

**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 49

Held at :

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

Thursday, August 24, 2006

Tenue à:

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

Jeudi, le 24 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
Actg.Det.Supt. Colleen McQuade	Ontario Provincial Police
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

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1 --- Upon commencing at 10:13 a.m./

2 L'audience débute à 10:13

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

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude presiding.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning.

10 Good morning Mr. Engelmann.

11 **MR. ENGELMANN:** Good morning, Mr.
12 Commissioner.

13 When we left off yesterday, we were about to
14 start Item No. 6 on the list and I've had some discussion
15 with counsel over the last few minutes. I've gleaned that
16 Mr. Manson is the senior lawyer in the room by a day over
17 Mr. Carroll, although he claims he's not as old. He told
18 me that we should give deference to his seniority at the
19 bar and give him an opportunity to speak first. He
20 actually tells me that that will speed up the morning
21 process. So if you have no objection to that, Mr. Manson
22 would like to address you to start.

23 **THE COMMISSIONER:** With baited breath.

24 --- **SUBMISSIONS ON LEIPERT CASE:**

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

1 **MR. MANSON:** Thank you, Mr. Commissioner.

2 I'll be very, very brief.

3 I want to start by saying, while there's an
4 excellent turnout here this morning, a number of us have
5 obligations out of town and time is a factor today which is
6 what prompted me to say a few things.

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

8 **MR. MANSON:** First, I know this isn't on the
9 list but a number of people have raised questions with me
10 about how to deal with publication bans. In paragraph 11
11 of our material, we make reference to that and there's a
12 quotation from a section of the Code but I misstated the
13 section number. It appears as 486.4(5) and it should be
14 486.4(4).

15 **THE COMMISSIONER:** Okay.

16 **MR. MANSON:** And as well, for another kind
17 of publication ban, A discretionary one, it's dealt with in
18 a similar way in 486.5(5). So that's a corollary
19 reference.

20 But if I can get to the heart of what I want
21 to say, Mr. Commissioner, Listening to many of the
22 submissions yesterday I got the sense that the real message
23 being conveyed by a number of my colleagues was, if you
24 order it, we will do it.

25 And I want to say, Mr. Commissioner, I think

1 that may be a legitimate submission but I would ask my
2 colleagues to get to that more quickly if that really is
3 their position.

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

5 **MR. MANSON:** That's all I want to say about
6 that.

7 With respect to the remaining questions that
8 we're about to deal with and this is certainly subject to
9 anything anyone else has to say, but my view is, the
10 principles that underlie 6 and 7 are the same and we should
11 deal with them together and hear from the parties together.

12 The principles that underlie 8 and 9 are the
13 same and we should deal with those together.

14 Lastly, for the purposes of disclosure,
15 which is what's on the table today ---

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

17 **MR. MANSON:** --- my submission is No. 10 is
18 a non-issue. All of those materials must be disclosed.
19 There may be issues in the future, at the Inquiry, raised
20 by some of these facts but for the disclosure issue, it's a
21 non-issue.

22 If I could also -- you gave me an
23 opportunity yesterday to speak to *Leipert* and you advised a
24 number of counsel that they could come back and address
25 that today and I know Mr. Carroll is going to address that.

1 I've conceived a very succinct way to make the first point
2 I tried to make yesterday, which is why *Leipert* doesn't
3 apply to what we might call confidential victims.

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

5 **MR. MANSON:** In a nutshell, here is my
6 submission. History tells us that the police need
7 confidential informants. The police do not need
8 confidential victims and in fact don't want confidential
9 victims. So the law enforcement rationale that applies to
10 confidential informants in the third-party sense does not
11 apply to confidential victims.

12 Those are all my remarks, Mr. Commissioner.

13 I think we can proceed orderly and get this
14 wrapped up. They're important issues but they can be dealt
15 with. Thank you.

16 **THE COMMISSIONER:** Thank you.

17 **MR. ENGELMANN:** Mr. Commissioner, would you
18 like then, to hear briefly from anyone else who might still
19 have submissions on *Leipert*, which was from No. 3, if you
20 recall?

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

22 **MR. ENGELMANN:** I don't know if -- no, Mr.
23 Sherriff-Scott does not. Mr. Carroll has some brief
24 submissions.

25 **THE COMMISSIONER:** Thank you.

1 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CARROLL:

2 MR. CARROLL: Good morning.

3 THE COMMISSIONER: Good morning, sir.

4 MR. CARROLL: I would ask that you, sir, in
5 your deliberation review paragraph 15 of the report that
6 was provided, the second sentence which is,

7 "However, the crown cannot, without the
8 informer's consent, waive the privilege
9 either expressly or by implication by
10 not raising it."

11 It gives the purposes of privileges which
12 are set out being protection of the people who provide the
13 information and encouraging others to provide information.
14 To assist them, I understand Mr. Manson's distinction. I
15 think it's, with the greatest of respect, without a legal
16 significance. The distinction is to protect persons'
17 identity who have already received that promise of
18 confidentiality does not encourage a new class of
19 confidential victims, people who come forward and say,
20 "This was the ruling at the Inquiry; now I know I can say I
21 was a victim without having to proceed". I don't see that
22 as a logical outcome of what I'm asking you to consider
23 ruling.

24 I'm not quite certain -- and when I say
25 distinction without a difference, I mean the fact that in

1 *Leipert*, the person to whom the promise was made wasn't
2 known through Crime Stoppers. I don't know how the
3 redactor being aware of the name of the person who gave the
4 information is going to assist them anymore than if it was
5 an anonymous tip.

6 I recall many, many years ago being involved
7 peripherally in an inquiry into violence in the
8 construction industry in Ontario. If I can sort of draw
9 from that, there were many persons who apparently were
10 victims of violence during that timeframe. Hypothetically,
11 if there's five known victims and a sixth victim came
12 forward and said, "I was beaten up but I'm terrified. I
13 think there will be recriminations. I don't want you to do
14 anything." You would -- as a law enforcement person, you
15 would take the information I would suspect, confident in
16 the knowledge of the law at least as it is now through
17 *Leipert*, that you could protect that person's lawful
18 entitlement to anonymity.

19 And I say to you, sir -- excuse me -- I
20 don't know of a process by which you can confidently
21 extract enough detail to be certain that this person's
22 identity would not become known in this relatively small
23 community.

24 **THE COMMISSIONER:** In the inquiry that you
25 were involved, were they talking about a disclosure process

1 or an evidentiary?

2 **MR. CARROLL:** No, no, I said hypothetically.
3 I'm just put in mind of this when Mr. Manson talked about
4 encouraging confidential sources not confidential victims.
5 It wasn't -- I'm not giving you a specific case. I'm just
6 saying in that setting because we're talking here quite
7 frankly, obviously, about a form of violence. Sexual
8 assault is. That was just an analogy. That's all.

9 **THE COMMISSIONER:** Okay.

10 **MR. CARROLL:** I would conclude by saying the
11 following: I think that if -- this community has been
12 wracked with this mess for years and years and years and
13 we're all here doing our best. One, to perhaps come up
14 with some ideas as to how it happened and then phase two,
15 to make some suggestions.

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

17 **MR. CARROLL:** I think everybody is acting in
18 good faith in that regard. I don't mean to cast aspersions
19 of the people in this community but I fear a parlour-type
20 guessing game would start if statements come out with
21 enough detail to make sense so that use can be made of it
22 and yet not enough detail to ensure anonymity.

23 **THE COMMISSIONER:** That's parlour discussion
24 if it were in the inquiry process, the evidentiary part.
25 This is the disclosure part.

1 **MR. CARROLL:** You know, I hear that being
2 said over and over again and quite frankly, from my
3 clients' perspective, we made a promise which we considered
4 legally binding. With the greatest of respect, I wouldn't
5 reveal it to you, sir, if I was a police officer, except by
6 an order. And to say that it's going to go to the lawyers
7 in this room, all of whom I have respect for, or their
8 clients, with whom I have no issue, is to disclose. It's
9 to break the promise. If ordered to, obviously that's what
10 will transpire. But the promise, as my client
11 understands it, is inviolate.

12 To say it's only going to the lawyers or
13 it's only going to their clients ---

14 **THE COMMISSIONER:** It went to the Crown. It
15 goes to the Crown.

16 **MR. CARROLL:** No, no, no, not necessarily.
17 No. The police do not -- Crown Attorney can't order a
18 police officer to tell them the name of the informant.
19 They won't do it. I have ---

20 **THE COMMISSIONER:** I'm sorry. I was mixing
21 up my discussion with Mr. Chisholm. Mr. Chisholm yesterday
22 ---

23 **MR. CARROLL:** Yes.

24 **THE COMMISSIONER:** --- was talking about
25 this as well. It goes from the Children's Aid Society, it

1 goes to the Crown but that's okay ---

2 **MR. CARROLL:** And also keep in mind there's
3 a statutory obligation there.

4 **THE COMMISSIONER:** To what?

5 **MR. CARROLL:** There's a statutory obligation
6 on the part of citizens to come forward with information.
7 There's no ---

8 **THE COMMISSIONER:** Oh, to disclose.

9 **MR. CARROLL:** Pardon?

10 **THE COMMISSIONER:** Well, we're going far
11 afield, but ---

12 **MR. CARROLL:** In my situation, which I
13 distinguished yesterday, there's no statutory obligation to
14 be a good Samaritan.

15 The last comment that I would ask you to
16 consider is that it's my client's position that having made
17 the promise in good faith and the information coming to the
18 police in good faith from those who provided it, we
19 consider ourselves legally and morally bound by it. And
20 subject to an order obviously, which we would comply with
21 or seek other remedies, we ask you to give very serious
22 thought to this.

23 Thank you.

24 **THE COMMISSIONER:** Thank you, sir.

25 **MR. ENGELMANN:** I think that concludes all

1 the parties wishing to make submissions on *Leipert* and the
2 case has been dealt with exhaustively.

3 The next area then is Issue No. 6.

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

5 **MR. ENGELMANN:** I'm hopeful that counsel may
6 address 6 and 7, as per Mr. Manson's suggestion.

7 **THE COMMISSIONER:** Very well.

8 **MR. ENGELMANN:** Perhaps, if Ms. Brannan
9 wishes to start, I can turn the floor to her.

10 **THE COMMISSIONER:** Thank you.

11 --- ISSUE NO./ITEM NO. 6 AND 7:

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

13 BRANNAN:

14 **MS. SACCOCCIO BRANNAN:** Good morning, Mr.
15 Commissioner.

16 **THE COMMISSIONER:** Good morning.

17 **MS. SACCOCCIO BRANNAN:** With respect to
18 information that would identify a victim and any related
19 information such as their telephone number, SIN number,
20 address or names of relatives in the body of a statement or
21 a police officer's notes, the -- in accordance with our
22 discussions with counsel and yourself back in June, in the
23 57 boxes, those names have been redacted, as have all the
24 identifiers.

25 It's the position of the Ontario Provincial

1 Police that even in the disclosure process, it is not our
2 place to reveal those victims' names to anybody. With
3 respect to the publication bans, I understand because that
4 was one of the issues I discussed with Mr. Manson last
5 evening and he has gratefully clarified that for us, but
6 notwithstanding that, it's our position that, in this
7 particular Inquiry, to bulk disclose all victims' names to
8 counsel and to their clients when it may be that you make a
9 decision to manage your mandate in such a fashion that only
10 a certain number of victims will take the stand, that we
11 have then unnecessarily revealed the identity of victims
12 who may not want their identity revealed.

13 In order to unredact or to not redact those
14 victims' names, the Ontario Provincial Police require some
15 direction from Commission counsel as to which victims will
16 be taking the stand or -- and that they have their consent
17 to release their names on a bulk disclosure to counsel and
18 their clients or, in the case of all victims, we need
19 direction from Commission counsel that they have the
20 consent of John Smith, Jim Jones. Once we are aware that
21 they have that consent or, sir, if you are aware that they
22 have that consent and we are directed based on that
23 consent, then those names can be unredacted.

24 It's the nature of this inquiry and the
25 nature of the very sensitive and, in some cases and

1 probably in all cases for victims, humiliating evidence
2 that I think gives the victim the right to decide whether
3 or not their name should be released to counsel and parties
4 with standing.

5 With respect to the witness names and
6 related information, the position I would take there is
7 that those names would be only released if that particular
8 witness is connected to a victim who has given their
9 consent to release their name because that could then be an
10 identifier of some sort, not in all cases but I'd rather
11 err on the side of caution in the case of victims.

12 Thank you.

13 **THE COMMISSIONER:** Thank you.

14 Okay. Mr. Chisholm.

15 --- SUBMISSIONS BY//REPRÉSENTATIONS PAR MR. CHISHOLM:

16 **MR. CHISHOLM:** Good morning, Mr.
17 Commissioner.

18 **THE COMMISSIONER:** Good morning.

19 **MR. CHISHOLM:** Speaking to issue number 6,
20 the victims' names and related information and names of
21 individuals associated with the victims, if I could take
22 you back to your example that you raised yesterday with the
23 twins whereby the one -- both twins were being abused, one
24 -- neither one knew if the other one was being abused. If
25 I could give you the hypothetical of two twins playing in a

1 hockey team and being abused by their coach, clearly in
2 that case the twins, both names will be relevant to the
3 inquiry.

4 Let's assume for a second that those twins
5 have a young sister at home, a two-year old sister, not
6 connected in any way to the hockey team or the coach, the
7 Society's position would be that that name, the sister's
8 name, would not be -- should not be disclosed and should be
9 redacted. A case-by-case basis might be the best way to
10 proceed in such circumstances on an issue like that.

11 With respect to issue number 7, Mr.
12 Commissioner, the witnesses' name and related information;
13 again, Ms. Brannan's comments ring true with respect to the
14 information contained in the Society's files being in many
15 instances very personal, humiliating information that the
16 Society feels should be protected.

17 Again, with respect to witnesses, I'm taking
18 you back to some of the audio recordings in the CAS
19 material that has been disclosed. Many of those involve
20 young persons, teenagers. The CAS went out to conduct this
21 investigation. Again, the discussions in some cases of
22 concerns raised with respect to confidentiality were there.
23 Given those concerns, the Society would seek redaction of
24 the identity of those individuals and any identifiers that
25 would potentially identify them.

1 Subject to your questions or comments, Mr.
2 Commissioner, those are my submissions.

3 **THE COMMISSIONER:** Thank you very much.

4 **MR. CHISHOLM:** Thank you.

5 **THE COMMISSIONER:** Mr. Callaghan?

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

7 **MR. CALLAGHAN:** My concerns at the moment
8 centre around the fixation on disclosure at the moment
9 because some of the documents are relative to hearings you
10 want to start on September 11th. I think that Mr. Manson,
11 for example, has touched on the issue with respect to
12 orders of non disclosure of names and he's pointed that for
13 the purpose of disclosure, that may be okay.

14 But I am concerned that we're going to get
15 on top of this pretty quickly in the sense that in the list
16 of names -- and I won't use any names per se because I
17 don't know what you're going to decide, but in the list of
18 names that's been given as people who are going to testify,
19 there would be convictions that were obtained in
20 circumstances where even our client wasn't there. The
21 Crown did a deal. The Crown went and the Crown got a
22 conviction. So I can't tell you with respect to work --
23 even our client did -- whether or not there's a publication
24 ban of those names and whether or not we then have to go
25 back to the court.

1 I'm not sure of the process. I know Mr.
2 Manson and we had a talk earlier about it. I'm not sure
3 he's certain of the process that would have to be
4 undertaken but those are names that are on the list which
5 we -- in fact, a number of them frankly that we'd have to
6 consider before September 11th. And I recognize you're here
7 on disclosure. I'm raising it because I don't want to -- I
8 don't want this to get lost because I don't want you to be
9 in a position on September 11th to say, "Oh, by the way,
10 what's happened" and I hear the concern today though.

11 **THE COMMISSIONER:** Give me the example again
12 now.

13 **MR. CALLAGHAN:** Well, I'll be very specific
14 and those who have the list can follow along. On the last
15 series of names on the list, there was a conviction
16 obtained by the Cornwall Police Services as a result of an
17 investigation done a number of years ago.

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

19 **MR. CALLAGHAN:** In the context of that
20 particular investigation, we would have done the
21 investigation, turned over the Crown brief to the Crown.
22 The Crown would then enter the discussions with defence
23 counsel and a plea bargain of some sort was arranged. Our
24 officers aren't necessarily told that that's done. They're
25 told that there's a conviction. So I couldn't even tell

1 you because they weren't there as to whether in the context
2 of that incident there was a publication ban.

3 So when we get to those witnesses, you're
4 going to look at me and say, "Mr. Callaghan, can't you tell
5 me there's a publication ban?" I can't, and it's something
6 I think we have to get on top of now so that whatever steps
7 that say -- Mr. Manson who is probably the expert in this
8 room on can tell us what maybe we have to do to ensure that
9 the rights are protected.

10 So I just raise that as an issue.

11 **THE COMMISSIONER:** The right of ---

12 **MR. CALLAGHAN:** The victims.

13 **THE COMMISSIONER:** Well, the victim who is
14 testifying here?

15 **MR. CALLAGHAN:** Yes, but as Mr. Manson will
16 tell you, in the case of the *Hilton Sisters* in Montreal,
17 they had -- even though they wanted to out their father,
18 they had to go to the court to get the lifting of the ban.
19 So they, themselves, can't waive the lifting.

20 Have I got that right, Mr. Manson?

21 **MR. MANSON:** That's my understanding.

22 **MR. CALLAGHAN:** We know that this is all
23 sort of a little bit real time but -- so I raise that issue
24 so that we're well aware of the issues going forward.

25 I raise another issue which is -- and it's

1 an issue that -- and I say this in the context of the list.
2 There's another series of witnesses who are going to
3 testify as to whether well-known prosecution in say the
4 mid-'80s, if that's not too descriptive, where one witness
5 is coming forward and yet there were a number of other
6 witnesses and victims who came forward. So I'm assuming
7 that counsel for the Commission will tell us they have the
8 consent of the victim who is testifying but there are at
9 least five, six, seven others who haven't been spoken to.
10 Again, the publication ban issue is also an issue in that
11 case because convictions were obtained.

12 But as a matter of the responsibility under
13 section 6 of the Order in Council and also sort of common
14 decency, somebody has got to take the responsibility, I
15 think, to advise these victims. If you conclude that there
16 isn't a restriction on the name, I think that as a common
17 decency someone should say, "Look, this case is going to be
18 discussed. Your name may well come up because that event
19 happened 20-some odd years ago." It may be subject to a
20 publication ban. At the very least, I'm sure it's in the
21 mysteries of time for them that they've gotten on with
22 their life and you can't -- if you're anywhere near this
23 town, you can't be unaware of the train that's coming down
24 the track but you may not know you're on it.

25 I must say I think and I know there's --

1 I've got a dispute with counsel. I know that the
2 Commission takes a broader view than Project Truth. I
3 think that the perception is this is Project Truth. We got
4 cases where multiple victims are not associated with
5 Project Truth, and I'm not sure those people are going to
6 accept it -- not accept, expect -- expect that this is
7 happening and that's not -- that may not result in a legal
8 requirement other than under section 6 but as a humanistic
9 issue, you know, we don't want to create mischief doing our
10 job here. This is not about victims necessarily. Victims
11 are there and they're necessary but it's about
12 institutional responses.

13 I know what the Supreme Court of Canada says
14 with respect to, you know, that there may be reputations
15 hurt but this is a little bit different and that's why this
16 inquiry, I think, sort of is somewhat different because of
17 the personal nature of the issues. I can't speak to
18 victims.

19 And that was my last point.

20 I think that the public -- I know that,
21 Commissioner, you don't have this view but I think the
22 public should understand while the institutions making
23 these comments, particularly the OPP, these are really
24 issues to protect individuals, whether they're victims or
25 whether they are -- whether they are suspects who, as we'll

1 hear in the next ones, who never were identified publicly
2 because they were never charged, et cetera. They're not
3 here. There is no one speaking on their behalf and I don't
4 want -- and I do have an institutional issue about trying
5 to get -- when you tell me when this decision comes down
6 and says, you know, as between us and the Commission
7 counsel, we're to do it.

8 I mean, we wrote to Commission counsel in
9 December last year. I know it's not a blame game but we
10 had raised this issue over nine months ago. But if you're
11 going to tell us to do it, you know, obviously I don't have
12 instructions but we'll probably suck it up and try to get
13 it done, but there has to be some clarity.

14 But it isn't about the institution, though.
15 The institution has their own concerns. It's about people.
16 It's about victims. It's about witnesses. It's about
17 suspects.

18 I just feel that their voice is not here.
19 And I want to use the twig that I was speaking to a very
20 senior lawyer this morning who expressed that the mischief
21 issue is a big issue. It's the mischief that would be done
22 to these individuals, whether it's because there is a leak
23 through the process of disclosure which I don't think that
24 there is -- that there could actually be. Regardless the
25 document, the undertaking will not satisfy the pain of an

1 individual. It may satisfy the court's admonition of its
2 ruling but it won't save the pain of the individual whose
3 name gets bandied around a bar as may -- having been a
4 victim -- and that's the mischief. You know, we have our
5 own concerns about getting ready for the inquiry and
6 they're real, but that's the real mischief that's here
7 today.

8 I raise these concerns because I think that
9 they have to be dealt with. I think that we shouldn't lose
10 sight that the real issue is not that far away. It's
11 within a hair's breath away in terms of the inquiry proper.

12 **THE COMMISSIONER:** Thank you.

13 **MR. CALLAGHAN:** Thank you.

14 **THE COMMISSIONER:** Mr. Sherriff-Scott?

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

16 **MR. SHERRIFF-SCOTT:** Good morning,
17 Commissioner.

18 **THE COMMISSIONER:** Good morning.

19 **MR. SHERRIFF-SCOTT:** I raise a practical
20 consideration for you to think about. In this sort of
21 technological zone where we find ourselves getting hard
22 drives as opposed to paper production, we all have to come
23 up with strategies to find documents. One of the simplest
24 and most compelling is to search a name, and if I don't
25 have a victim's name I can't prepare for the inquiry

1 without reading 20,000 documents to find them, as opposed
2 to key word searching it.

3 So from a practical utilitarian point of
4 view, which doesn't override the sensitive considerations
5 of privacy and other, there is a very serious issue about
6 counsel being able to prepare for the inquiry. So when I
7 confront a witness against potentially my client and I want
8 to find all of the documents that I don't have or never
9 have had, I'll need to be able to, not without reading
10 50,000 documents, find them and I can't do that without
11 names of victims, of witnesses, as opposed -- as well as
12 accused persons.

13 That's a reality. We're in here in this
14 technological zone for you to consider in terms of your
15 ruling and I would ask you to consider that as you digest
16 all this. I think what you're hearing is there is
17 overwhelming sensitivity to privacy issues and from the
18 point of view of the other points 8 and 9 that I spoke to
19 yesterday my approach to disclosure is I'm treating this as
20 sort of a civil discovery. The test, the threshold is
21 inordinately low. I'm not the adjudicator of relevance.
22 That's your job down the line and it's all without
23 prejudice to my views with relevance and so forth, as well
24 as the concerns I expressed about publication bans and so
25 forth.

1 The witnesses, the victims and the suspects,
2 et cetera, will all have to be treated in this zone with
3 respect to the technological issue and with respect to the
4 sensitivity issue, I would submit, in the same fashion.
5 They all have overwhelming and inordinate privacy
6 considerations.

7 Now, yesterday I raised an issue that Mr.
8 Engelmann reacted to by saying, "I don't know how we would
9 give disclosure piecemeal to particular clients". What I
10 meant to suggest to you as a practical consideration to the
11 point my friend Mr. Callaghan raised as a mischief is there
12 is a concern by a lot of people here that, for example,
13 disclosure, as you describe it, is in fact disclosure to
14 the public through clients and I know that they will
15 execute undertakings but, for example, Mr. Manson's client
16 is the public. Mr. Lee's clients are members of the public
17 although they have more limited interests. What I meant to
18 suggest yesterday is, for example, when the lawyer gets
19 disclosure and your order on the question of disclosure and
20 undertakings use the expression, I think, if it's not need
21 to know, it's something similar to that effect, the lawyer,
22 I would suggest, you've given admonition in this ruling
23 that the persons to whom that is disclosed, i.e., the
24 clients; so for example, in Mr. Lee's case of 48 people get
25 what they need pursuant to their interest as opposed to

1 excess disclosure. The lawyer can get everything because
2 Mr. Lee has got to look at the global picture but Mr. X who
3 was allegedly assaulted by Mr. Y shouldn't get the brief of
4 Mr. A. And that should be, I would submit, a directive by
5 you to counsel to consider, so that we don't run into the
6 type of mischief and at least we can neutralize at least
7 some of the concerns Mr. Callaghan has raised.

8 **THE COMMISSIONER:** Well, you represent a
9 number of individuals as well.

10 **MR. SHERRIFF-SCOTT:** I do, yes.

11 **THE COMMISSIONER:** So you're ---

12 **MR. SHERRIFF-SCOTT:** I'm happy to live by
13 those rules, Commissioner, as I said yesterday. What is
14 sauce for the goose is sauce for the gander. My client is
15 not interested in hearing about victims of personnel in
16 other institutions and it has nothing to do with our
17 interest or our case, and I would not be giving disclosure
18 to the Bishop of those things. And so I am happy to live
19 with that.

20 **THE COMMISSIONER:** But Mr. Lee says and I
21 think it was his argument that said, "I don't know the
22 whole story. My clients do. And so if I'm not giving them
23 the full names and stuff, maybe I am going to miss
24 something. Maybe somebody is going to twig to a name and
25 say, 'Aha!' and this is how it is relevant".

1 How do we deal with that?

2 **MR. SHERRIFF-SCOTT:** Well, I think what we
3 are dealing with here is we are looking at the
4 institutional response to allegations by particular
5 individuals. So first of all, there has to be an
6 individual, and that individual has to have been abused and
7 made an allegation to an institution. This process is not
8 investigatory in the sense that it doesn't go beyond that;
9 and so if Mr. Lee's client says, "Well, A knows something
10 about the case of B that was never disclosed to the
11 officers", well that's not up for grabs here.

12 And so I would submit that you will not run
13 into that confusion. What Mr. A will know about his case
14 is what he needs to know about his case, and all the
15 documents pertaining thereto should be given to him on his
16 execution of an undertaking, but a person who is an alleged
17 victim of the church, a church person, shouldn't be perhaps
18 getting documents of school board victims, et cetera.

19 I raise that as a consideration for you to
20 think about. I think it's at least some sort of practical
21 way of giving counsel some guidance to prevent some of the
22 mischief.

23 Thank you.

24 **THE COMMISSIONER:** Thank you. Mr. Carroll,
25 did you wish to add?

1 MR. CARROLL: Nothing to add.

2 THE COMMISSIONER: Thank you. Mr. Cipriano.

3 MR. CIPRIANO: Nothing to add.

4 THE COMMISSIONER: Thank you. Mr. Lee.

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

6 MR. LEE: Good morning.

7 THE COMMISSIONER: Good morning.

8 MR. LEE: I guess I will first address the
9 last point raised by Mr. Sherriff-Scott, and we discussed
10 this very briefly yesterday between the two of us.

11 Generally, I agree with him. There is no
12 reason for me to go to client A with documents about client
13 C. I don't understand why I would do that, what purpose it
14 would serve, it doesn't get me anywhere, it's not relevant.
15 I am going to go to each individual client with the
16 documents that pertain to that client.

17 My concern, and I don't have a specific
18 example in mind, I don't have something that I'm thinking
19 down the road where this may need to happen, but it occurs
20 to me that generally it could happen down the road that I
21 am trying to put the full picture together.

22 This Inquiry isn't about individual cases in
23 complete isolation of each other necessarily. There are
24 allegations, I suppose, there are suggestions certain of my
25 clients believe that things in Cornwall during the relevant

1 period fit together in a certain way that things are
2 connected; institutions were connected; persons were
3 connected; cases were connected; and the institutional
4 responses happened the way they did because of these
5 connections on a global scale. And it is possible, it
6 seems to me, that at some point I will need to sit down
7 with a client or a group of clients and say, "Here are some
8 documents relating to several people across the board that
9 I need help figuring how these piece together. What is
10 your take on it? What is your understanding of this?
11 What's your understanding of the relationship between A and
12 B and between C and D?"

13 Given what Mr. Sherriff-Scott suggested, my
14 reading of his suggestion is that wouldn't necessarily be
15 proper because A would be getting access to documents that
16 don't directly pertain to him. I think the admonition that
17 Mr. Sherriff-Scott talks about is appropriate and I think
18 it is something that we need to keep in mind and from a
19 practical point of view, I think that's the way things are
20 conducted anyways. That you are not talking to one client
21 about another client because it doesn't matter, it is not
22 relevant. You don't need the first client's opinion on the
23 second client, but generally I think there could come a
24 point in time and I think I should put it on the record
25 that there may be a time where obviously the clients have

1 signed undertakings, but they may need to see documents in
2 order to instruct me and to help me understand about
3 globally what is going on here.

4 **THE COMMISSIONER:** All right but again we
5 are looking at "maybes", and I understand that trying to
6 find an example is difficult. What about if we went along
7 with what Mr. Sherriff-Scott is saying under the proviso
8 that if you come as the lawyer for your clients to a
9 situation where you say, "Oh, I hadn't thought of this, and
10 this is a real situation", you come back and you seek
11 permission.

12 **MR. LEE:** Just to be perfectly clear, the
13 situation then would be that there would be a hard and fast
14 rule that client A is only entitled to see documents
15 directly related to client A. And if I want to show client
16 A a document that doesn't directly relate to him, I need to
17 seek leave; is that correct?

18 **THE COMMISSIONER:** No, we've gone afar here
19 in the sense that we're talking about number 6 and number
20 7. All right. We're talking about victims' names and
21 relating information. Because that's what we want to do is
22 protect people from -- that may have not been involved
23 directly or whatever -- and so those names would be given
24 to you. You would get the unredacted document.

25 **MR. LEE:** Right.

1 **THE COMMISSIONER:** And yes, you could not
2 show a document that relates to one client to another.
3 That would be the rule and with the proviso that if you
4 come up with an articulable reason, then you come back and
5 we deal with those matters on a case-by-case basis.

6 **MR. LEE:** My first comment, I suppose, is
7 are we only talking about number 6 here? My understanding
8 of Mr. Sherriff-Scott's submission was that this would
9 apply generally not just in terms of victims' names, in
10 terms of all of this information that we are debating about
11 right now. Maybe I'm wrong there but ---

12 **THE COMMISSIONER:** Come on up.

13 **MR. SHERRIFF-SCOTT:** I used the tired
14 expression "sauce for the goose is sauce for the gander",
15 which -- and so I meant it to pertain to the issues 8 and 9
16 as well as 7 and 6.

17 **THE COMMISSIONER:** Okay, so it's not in
18 every document. It's not -- you are not suggesting that we
19 silo everything, absolutely everything. You are talking
20 about matters that -- the names of suspects and the persons
21 getting -- the names is basically what you are talking
22 about?

23 **MR. SHERRIFF-SCOTT:** Yes.

24 **THE COMMISSIONER:** Okay.

25 **MR. SHERRIFF-SCOTT:** I am talking about the

1 victims -- what I said there has to be symmetry between the
2 names of victims and the names of witnesses and the names
3 of suspects, et cetera, on those.

4 Thank you.

5 **THE COMMISSIONER:** Right.

6 Mr. Lee, does that help you?

7 **MR. LEE:** I mean I think we are going to get
8 to the argument a little later, but I don't agree that the
9 names of victims and the names of suspects are akin to one
10 another or similar or could be treated the same way. I
11 think there's at least some validity to the idea that
12 victims' names need to be confidential; my opinion and I
13 stated it yesterday and I will state it again and it is my
14 opinion throughout, in all of these categories, I don't
15 know how I'd do my job without knowing this information.

16 **THE COMMISSIONER:** You?

17 **MR. LEE:** Yes.

18 **THE COMMISSIONER:** You are going to get it
19 all.

20 **MR. LEE:** Perhaps I am going to get it all.
21 We don't have your ruling yet, perhaps ---

22 **THE COMMISSIONER:** No, but under what we
23 have been talking about is for 6 and 7 at least I am
24 looking at is that the disclosure would be that you would
25 get those names.

1 **MR. LEE:** Right. Okay, if we are going on
2 the premise that I get these names.

3 **THE COMMISSIONER:** But what Mr. Sherriff-
4 Scott is saying is you get those names, you can divulge --
5 well presumably your victim would know his case.

6 **MR. LEE:** Right.

7 **THE COMMISSIONER:** So you would be able to
8 show him that.

9 **MR. LEE:** Of course.

10 **THE COMMISSIONER:** You wouldn't be able to
11 show him or her the names of other people in another
12 investigation.

13 **MR. LEE:** Right. Subject to coming here
14 with a valid explanation for it.

15 **THE COMMISSIONER:** Exactly.

16 **MR. LEE:** I mean -- to be honest with you, I
17 don't particularly have a problem with that of going on a
18 need-to-know basis as far as the names go. I mean the
19 names may not be relevant anyways, it's the information.
20 To my client the names may not be relevant. To me, I
21 believe the names are relevant because I need to see
22 whether or not, as I've said, whether or not there are
23 connections, the people, the relationships, everything
24 else.

25 As far as the clients, my understanding is

1 this is going to proceed on a need-to-know basis as it is
2 with all of this information. And I don't see why the
3 victims' names or witness names are really any different
4 than that.

5 **THE COMMISSIONER:** Okay.

6 **MR. LEE:** As I was saying, Mr. Commissioner,
7 my submission throughout is specifically related to 6 and 7
8 and that we need this information, and I'm sensitive to the
9 privacy issues here. I represent the Victims Group, I
10 don't represent victims generally, I represent a specific
11 number of people. Obviously I am sensitive to the idea of
12 -- I have one client who has filed an affidavit for
13 standing and funding who requested that only his initials
14 be used. I have clients who will take the stand who will
15 request that they not be identified, who will seek
16 confidentiality measures.

17 At the disclosure stage though, and I think
18 that is still an important distinction, at the disclosure
19 stage, my clients recognize this information needs to be
20 out. You don't have my clients coming here and saying,
21 "Okay, well, you know we put some thought into it, and
22 after the disclosure stage, let's go on this".

23 There is a recognition that at disclosure to
24 these parties, to these lawyers that in order to allow us
25 to do our jobs, we need the names, we need the information,

1 we need the documents. As I said, I don't claim that this
2 is an easy balancing act, Mr. Commissioner, but I think the
3 protections that we have in place are good ones. I think
4 we have done all we can, and I think this information needs
5 to be disclosed. I think we need to deal with the more
6 significant issues of privacy and of confidentiality when
7 it comes to these documents being put into evidence and
8 becoming public. But that is not where we are at and so I
9 again say that, in my opinion, the business of this Inquiry
10 requires that this information be produced.

11 **THE COMMISSIONER:** Thank you.

12 **MR. LEE:** Thank you.

13 **THE COMMISSIONER:** Mr. Manson, you are on
14 the list. Did you wish to add anything?

15 **MR. MANSON:** Yes.

16 **THE COMMISSIONER:** Thank you.

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

18 **MR. MANSON:** Our position is simple. All of
19 these names are relevant. They are necessary to make
20 disclosure useful. I echo Mr. Sherriff-Scott's concerns
21 about the practicalities. I have started looking through
22 and coding disclosure that we have received and it's a long
23 process, but to make any use of it, we need these names.

24 We have addressed this in paragraph 10 of
25 our submission. We are not concerned about personal

1 information like addresses, phone numbers, and SIN numbers.
2 That's not relevant and we don't need that. I do want to
3 say that I have gone through your order of August 10th with
4 my clients. They understand its impact. They understand
5 what the potential of a contempt proceeding is, and they
6 take these matters very, very seriously. Mr. Sherriff-
7 Scott suggested that my client is the public. I think that
8 is a bit of an exaggeration there. The Citizens Group,
9 they are a distinct entity. I have heard this a number of
10 times that disclosure to your client is disclosure to the
11 public, and I would suggest that that is an exaggeration.

12 In respect to Mr. Sherriff-Scott's
13 suggestion that there could be conditions on disclosure to
14 clients, our position is it would not be helpful and it
15 certainly wouldn't be -- it wouldn't be applicable and
16 certainly wouldn't be helpful to our situation. We are
17 looking at the whole picture globally and trying to make
18 sense of it, and we do need the constant advice of a very
19 small group of people. We have four who signed
20 undertakings. I am constantly coming up with names and
21 situations that are foreign to me. And rather than
22 investing a lot of time, it is easier to ask someone what
23 is this about and getting some background, so we can
24 proceed with the coding of documents, which is our way of
25 dealing with the disclosure.

1 We use a particular software program called
2 "Summation" and to make use of the documents, each document
3 has to be coded according to a variety of fields. It is a
4 slow process to do without names of the victims and the
5 witnesses ---

6 **THE COMMISSIONER:** Well, I think we are
7 exploring, I thought, the issue of giving the names out but
8 not giving the -- on the condition that you don't give it
9 to your clients unless we come back and have an articulable
10 reason for so doing. Because again, and I hearken back if
11 -- you know, if in this whole pile or pool of documents we
12 are going to use this many this may all be irrelevant.

13 **MR. MANSON:** That's true, Mr. Commissioner,
14 but to require us to come back and seek your permission,
15 let me just say you and I would become the closest of
16 friends because I would be talking to you every five
17 minutes. It's a mass of documents that we're looking at,
18 and we start knowing little tidbits of information. New
19 situations, new names, new places pop up constantly, and
20 it's so much easier to call my clients and ask who is so
21 and so, and they usually know. That helps me put the whole
22 matter in -- is it relevant? Can I go through -- can I
23 just ignore this little group of documents or should I be
24 reading every one and coding them?

25 **THE COMMISSIONER:** Well, the coding part is

1 an administrative function and I can see that.

2 **MR. MANSON:** The coding is the key, Mr.
3 Commissioner, because without doing that they're ---

4 **THE COMMISSIONER:** I understand what you're
5 saying.

6 I wasn't hoping necessarily to make a whole
7 lot of friends here.

8 **(LAUGHTER/RIRES)**

9 **MR. MANSON:** I only meant that one of us
10 would be with the other constantly because if that was the
11 situation that we required permission.

12 **THE COMMISSIONER:** My lament is, I suppose,
13 Mr. Manson, is that I don't seem to have any friends around
14 here.

15 **(LAUGHTER/RIRES)**

16 **MR. MANSON:** That's not true, Mr.
17 Commissioner. That's not true.

18 **THE COMMISSIONER:** Well ---

19 **MR. MANSON:** But I have always believed that
20 if you have two friends in the world, that's enough.

21 **THE COMMISSIONER:** Yes, well, I look in the
22 mirror, that's two. The other thing, you know, is it's
23 like human nature, and it's not a reflection of your
24 clients or anybody's clients but in bed at night the pillow
25 is there and you just start talking and then the next

1 morning something slips out to somebody else. It's just
2 human nature.

3 I suppose we've got to consider ---

4 **MR. MANSON:** Can I address that for one
5 second.

6 **THE COMMISSIONER:** Sure.

7 **MR. MANSON:** Just to be completely frank, we
8 have four undertakings signed. We do not intend to have
9 any other signed and to address that concern we, the two
10 spouses, have signed undertakings. They are part of the
11 four.

12 **THE COMMISSIONER:** I know, and I said I am
13 not even looking at who is signing what undertakings or
14 whatever. It's just ---

15 **MR. MANSON:** I wouldn't have mentioned it
16 other than you raised it.

17 **THE COMMISSIONER:** Well, there you go.

18 It's a difficult situation and that's all I
19 can say is in balancing the needs of this Inquiry, we have
20 set some important goals. It will be interesting to see.
21 We may become very good friends after all, Mr. Manson.

22 **MR. MANSON:** Perhaps. Thank you, Mr.
23 Commissioner.

24 **THE COMMISSIONER:** Thank you.
25 Mr. Engelmann.

1 **MR. ENGELMANN:** I just wanted to say I found
2 the clarification by Mr. Sherriff-Scott of his comments
3 from yesterday quite helpful. I clearly misunderstood his
4 issue with respect to piecemeal disclosure. As I
5 understand it now it's more perhaps circumscribing what is
6 meant by need to know in the undertaking of parties to the
7 Cornwall Public Inquiry as clearly in that undertaking as
8 opposed to the undertaking of counsel in paragraph 3. It
9 does say, "I understand that these documents and
10 information are shown to me on a need to know basis only".
11 So I'm sure that there will be some discussions generated
12 as a result of that.

13 I found that clarification quite helpful.

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

15 **MR. ENGELMANN:** I believe, therefore,
16 everybody has now commented on Items 6 and 7. I just
17 wanted to add, I think a number of counsel talked about
18 practicalities and feasibilities, and I think those
19 practicalities and feasibilities are not just with respect
20 to how counsel view the documents in electronic form but
21 how redactions and/or unredactions are done as well and the
22 feasibility of doing certain things with the amount of
23 information we have at this stage and at later stages.

24 I'm certainly cognizant of Mr. Callaghan's
25 comments about matters that are upcoming and I'm sure he

1 has addressed those issues with the Crown and since I
2 certainly understand his issue that Cornwall police
3 officers may not be present when publication bans are
4 issued, et cetera, and we are having discussions with the
5 Crown on those issues as well. But let's deal with what we
6 are here for today.

7 And I am just going to ask counsel if they
8 want to speak to Items 8, 9 and 10. Again, perhaps we
9 could start with Ms. Brannan.

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

11 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO**

12 **BRANNAN:**

13 **MS. SACCOCCIO BRANNAN:** Thank you, Mr.
14 Engelmann.

15 Mr. Commissioner, in addressing number 8, 9
16 and 10, I will go to number 10. It's the easiest for me to
17 address, the quickest.

18 Persons acquitted; charges stayed; charges
19 withdrawn; none of those names were redacted by the Ontario
20 Provincial Police.

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

22 **MS. SACCOCCIO BRANNAN:** With respect to
23 numbers 8 and 9, I will deal with those together: Names of
24 suspects dead or alive investigated but never charged; and
25 persons of interest dead or alive named but never

1 investigated.

2 With respect to this group of individuals,
3 the Ontario Provincial Police do not publish or publicize
4 the name of suspects who are investigated but never
5 charged, and it is for that reason that those names and any
6 identifiers have been redacted in the 57 boxes.

7 When I heard Mr. Callaghan speak of the
8 mischief for victims, I'm very sympathetic to that, having
9 a substantial victims practice, but I too can see the other
10 side, and that is the mischief that can be caused with the
11 publication of the name of a suspect, dead or alive, who
12 was investigated but never charged. And we saw what
13 occurred in this community when charges were about to be
14 laid. People took their lives.

15 It would be huge mischief, I think, in the
16 case of an individual who was a suspect, who was
17 investigated and never charged to have that individual's
18 name back out in the community, even disclosure to counsel
19 and their clients, without those people being told that
20 this is going to happen, in fairness to them. We don't
21 know what these people are doing in this community right
22 now. We don't know what positions they hold in this
23 community. We don't know what their families know and, in
24 fairness to them, they should be protected.

25 I don't see a difference at the end of the

1 day where you may have your heartstrings tugged towards the
2 victim and some may say the suspect -- well, a suspect is a
3 suspect. I don't feel that way. I sat and I thought about
4 it very carefully and these people find themselves in
5 exactly the same position. If their names are going to be
6 put out there, they should be told. They should be asked
7 and their consent should be obtained. If at the end of the
8 day those names are not going to be -- or evidence isn't
9 going to be called to involve those names, then there is no
10 need to put them out there in the first place.

11 Those are my submissions with respect to 7,
12 8 and 9 -- pardon me -- 8, 9 and 10. Thank you.

13 **THE COMMISSIONER:** Thank you.

14 **MR. CHISHOLM:** No submission, sir.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Callaghan.

17 --- **SUBMISSIONS BY/REPRESENTATIONS PAR MR. CALLAGHAN:**

18 **MR. CALLAGHAN:** This is actually a topic
19 I've discussed with counsel on a number of occasions. I
20 see this issue as having three components; two are
21 interrelated which is -- one is a policing issue, a public
22 safety and investigatory issue and the next is a humanistic
23 issue that Ms. Brannan talked about.

24 As you are aware, there is no limitation
25 period. So consequently, if we are to hear allegations

1 that have not concluded and have not been investigated,
2 that's a problem. It's a problem insofar as the policing
3 process has not taken place. You would, in that context,
4 run into two problems. The first problem is that if facts
5 are to be given that disclose a crime, then obviously a
6 policing agency are going to have to deal with it which
7 would, in my respectful view, invoke, I believe, it's
8 paragraph 7 of the Order in Council and create an ongoing
9 issue. So to the extent it hasn't been investigated,
10 that's an issue.

11 To the extent it hasn't been investigated is
12 a matter of police procedure, it is customary for police
13 not to approach a suspect until they've done their
14 investigation. It's a matter of police techniques. And I
15 recognize I glossed over that part in the earlier but since
16 we haven't -- since you have not -- I'll raise it.

17 That would be a problem because now you are
18 going to identify to a victim -- pardon me -- to a suspect,
19 that they are under investigation. That causes problems
20 insofar as now the suspect has an opportunity to deal with
21 the issue, consider the issue; consider their position
22 before he is confronted.

23 I recognize, Mr. Commissioner, this is not a
24 policing process. There is a statutory scheme. There is a
25 constitutional and statutory scheme for policing and it

1 resides for better or for worse, for whatever people think,
2 in this community with the Cornwall Police and outside this
3 community, the OPP. That's what happens. And so that's of
4 concern.

5 On the flip side though, of course, if you
6 are going to get into people who are suspect but never
7 charged, many of those people wouldn't know they were
8 suspects. You will be creating a situation where somebody
9 either never took the time to give full particulars as to
10 the offence, in which case it was never properly
11 investigated or where it was investigated and there were no
12 reasonable probable grounds. And in those circumstances,
13 that person might not know they were under investigation.
14 Their life will come tumbling down.

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

16 **MR. CALLAGHAN:** One only has to take a
17 moment to read the allegations in the *Regina V. MacDonald*
18 brief provided by the OPP to read a particular individual's
19 take on the number of people who were offenders in this
20 community. And whether those have been on the web, whether
21 they have been a matter of barroom talk is not an issue
22 that should ameliorate the concern. These are people who
23 are either some are outstanding people in the community;
24 some are just ordinary people who have nothing to do with
25 it, and it would be very disconcerting if their names get

1 out there, and it may be to the point where it should be
2 disclosure, as a matter of disclosure.

3 It's problematic and it's problematic (a)
4 going back to the issue I made mention because none of them
5 are here to give their view, and I don't know how you'd get
6 them unless someone approached them and said, "By the way,
7 I'm sorry to tell you. You were raised as a victim". Some
8 would know because some -- again, reading that brief alone
9 you'll see that many of them were interviewed. But it's a
10 prickly -- it's the same problem you've got, and I think
11 it's the same problem you have regarding victims.

12 **THE COMMISSIONER:** I though you said with --
13 -

14 **MR. CALLAGHAN:** But it is -- and to
15 reiterate what Ms. Brannan said, it is -- aside from the
16 policing concerns and the humanistic concerns, it's no
17 different than victims, whether people want to say, "Oh,
18 well, you know, regardless of whether the police got it,
19 they are the ones that were doing things". Regardless of
20 that sort of suspicion, the issue that you started this
21 whole Inquiry with is we are going to get past the innuendo
22 and get to the facts. It is a concern on a humanistic
23 level.

24 **THE COMMISSIONER:** No, I understand that.
25 What about the concern that if parties don't get the name

1 that -- you know, the issue of collusion or cover up, and
2 so the reason why we are not giving those names is because
3 they are prominent people and the fix is in and we are
4 going to continue the fix here?

5 **MR. CALLAGHAN:** And that is a real concern
6 for this inquiry. But let me tell you that there are a
7 couple of -- that's something that your counsel has to take
8 great measure and has to make that determination. That's
9 why the bulk disclosure is a problem. To just disclose for
10 the sake of disclosure without having said, "You know what?
11 That is central to this". That's central. Those
12 allegations are central. I'm sorry. For the better of
13 this inquiry we have to deal with it. We'll try to take
14 whatever precautions we can and you may conclude at the
15 appropriate time saying, "You know what? I'm sorry, until
16 I hear it all, there will be a publication ban" or we don't
17 want to do an *Arar* where they had to hear all the evidence
18 and hear it twice. I know that's not what we want to do.

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

20 **MR. CALLAGHAN:** But I'm just concerned about
21 rushing through that part of it without pausing and having
22 a thoughtful review of the documents to say do we really
23 need to do that?

24 If the cover up issue is that prominent that
25 you need to do it, that there is enough weight to it that

1 you need to consider it or that you feel that it has a
2 public airing, that's obviously something that has to be
3 considered and your counsel has to consider it carefully
4 and present to you that issue without doing the bulk
5 disclosure because within the rest of that disclosure I'd
6 be getting cases where there hasn't been a full
7 investigation because we never got a full statement from
8 anybody. Kind of what they talked about the OPP when they
9 testified. So someone comes and says, "Oh, I was assaulted
10 by Bob." "Do you have a statement?" "No, I'm not going to
11 talk to you anymore."

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

13 **MR. CALLAGHAN:** So now Bob's name gets
14 driven out there for the bulk disclosure reason. That to
15 me is a little problematic.

16 If it's central -- if it's central then that
17 has to be considered on its face, I think, and it may be
18 that you conclude that they are sufficient there either
19 because of the public concern; that is, that it's just, you
20 know, one -- I mean, I come back. The Attorney General
21 didn't wake up and look at his burnt toast and say, "I've
22 got to call an inquiry in Cornwall". This pre-dated all
23 the stuff regarding Project Truth, and that may be valid.
24 But I still think that there is an element of whether you
25 notify people or however you do it, to let them know that

1 you know what? Those allegations -- whilst policing
2 authorities found there was no reasonable probable grounds,
3 whilst we may not as Commission investigators or Commission
4 counsel having read it see no reasonable probable grounds,
5 we feel that nonetheless because of the mandate, because of
6 the public cleansing, to use an overly dramatic term, we
7 need to do that. That to me may be the appropriate way to
8 do it. But that's a nuanced approach.

9 **THE COMMISSIONER:** But then you're sucking
10 and blowing in a sense when you're saying but then we are
11 going to alert those suspects who may be ---

12 **MR. CALLAGHAN:** But that's different than
13 saying, well, you know, we don't have the time to do it so
14 we'll just disclose it all because that's the bulk
15 disclosure approach, which is -- and I hear you. You know,
16 this Inquiry was called for a specific reason in my view.
17 You know, I see the mandate a little different. I see it
18 as a Project Truth mandate. It was caused -- and you may
19 say that's just unfortunate, that these people got caught
20 in the web. I can think of one individual -- if you read
21 the transcripts -- who has been alleged to have been a
22 pedophile over and over again in this community and the guy
23 who puts him down as one when he is cross-examined at a
24 deposition says, no, he wasn't. And yet, it's all going to
25 go out there and it's going to be reiterated once again.

1 It's the very issue you started the Inquiry
2 with, which is this is the very essence of the difficulty
3 with this Inquiry.

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

5 **MR. CALLAGHAN:** And it may require a nuanced
6 approach and the bulk disclosure may not allow for that
7 nuanced approach is what I'm trying to suggest and I think
8 that, you know, there is -- it's a difficult issue.

9 **THE COMMISSIONER:** But that's fine. You
10 know I can go along and lead counsel can go and counsel can
11 go through all that, but I can hear Messrs. Manson and Lee
12 saying, wait a minute here; we want to form our own opinion
13 and so we need those names. And so maybe they don't trust
14 me. They don't trust Mr. ---

15 **MR. CALLAGHAN:** Oh, perish the thought.

16 **THE COMMISSIONER:** You don't read
17 newspapers, do you?

18 **(LAUGHTER/RIRES)**

19 **THE COMMISSIONER:** But you know to be able
20 to be transparent so that we can have everyone looking at
21 the same thing and saying maybe we come up with a consensus
22 in the end, you know, that these things aren't important or
23 maybe they were important, things like that. But I think
24 that ---

25 **MR. CALLAGHAN:** Maybe for disclosure. I

1 mean, I'm working through this as we work as well because
2 on the issue of disclosure, it may be that you can get to
3 that issue, but that doesn't mean that when you get to the
4 hearing, you are not going to have a heck of a problem
5 dealing with it. Again, just I feel very -- I feel very
6 queasy given the material that I've read and, you know, I'm
7 with everybody else. It's been very difficult to slog
8 through that material. I have picked out very distinct
9 things to read.

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

11 **MR. CALLAGHAN:** And I was astounded because
12 notwithstanding everybody thinks the Cornwall Police know
13 all about it, we don't, because Project Truth was done by
14 the OPP.

15 **THE COMMISSIONER:** Yes.

16 **THE CALLAGHAN:** It is the breadth of the
17 allegations that were never proceeded -- were never
18 concluded as being with merit is an issue, and I don't know
19 -- it's up to the OPP. I've got files which frankly aren't
20 associated with Project Truth, but because of the mandate
21 of interpretation are there in which -- in which people
22 were never told that they were being investigated. Now, I
23 am dealing with Commission counsel on that, and that's a
24 problem from a policing perspective because either you're
25 outing someone for which there is no merit or otherwise

1 you're going to affect an investigation. That's a
2 different issue. This issue -- you know, it's a real
3 issue. I think that at some point someone is going to
4 pause and say "Do we need it?" and if we do, maybe counsel
5 will have to reconvene and say, "Do you need it?" and you
6 may have to hear in-camera discussions saying, "You know
7 what? I'm afraid you have got to find another way,
8 gentleman" -- or people, sorry -- "Ladies and gentlemen,
9 you have to find another way. Go back." That may be it.

10 Maybe we can get through the disclosure
11 stage, but it is problematic on the wider issue. On the
12 other issue I don't think if there hasn't been a concluded
13 investigation, I don't think you can disclose it at all.

14 **THE COMMISSIONER:** Do you have any of those?

15 **MR. CALLAGHAN:** Yes, I have talked to --
16 yes, because the people never came forward. People come
17 and say, "Bob" -- "I've got a complaint about Bob. Can you
18 give me a statement?" The guy wouldn't come forward. And
19 now, if that gets disseminated, either you're going to
20 affect an on investigation because there is no limitation
21 period ---

22 **THE COMMISSIONER:** If it gets disclosed?

23 **MR. CALLAGHAN:** Yes.

24 **THE COMMISSIONER:** And what happens if it
25 gets disclosed to the lawyers and to the people that have

1 bound not to say anything?

2 **MR. CALLAGHAN:** This is something that would
3 never be disclosed and I don't think -- I think it's beyond
4 the mandate of the Inquiry, which is to deal with criminal
5 prosecutions -- pardon me, police investigations and
6 criminal prosecutions relating to these allegations have
7 concluded. That's what the premise of this Inquiry is, and
8 these haven't concluded because they haven't been
9 investigated, because there hasn't been enough to
10 investigate.

11 **THE COMMISSIONER:** Well, you say it's
12 because it hasn't been ---

13 **MR. CALLAGHAN:** Right.

14 **THE COMMISSIONER:** Maybe it has improperly
15 not been investigated.

16 **MR. CALLAGHAN:** Well, and that may be, and
17 it may be -- it may be that we can deal with that as an
18 issue, as a statement of fact issue that you say, "Well,
19 you know what? I don't care whether the guy doesn't want
20 to give a statement. That's not sufficient" -- that all
21 the reasons that we have talked about in terms of re-
22 victimization, the issues with respect to the police don't
23 conduct investigations in the absence of a complainant,
24 those aren't valid when you're dealing with someone who is
25 in the community, and that's free for you to say as an

1 opinion at the end of the day. I don't think you need to
2 get into the files to say that.

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

4 **MR. CALLAGHAN:** I think you probably heard
5 enough evidence; you can hear in the totality of what you
6 say and say, "You know, this is a very serious problem in
7 our community, not just in Cornwall, across our community
8 and that is not a sufficient answer." But that has to be
9 something you weigh against the issue that I'm talking
10 about.

11 **THE COMMISSIONER:** I guess the other
12 situation is you've read material.

13 **MR. CALLAGHAN:** Yes.

14 **THE COMMISSIONER:** I haven't.

15 **MR. CALLAGAN:** It's been a long summer.

16 **(LAUGHTER/RIRES)**

17 **MR. CALLAGHAN:** I know what you're saying,
18 and you haven't read it either.

19 **THE COMMISSIONER:** So you are telling me
20 things not improperly obviously ---

21 **MR. CALLAGHAN:** No.

22 **THE COMMISSIONER:** --- you're raising
23 concerns that I can't relate to, I suppose.

24 **MR. CALLAGHAN:** I know, and I think -- you
25 know, I don't want to talk about the evidentiary vacuum,

1 but you have to understand it because the difficulty I have
2 is it's not just this institution. It's not just these --
3 it's other people. In my case, it's the administration of
4 justice at one end; that is, the proper investigation of
5 police, which isn't just the institution; that goes to the
6 interest of the public. Next to that, you have -- and I'm
7 not suggesting the Commission is taking that lightly. I'm
8 just suggesting that -- that's not just me, that's just not
9 -- turf protection, if I can put it that way.

10 The other way is individuals -- the other
11 part of this is individual interests that we are trying to
12 articulate, which I'm not -- none of my -- well, I
13 shouldn't say none of my clients. I suspect some of them
14 are there in those documents. In fact, I can tell you they
15 are. But you know, I'm not here to talk about them as
16 individuals. They have to be considered and unfortunately
17 you are the only one in the position that can say, "You
18 know what? I hear you guys. I can take their concerted
19 interest" -- and maybe you say, "Look, someone has got to
20 find someone to stand up in this room and say it. Maybe we
21 need an *amicus curiae* to say, "You know, I'm here for the
22 victims. I'm here for the suspects", and I hear the issue
23 about costs. I'm not insensitive, but there is an Order in
24 Council. The Order in Council says in paragraph 6 what it
25 says.

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

2 **MR. CALLAGHAN:** The Attorney General thinks
3 if it's costing too much, the Attorney General can change
4 the Order in Council. That would be the resolution. But
5 it may be necessary for you to hear an *amicus curiae*
6 saying, "Look, these guys are doing what they can", but
7 somebody has got to stand up for these people and say what
8 is the proper result.

9 You know, I hope people take our submissions
10 as -- I forgot my institutional concerns, which I have
11 articulated *ad nauseum* about being able to do this in
12 getting ready for the Inquiry, and I know you don't want to
13 hear about that, but I hope they take this submission in
14 the heart in which it's meant, which is we are here as a
15 proxy because nobody else is here. In other words, we're
16 taking the position that the victims and the suspects and
17 the witnesses -- because we can see it from our
18 perspective, but we are not them. We cannot articulate all
19 that they might articulate from our perspective. And it
20 may be that you cannot get someone to come forward as one
21 of those people who don't want to participate because
22 obviously Mr. Lee's clients want to participate.

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

24 **MR. CALLAGHAN:** But there's a whole slew --
25 I mean, the disclosure is rife with it, particularly in the

1 Project Truth stuff. Ours is probably a little bit more
2 contained but, as I articulated earlier, at least one of
3 those investigations right off the bat has about seven or
4 eight other victims whose names will now come up, without
5 doubt, in the course of the discussion regarding this one
6 victim to discuss how the case proceeded and how -- I mean,
7 I'll raise it because I want to be able to say, look, you
8 started with one victim and we were able to get seven or
9 eight victims together and build a really good case.
10 Aren't we a good police force? I mean, that's going to be
11 my pitch. But that doesn't mean those other eight people
12 want their names out here or even want to have them
13 disseminated.

14 So what I'm trying to articulate again is
15 that I'm not sure I'm doing justice to their position. I'm
16 trying to articulate their position through my
17 institution's eyes. I'm not sure that's sufficient.

18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Sherriff-Scott.

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

22 **MR. SHERRIFF-SCOTT:** Just two very brief
23 points again on the practicality side that occurred to me
24 as I was listening to these arguments.

25 First, I echo the concerns of my friends on

1 these issues, but I think that these concerns -- and I
2 think these are concerns that all the counsel share,
3 notwithstanding the difficulty we may have about finding
4 out about cases against our clients or how they are
5 affecting the community, et cetera -- all of these concerns
6 that you heard auger for, I would submit, a stricter
7 approach in terms of the disclosure, which I described to
8 you in terms of making counsel accountable.

9 But I would suggest this as well and
10 particularly as a result of the comments you made about how
11 things get out and it's human nature. Perhaps it's time
12 that we address the question -- I appreciate this is a
13 disclosure discussion but given the nature of the concerns
14 we are hearing, perhaps it's time that we consider before
15 we get into the evidence the question of a publication ban,
16 which I'm prepared to address at least insofar as the
17 interests that I have identified are relevant, because
18 supplementing the restrictions that you place on disclosure
19 that would give another layer of protection to ensure that
20 if there was inadvertent disclosure, then those in the
21 community at large, third parties, who wouldn't be caught
22 by the undertaking who may be the recipients of the
23 information would be enjoined from publication, thus
24 working the mischief that may occasion as a result of some
25 slippage.

1 So I throw that out there for your
2 consideration and, as I have indicated to Mr. Engelmann, I
3 have told him I'm going to take this position and then I'm
4 prepared to argument at the convenience of the Tribunal.

5 Thank you.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Carroll.

8 **MR. CARROLL:** Nothing to add. Thank you.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Cipriano.

11 **MR. CIPRIANO:** Nothing to add.

12 **THE COMMISSIONER:** Mr. Lee.

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

14 **MR. LEE:** Mr. Commissioner, everyone echoes
15 these concerns. Everyone echoes the fact that -- I'm very
16 pleased that I am not in the position of potentially having
17 my name in a document as someone who was suspect or someone
18 who is a person of interest in one of these investigations.

19 That being said, nothing could go more to
20 the heart of the subject matter of this Inquiry than the
21 decision to charge or to not charge a person who is
22 investigated or a person of interest. That's exactly what
23 we are here about. That's a major, major issue in this
24 Inquiry. Allegations were made, suspicion was raised and
25 something was done or something was not done. In these

1 cases, it got to the point where charges were not laid.
2 Why were the charges not laid? This is exactly what we are
3 here to assess. This is exactly what we are here to
4 comment on and that's exactly -- the only way we can do
5 that is through these documents. This is information that
6 goes directly, directly to the heart of a major issue at
7 this inquiry and again, to use the line I have used I think
8 three times in the last two days, I don't see how we can do
9 what we are here to do without knowing this information.

10 **THE COMMISSIONER:** Thank you.

11 Mr. Manson.

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

13 **MR. MANSON:** It's clear to everybody that
14 the citizens of Cornwall have, over the past decade
15 suffered a variety of harm related to the issues, which
16 this Commission was created to inquire into. My clients
17 are very concerned not to cause any further harm to victims
18 or to anybody who may have suffered in the past who would
19 suffer in the future by the public knowledge of their
20 innocent relation to these issues. But we are talking
21 about disclosure, Mr. Commissioner. I think everyone has
22 to have confidence in the process and your order of August
23 10th. When it comes time to deal with potential public
24 dissemination, I can assure you that our clients will
25 address that matter very, very seriously and will be very

1 sensitive to the concerns that you've heard expressed.

2 I echo Mr. Lee's comments about the
3 centrality of this issue. In our submission, Mr.
4 Commissioner, in paragraph 3, we set out what we believe
5 are the three rationalia for disclosure. The second one,
6 you alluded to it, at the top of page 2.

7 "To enhance public confidence in the
8 Inquiry process by ensuring that all
9 parties with standing have full access
10 to relevant documents, thereby allaying
11 fears that some of the material has
12 been kept hidden by institutions from
13 the public."

14 I've had many conversations with counsel
15 over the past few weeks because this has been a major
16 concern of ours, people investigated and not charged. I
17 can offer many, many examples why that is necessary
18 material for the purpose of preparing for the Inquiry.

19 If I can just digress for a minute to
20 address Mr. Callaghan's comments about paragraph 7 of the
21 Terms of Reference, where you're precluded from inquiring
22 into matters, which are the subject of ongoing legal
23 proceedings. I don't accept his characterization of a file
24 where someone 20 years ago walked into the police station,
25 said something and it wasn't pursued and, therefore,

1 because there's no limitation period, it's still an ongoing
2 legal proceeding. It seems to me that a file that's been
3 left on the shelf is a file that's left on the shelf.
4 That's different than an ongoing investigation. We're not
5 raising the problem of ongoing investigations or ongoing
6 legal proceedings.

7 But in a nutshell in paragraph 14, we
8 explain why this material is essential, and we would
9 further add, Mr. Commissioner, that no one yet has raised
10 the juridical basis to refuse to disclose this material.
11 And again we're talking only about disclosure at this time.

12 Thank you, Mr. Commissioner.

13 **THE COMMISSIONER:** Thank you.

14 **MR. ENGELMANN:** Just on the last point, I
15 think that juridical basis -- excuse my pronunciation --
16 has been resolved in the sense that the YCJA and the
17 confidential police informant issues have been dealt with.
18 So I would echo Mr. Manson's last statement that at this
19 stage there are none outstanding.

20 I also want to make the point and I want to
21 reiterate the point we are talking about the disclosure
22 stage here, and I listen to comments that are being made
23 about issues like, "well, when it's put out there, if we
24 are to hear allegations that have not been investigated",
25 that is a stage we will come to. Commission counsel have

1 an obligation to act in the public interest. We have an
2 obligation to follow section 6 of the Order in Council and
3 balance those rights, those rights to a public hearing,
4 those rights to privacy. We take that responsibility very
5 seriously.

6 So because people are here saying, "This is
7 the disclosure stage as opposed to the publication stage"
8 doesn't mean that those individuals or their clients take
9 this any less seriously. Those privacy rights, whether
10 they be victims, whether they be alleged victims, whether
11 they be witnesses, whether they be suspects, perpetrators,
12 alleged perpetrators, whatever. I think everyone in this
13 room, as counsel, that is appearing in this Inquiry knows
14 that there's a balancing act that has to go on. Part of
15 that balancing act is feasibility and practicality. And if
16 before every Commission of Inquiry, especially every public
17 inquiry started, Commission counsel would have to review
18 and decide every witness, every point that was going to be
19 called during the course of the inquiry before you could
20 start with any form of disclosures so parties could
21 prepare, there would be inevitably, very, very lengthy
22 delays.

23 We are in no way trying to sacrifice
24 anybody's rights by expediency. That has been the purpose
25 of developing undertakings. That has been the purpose of

1 asking for an order, which thankfully was unopposed and
2 that is there. And there are a number of other issues --
3 we've heard a number of things about, "well, let's
4 circumscribe the mandate this way" or "let's deal with a
5 publication ban". I mean, I know these things are coming
6 and they're coming soon, but let's stick to the issue we're
7 dealing with today. And when it comes, if there is an
8 application for a publication ban and Mr. Sherriff-Scott
9 assures me there isn't. I think there may be other parties
10 who are going to make them, we'll deal with it based on
11 those issues, on those individuals, on those facts, with
12 proper notice to all parties, including the press because
13 this is a public inquiry. That time will come.

14 In any event, I know Ms. Brannan had a few
15 comments that she wanted to make and I don't know if there
16 are other counsel that wish to make comments on some of the
17 issues, but I think we are through the issue-by-issue
18 analysis. So Ms. Brannan has a few comments and there may
19 be others who have some just general concluding comments.

20 **THE COMMISSIONER:** Okay. Thank you.

21 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO**

22 **BRANNAN:**

23 **MS. SACCOCCIO BRANNAN:** I don't know, Mr.
24 Commissioner, if you wanted to take a break. Sorry. Mr.
25 Commissioner, if you wanted to take a 10 minute stretch

1 break before we all made our closing statements?

2 **THE COMMISSIONER:** I was just mindful of the
3 fact that Mr. Manson mentioned people had other
4 obligations. If they want -- if you want to take a break,
5 I'm fine. I don't know how long -- so if we give everybody
6 five minutes, we'll be here another hour and a half or so.

7 **MR. MANSON:** I have nothing further to say
8 on any matter.

9 **THE COMMISSIONER:** All right.

10 **MR. SHERRIFF-SCOTT:** I have nothing further.

11 **MR. CARROLL:** On behalf of the OPPA, I have
12 nothing further to add.

13 **MR. CHISHOLM:** I have nothing further.

14 **THE COMMISSIONER:** Nothing further, sir.
15 So you start ---

16 **MS. SACCOCCIO BRANNAN:** But then, Mr.
17 Commissioner, I will take 10 minutes of your time, if I
18 may, just to sum up on behalf of the Ontario Provincial
19 Police.

20 Yesterday, we talked about hindsight and we
21 talked about if we only knew then what we know now, that we
22 may not have reached this roadblock. There's no doubt in
23 my mind, Mr. Commissioner that bulk disclosure is fraught
24 with a number of problems. And it may be to understand it
25 best if we look at possibly putting the cart before the

1 horse here.

2 We don't know yet the direction of the
3 Commission with respect to which investigations it wants to
4 look at in order to consider and determine the public
5 response or the public institutions' response or the
6 response of the justice system.

7 It seems to me, Mr. Commissioner, that bulk
8 disclosure isn't going to achieve that. What would achieve
9 that is to choose the investigations that you want to look
10 at and when you've chosen those investigations, then the
11 Ontario Provincial Police and other parties can bring the
12 disclosure forward with the items redacted and then the
13 question of whether those items should be redacted or not
14 can be addressed.

15 **THE COMMISSIONER:** Can I stop you there?

16 **MS. SACCOCCIO BRANNAN:** That -- we're not --
17 -

18 **THE COMMISSIONER:** What about -- so if
19 that's what Commission counsel does, that means that other
20 parties won't have a chance to look at all the files and
21 say, "Hey, wait a minute. What about this one? We want
22 this one to be investigated. This is relevant to the way
23 we see things."

24 **MS. SACCOCCIO BRANNAN:** I hear what you're
25 saying, Mr. Commissioner, but it's your mandate. The

1 mandate is huge in the way in which it's been described to
2 us by Commission counsel. The mandate has to be managed.
3 Otherwise we could be here forever because it's huge, what
4 we have in front of us.

5 But maybe, Mr. Commissioner, your decision
6 is not to do it that way. You've chosen the road of bulk
7 disclosure and, as a result of that, I'd like to address
8 the following.

9 **THE COMMISSIONER:** Okay.

10 **MS. SACCOCCIO BRANNAN:** With respect to bulk
11 disclosure, it continues to be the position of the Ontario
12 Provincial Police that the following items should be
13 redacted before disclosure is given to counsel and their
14 clients; confidential informants, that's police informants;
15 investigations unrelated to the Commission's mandate, for
16 example, a homicide investigation; 3) any information that
17 would identify a victim who came forward to the police in
18 confidence on the basis that their name would never be
19 divulged. That should be redacted. Any information that
20 relates to police investigative techniques and that could
21 jeopardize officers' safety should be redacted.

22 With respect to *JDA* and *YOA* criminal
23 records, yes sir, we have an order, but the order is not
24 directed to the Ontario Provincial Police. The Ontario
25 Provincial Police in order to unredact those items would

1 require some sort of a direction where the order you have
2 been given, the permission you have been given, is somehow
3 transferred to us. And maybe that's achieved by us making
4 those redactions, handing them back to Commission counsel
5 and then Commission counsel does the publication, because
6 it's the Commission that has the permission from the court
7 to do that.

8 Victims' names must be redacted. At this
9 stage of bulk disclosure, I cannot comprehend or understand
10 why it is necessary for any of the parties with standing or
11 their clients to have the names of victims who are not here
12 standing before you today to say, "It's okay, Mr.
13 Commissioner, my name can go out there".

14 I don't understand why they need the names.
15 I don't understand why they need the identifiers. What I
16 do understand is they need what's in their statements.

17 Mr. Manson talked about his process that
18 he's doing about codifying. Do we need a victim's name or
19 do we need a number so that he can see where that number
20 pops up throughout the disclosure? I put that out as a
21 thought.

22 This would be the same with witness names
23 and any related information that could result in the
24 identification of a witness. Do we really need the
25 witness' name? Or do we need what they say?

1 **THE COMMISSIONER:** Sorry. I thought you
2 were going to give me a summary.

3 **MS. SACCOCCIO BRANNAN:** I am.

4 **THE COMMISSIONER:** I don't want you to
5 reargue your whole position.

6 **MS. SACCOCCIO BRANNAN:** I'm not rearguing my
7 whole position, Mr. Commissioner. I'm putting on the
8 record, each of the things that we think should be redacted
9 and trying to offer to you a solution, as you asked
10 yesterday in the way in which that information could be put
11 forward.

12 In respect of the victim's name, I'm
13 offering you a numbering system. In respect of the
14 witness' name, I'm offering you ---

15 **THE COMMISSIONER:** Why didn't you do that at
16 the beginning?

17 **MS. SACCOCCIO BRANNAN:** Because I'm summing
18 up after having heard what everybody's had to say, and I'm
19 trying to bring it all together so that we have something
20 all together.

21 **THE COMMISSIONER:** You're right. I'm sorry.
22 I'm sorry.

23 So you've offered the codifying of ---

24 **MS. SACCOCCIO BRANNAN:** A codifying system
25 with respect to victims' names, ---

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

2 **MS. SACCOCCIO BRANNAN:** --- with respect to
3 witness' names and also with respect to suspects' names.
4 That's another item that has been redacted by the OPP, but
5 we have not redacted the information, just the names and
6 the identifiers so maybe there could be a coding system
7 there as well. This would also apply to persons of
8 interest.

9 With respect to persons' acquitted, charge
10 stayed or charges withdrawn, we have not redacted any of
11 those names and I see no need to redact those names. Those
12 names are out there.

13 So, just in sum, Mr. Commissioner, what I'm
14 asking in respect of your consideration when you make your
15 ruling is that you take into consideration, is there truly
16 a need for the names or is there a need for that
17 information under the names? Let there be no mistake, Mr.
18 Commissioner, we're not here to hide people's names. We're
19 here to get the information out with respect to how the
20 particular investigation was carried out, in our case by
21 the Ontario Provincial Police.

22 The last thing that I submit to you, sir, is
23 that in considering all that you've heard and in making
24 your ruling that whatever the ruling is, that the time
25 required to accomplish the task be a reasonable amount of

1 time so that in the case of the Ontario Provincial Police
2 and any other public institution that has to respond to
3 your order is able to do so without being rushed and
4 therefore making mistakes. So the time has to be
5 reasonable.

6 Those are all my submissions in sum, Mr.
7 Commissioner. I wasn't to stand up here and reargue but
8 just to summarize as best I could and hopefully offer to
9 you some solutions you can consider in making your ruling.
10 Thank you for the time.

11 **THE COMMISSIONER:** Thank you very much.
12 Mr. Callaghan?

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

14 **MR. CALLAGHAN:** Two brief comments on the
15 issue of bulk disclosure. We would suggest that in the
16 context of the Cornwall Police Services, it may not be
17 appropriate for all of it for one reason, in the sense that
18 there have been summons from the Cornwall Police Service, a
19 number, a great number of files that do not appear to
20 relate to Project Truth and that's understandable because
21 Project Truth emanates from one case and goes over to the
22 OPP.

23 I think that where there's an intersection
24 with Project Truth; that is, by witness -- not by witness
25 but by either complainant or suspect, it might differ,

1 but in respect of the others, I don't think that bulk
2 disclosure is appropriate without the Commission counsel
3 having reviewed each file and having decided what they want
4 to call. I think the appropriate was is the tranche
5 approach which is what is, I think, presently underway at
6 the moment with this first set of files. Each would cause
7 -- each may have their own issue subject to your ruling.

8 The second reason why that's important is
9 the resource issue. If you determine that there is
10 redacting to be done and if you're going to request that we
11 do some of that redacting, realistically I don't have the
12 resources either in the Cornwall Police Service or in my
13 own office to do it responsibly on a bulk basis. I would
14 ask that you be sensitive to that issue. I don't want to
15 hold the inquiry up but, for example, we have a first list
16 of files which may be able to be processed so as to allow
17 you to start, subject to what your ruling is.

18 Of course if you say no redactions are
19 necessary for the purpose, then obviously we don't have a
20 problem because you've made that ruling. If you do, it
21 does cause a problem.

22 And third, I do want to stress again that at
23 some point we have to reconvene on this issue quite quickly
24 to get our heads around, if I may put it that way, what
25 happens at the next stage because it's happening really

1 quick.

2 Thank you.

3 **THE COMMISSIONER:** Thank you.

4 Anyone else?

5 **MR. ENGELMANN:** I think that concludes the
6 various submissions on the disclosure/redaction issues.
7 Mr. Commissioner, I don't know if you will be issuing a
8 decision this week or next and whether you want the parties
9 here for that or whether I can simply communicate with
10 parties.

11 **THE COMMISSIONER:** I think at this point
12 we'll have to simply adjourn. I will in the next few hours
13 or tomorrow morning give you an idea of when I will be
14 ready to give you a decision. I can assure you that it
15 will be in the briefest of delays. I can't say whether it
16 will be tomorrow or Tuesday or Wednesday. I guess it's
17 best to leave it open.

18 We'll adjourn for now on the understanding
19 that Mr. Engelmann will contact you as soon as I've come to
20 a determination as to when we can do that.

21 As to whether or not -- well, it may be wise
22 to reconvene in case there are questions arising out of the
23 ruling. I'm open to -- I'll consider that as well. All
24 right. Thank you.

25 **THE REGISTRAR:** Order; all rise. À l'ordre;

1 veuillez vous lever.

2 The hearing is now adjourned. L'audience
3 est ajournée.

4 --- Upon adjourning at 11:48 a.m. /

5 L'audience est ajournée à 11h48

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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