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

FINAL SUBMISSIONS OF JACQUES LEDUC

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PART 1—EXECUTIVE SUMMARY

JURISDICTION AND MANDATE

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

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

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

THE FATHER DESLAURIERS CASE

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

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

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

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

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

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

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

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

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

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

THE FATHER MACDONALD/DAVID SILMSER CASE

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

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

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

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

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

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

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

THE LEDUC TRIAL

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

PART 2—MANDATE OF THE INQUIRY—INSTITUTIONAL RESPONSE & SYSTEMIC FAILURES

1. On April 14, 2005 the Ontario Government established the Cornwall Public Inquiry pursuant to the *Inquiries Act*. The Order in Council set out the mandate of the Inquiry as follows:

> Mandate
>
> 2. The Commission shall inquire into and report on the **institutional response of the justice system and other public institutions**, including the interaction of that response with other public and community sectors in relation to:
>
> (a) allegations of historical abuse of young people in the Cornwall area including the policies and practices then in place to respond to such allegations; and
>
> (b) the creation and development of policies and practices that were designed to improve the response to allegations of abuse
>
> in order to make recommendations directed to the further improvement of the response in similar circumstances.
>
> 3. The Commission shall inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall

2. Consistent with the limits of the mandate, Commissioner Glaude indicated that the focus of the Inquiry was as follows:

> Opening Remarks
>
> The mandate sets out two primary tasks. The first task is to find out how public institutions in Cornwall responded in the past to any allegations of sexual abuse that were brought to their attention.
>
> We will also look at the way institutional responses and the capacity of institutions to respond have evolved over time and how the responses could be improved in the future. This will be the subject of Phase 1 of the inquiry.

> As the focus of Phase 1 is on allegations of child sexual abuse made to public institutions, I would like to take a moment to comment briefly on these terms.
>
> [...]
>
> The mandate also speaks about the responses of public institutions. By public institutions we mean such entities as the police and Corrections and those that have been listed as parties, I suppose, in this inquiry.
>
> I should point out, however, that during the inquiry we may also discuss the role and practices of other institutions such as the Church. This would be done for the purpose of better understanding and evaluating the responses of the public institutions that are included in the inquiry's mandate.
>
> […]
>
> I may make findings of fact about what allegations were made to various public institutions and how those institutions responded, including the interaction of the response with other public and community sectors.
>
> […]
>
> However, I remind all parties and their counsel that our focus is on the response of the institutions themselves, and we will be hearing the evidence in Phase 1 for that purpose alone. (emphasis added)

Transcript of Proceedings Vol. 4, dated February 13, 2006 at p. 4-5, 6, and 7

3. The Ontario Court of Appeal has also had occasion to interpret the nature of the mandate. In considering the admissibility of two proposed witnesses, the Ontario Court of Appeal held that the evidence of two proposed witnesses did not come within the subject matter assigned to the Commissioner by the terms of the Order in Council and that the Commissioner erred in holding that it did. Properly construed, the Inquiry's mandate:

> […] was directing the Commissioner to look at institutional policies and practices – past, present and future – in responding to allegations of historical abuse of young people in the Cornwall area.

> *Ontario (Provincial Police) v. Cornwall (Public Inquiry)*, [2008] O.J. No. 153 at para. 55 (Ont. C.A.)

4. The Court made other useful pronouncements in the interpretation of the mandate. The Ontario Court of Appeal ruled that ordinarily, the Commissioner would be entitled to hear evidence that did not fall squarely within the mandate if that evidence was reasonably relevant to the work of the Commission. The Court held that the evidence of these two witnesses did not pass the "reasonably relevant" test for admissibility because their evidence, if believed, was about the misconduct of an *individual* police officer, as opposed to evidence of systemic failures in policing:

> Assuming that the evidence of C12 and C13 stands alone and is not the prelude to an avalanche of other such evidence from like complainants and their family members, I fail to see how it could reasonably advance the inquiry that the Commission had been asked to perform. Without wishing to minimize the seriousness of C12's complaint or the gravity of her allegations against the investigating officer, <u>her evidence, if true, essentially comes down to one person having been treated inappropriately by a police officer in a case where she allegedly was sexually assaulted by other teenagers.</u> <u>**Her evidence does not speak to systemic problems that may or may not exist in the way police respond to allegations of sexual abuse of young people by persons in a position of trust or authority. In other words, it has no probative value in relation to the Commissioners mandate**.</u>

> *Ontario (Provincial Police) v. Cornwall (Public Inquiry)*, [2008] O.J. No. 153 at para. 68 (C.A.)

In ruling that evidence alleging some individual form of misconduct is not even reasonably relevant to the mandate, the Court of Appeal set out clear boundaries to the mandate. It is therefore clear that the Ontario Court of Appeal has unequivocally held that allegations of individual misconduct or negligence, even of individual institutional actors, do not fall within the Commissioner's mandate. The evidence must be relevant to <u>systemic institutional</u> responses.

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

1. FINDINGS OF MISCONDUCT MUST BE NECESSARY TO FULFILL MANDATE OF THE INQUIRY (INSTITUTIONAL RESPONSE)

6. While the threshold for admissibility of evidence at an Inquiry is one of "reasonable relevance", the jurisdiction to make findings of misconduct is much narrower and can only be made where they advance the mandate and the valid purpose of the Inquiry. Findings of misconduct that are not necessary to advance the mandate and the valid purpose of the Inquiry constitute an excess of jurisdiction. As stated by the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada-Krever Commission)*:

> Findings of misconduct should not be the principal focus of this kind of public inquiry. Rather, they should be made only in those circumstances where they are required to carry out the mandate of the inquiry.
>
> […]
> a commissioner may make findings of misconduct based on the factual findings, provided that they are necessary to fulfill the purpose of the inquiry as it is described in the terms of reference.
>
> *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada—Krever Commission)*, [1997] S.C.J.

> No. 83 at para. 53; *Consortium Development (Clearwater) Ltd. v. Sarnia (City)*, [1998] S.C.J. No. 26 at para. 39-40; *Jakobek v. Toronto (Computer Leasing Inquiry)*, [2004] O.J. No. 2889 at para. 15 (Div. Crt.); *Chrétien v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities, Gomery Commission)*, [2008] F.C.J. No. 973 at para. 42

In other words, while the Commission has allowed for a great deal of evidence to be adduced that extended well beyond institutional responses as it was arguably "reasonably relevant", the admissibility of this evidence does not broaden the jurisdiction to make findings of misconduct which is strictly limited to those circumstances required to carry out the mandate of the Inquiry.

7. Accordingly, findings of misconduct must necessarily meet the following criteria: (i) the findings can only be made either against institutions themselves or institutional actors; and (ii) the conduct that is the subject of comment must demonstrate a systemic failure to respond appropriately to allegations of historical sexual abuse. Individual misconduct that does not establish a systemic failure cannot be the subject of misconduct findings In addressing the limited jurisdiction to consider the admissibility of evidence from alleged victims in respect of Father MacDonald, the Commissioner reaffirmed that there was no jurisdiction to make findings of wrongdoing against the alleged perpetrator. This was affirmed by the Divisional Court as follows:

> With respect to the analogy to *Nelles*, as already indicated, the Commissioner was clear that his intention was not to make specific findings of wrongdoing as against the Applicant or any of the other alleged perpetrators of abuse. <u>Such findings, if any, would be as against the members of the justice system or the other public institutions that received and dealt with allegations.</u>

MacDonald v. Ontario (Cornwall Public Inquiry), [2006] O.J. No. 3546 at para.12 (Div. Ct.)

2. MR. LEDUC WAS NOT AN INSTITUTIONAL ACTOR

8. On May 1, 2006, Commissioner Glaude ruled that the Diocese of Alexandria Cornwall was a "public institution" within the meaning of the Order in Council:

> In conclusion, I believe that the Diocese is a public institution involved in the response to allegations of abuse in the Cornwall area and is allegedly one of the most significant players in this matter.
>
> As a public institution, the response of the Diocese to allegations of historical abuse can be examined. In addition, recommendations may be made for how the Diocese, together with other such public institutions can and should respond to such allegations in the future.
>
> Having said that, the fact remains that this should not, and cannot, be looked upon as an investigation of the church, its doctrine or its beliefs. Rather, the Diocese is a corporate entity, a human resources arm of the Roman Catholic Church which employed the priests who worked in this area. As such, the mandate will be applied to the Diocese in the same way that it is being applied to other public institutions involved in this inquiry. (emphasis added)

Transcript of Proceedings Vol. 24, dated May 1, 2006 at p.35

9. Mr. Leduc was granted standing for Part 1 and Part II of the Inquiry as the Commissioner was satisfied that Mr. Leduc had a substantial and direct interest in some of the issues being examined in the Inquiry. Of particular import to the question of standing was the fact that Mr. Leduc "was a lawyer on behalf of the Diocese in respect to the civil settlement between the Diocese and the first complainant." Unlike many witnesses who have sought standing before the Commission, at no time did the Commissioner, Commission Counsel or counsel for the Diocese ever suggest that Mr. Leduc's interests for the purposes of the Inquiry could be subsumed under the umbrella of the Diocese. This is for the simple reason that Mr. Leduc is not and was never an employee or a member of that institution. Mr. Leduc was counsel to the Diocese, engaged on the

basis of discrete and limited retainers on specific legal matters largely pertaining to real estate issues.

Transcript of Proceedings dated November 17, 2005, Vol 2 p. 57-60

10. Mr. Leduc was granted standing limited to "specific issues that affect his interest." It was clear that the Diocese, Mr. Leduc's former client, would be examined by the Commission in relation to two matters for which Mr. Leduc had previously been retained (Father Deslauriers and Father MacDonald). The Diocese was required to waive solicitor-client privilege in relation to those matters so as to allow Mr. Leduc to testify about his instructions and interactions with his client, the Diocese of Alexandria Cornwall Corporation.

a. MR. LEDUC'S SPECIFIC AND LIMITED RETAINERS WITH THE DIOCESE

11. In 1978, after the completion of his studies at the University of Ottawa, Mr. Leduc was called to the Bar in Ontario and began his general practice in Cornwall. Mr. Leduc's practice was limited to the extent that he rarely worked in the areas of tax, matrimonial litigation, environmental or criminal law. Mr. Leduc was the only lawyer in Cornwall that also had a license in cannon law. From time to time, Mr. Leduc was retained by the Diocese to act on certain files. Apart from Mr. Leduc's work on the matrimonial tribunal, he was never retained by the Diocese for the purposes of advising on cannon law matters. The revenue generated by Diocese files was not significant as Mr. Leduc, as a courtesy, would either not charge a fee or reduce his fee when dealing with matters on behalf of the Diocese. Mr. Leduc was aware that other lawyers in Cornwall acted for the diocese from time to time and was never retained by the Diocese on a standing or annual basis. To that end, Mr. Leduc was never retained or instructed to act in the capacity of a compliance officer to ensure that the Diocese was abiding by whatever internal guidelines they may have in place at any given time. This is corroborated by Bishop

Larocque's evidence that he never expected Mr. Leduc to ensure that the diocesan protocol was adhered to in the Silmser matter, but placed that responsibility squarely on the shoulders of Father Vaillancourt who had drafted the protocol. As is evidenced in the uncontradicted evidence of Bishop Larocque and Mr. Leduc, at no time did Mr. Leduc have control, direction, involvement in and provide advice in relation to systemic church policy in respect to responses to allegations of child abuse.

Evidence of J. Leduc	Vol 253, p.7-11; p.13-17; 19-20; p.27; Vol 254, p. 202 l.20-p.203 l.13; Vol 255, p.190 l.20-p.191 l.13; p.192 l.23-p.193 l.20
Evidence of E. Larocque	Vol 271, p.293 l.12-294 l.8

12. When Mr. Leduc testified, the Diocese waived solicitor client privilege with respect to certain matters and Mr. David Sherriff-Scott, Counsel for the Diocese at the Inquiry, fairly summarized the nature of those retainers:

> Well, my fiend has asked me to address the question of privilege because Mr. Leduc acted from time-to-time for the Diocese. And in the discussions what we had during interviews, there were several issues that arose that are canvassed in his A.E. and connection with which privilege was waived.

Transcript of Proceedings *Vol. 253, dated July 14, 2008 at p. 27*

b. MR. LEDUC IS AN OUTSIDER TO THE HIERACHY OF THE DIOCESE

13. The Diocese revealed its corporate structure or canonical hierarchy to the Commission during the testimony of current Bishop, Bishop Paul Andre Duroche. The Structure is set out in Ex 58 Tab 2.1. The hierarchy of the Diocese shows that the Bishop at the top of the corporate structure, below him are the Vicar General, the Chancellor, the Finance Officer and the parish priests. There is no position in the corporate or canonical structure for either a lay person or a lawyer. No client is required or compelled to follow the advice or suggestions of their counsel and the provision of legal advice does not render Mr. Leduc a member of the church institution.

Mr. Leduc was always an outsider to this structure; he does not appear on any branch of the hierarchy and is not an employee of the Diocese. No one sought to challenge Mr. Leduc in cross-examination either on the transient nature of his retainers with the Diocese or with respect his status as an outsider to the Diocesan corporate structure.

c. AT ALL RELEVANT TIMES BISHOP EUGENE LAROCQUE HAD COMPLETE, EXCLUSIVE AND FINAL AUTHORITY IN ALL MATTERS WITHIN THE DIOCESE

14. The Bishop of the Diocese is the sole officer, director and chief administrator of the Corporation. Bishop Larocque admitted during his testimony that he was at all times aware of his complete, final and exclusive authority over all Diocesan matters including the systemic institutional response to allegations of sexual abuse. Bishop Larocque would, from time to time consult with certain advisors on matters within his jurisdiction, but all decisions were his alone to make. Bishop Larocque testified that he "was not shackled to a protocol" and therefore could not be bound even by his own Diocesan protocols. He could use the "inherent power of the Bishop" to act outside of the protocols and is evidenced in his response to allegations of abuse, did so on his own initiative. Finally, the Bishop testified that it was his view that his discretion could not be hindered even by the CAS. This in fact is borne out during the CAS investigation into Father MacDonald. Notwithstanding the wish of the CAS to have Father MacDonald removed from the church during the entire course of their investigation, Bishop Larocque had the ultimate authority to do so and initially declined to accede to the request of the CAS granting only a 2 week window for the CAS to perform their investigation. At all relevant times, the Bishop's power, discretion and jurisdiction regarding all Diocesan matters was complete and exclusive.

Evidence of E. Larocque Vol 271 p. 150 l.1-160 l.12

15. As an individual occupying the office of Bishop of Alexandria Cornwall, Bishop Larocque was very much his own person, an individual thinker, formal in manner, who gave directions unilaterally. Mr. Leduc testified that there were a number of instances when he would provide Bishop Larocque with legal advice and the Bishop would decline to follow it. Mr. Leduc had no authority or jurisdiction to enforce his legal advice in respect of the church. Mr. Leduc further testified that there were instances when he would provide Monsignor Larocque with legal advice and Mr. Leduc would not be kept informed as to the outcome of the matter or whether the legal advice was followed. Mr. Leduc was never aware of all of Bishop Larocque's dealings on any matter. Bishop Larocque was the type of leader who made decisions based on his own sense of "moral certitude" or "conscience" and he was the type of man who would stand so firmly by his decisions that not even the threat of jail would make him change his mind. Mr. Leduc's influence on Bishop Larocque's conduct, like the influence of Bishop Larocque's many other advisors, was minimal if discernable at all. It is absolutely incomprehensible and wholly unfounded on the evidence that as legal counsel, Mr. Leduc was charged with the duty of reminding Bishop Larocque of his moral responsibilities as Bishop of the Diocese or of the need to comply with internal systemic policies.

Evidence of J. Leduc Vol 255, p.204 l.12-p.205 l.11; Vol 257, p.94 l.24-p.87 l.2; p.97 ll.8-14; p.98 ll.15-25; p.109 ll.5-13
Evidence of E. Larcoque Vol 271, p.151 l.24-p.153 l.8 p.161 l.4-p.164 l.16

3. THE INQUIRY'S MANDATE DOES NOT EXTEND TO MATTERS OF THE PROFESSIONAL COMPETENCE OR PROFESSIONAL NEGLIGENCE OF LAWYERS

16. Lawyers who represent institutions are subject to the same duties of loyalty to the client, privilege, competence and confidentiality as lawyers who represent individuals. The conduct of such lawyers, like counsel representing individuals, is always assumed to be on the instruction

and direction of their clients, advancing the best interests of the client in the pursuit of their stated goals or purpose.

17. This Inquiry was never tasked with the mandate to inquire into and report on the competence or professional conduct of those lawyers who from time to time acted for the various institutions represented at the Inquiry. All lawyers in Ontario are subject to the Rules of Professional Conduct and by-laws issued by the Law Society of Upper Canada as well as practice directions issued from time to time by the Courts. This Commission was not directed by the legislature to re-draft the norms or Rules of Professional Conduct that have emerged from the Law Society of Upper Canada guiding the conduct of lawyers in the province. Indeed, to do so would be invading what is the purview and proper jurisdiction of the Law Society of Upper Canada.

> **4.1** It is a function of the Society to ensure that,
>
> (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
>
> (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.
>
> *Law Society Act* 2006, c. 21, Sched. C, s. 7.

4. THE EVIDENTIARY RECORD DOES NOT SUPPORT CERTAIN FINDINGS OF MISCONDUCT

18. The Commission heard absolutely no evidence regarding the:

- Training;
- Education;
- Qualification;
- Code of conduct;
- Standards for competence; and
- Discipline of lawyers practicing in Ontario

By analogy, The Goudge Inquiry *was* specially tasked with the mandate of inquiring into the qualification and discipline of doctors practicing forensic pathology in the Province. As a result of that mandate, the Goudge Inquiry heard from a range of experts in the field, including evidence as to the practices in other jurisdictions (including England, Wales, the United States and Finland) on the issue of what should be the proper qualifications for forensic pathologists. The College of Physicians and Surgeons, the disciplinary and regulatory body in question, had standing at the Goudge Inquiry due to their obvious interest in the mandate of the Commission.

19. There is good reason why the Inquiry has not heard evidence, expert or otherwise, about the competence and appropriate practice habits of lawyers in the Province. There is good reason why the Law Society of Upper Canada did not seek and was not granted standing at this Inquiry. It is because that subject matter is totally outside this Inquiry's mandate. Despite the obvious lack of relevance to the task at hand, Commission counsel in their questioning of witnesses, and specifically in the examination of Mr. Leduc, asked questions about rules or norms of professional conduct of legal counsel. These questions included but were not limited to:

- The level of expertise of training required to interview alleged victims of sexual assault;
- The appropriate standard for a lawyer with respect to the taking notes during meetings, phone calls and proceedings;
- The appropriate standard with respect to the maintaining and preserving notes;
- The appropriate standard with respect to when counsel should open a file with respect to a matter;
- The appropriate standard with respect to how long a file should be preserved;
- The propriety of speaking to a witness during the course of a judicial proceeding;

- The appropriate division of labour between co-counsel in the preparation and realization of a civil settlement;
- The appropriate level of inquiry regarding the qualification and potential conflict of an opposing party's lawyer to provide independent legal advice.

20. Absolutely no evidence was called regarding any of these assertions. The Rules of Professional Conduct, were from time to time were vaguely referred to (and on occasion erroneously). No experts were called to testify about the rules and standards applicable to civil lawyers practicing and dealing with cases of historical sexual abuse. There is absolutely no evidentiary foundation to make conclusions about Mr. Leduc's general practices as counsel, specific habits or level of competence because there was no evidence called with respect to standards, norms or rules against which such conduct could be measured. Any finding that Mr. Leduc was somehow negligent or fell below the accepted standards of legal practice is a specific finding of misconduct against a non-institutional actor in respect of a non-institutional response. Such a finding, would not only be *ultra vires* the Order in Council, it would be a finding made with a lack of any evidentiary foundation.

PART 3—MR. LEDUC'S ROLE AS COUNSEL TO THE DIOCESE OF ALEXANDRIA CORNWALL IN RELATION TO FATHER DESLAURIERS

MR. LEDUC'S ROLE AS COUNSEL TO THE AD HOC COMMITTEE

21. Mr. Leduc testified that he could not recall being consulted about the Deslauriers matter until such time as he was retained as counsel for the Diocese along with Sister Pilon and Monsignor Guindon to the Ad Hoc Committee on April 3, 1986. Mr. Leduc could not recall whether the Ad Hoc Committee was constituted pursuant to a Diocesan protocol or through the inherent power and discretion vested in the Bishop's office. In any event, Mr. Leduc understood that the Committee's mandate was set out in the April 3, 1986 letter from the Bishop. Monsignor Guindon, who was the Vicar General of the Diocese, was appointed chair of the Committee and directed its activities, which included interviewing alleged victims, family members of alleged victims, priests and members of the religious community who had involvement in the Deslauriers affair and to report findings and recommendations to the Bishop. As the lawyer on the committee, Mr. Leduc had the specific role of providing legal advice to the committee as issues arose and as legal advice was requested. Mr. Leduc took an active role in the questioning of witnesses that came before the committee. Mr. Leduc did not give any canonical legal advice to the committee given that Monsignor Guindon had a doctorate in the subject and was the local authority in Canon Law. Bishop Larocque had a number of dealings regarding the issue of Father Deslauriers with the following people without the knowledge or assistance of Mr. Leduc and prior to the striking of the Ad Hoc Committee: Father Bissaillon, Msg. Guindon, Father Vaillancourt, Father Thibault, Bishop Proulx, Father Menart and the Brisson family.

Evidence of J. Leduc	Vol 253 p. 27-52; p.44 ll.11-19; p.53 l.5-p.55 l.5; Vol 257, p.99 ll.22-25; p.100, ll.9-25
Evidence of E. Larocque	Vol 271, p.153 l.20-155 l.1

Ex 72 (738435)	Rapport et recommendations du comite ad hoc pour le cas de l'abbe Gilles Deslauriers, 23 may 1986

22. The Ad Hoc Committee did not have any jurisdiction to summons witnesses or force Father Deslauriers to testify. Indeed, Father Deslauriers refused to participate before the Ad Hoc Committee. In addition, they had no jurisdiction to bind the Church, the Bishop or Father Deslauriers. The Committee had absolutely no power to enforce its recommendations or any penalty. Once he completed his retainer on the Ad Hoc Committee, Mr. Leduc did not receive any instructions to follow up on whether the recommendations were being implemented nor was his advice sought as to how to implement the recommendations.

Evidence of J. Leduc	Vol 257, p.102 l.6-p.103 l.14

23. The issue of offering to pay for counseling is an issue that, though not part of the mandate, came up in the course of the Ad Hoc Committee proceedings. Ultimately, it became one of the Committee's recommendations: that the diocese should assume the cost of therapy and that the responsibility of those costs would fall upon Father Deslauriers. The Committee never recommended that any sort of compensation be made to victims beyond being reimbursement for therapy expenses. Contrary to Ms. Pilon's evidence, there were no discussions about paying Mr. Brisson any compensation. This is corroborated by Bishop Larocque's evidence who testified that he was never consulted about paying Mr. Brisson any sort of compensation. Mr. Leduc was never questioned about this issue.

Evidence of J. Leduc	Vol 253, p.52-53; p.93 ll.7-13; p.113 l.20-p.115 l.6; p.127 l.16-p128 l.13
Evidence of E. Larocque	Vol 265 p.7 l.11- p.8 l.1

24. Mr. Leduc acknowledged in his examination in chief that there were certain questions he had asked certain witnesses that were based on a foundation that would today be considered

flawed and stereotypical. For example, Mr. Leduc inquired about the sexual orientation of the alleged victims. Though he never asked this question to any of the alleged victims themselves, at the time, Mr. Leduc believed that such information could be relevant to the issue of consent.

Evidence of J. Leduc Vol. 253 p. 56 l.1-p.60l.17

25. In the course of receiving testimony from Mrs. Brission, Mr. Leduc made certain comments about the way the Brissons would be received if they attended the office of the Papal Nuncio in Ottawa. Mr. Leduc testified that the comments were not meant to dissuade the Brissons from communicating their very legitimate concerns with the Pope's representative. Indeed, the Brissons were not dissuaded as they did send correspondence both to the Nuncio and to Rome. Further, the Ad Hoc Committee itself recommended that their report be forwarded to Rome.[1] Any allegation that Mr. Leduc attempted in any way to keep the Deslauriers affair hidden from the Papal authority either in Rome or Ottawa is baseless. Mrs. Brisson, who testified at the inquiry made absolutely no mention of feeling as though Mr. Leduc dissuaded her in any way and no complaint about the conduct of Mr. Leduc.

Evidence of J. Leduc Vol 253, p.110 l.15-p.112 l.10; Vol 257, p.30 l.5-p.32 l.15

RECOMMENDATIONS OF THE AD HOC COMMITTEE

26. Mr. Leduc understood at the time of his retainer on the Ad Hoc Committee that the Committee recommendations were not binding in any way on the Bishop. Mr. Leduc communicated his fear with respect to the powerless nature of the Ad Hoc Committee's mandate to the witnesses Mr. and Mrs. Brisson:

[1] Msg. Larocque testified he sent a copy of the Ad Hoc Committee Repot to the Pro-nuncio in Ottawa. The documentary record demonstrates that the report was received by the Pro-nuncio (Vol 264, p.172 ll.2-7; p.179 ll. 10-24; Ex 2047 Lettre du Pro-nonce Apostolique a Eugene LaRocque en date du 19 Juin 1986)

> "On voudrait qu'elles soient suivies mais il n'y a pas de garantie la-dedans. C'est ce qui me fait peur."

Mr. Leduc knew, for example, that the Committee could very well recommend that Father Deslauriers be removed permanently from the Diocese and that recommendation could be ignored by the Bishop. Mr. Leduc was fully aware at the time of his retainer on the Ad Hoc Committee that it had no authority to implement any of its recommendations, that it was an advisory body and that all decisions regarding implementation would be made by the Bishop. When questioned about the issue of follow-up subsequent to the report, Bishop Larocque testified that Msg. Guindon, the chair of the Committee, worked with him at the Diocesan Center office everyday. Msg. Guindon, the Chairperson of the committee, the Vicar General and a member of the institution at issue, was best situated to follow up on the Committee's recommendations with the Bishop.

Evidence of J. Leduc	Vol 253 p.97 l.25-p.101 l.3; Vol 257, p.34 l.9-p.35 l.11
Evidence of E. Larocque	Vol 264, p.172 l.22-p.173 l.2

27. Mr. Leduc had no recollection as to which member of the committee actually prepared the report to the Bishop which was submitted on May 23, 1986, but did recall that they collectively approved the final version of the report. The following were the recommendations of the Ad Hoc Committee:

> 1. que l'abbe Gilles Deslauriers sois suspendu 'a divinis' et que son exclusion du diocese soit maintenu par l'authorite competente.
>
> 2. son excardination et incardination a un autre diocese moyennant les condition suivantes:
>
>   a. qu'il accepte de suivre un therapie par un psychologue reconnu et competent et que celui-ci recoive toutes les informations a son sujet y compris ce rapport.
>
>   b. qu'on lui accorde accune charge pastorale jusqu'a ce que l'autorite competente soit convaincue de sa rehabilitation.

c. nous recommandons qu'li cesse d'occuper la fonction pastorale qu'il assume actuellement.

3. que tous ceux qui ont souffert des agissement de l'abbe Gilles Deslauirers et quit auraient besoin de traitements professionnels et qui en feront la demande au diocese soient assure que le diocese assumera les frais encourus mais la responsabilites reelle de ces depense reviendrait a celui qui les a occasionnees, l'abbe Gilles Deslauriers.

4. que les temoins soient tous avertis que les members du comite ne savaient pas lors de leurs presence devant le comite que l'abbe Gilles Deslauriers n'avait pas obtempere a votre ordre en ce qui concerne le stage a Pierrefonds.

5. que ce rapport soit envoye selon votre bon plaisir aux autorites superieures qui furent impliquees dans la question.

6. que le rapport du Pere Bernard Menart, surtout ses reommandations, soient prises en serieuses considerations.

28. The 4th recommendation of the Committee was that all those who had come before the committee be made aware that, unbeknownst to the Committee members, Father Deslauriers was not receiving treatment at Pierrefond. Mr. Leduc testified that throughout the Committee's proceedings, the Committee members had operated on the assumption, and disseminated the information, that Father Deslauiers was indeed at Pierrefond receiving treatment for his particular illness. While Bishop Larocque knew that Father Deslauriers was not at Pierrefond as early as April 16, 1986, the Committee was not made aware of that fact until May 16, 1986 after all of the witnesses had testified.

Evidence of J. Leduc Vol. 253 p.119 l.15-p.120 l.17

MR. LEDUC'S ALLEGED FAILURE TO REPORT COMPLAINTS REGARDING FATHER DESLAURIERS TO THE CAS AND POLICE

29. Mr. Leduc testified that the issue of whether or not his client, the Diocese, had a duty to report the allegations made against Father Deslauriers to the civil authorities was a live issue during the course of the work of Ad Hoc Committee. Mr. Leduc testified that he could not recall what opinion he developed regarding whether such a duty existed given the age of the complainants at the time of the Ad Hoc Committee proceedings, and he could not recall what advice if any he gave his client regarding the existence of such a duty. Mr. Leduc agreed that it was the wishes of the Brisson family, at least in April of 1986, that the matter be dealt with internally without recourse to any public authorities. It is of course highly relevant that, by the time the Ad Hoc Committee finalized its report, the Cornwall Police Service were aware of the allegations against Father Deslauriers and the matter had been made public by the Brissons in the local media. Mr. Leduc testified that when the Committee was filing its report, he understood that the matter was already fully public. Msg. Larocque also testified that at the time he received the Ad Hoc Committee report, the allegation had already been made public.

Evidence of J.Leduc	Vol 253 p.77 l. 4-p.83 l.20; p.138 ll.4-15; Vol 257, p.43 l.18-p.44 l.3; Vol 257, p.45 ll.2-7; p.45 l.7-p.47 l.22; p.112 l.14-p.114 l.5
Evidence of E. Larocque	Vol 265, p.4 ll.7-16

30. Of further import to the question of whether Mr. Leduc should have advised his client to notify the CAS is the fact that by the time the Ad Hoc Committee was instituted, Father Deslauriers had been removed from his functions and resigned from the Diocese. Mr. Leduc therefore had no reasonable foundation to believe that a young person was being abused. Further, all of the alleged victims that appeared before the Ad Hoc Committee were adults in their twenties.

Evidence of J. Leduc	Vol. 257, p.21 l.9-p.22 l.19

31. Mr. Brission testified that he notified the press about his allegations in the early part of May 1986 and provided an interview with Charlie Greenwell of CTV in his home. Mr. Brisson testified that Mr. Greenwell's report and interview with him was broadcast on television on May 19, 1986, 5 days before the finalization of the Ad Hoc Committee's report. On May 21, 1986, two days before the finalization of the Ad Hoc Committee report, the allegations against Father Deslauriers were reported to the Cornwall Police Service. Cst. Herb Lefebvre and Cst. Ron Lefebvre investigated the matter. Though Mr. Leduc spoke on a number of occasions with the officers during the course of the investigation, they never asked to interview Mr. Leduc. Mr. Leduc was given instructions by Bishop Larocque to provide assistance to any member of the Diocese who requested his assistance in their dealings with the police in the course of the investigation. Pursuant to that retainer, Mr. Leduc attended the police interviews of some members of the Diocese. Some members of the Diocese chose to attend interviews with the police without Mr. Leduc's assistance.

Evidence of J. Leduc	Vol. 253, p.139 l.16-p.141l.9; p.141 l.10-p.143 l.23; Vol 257, p.36 l.7-p.38 l.24
Evidence of B. Brisson	Vol. 55, p.52 l.1-p.53 l.8

32. Father Thibault testified that on June 3, 1986, two officers from the Cornwall Police Service arrived at his rectory and requested to speak with him. The officers advised Father Thibault that they had reason to believe that he had been sexually abused by Father Deslauriers. The officers' attendance was unexpected, Father Thibault panicked and he denied the abuse. Subsequent to the meeting with the officers, Father Thibault telephoned Mr. Leduc and asked for legal advice. Mr. Leduc advised Father Thibault that while he could decline to make a statement to the police, he could not provide a statement and lie to the police. On Father Thibault's

instructions, Mr. Leduc telephoned the Cornwall Police Service and indicated that Father Thibault wanted to retract his denial that he had been abused. Subsequently, Mr. Leduc informed Father Thibault that the officers wanted to meet him and asked whether he was now ready to cooperate with their investigation. Father Thibault requested that Mr. Leduc make an appointment and attend with him. Father Thibault testified that Mr. Leduc facilitated his telling the authorities exactly what Mr. Deslauriers had done to him. Mr. Leduc testified that he had no memory of these events, though he did not dispute Father Thibault's recollection.

Evidence of C. Thibault	Vol. 143, p.92 l.9-p.95 l.12; p.96 l.9-p.97 l.14; Vol 144, p.102 l.15-p.107 l.13
Evidence of J. Leduc	Vol. 253, p.146 l.20-p.149 l.3

33. Mr. Leduc testified that on June 16, 1986, he attended the residence of Bishop Larocque in advance of both Cst. Herb Lefebvre and Ron Lefebvre's attendance. Mr. Leduc met with the Bishop to advise him that the Police were requesting an interview. The Bishop responded that he would only confirm information that was already in the public record and would not divulge any more. Mr. Leduc gave the Bishop the legal advice that he was not required to answer the officers' questions and was within his rights to decline an interview. Mr. Leduc also advised the Bishop that there was no such thing as a privilege between the Bishop and a priest and that should he be subpoenaed to Court, he would be legally obligated to answer all questions as there was no viable legal claim of privilege. Mr. Leduc further advised the Bishop that a possible penalty for refusing to answer questions in Court was jail. Mr. Leduc was present when the Bishop told the officers that he would rather go to jail than answer their questions. According to Mr. Leduc, the Bishop took the position that he would not want to breach the trust relationship with his priests. Mr. Leduc testified that at the time it was clear that the Bishop understood that he had relevant information to offer the police but chose not to submit to any questioning. The

Bishop testified that had the Crown called him to testify during the preliminary inquiry he would have held true to his position and refused to answer questions. Indeed, 3 months after this meeting with police, Msg. Larocque wrote to Father Deslauriers pledging to him that he would never testify against him.

Evidence of J. Leduc	Vol 253, p.151 l.17-p.155 l.1; Vol 254, p.2 ll.3-22; Vol 255 p.210 ll.17-21; p.216 l.19-p.217 l.6; p.218 ll.16-20
Evidence of E. Larocque	Vol 265, p.18 l.16-p.21 l.15; Vol 271, p.161 l.4-p.164 l.16
Ex.1785 (703441)	Will Say of Ron Lefebvre
Ex. 2168 (118892)	Lettre d'Eugene LaRocque a Gilles Deslauriers datee le 3 Septembre 1986

34. Mr. Leduc was never instructed to provide the police with any notes, recordings or reports in relation to Father Deslauriers nor did the Cornwall Police Service ever asked for them. The Cornwall police identified Mr. Leduc on its investigative register as follows: "Jacques Leduc, Diocese lawyer, assisted in case." Mr. Leduc was not aware of any conversations Bishop Larocque had with the Cornwall Police Service in his absence. It was Mr. Leduc's evidence that in general, and specifically in regards to the Deslauriers matter, Bishop Larocque gave him information if and when he saw fit and he was certainly not privy to the entirety of Bishop Larocque's dealings with the matter with the police.

Evidence of J. Leduc	Vol. 253, p.155 l.22-p.156 l.190; Vol. 255 p.211 l.23-p.212 l.10; Vol. 257, p.39 l.23-p.41 l.8; p.115 ll.7-11; p.115 l.18-p.116 l.7

THE DIOCESE'S "WATCHING BRIEF" OF THE *R. V. DESLAURIERS* PRELIMINARY INQUIRY

35. Mr. Leduc testified that he was retained by the Diocese to monitor the preliminary inquiry proceedings in the *R. v. Deslauriers* prosecution and to report to the Bishop on any matters that may have been of interest to the Diocese. Mr. Leduc recalled that his instructions on the matter were that he remain available to answer any questions.

Evidence of J. Leduc	Vol. 254, p.4 l.16-p.6 l.9; Vol. 256, p.124 ll.13-17
Evidence of E. Larocque	Vol. 265, p.24 ll.7-15

36. During Mr. Leduc's observation of the cross examination of Father Thibault, it became clear to Mr. Leduc that defence counsel was using information for the purposes of cross-examination, which was likely obtained from Father Deslaurier during the victim's sacrament of confession to advance the defence case.[2] As a result of this concern raised during the course of the testimony of other witnesses, before Mr. Brisson was set to begin his cross-examination for the day, Mr. Leduc approached Crown counsel in the matter, Mr. Masse, and asked if he could speak to Mr. Brisson and remind him that if he was being asked about matters relating to confession that he was free to advise the Court. Mr. Masse agreed to this and Mr. Leduc did have this conversation with Mr. Brisson. This conversation was the subject of cross-examination by the defence and Mr. Brisson recounted for the Court his conversation with Mr. Leduc:

Q. De quoi avez-vous traite, est-ce que ca traitait de votre temoignage d'hier, des question out des reponses d'hier?
R. Moi, j'ai rien dit de qu'est-ce j'ai parle.
Q. Bien, pour quelle raison vous etes-vous entretenu avec l'avocat du diocese il a quelque minutes?
R. Y'm'a juste did que si ca traitait des questions en confession, que je l'dise
Q. Oui, et moi je vous avais dit ca hier n'est ce pas…
R. Oui
Q. …avant de vous poser des questions?
R. Y'me l'a juste rappele.
Q, De qu'oi d'autre vous a-t-il juste rappele?
R. C'est tout.
Q. Pendant combine de temps vous etes-vous entretenu avec lui?
R. J'sais pas, deux minutes.

[2] This was a troubling development for Mr. Leduc, as counsel for the Diocese, because if indeed Father Deslaurier breached the priest-pennant privilege he had committed a grave crime according to cannon law that is punishable by excommunication.

Mr. Leduc advised the Bishop about his concern that Father Deslauriers had disclosed information he received during the sacrament of confession to his lawyer. Mr. Leduc denied that he told Mr. Brisson not to testify about conversations he had with Father Deslaurier and emphatically denied the suggestion that his purpose in speaking with Mr. Brisson was to dissuade him from giving full and complete evidence. Of all the persons present in the hearing room that day, the one person who was upset that Mr. Leduc spoke to Mr. Brisson was Father Deslauiriers' defence counsel Mr. Charlebois.

Evidence of J. Leduc	Vol 254, p. 9 l.22-p.14 l.2; p.17 ll.6-22; p.62 l.2-p.68 l.22; Vol 256, p.121 ll.4-21; p.153 l.14-p.154 .19; p.239 l.13-p.240 l.1; Vol 257, p.116 l.24-p.117 l.12; p.119 l.24-p.121 l.6
Ex. 71C (Bates1072059-60)	Transcript-Sa Majeste la reine contre Gilles Deslauriers—Enquete Preliminaire-Volume 3, 17 September 1986

37. Mr. Leduc could not recall one way or the other whether he made notes of the two minute conversation he had with Mr. Brisson in 1986 over 20 years ago. Mr. Leduc testified that he could not recall whether he opened a file in relation to this "watching brief" though he believed he billed the file. When questioned about his file retention practices, Mr. Leduc responded that had he kept a file, it likely would have been destroyed in 2001. Mr. Leduc was never instructed by the Diocese, nor did he have any reason to believe, that he should retain the file longer than the normal retention period. The fact of the absence of any notes on the Deslauriers or Silmser matter was never brought to Mr. Leduc's attention by his client. There has never been a suggestion that the completeness or brevity of Mr. Leduc's file in these matters impacted in any way on the institutional response of the Diocese.

Evidence of J. Leduc	Vol. 254, p.14 l.3-p.17 l.5; Vol 257, p.137 ll.6-14; p.138 ll.4-17

PART 4—MR. LEDUC'S ROLE AS COUNSEL TO THE DIOCESE OF ALEXANDRIA CORNWALL IN RELATION TO MR. SILMSER'S COMPLAINT AGAINST FATHER MACDONALD

MR. LEDUC'S ROLE AS COUNSEL TO THE PHASE 4 COMMITTEE

38. Though he could not recall when he learned of the identity of the complainant, Mr. Leduc was first advised of the Silmser complaint by Msg. Guindon in December of 1992. Mr. Leduc testified that as a result of this information, he advised the Diocesan bursar, Rev. Bryan, to notify the insurers because he recognized that there may be a potential claim against the Diocese in relation to this complaint.[3] Mr. Leduc also advised the Bishop to follow the Diocesan protocol that was in place at the time to specifically to deal with such issues.

Evidence of J. Leduc Vol 254, p. 29 ll.1-5-p.31 l.5; p.32 ll.6-11; p.32 l.12-17; p.158 ll.11-12

39. Pursuant to the protocol, Mr. Leduc was retained to be counsel on the Phase 4 committee along with Father Vaillancourt and Monsignor McDougald. Monsignor McDougald was the Bishop's Delegate to deal with such matters and was the chair of the Phase 4 Committee. Mr. Leduc understood that the purpose of the Phase 4 committee was to meet with the complainant, obtain details regarding the complaint, and to make recommendations to the Bishop. Part of the task involved evaluating the complainant and determining whether he was being sincere or had some ulterior purpose in making a complaint. Mr. Leduc met with Father Vaillancourt and Monsignor McDougald prior to February 9, 1993 in order to discuss how to open the conversation with Mr. Silmser, what information they wanted to communicate to Mr. Silmser

[3] Rev Bryan, Msg. Larocque and Jacques Leduc all testified that Rev. Bryan was the person responsible for communicating with Diocesan insurers. Rev. Bryan denied Mr. Leduc's evidence that he was told by Mr. Leduc to notify the Diocesan insurers about Mr. Silmser's complaint in December of 1992. If Rev. Bryan's evidence is preferred in that regard, it is still open to the Commissioner to conclude that it was solely the responsibility of the Diocese to notify the insurer seeing as Msg. Larocque, Msg. McDougald and Msg. Vaillancourt were all aware of Diocesan insurance and the possibility of coverage for allegations of sexual abuse. (Vol 271, p.145 ll.7-p.148 l.16)

and to decide who would lead the conversation. It was requested that Mr. Leduc lead the questioning.

Evidence of Mr. Leduc	Vol 254, p. 35 l.25-p.36 l.15; p.45 l.15-p.46 l.19; p.? ll.1-25; p.54 ll.15-25; p.100 ll.16-21; Vol 255, p.264 l.19-p.265 l.9

MR. LEDUC'S INTERACTION WITH MR. SILMSER

40. The Phase 4 Committee met with Mr. Silmser on February 9, 1993. Mr. Leduc testified that Mr. Silmser refused to have the meeting tape recorded. Mr. Leduc insisted that minutes of the meeting be prepared and that Monsignor McDougald report to the Bishop pursuant to the protocol. Mr. Leduc testified that the meeting was very polite and cordial. This is corroborated by the evidence of Mr. Silmser who testified that Mr. Leduc acted sympathetically towards him and made him feel that the Diocese wanted to know what had happened to him. The Committee sought to ascertain a certain level of detail from Mr. Silmser in order to assess if he was being truthful and so that Father MacDonald, who denied any impropriety, could be confronted with the specifics of the allegations. Mr. Silmser told the Committee either that he had gone to the police or he was going to the police with his allegations. Further, Mr. Silmser also told the Committee that he had hired the best lawyers in Ottawa to represent him in respect of the matter.

Evidence of Mr. Leduc	Vol 254 p. 47 l.25-p.49 l.19; p.51 ll.1-7; p.53 ll.2-18; p.55 l.12-p.57 l.21; p.53 l.24-p.54 l.14; p.58 ll.14-24; p.80 ll.8-15; p.81 ll.12-20; Vol 255, p.109 l.20-110 l.12; Vol 256, p.12 ll.2-21; Vol 257 p.132 ll.13-21; p.134 ll.8-20
Evidence D. Silmser	Vol 87, p.180 ll.5-6; p.212 l.17-213 l.3

41. Mr. Leduc testified that Mr. Silmser indicated to the Phase 4 Committee that he had been in therapy. Mr. Leduc recalled that the Committee informed him that in the past, the Diocese had been prepared to cover the costs of therapy on a no-fault basis. Mr. Leduc could not recall who in the meeting initiated discussion about compensation for therapy.

Evidence of M. Leduc Vol 254, p.59 ll.4-20; p.62 l.6-p.63 l.3

42. Subsequent to the meeting, the Phase 4 Committee members discussed their impressions of the allegations. Mr. Leduc testified that Monsignor McDougald had concerns about the veracity of allegations that Father MacDonald had ever been violent. The Committee was also concerned about Mr. Silmser's credibility in light of the fact that he refused to provide details of alleged incidents. The committee concluded that either Mr. Silmser "was telling the truth or he was a very good actor." Father Vaillancourt testified that he came to the same conclusions with respect to Mr. Silmser's credibility. Mr. Leduc asked Monsignor McDougald to prepare a report and submit it to the Bishop and to act within the protocol. Mr. Leduc could not recall what precise recommendations where to be made to the Bishop, if any, except that the Committee's inconclusive impressions of Mr. Silmser should be transmitted to the Bishop. It was not recommended to the Bishop that Father MacDonald be removed from his post as parish priest at St. Andrews. According to the protocol, the Phase 4 committee was not tasked with searching for more complainants or considering the safety of children in its analysis.[4] The Committee did not meet with Father MacDonald and question him on the allegations as this was not part of the duty of the Phase 4 Committee. This was to be pursued by Monsignor McDouglad, the designate according to the protocol. This completed the tasks Mr. Leduc was retained to perform for his client.

Evidence of M. Leduc	Vol 254, p.73 l.13-p.75 l.1; p.85 l.12-p.86 l.3; p.86 ll.4-15; p.87 l.17-p.88 l.6; p.102 l.22-p.103 l.5; p.110 ll.22-25; Vol 255, p.272 l.9-p.273 l.16; p.275 ll.11-14; Vol 256, p.18 ll.4-9; p.164 ll.10-15
Ex. 58, Tab 28	Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants

[4] Bishop Larocque did however, once the allegation was made public on January 7, 1994, call on all potential victims to come forward "if there are victims of sexual abuse by clergy, we want to know about it. We are prepared to cooperate with the police and/or other agencies and also in the healing process, as we have done in the past."

MR. LEDUC'S INSTRUCTIONS TO FOLLOW THE PROTOCOL

43. The compliance of the Diocese to its own protocol is a task that, according to Bishop Larocque, fell on the shoulders of Monsignor McDougald who was his delegate in the matter. At no time did Bishop Larocque testify that compliance with an institutional protocol was in any way related to or dependent on Mr. Leduc. For the institution of the Diocese to suggest that a civil lawyer retained intermittently by them primarily in real estate matters has any authority or indeed legal obligation to enforce an internal protocol created by the institution and approved by the Bishop is without foundation. Father Vaillancourt must have also borne some responsibility for compliance given that it was he who drafted the protocol and likely knew it best. Indeed, Bishop Larocque, Mr. Leduc's client, rejected the suggestion that it was Mr. Leduc's responsibility to see that the Diocese was to abide by its own protocol:

Mr. Sherriff-Scott:	Okay. Now Mr. Leduc was retained in connection with the committee proceeding; he sat on the committee
Msgr. Larocque:	Right
Mr. Sherriff-Scott:	And the evidence was he led the discussions with Mr. Silmser
Msgr. Larocque:	I don't know if he led them or not but ---
Mr. Sherriff-Scott:	Okay. This is the first time this protocol was to be used?
Msgr. Larocque:	That's right.
Mr. Sherriff-Scott:	Were you expecting Mr. Leduc to be an adviser in connection to how this thing should go?
Msgr. Larocque:	**I don't think so, no, because he didn't write it. Father Dennis Vaillancourt, who wrote it, would be the one that I would put more responsibility on.**
Mr. Sherriff-Scott:	Mr. Leduc's role there, was he an adviser to the committee?
Msgr. Larocque:	He was a member of the committee

Evidence of E. Larocque — Vol 266, p.214 ll.12-24; p.224 ll.2325; p.230 l.17-p.231l.25;Vol 271, p.293 l.12-p.294 l.8

44. Msg, Larocque testified that Msg. McDougald updated him regularly throughout the Silmser matter. Ultimate responsibility for the non-compliance with the protocol, of course,

rested with the Bishop who admitted that he had complete and ultimate authority in the Diocese and had the power and jurisdiction to oversee the process closely, meet with Mr. Silmser himself, personally assess the validity of his complaint and institute whatever procedures he saw fit. Bishop Larocque testified, however, that he had too many other responsibilities to be able to monitor progress on the protocol in respect of an allegation of sexual abuse against one of his priests. Bishop Larocque testified: "You can't possibly do that with everything that's going on in the Diocese. That's absolutely impossible. I'd have to be God to be able to do that." In response to Commission counsel's questions about why, after his involvement with the Phase 4 Committee was completed, Mr. Leduc did not monitor his client more closely to ensure its compliance with the protocol, Mr. Leduc testified:

> I do not feel, and I didn't at that time, that it was my obligation to assure that my client complied with its own protocol. My function as counsel was to advise on the protocol; participate in the protocol as a member of the committee; give advice as to the compliance with the protocol. But I, as a lawyer, certainly do not have an obligation to see to its execution and ultimate realization…Following the protocol which had been adopted by the Diocese was a matter of self regulation if you wish. And I thought that the Diocese should exercise due diligence, and so advised the Diocese, follow the protocol.

Evidence of J. Leduc	Vol 254, p.84 ll.1-p.85 l.11; p.104 l.19-p.106 l.17
Evidence of E. Larocque	Vol 266. p.205 l.23-p.206 l.7; p.207 ll. 12-25; p.230 l.17-p.231 l.25

45. It is possible that Mr. Leduc did in fact advise his client that they should alert the CAS of the complaint. Mr. Leduc testified that at the end on January 1994, he prepared his account with respect to the Silmser matter. It appears from the notes Mr. Leduc made regarding his account, that along with advising the client to follow the protocol (which of course included repeated references to advising the CAS), alerting the insurers, Mr. Leduc may have also advised that they should notify the CAS.

Evidence of M. Leduc Vol 255 p.164 l.8-p.165 l.9
Exhibit 1914 (738135, bates 7165235) Jacques Leduc's Affidavit of Documents

46. The protocol in place during the period was drafted by Father Vaillancourt and was replete with references to the CAS, including instruction as to when and under what circumstances there should be a report to CAS. Specifically, it included 3 references to the CAS before the Phase 4 Committee is even convened. The protocol also specified:

> Phase V – Notification
>
> 1. a) The designated person notifies the C.A.S. of the case and follows its directives, if necessary. (emphasis in original)

On a plain reading of the protocol, there cannot be a suggestion that the Diocese was somehow oblivious to certain CAS reporting obligations and were dependant on the advice of counsel acting on the Phase 4 Committee for advice in that regard. To that end, Mr. Leduc was never consulted regarding the meaning or interpretation of the protocol. Had the Diocese heeded Mr. Leduc's advice to follow the protocol, the CAS would have been notified of the complaint.

Evidence of J. Leduc Vol 257, p.123 l.2-p.128 l.1; p.128 l.12-p.130 l.11; p.130 l.20-p.131 l.14
Ex. 58, Tab 28, (Bates 7165159-60) Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants

47. Msg. Larocque himself recognized how explicitly the protocol directed the designated person to report to the CAS. When confronted with a copy of the protocol in place at the time of Silmser complaint, which he subsequently attached to his January 7, 1994 press-release, Bishop Larocque testified that he did not believe that that was the correct protocol:

> So am I, because I'm quite sure of the fact that – you know, we were later accused of not having referred it to the CAS, so that if this document had been in place, we wouldn't have a leg to stand on.

Bishop Larocque later conceded that Ex 58, Tab 28, was indeed the correct protocol in place at the time of the Silmser matter.

Evidence of E. Larocque Vol 266, p.210 l.11-p.211 l.14

48. The issue of the Diocesan reporting obligation in the Silmser matter is of course completely academic since their lack of report did not result in any sort of lag between the time when the allegation was known to the Diocese and the time it was reported to the Cornwall Police Service. At the time of the February 9, 1993 meeting with Mr. Silmser, Mr. Leduc had been provided information that he had either gone to the police or was going to the police. In fact, Mr. Silmser had already reported to the Cornwall Police Service 2 months prior on December 9, 1992. The CAS was not at the time, or ever, vested with any more investigative power than was the Cornwall Police Service. Further, unlike the Cornwall Police Service, the CAS had no power to:

- Charge Father MacDonald; or
- Place conditions on Father MacDonald such that he be precluded from having contact with children.

As demonstrated by the results of Project Blue, the very most that the CAS could do was recommend to the Bishop that their findings be taken into consideration when decisions were being made regarding Father MacDonald's employment.

Evidence of J. Leduc Vol 257, p.135 l.22-p.136 l.8
Evidence of E. Larocque Vol 271, p.150 l.12-p.151 l.23; p.155 l.15-p.158 l.17

COMMUNICATIONS WITH MALCOLM MACDONALD, COUNSEL FOR FATHER MACDONALD

49. Between the time Mr. Leduc learned of the complaint to the time Mr. Leduc participated in the Phase 4 Committee on February 9, 1993, he did not recall having any discussions

regarding anything except the scheduling and establishment of the Committee. Mr. Leduc had no independent recollection of when he learned that Father MacDonald was being represented by Malcolm MacDonald and did not have any contact with him prior to the February 9, 1993 meeting. Mr. Leduc denied "reporting back to Malcolm MacDonald" the contents of the February 9, 1993 meeting. Mr. Leduc testified that at no point did he ever ask Malcolm MacDonald to call Mr. Silmser on behalf of the Diocese or make any representations whatsoever on behalf of the Diocese. Mr. Leduc testified that the first time he could recall speaking to Mr. MacDonald about the Silmser matter was in August 1993 when Mr. MacDonald called his office. Both Mr. Leduc and Bishop Larocque denied meeting with Malcolm MacDonald in February 1993. Mr. Leduc was not aware of any settlement discussion during the period between February 9, 1993 and the end of August when he received the first phone call from Mr. MacDonald.

Evidence of J. Leduc Vol 254, p.40 l.19-p.41 l.3; p. 43 ll.6-12; p.69 ll.11-18; p.72 ll.13-15; p.114 l.2-p.117 l.1; p.131 l.2-p.133 l.6; p.135 l.19-p.136 l.1; p.136 l.17-p.141 l.21; p.145 l.18-p.146 l.5; p.151 ll.2-12;Vol 256, p.36 l.21-p.37 l.11
Evidence of E. Larocque Vol 267, p.26 l.10-28 l.2

50. Mr. Leduc knew Mr. Malcolm MacDonald to be a very senior member of the Bar (over 20 years his senior, having been called to the bar in the 1950s), a former Crown attorney, and a Queen's Council. At the time, Mr. Leduc had absolutely no reason to doubt Mr. MacDonald's good standing in the Law Society of Upper Canada or his *bona fides* in any way. Mr. MacDonald reported that he had certain conversations and dealings with Mr. Leduc that, in fact, never occurred. Mr. Leduc testified that he never told Mr. MacDonald that $32,000 was a small settlement and that usually the Diocese "pays a lot more." Mr. Leduc also did not tell Mr. MacDonald that the cheque issued to Silmser should be from MacDonald's account so as to not raise any questions.

Evidence of J. Leduc Vol. 254 p.? ll.2-4; Vol 255, p.18 ll.18-25; p.115 l.25-l.2; Vol 257 p.141 l.21-p.143 l.7

51. Sometime near the end of August, Malcolm MacDonald contacted Mr. Leduc and stated that he wanted to meet with Bishop Larocque to discuss the Silmser claim. Mr. Leduc agreed that he would contact the Bishop's office to determine if the Bishop wished to meet with Mr. MacDonald. The Bishop agreed to a meeting and it was at this point that Mr. Leduc was retained to act on behalf of the Diocese in relation to the Silmser potential civil claim. Malcolm MacDonald also informed Mr. Leduc that the police investigation into Father MacDonald was concluded.

Evidence of J. Leduc Vol 254 p. 118 l.17-p.119 l.11; p.128 ll.5-10; Vol 256 p.24 ll.14-25

MEETINGS WITH THE BISHOP AND MACDONALD

52. On August 25, 1993, Mr. Leduc and the Bishop met with Mr. MacDonald. Mr. Leduc testified that he believed that Mr. Gordon Bryan may have also been in attendance. The issue of a monetary settlement was discussed in the meeting including the fact that by settling, Mr. Silmser would be settling any civil claim against the Diocese. The Bishop expressed a concern that a settlement, if it became public, could be perceived as "hush money". Mr. Leduc told the Bishop that a settlement would not affect the complainant's right to pursue his criminal complaint. It was made clear by Mr. Leduc that the settlement "would not affect the complainant's decision to proceed criminally as there was nothing that could be done to impede a criminal complaint." Malcolm MacDonald assured the Bishop and Mr. Leduc that both the police and the Crown Attorney were aware of the proposed civil settlement. In fact, this was corroborated by the evidence obtained from the police notes confirming that Mr. Silmser had advised them that he was having discussions regarding a civil settlement. The issue of a

confidentiality clause was also discussed. During the meeting, the Bishop was adamantly against any settlement. In Mr. Leduc's view, a settlement was the preferred course because it (1) could protect the reputation of Father MacDonald and (2) would avoid incurring the high costs of defending a civil claim. As counsel for the Diocese, considering the best interests of his client, Mr. Leduc admitted that it was his hope that the criminal issues would also resolve themselves as an indirect result of the settlement of the civil claim. According to Bishop Larocque, the meeting ended with his refusal to agree to a settlement and he believed that the matter was closed and did not invite counsel back for a second meeting to discuss it further.

Evidence of J. Leduc — Vol 254, p.120 l.10-p.123 l.3; p.123 ll.7-25; p.124 l.13-p.125 l.7; Vol 256, p.43 l.3-p.44 l.16; Vol 257, p.62 ll.10-23
Evidence of E. Larocque — Vol267, p.33 ll.13-20; p.36 ll.3-p.37 l.9

53. After the first meeting with the Bishop and Malcolm MacDonald, Malcolm MacDonald called Mr. Leduc and requested a 2nd meeting with the Bishop. On September 1, 1993, a 2nd meeting was convened. It was sometime during this time period that Mr. MacDonald advised Mr. Leduc that the police had determined that there was insufficient evidence to lay a charge. Mr. Mr. MacDonald also indicated that he had spoken to the complainant and that he was willing to settle for $32,000. Mr. Leduc again addressed the Bishop's concern that if the public were to find out about the settlement, they would see it as "hush money" by reminding him that there would be a confidentiality clause in the agreement. Bishop Larocque agreed to the inclusion of a confidentiality clause in the agreement, as he was concerned with avoiding scandal:

> Engelmann: Well, presumably you wanted to avoid scandal for the Diocese if you could?
>
> Msgr. Larocque: Any bishop would, yes.

Evidence of J. Leduc — Vol 254, p. 146 l.17-p.147 l.8; p.158 l.11-12; p.159 l.19-p.160 l.4; p.160 l.10-161 l.1; Vol 256, p.20 ll.2-14; p.31 l.17-p.32 l.16; p.55 l.16-p.56 l.7; p.56 l.23-p.57 l.4; Vol 257, p.189, l.8-p.191 l.15
Evidence of E. Larocque — Vol 267, p.46 ll.11-25; p.57 ll.1-8

54. Mr. Leduc had no knowledge as to how the $32,000 figure was determined. Though Mr. Leduc testified he had no independent recollection of the "breakdown" of $32,000, he accepted Malcolm MacDonald's version as recounted in his statement to police: half of the global amount was for therapy and the other half was for damages. The Diocese was to pay $27,000 and Father MacDonald was to pay $5,000. Though Mr. Leduc clearly recalled advising Rev. Bryan to notify the insurers in December 1992, he could not recall if the subject of insurance came up again at this stage of the discussions.

Evidence of J. Leduc Vol 254, p. 146 l.17-p.147 l.8; p.158 l.11-12; p.159 l.19-p.160 l.4; p.160 l.10-161 l.1; Vol 256, p.20 ll.2-14; p.31 l.17-p.32 l.16; p.55 l.16-p.56 l.7; p.56 l.23-p.57 l.4; Vol 257, p.189, l.8-p.191 l.15

55. Mr. Leduc testified that both he and Mr. MacDonald presented a good argument in favour of the settlement to the Bishop in the second meeting. One of the arguments Mr. Leduc presented to the Bishop was that Father MacDonald had been in the Diocese for an extended period and had an unblemished record. A $32,000 settlement of the claim was in Mr. Leduc's view a very favourable resolution of the matter for the Diocese given that the cost of litigation would be much higher and a potential damage award would also be considerably more than $32,000. Mr. Leduc denied Commission counsel's suggestion that in his arguments in favour of the settlement he "was trying to make it so the Bishop had no choice in the matter":

> "The Bishop was a very autonomous person and I would never say that Bishop Larocque would be coerced into making any such decision"

Further, Mr. Leduc was aware at the time that the Bishop had the "authority to do pretty much whatever he wishe(d)" and that he had absolutely no authority whatsoever to direct any decision of the Bishop. Indeed, between the 1st and 2nd meeting, Bishop Larocque attended a closed-door session at the Canadian Conference of Catholic Bishop's annual meeting wherein he asked for

advice on the proposed settlement from approximately 90 Catholic Bishops. The consensus from the Bishops was to not proceed with the settlement. At the end of the 2nd meeting with Malcolm MacDonald and Mr. Leduc, Mr. Leduc received the instructions from the Bishop to proceed with the settlement.

Evidence of J. Leduc	Vol 254, p.161 l.6-p.162 l.14; p.163 l.19-p.164 l.4; p.165 l.18-p.167 l.9; Vol 255, p.206 ll.15-19; Vol 256, p.47 l.21-p.48 l.23; Vol 257, p.94 l.24-p.95 l.8
Evidence of E. Larocque	Vol 267, p.37 l.10-p.39 l.14; Vol 271, p.169 l.12-p.172 l.17

56. Msg. Larocque testified that he was aware at the time of these meetings that the Diocese had paid for counseling on a no-fault basis in the past in relation to Father Deslauriers and that such payments did not necessitate entering into a civil settlement.

Ms. Robitaille:	You say that the one argument that persuaded you was the therapy argument; right?
Msgr. Larocque:	That's what I have repeated six or seven times
Ms. Robitaille:	But you knew you didn't need a settlement to pay for Mr. Silmser's therapy; right?
Msg. Larocque:	And I've admitted that before
Ms. Robitaille:	Because you had offered Madame Brisson in your second meeting with her in '86 to pay for therapy?
Msg. Larocque:	That's right.

Msg. Larocque testified that he did not need Mr. Leduc to remind him of that fact: "he didn't have to tell me: I knew it. I had agreed to it."

Evidence of E. Larocque	Vol. 267, p.47 ll.12-18; Vol 271, p.172 l.18-p.173 l.5

57. Commission counsel read out a portion of Malcolm MacDonald's statement wherein he stated: "I was against any monies being paid and I told that to the Bishop and the other people". Mr. Leduc testified that is something Malcolm MacDonald never said. This is corroborated by the evidence of Bishop Larocque who testified that Malcolm MacDonald carried the first meeting and argued strongly in favor of a monetary settlement. Bishop Larocque also confirmed that it was MacDonald, not Leduc, who was most eager and aggressive in his efforts to convince him to agree to the settlement.

Evidence of J. Leduc — Vol. 254, p.163 ll.1-14
Evidence of E. Larocque — Vol 267, p.29 ll.4-20; p.45 ll.11-16

58. Mr. Leduc testified that when he and Malcolm MacDonald left the Bishop's office, Mr. Leduc indicated what sort of documentation would be necessary. Specifically, Mr. Leduc insisted that Mr. Silmser seek independent legal advice before the agreement was finalized. Mr. Leduc became aware that Mr. Sean Adams had been retained by Mr. Silmser for those purposes. Mr. Leduc was not aware of any conflict or alleged conflict that Sean Adams had in acting for Mr. Silmser. Indeed, there was no such conflict arising from the fact that Mr. Adams had acted for an individual church in the Diocese in respect of a minor property matter nor is there any evidence that Mr. Leduc would have been aware of Mr. Adam's prior retainer with a church.

Evidence of J. Leduc — Vol 255 p. 2 ll.5-14; p.3 l.18-p.4 l.7; Vol 257, p.144 ll.3-17

MEETING WITH MURRAY MACDONALD

59. Sometime between August 25 and September 1, 1993, Mr. Leduc met with Mr. Murray MacDonald, the Crown Attorney, in the Provincial Court house. Mr. Leduc confirmed with him that he had spoken to Malcolm MacDonald and that he knew that the Diocese, Father MacDonald and Mr. Silmser were preparing a civil settlement. Mr. MacDonald said something

to the effect of "do what you have to do" and also advised that if a criminal process continued, it will do so notwithstanding the civil settlement. Mr. Murray MacDonald corroborated Mr. Leduc's account of the conversation. Mr. Murray MacDonald, however, testified that he recalled that the conversation occurred over the telephone. Mr. MacDonald testified that he had the impression from Mr. Leduc that he wanted to "take the high road" by keeping the Crown attorney apprised of the settlement. Mr. Murray MacDonald was not suspicious of Mr. Leduc's phone call.

Evidence of J. Leduc	Vol 254, p.173 l.19-p.175 l.1; Vol 256, p.23 l.14-p.24 l.3; p.55 ll.2-13; Vol 256, p.116 ll.8-18; p.241 l14-p.242 l.7
Evidence of M. MacDonald	Vol 325, p.242 l.12-p.253 l.13

PREPARATION OF SETTLEMENT DOCUMENTATION

60. Malcolm MacDonald was to prepare the release in respect of the settlement. He telephoned Mr. Leduc and indicated that he was not sure how to start the drafting process. Mr. Leduc advised that he would send Mr. MacDonald a draft precedent release. Mr. Leduc, using an O'Brien's Book of Precedents, dictated a draft release and certificate of independent legal advice with blanks where the names were to appear and sent it to Malcolm MacDonald via fax. Mr. Leduc's fax, Exhibit 1893, did not contain what was ultimately to become clause #2 of the Final Release and Undertaking nor did it contain any reference whatsoever to criminal process. Indeed, this document was produced in the course of the subsequent civil suit in the affidavit of documents provided by Mr. Leduc <u>and</u> the affidavit of documents provided by Mr. MacDonald as having been received from Mr. Leduc. The document included the fax cover page from Mr. Leduc's fax to Mr. MacDonald's fax. This precedent, consistent with Mr. Leduc's evidence, did <u>not</u> contain clause 2. Mr. MacDonald faxed back some changes and Mr. Leduc made some corrections, telephoned Mr. MacDonald and told him to make sure that "the criminal reference"

be removed. Mr. Leduc testified that the handwriting on Exhibit 1893 is not his own and he did not change the numbering of the clauses by hand. The handwriting on the document appears to be that of Malcolm MacDonald and it therefore appears as though Mr. MacDonald had altered the document for the purposes of adding clause #2 that did not exist in Mr. Leduc's document.

Evidence of J. Leduc Vol 254, p. 179 l.2-p.185 l.12; p.187 l.4-p.190 l.6; Vol 257, p.155 l.9-p.155 l.25
Ex 1893 (bates 1143660-63) Draft full release undertaking no to disclose dated 2 September 1993

61. Commission counsel questioned Mr. Leduc at length about clause #3 of the Full Release and Undertaking not to Disclose:

> In addition to the aforesaid release and or the said consideration I further hereby undertake 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. 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.

Mr. Leduc testified that the clause was a typical non-disclosure provision contained in civil settlements. Mr. Leduc was not challenged on this point. No evidence was called to rebut his evidence.

Evidence of J. Leduc Vol 254 p. 192 l.18-p.194 l.11; p.195 ll.19-22; Vol 255, p.252 ll.16-24

62. Mr. Leduc could not recall which party suggested that there be a confidentiality clause included in the release. Mr. Leduc testified that his best evidence was that the confidentiality clause satisfied the wishes of both Mr. Silmser and his client, the Diocese.

Evidence of J. Leduc Vol 255, p.549 l.2-p.250 l.21

TRANSFER OF FUNDS

63. Mr. Leduc testified that he received $27,000 from the Diocese which he deposited in his trust account and issued a cheque to Mr. MacDonald in trust to be held in escrow until the receipt of the executed settlement documents. Rev. Bryan, the Diocese bursar, testified that on September 2, 1993, Mr. Leduc came to his office at the Diocesan Center and requested that the cheque for $27,000 be issued. Mr. Bryan confirmed with the Bishop that he had indeed authorized the issuance of the cheque. The cheque was made payable to Mr. Leduc's trust account, which Mr. Bryan testified was a standard practice in his dealings at the Diocese. Mr. Leduc had absolutely no knowledge or direction with respect of which Diocesan account the money should be drawn nor the way it was to be recorded in the books. Mr. Leduc testified that he had no knowledge regarding any alleged 3rd person contributing to the settlement. Mr. Leduc drew a cheque from his trust account payable to Malcolm MacDonald to be held in escrow until the final execution of the documents. Mr. Leduc testified that it was a perfectly routine and acceptable practice to transfer funds into the trust account of another lawyer. Mr. Leduc disputed the suggestion made by Mr. MacDonald in his police statement that this method of transferring funds was done for the purposes of hiding or covering up the transaction. In fact, on the face of Mr. MacDonald's cheque to David Silmser are the letters "ECDA" which stand for the Episcopal Corporate Diocese of Alexandria. The cheque is consistent with Mr. Leduc's evidence that there was never any efforts or instructions to bury the source of the funds paid to Mr. Silmser

Evidence of J. Leduc	Vol 255, p.10 ll.12-22; p.11 l.9-p.12 l.3; p.14 l.17-p.15 l.13; p.16 l.8-11; p.116 l.17-p.118 l.60; Vol 256 p.197 l.19-p.198 l.7; Vol 257, p.144 l.23-p.145 l.23
Evidence of G. Bryan	Vol 260, p.125 l.6-126 l.22; p.128 l.10-p.130 l.6; Vol 261, p.147 ll.13-25
Evidence of E. Larocque	Vol 267, p.59 l.7-p.60 l.19
Ex.321	Copy of $32,000 settlement cheque dated September 2, 1993

DELIVERY OF EXECUTED DOCUMENTS

64. Mr. MacDonald called Mr. Leduc and advised him that the release and certificate had been signed and that he was going to deliver the documents to him. Mr. MacDonald attended Mr. Leduc's office and provided him with a sealed brown envelope containing the Release and the Certificate. He advised that Mr. Adams had attended the signing of the documents. Mr. Leduc never opened the envelope and inspected the documents. Mr. Leduc assumed that the changes he had requested, specifically the removal of references to "criminal" had been done pursuant to his direction. Mr. Leduc testified: "I had no reason to expect anything else from the document then that which we had agreed to. That's the explanation. It's not an excuse, it's an explanation." Mr. Leduc did not review the final signed Release and Undertaking, nor did he review the executed copy of the Certificate of Independent Legal Advice at that time. Mr. Leduc admitted in his testimony before the Commission, as he had done very publicly in the past, that his failure to review the executed version of the documents was a serious omission and mistake. Mr. Leduc testified that he unfortunately relied on the word of Malcolm MacDonald that proved to be false and that reliance was misplaced. Mr. Leduc testified that the consequences of that error were disastrous and embarrassing.

Evidence of J. Leduc Vol 255, p.5 ll.23-25; Vol 255, p.6 ll.1-19; p.6 l.23-p.7 l.6; p.16 l.20-p.18 l.13; p.18 ll.18-25;Vol 256, p.59 l.23-p.60 l.4; p.62 l.6-p.64 l.6; p.172 l.21-p.173 l.1

65. On or about September 3, 1993, Mr. Leduc telephoned Rev. Bryan, reported to him that the matter had been resolved, and asked him to come pick up the envelope. Mr. Leduc recalled Mr. Bryan coming to his office to pick up the envelope and recalled telling Mr. Bryan that it was to be filed in a confidential file. Rev. Bryan testified that Mr. Leduc dropped off the brown envelope at the Diocesan center and told him to mark it "private and confidential to be opened by

the Bishop only". Rev. Bryan suggested that he include his name also and Mr. Leduc said "sure". Mr. Leduc did not indicate to Rev. Bryan that the documents should be filed in any sort of secret archive. Rev. Bryan affixed a piece of tape over the flap of the envelope and filed in a filing cabinet where the bookkeeper would work. Mr. Leduc testified that in Cornwall, it was fairly common for lawyers to attend in person to deliver cheques and documents. Rev. Bryan said it was common for both he and Mr. Leduc to stop in at each other's offices to say hello given they were so close in proximity.

Evidence of J. Leduc	Vol 255, p.17 l.10-p.18 l.1; p.26 ll.2-13; p.30 ll.17-24
Evidence of G. Bryan	Vol 260, p.149 ll.8-25; p.152 l.4-p.153 l.1

66. On the face of the brown envelope, Mr. Bryan wrote in large printing: "PRIVATE AND CONFIDENTIAL TO BE OPENED BY THE BISHOP OR THE BURSAR ONLY". At no time did Mr. Leduc instruct the Bishop to not read the contents of the envelope. At no time did Mr. Leduc instruct Mr. Bryan to not read the contents of the envelope. Consistent with Mr. Leduc's belief that the settlement documents were valid and reflected his client's instructions to him as well as his own instructions to Malcolm MacDonald, Mr. Leduc made the original documents available for the Bishop's review. From the time Mr. Leduc provided the Diocese with the documentation on or about September 3, 1993, until the time he telephoned the Rev. Bryan on January 19, 1994, the documents were in the very same building that Rev. Bryan and Bishop Larocque worked.

Ms. Robitaille:	Mr. Leduc never told you that you should not open the envelope, right?
Rev. Bryan:	That's right.
Ms. Robitaille:	And he never told you that the Bishop should not open the envelope?
Rev. Bryan:	Definitely not.
Ms. Robitaille:	And, in fact, Ms. Leduc's initial instructions to you were that the envelope were to be only opened by the Bishop?

Rev. Bryan:	Yes
Ms. Robitaille:	And then you suggested that the you should be allowed to open it?
Rev. Bryan:	In the event that the Bishop was absent, yes.
Ms. Robitaille:	And Mr. Leduc didn't resist that request?
Rev. Bryan:	No
Ms. Robitaille:	And you've told us numerous times, I won't ask you to repeat it and you have it in two of your OPP statements, that in hindsight you should have given the envelope to the Bishop?
Rev. Bryan:	That's right.
Ms. Robitaille:	<u>But the envelope was always available for the Bishop to read had he asked for it?</u>
Rev. Bryan:	<u>Had he asked for it, yes. Had he even asked me if it was in. He would have had it.</u>
Ms. Robitaille:	<u>But he didn't do that?</u>
Rev. Bryan:	<u>He didn't.</u>

Evidence of J. Leduc	Vol 257, p.163 l.24-p.166 l.10
Evidence of G. Bryan	Vol 261, p.158 l.19-p.159 l.21

67. Mr. Leduc was never copied or provided with the documents prepared by Malcolm MacDonald, counsel to Father MacDonald, and witnessed by Sean Adams and signed by David Silmser that were sent to the Cornwall Police Service indicating Mr. Silmser wished to withdraw his criminal complaint. Indeed, Mr. Leduc had no knowledge that such documents existed. In fact, it is extremely telling that those documents were not included in the brown envelope provided to Mr. Leduc by Mr. MacDonald and subsequently forwarded to the Diocese.

Evidence of J. Leduc	Vol 255, p.20 l.12-p.21 l.9; p.22 l.25-p.23 l.19; p.161 l.18-p.162 l.10; Vol 257, p.161 l.18-p.162 l.10
Ex. 266	

68. Commission counsel suggested to Mr. Leduc that he delegated the protection of his client's interests to Malcolm MacDonald. Mr. Leduc disputed that suggestion and testified:

> No, I received direct representation from a member of the Bar as to what was done according to my instructions and I – I fully

> expected, as I should, that he would be good to his word and to his professional representation. And I relied on that, as is done on a regular basis in the practice of law.

It is of course totally up to counsel who are not adverse in interests to divide tasks up as they see fit. There is absolutely no rule, by-law or practice direction that requires that all parties to a settlement attend the execution of a release. Indeed, it is uncommon that any party to a settlement attend the execution of a release document. Rather, this is something done by the plaintiff with his counsel and subsequently forwarded to the parties. The Commission did not call any evidence regarding this point or explore the issue with any other witness.

Evidence of J. Leduc Vol 255, p.27 l.22-p.28 l.6

CAS INVESTIGATION

69. Mr. Leduc had very little independent recollection of his dealing with the CAS as counsel for the Diocese. In a general sense, he was able to confirm that he had many phone calls with Mr. Abell and Mr. Bell in the fall of 1993 regarding Father MacDonald and that he provided documents that were requested by the CAS. Mr. Leduc did testify that his instructions from the Bishop were to cooperate with the CAS investigation and be present during interviews of Diocesan employees if they wished to have his assistance. Initially, on October 12, 1993, however, the Bishop indicated to the CAS that they only had two weeks to complete their investigation. Mr. Leduc was asked by the CAS to request more time from the Bishop. Though Mr. Leduc had no independent recollection he did not dispute the notes of Richard Abell that he communicated to the CAS on October 29,1993 that they had all the time they needed to investigate and that Father MacDonald would not be returning to the Parish. Consistent with Mr. Leduc's knowledge at the time about the content of release, Mr. Leduc told Mr. Abell that Mr. Silmser should be assured that he could speak to the CAS without penalty.

Evidence of J. Leduc	Vol 255, p.33 l.21-p.35 l.6; p.44 l.3-p.45 l.23; p.73 l.11-p.74 l.12; p.103 ll.1-11; Vol 257, p.89 l.1-p.92 l.22; p.148 l.10-p.151 l.22
Evidence of E. Larocque	Vol 268, p.68 ll.4-8; p.86 l.25-p.87 l.11
Ex. 1441 (721621)	Various notes CAS file

70. Commission counsel showed Mr. Leduc a note written by Mr. Abell purporting to record the contents of a telephone conversation on October 12, 1993: "says he will talk to Greg rather than Father McDougald. McDougald is the Vicar-General. Can't betray priestly confidences (?) I say 'okay we'll start there'." Mr. Leduc did not recall this specific conversation but did recall advising the CAS that the priests they spoke to would not be able to violate the sacramental privilege of confession. Mr. Leduc testified that "priestly confidences" is not a phrase he would have used given that no such privilege existed. Mr. Abell corroborated Mr. Leduc's evidence and testified that the conversation was about how priests were subject to the very narrow privilege of the confessional. This is further substantiated by the fact that Monsignor McDougald was indeed interviewed by the CAS on October 26, 1993.

Evidence of J. Leduc	Vol 255, p.50 l.20-p.54 l.1; p.107 l.1-p.108 l.1
Evidence of G. Abell	Vol 295, p.7 l.3-p.8 l.5
Ex. 1441 (721621)	Various notes CAS file

71. Mr. Leduc testified that on October 22, 1993, upon instruction from his client, he advised the CAS of the existence of previous complainant about Father MacDonald and further advised that Monsignor McDougald was in a position to provide details. Monsignor McDougald did advise the CAS of the details of the previous complaint when he was interviewed by the CAS on October 26, 1993.

Evidence of J. Leduc	Vol 255, p.97 l.17-p.99 l.19; p.107 l.1-p.108 l.1

72. Mr. Leduc testified that by December, his client became concerned that the CAS investigation was lagging and that they had received information that some people were being hurt in the process of the investigation. He recalls communicating these concerns to Greg Bell and inquiring about the expected end date of the investigation.

Evidence of J. Leduc	Vol 255, p.120 l.25-p.132 l.25

73. The CAS provided the Bishop with the conclusions of their investigation on January 6, 1995. The CAS concluded that they had reasonable grounds to believe that the abuse of a child did occur. Pursuant to the CAS' lack of jurisdiction over the Diocese or any of the Bishop's decisions, the CAS only requested that their conclusions be taken into consideration when making decisions about the further assignment of Father MacDonald within the Diocese. The Bishop admitted that the CAS had no jurisdiction over his hiring, firing or suspension practices and that the CAS could not bind his decisions at all.

Evidence of E. Larocque	Vol 271, p.155 l.20-p.158 l.17
Ex.2090	Letter form R. Abell to E. Larocque dated January 6, 1995

THE BISHOP'S PRESS CONFERENCES AND PRESS RELEASES

74. On January 7, 1994 the Bishop issued a press release indicating that the Diocese had acted in accordance with its guidelines in relation to the Silmser complainant. Mr. Leduc testified that the Bishop had telephoned him on January 6, 1994 and read to him the release he had drafted. Mr. Leduc advised him to not issue the press release immediately in order to discuss the matter further. The Bishop, contrary to Mr. Leduc's advice, proceeded with the press release immediately. The first paragraph of the press release read as follows and was completely inaccurate:

> In view of recent media allegations of sexual aggression on the part of a member of the Clergy of the Diocese of Alexandria-

> Cornwall let it be know that the Diocese has acted in accordance with the Guidelines accepted and promulgated for the immediate and serious attention demanded by such a complaint.

Evidence of J. Leduc	Vol 255, p.124 l.3-p.125 l.10;
Evidence of E. Larocque	Vol 268, p.163 l.17-p.165 l.20;
Ex. 58, Tab 28, (Bates 7165159-60)	Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants

75. Bishop Larocque called a press conference held on January 14, 1994. On January 13, 1994, Mr. Leduc drafted some comments that he planned on reading at the press conference the following day. Mr. Leduc faxed the draft comments to Mr. Sean Adams because he believed that Mr. Adams was Silmser's solicitor and wanted his input on the draft. On or about January 13, 1994, Mr. Leduc became aware that Mr. Geoffrey acted for Mr. Silmser. Mr. Geoffrey was also provided with the draft press-release and provided comments on same. Mr. Geoffrey suggested 4 changes to the draft which were all incorporated in the finalized version prepared by Mr. Leduc. Mr. Leduc also sent the draft to Mr. MacDonald for approval and comment. There was no objection emanating from any of Mr. Adams, Mr. Geoffrey or Mr. Malcolm MacDonald, to the statement included in both the draft and the final version of the statement and read out to the national media:

> The Diocese by this decision settles a civil dispute and does not as has been implied, pay the complainant to withdraw criminal complaints.
> There was no interference with the criminal justice system in that the investigating officers and the Crown Attorney were advised of the proposed settlement and of the settlement and no criminal charges have been laid.

Mr. MacDonald attended the press-conference where Mr. Leduc read out the previous statement. Mr. MacDonald voiced no objection during the press conference and never indicated at any stage that what Mr. Leduc was stating was in fact false and that unbeknownst to him he was misleading the public.

Evidence of J. Leduc	Vol 255, p.133 l.7-p.136 l.2; p.136 l.10-p.151 l.13; Vol 256 p.70 ll.8-18; Vol 257, p.5 ll.7-18; p.10 l.11-p.11 l.21; p.13 l.12-p.18 l.19; p.166 l.15-p.169 l.5
Ex. 1911	Final Version of The Bishop's Statement, January 14, 1994

76. Bishop Larocque took the January 14, 1994 press conference as an opportunity to inform members of the public that he did not really wish to proceed with the settlement but did so "reluctantly" at the urging of Mr. Leduc. Bishop Larocque told the press that he "should have maintained his original position". In cross-examination however, Msg. Larocque conceded that he entered into a civil settlement with David Silmser because:

- he was concerned about the reputation of Father MacDonald;
- he cared about the reputation of the Diocese and wanted to avoid scandal
- he wanted to avoided the costly expense of defending a claim

Bishop Larocque admitted that the decision to enter a settlement was a decision he made independently.

Evidence of E. Larocque	Vol 268, p.165 l.25-p.178 l.7; Vol 27, p.175 l.14-p.176 l.9
Ex. 1911	Final Version of The Bishop's Statement, January 14, 1994

LEDUC WITHDRAWS FROM THE FILE

77. On January 18, 1994, Mr. Leduc received a letter from Mr. Geoffrey. Mr. Geoffrey began his correspondence by noting that he "had an opportunity to fully review the document entitled "Full Release and Undertaking Not to Disclose" dated September 3, 1993, together with the one page direction to the Cornwall City Police of the same date." Mr. Geoffrey went on to alert Mr. Leduc to the existence of clause #2, which was "an express agreement to stifle criminal proceedings." Obviously, Mr. Geoffrey had a copy of the release either provided to him by his

client or by Mr. Adams. Mr. Geoffrey also had access, unlike Mr. Leduc, to the one page direction to the Cornwall Police Service requesting that they close their file.

Evidence of J. Leduc	Vol 257, p.132, l.12-21
Ex. 276	Letter from B. Geoffrey to J. Leduc dated 17 January 1994

78. Immediately upon reading this letter, Mr. Leduc called Rev. Bryan and asked him to fax him a copy of the Full Release and Undertaking. Upon reading the Final Release and Undertaking when it was faxed to him by Gordon Bryan, Mr. Leduc was shocked, disturbed and dismayed to see the word “criminal” in the release.

Evidence of J. Leduc	Vol 256, p.76 ll.6-p.77 l.8; p.225 ll.10-25

79. On January 18, 1994 Mr. Leduc called Bishop Larocque, advised him of what happened and the existence of clause 2 and explained to him that he had to withdraw from the file because he may be a witness in the case and new counsel would have to be retained.

Ex. 1912	Letter from J. Leduc to E. Larocque dated January 19, 1994
Evidence of J. Leduc	Vol 255, p.259 ll.3-16; Vol 256, p.72 ll.2-22

80. On January 24th, the Bishop called a second press conference. The Bishop asked that both Mr. Leduc and Rev. Bryan attend the press conference. Bishop Larocque asked that Rev. Bryan bring the brown envelope to the press conference. Bishop Larocque wanted to demonstrate for the national media that the oversights that resulted in misstatements during the January 14, 1993 press conferences were not his and that the whole situation was not his fault. He was blameless. Rev. Bryan indicated to the media that he should have provided the brown envelope to the Bishop and that he regretted his oversight. Mr. Leduc made a statement at that press conference wherein he stated that he felt foolish and embarrassed and assumed responsibility for any confusion and misrepresentations arrived at as a result of his omission.

> "I can assure you that I regret this error and that I deeply regret having caused embarrassment to our Bishop and to other Diocesan authorities."

The next day's paper bore the pictures of Mr. Leduc and Rev. Bryan on the front page. Bishop Larocque was not in the frame.

Evidence of E. Larocque	Vol 268, p.180 l.7-p.184 l.25
Ex. 1916	Press Release dated 24 January 1994
Ex. 1965	Standard Freeholder article "We all make mistakes" dated January 25, 1994

THE EXISTENCE OF A FILE

81. Mr. Leduc testified that he did not keep a file in this matter at his office as he wanted to keep the identity of Father MacDonald confidential. This is corroborated by Rev. Brian's statement to police wherein he described Mr. Leduc asking him to take the brown envelope in light of the fact that he does not have a file open on the Silmser matter. Mr. Leduc testified that it was possible he kept notes in relation to the matter but had no recollection of having done so. Mr. Leduc billed the Diocese for his work on the Silmser matter at the end of his retainer in January 1994. His role was not to keep and maintain good records in regards to the Silmser matter. In fact, Bishop Larocque himself testified that he did not keep notes on the Silmser matter. The paucity of notes kept by counsel is not an institutional issue upon which this Commission has heard any evidence.

Evidence of J. Leduc	Vol 254, p.200 l.21-p.201 l.12; Vol 255, p.160 ll.4-23; p.161 l.20-p.170 l.7; p.200 ll.6-8;.Vol 256 p.207 l.20-p.208 l.1; Vol 257, p.204 ll. 2-22
Evidence of E. Larocque	Vol 266, p.216 l.23-p.217 l.3

C69

82. Documents were adduced in relation to a witness given the moniker C69. These exhibits related to OPP Project Truth contact with this individual wherein she made allegations of sexual abuse at the hands of Father Major as well as other priests outside the Diocese. In the course of

her OPP interview, C69 also alleged that Mr. Leduc negotiated a settlement with the Diocese of Sherbrooke, wherein she contracted to never speak of the abuse again in exchange for the settlement funds. She also alleged that Mr. Leduc advised her that there was a 2 year limitation period with respect to her ability to complain to Quebec police authorities about the abuse. C-69 made a further allegation against Bishop Larocque alleging that once she told him about the abuse by Father Major the Bishop told her to never speak of it otherwise she would be fired from her employment as a teacher. Commissioner Glaude ruled that C-69 had waived solicitor-client privilege with respect to her involvement with Mr. Leduc as counsel and therefore Mr. Leduc could answer questions relating to his retainer with C-69. C-69 was deceased at the time of the Inquiry. Mr. Leduc testified that he never told C-69 about a two-year limitation period in Quebec preventing her from complaining to the police. Mr. Leduc further testified that he never told C-69 that by her settling her civil claim that she would be prohibited from proceeding criminally. Most importantly, there was neither a confidentiality clause, nor was there a clause inhibiting any criminal processes contained in the release signed by C-69. Mr. Leduc identified Ex 1918 as the release C-69 executed in the matter. There was <u>no</u> confidentiality clause in the release:

> Je soussignee [redacted] d'ont le numero d'assurance sociale est [redacted] pour bone et valable consideration recue ce jour done quittance generale, finale et complete a [redacted] et a L'Archeveque de [redacted] de toute reclamation que je purrais avoir ou pretendre avoir contre eux pour des actes posees anterieurement a ce jour.

Mr. Leduc had no knowledge whatsoever about the allegation made by C69 against Bishop Larocque as he never discussed it with either the Bishop or C69.

Evidence of J. Leduc	Vol 256, p.173 l.15-p.183 l.22; p.189 ll. 1-5; p. 189 l.20-p.191 l.7; p. 196 l.17-p.197 l.5
Ex. 1918	Recu et quittance datee le 30 mars 1992

Ex. 1921	Interview report-C-69 w-OPP J. Dupuis and D, C, Genier dated 18 April 2000
1922 (7107864-68)	Notes of Genier dated 18 April 2000

83. It was Mr. Leduc's evidence that C-69 suffered from serious mental health issues. Mr. Leduc's evidence in this regard is consistent with documentation collected by Project Truth indicating that C-69 was extremely fragile and under the close supervision of a psychiatrist. C-69's state was so fragile she could not participate in any way in the criminal process and could not so much as communicate with Project Truth officers.

ALLEGED CONSPIRACY

84. Mr. Leduc denies all allegations that he was a part of a criminal conspiracy to obstruct justice. Mr. Leduc was never aware that Mr. Silmser entered into an invalid and obviously unenforceable agreement to terminate criminal proceedings. From the time Mr. Leduc hung up the phone with Mr. MacDonald in the early fall of 1993 after specifically directing him to remove references to "criminal" from the release until January 18, 1994, he was at all times operating under the assumption that the release was valid. Mr. Leduc's "after the fact conduct" demonstrates his ignorance of clause 2 of the agreement and reveals absolutely no "consciousness of guilt":

- In the last week of August 1993, Mr. Leduc advised the Crown Attorney Malcolm MacDonald that he was acting for the Diocese with respect to a settlement involving Father MacDonald and Mr. Silmser;
- On or about September 3, 1993, Mr. Leduc provided the executed release to Rev. Bryan and advised him that it is to be opened by the Bishop only. When Rev. Bryan suggests that he also be permitted to view the release, Mr. Leduc unhesitatingly agrees;

- In October 1993, Mr. Leduc advised the CAS that they should assure Mr. Silmser that he will not forfeit his settlement funds if he chooses to speak to the CAS;
- On January 13, 1994, Mr. Leduc faxed a draft statement to Sean Adams, Malcolm MacDonald and Bryce Geoffrey (all of whom have copies of the release) clearly stating that he intends to represent to the media the next day that the settlement does not inhibit criminal processes in any way;
- On January 14, 1994, Mr. Leduc made a statement during a national press conference that settlement does not inhibit criminal processes in any way;
- On January 19, 1994, upon reading the final executed release, Mr. Leduc immediately advised his client and removes himself as counsel;
- On January 24, 1994, despite absolutely no obligation to do so, Mr. Leduc makes a public, media covered statement admitting his own negligence in the conduct of the file.

  Evidence of J. Leduc   Vol 257, p.163 ll.6-12

85. Mr. Leduc had absolutely no motive for entering into such a conspiracy. The Diocese was not a large client and conferred very little financial remuneration in the scope of his practice. Mr. Leduc was not close friends with any of: the Bishop, Father MacDonald, Malcolm MacDonald or Sean Adams. The only person who would benefit from such an agreement (and the resulting misapprehension held by Mr. Silmser that it was enforceable) would be Father MacDonald. Mr. Malcolm MacDonald was the only counsel involved who represented Father MacDonald's interests and by all accounts was a very close friend of his. Further, Mr. MacDonald plead guilty and was convicted of attempt to obstruct justice. At no point did Mr. MacDonald allege that it was really Mr. Leduc who had included "clause 2" in the agreement. There is absolutely no evidence, and it flies in the face of logic that Malcolm MacDonald would

be publicly humiliated, admit to the obstruction of justice and risk his license to practice law as a favor to Mr. Leduc, a person with whom he had no personal relationship. While conspiracy theories are certainly easy to allege, they rarely withstand the scrutiny of the facts upon which such claims are made.

86. At no time did Mr. Leduc attend at Mr. Duncan MacDonald's office to discuss the Silmser settlement. In fact, Mr. Leduc had never been to Duncan MacDonald's office. Sean Adams testified that he never attended the office of Duncan MacDonald with Jacques Leduc and Malcolm MacDonald. Mr. Adams testified that there was never a time when Mr. Duncan MacDonald was upset with him and would not take his calls. Mr. Adams testified that Mr. Duncan MacDonald died as friend of his and that in the course of their friendship they never once had a falling out.

Evidence of J. Leduc	Vol 255, p.7 l.12; p.9 ll.18-24
Evidence of S. Adams	Vol 160, p.206 ll.8-25. Vol 161, p.140 l.21-p.141 l.21

ATTEMPT OBSTRUCT JUSTICE INVESTIGATION CONDUCTED BY INSPECTOR SMITH

87. Approximately 7 days after the Bishop's 2nd press conference, where Mr. Leduc publicly acknowledged the existence of clause #2 in the release, Cornwall Police Service's Acting Chief Johnson wrote to the OPP's Deputy Commissioner R.E. Piers requesting, *inter alia*, an investigation into a possible conspiracy and possible obstruction of justice relating to the Silmser settlement. Four days later, Insp. Smith was assigned to investigate.

Evidence of T. Smith	Vol 301, p.50 l.12-p.55 l.8
Ex 2558 (701630)	Letter from Carl Johnson to R. E. Piers dated January 31, 1994

88. Insp. Smith specifically investigated Mr. Leduc to determine whether his conduct amounted to any criminal wrongdoing. Specifically he examined the question of whether Mr.

Leduc, as counsel for the Diocese, was involved in a conspiracy to terminate the criminal investigation of Father MacDonald. Secondly, Insp. Smith considered whether Mr. Leduc attempted to obstruct justice via his involvement with the drafting of the settlement documentation.

Evidence of T. Smith	Vol 301, p.58, ll.1519; Vol 302 p.171 ll.14-21; Vol 312, p.67 l.14-18

89. During the course of their investigation, the OPP interviewed Bishop Larocque, Murray MacDonald, Malcolm MacDonald, Mr. Leduc, David Silmser, Sean Adams, Rev. Bryan, Father Vaillancourt, Father McDougald,. and spoke to the members of the Cornwall Police Service that were involved in the Father MacDonald investigation. Insp. Smith testified that Mr. Leduc cooperated with his investigation and on August 2, 1994, Insp. Smith and Det. Fagan interviewed Mr. Leduc. In that interview, Mr. Leduc, outlined the timeline and his actions on the Silmser file. In particular, he summarized his meetings with Malcolm MacDonald and Bishop Larocque. Mr. Leduc told the officers that it was clear in his discussions with Malcolm MacDonald that the release was not to include any references to criminal matters. Mr. Leduc also told the investigators that he had provided Mr. MacDonald with a draft release which did not include any reference to criminal action. Mr. Leduc also described how he received the final executed documents (the Release and the Certificate of ILA) in a sealed envelope from Mr, MacDonald and that he never reviewed the final documents. Insp. Smith testified that Mr. Leduc's account of the events did not make him suspicious and that he did not think it was unusual or suspicious that Mr. Leduc would have a discussion with the Crown regarding the settlement.

Evidence of T. Smith	Vol 310, p.136 l.25-p.138 l.4; p.144 l.18-p.146 l.1; p.147 .19-p.150 l.12; p.156 l.24-p.157 l.22; Vol 313, p.22 l.23-p.23 l.18; Vol 313 p. 36 ll.19-21
Exhibit 1892	Interview report of Jaques Leduc dated 2 August 1994

90. Insp. Smith testified that there were certain facts available to him that corroborated Mr. Leduc's version and that demonstrated that Mr. Leduc did not know that clause #2 existed:

1. Mr. Leduc and Bishop Larocque had taken part in a press conference and expressed to the public that the settlement was purely civil in nature
2. Mr. Leduc and Bishop Larocque then participated in a 2nd press conference where they explained the error they made and apologized for misleading the public. They both expressed being deeply embarrassed.
3. Once Mr. Leduc was made aware of clause #2 he immediately withdrew from the file

According to Insp. Smith, Mr. Leduc acted like a man who did not know what was in the document. Mr. Leduc's after the fact conduct corroborated his statement to police. Insp. Smith also testified that Rev. Bryan's statement also corroborated Mr. Leduc's version of events.

Evidence of T. Smith Vol 313, p.23 l.23-p.26 l.1

91. At the end of October 1994, Insp. Smith interviewed Malcolm MacDonald. Mr. MacDonald made certain admissions in the course of his interview including that he had prepared the release document and that he had also prepared the one page direction to Cornwall Police Service advising them to close their file. At no time in the interview did Malcolm MacDonald claim the word "criminal" appeared in the release through accident or inadvertence. Indeed, had he taken that position, the direction to the Cornwall Police Service would have contradicted that assertion. Mr. MacDonald lied to the police in his police interview on several occasions. Specifically, he reported to police that he had been against paying monies to Mr. Silmser and that he had expressed this view to the Bishop. Mr. MacDonald also told Insp. Smith that his client did not contribute at all to the financial settlement. During the course of the interview, Mr. MacDonald claimed that Murray MacDonald was aware that the settlement was intended to cover civil as well as criminal matters. When pressed on the issue, Mr. MacDonald

became evasive. Overall, Insp, Smith testified that Malcolm MacDonald was extremely evasive, difficult to pin down and "slippery as an eel" in his dealings with investigators. Insp. Smith testified that Mr. MacDonald was not credible.

Evidence of T. Smith	Vol 310, pp.220 ll.1-11; p.229 l.20-230 l.13; Vol 313 p.26 l.2-p.27 l.20
Ex 863	Interview Report—Malcolm MacDonald w/ Insp. Smith dated 28 October 1994

92. Insp. Smith did not ask Mr. Leduc to provide the precedent release he prepared and sent to Mr. MacDonald. Nor did he ask to see the draft press-releases Mr. Leduc sent to Mr. Adams, Mr. MacDonald and Mr. Geoffrey in advance of the January 14, 1994 press-conference. Instead, Insp. Smith asked for wording of some settlements Mr. Leduc had worked on in the past. Accordingly, Mr. Leduc provided Cst. Fagan with the release that had been used in his dealings with C69. Mr. Leduc was likely not in a position to provide more documentation to police given that it was the subject of ongoing civil litigation.[5] In cross-examination, Insp. Smith was shown the draft release that Mr. Leduc prepared and faxed to Malcolm MacDonald which included Malcolm MacDonald's hand written notations. Insp. Smith agreed that the notations on the draft show that "the person who authored these handwritten comments knows there's going to be an additional clause added to the release and its going to be clause 2." Neither this piece of evidence nor the draft press-releases sent to Mr. MacDonald, Mr. Adams and Mr. Geoffrey were available to OPP investigators. These pieces of exculpatory evidence serve to further corroborate Mr. Leduc's statement to police.

Evidence of T. Smith	Vol 310, p.145 l.23-p.146 l.1; p.158 l.2-p.159 l.10; Vol 312, p.80 l.14-p.84 l.6; Vol 313 p.35 l.24-p.36 l.18

[5] In fact, the draft release appeared in both the affidavit of documents of Mr. Leduc and Mr. MacDonald (see exhibit 1899 and 1914)

93. Insp. Smith testified that he fully investigated the "illegal settlement" and that Mr. MacDonald was the one person responsible for clause #2. Indeed Mr. MacDonald himself never raised Mr. Leduc's involvement as a defence. Mr. MacDonald's guilty plea had significant consequences on him. Insp. Smith testified that the Law Society of Upper Canada contacted him subsequently and advised that Malcolm MacDonald was no longer practicing law. Insp. Smith did not uncover a single piece of evidence showing that Mr. MacDonald would risk his license and his reputation for the sake of Mr. Leduc. Indeed, Mr. Leduc and Mr. MacDonald were not even friends.

Evidence of T. Smith Vol 311, p. 15 l.14-p.16 l.6; Vol 313, p.42 ll.1-5

94. Insp. Smith specifically rejected the suggestion that he did not adequately investigate Mr. Leduc's role in the Silmser settlement and that he should have scrutinized him more closely. Insp. Smith testified that he had absolutely no bias in favour of the Diocese or Mr. Leduc and the sole reason he did not charge Mr. Leduc with attempt to obstruct justice is because there was no evidence supporting the charge. Insp. Smith testified that he remains confident even today with the results of his investigation and that Mr. MacDonald was responsible for clause #2.

Ms. Robitaille: I take it that even today, as we sit here, you think you got the right man in '95, right?
Insp. Smith: I know I did

Evidence of T. Smith Vol 313, p.42 ll.13-16; p.42 l.20-p.44 l.18

REVIEW OF BRIEF CONDUCTED BY CROWN PETER GRIFFITH'S (as he then was)

95. In November 1994, Insp. Smith prepared the Crown Brief with respect to his obstruction of justice investigation for Crown review. The Crown brief contained, *inter alia*, all of the civil settlement documents, including the one page direction to the Cornwall Police Service as well as the press releases prepared by the Bishop and Mr. Leduc in January 1994. In December 1994,

Mr. Griffiths advised Insp. Smith that he was going to seek the opinion of a colleague on the obstruction of justice brief. On January 30, 1995, Mr. Griffiths advised Insp. Smith that there was reasonable and probable grounds, a reasonable prospect of conviction, and a public interest in charging and proceeding on charges of obstruct justice against Malcolm MacDonald. No charges were recommended against Mr. Leduc. Insp. Smith testified that he was aware that Crown Griffiths reviewed the brief with a number of other Crown attorneys.

Evidence of T. Smith	Vol 310, p.231 ll.12-18; Vol 311, p.28 l.22-p.33 l.15; Vol 313 p.31 l.25-p.32 l.13; p.36 l.22-p.37 l.13
Exhibit 2690	Index of investigation re: allegations of obstruction of justice

96. Justice Griffiths testified that he conducted a review of the obstruct justice brief prepared by the OPP in order to provide an opinion with respect to reasonable and probable grounds. Justice Griffiths testified that he did not view the file with tunnel vision, focusing exclusively on the role played by Mr. MacDonald in the settlement. Rather, Justice Griffiths specifically considered whether there were reasonable and probable grounds to lay a charge against Mr. Leduc. Justice Griffiths concluded that there were no such reasonable and probable grounds to lay charges against Mr. Leduc. Justice Griffiths forwarded the obstruction of justice brief to Mr. McDougald for his review and opinion. Mr. McDougald was a very senior, careful and well-respected Crown Attorney. Mr. McDougald also recommended that no charges be laid against Mr. Leduc.

Evidence of Griffiths J. Vol 332, p.97 l.24-p.98 l.20; p.203 ll.15-24; p.284 l.12-p.285 l.12

GUILTY PLEA OF MALCOLM MACDONALD

97. In February 1995, Mr. MacDonald was charged with attempted obstruction of justice. Crown counsel Flanagan had carriage of the prosecution. Mr. Flanagan testified that he reviewed the entirety of the Crown brief and never formed the opinion that Mr. Leduc was responsible for

the obstruction of justice. At all times, Mr. Flanagan was aware that he had a continuing duty to assess the matter for reasonable prospect of conviction. The case was pre-tried before Justice Lennox and as part of the practice at the time, Mr. Flanagan forwarded the Crown brief to Justice Lennox. Justice Lennox reviewed the materials and a pre-trial was held in April of 1995 where the joint Crown and defence position of a plea of guilty was articulated.

Evidence of C. Flanagan	Vol 331, p. 14 l.16-p.15 l.8; p.22 l.23-p.23 l.7; p.32 ll.8-13; p.148 ll.20-24; p.148 l.25-p.149 l.25; p.151 ll.1-8
Ex 2995 (715995)	Letter from C. Flanagan to Justice Lennox April 14, 1995
Ex 1165 (716637)	Transcript of Proceedings *R. v. MacDonald* of guilty plea

98. On September 12, 1995, Malcolm MacDonald pled guilty to attempt to obstruct justice. The agreed statement of facts read by Mr. Flanagan before his Honour Justice Lennox on the guilty plea indicated that Mr. Malcolm MacDonald was acting alone when he included in the full release and undertaking clause #2. Defence counsel made certain comments on the record regarding the facts as read in by the Crown. At no time did Mr. MacDonald or his counsel indicate that the Crown was mistaken when it represented to the Court that Mr. Leduc was unaware of the offensive clause. It was on those facts that Mr. MacDonald pled guilty and was found guilty by Justice Lennox.

Ex 1165 (716637)	Transcript of Proceedings *R. v. MacDonald* of guilty plea September 12, 1995

OPP RE-INVESTIGATION: DET. DUPUIS AND DET. HALL FIND NO REASONABLE AND PROBABLE GOUNDS TO LAY CHARGES AGAINST LEDUC

99. Part of the mandate of Project Truth was to re-investigate the allegations of conspiracy to obstruct justice that had previously been investigated by Insp. Smith. To that end, Cst. Dupuis and the Project Truth team conducted further interviews with persons involved in the Silmser settlement. One of the interviews conducted was of Helene Jones who was Mr. Leduc's assistant

in 1993. Ms. Jones was asked by investigators if she knew anything about "the agreement between the Diocese of Alexandria-Cornwall, and a person by the name of David Silmser." Ms. Jones told investigators that she could not remember who drafted the agreement and whether she typed it or not. Ms. Jones told investigators that she would have difficulty remembering the document because "it just would have been another document to [her]". Approximately half an hour after the investigators left her home, Ms. Jones spoke to Cst. Dupuis over the telephone. Cst. Dupuis' entry in his will say states: "after the document was typed, Jacques Leduc told Mrs. Jones to erase the memory of the typewriter, with reference to this document, which she did. No reason was given." Mr. Leduc was not questioned in examination in chief or cross-examination regarding Ms. Jones' statements. Ms. Jones was not called as a witness at the Inquiry.

Evidence of J. Dupuis	Vol 308, p. 179 l.23-p.185 l.18;
Exhibit 2638 (703759)	Statement of Helene Jones dated 9 August 2000

100. Ms. Jones' unsworn and untested evidence is not inconsistent with Mr. Leduc's evidence that he did not want to keep a file relating to the Silmser complaint in his office, preferring to respect the anonymity of the parties. In any event, Ms. Jones utterances were available to investigators when they concluded that they did not have reasonable or probable grounds to lay charges against Mr. Leduc. Ms. Jones statement was also available to Crown counsel Mr. McConnery who did not recommend that any charges be laid against Mr. Leduc.

Evidence of J. Dupuis	Vol 310, p.43 l.17-p.46 l.22
Evidence of L. McConnery	Vol 335, p.96 l.25-p.98 l.11
Exhibit 2631 (116281)	Index to Conspiracy to Obstruct Justice Allegation of Cst. Dunlop
Exhibit 2652 (702458)	Letter from Pat Hall to Lorne McConnery re: Project Truth, dated July 4, 2001
Exhibit 2615 (703890)	Cst. Dupuis Will Say

PART 5—THE LEDUC TRIAL

LABELLE VIDEO

101. Ms. Hallett was assigned to prosecute the Leduc case in June 1998 shortly after charges were laid against Mr. Leduc in respect of two complainants. Ms. Hallett testified that on November 24, 1998, she attended Mr. Stewart Labelle's home with Det. Seguin and Det. Dupuis. Mr. Labelle was a person whom the investigators believed had been abused by Mr. Leduc but who had refused to provide a statement against Mr. Leduc. Ms. Hallett attended the home of Mr. Labelle and explained to Mr. Labelle why his evidence was important and requested that he accompany the officers to the detachment and provide a videotaped interview. The meeting lasted half an hour. Ms. Hallett could not recall whether she traveled in the same vehicle as Mr. Labelle but acknowledged that she was present at the detachment while Mr. Labelle's statement was being taken. Ms. Hallett observed Mr. Labelle provide his statement via close circuit television. Ms. Hallett testified that though she was not able to discern precisely what Mr. Labelle was saying in the interview, she ascertained the content of his statement through one of the officers once it was completed. Ms. Hallett knew on November 24, 1998 that Mr. Labelle claimed, for the very first time, in this statement that Mr. Leduc had sexually abused him. On November 25, 1998, the day after Mr. Labelle's statement was recorded, Mr. Leduc set dates for his preliminary inquiry. The matter was set down to begin April 8, 1999.

Evidence of Ms. Hallett	Vol 340, p.40 l.11-p.48 l.18;
Exhibit 324	Will Say of Joe Dupuis dated from June 4, 1998 to June 8, 1999

102. Despite Ms. Hallett being aware on November 24, 1998 that Mr. Labelle had provided an interview that was approximately an hour long wherein he alleged that he was sexually

abused by Mr. Leduc, no disclosure was provided with respect to either Mr. Labelle's interview or the laying of additional charges with respect to Mr. Labelle in November 1998, December 1998, January 1999 or February 1999. On March 8, 1999, 4 weeks prior to the commencement of the preliminary hearing, Ms. Hallett wrote to defence counsel, Mr. Edelson, and advised that charges would be laid against Mr. Leduc with respect to Mr. Labelle. This letter was not accompanied by the transcript or the video statement. The videotape was not made available to Mr. Edelson until March 19, 1999 less than 3 weeks before the beginning of the preliminary inquiry.

Evidence of S. Hallett	Vol 338, p. 39 l.8-p.51 l.22
Ex 3177 (700948)	Letter form Shelley Hallett to Michael Edelson dated March 9, 1999
Ex. 3178 (113280)	Letter from Michael Edelson to Shelley Hallett dated March 9, 1999

103. Ms. Hallett explained that the reason she waited until the eve of the preliminary hearing to lay the additional charges and to disclose Mr. Labelle's videotape was because she did not have a transcription of the videotaped statement and did not receive her copy of the video statement until February 19, 1999. The absence of a transcript is not an adequate explanation for the delay having regard to the following:

1. The videotaped interview was created almost instantaneously on November 24, 1998 when it was recorded;
2. Ms. Hallett was aware of the existence and content of the videotaped statement on the day it was taken on November 24, 1998;
3. There was no requirement to provide counsel with a transcript of the videotaped statement;
4. Ms. Hallett could have reviewed the videotaped statement immediately to ascertain if further charges were to be laid;
5. Irrespective of whether further charges would be laid, Ms. Hallett would have been obligated to disclose the videotaped statement and could have disclosed it in advance of any decision with respect to charges;

6. There was no requirement on the Crown to provide a transcript of the videotaped statement. Ms. Hallett testified that she was aware that there was no such requirement and indeed had disclosed video statements without accompanying transcripts in the case previously;

7. At the time the statement was taken Ms. Hallett was aware that the next day the preliminary inquiry was to be set for April 8, 1998, a little over 4 months away. Ms. Hallett was aware of the urgent nature of the disclosure;

8. Ms. Hallett conceded that she took no steps to expedite the preparation of the transcript.

Evidence of S. Hallett	Vol 338, p.47 l.21-p.48 l.7; Vol 340 p.45 l.18-p.50 l.5
Ex.3178	Letter from M. Edelson to S. Hallett dated 9 March 1999

104. The delay in disclosing the video statement was not attributable to the time spent awaiting Mr. Edelson's undertaking restricting his use and copying of the video statement should not be accepted by this Commission. Ms. Hallett had obtained an order from Mr. Justice Belanger a month before the making of Mr. Labelle's statement restricting the use and copying of all video statements in the case. A further undertaking from Mr. Edelson was redundant. If there was a concern that Mr. Edelson was not clear on the terms of Justice Belanger's order, and knowing in November 1998 that disclosure of Mr. Labelle's video statement would be necessary, she could have arranged an appearance before His Honour to seek clarification some time in November, December, January, or February. She did not do that. Instead, Ms. Hallett arranged for an officer to drop off disclosure at Mr. Edelson's office on March 19, 1999 in exchange for an executed undertaking, 10 days after revealing the existence of the tape, 3 weeks before the preliminary hearing and 4 months after Ms. Hallett herself witnessed the recording of the video. It is respectfully submitted that Mr. Edelson's undertaking played no role whatsoever in the untimely disclosure of Mr. Labelle's video statement.

Evidence of S. Hallett Vol 340, p.50 l.10-p.56 l.13; Vol 341, p.53 l.8-p.54 l.18

Exhibit 3274 (113270) Letter from Mr. Edelson to Ms. Hallett dated March 17, 1999

105. The delayed disclosure relating to Mr. Labelle necessitated the adjournment of the preliminary hearing. Due to ongoing disclosure problems the preliminary hearing did not proceed until the end of November 1999. It therefore took 17 months from the time Mr. Leduc was charged until his preliminary hearing was held.

ANOTHER CONSPIRACY THEORY: THE ALLEGED AGREEMENT BETWEEN DEFENCE AND OPP

106. In the middle of Mr. Leduc's trial, during cross-examination on February 7, 2001, C-16's mother testified that she had been in contact and sought advice about Mr. Leduc from Cst. Dunlop. Prior to C-16's mother's testimony, Cst. Dunlop's connection and involvement with the case and in particular with the complainants of the case was completely unknown to the defence. Insp. Smith testified that on or about February 8, 2001 he received a phone call from Pat Hall requesting that he prepare a statement regarding the issue of contact between Mr. Dunlop and C16's mother. Insp. Smith prepared a 2-page statement dated February 9, 2001, which was subsequently disclosed to the defence. Insp. Smith was also advised that he had been subpoenaed to testify during the defence application for a stay of proceedings. Though he was initially unaware of which party had subpoenaed him, Insp. Smith became aware that it was the defence that had done so. On February 19, 2001, Insp. Smith was in court when Justice MacKinnon recused himself. When Court adjourned, Insp. Smith advised Ms. Hallett that he was going to meet with Mr. Skurka to determine what type of questions defence counsel planned on asking him when he testified. Insp. Smith testified that he met with Mr. Skurka who asked him if he had any notes regarding the conversation he had with Cst. Dupuis about Mr. Dunlop and C-16's mother. Once Insp. Smith advised that he did not, Mr. Skurka indicated to him he likely was not

going to call him as a witness and gave him his card so that he could forward his expenses to him.

Evidence of T. Smith Vol 312, p. 20 l.16-p.22 l.6; p.22 l.21-p.24 l.18; p.24 l.23-p.26 l.17; p.29 ll.4-20

107. Ms. Hallett speculated that she became the victim of a *quid pro quo* between the OPP Project Truth investigators and defence counsel acting for Mr. Leduc at his first trial. Ms. Hallett testified that on February 22, 2001, upon learning that Insp. Smith would not be called as a witness by the defence she came to believe that the OPP and the defence had come to an agreement whereby the defence had agreed to withdraw their allegations of willful non-disclosure against the police in exchange for ammunition showing the Crown had willfully not disclosed. Ms. Hallett's conspiracy theory in this regard should be wholly rejected based on the objective facts:

1. The defence never abandoned their position that the police had willfully not disclosed their knowledge that Dunlop had contact with C-16's mother. This evidence is abundantly clear in the examination of the police officers. Furthermore, in the final submissions, the defence specifically called on Justice Chadwick to make a finding of misconduct against the police officers. Mr. Campbell characterized the evidence of the police conduct as "a cogent circumstantial case for willfulness of non-disclosure." Mr. Campbell further submitted to the Court that bad faith was a more logical explanation for the officers' omissions than the explanation of coincidence. If there was a *quid pro quo*, it was either the worst deal or no deal because the police were not "let off the hook" as suggested by Ms. Hallett's conspiracy theory;

2. Ms. Hallett speculated that the agreement between the police and the defence was that the Crown would take "the fall" for the non-disclosure in exchange for being "let off the hook". This conspiracy theory is unsupported by the evidence. Cst. Dupuis and Insp. Hall both testified under oath that Ms. Hallett had never intentionally withheld disclosure provided to the defence. The allegation that these officers provided the defence with the evidence to incriminate Ms. Hallett is untenable given their actual evidence on the motion. Once again, it was either the worst deal or no deal because the defence had gotten nothing for the bargain since the police officers supported Ms. Hallett in their testimony and did not suggest that she had intentionally withheld disclosure;

3. Ms. Hallett testified that the fact that Insp. Smith was not called as a witness was her primary basis for the belief that there was a *quid pro quo*. From the inception of the application, the defence had forecast not calling Insp. Smith to testify. Once Insp. Hall testified that Cst. Dunlop's notes of the July 23, 1998 meeting between himself, Cst. Dunlop and Insp. Smith was likely a transcription of a recording and accorded with his own recollection of the meeting, Insp. Smith's evidence would have been redundant. Further, had Ms. Hallett believed that Insp. Smith's evidence was critical on the motion, consistent with her duties as a Crown Attorney she could have called him to present all the facts to the Court. She did not do so and could provide no reasonable explanation to this Inquiry as to why she did not call a witness whom she believed was "critical". The fact that Insp. Smith was not called as a witness cannot be viewed as any evidence of any agreement between defence and police. It is simply evidence that his testimony was not required.

Ex. 3273 (Bates 1077090)	Proceeding on Application for Stay of Proceedings re: R. v. Leduc dated 26 February 2001
Evidence of Ms. Hallett	Vol 340, p.75 l.10-p.80 l.20

108. The notion of a *quid pro quo* between the officers and the defence was mentioned for the very first time in the testimony of Ms. Hallett. Insp. Smith specifically denied that he was part of any conspiracy to "backstab" Ms. Hallett and was never questioned about any *quid pro quo* with defence counsel. Det Dupuis was also in attendance at the meeting with Insp. Hall and defence counsel on February 19, 2001. At no time in his testimony did Det. Dupuis mention any *quid pro quo* or agreement with defence counsel. Insp. Hall testified that he never intended to make Ms. Hallett the target of the defence's motion. Insp. Hall was never questioned about any alleged conspiracy or *quid pro quo* with defence counsel.

Evidence of T. Smith	Vol 312, p.34 l.22-p.35 l.13
Evidence of Ms. Hallett	Vol 340, p.75 l.10-p.80 l.20

109. Ms. Hallett's allegation that she became aware on February 22, 2001 that the defence had abandoned their application against the officers in exchange for ammunition against the Crown, is also contradicted by her own evidence. Ms. Hallett had maintained and continued to take the position at the inquiry that she was completely oblivious to the defence's allegations against her

until February 26, 2001 when she heard the defence closing submissions on the motion. In our respectful submission, Ms. Hallett's evidence regarding an alleged agreement between defence and police is untenable and any findings respecting it would be an error. More importantly, the resolution of this conspiracy theory has no bearing on the institutional responses at issue before the Inquiry.

Evidence of Ms. Hallett Vol 340, p.75 l.10-p.80 l.20

110. Ms. Hallett testified that she did not remove herself as counsel during the defence's application for a stay of proceedings because she was not given proper notice that her conduct was at issue. It is our respectful submission that this issue was fully canvassed at the Court of Appeal and those findings should be maintained:

> **77** Still, Leduc's failure to take any of these steps does not answer the question whether the notice of prosecutorial misconduct was so inadequate that for this reason alone the stay should be set aside. I do not have to resolve this question because I have concluded that the finding of Crown misconduct on which the stay was based is not supported by the evidence. I do, however, lean to the view that though not ideal, the notice was adequate. I also lean to the view that the Crown should not be permitted to raise the adequacy of the notice on appeal. I do so for three main reasons.
>
> **78** First, from the beginning of the hearing of the stay application, Ms. Hallett seemed aware of the allegation against her and prepared to respond to it. She addressed the allegation not just in her closing submissions but in her questioning of the police officers called on the stay. In answer to questions from Ms. Hallett, Inspector Hall and Detective Constable Dupuis each said that to his knowledge Crown counsel had not intentionally withheld material prejudicial to the prosecution.
>
> **79** Second, and more important, Ms. Hallett did not object to the adequacy of the notice she was given. At no time during the stay, even during closing arguments when there could have been no doubt about Leduc's position, did Ms. Hallett ask for an adjournment, ask for the opportunity to get advice from another lawyer, or even say that the allegation had taken her by surprise. Although her failure to object may not be fatal to the Crown's position on appeal, I think it is an important consideration.

> **93** It seems to me that maintaining this flexibility is necessary to protect the accused's constitutional right to make full answer and defence. In some cases it may be unfair to require the accused to identify in advance the reasons for non-disclosure, whether the non-disclosure was intentional, and, if so, the party responsible. It may be unfair because ordinarily the Crown is in the best position to know the reasons why relevant information was withheld and who withheld it. The law is clear that the Crown, not the defence, has the burden of explaining non-disclosure. See R. v. Stinchcombe (1991), 68 C.C.C. (3d) 1 at p. 12 (S.C.C.) and R. v. Ahluwalia (2000), 149 C.C.C. (3d) 193 at 212-213 (Ont. C.A.).
>
> **94** Also, at any stage of a trial an accused has to be reasonably free to raise any legitimate defence, even though doing so may adversely affect another person. The accused's right is a constitutional one. The concerns of a Crown counsel targeted with an allegation of wilful non-disclosure, though entirely legitimate, are not constitutionally protected.

Ex.774 Court of Appeal Decision, *R. v. Leduc*, 24 July 2003

111. Irrespective of the Court of Appeal's findings as to errors made by Justice Chadwick, Mr. Leduc's defence and application for a stay of proceedings was at all times conducted ethically and professionally by senior members of the Bar. Below are the comments of the Commissioner regarding the conduct of Mr. Leduc's defence:

> I don't know if you were thinking of exploring the merits of the 11(b) application your client won it fair and square, and there's no suggestion that you or any defence counsel did anything inappropriate. So I don't need to hear from you on those things.

Transcript of proceedings dated January 23, 2009 at p.175 l.25-p.176 l.6

THE CASE OF *R. V. LEDUC* WAS MARRED BY UNTIMELY DISCLOSURE AND UNREASONABLE DELAY

112. On November 10, 2004, Justice Platana found that the delay in Mr. Leduc case, spanning a period of over 6 years, was unreasonable and that the bulk of that delay was as a result of delayed disclosure. Justice Platana found that Mr. Leduc diligently and repeatedly asserted his

right to be tried within a reasonable time and that his efforts were frustrated by the Crown who delayed the proceedings by failing to provide timely disclosure:

> c) ACTIONS OF THE CROWN
>
> **146** I next consider the actions of the Crown. Ms. Henein submits that this record is illustrative of the fact that it is actions which are attributable to the Crown which have resulted in a substantial delay incurred in the case at bar. This is not an issue of attributing fault but an issue of applying the law that states in certain circumstances delays which have been caused are attributable to the Crown whether very specifically caused by the Crown or not. The preliminary inquiry was adjourned due to non-disclosure and the trial was stayed as a result of non-disclosure, which is acknowledged would have led to a mistrial.
>
> **147** The Respondent acknowledges that most of the pre-trial delay resulted from delayed disclosure and that responsibility for this delay must rest at the feet of the Crown. Similarly, Ms. Nerozniak accepts that the Crown must also accept responsibility for the delay that would have resulted from the mid-trial discovery of the Dunlop connection.
>
> **148** In view of the position taken by the Crown and in view of the determination that I have made earlier that any delay in this case begins from the date of the laying of charges I am certainly satisfied that any delay in this matter must be attributable to the Crown.

Ex.781 Reasons for Judgement, R. v. Leduc, dated 10 Novembre 2004

113. Crown counsel on the s. 11(b) application conceded (both on the application and in her testimony before the Commission) that the bulk of the delay in Mr. Leduc's case was caused by delayed disclosure. In particular it was repeatedly acknowledged by Ms. Hallett that Mr. Dunlop's material was both disclosable and should have been disclosed to Mr. Leduc in a timely way. Ms. Hallett maintained this position at the Inquiry. Justice Platana had a full documentary record before him, which consisted of the Applicant's and Respondent's factums, a 4-volume application record and a detailed timeline prepared by the defence and the Crown and submitted as an agreed statement of facts. None of the facts agreed to by the Crown and the defence setting out the pattern of non and delayed disclosure were challenged in examination of either Ms. Hallett or Ms. Narozniak (See Ex. 2276 at paras. 7-85). It is respectfully submitted that the

Ministry of the Attorney General is best situated to provide this Inquiry with recommendations with respect to the crafting of disclosure policies and practices that will ensure defendants receive timely disclosure consistent with their *Charter* rights.

Evidence of L. Narozniak Vol 341, p. 190 l.11-191 l.17

MR. DUNLOP'S INTERFERENCE IN *R V. LEDUC*

114. The nine Dunlop boxes were disclosed to Mr. Leduc's appellate counsel on June 26, 2002. Further documents relating to Mr. Dunlop's private investigation were disclosed to Mr. Leduc's re-trial counsel leading up to the pre-trial motions. In the course of a motion for disclosure, beginning August 16, 2004, Mr. Dunlop and Mr. Chisholm were cross-examined for the first time regarding their respective roles in Mr. Dunlop's private investigation. It was only through cross-examination based on the nine boxes of disclosure that it was revealed that:

1. Mr. Dunlop had a pattern of taking detailed witness statements;
2. Complainants had made allegations of serious misconduct against Mr. Dunlop;
3. The contact with Leduc complainants extended well beyond an "innocuous" telephone call with C-16's mother;
4. There were repeated contacts with C-17's mother through Carson Chisholm;
5. There was evidence of contact between the C-16s and the C-17s.

None of this was information before the trial judge or the Court of Appeal.

Ex.3276 Applicant's Factum section 11(B) at para 69
Evidence of L. Narozniak Vol 341 p. 186 ll.14-21

115. Justice Platana made the following findings with respect to Mr. Dunlop and Mr. Chisholm's role in the case:

> 85 Mr. Dunlop's evidence during the four days on the motion for production before me should not be given any more emphasis than it deserves. The purpose of exploring his connection to this case is to uncover any contamination of witnesses and that, indeed, is an issue for the trier of fact. It is,

therefore, not necessary for me in this application to detail the full involvement of Mr. Dunlop and Mr. Chisholm as evidenced in the pre-trial matters before me. I repeat, none of the evidence given by them was available to the Court of Appeal during the hearing of the appeal from the stay. Furthermore, the Court of Appeal was dealing with an appeal from a stay of proceedings based on a different ground, that being willful non-disclosure. The Court of Appeal decision dealt with delay only as noting that the judge hearing the stay application dealt with the issue when it had not been raised. That the decision on delay was based on no factual underpinning and no consideration of the principle of when a stay on the basis of delay should be granted.

86 What is of import to the issue of delay before me is that from very early on in his involvement Mr. Dunlop projected himself, his wife and Mr. Chisholm into circumstances where numerous individuals, potential witnesses, were interviewed and/or tape-recorded. Extensive records were kept and those notes were the subject of ongoing problems with disclosure in a timely fashion. They are, as I've said, acknowledged by the Crown to be relevant to these charges and non-disclosure is acknowledged to have contributed to the delay in having these charges proceed. I will review only some of the facts which the respondent accepts as correct and which relate to a disclosure obligation which is now acknowledged to be relevant to the delay issue.

87 Mr. Dunlop became a police officer in 1983 and from July of 1997 to July of 2000, a period of time relevant to this case, Cst. Dunlop was on active duty. He began his involvement in sexual abuse allegations in 1993 and enlisted the aid of both his wife and Carson Chisholm. As a police office, he testified in the pre-trial motion, that he was well trained in keeping notes of an investigation and, indeed, did so in a constant basis. It is apparent also that between June of 1997 and January of 2000, the police repeatedly attempted to obtain compliance from Cst. Dunlop to given them his notes, videotapes and interviews. Indeed, on at least four occasions, he was given orders to provide the information in his possession to the police. That was not done and in his testimony before me, he acknowledged that he had not complied with those orders. It was on March 6th of 2000 that Cst. Dunlop finally disclosed his notebooks and personal notes regarding his investigation.

88 It is acknowledged and the evidence is clear that between 1993 and 2000 when he resigned, he was a police officer and his material, therefore, was the subject of disclosure obligations. A memo from Staff Sgt. Derochie in January of 2000, which Cst. Dunlop acknowledged receiving, clearly specified the extent of the disclosure obligations which Mr. Dunlop had in relation to the material in his possession. In particular, the evidence now discloses that notebooks which are particularly relevant to the proceedings against Mr. Leduc have, in some cases, never been produced in their original form. The evidence before me indicates that some of the material appears to be missing, some of it on the basis of the evidence which I have heard, appears to be out of order. What the evidence does clearly establish is that Mr. Dunlop's contact with the complainants, while originally thought of in incomplete material before the Court of Appeal as being innocuous, is far from benign and far from innocuous.

89 In addition, the information before me, as a result of the defence application for production, establishes a far more extensive relationship between Dunlop, Chisholm and the complainants in Mr. Leduc's case than has previously been disclosed. The evidence of Mr. Chisholm, in particular, discloses for the first time repeated contacts with [C-16's mother], the fact that he attended her home and, indeed, that he had contact with [C-17's mother] on more than one occasion. The evidence before me now satisfies me that Mr. Chisholm has acted in close concert with and under the direction of Mr. Dunlop. The entire course of conduct of Dunlop and Chisholm was, in fact, in my view, properly and appropriately the subject matter of disclosure which should have been made. It is clear that if the evidentiary record that was before me had been available to the defence at trial or, indeed, to the Court of Appeal, that that would have had a significant aspect in terms of the evidence before those courts on any stay of proceedings.

Ex.781 Reasons for Judgement, R. v. Leduc, dated 10 Novembre 2004 at para. 85-89

116. It is respectfully submitted that Mr. Dunlop and Mr. Chisholm's ongoing distrust of the police and conspiracy theories informed their actions. It is inconceivable that in light of Dunlop's view of Project Truth, he would have trusted the police to properly investigate the complaints against Mr. Leduc or that he would have provided full disclosure of his contacts. Having regard to the evidence of both Mr. Dunlop and Chisholm in the disclosure motion, the full extent of the interference with complainants in this case will never be fully known. Crown Counsel Narozniak testified that after her exhaustive review of Mr. Dunlop's material, she was not satisfied that Mr. Dunlop had disclosed all of his material or contact with witnesses. Mr. Dunlop's actions have repeatedly imperiled accused persons rights to full answer and defence as well as a speedy trial under sections 7 and 11(b) of the *Charter.*

Evidence of L. Narozniak Vol 341, p. 188 ll.15-20

DUNLOP'S CONDUCT AS A WITNESS

117. In the course of Mr. Dunlop's participation as a witness in Mr. Leduc's case he:

- evaded service of a subpoena;
- claimed that he was not provided with proper materials to prepare for his testimony;
- claimed that Crown counsel had not met with him and prepared him to testify;
- refused to answer questions; and
- halted the proceeding for the purposes of obtaining independent legal advice.

This conduct was also consistent with Mr. Dunlop's behaviour in the Father Charles MacDonald case. Mr. Dunlop, of course, engaged in the same type of disrespect for the administration of justice at this Inquiry. To that end, the Divisional Court found:

> [32] Mr. Dunlop has not only refused to comply with this court's order, he has done so deliberately and with full intent. He has done so flagrantly and publicly, and he has done so in a manner that has invited and attracted much public attention. Despite refusing to testify, he has discussed matters with the media and has indicated that although he will not testify, he may well write a book and that he "will tell Canadians his story".
>
> [33] He has indicated publicly and to the court directly that he will go to jail rather than testify -- whether that be three months or six months (which was the range submitted by the Commission and the Crown) for the civil contempt.
>
> [34] One must not lose sight of the mandate of the Commission -- to determine what happened in Cornwall, including how institutions responded -- as well as its ultimate purpose, which is surely the protection of children from sexual abuse. Despite this, Mr. Dunlop continues to refuse to testify.

It is clear that Mr. Dunlop, as an institutional actor, was not willing to be candid and honest with judicial officials regarding his investigation. After several trials and a public inquiry, Mr. Dunlop's obstructive conduct as a witness has certainly risen to the level of a systemic problem affecting the entirety of Project Truth and related proceedings.

Cornwall Public Inquiry (Commissioner of) v. Dunlop, (2008) 90 O.R. (3d) 524 at para. 32-34