

**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 198

Held at :

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

Tuesday, February 19 2008

Tenue à:

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

Mardi, le 19 février 2008

ERRATA

**February 14, 2008
Volume 197**

Transcript

Page 103, Line 3

Reads:

MR. CALLAGHAN: And it's fair to say that in one theory, when you've got a case as you saw from the Crown Attorney's letter where there's no corroboration and you have a witness, a victim, making an accusation against the accused, that one school of policing would say you wouldn't confront the accused until you got absolutely all the evidence you can possibly have because you'll only get one chance to confront the accused likely; correct?

MR. SKINNER: That is true, isn't it?

Should have read:

MR. CALLAGHAN: And it's fair to say that in one theory, when you've got a case as you saw from the Crown Attorney's letter where there's no corroboration and you have a witness, a victim, making an accusation against the accused, that one school of policing would say you wouldn't confront the accused until you got absolutely all the evidence you can possibly have because you'll only get one chance to confront the accused likely; correct?

MR. SKINNER: That is true, m'hm.

Appearances/Comparutions

Ms. Julie Gauthier	Registrar
Mr. Peter Engelmann	Commission Counsel
Ms. Raija Pulkkinen	
Mr. Peter Manderville	Cornwall Police Service Board
Ms. Diane Lahaie	Ontario Provincial Police
Ms. Stephanie Gibson	The Children's Aid Society of the United Counties
Mr. Dallas Lee	Victims Group
Mr. Michael Neville	The estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action

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1 --- Upon commencing at 9:38 a.m./

2 L'audience débute à 9h38

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

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you.

8 Good morning, sir.

9 **MR. ENGELMANN:** Good morning, Mr.
10 Commissioner.

11 **THE COMMISSIONER:** Good morning, Mr.
12 Engelmann.

13 **MR. ENGELMANN:** As per the request that was
14 made last Thursday, we did receive some correspondence on
15 Friday afternoon.

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

17 **MR. ENGELMANN:** And I thought just to
18 complete the record for the Motion these matters should be
19 entered as well as exhibits on the -- I hate to call it a
20 Motion, but on the stated case or on the issue before us.

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** They're simply being marked
23 as submissions, again, not for the truth of their contents
24 so we don't get into any issues.

25 There were letters from Mr. Neville.

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

2 **MR. ENGELMANN:** And there should be two of
3 them, I believe, from Friday afternoon. One on behalf of
4 his client Father MacDonald and one on behalf of his client
5 the family of Ken Seguin.

6 If those could then be marked, I believe as
7 A-4 and A-5. So the one on behalf of Father MacDonald
8 perhaps A-4, on behalf of Ken Seguin A-5.

9 There was a letter from Mr. Manderville's
10 office. Those are the submissions of the Cornwall Police
11 Service; if that could be A-6.

12 **THE COMMISSIONER:** Thank you.

13 **MR. ENGELMANN:** Then there was
14 correspondence from Ms. MacIntosh -- I don't know, Madam
15 Clerk, if you have that from her office -- if that could be
16 A-7.

17 **THE COMMISSIONER:** Thank you.

18 **MR. ENGELMANN:** And there were submissions
19 sent to us by Mr. Canto on behalf of the CCR. We were
20 advised that counsel couldn't be here.

21 Madam Clerk, if you have a copy of those
22 submissions; if that could be A-8.

23 **THE COMMISSIONER:** Thank you.

24 **MR. ENGELMANN:** And just by way of
25 background, sir, to summarize, Mr. Neville and Mr.

1 Manderville were asked to send in, in some form in writing,
2 sort of the basis for the concerns they had and why certain
3 evidence should not be considered by you in the findings
4 that you are to make, and in particular any findings with
5 respect to notices of misconduct.

6 So they set out in very brief form their
7 position with respect to some of the evidence of some of
8 the witnesses we have heard from.

9 The letter from Ms. MacIntosh, if I can sum
10 it up, essentially says that they're taking no position
11 here. Of course, the Ministry of the Attorney General is
12 one of the parties participating in the matter before the
13 Court of Appeal.

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

15 **MR. ENGELMANN:** The letter speaks for
16 itself. There's a brief summary of highlights of the
17 decision.

18 And then the CCR is in the form of a written
19 submission setting out why they believe the evidence that's
20 been heard should still be the subject matter of findings
21 and possibly notices of misconduct.

22 So I'll leave that with you, sir.

23 I did canvass the parties earlier with
24 respect to timelines and the worst case scenario if they
25 took as much time as they said they might take I have

1 approximately four and a half hours. I'm assuming though
2 that some of them may have overstated that and there may be
3 some duplication but we'll see as time goes on. And
4 certainly I may have some brief submissions at the end,
5 depending on whether or not Commission counsel feels there
6 are issues that have not been covered, just for
7 clarification.

8 **THE COMMISSIONER:** What about Ms. Morrison -
9 - the letter from, I'm sorry, Lori Harreman; did we ever
10 find out about her?

11 **MR. ENGELMANN:** Sir, I'm not sure whether
12 there will be an attendance. If so, it would be this
13 afternoon.

14 **THE COMMISSIONER:** All right.

15 **MR. ENGELMANN:** But I will confirm that.

16 **THE COMMISSIONER:** Thank you.

17 So what's the order for this morning then?

18 **MR. ENGELMANN:** The order that I had
19 proposed, sir, was that Mr. Manderville start. And we have
20 the Cornwall Police Service followed by Mr. Neville. I
21 don't believe there were any other parties speaking in
22 favour of any form of -- I don't want to use the word
23 exclusion but any form of non-reference to evidence as a
24 result of the Court of Appeal decision.

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

1 **MR. ENGELMANN:** Then I understand that Mr.
2 Lee and Mr. Horn have submissions opposing.

3 By the way, sir, a new face at the counsel
4 table this morning. Stephanie Gibson is here for the
5 Children's Aid Society on behalf of Mr. Chisholm.

6 **THE COMMISSIONER:** Good morning.

7 **MR. ENGELMANN:** She's advised me that she
8 may have -- she will have some brief reply submissions, 10
9 to 15 minutes.

10 **THE COMMISSIONER:** All right.

11 **MR. ENGELMANN:** Sir, I'll turn it over to
12 Mr. Manderville.

13 **THE COMMISSIONER:** Thank you.

14 Good morning, Mr. Manderville.

15 ---SUBMISSIONS BY/REPRESENTATION PAR **MR. MANDERVILLE:**

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

18 I'm going to introduce to you first how I
19 propose to proceed this morning.

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

21 **MR. MANDERVILLE:** I will review what I
22 believe to be the salient aspects of the Court of Appeal's
23 decision with you, paying particular attention to certain
24 paragraphs which I feel are important for today's
25 discussion as to how you should now view your mandate.

1 Secondly I will suggest to you that the
2 Court of Appeal's decision and its impact on your mandate
3 gives rise to three issues. First is concerned with
4 certain prior issues -- prior witnesses called by the
5 Commission which we contend gave evidence which the Court
6 of Appeal has declared to be not within your mandate as it
7 is now defined, and any witnesses ancillary to those
8 particular witnesses and make submissions to you as to what
9 we feel should be done with that evidence.

10 Secondly, we will discuss the effect of the
11 Court of Appeal's decision on witnesses yet to be called.
12 You have, in my view, correctly noted that if you did not
13 have jurisdiction to hear from certain witnesses who've
14 already testified you also do not have jurisdiction to hear
15 the institutional response to that evidence. And as such,
16 I would be submitting to you that for certain officers of
17 my client -- and perhaps other institutions, but I'm not
18 here to submit on behalf of other institutions -- that the
19 Commission intends to call in relation to prior witnesses
20 whose testimony is irrelevant, those institutional
21 witnesses are not to be called to respond to that
22 particular testimony.

23 And thirdly, it is our position that certain
24 specific investigations on which the Commission seeks to

1 elicit evidence falls outside your mandate as well, and I
2 will speak in detail about one in particular.

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

4 **MR. MANDERVILLE:** Moreover, I should also
5 say that for evidence yet to be called or witnesses yet to
6 be called, the relevance of such proposed evidence or
7 proposed testimony to your mandate will have to be
8 considered on a case-by-case basis as it occurs, and it is
9 conceivable -- and I'm speculating to some extent, it is
10 conceivable that the decision of the Court of Appeal and
11 the extent of your mandate may have to be revisited from
12 time to time between now and the end of the Inquiry.

13 Now, as you know, Mr. Commissioner, this
14 Inquiry was called in response to three particular issues
15 or concerns within the Cornwall area. First, there was the
16 allegation that a clan of paedophiles was operating in the
17 Cornwall area and had been doing so for some period of
18 time. This allegation was advanced primarily initially by
19 Mr. Leroux and Mr. Dunlop.

20 Secondly, we had the allegation that certain
21 prominent local citizens conspired to cover-up the
22 activities of the so-called clan. And again, this
23 allegation was advanced primarily by Mr. Leroux and Mr.
24 Dunlop.

25 And thirdly, we had the Project Truth

1 investigations and the subsequent prosecutions and the
2 perception held by some that the prosecutions had not been
3 as successful as some would have liked.

4 The Court of Appeal adverted to these 3
5 factors in paragraph 43 of their decision. The Court of
6 Appeal stated that the 3 factors I just mentioned to you
7 formed the context and the factual background in which the
8 Commission was created.

9 And at paragraph 44 of the decision, the
10 Court of Appeal states that both you, Mr. Commissioner, and
11 the Divisional Court ought to have adverted to the fact
12 that the legislative intent in ordering the Inquiry was
13 focussed on having you investigate the institutional
14 response to allegations of historical sexual abuse of young
15 people in the Cornwall area by persons in positions of
16 authority or trust and to recommend ways in which those
17 institutions could better respond to this type of
18 allegation.

19 And I suggest similar limiting comments can
20 be found in the Court of Appeal's decision at paragraph 47;
21 at paragraph 52. At paragraph 52, the Court of Appeal
22 suggests that the Commissioner should have realized that
23 the allegations of abuse were the allegations of abuse that
24 formed the subject matter of Project Truth; that being
25 allegations of historical sexual abuse of young people in

1 the Cornwall area by persons in authority or positions of
2 trust.

3 The Court goes on to make similar types of
4 comments in paragraphs 53, 55, and paragraph 60 and in
5 particular in paragraph 62. In that paragraph, the Court
6 of Appeal states that:

7 "Properly construed the Order-in-
8 Council empowers you to look into and
9 report on institutional responses,
10 past, present and future, relating to
11 allegations of historical abuse of
12 young people in the Cornwall area by
13 persons in authority or positions of
14 trust, including the allegations
15 investigated in Project Truth, as well
16 as similar such allegations."

17 That is what the Court of Appeal is saying
18 that you are to do, sir, and I acknowledge that we need to
19 break paragraph 62 down into its component parts to discuss
20 what that means.

21 First off, they note your focus is to be on
22 "allegations of historical abuse" and I say that in quotes.

23 Your contextual expert, Mr. Wolfe, gave us a
24 definition of abuse and defined it as being:

25 "...evidenced by activity between

1 a child and an adult or another child who by
2 virtue of age or development is in a
3 relationship of responsibility, trust or
4 authority, the activity being intended to
5 gratify or satisfy the needs of the other
6 person."

7 That was Professor Wolfe's definition of
8 abuse and it is thus far the only definition of abuse we
9 have had at this Inquiry.

10 We also have the Court of Appeal telling you
11 that your focus is to be on allegations of historical abuse
12 of "young people". Again, the term "young people" in
13 quotes for the purpose of my submission.

14 So what is a young person in this context?
15 As we know the *Young Offenders Act* defines a young offender
16 as being someone who is under the age of 18.

17 Section 153 of the *Criminal Code*, which I
18 submit is particularly apt because it deals with the
19 offence of sexual exploitation, that section of the
20 *Criminal Code* defines a young person as meaning a person
21 who is 14 years of age or more but under the age of 18.

22 As we also know, the age of 18 is the age at
23 which you can vote, the age at which you can be sent to
24 fight for your country. Eighteen (18) is the age at which
25 you are considered to be an adult in the eyes of the law in

1 terms of being charged and possibly convicted as an adult.
2 And, as such, I would submit that young person here means
3 persons under the age of 18.

4 **THE COMMISSIONER:** But the Order-in-Council
5 says "young people", does it not?

6 **MR. MANDERVILLE:** More than one young
7 person, I guess. It does say "young people".

8 **THE COMMISSIONER:** So you're saying that
9 people and persons are equal?

10 **MR. MANDERVILLE:** I would say that person --
11 or people is the plural of person.

12 **THE COMMISSIONER:** Persons. I thought
13 persons was the plural of person?

14 **MR. MANDERVILLE:** Well I'm not sure that
15 very much turns on it, Mr. Commissioner.

16 A young person, a young people -- my point
17 is that the *Young Offenders Act* and the relevant section of
18 the *Criminal Code* concerning sexual exploitation defines a
19 young offender or a young person as being someone under the
20 age of 18.

21 I'm not aware of any definition of "young
22 people" suggesting that "young people" can be older than
23 age 18.

24 **THE COMMISSIONER:** I guess when my dad talks
25 to me and he say, "Oh you young people nowadays" that has

1 no meaning, I guess.

2 **MR. MANDERVILLE:** Yes, it does. It means
3 you under 18 people.

4 (LAUGHTER/RIRES)

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

6 **MR. MANDERVILLE:** I say the same to my
7 children.

8 **THE COMMISSIONER:** Okay, hence lies the
9 difference, you're younger than I.

10 Okay.

11 **MR. MANDERVILLE:** Next, we should consider
12 what it means to be in a position of trust and authority
13 and that is not an easy, straightforward issue, I will
14 concede.

15 Mr. Manson referred you to the case of the
16 *Queen v. Audet* and that's at Tab 2 of the Brief of
17 Authorities.

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

19 **MR. MANDERVILLE:** Paragraph 14 of that
20 decision provides an excerpt of section 153 of the *Criminal*
21 *Code* with the definition of young person.

22 Paragraph 33 and onward speaks in terms of
23 what a position of trust means, as well as a position of
24 authority.

25 The court -- and it's Mr. Justice La Forest

1 speaking for the majority in that decision, quotes from
2 Justice Proulx from the Quebec Court of Appeal in paragraph
3 33 and states:

4 "In its primary meaning, the notion of
5 authority stems from an adult's role in
6 relation to the young person. But it
7 will be agreed that in the context of
8 this statutory provision to be in a
9 position of authority does not
10 necessarily entail just the exercise of
11 a legal right over the young person but
12 also a lawful or unlawful power to
13 command which the adult may acquire in
14 the circumstances."

15 The court goes on to note the comment of
16 Justice Blair, further on in the same paragraph:

17 "A position of authority invokes
18 notions of power and the ability to
19 hold in one's hands the future or
20 destiny of the person who is the object
21 of the exercise of the authority."

22 In that same paragraph, Justice La Forest
23 quotes Justice Blair from the same decision about what a
24 position of trust means. And Justice Blair notes that the
25 term "position of trust" is broader than our old trusts and

1 equity chestnuts about trustees and beneficiaries.

2 It states that:

3 "Where the nature of the relationship
4 between an adult and a young person is
5 such that it creates an opportunity for
6 all of the persuasive and influencing
7 factors which adults hold over children
8 and young persons to come into play and
9 the child or young person is
10 particularly vulnerable to the sway of
11 these factors, the adult is in a
12 position where those concepts of
13 reliability and truth and strength are
14 put to the test. Taken together, all
15 of these factors combined to create a
16 'position of trust' towards the young
17 person."

18 What our Court of Appeal has said you are
19 empowered to do, Mr. Commissioner, is to examine
20 allegations of historical abuse of young persons by persons
21 in positions of trust and authority, and what *Audet* is
22 trying to set out is what position of trust and authority
23 means.

24 In the case of *Audet*, the accused was a
25 teacher and the complainant was one of his students and the

1 court had little difficulty in concluding that the
2 teacher/student relationship was one where the teacher was
3 virtually always in a position of trust and authority with
4 his or her students and we would agree.

5 And, similarly, a priest would be in a
6 position of trust and authority with an altar boy or with
7 his parishioner and the Supreme Court of Canada has made
8 that observation in one of the other decisions in this
9 brief.

10 A probation officer would be in a position
11 of trust and authority with current probationers. The
12 doctor/patient relationship would certainly be one of
13 trust.

14 In the case of *E.D.G. v. Hammer*, which is at
15 Tab 5 of the brief, and that's a Supreme Court of Canada
16 decision rendered in 2003; the Court, in that decision,
17 held that a janitor at a school is not in a position of
18 trust and authority over students and as such, the school
19 could not be vicariously liable for the actions of that
20 janitor when he sexually assaulted one of the students.

21 Court held that the notion of vicarious
22 liability was not triggered because the role of janitor to
23 a school and the sexual abuse that that janitor carried out
24 on a student did not come about as an incident of his
25 employment. He was not placed, by virtue of his employment

1 position, in a position of trust and authority over
2 students of the school.

3 In the case of *Bazley v. Curry* which is
4 found at Tab 3 of the brief, that's in 1998, a Supreme
5 Court decision. The citation is 1999, the -- sorry it's a
6 '99 decision of the Supreme Court.

7 In that case, the Court held that employees
8 of the defendant Children's Foundation were in a position
9 of trust and authority because the Foundation's employees
10 were specifically directed by their employer to do
11 everything a parent would do from general supervision of
12 the students who attended at the Foundation or children who
13 attended at the Foundation to intimate duties like bathing
14 and tucking in at bedtimes. And as a result, the position
15 held by the Foundation of employees and the duties imposed
16 upon them created that authority and trust relationship
17 sufficient to trigger vicarious liability in that
18 circumstance.

19 Another decision in this brief is the
20 decision of *E.B. v. The Order of the Oblates of Mary*
21 *Immaculate* in the Province of British Columbia; that's at
22 Tab 4 of the brief. That's a 2005 Supreme Court of Canada
23 decision.

24 In that instance, the perpetrator of the
25 abuse was a lay employee at a residential school. He

1 worked as a baker, as a boat driver, as an odd job person.
2 And during the course of his employment, he sexually abused
3 one of the children at the school.

4 The Court held -- Supreme Court held that
5 the position of a baker or a boat driver, an odd job person
6 at a residential school did not create, by virtue of the
7 employment position, a relationship of trust and authority
8 with the students at the school.

9 Lastly in the case of *Jacobi v. Griffiths* a
10 1999 Supreme Court decision at Tab 6, the Court held that a
11 boys and girls club recreation director was not placed in a
12 position of trust and authority with participants in the
13 programs.

14 Now I suggest we apply the jurisprudence
15 I've just cited to you and the legislation in the Court of
16 Appeals decision to the testimony of some of the witnesses
17 we have heard from starting with Larry Séguin.

18 Larry Séguin was the first victim to testify
19 here at this Inquiry back in October 2006. Mr. Séguin told
20 a sad tale of being essentially abducted or kidnapped and
21 sexually assaulted at age 7 by someone he didn't know and
22 had never met. Certainly that position -- that person
23 could not possibly have been in a position of trust and
24 authority vis-à-vis Larry Séguin; he'd never met him
25 before. As such, Larry Séguin's allegations in this area

1 fall outside your mandate, we submit, as the Court of
2 Appeals has defined it.

3 The second allegation made by Larry Séguin
4 was that at the age of 16, he was physically and sexually
5 assaulted at knifepoint by a man not previously known to
6 him. He was a few years older than he. He reported the
7 incident within 24 hours and the man was arrested the next
8 day.

9 I submit that sort of allegation is squarely
10 on all fours with the allegations made by C-12 which the
11 Court of Appeals specifically considered. And again, I
12 would submit that these allegations do not fall within your
13 mandate.

14 I would submit that technically, if you
15 agree with my view that this evidence is not within your
16 mandate, the evidence should be expunged. We acknowledge
17 it's already out there. There's a transcript; it's public.

18 As such, if you do agree with our position,
19 we believe it to be appropriate for you to state that the
20 evidence will simply be disregarded be it in its entirety
21 and will not form a basis or a partial basis for a finding
22 of misconduct against an individual or an institution, and
23 will not form a basis or a partial basis for the issuance
24 of a notice pursuant to Section 5(2) of the *Public*
25 *Inquiries Act* to an individual or an institution.

1 Next we have Juliette Séguin, Larry Séguin's
2 mother. Her testimony was entirely ancillary to that of
3 her son Larry concerning the effects upon him of the sexual
4 assaults he'd experienced. If his evidence is outside your
5 mandate to consider, certainly the evidence of his mother
6 concerning the effects upon him is also irrelevant and
7 should be disregarded.

8 Next, we have David Petepiece. He testified
9 that he had been propositioned but not touched by an
10 Anglican priest. He did not know the man. The man had not
11 been a minister at the church Mr. Petepiece had attended.
12 He knew of him.

13 Given the facts of the evidence deposed to
14 by Mr. Petepiece, he would, we submit, have not been abused
15 nor with a man in a position of trust and authority over
16 him.

17 **THE COMMISSIONER:** So if I were to say that
18 it was at least an attempt, you're saying an attempt is not
19 -- given that it carries the same penalty as the, in a lot
20 of cases I think, the original crime; you're saying an
21 attempt doesn't fit in?

22 **MR. MANDERVILLE:** Well propositioning, let's
23 go back to the sexual exploitation offence, Section 153 of
24 the *Criminal Code*. Propositioning a young person is not a
25 crime; it's touching for sexual purpose.

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

2 **MR. MANDERVILLE:** Mr. Wolfe's definition of
3 abuse spoke of being evidence by activity between a child
4 or an adult intended to gratify or satisfy the needs of the
5 adult. We can only speculate, and it can be somewhat
6 informed speculation perhaps, what that individual's
7 motives were but it never extended beyond the proposition
8 stage.

9 That fact coupled with the fact that Mr.
10 Petepiece did not know him, did not put the man in a
11 position of trust or authority over him and it was not, we
12 would submit, abuse as the *Criminal Code* would say it is
13 and as Mr. Wolfe has defined it as being. And as such, I
14 would submit that Mr. Petepiece's evidence should be
15 disregarded.

16 Next we have C-10. C-10 alleged abuse or
17 sexual abuse at the hands of four different people at
18 different times; three of whom are now dead, being Ken
19 Seguin, Father Don Scott and Malcolm MacDonald. And we
20 take no issue with C-10's allegations and his evidence
21 concerning those three.

22 C-10 also alleged abuse by an individual
23 named Carl Allen. At the time of that alleged abuse, C-10
24 was 10 years old and Mr. Allen was 14 years old at the
25 time. He was a young person; he was a young person too.

1 Mr. Allen had not been C-10's babysitter or caregiver,
2 rather he was just someone in the neighbourhood and as
3 such, he could not have been in a position of trust and
4 authority to C-10.

5 And I would submit that C-10's evidence on
6 this issue alone should be disregarded.

7 **THE COMMISSIONER:** C-10 was investigated
8 through Project Truth; was he not?

9 **MR. MANDERVILLE:** Yes.

10 **THE COMMISSIONER:** So ---

11 **MR. MANDERVILLE:** His allegations against
12 Mr. Allen did not form part of a Project Truth
13 investigation. His allegations against Mr. Allen were
14 investigated by my client.

15 **THE COMMISSIONER:** Oh.

16 **MR. MANDERVILLE:** His allegations against
17 Malcolm MacDonald --- the other two were already dead by
18 the time he came forward ---

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

20 **MR. MANDERVILLE:** --- but his allegations
21 against Malcolm MacDonald were Project Truth matters.

22 **THE COMMISSIONER:** So do you -- do you agree
23 that if it was part of Project Truth, that even if there's
24 not a position of authority, that if Project Truth looked
25 at it, that the Court of Appeal gives me at least the

1 jurisdiction to look at what Project Truth looked at?

2 **MR. MANDERVILLE:** I think that's right, yes.
3 I think so. I'd like to say otherwise but I think that's
4 right.

5 **THE COMMISSIONER:** I thought your client was
6 interested in -- oh, it's okay. So, all right.

7 So could it not be argued that Mr. Allen --
8 oh, I see, you're just trying to make sure that you don't
9 have to respond to Mr. Allen, but couldn't Mr. Allen be all
10 part and parcel because he reported it to Project Truth and
11 then Project Truth sent it to your people.

12 **MR. MANDERVILLE:** It did not form a project
13 part -- that is correct, it did not form a Project Truth
14 investigation.

15 **THE COMMISSIONER:** Right.

16 **MR. MANDERVILLE:** It was not considered by
17 Project Truth to be within their mandate. Conversely, his
18 allegations against Malcolm MacDonald were viewed as being
19 within their mandate ---

20 **THE COMMISSIONER:** Right.

21 **MR. MANDERVILLE:** --- which I submit arises
22 from the fact that Mr. MacDonald -- Malcolm MacDonald, was
23 alleged to have been part of the clan and was one of the --
24 perhaps one of the prominent local citizens who were
25 alleged to have covered up the so-called clan's activities;

1 something within the focus of Project Truth.

2 **THE COMMISSIONER:** M'hm. Okay.

3 **MR. MANDERVILLE:** So to be clear, my only
4 concern with C-10 is that one allegation.

5 Next we have Marc Carriere. Mr. Carriere
6 testified that when he was 21 years old, a local JP placed
7 his hand ---

8 **THE COMMISSIONER:** A local what? Justice of
9 the Peace?

10 **MR. MANDERVILLE:** Yeah.

11 **THE COMMISSIONER:** Okay. They're a little
12 touchy on that.

13 **MR. MANDERVILLE:** JP?

14 **THE COMMISSIONER:** M'hm. Justice of the
15 Peace.

16 **MR. MANDERVILLE:** Placed his hand on Mr.
17 Carriere's thigh. We would submit that Mr. Carriere was
18 not a young person at the time being 21 years old. We
19 would also submit the event he complained of was not abuse
20 and I would also submit, in a larger sense, the evidence of
21 Mr. Petepiece and certainly the evidence of Mr. Carriere do
22 not form a basis to call a public inquiry and could not
23 possibly be a focus of this Public Inquiry and I submit Mr.
24 Carriere's evidence should be disregarded by you.

25 There are some other examples that I will

1 touch on very briefly, one of which I understand Mr.
2 Neville will speak to somewhat.

3 We heard from Mr. Leroux that at the age of
4 31 he was sexually abused by Nelson Barque. Thirty-one
5 (31) is not a young person. C-8 alleged that Ken Sequin
6 made remarks to him of a -- a sexual nature -- a pass -- a
7 proposition. That would not be abuse.

8 Keith Ouellette alleged that he was sexually
9 abused by a person named -- by an art teacher when he was
10 22 to 23 years old. Again, we would submit that that does
11 not place Mr. Ouellette in the category of a young person
12 for the purposes that allegation.

13 Now, as I indicated previously, the Court of
14 Appeal has said that this Inquiry was called to address
15 three specific issues and I told you what they are: The
16 alleged existence of a clan of pedophiles; the alleged
17 existence of a cover-up of the activities of that alleged
18 clan; and the Project Truth investigations and subsequent
19 prosecutions.

20 And, as such, there are several other
21 witnesses whose testimony is not concerned with the three
22 factors leading to the calling of this Inquiry which
23 factors were to be your focus.

24 I want to talk to you a bit about the Earl
25 Landry, Jr. investigation.

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

2 **MR. MANDERVILLE:** You have a document that
3 Commission counsel and I were able to fashion into an
4 Agreed Statement of Facts. Mr. Landry, Jr. was a park
5 janitor, a custodian, who abused three young persons in
6 that capacity. He also abused two other young persons whom
7 he had befriended in some fashion, not in his role as park
8 janitor.

9 At one point, not contemporaneous with the
10 actions complained of, at one point in the past he had been
11 a hockey coach to one of the victims.

12 **THE COMMISSIONER:** Before the assaults?

13 **MR. MANDERVILLE:** Correct.

14 He was charged and he plead guilty to five
15 separate counts of abuse and was sentenced to five years
16 imprisonment. Consistent with the Supreme Court of Canada
17 jurisprudence I referred you to and, in particular, the
18 E.D.G. decision involving a janitor, *A.B v. the Order of*
19 *the Oblates* decision involving a baker/odd-job man, someone
20 who was a park custodian is certainly not in a position of
21 trust and authority with a young person who happens to
22 frequent the park.

23 Mr. Manson has suggested you need to
24 consider a much larger factual matrix to come to that
25 conclusion. I don't agree with him but if he's *prima facie*

1 correct, none of Mr. Landry's victims have been called as
2 witnesses. There will be no factual matrix before you when
3 -- we suggest you should not -- when you consider the
4 investigation into Mr. Landry, Jr.'s activities.

5 A park janitor, *prima facie*, is not in a
6 position of trust and authority with people who come to the
7 park and, as such, his crimes and the institutional
8 response to allegations concerning them is outside the
9 mandate of this Commission.

10 You will hear that his father had once been
11 the Chief of Police in Cornwall and none of the allegations
12 nor the events complained of occurred during his father's
13 tenure as chief.

14 This Inquiry, I submit, is not tasked with
15 examining the parents of alleged abusers. Certainly the
16 parent of an alleged abuser cannot possibly be the person
17 in a position of trust and authority to the young person
18 who alleges that he or she is a victim and then somehow
19 bring the issue within your mandate.

20 Moreover, the investigations concerning Mr.
21 Landry, Jr. were lengthy. They involve a number of
22 officers and the evidence concerning them will be lengthy
23 and extend this Inquiry by a matter of some weeks.

24 I suggest that you have many, many
25 investigations that you have heard about and will hear

1 about by my client and others. You have many, many
2 allegations that we agree fall within your mandate.

3 This Inquiry is now in its third year of
4 hearing evidence and you have more than enough information
5 and evidence concerning various Cornwall Police Service
6 investigations and other investigations carried out by
7 other institutions with standing here with which to prepare
8 your report -- a thorough and comprehensive report and to
9 make your recommendations.

10 This investigation, the Landry, Jr.
11 investigation and this man's activities, we submit fall
12 outside your mandate. It's irrelevant, it's unnecessary
13 for the purposes of your report and will serve to lengthen
14 the Inquiry.

15 The activities of Mr. Landry, Jr. are in no
16 way related to a clan of pedophiles. They were in no way
17 related to an alleged conspiracy to cover-up the clan's
18 activities and they were in no way related to Project Truth
19 investigations.

20 Given the Court of Appeal's decision, I
21 would submit they are not to be a part of your focus and,
22 moreover, I submit he was not in a position of trust and
23 authority with these individuals and as such it's outside
24 your mandate.

25 In closing, Mr. Commissioner, I would submit

1 the decision of the Court of Appeal serves to render
2 irrelevant the testimony of some of the witnesses we have
3 heard from and I have set out for you who we believe those
4 witnesses to be. It renders the institutional response to
5 the testimony of those specific witnesses irrelevant too
6 and you are without jurisdiction to hear it.

7 And, lastly, it renders certain
8 investigations or avenues of inquiry on which the
9 Commission seeks to leave evidence irrelevant and outside
10 your jurisdiction.

11 Subject to any questions you have for me,
12 Mr. Commissioner, those are my submissions.

13 **THE COMMISSIONER:** No, that's fine. Thank
14 you.

15 Mr. Neville?

16 **MR. NEVILLE:** Can I have a moment please,
17 sir?

18 **THE COMMISSIONER:** Sure.

19 (SHORT PAUSE/COURTE PAUSE)

20 **MR. NEVILLE:** Good morning, sir.

21 **THE COMMISSIONER:** Good morning.

22 --- SUBMISSIONS BY/REPRESENTATION PAR MR. NEVILLE:

23 **MR. NEVILLE:** Mr. Commissioner, Mr.
24 Manderville, having reviewed with you the essence of the

1 Ontario Court of Appeal's decision, I don't intend to go
2 into it in any significant detail, save for this.

3 Mr. Manson, or Professor Manson attempted to
4 persuade you when we were last here, that because of the
5 absence of the word "sexual" in numerous passages that he
6 cited to you that somehow you ought to find, either using
7 your words that it was somehow *obiter*, or using his
8 submissions that somehow the focus of this Inquiry is
9 something other than sexual abuse.

10 In my submission, with great respect sir,
11 you would be led down a path of error if you were to so
12 interpret the reasons of the Court.

13 Mr. Manderville has cited to you one
14 particular passage and if I could just turn to it for a
15 moment.

16 It's found at page 15, paragraph 42 and 43
17 of the Reasons and this is in the portion of the Judgement
18 where Justice Moldaver for the Court is reviewing some of
19 the interpretive aids, including media coverage, Hansard
20 comments and the like.

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

22 **MR. NEVILLE:** And he says at paragraph 42:

23 "In my view these extracts are telling.
24 They provide valuable insight into the
25 background and purpose of the OIC."

1 Meaning of course, Order-in-Council:
2 "They were available to the
3 Commissioner in the Divisional Court as
4 an interpretative aid and should have
5 been used in determining the
6 legislative purpose for creating the
7 Commission.
8 Considered in conjunction with the
9 factual matrix underlying -- outlined
10 by Detective Superintendent McQuade in
11 her affidavit, these Hansard extracts
12 provide clear evidence of the context
13 and circumstances of which the
14 Commission was created. I would
15 summarize them as follows:"

16 First bullet:

17 "A clan of paedophiles alleging
18 operating in the Cornwall area for a
19 very long period of time."

20 Bullet two:

21 "Prominent local citizens alleging
22 conspired to cover up the activities of
23 the clan of paedophiles."

24 Bullet three:

1 "Project Truth and the prosecutions it
2 spawned failed to generate satisfactory
3 results and a cloud of suspicion and
4 mistrust continues to hang over the
5 citizens of Cornwall."

6 Mr. Manderville has cited to you,
7 Commissioner, one witness's definition of explanation of
8 the concept of paedophiles. It goes without saying that
9 paedophilia is sexual conduct based. There is nothing
10 about paedophilia that I am aware of that connects it to
11 physical abuse.

12 The essence of Project Truth and indeed all
13 of the prosecutions that came from Project Truth were those
14 of alleged sexual offences, so the focus is that of sexual
15 abuse as alleged by various persons.

16 There are in my submission, Commissioner,
17 three parts, if you wish, to the framework of the Inquiry.
18 The first one which Mr. Sherriff-Scott argued a couple of
19 weeks ago, supported by myself and others, is that post-
20 mandate disclosures are not within your mandate. That is
21 after the 14th of April 2005 the alleged perpetrator must be
22 a person in authority or in a position of trust and the
23 alleged victim must be a young person.

24 I have provided and you have there,
25 Commissioner, my letter outlining the basis of my concern

1 on behalf of my two clients. And if I can address you
2 first in relation to Father MacDonald.

3 If you have my letter there, sir, in fact I
4 think it probably gives you without my having to waste your
5 time and take up the public's time in going through it in
6 detail, but if I can just refer you to it.

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

8 **MR. NEVILLE:** You can see that the three
9 individuals that I suggest are not, in the light of the OCA
10 Decision, within your mandate are Robert Renshaw, C-3, and
11 C-4.

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

13 **MR. NEVILLE:** And the essence of my position
14 for all of them is that at the date in time of the alleged
15 conduct, each was not a young person as understood in the
16 law.

17 You have various versions of the word "young
18 person" which is not of course defined in the mandate, but
19 it's a well-known concept. You have Mr. Manderville's
20 reference to you at section 153.

21 The *Young Offenders Act* which defines young
22 persons for purpose of sexual exploitation, which is quite
23 a significant section in the context of this Inquiry, as it
24 goes -- really, that section almost epitomizes, I would
25 suggest to you, what the focus of the Inquiry is. That is

1 to say it talks about persons in a position of trust or
2 authority; it talks about sexual conduct and it talks about
3 young persons. Young person is defined as between ages 14
4 and 17 inclusive. And I suggest to you, sir, that's quite
5 significant because it's almost in itself the section that
6 mirrors the mandate of the Inquiry.

7 **THE COMMISSIONER:** But Mr. Renshaw, did he
8 not go through Project Truth?

9 **MR. NEVILLE:** He did.

10 **THE COMMISSIONER:** So didn't the Court of
11 Appeal say you can look at whatever Project Truth looked
12 at? Are you saying that ---

13 **MR. NEVILLE:** Yes they do, Commissioner.
14 They weren't asked to address, of course, as we are now to
15 you ---

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

17 **MR. NEVILLE:** --- the notion of young person
18 as the mandate we would suggest defined it. But you're
19 right and I think you've put much the same question to Mr.
20 Manderville; he was under Project Truth.

21 Indeed -- and that if you see it as the
22 simple answer is the simple answer. I suggest it goes
23 further than that and if you go back to the Reasons, I
24 suggest to you, sir, that while it says look at what
25 Project Truth did, it ought to be also a question of

1 whether Project Truth in itself on a case-by-case basis was
2 investigating the alleged abuse of a young person, not
3 merely the fact that it was under Project Truth, because
4 you must go back to the root wording of the Inquiry
5 mandate.

6 But that's a view, Mr. Commissioner, if you
7 take the Reasons to say if it's under Project Truth end of
8 the story, then I'm taking up your time. But I suggest
9 it's more than that.

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

11 **MR. NEVILLE:** In any event you have in my
12 letter, sir, summarizing with the appropriate references,
13 the Renshaw situation, born in 1963, the event happened as
14 he alleges it in the fall of -- in October of 1983 when he
15 was 20. Our view respectfully is he by no stretch a young
16 person.

17 In addition, I would suggest to you, sir,
18 that when he goes to meet allegedly at the rectory of
19 Father MacDonald, there should be an issue here as to
20 whether at that point Father MacDonald was in a position of
21 trust or authority. He was not a Catholic. He was not a
22 parishioner. His story is that he was having trouble
23 handling the death two years earlier of his father and went
24 for advice at the rectory.

1 **THE COMMISSIONER:** So seeking advice from --
2 -

3 **MR. NEVILLE:** Well---

4 **THE COMMISSIONER:** The janitor?

5 **MR. NEVILLE:** No, from a priest but he's not
6 -- Mr. Renshaw is not a Catholic. So he's not a priest of
7 the faith that Mr. Renshaw practiced.

8 **THE COMMISSIONER:** But the Catholic church
9 welcomes everyone into their realm.

10 **MR. NEVILLE:** Yes, sir. I'm not pressing
11 the point. I'm simply saying that he went for advice, not
12 in Charles MacDonald's capacity as a priest.

13 Now the next one is C-3.

14 **THE COMMISSIONER:** Yes. No, I can -- that
15 was C-3?

16 **MR. NEVILLE:** No. Mr. Renshaw, he's not
17 monikered, sir.

18 **THE COMMISSIONER:** Oh, no, no. I understand
19 that. Okay, okay. Sorry.

20 **MR. NEVILLE:** So looking at my letter at
21 page 2, paragraph number 2 ---

22 **THE COMMISSIONER:** Yes, I'm sorry.

23 **MR. NEVILLE:** --- I summarize for you the
24 situation of C-3.

25 **THE COMMISSIONER:** Yes.

1 **MR. NEVILLE:** His situation is somewhat more
2 problematic, sir, in this sense that his evidence and I've
3 put the phrase in quotation marks for a reason. It was not
4 conventional evidence by way of vive voce; it was by way of
5 an ODE and Mr. Manderville has advanced the proposition
6 with which I concurred that an ODE in itself cannot be the
7 basis for a finding of misconduct or a section 5 notice.
8 So there's a problem there in that his ---

9 **THE COMMISSIONER:** Well assuming for a
10 moment that everything that's in the ODE ---

11 **MR. NEVILLE:** Right.

12 **THE COMMISSIONER:** --- is word for word in
13 the material, I am free to look ---

14 **MR. NEVILLE:** Yes.

15 **THE COMMISSIONER:** --- and look at it and
16 come to the same actual conclusion.

17 **MR. NEVILLE:** Yes. Putting it perhaps
18 slightly differently as between the ODE and the documents;
19 documents rule.

20 **THE COMMISSIONER:** Absolutely -- well,
21 there's no -- it's always been prefaced by that.

22 **MR. NEVILLE:** Exactly and that's why I've
23 given you as references under him, the actual -- which was
24 made -- things that were made exhibits, sir.

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

1 **MR. NEVILLE:** The ODE itself was exhibit or
2 is Exhibit 413.

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

4 **MR. NEVILLE:** Four one four (414) is the
5 preliminary inquiry in February of 1997; 435 is the
6 discovery from the civil action which took place on May
7 30th, 1996. I've also provided to you Document -- or
8 reference to Document 110824 ---

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

10 **MR. NEVILLE:** --- which are summaries
11 prepared by the Ministry of the Attorney General of those
12 two transcripts and I suspect, at some point, as we go
13 through this Inquiry, when their turn comes, that document
14 may well come before you.

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

16 **MR. NEVILLE:** And Exhibit 1129, sir, was an
17 exhibit put in during the ODE presentation of C-2 ---

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

19 **MR. NEVILLE:** --- which sets out the
20 appointments of Father MacDonald. So there's no dispute, I
21 would suggest that the event that Mr. C-3 describes or
22 particularly the one he describes took place in the fall of
23 1975 when it put -- at which point he was then 18 years
24 old.

1 **THE COMMISSIONER:** Okay, but are you not
2 arguing -- I mean, you're arguing guilt or innocence there.

3 **MR. NEVILLE:** Well ---

4 **THE COMMISSIONER:** And that has no place
5 here.

6 **MR. NEVILLE:** Well, there's a problem, sir,
7 as I see it and that is this -- and I've been down this
8 path or my firm has in the past and the problem here in
9 part, sir, is that there are certain situations where you
10 may have to make a finding as to whether a certain event
11 happened because if it didn't happen, there's no abuse.

12 **THE COMMISSIONER:** Wait a minute. We're
13 looking at allegations of abuse.

14 **MR. NEVILLE:** Yes.

15 **THE COMMISSIONER:** All right? So if Project
16 Truth looked at this, all right, and they did something
17 wrong in looking at it ---

18 **MR. NEVILLE:** Right.

19 **THE COMMISSIONER:** --- that's an
20 institutional response, so whether or not the act ever
21 happened is irrelevant to me.

22 **MR. NEVILLE:** Well, I -- I agree with you to
23 that extent, but let me -- let me illustrate it from C-3
24 this way, sir, and if ---

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

1 **MR. NEVILLE:** --- I'll take you to my
2 material here.

3 **THE COMMISSIONER:** Yes.

4 **MR. NEVILLE:** I don't know what the
5 intention of Commission counsel is in terms of calling
6 Crown counsel to testify; previous Crown counsel ---

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

8 **MR. NEVILLE:** --- because some of you, we
9 all know, are members of the judiciary.

10 **THE COMMISSIONER:** That shouldn't matter.

11 **MR. NEVILLE:** Well, I'm not saying that --
12 assuming that they may testify ---

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

14 **MR. NEVILLE:** --- I can advise you of this,
15 sir, and it's reflected in the documents that I have given
16 you as references ---

17 **THE COMMISSIONER:** Yes.

18 **MR. NEVILLE:** --- that the event that C-3
19 describes at the Apple Hill Rectory ---

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

21 **MR. NEVILLE:** --- was not prosecuted.

22 **THE COMMISSIONER:** It was -- he did not lead
23 evidence of this event on February 26, 1997 at the
24 preliminary inquiry.

25 **MR. NEVILLE:** That's right.

1 **THE COMMISSIONER:** All right. That might be
2 subject to "why not."

3 **MR. NEVILLE:** Well.

4 **THE COMMISSIONER:** And so ---

5 **MR. NEVILLE:** There's a reason why not and
6 that -- that's where we get into a problem, sir, in terms
7 of -- and I'm not arguing here guilt or innocence.

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

9 **MR. NEVILLE:** But what I'm saying to you is
10 that a decision was made by a prosecutor that that event
11 was not an offence; it was simply an event that happened,
12 but did not constitute a criminal offence ---

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

14 **MR. NEVILLE:** --- because of such issues as
15 consent.

16 **THE COMMISSIONER:** Right.

17 **MR. NEVILLE:** So there was no offence and
18 even though there's an investigation, there was no trial of
19 the issue at any stage, so that's what I'm saying to you is
20 that in certain circumstances, one gets into a potential
21 problem and that's an example of one right there.

22 **THE COMMISSIONER:** Well, if you're -- it may
23 well be that when all is said is done that I'll agree and
24 I'll say, look at, everything went according to plan; the
25 institutional response was proper. But can you imagine

1 those people who hold the honestly held belief that there
2 was a conspiracy and that people in high places have
3 circumscribed the law; that we just say, no, we can't hear
4 that because although they did an investigation, although
5 it was with Project Truth, because there was no prosecution
6 then we should let it go.

7 **MR. NEVILLE:** I'm sorry, we should ---

8 **THE COMMISSIONER:** We should not look at it?

9 **MR. NEVILLE:** Well, on the basis, sir, that
10 the Court of Appeal talks about your looking at Project
11 Truth ---

12 **THE COMMISSIONER:** Yes.

13 **MR. NEVILLE:** --- and this person's
14 allegations because there were two parts to the allegations
15 ---

16 **THE COMMISSIONER:** Yes.

17 **MR. NEVILLE:** --- were under Project Truth,
18 that may -- you find -- may well find, settles the matter
19 and I'm not going to belabour the point; you have my point
20 as summarized ---

21 **THE COMMISSIONER:** No, okay. No, I agree.
22 I just wanted to make sure I understood your full argument.

23 **MR. NEVILLE:** Right.

24 **THE COMMISSIONER:** Thank you.

1 **MR. NEVILLE:** My main position is that this
2 gentleman, at the time of the alleged event, was not a
3 young person as that has been discussed by myself, briefly,
4 and Mr. Manderville.

5 **THE COMMISSIONER:** Right.

6 **MR. NEVILLE:** Likewise, sir, with C-4 ---

7 **THE COMMISSIONER:** Yes.

8 **MR. NEVILLE:** --- and, again, I've given you
9 references ---

10 **THE COMMISSIONER:** Yes, I appreciate that.

11 **MR. NEVILLE:** --- the volumes from the
12 Inquiry where he testified and, again, I've given you a
13 document reference A110832 which is a similar summary
14 prepared by the Ministry of the Attorney General of C-4's
15 testimony on March 1, 1999.

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

17 **MR. NEVILLE:** And you can see from my
18 summary for you or to assist, that he was 18, closer to 19,
19 at the time of the alleged event in the fall of 1981 and my
20 position would be "not a young person."

21 **THE COMMISSIONER:** Still a Project Truth
22 investigation.

23 **MR. NEVILLE:** Project Truth case, sir.

24 **THE COMMISSIONER:** It was. Thank you.

1 **MR. NEVILLE:** Now, in relation to Mr. Seguin

2 ---

3 **THE COMMISSIONER:** Yes.

4 **MR. NEVILLE:** --- there are two parts to my
5 submission, sir, and I'm not sure whether today you wished
6 me to address the evidence in the factual overview that's
7 yet to come. I'm prepared to do that and I've set it out
8 in my letters. There are two parts to the position; one is
9 already heard testimony ---

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

11 **MR. NEVILLE:** --- which I thought was the
12 main focus today.

13 **THE COMMISSIONER:** Yes, yes.

14 **MR. NEVILLE:** And then the subsequent one,
15 I've set out in some detail and I've given yourself and the
16 other parties the specific references and I've listed the
17 moniker numbers from the factual overview and you should
18 have a letter ---

19 **THE COMMISSIONER:** This is a second -- a
20 second piece of paper here, dated February 15th.

21 **MR. NEVILLE:** There are two -- there are two
22 that go together, Commissioner. There is -- hang on just a
23 minute. Actually, there may be three, excuse me.

24 **THE COMMISSIONER:** I've got two letters.
25 One says that -- dealing with Mr. Renshaw and Ken Seguin.

1 **MR. NEVILLE:** What I did, Commissioner, was
2 I sent -- you should, in effect, I think, have three. I
3 had sent an earlier letter; I don't know whether -- no, I
4 didn't put that in.

5 **MR. ENGELMANN:** That's the only -- we asked
6 parties to write on Friday to set out their position with
7 respect to this issue. We didn't put anything else before
8 you, sir.

9 **THE COMMISSIONER:** Okay, well -- well, I can
10 get it.

11 **MR. NEVILLE:** Well, I can get you a copy.

12 **THE COMMISSIONER:** Sure.

13 **MR. NEVILLE:** I just want -- if you have my
14 February 15th letter ---

15 **THE COMMISSIONER:** Yes.

16 **MR. NEVILLE:** --- it addresses just the
17 factual overview part. There's another letter of February
18 15th ---

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

20 **MR. NEVILLE:** --- that deals with the
21 already heard testimony, and it relates to one additional
22 person.

23 As you know, sir, I've already argued about
24 C-8 ---

25 **THE COMMISSIONER:** Yes, yes.

1 **MR. NEVILLE:** -- a couple of weeks ago.

2 **THE COMMISSIONER:** Right, right.

3 **MR. NEVILLE:** Not a young person, not a
4 position of trust, not abuse.

5 **THE COMMISSIONER:** Right.

6 **MR. NEVILLE:** In relation to -- I just want
7 to make sure it's not a moniker -- Gerry Renshaw, sir, I've
8 summarized the position for you. It's very similar to the
9 C-8 situation. Mr. Renshaw, Gerry Renshaw that is, was
10 born in December 1965. You know from various Corrections
11 witnesses that he became a tenant, renting a room in the
12 Seguin house in March of 1989, through to -- and it's not
13 clear but perhaps to the early nineties so I've given you
14 an age range of 24, up to 27 or 28. And my position of
15 course would be he is far from a young person at that
16 point. And that's in terms of already heard evidence,
17 together with that of C-8, so they are somewhat in the same
18 position.

19 Although, in fairness, Renshaw alleges -- on
20 the face he alleges more in the way of what might be called
21 classic sexual misconduct as opposed to C-8.

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

23 **MR. NEVILLE:** Now, what I did, sir, on the -
24 - and I don't know whether you want me to get into the
25 factual overview ones now or ---

1 **THE COMMISSIONER:** I don't know -- the ones
2 that are yet to come?

3 **MR. NEVILLE:** That's right.

4 **THE COMMISSIONER:** I don't know. Mr.
5 Engelmann, can you help us out here?

6 **MR. ENGELMANN:** Well, sir, you've asked for
7 an argument on the factual overview issue and I thought we
8 had that in, and my understanding was that everything was
9 agreed to on the factual overview. The parties has
10 compromised with one exception, that was Mr. Neville ---

11 **THE COMMISSIONER:** Right.

12 **MR. ENGELMANN:** --- who still wanted to
13 maintain that some of the individuals referred to were not,
14 in his words, "young persons".

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

16 **MR. ENGELMANN:** So, therefore, the exhibit
17 couldn't go in as currently agreed to ---

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

19 **MR. ENGELMANN:** --- because he had concerns
20 about certain monikers, certain individuals.

21 **THE COMMISSIONER:** Right.

22 **MR. ENGELMANN:** So I think he should address
23 it because you have to make a decision ---

24 **THE COMMISSIONER:** Yes.

25 **MR. ENGELMANN:** --- on the factual overview

1 issue before the return of Sue Larivière.

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

3 **MR. ENGELMANN:** Because if his argument is
4 rejected then it goes in as compromised and as the other
5 parties have agreed to, if it's accepted then there has to
6 be some work yet on the factual overview.

7 **THE COMMISSIONER:** Okay.

8 **MR. NEVILLE:** I'll carry on then,
9 Commissioner.

10 **THE COMMISSIONER:** Yes, okay.

11 **MR. NEVILLE:** Good.

12 Now, just to make sure -- and that's why, on
13 the assumption I might be asked to do that this morning,
14 sir, that's why I made reference to an earlier letter which
15 we should get you a copy of.

16 Perhaps it might be helpful if we took a
17 short break ---

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

19 **MR. NEVILLE:** --- to get it for you because
20 what I did, sir, was on the 31st of January ---

21 **THE COMMISSIONER:** Yes.

22 **MR. NEVILLE:** --- at the request of Mr.
23 Engelmann, I sent him a letter, which has been circulated
24 to all parties, as to what I felt were problems with
25 certain named numbered monikers.

1 **THE COMMISSIONER:** Right.

2 **MR. NEVILLE:** And to make it more helpful
3 for purposes of today, if we got there, I revisited the
4 same numbers and gave the references from the actual
5 documents.

6 **THE COMMISSIONER:** Right.

7 **MR. NEVILLE:** But my position is fairly
8 accurate, I think accurately stated, reflected directly
9 from the documents with the actual citations provided in my
10 letter of February 15th.

11 Now, that set of documents, sir, that are
12 referred to by document number ---

13 **THE COMMISSIONER:** Yes.

14 **MR. NEVILLE:** And one is an exhibit, are of
15 course in the database and have yet to be entered or filed.

16 **THE COMMISSIONER:** Right.

17 **MR. NEVILLE:** That's why I gave you the
18 numbers.

19 The content of what the numbers are about is
20 in the earlier letter and that's the one you perhaps more
21 need than the one with the numbers.

22 **THE COMMISSIONER:** Okay, because ---

23 **MR. NEVILLE:** And I can give you a copy of
24 that.

25 **THE COMMISSIONER:** I shouldn't be

1 consulting.

2 **MR. ENGELMANN:** Well, we can have copies
3 made, on Mr. Neville's suggestion, if we took a short
4 break.

5 **THE COMMISSIONER:** Sure.

6 **MR. ENGELMANN:** And I think it would be
7 easier for him to argue it if ---

8 **THE COMMISSIONER:** Yeah.

9 **MR. ENGELMANN:** --- you have the letters,
10 sir.

11 **THE COMMISSIONER:** Okay, good, thank you.

12 **MR. NEVILLE:** I have -- I think I have an
13 extra copy of the letter.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **MR. NEVILLE:** Perhaps I don't, Commissioner.

16 **THE COMMISSIONER:** Okay. Well, why don't we
17 take a short break and we'll come back.

18 **MR. NEVILLE:** Sure.

19 **THE REGISTRAR:** Order, all rise; veuillez
20 vous lever.

21 This hearing will resume at 11:00 a.m.

22 --- Upon recessing at 10:50 a.m. /

23 L'audience est suspendue à 10h50

24 --- Upon resuming at 10:59 a.m. /

25 L'audience est reprise à 10h59

1 **THE REGISTRAR:** Order, all rise; veuillez
2 vous lever.

3 This hearing is now resumed, please be
4 seated; veuillez vous asseoir.

5 **THE COMMISSIONER:** So do I have the letter
6 now?

7 **MR. NEVILLE:** Sorry, Commissioner, I think
8 they were going to get them for you.

9 **THE COMMISSIONER:** Yeah. Thank you.
10 So I have a letter dated January 31st and
11 another dated February 15th; all right.

12 **MR. NEVILLE:** Yes, sir.

13 **THE COMMISSIONER:** Go ahead.

14 **MR. NEVILLE:** In fact, sir, the content of
15 what I'm offering to you as submissions is in the January
16 31st letter. The second letter of last Friday is simply the
17 companion letter with the document references.

18 **THE COMMISSIONER:** Right.

19 **MR. NEVILLE:** With a little more substance,
20 I might say, fleshed out about Number 19 on page 2, but
21 we'll come to that in a moment.

22 So, again, sir, just to reiterate. In my
23 respectful submission, what the Cornwall Public Inquiry has
24 been said to be about by the Court of Appeal is pedophilia
25 by persons in a position of trust or authority. And

1 pedophilia, no matter how one stretches it in my
2 submission, does not include people over the age of 18.

3 So looking at Number 4, the Bates page
4 reference that you have on the other letter, Mr.
5 Commissioner, is from case notes in which you find the
6 observations that I've set out beside Number 4 on January
7 31st. There is no age given anywhere as to the age of
8 alleged abuse for Number 4. He would have been an adult by
9 July, 1982 and had already been incarcerated by the age of
10 16.

11 In the case of moniker Number 5, based on
12 the documents from the then supplements, now in the
13 database, the earliest he was on probation was the age of
14 18 or 19 and, therefore, in my submission, not a young
15 person.

16 The document reference, his date of birth,
17 you can see in the February 15th letter, was May the 5th of
18 1970 and the document reference is that of his criminal
19 record, that was contained in the material.

20 So when you put the two together, his first
21 period on probation he would have been the age of 18 or 19.

22 In the case of Number 7 ---

23 **THE COMMISSIONER:** But Mr. Neville, help me
24 out here.

25 **MR. NEVILLE:** Yes.

1 **THE COMMISSIONER:** The purpose for which
2 this factual overview of Corrections is being brought
3 forward is to show how they responded -- how they now
4 respond to this kind of thing.

5 Surely no one could think that I'm going to
6 use that factual overview to make a finding against
7 Corrections. I might say, well look it, this is -- they
8 have come up and they have shown us this is what they do
9 now and I can look it and say, that's a pretty good
10 practice but I would suggest maybe if they tried doing
11 this, this and that, but there won't be any finding of
12 fault. There won't be any need for any response to it so
13 what does it matter whether or not these things aren't
14 detailed? They're just using these incidents as an example
15 of how they react.

16 **MR. NEVILLE:** Well, that's why I said to you
17 last week, sir, when we talk about, as Mr. Engelmann put
18 it, a compromise.

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

20 **MR. NEVILLE:** The document may well be
21 admissible for one purpose but certainly not for another.

22 **THE COMMISSIONER:** Right.

23 **MR. NEVILLE:** And the document, in my
24 submission, given the limits on your mandate as recently
25 redefined ---

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

2 **MR. NEVILLE:** --- would say, I submit, on
3 behalf of Mr. Seguin or his Estate, that these allegations
4 are not within your mandate. They may be something they
5 chose to respond to and they can be looked at for that
6 purpose, but certainly not for the purpose of mandate-
7 covered allegations. They simply can't be ---

8 **THE COMMISSIONER:** Well ---

9 **MR. NEVILLE:** --- because of the factors
10 that I've set out.

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

12 **MR. ENGELMANN:** Maybe I can just ask a
13 question for clarification, Mr. Neville.

14 I'm assuming, without knowing because it's
15 not clear from the document and unfortunately I don't have
16 my factual overview with me, are these all disclosures
17 dealing with Mr. Seguin?

18 **MR. NEVILLE:** Yes. Oh, well, that's --
19 that's -- sorry, that's the premise, sir, that the
20 allegations, the ones I've itemized here, are ones where
21 the alleged perpetrator of misconduct is Mr. Seguin.

22 **THE COMMISSIONER:** Yes.

23 Well, first of all, I don't think that will
24 ever be -- it'll be a probation officer?

25 **MR. NEVILLE:** I'm sorry?

1 **THE COMMISSIONER:** I don't think -- the
2 factual overview doesn't say this was a victim if Ken
3 Seguin, does it?

4 **MR. NEVILLE:** Yes.

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

6 **MR. NEVILLE:** It does, absolutely, sir.
7 It's in the summaries and it's in the tables.

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

9 **MR. NEVILLE:** And that's relevant because --
10 sorry.

11 **MR. ENGELMANN:** These are a subset of -- I
12 can't remember how many there were, but there were over 20,
13 I think, that alleged some kind of abuse from Mr. Seguin.

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

15 **MR. ENGELMANN:** And what Mr. Neville has
16 done, if I understand him correctly, is suggested that you
17 shouldn't have the factual details with these certain
18 monikers.

19 Now, the compromise was we would have the
20 factual details of everybody before April 14th, 2005. That
21 was agreed to by all of the parties, save and except Mr.
22 Neville on behalf of Mr. Seguin.

23 **THE COMMISSIONER:** Right.

24 **MR. ENGELMANN:** So those would deal with
25 several others dealing with Mr. Seguin and others, but this

1 is a subset of that larger group as I understand it.

2 **THE COMMISSIONER:** Okay.

3 **MR. NEVILLE:** And by way of clear
4 illustration, sir, I argued specifically two-to-three weeks
5 ago, for example, and I didn't refer you to it in this
6 letter. C-8 is Number 3 and I've addressed you on that in
7 some detail a couple of weeks ago and in passing this
8 morning.

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

10 **MR. NEVILLE:** But he's been included as a
11 purported victim, not a young person, not on probation to
12 Mr. Seguin and no act alleged that could be described as
13 abuse, but yet he's in there.

14 So I submit that that should not be there on
15 any basis, other than for the statistical purpose of these
16 are the numbers of people whose disclosures we dealt with.

17 **THE COMMISSIONER:** And this is what we did
18 with this gentleman. What's wrong with that?

19 **MR. NEVILLE:** Well, except that they're
20 being put in, sir, by naming Mr. Seguin as the perpetrator
21 ---

22 **THE COMMISSIONER:** Right.

23 **MR. NEVILLE:** --- and they are not within
24 the mandate, in my view.

25 I mean, I can refer you ---

1 **THE COMMISSIONER:** But we're not accusing
2 him. We're just saying -- all Probation is saying is look
3 it, these people came in; they said they were abused; this
4 is what we did.

5 **MR. NEVILLE:** Right. Well, sir, it still
6 names Mr. Seguin in the summaries.

7 **THE COMMISSIONER:** Yes.

8 **MR. NEVILLE:** If the summaries are taken
9 out, the ones that I've identified ---

10 **THE COMMISSIONER:** Yes.

11 **MR. NEVILLE:** --- then they won't be part of
12 the record of this Inquiry as an allegation made against
13 Mr. Seguin because they're not within the mandate.

14 If Mr. Seguin, sir, were alive ---

15 **THE COMMISSIONER:** Yes.

16 **MR. NEVILLE:** --- they would not be
17 admissible against him. For example ---

18 **THE COMMISSIONER:** Admissible against him?

19 **MR. NEVILLE:** As an allegation of
20 misconduct, to which various institutions may have made a
21 response.

22 **THE COMMISSIONER:** Well, first of all, Mr.
23 Seguin, unless he was part of the institutional response,
24 right, we wouldn't be asking him whether it's true or not;
25 I wouldn't be making any findings.

1 **MR. NEVILLE:** Well, for example, sir, within
2 the material there's an allegation that one of the alleged
3 victims of Mr. Barque took his complaint of being abuse by
4 Mr. Barque to Mr. Seguin ---

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

6 **MR. NEVILLE:** --- and in turn alleges abuse
7 by Mr. Seguin.

8 **THE COMMISSIONER:** Yes.

9 **MR. NEVILLE:** Well there's a response.

10 **THE COMMISSIONER:** That part is ---

11 **MR. NEVILLE:** Now, if, for example -- to
12 illustrate the concern, sir, if that person, hypothetically
13 for example, were to be number nine ---

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

15 **MR. NEVILLE:** --- this is an individual who
16 was born in 1957, alleges abuse started in 1988 when he was
17 31.

18 **THE COMMISSIONER:** But we're not asking
19 anyone to respond to this.

20 **MR. NEVILLE:** Well, I'm responding to it as
21 Mr. Seguin's counsel of saying to you that these
22 allegations, in any form ---

23 **THE COMMISSIONER:** Right.

24 **MR. NEVILLE:** --- whether in summary or
25 otherwise, ought not to be before you.

1 **THE COMMISSIONER:** And why is that?

2 **MR. NEVILLE:** Because it's not within your
3 mandate. These are not young persons. They do not deal
4 with alleged allegations of paedophilia.

5 **THE COMMISSIONER:** Okay.

6 **MR. NEVILLE:** So you have number five, as
7 I've touched on.

8 **THE COMMISSIONER:** Yes.

9 **MR. NEVILLE:** Number seven on page 2, sir,
10 is again the same, the allegation is of something while on
11 parole, and by his record and the documents in the
12 supporting supplements he was aged 20, not a young person,
13 as I and others have argued to you.

14 In the case of number eight there is
15 actually no evidence of age. Based on his age and when
16 someone became an adult at that time, namely age 16, the
17 conduct could have happened anywhere between the age of 16
18 and age 24 on the documents in the Corrections material.

19 Number nine I've just touched on. This is
20 directly from his interview, sir.

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

22 **MR. NEVILLE:** In fact this individual -- and
23 you'll see in my subsequent letter of Friday -- is
24 reflected already as an exhibit, and it went in as an
25 exhibit through Mr. Downing as one of the persons whose

1 name came forward basically after he had done his initial
2 investigation that led to the report. You may recall I
3 believe three names came through counsel, through lawyers I
4 believe it was. And he instructed staff of his to take
5 statements and this is one of the statements that his staff
6 took and it became Exhibit 1090 and is number nine.

7 Likewise in the case of number 14,
8 Commissioner, in the Corrections material claims conduct of
9 an abusive nature happened in the late 1980s. The
10 documents confirm a date of birth of 1964, thereby putting
11 him, at best, in his mid-20s.

12 A similar situation for number 16. His date
13 of birth is November 21st, 1951. The documents in the
14 Corrections group show him as being on parole then age 24
15 or perhaps 25.

16 In the case of number 17 my position is the
17 same as in the letter of January 31st there isn't anything
18 further. There is nothing for an age specified for any
19 alleged abuse and indeed no sexual assault or sexual abuse
20 is actually alleged in any summary.

21 Number 20, Commissioner, I've fleshed out a
22 bit more and you might be better to look at my February 15th
23 letter. There appears to be what I would suggest as a
24 likely mistake. In one of the documents you'll see my
25 first bullet point that the date of birth on one of the

1 documents which is cited there is given as the 22nd of
2 January 1965, however, his first adult entry on his
3 criminal record, which is the next document in the next
4 line, is 1972.

5 So assuming he can't be an adult at age
6 seven it would appear that at the very -- it's likely '55.
7 It could even be before but certainly couldn't be before
8 '55. In any event -- and you see how I've worded it. If
9 we assume 1965 should be 1955 his 1975 conviction, then at
10 the age of 20 of course, would have had probation and the
11 criminal record as filed, sir, shows a sentence of two
12 years less a day followed by probation. So the way it
13 would work, as you would know from your judicial
14 activities, there would be the time in custody, followed by
15 parole, followed by probation.

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

17 **MR. NEVILLE:** So he would have been starting
18 the probationary portion not before July of 1977, at which
19 point he would have been 22 years old.

20 And in addition, the documents that I've
21 given you the numbers for, makes an allegation of
22 misconduct, no allegation of sexual misconduct. So neither
23 paedophilia nor sexual misconduct specified.

24 So it's my submission, Commissioner, that
25 those numbers ought not to form part of the material on

1 which findings can be made, in particular, about Mr.
2 Seguin.

3 Those are my submissions.

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

5 All right. So who do I hear from now?
6 Probation and Corrections aren't here. The Diocese isn't
7 here. Is the OPP participating this morning?

8 **MS. LAHAIE:** Good morning, Mr. Commissioner.

9 I believe Mr. Engelmann wished to have those
10 opposed to the propositions brought forward proceed next --
11 -

12 **THE COMMISSIONER:** Yes.

13 **MS. LAHAIE:** --- and then if there were any
14 comments to be made by the remaining parties that they be
15 made at that time.

16 In a nutshell, the Ontario Provincial
17 Police, as an organization, is prepared to respond to the
18 evidence that you've heard to date and -- with respect to
19 one caveat, and I can outline that now or I can wait until
20 ---

21 **THE COMMISSIONER:** What's your caveat?

22 **MS. LAHAIE:** That should -- Mr.
23 Commissioner, should you find that any of the evidence that
24 you've heard to date falls outside your mandate based on
25 the submissions that are being made before you at this time

1 and those made by Mr. Chisholm last week, that that
2 evidence, if it is not going to form the basis for any
3 findings of misconduct or form the basis for 5(2) notices
4 against those institutions, that that apply to the other
5 institutions who dealt with that individual as well.

6 **THE COMMISSIONER:** Okay.

7 **MS. LAHAIE:** Thank you.

8 **THE COMMISSIONER:** Thank you.

9 Mr. Wallace.

10 **MR. WALLACE:** Good morning, sir.

11 **THE COMMISSIONER:** Good morning, sir.

12 **MR. WALLACE:** We're taking the same

13 position.

14 **THE COMMISSIONER:** All right.

15 So then we need to hear from the Coalition
16 and the Victims Group and then reply -- and for Mr.
17 Engelmann -- oh, actually shouldn't the Coalition go first
18 or do you disagree?

19 **MR. LEE:** Mr. Horn and I have agreed that I
20 would go first. I've asked Mr. Manderville and Mr. Neville
21 and they have no problem, but I'm not sure ---

22 **THE COMMISSIONER:** All right.

23 **MR. LEE:** --- if anyone else has an issue.

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

25 **MR. LEE:** Sir, I want to start by talking a

1 little bit about the evidence that we're dealing with
2 that's being challenged.

3 As you know, all of the evidence that we're
4 talking about here was given by victims or alleged victims
5 of abuse. I would say that these people showed tremendous
6 courage in coming here to tell their stories and if you
7 think back, Mr. Commissioner, on how difficult it was to
8 listen to some of the evidence that we've heard, we can
9 imagine how difficult it must have been for these people to
10 sit here and give that evidence.

11 Some of these witnesses sat here in this
12 very public forum and in a room filled with strangers and
13 told us things about what happened to them and how they
14 felt about it, that they had never told anybody before.
15 Some of those people have told us that this process helped
16 them move forward or that it was therapeutic for them in
17 some way.

18 The evidence has been, at times, very
19 intense, very sad, and very inspiring. I would submit that
20 the evidence that we heard from these people has helped us
21 all understand in some way what it means to be a victim of
22 abuse and what it means to be a survivor of abuse.

23 And all that evidence was tied directly to
24 how institutions responded to their allegations and we have
25 heard about the very real effects of institutional actions,

1 some of them good, some of them bad. I would say that the
2 evidence of these people has been absolutely critical to
3 our understanding and appreciation of the issues that we're
4 dealing with here and the importance of this work.

5 The point of all this is to say, Mr.
6 Commissioner, that we cannot and should not be hasty in
7 determining whether the challenged evidence does or does
8 not fit within the mandate of this Inquiry. These are
9 serious issues that we are dealing with here and a
10 checklist approach, if you will, isn't appropriate here.
11 These are important things we're dealing with.

12 Whether or not someone or someone's
13 evidence, more specifically, fits squarely within the core
14 mandate of the Inquiry does not end the discussion as you
15 know. We must also consider whether the evidence is
16 reasonably relevant in that it has a bearing on an issue to
17 be resolved and could reasonably in some way advance the
18 Inquiry.

19 It is the submission of the Victims Group
20 that all of the challenged evidence either fits squarely
21 within the core mandate of this Inquiry or is reasonably
22 relevant to it, and we further submit that not only should
23 the challenged evidence be kept on the record but that we
24 should be examining the institutional responses to it.

25 These witnesses testified in part because

1 they wanted answers to the questions that they raised and,
2 speaking for my clients only, I cannot stress in strong
3 enough terms how important it is not only to be heard but
4 to have institutions answer for their actions. They want
5 the people in institutions, that they in many cases feel
6 failed them, to be held accountable in some way at this
7 Inquiry.

8 Turning to the specific issues that we're
9 here dealing with, I want to start by addressing the Court
10 of Appeal decision itself. The Court of Appeal decision
11 has amended the Order-in-Council, in essence, and the
12 result is we are left trying to figure out the rules half
13 way through the game, and there are inconsistencies in the
14 decision itself that have complicated things and have left
15 us where we are today trying to figure all of this out.

16 That being said, even with those amendments,
17 we say the challenged evidence is within the mandate.

18 I'd like to proceed in order and deal with
19 the CAS submissions first and then move on to some of what
20 we've heard today. I'm going to try very hard to avoid
21 duplicating what the CCR went through the last time.

22 What Mr. Manson took you through last time,
23 to begin, was the Court of Appeal decision itself so I
24 don't intend to do that again. My understanding is that
25 the CAS, essentially, argues that the Court of Appeal read

1 in the phrase "sexual abuse" to the Order-in-Council in
2 place of the term "abuse" and the argument flows from that
3 that all other forms of abuse such as emotional and
4 physical are, therefore, sheltered from scrutiny.

5 As Mr. Chisholm could see that last day he
6 was here, the decision is somewhat confusing. What is not
7 confusing though, sir, is the final pronouncement of the
8 Court of Appeal which is found in paragraph 62 of the
9 decision. You've been brought to that a few times.

10 That paragraph does not restrict the meaning
11 to sexual abuse alone and I say that we should presume that
12 the court would have been especially diligent in drafting
13 that section of its decision given that it immediately
14 follows a bold heading that reads "Conclusion on the
15 Subject Matter of the Commission" and you can see that on
16 your screen right now.

17 Paragraph 62 is the key paragraph that
18 summarizes every other comment on the mandate. This should
19 be taken as setting out the Court of Appeal's precise view
20 of your mandate and this paragraph does not include the
21 modifier "sexual".

22 The CAS interpretation, essentially, asks
23 you to presume that the court left "sexual" out of this
24 paragraph out of inadvertence. That assumption should not
25 be made.

1 The Order in Council does not refer to the
2 term "sexual abuse" at any point and we say that the Court
3 of Appeal didn't read it in.

4 Mr. Neville argued today that the focus of
5 the Court of Appeal decision and your mandate is sexual
6 abuse. We agree with that but not to the exclusion of
7 other forms of abuse such as physical or emotional.
8 Sexual, physical and emotional abuse are all within your
9 mandate.

10 That's our basic position on the CAS issue
11 and if you agree with me on that, it disposes of many of
12 the issues raised by the CAS, but in the event that you
13 disagree with my submissions, I need to take you through
14 these witnesses specifically to argue that they are
15 reasonably relevant.

16 As you know, a number of my clients would be
17 directly affected if you accept the arguments of the CAS
18 and we submit that every single one of the witnesses whose
19 evidence is now being challenged by the CAS testified about
20 sexual abuse while suffered in the care of the CAS and many
21 of them also spoke of other forms of abuse, and while we
22 say that the Court of Appeal decision should not be read as
23 having replaced "abuse" with "sexual abuse" in your
24 mandate, we also submit that even if you accept that
25 interpretation, they're slotted in under on the reasonably

1 relevant side of things.

2 One of the major problems we have, and Mr.
3 Manson touched on this last day, is that the evidence of
4 emotional or physical abuse not immediately excised from
5 the evidence relating to sexual abuse. The sexual element
6 of the abuse came in the context of their broader
7 experiences in CAS care and that context included other
8 forms of abuse.

9 To be able to appreciate what happened to
10 these people and how the CAS responded to it, you need a
11 full picture of what was happening at the time. The full
12 details of all of the various forms of abuse suffered goes
13 directly to the issue of why reporting was limited or
14 delayed in many cases.

15 The testimony of these witnesses about all
16 of their abuse invariably helps us to understand the
17 effects of abuse on young people. These details help us
18 understand the institutional response of the CAS that was
19 in many cases, we say, was less than adequate.

20 Let me start with Cathy Sutherland, one of
21 my clients. The CAS says that Ms. Sutherland's sexual
22 abuse by strangers that was facilitated by her natural
23 mother is within the mandate and they say that the sexual
24 abuse by the foster father is within the mandate but the
25 physical abuse by the mother is out.

1 You will recall that Ms. Sutherland
2 testified here on May 30th and 31st, 2007 that there was a
3 lot of sexual abuse at the hands of her mother. She told
4 us that her mother made the children lie around -- sorry, I
5 believe the evidence was that the step-father would be
6 naked and the mother would ask them to touch him and to
7 explore. She also told us about her mother dropping her
8 off at a house in Cornwall where she would be sexually
9 abused by a man.

10 All of that is in the mandate, according to
11 the CAS, but they argue that the physical abuse inflicted
12 by that same woman is outside the mandate.

13 Mr. Commissioner, when Cathy Sutherland was
14 here, we looked at case notes made during her time in CAS
15 care. One of the striking notes, among many, was that
16 Cathy had:

17 "The most severely bruised face the
18 worker had ever seen on a person."

19 This is from the CAS first involvement when
20 Cathy was two years old.

21 I would strongly urge you to take a look at
22 Exhibits 479 and 482 ---

23 **THE COMMISSIONER:** Was it 479?

24 **MR. LEE:** Four-seven-nine (479) and 482 ---

25 **THE COMMISSIONER:** Yes.

1 **MR. LEE:** --- to refresh your memory as to
2 what we are dealing with in relation to Cathy Sutherland.

3 Ms. Sutherland, when she was here, testified
4 that as a slightly older child, she didn't think that
5 physical abuse would have been very hard to spot at school
6 because she was severely malnourished and covered in marks
7 and bruises.

8 You will recall that we learned that there
9 was some concern from the school and they called the CAS
10 about it and Ms. Sutherland testified that she thinks the
11 CAS could have done more to help, as well as the school.

12 Ms. Sutherland told us about her mother
13 repeatedly burning her hands on the stove and told us that
14 she believes others would have noticed those burns.

15 So this is the context within which the
16 various players were operating at the time. Cathy was
17 living in an environment of constant abuse. The emotional
18 abuse was unrelenting; the physical abuse was daily; the
19 sexual abuse was a way of life and all of these things came
20 together. The sexual abuse might not have been possible
21 without the emotional and physical abuse.

22 The whole of her evidence about her time in
23 her mother's care amounts to the fact that Cathy's mother
24 broke her; she absolutely broke her. It got to a point
25 where Ms. Sutherland tells us that her mother could drive

1 her across town and drop her off at a stranger's house to
2 be sexually abused. Not only would it be impossible in
3 this situation to consider the sexual abuse without the
4 physical and emotional, it would make no sense.

5 And the problem we have when looking at
6 Cathy Sutherland's case is that it appears that the abuse
7 could have been stopped at any juncture. The case notes
8 that I've asked you to refer to are explicit. This case
9 moves far beyond what the CAS ought to have known and fits
10 squarely within the category of what it did know. Anybody,
11 anybody reading the case notes would have known that Cathy
12 was sexually abused at a very young age, we submit.

13 There are references to masturbation at a
14 very young age, of coming back from her mother's no longer
15 toilet-trained, of not answering to her name after visits
16 to her mother's; of drastic changes in behaviour after she
17 went back to her mother. And long before that, there is no
18 doubt that she was being physically abused. If a proper
19 response to any of those forms of abuse would have occurred
20 right way, there may not have been any sexual abuse at the
21 hands of the mother or, for lack of a better term, Cathy
22 being pimped out by her mother to someone else.

23 Ms. Sutherland's evidence is reasonably
24 relevant to several issues that you're going to look at.
25 She most certainly spoke to the effects of abuse on a

1 victim. Her evidence goes not only to the existence of
2 institutional responses but the sufficiency of responses.

3 You'll recall that CAS did remove Ms.
4 Sutherland from her home at some point. But they kept on
5 sending her back for visits with the mother where the abuse
6 would reoccur and the effects would again be very plainly
7 obvious to everyone and anyone.

8 Her evidence also goes to the obligations
9 that an institution has to those that it failed to protect.
10 And I'm speaking not only of its obligations to protect the
11 young people in its care but also its obligations to the
12 victim who is still hurting as an adult and seeks closure
13 or help of whatever it may be. Cathy also spoke to
14 barriers to her disclosures and the vulnerability of
15 victims, in her evidence.

16 Roberta Archambault testified here on
17 November 16th, 2006. The CAS says that her sexual abuse by
18 her foster father, Mr. Hubert, is in but that the physical
19 and emotional abuse in that home is out. And they also say
20 that the sexual abuse by Brian Lapensée in a subsequent
21 home is out because he was not in a position of trust or
22 authority.

23 With respect to the abuse in the Hubert
24 home, Roberta alleged physical, sexual, mental and verbal
25 abuse. And this case provides another excellent example of

1 where it's impossible to separate sexual abuse from other
2 forms of abuse and I want to give you a specific example
3 here.

4 Roberta told us that her foster mother, Mrs.
5 Hubert, may have known about the sexual abuse being
6 perpetrated by Mr. Hubert.

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

8 **MR. LEE:** So we have the foster father
9 sexually abusing the child in his care and the witness is
10 telling us she suspects that the foster mother may have
11 known about it. And Roberta told us that she thought the
12 mother may have known because when Roberta was 11 years
13 old, Mrs. Hubert struck her in the stomach and told her
14 that she would make sure that she didn't reproduce.

15 How can we possibly segregate the physical
16 abuse from the sexual abuse in that case?

17 And again, much like when dealing with Cathy
18 Sutherland, an issue we have in many of these CAS cases is
19 that the physical abuse should have been much easier to
20 detect than the sexual. And this is relevant because
21 removing a child in care from a physically abusive
22 environment would have meant getting them away from the
23 sexual abuse too.

24 Roberta first told a friend's mother about
25 the physical abuse and felt that she was not believed and

1 she was returned to the home. After a fight at school,
2 Roberta told us that she told the teacher and I quote "When
3 you've been beaten as many times as I have, you don't
4 bruise that easy." And she told us that no one said
5 anything else about it. The physical abuse in the Hubert
6 home went hand in hand with the sexual. It's within your
7 mandate.

8 Roberta also alleged sexual abuse by Brian
9 Lapensée who was the son of her foster parents in another
10 home. Roberta told us that she was 15 at the time and
11 Lapensée was 21 years old. You'll recall that he lived at
12 the Lapensée farmhouse where the family would go on
13 weekends.

14 And Roberta told us how most of the foster
15 kids would leave the home and go elsewhere so the Lapensées
16 could have time to themselves. But she had nowhere to go
17 so she was ---

18 **THE COMMISSIONER:** Not the Lapensée -- the
19 Huberts needed time, then that's why she went to the
20 Lapensées.

21 **MR. LEE:** No, I think this was while she was
22 in the Lapensée home.

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

24 **MR. LEE:** They had an arrangement whereby
25 they would have the kids during the week but on the weekend

1 ---

2 **THE COMMISSIONER:** Right.

3 **MR. LEE:** --- the kids would go home to
4 wherever.

5 **THE COMMISSIONER:** Okay.

6 **MR. LEE:** And she had nowhere to go so she
7 went to the farmhouse with them. It sounds like it was
8 kind of a little cottage farmhouse type of thing.

9 **THE COMMISSIONER:** Right.

10 **MR. LEE:** And this situation illustrates one
11 of the major problems with the Court of Appeal changing the
12 mandate at this stage. When Roberta was here, we had no
13 idea that we needed evidence on the position of authority
14 or trust issue. We know that Roberta was 15 and Lapensée
15 was 21. But we don't have evidence from her about how she
16 viewed him or about whether he was left in charge of her or
17 about whether she saw him as an authority figure. We
18 didn't know we needed it at the time.

19 What we do know about the situation though
20 is that Roberta told us that she didn't disclose the abuse
21 by Brian Lapensée because people had told her that that
22 home was her last-chance foster home.

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

24 **MR. LEE:** She told us that a CAS worker
25 named Mary Miller asked her specifically about Brian

1 Lapensée and she denied that anything was going on because
2 she was scared to death of being put out on the street.
3 Lapensée as the birth son had total control. This was
4 Roberta's last chance, if she put herself in a position
5 where she was in a conflict with the birth son, she would
6 be out on the street. She felt that she had no choice but
7 to capitulate and to keep her mouth shut. When viewed from
8 Roberta's perspective, Lapensée was most certainly in a
9 position of trust or authority.

10 Returning to the reasonable relevance test,
11 her testimony relating to the abuse by Lapensée and the
12 physical abuse by the Huberts goes to many issues of this
13 Inquiry. It goes to the issue of barriers to disclosure;
14 she tells us she wasn't believed when she did disclose.
15 And she is in a very unique position of being a CAS ward in
16 terms of fear being displaced and being left homeless and
17 how that played on her mind. It goes to the vulnerability
18 of victims.

19 She told us about how the past abuses left
20 her feeling damaged. She told us that she essentially
21 saved another girl from Brian Lapensée by taking her place
22 because Roberta was already damaged and the other girl
23 wasn't so it was better for her to be abused.

24 It talks about the treatment of victims who
25 come forward in terms of counselling that was or was not

1 offered. And it talks about the accountability, in this
2 case, of the Crown attorney in terms of its obligations
3 towards complainants and victims of abuse and explaining
4 what's going on.

5 Roberta told us that she wants answers from
6 the Ministry about why Brian Lapensée was never charged
7 when there were a number of complainants against him. The
8 OPP were never contacted in relation to that investigation.
9 As we understand it, the CAS went directly to the Crown
10 attorney, not the police and the decision was made that no
11 further action would be taken against Lapensée.

12 And this goes directly to the issue of
13 communication and consultation between agencies which is a
14 key issue at this Inquiry.

15 We heard from another one of my clients
16 who's known here as C-14.

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

18 **MR. LEE:** And the CAS says that sexual abuse
19 perpetrated by Frank Rolland, who you'll recall was a bee
20 keeper friend of the foster family, is in but the physical
21 abuse by the foster parents is out and the sexual abuse by
22 a man named Arthur Sypes is out based on the trust or
23 authority argument again.

24 C-14 testified on June 18th and 19th of 2007.
25 And I'm trying not to keep on repeating myself when it

1 comes when not being able to separate the physical and
2 emotional from the sexual but there is some very salient
3 features here.

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

5 **MR. LEE:** And in this case, the physical
6 abuse is especially relevant to the disclosure of the
7 sexual abuse. C-14 told us that when he told the social
8 worker about the physical abuse, nothing was done. He then
9 told us and I quote:

10 "They didn't believe the physical
11 abuse. There was no way, I thought,
12 they would believe the sexual abuse.
13 Furthermore, I didn't want the usual
14 conversation about how everything had
15 been my fault and being blamed for that
16 as well."

17 The physical abuse here was tied to the
18 institutional response. It left marks. It could have been
19 followed up on. It could have been addressed. It could
20 have been explored. There was an explicit disclosure.

21 We have a situation where other types of
22 abuse maybe more likely when a child is in an abusive
23 situation. It's all relevant to your mandate.

24 Relating to Arthur Sypes, you'll recall that
25 the evidence we have from C-14 was that Mr. Sypes was a

1 mentally-challenged 23 year-old former Crown ward who lived
2 in the Barber home with C-14.

3 C-14 told us that he was about 10 years old
4 at the time the abuse started so we have the -- a 10 year-
5 old being abused by a 23 year-old. And C-14 told us that
6 Mr. and Mrs. Barber, were the foster parents, left C-14 in
7 the care of Arthur Sypes and it was during these occasions
8 that abuse occurred. Mr. Sypes was the 23 year-old
9 babysitter in this case, sir ---

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

11 **MR. LEE:** --- clearly in a position of trust
12 and authority. It was known at the time that C-14
13 testified that Sypes has some capacity issues, we knew
14 that. Again, had we known that we would have this trust
15 and authority read into the mandate, we could have
16 questioned C-14 further in regards to issues surrounding
17 Sypes' abilities and the supervision by him, et cetera.
18 With the evidence we do have, there can be very little
19 doubt that Sypes was in a position of trust or authority
20 vis-à-vis C-14.

21 And I think, sir, we also need to consider
22 the position of -- of the CAS itself in these situations.
23 The position of trust or authority of the abuser is not the
24 only consideration here. The key trust insofar as the CAS

1 concern, relates to the relationship between the agency and
2 the children entrusted to its care.

3 It is inconceivable that the CAS would be
4 able to escape examination of its responses to allegations
5 made by children under its care. The power and authority
6 and trust relationship between a CAS and a child under its
7 care is beyond question. Everything the CAS does in
8 relation to these children is within the context of a very
9 clear trust relationship. And even should you find that
10 there is not a clear position of trust or authority between
11 the victim and the perpetrator, that relationship always
12 exists between the victim and the CAS, a party to these
13 proceedings.

14 That's all I propose to say about the CAS
15 issue. I'll stop here if you have any questions.

16 **THE COMMISSIONER:** No, that's fine.

17 **MR. LEE:** I next want to turn it to the --
18 the two, sort of -- related issue of young persons ---

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

20 **MR. LEE:** --- and of those who were not
21 abused.

22 Mr. Manderville claims in certain situations
23 there was not abuse. So my understanding, these witnesses
24 would include Keith Ouellette, Gerry Renshaw, Robert
25 Renshaw, Marc Carriere and David Petepiece. And the first

1 point I want to make in relation to the evidence challenged
2 on either of these grounds ---

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

4 **MR. LEE:** --- is that objections were not
5 made at the time the evidence was received.

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

7 **MR. LEE:** The Court of Appeal decision does
8 not in any way change the definition of "young person". It
9 did not seek to define "young person". There is nothing in
10 that decision to justify a suggestion that what we
11 considered a "young person" last year or the year before is
12 no longer correct.

13 The evidence on these issues was received
14 without objection because the parties all understood that
15 it was within the mandate. That part of the mandate has
16 not been changed or altered by the Court of Appeal in any
17 way.

18 Similarly, the issue of whether or not abuse
19 even occurred was not reopened by the Court of Appeal and
20 this relates to Marc Carriere and David Petepiece. Mr.
21 Chisholm, on behalf of the CAS, argues that the Court of
22 Appeal read in the phrase "sexual abuse" to the exclusion
23 of other forms of abuse, but that's a separate issue than
24 what's being submitted here.

1 The evidence is being challenged in relation
2 to these witnesses on the grounds that the abuse didn't
3 happen at all; it wasn't abuse. Nothing in the Court of
4 Appeal decision speaks to that issue. And if the parties
5 felt that Petepiece or Carriere were not abused at all, the
6 objection should have been made at the time of their
7 testimony. That evidence went in because everyone
8 interpreted the mandate to include it. The arguments being
9 advanced now are very, very late and they should have been
10 made many months ago. These witnesses were called and put
11 themselves through this very difficult process and nobody,
12 at any point, made a formal objection of their evidence.

13 Turning to the specifics, dealing with
14 "young person", the Court of Appeal decision consistently
15 uses the term "young people". It does not use the terms
16 "youth" or "child" and "minor" in a similar context, nor
17 does the Court of Appeal decision define the term "young
18 people". The differences in life experience between an
19 abuser and the victims is relevant and age differences may
20 speak to this.

21 Our position is that youth is an expansive
22 term that is not limited to those persons under the age of
23 18 and that the circumstances must be examined as a whole.

24 We say that relevant circumstances would
25 include the power imbalance between a perpetrator and a

1 victim, the vulnerability of the victim and situations
2 where the abuse commenced when the person was younger but
3 continued to where the victim was older.

4 We say there can be no doubt that anyone
5 under 18 is a "young person". The legislature, clearly,
6 would not have intended anything less than that, but it is
7 not, by any means, a given that 18 is the cut-off; they
8 should be considered on a case-by-case basis. The
9 different maturities, experiences, sophistications and
10 circumstances of the victim, in each case, should be
11 considered. There's no definition of "young person"
12 provided in the legislature or by the Court of Appeal -- in
13 the mandate, rather. Both easily could have provided a
14 definition, but they did not. We should take that as a
15 clear indication that that determination is best left to
16 you and it is something -- it is open to be something other
17 than the most obvious definition.

18 Mr. Neville has objected to the evidence of
19 Gerald Renshaw on the grounds that he was 24 years-old when
20 he rented a room from Ken Seguin. Mr. Neville also argues
21 that he was not on probation or parole and so there was no
22 relationship of trust or authority.

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

24 **MR. LEE:** With respect, Mr. Neville
25 completely ignores the entire back story here. Mr. Renshaw

1 testified that he met Ken Seguin for the first time when
2 Seguin was a probation officer supervising Mr. Renshaw's
3 older brother. Gerry was 12 years-old at the time. Gerry
4 was then placed on probation to Mr. Seguin as a teenager.
5 He was sexually abused by Mr. Seguin as a teenaged
6 probationer while under his supervision. Mr. Seguin had
7 control over Gerry Renshaw long after Gerry got off
8 probation. Mr. Renshaw can't to this day explain why he
9 lived in Mr. Seguin's house. It makes no sense to him.
10 The time period when Gerry Renshaw lived with Ken Seguin is
11 very, very squarely within this mandate. Mr. Seguin took
12 hold of Gerry's life when he was a teenager and he still
13 hadn't let go by the time Gerry moved into that house.

14 Issues of whether Gerry was a "young person"
15 and whether Seguin was in a position of trust or authority
16 aside, this was investigated by Project Truth and Ken
17 Seguin's story was a big part of the conspiracy, the cover-
18 up. It goes to the heart of Project Truth which brings it
19 squarely within your mandate and on top of that, the
20 alleged perpetrator here is Ken Seguin who is -- flows
21 throughout this Inquiry and is critical to it.

22 The institutional responses to allegations
23 made against Mr. Seguin are clearly within your mandate.

24 Mr. Neville also objects to the evidence of
25 Robert Renshaw, Gerry's brother. Mr. Neville says he was

1 20 years-old when he alleges abuse by Father Charles
2 MacDonald and he also says that Father MacDonald was not in
3 a position of trust or authority in relation to Robert
4 Renshaw.

5 Mr. Manson briefly mentioned the concept of
6 transference in his submissions last day ---

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

8 **MR. LEE:** --- in that it's possible for
9 there to be a transference of one -- one's position of
10 trust or authority to someone else and the example given
11 the other day related to Cathy Sutherland and I touched on
12 it a little bit here where the -- the mother had clear
13 trust and authority, would drive her over to a house on
14 Second Street and drop her off with a man, and the argument
15 would be that that authority was clearly transferred in
16 that case.

17 The background of Robert Renshaw's
18 relationship with Ken Seguin is similar to Gerry Renshaw's.
19 He met Ken when he was a young -- as a result of the older
20 brother's supervision, he ended up on probation where he
21 says he was abused. He told us he was 15 years-old when
22 the abuse started and it continued well into his 20s. The
23 abuse had not concluded by the time of the incident with
24 Father Charles MacDonald.

1 You recall the evidence here was that Mr.
2 Renshaw went to Mr. Seguin when he was "an emotional wreck"
3 and was having a hard time with life at that point and that
4 it was Ken Seguin who recommended that he meet Father
5 Charles MacDonald and that Ken Seguin drove him to meet
6 Charles MacDonald.

7 Again, we cannot underestimate the control
8 that Mr. Seguin had over these people. The allegation
9 essentially then is that Robert Renshaw was in very bad
10 shape and that Ken Seguin served him up to be abused by
11 Father Charles MacDonald; that's the evidence of Mr.
12 Renshaw. The vulnerability of Mr. Renshaw in that
13 situation and the involvement of Mr. Seguin puts it
14 squarely within your mandate. The issue of Mr. Seguin's
15 relationship with Charles MacDonald alone likely brings it
16 within your mandate.

17 Mr. Manderville briefly mentioned Keith
18 Ouellette, another one of my clients, he argued being that
19 he was not a "young person" when he was abused by his art
20 teacher, Chris Wilson. I would say in that case it's
21 important to note the context of prior abuse suffered by
22 Mr. Ouellette. He told us that in 1959 he was abused by
23 his older brother and this had continued for many years,
24 and he told us that his sexual abuse at that time affected
25 his behaviour in subsequent years.

1 One of the things he told us on August 20th
2 was:

3 "I was very misguided and very troubled
4 when I was young. I came from a poor
5 family, so to support my drug habit --
6 to deal with having been sexually
7 molested, I turned to drugs to find an
8 answer and subsequently got in trouble
9 and I ended up on probation."

10 Mr. Ouellette told us that he was abused by
11 Ken Seguin prior to meeting Chris Wilson and it appears
12 likely that the timeframe of his abuse by Richard Hickerson
13 fell before Chris Wilson as well.

14 The story goes that Mr. Ouellette enrolled
15 in the fall of 1978 or '79 in an arts program at St.
16 Lawrence College. Chris Wilson was his teacher. The
17 assaults occurred four or five times, and he was 23 or 24
18 years old at the time of the abuse.

19 We would say that a college instructor can
20 be very influential on a young person. Keith had been --
21 previously been abused and was incredibly vulnerable. He
22 was already very damaged by the time Chris Wilson got to
23 him.

24 What is more, with reference back to the
25 Court of Appeal decision, the allegation against Chris

1 Wilson was investigated by Project Truth. Keith made a
2 statement to Project Truth, charges in relation to Chris
3 Wilson were laid by Officer Dupuis. Project Truth
4 investigations are squarely within your mandate.

5 I don't intend to spend a lot of time
6 responding to the argument about Petepiece and Carriere
7 being outside of the mandate because of the abuse not
8 having occurred at all or what happened not amounting to
9 abuse, more specifically. But I would urge you to consider
10 the facts of these two cases closely in making your
11 decision.

12 David Petepiece was 10 years old when an
13 Anglican pastor visited him in the hospital and asked if he
14 could touch his penis. Mr. Manderville suggested this man
15 was a stranger or someone that Mr. Petepiece didn't know.
16 I would say that it was very clear from Mr. Petepiece's
17 evidence that he knew this man to be a pastor or an
18 assistant pastor in the Anglican Church; he knew this man
19 had some kind of standing in his church.

20 At the time you'll recall Mr. Petepiece was
21 immobile because of an injury; he could not get away from
22 this man. This man visited Mr. Petepiece more can once.

23 Mr. Petepiece spoke to us about his fear,
24 about crying constantly, as he put it, about not being able
25 to get away. Those are the facts relating to Mr. Petepiece

1 and I say this situation clearly falls within the mandate
2 of this Inquiry.

3 With respect to Marc Carriere, Keith Jodoin
4 was in a position of authority or trust as his superior at
5 work and a Justice of the Peace. There was an unwanted
6 sexual touching and Mr. Carriere told us that the incidents
7 affected him. The case was investigated by Project Truth;
8 clearly within the mandate of your Inquiry.

9 Any questions on that, sir?

10 **THE COMMISSIONER:** No.

11 **MR. LEE:** Turning to the position of trust
12 or authority issue; throughout the Court of Appeal decision
13 there is reference made to persons in authority or
14 positions of trust, so it indicates that we're dealing with
15 two separate circumstances and either circumstance is
16 sufficient.

17 No clear definition is provided of either of
18 abuse by persons in authority or of positions of trust.
19 The Cornwall Police has urged a restrictive definition of
20 the term authority in trust.

21 I want to take you back to Audet, if I
22 could, sir; that's Tab 2.

23 **THE COMMISSIONER:** Yes.

24 **MR. LEE:** Mr. -- I believe Mr. Manson
25 touched on paragraph 33 and Mr. Manderville again looked at

1 paragraph 33 and this is where there's an excerpt -- a
2 translated excerpt from the Léon case and if we look at the
3 -- paragraph 33, midway, the very bottom of the page we
4 have, finally Justice Blair also in P.S. wrote the
5 following about the term position of trust.

6 "One needs to keep in mind that what is
7 in question is not the specialized
8 concept of the law of equity called a
9 trust. What is in question is a
10 broader social or societal relationship
11 between two people; an adult and a
12 young person.

13 Trust, according to the Concise Oxford
14 Dictionary is simply a firm belief in
15 the reliability or truth or strength of
16 a young person.

17 Where the nature of the relationship
18 between an adult and a young person is
19 such that it creates an opportunity for
20 all of the persuasive and influencing
21 factors which adults hold over children
22 and young persons to come into play,
23 and the child or young person is
24 particularly vulnerable to the sway of
25 these factors the adult is in a

1 position where those concepts of
2 reliability and truth and strength are
3 put to the test. Taken together all of
4 these factors combine to create a
5 position of trust towards the young
6 person."

7 As Mr. Manson pointed out the other day,
8 paragraph 35 we have: "I therefore agree with the
9 reservations expressed by Blair -- Justice Blair."

10 Paragraph 36, I'd like to read as well, sir:

11 "I would add that the definition of the
12 words used by Parliament, like the
13 determination in each case of the
14 nature of the relationship between a
15 young person and the accused must take
16 into the account the purpose and
17 objective pursued by Parliament of
18 protecting the interest of young
19 persons who, due to the nature of the
20 relationships with certain persons, are
21 in a position of vulnerability and
22 weakness in relation to those
23 purposes."

24 For the purposes of this Inquiry trust and
25 authority must be defined broadly. To interpret those

1 words as a court might in determining vicarious liability
2 makes no sense in the context here.

3 We're not concerned with legal duties or
4 liabilities here; this is a public inquiry assessing
5 institutional responses for the purposes of making
6 recommendations. The vicarious liability and fiduciary
7 duty cases are of no great help to us here.

8 As I noted, the Court of Appeal did not
9 define these terms, much like it didn't define what a young
10 person or young people was, and the Court could have.

11 I submit that we should take that as a clear
12 indication that the interpretation of these terms, in your
13 mandate, is best to be left to you and we know that you are
14 to define your mandate broadly.

15 We urge you to find that what it means to be
16 in a position of trust or authority at this Inquiry is not
17 confined to what those terms might mean in a criminal or
18 civil litigation context.

19 I've touched on it a little bit in terms of
20 some of the issues with the record we have given that --
21 what we knew and didn't know at the time these witnesses
22 were here and it's important to note that we -- we don't
23 have all the evidence that we might have had from these
24 people on these points.

25 Had we known that we needed it the witnesses

1 would have been prepared differently and questions would
2 have been put to them to fully explore the position of
3 trust and authority issue.

4 In considering that issue we cannot analyse
5 the relationship between the perpetrator and the victim by
6 using basic categories such as profession in all cases.
7 It's too easy to say that a priest is in a position of
8 trust and that a construction worker is not.

9 The way that the victim saw the perpetrator
10 is extremely relevant to this analysis and we don't have
11 that evidence because we didn't realize at the time that we
12 needed it.

13 Larry Seguin is one of the witnesses whose
14 evidence is being challenged here. We don't know how he
15 saw adults, as an example. We don't know what his mother
16 or teachers told him about strangers or respect for adults
17 or how he viewed them. We don't know whether he would have
18 obeyed a command to "Get in the car" based on what he had
19 or had or had not been taught about how he should handle
20 such situations. We just don't know.

21 It's too easy to say that his abuser was a
22 stranger so he must not have been in a position of power.
23 Larry's evidence on that point may have been helpful to us.

24 This helps us illustrate some of the
25 problems we have in trying to go back to retroactively

1 apply this Court of Appeal decision. Whether or not you
2 need such evidence to make these decisions is something
3 you'll have to decide, obviously. But if you feel you need
4 it, the option of recalling witnesses or scheduling formal
5 motions should not be entirely ruled out. It's important
6 that we get this right.

7 Dealing with Larry Seguin specifically,
8 another one of my clients, this is a prime example of where
9 the principles laid down in Audet relating to position of
10 vulnerability and weakness of the young person come into
11 play.

12 The first incident we learned of was when
13 Larry was assaulted by a stranger in February 1978. I
14 recall that his evidence was he was six years old; Mr.
15 Manderville said seven years old today; either way, he was
16 very young.

17 And you'll recall we were told that at the
18 time Larry Seguin was living at 53 Westgate Court, which he
19 described as low-income rental units.

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

21 **MR. LEE:** And since that time you'll recall
22 that Mr. Seguin was the first victim of abuse or alleged
23 victim that we heard from here.

24 **THE COMMISSIONER:** Mr. Lee, can you give me
25 an example where an adult and a child there wouldn't be --

1 by your definition, that there wouldn't be a position of
2 authority?

3 **MR. LEE:** I mean it's -- there are going to
4 be situations -- when we're dealing with the Larry Seguin
5 situation you have -- on its face you have the stranger ---

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

7 **MR. LEE:** --- and you have the child.

8 **THE COMMISSIONER:** Okay.

9 **MR. LEE:** But there's more that goes into
10 it. There's the vulnerability of Larry Seguin that I want
11 to talk to you about.

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

13 **MR. LEE:** I mean it's so very, very case-
14 specific in these situations I can't -- I have to admit to
15 you, I haven't turned my mind of when it wouldn't occur
16 because I've been looking at the specific occasions when I
17 say it did.

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

19 **MR. LEE:** The point I wanted to make and it
20 goes to the vulnerability of Larry Seguin, is this whole
21 Westgate Court issue.

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

23 **MR. LEE:** Since we first heard from Larry
24 Seguin about Westgate Court it's come up a number of times.
25 We've heard that Ron Leroux first met C-8 at Westgate

1 Court. We've heard that the Burgess family was living on
2 Westgate Court when the abuse by Jean-Luc Leblanc started.

3 This issue goes very directly to the
4 vulnerability of victims in this town and what we have from
5 these witnesses, that it's not good to be a poor kid when
6 the abusers are looking for victims.

7 It's a horrible thing to know that we've had
8 five witnesses at this Inquiry, five of them who have ties
9 to the same street in the city and that's where Larry
10 Seguin is living at the time.

11 He told us that he started using drugs at
12 the age of 10 as a result of the abuse.

13 So we have Larry Seguin who is a vulnerable
14 child who came from a single-parent home and lived in a
15 poor area of town. We have this six or seven year old
16 child out walking by himself at the time that he's
17 abducted, and earlier at paragraph 33 of Audet there's a
18 quote from the Quebec Court of Appeal decision in Léon.

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

20 **MR. LEE:** And the quote is:

21 "In its primary meaning the notion
22 of.."

23 -- it's a translation of the original
24 decision:

25 "In its primary meaning, the notion of

1 authority stems from the adult's role
2 in relation to a young person, but it
3 will be agreed that in the context of
4 the statutory provision to be in a
5 position of authority does not
6 necessarily entail just the exercise of
7 a legal right over the young person but
8 also a lawful or unlawful power to
9 command which the adult may acquire in
10 the circumstances."

11 When assessing the trust or authority
12 question it's not sufficient, as I've said, to consider
13 this only from our perspective, we need to consider the
14 perspective of Larry Seguin as a six-year old as well. His
15 vulnerability and weakness were significant when he was met
16 by an adult who appeared to him to be trustworthy. He told
17 us that this man had a dog in the car that piqued his
18 interest.

19 Léon speaks the unlawful power to command
20 which an adult may use in the circumstances, which is most
21 certainly what happened here, force was used. We say this
22 adult was in a position of authority over Larry Seguin on
23 these facts.

24 The second incident involved an assault by
25 Edward Desjardins when Mr. Seguin was 16 years old.

1 Mr. Manderville during his submissions said
2 to you that Mr. Desjardins was a few years older. My
3 information, based on one of the documents in the
4 disclosure, was that Mr. Desjardins was 42 years old at the
5 time. Either way, he's an adult but there's a bit of
6 distinction there. I can't provide you with the document.
7 I didn't realize that that was going to come up.

8 We were told that he was a friend of
9 Juliette Seguin's friend; there was some kind of relations
10 there. And when Juliette Seguin was here she stated that
11 she had met Desjardins through her friend, Jeannine.

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

13 **MR. LEE:** We know that Ms. Seguin told us
14 that she knew that Desjardins lived nearby and she felt
15 that the boys, being Larry and his brother, were talking to
16 him because they did not have a father figure.

17 So again we have this picture of Larry
18 Seguin being painted as a vulnerable person in the poor
19 neighbourhood, in the single parent household, who lacked a
20 father figure. We know from his evidence that he has
21 substance abuse issues already at this time stemming
22 directly from the first incident of abuse.

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

24 **MR. LEE:** Larry told us about Desjardins
25 giving him a beer and showing him identification cards from

1 the penitentiary he'd been in and how Larry and his brother
2 thought that was cool. You'll recall that this man also
3 used force. He had a knife. He physically restrained
4 Larry. He caused injury to his eyes.

5 Again, we have the powerful adult preying on
6 the very vulnerable young person. On these facts, again,
7 we say this is within your mandate.

8 And even if you disagree that he fits within
9 the mandate on the power or authority branch, his evidence
10 is reasonably relevant.

11 Larry spoke very passionately about the
12 effects of institutional responses. You'll recall that he
13 told us that when he was abducted that first time he was
14 rushing home to watch a show about firemen and he talked to
15 us about his respect for authority and his admiration for
16 those men. He told us about how the poor institutional
17 response, as he viewed it, fundamentally changed the way he
18 viewed the police. He told us about his troubles with
19 drugs and with the law that followed. He spoke of the very
20 real effects of his abuse and certainly his evidence goes
21 to the vulnerability of victims and can certainly inform
22 your recommendations geared towards prevention.

23 The evidence of C-10 has also been
24 challenged by the Cornwall police. As Mr. Manderville set
25 out, C-10 was abused by a number of men, including Malcolm

1 MacDonalld, Ken Seguin and Father Scott, and then the issue
2 is with Carl Allen. The Cornwall police argues that the
3 allegations against Allen are out because he was 14 years
4 old at the time that he abused C-10.

5 You have written submissions from the CCR on
6 this issue?

7 **THE COMMISSIONER:** Yes, I do.

8 **MR. LEE:** I know you haven't had time to
9 read them yet.

10 I don't propose to reinvent the wheel here.
11 I agree with their submissions and I adopt them. I'd like
12 to expand a little bit though.

13 A few important issues arise from C-10s
14 evidence relating to Carl Allen that bring it within the
15 mandate of the Inquiry on the reasonable relevance test.

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

17 **MR. LEE:** The first relates to the transfer
18 of the investigation of Project Truth to the Cornwall
19 Police Service.

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

21 **MR. LEE:** As you'll recall, the evidence was
22 that the allegation was originally made to the OPP and it
23 was transferred over to Project Truth.

24 There is an issue at this Inquiry about the
25 Project Truth mandate, and to the best of my recollection

1 this arose for the first time during the evidence of David
2 Petepiece in relation to why the alleged abuse by an
3 Anglican pastor was not a Project Truth matter, and then it
4 arose again with C-10 in relation to why the allegations
5 against Carl Allen were not within the mandate, and the
6 issue will be raised when Project Truth's officers are
7 here.

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

9 **MR. LEE:** In general terms, there's some
10 issue as to what the mandate was and whether or not it was
11 clearly articulated at any point. There's an issue
12 relating to how determinations were made as to what was in
13 and what was out of Project Truth.

14 C-10 himself when he testified here
15 questioned why Carl Allen was not a Project Truth matter.
16 That distinction was never explained to him and he remains
17 confused, and I think the same can be said for David
18 Petepiece. And that's a significant Project Truth issue.
19 Clearly Project Truth matters are within your mandate.

20 That leads to another issue that brings this
21 evidence within the mandate on the reasonable relevance
22 test, and that's the issue of how complainants are dealt
23 with by the police and Crown attorneys. When complainants
24 are consistently -- sorry, I shouldn't say consistent --
25 when complainants are left confused, there is a significant

1 problem that needs to be addressed. And here we have some
2 real confusion on behalf of these witnesses of what
3 happened, why one police force investigated, why the other
4 one didn't. And it goes to that general feeling of
5 satisfaction, the general ability of the complainant to
6 understand what's happened to his complaint.

7 And, finally, as the CCR points out, you'll
8 see there's an issue relating to communication between the
9 police and the Crown. In this case, that relates to what
10 we would argue was an inappropriate disposition in the
11 matter relating to Carl Allen and had to do with a
12 recognisance that didn't mention young people you may
13 recall.

14 So, again, we say that C-10s evidence is
15 reasonably relevant to your mandate.

16 Turning to the Earl Landry, Jr. issue, the
17 Cornwall police objects on the grounds -- again on the
18 power authority -- trust or authority, rather, requirement.

19 We have in our database -- it's not yet an
20 exhibit. I can give you the document reference. It's
21 110378. We have the reasons for sentencing of Justice
22 Manton in relation to Earl Landry, Jr. My understanding is
23 that he plead guilty in relation to charges relating to all
24 five of his victims.

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

1 **MR. LEE:** And I'd like to just read you a
2 quote. I'm sorry, I don't have copies.

3 **THE COMMISSIONER:** Okay. Does anybody
4 object? Nobody objecting.

5 **MR. LEE:** Again, this is Justice Manton
6 during the sentencing:

7 "You were in a position of trust, which
8 means that people trusted you. You
9 were working for the City of Cornwall,
10 worked in the parks as a rink attendant
11 where a number of children attended.
12 They looked up to you. They trusted
13 you. They sent their children there
14 thinking that their children were safe
15 in a city park or city arena. They
16 were all wrong to trust you, sir. You
17 took advantage of these children. It
18 is not as if you took advantage of one
19 child or took advantage of someone on
20 one or two occasions but we have a
21 situation where this went on, number
22 one, for years, and there are between
23 47 and 52 occasions where there was
24 masturbation, fellatio, penetration.
25 Even your own brother-in-law, you took

1 advantage of him while you were
2 supposed to be acting as his parent or
3 father."

4 Sir, a court seems to have already decided
5 this issue for us.

6 Another key issue relating to the Earl
7 Landry situation is the fact that his father had been the
8 Chief of Police in Cornwall and there are rumours or
9 innuendo or suggestions of some kind of cover-up of the
10 allegations relating to Earl Landry, Jr.

11 This matter goes to the heart of the
12 suspicions of cover-up that have surrounded the Cornwall
13 police in this community. This matter was in the media.
14 It contributed to the way that the Cornwall police was
15 viewed in the community by everyone. That would include
16 the average guy on the street who is removed from the
17 situations; how victims of abuse view the Cornwall police;
18 how perpetrators of abuse may have viewed the Cornwall
19 police. And it's important that you look at how the CPS
20 handled the situation when the former chief's son got
21 caught.

22 **THE COMMISSIONER:** Yeah, but, you know, if I
23 read the answer and if I read all that material that the
24 Court of Appeal tells me to read, how would he fit in? He
25 wasn't part of the Project Truth.

1 **MR. LEE:** I don't think the Court of Appeal
2 says that you need to only look at Project Truth.

3 **THE COMMISSIONER:** No.

4 **MR. LEE:** This isn't a Project Truth inquiry
5 and the Court of Appeal didn't turn it into that. Project
6 Truth is a focus. It's a main focus, but they go so far in
7 the Court of Appeal decision to say "Project Truth and
8 other similar investigations".

9 **THE COMMISSIONER:** Well, some people would
10 say it's Project Truth less.

11 **MR. LEE:** Well, some people -- I think it
12 was at least implied early on, if not stated explicitly
13 from the get go, that this was the Project Truth inquiry.

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

15 **MR. LEE:** That's not what it is.

16 We have here a situation where we have a --
17 you know, Mr. Manderville says we're not here to look at --
18 you know, impose the position of power or trust on the
19 father here for the son's crimes, and I agree with that,
20 but Earl Landry, Jr., by virtue of who his father was ---

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

22 **MR. LEE:** And, I mean, his name made that
23 readily apparent to anybody in the media focus. This was a
24 prominent person in this community. It received media
25 attention. It's a person in a position of trust or

1 authority.

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

3 **MR. LEE:** Sexual abuse -- I mean, I don't --
4 I have to admit I don't get the argument on this one.

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

6 **MR. LEE:** He appears to be squarely within
7 the mandate here.

8 And it goes to the broader issues, as I
9 said, of cover-up and -- Earl Landry, Jr. doesn't fit into
10 the Ken Seguin, Malcolm MacDonald, Bishop Larocque category
11 of cover-up, but, you know, as far as if you look at it
12 from a Cornwall police perspective it's all a part of the
13 same ball of wax.

14 We need to consider how -- the faith this
15 community had in the police force, how it responded to
16 these things and this is one of the key matters that we
17 need to look at in terms of was there a cover up; was there
18 not a cover up; are the rumours and allegations founded,
19 are they not founded as it relates to the Cornwall Police.

20 As we read and interpret the Court of Appeal
21 decision as it currently stands, only the evidence of C-12
22 and C-13 cannot be heard by this Commission. The effect of
23 the decision is not to result in any of the evidence
24 already heard being no longer subject to your
25 consideration.

1 Even if there comes a case where you find
2 that some of the evidence doesn't fit squarely within the
3 core of your mandate, we say it's reasonably relevant for
4 the reasons I've gone into. I haven't understood, at this
5 point, that anybody's asking for any of this evidence to be
6 expunged.

7 **THE COMMISSIONER:** Mr. Manderville's got it
8 on the table.

9 **MR. LEE:** I misunderstood then. I would say
10 at worst, should you find that some of this evidence is not
11 reasonably relevant and it's not within the core of your
12 mandate, at worst the proper way of proceeding would be to
13 rule that such evidence could not form the basis for a 5.2
14 notice or a finding of misconduct, you should still be able
15 to consider this evidence in making your recommendations,
16 as an example, and in the greater context. That's our
17 bottom line -- on that. We say it doesn't go that far; you
18 can consider all of this evidence for the purpose of
19 notices of misconduct and findings of misconduct but if not
20 that's where it should stop. There should not be
21 expungement.

22 **THE COMMISSIONER:** I understand your
23 position.

24 **MR. LEE:** Subject to any questions, those
25 are my submissions, sir.

1 **THE COMMISSIONER:** Thank you.

2 **MR. LEE:** Thank you.

3 **THE COMMISSIONER:** How are we doing for
4 time?

5 **---SUBMISSIONS BY/REPRESENTATION PAR MR. HORN:**

6 **MR. HORN:** My friend, Mr. Manson, covered a
7 great deal of the matters that I am interested in but the
8 thing that I was quite interested in was the fact that the
9 police officer, the OPP Officer who did the affidavit went
10 into some of the background which involved the things that
11 the coalition is very interested in, is the history the
12 involvement of Mr. Dunlop where it goes into some of the
13 facts surrounding his being charged ---

14 **THE COMMISSIONER:** Being charged?

15 **MR. HORN:** --- in the -- pursuant to the
16 *Police Act.*

17 **THE COMMISSIONER:** Oh yes.

18 **MR. HORN:** And that this was part of her
19 evidence, and this is an affidavit of Acting Detective
20 Superintendent Colleen McQuade of the OPP.

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

22 **MR. HORN:** And that really when you look at
23 it, what she was saying was that there was a great -- there
24 was a cloud of suspicion that was over the investigation,
25 the Silmsler matter and Mr. Dunlop had done something to try

1 to bring to light what was going on and that he was
2 alleging that there was a conspiracy, and that there was a
3 conspiracy to obstruct justice and that the -- as a result
4 of what he had done, the -- it basically snowballed into
5 the development of the push to have this public inquiry.

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

7 **MR. HORN:** And that the Project Truth was
8 brought in in order to try to find out if there was any
9 truth to the things that were going on here so that Mr. --
10 or the evidence that was brought together in the affidavit
11 shows that the -- what it was is that the -- had to be
12 looked at in order to give definitions to the Order-in-
13 Council that was passed creating this Commission so that
14 they would have a background or a context as to what was
15 behind the creation of the Commission and the Order-in-
16 Council on April the 14th of 2005. And that the preamble
17 and the mandate really didn't give a full definition of
18 some of the terms that were being used such as abuse in
19 young people. Now, what we have to look at is what was the
20 situation at the time of these allegations.

21 We're dealing with a situation in 19 -- in
22 the early '90s until the OPP became involved. In that
23 period of time there was, swirling around in the City of
24 Cornwall and surrounding area, a great deal of talk of a
25 coverup, a conspiracy among prominent people in Cornwall

1 and that there had to be something to be done to uncover
2 the -- what was being hidden from the people.

3 So, that really a part of your mandate would
4 be to make sure that any evidence that was going to be
5 coming before you would really focus in on trying to
6 explain and answer the questions that the public was asking
7 back then.

8 And what they were concerned about is not
9 only the response of the police, the Children's Aid
10 Society, and the other institutions but also what was it --
11 what was the circumstances that gave rise to the cry for a
12 public inquiry.

13 And so that the questions that were in the
14 air hovering over the City of Cornwall were ones in which
15 everybody was very suspicious of the work that was being
16 done by the police, the Children's Aid Society, and why was
17 it that Mr. Dunlop was the one that seemed to be the focus
18 of so much anger because of what he had done, was that he
19 was bringing this to light.

20 And so this is really what the OPP affidavit
21 was focusing in on at that time plus the Attorney General
22 came -- when he was coming -- came to Cornwall to announce
23 that there was going to be a public inquiry, he met with
24 people who were coming forth and saying that they had the
25 inquiry and they weren't all young people pursuant to some

1 statutory description according to the *Criminal Code* or any
2 other statute.

3 What he saw were -- when he looked at them
4 these were young people who had been sexually abused; had
5 been abused by people in prominent positions and, as a
6 result, the definition of the young person was not -- as
7 being portrayed today before you by Mr. Manderville and
8 others that it kind of has to be a certain age group.

9 What they saw was young people being abused
10 and the young people, I would suggest, could be -- we could
11 get some help in regards to who a young person is by
12 looking at some of the legal definitions that are available
13 to lawyers. We can go to Black's Dictionary and there,
14 talking about a youthful person -- youthful is "young
15 especially in appearance or manner having the
16 characteristics of youth; having the freshness or vigour of
17 youth" so it's not something -- this is a definition that
18 comes from Black's Dictionary.

19 I can give you a copy of this -- I just -- I
20 had a number of copies but I didn't bring them here. I've
21 only got one copy here. Also, there is the Canadian Oxford
22 Dictionary ---

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

24 **MR. HORN:** "Youthful Offender - a person
25 in late adolescence or early adulthood

1 who has been convicted of a crime. A
2 youthful offender is often eligible for
3 special programs not available to older
4 offenders including community
5 supervision, successful completion of
6 which may lead to erasing the
7 conviction from the offender's record."

8 This is from another definition; it comes
9 from the Oxford Dictionary.

10 And so I'm suggesting that when the Attorney
11 General of Ontario came down here and saw these young
12 people, he didn't look at them and say "well they had to be
13 a certain age; they had to be under 18; and they had to fit
14 into a certain legal category that would pigeonhole them to
15 a certain status, to a certain age because of the
16 legislation."

17 What he saw were young people who were in
18 positions -- in a vulnerable position who had been abused,
19 and as a result he realized that a public inquiry had to be
20 established and also the member of the legislature here,
21 Mr. Brownell, was also making statements regarding the
22 situation here.

23 So, that was the surrounding circumstances
24 when the Order-in-Council came into existence. There was
25 swirling around this situation that had to be dealt with

1 and so the mandate which basically gives you the bare bones
2 of what you -- what you are allowed to do is not the limit
3 that should be placed upon what you should be allowed to
4 do.

5 The Court of Appeal -- I think my friend
6 gave one of the statements that were made in paragraph 55
7 where it says:

8 "Similar allegations of historical abuse of young people by
9 persons in authority or positions of trust that were not
10 investigated by Project Truth or that came to light after
11 the Project Truth investigation ended..."

12 So we're not talking about, well, it has to
13 be what Project Truth looked at, but it says there are
14 other allegations that came out after Project Truth ended
15 so it would be beyond and after the investigation that was
16 being done by Project Truth. So, that doesn't narrow your
17 mandate, it expands it, and it expands it because that's
18 what the Court of Appeal was saying; it would be after
19 Project Truth had ended. So that if there was something
20 that was found that Project Truth had not looked at and it
21 came to light afterwards, you could look into that, and so
22 I would suggest that your mandate was not narrowed it was
23 actually expanded.

24 But, the -- and the -- I think that one of
25 the main things that you have to take into account is that

1 when you are -- when we're looking at what was going on in
2 Cornwall, it seems that when you say "conspiracy" what
3 you're really saying is there are people who are very
4 clever and very good at hiding things. They're very good
5 at cloaking what they are doing in such a way that nobody
6 will find out and they can probably get away with it for
7 some period of time.

8 I mean, the evidence that came forth with
9 the probation officers shows that right under their nose a
10 lot of this was going on and nobody ever -- some of them
11 never even knew that it was going on so there is -- there
12 is a *modus operandi*, or a method, that the paedophiles
13 operate in.

14 And that's really what you are trying to
15 find out about in your Inquiry, is to not allow such a
16 situation to every occur again where a group of people who
17 are very clever, people involved in a conspiracy were able
18 to hoodwink a lot of people and get away with it for a long
19 period of time.

20 So the conspiracy, as far as we're
21 concerned, is by people who were able to get away with this
22 not only under the nose of a lot of people but they may
23 have even co-opted these people to become involved with
24 them. So this is really what I'm suggesting that your
25 mandate really is involved in, is trying to make sure that

1 something like this never happens again.

2 This would be that -- so any evidence that
3 would show a *modus operandi* or a method of operation by a
4 small group of conspirators is something that is reasonably
5 relevant to your Inquiry. It allows you look into -- like
6 let's say the Landry situation. What I'm suggesting is
7 that when the Chief of Police has a son that was being
8 charged, since it was his son, the Cornwall Police should
9 never have investigated that situation at all because it
10 was someone too closely connected with the Cornwall Police.

11 This is an example of how the local police
12 department became involved in something they should not
13 have become involved in because it involved the Chief of
14 Police -- former Chief of Police's son.

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

16 **MR. HORN:** And they should have immediately
17 realized this was something they could not become involved
18 in and yet they remained involved.

19 And we're suggesting that it is very similar
20 to the allegations that have been made against the Cornwall
21 Police Department. There were certain things that were
22 done that they shouldn't have got involved in because there
23 was conflicts of interest that were involved.

24 I'm suggesting that that's what has caused
25 this mistrust in the community towards the manner in which

1 these things were being handled.

2 And so I'm suggesting that the -- this is
3 the sort of thing that could come under the heading of the
4 -- being reasonably relevant evidence that should come
5 before you in order to give you some background as to how
6 these things occur and how they happen and, as a result, it
7 was possible for this conspiracy to go on for so long and
8 never have been uncovered and had never been dealt with in
9 the past, and that's the reason why the Inquiry was set up.

10 I think that most of the things that I've
11 wanted to deal with have been dealt with by my colleagues
12 and I think that I will end it there unless you have other
13 questions.

14 **THE COMMISSIONER:** No, that's fine. Thank
15 you.

16 So, what do we do now Mr. Engelmann? Do you
17 reply?

18 **MR. ENGELMANN:** Mr. Commissioner, I'm just
19 not sure if counsel for Mr. Bissonette ---

20 **MR. COMMISSIONER:** Right, so why don't we
21 take ---

22 **MR. ENGELMANN:** --- was able to attend or
23 not today. Would this be an appropriate time to take the
24 lunch break?

25 **THE COMMISSIONER:** Yes, it is. Two o'clock

1 it is; thank you.

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

4 This hearing will resume at 2 p.m.

5 --- Upon recessing at 12:25 p.m. /

6 L'audience est suspendue à 12h25

7 --- Upon resuming at 2:01 p.m. /

8 L'audience est reprise à 14h01

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

11 This hearing is now resumed. Please be
12 seated. Veuillez vous asseoir.

13 **THE COMMISSIONER:** Thank you.

14 Now where were we Mr. Engelmann?

15 **MR. ENGELMANN:** It's my understanding that
16 Ms. Harreman cannot make it this afternoon.

17 **THE COMMISSIONER:** Right.

18 **MR. ENGELMANN:** She has given us submissions
19 that were entered as A-3 ---

20 **THE COMMISSIONER:** Yes.

21 **MR. ENGELMANN:** --- which I think speak for
22 themselves. Mr. Manson also speaks to the issue of Mr.
23 Bissonnette in his materials that he filed that I gave to
24 you this morning.

25 **THE COMMISSIONER:** Yeah.

1 **---** SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:

2 **MR. ENGELMANN:** So I'd like to very briefly-
3 - well, very briefly would like to review just a few areas
4 for clarification purposes if I may.

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

6 **MR. ENGELMANN:** I want to talk about the
7 Court of Appeal decision and what I think it might mean. I
8 do want to talk just very briefly about some related
9 jurisprudence and then briefly talk to you about some of
10 the factual circumstances that were discussed.

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

12 **MR. ENGELMANN:** I want to start with the
13 premise that I don't believe anybody has asked that
14 evidence actually be expunged. The question is whether or
15 not the evidence you've heard which three parties have
16 asserted is beyond the scope of your mandate can or should
17 be used in any way to fashion notices of misconduct or for
18 other forms of findings.

19 **THE COMMISSIONER:** Mr. Manderville used the
20 word "expunged."

21 **MR. ENGELMANN:** He did, but I think -- and
22 I'll let him speak to it if I don't do it accurately. I
23 think what he said was if he'd been making this argument
24 earlier in the day, perhaps back at the time when the
25 particular evidence was called, he might have asked for it

1 to be expunged. But given that that is some time in the
2 past, he is not taking that position. I think that's what
3 I understood him to say.

4 **MR. MANDERVILLE:** (Inaudible).

5 **THE COMMISSIONER:** Thank you.

6 **MR. ENGELMANN:** So I want to turn briefly
7 sir, if I may to the Court of Appeal decision.

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

9 **MR. ENGELMANN:** And it's at Tab 8 of the
10 Book of Authorities. And although, sir, there are a number
11 of paragraphs that deal with various aspects of the
12 mandate, it is my respectful submission that the paragraph
13 that answers at least most of the questions that I think
14 you're being asked to deal with is paragraph 62. And
15 that's found at page 28 of the decision.

16 And I say it's the most significant
17 paragraph because there seems to be some inconsistency in
18 what is being said in some of the paragraphs when one looks
19 at things. But this paragraph comes right after the
20 caption "Conclusion on the subject matter of the
21 Commission" and answers several questions. And questions
22 that may not have been apparent before are answered here.

23 For example, the paragraph starts with the
24 sentence, "Properly construed, the OIC..." the Order-in-
25 Council:

1 "...empowers the Commissioner to look into and report on
2 institutional responses past, present and future relating
3 to allegations."

4 So what's being said there right away is
5 that the date April 14th, 2005 isn't necessarily an end
6 date. And that is something the Court of Appeal is telling
7 us, in my respectful submission, in this paragraph when
8 they talk about, "look into and report on institutional
9 responses past, present and future."

10 So that is a new direction, guidance from
11 the Court of Appeal with respect to your mandate. The
12 Court of Appeal also says that allegations that were
13 reported at the time of the abuse or years later or both
14 would fall within this mandate. In other words, the
15 Commissioner can look at the responses, the response of
16 various institutions to allegations made and reported in
17 the 1950s, as well as the response to allegations made for
18 the first time or renewed in the 1990s. Then there's
19 footnote 5:

20 "I do not agree with the dissenting
21 opinion of Spiegel, J. to the extent
22 that he concluded at paragraph 31 that
23 the term 'historical' in paragraph 2(a)
24 of the Order-in-Council imports a
25 requirement that there must necessarily

1 be a lapse of time between the time of
2 the abuse and the time of reporting for
3 the allegation to be considered as
4 historical."

5 And you'll recall this was at least the
6 original argument by the OPP and perhaps others that it had
7 to be historical reporting to be historical abuse. So that
8 question has been answered by the Court of Appeal. And
9 clearly the current reporting or current plus renewed or
10 historical reporting that we've heard, they're saying is
11 within your mandate.

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

13 **MR. ENGELMANN:** So those two issues have
14 been clarified.

15 Another thing that has been clarified is
16 there has been talk about whether or not, at least there
17 were some initial talk, this mandate should be solely
18 Project Truth. And the Court of Appeal, in paragraph 62,
19 says,

20 "Including the allegations investigated
21 in Project Truth as well as similar
22 such allegations."

23 So in my respectful submission, sir, in
24 reading that paragraph, they are not saying Project Truth
25 minus, they are saying Project Truth plus. I don't think

1 there was much of a debate on that, perhaps maybe one of
2 the parties but in any event, that seems to be clarified as
3 well.

4 Now what is not clarified, in my respectful
5 submission, is whether or not the Court of Appeal has read
6 in to the Order-in-Council the term sexual between
7 historical and abuse. If one reads the decision as a whole
8 and you look at, at least the majority of the paragraphs
9 that deal with this issue, they appear to be saying that
10 you should read in the word "sexual." So that it should
11 read, "historical sexual abuse of young people."

12 However, in the concluding paragraph and in
13 one or two others, they go back to the wording from the
14 Order-in-Council which is "historical abuse of young
15 people." So there is some confusion on that issue.

16 But with respect the evidence that's been
17 commented on today by the three parties seeking to have you
18 not review certain evidence, I would simply submit that in
19 calling the evidence and, in particular, this arises with
20 respect to the CAS and the submissions they have made. I
21 would simply submit sir that in calling that evidence,
22 Commission counsel led evidence that in each and every case
23 had a component of sexuality whether it was sexual abuse or
24 sexual assault allegation, allegation of some form of
25 sexual impropriety, there was no witness called of those

1 five or so that have been named by the CAS that were simply
2 physical and/or physical and emotional abuse.

3 In each one of those cases, there was an
4 element of an alleged sexual abuse or alleged sexual
5 assault, something of that nature. So Commission counsel
6 was fairly careful in calling that evidence.

7 We have some mixed signals from the Court of
8 Appeal. The question you now are left with, at least from
9 the arguments that I heard today, is whether or not you
10 should parse that; whether you should separate the sexual
11 abuse from the physical and emotional abuse that was
12 testified about.

13 And I certainly have some sympathy or
14 understanding for an argument that says when you're talking
15 about individuals who, by the very nature of their
16 situation, are in a trust relationship with the Children's
17 Aid Society as wards, that it might be important in looking
18 at the context of the evidence to look at the physical and
19 emotional abuse when you're looking at the response by the
20 institution and institutions to the sexual abuse
21 allegations.

22 Sir, that then leaves us with what I'll call
23 the other read in to the Order-in-Council. In the Order-
24 in-Council, under the caption "Mandate" in paragraph 2, it
25 is stated:

1 "The Commission shall inquire into and
2 report on the institutional response of
3 the justice system and other public
4 institutions, including the interaction
5 of that response with other public and
6 community sectors in relation to a)
7 allegations of historical abuse of
8 young people in the Cornwall area
9 including ..."

10 Et cetera and then it goes through b).

11 And of course, as I said, it's uncertain
12 whether or not the word "sexual" has been read in between
13 historical and abuse. But whether it has or not may not
14 make any difference really with respect to the arguments
15 that are being put before you, unless you wish to parse
16 that evidence.

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

18 **MR. ENGELMANN:** Having said that, the Court
19 of Appeal has now read in the following words -- after
20 allegations of historical abuse of young people they have
21 added the words -- sorry,

22 "In the Cornwall area by persons in
23 authority or positions of trust."

1 All right, and they've clearly said that not
2 only in their concluding paragraph but in other paragraphs
3 in their decision.

4 So that is a new defined, explained, read-
5 in, if I can call it, to paragraph 2(a). And that is the
6 subject of some debate here with respect to some of the
7 arguments that were put forward, certainly by the Cornwall
8 Police Service about whether or not the alleged perpetrator
9 was in a position of trust or authority.

10 Other issues which have been brought forward
11 today and last week which weren't defined by the Court of
12 Appeal are the issue of what is meant by young people when
13 it's set out in the Order-in-Council.

14 And also another new issue, if I can call it
15 that, which has not been raised before, the suggestion or
16 submission that in certain cases there were no allegations
17 of abuse, and whether an attempted abuse or alleged attempt
18 -- an alleged attempt to commit some kind of sexual act or
19 sexual impropriety should be considered to be part of your
20 mandate.

21 So we didn't have those issues defined by
22 the Court of Appeal. They weren't in play before the Court
23 of Appeal. Nobody had raised them until we invited the
24 parties to comment on the Court of Appeal decision and here
25 they are.

1 So those issues as I said, the Court of
2 Appeal decision doesn't really help us so then we have to
3 go back to natural statutory interpretation provisions. We
4 have to look at the Order-in-Council. We have to do so in
5 a broad and liberal fashion and determine what might have
6 been meant by "young people" and what might have been meant
7 by "historical abuse" or now "historical sexual abuse" and
8 whether that might include attempted abuse or some form of
9 attempted sexual impropriety.

10 And sir, with respect to the issue of young
11 people, I will simply say this. The Order-in-Council does
12 not use the term "young persons". That position has been
13 put before you I know by Mr. Neville and by Mr.
14 Manderville. And that term has some meaning in specific
15 sections of the *Criminal Code*, and it means a person
16 between the ages of 14 and 17.

17 Mr. Manson dealt with this in his written
18 submissions and quite frankly, I concur with his comments
19 that clearly the Order-in-Council was not meant to be
20 restricted to young people between the ages of 14 and 17.

21 We have certainly heard allegations from
22 people who were younger than 14 and some who were 18 or
23 slightly older. But this is the first time at this stage
24 in our Inquiry that there is an attempt to redefine young
25 people as young persons, put that into the context of the

1 *Criminal Code* and suggest that it should fit some
2 definition of 14 to 17.

3 And I would submit, with respect that that
4 clearly is not taking a broad and liberal interpretation of
5 the term "young people" as it is set out in the Order-in-
6 Council.

7 Sir, with respect to the issue of persons in
8 authority and/or persons in positions of trust, the leading
9 case, in my respectful submission, is that of Regina and
10 Audet.

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

12 **MR. ENGELMANN:** It is in the Book of
13 Authorities at Tab 2. The paragraphs that are most
14 relevant have been read to you. I'm not going to read them
15 to you again. But clearly persons in authority not
16 identical to persons in positions of trust. And while
17 persons may be both, I would respectfully submit that
18 positions of trust can be broader than persons in
19 authority.

20 And sir, another case that is referenced in
21 Audet is the case of Léon. It's at Tab 7 of the
22 Authorities. It is a decision of the Quebec Court of
23 Appeal. The decision is set out in French. The references
24 I wanted to leave with you are on page 4 of the decision
25 starting with the paragraph:

1 « Dans son sens premier, la notation d'autorité ... »

2 It's the ---

3 **THE COMMISSIONER:** Oui, je le sais. « Dans
4 son sens ... » Yeah, I got it.

5 **MR. ENGELMANN:** Okay, and then the paragraph
6 that follows:

7 « Le terme dépendence... »

8 Those two paragraphs I think are key
9 paragraphs and I want to just simply, sir, to refer you to
10 the fact that in the Léon decision, there is also a
11 reference to the Bazley report.

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

13 **MR. ENGELMANN:** We have the Bazley report in
14 evidence. It was found, for example, in the Book of
15 Documents of Wendy Harvey. I apologize, sir, I can't
16 remember the exhibit number. I did ---

17 **THE REGISTRAR:** Two thirty nine (239).

18 **MR. ENGELMANN:** Two thirty nine (239).

19 Thank you, Madam Clerk.

20 The reference that I wanted to turn you to,
21 Mr. Commissioner is at Tab 6 of Exhibit 239. It's pages 21
22 and 22 and it sets out, at least on the part of this
23 committee in 1984, their views as to positions of trust.
24 And you'll see it starts under the caption "Abuse of

1 Position of Trust" and it carries on until the following
2 page just before Recommendation 9.

3 I'm not going to read it to you, sir, but I
4 think that it sets out a fairly broad definition of persons
5 in positions of trust. And it sets out why the committee
6 feels that those should be situations where there is
7 further protection.

8 My friend, Mr. Manderville, referred you to
9 three or four cases from the Supreme Court of Canada.

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

11 **MR. ENGELMANN:** Those cases deal with
12 concepts of vicarious liability and fiduciary duty in the
13 context of civil litigation claims against employers for
14 the acts of their employees, and with the greatest of
15 respect, don't deal with persons in position of trust
16 and/or authority in the same context, and for the same
17 reasons as we're looking at them here.

18 That is why, in my respectful submission,
19 the discussion of these issues in the Audet case is much
20 more relevant to the decisions you have to make today.
21 They really deal with the imposition of vicarious civil
22 liability of organizations with respect to the intentional
23 tort of sexual abuse committed by an employee.

24 And of course the test of vicarious
25 liability in those circumstances is based on policy

1 considerations with respect to strict liability, in other
2 words, whether or not it is appropriate for an innocent
3 institution to bear the burden of damages as opposed to
4 leaving them lie with the innocent victim.

5 It's not the same type of test that we're
6 dealing with here. There are not the same types of
7 references that you'll find in Audet and Léon, which are
8 useful to the determination of this issue, in my respectful
9 submission.

10 Now if I could just turn briefly back to the
11 Court of Appeal Decision.

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

13 **MR. ENGELMANN:** As I said, sir, I think
14 paragraph 62 is extremely pertinent to decisions you have
15 to make here but I would be remiss if I didn't take you a
16 little bit further in the decision because of the
17 suggestion by the Court of Appeal that even if evidence
18 doesn't necessarily fit within the core mandate, if I can
19 use that term, of this Commission, the Court of Appeal is
20 saying it doesn't stop there; you've got to look at a
21 second stage or a second test, and that is the test of
22 whether or not the evidence, even if it's peripheral, even
23 if it's not core mandate, is reasonably relevant to the
24 subject matter of the Inquiry.

25 That discussion starts at page 29 of the

1 decision, Mr. Commissioner, at paragraph 64, where they
2 say:

3 "Although the evidence of C-12 and C-13 falls outside the
4 subject matter of the Inquiry it could nevertheless be
5 admissible if it were found to be 'reasonably relevant to
6 the subject matter of the inquiry.'"

7 And they refer to the Bortolotti case. And
8 they talk about the fact that:

9 "Affording a high degree of deference
10 to such a ruling makes eminent good
11 sense otherwise Commissions would
12 constantly be in a state of stop and go
13 as disgruntled parties trundled off to
14 the Divisional Court to challenge
15 evidentiary rulings."

16 And at page 30 of the decision, the same
17 paragraph, paragraph 65:

18 "If the Commissioner believes that an item or body of
19 evidence, though peripheral to the subject matter of the
20 Commission, bears on an issue to be resolved and will in
21 some degree advance the Inquiry so long as the
22 Commissioner's view is reasonably based, the admission of
23 the evidence will not constitute jurisdictional error."

24 And then at paragraph 66 they comment on the
25 fact that that wasn't done with the evidence of C-12 and C-

1 13. That second test of reasonable relevance wasn't
2 applied. So it -- for instance, they say:
3 "To be precise, he did not turn his mind to the issue
4 having concluded that their evidence came within his
5 mandate and was thus clearly admissible."

6 And they then set out why they look at it
7 because it was raised in oral submissions with the Court.

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

9 **MR. ENGELMANN:** But clearly the Court of
10 Appeal is giving some guidance or some direction here that
11 you should be looking at that second stage or second test
12 when you consider the issues that have been put before you
13 by the parties here.

14 And, sir, with respect to that I -- with
15 respect to the CAS evidence, both Mr. Manson and Mr. Lee
16 have talked about the special relationship of the
17 Children's Aid Society, its position of trust and
18 authority, and that things should be considered looking at
19 the full context.

20 And then in the situation here, if the
21 evidence from those five individuals is not, in your view,
22 in the core mandate of this Commission, if it is
23 peripheral, is it still reasonably relevant to the work of
24 this Inquiry.

25 With respect to other matters, the same test

1 would have to be applied on a case-by-case basis looking at
2 the individuals that the three parties are seeking some
3 form of finding that you don't have to make findings or
4 institutional response evidence need not be called with
5 respect to their evidence.

6 I wanted to very briefly touch upon the
7 issues involving Earl Landry, Jr. And my friend Mr.
8 Manderville is correct that we haven't led victim evidence
9 or alleged victim evidence -- in this case it would be
10 victim evidence -- from any of the five victims of Earl
11 Landry, Jr.

12 Now, of course, that's not required. As
13 you'll recall way back when, when the Commission wanted to
14 lead victim evidence and we were taken to the Divisional
15 Court on that issue and the Divisional Court confirmed that
16 one, we could lead victim or alleged victim evidence, or
17 alternatively could put evidence in through other means,
18 through documents, et cetera.

19 Now, clearly there's a fair bit of
20 documentary evidence about Earl Landry, Jr. Some of it is
21 set out in the summary of agreed statements of facts. For
22 example -- that might be of interest -- that his father was
23 the Chief of the Cornwall Police Service from 1974 to '84.

24 And, sir, as you look a little further in
25 the agreed statements of fact you will note, for example,

1 that the abuse that Mr. Earl Landry, Jr. is later convicted
2 of with the first four complainants the abuse took place
3 during the time when Mr. Earl Landry, Sr. was the Chief of
4 Police. The allegations were reported after but they all
5 took place during his tenure as Chief.

6 In paragraph 6 there's the reference to the
7 fact that shortly after Chief Shaver was advised of the
8 investigation he spoke with Earl Landry, Sr. about these
9 allegations and they talked about the possibility of Earl
10 Landry, Jr. taking a polygraph test.

11 There's also reference in paragraphs 9 and
12 10 to the involvement of the Children's Aid Society.

13 The other issues that I just wanted to
14 highlight very briefly, and Mr. Lee referred you to the
15 sentencing hearing set out at paragraph 17, the sentence by
16 Justice Manton on December 23rd, 1999.

17 Paragraph 22 talks about an administrative
18 review that Staff Sergeant Derochie does of these
19 investigations, and in his final report he identifies a
20 number of concerns and they deal with policies, practices,
21 rules dealing with the investigation of historical sexual
22 abuse.

23 And of course at paragraph 23, and I think
24 this is of particular import, that in response to Staff
25 Sergeant Derochie's report a new standing order was passed

1 effective December 30th, 1999. The order required that
2 highest priority be given to sexual offences and that
3 historical sexual assaults be given the same priority as
4 recent sexual assaults.

5 Of course there was also in the case, as
6 you'll see in paragraph 24, an allegation that there'd be
7 some form of conspiracy not to investigate when the matters
8 first came to the attention of the Cornwall Police Service
9 back in 1985.

10 So, sir, in my respectful submission, this
11 case is not only a situation which would find us in the
12 core mandate of this Commission of Inquiry, but in any
13 event, if you should find that it's peripheral it's
14 certainly reasonably relevant when we're examining the
15 institutional response, particular of the CPS but also to
16 some extent of the Children's Aid Society.

17 So in my respectful submission it is
18 evidence you should hear.

19 I think, Mr. Commissioner, with respect to
20 the individuals that have been identified, the arguments
21 have been made. I don't really have anything further to
22 add on the individual circumstances, other than it's going
23 to be important for you to look at them on a case-by-case
24 basis.

25 If they are Project Truth matters that may

1 well be the end of it. You may not have to look further,
2 given the Court of Appeal's comments.

3 And with respect to other issues you must
4 look at this evidence through that two part or two stage
5 test that the Court of Appeal set out. Is it core mandate?
6 If not, if it's peripheral is it still reasonably relevant?

7 Those are my submissions, sir, unless you
8 have questions.

9 **THE COMMISSIONER:** No, that's fine. Thank
10 you.

11 **MR. ENGELMANN:** Thank you.

12 **THE COMMISSIONER:** So do we give Mr.
13 Manderville and Mr. Neville the right to reply or -- Mr.
14 Manderville, do you wish to add anything?

15 **MR. MANDERVILLE:** I will be brief. But I
16 understand ---

17 **THE COMMISSIONER:** Oh, I'm sorry. Yes, yes.
18 Thank you. Ever so much a gentleman, Mr. Manderville.
19 Thank you.

20 **MS. GIBSON:** Good afternoon, Commissioner.

21 **THE COMMISSIONER:** Good afternoon.

22 ---REPLY SUBMISSIONS BY/RÉPLIQUE BY MS. GIBSON:

23 **MS. GIBSON:** I do have a few brief comments
24 in reply to some of the submissions of my friends.

25 In particular I'd first like to look at Ms.

1 Harreman's letter, which I believe was marked as Exhibit A-
2 3.

3 **THE COMMISSIONER:** Yes.

4 **MS. GIBSON:** On page 2 in the last paragraph
5 Ms. Harreman suggests that Mr. Justice Moldaver's decision
6 does not limit us to incidents of abuse committed directly
7 by persons in positions of authority or trust but rather in
8 the case of a fellow Crown ward committing alleged assault
9 against Mr. Bissonnette, there is sufficient elements of
10 vicarious liability to bring the acts within the scope of
11 the Inquiry's mandate.

12 With all due respect to Ms. Harreman, I fail
13 to see any indication on Mr. Justice Moldaver's part, or
14 for that matter in the Audet case or any other of the
15 authorities provided to us, that the Court believes that
16 there is such a thing as an indirect position of authority
17 or trust or that incidents of abuse can take place
18 indirectly at the hands of a person in a position of trust
19 or authority.

20 In any event, I agree -- I'd agree with Mr.
21 Lee's earlier submission with respect to the document, the
22 vicarious liability not having any place in this Inquiry.

23 In any event, should it have a place here,
24 it is our position that in Mr. Bissonnette's particular
25 situation this is a matter of an alleged assault by a

1 fellow Crown ward. And as a result, the documented
2 vicarious liability, particularly as set forth in the body
3 of case law that we've received would not apply in that
4 situation.

5 I'd next like to -- excuse me, I'd next like
6 to address the issue of the Court of Appeal's inconsistent
7 use of the term "sexual" as a modifier for the word
8 "abuse."

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

10 **MS. GIBSON:** Mr. Manson, Ms. Harreman, and
11 Mr. Lee all touched upon this issue, in particular Mr. Lee
12 and Ms. Harreman suggested, and as did Mr. Engelmann, that
13 Mr. Justice Moldaver's lack of the modifier sexual in
14 paragraph 62 is where we should hang our hats. Mr. Lee
15 refers to this paragraph as a key paragraph and as the
16 final pronouncement.

17 For unknown reasons Mr. Justice Moldaver
18 does not use the word "sexual" to modify the word "abuse"
19 in that particular paragraph. However, if we look at the
20 wording he does state that:

21 "Relating to allegations of abuse of
22 young people in the Cornwall area by
23 persons in authority or positions of
24 trust, including the allegations
25 investigated in Project Truth as well

1 as similar such allegations..."

2 It's our understanding that all of the
3 allegations investigated in Project Truth were sexual in
4 nature and as a result the word "similar such allegations"
5 would necessarily mean allegations of sexual abuse.

6 Mr. Engelmann further suggested that in
7 reading the decision in its entirety it appears that the
8 Court of Appeal was perhaps reading in the word "sexual"
9 before "abuse" and we would agree with that and submit that
10 the decision can -- should be considered in its entirety
11 and not reduced to the wording of one paragraph.

12 **THE COMMISSIONER:** Even though it says
13 "Conclusion"?

14 **MS. GIBSON:** Even though it says
15 "Conclusion."

16 **THE COMMISSIONER:** Okay.

17 **MS. GIBSON:** The final issue that I'd like
18 to address is that of whether or not the allegations of
19 abuse, other than sexual abuse, which we have identified or
20 Mr. Chisholm identified on Thursday in relation to the
21 particular complainant, are reasonably relevant to the
22 mandate of the Inquiry.

23 Mr. Lee asserts that the evidence of his
24 clients, Roberta Archambault, Catherine Sutherland and C-
25 14, if found to be outside the mandate of this Inquiry,

1 should -- is still reasonably relevant and as such, should
2 be included.

3 It is our position that this evidence would
4 not advance the mandate of the Inquiry, nor would an
5 informer assist you, Mr. Commissioner, in your final
6 determination.

7 If I can take you to paragraph 21 of a Court
8 of Appeal decision.

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

10 **MS. GIBSON:** Mr. Justice Moldaver quotes Mr.
11 Justice Howland in Bortolotti with respect to the
12 reasonably relevant test.

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

14 **MS. GIBSON:** He states that:

15 "In deciding whether evidence is
16 reasonably relevant it is necessary to
17 scrutinize carefully the subject matter
18 of the inquiry as set forth in Order-
19 in-Council."

20 It's our submission that the Court of Appeal
21 did perform this careful scrutiny and as a result limited
22 the scope of the Inquiry to -- as per our previous
23 submissions, and in doing so they also necessarily limited
24 what is relevant to the Inquiry.

25 **THE COMMISSIONER:** How did they -- no, I

1 don't understand that part.

2 **MS. GIBSON:** Pardon me?

3 **THE COMMISSIONER:** I don't understand that
4 part. I don't know that they limited -- they set out the
5 test. Relatively relevant is this, and they applied it to
6 the C-12 and C-13. They didn't give me an instruction as
7 to how I'm supposed to interpret that, other than the
8 Bortolotti case.

9 **MS. GIBSON:** The Bortolotti case.

10 **THE COMMISSIONER:** And so -- yeah, and so
11 they haven't limited my mandate by ---

12 **MS. GIBSON:** No, I apologize, perhaps I
13 wasn't clear. They have limited the mandate of the Inquiry
14 in our view, to ---

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

16 **MS. GIBSON:** --- allegations of sexual
17 abuse.

18 **THE COMMISSIONER:** Right.

19 **MS. GIBSON:** Our submission is that then
20 limits what's relevant to the Inquiry.

21 **THE COMMISSIONER:** Okay, I see what you
22 mean.

23 **MS. GIBSON:** Thank you.

24 It's our position that once the mandate of
25 the Inquiry is so limited the evidence of the complainants

1 that Mr. Chisholm discussed, Roberta Archambault, Jeannette
2 Antoine, André Bissonnette, Katherine Sutherland, C-14,
3 Keith Ouellette and Douglas Seguin, as it pertains to any
4 incidences of abuse, other than sexual, is no longer of any
5 probative value to you, Mr. Commissioner and does not
6 advance the Inquiry.

7 Subject to any questions, those are my
8 submissions.

9 **THE COMMISSIONER:** No. Thank you.

10 **MS. GIBSON:** Thank you.

11 **THE COMMISSIONER:** Mr. Manderville?

12 --- **REPLY BY/RÉPLIQUE PAR MR. PETER MANDERVILLE:**

13 **MR. MANDERVILLE:** Mr. Commissioner, I want
14 to address a few discrete points.

15 Mr. Neville will speak to the issue of
16 objections and whether or not any were taken but Mr. Lee
17 raised the notion that none of the parties objected when
18 certain evidence was called; rising to suggest it was
19 outside your mandate to hear it.

20 Regardless of whether or not that's accurate
21 the lack of objection, as you well know, does not confer a
22 jurisdiction upon you where none exists.

23 **THE COMMISSIONER:** That's right.

24 **MR. MANDERVILLE:** That's the simple point I
25 wish to make for you there.

1 Secondly, Mr. Lee and your Commission
2 counsel focused on the notion of what is a young person and
3 sought to distinguish between young people and young
4 persons.

5 **THE COMMISSIONER:** Right.

6 **MR. MANDERVILLE:** And when you and I were
7 talking this morning you made the in-jest observation of
8 someone of a certain age talking about "you young people
9 these days" and I know that was in jest.

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

11 **MR. MANDERVILLE:** I guess the point I would
12 make is, if we are going to try and make sense of what the
13 mandate is and the Court of Appeal -- certainly the Order-
14 in-Council and the government did not seek to appoint a 95
15 year old Commissioner so that everyone else would be young
16 people so we could examine whatever the heck he wanted.

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

18 **MR. MANDERVILLE:** That's not what we're on
19 about here or that's not what we're talking about.

20 Young persons does mean something. It's not
21 a defined term in the Order-in-Council. The Court of
22 Appeal has not defined it for you; I accept that.

23 It is a defined term in certain statutes
24 which provides some guidance to you, I submit, as to what a
25 young person is. Those statutes are uniform in construing

1 a young person to be someone who is under the age of 18.
2 That is the point I wished to make with you.

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

4 **MR. MANDERVILLE:** Thirdly ---

5 **THE COMMISSIONER:** But let's assume for a
6 minute that Project Truth investigated someone where he was
7 21 years old; 31 years old. By the fact that -- are you
8 saying then that notwithstanding the fact that they may be
9 within Project Truth that because of the term young -- if I
10 interpret your premise that I couldn't look at it,
11 notwithstanding the fact that it's within Project Truth?

12 **MR. MANDERVILLE:** Yes, I say that is
13 correct. That -- if Project Truth went a little bit afield
14 in the late 1990s in seeking to do various investigations
15 and carry out various prosecutions that was the business of
16 the OPP investigators.

17 What the Court of Appeal is telling you is
18 that the circumstances that gave rise to this Inquiry are
19 the three-fold circumstances I set out for you this morning
20 and that paragraph 62 of the Court of Appeal's decision is
21 saying, look, here is what the OIC is empowering you to
22 look into, sir; historical allegations of abuse of young
23 persons by people in positions of trust and authority.
24 Young persons means something and it's part of what they
25 are saying you are to look into.

1 **THE COMMISSIONER:** But they also went in and
2 said, well you know, let's look at Hansard, you know, and
3 let's look at all these other things, and so if we find
4 something in there that says, yeah, we want you to look
5 into what's been going on in Cornwall and what Project
6 Truth did, are you saying that Parliament wanted to
7 restrict it and to limit me in not looking at all of what
8 Project Truth did?

9 **MR. MANDERVILLE:** I am saying that
10 Parliament and the Court of Appeal is suggesting that the
11 focus of your mandate should be exactly what paragraph 62
12 sets out. That is to be the focus ---

13 **THE COMMISSIONER:** That's not Parliament.
14 Parliament didn't say that, the Court of Appeal did.

15 **MR. MANDERVILLE:** Sorry. Parliament
16 beforehand set out the three circumstances ---

17 **THE COMMISSIONER:** Well ---

18 **MR. MANDERVILLE:** --- giving rise to an
19 Inquiry and then drafted up an Order-in-Council suggesting
20 what they wanted you to look into.

21 The Court of Appeal has interpreted the
22 Order-in-Council and the purported evidence of C-12 and C-
23 13 and has fashioned a judgement saying "here's what we
24 think" and paragraph 62 is the most succinct statement of
25 what they think.

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

2 **MR. MANDERVILLE:** And if Project Truth
3 delved into peripheral matters I submit that does not
4 necessarily empower you to delve into those peripheral
5 matters too.

6 **THE COMMISSIONER:** Okay.

7 **MR. MANDERVILLE:** Mr. Lee spoke about the
8 notion of reasonable relevance and if evidence can be
9 reasonably relevant to your mandate. And the Court of
10 Appeal deals with that in paragraphs 68 and 69, within the
11 context of C-12 and C-13.

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

13 **MR. MANDERVILLE:** And in particular, in
14 paragraph 68 they say it may be reasonably relevant if it
15 is evidence of some sort of a systemic failure or a
16 systemic issue but if it stands alone it would not be
17 reasonably relevant to your mandate unless it fit within
18 the core of your mandate.

19 Mr. Seguin, Larry Seguin's evidence, I
20 submit, was an indication of a one-off event, a singular
21 event, certainly did not address an issue to be resolved by
22 way of an institutional response, and I would make similar
23 submissions for the evidence of C-10 concerning Carl Allen,
24 Mr. Petepiece's evidence and that of Mr. Carriere. That
25 they are, each in their own, an indication of a one-off

1 situation and by that I don't mean to diminish it. By
2 that, I mean you've not heard any evidence of a systemic
3 sort of issue associated with that and, as such, based on
4 what the Court of Appeal is saying to you in paragraph 68,
5 it would not fall within the reasonably relevant area of
6 your mandate. And I, as I submitted before, would say that
7 it's not within your core focus of your mandate.

8 Those are my submissions, Mr. Commissioner.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Neville?

11 **--- REPLY BY/RÉPLIQUE PAR MR. NEVILLE:**

12 **MR. NEVILLE:** Thank you, sir.

13 There is some documentary material, Mr.
14 Commissioner, that I had Madam Clerk make copies of and you
15 should have copies there. I'll refer to it in a moment. I
16 have ---

17 **THE COMMISSIONER:** What is it?

18 **MR. NEVILLE:** It deals with the question of
19 whether an issue has been raised in the past about what
20 "young person" means prior to this argument.

21 **THE COMMISSIONER:** Okay.

22 **MR. NEVILLE:** But I'll -- but I'll come to
23 that as my -- it's my third of three points, sir, in reply.

1 If I could deal with -- the three areas in
2 reply, Commissioner, I wish to address you on briefly are
3 these.

4 Whether or not the mandate of this Inquiry
5 relates to allegations of pedophilia, that is to say,
6 sexual abuse of young people.

7 Secondly, the proper approach to the phrase
8 "reasonably relevant".

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

10 **MR. NEVILLE:** And thirdly, the notion of
11 "young person" as a limiting component of the mandate.

12 **THE COMMISSIONER:** Is this reply or is this
13 new?

14 **MR. NEVILLE:** No, this is reply.

15 **THE COMMISSIONER:** Okay.

16 **MR. NEVILLE:** When I addressed you earlier,
17 Commissioner, on the question of sexual versus other types
18 of abuse ---

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

20 **MR. NEVILLE:** --- I had referred you only to
21 paragraphs 42 and 43 of the reasons found at page 15.

22 Could I refer you back, sir, to page 11,
23 paragraph 30, commencing at this point and the reasons,
24 sir, for the -- Justice Moldaver is providing an analysis
25 of what was the factual matrix leading to the wording of

1 the OIC, and in paragraphs 30 to 32 -- and I won't go
2 through them -- he summarizes Part 1 because the factual
3 matrix has two parts.

4 Part 1 is the affidavit of Superintendent
5 McQuade. In relation to that component, he says at
6 paragraph 33:

7 "In my view, this information [that is,
8 her information in the preceding three
9 paragraphs] flushes out the meaning of
10 the first two sentences of the preamble
11 to the OIC and makes it clear that the
12 'allegations of abuse of young people'
13 that had surrounded the City of
14 Cornwall and its citizens for many
15 years, referred to the allegations of
16 historical sexual abuse of young people
17 by persons in authority or positions of
18 trust that were the focus of Project
19 Truth and the police investigations and
20 criminal prosecutions in relation to
21 those allegations that have now
22 concluded."

23 It's then, sir, that Justice Moldaver
24 returns as a second component to the factual matrix to the
25 Hansard references ---

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

2 **MR. NEVILLE:** --- and that goes on for the
3 next several pages and brings us to page 15 and the 2
4 paragraphs quoted earlier to you.

5 **THE COMMISSIONER:** At what -- what
6 paragraphs?

7 **MR. NEVILLE:** Forty-two (42) and on.

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

9 **MR. NEVILLE:** And, of course, having
10 reviewed now the two factual bases -- two bases to the
11 factual matrix, he commences at paragraph 42 with the
12 phrase:

13 "In my view, these extracts are
14 telling..."

15 And I've cited to you the next two
16 paragraphs, however, I didn't refer you and I would now on
17 to paragraph 44:

18 "Had the Commissioner or the majority
19 of the Divisional Court referred to the
20 Hansard extracts [that's the second
21 part of the matrix] and the factual
22 matrixes outlined by Detective
23 Superintendent McQuade in her affidavit
24 filed with the Divisional Court, they
25 would have recognized that the

1 legislative intention in appointing the
2 Inquiry was not to investigate the
3 institutional response to all
4 allegations of abuse in the Cornwall
5 area that pre-date April 14, 2005,
6 including allegations of sexual
7 assaults such as those made by C-12,
8 rather, the legislative intention in
9 ordering the Inquiry was more focussed.
10 The legislature sought to have the
11 Commissioner investigate the
12 institutional response to allegations
13 of historical sexual abuse of young
14 people in the Cornwall area by persons
15 in authority or positions of trust."

16 And then the last sentence.

17 **THE COMMISSIONER:** Yes, I know, but you know
18 when you look back at paragraph 43, it doesn't say there
19 that it's abuse of young people by persons in authority or
20 positions of trust, it says that prominent, local citizens
21 allegedly conspired to cover up the activities of the clan
22 of pedophiles.

23 **MR. NEVILLE:** Right.

24 **THE COMMISSIONER:** So ---

25 **MR. NEVILLE:** Well ---

1 **THE COMMISSIONER:** --- being a little
2 dysfunctional there?

3 **MR. NEVILLE:** Well, I -- I -- if I may say
4 this, sir, I will not accuse Justice Moldaver's reasoning
5 as being dysfunctional. I -- I'll only go with what he
6 wrote and what he wrote is what I've read.

7 **THE COMMISSIONER:** Yes.

8 **MR. NEVILLE:** And he clearly -- and talks at
9 more length in the reasons about people in positions of
10 trust or authority.

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

12 **MR. NEVILLE:** Now, what I say to you then is
13 this, because with all due respect the argument of others
14 today, including Mr. Engelmann, would amount to this, that
15 reliance on paragraph 62 ---

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

17 **MR. NEVILLE:** --- merely because it has the
18 word "conclusion" in front of it would render the
19 paragraphs I've just referred you to, meaningless. That
20 the entire reasoning process of the court, starting in the
21 earlier paragraphs, 33 in particular through to 44, would
22 be meaningless if the whole thrust of the judgement was
23 simply paragraph 62.

24 **THE COMMISSIONER:** Okay.

1 **MR. NEVILLE:** In terms of a concept of
2 "reasonably relevant" then, Commissioner, could I simply
3 refer you to paragraph 21 at page 9 of the reasons.

4 It's at the end of the excerpted passage
5 from Bortolotti, the last four lines. It says:

6 "In deciding whether evidence is
7 reasonably relevant, it is necessary to
8 scrutinize carefully the subject matter
9 of the Inquiry as set forth in Order-
10 in-Council."

11 And what I would suggest to you, sir, is you
12 start first with the Order-in-Council as properly
13 interpreted now with the guidance from this judgement and
14 that tells you what can or might be reasonably relevant.
15 You don't go in reverse. You first say, is it reasonably
16 relevant to the mandate as some of us have argued it to you
17 as being.

18 And, finally, in relation to the question of
19 "young person" and whether it has come up in the past, sir,
20 I provided to you -- because Mr. Lee in his submissions
21 earlier today suggested that a challenge to what that means
22 and who may or may not be a "young person" was raised by my
23 associate, Mr. Cipriano ---

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

1 **MR. NEVILLE:** --- in April of 2006 and I've
2 provided to you a copy of his notice of motion ---

3 **THE COMMISSIONER:** Yes.

4 **MR. NEVILLE:** --- which is Exhibit M2-A1.

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

6 **MR. NEVILLE:** And would refer you in
7 particular ---

8 **THE COMMISSIONER:** Page 33?

9 **MR. NEVILLE:** Well, I'm actually referring
10 you firstly -- yes, to -- you should have a copy, sir, of
11 the notice of motion itself?

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

13 **MR. NEVILLE:** And I refer you to paragraphs
14 18 and 19 and, interestingly for what else you've heard
15 today in particular from myself, he picks actually Mr.
16 Renshaw and sets out that his affidavit indicates at
17 paragraph 2 that he was sexually abused by Father MacDonald
18 in 1983 at the age of 20.

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

20 **MR. NEVILLE:** Since Mr. Renshaw is an adult
21 at the age of 20, he is not a victim of child sexual abuse.

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

23 **MR. NEVILLE:** That was in fact referred to
24 in his oral submissions to you ---

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

1 **MR. NEVILLE:** --- on April 24th and I've
2 given you an excerpt of that.

3 **THE COMMISSIONER:** Yeah.

4 **MR. NEVILLE:** Page 33 as you just mentioned,
5 sir, and I don't have the date. I've printed out a copy of
6 your ruling ---

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

8 **MR. NEVILLE:** --- which, from my standpoint
9 -- I apologize, I don't have a date for it, but it's
10 sometime I believe in June -- your reasons address only the
11 redacting or the removal submission, not the question of
12 what is a young person as set out in the notice of motion.
13 So the fact that there is an issue about what is a young
14 person based on age has, in fact, been brought forward for
15 consideration on a previous occasion in April almost two
16 years ago.

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

18 **MR. NEVILLE:** What I would suggest to you,
19 sir, is this, partly in response to Mr. Engelmann.

20 As a matter of common sense, your mandate is
21 not confined at its lower end -- I emphasize it's lower end
22 -- to the age of 14.

23 For example, taking the age range in Section
24 153, the reason that age is in there, sir, is that there
25 are other sections in the *Criminal Code* that deal with

1 sexual interference and sexual touching and invitation to
2 sexual touching for those under 14.

3 So I would suggest to you that -- certainly
4 I would not argue, I doubt anyone else here would -- that
5 any purported or apparent victim under the age of 14 would
6 be beyond your mandate, but because the phrase was used by
7 provincial legislature and as interpreted to some extent,
8 although minimally, by the Court of Appeal, when I say
9 minimally, for example, its use of the word "pedophile"
10 which has a fairly well understood meaning and you've heard
11 evidence directly on it.

12 So while you are not confined I would
13 concede at the lower end, there is a meaning and a confined
14 meaning at the upper end and I point out this, sir, that
15 the OPP vis-à-vis Project Truth did not have, and were not
16 operating, pursuant to a statutory mandate. They had no
17 definitional restriction on what types of complaints they
18 could look into.

19 But your mandate does have a wording that
20 has been provided by the legislature as interpreted in the
21 Court of Appeal. So the mere fact that Project Truth may
22 have looked at an allegation made by a 24 or 25 year-old is
23 not relevant as to whether your mandate is confined by the
24 wording of the Order-in-Council as properly interpreted
25 because the OPP have no statutory mandate that restricts

1 them.

2 Those are my submissions.

3 **THE COMMISSIONER:** Thank you.

4 All right. So I should be in a position to
5 render a decision on this on Monday afternoon at two.
6 That's when we will reconvene?

7 **MR. ENGELMANN:** At one.

8 **THE COMMISSIONER:** Right. Okay, at one
9 o'clock. So in the meantime, see you then.

10 **MR. ENGELMANN:** Thank you.

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

13 This hearing is adjourned until February 25th
14 at 1:00 p.m.

15 --- Upon adjourning at 2:55 p.m. /

16 --- L'audience est ajournée à 14h55

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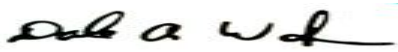
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C E R T I F I C A T I O N

I, Dale Waterman 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, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM