

**THE CORNWALL
PUBLIC INQUIRY**



**L'ENQUÊTE PUBLIQUE
SUR CORNWALL**

Public Hearing

Audience publique

Commissioner

**The Honourable Justice /
L'honorable juge
G. Normand Glaude**

Commissaire

VOLUME 48

Held at :

Hearings Room
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7

Wednesday, August 23, 2006

Tenue à:

Salle des audiences
709, rue de la Fabrique
Cornwall, Ontario
K6H 7K7

Mercredi, le 23 août 2006

Appearances/Comparutions

| | |
|----------------------------------|--|
| Mr. Peter Engelmann | Lead Commission Counsel |
| Mr. Pierre R. Dumais | Commission Counsel |
| Ms. Louise Mongeon | Registrar |
| Mr. John E. Callaghan | Cornwall Police Service Board |
| Mr. Neil Kozloff | Ontario Provincial Police |
| Actg.Det.Supt. Colleen McQuade | |
| Ms. Suzanne Costom | |
| Ms. Diane Lahaie | |
| Ms. Gina Saccoccio Brannan, Q.C. | |
| Dect.Staff Sgt.Colin Groskopf | |
| Mr. Peter Chisholm | The Children's Aid Society of the United Counties |
| Mr. Allan Manson | Citizens for Community Renewal |
| Mr. Dallas Lee | Victims Group |
| Mr. David Sherriff-Scott | Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque |
| Mr. Giuseppe Cipriano | The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald |
| Mr. William Carroll | Ontario Provincial Police Association |

Table of Contents / Table des matières

| | Page |
|--|-------------|
| List of Exhibits : | v |
| Opening Remarks | 1 |
| Submission by/Représentation par Ms. Gina Saccoccio Brannan Exhibit RI-A1 Section 1 | 9 |
| Submission by/Représentation par Mr. Peter Chisholm Exhibit RI-A1 Section 1 | 15 |
| Submission by/Représentation par Mr. John E. Callaghan Exhibit RI-A1 Section 1 | 32 |
| Submission by/Représentation par Mr. David Sherriff-Scott Exhibit RI-A1 Section 1 | 39 |
| Submission by/Représentation par Mr. William Carroll Exhibit RI-A1 Section 1 | 41 |
| Submission by/Représentation par Mr. Dallas Lee Exhibit RI-A1 Section 1 | 42 |
| Submission by/Représentation par Mr. Allan Manson Exhibit RI-A1 Section 1 | 43 |
| Submission by/Représentation par Ms. Gina Saccoccio Brannan Exhibit RI-A1 Section 2 | 48 |
| Submission by/Représentation par Mr. Peter Chisholm Exhibit RI-A1 Section 2 | 49 |
| Submission by/Représentation par Mr. John E. Callaghan Exhibit RI-A1 Section 2 | 60 |
| Submission by/Représentation par Mr. Dallas Lee Exhibit RI-A1 Section 2 | 69 |

Table of Contents / Table des matières

| | Page |
|---|-------------|
| Submission by/Représentation par Mr. Dallas Lee Exhibit RI-A1 Section 2 | 69 |
| Submission by/Représentation par Mr. Allan Manson Exhibit RI-A1 Section 2 | 71 |
| Submission by/Représentation par Ms. Gina Saccoccio Brannan Exhibit RI-A1 Section 3 | 72 |
| Submission by/Représentation par Mr. William Carroll Exhibit RI-A1 Section 3 | 87 |
| Submission by/Représentation par Mr. John E. Callaghan Exhibit RI-A1 Section 3 | 96 |
| Submission by/Représentation par Mr. David Sherriff-Scott Exhibit RI-A1 Section 3 | 97 |
| Submission by/Représentation par Mr. Dallas Lee Exhibit RI-A1 Section 3 | 99 |
| Submission by/Représentation par Mr. Allan Manson Exhibit RI-A1 Section 3 | 105 |
| Submission by/Représentation par Ms. Gina Saccoccio Brannan Exhibit RI-A1 Section 4 | 121 |
| Submission by/Représentation par Mr. John E. Callaghan Exhibit RI-A1 Section 4 | 132 |
| Submission by/Représentation par Mr. Allan Manson Exhibit RI-A1 Section 5 | 133 |
| Submission by/Représentation par Mr. David Sherriff-Scott Exhibit RI-A1 Section 8, 9, 10 | 137 |
| Submission by/Représentation par Ms. Gina Saccoccio Brannan Exhibit RI-A1 Section 8, 9, 10 | 140 |

LIST OF EXHIBITS/LISTE D'EXHIBITS

| NO. | DESCRIPTION | PAGE NO |
|------------|--|----------------|
| RI-A1 | THE CORNWALL PUBLICATION INQUIRY REDACTION/DISCLOSURE ISSUES TO BE ADDRESSED AUGUST 23, 2006 | 4 |
| RI-B1 | SUBMISSION ON DISCLOSURE AND DOCUMENT REDACTION OF CITIZENS FOR COMMUNITY RENEWAL | 5 |
| RI-B2 | AFFIDAVIT OF STEVEN GABRIEL CANTO (sworn August 21, 2006) | 5 |
| RI-C1 | SUBMISSIONS OF THE VICTIMS. GROUP | 6 |
| RI-C2 | CASE LAW - CAREY V. ONTARIO | 6 |
| RI-C3 | CASE LAW - AYLMER MEAT PACKERS INC. v. ONTARIO | 6 |
| RI-D1 | CORRESPONDENCE BETWEEN THE COMMISSION AND PARTIES ON THE REDACTION ISSUE | 7 |
| RI-E1 | CASE LAW - R v. LEIPERT | 7 |

1 --- Upon commencing at 10:09 a.m./

2 L'audience débute à 10h09

3 **THE REGISTRAR:** This hearing of the Cornwall
4 Public Inquiry is now in session. The Honourable Mr.
5 Justice Normand Glaude presiding.

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you. Good morning
8 all.

9 I'd like to begin by taking a moment to
10 situate ourselves in the discussion we're about to enter.
11 As most of you are aware, the parties have an obligation to
12 provide me with all of the relevant documentation that they
13 have in their possession and this is called disclosure. I
14 in turn want to ensure that all of the documents are
15 delivered to the other parties.

16 Now, some parties have had some concerns
17 about giving out the documents without blacking out or
18 redacting certain parts of those documents. There are some
19 good examples and reasons for redacting and those are, for
20 example, in some police officers' notebooks, there may be
21 pages that contain notations dealing with a separate
22 investigation, which are clearly not relevant and may be
23 prejudicial to other investigations. Some pages in those
24 notes may contain the names of informants.

25 Accordingly, some time ago, we had a

1 discussion about those concerns and they were brought
2 forward largely by the Ontario Provincial Police and at
3 that time I made a determination as to what should be
4 redacted. As well, as part of that whole process, there
5 were considerable efforts made to ensure that privacy
6 issues would be protected. So I issued an order with the
7 consent of the parties whereby I limited who could and --
8 who could see and what use could be made of that
9 disclosure.

10 Since that time, I have been advised that
11 certain issues have arisen which give reason for me to
12 revisit this whole situation. I understand that via a
13 letter of August 15th, a letter from Mr. Engelmann to the
14 parties, it outlined some of the concerns that had arisen
15 and invited the parties to make some comments and to limit,
16 I suppose, or try to picture what the issues would be.

17 I understand that there has been some
18 correspondence following the August 15th letter on the 18th
19 and 19th and I understand that there have been other
20 submissions made and an interest made to make
21 representations to me today as to what the situation is and
22 how we can resolve this matter to, first of all I suppose,
23 ensure that funds are not unnecessarily spent; secondly,
24 that disclosure be made effectively; and thirdly, that
25 those privacy issues be protected and the risk of unwanted

1 disclosure be minimized.

2 Now, I understand that the submissions have
3 been coming as early or as late as this morning and that
4 parties may not have had a chance to review and discuss
5 amongst themselves what their positions might be. So
6 accordingly, what I want to do at this point is to take a
7 15 to 30-minute break to permit the parties to discuss and
8 to see if there are any matters that can be finalized
9 before I hear submissions on what we are to do with the
10 disclosure.

11 So that's my summary of where we are at now.
12 Unless people have any other comments at this point, I
13 propose to take that break and to come back upon advice of
14 counsel but let's say I'll start off with a 30-minute
15 break.

16 Is that satisfactory to all? All right. So
17 let's take a short break and I'll be back in half an hour.

18 **THE REGISTRAR:** Order; all rise. À l'ordre;
19 veuillez vous lever.

20 The hearing will resume at 10:40.

21 --- Upon recessing at 10:14 a.m./

22 L'audience est suspendue à 10h14

23 --- Upon resuming at 11:32 a.m./

24 L'audience est reprise à 11h32

25 **THE REGISTRAR:** This hearing of the Cornwall

1 Public Inquiry is now session.

2 Please be seated. Veuillez vous asseoir.

3 **THE COMMISSIONER:** Yes, sir.

4 **MR. ENGELMANN:** The parties have been hard
5 at work trying to narrow some of the issues on this
6 important issue of redaction, disclosure and how the
7 Commission should deal with some of the issues that have
8 arisen.

9 I think just so that we have material on the
10 record, because of the discussion which is about to take
11 place, I think it would be helpful to have the document
12 that lists some of the issues. It was kindly prepared by
13 Ms. Saccoccio Brannan in the break. If we could have that
14 entered as an exhibit, I think that would be appropriate?

15 **THE COMMISSIONER:** Madam Clerk, do you have
16 a copy?

17 **THE REGISTRAR:** Yes.

18 **THE COMMISSIONER:** All right. And what
19 exhibit would that be?

20 **THE REGISTRAR:** RI-A1.

21 **THE COMMISSIONER:** RI-A1.

22 **--- EXHIBIT NO./PIÈCE No. RI-A1:**

23 THE CORNWALL PUBLIC INQUIRY
24 REDACTION/DISCLOSURE ISSUES TO BE
25 ADDRESSED AUGUST 23, 2006

1 **THE COMMISSIONER:** All right.

2 **MR. ENGELMANN:** Mr. Commissioner, there were
3 some other documents that were submitted to the Commission
4 in the last day or so and I think they should also be
5 entered.

6 **THE COMMISSIONER:** All right.

7 **MR. ENGELMANN:** We have from the CCR an
8 affidavit.

9 **THE COMMISSIONER:** That's of Steven Gabriel
10 Canto?

11 **MR. ENGELMANN:** Yes, sworn August 24th, 2006
12 (sic), and we also have a submission on disclosure and
13 redaction of the CCR.

14 Madam Clerk, do you have those documents?
15 And did you have a number set aside for them?

16 **THE REGISTRAR:** The submissions are RI-B1.

17 **MR. ENGELMANN:** RI-B1.

18 **THE REGISTRAR:** And RI-B2.

19 **--- EXHIBIT NO./PIÈCE No. RI-B1:**

20 SUBMISSION ON DISCLOSURE AND DOCUMENT
21 REDACTION OF CITIZENS FOR COMMUNITY
22 RENEWAL

23 **--- EXHIBIT NO./PIÈCE No. RI-B2:**

24 AFFIDAVIT OF STEVEN GABRIEL CANTO
25 (sworn August 21, 2006)

1 **MR. ENGELMANN:** At some point I may ask
2 about these acronyms but I'll leave that for later.

3 There is as well a submission that was filed
4 by the Victims Group. Perhaps we could have that filed.

5 **THE REGISTRAR:** RI-C1.

6 **MR. ENGELMANN:** RI-C1.

7 --- **EXHIBIT NO./PIÈCE No. RI-C1:**

8 SUBMISSIONS OF THE VICTIMS GROUP

9 **MR. ENGELMANN:** There were a number of
10 letters that were received by the Commission. I'm sorry?

11 **THE REGISTRAR:** Case law?

12 **MR. ENGELMANN:** Yes, case law by the Victims
13 Group. Is that RI-C2? And C3, and C2, Madam Clerk ---

14 **THE COMMISSIONER:** It's the *Carey* case --
15 all right. And RI-C3 is the *Aylmer Meat Packers* case.

16 --- **EXHIBIT NO./PIÈCE No. RI-C2:**

17 CASE LAW - *CAREY v. ONTARIO*

18 --- **EXHIBIT NO./PIÈCE No. RI-C3:**

19 CASE LAW - *AYLMER MEAT PACKERS INC. v.*
20 *ONTARIO*

21 **MR. ENGELMANN:** There was a letter sent on
22 August 15th which perhaps led to all of our attendance here
23 today, sent to all counsel and there were several
24 responses. I'm not sure if we have copies of all of them
25 but perhaps what we could do is, for the record, they could

1 be entered as a bundle and could I propose RI-D1? Would
2 that be appropriate?

3 **THE REGISTRAR:** Certainly.

4 --- EXHIBIT NO./PIÈCE No. RI-D1:

5 CORRESPONDENCE BETWEEN THE COMMISSION
6 AND PARTIES ON THE REDACTION ISSUE

7 **MR. ENGELMANN:** All right. So I think all
8 counsel have them. I think in all cases they were letters
9 that were in response to a letter I sent on August 15th and
10 counsel, keeping with their normal practice, would have
11 copied all other counsel.

12 There is also a case that I know Mr. Carroll
13 wishes to refer to.

14 **THE COMMISSIONER:** It's the *Leipert* case, L-
15 E-I-P-E-R-T?

16 **MR. ENGELMANN:** Yes, and given that we've
17 marked some authorities already, perhaps that could be RI-
18 E1, if that's appropriate? So RI-E1.

19 --- EXHIBIT NO./PIÈCE No. RI-E1:

20 CASE LAW - R. v. LEIPERT

21 **MR. ENGELMANN:** If you can just give me a
22 moment, sir?

23 **THE COMMISSIONER:** Yes.

24 **MR. ENGELMANN:** No, the first document I
25 referred to, I'm sorry, I mispronounced perhaps; RI-A1 was

1 the first document. If I can just have a moment, sir?

2 **THE COMMISSIONER:** Yes.

3 **(SHORT PAUSE/COURTE PAUSE)**

4 **MR. ENGELMANN:** I was advised by counsel for
5 the Diocese that he may wish to refer to a case or cases
6 that they would have already put in the record. So ---

7 **THE REGISTRAR:** It's not in the record.

8 **MR. ENGELMANN:** Oh, it's not in the record.
9 Oh, okay, that's right. That matter was resolved on
10 consent. So we'll address that when and if it happens,
11 sir.

12 **THE COMMISSIONER:** Sure.

13 **MR. ENGELMANN:** All right. So I think the
14 best place to start, and we have many of the parties here
15 today but not all of them, is to review the items that are
16 listed, the issues to be addressed, and you'll note, Mr.
17 Commissioner, there are 10.

18 I'm going to ask Ms. Saccoccio Brannan to
19 get up in a moment and speak to those issues of concern to
20 the OPP and several of these were issues she would have
21 raised with you back in late June and there are issues that
22 have been added by some of the other parties. I have
23 advised her and others that I may have questions as we go
24 through this because I'm seeing this document now for the
25 first time and I'm sure you may have some questions, sir.

1 The order of speaking will be the OPP, the
2 CAS, and Ms. Saccoccio Brannan will be speaking for the OPP
3 and Mr. Chisholm for the CAS; the Cornwall Police Service,
4 Mr. Callaghan; the Diocese, Mr. Sherriff-Scott; the OPPA,
5 Mr. Carroll; Father MacDonald, Mr. Cipriano; the Victims
6 Group, Mr. Lee; and the CCR, Mr. Manson. Either myself or
7 Mr. Dumais may have questions to raise.

8 So that is the order and I had proposed that
9 we go through RI-A1 and then if there are still outstanding
10 issues with respect to the submissions we received either
11 from Mr. Manson on behalf of the CCR or Mr. Lee on behalf
12 of the Victims Group, they could be addressed at the end,
13 if they haven't already been addressed through these
14 issues.

15 **THE COMMISSIONER:** Okay.

16 **MR. ENGELMANN:** So I'll just turn the floor
17 over -- what I had proposed, sir, is that we deal with the
18 issues one at a time and that we have each counsel speak to
19 the issues. In some cases, counsel will have no
20 submissions and I'm sure that may well be the case on 1A.
21 I just thought for the record it would be easier if we
22 dealt with them one at a time.

23 **THE COMMISSIONER:** Sure. Thank you.

24 --- **ISSUE NO. 1/POINT No. 1:**

25 --- **SUBMISSIONS BY/SOUMISSIONS PAR MS. SACCOCCIO BRANNAN:**

1 **MS. SACCOCCIO BRANNAN:** Good morning, Mr.
2 Commissioner.

3 **THE COMMISSIONER:** Good morning.

4 **MS. SACCOCCIO BRANNAN:** Just by way of
5 introduction in respect of the Ontario Provincial Police,
6 the document disclosure of the Ontario Provincial Police
7 which was made following the receipt of a summons in
8 October was made in full by the end of January with one box
9 left and delivered in May. These documents were delivered
10 to Commission counsel unredacted. So there was not one
11 item highlighted or blacked out.

12 When we met on June the 27th, Mr.
13 Commissioner, and we had our discussion regarding
14 redaction, following that, the Ontario Provincial Police
15 met with Commission counsel, Commission staff, including
16 the investigators, and Ms. McArthur, and we began the
17 process of redacting the 57 boxes. There was much
18 discussion between the Commission and the OPP as to how it
19 should be done. It was done in yellow highlighter so that
20 the Commission could see what it was we were redacting and
21 as we had discussed on June 27th, it was delivered to the
22 Commission on a rolling basis. We've referred to it, I
23 think, as rolling redaction.

24 I can report to you today, sir, that, as of
25 today, the redaction is almost complete. On June 26th,

1 boxes 1 to 5 were delivered. On July the 7th, boxes 6 to 19
2 were delivered. On July the 27th, boxes 27, 34, 37, 40, 41
3 and 42 were delivered. On July the 28th, box 35 was
4 delivered. On August the 16th, boxes 24, 25, 26, 27, 28,
5 30, 33, 38, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53,
6 55 and 56 were delivered to the Commission. On August the
7 18th, boxes 29, 32, 36, 38 and 39 were delivered to the
8 Commission.

9 And what remains, sir, are eight boxes where
10 redaction is presently in progress, boxes 20, 21 22, 23,
11 30, 31, 54 and 55, and we are making our best efforts to
12 deliver that to the Commission by the end of this week.

13 I can say, sir, that there were 10 people
14 involved in this process, three counsel, officers and two
15 civilians and, to use the sports analogy, a full court
16 press was made in this process as we promised on June the
17 27th and it's now been completed with the exception of those
18 boxes that I mentioned at the end.

19 What has occurred, of course, is that when
20 the first disclosure was made to the parties, that
21 disclosure was made, as best I can see, with the redactions
22 that the Ontario Provincial Police made to its documents
23 and I can only speak for the OPP documents, and that Mr.
24 Manson and Mr. Lee have raised objection to the extent of
25 the redaction.

1 I can tell you, sir, that in the spirit of
2 trying to narrow issues, we have had -- since we've been
3 here in Cornwall, the OPP has had discussions with Mr.
4 Manson and today discussions amongst all counsel, and what
5 we were able to come up with is this three-page document.
6 I have prepared it so that there is -- it's three pages
7 only because it's large type and because I have allowed
8 some space for you to write, sir, in the various --
9 underneath each of the issues.

10 And what we propose is to introduce the
11 issue.

12 **THE COMMISSIONER:** M'hm.

13 **MS. SACCOCCIO BRANNAN:** And I will provide
14 you with the Ontario Provincial Police's position and, in
15 some cases, my colleagues will agree with that position.
16 In other cases, they won't and they will make submissions
17 and we thought that if we did it one issue at a time, the
18 transcript would be helpful in that regard.

19 **THE COMMISSIONER:** M'hm.

20 **MS. SACCOCCIO BRANNAN:** So let me begin,
21 sir, first with the confidential informants which I
22 addressed on June the 27th. My review of that June 27th
23 transcript is that police informants, confidential police
24 informants, which we believed will only relate to unrelated
25 investigations but weren't sure until we went through the

1 whole process, this was not an issue for you, sir, and that
2 it was something that should be redacted. That continues
3 to be the OPP's position and it's my understanding,
4 although I'm sure a hand will raise quickly if it's not the
5 correct understanding, that my colleagues are in agreement
6 with that.

7 **THE COMMISSIONER:** Help me out, though.
8 What we're talking about are police officer's notes?

9 **MS. SACCOCCIO BRANNAN:** We are talking about
10 police officer's notes generally, yes, sir, because where
11 else would you find the name of a confidential police
12 informant other than in the police officer's notes?

13 **THE COMMISSIONER:** So I'm going to say that
14 we're talking about police officer's notes here. And in
15 the police officer's notes, what you're telling me are
16 there are no confidential informants in the police
17 officer's notes that relate to this investigation?

18 **MS. SACCOCCIO BRANNAN:** As far as we know,
19 sir, at this point.

20 **THE COMMISSIONER:** And so ---

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MS. SACCOCCIO BRANNAN:** Oh, all right.

23 Mr. Kozloff has pointed out that in addition
24 to police officer's notes, police reports at various stages
25 of an investigation could mean a police informant.

1 **THE COMMISSIONER:** So what kind of
2 statements?

3 **MS. SACCOCCIO BRANNAN:** Police reports. I
4 guess occurrence reports or police reports in preparing --
5 going through their investigation, the reports the police
6 prepare may refer to an informant but, as I understand it,
7 sir, when we talk about police informants in the context of
8 Project Truth or in the context of the mandate of this
9 inquiry, it's my understanding that there are no
10 confidential police informants in that regard. Where they
11 will be found will be in police officer's notes in relation
12 to unrelated investigations, which is another topic.

13 **THE COMMISSIONER:** All right. Okay.
14 So I don't want to get into them, but the
15 police officer's notes that are unrelated to this
16 investigation, is there any consensus that they are to be
17 redacted?

18 **MS. SACCOCCIO BRANNAN:** Yes, sir. Those are
19 number 2A and my understanding from my colleagues is that
20 everybody is in agreement that unrelated police
21 investigations should be redacted.

22 **THE COMMISSIONER:** All right.
23 So the confidential informants would fall in
24 that category in any event?

25 **MS. SACCOCCIO BRANNAN:** It's my

1 understanding, yes, that that's the case.

2 **THE COMMISSIONER:** Okay.

3 **MS. SACCOCCIO BRANNAN:** So I have to go back
4 now to number one because an issue was raised today by Mr.
5 Chisholm which he will speak to, and that is under the
6 heading "Confidential Informants"; you'll see 1B,
7 "Individuals making referrals pursuant to their duty to
8 report suspicions of child maltreatment to the Children's
9 Aid Society". I certainly can't speak to that issue, sir,
10 but I will give the floor to Mr. Chisholm.

11 **THE COMMISSIONER:** And this is a new item?

12 **MS. SACCOCCIO BRANNAN:** As of today, yes,
13 sir.

14 **THE COMMISSIONER:** As of today, yes, okay.

15 **THE COMMISSIONER:** So Mr. Chisholm, with
16 respect to police informants, I take it that you have no
17 issue with that being redacted?

18 --- **SUBMISSIONS BY/REPRESENTATIONS PAR MR. CHISHOLM:**

19 **MR. CHISHOLM:** That would be correct, Mr.
20 Commissioner. To my knowledge none of -- that topic would
21 not impact upon the Society's file.

22 **THE COMMISSIONER:** Okay.

23 **MR. CHISHOLM:** Perhaps, Mr. Commissioner, I
24 could start with just a brief summary of how the Society's
25 files are different from the police services

1 who have standing here, the Ministry of the Attorney
2 General's files, for instance, whereas those types of
3 documents, police documents and many documents may have a
4 very narrow focus in terms of an allegation of sexual abuse
5 or sexual assault, it's the position of the Children's Aid
6 Society that its documents are much broader in scope and
7 cover in many cases larger periods of times and many issues
8 not related to the mandate of this Commission.

9 So as within CAS file we may have a portion
10 of it relating to allegations of child sexual abuse, that
11 same individual may have other aspects of the file, the
12 family file, relating to neglect or child maltreatment not
13 forming part of the mandate of this Commission or that same
14 individual may have an adult file. He or she or himself or
15 herself is now an adult and when the Commission has
16 requested files with respect to individual "X", the Society
17 not only gave the child's file but the adult's file to make
18 sure that it covered all the bases.

19 Much of the information contained in those
20 files would go far broader than the mandate of the
21 Commission. So I would submit that those Society files are
22 distinguishable from the files of any of the other
23 institutional clients that are before you with standing.

24 Those files, Mr. Commissioner, would also
25 contain information not only on the potential witness that

1 we are going to have testify but also his or her family
2 members such as parents, siblings. And let's take the
3 hypothetical example of a sibling of a witness we are going
4 to hear from, that person may have moved on with their life
5 but at the time, all their personal information is set out
6 in that file. So I start my submissions there to point out
7 that in the Society's view, its files are different from
8 some of the other institutions.

9 If I could move on now to address the first
10 issue that is set out, the confidential informants?

11 **THE COMMISSIONER:** M'hm.

12 **MR. CHISHOLM:** I won't say anything with
13 respect to police informants but with respect to 1B,
14 individuals making referrals pursuant to their duty to
15 report suspicions of child maltreatment to the CAS, I
16 submit, Mr. Commissioner, that in many of those cases
17 persons who come forward pursuant to their duty to report,
18 as set out in the child protection legislation, come
19 forward and in some instances they have an expectation of
20 confidentiality or in some cases assurances of
21 confidentiality have been made.

22 The Society has concern with respect to
23 doing anything that would cause members of the public to
24 think that if I do come forward with a suspicion, voice my
25 suspicion, which is my obligation as a person in Ontario,

1 that that somehow may be disclosed to persons outside of
2 the child protection context.

3 What the Society does not want to see, Mr.
4 Commissioner, is the public to be in any way reluctant to
5 come forward and comply with the duty to report.

6 **THE COMMISSIONER:** What did you say,
7 reluctant that the name of the informant be disclosed to
8 who?

9 **MR. CHISHOLM:** Mr. Commissioner, I would
10 submit to anyone beyond the people who need to know. The
11 people who need to know are the child protection workers at
12 Children's Aid Society and police officers who are
13 conducting an investigation and Crown attorneys, depending
14 on how far down we go. We are speaking hypotheticals but
15 those people that need to know may vary in any specific
16 instance.

17 My position would be, Mr. Commissioner, that
18 I, as a lawyer acting for a party with standing in this
19 Commission, have no right to deal or to be privy to
20 documents, confidential documents that would be in the
21 possession of other parties such as the Ontario Provincial
22 Police or the Cornwall Police Service. Equally, any lawyer
23 who has standing or is acting for a party with standing, I
24 would submit merely by the fact that they are engaged in
25 that capacity does not give them the right to be privy to

1 confidential documents relating to and, in this case we are
2 speaking to 1B, the confidential informants. But those
3 comments that I make are broader and can be applied to any
4 CAS file where confidentiality is an issue.

5 **THE COMMISSIONER:** Well, you're assuming for
6 a minute that confidentiality is absolute and it's not. Do
7 you agree that inside the CAS proceeding, for example, ---

8 **MR. CHISHOLM:** Right.

9 **THE COMMISSIONER:** --- that it's up to a
10 presiding judge to decide in exceptional circumstances, and
11 we accept that it has to be exceptional circumstances, that
12 the name of the informant would be disclosed.

13 **MR. CHISHOLM:** That's correct, Your Honour.

14 **THE COMMISSIONER:** So to tell someone, the
15 public, that you come forward and your name will be
16 protected absolutely is not correct?

17 **MR. CHISHOLM:** It may not be correct, Your
18 Honour -- Mr. Commissioner -- but it may have taken place
19 in the past.

20 **THE COMMISSIONER:** So how can a court or a
21 commission be bound by someone giving off the wrong
22 message?

23 **MR. CHISHOLM:** Well, Mr. Commissioner,
24 you're not bound by anything that may have been said by a
25 child protection worker. At the end of the day the

1 decision will be yours to make. But going back to your
2 example, you're speaking, I believe, of potentially child
3 protection proceedings under the legislation or perhaps the
4 *Criminal Code* -- or prosecution under the *Criminal Code*.

5 Dealing first with the child protection
6 proceedings, there are safeguards in place to limit the
7 public's access with respect to those proceedings.

8 Dealing with the *Criminal Code* proceedings,
9 Mr. Commissioner, I suppose the -- as in all cases of
10 confidential informants the Crown prosecutor at the end of
11 the day is left -- in some cases is left with the decision
12 of moving ahead with the prosecution or maintaining the --
13 well, obviously, the police informer privilege and not
14 proceeding with that prosecution.

15 But going back to child protection
16 proceedings, there are protections in place to limit the
17 public exposure, if you will, of the evidence that was
18 given.

19 **THE COMMISSIONER:** Right.

20 **MR. CHISHOLM:** I would submit, Your Honour,
21 what you have to do is balance two public interest
22 components; one relating to what Mr. Lee and perhaps Mr.
23 Manson will speak of in terms of the lawyer in the
24 Commission acting for a party with standing, asserting his
25 or her right to view all the documents in an un-redacted

1 form versus the public interest in protecting the
2 information that is brought to the Society in the course of
3 a child protection investigation. At the end of the day,
4 the Society's position is that it's -- the public interest
5 in protecting the confidentiality relating to the informant
6 outweighs the public interest that Mr. Lee and Mr. Manson
7 may well say ---

8 **THE COMMISSIONER:** Why?

9 **MR. CHISHOLM:** --- prevail.

10 **THE COMMISSIONER:** Why do you say that yours
11 outweighs their interest of a full public inquiry?

12 And first of all we should limit this in the
13 sense that we're at the point here of disclosure. We're at
14 the point of disclosing to lawyers, all right, like a Crown
15 attorney disclosing to them, and given that we've started
16 putting in place by way of consent an order that not only
17 must the lawyers undertake to sign before they even get the
18 documents all of the procedures that everybody consented to
19 and then, not only that, but we've made the -- I've ordered
20 that any of the clients that have to see have to promise as
21 well.

22 So you know, first of all, it's not like
23 we're going to order that the name of the informants are
24 going to be published anywhere. We're only talking about
25 disclosure and then we get to the point of, okay, we're at

1 disclosure. We're not even at the point that we're going
2 to be producing -- I mean somebody is going to be producing
3 of the name of an informant and we're at the point where
4 we're talking about professionals and we're talking about
5 parties that have standing signing undertakings to do these
6 things.

7 **MR. CHISHOLM:** And I certainly accept that
8 is the parameter within which we are operating, but going
9 back to my premise that being a lawyer acting for a party
10 with standing at this inquiry does not give me any right to
11 view the confidential records of any other party. That's
12 the premise from which -- others may say I'm wrong but why
13 expand a circle, Mr. Commissioner, of people who have this
14 knowledge beyond those that need to know?

15 And with respect to the inquiry we're
16 speaking of today, Mr. Commissioner, what does it matter to
17 the parties -- and again I'm speaking in generalities, but
18 what does it matter to the parties the identity of an
19 informant? The important thing, I would submit, to take
20 from that would be that a person came forth with this
21 information, a suspicion of child maltreatment and then
22 examining the institutional response from that time
23 forward. I would submit, Mr. Commissioner, that again
24 we're speaking in hypotheticals ---

25 **THE COMMISSIONER:** M'hm.

1 **MR. CHISHOLM:** -- makes it difficult to
2 apply the reasoning to every particular case. But what is
3 to be gained that will advance the purposes of this
4 commission of inquiry by putting forth the name of the
5 informant?

6 **THE COMMISSIONER:** If it's unrelated to the
7 investigation that we're doing here it would fall in
8 unrelated, much as I've indicated for the OPP; is that a
9 police informant in a police officer's notes dealing with a
10 case that's unrelated to this is going to get redacted in
11 any event.

12 So what we're doing is we're taking out all
13 of those, I would think, and I know it's subject to any --
14 what the comment may be -- is that the CAS files that are
15 unrelated to this investigation, well, we don't need to
16 know the informants.

17 **MR. CHISHOLM:** Our position would go further
18 down. When we get to that, Mr. Commissioner, that's
19 further down in the list but my position would be -- and as
20 we are craftsmen -- in putting our proposed redactions to
21 your counsel and staff have been to identify documents
22 wherein we set out the Society's position that these files
23 are not relevant to the Commission's mandate. And
24 therefore, if you disagree with this further discussions
25 will have to be had and redactions made but that's the

1 process that we've been operating under.

2 **THE COMMISSIONER:** Well, let's assume for a
3 minute that -- and I'm just throwing this out -- the
4 confidential informant, all right, the person who reports
5 to the Children's Aid Society -- well, the name Dunlop is a
6 pretty good one to use and you don't have to say so. So
7 let's assume we have out there that Officer Dunlop did
8 report to your people. It's out in the public form. Okay.

9 **MR. CHISHOLM:** I don't know that Constable
10 Dunlop ever came to the Society and said, "I'm doing this
11 on a confidential basis. I would ask" -- and we're not --
12 if Constable Dunlop came forth with a statement from an
13 alleged victim and provided it to the executive director of
14 the Children's Aid Society -- and from then we have a long
15 history of events -- but in Constable Dunlop's situation it
16 is not my understanding that he ever requested that his
17 identity be protected.

18 Let's take an example, Mr. Commissioner, if
19 I can move away -- not move away from Constable Dunlop's
20 example but put another example beside it? If we have a
21 situation of a grandmother who has her grandchildren over
22 to her house last night. She makes observations or hears
23 something from her grandchildren which would lead her to
24 form the suspicion that her grandchildren may well be being
25 abused by her son-in-law. Today she makes the call to the

1 Children's Aid Society and is quite concerned about the
2 dynamics of her family relationship, the relationship with
3 her family if her identity is to be disclosed. I would
4 submit, Mr. Commissioner, that that is a situation that
5 would have more bearing to the concerns that I'm advancing
6 than Constable Dunlop's situation.

7 **THE COMMISSIONER:** Sure, except that what --
8 how would that file be relevant to this investigation now?
9 How would it be relevant? So if it's not relevant, it's
10 out.

11 **MR. CHISHOLM:** Well, I say now -- let's move
12 that example back 10 years, Mr. Commissioner.

13 **THE COMMISSIONER:** M'hm.

14 **MR. CHISHOLM:** And where you may wish to
15 examine the institutional response of the Children's Aid
16 Society to that referral.

17 **THE COMMISSIONER:** Well, then it might get
18 all the more relevant, or let's put it another way. Let's
19 assume that somebody is concerned about how things -- other
20 informants -- for example, Mr. Dunlop's reporting and
21 accumulation of evidence won't be discussed in this
22 inquiry, okay.

23 So what about if somebody is saying well,
24 what about if Mr. Dunlop reported other things? Well, that
25 might become relevant or, if it wasn't Mr. Dunlop, it was

1 somebody that he knew very well.

2 So just going down that line, wouldn't some
3 of the parties want to know if there's a connection between
4 the informants to Mr. Dunlop? Wouldn't that become very
5 relevant? And that's just an example. I mean there are
6 other ways that the name in the report may or may not
7 become very relevant in this inquiry and I don't know.

8 **MR. CHISHOLM:** It's hard to speak of this
9 without an evidentiary -- we're in an evidentiary vacuum
10 right now, putting forth a hypothetical ---

11 **THE COMMISSIONER:** Oh, just a second;
12 evidentiary background. We're not talking about evidence
13 here.

14 **MR. CHISHOLM:** No, that's why we're in a
15 vacuum.

16 **THE COMMISSIONER:** We're talking about
17 disclosure to lawyers who have signed undertakings to do
18 certain things and to clients who have signed undertakings.
19 So it just stops there.

20 **MR. CHISHOLM:** It stops there, Mr.
21 Commissioner, but again we're back to the Society's
22 position. You and everyone else may take a different view
23 that the lawyers are entitled to this information in un-
24 redacted form and the lawyers' clients who need to see this
25 information on a need-to-know basis are entitled to view

1 this information in un-redacted form. I'm here today, Mr.
2 Commissioner, to put forth the Society's concerns perhaps
3 in the broader picture of the harm that could happen with
4 respect to the duty to report.

5 We've heard evidence on the duty to report
6 from a number of contextual experts, Mr. Commissioner.
7 It's an interesting subject and I would submit there's not
8 a person in this room that would want to do anything that
9 would limit the ability of the Society or Cornwall Police
10 or OPP to carry out their respective mandates with respect
11 to investigations relating to child sexual abuse.

12 **THE COMMISSIONER:** Okay, but I just want to
13 focus in the sense that we are speaking in a vacuum but if
14 every attempt is made to take out irrelevant cases and
15 therefore the name of the informant is not there, we're
16 talking about a very narrow scope, aren't we, with respect
17 to CAS informants?

18 **MR. CHISHOLM:** We may well be, Mr.
19 Commissioner.

20 **THE COMMISSIONER:** Well, then let's talk
21 about that. So we're talking about -- you're talking about
22 managing risk and I'm saying, okay, we're taking out all
23 the irrelevant ones. And so how many are we talking? How
24 many are we talking about; five, ten, fifteen
25 investigations?

1 **MR. CHISHOLM:** Perhaps, Mr. Commissioner. I
2 wouldn't disagree with your numbers.

3 **THE COMMISSIONER:** Okay. So we've gone from
4 "Oh my God, we're going to be disclosing all the informants
5 that the CAS ever received with respect to child sexual
6 abuse" down to -- well, first of all, we're not doing that.
7 We're giving it to lawyers. Second of all, we're taking
8 out the irrelevant ones and then we're going down to a
9 small number, right?

10 **MR. CHISHOLM:** Well, I suppose, Mr.
11 Commissioner, in terms of the order, first off I would
12 submit it's informants relating to suspicions of child
13 maltreatment, not -- which can include neglect or other
14 items. If you put those aside, the order in which, I would
15 submit, this should be done is separate any files that the
16 Commission staff would find to be not relevant to the terms
17 of the mandate of the Commission and then the question
18 becomes, to whom do we disclose?

19 **THE COMMISSIONER:** Well, wait a minute. I
20 thought there was a triage done at the beginning is that
21 you disclosed what you felt as a party would be relevant.

22 **MR. CHISHOLM:** Correct, but Mr.
23 Commissioner, we may have erred on the side of caution and
24 been a little broader than what specific terms of the
25 mandate would be.

1 **THE COMMISSIONER:** M'hm.

2 **MR. CHISHOLM:** The Commission has, in my
3 view has -- for instance, after disclosure of the Society's
4 documents had been made, we've had requests -- we have
5 ongoing requests ---

6 **THE COMMISSIONER:** Oh, yes.

7 **MR. CHISHOLM:** --- from Commission counsel
8 with respect to individual acts, give us all -- give us all
9 files for an individual's acts.

10 **THE COMMISSIONER:** Right.

11 **MR. CHISHOLM:** The Society conducts a
12 search, finds those files and a number of files could come
13 out of that inquiry.

14 **THE COMMISSIONER:** M'hm, yes.

15 **MR. CHISHOLM:** They are delivered to
16 Commission staff and counsel. We still maintain the view
17 that, yes, that individuals' names are in here but, in our
18 view, are not -- this file, one, two, three, four is not
19 relevant to the terms of the mandate.

20 **THE COMMISSIONER:** M'hm, okay. Well, I
21 think there is a difference between the bulk disclosure
22 that we have given and the specific request that we are
23 making of individuals, all right? And I think we have to
24 keep that in mind when we are doing this.

25 **MR. CHISHOLM:** At the end of the day, Mr.

1 Commissioner, I would suspect you may have to make an order
2 in which the Society will ---

3 **THE COMMISSIONER:** I sense that what I am
4 being asked to do is make an order so that everybody can go
5 in with their hands very clean.

6 **MR. CHISHOLM:** Clean or a clear direction of
7 ---

8 **THE COMMISSIONER:** Oh, yes, no, no.

9 **MR. CHISHOLM:** --- how to conduct themselves
10 and whatever remedies are out there as a result of the
11 order that when you make an order, Mr. Commissioner,
12 certain avenues open up to the parties if they disagree
13 with your order.

14 **THE COMMISSIONER:** Oh, that's fine, yes.

15 **MR. CHISHOLM:** I would think that's all I
16 have to say, Mr. Commissioner, with respect to Issue No. 1,
17 Confidential Informants.

18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Engelmann, because I don't have a watch
21 this morning ---

22 **MR. ENGELMANN:** It is 12:15, sir.

23 **THE COMMISSIONER:** Okay. At 12:30 I have a
24 meeting to go to. So we are going to be breaking ---

25 **MR. ENGELMANN:** We are not making great

1 progress but ---

2 THE COMMISSIONER: We are. I think we are.

3 MR. ENGELMANN: Okay.

4 (LAUGHTER/RIRES)

5 MR. ENGELMANN: Good. Maybe I'm just a
6 pessimist.

7 I think we've been dealing with both 1 and 2
8 to a large extent. I just wanted to make a comment. I
9 don't know if anybody else wants to address this new issue
10 that arose today.

11 I'm assuming that Mr. Chisholm is not
12 suggesting there is any form of privilege? By that I mean
13 sort of a class privilege like confidential police
14 informant privilege, that that privilege he is talking
15 about would simply be a case-by-case example. We go
16 through the Wigmore test or whatever and of course, as he
17 is well aware and, I think, you were perhaps pointing out
18 to him, that we have rules by which parties can make
19 application to have information that would otherwise be
20 admissible into evidence, confidential or publication bans,
21 et cetera.

22 And with respect to the comment about
23 unrelated investigations, you know, we have been asking
24 parties to give us some guidance on this and I know the OPP
25 has, for example; the Cornwall Police Service and others.

1 If people think they have given us documents that are
2 unrelated or irrelevant, obviously we want to hear from
3 them about that because our obligation is only to disclose
4 relevant documents and we are not in the business of
5 wanting to disclose anything but relevant documents.

6 So in any event those were just some very
7 brief comments but I think we have dealt with a large part
8 of 2 ---

9 **THE COMMISSIONER:** Well, I know ---

10 **MR. ENGELMANN:** --- already with 1, but I
11 know people will have some comments.

12 **THE COMMISSIONER:** Yes, all right.

13 So let's continue on with the No. 1 on that.

14 **MR. ENGELMANN:** I just don't know if there's
15 anybody else who wishes to comment on 1B?

16 **THE COMMISSIONER:** Well, we'll give them --
17 well, 1A or 1B.

18 **MR. ENGELMANN:** Yes.

19 **THE COMMISSIONER:** All right.

20 So Mr. Callaghan.

21 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:**

22 **MR. CALLAGHAN:** What I'd like to do is just
23 briefly for the purpose of educating the public and
24 yourself is, like the OPP, just explain briefly what we
25 have done so it's clear on the record.

1 **THE COMMISSIONER:** M'hm.

2 **MR. CALLAGHAN:** Starting in December, we
3 started to make productions. At that time we provided the
4 documents in an un-redacted form with two exceptions. We
5 redacted out *Youth Criminal Justice Act* issues which
6 regrettably you didn't have jurisdiction to deal with
7 because of the law. That's been dealt with. It's not a
8 problem at the moment. But at that time that's what we
9 redacted and we also redacted privilege issues. You
10 provided your ruling on that and it's being addressed.

11 So at that time we also outlined to the
12 Commission in December that we had other concerns and I
13 think, Mr. Commissioner, you have sort of hit on the issue
14 which is legal restrictions; restrictions that prohibit you
15 from dealing with it.

16 **THE COMMISSIONER:** M'hm.

17 **MR. CALLAGHAN:** Like such as the *Youth*
18 *Criminal Justice Act*, privilege issues, police informant
19 issues which are -- don't allow for even disclosure under
20 the case law, but that's something that is a very narrow
21 issue. Beyond that, you have the lawful power to summons.
22 You have summons.

23 **THE COMMISSIONER:** M'hm.

24 **MR. CALLAGHAN:** You have in your mandate,
25 particularly under paragraph 6 the -- and I'll just read

1 this for the record. I know you're aware of it:

2 "The Commission shall ensure that the
3 disclosure of evidence and other
4 materials balance the public
5 interest, the balance of open
6 hearings and the privacy interests of
7 the persons affected, taking into
8 account any legal requirements."

9 As Mr. Engelmann indicated, we have been in
10 discussion and we have raised concerns of a general nature.
11 It's not a surprise to anybody in this community that this
12 inquiry has a bit of its genesis in a disclosure of a
13 document that was perceived to be contrary to FIPA, the
14 Freedom of Information, and police officers and the police
15 services that do not disclose investigations, do not
16 disclose people who come forward except in the context of a
17 prosecution, so that if you were to come to the Cornwall
18 Police or the OPP, for that matter, it wouldn't be
19 disclosed.

20 And so consequently, there is a -- not a
21 resistance but a culture of trying to maintain the privacy.

22 **THE COMMISSIONER:** M'hm.

23 **MR. CALLAGHAN:** You, sir, have the power to
24 summons and you, sir, and the Commission have under
25 paragraph 6 the obligation to balance these issues.

1 And so consequently, we have taken the view
2 that it's the Commission's responsibility and we will do
3 what we can to assist and we have to identify those issues.
4 In June, the issue was brought to us that, "Well, it's all
5 very nice for you to say this, Mr. Callaghan, but I can't
6 tell the irrelevant parts of your officer's notes". So our
7 officers since June have gone and redacted the irrelevant
8 parts which you spoke of.

9 **THE COMMISSIONER:** M'hm.

10 **MR. CALLAGHAN:** They also took at that time
11 the liberty of identifying what they thought might be
12 promptly redacted and I know it's caused no ends of
13 headaches for your counsel and your staff because one
14 officer might have viewed it differently than the other
15 officer and there hasn't been a lot of specific guidelines
16 emanating to do that. But that's something that has got to
17 be worked out at some point.

18 Our concern -- and it is an issue because I
19 mean, you know, you have the balancing of people. You
20 know, this Commission of Inquiry is important. The people
21 who come to the police have to have an ability to confide
22 but that's something under section 6 I understand you will
23 address at the time when it's made public.

24 **THE COMMISSIONER:** M'hm.

25 **MR. CALLAGHAN:** And the only two comments I

1 have in that regard is one is there must be a consistency
2 of application. We cannot have a situation that if you
3 report to the Cornwall Police Services, your name is
4 exposed even in the disclosure side but it's not disclosed
5 on the OPP side. That to me is not acceptable, that it has
6 to be consistent and have consistency, which means there
7 has to be some specificity as to what we are doing.

8 I agree with the tenor of the submissions of
9 the OPP that whether it's now -- and I note the word in
10 paragraph 6 is disclosure, not evidence, and whether -- and
11 I understand that the Commission's view is that the
12 undertaking addresses the balance in the disclosure issue
13 but -- that's the balancing on the disclosure issue under
14 paragraph 6. It's not on the introduction of the evidence
15 because it says "shall ensure that the disclosure of
16 evidence" and whether this is that stage or maybe -- I
17 mean, these are Order in Council. Let's face it. There's
18 latitude here. It's not an issue of determination. You've
19 got to decide whether disclosure means to these people here
20 and their counsel and their -- their clients or whether it
21 means to the public at large in the course of a hearing.
22 That's something, I think, that had not been raised with
23 you and I think -- it's not -- it doesn't require
24 submissions. It requires your own thought, obviously, on
25 that issue.

1 But then the balancing issue or the legal
2 requirements are things I think that we're going to touch
3 on as we go through the issues that we have concerns with
4 and, you know, I want to say this straight up. It's a
5 human endeavour. This is a human endeavour but on the
6 other side you have individuals. You'll hear from us that
7 we have individuals who may have come forward and never
8 wanted to be disclosed.

9 They didn't want anyone to know that they
10 may have been victimized and they have asked that anonymity
11 be provided to them. Under many circumstances for whatever
12 reason their name never did come out in any proceeding,
13 whether in the context of a Stinchcombe disclosure we would
14 have disclosed it, it just never actually came to fruition.
15 That's an issue that you'll have to, I know -- you'll have
16 to deal with and you've indicated previously it is a human
17 endeavour and you will deal with it. Whether you perceive
18 it has to be dealt with at this stage, again, I think this
19 is up to the Commissioner with our submissions to make that
20 determination.

21 So I just wanted to say those opening
22 comments.

23 **THE COMMISSIONER:** M'hm.

24 **MR. CALLAGHAN:** And that it's a big task. I
25 will say that I don't think these issues should be driven

1 by economics or anything else, that these are important
2 issues. The work of the Commission is important but the
3 reputations and not just the reputations but in some cases
4 maybe the wellbeing of people is equally important and it
5 requires our sober reflection, all of us.

6 But in terms of the issue at hand, and I
7 don't know if there was anything else I meant to say as an
8 introductory comment but on police informants I agree. I
9 think that -- at least for the Cornwall Police Service I
10 think redacting the other irrelevant information would have
11 addressed that. So we don't have a concern. There is some
12 concern that others might express but that the police
13 informant definition might be broader than I have
14 interpreted but I think we can address that as we go along
15 in the numbers, subject -- in the numbers because there may
16 be a suggestion that informants who come forward who aren't
17 police informants in the classic sense may be entitled to
18 that same protection. That is, as I say, someone comes
19 forward and says, "I don't ever want to be brought into
20 this but I can tell you x, y and z regarding an incident to
21 me but, please, I don't want to be involved". That's a
22 concern and that's something that, you know, whether you --
23 again, it's up to you to decide whether to address it now
24 or address it later.

25 The one thing I will say, though, in

1 respecting address it now or address it later, later is
2 coming. Later is in two weeks. So it may be helpful to
3 get some guidelines because I know in some of our
4 investigations, that is the Cornwall Police Services, that
5 are anticipated to go first. That schedule may change.

6 **THE COMMISSIONER:** M'hm.

7 **MR. CALLAGHAN:** But I have officer issues in
8 that if there is going to be direction that we have to work
9 with your counsel to make sure clarity and I think your
10 staff would like clarity because, clearly, we weren't
11 providing consistency on our side.

12 So with those comments I'll step back.

13 **THE COMMISSIONER:** Thank you.

14 Mr. Sherriff-Scott.

15 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:**

16 **MR. SHERRIFF-SCOTT:** Mr. Commissioner, I
17 have no comments on 1A just insofar as what the Diocese has
18 done following our production. We have -- are producing on
19 separate discs highlighted versions of our productions.

20 **THE COMMISSIONER:** M'hm.

21 **MR. SHERRIFF-SCOTT:** I had a discussion with
22 your counsel last week and the issue of efficiency and cost
23 came up. So what we are doing is internally redacting on a
24 separate disc. So there will be a highlighted disc and
25 there will be an actually redacted disc so that your staff

1 can see what has been done so they can make their judgments
2 and whether or not a debate needs to ensue following that.

3 **THE COMMISSIONER:** M'hm.

4 **MR. SHERRIFF-SCOTT:** On 1B, my comment is I
5 don't know what assurances of confidentiality if any are
6 given. None are under the CFSA with the exception of
7 immunity from civil suit for damages under section 72. So
8 I don't see these people as any different from a witness as
9 indicated under paragraph number 7. I think the only
10 conceptual differences in terms of classes of people that I
11 am going to address are the question of victims and
12 suspects which are later on at which ---

13 **THE COMMISSIONER:** Yes, right. Well, I
14 remember in my history here that I had to decide a case
15 under the CFSA on whether or not we were going to disclose
16 the name of the informant who reported to the CFSA. And
17 there was a heavy debate and there was case law. So in my
18 historical memory, it isn't -- I don't know that ---

19 **MR. SHERRIFF-SCOTT:** It's not
20 straightforward.

21 **THE COMMISSIONER:** It's not straightforward.

22 **MR. SHERRIFF-SCOTT:** I'm not aware of the
23 restriction. All I know of is section 72 on the immunity
24 from civil damage claims.

25 **THE COMMISSIONER:** Yes, there are cases and

1 there were cases that discussed specifically people who
2 came forward under the CFSA.

3 So thank you.

4 **MR. SHERRIFF-SCOTT:** Okay, thank you.

5 **THE COMMISSIONER:** Thank you, Mr. Carroll.

6 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CARROLL:**

7 **MR. CARROLL:** Good afternoon. I'm not sure
8 if you wish me to address you now or when we deal with No.
9 3 because I see 1A and 3 as the only matter that I wish to
10 address.

11 **THE COMMISSIONER:** The Commission.

12 **MR. CARROLL:** The other thing I should tell
13 you is that ---

14 **THE COMMISSIONER:** No.

15 **MR. CARROLL:** Do you want to hear from me at
16 3:00?

17 **THE COMMISSIONER:** Yes. Unless you have
18 something on 1A, specifically.

19 **MR. CARROLL:** I think 3 is subsumed in 1A,
20 so I'll deal with it when we get to 3.

21 **THE COMMISSIONER:** All right. Thank you.

22 Mr. Cipriano.

23 **MR. CIPRIANO:** I don't have any comments on
24 Section 1.

25 **THE COMMISSIONER:** Thank you.

1 Mr. Lee.

2 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

3 MR. LEE: I have to admit that I'm waiting
4 to hear from Mr. Carroll on this a little bit; in terms of
5 what he has to say about police informants and witnesses
6 and whether or not there are some parallels there. My
7 understanding is that he's going to -- when he discusses
8 No. 3 he's going to make submissions to you about witnesses
9 that I think I can make my submissions on those at that
10 time.

11 As far as police informants go; I mean it
12 sounds like there's not much point in discussing this at
13 this stage because it sounds like it's not going to become
14 an issue anyways.

15 My only concern and generally I think the
16 concern I have is that we do our best to redact only what
17 needs to be redacted. If we can get away with just
18 redacting a name, we just redact the name. We don't go
19 overboard. But I think that's just kind of a general
20 comment and again when Mr. Carroll comes up, I expect that
21 may be something he addresses and I'll address it further
22 then.

23 As far as 1B being the CAS individuals, I
24 agree that I don't see how these people are any different
25 than a witness in another context. I think that might be

1 properly left for our discussion under No. 7 of the list;
2 which is just witness names and the related information.

3 **THE COMMISSIONER:** Okay.

4 **MR. LEE:** My position is there is no special
5 privilege that should happen to the CAS ---

6 **THE COMMISSIONER:** That's fine.

7 **MR. LEE:** A witness is a witness and we can
8 discuss that at the same time.

9 **THE COMMISSIONER:** Thank you.

10 **MR. LEE:** Thank you.

11 **THE COMMISSIONER:** Mr. Manson.

12 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

13 **MR. MANSON:** It's almost 12:30, so I won't
14 say anything generally about this disclosure. Just with
15 respect to 1A and B: confidential police informants, as I
16 understand that term and I know Mr. Carroll is going to
17 address this, but as I understand it, we agree, should not
18 be disclosed.

19 1B; we take the view that the names of
20 people and maybe even their status, who made referrals, is
21 relevant. It's relevant not simply to show who made the
22 referrals but also to show who didn't make referrals.

23 **THE COMMISSIONER:** M'hm.

24 **MR. MANSON:** So all the duty to report
25 material under 1B, we think should be left unredacted.

1 Thank you, Mr. Commissioner.

2 **THE COMMISSIONER:** All right.

3 **MR. ENGELMANN:** Mr. Commissioner, perhaps we
4 could take our noon break then.

5 **THE COMMISSIONER:** All right.

6 Did you have any further comments with
7 respect to 1A and B?

8 **MR. ENGELMANN:** No, I think it's dealt with,
9 with respect to unrelated or irrelevant matters and I think
10 we've made our submissions.

11 **THE COMMISSIONER:** Thank you.

12 **MR. ENGELMANN:** When do you want us back?

13 **THE COMMISSIONER:** Two (2).

14 **MR. ENGELMANN:** Two o'clock (2:00).

15 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
16 just very briefly with respect to 1A and 1B, I should have
17 introduced this earlier. The position of the Ontario
18 Provincial Police is that, on that issue -- because I'm
19 going to deal with it on each issue, is that we're talking
20 about disclosure to lawyers and clients and then at the end
21 of the day, disclosure to the public. We're talking about
22 both cases, with respect to 1A. And I'm going ---

23 **THE COMMISSIONER:** No. How can you take
24 that position? We're not even -- to the public is a
25 different ---

1 **MS. SACCOCCIO BRANNAN:** No. I understand
2 that. I understand that. But when we talk about the -- if
3 you want us only to address disclosure to lawyers and their
4 clients today, I'm satisfied to do that.

5 **THE COMMISSIONER:** Yes. Oh, yes.

6 **MS. SACCOCCIO BRANNAN:** Fair enough.

7 **THE COMMISSIONER:** I don't know, but I think
8 it's a whole different ballgame when it comes to the
9 public.

10 **MS. SACCOCCIO BRANNAN:** I would agree with
11 you, sir. And of course, we don't know because we don't
12 yet know exactly what cases we're going to be dealing with
13 except for the first number that have been provided to us.

14 **THE COMMISSIONER:** Unfortunately in that
15 context, the witness list is going to change as any inquiry
16 and so we just start off and we go with what we can. As
17 well, I think we should keep in mind that this may largely
18 be hypothetical in the sense that, from the amount of
19 disclosure that is disclosed, I would suspect a tiny bit of
20 that is going to be used in evidence. And when we get to
21 that point in evidence where it's going to go to the
22 public, well, then we have to decide whether it will be in
23 camera or in public, but that's a whole different ballgame.

24 **MS. SACCOCCIO BRANNAN:** I'm comforted by
25 your comments, sir.

1 **THE COMMISSIONER:** Well, I'm sorry that I
2 didn't make it plainer at the beginning.

3 **MS. SACCOCCIO BRANNAN:** Clearly that then
4 becomes the whole case-by-case issue ---

5 **THE COMMISSIONER:** Oh, absolutely.

6 **MS. SACCOCCIO BRANNAN:** --- that we're going
7 to have to address.

8 **THE COMMISSIONER:** Absolutely. I hear Mr.
9 Callaghan was saying consistency in approach. Once we get
10 down to case-by-case, it will be a case-by-case thing and a
11 lot of things are going to change in each one of the case.
12 It will be unique. Well, on that, we can chew on that for
13 lunch.

14 **MS. SACCOCCIO BRANNAN:** Thank you.

15 **THE COMMISSIONER:** Thank you.

16 **THE REGISTRAR:** Order; all rise. À l'ordre;
17 veuillez vous lever. The hearing will reconvene at 2:00
18 p.m.

19 --- Upon recessing at 12:33 p.m./

20 L'audience est suspendue à 12h33

21 --- Upon resuming at 2:04 p.m./

22 L'audience est reprise à 14h04

23 **THE REGISTRAR:** This hearing of the Cornwall
24 Public Inquiry is now in session. Please be seated.
25 Veuillez vous asseoir.

1 **THE COMMISSIONER:** Thank you.

2 Good afternoon, all.

3 **MR. ENGELMANN:** Good afternoon, Mr.
4 Commissioner.

5 I just wanted to confirm one thing. There
6 was some debate about whether something got marked and I
7 just wanted to make sure it was marked. There should be a
8 package of letters, starting with a letter ---

9 **THE COMMISSIONER:** Well, it was marked. We
10 gave it a number but I don't know that we delivered the
11 goods, so to speak.

12 **MR. ENGELMANN:** All right.

13 It should have been starting with a letter
14 dated August 15th, 2006, to all counsel from me. And then
15 there were a number of responses. It should just be a
16 package.

17 **(SHORT PAUSE/PAUSE COURTE)**

18 **MR. ENGELMANN:** Has that now been marked?
19 What is the number?

20 **THE REGISTRAR:** RI-D1. It is a package of
21 correspondence.

22 **MR. ENGELMANN:** And are the other exhibits
23 available on the screen? Could you just take a peek for a
24 moment?

25 **THE COMMISSIONER:** Hold it now. What did

1 you say the correspondence was?

2 **THE REGISTRAR:** All of the correspondence
3 RI-D1.

4 **THE COMMISSIONER:** That's right. Yes.

5 **MR. ENGELMANN:** I believe it should end with
6 a couple of letters from Mr. Sherriff-Scott.

7 Yes, all of the letters are there. Thank
8 you.

9 If we could just go back then to the Exhibit
10 List for today. It was up just a moment ago.

11 **(SHORT PAUSE/PAUSE COURTE)**

12 **MR. ENGELMANN:** I'll just be a moment.

13 All right. Then Mr. Commissioner, we were
14 on RI-A1 and I believe we were on the second item;
15 investigations unrelated to the Commission's mandate.

16 You, I think heard a little bit about this
17 but I'll invite Ms. Saccoccio Brannan to come up and then
18 others who may have comments.

19 --- ISSUE NO. 2/POINT No. 2:

20 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO

21 **BRANNAN:**

22 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
23 with respect to Issue No. 2, investigations unrelated to
24 the Commission's mandate, 2A in particular, police
25 investigations unrelated to the mandate and an example

1 given is homicide investigation. You'll recall sir, on
2 June 27th, we talked about the police officer's notebooks
3 not being separate for Project Truth and containing other
4 investigations. It's the position of the OPP, which I
5 believe your term back then was, "you got it", on June 27th.
6 The position of the OPP that with respect to disclosure to
7 parties with standing and their counsel, investigations
8 unrelated to Commission's mandate should be fully redacted.

9 Mr. Chisholm will speak to B and C.

10 **THE COMMISSIONER:** Okay.

11 Mr. Chisholm.

12 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:**

13 **MR. CHISHOLM:** Good afternoon, Mr.
14 Commissioner.

15 With respect to items 2B and 2C; if the
16 process is such that, dealing with 2B, information
17 contained in the CAS files linked to matters not within the
18 Commission's mandate. It sounds like we could follow the
19 process which we have been following whereby we've
20 submitted our comments to your Commission counsel and staff
21 indicating in our view the matter is not relevant and
22 therefore, if you disagree with us, we'll have further
23 discussions with respect to redactions.

24 I don't know that I need to say anymore
25 about 2B.

1 **THE COMMISSIONER:** That has to do with the
2 ongoing disclosure. I take it, someone writes to you
3 saying we want a file on so and so. You give the file and
4 then -- you give the full file.

5 **MR. CHISHOLM:** Correct.

6 **THE COMMISSIONER:** Counsel goes through it
7 all and then you have a discussion.

8 **MR. CHISHOLM:** Right.

9 **THE COMMISSIONER:** Fine. Yes, I don't see
10 any problem there.

11 **MR. CHISHOLM:** With respect to item 2C,
12 names of all family members and relatives of an alleged
13 victim of child maltreatment. Where those names appear in
14 documents that are relevant to the Commission's mandate ---

15 **THE COMMISSIONER:** M'hm.

16 **MR. CHISHOLM:** I would -- the Society would
17 take the position that the names of family members and
18 relatives should be redacted.

19 **THE COMMISSIONER:** M'hm.

20 **MR. CHISHOLM:** To the point where those
21 particular documents are going to be disclosed, that will
22 be the case in files relating to child sexual abuse. With
23 respect to the files where those names appear, that aren't
24 relevant to the mandate of the Commission, we don't get to
25 that step if there is a discussion between counsel, we're

1 all in agreement that those particular files are not
2 relevant to the Commission.

3 **THE COMMISSIONER:** Right, but let's assume
4 there's a file relevant to the Commission.

5 **MR. CHISHOLM:** Yes.

6 **THE COMMISSIONER:** Do you not think that the
7 name of the family members and relatives of an alleged
8 victim might well be relevant?

9 **MR. CHISHOLM:** Might well be relevant; yes,
10 Mr. Commissioner, but I suppose the -- let's take the
11 example of a sibling to an alleged victim. It may well be
12 on a case-by-case basis, Mr. Commissioner, if the name of
13 the family member is someone alleged to have committed
14 abuse in relation to the child that name is quite relevant,
15 and in those circumstances, I would not expect to see a
16 proposal to redact that name.

17 **THE COMMISSIONER:** So what are you
18 suggesting then? First of all, all the relevant files,
19 well, they're gone under B.

20 **MR. CHISHOLM:** Right. Correct.

21 **THE COMMISSIONER:** Okay.

22 **MR. CHISHOLM:** Mr. Engelmann advises that
23 this may well go under another category.

24 **THE COMMISSIONER:** I don't know, but I'm
25 just talking to you know. What I'm saying is that I had a

1 case once where -- twins, okay -- were sexually abused by
2 the same person and the twins never knew about each other.
3 You know. So ---

4 **MR. CHISHOLM:** That the sibling was
5 suffering abuse at the hands of ---

6 **THE COMMISSIONER:** --- the same abuser.

7 **MR. CHISHOLM:** M'hm.

8 **THE COMMISSIONER:** You know, so if we don't
9 know the names, how are people going to be able to make
10 those connections?

11 **MR. CHISHOLM:** Well, I suppose Mr.
12 Commissioner, your staff and investigators have the names.
13 If there is a connection to be drawn, they would be free to
14 make that inquiry or conduct an investigation along those
15 lines.

16 **THE COMMISSIONER:** M'hm. But we're talking
17 about disclosure here.

18 **MR. CHISHOLM:** Oh, I understand Mr.
19 Commissioner.

20 **THE COMMISSIONER:** All right.

21 So let's assume for a minute and I know that
22 the Commission staff, lawyers are excellent -- most
23 excellent, if I can use that expression -- but maybe Mr.
24 Manson is sitting there and they overlook something. If he
25 sees the name and it's just crystal clear. Oh my God, look

1 at this. And maybe there's a connection that he'll see
2 that we won't see.

3 **MR. CHISHOLM:** I would go back to my earlier
4 -- my submissions that I made before lunch about the --
5 about Mr. Manson being in possession of that name to begin
6 with. That's a valid point for Mr. Manson's camp, Mr.
7 Commissioner.

8 **THE COMMISSIONER:** Okay. But, you see,
9 we're talking about redaction.

10 **MR. CHISHOLM:** Correct.

11 **THE COMMISSIONER:** And you're telling me you
12 want the name of all family members and relatives of an
13 alleged victim of child maltreatment to be redacted?

14 **MR. CHISHOLM:** Correct.

15 **THE COMMISSIONER:** Point final. That's it.
16 Right off the bat, it's gone. And I'm saying well, wait a
17 minute here. Are you saying now that what we'll do is
18 we're not going to redact those names; we're going to leave
19 it up to Commission counsel and you to review and if they
20 are of the view that it should be redacted, that ---

21 **MR. CHISHOLM:** Well ---

22 **THE COMMISSIONER:** What happens to the other
23 side, the other people who are saying, "Wait a minute;
24 maybe I want to see it"? Are we going to have to argue
25 this every time?

1 **MR. CHISHOLM:** I hope not, Mr. Commissioner.

2 But the process that we've been following,
3 we've been putting forth our proposed redactions ---

4 **THE COMMISSIONER:** M'hm.

5 **MR. CHISHOLM:** --- putting those to your
6 staff and counsel.

7 **THE COMMISSIONER:** M'hm.

8 **MR. CHISHOLM:** And I don't know that I've
9 heard much in the way of disagreement from your staff.
10 Now, in fairness, they've had an awful lot of material to
11 go through. They may not be at the point of raising
12 disagreements.

13 **THE COMMISSIONER:** Well, no, but what you're
14 suggesting is a different process. Right now we're talking
15 about total redaction. You want -- here it says I've got
16 to consider total redaction of the name of all family
17 members and relatives of an alleged victim of child
18 maltreatment.

19 Well, if the argument is, "No, that's not
20 what we really want. We're content with the arrangement,
21 that you give the material to Commission counsel, and given
22 the fact that they're the ones who asked you about that
23 specific file, because that's where we're at now, they will
24 be reviewing it to find out if there's anything in there
25 they need for our purposes and then you people have a

1 discussion and decide which part is not -- is to be
2 redacted.

3 **MR. CHISHOLM:** Well, generally, whenever we
4 hand over a CD with proposed redactions, we have what we
5 believe to be appropriate redactions.

6 **THE COMMISSIONER:** True.

7 **MR. CHISHOLM:** But, of course, your staff
8 have the unredacted material.

9 **THE COMMISSIONER:** Right.

10 **MR. CHISHOLM:** I don't know that the process
11 that we have been following with respect to what we have
12 been identifying as proposed redactions would differ from
13 what's contained in 2(c).

14 **THE COMMISSIONER:** Well, I don't know; maybe
15 it's the lunchtime letdown here, but if I order this ---

16 **MR. CHISHOLM:** Yes.

17 **THE COMMISSIONER:** --- then it's done. So
18 Commission counsel cannot unredact without coming to me,
19 and I don't want to have to do that. So I don't see any
20 problems with what you're doing now if Commission counsel
21 is content with that, especially that with respect to the
22 Children's Aid Society, we're finished with the bulk of
23 disclosure and it's cases now that are being identified by
24 Commission counsel.

25 **MR. CHISHOLM:** Correct.

1 **THE COMMISSIONER:** And so therefore there's
2 a specific purpose for calling it up, bringing it in and
3 going through that.

4 So I would suggest, subject to whatever else
5 I hear today, that you continue with that but that it's not
6 a carte blanche to redact all of those things.

7 **MR. CHISHOLM:** And at the end of the day,
8 Mr. Commissioner, all my client and I can do is put forth
9 proposals for redaction and ---

10 **THE COMMISSIONER:** Okay.

11 **MR. CHISHOLM:** But that's what we'll
12 continue to do, Mr. Commissioner.

13 **THE COMMISSIONER:** What are you going to
14 continue to do?

15 **MR. CHISHOLM:** The proposal that we've --
16 setting out our proposals.

17 **THE COMMISSIONER:** But what you're going to
18 do is give a completely unredacted thing to Commission
19 counsel.

20 **MR. CHISHOLM:** Yes.

21 **THE COMMISSIONER:** Counsel is going to
22 review, look at your suggested redactions, determine, first
23 of all, what's relevant, get rid of all of that, number
24 one.

25 **MR. CHISHOLM:** Well, I suppose, backing up a

1 step, whenever we're giving our proposed redactions, our
2 first comment deals with relevancy in terms of ---

3 **THE COMMISSIONER:** Absolutely.

4 So you've got -- it should apply to
5 everybody. If you're about to disclose something, you do
6 your first check for relevance. So you limit it down.
7 Counsel will look at it and say, "Okay. This is what we
8 need." All right. Now, what in there needs to be
9 redacted? And if you come up and say, "Well, what about
10 the family members?" If Mr. Engelmann and his team looks
11 it over and you come to some agreement, there it is.

12 If you don't come to an agreement ---

13 **MR. CHISHOLM:** And we haven't had a
14 disagreement, with respect, at this point. It's a process,
15 from my perspective, I believe it's working well. Mr.
16 Engelmann and your staff can make comments to that, but I
17 believe it's a process that is working.

18 But the Society's position is that it's
19 important to -- the sensitive nature of this information
20 warrants the protection of these, what I will refer to as
21 non-involved family members.

22 **THE COMMISSIONER:** And if they're non-
23 involved, they'll be irrelevant.

24 **MR. CHISHOLM:** I suppose, Mr. Commissioner,
25 but in terms of chopping up a file in so many pieces, it's

1 easy to say a file, an adult file in the Society is
2 irrelevant to an incident, an allegation of child sexual
3 abuse.

4 What becomes more problematic is when you
5 have the portion of the file relating to child sexual abuse
6 and within that portion of the file, it's hard to chop up
7 documents at this point and say that portion is not
8 relevant. You get to the point where you can't simply say
9 it's irrelevant because clearly it is.

10 **THE COMMISSIONER:** M'hm.

11 **MR. CHISHOLM:** But then the redaction issues
12 arise.

13 **THE COMMISSIONER:** M'hm. Okay. So what I
14 take it then is you're not going to be surprised if I don't
15 order that carte blanche, all the names of family members
16 and relatives of an alleged victim of child maltreatment is
17 to be redacted?

18 **MR. CHISHOLM:** I suppose a carte blanche
19 order, there can always be exceptions to the rule, Mr.
20 Commissioner. So I could see the logic in -- I understand
21 you don't want to bind the Commission to a single process
22 that may not fit all circumstances. I can understand that,
23 but again, our rationale in requesting redaction relates to
24 the protection of some matters that are quite personal to
25 the family members of those who may not be otherwise

1 involved.

2 Thank you, Mr. Commissioner.

3 **MR. ENGELMANN:** If I could just speak to
4 this issue very briefly, Mr. Commissioner?

5 **THE COMMISSIONER:** M'hm.

6 **MR. ENGELMANN:** I just wanted to say, with
7 respect to 2A and 2B, police forces and the CAS have been
8 helpful in identifying to us material that they believe is
9 unrelated, whether we're dealing with police officers'
10 notes, and obviously that assistance is vital for our
11 ability to understand what might be unrelated and also the
12 CAS.

13 We have not had disagreements yet, I don't
14 think, on any of this, and I hope we won't. There is some
15 bulk disclosure still with the CAS to work through, but Mr.
16 Chisholm and his client have attended at our offices on
17 many occasions and we always welcome them, and we've had
18 some fruitful discussions about these issues and I think we
19 can continue to.

20 I think 2C, if I can -- if we're talking
21 about names of people who are in documents which are
22 otherwise related or relevant to this inquiry, it might
23 really fall under 6, but I share the concern and the
24 comment that a hard and fast rule -- I think what we're
25 really looking at is the Commission's obligation to

1 disclose relevant evidence, and that's all we're trying to
2 do here, certainly not trying to disclose information that
3 is otherwise irrelevant to the inquiry.

4 There may be other counsel who may wish to
5 comment on this issue.

6 **THE COMMISSIONER:** Item number 2.

7 Yes, Mr. Callaghan.

8 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:**

9 **MR. CALLAGHAN:** Just two points. First, in
10 respect to the issue of having redacted irrelevant
11 information, we didn't do that per se. When we were asked
12 for documents and there was relevant information in the
13 documents, we produced it in response to the summons.

14 We were then asked to deal with the notes,
15 and I explained what we did to the notes. So there may be
16 additional information that's irrelevant. I don't think
17 it's an issue for disclosure, but subject to your last
18 comment, we may be back saying we didn't actually do that
19 because we didn't see it our job, when the summons came to
20 us and there was relevant information, that Commission
21 counsel was entitled to the entire document unredacted,
22 absent the two issues I talked about, being privilege and
23 the *Criminal Youth Justice Act*. So that's one issue. I
24 just don't want to get lost in the mist of time.

25 The other, which again is a bit in the mist

1 of time as well, the summonses were broad, and
2 understandably so. There would be entire files, in our
3 submissions, that may be irrelevant for this Commission of
4 Inquiry that were responsive to the summons. So obviously
5 they haven't been redacted.

6 I know that Commission counsel will let us
7 know what files they intend to produce, but I wanted you to
8 be alerted to that, that it's just not redactions within
9 relevant files. There may be entire files that are
10 relevant such as -- we were given a name. We were asked to
11 do an examination of all sexual assault files. So we would
12 not have necessarily pulled up a file where someone's
13 bicycle was stolen.

14 **THE COMMISSIONER:** Right.

15 **MR. CALLAGHAN:** We might have two people
16 with the same name and there was no date of birth. They
17 would have got both files.

18 **THE COMMISSIONER:** Right.

19 **MR. CALLAGHAN:** One of those files is
20 completely irrelevant, and that's a debate we can have at
21 another time, but I wanted you to be alerted to that so
22 that you don't think that there may be -- the issue of
23 irrelevancy may not come back at a later date.

24 **THE COMMISSIONER:** For purposes of
25 disclosure.

1 **MR. CALLAGHAN:** For the purpose of
2 disclosure, I don't see how, if it's a debt from Mr. Jones,
3 why that file should be -- if Commission counsel intends to
4 do a dump, which I don't understand them to do, but they
5 intend to look at the file and make sure it's the relevant
6 file, I have no problem with it.

7 **THE COMMISSIONER:** M'hm.

8 **MR. CALLAGHAN:** They have files that
9 arguably would be irrelevant but were responsive to the
10 summons.

11 **THE COMMISSIONER:** Right.

12 **MR. CALLAGHAN:** And I'm just alerting you to
13 that fact, that those ought not to be disclosed just
14 because they're doing a dump of our files. I just don't --
15 I think there has to be some thought put by Commission
16 counsel that there is a relevant file here to this
17 Commission of Inquiry.

18 **THE COMMISSIONER:** If it's in specific
19 response to "We need the file on Mr. Jones" and you have
20 two files ---

21 **MR. CALLAGHAN:** Well, two Mr. Jones.

22 **THE COMMISSIONER:** Two Mr. Jones, right.
23 So, yes, I think it would be incumbent on Commission
24 counsel to look at both files before disclosing just both.

25 **MR. CALLAGHAN:** That's all I'm saying. So

1 if he gets the right file -- and if there's an issue, no
2 doubt Commission counsel has been very good to say "These
3 are the files we intend to produce." We'll say, "You know
4 what; I think you got the wrong file. You might need the
5 other file, or maybe you could tell me why that's relevant
6 and then we can deal with it."

7 **THE COMMISSIONER:** Right.

8 **MR. CALLAGHAN:** But I'm just alerting you to
9 that because I don't want to give the impression that all
10 we're talking about is overlaps in officers' notes that we
11 think may be irrelevant.

12 **THE COMMISSIONER:** Okay.

13 **MR. CALLAGHAN:** I don't think there's much
14 to do in terms of that because I take it Commission counsel
15 is aware of that issue. We've talked about that issue.

16 **THE COMMISSIONER:** Okay. But we're talking
17 about investigations unrelated to the Commission's mandate.

18 **MR. CALLAGHAN:** I'm sorry, Mr. Commissioner,
19 I was ---

20 **THE COMMISSIONER:** We're talking about
21 investigations unrelated to the Commission's mandate.

22 **MR. CALLAGHAN:** Well, only when you review
23 the file. When counsel describes the mandate, am I able to
24 respond to the summons? I mean, I get a summons and say,
25 "I need the file on Mr. Jones." You have the power to

1 summons. I provide the file.

2 **THE COMMISSIONER:** Right.

3 **MR. CALLAGHAN:** And if it appears that it
4 might be unrelated to the Commission's mandate, I take it
5 that the Commission counsel will not produce the file, even
6 the disclosure issue. I mean, it's just not relevant.

7 **THE COMMISSIONER:** No.

8 **MR. CALLAGHAN:** And Commission counsel has
9 been good about telling us which files they're disclosing
10 and if there's an issue, I'm sure we can deal with it, but
11 I wanted to alert you to that issue at the moment.

12 **THE COMMISSIONER:** Okay. I think there's a
13 difference here between what I call bulk disclosure in
14 response to different files.

15 **MR. CALLAGHAN:** Right.

16 **THE COMMISSIONER:** Because we say, "Give us
17 everything", is the first summons.

18 **MR. CALLAGHAN:** Right.

19 **THE COMMISSIONER:** And the second -- the
20 following ones are, "Give me Mr. Jones' file." Well, I
21 think it's a different course there in that in the bulk
22 files, I don't know that we can say that everybody has
23 looked at every single document.

24 **MR. CALLAGHAN:** No, and I'm not talking --
25 I'm talking individual files. What has happened in the

1 circumstances is the Commission gave us specific names --

2 -

3 **THE COMMISSIONER:** M'hm.

4 **MR. CALLAGHAN:** --- and asked us to review
5 the files we had. They specifically requested that we
6 limit our search to those involving sexual assault. So it
7 may well be that there are cases where victims are actually
8 suspects on sexual assault cases. Those files have been
9 produced.

10 **THE COMMISSIONER:** M'hm.

11 **MR. CALLAGHAN:** Whether they're relevant,
12 that's for someone to tell.

13 **THE COMMISSIONER:** M'hm.

14 **MR. CALLAGHAN:** But they're in addition
15 because of the lack of specificity the Commission had to
16 work with. They had to give us a name, and we all know
17 that there are repetitive names in this file.

18 **THE COMMISSIONER:** M'hm.

19 **MR. CALLAGHAN:** And we would say, "Here are
20 the numbers of files we have. Here they are." I'm sure
21 the Commission will satisfy itself that this is the right
22 file. We didn't want to take it upon ourselves in case we
23 misunderstand. I only have half of what's going on.

24 So what I'm saying is knowing a little bit
25 more I'm certain that there are some files that are

1 irrelevant but I'm just suggesting at the disclosure stage
2 that they ought not to be produced at all because they're
3 not relevant to the inquiry, but it's not something that
4 I'm redacting. It's something that's in the possession of
5 Commission counsel as we speak in response to the summons.

6 **THE COMMISSIONER:** Mr. Engelmann?

7 **MR. ENGELMANN:** I don't think this is going
8 to be an issue. I mean, we have approximately 10,000
9 files, 10,000 documents from the Cornwall Community Police
10 Service.

11 **THE COMMISSIONER:** M'hm.

12 **MR. ENGELMANN:** What happened is although
13 the summons was very broadly worded, we were informed by
14 the Cornwall Police early on that they were unable to
15 search by the charge and we have asked for all of their
16 files involving child sexual abuse, et cetera, and we were
17 essentially told, "We have a certain amount of files but if
18 you want other files, you're going to have to give us
19 names."

20 So what has happened almost from the get-go
21 is there has been correspondence from our office to Mr.
22 Callaghan's office identifying specific names. In those
23 cases, it is -- if there are two files that are returned, I
24 would think in almost every one of those cases Commission
25 counsel and/or investigators are going to be able to

1 determine what is the file that is relevant to the mandate
2 and what isn't.

3 Will we never make a mistake? Well, you
4 know, 9,500 documents, you never know, but the vast
5 majority of those cases where there's been a specific
6 request, it should be fairly easy to identify.

7 **THE COMMISSIONER:** M'hm. So am I correct
8 then in distinguishing between bulk disclosure and a
9 specific request?

10 **MR. ENGELMANN:** There is a distinction,
11 although with the bulk disclosure, much of it was dealing
12 with a few particular individuals in the case of the
13 Cornwall Police Service, but there is a distinction, sure.

14 **THE COMMISSIONER:** All right.

15 So what Mr. Callaghan is saying is in
16 response to specific files, ---

17 **MR. ENGELMANN:** Yes.

18 **THE COMMISSIONER:** --- that there is a
19 procedure set up where the file was reviewed, discussed
20 with the ---

21 **MR. ENGELMANN:** Yes.

22 **THE COMMISSIONER:** --- Cornwall Police and
23 then redaction is done and away we go.

24 **MR. ENGELMANN:** Yes, and there have been
25 ongoing discussions between our offices and in the course

1 of those discussions, certainly there have been occasions
2 when counsel for the police services indicated to us why
3 they believe one of the files that was sent is not relevant
4 and we've never had a disagreement on that.

5 **THE COMMISSIONER:** Okay. Relevancy is one
6 thing.

7 **MR. ENGELMANN:** They're not related.

8 **THE COMMISSIONER:** No, no, I understand
9 that. I understand that, and without using Mr. Manson as
10 an example too often, Mr. Manson might say -- let's assume
11 that there is a file that comes out and if somebody
12 decides, "Well, that name shouldn't be in there", so how is
13 Mr. Manson ever going to know what that name was or whether
14 that name would be relevant to the Inquiry?

15 **MR. ENGELMANN:** Well, I think that won't be
16 an issue in the sense that Commission counsel will have
17 determined that that particular file is unrelated to our
18 mandate.

19 **THE COMMISSIONER:** Right.

20 **MR. ENGELMANN:** So I don't think that should
21 be an issue in that case.

22 **THE COMMISSIONER:** Right.

23 **MR. ENGELMANN:** So in that case then,
24 essentially, we would be returning the documents to the
25 Cornwall Police Service. It would not form part of the

1 disclosure. So Mr. Manson wouldn't know about it but ---

2 **THE COMMISSIONER:** No, but that's on the
3 issue of relevancy, and that I can understand.

4 **MR. ENGELMANN:** Yes.

5 **THE COMMISSIONER:** All right. Okay. Thank
6 you.

7 **MR. CALLAGHAN:** Now, those are my points
8 unless you want further clarification. Thank you.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Sherriff-Scott?

11 **MR. SHERRIFF-SCOTT:** Nothing on 2A, B and C.
12 Thank you.

13 **THE COMMISSIONER:** Thank you.

14 Mr. Carroll?

15 **MR. CARROLL:** Nothing on 2. Thank you.

16 **THE COMMISSIONER:** Thank you.

17 Mr. Cipriano?

18 **MR. CIPRIANO:** Nothing on 2. Thank you.

19 **THE COMMISSIONER:** Mr. Lee?

20 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

21 **MR. LEE:** Just to be clear, my understanding
22 with number 2 is that we're just dealing with documents
23 that are relevant to the mandate or documents that are not
24 relevant to the mandate. Obviously, documents that are not
25 relevant to the mandate we don't care about and we don't --

1 we're not concerned about redactions because we don't care
2 about the document in the first place.

3 **THE COMMISSIONER:** Well, the only thing I
4 see is under 2C is "name of all family members and
5 relatives of an alleged victim of child maltreatment".
6 Now, if it's an unrelated file, it's gone. If it is a
7 related file, then the issue becomes do we expose the names
8 of the family members? Now, the Children's Aid Society is
9 saying we shouldn't be doing that.

10 **MR. LEE:** For simplicity sake, Mr.
11 Commissioner, I think we need to confine the discussion on
12 2C to investigations unrelated and deal with the situation
13 of family members and relatives under number 6.

14 **THE COMMISSIONER:** If that's what you want
15 to do, that's fine.

16 **MR. LEE:** I think that's going to make
17 things a lot easier for everybody where we can clearly
18 separate that 2C deals with things that aren't relevant to
19 this inquiry.

20 **THE COMMISSIONER:** Okay.

21 **MR. LEE:** And number 6 deals with situations
22 which are, in which case we can discuss that then.

23 **THE COMMISSIONER:** Okay. That's fine.

24 Thank you.

25 **MR. LEE:** Thank you.

1 **THE COMMISSIONER:** Mr. Manson?

2 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:**

3 **MR. MANSON:** Mr. Commissioner, my only
4 comments were going to be about 2C, and since we've moved
5 it and eliminated it from 2, I have nothing else.

6 **THE COMMISSIONER:** Well, only in the sense
7 that we're going to leave it to be discussed about names of
8 folks that are in relevant material.

9 **MR. MANSON:** Yes.

10 **THE COMMISSIONER:** And this was just an
11 overstatement of -- okay.

12 **MR. MANSON:** I can -- if you want, you
13 certainly don't need my concurrence, but we can provide you
14 with other examples where names of family members and
15 relatives may be relevant.

16 **THE COMMISSIONER:** M'hm.

17 **MR. MANSON:** We'll do that under number 6.

18 **THE COMMISSIONER:** Yes. Thank you.

19 Moving right along.

20 **MS. SACCOCCIO BRANNAN:** Yes, Mr.
21 Commissioner. With respect to our continuing
22 responsibility to let you know where we're at on our OPP
23 redaction, I received a report at lunch and I failed to
24 bring this up to you. Of those eight remaining boxes,
25 there are now five left to redact, and of those five, three

1 are 50 per cent completed. So the August 25th date is
2 looking good.

3 With respect to bulk disclosure, in our view
4 -- and I'm concerned because of what was said with respect
5 to Mr. Callaghan when he was on his feet. With respect to
6 bulk disclosure, it's the position of the OPP that
7 investigations that are unrelated to the Commission's
8 mandate must be fully blacked out. I think that's our
9 understanding; bulk disclosure. Am I ---

10 **MR. ENGELMANN:** Whether it's bulk disclosure
11 or specific disclosure, if it's unrelated, we are not going
12 to disclose it.

13 **MS. SACCOCCIO BRANNAN:** And in that regard,
14 Mr. Commissioner, the OPP has indeed assisted Commission
15 counsel by identifying the investigations that are
16 unrelated to the Commission's mandate and we have redacted
17 those.

18 **THE COMMISSIONER:** Okay.

19 **MS. SACCOCCIO BRANNAN:** Okay. The next
20 issue -- sorry.

21 **(COURTE PAUSE/SHORT PAUSE)**

22 **--- ISSUE NO. 3/POINT No. 3:**

23 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO**
24 **BRANNAN:**

25 **MS. SACCOCCIO BRANNAN:** With respect to

1 number 3, number 3 we have termed it information that would
2 identify a victim who -- and I apologize for the spelling
3 error -- provided information to the police on the basis
4 that the individual's name or the victim's name would never
5 be divulged.

6 **THE COMMISSIONER:** M'hm.

7 **MS. SACCOCCIO BRANNAN:** So we can call this
8 -- maybe another term for this is the confidential source.
9 So in the case of the Ontario Provincial Police, for
10 example, individual "X" comes to the police officer and
11 says, "I was a victim of abuse when I was young. The
12 individual who did it is Mr. So-and-so. I'm bringing this
13 information to you to assist you in your investigation as a
14 whole, but I never want my name released."

15 This is for obvious reasons. I think, Mr.
16 Commissioner, in respect of those individuals who may have
17 -- may now be, for example, married with children or who
18 never told their parents when they were young. So it's
19 been a secret that they have kept with them all of their
20 lives up until the point where they come to the police and
21 say, "I'm going to tell you this, but I don't want anybody
22 else to know".

23 It's the position of the Ontario Provincial
24 Police that in this bulk disclosure to parties with
25 standing and their counsel or counsel and to their clients

1 that these names and these incidents should be fully
2 redacted. That was our initial position back again on June
3 the 27th.

4 I can tell that this caused Mr. Manson some
5 concern and it's in his submissions to you today, and in
6 the interest of trying to narrow the issues, we have met
7 with Mr. Manson and we believe that we've come to a
8 resolution of that particular issue, but I should say that
9 not everybody is in agreement with that resolution. Mr.
10 Carroll will have something to say about this, but I'd like
11 to present to you, sir, what Mr. Manson and the Ontario
12 Provincial Police have been able to come to agreement on
13 and I'm sure Mr. Manson will jump up if I get this wrong.

14 In respect of these individuals, Mr. Manson
15 and his client have said to us, "We do not need to know
16 these people's names. We do not need to have any
17 information that would identify those individuals." So OPP
18 redact the names and redact all identifying information in
19 relation to those individuals.

20 What they would like to know is, I guess by
21 way of numbering, how many of these people there are. So
22 if there is -- we number the individuals who came to the
23 OPP, one, two, three, four and five, and so on, who came to
24 the OPP and asked for this type of confidentiality in
25 exchange for them giving the information about the abuse

1 when they were young.

2 Mr. Manson also wants to know in the case of
3 victim number 1, the confidential source number 1, how many
4 statements that individual gave. Was it one, two, three,
5 four, and to whom at the OPP?

6 **THE COMMISSIONER:** Presumably he would be
7 getting in the bulk disclosure all of those statements
8 redacted.

9 **MS. SACCOCCIO BRANNAN:** In bulk disclosure
10 they would get all of those statements redacted. Right
11 now, with respect to this particular item, the redaction
12 has been in its entirety. In other words, the full
13 statement of that individual has been redacted as well.

14 **THE COMMISSIONER:** M'hm.

15 **MS. SACCOCCIO BRANNAN:** What we're saying
16 in the interest of not having to go through motions and
17 reviews of decisions is that the OPP is prepared to agree
18 with this proposal put forward by Mr. Manson that only the
19 names and the identifiers in those statements be redacted
20 and that the individuals be numbered.

21 Now, Commission counsel has our unredacted
22 version of these statements. It has our redacted versions
23 of these statements and I'm assuming that the job of
24 leaving the names and the identifiers in there is something
25 that can be done. I'm making an assumption. I don't know

1 the answer to that question, but that's what we have tried
2 to resolve in that particular -- Mr. Carroll, however, does
3 not agree with that and he will speak to why it is he does
4 not agree with that. It's his position that there should
5 be no editing. It should be fully redacted as they are
6 presently.

7 **THE COMMISSIONER:** Okay.

8 **MS. SACCOCCIO BRANNAN:** For the purposes of
9 bulk disclosure and he'll speak to that.

10 **THE COMMISSIONER:** And for the purposes of
11 specific disclosure? Let's assume -- well, first of all,
12 bulk or not, you presumably in your disclosure have given
13 to the Commission everything?

14 **MS. SACCOCCIO BRANNAN:** Correct.

15 **THE COMMISSIONER:** All right.

16 **MS. SACCOCCIO BRANNAN:** Unredacted. They
17 have one whole set in response to the summons unredacted,
18 correct.

19 **THE COMMISSIONER:** Okay. And what you're
20 saying is that you're prepared to give an edited part -- an
21 edited copy of the statement together with -- well, if you
22 give an edited part of all the statements you received ---

23 **MS. SACCOCCIO BRANNAN:** All of the
24 statements that we received and all of the notes and the
25 officers' notebooks from these confidential sources are

1 fully redacted as I stand here.

2 **THE COMMISSIONER:** Yes, but fully redacted
3 means they're out.

4 **MS. SACCOCCIO BRANNAN:** It means they're
5 completely out and they're fully redacted right now. We're
6 trying to resolve this with Mr. Manson because of his
7 concerns and the resolution we came up with is as I
8 explained.

9 **THE COMMISSIONER:** Okay. So he gets edited
10 copies. So the numbers he'll be able to figure out
11 himself, but you can always compile that. You're going to
12 give him a statement saying there are 15 people who came
13 forward and don't want to be identified. You're going to
14 say ---

15 **MS. SACCOCCIO BRANNAN:** Is that correct?
16 You don't need the numbers? All right.

17 **MR. MANSON:** Whether you want to use numbers
18 or letters or a code, we just want to be able to keep track
19 so that we know that if there are 26 redacted statements,
20 did they come from 26 people? Did they all come from the
21 same person? So someone needs to have a code that Smith --
22 and we don't want to know Smith -- equals one.

23 **THE COMMISSIONER:** Right.

24 **MR. MANSON:** And so ---

25 **THE COMMISSIONER:** 1A, 1B, 1C, 1D, 1E ---

1 **MR. MANSON:** Would be the Smith statements.

2 Exactly.

3 **THE COMMISSIONER:** Right.

4 **MR. MANSON:** And if there are -- we don't
5 need to know the names. I've got clear instructions from
6 my clients that -- and I can explain -- in fact, I'll wait
7 until after Mr. Carroll speaks -- why we think the
8 substance of the statement is relevant, but the actual name
9 does not need to be put in our hands as long as we can keep
10 track somehow.

11 **THE COMMISSIONER:** M'hm.

12 **MR. SACCOCCIO MANSON:** You know, for
13 example, if one person gave a statement to 20 police
14 officers and said "keep this in confidence" we'd like to
15 know that because it has something to do with police
16 management of files and it may be relevant to the
17 Commission. So as long as they're coded, the names can
18 come out. Anything that is identifying, addresses, et
19 cetera, can come out, but the substance, including the name
20 of the alleged perpetrator, has to be removed.

21 **THE COMMISSIONER:** Has to be?

22 **MR. SACCOCCIO MANSON:** Has to be contained.

23 **THE COMMISSIONER:** Yes. Okay.

24 **MR. SACCOCCIO MANSON:** That's our position.

25 **THE COMMISSIONER:** Okay.

1 **MS. SACCOCCIO BRANNAN:** The obvious reason
2 for this, Mr. Commissioner, is to not re-victimize a victim
3 who doesn't want to be re-victimized.

4 **THE COMMISSIONER:** Obviously.

5 **MS. SACCOCCIO BRANNAN:** But with respect to
6 who is going to do this, we have already carried out the
7 full redaction of these individuals and the Commission has
8 our redacted version and our un-redacted version, and it
9 seems to me that when they are continuing through, because
10 there is still more bulk disclosure to be redacted, as I
11 understand, they will be able to identify these individuals
12 and maintain their name redacted. They're identifier is
13 redacted, but the name of the person that they alleged
14 abused them and the information can now -- the highlighting
15 can be lifted, is what we're saying.

16 **THE COMMISSIONER:** Mr. Engelmann.

17 **MR. ENGELMANN:** I just want to put this in
18 perspective; 54,000 documents approximately, thousands and
19 thousands of redactions. You have my letter about Super
20 Gravity, more redactions than they've ever, ever seen. No
21 reasons given for specific redactions. I'm not blaming
22 anybody. It's a reality. No one has the time.

23 So we have this list of seven reasons that
24 we had from the OPP earlier. So imagine trying to find
25 five, six, seven people. We can do it. The question is

1 when and how and if the OPP and/or any other institution
2 that has given us documents and knows about confidential
3 complainants, if I can use the term, we need some help.

4 **THE COMMISSIONER:** Well, surely the OPP
5 would know from the confidential -- how do you call it --
6 source is. I mean, how many there are and where they are.

7 **MR. ENGELMANN:** Well, you should ask that of
8 Ms. Saccoccio Brannan. Because as I said, we have received
9 -- we do have the unredacted documents. We have the 50-odd
10 thousand documents unredacted, and then we have -- and we
11 are receiving the highlighted versions and we're passing
12 those on to Super Gravity and they are doing the redactions
13 electronically so that you get what Mr. Manson has in his
14 affidavit, the blacked-out version. But there aren't on
15 those highlights, this is for this reason or this is for
16 that reason, and I'm not blaming anybody. That's an awful
17 lot of work and it's time consuming. I'm hopeful -- maybe
18 Ms. Saccoccio Brannan can tell us this -- that the OPP can
19 help us locate confidential complainants, and I have no
20 idea how many there are. I know there are some. But to
21 actually find them is an awful lot of work and I guess it's
22 a question of who does this and when and everything else.

23 **THE COMMISSIONER:** So you must know who they
24 are?

25 **MS. SACCOCCIO BRANNAN:** Well, the difficulty

1 is, Mr. Commissioner, that after June the 27th when we
2 talked about this very issue, we then met with Commission
3 counsel and Ms. Macarthur and your investigators and we
4 prepared a protocol with respect to the redaction of these
5 57 boxes, which is almost done, and in that, part of that
6 protocol included the redaction of confidential sources or
7 victims who did not want their names and the proposal was
8 everything is gone.

9 **THE COMMISSIONER:** M'hm.

10 **MS. SACCOCCIO BRANNAN:** So as a result of
11 that, we didn't keep track.

12 **THE COMMISSIONER:** I know, but surely to
13 heavens you people know who these complainants were.

14 **MS. SACCOCCIO BRANNAN:** You know who they
15 are when you lay your eyes on the piece of paper.

16 **THE COMMISSIONER:** M'hm.

17 **MS. SACCOCCIO BRANNAN:** And had the protocol
18 been for us to list those names as we came across them, the
19 10 people who were doing the redacting, we would not have
20 that difficulty. But our position that we took on June the
21 27th, which both Commission counsel and ourselves understood
22 that you were in agreement with, with respect to bulk
23 disclosure, that's how we carried out the redactions. For
24 us to go back now and to find all of those names ---

25 **THE COMMISSIONER:** Well, how many are there?

1 MS. SACCOCCIO BRANNAN: Well ---

2 THE COMMISSIONER: Ballpark.

3 MS. SACCOCCIO BRANNAN: Ballpark, 20. We
4 don't know exactly.

5 THE COMMISSIONER: Who is in a better
6 position to be able to recognize those names that you saw -
7 --

8 MS. SACCOCCIO BRANNAN: The person who looks
9 at the document at the time of redaction, and there are
10 hundreds of thousands of pages. So at the time that it was
11 redacted, yes, when you look at it you would know that
12 that's an individual who came forward to give confidential
13 information and never ever wanted to be exposed, inquiry or
14 no inquiry.

15 THE COMMISSIONER: Okay.

16 MS. SACCOCCIO BRANNAN: And they have been
17 redacted in their entirety.

18 THE COMMISSIONER: All right. So spilled
19 milk. All right. That's done. Who's going to do it? And
20 I'm saying, you know, your people are more apt to know who
21 those people are.

22 MS. SACCOCCIO BRANNAN: Then, Commissioner,
23 we don't have the time, nor the resources to do that, sir.
24 We just don't, not with this inquiry starting when it's
25 supposed to start. And if that is going to be the

1 difficulty, then we will have to return to our initial
2 position. We would have no choice.

3 **THE COMMISSIONER:** What's your initial
4 position?

5 **MS. SACCOCCIO BRANNAN:** Our initial position
6 was with information that relates to any information given
7 to us, the name of the victim, who abused them, when it
8 happened, where, all redacted, and that's the way it is
9 right now. For us to go back and review those hundreds of
10 thousands of pages again, which has taken 10 people over
11 two months to find those names, that's an impossibility.

12 So we would have to resile from this
13 position or this attempt to try and assist Mr. Manson and
14 take the position then that Mr. Carroll will take and that
15 is that there should be no editing. We have no choice,
16 sir. We don't have the time. We have to get ready to
17 address the witnesses that have been already listed for us,
18 some 15 of them, about 10 or 15 witnesses that we're going
19 to start this hearing with. It's a dilemma, I understand.
20 I don't know how to resolve the dilemma without ---

21 **THE COMMISSIONER:** Oh, come on. Come on.
22 First of all, we're talking about statements, right?
23 Complainants gave statements. So in your 25 boxes, I'm
24 sure you can quickly zip through and get rid of, you know,
25 police officers' notes, that kind of thing.

1 **MR. KOZLOFF:** Sir, we are not talking about
2 statements. We are talking about references in police
3 officer's notebooks. We are talking about names located in
4 various locations within 57 boxes of documents comprising
5 over 100,000 pages.

6 **THE COMMISSIONER:** So let me get this
7 straight. You're telling me that people came forward and
8 said "I'm going to give you some information, but I don't
9 want it revealed" and people put it in police officers'
10 notebooks. There were no statements taken from these?

11 **MR. KOZLOFF:** Correct. For instance, I'll
12 give you an example. A mother came forward and advised the
13 police during the course of Project Truth that her child
14 had been a victim. She gave that information on the
15 understanding and with the promise that that information
16 would never be revealed. She did so because
17 notwithstanding that she had promised her child anonymity,
18 "I will never tell anybody". She said "I felt a
19 responsibility as a citizen to let you know that "X" is
20 perpetrating."

21 **THE COMMISSIONER:** M'hm.

22 **MR. KOZLOFF:** Now, fast forward 20 years.
23 That nine year-old is now 29 years old. He is living under
24 the assumption that nobody knows except his mother.

25 **THE COMMISSIONER:** Those are -- that's a

1 human story. That's great. I mean, I ---

2 **MR. KOZLOFF:** That's in those 57 boxes.

3 **MR. ENGELMANN:** And it's been redacted.

4 **MR. KOZLOFF:** And it's been redacted.

5 **THE COMMISSIONER:** So we have to unredact
6 it. You can give me all the human stories you want, the
7 war stories about these people, and I care very much about
8 all of them. The fact of the matter is it's got to be
9 redone. So there.

10 **MR. KOZLOFF:** Well ---

11 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
12 what that's going to do is basically require the Ontario
13 Provincial Police to go back and review the 57 boxes again.

14 **THE COMMISSIONER:** M'hm.

15 **MS. SACCOCCIO BRANNAN:** That will take at
16 least another two to three months.

17 **THE COMMISSIONER:** M'hm.

18 **MS. SACCOCCIO BRANNAN:** And while we're
19 doing that, then there's no bulk disclosure. The bulk
20 disclosure they're going to get ---

21 **THE COMMISSIONER:** No, no, no.

22 **MS. SACCOCCIO BRANNAN:** --- will be fully
23 redacted.

24 **THE COMMISSIONER:** Well, we start off with
25 that. We give them all the disclosure we can so there's no

1 harm done in protecting those 20 people on the
2 understanding that somewhere down the line we're going to
3 get the 20 or so references of people and we're going to
4 deal with it.

5 **MS. SACCOCCIO BRANNAN:** We don't have the
6 resources to do that and prepare for this inquiry at the
7 same time, Mr. Commissioner.

8 **THE COMMISSIONER:** No, no ---

9 **MS. SACCOCCIO BRANNAN:** You don't buy that?

10 **THE COMMISSIONER:** I don't buy that.

11 **MS. SACCOCCIO BRANNAN:** Well, then the
12 position of the Ontario Provincial Police is that -- and
13 I'm sorry, Mr. Manson, but the position is that -- our
14 position is they should not be released on bulk disclosure
15 to Mr. Manson, Mr. Lee, Mr. Cipriano, or any party with
16 standing or their counsel. Mr. Carroll will speak to the
17 reasons why using *R. v. Liepert*.

18 I don't know any other way to resolve this,
19 other than this. Maybe this is a resolution; that when
20 Commission counsel come to us and say "These are the
21 witnesses we're going to be dealing with in public. These
22 are the documents we're going to put in as exhibits," maybe
23 at that point then we will be able to identify those
24 individuals who fit within number 3 and at that point be
25 able to unredact, because that means, Mr. Commissioner, we

1 would only have to go through, as you've described, that
2 small box of documents. That would mean that Mr. Manson
3 and his client would have to wait until that point in time.
4 And that might be a form of resolution that would then
5 allow the Ontario Provincial Police to be ready to roll
6 when you're ready to roll with respect to the substantive
7 part of this inquiry.

8 At the same time, on a case-by-case basis or
9 on a document-by-document basis, we could resolve the issue
10 that Mr. Manson has that we're prepared to resolve, but
11 prepared to resolve within reason. And it's more
12 reasonable, in my view, now that this full redaction has
13 been done on the basis of our submissions on June 27th and
14 our discussions with Commission counsel, that maybe this
15 would be a better way of doing it because then the time
16 factor doesn't hamper moving forward.

17 **THE COMMISSIONER:** Thank you.

18 **MR. ENGELMANN:** Perhaps we should hear from
19 Mr. Carroll out of order ---

20 **THE COMMISSIONER:** Sure.

21 **MR. ENGELMANN:** --- because of his view on
22 individuals who have complained in confidence, and then
23 other parties can file in the normal order.

24 **THE COMMISSIONER:** Yes. Fine.

25 ---SUBMISSIONS BY/RÉPRESENTATIONS PAR MR. CARROLL:

1 **MR. CARROLL:** Good afternoon.

2 And as you know, I'm counsel for the OPPA.

3 **THE COMMISSIONER:** Yes.

4 **MR. CARROLL:** I have no documentation that I
5 have presented and I have not partaken in the redaction
6 process.

7 **THE COMMISSIONER:** M'hm.

8 **MR. CARROLL:** It is my understanding of the
9 law, sir, that people who fall into category 3 are in fact
10 covered by the rulings in the Supreme Court of Canada in
11 *Leipert*.

12 **THE COMMISSIONER:** M'hm.

13 **MR. CARROLL:** And if I could take you
14 through -- the case was sent electronically over the lunch
15 hour and is available now.

16 If I could take you first to paragraph 9 --
17 if I could just, by way of introduction, sir, before you
18 start reading, lawyers tend -- at least I speak for myself
19 -- initially look at the concept of a police informant as
20 the perhaps not such savory character who cut the deal with
21 the police and advises them of information that assists
22 them in solving a crime for perhaps no consideration,
23 money, reduction of charges they're facing, something in
24 that vein.

25 It's my position that, subject obviously to

1 being corrected, that it's a broader -- confidential
2 informant is a much broader term and encompasses the people
3 who would be found in category 3.

4 Paragraph 9 of the report, if I may just
5 read from it, under the heading, "Importance of Informer
6 Privilege":

7 "A court considering this issue must
8 begin from the proposition that
9 informer privilege is an ancient and
10 hallowed protection which plays a vital
11 role in law enforcement. It is
12 premised on the duty of all citizens to
13 aid in enforcing the law. The
14 discharge of this duty carries with it
15 the risk of retribution from those
16 involved in crime. The rule of
17 informer privilege was developed to
18 protect citizens who assist in law
19 enforcement and to encourage others to
20 do the same."

21 So you can see it's stated by the court
22 there's a twofold premise for the rationale for the concept
23 of informer privilege. And I might say this contrasts -- I
24 take the position that these people who come forward, there
25 is no duty. The court refers to a duty, premised on the

1 duty. It is a moral obligation perhaps, but we don't have
2 a good Samaritan law.

3 And I contrast that, sir, with the statutory
4 duty imposed on all of us when it comes to children and
5 knowledge of abuse.

6 **THE COMMISSIONER:** M'hm.

7 **MR. CARROLL:** Mr. Chisholm's group, we don't
8 have the option. We are required by law under penalty of -
9 - financial penalty, I think, to disclose to the police
10 when we become aware of child abuse, but no such obligation
11 exists in the informer privilege concept. We don't have to
12 disclose crime other than that which is specified under the
13 ---

14 **THE COMMISSIONER:** I'm sorry, sir. You're
15 going to argue that the name of the complainant or the
16 confidential source ---

17 **MR. CARROLL:** Confidential informant.

18 **THE COMMISSIONER:** Informant. Ought not to
19 be divulged?

20 **MR. CARROLL:** No, more than that.

21 **THE COMMISSIONER:** Okay.

22 **MR. CARROLL:** Because what happened in
23 *Liepert*, you will know, is that *Liepert* was essentially a
24 ruling based on Crime Stoppers.

25 **THE COMMISSIONER:** M'hm.

1 **MR. CARROLL:** So it was an anonymous tip in
2 the first place.

3 **THE COMMISSIONER:** M'hm.

4 **MR. CARROLL:** The Crown nor the police could
5 turn over a name, and what the trial judge did in *Liepert*
6 was he edited the information that was provided by the
7 informant and handed that over.

8 Ultimately, the Supreme Court of Canada --
9 and I can take you to it -- but the Supreme Court of Canada
10 said, "No, you don't do that. You don't give out anything.
11 You don't edit. It's not Crown privilege." If you go to
12 paragraph 12 ---

13 **THE COMMISSIONER:** Twelve (12).

14 **MR. CARROLL:** "Informer privilege is of
15 such importance that once found, courts
16 are not entitled to balance the benefit
17 from the privilege against counter-
18 veiling considerations..."

19 As is the case, for example, with Crown privilege or
20 privileges based on Wigmore's four-part test, which is
21 what's referred to in Mr. Manson's materials. It's
22 absolute.

23 Dropping down:

24 "This procedure, designed to
25 implement Crown privilege, is pointless

1 in the case of secrecy regarding a
2 police informer. In this case, the law
3 gives the Minister and the court after
4 him no power of weighing or evaluating
5 various aspects of the public interests
6 which are in conflict since it has
7 already resolved the conflict itself."

8 It has decided once and for all, subject to
9 the law being changed, that information regarding police
10 informants' identity will be, because of its content, a
11 class of information which it is in the public interest to
12 keep secret, and that this interest will prevail over the
13 need to ensure the highest possible standard of justice,
14 and you will know the only exception is the innocence at
15 stake, exception that was enunciated by the Supreme Court.

16 So if you accept my proposition that people
17 who come forward under number 3, they are providing
18 confidential information to the police about a crime on the
19 understanding that their names will never be released, and
20 that assurance is given, and in my respectful submission to
21 you, that assurance is protected and sanctified by the
22 rules that come out of *Liepert*.

23 Because what happened is the Supreme Court
24 overruled the trial judge and said, "No, you shouldn't
25 edit" because they go on to say, "How can the court be

1 satisfied that the editing will in fact protect the
2 identity?" And they say in here, in this case, even the
3 disclosure of the time of the anonymous telephone call to
4 Crime Stoppers could be sufficient to identify who made the
5 call. So you don't embark on that process. Once they fit
6 within the category, you don't give it out period. And it
7 is not a privilege solely for the Crown or the state to
8 claim. It is the informer's privilege. Paragraph 15 of
9 the report under the heading "Who May Claim Informer
10 Privilege?" The privilege belongs to the Crown and a case
11 is cited therein.

12 "However, the court cannot, without the
13 informer's consent, waive the privilege
14 either expressly or by implication by
15 not raising it."

16 In that sense, it belongs to the informer.
17 This follows from the purpose of the privilege being the
18 protection of those who provide information to the police,
19 number one; number two, the encouragement of others to do
20 the same.

21 Paragraph 17, if I may, under the Scope of
22 Informer Privilege" heading:

23 "Connected as it is to the essential
24 effectiveness of the criminal law,
25 informer privilege is broad in scope.

1 While developed in criminal
2 proceedings, it applies in civil
3 proceedings as well. It applies to a
4 witness on the stand. Such a person
5 cannot be compelled to state whether or
6 not he or she is a police informant..."

7 And there is case law cited to support that proposition.

8 "...and it applies to the undisclosed
9 informant, the person who, although
10 never called as witness, supplies
11 information to the police. Subject
12 only to the innocence at stake
13 exception, the Crown and the Court are
14 bound not to reveal the undisclosed
15 informant's identity."

16 I see, with the greatest of respect, sir, no
17 distinction between the traditional definition or
18 description of a police informant, as I said at the outset
19 of my presentation, and the people who, in good faith, came
20 forward to assist the police by providing them with
21 information.

22 And you can see how the information would be
23 of assistance even if provided in an environment where they
24 can't be used as witnesses, if you will, because in a
25 situation -- let's say the police were investigating "A".

1 They had some complainants who had come forward. They're
2 still formulating whether or not they had the grounds to
3 actually charge. Along comes confidential informant victim
4 who says, "He did it to me too. I don't want you to use
5 me, and I'm not going to tell you any more unless you give
6 me that guarantee." What it does is even though it can't
7 be used as a victim or a similar fact under the terms under
8 which it was accepted, it would strengthen, in my
9 respectful submission, the belief of the officer in his
10 reasonable and probable grounds in terms of assessing
11 credibility of other complainants. It is crucial to the
12 administration of justice to protect these people and to
13 protect their identities from retribution, and it's a
14 promise that was made to them under the law as it now
15 stands which is, in my respectful submission, subject to
16 comments from my colleagues or questions from you, quite
17 clearly."

18 Subject to any questions you have, that's my
19 position.

20 **THE COMMISSIONER:** Thank you.

21 All right. So where were we now? Mr.
22 Sherriff-Scott, you said you had no comments at this point?

23 **MR. SHERRIFF-SCOTT:** I have a comment on
24 this.

25 **THE COMMISSIONER:** You do?

1 MR. SHERRIFF-SCOTT: Yes.

2 THE COMMISSIONER: I'm sorry, did I miss
3 people?

4 MR. SHERRIFF-SCOTT: Yes, Mr. Callaghan --
5 -

6 THE COMMISSIONER: Okay. We're starting
7 over.

8 MR. CHISHOLM: I have no submissions with
9 respect to number 3.

10 THE COMMISSIONER: Thank you.
11 Mr. Callaghan.

12 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:

13 MR. CALLAGHAN: Yes, sir. I won't comment
14 about the analysis in *Liepert*. I'll say this. You
15 basically have heard two submissions. You've heard Ms.
16 Brannan's submission which is more as a matter of decency
17 that those names have to be protected, and whether that's
18 you balancing in section 6 of the Order in Council, having
19 regard to FIPA, which would keep it confidential, or
20 whether it's the more legalistic argument of Mr. Carroll's,
21 which, frankly, is what I said at the beginning. I'm not
22 sure there's discretion, if you accept Mr. Carroll's
23 argument.

24 I do say this. We produced undisclosed
25 information or I mean redacted information. We are in the

1 same position as the OPP. I could not tell you how many
2 situations where someone has asked not to be identified. I
3 can't tell you whether even the scope of Mr. Carroll's
4 submission means I have to say it will not be -- "You will
5 not be identified" or whether it's simply a request that
6 they not be identified.

7 I think that there needs to be a clarity on
8 this. I think there has to be -- this is not an issue for
9 the institutions in the sense that this isn't for the
10 benefit of the institutions. This is for the benefit of
11 the person, and it's what I said at the beginning.
12 Whatever you decide has to be applied equally to any person
13 coming to a reporting authority, particularly if it's the
14 police, in my submission, and I've got to tell you now, it
15 would require work. I would have to go back to my officers
16 and say, "Review your notes and tell me does anyone fit the
17 definition provided by His Honour, the Commissioner, in
18 this situation?" I think that's the way we're going to
19 have to proceed.

20 It is fairly serious, and with those
21 submissions, I will back away again.

22 **THE COMMISSIONER:** Mr. Sherriff-Scott.

23 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:**

24 **MR. SHERRIFF-SCOTT:** I'm sorry; I didn't
25 have this case before this morning and I have had no

1 opportunity to review it or what may flow of it. My
2 concern or some of the concerns expressed that the extent
3 that these individuals, whoever they may be, may have
4 provided evidence in connection with any person associated
5 with my client, then I would seek disclosure of that
6 information.

7 **THE COMMISSIONER:** I'm sorry; say that
8 again?

9 **MR. SHERRIFF-SCOTT:** I said to the extent
10 that any such individual captured under the numbered
11 paragraph that was prepared as an issue may have presented
12 to any police force an allegation against a person
13 connected with my client, then I would seek disclosure of
14 that information, as well as the name, and I have not had
15 an opportunity to prepare submissions on this. What I
16 would ask is if I could have an opportunity to send a
17 letter to my friend on this to be forwarded to you before
18 you rule on it.

19 **THE COMMISSIONER:** Well, now we're opening
20 it up so that everybody is going to be sending me letters,
21 and as much as I love to read all of your correspondence
22 when it's addressed to me, other than that ---

23 **MR. SHERRIFF-SCOTT:** Well, I don't take this
24 issue lightly, Commissioner. From my point of view this
25 bears on the ---

1 **THE COMMISSIONER:** Why don't you come back
2 tomorrow, 10 o'clock.

3 **MR. SHERRIFF-SCOTT:** That's fine with me.

4 **THE COMMISSIONER:** Thank you.

5 **MR. SHERRIFF-SCOTT:** Thank you.

6 **THE COMMISSIONER:** Mr. Cipriano?

7 **MR. CIPRIANO:** I have no comments.

8 **THE COMMISSIONER:** Mr. Lee. That was your
9 best submission there.

10 **MR. LEE:** What's that?

11 **THE COMMISSIONER:** That was your best
12 submission that just went by.

13 **MR. LEE:** It was. I was saving it for
14 later, so I'll gather it up for you.

15 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

16 **MR. LEE:** Most of my submissions on all of
17 these issues generally deal with the same kind of question,
18 and that's the balancing act that you need to do here in
19 balancing the risks that my friends have tried to convey in
20 terms of confidentiality interest, privacy interest, and
21 the interest of the public and in my client's and Mr.
22 Manson's clients and everyone else in a full public
23 inquiry.

24 What I don't understand here, Mr.
25 Commissioner, is what the risk is, and specifically if

1 we're dealing with the category of persons being considered
2 in number 3. I don't understand the risk at this stage of
3 the disclosure stage. As you've pointed out several times
4 today and other people have pointed out we're not dealing
5 with disclosing this to the public at this stage. We're
6 only dealing with disclosing this to parties and I don't
7 understand at this stage what the risk is perceived to be.

8 The people in category number 3 requested
9 confidentiality generally and whatever example you want to
10 give of the mother who reports that her son was abused or
11 whatever it is, these people are okay with the police
12 having these names and having this information.

13 Presumably, I would guess they were okay with the Crown
14 having it. They didn't want it to be used. They didn't
15 want it to come out. They didn't want to receive a phone
16 call about it or anything along those lines.

17 What they were not okay with was the public
18 having this information. They didn't want their employers
19 to have this information. They didn't want their families
20 to have this information. There's no risk of that
21 happening at this stage. We're only dealing with
22 disclosure here. We're dealing with disclosure, as you put
23 it, to lawyers, to professionals and to their clients who
24 are bound by undertakings and bound by an order and bound
25 by the rules on top of that.

1 I suppose the question I have is that it
2 hasn't been explained, as far as I'm concerned, on why
3 there's such a fight on this at the disclosure stage and
4 what the risk is.

5 **THE COMMISSIONER:** Well, the risk, Mr. Lee,
6 for example, if one of your clients were to sign an
7 undertaking ---

8 **MR. LEE:** Sorry? If?

9 **THE COMMISSIONER:** If one of your clients
10 were to sign an undertaking ---

11 **MR. LEE:** Right.

12 **THE COMMISSIONER:** --- and they were to read
13 one of these things and they said, "Ah, too bad about
14 Charlie, he's just not realizing that he's got to get some
15 treatment. So I'm going to go as a good Samaritan and go
16 see him and say, 'Listen, Charlie, I know that you were
17 abused and I think you should get some treatment'",
18 wouldn't that be a good one?

19 **MR. LEE:** How do we hold this inquiry if
20 there's not some faith placed in the process? We've built
21 in every protection that can be built in.

22 **THE COMMISSIONER:** Well, there's two things.
23 First of all, are you in Mr. Manson's camp that you are
24 prepared to resolve this issue on the basis of don't need
25 the name of the complainant, right; all I need to know is

1 how many times he complained, like 1A as we described on
2 the statements and that you're prepared to receive an
3 edited statement?

4 **MR. LEE:** I was originally of that mind and
5 I'm not sure I completely foreclosed the possibility, but
6 there are some issues that arrive with that. If we have a
7 confidential complainant in 1984 who comes to the police
8 and says, "Please, you need to have this information but
9 don't identify me; it has to be confidential", and then
10 that same person in 1991 comes back to the police and makes
11 a complaint relating to the same transaction, how do we
12 deal with that? Are we -- does the 1990 or '91 complaint
13 supersede the request for confidentiality? Does the -- how
14 were we told that the 1984 person and the 1991 are the same
15 person because that's information we need to know?

16 All of a sudden does the ---

17 **THE COMMISSIONER:** Couldn't that be worked
18 out?

19 **MR. LEE:** I don't know. Can it? I mean,
20 we're ---

21 **THE COMMISSIONER:** Well, I think on this
22 whole issue number 3, there's Mr. Carroll's position that
23 says, "Uh-uh, the Supreme Court of Canada says you aren't
24 getting nothing, nothing". All right. So I think we have
25 to deal with that first.

1 If you can distinguish that, all right,
2 because if you can't, it's all over.

3 **MR. LEE:** Right.

4 **THE COMMISSIONER:** Okay. So let's say we
5 can distinguish that, the real issue here is Mr. Manson
6 says that -- and the OPP had a disagreement and now
7 because, you know, I'm telling them they have to do the
8 redaction or go and find where these things are, "We don't
9 have the resources and so it's just falling apart." It's
10 basically ---

11 **MR. LEE:** Right.

12 **THE COMMISSIONER:** So what do you want -- so
13 what are we going to do with all that?

14 **MR. LEE:** My concern at this point is how do
15 we know that we don't need these names? How do we know
16 that victim number 1 is going to suffice for our purposes?
17 In my submission, a large part of this inquiry is about
18 people and it's about relationships between people and
19 understandings between people and -- I mean, certainly from
20 the point of view of my clients, we need to know who people
21 are because, in my submission, the institutional responses
22 in certain cases will be directly affected by the players,
23 by the identities of the people involved, by the
24 relationships between -- perhaps between institutions,
25 between people.

1 I can't say at this point that it's going to
2 suffice to have these victims identified as victim A and
3 victim B or victim 1 and victim 2. I just don't know that.

4 **THE COMMISSIONER:** But you know that
5 Commission counsel have got the unredacted documents and
6 that they've looked at it.

7 **MR. LEE:** Right.

8 **THE COMMISSIONER:** And if they find some
9 link, some relevance to the name, that we have to revisit
10 it.

11 **MR. LEE:** My concern is that ---

12 **THE COMMISSIONER:** I see Mr. Engelmann
13 shaking his head there.

14 **MR. LEE:** What if Commission counsel doesn't
15 find that link? With all due respect, Commission counsel
16 is nowhere near well versed on what's happened here and the
17 facts in the past 40 years in Cornwall as my clients. My
18 clients have been here. They've lived through it. They
19 have information that Commission counsel doesn't have.

20 **THE COMMISSIONER:** They do?

21 **MR. LEE:** Well, I would assume not
22 consciously, obviously, that they're aware of at this point
23 that they're not disclosing something, but there will be
24 names in this disclosure undoubtedly that mean something to
25 my clients and don't mean anything to me and don't mean

1 anything to you and don't mean anything to your counsel.

2 This system, in my submission, works best
3 when the parties are allowed to do what they've been
4 retained by their clients to do and it assists the
5 Commission and it assists you in your work to have us
6 scrutinize these documents and us submit to you what our
7 interpretation of the documents is and our relevance of the
8 documents.

9 **THE COMMISSIONER:** All right. So you want
10 the names?

11 **MR. LEE:** I want the names.

12 **THE COMMISSIONER:** You want the whole thing?

13 **MR. LEE:** I want the whole thing and I'm in
14 the same boat as Mr. Sherriff-Scott that -- I have *Leipert*,
15 I believe ---

16 **THE COMMISSIONER:** Tomorrow morning at 10
17 o'clock we will be able to get your scholarly review of it
18 and ---

19 **MR. LEE:** Fantastic.

20 **THE COMMISSIONER:** Anything else?

21 **MR. LEE:** Okay. Thank you.

22 **THE COMMISSIONER:** Mr. Manson.

23 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

24 **MR. MANSON:** Mr. Commissioner, there seem to
25 be a number of issues around item number 3. If I can just

1 fill my water glass?

2 **THE COMMISSIONER:** Okay.

3 **MR. MANSON:** I think I will follow your
4 suggestion and start with Mr. Carroll's submission on
5 *Leipert* and then move from there to the general category.
6 I disagree with his analysis of *Leipert* for a number of
7 reasons. The first is it's our position that it only
8 captures what I might call third-party informants. It
9 doesn't necessarily have to be somebody informing for --
10 out of self-interest but a third-party informant could be a
11 neighbour. By third-party, I mean about an offence
12 allegedly perpetrated by someone else to someone else.

13 **THE COMMISSIONER:** M'hm.

14 **MR. MANSON:** That's our position.

15 **THE COMMISSIONER:** Okay. So what about the
16 mother?

17 **MR. MANSON:** Pardon me?

18 **THE COMMISSIONER:** What about the mother who
19 comes to the police and says, "My son was abused by so-and-
20 so"? That would be a third-party informant?

21 **MR. MANSON:** Obviously, I have to refine my
22 thinking and talk in a second about relations, but let me
23 just first explain ---

24 **THE COMMISSIONER:** A mother with an infant,
25 a minor, a position of responsibility.

1 **MR. MANSON:** That's right.

2 **THE COMMISSIONER:** There you go.

3 **MR. MANSON:** But let me -- Mr. Commissioner,
4 if I can just continue that analysis of *Leipert*?

5 **THE COMMISSIONER:** Yes.

6 **MR. MANSON:** Because there's another very
7 important part dealing with editing where I also disagree
8 with Mr. Carroll, but first let me say that nothing in
9 *Leipert*, regrettably, offers a definition of who the
10 informant is. As Mr. Carroll started off, criminal
11 lawyers, we have the traditional view of who it is. He is
12 saying the rationale in *Leipert* ought to apply in this case
13 both to victim, to mother -- let's leave mother aside for a
14 minute. But my first point is *Leipert* does not offer us a
15 definition.

16 **THE COMMISSIONER:** M'hm.

17 **MR. MANSON:** But its context is clearly
18 about not just the third-party informant but an anonymous
19 one. No one knows who the informant is, neither the person
20 who took the tip and wrote it down, nobody knows. That's
21 critical to my editing submissions in a minute.

22 I would submit that the reason that the
23 courts have recognized informant privilege as set out in
24 the early part of this decision is to encourage informants
25 with promises of confidentiality. I fully agree with Mr.

1 Carroll about the overstating the duty to divulge. It's
2 not a legal duty, but it's clear that, as a societal goal,
3 the police need and they want to encourage informants to
4 come forward. Sometimes they pay for the information;
5 sometimes they don't, but what they always want to do, they
6 will provide a promise of confidentiality.

7 With respect to victims or someone in close
8 relation with the victim like a mother who comes forward
9 confidentially, we don't have the same social interest.
10 The police are not encouraging victims to come forward
11 confidentially. They will take information and give a
12 promise of confidentiality, but they're not encouraging it.
13 It doesn't have the same objective as informers where
14 they've got to say -- they might as well have a sign, "We
15 will take information confidentially because we need
16 informers". They're not going to have a sign, "Victims
17 come forward; we want you to come forward confidentially".
18 They don't want victims to come forward confidentially.
19 They want victims to come forward frankly and candidly and
20 get behind the investigation and the prosecution.

21 This may seem like a subtle distinction, but
22 Mr. Carroll wants you to give a very expansive definition
23 of confidential informant, and I don't think he can make
24 the argument that supports that jump when there are
25 distinctions, and this being one.

1 **THE COMMISSIONER:** I don't want to muddy
2 your argument but wouldn't this help as well? I mean, the
3 Attorney General has policy to prosecute family abuse. So
4 if a woman comes forward to the police station and says,
5 "My husband has abused me," would the Attorney General's
6 directive make it -- nullify the secrecy?

7 **MR. MANSON:** Well, the difference there is a
8 police officer following that directive ought not to offer
9 a promise of confidentiality. That would be the
10 difference, but if I can just ---

11 **THE COMMISSIONER:** Yes, go ahead.

12 **MR. MANSON:** --- jump on that for a second,
13 one of the reasons why we think this category is important,
14 although we would certainly live with the proposal that Ms.
15 Brannan and I outlined earlier, one of the reasons we think
16 it's important is it may be down the road that the whole
17 process of receiving and dealing with complaints
18 confidentially is something that you will want to think
19 about. So that's why we think number 3 is relevant.

20 **THE COMMISSIONER:** M'hm.

21 **MR. MANSON:** If I can move to the editing,
22 and we can come back to the distinction, but I think on the
23 editing, Mr. Carroll's view is clearly wrong. The judgment
24 says the reason you don't edit the tip sheet is because we
25 don't know who the tipster is. The tipster is anonymous.

1 Therefore, who can say what will identify or not?

2 No one can say that because we don't know
3 and this, Mr. Commissioner, is quite clear from paragraph
4 28 dealing with judicial editing, the end of the paragraph:

5 "The scope of the rule extends not only
6 to the name of the informer but to any
7 details which might reveal the
8 informer's identity. It is virtually
9 impossible for the Court to know what
10 details may reveal the identity of an
11 anonymous informer."

12 And paragraph 29:

13 "These considerations suggest that
14 anonymous tip sheets should not be
15 edited with a view to disclosing them
16 to defence unless the accused can bring
17 himself within the innocence at stake."

18 And the conclusion of that paragraph -- of
19 that section in paragraphs 31 and 32, and 31 dealing with
20 some other cases that the Supreme Court distinguishes by
21 saying:

22 "First, the informants in those cases
23 were not anonymous, enabling the Court
24 to make judgments on what details might
25 or might not reveal the identity of the

1 informers."

2 And then in 32:

3 "There may be cases where the informer
4 and his circumstances are known..."

5 Those are our cases, Mr. Commissioner. The identities are
6 known.

7 "...in which the Court can be certain
8 that what remains of an informant
9 account after editing will not reveal
10 the informer's identity."

11 So at the very least, Mr. Commissioner, even
12 if you think we ought to be expanding the idea of who is a
13 confidential informant, certainly you have the authority
14 and, in this case, the parties to edit so long as they
15 don't reveal the identity, which, in our submission, is the
16 substance. We want to know -- this business about the
17 coding, that's just to ensure if there is something
18 anomalous because of it that we can figure that out. The
19 biggest part is the substance, the allegation that "X" on
20 such and such a date in the City of Cornwall did something
21 so that that can be linked to other allegations.

22 So our submission on *Leipert* is, number one,
23 it doesn't define confidential informant. I would submit,
24 therefore, there's no reason to expand it beyond the
25 traditional view. This case certainly doesn't support an

1 expansion. It is a third-party informant case, plus as I
2 said before, there is the distinction that the police
3 encourage informants with a promise of confidentiality.

4 They don't want to encourage victims with a
5 promise of -- they would prefer victims who are prepared to
6 be participants. But on the editing I think it's clear,
7 Mr. Commissioner, that in these cases there is clear
8 authority to edit the statements.

9 Now, I'm prepared to continue for a few
10 minutes because I think at this point, we need to talk
11 about the general category.

12 **THE COMMISSIONER:** What do you mean by
13 general category?

14 **MR. MANSON:** Number 3 and why, if we can't
15 pursue the Brannan resolution.

16 **MS. SACCOCCIO BRANNAN:** Brannan-Manson.

17 **MR. MANSON:** The Brannan-Manson resolution.
18 I should tell you just how this came about. I was trying
19 earlier today for a number of lawyers to articulate why we
20 thought this was relevant and why the process, the practice
21 of hearing from complainants' confidentiality -- why that
22 could be relevant to you. And one of the counsel said, "So
23 why do you have to know their names?" I went up and
24 thought about it and then I got instructions from my
25 clients, and my clients -- I can assure you, Mr.

1 Commissioner, have absolutely no interest in harming anyone
2 through this Commission. They're very concerned that
3 people's reputations have been maligned wrongly in this
4 community. And when we talked about it, they said, "You're
5 right, we don't need to know the names." If, on the other
6 hand, that proposal is not on the table and it's going to
7 be black or white; right now, we've got black, it's
8 redacted. I want to make the argument for white.

9 Give us the whole thing then.

10 **THE COMMISSIONER:** But even if we -- we
11 can't find them.

12 **MR. MANSON:** But we can get rid of the
13 redactions. We can get the whole thing because nobody's
14 got to look. I'm assuming that it just -- the shade that
15 was there gets lifted, and we get a whole bunch of stuff.

16 But as Mr. Lee said, the "we" is myself, Mr.
17 Wardle, Mr. Canto, our staff who sign undertakings and our
18 clients. We're talking about disclosure. We're not
19 talking about public dissemination. And public
20 dissemination, we'll have a very different view, Mr.
21 Commissioner.

22 **THE COMMISSIONER:** Actually, I -- no, I
23 understand that, but you see, the stumbling point where the
24 OPP said, "The heck with it, we're going back to black" was
25 who's going to go and find it. It was, "we're going to

1 have to look through 57 boxes; no, no, no, no". All we
2 have to look at is the black spots. At the black spots.

3 **MR. MANSON:** The black spots.

4 **THE COMMISSIONER:** The redactions.

5 **MR. MANSON:** Yes.

6 **THE COMMISSIONER:** You don't have to look
7 through 50,000 boxes. We have to look at the black spots.
8 Presumably, the black spots are a lot less than the white
9 spots.

10 **MR. CALLAGHAN:** Just so you're aware;
11 Cornwall Police don't have black spots. They don't ---

12 **THE COMMISSIONER:** No, listen, I'm just
13 trying to ---

14 **MR. MANSON:** This could be a headline in
15 tomorrow's newspaper. "The Cornwall Police have no black
16 spots".

17 **(LAUGHTER/RIRES)**

18 **THE COMMISSIONER:** Listen, I'm just taking
19 one group on at a time. You stay back there, Mr.
20 Callaghan.

21 The deal breaker here is we can't find it,
22 because nobody has resources and stuff.

23 Okay. Finish off your argument and we'll --
24 -

25 **MR. MANSON:** In the written submission that

1 we filed, Mr. Commissioner ---

2 **THE COMMISSIONER:** Yes.

3 **MR. MANSON:** --- we dealt with the question
4 of confidential material, promises of confidentiality at
5 paragraphs 15 to 17.

6 **THE COMMISSIONER:** M'hm.

7 **MR. MANSON:** These are the Wigmore Rules as
8 confirmed by the Supreme Court of Canada in Gruenke, which
9 is the priest penitent case that Mr. Sherriff-Scott was
10 talking about some weeks ago, but it confirmed the Wigmore
11 Rules, when you don't have a class privilege but you've got
12 a claim of confidentiality.

13 The only way my friends can insulate from
14 disclosure this category, in our submission, is by
15 satisfying the Wigmore Rules. To do that, they need your
16 imprimatur. There is no specific material in front of you,
17 but if we can just jump to the fourth category, the injury
18 that would -- the fourth standard, the fourth part of the
19 test ---

20 **THE COMMISSIONER:** M'hm.

21 **MR. MANSON:**

22 "the injury that would inure to the
23 relation by the disclosure of the
24 communications must be *greater than the*
25 *benefit* thereby gained for the correct

1 disposal of litigation".

2 In this situation, Mr. Commissioner, we're
3 talking about very, very limited disclosure and in our
4 submission, there is nothing before you that shows any
5 reason to suspect risk. Risk of harm to the interest of
6 people named. There's been speculation, but there's no
7 material in front of you.

8 Mr. Lee suggested that we have to have faith
9 in the process. You've made an order subjecting anyone to
10 contempt proceedings. Certainly like any order, like any
11 rule, there can be breaches of that, but there's no reason
12 to expect that. There's nothing in front of you to suggest
13 that could happen.

14 If that's the way we're going to run the
15 process, well, we've got nothing. There's no framework.

16 So our submission to wrap it up, without
17 some specific material in front of you satisfying the four
18 Wigmore conditions, this material that's been disclosed to
19 your staff should be disclosed to the parties, subject to
20 the undertaking, subject to the order. Short of that, we
21 would be satisfied of getting the material without the
22 names.

23 My clients, unlike Mr. Lee, we don't need to
24 know the names. We've thought this through and there's
25 nothing to be gained from us knowing that John Smith was

1 victimized. The substance of the allegation, we need to
2 know, but we don't need to know that.

3 If I can say one other thing about Mr. Lee's
4 remark; the situation where in 1984, it was confidential
5 and in 1994, it's not, our position is it's no longer
6 confidential.

7 **THE COMMISSIONER:** M'hm.

8 **MR. MANSON:** Once it's -- the cat's out of
9 the bag, you don't put it back in. That's that.

10 Those are our submissions on this point.

11 **THE COMMISSIONER:** Thank you.

12 Mr. Engelmann.

13 **MR. MANSON:** If I could say one more thing.

14 **THE COMMISSIONER:** Sure.

15 **MR. MANSON:** I would hope that this is
16 something that we could resolve. I really can't speak to
17 the resource issues, Mr. Commissioner. I can tell you how
18 long it takes to read the disclosure. I've been doing
19 that. I can't tell you anything about the redaction, but I
20 would hope that this is something that can be resolved. If
21 it can't, maybe we have to put dates and schedules back on
22 the table, if that's the only way to get the work -- I can
23 feel the ---

24 **THE COMMISSIONER:** Non-verbal communication.

25 **MR. MANSON:** Yes, I can feel it at this

1 distance, but I'm not sure how else we get over this
2 problem. The suggestion that we'll do it bit by bit, from
3 our perspective, we're trying to sort out all the material
4 and, as you said earlier, trying to make links if they're
5 there. If they're not there, they're not there. But you
6 can't do it with ---

7 **THE COMMISSIONER:** Yes, I know, but this is
8 Project Truth material ---

9 **MR. MANSON:** Yes.

10 **THE COMMISSIONER:** --- and I don't know --
11 one question would be. I think Project Truth is a little
12 further down than -- I don't think Project Truth clicks in
13 in September does it? I don't know. The witnesses and
14 stuff?

15 Anyways, we're all putting up our positions
16 here and if -- "We're not going to do this, we're going to
17 do it some other way". So I think it's time for a break,
18 but I think one of the things we might want to consider is
19 when will that material likely be necessary?

20 **MR. MANSON:** Yes.

21 **THE COMMISSIONER:** So if it's not for a
22 month or two, you know, and if we're just looking at
23 blackouts and unredacting those blackouts to check where
24 those 20 things are, it's a lot less than what we thought.

25 **MR. MANSON:** But before we go, Mr.

1 Commissioner, again, please appreciate that if we get those
2 kinds of assurances, I'm standing up here not knowing what
3 you have. I don't know when your counsel are going to get
4 into this. If we can get some assurances out in the open,
5 then a) I'm sure we can live with it, but we will live with
6 it.

7 **THE COMMISSIONER:** Right now, we're --
8 bottom line is we're going to get through all of this.

9 **MR. MANSON:** Yes.

10 **THE COMMISSIONER:** We're going to have a few
11 little skirmishes and things like that, but I -- you know,
12 in the end if all else fails, we'll refer ourselves to the
13 Children's Aid Society for a dysfunctional family session
14 and we'll be fine.

15 **MR. MANSON:** Thank you.

16 **THE COMMISSIONER:** Shall we take a break,
17 Mr. Engelmann or did you want to add something else?

18 **MR. ENGELMANN:** Well, I just wanted to say
19 that, unfortunately, some of the individuals you'll be
20 hearing from in September had contact with OPP
21 investigators during Project Truth and at last count, a
22 conservative estimate, we're at about 70,000 of those black
23 spots.

24 **THE COMMISSIONER:** Yes, I know, but those
25 individuals -- there are a lot less -- 70,000 black spots

1 is a lot less than 250,000 pages.

2 **MR. ENGELMANN:** Fair enough. That's true.

3 **THE COMMISSIONER:** So I cut down the work by
4 three quarters, so you guys can take care of the last
5 quarter.

6 **MR. ENGELMANN:** I note that we're on Item 3
7 of 10, so I might have been a realist as opposed to a
8 pessimist this morning, but I will check with the court
9 apparatus here to ensure that people are available for the
10 morning.

11 **THE COMMISSIONER:** Thank you.

12 **MR. ENGELMANN:** Thank you.

13 **THE REGISTRAR:** Order; all rise. À l'ordre;
14 veuillez vous lever. The hearing will reconvene at 3:50.

15 --- Upon recessing at 3:39 p.m./

16 L'audience est suspendue à 15h39

17 --- Upon resuming at 4:06 p.m./

18 L'audience est reprise à 16h06

19 **THE REGISTRAR:** This hearing of the Cornwall
20 Public Inquiry is now in session. Please be seated.
21 Veuillez vous asseoir.

22 **THE COMMISSIONER:** Thank you.

23 Mr. Engelmann. Yes, sir.

24 **MR. ENGELMANN:** Mr. Commissioner, I
25 understand that Ms. Brannan still has some submissions on

1 No. 3. I know that you're going to hear from Mr. Sherriff-
2 Scott and I believe, Mr. Lee, on the Lyford case in the
3 morning, and I'm assuming if Mr. Carroll has some
4 submissions, he'll wait until the morning.

5 **MR. CARROLL:** Yes.

6 **MR. ENGELMANN:** And Ms. Brannan just has, as
7 I understand, some further submissions on point No. 3
8 before we go to point 4.

9 **THE COMMISSIONER:** Very well.

10 **---SUBMISSIONS BY/RÉPRESENTATIONS PAR MS. SACCOCCIO**

11 **BRANNAN:**

12 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner, I
13 think it's important for you to understand that of the 10
14 redactors, I was not one of them. The reason for that is
15 that my responsibility at that time was to address
16 divisional court matter and some -- the matters continuing
17 with respect to our historical review, which is still
18 underway because we've got a lot of documents there as
19 well.

20 In the break, we talked with a number of the
21 individuals who did the redacting in order to ascertain
22 exactly what was redacted in respect of this particular
23 issue.

24 The way in which the redactions were done is
25 that the name of the victim or alleged victim, was redacted

1 and all identifiers of that individual were redacted, but
2 what the individual said in a statement or to a police
3 officer in their notes was not redacted. So the substance
4 is there, and I have informed Mr. Manson of that at the
5 break.

6 So what it brings us down to, is a situation
7 where we have redacted all victims' names, all victims'
8 identifiers and left the substance of the statement there.
9 Now that was done after -- that was done initially back in
10 October when we started this process based on our own
11 protocol.

12 I can tell you that we made several attempts
13 with Commission counsel to develop a joint protocol. We
14 were unsuccessful in doing that, but we had to do this
15 redaction process, so we proceeded to do so based on the
16 protocol we had developed.

17 Then, when we met with Commission counsel
18 and investigative staff and Ms. McArthur at the end of June
19 on the 28th and again on the 29th, we went through those
20 lists of things that I had listed on June 27th with you,
21 sir, in this room.

22 **THE COMMISSIONER:** M'hm.

23 **MS. SACCOCCIO BRANNAN:** And we were told by
24 Commission counsel and Ms. McArthur to continue on
25 redacting as we had. Unfortunately, there was no direction

1 to us and in hindsight now, when we look back, maybe deeper
2 thought should have been there. It wasn't. We continued
3 on redacting as we had with no direction that we were to
4 assist the Commission in that redaction process by
5 separating these alleged victims apart; ones who asked for
6 confidentiality and ones who, you sir, may say, "These
7 victims' names can be released on a bulk disclosure, and
8 the undertakings are something, which are sufficient". And
9 I believe I agreed with you, with respect to those types of
10 victims on June the 27th.

11 We are now in the predicament of moving,
12 attempting to move forward with the work of this Commission
13 and we understand why you want to get to the substantive
14 part of this hearing. If the OPP is asked to return to the
15 57 boxes, even if it's the redactive form on the screen, in
16 order to differentiate between those victims who request
17 confidentiality and those who did not, the time that it
18 will take to do that, and I think it may have been a little
19 flippant of me to say we don't have the resources, it's not
20 a question of not having the resources, it's a question of
21 the time that it will take to do that -- that then slows
22 down the work of this Commission.

23 **THE COMMISSIONER:** Mmm.

24 **MS. SACCOCCIO BRANNAN:** Well, it might,
25 because Mr. Manson is telling me that on the bulk

1 disclosure that he wants to have before we start doing ---

2 **THE COMMISSIONER:** That's what Mr. Manson
3 says he wants.

4 You know if we went along here and tried to
5 figure out what everybody wanted ---

6 **MS. SACCOCCIO BRANNAN:** --- we'd be in
7 trouble.

8 **THE COMMISSIONER:** --- we wouldn't get
9 anywhere; so I'm going to be the bad guy, and I'm going to
10 tell people when we have to do things and we're going to
11 get on with life. And that isn't done arbitrarily or
12 maliciously or anything like that.

13 **MS. SACCOCCIO BRANNAN:** No, I understand
14 that.

15 **THE COMMISSIONER:** It's a question of the
16 milk has been spilt. You could blame it on me, you could
17 blame it on anybody you want to, and that's fine. Blame it
18 on me. That's okay.

19 **MS. SACCOCCIO BRANNAN:** I'm not going to. No
20 sir, I ---

21 **THE COMMISSIONER:** The fact of the matter is
22 you're dealing with 20 incidents that may or may not be
23 important to this inquiry. As you said, people that have
24 asked for that confidentiality, we've got to work around to
25 ensure that as best we can their anonymity -- whatever that

1 word is -- is protected as best we can all the while
2 looking at if there's something that can be useful for the
3 future, if we can by using those 20 examples save one child
4 from being abused in the future, so ---

5 **MS. SACCOCCIO BRANNAN:** You won't get any
6 disagreement with me on that sir.

7 **THE COMMISSIONER:** Oh, okay, so let's quit
8 the rhetoric and let's get down to solving the problem. So
9 I know you've done your best. No one is criticizing the
10 OPP. We have a situation here. How do we best resolve it?

11 **MS. SACCOCCIO BRANNAN:** Well ---

12 **THE COMMISSIONER:** Now, I've listened very
13 carefully to all -- I know you, so get down to resolving
14 it.

15 **MS. SACCOCCIO BRANNAN:** Well, I think it's
16 going to take some time to sit down and try and figure out
17 what a resolution is. I mean there's no question, when
18 you're handed a lemon, we've got to try and make lemonade
19 here and in making that lemonade, we're going to need some
20 time to figure out how this can be done. To send the OPP
21 back to review the 57 boxes to make that differentiation is
22 a question of time.

23 **THE COMMISSIONER:** It's not 57 boxes, it's
24 70 thousand whatever black spots.

25 **MS. SACCOCCIO BRANNAN:** It's the redactions.

1 It's the black boxes.

2 **THE COMMISSIONER:** M'hm.

3 **MS. SACCOCCIO BRANNAN:** That still takes
4 time.

5 **THE COMMISSIONER:** Nobody said it didn't.
6 But for someone to get up and say, "I'm not going to do it"
7 ---

8 **MS. SACCOCCIO BRANNAN:** It's not a question
9 of not doing it.

10 **THE COMMISSIONER:** Oh, no! Oh no it is not!
11 No, no.

12 **MS. SACCOCCIO BRANNAN:** No, it's not a
13 question of not doing it because if I look at the way in
14 which the rules are set out, and Mr. Engelmann can
15 certainly correct me if I'm wrong, we are asked by way of
16 summons to produce all of our documents and we do that.
17 Then we are asked to mark those things which are considered
18 "C" or "P" I think it is; "C" for confidential, and that's
19 done by way of the highlighting. And then as I understood
20 the process, the Commission counsel were to come back to
21 us and say, "Well, you know, we don't agree with that".
22 That means Commission counsel has to review all of the
23 redactions that the Ontario Provincial Police, CPS and
24 everybody else has done to say whether they agree with
25 those redactions or they don't agree. And then we try and

1 hash it out with Commission counsel and if we can't come to
2 an agreement, then we come to you. I think we've missed a
3 step here because we have not heard from Commission counsel
4 with respect to the bulk disclosure and with respect to our
5 redactions on that bulk of documents, which redactions they
6 don't agree with. And maybe, maybe it would be helpful if
7 Commission counsel could tell us what redactions they don't
8 agree with and then we could hash it out from there.
9 Because we haven't gone through that process, sir, that is
10 set out in the rules. That concerns me because if we
11 continue to move forward without knowing what Commission
12 counsel's position is on those redactions, then we continue
13 to work in a vacuum and we may have more spilt milk, as you
14 put it.

15 **THE COMMISSIONER:** You just told me that
16 your redactions are pretty well finished.

17 **MS. SACCOCCIO BRANNAN:** Correct. Based on a
18 protocol that we developed ---

19 **THE COMMISSIONER:** Sure.

20 **MS. SACCOCCIO BRANNAN:** --- and that
21 Commission counsel said, "Go ahead and continue redacting
22 that way".

23 **THE COMMISSIONER:** Okay.

24 **MS. SACCOCCIO BRANNAN:** So that was helpful
25 to us to have Commission counsel tell us that. What

1 neither of us did or understood or directed our minds to
2 was to differentiate between those victims in carrying out
3 that redaction process.

4 **THE COMMISSIONER:** Okay. So okay is there
5 anything else you want to tell me about that?

6 **MS. SACCOCCIO BRANNAN:** I don't know what
7 the resolution is, sir, I need some time to sit down and to
8 think about it and to speak with my colleagues and to speak
9 with Mr. Engelmann.

10 **THE COMMISSIONER:** It's not resolutions we
11 want, solutions.

12 **MS. SACCOCCIO BRANNAN:** Well, solutions is
13 what I meant.

14 **THE COMMISSIONER:** No, it's different.

15 **MS. SACCOCCIO BRANNAN:** Solutions.
16 Solutions to the problem.

17 **THE COMMISSIONER:** Workable, reasonable
18 solutions.

19 **MS. SACCOCCIO BRANNAN:** For all concerned,
20 sir.

21 **THE COMMISSIONER:** Absolutely, but they are
22 your documents.

23 **MS. SACCOCCIO BRANNAN:** They are our
24 documents but they are now in the hands of Commission
25 counsel with the redactions. We need some help from them.

1 We do. Otherwise, we will continue on this process of
2 working in a vacuum.

3 **THE COMMISSIONER:** Well, no, no. Wait a
4 minute, wait a minute. On this issue No. 3, right, issue
5 No. 3, right, "information, victim provide information that
6 police on the basis of the victim's name, would never be
7 divulged".

8 Okay, that's what we're talking about, right
9 now. So you need -- what do you need from Commission
10 counsel?

11 **MS. SACCOCCIO BRANNAN:** We need them to look
12 at our redactions and to say, "We agree with these
13 redactions or we don't agree with these redactions". And
14 if they don't agree with the redactions, as I understand it
15 from the rules, then we hash it out. And if we can't come
16 to an agreement, we come back to you and you make a ruling.

17 **THE COMMISSIONER:** What are we doing today?

18 **MS. SACCOCCIO BRANNAN:** Today, we are
19 responding to a letter sent to us by Mr. Engelmann dated
20 August the 15th that raised three issues.

21 **THE COMMISSIONER:** M'hm.

22 **MS. SACCOCCIO BRANNAN:** And in my view, we
23 are not doing today what's in the rules because we have not
24 sat down and done that first part and that is the
25 Commission counsel saying, "Unh, Unh, we don't agree with

1 that redaction" or "Yes, we do agree with that redaction".
2 We haven't done that exercise yet.

3 **THE COMMISSIONER:** Okay. Anything else?

4 **MS. SACCOCCIO BRANNAN:** No. That's it.
5 Thank you, sir.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Engelmann, do you have any comment?

8 **MR. ENGELMANN:** I -- it would be best if I
9 not comment.

10 **THE COMMISSIONER:** Pardon me?

11 **MR. ENGELMANN:** I think it would be best
12 that I not comment right now. I have a disagreement about
13 the interpretation of the rules. I will discuss that with
14 counsel.

15 **THE COMMISSIONER:** All right.

16 **MR. ENGELMANN:** Number 4.

17 **THE COMMISSIONER:**

18 "Covert police investigative
19 techniques, police procedures and any
20 information that could jeopardize
21 officer safety".

22 **MR. ENGELMANN:** Okay. Again, I'm not aware
23 of any of this material being in anything we've received
24 that is relevant to the mandate of this Inquiry. So I'm
25 assuming that if there is anything dealing with covert

1 police investigative techniques, it is in material that is
2 unrelated and, therefore, will be determined to be
3 irrelevant and will not be disclosed, but I think we should
4 hear from both the OPP and the CPS on this issue and
5 perhaps the OPPA. We don't have -- certainly, I don't
6 think there's any issue with the importance of not
7 jeopardizing the safety of the police officers. I mean I
8 don't think there's any difficulty there in agreeing on
9 that. I think the question is, is this hypothetical? Have
10 there been redactions? I'm not aware of any.

11 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
12 with respect to No. 4, the only position that the OPP are
13 taking is that as we went -- as the redactors went through
14 the 57 boxes, if there was anything in there that
15 jeopardized police officer safety or was a police
16 investigative technique, it was redacted. I don't disagree
17 with Mr. Engelmann that it is likely, although I cannot
18 confirm 100 per cent that in that regard it was probably in
19 respect of unrelated investigations. However, in the event
20 that there was anything like that in the disclosure, the
21 unredacted disclosure, it would have been redacted by the
22 ten redactors. I don't think that anything should rise or
23 fall on that because these are issues that, I think, all of
24 my colleagues would agree are issues that are not necessary
25 for the bulk disclosure to parties with standing or to

1 their clients. There's no need for them to know this
2 information.

3 **THE COMMISSIONER:** M'hm. Yes, sir?

4 --- **SUBMISSION BY/REPRÉSENTATION PAR MR. CALLAGHAN:**

5 **MR. CALLAGHAN:** I'm not aware because I
6 didn't ask the question -- because this was presented to me
7 this morning whether there is such information, I doubt
8 there is, but I would have to make further inquiries, but I
9 doubt there is.

10 **THE COMMISSIONER:** I don't know. Okay.

11 Mr. Chisholm, do you have any comments?

12 **MR. CHISHOLM:** No comments.

13 **THE COMMISSIONER:** No? Mr. Sherriff-Scott?

14 **MR. SHERRIFF-SCOTT:** No, Commissioner.

15 **THE COMMISSIONER:** Mr. Carroll?

16 **MR. CARROLL:** I support the position of the
17 OPP, sir.

18 **THE COMMISSIONER:** M'hm. Mr. Cipriano?

19 **MR. CIPRIANO:** No comments.

20 **THE COMMISSIONER:** Mr. Lee.

21 **MR. LEE:** No comments, sir.

22 **THE COMMISSIONER:** Mr. Manson.

23 **MR. MANSON:** No submissions, Mr.

24 Commissioner.

25 **THE COMMISSIONER:** Mr. Engelmann. So why is

1 this on the list I guess is my question.

2 **MR. ENGELMANN:** It was in the original
3 letter from Ms. Brannan back in June and it was referred to
4 at the time.

5 **THE COMMISSIONER:** Okay.
6 Number 5.

7 **MR. ENGELMANN:** I hope there won't need to
8 be any submissions on this issue. There was an order,
9 unfortunately, although a copy of the order was here, many
10 counsel didn't receive it when we spoke to it I believe it
11 was on -- it came up on July 26th on the transcript. Ms.
12 McIntosh was here; I was leading the evidence of Sonia
13 Faryna at the time. The order was obtained. The order I
14 think now is in the hands of all counsel, so that was an
15 issue that was of concern to the Commission and it was an
16 issue of concern to many of the institutions that gave us
17 documents. It has been resolved, and I indicated to
18 counsel today that in addition to the order we are asking
19 all of those victims and/or alleged victims that are going
20 to be testifying to sign an even more comprehensive consent
21 dealing with *Youth Criminal Justice Act* records.

22 **THE COMMISSIONER:** Mr. Manson.

23 ---SUBMISSIONS BY/RÉPRESENTATIONS PAR MR. MANSON:

24 **MR. MANSON:** Perhaps there's a second order,
25 and I just saw this today and just read it very quickly but

1 my quick reading suggests that this order does not deal
2 with the issue of tendering into evidence but deals solely
3 with disclosure, which is enough to deal with today, but I
4 just point that out because it may be another order is
5 required.

6 **MR. ENGELMANN:** I agree. The order deals
7 with disclosure. We will have consents from all
8 individuals giving evidence.

9 **THE COMMISSIONER:** All right.

10 **MR. ENGELMANN:** Whether or not we will need
11 another order or not is something we can address later, but
12 at this point, we don't think so.

13 **THE COMMISSIONER:** Okay.

14 **MR. MANSON:** Mr. Commissioner, sorry to
15 belabour this, but it may not just be people in the witness
16 stand; it may be that it is relevant to know the record of
17 someone who is not in the witness stand and at the moment
18 that -- pursuant to this, we'll get copies of that person's
19 record.

20 **THE COMMISSIONER:** Right.

21 **MR. MANSON:** But we won't be able to use it
22 to put to another witness for example.

23 **THE COMMISSIONER:** "To put to another
24 witness"?

25 **MR. MANSON:** I will give you an example.

1 **THE COMMISSIONER:** Yes.

2 **MR. MANSON:** And I'm doing this off the top
3 of my head, but we have a police officer in the witness
4 stand who says "We didn't pursue that investigation because
5 so and so was hugely unreliable because of his long record;
6 the length of your arm". And I've got the record in my
7 hand and it has one shoplifting.

8 **THE COMMISSIONER:** M'hm.

9 **MR. MANSON:** I can't put that to the witness
10 because this order without a consent doesn't cover public
11 dissemination. That's my quick reading of it. I just ---

12 **THE COMMISSIONER:** Okay, well that's ---

13 **MR. MANSON:** A matter for another day, but I
14 just ---

15 **THE COMMISSIONER:** Yes, another day. So are
16 there any issues? Where were we? Mr. Manson, Mr.
17 Engelmann. Okay, so for disclosure then, we can disclose
18 all of the YCGA material that the people have given us. Is
19 that the way I understand it? Mr. Engelmann? When
20 redacted?

21 **MR. ENGELMANN:** Yes.

22 **THE COMMISSIONER:** Okay, thank you.

23 **MR. ENGELMANN:** We may have to -- well, I'll
24 speak to Mr. Manson about his concern, but that's for
25 another day.

1 **THE COMMISSIONER:** No, that's -- I am just
2 talking disclosure here. Okay.

3 All right. And No. 6 is going to be of
4 involvement; right?

5 **MR. ENGELMANN:** I just want to say before we
6 get to No. 6, there's going to be some need to unredact
7 some material that has been redacted with respect to No. 5.

8 **THE COMMISSIONER:** M'hm.

9 **MR. ENGELMANN:** Number 6 has come up earlier
10 in relation to 2C as you'll recall, Mr. Commissioner.

11 **THE COMMISSIONER:** M'hm.

12 **MR. ENGELMANN:** So I'll turn the floor over
13 to Ms. Brannan.

14 **THE COMMISSIONER:** Well, wait a minute.
15 It's 4:23, and I don't want to be overly late tonight. So
16 we are just looking at -- do we adjourn until tomorrow or
17 is there something we can do quickly or should we just call
18 it a day?

19 **MR. ENGELMANN:** I'm just taking a quick look
20 at counsel about whether there's a number on here we can
21 deal with quickly.

22 Mr. Sherriff-Scott believes there's
23 something we can deal with quickly, so I'll give him the
24 floor.

25 **THE COMMISSIONER:** Terrific.

1 --- ITEM NO/POINT NO. 8, 9, 10:

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

3 MR. SHERRIFF-SCOTT: Thank you,
4 Commissioner.

5 These are 8, 9 and 10. My client will not
6 oppose -- I have revisited this subject with my client, the
7 unredacted version of its productions, and to that end, I
8 will not oppose others releasing unredacted versions of
9 documents that relate to my client. I suspect this will
10 have a significant effect on the submissions of other
11 parties on this issue.

12 I would say this though. Down the line,
13 it's important for me to tell you that I will -- although
14 on the subject of this, I have very serious concerns about
15 sensitivity of a number of categories of information which
16 are identified here, and ultimately, whenever it is
17 convenient to schedule or necessary, I will move for a
18 publication ban on these categories of individuals and I
19 will oppose the testimony of any witness who has never
20 historically made an allegation of abuse against any person
21 connected with my client to any public institution or any
22 new testimony in that regard.

23 But on the subject of redactions, I've just
24 stated my position.

25 We can deal with the witness issue at your

1 convenience tomorrow.

2 **THE COMMISSIONER:** Eight (8), 9 and 10 were
3 your issues; is that what you're telling me?

4 **MR. SHERRIFF-SCOTT:** Well, they're shared
5 issues, but I think obviously the category may affect
6 others, and I know the OPP has redacted on this basis. The
7 Attorney General did not. Mr. Callaghan's client did not,
8 and as of yet, I have not.

9 **THE COMMISSIONER:** M'hm.

10 **MR. SHERRIFF-SCOTT:** And so I'm saying to
11 you now that I will not oppose the unredacted version for
12 disclosure, subject to my concerns about publication bans.

13 Now, I would say this on this subject. I do
14 have very significant concerns about what I would describe
15 as the breadth of disclosure. So, for example, on the
16 subject of -- and this applies, I would say, both to
17 witnesses, witness names in number 7 and victims' names in
18 number 6, as well as to alleged perpetrators' names in 8, 9
19 and 10. In other words, I think they all share this common
20 feature, which is this.

21 My submission, for example, in relation to
22 the individuals who fall in 8, 9 and 10 who may be touching
23 on my client, vis-à-vis the Victims Group, it's my
24 submission to you, and I think it's possible to interpret
25 your order this way, but I'd like to get some

1 clarification, that the names, for example, from the point
2 of view of disclosure at this juncture, at this stage,
3 ought to be released, assuming there's an undertaking
4 executed, to those people whose interest reflect it.

5 So if person A alleges that he was abused by
6 person B, person A ought not to see B names or identities
7 of persons X, Y and Z that have nothing to do with person
8 A, because although, for example, Mr. Lee's group is called
9 the Victims Group, they are really a group of victims who
10 sought and obtained standing based on their own individual
11 circumstances, not as a collective. They share one common
12 thread of abuse at the hands of some person, but those
13 persons are each different.

14 And so, for example, I would suggest that
15 the -- and I'm not interested, for example, in seeing the
16 names of victims that have nothing to do with my client
17 necessarily. So the limit on that disclosure could apply
18 to me, if necessary. I don't care to see the names of an
19 alleged victim who may have been victimized by a person at
20 the school board or some other institution. It's nothing
21 to me in terms of my representation to my client's
22 interest.

23 And so when I say that this is an issue that
24 weaves in and out of 6, 7, 8, 9 and 10, but I hope that
25 those comments will at least address in part 8, 9 and 10,

1 and just in terms of shortening things, I will not make
2 further submissions on number 3, but I want you to know
3 it's not because of your *inter orem* statement about
4 bringing me back tomorrow.

5 **THE COMMISSIONER:** So you're not coming back
6 tomorrow?

7 **MR. SHERRIFF-SCOTT:** Oh, I will come back,
8 but I'm just trying to inject a little bit of levity.

9 **THE COMMISSIONER:** I know. I know.

10 **MR. SHERRIFF-SCOTT:** So those are my
11 submissions on 8, 9 and 10. If we're going to deal with 6
12 and 7 tomorrow, then certainly I'll make further
13 submissions on that subject.

14 Thank you.

15 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO

16 **BRANNAN:**

17 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
18 with respect to 8, 9 and 10, I can tell you that with
19 respect to number 10, no redactions were made by the OPP.
20 I just wanted to correct that.

21 And with respect to number 8 and 9, which I
22 really put together as one, redactions were made.

23 **THE COMMISSIONER:** Of the whole thing or
24 just the names?

25 **MS. SACCOCCIO BRANNAN:** Just the names,

1 names and identifiers of suspects who were investigated but
2 never charged.

3 **MR. ENGELMANN:** Why don't we leave for the
4 morning whether other institutions share the position of
5 the Diocese then with respect to 8, 9 and 10, and if they
6 do, we can have those particular redactions unredacted for
7 the purposes of disclosure only.

8 **THE COMMISSIONER:** M'hm.

9 **MR. ENGELMANN:** So we'll hear from others on
10 that tomorrow morning.

11 I was a little concerned about my friend Mr.
12 Sherriff-Scott's comment about possibly having different
13 disclosure packages for different parties. That may be a
14 nightmare for our staff and this disclosure process, and
15 I'm sure that some of the parties may have comments to make
16 on that, but let's leave that for tomorrow. I believe he
17 was talking about Item 6 and 7 in the main. Let's see what
18 others have to say on 8, 9 and 10. We seem to be making
19 some progress now with our numbers.

20 So at what time would you like us back in
21 the morning?

22 **THE COMMISSIONER:** Ten o'clock.

23 **MR. ENGELMANN:** Okay.

24 **THE COMMISSIONER:** Thank you.

25 **MR. ENGELMANN:** Thank you.

1 **THE REGISTRAR:** Order; all rise. À l'ordre;
2 veuillez vous lever.

3 This hearing is now adjourned. L'audience
4 est ajournée.

5 --- Upon adjourning at 4:33 p.m./

6 L'audience est ajournée à 16h33

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C E R T I F I C A T I O N

I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM