THE CORNWALL
PUBLIC INQUIRY

L'ENQUÊTE PUBLIQUE
SUR CORNWALL

Commissioner

The Honourable Justice
L'honourable juge
G. Normand Glaude

Commissaire

SUBMISSIONS ON BEHALF OF THE MINISTRY OF THE ATTORNEY GENERAL

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EXECUTIVE SUMMARY

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

PHASE 1 SUBMISSIONS

The Phase 1 submissions are divided into seven main sections: Fundamental Principles, Pre-Project Truth Investigations and Prosecutions, Project Truth, Non-Project Truth Investigations and Prosecutions, Response to Institutional Issues, Phase1 Policy Submissions, and Phase 1 Recommendations.

1. Fundamental Principles

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

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

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

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

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

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

2. Pre-Project Truth Investigations and Prosecutions

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

3. Project Truth

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

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

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

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

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

4. Non-Project Truth Investigations and Prosecutions

Five main topics are canvassed in this section of the Phase 1 submissions, including advice given by Crown Attorneys to the Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry; the1982 investigation into the allegations against Nelson Barque, a probation officer; and some other prosecutions that were contemporaneous to, but were not classified as Project Truth by the OPP.

5. Response to Institutional Issues

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

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

The Ministry's response is:

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

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

The second issue is:

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

The Ministry's response is:

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

The third issue is:

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

The Ministry response is:

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

The fourth issue raised by the Commission is:

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

The Ministry's response to this issue is:

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

The fifth issue is:

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

The Ministry's response is:

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

The sixth issue is:

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

The Ministry's response is:

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

The seventh issue is:

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

The Ministry's response is:

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

The eighth issue is:

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

The Ministry submits:

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

The ninth issue is:

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

In response, the Ministry submits:

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

The final issue raised by the Commission is:

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

The Ministry's response is:

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

6. Phase 1 Policy Issues

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

7. Phase 1 Recommendations

The Ministry's Phase 1 recommendations are:

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

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

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

PHASE 2 SUBMISSIONS

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

PHASE 1 SUBMISSIONS

1. FUNDAMENTAL PRINCIPLES

(a) Role of the Crown Attorney

The role of Crown Counsel has been aptly described by the Supreme Court of Canada in the well-known passage contained in *R. v. Boucher:*

> The position held by counsel for the Crown is not that of a lawyer in civil litigation. His functions are quasi-judicial. His duty is not so much to obtain a conviction as to assist the judge and jury in ensuring that the fullest possible justice is done. His conduct before the Court must always be characterized by moderation and impartiality. He will have properly performed his duty and will be beyond all reproach if, eschewing any appeal to passion, and employing a dignified manner suited to his function, he presents the evidence to the jury without going beyond what it discloses[1].

Crown Attorneys are appointed by the Lieutenant Governor in Council under the *Crown Attorneys Act*, R.S.O. 1990, c. C.49. Their duties include acting as agent of the Attorney General for the jurisdiction for which they are appointed. That is why they have been referred to as “individual ministers of justice”.

The duties of the Attorney General are set out in the *Ministry of the Attorney General Act*, R.S.O. 1990. c. M.17. The Act incorporates by reference the common law powers and duties of the Attorney General. At common law, the Attorney General has a special role. Although he or she is a member of Cabinet, the Attorney General is also the chief legal officer of the Province, with powers

and duties unique to that office, chiefly the prosecution of criminal offences. In that role, the Attorney General exercises a discretion independent from the other members of the Executive Council.

The independence of the Attorney General was so strongly stressed in England that, until recent times, it was considered inappropriate for him to be even a Member of Parliament, much less a member of the Cabinet. However, in Canada since the 1850s, it was deemed that membership in the Cabinet is essential if the Attorney General is to be head of an administrative department. As a Cabinet minister and member of the Assembly, the Attorney General is answerable to the Legislature, but in matters relating to criminal prosecutions, he is open to questioning and censure only after the termination of any particular criminal proceedings. Any suggestion of political pressure in relation to the administration of criminal justice would be abhorrent to the most fundamental constitutional precepts.

The barrier between the Attorney General and politics is somewhat less rigid when he or she is serving as legal adviser to the government in non-criminal matters. He or she must, however, be constantly aware that the public depends on him or her for protection from legislative invasion of civil rights. Accordingly, in advising on legislation, the Attorney General must ensure that government policy and political considerations are secondary to the trust that he holds for the public at large.

It follows from the unique role of the Attorney General in respect of the prosecution of criminal offences that the exercise of discretion by the Attorney General and his agents is immune from review, except for malice.

(b) Immunity from Review for Exercise of Crown Discretion

The second fundamental principle is the immunity from review of the exercise of discretion with respect to core decisions by Crown Attorneys.

Crown Attorneys exercise independent discretion with respect to core decisions such as whether or not to proceed with charges. As the Supreme Court of Canada said in the *Beare* case, "discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid".[2]

The law protects the exercise of core Crown discretion from scrutiny by courts or tribunals, except in the case of malice. As the Supreme Court of Canada said in the leading case of *Krieger* "within the core of prosecutorial discretion, the courts cannot interfere except in such circumstances of flagrant impropriety or in actions for `malicious prosecution'."[3] This is a recognition of the fact that "reasonable Crown counsel will reasonably differ" about the exercise of discretion from time to time and that therefore honest exercises of Crown discretion should not be "second-guessed".[4]

The law protects the exercise of Crown discretion for the same reason it protects judges from being examined with respect to their decisions, as has been acknowledged at the Inquiry. The protection is not for the benefit of judges or Crown Attorneys, but to preserve the independence of the office in the interest of the administration of justice. As the Supreme Court of Canada said in the *Power* case this is based on the constitutional principle of "separation of powers, as well as a matter of policy founded on the efficiency of the system of criminal justice and the fact that prosecutorial discretion is especially ill-suited to judicial review".[5]

The Crown Attorneys answered all questions about their decisions in order to assist in the work of the Inquiry. However, they did so without prejudice to the Ministry's position that the exercise of their core discretion cannot be reviewed except for allegations of malice.

(c) Relationship between Crown Attorneys and Police

The police and Crown counsel are integral parts of the criminal justice system and while their roles are interdependent, they perform distinct functions, each with their own responsibilities and discretion.

In general terms, police investigate allegations of criminal wrongdoing. Based on their investigative findings, police decide whether to lay charges and which

charges to lay. While Crown counsel may advise the police, Crown counsel do not direct police investigations. The police have a discretion as to how an investigation shall be conducted, and ultimately make their own decisions as to how their investigation shall be designed and carried out, what leads will be followed up, what documents will be obtained, and who will be interviewed and when.

In appropriate cases, where they have reasonable and probable grounds to believe that a crime has been committed, the police may lay charges. That decision is within the sole discretion of the police. In most provinces including Ontario[6], Crown counsel have no say over whether an information should be laid, the particular charge that should be laid or the form of the information. This independent police discretion is designed, at least in part, to promote objective police investigations conducted without interference from the state.

Crown counsel have a cooperative but distinct role from the police. Crown counsel do not take part in or direct police investigations, their primary role is to conduct prosecutions once charges are laid. Crown counsel are not required to prosecute every charge laid by the police and, like police, retain their own discretion as to whether to proceed with a prosecution or withdraw some or all of the charges. If they decide to proceed with a prosecution, Crown counsel conduct the prosecution as they see fit. They alone make the decision as to what witnesses will be called, what evidence will be introduced, the manner in which

the evidence will be presented and the submissions and arguments that will be made.

Like the police, Crown counsel exercise their discretion independently. While Crown counsel may advise the police (and that advice is solicitor/client privileged[7]), unlike other solicitor/client relationships, Crown counsel do not take instructions from the police. They retain an independent discretion to prosecute as they see fit.

In 1993, the *Martin Report* described the distinction as follows:

> As a matter of law, police officers exercise their discretion in conducting their investigations and laying charges entirely independently of Crown counsel. The police seek the advice of the Crown only where they think it appropriate. And while it is no doubt prudent to do so in many cases, the police are not bound to follow the advice of Crown counsel, as that advice relates to the conduct of the investigation and the laying of charges. The Crown likewise exercises independent discretion in the conduct of the prosecution before the Courts, having no obligation to prosecute simply because a charge is laid by the police. The mutual independence of the Crown and police is recognized for example, in the fact that different Ministers of the Crown are responsible for each: the Attorney General, as the chief law officer of the Crown, and the Solicitor General as the Minister responsible fro providing police services[8].

This distinction between the role of Police and Crown counsel is has been the subject of some comment and analysis in recent years in Canada and Ontario. For example, in 1990 The Law Reform Commission of Canada published Working Paper 62 – “Controlling Criminal Prosecutions: the Attorney General and the Crown Prosecutor”[9] in which the Law Reform Commission noted and

affirmed the wisdom and utility of maintaining the distinct roles or Police and Crown Counsel.

> ….the major advantage of allowing the police an unrestricted right to lay charges is that it more affirmatively maintains the independence of the various aspects of the judicial system. The investigation of crime should be kept separate from the prosecution of crime, a position that is supported by the recent trend in Canada to remove control of the police from the Attorneys General. The need for independence in the control of prosecutions is particularly clear in cases that involve allegations of criminal conduct by police officers. Without a division of authority between investigations and prosecutions, a strong potential for conflict of interest would exist.
>
> The proper role of the prosecutor, for example, shows the advisability of the independence of the two aspects. A prosecutor must not be concerned with winning or losing; rather, the Crown must present fairly all evidence to the Court. The Commission has noted of the prosecutor in *Criminal Procedure: Control of the Process* that;
>
> > Though he functions within an adversary system, he is an adversary with a difference. His primary duty is *not to act as the instrument of the police* or to secure a conviction by exploiting the opportunities afforded him by the rules of the process.[10]

The *Martin Report* also noted that the mutual independence of Crown counsel and police has many advantages and that separating the investigative and prosecutorial powers of the state is an important safeguard against the misuse of both. Separation of function inserts a level of independent review between the investigation and any prosecution that may ensue. That independent review – charge screening – requires that the charges be assessed according to defined standards by a Crown in a position to view the investigative findings freshly and dispassionately, thus helping to ensure that both investigations and prosecutions are conducted more thoroughly and fairly.[11]

The *Martin Report* also noted that the independence of Crown counsel and the police also places upon the police some important responsibilities:

> Most importantly, the Crown is entitled to rely on the police, as the investigative source of most of the information relevant to the guilt or innocence of an accused person, to bring forward accurately and completely whatever has a bearing on the case[12].

The Ministry of the Attorney General ("MAG") has provided Crown counsel with advice and direction with respect to their roles in relation to that of police. In August, 1997, MAG introduced a policy into the Crown Policy Manual entitled "Police – Relationship with Crown Counsel."[13]. The policy noted the independent roles of both agencies but also stressed the need for mutual cooperation and reliance at all stages of an investigation and court proceeding. The policy stated that over recent years increasing legal complexity associated with many investigative tools has led to a greater need for police to obtain the advice and assistance of Crown Counsel during investigations. The *Charter of Rights* and in particular the broad disclosure obligations placed on Crown Counsel have also led to greater need for Crowns to make full and fair disclosure throughout the court process and has led to a greater need for the Crown to obtain investigative support after the charge has been laid.

In recognition of those developments the policy provided guidance to Crowns in maintaining the appropriate relationship at the three important stages of the criminal process – pre-charge, the point of charging and post charge.

The policy stated that pre-charge the role of the Crown is advisory and in nature and not directive or supervisory[14]. The policy provided some practical advice such as ensuring that the advice given in not misunderstood by keeping a written record of the advice or obtaining and verifying a copy of the officer's notes. Crowns were discouraged from attending at crime scenes or participating in the taking of statements from witnesses.

With respect to the charging decision, the policy affirmed that the final selection of an appropriate charge and the decision to lay the information must both be made by the police. It stated that the police may be tempted to seek practical direction from the Crown rather than legal advice. It was recommended that to protect the independence of both the police and the Crown that in difficult cases (this practice not required in every case) the police be required to provide a written investigative brief and where feasible, the advice be provided in writing.

After the charge is laid, the policy stated that the Crown is obliged to screen the charge and at this stage the Crown has absolute and independent control over the charge with authority to withdraw it or proceed with the prosecution. It was noted that the Crown's continuing obligation to provide disclosure may require additional investigative efforts. Crowns have the authority under the *Crown Attorneys Act* to cause charges to be further investigated and additional evidence be collected and thus may require additional investigation to be done.

In March, 2006, the above policy was replaced by "Practice Memorandum No 34 – Police: Relationship with Crown Counsel, March 31, 2006."[15] The synopsis states:

> This memorandum examines aspects of the working relationship between Crown counsel and police officers. Crown counsel may work cooperatively with police officers at all stages of the investigation and prosecution of a case; **however, care must be always be taken to respect the legal and institutional separation of the investigative and prosecutorial functions**.

Like the earlier policy, the memorandum provides practical suggestions to Crowns for working within these parameters at the pre-charge, point of charge, and post-charge stages. It stresses that at the pre-charge stage the role of the Crown is advisory and it would be inappropriate for the Crown to become involved in directing the investigation. It points out that privilege will apply to the advice provided to police but that disclosure of the advice, inadvertent or not, may result in a waiver and for disclosure purposes, Crowns are advised to redact such advice from officers' notes.

The memorandum also elaborates on the earlier policy with respect to Crown involvement at the point of charge and again stresses that in difficult, complex, or potentially controversial cases where judicial scrutiny of the Crown–police consultations may arise, that Crowns require a written investigative brief and that where feasible the advice be reduced to writing – either by the Crown or by police and verified by the Crown. The memorandum states that this practice

should also be followed where a Crown is asked to provide charging advice regarding historical sexual assaults, complex fraud or breach or trust or homicide cases. Crowns are advised to indicate to the police that the advice is a legal opinion only and is not binding on the police.

Finally, the memorandum addresses post-charge Crown involvement. It states that Crowns must screen all charges and that process may reveal frailties in the charging decision, the absence of disclosure material or aspects of the case that require further investigation. Again Crowns are reminded of their statutory authority to require further investigation into charges already laid and their responsibility to provide disclosure of all materials, whether it assists the prosecution or the defence.

(d) The Crown's Disclosure Obligations

The Crown's disclosure obligation is rooted in the well-accepted notion of fair play on the part of the Crown, and therefore, the police[16]. In addition, disclosure of the Crown's case is a right of the accused guaranteed under the *Canadian Charter of Rights and Freedoms*.

The leading authority in respect of the Crown's disclosure obligations is the Supreme Court of Canada's decision in *R. v. Stinchcombe*[17]. The Crown's *Stinchcombe* obligations, as it is often called, was subsequently examined in great detail by a committee, chaired by the Honourable G. Arthur Martin and

comprised of defence counsel, Crown counsel and police representatives. This committee was commissioned by the Attorney General of Ontario, in June of 1991, to study the early stages of the criminal process, including charge screening, disclosure, and resolution or plea discussions.

(i) The Martin Report

In 1993, the tripartite committee released the Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions[18]. The Martin Report, as it is often referred, considered *Stinchcombe* to be the authority for the following 15 propositions in respect of the Crown's disclosure obligations:

1. The fruits of the investigation which are in the possession of the Crown are not the property of the Crown for use in securing a conviction, but, rather, are the property of the public to ensure that justice is done.

2. The general principle is that all relevant information must be disclosed, whether or not the Crown intends to introduce it into evidence. The Crown must disclose relevant information, whether it is inculpatory or exculpatory, and must produce all information which may assist the accused.

3. Apart from the practical advantages, the overriding concern is that failure to disclose impedes the ability to make full answer and defence, which is now enshrined in sec.7 of the *Charter*.

4. All statements obtained from persons who have provided relevant information to the authorities should be produced even though the Crown does not propose to call them. When statements are not in existence other information, such as investigator's notes, must be produced; if there are not notes, then, in addition to the name, address, and occupation of the witness, all information in the possession of the prosecution, relating to any relevant evidence that the person could give, should be disclosed.

5. Crown counsel has a discretion, reviewable by the trial judge, with respect to the relevance of the information. Although the Crown must err on the side of the inclusion, it need not produce what is clearly irrelevant.
6. Crown counsel has a discretion, reviewable by the trial judge, to delay production of information in order to protect the identity of informers, the safety of witnesses or persons who have supplied information to the authorities, or to protect those persons from harassment. The Crown also has a discretion to delay disclosure in order to complete an investigation, but delays in disclosure on this ground should be rare. The absolute withholding of evidence relevant to the defence can only be justified, however, on the basis of the existence of a legal privilege which excludes the evidence from disclosure.

7. The trial judge, on a review, should be guided by the principle that information ought not to be withheld if there is a reasonable possibility that the withholding of information will impair the accused's right to make full answer and defence, unless the non-disclosure is justified by the law of privilege. The trial judge, in some circumstances, may conclude that the existing law of privilege does not constitute a reasonable limit on the accused's right to make full answer and defence, and thus, require disclosure in spite of the law of privilege.

8. The denial of disclosure cannot be justified on the ground that the material disclosed will enable the defence to tailor its evidence, for example to conform with a prior statement to the police. There is nothing wrong with a witness refreshing his or her memory from a previous statement. The witness may even change his or her evidence as a result. The cross-examiner may be deprived of a substantial advantage, but fairness to the witness may require that a trap not be laid, by allowing the witness to testify without the benefit of seeing contradictory writings. The principle has been accepted that the search for truth is advanced rather than retarded by disclosure of all relevant material.

9. The obligation of the Crown to make disclosure where an accused is represented by counsel is triggered by a request by or on behalf of the accused.

10. In the rare case in which the accused is unrepresented by counsel, Crown counsel should advise the accused of his or her right to disclosure, and a plea should not be taken unless the trial judge is satisfied that this has been done.

11. Disclosure should be made before the accused is called upon to elect the mode of trial or to plead. These are crucial decisions which the accused must make, which may affect his or her rights, and it will be of great assistance to know, before making these decisions, the strengths and

weaknesses of the Crown's case. Provided the request for disclosure has been timely, it should be complied with so as to enable the accused, before plea or election, to consider the information disclosed.

12. The Crown's obligation to disclose is a continuing one, and disclosure must be made with respect to additional information when it is received.

13. Disputes over disclosure will arise infrequently when it is made clear that Crown counsel is under a general duty to disclose *all* relevant information. The tradition in Canada of Crown counsel in carrying out their role as ministers of justice has generally been very high. Having regard to this fact, and to the obligation on defence counsel as officers of the court to act responsibly, disputes with respect to disclosure will usually be resolved without the intervention of the trial judge. But, when they cannot be resolved by counsel, the trial judge must resolve them. At trial, a *voir dire* can be a useful method of exploring and resolving outstanding disclosure issues.

14. Defence counsel has a duty to bring any non-disclosure to the attention of the trial judge as soon as he or she becomes aware of it.

15. The administration of justice will also benefit from early disclosure. There is compelling evidence that much time would be saved, and delays reduced by reason of guilty pleas, withdrawal of charges, and the shortening or waiver of preliminary hearings, by early disclosure.[19]

The Martin Report recommended that the Attorney General issue a new Directive on disclosure.

(ii) MAG Crown Policy Manual

The Crown Policy Manual is a fundamental cornerstone of Crown practice in Ontario and in it the Attorney General sets out established policies and procedures in order to meet the Attorney's accountability obligations to the public and to direct and guide Crown counsel in his or her exercise of discretion.[20] Guidelines in respect of a Crown's disclosure obligations have existed as early as July 1981[21]. Largely in response to the recommendations of the *Martin*

Report, the first Crown Policy Manual was issued in January of 1994 and contained sections on Disclosure, Charge Screening and Resolution Discussions[22].

The current Crown Policy Manual addresses disclosure in 2 documents[23]:

1. A policy that sets out a brief statement of principles issued by the Attorney General[24], and
2. A practice memorandum that details practical and legal advice with respect to the Crown's legal duty issued by the Assistant Deputy Attorney General[25].

(iii) Practice Memorandum, PM [2005] No.35

Full and timely disclosure is viewed as benefiting the administration of justice in the following ways:

1. Helping to guarantee the accused's ability to make full answer and defence;
2. Helps to prevent miscarriages of justice;
3. Promotes the accused's section 11(b) *Charter* rights;
4. Promotes the early resolution of cases, which benefits victims and accused persons; and
5. Promotes the early resolution of non-contentious and time-consuming issues in preliminary hearings or trials[26].

The "legal duty of the Crown" in respect of its disclosure obligations is described as follows:

> **"Disclosure is a legal duty, and is not a matter of prosecutorial discretion. Crown counsel must make disclosure according to the**

> **law.** As a general principle, Crown counsel have an ongoing responsibility to disclose *all* relevant material in the possession or control of the Crown, whether inculpatory or exculpatory. This duty is subject to the Crown counsel's discretion to refuse to disclose information that is privileged or clearly irrelevant"[27]. Crown counsel is advised that Crown counsel may only delay or limit disclosure in certain circumstances as prescribed by law, where the material is not in the Crown's possession or control, where the material is clearly irrelevant, or where there is a legal limitation on the obligation to disclose the material[28].

The practice memorandum also provides a list of legally established limitations on the duty to disclose[29] and a list of typical disclosure items[30], with commentary. A Crown seeking to provide, withhold or restrict disclosure for reasons that do not accord with the practice memorandum are advised to seek the approval of his/her Crown Attorney and the Director of Crown Operations for his/her region, or the Deputy Director, Trials, and the Director of the Crown Law Office-Criminal[31].

(iv) All Relevant Material in the Possession or Control of the Crown

As recommended by the *Martin Report*, relevance is given a "broad and liberal meaning" to include all information that may have some use in proving or negativing guilt or has some bearing on the offence charged[32]. The practice memorandum describes "relevant materials" as including:

> "… all evidence or information, whether Crown counsel or police believe this material to be credible or not, that could reasonably:

1. be used by the defence in meeting the case for the Crown;
2. be used by the defence in advancing a defence or otherwise in making a decision which may affect the conduct of the defence (e.g. whether to call evidence or whether to conduct further investigation); or

3. be relevant to sentence[33].

Material in the possession of the Crown includes all information in the physical possession of the Crown, as well as materials gathered or created by a police agency in the course of the investigation that are in the possession of that police agency[34]. Once a criminal charge is before the Courts there is a duty on the part of the police to provide full disclosure to Crown counsel – the *Martin Report* made it clear that the police obligation to disclose the "fruits of their investigation" to the Crown is a duty independent of any specific requests by Crown counsel[35]**.**

(v) Timing of Disclosure

The importance of timely disclosure to the administration of justice dictates that disclosure should be given as early as possible to the accused. The practice memorandum recommends that when the accused is out of custody that the Crown should give disclosure at the first appearance[36]. As well, a formal request for disclosure by an accused should not be a prerequisite for the provision of disclosure[37]. The Crown has a very limited discretion to delay disclosure, and must never delay disclosure for purely tactical reasons[38]

The Crown's obligations in respect of disclosure are also described as an "ongoing or continuous" obligation that requires disclosure to be made as soon as reasonably possible as additional information becomes available[39] [40]. The obligation continues throughout the appeal process, if a new trial is order, and following the conclusion of all proceedings[41]. The only time the Crown's

obligation to disclose, subject to relevancy, privilege, and privacy concerns, ceases is when the charges are withdrawn[42].

(vi) Relationship between the Crown Attorney and Police in Respect of Disclosure

As discussed in the "Relationship between Crown Attorneys and the Police" in the Ministry's submissions, it is important that Crown counsel and police are practically and legally independent of each other. However, it raises the practical issue of how it can be ensured that the flow of information between Crown counsel and the police is sufficient for the important task of providing disclosure to the accused, particularly when material arising from the investigation in the physical possession of the police is legally deemed to be in the possession and control of the Crown (see above discussion).

The *Martin Report* recognized that a parallel obligation placed upon the police to make full disclosure to Crown counsel is required in order to ensure that the duty imposed upon Crown counsel in respect of disclosure to the accused, is one that Crown counsel is functional capable of discharging, and further that the diligent discharge of their respective disclosure obligations by *both* Crown counsel and the police are necessary if accused person are to be accorded full disclosure and the right to a fair trial and to make full answer and defence[43].

The *Martin Report* made it clear that once a criminal charge is before the Courts there is a duty on the part of the police to provide full disclosure to Crown counsel, and that the obligation of police to disclose the "fruits of their investigation" to the Crown is a duty independent of any specific requests by Crown counsel[44].

The Crown and police, both the OPP and municipal forces, must work in a cooperative and coordinated way to create disclosure systems which provide high quality timely disclosure to the defence. In major cases, this requires the police to provide the Crown with an organized Crown brief which is paginated; indexed; edited/redacted; and includes a witness-in-brief list (outlining their proposed evidence). In addition, in cases involving multiple accused that have separate and lengthy briefs, if these cases are related in any way, cross-referencing amongst the briefs will ensure that both Crown and defence are aware of overlapping evidence.

In 2007 MAG created a disclosure initiative that brings together senior Crowns from each region in the province to develop standardized disclosure best practices procedures that will ensure disclosure is a timely, meaningful product upon which solid decision-making can be made. This disclosure initiative recognizes that disclosure is a joint obligation between the police and the Crown and, to that end, a joint MAG/MCSCS/Police Working Group has been established to address disclosure issues.

(vii) The LeSage-Code Report and Campbell Report

On November 28, 2008, the Honourable Patrick LeSage and Professor Michael Code released the Report of the Review of Large and Complex Criminal Case Procedures. Recommendations #1 - 8 pertain to disclosure issues. Specifically, these recommendations call for the police and Crown to collaborate much more closely in large and complex cases including in the preparation of disclosure.

Crowns can only provide adequate disclosure to the defence if the full brief and all relevant information has been provided by the police to the Crown in an organized fashion. As noted in LeSage-Code Report, when disclosure is disorganized and incomplete, it leads to delay and follow-up requests by defence. In some cases, the lack of organization of the Crown brief materials can lead to information being missed.

As a result of the Campbell Report's recommendation that evidence in large cases be organized in a coherent fashion, the OPP together with MCSCS developed the Major Case Management Crown Brief. This is used on a voluntary basis by some police services throughout Ontario.

(e) The Cornwall Crown's Office 1972-1991

(i) Staffing and Work Load

From 1972 until 1991 Cornwall's Crown Attorney was Donald Johnson. Johnson left the Crown's office to enter private practice and Murray MacDonald became the Cornwall Crown Attorney, a position which MacDonald held until January, 2009 when he was appointed Regional Director of Crown Attorneys, East Region (acting).

From 1972 to the present time, the Cornwall Crown's office has grown in terms of the number of prosecutors. At the same time, the type of prosecutions handled by that office has become more focused.

During 1972-1991, the period when Johnson was the Cornwall Crown Attorney, the Cornwall Crown's office prosecuted offences in the United Counties of Stormont, Dundas and Glengarry. Johnson also occasionally handled cases in neighboring jurisdictions due to conflicts.[45] At that time, the Crown's office prosecuted not only criminal charges but also provincial offences including, for example, *Highway Traffic Act* matters and charges under legislation administered by the Ministry of Natural Resources.[46] Administration was complicated by the fact that prosecutions were conducted at four locations; Cornwall, Alexandria, Winchester and Morrisburg. During those years the Cornwall Crown's office handled on average 3500 to 4500 cases per year.

Despite that heavy workload, Johnson had few staff resources. From 1972 to 1977 Johnson had no assistant Crowns. Prosecutions were handled either personally by Johnson or through the use of per diem Crowns who had to be supervised by Johnson. The office operated essentially as a “one man operation”. Johnson appeared in court five days a week, and handled trials, sentencing and bail hearings[47]. In addition to appearing in court, Johnson was required to supervise the per diem crowns, provide advice to police and other law enforcement agents and handle the administration of the office.[48]

In 1977, Johnson’s office gained two assistant Crowns. The Cornwall office had a complement of three prosecutors until MacDonald took over as the Crown Attorney in 1991.[49]

From 1991 onwards, the number of prosecutors in the Cornwall Crown’s Office has gradually increased.

(ii) Working with Police

In addition to his various other responsibilities, Johnson would occasionally provide advice to police officers - both the Cornwall Police Service and the OPP. Advice would be provided o a variety of matters including, evidentiary issues, elements of offences, admissibility of evidence and search warrants.[50] Johnson would not direct the police investigation in the sense of telling the officer who to interview, what documents should be obtained or what leads to follow up.

Although police officers would occasionally ask the Crowns for that sort of advice, that was part of the supervisory function within the police force, and not the function of the Crown.[51]

From 1972 to at least 1991, the relationship between police and Crowns was characterized by informality. When Johnson was approached by police for advice it usually done in a very informal way – "on the fly" [52] The police would seldom prepare a written investigative brief and for Johnson to receive a written synopsis from the police with will says and copies of documents collected during the investigation was the exception to the rule[53]. Typically police officers would approach Johnson in the court house hallway or in a court house interview room and provide a verbal description of the fact situation. Johnson's advice would naturally be heavily dependant on the detail and accuracy of the information provided by the police officer.

Johnson provided his advice verbally and he did not keep notes of those conversations. Johnson's does not recall officers taking notes of his advice with the exception of members of the Cornwall Police Service detective branch.[54]

(iii) Interactions with Victims/Witnesses

From 1972- 1991 there was no victim/witness assistance program ("VWAP") operating in Cornwall. Cornwall did not obtain a VWAP office until October, 2001. An investigating officer was associated with each prosecution and contacts

between the Crown and victim/witnesses were made through that officer. The prevailing practice was that it was the responsibility of the investigating officer to subpoena the witness, make sure they understood the nature of the testimony they were to give, and inform the complainant of the results of any plea resolution.[55]

The Crown would not meet the complainant unless the matter was to proceed to trial. In that case the Crown would ask the complainant to come to the Crown's office, and introduce him/her to the courtroom, explain who the players were etc.[56]

(f) Current MAG Policies

From 1991 to the present, MAG policies have undergone a process of development and refinement. In January 1994, the first Crown Policy Manual was issued to MAG prosecution staff in a three ring binder format to allow for convenient updating. That manual replaced the prior directives and guidelines had been issued from time to time. The Manual had actually been prepared to be issued earlier but was delayed until the *Martin Report* was released and its recommendations incorporated into MAG policy.[57]

From 1994 to 2006, specific policies in the Manual were occasionally updated and replaced by more current memos and new policies. As of March 31, 2006, the Crown Policy Manual was comprehensively revised and updated and made

available electronically. The new manual contains both Polices and Practice Memoranda. The Policies contain brief, clear statements of principle, all of which are available to the public on the Ministry of the Attorney General website. The Practice Memoranda contain specific policy directions and address practical and strategic issues. Some are confidential because they contain detailed legal advice and others are available to the public and defense counsel upon request. The policies and directives are not static and are subject to revision and updating as appropriate.

Several of the current policies address issues identified in the prosecutions and advice given by the Cornwall Crown's office prior to Project Truth.

PM[2005] No 34 – Police: Relationship with Crown Counsel, March 31, 2006[58]

This practice memorandum examines aspects of the working relationship between Crown Counsel and police officers and highlights the legal and institutional separation of investigative and prosecutorial functions.

With respect to pre-charge advice, the memorandum states that advice given by Crown counsel will likely be recorded by the recipient in his or her police notebook. To ensure that the advice given is not misunderstood, where practicable, Crown Counsel should keep a record of the advice given. It is suggested that this be done by confirming the advice in a letter, reading the

officer's notes or having them read back, obtaining a copy of the officer's notes to ensure their accuracy, or keeping contemporaneous notes of the advice.

With respect to advice given on the decision to charge (ie advice with respect to reasonable and probable grounds), the memorandum points out that both the final selection of an appropriate charge and the decision to lay an information must be made by police. However, in difficult cases, police may be tempted to seek practical direction from the Crown with respect to whether sufficient grounds exist to lay a charge rather than strictly legal advice.

The memorandum suggests that where the police are seeking an opinion regarding whether a legal basis exists to lay a criminal charge, in difficult, complex or potentially controversial cases – which are specifically stated to include historical sexual assault cases – Crowns should require that the police provide a full written investigative brief that will form the basis of the Crown's advice. Where feasible, the advice should be provided in writing and both the objective and subjective elements of the threshold test should be noted. Crown Counsel are advised to clearly note that they are providing an opinion only and that the opinion is not binding on the police.

It should be noted that the memorandum suggests that a full investigative brief be required only in cases where police are seeking to an opinion on whether a legal basis to lay a charge exists and only in difficult, complex or potentially

controversial cases. The memorandum implicitly recognizes that there are a multitude of other situations where police seek the advice of a Crown and where requiring a full investigative brief would be cumbersome and unnecessary.

PM[2005] No 16 – Resolution Discussions, March 31, 2006[59]

This memorandum reminds Crown Counsel that in all resolution discussions, Crowns should be mindful of the needs of victims. While Crowns do not need the approval of victims to agree to a plea arrangement, Crown Counsel should consider the needs of victims as one of the significant factors in arriving at a just resolution. Prior to taking a firm position on sentencing, Crown Counsel should inform themselves of all relevant factors including the harm suffered by the victim. Crown Counsel are reminded to ensure that sufficient information is contained in the Crown brief - including the impact of the crime on the victim - to ensure that an appropriate position on sentencing is taken.

This memorandum also makes it clear that absent exceptional circumstances, in sensitive cases - which include cases of sexual assault - the victims should be informed of proposed resolution whenever possible and in advance of the matter being heard in court or broadcast by the media.

These principles are discussed in further detail in the practice memoranda concerning victim issues.

PM [2005] No 11 – Victims of Crime: Access to Information & Services Communication and Assignment of Sensitive Cases, March 31, 2006 [60]

This practice memorandum deals with issues surrounding providing information to victims and contains a section dealing with “sensitive cases” which are defined to include sexual assault cases.

Crown Attorneys in each jurisdiction are required to ensure that protocols are in place to identify sensitive cases, assign Crown Counsel at an early stage and, where practicable, ensure that the assigned Crown has carriage of the case throughout the proceedings. The assigned Crown must ensure that the victim is aware of significant changes in the status of the case, including dates for trial, plea, or sentence, and the status of the case on appeal. As noted above, Crowns should inform victims in sexual assault cases of proposed resolutions in advance of the matter being heard by the court whenever possible.

The memorandum also provides that Crowns assigned to sexual assault cases should personally interview the victims who are likely to be called as witnesses and the primary focus of the interview should be to prepare the witness for testifying.

PM [2006] No 8 – Child Abuse and Offences Involving Children[61]

This memorandum provides guidance to Crowns on practical and procedural issues that arise in cases involving child abuse and other cases involving

children as witness. It is meant to be read in conjunction with other related policies and memoranda including the memoranda relating to victims and sexual assaults.

While this memorandum covers several areas, areas of particular relevance provide that:

- Police should be encouraged to contact the local Crown's office at an early stage of child abuse investigations, especially in multiple victim/multiple offender cases.

- Crown Counsel should ensure that victims are advised of significant steps and decisions made by them in advance of the matter being heard in Court.

- Crown Counsel should ensure that victims and their families understand the opportunity to provide a victim impact statement.

- Counsel should be assigned at an early stage and, where possible that Crown should assume carriage throughout.

- Where there is a reasonable prospect of conviction, charges in child abuse cases may not be terminated without the approval of the local Crown Attorney or Director

- Absent exceptional circumstances, Crown Counsel must interview a child witness at least once before the trial or preliminary hearing and as often as necessary after that to establish an appropriate rapport.

- Use of VWAP personnel is encouraged to familiarize the child witness with the courtroom

- Crown counsel must not advocate for or agree to a conditional sentence in cases of serious violence or sexual assault against children, except in exceptional circumstances.

PM [2006] No 9 – Sexual Assault and Other Sexual Offences, July 21, 2006[62].

This memorandum provides guidance to Crown Counsel on the practical and procedural issues that arise in the prosecution of sexual offences generally. Where the victim is a child, this memorandum is designed to be read in conjunction with PM No 8 (above). Among other things this memorandum provides that:

- Crown Attorneys in each jurisdiction must ensure that systems/protocols are in place to identify sexual offences cases, assign a Crown at an early stage and ensure that the assigned Crown has carriage throughout.

- After the screening stage, if there is a reasonable prospect of conviction, in all serious cases, Crown Counsel must not terminate proceedings without the approval of the Crown Attorney or designate.

- Crown Counsel should consult with the Crown Attorney before agreeing to a pleas based on a reduced charge.

- Crown counsel must not, absent exceptional circumstances, advocate for or agree to a conditional sentence in a sexual offence case involving serious violence, psychological or physical harm to children (conditional sentences are not available for offences that by definition involve sexual abuse of children, as such offences occurring after November 1, 2005, carry with them mandatory sentences of incarceration).

2. PRE-PROJECT TRUTH INVESTIGATIONS AND PROSECUTIONS

(a) Silmser - 1993 CPS Investigation

(i) Overview

Crown Attorney Murray MacDonald's first involvement with the David Silmser complaint occurred in February of 1993, when Officer Heidi Sebalj of the Cornwall Police Service approached him for advice with respect to her investigation of the complaint by Silmser that he had been sexually assaulted by Father Charles MacDonald. Sebalj approached MacDonald six or seven times thereafter. All of the contacts were informal, that is, brief meetings in the hallways of the court house, except one which began as an unscheduled meeting but was rearranged to a time later in the day when MacDonald attended the CPS office in the court house.

The advice sought by Sebalj was not legal advice. It was in the nature of investigative advice. For example, the first issue she raised with MacDonald was her difficulty getting details from Silmser. MacDonald told her to "keep digging". Later he suggested her that if she could not "dig down", that is, get further details from Silmser, she should "dig out", for example, obtain Church records so as to locate other altar boys, and obtain school records.

MacDonald advised Sebalj, that when she was ready to lay charges, he would arrange for her to speak to an outside Crown. He does not recall using the term

“conflict of interest”, although that is the term used by Sebalj in her notes. However, MacDonald continued to give advice to Sebalj during the course of the investigation. MacDonald testified that in his view the concern did not arise at the investigative stage because he was not required to exercise his Crown discretion.

The nature of the “conflict” identified by MacDonald was that if charges were laid and if he conducted the review as to whether the charges should proceed, an argument might be made by defence counsel that he was predisposed to prosecute priests for sexual assault and that as a result he prejudged the issue of whether there was a reasonable prospect of conviction of Fr. Macdonald. MacDonald was concerned that this perception might arise because of views he expressed at a Church conference advocating reporting to police of allegations of sexual abuse by priests. It is important to note that the potential perception of bias was against and not in favour of the Church.

The investigation ended because Silmser advised the police that he did not wish to proceed. At the request of Staff Sgt. Luc Brunet of the CPS, MacDonald wrote a letter confirming that it was the policy of his Office not to compel victims of sexual crimes to proceed against their wishes. MacDonald did not feel that the potential “conflict” was an issue at that stage because he was simply advising the police of the office policy and not exercising Crown discretion.

(ii) Issues arising out of MacDonald's involvement in the Silmser complaint

The Commission has asked the Ministry to address three issues in connection with Murray MacDonald's involvement in the Silmser complaint:

1. whether MacDonald provided pre-charge advice to the CPS on reasonable and probable grounds and reasonable prospect of conviction with respect to Silmser's complaint against Fr. MacDonald without reviewing an investigative brief, the police file and/or without a full briefing from the investigative officer.

2. whether MacDonald provided appropriate pre-charge advice to the CPS with respect to the apparent withdrawal of Silmser's complaint against Fr. MacDonald;

3. whether MacDonald ought to have referred the matter of Silmser's complaint against Fr. MacDonald to an outside Crown for review upon determining that his involvement could give rise to an appearance of a conflict of interest and/or bias.

1. Whether MacDonald provided pre-charge advice on reasonable and probable grounds or reasonable prospect of conviction without an investigative brief, the police file and/or without a full briefing from the investigating officer

The Ministry submits that MacDonald did not give advice to the CPS with respect reasonable and probable grounds or reasonable prospect of conviction. Rather, his letter confirmed the "policy" of the Cornwall Crown's office "not to compel victims of sexual crimes to proceed against their wishes". An investigative brief was not required for the purpose of giving advice with respect to the policy of the office.

Brunet and MacDonald had a telephone conversation on September 8, 1993, which Brunet confirmed in a letter dated September 9, 1993. Brunet attached a copy of a letter he had received from Malcolm Macdonald, which in turn enclosed a statement from Silmser. The statement from Silmser stated that he had "received a civil settlement to his satisfaction and received independent legal advice before accepting it". According to Brunet, Silmser advised that "he no longer wished to proceed further with criminal charges", and he "requested that we close our file and stop further proceedings as far as he is concerned". Brunet's letter continued: "[i]t is my understanding after our conversation that your office does not prosecute without the full cooperation of the victim" and concludes by seeking MacDonald's confirmation of that understanding.

In his letter, Brunet did not ask for advice on reasonable and probable grounds or on reasonable prospect of conviction.[63]

In his response dated September 14, 1993, MacDonald confirmed that "[i]t is our policy not to compel victims of sexual crimes to proceed against their wishes".[64]

MacDonald observed in his letter that "also the officer was tentative on the issue of R. and P.G. before this so-called `settlement'". MacDonald continued: "[g]rounds are now even further obfuscated by the fat that he has evidently used this threat of criminal prosecution as a means of furthering his efforts to gain monetary settlement".

MacDonald testified that he mentioned the issue of reasonable and probable grounds in his letter because he and Brunet discussed whether the police had reasonable and probable grounds in their telephone conversation prior to Brunet's letter. However, in his letter, MacDonald was not giving advice to Brunet about reasonable and probable grounds. Rather, he was simply repeating the information given to him by the police (both Brunet and Sebalj) that they did not feel they had reasonable and probable grounds. Neither an investigative brief, nor police file, nor a full briefing from the investigating officer is required in those circumstances.[65]

Finally, MacDonald's letter stated that "[i]t is exceptionally difficult to put supportive victims through the sexual offences trial process. It is for policy reasons, not in the public interest to put a reluctant witness through the same process. This is especially so when that reluctant witness will be `crucified' in cross -examination." This portion of the letter simply articulates the reasons for the policy not to compel victims of sexual crimes to proceed against their wishes. The concept of reasonable prospect of conviction was not in existence at the time.

It was suggested to MacDonald by Commission counsel that he did not have all of the necessary information upon which to base his letter. MacDonald responded that he believed Sebalj had provided him with the relevant information, in other words that he had had a "full briefing from the investigative

officer". MacDonald had two meetings with Sebalj and Brunet before the investigation ended.

It was suggested, for example, that MacDonald did not have accurate information with respect to who initiated the discussions with respect to a civil settlement. In one of their early contacts, Sebalj told MacDonald that Silmser was seeking a civil settlement from the Church. MacDonald had the impression from Sebalj that Silmser had initiated the civil settlement process. It is not clear that that impression is incorrect. There is some evidence to suggest that that was the case.

There has been some confusion about whether MacDonald knew at the time that there was some corroboration of Silmser's complaint. MacDonald testified at the Inquiry that he appreciated at the time that there was some evidence tended to corroborate Silmser's complaint. Sebalj initially reported to MacDonald that Silmser had given her two or three names, but that none of those individuals corroborated Silmser and one was "non-corroborative". Later Sebalj also told MacDonald about two additional persons. She advised MacDonald that one of them did not want to be involved, that the second might be prepared to be a witness but did not want to be a complainant.

In cross-examination, Mr. Neville suggested to MacDonald that there was also a great deal of information in the police file which tended to diminish Silmser's credibility.

Therefore, it is not correct to suggest that MacDonald's conclusion would have been different. Rather, as MacDonald testified, he "would have drafted" some of the comments differently.[66] However, as MacDonald noted, in a letter dated December 21, 1994, Peter Griffiths (then) the Regional Director of Crown Attorneys for the Eastern Region, drew the same conclusion. In his letter, Griffiths stated that he had reviewed among other materials, "a two volume brief of the investigation into allegations of indecent assault made by David Silmser against Father Charles MacDonald" and he confirmed the view of the OPP that the evidence did not reach "the threshold of objective reasonable and probable grounds".[67]

Conclusion

MAG has a Practice Memorandum that requires that when Crown Attorneys give advice with respect to criminal charges, that they do so on the basis of a full written investigative brief. However, because the advice sought in this case was with respect to the office policy and not reasonable and probable grounds, there was no need for an investigative brief.

2. Whether MacDonald provided appropriate pre-charge advice to the CPS with respect to the apparent withdrawal of Silmser's complaint against Fr. MacDonald

The Ministry's Position

MacDonald advised the police to ensure that Silmser understood that the civil settlement did not mean that the criminal charges could not proceed. There was no reason for MacDonald to ask the police to obtain a copy of the settlement document. There was no reason to suspect that there was an illegal clause in it.

The Evidence

MacDonald advised the officers not once, but twice to ensure that Silmser understood that the civil settlement did not mean that the criminal charges could not proceed. At their meeting at the CIB, MacDonald asked Brunet to tell Silmser that the criminal investigation could continue and Brunet advised MacDonald either that "he intended to do that" or that he "had done that" already.[68]

Either Brunet or Sebalj "reported back" that Silmser "was disinclined to continue" and so MacDonald told them to "go back a second time and urge him further in this". Sebalj reported to MacDonald "the second time that...he displayed more anger...saying, `Why should I do anything for you guys? You didn't do anything for me when I need you so why should I cooperate now?"[69]

MacDonald did not ask Malcolm Macdonald or Leduc for a copy of the settlement agreement, nor did he ask the police to do so. He had “no reason to suspect that there was an illegal clause” in it, and it “hadn’t crossed his mind” that there would be an attempt to obstruct justice.[70]

Commission counsel suggested to MacDonald that the Silmser matter was analogous to the Earl Landry Jr. prosecution. In that case, the Crown took the position that the charges would be proceeding notwithstanding a letter from the victim stating that he wished to drop the charges. Commission counsel noted that “the Cornwall Police went back and investigated and looked beyond the [victim’s] statement” in the Landry Jr. case and suggested that the same ought to have been done in the case of Silmser’s complaint. MacDonald disagreed that the cases were analogous. He said “the context was radically different...where three lawyers have openly conducted a civil resolution versus a victim receiving a gift from a suspect”. In the latter situation, “[t]here was an investigation into an obvious flag that had just been waved”. By contrast, in the Silmser case, there was no reason to suspect “a lawyer or lawyers to participate in obstruction of justice by putting in an illegal clause” in a civil settlement. There were other reasons why the situation was not analogous, which were explored with MacDonald in cross-examination by Ministry counsel.[71]

Therefore, it was reasonable for MacDonald to conclude that Silmser was genuinely a reluctant victim.

The policy of not compelling reluctant victims of sexual assaults to proceed against their wishes is based on the rationale of not re-victimizing them. The Ministry understands that this is the same policy adopted by the Cornwall Public Inquiry.

Ministry policy does contemplate compelling reluctant victims of domestic assaults to testify. That policy is based on different societal concerns, including that their reasons for not testifying might have to do with "economic or emotional dependence".

3. Whether MacDonald ought to have referred the matter of Silmser's complaint against Fr. MacDonald to an outside Crown for review upon determining that his involvement could give rise to an appearance of a conflict of interest and/or bias.

Ministry's Response

The issue was a potential perception of bias against and not in favour of the Church. It was not necessary for MacDonald to refer the matter "to an outside Crown for review", because no review was required. A review would only be required once the police were ready to lay charges, and the police never formed reasonable and probable grounds to lay charges in this case. MacDonald would have referred the matter to an outside Crown at the stage where the Crown was required to exercise discretion with respect to whether or not charges should proceed.

Nature of the "Conflict of Interest"

MacDonald's evidence was that his concern was that there could be a perception, should charges be laid and should he decide to proceed with the charges against Fr. Macdonald, that he was doing so because of views he expressed during the Ecclesia 2000 process.

Ecclesia 2000 was a conference organized by the Diocese to review various issues in order to update Church policies in anticipation of the millennium. MacDonald was asked by his parish priest to participate, not as the Crown Attorney, but as a concerned Catholic. At the conference, MacDonald was a member of a sub-committee which discussed a number of issues, including the proper response of the Church when there is an allegation made of sexual abuse by a priest. This was an issue about which MacDonald felt and continues to feel strongly. His view is that such allegations must be reported by the Diocese to the police. The sub-committee, lead by MacDonald on this issue, prepared a report which made that recommendation. That recommendation was not adopted in the final report of the conference. The report titled "Ecclesia 2000", which was marked as Exhibit 2937 at the Inquiry, is <u>not</u> the sub-committee report which MacDonald participated in drafting, and recommendations 21 to 24 of that document are not the same as recommendations made by the sub-committee. MacDonald was extremely disappointed that the recommendations of the sub-committee were not adopted.

As a result of the views he expressed during Ecclesia 2000, MacDonald was concerned that if charges were laid against Fr. MacDonald and if he conducted the review as to whether the charges should proceed, an argument might ultimately be made by defence counsel that he was predisposed to prosecute priests for sexual assault and that as a result he prejudged the issue. In other words, the argument would be made that the prosecution was a “witch hunt”.

MacDonald did not recall using the term “conflict of interest”, although that is the term used by Sebalj in her notes. The term “conflict of interest” means that a person’s own pecuniary or other personal interest is in conflict with the duty he or she is obliged to discharge. In this case, MacDonald had no pecuniary or other personal interest with respect to whether or not charges should be laid against Fr. MacDonald.

It is important to note that the potential perception of bias was against and not in favour of the Church. Therefore there can be no suggestion that MacDonald would have been inclined to decide not to proceed with charges against Fr. MacDonald.

No “Review” Required

It was not necessary for MacDonald to refer the matter to an outside Crown, because no “review” was ever required.

Because of the nature of the concern, the potential perception of bias did not arise at the investigative stage. The so-called "conflict" did not disqualify MacDonald from giving advice with respect to the investigation or as to office policies.

The potential perception of bias would not arise until the police were ready to lay charges. That is when a review would have been required. At that stage, the Crown would have discretion with respect to whether to proceed with a prosecution. However, the police never formed reasonable and probable grounds to lay charges in this case, and so that review was never required.

MacDonald would have referred the matter to an outside Crown, namely (then) L'Orignal Crown Attorney Robert Pelletier, at the stage where the Crown was required to conduct a review with respect to whether or not charges should proceed against Fr. MacDonald.[72]

Conclusion

The Ministry of the Attorney General has well-established policies to prevent any potential conflict of interest in prosecutions. Both the 1994 and 2006 Crown Policy Manuals address this issue in the Practice Memoranda on the Role of The Crown, noting that all Crown counsel must independently exercise their discretion and always be fair and judicious in all decision-making. These polices also make clear that the role of the Crown attorney is as a quasi-judicial officer

whose actions must be grounded in scrupulous fairness. In addition, MAG is governed by the *Public Service Act*, which was amended in 2005, and has Conflict of Interest Guidelines that pertain Ministry-wide that deal with areas such as confidentiality, permissible outside activities, prohibited use of position, confidential information, avoidance of preferential treatment, political activity, and taking improper advantage of position.

(b) Silmser - 1994 Ottawa Police Service Investigation

In January of 1994, after wide-spread media coverage of Silmser's allegation, the Ottawa Police Service conducted a review of the investigation carried out by the CPS at the request of the new Chief, Carl Johnston.

Murray MacDonald was interviewed by two members of the Ottawa Police Service. No formal statement was taken from MacDonald. According to MacDonald, the interview lasted only 10 or 15 minutes, and there was no suggestion from either of the officers that they had any criticism of his role.

On January 24, 1994, the Ottawa Police Service delivered a report to Johnston. The report concluded that "there was no attempt by any member of the Cornwall Police Service to `cover up' the situation".[73]

With respect to MacDonald, the report states that he should have "declared the conflict and referred all aspects of the investigation...to another Crown Attorney".

MacDonald disagreed with that observation and suggested that the Ottawa Police officers had misunderstood the question of when the potential conflict would arise.[74]

(c) Silmser - 1994 OPP Investigation

On January 28, 1994, Johnston asked the OPP to undertake a re-investigation of Silmser's allegations against Fr. MacDonald, and the allegation of a cover-up.

MacDonald was interviewed by the OPP. He understood he was a "person of interest" in an investigation into an attempt to obstruct justice. A written statement was taken from MacDonald on July 14, 1994.

In November of 1994, Smith delivered a two-volume investigative brief to Griffiths' office with respect to the allegations against Fr. MacDonald. Griffiths reviewed that brief, which incorporated the original investigation by the CPS, and the review of that investigation by the Ottawa Police Service. In a letter dated December 21, 1994, Griffiths advised Smith that the "vagueness of the allegations, the difficulty in placing them within a reliable time frame, and the lack of corroboration all combine to prevent the evidence from reaching the threshold of objective reasonable and probable grounds". Griffiths also noted in his letter that the material showed that Smith was not "personally, or subjectively, satisfied" that he had reasonable and probable grounds to lay criminal charges. Griffiths advised him that "absent that belief charges cannot be laid by you".

Griffiths concluded by noting that the "letter is his opinion only and as such is not binding" upon the OPP, which "operate[s] independently of the Crown Attorney's office and are legally entitled to lay charges if they see fit without the approval fof the Crown Attorney".[75]

On the same day, Griffiths wrote a second letter to Smith about the allegations of cover-up. Griffiths stated that he "agree[d] with [Smith's] assessment that objectively there are no reasonable and probable grounds to warrant the laying of any charges arising out of these allegations". He also noted that Smith had indicated that he "believe[d] subjectively that there is no evidence" and that he had "set out that belief in [his] memorandum" to Griffiths.[76]

Griffiths concluded stating "[t]his expression of my opinion to you is not binding upon you in that you are free to lay charges or refrain from laying charges without regard to my legal opinion".

As a result of the first OPP investigation into an alleged agreement among several parties to obstruct justice (the first conspiracy investigation), the OPP concluded that there was no evidence to support an agreement to this end was ever made.[77]

(d) Malcolm MacDonald Prosecution

(i) The investigation into Malcolm MacDonald

Among the individuals investigated with respect to the alleged agreement to cover up the Silmser allegations were the lawyers who negotiated the civil settlement with Silmser, including Malcolm MacDonald and Jacques Leduc. It was noted that Leduc's evidence to the investigators was that he believed the civil settlement with Silmser would not in any way interfere with the ongoing investigation and any subsequent criminal proceedings. This was also consistent with Murray MacDonald's understanding of the civil settlement, and his evidence was that he advised both lawyers of this when they spoke to him of the civil settlement.

It was noted by the investigators that lawyer Malcolm MacDonald had a different view of the civil settlement, and that his understanding was that the civil settlement would also bring the criminal proceedings to a conclusion.

Therefore, it is erroneous to suggest that the OPP investigators did not inquire into all parties' involvement in the civil settlement and each of their input into the illegal clause that was included in the settlement. Of all the lawyers involved in the settlement, only Malcolm MacDonald had the view that it would also conclude the criminal proceedings. Leduc stated to the police that he had no such view, and there was no evidence before the police in their investigation that would suggest that Leduc was not being truthful in this statement.

In fact, Smith in his testimony said that he was of the view there was absolutely no evidence to establish that there was an agreement among these lawyers or their principals to enter into an illegal settlement agreement with Silmser.[78]

Regional Director of Crown Operations Peter Griffiths agreed with this assessment.[79]

(ii) Crown opinion on Malcolm MacDonald brief and charges laid

As stated above, Griffiths provided opinions to Smith on December 21, 1994 with respect to the sexual misconduct allegations against Father MacDonald and with respect to the conspiracy allegations against the Cornwall Police, the Diocese and the Crown Attorney. However, Griffiths called Smith on December 22, 1994 to say, according to Smith's notes, that there were "problems" regarding Malcolm MacDonald and possible obstruct justice charges.[80]

Griffiths and Smith had another conversation on this matter on January 30, 1995. Griffiths had sent the brief to another Crown, Don McDougald, who reviewed the evidence. It was the Crown opinion that there was a reasonable prospect of conviction for obstruct justice charges against Malcolm MacDonald, and that it was in the public interest to prosecute. A charge of attempt to obstruct justice was therefore laid against Malcolm MacDonald and the brief was thereafter assigned to Brockville Crown Attorney Curt Flanagan to prosecute.

There were no charges contemplated against the other lawyers involved in negotiating the settlement, Leduc or Sean Adams. Smith's testimony was that he did not have the evidence to charge Leduc with attempt to obstruct justice.[81]

Griffiths' evidence was that he was only concerned with Malcolm MacDonald's involvement, after reviewing the Crown brief that was submitted to him, and that he thought there were no reasonable and probable grounds with respect to the other two lawyers. The entire brief was also forwarded to McDougald for his opinion, and he only recommended charges against Malcolm MacDonald. Griffiths testified that he also considered the conduct of both Leduc and Adams and whether or not there were reasonable and probable grounds to lay charges against them, and neither he nor McDougald recommended that charges be laid against those other lawyers.[82]

(iii) Crown Flanagan assigned carriage of the obstruct charge against Malcolm MacDonald

Flanagan did not have any involvement in providing an opinion on the brief or in deciding whether or not to charge Malcolm MacDonald or any of the other lawyers involved in the civil settlement with Silmser. The Crown brief with the interview statements of all the participants in the settlement, including Malcolm MacDonald, Leduc and Adams, was already fully reviewed by Griffiths and McDougald with respect to the appropriate charges to be laid. The brief came to Flanagan to prosecute the charge already laid against Malcolm MacDonald.[83]

Flanagan had no recollection of Smith requesting any further legal opinion from him about whether or not the other two lawyers should have been charged with obstruct justice, and Smith did not testify that he in fact asked Flanagan for any legal opinion regarding charges against the other two lawyers. Flanagan's opinion on reviewing the synopsis in the Crown brief at the Inquiry was that Smith did not believe that the other two lawyers were a party to any criminal offence.[84]

The fact of the matter is that Smith had already received the Crown's opinion from Griffiths on January 30, 1995.[85]

Flanagan assumed carriage of the prosecution and arranged for disclosure to defence counsel. The matter was pre-tried before Regional Senior Judge Brian Lennox (as he then was). In preparation for the pre-trial, Flanagan forwarded all disclosure materials to Justice Lennox.[86]

These materials included the interview reports of Leduc, Adams and Malcolm MacDonald. Flanagan testified that it was Judge Lennox's practice at the time to request a copy of the Crown brief so that counsel could conduct a more meaningful pre-trial.[87]

It was at the pre-trial before Judge Lennox that counsel for the accused suggested that his client was willing to plead guilty. Counsel suggested an

absolute discharge as an appropriate sentence and Flanagan did not object to that, considering the mitigating factors. These mitigating factors included:

(i) the guilty plea,

(ii) the fact that police had decided independently of the illegal settlement not to lay criminal charges,

(iii) Malcolm MacDonald's background and age and the fact that the charges against him were a well-known matter in Cornwall, and

(iv) the fact that the matter had been reported to the Law Society.[88]

It is also important to note that Judge Lennox felt that an absolute discharge was an appropriate sentence considering the circumstances of the case.[89]

MAG submits that Flanagan acted entirely appropriately in his carriage of the Malcolm MacDonald obstruct justice charge, seeing the prosecution to a guilty plea. The fact is that the police conducted an independent investigation into this matter and had evidence to charge only Malcolm MacDonald, but not any of the other participants involved in negotiating the civil settlement. This brief was then reviewed by two senior Crown Attorneys who recommended that charges be laid only against Malcolm MacDonald, and not against either of the other lawyers involved in the settlement.

Flanagan had no independent obligation to second guess the decisions made by the police or of the Crowns who had already given a legal opinion in this matter. It would have been inappropriate for a Crown to direct that the police conduct a further investigation into any individual. To suggest otherwise misconstrues the

proper division of roles between the Crowns and the police, where it is the responsibility of the police to investigate offences and lay charges where they believe on reasonable grounds that an offence has been committed. The Crown has no role in directing that the police conduct investigations into individuals where the police did not independently form reasonable and probable grounds to lay charges.[90]

3. PROJECT TRUTH

(a) Inception

(i) Fantino brief

On March 18, 1997, Pelletier was advised of the existence of the Fantino brief by the OPP. He met with Smith and Fagan on March 20th, at which time it was decided that the matter should be discussed with Peter Griffiths, who was at that time the Regional Director for the East Region.[91]

Pelletier raised the issue with Griffiths and a meeting was scheduled for April 24, 1997. For the purpose of that meeting, Pelletier prepared a memorandum to Griffiths dated April 2, 1997 outlining the background and describing the contents of the Fantino brief.[92]

At the meeting on April 24, 1997, Griffiths, Pelletier, Murray MacDonald, Smith, Hall, Genier and Fagan were in attendance. It was agreed that all of the allegations in the Fantino brief should be investigated.

Among the issues discussed at that meeting was the assignment of a Crown to give advice to the police during the course of the investigation. Griffiths recalled that Flanagan was to have been asked to do so. Flanagan testified that that did not in fact occur.

With respect to the assignment of a Crown review of investigative briefs, Griffiths stated:

> "...the police routinely investigate complex, multi-facetted (sic) criminal allegations without the involvement of a Crown. so they could have undertaken this and never call the Crown because they didn't have the need for Crown advice.
>
> On the other hand, I know that there are police that call the Crown on a very regular basis. so the extent to which they would need the assistance of a Crown was unclear at the time, but I asked that they use Mr. Flanagan for those occasions when advice was needed."[93]

Smith asked Griffiths to write a letter to Superintendent Edgar of the OPP requesting an investigation into the Fantino brief and Griffiths acceded to that request. Griffiths wrote to Edgar on May 27, 1997 stating "[g]iven the very serious allegations, I would request that Det. Insp. Smith be assigned to investigate the Dunlop/Bourgeois brief".[94]

Griffiths testified that he had "no idea" at the time as to the ultimate size of what was to become Project Truth.[95]

Griffiths was appointed to the Bench in May of 1998 and Pelletier became the Acting Regional Director from then until January of 1999.

(ii) Dunlop Binders

Overview

The loss of the Dunlop binders was an isolated event. The document tracking system in the Crown Law Office-Criminal has been significantly enhanced since

1997. The Crown Law Office-Criminal now has a computerized log to record service of documents. The Ministry made a number of efforts to locate the Dunlop binders. When the binders could not be located, Ministry officials ensured that the OPP had received all of the materials from other sources. None of the investigations was compromised by the loss of the Dunlop binders.

The Evidence

On April 8, 1997, Dunlop hand-delivered a letter dated April 7, 1997, together with four binders of materials and a video cassette of a CBC program, to the Ministry of the Attorney General at 720 Bay Street, Toronto.

The letter was not addressed to the Attorney General. It was addressed to the (then) Solicitor General Robert Runciman, and copied to the “Attorney General” and to the “Ontario Civilian Commission on Policing” (sic). The letter was in an envelope addressed to “the Honourable Charles Harnick” and marked “confidential”.

The Ministry of the Solicitor General was the Ministry responsible for the administration of the Ontario Provincial Police. The Ministry of the Solicitor General apparently did not accept service of the materials. MAG did not know at the time that the Ministry of the Solicitor General had not accepted service of the material.

The Dunlop letter and materials were received at MAG by a clerk with the Crown Law Office, Criminal. There is no evidence that Dunlop advised the clerk that the materials might constitute evidence. Therefore, the materials were treated as Minister's correspondence and left with the Minister's Correspondence Unit.

In his letter Dunlop stated that in December of 1996 he had forwarded to Julian Fantino, then the Chief of Police for the City of London, Ontario, "all of the information presented to me by victims up to that date".

The Minister's Correspondence Unit forwarded the letter to Peter Griffiths, (then) the Regional Director of the East Region, for a response. The four binders of materials and the video cassette were not apparently forwarded to Griffiths. Griffiths responded to Dunlop's letter in a letter dated June 23, 1997. Griffiths advised Dunlop that "all allegations of sexual assault against various persons in the Cornwall areas are being actively investigated" and that "the materials referred to in [his] correspondence as having been delivered to Chief of Police Fantino of the London Police Services, have been brought to the attention of the investigators" assigned to Project Truth.

In July of 1998, Dunlop advised Inspector Pat Hall of the OPP that he had delivered materials to MAG and to OCCOPS. Hall asked Dunlop to provide him with a complete copy of the materials he delivered to MAG and to OCCOPS. Dunlop did so on July 31, 1998.

In September of 1998, Garry Guzzo MPP wrote a letter to (then) Premier Harris with a copy to the Attorney General and to the Solicitor General. One of the issues raised in the letter was whether the materials delivered by Dunlop had been turned over to the OPP. The Attorney General asked the Assistant Deputy Attorney General at the time, Murray Segal, to respond. Segal asked the (then) Acting Regional Director, Robert Pelletier, to prepare a status report. Pelletier provide Segal with a report dated November 25,1998. Segal attempted to contact Guzzo without success in December of 1998.

In February of 1999, Guzzo wrote another letter to the Premier, which was also copied to the Attorney General. Segal was again asked to respond. Segal spoke to Guzzo on a number of occasions in March of 1999. As a result of his conversations with Guzzo, Segal spoke with the officer in charge at the OPP and satisfied himself that the OPP did in fact have all the materials.

Segal testified at the Inquiry:

> "at an early stage...and even before these repeated request to find them, I came to understand that there may be distinctions between some of the contents in some of the binders. So out of an abundance of caution, I wanted to assure myself and anybody who was asking, principally Mr. Guzzo and repeatedly Mr. Guzzo, that all the right stuff was in the right hands... And to that end, I took steps...and assured myself that the police early on, maybe in '98, certainly 20002, 2001...I think I probably made a pain of myself with the police through successive inquiries...to ensure that the police were satisfied...that they got everything they should have had...".[96]

The materials delivered by Dunlop to MAG in April of 1997 were different than the materials delivered to Fantino in December of 1996. There was one binder of materials delivered to Fantino. The four binders delivered by Dunlop to MAG consisted of the materials delivered to Fantino divided into two binders and enclosing three additional witness statements, and two additional binders consisting of the materials from Dunlop's *Police Services Act* discipline proceedings.

According to Hall, the OPP had already interviewed the three witnesses whose statements were included in the materials delivered to MAG before receiving the duplicate materials on July 31, 1998. Hall stated that the OPP had not received the materials from Dunlop's *PSA* proceedings prior July 31, 1998. Hall testified that this material was relevant to the conspiracy investigation. It should be noted that presumably, this material would have been available to the OPP through the Cornwall Police Service. In any event, Hall stated unequivocally that he was satisfied that the OPP had all of the material that had been delivered to MAG by July 31, 1998. The delay in obtaining the *PSA* materials did not affect the conspiracy investigation, which did not begin in earnest until 2000.

Nevertheless, Segal testified that:

> "it was something that concerned me a great deal" -- "Documents should not go missing." -- "We took it extremely seriously." -- "everybody was reminded of the seriousness of the process" -- "Albeit, even in an organization that receives thousands of documents, one should not go missing".[97]

Segal testified at the Inquiry that the issue of the missing materials had been raised a number of times over the years. He directed two reviews of the circumstances. The circumstances are described in two reports, one dated March 31, 1999 to the (then) Deputy Attorney General Andromache Karakatsanis and another in a report dated June 18, 2001 to the (then) Deputy Attorney General Mark Freiman.[98] Segal testified that the Ministry receives thousands of documents a year and that to the best of his knowledge, the loss of this material was an isolated incident. The report dated June 18, 2001 outlines the various efforts that were taken to try and locate the materials in both 1999 and 2001 and describes the document-handling procedures at the Crown Law Office, Criminal at the time and the subsequent enhancements of the procedures.

(iii) Involvement of Garry Guzzo

Overview

At the relevant time, Garry Guzzo was the MPP for Ottawa-Rideau. He wrote two letters to the (then) Premier concerning Project Truth, to which Segal was asked to respond. The Ministry submits that Segal's responses to Guzzo's inquiries were reasonable and appropriate.

Guzzo appeared to have two main concerns: first, whether the police had been provided with the materials that had been delivered to the Ministry by Dunlop in

April of 1997; and second, whether the Ministry was aware of other information that had apparently come to Guzzo's attention.

With respect to the first concern, Segal advised Guzzo that he had been assured by the police that they had duplicates of the materials delivered to the Ministry by Dunlop in April of 1997. Segal suggested that if Guzzo wished to satisfy himself that that was the case, he should contact the lead investigator for the OPP, Tim Smith.

In response to the second concern, Segal advised Guzzo to turn any other information he may have over to the police, as the Ministry is not an investigative agency.

The Evidence

Segal's first involvement with Guzzo in connection with Project Truth occurred in the fall of 1998. Segal described his actions at the time in a memorandum dated March 31, 1999 to (then) the Deputy Attorney General, Andromache Karakatsanis.[99] Guzzo had written a letter dated September 18, 1998 to (then) the Premier of Ontario, the Honourable Michael Harris.[100] The Attorney General at the time, Charles Harnick, asked Segal to "take such action as thought necessary including contacting Mr. Guzzo".

In early December of 1998, Segal attempted to contact Guzzo “on a few occasions...by telephone...leaving [his] name and the subject matter”. “On one occasion, when [he] had to attend at the Legislature, Mr. Guzzo was not available for a meeting”. Guzzo’s “office did not get back to [Segal] and so [he] let the matter rest’.

Guzzo wrote another letter to the Premier dated February 23, 1999. That letter was copied to Harnick, who again asked Segal to deal with it.[101] “The day [Segal] received it [he] left word with Mr. Guzzo’s executive assistant that [he] was happy to speak with Mr. Guzzo to respond to his concerns.”

Guzzo’s letter states that he would be in Florida. Segal made efforts to obtain a telephone number there and to the best of his recollection he obtained one through Guzzo’s constituency office. Segal called Guzzo in Florida around 6:30 pm on March 8, 1999. Segal had no way of knowing that Guzzo had dinner guests and Guzzo did not indicate to Segal that it was an inconvenient time to speak.[102]

Guzzo “expressed initial concern” regarding the telephone call from Segal. Segal explained that he was “calling him as a courtesy in [his] administrative capacity”, that “the norm was that the civil service responded to concerns” and that he “would not be sharing anything with him” that would not be “share[d] with any

member of the public". Segal testified that the tone of the conversation was "businesslike" and "normal".

Guzzo appeared to have two main concerns. The first was whether the police had been provided with the materials that had been delivered to the Ministry by Dunlop in April of 1997. With respect to the first concern, Segal advised Guzzo that he had been advised by the police that they had duplicates of the materials delivered to the Ministry by Dunlop in April of 1997. Segal suggested that if Guzzo wished to satisfy himself that that was the case, he should contact the lead investigator for the OPP, Tim Smith.

Guzzo's second main concern appeared to be whether the Ministry was aware of other information that had apparently come to Guzzo's attention, such as receipts from a hotel in Florida. Guzzo was "not relating...specifics" to Segal, rather he was talking in "generalities". Segal's response was to advise Guzzo to turn any other information over to the police, as the Ministry is not an "investigative agency".[103]

Segal agreed that Guzzo may also have raised the issue of whether "there are differences in the documents" that is, "what was turned over to the OPP...and I may have said I would try to look into it and get back to him".[104]

Guzzo sent a memo dated March 15, 1999 to Segal regarding Segal's "voicemail of 3/14/99, 7:49 pm". Guzzo's memo quoted Segal as having said: "[the] authorities have that brief that you (Mr. Guzzo) were referring to".[105] Segal does not dispute that he left a voicemail for Guzzo on March 14, 1999 to that effect. In his memo, Guzzo raises two more questions: "Does this mean that the authorities have it now, or had it all along. If so, from what date?"

On March 16, 1999, Guzzo sent a further memo to Segal.[106] In the memo Guzzo stated that he "was not speaking of a brief". He stated that he was referring to "documents, affidavits and photocopies of hotel registrations in the 1970's at two hotels on the pedophile strip in the Birch Avenue area of Fort Lauderdale". The memo continues: "[y]ou spoke to me of a `lawyers brief' received by your department some months prior to April 8, 1997. I accept that the lawyers brief and the three boxes of documents, affidavits and news clippings may be one and the same package" and concludes "[u]nless I hear to the contrary in writing, I will assume that this is the case and that the evidence had been given to the OPP many months ago". In his testimony at the Inquiry, Segal did "not adopt everything" in this memo.[107]

On the same date, Segal replied to Guzzo in a fax saying:

> "Dear Mr. Guzzo - I've done my best. It is clear that you are more familiar than me with the material. I have never seen the material - as I indicated to you. You seem to have familiarity with the contents or some of same. While I believe we are talking about the same stuff, if you are in any doubt feel free to contact the OPP - Insp. Tim Smith. Thank you." [108]

Segal testified that he suggested that Guzzo provide any documents he had to the police, because “that way...we’d be assured that his concerns would be met”.[109]

On March 19, 1999, Guzzo called Segal with a “distinctly different issue”. According to Segal’s notes[110] Guzzo advised that “[h]is office received a message from a Cabinet Minister” saying “something like back off because important people or friends [are] involved”. There was some further discussion and then Segal said that if what Guzzo had described was accurate it was “inappropriate” and “suggested he call the police about what he was reporting”, because the Ministry is “not an investigative agency”. Segal offered to call the police on Guzzo’s behalf and Guzzo said “a definite no”. There was then a further discussion of the Dunlop binders.

On November 1, 2001 Guzzo wrote a letter to Segal enclosing a letter dated April 3, 1999 he had written to (then) the Premier’s Chief of Staff. The letter to the Premier’s Chief of Staff was eight pages long and “rambling”. It was not addressed to Segal and Segal did not respond to it at the time.[111]

At the time of his November, 2001 letter, Guzzo had a Private Member’s Bill before the Legislature calling for a public inquiry in Cornwall. In his letter to Segal, Guzzo advised that he had enclosed his April 3, 1999 letter with a letter dated October 4, 2000 which he sent to all MPPs.[112] Guzzo stated that “during

the Caucus deliberations of October 23, 2001...the [then] Attorney General, Mr. Young stated that you have concerns with regard to the accuracy of what is reported in this letter as it relates to the...telephone conversation" on March 8, 1999. Guzzo asked Segal to "provide [his] opinion with regard to the accuracy" of his account of their telephone conversation and stated that if no reply had been received by November 8, 2001 he would "feel free to conclude that [Segal] has no complaint with regard to the accuracy".

Segal does dispute the accuracy of Guzzo's account of their telephone conversation on March 8, 1999. However, rather than responding to the "nitty-gritty of every word and every line" of Guzzo's letter, Segal responded in a letter dated November 7, 2001 stating in part:

> "I doubt that we will ever see eye to eye regarding the conversation we had on March 8, 1999.
>
> Your wide distribution of your November letter without comment by me does not mean I accept your version of the conversation.
>
> I do not want to debate with you at this stage your interpretation of the conversation."

Segal concluded his letter by stating that "[i]t is perhaps best to `agree to disagree'"[113]

Segal testified that he did not enter into a debate with respect to his telephone call with Guzzo because it was not "important...in relation to Project Truth".[114] What was important was that the OPP had the material that had been delivered

by Dunlop to the Ministry in April of 1997 and that Guzzo turn over any information he had to the OPP.

Conclusion

As stated above in section 3(a)(ii) titled “Dunlop Binders”, the evidence is clear that the OPP had the material that had been delivered by Dunlop to the Ministry in April of 1997. Hall obtained a duplicate copy of the material directly from Dunlop on July 31, 1998.

It is also clear that Guzzo had been assured of this by the OPP. On November 22, 2000, Hall and Lewis met Guzzo and addressed the issues raised in Guzzo’s letter of October, 2000, including the issue of whether and when the OPP received a duplicate of the Dunlop binders. At the meeting with Hall and Lewis, Guzzo acknowledged that he had been misinformed and apologized to the OPP.[115]

During his testimony at the Inquiry, Guzzo admitted that “many of the remarks” that he made in his “letters are in fact mistaken”.[116]

Guzzo also acknowledged at the Inquiry that he was not in possession of any evidence, but that had he had any evidence it would have been appropriate for him to provide it to the police.[117]

Accordingly, the Ministry submits that Segal's responses to Guzzo's inquiries were reasonable and appropriate.

(iv) Resourcing

Overview

The Project Truth prosecutions were resourced in a manner consistent with the practice for resourcing other prosecutions at that time. Now, Project Truth would likely be treated as a "major case" within the meaning of the Major Case Management Policy which was established in 2001.

Normal Practice at the Time

Under normal circumstances, the local Crown Attorney's office would constitute the "team" dedicated to the prosecution of the charges arising in the jurisdiction.

Prosecutions of persons involved in the administration of justice would be handled by the Special Prosecutions unit of the Crown Law Office-Criminal in Toronto.

In the event of workload issues, or conflicts of interest, or other special requirements, the local Crown Attorney would seek assistance from the Crown Attorney in a neighbouring jurisdiction in the region. If the issues could not be resolved at that level, they would be brought to the attention of the Regional

Director, who would then assume responsibility for finding the necessary resources.[118]

Out-of-town Crowns would normally find office space with the local Crown Attorney's office, but it would not be uncommon for them to work out of hotel rooms and to interview witnesses at police stations.[119]

Project Truth

The normal practice at the time was followed in the case of the Project Truth prosecutions. The prosecution of Fr. MacDonald was assigned to a Crown in the neighbouring region because of the "conflict of interest" identified by Murray MacDonald.

The prosecutions of the persons involvement in the administration of justice were assigned to Crown counsel Shelley Hallett of the Special Prosecutions unit of the Crown Law Office-Criminal.

Had the allegations made in the Fantino brief not been raised, the Project Truth prosecutions would have been handled by the Cornwall Crown Attorneys office operating as a dedicated "team". If any additional resources were needed, they would have been supplied either by the neighbouring Crown Attorney's office, or arranged for by the Regional Director level.

This is precisely what transpired in the Alfred prosecutions, to which a number of witness have compared to Project Truth, that is, the L'Orignal Crown Attorney's office handled the prosecutions with assistance from MacDonald and Guy Simard from the Cornwall Crown Attorney's office.

There were two factors which complicated the Project Truth prosecutions, and which did not exist with respect to the Alfred prosecutions.

First, in the case of Alfred prosecutions, the size of the project was known from the outset. There were 20 accused and 165 complainants.[120] By contrast, the ultimate size of Project Truth was not known from the outset. Project Truth grew incrementally. It is only with the benefit of hindsight that Project Truth could be characterized as a major case.

The second complicating factor in the Project Truth case was that the local Crown Attorney's office and the neighbouring Crown Attorney's office, could not act as a team to prosecute the charges, by reason of the allegations against the Cornwall Crown Attorney.

Pelletier was the Acting Regional Director between May 1997 and January 1998 and then again from May 1998 to January 1999. After the allegations in the Fantino brief surfaced, he was involved in trying to secure the services of a

Crown to conduct some of the prosecutions as part of his responsibility as Acting Regional Director.[121]

Pelletier identified the need for a bilingual Crown was required for some of the cases. He considered that as six suspects were involved, he was "looking for one other prosecutor" in addition to Hallett.[122]

Pelletier, who was involved in both the Alfred prosecutions and the Project Truth prosecutions, testified that the "proportion" of resources in Project Truth compared favourably to the Alfred prosecutions.[123]

James M. Stewart was appointed the Regional Director for the Eastern Region in January of 1999. Stewart continued the efforts to "recruit" Crown Attorneys to prosecute the Project Truth charges.

Terrance Cooper of Stewart's office played a role in coordinating disclosure for the Crowns assigned, including arranging for the pagination and copying of the Dunlop boxes. [124]

With respect to office space for the out-of-town Crowns, the conflict involving the local Crown's office again precluded any possibility of obtaining space there. Accordingly, the Crowns worked out of their hotel rooms and interviewed witnesses at the Long Sault OPP detachment. Stewart's office eventually

provided some office space to Assistant Crown Attorney Lorne McConnery, who was assigned to take over the Fr. MacDonald prosecution in April 2001.

Stewart pointed out one of the challenges was that the Project Truth case became more complicated as it went forward. In his words, it “morphed” into a more demanding, complicated case than it was originally thought to be. He testified that if Project Truth occurred today and if the Ministry knew of all of the complications that were to arise, that is, the Dunlop issue, the disclosure issues, and the conflict of interest issue, then the matter would likely be treated a major case.

Evidence of Deputy Attorney General

The Deputy Attorney General, Murray Segal, testified with respect to the resourcing of the Project Truth prosecutions. He was appointed the Assistant Deputy Attorney General of the Criminal Law Division in 1997 and Deputy Attorney General in January of 2004, and he had “ultimate responsibility” for the Project Truth prosecutions during that time.

Segal endorsed Stewart’s view that: “if we knew everything that we later knew about the size, the complexity, the challenges on this particular matter, I think that there may have been some additional resources contemplated as a much...earlier time”.[125]

Segal observed with respect to the Alfred prosecutions that:

> "Alfred's a little different...from Project Truth." "[i]n Project Truth...when it started it took a while and it grew in size in terms of the number of allegations or issue or complexities..." "It was not concrete at its inception. "...it had gone through...a number of police investigations...[s]o it didn't show up as Alfred or some of the other cases I've seen over the years...where there seems to be some cogent evidence of many allegations simultaneously that involve, from an early stage of identification once the matter has been raised, a very large investigation and a great deal of support for a number of alleged victims.[126]

The Deputy Attorney General noted, however, that the Ministry subsequently developed a Major Case Management Protocol and he expressed "every confidence that our initiative regarding major case management" has improved the ability of the Ministry to identify major cases at an early stage and to ensure that they are properly resourced.[127]

Major Case Management

Stewart was selected by Segal when the latter became Assistant Deputy Minister "to lead a significant initiative regarding major case management, including the beginning of some flex resources to deal with the pressure of larger complex undertakings"[128]

The Ministry's corporate presentation witness, Mary Nethery testified with respect to a Ministry policy document entitled "Managing Major Cases: A Resource Document".[129] That Policy was created in 2001 and provides recommended practices for handling major cases. It grew out a growing realization that Ministry

was encountering cases with increased complexity and needed to address specific issues related to the managements of such cases.[130]

The MCM Policy sets out the main elements for managing major cases. It is directed at staff prosecuting major cases, including local Crowns and specifically includes VWAP staff. With respect to defining what cases qualify as "major cases" the Policy states:

> "There will likely never be a unanimous definition of a major case: differences can arise as between a local perspective and a corporate one; between the life of a case on one situation and the course it takes in another situation.
>
> `Major cases' would likely include the following:…Historical or current sexual abuse /physical abuse cases with multiple victims."[131]

Stewart testified at the Inquiry that in his experience there are some cases that are obvious from the outset will qualify as "major cases. " There are other however that "morph" into major cases:

> "….whether it's the personality of the judge, the Crown, the defense. The circumstances; sometimes the perfect storm where you put a bunch of things together and it ends up being a major case, but it didn't start out that way."[132]

The Policy suggests that Crown Attorneys should be involved with the police before charges are laid and should bring such cases to the attention of the Regional Director of Crown Operations. Among other things, the Crown should appoint a lead prosecutor and work with him/her to create a team to run the case. The Policy states that the team should include at least one member from VWAP,

that is, that "…no major case with victim issues should go forward without requesting victim-witness resources".[133]

The Policy provides that once a team lead is assigned, that person is responsible for, among many other things, formulating a strategy for conducting the case, developing a resourcing plan, connecting with police, ensuring that facilities, technology and information systems are available, and presiding over all aspects case management. The Policy also provides that "[l]arge cases should not be undertaken without substantial planning regarding the VWAP component.[134]

The Policy provides for "flex" or "surge capacity" in the system. There are "nine, ten Crowns" available who may be deployed when the "case [is made] for some additional resources".[135]

The Policy also provides for the establishment of the Major Case Advisory Group" (MCAG) which is described as a "focal point for knowledge and consultative advice about major case prosecutions".[136] The MCAG is comprised of the Stewart, who is the Chair, the Director of Crown Law Office Criminal, the Director of Division Planning and Administration, the Directors of Crown Operations, the Regional Operations Manager and a VWAP representative. Among other things the Advisory Group provides advice to prosecution teams and Crown Attorneys, documents lessons learned following major cases, and shares that information with the Criminal Law Division.

Other Initiatives to Enhance Delivery of Prosecution Services

The Deputy Attorney General testified with respect to a number of other Ministry initiatives which have enhanced the delivery of prosecution services.

First, the Prosecution Division of the Ministry "over the last number of years has grown in numbers in a significant way", that is, "the number of Crowns has increased dramatically".[137]

A second major initiative is Justice on Target. The Deputy Attorney General explained that "[t]here are two sorts of cases in the criminal law system...large and/or complex...and all of the rest of the cases". He noted that "[t]here are about 600,000 charges in Ontario every year, about a quarter of a million accused." The Ministry's commitment with Justice on Target is "to try an reduce the number of appearances and...the length of trial by one-third in each" in 90 to 95 percent of the cases, with the result that more resources and "time would be available for the large and complex" cases.[138]

The Deputy Attorney General testified that the Ministry is already engaged in a number of initiatives arising out of the recently released LeSage-Code Report into Large and Complex Matters.[139] The "first is the notion of embedded Crowns", that is "Crowns working more closely with police on complex matters at the front end; each respecting their respective areas of independence and role with the criminal field but, at the same time, making sure that connections are

made early". Segal used the issue of the police briefs that were reassigned from Hallett to McConnery as an example of how this initiative would now ensure that advice is "available in a timely fashion".[140]

The second initiative arising out of the LeSage-Code Report is "mandatory peer review" in "large and complex matters". The Deputy Attorney General explained that "although a lot resides with the discretion of individual Crowns" in terms of the conduct of a prosecution, "there is something to getting assistance form those who have experienced similar-type cases before, and ensuring that that is something that is obtained in a mandatory fashion, as opposed to somewhat of a discretionary fashion".[141]

The "third aspect" is that "there are a number of suggestions" in the LeSage-Code Report "relating to those things that could be the subject of *Criminal Code* amendments". Segal testified that at the "semi-annual meeting of Deputies Attorney General" in Regina, which he had attended the week before his testimony, he "moved and obtained approval for those suggestions in that report, dealing with large and complex matters that require *Criminal Code* consideration, to go to a committee of senior officials to see whether they were appropriate or right for possible *Criminal Code* amendments".[142]

The Deputy Attorney General concluded by stating that the Ministry is always engaged in "continuous improvement" of the "criminal justice [system] in Ontario.[143]

(v) VWAP services

Overview

The Victim Witness Assistance Program ("VWAP") was established in 1986 by the Attorney General of Ontario when he announced the opening of 12 VWAP sites in eight court jurisdictions in Ontario. Ontario was a leader in Canada with respect to VWAP services. The program was developed as a response to a 1983 report by the Federal/Provincial Task Force on Justice for Victims of Crime and the Badgley Report in 1984. The Task Force report provided advice and information to government pertaining to the interests of victims in the criminal justice system. The Badgley Report clarified the prevalence of child abuse in Canada and the need for some governmental response to assist victims[144].

In April, 1987 the first 10 VWAP offices opened in the highest volume areas of the Province.[145] In the fall of 2000, the Provincial government committed to expand the Program to all areas of the Province and in October 2001, a VWAP office was opened in Cornwall.[146] Today there are approximately 56 VWAP offices throughout the Province.[147] The program is administered through six regional offices. Cornwall is located in the East Region whose Regional office is in Ottawa.[148]

The Program's mandate is to provide information, assistance and support to victims throughout the criminal court process in order to improve their understanding and participation in that process[149]. More specifically, the program attempts to keep victims up to date about court processes, familiarize them with the court process, explain the various proceedings, and identify and refer victims to community support. Those services are delivered by VWAP staff - referred to as Victim Witness Services workers, formerly called Victim Witness Assistance Coordinators.[150]

VWAP services are available from the time charges are laid to the date of disposition. Clients are referred to VWAP in a number of different ways. During the course of police investigations, police are responsible for keeping victims informed about the progress of the investigation and the laying of charges. Once charges are laid, each VWAP office has its own arrangements for getting client referrals and those arrangements depend on the physical location of the office and its relationships within the community. In some cases, VWAP offices have arrangements with courts administration, some obtain referrals from the Crown Attorney's office and sometimes victims are referred directly by police[151].

Funding for the Men's Project

The Men's Project is a community based agency that provides counseling services to adult male survivors of abuse. In approximately 1998–1999, when the charges were laid in respect of the Project Truth investigations, the Ministry of the Solicitor General identified the need to provide counseling support to the victims – both those who

would be testifying in court as well as other victims who, for whatever reason, would not be participating in the criminal process. In 1999, the Solicitor General began to fund the Men's Project as a counseling and support service for victims for the duration of the Project Truth investigations and court process. The funding was later extended to continue until the Cornwall Public Inquiry[152].

When VWAP services became available to Project truth victims, VWAP staff referred victims to the Men's Project and met with their representatives to discuss the status of cases and how services to victims would be provided[153].

Project Truth

The Inquiry heard testimony from Cosette Chafe, who was a VWAP coordinator in the Ottawa Regional Office from 1987 to 2001. She was promoted to the position of Regional Manager of VWAP's East Region in 2001 and held that position until her retirement in 2007.[154]

Chafe testified that she was first contacted about Project Truth in the fall of 1999 by Dennis Lessard, a Program Consultant in the Victim Services Unit of the Ministry of the Solicitor General. At that time, Chafe was only generally aware of the Project Truth investigations, mainly through newspaper articles[155]. In conversations with Lessard, Chafe learned of the investigations and prosecutions that were underway in Cornwall[156].

Chafe testified that each VWAP office had its own protocols with the police, Crown Attorneys or court services to get information when charges were laid so that it could make contact with victims/witnesses[157]. At that point there was no VWAP office in Cornwall and the Ottawa office was only organized to get information concerning charges laid in its jurisdiction and provide services in that same jurisdiction. There was no mechanism set up for the Ottawa VWAP office to obtain information concerning charges laid in Cornwall[158]. In any event, each VWAP office was mandated to provide services within its own jurisdiction. There were a limited amount of jurisdictions where VWAP services were offered and managers were specifically directed not to provide services in other jurisdictions without the Director's approval [159].

Chafe's discussion with Lessard led to discussions her Director; Cathy Finley, about the possibility of somehow providing VWAP services to the victims in the Cornwall cases. Chafe was under the impression that if a case was designated as a "special case," extra funding would be made available. According to Chafe, Finley had a number of conversations with her contacts in MAG to obtain approval and funding for services. However, in spite of Finley's efforts, funding and services were not immediately approved by the Ministry[160].

On December 23, 1999 Finley sent an email to Hallett, Assistant Crown Attorney Alain Godin and Flanagan who were involved in prosecuting Project Truth cases in Cornwall. Finley stated that she was hoping that VWAP services could

somehow be arranged for the victims and asked the Crowns for information about their cases which she hoped would assist her in dedicating VWAP resources to the prosecutions. Finley indicated that for the time being, Chafe would assist in the support of two witnesses required for a preliminary inquiry then scheduled for January 2000[161].

On January 11, 2000, Hallett sent an email to Finley and provided information about the MacDonald and Leduc prosecutions and requested victim/witness support for some of the victims. Finley referred this request to Chafe on February 10, 2000. Although approval for additional resources had not yet been obtained, Ms Chafe took this on in addition to her regular duties in the Ottawa office, pending development of a plan to provide VWAP services to Project Truth victims[162]. She indicated that she could be available only 1-2 days per week[163].

Between February and May 2000, Finley continued in her efforts to obtain authorization for additional resources to provide VWAP services to Project Truth victims. Chafe and Hallett communicated to coordinate VWAP services for victims and witnesses in the MacDonald and Leduc prosecutions[164].

On May 10, 2000, Chafe attended a meeting in Ottawa with Hallett and Dupuis. Chafe provided information about VWAP services and information from the protocol on multi-perpetrator/multi-victim prosecutions. Dupuis in turn offered to provide Chafe with a list of the Project Truth cases, names and contact

information for victims and witness and to identify those who, in his opinion, were most in need of assistance.[165]

Chafe recorded in her note of that meeting that she would explore the possibility of opening a bilingual regular VWAP office in Cornwall to manage the Project Truth cases. In the interim, Chafe noted some services would be provided from Ottawa. Chafe testified that she later explored the possibility of establishing an a Cornwall office but it eventually became clear that it would not be possible to open it in time to be of use in the Project Truth prosecutions.[166]

Chafe also noted that if an office was not opened in Cornwall, Hallett would advise all of the witnesses by letter that Chafe would be the resource for VWAP services. Hallett agreed to provide a copy of the letter to Godin and Assistant Crown Attorney Claudette Wilhelm (now Breault) and to encourage them to send a similar letter to victims in their cases. Chafe indicated she would contact the victims within one month of Hallett's letter and that she would also contact Godin and Wilhelm after Hallett contacted them.[167] Chafe testified that she knew that Hallett and the other prosecutors sent the letters out to the victims in their cases because she started to receive calls from them in response to the letters.

In late June, 2000, Finley's request for additional resources was authorized. Chafe contacted Louise Lamoureax, a caseworker at the Ottawa VWAP office who was then on maternity leave. Lamoureux agreed to come back from her leave early to assist with services for Project Truth. Because Lamoureux had

two years of experience with VWAP, she required minimal training and services could be implemented quickly[168]. Lamoureux began working on these cases in August or September 2000 and continued to provide services until she left the Program in April or May, 2001.

Chafe had contact with victims before Lamoureux began providing services[169] and by the first or second week of September Chafe and Lamoureax contacted all of the victims who were expected to testify in the four cases that were then set to proceed in September and October. However, most of those of the victims had already testified at their preliminary hearings and felt that they had sufficient support and did not require VWAP services[170].

Lamoureux began providing VWAP services to the Project Truth victims, both those whose preliminary hearings had already taken place as well as those who had not yet taken part in any formal proceedings. She made contact with the Crowns and began providing information to the victims regarding court dates and counseling services. Although initially some of the victims, especially those that had already testified at a preliminary hearing, did not see the need for VWAP services, Lamoureux kept in touch with them to provide them with updates. Some of those victims eventually began to use VWAP services once they became more familiar with it[171]. As noted, she also made timely contact with victims in Project Truth cases that had not yet reached the preliminary hearing stage and many of those victims made it clear that they would require VWAP services.[172]

Lamoureux provided services to the victims from August 2000 until she returned to her former position in the Ottawa Regional office in late May 2001.

Chafe described the services that were provided in cases where a preliminary hearing had already taken place. She stated that the victims were contacted four to six weeks before the trial. Lamoureux offered to attend any meetings between the Crown and the victims and she would have also offered a meeting for court preparation. She offered to accompany them to court when they were giving evidence.[173] Although this was not normally done, the decision was taken n the case of Project Truth to extend the VWAP service to family members of the victims.[174]

As stated above, Lamoureux provided services until she returned to her original position in late May, 2001. At that point, the work was not keeping her busy anymore and Chafe took over the responsibility for providing VWAP services for the Project Truth prosecutions in addition to her duties as Regional Manager[175].

VWAP Policies

VWAP has a Policy and Procedures Manual which contains a comprehensive set of polices regarding its mandate and operation[176]. It was first drafted 2000-2001 and revised in 2006[177]. It has a section (5.14) pertaining to “special prosecutions“ which, according to its terms, normally involve several accused persons charged with serious offences against multiple victims. The policy notes that that they are

often historical in nature and may involve abuse in institutions such as training and residential schools. They require a substantial commitment of resources and a high level of collaboration among Crowns Police and VWAP staff.

The policy suggests that these cases should be referred to the Director, Program and Community Development Branch to secure funding that may be necessary to provide the required services.

The policy makes reference to VWAP's "Protocol for the Development and Implementation of a Victim/Witness Assistance Program in Multi–Victim and Multi-Perpetrator Prosecutions."[178]

Chafe was one of the authors of that protocol and she testified that she and two others drafted it after her involvement in the Alfred prosecution. It was drafted in 1992-1993 when there were only 12 VWAP offices operating in Ontario and 44 jurisdictions without VWAP services and no policy and procedures manual. In the absence of a more comprehensive set of policies it was intended to provide VWAP staff with guidance in complex prosecutions would require the commitment of additional resources[179].

Chafe also testified that there was talk of updating the document when the Policy and Procedures Manual was updated but that was not done. As a result, section 5.14 of the Policy Manual covers the same circumstances as the protocol

(although in less detail). Chafe felt that updating the protocol and incorporating it into the Policy and Procedures Manual would be would be of benefit.[180]

Recommendations by Chafe

At the end of her testimony Chafe made three recommendations to the Commissioner arising from her experience with respect to the Project Truth cases:

1. The Protocol for Multi-Victim Multi/Perpetrator cases should be updated to reflect current circumstances and practices.

2. If it does not already exist, there be a coordinated mechanism within MAG to systematically identify major cases or special prosecutions that may require special or additional services, including VWAP services. “Early identification is key so that special and/or additional services can be established in a timely way”.

3. That there be a team approach among criminal justice sector officials in planning a response to major or special case, including, if necessary a designated team lead[181].

Issues With respect to VWAP Involvement in the Project Truth Cases

Ideally VWAP services should be made available before a victim first testifies so that information, referrals and support can be provided in advance of the first testimony. It appears clear that while VWAP services were made available to victims of the Project Truth cases, in some cases, the service was not available until after the preliminary inquiry stage.

The Ottawa Regional Office first became aware of the need for services in the fall of 1999 and that need was communicated the VWAP Director who attempted to secure a commitment for resources within MAG. That commitment was not immediately forthcoming and in the interim Ms Chafe provided services. At that point, the preliminary inquiries in some, (but not all), Project Truth cases had taken place and those victims had either developed their own support network, obtained what information and direction was available from the investigating OPP officers, or manage on their own.

Eventually finding was secured for an additional position and a dedicated VWAP worker was assigned to the cases who took over from Chafe. All of the victims were contacted by either Chafe and/or Lamoureax. Some of them declined VWAP services, some of them initially declined but later accepted the services when they became more familiar with VWAP, and others took full advantage of the services available.

It appears that this situation arose for two main reasons. Firstly, at the time the charges were laid, there was no VWAP office in operation in Cornwall. Each VWAP office was mandated to provide service within its own area and had mechanisms in place to obtain information about victims and witnesses in connection with charges laid in its jurisdiction. While the Ottawa office had protocols in place to obtain information concerning charges laid in its area, it had no mechanism to obtain information in respect of charges laid in Cornwall. In any

event, its mandate was to provide service in the Ottawa area and because of limited resources it was directed to confine its services to that area.

Once Chafe learned of the need for VWAP services in Cornwall, she brought the matter to the attention of her director in an effort to obtain the extra resources necessary to provide the service. That funding was obtained so that a staff person could be dedicated to Project Truth by late August/early September, 2000. Chafe herself took on that work in addition to her normal duties.

It appears that this has now been addressed by the establishment of VWAP offices in every jurisdiction in the Province, including Cornwall in October, 2001.

The second reason that services were not in place from the outset was that the Project Truth was not recognized early on for consideration as “a special case” for the purposed of s.5.14 of the VWAP’s Polices and Procedures Manual.” If that designation had been made, VWAP policies suggest that VWAP’s Director, Programs and Community Development Branch could have taken the necessary steps to secure funding and additional resources. Chafe testified that there appeared to be no criteria for designation as a special case and she was unclear as to who made that designation or the mechanism involved. Her second and third recommendations above appear to address this point.

(b) Project Truth Prosecutions and Investigations

(i) Marleau complaints

1. Investigation and Charges Laid

Claude Marleau came to attention of the Project Truth investigators on his own initiative. He had seen mention of the Project Truth investigations through media coverage shortly after the investigations began, and he contacted the investigators himself in July 1997. Marleau attended at the Lancaster OPP detachment on July 31, 1997 for an interview with D/Cst. Genier.[182]

A number of Crown briefs were prepared arising out of these investigations and forwarded to Robert Pelletier, who was Acting Regional Director of Crown Operations. On May 7, 1998, Pelletier gave an opinion to D/Insp. Tim Smith of the OPP recommending charges on all the matters.[183]

As a result of the police investigation into the Marleau complaints and those of C-96, introduced to the police through Marleau, charges were laid against several individuals on July 9, 1998. These included:

(i) charges of gross indecency and indecent assault against Roch Landry with respect to three complainants,

(ii) charges of gross indecency and indecent assault against Fr. Paul Lapierre with respect to Marleau,

(iii) one charge each of gross indecency and indecent assault against Kenneth Martin with respect to Marleau,

(iv) one charge each of gross indecency and indecent assault against George Lawrence with respect to Marleau,

(v) one charge each of gross indecency and indecent assault against Dr. Arthur Peachey with respect to Marleau,

(vi) one charge of indecent assault against Harvey Latour with respect to C-96, and

(vii) two charges of indecent assault against Fr. Léonel Carrière with respect to two complainants.[184]

2. Commencement of Prosecutions

In Pelletier's opinion letter to Smith containing his recommendations as to charges, Pelletier raises two issues with respect to Crown counsel for the prosecutions. The first was to engage the services of the Special Prosecution unit in the Criminal Law Division. This was for the prosecutions of Dr. Arthur Peachey and two other matters against accused or potential accused involved in the administration of justice in Cornwall, Jacques Leduc and Malcolm MacDonald. Shelley Hallett, Crown counsel at Crown Law Office – Criminal, was assigned to assume carriage of those prosecutions.

The other matter involved locating bilingual counsel for several of the other matters, since both complainants and the accused may have preferred a trial in French. Pelletier made efforts to locate a bilingual counsel and, with the assistance of the Regional Director of Crown Operations in the Northwest Region, Alain Godin was assigned to assume carriage of the other prosecutions from these complainants.

Godin was asked to assume carriage of the bulk of these prosecutions (with the exception of the Peachey prosecution) in September 1998.[185] The briefs were sent to him in Fort Frances to review. When Godin came to Cornwall, it was in blocks of time, two or three weeks at a time, depending on what he was in Cornwall to do.[186] Godin worked on his own files independently from Hallett, up to the time of the preliminary inquiries, during which time they worked together to accommodate the witnesses, particularly Marleau. After the preliminary inquiries were completed, there was no need for any further collaboration between Godin and Hallett.[187] Hallett's involvement in these prosecutions ended with Peachey's death on December 4, 1999.

Godin described his relationship with Hallett as professional, and Hallett agreed. They each testified that they had vigorous and animated discussions on certain topics related to the prosecutions, but they had independent control over each of their prosecutions. He also testified that Hallett assisted him by providing him with some legal research on the issue of consent.[188]

3. Preliminary Matters

One preliminary issue that came up in these trials was the matter of disclosure of the Fantino brief submitted by Perry Dunlop. Defence counsel was asking for disclosure of these materials and an adjournment of the preliminary inquiries to be able to review them. They brought an application before Renaud J. on May 6, 1999 in this matter.[189] Despite the fact that this application was brought before a

preliminary inquiry judge, who did not have the jurisdiction to order disclosure, Godin invited Renaud J. to review the binders and that he, as the Crown, would respect any decision Renaud J. came to respecting their relevance and disclosure.[190] Renaud J. found that there was nothing of any relevance in the materials that he reviewed that he would direct the Crown to disclose.[191]

The preliminary inquiries commenced on May 17, 1999 before Renaud J., with the charges against Landry taking up the first two days.[192] Landry was committed to stand trial on May 18, 1999.[193]

The preliminary inquiries with respect to the other four accused followed immediately thereafter, with the first issue being whether the common complainant, Marleau, could give all of his evidence with respect to the four accused in a single narrative and, in so doing, speak about the sexual abuse he claimed occurred at the hands of the other accused. One of the purposes of having the preliminary inquiries run sequentially was to accommodate Marleau, so he would not have to return to Cornwall either from Quebec City or from Costa Rica, where he was living at the time.[194]

Godin argued that the Crown would be advancing a theory that Marleau was being groomed from a young age, and introduced successively from one accused to the next, and that there was a common thread between all the parties.[195] Defence counsel, in his submissions, referred to this theory as a

“conspiracy” or “grooming”. Godin, in response, clarified that it was “not so much a conspiracy but what Monsieur Marleau thought and felt when he was being introduced to other parties.”[196]

Godin, in his testimony at the Inquiry, explained that he did consider before the preliminary inquiry whether there would be grounds to lay charges of conspiracy against the accused, but that there were certain criteria one must have to prove a conspiracy, but he was unable to find those prerequisites in the evidence. The fact that the accused knew each other was not sufficient to establish a conspiracy. Often, that evidence comes forth because one of the parties to the conspiracy will give evidence about the common plan or agreement, and there was no such evidence here. Therefore, he eliminated the possibility of trying to prove a conspiracy.[197]

The preliminary inquiries then proceeded from May 20 to 27, 1999. All four accused were committed to stand trial by Renaud J. on May 27, 1999, at the completion of the preliminary inquiries.[198]

As mentioned above, charges against Peachey were withdrawn after his death on December 4, 1999. Charges against Landry were withdrawn after he died, on October 24, 2000.[199]

4. Trials

The first of the three trials involving Marleau was *R. v. Lapierre*, held from September 4 to 11, 2001. On September 13, 2001, Lapierre was found not guilty by Lalonde J.[200]

One of the matters raised at the Lapierre trial was the evidence of Dunlop. Dunlop by that time was no longer on the Cornwall Police force and was brought from British Columbia to testify on the first day of trial, on September 4, 2001.[201] Godin arranged with the defence counsel on all the Marleau trials that he would arrange to have Dunlop called as a witness at the first trial, he would ask him a few preliminary questions, and then allow defence counsel free reign to ask him any questions they wished. It was agreed then that Dunlop's testimony from this trial could be filed in the other trials.[202]

The trial judge in *Lapierre* found Marleau's evidence to have the ring of truth and he accepted it in the final analysis. To the contrary, he believed only small parts of the evidence of the accused and found it did not have the ring of truth.[203] He points in this analysis to many of the inconsistencies in Lapierre's evidence that were brought out by Godin in his cross-examination.

The trial judge also held that the alleged sexual acts happened when the complainant was under the age of 14, and therefore consent was not an available defence. If he were wrong about the age, then he accepted the

Crown's submission that Lapierre represented an authoritative figure and there was an imbalance of power present in that relationship.[204] He also found that if the events did happen as alleged with the accused, that it would not be necessary for the Crown to call evidence on the community standards of the time.[205]

Further, the trial judge found that the fact that the complainant had made a recent complaint of historical offences did not raise a reasonable doubt in his mind as to whether the offences happened.[206] Therefore, there was no need for the Crown to bring any expert evidence on that matter. Both Godin and Hallett were questioned about their intentions to bring expert evidence in their cases, and the apparent difference of opinions on this issue. However, both Crowns decided against bringing any expert evidence on their respective trials, as Hallett explained, because of a recent change in the law in October 2000 at the Supreme Court of Canada that held that such evidence was not admissible.[207]

However, the trial judge was still left with a doubt, not whether the event happened, as he had no doubt that Marleau was abused, but whether it happened with Lapierre or a third person. He was left with a reasonable doubt and therefore felt he had to acquit.[208]

One of the questions raised at the Inquiry was how Lapierre could have been convicted in Quebec with respect to similar allegations also brought by Marleau,

after the Ontario trial was completed. Godin offered an explanation at the Inquiry: he testified that it was in part because the accused decided not to testify at his trial in Quebec. The effect of that is that the accused loses the opportunity to raise, with his own testimony, a reasonable doubt in the mind of the trier of fact. As Godin explained, if the accused testifies, then the trier of fact has to determine whether the accused's evidence raises a reasonable doubt. And then the trier of fact has to consider the evidence as a whole to determine whether or not there is a reasonable doubt.[209]

In Quebec, as in Ontario, the court found Marleau to be a credible witness and accepted his evidence. In Ontario, however, the accused testified, and while the trial judge largely accepted the complainant's evidence and disbelieved the accused's evidence, he still found himself troubled by a reasonable doubt as to the guilt of the accused. In Quebec, where the accused chose not to testify, the court was left with the uncontradicted evidence of the complainant, which was accepted, and the court entered a conviction.

The *Lawrence* trial was held from October 1 to 3, 2001. Lawrence was found not guilty by Charbonneau J. on October 5, 2001.[210]

At the conclusion of the Crown's case, the judge allowed a motion for a directed verdict of not guilty on the count alleging indecent assault.[211] However, on the charge of gross indecency, the court acknowledged that the Crown need not

prove lack of consent, and consent is not a defence to the charge.[212] The trial judge accepted a good portion of Marleau's evidence with respect to the sexual activity that he says took place with the accused.[213] He also stated he had grave concerns with the evidence of Lawrence.[214]

However, the trial judge was not able to find beyond a reasonable doubt that the actions of Lawrence constituted gross indecency, and therefore entered an acquittal on that charge as well.[215]

And finally, the trial in *R. v. Martin* was held from November 17 to 19, 2001. Martin was found not guilty by Cusson J. on November 29, 2001.[216] With respect to a second complainant that had been added to the indictment after the original charges were laid, C-109, the judge found he had a reasonable doubt as to whether the alleged incident was indecent.[217] With respect to Marleau, the judge held that the act, a single event between the accused and the complainant, was with the consent of Marleau, and therefore neither the charge of indecent assault, nor the charge of gross indecency, could stand.[218]

5. Issue of Confessor-Penitent Privilege in *R. v. Lapierre*

In the trial of *R. v. Lapierre*, at one point the accused raised confessor-penitent privilege as a ground for not answering a question. In his testimony at the Inquiry, Godin acknowledged that confessor-penitent privilege is not recognized

in Ontario. However, Godin went on to testify that tactically it was not necessary for him to go any further into this line of questioning.[219]

The fact that the accused resorted to a ground of privilege for refusing to answer questions that he claimed would support his evidence goes to the core of the witness's credibility. The privilege was raised by Lapierre when Godin was cross-examining him on his assertion that he was fearful of being blackmailed by Marleau when contacted by him in 1993.[220] Godin was establishing the inconsistency of that assertion, as Lapierre had testified that he had no sexual contact with Marleau, and also testified that Marleau had not spoken to him in 1993 about any sexual improprieties by others, and in fact Lapierre had invited Marleau to his own 60th birthday celebrations, to dinner at his home, and had arranged for an apartment for Marleau when he was in Montreal.[221]

When Godin had established that Lapierre had no reason to fear Marleau in 1993, the witness then alleged that he based this fear on "confidences" he had heard from others, but he refuses to divulge those confidences because they were told to him in a setting of spiritual direction.[222] Later on, the witness started to disclose bits of "stories" he heard from other priests about Marleau, tending toward discrediting the complainant, while all the time asserting that his knowledge on these matters came from discussions of "moral and ethical things", then acknowledging himself they were not technically the subject matter of a confession.[223] While he claimed he had suspicions from these discussions that

Marleau may have been the subject of sexual abuse, he stated he did not want to report those matters because it was a “matter of conscience”.

Godin testified that tactically he felt he did not need to go into a full argument about confessor-penitent privilege at the trial to draw out more details, because the real issue was Lapierre’s credibility, since he denied any sexual contact with Marleau. Any evidence of “grooming” by other priests was in that sense irrelevant to the prosecution against Lapierre since his main defence was a complete denial of the sexual contact. There was nothing to gain from asking Lapierre to give more details about those conversations he had with other priests.

The fact was that Lapierre had testified that he did not report his concerns of Marleau’s abuse and had hidden that, because of a supposed privilege, and also that Lapierre was hiding behind the same privilege from disclosing details of stories that allegedly supported his “fear” of being blackmailed by Marleau.[224] The truth of the subject matter of the confessions was not in issue, what Godin was doing was chipping away at the credibility of Lapierre by allowing him to hide behind the privilege that he was asserting.

6. Other Godin Prosecutions

Godin was assigned carriage of other prosecutions at the same time as those arising out of the Marleau complaints. The first was with respect to two charges

of indecent assault against Fr. Léonel Carrière, both charges laid on July 9, 1998. Carrière was committed to stand trial on both counts. On June 13, 2000, Mr. Justice Lalonde stayed the charges against Carrière on the basis that his memory had been impaired by a series of strokes. This application for stay was opposed by Godin.[225]

Godin also had carriage of the trial against Latour, the sole complainant in that prosecution being C-96. The trial in *Latour* was held on June 26, 2000, and on June 27, 2000, Latour was found not guilty by Byers J.[226] Byers J. stated that he was impressed with C-96 as a witness and not impressed with the accused. However, two things troubled the trial judge, and the main one was that the complainant believed the accused had a tattoo on his arm, where there was none. Byers J. felt this raised a reasonable doubt as to the identity of the perpetrator, and therefore acquitted Latour.

Finally, Godin gave an opinion to the Project Truth investigators in respect of allegations brought by Keith Ouellette against John Christopher Wilson. Godin stated that there was no reasonable prospect of conviction based on Ouellette's allegations, and no charges were laid.[227]

(ii) Father Charles MacDonald Prosecution

1. Investigation and Charges Laid

The first OPP investigation into the allegations of David Silmser against Father MacDonald resulted in an opinion that there was no evidence to lay criminal charges.[228]

However, D/Insp. Smith testified that he was leaving the investigation “open”, and if anything further came up that they would reopen the investigation.[229]

That evidence came forward in August 1995 in the way of a new complainant, John Macdonald. John MacDonald first made contact by way of letter to Fr. Kevin Maloney, who then forwarded John MacDonald’s letter to the Cornwall Police.[230]

This set off a renewed police investigation and a third complainant who had previously indicated he was unwilling to cooperate with the police in the investigation agreed to be interviewed and to participate in the criminal process as a witness in relation to charges against Fr. MacDonald.[231]

Pelletier was asked by Griffiths to become involved in the Fr. MacDonald brief on January 15, 1996, and Pelletier first met with the investigating officers on January 31, 1996.[232]

The police forwarded a Crown brief containing the results of their investigation to Pelletier. In reviewing this brief, Pelletier also reviewed a significant number of other materials, including the original Cornwall Police investigation into the Silmser allegations, the Ottawa Police investigation of the Silmser complaint, the first OPP investigation into the decision not to proceed with criminal charges, the OPP investigation into allegations of obstruct justice against Malcolm MacDonald, the OPP investigation into possible extortion by Silmser, and the OPP investigation into the release of information by a Cornwall police officer to the media.

In addition, Pelletier reviewed the video statements of the three complainants in the brief before him, Silmser, John MacDonald and C-3. On March 5, 1996, Pelletier sent a letter of opinion to Smith recommending that charges be laid against Fr. MacDonald in respect of the majority of the allegations made by the three complainants.[233] Pelletier stated in his opinion that the situation had changed from the time an earlier opinion on the Silmser allegations had been given by Griffiths, given that there were now two additional complainants who could provide corroboration of the Silmser complaint in the nature of similar fact evidence. He stated that “any prior decision not to proceed with regards to the Silmser complaint has to be viewed in that light.”

Pelletier recommended charges of indecent assault only with respect to these three complainants, as he felt those were the appropriate charges. His

experience in the Alfred prosecutions was that it was very difficult to prove gross indecency, and it required something other than just contacts of a sexual nature. It involved contact that was also offensive and an affront to people's sensibilities. Having prosecuted several charges relating to sexual offences, he could remember getting only one conviction on gross indecency.[234]

On March 6, 1996, an information was sworn containing seven charges of indecent assault against Fr. MacDonald in respect of these three complainants.[235]

2. Commencement of Prosecution

The preliminary inquiry commenced in the Fr. MacDonald prosecution on February 24, 1997, with John MacDonald being the first witness on the stand.[236] That evening, C-8 appeared on television discussing his allegations against Fr. MacDonald. C-8 was at that time unknown to Pelletier as a potential witness in this prosecution. Pelletier became aware of the news story the next morning when defence counsel raised it with him.[237]

On the third day of the preliminary inquiry, defence counsel requested an adjournment, which was denied.[238] Defence counsel then indicated its intention to bring an application for prohibition, which effectively adjourned the preliminary inquiry.[239]

On March 18, 1997, Pelletier was advised by Smith for the first time of the existence of the Fantino brief. Pelletier met with Smith and Fagan on March 20, 1997 and reviewed the brief for the first time.[240] Statements from this brief were provided to defence counsel on the same day.[241]

In Pelletier's memo to Griffiths dated April 2, 1997, Pelletier referred to his personal as well as professional relationship with Murray MacDonald becoming a "complicating factor" in light of the allegations that MacDonald was involved in a conspiracy to cover up allegations of sexual abuse in Cornwall, and sought the views of Griffiths in this regard.[242] Pelletier testified that he felt the review of the brief and any recommendations flowing from it should not be done by himself, considering the allegations against Murray MacDonald.[243] After discussing the matter with Griffiths, Pelletier said that it was agreed that he could continue to prosecute Fr. MacDonald with the three original complainants, both at the preliminary inquiry and perhaps further on. He did not recall any agreement that his participation would be terminated once the preliminary inquiry was over.[244]

The preliminary inquiry then resumed on September 8 to 11, 1997. Fr. MacDonald was committed to stand trial on October 24, 1997.[245]

With respect to the allegations contained in the Fantino brief regarding Murray MacDonald, the Ministry vigorously denies the allegation that MacDonald was involved in the conspiracy or that he was directly or indirectly a member of the

"clan". That allegation was recanted at the Inquiry. It was vigorously and forthrightly denied by MacDonald during his testimony. In any event, it is the Ministry's position that the Commission is precluded from making such a finding for the reasons set out below.

In his evidence in chief, Ron Leroux spontaneously recanted the allegation that MacDonald was a clan member or that he had attended a meeting in the summer of 1993 at which alleged clan members had conspired to cover up the Silmser complaint. As Commission counsel took him through the list of names in his various statements, he repeatedly confirmed that Murray MacDonald's name should "definitely not" be there.[246] There was no credible evidence to support the allegation.

MacDonald firmly and forthrightly denied the allegation in his evidence.[247] It is noteworthy that none of the parties chose to cross-examine him with respect to this evidence.

Finally, it is submitted that the Commission is precluded from making such a finding, not only because there is no credible evidence to support it, but also because:

(i) the Commission has not given the notice required by s.5(2) of the *Public Inquiries Act* of its intention to make such a finding; and

(ii) in any event, the Commission is prohibited from making such a finding because it would be contrary to s.7 of the Order-in-Council establishing its mandate and beyond the scope of the *Public Inquiries Act*.

3. Joinder of Second Set of Charges

As a result of investigations during 1997, a Crown brief was prepared and forwarded to Pelletier on January 6, 1998.[248] Pelletier recommended charges arising from these five new complainants and, on January 26, 1998, a second set of charges was laid against Fr. MacDonald.[249]

The first appearance on the second set of charges was held in the Provincial Division on February 2, 1998. The preliminary inquiry on the second set of charges was held in March 1999, and on May 3, 1999 Fr. MacDonald was committed to stand trial on those charges.[250]Pelletier testified that it was always his intention to join the second set of charges with the first set.[251] He recognized that this would necessarily result in some delays in conducting the trials on the first set of charges, but it would "no doubt improve the merits of the case and allow for similar fact evidence".[252] He testified that he felt fairly strongly that he would be able to use the evidence of the other complainants as similar fact evidence given the state of the law in the late 1990's on the issue of similar fact evidence.[253]

Pelletier testified that he felt joining the two sets of charges was appropriate, considering his intention to use all the complainants as similar fact witnesses. If there were two different trials, he would in fact be subjecting the complainants, and the accused, to two identical trials, as the second set of complainants would

be called as similar fact witnesses at the first trial and the same exercise would be repeated on the second trial. In effect, the same eight witnesses would be called at both times to give exactly the same evidence. The potential prejudice in not joining the charges into one trial would be the possibility that the witness's testimony might differ from one trial to the other, which was human nature and unavoidable. One of his concerns as a prosecutor was not to expose complainants to giving testimony more often than is necessary.[254]

Pelletier could not recall if there ever was a discussion between him and defence counsel respecting a waiver of Fr. MacDonald's s. 11(b) rights to allow for the two sets of charges to be joined.[255] In fact, on January 21, 1999, at a court appearance before Forget J. to adjourn the first set of charges to an assignment court after March 1999 (when the preliminary inquiry on the second set of charges was scheduled), defence counsel stated on the record that the adjournment was without prejudice to Fr. MacDonald's rights under s. 11(b).[256]

4. Transfer of prosecution to Shelley Hallett

Pelletier testified that by the late spring of 1999 it became obvious to him that Murray MacDonald may become a witness in the Fr. MacDonald trial, because of the allegations that he may be part of a group of individuals who were alleged to be undertaking a campaign to obstruct justice and prevent cases from going to court. The situation had changed from his earlier discussion with Griffiths in April 1997 in that at that time it was agreed that Pelletier would continue with the Fr.

MacDonald prosecution as long as he could. Now that it was a possibility that Murray MacDonald might testify, Pelletier felt he could no longer retain carriage of the prosecution.[257]

At some point in the spring or summer of 1999 Hallett agreed to take on the prosecution of Fr. MacDonald from Pelletier.[258] Pelletier provided her with the prosecution materials in the early summer of 1999.[259] Pelletier and Hallett then met to discuss the prosecution on August 31, 1999.[260]

A pre-trial conference was then held on September 6, 1999 before Mr. Justice Desmarais, with both Hallett and Pelletier attending.[261] The two sets of charges were formally joined into one indictment immediately thereafter, on September 10, 1999.[262]

In the fall 1999, a trial date was set for the Fr. MacDonald prosecution for May 1, 2000. At the same time, the Cornwall Police Service were engaged in drafting an order requiring Dunlop to provide full disclosure to them as a result of events from the *Lalonde* prosecution also in the fall of 1999. That order was served on Dunlop on January 10, 2000.

In late January 2000, Dunlop advised Hall of an allegation that had been disclosed to him a few years earlier by C-2 involving Fr. MacDonald. Hallett became aware of the allegation shortly after by the Project Truth officers.[263] She received an additional volume of a Crown brief containing the police investigation

into the C-2 complaint on March 23, 2000. On March 30, 2000, Hallett provided her opinion to Hall, recommending that charges be laid respecting these allegations by C-2.[264]

On April 6, 2000, Hallett advised defence counsel that additional charges are going to be laid with respect to the C-2 allegations.[265] These charges were then laid against Fr. MacDonald on April 10, 2000.[266]

Hallett's evidence at the Inquiry was that she knew that there would likely be a request for an adjournment of the May 2000 trial by defence counsel, but not necessarily based on the fact of these additional counts. There were other developments occurring at the time related to Dunlop. There was not only new disclosure provided by Dunlop, but he was also at that time become the subject of a criminal investigation for alleged perjury. Hallett testified that this would have a significant impact on the Fr. MacDonald trial in that Dunlop had identified so many of the original complainants on that matter.[267]

Hallett also testified that she did not believe the decision to charge Fr. MacDonald respecting the C-2 allegations contributed to any delay in this matter. She referred to the other significant developments occurring at the time, and noted that all the issues arising from these developments were wrapped up around the same time: the review of the Dunlop boxes, the results of the Dunlop

criminal investigation, and all disclosure had been provided to defence counsel, all during the summer of 2000.[268]

Hallett had the Fr. MacDonald indictment brought forward to be spoken to in court on April 18, 2000. Hallett advised the court firstly that a new complainant had been identified and charges laid with respect to his allegations. Secondly, that on April 5, 2000 the Project Truth investigators had become aware of ten bankers' boxes of materials that had been handed over to the Cornwall Police by Dunlop, and that she had not yet had the opportunity to review those boxes. And further that on April 10, 2000 Dunlop had provided the Cornwall Police with a will state he had prepared and to which he had appended four volumes of materials.[269]

Hallett also advised the court immediately thereafter, in an *in camera* session, about the additional development of the perjury investigation into Dunlop, who was likely to be a material witness in the Fr. MacDonald trial, and that the fruits of that investigation would be material that would be relevant to the defence.[270] Hallett requested that the court set an early trial date in the fall of 2000, but the matter was put off to be spoken to again on August 23, 2000.

The Ministry submits that Crown counsel are required to exercise their judgment and discretion on a daily basis, in order to respond to matters that arise in the course of prosecutions that are unexpected. A decision to continue with or

withdraw charges is part of the core exercise of Crown discretion, but decisions are taken daily with respect to the conduct of a prosecution in which Crown counsel must bring to bear all their judgment and experience in making decisions and choices. Any such exercise of professional judgment must be reviewed in light of the ever-changing circumstances inherent in any trial, or indeed any court or tribunal proceeding, and judged in that light.

One such unexpected occurrence, of many that occurred with respect to the Fr. MacDonald prosecution, was that on June 27, 2000, Dunlop attended on Hallett unannounced at her office in Toronto and provided her with an additional copy of his 110-page will state of April 10, 2000.[271] Hallett instructed Dunlop at that time that it was ill-advised to serve documents on the Ministry of the Attorney General, and that the normal way for Crowns to obtain evidence for an ongoing prosecution was through the police, who would then present that evidence to the Crown and then to the defence.[272]

The preliminary inquiry on the C-2 counts was held on August 28 to 30, 2000 and Fr. MacDonald was committed to stand trial on those counts. On October 19, 2000, a trial date was set for this matter for May 28, 2001.[273]

5. Transfer of prosecution to Lorne McConnery

Crown Attorney Lorne McConnery was asked to take over carriage of the Fr. MacDonald prosecution on April 2, 2001 by James Stewart.[274] He was advised

that the finding against Hallett in the *Leduc* matter resulted in her withdrawing from Project Truth prosecutions.[275] McConnery was advised that there was a trial date scheduled for May 28, 2001, and his intention was to accommodate that trial date.[276] He had been advised that he would be freed up from his other responsibilities to work on this matter full time.

McConnery testified that he was not concerned with the time taken by Hallett to transfer the contents of the prosecution file to him. He had the bulk of the file well within the first few months of assuming carriage of the Fr. MacDonald prosecution, and most of the materials that were sent to him in February 2002 were duplicates of materials he had already received from the investigating officers.

McConnery first spoke with Hallett about the Fr. MacDonald prosecution on May 4, 2001, the month after he was asked to assume carriage of the file, and after the trial had been adjourned to March 2002.[277] Hallett indicated in that conversation that she would make a complete inventory of her file before she handed it over to McConnery.[278]

McConnery's notes indicate that he also spoke with James Stewart the following Monday and was advised that a copy of the Fr. MacDonald brief was being photocopied for him. McConnery received a copy of the MacDonald brief two days later, and was able to commence his review of the brief on May 10, 2001.[279]

McConnery spoke to Hallett again later on May 28, 2001. At that time, McConnery told Hallett not to be concerned about expediting the MacDonald material to him as he was reviewing several other briefs at the time. By that time, McConnery had also been assigned to review the five remaining clergy Crown briefs and the conspiracy brief. He commenced his review of those briefs the following day in Ottawa.[280]

The following week, on June 4, 2001, Hallett transferred the first large set of MacDonald materials to McConnery, comprising of eight boxes of materials, along with an inventory of their contents, including the MacDonald Crown brief, briefs in several other matters, discovery transcripts, and other materials.[281]

On November 16, 2001, Hallett sent McConnery the preliminary inquiry transcripts in the MacDonald case, and then on February 27, 2002, she sent him her correspondence file, plus a number of other materials.[282] McConnery testified that most of the materials Hallett provided to him in February 2002 he had already received from the police investigators, except for Hallett's correspondence file. There was no evidence before the Inquiry that the manner of transfer of the prosecution file from Hallett to McConnery prejudiced in any way McConnery's ability to prosecute the case or to respond to the delay motion brought by Fr. MacDonald.

Hallett, in her evidence before the Inquiry, showed herself to have as her utmost concern her obligations as Crown counsel to serve the public interest, and to give full, careful and thorough review to matters that required her attention. There was no evidence that she was motivated by any interest other than those of the prosecution and the public interest in the proper administration of justice. As the Commissioner crystallized in a question he posed to Hallett, whether she maliciously or intentionally kept briefs or files in her possession either out of spite or as a bargaining chip to all of the things that were happening around her, her direct answer was no, she did not.[283] This is in keeping with Hallett's reputation as Crown counsel, and also in keeping with her own cooperation with the Inquiry in achieving its mandate.

6. Adjournment and stay application

On April 25, 2001, defence counsel brought a motion seeking an adjournment of the May 2001 trial date.[284] Assistant Crown Attorney Kevin Phillips argued that the adjournment should only be granted if the defence waived any s. 11(b) rights for the delay caused by the adjournment. The court set a new trial date for March 18, 2002, and left the matter of the s. 11(b) rights for the trial judge to determine.

McConnery testified that he was concerned and shocked that at that stage of the indictment there should be an adjournment of 10 months.[285] Phillips

subsequently wrote a series of letters to defence counsel to attempt to have the trial date moved up.[286]

Also in April 2001, the Ministry took efforts to ensure that the contents of the Dunlop boxes could be copied and tracked and disclosed to defence counsel in the various prosecutions, if necessary. This endeavour was spearheaded by Terrance Cooper in the Regional Director's office.[287]

McConnery subsequently made the decision to disclose the entire contents of the nine Dunlop boxes to defence counsel, and this was done on August 15, 2001.[288] McConnery testified that he erred on the side of caution in his decision to disclose everything, but he did not want to be in the same position the previous Crown had been in, and inadvertently miss something relevant from disclosure, especially given that he was new to the MacDonald brief.[289]

Upon his review of the Dunlop boxes, McConnery testified that he found almost all of it to be irrelevant to the prosecution itself, but in his view by that time they were relevant to any s. 11(b) application.[290] He was concerned about holding back anything that could inform the s. 11(b) application.[291]

In February 2002 McConnery was made aware that the trial judge to hear the matter was going to be Charbonneau J. Because of a potential conflict between the trial judge and the former officer in charge of Project Truth, Smith, a request

was made to have the judge replaced, and initially McConnery was advised that the new judge would be Rutherford J., and the trial would be adjourned only by a week.[292]

On March 4, 2002, Phillips and McConnery were advised that the trial would be adjourned to April 29, 2002, and the presiding judge would be Chilcott J.[293] McConnery testified that he was very concerned with this event, as it involved a further adjournment of over a month without any notice or opportunity to address the matter in court.[294] After inquiries were made into the matter by McConnery and by Stewart, they were advised by Regional Senior Justice Cunningham J. that the change in judges and the adjournment were necessary because of scheduling reasons.[295]

McConnery also testified that he and Stewart raised the matter with Murray Segal, who advised that they had received a satisfactory answer from the Regional Senior Justice. Segal advised them against bringing a motion to essentially request that all the judges of the Eastern Region recuse themselves from hearing the trial.[296]

On March 12, 2002, McConnery and Phillips met with C-8. He was concerned about some of C-8's evidence, particularly in light of the fact that he had recanted a significant part of his evidence in the *Lalonde* trial.[297] At this meeting with McConnery, C-8 advised that against Fr. MacDonald did not happen. C-8

claimed said that Dunlop had told him “More is better”, and kept asking him about priests using candles.[298] McConnery made the decision after this interview to withdraw the charges based on the allegations of C-8, based on the fact that he did not have a reasonable prospect of conviction with respect to those charges.[299]

On March 13, 2002, McConnery and Phillips met with C-2. McConnery testified that he did not have the same concerns with the C-2 allegations before the meeting as he had with C-8’s, but he did have some concerns about the reasonable prospect of conviction. He did want to assess C-2’s strength as a potential witness.[300] However, he did become concerned in a progression in C-2’s allegations and the addition of persons to his allegations.[301] McConnery subsequently made the decision to withdraw the charges based on C-2’s allegations, based on his view that there was not a reasonable prospect of conviction on these charges.[302]

On April 29, 2002, the first day scheduled for trial, defence commenced an application for stay based on delay. McConnery testified that he had decided to call Dunlop as a witness on the stay application, because he felt Dunlop was responsible for some of the delay and it was incumbent on McConnery to call him and try to explore the delay. He felt there was a real need to explore the issues that Dunlop presented, “to try to get some picture of the truth of what he was doing, as opposed to the general view that was out there.”[303]

McConnery made arrangements for Dunlop to travel to Ontario from British Columbia, in the course of several contacts with Dunlop and with his counsel. McConnery attempted to allow Dunlop some opportunity to travel to Ontario a few days in advance of the stay application so that he could prepare for his evidence, but Dunlop eventually decided to travel on the day before the application commenced. McConnery also made arrangements to give Dunlop his briefs when he arrived in Cornwall and to allow him to review those briefs before he gave evidence.[304]

On May 13, 2002, Mr. Justice Chilcott allowed the s. 11(b) application and stayed all the remaining counts against Fr. MacDonald.[305]

(iii) Jacques Leduc Prosecution

1. Investigation and Charges Laid

Jacques Leduc was charged first with six counts of sexual offences with respect to two complainants on June 22, 1998, and Hallett was assigned immediately thereafter to take carriage of the prosecution.[306] This particular prosecution was assigned to Hallett, counsel in the Crown Law Office – Criminal, because it was an "administration of justice" prosecution. Leduc was a lawyer in Cornwall and because of his position in the local Bar there would be a perceived conflict of interest if he were prosecuted by anyone in the local Crown Attorney's office. Similarly, Hallett was assigned at the same time with the Peachey prosecution (a

former local coroner) and the Malcolm MacDonald brief for review (a former Crown Attorney and prominent member of the local Bar).[307]

Hallett at the time was respected and experienced Crown counsel in the Crown Law Office – Criminal. That office does mostly appellate work, but because of Hallett's previous experience as a trial Crown, she was called upon from time to time to do some special prosecutions.[308] She was assigned to these Cornwall prosecutions, including that of Leduc, on or about July 2, 1998.[309]

2. Commencement of Prosecution

The charges against Leduc with respect to the original two complainants were amended, on the recommendation of Hallett, on July 17, 1998.[310]

Hallett was concerned with obtaining an undertaking from defence counsel with respect to not disclosing to any other persons the videotaped statements of each of the two complainants, and to return those videotapes to the Crown at the end of the case, and she obtained an order from Belanger J. on October 20, 1998 in the nature of such an undertaking.[311]

On Hallett's recommendation, on November 24, 1998 she accompanied Dupuis and Seguin to the home of a potential witness in the Leduc prosecution. Hallett spoke to this witness briefly, and the witness then accompanied Dupuis and Seguin and provided a statement to the officers.[312] As Hallett explained at the

Inquiry, it is not inconsistent with the duties of a Crown Attorney to cause further investigation by the police and have evidence collected, and also to try to persuade reluctant witnesses “who are holding the truth captive”.[313]

Charges were subsequently laid against Leduc with respect to this additional complainant on March 11, 1999, after Hallett receives a transcription of the videotaped statement for her review. She testified that she was very concerned about the seriousness of the complainant’s allegations and she felt it was the proper way to proceed to obtain the transcript before proceeding with recommending charges.[314] Hallett advised defence counsel of these additional charges on March 9, 1999.[315] She then provided disclosure of the videotaped statement on March 19, 1999 after receiving an undertaking from Edelson that he would not further disclose that statement.[316]

On March 26, 1999, defence counsel raised for the first time an issue about Hallett’s personal intervention in the investigation and his intention to subpoena Hallett at trial.[317] It was not until a year later, on March 22, 2000, that defence counsel advised Hallett that her involvement in simply identifying C-22 was not going to be the subject of any Charter application.[318]

Hallett testified that certainly by the end of April 1999, it was her belief and impression that the Crown team in *Leduc* had met all of the requests for disclosure that had been made at that point by defence counsel, and it was her

belief that defence counsel was satisfied with the disclosure that had been made.[319]

At a pre-trial held on March 31, 2000, the trial date for *Leduc* was set for January 15, 2001.[320]

3. *Leduc* trial

The *Leduc* trial commenced on January 15, 2001, with new defence counsel. On January 16, 2001, Hallett sought a publication ban which would cover all forms of communication of information from the trial, including on the internet. On January 17, 2001, defence counsel advised Mr. Justice McKinnon that Richard Nadeau had placed information on his website about the previous day's proceedings. Nadeau was cited for contempt on January 22, 2001 and on January 29, 2001 he was ordered to remove the materials from his website that were in breach of the publication ban.[321]

On February 7, 2001, during the evidence of C-16's mother, she disclosed that she had had some contact with Dunlop. This contact was previously unknown to Hallett.[322]

Hall was advised of this evidence from C-16's mother, and he later attended at court with some references to this contact from the Dunlop will state and the Dunlop notes. The officers and Hallett attended a meeting with defence counsel

on that day. Hallett recalled that defence counsel were extremely aggressive with the officers on this occasion, and that they were critical that the officers had not included any reference in their own duty book notes to the meeting that Smith and Hall had with Dunlop on July 23, 1998.[323]

Hallett agreed in her testimony at the Inquiry that at that meeting, she said words such as “this is news to me”. She testified that she was referring to this meeting on July 23, 1998. She was “finding out for the first time not only that that there had been this contact, but that this had been discussed by the lead investigators with Dunlop on this particular day of July 23rd of 1998, and that meeting was total news to me.”[324]

On February 14, 2001, defence counsel announced in court that they intended to bring a stay application on the basis of the deliberate non-disclosure by Dupuis and other senior officers. At this time, Hallett took responsibility for overlooking items in the Dunlop will state and notes for disclosure in *Leduc*. She also stated that Dupuis’s failure to provide relevant entries from his own notes was equally an innocent oversight on his part.[325]

The stay application commenced on February 19, 2001, but the first witness, Nadeau, called upon McKinnon J. to recuse himself because of his prior connection in giving legal advice in recommending disciplinary action against Dunlop. McKinnon J. recused himself on the following day for the purposes of

hearing the stay application, leaving open the possibility of returning to hear the remainder of the trial afterward.

Smith approached Hallett after court was adjourned and said the officers would like to speak to defence counsel about the questions they would be asked on the stay application the following day. Hallett was perplexed by the request as it was unusual to originate from the officers themselves, but went along with it and the officers met with defence counsel with her knowledge and her blessing.[326] She had arranged to meet with Hall afterward for a debriefing, and with Smith to review his notes for his testimony. She had only a brief meeting with Hall, and she did review Smith's notes with him. Neither officer advised Hallett that they were intending to disclose any documentation to defence counsel.[327]

The stay application resumed on February 21, 2001, before Chadwick J. Hall testified on that day and continued his evidence on the following day. Also on February 22, 2001, Dupuis testified and defence counsel entered as an exhibit the letter dated July 4, 2000 which the officers had provided defence counsel two days earlier. Hall then returned to the stand to testify about the circumstances under which he provided that letter to defence counsel.[328]

In submissions on February 26, 2001, defence counsel pointed to the circumstances of the delivery of this letter from the investigators to defence

counsel to construct an argument that Hallett was responsible for intentionally withholding relevant disclosure.[329]

In the same submissions on the issue of police non-disclosure, defence counsel invited the court to take account of evidence "in the opposite direction as well", and invited the court to evaluate "the good faith and indeed honesty of the officers who gave that evidence".[330] The tone and personal nature of the arguments made against the Crown in the same submissions are stark in the difference of tone and lack of respect for senior and respected Crown counsel.[331]

On March 1, 2001, Chadwick J. stayed the prosecution on the ground that the Crown wilfully failed to disclose relevant material.[332] That finding and the stay were overturned by the Court of Appeal on July 24, 2003.[333]

4. Inadvertent failure to provide relevant disclosure

The role of the disclosure provided by Dunlop to the Cornwall Police in March and April 2000, and its impact on the Leduc prosecution in February 2001, have been fully reviewed and decided upon by the Court of Appeal in *R. v. Leduc*. The Court of Appeal's decision in this matter is binding. The Commission has no jurisdiction to go behind this decision or its findings on material issues.

In particular, the Court of Appeal found as follows:

(i) There was nothing in the July 4, 2000 letter from Hallett to Dupuis from which one can infer that Hallett saw the brief references to Dunlop's contact with C-16's mother in Dunlop's materials, and in fact the evidence points to the opposite inference, that Hallett overlooked the references.[334]

(ii) Hallett made "an honest mistake. Her failure to disclose was inadvertent."[335] (emphasis added)

(iii) Hallett did not intentionally withhold the July 4, 2000 letter from defence counsel. Hall never suggested to Hallett that she should disclose the letter to defence, she readily provided her copy to the police, and the letter said no more than what she had already told the trial judge on February 14, 2001 in her submissions. Further, Hallett had no reason to disclose the letter.[336]

(iv) The trial judge had no reason to reject Hallett's innocent explanation for overlooking the references to C-16's mother in the Dunlop materials. And further, neither the judge nor opposing counsel warned Hallett ahead of time that her explanation would not be accepted unless she testified. Simple fairness required that the trial judge tell Hallett if he was not going to consider or would give less weight to her explanation because she did not give it under oath.[337]

The Ministry submits that this decision is conclusive on this issue of Hallett's failure to disclose the few portions of the Dunlop materials that were relevant to the Leduc prosecution. Equally, as Hallett argued during the stay application and as was accepted by the application judge, Dupuis' failure to identify portions of his notebooks that mentioned the same contact between Dunlop and C-16's mother, and his failure to provide those entries to Hallett for the purposes of disclosure, was inadvertent and an honest oversight.

The York Regional Police came to the same conclusion in its investigation in this matter, finding that the email generated by Hall that set off the investigation "would appear to be as a result of frustration over several concerns" and that all persons interviewed, including Hall, were of the opinion that Hallett would not intentionally withhold information from the defence.[338]

The evidence from both Hallett and Hall is that they had a good, strong, professional relationship up to the end of February 2001. The Ministry submits that any issue of the ultimate breakdown in their relationship after these events is not within the mandate of this Commission, as it does not go to institutional response.

However, as the Court of Appeal stated in its reasons, neither the trial judge nor defence counsel warned Hallett ahead of time that her explanation that she inadvertently overlooked the relevant portions of the Dunlop materials for

disclosure would not be accepted if she did not testify under oath. It was a requirement of simple fairness that Hallett be advised of these matters, so she could take measures to protect herself. [339]

Neither did Hall advise Hallett at any time in February 2001 before the application for stay that he believed it was necessary to disclose the July 2000 letter to defence, and that he was going to do so without Hallett's knowledge. The Ministry submits that had Hallett been advised of any of these matters ahead of time, by Hall or by defence counsel, she could have taken appropriate measures either to respond to her colleagues' concerns, or to protect the prosecution if it was considered necessary. The Ministry submits that the proper functioning of the criminal justice system is aided by civility and collegiality among the professionals working in the system, including Crown counsel, defence counsel and the police.

5. Transfer of prosecution file to Lidia Narozniak

After carriage of the Leduc re-trial was assigned to Assistant Crown Attorney Lidia Narozniak, Hallett provided her with a complete set of her materials for the prosecution. Hallett delivered a box of trial transcripts to Christine Tier on March 24, 2004, and then on May 19, 2004 Hallett delivered four boxes of Crown brief materials to Narozniak with a detailed inventory of those materials.[340] Two days later, on May 21, 2004, Hallett provided Narozniak with a further three boxes of

materials, again with a complete and detailed inventory of the contents of the boxes.[341]

Hallett also sent Narozniak an accompanying email explaining that Narozniak now had everything she should have in this case, and explaining why she felt it necessary to take some time to inventory the brief and the Dunlop materials, and to ensure that the four volumes of the correspondence file were complete, as they documented all of the disclosure that was made to Leduc's counsel.[342]

Narozniak testified that she was satisfied with this email.[343] Further, there was no evidence that the manner of transfer of the prosecution file from Hallett to Narozniak prejudiced in any way Narozniak's ability to prosecute the case or to respond to either the disclosure motion or the delay motion brought by Leduc.

6. Malcolm MacDonald sexual assault prosecution

Hallett provided an opinion to Hall on the Malcolm MacDonald sexual assault investigation on March 9, 1999, recommending that charges be laid, suggesting draft wording for the charges, and offering to take carriage of the prosecution.[344] A pre-trial conference was held in the matter on June 24, 1999.[345]

Malcolm MacDonald's preliminary inquiry was scheduled to proceed on January 17, 2000, but MacDonald passed away on December 23, 1999. On January 11, 2000, the charges against Malcolm MacDonald were withdrawn.[346]

7. Brian Dufour opinion letter

On January 7, 2000, Hallett was provided with one volume of a Crown brief containing the police investigation into Brian Dufour. On April 3, 2000, Hallett provided Hall with an opinion on this investigation, recommending that charges be laid and suggesting wording for the charges.[347]

On April 11, 2000, Dufour passed away and the charges were then withdrawn.[348]

8. Crown Response to the Projecttruth.com and Projecttruth2.com Websites

Projecttruth.com

On July 1, 2000, James Bateman, administrator of the website Projecttruth.com, wrote to the (then) Attorney General Jim Flaherty requesting his review, consideration and investigation of matters on the website. This email was forwarded to the (then) Assistant Deputy Attorney General – Criminal Law, Murray Segal, for response[349].

On July 26, 2000, Cornwall Crown Attorney Murray MacDonald contacted OPP Officer Pat Hall in respect of the Projecttruth.com website following a reporter's visit to him asking him to comment on the website. The website contained allegations in respect of MacDonald and other materials such as victim witness

statements. Hall advised MacDonald that he would raise the matter with Crown Hallett which he did the same day[350].

On July 31, 2000, Dick Nadeau, a supplier of content to the website, called Hall and they discussed the website. Hall expressed his concerns about the website to Nadeau. On August 1, 2000, Hallett and Hall discussed the website again and considered whether a letter to Nadeau's lawyer was advisable[351].

On or about August 2, 2000, the website was shut down[352]. On August 29, 2000, Segal responded to Bateman's email by letter. He noted that the website had been shut down.[353]

Projecttruth2.com

On or about August 28, 2000, Hall discovered that a new website had been initiated entitled Projecttruth2.com[354]. On September 5, 2000, Hall was advised by OPP Detective Staff Sergeant Rick Burgess that Nadeau was the operator of the website[355].

September 13, 2000 Meeting

Hallett arranged to meet with Segal, James Stewart, Director of the Eastern Region, and Crown Paul Lindsay, (then) Director of Crown Law Office – Criminal, on September 13, 2000, to discuss the website. Concerns with the website for discussion at the meeting included the following: the name of the website could

be confusing to the public because it was the same name as the OPP investigation; it posed a risk of tainting witness evidence and of witness collusion; it intrusively publicized statements by victims and witnesses potentially deterring victims and witnesses from testifying or other victims from coming forward; it contained statements that were arguably defamatory of alleged abusers; and it increased the likelihood of a change of venue in order to have a jury trial[356].

Hallett had legal research conducted by an articling student that concluded in general terms that the court has the power to control its own process[357]. Consideration was given to bringing a court application to temporarily close down the website until the completion of Project Truth trials.

Concerns in respect of an application to shut down the website included the following: a court application to shut down the website could bring more publicity to the website; the court application itself could generate its own publicity; it is unlikely that people would truly believe that the website was a police website; a court application to shut down the website and silence the operator could inflame conspiracy allegations in the community; there was a possibility that any affidavit for the application could be used against the prosecution in later trials; it would be difficult to prove a real and substantial risk that a fair trial was being jeopardized by the website; there was a concern of Crown action to suppress the right to freedom of speech under the *Charter of Rights and Freedoms*; the odds of succeeding on the application were not great post the *Dagenais* Supreme

Court of Canada decision; alternative means were available to address the concerns with the website short of a court application to shut it down such as advising the alleged victims and witnesses not to read the website, and challenging jurors for cause that reviewed the website; and there was the potential for unintended unforeseen consequences.[358]

It was ultimately decided to pursue alternative means to minimize the issues with the website that did not have the same potential negative effects of a court application to attempt to shut down the website[359].

Civil Defamation Action

On September 19, 2000, Bishop LaRocque and six priests who were of the Diocese of Alexandria-Cornwall commenced a defamation action against Nadeau and others seeking monetary damages and an injunction to shut down the website[360]. This action did not shut down the website. The action was settled almost a year later on or about August 23, 2001 for a dismissal without costs upon the agreement of Nadeau not to post allegations he had previously made on his website[361].

Leduc Trial and Nadeau's Contempt of Court

On January 16, 2001, at the beginning of the prosecution, Hallett requested and obtained a publication ban on the identity of the alleged victims. This publication ban court order applied to all media, including the internet, in respect of any

information that could disclose the identity of the complainants and a particular witness. The court also ordered a publication ban on any evidence for motions in the absence of the jury. Nadeau was in court at the time. Following the granting of the orders, the defence brought a motion requesting a re-election for a judge alone trial. [362]

Notwithstanding the orders, Nadeau published information on his website in respect of the proceedings. On January 17, 2001, defence counsel advised the court that they were not pursing those grounds for the motion to re-elect for a judge alone trial set out the previous day, and instead were relying solely on the website for the motion. Hallett believed that an impartial jury could have been possible in the community, but ultimately consented to the re-election request. Nadeau was present in court and was advised by the court that he had breached the publication ban. The court warned Nadeau, but did not cite him in contempt[363].

Despite the publication ban, Nadeau continued to publish information on the website in respect of the proceedings. On January 22, 2001, Hallett submitted to the court that it could make a direct order to Nadeau regarding his publication of the material. Justice McKinnon indicated that he wanted to see the web server who could shut the website down. Nadeau was ordered not to publish anything related to the trial and cited for contempt for continuing to publish information on

the website. He was ordered to return to court on January 29, 2001 to deal with the contempt matter.[364]

On January 26, 2001, Assistant Crown Attorney Terrance Cooper contacted the OPP and requested an investigator to assist in the preparation of contempt proceedings[365].

On January 29, 2001, Nadeau attended court with his lawyer Howard Yegendorf and a hearing date for the contempt was set for February 15, 2001. Cooper appeared on behalf of the Crown. He requested an expanded court order to remove information from the website pertaining to the criminal charge and in relation to all other cases where criminal charges were waiting disposition. Nadeau was ordered to remove any inappropriate information from his website and to refrain from publishing any information related to matters where criminal charges were awaiting disposition[366].

Thereafter, on February 2, 2001, Cooper faxed to Yegendorf a list of 50 specific items to remove from the website. On February 2, 2001, Hall observed that these items were removed from the website[367].

Hallett also personally met with Nadeau on February 13, 2001 to express her concerns about the impact of the website on the Crown's ability to prosecute cases and on new victims coming forward[368].

On February 15, 2001, Nadeau attended court and his contempt hearing was set for September 20 and 21, 2001. It was ordered that Nadeau could only publish items on his website that were reported in the mainstream media without comment[369]. Cooper had also advised all defence counsel by fax in all Project Truth matters that if they had any concerns about the website to attend court on February 15, 2001[370].

On March 29, 2001, Hall met with Nadeau and Yegendorf. Cooper gave Yegendorf a copy of an article posted on the website in respect of Fr. MacDonald and Yegendorf was asked to have it removed. Nadeau agreed to remove it[371].

On April 5, 2001, Mr. Justice MacKinnon wrote letters to Cooper and Yegendorf advising that another posting on the website constituted contempt of the administration of justice by Nadeau and was in breach of his January 22, 2001 order. Justice MacKinnon requested that Cooper include the posting as part of the record in the contempt proceedings. The website was shut down on or about April 13, 2001 [372].

Segal assigned a special prosecutor to prosecute the contempt to provide greater distance and objectivity[373]. The OPP had provided the Crown with a brief on the contempt matter and it was heard on August 7, 2001. Nadeau was found guilty of two counts of contempt for postings on his website and fined $1,000[374].

Criminal Defamatory Libel

On January 15, 2002, defence counsel Steven Skurka wrote to Segal alleging that Nadeau through his website had committed a defamatory libel contrary to s. 298.1 of the *Criminal Code* and was further in contempt of court. These allegations were referred by Segal to the police.[375]

Conclusion

Ministry officials considered various options with respect to the posting of victim statements and other sensitive materials on the internet. The Ministry decided not to seek an injunction to close the websites, but rather sought a publication ban at the outset of the prosecution and enforced the publication ban by means of contempt proceedings. The Ministry's decision appropriately balanced the various factors, including the protection of victims' privacy and freedom of speech.

(iv) Review of Crown Briefs

From the beginning of the Project Truth investigations the police adhered to a practice of sending Crown briefs for review by a Crown before charges were laid. This was a sensible practice considering that these were all investigations into historical offences, and also considering that the law relating to sexual offences has changed significantly over the relevant time period.

Crown briefs were normally sent to the Regional Director of Crown Operations, because the local Crown's office in Cornwall was conflicted out of providing advice on any matter relating to Project Truth, considering the allegations against the local Crown Attorney. The first sets of Crown briefs arising out of Project Truth were sent to Acting Regional Director Pelletier on April 1, 1998, and his opinion was returned to the OPP on May 7, 1998, recommending charges on all the briefs (arising out of the allegations of Marleau).

In some instances, charges were laid before Crown briefs were sent to the Crown for review. These instances arose only where the OPP were concerned that there might be ongoing contact between the accused and young persons, therefore that there might be an ongoing risk to the public if there was any delay in laying charges. In all other cases, those considerations did not arise.

Evidence at the Inquiry relating to a delay in providing Crown opinions focussed on six investigation briefs provided to Hallett. The first four of those briefs were sent to Hallett on September 22, 1999 for opinions. These briefs related to investigations into four members of the clergy all related to allegations of Ron Leroux. A fifth brief was provided to Hallett, through Stewart, in January 2000, relating to an investigation into another member of the clergy based on allegations of C-15.[376]

The evidence at the Inquiry showed that Hallett was never given a deadline within which to review those briefs. She was, of course, mindful of her obligation to respond to the OPP with an opinion on those briefs, but she was first and foremost duty-bound to be concerned that her opinion should be based on a complete review of the briefs.[377] Also, since the briefs all arose, with the exception of the C-15 allegation, from one single complainant, it was helpful to her to review all of the briefs together.

Furthermore, it was decided even before Hallett was given these Crown briefs, as early as April 1999, that she would also be given a Crown brief relating to the Project Truth conspiracy investigation. That investigation was not completed until a year later, and Hallett was provided with a Crown brief relating to allegations of conspiracy to obstruct justice in July 2000. The main informant on these allegations was also Leroux.

The evidence at the Inquiry, from a number of witnesses, all shows that it was understood and accepted that Hallett would wait until she received the conspiracy brief before she reviewed the other individual clergy briefs. Hallett stated that she wanted to review all the briefs together because it was important to assess the allegations from the main complainant/informant, Leroux, all at the same time, to get a full view of the ultimate reliability of his testimony. She also stated that reviewing the conspiracy brief at the beginning of her involvement in Project Truth would have been very helpful in terms of knowing more about the

Dunlop investigations and getting up to speed on the Dunlop issue before heading into the various prosecutions.[378]

Hall in his letter to James Stewart dated July 19, 2000, advising that the conspiracy investigation is completed, acknowledges that Hallett wanted to review the conspiracy brief prior to giving her opinion on the other matters. There was never any criticism of Hallett before July 2000 for any delay in her providing her opinion on the individual clergy briefs.

In the fall of 2000, Hallett was engaged in a number of other matters which understandably prevented her from giving full attention to these briefs. She was also preparing for two trials, one commencing in January 2001 for the Leduc prosecution and one scheduled for May 2001 in the Fr. MacDonald prosecution. Hall raised the issue with Hallett and others within the Ministry in January 2001. Segal, ADAG of the Criminal Law Division, advised Chris Lewis of the OPP that Hallett was occupied with the Leduc trial and he would wait until its completion to raise the matter with her.

The main concern on the part of the OPP for the delay in receiving opinions on the Crown briefs arose in the fall and winter of 2000-2001. At this time, Project Truth had completed all its investigative activities and Hall wished to wrap up the ongoing operations of the Project, with the exception of providing support to the ongoing prosecutions. Also, there was some public attention occasioned by

Guzzo's criticisms in the media and in the legislature about what he alleged to be an incompetent OPP investigation.

There was no concern among the Project Truth officers that the delay in the provision of legal opinions on these briefs had any prejudicial impact on the administration of justice. The Project Truth officers did not have reasonable and probable grounds to lay charges arising out of any of the investigations covered by these briefs, and there was never at any time any concern about a risk to public safety, or any concern about pre-charge delay. Hallett had some preliminary discussions with the Project Truth officers and was aware of this. It was later confirmed in a meeting that McConnery had with Hall in June 2001, after the briefs were reassigned to McConnery. Project Truth officers were simply waiting for confirmatory opinions from the Crowns.

It is acknowledged that the time taken in providing these opinions to Project Truth officers was not ideal, in that both complainants and the subjects of police investigation wish to know the outcome of the investigation in a timely manner. However, it is also important that Crowns fulfil their obligations to provide opinions on investigative briefs in a professional manner. Timeliness is only one factor to bear in mind, the others being thoroughness in reviewing all the materials in the briefs, the rights of persons under investigation not to be charged without a thorough review of the grounds under which charges are laid, and the public interest in the administration of justice. Crown counsel must always have

these different interests in mind in fulfilling their important role as independent Ministers of Justice.

While there has been criticism of Hallett in taking over a year and a half to review some of these briefs, the reality is that she was not in a position to start a thorough review until the conspiracy brief was delivered to her in July 2000. That gave her five months until December 2000, which was the only window she had to review those materials, until the commencement of the Leduc trial in January 2001. The briefs contained a total of 21 volumes, with over 10,000 pages ultimately read and analyzed by McConnery and Phillips, with all the additional material they wanted to review. It took McConnery and Phillips a total of 2.5 months to review and provide opinions on these materials, both of them working virtually full time on the task. Hall was quick to criticize Hallett for the delay in providing these opinions after the fact. There was no real concern expressed by Hall about the prejudicial effects, if any, of this delay.

(v) Leduc Retrial

1. Overview

The first involvement Narozniak had in the Leduc file was as a member of the appeal panel that considered the question of whether to appeal the stay ordered by Justice Chadwick on March 1, 2001.[379] The appeal panel was composed of Crowns from outside the Crown Law Office, Criminal because Hallett was a member of that Office. The appeal panel consisted of John Pearson, the Director

of Crown Operations, Central West Region, who rendered the first opinion, Louise Dupont, Deputy Crown Attorney, Ottawa, who gave the second opinion, and Narozniak. The appeal panel unanimously recommended an appeal.[380]

Pearson successfully handled the appeal in the Court of Appeal. In the fall of 2003, while the accused's application for leave to appeal to the Supreme Court of Canada was pending, Pearson contacted Narozniak to ask her if she would take carriage of the retrial assuming that leave was refused. Narozniak agreed to do so.[381]

Narozniak is an Assistant Crown Attorney for the Regional Municipality of Hamilton-Wentworth. She is a senior trial Crown with experience in the prosecution of sexual assault cases, including historical sexual assault cases, and she has both attended and taught sexual assault courses as part of the continuing legal education programs presented by the Ontario Crown Attorneys' Association.[382]

Narozniak determined in consultation with Pearson that in preparation for the retrial it was necessary for her to review not only the Leduc file, but also the entire Project Truth file, including the Dunlop boxes.[383] Narozniak asked the lead OPP officer assigned to the retrial, Detective Inspector Colleen McQuade, to make the arrangements for her to do so. There was a minor misunderstanding on the part of another OPP officer, Don Genier, about the reason for Narozniak's

request. That was quickly cleared up and the working relationship between Narozniak and all of the OPP on the retrial was very good.[384]

Narozniak testified that defence counsel, Marie Henein, initially agreed to the May 10, 2004 trial date that had been previously established, but that upon receiving the disclosure, she realized she could not be ready for that date. Accordingly, on February 19, 2004, they appeared before Justice Metivier to schedule a new trial date. In her submissions to Justice Metivier, Henein suggested that the request for an adjournment was a joint one. At the Inquiry, Narozniak testified that that was not the case and that she was ready to proceed, but that she saw no need to correct the record because Henein expressly waived any delay for the period between the May date and the new trial date, which was to be for four to six weeks beginning either October 4 or 12, 2004.[385]

At the same appearance, Justice Metivier advised that a judge had been assigned to hear pre-trial motions during the week of June 21, 2004, and to conduct case conferences if requested. In a subsequent case conference call with the motions judge, the week of August 16, 2004 was set for a disclosure application to be brought by the defence.[386]

2. Attempts to Prepare Dunlop for the Disclosure Application

The defence filed a Notice of Application for disclosure Pursuant to Section 7 of the Canadian *Charter of Rights and Freedoms* that stated that the attendance of

both Dunlop and Chisholm was required for the purpose of the application. The Notice of Application raised two issues: whether Dunlop and Chisholm had had any contacts with the witnesses or victims in the case, and whether they had made complete disclosure of all of the documentary evidence in their possession.[387]

Although the attendance of Dunlop and Chisholm was required by the defence, Narozniak and Henein agreed that the Crown should call them as witnesses. This is a routine practice when the witnesses are police officers. Narozniak anticipated that she might have to cross-examine them in light of McConnery's experience with Dunlop on the MacDonald s.11(b) motion, so she obtained Henein's agreement to that, notwithstanding that they were to be called as Crown witnesses.[388]

According to Narozniak, the Crown was "equally interested" in the answers to the two issues on the application for two main reasons. First, as a Crown Attorney and an officer of the court, Narozniak had an obligation to ensure that full disclosure had been made and that the evidence that the Crown would be leading would be truthful. From her review of the file, it appeared to Narozniak that "one of [Dunlop's] notebooks was missing in it original form, and the copy that we had in our possession clearly showed some gaps" at the relevant times.[389]

Second, Narozniak did not want the trial to go “off the rails” by reason of surprise evidence of contacts with witnesses or victims. She wanted to know in advance of the trial the number of contacts, in order to be able to explore the extent of the contacts with the victims and witnesses in preparation for the trial and to demonstrate at trial that they were not problematic. Her “goal” was to bring these charges to trial and to ensure that the victims had their day in court.

On July 12, 2004, Narozniak spoke to Dunlop by telephone. She wanted him to arrive in Cornwall a few days before the August court appearance, but he refused to do so because his band had an engagement on the Saturday night prior to the court date. Narozniak told Dunlop what the two issues were on the application, that is, the “need for the originals” of his notebooks and any other documents relating to the Leduc complainants, and “any contact he had with the witnesses and victims on Leduc”. Narozniak advised Dunlop that defence counsel’s approach to his cross-examination would likely be similar to that he experienced in the MacDonald matter, and he asked for the transcripts of his earlier testimony. Narozniak asked Seguin to arrange to provide the transcripts to Dunlop.[390]

Narozniak did not meet with Dunlop prior to his testimony, both by reason of his refusal to arrive in Cornwall before the court date, and because the issues with respect to which Dunlop was expected to testify were not complicated. She

testified that it is not unusual for a Crown Attorney not to meet to prepare a police officer for testimony because police officers are "professional witness[es]".[391]

On August 16, 2004, Dunlop was examined in chief by Narozniak and then cross-examined by Henein. Narozniak did not object during the cross-examination of Dunlop because in her view Henein's questions were not objectionable. Narozniak stated:

> "…in my experience…I have seen far more grilling (sic) cross-examination and much more aggressive cross-examination of investigating officers";[392]

and also that she was:

> "disappointed with the actions taken by Dunlop…[a]s a veteran police officer with experience in court and testimony, when you contrast what the victims went through, the days of grueling (sic) cross-examination…".[393]

On August 18, 1994, Dunlop made a statement on the record in which he criticized Narozniak. He stated that he thought the only issue he was called to court to address was a conversation he had with a victim's mother.[394] Narozniak "placed on the record that [she] disagreed" with Dunlop's criticism. As stated above she told Dunlop about both issues during their telephone conversation on July 12. Dunlop also suggested that he had not had an opportunity to review the transcripts of his earlier testimony. Henein's cross-examination demonstrated that he had had ample opportunity to review the transcripts of his prior testimony.[395] At the Inquiry, Narozniak testified:

> "[Dunlop] chose not to read the transcript. I cannot force someone to read materials that are provide to him. And yet again, just like he did in the MacDonald case, once again he turned and accused the Crown of not helping.

> Mr. Dunlop is a professional witness with 18 years of experience. … He knows what is required to prepare for testimony. He does not need my help in asking him to read the transcript, so I very much disagreed with the position that he took."[396]

Dunlop's difficulties during the *voir dire* were the result of inconsistencies between his testimony on that occasion and his evidence in previous proceedings and out of court statements.

Following the *voir dire*, Justice Platana made the disclosure order.[397]

Narozniak received a letter dated September 10, 2004 from Deputy Chief of the CPS, Dan Aikman, in which he noted that during his testimony on the disclosure application, "Dunlop made statements that were inconsistent with sworn testimony previously made in the Father MacDonald matter". Aikman requested "direction from the Attorney General, as to how an investigation into possible criminal misconduct by Mr. Perry Dunlop should be undertaken".[398] Narozniak contacted Marc Garson, who had previously been her direct supervisor, with respect to the letter. Through her review of the Project Truth material, she was aware that he had previously provided a response on a similar issue to the CPS. Garson advised her that a further response was not required and so she did not do so. Narozniak acknowledged during her testimony that "out of professional courtesy" she should have advised Aikman that she would not be responding to his request. Narozniak testified however, that the police do not "need

authorization or direction from the Ministry of the Attorney General to investigate a crime".[399]

3. Decision not to call reply evidence on the disclosure motion

The evidence of Dunlop and Chisholm was the only evidence called on the disclosure motion. Narozniak did not call reply evidence, for example, from the alleged victims with respect to the nature of their contacts with Dunlop or Chisholm.

There are two reasons why it was neither necessary nor appropriate to call reply evidence from the victims with respect to the nature of their contacts with Dunlop or Chisholm. First, the evidence of the victims and witnesses was irrelevant to the disclosure application. The suggestion that their evidence should have been called misconceives the purpose of the disclosure application. The purpose of disclosure application was to obtain disclosure of Dunlop's and Chisholm's evidence with respect to their contacts with victims and witnesses. It was akin to a pre-trial discovery in a civil proceeding. Nothing was decided on the disclosure application with respect to the contacts. No finding was made with respect to the extent of the contacts, that is, with respect to their nature and effect on the victims and witnesses, or indeed the number of contacts. The only order was the order for production.

The nature and effect of the contacts on the victims and witnesses would have been decided at the trial, had it survived the s.11(b) application. Narozniak intended to call the evidence of the victims and witnesses at trial. It should also be noted that the outcome of the disclosure application did not dictate the result of the s.11(b) application. The disclosure application was not the cause of the charges being stayed.

The evidence of the victims and witnesses was therefore irrelevant to the disclosure application.

Second, it would have been "highly insensitive" to subject victims of sexual assault to cross-examination at that stage. These victims had already indicated that they were weary of the court process and some of them were "fragile". It would also be unnecessary since the purpose of the disclosure application was to ascertain whether there had been any contacts, and not to explore the nature or effect of them. Again, that evidence would have been called at the trial.[400]

4. Section 11(b) Application

On September 22, 2004, defence counsel filed an Application for a Stay of Proceedings under s.11(b) of the *Charter*. On or about the same date, the Applicant's Factum was delivered. The Applicant's Factum was 99 pages in length exclusive of appendices. Approximately 70 of those pages were taken up with a statement of the facts and of the applicable legal principles.[401]

Narozniak consulted with Pearson, Paul Lindsay, (then) the Director of the Crown Law Office, Criminal, and Ken Campbell, the Deputy Director, with respect to what arguments to make in response to the stay application. Narozniak delivered a Respondent's Factum on or about September 30, 2004. The Respondent's Factum was 15 pages. Narozniak explained that there is no need for the respondent to repeat the facts and the legal principles, and indeed the rules of the court interdict it.[402]

In the Respondent's Factum, Narozniak appropriately conceded that the delay of six years between the date of the charge and the second trial date "is beyond the administrative guidelines and warrants judicial scrutiny". She did not concede that it followed that the s.11(b) application should be granted. Rather, she argued that the defence had all of the information it needed to launch a s.11(b) application at the first trial, and that their failure to do so amounted to waiver and foreclosed them from doing so at the second trial.[403]

Narozniak made a "tactical decision" not to cross-examine Leduc on the contents of his affidavit alleging prejudice by reason of the delay, "so as not to provide him with a more fulsome opportunity to indicate how he's been impacted by this case". Narozniak "wanted to foreclose that opportunity and limit it to paper" because "[I]t's much more compelling to hear it from the person on the stand in real life as opposed to reading a paper".[404]

Counsel for the Victims Group asked Narozniak if she was “aware of the perception in some quarters here that she didn’t put up much of a fight” on the s.11(b) application. Narozniak responded “I wouldn’t have been staying up all night trying to make sure my submissions were the most compelling possible…both my co-counsel and myself…worked very, very hard to try to make sure that this case went on.” Narozniak also stated that after her argument on the application, a member of the audience approached her and complimented her and thanked her for her efforts.[405]

The Commission has not raised any question with respect to Narozniak’s handling of the s.11(b) application and in the Ministry’s submission no adverse finding can be made in connection with this issue.

Narozniak reported on the s.11(b) application in a memorandum dated October 8, 2004 to Pearson, Lindsay and Campbell.[406] On October 18, 2004, Justice Platana allowed the s.11(b) application and stayed the charges. His Honour released written Reasons for Judgment on November 10, 2004.[407] No Crown appeal was taken from that decision.

Notwithstanding the outcome of the s..11(b) application, McQuade wrote a letter dated October 21, 2004 to the Cornwall Crown Attorney praising Narozniak’s “efforts and quality of preparation”, “professionalism” and “dedication”.[408]

(c) Other Project Truth Prosecutions

(i) Summary

There are four Project Truth prosecutions which were put into evidence through some witnesses at the Cornwall Inquiry although, in the Ministry's view, not fully: *R. v. Bernard Sauve*, *R. v. Keith Jodoin*, *R. v. Romeo Major* and *R. v Jean Luc Leblanc*. It is the Ministry's position that Crown counsel involved in these prosecutions acted in accordance with all applicable Crown policies. Further, Crown counsel with primary carriage of these prosecutions, Claudette Breault (formerly Wilhelm) and Alan Findlay, were not called to testify at the Inquiry, and therefore it is the Ministry's position that no adverse findings can be made against them in respect of these prosecutions.

(ii) R. v. Bernard Sauvé

Overview

OPP Officer Don Genier investigated the allegations of historical sexual abuse against Bernard Sauvé, a former convenience store owner. Pre-charge opinions in respect of two victims were given separately by two Crown counsel: Pelletier and Flanagan[409]. Charges were laid involving both victims. Brockville Assistant Crown Attorneys Wilhelm and then Alan Findlay had carriage of the prosecution. The accused was committed to trial on April 5, 2000, after the prelim[410]. The first trial date was adjourned by the accused citing medical reasons. On June 17,

2002, the first day of the next scheduled trial, all the charges were withdrawn by the Crown.

The Withdrawal

During preparations for the first schedule trial date, one of the victims refused to attend his scheduled appointments with Wilhelm, and the Crown was required to attend the victim's house. The victim advised the Crown that he did not wish to testify and cited extreme stress and related health concerns. In any event, the accused was granted an adjournment of the trial due to his own medical issues. After the adjournment, the victim indicated to the Crown that he would try to resolve his health problems and testify at the next trial date[411].

In and around May 2002, both victims advised Chafe of the Victim/Witness Assistance Program that they did not want to testify at the trial for this matter[412]. A jury trial was scheduled to proceed starting on June 17, 2002. One of the victims asked her if it was their "right not to testify" and she advised the victim that it was the Crown's decision[413].

On May 27, 2002, Findlay met with the victims to discuss their concerns. The second victim also advised the Crown that he was suffering from health related issues due to his extreme anxiety and stress. Both victims advised the Crown that they no longer wanted to proceed but would do so if they had to. However,

on June 12, 2002, only one victim attended his court preparation meeting with Findlay and at the meeting again reiterated that he did not wish to proceed[414].

On June 13 and 14, 2002, the police made attempts to locate and speak to both victims, and when both the victims were located they were adamant in stating that they would not testify. They exhibited extreme anxiety and stress, and both stated that they were suffering from stress related health issues[415].

On July 17, 2002, the Crown attended Court and requested that the charges against Sauvé be withdrawn for the following reasons:

1. Both complainants were suffering from extreme anxiety and stress and may not be able to endure testifying in Court;
2. The accused, though medically fit to stand trial, suffers from poor health due to complications from heart disease and diabetes; and
3. Given the circumstances, it is not in the public interest to proceed with the charges[416].

Although victim support services had been provided to both victims and efforts to assist them had been made by the Crown, the police and the Victim/Witness Assistance Program, the victims still did not wish to testify[417].

The applicable Crown Policy at the time[418] and the current Crown Policy[419] both advise that “If there is a reasonable prospect of conviction then Crown counsel should consider whether it is in the public interest to discontinue the prosecution”.

Some of the public interest factors that may be taken into account by the Crown in deciding whether to discontinue a prosecution include:

> (1) the circumstances and views of the victim, and
>
> (2) the age, physical health, mental health or special infirmity of an accused or witness[420].

Notably, the victims, Crowns and police officers directly involved in this matter were not called upon to testify at the Inquiry. As such, the evidence in respect of this matter is limited to documentary evidence and testimony from indirectly involved witnesses.

The Ministry's Position

Firstly, it is the Ministry's position that a Crown's decision to withdraw a charge(s) is immune from review because it is an exercise of core Crown discretion. As elaborated in Part 1(b) of the Ministry's Submissions, the administration of justice and preservation of the independence of the role of the Crown Attorney is dependent on this immunity.

Secondly, it is the Ministry's position that the Crown's decision to withdraw the charges, given the circumstances of this case, was reasonable and in accordance with the applicable crown policies, and that it was not in the public interest to force the victims to testify against their wishes.

Thirdly, given the limited evidence on the record in respect of this matter and the fact neither Wilhelm nor Findlay, the two Crowns with direct carriage of this matter, were called as witnesses at the Inquiry, it is the Ministry's position that no adverse findings can be made against them.

(iii) R. v. Keith Jodoin

Overview

Officer Joseph Dupuis investigated allegations of historic sexual abuse against Keith Jodoin, a former Justice of the Peace, by one victim[421]. On July 4, 2000, a pre-charge opinion was obtained from Wilhelm. One charge in respect of the allegations was laid against Jodoin on August 24, 2000[422]. Wilhelm was assigned to the prosecution. On November 20, 2000, the charge against Jodoin was withdrawn[423].

The Withdrawal

On July 31, 2000, the victim met with the Crown and Dupuis in the courthouse and advised that he was not sure he wanted to proceed with the charge against Jodoin[424]. They asked him to take a day to reconsider and get back to them and they also reassured him that they were prepared to proceed with the charge - the Crown was prepared to prosecute in respect to the victim's allegations[425].

On August 1, 2000, the victim called Dupuis and advised that he did want to testify against Jodoin and did not want there to be any further investigation into his allegations[426]. On that same day, the victim met with Dupuis and both the victim and Dupuis signed a document stating that the victim did not want the police to pursue the charge or continue investigating Jodoin because the victim did not want to attend court and give evidence against Jodoin. The document also states that this decision was reached after being interviewed by Wilhelm[427].

Subsequently, on August 8, 2000, the victim met with Dupuis and advised him that he had changed his mind. When asked why, the victim responded that he had more time to consider the matter, had spoken to both his sister and Richard Nadeau, and his questions and concerns about his juvenile record had been answered and addressed by Dupuis that morning[428].

On August 20, 2000, a charge was laid against Jodoin in respect of the victim's allegations[429]. Dupuis continued to investigate the matter including, but not limited to, interviewing Nadeau and the victim's sister[430]. On October 23, 2000, there was a judicial pre-trial and on November 20, 2000, the charge was withdrawn[431].

Prior to the withdrawal, both the Crown and Dupuis met with the victim. The victim was advised that there was no reasonable prospect of conviction, in part because he was the only victim to come forward and lack of evidence to prove

the case[432]. Lamoureux of the Victim/Witness Assistance Program also tried to contact the victim to discuss the withdrawal but her telephone message was not returned[433].

Wilhelm also consulted with other Crowns when making her decision, including her acting supervisor Findlay, and her supervisor who was then on secondment, Flanagan. Both Findlay and Flanagan agreed with Wilhelm's assessment that there was no reasonable prospect of conviction in respect of the charge[434].

The Crown Policy at the time[435], and the current Crown Policy[436], both state:

1. Every charge must be screened by Crown counsel as soon as practicable after the charge arrives at the Crown's office and prior to setting a date for preliminary hearing or trial;

2. Screening is an ongoing review by the Crown Attorney's office of every charge to determine, amongst other things, whether there is a reasonable prospect of conviction;

3. The obligation to screen charges is on-going as new information is received by Crown counsel in preparation for and during the conduct of bail hearings, pre-trials, preliminary hearings, and trials;

4. If the Crown determines there is no reasonable prospect of conviction, at any stage of the proceeding, then the prosecution of that charge must be discontinued;

5. The threshold test of "reasonable prospect of conviction" is objective and in applying the test, the Crown will want to consider, amongst other things, the availability of evidence and some assessment of the credibility of witnesses (without usurping the trier of fact); and

6. Where appropriate or feasible, Crown counsel or agent should notify the victim prior to withdrawing screened charges[437].

The victim testified at the Inquiry and recalls meeting with the Crown and Officer Dupuis and being told the reason why the charge was being withdrawn. However, it is his opinion that the Crown and police thought he was "coached" by Richard Nadeau into pursuing the charges against Jodoin[438]. He also doesn't recall being referred to victim services by the Crown or police, although he acknowledges that it is possible that they did[439]. He did not recall meeting with the Crown on July 31, 2000, either, despite his prior statement of August 5, 2000, to Dupuis, in which he discusses having had a meeting 5 days prior with the Crown on July 31, 2000[440].

Dupuis testified at the Inquiry but was not asked any questions by Commission counsel regarding his involvement in R. v. Keith Jodoin. Neither Crown Counsel, Breault (Wilhelm) or Findlay were called to testify at the Inquiry. Crown Counsel, Flanagan testified at the Inquiry but he had very limited involvement in the matter. Flanagan recalls that both he and Findlay reviewed the matter with Breault (Wilhelm) and agreed with her assessment that there was no reasonable prospect of conviction with respect to the charge[441].

The Ministry's Position

Firstly, it is the Ministry's position that the Crown's decision to withdraw the charge is immune from review because it is an exercise of core Crown discretion. As elaborated in Part 1(b) of the Ministry's Submissions, the administration of

justice and preservation of the independence of the role of Crown Attorney is dependent on this immunity.

Secondly, it is the Ministry's position that the Crown's decision was reasonable and made in accordance with the applicable crown policies; she made an assessment of the reasonable prospect of conviction after a complete review of all the available evidence after the pre-trial and before scheduling a preliminary hearing or trial, she consulted with other Crown Attorney's including her supervisor, Brockville Crown Attorney Flanagan, and she advised the victim prior to the withdrawal.

Thirdly, Breault (Wilhelm) was not called to testify at the Inquiry, therefore it is the Ministry's position that no adverse findings can be made against her in respect of this matter.

(iv) R. v. Romeo Major

Overview

This matter was investigated by OPP Project Truth Officer Don Genier[442]. On March 14, 2000, a pre-charge Crown opinion was provided by Claudette Breault (formerly Wilhelm) to Genier[443]. On April 11, 2000, the accused, Romeo Major, a former chaplain at St.Joseph's in Alfred, was charged with 1 count relating to one victim, C-111[444]. Brockville Assistant Crown Counsel Breault (Wilhelm), and then

Alan Findlay, were given carriage of the prosecution[445]. On October 10, 2001, the charges against Major were withdrawn[446].

The Withdrawal

On November 14, 2000, the victim met with the Crown, Breault (Wilhelm), Genier and Louise Lamoureux, a worker with the Victim Witness Assistance Program, in advance of the preliminary hearing to prepare the witness, including explaining the preliminary hearing and court process[447]. Soon after, the victim was hospitalized due to ill health and the preliminary hearing was adjourned for an indefinite time period. Breault (Wilhelm) went on leave and the matter was transferred to Findlay.

In and around April 2001, it was determined that the victim was able to testify and wished to proceed with the matter[448]. A preliminary hearing was scheduled for September 19 and 20, 2001[449]. On September 18, 2001, the victim met with the Findlay, Genier and Cosette Chafe, a worker with the Victim Witness Assistance Program to prepare for the preliminary hearing, including a review of the preliminary hearing and court process. At the hearing, the victim had difficulty recalling dates and events due to her illness and related surgeries[450].

Soon after the preliminary hearing, Findlay reviewed all the evidence in respect of the matter, including the evidence from the preliminary hearing, and the circumstances of the case, and determined that there was no reasonable

prospect of conviction against Major. He consulted with his supervisor, Brockville Crown Attorney, Curt Flanagan, who agreed with Findlay's assessment[451]. The primary factor of concern was the medical health of the victim which affected the victim's ability to recall dates and events in relation to the charges[452].

The Crown Policy at the time[453], and the current Crown Policy[454], both state:

1. Every charge must be screened by Crown counsel as soon as practicable after the charge arrives at the Crown's office and prior to setting a date for preliminary hearing or trial;

2. Screening is an ongoing review by the Crown Attorney's office of every charge to determine, amongst other things, whether there is a reasonable prospect of conviction;

3. The obligation to screen charges is on-going as new information is received by Crown counsel in preparation for and during the conduct of bail hearings, pre-trials, preliminary hearings, and trials;

4. If the Crown determines there is no reasonable prospect of conviction, at any stage of the proceeding, then the prosecution of that charge must be discontinued;

5. The threshold test of "reasonable prospect of conviction" is objective and in applying the test, the Crown will want to consider, amongst other things, the availability of evidence and some assessment of the credibility of witnesses (without usurping the trier of fact); and

6. Where appropriate or feasible, Crown counsel or agent should notify the victim prior to withdrawing screened charges[455].

On November 9, 2001, Chafe spoke to the victim about the withdrawal and it appeared that the victim understood why the charges were being withdrawn and the victim professed to be "ok with it"[456]. Findlay attended court on November 20, 2001, and requested that the charge against Major be withdrawn.

The Crowns, police and victim directly involved in this matter, were not called upon to testify at the Inquiry. As such the evidence in respect of this matter is limited to documentary evidence and testimony from indirectly involved witnesses.

The Ministry's Position

Firstly, it is the Ministry's position that the Crown's decision to withdraw the charge is immune from review because it is an exercise of core Crown discretion. As elaborated in Part 1(b) of the Ministry's Submissions, the administration of justice and preservation of the independence of the role of Crown Attorney is dependent on this immunity.

Secondly, it is the Ministry's position that the Crown's decision was reasonable and made in accordance with the applicable Crown policies. The Crown made an assessment of the reasonable prospect of conviction after a complete review of the evidence and circumstances of the case after the preliminary hearing and before scheduling a trial; he consulted with his supervisor, Flanagan; and he advised the victim through an agent, who had a prior relationship with the victim, prior to the withdrawal.

Thirdly, given the limited evidence on the record in respect of this matter and the fact that neither of the two Crown Counsel with carriage of this matter, Findlay or

Wilhelm, were called upon to testify at the Inquiry, it is the Ministry's position that no adverse findings can be made against them.

(v) R. v. Jean Luc Leblanc

Overview

In and around January 1999, OPP Project Truth Officers, Donald Genier and Steve Seguin began investigating allegations involving Jean-Luc Leblanc, a former school bus driver in Cornwall[457]. Pre-charge opinions in respect of two sets of charges were requested and obtained from two Crown counsel: Guy Simard on March 22, 1999, and Flanagan on or about June 2, 1999[458]. A total of 51 counts involving 13 victims were laid on the following dates: January 5, 1999, March 11, 1999, and April 7, 2000[459].

Wilhelm was assigned carriage of the prosecution and after she went on leave, Flanagan assumed carriage of the matter. The accused pled guilty to a total of 18 counts involving the 13 victims on March 26 and June 7, 2001[460]. The Crown brought an Application to declare the accused to be a dangerous offender, the hearing for which took place on April 10th and 15th, 2002. On April 22, 2002, Justice Chilcott declared the accused to be a long-term offender and sentenced him to 10 years (minus time served), as well as other conditions to be described in detail below.

The Resolution and Declaration of Long-Term Offender Status

In and around October of 1999, the accused agreed to a plea of guilt to one count in respect of each of 12 victims but refused to admit the allegations against the remaining, the "13th victim". Flanagan, felt he had a reasonable prospect of conviction in respect of the charges involving the 13th victim and refused to resolve the matter on those terms[461]. In and around June 2000, a preliminary hearing took place in respect of the charges involving the 13th victim[462]. Subsequently, on March 26, 2001, the accused pled guilty to counts involving 3 victims, including the 13th victim[463]. On June 7, 2001, the accused pled guilty to counts involving the remaining 10 victims[464]. In total the accused pled guilty to 18 counts involving the 13 victims.

On June 7, 2001, Flanagan sought an Order for an Assessment under section 752.1 of the *Criminal Code of Canada.* Under section 752.1, the Court may order an individual remanded for an assessment period not exceeding 60 days where the offender has been convicted of a number of serious personal injury offences and the court is of the opinion that there are reasonable grounds to believe that the offender might be found to be a dangerous offender or a longer term offender:

> "… where the court is of the opinion that there are reasonable grounds to believe that the offender might be found to be a dangerous offender under section 753 or a long term offender under 753.1, the court may, by order in writing, remand the offender, for a period not exceeding 60 days to the custody of the person that the court directs who can perform an assessment, or can have an assessment performed by experts. The assessment is to be used as evidence in an application either under 753 or 753.1."

Justice Chilcott granted the Order, which was consent to by the accused, and ordered the accused remanded into the custody of Dr. Klassen, at the Centre for Addiction and Mental Health Assessment and Triage Unit, Toronto, for an assessment[465].

On March 22, 2002, the Crown gave Notice that it was bringing an Application under section 753 of the *Criminal Code of Canada* to declare the accused to be a dangerous offender and impose on the accused a sentence of detention in a penitentiary for an indeterminate period *in lieu* of any other sentence that may be imposed with respect to the conviction of the accused. The Attorney General's Consent to the proceedings was given on March 27, 2002[466].

The Dangerous/Long-Term Offender hearing was held on April 10 and 15th, 2002. The evidence the Crown relied upon at the hearing included the following: the prior criminal record of the accused; the testimony and psychiatric assessment reports of Dr. Klassen; the testimony of Stewart Rousseau, the accused's probation officer; the evidence of Rory Evans, school bus driver and prior co-worker to the accused; and the Victim Impact Statements of 8 of the 13 victims, as well as Victim Impact Statements from 2 prior victims of the accused (related to his prior criminal record)[467].

On April 10, 2002, Dr. Klassen testified that it was his opinion that the accused, rather than being a dangerous offender, was a long-term offender. Further, Dr. Klassen was of the opinion that while there was a substantial risk that the accused may re-offend, "there is a reasonable possibility of eventual control of the risk in the community"[468].

On April 15, 2002, the Crown and defence counsel made submissions to the Court in respect of the Application and sentence. In light of the evidence, particularly the forensic evidence of Dr. Klassen, the Crown agreed that the accused was a long-term offender and sought 10 to 12 years in a penitentiary. The Crown also sought a long term supervision order under section 753.1(3)(b) of the *Criminal Code of Canada,* as well as other conditions to be imposed in respect of the sentence. The defence sought a sentence of 4-5 years (crediting the accused with approximately two years for time spent in pre-sentence custody)[469].

The Crown cited the following aggravating factors in support of his sentencing position:

1. Prior criminal record of the accused;
2. Some of the offences were committed while he was on probation and another offence was committed while he was in treatment;
3. Exploitation of children over a period of approximately 13 years;
4. Numerous incidents with some of the victims;
5. Many instances of grooming;
6. Offences were committed against disadvantaged people, some from dysfunctional homes; and
7. The repugnance of some of the offences[470].

In addition to a number of supervisory conditions to be imposed on the accused, including the accused have no contact with a person under the age of 18 years, Flanagan requested that the accused served one half of the sentence of the court before becoming eligible for parole[471].

On April 22, 2002, Justice Chilcott agreed that the accused did not meet the criteria for dangerous offender status and was of the opinion that the accused was a long-term offender. Justice Chilcott sentenced the accused to a global sentence of 8.5 years (10 years with a reduction of 18 months for a pre-sentence custody of 10 months); ordered that half of the sentence of the court must be served before the accused is released on full parole; and issued a DNA order and a 10 year long-term supervision order[472].

Justice Chilcott also recommended that the parole board consider implementation of the following additional conditions in the long-term supervision order (as recommended by the Crown):

1. That the accused abstain from alcohol and any controlled drug or substance, and not have either in his possession or control;
2. That the accused seek and accept treatment with Dr. Klassen or designate;
3. That the accused take whatever treatment or medication that may be prescribed by the doctors to him for sexual deviance;
4. That the accused not be in the presence of anyone under the age of 18 yrs; and
5. That the accused be subject to random drug testing by the board[473].

Victim/Witness Support

All the victims/witnesses involved in the prosecution were advised of Victim/Witness Assistance Program services available for Project Truth prosecutions[474]. However, the majority of the victims/witnesses advised Louise Lamoureux of the Victim/Witness Assistance Program that they were more comfortable dealing Officer Dupuis[475]. One victim was provided full Victim-Witness Assistance Program services including: referrals to counselling, court preparation and explanation, updates as to court proceedings, assistance in respect of preparation of a Victim Impact Statement, etc.[476]

All the victims were provided with Victim Impact Statement forms to fill out for the Dangerous/Long Term Offender hearing on April 10, 2002[477]. At the hearing, Victim Impact Statements were filed for 8 of the 13 victims involved in the prosecution and two additional Victim Impact Statements were filed, for the prior victims of the accused, as an aggravating factor in respect of the sentence[478].

Two victims relating to this prosecution testified at the Inquiry. They both recall meetings with a “female” crown and preparing a Victim Impact Statement for the hearing on April 10, 2002[479]. One of the victims testified that she was unhappy that the Crown read her statement in court when she had stated that it was her preference to do so[480].

Flanagan testified that it was his normal practice to allow victims the opportunity to read in their statements should they wish to, save and except when there are comments in the statement that are not appropriate and may have to be edited out[481]. Flanagan had no specific knowledge or recollection of this victim's request, it is highly likely that the request was not made and/or not communicated to him[482].

Neither Genier nor Wilhelm were called upon to testify at the Inquiry. Although Seguin testified at the Inquiry, he did not speak in great detail about the prosecution of Jean-Luc Leblanc.

The Ministry's Position

Firstly, it is the Ministry's position that all the Crown's decisions in respect to this prosecution were reasonable and made in accordance with the applicable Crown policies.

Secondly, Wilhelm was not called to testify at the Inquiry, therefore it is the Ministry's position that no adverse findings can be made against her in respect of this matter.

4. NON-PROJECT TRUTH INVESTIGATIONS AND PROSECUTIONS

(a) Advice to CAS

Overview

The Inquiry heard evidence from Thomas O'Brien, retired Executive Director of the Children's Aid Society of Stormont, Dundas and Glengarry ("CAS"), O'Brien joined the CAS in 1963 as a social worker and became Executive Director in 1966, a position he held until his retirement in 1990. [483]Among other things, O'Brien testified about his contacts with the Cornwall Crown's Office and the advice he sought and received ion behalf of the CAS.

O'Brien testified that during that time, (1963-1990), the CAS did not have a policy designed to provide guidance as to when the CAS would report matters to the police such as reports of abuse of child in care.[484] O'Brien testified that that most interactions between the CAS and the Crown's Office or the police were done through him personally. O'Brien had personal relationships with people in many institutions and he used that network on behalf of the CAS to get the in input he felt was appropriate. [485]

O'Brien testified Cornwall is a small city and he felt very comfortable in going directly to the Crown for advice (92). His practice of consulting directly with the Crown began in the early 1960's with Percy Milligan, the Crown Attorney that

preceded Don Johnson. O'Brien indicated that he had a personal relationship with Mr Milligan and that he trusted and respected him:

> "I knew Percy Mulligan as a Crown attorney before I knew him socially. I knew -- he was the only Crown attorney in Cornwall. He understood the law. He was a lawyer. He could give me advice and we knew each other well enough to -- he was pretty straightforward with me. He'd tell me where to go and what to do if he
> felt like it. But I respected him.
>
> And I continued that kind of friendly and business relationship with Crown attorneys. To me it seemed perfectly natural. I didn't see anything wrong with it."[486]

O'Brien testified that this personal, informal approach continued when Mr Johnson became the Crown Attorney[487]. O'Brien was aware that when he sought the advice of the Crowns it was necessary for him to provide full and complete information and that the value of the opinion obtained depended on him providing accurate and complete facts.[488]

O'Brien testified he sought the assistance of the Crown if he felt he needed to know the applicable law better in order make a decision as to what course to take[489]. There were also times when he went directly to the police and testified that he had a habit of getting together with the Cornwall Chief of Police to discuss contentious issues. [490]At one point he testified that could not recall being told by the Crown to bring his information to the police. However he also testified that he sought the Crowns' input on many occasions throughout the years when he was the CAS Executive Director, but could not, understandably, remember the specifics of all of those occasions.[491] Except for the three matters noted below,

the Inquiry has no information on the many matters on which O'Brien sought Crown assistance and it is possible, perhaps even likely, that the Crown would have recommended that O'Brien contact the police in cases where criminal activity was suspected.

O'Brien's description of the CAS's relationship with the Cornwall Crown's Office was reflective of the more informal atmosphere that prevailed at that time. The CAS had no protocol as to when to seek police assistance. It was apparently the CAS's practice at that time to leave that decision to O'Brien's' judgment. However, it appears that O'Brien had an effective relationship with both the Cornwall Police Service and the local Crown Attorney which allowed him quick and ready access to advice when required.

Whatever advice was sought or given, OBrien made it clear in his testimony that he respected and valued the assistance he received from the Crown's Office over the years.

It is entirely possible that O'Brien's letters to the Ministry reflect only the portion of the Crown's advice that confirmed his own opinion and that he left out the suggestion the Crowns may have made to the effect that the police should be notified.

It should also be noted that these discussions directly between O'Brien and the Crowns appear to have been a local practice developed before the CAS had a protocol concerning when to contact the police and in the context of a small town where officials are well known to each. The practice appears to have started with Percy Mulligan who was personally known to O'Brien and continued when Mr. Johnson was the Crown Attorney. There is no evidence before to suggest that the practice continues today.

With respect to the keeping or notes and records, it appears that the Crown involved in the meetings with the CAS either did not make notes or open a file or, if they did they are no longer available. The Ministry's current Practice Memorandum concerning the relationship between police and the Crown contains specific guidance on the recording in written from the advice provided to police by Crowns.

(i) Second Street Group Home/Lapointe Prosecution

Overview

In August 1989 the Cornwall CAS became aware of allegations of historical abuse of Jeannette Antoine while she was a child in CAS care and placed in the Second Street Group Home, a facility operated by the CAS, in or around 1976.[492] Thomas O'Brien, the CAS's Executive Director at the time, spoke with Antoine and members of the CAS staff. O'Brien decided to alert the CAS Board and ask for a meeting with the Police and the Crown Attorney.[493]

That meeting to place on September 25, 1989. Although Crown Attorney Don Johnson has no recollection of that meeting, according to O'Brien's notes, Johnson attended along with the Deputy Police Chief St Loius and Inspector Rick Trew of the Cornwall police.[494] O'Brien explained the situation and stated that he had spoken to Antoine and offered to meet with her but she had not contacted him again and he was "in a quandary as to how to proceed." During the course of the meeting the fact that strapping was administered at the group home was discussed as well as the fact that strapping was not necessarily a criminal act. As a result of the meeting it was agreed that O'Brien would send a registered letter to Antoine letting her know about the CAS's complaints procedure and inviting Antoine to contact him. [495]

Apparently the CAS received a handwritten document from Antoine and located a located social worker's case note that suggested inappropriate sexual behavior by CAS staff when the group home was in operation. O'Brien again met with his staff and it was decided that in light of that additional information, the CAS would again contact the police.[496]

In October, 1989, O'Brien met with the Deputy Police Chief and provided him with the CAS's additional information. O'Brien also noted that around that same time he spoke to Johnson and told him that he had taken the matter back to the police and explained his reasons for doing so. O'Brien asked Johnson if he wanted a copy of the material, but Johnson stated that if the police were going to

conduct an investigation he would eventually be supplied with the information by the police and at that point there was no value in unnecessarily circulating sensitive material.[497]

The Cornwall Police assigned the investigation of Antoine's complaint to Constable Kevin Malloy in September, 1989. Malloy contacted Antoine, who met with her and asked to her to provide him with a written statement. Malloy testified that Antoine was not cooperative and it was only after requesting the statement several times that she finally provided him with one on February 5, 1990.[498]. Malloy found Antoine's complaint to be bewildering. It was difficult to get her to provide him with a written statement, he felt that she changed her story and he found it strange that Antoine only wanted to deal with the corporal punishment aspect of her complaint and not the allegations of sexual abuse.[499]

In her statement Antoine describes her experience at the Second Street Group Home and describes physical, verbal and sexual abuse that Antoine alleged she and other children experienced while at the home.[500]

The evidence brought out at the Inquiry indicated that after the CAS became aware of Antoine's allegations, it compiled certain relevant information from its own records, including notes from a case worker that which suggested that staff had engaged in inappropriate sexual behavior while the home was in operation. According to the CAS, those records were given to the Cornwall Deputy Police

Chief and Molloy's supervisor. Malloy testified that he was not given this information and was unaware of their existence.[501]

According to O'Brien, he spoke to Malloy on a couple of occasions in December, 1989 and Malloy reported that he had approached Antoine who advised that she wished to think about whether or not she wanted to carry the matter further. Malloy was apparently waiting for Antoine to provide a statement before taking any steps to investigate. O'Brien's notes indicated that Malloy intended to close the investigation before Christmas.[502] However, he did not close his investigation before Antoine arrived at police station on February 5, 1989 and provided him with her statement of that date.[503]

O'Brien's notes further say that O'Brien contacted Malloy on February 7, 1990 – two days after he received Antoine's statement. Malloy reported to O'Brien that he did not have sufficient evidence to proceed and that the Crown Attorney by telephone agreed with that decision. Malloy stated that he would be meeting with the Crown to go over the evidence but expected to be advised in writing of the Crown's agreement that no further action needed to be taken.[504] It appears that within two days of receiving Antoine's statement and without conducting any investigation, Malloy had decided that he had insufficient evidence to proceed and expected to get the Crown's agreement which would enable him to close the file.

It appears that after receiving the statement, Malloy made no attempt to locate the individuals mentioned in Antoine's statement. Although those people were either employees of the CAS or residents in the home, Molloy did not contact either Antoine or the CAS for information that would allow him to attempt to verify or corroborate Antoine's allegations.

Most strikingly, Antoine alleged that an employee of the home engaged in sexual impropriety with a fellow resident named Sandy and that the beatings that Antoine received from this same employee would stop if she had sex with him as well. Malloy neither attempted to locate Sandy or interview the employee.[505] Malloy testified that he was not being actively supervised by his superiors in the police force.[506]

According to Malloy, he felt that Antoine's statement lacked credibility and that her story had changed from his initial meeting with her. Without conducting an investigation and without having reviewed the CAS records, Malloy decided to consult with Johnson. Malloy testified that when he went to see Johnson he felt that all of his investigative leads had been exhausted.[507]

Malloy testified that he took no notes of the meeting because he believed that was not permitted to due to solicitor client privilege.[508] He testified that although he could not recall the specifics of the discussion with Johnson, he did remember that they discussed whether the corporal punishment described by Antoine

amounted to common assault or something more serious, and whether bringing common assault charges would be precluded by the limitation period that applied to summary conviction offences[509]. Other than that, it is not known what exactly was discussed, what information Malloy provided to Johnson (other than Antoine's Feb 5/89 statement), what advice was sought or what, if any, advice was given. However, as noted above, it is clear that Johnson was not provided with some very pertinent information that had been given to Cornwall Police Services.

As a result of his meeting with Malloy, Johnson wrote a letter dated April 4, 1990 to Norm Douglas, at that time Director of Crown Attorneys.[510] Johnson enclosed Antoine's statement. He stated that "Although there appears to some factual basis for further investigation, I cannot find any indication of specific dates when the alleged incident occurred, or any names and addresses of any witnesses whom may substantiate the allegations." That letter was copied to and received by Malloy.[511]

In that letter Johnson said that he was forwarding the information to Douglas so that "Should anything come to your attention with regard to this incident, the Ministry will have knowledge of the incident." Johnson said that he has not brought up the matter of laying charges with the Cornwall Police because names and dates are not available but should Douglas wish to discuss the possibility of laying charges, he would request a meeting with Malloy and himself.

At the Inquiry Johnson testified that the reason for the letter was to bring to the attention of the Ministry of the Attorney General the fact that allegations had been made involving the local CAS; a potentially sensitive issue involving another government agency. According to Johnson, if Douglas wanted to discuss the possibility of laying charges he (Johnson) suggested a meeting to discuss such issues such as the process for laying charges, what charges may be laid and whether the Cornwall Crown's office should conduct the prosecution since it would involve another Cornwall public institution and issues of conflict of interest would have to be considered. [512]

Douglas replied in a letter dated April 10, 1990. Douglas acknowledged that "we ought to be careful on these matters and have the police investigate every allegation of abuse. I would like you to make sure that the police begin an investigation if they have not already done so. Perhaps Constable Malloy can dig a little deeper to secure the specifics." [513] Johnson testified that he did not receive that letter and at that time had no "bring forward" system in place[514].

Malloy testified that he held his investigation in abeyance waiting for the reply from Douglas. That reply never came and, after attempting to follow up with Johnson, he closed his file. It did not occur to Malloy to dig a little deeper to get the specifics that Johnson said in his letter were lacking [515] The Antoine investigation was at an end.

Issues With Respect to Johnson's Advice to Malloy

By way of background, it appears that when Malloy went to see Johnson he was anxious to close this file. He found Antoine's complaint to be confusing and lacking in credibility and he found Antoine herself to be uncooperative. After waiting months for Antoine's written statement, within two days of receiving it and without carrying out an investigation, he informed the CAS Executive Director that he intended to close the file subject to a discussion with the Crown. He conducted virtually no investigation before seeing Johnson and apparently provided Johnson with little more than Antoine's statement.

There is no information available as to what was discussed at the meeting between Johnson and Malloy other than the limitations issue. There is no information as to what advice was sought or what, if any advice was given. It appears that Malloy was not asking Johnson for an opinion as to what charge should be laid or whether he had the legal basis to lay a charge. It is clear that at that point, no investigation had been conducted and that discussion would have been premature. It seems instead that Malloy was at a loss as to how to proceed with his investigation and was seeking some legal direction. In the circumstances it is submitted that there is no basis for concluding that Johnson's advice was inappropriate.

With respect to whether Johnson should have provided advice without requiring a full investigative brief, it appears clear that Malloy had not conducted and investigation and was seeking general pre-charge advice. The current Practice Memorandum states that a full investigative brief is recommended in only in cases where the police are seeking an opinion as to whether a legal basis exists to lay a criminal charge at the point of charge, that is, after an investigation has been conducted.

That does not appear to be the case here. Malloy had not begun an investigation and thus an opinion with respect to whether or not to lay a charge was premature. Malloy testified that he recalled discussing a limitations issue with respect to common assault charges and that appears to be a matter on which Johnson could appropriately provide advice without a full investigative brief.

The current practice also requires that to ensure that advice given by the Crown is not misunderstood, Crown Counsel should keep a record of the advice given by confirming the advice in a letter, reading the officer's notes or having them read back, obtaining a copy of the officer's notes to ensure their accuracy, or keeping contemporaneous notes of the advice. That is the <u>current</u> practice and it does not appear to have been Johnson's practice in 1990. However, it is submitted that Johnson was entitled to assume that Malloy would note the substance of his consultation. Johnson was unaware that Malloy had the

mistaken belief that he was not permitted to make a note of his consultations with the Crown.

It appears that Malloy was actually looking to Johnson for practical direction as to how to proceed with his investigation. That, of course, was outside M. Johnson's role.

Johnson wrote a letter to Douglas to let the Ministry of the Attorney General know that the Cornwall police were investigating potentially sensitive allegations of child abuse that involved the local CAS. He states in that letter that "there appears to be a factual basis for further investigation." However, Malloy apparently misinterpreted that letter as a request by Johnson for advice as to how Malloy should proceed with his investigation. Malloy neglected to conduct an investigation, waiting for a response that never came. It is submitted that this reveals a fundamental misunderstanding with respect to the investigative role of the police and the prosecutorial role of the Crown.

While it is true that Johnson did not follow up on his letter to Douglas, he was entitled to assume that Malloy and the Cornwall Police Force would continue its investigation appropriately. As Johnson pointed out, the Cornwall Police force did not take direction from the Crown on investigations. [516]

(ii) Lapensee Foster Home

On December 1, 1982, a CAS supervisor completed a Serious Occurrence Report indicating that Brian Lapensee had sexually molested girls in the Lapensee group home. The supervisor had apparently received a complaint from one female resident. He conducted some inquiries and concluded that due to similar reports by at least four other girls and "Brian's history," many if not all of the incidents did in fact occur. [517]

On December 2, 1982, a CAS caseworker wrote to Alice Lapensee, one of the home's operators, and enclosed the serious occurrence report. He stated that Brian was never to be allowed on the premises as long as adolescent girls were living at the home and that the CAS was to be notified if Brian moved back to the area.[518]

Also on December 2, 1982, O'Brien wrote to Robert Nadon, Programme Supervisor, Children's Services, Ministry of Community and Social Services, and enclosed a copy of the serious occurrence report. O'Brien stated that while "the sexual play itself may not be too serious, the fact that it did occur is serious." He informed Nadon that he felt the action taken by the CAS up to that appoint was appropriate and that there was no further risk of harm to the children in the home since Brian Lepenee had left the home and the area.[519]

He stated that he did not think that the investigation unit of the Ministry needed to become involved. He added that “While I do not expect any action to be taken on the part of the Crown Attorney or the Police, I have decided to discuss the whole matter with the Crown Attorney and have made an appointment with him.” [520]

On December 6, 1982, O’Brien again wrote to Nadon. O’Brien stated that he had a meeting with the Crown Attorney that day and that after a brief discussion and perusal of the report it was felt that no further legal action would be taken.[521]

Despite the CAS’s directive to Alice Lapensee, it appears that by December 20, 1982 Brian returned to the area and was living in his parent’s home. The CAS wrote to him on that date reminding him that he was not to have any further contact with any girl living in the home.[522]

On April 3, 1983 a female ward of the CAS stayed overnight at the Lapensee home and spent the next day with the Lapensee family to celebrate Easter. According to the ward, Brian made sexual advances toward her which resulted in a confrontation with Brian. The next day she purchased a bottle of aspirin and took 26 tablets. She was taken to the hospital and later acknowledged to a CAS worker that the earlier accusations made by other girls who had been at the home were. She had previously denied them because she had always been able to handle Brian and did not want to hurt his parents.[523]

On April 6, 1982 CAS officials decided to close the home because they could not afford to take further risk with Brian. It appears that the home was closed at or around that time.[524]

Nadon recommended to O'Brien that he again consult with the police or the Crown Attorney with respect to Brian.[525] On April 20, O'Brien met with Assistant Crown Attorney Alan Ain, now deceased.[526] On April 22, O'Brien sent to Ain a copy of the serious occurrence report. O'Brien stated in his covering letter that:

> While it is your decision as to whether charges should be laid, I would like to take the liberty of giving you my opinion which is that there would not be a necessity to pursue charges. I am basing my decision on three specific items – 1) the nature of the sexual advance does not seem too serious; 2) since the advance in question was one more in a series of inappropriate advances we see it as the "straw that broke the camels' back" and therefore decided to close the group home. The home is now closed, though because of a contract we must continue to pay until some time in June; and 3) all girls have been removed form this group home and the licence for the operation of it has been revoked by us.[527]

O'Brien also wrote to Nadon on April 22 saying that he had met with Ain and that it was his opinion that "there would be not be a point in pursuing charges against Brian Lapensee at this time."[528]

Johnson testified at the Inquiry and stated that he has no recollection of any discussions concerning the Lepenese group home.[529] Ain is now deceased and thus his recollection of the discussion that took place with O'Brien, the specific information provided to him, the advice sought and the advice given is not available.

(iii) Cieslewicz Foster Home

In 1972 Dora and Hans Cieslewicz applied to become foster parents. Their application was accepted and they began receiving children in April, 1973. The home was made a receiving home in November, 1977 and was closed in November, 1978 after allegations of sexual abuse were made by four female children against Hans Cieslewicz. [530]

According to Thomas O'Brien, the Executive Director of the Cornwall CAS at the relevant time, he has no independent recollection of the Cieslewicz foster home or the allegations against Hans Cieslewicz. All of his information comes from correspondence and notes made at or around the time that the allegations came to light and were addressed.[531]

In September, 1978, a CAS caseworker noted that several teenagers who had spent time at the home made allegations of abuse against Cieslewicz.[532] On October 31, 1978, O'Brien wrote to the Director of the Child Welfare Branch of the Ministry of Community and Social Services and described the incidents of abuse that had come to light.

He pointed out that two of the complainants had made similar allegations in the past involving relatives or other child care staff or residents. One of the complainants was described by O'Brien as a compulsive lair and he stated that

he doubts about the credibility of another since she openly made sexual advances to the male worker who apprehended her and related casually her many past sexual experiences. O'Brien stated that he will be meeting with the Crown that day. [533]

On November 1, 1978, O'Brien again wrote to the Director of Child Welfare and stated that he met with Crown Attorney Don Johnson and an Assistant Crown Attorney, Guy Demarco. O'Brien stated that "After considering the facts which we presented to him, Johnson was of the opinion that there was insufficient evidence to proceed with any charges against Cieslewicz." [534]

Mr Johnson testified at the Inquiry and stated that at this point, (31 years later), he could not recall meeting with O'Brien the Cieslewicz group home.[535] Mr Johnson has no notes concerning any such meetings. Mr Johnson stated that while he cannot recall meetings with O'Brien, his usual instruction would be "if you have sufficient evidence please call the police."[536]

O'Brien's evidence concerning his consultations with the Crown was confined to what was stated in the letters written by him at the time. Unsurprisingly, he appeared to have no recollection of the details of his discussion with the Crown. As a result, the Inquiry has no information concerning the specific information provided to the Crown, the nature of the questions asked, the context in which Johnson is said to have concluded that there was insufficient evidence to

proceed, or whether O'Brien's characterization of Mr Johnson's advice is accurate.

Issues Involving Advice Provided to the CAS

As stated above, due to the passage of time and the death of Ain, the Inquiry has no information as to whether O'Brien's characterization of the advice he received from the Crowns was accurate or complete. According to Johnson, his usual advice in these circumstances would be to take the matter to the police if the CAS felt the facts warranted an investigation.

O'Brien's meetings with the Crowns are described only in his letters to the Ministry of Community and Social Services, the Ministry which had a general responsibility to supervise the operation of the CAS. In the Cieslewicz case, O'Brien reports the matter to the Ministry but states that he had serious reservations about whether further proceedings should be taken due to the complaints' lack of credibility. In the Lapensee case he reports the matter to the Ministry but at the same time expresses his own opinion to Ain that there was no necessity to pursue charges, mainly because he felt that the matter had been adequately dealt with by his organization.

(b) Barque – 1982 Investigation

Overview

In April, 1982 the Area Manager, Probation and Parole, Ministry of Correctional Services received a complaint concerning probation officer Nelson Barque. The information suggested that Barque was involved in homosexual relationships with two probationers under his supervision and was supplying them with alcohol in violation of their probation orders. The Area Manager conducted his own preliminary investigation that included contacting and meeting with two Cornwall Police Service officers. The Cornwall Police Service did not undertake an investigation and the Area Manager submitted a report to the Ministry's Regional Administrator.

The Area Manager's report concluded that there was sufficient information to warrant a thorough investigation by the Ministry's Inspection and Investigation Branch. The report also suggested that if evidence was uncovered that supported the allegations that Barque be given an opportunity to resign. and should he resign no further action be taken by the Ministry.

The Ministry's Inspections and Investigation Branch conducted a more through investigation and produced a report dated May 13, 1982. The report indicated that Barque admitted he had engaged in homosexual activity with two probationers. One of the probationers admitted it and the other denied it. Barque

also signed a statement for the Ministry's Inspector saying that he supplied alcohol to both probationers knowing they were subject to probation orders prohibiting the consumption of alcohol. The report concludes by saying that since Barque resigned his position on May 4, 1982, "no further action by this Ministry is deemed necessary"

However, on June 14, 1982 the Ministry's investigator, McMaster wrote to Johnson enclosing a copy of his investigation report and stating that "We would also appreciate being advised of your decision in this matter." McMaster did not testify ant the Inquiry and Johnson has no independent recollection of the conversation that preceded McMaster's letter. It is therefore not clear precisely what decision McMaster was expecting Johnson to make. However, based on the letter described below, it is a fair inference that Johnson was being asked whether the information in the report would warrant criminal charges.

In a letter dated June 22, 1982, Johnson wrote to McMaster stating that he had reviewed the material and concluded that the evidence was insufficient to support criminal charges against Barque. Johnson said that that hat was based on the fact that Barque had resigned immediately when confronted with the allegations, one of the probationers was over the age of 21and therefore a charge under the Criminal Code would not succeed, and the other probationer denied any homosexual activity. Johnson noted that Barque, in a statement to McMaster, admitted to sexual activity with both probationers. However, as Johnson

explained in his testimony, that statement would likely be inadmissible in any trial against Barque.

1. Should Johnson have advised the Ministry of Correctional Services to refer the matter to the Cornwall Police Service for investigation?

As stated above, McMaster did not testify and, given the events occurred almost 27 years ago, Johnson has no recollection of any conversation with McMaster that occurred before McMaster supplied him with the investigative report. However, it appears that McMaster was requesting that the Johnson review his investigative report to determine if the facts McMaster had uncovered warranted criminal charges.

Johnson testified that McMaster was an experienced investigator with the Ministry of Corrections Inspection and Investigation Branch. McMaster conducted his investigation after the Ministry's Area Manager had conducted a preliminary investigation and asked the Ministry to assign an investigator to investigate thoroughly. The Area manager had already discussed the Barque situation with the Cornwall Police and that police force did not commence its own investigation.

In these circumstances Johnson was entitled to assume that McMaster's investigation was done reasonably and thoroughly. If Johnson had concluded that the facts did support criminal charges, McMaster would then have approached the appropriate police force to take appropriate action.

It should also be noted that these events occurred 27 years ago, before many of the Crown policies now in place existed. In this case Johnson was asked by a professional Ministry investigator to review his investigation with a view to determining whether the facts as he had found them warranted criminal charges. This request was made in the context of the day – at a time when the Crown Attorney was prosecuting provincial offences cases and advising Provincial Government Ministries with respect to their cases. As Johnson testified, he provided advice to other Provincial Government agencies (MTO, Ministry of Natural Resources) and in that context, Johnson's willingness to assist a Ministry of Corrections investigator is not surprising. As Johnson testified, the Ministry of Corrections had conducted its own investigation and wanted the Crown's assessment of the possibility of criminal charges. He provided his assistance in that regard just as he provided similar assistance to the Ministry of Natural Resources and the Ministry of Transportation.

It was suggested to Johnson that rather than reviewing McMaster's investigation, he should have instead told McMaster to take his investigative results to the police who would have then had the opportunity to conduct its own investigation. When that suggestion was put to Johnson he essentially pointed out that the facts as found by McMaster indicated that the situation did not support criminal charges and asking the police to investigate in such circumstances would have been fruitless.

2. Johnson Was Correct in Concluding that the Facts Found by McMaster did not Support Criminal Charges.

In Johnson's June 22, 1982 response to McMaster, he concluded that the evidence was insufficient to support criminal charges against Barque. Johnson elaborated on that opinion in his testimony.

He stated that said that according to McMaster's investigation report, the probationer who admitted having sex with Barque was 21 years old at the time. The sexual activity was apparently consensual. According to the law as it existed then, if the activity occurred between two consenting adults who were at least 21 years old, the charge of gross indecency would not apply. Later amendments to the Criminal Code introduced the possibility of charges in circumstances where there was abuse of a position of trust, but they were not available in 1982.

With respect to the other individual, there appeared to be no admissible evidence to establish sexually activity with Barque. The probationer denied sexual activity. Although Barque had admitted it in a written statement Barque gave to McMaster, Johnson felt that in all likelihood that statement would not have been admissible since it was given in circumstances where its voluntariness was very much in doubt.

In these circumstances Johnson concluded that the facts did not support criminal charges. He stated that while the fact that Barque has supplied alcohol to

probationers may have given rise to charges under the *Liquor Control Act*, his opinion was confined to possible criminal charges.

It is submitted that Johnson's opinion, based on the information provided to him was correct. Johnson was cross-examined on his opinion and it was suggested that the Ministry's investigation could have been more through or could have canvassed other aspects of Barque's involvement with the probationers. However, no issue was taken with Johnson's opinion that the facts as presented did not support any criminal charge.

(c) Leblanc – 1986 Prosecution

(i) Overview

In January, 1986 the Cornwall Police Service became aware of a complaint of sexual abuse involving Scott Burgess. The matter was assigned to Cornwall police officer Brian Payment for investigation.[537] Payment conducted an investigation which revealed evidence indicating that Jean Luc Leblanc had sexually abused three boys including Burgess.

Payment took statements from the three victims. He met with Crown Donald Johnson and at that meeting provided copies of the statements to Johnson. Johnson and Payment discussed the appropriate charges and it was agreed that one count of gross indecency would be laid with respect to each of the three victims.[538] According to Johnson, based on the evidence provided to him in the

Crown brief, he advised Payment that “the strongest evidence he had was gross indecency.”[539]

The first appearance took place on February 13, 1986, and the second appearance took place on May 13, 1986. On November 6, 1986 Leblanc pleaded guilty to two counts of gross indecency and the Crown withdrew the charge involving Scott Burgess.

Leblanc was represented by counsel who arranged for him to be examined by Dr. John Bradford, Associate Professor of Psychiatry at the University of Ottawa, an acknowledged expert in forensic psychiatry. Dr Bradford conducted a number of examinations and treatments and produced a report which was provided to the Crown and the Court. In his report, Dr Bradford stated that:

> “I believe a non custodial disposition with a Probation Order possibly with conditions of psychiatric treatment to allow more formal monitoring is likely the appropriate disposition in this case.”[540]

At the November 6, 1986 hearing, submissions were made with respect to sentence. No transcript of those submissions is available and it is not clear which Crown Attorney attended or, what submissions were made or whether the Crown argued in favor of a custodial sentence. However, the Court appears to have closely followed Dr Bradford’s suggestion. The Court ordered that LeBlanc be placed on three years probation with a condition that he engage in counseling to be arranged by the Probation Office.[541]

(ii) Issues with the Leblanc Prosecution

1. Was the decision to proceed with three counts of gross indecency correct ?

Johnson reviewed the Crown brief prepared by Cornwall Police officer Payment. According to Payment, after some discussion with Johnson, they agreed to one charge of gross indecency in respect of each of the three complainants. The charge was drafted by Payment and in each case the charge alleged that during the relevant time period, Leblanc committed an act of gross indecency. The evidence indicated during the relevant time period acts occurred on a continuing basis and it may have been more accurate if the information had stated that during the relevant period LeBlanc committed acts of gross indecency.

In testifying before the Inquiry, Johnson pointed out that the information was drafted by Payment although he acknowledged that it would have been possible for the Crown to amend it to more accurately reflect the evidence.[542] However, in Johnson's opinion, the wording of the information did not weaken the Crown's case. The case proceeded by way of a guilty plea and the facts contained in the Crown Brief would normally be read in. The Crown Brief indicated that the acts continued during the relevant period, thus the fact that the sexual activity between LeBlanc and the victims was not confined to one occasion would have been before the court and available to take into account for sentencing purposes.[543]

Johnson was also questioned as to whether gross indecency was the appropriate charge in these circumstances. Given the large difference in age between LeBlanc and his victims, it was suggested that other charges based on LeBlanc abusing a position of trust with respect to his victims would have been more appropriate.

Johnson's evidence was that he reviewed the Crown Brief and it was his professional opinion that the evidence most strongly supported the charge of gross indecency. He concluded that the evidence did not support a charge based on LeBlanc being in a position of trust with respect to his victims. Johnson acknowledged that the law in this regard has evolved since 1986 and today there may well be situations where a large disparity in age between an adult and a child by itself could support a finding that a position of trust existed. However, Johnson's analysis was based on the law as it existed in 1986 and it was his professional judgment that the charge of gross indecency was appropriate. There was no evidence brought before the Inquiry to contradict that point.

2. The Undertaking upon release and the Probation Order made upon sentencing failed to contain a provision prohibiting Leblanc from having contact with the complainants.

With respect to the Undertaking upon release, Constable Payment testified at the Inquiry that the Undertaking was prepared by the Cornwall Police Service without seeking any from the Crown.[544] With respect to the probation Order, Johnson testified that a provision prohibiting Leblanc from having contact with the

complainants were usual and at the time this prosecution took place and Crowns would normally ask for their inclusion. Johnson had no recollection of this particular case and he was not the Crown who appeared on sentencing. He pointed out that no transcript of the sentencing hearing was available so it was impossible to know whether or not such a term was requested by the Crown and rejected by the trial judge.

Johnson acknowledged that during 1986 there was no formal procedure in the Crown's office to review Undertakings and Probation Orders to ensure that they all contained appropriate terms.

3. LeBlanc was pled guilty to the charges involving two victims but the charge involving Scot Burgess was dropped. According to Scott Burgess he was never informed by either the Crown's office of the police that the charge involving him was withdrawn.

Johnson had no specific recollection of this case; however he testified that in 1986 he probably consulted with the investigating officer before deciding to withdraw a charge. He speculated that in this case the decision to withdraw may have been based on considerations of the complainant's ability to provide testimony and withstand cross-examination.[545]

According to Johnson, all contact with the victims in the case of a negotiated resolution would be with the investigating officer. Officer Payment testified that in this case, after charges were laid he was in contact with the Burgess victims but

not the third victim. He stated that at that time, unfortunately, often the police did not get back in touch with victims or their families. [546]

(d) R. v. Marcel Lalonde and Related Investigations

This prosecution and related investigations were contemporaneous to, but never classified as a Project Truth prosecution or investigations by the OPP. All Crown counsel involved in these matters acted in accordance with all applicable crown policies. Further, Crown counsel with primary carriage of the prosecution and who provide opinions in respect of the investigations were not called as witnesses at the Inquiry, therefore it is the Ministry's position that no adverse findings can be made against them in respect of these matters.

(i) R. v. Marcel Lalonde Prosecution

Overview

Allegations in respect of Marcel Lalonde, a former Teacher at St. Bishop MacDonell School, by C-68 were investigated by OPP Project Truth Officer Donald Genier because the offence occurred in OPP jurisdiction, not because it was classified as a Project Truth matter[547]. Charges were laid in respect of these allegations on January 8, 1997. Subsequent allegations by other victims were investigated by Cornwall Police Service Officers Bryan Snyder and Rene Desrosiers and charges were laid in respect to these allegations.

Marcel Lalonde was charged in total with 14 counts relating to 7 victims. The matter was referred to the Brockville Crown Attorney's office in and around May 1997, and assigned to Crown Counsel Claudette Breault (formerly Wilhelm) in and around August 1997. The matter proceeded to a preliminary hearing (Jan. 13-16, 1998) and a trial (Sept.11-13, 18-19, 21-22, 26-28, Oct.4-5, 2000). On November 17, 2000, the accused was found guilty of 6 counts involving 4 of the victims[548]. Submissions as to sentence were made on April 12, 2001, and on May 3, 2001, Justice Metivier sentenced the accused to a 4 month custodial sentence followed by a consecutive sentence of 9 months less a day of a conditional sentence with terms[549].

Dunlop Disclosure and Other Pre-trial Issues

During the course of their investigation, Officers Snyder and Desrosiers became aware that Officer Dunlop of the Cornwall Police Service may have had some contact with witnesses involved in the Lalonde matter, in particular C-8, a victim whose allegations became the subject of charges against Lalonde[550]. Twice in March and once in April of 1997, Snyder attempted to obtain a statement from Dunlop in regards to his contact with C-8. A willstate, dated April 16, 1997, was eventually obtained by Snyder[551]. April 29, 1997, Lalonde is charged by Desrosiers in regards to allegations arising from Snyder's investigation.

On August 7, 1997, Project Truth Officers, Tim Smith and Pat Hall and Officer Trew of the Cornwall Police Service meet with Dunlop. Project Truth had

commenced and they request that Dunlop turn over all materials in relation to sexual assault cases by August 15, 1997. On October 10, 1997, Dunlop provides a binder entitled “Dunlop Notes” to OPP Project Truth Officer Genier[552].

At the Lalonde preliminary hearing, on January 13-16, 1998, the defence called Dunlop as a witness. Dunlop testified about his knowledge of the matter, specifically his contact with the victims. He advised the court that he had turned over all of his notes to the police and that C-8 (a complainant in the prosecution) did not make any disclosure to him during the period of June 1996 and January 1997[553].

The Crown cross-examined Dunlop. She advised him that all the disclosure she had from him was a will-state dated April 16, 1997, and asked him if he had any additional disclosure. He stated that he did and agreed to provide the additional disclosure to her[554]. After the preliminary hearing the accused was committed to stand trial. Wilhelm signed an Indictment charging the accused with 14 counts involving 4 victims and a trial was scheduled for October 4-22, 1999.

On January 16, 1998, Wilhelm asked Officer Desrosiers to get any Dunlop notes pertaining to meeting(s) he may have had with C-8[555]. Soon after Desrosiers met with Dunlop and made the request for any notes or newspaper articles. No disclosure was forthcoming[556].

On March 9, and April 14, 1998, defence counsel wrote to Breault (Wilhelm) requesting disclosure of Dunlop's notes[557]. Breault (Wilhelm) forwarded both disclosure letters to Officers Genier and Desrosiers. On May 4, 1998, Genier and Desrosiers forwarded to Breault (Wilhelm) the Dunlop Notes previously disclosed by Dunlop to Project Truth officers on October 10, 1997. These were provided to defence counsel shortly thereafter[558].

September 27, 1999, defence counsel requested any Dunlop notes in regards to C-8, and then on September 30, 1999, made a more specific request for Dunlop notes in regards to C-8, dated September 1, 1996 and December 12, 1996[559]. Breault (Wilhelm) referred the request to Desrosiers who in turn requested the assistance of S/Sgt. Brunet in obtaining the disclosure[560].

Wilhelm also wrote a letter to Hall, dated September 29, 1999, advising that Dunlop may have notes from C-8 between the period of June 1996 and January 1997[561]. In the meantime, trial preparations with the victims and Wilhelm and Desrosiers took place on September 29 and 30, 1999.

On October 1, 1999, Desrosiers received 3 pages of notes from Officer Garry Lefebvre of the Cornwall Police Service, who had received them from Dunlop on the same date[562]. They were notes Dunlop had taken with respect to an interview with C-8 on December 12, 1997[563]. They were forwarded to defence counsel by the Crown shortly thereafter. On October 4, 1999, defence counsel

requested an adjournment in order to obtain full Dunlop disclosure. The trial was adjourned to September 11, 2000.

On October 5, 1999, the Crown wrote to Hall and requested that he make further attempts to obtain Dunlop's notes and ask Dunlop not to contact the complainants involved in the case[564]. On that date, she also began reviewing the Project Truth Dunlop boxes of disclosure for materials that may be relevant to the Lalonde prosecution and disclosed them to defence in and around October 7, 1999[565].

On October 28, 1999, Hall responded to the Crown's letter of October 5, and advised her that Dunlop had assured Project Truth Officers that he had provided all disclosure relating to the investigation and he had "no reason to believe otherwise at this time". He further states that it would not be prudent for him, as "the officer in charge of Project Truth to become involved with Dunlop in matters that are not subject to our investigation[566].

On November 8, 1999, Wilhelm asked Genier to obtain full disclosure from Dunlop again, she advised him that Dunlop was meeting with complainants in the Lalonde prosecution and requested that they tell Dunlop not to contact the complainants[567].

On December 21, 1999, the Crown provided Officer Derochie comments on an Order to require Dunlop to provide disclosure related to the Lalonde prosecution. On January 10, 2000, Derochie issued an Order to Dunlop which included that all evidence in respect of the Lalonde investigation be disclosed to Breault Wilhelm[568].

Between February 18, 2000 and September 5, 2000, defence counsel made several more requests for disclosure which the Crown forwarded to Desrosiers and Genier, and which resulted in the disclosure of Dunlop materials to defence counsel.

Trial preparation began in early September 2000. During the course of a trial preparation interview with C-8 and Desrosiers and Wilhelm, C-8 revealed that he had lied at the preliminary hearing and in fact, no sexual assaults by Lalonde had occurred on school property. His sworn statement to Dunlop and his testimony at the preliminary hearing were false[569]. Wilhelm reassessed the charges against Lalonde involving C-8 and concluded that there was a reasonable prospect of conviction in respect of the charges.

Trial and Sentencing Hearing

The trial commenced on September 11, 2000. C-8 was called as a Crown witness and testified on September 19, 2000. On November 17, 2000, the accused was found guilty of 6 counts involving 4 of the victims, including C-8[570].

Submissions as to sentence were made on April 12, 2001. On May 3, 2001, Justice Metivier sentenced the accused to a 4 month custodial sentence followed by a consecutive sentence of 9 months less a day of a conditional sentence with a number of imposed optional terms.

Victim Witness Support

All of the victims were offered Victim/Witness Assistance Program services throughout the prosecution, including preparation for the preliminary hearing, the trial and sentencing, and court attendance[571]. Two of the victims testified at the Inquiry. One witness recalled being prepared for the preliminary hearing by a female crown who reviewed court process and procedure and his statements to the police[572]. He also recalls being offered victim witness support and counselling and that a Victim/Witness Assistance Support worker offered to accompany him at the trial but he declined[573].

C-8, the only other victim to testify at the Inquiry, did not testify about being offered victim/witness assistance program service. However, there are V/WAP notes that indicate that such services were offered and they were turned down - that C-8 told the V/WAP worker that he wish to “go it alone”[574].

The Ministry Position

Firstly, it is the Ministry's position that all the Crown's decisions in respect to this prosecution were reasonable and made in accordance with all applicable Crown policies.

Secondly, the Crown with carriage of this prosecution, Wilhelm was not called to testify at the Inquiry, therefore it is the Ministry's position that no adverse findings can be made against her in respect of this matter.

(ii) Nadeau Threats Investigation

On or around September 2000, Project Truth officers Genier and Dupuis investigated Nadeau regarding C-8 allegations, amongst other things. C-8 alleged that Nadeau made a threatening phone call to him, that he wanted C-8's authorization to put his Victim Impact Statement on Nadeau's website and that Nadeau also wanted him to get involved in a civil lawsuit. Nadeau was interviewed on September 15, 2000, in regards to C-8's allegations. [575].

Wilhelm reviewed all of the statements in respect of C-8's allegations and provided a written pre-charge opinion to Hall on October 25, 2000. In her opinion, the telephone calls do not fall under criminal harassment such as to cause one to "fear for their safety or the safety of anyone know to them", as such there are no charges to be laid in respect of the matter[576].

Both the applicable Crown Policy at the time and the current Crown Policy state that the pre-charge role of the Crown is advisory in nature and not directive or supervisory. It recommends that when advice is given to the police that steps are taken to ensure that the advice given is not misunderstood, whether that be by keeping a written record of that advice or obtaining and verifying a copy of the officer's notes[577].

Furthermore, the Crown Policy affirms that the final selection of an appropriate charge and the decision to lay the information must both be made by the police. It is recommended that to protect the independence of both the police and the Crown, in difficult cases, though not practical in every case, the police be required to provide a written investigative brief and where feasible the Crown's advice be provided in writing[578].

The Ministry Position

Firstly, it is the Ministry's position that the decision to lay a charge is within the sole discretion of the police and the pre-charge role of Crown counsel is purely advisory.

Secondly, it is the Ministry's position that the Crown's advice to the police in respect of this matter was made in accordance with the applicable crown policies.

Thirdly, Wilhelm was not called to testify at the Inquiry, therefore it is the Ministry's position that no adverse findings can be made against her in respect of this matter.

(iii) C-8 Perjury Investigation

In the fall of 2000, Officer Garry Lefebvre of the Cornwall Police Service began investigating C-8 for perjury in relation to C-8's testimony at the Lalonde preliminary hearing on January of 1998[579]. At the preliminary hearing C-8 testified that he had been sexually assaulted by Lalonde while on a school trip in Toronto. This was consistent with a prior sworn statement he gave to Dunlop.

In early September of 2000 during a trial preparation interview with Desrosiers and Wilhelm, C-8 revealed that he had lied at the preliminary hearing and that in fact, no sexual assaults by Lalonde had occurred on school property. His sworn statement to Dunlop and his testimony at the preliminary hearing on that point were false[580].

On October 4, 2000, C-8 was interviewed by Officer Lefebvre and when questioned about any undue pressure Dunlop may have exerted upon him, C-8 responded that he felt "obligated" to "please" Dunlop, who had "pushed and pushed and pushed"[581], by stating that he was sexually assaulted while on a school trip to Toronto when it actually occurred in Cornwall[582].

C-8 testifed that prior to speaking to Desrosiers and Wilhelm he was “too embarassed’ to reveal that he had lied to anyone[583]. Desrosiers testified that during the meeting when it became clear that C-8 had perjured himself, the Crown left the room, likely to avoid becoming a witness[584]. Charges were never laid in regards to this investigation and Officer Lefebvre was never called to testify at the Inquiry.

The Ministry’s Position

There is very little evidence in the record with respect to this matter and no evidence of any Crown involvement. As such we take the position that no adverse findings may be made against any Crown in respect of this matter.

(iv) Dunlop Investigations: Disclosure and Perjury

Crown Opinion re Disclosure Request

On October 29, 1999, S/Sgt. Derochie of the Cornwall Police Service met with Crown counsel, Marc Garson, Director of Crown Operations, Western Region, and requested a legal opinion on three issues involving Dunlop:

1. What are the requirements of the Cornwall Police Service at law to ensure full disclosure has been made?
2. What is the Crown’s responsibility in this mater? And
3. What are the next steps to be taken?

On November 19, 1999, Garson provided Derochie with a written legal opinion. With respect to issue 1, Garson reviewed the law in respect of Crown and police duties regarding disclosure and the facts of the case. In his opinion, the Lalonde investigating officer should take immediate steps to have Dunlop comply with Crown's disclosure requests by a set date. Should Dunlop not comply, it was his recommendation that the officer speak to the Crown about bringing the matter before a Judge or Justice for a formal judicial review of the issues[585]. He declined to comment on the issuing of orders or directives to police officers or *Police Service Act* charges[586].

With respect to issue 2, Garson reviewed the law in respect of the Crown's onerous and continuing obligation to disclose all relevant materials to the accused. In his opinion, the actions of Wilhelm in requesting disclosure from the police and seeking answers of Dunlop at the preliminary hearing are efforts to meeting her disclosure obligations and she must continue to make additional requests[587].

With respect to issue 3, Garson reiterated that it was not the role of the Crown to advise police how to regulate the conduct of an individual officer. However, he encouraged Derochie to get the investigating officer to meet with Dunlop as soon as possible and to keep written confirmation of all Dunlop contact. Regarding the potential criminal investigation of the inconsistencies between the testimony of Dunlop at the preliminary hearing and the subsequent disclosure of materials by

Dunlop, he opined that it may be a conflict for the Cornwall Police Service to do the investigation and if they decide that it merits investigation, an external police agency should probably do it[588].

Crown Opinion re Perjury

On December 17, 1999, Chief Repa of the Cornwall Police Service made a verbal request to Chief Ford, of the Ottawa-Carlton Police Service, for assistance in conducting an investigation of Dunlop[589]. Subsequently, Sgt. Rolland Lalonde of the Ottawa-Carleton Regional Police Service conducted an investigation of Dunlop pertaining to his testimony at the Lalonde preliminary hearing.

On July 3, 2000, Sgt. Lalonde provided Garson with two volumes of investigative materials and requests an opinion in respect of perjury charges arising from three statements Dunlop made at the Lalonde preliminary hearing on January 15, 1999:

1. That Dunlop did not know the name of the individual who first provided him with C-8's name;
2. That he had turned over all of his notes with respect to contact with C-8 in June of 1996 to the authorities prior to the preliminary hearing; and
3. That C-8 did not make any detailed disclosures about Lalonde to Dunlop during the time period of June 1996 and January 1997[590].

On July 14, 2000, Garson provided a written legal opinion to Lalonde[591]. In it he conducted a full assessment of the reasonable prospect of conviction for a charge against Dunlop for perjury. He reviewed the law and the elements of the

offence of perjury and states, among other things, that in a charge for perjury the Crown is required to prove intent to mislead beyond a reasonable doubt and that it is not sufficient to show mere recklessness as to the truth of the statement[592].

He also advised that even if all elements of perjury are met, section 133 of the *Criminal Code of Canada* prohibits a conviction for perjury upon the evidence of a single witness unless that evidence is corroborated in a material particular by evidence that implicated the accused, and the section has been interpreted to mean that two witnesses are required by the Crown to prove the offence[593].

Garson concluded that, having regard to the law and the evidence, in his opinion there was no reasonable prospect of conviction for each of the three utterances in question[594].

Garson also advised Lalonde that it appeared to him that there is information contained in Dunlop's materials that may be relevant to other matters in addition to the Lalonde prosecution, which should be forwarded to the appropriate Crown counsel so that they can make timely and appropriate disclosure decisions. He also reminds Officer Lalonde that ultimately the decision to lay charges rests solely with the police[595]

Crown Policy re Pre-Charge Opinions

Both the applicable Crown Policy at the time and the current Crown Policy state that the pre-charge role of the Crown is advisory in nature and not directive or supervisory. It recommends that when advice is given to the police that steps are taken to ensure that the advice given is not misunderstood, whether that be by keeping a written record of that advice or obtaining and verifying a copy of the officer's notes[596].

Furthermore, the Crown Policy affirms that the final selection of an appropriate charge and the decision to lay the Information must both be made by the police. It is recommended that to protect the independence of both the police and the Crown, in difficult cases, though not practical in every case, the police be required to provide a written investigative brief and where feasible the Crown advice be provided in writing[597].

The Ministry's Position

Firstly, it is the Ministry's position that the decision to lay a charge is within the sole discretion of the police and the pre-charge role of Crown counsel is purely advisory.

Secondly, it is the Ministry's position that the Crown's advice to the police in respect of this matter was made in accordance with the applicable Crown policies.

Thirdly, Garson was not called to testify at the Inquiry, and therefore it is the Ministry's position that no adverse findings can be made against him in respect of this matter.

(e) Other

(i) Greggain Investigation

In January 2003, Carroll spoke with Assistant Crown Attorney Simard about allegations of historical sexual abuse made against Gilf Greggain by Marc Latour. Simard advised Carroll that the Cornwall Crown Attorney's office would require a full investigative brief. Carroll delivered a brief and videotape statements to the office for review.

Simard and MacDonald decided to "scrum" the file, that is, they reviewed the evidence together and determined a legal opinion on behalf of the office. MacDonald spoke to Carroll and advised that they were of the opinion that there was no reasonable prospect of conviction and that they agreed with Carroll's determination that there were no reasonable and probable grounds. Carroll's notes indicated MacDonald identified credibility issues and lack of corroborating evidence as being some of the reasons for the conclusion that there was no reasonable prospect of conviction.

On February 12, 2003, Carroll wrote a letter to MacDonald confirming that MacDonald's office sees no reasonable prospect of conviction should charges be

laid against Greggain and that MacDonald endorses Carroll's belief that reasonable and probable grounds to believe a sexual assault was committed do not exist.[598]

(ii) Deslauriers Prosecution

Father Gilles Deslauriers was charged by the Cornwall Police with several counts of gross indecency and indecent assault for incidents ranging back to the 1970s and early 1980s with respect to seven complainants. The Crown with carriage of the prosecution was Rommel Masse. Father Deslaurier's preliminary inquiry was held in Cornwall on September 15-17, 1986, and on September 18, 1986 he was committed to stand trial by Mr. Justice Paris on 11 counts.[599]

Benoît Brisson, one of the complainants in this matter, testified at the Inquiry. Brisson testified that he understood that Deslauriers pleaded guilty at some time after the preliminary inquiry was concluded, and that he was not consulted about a possible guilty plea on the part of the accused. He was only told after the fact by the police officers that Deslauriers got a suspended sentence with two years' probation. He did admit that his goal was not to see that Deslauriers was punished, but to ensure there were no other victims. In cross-examination, Brisson admitted that he had an excellent working relationship with the police, that they contacted him many times during the investigation to keep him informed, and that he would have felt comfortable contacting them with any questions about the process.[600]

There was no Crown policy in effect at the time regarding Crown contact with complainants. The general practice at the time was to leave such contact up to the investigating officers, who would contact complainants to advise them of the progress of their case.

This matter did not go to trial, as there was a pre-trial before Forget J. on October 20, 1986. Forget J. would not try this matter since he knew several of the people involved. Forget J. did say that if the accused pled guilty to some of the offences, he thought an appropriate sentence would be 15 to 30 days consecutive for each count, and Masse indicated that that would be "most favorable" to him. Justice Gratton from Sudbury was assigned to be the trial judge, and it was agreed to have a pre-trial before Gratton J. on November 10, 1986.[601]

After the pre-trial, Deslauriers pleaded guilty to four counts of gross indecency, and the other charges were withdrawn. Gratton J. gave Deslauriers a suspended sentence with two years' probation. Masse was dissatisfied with the sentence. He had requested some jail time, because the conduct involved a blatant breach of trust by the accused. He immediately sent a letter to the Director of Crown Law – Criminal requesting that they consider an appeal.[602]

In December 1986, Masse received a response back from Crown Law – Criminal advising that no appeal would be taken.[603]

(iii) Desjardins Prosecution

Overview

Larry Seguin and his mother, Juliette Seguin, testified at the Inquiry about two incidents, one if which resulted in a criminal prosecution of Desjardins in or around 1987.

Seguin testified that on August 30, 1987, when he was sixteen years old, he was physically and sexually assaulted by a man known as Desjardins. The assault resulted in Seguin's hospitalization. According to Seguin, the hospital staff notified the Cornwall Police service and police officers attended at the hospital and took statements from him[604]. The assailant was known to Seguin and Desjardins was arrested and charged by the Cornwall Police service that same day. [605] According to Seguin, there was no follow up from the Cornwall Police Service and he was never contacted by the Police Service after providing the statements in the hospital.[606]

Seguin stated that he heard a rumor that Desjardins was arrested and was sentenced to three months, however, he didn't know if that was correct. According to Seguin, he was not contacted by the Cornwall Police or the Crown's Office, he was not informed of any plea resolution, he was not given an opportunity to complete a victim impact statement and was not offered any victim's assistance or support. Seguin's mother also testified that after the

incident she was not contacted by the Police of the Crown's Office and she was never told of the outcome of the criminal proceedings against Desjardins.[607]

At the Inquiry, Seguin testified that he learned much later that Desjardins sentence was closer to a year (although that had not been confirmed).[608] He also stated did receive some support. He referred to the Mens' Project in Cornwall and he was offered assistance from a Cornwall Police Services officer in making an application to the Criminal Injuries Compensation Board.[609]

Issues With Respect to the Desjardins Prosecution.

Seguin's evidence concerning his experience as a victim in 1987 highlights the changes in victim support services in Cornwall since that time. Since then there have been two significant developments to address that lack. Firstly, a Victim/Witness Support Program was established of in Cornwall in October, 2001. Secondly, several Crown Policies have been put in place that address communication between victims and the Crown Attorney's office.

With respect to VWAP, in April 1987 the first 10 VWAP offices opened in the highest volume areas of the Province.[610] In the fall of 2000, the Provincial government committed to expand the Program to all areas of the Province and in October 2001, a VWAP office was opened in Cornwall.[611] Today there are approximately 56 VWAP offices throughout the Province.[612]

The VWAP's mandate is to provide information, assistance and support to victims throughout the criminal court process in order to improve their understanding and participation in that process[613]. The program attempts to keep victims up to date about court processes, familiarize them with the court process, explain the various proceedings, and identify and refer victims to community support. Those services are delivered by VWAP staff - referred to as Victim Witness Services workers, formerly called Victim Witness Assistance Coordinators.[614]

VWAP services are now available from the time charges are laid to the date of disposition. Clients are referred to VWAP in a number of different ways. During the course of police investigations, police are responsible for keeping victims informed about the progress of the investigation and the laying of charges. Once charges are laid, each VWAP office has its own arrangements for getting client referrals and those arrangements depend on the physical location of the office and its relationships within the community. In some cases, VWAP offices have arrangements with courts administration, some obtain referrals from the Crown Attorney's office and sometimes victims are referred directly by police[615].

With respect to Crown Policies, several policies have been put in places since Seguin's ordeal which are designed to ensure that victims receive information and referrals to help them cope with the criminal process.

For example, it appears that Seguin was never required to attend at court and testify because Desjardins pleaded guilty. It appears likely that the guilty plea took place after some resolution discussion took place between the Crown and Desjardins' counsel.

Current Crown policy with respect to the resolution discussions – PM [2005] No 16 – Resolution Discussions, March 31, 2006[616]- reminds Crown Counsel that in all resolution discussions, Crowns should be mindful of the needs of victims. While Crowns do not need the approval of victims to agree to a plea arrangement, Crown Counsel should consider the needs of victims as one of the significant factors in arriving at a just resolution. Prior to taking a firm position on sentencing, Crown Counsel should inform themselves of all relevant factors including the harm suffered by the victim. Crown Counsel are reminded to ensure that sufficient information is contained in the Crown brief - including the impact of the crime on the victim - to ensure that an appropriate position on sentencing is taken.

This memorandum also makes it clear that absent exceptional circumstances, in sensitive cases - which include cases of sexual assault - the victims should be informed of proposed resolution whenever possible and in advance of the matter being heard in court or broadcast by the media.

It appears that the practice memorandum would now require that Crowns ensure that victim impact information is in the brief. If the police have not included it, they would be likely asked to do so. Also, the memorandum requires that except in exceptional circumstances, victims should be informed of ay plea resolution before it is presented to the court.

MAG has also now instituted a practice memorandum specifically dealing with issues surrounding providing information to victims - PM [2005] No 11–Victims of Crime: Access to Information & Services Communication and Assignment of Sensitive Cases, March 31, 2006.[617] The memorandum contains a section dealing with “sensitive cases,” defined to include sexual assault cases.

Crown Attorneys in each jurisdiction are required to ensure that protocols are in place to identify sensitive cases, assign Crown Counsel at an early stage and, where practicable, ensure that the assigned Crown has carriage of the case throughout the proceedings. The assigned Crown must ensure that the victim is aware of significant changes in the status of the case, including dates for trial, plea, or sentence, and the status of the case on appeal. The memorandum also provides that, as noted above, Crowns should inform victims in sexual assault cases or proposed resolutions whenever possible in advance of the matter being heard by the court.

If the matter is to go to trial, the memorandum provides that Crowns assigned to sexual assault cases should personally interview the victims who are likely to be called as witnesses and the primary focus of the interview should be to prepare the witness for testifying.

MAG has also introduced a practice memorandum designed to provide guidance to Crowns on practical and procedural issues that arise in cases involving child abuse and other case involving children as witness. PM [2006] No 8 – Child Abuse and Offences Involving Children. [618] It is meant to be read in conjunction with other related policies and memoranda including the memoranda relating to victims and sexual assaults.

While this memorandum covers several areas, areas of particular relevance provide that:

- Crown Counsel should ensure that victims are advised of significant steps and decisions made by them in advance of the matter being heard in Court.

- Crown Counsel should ensure that victims and their families understand the opportunity to provide a victim impact statement.

- Counsel should be assigned at an early stage and, where possible that Crown should assume carriage throughout.

- Absent exceptional circumstances, Crown Counsel must interview a child witness at least once before the trial or preliminary hearing and as often as necessary after that to establish an appropriate rapport.

- Use of VWAP personnel is encouraged to familiarize the child witness with the courtroom

- Crown counsel must not advocate for or agree to a conditional sentence in cases of serious violence or sexual assault against children, except in exceptional circumstances.

Finally, PM [2006] No 9 – Sexual Assault and Other Sexual Offences, July 21, 2006,[619] provides guidance to Crown Counsel on the practical and procedural issues that arise in the prosecution of sexual offences generally. Where the victim is a child, this memorandum is designed to be read in conjunction with PM No 8 (above). Among other things this memorandum provides that:

- Crown Attorneys in each jurisdiction must ensure that systems/protocols are in place to identify sexual offences cases, assign a Crown at an early stage and ensure that the assigned Crown has carriage throughout.

- After the screening stage, if there is a reasonable prospect of conviction, in all serious cases, Crown Counsel must not terminate proceedings without the approval of the Crown Attorney or designate.

- Crown Counsel should consult with the Crown Attorney before agreeing to a plea based on a reduced charge.

- Crown counsel must not, absent exceptional circumstances, advocate for or agree to a conditional sentence in a sexual offence case involving serious violence, psychological or physical harm to children (conditional sentences are not available for offences that by definition involve sexual abuse of children, as such offences occurring after November 1, 2005, carry with them mandatory sentences of incarceration).

(iv) Allen Prosecution

Summary

It is the Ministry's position that Crown counsel with carriage of this matter followed all applicable Crown policies. Furthermore, since the Crown counsel in question was not called as a witness at the Inquiry, it is our position that the Commission may make no adverse findings against her in respect of this prosecution.

Overview

This matter was referred to the Cornwall Police Service for investigation by Project Truth investigators. On May 5, 1998, Cornwall Police Service Officer Rene Desrosiers, was assigned to investigate C-10's allegations of historical sexual assault by Carl Allen[620]. In November 1999 charges were laid and Carl Allen was arrested[621]. Cornwall Assistant Crown Counsel, Lynn Robinson, was given carriage of the prosecution. The matter was resolved on July 31, 2000, by way of a section 810 peace bond stipulating 12 months no contact with C-10[622].

The Resolution

The decision to resolve the matter, and on what terms, was reached by the Crown, Robinson, after a full assessment of the evidence and the reasonable prospect of conviction in respect of the charges against Allen. The Crown consulted with her supervisor, Cornwall Crown Attorney Murray Macdonald, who agreed with her assessment that there was no reasonable prospect of conviction[623]. Some of the factors the Crown considered in coming to her decision are as follows:

1. Early resolution without trial thereby saving the victim from having to testify and be involved in a potentially long judicial process;

2. Sentencing and procedural issues surrounding the victim's recollection of the date of the offence and difficulties in proving that age of the accused at the time of the offence (and whether both a youth information and adult information should be laid which would require the victim to testify three time, once in the youth information trial and twice in the adult information preliminary hearing and trial)[624];

3. Lack of corroboration from the accused's sister regarding an incident the victim alleges happened after the assault;

4. An inconsistent version of the assault told to a friend;;

5. The accused had no convictions since 1968 (when the accused was charged with an incident involving another neighbourhood boy);

6. Letter from a doctor advising that the accused was not a risk;

7. Likely that defence counsel would want to see C-10's medical or counselling records, hence probable O'Conner application for third party records[625].

The Crown also consulted with the investigating officer, Desrosiers, and the victim, C-10, as per the applicable crown policies. Specifically, the applicable Crown Policy in respect of resolution discussions states that the "although the victim is not the client of Crown counsel, the victim does have an important stake in the justice system that often, but not always, coincides with the public interest". It also advises the Crown, where appropriate, to consult the victim prior to concluding resolution discussions[626].

On January 25, 2000, the Crown met with the victim and the investigating officer to discuss the case and possible terms for a resolution[627]. The Crown's meeting notes state that C-10 was in agreement with a resolution without jail time as it would avoid a trial but if a resolution did not happen, the Crown though C-10 would make a good witness[628]. The Crown was not called upon to testify at the Inquiry.

Officer Desrosiers testified at the Inquiry. He recalled meeting with the Crown and C-10 and discussing the above factors including the likelihood of the accused being a young offender at the time of the offence, lack of corroboration by the accused's sister and several other witnesses who saw "examples of exhibitionism but nothing chargeable" (in respect of Carl Allen)[629].

Desrosiers also recalled discussing the terms of the resolution with C-10 and Robinson, and the opinion that the terms of the resolution were reasonable, and it was not likely that the court would impose better terms if the matter went to trial[630]. In his view, the victim appeared to be in agreement with the resolution and appreciated the fact that a conviction would be secured without the victim having to testify, something the victim expressed concern over[631]. Cst. Desrosiers testified that he was satisfied with the resolution of the case[632].

The victim, C-10, testified at the Inquiry. C-10 recalled meeting with a "female crown" and "someone else" that took place about 6 months prior to the resolution and about 2 months after Allen was arrested[633]. He recalled discussing the likelihood that the accused was a juvenile at the time of the offence and the Crown advising him that the likelihood of conviction was low[634].

The victim did not remember agreeing to a resolution if it meant avoiding a trial[635]. However, both the Crown's notes of the meeting and Derosier's testimony of his recollection of the meeting are contrary to C-10's testimony on

this point. The Ministry submits that C-10's recollection of the meeting and what was discussed has suffered from the passage of time and it is likely that he did agree, or at least did not disagree, with the resolution when it was discussed at the meeting.

C-10 also testified that he was unsure as to how the matter resolved and that no one contacted C-10 further about the matter after that meeting in January[636]. Desrosiers testified that after the January meeting he did not contact the victim again, that in his view the victim was satisfied with the way the matter was going to be resolved and it was only necessary to advise the victim if anything changed[637].

Desrosiers also testified at lengthy over how difficult it had been to locate C-10 and that during the course of his investigation C-10 moved twice and had no telephone[638]. The Ministry submits that the Crown relied upon to Desrosiers to keep C-10 informed about the court proceedings[639] and had no reason to believe that this duty was not discharged with reasonable diligence, as Desrosiers testified it was.

(v) Landry Jr. Prosecution

The prosecution of Earl Landry Junior was conducted by Lynn Robinson, who was under MacDonald's supervision. The Commission elected not to call Robinson as a witness at the Inquiry.

MacDonald's involvement with this matter is as follows. On May 27, 1998, MacDonald received a memo from Robinson regarding some issues she had with the Snyder of the CPS.

MacDonald testified that he likely had some discussion with Robinson of these issues prior to May 27, 1998. On May 28, 1998, MacDonald wrote a letter to Chief Anthony Repa in which he asked that Crown requests for relevant information be acted upon as quickly as reasonably possible.

Repa wrote a letter to MacDonald dated June 9, 1998 apologizing for the breakdown in communications detailed in MacDonald's earlier correspondence. He requested that MacDonald and his staff forward all correspondence requests for follow-up by CPS officers to Repa's attention.

MacDonald testified that he does not recall being told that Landry Junior offered a victim, Michel Bertrand, a computer in exchange for dropping the charges against him, but he believes it is likely that Robinson brought the matter to his attention. He stated that he also believes he would have been advised that Bertrand sent a letter to Landry Junior's counsel, Don Johnson, advising that he wished to drop all the charges against Landry Junior.

MacDonald stated that he also believes that Robinson would have told him that she communicated to Snyder that the Crown would proceed and would not withdraw the charges.

On September 4, 1998, Landry Junior was arrested for attempt to obstruct justice.

According to the transcript of the proceeding, on August 30, 1999, Landry Junior pleaded guilty to sexual assault charges involving five different victims.[640]

(vi) Sabourin Prosecution

MacDonald attended the judicial pre-trial with respect to the prosecution of Robert Sabourin. The matter was subsequently handled by Guy Simard whom the Commission elected not to call as a witness at the Inquiry. Sabourin pleaded guilty on March 22, 1999. Simard sought the maximum sentence.

One of the victims, Alain Seguin, testified that he had not been contacted about the court dates, or the guilty plea or the sentencing. MacDonald apologized on behalf of the office and said that they "had a practice that should have worked in theory but did not always do so". He explained that sometimes there was a "crossing of wires" between the Crown and the investigator as to who would contact victims. MacDonald noted that now that Cornwall has VWAP services, that is no longer a problem.

The other victim, Andre Lavoie testified that he would have like to have read his Victim Impact Statement. The Victim Impact Statements were filed according to the transcript of the proceedings on that day. MacDonald apologized again and noted that VWAP has a "double-check system that would preclude that happening" now.[641]

5. RESPONSE TO INSTITUTIONAL ISSUES

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

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

The Ministry's response is:

(i) In the 1980's, both the Ministry of Correctional Services and the Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry approached the Cornwall Crown Attorney directly for advice. Generally speaking those agencies now receive advice from their own lawyers. MAG now has a Practice Memorandum that requires that when Crown Attorneys give advice on the decision to charge in difficult, complex or potentially controversial cases (including historical sexual assault cases), that they do so on the basis of a full written investigative brief.

The second issue is:

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

The Ministry's response is:

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

The third issue is:

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

The Ministry response is:

(iii) The Project Truth prosecutions were resourced in a manner consistent with the practice for resourcing other prosecutions at that time. The ultimate size of Project Truth was not known from the outset. Project Truth grew incrementally. With the benefit of hindsight, Project Truth

would likely be characterized as a "major case" within the meaning of the Major Case Management Protocol that was established in 2003.

The fourth issue raised by the Commission is:

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

The Ministry's response to this issue is:

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

The fifth issue is:

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

The Ministry's response is:

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

The sixth issue is:

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

The Ministry's response is:

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

The seventh issue is:

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

The Ministry's response is:

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

The eighth issue is:

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

The Ministry submits:

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

The ninth issue is:

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

In response, the Ministry submits:

(ix) The Ministry of the Attorney General has well-established policies to prevent any potential conflict of interest in prosecutions. Both the 1994 and 2006 Crown Policy Manuals address this issue in the Practice Memoranda on the Role of The Crown, noting that all Crown counsel must independently exercise their discretion and always be fair and judicious in all decision-making. These polices also make clear that the role of the Crown attorney is as a quasi-judicial officer whose actions must be grounded in scrupulous fairness. In addition, MAG is governed by the *Public Service Act*, which was amended in 2005, and has Conflict of Interest Guidelines that pertain Ministry-wide that deal with areas such as confidentiality, permissible outside activities, prohibited use of position, confidential information, avoidance of preferential treatment, political activity, and taking improper advantage of position.

The final issue raised by the Commission is:

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

The Ministry's response is:

(x) At the time the charges were laid in Project Truth there was no Victim Witness Assistance Program office in Cornwall. However, the VWAP

office in Ottawa did provide services, including the appointment of a dedicated staff member to Project Truth, by August 2000. A VWAP office opened in Cornwall in October 2001. Every region in the Province now has VWAP services.

6. PHASE 1 POLICY SUBMISSIONS

The Ministry addresses three Phase 1 policy issues in these submissions. The first is various issues involving children's aid societies, including the duty to report historical allegations of child abuse, and issues regarding the child abuse register. The second is issues regarding the media. The third is issues regarding school boards.

(a) Role of the Ministry of Children and Youth Services and Children's Aid Societies in the Provision of Child Protection Services

The Role of MCYS

The ministry's role in child protection is to fund, legislate and monitor the child welfare system for the protection and well-being of children. Through legislation, regulation and policy directive, the ministry prescribes procedures, practices and standards for the conduct of child protection cases by children's aid societies. Ontario has never had a direct delivery model of service whereby child protection services were delivered by the Ministry.[642]

The Role of the Society

Child protection services are provided by local children's aid societies, which have exclusive responsibility for the provision of the services under the *Child and Family Services Act (CFSA)*. Each society is an independent, non-profit organization with a local board of directors.[643] Children's aid societies must make decisions in accordance with the paramount purpose of the *CFSA* which is to promote the best interests, protection, and well-being of the child. Children's aid societies are mandated by the *CFSA* to provide protection services to children in need of protection, and are responsible for investigating all reports that a child may be in need of protection.

Mechanisms to Monitor and Supervise Societies

The ministry exercises its responsibility to monitor and supervise societies in a variety of ways, including through:[644]

- Program supervisors situated in each of the ministry's nine regional offices.
- Yearly reviews on the status of all Crown wards who have been Crown wards for at least two years. The ministry recently announced that it intends to review other society case files as part of its new Integrated File Review process.
- The requirement that all service providers, including societies, report all serious occurrences that directly affect the health and well-being of children to the ministry's regional office.
- The requirement that children who are receiving residential services have access to procedures for having their concerns heard.
- The annual budget setting and service estimate process for societies.

(i) The Duty to Report Child Abuse and Neglect

Scope of the Duty

The duty to promptly report to a children's aid society a suspicion that a child is or may be in need of protection is established by section 72 of the *Child and Family Services Act* ("CFSA" or "the Act"). The first articulation of the "duty to report" child abuse is found in amendments to the *Child Welfare Act* made in 1965[645] and the duty has been expanded and refined in subsequent amendments since that date.[646]

A "child in need of protection" is defined in the Act,[647] and includes a child who is or who appears to be suffering or at risk of suffering from harm or neglect resulting from the actions or failure to care for the child by the person having charge of the child.

The duty to report is a personal responsibility that applies to all members of the public, including professionals who work with children. It is an ongoing obligation that requires further reports to a society if there are additional grounds to suspect abuse and cannot be delegated.[648]

The Act recognizes that people who work closely with children have a special awareness of the signs of child abuse and neglect and a particular responsibility to report their suspicion. Any professional or official who fails to report a

suspicion is liable on conviction of a fine if they obtained the information on which their suspicion is based in the course of their professional or official duties.[649]

When a CAS receives a Report under the Duty to Report

When a CAS receives a report that a child is or may be in need of protection, it is required by statute (CFSA), regulation (O. Reg. 206/00) and policy directive (CW 002-07), to respond to the report and determine what, if any, intervention/investigation is necessary in the circumstances.

The determination by a society that a child is in need of protection requires that:

a. harm or risk of harm be verified through an investigation by a CAS
b. the harm must be caused by or result from something done or not done by the child's caregiver

Regulations made under the CFSA, require a society that receives information that a child is or may be in need of protection to respond in a specific manner and to apply the *Child Protection Standards in Ontario.*[650]

Policy Directive CW 002-07, issued under s. 20.1 of the Act, requires societies to apply the *Ontario Child Welfare Eligibility Spectrum, 2006* ("the Eligibility Spectrum") and the *Ontario Child Protection Tools Manual,* when a referral for service (*i.e.*, a report under s.72 of the Act that a child is or may be in need of protection) is received. Societies must then make a case-specific determination about the most suitable way to proceed.

The *Eligibility Spectrum* is used to assist child protection workers in making consistent and accurate decisions about eligibility for child protection services at the point of referral. Every child protection worker is required to exercise their judgment in dealing with every referral. The *Eligibility Spectrum* clearly states that "the Spectrum is a guide, not a replacement for worker judgment."

These evidence-based, clinical standards and tools are referred to as the component parts of the "Ontario Differential Response Model". The underlying concept of Differential Response is that each child and family receives the most appropriate and helpful response from a society.

Application of the Duty to Report to Historic Abuse

A society that receives a report alleging that an individual (*i.e.,* not a child for the purpose of Part III as defined in the Act) had been abused by a person in charge of them when they were a child, would be required to proceed in accordance with the Eligibility Spectrum.

Depending on the facts, investigations of a complaint of historic abuse could proceed under either Section 1 ("Abusive Sexual Activity") or Section 5 (Caregiver Has History of Abusing/Neglecting") of the Eligibility Spectrum.[651]

Section 1 of the Eligibility Spectrum deals with allegations of physical force and/or maltreatment, as well as abusive sexual activity. Allegations of past

(historical) harm made relating to a child under the age of 16 at the time of the abuse are dealt with under this section.

Allegations of past harm which suggest a current risk that other children may be harmed, are dealt with at Section 5 of the Eligibility Spectrum.

It is possible for a joint society/police investigation to proceed under Section 1 and for the society, in the course of its investigation, to be satisfied that the alleged abuser has no current involvement with children. In such circumstances, there would be no verified abuse and no report would be made to the Child Abuse Register.

For an investigation to proceed under Section 5, the society must be satisfied that the alleged abuser has current contact with children. If the abuse is verified with respect to individuals who are currently children, as defined in Part III of the Act, a report to the Child Abuse Register is required.

Applicable Standards and Protocols

The *Child Protection Standards in Ontario, February 2007,* in Standard #3 require that:

1. If the information received by a children's aid society alleges that a criminal offence has been perpetrated against a child, the child protection worker will

immediately inform the police and will work with the police according to the established protocols for investigation; and

2. Every children's aid society will have protocols with the society's local Police Departments related to investigation of allegations that a criminal act has been perpetrated against a child.

Public Education and Awareness

Public awareness of child abuse and the duty to report is supported through a variety of activities, including a brochure entitled: "Reporting Child Abuse & Neglect: It's Your Duty"[652], and by marking Child Abuse Prevention Month in the Ontario legislature.[653]

(ii) The Child Abuse Register

The Register

The Child Abuse Register ("the Register") is a confidential, centralized register maintained by the Ministry of Children and Youth Services that contains the names of persons who have been verified by a children's aid society to have abused children within the meaning of the *Child and Family Services Act* ("CFSA" or "the Act"). The Register is intended to be a useful tool in the overall effort to protect children and prevent child abuse and children's aid societies in Ontario are required to use it when investigating abuse allegations.[654]

Development of the Current Register

The Register was established in its current form by way of amendments to the *Child Welfare Act* made in 1978 and proclaimed in June 1979.[655] The current Register was developed, in part, to address concerns with its predecessor, a central administrative registry of child abuse that was introduced by the ministry in 1966. Concerns included a lack of consistency in societies' decisions to place a name on the administrative register and their subsequent use of the register; the register's utility as an information or research tool; the confidentiality of the register; and access to the register.[656]

The Alleged Abuser

The Register records information about alleged abuse by an individual in charge of a child. This could include not only a parent but anyone who has the responsibility of caring for a child on a short-term or long-term basis. Persons known to a child may be considered to have de facto charge of a child while the child is in their company.[657]

Requirement to Report Verified Abuse and Consult the Register

The use of the Register is not subject to discretion.[658] Societies are <u>required</u> by subsection 75(3) of the Act to report verified information concerning the abuse of a child to the Director of the Register. Alleged abuse is "verified" and reportable

to the Register once a society on the basis of its investigation has reasonable grounds to believe that a child is or has been abused.[659]

Regulations made under the Act require societies to consult the Register as part of their child protection investigations.[660]

Confidentiality of and Access to the Register

Information in the Register is confidential. Access to and use of that information is strictly prescribed, in accordance with the Register's purpose, in order for societies to track suspected abusers and their victims so to that protection efforts can continue uninterrupted.[661]

Accordingly, the Act authorizes the Coroner and Children's Lawyer to access the Register. Access is also available at the Director's discretion to persons - employed by the ministry, a society or a child protection agency outside of Ontario, or to a person who is providing counselling or treatment to a registered person. Access to information in the Register may, with the Director's written approval, be provided to persons engaged in research, subject to the appropriate protections for privacy and confidentiality. Registered persons have a limited right to inspect information in the Register that relates to them.[662]

(iii) Recent Developments in Child Welfare Legislation, Policy and Procedures: Child Welfare Transformation, 2006 to present

Since the establishment of the Commission, there have been significant developments in child welfare legislation, policy and procedure in Ontario that highlight the ministry's continuing work to help promote the best interests of vulnerable children and youth. These developments provide clear evidence that efforts to prevent and respond to child abuse and neglect continue to evolve.[663]

Amendments to the Child and Family Services Act

In 2006-07, amendments were made to the *Child and Family Services Act*, and new and amended regulations and policy directives came into effect, based on the ministry's Child Welfare Transformation initiative. This initiative was based on the findings of the Child Welfare Program Review, conducted in 2003/04, and rested on seven goals:

1. a more flexible intake and assessment model
2. a court processes strategy to reduce delays and encourage alternatives to court
3. a broader range of placement options to support more effective permanency planning
4. a rationalized and streamlined accountability framework
5. a sustainable and strategic funding model
6. a single information system
7. a provincial child welfare research capacity

Among the many amendments to the Act, new and amended regulations, and new policies are requirements that are relevant to this Inquiry that:

- require home inspections and child welfare and criminal background checks for all adults in the home where family or community members are proposing to care for a child in need of protection;
- establish new performance standards and operating policies that children's aid societies have to follow;
- strengthen risk assessment tools to assist children's aid societies in determining if a child's safety is at risk; and
- create a standardized client complaint process for people who disagree with a children's aid society decision which includes the possibility of applying for review by the Child and Family Services Review Board.

Child Protection Standards and Tools

In April 2007, the ministry introduced new standards for child protection and a set of new mandatory and supplementary assessment tools for children's aid societies. These standards and tools reflect current research in the field of child protection, and assist societies to assess the risk to a child's safety and match their response to the child's and the family's needs.

The new child protection standards guide child protection workers in how they provide services to children and families. The standards cover service activities and supports starting from the time when a society receives a referral for child protection services until the case is closed. Each standard sets out the required considerations and procedures that children's aid societies must follow.

The new client complaint review procedures are mandatory for all 53 societies across the province, and the Child and Family Services Review Board was given

the responsibility to review certain client complaints concerns CASs and certain decision of the societies and adoption licensees.

Provincial Advocate for Children and Youth

In 2007, a new act was proclaimed establishing the *Provincial Advocate for Children and Youth Act*, 2007 which provides for a Provincial Advocate who is an independent officer of the Legislature.

The Advocate's office provides advocacy to children and youth seeking and receiving services under the CFSA and the *Ministry of Correctional Services Act*; attending provincial and demonstration schools; and respecting matters that arise for children and youth while held in court holding cells or transported to or from court holding cells. The new Act maintained the mandate of the previous Office of the Child and Family Service Advocacy and enshrined in legislation advocacy to some children and youth that was previously provided through formal and informal agreements and protocols.

(b) Media and *Sub Judice*

(i) General Legal Principles

The *sub judice* rule is an element of the law of contempt of court. Through the power to punish for the criminal offence of contempt, courts have traditionally exercised the authority to control public statements made out of court about

litigation. Frequently, in the case law, the public statement in question was made by the media. However, the same rules apply regardless of who makes the public statement. Further, although issues of contempt more often arise in connection with public statements regarding criminal litigation, the rules of contempt also apply to public statements regarding civil litigation.

The law of contempt controls the content of extra-judicial public statements principally through two rules, the *sub judice* rule and the rule against scandalizing the courts.

(ii) *Sub Judice* Rule

The *sub judice* rule is a common law rule that curtails the content of statements and publications that may interfere with the outcome of judicial proceedings by prejudicing the fair trial of an issue.[664] As agents of the Attorney General, Crown Counsel are bound by the *sub judice* rule which restricts them from any public discussion that could prejudice ongoing proceedings.

The rationale behind the rule relates to protection of the independence, objectivity and integrity of the litigation process. As was written by Chief Justice McRuer in 1952:

> No judge or juror should be embarrassed in arriving at his decision by an expression of an opinion on the case by anyone. He should not be put in a position where, if he decided in accordance with the opinion expressed or the popular sentiment existing, it can be said he has been influenced; nor should he be put in the position where it could be said he was

> antagonist to any opinion or popular sentiment. Everyone who has a matter before a court of justice for decision has the right to have the decision of the court founded on the law as the Court conceives it to be and the evidence properly submitted.[665]

The *sub judice* rule, particularly as it applies to statements by governmental officials, is also one of the means by which the courts ensure that the constitutional division of powers among the judicial, executive and legislative branches of government is maintained. By limiting the comments that public officials may make while court matters are pending, the rule fosters the appearance of independent judicial decision-making.

The essence of the *sub judice* rule is that no one should make statements that would have the effect of "prejudging" a matter before the courts. Prejudgment in this context may take a number of forms:

- a direct assertion that one party or another may win or lose a case;
- statements containing a conclusion about an issue in a case;
- statements indicating that one party has a stronger or weaker case than another;
- statements whose contents might be perceived as leading a tribunal to reach one conclusion rather than another;
- statements containing potential evidence in the litigation or commenting upon a party or a potential witness.

Examples of prejudgment arising from the case law include:

- a newspaper article written to arouse public sympathy against a corporate defendant involved in a negligence action,[666]

- publication of information suggesting an accused was a person of bad character: [667]

- release of an internal government report regarding issues that were part of a dispute before the courts, and presumably containing evidence and conclusions, was criticized by the Supreme Court of Canada,[668]

Judicial commentary suggests that the rule also prevents statements that "abuse" parties to litigation through comments that are accusatory, intimidating or embarrassing. This is because such statements might appear to bias the court, deter the parties from taking part in or continuing litigation, or deter others from assisting the parties.

Contempt exists only where there is a real, as opposed to a trivial or insubstantial, risk of prejudice. However, no actual prejudice need be established; the test is whether a risk of prejudice exists. Further, the truth of a statement has no bearing on whether the *sub judice* rule has been breached. A true statement that creates a real risk to pending proceedings still violates the rule.

Breaches of the rule exist if the statements have a tendency to interfere with the course of justice. The rule is breached whether or not a person intended to interfere with the administration of justice[669] The timing of a statement will be

relevant. As a general rule, the nearer the date of trial, the greater the risk of prejudice.

The *sub judice* rule applies to parties and their counsel as well as to non-parties. The rule protects the integrity and independence of legal proceedings for all parties and ensures that the role of the court is not usurped. Prejudice may arise from comments by parties as well as non-parties. The courts generally consider that a party to a proceeding should present its case in court and not elsewhere in public.

It is sometimes suggested that the *sub judice* rule does not apply, or applies less rigorously, to appellate proceedings. Appeals are heard by judges alone and judges are seen to be less influenced by extra-judicial statements. Further, as a general rule all evidence is introduced at trial and no new evidence is introduced on appeal. However, in *Canada Minister of Citizenship and Immigration) v. Tobiass*, the Supreme Court of Canada was apparently of the view that the rule applied even during the course of appeal proceedings.

There is some authority holding that the rule can apply even before litigation is commenced[670]. One court has suggested that the rule should apply where legal proceedings are “imminent”[671]. The rule applies even if the litigation is in a quiescent stage, such as during settlement discussions.

The *sub judice* rule does not prohibit fair and accurate reports of the content of ongoing judicial proceedings by the media. However, in appropriate cases, the courts may order a publication ban to ensure a fair trial; however, since the Supreme Court of Canada decision in *Canadian Broadcasting Corp. v. Dagenais*,[672] the circumstances in which a publication ban may be ordered have been narrowed. Arguably, the Court's approach to what information may routinely be published about a pending proceeding has been somewhat relaxed, at least for the media.

The *sub judice* rule has effectively been made applicable to statements made in the Legislature by virtue of s.23(g) of the Standing Order of the Legislative Assembly, which provides that a member shall be called to order by the Speaker if he or she:

> Refers to any matter that is the subject of a proceeding:
>
> - that is pending in a court or before a judge for judicial determination, or
> - that is before any quasi-judicial body constituted by the House or by or under the authority of an act of the Legislature, where it is shown to the satisfaction of the speaker that further reference would create a real and substantial danger of prejudice to the proceeding.

The rule of Parliamentary practice was recently reaffirmed in *Canada (Minister of Citizenship and Immigration) v. Tobiass* (1997), 151 D.L.R. (4th) 119. The federal Minister of Justice had released an internal government report prepared by former Chief Justice Dubin relating to particular communications between the

Department of Justice and the courts. Presumably the report contained evidence and conclusions. The report related to matters that were then before the courts. The Supreme Court of Canada, on its own initiative, raised concerns about the *sub judice* rule and criticized the release of the report while the court proceedings were pending.

The Supreme Court indicated in this decision that the rule of Parliamentary practice essentially reflects the application of the *sub judice* rule in the Parliamentary context (see p.156). Thus, the apparent rigor with which the Court approached the rule of Parliamentary practice reflects the court's attitude towards the application of the *sub judice* rule outside of Parliament. Indeed, it would be peculiar for members of legislatures to be more restricted in what they may say in Parliament than elsewhere, since traditionally parliamentary rules have permitted a greater range of commentary.

(iii) *Sub Judice* Rule and the Attorney General

The identity or position of the person making the statements may be relevant to a determination of whether the rule has been breached. Statements of senior public officials may be perceived as having greater weight and authority and are likely to receive more public and media attention and hence may be more likely to breach the rule.

It should also be borne in mind that governments and their representatives may, due to the influence they wield and the publicity their actions and statements often receive, be held to a higher standard under the rule than are private litigants. Statements that may not attract attention when made by a private litigant may attract criticism or even remedial action when made by a governmental official. It is therefore our view that a traditional and arguably conservative approach for governmental statements is appropriate.

The Attorney General occupies a unique office, encompassing both executive and quasi-judicial functions. This dual function flows from the fact that the Attorney General is an elected member of the Legislative Assembly. The office of Attorney-General traditionally and by statute carries duties that relate, on the one hand, to advising the Executive and directing the administration of justice, and on the other hand, to enforcing the public law.

As to the Attorney General's executive function, as a member of Cabinet, the Attorney General assumes public responsibility for important issues affecting the administration of justice in the province. In that capacity he has a duty to publicly engage in issues of legitimate social concern. The Attorney General's executive role was described by McMurtry C.J.O. in the following terms:

> Ontario is different from many jurisdictions in the sense that the Attorney General has for over 125 years been the holder of political office and a full member of the Cabinet. The view which has prevailed is that it is essential for the Attorney General to be a member of the Cabinet as long as he bears administrative responsibility as the head of a department of government. Having supervision of the machinery of justice he must as a

> Minister to the Crown be politically accountable to the legislative assembly. Thus, in Ontario the politically accountable nature of the Attorney General's office has always been one of its essential characteristics.[673]

The Superior Court of Justice considered the sub judice rule in a 2004 case involving a defense application for a stay of proceedings in a criminal trial in which an issue was whether the Hell's Angels were a criminal organization. A newspaper published a series of articles containing comments to the effect that certain motorcycle groups were "outlaw biker gangs" Those comments were attributed to various police officers and the Attorney General was reported to have made statements concerning prosecutorial initiatives in cases involving "outlaw biker gangs".

The Court referred to the Attorney General's dual role and his responsibility to the community in matters of public concern that relate to the administration of justice and held that in the circumstances of this case, the *sub judice* rule was not violated The decision on the merits is under appeal, but not the decision with respect to the stay application.[674]

This responsibility to direct the administration of justice and at the same time engage publicly and answer to the public and the legislature on matters relating to the administration of justice means that the Attorney General must be keenly aware of the *sub judice* rule and the limits imposed by that rule on the ability to comment on matters before the Court or that may be before the Courts.

The Attorney General has provided direction to Crown Counsel with respect to media contact and making public statements in the form of a Practice Memorandum (PM [2006] Media Contact and Other Public Statements by Crown Counsel). Under the heading “Principles”, the memorandum states:

> Crown counsel are agents of the Attorney-General and local Ministers of Justice. As a result of their quasi-judicial status, Crown counsel are required to deal with the media and the public differently than defence counsel. Public statements by Crown counsel must not compromise counsel’s ability to function effectively as a public servant nor diminish the public perception of impartiality necessary to the fulfilment of quasi-judicial responsibilities. These responsibilities include the obligation to protect the integrity of the justice system and the interests of the accused, victims and witnesses when making public statements.

The memorandum contains a section on the *sub judice* rule which reminds Crowns that they are bound by the rue which curtails any public discussion which could prejudice ingoing proceedings. The rule applies until the appeal process and related prosecutions have been completed. Even then, once the appeal process has been completed, either by the appeal period lapsing or the release of the judgement of the final appellate court, comments of Crown counsel must reflect the finality of the decision made.

The memorandum states that in particular while proceedings are ongoing, Crown counsel must not comment on the following:

- Guilt or innocence of the accused;
- Strength or weakness of the either the case for the Crown or the Defence;

- Character reputation or criminal record of the accused or a witness;
- The failure of the accused to testify or cooperate with a police Investigation;
- The existence or results of any pleas negotiation or resolution discussion;
- The correctness or significance of any court ruling.

In our respectful submission, sufficient flexibility already exists within MAG's current Crown Policy to enable Crowns and/or the Minister to make effective and appropriate public statements - within the limits of the *sub judice* rule - about issues of concern to the administration of justice. A recommendation in this area is therefore unnecessary.

(c) School Boards

(i) Overview

School Board Evidence

The Commission heard institutional evidence from two school boards, being the Upper Canada District School Board ("UCDSB") and the Catholic District School Board of Eastern Ontario ("CDSBEO").

The Commission did not hear evidence from the myriad of education stakeholders in Ontario, such as other school boards, the Ministry of Education, the Ontario College of Teachers, the Ontario Teachers' Federation, teachers'

unions, Principals' associations, parent groups or education associations; nor has the Commission heard evidence from across all four education sectors within the Ontario education system.[675]

Therefore, it is the Crown's position that no adverse finding should be made regarding education-related issues in respect of the Crown. Further, it is submitted that no recommendations or conclusions should be made respecting the Ontario education system and, in particular, the areas addressed below.

(ii) School Board Resources

David Thomas, the Director of the UCDSB provided evidence from the UCDSB's perspective on the identification and prevention of sexual abuse in schools and the treatment of students subject to sexual abuse.

Director Thomas described significant school board resources which are available to staff and students at the UCDSB. These resources include: bi-annual in-service training for new and more senior Principals[676], professional development days and other training for staff[677], partnership training with Children's Aid Societies and the police[678], and the Director's own annual address at the outset of each academic year.[679] Various professionals assist in addressing sexual abuse, including psychologists, social workers and guidance counselors.[680] Counseling is also offered to students who disclose sexual abuse

and their family members, and even to former students who disclose sexual abuse in adulthood.[681]

In particular, school boards are provided with four discretionary professional activity days per year in which to use funds for professional development to meet local needs, including addressing sexual abuse.[682] For example, training could be provided in accordance with the Violence-Free Schools Policy issued by the Deputy Minister of Education in 1994, which advises school boards to provide training to all staff to help develop and maintain a violence-free environment, including training to recognize "signs of physical, sexual or mental abuse and knowing what to do".[683] Another avenue school boards may explore is to create their own programs or curriculum on the subject-matter of sexual abuse, with permission of the Minister of Education.[684]

More generally, the Director stated that current levels of funding are "some of the best they've ever had in my nearly 30 years as an educator".[685] Director Thomas also acknowledged the UCDSB currently receives a "significant" amount of funding for non-teaching professionals such as psychologists and social workers.[686]

On the other hand, funding to meet "perfect world" levels was identified by Director Thomas as being "very, very expensive", involving the employ of an "army" of psychologists and social workers and trained professionals. [687]

Director Thomas also expressed a preference for more discretion in determining how provincial funding is spent by, for example, receiving more “unsweatered” funds, which is funding that is not “enveloped”.[688] In today’s economic climate, taxpayers expect a high level of accountability from all levels of government. Governments are also charged with making important policy choices. “Enveloping” is a mechanism by which the government ensures that funds are addressed to the policy choices government has made on behalf of the citizens of Ontario.

Notwithstanding this consideration, school boards are not without discretionary funds to address local needs. Ontario Regulation 85/08, “Grants for Student Needs – Legislative Grants for the 2008-2009 School Board Fiscal Year” made pursuant to the Education Act, R.S.O. 1990, c. E.2, provides 16 allocations which have no envelope requirements at all:

1. pupil foundation allocation;
2. school foundation allocation;
3. primary class size allocation;
4. language allocation;
5. First Nations, Métis and Inuit supplemental allocation;
6. learning resources for distant and outlying schools allocation;
7. remote and rural allocation;
8. rural and small community allocation;
9. learning opportunities allocation;
10. safe schools allocation;
11. continuing education and other programs allocation;
12. cost adjustment and new teacher induction program allocation;
13. transportation allocation;`
14. program enhancement allocation;
15. community use of schools allocation; and,
16. debt charges allocation[689].

As is evident from the titles of the allocation, many of the allocations assist school boards to address local circumstances. For example, the remote and rural allocation supports school boards with schools that are far apart.

Furthermore, school board and other institutional resources are not just a matter of funding. As Director Thomas noted, "…in Eastern Ontario… it is very difficult to get a doctor, let alone a child psychiatrist."[690] This observation illustrates that addressing sexual abuse is a complex societal issue.

While school boards have an important role to play with respect to ensuring the safety and well-being of students, other institutions – such as the various Children's Aid Societies, the police and the health care system – have a direct role to play in preventing and identifying sexual abuse, and treating students subject to sexual abuse. Solutions require the appropriate balance of resources between various institutions in accordance with their roles.

(iii) Criminal History Screening

The below sets out the Ontario government's regulatory requirements in Ontario for screening the criminal history of employees and service providers to school boards, which is provided for the assistance of the Commissioner.

(a) Education

In 2000, Mr. Justice Sydney Robins released the report entitled “Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools, 2000”. In 2001, the Ontario government issued O. Reg. 521/01, “Collection of Personal Information”, pursuant to the Education Act, R.S.O. 1990, c. E.2. *Inter alia*, ss. 2(1) of the regulation requires school boards to obtain the personal criminal history of all employees of a school board – including existing and prospective employees - and all service providers who attend school sites.

Subsection 1(2) of O. Reg. 521/01 specifies that school bus drivers and driving instructors are not “service providers” for the purposes of the regulation if they have fulfilled the separate requirements already set out by the Ministry of Transportation.

School boards may also provide for additional safety-related requirements in a number of ways, as UCDSB has done,[691] such as by way of contract with transportation providers.

(b) Transportation

Section 13 of O. Reg. 340/94, “Driver’s Licences”, made pursuant to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, requires the Minister of Transportation to

deny/revoke a school bus driver's licence if the applicant/holder does not satisfy the regulated standards.

Currently, s. 13 of O. Reg. 340/94 provides that no school bus driver's licence will be granted if the individual:

- Is under suspension in the last 12 months for selected *Highway Traffic Act* convictions (e.g. careless driving) or a motor vehicle-related *Criminal Code* conviction (e.g. dangerous driving);
- Is found guilty or convicted in the last five years of two or more of the above offences; or,
- Is convicted or found guilty in the last five years of specified offences under the *Criminal Code* (e.g. sexual assault) or the *Narcotics Control Act/Controlled Drugs and Substances Act* (e.g. trafficking)[692].

Criminal record checks however are not limited to the previous five years and the Minister has discretion to deny a school bus driver's licence for convictions or findings of guilt for an "offence for conduct that affords reasonable grounds for believing that the person will not properly perform his or her duties or is not a proper person to have custody of children while having control of a school purposes bus."[693]

7. PHASE 1 RECOMMENDATIONS

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

(ii) The Crown Policy Manual is reviewed and updated regularly to reflect best practices. The responsibility for this rests with an entire Branch within the Criminal Law Division – the Criminal Law Policy Branch and since the 1990s there have been numerous updates and new memos and policies added to the Crown Policy Manual. In 2006 a completely revised CPM was issued and more recently in 2008, four new practice memoranda were added to the CPM. The Ministry will review the Crown Policy Manual and other Ministry policies in light of any recommendations from the Inquiry.

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

PHASE 2 SUBMISSIONS

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

1. Services for Male Victims of Sexual Assault Funded by the OVSS

A Phase 2 report was prepared for the Commission in respect of Services for Male Victims of Sexual Assault. That report recommends that the Men and Healing Program, a long-term counselling program, be funded and expanded throughout the Province, without comparing its effectiveness with other types of service delivery models for this client population. The Ontario Victim Services Secretariat has provided information about other service delivery models or combinations of service models, including service models that have been founded upon or adapted from the Men and Healing Program, and suggested that they be investigated before a decision is made to focus on one service delivery model throughout Ontario.

Before any service delivery program for male survivors of sexual abuse is funded on a permanent basis, it is necessary to make sure that the right program is being funded. What is the best service delivery model we can afford with the money that is available? What is the best possible combination of new resources with the resources that are presently available that will service the most people.[694]

The Ontario Victim Services Secretariat, Ministry of the Attorney General (the "OVSS"), provides funding to many programs that are available to all survivors of sexual abuse and assaults, male and female, including, but not limited to:

(1) The Province-wide Victim Crisis Assistance and Referral Services network which provides immediate crisis intervention to victims affected by crime[695];

(2) The Victim/Witness Assistance Program, presently available in all 54 court jurisdictions (a total of 56 offices in 39 program sites), which provides information, assistance and support to victims throughout their involvement in the justice system[696]; and

(3) The Victim Support Line which provides referrals to community service organizations[697]

In 1999, the OVSS began funding the Men's Project as part of its commitment to providing services to victims of the Project Truth investigation in Cornwall. It was the first OVSS funded program that specifically targeted male victims of sexual assault. In 2000, the Office for Victims of Crime Report, entitled "A Voice for Victims", noted the lack of comparable services available to male victims of sexual assault to female victims[698]. Since then, the OVSS has funded other programs aimed at male victims of sexual assault, as discussed in further detail below.

The Men's Project

The Men's Project is a not-for-profit charitable agency that provides counseling services for men and their families in Cornwall and Ottawa, as well as a telephone crisis intervention service for the 613 calling area in eastern Ontario[699].

As stated previously, the OVSS has funded the Men's Project since 1999. It was initially funded for a 3 year basis, in response to a need for services in respect of Project Truth[700], however, the funding has continued to the present time, throughout the Cornwall Inquiry[701].

Canadian Mental Health Association

The Canadian Mental Health Association, Waterloo Region Branch, received funding in 2002 to develop infrastructure services for male victims of sexual assault. These services include: therapy, a 1-800 toll free telephone support service, online service, workshops, peer support and self-help initiatives[702].

The Native Men's Residence

The Native Men's Residence, in Toronto, received funding in 2003 for peer outreach counselors and a full time staff member to facilitate counseling workshops on sexual violence and to work with homeless aboriginal and non-aboriginal youth who are victims of sexual abuse and perpetrators who abuse as a result of their own victimization[703].

Alpha House

Alpha House, in Toronto, received funding in 2003 for a short term project to provide a counseling program and group workshops for male sexual abuse survivors, 16-55 years of age, who have a correlated chemical dependency[704].

Sexual Assault Centre for Quinte and District

The Sexual Assault Centre for Quinte and District received funding in 2003 to develop a Community Response Program and hire staff to provide immediate emotional support, 24/7, to male and female acute victims of sexual assault in a medical setting in Picton, Trenton, Belleville and Bancroft[705].

The M'Wikwedong Native Cultural Resource Centre

The M'Wikwedong Native Cultural Resources Centre, based in the Owen Sound-Bruce Grey area, received funding in 2005 to develop a cross-cultural program for adult male survivors of sexual abuse in rural areas[706]. The Centre provides a combination of conventional, clinical treatment with aboriginal healing concepts[707].

North Bay and District Association for Community Living

The North Bay and District Association for Community Living received funding in 2005 to produce a manual and facilitate a series of support groups for men and women with a developmental disability who are victims of sexual assault[708]

Thunder Bay Sexual Assault/Sexual Abuse Crisis and Counseling Centre

Thunder Bay Sexual Assault/Sexual Abuse Crisis and Counseling Centre received funding in 2005 to offer two workshops: (1) for male survivors of sexual assault and abuse to speak about their experiences and offer

recommendations to improve services; and (2) to train professionals on the effects of male sexual assault.[709]

Cochrane Ininew Friendship Centre

The Cochrane Ininew Friendship Centre, Northern Region, received funding in 2005 to deliver a series of workshops and create a resource library to raise awareness of male sexual and physical abuse[710].

Shibogama First Nation Council

The Shibogama First Nation Council, Northern Region, received funding in 2005 to develop and provide culturally specific therapeutic services to male survivor members of the Nishnawbe-Aski Nation who were subjected to historic long-term sexual abuse[711].

Service Models for Delivering Support Services to Male Victims of Sexual Assault

There is great debate over which service model(s) is the most effective at delivering support services to male victims of sexual assault[712]. Further, what service delivery model, or combinations thereof, will be the most effective and reach the most people? There is no comparative research that suggests that one service delivery model is to be preferred over another service delivery model, nor other jurisdictions we can look to, to inform any decision-making about the best allocation of resources in respect of support services for male victims of sexual assault[713].

The Phase 2 Report entitled "*Men & Healing: Theory, Research and Practice in Working with Male Survivors of Childhood Sexual Abuse*"[714], advocates the "Men and Healing Program" as the preferred service model for male victims of sexual abuse. It recommends that the Men and Healing Program be funded and expanded throughout the Province without comparing its effectiveness with other types of service delivery models available for this client population, including: services delivered by Sexual Assault Centres, services delivered by Family Service Associations, the Gatehouse Adult Support Network and other Sexual Assault Centre based specialized supports for male survivors.

Men and Healing Program

The Men and Healing Program is a service delivery program offered by the Men's Project to assist male survivors of sexual abuse. First introduced in 1997, it has undergone many transformations since its inception, but can be described generally as a long-term counseling program that applies a trauma-oriented group therapy approach for service delivery[715]. It also offers a crisis support line during business hours. It is described in detail in the *Men and Healing Report* which acknowledges that it cannot meet the needs of all victims including: aboriginal victims, newcomers, men who are visibly or culturally diverse, and men with significant physical and intellectual disabilities[716].

Services Delivered by Sexual Assault Centres

There are 39 Sexual Assault Centres ("SAC"s) across the Province, including 9 French-language centres, funded by the Ministry of the Attorney General. SACs provide a crisis support/intervention service to victims of sexual assault and abuse and incest survivors, their families, partners, friends and others, including a 7/24 crisis line support, often staffed by volunteers, and group and individual counselling. Counselling staff have both experience and education in childhood sexual trauma but formal education may not always be a prerequisite. Duration of counselling varies based on individual need. Services are primarily delivered to women but all SACs provide information and referral services for men and some SACs provide counseling or specialized support services for men. .

Services Delivered by Family Service Associations

There are 41 Family Service Associations ("FSA"s) across the Province, that are funded by both the United Way and the Province. FSAs provide a wide range of services to diverse client groups, including men and women, such as: clinical treatment, individual and group support services, education, advocacy, social planning, social action and community development. Both individual and group counselling are offered to male and female survivors of childhood sexual abuse[717]. Individual counselling is generally paid for by the client on sliding scale based on ability to pay and generally, no crisis support line is offered.

Gatehouse Adult Support Network

Gatehouse Adult Support Network is an advocacy centre dedicated to the issue of child sexual abuse and provides services for children, families, adult sexual abuse survivors, and their partners. It has been operating since 2001 without any government funding, except for a $55,000 grant from the OVSS in 2007.. Group counselling is provided that is co-facilitated by a trained therapist and a trained mentor/volunteer. Long term one-to-one peer support is provided for survivors and their partners.

Other SAC Based Specialized Supports for Male Survivors: Paths of Courage

The Quinte Sexual Assault Centre has developed and delivered the Paths of Courage Program, with a grant from the OVSS, to three groups of participants (2 female groups and 1 male group). The Paths of Courage Program is a one-week intensive residential group therapy program. Each group, comprised of 10 participants, is overseen by 3 facilitators in a residential setting where the accommodation, travel, food and therapy are provided at no cost to the participant. Following completion of the program, groups are supported with weekly meetings, with facilitators, for a limited time, but groups may continue to meet indefinitely on an *ad hoc*, peer support basis.

2. APOLOGIES

The Government introduced apologies legislation on October 7, 2008 (Bill 108). The Bill received second reading on October 23, 2008 and has been referred to the Standing Committee on Justice Policy. The Ministry will be working to ensure that the proposed legislation meets the goal of promoting healing without compromising the legal rights of victims.

3. PHASE 2 RECOMMENDATION

It is the Ministry's recommendation that other service delivery models for male survivors of sexual assault, or combinations thereof, including service models that have been founded upon or adapted from the Men's Healing Program, be investigated before a decision is made to focus on one service delivery model throughout the Province. We recommend that a comprehensive, systematic review and evaluation of existing service models be undertaken by an independent, third party to mitigate intrinsic bias and to ensure the validity and reliability of results.

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[1] (1954), 110 CCC 263 (SCC)
[2] *R. v.* Beare (1988), 45 CCC (3d) 57 at p. 76
[3] *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372 at para.49
[4] *Martin Report*, pp.74 and 77
[5] *R. v. Power*, [1994] 1 S.C.R. 601 at para.64

[6] The exceptions to this rule are New Brunswick, Quebec and British Columbia. In each of these provinces, systems are in place requiring the approval of a Crown prosecutor before a charge can be laid.
[7] *Campbell and Shirose v.tthe Queen* (1999), 133 C.C.C., (3d)257 (SCC)
[8] Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, The Honorable G. Arthur Martin, Chair Queen's Printer for Ontario, 1993 ("the *Martin Report*")
[9] At the time the President of the Law Reform Commission was Mr Justice Allen M. Linden and the Consultants on this paper were Marc Rosenberg, C. Jane Arnup, and Stephen G. Coughlan
[10] The *Martin Report*, page 37-38.
[11] The *Martin Report*, page 39.
[12] The *Martin Report*, page 39
[13] Policy # P-1, MAG Corporate Presentation, Tab 30 A
[14] Exceptions may exist in respect of procedures requiring by statute the involvement of the Attorney General, for example a wiretap application.
[15] MAG Corporate Presentation, Tab 31
[16] *R. v. Boucher,* [1995] S.C.R. 16. See also: *R. v. Lemay,* [1952] 1 S.C.R.. 232
[17] *R. v. Stinchcombe (No.1)*, [1991] 3 S.C.R. 326 [hereinafter *Stinchcombe*]
[18] Ontario, Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions (Queen's Printer for Ontario, 1993) [hereinafter *Martin Report*]
[19] *Martin Report,* at 146
[20] Transcript of Proceedings of July 24, 2006, Vol.42, P. 34, L.21 (Mary Nethery)
[21] Guidelines to Crown Disclosure in Criminal Cases, Oct.1-81, MAG Corporate Presentation, Ex. P-46, Tab 50
[22] Crown Policy Manual – Policy No.D-1 "Disclosure", Jan.15-94, MAG Corporate Presentation, Ex.P-46, Tab 52
[23] Transcript of Proceedings of July 24, 2006, Vol.42, Pg. 45, L.9 (Mary Nethery)
[24] Crown Policy Manual "Disclosure", Mar.21-05, MAG Corporate Presentation, Ex.P-46, Tab 53
[25] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54
[26] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 4
[27] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 4. Bold type indicates mandatory language. See also: *Martin Report,* at 197
[28] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 5
[29] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 7. For example: confidential informants, crown work product, section 37 of the *Canada Evidence Act*, legal opinions provided to the police, third party records under s.278.1 of the *Criminal Code* and *O'Connor.Mills* applications, addresses and phone numbers of lay witnesses, etc.
[30] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P.11. For example: the charge(s), the synopsis, statements or notes regarding witnesses or accused, video and audiotapes, transcripts of audio and videotapes, information relevant to credibility/reliability, police notes, occurrence reports and records, expert evidence and scientific reports, documents and photographs, search warrants, etc.
[31] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 5
[32] *Martin Report,* at 201
[33] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 6
[34] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 6. See also: *R. v. T.(L.A.)* (1993), 84 C.C.C. (3d) 90 (Ont.C.A.) at 94, and *R. v. Styles,* [2003] O.J. No. 5824 (S.C.J.) at para.14.
[35] *Martin Report,* at 167-170 and 264-266. See also: PM [2005] No.34 "Police: Relationship with Crown Counsel", Mar.31-06, Ex.P-46, Tab 31
[36] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 17
[37] PM [2005] No.35 "Disclosure", Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 17

[38] PM [2005] No.35 “Disclosure”, Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 17
[39] PM [2005] No.35 “Disclosure”, Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 18
[40] *Martin Report,* at 206
[41] PM [2005] No.35 “Disclosure”, Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 18
[42] PM [2005] No.35 “Disclosure”, Mar.31-06, MAG Corporate Presentation, Ex.P-46, Tab 54, P. 18. After the withdrawal of charges, any requests for information would have to be made through the *Freedom of Information and Privacy Act.*
[43] *Martin Report,* at 135
[44] *Martin Report,* at 167-170 and 264-266. See also: PM [2005] No.34 “Police: Relationship with Crown Counsel”, Mar.31-06, Ex.P-46, Tab 31
[45] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 192, line 8-12.
[46] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 191, line 7-17.
[47] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 189, line 1-20.
[48] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 189, line 21 to page 190, line 17.
[49] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 190, line 18-25.
[50] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 195, line 1-11.
[51] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 195, line 12 to page 196, line 23.
[52] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 174, line 8-22.
[53] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 198, line 18-24.
[54] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 199, line 16 to page 200, line 20.
[55] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 202, line 2-19
[56] Examination of Don Johnson, Transcript dated January 7, 2009, vol. 329, page 202, line 20 to page 203, line 14.
[57] MAG Corporate Presentation, Exhibit P-46, Tab 12.
[58] PM[2005] No 34 – Police: Relationship with Crown Counsel, March 31, 2006, MAG Corporate Presentation, tab 31.
[59] PM[2005] No 16 – Resolution Discussions, March 31, 2006, MAG Corporate Presentation, Exhibit P-46, tab 46.
[60] PM[2005] No 11 – Victims of Crime: Access to Information & Services Communication and Assignment of Sensitive Cases, March 31, 2006, MAG Corporate Presentation, Exhibit P-46, tab 70.
[61] PM [2006] No 8–Child Abuse and Offences Involving Children, MAG Corporate Presentation Exhibit P-47.
[62] PM [2006] No 9–Sexual Assault and Other Sexual Offences, July 21, 2006, MAG Corporate Presentation, Exhibit P-48.
[63] Ex.300
[64] Ex. 301
[65] Transcript, Vol.326, p.79
[66] Transcript, Vol.326, p.79
[67] Ex. 1147
[68] Vol.325, p.264
[69] Vol.325, pp.264-265
[70] Vol.325, p.241 and 253
[71] Vol.326, p.226 to 240 and Vol.327, pp.251 to 254
[72] Transcript of Proceedings of December 19, 2008, Vol. 327, Pg. 271, l.4 to Pg. 272, l.25
[73] *Ottawa Police Service Report*, January 24, 1994 and Ex. 1207
[74] Transcript of Proceedings December 19, 2008, Vol.327, p.268, l.7 to p.272, l.25.
[75] Letter from Griffiths to Smith, dated December 21, 1994, Ex. 1147
[76] Letter from Griffiths to Smith, dated December 21, 1994, Ex. 1148

[77] Synopsis re: David Silmser's Sexual Assault Allegations, Exhibit 2669
[78] Transcript of Proceedings of November 25, 2008, Vol. 311, Pg. 4 (Tim Smith)
[79] Letter from Peter Griffiths to Tim Smith dated December 21, 1994, Exhibit 1148
[80] Notes of Tim Smith dated February 3, 1994 to March 23, 1999, Exhibit1803, bp. 1054235
[81] Transcript of Proceedings, November 26, 2008, Vol. 313, Pg. 44 (Tim Smith)
[82] Transcript of Proceedings of January 12, 2009, Vol. 332, Pg. 203-04, Pg. 284-85 (Peter Griffiths)
[83] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg. 22-23 (Curt Flanagan)
[84] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg. 22, Pg. 17 (Curt Flanagan)
[85] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg. 22, Pg. 32 (Curt Flanagan)
[86] Letter from Curt Flanagan to Regional Senior Judge Lennox re: R. v. Malcolm MacDonald dated April 14, 1995, Exhibit 2995
[87] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg. 43, Pg. 149 (Curt Flanagan)
[88] Transcript of Malcolm MacDonald Plea of Guilty, September, 12, 1995, Exhibit 1165, bp. 7061333-336
[89] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg. 120, Pg. 163 (Curt Flanagan); Transcript of Malcolm MacDonald Plea of Guilty, September, 12, 1995, Exhibit 1165, bp. 7061335
[90] Role of the Crown: Preamble to the Crown Policy Manual, Exhibit 46, Tab 14; *R. v. Regan* (2002), 1 S.C.R. 297 (S.C.C.)
[91] Transcript of Proceeding on January 26, 2009, Vol.342, p.52, l.1 to p.53, l.14
[92] Memorandum dated April 2 ,1997 from Pelletier to Griffiths, Exhibit 228
[93] Transcript of Proceeding on January 12, 2009, Vol.332, p.152, l.20 to p.154, l.15
[94] Transcript of Proceeding dated January 12, 2009, Vol.332, p.149, l.8 to p.150, l.17 and Letter dated May 27, 1997 from Griffiths to Edgar, Exhibit 2680
[95] Transcript of Proceeding on January 12, 2009, Vol.332, p.151, l.9 to p.152, l.14
[96] Transcript of Proceeding on January 29, 2009, Vol.345, p.118, l.20 to p.119, l.22
[97] Transcript of Proceeding on January 29, 2009, Vol.345, p.128, ll.1 to 14
[98] Report to the Deputy Attorney General dated June 18, 2001, Exhibit 3417
[99] Ex.3305
[100] Ex.983
[101] Ex.984
[102] Transcript of Proceedings of January 29, 2009, Vol. 345, p.16, ll.14-25 and pp.56-57
[103] Transcript of Proceedings of January 29, 2009, Vol. 345, pp.20-21 and p.39; Ex 3407; Ex. 987
[104] Transcript of Proceedings of January 29, 2009, Vol.345, p.29, l.23 to p.30, l.6
[105] Ex.988, Transcript of Proceedings of January 29, 2009, Vol.345, p.30
[106] Ex.989
[107] Transcript of Proceedings of January 29, 2009, Vol.345, p.32, l.16 to p.33, l.8
[108] Ex.900
[109] Transcript of Proceedings of January 29, 2009, Vol.345, p.33, l.9 to p.34, l.9
[110] Ex.3408
[111] Transcript of Proceedings of January 29, 2009, Vol.345, p.47, l.1 to p.48, l.17
[112] Ex.1008
[113] Ex.1204
[114] Transcript of Proceedings of January 29, 2009, Vol.345, p.56, ll.1-11
[115] Transcript of Proceedings of December 16, 2008, Vol.324, p.171, l.18 to p.176, l.17
[116] Transcript of Proceedings of January 16, 2008, Vol.183, p.234, ll.5-19
[117] Transcript of Proceeding of January 16, 2008, Vol.183, p.6, l.18 to p.9, l.16
[118] Transcript of Proceedings of January 29, 2009, Vol.345, p.236, ll.9-21
[119] Transcript of Proceedings of January 27, 2009, Vol.343, p.33, l.5 to p.36, l.17.
[120] Transcript of Proceedings of January 26, 2009, Vol.342, p.258, l.20 to p.260, l.20.
[121] Transcript, p. 89-90
[122] Transcript, p. 90
[123] Transcript of Proceedings of January 26, 2009, Vol.342, p.256, l.24 to p.257, l.12.
[124] E-mail from Terrance Cooper to Lorne McConnery and others re: Dunlop boxes, page numbering dated April 20, 2001, Exhibit 3038

[125] Transcript of Proceedings of January 29, 2009, Vol.345, p.236, l.23 to p.237, l.2.
[126] Transcript of Proceedings of January 29, 2009, Vol.345, p.110, l.21 to p.112, l.19
[127] Transcript of Proceedings of January 29, 2009, Vol.345, p.178, ll.6 to 14
[128] Transcript of Proceedings of January 29, 2009, Vol.345, p.175, l.23 to p.176, l.3.
[129] Managing Major Cases: A Resource Document, Ehhibit ????, tab 48
[130] Transcript of Proceedings of July 24, 2006, Vol. 42, page 135 line 15 to page 136 line 10
[131] Managing Major Cases: A Resource Document, Ehhibit ????, tab 4, page 7
[132] Transcript of Proceedings of January 27, 2009, Vol. 343, page 200, line 18 -23
[133] Managing Major Cases: A Resource Document, Exhibit ????, tab 4, page 15
[134] Managing Major Cases: A Resource Document, Exhibit ????, tab 4, page 20
[135] Transcript of Proceedings of January 29, 2009, Vol.345, p.236, ll.10 to 19
[136] Managing Major Cases: A Resource Document, Exhibit ????, tab 4, page 31
[137] Transcript of Proceedings of January 29, 2009, Vol.345, p.174, ll.13 to 23
[138] Transcript of Proceedings of January 29, 2009, Vol.345, p.178, l.15 to p.179, l.1
[139] Le Sage Report – Report of the Review of Large and Complex Criminal Case Procedures, Exhibit 3433
[140] Transcript of Proceedings of January 29, 2009, Vol.345, p.176, l.9 to p.177, l.2
[141] Transcript of Proceedings of January 29, 2009, Vol.345, p.177, ll.3 to 12
[142] Transcript of Proceedings of January 29, 2009, Vol.345, p.177, ll.23 to 22
[143] Transcript of Proceedings of January 29, 2009, Vol.345, p.179, ll.12 to 15.
[144] Transcript of Proceedings of July 26, 2006, Vol. 44, page 23-24.
[145] Transcript of Proceedings of July 26, 2006, Vol. 44, page 25, line 21-25.
[146] Transcript of Proceedings of July 26, 2006, Vol. 44, page 53, line 9-10.
[147] Transcript of Proceedings of January 16, 2009, Vol. 336, page 187, line 8-9.
[148] Transcript of Proceedings of July 26, 2006, Vol. 44, page 36, line 11-13.
[149] Transcript of Proceedings of July 26, 2006, Vol. 44, page 78, line 15-20.
[150] Transcript of Proceedings of July 26, 2006, Vol. 44, page 78-81.
[151] Transcript of Proceedings of July 26, 2006, Vol. 44, page 116, line 9-24.
[152] Transcript of Proceedings of July 26, 2006, Vol. 44, page 46, line 8-23, page 105, line 3-8.
[153] Transcript of Proceedings of January 16, 2009, Vol. 336, page 209, line 20-25 to page 210, line 1-3.
[154] Career Profile of Cosette Chase, Exhibit P-3105.
[155] Transcript of Proceedings of January 16, 2009, Vol. 336 page 218, line 19-25
[156] Transcript of Proceedings of January 16, 2009, Vol. 336, page 209, line 10- page 210, line 25.
[157] Transcript of Proceedings of January 19, 2009, Vol.337, page 379, line 6-25.
[158] Transcript of Proceedings of January 19, 2009, Vol. 337, page 380, line 4-25
[159] Transcript of Proceedings of January 16, 2009, Vol. 336, page 218, line 24- page 218, line 4.
[160] Transcript of Proceedings of January 16, 2009, Vol. 336, page 214, line 6-21
[161] E-mail from Cosette Chafe to Finley dated January 4, 2000, Exhibit 3106.
[162] Transcript of Proceedings of January 16, 2009, Vol. 336, page 217, line 8-16.
[163] E-mail from Cosette Chafe to Finley dated February 10, 2000, Exhibit 3107.
[164] Transcript of Proceedings of January 16, 2009, Vol. 336, page 224, line 17– page 226, line 2.
[165] Note Dated May 10, 2000, Exhibit P-3100.
[166] Transcript of Proceedings of January 16, 2009, Vol. 336, page 224, line 9 – page 245, line 10.
[167] Note Dated May 10, 2000, Exhibit P-3100
[168] Transcript of Proceedings of January 19, 2009, Vol. 337, page 251, line 1-3.
[169] Transcript of Proceedings of January 19, 2009, Vol. 337, page 251, line 6-24.
[170] Transcript of Proceedings of January 19, 2009, Vol. 337, page 250, line 1-18.
[171] Transcript of Proceedings of January 19, 2009, Vol. 337, page 308 line 2-7.
[172] Exhibit 3157, Exhibit 3146, Exhibit 3148
[173] Transcript of Proceedings of January 19, 2009, Vol. 337, page 265, line 1-15
[174] Transcript of Proceedings of January 19, 2009, Vol. 337, page 283, line 15 – page 285 line 8.
[175] Transcript of Proceedings of January 19, 2009, Vol. 337, page 266, line 6 – page 685 line 19
[176] MAG Corporate Presentation, Exhibit 49, tab ??????
[177] Transcript of Proceedings of January 16, 2009, Vol. 336, page 197, line 5-9

[178]MAG Corporate Presentation, Exhibit 49, tab ?????
[179]Transcript of Proceedings of January 16, 2009, Vol. 336, page 189, line 13 to page 191, line 25.
[180] Transcript of Proceedings of January 16, 2009, Vol. 336, page 204, line 2 -11, Transcript of Proceedings of January 19, 2009, Vol. 337, page 313, line 3 to 8
[181] Transcript of Proceedings of January 19, 2009, Vol. 337, page 313, line 3 to page 314, line 15.
[182] Claude Marleau – Video Taped Interview Report dated July 31, 1997, Exhibit 137
[183] Memorandum from Robert Pelletier to Mr. Tim Smith dated May 7, 1998, Exhibit 176
[184] Project Truth 'Breakdown of Charges' as at June 30, 2002, Exhibit 2778
[185] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 9 (Alain Godin)
[186] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 30-31 (Alain Godin)
[187] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 50-51 (Alain Godin)
[188] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 48, Pg. 55-59 (Alain Godin); Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 99-103 (Shelley Hallett)
[189] Transcription of Application for Adjournment Ruling against Arthur Peachey dated May 6, 1999, Exhibit 2967
[190] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 48, Pg. 86 (Alain Godin)
[191] Transcription of Application for Ruling against Arthur Peachey dated May 7, 1999, Exhibit 2968, bp. 1035479
[192] Transcript – Her Majesty the Queen v. Roch Joseph Landry dated May 17, 1999, Exhibit 150
[193] Transcript – Her Majesty the Queen v. Roch Joseph Landry dated May 18, 1999 – Continued, Exhibit 152
[194] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 107 (Alain Godin)
[195] Transcript – Her Majesty the Queen v. Paul Lapierre dated May 20, 1999, Exhibit 154, bp. 1034754
[196] Transcript – Her Majesty the Queen v. Paul Lapierre dated May 20, 1999, Exhibit 154, bp. 1034756-757
[197] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 112-15 (Alain Godin)
[198] Transcript – Her Majesty the Queen v. Paul Lapierre dated May 27, 1999, Exhibit 159
[199] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 106 (Alain Godin)
[200] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165
[201] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 4, 2001, Exhibit 160
[202] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 96-98 (Alain Godin)
[203] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165, bp. 1131173
[204] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165, bp. 1131175
[205] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165, bp. 1131179
[206] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165, bp. 1131150
[207] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 87-88 (Shelley Hallett)
[208] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 13, 2001, Exhibit 165, bp. 1131179-80
[209] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 291-92 (Alain Godin); *R. v. W.(D)*, [1991] 1 S.C.R. 742 (S.C.C.)
[210] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169
[211] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169, bp. 1030500
[212] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169, bp. 1030503
[213] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169, bp. 1030511

[214] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169, bp. 1030514
[215] Transcript – Her Majesty the Queen v. George Sanford Lawrence dated October 5, 2001, Exhibit 169, bp. 1030524-525
[216] Transcript – Her Majesty the Queen v. Kenneth Martin dated November 9 [sic], 2001, Exhibit 173
[217] Transcript – Her Majesty the Queen v. Kenneth Martin dated November 9 [sic], 2001, Exhibit 173, bp. 1030550
[218] Transcript – Her Majesty the Queen v. Kenneth Martin dated November 9 [sic], 2001, Exhibit 173, bp. 1030558
[219] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 149 (Alain Godin)
[220] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 7, 2001, Exhibit 163, bp. 1130922
[221] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 7, 2001, Exhibit 163, bp. 1130925-928
[222] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 7, 2001, Exhibit 163, bp. 1130930
[223] Transcript – Her Majesty the Queen v. Paul Lapierre dated September 7, 2001, Exhibit 163, bp. 1130963-965
[224] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 150-52 (Alain Godin)
[225] Transcript of Proceedings of January 8, 2009, Vol. 330, Pg. 223-26 (Alain Godin); Décision sur motion rendue oralement le 13 juin 2000, Exhibit 2987
[226] Transcription of Reasons for Judgment re: Harvey Joseph Latour dated June 27, 2000, Exhibit 2976
[227] Memo from Alain Godin to Insp. Pat Hall re: John Christopher Wilson dated June 29, 2000, Exhibit 588
[228] Letter from Peter Griffiths to D/Insp. T.F. Smith dated December 21, 1994, Exhibit 393
[229] Transcript of Proceedings of November 24, 2008, Vol. 310, Pg. 244 (Tim Smith)
[230] Transcript of Proceedings of December 13, 2006, Vol. 78, Pg. 11-30 (John MacDonald)
[231] Transcript of St. John's/St. Joseph's Investigation dated November 24, 1995, Exhibit 415
[232] Note to File from Robert Pelletier re: Charles MacDonald dated February 1, 1996, Exhibit 2673
[233] Memo from Robert Pelletier to Det. Insp. Tim Smith dated March 5, 1996, Exhibit 394
[234] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 22 (Robert Pelletier)
[235] Information against Father MacDonald dated March 6, 1996, Exhibit 2254
[236] Transcript – R. v. Charles MacDonald dated February 24, 1997, Exhibit 224
[237] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 41-42 (Robert Pelletier); Preliminary Inquiry re: R. v. Charles MacDonald dated February 25, 1997, Exhibit 3295
[238] R. vs. Charles MacDonald – Preliminary Inquiry – Volume 3 dated February 26, 1997, Exhibit 414
[239] R. vs. Charles MacDonald – Preliminary Inquiry – Volume 3 dated February 26, 1997, Exhibit 414, bp. 1056013-014
[240] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 52 (Robert Pelletier)
[241] Letter from Robert Pelletier to Michael Neville dated March 20, 1997, Exhibit 3298
[242] Memo from Robert Pelletier to Mr. Peter Griffiths dated April 2, 1997, Exhibit 228
[243] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 59-60 (Robert Pelletier)
[244] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 65 (Robert Pelletier)
[245] Transcript, R. v. MacDonald, Reply Submissions and reasons on committal, October 24, 1997, Exhibit 2256
[246] Transcript of Proceeding on June 28, 2007, Vol. 122, p.110, l20 to p.115, l.25, p.185, l.16 to 25 and p.260, l.17 to p.261, l.25
[247] Transcript of Proceeding on December 18, 2008, Vol.326, p.159, ll.7 to 9
[248] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 78 (Robert Pelletier)
[249] Information against Father MacDonald dated January 26, 1998, Exhibit 2258; Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 79-80 (Robert Pelletier)
[250] Transcript, R. v. MacDonald, May 3, 1999, Exhibit 2259

[251] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 80, 110 (Robert Pelletier)
[252] Letter from Robert Pelletier to Alain Robichaud re: R. v. Charles MacDonald dated February 27, 1998, Exhibit 3308
[253] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 163 (Robert Pelletier)
[254] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 163-64 (Robert Pelletier)
[255] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 119-20 (Robert Pelletier)
[256] Adjournment re: Charges: Sections 148 and 156 C.C.C. dated January 21, 1999, Exhibit 3090
[257] Transcript of Proceedings of January 26, 2009, Vol. 342, Pg. 123-24 (Robert Pelletier)
[258] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 48 (Shelley Hallett)
[259] Letter from Robert Pelletier to Shelley Hallett re: R. v. Charles MacDonald dated June 25, 1999
[260] Memorandum from Nadia Thomas to Shelley Hallett re: R. v. Charles MacDonald dated August 31, 1999, Exhibit 3212
[261] Memorandum from Nadia Thomas to Shelley Hallett re: Pre-Trial Conference Discussion Notes dated September 13, 1999, Exhibit 3214
[262] Indictment dated September 10, 1999 with handwritten notations, Exhibit 2261
[263] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 30-31 (Shelley Hallett)
[264] Letter from Shelley Hallett to Pat Hall re: Additional Charges C-2 allegations dated March 30, 2000, Exhibit 2848
[265] Letter from Shelley Hallett to Michael Neville re: R. v. Charles MacDonald dated April 6, 2000, Exhibit 3216
[266] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 33 (Shelley Hallett)
[267] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 38-39 (Shelley Hallett)
[268] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 100 (Shelley Hallett)
[269] Extract Adjournment Part 1 of 2 Open Court Transcript re: R. v. Charles MacDonald dated April 18, 2000, Exhibit 3220; Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 55-57 (Shelley Hallett)
[270] Extract Adjournment Held In Camera Transcript re: R. v. Charles MacDonald dated April 18, 2000, Exhibit 3221
[271] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 76 (Shelley Hallett)
[272] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 84(Shelley Hallett)
[273] Transcript of Proceedings of January 21, 2009, Vol. 339, Pg. 99 (Shelley Hallett)
[274] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 7 (Lorne McConnery); E-mail from James Stewart to Lorne McConnery re: R. v. MacDonald dated April 2, 2001, Exhibit 3036
[275] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 9-10 (Lorne McConnery)
[276] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 10-11 (Lorne McConnery)
[277] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 56 (Lorne McConnery)
[278] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 74 (Lorne McConnery)
[279] Notes of Lorne McConnery dated from May 3, 2001 to July 9, 2001, Exhibit 3042, bp. 1170907-908
[280] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 75-76 (Lorne McConnery); Notes of Lorne McConnery dated from May 3, 2001 to July 9, 2001, Exhibit 3042, bp. 1170908-909
[281] Memorandum from Shelley Hallett to Lorne McConnery re: R. v. Charles MacDonald dated June 2, 2001, Exhibit 3044; Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 78-79 (Lorne McConnery)
[282] Letter from Shelley Hallett to Lorne McConnery re: Preliminary Inquiry Transcripts dated November 16, 2001, Exhibit 3047; Letter from Shelley Hallett to Lorne McConnery re: Preliminary Inquiry Transcripts dated February 27, 2002, Exhibit 3048
[283] Transcript of Proceedings of January 22, 2009, Vol. 340, Pg. 218 (Shelley Hallett)
[284] Transcript, R. v. MacDonald, Application for Adjournment, April 25, 2001, Exhibit 2265
[285] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 27 (Lorne McConnery)
[286] Letter from Kevin Phillips to Robert Selkirk re: R. v. MacDonald dated April 25, 2001, Exhibit 3097; Letter from Kevin Phillips to Michael Neville re: R. v. MacDonald dated May 11, 2001, Exhibit 3098; Letter from Kevin Phillips to Michael Neville re: R. v. MacDonald dated May 24, 2001, Exhibit 3099

[287] E-mail from Terrance Cooper to Lorne McConnery and others re: Dunlop boxes, page numbering dated April 20, 2001, Exhibit 3038
[288] Letter from Lorne McConnery to Mike Neville re: R. v. Charles Macdonald dated August 15, 2001, Exhibit 3041
[289] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 36, Pg. 47 (Lorne McConnery)
[290] Transcript of Proceedings of January 13, 2009, Vol. 333, Pg. 47 (Lorne McConnery)
[291] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 47-51 (Lorne McConnery)
[292] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 62-67 (Lorne McConnery)
[293] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 69 (Lorne McConnery)
[294] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 70 (Lorne McConnery)
[295] Letter from Douglas Cunningham to James Stewart re: R. v. Charles MacDonald dated March 14, 2002, Exhibit 3065
[296] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 91-93 (Lorne McConnery)
[297] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 104-05, Pg. 115-16 (Lorne McConnery)
[298] Notes of Lorne McConnery re: C-8 dated March 12, 2002, Exhibit 3068; More Notes of Lorne McConnery re: C-8 dated March 12, 2002, Exhibit 3069
[299] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 120-22 (Lorne McConnery)
[300] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 125-27 (Lorne McConnery)
[301] Transcript of Proceedings of January 15, 2009, Vol. 335, Pg. 191-92 (Lorne McConnery)
[302] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 127-29 (Lorne McConnery); Notes of Lorne McConnery re: C-2 dated March 13, 2002, Exhibit 3070; More Notes of Lorne McConnery re: C-2 dated March 12, 2002, Exhibit 3071
[303] Transcript of Proceedings of January 14, 2009, Vol. 334, Pg. 145-47 (Lorne McConnery)
[304] Notes of Lorne McConnery re: Contacts with Perry Dunlop his travel arrangements undated, Exhibit 3100; Notes of Lorne McConnery dated April 24, 2002, Exhibit 3101
[305] Transcript, R. v. Charles MacDonald dated May 13, 2002, Exhibit 227
[306] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 22 (Shelley Hallett); Information of charges on Jacques Leduc dated June 22, 1998, Exhibit 3172
[307] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 27 (Shelley Hallett)
[308] Career Profile of Shelley Hallett, Exhibit 3113
[309] Memorandum from Milan Rupic to Shelley Hallett re: Cornwall Investigation dated July 2, 1998
[310] Recommended rewording of the charges on the information re: R. v. Jacques Leduc dated July 15, 1998, Exhibit 3173; Information of charges on Jacques Leduc dated July 17, 1998, Exhibit 3174
[311] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 53 (Shelley Hallett)
[312] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 31-38 (Shelley Hallett)
[313] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 34-35 (Shelley Hallett)
[314] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 45-46 (Shelley Hallett)
[315] Letter from Shelley Hallett to Michael Edelson re: R. v. Jacques Leduc dated March 9, 1999
[316] Letter from Michael Edelson to Shelley Hallett re: R. v. Jacques Leduc dated March 17, 1999, Exhibit 3274; Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 66-67 (Shelley Hallett)
[317] Letter from Michael Edelson to Shelley Hallett re: R. v. Jacques Leduc dated March 26, 1999, Exhibit 3181
[318] Letter from Michael Edelson to Shelley Hallett re: R. v. Jacques Leduc Judicial Pre-trial teleconference dated March 22, 2000, Exhibit 3275
[319] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 90 (Shelley Hallett)
[320] Timeline re: Jacques Leduc dated from June 22, 1998 to October 4, 2004, Exhibit 3179, bp. 1016039
[321] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 117-19 (Shelley Hallett)
[322] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 124 (Shelley Hallett)
[323] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 129-30 (Shelley Hallett)
[324] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 131 (Shelley Hallett)
[325] Extract from Proceedings at Trial re: Application for Stay of Proceedings re: Jacques Leduc dated February 14, 2001, Exhibit 2647

[326] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 177-80 (Shelley Hallett)
[327] Transcript of Proceedings of January 20, 2009, Vol. 338, Pg. 180-84 (Shelley Hallett)
[328] Proceedings on Application for Stay of Proceedings re: Jacques Leduc dated February 22, 2001, Exhibit 2648
[329] Proceedings on Application for Stay of Proceedings re: Jacques Leduc dated February 26, 2001, Exhibit 3273
[330] Proceedings on Application for Stay of Proceedings re: Jacques Leduc dated February 26, 2001, Exhibit 3273, bp. 1077093
[331] Proceedings on Application for Stay of Proceedings re: Jacques Leduc dated February 26, 2001, Exhibit 3273, bp. 1077107-112
[332] Reasons for Judgment on Application for Stay of Proceedings re: Jacques Leduc dated March 1, 2001, Exhibit 2650
[333] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774
[334] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774, bp. 1007716-717
[335] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774, bp. 1007718 (para. 120)
[336] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774, bp. 1007718 (para. 125)
[337] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774, bp. 1007720 (para. 135)
[338] York Regional Police – Conclusion undated, Exhibit 3208
[339] Court of Appeal decision, R. v. Jacques Leduc, July 24, 2003, Exhibit 774, bp. 1007720 (para. 135)
[340] Memorandum from Shelley Hallett to Lidia Narozniak re: R. v. Leduc dated May 19, 2004, Exhibit 3271
[341] Memorandum from Shelley Hallett to Lidia Narozniak re: R. v. Leduc dated May 21, 2004, Exhibit 3210
[342] E-mail from Shelley Hallett to Lidia Narozniak re: R. v. Leduc dated May 23, 2004, Exhibit 3211.
[343] Transcript of Proceedings of January 22, 2009, Vol. 340, Pg. 373 (Lidia Narozniak)
[344] Letter from Shelley Hallett to Pat Hall re: R. v. Malcolm MacDonald dated March 9, 1999, Exhibit 3125
[345] Pre-Trial Conference Report re: Malcolm MacDonald dated June 24, 1999, Exhibit 3127
[346] Transcript of R. v. Malcolm MacDonald, January 11, 2000, Exhibit 1158
[347] Letter from Shelley Hallett to Pat Hall re: R. v. Brian Dufour Criminal Investigation and Proposed Charges dated April 3, 2000
[348] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 196 (Shelley Hallett)
[349] Transcript of Proceedings of January 29, 2009, Vol. 345, pp. 157-8, Exhibit 3421, bp7102167, E-mail from James Bateman to Jim Flaherty re: Project Truth dated 01 Jul 00
[350] Transcript of Proceedings of December 5, 2008, Vol. 319, pp. 124-126, Transcript of Proceedings of December 18, 2009, Vol. 326, pp. 180-183, Exhibit 2754, bp 7110574-75, Notebook #12 of Pat Hall dated 10 Apr 00 to 01 Aug 00
[351] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 107-108, Exhibit 2754, bp 7110574-5, 7110582, 7110591-92, Notebook #12 of Pat Hall dated 10 Apr 00 to 01 Aug 00
[352] Transcript of Proceedings of December 5, 2008, Vol. 319, p. 129, Exhibit 793, bp 1144086, Printout of 86 pages of Project truth Website printed by OPP at the direction of D/Insp Hall on 01 Aug 00 ; Exhibit 2755, bp 7110589, 7110611, Notebook #13 of Pat Hall dated 02 Aug 00 to 03 Nov 00
[353] Transcript of Proceedings of January 29, 2009, Vol. 345, pp. 157-8, Exhibit 3422, bp 1042471-2, Letter from Murray Segal to James Bateman dated 29 Aug 00
[354] Transcript of Proceedings of December 5, 2008, Vol. 319, p. 129, Exhibit 803, OPP memorandum from D/Insp Pat Hall to the Director of the Criminal Investigation Branch dated 15 Mar 01, bp 7022723
[355] Exhibit 814, bp 7102153, Will Say of Detective Inspector Pat Hall; Transcript of Proceedings of December 5, 2008, Vol. 319, p. 124

[356] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 109-116, Exhibit 3189, bp 1042481-2, Notes on Project Truth Website dated 13 Sep 00; Transcript of Proceedings of January 29, 2009, Vol. 345, pp. 164-167
[357] Transcript of Proceedings of January 20, 2009, Vol. 338, p. 122, Exhibit 3191, bp 1042483, Memo from Kerry Benzakein to Shelley Hallett re: Jurisdiction of Superior Courts - Power to control their own process dated 13 Sep 00
[358] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 109, 116-117, Exhibit 3190, bp 1042484-6, Handwritten notes of Shelley Hallett of meeting dated 13 Sep 00; Transcript of Proceedings of January 29, 2009, Vol. 345, pp. 164-167
[359] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 109, 116-117, Exhibit 3190, bp 1042484-6, Handwritten notes of Shelley Hallett of meeting dated 13 Sep 00; Transcript of Proceedings of January 29, 2009, Vol. 345, pp. 164-167
[360] Exhibit 635, Statement of Claim Court File No. 00-00-015075 dated 19 Sep 00
[361] Exhibit 801, Letter from Mr. David Sheriff-Scott to Nadeau dated August 23, 2001
[362] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 118-119, Exhibit 782, bp 1075777-9, Transcript of R. vs. Jacques Leduc dated 16 Jan 01
[363] Exhibit 783, bp 1075847-53, Transcript of R v Jacques Leduc dated 17 Jan 01
[364] Transcript of Proceedings of January 20, 2009, Vol. 338, pp. 118-119, Exhibit 784, bp 1075865-72, Transcript of R v Jacques Leduc dated 22 Jan 01
[365] Exhibit 2787, bp 7022783, Duplication of Initial Report from Pat Hall to Director Criminal Investigation Branch Investigation Bureau dated 15 Mar 01
[366] Exhibit 785, bp 1076154-7, Transcript of R v Jacques Leduc dated 29 Jan 01
[367] Exhibit 791A, bp 1085781, Fax message from Assistant Crown Attorney Terry Cooper to Howard Yegendorf dated 01 Feb 01; Exhibit 826, bp 7110786, D/Insp Pat Hall's handwritten notes
[368] Exhibit 836, bp 7129525-26, D/Cst Steve Seguin's handwritten notes
[369] Exhibit 777, bp 1016661-4, Transcript of R v Richard Nadeau dated 15 Feb 01
[370] Exhibit 2786, bp 7022795, Initial Report from Pat Hall to Director Criminal Investigation Branch Investigation Bureau dated 15 Mar 01; Exhibit 777, bp 1016646-7, Transcript of R v Richard Nadeau dated 15 Feb 01
[371] Exhibit 827, bp 7110860-61, D/Insp Hall's handwritten notes
[372] Exhibit 810, Letter to Mr. Terry Cooper, Assistant Crown Attorney by the Honourable Justice Colin McKinnon, dated 05 Apr 01; Exhibit 808, Copy of Project Truth 2 website page which appears to have been printed on April 18, 2001; Exhibit 2790, Final Supplementary Report from Pat Hall to Director Criminal Investigation Branch Investigation Bureau dated 01 Oct 01
[373] Transcript of Proceedings, January 29, 2009, Vol. 345, pp. 167-169, Exhibit 3424, Memorandum from James Stewart to Murray Segal re: Contempt Charge - Cornwall Richard Nadeau dated 09 May 01; Exhibit 3425, Letter from Jeffrey Manishen to Murray Segal re: R.v. Richard Nadeau dated 05 Jun 01
[374] Exhibit 789, OPP Crown Brief, Regina v Richard Nadeau, volume 1; Exhibit 790, OPP Crown Brief, Regina v Richard Nadeau, volume 2; Exhibit 804, Transcript, R. vs. Richard Nadeau, in the matter of the contempt of court hearing arising out of publications on the Internet related to the trial of Jacques Leduc, dated 01 Aug 07, bp 7022830, 7022843; Exhibit 2790, Final Supplementary Report from Pat Hall to Director Criminal Investigation Branch Investigation Bureau dated 01 Oct 01
[375] Transcript of Proceedings, January 29, 2009, Vol. 345, pp. 169-172; Exhibit 3426, Letter from Steven Skurka to Murray Segal dated 15 Jul 02; Exhibit 3427, Letter from Murray Segal to Ross Bingley dated 19 Jul 02
[376] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 58-63 (Shelley Hallett)
[377] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 118-20 (Shelley Hallett)
[378] Transcript of Proceedings of January 19, 2009, Vol. 337, Pg. 61 (Shelley Hallett)
[379] Transcript of Proceedings of January 22, 2009, Vol.340, p.308, l.12 to p.310, l.24
[380] Opinions of Pearson, Dupont and Narozniak, Exhibits 3257, 3258 and 3259 respectively.
[381] Transcript of Proceedings of January 22, 2009, Vol.340, p.329, l.13 to p.330, l.16
[382] Transcript of Proceedings of January 22, 2009, Vol.340, p.306, l.9 to p.307, l.18

[383] Transcript of Proceedings of January 22, 2009, Vol.340, p.336, l.11-24
[384] Transcript of Proceedings of January 22, 2009, Vol.340, p.338, l.3 to p.341, l.1
[385] Transcript of Proceedings of January 22, 2009, Vol.340, p.342, l.24 to p.348, l.19 and Transcript of an Adjournment in R. v. Leduc dated February 19, 2004, Exhibit 3264, bp 1014798-1014800
[386] Transcript of Proceedings of January 22, 2009, Vol.340, p.347, ll.17-223 and p.348, ll.13-15 and Email from McQuade to Narozniak dated June 4, 2004, Exhibit 3287, bp 7130456-7130457
[387] Notice of Application Pursuant to s.7 of the Canadian *Charter of Rights and Freedoms*, Exhibit 3483, bp 1047218
[388] Transcript of Proceedings of January 23, 2009, Vol.341, p.213, l.4 to p.215, l.9 and Email from Narozniak to Seguin dated June 10, 2004, Exhibit 3288, bp 7022980
[389] Transcript of Proceedings of January 22, 2009, Vol.340, p.360, l.18 to p.362, l.9
[390] Transcript of Proceedings of January 23, 2009, Vol.341, p.217, l.23 to p.220, l.10 and Email from Narozniak to Seguin dated July 12, 2004, Exhibit 3290, bp 7022440
[391] Transcript of Proceedings of January 23, 2009, Vol.341, p.220, l.15 to p.221, l.5
[392] Transcript of Proceedings of January 23, 2009, Vol.341, p.78, l.12 to p.80, l.16
[393] Transcript of Proceedings of January 23, 2009, Vol.341, p.101, ll.5-22
[394] Transcript of Voir Dire in R. v. Leduc dated August 18, 2004, Exhibit 724, bp 1046810-1046811
[395] Transcript of Voir Dire in R. v. Leduc dated August 16, 2004, Exhibit 722, bp 1046614-1046619
[396] Transcript of Proceedings of January 23, 2009, Vol.341, p.95, l.16 to p.96, l.16
[397] Reasons for Judgment of Platana R.S.J. dated November 10, 2004, Exhibit 781, bp 1066031, para.8
[398] Letter from Aikman to Narozniak dated September 10, 2004, Exhibit 1415, bp 7123494
[399] Transcript of Proceedings of January 23, 2009, Vol.341, p.200, l.2 to p.204, l.25 and p.221, ll.6-12
[400] Transcript of Proceedings of January 23, 2009, Vol.341, p.100, l.5 to p.101, l.5
[401] Applicant's Factum for the purpose of the s.11(b) application in R. v. Leduc, Exhibit 3276
[402] Transcript of Proceedings of January 23, 2009, Vol.341, p.113, l.3 to p.114, l.25
[403] Transcript of Proceedings of January 23, 2009, Vol.341, p.115, l.1 to p.116, l.2
[404] Transcript of Proceedings of January 23, 2009, Vol.341, p.152, ll.2-19
[405] Transcript of Proceedings of January 23, 2009, Vol.341, p.170, l.12 to p.171, l.24
[406] Memorandum dated October 8, 2004 from Narozniak to Pearson, Lindsay and Campbell, Exhibit 2731
[407] *Supra*, note 19
[408] Transcript of Proceedings of January 23, 2009, Vol.341, p.123, l.7 to p.124, l.4 and Letter from McQuade to Murray MacDonald dated October 21, 2004, Exhibit 3279, bp 7125242
[409] Transcript of Proceedings of January 9, 2009, Vol.331, Pg. 105 (Curt Flanagan)
[410] Transcript of Proceedings of May 13, 2008, Vol.227, Pg.28 (Brian Snyder)
[411] Memo from Alan Findlay to James Stewart, June 14, 2002, Ex.3165, bp.1012967
[412] Memo from Alan Findlay to James Stewart, June 14, 2002, Ex.3165; Email from Alan Findlay to Cosette Chafe re Bernard Sauve, May 24, 2002, Ex.3166, and Transcript of Proceedings of January 19, 2009, Vol.337, Pg.364-366 (Cosette Chafe)
[413] Email from Alan Findlay to Cosette Chafe re Bernard Sauve, May 24, 2002, Ex.3166
[414] Memo from Alan Findlay to James Stewart, June 14, 2002, Ex.3165, bp.1012967-2968
[415] Memo from Alan Findlay to James Stewart re R. v. Sauve, June 14, 2002, Ex.3165; Transcript of Proceedings, R. v. Bernard Sauve, June 17, 2002, Ex.1592, bp 1108002-11108003; and Transcript of Proceedings of January 19, 2009, Vol.337, Pg.364-366 (Cosette Chafe)
[416] Transcript of Proceedings, R.v. Bernard Sauve, June 17, 2002, Ex.1592, bp 1108002-1108003
[417] Letter from Alan Findlay to James Stewart re R. v. Sauve, June 14, 2002, Ex.3165, Email from Alan Findlay to Cosette Chafe re Bernard Sauve, May 24, 2002, Ex.3166, and Transcript of Proceedings of January 19, 2009, Vol.337, Pg.364-366 (Cosette Chafe)

[418] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32, Para.3a
[419] PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37, Pg.5
[420] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32, 3c)ii), and 3c)iii); and PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37, Pg.5
[421] OPP Project Truth Court Appearances, Ex.2775, Pg.1
[422] OPP Project Truth Brief Log, Ex.2772, Pg.2; OPP Project Truth Court Appearances, Ex.2775, Pg.1; OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.1
[423] OPP Project Truth Court Appearances, Ex.2775, Pg.1
[424] Videotaped Interview of Marc Carriere, August 8, 2000, Ex.639, bp.7014706-4707
[425] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 81-83 (Marc Carriere); Videotape Interview of Marc Carriere, dated August 8, 2000, Ex.639, bp.7014708
[426] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 80-82 (Marc Carriere)
[427] OPP Document re Investigation against Keith Jodoin, dated August 1, 2000, Ex.638
[428] Videotape Interview of Marc Carriere, dated August 8, 2000, Ex.639, bp.7014707-4712
[429] OPP Project Truth Brief Log, Ex.2772, Pg.2; OPP Project Truth Court Appearances, Ex.2775, Pg.1; OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.1
[430] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 84-85 (Marc Carriere)
[431] OPP Project Truth Court Appearances, Ex.2775, Pg.1
[432] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 36, 85-87 (Marc Carriere)
[433] Email from Louise Lamoureux to Cosette Chafe re Project Truth Status Report, dated November 28, 2000, Ex.3164
[434] Transcript of Proceedings of January 9, 2009, Vol.331, Pg. 77 (Curt Flanagan), and Letter from Pat Hall to Claudette Wilhelm re Jodoin, dated September 12, 2000, Ex.3002
[435] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32
[436] PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37
[437] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32, paras.1a), 1b)i), 1c), 2a), 2b)i), 2b)ii), 6; and PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37, Pg.2-4, 7
[438] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 81-86 (Marc Carriere)
[439] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 40 (Marc Carriere)
[440] Transcript of Proceedings of September 11, 2007, Vol.136, Pg. 32-33 (Marc Carriere)
[441] Transcript of Proceedings of January 9, 2009, Vol.331, Pg. 76-77, 127-128 (Curt Flanagan), and Letter from Pat Hall to Claudette Wilhelm re Jodoin, dated September 12, 2000, Ex.3002
[442] OPP Project Truth Court Appearances, Ex.2775, Pg.4
[443] OPP Project Truth Brief Log, Ex.2772, Pg.4
[444] OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.4
[445] OPP Project Truth Court Appearances, Ex.2775, Pg.4
[446] OPP Project Truth Court Appearances, Ex.2775, Pg.4
[447] V/WAP notes re C-111 and R v Major, Oct.3-00 to Nov.7-01, Ex. 3163
[448] V/WAP notes re C-111 and R v Major, Oct.3-00 to Nov.7-01, Ex. 3163
[449] OPP Project Truth Court Appearances, Ex.2775, Pg.4
[450] V/WAP notes re C-111 and R v Major, Oct.3-00 to Nov.7-01, Ex. 3163
[451] Transcript of Proceedings of January 9, 2009, Vol.331, Pg. 74-75, 154-159 (Curt Flanagan)
[452] Videotaped Interview Report of C-111, dated October 19, 1999, Ex.3017, bp. 8448-8449
[453] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32
[454] PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37

[455] Policy No.C.S.1 “Charge Screening”, January 15, 1994 (updated February 10, 1995), MAG Corporate Presentation, Ex.46, Tab 32, paras.1a), 1b)i), 1c), 2a), 2b)i), 2b)ii), 6; and PM [2002] No.5 “Charge Screening”, October 1, 2002, MAG Corporate Presentation, Ex.46, Tab 37, Pg.2-4, 7
[456] V/WAP notes re C-111 and R v Major, Oct.3-00 to Nov.7-01, Ex. 3163
[457] OPP Project Truth Court Appearances, Ex.2775, Pg.5; and OPP Project Truth Brief Log, Ex.2772, Pg.3
[458] OPP Project Truth Brief Log, Ex.2772, Pg.3
[459] OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.2
[460] OPP Project Truth Court Appearances, Ex.2775, Pg.5
[461] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.10 (Curt Flanagan); and Memo from Flanagan to Wilhelm, dated October 18, 1999, Ex.3004
[462] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.10 (Curt Flanagan)
[463] OPP Project Truth Brief Log, Ex.2772, Pg.3; and OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.2
[464] OPP Project Truth Brief Log, Ex.2772, Pg.3; and OPP Project Truth Breakdown of Charges as of June 30, 2002, Ex.2778, Pg.2
[465] Transcript of Proceeding, R. v. Jean-Luc Leblanc, June 7, 2001, Ex. 3006, bp. 1040066-0067
[466] Consent of the Attorney General, R. v. Jean-Luc Leblanc, March 27, 2002, Ex.3010
[467] Transcript of Proceeding, R. v. Jean-Luc Leblanc, April 10, Ex. 3011; and Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012
[468] Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012, Pg.9-11
[469] Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012, Pg.15
[470] Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012, Pg.14
[471] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.29 (Curt Flanagan)
[472] Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012, Pg.18 to 22
[473] Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012, Pg.22-23
[474] Project Truth-Outline of Services, Victim/Witness Assistance Program, Ex.3141; Victim/Witness Programme, Project Truth, Guidelines for Service, May 2001, Ex.3142
[475] V/WAP notes re Leblanc prosecution, Sept.28-00 to Apr.5-01, Ex.3162, Pg.2
[476] V/WAP notes re Leblanc prosecution, Sept.28-00 to Apr.5-01, Ex.3162, bp. 11149230; and Transcript of Proceedings of November 1, 2006, Vol.63, Pg. 106-107 and 137-140 (Cindy Burgess-Lebrun)
[477] V/WAP notes re Leblanc prosecution, Sept 28-00 o Apr.5-01, Ex.3162, bp1149228
[478] Transcript of Proceeding, R. v. Jean-Luc Leblanc, April 10, Ex. 3011; Decision on Dangerous Offender Application and Sentence, R. v. Jean-Luc Leblanc, April 22, 2002, Ex.3012; and Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.25 (Curt Flanagan)
[479] Transcript of Proceedings of October 19, Vol. 60, Pg. 162-165 (Jason Tyo); and Transcript of Proceedings of November 1, 2006, Vol. 63, Pg. 106-107 and 137-140 (Cindy Burgess-Lebrun)
[480] Transcript of Proceedings of November 1, 2006, Vol. 63, Pg. 111-115 (Cindy Burgess-Lebrun)
[481] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.23 (Curt Flanagan)
[482] Transcript of Proceedings of January 9, 2009, Vol. 331, Pg.23 (Curt Flanagan)
[483] Transcript of Proceedings of October, 22, 2008, Vol. 292, page 9, line 6-25.
[484] Transcript of Proceedings of October 22, 2008, Vol. 292, page 116, line 18 – page 117, line 1.
[485] Transcript of Proceedings of October 22, 2008, Vol. 292, page 115, line 24 – page 117, line 8.
[486] Transcript of Proceedings of October 22, 2008, Vol. 292, page 170, line 4–24.
[487] Transcript of Proceedings of October 22, 2008, Vol. 292, page 171, line 16 – 24.
[488] Transcript of Proceedings of October 23, 2008, Vol. 293, page 81, line 2 – page 82, line 8.
[489] Transcript of Proceedings of October 22, 2008, Vol. 292, page 86, line 12 – page 87, line 4.

[490] Transcript of Proceedings of October 22, 2008, Vol. 292, page 117, line 21 – page 118, line 13.
[491] Transcript of Proceedings of October 23, 2008, Vol. 293, page 110, line 19 – page 11 line 3.
[492] Notes of Thomas O"Brien, Exhibit 1505, bates page # 717232.
[493] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717233.
[494] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717233.
[495] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717234.
[496] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717234.
[497] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717235.
[498] Transcript of Proceedings of April 22, 2008, Vol. 217, page 249, line 20 to page 254 line 4.
[499] Transcript of Proceedings of April 23, 2008, Vol. 218, page 5, line 7-22.
[500] Typewritten Version Antoine Witness Statement of CPS dated January 21 1990, Exhibit 504.
[501] Transcript of Proceedings of April 23, 2008, Vol. 218, page 98, line 6- page 100, line 4.
[502] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717236.
[503] Transcript of Proceedings of April 22, 2008, Vol. 217, page 254, line 20 to page 257, line 3.
[504] Notes of Thomas O'Brien, Exhibit 1505, bates page # 717237.
[505] Transcript of Proceedings of April 23, 2008, Vol. 218, page 115, line 12-page 116, line 10.
[506] Transcript of Proceedings of April 23, 2008, Vol. 218, page 14, line 18-page 15, line 1.
[507] Transcript of Proceedings of April 23, 2008, Vol. 218, page 269, line 2-8.
[508] Transcript of Proceedings of April 23, 2008, Vol. 218, page 234, line 7 -page 236, line 14.
[509] Transcript of Proceedings of April 22, 2008, Vol. 217, page 6, line 5 to page 7, line 17.
[510] Letter from Johnson to Douglas dated April 4, 1990, Exhibit 1499.
[511] Transcript of Proceedings of April 23, 2008, Vol. 218, page 371, line 7-11.
[512] Transcript of Proceedings of January 6, 2009, Vol. 328, page 168, line 10-20..
[513] Letter from Douglas to Johnson Douglas dated April 10, 1990, Exhibit 1500.
[514] Transcript of Proceedings of January 6, 2009, Vol. 328, page 172, line 23 to page 173, line 21.
[515] Transcript of Proceedings of April 23, 2008, Vol. 218, page 266, line 5-14.
[516] Transcript of Proceedings of January 6, 2009, Vol. 328, page 178, line 15 to page 179, line 2.
[517] Transcript of Proceedings of October 22, 2008, Vol. 292, page 33, line 10 – 18.
[518] Transcript of Proceedings of October 22, 2008, Vol. 292, page 34, line 16 – 25.
[519] Letter from O'Brien to Nadon dated December 2, 1982, Exhibit 129.
[520] Letter from O'Brien to Nadon dated December 2, 1982, Exhibit 129.
[521] Letter from O'Brien to Nadon dated December 6, 1982, Exhibit 130.
[522] Transcript of Proceedings of October 22, 2008, Vol. 292, page 35, line 2-7.
[523] Transcript of Proceedings of October 22, 2008, Vol. 292, page 36, line 2 to page 37, line 3.
[524] Transcript of Proceedings of October 22, 2008, Vol. 292, page 37, line 5 – 17.
[525] Transcript of Proceedings of October 22, 2008, Vol. 292, page 37, line 19 – 21.
[526] Transcript of Proceedings of October 22, 2008, Vol. 292, page 38, line 6 – 13.
[527] Letter from O'Brien to Ain dated April 22, 1983, Exhibit 133.
[528] Letter from O'Brien to Nadon dated April 22, 1982, Exhibit 134.
[529] Transcript of Proceedings of January 6, 2009, Vol. 328, page 187 line 222 to page 188 line 4.
[530] Transcript of Proceedings of October 22, 2008, Vol. 292, page 19, line 4 – 9.
[531] Transcript of Proceedings of October 22, 2008, Vol. 292, page 18, line 23 to page 19 line 2.
[532] Transcript of Proceedings of October 22, 2008, Vol. 292, page 19, line 11 to page 23, line 10.
[533] Letter from O'Brien to Dalby dated October 31, 1978, Exhibit 2337.
[534] Letter from O'Brien to Dalby dated November 1, 1978, Exhibit 2338.
[535] Transcript of Proceedings of January 6, 2009, Vol. 328, page 190 line 9-12.
[536] Transcript of Proceedings of January 7, 2009, Vol 329, page 28, line 15-20.
[537] Examination of Brian Payment, Transcript of Evidence dated My 1, 2008, vol 224, page 13, lines 23 to page 14 line 14.
[538] Examination of Brian Payment,Transcript of Evidence dated My 1, 2008, vol 224, page 76, line 9 – page 77 line 20.
[539] Transcript of Proceedings of January 6, 2009, Vol. 328, page 88, line 18-25.
[540] Report of Dr. John Bradford dated October 10, 1986, Exhibit 2944, bates page # 1071658.
[541] Probation Order, Exhibit 97.

[542] Transcript of Proceedings of January 6, 2009, Vol. 328, page 90, line 21 to page 91, line 22.
[543] Transcript of Proceedings of Januaray7, 2009, Vol. 329, page 206, line 13 to page 208, line 10.
[544] Transcript of Proceedings of May 1, 2008, Vol. 224, page 87, line 12 to page 91, line 13.
[545] Transcript of Proceedings of January 6, 2009, Vol. 328, page 102, line 25 to page 103, line 14.
[546] Transcript of Proceedings of May 1, 2008, Vol. 224, page 95, line 4-22.
[547] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123402
[548] Reasons for Judgment, R. v. Marcel Lalonde, November 17, 2000, Ex. 497
[549] Reasons on Sentencing, R. v. Marcel Lalonde, dated May 3, 2001 at Pg.18
[550] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123402, 7123406
[551] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123404-06
[552] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123407, 123409
[553] Letter from Marc Garson to Officer Garry Derochie re Lalonde Disclosure Request, dated November 19, 1999, Ex.1326, bp.1108359
[554] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.1
[555] Transcript of Proceedings of June 2, 2008, Pg.9 (Rene Desrosiers); and Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123411
[556] Statement of Rene Desrosiers, dated October 6, 1999, Ex.1718
[557] Letter from Donna Ptak to Claudette Wilhelm, dated March 9, 1998, Ex. 1719, Pg.2.; and Memo from Officers Genier and Desrosiers to Claudette Wilhelm, dated May 4, 1998, Ex.1721 and Ex.1722
[558] Letter from Officers Genier and Desrosiers to Claudette Wilhelm, dated May 4, 1998, Ex.1721; and Transcript of Proceedings of June 2, 2008, Pg.24, 28 (Rene Desrosiers); and Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123409
[559] Internal Correspondence from Officer Desrosiers to S/Sgt. Brunet, September 30, 1999, Ex.1451
[560] Internal Correspondence from Officer Desrosiers to S/Sgt. Brunet, September 30, 1999, Ex.1451
[561] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123414
[562] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123416
[563] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123421
[564] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123416
[565] Memo from Pat Hall to D/Supt.Edgar, Ex.2817A; Willsay of Don Genier, Ex.1724; and Transcript of Proceedings of June 2, 2008, Vol.235, Pg.65 (Rene Desrosiers).
[566] Letter from Pat Hall to Claudette Wilhelm, October 28, 1999, Ex.2818
[567] Letter from Claudette Wilhelm to Don Genier, November 8, 1999, Ex.1737; Transcript of Proceedings of June 3, 2008, Vol. 236, Pg11 (Rene Desrosiers)
[568] Transcript of Proceedings of Mar.31, 2008, Vol.207, Pg. 151 (Garry Derochie)
[569] Transcript of Proceedings of August 23, 2007, Vol. 130, Pg. 17 (C-8)
[570] Reasons for Judgment, R. v. Marcel Lalonde, November 17, 2000, Ex. 497
[571] V/WAP Notes, November 17, 2000 to April 12, 2001, Ex.503; and V/WAP Notes re C-8, October 20, 2000 to April 16, 2002, Ex. 3155
[572] Transcript of Proceedings of May 31, 2007, Vol.112, Pg.155 and 237 (Kevin Upper)
[573] Transcript of Proceedings of May 31, 2007, Vol. 112, Pg.161, 250, 287 (Kevin Upper)
[574] V/WAP Notes re C-8, dated Oct.20, 2000 to Apr.16, 2002, Ex.3155

[575] Crown Brief, R. v. Richard Nadeau, Ex.701A and 791B, bp 1085777, 1085757
[576] Letter from Claudette Wilhelm to Pall Hall re Nadeau Threats, dated October 25, 2000, Ex.779.
[577] Policy No.P-1: "Police Relationship with Crown Counsel", August 5, 1997, MAG Corporate Presentation, Ex.46, Tab 30 (Mary Nethery); and PM [2005] No.34: Police Relationship with Crown Counsel, March 31, 2006, MAG Corporate Presentation, Ex.46, TAB 31 (Mary Nethery)
[578] Policy No.P-1: "Police Relationship with Crown Counsel", August 5, 1997, MAG Corporate Presentation, Ex. 46, Tab 30 (Mary Nethery); and PM [2005] No.34: Police Relationship with Crown Counsel, March 31, 2006, MAG Corporate Presentation, Ex.46, Tab 31 (Mary Nethery)
[579] Transcript of Proceedings of August 23, 2007, Vol. 130, Pg. 9 (C-8)
[580] Transcript of Proceedings of August 23, 2007, Vol. 130, Pg. 17 (C-8)
[581] Transcript of Proceedings of August 23, 2007, Vol. 130, Pg. 18-19 (C-8)
[582] Statement of C-8, October 4, 2000, Ex.615
[583] Transcript of Proceedings of August 23, 2007, Vol. 130, Pg. 17 (C-8)
[584] Transcript of Proceedings of June 3, 2008, Vol.236, Pg.105 (Rene Desrosiers).
[585] Letter from Marc Garson to Garry Derochie, November 19, 1999, Ex.1326, Pg.2-3
[586] Letter from Marc Garson to Garry Derochie, November 19, 1999, Ex.1326, Pg.3: Crown opinions are limited to legal advice on issues pertaining to criminal investigations and prosecution of persons charged with an offence.
[587] Letter from Marc Garson to Garry Derochie, November 19, 1999, Ex.1326, Pg.5
[588] Letter from Marc Garson to Garry Derochie, November 19, 1999, Ex.1326, Pg.6
[589] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123417
[590] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.2
[591] Cornwall Police Service Chronology of Events – Cornwall Dunlop Investigation, 1993 to July 17, 2000, Ex. 1727, bp.7123429
[592] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.4
[593] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.6
[594] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.8
[595] Letter from Marc Garson to Rolland Lalonde, July 14, 2000, Ex.1326, P.8
[596] Policy No.P-1: "Police Relationship with Crown Counsel", August 5, 1997, MAG Corporate Presentation, Ex.46, Tab 30 (Mary Nethery); and PM [2005] No.34: Police Relationship with Crown Counsel, March 31, 2006, MAG Corporate Presentation, Ex.46, TAB 31 (Mary Nethery)
[597] Policy No.P-1: "Police Relationship with Crown Counsel", August 5, 1997, MAG Corporate Presentation, Ex. 46, Tab 30 (Mary Nethery); and PM [2005] No.34: Police Relationship with Crown Counsel, March 31, 2006, MAG Corporate Presentation, Ex.46, Tab 31 (Mary Nethery)
[598] Transcript of Proceedings of December 18, 2008, Vol.326, p.216, l.15 to p. 226, l.12; Transcript of Proceedings December 19, 2008, Vol.327, p.113, l.4 to p.119, l.22 and Ex. 1689
[599] Transcript – Sa Majesté la reine contre Gilles Deslauriers – Enquête Préliminaire – Volumes 1-3, September 15-17, 1986, Exhibits 71A, B, C; Letter from Rommel Masse to Don Johnson re: R. v. Gilles Deslauriers dated September 30, 1986, Exhibit 2948
[600] Transcript of Proceedings of October 11, 2006, Vol. 55 (Benoît Brisson)
[601] Letter from Rommel Masse to Don Johnson re: R. v. Gilles Deslauriers dated October 24, 1986, Exhibit 2949
[602] Letter from Rommel Masse to D. Hunt re: R. v. Gilles Deslauriers dated November 14, 1986, Exhibit 2950
[603] Letter from Rommel Masse to Don Johnson re: R. v. Gilles Deslauriers dated December 17, 1986
[604] Transcript of Proceedings of October 4, 2006, Vol. 52, page 107, line 7 to page 112 line 10.
[605] Transcript of Proceedings of October 4, 2006, Vol. 52, page 153, line 3 to line 17.
[606] Transcript of Proceedings of October 4, 2006, Vol. 52, page 113, line 5 to line 18.
[607] Transcript of Proceedings of October 5, 2006, Vol. 53, page 21, line 7-23.
[608] Transcript of Proceedings of October 4, 2006, Vol. 52, page 143, line 12-13.
[609] Transcript of Proceedings of October 4, 2006, Vol. 52, page 115, line 15-20.
[610] Transcript of Proceedings of July 26, 2006, Vol. 44, page 25, line 21-25.

[611] Transcript of Proceedings of July 26, 2006, Vol. 44, page 53, line 9-10.
[612] Transcript of Proceedings of January 16, 2009, Vol. 336, page 187, line 8-9.
[613]Transcript of Proceedings of July 26, 2006, Vol. 44, page 78, line 15-20.
[614] Transcript of Proceedings of July 26, 2006, Vol. 44, page 78-81.
[615] Transcript of Proceedings of July 26, 2006, Vol. 44, page 116, line 9-24.
[616] PM [2005] No 16 – Resolution Discussions, March 31, 2006, MAG Corporate Presentation, Exhibit 46, tab 46.
[617] PM[2005] No 11– Victims of Crime: Access to Information & Services Communication and Assignment of Sensitive Cases, March 31, 2006, MAG Corporate Presentation, Exhibit 46, tab 70.
[618] PM [2006] No 8 – Child Abuse and Offences Involving Children, MAG Corporate Presentation, Exhibit 48.
[619] PM [2006] No 9–Sexual Assault and Other Sexual Offences, July 21, 2006, MAG Corporate Presentation, Exhibit 48.
[620] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 117 (Cst. Rene Desrosiers)
[621] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 117 (Cst. Rene Desrosiers)
[622] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 189 (Cst. Rene Desrosiers); and Transcript of Proceedings, R. v. Carl Allen, July 31, 2000, Ex.380
[623] Transcript of Proceedings of March 29, 2007, Vol.102, Pg. 135 (C-10); and Memo from Lynn Robinson to Murray MacDonald re Carl Allen, January 4, 2000, Ex.382
[624] The Juvenile Delinquents Act was in place at the time of the offence and it defined an adult as 16 years or older.
[625] Memo from Lynn Robinson to Murray MacDonald re Carl Allen, January 4, 2000, Ex.382; Memo to File re Carl Allen, Lynn Robinson, January 25, 2000, Ex. 383; and Ontario Court of Justice Cover Sheet and Crown Notes re R. v. Carl Allen, Ex. 384
[626] Policy R-1 "Resolution Discussions", dated January 15, 1994, updated February 10, 1995, MAG Corporate Presentation, Ex.P-46, Tab 34, Pg.3
[627] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 159 (Cst. Rene Desrosiers); Memo from Lynn Robinson to Murray MacDonald re Carl Allen, January 4, 2000, Ex.382; Memo to File re Carl Allen, Lynn Robinson, January 25, 2000, Ex. 383; and Ontario Court of Justice Cover Sheet and Crown Notes re R. v. Carl Allen, Ex. 384
[628] Memo from Lynn Robinson to Murray MacDonald re Carl Allen, January 4, 2000, Ex.382; Memo to File re Carl Allen, Lynn Robinson, January 25, 2000, Ex. 383; and Ontario Court of Justice Cover Sheet and Crown Notes re R. v. Carl Allen, Ex. 384
[629] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 159 (Cst. Rene Desrosiers)
[630] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 160 (Cst. Rene Desrosiers)
[631] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 160-163 (Cst. Rene Desrosiers)
[632] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 162 (Cst. Rene Desrosiers)
[633] Transcript of Proceedings of March 29, 2007, Vol.102, Pg. 124-131 (C-10)
[634] Transcript of Proceedings of March 29, 2007, Vol.102, Pg. 132, 135-136 (C-10)
[635] Transcript of Proceedings of March 29, 2007, Vol.102, Pg. 137 (C-10)
[636] Transcript of Proceedings of March 29, 2007, Vol.102, Pg. 84-85 (C-10)
[637] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 163 (Cst. Rene Desrosiers)
[638] Transcript of Proceedings of June 2, 2008, Vol.235, Pg. 129 (Cst. Rene Desrosiers)
[639] Memo to File re Carl Allen, Lynn Robinson, January 25, 2000, Ex. 383 – see bottom of memo which reads "advise Cst. Desrosiers if resolved".
[640] Transcript of Proceedings of December 18, 2008, Vol.326, p.220, l.13 to p. 226, l.11 and Ex. 1612 and 1843
[641] Transcript of Proceedings of December 18, 2008, Vol.326, p.242, l.13 to p. 245, l.25; Transcript of Proceedings December 19, 2008, Vol.327, p.263, l.14 to p.268, l.3
[642] Testimony of Kevin Morris, April 6, 2006, page 11.
[643] Testimony of Kevin Morris, April 6, 2006, page 21-23.
[644] Testimony of Kevin Morris, April 6, 2006, page 15 - 21
[645] Testimony of Kevin Morris, April 6, 2006, page 24; *Child Welfare Act,* 1965, Chap. 14, s. 41.
[646] Testimony of Kevin Morris, April 6, 2006, page 25, 29-39.

[647] *Child and Family Services Act*, R.S.O. 1990, c. C.11, ss. 37(2).
[648] *Child and Family Services Act*, R.S.O. 1990, c. C.11, ss. 72(2), (3).
[649] *Child and Family Services Act,* R.S.O. 1990, c. C.11, ss. 72(4).
[650] O. Reg 206/00, ss. 1 – 4.
[651] Portions of The Eligibility Spectrum are reproduced at Appendix A to the Phase 2 Report: "Policies and Practices of Child Welfare Agencies in Response to Complaints of Child Sexual Abuse 1960 – 2006", Carol Stalker, et al, September 2007.
[652] Queen's Printer for Ontario, 2005; ISBN 0-7794-7559-3; http://www.gov.on.ca/children/graphics/stel02_179889.pdf
[653] Ontario, Legislative Assembly, Statement by the Honourable Deborah Matthews, Minister of Children and Youth Services, October 7, 2008 (Hansard).
[654] "Guidelines for Reporting to the Register (Revised August 1987)", Exhibit 28, page 3. Testimony of Kevin Morris, April 6, 2006, page 54. Affidavit of Kevin Morris, sworn January 8, 2007 in a Proceeding under the *Judicial Review Procedure Act: The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry and The Honourable G. Normand Glaude* (Div. Ct.) April 11, 2007.
[655] Testimony of Kevin Morris, April 6, 2006, page 42. Outline of Evidence of Kevin Morris, Exhibit 28, page 11.
[656] Testimony of Kevin Morris, April 6, 2006, page 40-41.
[657] "Guidelines for Reporting to the Register (Revised August 1987)", Exhibit 28, page 10.
[658] "Guidelines for Reporting to the Register (Revised August 1987)", Exhibit 28, page 4.
[659] "Guidelines for Reporting to the Register (Revised August 1987)", Exhibit 28, page 11.
[660] R.R.O. 1990, Reg. 71, s.2(1). Testimony of Kevin Morris, April 6, 2006, page 53.
[661] Testimony of Kevin Morris, April 6, 2006, page 41.
[662] *Child and Family Services Act*, R.S.O. 1990, c. C.11, ss. 75(6)-(12).
[663] Ministry Comments on "Policies and Practices of Child Welfare Agencies in Response to Complaints of Child Sexual Abuse 1960-2006", Memorandum provided to the Commission and dated August 24, 2007.

664 *Miller, The Law of Contempt in Canada* (1997) at p. 101.

665 Chief Justice McRuer, in "*Criminal Contempt of Court Procedure. A Protection to the Rights of the Individual*" (1952), 30 Can. Bar Rev. 225, stated at pp. 227-8:

666 *Attorney-General v. Times Newspapers Ltd*, get reference

667 *Alta (A.G.) v. Interwest Publications Ltd*., [1990] 5 W.W.R. 498 (Alta. Q.B.);

668 *Canada (Minister of Citizenship and Immigration) v. Tobiass*, get reference

669 *R. v. Chek TV Ltd.* (1987), 30 B.C.L.R. (2d) 36 (B.C.C.A.), leave to appeal refused (1987), 81 N.R. 240 (S.C.C.).

670 *Manitoba (Attorney General) v. Groupe Quebecor Inc*. (1987), 45 D.L.R. (4th) 80 (Man. C.A.).

671 *Alberta (A.G.) v. Interwest Publications Ltd*., above.

672 (1994), 120 D.L.R. (4th) 12

673 An Address by The Honourable R. Roy McMurtry, Q.C. on The Office of the Attorney General of Ontario, Barbados (January 1978) p.3.
[674] R. v Lindsay & Bonner [2004] O.T.C. 825. Fuerst J.
[675] The four education sectors in Ontario are: English-language public, English-language Catholic, French-language public and French-language Catholic.
[676] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 181-182
[677] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 180-181; 182-183
[678] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 186-187; 200
[679] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 184-185
[680] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 188, 190, 265
[681] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 213-4
[682] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 268-269

[683] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 275-276, Exhibit 56, Ministry of Education Violence-Free Schools Policy, 1994, bp 6000137
[684] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 274; Education Act, R.S.O. 1990, c. E.2, s. 8(1)3(c), s. 171(1)8
[685] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 186
[686] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 190
[687] Transcript of Proceedings, January 28, 2009, Vol. 344, pp. 199 and 246
[688] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 186, pp. 190 - 191
[689] O. Reg. 85/08, s. 15, 16, 17, 25 - 30, 31, 32, 33, 34, 35, 36, 37, 38 - 40, 41, 43, 44, 45 - 46, 57
[690] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 199
[691] Transcript of Proceedings, January 28, 2009, Vol. 344, p. 193
[692] O. Reg. 340/94, s. 13(3)1, 13(3)2, 13(3)3, Exhibit 3428, Ontario School Bus Newsletter dated August 1999, Exhibit 3429, Letter from Frank D'Onofrio to Richard Donaldson dated 30 Jun 99
[693] O. Reg. 30/94, s. 13(4), Exhibit 3428, Ontario School Bus Newsletter dated August 1999, Exhibit 3429, Letter from Frank D'Onofrio to Richard Donaldson dated 30 Jun 99

[694] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 132 and 148-149 (Sonia Faryna)
[695] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 59-64 (Sonia Faryna)
[696] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 77-86 (Sonia Faryna). See also: V/WAP Office in Ontario, MAG Corporate Presentation, Ex.49, Tab.9 and Tab 10.
[697] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 101 (Sonia Faryna)
[698] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 48 (Sonia Faryna)
[699] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.103-106 (Sonia Faryna)
[700] 2002-2003 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 12, Pg.5
[701] Men's Project Service Summary, 1999 to 2006, MAG Corporate Presentation, Ex.49, Tab.11
[702] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.10150 (Sonia Faryna). See also: 2002-2003 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 12, Pg.2
[703] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.109, 151 (Sonia Faryna). See also: 2003-2004 Grant Program, MAG Corporate Presentation, Ex.49, Tab 13, Pg.1
[704] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.109, 151 (Sonia Faryna). See also: 2003-2004 Grant Program, MAG Corporate Presentation, Ex.49, Tab 13, Pg.1
[705] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.152 (Sonia Faryna). See also: 2003-2004 Grant Program, MAG Corporate Presentation, Ex.49, Tab 13, Pg.1
[706] Transcript of Proceedings of July 26, 2006, Vol.44, Pg.109, 152 (Sonia Faryna). See also: 2005-2006 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 14, Pg.1
[707] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 109, 152 (Sonia Faryna)
[708] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 153 (Sonia Faryna). See also: 2005-2006 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 14, Pg.7
[709] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 153 (Sonia Faryna). See also: 2005-2006 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 14, Pg.7
[710] 2005-2006 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 14, Pg.7
[711] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 153 (Sonia Faryna). See also: 2005-2006 Community Project Grant Program Recipients, MAG Corporate Presentation, Ex.49, Tab 14, Pg.7
[712] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 149 (Sonia Faryna)
[713] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 148-149 (Sonia Faryna)
[714] Andy Fisher, Rick Goodwin, and Mark Patton (December 23, 2008), *Men and Healing: Theory, Research, and Practice in Working with Male Survivors of Childhood Sexual Abuse.* Cornwall: Cornwall Public Inquiry Phase 2 Report, Men's Project ("*Men and Healing Report*")

[715] *Men and Healing Report*, at 184-214 and 220-266
[716] *Men and Healing Report*, at 181-182
[717] Transcript of Proceedings of July 26, 2006, Vol.44, Pg. 125 (Sonia Faryna)