

**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 8

Held at :

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

Monday, February 20, 2006

Tenue à:

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

Lundi, le 20 février 2006

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Louise Mongeon	Registrar
Ms. Raija Pulkkinen	Commission Counsel
Mr. John E. Callaghan Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff Det. Insp. Colleen McQuade Ms. Gina Saccoccio Brannan, Q.C.	Ontario Provincial Police
M ^e Claude Rouleau Mr. Todd Robertson	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Bennett	The Men's Project
M ^e André Ducasse	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles Macdonald
Ms. Sara Siebert	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Peter Engelmann	Professor Nicholas Bala, LL.M.

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NO.	DESCRIPTION	PAGE NO.
22P	Chart - Child Abuse: Reporting and Classification in Health Care Settings - August 1998	97

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

2 L'audience débute à 10h06

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Before we begin, Mr. Bala -- Professor Bala,
11 how are you doing today?

12 **MR. BALA:** Yes.

13 **THE COMMISSIONER:** Good. If you'll bear
14 with me for a moment, I suppose I want to address counsel
15 with respect to a matter that has been, I suppose,
16 bothering me a little bit and that's with respect to
17 motions that should or might want to be brought by some of
18 the parties. Of course, there had been some discussions
19 with my counsel and with the parties as to what kind of
20 accommodations we can make and that's good. That's good.

21 Sometimes, maybe you won't be able to come
22 to a resolution and it has to come before me for a decision
23 and that's fine too. What I want to do, though, is talk
24 about the process of that and what I've done is I had in
25 late January, January the 30th, set some time aside for

1 those motions and I was told or I wasn't taken up on my
2 offer. And then, we set some other days and, finally, it
3 became apparent that we had to set a date and I set a date
4 for next Thursday for motions to be heard.

5 Then regrettably I suppose, I hear words
6 like, "We'll bring motions on notice when we want to", and
7 quite frankly, that just isn't good enough, and I say that
8 not because of me or anyone else. It's process and I think
9 we owe it to the people of Cornwall not to get mired into
10 matters that will delay matters unnecessarily.

11 Another comment I heard was, "Well, we've
12 got lots of time until March 27th to bring these motions",
13 and quite frankly, that isn't good enough either and the
14 reason for that is because while we're not having audiences
15 or hearings from now until March 27th, a lot of things have
16 to be done. And so if we were to have a motion on
17 Thursday, which I hope we will, that would give me time to
18 write up a decision and to let parties decide what they
19 want to do. And if they want to appeal to another court,
20 that's fine, except we will not, and I repeat, we will not
21 slow down this process unnecessarily.

22 Accordingly, if I appear a little perhaps
23 strident and tough, I am with respect to process and I
24 choose to keep my compassion, my patience and understanding
25 where it really counts and that's with the witnesses that

1 will be participating in this inquiry.

2 Accordingly, with respect to process, if we
3 want to and we have to get 14 lawyers in here, I will order
4 you to come. Hopefully, that won't have to happen and
5 hopefully we can resolve the matters of process in a
6 civilized and decent fashion. So there we go on a Monday
7 morning.

8 Now, where that leaves us, you may wish to
9 speak to Mr. Engelmann at the break to find out where and
10 how we can accommodate your wishes. Now, I understand some
11 lawyers may not have been available for next Thursday and
12 what I'm prepared to do is to open up three more days
13 before the break and that would be next Monday, Tuesday or
14 Wednesday.

15 Now, the difficulty with that, of course, is
16 that those days haven't been marked on the calendar and
17 lawyers are busy people and they may have already booked
18 those days. In any event, the best I can do is offer those
19 three days and if not, if not, then we'll hear it on March
20 27th and we'll hear explanations as to why they couldn't
21 have been brought any earlier.

22 All right. So on that, let's begin.

23 Professor Bala, you're here to be cross-
24 examined. You understand that you have given a promise to
25 tell the truth and you're still bound by that promise, sir?

1 **MR. BALA:** Yes.

2 **NICHOLAS BALA, Resumed/Sous affirmation solennelle:**

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

4 Mr. Engelmann.

5 **MR. ENGELMANN:** Commissioner, I understand
6 that we're going to be following the same order we have
7 been and so therefore, the Citizens for Community Renewal
8 would start and today that is Mr. Manson in place of Mr.
9 Wardle.

10 **THE COMMISSIONER:** Mr. Manson, there you go.
11 Good morning, Mr. Manson.

12 **MR. MANSON:** Good morning, Mr. Commissioner.
13 I hope I can manage with this high tech
14 approach but you may have to just bear with me. I'm going
15 to go a bit slowly.

16 **THE COMMISSIONER:** And for that we have all
17 the patience in the world, Mr. Manson.

18 **MR. MANSON:** Thank you.

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

20 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
21 **MANSON:**

22 **MR. MANSON:** Professor Bala, I've read the
23 transcript from last week and I have your lengthy CV and
24 what I want to suggest to you is that your expertise goes
25 beyond the academic sphere and that throughout your career,

1 you've played a quite significant role in the development
2 of policy in the areas of child and youth sexual and
3 physical abuse.

4 **MR. BALA:** Yes. I mean significant that I
5 spent quite a lot of time on it. I'm not so sure about the
6 impact that I've had but I've certainly been engaged in it.

7 **MR. MANSON:** And that's been based both on
8 your academic work and also formally you've given advice
9 and been consulted by various ministries and various task
10 forces in special reviews.

11 **MR. BALA:** Yes, I've participated in some
12 and wrote some reports.

13 **MR. MANSON:** So the issue of governmental
14 policy, its development and its implementation, is
15 something well within your expertise?

16 **MR. BALA:** In a broad sense, yes, there are
17 some areas that are quite technical that I would know less
18 about.

19 **MR. MANSON:** And in the course of this
20 career, I just want to make it clear that while you're a
21 lawyer, aside from working with judges and other lawyers,
22 you have also been involved with child welfare workers,
23 probation officers and police officers.

24 **MR. BALA:** Yes, and I've worked with
25 psychologists, social workers and so on, yes.

1 **MR. MANSON:** Thank you.

2 Now, I only have a few questions but I want
3 to concentrate on the period 1985 to 1989 in Canada
4 generally and in Ontario particularly.

5 So let me first start with the Badgley
6 Report which you've referred to and it is Tab 5 in the Book
7 of Documents and this was a report that was released on
8 August 22nd, 1984?

9 **MR. BALA:** Yes, I believe that's the date.

10 **MR. MANSON:** And it was entitled "Sexual
11 Offences against Children".

12 **MR. BALA:** Yes.

13 **MR. MANSON:** And I just want to refer to two
14 parts of it. Right on the first page, we have the report
15 saying:

16 "Child sexual abuse is a largely hidden
17 yet pervasive tragedy that has damaged
18 the lives of tens of thousands of
19 Canadian children and youths."

20 **THE COMMISSIONER:** Hold on a minute now.
21 You have to let technology catch up to you for a minute.

22 **MR. MANSON:** Oh, when I said page 1, I meant
23 page 1 of the report. I'm not sure what page of the file.

24 **MR. BALA:** Yes. It's titled "The National
25 Concern" there.

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

2 **MR. BALA:** One more page.

3 **THE COMMISSIONER:** All right. And where
4 were you?

5 **MR. BALA:** About the beginning of the fourth
6 paragraph.

7 **MR. MANSON:** Yes.

8 **THE COMMISSIONER:** Right. Okay.

9 **MR. MANSON:** "Child sexual abuse is a
10 largely hidden yet pervasive tragedy
11 that has damaged the lives of tens of
12 thousands of Canadian children and
13 youth."

14 What I want to suggest to you is that this
15 document in 1984 should be characterized as both a wake-up
16 call and a flashing amber light about the extent and nature
17 of the problem of child sexual abuse in Canada.

18 **MR. BALA:** Yes, I think it certainly had the
19 effect of documenting in some measure the extent of the
20 problem and it began -- and some would say there was
21 already -- before that, there was some awareness of it.
22 But certainly with this report, not only in the academic
23 community but I think in the professional community and in
24 government circles, there was a greater awareness of both
25 the extent of the problem, the inadequacies of Canadian

1 legislation, the inadequacy of Canadian programs, protocols
2 and policies and so on in that it began a process of change
3 in the legal system, in the social service system, the
4 child welfare system and so on that really in some ways has
5 taken 20 years. We have seen 20 years of progress but it
6 began that process, yes.

7 **MR. MANSON:** And when you say "and so on"
8 you are including law enforcement and the prosecutorial
9 process?

10 **MR. BALA:** Absolutely, and changed the
11 legislation in resources and training.

12 **MR. MANSON:** And in fact, if I could take
13 you to Recommendation 29 which is at page 38 of the
14 document and page 43 of the file ---

15 **THE COMMISSIONER:** I'm sorry, you are saying
16 Recommendation 29?

17 **MR. MANSON:** Twenty-nine (29).

18 **THE COMMISSIONER:** Yes.

19 **MR. MANSON:** Which I believe ---

20 **THE COMMISSIONER:** You have it, yes.

21 **MR. BALA:** Yes.

22 **MR. MANSON:** The first part of that is:

23 "... to develop minimum standards of
24 services to be provided by each of the
25 main public services, police, medical

1 and child protection services in
2 relation to the investigation,
3 assessment and care of sexually abused
4 children."

5 **MR. BALA:** Yes, that was a very important
6 part of the recommendation, bearing in mind that this was a
7 federally-appointed committee and they were aware of the
8 limitations of federal jurisdiction but, I think quite
9 appropriately, they somewhat went beyond and made
10 recommendations that were directed at the provinces as
11 well.

12 **MR. MANSON:** And this would be a clarion
13 call to the provinces?

14 **MR. BALA:** Yes.

15 **MR. MANSON:** We will come back to the
16 provinces in a moment.

17 If I can take you to Tab 7, which is a
18 document that you worked on ---

19 **MR. BALA:** Well, in fact, I wrote that by
20 myself.

21 **MR. MANSON:** And it was prepared for the
22 Institute for the Prevention of Child Abuse?

23 **MR. BALA:** Yes.

24 **MR. MANSON:** Known in the business as IPCA?

25 **MR. BALA:** Yes.

1 **MR. MANSON:** Does IPCA still exist?

2 **MR. BALA:** No, it existed -- I'm not 100 per
3 cent certain of the start date but I believe it was setup
4 in 1985. It was certainly going in 1987 and it was ended
5 by the previous government here in Ontario. The
6 Conservative government ceased funding for it so it ended
7 in, I think, 1995. So it was in existence -- in fact, I'm
8 sure it was 1995. It was in existence for 10 years.

9 **MR. MANSON:** And this document was prepared
10 in 1988?

11 **MR. BALA:** Yes.

12 **MR. MANSON:** And it was used as the basis
13 for forums held across Ontario to discuss the issues of
14 dealing with sexual abuse cases?

15 **MR. BALA:** Well, IPCA had a number of forums
16 specifically around Bill C-15 of the federal legislation,
17 and this was the text of one of the addresses, the one that
18 I gave in Toronto. There was another forum in London that
19 I did not attend but another similar speech was given
20 there. There was one in Thunder Bay.

21 IPCA generally was going around the province
22 and conducting training for frontline workers; police,
23 child protection, medical, nursing and so on. As I
24 indicated, I was just one of many or a number of people
25 working for them. I don't have a detailed list of exactly

1 where they went or where their sessions were. Some of them
2 were done to be short in that they were a day or two. Some
3 of them were a week long.

4 **MR. MANSON:** And this is 1988?

5 **MR. BALA:** Yes, this was certainly going on
6 '87-'88 and into the early 90's.

7 **MR. MANSON:** If I can just take you to your
8 transcript from last week, February 14 -- just give me a
9 second to close one document and open the next?

10 **MR. ENGELMANN:** I am just wondering if the
11 clerk can give the witness a hard copy of the transcript?

12 **MR. MANSON:** Sure. He will have it on his
13 screen.

14 **MR. ENGELMANN:** Yes, I know.

15 **THE COMMISSIONER:** Okay.

16 **(SHORT PAUSE/COURTE PAUSE)**

17 **MR. BALA:** Thank you.

18 **MR. MANSON:** I want to take you to page 181
19 and this is where you make the comment about the glass
20 being -- this is 181 of the transcript, not of the file.

21 **MR. BALA:** Yes.

22 **MR. MANSON:** It's 186 of the file. This is
23 where you make the comment -- oh, no, I'm sorry. I must
24 have the wrong -- well, I do have the wrong date. Sorry.
25 It is page 181 of this transcript. I'm the one who --

1 there I've got it.

2 This is where you make the comment in answer
3 to a question by Mr. Engelmann -- and you're speaking about
4 1989 and the time of the commencement of the Mount Cashel
5 Inquiry.

6 **MR. BALA:** Yes.

7 **MR. MANSON:** And you're referring
8 specifically to prosecution and you say:

9 "It depends on how you see it."

10 You make the comment:

11 "Is the glass half full or half empty?
12 We are certainly seeing more
13 prosecutions, more successful
14 prosecutions. There was also -- at
15 that time I was involved in doing
16 research about the cases that were not
17 successful, if you want, and there was
18 pretty strong evidence of abuse and the
19 Crown was not able to get a conviction.
20 So there was still lots of room for
21 improvement in different kinds of
22 aspects of the legal system."

23 I just want to clarify that you're referring
24 to 1989 at this point?

25 **MR. BALA:** Yes, I think -- and you're

1 correct identifying 1988 was the -- 1984, excuse me, the
2 Badgley Report was a watershed event, 1988 -- I mean
3 particularly talking about the criminal justice system --
4 1988 a watershed event with the enactment and proclamation
5 to force of Bill C-15. So major changes and, as with most
6 legislation changes, it takes time to go from the
7 proclamation to force to see effective enforcement of that
8 law.

9 For example, the law -- and one of the
10 pieces of research that's in my CV that I did actually with
11 IPCA, we did a survey -- we were doing a survey of
12 professionals saying how child protection -- how child
13 abuse prosecution is going. And, for example, we heard,
14 "Well, the law has been enacted to allow use of screens and
15 videotapes. In our community we don't have it. In other
16 communities, they were having it".

17 So there was a lot of unevenness or some
18 unevenness in the implementation of the Act in terms of
19 resources, training and so on, but we were seeing quite
20 marked improvements. We were also seeing cases that either
21 were improperly investigated, were unsuccessfully
22 prosecuted and so on. And people in the profession were
23 saying, "You know, maybe with some more resources or some
24 more training we could have been successful in this case,
25 so perhaps more legislative change as well".

1 **MR. MANSON:** But with respect to legislative
2 change, when we are talking about screens, we are talking
3 about problems that relate to the child as witness?

4 **MR. BALA:** Yes.

5 **MR. MANSON:** We're not talking about the
6 historical cases where the witness is an adult?

7 **MR. BALA:** No, and none of these changes,
8 actually, until this year would have dealt with historical
9 abuse. Today, we have, as we know, the Bill C-2 changes.
10 We have facilitation of giving evidence by adults who are
11 vulnerable. That really didn't happen until 2005-2006.

12 **MR. MANSON:** But leaving aside the prospect
13 of legislative change, when you are talking about room for
14 improvement, going back to 1989, your concern there are the
15 unsuccessful prosecutions that have had problems at the
16 interrogation stage, problems at the marshalling of
17 evidence stage and, indeed, problems at the prosecution
18 stage.

19 **MR. BALA:** Yes, and the major focus of my
20 work, although I've done a little bit with -- around issues
21 with historic abuse, was with people who were children at
22 that time.

23 **MR. MANSON:** Yes.

24 **MR. BALA:** And that was all what this
25 discussion is about. Although, at the same time, with the

1 inquiry, the Hughes Inquiry starting in Newfoundland, there
2 was a growing awareness of issues of historic abuse and
3 there's an obvious relationship between them.

4 MR. BALA: And you say Hughes inquiry, you
5 talk about Mount Cashel ---

6 MR. MANSON: The Mount Cashel ---

7 MR. BALA: --- starting in 1989?

8 MR. MANSON: I believe in the fall of 1989
9 the Hughes Inquiry was starting. There had been certainly
10 some publicity around the situation at Mount Cashel in the
11 late '80s before the inquiry started. Of course, there
12 were some criminal cases that were going on, later some
13 civil cases, but in my memory, the public inquiry that
14 started in the fall 1989 was in many ways a -- it was not
15 only having an effect in Newfoundland but elsewhere across
16 the country and I think this was documented to some extent,
17 including in Kingston, that adult survivors of -- male
18 adult survivors were looking at what was going on, were
19 seeing the publicity, seeing some of the hearings on
20 television and realizing that they too could come forward
21 or should come forward, that they had, in some case they
22 would say, a moral responsibility to come forward to
23 protect people who were now children; in other case, the
24 responsibility to come forth to hold people accountable.

25 And so we saw a significant change in the

1 level of understanding of abuse of males in institutional
2 settings or by persons in position of responsibility.

3 And, indeed, there was a discussion I think
4 in a previous hearing. I and others were writing about the
5 need to have policies to deal with a range of child-serving
6 institutions. So it was not just orphanages and as we saw
7 in Kingston, it could be children who are living at home
8 who were going into a choir, sport settings, boy scouts,
9 and so on.

10 And, indeed, it was not just in Canada. We
11 were seeing similar cases going forward in the United
12 States and this was an increase in both public and
13 professional awareness at that time.

14 **MR. MANSON:** If I can change the pace for a
15 minute, I want to move to page 183. Mr. Englemann was just
16 getting you to speak about some of the major cases, and I
17 don't want to do that. I don't want to get into those. I
18 have a question about Kingston that I will ask you later,
19 but what I want to point to is line 11 to line 15 where you
20 say:

21 "There are cases that were getting the
22 most public attention often because
23 they involved multiple victims,
24 sometimes multiple offenders, often
25 some kind of public institution, and

1 when I say public, I mean very broadly
2 it could include a church or a school."

3 I want to suggest to you that when you say
4 "it could include a church," you are saying it depends on
5 why we're asking the question of who is a public -- what is
6 a public institution, and it depends on the way a
7 particular church has acted or performed historically in a
8 particular community.

9 Isn't that your meaning there, that it's not
10 a clear black and white question?

11 **MR. BALA:** That's right. I think that --
12 and, indeed, with schools, we have public schools, private
13 schools. I think in many ways, obviously, churches are not
14 public institution, but they have some very public
15 dimensions to them.

16 **MR. MANSON:** But you'd agree that what we
17 have to ask is, first, why are we asking the question of
18 what's a public institution and, secondly, how has an
19 institution like a church played a role historically in
20 this particular community?

21 **MR. BALA:** Yes.

22 **MR. MANSON:** Thank you.

23 I know I had troubles with computers, but I
24 thought I mastered the microphone.

25 **(LAUGHTER/RIRES)**

1 **MR. MANSON:** Apparently not.

2 I just want to take you to one more part of
3 the transcript, page 211. This would be my last reference
4 to the transcript. It's page 211 of the transcript, page
5 216 of the file and at line 7 to 11. This is Mr. Bala:

6 "I think by the late 1980s in Canada
7 there was a recognition that child-
8 serving institutions, youth-serving
9 institutions had to have a protocol, a
10 set of policies in place to deal with
11 allegations of abuse in both the cases
12 where children were disclosing."

13 And then you go on to some other issues and
14 talk about other ways that sexual abuse was disclosed.

15 But what I want to suggest to you is that
16 going back to the late '80s, it's not just youth-serving
17 institutions that ought to have recognized their needs to
18 address this problem, but it's also justice institutions
19 and law enforcement agencies.

20 **MR. BALA:** Oh, yes. And this particular
21 question, if I recall, was in the context of a publication
22 that I wrote for a consortium of ---

23 **MR. MANSON:** Put the child first.

24 **MR. BALA:** Right. Exactly.

25 And I should say youth-serving organizations

1 is certainly broadly defined to include schools, church
2 choirs, as we saw in Kingston, and volunteer organizations,
3 hockey and so on. So this is the focus on youth-serving
4 organizations and certainly at the time there was a
5 recognition that police, particularly police and child
6 protection agencies had to do a better job of coordinating.
7 And so, you know, we can go, -- in some levels, to go back,
8 there was certainly a level of awareness at the time of the
9 Badgley Report in 1984, but in even in 1990, Rix Rogers was
10 writing about the need to establish ---

11 **MR. MANSON:** I'm going to get to the Rogers
12 Report in a second.

13 What I'd like to take you to now is Tab 8,
14 your article "Child Sexual Abuse Prosecutions in Canada: A
15 Measure of Progress," and this is published in a 1992
16 journal called the *Annals of Health Law*. But you gave an
17 earlier version of this at a conference in Montreal in the
18 summer of 1991, didn't you?

19 **MR. BALA:** I certainly gave an earlier
20 version of it somewhere.

21 **MR. MANSON:** I checked out your CV and it
22 has "Montreal 1991."

23 **MR. BALA:** Well, I can look back if it
24 matters. Yes.

25 **MR. MANSON:** Well, let me get to my real

1 question. When did you do the research and the writing for
2 this? It obviously wasn't 1992. It was earlier.

3 **MR. BALA:** Yes. It was leading up to that
4 and I was giving a number of different papers and
5 presentations around that time. I think, as my CV
6 indicates, primarily in Canada in different parts of the
7 country, to difference audiences; so some were to
8 professional audiences, some were to audiences of lawyers
9 and judges, some were less sophisticated, technically
10 sophisticated, legally sophisticated such as social workers
11 and so on, and this particular version of it or direction
12 was going towards a more international audience so to set
13 more of a context.

14 **MR. MANSON:** But you would agree with me
15 that the work that went into this is roughly 1990 work, so
16 it -- if we want to put it in time.

17 **MR. BALA:** Well, I think if -- my
18 recollection, actually, was that I gave this in -- to a
19 conference elsewhere when you said Montreal, but it was
20 certainly before 1992. It would have been -- I think if
21 you look back to my CV, full CV in Tab 1, at pages 23 and
22 24, you can see a number of presentations that I gave
23 around child witness issues. For example, at number 28 --
24 page 24, number 28 "Double Victims: Child Sexual Abuse and
25 the Canadian Criminal Justice System," I gave that paper to

1 ---

2 **MR. MANSON:** I'm looking at number 37
3 "Prosecuting Child Sexual Abuse Cases by any Measure of
4 Progress, Comparative Health Law Conference, Montreal, June
5 1991."

6 **MR. BALA:** Right, and that was probably the
7 version that ended up in the paper. It certainly sounds
8 like it fits the best, but I would just note for you there
9 were a number of other -- '89, there was a presentation in
10 Kananaskis to a group of judges and ---

11 **MR. MANSON:** If I could just interrupt you.
12 That's exactly my point; it's that the general observations
13 that you're making, this 1992 article, are things that
14 would have been clear to you in 1990 or earlier.

15 **MR. BALA:** And then I was writing about '89,
16 '90, '91, those were conference presentations, and a
17 version that got published in that particular publication.

18 **MR. MANSON:** You weren't writing about '89,
19 '90, you were writing for '89, '90 and '91.

20 **MR. BALA:** I was ---

21 **MR. MANSON:** You were making these
22 presentations in '89, '90 ---

23 **MR. BALA:** Yes, yes.

24 **MR. MANSON:** And they had both the
25 retrospectives, so some of the references there go back in

1 the '80s and even earlier. There was a lot of discussion
2 about the legislative reform and then also about the Common
3 Law reform.

4 **MR. MANSON:** Let me just read you the first
5 paragraph:

6 "Until the early 1980s, child sexual abuse was a
7 virtually ignored social phenomenon in Canada.
8 It is now clear that the cases reported to the
9 police and child protection authorities were a
10 small fraction of the actual incidence of abuse.
11 The legal system, especially the criminal justice
12 system contributed to the perception that child
13 sexual abuse was not a widespread problem and,
14 indeed, that many of the cases reported were
15 unfounded. Canadian law was premised on the
16 notion that victims of sexual abuse, particularly
17 children, are inherently unreliable. The courts
18 frequently dismissed the evidence of children and
19 made it difficult for children to even be heard
20 as witnesses. Too often, the legal system
21 produced secondary traumatisation of those
22 children who were witnesses."

23 And I am just going to read one more sentence.

24 "In the last decade, there has been a dramatic
25 change in attitudes and awareness concerning

1 child sexual abuse as well as enormous increases
2 in numbers of reported cases".

3 And I want to suggest to you that this
4 dramatic change is, as we said before, both with respect to
5 the awareness of the extent of the problem and the special
6 nature of prosecuting these kinds of cases.

7 **MR. BALA:** Yes.

8 **MR. MANSON:** Thank you.

9 I want to now move to Tab 14 which is the
10 "Put the Child First" document, which you've spoken about.
11 And again, let me remind you, Professor Bala, that I'm
12 mostly concerned with the 1985 to 1989 period. This was
13 published in 1989.

14 **MR. BALA:** Yes.

15 **MR. MANSON:** And it makes a number of
16 recommendations. I want to look at page 4 of the document,
17 which is page 8 of the file.

18 In 1989, you are recommending that these
19 organizations,

20 "...youth-serving organizations meet with child
21 protection services and police to develop a
22 community-wide procedure".

23 I want to suggest to you that this
24 recommendation wasn't meant only for large cities but was
25 meant for small centers, rural communities.

1 **MR. BALA:** Yes.

2 **MR. MANSON:** This is a general
3 recommendation of a need that has to be addressed.

4 **MR. BALA:** Yes. We were certainly aware of,
5 in writing this report, that Canada is a big country and I
6 think it's also fair to point out that there can be
7 knowledge and priorities of academics or people in Ottawa
8 or whatever that takes time to filter through the entire
9 country.

10 But, yes, we were certainly aware of it, and
11 indeed in writing this, I think I put out in the last
12 session, that this was actually written together with some
13 other materials and a video that were, in fact, taken
14 across the country by other people, not myself, at so-
15 called "Trainer Sessions" when people were brought in from
16 different parts of each province and each region to learn
17 about what the organization could do. But in many cases,
18 it took months or even years for this to get everywhere.

19 We certainly gained, you know, we could see
20 -- by the end of the decade -- in the next decade, by the
21 late 1990s, it was certainly very, very widespread
22 awareness and very definite institutional responses.

23 So we were -- in fairness, we were in a time
24 of change ---

25 **MR. MANSON:** Yes.

1 **MR. BALA:** --- and in some places it was
2 going more quickly than others.

3 **MR. MANSON:** And another recommendation that
4 you made in about a child abuse resource person. I take it
5 you are suggesting that organizations like the Scouts, like
6 Big Brothers have to be proactive and they should have
7 someone especially trained in advance who knows how to deal
8 with the problems of sexual and physical abuse of children
9 and youths.

10 **MR. BALA:** Yes. The bigger the
11 organization, the more important it would be to have
12 somebody in that kind of role.

13 **MR. MANSON:** And I want to suggest to you
14 that had you been asked in 1989 about whether law
15 enforcement and other justice related organizations ought
16 to be proactive like this, you would have said, "Of
17 course."

18 **MR. BALA:** Yes, and indeed, and we'll come
19 to the Rix Rogers Report; that was where my work in that
20 area was going.

21 **MR. MANSON:** I want to make just one more
22 reference to Child First; there is a number of
23 recommendations about file keeping and confidentiality.
24 And I want to -- that's at page 5 of the report, which is
25 page 9 of the file; "How can the report be kept

1 confidential?"

2 I want to suggest to you that at this stage,
3 you were sensitive to the role that case files can play in
4 future prosecutions and that you were also sensitive to
5 concerns about premature dissemination or the dissemination
6 of intentionally false allegations.

7 **MR. BALA:** Yes.

8 **MR. MANSON:** And one of your concerns about
9 premature disseminations or the dissemination of
10 intentionally false allegations is the issue of rumor in a
11 community.

12 **MR. BALA:** Yes, that would be one of them.

13 **MR. MANSON:** If we can now move to the
14 Roger's report, which is at Tab 15, it's called "Reaching
15 for Solutions". And this is issued in 1990, but is the
16 result of research conducted between 1988 and 1989.

17 **MR. BALA:** And into 1990, yes.

18 **MR. MANSON:** And I'll just summarize, in
19 Chapter 5, it deals with child sexual abuse and the justice
20 system, and it includes a number of recommendations dealing
21 with prosecutorial policy, local protocols and special
22 training for both law enforcement and prosecutorial
23 officials.

24 **MR. BALA:** Yes. Twenty-two (22)?

25 **MR. MANSON:** And I would suggest to you---

1 **MR. BALA:** This is on page 22 of the ---

2 **MR. MANSON:** Yes, page 20 of the file. And
3 then at page 27, there is some more recommendations
4 specifically about training.

5 **MR. BALA:** Yes.

6 **MR. MANSON:** And I want to suggest to you
7 that June 1990, it ought to be clear to anyone involved in
8 law enforcement or prosecution that there is a need for
9 protocols, how to pursue a particular investigation and a
10 need for specialized training that these are not just like
11 any prosecution.

12 **MR. BALA:** Well, there was certainly an
13 awareness of it in when the people that I was working with
14 -- and I should say that this report was partly based on
15 research, but it was also based on a lot of consultations
16 with leaders of various professional communities, including
17 the police community. So the leaders of that community in
18 Canada were certainly aware of this.

19 **MR. MANSON:** Let me move to two more issues
20 with respect to policies and awareness. Let's be specific
21 about the Ontario government and let's be specific about
22 the periods of 1985 to 1990.

23 The Ministries who would be involved with
24 the particular issue of sexual and physical abuse of
25 children and youths would be the Attorney General's

1 Ministry, COMSOC, Community and Social Services, I believe
2 it was called Solicitor General at the time, it was
3 responsible for law enforcement or at least the OPP, and
4 Corrections.

5 Is that correct, those four?

6 **MR. BALA:** Well, certainly those four; I
7 think also Education and Health.

8 **MR. MANSON:** Excellent.

9 And looking back to the 1985 to 1990 period,
10 in each of those Ministries, we would find officials whose
11 responsibilities were dedicated to this issue now.

12 **MR. BALA:** I would assume so, in whole or in
13 part, but there was certainly -- I was attending meetings
14 with people who were responsible, yes.

15 And I can go back -- I actually sat on a
16 committee that -- well, I'll have to go back and look...

17 **MR. MANSON:** No, that's okay. My point is,
18 if we went to one of these ministries during 1980 to 1985,
19 for example, it might be hard to find someone who's
20 dedicated to the responsibility of these issues. But if we
21 went between 1985 and 1990, there were people who were
22 either entirely dedicated or partly dedicated to these
23 specific issues.

24 **MR. BALA:** Yes, and who would be responsible
25 then for policies, training, funding and working with other

1 ministries. One of the things about dealing with child
2 sexual abuse is, it is an issue that requires coordination
3 of different community agencies and that means coordination
4 in the capital, in Toronto and also at the local level.
5 And I can ---

6 **MR. MANSON:** That was exactly my next
7 question. Their work would involve developing policies,
8 developing training, implementing policies, but also
9 working on coordination amongst those relevant ministries.

10 **MR. BALA:** That's right and bearing in mind,
11 that government is a complex place and things sometimes
12 move much more slowly than one would hope.

13 **MR. MANSON:** But across that spectrum of
14 ministries, one thing that would be common is we would find
15 a recognition of the need for specialized training, to deal
16 with cases of child and youth sexual and physical abuse.

17 **MR. BALA:** Yes. Yes.

18 **MR. MANSON:** Let me take you to the Kingston
19 Case that you talked about in your Examination in Chief.
20 This is the choirmaster and you recall that it became a
21 formal investigation and prosecution in part because of the
22 suicide of a young man who was attending an Ivy League
23 college and the efforts of his parents.

24 **MR. BALA:** Yes.

25 **MR. MANSON:** I want to just ask you two

1 questions about -- and this is a multiple victim, single
2 abuser case, but a multiple victim over a period of time.

3 **MR. BALA:** I think that -- and my knowledge
4 of this case is, of course, second-hand, third-hand if you
5 want, but my understanding is that there was some
6 suggestion that there may have been other perpetrators as
7 well, but there was one primary perpetrator ---

8 **MR. MANSON:** There was one person who was
9 prosecuted.

10 **MR. BALA:** Yes, there was one -- I actually
11 think there was a second prosecution, but in any event,
12 there was primarily one. Yes.

13 **MR. MANSON:** I want to put to you, two
14 lessons that -- and this again is the late '80s and it's
15 Kingston, Ontario, which is Eastern Ontario -- two lessons
16 that we ought to learn from this abuse case.

17 **MR. BALA:** Yes, and I should say if -- the
18 investigation is going on starting in '89, I believe, and
19 the publicity and the charges, I think, are 1990.

20 **MR. MANSON:** One lesson would be; when an
21 adult observer is a respected community member, it's often
22 difficult for a variety of reasons for victims, even
23 educated, mature victims to make their abuse public, by
24 formally complaining.

25 **MR. BALA:** Absolutely. I think that was

1 very graphically and in some cases, tragically indicated.
2 I think the young man who you are referring to, Mr. Franks,
3 actually at one point went to the police and said, "I have
4 been abused. I am prepared to make a statement, but I'm
5 not prepared to have you do anything about this unless
6 there are others who come forward. I don't want to bear
7 this responsibility."

8 **MR. MANSON:** That's exactly my next
9 question. And this is my last question. The second lesson
10 -- I'm sure there's a variety of lessons that someone with
11 your expertise could draw from this, but the second lesson
12 that I would suggest to you is, that this difficulty in
13 coming forward is compounded if there is a history or even
14 a rumour of history that's similar complaints had been
15 ignored in the past.

16 **MR. BALA:** Well, certainly the first lesson
17 is very much they have a difficulty in coming forward and
18 there were -- and certainly one of the issues in the
19 Kingston Case that was amply documented was that there were
20 a series of reports to somewhat different people at
21 somewhat different points in time, and I think that it was
22 certainly clear that, at least with hindsight, that people
23 in positions responsible had not taken these seriously or
24 at least were not protecting the children who were there.

25 **MR. MANSON:** And, if I could just interrupt

1 you for a second. That kind of history compounds the
2 difficulties for an individual victim to make a decision
3 about coming forward.

4 **MR. BALA:** I'm not sure that I would
5 necessarily draw that -- say that lesson was learned, but
6 it certainly was a big issue there. I mean there is no
7 doubt that if people are aware that others have reported
8 and those reports were not acted upon, it would make them
9 more reluctant. But I think there was a lot going on there
10 and I'm not sure that that was a determinative factor in
11 why people were being reluctant to come forward. I think
12 there's a lot of shame, embarrassment, guilt, pressure ---

13 **MR. MANSON:** --- fear ---

14 **MR. BALA:** --- fear. All those things.

15 **MR. MANSON:** I'm simply suggesting that a
16 history of ignoring complaints can only compound those
17 other factors that make it difficult for someone to come
18 forward with a formal complaint.

19 **MR. BALA:** Yes, and I think most
20 significantly the history of ignoring complaints means that
21 the abuse continues. And in fact, I think one of the
22 lessons of the Kingston Cathedral abuse was that, you can't
23 trust a pedophile and say, "Well, you know, we've talked to
24 Joe, and he's not going to do it anymore, so it's okay."
25 And that simple -- you have to take very direct action and

1 ultimately, in fact, you have to hold people accountable
2 and call in the police or they're going to go on abusing
3 kids, which is exactly what happened in Kingston.

4 **MR. MANSON:** Thank you, Professor Bala.
5 Those are all my questions.

6 **THE COMMISSIONER:** Thank you, Mr. Manson.
7 Mr. Bennett.
8 Who's next?

9 **MR. LEE:** I think I'm next.

10 **THE COMMISSIONER:** You're next. Sorry.
11 Okay.

12 Mr. Manson, did you have something else?

13 **MR. MANSON:** No, I'm just closing up my
14 machine. I apologize. I'll be gone in a few seconds.

15 **THE COMMISSIONER:** Oh, no. Take your time.
16 Oh, yes. That's right, Mr. Lee.

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

18 **MR. BALA:** Mr. Commissioner, am I entitled
19 to know who the lawyers are representing?

20 **THE COMMISSIONER:** Oh, yes. I'm sorry. Mr.
21 Lee acts for the Victims Group.

22 **MR. BALA:** Thank you.

23 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:**

24 **MR. LEE:** Good morning, Professor Bala.

25 **MR. BALA:** Good morning.

1 **MR. LEE:** I'd like to start by discussing
2 the law a little bit and you have spent a lot of time, both
3 In-Chief and a little bit this morning talking about the
4 amendments to the *Criminal Code* in 1988.

5 **MR. BALA:** Yes.

6 **MR. LEE:** I'd like to go back to before that
7 time. I know in your outline, you mention the fact that
8 really the criminal law in relation to child sexual abuse
9 hadn't changed much since 1890, I think was the date you
10 gave, up until the amendments in 1988. Can you tell us
11 what was prohibited under the *Code*, in relation to
12 childhood sexual abuse, before the 1988 amendments?

13 **MR. BALA:** Speaking from memory, as opposed
14 to -- and I have some points written about this, I would
15 want to look at the *Criminal Code* and indeed, people who
16 are now being charged with offences that occurred then,
17 would be charged under those old provisions. But I think
18 that the focus was on acts of penetration, for example, as
19 opposed to fondling or invitation to sexual touching.
20 There was less emphasis or recognition of issues of abuse
21 of positions of responsibility and authority. There were
22 offences that were specific to males and females.

23 Some changes, by the way, occurred in 1983,
24 with the changes to more gender-neutral language. So it
25 was a process of change in regard to the offence

1 provisions.

2 But I'm reluctant to answer a specific
3 question without having the -- and you're talking about
4 between '83 and '88 or pre-'83 -- some of the provisions
5 changed in '83.

6 **MR. LEE:** Can you explain exactly what the
7 1983 changes were?

8 **MR. BALA:** In 1983, there were significant
9 changes to the offence provisions related to sexual
10 assault. We move from rape, which was -- and some other
11 gender-specific offences to ones that were more gender-
12 neutral and definitely gender-neutral language and gender-
13 neutral concepts. I think as I pointed out last session,
14 the concept of marital rape was introduced, if you want, a
15 husband could no longer say that he had the right to have
16 sexual relations with his wife in 1983. I would have to
17 have those provisions. I'm certainly prepared to get those
18 out. I was encouraged not to bring anything to the stand
19 that was not in the hands of everybody. So I can't tell
20 you in detail exactly what those provisions were.

21 **MR. LEE:** And I'm not sure we need to go
22 into a tremendous amount of detail. I am curious what you
23 mean by gender neutral, though. I take it what you mean by
24 that is that in 1983 there was a greater recognition that a
25 male could sexually assault a male.

1 Is that correct?

2 **MR. BALA:** Yes. Well, there was always a
3 recognition and, in particular, anal intercourse; buggery
4 were -- there were specific criminal and in fact, there
5 were offences that were -- actually, consensual sexual
6 relations between males were an offence prior to 1969. So
7 in 1969 we had changes to remove the prohibition against
8 adults engaging in consensual anal intercourse. So we had
9 another change in 1969, a change in 1983, but 18 would be a
10 significant -- and there were different ages for different
11 kinds of offences. So some of it was 18, the age of
12 consent, some of it was 14, and so you had different
13 provisions with different ages.

14 But in 1983, in significant measure, we
15 moved from more gender-specific offences to ones that were
16 more gender neutral. There were also some very vague
17 provisions like, for example, gross indecency that were
18 removed in 1983.

19 **MR. LEE:** From your memory, prior to 1983,
20 is it at least fair to say that intercourse between an
21 adult and a child was illegal?

22 **MR. BALA:** Was illegal?

23 **MR. LEE:** Yes.

24 **MR. BALA:** Yes.

25 **MR. LEE:** And you mentioned that there were

1 some either ambiguity or there were some changes with
2 respect to fondling and invitation to sexual touching?

3 **MR. BALA:** In '88.

4 **MR. LEE:** Okay. If we set aside the
5 invitation side of it and just move on to the fondling,
6 prior to 1983 or 1988, or whatever date you want to use,
7 would an adult fondling a child in a sexual way have been
8 illegal?

9 **MR. BALA:** Yes. In my general
10 understanding, yes.

11 **MR. LEE:** Let's say in 1980, would an adult
12 inviting a child to fondle the adult have been illegal?

13 **MR. BALA:** I'm not so sure about that, and
14 there would be some ambiguity about that, about some of
15 those acts, or at least my memory is not good enough that
16 I'd want to answer a question about it. But I think that
17 if you want to get into it, we should have the provisions
18 of the legislation in front of us.

19 **MR. LEE:** Okay; that's fair enough.

20 Now, you've explained obviously that Bill C-
21 15 comes along and there are a number of changes and, as
22 you set out in your materials and in your evidence,
23 obviously that the most significant changes, as I take what
24 you've said, have to do with the child being able to
25 testify, the provisions with the oath and things like that.

1 **MR. BALA:** Yes.

2 **MR. LEE:** Is that correct? And then you
3 also explained that there were new provisions added or
4 revised provisions dealing with breaches of trust ---

5 **MR. BALA:** Yes.

6 **MR. LEE:** --- in 1988 and obviously that
7 will be an important issue for this inquiry and then also
8 with the sexual exploitation of children. Is that correct?

9 **MR. BALA:** Yes.

10 **MR. LEE:** And your opinion is that these
11 amendments to the *Criminal Code* in 1988 came in large part
12 -- were brought about by the Badgley Report in 1984?

13 **MR. BALA:** Yes, and the Badgley Report then
14 touched a wider community. It raised people's awareness.
15 They began to work with children, realized how extensive
16 these cases were and then gradually started to work for
17 adult survivors.

18 **MR. LEE:** And I think you touched upon this
19 earlier this morning but, is it fair to say and do you
20 agree that the Badgley Report helped out a lot in terms of
21 society understanding the nature and the effect and the
22 prevalence of child sexual abuse?

23 **MR. BALA:** Yes, although society is a very
24 broad and complex place. So it was certainly making those
25 in the professional communities, particularly leadership

1 positions, those in the academic community, aware of this;
2 absolutely.

3 **MR. LEE:** I intend to get back to that
4 distinction. Maybe "society" wasn't the best choice of
5 word there, and I'll get back to that a little bit.

6 **MR. BALA:** I mean there are still some in
7 our society who are not aware of the extent of the problem.

8 **MR. LEE:** Of course.

9 Now, before Badgley came out and before
10 there was an uptake in the amount of scientific research
11 being done and academic research being done both in the
12 area that you work in and psychologists and people like
13 that, do you agree that there was still a general
14 understanding, likely in society or the community but more
15 specifically people who -- child care workers and people
16 who dealt with sexual abuse, that at the very least sexual
17 abuse was wrong and it was illegal?

18 **MR. BALA:** Yes, and I should say that most
19 of the acts that one would consider between an adult and a
20 child or a minor of a sexual nature would have been
21 criminal acts even under the old legislation.

22 So going back to your earlier question,
23 there were some acts, if you want, that are right on the
24 edge and you'd sort of say we have to look at the specific
25 legislation, but almost all sexual acts between an adult

1 and a minor were criminalized in some degree prior to the
2 changes and I think the changes clarified some of the areas
3 of ambiguity and dealt more specifically with some of the
4 child sexual abuse issues.

5 **MR. LEE:** So even before the changes there
6 were some elements of commonsense?

7 **MR. BALA:** Yes, and there was certainly an
8 awareness that it was wrong and there were prosecutions but
9 they were few and far between. Most of them involved
10 situations where there were strangers or quite remote
11 acquaintances who ---

12 **MR. LEE:** This is most prosecutions involved
13 ---

14 **MR. BALA:** Yes, in this period. So there
15 certainly were some prosecutions, yes.

16 **MR. LEE:** And so as you've explained, in
17 1988 with the amendments that's when there should have been
18 a noticeable -- it would've been easier to prosecute?

19 **MR. BALA:** Significantly easier, yes,
20 particularly for, if you want, contemporaneous events as
21 opposed to historic abuse in that the law -- as I point
22 out, some of the laws only changed in 2005, 2006, about how
23 to prosecute with adult survivors. But there were
24 significant changes, yes.

25 **MR. LEE:** How would the amendments to the

1 *Criminal Code* in 1988 have affected investigation? I
2 presume we can draw a clear distinction between
3 investigation and prosecution.

4 **MR. BALA:** Yes. Well, I think
5 investigators were -- and there was training of police
6 going on and my role was limited so I'll speak from my --
7 but I was working with police and particularly police
8 trainers who were going out and saying, "We now have a
9 better understanding of the extent of this, the dynamics of
10 it. We should be, for example, doing things like
11 videotaping statements from children for possible use in
12 court. We couldn't do that before. We weren't doing that
13 before. We should be prepared when we come into court to
14 make use of the screen or closed-circuit television",
15 although those things came much more slowly.

16 So there is a recognition that the
17 interviewing -- investigation of a case involving child
18 abuse required special knowledge and training. It did not
19 require -- one of the controversies in the police community
20 -- it did not require every force to have an officer who is
21 doing nothing but this kind of investigation, but it did
22 mean that those who were interviewing children had to have
23 training in interviewing children, their language
24 abilities, making them emotionally comfortable, recognizing
25 that disclosure sometimes takes a long time to occur, it

1 may take more than one interview and so on.

2 **MR. LEE:** So as with anything else,
3 investigation was just getting better?

4 **MR. BALA:** Yes. There was more
5 understanding of the issue and problem.

6 **MR. LEE:** Now, was any of that to say that
7 investigation wasn't occurring in part of the amendments?
8 I mean the amendments didn't affect the fact that
9 investigations needed to happen when there was allegation
10 of sexual abuse; is that right?

11 **MR. BALA:** Well, I think prior to that time
12 and not -- certainly if we go back and some of the best
13 documented failed prosecutions were -- for example, boys
14 from Mount Cashel were coming into the Royal Newfoundland
15 Constabulary and alleging, correctly alleging that they had
16 been sexually abused by priests in Mount Cashel and the
17 priest didn't understand the -- the police didn't
18 understand the dynamics and simply refused to believe the
19 victims and/or took very minimal steps but did not lay
20 charges.

21 So we don't have a great deal of information
22 about how police were dealing with this. They were getting
23 fewer reports, and when they were getting them, they were
24 either not believing the victims or if they were, they were
25 not taking steps. They were worried aboutm "Well, could I

1 get a conviction here? Maybe this child won't be able to
2 be a witness or whatever", so they weren't prosecuting the
3 cases by and large.

4 **MR. LEE:** So there was a fairly major
5 failure there in the system at that time.

6 **MR. BALA:** I think it was -- in fairness, it
7 was a societal failure, particularly to go back into a
8 period where we have clarity. I mean one of the things is
9 that the 1980s was a period of transition; so what was
10 known by whom and when. But in the 1970s police were
11 largely not understanding the dynamics of these cases, they
12 were not aware of how to interview victims; they were not
13 aware of how to collect evidence. So one of the things
14 that they came to realize was that we had multiple -- that
15 offenders almost always -- pedophiles had multiples
16 victims; so look for victims, interview other children.

17 Still there was a series of failures. The
18 police were certainly part of it, but in fairness, so was
19 everyone else in society, including the research community.

20 **MR. LEE:** Fair enough.

21 **MR. BALA:** I mean I think when I go back and
22 look at my own writing as I did in preparation of this from
23 1982. I certainly did not understand the extent and nature
24 of the issues the way I do now.

25 **MR. LEE:** Now, I don't want to go back over

1 what you told us in chief about the Badgley Report coming
2 out, and we've been through your findings and your
3 recommendations and you've explained to us how it increased
4 understanding and all that kind of stuff.

5 I guess my question is when the Badgley
6 Report came out you referred a few minutes ago to the fact
7 that when I used "society" there probably was a large
8 segment of society that had absolutely no idea what was
9 going on but at the very least for those people involved in
10 some way with dealing with children or dealing with child
11 sexual abuse. How well publicized was Badgley at the time?
12 I mean, is this something that you couldn't avoid knowing
13 about or was it a little more subtle than that?

14 **MR. BALA:** I have a recollection of when the
15 report actually came out it was certainly getting attention
16 on the national media, TV, newspapers. There were press
17 conferences. Later on, there were professional conferences
18 and so on. But you know, the professional communities are
19 very broad and diverse so there may be a lot of awareness
20 by some people in Ottawa and some other places that may not
21 be too far away people would say, "I didn't, you know, read
22 the newspaper that day or didn't watch TV that day".

23 It was certainly publicized.

24 **MR. LEE:** And at very least, I take it, you
25 would have expected professionals dealing with issues of

1 child sexual abuse to know about the report?

2 **MR. BALA:** In a general way, yes, but it
3 does speak to the fact that even in the '89-'90 period with
4 Rix Rogers we were still talking about how we have to have
5 protocols and do a better job. So it's not -- you don't
6 have instantaneous response.

7 **MR. LEE:** No, and I'm not suggesting that
8 there would be an instantaneous response. I'm just
9 suggesting that at very least there would be an
10 understanding that this report had come out and the nature
11 of what it dealt with.

12 **MR. BALA:** I think, yes, although in terms
13 of publicity I would say that the Mount Cashel Hughes
14 inquiry had probably more impact and it was repeated. I
15 mean, the thing about Badgley, the unfortunate thing is you
16 get a report -- it comes out in Ottawa and, you know,
17 people who are paying attention see it, read it, think
18 about it, go to meetings. Other people don't see it. The
19 Hughes Inquiry in Newfoundland was going on day after day.
20 That's the value of a public inquiry.

21 So I think that certainly by 1989, people
22 broadly should have been aware that this is a -- those who
23 would in any way be attuned to what was going on in the
24 public sphere should have been aware of it.

25 **MR. LEE:** And in chief you referred to the

1 Badgley Report. I believe your quote was, "in terms of the
2 law and policy and knowledge in Canada is one of the
3 seminal events".

4 **MR. BALA:** Yes.

5 **MR. LEE:** Do you agree with that?

6 **MR. BALA:** Yes.

7 **MR. LEE:** So this was a pretty big deal at
8 the time?

9 **MR. BALA:** Yes.

10 **MR. LEE:** Now, if we move from the Badgley
11 Report -- and as you explained earlier today, there is
12 always going to be that period from when recommendations
13 are made and suggestions are made and research is
14 undertaken until there is any time of implementation ---

15 **MR. BALA:** Right.

16 **MR. LEE:** It's never going to be an
17 immediate thing and you're not going to see the effects
18 right away; is that correct?

19 **MR. BALA:** That's right.

20 **MR. LEE:** We can start varyingly seeing the
21 effects of the Badgley Report when in 1988 the *Criminal*
22 *Code* is amended and the *Canada Evidence Act* is amended and,
23 in large part, it's because of the Badgley Report?

24 **MR. BALA:** Right, and I think by that time
25 everyone who worked in the criminal justice system should

1 be aware of the fact we have major new legislation that
2 very much affects the investigation and prosecution of
3 child abuse cases and that would certainly be at that point
4 a red flag to people.

5 **MR. LEE:** And this is in 1988 when ---

6 **MR. BALA:** Right.

7 **MR. LEE:** Just to be perfectly clear so I'm
8 sure I understand you, how do the 1988 amendments affect
9 the investigation of child sexual abuse?

10 **MR. BALA:** Well, they opened up the scope
11 particularly for videotaping statements from children.
12 They opened up the range of offences and this goes back to
13 the invitation of sexual touching and -- you'll have to
14 forgive me. I don't have the old law in front of me. I'm
15 not sure that some of those things were criminalized. So if
16 an adult touched a child sexually that would have been an
17 offence but if the adult invites a child to touch him prior
18 to 1988 that might not be an offence. Well, now you are
19 being told, "This is one of the dynamics that abusers use.
20 You should be aware of it and looking for this as well as
21 the more -- if you want -- widely known kinds of sexual
22 abuse".

23 **MR. LEE:** I would like to take you to Tab 7
24 of your materials and this is -- my understanding is that
25 this was written at the time that Bill C-15 came in and it

1 was kind of your treatise on the subject to the profession
2 saying, "Here is what the bill is. Here is what you can
3 expect. Here is my opinion on it". Is that correct?

4 **MR. BALA:** Yes, and in fact, this was a
5 loosely-edited transcript of actually a set of oral remarks
6 that I gave to a mixed professional audience that I know
7 included police, crown prosecutors, child welfare workers
8 and other professionals.

9 **MR. LEE:** So if I can get you to take a look
10 at page 2 -- no, it's page 5 of the electronic document --
11 right at the top here in the first paragraph I'd like to
12 read this:

13 "Bill C-15 is an important new piece of
14 legislation. The enactment of this
15 federal legislation represents a major
16 reform in the substantive and
17 procedural laws governing the sexual
18 abuse of children. There are
19 significant revisions to the provisions
20 of the *Criminal Code* governing sexual
21 offence against children. We will talk
22 a bit about those reforms. They should
23 make it easier to secure a conviction
24 when a child has been abused. Bill C-
25 15 closes some loopholes in the old

1 law.”
2 And you go on a bit. Lower on you say:
3 “That type of inadequacy has been
4 remedied. The new offence provisions
5 are gender-neutral but the most
6 important changes have been in the
7 evidentiary and procedural laws that
8 govern prosecutions for child sexual
9 abuse. It should be substantially
10 easier to conduct criminal prosecutions
11 and to obtain convictions in these
12 kinds of cases.”

13 And this was at the time that these changes
14 were coming in?

15 **MR. BALA:** Yes, that was February of 1988.

16 **MR. LEE:** So this was you looking forward?

17 **MR. BALA:** Yes.

18 **MR. LEE:** Is that correct? So similarly, if
19 we go down to the third paragraph on that page you write:

20 “I think reforming the criminal law by
21 making it easier to obtain convictions
22 where abuse has actually occurred may
23 have an important deterrent effect.
24 Until now it was all too easy to abuse
25 a child and get away with it. It was

1 almost a licence to abuse children. We
2 now have a much better criminal law.
3 Those who are offenders are being put
4 on notice and I think that some
5 offenders and potential offenders may
6 be deterred. I think there are some
7 offenders who will realize 'I might get
8 caught now and I better not do this or
9 I'm going to go to jail.' I hope that
10 Bill C-15 will have a positive
11 deterrent effect both on individuals
12 and on society at large."

13 Can you just elaborate a little bit on what
14 you mean by the deterrent effect?

15 **MR. BALA:** Well, when I was writing that,
16 and I still believe that the criminal justice system has a
17 number of functions; one of them is, of course, to hold
18 offenders accountable, but it also serves to protect
19 society. I actually think that we have had some reduction
20 in the levels of sexual offending in our society against
21 children in particular because pedophiles are aware of the
22 fact that they are likely or, certainly, more likely to be
23 apprehended, investigated, successfully prosecuted and
24 punished.

25 So the knowledge that you're likely to get

1 caught doing this; you are likely to be punished, it defers
2 some offenders. It doesn't deter all offenders. Some
3 people it displaces so rather than sexually abusing
4 children in Canada they may go overseas. Some of them are,
5 I think, encouraged to seek treatment. My understanding is
6 that some -- more pedophiles are voluntarily seeking
7 treatment, realizing that this is a socially-unacceptable
8 conduct, that they are likely to be caught at it and they'd
9 better not do it. But certainly we continue to have
10 pedophiles in society who are obviously not deterred.

11 **MR. LEE:** So some pedophiles when they see
12 other pedophiles being caught and punished are going to
13 say, "I'm going to back off"?

14 **MR. BALA:** Yes.

15 **MR. LEE:** All right.

16 **MR. BALA:** I believe that that has -- that
17 is what one would logically expect and that seems to have
18 happened.

19 **MR. LEE:** And then the next paragraph at the
20 top of page 3:

21 "Another positive aspect of the reforms
22 is the increased possibility of using
23 the criminal justice system as a means
24 of gaining intervention in situations
25 where abusers might not initially want

1 intervention. Some people deny they
2 are abusing and simultaneously deny
3 their need for help. If they are
4 convicted in criminal court they may be
5 brought into a therapeutic relationship
6 as well as being sanctioned. For some
7 abusers, rehabilitation may not be
8 realistic and confinement in prison may
9 be the only protection that the
10 criminal justice system can afford."

11 So not only is there an important deterrent
12 effect but there is the prosecution of cases and
13 investigation of cases gets pedophiles off the street?

14 **MR. BALA:** Yes, so we can find now -- in my
15 own view, we still have cases where some of the sentences
16 may be too short. There are people who should be dangerous
17 offenders who are not.

18 But we are certainly seeing people, if you
19 want, being kept off the street and while there are huge
20 problems in treating pedophiles, in rehabilitating them and
21 ensuring that they don't re-offend from a therapeutic point
22 of view, I think we are probably doing a better job today
23 than we were 20 years ago.

24 **MR. LEE:** And that is actually a beautiful
25 segue into my next question. If we can turn to Tab 12 ---

1 **THE COMMISSIONER:** Well, before we segue
2 into your segue ---

3 **(LAUGHTER/RIRES)**

4 **THE COMMISSIONER:** --- why don't we segue
5 into a break?

6 **MR. LEE:** Sure. Sorry about that.

7 **THE COMMISSIONER:** Until 11:30.

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

10 This hearing will reconvene at 11:30.

11 --- Upon recessing at 11:16 a.m. /

12 L'audience est suspendue à 11h16

13 --- Upon resuming at 11:37 a.m. /

14 L'audience est reprises à 11h37

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

17 This hearing of the Cornwall Public Inquiry
18 is now in session.

19 Please be seated. Veuillez vous asseoir.

20 **NICHOLAS BALA, Resumed/Sous affirmation solennelle:**

21 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE,**
22 **(continued/suite):**

23 **THE COMMISSIONER:** Mr. Lee.

24 **MR. LEE:** Tab 12, yes, and turn to page 461
25 which is the -- I believe the first page of that.

1 So before the break, we were discussing the
2 article that you had written in 1988 at the time, kind of
3 giving of an introduction of what the changes were. This
4 one here was written in 2001.

5 **MR. BALA:** Yes.

6 **MR. LEE:** And you begin by saying:

7 "Over the past two decades, there has
8 been a dramatic increase in awareness
9 of child abuse and a corresponding
10 increase in the reporting and
11 prosecution of child abuse cases."

12 **MR. BALA:** Yes.

13 **MR. LEE:** So I take it then that having had
14 the opportunity to assess what had happened from 1988 until
15 2001, you would notice some marked increase in what was
16 happening. Is that correct?

17 **MR. BALA:** Yes.

18 **MR. LEE:** Now, looking back on that time,
19 this inquiry obviously at some point is going to start
20 looking at the institutions in Cornwall and the evolution
21 of practices and procedures and things like that.

22 **MR. BALA:** Yes.

23 **MR. LEE:** What would you expect us to find
24 when we look at the policies and procedures from that era?

25 **MR. BALA:** Well, I assume that you would be

1 looking at how training was going on during that period.
2 So who was going to what programs? Were they bringing in
3 people? How was knowledge being disseminated? How were
4 policies being developed to deal with reports,
5 investigations? How were the -- what were the interactions
6 between the agencies? So we have these so-called protocols
7 and the idea there is that until the late '80s, Children's
8 Aid and police were very separate and they are separate
9 institutions. They are separate social functions but there
10 was a recognition that they have to work together in
11 investigations of certain kinds of cases.

12 So when were those kinds of programs put in
13 place? If they were lagging markedly behind other
14 communities, why was that? It certainly wasn't geographic
15 in that communities not too far away were making very
16 significant changes in how they were dealing with child
17 sexual abuse. So those are the kinds of things that I
18 would expect the inquiry to be looking at.

19 **MR. LEE:** Because this was a time of change
20 and so we need to look at what those changes were; is that
21 correct?

22 **MR. BALA:** Yes, and when were those changes
23 coming to Cornwall? If they were coming, they were much
24 slower than in other places. Why was that? If they were
25 coming at a certain level, so what happened in some

1 communities is somebody goes off, yes, there's a protocol
2 and certain people have the knowledge and are doing it and
3 others within the same force, within the same organization
4 are not changing. Why is that happening?

5 **MR. LEE:** Thank you very much. Those are my
6 questions.

7 **THE COMMISSIONER:** Thank you.

8 Mr. Bennett from the Men's Project. Good
9 morning, sir.

10 **MR. BENNETT:** Good morning, Mr.
11 Commissioner.

12 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
13 **BENNETT:**

14 **MR. BENNETT:** Good morning, Professor Bala.
15 I am with the Men's Project which is an organization that
16 represents survivors of sexual abuse and mine is going to
17 be very low-tech and I'm not going to be referring you to
18 any documents.

19 So I just want to have a conversation with
20 you about something you have raised over your testimony and
21 you talked about victim witness programs and I was
22 wondering if you could explain how these work and what they
23 are?

24 **MR. BALA:** I mean I can certainly talk a
25 little about them and we'll try to do that. There are

1 obviously people who work in that field who could be
2 brought here as experts. I have worked with some of the
3 people particularly in Kingston, done some survey work
4 surveying different victim witness people across Ontario,
5 but essentially the idea is a recognition that for people
6 who are coming to court to testify, particularly those who
7 are vulnerable which would include children, it would
8 include victims of domestic violence, spousal abuse. It
9 would also include adult survivors of child sexual abuse
10 who would be coming to court.

11 It involves meeting with them, providing
12 them with some emotional support, providing them with
13 information about the court process. With children, it
14 would mean bringing them into the courtroom when the
15 courtroom is empty and saying, "This is where the judge
16 sits. This is where you'll sit. Are you concerned about
17 seeing the accused?" So they would bring forth a liaison
18 worker to get a screen or use close circuit television. So
19 it involves preparation for the court process, being in the
20 courtroom with the child or vulnerable person and providing
21 some limited support afterwards.

22 If you want, many of these people are a kind
23 of social worker. Some of them have social backgrounds,
24 some of them have psychology backgrounds and they work
25 around emotional support issues, some instrumental issues,

1 but they are specifically not expected to discuss evidence
2 with a proposed witness. In fact, they're specifically
3 instructed not to do that but they would have a pretty good
4 sense of what the experience of being a witness, a
5 vulnerable witness is like.

6 So in fact the article that was referred to,
7 which is at Tab 12 and I won't go further in details, is
8 actually largely a report on a survey that we did of victim
9 witness people among other things. Here's how they
10 perceive the changes that have occurred for child
11 witnesses, but on the other hand also the areas where we
12 need to have improvement.

13 **MR. BENNETT:** And the emotional support they
14 are providing would be different than counselling or
15 ongoing therapy that someone would have?

16 **MR. BALA:** Very much, although they might
17 liaise with a therapist but they're not -- and while some
18 of them or all of them would have some kind of counselling
19 therapy backgrounds, they are not there intended to be
20 therapists. They are not there intended to deal with long-
21 term problems.

22 **MR. BENNETT:** And I think you talked about
23 preventing secondary traumatization?

24 **MR. BALA:** Yes.

25 **MR. BENNETT:** And that would be similar to

1 their role?

2 **MR. BALA:** They would have a role in that
3 certainly very much to try to reduce the stress of the
4 effect of testifying but if they are long-term issues, they
5 might refer the person to any available programs if there
6 are available programs in the community and say, you know -
7 - and one of the things about secondary trauma is there is
8 so much going on in the lives of victims that the court
9 process -- for example, the criminal court process may be
10 part of it. There might be civil proceedings. There might
11 be a range of context and the victim witness workers what
12 they -- we have a relatively narrow mandate. They are
13 funded by the Ministry of the Attorney General and while --
14 and they tend to make the system more victim-friendly. So
15 if we go back, I think we've had -- the first ones were
16 retained about 25 years ago, in the early 1980s, and again
17 spreading very slowly across the province. So some places
18 had them long before other places.

19 **MR. BENNETT:** And they're usually run
20 through the courthouse; is that correct? The person is
21 present in the courthouse?

22 **MR. BALA:** They would have an office at the
23 court, yes, and they might have an office elsewhere in the
24 community as well, depending on the exact structure. Some
25 of them are directly -- in my understanding, some of them

1 are directly employees of the Ministry of the Attorney
2 General. Others would be on contract basis in some
3 communities where the court doesn't sit very often. They
4 might say, "Well, we'll retain someone from an agency or
5 whatever".

6 **MR. BENNETT:** And do you think it would be
7 helpful for this inquiry to have both counselling and
8 victim witness program?

9 **MR. BALA:** I think that that could be an
10 important role depending on whether the -- the experience,
11 I think, the closest to this would be the Mount Cashel
12 Inquiry. One could look at what was done there but the
13 process of coming and testifying here on close circuit
14 television or whatever, on the web, will be very stressful
15 for some victims and certainly they have to have support
16 around that experience, yes.

17 **MR. BENNETT:** Okay. Those are my questions.
18 Thank you very much.

19 Thank you, Mr. Commissioner.

20 **THE COMMISSIONER:** Mr. Cipriano.

21 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

22 **CIPRIANO:**

23 **MR. CIPRIANO:** Good morning.

24 **MR. BALA:** Good morning.

25 **MR. CIPRIANO:** Professor, at Tab 3, your

1 outline, page 5, you discuss a number of some of the high-
2 profile cases involving child sexual abuse and these cases
3 have attracted extensive attention from both the media, the
4 public, from scholars like yourself to see ---

5 MR. BALA: Yes.

6 MR. CIPRIANO: --- what occurs in
7 prosecutions and investigations; correct?

8 MR. BALA: Yes.

9 MR. CIPRIANO: I guess one of the areas of
10 interest is to study how either trends or how the process,
11 the legal process, be it investigations or prosecutions,
12 have evolved and changed as a result of a number of these
13 high-profile cases.

14 MR. BALA: Yes.

15 MR. CIPRIANO: And as a result of these
16 cases, you've touched upon a number of changes that have
17 occurred over the years when dealing with child sexual
18 abuse. And generally speaking, the changes include ways in
19 which the system approaches the evidence that's going to be
20 anticipated with respect to screens or using a whole bunch
21 of different techniques to make the victim more -- to feel
22 more comfortable in the process.

23 MR. BALA: Yes, or I would say less
24 intimidated.

25 MR. CIPRIANO: Less intimidated, yes.

1 **MR. BALA:** The experience of being a
2 witness, even with all these protections, is often very
3 stressful. And indeed, there are some children who even if
4 you put them -- they're testifying via closed circuit TV,
5 simply don't have the emotional strength to go on with it.

6 **MR. CIPRIANO:** And I guess another change
7 that has evolved as a result of these investigations is
8 changes in how allegations are investigated and approached.

9 **MR. BALA:** Yes.

10 **MR. CIPRIANO:** And by that I refer to Tab 6,
11 which is the Martensville case.

12 **MR. BALA:** Yes.

13 **MR. CIPRIANO:** That case I refer to because
14 I think it resonates a bit to what we're doing here today
15 with this Inquiry in the sense that that case dealt with
16 multiple victims and multiples offenders as does the issues
17 involving what occurred in Cornwall.

18 **MR. BALA:** Yes, although I think that the
19 issues in Martensville were very much related to the fact
20 that the victims were very young.

21 **MR. CIPRIANO:** Yes.

22 **MR. BALA:** And so the issues about
23 interviewing an investigation case with young child victims
24 are quite different from those involving historical abuse
25 allegations.

1 **MR. CIPRIANO:** Oh, yes, no, I agree with
2 that. But the value, I guess, to be taken from
3 Martensville, and I'm just looking at Tab 6, is that,
4 "...it provides prosecutors, the judiciary, police,
5 child care workers and mental health
6 professionals with the sobering reminder about
7 the importance of carrying out objective and
8 careful investigations using trained personnel."

9 **MR. BALA:** Yes. And not presuming, although
10 on a statistical basis, most allegations of abuse, child
11 abuse and, for that matter, historic abuses certainly
12 having been borne out as true, there are allegations that
13 are unfounded and mistaken. There was an unfortunate
14 tendency for -- there was a famous article written in 1983
15 by an American psychologist who worked a lot with victims
16 in which he made the statement, "Well, children don't lie
17 about abuse". And some people took that to be that, "Well,
18 the child makes a statement, it must be true", whereas I
19 think that has to be seen in a particular context.
20 Children like adults do lie. Children perhaps more than
21 adults are sometimes mistaken.

22 **MR. CIPRIANO:** Okay. But what I'm getting
23 at is what I take to be one of the main findings of what we
24 learned from Martensville is this idea of keeping an
25 objective view of the investigation or looking to other

1 alternative explanations to what the victim is complaining
2 of.

3 **MR. BALA:** Yes.

4 **MR. CIPRIANO:** And one of the problems that
5 occurred in Martensville was that there was a lack of
6 objectivity, a lack of looking to alternative explanations
7 for what had occurred.

8 **MR. BALA:** Yes, and I think the main issue
9 there was the lack of training of the police, the primary
10 police investigators.

11 **MR. CIPRIANO:** And am I also right in saying
12 that when there is a lack of objectivity, this means that
13 there is an assumption that every complainant who comes
14 forward is telling the truth?

15 **MR. BALA:** That's right. I think each
16 individual who is coming forward has to be independently
17 assessed and although the fact that there are multiple
18 victims may provide some corroboration or support for the
19 fact that there is probably a true allegation, it's also
20 important to assess each case separately.

21 And I should say, and you know I refer to
22 this in the context of historic abuse allegations probably
23 the Kaufman Report from Nova Scotia is a little more
24 applicable than Martensville.

25 **MR. CIPRIANO:** Okay. I guess one of the

1 reasons why we want to keep an objective view is to avoid,
2 as you've been saying, possibly leading certain victims to
3 give certain answers and avoiding false allegations.

4 **MR. BALA:** Yes.

5 **MR. CIPRIANO:** If we are stuck in a
6 situation as we are here today where there were multiple
7 victims and multiple allegations against offenders, I guess
8 -- and despite all these allegations, nothing really coming
9 to fruition. Many charges were stayed or there may have
10 been acquittals or so on. One of the things that we want
11 to look at is what led to these events, either the stays or
12 acquittals; correct?

13 **MR. BALA:** Well, I'm not exactly sure what
14 the scope of the inquiry is but certainly one would want to
15 know that the investigations were properly carried out,
16 carefully carried out, objectively carried out in order to
17 ensure that it would not happen again or the likelihood of
18 this kind of thing happening again would be diminished.

19 **MR. CIPRIANO:** Well, one of the mandates is
20 to look at the institutional response to the allegations.

21 **MR. BALA:** Yes.

22 **MR. CIPRIANO:** And we have the benefit of
23 some of the decisions that were given by the courts and
24 they touch on the facts that led to some of the stays or so
25 on that occurred in Cornwall. If certain agencies or

1 individuals were blamed for derailing the investigation,
2 for withholding information, for bringing the media into
3 this so that their side could be heard, and they were found
4 to be the cause of the delay, would it be beneficial for
5 the Inquiry to hear from these people?

6 **MR. BALA:** I mean, I guess I can't comment
7 too much on the exact scope of the Inquiry, but you'd
8 certainly like to know why the prosecutions were not
9 successful, especially from institutional perspective.

10 **MR. CIPRIANO:** Well, if let us say a
11 particular police officer was taken off the case, would you
12 -- and that person then continued with his own or her own
13 investigation to the detriment of the investigation, would
14 you not want to hear from that person?

15 **MR. BALA:** I think if there was that kind of
16 thing going on, I think it would be within the mandate --
17 of my understanding of the mandate of the Commission to be
18 looking at what those problems in investigation were, yes.

19 **MR. CIPRIANO:** And touching upon the area of
20 false allegations, I know on page 6, you discuss some
21 distinctions between false versus unproven allegations,
22 malicious versus honest mistake, unverified allegations for
23 a financial gain.

24 Now, you've given us some material to say
25 that the area of false allegations is small, but they still

1 do exist.

2 **MR. BALA:** Yes, and seen in a broader
3 context, that they are a relatively small portion of all
4 cases, but there are certainly false allegations, "false"
5 in the sense of, and I think you see going on there,
6 sometimes they are deliberate.

7 **MR. CIPRIANO:** Yes.

8 **MR. BALA:** If you want lies, manipulation;
9 in other cases, they may be mistaken; and in other cases,
10 an allegation is brought forward and although it's not
11 proven to the satisfaction particularly in a criminal
12 context, it is not proven beyond a reasonable doubt or
13 there may be Charter issues that result in a Stay of
14 Prosecution, it doesn't mean that the incidents did not
15 occur.

16 **MR. CIPRIANO:** Okay. Just going first with
17 the issue of false or even using the word "malicious", I
18 take it if there is a malicious allegation or a malicious
19 report, I take it the person doing the reporting or the
20 victim would have an ulterior motive in making the
21 complaint?

22 **MR. BALA:** Yes.

23 That would be my interpretation and the way I use the word
24 "malicious" is a deliberate effort to bring forward a false
25 allegation.

1 **MR. CIPRIANO:** Okay. And I guess we heard
2 from Professor Trocmé on this as well and one of the -- a
3 malicious allegation would be one in which the person
4 making the allegation knows it is false and they have an
5 ulterior motive.

6 Would you agree with that statement?

7 **MR. BALA:** Yes. In fact, I would just say
8 they know that it's false. Motive is part of it but not
9 necessarily central.

10 **MR. CIPRIANO:** When speaking of unverified
11 allegations for a financial gain, you touched upon the
12 Kaufman Inquiry in Nova Scotia. In those cases, there were
13 certainly monetary incentives to make reports?

14 **MR. BALA:** That's right, and I think that a
15 key thing about that was that there were effectively at
16 certain points no efforts to verify the veracity of the
17 allegations, so that it was simply -- and it was, I think,
18 brought forward the best of good intentions and there was a
19 recognition that victims are very vulnerable and so there
20 was a -- use in ADR process, and I think at some moments
21 with some of the cases they really made no effort at all to
22 verify what was actually going on. They didn't go back and
23 look at records. They didn't go back and ask the alleged
24 perpetrators what had happened and so on. There was no
25 confrontation.

1 And so Kaufman, I think, identifies that
2 there were probably some cases in which compensation was
3 provided to people who were not genuine victims. That can
4 be distinguished from the kind of compensation schemes that
5 have been set up in other places, including Ontario where
6 we had survivors of training schools, in particular, who
7 had been sexually abused, physically abused, abused in
8 other ways, and compensation was provided with an
9 appropriate verification process and they didn't have the
10 problems that they had in Nova Scotia.

11 **MR. CIPRIANO:** When were these compensation
12 schemes in Ontario set up?

13 **MR. BALA:** There were a number of different
14 ones, but it was, I think, starting in about 1991,
15 particularly the Grandview School, which was for girls,
16 adult female survivors and just about that time the St.
17 Joseph's and St. John's School investigations were begun.
18 The compensation programs went on into the mid-1990s.

19 **MR. CIPRIANO:** Okay.

20 **MR. BALA:** I don't have the exact dates in
21 front of me, but they were readily available.

22 But it was certainly after the -- I mean, I
23 think again a precipitating event of a lot of these things
24 was the Mount Cashel inquiry that gave strength to some
25 survivors who started to come forward in different kinds of

1 contexts.

2 **MR. CIPRIANO:** I just wanted to touch on
3 something you said earlier in response to one of my
4 questions. You said that when there is multiple victims
5 who come forward that can also lend credibility to their
6 stories. Am I correct? I don't want to misquote you.

7 **MR. BALA:** Yes, I think that one of the
8 things that we now know about child sexual abuse, is that
9 there are often multiple victims and so as an investigator,
10 you are looking for other potential victims. The courts
11 have clearly but carefully, I think, in a criminal context,
12 particularly, said that we have a similar fact rule, that
13 the mere fact that there are allegations that are true is
14 not proof of this, but it is something that can help to
15 enhance the credibility of each individual complainant.

16 **MR. CIPRIANO:** Okay.

17 When there are multiple victims who come
18 forward, would you not agree with me that the investigators
19 would still have to critically assess each allegation?

20 **MR. BALA:** Yes, you're right.

21 **MR. CIPRIANO:** If the investigators have
22 within their information the fact that a victim came
23 forward after learning of a certain monetary settlement and
24 that person is quoted as saying, "For the life of me, for x
25 amount of money, I'd kill myself to remember something that

1 would have occurred years ago"; would that set off some
2 alarm bells as to the falsity of the allegation?

3 **MR. BALA:** Well, alarm bells -- I mean, it
4 depends exactly what was said, but it certainly -- on the
5 one hand, the fact that there may be monetary compensation
6 as a possibility is a factor to look at. On the other
7 hand, that in and of itself clearly does not mean that the
8 person who is coming forward -- one of the things that we
9 know is that it's very hard for victims to come forward and
10 the first victims, if you want, for whatever reasons, are
11 able to do that. Other victims maybe gain the strength to
12 come forward at a later stage. So I don't think it's
13 appropriate to discount later disclosures saying, "Well,
14 you weren't here as the first person so maybe this isn't
15 true" or there has only been -- and again, the experience
16 with -- and you may want to look at -- people have asked
17 about the scope of this, if this is an issue to look at
18 some of -- how this was done, particularly with the St.
19 John's and St. Joseph's processes in Ontario, which
20 involved male survivors, that it takes a long time for some
21 of them to come forward, but the fact that there is
22 monetary -- there is the possibility of monetary
23 compensation would certainly be a factor but, by no means,
24 determinative.

25 **MR. CIPRIANO:** No, it may not be by no means

1 determinative but -- and I agree that certainly when one
2 comes forward it could lead courage to others to come
3 forward, but if that person, the second person coming
4 forward, admits in court that they came forward for
5 monetary reasons, surely that would lend support to the
6 allegation being false?

7 **MR. BALA:** If they said, "I came forward
8 only for monetary reasons", and it's not true, and clearly
9 it's false, if they simply said, "Well, the fact that there
10 is monetary compensation was one of the motivations for
11 coming forward", I don't think that that necessarily means
12 that they are not telling the truth about the allegations.

13 **MR. CIPRIANO:** If a person then would make
14 an allegation regarding an incident that occurred years ago
15 in a school during a confession, shall we say ---

16 **THE COMMISSIONER:** During a confession?

17 **MR. CIPRIANO:** Yes, at a school.

18 **MR. BALA:** While they are taking confession
19 at a Catholic school, you mean they alleged they were
20 abused by a priest years earlier?

21 **MR. CIPRIANO:** Yes.

22 **THE COMMISSIONER:** Okay.

23 **MR. CIPRIANO:** Sorry, it wasn't clear.

24 **THE COMMISSIONER:** A confession could be in
25 an police station.

1 **MR. CIPRIANO:** Yes. No, no, I mean a
2 confession by a church at school.

3 **THE COMMISSIONER:** Confession.

4 **MR. CIPRIANO:** Yes.

5 And the person discloses an act of abuse and
6 says that they would never -- discloses an act. I mean,
7 one of the things that you would want to do is, if you can
8 possibly interview the teacher at the time or other
9 students to see what they can remember, what they can give,
10 what information they can give about that incident.

11 **MR. BALA:** Yes, bearing in mind that there
12 are real challenges in historic abuse cases in that there
13 are events that may be very central to the individuals, but
14 others if it was a sort of unremarkable day you say, "Well,
15 what happened?" They may not remember, they may be hard to
16 locate or whatever.

17 **MR. CIPRIANO:** But if the story gives
18 certain remarkable events, things that would lead people to
19 remember that event; for example, the time of day or the
20 area that it took place, would it not help to go to certain
21 other people such as the teacher that would have been
22 involved? And I am not saying the teacher is the alleged
23 offender but would have been around the area?

24 **MR. BALA:** I think that an investigator --
25 certainly, in the ideal world would like to get as much

1 information as possible and talk to as many people as
2 possible. There are real problems in going back. Things
3 that may be memorable to one person, if you are a victim
4 that would be a very memorable incident -- if you were in
5 the other room even if - you know, particular time of day,
6 say, what happened, you know, 10, 15, 20 years ago? One of
7 the challenges is in dealing with historic abuse cases that
8 the victim may have had only limited sense of time at that
9 point. If the victim was, let's say, eight years old at
10 the time, you say, well, what -- you know, at that time you
11 barely know the days of the weeks. So you say, "Well, what
12 day" and "I don't remember what day of the week it was. I
13 just remember this happened in this way" and then the
14 investigator and ultimately the trier of fact has to do the
15 best they can. It may be that you are not going to have
16 other victims -- other witnesses being able to either
17 corroborate or refute that. They'll say, "Well, yes, I
18 remember this person was in the class that year, but I
19 don't remember anything about a particular day".

20 Memory is not a video recording, like we
21 can't go back and say ---

22 **MR. CIPRIANO:** No.

23 **MR. BALA:** --- say just what happened,
24 particularly if the incidents were not particularly
25 remarkable for the other people.

1 **MR. CIPRIANO:** But should the teacher, let's
2 say, remember certain aspects of this given the nature of
3 the complaint, would their information not be relevant to
4 the investigators?

5 **MR. BALA:** Depending on exactly what was
6 being said and how remarkable it was. Often -- and there
7 may be -- you know, you go back and talk to somebody, "I
8 don't remember who the student was". Sometimes, it's
9 distressing me as a professor, I hear people who had a
10 course from me, and they don't remember who their professor
11 was. So it's not unusual, particularly in a long period of
12 time if you've had a lot of students, someone would say, "I
13 don't remember this person being in my class". I mean,
14 they may have been ---

15 **MR. CIPRIANO:** Yes.

16 **MR. BALA:** --- I can see from the register
17 they must have been; I don't remember the student let alone
18 what happened on a particular day".

19 It would not be unusual that the incident
20 would stand out for the victim but would be
21 indistinguishable for the -- one of the things about memory
22 is that unless something very unusual happens, people --
23 their so-called script memories, "Well, I went to school
24 everyday that year, but I don't remember anything in
25 particular happening because it was not remarkable". "I

1 remember the day that the school caught on fire." Oh, yes,
2 everyone would remember that. It was a particularly
3 remarkable event, but in the ordinary course of -- and I
4 should say one of the issues with multiple abuse is that if
5 a person has been abused many times by a perpetrator, they
6 may not have a distinct memory of all those events either.

7 **MR. CIPRIANO:** But what I am getting at --
8 and I agree with what you're saying -- simply what I am
9 referring to is if that teacher does remember it, the
10 incident, because the incident is described with such
11 detail, wouldn't going to that teacher be beneficial to the
12 investigator?

13 If the teacher comes forward and says "I do
14 remember that. I do remember this. I remember the room,"
15 for instance, "I remember the timing because we only did
16 confessions at certain times of day. Teachers always went
17 last," for instance.

18 I mean that would be beneficial, would it
19 not, to the investigator?

20 **MR. BALA:** I think, yes. Trying to get as
21 much information as possible is always the most desirable.

22 **MR. CIPRIANO:** Thank you.

23 **THE COMMISSIONER:** Thank you.

24 Mr. Chisholm.

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

1 CHISHOLM:

2 MR. CHISHOLM: Good morning, Professor Bala.
3 My name is Peter Chisholm. I'm counsel for the Children's
4 Aid Society of the United Counties of Stormont, Dundas and
5 Glengarry.

6 If I could take you, sir, to -- back to your
7 evidence in chief, where you spoke briefly of the view of
8 conducting studies with respect to the Ontario Child Abuse
9 Register?

10 MR. BALA: Yes.

11 MR. CHISHOLM: And you told us -- you told
12 Mr. Engelmann that some of the -- you prepared a report and
13 the government acted on some of that report. Is that
14 correct?

15 MR. BALA: Yes. I certainly prepared the
16 report and I think I indicated that -- in fact, the
17 government announced they were going to act on a lot of it
18 and they, in fact, have acted on little bits of it as time
19 has gone by.

20 MR. CHISHOLM: And that is the Ontario
21 government ---

22 MR. BALA: Yes.

23 MR. CHISHOLM: --- you are speaking of?

24 MR. BALA: Yes, the Ontario Child Abuse
25 Register.

1 **MR. CHISHOLM:** And with respect to the
2 conclusions that you reached during your study of the
3 Ontario Child Abuse Register, are you able to tell us what
4 those conclusions were?

5 **MR. BALA:** The Ontario Child Abuse Register
6 exists as a place where children's aid workers are required
7 to report what are called verified cases of abuse by -- and
8 part of the problem in Ontario was and actually still is,
9 that the obligation to report child abuse is defined by
10 legislation and the legislation has changed a little bit
11 over the time, but it focuses on the reporting of abuse by
12 persons who have charge of a child and, therefore, it is
13 clear that if there is a -- I should say that it is
14 verified abuse, but that really means the social worker has
15 so-called credible evidence of abuse, the social worker
16 believes -- the child protection worker believes that abuse
17 occurred.

18 But the obligation to report only applies
19 when the person has charge of a child. There's some
20 fuzziness around exactly -- there's a little bit of case
21 law about exactly what that means. It's clear it would
22 include abuse by a parent or reasonably suspected abuse by
23 a parent.

24 **MR. CHISHOLM:** I would just stop you there.
25 The fuzziness is around the issue of not

1 whom it is that has to report, but who is in charge of the
2 child.

3 **MR. BALA:** Right. And so, for example,
4 there was a case involving a daycare; did the person have
5 charge of child, does a daycare worker who has abused a
6 child have to be reported, and the way the legislation is
7 written right now, arguably, the extra-familial abuse,
8 abuse by a coach, for example, would be pretty clearly
9 someone who does not have charge of child and that is not
10 to be reported on the register. So one of the issues is
11 who has to be reported. Ontario net has different laws
12 from, for example, Nova Scotia and Manitoba, which specify
13 -- have a broader definition of reportable abuse.

14 **MR. CHISHOLM:** And, ultimately, your
15 conclusion with respect to the Ontario Child Abuse Register
16 would be it's a good thing, a bad thing, it needs to be
17 changed?

18 **MR. BALA:** Well, it certainly needs to be
19 fundamentally changed. One of the issues was that it
20 cannot be used for screening for job purposes. It couldn't
21 then and it can't now, and a concern that we had is that
22 it's not a very useful institution and, therefore, it
23 should either have been dramatically changed or shut down.
24 Since then, one of the things that we talk about in the
25 report that has happened is, at least, computers have

1 helped link it up. It used to be quite clumsy. At least,
2 now it's online and so on. So there's better communication
3 between Children's Aid Societies.

4 **MR. CHISHOLM:** And when you speak of not
5 using the Abuse Register as a job screening tool, I take it
6 your concern would be that that would be too narrow an
7 instrument to use for a job screening tool; is that right?

8 **MR. BALA:** Well, the issue was and is that
9 people who have sexually abused children, if they are found
10 guilty in criminal court, which we know is a very high
11 standard of proof, we now have -- at that time, it was
12 going on but now it's almost universal -- but there's a
13 Criminal Code check to make sure that that person doesn't
14 have a history of having abused children or other criminal
15 offences. If they do, they're not going to get the
16 position.

17 But there are a range of people who might
18 not be found guilty in criminal court, but, nevertheless,
19 there's significant evidence they've abused a child, there
20 may be even a finding -- for example, it could have been
21 dismissed for a position who had an arbitration hearing and
22 the arbitrator concluded, on a balance of probabilities,
23 this person did abuse a child, but it has not satisfied the
24 criminal standard, so they would not be on the register --
25 excuse me -- it would not show up on a Criminal Code check.

1 **MR. CHISHOLM:** And you address that concern,
2 I believe, in your document "The Child First" which ---

3 **MR. BALA:** Yes.

4 **MR. CHISHOLM:** --- is Tab 14 of your
5 document.

6 **MR. BALA:** That a Criminal Code check is not
7 sufficient. It's certainly necessary, but there will be
8 many people who have, in fact, abused children, who will
9 not appear on a criminal record and CPIC check.

10 **MR. CHISHOLM:** So the net would not be wide
11 enough for those ---

12 **MR. BALA:** That's right.

13 That was one of our concerns in that report
14 and, as I say, some provinces have acted on that and
15 Manitoba, Nova Scotia, Ontario have not.

16 **MR. CHISHOLM:** And you've spoken today of
17 the link between Children's Aid Societies, the computer
18 link and how that can accomplish -- I don't want to put
19 words in your mouth-- but that accomplish many of the
20 goals of the Child Abuse Register with respect to ---

21 **MR. BALA:** Well, it certainly has improved
22 how it operates in that they can have the so-called Fast
23 Track. They have quite good access to information from one
24 agency to another. Police forces have very, very good
25 communication systems between police forces on a certain

1 level in terms of, you know, particular criminal records.

2 Historically, Children's Aid Societies in
3 Ontario that are localized and didn't have very good
4 communication at all, they now have better communication
5 between agencies. They're all, for certain groups, on a
6 centralized computer system.

7 **MR. CHISHOLM:** That's Fast Track?

8 **MR. BALA:** Yes.

9 **MR. CHISHOLM:** And that would be province-
10 wide; is that your understanding?

11 **MR. BALA:** Yes, it's my understanding.

12 **MR. CHISHOLM:** Okay.

13 And if you'd expect the agencies to be using
14 Fast Track system which is province-wide, would you expect
15 the agencies to rely less and less upon the Child Abuse
16 Register?

17 **MR. BALA:** Yes, and that's why one reason we
18 think it -- we recommended then that it should be shut down
19 and, in fact, the government has announced they have but it
20 still exists.

21 **MR. CHISHOLM:** And just for the purposes of
22 clearing up the record, when was it that you studied the
23 Ontario Child Abuse Register?

24 **MR. BALA:** In '87 and a report was released
25 in '88. I don't have the exact dates, but I recall it

1 being the spring of '88. The government announced -- I
2 remember vividly, we had a press conference and the
3 Minister announced at that time that he was broadly going
4 to accept our recommendations and I had the front page of
5 the newspaper and we're still waiting for the full
6 implementation of those recommendations.

7 **MR. CHISHOLM:** And is that an example of
8 your comments earlier in your testimony that the winds have
9 changed and government can sometimes move slowly?

10 **MR. BALA:** Yes, and, in fact, I sat on a
11 Commission. I was looking at my CV during the break, and
12 we did the report in '87-'88. I sat on another Committee
13 in '93-'94 and people -- and I still meet people at
14 conferences who say "When are they going to act on your
15 report?" because they didn't reject it. They actually
16 seemed to accept it. Little bits of it have been
17 implanted, but we're still waiting for the major
18 implementation.

19 **MR. CHISHOLM:** And taking you back to last
20 week during your evidence in chief, you spoke of the duty to
21 report suspicions of child abuse first arising in Ontario
22 in 1965 and you referred to the *Child Welfare Act*.

23 **MR. BALA:** Yes.

24 **MR. CHISHOLM:** Is that right?

25 And that the short title for that is *Child*

1 *Welfare Act, 1965?*

2 **MR. BALA:** Yes.

3 **MR. CHISHOLM:** And I know you don't have the
4 provisions in front of you, but Section 41(1) -- and if I
5 just read the note, it may help refresh your memory or
6 bring it back to it:

7 "Every person having information of the
8 abandonment, desertion, physical ill
9 treatment or need for protection of a
10 child shall report the information to a
11 Children's Aid Society or a Crown
12 Attorney."

13 Is that, sir, the -- is that the piece of
14 legislation that you were referring to last week?

15 **MR. BALA:** Yes, and then the thing about
16 that legislation is that that also links to two other
17 provisions. One is the definition of child in need of
18 protection, which has this notion of the person in charge
19 of a child. That definition looks very broad. And
20 secondly, the offence provision in there, it's not an
21 offence -- that's what I would call a moral or hortatory
22 statement because the offence provision is actually quite a
23 bit narrow -- the people who would be prosecuted for
24 failing to do that. It's narrower.

25 **MR. CHISHOLM:** And I know you don't have it

1 in front of you, but was there even an offence provision in
2 the 1965 legislation or does that -- some of it comes about
3 later on in the *Child and Family Services Act*?

4 **MR. BALA:** Well, I would be speaking from
5 memory and it would stand to be corrected, but I believe
6 that there was an offence provision but only for people who
7 were professionals, doctors, nurses and so on. But
8 certainly I could be mistaken about that. It's certainly
9 in the 1984 Act, but my recollection is that it was already
10 in the 1965 Act. But very clearly there were some people
11 for whom it was not an obligation to -- there was an
12 enforceable obligation to report.

13 **MR. CHISHOLM:** Still today you speak of, if
14 I take you to the present legislation today, that would be
15 section 72 of the *Child and Family Services Act* ---

16 **MR. BALA:** Yes.

17 **MR. CHISHOLM:** --- it sets out the regime of
18 the duty to report and the penalty in some situations. Am
19 I right that it's your understanding, Professor, that the
20 duty to report would apply to all persons?

21 **MR. BALA:** The moral duty to apply, but the
22 offence provisions continue to apply only to people who are
23 in certain defined professional ---

24 **MR. CHISHOLM:** Professionals.

25 **MR. BALA:** And in particular, for example,

1 what it meant and means is that if a parent fails to
2 report, the other parent for -- you know, the wife says
3 "Well, my husband is sexually abusing a child," she cannot
4 be prosecuted for failing to report that. She could have
5 other kinds of liability but not on the *Child and Family*
6 *Services Act* -- or a neighbour who fails to report can't be
7 prosecuted.

8 There is this -- the category of
9 professionals who have responsibility has changed over time
10 and always, though, the obligation to report is related to
11 primarily, if you want, intra-familial although there are
12 some -- this what is it, having charge of a child.

13 **MR. CHISHOLM:** Am I correct, Professor, that
14 your view is that the triggering provision to -- for a
15 successful prosecution for failure to report arises by
16 getting the information to base your suspicion on by way of
17 a professional or official duty? You can't -- as you say,
18 if you're a mere neighbour, you can't be prosecuted but you
19 have to acquire the information to base your suspicion on
20 in the capacity of your professional duties.

21 **MR. BALA:** That's right.

22 **MR. CHISHOLM:** Okay.

23 **MR. BALA:** And the exact nature of those
24 certainly changed over time. So to the extent that it may
25 be central in this Commission you want to look at the

1 definition at each point in time which changed in 1984 and
2 also bear in mind that there was actually -- there was and
3 is a certain amount of misunderstanding about exactly what
4 the scope of the reporting obligations are and that there
5 are situations where people think, "I do have an obligation
6 to report" and in fact they don't. Particularly with
7 extra-familial abuse, they may think "Oh, I have to report
8 to Children's Aid Society," when you actually read the
9 legislation, they may not have that obligation.

10 **MR. CHISHOLM:** But they would be caught by
11 the moral duty that you described earlier.

12 **MR. BALA:** Yes, and in fact, speaking
13 specifically about institutional abuse in a broad sense,
14 whether it's in a school, a sports organization or
15 whatever, there might not be the obligation to report on
16 the *Child and Family Services Act*, but there may be
17 potential civil liability for a failure to report or even
18 for passing someone on and sometimes -- and I think you had
19 other witnesses and myself talking last week about a
20 situation where someone was suspected of having abused a
21 child, let's say as a teacher or whatever, and they'd say
22 "Well, we're not going to investigate, we're not going to
23 prosecute but you can move on. We'll give you a good
24 letter of reference." That is a not uncommon practice in
25 Canada and at least, arguably, there'd be civil liability

1 for writing a positive letter of reference when you had
2 reasonable grounds to suspect someone had been abusing a
3 child, but you wouldn't necessarily have had the obligation
4 to report it.

5 **MR. CHISHOLM:** And that would be on the
6 basis of a misrepresentation.

7 **MR. BALA:** Yes.

8 **MR. CHISHOLM:** And negligent to fraudulent
9 misrepresentation.

10 **MR. BALA:** Yes.

11 **MR. CHISHOLM:** Just taking you back, talking
12 about the moral duty to report ---

13 **MR. BALA:** And I should say, in that moral
14 duty, section -- I take it was section 41 -- it's
15 interesting that it sets up that moral duty and it says
16 everybody has the duty to report but then it immediately
17 says we have this narrower offence provision. It's one of
18 the few places in law where you have a general statement
19 and no remedy, either civil or criminal or quasi-criminal,
20 for that and so it's been described as this moral duty to
21 report.

22 **MR. CHISHOLM:** When I speak of the moral
23 duty I'm speaking about present-day legislation which is
24 subsection 1 of section 72 of the *Child and Family Services*
25 *Act*.

1 **MR. BALA:** Yes.

2 **MR. CHISHOLM:** Okay.

3 If I could take you to Tab 14 of Exhibit
4 17P(b, which is Volume 2 I believe of your Book of
5 Documents, and that is the child -- first, specifically the
6 page 7 of 18 of the electronic version or page 3 of the
7 hardcopy version.

8 **THE COMMISSIONER:** Sorry; you said page 7?

9 **MR. CHISHOLM:** Page 7 of 18 for Madam Clerk.
10 Page 3 is what you would want for the hardcopy. It's ---

11 **THE COMMISSIONER:** Yes.

12 **MR. CHISHOLM:** --- entitled, "How to Report
13 Suspected Child Abuse and Neglect." That's the heading on
14 the top-left portion.

15 **MR. BALA:** Yes.

16 **MR. CHISHOLM:** And it's up on the screen
17 now. The second paragraph under the -- well, the second
18 heading, "Who must report." It appears in relation to this
19 paper, you did some type of comparative analysis amongst
20 the child welfare legislation in the provinces?

21 **MR. BALA:** Yes.

22 **MR. CHISHOLM:** Can you speak of the appendix
23 -- I don't know if the appendix has been included in your
24 Book of Documents. I don't see it in the electronic
25 version. Just so I'm clear, Professor, do you see the ---

1 **MR. BALA:** No, I don't think it is and I
2 should say I wrote a more -- in my CV and I think on the
3 list of publications I do refer to 1998 which is much later
4 than this.

5 I mean, if you're looking for a detailed
6 discussion about a lot of these issues, and they're very
7 relevant, I wrote a report for the federal government in
8 1998, and I think it's on the list of my bibliography, that
9 does set out in detail the legislation in every
10 jurisdiction. It compares it. It deals with some of these
11 issues about the scope and the duty to report and so on.

12 In this document, I think, which is written,
13 if you want, for a lay audience, it's not intended to
14 provide legal advice, there's quite a lot of variation
15 around the detail in different provinces, so we make some
16 broad statements.

17 **MR. CHISHOLM:** That's fair.

18 Now, I'll just take you to -- it's the third
19 line under that second heading, the heading of "Who Must
20 Report", the third line.

21 The sentence reads:

22 "In some provinces, certain
23 professionals and paid officials, who
24 in the course of their responsibilities
25 are charged with the care of children,

1 are subject to penalty for failure to
2 report. In others, all persons can be
3 charged for failure to report. The
4 penalty may be a fine or a period of
5 imprisonment (see appendix)."

6 Do I take it, Professor, that those
7 sentences capture the conclusion that you've reached, that
8 there's a distinction between -- in Ontario, between the
9 moral duty and the duty that -- the breach of the duty that
10 will find you prosecuted as a professional ---

11 **MR. BALA:** Right ----

12 **MR. CHISHOLM:** --- versus some other
13 provinces where the mere fact that you have the suspicion
14 of abuse triggers -- renders you susceptible to a
15 prosecution if you fail to carry out that duty?

16 **MR. BALA:** Yes.

17 **MR. CHISHOLM:** Do you recall, Professor, and
18 you may not -- it wouldn't be fair if you didn't -- do you
19 recall what provinces that you looked at in terms of the
20 legislation that would've set out the most -- the strictest
21 of the duties to report that caught everybody?

22 **MR. BALA:** I wouldn't want to speak from
23 memory. I have -- I've been encouraged not to bring
24 documents with me to the witness stand. I do have a copy
25 of -- you know, if we're going to take a break -- of the

1 1998 report that deals with this extensively. It's also on
2 the internet and could tell you every province. It'll make
3 a different.

4 **MR. CHISHOLM:** Certainly. Perhaps over the
5 lunch hour we can ---

6 **THE COMMISSIONER:** Okay, sure.

7 **MR. CHISHOLM:** --- we can do that.

8 And while you're thinking of that,
9 Professor, you speak of a distinction between provinces and
10 some just having -- I assume these are maximum penalties --
11 fines such as Ontario.

12 You speak also, in this document I've just
13 read to you, of a period of imprisonment.

14 **MR. BALA:** Yes.

15 **MR. CHISHOLM:** I would be interested, if you
16 could, Professor, in finding out which of the provinces
17 imposed or leave open a possibility of the imprisonment ---

18 **MR. BALA:** Yes, I can certainly ---

19 **MR. CHISHOLM:** --- option.

20 **MR. BALA:** --- get that for you.

21 **MR. CHISHOLM:** Thank you, Professor.

22 Just in the couple of minutes we have before
23 we go on lunch, we can move on to another area. You spoke
24 of IPCA, the Institute for the Prevention of Child Abuse in
25 your evidence.

1 **MR. BALA:** Yes.

2 **MR. CHISHOLM:** Both in-chief and in some of
3 your cross-examination. Your timeframe on that would
4 suggest that IPCA was around from 1985 until, I believe you
5 said, 1995.

6 **MR. BALA:** Yes.

7 **MR. CHISHOLM:** And as of that point, the
8 government funding stopped?

9 **MR. BALA:** Yes.

10 **MR. CHISHOLM:** You told us in your evidence
11 in-chief about the function of IPCA providing training to a
12 broad range of professionals from a number of disciplines;
13 is that right?

14 **MR. BALA:** Yes, a major focus was the child
15 protection field but also police, prosecutors; health
16 professionals.

17 **MR. CHISHOLM:** Do you know what, if anything
18 came along to replace IPCA upon funding being stopped to
19 it?

20 **MR. BALA:** I couldn't give it in great
21 details. It would seem to me that there's been less
22 training being done. Some of it has been done by the
23 Ontario Association of Children's Aid Societies, for
24 example. So it's not true that there's been nothing, but
25 IPCA was a particularly important organization that is no

1 longer existing.

2 **MR. CHISHOLM:** And you touched upon the
3 Ontario Association of Children's Aid Societies. Are you
4 familiar with that organization?

5 **MR. BALA:** In a broad sense, yes.

6 **MR. CHISHOLM:** Have you ever provided any
7 training to that association?

8 **MR. BALA:** I have presented at their annual
9 conference on a number of occasions.

10 **MR. CHISHOLM:** And the distinction, if any,
11 that you draw between -- and again, I'm looking at it from
12 the perspective of a child protection worker.

13 **MR. BALA:** I think that IPCA's major mandate
14 was training, through a lesser extent research and advocacy
15 province-wide, whereas the Ontario Association of
16 Children's Aid Societies is an administrative organization
17 that represents each Children's Aid Society and has more --
18 deals more with administrative financial policy issues but
19 it also does some training. It was not as central to its
20 mandate as IPCA was and my sense is, and I stand to be
21 corrected, that they do not have the level of funding for
22 doing training that IPCA had.

23 **MR. CHISHOLM:** So is it fair to say you
24 still -- you see a void from the time that IPCA left?

25 **MR. BALA:** Very much so, very much so. I

1 think that, in fairness, those who are responsible for
2 child protection agencies are -- and there's a whole set of
3 issues about how child protection workers are trained.
4 They go to school in social work where child protection is
5 a relatively small part of it. The child protection field
6 is one where there's a relatively high turnover of staff
7 and a lot of people come with a lot of goodwill but they
8 don't have much training specifically about identifying
9 abuse, interviewing, working with a suspected abuse of
10 parents and so on. There's a lot to be done there, coming
11 to court to testify, and the level of training is often not
12 what it could be.

13 I think that's a real gap, yes.

14 **MR. CHISHOLM:** Mr. Commissioner, I see that
15 it's 12:30. Now may be an appropriate time to take a
16 break, and I can advise you that I believe, but for the two
17 outstanding questions I will have of Professor Bala, I
18 would be finished.

19 **THE COMMISSIONER:** That's terrific. Thank
20 you.

21 **MR. ENGELMANN:** Perhaps what we'll do to
22 accommodate Mr. Chisholm in questioning, he can speak to
23 Professor Bala and we can have those articles made
24 available. And if any copying needs to be done, we can do
25 that over the lunch break.

1 **THE COMMISSIONER:** Perfect. Thank you.

2 Come back at 2:00.

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

5 The hearing will reconvene at 2:00.

6 --- Upon recessing at 12:31 p.m. /

7 L'audience est suspendue à 12h31

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

9 L'audience est reprise à 14h04

10 **THE REGISTRAR:** This hearing of the Cornwall
11 Public Inquiry is now in session.

12 Please be seated. Veuillez vous asseoir.

13 **THE COMMISSIONER:** Thank you.

14 **NICHOLAS BALA, Resumed/Sous affirmation solennelle:**

15 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

16 **CHISHOLM, (continued/suite):**

17 **THE COMMISSIONER:** All right, yes. So you
18 want me -- Mr. Chisholm, you were looking at a table, I
19 suppose, and I think we produced a two-page document.

20 **MR. CHISHOLM:** That's correct.

21 **THE COMMISSIONER:** Entitled "Child Abuse:
22 Reporting and Classification in Healthcare Settings" August
23 of 1998. You're going to want the witness to review this,
24 so we should enter it as an exhibit.

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

1 **THE COMMISSIONER:** Madam Clerk, what exhibit
2 would that be?

3 **MR. ENGELMANN:** Twenty-two P (22P) I
4 believe.

5 **THE COMMISSIONER:** Pardon me?

6 **THE REGISTRAR:** Twenty-two P (22P).

7 **THE COMMISSIONER:** Twenty-two P (22P). All
8 right.

9 **---- EXHIBIT NO./PIÈCE No. 22P:**

10 Chart - Child Abuse: Reporting and
11 Classification in Healthcare Settings -
12 August 1998

13 **MR. CHISHOLM:** Good afternoon, Professor
14 Bala.

15 Over the lunch hour, you had occasion to
16 take up a report entitled "Child Abuse: Reporting and
17 Classification in Healthcare Settings". Is that correct?

18 **MR. BALA:** Yes.

19 **MR. CHISHOLM:** And it's dated August of
20 1998; is that right?

21 **MR. BALA:** Yes.

22 **MR. CHISHOLM:** And you were one of the four
23 authors of that report; is that correct?

24 **MR. BALA:** Yes.

25 **MR. CHISHOLM:** Now, we've entered in exhibit

1 the cover sheet and Table 3.1 from that report, and Table
2 3.1 would be found on page 30 of the hard copy.

3 Can you tell us, Professor, what Table 3.1
4 represents?

5 **MR. BALA:** It represents in summary form the
6 legislation as it existed in 1998 for reporting of child
7 abuse and neglect, showing that there is some significant
8 variation around various issues in the child abuse
9 reporting laws and there are a number of other issues dealt
10 with within the report discussing the variations.

11 **MR. CHISHOLM:** With respect to the -- there
12 are two issues I suppose we can draw out of this -- out of
13 this table from my perspective, the first one being how
14 wide the particular offence is, and if I look at the
15 Province of New Brunswick and the Province of Ontario,
16 would I be correct to understand your table that while the
17 offence is -- while there is an offence of failure to
18 report a suspicion of child abuse, that in those two
19 provinces at that time the offence related only to
20 professionals?

21 **MR. BALA:** That's right.

22 **MR. CHISHOLM:** And would I be correct to
23 understand that in the Yukon Territory at that time there
24 was no offence with respect to the duty to report a
25 suspicion of child abuse?

1 **MR. BALA:** That's right, and to my
2 knowledge, there is still no duty in the Yukon although
3 there are some regulations that deal with some
4 professionals, but there is no -- in their *Children's Act*,
5 it's not part of the Act.

6 **MR. CHISHOLM:** So if I understand this table
7 correctly, Ontario; certainly when this report was
8 prepared, would have been in the minority with respect to
9 the breath of its duty to report?

10 **MR. BALA:** That's right, particularly in
11 that it only made it only made it an offence for
12 professionals, although the definition of professionals has
13 gradually been expanding. The other point that's not on
14 this table but is in the full report is that in Ontario,
15 the focus is on -- at least in the legislation, is on the
16 reporting of abuse by a person having charge of a child and
17 the case law actually defines that relatively narrowly as I
18 said, for example, to clearly exclude a coach and probably
19 as well who has been abusing a child.

20 In some other provinces, Nova Scotia and
21 Manitoba in particular, there's a broader duty that would
22 encompass reporting of child abuse by any person.

23 **MR. CHISHOLM:** To broaden the net in
24 Ontario, I take it we could -- would you be in favour of
25 amending the legislation to remove the "in charge of"

1 portion so that anybody -- if you have a suspicion of child
2 abuse arising from any person's involvement with a child,
3 it would trigger the duty to report?

4 **MR. BALA:** Yes, although to some extent, the
5 issue of reporting is part of a broader scheme. So the
6 question is why are you reporting, in that in Ontario you
7 report to the Children's Aid Society and the reporting has
8 been tied to the duty to protect children essentially from
9 abuse by the caregivers and parents.

10 In provinces that have the broader mandate,
11 in particular Manitoba and Nova Scotia, the reason there is
12 that broader mandate is that the child welfare system, in
13 particular the Child Abuse Registry, deals -- has a
14 screening function in general. So I don't see reporting as
15 separate from the broader issues.

16 Now, in our report in 1988, we recommended
17 that the Child Abuse Register should be expanded to be a
18 screen register and that's in fact what they have in Nova
19 Scotia and Manitoba and that's how it works, but I think we
20 need, in fact, broader screening in Ontario and that's why
21 we'd see also the broader reporting.

22 **MR. CHISHOLM:** Okay. In terms of the
23 penalties, your third column in your table sets out the
24 possible or the maximum penalties for an offence by
25 province.

1 **MR. BALA:** Yes.

2 **MR. CHISHOLM:** I see that some provinces
3 would have a maximum penalty that includes jail. Some have
4 merely a fine, including Ontario; is that right?

5 **MR. BALA:** Yes.

6 **MR. CHISHOLM:** And Prince Edward Island?

7 **MR. BALA:** Yes.

8 **MR. CHISHOLM:** And some provinces,
9 particularly Nova Scotia, distinguish between whether the
10 person convicted of failure to report is a professional
11 versus someone who is not a professional. Am I
12 understanding your chart correctly?

13 **MR. BALA:** Yes.

14 **MR. CHISHOLM:** And a quick review of the
15 table would show that at least six of the jurisdictions
16 that you have set out have a maximum penalty of
17 incarceration for at least some period of time; is that
18 correct?

19 **MR. BALA:** Yes, although I'm not -- I should
20 say that prosecutions under these provisions are relatively
21 rare, there had been a few including in Ontario. To my
22 knowledge no one has been imprisoned anywhere in Canada for
23 failure to report and that these were people who failed to
24 report. There are others, of course, who are the primary
25 abusers.

1 But what has had a significant impact, I'm
2 reporting, since you asked the question, two things. One
3 is that there has been a -- the change in legislation and
4 the change in awareness has resulted in more professional
5 education for people who work with children but are not in
6 the child welfare system. So faculties of education,
7 medicine, nursing, and so on, have a lot more education
8 today around child abuse reporting. The only thing that
9 has helped that is not so much the fine, the imprisonment,
10 although that's certainly out there; it's the threat of
11 professional sanction which is -- also occurs in Ontario
12 and elsewhere, so that professionals like doctors who fail
13 to report reasonable suspicions of child abuse may find
14 that their license to practice is suspended. That's had a
15 significant -- my sense is that that professional sanction
16 is as or more effective. They're all interrelated because
17 the professional colleges say "It's in the legislation. If
18 you don't follow the legislation, you may have professional
19 sanctions as well as a fine."

20 **MR. CHISHOLM:** That would be the College of
21 Physicians and Surgeons who could impose ---

22 **MR. BALA:** Yes.

23 **MR. CHISHOLM:** --- a penalty on the doctor,
24 that the College of Teachers can impose a penalty on the
25 teachers?

1 **MR. BALA:** Yes.

2 **MR. CHISHOLM:** What you're describing is
3 separate and apart from the penalty that is set out in
4 Section 72 of the *Child and Family Services Act*.

5 **MR. BALA:** Right.

6 But related to it in that they say "Because
7 it's not legislation, we want you as a professional in this
8 discipline to be particularly aware of this and so we're
9 making, in addition, a professional sanction."

10 And that -- it has an impact in -- and I've
11 gone and lectured at Queen's and elsewhere into the Faculty
12 of Health Science to say not only is this a morally
13 important thing, but there are sanctions and it's not just
14 a fine; it's also the possibility of having your license
15 suspended. That gets people's attention.

16 **MR. CHISHOLM:** So not only at the
17 institutions, the educational institutions such as
18 universities where the faculties can drive home the point
19 of the professional obligation to report, but you could
20 also have the governing bodies of each profession driving
21 home that point to its members?

22 **MR. BALA:** Yes.

23 **MR. CHISHOLM:** Thanks, professor, those are
24 my questions.

25 **THE COMMISSIONER:** Thank you.

1 Before we go on to either Monsieur Rouleau
2 or Todd Robertson, I guess I'd like to know will we be
3 finishing today with this witness or will there be an
4 overflow until tomorrow?

5 The reason I ask is because we have a big
6 technical crew here and they have to know whether the
7 interpreters and the web cast and all of that will be
8 coming through. It matters not to me. If we can get some
9 indication.

10 **MR. ENGELMANN:** I just had a brief
11 discussion with counsel and my understanding was they
12 thought we would be done today with this witness.

13 **THE COMISSIONER:** Okay. All right.
14 So who will be speaking for Probation and
15 Corrections?

16 **MR. ROULEAU:** Mr. Rouleau. I have no
17 questions Mr. Bala.

18 **LE COMMISSAIRE:** Parfait. Merci.
19 Darrell, is it Kloeze? Sorry.

20 **MR. KLOEZE:** It's Kloeze.

21 **THE COMISSIONER:** Kloeze?

22 **MR. KLOEZE:** Yes.

23 **THE COMISSIONER:** All right.

24 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
25 **KLOEZE:**

1 **MR. KLOEZE:** Good afternoon, Professor Bala.
2 My name is Darrell Kloeze and I represent the Attorney
3 General for Ontario.

4 I just have a very few questions for you,
5 Professor Bala. Your evidence last week and this morning
6 has been very interesting. Obviously, the Attorney General
7 of Ontario has an interest in law reform and legal reform,
8 and you described last week -- you made a comment that law
9 reform is generally a slow process, but I would like to
10 suggest to you that in this area of prosecutions and
11 criminalization of child sex abuse that, in fact, there are
12 two significant periods, one in which, as you said last
13 week, there was an over -- over a century of -- a period
14 that lasted over a century with no change whatsoever, and
15 then in the last 20 years there's actually been quite
16 significant changes in the laws that relate to child sex
17 abuse and prosecutions of child sex abuse.

18 **MR. BALA:** Oh, yes. I think, and I hope my
19 evidence has made clear that we've made enormous progress
20 over the last 20 years and, in particular, in comparison to
21 the previous 20 years or previous 100 years, and that
22 progress is both in terms of legislation, federal
23 responsibility and also in terms, I think, of training and
24 awareness by police and prosecutors, sensitivity support
25 services for victims.

1 **MR. KLOEZE:** I think some of the changes you
2 talk about in terms of legislation, the changes deal with
3 not only substantive changes to the Criminal Code, but
4 offences. You talked, in 1988 there were changes to the
5 Criminal Code including offences related to exploitation of
6 children and invitation to sexual touching ---

7 **MR. BALA:** Yes.

8 **MR. KLOEZE:** --- but not only substantive
9 changes to the criminal law. There had been changes to
10 rules of evidence.

11 **MR. BALA:** Yes.

12 **MR. KLOEZE:** Not only legislative changes to
13 rules of evidence, but also common-law changes.

14 **MR. BALA:** Yes, very much so and I think we
15 reviewed in the last session here some of the Supreme Court
16 of Canada decisions, the Ontario Court of Appeal decisions
17 that changed the laws of evidence and the common-law rules.

18 **MR. KLOEZE:** Would you agree with me that
19 one of the most significant legislative changes in 1988 was
20 the abolition of a requirement for corroboration in order
21 to establish a successful prosecution of sexual abuse?

22 **MR. BALA:** It was certainly one of the
23 significant changes, yes.

24 **MR. KLOEZE:** And, in fact, prior to that
25 change of the law, there was no longer a requirement for

1 corroboration. Any acts of sexual abuse that occurred in
2 private prior to 1988, it would have been virtually
3 impossible to convict in the absence of any physical
4 evidence.

5 **MR. BALA:** I think that, you know, some of
6 the rules dealt with, if we're talking about children, for
7 example, under the age 14, you have a different rule than,
8 for example, for an adult coming forward and talking about
9 child sexual abuse. So there are different rules that
10 apply depending on the age of the witness.

11 **MR. KLOEZE:** You're talking about prior to
12 1988, prior to the ---

13 **MR. BALA:** Yes.

14 **MR. KLOEZE:** But prior to 1988 there was
15 always a requirement that there would be corroboration of
16 any allegation.

17 **MR. BALA:** For the evidence of a child
18 witness that -- it was a different rule for adults who were
19 testifying about what happened when they were children.

20 **MR. KLOEZE:** Okay. Thank you.

21 And, as I said, I think ---

22 **MR. BALA:** And I should say that, you know,
23 and we can go back and certainly look at the -- the
24 corroboration requirement was, in fact, for -- there was a
25 common-law warning requirement, the corroboration

1 requirement per se was for children who were giving
2 testimony under a promise to tell the truth as opposed to
3 under an oath. So there would be circumstances in which it
4 was -- and this goes back -- yes, it was a significant
5 change, but even prior to 1988 there were circumstances in
6 which you did not require corroboration. There was,
7 however, the common-law warning which was slightly
8 different which apply to all child witnesses.

9 **MR. KLOEZE:** And the common-law ---

10 **MR. BALA:** And so -- I don't know how much
11 you want to get into the technicality of the pre-1988 law.
12 I think in general, the changes in 1988 made it, as was
13 quoted this morning, significantly easier to get a
14 conviction, but the law was quite complex prior to 1988,
15 different rules depending on whether the child was
16 testifying as a so-called unsworn witness on a promise or
17 was testifying under oath. You know, I don't know how much
18 you want to get into the technicality of the pre-'88 law or
19 just to make the general point that it was certainly
20 significantly easier in a number of ways to get a
21 conviction after 1988.

22 **MR. KLOEZE:** Okay.

23 I don't think it's necessary to get into the
24 technicalities. I'm satisfied with your evidence. I
25 think you also said this morning that 1988 was a watershed

1 moment.

2 **MR. BALA:** Yes. I think that the change in
3 the legislation was very significant in and of itself, both
4 in terms of the offences, in terms of the evidentiary and
5 procedural changes and in terms of the education for
6 professionals that started to go on around that because
7 there was new legislation. So people -- and I think you've
8 seen the paper, institutions like IPCA were taking
9 advantage of the legislation, the enactment of the
10 legislation, and say "We have to start to train people
11 about the new legislation."

12 **MR. KLOEZE:** I'd like to talk a bit more
13 about the evidentiary and procedural changes that you're
14 talking about as well. The legislative changes in 1988
15 that made it easier for child witnesses to testify?

16 **MR. BALA:** Yes.

17 **MR. KLOEZE:** And there were legislative
18 changes that relaxed or, I guess, common-law changes that
19 relaxed the strict rules of admissibility of evidence?

20 **MR. BALA:** Yes.

21 **MR. KLOEZE:** For example, hearsay evidence
22 or similar fact evidence?

23 **MR. BALA:** Yes.

24 **MR. KLOEZE:** And would you agree that as
25 these changes were taking place from a criminal justice

1 perspective that these are very significant changes
2 because, again from that perspective of criminal justice,
3 to get a successful prosecution, a prosecutor would have to
4 have sufficient credible evidence to place before a judge
5 before there could be a conviction?

6 **MR. BALA:** Yes.

7 **MR. KLOEZE:** So relaxing the rules of
8 evidence and making it easier to give evidence is
9 significant from that perspective?

10 **MR. BALA:** Yes, absolutely, and some of
11 those changes were the legislative changes that occurred in
12 1988 on a specific date. I think it was right at the start
13 of January. Other ones were changes in the common law that
14 came in over a period of time quite quickly in the couple
15 of years following that, but one would have to wait for the
16 decision in certain contexts and certain contexts; for
17 example, hearsay we have the *Khan* decision in the Ontario
18 Court of Appeal in 1998. Trial judges then immediately
19 started to apply the decision even though it didn't get to
20 the Supreme Court of Canada for two years.

21 **MR. KLOEZE:** And generally, changes to the
22 common law are incremental but, as you said, in this area
23 it seems to be happening quite quickly?

24 **MR. BALA:** Yes.

25 **MR. KLOEZE:** The *Khan* case in terms of

1 admitting hearsay evidence that was given out of court, but
2 hearsay evidence of a child's statement, that was a
3 significant change not only to, I guess, the law on child's
4 sexual abuse but it was just a significant change to the
5 law of evidence?

6 MR. BALA: Yes, it was both.

7 MR. KLOEZE: I think you said the other day
8 that you had sympathy for trial judges as this period was
9 going on because until the Supreme Court changes the law,
10 the trial judges are limited to what the common law
11 actually is at that particular time?

12 MR. BALA: Well, that's right and, in fact,
13 I mean I should say also for prosecutors in that -- and
14 similar fact may be another good example where you'd like
15 to -- you realize, oh, I've got this one victim here that's
16 the complainant in this particular charge. I know there
17 are two others who have similar evidence that they could
18 bring forward that would buttress the credibility of my
19 complainant.

20 If I push either the prosecutor or the trial
21 judge to get these other complainants in and buttress the
22 credibility, that looks great. We've got a conviction here
23 -- great in the sense that you're going to have a fuller
24 picture and you may get a conviction but if it turns out
25 the Court of Appeal or the Supreme Court of Canada says you

1 can't do that, you've just lost that prosecution and you
2 have to go back and the complainant has to go through the
3 whole trial again.

4 So there is always this question about how
5 hard you push in terms of getting in additional evidence.
6 Once the Supreme Court has decided these cases and the
7 scope expands, there is more scope but with similar fact
8 evidence, for example, the courts -- there is still a fair
9 amount of -- the test is not easy to apply and so one is
10 always sitting there saying, "Well, should I admit this
11 evidence?" That may facilitate a fuller and fairer hearing
12 about this and perhaps give me an appropriate conviction
13 but if it's overturned, we go back to square one.

14 **MR. KLOEZE:** Okay. So would you agree that
15 that's a balance that a prosecutor always has to have in
16 mind whether or not they push for that evidence with the
17 possible risk of losing the prosecution at the end of the
18 day?

19 **MR. BALA:** That's right. It's always a
20 question of judgment how far one wants to go in trying to
21 get evidence in.

22 **MR. KLOEZE:** Moving on to another topic, but
23 keeping with the same principle, would you agree that the
24 prosecutors also have another balance to make when they are
25 prosecuting child sexual abuse cases and that balance would

1 be whether or not on the one hand they have sufficient
2 evidence to proceed with the prosecution with all the
3 things we have just been talking about and, on the other
4 hand, whether or not pushing for the prosecution would re-
5 victimize the complainant and perhaps cause trauma to the
6 complainant?

7 **MR. BALA:** I think that it's well recognized
8 that prosecutors have at least two functions there and
9 you're correct, one is that they will only go ahead with a
10 case if there is a reasonable prospect of a conviction. So
11 there will be cases where those who have been working with
12 the victims may be satisfied that there was abuse going
13 forward but the prosecutor has to say, "I don't think there
14 is a reasonable prospect of a prosecution succeeding here"
15 and therefore, they steer with broader charges.

16 And secondly, there is a balance, you know,
17 this is somewhat more controversial. I think they have to
18 take some account of the emotional state of a victim or
19 potential witness and might decide that -- I have written
20 this -- there is a little bit of it here and I have written
21 elsewhere that I think it is ultimately the state -- the
22 emotional state of a victim is an important factor that the
23 Crown must weigh in deciding whether or not to go ahead
24 with a prosecution.

25 Now, fortunately, things like more use of

1 close circuit television and victim witness workers will
2 reduce the emotional impact but it's something that has to
3 be taken into account, in my view, legitimately by a
4 prosecutor.

5 **MR. KLOEZE:** Would you say that that balance
6 or that consideration only applies in cases of child sexual
7 abuse where the child is making the complaint or would it
8 also apply in cases where there are historical allegations
9 of sexual abuse?

10 **MR. BALA:** In my view, those two factors
11 would be taken into account in both of those circumstances.

12 **MR. KLOEZE:** And that's because even with
13 adult witnesses, there should be a sensitivity to the
14 trauma that they might face when they testify?

15 **MR. BALA:** Yes, and not only just the trauma
16 of the entire process but testimony would be a significant
17 part of it.

18 Now, as I say, there are things that one can
19 do to reduce that trauma. The reality, though, is that
20 unless people have appropriate support -- and this is an
21 issue with children. We've had cases where -- I was
22 mentioning about appeals. One goes ahead. They have a
23 success of prosecuting from "a trial" and the Court of
24 Appeal says, "Well, we think the trial judge went too far
25 and this evidence shouldn't have been admitted".

1 So you have another trial and the parents
2 are saying, "We're not going to have another trial. We
3 know our child was sexually abused by this person but we're
4 not prepared to put our child through this again". I think
5 that although in theory there are things the Crown
6 prosecutor can do to say, "Well, maybe I'm going to
7 subpoena a child or prosecute the parents for obstruction
8 of justice if they don't do this", say, "Okay, I respect
9 that. I respect the decision of the parents about their
10 child's needs. We are not going to have a second trial
11 because of the vulnerability of the victim."

12 Similarly, I think, at some point the -- and
13 it has certainly gone on in some of the historic abuse
14 cases that the Crown and police may be aware that people
15 are saying, "I, too, was victimized by this person but I'm
16 not prepared to testify and I don't want to be subpoenaed.
17 It's not my problem" and they have effectively dropped out
18 of it. I think generally prosecutors correctly respected
19 that and not to, "Well, just a second, we're going to bring
20 you down here and if you don't testify we'll put you in
21 jail for contempt of court". There's a question of how far
22 you push as a prosecutor and then you take legitimately the
23 views of victims into account.

24 **MR. KLOEZE:** You have talked and written at
25 length about the accommodations that have been made for

1 child witnesses in terms of testifying and I think you said
2 this morning, and perhaps last week as well, that those
3 same kinds of accommodations are now being made available
4 to adult witnesses when they are relating traumatic events.

5 **MR. BALA:** Yes.

6 **MR. KLOEZE:** But those are very recent
7 changes in the law?

8 **MR. BALA:** That's right. They only came
9 into effect on January 2nd of this year through the Bill C-2
10 provisions.

11 **MR. KLOEZE:** Okay. Thank you.

12 Those are my questions.

13 **THE COMMISSIONER:** Thank you.

14 For Jacques Leduc is Sarah Siebert.

15 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

16 **SIEBERT:**

17 **MS. SIEBERT:** Good afternoon, Professor.

18 **MR. BALA:** Good afternoon.

19 **MS. SIEBERT:** I was reviewing your testimony
20 in-chief and I'd like to take you to the issue of false
21 allegations that you discussed.

22 And one of the sub-sets of that that you
23 discussed was the issue of manipulative adolescents ---

24 **THE COMMISSIONER:** I'm sorry.

25 **MS. SIEBERT:** --- who may make false

1 allegations to gain a material or other advantage.

2 **MR. BALA:** Yes.

3 **MS. SIEBERT:** And would you agree that you
4 mentioned that this is an issue that's increasing and it's
5 more so than in the past? I think -- is that correct?

6 **MR. BALA:** In a broad sense, I think -- and
7 I did and we can go and look at the transcript but I did
8 indicate that it's my sense -- and there is not as much
9 research about this as one would want to have but it's
10 partly if you want anecdotal from talking to people; for
11 example, in the foster care system, but also some of the
12 work we did for the Ontario Office of Child and Family
13 Services Advocacy that it is more of an issue today in 2006
14 when there is a greater awareness by youth in care and more
15 generally that some youth -- and I want to emphasize that
16 my sense being much as the minority of youth but in order
17 to gain some advantage may make an allegation of sexual
18 abuse and because they have a knowledge that if you make
19 this allegation, something is going to happen.

20 People today don't sit back and say, "Well,
21 maybe it's not true whatever they say". The first
22 responsibility is to protect this child and other children.
23 So for example, in foster care, we will move you from that
24 placement.

25 But I also want to emphasize that

1 adolescence is also a time of greater sexual victimization.
2 We have quite a lot of research about that.

3 **MS. SIEBERT:** Okay. And you said that as a
4 result of this new awareness, we have to focus
5 investigations and make sure that they are both objective
6 and sensitive; I think are the words you used?

7 **MR. BALA:** Yes, yes.

8 **MS. SIEBERT:** And if we just focus our
9 attention on this issue of objectivity, I'm wondering if
10 you can provide us with some more examples from your
11 experience of the types of steps that police officers have
12 to take when they conduct these investigations to maintain
13 their objectivity.

14 **MR. BALA:** Well, and I certainly have
15 written and thought about investigation; on the other hand,
16 there are people who are experts and I've actually
17 contributed, I think as a -- last session -- work that I
18 contributed to that was written largely by police officers,
19 I had some role in it, so I would defer it to others. I
20 mean there are others who are greater experts how to carry
21 out an investigation.

22 But objectivity, obviously, is a question
23 initially of orientation in the sense of maintaining a
24 recognition of what's going into an investigation with an
25 alternate hypothesis. Yes, I'm hearing from this person;

1 might they be lying; might they be mistaken; do I have any
2 sense of why those things -- and going to follow up as
3 things start to occur with that particular person. Also,
4 though, being very careful to say the mere fact that they
5 might have some -- someone could say, I mean, we are now in
6 a sort of a hall of mirrors and that when an allegation
7 comes forward -- and one point that I've made before, but
8 would just like to emphasize, there are issues about false
9 allegations. There are many more issues about false
10 denial.

11 So very, very few people who have sexually
12 abused children or adolescents, when confronted by the
13 police or by the victim, will say, "Oh, yes, I did a -- you
14 know, I now want to confess". Confessions come very, very
15 late if ever from -- and we have many documented cases
16 where there is no doubt this person has sexually abused
17 children, they're in jail, and they are saying, "No, no, I
18 didn't do it", and even if you have irrefutable evidence,
19 let alone they've been convicted in Criminal Court.

20 So I think though as a police officer
21 carrying on an investigation, you want to keep an open mind
22 and say, okay, I'm listening to the story; how does it fit
23 with what I know about what else is going on and is it
24 internally consistent, is it consistent with other evidence
25 I have? Is it consistent with documentary evidence? And

1 I'm keeping an open mind and recognizing that it might be
2 untrue.

3 And of course this particular issue we're
4 focusing on, on sexual abuse allegations, it's also true in
5 any, almost any kind of investigation, unless you have a
6 dead body, you are always saying, "Well, is this true? Was
7 this person truly robbed?" or whatever.

8 **MS. SIEBERT:** Right. And do you see any
9 additional or special concerns that police officers have to
10 take into account in the context of multiple allegations or
11 multiple complainants or multiple alleged abusers?

12 **MR. BALA:** Well, these investigations are
13 particularly difficult. There is no doubt, as one is going
14 forward, one wants to -- it's hard even in some of these
15 cases to keep track of who the alleged perpetrators are,
16 who the alleged victims are, and it depends on the size of
17 the police force to know as we're going ahead.

18 There have been some cases where there have
19 been hundreds of victims, and a relatively small force is
20 trying to carry out this very complex investigation. So
21 another aspect of this is depending on the investigation
22 bringing in additional resources both in terms of just
23 sheer manpower and also expertise as is appropriate, going
24 forward.

25 **MS. SIEBERT:** Okay, I think that's all I

1 have for today. Thank you.

2 **THE COMMISSIONER:** Thank you.

3 Mr. Ducasse? Is that how you pronounce you

4 ---

5 **MR. DUCASSE:** Je n'ai aucune question pour
6 le Professeur Bala, Monsieur le Commissaire.

7 **LE COMMISSAIRE:** Parfait, merci beaucoup.

8 **THE COMMISSIONER:** Mr. Callaghan.

9 **MR. CALLAGHAN:** Thank you, Mr. Commissioner.

10 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
11 **CALLAGHAN:**

12 **MR. CALLAGHAN:** Professor Bala, my name is
13 John Callaghan, and I am here representing the Cornwall
14 Police Services.

15 Now, just to sort of dovetail with some of
16 the earlier cross-examiners, I take it the changes in
17 legislation, particularly in 1988 and 1993, made it easier
18 to secure convictions; correct?

19 **MR. BALA:** Yes, right.

20 **MR. CALLAGHAN:** And I take it that that
21 would affect the ability of the police to have reasonable
22 and probable grounds, correct?

23 **MR. BALA:** Yes.

24 **MR. CALLAGHAN:** And I take it that child
25 sexual assault cases are particularly difficult to

1 investigate; primarily, one, the primary source of evidence
2 would be a child; that the events generally happen in
3 private, not in public, so aren't any other witnesses; and
4 I take it that more often than not there's usually no
5 physical evidence left by the time the complaint is made.
6 Correct?

7 **MR. BALA:** That's right.

8 **MR. CALLAGHAN:** And so I take it that that
9 adds to the difficulty of obtaining reasonable and probable
10 grounds when one is conducting those types of
11 investigations. Correct?

12 **MR. BALA:** Yes.

13 **MR. CALLAGHAN:** And I take it if you go back
14 to say, 1986, prior to the changes in the legislation, it's
15 more difficult, and I'll give you an example.

16 For example, if a child is unable to give
17 the oath either because of age or mental infirmity, and
18 without corroborating evidence this would clearly affect
19 the reasonable probable grounds of a police officer.
20 Correct?

21 **MR. BALA:** Yes, and this goes back to the
22 questions asked about the pre-1988 law, and it set -- there
23 were children who were considered capable of giving an oath
24 which required ---

25 **MR. CALLAGHAN:** Right.

1 **MR. BALA:** --- an inquiry -- at that time
2 many judges were saying that it required an understanding
3 of the religious significance or at least the moral
4 significance of an oath -- that child could testify without
5 corroboration. There was a lower standard for children who
6 understood the moral duty of telling the truth without --
7 but could not demonstrate an understanding of the oath.
8 They could testify. There was a requirement of
9 corroboration. That's what you're referring to and, yes,
10 you're correct.

11 **MR. CALLAGHAN:** And so that would make it
12 more difficult for police officers in that era?

13 **MR. BALA:** Yes.

14 **MR. CALLAGHAN:** Right. And then I take it
15 that other changes were intended to make the victim feel
16 more comfortable, as you indicated, the screens, the child-
17 friendly courtrooms, that type of thing.

18 **MR. BALA:** Yes, although I would say less --
19 you know, more comfortable makes it sound like it's
20 generally just sort of sitting there. I mean, it was less
21 traumatic, if you want, for the child.

22 **MR. CALLAGHAN:** No, that's fair enough. I
23 mean, it's a matter of the adjective; less traumatic.

24 Now, I take it from the last witness --0 the
25 last cross-examination, I should say, that you will agree

1 that the reluctance of a child victim or even a historic
2 sexual assault victim to testify is a legitimate concern.

3 **MR. BALA:** Yes, I think both professionally,
4 in my mind and, you know, I think you can -- I have a
5 certain view of the prosecutorial role. I've never been a
6 prosecutor. You know, there is a range of views, I think,
7 within the prosecution service, but in my mind it's an
8 ethical issue, but of course it's also a practical issue.
9 I mean, if victims are unwilling to testify you're not
10 going to have a -- you're very unlikely to have a
11 successful prosecution by saying, "Well, we can drag you to
12 the stand", which in some sense we can't with a child. In
13 fact, there is an issue with the children under the age of
14 12 if they -- what the legal sanction is if they don't
15 testify in that they can't be prosecuted for contempt of
16 court.

17 So what you do if a child or if the parents
18 are saying, "Well, my child is not going to testify?" I
19 don't think we've ever had it pushed in Canada to the point
20 that the crown or the police said, "We want to go ahead and
21 prosecute anyway, and we'll prosecute the parents for
22 obstruction of justice". I think in theory there's that
23 possibility but, in fact, to my knowledge it hasn't been
24 done.

25 **MR. CALLAGHAN:** And I take it the same

1 applies to anybody who might be known to police for the
2 purposes of similar fact evidence but declines to come
3 forward?

4 **MR. BALA:** That's right, and bear in mind
5 that we have different issues with adults talking about
6 historic abuse as opposed to children.

7 **MR. CALLAGHAN:** But I would suggest to you
8 that your answer earlier indicates that the concern is the
9 same; that you can retraumatize an adult as well as a
10 child?

11 **MR. BALA:** Yes, and I think that if adults
12 are not -- in my view both practically and ethically, if
13 adults are saying, "Yes" -- and we've had cases and the
14 Kingston Case is a pretty good example because it's quite
15 well documented. There were, I think, 15 -- 14 complaints
16 in that case who were prepared to go ahead and testify at
17 one point, and the police interview evidence said, "I don't
18 mind talking to you about this, officer, but I'm not
19 prepared to make a statement that can be used in court".
20 And so they knew there were more victims and they were not
21 laying charges in regard to them.

22 **MR. CALLAGHAN:** And that's just the reality
23 of doing these investigations?

24 **MR. BALA:** That's right. I mean, I think --
25 and it's both morally sensitive and a practical reality.

1 **MR. CALLAGHAN:** And so effectively without a
2 complainant, the prosecution doesn't go ahead. Correct?

3 **MR. BALA:** That's correct.

4 **MR. CALLAGHAN:** So now let us talk about
5 historical ---

6 **MR. BALA:** If I could just say, though, this
7 goes back to what somebody was saying earlier, there are
8 ways -- I don't think -- certainly today, I would like to
9 see our police saying, "It's not just yes or no. Are there
10 things we can do to support victims; for instance, through
11 victim witness support people, through therapy or whatever,
12 so that they may feel comfortable enough or supported
13 enough that they're prepared to go ahead?"

14 **MR. CALLAGHAN:** In other words, you're
15 suggesting they should take steps to ameliorate the
16 concerns of the victim or the other witnesses. Correct?

17 **MR. BALA:** Yes. And we have more in the way
18 of resource that are available today than was the case in
19 1986.

20 **MR. CALLAGHAN:** Right. And also probably as
21 it relates to 1994, as an example; we have more resources
22 today.

23 **MR. BALA:** In a broad sense, yes, although I
24 would defer to other witnesses, particularly as I
25 understand this inquiry is focusing on what the resource

1 were in Cornwall; I don't know.

2 **MR. CALLAGHAN:** Right.

3 And so let's talk then about historical
4 sexual assaults. I take it that you'll agree that those
5 are even more difficult to investigate for police?

6 **MR. BALA:** Well, they're different issues
7 and there can be some very challenging issues in the
8 historical abuse cases, but more difficult, I'm not --
9 because you're dealing with adults, it's not necessarily
10 more difficult.

11 **MR. CALLAGHAN:** Well, ---

12 **MR. BALA:** They're different difficulties.

13 **MR. CALLAGHAN:** Well, I mean there's time.
14 Time is a difficulty; that so much time has passed if the
15 assault happened 20 years ago.

16 **MR. BALA:** I'm really quibbling, if you
17 want, with the word "more difficulty." There are
18 significant difficulties in both kinds of ---

19 **MR. CALLAGHAN:** Okay.

20 **MR. BALA:** --- investigations.

21 **MR. CALLAGHAN:** But some of -- for example,
22 you talked about *Regina versus Khan*. Has that case ever
23 been applied in a historic sexual assault circumstance that
24 you're aware of?

25 **MR. BALA:** Not that I'm aware of and

1 certainly you would have different issues with the
2 admissibility of hearsay evidence.

3 **MR. CALLAGHAN:** So some of the progressions
4 of common-law wouldn't assist historical sexual assaults;
5 some of them?

6 **MR. BALA:** Some of them with the issue of
7 similar-fact evidence would clearly be of assistance in
8 both kinds of cases.

9 **MR. CALLAGHAN:** But you agree with me that
10 historical sexual assaults become somewhat difficult
11 because the law speaks currently, and you would have to
12 charge under the Section applicable at the time of the
13 alleged assault. Correct?

14 **MR. BALA:** Yes, and so as I think I was
15 discussing with one of your friends earlier today, there
16 are certain acts that today we would clearly recognize as
17 leading towards a more intrusive form of sexual assault and
18 clearly abuse in and of themselves that might not have been
19 offences at the time of the incidents. But many acts
20 would've been offences both then and now.

21 **MR. CALLAGHAN:** Well, prior to 1988, was
22 there a concept of consent for males, sexual consent, as
23 there was for females under the age of 14?

24 **MR. BALA:** I believe -- and, you know, you
25 probably have the Act -- the Criminal Code in front of you.

1 **MR. CALLAGHAN:** I actually don't, but I have
2 something that says similarly that there may not have been
3 for -- particularly, sexual intercourse, for example, there
4 was no age of consent for male youths.

5 **MR. BALA:** There were -- well, prior --
6 certainly for anal intercourse, at the time there would
7 have been no issue of consent, yes.

8 **MR. CALLAGHAN:** What I'm trying to get at is
9 what about physical touching, was there consent issues with
10 respect to physical touching ---

11 **MR. BALA:** It depends ---

12 **MR. CALLAGHAN:** --- for boys?

13 **MR. BALA:** --- what the acts were and, you
14 know, I think your questions are not inappropriate, but
15 without having the Criminal Code provisions in front of me
16 from that time, I'd be reluctant to answer.

17 **MR. CALLAGHAN:** Well, let me ask ---

18 **MR. BALA:** I mean, you know, you go down
19 these particular offences, there were some -- let me just
20 say there were certain acts that prior to 1988 were not
21 criminalized involving adults and children and there were
22 significant changes in 1988, but the more intrusive acts
23 would've been crimes both then and now.

24 **MR. CALLAGHAN:** Well, I mean, but let's take
25 -- there would be, for example, sexual assault which

1 changed in 1983. Correct?

2 MR. BALA: Yes.

3 MR. CALLAGHAN: So if it's a sexual assault,
4 is there an issue of consent?

5 MR. BALA: No.

6 MR. CALLAGHAN: Right.

7 MR. BALA: I mean, well ---

8 MR. CALLAGHAN: And that prior to 1988?

9 MR. BALA: If -- when you say is there an
10 issue of consent, acts, if there is consent and you have
11 two adults, it's not a sexual assault. If you're under the
12 age of 14, no, it wouldn't be. No.

13 MR. CALLAGHAN: And I take it that currently
14 the legislation makes a break at the age of 14 and that
15 there are additional requirements if the child is between
16 the ages of 15 and 18 that there be a person of authority
17 involved?

18 MR. BALA: Yes, in a position of trust or
19 authority, but it's 14; the break is actually at the 14th
20 birthday.

21 MR. CALLAGHAN: The 14th birthday.

22 MR. BALA: Yes.

23 MR. CALLAGHAN: Well then, in light of these
24 changes, do you agree that the police, in investigating
25 historical sexual assaults, should seek the advice of the

1 Crown? It's a good idea?

2 **MR. BALA:** Well, certainly at some point
3 they certainly should be seeking the advice and direction
4 of the Crown.

5 As you can see, I'm a law professor and I'm
6 struggling with what the offences were without having a
7 Criminal Code in front of me, from 1982, let's say, and I
8 think that a police officer would understandably say "Well,
9 I don't know what was an offence and better phone up the
10 Crown. They better get out their 1982 Criminal Code."

11 **MR. CALLAGHAN:** Right.

12 If the Crown were to give you advice not to
13 -- that they would not proceed with charges, do you believe
14 that the police ought to adhere to that advice and not
15 charge?

16 **MR. BALA:** Well, I wouldn't want to say that
17 my area of expertise is what the relationship is between
18 the police and the Crown, but obviously that would raise
19 real concerns about how the prosecutions can go ahead if
20 the Crown is saying that there is no legal basis for a
21 charge.

22 **MR. CALLAGHAN:** Right.

23 So that if a police officer got that advice,
24 that it wouldn't be wise for the police officer to ignore
25 the advice and charge in any event. Correct?

1 **MR. BALA:** I ---

2 **MR. CALLAGHAN:** Particularly given the civil
3 liabilities you've spoke of.

4 **MR. BALA:** I mean my sense is that it would
5 be very rare for a police officer not to follow the
6 direction of the Crown on that. I don't know what the
7 mechanism is for resolving disputes, but certainly my
8 understanding is that typically the police would take that
9 as a given and cease the investigation.

10 **MR. CALLAGHAN:** And you also indicated, I
11 think, in your testimony that prior to, I think, 1989 or
12 thereabouts there were not a lot of successful prosecutions
13 of historic sexual assaults. Correct?

14 **MR. BALA:** There were certainly few of them
15 and, indeed, I guess historic sexual assaults, I'm not
16 actually aware of any prior to, I mean, 1990; certainly
17 that period.

18 **MR. CALLAGHAN:** So a multi-victim or a
19 multi-offender in 1986 would be a rare successful
20 prosecution or even taken to prosecution, in your sense.

21 **MR. BALA:** That's right, although I think
22 that that was just about the time they were starting the
23 Mount Cashel investigations and prosecutions. I could look
24 at the exact date and if that matters but I'll say that the
25 first cases in Canada were starting to go ahead in about

1 '86.

2 **MR. CALLAGHAN:** And a successful prosecution
3 by a police, for say Cornwall, of a priest in 1986 of a
4 multi-victim assault would be a considerable success in
5 that period of time. Correct?

6 **MR. BALA:** Yes.

7 **MR. CALLAGHAN:** Right.

8 And to the extent that that becomes known to
9 the public, that should entice people to speak to the
10 police because of the success of such a prosecution.
11 Correct?

12 **MR. BALA:** Well, either these people -- I
13 think it would encourage some people in some contexts to
14 come forward, yes.

15 **MR. CALLAGHAN:** Right.

16 And if there were, say, six offenders who
17 were charged and four were convicted and the judge gave two
18 years probation, that might deter people from coming
19 forward, would it not?

20 **MR. BALA:** I think that the role -- you
21 know, you're asking me to speculate and I think you're --
22 you know, I would speculate that, yes, you're probably
23 correct. But if you're saying, as, you know, as saying
24 well, is there research on that? I don't know.

25 **MR. CALLAGHAN:** Now, I want to deal with

1 training for a minute. I take it that you're aware that
2 most municipal police forces obtain training largely from
3 the Ontario Police College in Aylmer?

4 MR. BALA: That's part of it, yes. That
5 would be the primary source; in fact, their initial
6 training, yes.

7 MR. CALLAGHAN: Right.

8 And I take it there are some exceptions.
9 The OPP has their own training facility?

10 MR. BALA: Yes. I think some of it done in
11 some of the largest forces, Toronto, Ottawa, do some of
12 their own training, but it's mostly through the OPC.

13 MR. CALLAGHAN: Right.

14 And Toronto, for example, has its own
15 college.

16 MR. BALA: Yes.

17 MR. CALLAGHAN: The Bick College. Correct?

18 MR. BALA: Yes.

19 MR. CALLAGHAN: Now, I take it that you
20 actually taught a course at the Ontario Police College from
21 1990 to 1992?

22 MR. BALA: Yes.

23 MR. CALLAGHAN: All right.

24 And that was a youth course?

25 MR. BALA: Yes.

1 **MR. CALLAGHAN:** Are you aware of whether or
2 not the Ontario Police College, in 1990, had a sexual
3 assault course independent of the general investigatory
4 course?

5 **MR. BALA:** I couldn't answer that. At some
6 point, they started to develop it. Exactly when they
7 started, I'm not sure.

8 **MR. CALLAGHAN:** Well, would it surprise you
9 to say it was 1991, while you were there?

10 **MR. BALA:** I should say, when I went down
11 there, I was just going down there for a day at a time.

12 **MR. CALLAGHAN:** Oh!

13 **MR. BALA:** And so it certainly wouldn't
14 surprise me and I would take your -- and this was also an
15 era when there was a slowly growing awareness of adult
16 complainants as well. So if you tell me 1991, I certainly
17 accept that.

18 **MR. CALLAGHAN:** So that wouldn't -- Mr.
19 Mason talks about 1985 to 1990. Much of the progression
20 happened after 1990; correct, reaching the field, so to
21 speak?

22 **MR. BALA:** Well, and this goes to the
23 question that was asked earlier; how quickly does knowledge
24 disseminate? And so certainly in 1990, when we had the Rix
25 Rogers Report it documented the fact that we had to allot

1 more in terms of training. So it wasn't in place
2 everywhere the way it should be in 1990.

3 **MR. CALLAGHAN:** Indeed, Rix Rogers says in
4 his report that notwithstanding he had spent 30 years, that
5 he was shocked at the issues that arose.

6 **MR. BALA:** Yes.

7 **MR. CALLAGHAN:** And that's after Badgley.

8 **MR. BALA:** Well, he was shocked as he was
9 doing his work in 1988 to 1990.

10 **MR. CALLAGHAN:** But that was after Badgley,
11 which was 1984. Even a man as Mr. Rogers' aptitude, was
12 shocked. And I can take you to the passage, but ---

13 **MR. BALA:** Yes, I'm familiar with the
14 passage, yes, although I'm just -- I think he was
15 certainly, whether he was shocked after Badgley -- I think
16 he was shocked. He started to go and talk to people in the
17 field, yes.

18 **MR. CALLAGHAN:** And now, just going back to
19 the Police College for a moment. I'm not sure whether
20 we're having anyone testify here, but are you aware how
21 Forces get access to the Police College?

22 **MR. BALA:** No.

23 **MR. CALLAGHAN:** All right.

24 You're not. So you're not aware that, say,
25 in about 1990, there were approximately 120 police forces

1 in Ontario?

2 **MR. BALA:** Well, I knew there were a
3 significant number of them.

4 **MR. CALLAGHAN:** And you're not aware that
5 the way the Police College works is they rotate seats on a
6 pro-rata basis to the various police forces, so Peel, for
7 example, which is a big police force, would get many more
8 seats than say Cornwall, which wouldn't be getting more --
9 many -- seats than some smaller community?

10 **MR. BALA:** I think I had a vague awares of
11 it, I mean, I really, -- to me, Mr. Callaghan, with your
12 questions, which are very appropriate, but not particularly
13 to myself are what kind of training was going on in
14 Cornwall, what was available in different years. And I
15 suspect that someone of the Cornwall Police could say
16 "Here's the training that we had in this day, and here's..."
17 you know, I mentioned if it did have programs, maybe they
18 didn't send somebody or maybe they'd sent a few people, I
19 don't know.

20 You know, you have to look at the total --
21 it was not just the OPC but that was part of the training.

22 **MR. CALLAGHAN:** But you agree that if Mr.
23 Commissioner has to make assessments at the end of the day,
24 he has to apply some sort of standard as to whether people
25 met the applicable standard of the day; correct?

1 **MR. BALA:** That would certainly be an issue,
2 yes.

3 **MR. CALLAGHAN:** And it would be unfair to
4 say everybody knew from 1985 to 1990, why their police
5 services weren't getting the training because it wasn't
6 available; correct? That would be unfair.

7 **MR. BALA:** I think that what one has to look
8 at is what was the knowledge; who knew about it; what was
9 the knowledge of people, you know, one could go, for
10 example, in Kingston in -- which is not that far away, in
11 19 -- not, certainly, it's a larger community, but we had a
12 fairly sensitive investigation, I think, in 1989-90 of the
13 case there involving the Cathedral in terms of the police
14 carrying out a multi-victim and I think multi-offender
15 investigation, but in that time.

16 **MR. CALLAGHAN:** But you'll agree that the
17 Ontario Police College largely takes the lead in education
18 for the average municipal police force in Ontario? I'm not
19 talking about the big one.

20 **MR. BALA:** I'm not in a position to dispute
21 that there were certainly one of the major source -- and
22 certainly, there -- and I think there's also some
23 distinction perhaps between the basic training, which is
24 unquestionably at the Ontario Police College and the
25 advanced training.

1 **MR. CALLAGHAN:** Now, let me ask ---

2 **MR. BALA:** And so -- and this goes back to
3 the role of, particularly, IPCA was working with police
4 forces. Now, I don't know to what extent IPCA's training
5 was made available to the Ontario -- to the Cornwall
6 Police, but there were certainly police who were going
7 there to -- the focus of IPCA training, in all fairness to
8 you, was on children as opposed to historic abuse.

9 **MR. CALLAGHAN:** Let me ask you this. In
10 1994, did you not do a report or assist in a report by IPCA
11 regarding the implementation of Bill C-15?

12 **MR. BALA:** Yes.

13 **MR. CALLAGHAN:** Right.

14 And you reviewed eight communities in
15 Ontario?

16 **MR. BALA:** I believe some would of -- you
17 have the report in front of you. I don't have it in front
18 of me, but it was certainly a survey of a number of
19 communities.

20 **MR. CALLAGHAN:** But do you not recall that
21 you concluded that most police officers interviewed lacked
22 appropriate training?

23 **MR. BALA:** We were still concerned and,
24 indeed, there are still concerns today about lack of
25 training and -- for police. I mean the police -- what you

1 haven't quite asked is that the police, I mean, I don't ---

2 **MR. CALLAGHAN:** I take it, it doesn't matter
3 whether I ask or not. You're going to answer it.

4 **(LAUGHTER/RIRES)**

5 **THE COMMISSIONER:** Hold it, okay, okay.

6 **MR. ENGELMANN:** In fairness to the witness,
7 the witness has written dozens and dozens of reports. If
8 Mr. Callaghan wants to read from a report or suggesting
9 from a report, it would be in fairness to the witness to
10 give a copy to the witness.

11 **MR. CALLAGHAN:** Well, I mean, I'm happy to
12 -- I've got a draft of it, that's the problem. We can't
13 find the final report anywhere and we got it from a
14 library. So ---

15 **MR. BALA:** Well, I think, you know, as they
16 say, when you're young, you forget what you read, when
17 you're old, you forget what you wrote.

18 **(LAUGHTER/RIRES)**

19 **MR. CALLAGHAN:** Given your Résumé, that's
20 got to be quite a task!

21 **THE COMMISSIONER:** Just a minute, just a
22 minute. We're going to quote you on this.

23 **(LAUGHTER/RIRES)**

24 **MR. BALA:** I certainly -- the issue of
25 police training, which I think is in some ways very

1 important to this Inquiry is one that you want to look at
2 and say "So what was Cornwall doing as opposed to other
3 police forces in the area and was the training...?" but the
4 point that I was going to tell you was their police force -
5 - I mean, we have thousands, and I don't have the number of
6 police officers in Ontario. So it may well be that some
7 officers from one force were going to a particular place,
8 but was this getting down to the ground level so that
9 everybody in the police force or all the officers were
10 doing these kinds of investigations, if they have the
11 training.

12 **MR. CALLAGHAN:** Well, you wouldn't expect
13 that?

14 **MR. BALA:** Well, it takes a long time to get
15 that kind of training in place.

16 **MR. CALLAGHAN:** Would you expect everybody
17 to have that level of training when they've got different
18 regiments, you've got your Patrol group, you've got your
19 Highway Traffic group, you've got your Intelligence group?

20 **MR. BALA:** And you've got people -- and you
21 have turnover.

22 **MR. CALLAGHAN:** Right.

23 **MR. BALA:** So training is an ongoing major
24 issue.

25 **MR. CALLAGHAN:** Right.

1 And in fairness, in your report, you said
2 judges needed training too; didn't you?

3 **MR. BALA:** Yes.

4 **MR. CALLAGHAN:** Right.

5 **MR. BALA:** And, in fact, I mean, dare I say
6 with the greatest respect, they are aware of the fact in
7 the National Judicial Institute that they still need
8 training and education around child witness issues.

9 **MR. CALLAGHAN:** And you recall actually
10 dealing with protocols and concluding that in terms of
11 investigative protocols, the only protocols you found were
12 with Children's Aid Societies in 1994, not with the wider
13 public amongst the eight public forces?

14 **MR. BALA:** Well, again, you know, if you
15 have the document in front of you, I'm not ---

16 **MR. ENGELMANN:** Again, this is going to be a
17 big objection, I really don't think this is improper. I
18 really think ---

19 **MR. CALLAGHAN:** Well, maybe if the witness
20 could give me the file. I have a draft that we found from
21 a library, but I didn't think it ---

22 **MR. ENGELMANN:** Take a look at this CV, sir,
23 and just suggest what article it is and maybe we can find
24 it.

25 **MR. CALLAGHAN:** I looked at his CV and I

1 couldn't find it in it.

2 **MR. ENGELMANN:** Perhaps if could just ---

3 **THE COMMISSIONER:** So what's the article?

4 **MR. CALLAGHAN:** What's that?

5 **THE COMMISSIONER:** What's the article that
6 you have in front of you?

7 **MR. CALLAGHAN:** What it is, it's an
8 organization report that he did with IPCA in -- you recall,
9 Mr. Commissioner, in 1988, there was the change in
10 legislation. I think -- I don't know whether it was this
11 witness or another witness testified that there was
12 supposed to be a review of the success of the
13 implementation.

14 The provinces, I'm not sure exactly how it
15 worked, but I gather IPCA did reviews in various provinces
16 including Ontario and they took eight communities and they
17 assessed how they did in various issues. If we can get a
18 final report, which is what I was thinking we might be able
19 to get, then it might be helpful to see what the results
20 were. But the results that I could read were that, in
21 fact, and we can bring this out, I'm not sure I necessarily
22 have to deal with this witness on it, but it's something
23 that we can all put away and find out if we can get a copy.
24 And if he's got a copy, then I suppose he could send one
25 along.

1 **THE COMMISSIONER:** Sir, do you recall what
2 he's talking about?

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

4 **MR. ENGELMANN:** Just to assist the witness
5 for a moment perhaps.

6 Mr. Bala, you had -- you took us through
7 this earlier in your chief, pages 12 and 13 at Tab 1. And
8 starting with Item 1, you took us through the IPCA reports
9 you did from '88 onwards.

10 **MR. BALA:** Yes.

11 **MR. ENGELMANN:** And Mr. Callaghan referred
12 to 1994. I note at paragraph 14, you have "Bala Updates -
13 Child Abuse and the Law in 1994."

14 Is it -- do you think that's it?

15 **MR. CALLAGHAN:** I don't think -- I think
16 this is a survey that Professor Bala was involved in. I
17 think he recalls it when they surveyed eight communities
18 and interviewed countless police officers and others and
19 social workers, et cetera, prosecutors, judges. Is this
20 ringing a bell Professor Bala?

21 **MR. BALA:** I think -- I see it's not listed
22 on my CV probably because I had a limited role in it, but I
23 know that it was -- that IPCA certainly did that and if
24 your general point is, and this goes back to what I said
25 earlier this morning, the way of dissemination of

1 information and knowledge is sometimes quite slow.

2 **MR. CALLAGHAN:** Right.

3 **MR. BALA:** And the issues are complex, and
4 I'm sure that -- and I know that IPCA did a study. I don't
5 think, you know, in the academic world, we're very jealous
6 about when our name appears on the cover. I suspect that
7 if it's not in my CV ---

8 **(LAUGHTER/RIRES)**

9 **MR. BALA:** --- that I was not directly
10 involved in that in a significant -- sufficiently
11 significant way to merit authorship.

12 There are projects in which I have -- I'm
13 sometimes asked to participate that I'm not an author on,
14 and this might be one of them and, you know, I don't want
15 to it's possible that there are people who are lawyers or
16 even judges in this room who, if you ask, "Well, in 1994,
17 did you spends a few hours on this particular file?", they
18 might not have, without having it in front of them, an
19 exact recall.

20 But I certainly take your point and I think
21 you're correct that the rate of training of officers across
22 the country did vary and it came more slowly to smaller
23 communities. That's your general point. I think that's a
24 fair comment.

25 What one would really want to do, I think,

1 and what your inquiry will be looking at is, so how -- what
2 kind of training was available. Someone in the Cornwall
3 Police Force presumably could say "Here's where our
4 officers were doing training in different places. A lot of
5 it was OPC. We did send some people at IPCA. It wasn't
6 getting to everyone on the Force, or it was, or whatever."

7 **THE COMMISSIONER:** All right.

8 Can you show him the document?

9 **MR. CALLAGHAN:** I don't have the document
10 here. I had it at the office. I had a draft and I didn't
11 think it was an issue, but I will see if I can provide it
12 to my friend.

13 **THE COMMISSIONER:** Sure.

14 **MR. CALLAGHAN:** Because I assumed that there
15 would be some more recollection and I think we should, if
16 we can, get the final version.

17 **MR. BALA:** And I should say ---

18 **MR. CALLAGHAN:** And there is one.

19 **MR. BALA:** Because it's possible that I did
20 -- I mean, I certainly recall having some participation in
21 a survey that they were doing of police force in
22 communities.

23 I don't think I was involved in the
24 preparation of a final report that they did, but it may be
25 that I am on the cover and I should ---

1 **MR. CALLAGHAN:** No, no, you're actually in
2 the back. In my recollection, you're at the back.

3 **MR. BALA:** Well, ---

4 **MR. CALLAGHAN:** And I don't know whether
5 that makes a difference ---

6 **MR. BALA:** Well, if ---

7 **MR. CALLAGHAN:** --- because it had IPCA on
8 the front.

9 **MR. BALA:** Well, I think that that makes a
10 difference. The difference is whether you are one of the
11 people that was talked to, and I probably was, or one of
12 the authors of the report. And so, from what you're
13 telling me, from your recollection, I was not an author of
14 that report. I was one of many ---

15 **MR. CALLAGHAN:** Right.

16 **MR. BALA:** --- people who they consulted.

17 **MR. CALLAGHAN:** Fair enough.

18 **MR. BALA:** And therefore, it would mean that
19 I had -- it may well be that they sent me a copy of it and
20 that I remember that I read it, but I don't have -- the
21 fact that I don't have a detailed knowledge of it probably
22 speaks to the fact that I wasn't an author of it.

23 **MR. CALLAGHAN:** Fair enough.

24 **THE COMMISSIONER:** And the royalties haven't
25 been that good on it.

1 (LAUGHTER/RIRES)

2 MR. CALLAGHAN: Exactly.

3 In fact, it was almost impossible to find
4 anything on that topic.

5 Let me just continue then. You're obviously
6 familiar with the Campbell Report into the Bernardo
7 investigation?

8 MR. BALA: I have some general knowledge of
9 it.

10 MR. CALLAGHAN: You had not read it?

11 MR. BALA: Not in detail.

12 MR. CALLAGHAN: So you're aware, of course,
13 that the *Bernardo* case also involves him acting as the
14 Scarborough rapist?

15 MR. BALA: Yes, I'm aware of that.

16 MR. CALLAGHAN: And you are aware that Mr.
17 Justice Campbell was tasked with the responsibility to
18 conduct a review of how police agencies dealt with that ---

19 MR. BALA: Yes and ---

20 MR. CALLAGHAN: --- investigation?

21 MR. BALA: --- I should say I probably read
22 an executive summary but I don't think I read the entire
23 report.

24 MR. CALLAGHAN: So you're not able -- so you
25 were unaware that in 1996 Mr. Justice Campbell was somewhat

1 critical of the state of training of those police agencies
2 which included such large ones as the Niagara Regional
3 Police Services, the Halton Regional Police, Hamilton,
4 RCMP, London, Waterloo?

5 **MR. BALA:** I am aware of that and aware of
6 some of the things that came out of that, the concern about
7 cooperation between police agencies and lack of training.

8 **MR. CALLAGHAN:** I'm just doing this to
9 illustrate that when one looks to the Cornwall Police
10 Services, that one has to look at a standard being applied
11 across the province; correct, and how it was being dealt
12 with?

13 **MR. BALA:** Well, and that it was being dealt
14 with by different forces in different ways and with
15 different levels of resources.

16 **MR. CALLAGHAN:** Right.

17 Now, you're aware that the Province didn't
18 actually have adequacy standards and legislation for police
19 until 2000?

20 **MR. BALA:** I will take your word for that.

21 **MR. CALLAGHAN:** But you are aware that the
22 Campbell Commission was the forerunner to major case
23 management, for example?

24 **MR. BALA:** Yes. I'm certainly aware that
25 there were changes. I mean, my concern is just the exact

1 date.

2 **MR. CALLAGHAN:** And you're aware that the
3 major case management dealt with sexual assault
4 investigations, many, not all, but many sexual assault
5 investigations?

6 **MR. BALA:** Yes and that the *Bernardo* case,
7 among others, pointed out the issues of multiple victims
8 and, in fact, multiple offenders as well, and the
9 complexity of those kinds of investigations.

10 That was, of course, a particularly
11 difficult and challenging case in that you had an
12 unidentified perpetrator which is somewhat different from
13 other kinds of cases but it was -- certainly, they've
14 improved and, indeed, of course some of the issues there
15 had to do with forensic evidence. We've had dramatic
16 improvements in technology as well.

17 **MR. CALLAGHAN:** Right.

18 I take it that in traditional policing, if
19 we could use that phrase, that the police respond to
20 complaints; correct?

21 **MR. BALA:** Yes, and I do want to say that --
22 you've been asking a lot of questions, and it's not
23 inappropriate. My area of expertise is not policing and I
24 did make some comments about it and I will also -- I think
25 I qualified them and I qualify them now.

1 **MR. CALLAGHAN:** They won't do that again.

2 No, I hear that.

3 I just -- what I'm about to suggest to you,
4 aside from Project Truth, are you aware of another
5 investigation where they literally hung out a shingle
6 looking for people that had been sexually assaulted
7 historically?

8 **MR. BALA:** Well, I think that there have
9 been similar investigations, for example, in Newfoundland
10 with the -- in fact, hung out a shingle, I don't know, but
11 we've had multiple -- I think a good example would be, and
12 more in this timeframe, would be the inquiries and
13 investigations and prosecutions in regard to St. John's
14 Training School, St. Joseph's Training School, and those
15 were starting in the early 1990s.

16 **MR. CALLAGHAN:** Those were training
17 institutions; correct?

18 **MR. BALA:** They were already -- there was
19 already experience within Ontario for carrying out
20 multiple-victim historic, multiple-offender historic abuse
21 cases and the three training schools would be the obvious
22 examples.

23 **MR. CALLAGHAN:** But is that in circumstances
24 where they asked people to come forward outside the
25 institution? Those are confined to an institution;

1 correct?

2 **MR. BALA:** But the people left the
3 institution and so they were looking -- they were going
4 back. Those were historic abuse cases and two of them
5 involving males and, of course, then we had the experience
6 already in Newfoundland where the police force had already
7 carried out multiple-offender, multiple-victim historic
8 abuse cases. Now, I want to say those were -- some of
9 those places were not very far away. So there was that
10 level of expertise within the police services. Was it
11 widely disseminated? I think the Commission will obviously
12 look at that.

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

14 **THE COMMISSIONER:** Thank you.

15 Now, for the OPP, Mr. Kozloff.

16 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
17 KOZLOFF:

18 **MR. KOZLOFF:** Good afternoon, Professor
19 Bala.

20 **MR. BALA:** Good afternoon.

21 **MR. KOZLOFF:** My name is Neil Kozloff and I
22 represent the Ontario Provincial Police.

23 I have a few questions and they really
24 relate to a comment you make in your outline of evidence at
25 Tab 3. It's at page 4 of your outline under IV, overall

1 paragraph (b), you say:

2 "A child sexual abuse is still hard to
3 prove. Crown uncertainty about
4 reasonable prospect of conviction
5 particularly hard with historical
6 allegations."

7 I think you've elaborated to a great extent
8 on why child sexual abuse cases are still hard to prove,
9 and I think we've touched on why the Crown has uncertainty
10 about reasonable prospects of conviction.

11 I want to just focus in on why it's
12 particularly hard with respect to historical abuse
13 allegations.

14 Would you agree that where incidents are
15 generally 20, 30 and even more years in the past, by the
16 time they're reported, and then there's some time before
17 they're investigated and finally prosecuted, first of all,
18 I think it's axiomatic that the memory of the victim is
19 always an issue.

20 **MR. BALA:** Yes. I think memory is -- well,
21 actually even in relative contemporaries, the further back
22 you go, there's a body of psychological literature that
23 memory tends to fade, although it fades more as to
24 peripheral things than central elements but memory is
25 certainly an issue, yes.

1 **MR. KOZLOFF:** Details are forgotten and ---

2 **MR. BALA:** And sometimes confused.

3 **MR. KOZLOFF:** Confused; right.

4 And the other general commonality of all
5 these cases is that there is no physical evidence.

6 **MR. BALA:** Often what -- often there's no
7 physical evidence and, indeed, one of the things we found
8 with historic cases is sometimes records that one might
9 expect to have existed, have disappeared.

10 **MR. KOZLOFF:** Right.

11 And would you agree as well that often the
12 victims who are coming forward with these allegations come
13 with a lot of baggage? I'm going to just repeat some of
14 the things we heard last week from some of your colleagues.

15 Amongst victims of historic sexual abuse you
16 have a much higher incidence of substance abuse.

17 **MR. BALA:** Yes. And I think, by the way --
18 and both my colleagues and even I referred to this issue
19 that sometimes the abuse has caused or contributed to
20 substance abuse, criminality ---

21 **MR. KOZLOFF:** Right.

22 **MR. BALA:** --- and so on. So yes, I think
23 in a broad sense you want to use the word "they come with a
24 lot of baggage", yes, but that doesn't mean that their
25 evidence should necessarily be discounted.

1 **MR. KOZLOFF:** I agree. I agree. But we'll
2 get to that.

3 They come with a much higher incidence of
4 psychopathology?

5 **MR. BALA:** Yes.

6 **MR. KOZLOFF:** They, as you just said, come
7 with a much higher incidence of criminal behaviour and, in
8 fact, criminal records?

9 **MR. BALA:** Yes.

10 **MR. KOZLOFF:** They come with a much higher
11 incidence of failed relationships?

12 **MR. BALA:** Yes.

13 **MR. KOZLOFF:** They come with a much higher
14 incidence of an inability to maintain steady employment?

15 **MR. BALA:** Yes.

16 **MR. KOZLOFF:** So that's what I'm getting at
17 when I'm suggesting that often the victims who come forward
18 have a lot of baggage.

19 **MR. BALA:** Yes, I think that's a fair
20 comment.

21 **MR. KOZLOFF:** And there is, as you indicated
22 in your evidence, there's the issue of monetary incentives
23 to coming forth, especially when the alleged perpetrator
24 has financial resources. That's going to be an issue?

25 **MR. BALA:** That's an issue, yes. Although,

1 I mean, that's a concern again in many cases in that there
2 may be some financial issues there, but all those things
3 together are factors.

4 **MR. KOZLOFF:** I suggest to you that all of
5 those things are a basis for a competent defence counsel to
6 hone in on in defending his client.

7 **MR. BALA:** Those are all factors that come
8 up or, in one form or another, have come up in historic
9 abuse prosecutions. We've nevertheless had a significant
10 number of successful prosecutions for historic abuse cases.

11 **MR. KOZLOFF:** There is also the issue -- and
12 I believe you addressed it -- particularly in multiple
13 victim -- multiple offender cases of the potential for
14 contamination.

15 **MR. BALA:** Yes, that's come up as a factor.

16 **MR. KOZLOFF:** And allegations of collusion
17 where multiple victims join in making allegations against
18 an alleged perpetrator?

19 **MR. BALA:** These are all issues -- I think
20 you're correct there -- all issues that have come up in
21 case that defence counsel raised, yes.

22 **MR. KOZLOFF:** And perhaps common to every
23 one of these cases is the issue of victim stigmatization,
24 shame, embarrassment, guilt, and those are the very things
25 that, by definition, make these historic sexual abuse

1 cases, because the reason people didn't come forward for 10
2 or 15 or 20 or 30 years is because they felt stigmatized;
3 they felt shame; they felt embarrassment; they felt guilt,
4 and they were reluctant to come forward and expose
5 themselves?

6 MR. BALA: Well, that and the original
7 disclosures may not have occurred because they were
8 frightened, intimidated, pressured.

9 MR. KOZLOFF: Right.

10 MR. BALA: But I agree that those are all
11 factors that you've listed, yes.

12 MR. KOZLOFF: And would it be fair to
13 suggest to you ---

14 MR. BALA: And I should say in querying
15 what's going to happen; will the prosecution be successful.

16 MR. KOZLOFF: Right.

17 MR. BALA: I mean, "Am I putting myself
18 through all this simply to have the thing fall apart?"

19 MR. KOZLOFF: Would it be fair to suggest to
20 you that those victims who are least likely to come forward
21 would be the ones with the most to lose? And I suggest in
22 that sense those who hold respected positions in the
23 community.

24 MR. BALA: Well, I wouldn't be surprised if
25 that was the reality, but nor could I say I've looked at

1 that and could say I think -- we've certainly had cases of
2 people who are in respected positions who are prepared to
3 come forward and acknowledge the fact that they've been
4 victimized. So I'm not quite sure about that last point.

5 **MR. KOZLOFF:** All of the changes that you've
6 addressed with respect to changing the provisions of the
7 Criminal Code beginning in 1983, then 1988 and since, and
8 all of the changes to the common law really at least until
9 2006, all of those were aimed at evening the playing field
10 for child witnesses?

11 **MR. BALA:** Yes.

12 **MR. KOZLOFF:** And so they don't apply to
13 historic sexual abuse cases?

14 **MR. BALA:** That's right.

15 And as I pointed out, the major legislative
16 change in regard to historic cases really only came into
17 force on January 2nd of this year.

18 **MR. KOZLOFF:** And judges will assess the
19 evidence of adult victims of historic sexual abuse cases as
20 they assess the evidence of other adult witnesses?

21 **MR. BALA:** Well, of course, some of these
22 cases are dealt with by juries. Some of them are dealt
23 with by way of judges. I think if the question is -- the
24 issues around -- the special protections that are in place
25 for child witnesses until now were not available to adults.

1 I think that at least some of the decisions that we had --
2 and judges are not a monolithic group -- certainly have had
3 sensitivity to issues -- adult survivors as well.

4 I alluded to it just briefly, but there was,
5 for example, in 1992 -- I mentioned this in my examination
6 in-chief -- a 1992 Supreme Court of Canada case dealing
7 with recovery of a civil damage award from an adult
8 survivor of abuse in which the Court displayed significant
9 sensitivity to some of the issues around historic abuse
10 cases and adults coming forward.

11 **MR. KOZLOFF:** Right.

12 **MR. BALA:** So I don't want to state the
13 courts were by any means insensitive to or not aware of
14 some of the dynamics of historic abuse, the difficulty. So
15 those words used, for example, the shame, the guilt, the
16 fear that victims had in coming forward appear not
17 infrequently in judgments of courts, particularly since
18 1988.

19 **MR. KOZLOFF:** I suppose my question is more
20 directed to victims who come forward with criminal records,
21 drug and alcohol abuse patterns.

22 **MR. BALA:** I think that there is certainly -
23 - in the Mount Cashel Inquiry, you know, it was really very
24 helpful for elucidating some of the problems. Many of the
25 victims in that case, as you illustrate and as you point

1 out, had higher rates of criminal records, substance abuse,
2 unemployment, relationship difficulties, and so already in
3 1989, there is the beginnings of awareness in among
4 lawyers, judges, about this issue. Again, how quickly it
5 disseminates to all judges is another matter.

6 And there is -- you know, you can bring in
7 someone to talk about judicial education from the national
8 judiciary to say well, when did judges have training or
9 education around this issue, and it certainly has been
10 ongoing. I think 1989 would be a good starting spot for
11 the awareness about these issues and why there should not
12 be an automatic discounting of evidence from someone who
13 has that kind of background, particularly in this kind of
14 situation.

15 And again, the 1992 decision of the Supreme
16 Court of Canada is a particularly sensitive discussion of
17 the fact that we should not discount -- we have to account
18 the fact that maybe the person's "lack of credibility" is a
19 reflection of the abuse that they actually suffered, and so
20 we shouldn't doubly penalize them.

21 **MR. KOZLOFF:** You'll agree with me it's a
22 long way from that sort of sensitivity to a judge being
23 able to arrive at a conclusion beyond a reasonable doubt of
24 the guilt of the accused?

25 **MR. BALA:** I think that the criminal

1 standard of proof and the criminal process is the one in
2 which it's most difficult to obtain a finding that abuse
3 has occurred.

4 **MR. KOZLOFF:** And insofar as offences which
5 are historical in the sense that they occurred, for
6 instance, before 1983, as many of the cases that this
7 inquiry is concerned with did, but not reported until the
8 1990s, you'll agree that the law -- the Criminal Code
9 provisions in effect for those offences and the law in
10 effect for those offences is the law at the time of the
11 offence rather than at the time of the prosecution?

12 **MR. BALA:** Absolutely. I mean, that's very
13 clear as a matter of law and, therefore, one has to go back
14 and look at the Criminal Code at that time and, indeed, in
15 some cases the case law under those Criminal Code
16 provisions, yes.

17 **MR. KOZLOFF:** Thank you very much, sir.

18 **THE COMMISSIONER:** All right.

19 And our last is from the OPP Association,
20 Mr. Carroll.

21 **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. CARROLL**

22 **MR. CARROLL:** Good afternoon, Professor.

23 Did you want to ---

24 **THE COMISSIONER:** How long will you be, sir?

25 I guess that's the question because it's break -- it's

1 about time for a break, but ---

2 **MR. CARROLL:** I would not think more than 10
3 to 15 minutes.

4 **THE COMISSIONER:** Okay.

5 Well, why don't we just ---

6 **MR. CARROLL:** Lawyers' estimates are ---

7 **THE COMISSIONER:** Does anyone need a break?
8 If not -- well, then there's a lawyer's estimate. That's
9 the problem.

10 **MR. CARROLL:** I know.

11 **THE COMISSIONER:** Why don't we take the
12 break and we'll come back after that?

13 **(LAUGHTER/RIRES)**

14 **THE COMISSIONER:** No disrespect to you, sir.

15 **MR. CARROLL:** No, that's fine.

16 **THE REGISTRAR:** Order; all rise. Veuillez
17 vous lever.

18 This hearing reconvenes at 3:35.

19 --- Upon recessing at 3:21 p.m.

20 L'audience est suspendue à 15h21

21 --- Upon resuming at 3:39 p.m.

22 L'audience est reprise à 15h39

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

1 **THE COMISSIONER:** For of those of you who
2 are interested, the Canadian Women's Team is winning 2-0 in
3 the final hockey game.

4 All right. Mr. Carroll.

5 **MR. CARROLL:** Thank you, sir.

6 **NICHOLAS BALA RESUMED/SOUS LE MÊME SERMENT:**

7 **MR. CARROLL:** Good afternoon again,
8 professor. My name is Bill Carroll and I represent the
9 members of the Ontario Provincial Police Association, the
10 non-commissioned officers.

11 As you know, this inquiry in large part is
12 called for the benefit of the citizens of Cornwall, and I
13 want to make some points just so there's a comprehension in
14 the community of the roles and duties within that context.

15 The Crown's Office is the agency that makes
16 the decision as to whether a prosecution goes forward or
17 not; correct?

18 **MR. BALA:** Yes.

19 **MR. CARROLL:** Not the police?

20 **MR. BALA:** The police lay the charge, then
21 the Crown decides whether or not it will go ahead.

22 **MR. CARROLL:** Right.

23 But it is -- yes, there is -- and that
24 concept of the police laying the charge revolves around
25 reasonable and probable grounds; correct?

1 **MR. BALA:** Yes.

2 **MR. CARROLL:** It's the Crown's office that
3 makes the decision to prosecute or not based presumably on
4 reasonable prospect of conviction or whatever its
5 predecessors were as the test?

6 **MR. BALA:** Yes.

7 **MR. CARROLL:** All right.

8 I take it from your evidence, sir, you are -
9 - would counsel policing agencies or other persons in the
10 criminal justice system against coercing a complainant to
11 testify in a historical sexual assault case?

12 **MR. BALA:** Yes.

13 **MR. CARROLL:** And you did, however, allow us
14 how -- it's not a question of simply yes or no. There are
15 tools available to aid the agencies to assist in making the
16 complainant more comfortable with the proceeding?

17 **MR. BALA:** Yes. There are strategies and I
18 guess one can, to some extent, in all prosecutions you want
19 witnesses who are ---

20 **MR. CARROLL:** Willing.

21 **MR. BALA:** --- willing. But there are other
22 kinds of cases where you -- you know, if you're
23 investigating a drug cartel, you're not going to have the
24 concerns of sensitivities that you would when you are
25 dealing with this kind of situation.

1 **MR. CARROLL:** No, of course not.

2 Those tools -- for example, victim witness
3 programs is a relatively new phenomenon; correct, in a
4 formalized institutional setting?

5 **MR. BALA:** It varies across the province and
6 you'd have to -- I know that in Kingston we've had it for
7 over 20 years, but I'm not -- I have no idea how long it's
8 been in Cornwall.

9 **MR. CARROLL:** It should be the mid-80s.

10 **MR. BALA:** Yes.

11 **MR. CARROLL:** I mean, you are not aware of
12 how long they have existed in Cornwall?

13 **MR. BALA:** No, I have no idea.

14 **MR. CARROLL:** All right.

15 The police training generally, you're aware
16 that there's -- well, for the OPP there's in-house or in-
17 service training ongoing. You know that?

18 **MR. BALA:** I understand that to be the case
19 and, once again, policing is not my area of expertise.

20 **MR. CARROLL:** No, but it hasn't stopped you
21 from commenting from time to time on what police should or
22 shouldn't do.

23 **MR. BALA:** Yes, and I've worked at some
24 points with the police in a limited sense.

25 **MR. CARROLL:** Right.

1 Sir, in your paper from 1999, which I think
2 is at Tab 16, page -- paragraph 2 of the hard copy, it's
3 the "Developmentally Appropriate Questions for Child
4 Witnesses Paper."

5 **MR. BALA:** Yes.

6 **MR. CARROLL:** Just on a page 2 there,
7 paragraph 2 in the introduction:

8 "While the legal regime has changed
9 judges and lawyers..."

10 **THE COMISSIONER:** Just a second. Just a
11 second. No, I don't ---

12 **MR. CARROLL:** Sorry.

13 **THE COMISSIONER:** It's at the bottom.
14 Right.

15 **MR. CARROLL:** Thank you, sir.

16 Paragraph 2.

17 **THE COMISSIONER:** Hang on a second ---

18 **MR. CARROLL:** Yes.

19 **THE COMISSIONER:** --- sir, but for the ---

20 **MR. CARROLL:** To the next page.

21 **THE COMISSIONER:** Next page?

22 **MR. CARROLL:** Yes, yes. There you are.

23 "While the legal regime has changed,
24 judges and lawyers still too often lack
25 the education, training and sensitivity

1 to work effectively with children."

2 Would you say the same, sir? You're the
3 author of this report or one of the authors.

4 **MR. BALA:** I'm one the authors of this
5 paper, yes.

6 **MR. CARROLL:** Would you say, sir, that the
7 same applies to -- with respect to educating those
8 principals on issues of historical sexual assault claims?

9 **MR. BALA:** Well ---

10 **THE COMISSIONER:** As of 1999.

11 **MR. CARROLL:** Yes, as of the time the paper
12 is written, yes.

13 **THE COMISSIONER:** Thank you.

14 **MR. BALA:** I think that the -- you know,
15 still too often lack the education, training and
16 sensitivity to work effectively with children. In fact,
17 that's still the case, I mean, even in 2006. I'm reluctant
18 to say what the training was of police, but I would not be
19 at all surprised if it was -- if there were similar issues
20 then.

21 **MR. CARROLL:** Well, your statement there
22 speaks to judges and lawyers. My follow-up was going to be
23 do you have the same opinion for police?

24 **MR. BALA:** Well, I certainly would not be
25 surprised if that was the case for police, and certainly, I

1 should say, to go back to your question about historic
2 abuse cases, there were similar issues, although the issues
3 around interviewing -- this paper in particular is around
4 interviewing and questioning and those, even in 1999, the
5 issues that are addressed in this paper are very different
6 from the issues about historic abuse cases because you're
7 talking about questioning adults. So I ---

8 **MR. CARROLL:** I agree. I understand the
9 difference. I'm just asking you, given that you've made
10 this statement that there's a lack of training, sensitivity
11 and education with respect to children, even as of '99
12 amongst judges and lawyers, does the same apply in the
13 historical sexual assault context? Is there a need for
14 training, education and sensitivity work to be done with
15 those principals and ultimately with the police?

16 **MR. BALA:** Well, I guess I couldn't comment
17 on that.

18 **MR. CARROLL:** You can't. All right.
19 You can, however, as you have on many
20 occasions, confirm the need for ongoing, effective training
21 of police personnel to carry out their jobs?

22 **MR. BALA:** Yes.

23 **MR. CARROLL:** And I want to ask you a bit
24 about -- you said at one point in your evidence with
25 respect to the late 80s recommendations, you're still

1 waiting for the implementation of some changes?

2 **MR. BALA:** That's correct.

3 **MR. CARROLL:** So that if something comes out
4 of this inquiry, it should be a very forceful statement of
5 the importance of acting on the recommendations. Is that
6 fair to say?

7 **MR. BALA:** Yes. I think that we've
8 certainly had a history of -- as you can -- to some extent,
9 as we're discussing here of recommendations that are not
10 fully acted on; the issues are often complex. There are
11 issues of resource and priorities.

12 That's why I think this Commission is still
13 very useful even though it is -- you know, some would say
14 "Well, this happened in the past." I think these issues
15 are still very present.

16 **MR. CARROLL:** Yes, and I'd like to deal just
17 with that very point, sir, at Tab 15 with the "Reaching for
18 Solutions", the Summary Report of the Special Advisor.

19 **MR. BALA:** Yes.

20 **MR. CARROLL:** And I want to ask you about
21 some of those recommendations and their implementation;
22 okay?

23 **MR. BALA:** Yes.

24 **MR. CARROLL:** I appreciate that Mr. Rogers
25 was the author of this report, but it's a report with which

1 you are very familiar; correct?

2 **MR. BALA:** Yes. And as I indicated, there
3 were parts that I had a significant role in writing, but it
4 was certainly his views, yes.

5 **MR. CARROLL:** Well, let's look at the
6 recommendations then from 15 or 16 years ago and see if any
7 of them have been implemented and to what extent.

8 If you turn to Recommendation 25 ---

9 **THE COMMISSIONER:** That's on page 22?

10 **MR. CARROLL:** Page 22 of the hard copy, sir.

11 **THE COMMISSIONER:** Thank you.

12 **MR. BALA:** Yes.

13 **MR. CARROLL:** All right.

14 "That all police officers and
15 supervisory personnel receive training
16 in issues related to child sexual abuse
17 and domestic violence and that all
18 police forces have officers who
19 specialize in the handling of child
20 sexual abuse cases and who have had
21 specialized multidisciplinary training
22 in programs of at least one week's
23 duration."

24 **MR. BALA:** Yes.

25 **MR. CARROLL:** Now, appreciating that this is

1 a federal report and that funding generally comes from the
2 provinces ---

3 MR. BALA: Yes.

4 MR. CARROLL: --- or municipalities, to your
5 knowledge, sir, has that recommendation come close to being
6 implemented in the Province with respect to all police
7 officers and supervisory personnel receiving training in
8 issues related to child sexual abuse and domestic violence
9 -- all police officers?

10 MR. BALA: Well, I would be speculating, but
11 I don't think it's been fully implemented, but again, I
12 would defer to someone who was knowledgeable in police
13 training.

14 MR. CARROLL: All right. You'll defer.

15 But you continued to study this issue over
16 the 16 years since this report came out.

17 MR. BALA: I have not looked at issues of --
18 and I should say I didn't -- you know, that particular --
19 the work around some of the issues around police training
20 were actually done by others with Rix Rogers. I'm just not
21 in a position to say, but I wouldn't be surprised to find
22 out that it hadn't happened.

23 MR. CARROLL: All right.

24 Recommendation 45, which is on page 25 of
25 the hard copy -- have you got it?

1 answer these questions in more detail.

2 MR. CARROLL: Well, in part, my reason for
3 addressing them with you is because of my understanding
4 that you did have some input into some of the ---

5 MR. BALA: Yes, I had some input.

6 MR. CARROLL: --- matters.

7 MR. BALA: Yes, yes.

8 MR. CARROLL: With respect to Recommendation
9 61, it talks about the Canadian Association of Chiefs of
10 Police and the RCMP reviewing police policy and practice
11 relating to the investigation of child sexual abuse and the
12 necessary level of expertise required by police officers in
13 this area.

14 I take it you would agree with that as a ---

15 MR. BALA: Yes.

16 MR. CARROLL: --- proper course of action?

17 MR. BALA: Yes.

18 MR. CARROLL: In dealing with the police
19 forces that you have in Ontario since 1990 when this -- or
20 -- yes, June of '90 when this report came out, are you
21 aware as to whether or not there is such ongoing reviews?

22 MR. BALA: I'm not in a position to answer
23 that.

24 And again, you know, I think one of your
25 friends was asking me questions about a report. I have not

1 been involved in writing a report about policing in these
2 cases since 1990. This was -- my last significant
3 involvement around issues in policing was in 1990.

4 **MR. CARROLL:** Well, let me ask you about
5 funding, sir, because ultimately, at the bottom of it all,
6 that's the issue, isn't it? Funding permits the programs
7 to be provided to the various frontline workers, and then
8 they can implement their education?

9 **MR. BALA:** Yes. I think funding is a very
10 important aspect to this.

11 **MR. CARROLL:** Has the federal government
12 provided funding pursuant to the recommendations of the
13 Rogers Report, to your knowledge ---

14 **MR. BALA:** Well, there ---

15 **MR. CARROLL:** --- to implement these?

16 **MR. BALA:** --- are a number of
17 recommendations that are made. I think they provided some
18 limited funding, but many of these, they have not provided
19 the funding.

20 **MR. CARROLL:** All right.

21 And lastly, I suppose, in Recommendation 73
22 at page 28 -- sorry, 73 is the recommendation. It's that
23 report, page 28.

24 **MR. BALA:** Right.

25 **MR. CARROLL:** And I guess this is Rogers'

1 effort to keep tabs on the government, if you will?

2 MR. BALA: Yes.

3 MR. CARROLL: And I will read it:

4 "Within six months of the release of
5 this report, the federal government
6 should issue a statement indicating
7 what action it intends to take in
8 response to the Report's
9 recommendations."

10 Are you aware, sir, of any such statement
11 from the federal government as urged by the Rogers Report?

12 MR. BALA: I believe that there was, not
13 within six months, and there was at some point an initial
14 response to this, but in particular, the general thrust,
15 that he envisions a series of steps that would be taken;
16 for example, the appointment of an Office of a Children's
17 Commissioner and the annual reports, and that has not been
18 done.

19 There's still people in Ottawa -- by the
20 way, this goes back to things moving slowly. There's still
21 people who are advocating around the establishment of the
22 Office of a Commissioner for Children.

23 MR. CARROLL: For children.

24 MR. BALA: Yes.

25 MR. CARROLL: My clients are most anxious to

1 see what comes out of this ---

2 **MR. BALA:** I was one of those people. I was
3 at a Senate Committee about a year ago, and I certainly
4 support the establishment of an Office of Commissioner, but
5 it hasn't happened.

6 **MR. CARROLL:** My clients are most anxious to
7 see what recommendations are made here, and are
8 particularly interested in the ongoing training that all of
9 these recommendations from many past commissions suggest
10 are appropriate.

11 Would you think that a recommendation such
12 as number 73 here would be appropriate for this Commission?

13 **MR. BALA:** I think it is an increasingly
14 common way for commissioners to try to give life to their
15 reports to see if there is some ongoing monitoring and it
16 has sometimes been successful and sometimes not. I think
17 that it's certainly a useful benchmark for governments to
18 have to say "How are we doing?"

19 **MR. CARROLL:** So can I take it from that
20 answer that you would wholeheartedly support a
21 recommendation from the Commissioner from your field of
22 expertise to that effect?

23 **MR. BALA:** Well, yes, although I would be
24 cautious about how successful one is going to be in that
25 regard.

1 **MR. CARROLL:** Well, you can't win if you
2 don't try.

3 **MR. BALA:** Yes, and I think that -- and
4 that's why I think that this kind of inquiry, even into
5 events that occurred, in some cases, quite a long time in
6 the past, is important because it is both retrospective and
7 prospective and that ultimately our governments and society
8 do change, and while there is a lot to be done, we also see
9 remarkable progress because of the reports, because of the
10 commissions and because of the inquiries and the
11 prosecutions that we've had.

12 **MR. CARROLL:** Thank you, sir.

13 **THE COMMISSIONER:** Thank you.

14 Mr. Engelmann.

15 **MR. ENGELMANN:** I have a few questions.

16 **THE COMMISSIONER:** Yes.

17 --- **RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. ENGELMANN:**

18 **MR. ENGELMANN:** Professor Bala, maybe we
19 could just start where my friend Mr. Carroll just left off
20 with the Rix Rogers Report at Tab 15, and he had you take a
21 look at Recommendation 61. It's on page 27.

22 I want to, just before I ask the question,
23 acknowledge that I won't ask you a great number of
24 questions about police investigations and policing, and I
25 understand from one of your answers very recently that you

1 recognize that someone else will be coming to talk to those
2 issues.

3 **MR. BALA:** Yes.

4 **MR. ENGELMANN:** Would it be fair to say that
5 someone involved in policing for many, many years and
6 someone who may have been involved in policing during the
7 Badgley Report and, in fact, worked on the Badgley Report
8 may be better placed to comment on what police knew and
9 police investigations, et cetera?

10 **MR. BALA:** Absolutely. Absolutely. And I
11 would defer to that person's expertise.

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

13 And, sir, do you have any idea why -- I'm
14 looking at Recommendation 61. It says that the Canadian
15 Association of Chiefs of Police and the RCMP review police
16 policy.

17 Do you know why Rix Rogers or the reporters
18 thought it important that police chiefs actually review
19 this and work on this?

20 **MR. BALA:** Because, I mean, in a broad sense
21 the police, as an institution, like all institutions but
22 perhaps more than some others, take their direction from
23 the top, and so if the Canadian Association of Chiefs of
24 Police and the RCMP, the Commissioner and people in the
25 Commissioner's office take a leadership role, they would

1 expect that there would be changes, and I should say there
2 -- while I don't know that we've had the full
3 implementation around policing. We've certainly had some
4 significant efforts around police training about child
5 sexual abuse and investigations in that area.

6 **MR. ENGELMANN:** So how important is that
7 leadership role, from a police chief, in getting officers
8 trained in an area like child sexual abuse?

9 **MR. BALA:** Well, again, I would defer to the
10 expert, but there's no doubt that in comparison to some
11 other institutions, let's say in comparison to university,
12 policing is a fairly hierarchical organization. If the
13 people at the top say "This is what we're doing," the
14 people at the bottom salute.

15 **MR. ENGELMANN:** So you ---

16 **MR. BALA:** Sorry. It's facetious but they
17 certainly get -- they're likely to do what the chief says
18 and it's certainly notable in my interaction with people in
19 policing that they pay a lot of attention to what the chief
20 of police in their force is saying; more so I think than
21 perhaps in some other organizations.

22 **MR. ENGELMANN:** So when you were involved in
23 training police officers and of course other professionals
24 in this area, the IPCA training you were doing with police
25 officers, prosecutors, childcare workers, et cetera,

1 whether these professionals were coming from small or large
2 communities, did you get some sense as to the importance of
3 that leadership role?

4 **MR. BALA:** Yes, and, in fact, I think that
5 to some extent who -- and the IPCA conferences were a good
6 example. I want to say, while I was doing work with IPCA
7 we were not dealing with just police officers. There would
8 be an interdisciplinary group and so the question of
9 whether or not the force sent people to an IPCA training
10 program, for example, was a function of the view of the
11 people who were in charge of that force in some measure and
12 their priorities as well as balancing off of other things.

13 **MR. ENGELMANN:** With the risk of going too
14 far down this road, you mentioned the -- you were asked
15 questions about the OPC and you said it was a primary
16 source of initial training. You mentioned IPCA had some
17 programs.

18 Did you know of other areas that were
19 available for police training?

20 **MR. BALA:** No. That doesn't mean that they
21 didn't exist. It's simply I'm not aware of -- you know, I
22 think some forces were doing their own internal training.

23 **MR. ENGELMANN:** And ---

24 **MR. BALA:** And I should say certainly, as
25 it's noted on my CV, I was involved in preparation of some

1 material. The RCMP and Solicitor General of Canada had
2 prepared materials for investigations of child sexual abuse
3 cases, both present and historical. I had a small role.
4 It's in my CV. I was on the front cover of that material
5 and that was made available and it is used for training.

6 Some police forces have done better than
7 others. I mean I would certainly say, in my experience in
8 dealing with police forces across Canada, which is limited,
9 some forces are clearly more attuned, more sensitive, have
10 a greater priority to this set of issues than others.

11 **MR. ENGELMANN:** Now, you talked about -- you
12 were asked some questions, and I think it was Mr.
13 Callaghan, about corroboration and requirements and what
14 you'd need for reasonable and probable grounds and that
15 pre-1988, with the child victim or if the person was under
16 the age of 14, in any event, that you would need some form
17 of corroboration, some form of other evidence.

18 What about for adults who are complaining of
19 historical sexual abuse as children, any requirement
20 necessary there for reasonable and probable grounds?

21 **MR. BALA:** No and so that the law -- in
22 particular for historic abuse cases, the laws that we had
23 about corroboration were -- at least in Section 60 of the
24 *Evidence Act* which some of this applied to people who were
25 children who were testifying as opposed to adults

1 testifying about things that happened to them as children.

2 **MR. ENGELMANN:** All right.

3 So the word of the adult would be
4 sufficient?

5 **MR. BALA:** Yes, and I should say that
6 corroboration is largely a matter of evidentiary law and so
7 when the law -- when there's a change, if you want,
8 retroactive -- retrospective, more accurately.

9 **MR. ENGELMANN:** Now, you were also asked
10 some questions about this whole issue of the need to
11 support victims and ameliorating concerns of victims and to
12 make the court process less intimidating.

13 Sir, I just want you to go to the Badgley
14 Report for a minute, if I could, at Tab 5, Volume 1.

15 **(SHORT PAUSE/COURTE PAUSE)**

16 **MR. ENGELMANN:** I just want to ask, and I'm
17 looking at page 35 under the caption "Strengthening the
18 provision of services" and I'm just wondering if what we
19 see that falls there under "Strengthening the provision of
20 services, special programs," et cetera, if that is a
21 discussion about those issues, the need to support victims
22 and ameliorate some of their concerns?

23 **MR. BALA:** Yes, and, in fact, that
24 recommendation also deals with policing as well, but, yes,
25 both -- I think this is the point in the summary where he

1 has gone from recommendations about changing the law, the
2 substantive law and the evidentiary law, into issues around
3 services which include provision of services, resources,
4 training and so on. And he then -- the Committee then
5 shifts to deal with a number of recommendations about
6 service provision, including in policing but also child
7 protection, health and so on, and different services.

8 **MR. ENGELMANN:** Thank you, Professor Bala.
9 Those are my questions.

10 **MR. BALA:** Thank you.

11 **THE COMMISSIONER:** Thank you very much, sir.
12 All right.

13 So are we done for the day?

14 **MR. ENGELMANN:** We are. We have Dr. Peter
15 Jaffe who will be with us first thing Wednesday morning.
16 There will be some discussions with counsel over the course
17 of the day tomorrow. I've also spoken to counsel with
18 respect to an issue that we would like to address with you
19 Thursday morning dealing with what is a public institution,
20 in particular whether or not the diocese in this particular
21 case is a public institution within the terms of the
22 mandate.

23 **THE COMMISSIONER:** Thank you. It seems fair
24 enough.

25 Once again, thank you very much, Professor

1 Bala.

2 MR. BALA: Thank you.

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

5 This hearing is now adjourned.

6 --- Upon adjourning at 4:05 p.m./

7 L'audience est ajournée à 16h05

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C E R T I F I C A T I O N

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I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM