

**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 50

Held at :

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

Wednesday, August 30, 2006

Tenue à:

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

Mercredi, le 30 août 2006

ERRATA

**August 23rd, 2006
Volume 48**

Exhibit list

RI-A1 THE CORNWALL PUBLICATION INQUIRY 4
REDACTION/DISCLOSURE ISSUES TO BE
ADDRESSED AUGUST 23, 2006

Should have read

RI-A1 THE CORNWALL PUBLIC INQUIRY 4
REDACTION/DISCLOSURE ISSUES TO BE
ADDRESSED AUGUST 23, 2006

Appearances/Comparutions

| | |
|-----------------------|-------------------------------|
| Mr. Pierre R. Dumais | Commission Counsel |
| Ms. Christine Morris | |
| Ms. Louise Mongeon | Registrar |
| Mr. Peter Manderville | Cornwall Police Service Board |
| Ms. Diane Lahaie | Ontario Provincial Police |

Table of Contents / Table des matières

| | Page |
|--|-------------|
| List of Exhibits : | v |
| Decision on Ruling of Redaction by the Honourable Justice G. Normand Glaude | 1 |

LIST OF EXHIBITS/LISTE D'EXHIBITS

| NO. | DESCRIPTION | PAGE NO |
|------------|--------------------|----------------|
| | None Entered | |

1 --- Upon commencing at 10:06 a.m./

2 L'audience débute à 10h06

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:** We're here this morning
10 to have my decision on the issues of redaction.

11 So this Ruling pertains to the issue of
12 disclosure of documents obtained by the Commission to
13 parties with standing before this Commission.

14 Now, before dealing with the heart of the
15 matter, it's important to provide the necessary background
16 to better understand the issues at hand.

17 Pursuant to Section 7 of the *Public*
18 *Inquiries Act* and under Rule 31 of the Commission's Rules
19 of Practice and Procedure, parties with standing before
20 this Commission were summonsed and expected to produce all
21 records arguably relevant to the mandate of the Cornwall
22 Public Inquiry. This involved casting a wide net, even
23 including documents in relation to which privilege may be
24 claimed under the laws of evidence.

25 In due course, the parties produced tens of

1 thousands of documents and continue to do so in response to
2 specific requests from Commission counsel.

3 The bulk of the records from parties had
4 been received by Commission counsel in original, unedited
5 form, as per the requirements of Rule 31.

6 Two parties before this Commission took
7 issue with Commission counsel reviewing a small set of
8 documents on the basis of claims of solicitor/client
9 privilege. This will be argued before the Divisional Court
10 on September 21st of this year.

11 Apart from that small subset of documents,
12 all documents produced by parties will be reviewed by
13 Commission counsel in unedited form. This allows
14 Commission counsel to have an unrestricted view of all the
15 documents that may have a bearing on the conduct of this
16 Inquiry.

17 The next stage is the disclosure of
18 documents to the parties with standing before the
19 Commission. Of paramount importance is the purpose of that
20 disclosure and the very limited use that can be made of it.

21 In my Ruling on Standing and Funding issued
22 on November 17th, 2005, I determined that those who had been
23 granted full standing before the Commission are entitled,
24 as a matter of fairness, to a number of rights, including
25 access to the relevant documents obtained by the Commission

1 subject to the Rules of the Commission.

2 The parties with standing represent a broad
3 spectrum of society. Not only are public institutions
4 represented, but so are community interests, alleged
5 victims and formerly accused individuals. These parties
6 have been involved in relevant events or have lived in this
7 community during the period of time when relevant events
8 occurred. They are in a unique position to provide me with
9 different perspectives.

10 For them to be able to do so and to ensure
11 the effectiveness of this Inquiry, it is essential to
12 provide the parties access to relevant documents in
13 possession of the Commission in advance of the evidentiary
14 hearings. This is consistent with the process followed by
15 other public inquiries in Canada.

16 As a result of the volume of documents
17 generated, a decision was made by the Commission to have
18 these documents loaded onto an electronic database which
19 would allow Commission staff to organize, search and review
20 the documents. The system also allowed orderly advanced
21 disclosure to the parties.

22 Disclosure to parties does not mean that all
23 the documents will necessarily be tendered as evidence
24 before the Commission or otherwise made public. The
25 documents are disclosed to the parties under very strict

1 conditions. The disclosure of documents is provided to
2 counsel for parties only upon the signature of an
3 undertaking providing that the documents are strictly
4 confidential and are not to be disclosed or shown to anyone
5 or made public, except as provided in the undertaking.
6 Counsel are allowed to show the documents to their clients
7 on a need-to-know basis and upon the condition that their
8 clients also sign undertakings.

9 On August 10th, 2006, I issued an Order
10 directing that counsel and parties requiring access to
11 Commission documents must sign the undertakings and abide
12 by specific conditions for disclosure.

13 The breach of the terms of an undertaking by
14 counsel or their clients may lead to serious consequences
15 such as a limitation or loss of standing or funding and the
16 initiation of contempt proceedings, which may eventually
17 result in imprisonment.

18 Commission counsel who adduce the evidence
19 will control the use of documents before the Commission.
20 If parties wish to use documents received pursuant to the
21 advance disclosure, they must notify Commission counsel in
22 advance. This means that not all documents disclosed in
23 advance to parties will be used in evidence. This also
24 means that prior to their introduction into evidence
25 Commission counsel and parties will have the opportunity to

1 ask that specific, sensitive information be protected from
2 public disclosure either through editing, the application
3 of confidentiality measures or limitations on publication.

4 The disclosure to parties therefore does not
5 equate to the release of information to the public. The
6 disclosure is a means to provide the parties with access to
7 the relevant documents in the hands of the Commission in
8 order to adequately prepare for the hearings and assist the
9 Commission in the fulfillment of its mandate.

10 Nonetheless, as the disclosure process was
11 taking place, a number of concerns over privacy and
12 confidentiality were raised by a number of parties which
13 warranted argument before me on June 27th, 2006 over the
14 type of disclosure that would be made to the parties.

15 Some parties, including the Ontario
16 Provincial Police, the Cornwall Community Police Services
17 and the Children's Aid Society were of the view that
18 disclosure of documents to parties should not take place
19 without significant editing.

20 The Attorney General was of the view that
21 its documents could be disclosed in unedited form on the
22 understanding that any discussion with respect to
23 admissibility and editing would take place at the time of
24 their introduction into evidence.

25 The Ministry of Community Safety and

1 Correctional Services has now adopted that position.

2 I issued directions on the same date to
3 permit quick access to relevant Commission documents to the
4 parties with appropriate editing to be applied prior to
5 disclosure to satisfy parties' concerns. These directives
6 seemed rather simple, but given that the documentation
7 includes hundreds of thousands of pages, the task requested
8 of the parties was massive.

9 Mindful that the Inquiry must proceed
10 expeditiously, I requested that the parties make their best
11 efforts to complete their editing within two months. I
12 would be remiss in not acknowledging the sustained and
13 conscientious work of those parties who produced documents
14 requiring the greatest amount of editing; namely, the
15 Ontario Provincial Police, the Cornwall Community Police
16 Service, the Children's Aid Society and the Ministry of
17 Community Safety and Correctional Services.

18 With the cooperation of all parties,
19 Commission staff worked diligently throughout the summer
20 and delivered the first hard drive of disclosure to parties
21 containing approximately half of the disclosure.

22 Once the hard drives were delivered and the
23 documents reviewed by parties with standing, certain issues
24 arose which warranted that we revisit the matter of editing
25 of certain information as it pertained to balancing the

1 interest of full disclosure with the need to protect those
2 involved peripherally with the Inquiry or those who may be
3 re-traumatized.

4 The parties, in an attempt to focus on
5 certain of these concerns, had drawn up a list of 10 issues
6 for my consideration. I note that since the beginning of
7 this Inquiry I have been and remain very much concerned
8 about the issues involved in the disclosure of sensitive
9 information.

10 I have considered this matter anew in the
11 view of balancing concerns relating to the disclosure of
12 sensitive information with fairness requirements towards
13 those affected by this Inquiry.

14 Before turning to the 10 issues which need
15 to be considered, I must say that I am heartened by the
16 fact that the parties seem genuinely interested in
17 advancing the mandate of this Inquiry and I am hopeful that
18 we can continue to deal with matters of interest to the
19 parties if and when they come up.

20 With respect to the analysis, the first
21 heading on the 10 points was that of "Informants", and I'll
22 deal with confidential police informants first.

23 The Ontario Provincial Police, the Cornwall
24 Community Police Service and the Attorney General are the
25 parties who are in the best position to claim the

1 application of police informant privilege as they have
2 provided the Commission with the police records relevant to
3 the work of the Commission. They have indicated before me
4 that to their knowledge, there are no confidential police
5 informants identified in the documents produced by them
6 relevant to the subject matter of the Inquiry.

7 The concerns expressed by the Ontario
8 Provincial Police and the Cornwall Community Police Service
9 relate to police officer notebooks which contain
10 chronologically-noted writings and, thus, may contain
11 information permitting the identification of police
12 informants in investigations unrelated to this Inquiry.

13 The protection of the identity of police
14 informants is supported by longstanding authorities and is
15 undisputed. The scope of the privilege may be an issue
16 before this Commission and will be discussed below in Point
17 3 of this Ruling.

18 I have taken into consideration the
19 information provided by the Ontario Provincial Police, the
20 Cornwall Community Police Service and the Attorney General
21 and any concerns with the application of police informant
22 privilege would be automatically eliminated with my Ruling
23 on Point 2 which deals with unrelated investigations.

24 Accordingly, I do not need to consider this
25 issue further at this time.

1 Under Section 1, the Children's Aid Society
2 wish to deal with individuals making referrals pursuant to
3 their duty to report suspicion of child maltreatment to the
4 Children's Aid Society.

5 While apparently akin to police informants,
6 those persons differ in legal status from police informants
7 in two important ways. First, such persons are making
8 referrals to the Children's Aid Society under a legal duty
9 pursuant to the *Child and Family Services Act*. Second,
10 there is no legal pronouncement or law recognizing a class
11 of privilege under such circumstances.

12 Having said that, such information is
13 important and may be required by the Commission in order to
14 properly assess the response of the Children's Aid Society
15 to allegations of abuse.

16 Now, that being said, sound public policy
17 should encourage people to report abuse of children to the
18 Children's Aid Society.

19 Consequently, any request for
20 confidentiality with respect to the identities of
21 individuals reporting suspicion of maltreatment to the
22 Society should be made and will be assessed on a case-by-
23 case basis if and when such information is tendered as
24 evidence before the Commission.

25 With respect to the second item,

1 investigations unrelated to the Commission's mandate, there
2 are two subheadings: "Police investigations unrelated to
3 the mandate" and "Children's Aid Society files relating to
4 matters not within the Commission's mandate".

5 As indicated earlier, the summonses to
6 parties sought the production of all records arguably
7 relevant to the mandate of the Cornwall Public Inquiry. In
8 responding, parties provided some materials not relevant to
9 the mandate of the Commission. This issue really centres
10 on police officers' notes and some files of the Children's
11 Aid Society.

12 With respect to the Children's Aid Society,
13 I understand that a process has been established whereby
14 files are being vetted on a case-by-case basis with the
15 assistance of counsel for the Children's Aid Society.
16 Commission counsel are instructed to redact or withhold
17 materials relating to matters not within the Commission's
18 mandate.

19 With respect to police officers' notes, I
20 agree that they should be redacted prior to their
21 disclosure to the parties in order to exclude those
22 investigations unrelated to the mandate of the Commission.

23 If, during the course of the Inquiry,
24 parties raise questions with respect to the edited notes,
25 those concerns can be put to Commission counsel who, as I

1 have indicated, have access to the unedited notes. If
2 concerns persist, the matter can be brought before me for
3 ruling.

4 There is another subheading which I failed
5 to note, that of "Names of family members and relatives of
6 alleged victims of child maltreatment". The issue raised
7 by the Children's Aid Society with respect to this
8 subheading is similar to Point 6, which I will discuss
9 below.

10 The third point is the information that
11 would identify a victim who provided information to the
12 police on the basis that the victim's name would never be
13 divulged.

14 This item has given the Ontario Provincial
15 Police, the Cornwall Community Police Services and the
16 Ontario Provincial Police Association much concern. As I
17 understand it, those parties take issue with the disclosure
18 of information to parties about alleged victims who have
19 provided information to the police who did not want their
20 names to be disclosed or investigations to be initiated or
21 pursued.

22 The Ontario Provincial Police and the
23 Cornwall Community Police Service argue that to maintain
24 any promise of confidentiality, information allowing the
25 identification of those persons should be edited prior to

1 the disclosure to the parties.

2 Counsel for the Ontario Provincial Police
3 Association goes further in inviting the Commission to
4 extend the application of the protection traditionally
5 afforded to police informants to these persons. Counsel
6 quoted the case of *Regina v. Leipert* for the proposition
7 that a person providing information to the police about a
8 crime involving themselves as a victim with the
9 understanding that such information will not be revealed
10 should have the protection of police informant privilege.

11 Now, the limits of police informant
12 privilege are well known. Not everyone providing
13 information to the police in confidence will be considered
14 a confidential informant. As stated by Justice Trafford in
15 *Regina v. Brown*:

16 "Not everyone who gives information to
17 the police is a confidential informant.
18 It is one thing to be an informant; it
19 is another thing to be a confidential
20 informant. To be a confidential
21 informant, an informant must request
22 the privilege expressly or by necessary
23 implication and receive assurances of
24 confidentiality expressly or by
25 necessary implication from the officer.

1 Regard must be had for all of the
2 circumstances of the case. A would-be
3 confidential informant does not begin
4 with a right of confidentiality but
5 does have a right to silence. One need
6 not give information to the police, but
7 if the privilege attaches to the
8 relationship, a right of
9 confidentiality in the confidential
10 informant is created and must be
11 recognized by everyone."

12 The mandate of this Inquiry includes looking
13 into the response of police services to allegations of
14 sexual abuse of children. The fact that institutions
15 submitted that victims claim confidentiality must be
16 examined to determine if in fact and under what
17 circumstances such claims were requested and what promises
18 of confidentiality were made. As well, we need to
19 determine to what extent those procedures followed
20 established protocols, if any, and if indeed such promises
21 were warranted.

22 I will therefore order that the Ontario
23 Provincial Police and the Cornwall Community Police Service
24 identify those persons whose identity they claim should be
25 protected. As well, they are to point out to Commission

1 counsel in the disclosure those portions of evidence they
2 believe would justify the claim that these individuals are
3 in fact confidential complainants and, thus, may be
4 entitled to the claim of privilege.

5 Once those materials have been isolated,
6 they will be reviewed by Commission counsel pursuant to the
7 Rules.

8 Section 4, "Covert police investigative
9 techniques, police procedures and any information that
10 could jeopardize officer safety", I agree that these items
11 should be redacted as they are integral to effective police
12 investigation and, most importantly, to police safety.
13 This is subject to revisiting any matter on a case-by-case
14 basis if and when the issue arises.

15 Number 5, "*Juvenile Delinquents Act* and
16 *Young Offenders Act* records", this matter deals with the
17 privacy afforded to young persons whose identities as young
18 persons dealt with under the *Juvenile Delinquents Act* or
19 the *Young Offenders Act* are protected under relevant
20 legislation.

21 By order of Justice Marin of the Youth
22 Justice Court dated July 25th, 2006, permission to release
23 documents containing such information for disclosure
24 purposes was obtained. Counsel raised concerns as to the
25 extent to which the Order may be used other than at the

1 disclosure state and the extent to which such documents can
2 be used at the evidentiary stage.

3 I will consider those concerns if and when
4 they arise, at the appropriate time.

5 The next four headings can be dealt with
6 together, and they are: "The victims names and related
7 information and names of individuals associated to victims
8 and related information that could result in the
9 identification of victims"; number 7, "Witness names and
10 related information that could result in the identification
11 of the witness"; number 8, "Name of suspects, dead or
12 alive, investigated but never charged"; number 9, "Persons
13 of interest that are alive, named but never investigated".

14 All four categories of persons, be they
15 victims, witnesses, suspects or persons of interest, should
16 be treated with respect and decency. Documents containing
17 such information shall be released to the parties in un-
18 redacted form. However, counsel for the parties and their
19 clients are prohibited under any circumstances from
20 communicating with those persons.

21 Should any issue arise as a result of this
22 disclosure, the concerned parties shall bring the matter to
23 the attention of Commission counsel forthwith.

24 The last heading is that of "Persons
25 acquitted, charges stayed or charges withdrawn." It was

1 agreed by all the parties that these names should be
2 disclosed.

3 Now, with respect to the conclusion, in the
4 circumstances, I hereby order that disclosure will be
5 provided to the parties with standing in un-redacted form
6 except for police officers' notes produced by the Ontario
7 Provincial Police and the Cornwall Police Service.

8 Both the Ontario Provincial Police and the
9 Cornwall Police Service will review their police officers'
10 notes so as to redact only those portions of the notes that
11 fall under sections 1(a), 2(a) and 4 of this Ruling;
12 namely, the name of confidential police informants and any
13 information allowing the identification of police
14 informants, any information concerning police
15 investigations unrelated to the Commission's mandate and
16 information concerning covert police investigative
17 techniques, police procedures and any information that
18 could jeopardize police officer safety.

19 As well, the Ontario Provincial Police and
20 the Cornwall Community Police Service are to provide the
21 Inquiry with the names and details surrounding those
22 complainants whom the police state wish to remain anonymous
23 subject to further disclosure once these details have been
24 reviewed by Commission counsel or ruled upon, and at that
25 point a decision will be made.

1 Now, I do understand that this is an onerous
2 task. My further understanding is that the police
3 officers' notes have been flagged, and without for a moment
4 minimizing the work to be done, this shall reduce the
5 number of documents to review.

6 Counsel for the Ontario Provincial Police
7 and the Cornwall Police Service shall provide Commission
8 counsel with the changes and information contained in this
9 Order within two weeks from the issuance of this Ruling.
10 Details on how to accomplish this should be discussed with
11 Commission counsel as soon as possible after this Ruling.

12 I believe that this exercise has been a
13 productive one. It has served to help all parties focus on
14 these important issues and hopefully inform the public on
15 the need to disclose as much as possible to the parties,
16 all the while ensuring that privacy of individuals is
17 safeguarded.

18 In the end, it is essential to understand
19 that while certain names will be revealed to the parties,
20 it is being done for disclosure purposes only and that very
21 strict rules have been established to ensure that those
22 names are kept private and not made public, that in the
23 event that some names are considered to be entered in
24 evidence, that no order will be made without affording the
25 parties full opportunity to make submissions and that

1 consideration of the use of publication bans and other
2 remedies be used to protect the confidentiality of the
3 individuals in question.

4 Having said that, the Ruling that I have
5 issued aims to balance, again, the right of the parties to
6 have as much disclosure as is reasonably possible, all the
7 while respecting the privacy of those affected by the
8 events giving rise to this Inquiry.

9 It is obvious that my decision has
10 repercussions that affect not only the work of the OPP and
11 the Cornwall Police Services but also affect the ability of
12 those parties who are receiving massive amounts of
13 information to assimilate and digest all of that
14 information.

15 I have indicated in my earlier statements
16 that this Inquiry has been sought for for years. I have
17 stated I would move as quickly as possible but proceed only
18 when we are ready.

19 While Commission counsel may be in a
20 position to begin calling witnesses, I also must ensure
21 that the parties are also ready to proceed.

22 Accordingly, I have asked Commission counsel
23 to discuss the logistics and possible impact this decision
24 may have on the schedule and I expect a report back to me
25 on Friday of this week, at which time I will assess whether

1 changes need to be effected and I will make my final
2 decision on the schedule early next week and will ensure
3 that Commission counsel communicate that decision to the
4 parties in the briefest of delays.

5 Accordingly, I look forward to the input of
6 the parties and discussions with Commission counsel and a
7 report from Commission counsel on Friday.

8 Thank you.

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

11 This hearing is now adjourned. L'audience
12 est ajournée.

13 --- Upon adjourning at 10:31 a.m./

14 L'audience est ajournée à 10h31

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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