectly of any of the terms of this settlement or of any of the events alleged to have occurred**."

Thus, Silmser was precluded from ever discussing the allegations of sexual abuse. Moreover, Silmser risked losing the settlement amount if he did discuss the allegations. The release contained a "strongly-worded clause" in this regard:

> **"A breach of this undertaking will constitute a breach of settlement agreement as evidenced by this release and I will refund all amounts paid to me forthwith."**
>
> **Reference**: Exhibit 263, bates page 7095975
>
> Evidence of Sean Adams, November 15, 2007, page 135, line 19 to page 136, line 3

615. Although the settlement contained an illegal term, and although there were three separate lawyers involved in the file, none of the lawyers or parties involved could adequately explain how it came to pass that the word "criminal" appeared in the agreement. Bishop Eugene LaRocque explained to OPP investigators that counsel for the Diocese (*viz*: Leduc) was responsible for the wording of the settlement. Jacques Leduc explained to investigators that the term "criminal proceedings" must have been placed within the settlement document inadvertently. Although Malcolm MacDonald explained to investigators that he believed that the clause pertaining to civil or criminal complaints stemmed from a precedent that he had received from Leduc, Leduc was of the impression

that the addition of the word “criminal” was done by MacDonald during his drafting. Finally, Adams explained to investigators that he could not recall specifically reading the entire release word for word when he provided Silmser with independent legal advice with respect to the settlement.

Reference: Exhibit 1916, bates page 1105397

Exhibit 1892, bates page 1048432

Exhibit 1154, at paragraph 23

Exhibit 849, bates pages 7058395 to 7058396

616. As Tim Smith so aptly noted, in interviewing one of the suspects, “the buck seems to be, being passed around here”.

Reference: Exhibit 1916, bates page 1105417

617. Bishop LaRocque explained to investigators that he never saw the document prior to its being signed by David Silmser. He also testified that he never saw a draft of the settlement document, played no role in drafting the settlement, was never provided with a draft by his own lawyer, and would not have authorized the settlement had he known that it contained a clause prohibiting Silmser from continuing in any criminal proceedings**.** The Bishop only saw the settlement after it was commented on in the media in January 1994.

Reference: Exhibit 1916, bates page 1105397

Evidence of Eugene LaRocque, August 1, 2008, page 84 to page 89, line 8

618. For his part, Leduc claimed that he did not see the signed settlement when it was returned to his office. He explained to investigators that the Silmser release was provided to him in a sealed brown envelope, and that he did not open it at any point. Leduc called Reverend Bryan and had him pick up the envelope, and suggested that it be placed in a confidential file. As he never opened the envelope containing the settlement documents, Leduc did not read the settlement documents at this time, and now acknowledges that "there's no excuse professionally" that he can give for this conduct. Leduc did not keep copies of any of these settlement documents in his office. He had no physical file in connection with this retainer.

> **Reference**: Exhibit 1892, bates pages 1048432 to 1048433
>
> Evidence of Jacques Leduc, July 16, 2008, page 17, line 7 to page 18, line 20
>
> Evidence of Jacques Leduc, July 15, 2008, page 200, line 23 to page 201 line 12

619. There is conflicting evidence as to whether Malcolm MacDonald sent a letter to Sean Adams on September 2, 1993 with a cheque payable to David Silmser for the amount of $32,000. Malcolm MacDonald wrote a letter to Adams on September 2, 1993 explaining that the cheque was to be held under the following conditions:

> **"This cheque is being given to you and to be held in escrow until we are advised by the City Police, that David Simser [sic] has attended at the Police Station and he advised them that he does not want to proceed with any of these charges**."
>
> **Reference**: Exhibit 268

620. Sean Adams testified that he did not receive this letter from Malcolm MacDonald. he believed the cheque was provided directly to David Silmser. Regardless of whether Adams received this letter, he provided Silmser with legal advice leading to his signing of a release and termination of a criminal complaint. He assisted Silmser in providing a direction to the Cornwall Police Service to stop further criminal proceedings. Adams acknowledges that it is reasonable to assume that he instructed Silmser to attend at the police station to advise that he did not want to proceed with charges. Adams clearly knew that Silmser's withdrawal of the criminal complaint was a condition precedent to him receiving the $32,000.

Reference: Evidence of Sean Adams, November 15, 2007, page 120, lines 2 through 18, page 121, lines 1 through 8, page 129, lines 12 through 19

621. On September 3, 1993, Malcolm MacDonald sent a letter to Luc Brunet enclosing a Statement signed by Silmser indicating that he no longer wished to proceed with any of the charges. Shortly thereafter Silmser withdrew his complaint, and he cashed the cheque.

Reference: Exhibit 268

Exhibit 299

Exhibit 266

Exhibit 1154, para. 27

622. The letter to Brunet and the enclosure made it clear to the reader that the criminal complaint was being withdrawn as a result of a civil settlement which Silmser had received to his satisfaction.

623. Although the facts were before him, Brunet was not concerned that the settlement was therefore illegal or potentially so. It is incomprehensible that Brunet would not have insisted on obtaining a copy of the settlement document.

624. Certainly Malcolm MacDonald is behaving as though he parties have agreed that Silmser is to withdraw the police complaint in exchange for payment of the $32,000.00. Adams also follows through with steps to comply with the terms for releasing the funds. By September 2nd, both Malcolm MacDonald and Sean Adams are acting as though the settlement deal is based in part on Silmser's withdrawal of his criminal complaint.

625. The illegal settlement only became public after Silmser's statement was reported on widely in the media in early 1994. On January 6, 1994, a report in the Ottawa media stated in the first paragraph that a complainant (now known to be David Silmser) **may have been paid $30,000 to drop a criminal complaint against a local priest** (now known to have been Father Charles MacDonald).

Reference: Exhibit 1743
Exhibit 766
Exhibit 58, Tab 28

626. In responding to this media report about the Silmser settlement, the Diocese indicated publicly on January 7, 1994 that it had acted in accordance with its guidelines, and was prepared to cooperate with police and other agencies. The following week, on January 14, 1994, Bishop LaRocque held a press conference where he stated **"In no way did I wish to impede the police investigation"**. The accompanying press release stated "The

Diocese by this decision settles a civil dispute and does not as has been implied, pay the complainant to withdraw criminal complaints".

Reference: Exhibit 1911

Exhibit 1911, bates pages 1116578-1116579

627. Three days later, on January 17, 1994, David Silmser's new counsel, Mr. Geoffrey, requested a copy of the settlement agreement from Diocesan lawyer Jacques Leduc. At this point Leduc requested a copy of the release from the Diocese, the Diocese forwarded a copy to Leduc, and Leduc provided a copy to Silmser's lawyer. By letter dated January 17, 1994, counsel to Mr. Silmser indicated that having reviewed the release it was his opinion that the document was an illegal contract, as its expressed purpose was to stifle any potential criminal prosecution.

Reference: Exhibit 276

628. After learning of the reference to criminal proceedings contained in the full release, on January 23, 1994, Bishop LaRocque issued another press release indicating that he had learned that the civil settlement entered into by the Diocese had in fact prevented the complainant from proceeding both civilly and in a criminal action and that his prior statements were wrong.

Reference: Exhibit 1913

629. When the illegality of the settlement in which the Diocese had participated became known, it caused a sensation in the community, and ultimately led to a further loss of faith in the Diocese.

Analysis of the Diocese's Illegal Settlement

630. **The Bishop and all three lawyers radically departed from the standards in place at the time that the illegal settlement was signed.**

631. **The first notable departure from a professional standard with respect to the illegal settlement is that of Bishop LaRocque. Shortly after consulting with his fellow Bishops with respect to the possibility of a civil settlement, and after having received the advice of his peers to refrain from entering into any such agreement, Bishop LaRocque approved a civil settlement. Had the Bishop followed the advice of his peers, the release would not have been signed. The Bishop is also responsible for a communications debacle which resulted from his failure to read the settlement when it was provided to him by his lawyer Jacques Leduc. As a result of that failure he made a false statement on the public record and lost credibility as a community and institutional leader. It is contrary to basic common sense not to check the facts before speaking publically about them. Ultimate responsibility must rest with the leader of the Diocese.**

632. **If the lawyers' explanations are to be believed, all three lawyers fell shockingly below the standard of a reasonably prudent solicitor. Malcolm MacDonald spent roughly 20 years as a Crown Attorney and knew it was illegal to pay off a person to withdraw a criminal complaint. He pleaded guilty to one count of attempting to obstruct justice. His conduct was also reported to the Law Society of Upper Canada.**

Reference: Exhibit 1165

633. **Jacques Leduc's conduct fell below the standard of a reasonably prudent solicitor. He too knew it was illegal to bargain for the withdrawal of criminal charges. He failed to maintain any file containing documents with respect to the Silmser settlement matter, even though he had kept files for other Diocesan files, and the Diocese did not impose on Leduc any requirement that he not keep files on this particular matter. He failed to review the signed settlement agreement when it was returned to him. His client released funds without him having ever determined that a settlement document and a release had even been signed. His failure to review the signed settlement prior to the Diocese's January 14, 1994 press release caused his clients embarrassment, and contributed to a process which misled the public.**

Reference: Evidence of Jacques Leduc, July 16, 2008, page 194 line 14 through 23, page 198 line 23 to page 199 line 2

634. **As independent legal counsel to David Silmser, Adams should have flagged the provision with respect to criminal complaints contained within the final release. His failure to do so, and his evidence that he could not even recall whether he read the entire document are further instances of a solicitor failing to protect his client, and undermining the proper administration of justice.**

635. **Had any one of the four main actors in the creation of the illegal settlement acted in accordance with the minimum standard required of them at the time that the settlement was being drafted, David Silmser would not have signed a release making the payment of $32,000 conditional upon his attendance at the Cornwall Police station to withdraw his criminal complaint against Father Charles MacDonald.**

That an experienced Bishop and three experienced lawyers would act contrary to basic business prudence and common sense (let alone their governing professional standards) fuelled a public perception that there had been a concerted effort to cover-up the allegations against Father Charles MacDonald.

636. **Any community members who may have thought that the illegal settlement was the standard operating procedure of the Diocese at this time would have had this belief confirmed by public comments made by Bishop LaRocque on January 15, 1994 in the *Standard Freeholder*. On this day, the *Standard Freeholder* reported "LaRocque said adding that the Diocese had in the past agreed to similar settlements involving alleged victims of child molesting Priests".**

Reference: Exhibit 1915

637. **Although Bishop LaRocque claims he was misquoted with respect to the report that he had agreed to similar settlements as that provided for Mr. Silmser, he took no steps to correct the record at any point to make it clear that Mr. Silmser's settlement was the only one that Bishop LaRocque had ever made.**

Reference: Evidence of Eugene LaRocque, August 27, 2008, page 10, lines 18 through 21, page 12, line 6 through 11

The Cornwall Police Service Raise Concerns About the Silmser Settlement[2]

638. On September 29, 1993, David Silmser contacted Heidi Sebalj of the Cornwall Police Services and indicated that he no longer wished to proceed with his criminal complaint as he had settled the matter with the Diocese. Both the head of the CAS and Chief Shaver believed that the settlement did not represent the best interests of the community.

Reference: Exhibit 1789, bates page 7058713

639. In the afternoon of October 7, 1993, Bishop LaRocque met with Chief of Police Claude Shaver and Luc Brunet with respect to the Silmser complaint and settlement. Prior to meeting with the Bishop, however, Chief Shaver and Brunet visited Archbishop Carlo Curtis to raise their concerns with him. Representatives of the Cornwall Police Services felt that, given their past experiences in dealing with Bishop LaRocque with respect to Gilles Deslauriers, they needed to speak to the Archbishop in Ottawa to have their concerns heard. Chief Shaver thought that he could not raise the MacDonald issue with Bishop LaRocque, in part because of the CPS interactions with LaRocque during the Deslauriers investigation, and in part because LaRocque had signed off on the Silmser settlement. The Archbishop assured the CPS that the Bishop would be of assistance, and the CPS went to visit the Bishop that same day, where they found the Bishop "**very cooperative**".

Reference: Evidence of Claude Shaver, June 11, 2008, , page 39 line 15 to page 40 line 17; page 55 lines 2 through 5; page 56 lines 11 through 12

2 Please note: Some of these details will be duplicated in later sections of these submissions.

640. The visit from Chief Shaver and Luc Brunet was the first time that the Bishop had met with anyone from the Cornwall Police Services with respect to the Silmser complaint. The police and Bishop LaRocque did not review the terms of the settlement at this meeting.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 3, lines 1 through 7; page 8 lines 13 through 16

641. During the October 7, 1993 meeting, Chief Shaver voiced his "displeasure" that the Church had not contacted the police during their negotiations. The Chief and the Bishop agreed "to discuss and implement a mutual policy to cover allegations against the clergy".

Reference: Exhibit 1789, bates page 7058714

Evidence of Eugene LaRocque, August 25, 2008, page 12, line 23 to page 13, line 4

642. At this meeting, the Cornwall Police Service also informed Bishop LaRocque that there were two other persons in addition to Silmser who also alleged sexual abuse by Father Charles MacDonald. This was the first time that the Bishop became aware of these two other complainants. Had the Diocese conducted a more full investigation to see whether there may have been other possible complainants against Father Charles MacDonald when it first learned of Silmser's complaint, then it is possible that these or other individuals could have been located earlier.

Reference: Exhibit 1789, bates page 7058714

Evidence of Eugene LaRocque, August 25, 2008, page 13, line 9 to page 14, line 11

The Diocese Keeps Secret The Reasons for Father MacDonald's Departure

643. After meeting with the police, Bishop LaRocque met with Father MacDonald, and decided to remove Father Charles MacDonald from the parish, and to send him for treatment. Father Charles MacDonald left for treatment at Southdown on October 9, 1994, and never returned to active ministry. At this point, Father MacDonald was being sent for an initial assessment, and the Bishop was provided with a report shortly thereafter. The Bishop's next move with respect to Father MacDonald was to depend on the results received from Southdown.

Reference: Exhibit 1789, bates pages 7058714-7058715

Evidence of Eugene LaRocque, August 25, 2008, page 22, lines 8 through 25; page 67, lines 5 through 8

Exhibit 1299, bates page 7044920

644. In mid to late October 1993, Bishop LaRocque learned from Southdown that Father MacDonald should attend six months of treatment, and on this basis decided that Father MacDonald could no longer return to the ministry. Father MacDonald was suspended from active duty, but continued to be paid as a full-time priest. Father Charles MacDonald arrived at Southdown for treatment on December 1, 1993.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 87 line 1 to page 88, line 13; page 99 line 20 to page 100 line 2

Exhibit 2106

645. The Bishop requested that Father Charles MacDonald provide him with a letter of resignation, and ultimately received a "strange letter of resignation" from Father MacDonald on October 30, 1993. The resignation letter simply states:

> **"The Most Reverend Eugene P. LaRocque, D.D., Bishop of the Diocese of Alexandria-Cornwall has announced the resignation of Rev. Charles F. MacDonald as pastor of Saint Andrew's Parish effective immediately. Father MacDonald has asked for time for rest and personal renewal before accepting re-assignment."**
>
> **Reference**: Exhibit 2100
>
> Evidence of Eugene LaRocque, August 25, 2008, page 89 line 4 to page 90 line 17

646. This letter of resignation fails to address in any meaningful way the situation as it existed and the reasons why his resignation was sought.

647. The Diocese's response to Father MacDonald's letter of resignation similarly fails to mention the complaints of sexual abuse which triggered the resignation. It states:

> **"I wish to thank you for the work that you have done at St. Andrews and for your resignation as Pastor of this Parish in order to find time for rest and personal renewal before you accept a new assignment.**
>
> **I hope that your stay at Southdown may be profitable to you personally and to your future ministry.**
>
> **Reference**: Exhibit 2101

648. It should be noted that in both Father MacDonald's letter of resignation and the Diocese response, there is language suggesting that Father MacDonald might be given a new

assignment in the future. Bishop LaRocque testified that by this point, in October and November 1993, the Bishop was awaiting the results of Father MacDonald's treatment at Southdown before determining whether Father MacDonald may be able to return to active ministry.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 93 lines 14 through 19

The Diocese Interactions with the Children's Aid Society

649. Shortly after commencing Project Blue, the Children's Aid Society met with Bishop LaRocque with respect to the Silmser allegations. On October 12, 1993, Bishop LaRocque met with three senior representatives of the CAS, namely Rick Abell, Angelo Towndale and Bill Carriere.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 57 lines 13 to page 58 line 1

650. Although Bishop LaRocque indicated that he wanted to work with the Children's Aid Society, at this point, the Bishop was "taken aback" that the CAS wished to investigate the Silmser allegations, and initially was not fully co-operative with the CAS authorities.

Reference: Exhibit 1299, bates page 7044920

651. The CAS indicated that they had seen the letter from Monsignor Schonenbach in Ottawa reporting on his meeting with Silmser in December 1992, and requested a copy. The Bishop refused, claiming that the letter was confidential. The Bishop at the Inquiry

admitted that the letter was not confidential, as the police already had a copy, and that the letter should have been given to the authorities.

Reference: Exhibit 1299, bates pages 7044920-7044921

Evidence of Eugene LaRocque, August 25, 2008, page 69, lines 8 through 9, 18 through 20

652. The CAS informed the Bishop that they wanted Father MacDonald out of the parish to give them time to investigate. Ultimately, the Bishop agreed to permit the CAS a two week period in which they would be able to investigate without Father MacDonald in the parish.

Reference: Exhibit 1299, bates page 7044920

653. It was clear to the CAS and should have been clear to any reasonable observer that two weeks was not adequate time for the CAS to verify or refute Silmser's allegations and to ascertain whether there were any current children at risk in Father Charles's parish.

654. The Bishop also raised concerns about the publicity that a CAS investigation would cause.

Reference: Exhibit 1299, bates page 7044920

655. However, the Bishop also provided the CAS with some actionable information during this first meeting. The Bishop indicated to the CAS officials that Father Charles had been engaged in gay relationships with "**teens/adults, but not for the past 4 years**". This information would suggest that it was a possibility that Father Charles MacDonald had been involved with teens other than Silmser as recently as 1989. As the Bishop did not

know the age of the "teens" potentially involved, the CAS might reasonably need to investigate this matter further to make sure that no children or youth had recently been abused by Father Charles MacDonald.

Reference: Exhibit 1299, bates page 7044921

Evidence of Eugene LaRocque, August 25, 2008, page 73 lines 1 through 7

Exhibit 1299, bates page 7044921

656. Faced with the admission by Father Charles of him being involved with "teens" from the parish, it was incumbent upon the Bishop to have followed up; sought names; made contact with the persons named; determined whether they wished to complain to the Diocese, etc. Instead, the Bishop's approach was completely passive: he seems to have no curiosity about Father Charles's admission, no ability to see that maybe the "teens/adults" with whom Father Charles had had sex had been vulnerable to or exploited by him, and no desire to make amends.

657. With all due respect, the Bishop's lack of action bespeaks the fact that he has no genuine commitment to the protocol or to the "From Pain to Hope" principles.

658. The Bishop also indicated that he wished to "monitor" the Project Blue investigation, which the CAS refused.

Reference: Exhibit 1299, bates page 7044920

659. Although the Bishop now states that the best way to handle such matters is to conduct some form of open investigation, it appears as though at the time his overarching concern was about negative publicity for the church arising from a CAS investigation.

Reference: Evidence of Eugene LaRocque, August 25, 2008, page 64 line 25 to page 65 line 1

660. Ultimately, the Children's Aid Society concluded in January 1995 that "there are reasonable and probable grounds to believe that the abuse of a child did occur". Bishop LaRocque did not take further steps with respect to Father MacDonald after receiving the conclusions of the CAS investigation, as by that point, Father MacDonald had been removed from the ministry, had not been re-assigned, and had no contact with children.

Reference: Exhibit 2090

661. Although the CAS reported the findings of their investigation into the Silmser matter in January 1995, it was not until January 28, 1999 that Bishop LaRocque asked Father MacDonald to retire from active ministry. Father Charles MacDonald was only asked to do so after the Bishop learned that other complainants had come forward in addition to the three he had known about in 1998.

Reference: Exhibit 2102

Evidence of Eugene LaRocque, August 25, 2008, page 106, lines 10 through 21; page 135, lines 7 through 18

Exhibit 2108

Exhibit 416

Institutional Response to Allegations of John MacDonald – 1995

662. On August 11, 1995, John MacDonald wrote to Father Kevin Maloney to report that he had been sexually abused by Father Charles MacDonald at the age of 13. John

MacDonald explained that he then became addicted to drugs and alcohol for the next 13 years until he sought treatment. He wrote that had been living in British Columbia for the past four years, but upon returning to Cornwall had learned of the Silmser case, and realized that he could no longer forget what had happened to him. In this letter, John MacDonald also indicated that he did not want the police, the CAS or his family involved.

Reference: Exhibit 202

663. While earlier Diocesan policies would have required the Bishop's delegate to meet with the complainant prior to reporting the matter, by this period, the Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistances, which was approved by the Bishop in June 1995, had evolved and now required that:

> **"The first person receiving a complaint has to report it immediately to the Children's Aid Society, if the victim is under 16 years of age at the time of the offence, or to the Police."**
>
> **Reference**: Exhibit 58, Tab 31

664. By letter dated August 15, 1995, Father Maloney responded to John MacDonald by informing him that the Diocese's policy required him to forward the complaint to the police to investigate. Father Maloney attached the Diocesan Policy for Mr. MacDonald to review and indicated that he hoped that Mr. MacDonald would cooperate with the civil authorities.

Reference: Exhibit 203

665. That same day Father Maloney reported the matter to both the Cornwall Police Service and the Children's Aid Society. He brought a copy of MacDonald's letter to these authorities, and provided a copy of it to the Bishop. At this point, Father Maloney believed he would no longer play any role, and that the civil authorities would take over.

Reference: Exhibit 230

Exhibit 1553

Evidence of Kevin Maloney, July 3, 2008, page 78 lines 3 through 5; page 82, lines 13 through 19

666. In September 1995, through the intervention of Richard Abell, the Diocese provided the financial support which enabled Mr. MacDonald to attend counselling. Unlike in the case of Silmser, access to counselling was made available on the basis that it was without prejudice to Mr. MacDonald's rights to commence a civil claim against the Diocese.

Reference: Exhibit 252

Evidence of Eugene LaRocque, August 25, 2008, page 219, lines 12 through 15

Institutional Responses to Father Paul Lapierre and Father René Dubé Matters

667. Father René Dubé was the pastor of Sainte-Croix parish in Cornwall. Father Paul Lapierre was a priest who, although incardinated in the Diocese, had left the Cornwall area prior to the arrival of Bishop LaRocque, probably around 1967. Father Lapierre lived in Montreal.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 46, lines 1 through 8, page 157-158

668. Father Lapierre was investigated and charged through Project Truth with respect to an alleged historical sexual assault against Claude Marleau. Subsequent to the Ontario charges, both Father Lapierre and Father Dubé were charged in Quebec for a historical sexual assaults against Claude Marleau occurring in Montreal. Father Lapierre was convicted for his role in the Montreal assaults. Ultimately Father Dubé was acquitted, after a trial on October 31, 2001.

Reference: Exhibit 2121

Evidence of Eugene LaRocque, August 26, 2008, page 46 lines 1 through 8

Exhibit 178

Evidence of Pat Hall, December 3, 2008, page 165, lines 4 through 10

The Lapierre Ontario Proceedings

669. Father Lapierre was arrested in Ontario by Project Truth officers on July 9, 1998. Prior to this arrest he had been arrested in the United States with respect to a sexual offense. Bishop LaRocque was aware of Father Lapierre's prior offense history, but there is no evidence that he disclosed this information at any point to Project Truth investigators.

Reference: Exhibit 2772, bates page 7007642

Evidence of Eugene LaRocque, August 26, 2008, page 48 line 5 to page 49 line 5

670. Father Lapierre was given a cautioned interview by OPP investigators in March 1998. When asked whether he understood the charge, Lapierre stated, "Yes, I understand the allegation. **Bishop told me not to say anything**." Bishop LaRocque denies having instructed Father Lapierre to keep quiet.

Reference: Exhibit 2147

Evidence of Eugene LaRocque, August 26, 2008, page 160, lines 1 through 9

671. During his criminal trial, Father Lapierre testified that although he did not participate in the sexual assault of Claude Marleau for which he was on trial, he had heard that Marleau had been abused simultaneously by two other priests. He claimed he knew of "the others" who had sexually abused Marleau and other boys through conversations with other priests. He testified that Father Hollis Lapierre "kept pictures of naked boys with himself", but that Father Don Scott, the executor of Hollis Lapierre's will, "**had been asked to destroy those pictures**". Lapierre also testified that he had had further conversations about sexual abuse, but refused to comment further, claiming that the information had been exchanged during religious confessions, and therefore was privileged. When asked whether he ever reported the abuse, Father Lapierre claimed he discussed the matters with the Bishop, but stated that "**It's privileged… you're dealing with moral things, ethical things**".

Reference: Exhibit 1022, bates pages 1154605-115408; see also bates pages 1154611-1154612

672. Bishop LaRocque denied having ever discussed these matters with Father Lapierre, although it could have discussed LaRocque's predecessor as bishop with whom Lapierre discussed sexual abuse.

> **Reference**: Evidence of Eugene LaRocque, August 26, 2008, page 166, lines 2 through 10, page 166 line 21 to page 167 line 2

673. Bishop LaRocque testified that he could not recall having confronted Father Lapierre about these comments, and acknowledged that "**I should have if I didn't**". These were, in fact, explosive allegations as to the existence of a ring of priest/abusers who had sexually abused Marleau.

> **Reference**: Evidence of Eugene LaRocque, August 26, 2008, page 167, lines 8 through 13., page 166 line 21 to page 167 line 2

674. Although the entire clergy was upset by the comments made by Father Lapierre during his Ontario criminal proceedings, Bishop LaRocque did not follow up or instruct his delegate to follow up with respect to any of the allegations made by Father Lapierre. There was no evidence that Bishop LaRocque attempted to ascertain the facts or to correct the public record at this time.

> **Reference**: Evidence of Eugene LaRocque, August 26, 2008, page 168 line 13 to page 169 line 9, page 171 to page 172 line 6

675. In Father Lapierre's Ontario prosecution, the public learned of allegations of historic sexual abuse involving priests. It learned from the media that there were multiple aggressors, or a 'ring' of individuals who had abused Claude Marleau which had

reportedly been covered up by a member of the Diocese. A Bishop was reportedly aware of the incidents of sexual abuse. The Lapierre evidence supported the notion of a 'pedophile ring' and cover-up, and would have been extremely damaging to confidence in the Diocese within the Cornwall community. Despite this, the Diocese took no steps to investigate Father Lapierre's evidence and attempt to ascertain whether it was true and, if so, whether any present priests were implicated.

676. Father Lapierre was found not guilty of the Ontario charges on September 12, 2001.

Reference: Exhibit 2772, bates page 7007642

The Lapierre and Dubé Quebec Proceedings

677. Lapierre and Dubé were charged in Quebec in the summer of 1999. Under the protocols in place at the time, the Bishop was encouraged to remove the Priest. The Diocesan Policies in place by mid-June 1996 to supplement the sexual abuse protocol state:

> **"If the situation warrants it, (because there is a risk to the alleged aggressor, or the possibility of risk to other members of the community, because the events have become public, because charges will be laid, because a trial will take place), the Bishop removes the suspected aggressor from Church duties."**
>
> **Reference**: Exhibit 2121
>
> Exhibit 58, Tab 32, bates page 6007816

678. Although this Policy suggests that the Bishop had some discretion, the accompanying "Protocol for priests who are the subject matter of criminal proceedings or civil litigations", also dated June 1996 and in force at the time states:

> **"Should there be an allegation of an indictable offense, with one or more of the following conditions present:**
>
> **a) risk to the alleged aggressor;**
>
> **b) possibility of risk to members of the community;**
>
> **c) <u>because the events have become public;</u>**
>
> **d) <u>because charges will be laid;</u>**
>
> **e) <u>because a trial will take place</u>;**
>
> **the accused priest <u>will be removed from his position and placed on a leave of absence</u>.**" [Emphasis Added]
>
> **Reference**: Exhibit 58, Tab 32, bates page 6007817

The Bishop had no choice but to remove Father Dubé in the circumstances.

679. The Diocese deviated from its policies and protocol in handling this case, as acknowledged by the present Bishop, Paul-André Durocher.

680. Bishop LaRocque testified that he kept Father Dubé in his position because he was "morally certain" that Father Dubé was innocent. He acquired this moral certainty after speaking with Father Lapierre, who told him that (Dubé) was innocent, as it was Don Scott, another Priest incardinated in the Diocese (although living in Montreal) who was the other perpetrator of abuse. Scott was then deceased.

> **Reference**: Evidence of Paul Andre Durocher, September 3, 2008, page 24 lines 9 through 12
>
> Evidence of Eugene LaRocque, August 26, 2008, page 54, line 25 to page 55 line 15; page 60 lines 16 through 24

681. If Lapierre's statement is to be believed, Father Lapierre had essentially admitted to the sexual assault of Claude Marleau with Don Scott in Montreal. At the same time that Father Lapierre had exonerated Father Dubé, he acknowledged his own role in the Montreal incident.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 55 line 23 to page 56 line 1

682. The Bishop did not tell the police or the Crown Attorney of Lapierre's statement. Alain Godin, the Crown who had prosecuted the Ontario cases involving Claude Marleau, and who was in contact with the Quebec prosecutors for the Lapierre/Dubé charges, testified that, had he been aware of the Bishop's conversation with Lapierre, he would have subpoenaed Bishop LaRocque to testify at trial. Had this evidence been provided to the authorities, they would have been able to reconsider continuing the prosecution against Dubé. Ultimately, Dubé had to go through a full criminal trial, in which he was found not guilty. The evidence also would have provided further support for prosecuting Father Lapierre.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 58 lines 7 through 10

Evidence of Alain Godin, January 8, 2009, page 243 lines 10 through 24

Exhibit 178, bates page 1066548

683. The Bishop also did not take any steps to try to find out whether other parishioners may have been abused by Don Scott. The fact that Father Scott was deceased meant that the Diocese did not need to concern itself about possible future victims, but it could and

should have tried to determine whether there were individuals within the community who, if abused by Scott, could benefit from assistance for counselling. This would of course include Marleau himself.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 61 lines 3 through 11; page 75, lines 13 through 21

684. The Bishop did not seek any legal advice as to how to handle the knowledge he had with respect to Father Lapierre's admission, or the exculpatory statement regarding Father Dubé.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 182, lines 14 through 21

685. Although the Bishop did not share his information with respect to Dubé and Lapierre with the civil authorities, he took swift action internally to protect Father Dubé. The Bishop went to visit the parish council and finance council for Sainte-Croix parish, and explained to them that he was "morally certain" that Father Dubé was innocent, although he did not share with the council members the source of his information, namely that Lapierre named another priest as Marleau's abuser. The Bishop requested from council that he be permitted to "**break the protocol and allow him to minister under – with certain reservations during the time that he was being investigated**", and council agreed unanimously.

Reference: Exhibit 2123

Evidence of Eugene LaRocque, August 26, 2008, page 52, lines 20 through 25, page 53, lines 4 through 7 and 15

686. The Bishop also claims that he consulted with Father Vaillancourt, who had authored the protocol, and was advised that he would not be breaking the protocol by making an exception in the case of Father Dubé. In contrast, in considering whether he had any obligations towards civil authorities, the Bishop did not seek any advice as to how to handle the knowledge he had with respect to Father Dubé or what his legal obligations were.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 77 lines 15-18; page 182, lines 14 through 21

687. Although Father Dubé had submitted his letter of resignation, the Bishop refused it by letter dated June 23, 1999. Bishop LaRocque wrote to Father Dubé as follows:

> **"Étant donné que j'ai la certitude morale que tu es innocent, je ne peux ajouter un autre injustice à celle que tu as subie."**

Reference: Exhibit 2123

688. The Bishop asked Father Dubé to continue his duties, and at this point did not impose any conditions or reservations on him.

Reference: Exhibit 2123

689. Father Dubé then announced to his parishioners that he had been charged with alleged sexual assault, but that he was innocent. This event was reported by the *Standard Freeholder* on June 26, 1999.

Reference: Exhibit 2121, "*Priest tells parishioners he's innocent*"

690. By letter dated June 30, Rick Abell from the CAS wrote Bishop LaRocque to urge him to remove Father Dubé. Abell wrote that for the public's safety, and given that criminal charges had been laid, Father Dubé should be asked to step down. Abell opined that while the Bishop's protocol provided the Bishop with some discretion, there were several factors within the protocol which argued for suspending Father Dubé. Finally, Abell asked that should the Bishop let Father Dubé remain in his present duties, that the Bishop take steps to protect children and youth from Father Dubé until the outcome of the charges was known.

Reference: Exhibit 2124, bates page 7080476

691. The Bishop and Abell discussed this matter on July 1, 1999, and the next day, the Bishop requested that Father Dubé refrain from being in the company of youths without other adults present. Again, it was only at the urging of an outside civil authority that the Diocese took any step with respect to Father Dubé.

Reference: Exhibit 2125

692. The Diocese's handling of the allegations and criminal charge against Father Dubé would have been perplexing to the community given the Diocese's public policies regarding allegations against Priests and its failure to adhere to them. Absent the knowledge that there was a claim by the co-accused that Father Dubé was entirely innocent, the

community could not have known why a priest charged with sexual offences would not have been suspended.

693. The Bishop's failure to report his conversation with Father Lapierre is equally of concern, as this statement would have been important for the police and Crown.

Institutional Response to Romeo Major Matter

694. Romeo Major was a priest incardinated in the Diocese. On October 28, 1999, Pat Hall contacted Bishop LaRocque and advised him that the OPP was conducting an investigation into Father Major. On November 1, 1999, Bishop LaRocque called the CAS to share information as requested. He advised that he had learned of an OPP investigation into Father Major allegedly touching a girl 25 years ago. Thus, in this case, the Diocese followed up with the CAS and assisted in the smooth communication between public institutions.

Reference: Exhibit 2752, bates page 7110292

Evidence of Pat Hall, December 4, 2008, page 208 line 21 to page 209 line 20

Exhibit 2128

695. Father Major was charged by the OPP as part of Project Truth and arrested in April 2000. He was charged with indecently assaulting a female in the mid 1970s. The complainant would have been between 8 and 11 years old at the relevant times.

Reference: Exhibit 2135, bates page 1013722

696. Once charges were laid, Major wrote to the Bishop requesting that he be removed as the priest for Sts Martyrs Parish. On April 11, 2000, Bishop LaRocque accepted Father Major's resignation, and left the matter to be adjudicated by the Courts. The Bishop cc'd this letter to a representative of the media. Although Father Major was removed from his parish, he was only removed after allegations against him became publically known.

Reference: Exhibit 2129

Exhibit 2130

697. On October 8, 2001, the charges against Father Major were dropped on the basis that the complainant suffered from a malignant brain tumour which impacted her memory to the point that it was determined by the Crown that there was no longer any reasonable prospect of conviction.

Reference: Exhibit 2135, bates page 1013722

698. On October 13, 2001, Bishop LaRocque wrote to the parishioners of Sts Martyrs Parish and informed them that Father Major would be reinstated as parish priest as follows:

> **"C'est avec joie que je remets le P. Roméo Major en function comme votre cure. Après un an et demi la cour trouve qu'il n'y a pas de cas juridique."**

Reference: Exhibit 2134

699. This letter suggests that the Court found that there was no legal case against Father Major, and not that the matter was withdrawn because of a deterioration in the complainant's health. It misleadingly suggests that the case against Father Major was heard by a Court on its merits. A person reading this letter could reasonably believe that

the evidence against Father Major was heard and assessed by a Court, and that he was acquitted.

700. The Bishop was aware that the case had never been adjudicated, yet the public response from the Diocese suggests that Father Major was exonerated.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 115, lines 2 through 5

701. Other than sending Father Major for assessment and treatment at Southdown, and consulting with some parishioners, the Bishop did not conduct any investigation into possible other abuses by Father Major before re-instating him, nor did he further investigate the alleged abuse upon which the charges had been founded.

Reference: Evidence of Eugene LaRocque, August 26, 2008, page 121 line 23 to page 122 line 3

702. Again in this instance, although the Diocese properly shared information, it failed to transparently communicate with the public. As was the case in relation to the Silmser settlement, the Bishop's public statement painted a misleading picture of innocence.

Analysis of the Above Response of the Diocese

703. **Starting with allegations against Father Stone in the 1950s, and through to the resignation of Bishop Eugene LaRocque, the Diocese consistently failed to properly respond to allegations of current or historic sexual abuse against clergy incardinated within the Diocese or who practiced ministry within in the Cornwall area through the Diocese. The Diocese's shortcomings include:**

- **A failure by the Bishops and others within the Diocese to recognize that priests can engage in sexual abuse**

- **A general inclination to disbelieve the complainant at first instance (ex: Silmser)**

- **A preference to secretly resolve any complaints within internal Diocesan channels, without reporting to any secular authorities, including the Children's Aid Society, the police, school boards, immigration officials or any secular authorities (ex: Father Stone, David Silmser, Father Deslauriers). Note, however, that in the case of John MacDonald, at least one member of the Diocese properly contacted the authorities.**

- **In certain cases, a failure to take reasonable steps to prevent the risk of abuse by priests once the priest left the Diocese's jurisdiction (ex: Father Stone, Father Deslauriers)**

- **A failure to follow the Diocese's own policies and protocols and best practices of the time (ex: Father Deslauriers; Father Charles MacDonald investigation; Silmser illegal settlement; Father Dubé; Father Major; Father Lapierre)**

- **A failure to assist other institutions tasked with investigating allegations of sexual abuse or providing support to complainants (ex: Father Gilles Deslauriers), although the Diocese showed some progress in this regard over time.**

- **A failure to thoroughly investigate complaints against clergy (ex: Father Stone; Father Charles MacDonald; Father Dubé; Father Major; Father Lapierre; Don Scott)**

- **A failure to communicate to the public in a fully transparent and accurate manner (ex: Silmser settlement; Father Major). This included a failure to take any steps to correct the public record as required.**

- **A failure to develop victim-centric responses (ex: Father Deslauriers; Father Charles MacDonald; Father Lapierre)**

- **A failure to attempt to locate possible other victims of clergy sexual abuse or to provide victims with easily**

accessible support, financial assistance for therapy, or an apology

704. **The Diocese of Alexandria-Cornwall failed to implement the principles of *From Pain to Hope* in a timely and transparent manner. It chose secrecy over openness, and acted in an insular manner which was damaging to the community.**

THE TRANSITION TO BISHOP DUROCHER LEADS TO IMPROVED TRANSPARENCY, BUT ROOM FOR IMPROVEMENT EXISTS

705. Bishop LaRocque retired as Bishop of the Diocese of Alexandria-Cornwall in April, 2002. He was replaced by Bishop Paul-André Durocher, who arrived in Cornwall in June 2002.

706. At that time, four of the Diocese's thirty priests had been subject to criminal charges. It was firmly entrenched with some community members that the Church had knowingly participated in a "cover up" with respect to the Silmser illegal settlement. Soon after Bishop Durocher's arrival, the criminal proceedings against Father Charles MacDonald were stayed, leading to further community concerns. In 2002 the issues of historic sexual abuse were a very live and heated issue in the Cornwall community, and continued to deeply involve the Diocese. The Bishop also came to realize that the Diocese had failed to be "victim centric" in its response to allegations of historic sexual abuse, and that its actions had been more self-protective than truly helpful to victims**.**

> **Reference:** Evidence of Paul Andre Durocher, September 3, 2008, page 3, line 24 to page 4, line 5; page 13; page 52, line 20 to page 53, line 7

707. Despite the importance of the issue of historic sexual abuse both within the Diocese and the Cornwall community in general, when Bishop LaRocque left the Diocese, he did not provide Bishop Durocher with a detailed briefing of the situation. Bishop LaRocque was "hands off" on the transition process. Although this enabled the new Bishop to get a sense of the Diocese for himself, Bishop Durocher was deprived of information as to whether there were any limits placed on the ministries of any of his priests. Bishop

Durocher never reviewed all of the files of the current priests when he came to Cornwall. In short, although Bishop Durocher was committed to starting fresh, he was lacking information which could have assisted him in assessing the situation.

Reference: Evidence of Paul Andre Durocher, August 29, 2008, page 30, lines 8 through 10

Evidence of Paul Andre Durocher, September 3, 2008, page 2 lines 5 through 6; page 24, lines 9 through 12

708. Bishop Durocher became aware of the gravity of the situation, and took action. He came to the view that nobody within the Diocese had the proper training or experience to serve as the Bishop's delegate, and so he appointed Father MacNeil from Ottawa to serve as his delegate on matters of sexual misconduct. As Father MacNeil had already served as the Bishop's delegate in Ottawa, had previously studied the issue of sexual assault for Bishops in the United States in the 1990s, and had other related experience this move again showed concern for victims and was a marked improvement.

Reference: Evidence of Paul Andre Durocher, August 10, 2006, page 121 line 13 to page 122 line 21

709. The Bishop took the step of publically stating shortly after his arrival in Cornwall that he wanted the Diocese to address the issue of sex abuse. On June 15, 2002, Bishop Durocher announced that he would set up an ad hoc committee to advise on protecting children and vulnerable parishioners from sexual abuse, and that he wanted the community's input as to how to move forward. The mandate of the ad hoc committee was received by committee members and approved by the Bishop by August 15, 2002.

The first meeting of the ad hoc committee took place on August 15, 2002, and the Diocese issued a media release within days to report back to the community that the committee members had been selected, and work had begun.

Reference: Exhibit 2185

Exhibit 58, Tab 33, Tab 34

710. In the fall of 2002, the Diocese's ad hoc committee also placed an advertisement in the *Standard Freeholder* to seek input from individuals and community groups as to how to improve upon existing Diocesan policies. The advertisement printed the Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants, and the Protocol for priests who are the subject matter of criminal proceedings or civil action. The Diocese received several responses to this request for information.

Reference: Exhibit 58, Tab 39

Evidence of Paul Andre Durocher, August 10, 2006, page 137 lines 11 through 15

711. The ad hoc committee reported back to the Bishop in December 2002. This led to the creation of new Diocesan Guidelines in April 2003, which took effect on July 1, 2003. The 2003 Guidelines were subject to minor amendments in 2005. These new Guidelines replaced the Diocese Guidelines of June 21, 1996 but did not replace the 1996 "Protocol for priests who are the subject matter of criminal proceedings or civil litigations".

Reference: Exhibit 58, Tabs 31-32, 44, 46 and 49

Evidence of Paul Andre Durocher, August 29, 2008, page 61 to page 65 line 5

712. The latest Guidelines appear to shift towards greater accountability, transparency and victim-centric response. There are several notable improvements to these Guidelines. For example:

- Investigations: The present Guideline require that anyone serving in the Church who receives an allegation of sexual abuse of a child must report it to the CAS. If the matter is investigated by the CAS, the Bishop's Delegate will not undertake an investigation. This prevents the creation of parallel investigations as had occurred in the Deslauriers and Silmser matters.

- Removal of Priests: If charges are laid at any time, the Bishop will immediately place the accused on a leave of absence and inform the parish and community.

- Victim Support: The care to be afforded the victim is stated as figuring "among the first issues to be considered by the Advisory Committee". A new Victim's Care Committee has also been created through the Guidelines with the goal of seeing "that individualized support is available to a victim, both during and after the investigative process".

- Accountability: The new Guidelines also establish a Review Committee tasked with studying the effectiveness of the Diocesan Guidelines and recommending improvements. The Guidelines expressly note that the Bishop will make the results of the review available to the public.

  Reference: Exhibit 58, Tab 49.

713. Following global Church doctrine, the new Guidelines do not have a retroactive effect. Victims who came forward before the July 2003 protocol would not be dealt with under it. Bishop Durocher did not initiate contact with people who brought complaints forward in the past. In hindsight, Bishop Durocher acknowledges that it might have been appropriate to attempt to contact them to let them know that his door is open.

Reference: Evidence of Paul Andre Durocher, September 3, 2008, page 31 lines 4 through 7; page 32, lines 15 through 17; page 33, lines 17 through 23

714. Although these new Guidelines mark a step towards accountability and transparency, as noted in its recommendations, the CCR submits that further changes to the Guidelines and Diocesan policies will assist this public institution in responding quickly, openly, and in a coordinated fashion with other institutions.

SECTION II: INSTITUTIONAL RESPONSES TO THE SEXUAL ABUSE ALLEGATIONS OF DAVID SILMSER

715. Having examined the patterns of weaknesses in institutional responses pre-dating the Silmser complaint, we turn now to that subject.

716. The historic sexual abuse allegations of David Silmser touched upon all of the institutional respondents at this Inquiry. At one time or another commencing in 1992 and ending with the final termination of *R. v. MacDonald* in 2004, virtually every institution present at this Inquiry had dealings with Silmser. Silmser himself was the focus of a police investigation (for potential extortion in connection with the suicide of Ken Seguin); he was the complainant in several different criminal charges brought by the OPP and prosecuted by MAG; he alleged sexual abuse by a school teacher (Lalonde). He was involved in investigations conducted by the Children's Aid Society (Project Blue), and he met with Diocese officials in relation to his complaint. Silmser was also a complainant against Ken Seguin, a probation officer at the Cornwall Probation Office.

717. Several of the institutions were involved concurrently with Silmser or dealt with one another in relation to Silmser. For example, CAS employees during Project Blue interacted with the CPS, the Diocese of Alexandra in Cornwall and with counsel to Father Charles MacDonald.

718. It was Silmser's complaint about his statement being leaked to the media which ultimately triggered the *Police Services Act* charge against Constable Dunlop, an event which had far-reaching consequences. It was the settlement of Silmser's claim against Father Charles which led to the criminal investigation of obstruction of justice and the

eventual charges against Malcolm MacDonald. Simply, the Silmser story connects all institutions and intersects with the key actors, being Ron Leroux, Perry Dunlop, Ken Seguin, Father Charles MacDonald, and others.

719. The following is a chronology of events based largely upon the evidence considered to be the most reliable, namely, documents made contemporaneously with the events recorded. The chronology will attempt to examine the role played by each institutional actor throughout the narrative. Because the events are so enmeshed, we will present our submissions on the CPS/Dunlop relationship as a separate section, for ease of presentation.

720. David Silmser's historic abuse allegations are first addressed to institutions on **December 9th, 1992**. On that date, Silmser called the CPS headquarters at 11:55 a.m. to report himself the victim of historic sexual abuse by Father MacDonald and Ken Seguin.

Reference: Exhibit 1214

721. Also on **December 9th, 1992**, Peter Schonenbach spoke with Monsignor McDougald pertaining to Silmser.

Reference: Exhibit 311

722. On **December 10th, 1992**, Chief Shaver assigned the Silmser investigation to Claude Lortie.

Reference: Exhibit 1474

723. Also on **December 10th, 1992** Monsignor Schonenbach met with David Silmser at the Diocese Centre in Cornwall. At that time, Silmser discloses historic sexual abuse by Father MacDonald to Schonenbach, as well as the personal consequences he said he experienced as a result of that abuse.

Reference: Exhibit 311

724. On **December 11th, 1992,** Schonenbach wrote to Monsignor McDougald outlining what he had learned from Silmser, and adding the observation "**He seems like a credible person**".

Reference: Exhibit 311

725. On **Monday, December 14th, 1992**, Lortie contacted Silmser by telephone and they made an appointment to meet on **January 18th, 1993**.

Reference: Exhibit 1474, bates page 7138663

726. On **December 17th, 1992**, a meeting occurred between Father Charles MacDonald, his lawyer, Malcolm MacDonald and Monsignor McDougald. It appears that Father Charles MacDonald denied Silmser's allegations at that meeting.

Reference: Exhibit 312

727. Of the two suspects named in the Silmser matter, Lortie was familiar with Ken Seguin, and had known him for a number of years as a co-worker of Lortie's wife. Lortie was not personally acquainted with Father MacDonald.

Reference: Evidence of Claude Lortie, April 9, 2008, page 171, line 17 to page 172, line 25

728. Lortie was clear in his evidence that there were adequate resources available to investigate the Silmser matter at that time.

Reference: Evidence of Claude Lortie, April 9, 2008, page 178, lines 15 and 16

729. As at the time the Silmser file was assigned to Lortie, five members of the CPS had knowledge of the complaint: Sergeant Nakic, Chief Shaver, Deputy Chief St. Denis, Staff Inspector Stuart McDonald and Lortie.

Reference: Evidence of Claude Lortie, April 9, 2008, 180

730. Lortie and Silmser arranged to meet on **January 18th, 1993**, because Lortie had surgery scheduled on **January 4th** and anticipated being off for two weeks.

Reference: Evidence of Claude Lortie, April 9, 2008, page 188, lines 15 through 18

731. Lortie acknowledged that **"he thought it was an important investigation**".

Reference: Evidence of Claude Lortie, April 9, 2008, page 196, lines 15 through 16

732. Although the evidence was hypothetical (because in fact he never met with Silmser), Lortie did testify that after he had obtained a statement from Silmser, he would have made arrangements to meet Father Charles MacDonald and Ken Seguin.

Reference: Evidence of Claude Lortie, April 9, 2008, page 203, lines 16 through 18

733. Lortie also would have contacted Ken Seguin's superior at the Probation Office.

Reference: Evidence of Claude Lortie, April 9, 2008, page 203, line 23 to page 204, line 3

734. Lortie did not immediately open an OMPPAC incident report for this investigation, and he does not recall why he did not. He did testify that "**Right from the beginning it should have already been entered as a general file.**"

Reference: Evidence of Claude Lortie, April 9, 2008, page 208, lines 1 through 3

735. Lortie made no OMPPAC entries during the time that he had carriage of this investigation.

Reference: Evidence of Claude Lortie, April 9, 2008, page 212, lines 6 through 12

736. Some time between Christmas and New Year's, Lortie was called in to meet with the Deputy Chief who asked how the Silmser investigation was going. When learning that nothing was scheduled until **January 18th**, the Deputy Chief said "**Well, it can't wait that long, so just bring the file back**". Lortie returned the file to the Deputy Chief.

Reference: Evidence of Claude Lortie, April 9, 2008, page 215, line 19 to page 216, line 5

737. On **January 8th, 1993**, the Deputy Chief wrote to the officer in charge of the CIB Unit and asked to have the Silmser investigation assigned as soon as possible. He noted "**I realize the heavy workload in CIB but this could possibly turn into an Alfred type situation**", the latter being a reference to a large multi-victim, multi-perpetrator case of institutional sexual abuse by persons in authority against residents of two training schools for boys.

Reference: Exhibit 1298

738. The head of the CIB was Luc Brunet and he received Exhibit 1298 from the Deputy Chief on **January 12th, 1993**.

Reference: Evidence of Luc Brunet, April 3, 2008, page 152, lines 20 through 25

739. **January 12th, 1993** was Staff Sergeant Brunet's second day on the job as head of CIB.

Reference: Evidence of Luc Brunet, April 3, 2008, page 153, lines 1 through 7

740. By the time Brunet received Exhibit 1298, Lortie was back on the job, having returned from his surgery. Brunet recalls a meeting with Lortie on or about **January 12th, 1993** in which they questioned why the investigation was being re-assigned, given the fact that Lortie was back on the job.

Reference: Evidence of Luc Brunet, April 3, 2008, page 157, line 17 to page 158, line 23

741. Regardless of the seeming lack of logic behind the re-assignment, Brunet felt that he had received the Deputy Chief's clear instructions to re-assign the file within the CIB, hence Brunet started to look at who would be the person that could "**get at it the fastest**".

Reference: Evidence of Luc Brunet, April 3, 2008, page 158, lines 20 through 23

742. On **January 13th, 1993** the Silmser investigation was assigned to Heidi Sebalj (See ODE of Heidi Sebalj, Exhibit 1236, paragraph 5). At that time, the officers with the most experience in investigating sexual assault were Ron Lefebvre and Kevin Malloy.

Reference: Evidence of Luc Brunet, April 3, 2008, page 163, lines 9 through 14

Exhibit 1236

743. Brunet was extremely busy at the time and he did not feel that they would have been able to get to the Silmser investigation in a timely fashion.

Reference: Evidence of Luc Brunet, April 3, 2008, page 163, lines 15 through 21

744. Brunet offered the opinion that this investigation should have gone to Youth Bureau as that Bureau specialized in sexual assault.

Reference: Evidence of Luc Brunet, April 3, 2008, page 164, lines 12 through 19

745. It was Brunet's hope that both Malloy and Lefebvre could provide help to Officer Sebalj in the Silmser investigation.

Reference: Evidence of Luc Brunet, April 3, 2008, pages 165 and 166

746. Brunet testified that upon transferring the file to Officer Sebalj, he instructed her to put an incident number on the OMPPAC system.

Reference: Evidence of Luc Brunet, April 3, 2008, page 171, line 24 to page 172, line 4

747. Sebalj did open an OMPPAC incident with respect to the Silmser investigation and an occurrence number was assigned. She did not however enter any details of her investigation until nine months later, after the complainant Silmser had withdrawn his complaint.

Reference: Exhibit 1236; ODE of Heidi Sebalj at paragraph 6 and Exhibit 1223

748. Silmser's **January 18th, 1993** appointment was rescheduled to **January 26th, 1993**. Silmser did not attend that interview. Sebalj contacted him. He said that he had forgotten the appointment. He also complained about not being dealt with by a male officer and said he would **"take it up with the Chief**".

Reference: Exhibit 295, notes of Officer Sebalj, bates pages 7063727 to 7063731

749. On **January 27th, 1993**, Sebalj met with the Chief and Sergeant Lefebvre to discuss the Silmser matter, and a decision was made that the investigation would remain with Sebalj

but the Silmser interview must accommodate his wishes to speak to a male. Lefebvre called Silmser and an appointment was scheduled for **January 28th, 1993**.

Reference: Exhibit 295, bates pages 7063731

750. On **January 28th, 1993**, Silmser attended the Youth Office at 9:22 a.m. Present were Malloy, Lefebvre and Sebalj. Although Silmser had requested that the interview be conducted in the absence of Sebalj, she "**pleaded her case**" and remained in the room as a listener. Lefebvre conducted the interview.

Reference: Exhibit 295, bates page 7063732

751. At the **January 28th, 1993** meeting, notes were taken by Malloy, Lefebvre and Sebalj. At the conclusion of the interview, statement forms were given to Silmser to complete on his own, and he was escorted out of the Youth Office at 12:30 p.m.

752. On **February 3rd, 1993**, Silmser advised Sebalj that he had been contacted by the Diocese and that they wanted a meeting **"with the victim**", and that the meeting was scheduled for **Tuesday, February 9th** at 10:00 o'clock at 220 Montreal Road. Sebalj asked Silmser to drop by at CPS before going to the meeting and to hand in his completed statement.

Reference: Exhibit 295, bates page 7063734

753. On **February 9th, 1993** Silmser attended at the Youth Office and met with Sebalj. He had not yet completed his statement.

Reference: Exhibit 295, bates page 7063734

754. Silmser told Sebalj that a lawyer had been present at the Diocese meeting as well as McDougald. He advised her that the representatives of the Diocese at the meeting wanted him to provide details of the assault. Silmser told Sebalj that he had been offered psychological help, and suggested that **"he may go civilly after criminal process completed**".

Reference: Exhibit 295, bates page 7063734

755. Silmser called Sebalj **February 10th, 1993** and advised that he had called Seguin, who was **"running scared**". "**Advised him he's laying charges on MacDonald – stated that he's getting very mad**".

Reference: Exhibit 295, bates page 7063735

756. On **February 16th, 1993**, Silmser arrived at the station for an unscheduled visit at 9:55 a.m. and provided a handwritten statement. He also informed Sebalj that McDougald had contacted him the prior night wanting to discuss a settlement and that Silmser had not entertained the conversation.

Reference: Exhibit 295, bates page 7063735

757. On **February 17th, 1993** Sebalj contacted some relatives of Silmser and began to develop background information. On **February 18th**, Silmser advised that he had retained a lawyer, namely, Don Johnson and had told him the story. Without asking for money,

Johnson had said "**I'll take the case**"; Silmser advised Sebalj that he wanted Don to go to the Diocese and go their lawyer re: a settlement. Her notes also reflect that he **"wanted to take them to the cleaners, going for the full amount, strong and hard**".

Reference: Exhibit 295, bates page 7063742

758. On **February 22nd, 1993**, amongst other things, Silmser advised Sebalj that he had fired Don Johnson on Friday and that he would get a lawyer when the criminal work is done.

Reference: Exhibit 295, bates page 7063744

759. On **February 24th, 1993**, during an unscheduled attendance at the CPS, Silmser questioned when charges would be laid and was told by Sebalj that the investigation was just beginning.

760. On **February 25th, 1993** at 14:55 Sebalj received a telephone call from Malcolm MacDonald, counsel to Father Charles MacDonald. Malcolm MacDonald advised her of the role played by Schonenbach and McDougald, and advised her that Father Charles had written both to McDougald and to Silmser denying the allegations and requesting clarification on the incident. MacDonald informed Sebalj that the dates provided by the victim were wrong as Father MacDonald was not at St. Columban's at that time. MacDonald further suggested to Sebalj that on the evening of **January 28th, 1993** (Silmser's first attendance at CPS) he called McDougald at approximately 23:00 hours and stated that he wanted to go through the Diocese. McDougald believed that Silmser was very intoxicated at that time, but as a result the **February 9th, 1993** meeting was set up at the victim's request. He recounted to Sebalj that at the **February 9th** meeting

counselling had been offered without an admission of liability and that Silmser had seemed satisfied at the time, however, Silmser called the next day stating that he was "**going to the police**".

761. MacDonald was also aware that Silmser had retained Don Johnson as well as Tom Swabey as counsel, and told Sebalj that he had **"parted ways with both a couple of days later**". He told her that the Church files **"are open and they are willing to cooperate**". He further told her that he would provide her with a copy of Silmser's allegations to the Church (made at the **February 9th** meeting). He further informed her that Father MacDonald was prepared to take a polygraph.

> **Reference**: Exhibit 295, bates pages 7063750 to 7063753

762. On intervening days, Sebalj spoke to individuals who might have had knowledge about Silmser's allegations concerning Father Charles. As of **March 2nd, 1993**, her notes record:

> "**Meet Crown MacDonald in CIB, asked how investigation was going, advised re C9, B.... denial and C12 not being present, became concerned about my grounds. Suggested a meeting with victim, advised scheduling difficulties, asked to be kept up to date**".
>
> **Reference**: Exhibit 295, bates pages 7063760

763. Crown Murray MacDonald, in his evidence, confirmed that he was effectively supervising Sebalj's investigation. He met with her seven to ten times between **February and August, 1993** and suggested investigative steps that she might take. She

shared with him at the outset that the case was sensitive and she was having difficulty with it.

Reference: Evidence of Murray MacDonald, December 17, 2008, page 195, lines 17 through 20 and page 210, lines 20 through 23

Exhibit 1233, bates page 7055849

764. Also on **March 2nd, 1993** Sebalj had a conversation with Silmser in which he asked whether there was enough to lay charges now, and she answered **"no**". He asked **"'Will there be?' I told him that there always is that things are going well, that the Church is cooperating, that I've spoken with a few witnesses, that it was going fine so far**:. Her notes then reflected "**drastic change in Silmser's demeanour**" and/or comment to the effect that "**if you don't take care of it, I will**".

Reference: Exhibit 295, bates pages 7063761-7063762

765. On **March 9th, 1993** at 15:20 Sebalj had a phone call from C56 who had been an altar boy and had spent time with Father Charles MacDonald. He did disclose that on one occasion in high school when he was visiting, Father Charles placed his hand on C56's groin area, after which C56 had no further contact with or visits to Father Charles. At this time Father Charles had asked C56 if he felt uncomfortable and C56 said yes and MacDonald stopped. This event occurred in a car which was parked in C56's parents' driveway. The contact at the groin area lasted for approximately one to one and half minutes before the question was put as to whether C56 was uncomfortable.

Reference: Exhibit 295, bates pages 7063792-7063793

766. At a meeting that occurred on **March 10th, 1993** Silmser said to Sebalj, amongst other things, "**I don't think I can deal with this too right now re Seguin**".

Reference: Exhibit 295, bates page 7063802

767. CPS was prepared to let Silmser control whether they would investigate his allegations against Seguin. Since Silmser early on indicated he didn't want to proceed at that time in relation to Seguin, CPS was content to do nothing in respect of Seguin.

768. On **March 12th, 1993** at 15:18 Sebalj had a telephone conversation with C3, who informed that he was an altar boy for about five to six years starting in Grade 5 through Grade 9 or 10. He said that his relationship with Father Charles MacDonald was a **"weird one; he did try to sexually molest, it was whenever he left Cornwall and went to Apple Hill. He invited me out one weekend for a night and he sexually molested me ... was wondering if this was ever going to come out**".

Reference: Exhibit 295, bates pages 7063808-7063809

769. Sebalj's interview with C3 lasted about 50 minutes and the latter provided details of alleged sexual encounters with Father Charles. Her conversation with him was completed at 16:05, and she undertook to call him back to arrange a meeting.

770. On **March 17th, 1993** Sebalj had another conversation with Malcolm MacDonald in which she asked him to confirm the years that his client was at St. Columban's, the dates that Silmser was an altar boy and the dates of any retreats in St. Andrews.

771. Malcolm also informed her that two people with whom she had spoken, C107 and Meilleur, had called and told him that they would be sending him (Malcolm) a copy of their statement. Both of these people had a high regard for Father Charles and no unwelcomed sexual behaviour to report.

772. On **March 18th, 1993** Sebalj's notes record a 9:20 telephone conversation with C3 who said that he had decided against giving a statement, stating that it was a difficult decision which he had discussed with his lawyer. He did agree to meet further with Officer Sebalj.

Reference: Exhibit 295, bates page 7063821

773. On **March 22nd,** Sebalj communicated with both C56 and C3. On **March 25th**, she made arrangements to meet with C3.

Reference: Exhibit 295, Bates page 7063823

774. On **April 3rd, 1993** commencing at 10:24, Sebalj met with C56 who provided details of his and others' interactions with Father Charles. He gave details of the incident in the car, referred to previously. As to his participation as a witness, he stated **"I have no problem doing whatever is needed**".

Reference: Exhibit 295, bates page 7063828

775. At 12:30 on **April 3rd, 1993** Sebalj met with C3 who said he was not prepared to provide a statement and gave as his reasons not wishing to upset his family, the fact that his mother was ill and the fact that he was trying to establish a reputation for himself in a

particular line of work. Sebalj explained the importance of his statement to her investigation and observed that he seemed **"very torn as to the proper thing to do, asked me to keep in touch and let him know if I located further victims**".

Reference: Exhibit 295, bates pages 7063829-7063830

776. On **April 13th, 1993** Sebalj spoke by phone with C113, who acknowledged having been an altar boy from Grade 4 or 5 through to junior high school. When asked if he witnessed any improprieties, his answer was "**no, personally I had no problem**". He did recall Father Charles MacDonald but said he didn't remember anything out of the ordinary. Shortly before the conclusion of her phone call with C133, he stated "**thought investigation was scary stuff and very close to home**".

Reference: Exhibit 295, bates page 7063831

777. The last act of investigation occurrence recorded in Sebalj's notes took place on **April 29th, 1993**. On that day, she spoke by telephone to an individual in B.C. who stated to her that another individual **"used to hang around [Father Charles]. He could tell you.**" This individual stated that he had seen **"skin mags**" under Father Charles' bed at the age of 12. This individual reported that Father Charles **"was a really nice guy**" and "**never came close to touching us**".

Reference: Exhibit 295, bates pages 7063833-7063834

778. There is nothing further recorded in Sebalj's notes until **August 23rd, 1993**. It appears that the CPS investigation was dormant during the period **April 29, 1993 to August 23, 1993**.

779. Crown MacDonald testified that, in all his many conversations with Sebalj, she never mentioned the confirmatory information she had received from C3 and C56.

Reference: Evidence of Murray MacDonald, December 18, 2008, page 56, line24 to page 60, line 12

780. At the supervisory level, Constable Sebalj's supervisor, Staff Sergeant Brunet, was aware of the information from Silmser to the effect that he was talking to the Church about a financial settlement. Brunet says that he discussed this with Constable Sebalj and told her that this "**had nothing to do with us ... continue with the investigation**".

Reference: Exhibit 1425, bates page 7113773

781. Brunet also testified that he told Officer Sebalj to essentially ignore the civil side and not to become involved in Silmser's dealings with the Church or anyone else on the civil side.

Reference: Evidence of Luc Brunet, Day 2, page 24, lines 7 through 14

782. Constable Sebalj's supervisor was also aware of Silmser's position that he did not want to lay charges against Seguin at the time, and wanted to concentrate on Father MacDonald instead.

Reference: Exhibit 1425, bates page 7113772

Evidence of Luc Brunet, April 4, 2008, page 2, lines 9 through 25

783. There is no indication that Brunet gave Constable Sebalj any specific directions, comments or guidance concerning this aspect of the Silmser investigation.

784. Crown MacDonald however testified that he encouraged Sebalj to probe for further details about Ken Seguin. She did not do so.

Reference: Evidence of Murray MacDonald, December 17, 2008, page 207, lines 4 through 9

785. Brunet's evidence at the Inquiry was that the CPS relationship with Silmser was "**somewhat not very good**" and CPS wanted to try to build rapport with him and so, therefore, had agreed that they would start with Father Charles as Silmser was ready to deal with that alleged perpetrator and **"take it one step at a time**".

Reference: Evidence of Luc Brunet, April 4, 2008, page 8, lines 1 through 14

786. Brunet also testified that he discussed the Seguin allegations with Lefebvre and they decided not to advise his employer because they **"didn't feel that we had the authority to advise his employer ... we're not doing an investigation**".

Reference: Evidence of Luc Brunet, April 4, 2008, page 9, lines 3 through 21

787. This decision was made notwithstanding Silmser's interview of **January 28th, 1993** in which details of his alleged abuse by Seguin are provided and his **February 16th** handwritten statement which also referred to Seguin, although not in detail.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 10, lines 17 through 22

788. Following this decision which Brunet says occurred on **February 10th, 1993** there was no further discussion at the CPS concerning Ken Seguin and Silmser's allegations against him until **late fall, 1993**, triggered by his suicide.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, pages 10 and 11

789. It was Brunet's evidence that Officer Sebalj expressed concern to him about Silmser and in particular his conduct in communicating with her, which raised some concerns about his motives for making the allegations.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 23, line 15 to page 24, line 4

790. Brunet also testified that he advised Sebalj that it was premature to consider giving Father Charles a polygraph, and that the best avenue for using the polygraph was to wait until the investigation was complete if the polygraph was to be offered to a suspect/accused.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 26, line 8 to page 27, line 12

791. He also testified that if reasonable and probable grounds to lay a charge do not exist at the end of an investigation, **'at that point you bring the subject in for an interview and see if he will confess and you would have your polygraph operator ready to go, same type of procedure**".

Reference: Evidence of Luc Brunet, April 4, 2008, page 27, lines 4 through 12

792. Brunet's explanation for why such did not occur in the Silmser matter is "**because the investigation wasn't done when we got the letter requesting that he will not participate in any further criminal investigation**".

Reference: Evidence of Luc Brunet, April 4, 2008, page 29, lines 18 through 22

793. Brunet himself realized and noted that the information that Sebalj obtained from C3 and C56 "**gave some credibility to Mr. Silmser's allegations**".

Reference: Exhibit 1425, bates page 7113773

794. Brunet and Sebalj did not meet to discuss the Silmser investigation between **April 29th and June 29th, 1993**.

Reference: Evidence of Luc Brunet, April 4, 2008, page 55, lines 4 through 21

795. The meeting of **June 29th, 1993** was meant as a general review of Sebalj's assignment list.

Reference: Evidence of Luc Brunet, April 4, 2008, page 56

796. Brunet's recollection in relation to Silmser was that Sebalj told him that she was waiting for a few witnesses to get back to her, and in particular, a witness who was in Germany whose return to Cornwall she was awaiting.

Reference: Evidence of Luc Brunet, April 4, 2008, page 58, lines 14 through 25

797. At a morning meeting in **July, 1993** Brunet raised that it was impossible for Heidi to keep her head above water, and that the Silmser investigation was still incomplete. He said that Chief Shaver got very upset and ordered him to get the investigation done.

Reference: Exhibit 1421, bates page 7113864

Evidence of Brunet, April 4, 2008, page 62, line 23 to page 63, line 18

798. According to Brunet, this event occurred in either **July** or **August of 1993**. It was the first time that he had updated the Chief on the Silmser investigation and that the Chief was quite surprised about the lack of progress.

Reference: Evidence of Luc Brunet, April 4, 2008, page 64, lines 1 through 13

799. As a result, Brunet spoke to Sebalj at some time before **August 24th,** asked if there were any new developments on the Silmser matter and learned that there were no new developments, but she still had issues about reasonable and probable grounds. Brunet's

evidence is that he asked her to meet with the Crown Attorney and discuss "where we were going with it".

Reference: Evidence of Luc Brunet, April 4, 2008, page 64, line 20 to page 65, line 3

800. Brunet and Sebalj met on **August 24th, 1993** to review her progress on open cases. He spoke to her about the Silmser and learned that she was waiting for the Crown Attorney's office to get back to her.

Reference: Exhibit 1421

Evidence of Brunet, April 4, 2008, page 68, line 18 to page 69, line 10

801. In his two meetings with her, Sebalj did not indicate that she had done no active investigation in the Silmser matter since **April**.

Reference: Evidence of Luc Brunet, April 4, 2008, page 78, lines 5 through 15

802. Brunet has no recollection of being involved in setting up a meeting between CPS (Sebalj) and Crown Robert Pelletier of L'Orignal.

Reference: Evidence of Luc Brunet, April 4, 2008, page 79, lines 19 through 22

803. He did recollect Sebalj mentioning that Murray MacDonald had a possible conflict of interest and they were, accordingly, looking for an outside Crown.

Reference: Evidence of Luc Brunet, April 4, 2008, page 80, lines 1 through 9

804. According to Crown MacDonald, this was not his intention and not what he told Sebalj. According to MacDonald, they were to go to an outside Crown if and only if Sebalj had RPG to lay a charge. The outside Crown would then review the charge for reasonable prospect of conviction. On MacDonald's evidence, Sebalj did not need to be "**waiting**" for an outside Crown in order to complete her investigation and decided whether to lay a charge or not.

Reference: Evidence of Murray MacDonald, December 18, 2008, page 114, line 3 to page 115, line 21

Evidence of Murray MacDonald, December 19, 20008, page 257, line 25 to page 258, line 16

805. On **August 23rd, 1993** Sebalj's notes indicate a 9:30 a.m. telephone call from Malcolm MacDonald who was requesting an update. She told Malcolm that she was waiting to meet with the Crown. Malcolm asked that his client be summoned as opposed to handcuffed, and she said that she would try to accommodate the request.

Reference: Exhibit 295, bates page 7063835

806. On **August 24th, 1993** Sebalj's notes indicate that she returned a telephone call to Silmser who was also, coincidentally, requesting a progress report. She advised him that she was awaiting a meeting with an out-of-town Crown to review and she inquired as to whether he had pursued counselling.

Reference: Exhibit 295, bates page 7063835

807. In the conclusion of her **August 24th, 1993** conversation with Silmser, he advised that he **"was not in a hurry. Don't care if it took another four months**".

Reference: Exhibit 295, bates page 7063836

808. On **September 3rd, 1993** Brunet received a call from local lawyer Sean Adams who stated that he was representing Silmser and had just reached a civil settlement with the Church, and that Silmser no longer wanted to pursue his criminal investigation with CPS.

Reference: Evidence of Luc Brunet, April 4, 2008, page 91, lines 8 through 19

809. Malcolm MacDonald was also in communication with Brunet on **September 3rd, 1993:** Malcolm MacDonald sent a letter to Brunet enclosing a statement prepared by Adams and signed by Silmser.

Reference: Exhibit 299

Exhibit 266

Evidence of Brunet, April 4, 2008, page 92 and following

810. Brunet testified that the situation was concerning and he wanted Sebalj to meet with Silmser and be told directly by Silmser what his position was. Brunet's evidence in this respect is worth quoting:

> "**Well, yes, and find out how he changed his mind from – my understanding was that the civil settlement would**

> **not be affecting the criminal investigation, and all of a sudden he wants to withdraw his criminal investigation. So I – yeah, I had concerns about that**".
>
> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 93, lines 4 through 12

811. Based on this evidence Brunet was asking himself the right question: why had Silmser withdrawn his criminal complaint having settled his civil claim? Logically this would lead to questions about the nature of the settlement and what Silmser had agreed to **"**give up" in exchange for his payment.

812. Brunet's "concern" arises from Silmser's change in position on proceeding with the criminal charges and the fact that it appears to be connected to the civil settlement. Though it is recognized that police officers may not have familiarity with civil litigation and civil practice, they would certainly have known that the Silmser settlement was documented in some fashion. Brunet's concern that the settlement affected Silmser's position on the criminal complaint should have led them to obtain and review the settlement documents.

813. Brunet's evidence on this point is that he didn't know that settlement documents existed. This begs the question, why not?

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 94, lines 6 through 10

814. On **September 8th, 1993** Brunet spoke with Local Crown Murray MacDonald.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 94, lines 11 through 21

815. Brunet recalled that he discussed two things with Crown MacDonald: "**can they legally do that and, second of all, the issue of what we do if we don't have a willing complainant in a sexual assault investigation**".

Reference: Evidence of Luc Brunet, April 4, 2008, page 96, lines 2 through 8

816. Again, the first of these questions seems to point to the legality of the settlement and its connection to the withdrawal of Silmser's criminal complaint.

817. The advice received from Crown MacDonald was that there was nothing that could be done as far as the prosecution went if there was no complainant. Crown MacDonald had not received a copy of the settlement document when he gave that opinion.

Reference: Evidence of Luc Brunet, April 4, 2008, page 97, lines 7 through 9

818. Following that conversation, Brunet wrote to Crown MacDonald on **September 9th, 1993** requesting a written opinion.

Reference: Exhibit 300

819. The question posed in Exhibit 300 is whether the Crown's office would not prosecute without the full cooperation of the victim.

Reference: Exhibit 300

820. Brunet sent Exhibit 300 to the Crown because, on the day following his conversation (**September 9th, 1993**), he had discussed the situation at a morning meeting at which the Chief and the Deputy Chief were briefed.

Reference: Evidence of Luc Brunet, April 4, 2008, page 98, line 18 to page 99, line 4

821. At that time he was directed to obtain the Crown's opinion in writing.

822. MacDonald's reply is dated **September 14th, 1993** (Exhibit 301).

823. The content of Exhibit 301 includes reference to Sebalj being tentative on the issue of RPG before the settlement, as well as the inference that the complainant had evidently used his threat of criminal prosecution as a means of furthering his efforts to gain a monetary settlement. The letter thus emphasizes the connection between the civil settlement and the criminal complaint, but in a vacuum because no one has obtained and reviewed the settlement document.

Reference: Exhibit 301

824. Brunet had no recollection of discussing this aspect of the Silmser investigation with Crown MacDonald (*viz.* the connection between the criminal complaint and negotiating a monetary payment with the Church).

Reference: Evidence of Luc Brunet, April 4, 2008, page 103, lines 4 through 19

825. Brunet testified that at the time, he did not **"pick up on**" the fact that Exhibit 301 actually alludes to an offence, being extortion.

Reference: Evidence of Luc Brunet, April 4, 2008, page 104, lines 2 through 19

826. Upon receipt of Exhibit 301, Brunet's decision was that CPS could not proceed further with the Silmser investigation.

Reference: Evidence of Luc Brunet, April 4, 2008, page 113, lines 1 through 4

827. The Silmser investigation was discussed again at a morning meeting. Brunet recalls a meeting at which Lortie used the words **"cover up**" and spoke against the idea that the Church would have agreed to settle with Silmser. Lortie's view was that, regardless of the lack of cooperation by the alleged victim, they should continue with the investigation. Brunet disagreed, having received Exhibit 301 from Crown MacDonald.

Reference: Evidence of Luc Brunet, April 4, 2008, page 114, lines 1 through 11

Exhibit 1435

828. Brunet also felt that Lortie was insinuating that the investigation hadn't been done properly.

Reference: Evidence of Luc Brunet, April 4, 2008, page 117, lines 10 through 13

829. On **September 25th, 1993**, Abell, the then Executive Director of the CAS, Perry Dunlop and their wives met at Quinn's Inn in St. Andrews. In the parking lot both Perry and Helen spoke to Abell and his wife about the Silmser investigation, the fact that the matter hadn't been properly handled, the fact that the investigation wasn't going forward, and Dunlop's belief that something needed to be done as a result of the risk to children.

Reference: Evidence of Abell, October 24, 2008, page 74, lines 5 through 12

Exhibit 1441, notes of Rick Abell, bates page 7080663

830. Dunlop was critical of his own police force and said that they "**dropped the ball**". Abell doesn't recall Dunlop "**raising the conspiracy spectre the first night in the parking lot**; **I do have recollections of him raising it in our discussions the next day when he came to my home**".

Reference: Evidence of Abell, October 24, 2008, page 78, lines 12 through 16

831. At the Quinn's Inn parking lot meeting, Abell was shown the Silmser statement, and had concluded that CAS was going to "**move on the matter. I mean, that was alluding to there being a decision to be made by my society**".

Reference: Evidence of Abell, October 24, 2008, page 83, lines 14 through 22

832. Dunlop did not give a copy of the Silmser statement to Abell that night, as he (Dunlop) told Abell that he wanted to make a further effort to persuade his force to do what he

thought should be done. It was decided that if that effort was unsuccessful, then the CAS "**could proceed with [its] own decision making**".

Reference: Evidence of Abell, October 24, 2008, page 85, lines 1 through 9

833. On the afternoon of **September 26th**, the Dunlops attended at Abell's residence. Abell reviewed the Silmser statement, and commented to the Dunlops "**It looks very credible**".

Reference: Evidence of Abell, October 24, 2008, page 88, lines 7 through 21

834. Meanwhile back at the CPS, Sebalj did meet with Silmser on **September 29th,1993** as Brunet had directed.

Reference: Exhibit 1436, Brunet's notes

835. At that meeting, Sebalj obtained both a verbal and a written confirmation that Silmser no longer wanted to pursue the criminal investigation against Father Charles MacDonald.

Reference: Evidence of Luc Brunet, April 4, 2008, page 121, line 21 to page 122, line 5

Exhibit 269

836. Sebalj also informed Brunet that Silmser had received a phone call from an individual named Helen Dunlop, who wanted to talk to him about the incident. Constable Sebalj knew that the phone number provided for this individual was that of her co-worker, Perry Dunlop. Clearly Silmser did not know Helen Dunlop was the wife of a CPS Officer.

Sebalj informed Brunet that Dunlop had asked her some time prior to view the Silmser statement and she had allowed him to view a copy of it.

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 123, lines 5 through 25

837. Brunet sought direction from the Deputy Chief and was told to speak to Dunlop: **"Obviously we can't have his wife contacting the victim**".

> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 124, lines 7 through 12

838. Following his meeting with the Deputy Chief, Brunet did encounter Dunlop and sat down with Dunlop in Brunet's office. Dunlop expressed to him that he felt the investigation hadn't been done properly, that he had young family members living in the St. Andrews area. He also voiced concerns about Ken Seguin and mentioned prior incidents involving a homicide and a probationer drinking at Ken's home. Brunet's testimony was that

> "**I don't want to make a big police or conduct a *Police Act* investigation here. I think that you're breaching the *Police Act* ... I think he had concerns and I was trying to tell him that what's happening right now, your wife trying to reach him, is not a good idea. You can't – we can't do that.**"
>
> **Reference**: Evidence of Luc Brunet, April 4, 2008, page 125, line 21 to page 126, line 6

839. Upon further discussion, Dunlop suggested a conversation with the Bishop and the removal of Father Charles from the Parish, a concept that Brunet testified he agreed with. Brunet then asked Dunlop if he had a copy of the Silmser statement: "**If you have any**

documents right now relating to this case, I want them turned over to me immediately. **And he agreed, at that point, that he would call his wife and tell her to back off in contacting the victim**."

Reference: Evidence of Luc Brunet, April 4, 2008, pages 124 to 126

840. Dunlop neither acknowledged nor denied having a copy of the Silmser statement.

Reference: Evidence of Luc Brunet, April 4, 2008, page 126, line 23 to page 127, line 2

841. Brunet testified that his directive to Dunlop to return any documents in his possession was a direct order.

Reference: Evidence of Luc Brunet, April 4, 2008, page 128, lines 7 through 9

842. Dunlop did not tell Brunet that he had met with Crown MacDonald immediately prior to the Brunet meeting.

Reference: Evidence of Luc Brunet, April 4, 2008, page 130, lines 14 through 23

843. Notwithstanding what he had said to Rick Abell (see paragraph 832) there is no evidence that Dunlop raised with Brunet or any other member of his Service that the CPS should disclose the Silmser allegations to the CAS. There is no evidence that CPS would not have disclosed the Silmser incident to the CAS had they been prompted to do so.

844. The *Police Services Act* breach that Brunet referred to in his conversation with Dunlop pertained to disclosing confidential information. The conversation entailed a comment from Brunet to the effect that "**he (*viz.* Perry Dunlop) had been through this before, and not the same type of case, but he had been through the experience before and it couldn't be a very pleasant experience to go through**". This was a reference to Dunlop's prior discipline history.

Reference: Evidence of Luc Brunet, April 4, 2008, page 127, lines 6 through 13

845. With reference to the Brunet/Dunlop conversation, Brunet does recall (on the subject of the *Police Act* charges) saying words to the effect "**you've got a family now**". He also acknowledged that it was possible reference was made to not losing his job, in the event of police discipline.

Reference: Evidence of Luc Brunet, April 4, 2008, page 133, lines 9 through 25

846. On or about **September 29th**, Abell attended on Helen Dunlop, who was very upset. She recounted to Abell what Dunlop had told her about his (Dunlop's) meeting with Luc Brunet. She presented that scenario as Perry was being threatened with a charge under the *Police Act* and being told to drop the matter.

Reference: Evidence of Abell, Day 2, page 90, lines 3 through 21

Exhibit 2322, Note of **September 29th, 1993**, bates pages 7081067 - 7081068

847. Abell's note of that date also confirms that Helen had tried to see David Silmser, and had arranged to meet with him, that Silmser had contacted the CPS inquiring as to who she was, and that Dunlop had spoken with Murray MacDonald.

Reference: Evidence of Abell, October 24, 2008, page 90, line 24 to page 91

848. Abell was **"surprised**" that the Dunlops had acted in this manner, and was concerned about contamination and privacy issues.

Reference: Evidence of Abell, October 24, page 92, lines 1 through 11

849. On **September 30th, 1993** Abell went to Dunlop's home and picked up a copy of the Silmser statement.

Reference: Evidence of Abell, October 24, 2008, page 94, lines 1 through 11

850. Abell told Dunlop that he was going to "**put together a plan, and move on it**".

Reference: Evidence of Abell, October 24, 2008, page 95, lines 13 through 22

851. It was always very clear both to Dunlop and to Abell that Dunlop's conduct was putting him into jeopardy.

Reference: Evidence of Abell, October 24, 2008, page 98, lines 5 through 9

852. It was clear to Abell that the risk to Dunlop increased as a result of Dunlop's decision to hand the Silmser statement to Abell.

Reference: Evidence of Abell, October 24, 2008, page 98, lines 14 through 18

853. According to Abell, there was no uncertainty in Dunlop's mind as to the duty to report the Silmser occurrence.

Reference: Evidence of Abell, October 24, 2008, page 99, lines 1 through 8

854. Abell met with Chief Shaver on **October 1st** at Abell's request.

Reference: Evidence of Abell, October 24, 2008, page 102, lines 22 through 25

855. At that meeting, Abell disclosed to Chief Shaver that Dunlop had provided Abell with the Silmser statement. Abell described the Chief's reaction as being "**really angry**" with Dunlop for having provided the statement.

Reference: Evidence of Abell, October 24, 2008, page 104

856. As the **October 1st, 1993** meeting with the Chief progressed, Shaver expressed that he was upset about the financial settlement with Silmser.

Reference: Evidence of Abell, October 24, 2008, page 126, lines 15 through 18

857. Shaver implied that he was prepared to proceed with the criminal investigation, but the question was that the financial settlement had **"got in the way"**.

Reference: Evidence of Abell, October 24, 2008, page 127, lines 1 and 2

Evidence of Abell, October 24, 2008, page 127, lines 8 through 10

858. The Chief, according to Abell's notes, also acknowledged that his force had **"screwed up big time**" and that the investigation had been **"put on the back burner**".

Reference: Evidence of Abell, October 24, 2008, page 128, lines 18 through 24

Exhibit 1441, bates page 7080659-7080661

859. Abell recalled that the Chief made negative comments both about Sebalj and Brunet in reference to the Silmser investigation. According to Brunet, the Chief did not direct any criticism to him concerning a failure to supervise Sebalj.

Reference: Evidence of Abell, October 24, 2008, page 129

Evidence of Brunet, April 7, 2008, p.84, lines 4-11

860. Abell also records Shaver expressing the following thought: "**His force was used by Silmser to get money from the Church**".

Reference: Evidence of Abell, October 24, 2008, page 136, lines 16 through 23

861. Shaver requested that the CAS **"hold off**" for one week while he reviewed his own file. The CAS accommodated, and met again with the Chief one week later on **October 8th, 1993**.

Reference: Evidence of Abell, October 24, 2008, page 140, lines 3 through 14

862. Although conversation at the **October 1st** meeting between Shaver and Abell focused on Silmser's settlement and his withdrawal of the complaint to the CPS, there was no discussion about looking at the settlement document itself.

Reference: Evidence of Abell, October 24, 2008, page 141, lines 8 through 13

863. On **October 1st, 1993** Chief Shaver called Brunet and the Deputy Chief into his office and advised him that the Silmser statement had been released to the Children's Aid Society.

Reference: Evidence of Luc Brunet, April 4, 2008, page 118, lines 18 through 22

Evidence of Luc Brunet, April 7, 2008, page 6

864. At the **October 1st** internal CPS meeting, Brunet also discussed with the Deputy Chief his meeting with Dunlop, as described above.

Reference: Evidence of Luc Brunet, April 7, 2008, page 5, lines 7 through 16

865. Also at the **October 1st, 1993** meeting, a decision was made to have the Silmser investigation entered as a project file, **"because of the leak that we have just experienced**". Brunet agreed with that approach. At no time prior to **October, 1993** had Sebalj entered any information about the Silmser investigation onto the OMPPAC file.

Reference: Evidence of Luc Brunet, April 7, 2008, page 3, lines 10 through 18

866. Internally at the CPS, four items were addressed at the time:

(a) Brunet was to obtain a letter from Sean Adams containing a direction on the Ken Seguin complaint;

(b) the Silmser investigation was to be entered on OMPPAC as a project file by the following Monday;

(c) there was a discussion about attending Ottawa to visit the Pope's representative; and

(d) there was to be an investigation on the conduct of Dunlop with respect to the Silmser statement.

Reference: Evidence of Luc Brunet, April 7, 2008, page 6, line 19 to page 7, line 11

867. To implement the Chief's order, Sergeant Lortie set up the Silmser investigation as a **"Project**" file, as he had the authority to create Project files. No one at CPS or outside of CPS could access the Project file except for Sebalj, Brunet and Staff Sergeant Derochie.

Reference: Evidence of Luc Brunet, April 7, 2008, page 40, lines 3 through 7

868. Sebalj attended and entered her investigation on the OMPPAC system as a Project file, over the weekend of **October 3rd, 1993**. At the conclusion she printed a copy of the OMPPAC report and provided it to Luc Brunet.

Reference: Evidence of Luc Brunet, April 7, 2008, page 42, lines 13 through 19

869. A copy of the report was given to the Chief, whose response was that the details on each person who had been interviewed by Sebalj should be included in the OMPPAC report.

Reference: Evidence of Luc Brunet, April 7, 2008, page 44, lines 12 through 16

Exhibit 1249, bates page 7113696

870. Notwithstanding the request of Sean Adams, there was no written direction ever received pertaining to Silmser's wishes in relation to the Seguin investigation.

Reference: Evidence of Luc Brunet, April 7, 2008, page 9, lines 18 and 19

871. In the meanwhile the CAS met internally, including with their in-house counsel and determined very quickly by means of a "**strong consensus**" that there was a duty to open an investigation based on concerns for present abuse of children.

Reference: Exhibit 2322, bates page 7081068

Evidence of Abell, October 24, 2008, page 111, lines 7 through 12

872. This became the mandate of Project Blue.

Reference: Evidence of Abell, October 24, 2008, page 111, lines 13 through 15

873. Having decided to proceed with Project Blue, CAS decided to invite the cooperation of CPS to conduct a joint investigation as well as the OPP Long Sault, because that detachment had jurisdiction over Father MacDonald's Parish.

Reference: Evidence of Abell, October 24, 2008, pages 115 to 116

874. Shaver and Brunet attended an appointment on **October 7th, 1993** in Ottawa with Archbishop Carlo Curis. The purpose was to voice their concerns about the settlement, how it wasn't in the interest of the public nor was it in the interest of the Church.

Reference: Evidence of Luc Brunet, April 7, 2008, page 56, lines 11 through 25

Exhibit 1437, bates pages 1051247 and following

875. It was suggested at this meeting that the priest, Father Charles MacDonald, should be removed from the Diocese.

Reference: Evidence of Luc Brunet, April 7, 2008, page 60

Exhibit 1437, bates page 1051247

876. Chief Shaver and Luc Brunet were directed by Archbishop Curis to deal with the issue at the Diocese level first, and he directed them back to Bishop LaRocque.

Reference: Evidence of Luc Brunet, April 7, 2008, page 61, lines 18 through 24

Exhibit 1437, bates page 1051247

877. Shaver and Bishop LaRocque had a bad relationship, as a result of the falling out that they had during the 1986 Deslauriers investigation.

Reference: Evidence of Luc Brunet, April 7, 2008, page 64, lines 5 through 11

878. At their meeting with Bishop LaRocque, he was informed that CPS had other people that had come forward with some allegations of sexual impropriety by Father Charles MacDonald.

Reference: Evidence of Luc Brunet, April 7, 2008, page 68, lines 2 through 4

879. LaRocque also shared with them that he had serious concerns when he was approached about the Silmser settlement and had been led to believe by the people involved in the negotiations that the police had not found any other evidence to substantiate the accusations.

Reference: Exhibit 1437, bates page 1051247

Evidence of Luc Brunet, April 7, 2008, page 70, line 17 to page 71, line 10

880. Notwithstanding the desire to protect the public, which led them to meet with the Archbishop and Bishop, the same concern was not demonstrated in relation to Silmser's

allegations against Ken Seguin and Ken Seguin's capacity as a probation officer. Brunet had felt that the CPS had no authority to disclose Silmser's allegations to Seguin's employer.

Reference: Evidence of Luc Brunet, April 7, 2008, page 71, line 11 to page 73, line 5

881. At the conclusion of the meeting the Bishop informed Brunet and Shaver that he would be speaking with Father McDougald, and that they would arrange to meet with Father Charles as soon as possible, and that he would advise the police of the results.

Reference: Evidence of Luc Brunet, April 7, 2008, page 77, lines 7 through 13

882. A **October 8th**, **1993** meeting between the CPS and the CAS is noted on Exhibit 1441, bates page 7080656.

883. Shaver attended this meeting with Brunet. Abell attended with Angelo Towndale.

Reference: Exhibit 1441, bates page 7080656

884. Also at the **October 8th** meeting, it was agreed that someone needed to talk to the present altar boys at St. Andrews.

Reference: Evidence of Abell, October 24, 2008, page 156, lines 7 through 11

885. Abell learned at this time that the Diocese had done some form of investigation of its own in **December of 1992** when approached by Silmser, but had not reported same to the CAS.

Reference: Evidence of Abell, October 24, 2008, page 157, line 12 to page 158, line 1

886. On **October 8th,** there was discussion about Ken Seguin; Abell advised that he was about to notify Seguin's employer, the Ministry of Community and Social Services, of the allegation but that CPS was waiting to hear from the Crown on where to go with the Seguin allegation. The latter statement was not in fact correct: they were waiting to hear from Sean Adams and never did. In the result, there is no notice to Seguin's employer.

Reference: Evidence of Abell, October 24, 2008, page 158, line 11 to page 159, line 4

887. Also on **October 8th** the Chief and Brunet had met with Bishop LaRocque; they informed Abell on **October 8th** of the information learned from LaRocque, including the Diocese's dealings with Silmser in **December of 1992**.

888. There was discussion that Father Charles had put in $10,000.00 of his own money towards the settlement and that the Bishop had been against the "**pay-off but took the advice of his lawyers, Leduc, Malcolm MacDonald**".

Reference: Evidence of Abell, October 24, 2008, pages 145 to 151

889. Again, though the discussion focused on the payment to Silmser and some uncertainty about who had contributed to it, no one at the meeting decided to request a copy of the settlement document.

Reference: Evidence of Abell, October 24, 2008, page 155, lines 1 through 15

890. Following their **October 8th** meeting with the CPS, the CAS prepared for its own meeting with Bishop LaRocque, the object of that meeting being to determine what had happened to Charlie MacDonald.

Reference: Evidence of Abell, October 24, 2008, page 160

Exhibit 1441, bates 7080653, Abell's notes of the LaRocque meeting which occurred on **Tuesday, October 12th, 1993**

891. Abell's note of his meeting with the Bishop reflect that the Bishop was surprised that the CAS intended to do a full investigation into the Silmser allegations.

Reference: Evidence of Abell, October 24, 2008, page 168, line 21 to page 170, line 1

Exhibit 1141, bates page 7080653

892. The Bishop had thought that the Church could **"monitor**" the CAS investigation but was disabused of that notion by Abell at this meeting.

Reference: Exhibit 1141, bates page 7080653

893. CAS attendees were informed that Father Charles had been sent for treatment assessment at a facility the prior Sunday and was returning on Friday of that week.

Reference: Evidence of Abell, October 24, 2008, page 171, lines 11 through 21

894. CAS told the Bishop that they wanted Father MacDonald out of the Parish to allow them to investigate. The Bishop was "**very reluctant**".

Reference: Evidence of Abell, October 24, 2008, page 172, lines 1 through 22

Exhibit 1141, bates 7080653

895. Abell's testimony was that the removal of Father MacDonald for two weeks or more from the Parish was a contentious matter with the Bishop; "**He really wanted to bring Father MacDonald back relatively quickly**".

Reference: Evidence of Abell, October 24, 2008, page 173, lines 19 to page 174, line 23

896. The CAS was also advised at this meeting that Father MacDonald had strongly denied Silmser's allegations, but admitted to being a homosexual, qualifying it by saying "**not while he was teaching, not for the last four years"**.

Reference: Evidence of Abell, October 24, 2008, page 181

Exhibit 1441, bates pages 7080654

897. The Bishop also reported that Father MacDonald had said that it was "**only with teens/adults**" and that the partners had sometimes initiated.

Reference: Evidence of Abell, October 24, 2008, page 182

Exhibit 1441, bates pages 7080654-7080655

898. According to Abell, the CAS **"pushed back**" on that comment, as it seemed to imply the thought that the "**victims**" were responsible for their own abuse.

Reference: Evidence of Abell, October 24, 2008, pages 185, line 14 to page 186, line 9

899. In sum, Abell recognized that Project Blue had the potential to **"open up a very, very major can of worms**" and anticipated that there could be push back from various sources as a result.

Reference: Evidence of Abell, October 24, 2008, page 193, lines 1 through 8

900. As Abell explained it, notwithstanding the wording of the *Child and Family Services Act* and its predecessor statute (Exhibit 25, Tab 5), the CAS had some concern about conducting an investigation in a historic abuse case because they did not at that time have evidence of a specific identifiable child under the age of 16 who may be at risk.

Reference: Evidence of Abell, October 24, 2008, page 196, line 1 to page 197, line 7

901. Both Abell's supervisor and her direct supervisor at the Ministry communicated to him on **November 3rd, 1993** that they were concerned that CAS was "**out there on its own**" and were questioning why the police were not investigating with the CAS.

Reference: Exhibit 1441, bates page 7080635

Evidence of Abell, October 27, 2008, pages 17 and 18

902. In relation to Project Blue, CAS had contact with Staff Sergeant Garry Derochie of the CPS on or about **October 14th, 1993**.

Reference: Exhibit 1441, bates pages 7080650 and 0651

903. Derochie got in touch with Abell to discuss Perry Dunlop providing information on the Silmser matter.

Reference: Exhibit 2322, bates page 7081083

904. It was made known to Abell at that meeting that Derochie was investigating possible *Police Act* charges against Dunlop for having disclosed the Silmser statement.

Reference: Evidence of Abell, October 24, 2008, page 201, lines 3 through 5

905. Derochie advised Abell that he couldn't see grounds for *Police Act* charges.

Reference: Evidence of Abell, October 24, 2008, page 203, lines 2 through 5

Exhibit 1441, bates page 7080650

906. Abell recalls statements made by Derochie at the meeting to the effect that if the CPS in fact had made mistakes in the first instance, then they should acknowledge it and do a proper investigation.

Reference: Evidence of Abell, October 24, 2008, page 203, line 12 to page 204, line 2

Exhibit 1441, bates page 7080650

907. Derochie also referred to the Silmser allegations against Ken Seguin and suggested that they should be investigated, referring to the Chief's comment that **"There have been 'stories' about Seguin for some time**".

Reference: Exhibit 1441. bates page 7080651

908. Abell testified that he tried very hard to **"keep a professional line**" in place between himself and Dunlop concerning the Silmser matter, but it "**got increasingly difficult and then it got impossible**".

Reference: Evidence of Abell, October 24, 2008, page 107, lines 1 through 11

909. He quarrels with the fact that Dunlop attributes to him (Abell) concerns about Dunlop's job being in jeopardy. Abell testified that : "**These are things that he said to me right from the start**" including **"I can lose my job over this**". Abell stresses that this was Dunlop's thinking from the very outset of the occurrence.

Reference: Evidence of Abell, October 24, 2008, page 108

910. After an organizational phase, Project Blue commenced its work in earnest on **October 14th, 1993**; Greg Bell was the principal investigator.

Reference: Evidence of Abell, October 24, 2008, page 209, line 18 to page 210, line 9

911. Project Blue was supervised directly by Bill Carriere. Greg Bell was the lead investigator and Pina Debellis was assigned to the Project several days later.

Reference: Evidence of Abell, October 24, 2008, page 210 line 21 to page 211, line 6

912. Bell worked on Project Blue on a full-time basis for ten weeks, and then did some subsequent part-time follow-up work.

Reference: Evidence of Abell, October 24, 2008, page 211, lines 7 through 14

913. Although it appears that Project Blue did attempt to ascertain whether Ken Seguin worked with people 16 years of age and younger in his capacity as a probation officer, it is clear that it did not obtain that information at the commencement of Project Blue. This failure left CAS in the position where they had another possible risk to children under 16 to act upon.

Reference: Evidence of Abell, October 24, 2008, page 217, lines 19 through 25

914. This became the subject of a misunderstanding between Derochie and CAS, as Derochie believed that the CAS was not investigating Ken Seguin because he was not part of their Ministry.

Reference: Evidence of Abell, October 24, 2008, page 218, lines 3 through 20

915. Several weeks following the CAS meeting with the Bishop, it was communicated through Jacques Leduc that "**We will have all the time we need to investigate ... and Father MacDonald will not be going back into the Parish**".

Reference: Exhibit 1441, bates pages 7081347 and 1348

Evidence of Abell, October 27, 2008, page 14

916. On **November 2nd, 1993**, the Project Blue investigator, Greg Bell, made telephone contact with David Silmser in an effort to set up an appointment. He records Silmser as stating "**Concerned he will lose his money if he talks to us"**.

Reference: Evidence of Abell, October 27, 2008, page 15, lines 13 through 16

917. Assurances were given that Jacques Leduc would communicate to Silmser and/or Silmser's lawyer that he could speak to the CAS without penalty.

Reference: Evidence of Abell, October 27, 2008, page 25, lines 17 through 20

918. At that point in time, the state of understanding as between the CAS and the CPS was that the CPS wasn't going to investigate unless the CAS found something new.

Reference: Evidence of Abell, October 27, 2008, page 19, lines 19 through 22

919. Silmser was interviewed by Greg Bell and Pina DeBellis on **November 2nd, 1993**. He for the first time made allegations of having been abused by his school teacher, Marcel Lalonde.

Reference: Exhibit 270

920. Silmser contacted Sebalj by telephone on **November 4, 1993**, at which point her OMPPAC entry notes state he "**once again reiterated ... that he did not want to talk to anyone about this**".

Reference: Evidence of Luc Brunet, April 7, 2008, page 13, lines 9 through 15

Exhibit 1248

921. On **November 4th, 1993** there was a further meeting between Abell and Derochie.

Reference: Exhibit 1441, bates pages 7080633 to 7080634

922. Amongst other things, Derochie disclosed to Abell that he (Derochie) was now doing an investigation of the entire police action in Silmser, not just Dunlop's disclosure of the Silmser statement to Abell.

Reference: Evidence of Abell, October 27, 2008, page 24, lines 11 through 14

923. Abell in that conversation emphasized the need for CAS and CPS to get together on the duty to report issue, particularly with reference to reporting of historical abuse, to make sure that the two institutions had a common understanding as to when these cases should be reported to the CAS and to the police.

Reference: Evidence of Abell, October 27, 2008, page 25, lines 1 through 15

924. To disrupt the chronology for a moment and deal with the "duty to report", Exhibit 1442 is a memorandum of **December 8th, 1995** to Chief Ripa from Brunet dealing with the duty to report to the CAS.

925. The 1995 memorandum states, amongst other things, that whenever CPS tried to refer a non-familial allegation to the CAS, it was advised that such allegations were not within their mandate. It further notes that CPS had investigated a similar complaint in the mid 80s without informing the CAS, but after that matter went public, the CAS demonstrated no interest in the case. Brunet expressed the belief that if a case was historic and there were no grounds to believe any recent incident had occurred, the CAS would not have an interest in the case. It is for this reason, according to Brunet, that "**Constable Sebalj or I never thought of advising that agency**". He however has no recollection of even talking to Sebalj about reporting the Silmser matter to the CAS.

Reference: Exhibit 1442

Evidence of Brunet, April 7, 2008, page 85, lines 7 through 14 and pages 91 to 92

926. Abell wished that the Silmser matter had been reported to the CAS at the outset; he sees it as a case that could have been jointly investigated by the CAS and the CPS.

Reference: Evidence of Abell, October 27, 2008, pages 25, line 17 to page 26, line 25

927. While initially Derochie had offered to provide the CAS with the two witness names that had corroborated Silmser's allegations during Sebalj's investigation, he later informed Abell that the CPS could not disclose that information and in the result, the names were never provided to the CAS.

Reference: Evidence of Abell, October 27, 2008, pages 28 , line 11 to page 29, line 12

928. At this meeting, Abell did not mention to Derochie that Silmser had made allegations concerning Marcel Lalonde.

Reference: Evidence of Abell, October 27, 2008, page 31,lines 8 through 10

929. It appears that this omission in part occurs because the Silmser allegations about Lalonde were not mentioned by the investigators during the Project Blue team meeting of **November 4th**.

Reference: Evidence of Abell, October 27, 2008, page 32, line 4 to page 33, line 24

930. It appears that it was not until on or about **December 17th, 1993** that the investigators apprised Abell that Silmser had alleged abuse by a third perpetrator, being Marcel Lalonde.

Reference: Evidence of Abell, October 27, 2008, page 34, lines 1 through 4

931. The CAS' **"position**" on Lalonde is that it had insufficient information from Silmser to justify taking any step, notwithstanding the knowledge that Lalonde continued to be a school teacher. Abell's testimony at the Inquiry was that they felt they were in a position such they could neither notify Lalonde's employer or (presumably) commence an investigation of their own into Marcel Lalonde. For all that CAS was supposed to be sharing information with CPS, this topic evidently never arose; there is no evidence that the CAS informed the CPS that Silmser had alleged abuse by Lalonde in his **November 2nd, 1993** interview.

Reference: Evidence of Abell, October 27, 2008, pages 34 through 36

932. If this is the justification for inaction by the CPS, then it is surprising that they cannot succeed in obtaining further details from Silmser.

933. It is also noteworthy that Abell was not aware that the CPS had received numerous allegations against Lalonde in **1989**. This information "**could possibly have had an influence**" on the decision of the CAS to take no steps pertaining to Lalonde in **1993**.

Reference: Evidence of Abell, October 27, 2008, page 36, lines 4 through 14

934. On **November 25th, 1993** Staff Sergeant Darcy Dupuis received a call from David Silmser.

Reference: Exhibit 1440, dated **November 24th, 1993**

Exhibit 372

935. The communication from Silmser to Darcy Dupuis was to the effect that there was some sort of negotiation for settlement of his civil suit ongoing pertaining to Ken Seguin. Silmser reported that should anything happen to him, Seguin and Charlie MacDonald should be considered suspects.

Reference: Exhibit 1440

Exhibit 372

936. Exhibit 372 reports Silmser saying "**If they don't pay within the next 48 hours he would be going to the press with his story"**. Silmser also made a statement that "**there's a lot of money at stake and a lot of people's reputations**".

Reference: Exhibit 372

937. By **late November, 1993** Chief Shaver was no longer attending work at CPS headquarters. Brunet met with Shaver at his home in relation to the Dupuis/Silmser occurrence.

Reference: Evidence of Luc Brunet, April 7, 2008, page 29, lines 10 through 20

938. Brunet did attempt to reach Silmser to verify that he was the one who had made the call, but was not able to reach him.

Reference: Evidence of Luc Brunet, April 7, 2008, page 30, lines 8 and 9

939. On the evening of **November 25th, 1993** Staff Sergeant Darcy Dupuis spoke with Brunet at home and informed him that Ken Seguin had been found dead.

Reference: Evidence of Luc Brunet, April 7, 2008, page 30, lines 10 through 19

940. Brunet immediately informed Shaver at home. On the following day, Brunet contacted the OPP and learned that Constable Randy Millar and Chris McDonell were doing the investigation into Seguin's death.

Reference: Evidence of Luc Brunet, April 7, 2008, page 31, lines 4 through 9

941. The purpose of Brunet's phone call was to inform the OPP about the call that Staff Sergeant Dupuis had received the day before Ken Seguin's death, as he saw it being very important information for them to have, since they appeared to be investigating a potential homicide.

942. On **November 26th, 1993**, Derochie phoned Abell and they spoke about the recent suicide of Ken Seguin. He communicated the following information concerning Silmser:

"**Says Silmser has been in touch with them. Said he was talking to Seguin; wanted $100,000 or he would go to the press; said he had 'an agency working for him'**".

Reference: Evidence of Abell, October 27, 2008, page 48, lines 15 through 22

943. By **mid November, 1993** the Project Blue investigators were attempting to obtain further information from Perry and Helen Dunlop. Perry Dunlop had told the CAS of a pedophile "clan" operating in Cornwall.

Reference: Exhibit 1441, bates page 345

Evidence of Abell, October 27, 2008, pages 38, line 12 to page 40, line 1

944. Project Blue team meeting minutes referred to scheduling an interview with Perry Dunlop, but contained no information about any such interview occurring. As of **January 11th** the team minutes note that there was no appointment yet with Dunlop and that the matter would be followed up.

Reference: Evidence of Abell, October 27, 2008, page 42, line 22 to page 43, line 5

945. The **January 31st, 1994** Project Blue team meeting notes indicate that there has been no further contact from Dunlop and a decision had been made not to pursue him.

Reference: Evidence of Abell, October 27, 2008, page 43, lines 6 through 20

946. As he attested, Abell's friendship with Dunlop cooled in this period and gradually came to an end.

947. On **March 21st, 2001** Abell wrote a letter to the Assistant Director, Decorations and Medals, Rideau Hall, Ottawa, regarding Perry Dunlop's nomination for the Order of Canada.

Reference: Exhibit 2470

948. The thrust of Abell's letter and Abell's feelings about the Dunlops were that, although Perry deserved a huge amount for the initial steps that he took (pertaining to the Silmser statement and the CAS) subsequent events damaged and in many ways offset the good work that he had done in the beginning. He did not recommend Dunlop for the Order of Canada for this reason.

Reference: Exhibit 2470

949. The three items mentioned by Abell in this letter resonate with the evidence of this Inquiry. He felt that the Dunlops had participated in

> **"public condemnation, accusations of many people in the community of sex crimes, the characterization of the entire City as a 'haven for pedophiles' and their work in contacting alleged sexual abuse victims which is now emerging in criminal proceedings as profoundly damaging to the very cause that the Dunlops had so strongly espoused."**

Reference: Exhibit 2470

950. He noted that as a result of this behaviour, some innocent people will have to endure a lifelong cloud of suspicion, and some guilty parties will escape being held for their crimes. He noted that the respect which the Dunlops did earn at the outset "**has been stained by their single-minded and self-promoting crusade**".

Reference: Exhibit 2470

951. Exhibit 2324 is Greg Bell's notes of a meeting that did occur with Dunlop in the CAS offices on **November 29th, 1993**.

952. Bell's notes reflect the following: "**There are other perpetrators involved in the ring. We will be hearing about this; but this includes Malcolm MacDonald**".

Reference: Exhibit 2324, bates pages 7081983 and 7081984

953. In sum, Dunlop informed the CAS that he was aware of other allegations. Efforts were made by Greg Bell to have Dunlop attend another interview to discuss those allegations. Bell also informed Dunlop that Dunlop would have a duty under the *Child and Family Services Act* to report those allegations.

Reference: Evidence of Abell, October 27, 2008, pages 45 to 46, line 8

954. Ultimately, there was no further cooperation offered by Dunlop to the CAS and no further information provided by him about the **"pedophile ring**'.

955. To disrupt the chronology and conclude on this topic, on or **December 19th, 1996** Abell received a phone call from Charles Bourgeois, Dunlop's counsel. Bourgeois provided a list of names and said he was providing those names under the duty to report, on the basis that they were suspected pedophiles.

Reference: Evidence of Abell, October 27, 2008, pages 160, lines 4 through 22

956. After some back and forth with Bourgeois and Bourgeois raising allegations of conflicts of interest, Bourgeois eventually came to the view that he had no duty to report and was prepared to disclose any information pertaining to the suspected pedophiles.

Reference: Exhibit 735

Evidence of Abell, October 27, 2008, pages 165 through 167

957. By late **December, 1996** the name Marcel Lalonde had surfaced a third time at the agency, this time in reference to C8.

Reference: Exhibit 2464, bates page 7080903

958. In late **1996**, Bourgeois was communicating with Leonor Jones of the Ministry, and advised that he had already sent Mr. Dunlop's brief to Julian Fantino. Abell was aware of that event.

Reference: Evidence of Abell, October 27, 2008, page 170, line 6 to page 171, line 11

959. By **December 3rd, 1993** LaRocque had been in contact with Abell again and was expressing some concern about the length of the Project Blue investigation.

Reference: Exhibit 1441, bates pages 7080623 and 7080624

960. By **February 17th, 1994**, the CAS had concluded that the Silmser allegations against Father Charles were verified.

Reference: Evidence of Abell, October 27, 2008, page 61, lines 16 through 19

961. For all the time and effort involved in Project Blue, no present altar boys were found to have been abused.

Seguin Death Investigation

962. The **November 25th, 1993** death of Ken Seguin was investigated by Constable Randy Millar, Constable Chris McDonell and Officers Dussault and Vanderwoude of the OPP Long Sault Detachment.

Reference: Exhibit 972

963. Millar's report of the Seguin death investigation is Exhibit 972. It describes receiving a call from Emile Robert, Seguin's supervisor, at 13:40 on **November 25th**, and an attendance at Seguin's home, a subsequent phone call at 3:00 p.m. by Ron Leroux who, together with Cyndy Leroux had let themselves into Seguin's home by using the spare key and discovered him hanging in the bathroom. Officers Venderwoude and Dussault

arrived at the scene at approximately 3:30 p.m., with Millar and McDonell arriving at approximately 4:03 p.m.

964. According to Millar's testimony, the scene strongly suggested that Seguin had committed suicide and had used a number of methods to do so.

Reference: Evidence of Randy Millar, November 18, 2008, page 2, lines 9 through 19

965. No suicide note was found at either Seguin's home or his office.

Reference: Exhibit 972, bates pages 7013760-7013761

966. The autopsy was conducted on **November 26th, 1993** and the cause of death was determined as suicide by hanging.

Reference: Exhibit 972, bates page 7013761

967. Following the autopsy Millar met with Staff Sergeants Derochie and Luc Brunet of the CPS, who discussed with him their investigation of Father Charles MacDonald and Ken Seguin. He was provided with copies of reports from that investigation and informed of the phone call received by Staff Sergeant Darcy Dupuis the prior evening from David Silmser.

Reference: Exhibit 2596, bates page 7098427

Evidence of Randy Millar, November 18, 2008, page 10 line 16 to page 11, line 21

968. During his conversation with CPS, Millar noted having been told that the CPS investigators felt "**corroboration was required on Silmser statement due to the lengthy criminal record of Silmser, which included crimes of deceit**".

Reference: Evidence of Randy Millar, November 18, 2008, page 12, line 17 to page 13, line 9

Exhibit 2529, bates page 7058233

969. Millar interviewed David Silmser on **November 26th, 1993**. According to Silmser's statement (Exhibit 271), three weeks prior to the date of the statement, Gregory Bell of the CAS had contacted Silmser wanting to discuss Father Charles MacDonald and Ken Seguin, and Silmser had told him that he didn't wish to talk about it because everything was settled. Bell kept calling and eventually Silmser agreed to speak with the CAS. "**I told him my story. I left out some detail about the sex. I started thinking again about what had happened to me. I had put one man in his place and that's when I decided to go after Seguin for what he had done to me.**"

Reference: Exhibit 271, bates page 7057873

970. Silmser then told Officer Millar that he phoned Malcolm MacDonald who said he was not representing Ken; Silmser then phoned Ken "**a week or so ago**" at work and said that he wanted a settlement. Ken directed him to speak with Malcolm. Silmser called Malcolm who said that he would not be involved in the case if Silmser had a lawyer. In a conversation which occurred the following day, Silmser told Malcolm that he wanted $100,000.00, and that "**if he didn't have the money, I was going to sue the Ministry of Probation and Parole. That was it for that the conversation.**"

Reference: Exhibit 271, bates page 7057873

971. Not having heard back from Malcolm by Wednesday, **November 24th**, Silmser phoned Ken at his home between 7:00 and 9:00 p.m. and asked "**if he was going to make a settlement by Friday or not**." Ken's response was "**I don't think I can come up with that type of money**" and that Malcolm would call him first thing Thursday. Silmser stated to Millar "**I said you have until Friday to get a settlement or I will be getting a lawyer and suing. There was no response for three or four seconds, so I said good-bye.**"

Reference: Exhibit 271, bates page 7057874

972. It is evidently based on Silmser's statement that Millar comes to the conclusion that "**extortion does not exist against Silmser as per Section 346 (2) CCC**".

Reference: Exhibit 972, bates page 7013763

973. That provision of the *Code* states that a threat to bring or continue civil proceedings does not constitute extortion.

974. Exhibit 972, which contains this conclusion, was prepared shortly after the end of **November, 1993**.

975. In Millar's mind, both the Seguin suicide and the extortion issues had been fully resolved by **December 20th, 1993**.

Reference: Evidence of Randy Millar, November 18, 2008, page 44, lines 16 through 21

976. Notwithstanding that, Millar conducted an interview with Malcolm MacDonald on **December 21st, 1993** together with Officer McDonell.

Reference: Exhibit 973

977. Malcolm MacDonald's statement corroborates that Silmser called Ken Seguin at work in or about **mid November, 1993**, and that Ken had been "**very excited**" after that call. It would appear that prior to this date, Ken had been receiving calls from Silmser.

Reference: Exhibit 973, bates page 7057741

978. Malcolm also confirms that he spoke with Silmser at that time. According to his statement of **December 21st, 1993**, he contacted Silmser by phone on the afternoon of **December 15th, 1993**: "**Silmser wanted money and told me if he didn't get any money, he was going to the Ministry with the complaint**".

Reference: Exhibit 973, bates page 7057742

979. Malcolm's statement also confirmed a subsequent conversation between Silmser and him in which Silmser asked for "**$10,000.00 a year for ten or twenty years**". Malcolm last saw Ken on Wednesday, **November 24th**, the day before his death. On Friday morning, **November 26th**, Malcolm stated that he received a phone call at his office from David Silmser who said he had "**reached an agreement**" and then in response to Malcolm's question, he said "**yes, I called him Wednesday night around 7:00 p.m.**". Malcolm then reported that he told Silmser that Ken was dead and that Silmser hung up.

Reference: Exhibit 973, bates page 7057743-7057744

980. Exhibit 973 suggested that the threat made by Silmser was possibly to do something other commence or continue a civil suit; *prima facie* it could therefore support an extortion charge.

981. Millar also knew about Silmser's phone call to Staff Sergeant Darcy Dupuis of CPS on the evening of **November 24th, 1993**. In his report on the investigation, he (correctly) noted that during that conversation "**Silmser stated that if they don't pay in the next 48 hours he will be going to the press with his story. There's a lot of money at stake**".

Reference: Exhibit 972, bates page 7013762

982. This is also evidence of a threat other than a threat pertaining to civil proceedings; it could therefore have possibly provided evidence of the offence of extortion.

983. Officer Millar must have discounted Malcolm's evidence and the evidence of Staff Sergeant Dupuis in concluding that no extortion charges were available against David Silmser.

984. Millar learned, after the fact, that Fred Hamelink of the OPP was tasked to investigate or continue the extortion investigation in **1994**. Millar did not talk to Hamelink about that investigation at any material time.

Reference: Evidence of Randy Millar, November 18, 2008, pages 53 and 54

985. Chris McDonell, who had been involved in the **November 1993** extortion investigation, continued to investigate extortion under Hamelink in 1994.

986. Millar was not aware that Carson Fougere had actually requested that the death of Ken Seguin also be re-investigated.

The Silmser Matter Being Public

987. In late **December, 1993** Rick Abell's notes reflected that Charlie Greenwell, a television reporter, was trying to communicate with him about the Silmser allegations.

Reference: Exhibit 1441, bates page 7080613

988. This occurred one week before the Silmser statement was in fact shown on television.

Reference: Evidence of Abell, October 27, 2008, page 57, lines 18 through 20

989. Amongst the brief notes taken by Abell of the Greenwell conversation is the following: "**Allegation of cover-up for a long time in the community**".

Reference: Exhibit 1141, bates page 7080615

990. On **January 5th or 6th, 1994** Greenwell aired a story on CJOH in which Silmser's handwritten statement given to the CPS was broadcast.

Reference: Evidence of Abell, October 27, 2008, page 67, line 19 to page 68, line 25

Exhibit 1441, bates page 7080605

991. That media coverage also prompted Chief Shaver to visit with Abell on **January 6th**.

Reference: Exhibit 1441, bates page 7080597

Evidence of Abell, October 27, 2008, page 73

992. On **January 7th, 1994**, Abell received a phone call from David Silmser, the thrust of which is that the publicity has caused him and his family much distress.

Reference: Evidence of Abell, October 27, 2008, page 75, lines 15 through 19

993. Amongst other things, Silmser distrusted both the CPS and the CAS, as he did not know which if either of those agencies had disclosed his statement to CJOH.

994. Silmser didn't know who to turn to or who to trust.

Reference: Evidence of Abell, October 27, 2008, page 76, lines 1 through 9

995. For his part, Abell was circumspect in talking to the media; he told most media who asked that CAS could not respond to questions due to confidentiality and related concerns.

Reference: Evidence of Abell, October 27, 2008, page 77, lines 13 through 15

Exhibit 2461, notes of Richard Abell "Project Blue Media Documents"

996. As early as **January and February, 1994**, Abell was cognisant that the situation could be viewed as a cover-up. "**I did wonder as time went by, the cover-up was being talked about, Cornwall being 'tinytown'"**.

Reference: Evidence of Abell, October 27, 2008, page 103, line 15 to page 104, line 9

Exhibit 1441, bates pages 7080571 to 7080573

997. As Abell said, **"It begins with me acknowledging that I too would have wondered was there a cover up. I mean it was in the air, it was in the water. It was everywhere**".

Reference: Evidence of Abell, October 27, 2008, page 104, lines 13 through 16

998. After the Ottawa television station CJOH broadcast Silmser's statement and story, commencing in very early in **January 1994** the story garnered much media attention, both in Cornwall and in Ottawa. In response to that media attention, the following events occurred:

(a) The Ottawa Police Service was tasked with examining the CPS' investigation of Silmser's allegations. That inquiry was also to include "**what appeared to be a ten month delay by the Cornwall force in informing the Children's Aid Society in September 1993 of the man's sex abuse allegations**".

Reference: Exhibit 767

(b) The Bishop issued a news release on January 7th, 1994 claiming that, in relation to the allegations against Father Charles, the Diocese had "acted within the guidelines accepted and promulgated for the immediate and serious attention demanded by such a complaint". His release also stated that "We are prepared to cooperate with the police and/or other agencies ...".

Reference: Exhibit 58, Tab 28

(c) The Bishop held a news conference on Friday, **January 14th, 1994**. In his news conference Bishop LaRocque said that his agreement to settle with Silmser was made "**reluctantly**" and that it was "**not meant to interfere with the criminal investigation, despite complaints to the contrary by this City's former Police Chief**". The Bishop is quoted as saying that "**At the very first, I was opposed to this**. **I gave in because this young man had a considerable bill of counselling charges for a psychologist and he needed help**".

Reference: Exhibit 2166

(d) On that same day, local media contained an article under the by-line "**Shaver says settlement made him furious**" and quoted the Chief as saying "**I was extremely upset as a police officer ... I understand there are legal precedents, but all of a sudden, the police have their hands tied because of that**". The same article contained quotes by Murray MacDonald, which he had also expressed he was "**uncomfortable**" with the arrangement. "**I am against paying what amounts to bribery**" but MacDonald said that "**the settlement was not an attempt to impede us**".

Reference: Exhibit 1800

999. Again, the police and Bishop in these media pieces are commenting on the settlement but had yet to review the document.

Reference: Exhibit 1800

1000. By Tuesday, **January 25th, 1995** LaRocque had to make a public statement admitting that his prior public statement was false because the settlement did prevent Silmser from proceeding with criminal charges. The explanation for his prior incorrect statements was that Jacques Leduc and LaRocque hadn't read the settlement document. In a statement that is, if nothing else, prescient, Leduc said "**there was a lack of judgment on my part. I know you may find this difficult to believe. Some would say we're lying, but we're not**". The article went on to state that a sealed envelope containing the settlement was first opened on **January 19th**. LaRocque was quoted in the article as saying that he had not intended to "**interfere**" with the criminal investigation.

Reference: Exhibit 1965

1001. At about this same time (**January 24th, 1994**), the Ottawa Police Service had completed its review of CPS's investigation of the Silmser allegations; the written report was delivered to then acting Chief Carl Johnston on or about **January 24th, 1994.** In summary form, the authors of the Ottawa Police report noted the following problems:

(a) There are no records of the Cornwall Police Service that would enable anyone to follow the progress of the investigation in its early stages, including the assignment and re-assignment of the investigation;

(b) Shaver left Sebalj in charge of the investigation notwithstanding that the victim did not want to speak with a female and notwithstanding her lack of experience;

(c) It is noted that, although C113 had potentially relevant information to impart to Sebalj and wished to do so in person, she did not meet with him and no statement was taken from him;

(d) It appeared that the investigation suffered in part from Silmser's ability to manipulate Sebalj;

(e) The investigation appeared to have been completed by **late March or early April,** and no further information was gathered thereafter;

(f) The CPS should have had a sense of urgency about the investigation which apparently it did not possess (given the communications from Silmser concerning discussions about a civil settlement with the Diocese);

(g) There was no follow-up on the offer of a polygraph examination of the suspect;

(h) Sebalj was occupied with training courses in the **summer of 1993** and given her the responsibility for this investigation and others, that should have been deferred.

Reference: Exhibit 1336

1002. The authors of the Ottawa Police Service review concluded that the

"**the investigation ... was inept and ineffective. The responsibility for this rests with the Cornwall Police Service. The problems are systemic and, during the time of my review, still existed**.

...

People who lacked the proper background and training were placed in positions for which they were ill-suited and unqualified and no management system existed which would enable supervisors to track the progress of investigations. Mechanics are in place, but they are not effectively utilized.

No one monitored the progress of the investigation, and even if someone had chosen to do so, their only recourse would have been to ask Constable Sebalj since no formal record of the complaint and the resulting investigation existed until October 1st, 1993.

...

Constable Sebalj, in my opinion not sufficiently qualified to undertake such a complex and potentially contentious investigation, was left to her own devices and failed to see the urgency of the situation.

...

I am satisfied that there was no attempt by any member of the CPS to 'cover up' the situation."

Reference: Exhibit 1336, bates page 7111549 to 7111550

1003. With respect to the leak of the victim statement to CJOH television, at least two witnesses stated that the reporter Charlie Greenwell claimed he received the statement from the Cornwall Police Association.

Reference: Exhibit 1336

1004. By **February 2nd, 1994**, CPS acting Chief Carl Johnston had announced that there would be an OPP probe into the Silmser complaint which would **"start from scratch**".

Reference: Exhibit 1518

1005. For its part, the CPS had issued a press release on **January 11th, 1994** (Exhibit 1224) which contained an outline of 17 points from the Silmser investigation in chronological order.

1006. Following the release of the Ottawa Police report, the CPS issued a further press release of **February 2nd, 1994**, referring to the Ottawa review.

Reference: Exhibit 1226

1007. The February 2, 1994 release stresses that Ottawa found no "**cover up, that there was substantial evidence of excellent police work, however, a lack of Senior Management direction, that the criticism was not intended as an indictment of the Police Service or its members."**

Reference: Exhibit 1226

1008. Although there was very little "good news" within the Ottawa report, the author of the **February 2nd, 1994** press release managed to find and emphasize it, to the exclusion of the many other adverse findings. Cornwall citizens could and should have legitimately expected more accountability and more honest disclosure of the Ottawa findings from the CPS Board, given the media attention that the issue was receiving and the erosion of public confidence in the CPS as an institution which was resulting. The CPS seems to

have adopted the early strategy that if they kept their heads down it would all blow over. This was a mistake.

Reference: Evidence of Leo Courville, April 24, 2008, page 108, lines 5 through 25

1009. Detective Inspector Smith "re-investigated" the Silmser allegations against Father Charles MacDonald in **1994**. In **mid-November** of that year, he had delivered a two-volume brief of the police investigation to Crown Peter Griffiths.

1010. Smith's investigation mandate in **1994** is set out in part in Exhibit 2558, being a letter from acting Chief Carl Johnston to Deputy Commissioner R.E. Piers. That mandate included the following:

(a) allegations of an alleged conspiracy between the Cornwall Police and the local Catholic Diocese to effect the civil settlement, thus terminating criminal proceedings;

(b) whether there was an obstruction of justice when two lawyers worked to bring about a cash settlement which resulted in the termination of the police investigation, upon consultation with the local Crown Attorney.

(c) the third component of Smith's **1994** investigation was the allegations of David Silmser and whether charges should be brought against Father Charles as a result.

Reference: Exhibit 2558

1011. It is also noteworthy that the news release which was issued at the outset of Smith's investigation (Exhibit 2559) which is dated **February 2nd, 1994,** simply refers to the re-investigation of the allegations against Father Charles MacDonald, and makes no mention of the other matters which he was tasked to investigate.

> **Reference**: Evidence of Smith, November 11, 2008, page 76, lines 11 through 15

1012. In his **December 21st, 1994** opinion letter, Crown Griffiths opines on the lack of reasonable and probable grounds to lay charges against Father MacDonald based upon the information provided by Silmser. He goes on to state that

> "**I understand from your material, you are not personally or subjectively satisfied that you have reasonable and probable grounds to lay criminal charges. Since the subjective belief is an essential element in the swearing of an information, it is my advice that absent that belief, charges cannot be laid by you**".
>
> **Reference**: Exhibit 1147

1013. The OPP issued a press release on **December 23rd, 1994** (Exhibit 2671) in which they addressed the findings of Smith's investigation concerning charges against the priest. That press release also addressed two other aspects of Smith's investigative work in 1994: an alleged conspiracy between CPS and the Diocese of Alexandra Cornwall not to prefer charges against the priest and obstruction of justice charges in relation to the Silmser settlement.

1014. In a separate letter dated **December 21st, 1994** Crown Griffiths wrote to Inspector Smith under the re line "**Investigation into Alleged Collusion between Crown, Church and Police in Cornwall**".

Reference: Exhibit 1148

1015. Firstly, it is noteworthy that Smith at the Inquiry testified that this investigation focussed on the Church and the police only; he did not investigate the Crown.

Reference: Evidence of Tim Smith, November 11, 2008, page 56 lines 10 through 24

1016. The Crown's **December 21st, 1994** opinion letter suggests that the Crown received a brief of the police investigation into the collusion allegation. Clearly Smith had concluded that there was no reasonable and probable grounds to lay a charge: at page 2 of the Crown letter, Crown Griffiths states

> "**I agree with your assessment that objectively there are no reasonable and probable grounds to warrant the laying of any charges arising out of these allegations. You have indicated that you believe subjectively that there is no evidence and you have set out that belief in your memorandum to me. In the circumstances, I can advise you that without the subjective belief it is my opinion that charges cannot be laid."** (Emphasis added)
>
> **Reference**: Exhibit 1148, bates page 1655098

1017. In a separate news release of **December 23rd, 1994** (Exhibit 1000) the OPP stated as follows:

> "**Following the nine month investigation in consultation with the Regional Director of Crown Attorneys, it has been decided that there are no grounds to lay criminal charges against a Cornwall priest in the alleged assault, nor to lay charges in the alleged improper relationship between the Diocese and the Cornwall Police**".

1018. The above press release does not refer to the "**improper relationship**" as extending to the Crown Attorney's office.

1019. The two Crown opinions, although emanating from the Regional Director of Crowns and referred to in the press release, really say nothing of substance except to repeat that since the investigator had no reasonable and probable grounds on a subjective basis, there was no basis for charges to be laid. In other words, reduced to the simplest elements, the issue here is a **police** issue and not a legal issue: did the police believe Mr. Silmser when he alleged abuse by Father Charles MacDonald, and had they developed any believable evidence of an "improper relationship" between the Diocese and the police? There was no "consultation" of any substance between the Crown and the police on these matters during the nine months of the investigation.

> **Reference**: Exhibit 1147 and 1148
>
> **Note that Exhibit 2562 is the Crown Brief index on the Silmser sexual assault matter**

1020. The primary actor in the laying of charges is the police, not the Crown. On that basis it appears that the Crown is being "used" by the OPP in its press release to bolster the credibility of the absence of charges or to somehow make the lack of charges more acceptable to the public.

Details of the Obstruct Justice Investigation

1021. Given the importance of the Silmser settlement to the narrative, we will examine in further detail Smith's **1994** investigation into the settlement. On January 25, 1994, just days after the Diocese's press conference and press release with respect to the illegal settlement, Peter Griffiths, then Easten Ontario's Chief Crown Attorney, publicly indicated that he would like the Church's payment to David Silmser investigated by police to determine whether an obstruction of justice had taken place. Griffiths also publicly indicated at that time that it was too early to say whether the settlement had actually obstructed the Cornwall Police.

Reference: Exhibit 3025

1022. In February 1994, Tim Smith was tasked with investigating this potential obstruction of justice (in addition to other matters). The Crown Brief with respect to this matter was received by the Crown in November 1994.

Reference: Peter Griffiths, January 123, 2009, page 106, lines 9 through 14

1023. The Crown Brief contained a synopsis in which Tim Smith wrote the following:

> **The settlement document is very explicit, in that it clearly dictates that, in return for the consideration of $32,000.00, David SILMSER will not proceed with criminal, or civil proceedings against Father MacDONALD, the BISHOP, or the Diocese of Alexandria-Cornwall.**
>
> **This document was prepared, and reviewed by three practicing lawyers for the Province of Ontario.**

> **It is difficult to understand how three knowledgeable, and experienced solicitors, could condone, and approve of such a document, not realizing Section two of the contract clearly obstructs justice.**
>
> **Their explanations of their part in this process is one of negligence, rather than wilfully, and wantonly, attempting to terminate a criminal investigation, and or, subsequent prosecution.**
>
> **Reference**: Exhibit 1164, bates page 7056038-7056039 [Emphasis Added]

1024. At the point in time when Detective Inspector Smith prepared the Crown Brief, he was concerned about all three lawyers involved in the illegal settlement. Malcolm MacDonald was not singled out.

> **Reference**: Tim Smith, November 25, 2008, page 11, lines 5 through 13
>
> Peter Griffiths, January 12, 2009, page 107, line 25 to page 108, line 20

1025. In December 1994, Peter Griffiths reported back to Detective Inspector Smith with respect to his progress on determining whether charges should be laid in the obstruct justice investigation. Griffiths contacted Smith on December 20, 1994. Detective Inspector Smith's notes record the following: "Obstruct lawyers, appropriate to contact Law Society, obstruct justice, less than criminal but inappropriate". Griffiths, was concerned by this file, and on December 22, 1994, he contacted Smith again. This time, Griffiths indicated that there was a problem with Malcolm MacDonald, and that there might have been a possible obstruction of justice.

> **Reference**: Exhibit 1803, bates page 1054232

Exhibit 1803, bates page 1054235

1026. As Griffiths was troubled by the file, he asked a senior Crown, Don McDougald, to provide an independent second review.

Reference: Peter Griffiths, January 12, 2009, page 98, lines 3 through 17

1027. On January 30, 1995 Peter Griffiths contacted Detective Inspector Smith, and informed him that Crown Don McDougald had reviewed the evidence with respect to Malcolm MacDonald and advised that there were reasonable and probable grounds to believe that MacDonald attempted to obstruct justice. Griffiths advised that there was a reasonable prospect of conviction and it would be in the public interest to prosecute.

Reference: Exhibit 1803, bates page 1054236

1028. Griffiths informed Smith that he would draw up the information for the charge, and the next day advised Smith that Crown Curt Flanagan would be assigned to the obstruct justice matter.

Reference: Exhibit 1803, bates page 1054237

1029. It should be noted that although Peter Griffiths provided written opinions for the two other Crown Briefs provided to him by Tim Smith in November of 1994, he did not provide a written opinion with respect to the obstruct justice file. Griffiths had only received an oral second opinion from Crown McDougald. He did not reduce that opinion or his own opinion to writing.

Reference: Peter Griffiths, January 12, 2009, page 103, line 23 to page 104, line 3

1030. In the absence of a written Crown opinion, it is unclear how the Crown at that time determined that Malcolm MacDonald alone should be charged with an attempt to obstruct justice while the other two lawyers who represented parties with respect to the settlement were not charged. Between mid-November 1994 and early 1995 when the Crown examines this matter and focuses its attention on Malcolm MacDonald no new information has been brought to the Crown's attention by the police.

Reference: Peter Griffiths, January 12, 2009, page 108, line 24 to page 109, line 7

1031. The common sense insight of Tim Smith to the effect that all three lawyers must have realized that the offending clause obstructed a police investigation had not been addressed.

Reference: Peter Griffiths, January 12, 2009, page 203, lines 10 through 24

Peter Griffiths, page 204, lines 4 through 5

1032. Although both Smith and Griffiths at one point indicated that the matter should be reported to the Law Society, the Crown never complained to the Law Society with respect to any of the three lawyers involved.

Reference: Peter Griffiths, January 12, 2009, page 205, lines 13 through 17

The Crown Agrees to an Absolute Discharge for Malcolm MacDonald

1033. When Crown Curt Flanagan was assigned the attempt to obstruct justice prosecution he did not consider whether charges against the other lawyers, or Bishop Eugene LaRocque should be added.

Reference: Curt Flanagan, January 9, 2009, page 22, line 23 to page 23, line 6, page 32, lines 8 through 13

1034. On September 12, 1995 Malcolm MacDonald pleaded guilty to one count of unlawfully attempting to obstruct or defeat the course of justice contrary to Section 139(2) of the *Criminal Code of Canada*. The Honourable Justice Lennox was provided with a joint submission by Crown Flanagan and the defence, and adopted the position taken by counsel that an absolute discharge was warranted in this case. No conviction was registered for the guilty plea.

Reference: Exhibit 1165

1035. Justice Lennox ultimately accepted the submissions of the Crown and defence. The information that was before Justice Lennox easily supported the absolute discharge. However, the Crown, as an officer of the Court, could well have taken the position that more severe sanctions were required in the case, and raised for the Court's consideration factors which supported such sanctions. Had they done so, the Court may have been in a position to consider whether a more severe sentence may have been appropriate.

Reference: Exhibit 1165, bates page 7061336

1036. In this case, the Silmser settlement had caused an uproar in the Cornwall community, however this factor was not featured in the sentencing submissions by the Crown. MAG downplayed what had happened as a result of the illegal settlement, and the full impact that it had on Cornwall. MAG also used Malcolm's credentials as a former Crown and his vast experience in practice as mitigating factors when in reality they were aggravating factors.

1037. The sentencing submissions could have been used to help to restore faith in the proper administration of justice, by giving more weight to the community impact of what had occurred and by acknowledging Malcolm's wrongdoing by means of a criminal conviction.

1038. After the absolute discharge was granted, the media response was highly critical. The predictable questions related to the attempt to obstruct justice proceedings were raised, notably why Malcolm MacDonald was the only lawyer charged, and how he could have received an absolute discharge in this case.

Reference: Exhibit 3030
Exhibit 3031
Exhibit 3032

1039. To return to the broader chronology of events at the same time as Smith was investigating the above items, Fred Hamelink of the OPP had been tasked to investigate extortion charges against David Silmser. Hamelink was dispatched in **February 1994**.

Reference: Exhibit 1031, notes of **February 1, 1994**

1040. Chris McDonell became the lead investigator on the extortion case.

Reference: Evidence of Hamelink, November 13, 2008, page 12, lines 13 through 15

1041. Hamelink was aware at this time that Smith was doing another investigation into sexual assaults in the Cornwall area.

Reference: Evidence of Hamelink, November 13, 2008, page 13, lines 16 through 18

1042. Hamelink was not initially aware that Smith's investigation overlapped with his extortion investigation. In addition, Hamelink testified that the possibility of re-investigating the death of Ken Seguin was not raised with him by Superintendent Fougere.

Reference: Evidence of Hamelink, November 13, 2008, page 19, lines 19 through 24

1043. Hamelink was never made aware of any complaints that the Seguin family had made about Officer McDonell and Officer Millar in connection with the death investigation.

Reference: Evidence of Hamelink, November 13, 2008, page 25, lines 10 through 15

1044. Hamelink saw a clear division between the extortion investigation and the death investigation. Accordingly he saw no benefit in speaking to Randy Millar who had investigated the death and had also written a report (Exhibit 972) that dealt in part with extortion.

Reference: Evidence of Hamelink, November 13, 2008, page 37, lines 16 through 24

1045. Hamelink did become aware of Exhibit 372 (Staff Sergeant Dupuis' memorandum of the telephone call he received from David Silmser on the evening of **November 24th, 1993**).

Reference: Evidence of Hamelink, November 13, 2008, page 41, lines 4 through 23

1046. Hamelink did meet with Smith on or about **February 8th, 1994** (see Hamelink notes, Exhibit 1031 bates page 7098223). The two officers exchanged information.

1047. Smith and Hamelink had no formal protocol for meeting to exchange information about their respective investigations.

Reference: Evidence of Hamelink, November 13, 2008, page 47, lines 3 through 17

1048. Hamelink does not recall that Smith asked him to forward anything that his investigators found about Charles MacDonald to Smith.

Reference: Evidence of Hamelink, November 13, 2008, page 47, lines 18 through 22

1049. Hamelink and Smith had agreed to share their respective investigatory information with one another. After a **February 21st** meeting that the two attended with Crown Griffiths, it was decided that, after they had finished their investigations, they would get together, compare their evidence, and then prepare their Crown briefs for Griffiths after having done so.

Reference: Evidence of Hamelink, November 13, 2008, pages 49 and 50

1050. It was important that these investigations be coordinated as David Silmser was a common thread: suspect in one and prospective victim in another. The practical implications of this was that the two had to coordinate how Silmser would be interviewed, if in fact he was to be interviewed on the extortion investigation.

Reference: Evidence of Hamelink, November 13, 2008, page 53, lines 10 through 14

Exhibit 1803; Notes of Smith, **February 10th, 1994**, bates page 1054214

1051. Exhibit 1085 is a fairly lengthy interview of Jos Van Diepen conducted on **February 14th, 1994.** The interview canvasses a great deal of personal information pertaining to Ken Seguin and Nelson Barque, and it also touches upon Father Charles MacDonald. Van Diepen referred to probationers who had been sent by Ken Seguin to live at the Rectory with Father Charles, and also commented on probationers who had stayed with Ken in the **late 1970s**. He also attributed statements to probationers pertaining to Charles' homosexuality and unwanted sexual advances.

Reference: Exhibit 1085, bates pages 7099300 and following

1052. Hamelink acknowledged that little, if any, follow-up was conducted on the information obtained from the Jos Van Diepen and "**there could have been**".

Reference: Evidence of Hamelink, November 13, 2008, page 64, lines 2 through 5

1053. There is no indication from Hamelink's notes or testimony that Van Diepen's information was shared with Smith.

Reference: Evidence of Hamelink, November 13, 2008, page 66, line 9 to page 67, line 1

1054. Smith had never seen the Van Diepen statement before submitting his Crown brief.

Reference: Evidence of Hamelink, November 13, 2008, page 66, line 22 to page 67, line 17

1055. At a meeting of **February 22nd, 1995** with Don Genier, Tim Smith and Peter Griffiths, Hamelink's notes reflected the following outcome: "**extortion on hold for time being until Smith completed obstruction investigation. Need Silmser as witness against Father MacDonald**".

Reference: Exhibit 2544

Evidence of Hamelink, November 13, 2008, pages and 76

1056. Hamelink's evidence at the Inquiry was that this note was "**a poor choice of words**" as the only thing that was "**on hold**" was an interview of David Silmser.

Reference: Evidence of Hamelink, November 13, 2008, page 76, lines 5 through 19

1057. Hamelink acknowledged that there was no operational plan in place for his investigation nor was there a plan to coordinate his investigation with Smith's.

Reference: Evidence of Hamelink, November 13, 2008, page 76, lines 24 and 25

1058. On **February 22nd, 1994** Silmser, in the presence of his lawyer, gave a statement to Smith. Hamelink watched the interview behind one-way glass.

Reference: Evidence of Hamelink, November 13, 2008, page 77, lines 10 through 16

Exhibit 267

Returning to the Silmser/Father Charles Investigation

1059. During the February 22, 1994 interview, in addition to describing allegations of historic sexual abuse by Ken Seguin and Father Charles MacDonald, **Silmser disclosed allegations of abuse by a school teacher by the name of Marcel Lalonde**. During his February 1994 meeting with OPP investigators, Silmser disclosed that Marcel Lalonde was his teacher when he was in grade 8 at Bishop McDonell School. He described being picked up by Marcel Lalonde and being driven to Lalonde's residence where Lalonde would "try to take advantage of me". Silmser disclosed that Lalonde attempted to grab him by the crotch and he would have to fight his way out. He also told investigators that Lalonde had pictures at his house, although he reported that Lalonde never took his picture.

Reference: Exhibit 267, bates pages 7056838-7056839

1060. At the time that Silmser was making these disclosures, Detective Inspector Smith was keenly aware of the potential importance of the information he was receiving. Smith explained to Silmser the need for his full disclosure as follows:

> "**In, in, in, in fairness like, if, if it happened to you and it made you uncomfortable and it was a sexual assault, then, I think we should look at it so it doesn't happen to others so, but if you can, be more explicit as to ah, what happened, it would help us and maybe other names of other people that you may have, that you may be aware of.**"
>
> **Reference**: Exhibit 267

1061. The OPP was aware in **February 1994**, that if Silmser's allegations were substantiated that there may also be a present day risk to children, as Lalonde continued to teach public school. One would have expected the OPP to immediately contact both the Children's Aid Society and the Cornwall Police Services after receiving this disclosure about Lalonde. [Unbeknownst to Smith, the CAS was hoping to receive additional details from Silmser regarding the alleged Lalonde incidents so it could determine if further steps were necessary.] Informing the Cornwall Police Services would have enabled them to cross-reference Silmser's Marcel Lalonde allegations within their own investigations to determine whether this new information had any bearing on other complainants.

> **Reference**: Evidence of Greg Bell, October 21, 2008, page 16, line 20 to page 18, line 7

1062. The OPP, however, waited one month before meeting with the Children's Aid Society with respect to Marcel Lalonde. At a March 22, 1994 meeting, CAS and OPP representatives discussed their respective Marcel Lalonde investigations. At this

meeting, the Children's Aid Society explained that they did not feel that they could pursue the alleged sexual assault of Silmser by Marcel Lalonde without further details. Although the OPP was in possession of further details from Silmser, Smith did not provide the CAS with those details.

Reference: Exhibit 2324, bates page 7082079

Exhibit 1803, bates page 1054220

Evidence of Tim Smith, November 11, 2008, page 154, line 22 to page 155, line 19

1063. On July 7, 1994, Tim Smith returned to the CAS with concerns regarding Marcel Lalonde and recommended that the CAS advise Lalonde's School Board. It was decided that the CAS would attempt to contact Silmser, but if they did not receive a response, they would not proceed further with a Lalonde investigation.

Reference: Exhibit 2462, bates page 7080546

1064. The next action taken by the OPP with respect to Marcel Lalonde was a letter to Chief Carl Johnston of the Cornwall Police Services on July 21, 1994: five months after Smith's Silmser interview. In this letter, Detective Inspector Smith advised the CPS that Silmser had alleged that he was sexually assaulted by Marcel Lalonde in an interview in November 1993 with the CAS. He advised that the CAS had investigated this allegation, but had subsequently terminated the investigation as Silmser failed to attend subsequent meetings to assist in the investigation. Smith informed Chief Johnston that although he suggested to the CAS that they should contact Marcel Lalonde's employer to advise of the allegations, the CAS was reluctant to do so because Silmser was non cooperative.

Smith explained that he was writing to the CPS at this time to bring the Lalonde allegation to the CPS's attention "in the event you have any similar complaints or investigations concerning this school teacher".

1065. Detective Inspector Smith does not tell the CPS about the OPP February 1994 interview of Silmser in which Silmser disclosed further particulars with respect to the alleged sexual assaults by Lalonde, nor does he advise the CPS that Marcel Lalonde was now teaching at Sacred Heart School. At the Cornwall Public Inquiry, when asked why this letter to the CPS did not include this information about in the Lalonde matter, Detective Inspector Smith could only explain that he must have missed this information although he could not understand how this had happened.

Reference: Exhibit 406

Evidence of Tim Smith, November 11, 2008, page 162, lines 2 through 17

1066. Detective Inspector Smith acknowledged at the Inquiry that the OPP should have followed up on the Silmser allegations regarding Marcel Lalonde as soon as they were disclosed to them in February 1994. Smith did not recall instructing Constable Fagan or any other OPP investigator to follow up on the allegation. Smith testified **"I see there is no documentation anywhere that shows I did anything until July. [...] I'm being honest with you. It appears I missed it. I was unaware somehow or I have missed it, and it should have been reported"**. Smith went on to testify **"and once again I'm going to say that it's definitely in that statement and I can't believe that I didn't pass that on immediately, not six months later, if I was aware. And there's no excuse"**. Smith explained that he should have disclosed this allegation immediately to

both the Cornwall Police Services and the Children's Aid Society, and had no doubt that had this additional information been provided to the CAS in a timely manner that they would have investigated and acted on this information as required.

Reference: Evidence of Tim Smith, November 11, 2008, page 164, lines 4 through 6, lines 12 through 14; page 164, line 24 to page 165, line 2; page 165, lines 3 through 12

1067. In addition to delaying one month before discussing the matter with the CAS, and six months from the time of taking the statement before communicating with the Cornwall Police Services, the communications about Lalonde with these other institutions were incomplete. The CAS and CPS did not know that the OPP had received a report of sexual assault by Marcel Lalonde against David Silmser in February 1994, when both had a clear interest in the subject and a need to know in late 1996/early 1997.

1068. Police investigations into Marcel Lalonde commenced again in **late 1996/early 1997**. Investigations into Lalonde could have commenced at a much earlier date (*viz.* **November 1993**). Marcel Lalonde continued to teach in the interim, which could have put children at risk.

Reference: Exhibit 2692

1069. To return to the subject of Hamelink's **1994** extortion investigation, those investigations obtained a statement from Ron Leroux (Exhibit 562) in which Leroux links Father Charles MacDonald with Ken Seguin.

Reference: Evidence of Hamelink, November 13, 2008, page 81, line 1 to page 82, line 2

1070. Consistent with the "**on hold**" note in his notes of **April 13th, 1994** (Exhibit 1031 bates page 7098225 and following) Hamelink notes that the extortion investigation "**was not proceeding full time".** Hamelink also disputed the accuracy of that note at the Inquiry as being incorrect. **"The extortion <u>was</u> being pursued full time**", he claimed.

Reference: Evidence of Hamelink, November 13, 2008, page 85, lines 3 through 8

1071. As of **May, 1994** Hamelink was still operating on the understanding that he and Tim Smith would coordinate their information before submitting their respective briefs to the Crown, and that those briefs would be presented to the Crown.

Reference: Evidence of Hamelink, November 13, 2008, page 98, line 1 to page 99, line 2

1072. The extortion investigation obtained a statement from Malcolm MacDonald on **May 12, 1994**.

Reference: Exhibit 2571

1073. Though he acknowledged that Malcolm MacDonald was also relevant to Smith's investigation of sexual assault, Hamelink did not specifically coordinate this interview with Smith, at least not directly. Hamelink appears to have been relying on communication that he assumed occurred between the lead investigators Fagan and McDonell and own expectation that the two offices would share their information.

Reference: Evidence of Hamelink, November 13, 2008, page 110

1074. It is noteworthy that the statement subsequently provided by Malcolm MacDonald (Exhibit 2571) contains evidence that Silmser "**was demanding money or he would go to the police concerning Ken's behaviour**". Again, this is highly relevant to the offense of extortion, which was the subject matter of the Hamelink investigation.

Reference: Evidence of Hamelink, November 13, 2008, page 111, lines 10 through 25

1075. Hamelink did not directly provide a copy of Malcolm's statement to Officer Smith. He seems to have simply relied upon the fact that it was in his Crown brief.

Reference: Evidence of Hamelink, November 13, 2008, page 113, lines 13 through 21

1076. Hamelink did not attempt to explain the inconsistencies between the statement which Malcolm gave him **May 12th, 1994** and the statement which Malcolm had given on **December 21st, 1993** (Exhibit 973).

1077. Hamelink, in response to questions by the Commissioner, gave a rather confusing if not erroneous understanding of whether threatening to go to a victim's boss unless the victim paid money could constitute extortion.

Reference: Evidence of Hamelink, November 13, 2008, page 122 line 1 to page 123, line 20

1078. He testified again in response to the Commissioner's questions that **"he did not think about**" attempting to reconcile the discrepancies in Malcolm's statements as between whether Silmser had threatened to go to Ken's "**boss**" or to the police (or both) if he did not receive payment.

Reference: Evidence of Hamelink, November 13, 2008, page 123, lines 13 through 19

1079. Ultimately, Hamelink delivers his Crown brief to Crown Griffiths without prior consultation with Tim Smith. He receives a Crown opinion letter of **October 12th, 1994** (Exhibit 2574). Crown Griffiths' letter focused exclusively on the statements of Malcolm MacDonald and both of their inherent weaknesses (Malcolm acknowledges that his memory may be faulty and some of what he recites is hearsay and would be inadmissible). The opinion letter makes no mention of Silmser's threat to go to the press, recorded in Exhibit 372. The conclusion was a lack of sufficient evidence to provide reasonable and probable grounds to support a criminal charge of extortion. Hamelink agreed with that view.

Reference: Evidence of Hamelink, November 13, 2008, pages 147 and 148

1080. Two points are notable: (a) again, the Crown seems to be the one initiating the "no RPG" conclusion as opposed to the police; and (b) the Crown opinion has failed to consider the totality of the evidence (i.e. the "other" Silmser threats apart from the civil litigation threat.

1081. The concern this poses is this: did they jump to the conclusion that Silmser did not commit extortion so as to preserve his status as complainant?

1082. Hamelink has no explanation to offer as to why he had failed to honour the agreement he made with Tim Smith to share information before finalizing briefs: **"There is really no explanation as to why I did it. I was finished**".

Reference: Evidence of Hamelink, November 13, 2008, page 149, lines 3 through 4

1083. Notwithstanding other documentation that suggests the occurrence, Hamelink denied that he and Smith had a "**blow up**" and that Hamelink had therefore concluded his investigation without Smith's knowledge.

Reference: Evidence of Hamelink, November 13, 2008, page 150

1084. Also during the calendar year 1994 the CAS is continuing its work on Project Blue, and interacting with the OPP investigations.

1085. Abell was also aware that the OPP had commenced the Hamelink investigation of Silmser for extortion of Ken Seguin, and the Inspector Smith re-investigation the Father MacDonald allegations as well as the allegations of conspiracy involving the settlement.

Reference: Evidence of Abell, October 27, 2008, page 121, lines 10 through 22

1086. Greg Bell and Rick Abell both met with the OPP in **March of 1994** and were briefed on the investigations which the OPP intended to conduct.

Reference: Evidence of Abell, October 27, 2008, page 123, lines 1 through 4

1087. Abell was also involved and aware of the activities of Staff Sergeant Wells, the CPS Professional Standards officer, who investigated the possible breach of the *Police Services Act* as a result of the release of the Silmser statement to the media and to the CAS.

Reference: Evidence of Abell, October 27, 2008, page 106, lines 10 through 20

1088. Abell had contact with Wells in that regard; ultimately CAS materials were provided to the CPS Professional Standards Investigation, pursuant to appropriate authorizations.

1089. CAS communicated that it had **"verified**" the Silmser allegations against Father Charles MacDonald to the CPS and to the OPP in early **March of 1994**.

Reference: Evidence of Abell, October 27, 2008, page 118, lines 18 through 24

1090. A similar letter verifying the abuse went to the Diocese in **January of 1995**.

Reference: Evidence of Abell, October 27, 2008, page 119, lines 1 through 3

1091. In 1995, the OPP received information from other complainants alleging that they had been sexually assaulted by Father MacDonald. This prompted the OPP to continue to investigate Father MacDonald.

1092. The first new complainant to come forward was Albert Lalonde. Lalonde contacted the OPP's Mike Fagan around May 1, 1995. He reported that he was a former altar boy, and that he had been sexually molested by Father MacDonald in 1968.

Reference: Exhibit 1803, bates page 1054245

1093. Albert Lalonde was interviewed by OPP officers on April 25 and May 12, 1995. In these interviews, Lalonde explained that he had been experiencing recent flashbacks of being sexually abused by Father MacDonald. These interviews were provided to Crown Curt Flanagan in August 1995 for legal review, and no criminal charges were laid at that time. (Lalonde brought allegations against Father MacDonald to the attention of the Cornwall Police Services in 2002. This matter was investigated by the CPS and sent to the Crown for review, who concluded that he agreed with the investigating officer that there were no reasonable and probable grounds in this case, and advised that there was no reasonable prospect of conviction).

Reference: Exhibit 1689
Exhibit 1696
Exhibit 2590
Exhibit 1702
Exhibit 1704

1094. In **August, 1995** Father Kevin Maloney approached Abell and informed him of a further complaint against Father MacDonald from a former altar boy.

Reference: Exhibit 230

Evidence of Abell, October 27, 2008, page 135, lines 5 through 13

1095. The individual to whom Maloney referred was John MacDonald, who evidently had disclosed to Maloney that he had a history of alcohol abuse, and that he knew of David Silmser.

Reference: Evidence of Abell, October 27, 2008, page 136, line 21 to page 137, line 9

1096. Several days after this occurrence, Silmser phoned the CAS (Exhibit 281) who returned Silmser's call (Exhibit C407).

1097. In that phone call, Silmser was obviously aware that MacDonald had returned from B.C. and had similar allegations to make about Father MacDonald; Silmser went on to allude to other possible victims of Father Charles, as well as the role of Dunlop. This is an early indication that the alleged victims knew one another and are discussing their respective allegations.

1098. On or around August 15, 1995, Father Maloney received and provided a copy of a letter from John MacDonald alleging he had been sexually abused by Father Charles MacDonald to the Cornwall Police services. The matter was initially assigned by Rick Trew of the Cornwall Police Services to Officer Bough. However, on August 23, 1995, David Silmser contacted Mike Fagan at the OPP and informed him that he had spoken to the Cornwall Police Services, and learned that a new complainant regarding Father MacDonald had come forward. That day, Rick Trew informed Tim Smith that John

MacDonald had come forward. On August 25, 1995 Chief Repa wrote to Superintendant Edgar of the OPP, requesting that the OPP take over the John MacDonald investigation.

Reference: Evidence of Rick Trew, April 28, 2008, p.191 lines 2-4

Exhibit 1803, bates page 1054246

Exhibit 1816

1099. One month after Chief Repa wrote the OPP, John MacDonald contacted Rick Abell of the CAS. He was distraught by the fact that the CPS would not take his statement. Abell suggested that it was important that MacDonald tell his story directly to the police. Abell contacted Tim Smith with respect to MacDonald, and Smith then contacted John MacDonald. When MacDonald called back that same day to inform Abell that he had been called by Tim Smith, Abell encouraged John MacDonald to cooperate fully.

Reference: Exhibit 2462, document 721620 bates pages 7080526-7080529

Exhibit 1803, bates pages 1054246-1054247

1100. Abell met with John MacDonald on **September 25th, 1995**.

Reference: Exhibit 241, bates page 7011088

1101. Subsequent to that meeting, Abell informed Tim Smith about the meeting and that MacDonald was keen to talk with Smith.

Reference: Evidence of Abell, October 27, 2008, page 145, lines 6 through 14

Exhibit 241, bates page 7011091

1102. On **September 27th, 1995,** Abell wrote to the Bishop concerning the John MacDonald allegation. (Exhibit 232).

Reference: Exhibit 232

1103. Abell had discussed the provision of counselling for MacDonald with the Bishop the day before. The Bishop's response was "**Send me the bill**".

Reference: Evidence of Abell, October 27, 2008, page 147, lines 8 through 13

1104. Abell had the impression that Smith responded very appropriately to MacDonald and followed up with MacDonald right away.

Reference: Evidence of Abell, Day 3, page 148

1105. On September 28, 1995, Smith met with Chief Repa and determined that the John MacDonald investigation would be conducted by OPP because the complaint was a continuation of the previous investigation into Father Charles MacDonald, and because John MacDonald's allegation could have taken place within OPP jurisdiction.

Reference: Exhibit 1803, bates pages 1054246-1054247

1106. On September 28, 1995, the OPP took a statement from John MacDonald. It is not clear why it took approximately a month and a half from the time that MacDonald's letter was disclosed to the Cornwall Police for a police agency to take MacDonald's statement.

This passage of time, and the failure of the police authorities to explain why no steps were being taken clearly caused John MacDonald additional avoidable stress and confusion.

Reference: Exhibit 1803, bates page 1054247

1107. In November 1995, the OPP were then contacted by C-3. C-3 had previously been interviewed by Heidi Sebalj of the CPS in her Silmser investigation and had disclosed alleged sexual abuse by Father Charles.

1108. When C-3 contacted the OPP in November 1995, the police took a statement. During his interview with the OPP, C-3 explained that he had received a call from John MacDonald regarding Father MacDonald, and had also met with Silmser and MacDonald. He was aware that his complaint would corroborate their statements. This was another "early warning" about the possibility of witnesses becoming contaminated by discussing their evidence with one another.

Reference: Exhibit 2672

1109. The OPP continued through the fall with its investigation. On January 3, 1996, Tim Smith called Peter Griffiths to inform him that the Crown brief would be ready in two weeks, and to request his review. Smith indicated at this time that the OPP was of the view that with these two additional victims, there were reasonable and probable grounds to lay indecent assault charges.

Reference: Exhibit 1803, bates page 1054252

1110. In the Crown brief Synopsis, Smith does not express his view that there were reasonable and probable grounds to lay charges. Smith provides the Crown with an overview of the difficulties caused by Silmser's "**credibility and selective memory**", leading to difficulties in obtaining reasonable and probable grounds. However, he also notes that "**there still remains strong suspicion that Silmser was sexually assaulted in some manner by Father Charles MacDonald**".

Reference: Exhibit 2672

1111. On January 15, 1996 Griffiths assigned Crown Robert Pelletier to review the allegations against Father Charles MacDonald raised by Silmser, C-3 and John MacDonald. Pelletier received the Crown brief on January 18, 1996.

1112. On March 6, 1996, Pelletier provided a legal opinion to the OPP on this matter. He concluded that there were reasonable and probable grounds exist to lay charges of seven counts of indecent assault against Father Charles MacDonald. Three counts related to Silmser, three counts stemmed from the John MacDonald complaints, and the remaining count related to C-3.

Reference: Exhibit C-0394

1113. In his opinion letter, Crown Pelletier distinguished the previous conclusions reached in Peter Griffiths' 1994 opinion which found that there were not reasonable and probable grounds to support the laying of charges in relation to Silmser. Pelletier noted that:

> "**The situation has changed somewhat given that there now exist two complainants who provide, if their accounts are to believed at trial, corroboration of the Silmser complainant in the nature of similar fact evidence. More particularly, the three complaints now relate to the same suspect, allege similar types of sexual abuse, refer to a similar pattern of behaviour and method, relate to allegations at a time when the complainants were of the similar age, in a similar location, and in the same general time frame. The case against Father Charles MacDonald is certainly reinforced by the most recent complaints by John MacDonald and [C-3]. Accordingly, any prior decision not to proceed with regards to the Silmser complaint has to be reviewed in that light**."
>
> **Reference:** Exhibit C-0394, bates page 1069955

1114. Father Charles MacDonald was charged with the 7 counts of indecent assault on March 11, 1996, and issued a press release on the charges that same day.

Reference: Exhibit 2501

1115. During the period that Crown Pelletier was assigned the Father MacDonald prosecutions, David Silmser attempted to contact him on several occasions.

1116. On March 18, 1996, Silmser called Pelletier's office and spoke to his assistant. This prompted Pelletier to write Silmser's lawyer Bryce Geoffrey to request that any further concerns of Silmser's be addressed through his counsel.

Reference: Exhibit 305

Exhibit 283

1117. On June 19, 1996, Pelletier's assistant received another call. Silmser wanted to leave a voice message that another victim had been located by a private investigator and had given a 4½ hour statement.

Reference: Exhibit 303
Exhibit 286

1118. On July 19, 1996, Pelletier wrote a note to file in which he expressed concern that Silmser's communications risked placing him in a conflict, and noting that he had passed on Silmser's claim that a fourth victim had been located to Fagan.

Reference: Exhibit 308

1119. Again, in hindsight an "early warning" to the Crown that third parties (likely Dunlop's group) were taking an interest in Silmser and were involving themselves in abuse allegations against Father Charles. From what we know now the alleged "other victim" of Charles MacDonald who emerged in the summer of 1996 was C8, and it was Dunlop to whom he made a statement.

1120. By the inception date of the first set of MacDonald charges Dunlop was still off duty on sick leave. He remained on sick leave until **May 1997.**

1121. Shortly after those charges we laid Dunlop's will say suggests that he began to be contacted by sexual abuse victims, and that the contact intensified over the following years.

Reference: Exhibit 579, bates pages 7114923 to 7114924

1122. The contact between Dunlop (in a non-police capacity) and complainants and witnesses factored largely in the Project Truth prosecutions and in certain non Project Truth prosecutions (*R. v. Lalonde*, for instance).

1123. The balance of these submissions will examine (in chronological order) the deteriorating relationship between Dunlop and the CPS, and the steps taken by both CPS and OPP to attempt to control Dunlop and to neutralize his impact on cases before the Courts. Our submissions will include a critical analysis of the Project Truth "conspiracy" and "pedophile ring" components.

1124. We will also focus on the two failed prosecutions (*Leduc* and *MacDonald*) and the respective roles of the Crown and OPP in each.

1125. Finally we will devote a separate section of these submissions to people other than the Dunlops who influenced community opinion or the subject of the pedophile ring: these include Gary Guzzo, Dick Nadeau and his *projecttruth.com* websites.

The Evolution of a Problem: Dunlop and the CPS in 1993 and Following

1126. On **October 7th, 1993** Staff Sergeant Derochie was tasked with looking into Dunlop's actions in relation to the Silmser statement and determining if disciplinary action should be taken against Constable Dunlop.

Reference: Exhibit 1301, bates page 7072394

1127. On **October 12th, 1996**, prior to a team meeting, Derochie called Dunlop aside and told him that he was doing a *Police Services Act* ("PSA") investigation concerning Dunlop's involvement in giving the Silmser statement to Abell. Derochie's notes say that, since he was aware of Dunlop's prior discipline record, he took pains to assure Dunlop that he was not "**head hunting**". Notwithstanding that message, Derochie observed that Dunlop took it **"very hard**", and felt his reaction was surprising. Derochie wished to speak with Dunlop further that evening, but apparently Dunlop left without attending the team meeting.

Reference: Exhibit 1293, bates pages 7113382 to 7113384 - Notes of Officer Derochie

1128. Derochie accordingly spoke with Officers Quinn and O'Reilly, both of whom were members of the Police Association Executive. He communicated to them both that Dunlop's job was not in danger and he asked them both to communicate that message to Dunlop. Derochie was surprised because Quinn gave the impression that he had been dealing with Dunlop on this issue for a considerable period of time prior to **October 12th,** and knew more about it than Derochie did.

Reference: Exhibit 1293, bates pages 7113384 to 7113385

1129. On **October 14th, 1993,** Derochie met with the Chief and the Deputy Chief, and all agreed that PSA charges did not appear to be called for.

Reference: Exhibit 1293, bates pages 711392 to 711394

1130. On the evening of **October 14th,** Derochie received a call at home from Chief Shaver who was extremely upset, having just received an unannounced visit from Helen Dunlop, whom he described as being "**very aggressive**" in her presentation to him. She accused the Chief of going after her husband's job. The Chief was upset and perplexed since this was exactly the opposite of his intentions.

Reference: Exhibit 1293, bates page 7113395

1131. Upon learning of this event, Derochie called O'Reiley who advised him that Quinn had indeed spoken with Dunlop and delivered the requested message.

Reference: Exhibit 1293, bates page 7113396

1132. On the morning of **October 15th, 1993**, Derochie met with the Chief who appeared to have been reflecting on Helen Dunlop's visit of the night before and stated that he wanted Dunlop to be formally counselled for going outside of channels in relation to the Silmser statement. Derochie and the Deputy Chief had wanted a somewhat stronger form of discipline, but agreed to accept the Chief's lesser form of discipline provided that such discipline was documented.

Reference: Exhibit 1293, bates pages 7113397 to 7113398

1133. Also on **October 15th, 1993,** Derochie's mandate was expanded, and he was requested to also review the CPS's investigation of Silmser's allegations.

Reference: Exhibit 1293, bates page 7113399

1134. On **October 15th,** Derochie spoke with Staff Sergeant Darcy Dupuis and learned that Dunlop had come to him (Dupuis) on the night of **October 12th** (i.e. the night of the team meeting). Dupuis reported that Dunlop was extremely upset and **"in tears**" over the fact that his actions were being investigated.

Reference: Exhibit 1293, bates page 7113400

1135. Dupuis also informed Derochie that Dunlop had spoken to him prior to **October 12, 1992** about his concerns pertaining to the Silmser investigation. On that occasion, Dupuis had told Dunlop that he would look into it and raise it at a morning meeting. Before he did so (i.e. within one to two days) Dunlop called him back and said words to the effect that "**Don't bother. I'm dealing with it**".

Reference: Exhibit 1293, bates pages 7113400 to 7113401

1136. When Derochie commenced his evening shift on **October 15th**, he was told "through the grapevine" that Dunlop was on sick leave and would not be returning until the investigation had been completed. Derochie spoke to O'Reilly who, at that point, stated that he was "**washing his hands**" of the situation, as Dunlop appeared to be getting advice from others.

Reference: Exhibit 1293, bates pages 7113401 to 7113402

1137. Also on the evening of **October 15th**, 1993, Derochie told Quinn that the issues with Dunlop could be resolved "**right away**" if Dunlop would only report for duty. Dunlop did not report for duty.

Reference: Exhibit 1293, bates page 7113402

1138. By **October 29th**, Derochie had completed his draft counselling document; he received input from the Chief and made the necessary revisions.

Reference: Exhibit 1293, bates page 7113408

1139. At or about this time, Derochie was told by the Chief to set aside the Dunlop discipline matter and concentrate on reviewing the Silmser investigation first before finalizing the Dunlop discipline.

1140. By **November 4th,** Derochie is speaking with Sebalj and others involved in the Silmser investigation. He was told on **November 4th** by Sebalj about Malcolm MacDonald's alleged preference for young boys, and about the indecent assault charges involving the local Crown's father, Milton MacDonald. While Derochie does not make any particular use of this information it is quite curious that the elements of the eventual "conspiracy theory" are beginning to be woven together as early as **November 4th,** and the local Crown, Murray MacDonald, is being drawn into this theory by virtue of his father's prior conviction.

1141. By **November 4th,** Derochie's notes, which candidly reflect his evolving thinking about Dunlop and other matters, state that Derochie is having "**second thoughts**" about the role played by Dunlop and whether his true motivation might be different than his stated

motivation, to protect children. He also speculates that Dunlop may be being used by others to advance individuals' personal agendas at the CPS. In any event, in the **November 4th** discussion with the Chief, he notes that the Chief is prepared to revisit the lenient discipline he has agreed upon if so warranted.

1142. The balance of Derochie's notes in the year **1993** focus on the Silmser investigation by CPS as opposed to the Dunlop disciplinary issues. It is not unfair to suggest that CPS "dropped the ball" and discontinued its efforts to discipline Dunlop after **October 15th**. It did not implement the plan to formally caution Dunlop in accordance with the document drafted by Derochie, although Dunlop returned to work following his sick leave in **mid October 1993**.

> **Reference**: Exhibit 1301, bates pages 7072396 through 7072400

1143. The ultimate purpose of the intended counselling session was to enforce the message to Dunlop that

> **"information he has access to at work is confidential. It is not to be unofficial subject of conversation with <u>anyone</u> outside of the Service. Although the Service maintains that anyone includes spouses, it is acknowledged that the nature of police work is such that officers need to talk to someone about events which occurred at work in order to vent some of the stress inherent with their occupation. ... however the officer must ensure that the confidant (one with whom secrets are shared) is willing to accept the same responsibility as the officer inasmuch as confidentiality of information is concerned. Otherwise the Service insists that the information be discussed with no one. Constable Dunlop is to return or destroy all documents relative to this or any other investigation that he may have in his**

possession for a purpose other than cases assigned to himself for investigation."

Reference: Exhibit 1301, bates page 7072399

1144. The counselling document also noted the fact that Dunlop had pursued his own course of action (delivering the statement to Abell) after having brought the issues to the attention of the NCOs. In sum, the counselling is focused on Dunlop's decision to take his own course of action notwithstanding that Brunet had ordered him to return the Silmser statement. It also focuses on the fact that Dunlop and his wife appeared to be acting as a unit in going outside policing channels to involve themselves in the Silmser complaint. Both behaviours exemplified disrespect for the internal process by which police work is conducted at the CPS, and the decision to act like "**a maverick**" as opposed to like a police officer. The inappropriateness of this behaviour was an important message to give to Dunlop at this time.

1145. The CPS clearly saw that professional discipline of this nature was required with Dunlop as early as **mid October, 1993**. The problem identified in the counselling document is the same problem that continues to manifest itself throughout: the Dunlops will simply not accept the direction to stay away from historic sexual abuse complaints and will not refrain from speaking to the media. They play the game that Helen, not Perry, is the one speaking to the media, so as to avoid Perry being sanctioned. In short, they consistently chose their own agenda over the directions Perry was given by his service.

1146. If Dunlop was an ungovernable officer, then he should have been terminated long before he had opportunities to involve himself and his wife in an unofficial capacity with historic sexual abuse victims. While we will never know what Dunlop's response would

have been had Derochie administered the counselling session, at least it would have been a reasonable step to try to correct Dunlop's behaviour at an early stage. It also would have provided the platform for more serious forms of discipline should the counselling not be followed.

Reference: Exhibit 1301, bates page 7072400

The Silmser Public Complaint

1147. Following the publication of the Silmser statement in the broadcast and print media, Silmser's lawyer, Bryce Geoffrey, wrote a complaint letter on his behalf to the CPS Board. The focal point of that letter was that someone at the CPS had released Silmser's confidential statement to the media without Silmser's authority**,** with catastrophic consequences to Silmser. The letter threatened civil action with respect to the unauthorized release of the statement.

Reference: Exhibit 272A

1148. Silmser signed a public complaint Form 1 against the CPS for its unauthorized release of his statement on **January 21st, 1994**. The particulars of Silmser's complaint were identical to the matters specified in his lawyer's letter, Exhibit 272A.

Reference: Exhibit 272

1149. Officer Wells was the Professional Standards Bureau officer assigned to deal with Silmser's public complaint. Exhibit 643 is his file history brief containing the statements and documents pertaining to the Silmser public complaint.

1150. Silmser initiated a civil action against, amongst others, Dunlop and the CPS Board as a result of the disclosure of his confidential information to the media and to the CAS. Silmser's amended statement of claim is dated **April 22nd, 1994**.

Reference: Exhibit 579, bates page 7114934
Document No. 729864

1151. Dunlop was served by Derochie on **May 14th, 1994** with formal notice that PSA charges had been brought against him arising from the Silmser police complaint and that the charges had been referred to a public Board of Inquiry. Dunlop was charged with the following PSA offences:

(a) misconduct (as a result of providing Silmser's statement to Abell)

(b) two counts of breach of confidence, one for providing the statement to Abell and the second for showing him a copy of the Silmser statement.

Reference: Exhibit 643, bates pages 1092745 to 1092748

1152. Dunlop went on sick leave on January 12th, 1994 and was absent from duty from January 12th, 1994 until May 19th, 1997.

1153. The Board of Inquiry took place in Ottawa on **September 23rd, 1994**. It heard and determined a motion brought on behalf of Dunlop to stay the charges for want of

jurisdiction, based upon the argument that the *Child and Family Services Act* specifically bars any action against an officer on the basis of steps taken in furtherance of the duty to report.

1154. The Board of Inquiry released its decision on **January 31st, 1995**. The charges were stayed on the basis that Dunlop's release of the Silmser statement to the CAS was pursuant to his statutory duty to report under the *Child and Family Services Act*.

Reference: Exhibit 646

1155. The stay was appealed by the Public Complaints Commissioner to the Divisional Court. The appeal was heard on **November 23rd, 1995** and was dismissed, with reasons released **December 7th, 1995**.

1156. Accordingly, by the end of **1995** Dunlop had effectively been exonerated from any PSA charges stemming from his release of the Silmser statement to the CAS.

1157. By **December 12, 1995** the Dunlops had been featured in a *Fifth Estate* broadcast on the CBC, entitled "The Man Who Made Waves".

Reference: Exhibit 649

1158. On **December 21st, 1995** Dunlop contacted an Ottawa lawyer named Howard Yegendorf for the purpose of seeking advice in connection with a contemplated civil action. Dunlop met with Yegendorf at his offices in Ottawa on **December 22nd, 1995**, it being understood that Yegendorf would review materials provided by Dunlop, would consider the intended civil action and would provide advice to Dunlop with respect to it. The

second meeting between Yegendorf and the Dunlops occurred on **March 5th, 1996**. Yegendorf's associates also worked on the file, including research tasks.

Reference: Exhibit 742

1159. On **May 31st, 1996** Yegendorf received a voicemail message from Dunlop advising him that Dunlop did not wish to proceed any further. Yegendorf ultimately rendered an account for services in a reduced amount, which the Dunlops did not pay, resulting in an assessment proceeding and a ruling that the Dunlops pay Yegendorf's fees, made on **September 25th, 1998**.

Reference: Exhibit 742

1160. Dunlop's notes suggested that in the **fall of 1995** he began receiving communications from alleged victims, including Silmser and Albert Roy. (By this time Roy's charges against Barque had already been disposed of.)

Reference: Exhibit 579

Doc. No. 719597 bates page 7071165 to 7071177

1161. Dunlop's will-say statement of **April 7th, 2000** suggested that on **December 15th, 1995** a bartender at the Blue Anchor gave him a message that C8 wanted to meet with him and provided C8's phone number.

Reference: Exhibit 579, bates pages 7114943

1162. On **June 6th, 1996**, Dunlop issued a notice of action in a civil proceeding against Chief Shaver, Carl Johnston, Joe St. Denis, Luc Brunet, Brendon Wells, Cornwall Police Services Board, CPS, Doug Seguin, the Diocese of Alexandria Cornwall, Malcolm MacDonald and the Crown in the Right of Ontario as represented by the Police Complaints Commissioner. His counsel was Charles Bourgeois.

Reference: Exhibit 671

1163. Dunlop's will say claims that from the beginning of June, 1996 to the date of the will-state (April 2000), he was contacted by "dozens of victims. These victims named numerous suspects, all current or prior residents of the Cornwall area". His will-say indicates that victims called in many different circumstances, some "just cried" and some were "intoxicated". C8 "begged me not tell anyone" and some apparently preferred disclosing to Dunlop over "their closest friend or family member". Dunlop stated that "I have not and do not keep track of every call or contact, it would be an impossibility".

Reference: Exhibit 579, bates pages 7114924 and 7114943

1164. In describing his role Dunlop claims that he assumed a unique importance in many alleged victims' lives.

1165. In the months following the issuance of Dunlop's notice of action, his will-say (Exhibit 579) and his notes indicate that he met with and/or took statements from the following individuals, some of whom become complainants and/or witnesses in subsequent historical sexual abuse proceedings:

(a) C8 (see Exhibit 579, bates page 7114946);

(b) David Silmser;

(c) Gerry Renshaw;

(d) C15

(e) Carol Deschamps;

(f) Albert Roy's lawyer, Wendy Rogers;

(g) John MacDonald;

(h) C19;

(i) Steve Ingram;

(j) Charlie Praskey;

(k) Ron Leroux;

(l) Cindy Leroux;

(m) C92;

(n) Karl Stone.

Reference: Exhibit 579

Dunlop notes, bates page 116241

1166. In the **Fall of 1996** Dunlop had also compiled a list of people to talk to, which included the following, some of whom became complainants or witnesses in sexual abuse matters:

(a) Mark Menard;

(b) Harvey Berry Jr.

(c) Gerry Renshaw;

(d) David Merpaw;

(e) C5;

(f) C8;

(g) Debbie Ouderkirk

Reference: Exhibit 597, bates page 7114948

Document No. 116241, bates page 1457

1167. With respect to Ron Leroux, whose involvement in Dunlop's personal investigation assumed very significant proportions, multiple affidavits and statements were taken by Dunlop from Ron Leroux. A list follows:

(a) Statement taken on or about **October 7th, 1996** from Ron Leroux in Norway, Maine (Exhibit 579, bates 7114949);

(b) Typed statement taken from Leroux on **October 10th, 1996** and a handwritten statement obtained **October 11th, 1996**, both in Norway, Maine. Dunlop had Leroux identify men from single photographs (Exhibit 579, Exhibit 563 and Exhibit 579);

(c) On **October 31st,** Dunlop and Charles Bourgeois took another statement in the form of an affidavit from Ron Leroux in Maine (Exhibit 579, bates 7114949 and Exhibit 576);

(d) There was a meeting between Leroux and Dunlop in Aurora, Ontario on **November 11th, 1996** (Doc 116241, bates 1091466);

(e) Leroux signed a statement and swore an affidavit commissioned by Bourgeois on **November 13th, 1996** in Newmarket (Exhibit 565 and Exhibit 567);

(f) On **December 1st, 1996** Dunlop videotaped an interview with Leroux in the office of Bourgeois (Exhibit 568A);

(g) On **December 4th, 1996** Dunlop took another statement from Leroux (Exhibit 569);

(h) A further statement is signed by Leroux on **December 7th, 1996** (Exhibit 570) [note: this statement appears to have been misdated to 1997, but was actually obtained in December, 1996].

1168. On **November 15th, 1996,** Bourgeois delivered an amended statement of claim in the Dunlop action. The amendments made on **November 15th** reflect the latest iteration of the statements procured from Ron Leroux, to the effect that "a clan" of pedophiles existed and operated in Cornwall and that at a meeting held in **late August or early September** on Stanley Island, a number of prominent individuals who were members of the pedophile clan conspired to arrange a cover up of Silmser's allegations. A further amendment referred to a conspiracy to kill Dunlop and his family, in relation to which it was said that Father MacDonald, Ken Seguin and Malcolm MacDonald were the conspirators. It is noteworthy that this death threat was said to have been made in 1993: three years prior to the date of the amended pleading. It was only reported by Helen Dunlop to the police in 1997.

Reference: Exhibit 672

1169. The correlation between the multiple statements obtained from Leroux by Dunlop and Bourgeois and the content of Dunlop's statement of claim in the civil suit is noteworthy and strongly suggests manipulation of or by Ron Leroux.

1170. The Inquiry was deprived of the best evidence as to who was manipulating whom. This lack of evidence arises because Dunlop refused to testify and because Leroux ultimately

was unable to be fully cross-examined. He admitted at the Inquiry in general terms that he was not truthful with Dunlop when he made his "**clan of pedophiles**" and Stanley Island meeting allegations, and it is submitted that his admission should be accepted as factual. Leroux repudiated many of his statements and affidavits, while still maintaining that he was personally a victim of abuse by priests including Bishop LaRocque, Father Cameron and others when he was a youth. Leroux suggested that he had been questioned intensively and over prolonged periods of time by Dunlop felt pressure and had given false information.

1171. In addition to the numerous statements and affidavits procured from Ron Leroux, Dunlop in the **fall of 1996** and afterwards, met with and/or took statements from the following:

(a) C8 who disclosed some details regarding alleged abuse by Marcel Lalonde to Dunlop on **November 19th, 1996** (Document 116241);

(b) Gerald Renshaw (Exhibit 544);

(c) David Silmser (Exhibit 288);

(d) It appears that Dunlop may have procured more than one statement from Gerald Renshaw (Exhibit 579, bates 4954);

(e) Daniel Flipsen;

(f) C18;

(g) A further statement from Gerald Renshaw dated **December 5th, 1996** (Exhibit 548);

(h) Albert Roy (Exhibit 579, bates 4954);

(i) A further session with C8 in which photographs were shown to him (Exhibit 579, bates 4954);

(j) Carol Lee Berry;

(k) A further statement is taken from C8 on **December 12th, 1996** (Exhibit C606);

(l) Carole Deschamps, **December 13th, 1996**;

(m) A statement is taken from C15 on **December 15th, 1996** (Document 721834);

1172. As the foregoing demonstrates, Dunlop had significant contact with complainants and/or witnesses pertaining to their alleged historic sexual abuse. As of the end of **December, 1996,** Dunlop is the plaintiff in litigation against members of his force and others, and there is no evidence that any of the complainants with whom he spoke were referred by him to the CPS or any other law enforcement agency with respect to their allegations of abuse. Dunlop throughout **1996** is giving his time and attention to "unofficially" investigating abuse allegations while he is receiving disability insurance payments and is on sick leave from the Service.

Reference: Exhibit 579

1173. Presumably upon Dunlop's instructions, his counsel Bourgeois wrote a letter dated **December 18th, 1996** to Chief Julian Fantino, of the London Police Force. With that letter, Bourgeois transmitted a binder "**with particulars relevant to this case**", a copy of the *Fifth Estate* program and a copy of a tape-recorded witness statement.

Reference: Exhibit 719

1174. Exhibit 719 states, amongst other things, as follows:

> **"During our investigation and preparation of the Dunlop civil suit, it was discovered that serious criminal acts were committed and may well be continuing. We have gained knowledge of covert plans to cover up and impede police investigations as well as a planned hit on the Dunlop family. We have great concerns for the safety of the Dunlop family and the safety of children in the community. We are also very concerned for the victims we know are out there. The Dunlops have funded this complete investigation by themselves and they have financially, physically and emotionally exhausted their resources. ... They have recently retained the services of Adrienne McLennan as their press consultant (It is also worthy to mention that Judy Steed is aware of this case)."**

1175. Although the letter forwarded to Fantino suggested that Fantino had already agreed to devote "**considerable time**, **effort and commitment**" to the case presented by Bourgeois, in fact Fantino testified that he made no such commitment and, to the contrary, gave Bourgeois advice about how to proceed more appropriately. When a few days later the letter arrived, Fantino found that it was "**totally dismissive of my comments and advice to him**".

Reference: Evidence of Fantino, November 1, 2007, page 130, lines 4 through 12

1176. Fantino says that Bourgeois' characterization of their conversation in Exhibit 719 is "**totally contrary to everything I said to him**. **He was dismissive of all I said to him. He was intent on sending that, no matter what**".

Reference: Evidence of Fantino, November 1, 2007, page 133, lines 8 through 11

1177. Fantino's reaction to the correspondence and the enclosures was that he was **"very disappointed that the writer being a legally trained person would not exercise a modicum of common sense and have these matters brought to the appropriate authorities such as I advised him to do**".

Reference: Evidence of Fantino, November 1, 2007, page 134, lines 15 through 19

1178. Fantino made it clear that at no time in his discussion with Bourgeois had he ever agreed that he would do anything with the materials which Bourgeois sent to him.

Reference: Evidence of Fantino, November 1, 2007, page 137, lines 23 through 25

1179. Exhibit 729 is a table of contents of the brief that seemingly was sent to Fantino, however he was not able to identify it as such.

Reference: Evidence of Fantino, November 1, 2007, page 140, lines 1 through 12

1180. Fantino attempted to review the materials to the extent required to give him a sense of what he now needed to do with it.

Reference: Evidence of Fantino, November, 1, 2007, page 142, lines 2 through 9

1181. Upon the conclusion of his review he felt that the material was best turned over to the OPP.

Reference: Evidence of Fantino, November 1, 2007, page 143, lines 6 through 13

1182. He met with Chief Superintendent Wayne Frechette of the OPP CIB in **early February 1997** and gave the Bourgeois material to him.

Reference: Evidence of Fantino, November 1, 007, page 143, lines 16 through 19

1183. Leroux came to Canada from Maine in **February 1997** and, together with Charles Bourgeois, went to the Orillia Office of the OPP where he was interviewed by Officers Bell and Anthony.

Reference: Exhibit 2679

The Evolution of Project Truth

1184. On or about **March 20th, 1997** a meeting was convened with Crown Pelletier (who was then prosecuting the MacDonald matter), Detective Inspector Smith and Mike Fagan, at which Crown Pelletier reviewed the Fantino brief for the first time.

Reference: Evidence of Smith, November 25, 2008, page 129, lines 13 through 16

Exhibit 1803, bates page 1054260, Notes of Officer Smith

1185. Crown Pelletier at that time or shortly thereafter made the judgment call that all materials in the Fantino brief should be disclosed to defence counsel in the MacDonald matter, notwithstanding that they had not yet had an opportunity to investigate the Fantino brief allegations.

Reference: Evidence of Smith, November 25, 2008, page 129, line 17 to page 130, line 20

1186. Smith requested a meeting with Crown Pelletier and Peter Griffiths at which time they would review the Fantino brief and decided "**where are we going to go on this**".

Reference: Evidence of Smith, November 25, 2008, page 131, lines 19 through 25

1187. The meeting requested by Smith occurred **April 21st, 1997**. It was preceded by a memo from Pelletier to Griffiths dated **April 2nd, 1997**.

Reference: Exhibit 228

1188. Smith also became aware that Dunlop attempted to deliver a number of binders to the Ministry of the Attorney General and to OCOPS on **April 7th, 1997**.

Reference: Evidence of Smith, November 25, 2008, page 140, line 22 to page 141, line 13

1189. Smith proceeded on the assumption that these materials were **"the same thing that Fantino got – we were getting stuff from Orillia, from the Cornwall Police, from**

CAS and then from London Police Force. I assumed that it was probably the same thing".

Reference: Evidence of Smith, November 25, 2008, page 141, lines 17 through 21

1190. Smith did not take it upon himself to determine if Dunlop was still doing his own "investigating" of historic abuse allegations.

Reference: Evidence of Smith, November 25, 2008, page 142, lines 5 through 10

1191. The Crown/OPP meeting occurred on **April 24th, 1997** and is referred to at bates 1054263 of Officer Smith's notes.

Reference: Exhibit 1803

1192. Murray MacDonald was present for part of that meeting, although he was a person accused of wrongdoing in the Fantino brief.

Reference: Evidence of Smith, November 25, 2008, page 143, lines 18 through 25

1193. The officers present at that meeting were Hall, Genier, Mike Fagan and Smith, and the Crowns present were Griffiths, Pelletier and MacDonald.

1194. There was a consensus at the meeting that all of the allegations in the Fantino brief would be investigated.

Reference: Evidence of Smith, November 25, 2008, page 145, lines 4 through 11

1195. At the time of this meeting the preliminary hearing in the first set of MacDonald charges was before the Court. There was a decision to ask for an adjournment of that preliminary hearing. This was the Crown's decision and Smith does not recall there being any discussion of possible consequences of delay in the MacDonald case.

Reference: Evidence of Smith, November 25, 2008, page 145, line 12 to page 146, line 25

1196. The outcome of the **April 24th, 1997** meeting was a letter dated **May 27th, 1997** written to Superintendent Edgar, Officer in Charge, Major Cases, OPP Headquarters from Peter Griffiths. Within that letter, the Crown requested the assignment of Detective Inspector Smith "**to investigate the Dunlop/Bourgeois brief**", the latter being a reference to the briefs which had been hand delivered by Dunlop to the Ministry of the Attorney General, the Solicitor General and Correctional Services.

Reference: Exhibit 2680

1197. On an operational basis, it was Detective Inspector Smith's understanding that the mandate of Project Truth overlapped entirely with the contents of Fantino brief: **"The mandate of Project Truth was the Fantino brief, what was contained in the Fantino brief ... that was the only thing I was going to investigate, what was in the Fantino brief**".

Reference: Evidence of Smith, November 25, 2008, page 32, lines 6 through 9

The Fantino Brief and Project Truth: A Reasonable Mandate?

1198. From the very outset, the police who were involved in Project Truth and the Senior Crowns Pelletier and Griffith had knowledge of the extensive role which Dunlop had played **prior to April of 1997** with alleged victims of historic sexual abuse. The Bourgeois letter (Exhibit 719) together with Exhibit 729 (which is the index to the Fantino brief) made it abundantly clear that Dunlop himself and his family had been the "investigators", and that they had procured statements (in many cases multiple statements) from David Silmser, Ron Leroux, C8, Gerry Renshaw, C15, C18, C19 and that they were alleging wrongdoing (or membership in the "**pedophile clan**") on the part of approximately 21 people, including the former Chief of Police, senior clerics, the Bishop himself, the local Crown Attorney Murray MacDonald, and others.

Reference: Exhibit 729

1199. Dunlop's role as "investigator" and the prospect of evidence contamination were therefore known from the outset of Project Truth; it was completely foreseeable that if he was not dealt with properly, difficulties would arise in prosecutions where he had involved himself.

1200. As to the integrity of the Project Truth investigation, it was clear from the outset that Dunlop's allegations of wrongdoing encompassed the local Crown. While Murray MacDonald's evidence was that his participation in the **April 24th, 1997** meeting was quite minimal, the fact that he was invited to that meeting at a time when he was going to be technically viewed as a "**suspect**" raises an interesting consideration: was it the case

that the other attendees at that meeting saw no realistic possibility that Murray could have been involved in the wrongdoing alleged by Dunlop in the Fantino brief, and hence felt comfortable with him being present? Did the persons receiving the Fantino brief feel that Dunlop had no credibility since he had made "outrageous" allegations of wrongdoing against his own Chief and Senior Officers in a multi-million dollar civil suit? Did they give no weight to the view that Murray MacDonald may have been complicit in wrongdoing because Dunlop was the source? Alternately, did the investigators and Crowns take the allegations against Murray seriously, but nonetheless were so lax on process as to allow a "suspect" to be present at their meeting?

1201. Certain key allegations from the Fantino brief had already been investigated and rejected by Tim Smith in **1994**. Smith investigated an alleged conspiracy between the Diocese and the CPS, and concluded that there was no evidence of such. If there was no conspiracy between two of the three conspirators alleged in the Fantino brief, then it is highly unlikely evidence would exist implicating a third alleged conspirator, the Crown. If there was to be an attempt to conduct a new **"from scratch**" investigation of conspiracy, would the exercise not have had more credibility had it been conducted by someone other than Tim Smith who had already concluded that there was no conspiracy?

1202. The "**pedophile ring**" allegation within the Fantino brief which became part of the investigatory mandate of Project Truth is problematic. As Pat Hall testified, the concept of a "**pedophile ring**" is vague and not particularly meaningful. There is no such offense in the *Criminal Code.* From an investigator's perspective, he felt that there would be no possible way of investigating a "**pedophile ring**" until one had at least two or more convicted pedophiles, in relation to whom one could investigate linkages. Hall's

evidence confirms that the "**pedophile ring**" concept was not realistically amenable to investigation. His exhibit demonstrating **"linkages**" (Exhibit 2697, see also Exhibit 2777) is byzantine in its complexity, however, it does not disclose any theory or any facts which could be investigated as to the significance of the linkages amongst people. Cornwall is **"tiny town**" to use Mr. Abell's phrase and the mere fact that people know one another is of no significance.

Reference: Evidence of Hall, December 2, 2008, pages 260 to 262

1203. When the Project Truth prosecutions are viewed alongside the non Project Truth historic sexual assault prosecutions (such as Lalonde) it is obvious that there are instances in which the same individual alleges abuse by different alleged perpetrators, some of whom have social and other relationships with one another. To use the most obvious example, Father Charles, Ken Seguin and Malcolm MacDonald all know one another on a social basis, and Malcolm acted as counsel for each of Charles and Ken. C5 was an alleged victim of both Malcolm and Father Charles, and charges were laid based upon his information against both. David Silmser is alleged to be a victim of Ken, Father Charles, and Marcel Lalonde. C8 (a complainant against Father Charles) is also a complainant against Marcel Lalonde. We know that Lalonde participated as a lay person in services conducted at Father Charles' church, and know that there is some photographic evidence that Charles and Marcel Lalonde were personally acquainted, based on the items seized under the Lalonde search warrant. C10 is an alleged victim of Malcolm and he also alleged abuse by Ken Seguin, Father Scott and Carl Allen (the latter of whom was

charged based on C10's information). Kevin Upper is an alleged victim of Father Charles and of Marcel Lalonde.

Reference: Exhibit 379, will say statement taken by Rene Desrosiers, October 20, 1998 re C10

Exhibit 2772

1204. We have also earlier referred in paragraph 440 to the allegations of C45, who alleges abuse by Lalonde, Barque, Father MacDonald and Seguin.

1205. Only one of the alleged perpetrators named in the preceding paragraph was ever convicted of sexual offences. It follows in accordance with Pat Hall's reasoning that there was no basis to investigate this group of men for having been part of a "**clan**" or "**ring**", since (with one exception) there was no proof that they had engaged in sexual offences.

Reference: Evidence of Pat Hall, December 8, 2008, pages 52 to 59

Evidence of Pat Hall, December 9, 2008, pages 93 to 96, line 8

1206. It is worthwhile to "**fast forward**" to the conclusion of the Project Truth conspiracy investigation. The conclusion of this investigation occurs in **August of 2001** when Crown McConnery reviews the nine-volume conspiracy brief and states as follows: "**I concur with your opinion (i.e. that of Hall) that charges not be laid in these six investigations, more particularly those six cases [include] ... the allegation of a conspiracy to obstruct justice."**

Reference: Exhibit 1140

1207. Lorne McConnery prepared Exhibit 2651, which is a extensive document analysing the investigators' conspiracy brief. As McConnery testified at the Inquiry, his sole focus in reviewing the conspiracy brief was to ascertain whether or not there was evidence to support the occurrence of a meeting at Stanley Island immediately prior to the Silmser settlement on **September 2nd**. Put another way, regardless of which precise individuals were involved in the conspiracy, the conspiracy rose or fell depending upon the availability of admissible and credible evidence about Stanley Island and the last weekend of **August 1993**. As the source of this evidence was Leroux, the "conspiracy" depended on one's view of Leroux's many statements and affidavits. It was clear to Crown McConnery in his analysis that the only thing "**new**" between the time Peter Griffiths gave his opinion on **December 21st, 1994** that there was no basis to a conspiracy charge (Exhibit 1148) and **August of 2001** was the Leroux affidavit material and the Leroux statements.

1208. Having reduced the conspiracy allegation to this point, McConnery supports the conclusion of the investigating officers that they do not have reasonable and probable grounds to believe that a conspiracy has occurred, because, as Pat Hall put it, "**he would have put his hand on a Bible re: anything Ron Leroux says, or have any of my men do that** ".

Reference: Evidence of Pat Hall, December, December 10, 2008, page 117, line 2 to page 119, line 16

Exhibit 3050

1209. At the end of the day, although Project Truth officers can rightfully claim that they created a nine volume brief pertaining to the conspiracy, there is much less to that statement than meets the eye. Crown McConnery's analysis makes this point it in a succinct manner:

> "**If Leroux was determined to be unreliable, then despite the thorough investigation of Project Truth investigators, the evidence is really no different than presented to Griffiths (in 1994). The theorizing and speculations of Perry Dunlop do not advance the case. Is there any reason to vary the opinion of Mr. Griffiths?**"
>
> **Reference**: Exhibit 2651, bates page 1018668

1210. To return to the "**pedophile clan**" component of the Project Truth mandate, notwithstanding that there were then no convicted pedophiles, hence no foundation for even commencing to investigate a "**pedophile clan**", Detective Inspector Smith made the following public statement in **April of 1999**:

> "**After investigating the case for five years, Smith is not convinced that there ever was a 'pedophile clan' in Cornwall quite like the one Dunlop and other people have talked about ... deviants who manipulated the system to hide their crimes. But he is certain that if there ever was such a group, it is no longer active ... "It is true that a number of the accused are Catholic, but there is no evidence of common victims. Only five of the accused to date know each other. In a town like Cornwall, everybody sort of knows everybody, so people tend to think the worst.**"
>
> **Reference**: Exhibit 754, bates pages 1147923 to 1147924, "OPP Defend Pedophile Inquiry", April 5th, 1999

1211. While Tim Smith's comments may have been intended simply to allay fears in the community, they are unfortunately erroneous. Clearly many victims knew one another and there was "**evidence of common victims**". Once the frame is expanded to include Lalonde, there were a significant number of alleged victims of the same perpetrator. To the extent Smith suggests an actual "**pedophile ring**" investigation, there was no such offense under the *Criminal Code* and, if Pat Hall is to be believed, no such free-standing investigation had occurred.

1212. Smith's public statements in **April of 1999** also conflict with OPP statements made when the first set of Project Truth charges were announced publicly in **July of 1998**. Exhibit 2516, the *Standard-Freeholder* article of Friday, **July 10th, 1998** announcing historic sexual assault charges against seven individuals quotes OPP Superintendent Fougere as follows:

> "**While a number of these people are linked to and directly associated to the Catholic church, a number of these people are also friends and have been friends since the time of their birth in this community and have professional or other links to each other that go beyond their linkage to the Catholic church**."

1213. These conflicting statements would have caused confusion. The local paper is read by local people who could reasonably be expected to know of the professional, personal and social relationships amongst the alleged perpetrators, as well as connections amongst alleged victims. On the face of it, it is not unreasonable to suppose that people who know one another might have acted jointly to abuse young people. To say (as Smith did) that there is "**no clan**" because only five accuseds know one another and there are no common victims is both factually incorrect and unsatisfying. The "**pedophile clan**" idea

resonated because there was in fact a group of men who were friends and about whom historical sexual abuse allegations were made by some of the same individuals.

1214. Although no witness has expressly acknowledged it, it appears that, having received the Fantino brief, neither the OPP nor the Crown saw any means of dealing with it other than to announce a full investigation of **all** of its allegations. The difficulty is that some of those allegations did not point to specific crimes or even to concepts that have a commonly-understood meaning - the "**pedophile ring**" allegation for example.

1215. On the conspiracy allegation, the public understanding of that allegation was substantially broader than the Stanley Island meeting. The public had already been exposed through the media to the idea that the settlement with Silmser was illegal and had resulted in one criminal charge (against Malcolm MacDonald) which had nothing to do with the Stanley Island meeting. Clearly the public remained concerned about the role of the other parties to that settlement and their knowledge and intent. Those concerns are not answered by refuting the occurrence of the Stanley Island meeting or determining that Ron Leroux is not credible. The narrow focus by the Crown on the Stanley Island element to the alleged conspiracy was not adequate.

1216. While Project Truth investigators conducted interviews of alleged abuse victims in a professional way, utilizing proper police procedures, following up on leads and searching for corroborative evidence, all in a logical manner, the same cannot be said for either the "**pedophile ring**" component of Project Truth or the conspiracy component.

1217. Firstly, a sceptical mind would consider that, since the OPP purported to have investigated those matters in **1994**, and concluded that there were no charges to be laid, it

was impossible for the same organization to come to a different conclusion based on a "**re-investigation**" of the same background facts, particularly when both exercises were under the direction of the same Detective Inspector, Tim Smith.

1218. Project Truth might have been viewed more positively it had analyzed those allegations at the outset with a view to determining whether they were capable of investigation and, if so, how they could be investigated. Both Crown and police should have been involved in this analysis.

1219. For allegations that did not relate directly to any *Criminal Code* offence (the "**pedophile ring"**) much more thinking needed to be done at the outset of the Project: what **was** the underlying investigable offence? What are its elements and could evidence possibly be obtained to prove those elements? Who were the suspects? Could we get evidence from alleged victims? For the "**conspiracy**" allegations, it is submitted that more work should have been done in the planning stage of Project Truth to determine what specific *Criminal Code* offences were suggested by these allegations, what suspects or persons of interest were associated with the allegations, how best to investigate each individual suspect or person of interest, and how to reason through to a coherent factual theory as to the conduct of the persons involved. The more fruitful area to focus upon here (given Leroux's impaired credibility) was the Silmser settlement.

1220. Since the investigating officers (legitimately it is suggested) had a negative assessment of Leroux's credibility given his numerous statements, his suggestibility and his involvement in the Dunlop litigation, perhaps it simply would have been best to acknowledge from the outset that there was no credible evidence of the Stanley Island meeting conspiracy and not to have **"**gone through the motions" when the result was a

foregone conclusion. This wouldn't however have precluded a re-examination of the Silmser settlement and related events.

Project Truth's Dealings with Dunlop

1221. Very early in the organizational phase of Project Truth, Inspector Smith met with his counterpart officers at the CPS. On **June 11th, 1997** Smith attended a meeting with Chief Repa and Inspector Trew (see notes of Inspector Trew, Exhibit 733, **June 11th** at 11:55 hours). Trew's notes record that "**any information received by the Dunlops was to be turned over to Inspector Smith. If Constable Dunlop went to any court proceedings related to these cases, that he was to act accordingly and not to make a scene against the accused person**."

Reference: Evidence of Rick Trew, April 28, 2008, page 210, line 13 to page 211, line 19

1222. Dunlop was called in, Smith spoke to Dunlop in the presence of Trew and the above points were made to Dunlop by Inspector Smith.

Reference: Evidence of Rick Trew, April 28, 20081, page 211, lines 4 through 12

1223. Trew's notes also reflected that Dunlop was told not to speak to the media until there was a conclusion to the cases.

Reference: Evidence of Rick Trew, April 28, 2008, page 213

Exhibit 733, bates page 7053356

1224. Since Smith had no jurisdiction over Dunlop, there was no basis for Smith to issue any orders to Dunlop along these lines.

Reference: Evidence of Rick Trew, April 28, 2008, page 213, lines 18 through 21

1225. Trew's notes indicate that Dunlop agreed with these requests, and, as a police officer, he understood that he should not be making a scene in court proceedings.

Reference: Evidence of Rick Trew, April 28, 2008 1, page 213, line 22 to page 214, line 7

1226. On **August 7th, 1997** a meeting was held in Trew's office to introduce Detective Sergeant Pat Hall. The meeting also focussed on "**disclosure by Constable Dunlop and speaking to the media"**.

Reference: Exhibit 733, bates page 70533577

1227. At this point, there was a suggestion that the Dunlop family was speaking with the media but there was no direct evidence of such.

Reference: Evidence of Rick Trew, April 28, 2008, page 215, lines 14 through 21

1228. The discussion that day notes that "**Constable Dunlop was strongly advised not to comment on any criminal cases that Inspector Smith and his team are working on because this could possibly jeopardize these cases**".

Reference: Evidence of Rick Trew, April 28, 2008, page 215

1229. On **August 7th, 1997**, a memo was issued to Dunlop telling him not to speak to the media. This was considered a direct order.

Reference: Evidence of Rick Trew, April 28, 2008, page 215, lines 5 through 10

Exhibit 1530

1230. In the **August 7th** meeting Dunlop claimed that "**there were victims that wouldn't come forward unless he was involved with their case**"**.**

Reference: Exhibit 733, bates page 7053358

1231. The response to this from Smith was that all efforts should be made by Dunlop to direct such people to the proper authorities (i.e. Project Truth) and that Dunlop "**could not be involved with taking statements**".

Reference: Evidence of Rick Trew, April 28, 20081, pages 218 and 219

1232. On **August 7th, 1997**, Dunlop was requested to give his information to Inspector Smith before **August 15th.**

Reference: Evidence of Rick Trew, April 28, 2008, page 219, lines 9 through 14

1233. Trew stated in his evidence that the message to Dunlop was crystal clear; "**whether that's two pieces of paper or 20 pieces of paper**" he had to disclose it all to the OPP.

Reference: Evidence of Rick Trew, April 28, 2008, page 220, lines 6 through 10

1234. The climate between the CPS and Dunlop at this point must be assessed in light of the events which had occurred: at that time the CPS was a defendant in a $85 million law suit which was also brought against a number of named individuals, and in which Dunlop was the plaintiff. The law suit alleged serious criminal wrongdoing by those senior officers and that police service.

Reference: Evidence of Rick Trew, April 28, 2008, pages 221 and 222

1235. From Trew's perspective, the fact of Dunlop's civil suit against members of his own force and the allegations made in that suit rendered it absolutely impossible for the CPS to involve Dunlop in an official capacity in any historic sexual abuse investigations.

Reference: Evidence of Rick Trew, April 28, 2008, pages 257 and 258

1236. Notwithstanding the civil lawsuit, CPS seemed prepared to rely upon Dunlop's status as a police officer and his knowledge about disclosure obligations to ensure proper conduct by Dunlop: "**I'm speaking with the officer. He is a member of the Cornwall Police Service. He fully realizes he's a police officer**". While this is true, in the circumstances, it wasn't enough.

Reference: Evidence of Rick Trew, April 28, 2008, page 222, lines 16 through 22

1237. On **September 23rd, 1997** (roughly six weeks after the **August 15th** deadline which had been imposed on Dunlop for delivery of his material to Pat Hall), Trew received a phone call from Inspector Smith who explained that Dunlop's notes had not been turned over.

Reference: Evidence of Rick Trew, April 28, 2008, pages 224 and 225

1238. Trew had simply presumed that Dunlop had complied with the earlier order. Having learned that the order had been disobeyed, Trew and the other CPS Senior Officers ought reasonably to have realized that giving orders and patiently awaiting Dunlop's compliance was not going to be effective.

1239. Upon learning of Dunlop's failure, Trew resolved to prepare a letter to Dunlop ordering him to disclose the information to Inspector Smith.

Reference: Exhibit 733, bates page 7053361

1240. On **September 26th**, Trew in the presence of acting Sergeant Aikman, gave Dunlop a written order to disclose. Exhibit 731 is that order, and it required Dunlop to deliver his material prior to **October 3rd, 1997**. This day also passed without compliance by Dunlop.

Reference: Exhibit 733, bates 7053362

Evidence of Rick Trew, April 28, 2008, page 228

1241. Although solicitor and client privilege was raised by Bourgeois by way of explanation for Dunlop's failure to provide the materials, at no time did Bourgeois or Dunlop create a list of documents that they did not intend to produce on the basis of privilege.

Reference: Evidence of Rick Trew, April 28, 2008, page 231, lines 5 through 9

1242. Trew attempted to explain why no disciplinary steps were taken against Dunlop as a result of his failure to comply with these orders. Trew acknowledged that the issue of disciplining Dunlop was a concern of himself and the Chief "**all the way through**".

Reference: Evidence of Rick Trew, April 28, 2008, page 231, lines 20 through 25

1243. Trew's reasoning was that Dunlop could always be charged after the fact, "**but for now let's try and get this**" [disclosure].

Reference: Evidence of Rick Trew, April 28, 2008, page 232, lines 17 through 25

1244. Trew acknowledged that after Dunlop's failure to abide by the **August 15th, 1997** deadline, he and the Chief did discuss disciplining Dunlop.

Reference: Evidence of Rick Trew, April 28, 2008, page 233, lines 11 through 15

1245. With respect to the material that Dunlop did disclose to the OPP, Trew did not see that material, nor was he aware that anyone else at the CPS had seen the material during the timeframe that disclosure was being ordered.

Reference: Evidence of Rick Trew, April 28, 20081, page 234, lines 20 through 25

1246. Trew's notes indicate that Dunlop stated that he had turned over his disclosure to Hall on **October 10th, 1997** at 11:00 hours. Hall confirmed the receipt of more material from Dunlop on that date.

Reference: Evidence of Rick Trew, April 28, 2008, page 236, lines 3 through 21

1247. As to Hall's dealings with Dunlop, all such meetings and phone contacts are recorded in Exhibit 1544. Exhibit 1544 discloses that on **August 15th, 1997** (the due date for the delivery of Dunlop's notes and statements to the OPP), Dunlop called Pat Hall and made an appointment to meet at his (Dunlop) residence.

1248. Hall went to Dunlop's home on **August 15th** and Dunlop gave him a typed list of 14 victims' names and 2 other names. He provided a further list of 16 names of people who may have information or be witnesses to sexual acts. Dunlop advised that he was going on a two-week holiday. Some of the "names" on his list were just initials and he asked Hall to let him (Dunlop) contact those people first. He also apparently said to Hall that he did not have any copies of his notes available.

Reference: Exhibit 1544, bates page 1054582

1249. On **September 23rd,** Hall contacted Dunlop by phone about his notes and the latter stated that his lawyer advised him not to provide them due to the civil litigation.

Reference: Exhibit 1544, bates page 1054583

1250. On **October 10th, 1997**, Hall met with Dunlop and received a yellow bound binder with nine tabs and three audio cassettes of Robert Renshaw, Gerry Renshaw and Ron Leroux.

1251. On **December 8th, 1997** Hall contacted Dunlop as the Robert Renshaw tape side two was blank. Dunlop said that Bourgeois had looked after the tapes.

1252. Hall next contacted Dunlop on **April 29th, 1998** as a result of having received a disclosure request from defence counsel representing Marcel Lalonde. Dunlop claimed that the OPP was in possession of all his notes, but very little had been provided. Dunlop said that he would check his notes again and would advise if there was anything further.

Reference: Exhibit 1544, bates page 1054585

1253. On **July 23rd, 1998** Trew, Smith and Hall met with Dunlop and discussed disclosure issues. Their purpose was to ascertain from Dunlop if they had received all of his notes, and tapes regarding their investigations. Hall requested a memo from Dunlop confirming that he had produced everything to the OPP.

Reference: Exhibit 1544, bates page 1054586

1254. As of **October 1997**, there was no question in Hall's mind that there was information in Dunlop's possession that he had not provided, but that Dunlop was not disclosing what precisely that was.

Reference: Evidence of Hall, December 3, 2008, page 112, lines 6 through 10

1255. Amongst other things, Bourgeois had taken the position that "**materials that fall under the solicitor and client privilege**" were not to be produced by Dunlop to the OPP.

Reference: Exhibit 732

1256. Hall also observed that one could see on the videotape that Dunlop was doing photo line-ups with Leroux, however the photo line-up materials had not been produced, nor any notes taken by Dunlop during the session.

Reference: Evidence of Hall, December 3, 2008, pages 111 and 112

1257. Hall also confirmed that no effort was made to obtain a list of the so-called solicitor and client privileged documents.

Reference: Evidence of Hall, December 3, 2008, pages 112 and 113

1258. Hall's objective was to obtain confirmation that Dunlop had indeed provided all material in his possession relevant to any of the Project Truth cases.

1259. As these disclosure problems continued throughout **1997** and **1998**, the OPP did not, of its own initiative, seek any advice from the Crown or any other potential resource as to how to either procure Dunlop's cooperation or otherwise gain possession of his investigative materials. At a minimum, it should have been readily possible to bring the "solicitor/client privilege" claim before the Court for determination and the appropriate disclosure order.

Reference: Evidence of Hall, December 3, 2008, pages 115 to 116

1260. One OPP initiative was to discuss with Trew in **July** or **August of 1998** the fact that the OPP wanted the CPS to do an investigation on Dunlop. Trew consulted with his chief and returned with the position that CPS needed a written request from the OPP before it would embark on such an investigation. The OPP in turn consulted with Orillia headquarters and decided that it would not issue a request in writing because that might be construed as the OPP doing an investigation on Dunlop which **"we didn't want to do**. **There was a period of time when I don't think they really knew what to do with him quite frankly".**

Reference: Evidence of Hall, December 3, 2008, page 117, lines 3 through 15

1261. While it is a fair comment on Hall's part that the CPS "**didn't know what to do**" with Dunlop, it must be said neither did the OPP. It is acknowledged that the OPP had no direct ability to issue orders to Dunlop as he was not a member of their service. However, it was the OPP alone that was tasked with the disclosure responsibility in the Project Truth cases. Dunlop was the impediment to being able to make full disclosure to

the defence in the Project Truth cases, as he was the only person who was in possession of information and documents which had been withheld from the OPP. He also continued to have contact with complainants and witnesses while these prosecutions were before the Courts, thereby creating further discloseable events.

1262. As at **1998** the CPS had effectively been **"at war**" with Dunlop for five years, commencing in late **September 1993** and rising to a crescendo with the service of his civil law suit in **July 1996**. In hindsight, as of **1998** if not **1997** some form of legal process against Dunlop seemed to be necessary to secure his disclosure, and the OPP's decision not to make a written request that he be investigated was a bad judgment call. The only reason he declined to do so according to Hall was the perceived "**optics**", because the OPP didn't want to be characterized as going after Dunlop. Surely the preservation of the prosecutions represented a higher and more important objective than avoiding an "**image**" problem for the OPP.

Reference: Evidence of Hall, December 3, 2008, page 119, lines 5 through 7

1263. An example of the "catch 22" that existed is as follows: although it was recognized that a search warrant might be a reasonable strategy to obtain Dunlop's documents, the problem was that the OPP couldn't identify what they didn't have for the purpose of preparing the information to obtain the warrant because they never asked Dunlop to give them a list of the materials that he claimed his solicitor had advised him to withhold on the basis of privilege.

Reference: Evidence of Hall, December 3, 2008, page 120, lines 12 through 23

1264. The other reason that Hall discounted the search warrant strategy was because on one occasion Dunlop brought banker's boxes over that had been stored at his neighbour's home and Dunlop had also stated that material was with his lawyer in Newmarket. Again, with respect, this appears like a hollow excuse for inaction. On Hall's own evidence he at least knew of two locations where materials were stored by Dunlop. Why could he not simply ask Dunlop where his materials were stored, if not at his home, and rely upon that response in swearing his information to obtain a search warrant?

1265. Throughout **1997 and 1998** it is obvious that both forces know that Dunlop has not made full disclosure, indeed Bourgeois' own letter (Exhibit 732) so confirms. Given the level of seniority around the table on the policing side and given the involvement of the Senior Regional Crown, it is surprising that no one could devise a strategy to deal with Dunlop apart from issuing orders and hoping for his compliance. Both forces are in a "non aggression" mode with Dunlop, hoping that by appeasing him, he will cooperate, even though they know that approach hasn't worked.

Reference: Evidence of Hall, December 3, 2008, page 120, lines 14 through 23

1266. It must be said that this passive attitude probably arises because the Dunlops have won the media battle for local hearts and minds. The CPS had been characterized in the media as trying to stifle the "whistleblower" so as to prevent the public learning about its incompetence and corruption in relation to the Silmser complaint. This message was only reinforced by the unsuccessful PSA charges which were prosecuted against Dunlop and his exoneration by the Board of Inquiry and the Divisional Court.

1267. By the time the OPP has to address disclosure matters, it too has been tarred publically by Garry Guzzo with the brush of incompetence and possible corruption. The last thing it wants is to pick a fight and lose it with Cst. Dunlop.

1268. While the passivity of both forces is understandable, it was not the right approach.

1269. Prior to the **July 23rd, 1998** meeting between Trew, Smith, Hall and Dunlop to discuss disclosure, Dunlop had been in contact with the mother of Leduc complainant C16 by telephone. This occurred on **June 15th, 1998** and OPP officer Joe Dupuis was in C16's mother's home when the telephone call occurred. He noted it in his duty book and informed both Smith and Hall about this event, within the next one or two days. Neither Smith nor Hall made notes of this information in their respective duty books.

1270. On **July 23rd, 1998**, Smith and Hall were again meeting with Dunlop and trying to ascertain from him if they had received all of his notes, tapes and other materials relevant to their investigations. On this occasion, they learned that there were two volumes of materials which they had not obtained. They asked for a memo from Dunlop confirming that he had provided everything in his possession to them. On **July 31st, 1998** Hall's notes indicate that Trew called stating that Dunlop had materials available to be picked up, and that Dunlop had declined to complete the memorandum on the advice of his lawyer. Trew indicated that Dunlop wanted "**us**" to prepare a memo and that he would sign it.

Reference: Exhibit 1544, bates page 1054586

1271. On **July 31st, 1998** at 14:00 hours Pat Hall attended CPS and picked up two black binders volumes 1 and 2 and two plastic bound binders volumes 3 and 4, a copy of the memo to

Fantino, a copy of the memo to Runciman and certain other items. At Dunlop's request, Hall signed a document acknowledging that he had received those materials from Dunlop on that date and that he had not previously been in possession of the two volumes.

Reference: Exhibit 1544, bates page 1054586
Exhibit 1478

1272. On **August 11th,** Hall followed up with Dunlop, requesting the signed memo acknowledging that Dunlop had provided all his materials to the OPP. Hall attended on Dunlop and provided him with a memo to sign. Dunlop stated that he wanted to check with his lawyer first. Hall left the memo with Dunlop on the basis that he would get back to Hall after having contacted his lawyer.

Reference: Exhibit 2815 is the memo that Hall requested be signed

1273. Dunlop objected to one aspect of the wording of Exhibit 2815 and, as a result of his objection, Hall removed the word "**civil**" from the phrase "**criminal and civil matters**".

Reference: Evidence of Hall, December 4, 2008, page 49, lines 3 through 14

1274. On **September 17th, 1998** Dunlop was given a revised memo to sign confirming that he had made complete disclosure. He indicated to Hall that he agreed with its contents but needed to pass it by his lawyer. He said that he would have the memo signed by next Wednesday.

Reference: Exhibit 1544, bates page 1054587

1275. On **October 1st, 1998** there was a telephone conversation between Dunlop and Hall at 15:15 hours. They arranged to meet at 15:45 hours at the CPS Headquarters. Hall asked if Dunlop would sign the memo on disclosure and he replied "**absolutely**".

Reference: Exhibit 1544, bates page 1054588

1276. At that time, Hall met Dunlop at the front counter of the CPS and received a videotape labelled "Ron Leroux". Hall produced the memo for disclosure and asked Dunlop to sign, and Dunlop said he was advised not to sign it.

Reference: Exhibit 1544 bates page 1054588
Exhibit 2816

1277. It follows that from and after **October 1998** OPP should have assumed that there was outstanding disclosure from Dunlop that he had not provided and governed themselves accordingly. At a minimum, the OPP should have been informing all Crowns (including in *R. v. Lalonde*) and they should have been requesting Crown advice.

1278. The next incident between Hall and Dunlop occurred on **November 16th, 1998** and according to Hall, this caused his relationship with Dunlop to change "**drastically**".

Reference: Evidence of Hall, December 4, 2008, page 159, lines 2 and 3

1279. At this time charges were proceeding on the information of Claude Marleau against a number of accused, and Crown Godin was prosecuting those cases. Hall had a phone call

with Godin concerning a defence disclosure request in one of the Marleau cases immediately before he made a phone call to Dunlop on the morning of **November 16th, 1998** at 10:05 a.m.

1280. Hall was told by Helen Dunlop that Perry was asleep, and Hall informed her that he needed to know if she had any notes on her dealings with Claude Marleau. This was the disclosure request that had been made by defence counsel.

Reference: Evidence of Hall, December 4, 2008, page 162

1281. The above was explained to Helen Dunlop, who indicated that she thought there was a copy of a **October 3rd, 1997** letter which she had sent to Marleau. Hall asked her to check with Perry to determine whether he had any notes or documents relating to Marleau's contact with him.

1282. Five minutes later, Officer Dupuis contacted Marleau and Marleau mentioned that he had just that minute received a call from Perry Dunlop and he had been asked to fax to Dunlop the documents that the OPP had requested in Hall's conversation with Helen.

Reference: Exhibit 1544, bates pages 1054588 and 1054589

1283. Upon learning this information Hall called the Dunlops again at 10:35 a.m. and when Helen answered, he insisted upon speaking with Perry. Perry came to the telephone and "**really didn't have any explanation for contacting Marleau**". Perry suggested that his wife was dealing with Marleau.

Reference: Exhibit 1544, bates pages 1054588 and 1054589

1284. Dunlop said "**put me on the stand**" as though his **"disclosure**" would occur in that fashion. Hall indicated that if they could not satisfy disclosure issues, the cases would never come to trial. At the conclusion of this conversation, Dunlop stated "**Don't call me anymore, call my lawyer**".

Reference: Exhibit 1544, bates page 1054588 and 1054589

1285. Hall spoke to Crown Godin, explained the Dunlop disclosure problem, and outlined it to him in a memo on **November 17th, 1998**.

Reference: Exhibit 1544, bates page 1054590

Exhibit 2839, Hall letter to Godin

1286. A meeting took place between Hall and the Dunlops on **January 6th, 1999** which was convened to deal with the death threat investigation but led to a broader discussions of other subjects. According to Hall's notes, "**Helen wanted to know why people in this building are not being arrested for obstructing justice, referring to Cornwall Police Service. She wanted to know if anyone was actually investigating that**". It was explained that the sexual assault cases had to take priority and the obstruct justice allegation would be looked into later. As to the outstanding allegations contained in the Fantino brief, she asked "**why we are not arresting these pedophiles when we had statements from victims**" and Hall advised that all allegations would be addressed before the completion of the investigation. The Dunlops indicated "**that they would be**

pursuing matters further through their lawyer. Perry said we can't wait that long, referring to the year 2000".

Reference: Exhibit 1544, bates page 1054591

1287. Upon an earlier occasion when he was dealing with Helen Dunlop about the death threats, she questioned whether there would be media releases on Charles or Malcolm MacDonald. "**I told her that we cannot release anything until such time as charges are laid. She wanted to know if anything would be out by September**". This statement was made in **April of 1998**.

1288. The Dunlops' curiosity about the timing of the "death threat investigation" and the timing of any Project Truth charges based upon the Fantino brief is significant, as it suggests they see a connection between these police investigations and the success of their civil suit. Had charges been brought based upon the allegations in their civil suit, it seems clear that the Dunlops felt that it would benefit them in the suit. Clearly if the Dunlops thought this way, the thought must also have occurred to the leaders of Project Truth.

1289. One can't help but wonder about the extent to which the Project Truth officers resented investigating those parts of their mandate (pedophile ring and conspiracy) which emanated from Dunlop's statement of claim. Did they see themselves as being used as Dunlop's personal investigators, to the extent their findings supported his civil allegations?

1290. In **January or February of 1999** the Dunlops were involved in presentations to the media, including CBC Radio and Television. This occurred notwithstanding the **August 7th, 1997** order.

Reference: Exhibit 1544, bates page 1054592

1291. The CPS issued a final order to Dunlop on **January 10th, 2000**.

Reference: Exhibit 1330

1292. Dunlop's response to this order was to prepare a lengthy "will say" document outlining his involvement in Project Truth investigation matters and annexing his documents. The evidence is that Dunlop was relieved of ordinary duties for an approximately four month period at the CPS to enable him to work on this will say. Dunlop worked on the will say from in or about **January 2000** to **April 2000**.

1293. At the conclusion of the exercise, Dunlop delivered a will say document with documents attached to it, and nine boxes of materials in purported compliance with the CPS **January 2000** order. These materials were provided to the OPP.

Reference: Exhibit 579, Dunlop statement

1294. The Dunlop will say was relevant to the following prosecutions before the courts: *R. v. MacDonald, R. v. Leduc, R. v. Lalonde, R. v. Deslauriers, R. v. Latour* and *R. v. Lawrence.*

Reference: Exhibit 579
Exhibit 2772

1295. The nine Dunlop boxes were, at Crown Hallett's insistence, delivered to the OPP Project Truth offices in Cornwall. Pat Hall disagreed with this disposition of the boxes. Joe

Dupuis understood that Hallett wanted the boxes at the OPP office so that she could review them there.

The Failure of the Two Key Project Truth Prosecutions

1296. As referred to previously, the first set of charges were laid against Father Charles MacDonald on or about **March 6th, 1996**. The investigating officer on those first charges was Detective Mike Fagan of the OPP, and his Information is Exhibit 2254.

1297. The complainants in the first set of charges are David Silmser, John MacDonald and C3.

1298. The preliminary hearing on the first set of MacDonald charges commenced on or about **February 24th, 1997**. That preliminary hearing was adjourned as a result of a new complainant (C8) about whom there had been a press story in **February of 1997**.

1299. The preliminary hearing on the first set of charges was resumed in **September of 1997**, just as the Project Truth investigation work was starting in earnest. The Project Truth investigator who worked on the MacDonald charges, Joe Dupuis, was not aware of the history of the first set of charges nor was he advised of the approximately six month delay in completing the preliminary hearing on the first set of MacDonald charges.

1300. Dupuis' evidence was that essentially "**he did his job and Mike Fagan did his"** and the two of them did not communicate about one another's charges.

Reference: Evidence of Joe Dupuis, November 19, 2008, page 41, lines 21 through 24

1301. Father MacDonald was committed to trial in the first set of charges on **October 24th, 1997** (Exhibit 2257). Those charges were made returnable in Assignment Court on **November 5th, 1997**.

Reference: Exhibit 2254, bates page 1044049

1302. In the meantime, Joe Dupuis commenced dealing with five new complainants against Father Charles.

Reference: Exhibit 2609, bates page 7131138

1303. He delivered a Crown brief to Crown Pelletier on or about **January 6th, 1998**.

Reference: Evidence of Joe Dupuis, November 19, 2008, page 53, lines 5 through 9

1304. The information on the second set of charges was sworn on **January 26th, 1998**.

Reference: Exhibit 2258

1305. The preliminary hearing on the second set of charges was set for **March 1999**. On **May 3rd, 1999** Father Charles was committed to stand trial on the second set of charges and the matter was in Assignment Court on **May 19th, 1999**. There was no formal waiver of the accused's 11 (b) rights at this or at any stage of the proceedings in *R. v. MacDonald*.

Reference: Exhibit 2258

1306. As the Crowns involved all testified (initially Crown Pelletier and ultimately Crown McConnery), it was always their desire to have all charges against Father MacDonald heard and dealt with by the Court at the same time and within the same trial. While both Crowns recognized the fact that an unreasonable delay could be fatal to these charges (as in any case) it appears that the predominating view always was that all charges should be joined.

1307. In late **April, 1999** Joe Dupuis was informed that Crown Hallett was taking over the MacDonald prosecution from Crown Pelletier, although he was not provided with the reasons behind the transition.

Reference: Exhibit 2611, bates page 7131475

1308. A judicial pre-trial occurred on **September 7th, 1999,** attended by Hallett and Pelletier; and on **September 10th, 1999** an indictment was signed by Crown Hallett in which both sets of charges and all counts were joined.

Reference: Exhibit 2261

1309. The Crown withdrew the other indictments, and a trial date was established for all charges in Ottawa the week of **May 1st, 2000**. On **October 19th 1999,** a trial date was set on consent on **May 28th, 2001**.

Reference: Exhibit 2261

1310. On **April 25th, 2001** the trial date was adjourned to **March 18th, 2002** for five weeks. The endorsement indicated that 11 (b) was "**not waived and left to the determination of trial judge**",

Reference: Exhibit 2261, bates page 1044045

1311. Between Father Charles' committal on the second set of charges and the ultimate trial date, a third set of charges were laid against him based upon the information of C2. C2 was first referred to Joe Dupuis in **January 2000** and Officer Dupuis interviewed him at or about that time.

Reference: Evidence of Dupuis, November 20, 2008, pages 11 and 12

Exhibit 2612, bates page 7131707

1312. C2 had been in contact with Perry Dunlop **two years prior to January 2000**, however Dunlop had not disclosed C2 as a potential victim of Father Charles to the OPP and C2 himself had not initiated contact with the OPP prior.

Reference: Evidence of Joe Dupuis, January 20, 2008, page 11, line 6 to page 14, line 3

1313. Joe Dupuis swore an Information in relation to C2 on **April 10th, 2000**. A preliminary inquiry occurred and Father Charles was ordered to stand trial upon this charge on **August 30th, 2000**.

Reference: Exhibit 2262

1314. On or about **October 18th, 2000** a further indictment was prepared, containing all three sets of charges against Father Charles MacDonald.

Reference: Exhibit 2264

1315. The previously scheduled trial in **May 2000** was adjourned to accommodate the new charges laid on the information of C2 and the preliminary hearing on those charges.

1316. The **May 28th, 2001** trial date on the combined charges was adjourned by the Court on **April 25th, 2001** to **March 18th, 2002**. At the time of that adjournment Crown Hallett had very recently been removed as the responsible Crown in *R. v. MacDonald* and Lorne McConnery had agreed to assume that role, but had yet to receive the materials and had therefore yet to comprehend the scope of the case.

Reference: Evidence of McConnery, January 13, 2009, page 11, line 1 to page 12, line 4

Exhibit 3042, notes May 3/01 to July 9/01

Exhibit 2261, bates page 1044045

1317. Although, as canvassed in the evidence of McConnery, the **March 18th, 2002** date was pushed back by several weeks to the end of **April, 2002**, that period of delay was not material in the result. By **April 2002** the defence had brought an application to stay the MacDonald charges based upon delay, and on **May 13th, 2002** Mr. Justice Chilcott granted that application.

Reference: Exhibit 227

1318. For his part, Dupuis acknowledged that the Constables working on Project Truth were frustrated by the delay in *MacDonald* and amongst themselves discussed their feeling that the case was "**going too slow**". These thoughts were not reflected back to the Crown however as, in Officer Dupuis' words "**the Crown does its job and we do ours**".

Reference: Evidence of Dupuis, November 20, 2008, page 22, line 21 to page 23, line 3

1319. In granting the defence's stay application, the following were the key findings of Mr. Justice Chilcott pertinent to the subject matter of this Inquiry:

(a) With respect to the first set of charges, the time period **March 26th, 1996** to **October 24th, 1997** (the date of the commencement of the trial) was "**not the fault of anyone or fatal to the prosecution**".

Reference: Exhibit C627, bates page 1012088

Exhibit 227, bates page 1077169

(b) As to the second set of charges, the timeframe between laying the charges on **January 26th, 1998** and the pre-trial hearing which was scheduled in **September of 1999** after a committal in **May 1999** was also innocuous: "**there is nothing in this period that is unnecessarily delaying the proceedings in my view**";

Reference: Exhibit C624, bates page 1012088

Exhibit 227, bates page 1077169

(c) With respect to the original trial date of **May 1st, 2000**, had the trial proceeded at that time, the second set of charges "**although in excess of the suggested guidelines, ... [were not] excessively in violation**";

Reference: Exhibit C627, bates page 2089
Exhibit 227, bates page 1077170

(d) Again, in reference to the scheduled **May 1st, 2000** trial date, the first set of charges would have been four years and two months old, and "**the delay was well in excess of the guidelines. I must conclude that the Crown was aware at the time that the trial date was set ... of a looming risk that a Section 11 (b) application will be made";**

Reference: Exhibit C627, bates page 2089

(e) By **April 18th, 2000**, charges were in the process of being laid in relation to C2, the Crown advised the defence that Dunlop had just turned over nine boxes of material, and that he was under investigation for perjury, and that he had provided a 110 page will say statement. "**As a result of this, the trial date of May 1st, 2000 was vacated and a new date set for May 28th, 2001**";

Reference: Exhibit C627, bates page 2089

(f) The defence motion to adjourn brought on **April 25th, 2001** as a result of circumstances pertaining to counsel's availability was met with a Crown refusal to consent to the adjournment unless the accused waived his rights under Section

11 (b) of the *Charter*: "**In my view that was an unreasonable request of the Crown"**;

Reference: Exhibit C627, bates page 2092

(g) The adjournment granted at that time was to **March 18th, 2002** which subsequently became **April 29th, 2002** because of the non-availability of a judge;

Reference: Exhibit C627, bates page 2093

1320. By the time that the matter was heard, the first set of charges was roughly six years old and the second set of charges roughly four years old; the C2 charges had been withdrawn.

1321. In those circumstances, Chilcott found that

> "**the Crown should have proceeded with the first set of charges and set a trial date as soon as possible after the October 24th, 1997 committal for trial. ... With respect to the second set of charges, it might seem, at first blush, reasonable and desirable to try all the charges together. However, the reasonableness aspect should have been superseded by the fear of an application for the relief as provided in Section 11 (b) of the *Charter*";**
>
> **Reference**: Exhibit C627, bates page 1012096

> "**... Again, I cannot fathom that a Section 11(b) concern could not have been a dominant consideration or factor in every decision that the Crown was making at that point, even if they had not considered it earlier, as pointed out above".** [This being a reference to the laying of the C2 charges in 2000].
>
> **Reference**: Exhibit C627, bates page 1012097

1322. As to the other reasons for delay,

> "**In the Court's opinion, the greatest contributor to the delay in this matter was Mr. Dunlop. ... There were oral and written instructions that he was ordered to comply with. He refused to provide the statements and documentation until he had seriously imperilled this prosecution and it was too late to be salvaged. ... Now it is clear that Dunlop was trusted at the time and that was a mistake. Mr. Dunlop was the cause of a large part of the delay."**
>
> **Reference**: Exhibit C627, bates pages 1012102 to 1012103
>
> **"Further: ... the Crown and the police were aware of Dunlop's procrastination and deception and his reluctance to provide the material."**
>
> **Reference**: Exhibit C627, bates page 1012104

1323. In the end analysis, the Crown's "joinder at all costs" mindset seems to have been the prevailing weakness in MAG's conduct of the MacDonald prosecution. The reason for this mindset is easy to understand and is reflected in the Crown opinion on the first set of charges: the two additional complainants corroborated Silmser, and all three allegations reinforced one another as they involved similarities in behaviour, age, location and other characteristics of the offense.

> **Reference**: Exhibit 394

1324. As has been mentioned before, the difficulty in proving historic allegations lies in the reality that memory fades over time and, given the criminal burden of proof, complainants can easily fail to give evidence that rises to proof beyond reasonable doubt.

This is no doubt why Crowns are attracted to the use of similar fact witnesses and multiple complainants in historic cases.

1325. The lesson learned from Chilcott J.'s reasons is that the desire to bolster the evidence by joining charges can't be the controlling strategy when the oldest charges start to exceed the delay "guidelines". At that point the s. 11(b) *Charter Right* to trial within a reasonable time must be the paramount consideration.

1326. Moving to the Leduc prosecution, the Project Truth investigator responsible for this matter was Joe Dupuis; he investigated and swore an Information against Jacques Leduc on **July 17th, 1998**, alleging sexual offences against C16 and C17.

Reference: Exhibit 3174

1327. Stuart Labelle was also a person of interest in the Leduc investigation, as it appeared that he had also been abused by Leduc but was reluctant to become involved in the investigation. Project Truth Officers attended upon him twice in an effort to secure his cooperation, but without success. On or about **November 24th, 1998** Crown Hallett attended with the Project Truth officers on Labelle and again attempted to persuade him to cooperate with the investigation. Labelle, on that occasion, did say that he would make a statement. He was taken to the Project Truth offices and gave a videotaped statement that same day, **November 24th, 1998.**

Reference: Exhibit 2377

1328. As this was occurring, a continuing pre-trial conference had been scheduled for **November 23rd, 1999** and an Assignment Court appearance was set for **November 25th, 1998** on the first set of Leduc charges.

Reference: Exhibit 781, bates page 1066036, Reasons for Decision of Mr. Justice Plantana,

1329. Although the cooperation of Labelle had just been obtained and it was foreseeable, if not certain, that further charges would be laid, Crown counsel who attended in Court on **November 25th** did not inform the defence that new disclosure was forthcoming in relation to a new complainant and that additional charges would likely be laid, or that the Crown had further witnesses to call at the Preliminary Inquiry.

Reference: Exhibit 781, bates page 6037

1330. The Preliminary Inquiry on the first two Leduc charges had been scheduled for **April 8th, 1999.** On **March 9th, 1998** the Crown advised the defence for the first time that further charges would be laid and that a new volume of disclosure was forthcoming. The Crown nonetheless wished to proceed with the preliminary hearing scheduled for **April 8th, 1999**.

Reference: Exhibit 781, bates page 1066037

1331. On or about **March 11th, 1999** Leduc surrendered into custody on the new charge and a replacement Information was sworn containing the four new charges relative to Labelle.

Reference: Exhibit 781, bates page 1066037

1332. Further disclosure was made by the Crown on **March 16th, 1999** which contained material regarding Labelle and also the original complaint of C16 and C17. Much of that material had been in the possession of the police and the Crown for a substantial period of time as of **March 1999**.

Reference: Exhibit 781, bates pages 1066037 and 1066038

1333. On **March 16th, 1999** Leduc's counsel served a notice of application for an adjournment of the preliminary hearing based principally on the recent disclosure of material and the number of remaining disclosure issues which were outstanding. The adjournment was granted on **March 30th, 1999** by Madam Justice Rastushny.

Reference: Exhibit 781, bates page 1066038

1334. Further disclosure was made by the Crown in the third week of **April 1999**. On **April 22nd, 1999** the preliminary hearing was rescheduled to commence **November 25th, 1999**.

Reference: Exhibit 781, bates page 1066039

1335. Leduc was committed to trial on 13 of 16 counts, and the matter was adjourned to a judicial pre-trial conference on **February 16th, 2000.**

Reference: Exhibit 781, bates page 1066039

1336. On **March 31st, 2000** a trial date in Superior Court was scheduled to commence **January 15th, 2001**.

Reference: Exhibit 781, bates page 1066040

1337. In **October or November 2000** further volumes of disclosure were provided by the Crown to the defence; in early **January 2001** a seventh volume of disclosure was provided to Leduc's counsel.

Reference: Exhibit 781, bates page 1066040

1338. As these submissions will now review in detail, disclosure issues arose at the trial which led to a defence motion to stay the case based on wilful non disclosure.

1339. It is an understatement to say that tensions existed between the Crown and the OPP on certain Project Truth prosecutions. Although he never raised this concern directly with Crown Hallett, Officer Steve Seguin who worked with her on the Peachey, Malcolm MacDonald, Brian Dufour and Leduc prosecutions, was critical of what he called her excessive interviewing of witnesses. He felt that this created opportunities to exploit inconsistencies in the alleged victim's statements as "**every time the story was told there was a new story**".

Reference: Evidence of Steve Seguin, November 28, 2008, page 28, lines 23 through 25

1340. At a later point in time when Seguin was being interviewed by the York Regional Police about interactions with Crown Hallett, he states:

> "**In my opinion one of the most serious issues in the Leduc matter was Ms. Hallett's inability to leave witnesses alone ... she would continually want to meet at length on more occasions ... The witnesses were not only upset at Ms. Hallett but also targeted us for not leaving them alone. These continuous meetings not only caused tension with the witnesses, but also caused disclosure issues**."
>
> **Reference**: Exhibit 2716, bates page 7003960
>
> Exhibit 2717

1341. Several other points of tension were discussed in the evidence of Pat Hall: he questioned Crown Hallett's approach to the arrest and processing of Brian Dufour (he testified that Crown Hallett wanted him brought to Cornwall for arrest and release) and he disagreed with her decision to house the nine boxes of Dunlop materials at the OPP offices as opposed to those of the CPS. She was criticized for not spending more time with the officers in the morning before Court commenced. It was also stated by Crown McConnery that Hall on more than one occasion, labelled Ms. Hallett a "**princess**" and complained about the fact that she used his officers and their vehicles to carry her bags and drive her to and from the train station, to witness interviews and to Court. McConnery testified that he learned that, although this "complaint" was apparently being made by Hall on behalf of the Project Truth Constables, they themselves were not critical of Hallett on this front.

> **Reference**: Evidence of Pat Hall
>
> Evidence of McConnery

1342. For her part, Crown Hallett testified that she had no awareness that Hall harboured these views or criticisms of her as none of them were ever raised while they worked together.

1343. The working relationship between Hall and Hallett exploded during the Leduc prosecution, and gave rise to a stay of proceedings. Whether or not the following facts represent a systemic problem or a unique problem that arose between two individuals in unique circumstances is for the Commissioner to decide; suffice to say that the impact of these events was immense and devastating, to the alleged victims, to Crown Hallett and finally to the community at large, which had an interest in seeing the Leduc charges disposed of on their merits.

1344. The Leduc trial on **February 7th** heard the evidence of C16's mother, who testified that she had two conversations with Constable Dunlop, one on **June 15th, 1998** and one on a prior occasion in **May 1998**.

Reference: Exhibit 781, bates page 1066041

Evidence of Dupuis, November 20, 2008, page 63, lines 1 through 9

1345. When Dupuis heard this evidence, it jogged his memory and he looked firstly through the disclosure brief to see if his notes of his **June 15th, 1998** attendance on C16's mother were present in the disclosure materials. The notes were not present. He then went to his original notebook looking for this event and stated "**it took me three tries before I found it**". The only contact between C16's mother and Dunlop that Dupuis found referenced in his notes was that of **June 15th, 1998**. He had no note of the **May 1998** contact.

Reference: Evidence of Dupuis, November 20, 2008, pages 63 and 64

1346. Dupuis made copies of his **June 15, 1998** notebook entry and produced it to the Crown's office.

> **Reference**: Evidence of Dupuis, November 20, 2008, page 64, lines 7 through 10

1347. Dupuis then contacted Hall to discuss C16's mother's contact with Dunlop, and Hall recalled seeing reference to it, possibly within the Dunlop will say.

> **Reference**: Evidence of Dupuis, November 20, 2008, page 64, line 19 to page 65, line 22

1348. Hall then attended in Court with the Dunlop will say and made a copy of the relevant portion of it.

> **Reference**: See Exhibit 2613, Notes of Officer Dupuis, bates page 7131958, entry for February 7th, 2001

1349. Steve Seguin's will say statement states that, after the conclusion of Court on the day C16's mother testified, he met with Hallett, Crown Tier, Dupuis and Hall concerning the Dunlop matter. Hall had with him "**a number of documents and two Dunlop binders**". Hallett requested that they meet with defence counsel and they attended on Messrs. Skurka and Campbell. The Dunlop material was provided to the defence and Mr. Skurka aggressively challenged Hall as to the non-disclosure of "**very relevant material**." It is recorded that when Skurka turned to Ms. Hallett on the topic, she replied that she didn't know anything about it "**prior to now**". At the subsequent private meeting amongst the

police and Crown Hallett, Hall reminded her that she **"did have this material**" in her possession and he provided her dates he had received it.

Reference: Exhibit 2716, bates page 7003959

1350. Although Seguin's duty book for **February 7th, 2001** records details at trial and a post-trial meeting between Crown Hallett and her witness, it does not record the above meeting with defence counsel.

Reference: Exhibit 2710, bates page 7129477 and following

1351. Seguin's will say statement for **February 8th, 2001** notes that Hall provided him with a copy of **July 4th, 2000** correspondence from Crown Hallett to Constable Dupuis regarding Perry Dunlop's will say statement, notes and nine boxes. Hall requested Seguin to provide Hallett with a copy of this letter which he did, with Hall's handwritten notation on the top: **"Shelly, for your information**".

Reference: Exhibit 2623

Exhibit 2716, bates page 7003959

1352. On **February 20th, 2001** Dupuis attended a meeting with Hall, then-retired Inspector Smith and Leduc's defence counsel.

Reference: Exhibit 2614 at bates page 7131975 and following

1353. That meeting occurred because defence intended to call these officers as witnesses on their stay application. The Officers decided that it would be prudent to prepare themselves for that evidence by speaking in advance to defence counsel.

Reference: Evidence of Dupuis, November 20, 2008, pages 68 and 69

1354. Dupuis took his original notebook to that meeting and defence counsel reviewed the entries before and after **June 15th, 1998.**

1355. At this point in the proceedings, defence counsel's stay motion alleged that Dupuis had wilfully failed to disclose the **June 15th, 1998** notes.

Reference: Evidence of Dupuis, November 20, 2008, page 70, lines 7 through 12

1356. Dupuis does not recall that that focus shifted during this meeting.

Reference: Evidence of Dupuis, November 20, 2008, page 71, lines 16 through 20

1357. The police made direct disclosure of the **July 4th, 2000** letter from Crown Hallett to Cst. Dupuis to defence without any prior consultation with the Crown nor any subsequent advice to the Crown that they had done so. This was acknowledged to be contrary to standard practice: it is the Crown who makes disclosure to the defence, not the police.

1358. Hall focussed on the **July 4th,** 2000 letter. The logic behind Hall focusing on the **July 4th, 2000** correspondence is that it confirms that Hallett received the 110-page Dunlop will say, which does make reference to his contact with C16's mother. In other words,

Hall is imputing actual knowledge to Hallett of that event from the fact she received the 110 page will say. He therefore concluded (as he testified at the Inquiry) that Hallett was lying to defence counsel on **February 7th** when she said that in reference to the C16's mother/Dunlop contact "**that's the first I've heard of it**".

1359. Hall gave Hallett the benefit of no doubt; he failed to consider the logical possibility that Hallett had not read the will say carefully enough to have noticed this information within it. Although this is precisely what Hallett says occurred (and indeed she admitted this in open Court and apologized for her oversight) Hall seemingly never turned his mind to this more rational explanation, but rather became fixated on the conclusion that Hallett lied to the defence.

1360. Hall's conclusion that Crown Hallett had lied then became his justification for going behind her back and making disclosure of the **July 4th, 2000** correspondence (Exhibit 2623).

1361. Immediately following the **February 20th** meeting between defence counsel and the police, Inspector Hall asked Dupuis to go back to Ms. Hallett, who was staying at the hotel in Cornwall, and obtain a copy of the **July 4th, 2000** memorandum from her.

Reference: Evidence of Dupuis, November 20, 2008, pages 75 and 76

1362. No explanation was given to Crown Hallett as to why this document was being requested, however, she handed over a copy of the document to Dupuis, and thereafter it was disclosed directly to defence counsel without her knowledge. Dupuis made a copy of the

July 4th, 2000 document, returned Hallett's original to her and, on Hall's instructions, took the document to Mr. Campbell.

> **Reference**: Evidence of Dupuis, November 20, 2008, page 78, lines 1 through 22

1363. In that instruction, Dupuis said that he was told to "**hurry up and get it to Mr. Campbell**".

> **Reference**: Evidence of Dupuis, November 20, 2008, page 80, lines 4 through 6

1364. On the following day, **February 21st, 2001** the defence application proceeded and Hall and Dupuis were called.

1365. With reference to the Dunlop will say (Exhibit 579), the following points should be noted:

(a) It does disclose on **May 8th, 1998** a contact by telephone between Dunlop and C16's mother pertaining to C16's allegations of abuse by Jacques Leduc;

(b) It contains no specific date entry for **June 15th, 1998**;

(c) It contains a lengthy entry on **July 23rd, 1998**;

(d) The only reference to a possible **June 15th** occurrence is found under the **July 23, 1998** entry and states as follows:

> "**Inspector Tim Smith wants to know about C16's mother. I stated that I spoke to her and directed her to approach Project Truth. Inspector Tim Smith**

> **indicated that I call her back. Three weeks later, I called C16's mother back out of concern. She was very upset the first time she called me. Out of concern that a normal caring person has, I called her back to make sure that she was okay."**
>
> **Reference**: Exhibit 579, bates pages 7114969 and 70

(e) Note that it is only by extrapolation ("three weeks later") and knowledge of the May contact that one can understand that there was a second contact between C16's mother and Dunlop based on this document. Even so, one can't derive the date of **June 15th, 1998** for the second contact based on the will say.

1366. It is understandable that the Crown might not have reviewed on the **July 23rd** entry as it was a lengthy entry focussing on an internal police meeting. It requires quite an extrapolation from the content of **the July 23rd, 1998** entry in Exhibit 579 to the conclusion that Crown Hallett knew about an undisclosed conversation between C16's mother and Dunlop on **June 15th, 1998**. Although the material was not presented in this fashion at the Inquiry, the will say apparently had four volumes attached to it and had been preceded by the disclosure of Dunlop notes. Buried in that volume of material was a note of material was a note of the **June 15, 1998** conversation with C16's mother.

1367. In addition to Officer Dupuis, both Smith and Hall had knowledge very shortly after **July 15th, 1998** that this communication between Dunlop and C16's mother had occurred. Although they did not note this discussion in their books, the C16/Dunlop contact was raised by them with Dunlop on **July 23rd, 1998**. At that time they did not know that Dunlop was taping that meeting and would make reference to it several years later in his **April 2000** will say.

1368. In any event, neither Hall nor Smith ever told Crown Hallett about the **June 15th, 1998** contact nor about the fact they confronted Dunlop about it on **July 23rd, 1998,** and yet Hall was prepared to assume she knew about it and intentionally lied about her knowledge.

1369. The fact remains that three OPP officers including the two senior managers of Project Truth had knowledge of Dunlop's **June 15, 1998** communication with C16's mother and did not disclose it to the Crown. Two of the three made no note of it in their duty books. By **June 1998,** the OPP had detailed knowledge of Dunlop's prevalence in dealing with other complainants. This renders their failure to take a note of their discussion about his contact with a Leduc complainant's mother suspect.

1370. While their failure to do so on balance may well have been inadvertent, what was not inadvertent was Hall's tactic to shift the focus from wilful non-disclosure by himself and Detective Inspector Smith to Ms. Hallett. It is as though he thought that a finding of wilful non-disclosure was inevitable, that there were only two parties who would be found responsible for it, and he had decided that it was not going to be the OPP.

1371. The justification for Hall's actions is founded on such flawed reasoning that it is difficult to accept coming from an investigator who rose to the rank of Detective Inspector and who was considered the appropriate investigator to case manage and head an investigation of the magnitude and complexity of Project Truth. His conclusion that Hallett lied to the defence is particularly difficult to accept since on **February 14th, 2001** Crown Hallett addressed the issue in Court. She acknowledged that on or about **March 14th, 2000** Dunlop's notes had been made available to Inspector Hall and shortly thereafter were received by her, and that she had also taken possession of the will say and

four volumes of appendices. She acknowledged having reviewed these documents "**in a cursory way**", and said that she appreciated that they should be disclosed in the MacDonald case because of the close connection between Constable Dunlop and those alleged victims, but that, based on her knowledge of the Leduc matter to that point, she did not believe that there was anything in that material which might be discloseable in relation to Leduc. She went on to explain that the Dupuis notebook entry was a five-line entry "**in a mountain of notebook entries**" and that its non-disclosure was simply inadvertent. She frankly acknowledged that she did not "**pour over each document**" in the Dunlop will say or nine volumes to see whether there was anything discloseable in Leduc and states "**I take responsibility for that**".

Reference: Exhibit 2647, bates pages 1020390 to 1020398

1372. Although Hall was not present in court that day, Steve Seguin was, as indicated in his duty book. Surely this information about Hallett's position was conveyed by him to Hall.

Reference: Exhibit 2710, bates page 7129537 to 7129538

1373. As other witnesses described him, Pat Hall is a "**cover your ass**" kind of guy. We have seen more than one instance in this Inquiry where, years after the fact, he criticizes or complains about fellow officers (*vis* the Randy Millar situation in relation to Leblanc). We have also seen documents in which he quietly needles the Crown by pointing out their flaws in response to perceived criticism of the OPP by the Crown's office.

Reference: Exhibit 3053

1374. It is submitted that Crown Hallett's comments are valid when she says that Hall's decision to by-pass the Crown and surreptitiously provide the defence with the **July 4th** letter was not generated by a "**communication problem with the Crown or fairness concerns for the accused, but self-interest on the part of the police officers at the expense of the Crown and the case**".

> **Reference**: Exhibit 3083, July 7th, 2001 letter from Hallett to LaBarge

1375. As determined by the Court of Appeal in its Reasons for Decision overturning Chadwick J.'s finding of wilful non-disclosure, there was simply no evidence to support that finding.

> **Reference**: Exhibit 774, bates pages 1007713, paragraph 97 of the Judgment

1376. The finding of wilful non-disclosure

> "**is entirely unsupported by the record, does not take account of several exculpatory considerations, and flies in the face of the innocent explanation given by Ms. Hallett, an explanation the application judge had no reason to reject."**
>
> **Reference**: Exhibit 774, bates pages 1007714

1377. Ironically, the error by the application judge is the same error that Pat Hall adopted: the "**crucial plank**" was the **July 4th, 2000** letter, which was taken as though it were proof that Ms. Hallett had "**reviewed Dunlop's materials in depth**".

Reference: Exhibit 774, page 23, paragraph 107 of the Judgment

1378. The other "**plank**" in this platform is that "**for his finding of wilful non-disclosure to make sense, the application judge must have concluded that Ms. Hallett saw the information she says she overlooked**".

Reference: Exhibit 774, page 25, paragraph 112 of the Judgment

1379. As the Court of Appeal noted, there was nothing in the content of the **July 4th, 2000** correspondence nor the evidence led on the application from which one could infer that Crown Hallett saw the brief references to C16's mother in Dunlop's material and wilfully withheld them. In order to arrive at the conclusion he did, Chadwick J. misinterpreted the **July 4th, 2000** letter (read it as if it applied to the present and not the future) and failed to appreciate that at the time that she did review these materials, she was doing so for the purposes of the MacDonald prosecution (as the letter in fact says). Both of these logic flaws are also inherent in Pat Hall's position that Hallett "**lied**" to the defence.

1380. As found by the Court of Appeal, the reality was that the Project Truth officers had become concerned about Dunlop very shortly after the commencement of Project Truth. They were concerned that Dunlop was interviewing witnesses and complainants and trying to colour their evidence. The officers viewed Dunlop as a potential obstacle to successful prosecutions and made numerous attempts, mostly unsuccessful, to stop him from contacting complainants or witnesses in any Project Truth inquiry.

Reference: Exhibit 774, bates page 1007695, paragraph 13 of the Judgment

1381. As the Court of Appeal also found, the investigators were directly involved with Dunlop, and had repeatedly asked him to surrender all of his notes and produce a detailed history accounting for his involvement in Project Truth matters. On **July 23rd, 1998** Dunlop was told to turn over his notes as they were needed for inclusion in disclosure briefs for defence counsel in a number of Project Truth cases, but he refused to comply. It was not until the **spring of 2000** that notes were handed over, together with the 110 page will say statement and other materials.

Reference: Exhibit 774, bates page 1007695, paragraph 13 of the Judgment

1382. These findings remind us that it was the Project Truth investigators, and in particular Hall and Smith as the team leaders, who had the "front line" contact with Dunlop and who had the most knowledge about Dunlop's involvement with witnesses and complainants. As Pat Hall's evidence makes clear, he knew over a long period of time after the Project Truth investigation commenced that Dunlop was not obeying orders and was continuing to contact complainants and witnesses. The OPP officers and the CPS officers, it is submitted, knew that their "kid glove" approach to Dunlop had not worked and was not working, however, neither force wanted to be seen to "**be going after Dunlop**" in their dealings with him. Ultimately the Ottawa Police Services' investigation of perjury and/or counselling perjury gave rise to no charges, although by the time that matter was investigated, substantial damage had already been done to the Lalonde prosecution within which the perjury issue arose. In any event, perjury charges may have been brought may have punished past wrongdoing but would not secure future cooperation.

1383. As between the OPP and the Crown, Dunlop's communications with complainants and witnesses were much better known to the OPP. The OPP knew almost contemporaneously about the communication that resulted in the Leduc stay. They had not told the Crown about it. It is our submission that Hall dealt with this situation by sacrificing Crown Hallett. He simply could not accept the risk that he or Tim Smith, at the conclusion of their lengthy police careers, would be found to have wilfully not disclosed evidence in a high profile Project Truth.

1384. It is hard to accept that with all of the intelligence, experience and resources available to the OPP and the Crowns involved in Project Truth, no solution could be found to the witness contamination and non-disclosure problems generated by Officer Dunlop. At a bare minimum, the following are common sense suggestions which could possibly have made a difference:

(a) All Project Truth victims or witnesses should have been asked as a matter of routine whether they had had any contact with Dunlop, his wife or brother-in-law. If so, they would be asked to provide details of the times and nature of that contact. The officers could then go directly to Dunlop and demand production of notes or other documents corresponding to that contact. In the absence of cooperation by Dunlop, at least the officers would have evidence that records likely existed, and the same could be sought by means of a search warrant or other process.

(b) Although Pat Hall disagreed with this suggestion, Project Truth officers could and should have told each of their victims and witnesses to refrain from contact with Dunlop until the conclusion of the proceedings. Joe Dupuis had no hesitation in

so advising C16's mother, and there was no reason why this couldn't have been routinely done.

(c) It must be recognized that from the alleged victims' and families' points of view, it appeared that Dunlop and his wife were providing moral support. The OPP and Crown should have ensured that the Victim Witness Assistance Program was connected with Project Truth at the very outset, such that as soon as charges were laid and court proceedings scheduled the VWAP personnel would be in place and offering support and assistance. To the extent that alleged complainants and witnesses are seeking out the Dunlops for support because there was nowhere to go, neither the alleged victims nor the Dunlops can be blamed for that state of affairs.

(d) Since Smith had worked with VWAP in the Alfred prosecutions, it is unfortunate that he did not foresee the need for VWAP involvement in Project Truth.

(e) In the absence of the VWAP, at a minimum, Crowns and Police should have explained very thoroughly to the victims and witnesses that Dunlop was perceived to be a contaminator of evidence and that their contacts with Dunlop could possibly cause the trier of fact to disbelieve their evidence. It must be said that the alleged victims of Jacques Leduc were facing a difficult time already on the witness stand; if it had been explained to them and their families that the contact with Dunlop would make matters worse, that might have been persuasive.

(f) Nothing was ever done to penetrate the "solicitor and client privilege" claim that Dunlop was invoking in the summer of 1998 if not earlier. By reason of that

claim, the OPP was reasonably sure that Dunlop had not in fact made full disclosure of his investigation materials to the OPP. Rather than bringing court proceedings to challenge the privilege assertion, nothing was done and the matter dragged on until the eventual order of **December 10th, 2000** which led to the will say, notes and nine boxes of documents being disclosed in **April of 2000**.

(g) In hindsight, **January 10th, 2000** was far too late to be issuing disclosure orders to Dunlop. If this had been done in **1997** there might have been a chance at avoiding adjournments based upon late Dunlop disclosure.

(h) Senior Crowns and the OPP both knew from the outset that Dunlop had been the "go to guy" for sexual abuse in Cornwall and that he was continuing in that role. There was every reason to issue orders in **1997** that he disclose everything in this possession relating to any complainant or witness.

(i) There was no "down side" to issuing disclosure order to Dunlop in **1997** and should it not be obeyed, taking the steps necessary to enforce it.

Cornwall's Ongoing Fears: The Roles of Guzzo, Nadeau and Websites in Influencing Community Opinion

1385. Garry Guzzo is a former lawyer who also served as a Judge of the Ontario Court of Justice for over a decade. He served for several years on Ottawa City Council, and in 1995 was elected as a member of Provincial Parliament for the Progressive Conservative Party. In 1999 Guzzo was re-elected to the Ontario Legislature. He served as MPP until he was defeated in 2003.

Reference: Guzzo, November 13, 2007, page 6, lines 1 through 4, page 6 line 22 to page 7, line3

Guzzo, November 13, 2007, page 10, line 20 to page 11, line 9

Guzzo, November 13, 2007, page 12, lines 7 through 9, 19 through 24

1386. As a member of Provincial Parliament Garry Guzzo's public statements had the potential to greatly influence public opinion. As an elected person in a position in authority, his comments would typically have been considered credible. Given his position of power and authority, Garry Guzzo, like all MPP's had the duty to be as accurate and fair as possible when making public pronouncements, and should have been mindful at all times to possible harms caused by statements which he could make.

Reference: Guzzo January 15, 2008, page 187, lines 1 through 12

1387. Guzzo made several important misrepresentations in his public comments regarding Cornwall, which would contribute to a public concern that its institutions were not being transparent or diligent, and may have been involved in cover-up.

1388. Starting in the fall of 1998, Guzzo engaged in a series of written correspondences with Premier Harris and other members of the Legislature with respect to allegations of historic sexual abuse and institutional shortcomings in Cornwall.

Reference: Guzzo, January 15, 2008, page 108, lines 16 through 20

Exhibit 0983

1389. In a letter to then Premier Harris dated September 18, 1998, Garry Guzzo raised his concerns to the Premier with respect to the OPP Project Truth investigation. Guzzo's letters to the Premier were obtained by the *Sun* in the Spring of 1999. Guzzo's allegation was that an investigation into an alleged pedophile clan had been conducted in 1992 by the Cornwall Police, had been reviewed by the Ottawa Police Force, and later re-investigated again by the OPP only to find no evidence of such. These allegations made their way into the press by March 1999.

Reference: Exhibit 1152

1390. Guzzo's thesis was that the police had engaged in either an incompetent investigation or a cover-up. This was again reported in a CJOH television interview in 2000. During this report, Guzzo made the following remarks:

"Guzzo: At a press conference. At a press conference on Christmas Eve of '94.

> **'We've left no stone unturned. There's no one to charge. There's no pedophile ring.'**
>
> **Walker:** **And then low and behold, Project Truth is launched, and ah, there have been a 114 charges to date?**
>
> **Guzzo:** **A 114 charges, and a 108 of those took place before the Christmas Ever, long before the Christmas Eve ah, press conference of '94.**
>
> **Walker:** **So what are the choices when it comes to how this could happen, in your mind? Is it, is it a matter of ah, understaffing of Police Services, or ah, people that just wouldn't talk to the police?**
>
> **Guzzo:** **No, definitely not. I, you know, I have, and I'm not certain, I'm not suggest. It's one or the other. <u>There's either been a very incompetent investigation here, or there has been a cover up. And ah, as a member of the Government I'm concerned</u>. Either one. How many more of these are going on in Ontario right now."** [Emphasis Added]"
>
> **Reference**: Exhibit 1138

1391. Guzzo's main points were that there were three police investigations which had taken place which examined the question of whether a pedophile ring was operating in Cornwall. None of those investigations found any evidence of such a ring. Nevertheless, the OPP Project Truth investigation led to over 100 charges, which Guzzo suggested should have been found by the police agencies in their first three investigations into these matters. Guzzo also implied in public that the OPP 1994 press release was issued at a time when no one would be paying attention. Guzzo's public statements suggested to the

public that the evidence available to police forces in 1993 and 1994 could have led to charges at that time.

Reference: Guzzo, January 15, 2008, page 120, line 23 to page 121, line 2

Guzzo, January 15, 2008, page 121, lines 3 through 8

Guzzo, January 15, 2008, page 158, line 22 to page 159, line 1

Exhibit 1138, bates page 7125069

Guzzo, January 15, 2008, page 162, lines 11 through 14

1392. Guzzo's theory depended on the premise that all three police investigations were investigating exactly the same thing, which is incorrect. Guzzo was factually incorrect as to the nature of the first CPS investigation, the Ottawa Police review of that investigation, and the subsequent OPP investigations prior to Project Truth. The Cornwall Police Service investigation was solely with respect to one complainant alleging that he had been sexually abused by a Priest several years ago. It did not raise an issue of the existence of pedophile ring, contrary to Guzzo's assertions. Moreover, the complainant in this one case was a teenager at the time of the alleged sexual assaults, and so the allegation on its face did not disclose an allegation of pedophilia. The Ottawa Police review of the Cornwall Police investigation similarly did not examine the question of a possible pedophile ring in Cornwall. The first OPP investigation, while examining an alleged conspiracy between the Diocese and the Cornwall Police to cover-up any investigation involving Father Charles MacDonald did not investigate any alleged clan of

pedophiles or pedophile ring. As the OPP press release of December 23, 1994 clearly indicates, the OPP investigation into sexual assault was against only one Priest.

Reference: Exhibit 1000

1393. Guzzo's public statements could have eroded public confidence in the Cornwall, Ottawa, and Provincial police forces by misleading the public into thinking that each of these forces could and should have been able to find a pedophile ring as early as 1993. The numerous charges laid by Project Truth were individual historic assault cases, **most** of which had never before come to police attention.

1394. Guzzo's public stance would likely have affected the public's faith in the legitimacy and competence of the Project Truth investigation, which was ongoing at the time of Guzzo's criticism.

Reference: Exhibit 1138

Guzzo Suggests that the Cornwall 'Ring' Has International Reach Without Proof

1395. Guzzo also publicly espoused the view that the Cornwall pedophile ring was an international crisis involving victims who "were traded like baseball cards". Although Guzzo repeatedly explained that he had been careful and diligent in checking the facts on his allegations, the alleged links to a 'pedophile strip' in Florida were not were not adequately investigated by him before being made public. For example, although Perry Dunlop's group indicated (wrongly) to Guzzo that there were registration slips from a motel in Florida linking Cornwall residents to sexual abuse taking place in Florida,

Guzzo never saw the registration slips, and was not given copies of any information in that regard. The only documented visitors from Cornwall to that motel were Malcolm MacDonald and Ron Leroux.

Reference: Exhibit 978

Guzzo, January 15, 2008, page 144, lines 11 through 18

1396. During his testimony before the Inquiry Guzzo acknowledged that the suggestion that victims in Florida were being "traded like baseball cards" was a claim being made by an individual in Florida who wanted to be paid off for his information. Guzzo could have had no real belief in the reliability of his statement.

Reference: Guzzo, January 15, 2008, page 40, line 4 to page 41, line 25; page 41, line 6, page 42, line 1

Exhibit 0978

Guzzo Comments on the Tapes Seized by the OPP Without Any Proof

1397. Guzzo also made public comments with respect to the tapes seized from Ron Leroux's residence, which would have led members of the public to believe that the OPP had destroyed "smoking gun" evidence of the existence of the pedophile ring.

> **"According to Mr. Guzzo, a former provincial court judge, Mr. Seguin would mount a video camera at the end of his bed and record sex between members of the ring and the young victims. Mr. Guzzo said he learned Mr. Seguin would make copies of the films and sell them in the United States -- meaning the graphic evidence could still be floating around, somewhere.**

> **'He filmed everything," Mr. Guzzo said. 'Some people who were charged and people who have not been charged could have been implicated by those films. They say it's not a ring ... but some of these films included shots in Florida, on the pedophile strip of these people together in the company of a couple of youngsters who have complained. When I first asked the question about what happened to the tapes, I was told immediately that they were destroyed, that they were of no more value."**
>
> **Reference**: Exhibit 1017, bates page 1154630
>
> Exhibit 1145, bates page 7002585
>
> Exhibit 1017, bates page 1154630

1398. Guzzo was relying on C8 and Ron Leroux to form this understanding of the content of the tapes. Guzzo had never reviewed the tapes himself, and never spoke to anyone who had seen the tapes.

> **Reference**: Garry Guzzo, January 15, 2008, page 42, line 21 to page 43, line 4
>
> Guzzo, January 15, 2008, page 44, lines 10 through 23; page 53, line 22 to page 54, line 2; page 57, lines 16 through 21

1399. Guzzo reported in the legislature that the "king pins" of the pedophile ring had been recorded in these movies. The clear inference from his questions in the legislature would be that the police had destroyed the key evidence to the clan of pedophile case.

1400. As one media report described:

> **"The most popular urban myth about the case is that police found and then destroyed smoking-gun, kiddy porn tapes showing prominent citizens having sex with their victims."**

Reference: Exhibit 754, bates page 1147924

1401. Of course the OPP had no way of knowing in 1992 when the tapes were seized that the "pedophile clan" would come to dominate the community's attention more than a year later. That said, adhering to better practices in relation to the seizure, review and destruction of the tapes could have assisted the OPP to refute the "urban myth":

- The tapes should have been identified in the Return to the Justice, which identified only the seized firearms;.
- The tapes were never reviewed in their entirety but only reviewed at random. This is not logical, given the rationale for seizing them.
- The tapes were not treated as seized evidence normally would be treated; they are not identified in writing, catalogued or photographed for instance.
- There is no adequate documentation of the OPP review of the tapes.
- It is not clear how or by whom the tapes were destroyed.

Reference: Exhibit C-603, bates pages 7023198

Exhibit 6901

Evidence of McWade, October 30, 2008, pp. 18-19, p. 33, p. 43, p. 58, p. 65

Evidence of McDougald, November 10, 2008, pages 33 and 34

1402. Had the occurrence been treated and documented differently, the urban myth could have been refuted.

1403. It is unfortunate that due to the OPP's poor record-keeping and failure to fully review the tapes, the OPP was unable to definitively disprove Guzzo's assertions about the tapes. .

Guzzo's Public Statements Would Have Interfered with Ongoing Police Investigations

1404. Guzzo repeatedly voiced his concern that the OPP were not doing their job properly. He even stated after the completion of Project Truth that he could not blame victims for choosing not to go forward to the OPP, given that the OPP had not investigated these matters properly back in 1994.

Reference: Exhibit 1017, bates page 1154632

1405. Guzzo was reportedly in contact with as many as 70 alleged victims of the so-called pedophile ring. If true, then the fact that the MPP became a parallel contact person for victims would have further frustrated any OPP efforts to investigate either allegations of historic sexual abuse, or a possible ring of pedophiles. (One might doubt the truth of Guzzo's claim because he never took any step to inform authorities about these "victims".)

Reference: Exhibit 0978, bates page 1153991

Guzzo, January 15, 2008, page 61, lines 11 through 17

1406. The fact that an MPP claimed to be investigating these matters allegedly on his own time and at his own cost, and claimed to be an alternate voice for victims, could only potentially hinder police efforts to uncover the truth, and generate further problems of witness contamination and disclosure.

1407. To summarize, while CCR has also been critical of the OPP's 1994 exercise, Guzzo took a very small kernel of truth and turned it into a full frontal assault on the OPP, as he saw this as a provincial matter which would leverage him in the legislature and in his home riding and which would accord with his "maverick" image.

1408. To those who ended up falsely accused of being "pedophiles" and also to those who were deterred from going to law enforcement with legitimate complaints, Guzzo did a disservice.

1409. As discussed in the body of these submissions, print media, radio and television reported extensively on allegations of historic sexual abuse in the Cornwall area, the alleged "clan of pedophiles" and institutional cover-up. By 2000, the Cornwall community also had access to information posted on websites created and hosted by private individuals. Due to the relative accessibility of the world wide web, these websites also became a vital source of information to individuals outside of the Cornwall region.

Reference: Evidence of C11, June 6, 2007**,** page 154, lines 16 through 18; page 173, lines 2 through 5

Projecttruth.com

1410. On April 24, 2000, a website known as Projecttruth.com was created and registered to James Bateman. Bateman received assistance from Richard "Dick" Nadeau ("Nadeau").

1411. Nadeau was a Cornwall resident who allegedly was sexually abused as a child and youth by several perpetrators. Nadeau had been in contact with Perry Dunlop as early as 1996, and likely received materials from Dunlop. Nadeau had also been previously been involved in organizing victims of sexual abuse for a class action lawsuit. He died on April 19, 2006.

Reference: Exhibit 769

1412. Projecttruth.com had been launched initially "as a means to collect information surrounding allegations of sexual abuse against young boys committed by prominent citizens, in and around Cornwall, Ontario…". The site authors then "modified their mandate to include 'Victim Statements,' 'Testimonials,' 'Impact Statements' whenever possible, in an effort to provide a 'safe haven' where such disclosures could be made without fear of reprisals."

Reference: Exhibit 769, paras. 41 and 47.
Exhibit IC-793, bates page 1144084

1413. This site contained postings of statements of alleged victims of sexual abuse in Cornwall, including the November 1996 Ron Leroux affidavit, which purported to list dozens of local citizens as "pedophiles". The unproven allegations contained in this affidavit were

presented for anyone to read. As with most internet website content, the statements found online could easily be printed and disseminated.

1414. The Projecttruth.com site was completely unaffiliated with the OPP investigation of the same name. The site's name could easily cause confusion to members of the public, who would naturally have associated the site with the OPP Project Truth investigation. Individuals reading the website under the false impression that it was affiliated with the OPP investigation would have gained an erroneous understanding of the mandate of the OPP Project Truth investigation.

1415. By late July 2000, the local Crown Attorney and OPP had become concerned with certain contents posted on the ProjectTruth.com site. On July 31, 2000, D/Insp. Pat Hall explained to Nadeau his concern that Nadeau was putting evidence in matters before the court into the public domain as well as names of people involved in the judicial proceedings, and that such postings could have a negative impact on upcoming criminal trials of matters arising out of the OPP Project Truth investigations.

Reference: Exhibit 804 at para. 1; Exhibit 769, para. 39

1416. In August, Pat Hall again voiced concerns about the contents of the site to Nadeau. Nadeau advised Hall that his concerns would be relayed (presumably to Bateman). Nevertheless, completely untested allegations of pedophilia against members of the community remained on the site.

Reference: Exhibit 769, paras. 42, 45

1417. Facing the threat of legal action, on August 2, 2000, a posting on the site claimed that "ProjectTruth.com is closed". Content was then added to the site as of April 8th, explaining that the site was being withdrawn because of attempts to manipulate the disclosures on the site by "the Power's".

Reference: Exhibit 769, para. 47;

Exhibit 831

Exhibit IC-793**,** bates page 1144085

Projecttruth2.com

1418. The Projecttruth.com website was succeeded by Projecttruth2.com, a site which was registered by Rick Nadeau which was operational by the end of August 2000. Nadeau prepared materials for the site, and his wife assisted him in posting them.

Reference: Exhibit 831

Richard Nadeau, October 31, 2007, page 157 lines 18 to page 158 line 16

1419. As Nadeau's wife explains, after the closing of the first Project Truth site, it became Nadeau's "mission" to fill the gap created by the absence of Projecttruth.com:

> **"Me DUMAIS: Est-ce qu'il a été motive d'ouvrir un site Web par le fait que James fermait le-sien?**
>
> **Mme PRÉGENT: Probablement. Étant donné que c'était là, que le site était déjà existant, probablement ça a encouragé Dick de prendre la relève. Mais ça donnait -- je pense que cela a été --il était plus surpris que n'importe qui d'autre. C'est un peu comme Perry. On dirait que ces gens-là ont été mis là comme mission et puis, selon moi, c'est cela qui est arrivé. Ça s'est**

> **adonné qu'il y avait un site Web qui était pour fermer et qui était en relation avec l'abus sexuel. Alors, c'était naturel, je pense, pour lui de poursuivre."** [Emphasis Added]
>
> **Reference**: Richard Nadeau, October 31, 2007, page 155 line 19 to page 156, line 6

1420. The ProjectTruth2.com site continued to post information regarding sex abuse, the alleged 'clan of pedophiles', and institutional cover-up, and continued the Projecttruth.com mandate of providing a 'safe haven' area of victim disclosures.

> **"Me DUMAIS: Est-ce que ça serait juste de dire, Carmen, que Dick trouvait ça très important que l'information soit rendue publique?**
>
> **Mme PRÉGENT: Très, parce que c'était la seule voix pour les victimes. C'était rendue la seule voix pour les victimes. Surtout que là Perry était parti, les victimes n'avaient plus personne à avoir recours."**
>
> **Reference**: Richard Nadeau, June 6, 2007, page 166, lines 6 through 10

1421. Like its predecessor, the site's name would continue to cause confusion among members of the public, who could easily believe from the site's name that it was affiliated with the OPP Project Truth investigation.

1422. Nadeau was unrelenting and dogmatic in his pursuit to expose his version of the "truth" of a pedophile ring in Cornwall and institutional cover-up. Nadeau accepted the contents of affidavit materials on their face, without having engaged in any independent fact-checking with respect to the allegations contained in the sworn affidavits.

Reference: Evidence of Prégent, page 73, line 6 to page 74, line 10

1423. Nadeau was quoted in the *Toronto Star* as saying, "I have no qualms about being unfair to a pedophile". He appears to have been completely uninterested in the presumption of innocence in reporting on these allegations on the web.

Reference: Exhibit 780, bates page 1065920

1424. Nadeau posted or threatened to post victim statements without prior authorization from the victim (i.e. C8), or posted information which could reasonably lead a reader to identify the victim. Ironically, in efforts to become a voice for victims, the Projecttruth2.com site also caused many victims further harm.

Reference: Claire Chouinard (Renshaw), February 27, 2007 pages 86 to 88, 86.

Exhibit 769, para. 48

Exhibit 814

Evidence of Joe Dupuis, November 21, 2008, page 62

1425. By August 26, 2000, the *Standard Freeholder* had commented on the new site's reporting of pedophile clans as follows:

> **"[Projecttruth2.com] is soaked with names of Roman Catholic clergymen, police officials, business people, even a former police service board official. All are said to be connected to or directly involved in the alleged pedophile ring.**
>
> **Some have been charged. Some have not.**

It's not conventional journalism…"

Reference: Exhibit 831

1426. The article also noted that Nadeau's position was that if individuals thought they had been slandered, they could sue him.

Reference: Exhibit 831

1427. For all the obvious harm the site inflicted on innocent people falsely labelled as "pedophiles", the site seemed to some users to have value because little information about the Project Truth police investigation was otherwise being reported. As C-11 explained in one web posting:

> **"A caveat before I begin. I disagree with a number of positions that this website has pursued. I also disagree in part with the tone as well as some of the actions that the author of this website has chosen. <u>However, without the website</u>, without this man now having the courage to go forward as he has, tenaciously facing the angry mobs, <u>I would have no recourse</u>. I know that I am personally indebted to him." [Emphasis Added]**
>
> **Reference**: Exhibit P-523, bates page 1062553; see also C11, June 6, 2007, page 154, lines 16 through 25

1428. Projecttruth2.com became an important source of information with respect to allegations of sexual abuse within the community. The site Projectttruth2.com was reportedly visited over 71,000 times in less than a one year period.

Reference: Exhibit 804, page 2

Institutional Responses to the Websites

1429. In September 2000, both the Ministry of the Attorney General and the Diocese considered their institutional responses to Nadeau's website postings.

1430. The Diocese was concerned by potentially defamatory content on the Project Truth websites alleging that certain priests had engaged in acts of sexual assault and rape. These unproven allegations had been causing damage to the reputations of the Bishop and Priests of the Diocese. On September 19, 2000, the Bishop and several priests of the Diocese of Alexandria-Cornwall issued a defamation claim against Bateman, Nadeau and their internet service providers**.** The defamation claim was settled against Nadeau by the summer of 2001 on the basis that Nadeau would not publish the allegations that had previously been made on the site with respect to members of the Diocese again**.**

Reference: Exhibit 799
Exhibit 801

1431. The Ministry of the Attorney General also considered its options with respect to the issue of websites in late August and early September 2000.

1432. In a letter dated August 29, 2000 Murray Segal described problems caused by the website:

> **"I do not support the website as it has not served the interests of the Cornwall community. You have named the website "project truth," which is the same name as the official police investigation, which could confuse the public. Members of the public accessing the website may have been led to believe that it was associated with the O..P.P. *Project Truth* investigation and they may be**

> **of the view that these investigators have improperly published the affidavits of victims who reported their experience of sexual abuse. This in turn would reduce public confidence in the official O.P.P. investigation into allegations of sexual abuse of young people in the Cornwall community. These investigations are at a critical juncture with some cases just beginning to come to trial. Victims and other witnesses who may not have yet come forward to the police may be inhibited from doing so as a result of their perception that the police, contrary to accepted practices, have disseminated confidential information. As you can appreciate, reduced public confidence in the official police investigation has the potential of brining the administration of local criminal justice into disrepute."**
>
> **Reference**: Exhibit 3422

1433. On September 13, 2000, Segal met with Shelley Hallett, Jim Stewart and Paul Lindsay with respect to the website. Hallett called the meeting to follow up on Pat Hall's concerns about the website and wished to discuss possible witness tainting, the possible chilling effect the site could have on additional victims coming forward, and the fact that the site had content related to individuals still under investigation in Project Truth. She also raised concerns pertaining to jury selection and the overall effect of the site on the administration of justice.

> **Reference:** Exhibit 3190
>
> Exhibit 1389
>
> Shelley Hallett, January 20, 2009, page 110 line 14 to page 111 line 15

1434. After outlining these concerns, Hallett proposed that the Crown seek a Court order temporarily closing down the website until completion of the trials.

Reference: Exhibit 3189

1435. Hallett's recommended course of action was ultimately rejected in the Crown meeting of September 13, 2000. The Crown decided to take no step in relation to the website principally because it wanted to avoid being perceived as being heavy handed, and seeking "gag" orders against institutional critics so as to further facilitate cover ups by institutions.

Reference: Exhibit 3190

Shelley Hallett, January 21, 2009, page 178, lines 6 through 17

Murray Segal, January 29, 2009, page 167, lines 2 through 8

1436. The Crown's failure to take any meaningful steps against Nadeau had consequences for the *R. v. Leduc* trial. When the Leduc trial commenced on January 15, 2001, the presiding judge, Justice McKinnon, ordered a publication ban prohibiting the publication of any information that could identify the complainants. Justice McKinnon's order expressly prohibited the broadcast of information by internet. Nadeau defied the Court order and reported on matters in the *R. v. Leduc* proceedings, which jeopardized the prosecution of this case.

1437. After posting to his site information from the *Leduc* trial, and being reprimanded by the trial judge, Nadeau was cited in contempt of Court by Justice McKinnon.

1438. By the time Nadeau was cited for contempt, damage to the *Leduc* trial had already been done by virtue of the website. Shelley Hallett, the prosecuting Crown, thought it was

important for the *Leduc* trial to be tried before a Jury. She was of the view that, given the nature of this case, "a conclusion of a jury would have compelling effect on the community generally in terms of […] finality of the result".

Reference: Shelley Hallett, January 21, 2009, page 174 line 15 to page 175 line 20

1439. In *Leduc* the defense moved to re-elect to a judge alone trial and the Crown initially opposed the re-election. Nadeau posted an article referring to the defence motion which was brought to the Court's attention, the Crown was compelled to consent to the re-election. As a direct result of website postings related to the *Leduc* trial, the Crown was no longer able to sustain a trial by jury.

Reference: Exhibit 804, bates page 7022831

1440. It must be said that Nadeau's participation in the *Leduc* trial was not solely negative. It also resulted in an examination of Justice McKinnon's previous involvement on behalf of the CPS in relation to Officer Dunlop, which in turn led to His Honour's decision to recuse himself from hearing the defence stay motion in *Leduc.*

1441. Ultimately, on September 7, 2001, Justice Cunningham found Nadeau guilty of two counts of contempt of court for Nadeau's web posts with respect to the *R. v. Leduc* proceedings. Nadeau was fined $1,000.

Reference: Exhibit 804

1442. After being found in contempt of Court, Nadeau was reported as saying, “I think it’s fair. I got my whacks in, and it cost me a thousand bucks.”

Reference: Exhibit 812

1443. Even after being found guilty of two counts of contempt of Court, Nadeau continued to post materials on occasion onto the projecttruth2.com website.

1444. The Projecttruth.com and Projecttruth2.com websites on balance were damaging to the community.

1445. The sites caused harm to victims whose affidavit materials were at times posted online without their consent. One of the sad ironies of these websites is that although they claimed to be trying to provide an environment which would be safe for victims, the sites themselves posted content which could have been harmful to victims.

1446. The website allegations also damaged the reputations of many innocent individuals in the community. For example, as a direct result of unproven allegations against him on the Projecttruth.com website, Father Kevin Maloney decided to step down from his duties as chaplain of the Cornwall jail until the issue could be clarified. Father Maloney explained the impact of the allegations on the website as follows:

> **“I have found this whole matter to be very trying and unsettling. It has called my reputation in the community and in the jail in question that’s compromised my ability to minister to my parish and at the jail.”**

Reference: Kevin Maloney, July 4, 2008, page 8 lines 1 through 3;

Exhibit 1866, bates page 1001917

1447. The websites continued to fan the conspiracy theorists' flames. By throwing dozens of names into the public domain as being "pedophiles" the website content fed the community panic about lack of public safety. So did the public comments of Guzzo.

1448. Reaching back to the beginning of these submissions, it is possible that, had institutions such as the CPS properly responded at the outset to allegations of historic sexual abuse, and taken a more pro-active approach to speaking to mainstream media, these websites would not have been created. Had the CPS responded better, it is likely that complainants would have felt comfortable reporting directly to the police or CAS or both (as opposed to Dunlop or Nadeau), and would have felt that they were going to be listened to when they came forward and shared their stories. The general public would also have maintained its confidence that those complaining through the appropriate channels would have their concerns addressed.

1449. We have seen several examples of abuse complainants who felt they had to 'go public', meaning go to the media with his or her complaint, in order to get taken seriously. This occurred in the Brisson family in 1986 with respect to the Diocese, it occurred with Jeanette Antoine concerning the CAS and the CPS and it occurred with C52 in respect of the CPS. This fact too sheds light upon why many complainants first approached Perry Dunlop or Dick Nadeau with their stories, in that both were local media celebrities who had access to media. A parallel reporting structure thus evolved due to an absence of trust in the community's investigating institutions.

1450. In terms of public opinion, it is important to recall that CPS went to war with Dunlop over an action (release of Silmser's statement to the CAS) that was found to be Dunlop's

duty to perform. Dunlop won that war in the press and in the hearts of minds of the community. CPS wore the "black hat" in that story and it never recovered a positive public image – notwithstanding that Dunlop himself began causing problems for historic abuse prosecutions as events unfolded.

1451. The net effect of the above was an audience pre-disposed to trust the "whistle blowing cop" over members of the CPS, and hence to seek him out instead of bringing police complaints to the police.

1452. As events unfolded and Project Truth went into operation, some of the "anti-police" sentiment was transferred to the OPP, and in particular, the Guzzo critique of the OPP gained media attention.

1453. Although Pat Hall expressed understandable frustration at not being able to persuade Guzzo to cease making incorrect statements about the OPP, the fact remains that the OPP had no countervailing media strategy of its own and effectively "yielded the field" to Guzzo.

1454. In the end, there was an obvious appetite in the community for the content of the Nadeau sites. The sites themselves seemed to be duplicating the "whistle blowing" mantle previously assumed by Dunlop: it is no coincidence that the sites started operating the summer the Dunlops left Cornwall for Vancouver Island.

1455. While recognizing that policing agencies cannot comment on active, specific investigations or criminal charges before the Court, there is still ample scope for public communications on police topics of concern to the community.

1456. In Cornwall, something as basic as a civics lesson in how law enforcement agencies operate and co-operate in the administration of justice would have helped dispel some of the more far-fetched conspiracy theories that circulated.

1457. The public outcry over the stays in both *MacDonald* and *Leduc* represented an opportunity to explain to and educate the public at large about the *Charter* and how and why criminal charges are affected by it. Instead, in an information vacuum, the community continued to speculate about secret connections amongst judges and a certain segment believed that the judges themselves were part of a "conspiracy".

1458. Project Truth officers or other representatives of the OPP could have engaged more with the community as a whole by doing town hall sessions focussed on prevention, or victim assistance, or other topics associated with community safety.

1459. While steering clear of specific cases, it should have been possible to give the community routine updates on Project Truth.

1460. Both the CPS and OPP needed to be more responsive and to "push back" against the way the mainstream media framed the "whistleblower" story. As the media expert testified, that was an inherently newsworthy and potent story; over the years, through repetition, it became the Cornwall "world view". The truth was far more nuanced, and the whistleblower brought about unintended and negative consequences for sexual abuse complainants: **that** was an equally interesting media story, but no one told it.

1461. Attached as Appendix A are our recommendations.

APPENDIX A

THE CCR'S RECOMMENDATIONS

Apology Act

1. CCR supports the enactment of an *Apology Act* similar in content to the British Columbia Act (*Apology Act*, [SBC 2006] Chapter 19).

Recommendations for the Children's Aid Society

Greater CAS Oversight

1. Legislation such as Bill 93, 2008 presently before the Legislature should be enacted to allow the Ombudsman of Ontario to review and make decisions on complaints of the Children's Aid Society.

2. Although the CCR applauds the existence of The Office of the Provincial Advocate for Children and Youth, this Office needs increased powers in order to advocate for children in situations where informal resolutions are not achievable. (See the *Provincial Advocate for Children and Youth Act, 2007,* S.O. 2007, Chapter 9). This Office should be accorded tools and powers to make it a children's advocate "with teeth".

3. The number of cases that a CAS worker can effectively manage should be examined by a committee comprised of staff from CAS, the Ministry, OACAS and other qualified professionals.

Foster Homes and Group Homes

4. Interviews with children in foster or group homes should never be conducted in the home.

5. If the CAS has not started on its commitment to commence unscheduled, surprise inspections of foster homes, it should start this practice as soon as possible. There should equally be surprise inspections of group homes.

Impartial Independent Investigations

6. When allegations are received against a CAS case worker, or within the foster care and group home system, a social worker not affiliated with the agency should be appointed to conduct an impartial, independent investigation of the incident. If the allegations involve criminal wrongdoing, the local police force should be contacted.

Training and Resources

7. The CAS should share its expertise in the early detection of child abuse with other institutions who provide services to children and youth (ex: police services, school boards, probations offices, religious organizations etc.). The Ministry should provide ear-marked funding to enable the CAS to provide these community training services.

8. There should be joint training for the CAS and police, similar to the Investigation of Sexual Offences Against Children course which previously existed. The course should include instruction related to historical abuse.

9. The Ministry should provide appropriate funding in order that each Children's Aid Society can create sufficient staffing positions to properly operate quality assurance programs.

10. Every Children's Aid Society be provided with adequate funding to create sufficient staffing positions to ensure that internal orientation and training needs are properly addressed on an ongoing basis.

Fast Track of Criminal Record Checks

11. A fast track of criminal record checks should be implemented for applicants for foster care, adoption and CAS positions, including volunteers and board members, with the consent of the individuals.

Review the Child Abuse Register

12. A provincial committee or task force should be created to determine whether the Child Abuse Register continues to serve a useful purpose, and if the Register is to be maintained, how it can be improved.

13. Should it be determined that the Child Abuse Register should be maintained, the names of victims should be excluded from the Register forms, and should be replaced by monikers. Where the parents or caregivers of the child victim are not the verified abuser, monikers should be used.

14. Information pertaining to individuals registered on the Child Abuse Register should be allowed to be shared with appropriate organizations such as police, Crown attorneys, probation and parole officers, and employers as deemed necessary by the Children's Aid Societies.

Clarification on Duty to Report to Employers and the Term "Caregiver"

15. The CAS should be required to notify employers in all cases where an employee who has access to children as a consequence of his or her employment has been the subject of a *prima facie* credible complaint of sexual abuse.

16. The CCR is of the view that the term "caregiver" is not a confusing term, but should the CAS recommend that this term be reviewed, the CCR recommends that it be defined as "anyone having control or authority over a child or youth"

Records Disclosure

17. Records disclosure should officially become part of the CAS mandate.

18. The CAS should be provided with adequate resources to provide timely disclosure of records.

19. A standard policy for all Children's Aid Societies should be developed outlining how records are delivered. There should be priority and resources devoted to deliver information about people who have been in CAS care. The CAS should provide all outgoing Crown wards with:

- their updated social and medical histories during the time they were in care and that was collected on them during their care;
- the names, addresses, and telephone numbers of mental health professionals who have done tests and produced reports for the youth and how to obtain those reports and test results;
- a list of schools attended with names of teachers, grades completed and copies of report cards;
- a list of the foster homes where the wards lived, including the dates and placements and the names of the foster family members living with them in the home;
- a list of clubs and groups attended and any certificates received from same;

A parent or guardian or the youth themselves should sign to confirm receipt of records. A full copy of the material given, including the sign-off, should be kept by the agency at the front of the child's file and would be immediately available to the individual if required in years later.

When a file is handed over, there needs to be counseling made available to the person.

Recommendations to the Cornwall Police Services and the Ontario Provincial Police

Police Oversight

1. To the extent that Bill 103 (*Chapter 5, Statutes of Ontario, 2007*) does not address the situation, there should be a recommendation to the government that local and provincial police forces *not* involve themselves in any investigations alleging wrongdoing against senior members, present or former of their service.

Training and Resources

2. The CPS and OPP should be providing *all* criminal investigators with training on sexual abuse, including historic sexual abuse and male to male sexual abuse.

3. The investigator training should include training of proper rapport building with sexual assault victims and proper interviewing techniques to be used with victims of historical sexual abuse.

4. Police training should be developed on how investigators should proceed in cases where the complainant has also launched a civil claim or other complaint (ie: a human rights complaint)

5. All police officers in Ontario (both municipal and OPP) should learn of the concerns and recommendations highlighted in the Cornwall Public Inquiry through continuing professional education.

Investigatory Techniques

6. The complainant should be permitted in all cases of alleged sexual abuse to disclose his or her allegations to an officer of the gender of the complainant's choice. If possible, during the first meeting with the complainant, a male and female officer should be present to further enable the complainant to voice his or her preference.

7. All efforts should be taken to make sure that the interview is taking place in a comfortable setting. Although interviews can take place at a police station, the interview room should not be a "cold" physical setting.

8. Police must take the time necessary to build trust with a complainant of sexual abuse. The police must ensure that the complainant understands that he or she will be believed by the police. This may require a police officer to meet with a complainant on multiple occasions before a statement is taken.

9. Police officers must assist complainants who disclose abuse to become "ready" to be involved in criminal proceedings.

10. Complainants should never be sent away from a police interview to write his or her own statement alone. The police should always be present to assist the complainant in this capacity.

11. Police officers should call ahead before visiting a victim of sexual abuse.

12. Consideration should be given to use of child psychologists when police interview children regarding allegations of sexual abuse.

13. Police should keep bilingual counseling cards on them at all times to hand to victims so they have somewhere to call.

Communications Strategy

14. Both forces should consider a more pro-active media strategy in situations where there are community concerns about the efficacy of policing. This should encompass "informal" or Town Hall types of public meetings, educational events, question and answer formats, etc.

Recommendations Specific to the Ontario Provincial Police

Project Management

1. "Projects" should be clearly defined as to scope at the outset, potential charges analyzed, and an investigation plan prepared.

Joint Investigation Management

2. There must be a formal written protocol with respect to joint sexual abuse investigations. The protocol should outline:

   (a) the sharing of investigatory information

   (b) the provision of support and assistance to complainants

   (c) the sharing of disclosure-related information

   (d) the manner in which complaints will be referred to the other agency

   (e) generally coordinate so as to achieve the most effective use of police resources

3. If the OPP investigates jointly with another police force and lays charges, the OPP is responsible for disclosure. In these circumstances, the OPP should have jurisdiction and authority to issue orders to the officers in the partner force involved in the investigation and resulting prosecutions.

Accountability for Destruction of Property

4. The OPP should develop a standard form for officers to use to itemize all items seized in a search (so that the content of tapes, for example, can be itemized and described).

5. The OPP should modify its Property Report form to include a space to indicate not only the person approving the disposal of property, and when, but who actually destroyed the property, the means of destruction, and when the destruction takes place.

6. Two OPP staff should be present at any time that property is being destroyed. Each individual should be required to sign for the destruction of property.

Recommendations to the Government Regarding Victim Participation in the Criminal Process

1. Complainants must be made aware that services are available for them at the outset of their decision to disclose to police. They must be aware in advance of disclosing to the police that even if their matter does not go to trial or if a charge is not laid that their risk of being re-traumatized by coming forward will be minimized by their being referred to appropriate support services.

2. Victims must be assured in advance of coming forward to police that there will be availability of services even if charges are not laid, as well as beyond the conclusion of the criminal trial. Although the role of the police and the Crown ends at the completion of a trial, even when the legal proceedings have concluded, for many victims the impact of sexual abuse is lifelong.

3. For all multi-victim/multi-perpetrator investigations, VWAP services should be made available from when charges are anticipated. Steps should be taken to implement VWAP services from the start of police investigations into the multi-victim/multi-perpetrator case, and the availability of VWAP services as well as other victim support resources should be communicated to the public at the outset of the investigation.

4. VWAP should be provided with greater funding discretion to expand its services as required in multi-victim/multi-perpetrator investigations

5. VWAP counselling should explicitly emphasise to complainants the importance of not discussing testimony with third parties, as these discussions could cause witness contamination.

6. VWAP should provide referral services as necessary to ensure that individuals who have assisted the criminal justice system by coming forward with allegations of sexual abuse are able to continue to receive services as required after the end of criminal proceedings.

7. When victims first interact with the justice system, they should be provided with an introduction document explaining the victim's role in the judicial process, and explaining in general the process of criminal trials.

8. A VWAP staff member should be available to assist the victim to find the proper courtroom when the victim attends court.

9. Victims should always be kept aware of the stages of court proceedings. There must be a clear protocol explaining who has this responsibility (as between police, the Crown, VWAP). Victims should be informed, both orally and in writing, of the development of the case and of the specific outcome.

10. A VWAP staff member should make a victim aware of the right to apply for compensation from the Criminal Injuries Compensation Board. If charges are not laid because the alleged perpetrator is deceased or cannot be tried for any other reason, the possibility of applying to this Board should be explained to the victim by the

investigating police officer. The victim should be referred to assistance for completing the Criminal Injuries Compensation Board application if necessary.

11. The preferred practice should be that the victim be involved in the sentencing phase. Victim impact statements should be provided to the Court either in writing or orally during sentencing, even if someone pleads guilty.

12. Counseling services should also be made available and easily accessible for family members of the victim

Recommendations to the Government Regarding Victim Assistance

1. The province should undertake a comprehensive review of the availability of services across Ontario for male survivors of sexual abuse and/or sexual assault.

2. Should this review determine that services are inadequate at the provincial level, then the province should undertake to ensure that services are developed. The CCR takes no position as to whether this would require the development of specialized victim treatment service centres for male survivors of sexual abuse and/or sexual assault, or whether these services may be provided within existing service centers, so long as services are easily accessible for male victims. Should services need to be expanded, the province must undertake a victim-centric approach to providing appropriate services.

3. The province should commit to establishing a 211 system for Cornwall as soon as possible. The 211 system should include both a website and phone service, and should provide easy links to existing services for victims of sexual abuse and/or sexual assault.

4. The province should undertake to establish a 24 hour victim support hotline where male victims may speak with a health professional, and a website dedicated to information on male sexual abuse.

5. The province should establish a special fund to re-imburse victims of sexual assault and/or sexual abuse for health related expenses currently not covered by OHIP.

Recommendations for MAG

1. All Crowns should maintain a detailed disclosure record, including documents disclosed to defence counsel, date of requested disclosure, and date that disclosure provided. This document should be updated in a timely manner, and should be readily available to police.

2. There should be mandatory peer review of Crown work in large and complex cases

3. There should be "embedded Crowns" within police forces investigating complex multi-victim multi-witness sexual assault investigations. The province should develop a policy clearly outlining the roles and responsibilities of "embedded Crowns" so as to avoid "mandate creep" on the part of either the police or the Crown.

4. Once a charge has been laid in a multi-victim/multi-witness sexual assault investigation, there should be a dedicated Crown post charge.

5. In cases where two forces have laid charges against one individual, the Crown should bring together for management purposes all related cases, regardless of which force laid the charge (i.e. to avoid a Lalonde / Project Truth situation)

6. Flex resources should be earmarked at the outset of any multi-victim sexual assault investigation, as history has shown that additional complainants are likely to come forward after the public learns that an investigation has commenced or the first charges are laid

7. Crown opinion letters should provide written reasons to police as to the Crown's understanding as to why the circumstances in the case, there is no reasonable prospect of conviction, or no public interest in laying a charge. Crown opinions letters should provide reasons and not just conclusions. In cases where there are factual uncertainties, additional factors which could lead to a different conclusion, or in cases where the Crown is of the view that further investigatory steps are required, the Crown should indicate this in the opinion letter. The Crown should provide a similar level of reasoning and analysis when recommending that there is a reasonable prospect of conviction.

8. The MAG Crown Law Criminal Appeals division should provide a copy of its written memoranda considering whether to appeal trial decisions to the trial Crown requesting the appeal

9. The Courts Administration services should provide expedited dates for adjourned criminal matters, in order to minimize delay and the risk of a *Charter* application to stay the charges on the grounds of delay.

Ministry of Community Safety and Correctional Services

1. The Ministry should contact all of the former clients who were on probation to Nelson Barque or Ken Seguin, and ascertain if they wish to disclose any complaints. If so, the Ministry should hear the complaints, and offer further assistance if necessary as well as an apology.

2. The Ministry should develop and implement a protocol on how probation officers deal with clients who disclose sexual abuse. The protocol should be premised on principles of consistency, transparency and accountability.

3. The Ministry should develop a protocol with respect to allegations of sexual impropriety or other employee misconduct against current and former Ministry employees. The protocol should develop the steps required to conduct a client review of a probation or parole officer after receipt of complaints of allegations of sexual impropriety, sexual abuse or other misconduct, in order to ascertain whether they may be other complainants.

4. Employees should be required to report to their agency head (or beyond if necessary), suspected misconduct by fellow employees with agency clients. Any employee who has reason to believe misconduct is occurring or has occurred, and who does not report the incident should be sanctioned.

School Boards

1. The Ministry of Education should review all sexual abuse awareness curriculums to ensure that it forms a core part of the curriculum from early ages.

2. In addition to Principals and teachers, all volunteers within school boards should be trained with respect to recognizing symptoms of sexual abuse, and on how to act in situation when a student discloses allegations of sexual abuse to them.

3. The province should provide earmarked funding to Boards of Education for the training of Principals, teachers, staff and volunteers with respect to prevention and early identification of child sexual abuse. In addition, school boards should seek the assistance of police agencies and the CAS to provide training with respect to sexual abuse best practices.

Support for Frontline Workers to Prevent and Assist with Vicarious Trauma

1. There should be a mandatory training for frontline workers who are regularly exposed to claims of sexual assault and/or abuse (ex: CAS employees, police investigators) alerting them of the risk of experiencing vicarious trauma, and providing them with awareness of supports available for them.

2. There should be an encouragement within institutions for disclosure of what frontline workers are suffering.

3. Easily accessible, fully confidential counseling services should be made available to frontline workers both to prevent vicarious trauma and treat vicarious trauma as it arises.

Recommendations for the Diocese

1. The CCR recommends that the Bishop and the Diocese of Alexandria-Cornwall adopt a national uniform standard as is found in the United States for the handling of allegations of sexual abuse. This national standard should be premised on the principles of transparency and openness as found in *From Pain to Hope*. It should also focus on prevention, as well as care for victims. Should there be any interim period before the adoption of a national policy, or in the event that Canadian Bishops cannot agree on a national policy, the Diocese of Alexandria-Cornwall's policies and protocols should be revised in accordance with the CCR's recommendations for the contents of a national policy as described below.

2. The CCR adopts a one strike rule for priests who have sexually abused children or youth, as has been adopted in the United States. Priests charged and convicted of pedophilia or other acts of sexual abuse involving youth should not be re-admitted into active ministry.

3. The practice of transferring sexually offending priests to other dioceses and/or of accepting sexually offending priests from other dioceses must stop. Although an offending priest might be sent to another Diocese in order to receive better treatment or therapy, this priest should remain under the jurisdiction of his original Diocese. Priests with known sexual misconducts should never be transferred.

4. The national policy should clearly state that when a priest working in one Diocese but incardinated elsewhere is subject to a sexual abuse complaint, the Diocese learning of the complaint shall inform the other Diocese with full particulars.

5. The national policy should clearly state that when a priest working in one Diocese but incardinated elsewhere is subject to a sexual abuse complaint, the Diocese in which the priest is incardinated shall require the priest to return to his Diocese of incardination.

6. The Diocese of Alexandria-Cornwall should maintain its protocol for its interactions with other local institutions (such as the police and CAS). This protocol should be consistent with the national policy.

7. The duty to report must be consistently adhered to by the Bishop, priests, employees and volunteers of the Diocese. They should report all allegations of sexual abuse to the police and the CAS if they receive allegations of sexual abuse against a minor.

8. The Bishop should discourage the use of the seal of the confessional as a means of protecting clergy who have committed sexual abuse.

9. Should the Diocese receive a Statement of Claim or other direct complaint, these matters should immediately be reported to the CAS or police.

10. The Diocese of Alexandria-Cornwall's present commitment to exclude confidentiality clauses from any settlements related to alleged sexual abuse by a priest or other Diocesan employee or volunteer should be expressly incorporated into a national protocol and the Diocesan protocols or policies.

11. The Chuch has a moral obligation to assist victims in every way possible. This may include apologizing for sexual abuse, providing medical assistance, or other forms of restitution, depending on the complaint. The Diocese should provide assistance with survivors of clergy sexual abuse, and should liaise with victims in the best interests of the survivor.

12. The CCR applauds the development of a victims care committee, and supports its continued use.

13. When a new Bishop is assigned to a Diocese, the outgoing Bishop should provide a written brief to the incoming Bishop outlining all areas of concern or improvement for the Diocese.

14. In the interests of full transparency, the Diocese of Alexandria-Cornwall, and all provincial and national Catholic organizations should disclose statistics on clergy sexual abuse. Any caveats with respect to the data being disclosed should be noted, but information gaps should not form the basis of a refusal to release available information.

15. The Diocese's current sex abuse information pamphlet should be modified to include information pertaining to sexual abuse of adolescents and teenagers. (The focus of the current pamphlet is too focused on child sexual abuse).

16. As recommended by the CCCB, the Diocese of Alexandria-Cornwall should adopt a broad policy with respect to screening and prevention. The policy should expressly state that if the Diocese has any doubts as to possible previous sexual misconduct on the part of a priest, employee or volunteer, the applicant should be rejected.

17. The Diocese's screening policies with respect to volunteers should also be applied to non-priest Diocese employees.

18. The national policy should incorporate a code of professional conduct for clergy and Diocesan employees, and should stress the 'zero tolerance' approach.

19. The work of the Diocese's review committee should not be outsourced. The Diocese should implement policies and procedures to facilitate cooperation between the Diocese's committee and its insurers.

20. CCR applauds the Diocesan funding and support of the Children's Treatment Center and encourages similar support of an adult treatment center should one be formed

21. The Catholic Church must stop using "Mental Reservation" to prevent scandal. It should move towards full transparency and accountability with respect to allegations of sexual abuse.

22. The Diocese should appoint a representative to monitor any criminal trials against Diocese clergy, employees or volunteers to ensure that if other victims are identified or other allegations surface that the Diocese is able to properly respond and assist police and other officials.