

**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 80**

**Held at :**

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

Monday, December 18, 2006

**Tenue à:**

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

Lundi, le 18 décembre 2006

**Appearances/Comparutions**

M <sup>e</sup> Simon Ruel	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. Peter Manderville	Cornwall Police Service Board
Actg.Det.Supt Colleen McQuade	Ontario Provincial Police
Ms. Diane Lahaie	
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
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. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association

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1 --- Upon commencing at 2:05 p.m./

2 L'audience débute à 14h05

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 **LE COMMISSAIRE:** Bonjour Me Ruel.

10 Good afternoon, sir.

11 **MR. RUEL:** Good afternoon, Mr. Commissioner.  
12 Today we have Staff Sergeant Roger Kelly who is the Manager  
13 of the Research and Policy Section within the Operational  
14 Research and Development Bureau with the OPP.

15 You will remember that Staff Sergeant Kelly  
16 testified before you on May 17<sup>th</sup> and 18<sup>th</sup>. So this will be a  
17 completion I guess of the OPP corporate presentation.

18 Counsel for the OPP, Mrs. Brannan, has a  
19 statement to make. So if you agree, I'll let her speak and  
20 then I'll examine the witness.

21 **THE COMMISSIONER:** Thank you.

22 Yes, Ms. Brannan.

23 **MS. SACCOCCIO BRANNAN:** Mr. Ruel doesn't  
24 often let me speak I must say.

25 **(LAUGHTER/RIRES)**

1 --- SUBMISSION BY/REPRÉSENTATION PAR MS. SACCOCCIO BRANNAN:

2 MS. SACCOCCIO BRANNAN: Good afternoon, Mr.  
3 Commissioner. Since this will be the last time this year  
4 that I have the opportunity to be on my feet, I'd like to  
5 wish you and your staff, Commission counsel and all my  
6 colleagues the very best of the holiday season.

7 THE COMMISSIONER: Thank you.

8 MS. SACCOCCIO BRANNAN: I'm going to make a  
9 few opening remarks that follow on the corporate  
10 presentation in May of 2006 and you'll recall, Mr.  
11 Commissioner, that during our OPP corporate presentation,  
12 you asked that we make efforts to search for additional  
13 police orders or OPP policy that predated the 1990 police  
14 orders presented at that time.

15 THE COMMISSIONER: M'hm.

16 MS. SACCOCCIO BRANNAN: The OPP has carried  
17 out an extensive search since then and during that process,  
18 we have provided Commission counsel with three written  
19 reports on May the 15<sup>th</sup>, October the 12<sup>th</sup> and November the  
20 1<sup>st</sup>. In each of these reports, we kept Commission counsel  
21 aware of the results of our search efforts and we were able  
22 to come to a consensus on each occasion with Commission  
23 counsel as to next steps.

24 In addition, we have met with Commission  
25 counsel on three occasions to review the results of our

1 search, to take direction and ultimately to prepare the  
2 additional contextual evidence that you will hear today  
3 from Staff Sergeant Roger Kelly.

4 In addition, Commission counsel has also met  
5 with Staff Sergeant Kelly on two further occasions. What  
6 is important is for you to understand the breadth of our  
7 search and where we obtained this additional information:  
8 one is Corporate Memory; the other is the OPP Museum; the  
9 Archives of Ontario; and, the Eric Silk Library.

10 With respect to Corporate Memory, Mr.  
11 Commissioner, as a result of a request made to senior  
12 members of the OPP, we received a copy of the Standing  
13 Orders of the Commissioner of Police for Ontario for the  
14 Ontario Provincial Police Force dated December 1960. This  
15 is from a 39-year member of the Force.

16 You will recall the evidence of Staff  
17 Sergeant Kelly that Standing Orders were one of the  
18 precursors to the present day Police Orders.

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

20 **MS. SACCOCCIO BRANNAN:** A copy of these  
21 Standing Orders were produced to Commission counsel. They  
22 have been reviewed and as a result of this review, we were  
23 able to determine that these Standing Orders, with the  
24 exception of the preamble, did not contain any policies  
25 that are relevant to the mandate of this Commission.

1                   Our next stop was the OPP documents obtained  
2                   from the OPP Museum. Detective Chief Superintendent Frank  
3                   Ryder, who has since retired from the OPP, contacted the  
4                   curator of the OPP Museum and inquired if there were any  
5                   copies of Standing Orders, Directives or Police Orders  
6                   prior to 1990.

7                   We obtained four documents from the OPP  
8                   Museum which met this description and we reviewed the  
9                   following documents: the May 31<sup>st</sup>, 1927 Regulations; the  
10                  November 15<sup>th</sup>, 1947 Standing Orders; and the April 1<sup>st</sup>, 1954  
11                  Standing Orders. Hard copies of these documents were  
12                  obtained. They were scanned to disk and were provided to  
13                  Commission counsel.

14                  These documents, like the 1960 Standing  
15                  Orders, were reviewed by the OPP and again, with the  
16                  exception of the preamble to these documents, which will be  
17                  addressed by Staff Sergeant Kelly during his evidence  
18                  today, no orders or policies relevant to the mandate of  
19                  this Commission were contained in these documents.

20                  Probably the most important part of our  
21                  search was at the Archives of Ontario. The search of  
22                  documents at the Archives of Ontario was a labour-intensive  
23                  project. Sergeant Catherine Yeandle-Slater took on the  
24                  responsibility of the search with the assistance of Staff  
25                  Sergeant Roger Kelly and Detective Constable Penny Fulford.

1                   The search began in late May 2006 and was  
2                   not completed until late August and the documents obtained  
3                   from the Archives sometime in September. The OPP had  
4                   received from the curator of the Museum an inventory of  
5                   records that had been sent to Archives and we learned that  
6                   this was a document typical of government documents that  
7                   were sent to Archives and that the inventory number 23 was  
8                   case-specific to the OPP.

9                   We reviewed that inventory, selected a  
10                  number of documents which, from their description, were  
11                  thought to be relevant or at least documents of interest.  
12                  We discussed this list with Commission counsel and we came  
13                  to a consensus as to which documents should be requested  
14                  from Archives. That request was made and at the end of May  
15                  -- pardon me, beginning of June, we were presented with 48  
16                  bankers boxes of documents that had arrived from the  
17                  offsite storage location to the Toronto office of the  
18                  Ontario Archives.

19                  Then began the task of reviewing the 1,500  
20                  to 2,000 pieces of paper contained in each of the 48 boxes  
21                  and this task was carried out by Staff Sergeant Kelly and  
22                  Sergeant Yeandle-Slater. I went down for one day and was  
23                  overwhelmed, I must say.

24                  The documents could not be removed from the  
25                  Toronto offices of the Ontario Archives and, as a result,

1 the review took place there.

2 It should be noted that none of the 48 boxes  
3 of documents obtained from the Archives of Ontario  
4 contained an index and that required us to look at each and  
5 every page.

6 During the review, documents which appeared  
7 to be of interest or relevant to the mandate of this  
8 Inquiry were marked for copying and Archives staff, as  
9 required, had to carry out the copying of the documents.  
10 We were not permitted to do that. So that took a little  
11 bit of time, which meant that the documents didn't arrive  
12 until the end of September I believe.

13 On October the 12<sup>th</sup> of 2006, we met with  
14 Commission counsel to review our search of the documents  
15 obtained from the Archives of Ontario. The review of the  
16 48 boxes produced documents that filled five bankers boxes  
17 of documents of interest and that were possibly relevant.

18 A catalogue or inventory of these five  
19 bankers boxes was prepared by myself and Sergeant Yeandle-  
20 Slater and we provided that to Commission counsel and  
21 reviewed it with them during our meeting of October the  
22 12<sup>th</sup>.

23 The majority of the documents in four of the  
24 boxes included what we believe now are the full set of 1980  
25 Police Orders, and each and every revision to those Police

1 Orders from 1980 to 1990. The remaining box contained  
2 historical documents which related to training and these  
3 documents were reviewed and found not to be relevant to  
4 what we are doing here today.

5 In respect of that last box, while we were  
6 able to find training documents in the Archives of Ontario,  
7 those training documents were merely agendas and timetables  
8 for training courses dating back to 1960. Now, those  
9 agendas did indicate that child abuse training was offered  
10 since the late '60s, but the archived documents  
11 unfortunately did not include any of the course materials.

12 The next large task of course was the  
13 documents on microfilm and microfiche that we obtained from  
14 the OPP Eric Silk Library. You will recall Staff Sergeant  
15 Kelly's evidence regarding the fact that the OPP were  
16 unable to review microfilm and microfiche located in the  
17 Eric Silk Library due to the fact that the OPP did not have  
18 the appropriate viewing machine.

19 In any event, even with the appropriate  
20 viewing machine, it was estimated that each of the 100  
21 reels of film contained 3,000 slide images. Further,  
22 without search capabilities, the number of hours to review  
23 each and every document would have been excessive.

24 While a number of options were considered  
25 and each were reported to Commission counsel, it was

1 ultimately determined that the time factor dictated that  
2 the microfilm and microfiche would have to be digitally  
3 formatted in order for the OPP to be able to search  
4 keywords.

5 Staff Sergeant Roger Kelly and Detective  
6 Constable Penny Fulford were responsible for investigating  
7 the cost effective -- most cost effective and timely way to  
8 reproduce the microfilm and microfiche into a readable and  
9 searchable format.

10 Numerous searches were made for private  
11 companies that could provide the scanning of the films to  
12 digital format. During the search, companies were  
13 eliminated or retained based on their location within the  
14 Province of Ontario, their affiliation to American  
15 companies, security issues with the *Patriot Act*, the  
16 capabilities to produce a quality document, their  
17 willingness to undergo security clearances, the capacity to  
18 handle the volume of the work required and to carry this  
19 out within a short period of time.

20 Two companies were identified as viable  
21 candidates. The OPP entered into discussions concerning  
22 their ability to produce the required product and receive  
23 price quotations. Ultimately, the company Electronic  
24 Imaging Systems Corporation, a privately-owned Canadian  
25 corporation located in Scarborough was retained. They met

1 all of the parameters.

2 The quote to carry out the conversion of the  
3 microfilm to an electronic format was \$39,500. Approval  
4 was obtained for this expenditure and the contract with  
5 EISC was signed. It's important to note, Mr. Commissioner,  
6 that when we saw this amount that we worked with Commission  
7 counsel, went through the list and we reduced the number of  
8 documents that were going to be digitized.

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

10 **MS. SACCOCCIO BRANNAN:** The conversion of  
11 the documents that the OPP and Commission counsel agreed  
12 upon as possibly being relevant to the mandate of this  
13 Inquiry was carried out. The conversion was completed in  
14 early October and I'm happy to report that the final cost  
15 was \$27,900.

16 The disks received from the company were  
17 turned over to the OPP Evidence Management Unit to be  
18 scanned and OCRed. That's optical character recognition  
19 into SuperText. The disks received were transferred to one  
20 disk by EMU and readable in SuperText Basic.

21 We then worked with Commission counsel in  
22 order to determine the keywords that should be searched and  
23 those keywords were sexual assault, sexual not including  
24 sexual harassment, child abuse, victim, victim support and  
25 victim assistance.

1                   In addition, further searches were made by  
2                   Staff Sergeant Roger Kelly in an attempt to locate the  
3                   Police Orders from 1970.

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

5                   **MS. SACCOCCIO BRANNAN:** Now, I can tell you,  
6                   Mr. Commissioner, we do not have a complete set of the 1970  
7                   Police Orders, but what we do have through Staff Sergeant  
8                   Kelly's diligence is the preamble from the 1977 Police  
9                   Order, and the occurrence reporting section which is Part 7  
10                  and he'll speak to that during his evidence.

11                  **THE COMMISSIONER:** I'm sorry. The  
12                  occurrence ---

13                  **MS. SACCOCCIO BRANNAN:** Occurrence reporting  
14                  which dovetails with major crime and benchmark.

15                  **THE COMMISSIONER:** Right.

16                  **MS. SACCOCCIO BRANNAN:** The results of the  
17                  OPP's efforts and its work with Commission counsel will be  
18                  presented to you today, Mr. Commissioner, by Staff Sergeant  
19                  Roger Kelly in three of the areas initially addressed in  
20                  May of this year. That's history and organisational  
21                  structure, which will address the review of the preamble,  
22                  investigative techniques and standards, and that will  
23                  address child abuse, sexual assault and the major  
24                  occurrence/benchmark, and support and care to victims.

25                  This just brings me to one piece of

1 housekeeping, Mr. Commissioner, and as I said that we had  
2 come across the 1977 -- or pardon me, not we. It was Staff  
3 Sergeant Kelly who came across the 1977 preamble and we  
4 were able this morning to have it scanned in the PDF format  
5 and each and every one of my colleagues has a copy of this  
6 preamble and because of the good work of Ms. McArthur, they  
7 also had the amended index.

8 **THE COMMISSIONER:** Right.

9 **MS. SACCOCCIO BRANNAN:** Thank you, Mr.  
10 Commissioner, for the opportunity to present to you the  
11 results of our search and I look forward to hearing what  
12 Roger Kelly has to say.

13 **THE COMMISSIONER:** Thank you very much.  
14 Maître. Ruel.

15 **MR. RUEL:** Yes, Commissioner.

16 We have three documents to enter as  
17 exhibits.

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

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **THE COMMISSIONER:** Thank you.

21 **MR. RUEL:** Those would be filed, if you  
22 agree, as addendums to the previous books of documents that  
23 were filed in the context of the OPP corporate  
24 presentation.

25 **THE COMMISSIONER:** All right.

1                   **MR. RUEL:** So the first one is called  
2                   "Addendum to History and Organizational Structure". So  
3                   that would be Exhibit 36, Volume 2, and it will be Addendum  
4                   A, so Volume 2A.

5                   --- **EXHIBIT NO./PIÈCE NO. 36, Volume 2A:**

6                   Document entitled "Addendum to History  
7                   and Organizational Structure"

8                   **THE COMMISSIONER:** Yes, that's good. Thank  
9                   you.

10                  **MR. RUEL:** The second volume is called  
11                  "Addendum to Investigative Techniques and Standards". So  
12                  that would be Exhibit 36, Volume 6A.

13                  --- **EXHIBIT NO./PIÈCE NO. 36, Volume 2A:**

14                  Document entitled "Addendum to  
15                  Investigative Techniques and Standards"

16                  **MR. RUEL:** And the final, the third document  
17                  finally is called "Addendum to Support and Care to  
18                  Victims". That would be Exhibit 36, Volume 7A.

19                  --- **EXHIBIT NO./PIÈCE NO. 36, Volume 2A:**

20                  Document entitled "Addendum to Support and  
21                  Care to Victims"

22                  **ROGER KELLY, SWORN/ASSERMENTÉ:**

23                  **THE COMMISSIONER:** Okay.

24                  Yes, sir.

25                  **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**

1 RUEL:

2 MR. RUEL: Good afternoon, Staff Sergeant  
3 Kelly.

4 S/SGT. KELLY: Good afternoon.

5 MR. RUEL: Thank you for being here today.

6 S/SGT. KELLY: Good afternoon, Commissioner.

7 THE COMMISSIONER: Good afternoon, sir.

8 MR. RUEL: The first document -- and I'll  
9 ask you to take Exhibit 36, Volume 2A -- and, first of all,  
10 I gather, as your counsel has confirmed, that you and the  
11 OPP has done a thorough search for policies relevant to the  
12 mandate of this Inquiry that predate 1990. That would be  
13 correct?

14 S/SGT. KELLY: Yes, that's correct.

15 MR. RUEL: And the three documents that we  
16 are going to be discussing today are the product of your  
17 searches?

18 S/SGT. KELLY: Yes.

19 MR. RUEL: Or the OPP search?

20 S/SGT. KELLY: Yes, that's correct.

21 MR. RUEL: So the first document deals with  
22 -- is an addendum to the history and organizational  
23 structure, and that book you will remember that the issue  
24 of police orders generally was discussed?

25 S/SGT. KELLY: Yes.

1                   **MR. RUEL:** And you have been able to locate  
2 some pre-1990 police orders?

3                   **S/SGT. KELLY:** Yes, we have.

4                   **MR. RUEL:** Can you explain to the  
5 Commissioner where those police orders -- or, I know that  
6 they were called at sometime standing orders or  
7 regulations.

8                   **S/SGT. KELLY:** Yes.

9                   **MR. RUEL:** So can you explain where they  
10 were located?

11                   **S/SGT. KELLY:** Well, we did locate some of  
12 the documents in the OPP museum and, specifically, we  
13 located the regulations governing the OPP Force from May  
14 31<sup>st</sup>, 1927; the Standing Orders of the Commissioner of  
15 Police of Ontario to the OPP, November 15<sup>th</sup>, 1947, and the  
16 Standing Orders of the Commissioner of the Police for  
17 Ontario, April 1<sup>st</sup>, 1954. We also had one of our senior  
18 members identify that he was in possession of standing  
19 orders dated 1960; provided those to us, and we attended  
20 the Ontario Archives and retrieved a number of documents  
21 relating to police orders.

22                   As well, we converted a lot of information  
23 from the microfilm, microfiche that was being stored in the  
24 Eric Silk Library and again found some material within  
25 that.

1                   **MR. RUEL:** Thank you.

2                   At page 1 of the document, Exhibit 36,  
3                   Volume 2A, there is the beginning of an outline of the  
4                   various police orders or standing orders that were located.  
5                   So I would ask you to go through what was found and briefly  
6                   describe what those documents cover and if they contain any  
7                   information relevant to the mandate of the Inquiry.

8                   **S/SGT. KELLY:** Yes.

9                   I'll speak first then to the 1927  
10                  regulations that we had in the OPP museum. Those  
11                  particular regulations set out material relating to the  
12                  composition of our organization dividing the province into  
13                  districts that set out duties and powers of various ranks  
14                  and the different codes of conduct, uniform issues,  
15                  financial regulations; very administrative in nature.

16                  The 1947 standing orders ---

17                  **MR. RUEL:** Just before you go there, there  
18                  was -- in terms of investigative activities there was an  
19                  emphasis on liquor control at the time.

20                  **S/SGT. KELLY:** Yes, that was about -- yes,  
21                  that was about the only area really that had any material  
22                  about investigations which was probably appropriate at that  
23                  particular time period.

24                  **MR. RUEL:** M'hm.

25                  **S/SGT. KELLY:** The 1947 standing orders;

1 again, we find that it's very administrative in nature,  
2 similar to 1927 and; again, setting out the organizational  
3 structure, duties and powers of various ranks; employment  
4 issues in respect to officers, rules of conduct, address;  
5 duties on making an arrest and gathering evidence but,  
6 again, no specific information regarding the investigative  
7 procedures that we're interested in.

8 In 1954, again, the standing orders. Here  
9 we have an example of a preamble; again, similar to what we  
10 had in 1947 but, again, it's still very administrative in  
11 nature dealing with essentially the same types of topics.  
12 There was some area in there dealing with confessions in  
13 admissions. So it seemed to go a little bit further than  
14 the others, but otherwise it was administrative in nature  
15 again.

16 **MR. RUEL:** And then, as your counsel  
17 indicated, a copy of the 1960 standing orders was found  
18 from -- and that was obtained from a senior member of the  
19 Force?

20 **S/SGT. KELLY:** Yes, that's correct. We had  
21 that particular document scanned so that we could search it  
22 electronically. Again, it contained a preamble, very much  
23 the same as what we saw in 1954 but, again, we didn't find  
24 any relevant policies in there that are specific to the  
25 mandate of the Inquiry.

1                   **MR. RUEL:** When you say "relevant policy" I  
2                   assume ---

3                   **S/SGT. KELLY:** The investigative policies  
4                   dealing with child abuse, sexual assault ---

5                   **MR. RUEL:** Historical ---

6                   **S/SGT. KELLY:** --- sex offences; historical,  
7                   yes. But we didn't find any. Again, very much  
8                   administrative in nature.

9                   **MR. RUEL:** Then, at page 3 of the document  
10                  there is a reference to the 1965 police orders. So can you  
11                  explain if there's -- what those orders covered and if  
12                  there's anything relevant to the mandate ---

13                  **S/SGT. KELLY:** Yes.

14                  **MR. RUEL:** --- of the Inquiry?

15                  **S/SGT. KELLY:** 1965 is actually a unique  
16                  year because that is the first release of what we know now  
17                  as police orders.

18                  **MR. RUEL:** So that the move was from  
19                  standing orders to police orders?

20                  **S/SGT. KELLY:** Yes, and what we were able to  
21                  find were documents that actually articulated the  
22                  development and the vision for police orders into specific  
23                  parts to replace the regulations and directives that had  
24                  preceded them with the standing orders and in 1965 was the  
25                  first release of some of the parts that were available now

1 in this new format, although not all of the entire set of  
2 police orders was not produced in 1965. We did find the  
3 parts that were released and we did find amendments to  
4 those up to 1967.

5 MR. RUEL: Then, I guess, you were able to  
6 locate the 1980 police orders -- and I'm not talking about  
7 the amendments but the comprehensive or consolidated  
8 version of the police orders from 1980.

9 S/SGT. KELLY: Yes.

10 MR. RUEL: Would that be correct?

11 S/SGT. KELLY: Yes, we were able -- through  
12 our searches of the documents at the Ontario Archives we  
13 were able to recover all of the revision packages that we  
14 had issued throughout the 1980s and the original set of  
15 police orders from 1980, which allows us then to create  
16 moments in time inserting the revision packages as they  
17 were issued.

18 MR. RUEL: So from 1980 on would it be fair  
19 to say that you would be able to reconstruct pretty much in  
20 totality all of the police orders that existed from '80  
21 until now essentially?

22 S/SGT. KELLY: Yes, that's our -- we have a  
23 pretty high level of confidence that we can do that, that  
24 we have all of the material.

25 MR. RUEL: So what about between 1965 and

1 1980?

2 S/SGT. KELLY: As I mentioned, in the 1965  
3 material we know that that particular binder that we  
4 retrieved from the archives had been updated to 1967. So  
5 we were aware then that we had covered the revisions  
6 through that period of time. We have not been able to  
7 locate full sets of police orders from 1967 onto 1980.  
8 What I have been able to find through different searches is  
9 some material relating to the occurrence reporting process  
10 and the preamble that was in the beginning of these orders.

11 MR. RUEL: Apart from the preambles, which  
12 we are going to discuss now, was there anything that was  
13 relevant to the mandate of the Inquiry in the police orders  
14 that you could located from 1965 until 1980?

15 S/SGT. KELLY: No, I couldn't find anything.

16 MR. RUEL: So we will see that in a few  
17 moments but it's starting, I believe, in 1981 that we begin  
18 to see some materials ---

19 S/SGT. KELLY: Yes.

20 MR. RUEL: --- relevant to the mandate of  
21 the Inquiry ---

22 S/SGT. KELLY: That's correct.

23 MR. RUEL: --- in terms of victim's  
24 assistance for a child -- child abuse?

25 S/SGT. KELLY: I guess the only exception to

1 that is when we talk about the occurrence reporting process  
2 or the occurrence we talk about the whole benchmark process  
3 and we have been able to trace that back a fair distance in  
4 time.

5 MR. RUEL: Okay.

6 S/SGT. KELLY: And that does precede the  
7 70s.

8 MR. RUEL: At page 3 under the second  
9 heading, "Preamble to Police Orders" I'll say you, but it's  
10 the OPP state:

11 "While today's police orders address a  
12 broad range of issues, they are not  
13 intended as a substitute for sound  
14 judgment and discretion."

15 So those are -- correct me if I'm wrong --  
16 those are words or those are -- this is the intention  
17 carried in the various preambles since 1947?

18 S/SGT. KELLY: Yes, that's correct. And  
19 those principles exist through till today. They have  
20 carried through in various different words changing as the  
21 times change to reflect what was going on at the time but,  
22 essentially, the spirit and the intent of those provisions  
23 have continued on through till today.

24 MR. RUEL: If you just want to take a look  
25 at the bottom of the page, the 1947 Preamble to Standing

1 Orders, and it reads:

2 "It is required of you that you shall  
3 familiarize yourself with the  
4 provisions of those laws, laws which is  
5 your duty to enforce and that you must  
6 be conversant with and carry out the  
7 regulations and orders of the Force  
8 published for your guidance. Do not  
9 expect to find some specific rules  
10 relating or likely to meet every case  
11 or situation that may arise. That is  
12 impossible. It must be totally  
13 understood that much of necessity be  
14 left to your judgment and the exercise  
15 of those qualities already mentioned."

16 So the trust or the intention seems to be --  
17 correct me if I'm wrong -- that police orders have to be  
18 followed but if they can't cover every single situation so  
19 in those situations the police officers or police, members  
20 of the OPP, have to use their judgment and apply the police  
21 orders reasonably.

22 **S/SGT. KELLY:** That's correct, and I think I  
23 referred to this in my previous testimony, and I'll just  
24 try some different words today. It's essentially a roadmap  
25 to get to a destination and, as an organization, we're very

1 much interested in anyone who steps off that road but there  
2 is a sense of comfort for anyone who follows the road to  
3 get to the destinations; in other words, to the successful  
4 investigation.

5 MR. RUEL: At page 4, the 1954 -- I won't  
6 read all of them but there has been some change in wording.  
7 In the 1954 preamble to standing orders read:

8 "No set of rules can be drawn up that  
9 will meet every situation and no matter  
10 how detailed the orders may be  
11 something must be left to intelligence  
12 and discretion of the officer  
13 concerned. Members of the OPP are  
14 therefore expected to interpret these  
15 instructions reasonably and with due  
16 regard to the interest of the Force."

17 So there is a change of wording but is it  
18 your testimony that there is no change in policy in terms  
19 of ---

20 S/SGT. KELLY: That's correct. I mean, to  
21 me the message is the same and it continues to be embodied  
22 within this particular paragraph even though there are  
23 different words being used.

24 MR. RUEL: So all of the preambles from 1947  
25 until today are reproduced at pages 4 and 5 of this

1 document. Correct?

2 S/SGT. KELLY: Yes.

3 MR. RUEL: And even today it's -- the  
4 wording is still different but it's essentially the same  
5 policy?

6 S/SGT. KELLY: Yes, essentially the same  
7 message.

8 The preamble contains this particular  
9 message consistently throughout -- from 1947 onto today.  
10 The preamble does, though, include other different  
11 provisions that change as the priorities focus and  
12 interests of the time reflect.

13 MR. RUEL: Thank you.

14 THE COMMISSIONER: Well, is it fair to say  
15 that -- and I'm just reading through for the first time  
16 now, but what I got was like in 1947 or 1927 and we were  
17 looking at setting up the districts and the various ranks  
18 and things, and looking at the flavour of the day, which  
19 was the *Liquor Control Act*, and that we see a little bit of  
20 an evolution where they start talking about duties on  
21 making an arrest, for example, in 1947. They seem to be  
22 growing ---

23 S/SGT. KELLY: Yes.

24 THE COMMISSIONER: --- I suppose. So in  
25 1954 we've got areas of confessions and admissions,

1 firearms, use of force, and it seems to progress as we go.  
2 Is that a fair ---

3 S/SGT. KELLY: Yes.

4 THE COMMISSIONER: Fair comment?

5 S/SGT. KELLY: Fair comment, and that's  
6 exactly how our business is operating still today.

7 THE COMMISSIONER: Right. But having said  
8 that, you said that -- is it that you didn't find anything  
9 dealing with the words that might be relevant to the  
10 mandate of the thing, or there were no words?

11 S/SGT. KELLY: We could not find any words,  
12 and I think that's about as far as I can -- I mean, I  
13 haven't -- with many of these documents the only thing that  
14 we could do is conduct key word searches ---

15 THE COMMISSIONER: M'hm.

16 S/SGT. KELLY: --- as triggers or indicators  
17 and read the material around that as opposed to reading  
18 word for word every single document.

19 THE COMMISSIONER: All right. Thank you.

20 MR. RUEL: Now I will move to Exhibit 36,  
21 Volume 6A, which is the addendum to the volume called  
22 "Investigative Techniques and Standards". If you can take  
23 page 1 of the document. It's at Tab 1.

24 So in this document we will find some policy  
25 information concerning the investigation of child abuse,

1 and also information concerning the management of criminal  
2 investigations generally, some notification policy ---

3 S/SGT. KELLY: Yes.

4 MR. RUEL: --- and finally, there's a new  
5 policy dealing with the investigation of sexual assault.  
6 That is included in this document.

7 S/SGT. KELLY: Yes, that's correct.

8 MR. RUEL: Can you explain where those  
9 documents were located? Were found?

10 S/SGT. KELLY: The majority of these  
11 documents were found at the Archives of Ontario through our  
12 searches and through the microfilm and microfiche that we  
13 had converted. It's a combination of the two. Neither one  
14 would really -- I can't really say that one alone provided  
15 all of the information. It was a combination of the two  
16 that was able to put the pieces together.

17 MR. RUEL: But first there is child abuse  
18 and neglect, and if you can turn up Tab 2? It's a document  
19 dated -- and this document is discussed at page 1 of the  
20 outline, but I think we'll go to the actual document which  
21 is at Tab 2. It's a document dated November 24, 1981, and  
22 it's an interim police order which was issued by Assistant  
23 Commissioner -- OPP Commissioner Lidstone.

24 S/SGT. KELLY: Yes.

25 MR. RUEL: Can you explain what this

1 document provides?

2 S/SGT. KELLY: An interim police order is a  
3 policy instrument that's used to communicate policy very  
4 quickly to the organization and implement that particular  
5 policy as soon as possible. It's intended as a temporary  
6 order until a formal revision package can be prepared  
7 that's sent out to the entire organization.

8 Back in 1981 we would have had about 950  
9 sets of police orders throughout the province, and each of  
10 those sets would have an index, table of contents,  
11 numbering system, and when you insert any new piece of  
12 policy you have a major editing process to undertake to  
13 incorporate that new piece. Rather than wait until that's  
14 completed an interim police order is issued to quickly  
15 implement that policy.

16 MR. RUEL: So this document deals with child  
17 in need of protection.

18 S/SGT. KELLY: Yes.

19 MR. RUEL: Would it be accurate to say that  
20 this is the first policy document that you've been able to  
21 find ---

22 S/SGT. KELLY: Yes, that's correct.

23 MR. RUEL: --- that deals with the issue of  
24 investigation of child abuse or child in need of  
25 protection?

1                   **S/SGT. KELLY:** Yes.

2                   **MR. RUEL:** So the document mentioned or the  
3 interim police order mentioned:

4                                "Some police forces in the province  
5                                have recently been criticized by the  
6                                judiciary for their policy as it  
7                                relates to the protection of children."

8                   Do you know what this sentence refers to?

9                   **S/SGT. KELLY:** No, I'm sorry. We weren't  
10 able to find information to explain the trigger or the  
11 motivation for the development of this and what the  
12 criticism actually was. Not able to find that.

13                   **MR. RUEL:** So this document, I guess,  
14 provides for a section in Part 10 of the police orders  
15 dealing with the child in need of protection?

16                   **S/SGT. KELLY:** Yes.

17                   **MR. RUEL:** So it's when a member receives a  
18 report of a child in need of protection there shall be an  
19 investigation forthwith, action as may be required shall be  
20 taken to ensure the safety of the child, and the member  
21 shall inform the appropriate Children's Aid Society of the  
22 report?

23                   **S/SGT. KELLY:** Yes, and along with that  
24 particular policy piece, specific excerpts of legislation  
25 were provided as part of that interim order to educate the

1 members in the field very quickly about the relevant  
2 provisions in that legislation.

3 MR. RUEL: The following tab, it's Tab 3 --  
4 and this matter is discussed at page 2 of the outline, that  
5 this interim police order was made a permanent police order  
6 in March of 1982?

7 S/SGT. KELLY: Yes, that's correct.

8 MR. RUEL: Is there any change in the  
9 wording of the provision?

10 S/SGT. KELLY: No.

11 MR. RUEL: Then it's the following tab, in  
12 September of 1986. I gather there was a renumbering and  
13 some changes were made to the provision dealing with a  
14 child in need of protection?

15 S/SGT. KELLY: Yes. Subsection 1 is in the  
16 1986 version is new and articulates the responsibility to  
17 report any child in need of protection. And we felt  
18 obviously that this was an important part of the  
19 legislation to remind everyone of their legal obligation.

20 The Subsection 2 takes the wording from 1982  
21 with some minor modifications to it. Here we've  
22 reorganized some of the bullets. You'll see now that  
23 safety of the child is the very first point to emphasize,  
24 to remember that safety is paramount. We've continued to  
25 indicate the requirement to inform the appropriate local

1 Children's Aid Society.

2 And I think the point that I want to make  
3 about the last item is that it recognizes now that the  
4 investigation responsibility is in concert with the  
5 Children's Aid Society. So now we're working with them on  
6 the investigation.

7 MR. RUEL: The next revision was in 2000.  
8 That's the next tab. Is that accurate?

9 S/SGT. KELLY: Yes.

10 MR. RUEL: And can you explain the changes  
11 that were made ---

12 S/SGT. KELLY: Here the only ---

13 MR. RUEL: --- if any?

14 S/SGT. KELLY: Yes. The only change is at  
15 the very bottom paragraph. And here it's a requirement for  
16 a cross-referencing of records between the Children's Aid  
17 Society and the OPP to ensure that our records can connect  
18 to each other so that their investigators and our  
19 investigators, when we're talking about reports from each  
20 agency, can connect them together.

21 MR. RUEL: So there was no change made --  
22 essentially no significant change made to this policy  
23 between '86 and 2000?

24 S/SGT. KELLY: No.

25 MR. RUEL: The next document -- and I

1 believe this document, the 2000 document, was in the  
2 previous Book of Documents that we covered in May.

3 S/SGT. KELLY: I'm sorry, which tab were you  
4 referring to?

5 MR. RUEL: Tab 5.

6 S/SGT. KELLY: On Tab 5.

7 MR. RUEL: I don't want to repeat what we've  
8 said but I just want to -- this is a 2000 document so I  
9 believe it was in the previous -- in fact, it was in the  
10 previous Book of Documents.

11 S/SGT. KELLY: I'm sorry, I -- without the  
12 book here I can't confirm.

13 MR. RUEL: Okay. Tab -- I just want to  
14 conclude on this with Tab 6, which is the current policy  
15 dealing with the investigation of child abuse and neglect,  
16 and we've covered that ---

17 S/SGT. KELLY: Yes.

18 MR. RUEL: You've covered that in your  
19 testimony.

20 S/SGT. KELLY: Yes.

21 MR. RUEL: It's much more comprehensive than  
22 the previous version.

23 S/SGT. KELLY: Yes, it is.

24 MR. RUEL: And it covers -- seems to cover  
25 historical assault from the ---

1                   **S/SGT. KELLY:** It covers historical -- it  
2 makes reference to historical in the context ---

3                   **MR. RUEL:** Historical abuse.

4                   **S/SGT. KELLY:** --- of the characteristics or  
5 the dynamics of -- or categories.

6                   **MR. RUEL:** M'hm.

7                   **S/SGT. KELLY:** But it doesn't set out  
8 specific responsibilities or a change in the investigative  
9 process because of the offence being historical in nature.

10                   **THE COMMISSIONER:** I do note that on Tab 6  
11 the "not a private matter":

12                                   "A crime committed in relation to child  
13 abuse and neglect is an offence  
14 pursuant to the *Criminal Code* and must  
15 never be viewed as a private matter."

16                   **S/SGT. KELLY:** Yes.

17                   **THE COMMISSIONER:** I think we have had and  
18 we will have some discussion, I suppose, as to how that  
19 thought has evolved over time.

20                   **MR. RUEL:** The next area is at page 3 of  
21 your document, which deals with the criminal  
22 investigations. And just to situate you, Staff Sergeant  
23 Kelly, you will remember, the document is at Tab 8 of this  
24 Book of Documents ---

25                   **S/SGT. KELLY:** Yes.

1                   **MR. RUEL:** --- that we discussed -- or you  
2 testified in May about a policy called "Criminal  
3 Investigation Management Procedures", which provides that  
4 for some major crimes called "benchmark" there must be --  
5 there is a notification process to supervisors and an  
6 overview or a supervisory process that is provided for in  
7 the policy in relation to the investigation of those major  
8 crimes.

9                   **S/SGT. KELLY:** Yes.

10                  **MR. RUEL:** And it's at Tab 7.

11                   You were able at the time to track this  
12 major crime occurrence policy to 1993?

13                  **S/SGT. KELLY:** Yes, that's correct.

14                  **MR. RUEL:** So my question to you is were you  
15 able to find anything in terms of any predecessor to this  
16 policy, which is at Tab 7, Part 10, "Investigative  
17 Responsibility", or any other policy that deals with the  
18 notification to upper ranks concerning major crimes?

19                  **S/SGT. KELLY:** Yes, I have.

20                  **THE COMMISSIONER:** I'm sorry. You're saying  
21 that Tab 7, Part 10 -- that was in 1972?

22                  **S/SGT. KELLY:** Tab 7?

23                  **THE COMMISSIONER:** Yes.

24                  **S/SGT. KELLY:** Is from 1993.

25                  **THE COMMISSIONER:** Ninety-three ('93).

1           Okay, good.

2                           **S/SGT. KELLY:** November, 1993.

3                           **THE COMMISSIONER:** Okay.

4                           **S/SGT. KELLY:** I believe in my initial  
5           testimony, I made reference to a document, I believe it's  
6           Exhibit 39 and it's in Tab 13. It sets out a notification  
7           requirement. That particular provision existed -- at that  
8           point, we were aware that it existed back as far as 1987.  
9           I've now been able to trace the complete history of that  
10          notification process back into the early sixties, actually  
11          before that process came into place.

12                          **MR. RUEL:** So the document at Tab 13 is at  
13          Part 7 and it's "Occurrence Reporting Procedures" and the  
14          other one we're just talking about ---

15                          **S/SGT. KELLY:** --- was in Part 10.

16                          **MR. RUEL:** Was at Part 10.

17                          **S/SGT. KELLY:** Yes.

18                          **MR. RUEL:** So those are not -- it's not the  
19          same process?

20                          **S/SGT. KELLY:** No, in fact, I think the key  
21          distinction here is that in 1993, when we implemented the  
22          benchmark policy for major crimes, it's part of the  
23          Criminal Investigation Management Plan, where previously it  
24          was only a notification process. There is very little  
25          reference in the policy prior to 1993, as to what the

1 motive of the notification was about. It was strictly just  
2 a notification process.

3 We have some indication from some of the  
4 wording that it may relate to criminal investigation  
5 management as well as media or public interest types of  
6 occurrences. So that in 1993, we're dealing specifically  
7 now with criminal management -- criminal case management.

8 MR. RUEL: So there are specific provisions  
9 dealing with how the information received must be dealt  
10 with essentially?

11 S/SGT. KELLY: Yes.

12 MR. RUEL: So for example, and this is just  
13 for as a reminder, because this has been a number of months  
14 -- at Tab 7, this is the document at Part 10. At the  
15 bottom of the page:

16 "Upon determination of a major crime,  
17 member shall notify their immediate  
18 supervisor who shall in turn notify  
19 appropriate criminal investigation  
20 supervisory personnel in accordance  
21 with listed procedures."

22 So there's notification and then there's  
23 supervision, essentially.

24 S/SGT. KELLY: Yes. And as you see, it's  
25 strictly relating to criminal investigation supervisory

1           personnel. So we're staying within an element of the  
2           organization that is focussed on crime and criminal  
3           activity, as opposed to an administrative process.

4                   **MR. RUEL:** The other procedure, which is at  
5           Part 7 or was at Part 7 is notification only.

6                   **S/SGT. KELLY:** Yes, it was a notification  
7           process and we can only surmise what its purposes were. As  
8           I mentioned, it would supposedly relate to criminal  
9           investigation management of major crimes but as well,  
10          issues of significant public interest.

11                   **MR. RUEL:** So if you want, we'll just go  
12          through with the predecessors of this part -- well, first  
13          of all, Part 7 here, the "Occurrence Reporting". Does it -  
14          - this was 1987; correct?

15                   **S/SGT. KELLY:** Yes.

16                   **MR. RUEL:** Does it still exist today in this  
17          form or another form?

18                   **S/SGT. KELLY:** Those particular provisions  
19          still exist within Police Orders as a notification process.  
20          The notification process is set out within our Niche RMS  
21          policies and its wording is very similar but its focus is  
22          much more on the public interest/media relations type of  
23          perspective.

24                   **MR. RUEL:** What do you mean; media relations  
25          -- public interest/media relations?

1                   **S/SGT. KELLY:** Occurrences that could  
2                   generate significant public interest or significant  
3                   interest with the media where we might be getting a number  
4                   of calls from the media and our media relations area --  
5                   Corporate Communications area would need to know the issues  
6                   and be prepared to respond to them.

7                   **MR. RUEL:** So is it similar as this --  
8                   currently, is there still a list of offences for which  
9                   there's automatic notification required?

10                  **S/SGT. KELLY:** Yes, there is still a list  
11                  there.

12                  **MR. RUEL:** And is there an overlap with ---

13                  **S/SGT. KELLY:** There is. There is.

14                  **MR. RUEL:** --- this and the list dealing  
15                  with the management of -- investigation management.

16                  **S/SGT. KELLY:** There is some overlap and I  
17                  have a sense that there is some redundancy there and I have  
18                  asked one of my staff to begin some consultations to  
19                  consider whether or not that particular policy is in fact,  
20                  redundant.

21                  **MR. RUEL:** Which one?

22                  **S/SGT. KELLY:** The notification process that  
23                  still remains in Niche RMS, because we also -- throughout  
24                  the years, we've developed some other very specific policy  
25                  relating to media relations. So there's some question now

1 as to whether or not that particular notification process,  
2 through Niche RMS is even required anymore.

3 MR. RUEL: Because there's already a  
4 notification process in the Criminal Investigation  
5 Management procedures?

6 S/SGT. KELLY: That's correct. That's  
7 correct.

8 MR. RUEL: So just to go through the history  
9 of this reporting procedure and it's at Tab 9.

10 S/SGT. KELLY: Yes. I believe this comes  
11 from our -- a document that we found at the Archives that  
12 included material from 1965 to 1967.

13 MR. RUEL: So we don't have -- do you have a  
14 date, a specific date for this document?

15 S/SGT. KELLY: Well, I can only say that it  
16 came from the binder that we know was produced in 1965 and  
17 had been updated by someone up to 1967.

18 So in that particular policy, you can see  
19 that we're dealing with a completely different occurrence  
20 reporting process than we have today.

21 MR. RUEL: So can you just briefly explain  
22 what was the process at the time?

23 S/SGT. KELLY: I think when you recall when  
24 Chief Superintendent Ryder was here with a large binder  
25 which was basically an occurrence book. I think that's

1        what we're referring to in Section 117(a), "General  
2        Occurrence Book". And with that then, after they have  
3        entered in information in the book about an occurrence,  
4        they would complete an occurrence form, which is the LE39  
5        here.

6                    What's important about this particular  
7        policy -- it's of particular interest to us in this -- is  
8        that Section 121 says that all occurrences except those  
9        that are listed are to be reported. As we turn the page in  
10       Section 143, we see that everything that is recorded is  
11       reported up, through the organization to General  
12       Headquarters, to District Headquarters.

13                   So if it was a recordable occurrence, it was  
14       reported up.

15                   **MR. RUEL:** So GHQ is General Headquarters;  
16       DHQ is District Headquarters?

17                   **S/SGT. KELLY:** Yes.

18                   **MR. RUEL:** This is at paragraph 143.

19                   **S/SGT. KELLY:** Yes.

20                   **MR. RUEL:** And the reportable offences --  
21       this is at paragraph 121, it's pretty much all offences  
22       except those listed there.

23                   **S/SGT. KELLY:** Yes, because if it was a  
24       reported occurrence, it was reported up to higher levels in  
25       the organization. So they were reporting -- there was no

1 threshold, no benchmark -- everything reported was being  
2 reported up.

3 MR. RUEL: And we don't know -- sorry.

4 S/SGT. KELLY: Which will lead us to some of  
5 the other things that I have been able to find out that  
6 lead us to then how the benchmarks were created.

7 MR. RUEL: Do we or do you know what was the  
8 purpose of reporting at the time?

9 S/SGT. KELLY: No, I don't.

10 MR. RUEL: So the next document is at Tab  
11 10.

12 S/SGT. KELLY: Yes.

13 MR. RUEL: It's a document ---

14 S/SGT. KELLY: This is a small excerpt from  
15 a much larger document.

16 MR. RUEL: I see.

17 THE COMMISSIONER: Where it read, I think,  
18 through here, they were saying at one point, well wait a  
19 minute here, we're getting too many reports coming up so  
20 now we're going to start culling and we're going to go with  
21 major occurrences.

22 S/SGT. KELLY: That's correct. And those  
23 recommendations were laid out in the Audit Report from  
24 1975.

25 THE COMMISSIONER: Right and so, in there,

1 and I'm looking at it -- it only contains rapes.

2 S/SGT. KELLY: Yes.

3 THE COMMISSIONER: It doesn't include  
4 buggery. It doesn't include gross indecency.

5 MR. RUEL: Indecent assault.

6 THE COMMISSIONER: Indecent assault? I  
7 don't know if indecent assault was in 1975, was it?

8 In any event, they culled hard on that one.  
9 They just kept rapes there.

10 S/SGT. KELLY: Yes.

11 MR. RUEL: So the following document is at  
12 Tab 11 ---

13 THE COMMISSIONER: I'm sorry. Just to be  
14 clear though, if someone was -- would be charged with  
15 indecent assault or gross indecency, that would not show up  
16 on the -- would not be reported upwards as a major  
17 reportable occurrence, in 1975?

18 S/SGT. KELLY: Well, it would not be on that  
19 particular list. Now, in 1975, these were just  
20 recommendations -- hadn't yet been implemented.

21 THE COMMISSIONER: Okay.

22 S/SGT. KELLY: When we go to Tab 11 ---

23 MR. RUEL: Tab 11 is the implementation of  
24 those recommendations?

25 S/SGT. KELLY: Yes, in 1977.

1                   There we see a list of specific occurrences  
2                   or specific offences and here we say a rape and attempted  
3                   rape.

4                   **MR. RUEL:** Right.

5                   **S/SGT. KELLY:** And a number of other  
6                   offences. But we also see here, at the discretion of the  
7                   detachment commander, an unusual major occurrence for  
8                   example, demonstration, incidents of union violence, et  
9                   cetera. So there is some discretion built in, although --  
10                  albeit it does not suggest there, that in the particular  
11                  area that you're interested in here. But there is a  
12                  discretion component built in for the detachment commander  
13                  to report up occurrences that they feel are appropriate.

14                  **THE COMMISSIONER:** Well, I mean in 1970s,  
15                  demonstration and union violence might have been ---

16                  **S/SGT. KELLY:** Yes.

17                  **THE COMMISSIONER:** --- the flavour of the  
18                  day.

19                  **MR. RUEL:** And again that's rape -- in terms  
20                  of sexual offences, it's only rape and attempted rape.

21                  **S/SGT. KELLY:** Yes.

22                  **MR. RUEL:** The next document is at Tab 12.  
23                  Do you know the date of this document?

24                  **S/SGT. KELLY:** This is from 1984 and again  
25                  we see a very similar list, but with some modifications.

1 Here, we're looking at essentially what's now a CPIC-based  
2 reporting process rather than an occurrence report  
3 notification process.

4 MR. RUEL: M'hm.

5 S/SGT. KELLY: So previously it talked about  
6 distribution of the reports up to higher levels. Now,  
7 we're talking about an actual notification process by way  
8 of CPIC, so to communicate very specific information about  
9 the existence of these occurrences.

10 MR. RUEL: And those of us who don't know  
11 what CPIC is?

12 S/SGT. KELLY: Canadian Police Information  
13 Centre.

14 MR. RUEL: So the process was; a member in  
15 charge of the -- that's at paragraph 31:

16 "Member in charge of a detachment must  
17 notify his District Commander by CPIC  
18 and by telephone when urgent when an  
19 occurrence involves..."

20 And we have the list here.

21 S/SGT. KELLY: Yes.

22 MR. RUEL: And then 38.2:

23 "The District Commander receiving a  
24 notification will forthwith notify the  
25 division-held Field Operations

1 Division."

2 So that's -- can you just explain briefly  
3 the structure here so that we can understand what this  
4 deals with.

5 S/SGT. KELLY: This particular structure  
6 reports up to one specific division commander that -- at  
7 our General Headquarters, that is in charge of the Field  
8 Operations Division, which would be all of the districts in  
9 the province. In later versions, you'll see that that's  
10 been divided up into different divisions, so we would end  
11 up a couple of years later, with A, B and C Division to  
12 kind of take some pressure off that senior level of  
13 command; dividing up the province so that so many districts  
14 would report to one division commander, other districts to  
15 another division commander.

16 MR. RUEL: So the following document is at  
17 Tab 13. I think we're closing the loop here. This is  
18 Exhibit 39, which was already filed.

19 S/SGT. KELLY: Yes.

20 MR. RUEL: This is a document or this policy  
21 was adopted in 1987.

22 S/SGT. KELLY: Yes. Here we can see that  
23 there were just a couple of amendments and again, this is  
24 where we begin to get a sense of the intent or the motive  
25 behind the notification process, as it's beginning to

1 change. We're seeing the introduction here of assault  
2 against a member, hospital treatment required and very  
3 specific reference to a copy going to the OPP News Bureau.  
4 So we're seeing that it's going -- it's beginning to evolve  
5 beyond criminal management or major occurrences in relation  
6 to criminal investigation.

7 MR. RUEL: To public or ---

8 S/SGT. KELLY: Yes; to issues of significant  
9 public interest.

10 MR. RUEL: Sorry, I'm going to ask you to go  
11 back to Exhibit -- Tab 12. The 1984 version covered sexual  
12 assault so this has been a change, I suppose, that reflects  
13 legislative changes?

14 S/SGT. KELLY: Yes, that's correct.

15 MR. RUEL: And the same at Tab 13, "Sexual  
16 Assault"?

17 THE COMMISSIONER: I guess the question  
18 would be then, if at that time, someone was charged with  
19 rape under the old section, would someone interpret it as  
20 being part of the sexual assault and report it accordingly?

21 S/SGT. KELLY: I can only speak for my own  
22 interpretation of that and I would say that, yes, if an  
23 occurrence came in after it had been changed to sexual  
24 assault all rapes would be included in that.

25 MR. RUEL: I think this covers this section.

1           Then, we are going to move to page 5 of the outline which  
2           is at section C, "Sexual Assault Investigations".

3                       When you testified in May you indicated that  
4           the comprehensive, if I may qualify it like that, policy  
5           dealing with the investigation of sexual assault was in the  
6           works and was about to be released.

7                       **S/SGT. KELLY:** Yes, that's correct.

8                       **MR. RUEL:** So I gather that this policy has  
9           now been released and it may be found at Tab 15?

10                      **S/SGT. KELLY:** Yes, it was released in June  
11           of 2006.

12                      **MR. RUEL:** Were you involved in the process,  
13           the development process?

14                      **S/SGT. KELLY:** Yes, I was.

15                      **MR. RUEL:** Okay.

16                      **S/SGT. KELLY:** I was involved in the final  
17           development of it as well as the approval of it.

18                      **MR. RUEL:** So at Tab 14 this is a document  
19           that was filed already and it has been included for ease of  
20           reference. It is Exhibit 38.

21                      **S/SGT. KELLY:** Yes.

22                      **MR. RUEL:** And I asked you at the time if  
23           there was a policy or a comprehensive or specific policy --  
24           I'm sorry -- dealing with the investigation of sexual  
25           assault. Your answer was, no, but that there were a number

1 of existing policies that dealt or could be applicable to  
2 the investigation of sexual assault?

3 S/SGT. KELLY: Yes, that's correct.

4 MR. RUEL: And this was the list you  
5 provided to the Commission?

6 S/SGT. KELLY: Yes.

7 MR. RUEL: Then, turning to Tab 15, and I'm  
8 going to ask you to go through the document, but in the  
9 introduction I gather that we can see ---

10 S/SGT. KELLY: Yes.

11 MR. RUEL: --- a number of the ---

12 S/SGT. KELLY: Similarity.

13 MR. RUEL: --- policies that you already --  
14 you had listed and that can be found in Exhibit 38?

15 S/SGT. KELLY: Yes. And this is similar to  
16 many of the other policies that we have been developing.  
17 Instead of deconstructing a number of the other policies  
18 that make reference to sexual assault or sexual issues of  
19 our investigations we provide a gateway or a doorway here  
20 in a consolidated policy to take people to all of those  
21 different provisions. In addition, we have gone further  
22 then in this particular policy to add a number of different  
23 responsibilities for the individuals who would be involved  
24 at different levels or different stages of the  
25 investigation or the service response from the OPP.

1           **MR. RUEL:** There is no -- I don't see any  
2 definition here of sexual assault.

3           **S/SGT. KELLY:** We do have a definition. I  
4 don't think it's provided here but if you see -- if you  
5 look at the underlined reference where it says "All sexual  
6 assault" under the introduction, the underline indicates  
7 that we have a definition within police orders and this is  
8 a link to that definition.

9           **MR. RUEL:** Does it cover historical cases of  
10 sexual assault or historical abuse?

11           **S/SGT. KELLY:** It would. It does not  
12 differentiate between recent or historical. So there is no  
13 -- we don't in policy articulate any difference in how  
14 those are investigated. The only difference that I can  
15 articulate for you is the issue around 96 hours at the time  
16 of reporting from when the incident happened, and that's  
17 around a forensic identification issue and the ability to  
18 collect and preserve evidence that may be critical to the  
19 success of the investigation.

20           **MR. RUEL:** That can only apply to a recent  
21 case of sexual assault?

22           **S/SGT. KELLY:** Yes.

23           **MR. RUEL:** So you've got the introduction  
24 which is essentially ground that was already covered by  
25 previous or existing policies and then the rest provides

1 responsibilities and accountabilities for various players -  
2 --

3 S/SGT. KELLY: Yes.

4 MR. RUEL: --- within the OPP structure?

5 S/SGT. KELLY: Yes, as I mentioned in my  
6 previous testimony, when we embarked on the issue of  
7 restructuring police orders to meet adequacy we recognized  
8 that there were gaps in our policy where we were -- there  
9 were a number of practices in the organization that weren't  
10 clearly articulated and that's certainly an exercise that  
11 we undertook here. We reached out to the experts in the  
12 field about how they were conducting their investigations  
13 and formalized and articulated those particular steps here  
14 in the policy.

15 MR. RUEL: So just going through some of the  
16 provisions here; the employee -- who is the employee within  
17 the OPP?

18 S/SGT. KELLY: Employee is any person who is  
19 employed by the OPP. So that could be the police officer  
20 on the frontline, a commissioned officer; it could be the  
21 caretaker, a dispatcher. Anyone who is employed by the OPP  
22 and by this section is given a responsibility to  
23 communicate any information they've received about a sexual  
24 assault as soon as possible to a provincial communication  
25 centre.

1 MR. RUEL:

2 "And the employee shall obtain as much  
3 information as possible before doing  
4 so."

5 S/SGT. KELLY: Yes.

6 MR. RUEL: Then, at the second page, there  
7 is the responsibilities for the communicator. That person  
8 would be at the provincial communication centre. And then  
9 you've got the first member at the scene and it's written  
10 here:

11 "The first member at the scene  
12 responding to a report of an alleged  
13 sexual assault shall have an  
14 understanding of the complexity and  
15 sensitivity of this type of  
16 investigation and therefore present  
17 themselves in a professional  
18 compassionate and reassuring manner."

19 When there is a mention to the  
20 "understanding of the complexity and sensitivity of this  
21 type of investigation" does that refer to specific  
22 training?

23 S/SGT. KELLY: What we're referring to here  
24 is -- I mean, we recognize how traumatic a sexual offence  
25 is to a victim and we found it was important to remind our

1 members about that particular importance when they begin to  
2 deal with victims from these types of offences.

3 We know that as a first responder our  
4 initial contact with these individuals is crucial as to how  
5 the investigation and the impact of that investigation will  
6 have on the victim throughout the process. We don't want  
7 to begin a re-victimization process at the very beginning.  
8 So we want our members to be very professional, very  
9 compassionate and be very supportive of the victim's needs  
10 at the onset.

11 **MR. RUEL:** Then you've got responsibilities  
12 for the area crime sergeant. Just in the structure again,  
13 where does the area crime sergeant fit?

14 **S/SGT. KELLY:** The area crime sergeant  
15 reports out of the regional headquarters through  
16 essentially the crime units. There may be a number of area  
17 crime sergeants within a region. The regions determine  
18 their particular structure for their crime management  
19 process depending on the volume of calls, their geographic  
20 issues, the number of personnel that they have. The area  
21 crime sergeant would be responsible for supervising a  
22 number of different criminal investigators within a  
23 specified area within their region.

24 **MR. RUEL:** So this provision states that an  
25 area crime sergeant shall -- and it's bullet number 2:

1 "Assign the primary investigator to the  
2 sexual assault occurrence, ensuring  
3 that the member assigned has the  
4 specific knowledge, skills, abilities,  
5 training to conduct an investigation as  
6 follows: threshold offence; require  
7 training accreditation and general  
8 investigation techniques; sexual  
9 assault investigation; major case  
10 management and non-threshold can be  
11 investigated by a member who does not  
12 possess accreditation in the  
13 aforementioned areas."

14 So what is a threshold offence? What does  
15 this refer to?

16 **S/SGT. KELLY:** There we're specifically  
17 referring to a threshold offence as defined in the Major  
18 Case Management Manual.

19 **MR. RUEL:** Would it be -- we can go to the  
20 provision, but would it be accurate to say that not all  
21 sexual offences are threshold offences?

22 **S/SGT. KELLY:** No, that's correct. There  
23 are very specific criteria, specific characteristics of the  
24 offence that would elevate it through the level of  
25 threshold and at that time major case management process

1 will take place.

2 MR. RUEL: And historical sexual offences  
3 are not considered as threshold offences under the Ontario  
4 Major Case Management Manual?

5 S/SGT. KELLY: I'm sorry; I would have to  
6 have a look at that. I'm not that familiar with the  
7 manual.

8 MR. RUEL: This is at Exhibit 36, Volume 6.  
9 Yes, Tab 2, and it's at page 8 of the document.

10 Well, I should first go to page 7, and at  
11 paragraph 2:

12 "The following major case occurrences  
13 are deemed to be threshold offences and  
14 shall be assigned to a primary  
15 investigator who shall undertake the  
16 investigation..."

17 And there is a reference to, for example, at  
18 paragraph 5 -- sub-paragraph 5:

19 "...multiple sexual acts, use of  
20 restraints, bondage disguised by the  
21 offender".

22 At paragraph 11:

23 "The commission of any other offence in  
24 conjunction with a sexual assault."

25 So it's not only simple sexual assault, if I

1 may put it like that?

2 S/SGT. KELLY: There are certainly unique  
3 characteristics to these types of offences.

4 MR. RUEL: And at page 8.

5 THE COMMISSIONER: Thank you.

6 MR. RUEL: Paragraph 3:

7 "The following major case occurrences  
8 are not deemed to be threshold  
9 offences."

10 And at subparagraph 3:

11 "If the case involves historical sexual  
12 offence..."

13 So those are not threshold offences?

14 S/SGT. KELLY: That's correct.

15 MR. RUEL: Explain your reason why you would  
16 not include, currently include the broader spectrum of  
17 sexual offences under your threshold provision here  
18 requiring primary investigators to have the accreditations  
19 for specified areas.

20 S/SGT. KELLY: I can give you a qualified  
21 answer. I may not be the most appropriate person to  
22 provide a detailed answer on this.

23 With the method of policing that we  
24 undertake in a generalist policing environment we have to  
25 establish certain levels or thresholds to divert

1 occurrences or offences, investigations, into  
2 specialization areas. But we have to maintain that  
3 generalist approach at the frontline level for a number of  
4 different types of occurrences just to meet the capacity  
5 needs.

6 What we have done here, and what we have  
7 done with all of our crime management process, is impose a  
8 responsibility on the area crime sergeant to ensure that  
9 regardless of whether it is a threshold or not, that the  
10 individual has the knowledge, skill and ability. Now, here  
11 that level of knowledge, skill and ability isn't as  
12 specific as with the non-threshold but there still  
13 maintains that responsibility.

14 This does a number of things for us. One,  
15 it helps us manage the cases so that we are not sending too  
16 many of the -- I guess the lower-level non-complex types of  
17 crimes to a specialist and tying them up. And as well, it  
18 provides a developmental opportunity for frontline members  
19 to become experienced in investigations under the  
20 supervision of an area crime sergeant or if the area crime  
21 sergeant determines to partner them with another  
22 individual, another criminal investigator.

23 So that's essentially the design idea behind  
24 all of this. We do this with a number of different types  
25 of investigations.

1                   **MR. RUEL:** Then there is some more  
2                   responsibilities for the area crime sergeant; for example,  
3                   provide -- and I'm back at this document at Tab 15 of the  
4                   addendum to Volume 6 of Exhibit 36, "to provide  
5                   investigative support to the primary investigator."

6                   Then, if you go down the page, the primary  
7                   investigator is -- there is some responsibilities there as  
8                   well:

9                                   "...responsible for maintaining contact  
10                                  with the victim throughout the  
11                                  investigation; provide relevant  
12                                  information to the victim regarding the  
13                                  investigation."

14                   So the primary investigator is the prime  
15                   contact with the victim?

16                   **S/SGT. KELLY:** Yes.

17                   **MR. RUEL:** Then the ---

18                   **S/SGT. KELLY:** Under the direction of the  
19                   area crime sergeant they are essentially making the  
20                   decisions regarding the direction of the investigation.

21                   **MR. RUEL:** And if you can just go through,  
22                   quickly through the rest of the players and  
23                   responsibilities?

24                   **S/SGT. KELLY:** Again, we maintain a  
25                   responsibility for the first line supervisor to make sure

1 that the initial steps are undertaken by the first member  
2 at the scene.

3 We have very specific responsibilities for  
4 the detachment commander and here a lot of this is relating  
5 to making sure that the appropriate supports are made  
6 available and making sure that protocols are in place.

7 We also have responsibilities for the  
8 regional abuse coordinator. They provide a lot of support  
9 for the primary investigators in relation to training and  
10 education, trend analysis. They provide assistance to the  
11 detachment commanders in the development of the protocols  
12 and working with other agencies.

13 We have the regional manager of Criminal  
14 Operations. This is the individual who essentially  
15 supervises over the area of crime sergeants and has  
16 ultimate responsibility for managing the day-to-day  
17 criminal operations within the region.

18 **MR. RUEL:** Then there is at paragraph 213.3,  
19 Investigative Considerations, and the second heading  
20 "advise victim if no charge". So this policy provides that  
21 if there is no -- no charges are laid by the police or the  
22 OPP, then the victim has to be advised.

23 **S/SGT. KELLY:** Yes.

24 **MR. RUEL:** So these provisions here under  
25 the heading "Responsibilities" are new. They did not

1           formally exist on paper anywhere else in the OPP Police  
2           Orders prior to June 2006?

3                       **S/SGT. KELLY:** Not in Police Orders, no.  
4           They may have existed in other documents but certainly they  
5           were not part of Police Orders prior to June 2006.

6                       **MR. RUEL:** The next document is at Tab 16.

7                       **THE COMMISSIONER:** Me Ruel, it might be time  
8           for the afternoon break?

9                       **MR. RUEL:** Sure.

10                      **THE COMMISSIONER:** Let's take a break. How  
11           much longer do you have with respect to this witness?

12                      **MR. RUEL:** Sorry? How much time ---

13                      **THE COMMISSIONER:** I was wondering if we're  
14           going to be able to finish this witness today

15                      **MR. RUEL:** Yes, I think we're going to be 20  
16           more minutes.

17                      **THE COMMISSIONER:** All right and then it  
18           will be cross. Thank you.

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

21                      The hearing will resume in 15 minutes.

22           --- Upon recessing at 3:21 p.m./

23                      L'audience est suspendue à 15h21

24           --- Upon resuming at 3:39 p.m./

25                      L'audience est reprise à 15h39

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

3                   This hearing of the Cornwall Public Inquiry  
4                   is now in session. Please be seated. Veuillez vous  
5                   asseoir.

6                   **THE COMMISSIONER:** Me Ruel.

7                   **STAFF SERGEANT ROGER KELLY, Resumed/Sous affirmation**  
8                   **solennelle:**

9                   **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**  
10                  **RUEL, (cont'd/suite):**

11                  **MR. RUEL:** Staff Sergeant Kelly, we were at  
12                  Tab 16 of the Addendum page to Volume 6 of Exhibit 36.

13                  So there is another policy here that was  
14                  included in the package. So can you explain what this  
15                  policy is about and when it was adopted?

16                  **S/SGT. KELLY:** Yes. This was adopted into  
17                  policy October 5<sup>th</sup>, 2006 and the Ontario Provincial Police  
18                  have a specialized unit, the Child Pornography Section,  
19                  also known as Project P. This particular policy outlines  
20                  very specific responsibilities of that area and the  
21                  investigative procedures for these very unique types of  
22                  investigations that require very specific expertise.

23                  **MR. RUEL:** Thank you. I guess those -- were  
24                  those changes prompted by legislative changes to the  
25                  *Criminal Code*?

1                   **S/SGT. KELLY:** They are routed in the  
2                   *Criminal Code*, specifically with respect to items like  
3                   child sex tourism and voyeuristic recording. We felt it  
4                   was important to articulate the actual responsibilities and  
5                   the process of these types of investigations to ensure that  
6                   high quality investigations are undertaken.

7                   **MR. RUEL:** Thank you.

8                   So we will go now to the last book of  
9                   documents which is Exhibit 36, Volume 7, Addendum A. I  
10                  will ask you to turn up Tab 1, page 1. So I gather you've  
11                  been able to or the OPP has been able to find some policy  
12                  documents dealing with the support and care to victims.

13                  So where have these documents been found?

14                  **S/SGT. KELLY:** Well, here again going  
15                  through the material that we had converted from microfilm  
16                  and microfiche that was located in the Eric Silk Library,  
17                  we were able to recover some documents relating to project  
18                  work that gave us some clues as to where the organization  
19                  was going in relation to assistance to victims of crime.  
20                  And as well, we were able to recover some memoranda that  
21                  were issued by the Commissioner of the OPP back in the  
22                  early '80s.

23                  **MR. RUEL:** So on this point, if you can turn  
24                  up Tab 2, and this is a letter dated January 6<sup>th</sup>, 1981 from  
25                  Commissioner Graham to members of the OPP, and it refers to

1 a recent meeting of the Cabinet Committee on justice and  
2 there was a discussion on justice for the victims.

3 So first of all, the Cabinet Committee, this  
4 is the provincial?

5 S/SGT. KELLY: That's my understanding, yes.

6 MR. RUEL: And can you explain what this  
7 letter is about?

8 S/SGT. KELLY: Well, the outcomes of those  
9 discussions were some concerns that victims of crime were  
10 not being provided with sufficient information regarding  
11 the court process and their attendance at court. And the  
12 Commissioner at the time it appears felt that this was  
13 significant enough of an issue to notify every employee in  
14 the organization of the importance of ensuring that victims  
15 of crime are provided with information to support them  
16 through the process.

17 And my perspective when I see this kind of  
18 letter going out is that it's been identified by the  
19 Commissioner that this is an issue of significant  
20 organizational importance and essentially he is getting the  
21 ball rolling for something that's about to come out into  
22 the organization in a more formal way.

23 Because what we see here is not specific  
24 processes or procedures, but more an articulation of the  
25 responsibility to provide support to victims. So it just

1       seems to be suggesting to us that there is going to be a  
2       greater emphasis in the near future regarding how we're  
3       going to deliver those services to victims.

4               **MR. RUEL:** You talk about the  
5       responsibility. Is this document in the nature, in  
6       addition to -- discussing the responsibility of the OPP, is  
7       this in the nature of a policy or a directive or -- how did  
8       you qualify this document?

9               **S/SGT. KELLY:** It's difficult to say that  
10       this is an actual policy document. It's certainly a policy  
11       instrument but the wording that's used in here is setting  
12       the stage for a new -- new priorities in the organization,  
13       an enhanced priority in the organization.

14               There's some reference here, an  
15       encouragement that all employees participate wholeheartedly  
16       in ensuring that victims of crime are informed of the  
17       disposition of occurrences. And that language, to me,  
18       isn't as explicit as policy statement, but it's again  
19       setting the stage for something else to come.

20               **MR. RUEL:** Would it be accurate to say that  
21       this is the first instance of a mention of a responsibility  
22       of the OPP with respect to victims of a crime?

23               **S/SGT. KELLY:** This is certainly the first  
24       major document that we could find that articulates this  
25       kind of responsibility in this way.

1                   **MR. RUEL:** When you say major document, was  
2 there other document?

3                   **S/SGT. KELLY:** There are other working  
4 documents that exist that are references to providing  
5 support to victims, but this is the first document that we  
6 see that's been communicated out to the organization that  
7 we've been able to find that truly articulates that  
8 responsibility.

9                   **MR. RUEL:** Then at Tab 3, there is another  
10 letter from the Commissioner but it's a different  
11 Commissioner. It's Commissioner Erskine dated December 3<sup>rd</sup>,  
12 1982 also to the members of the OPP.

13                   So can you explain what this letter is  
14 about?

15                   **S/SGT. KELLY:** This particular letter, again  
16 to all members of the organization, refers back to the  
17 original memo or original letter in January of '81. And it  
18 appears that it's a reaffirmation to all of the members of  
19 the organization that with the change of leadership from  
20 Commissioner Graham to Commissioner Erskine, there  
21 continues to be a major emphasis in ensuring that we  
22 fulfill our responsibilities to supporting victims of  
23 crime, and again, giving us the heads-up that there is  
24 something coming, that there's something being created in  
25 the organization to support this.

1           **MR. RUEL:** If you can turn up Tab 4, this is  
2 a document dated February 13, '84. It's a memorandum from  
3 Corporal Redpath, the Policy and Procedure Unit ---

4           **S/SGT. KELLY:** Yes.

5           **MR. RUEL:** --- to the Policy and Planning  
6 Branch. So what is the Policy and Planning Branch?

7           **S/SGT. KELLY:** That -- throughout the years  
8 it's essentially the same bureau that I belong to today but  
9 the number of different name changes have take place over  
10 the years.

11           **MR. RUEL:** I am noticing here that this is  
12 written "Draft Copy" to suggest that this document was a  
13 draft. Were you able to locate the final document?

14           **S/SGT. KELLY:** I was not able to find a  
15 signed document. This came from our microfiche from the  
16 project files that we had archived from our particular  
17 program area.

18           **MR. RUEL:** So the document is titled "Review  
19 of Report of Federal/Provincial Task Force on Justice for  
20 Victims of Crime". Can you explain what this document is  
21 about?

22           **S/SGT. KELLY:** This is an analysis of that  
23 document and report back to the Director of the Policy and  
24 Planning Area by one of -- well, by the corporal who  
25 belongs to the Policy Unit of that particular branch,

1 providing an analysis of the recommendations in relation to  
2 how well the OPP or whether the OPP is already complying  
3 with some of these recommendations, whether the OPP should  
4 be going further in implementing some of these  
5 recommendations, which areas of the organization these  
6 recommendations should be forwarded to for consideration  
7 and further research, and whether or not some of the  
8 recommendations are related to other areas of government.

9 **MR. RUEL:** This deals, in a comprehensive  
10 manner, with how victims of crime should be treated in the  
11 investigative and judicial stages of judicial proceedings.  
12 Is that, to your knowledge, the first or one of the first  
13 comprehensive document, I mean the report of the task force  
14 dealing with such issue?

15 **S/SGT. KELLY:** Well, with all of the  
16 information that we had searched through, this is the first  
17 that we could find of a major review in relation to victim  
18 services.

19 **MR. RUEL:** Is there some paragraphs that you  
20 wish to outline for the Commission?

21 **S/SGT. KELLY:** Yes, I think, just before I  
22 go through each one of those, in a summary, what we see  
23 here in many of these recommendations, eventually, we'll  
24 see in our policy documents. So things like the proper  
25 turn of property are the first three points that are here.

1                   Eventually, they do make it into later one  
2                   of the policy documents that we have. You can see on page  
3                   2, Recommendation number 4, that talks about the  
4                   difficulties that victims encounter in relation to the  
5                   return of property because of issues around pawn brokers.  
6                   You can see that the response here is that the force,  
7                   meaning the OPP, identified this need some time ago and  
8                   sufficient policy is contained in Section 1138.2 of Part  
9                   10. So they're suggesting that we were already addressing  
10                  this as a policy issue.

11                  **MR. RUEL:** In some other cases, I guess, but  
12                  we'll come to that, but in some cases, it was addressed in  
13                  some cases, and in some cases, the OPP was already doing  
14                  what was ---

15                  **S/SGT. KELLY:** That's correct.

16                  **MR. RUEL:** --- suggested, and in some other  
17                  areas, I mean there was further policy analysis to  
18                  determine if there should be changes to practices or to  
19                  police orders.

20                  **S/SGT. KELLY:** Yes. And for example,  
21                  another on page 3, Recommendation number 16:

22                                "A campaign should be launched in each  
23                                jurisdiction to acquaint citizens as  
24                                fully as possible with the existence of  
25                                the Criminal Injuries Compensation

1 Board and their purpose."

2 And I note below that that it mentions that:

3 "Force members have been distributing  
4 information cards prepared by the  
5 Ontario Criminal Injuries Compensation  
6 Board to innocent victims of crime  
7 since December 1977."

8 And it goes further suggesting that perhaps  
9 we should formalize that practice within policy.

10 **MR. RUEL:** And then you have paragraph 25  
11 and maybe we can go to 25(c) which is at page 4 of the  
12 document. So 25 says:

13 "Every effort should be made by the  
14 various ministries involved to meet the  
15 needs of victims and witnesses and that  
16 particular consideration be given  
17 to..."

18 And (c):

19 "...providing crisis counselling to  
20 victims and their families either by  
21 responding police officers, other  
22 professionals or trained volunteers."

23 **S/SGT. KELLY:** Yes.

24 **MR. RUEL:** And the response of the ---

25 **S/SGT. KELLY:** And the response there:

1 "To a limited but acceptable degree we  
2 fulfill this function now. However,  
3 our member should be encouraged to  
4 refer these people to appropriate  
5 social agencies. Advice should be  
6 sought from our training branch to  
7 ascertain what training and in-service  
8 training programs contain in this  
9 regard and whether there can be  
10 improvement in either of these areas."

11 **MR. RUEL:** And there is a section of this  
12 document at page 8 dealing with sexual assault victims.  
13 For example, paragraph 53:

14 "Responding police officers and  
15 hospital staff and other local victim  
16 assistance services should make special  
17 efforts to ensure that sexual assault  
18 victims' practical and emotional needs  
19 for crisis counselling are satisfied."

20 **S/SGT. KELLY:** Yes. And here again are the  
21 responses:

22 "Our officers deal with these offences  
23 in the most diplomatic and  
24 understanding manner. Where the  
25 emotional need is evident, the

1                   examining doctor should be the  
2                   individual concerned with this matter  
3                   and should recommend crisis counselling  
4                   to the victim."

5                   **MR. RUEL:** And then there's some other  
6 relevant comments at pages 12 and 13. There is paragraph  
7 64 of page 12. There is the issue of information,  
8 information in respect of victims. In paragraph 66 of the  
9 following page, information on trial dates.

10                   **S/SGT. KELLY:** Yes. And many of these  
11 following recommendations in fact do make it into our  
12 policy at some point in the future.

13                   **MR. RUEL:** So this was an analysis of a  
14 report, federal/provincial report.

15                   **S/SGT. KELLY:** Yes.

16                   **MR. RUEL:** And then at the next tab, the  
17 document was dated February 13<sup>th</sup>, '84, as we indicated. The  
18 next tab, the document is dated July 11<sup>th</sup>, 1984 and it's a  
19 memorandum to all chiefs of police in Ontario from Sean  
20 McGrath, Chairman of the Ontario Police Commission.

21                   First of all, can you explain what was the  
22 role of the Ontario Police Commission in 1984, from what  
23 you know?

24                   **S/SGT. KELLY:** At that time, the Police  
25 Commission provided -- this was prior to the 1990

1 amendments to the *Police Services Act* and the Ontario  
2 Police Commission was charged with the responsibility of  
3 providing boards of commissioners and police -- and chiefs  
4 of police with advice respecting the management and  
5 operation of police forces. So this particular memorandum  
6 would be sent out to all municipal chiefs of police, as  
7 well as the Commissioner of the Ontario Provincial Police.

8 **MR. RUEL:** And it states here that:

9 "Every effort should be made to meet  
10 the needs of victims and witnesses and  
11 particular consideration should be  
12 given to:"

13 (1), for example:

14 "...having the initial investigator  
15 understand the traumatic experience the  
16 victim has undergone and provide some  
17 form of counselling to overcome the  
18 effects."

19 So there's a number of -- would you call  
20 those recommendations?

21 **S/SGT. KELLY:** Yes, essentially I would view  
22 these as recommendations for standard practice to be  
23 followed that the Commission itself is suggesting that  
24 police services undertake to achieve each of these  
25 particular points that they have set out.

1                   **MR. RUEL:** Paragraph 2 of this document:

2                   "...ensuring that victims are aware of  
3                   community services available."

4                   And (5):

5                   "...having the officer in charge of the  
6                   case ensure the victim is kept informed  
7                   of the status of the case as it  
8                   progresses and the ultimate  
9                   disposition. This ongoing  
10                  communication between the police and  
11                  victim is most important."

12                  So that seems to cover not only the --  
13                  correct me if I'm wrong but this seems to cover not only  
14                  the investigative stage but the judicial stage of criminal  
15                  proceedings as well.

16                  **S/SGT. KELLY:** I believe so.

17                  **MR. RUEL:** Paragraph (7):

18                  "...giving victims and witnesses a  
19                  brief overview of the criminal justice  
20                  system and the people involved."

21                  So the right of victims and witnesses, so  
22                  that -- the recommendation was that police -- the police  
23                  should provide those information to the victims.

24                  **S/SGT. KELLY:** Yes.

25                  **MR. RUEL:** And at the bottom of the page, as

1       you indicated, the Commissioner of the OPP, Commissioner  
2       Ferguson at the time was copied on this ---

3                   **S/SGT. KELLY:** Yes.

4                   **MR. RUEL:** --- or received a copy of this  
5       letter.

6                   So the next document is at Tab 6. It's a  
7       document dated August 8<sup>th</sup>, 1984, which is a little less than  
8       a month after the document sent by the Ontario Police  
9       Commission.

10                   Can you explain the -- this is a note to  
11       division heads, branch directors, district commanders,  
12       detachment commanders, from Archie Ferguson, the  
13       Commissioner -- then the Commissioner of the OPP. So can  
14       you explain the nature of this note?

15                   **S/SGT. KELLY:** Yes. Essentially, this is a  
16       memorandum to all members in the organization and near the  
17       end of the actual memo, it places responsibility on each of  
18       those who receive this to ensure that all members under  
19       their command are aware of and comply with the contents of  
20       this memorandum.

21                   Those particular words then indicate that  
22       this is specifically a policy instrument. This is  
23       indicating that there's a compliance requirement by all  
24       members in the organization to implement and carry out what  
25       is indicated in this particular memo.

1                   **MR. RUEL:** And would it be accurate to say  
2                   that it mirrors almost -- it's almost identical to the ---

3                   **S/SGT. KELLY:** Almost identical with one  
4                   exception.

5                   **MR. RUEL:** To the previous document from the  
6                   Ontario Police Commission.

7                   **S/SGT. KELLY:** Yes.

8                   **MR. RUEL:** What's the exception?

9                   **S/SGT. KELLY:** The only exception is in  
10                  relation to number 8 and that's regarding:

11                                 "Victims and witnesses should be  
12                                 provided with sufficient notice to a  
13                                 court appearance so their personal  
14                                 schedules are not unduly upset."

15                                 And in the previous memo, it spoke about  
16                                 responsibility of providing information to alleviate  
17                                 concerns of the victims' employer so that they can be  
18                                 released from their employment to attend court. So it's a  
19                                 minor modification but still addressing the same kind of  
20                                 issue.

21                   **MR. RUEL:** Is that not covered implicitly at  
22                   paragraph 8?

23                                 "Victims and witnesses should be  
24                                 provided with sufficient notice of  
25                                 court appearances so their personal

1 schedules are not unduly upset."

2 S/SGT. KELLY: Yes, and as I mentioned  
3 though, the difference is that the original memo referred  
4 to so that the employer ---

5 MR. RUEL: To the employer?

6 S/SGT. KELLY: Yes.

7 MR. RUEL: And there's no mention of  
8 training as well. The previous document referred at  
9 paragraph 11 to training but there is no reference to  
10 training?

11 S/SGT. KELLY: That's correct.

12 MR. RUEL: Is there any reason for that?

13 S/SGT. KELLY: That's because that would be  
14 carried out as an organisational responsibility through the  
15 Provincial Police Academy.

16 MR. RUEL: Okay. The next document is at  
17 Tab 7 and can you explain what this document is? It's  
18 dated at the bottom of the page February 1986?

19 S/SGT. KELLY: This is policy from Police  
20 Orders, Part 10, and this is the first specific policy that  
21 we could find that deals specifically with assistance to  
22 victims of crime. And we can see that there appears to be  
23 a correlation between the design of this policy and the  
24 proceeding memorandum that was released in August of 1984.

25 In fact, a number of the items that were

1 listed in that memorandum are specifically addressed in  
2 this particular policy.

3 MR. RUEL: So for example, "attempt to  
4 understand the traumatic experience the victim has  
5 undergone", that statement appeared in the two previous  
6 documents.

7 S/SGT. KELLY: Yes. In fact, that was  
8 recommendation number 1 in the August memorandum.

9 MR. RUEL: Same for "making victims aware of  
10 services available to the community".

11 S/SGT. KELLY: Yes.

12 MR. RUEL: So would this be in 1986 the  
13 first official ---

14 S/SGT. KELLY: That's the first that we've  
15 been able to find, yes.

16 MR. RUEL: --- policy, yes.

17 There's two elements -- I mean you may not  
18 know the answer but if you take the previous document at  
19 Tab 6, there were two requirements which were at paragraph  
20 3 and 4. Three (3) provided:

21 "...advise the victim on preventative  
22 methods to minimize the likelihood of  
23 recurrence."

24 S/SGT. KELLY: Yes.

25 MR. RUEL: And 4 was,

1                    "...assure the victim that everything  
2                    possible will be done to ensure his or  
3                    her safety."

4                    So this does not seem to appear in the  
5                    February '86 document.

6                    **S/SGT. KELLY:** No.

7                    **MR. RUEL:** Is there any reason?

8                    **S/SGT. KELLY:** I wasn't able to find  
9                    information to explain that.

10                   **MR. RUEL:** Then if you -- I would ask you to  
11                   go to page 4 of your outline, which is still Exhibit 36,  
12                   Volume 7, Addendum A. At the bottom of the page, there is  
13                   a mention or there is reference to the introduction of the  
14                   new *Police Services Act* and we've covered that in your  
15                   testimony in May.

16                   And page 5, there was a declaration of  
17                   principle in the new Act which included -- the fourth  
18                   principle included or provided the importance of respect  
19                   for victims of crime and understanding their needs.

20                   **S/SGT. KELLY:** Yes.

21                   **MR. RUEL:** So I gather that the OPP had been  
22                   providing for victim assistance and policy prior to 1990,  
23                   right?

24                   **S/SGT. KELLY:** Yes, for nine years prior to  
25                   that.

1                   **MR. RUEL:** Why do you say for nine -- oh,  
2                   for nine years, you're referring back to 1981?

3                   **S/SGT. KELLY:** Yes. So we've had policy and  
4                   Police Orders for nine years prior to the *Police Services*  
5                   Act amendment specifically identifying that as a core  
6                   responsibility.

7                   **MR. RUEL:** So between '86 and the next time  
8                   a policy was -- an OPP policy dealt with the assistance to  
9                   victims, the next one was 1990 and we covered that in your  
10                  previous testimony.

11                  **S/SGT. KELLY:** Yes.

12                  **MR. RUEL:** And it's essentially -- if I  
13                  remember correctly, 1990 was reiteration of the 1986  
14                  policy, no modification.

15                  **S/SGT. KELLY:** Yes, I believe it was.

16                  **MR. RUEL:** And then there were some  
17                  subsequent modifications or changes to this policy and  
18                  we've discussed those in your previous testimony.

19                  **S/SGT. KELLY:** Yes.

20                  **MR. RUEL:** In 1994, I believe 1997 and the  
21                  current victim services policy is at Tab 8 of your -- of  
22                  this addendum.

23                  **S/SGT. KELLY:** Yes, that's correct, and it's  
24                  much more comprehensive than what we have seen in the  
25                  previous versions.

1                   **MR. RUEL:** I believe that covers -- those  
2                   are my questions for the witness, Mr. Commissioner.

3                   **THE COMMISSIONER:** Thank you.

4                   **MR. RUEL:** Thank you very much.

5                   **THE COMMISSIONER:** We'll turn to cross-  
6                   examination then.

7                   Mr. Manson?

8                   --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

9                   **MANSON:**

10                  **MR. MANSON:** Mr. Kelly, your rank now is  
11                  Staff Sergeant?

12                  **S/SGT. KELLY:** Yes, that's correct.

13                  **MR. MANSON:** My name is Alan Manson. I'm  
14                  one of the lawyers for the Citizens for Community Renewal  
15                  and I have a few questions to ask you about the new  
16                  material dealing with investigative techniques and  
17                  standards.

18                  I have to say you're certainly a man of your  
19                  word. I read the transcript from May 17<sup>th</sup> and 18<sup>th</sup> and you  
20                  said there'd be a new 2.3.1 within a few weeks and you were  
21                  right.

22                  **S/SGT. KELLY:** Thank you.

23                  **MR. MANSON:** I thought at first that that  
24                  was pretty convenient but I was obviously wrong and you  
25                  were right. You're a man of your word.

1                   Can we look at Tabs 2, 3, 4 and 5 of the  
2                   volume dealing with investigative techniques and standards?  
3                   These are the documents which, as a group, deal with  
4                   children in need of protection.

5                   What I want to suggest to you is in the  
6                   early documents, as far as the Police Orders are concerned  
7                   -- Tab 2 is the one from number 81-12 in the top right-hand  
8                   corner.

9                   **S/SGT. KELLY:** Yes.

10                  **MR. MANSON:** As far as the police officer is  
11                  concerned, the document is very specific in terms of  
12                  dealing with "the report" and "the child". I'm looking at  
13                  page 1, 1345.1:

14                               "...forthwith cause an investigation to  
15                               be made into the report..."

16                  **S/SGT. KELLY:** Yes.

17                  **MR. MANSON:**

18                               "...take such action as may be required  
19                               to ensure the safety of the child..."

20                  **S/SGT. KELLY:** Yes.

21                  **MR. MANSON:** And then of course:

22                               "...inform the appropriate CAS of the  
23                               report."

24                               This is then continued in Tab 3. We have to  
25                               scroll down a bit. It's still 1345.1, and then when we get

1 to Tab 4, we again have the same language:

2 "...take such action as may be required  
3 to ensure the safety of the child..."

4 We have a slight change:

5 "...inform the appropriate local  
6 Children's Aid Society having  
7 jurisdiction..."

8 And then, finally, we're back in Tab 5:

9 "...to ensure the safety of the  
10 child..."

11 And we have more general language:

12 "...in concert with the CAS  
13 representative causing the  
14 investigation to be made."

15 My question is this, and if the answer lies  
16 in another document, just please help me. I'm suggesting  
17 that these documents focus on a report about a particular  
18 child and create obligations with respect to that  
19 particular child and they don't say anything about other  
20 children.

21 That seems to be what one sees from the face  
22 of the documents; isn't that true?

23 **S/SGT. KELLY:** Yes, and I can see your  
24 point, but I think it's important to look at the  
25 implications of the investigation, the response regarding

1 an investigation.

2 When you receive a report about a child in  
3 need of protection, obviously the first thing to do is to  
4 protect that child because that's the information that we  
5 have. The investigation itself could reveal other victims,  
6 could reveal individuals who are at risk, and it's at that  
7 time during the investigation that the other individuals  
8 and the care and concern for them would be addressed.

9 MR. MANSON: And this would include  
10 siblings, for example, if we were talking about abuse at  
11 the hands of a parent ---

12 S/SGT. KELLY: It could, yes.

13 MR. MANSON: --- or someone -- or it could  
14 include other students, if we were talking about a teacher;  
15 correct?

16 S/SGT. KELLY: Yes.

17 MR. MANSON: Or it could include other young  
18 probationers, if we were talking about a probation officer;  
19 correct.

20 S/SGT. KELLY: It could. It could include  
21 anyone that the investigation discovers is placing someone  
22 at risk.

23 MR. MANSON: And all this is triggered by a  
24 report about a child in need of protection; correct?

25 S/SGT. KELLY: Yes.

1                   **MR. MANSON:** My other point is, if we're  
2 talking about an historical sexual assault, you've usually  
3 got an adult coming in as the victim; correct?

4                   **S/SGT. KELLY:** Yes.

5                   **MR. MANSON:** So they're not a child in need  
6 of protection; correct?

7                   **S/SGT. KELLY:** That would be correct.

8                   **MR. MANSON:** So none of these avenues or  
9 responsibilities would be triggered; correct?

10                   **S/SGT. KELLY:** Well, the issue around the  
11 investigation would exist. The investigation would take  
12 place. So everything you would uncover in an investigation  
13 under this policy, you would uncover under an investigation  
14 for a historical occurrence.

15                   **MR. MANSON:** That's not my question. My  
16 question is; we have a particular set of provisions here  
17 that has evolved over time to some degree and that  
18 identifies very clear obligations on the part of police  
19 officers in conjunction with Children's Aid Societies that  
20 are -- but they're all triggered by a report about a child  
21 in need of protection; correct?

22                   **S/SGT. KELLY:** For this particular policy,  
23 when the allegation is in relation to a child in need of  
24 protection.

25                   **MR. MANSON:** So if a 40-year-old man comes

1 in ---

2 S/SGT. KELLY: Yes.

3 MR. MANSON: --- you'd agree with me he's  
4 not a child in need of protection?

5 S/SGT. KELLY: That's correct.

6 MR. MANSON: Can you show me any document  
7 that triggers an obligation with respect to potential  
8 children in need of protection?

9 S/SGT. KELLY: If we uncover any information  
10 -- I think I know where you're going on this, in the sense  
11 that it's not specifically articulated in this policy. And  
12 I don't think that I can pull up a particular policy right  
13 now that's going to satisfy your question.

14 But the investigative process is such that  
15 an individual, regardless of the age, comes in to report an  
16 incident, historical in nature, immediate threat, it  
17 doesn't really -- there's no difference. Once that  
18 investigation begins, if the investigator were to  
19 determine, through any information they receive, that there  
20 is a child anywhere at risk, they have a responsibility to  
21 act on that.

22 MR. MANSON: What would need to trigger the  
23 recognition that even though I'm talking to a 40-year-old  
24 man now, there may be a child in need of risk?

25 S/SGT. KELLY: I think we go ---

1                   **MR. MANSON:** Can you give me an example?

2                   **S/SGT. KELLY:** I think if we go back up to  
3 the very top paragraph here, perhaps the answer is there,  
4 because the *Child and Family Services Act* requires:

5                                 "...any person who believes on  
6 reasonable grounds that a child is or  
7 may be in need of protection to  
8 forthwith report it."

9                   And there if ---

10                   **MR. MANSON:** If I can just interrupt you for  
11 one second. We should point out that those words, "or may  
12 be in need of protection" have been added in the most  
13 recent document.

14                   **S/SGT. KELLY:** Yes. But this is taken from  
15 the legislation. That legislative obligation, regardless  
16 of whether we put it into our policy or not, is still  
17 imposed upon us. And as police officers, we recognize that  
18 responsibility.

19                                 We receive information from a complainant.  
20 They indicate that somebody is at risk. Because of the  
21 information we receive, we now, according to this  
22 legislation, have an obligation to report it and we would  
23 take that action.

24                   **MR. MANSON:** So if I change my example from  
25 a 40-year-old man to a 19-year-old man talking about

1 something that happened six or seven or eight years  
2 earlier, again, this man is not a child in need of  
3 protection. But what you're suggesting is, if he came to a  
4 police officer and disclosed an alleged assault by a  
5 parent, for example, the police officer would want to know  
6 are there any young siblings in the home ---

7 S/SGT. KELLY: Yes.

8 MR. MANSON: --- because they're potential  
9 victims; correct?

10 S/SGT. KELLY: Yes. Yes.

11 MR. MANSON: If he disclosed an assault by a  
12 teacher when he was 13, the police officer would want to  
13 know, is this person still teaching ---

14 S/SGT. KELLY: Yes.

15 MR. MANSON: --- 13-year olds; correct?

16 S/SGT. KELLY: Yes.

17 MR. MANSON: If he disclosed an assault by a  
18 probation officer, the police officer would want to know  
19 does this man still have -- does the probation officer  
20 still have young probationers; correct?

21 S/SGT. KELLY: Yes. Yes.

22 MR. MANSON: And that's how the experience  
23 of the officer ought to fill in these gaps; correct?

24 S/SGT. KELLY: I'm not sure if I agree that  
25 it's filling in gaps. This policy was specifically written

1 to address the issue of children. The legislation itself  
2 addresses -- it addresses the circumstance that you're  
3 describing to me where an adult comes in and relays  
4 information that there may be someone else, another child  
5 at risk.

6 **MR. MANSON:** I'm not concerned about  
7 legislation. I'm concerned about police investigative  
8 policy. I think the point is that there are some things  
9 not laid out that apply especially with respect to  
10 historical assaults. But your very sensible evidence is  
11 that the officer's experience would fill that in, in the  
12 examples I gave, talking about teachers, parents, probation  
13 officers, for example.

14 **S/SGT. KELLY:** I guess I can agree to that,  
15 yes.

16 **MR. MANSON:** Can we also look at Tabs 13 and  
17 14, for a second? Tab 13, this is where we have what  
18 you've referred to as benchmarks; correct?

19 **S/SGT. KELLY:** Yes.

20 **MR. MANSON:** And this is the first one that  
21 has sexual assaults. In the past, it had rape and  
22 attempted rape; correct?

23 **S/SGT. KELLY:** There was one before, so  
24 we're ---

25 **MR. MANSON:** Oh, I couldn't ---

1 S/SGT. KELLY: On Tab 12, that was in ---

2 MR. MANSON: I apologize. Tab 12, in 1984?

3 S/SGT. KELLY: Yes.

4 MR. MANSON: Yes, because these amendments  
5 took place in '82?

6 S/SGT. KELLY: Yes.

7 MR. MANSON: But when you were talking about  
8 Tab 13 in your evidence in-chief -- could you please just  
9 scroll down a touch? That's right.

10 Mr. Ruel referred you to assault against a  
11 member, hospital treatment is required.

12 S/SGT. KELLY: Yes.

13 MR. MANSON: He asked you about this and you  
14 suggested that it indicated an acknowledgement of  
15 seriousness in the public interest.

16 S/SGT. KELLY: Yes.

17 MR. MANSON: I can't remember your exact  
18 words.

19 S/SGT. KELLY: Yes. Because at the same  
20 time, we also see the addition in 38.2 of this reference of  
21 a copy of such notification shall be provided to the OPP  
22 News Bureau.

23 So my point there is that, what we're seeing  
24 is, that this notification process, where it was -- where  
25 it appeared to be specifically related to notifying these

1        occurrences up from an investigative point of view, we're  
2        now seeing that it's being expanded to include public  
3        interest issues, or issues that are of significant interest  
4        to the Commissioner, which certainly any assault against  
5        the member where there is hospital treatment required would  
6        be the case.

7                    **MR. MANSON:** But we still have gambling,  
8        right there, at the top?

9                    **S/SGT. KELLY:** Yes. Oh, yes.

10                   **MR. MANSON:** Is it still on the list?

11                   **S/SGT. KELLY:** Gambling?

12                   **MR. MANSON:** Yes.

13                   **S/SGT. KELLY:** I have to keep checking.

14                   **MR. MANSON:** I just thought I'd check before  
15        I went out and bought a lottery ticket, that ---

16                   **S/SGT. KELLY:** I can't remember which tab  
17        that was in.

18                   **THE COMMISSIONER:** Isn't tab -- the last  
19        one, Tab 15?

20                   **MR. MANSON:** But that's sexual assault  
21        investigations.

22                   **THE COMMISSIONER:** Right.

23                   **MR. MANSON:** In any event, it's not a  
24        serious matter, Staff Sergeant. We don't have to worry  
25        about gambling.

1                   But I do want to look at, quickly, the new  
2                   Child in Need of Protection document. This is the 10-page  
3                   document. As Mr. Ruel pointed out ---

4                   **THE REGISTRAR:** Sorry, what tab?

5                   **MR. MANSON:** That's Tab 14, I believe. No,  
6                   no, it's Tab 6, I'm sorry. Yes.

7                   As Mr. Ruel pointed out, right on the front  
8                   page, it tells officers that you should be thinking about  
9                   whether the offence involves physical abuse, sexual abuse,  
10                  neglect or is historical?

11                  **S/SGT. KELLY:** Yes.

12                  **MR. MANSON:** That's a separate category, but  
13                  you'd agree that there is really nothing in the following  
14                  10 pages that deals with this category?

15                  **S/SGT. KELLY:** That's correct. The purpose  
16                  there is to identify that there are different  
17                  characteristics or different areas in which these types of  
18                  abuse fall within.

19                  **MR. MANSON:** Now, if we move from there to  
20                  the new sexual assault investigation document, which is Tab  
21                  15, I would suggest to you again that I don't see anything  
22                  in these five pages addressed to the investigator who is  
23                  dealing with a 40 or 45-year-old complainant and a 30-year-  
24                  old alleged offence.

25                  **S/SGT. KELLY:** That's correct.

1                   **MR. MANSON:** There is, for example, nothing  
2 in this document that deals with how to advise a  
3 complainant about matters like, number one, how to prepare  
4 for making a formal statement.

5                   **S/SGT. KELLY:** Which document are you  
6 referring to now?

7                   **MR. MANSON:** The 2.13, the new June 6  
8 document ---

9                   **S/SGT. KELLY:** The sexual assault?

10                   **MR. MANSON:** Yes.

11                   **S/SGT. KELLY:** Now, what we -- again, when  
12 you look at this particular policy, it has to be read in  
13 totality with all of the other policies that are linked to  
14 it, as well as all of our Victim Services policies, which  
15 is referred to in the introduction part of this.

16                   In the Victim Services policy, there is a  
17 significant amount of information that supports helping and  
18 guiding victims through the process.

19                   **MR. MANSON:** What I am interested in is  
20 this. Just imagine if a 45-year-old man calls an officer  
21 and say "I want to come in to make a statement, I want to  
22 talk about something that happened 30 years ago". Where  
23 does that officer go to find advice on what to say to that  
24 complainant about how to prepare yourself for making a  
25 formal statement? Are there any policies or documents you

1 can refer me to?

2 S/SGT. KELLY: Well, I would look at the  
3 sexual assault investigation policy and I would again  
4 review all of the Victim Services policy. And we have that  
5 policy set out in Tab 8 of the -- of Exhibit 36-7(a). And  
6 I can't -- without reading all of it, I can't give you a  
7 specific answer as to whether or not that particular advice  
8 is set out there.

9 MR. MANSON: Is this the new Victim Services  
10 -- this would be Tab 8 of that third volume.

11 S/SGT. KELLY: Yes, that's correct.

12 MR. MANSON: There's an introduction and  
13 then there is victim witness response. There is  
14 responsibilities, special provisions, victim liaisons,  
15 options for victims, victim support lines. I'm not -- and  
16 there's material on Victim Impact Statements for example.

17 What I'm talking about I think is very  
18 critical. How do the police advise someone to prepare to  
19 making their first formal complaint about something that's  
20 30 years old? I am suggesting to your that there is  
21 nothing in these documents about that.

22 S/SGT. KELLY: That's something that's  
23 probably best put to one of the criminal investigator who  
24 specializes in this area, not myself.

25 MR. MANSON: Okay. Thank you. That's fair.

1                   Would you say the same thing about how to  
2                   advise a complainant in this situation, again the 40-year-  
3                   old man talking about something 30 years old, about how to  
4                   avoid allegations of collusion or collaboration with other  
5                   victims?

6                   **S/SGT. KELLY:** Again, you are getting into  
7                   some details there that I think would be best answered by  
8                   one of the investigators.

9                   **MR. MANSON:** I think those are all my  
10                  questions.

11                  **THE COMMISSIONER:** Thank you.

12                  **MR. MANSON:** Thank you, Staff Sergeant.

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

14                  **MR. LEE:** No questions sir.

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

16                  **MR. CIPRIANO:** No questions.

17                  **THE COMMISSIONER:** Mr. Chisholm?

18                  **MR. CHISHOLM:** No questions, sir.

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

20                  **MR. ROSE:** No questions.

21                  **THE COMMISSIONER:** Mr. Scharbach?

22                  **MR. SCHARBACH:** Just a couple please, Mr.  
23                  Commissioner.

24                  **THE COMMISSIONER:** Thank you.

25                  --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

1           **SCHARBACH:**

2                           **MR. SCHARBACH:** Good afternoon, Mr.  
3 Commissioner.

4                           **THE COMMISSIONER:** Good afternoon sir.

5                           **MR. SCHARBACH:** And good afternoon Staff  
6 Sergeant Kelly.

7                           **S/SGT. KELLY:** Good afternoon.

8                           **MR. SCHARBACH:** I just have a couple of  
9 questions for you and I was hoping to refer only to the  
10 additional material on victims. That would be Exhibit 36,  
11 Volume 7, Addendum A. And I wanted to refer you, if I may,  
12 Staff Sergeant Kelly to Tab 6 of that material.

13                                   When you described this document, you called  
14 it a policy instrument. I noted that.

15                           **S/SGT. KELLY:** Yes.

16                           **MR. SCHARBACH:** And then when we got to Tab  
17 7, you said that that was the first indication of a policy.

18                           **S/SGT. KELLY:** It is actually formalizing  
19 the policy, yes.

20                           **MR. SCHARBACH:** Right.

21                           **S/SGT. KELLY:** Essentially, I'll just  
22 clarify this. Police Orders are the official directives of  
23 the Commissioner and the Commissioner can issue directives  
24 in a number of different ways to affect a policy. In a  
25 permanent way, they're embodied within Police Orders. In a

1 temporary way, they are articulated through memorandum or  
2 other types of devices.

3 MR. SCHARBACH: Right. But what we have at  
4 Tab 8 appears to be a memorandum, it's directed to all  
5 division heads, branch directors, the management ---

6 S/SGT. KELLY: Yes.

7 MR. SCHARBACH: --- it looks like to me of  
8 the OPP and it's from the Commissioner.

9 S/SGT. KELLY: Yes.

10 MR. SCHARBACH: And the Commissioner, if I  
11 can just paraphrase and tell me if I am wrong here, but the  
12 Commissioner seems to be saying that he wants the  
13 management to take note of the role of victims and  
14 witnesses and he wants his members to provide assistance to  
15 victims.

16 S/SGT. KELLY: Yes.

17 MR. SCHARBACH: And he specifically mentions  
18 that the officer in charge should keep the victims informed  
19 of the status of the case. I'm referring to number 5.

20 S/SGT. KELLY: Yes.

21 MR. SCHARBACH: And its ultimate  
22 disposition.

23 S/SGT. KELLY: Yes.

24 MR. SCHARBACH: And if we go down to number  
25 8, the Commissioner seems to be telling management that

1           they should do whatever it takes, I take it, to ensure the  
2           victims and witnesses should be provided with notice of  
3           court appearances and so on.

4                        So is it fair to say that the Commissioner  
5           here is directing staff, his staff, his management staff to  
6           ensure that victims are looked after in these particular  
7           ways at once?

8                        **S/SGT. KELLY:** Absolutely.

9                        **MR. SCHARBACH:** And although it doesn't  
10          quite have the forceful effect of a Police Order, is it  
11          fair to say that it is the policy of the OPP at that point?

12                       **S/SGT. KELLY:** Yes, it is.

13                       **MR. SCHARBACH:** So that's the policy the OPP  
14          has of August the 8<sup>th</sup>, 1984? Correct?

15                       **S/SGT. KELLY:** Yes.

16                       **MR. SCHARBACH:** And if we turn to Tab 7,  
17          that policy has now been incorporated in the Police Orders?

18                       **S/SGT. KELLY:** Yes.

19                       **MR. SCHARBACH:** Without tediously going  
20          through it, I'll ask you if you agree with me that  
21          essentially what's in the orders now is what the  
22          Commissioner asked the organization to do in August of '84.  
23          That is to look after witness in particular ways and the  
24          ones that I'm interested in is ensuring that victims are  
25          notified of significant court appearances and court dates.

1 S/SGT. KELLY: Yes.

2 MR. SCHARBACH: And as well as other things;  
3 is that correct?

4 S/SGT. KELLY: That's correct.

5 MR. SCHARBACH: You may have answered this  
6 question in your earlier testimony, but I haven't had a  
7 chance to go through all of it. Is it fair to say that  
8 that has been the policy of the OPP since the time of these  
9 documents right up to the present?

10 S/SGT. KELLY: Yes.

11 MR. SCHARBACH: Okay. I guess that again is  
12 reflected in the current Victim Services policy at Tab 8,  
13 is that correct?

14 S/SGT. KELLY: Yes.

15 MR. SCHARBACH: And that takes us right up  
16 to the present?

17 S/SGT. KELLY: Yes, that's correct.

18 MR. SCHARBACH: Just one additional quick  
19 question. If I may direct the witness, please, to Exhibit  
20 36, Volume 6, Addendum A? That's your section, Staff  
21 Sergeant Kelly, on investigative incentives and techniques.

22 S/SGT. KELLY: Yes.

23 MR. SCHARBACH: And there is a policy that  
24 appears at Tab 16, "Sexual Assault Investigation".

25 S/SGT. KELLY: Tab 15?

1                   **MR. SCHARBACH:** Sorry, 16.

2                   **S/SGT. KELLY:** Sixteen (16) is "Child  
3 Pornography, Child Luring, Sex Tourism ---

4                   **MR. SCHARBACH:** I'm looking for the policy  
5 just before that.

6                   **S/SGT. KELLY:** Yes

7                   **MR. SCHARBACH:** That's 2.13 "Sexual Assault  
8 Investigations".

9                   **S/SGT. KELLY:** Yes, at Tab 15.

10                  **MR. SCHARBACH:** Fifteen (15). And I realize  
11 that this policy needs to be read in connection with other  
12 related policies including the Victim Services policy that  
13 we just saw.

14                  **S/SGT. KELLY:** Yes.

15                  **MR. SCHARBACH:** But at page 2 of this  
16 policy, that is the "Sexual Assault Investigation" policy,  
17 three quarters of the way down the page, there is a section  
18 beside the words "Primary investigator" and it sets out  
19 some of the duties of the primary investigator.

20                  **S/SGT. KELLY:** Yes.

21                  **MR. SCHARBACH:** You'll see,  
22                                "Primary investigators shall be  
23                                responsible for maintaining contact  
24                                with the victim throughout the  
25                                investigation."

1                   Now, my quick question is this. Reading  
2                   this in connection with the other policies, would it be  
3                   fair to say that it's the primary investigator's  
4                   responsibility to maintain contact with the victim  
5                   throughout the investigation and the related court  
6                   proceedings that flow from the investigation?

7                   **S/SGT. KELLY:** I think again we have to look  
8                   at this in conjunction with the Victim Services policy.

9                   **MR. SCHARBACH:** Right.

10                  **S/SGT. KELLY:** As the continuation of that.

11                  **MR. SCHARBACH:** And the Victim Services  
12                  policy seems to indicate that the -- I think they refer to  
13                  it as "the member in charge ---

14                  **S/SGT. KELLY:** Yes.

15                  **MR. SCHARBACH:** --- shall make the victim  
16                  aware of the various court dates" and so on.

17                  **S/SGT. KELLY:** I think that was in the  
18                  previous policy. Oh now, yes, member in charge -- yes,  
19                  member in charge of the investigation -- yes.

20                  **MR. SCHARBACH:** Well, this might be a small  
21                  point of confusion for me only but what's the difference  
22                  between the member in charge referred to in the victims  
23                  policy and the primary investigator that's referred to in  
24                  the sexual assault policy?

25                  **S/SGT. KELLY:** They can be the same person.

1 The Victim Services policy is written to support all other  
2 types of investigations, all other types of occurrences and  
3 the member in charge of the investigation, in some cases,  
4 could be a primary investigator, if it's a major case, or  
5 it could be just another constable on the road or a  
6 sergeant or a member of a crime unit.

7 **MR. SCHARBACH:** I see.

8 **S/SGT. KELLY:** So the member in charge of an  
9 investigation is more generic to apply to a number of  
10 different policies and would apply to the primary  
11 investigators. The primary investigator in this case is  
12 the member in charge of the investigation.

13 **MR. SCHARBACH:** Okay. All right. Then if I  
14 can ask you this question then. According to this policy,  
15 when it refers to the responsibilities of the primary  
16 investigator to maintain contact with the victim throughout  
17 the investigation, when does the investigation end for the  
18 purposes of this policy? Does it end at the point where a  
19 decision is made that no charges were laid, for example?

20 **S/SGT. KELLY:** That's probably not a  
21 question I can answer for you as to when an investigation  
22 actually ends. That's something that I think that an  
23 investigator is probably more appropriate to answer,  
24 because I'm not in a position to make the decision that's  
25 around and in the position that I hold for the last few

1 years of when these investigations actually close and there  
2 may be a number of different factors that keep things open  
3 or close them.

4 **MR. SCHARBACH:** All right. Well my question  
5 really is and, if you can't answer this, that's fine.

6 **S/SGT. KELLY:** I know. I mean, there are  
7 times when investigations are opened and there are already  
8 court proceedings under way but an investigation is still  
9 continuing. So I just don't know if I can answer your  
10 question for you.

11 **MR. SCHARBACH:** Okay. Well, my question is,  
12 does the primary investigator's responsibilities to  
13 maintain contact with the victim continue past the point  
14 when court proceedings are instituted? And if you can't  
15 answer that question, that's fine. That was my question  
16 really.

17 **S/SGT. KELLY:** It would be my opinion that  
18 the Victim Services policy, as the member in charge of the  
19 investigation, would kick in and those responsibilities  
20 then, the primary investigator being the member in charge  
21 of the investigation would have to fulfill those  
22 responsibilities or ensure at least someone is fulfilling  
23 them.

24 **MR. SCHARBACH:** Thank you, sir. That's  
25 helpful. Thank you.

1                   **THE COMMISSIONER:** Thank you.

2                   Ms. Makepeace?

3                   **MS. MAKEPEACE:** Nothing, thank you.

4                   **THE COMMISSIONER:** Thank you.

5                   Mr. Manderville?

6                   **MR. MANDERVILLE:** Thank you, Mr.

7 Commissioner.

8                   **THE COMMISSIONER:** Thank you.

9                   --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

10 **MANDERVILLE:**

11                   **MR. MANDERVILLE:** Staff Sergeant Kelly, just  
12 a couple of questions.

13                   I take it that when the OPP and the  
14 Solicitor General put together some of the protocols we're  
15 looking at here there is some consultation with the  
16 Attorney General's office; would that be right?

17                   **S/SGT. KELLY:** That's right. I think I need  
18 you to clarify when you refer to protocols that we're  
19 discussing here. Can you be more specific?

20                   **MR. MANDERVILLE:** Well, some of the material  
21 on your screen or my screen here, what would be the term of  
22 art for that?

23                   **S/SGT. KELLY:** Pardon me?

24                   **MR. MANDERVILLE:** The term of art for what  
25 I'm looking at here on my screen?

1                   **S/SGT. KELLY:** The document that we're  
2                   looking at right now ---

3                   **MR. MANDERVILLE:** Yes.

4                   **S/SGT. KELLY:** --- is Police Orders which is  
5                   a policy document of the OPP.

6                   **MR. MANDERVILLE:** Okay. So when the OPP  
7                   puts together a Police Order or a policy document, would it  
8                   necessarily liaise with the Attorney General's office in  
9                   putting together the policy document? Do you know?

10                  **S/SGT. KELLY:** Each one of our projects is  
11                  different, has different characteristics. We, on occasion,  
12                  do consult directly with the Attorney General's office, but  
13                  for the most part, we will route those types of requests  
14                  through our Legal Services Branch, unless we are dealing  
15                  specifically with a program area within the Ministry of  
16                  Attorney General.

17                  **MR. MANDERVILLE:** And when it comes to  
18                  Victims Services, which we've been talking about for a  
19                  little bit now, do you know whether the OPP specifically  
20                  liaised with the Attorney General's office about who would  
21                  provide such services such as notifying the victims once a  
22                  prosecution has begun?

23                  **S/SGT. KELLY:** I'm not aware in our project  
24                  file that there was specific interaction with the Ministry  
25                  of Attorney General by policy staff. There may have been

1 via other people that we were consulting within the  
2 organization. I can't confirm that.

3 **MR. MANDERVILLE:** So for all you know, the  
4 Attorney General may well have a policy themselves about  
5 the Attorney General's office, may well have a policy  
6 themselves about contacting victims or providing some form  
7 of victim services during the prosecution?

8 **S/SGT. KELLY:** Well, our Victims Services  
9 Policy recognizes the programs that the Ministry of  
10 Attorney General offers for victims and I believe we've got  
11 provisions in here that articulate that process.

12 **MR. MANDERVILLE:** Thank you very much.  
13 Those are all my questions.

14 **THE COMMISSIONER:** Thank you.  
15 Mr. Wallace?

16 **MR. WALLACE:** No questions. Thank you.

17 **THE COMMISSIONER:** Re-examination or ---  
18 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**  
19 **SACCOCCIO BRANNAN:**

20 **MS. SACCOCCIO BRANNAN:** The first is a  
21 housekeeping matter, Mr. Commissioner, just so that the  
22 record is correct.

23 If we turn to page 5 of the outline and  
24 history and organisational structure, and you'll see that  
25 first bullet point, Mr. Commissioner,

1 "Despite all our efforts in carrying  
2 out this historical search, the OPP  
3 were unable to locate any examples of  
4 the preamble to Police Orders between  
5 1965 and 1980."

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

7 **MS. SACCOCCIO BRANNAN:** That's been  
8 corrected. This outline was delivered last week or even  
9 two weeks ago. I can't remember exactly, and at that time,  
10 we did not have that 1977 preamble which was added today.

11 Just so that the record is correct, we did  
12 find a preamble from 1977 which is not at Tab 6 attached to  
13 that particular outline.

14 **THE COMMISSIONER:** Right.

15 **MS. SACCOCCIO BRANNAN:** Staff Sergeant  
16 Kelly, I just want to go back to the investigative  
17 techniques and standards outline of evidence, and in  
18 particular to address what my friend Mr. Manson was  
19 pointing out in the Police Orders.

20 You'll recall that his question -- he laid  
21 heavy emphasis if we go to Tab 2 on "the report", "the  
22 safety of the child". And I would take you to Tab 4 and I  
23 think this may assist Mr. Manson in his concerns because  
24 there was a significant change made in 1986 where 1375.1  
25 was added.

1                   And if you just have a look at that, maybe  
2                   you could read that section.

3                   **S/SGT. KELLY:** Yes.

4                   **MS. SACCOCCIO BRANNAN:** It says:

5                                "The *Child and Family Services Act*  
6                                requires any person who believes on  
7                                reasonable grounds that a child is or  
8                                may be in need of protection."

9                   So I just want to take you back to Mr.  
10                  Manson's example.

11                  **S/SGT. KELLY:** And that was the point that I  
12                  was trying to make, is that that particular provision does  
13                  seem to answer his question in that if we receive any  
14                  information at all, regardless of the age of the individual  
15                  providing it to us, that there is a child in need of  
16                  protection, the onus is set out here that we will respond  
17                  to that.

18                  **MS. SACCOCCIO BRANNAN:** And that then is  
19                  continued through in 2.16. Those words remain there,  
20                  "believes on reasonable and probable grounds".

21                  I think Mr. Manson's concern is that an  
22                  individual who is 30 or 40 comes in, then they are not a  
23                  child in need of protection, but even taking it one step  
24                  further and the perpetrator -- the alleged perpetrator may  
25                  still be in the community.

1                   **S/SGT. KELLY:** Yes.

2                   **MS. SACCOCCIO BRANNAN:** So I guess the  
3 question is, would 1375.1 brought in in 1986 and carried  
4 through today assist the officer in understanding what  
5 their responsibilities are?

6                   **S/SGT. KELLY:** I believe it does.

7                   **MS. SACCOCCIO BRANNAN:** The last question I  
8 have deals with Tab 6 in that same section of investigative  
9 techniques and standards. That's the new or the most  
10 recent and present child abuse and neglect section of the  
11 chapter to law enforcement, and Mr. Manson took you to that  
12 first area where historical is listed.

13                   **S/SGT. KELLY:** Yes.

14                   **MS. SACCOCCIO BRANNAN:** And then he took you  
15 to Tab 15 I believe which is the sexual assault  
16 investigation policy that was published in June 2006.

17                   **S/SGT. KELLY:** Yes.

18                   **MS. SACCOCCIO BRANNAN:** And his concern is  
19 that there is no recipe or formula that is specifically  
20 directed in either the child abuse and neglect policy or  
21 the sexual assault investigation policy that deals with the  
22 investigation of historical assault.

23                   Maybe you can assist us in telling us why  
24 that is?

25                   **S/SGT. KELLY:** Well, from an organisational

1 perspective, we are very careful not to interfere with the  
2 flexibility that's required for investigators in conducting  
3 their investigations. Investigations are very fluid. The  
4 circumstances of investigations can be varied.

5 It's the experience and the training of the  
6 investigator that will guide that particular investigation.  
7 We did not see an organisational need to articulate a  
8 unique process in policy for a difference between  
9 historical occurrence versus a recent occurrence. That's  
10 an investigative process and the investigator will lead the  
11 investigation depending on the circumstances of the  
12 investigation itself.

13 **MS. SACCOCCIO BRANNAN:** Those are my  
14 questions, Mr. Commissioner. Thank you.

15 **THE COMMISSIONER:** Thank you.

16 Me Ruel, any further questions?

17 **MR. RUEL:** I have no further question. I  
18 just want to thank Staff Sergeant Kelly for coming back. I  
19 know that the OPP has invested considerable resources to  
20 prepare those outlines. So thank you very much.

21 **S/SGT. KELLY:** Thank you.

22 **THE COMMISSIONER:** Thank you. I'd like to  
23 thank the OPP and Staff Sergeant Kelly for their diligence  
24 in looking this up. It's not exactly the most exotic  
25 research but I think that it's important for me to get an

1 overall scheme of things. So thank you again for the hard  
2 work that you've done.

3 **S/SGT. KELLY:** Thank you.

4 **THE COMMISSIONER:** Thank you. We'll close  
5 court and come back tomorrow morning at 9:30.

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

8 The hearing is now adjourned. L'audience  
9 est ajournée.

10

11 --- Upon adjourning at 4:46 p.m./

12 L'audience est ajournée à 16h46

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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-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



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Sean Prouse, CVR-CM