

**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 347

Held at :

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

Tuesday, February 24, 2009

Tenue à:

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

Mardi, le 24 février 2009

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Lori Beaudette	Registrar
Mr. John E. Callaghan Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Ms. Diane Lahaie Mr. Tilton Donihee	Ontario Provincial Police
Mr. David Rose Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Ms. Leslie McIntosh	Ministry of the Attorney General
Mr. Peter Chisholm Ms. Stephanie Gibson	The Children's Aid Society of the United Counties
Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. David Bennett	The Men's Project
Mr. Michael Neville Mr. Giuseppe Cipriano	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Ian Paul	Coalition for Action

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1 --- Upon commencing at 9:34 a.m./

2 L'audience débute à 9h34

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. Good morning,
10 all.

11 Mr. Engelmann?

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

14 **THE COMMISSIONER:** Yes.

15 **MR. ENGELMANN:** Just wanted to let you know
16 the line-up this morning and also advise the public we'll
17 be starting with Submissions on behalf of the family of Ken
18 Seguin and Mr. Cipriano ---

19 **THE COMMISSIONER:** Yes, sir.

20 **MR. ENGELMANN:** --- will be speaking to that
21 matter.

22 He will be followed by his colleague, Mr.
23 Neville, who will be speaking on behalf of Father Charles
24 MacDonald.

25 **THE COMMISSIONER:** Yes.

1 **MR. ENGELMANN:** And that will occupy our
2 first hour ---

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

4 **MR. ENGELMANN:** --- until the morning break.
5 Then we have Messrs. Neuberger and Rose both
6 here speaking on behalf of the Ministry of Correctional
7 Services.

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

9 **MR. ENGELMANN:** And that will take us to our
10 lunch hour.

11 And then I thought we'd take a slightly
12 longer lunch than we'd anticipated; instead of 12:45 to
13 1:45, perhaps 12:45 to 2.

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

15 **MR. ENGELMANN:** And then we'd hear from Ms.
16 McIntosh who's here on behalf of the Ministry of the
17 Attorney General.

18 **THE COMMISSIONER:** Thank you.

19 **MR. ENGELMANN:** We had indicated earlier
20 that there may be oral submissions on behalf of the
21 Catholic District School Board of Eastern Ontario. That
22 was a mistake. They had indicated that they were relying
23 upon their written submissions only.

24 **THE COMMISSIONER:** Yes.

25 **MR. ENGELMANN:** So we will end today with

1 the Ministry of the Attorney General representations.

2 **THE COMMISSIONER:** Thank you.

3 **MR. ENGELMANN:** Thank you, sir.

4 --- FINAL SUBMISSIONS BY/REPRESENTATIONS FINALES PAR MR.
5 **CIPRIANO:**

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

7 **MR. CIPRIANO:** Good morning, Mr.
8 Commissioner.

9 As Mr. Engelmann stated, I'll be making
10 submissions on behalf of Doug Seguin and his brother and
11 then I'll be followed by Mr. Neville.

12 What I plan to do, Mr. Commissioner, is
13 start at the end of my written submissions, really to
14 illustrate how the problem or controversy -- which has been
15 referred to as the moral panic in Cornwall -- can be
16 avoided in the future. And, ultimately, it will be my
17 submission that what happened in Cornwall -- the moral
18 panic -- is really a much deeper problem of perception and
19 misinformation.

20 Between 1993 and 2002, it was not uncommon
21 that allegations of abuse were accepted by the public as
22 absolute truths -- by some members of the public, and that
23 guilt was assumed. And that is that the portrayal of
24 allegations in the public and in the media on websites were
25 often seen as presumptions of guilt. This was in large

1 part due to misconceptions and misunderstandings about the
2 justice system and the presumption of innocence in our
3 Constitution.

4 Now, I appreciate that in law there are
5 safeguards that protect the presumption of innocence and
6 safeguards against a shifting of the burden of proof onto
7 the accused to disprove the allegations made against him or
8 her. Unfortunately, these safeguards do not extend always
9 to the public and public perception. We're free to assume
10 guilt on the whim of the statements. Their perception of
11 guilty until proven innocent can have far-reaching
12 consequences and cause irreparable harm to innocent people.

13 As I indicated in my submission, an accused
14 person is nevertheless a person with a life outside of the
15 four corners of the courtroom. It is cold comfort to that
16 person to find out that he's presumed innocent in the eyes
17 of the law but that his peers, the public around him, label
18 him as a perpetual paedophile.

19 This was the reality that was experienced by
20 many, particularly by the Seguin family, and Doug Seguin in
21 particular, in relation to the allegations made against his
22 brother after his brother's death.

23 It's my submission that when society places
24 the onus on the alleged abuser to prove his innocence, then
25 a moral panic is possible because there's a discord between

1 the law and public perception.

2 Doug Seguin and his family were very close
3 to Ken Seguin. They were often at his home on several
4 occasions and they thought of him as a close family member.
5 Throughout his life, Ken was known -- and we've heard this
6 often quoted -- as "Mr. Probation". We've heard from some
7 of his colleagues who worked with him refer to him as that.
8 There was Ms. Lariviere who stated she called him this
9 because he did his work in such a way that -- and I quote:

10 "I don't know. His work was second-to-
11 none from what I could see and just
12 learning, coming into the field, his
13 work was immaculate. There was nothing
14 that you could say about his work. He
15 did everything he could possibly do to
16 help people. His case notes were
17 perfect. His desk was perfect. He
18 came in in a suit and tie everyday. It
19 was just somebody that you admired and
20 felt that he was very professional in
21 what he did."

22 Now, I've noted this in my submissions -- in
23 my written submissions -- that consistently throughout his
24 employment at Corrections, his reviews demonstrate that he
25 was an above-average and extremely competent probation

1 officer. He was quoted as being a role model. His
2 performance reports indicate that he was an asset to the
3 office and his quality of work was superior. He had a high
4 level of respect among his co-workers.

5 We also know that Mr. Seguin took a
6 humanistic approach to his job. His role as probation
7 officer to him was more than mere rule enforcement. He
8 would often see his role as one which developed a rapport
9 with a probationer. He saw that his role was one that was
10 geared towards assisting the person in overcoming any
11 problems that lead them to where they were.

12 Finally, and apart from his professional
13 life, we also heard evidence that Ken Seguin was also
14 congratulated for his courage. We heard evidence from
15 Inspector MacDonald of the Cornwall Police Service who
16 described Ken as courageous in assisting and diffusing the
17 hostage situation in which a male was holding a knife to
18 his wife. The Cornwall Police on behalf of Inspector
19 McDonald sent a letter to Probation, and I quote:

20 "Mr. Seguin was extremely helpful to
21 the police officers in alleviating a
22 very dangerous situation. It is
23 unknown whether this incident could
24 have been brought to a successful
25 conclusion without the highly

1 professional assistance of Mr. Ken
2 Seguin."

3 And I say this because when we look back and
4 we measure the institutional response, we have to look at
5 what Corrections -- the Ministry of Corrections -- knew at
6 the time. And this is all information that has been made
7 as exhibits at this Inquiry. They're Exhibit Numbers 924,
8 925, 957, 968; there are about a dozen or more exhibits
9 that illustrate the career and profile of Mr. Seguin.

10 Now, yesterday we heard that Corrections
11 should have or ought to have opened their eyes more to Mr.
12 Seguin and red flags should have gone up. And it's my
13 submission that that submission fails to mention the
14 complete record of what Corrections would have known at the
15 time.

16 We heard yesterday that Mr. Seguin was
17 someone who was under surveillance and people should have
18 questioned what was happening with him. And, yes, that was
19 true. We heard that Mr. Seguin was under surveillance, but
20 we also have to realize that what came of that
21 surveillance; nothing. There was no criminal act that was
22 being observed. And when we begin to judge people based on
23 these one-sided rumours and innuendo and ignore the
24 complete record of what was known at the time in an
25 objective way, then this is when the moral panic begins to

1 take a pulse.

2 In the years after Mr. Seguin's death and
3 during the rise of this moral panic and these conspiracy
4 theories and paedophile clans, Doug Seguin and his family
5 found themselves facing these allegations, that their
6 brother was part of a clan of paedophiles and his name had
7 come up as being part of cover-ups and unchallenged
8 allegations.

9 Given what the family knew about their
10 brother, or Ken Seguin, at the time, it's understandable
11 that they would refuse to accept the allegations as
12 absolute truths unless there was some evidence of some
13 merit that their brother was involved in these conspiracy
14 theories. For Doug Seguin and his family, the moral panic
15 was not a moral panic until they had some proof beyond the
16 mere making of the allegation before they could accept it.
17 The real panic, I would submit, for the Seguin family was
18 why these allegations were being perceived as having merit
19 to them without any evidence.

20 As I indicated, Ken's name and his home
21 became a focal point of cover-ups and allegations and it is
22 no wonder, in my submission, that Doug Seguin took steps to
23 determine if there was any such merit to the allegations
24 that were popping up on websites and affidavits and in the
25 media.

1 Doug Seguin, and I'll refer to him as Doug
2 so that we don't get confused because of the same last
3 name, he was -- testified here and called as a community
4 context witness. He was called not only because he was the
5 brother of the late Ken Seguin and could testify as to the
6 effects of these allegations on his family and himself, but
7 he was also called because, as Ken's brother who also
8 associated with him in his home, he had various
9 interactions with various of -- various players who were
10 becoming to be the main characters of the conspiracy
11 theories and allegations, specifically, Ron Leroux, Mr. C-8
12 and Gerry Renshaw.

13 As I indicated earlier, given the rate at
14 which allegations were arising after Mr. Seguin's death and
15 the fact of how the Seguin family knew of Mr. Seguin, it's
16 understandable that Doug Seguin and his family would seek
17 to determine if there was any merit to these allegations.
18 But I pause to note that what Doug Seguin did not do is
19 carry out his own parallel investigation, such as Carson
20 Chisholm or Perry Dunlop. He did not meet with
21 complainants to take -- have them swear affidavits or
22 travel to places and present themselves as an investigator.
23 He took appropriate legal steps and if the answer was
24 negative, the family accepted it as such. People may
25 question the route he took but it's my submission that he

1 did take the appropriate legal measures that were available
2 to him at the time.

3 As I indicated, Doug Seguin was called, not
4 only as a community context witness but because he had
5 interacted with some of the various players. And he was
6 specifically asked by Commission counsel about his
7 interactions with Gerry Renshaw, whom he knew.

8 The evidence that was tendered by Doug
9 Seguin was that, according to Gerry Renshaw, he had made
10 various submissions to him that would shed a different
11 light on the interaction that Gerry Renshaw, Perry Dunlop
12 and others would have had in Cornwall at the time
13 subsequent to Ken's death.

14 And the following information was elicited:
15 that Gerry Renshaw freely provided his written statement to
16 him; that Gerry Renshaw had nothing to hide; that he and
17 Gerry Renshaw would have met on two occasions to discuss
18 the contents of his statement and Renshaw's interaction
19 with Perry Dunlop and Carson Chisholm; that Gerry Renshaw
20 admitted to him that he personally knew of no sexual
21 misconduct by Ken Seguin or Father MacDonald.

22 Gerry Renshaw did not appreciate the
23 difference between facts known to him personally and the
24 innuendo and hearsay he received from others; that what was
25 in Gerry's statement was information he received from

1 others.

2 Now as a basis for this information,
3 Commission counsel used Doug Seguin's typed notes that he
4 had prepared for his counsel and for their lawsuits. These
5 notes became Exhibit 1043. These notes were prepared two
6 weeks prior - two weeks after Mr. Seguin would have met
7 with Mr. Gerry Renshaw on the second occasion.

8 Now counsel to Gerry Renshaw sought to
9 attack the credibility of Doug Seguin as it impacted his
10 client. The basis for his attack was that the
11 conversations Doug had with Gerry were not reflected in his
12 notebooks but only in his typed notes, the inference being
13 that since Doug does not have handwritten notes, the typed
14 notes must, of course, be fabricated.

15 And I submit that two points have to be made
16 on this. Firstly, there's nothing wrong or sinister in
17 making typed notes in lieu of handwritten notes. Doug
18 Seguin was not a member of a public institution under legal
19 obligation to take notes or to take notes in a specified
20 manner.

21 Secondly and more to the point, Doug Seguin
22 actually replied that the notes were in fact made about
23 these conversations and they were made on the statement
24 provided to him by Gerry Renshaw. And I quote from the
25 transcript. He's asked by Mr. Lee:

1 "Sir, as far as the February 5th, '97
2 conversation with Gerry Renshaw goes,
3 we have no notes from you on that."

4 Answer:

5 "I think you do. I -- they're -- sure I
6 read them in the book because I was
7 looking at the book, but I would have
8 to look back at the book because I
9 remember writing this down after I was
10 talking to him."

11 Further on:

12 "Are we missing something, sir?"

13 Answer:

14 "I think so, m'hm, but I'm not sure
15 what it was, where that comes from. I
16 know I wrote his material down."

17 Question:

18 "What about the second meeting?"

19 Answer: "In the second one, I didn't
20 write it in the book. What I did was,
21 I had his statement, I was making notes
22 on the statement with a pencil. I
23 typed and asking him questions."

24 Further on:

25 "The point I'm trying to make, sir, is

1 we have a very brief notebook entry
2 from you relating to January 23rd
3 conversations. We have no notes from
4 you relating to the February 5th. Is it
5 February 5th conversation? At some
6 point on February 10th, we end with a
7 fairly lengthy document outlining all
8 kinds of allegations and your story of
9 what Mr. Renshaw told you."

10 And further on, Doug Seguin is accused on
11 lying to clear his brother's name.

12 Now as I state in my submissions, this is
13 regrettable and unfortunate, because the document that Doug
14 Seguin was referring to was in existence and was disclosed
15 to the Commission, however it was not disclosed to parties.
16 Now counsel for the Commission knew of its existence and
17 corrected this error. This document has now become Exhibit
18 3312.

19 This document confirms that Gerry Renshaw
20 did not have any personal, first-hand knowledge or witness
21 any misconduct. What it does show is that he was used as a
22 pawn or a mouthpiece by Perry Dunlop.

23 Now while Doug Seguin may have had made
24 some errors in judgement, he certainly cannot be faulted
25 for his willingness not to accept allegations at face

1 value. And I note that it must be recalled that Doug
2 Seguin was not a professional investigator. He did not
3 have any resources at his disposal. Given the magnitude
4 and rate at which the allegations were coming, it's my
5 submission that it is understandable that the family took
6 the steps that they did to discover for them and satisfy
7 themselves if there was any merit to the allegations.

8 I stated at the beginning of my submissions,
9 what I ultimately submit is that the events -- what the
10 events in Cornwall do is shed light on a much deeper
11 problem of perception. That is, allegations of abuse, once
12 made, were taken as absolute truths by members of the
13 public.

14 And, in the end, it's my submission that one
15 of your goals, Mr. Commissioner is not only to make
16 recommendations that will prevent future -- future moral
17 panic from occurring in Cornwall and elsewhere, but it
18 should also be to educate the public on the presumption of
19 innocence as a fundamental principle of our justice system.

20 And it's my submission that only through
21 this education and information can the perception slowly be
22 changed and the controversy that surrounded Cornwall be
23 prevented in the future.

24 Those would be my submissions. Mr.
25 Commissioner.

1 **THE COMMISSIONER:** Thank you.

2 Mr. Neville?

3 **--- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**
4 **NEVILLE:**

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

6 **MR. NEVILLE:** Good morning, Commissioner.

7 Along the winding road nears an end, at
8 least for some of us in this room and for you, I guess, the
9 journey in some ways begins.

10 **THE COMMISSIONER:** Begins, yes.

11 **MR. NEVILLE:** You have available to you, Mr.
12 Commissioner, my written materials and I'm quite sure, as
13 you've assured all of us and the public yesterday that you
14 will use them as you see fit and feel that they assist you
15 as you will so find.

16 **THE COMMISSIONER:** And I have read them.

17 **MR. NEVILLE:** Thank you, sir. And I'm not
18 going to spend much time dealing specifically with them.

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

20 **MR. NEVILLE:** Although it is perhaps, sir,
21 unusual, I will begin these brief submissions by
22 responding, if I may, to two particular positions advanced
23 by one or all of the first three parties to address you;
24 the CCR, the Coalition and the Victims' Group.

25 My submission, respectfully, is that if you

1 rely on certain materials urged upon you in the written
2 submissions, in particular the Victims' Group, and/or you
3 accept a certain view advanced by all three of my friends,
4 you will be led into serious error, legal and factual and
5 could indeed fail to follow your mandate as the Ontario
6 Court of Appeal has defined it in January of 1998.

7 And you will fail, sir, to meet your mandate
8 from the standpoint of relevant fact finding and of
9 promoting healing in Cornwall. And the two, I submit, fact
10 finding and the promotion of healing are related.

11 In my submission, with respect, it is not
12 conducive to healing if this community of Cornwall is
13 somehow left with a nagging doubt, a nagging uncertainty
14 that there was a clan that preyed on children and young
15 persons for several decades; a clan peopled by priests,
16 bishops, police chiefs, senior police personnel, Crown
17 Attorneys, lawyers and others, and that police
18 investigations and Crown reviews were at best inadequate,
19 one party would say corrupt, and either missed it or
20 deliberately concealed it.

21 Now, that is not to say, sir, that over
22 three or four decades reviewed in the evidence before you
23 that mistakes or shortcomings did not occur within or by
24 various institutions. Each of those will speak for itself,
25 but that is a very different matter.

1 Let me deal, sir, with the first concern.
2 That is the reliance on certain materials put forward as
3 supportive of the position of Perry Dunlop, essentially in
4 the written materials of the Victims' Group. In the
5 materials, the following is found:

6 "The Victims' Group has throughout the
7 Inquiry resisted the attempts of many
8 parties to turn the Inquiry into an
9 examination of Dunlop and his
10 activities. It is apparent that for
11 some parties the best defence was
12 deemed to be distraction."

13 Further down:

14 "Some comment is required in our
15 submissions, given the inordinate
16 amount of time parties to this
17 Commission have spent debating Dunlop's
18 actions. We have endeavoured to assist
19 the Commission by setting out Dunlop's
20 documents, statements and words
21 relating to his contacts with victims
22 and their families, police officers,
23 government officials, witnesses and
24 others in an attempt 'to balance' the
25 submissions of institutions that have

1 been set on blaming their failures on
2 Dunlop for years."

3 One must, I submit, sir, return to what I,
4 relying on the Court of Appeal again, have termed in my
5 paper "The factual matrix of the Inquiry": the clan, the
6 cover-up and the perceived failings or failures of Project
7 Truth. From whom, I ask, do the first two directly and
8 solely flow? And the answer is Perry Dunlop.

9 As stated in our written materials, to state
10 that there were perceived failures of Project Truth is
11 quite misleading unless one clearly understands that
12 "perceived" means "misperceived" if one ignores the factual
13 record. There cannot, there must not, be a negative
14 inference about Project Truth because there were several
15 acquittals; likewise, sir, withdrawals for the non-laying
16 of charges because of deaths or even medical stays.

17 So what remains? Judicial stays in two
18 cases, at both of which Perry Dunlop, unlike at this
19 Inquiry, testified, with direct causal links judicially
20 found between the conduct of Mr. Dunlop and the results in
21 those cases. Those are the only two occasions where Perry
22 Dunlop was made to be in any way accountable on the public
23 record.

24 In the brief filed on behalf of the Victims'
25 Group, sir, there are 61 pages devoted to Perry Dunlop,

1 with dozens of citations of documents. By my rough
2 calculations, sir, there are well over 400 document
3 references that undoubtedly would have generated
4 significant cross-examination by many parties.

5 For example, there are some 96 citations of
6 his self-serving will say, Exhibit 579. There are
7 countless citations of his personal notes. There are
8 citations of many exhibit numbers of statements taken from
9 the likes of Ron Leroux -- of which there are many as you
10 know -- C-8, Robert and Gerald Renshaw, to name only four.

11 As if there would not have been hard
12 questions asked! For example, how did C-8 manage to
13 fabricate part or all of his stories? How did Ron Leroux
14 put Bishop LaRocque at a VIP meeting when he was at the
15 Canadian Conference of Bishops in another city?

16 To quote briefly, and it will be brief
17 because that's how brief it is, from one cited document --
18 this is Mr. Dunlop's statement to his own police force as
19 to his dealings with C-8 in relation to the Marcel Lalonde
20 case. It is your Exhibit 628 and will take me 30 seconds,
21 if that, to read it:

22 "[C-8] contacted me in June, 1996. At
23 that time he indicated that he was a
24 victim of sexual assault when he was a
25 minor. He did not provide details of

1 the assault. In January of 1997 [C-8]
2 attended my residence. It was at this
3 time that he gave disclosure that he
4 was sexually assaulted by Father
5 Charles MacDonald as well as Marcel
6 Lalonde. The statement was taken at my
7 neighbour's house. [C-8] and I worked
8 from rough notes that he had made.
9 Upon completion of the statement, he
10 went directly to the OPP station in
11 Lancaster. Signed Perry Dunlop, April
12 16th, 1997."

13 That is what he put forward as his entire
14 dealings with C-8. You know it is quite different.

15 The clan and the cover-up are of the essence
16 of his two-part civil action found in Exhibit 673. The
17 other, of course, is for the purported malicious
18 prosecution under the *PSA*.

19 Not one party that has preceded me, in
20 particular the Coalition and the Victims' Group, has
21 attempted to defend the allegation of the clan. I say this
22 -- what images more caught the imagination and raised the
23 anxieties of the Cornwall community than the allegations
24 that prominent citizens of Cornwall preyed on Cornwall's
25 young and used their positions and/or influence to prevent

1 detection; or worse, to corrupt the law enforcement process
2 of an entire city of some 50,000 people for several
3 decades?

4 The allegation of a predatory clan appears
5 for the first time on paper in Ron Leroux's statement of
6 October the 31st, 1996, which you have as Exhibit 564. In
7 paragraph 6, he says:

8 "I can advise and have witnessed a
9 'clan' of paedophiles which were
10 comprised of the following people."

11 An extensive list is set out.

12 Paragraph 7:

13 "I have witnessed sexual improprieties,
14 molestation, fondling et cetera between
15 the above-named clan members and minors
16 through the period of 1960 or '61 to
17 1993."

18 He goes on and on and on. In paragraph 12:

19 "The clan's regular meeting spots were
20 Ken Seguin's home in Summerstown and
21 Malcolm MacDonald's summer residence on
22 Stanley Island. I observed clan
23 members at those meeting spots all the
24 time and some more frequent than
25 others."

1 And then he talks about Cameron's Point and
2 Birch Avenue and Fort Lauderdale.

3 He specifically identifies as Claude Shaver
4 as purportedly a clan member and very good friends with
5 Malcolm, Father Charles, Ken Seguin, the Bishop and Ron
6 Wilson et cetera. He then goes on in detailed paragraphs
7 to make allegations specifically about the Bishop, Ron
8 Wilson and others.

9 However -- oh, and by the way, just while
10 I'm dealing with it, paragraph 21:

11 "On or about March, 1994, in the
12 presence of my wife Cyndy Leroux, I
13 advised an OPP officer and an Ottawa
14 officer of these tapes. Both officers
15 stated that they knew nothing of these
16 tapes but would look into it."

17 That is October the 31st, 1996. Now, the
18 problem for Mr. Leroux and Mr. Dunlop of course is ---

19 **THE COMMISSIONER:** I'm sorry, '94 or '96?

20 **MR. NEVILLE:** Ninety-six ('96).

21 **THE COMMISSIONER:** Thank you.

22 **MR. NEVILLE:** The document I'm reading from,
23 sir, where he makes that statement is a '96 document of
24 October ---

25 **THE COMMISSIONER:** I had written '94; I

1 don't know why. Yeah, '96.

2 MR. NEVILLE: All right. It's authored, sir
3 -- the date on it is October 31st, '96.

4 THE COMMISSIONER: Yes.

5 MR. NEVILLE: And that's Exhibit 564.

6 THE COMMISSIONER: Yes.

7 MR. NEVILLE: And that's a paragraph from it
8 which references 1994, sir. That's perhaps ---

9 THE COMMISSIONER: All right.

10 MR. NEVILLE: All right?

11 He says that something happened in March '94
12 between himself in the presence of his wife, an OPP officer
13 and an Ottawa officer, who said they knew nothing of the
14 tapes but would look into it. I'm just paraphrasing but
15 that's the essence of paragraph 21 of that exhibit.

16 The problem of course is there's Exhibit 562
17 which, surprise surprise, is in March of 1994. It's a
18 typed statement done by Detective McDonnell and Detective
19 Fagan, who in fact is from Ottawa. And indeed there is a
20 discussion of the tapes, and here is the discussion:

21 "In February of 1993, Ken put a
22 briefcase in my house containing VCR
23 tapes of gay men, and the police seized
24 them when they took some guns from my
25 house when I wasn't there. The guns

1 were since sold to [C-8]. The
2 Lancaster OPP were the police
3 department that seized the tapes and
4 guns."

5 That's what he says in 1994, referenced
6 again, inaccurately, to put it kindly, in 1996.

7 More importantly, sir, as our written
8 submissions emphasize and neither of the Coalition or
9 Victims' Group address, Mr. Dunlop harboured a clan theory,
10 called at that time a "ring", in the fall of 1993. He
11 would not meet with the CAS then to substantiate the theory
12 and he wouldn't meet with you, or more accurately, face the
13 parties and the Cornwall public here to explain himself.

14 With respect, sir, to suggest that
15 Mr. Dunlop is merely a distraction is not highly relevant
16 to your mandate and to the concerns of this community --
17 would be to ignore 15 years of Cornwall history and the
18 directives of the Court of Appeal.

19 Mr. Horn made an impassioned plea in support
20 of Perry Dunlop here yesterday. He wasn't asked, and he
21 certainly didn't volunteer an answer to the most obvious
22 question, I submit, that demands an answer or significant
23 comment by you in your report. Where is Perry Dunlop?

24 Parties here, many maligned by him -- and I
25 repeat, many in this community -- had questions for him,

1 wanted answers from him. He is more than a distraction.

2 He is in large measure why you and all of us are here.

3 Now, let me deal briefly with the second
4 position, one advanced directly by the CCR and the
5 Coalition and adopted by the Victims' Group, and I'll state
6 my position with, if I may, a rhetorical question: What
7 other conspiracy? What other conspiracy?

8 At various stages in the evidence of the
9 proceedings here, there were references, things like the
10 larger conspiracy, the conspiracy about the clan of
11 paedophiles. Again, I return to the factual matrix of the
12 Inquiry, the clan, the cover-up. I'll set aside the
13 Project Truth component.

14 What are people, including counsel, talking
15 about? I use the term "evidentiary" most loosely, however,
16 there is I submit only one evidentiary basis for the so-
17 called larger conspiracy.

18 It is the clan of paedophiles conspiracy of
19 Perry Dunlop, the one I referred to that starts its public
20 appearance, so to speak, on October 31st in Mr. Leroux's
21 statement. It then finds greater life through the drafting
22 ingenuity of Mr. Bourgeois.

23 No one in law enforcement, police or Crown,
24 believed Ron Leroux. Only Ron Leroux takes the allegations
25 of child sexual abuse back to the 1960s, if not the late

1 1950s. Even he makes no connection between those bizarre
2 allegations and anyone connected to agencies of law
3 enforcement, police or Crown, until the non-existent VIP
4 meeting that he brings forward in 1996, speaking
5 purportedly of August, September, of 1993.

6 What is a conspiracy? You, as a lawyer and
7 a judge, sir, know it is an agreement. It is an agreement
8 to effect an unlawful purpose or to effect a lawful purpose
9 by unlawful means.

10 Who are the parties? What are the purposes?
11 With the greatest respect, none of us here -- and I plead
12 guilty myself -- asked the right question.

13 The question that should have been asked was
14 one like this: Mr. Smith, Inspector Smith, or Inspector
15 Hall, and/or Mr. McConnery, what evidence did you see,
16 credible and admissible, that over the last four or five
17 decades there was an agreement or series of agreements to
18 commit the offence of child sexual abuse and to cover it up
19 through the control or manipulation of the justice system?
20 And the answer is, none, save Ron Leroux, whom nobody
21 believed.

22 So, I suggest to you, sir, that it is no
23 service to this community to say that somehow the other
24 conspiracy, the bigger conspiracy, was never finally
25 resolved. It was not resolved perhaps so-called, but it

1 was resolved in essence, and you can resolve it because the
2 essence shows you that that was the entire foundation of
3 it, and it is a non-existent foundation.

4 Now, in his able fashion, Mr. Lee has
5 analyzed and criticized, as he sees it, the responses of
6 various institutions to various allegations of child sexual
7 abuse, casting back almost 40 years. Of the complainants,
8 actual or potential, against my client, Father MacDonald,
9 there are two, Robert Renshaw and Albert Lalonde, whom he
10 represents.

11 In relation to Mr. Renshaw, you have my
12 written submissions, together with his cross-examination
13 here and at the preliminary inquiry, which you have as an
14 exhibit, together with the Crown analysis of his evidence
15 at that preliminary inquiry which is found in Exhibit 502,
16 together with his regular visits at Mr. Seguin's house, now
17 a perpetrator against him, together with his connections
18 with Mr. Dunlop together with his lawsuit.

19 I suggest all these things raise many more
20 questions than have been answered. And in case anyone
21 forgets, he is an alleged victim, because there were a
22 great deal of things said yesterday on which the underlying
23 premise was these are all unequivocally, in fact, victims.

24 As for Albert Lalonde, it is more, I
25 suggest, just a touch ingenuous to suggest that Sergeant

1 Carroll lacked sufficient material to decide that he could
2 not form reasonable and probable grounds.

3 A recovered memory from a television show?
4 M'hm -- \$2 million -- m'hm; has echos of John MacDonald.

5 The cross-examination of Detective Carroll
6 brought out such factors as:

7 "Although he purports to have had a
8 recovered memory in the presence of his
9 wife, her recollection is that he first
10 starts mentioning abuse after starting
11 to meet with one John MacDonald."

12 Dr. Clement, his own doctor, has summarized
13 Mr. Lalonde as having zero credibility. To Detective
14 Genier in 1996, he suggests that the sodomizer at Avonmore,
15 in the park, is likely Marcel Lalonde.

16 Sergeant Carroll had all that and more. He
17 had the entire OPP file, and he met with them.
18 Mr. McConnery had the same material and, of course,
19 Mr. Lalonde did not testify here.

20 As I followed yesterday's proceedings,
21 Commissioner, it was difficult to keep track of the
22 conspiracies. We had a new one yesterday, Mr. Horn's
23 theory of a CAS conspiracy to protect Ken Seguin because he
24 knew something unpleasant or damaging about them.

25 I want to address, however, more directly

1 what Mr. Lee invited you to do in relation to his theory of
2 the Silmsers settlement, and I suggest we have not
3 substituted the clan and its conspiracy for the Catholic
4 lawyer conspiracy.

5 You must reject it, sir, for two reasons:
6 One legal, one factual. First, on a legal basis, Section 7
7 of your mandate prohibits you from making findings of
8 criminal responsibility.

9 The argument, as crafted by Mr. Lee, would
10 require you to find several persons, including of all
11 people, Sean Adams, one of the pillars of this community, a
12 man whose reputation is to be envied.

13 You would be required to find that they were
14 not truthful under oath before you and conspired to commit,
15 and did commit, the offence of obstruct justice.

16 On a factual basis, you would have to do the
17 following, among others. You would have to reject the
18 evidence of David Silmsers, that he and he alone retained
19 and paid, with a receipt provided, Mr. Adams. That's his
20 evidence.

21 You would not only have to reject the
22 evidence of former Deputy Chief St. Denis, but you would
23 have to reject the significance and the entirety of Exhibit
24 301, which is Murray MacDonald's letter to Staff Sergeant
25 Brunet. You have that. You've looked at it probably more

1 times that you care to remember, sir, but you will perhaps
2 note early in my cross-examination of Deputy Chief St.
3 Denis, I refer him to the document and had him identify the
4 writing in the corners.

5 In the left-hand corner, it is his writing,
6 where he talks about the morning meeting of September 16th,
7 the matter was discussed, and he was requested and indeed
8 on that day forwarded the letter to the Chief.

9 In the right-hand corner is the notes,
10 handwriting, and initial of Chief Shaver forwarding it to
11 the actual addressee, Mr. Brunet.

12 You would also have to ignore the evidence,
13 both documentary and oral, that immediately after the
14 September 28th meeting, when Mr. Lortie said whatever he
15 said because he doesn't seem to be too keen on adopting
16 cover-up, Mr. Brunet, in fact, goes to see the Deputy Chief
17 upset that the word has been used, perhaps implying that he
18 had done something verging on a cover-up.

19 You also would have to reject outright the
20 reputation and integrity of Inspector Timothy Smith.
21 Mr. Smith, in his findings in 1994, in my submission, has
22 always been an irritant to certain of the parties, that
23 Inspector Smith could not come to a belief sufficient to
24 lay a charge related to Mr. Silmser, the same result
25 arrived at by Officer Sebalj.

1 This is a man of sterling reputation; a
2 pioneer, in some ways, in investigating large-scale
3 historical sexual assault. Somehow, he must have -- in the
4 space of 1994 for no apparent reason or motive -- lost all
5 that integrity or had a complete brain cramp for 9 to 12
6 months all to the benefit of a priest that he never even
7 met.

8 I suggest, sir, there is not one iota of
9 evidence that Chief Shaver had any input into or control
10 over the work of Officer Sebalj up to the end of April 1993
11 when her evidence-gathering stages ended.

12 You have the exhibit of Staff Sergeant
13 Derochie and you heard him, sir, at great length. Exhibit
14 1293, his review in that fall of 1993 of two things; not
15 one, two; the conduct of Mr. Dunlop with the CAS disclosure
16 and the conduct of the CPS investigation. And in those
17 notes discussed at great length *viva voce* is his interview
18 with Officer Sebalj and her describing the state of mind
19 she got to in late August of no reasonable and probable
20 grounds. This, interestingly, is almost the exact same
21 time, November 1993, when she is purportedly telling Ms.
22 Fitzpatrick that she did have RPG.

23 Now, if we're going to speculate, as I
24 suggest Mr. Lee's theory is, let me give you a theory.
25 From the cross-examination of Karen Derochie by Mr. Adam's

1 counsel, Mr. Cameron, she indicated to you, sir, that the
2 meeting or the attendance of lawyers at Dr. McDonald's
3 waiting room for a meeting was perhaps as late as November
4 1993. Now, at that point, sir, you know from abundant
5 testimony and documentary evidence that there were very
6 serious concerns being raised about the settlement. The
7 CAS were directly involved in carrying out Project Blue and
8 had been since basically the end of September, start of
9 October. By that point, sir, Malcolm MacDonald had been in
10 for interviews. Jacques Leduc had been in for interviews.
11 Monsignor McDougald had been in; everybody had been in for
12 interviews. The CAS was launching an extensive
13 investigation with altar boys and others in the St. Andrews
14 Parish. Something had hit the fan.

15 It's not by any means a stretch to suggest
16 that perhaps, at that point, some advice from a sage senior
17 Catholic lawyer was sought who was not, perhaps, happy at
18 the agreement that had been reached as indeed Mr. MacDonald
19 was on record for years as saying he disapproved of such
20 agreements.

21 **THE COMMISSIONER:** Well, I don't know how
22 far we're going to go that road, but didn't the lawyers
23 categorically deny ---

24 **MR. NEVILLE:** Yes.

25 **THE COMMISSIONER:** --- that they'd been

1 there so ---

2 **MR. NEVILLE:** They say they were not there,
3 sir.

4 **THE COMMISSIONER:** Right.

5 **MR. NEVILLE:** They have no recollection of
6 going to any such meeting.

7 **THE COMMISSIONER:** Okay. I thought they
8 said not that they don't have any recollection; they did
9 not go.

10 **MR. NEVILLE:** Well, I think the only one
11 that we got a chance to ask, sir, was Mr. Adams.

12 **THE COMMISSIONER:** Yes, m'hm.

13 **MR. NEVILLE:** I'm not sure, frankly -- in
14 fact, it may be a failing of memory on my part. I don't
15 frankly recall. You would recall better than I, Mr. Leduc
16 was asked.

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

18 **MR. NEVILLE:** I certainly know Mr. Adams
19 was.

20 **THE COMMISSIONER:** Okay.

21 **MR. NEVILLE:** Touching on a few highlights
22 that are reflected in my paper, sir, my introductory
23 foundation is the rule of law as opposed to the rule of
24 man. We have a legal system, sir, and a society where
25 rules and the values that underlie them are fundamental.

1 It is not acceptable in the judicial system -- the legal
2 system as we know it and have successfully lived under for
3 decades to throw out the rule book and that is what Mr.
4 Dunlop did and bragged of doing. There is a concern, sir,
5 about what I would call -- and it's touched on in my paper
6 -- hindsight bias.

7 **THE COMMISSIONER:** Hindsight bias, yes.
8 M'hm.

9 **MR. NEVILLE:** Mr. Lee skilfully mounted an
10 attack on many institutions and/or individuals. What I
11 caution, sir, is you avoid, as much as possible, using
12 then-versus-now thinking and making findings of wrongdoing
13 on a standard that is much different today.

14 And I come back to a point touched on
15 earlier that a number of the findings he would have you
16 make would put you in serious jeopardy of violating the
17 provisions of Section 7 of your mandate.

18 In relation, sir, to the two most vigorous
19 campaigners for what is now this Inquiry, Mr. Dunlop and
20 Mr. Guzzo, I suggest to you, sir, that there is
21 unfortunately, the spectre of both ego and self-interest
22 that cannot be ignored or at least underestimated. As I
23 discussed at some detail, sir, in my paper, there is an
24 obvious absurdity to the notion of a long-standing, long-
25 running clan and conspiracy with a cover-up intended

1 thereto.

2 Mr. MacDonald was the Crown Attorney here as
3 of 1992. Mr. Johnson was effectively the Crown Attorney
4 here for the 20 years preceding that. How did the clan
5 control the justice system for 20 years without Mr.
6 Johnson?

7 Your task, sir, requires some intellectual
8 rigor and precise analysis. It is preposterous and without
9 any evidentiary foundation that Mr. Leroux' fanciful clan
10 existed let alone controlled a justice system and the
11 prosecutions of the members without the input of the Crown
12 Attorney's office then headed almost exclusively by Mr.
13 Johnson.

14 In the case of Mr. Guzzo, discussed at some
15 length by myself and other parties, what is particularly
16 disturbing in my submission, sir, is the litany of
17 misrepresentations he made to fellow legislators and to the
18 media. Those are detailed in some measure in various
19 papers.

20 In my respectful submission, sir, the
21 essence of the problem is very well encapsulated in a
22 document that I thought was of such significance that I
23 reproduced it in full at pages 37 and 38 of my paper and
24 that is the letter by Richard Abell to Rideau Hall in
25 relation to a proposed award for Mr. and Mrs. Dunlop. Now

1 let me just read one paragraph, bearing in mind, of course,
2 who he was and his relationship with Mr. Dunlop and his
3 involvement in the commencement of what largely has us
4 here.

5 "It is unlikely that this community
6 will ever see the clearing of the air
7 that so many have asked for. Some
8 innocent people will have to endure a
9 life-long cloud of suspicion over them
10 because of the public accusations
11 directed against them. Some guilty
12 parties will escape being held to
13 account for their crimes. Lastly, the
14 respect and appreciate [I guess it
15 should be appreciation] the Dunlops
16 actually did earn has been stained by
17 their single-minded and self-promoting
18 crusade."

19 Now you, sir, have the opportunity, I
20 suggest, with respect to clear this air; to set the record
21 straight as you see it. You have some recommendations,
22 sir, and I'm about to close. The one I would simply
23 emphasize, there are some that are somewhat legalistic
24 about how investigations should be conducted and perhaps
25 ultimately analyzed by the Crown. My view is that the

1 notion of simply a prospect of conviction is perhaps
2 setting the bar too low. It is a mere possibility. I
3 suggest it ought to be something higher.

4 But the one I want to stress to some extent
5 is that of speaking to employers. And I've set it out in
6 the paper. I won't repeat it, sir, save to say that some
7 genies never go back in the bottle and I would query the
8 propriety of going to an employer when the investigators --
9 and Mr. Lee went on at great length itemizing all the
10 police officers who failed to go and tell the CAS. The
11 fundamental problem here, sir, is the main investigator
12 didn't sufficiently believe the complainant. And if visits
13 to employers are going to be based on that foundation,
14 there are going to be careers and reputations and lives
15 ruined. This is a very complex issue and is not a simple
16 one of saying, allegation received, allegation passed on.

17 And those, sir, with respect to my
18 submissions. Thank you.

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

20 So we'll take a break until what time now
21 Mr. Engelmann?

22 **MR. ENGELMANN:** Ah, perhaps until quarter
23 to, sir.

24 **THE COMMISSIONER:** Thank you.

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

1 veuillez vous lever.

2 This hearing will resume at 10:45 a.m.

3 --- Upon recessing at 10:23 a.m./

4 L'audience est suspendue à 10h23

5 --- Upon resuming at 10:45 a.m./

6 L'audience est reprise à 10h45

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

9 This hearing is now resumed. Please be
10 seated. Veuillez vous asseoir.

11 **THE COMMISSIONER:** Thank you.

12 Good morning, sir.

13 --- **FINAL SUBMISSIONS BY/REPRESENTATIONS FINALES PAR MR.**
14 **NEUBERGER:**

15 **MR. NEUBERGER:** Mr. Commissioner, good
16 morning ---

17 **THE COMMISSIONER:** Good morning.

18 **MR. NEUBERGER:** --- Mr. Engelmann,
19 Commission counsel and counsel for all parties. Mr. Rose
20 and I, on behalf of the Ministry of Community Safety and
21 Correctional Services, are pleased to be providing its
22 closing submissions on Phase 1 of the Inquiry.

23 I'd like to first take the opportunity to
24 thank the participants and fellow counsel for having an
25 open dialogue with us throughout the Inquiry. In our

1 submission, it's certainly made the Inquiry more effective.

2 The Inquiry tackled many complex issues and
3 there is tremendous value in shining light on many dark and
4 harmful events of the past and exposing to exacting
5 scrutiny myths and rumours that affected the community of
6 Cornwall. It provided for our client, the Ministry, an
7 important opportunity to examine its policies and
8 procedures, both as they existed in the past and present,
9 to recognize deficits and move forward with enhanced
10 policies and procedures to address gaps that have been
11 identified by the evidence, in order to strengthen
12 protection for the public, which significantly includes our
13 clients.

14 We have in our written document, I hope,
15 been candid and realistic in recognizing deficits both in
16 actions and policies, certainly over various periods of
17 time, and we have attempted to be responsive to the
18 evidence and act at this juncture proactively. We
19 recognize that there is more work to be done.

20 Our submissions this morning will be in
21 several parts. First we will deal with a brief reply to
22 some of the submissions that have been either proffered to
23 the Inquiry in writing or made orally, and Mr. Rose and I
24 are going to split that. But for the most part, we'd like
25 to focus on the future in our submissions and we wish to

1 address three themes arising from our evidence, which
2 includes transparency, commitment to healing and
3 rehabilitation, and moving forward with change.

4 We can break these concepts down into three
5 areas: the Ministry then and now, the local response
6 commencing in 1998, and lastly what I term the functional
7 approach to recommendations and implementation.

8 First, I'd like to just indicate briefly
9 something about the Ministry then and now, and Mr. Rose is
10 going to address you somewhat extensively on that issue.
11 But as I said, we'll first deal with some reply but I think
12 at the outset I just want to make a few comments.

13 When we talk about the Ministry then and
14 now, several of our witnesses, both senior management and
15 local and probation officers, were enthusiastic and
16 passionate about their work and their commitment to
17 providing the best possible services for their clients. We
18 may recall the evidence of Morris Zbar and Claude Legault
19 and all the work that has gone into implementing change.

20 These are two examples of leadership at the
21 corporate and local level that has helped define
22 institutional response. And I don't think it's an
23 understatement to say that there has been monumental shifts
24 in thinking and in the way correctional services have been
25 delivered in this community and at large in the Province of

1 Ontario.

2 If I can then first just segue to some reply
3 evidence and what I'm going to focus on is the submissions
4 by the Victims' Group, and the first part of my reply in
5 that regard is to page 55, and we don't have to turn that
6 up but I'm just going to mark it for you. It's page 55 of
7 the Victims' Group submissions and there's a paragraph
8 which after the first sentence talks about Ms. Eley
9 communicated a decision that the Silmsler complaint against
10 Ken Seguin would be referred to Legal Branch of the
11 Ministry and then they agreed. And there was also some
12 comment at that page about Ms. Eley advised that Bill Roy
13 should contact David Silmsler.

14 The reference in the submission is Volume
15 175, page 259. Mr. Commissioner, I just commend to you the
16 reading of page 259 as I look at it in Volume 175. The
17 quote is actually from the memorandum of Lenna Bradburn's
18 memo of December 22nd, 1993 and it's not a reflective
19 quotation from Ms. Eley's *viva voce* evidence, and that
20 actually arises from Lenna Bradburn's evidence. And then I
21 would draw your attention to pages 83 to approximately page
22 87 of Volume 176 which is Ms. Eley's evidence on the topic.

23 The additional comment is found at page 58
24 of the Victims' Group submissions and that's about Ms. Eley
25 acknowledged that her involvement with the David Silmsler

1 complaint amounted to an involvement of the DM's Office in
2 an investigative decision; that being the Deputy Minister's
3 Office. When I look at the citation for that, which is I
4 believe Volume 176 pages 96 to 97, I do not see that
5 acknowledgment from Ms. Eley and I have it actually in
6 front of me.

7 There seems to be a fairly long question on
8 page 97 with a quotation from questions that were asked to
9 Ms. Eley during I believe the Downing investigation but the
10 admission isn't there. And so I just commend to you again
11 a careful reading of those pages, because, again, as we've
12 indicated in our submissions somewhat extensively, it was
13 Ms. Bradburn's decision in conjunction or consultation with
14 Ms. Eley of the Deputy Minister's Office.

15 And the way -- and some of the narrative as
16 outlined by the Victims' Group is accurate but these two
17 references I just commend for those readings so we can be
18 clear on the facts. That's all.

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

20 **MR. NEUBERGER:** Then I'd like to address
21 just briefly some comments that have been made about the,
22 as I call it, the Peter Sirrs' investigation of the Nelson
23 Barque issue in 1982. And specifically I'd like to address
24 the submission that the path taken by Mr. Sirrs was the
25 path of least resistance in his recommendation about

1 allowing Mr. Barque to resign and it possibly is evidence
2 of some attempt to either hide or keep concealed from the
3 public the complaint about Nelson Barque.

4 We do not challenge the evidence. Mr. Sirrs
5 was actually quite frank about his opinion that Mr. Barque
6 should be allowed to resign if he admits it, but it's the
7 spin, as I could put it, on whether that is indicative of a
8 desire to hide it from public scrutiny. And what I would
9 draw to your attention and commend to your reading is
10 Volume 168 pages 280 to 292.

11 **THE COMMISSIONER:** One sixty-eight (168)?

12 **MR. NEUBERGER:** One sixty-eight (168), pages
13 280 to 292, where Peter Sirrs reviews in his evidence
14 various police officers he spoke with in the public. In
15 particular he speaks with RCMP officer Sergeant Isbester,
16 Sergeant Masson from the Cornwall Police Service, and
17 Sergeant Laroche as well from the Cornwall Police Service.
18 And you'll recall there's quite a bit of evidence about
19 what they knew and what their contacts were with
20 Mr. Barque. And then Mr. Sirrs quite adamant about how he
21 expressed his disappointment that he hadn't been told about
22 the information that they had.

23 I would offer to you, Mr. Commissioner, that
24 if the intent was for Mr. Sirrs to hide from public
25 scrutiny the event involving Mr. Barque, that by speaking

1 to local police and going out into the community to speak
2 to people about what they may have known about the
3 activities of Nelson Barque, belies that assertion.

4 You'll recall that he actually spoke with a
5 maintenance supervisor and maintenance staff about their
6 observations. And my submission would be that by going out
7 and speaking to these people about their knowledge, it is
8 not -- he's going out into the community and speaking with
9 other sources, not just within the Ministry of Community
10 Safety and Correctional Services, or Corrections as it was
11 known then, and so he is out into the public.

12 In addition, as a contrary argument to that
13 assertion, the Ministry itself, through Clair McMaster who
14 was an investigator, sent a letter on June 14th, 1982,
15 that's Exhibit 903, to the then Crown attorney, Don
16 Johnson, for his opinion. Again, that would subject it to
17 possible public prosecution. And I think that is a
18 significant effort to address what they may have considered
19 to be a criminal wrong and, again, it's not indicative of
20 trying to hide it.

21 If I can just focus on the resignation for a
22 moment, just so we can have the sequence which will just
23 help me.

24 May 4th is the decision or the effective date
25 of which Mr. Barque, 1982, wants his resignation to be

1 effective. The letter is actually delivered May 5th, 1982
2 and for your quick reference, that's Exhibit 894.

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

4 **MR. NEUBERGER:** The report from the Ministry
5 is actually, in part of May 4th, 1982, but the interview,
6 significantly, of Nelson Barque is May 6th, 1982, the day
7 after his resignation is tendered. And that's Exhibit 902,
8 Mr. Commissioner.

9 **THE COMMISSIONER:** And this is the interview
10 by?

11 **MR. NEUBERGER:** By the Investigations Branch
12 of ---

13 **THE COMMISSIONER:** Of Mr. ---

14 **MR. NEUBERGER:** --- Barque.

15 **THE COMMISSIONER:** No, I know, but who was
16 the investigator?

17 **MR. NEUBERGER:** I believe that was
18 Clair McMMaster.

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

20 **MR. NEUBERGER:** Yes. And so the resignation
21 didn't stop the investigation from seeking evidence from
22 Mr. Barque. And so I would say that that is important as
23 well, because the resignation opinion of Mr. Sirrs was not
24 actually communicated to Mr. Barque.

25 **THE COMMISSIONER:** I'm sorry?

1 **MR. NEUBERGER:** Mr. Sirrs' opinion, which he
2 wrote in his report, was not something which was discussed
3 in a timely manner with Mr. Barque.

4 **THE COMMISSIONER:** Right.

5 **MR. NEUBERGER:** So that's something he did
6 on his own. We agree that that was Peter Sirrs' position
7 and -- but that did not have an impact, that was not a
8 Ministry decision to allow him to resign. He resigned and
9 then the Ministry went on to make an interview of him on
10 May 6th and then make the decision to send on the report to
11 Don Johnson.

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

13 **MR. NEUBERGER:** And I would also, just in
14 that vein, also address the issue of circumvention of the
15 Cornwall Police, because there has been some intimation
16 that by sending it to Don Johnson somehow circumvents the
17 police, although the police weren't invited in to an
18 investigation at that point. By referring it off to the
19 Crown attorney for an assessment of public prosecution, in
20 my respectful submission, is not, again, something of
21 trying to circumvent criminal justice and the opposite, in
22 my respectful submission, is true of that.

23 Two other brief areas for myself to cover.
24 Mr. Lee mentioned yesterday -- at the beginning of our
25 submissions we sort of do a summary and we talk about the

1 theme of the victims' evidence, as we call the mosaic of
2 allegations. And I think what's important and might have
3 been missed in this, is that we reference as one of the
4 themes that victims, unfortunately, were not able to, for
5 the most part, disclose to persons in authority such as the
6 police at the time of the abuse, although we recognise that
7 Albert Roy made a complaint to Ken Seguin.

8 And this is not something that we -- that
9 has harmed our institutional response, that was the way
10 that it was explained yesterday by Mr. Lee and we disagree
11 with that.

12 The fact is that, because of that non-
13 disclosure, we did not have contemporaneous knowledge.
14 That did not go to the police, but rather this is an
15 inability related to the trauma and emotional distress that
16 a victim has at the time of the abuse. And it was
17 something which, as part of our theme about how two
18 individuals could have operated in secrecy, took advantage
19 and exploited that type of trauma, that type of inability
20 and allowed them to continue for a period of time without
21 being detected.

22 So it's not something that we try and foist
23 upon the Inquiry to look at as harming our ability to
24 respond. It's a fact that the disclosure wasn't made to
25 police at the time or let's say persons of higher authority

1 in the Ministry and it's something that was exploited by
2 the perpetrators.

3 Lastly if I can deal with, before I turn it
4 over to Mr. Rose for his comments, Mr. Hawkins' evidence
5 was some subject of comment by Mr. Lee yesterday in
6 addition to his comments about Emile Robert, and I would
7 just indicate this. Mr. Lee stated that Mr. Hawkins was
8 not willing to accept responsibility for the fact that he
9 did not make the executive decision to require Mr. Robert
10 to do more.

11 Hawkins had the same information at his
12 disposal. However, Mr. Hawkins, and it's in our written
13 submissions, I thought very clearly indicated that he
14 accepted, in hindsight, the responsibility for not having
15 stepped in and decided that some further, independent
16 investigation needs to be taken, in light of the inadequate
17 approach by Emile Robert. So I would disagree with that
18 comment and indicate that Mr. Hawkins actually did accept
19 responsibility for that.

20 Mr. Commissioner, those are my comments on
21 reply evidence. Mr. Rose is going to make a couple of
22 additional comments and then talk to you about the Ministry
23 then and now, and then I'll have the pleasure to come back
24 and talk about two additional topics. And we probably will
25 be no more than about 40 minutes in that regard. Thank

1 you.

2 **THE COMMISSIONER:** Thank you.

3 **--- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**

4 **ROSE:** **MR. ROSE:** Good morning, Mr. Commissioner.

5 **THE COMMISSIONER:** Good morning, Mr. Rose.

6 **MR. ROSE:** As Mr. Neuberger said, I have
7 some specific responses to some submissions that you've
8 heard and also some general comments. So launching right
9 in to some of my specific responses.

10 You've heard, or you've read, I suppose more
11 accurately in Mr. Lee's submissions, there is a portion of
12 his argument where Mr. Lee makes an argument that Mr. van
13 Diepen knew, from 1960, that at some point from 1962, there
14 was a claim that there was someone in the Probation Office
15 who had faced similar allegations to Mr. Barque. That's
16 what I wanted to respond to at the outset.

17 It's my submission, if you look at Mr. Lee's
18 cross-examination of Mr. van Diepen, this comes out really
19 only in Mr. van Diepen's testimony. And just to remind you
20 what had happened was that, Mr. van Diepen, I think, if I
21 can use the phrase unsolicited, sort of came out with this
22 idea that there had been someone in 1962. He found out
23 after Mr. Barque's resignation that there had been someone
24 in 1962 who had -- there had been a similar, earlier
25 incident.

1 What I'm asking you to look at and to draw
2 from that evidence is, first of all, it's extremely vague,
3 and so it really comes to the best saying, "Your best
4 recollection," this is Mr. Lee, in his cross-examination
5 saying:

6 "Your best recollection is that
7 following Mr. Barque's
8 resignation, Marcelle Leger told
9 you about an earlier incident or
10 incidents with a probation
11 officer?"

12 "That's correct."

13 "You can't provide us any more
14 details than that?"

15 Answer: "No."

16 It comes out of the blue. There's no
17 documentation, and as you'll know when you observe the
18 record and you read it, you'll see that Marcelle Leger was
19 never asked about that, because this came out of the blue.
20 She was never recalled to be asked about that evidence.
21 There's no documentation from it. No other staff member
22 was asked about it. And you'll also recall, Mr.
23 Commissioner, we actually did hear from someone who had
24 been working in the Probation Office in 1962, turned out to
25 be a Children's Aid Society witness, Mr. O'Brien.

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

2 **MR. ROSE:** There's no evidence from him
3 about that either. So when you assess Mr. Lee's submission
4 to you, that there was some sense that there had been a
5 similar incident, as vague as it might be going back to
6 1962, I'm asking you, sir, to place so little weight on
7 that as to be unsupportable to any, any significant
8 finding. It's just something that comes out of the blue.

9 **THE COMMISSIONER:** That's fine.

10 **MR. ROSE:** But that's something that we have
11 to comment on.

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

13 **MR. ROSE:** There's also a claim by Mr. Lee
14 and others yesterday that people in the Probation Office
15 knew or ought to have known something about Mr. Seguin.
16 There's no suggestion that anyone knew or ought to have
17 known that Nelson Barque, prior to his resignation was
18 carrying on in a manner that he was subsequently found
19 guilty of, or that the Peter Sirrs report disclosed.

20 So dealing with Mr. Seguin after that, the
21 argument is put before you that people at the local level
22 knew or ought to have known about what Mr. Seguin did and
23 thereby I suppose the conclusion is, didn't intervene as so
24 as to prevent it? And that's something that I want to
25 focus on right now.

1 And it seems to me, and I'm going to suggest
2 to you, that you have to be very careful in looking at
3 certain facts that you've heard many, many times in the
4 last three years.

5 The first thing is that local staff were
6 upset about a couple of incidents. The really significant
7 incidents are, in 1989 you heard a lot of evidence about
8 Gerald Renshaw moving in with Ken Seguin, and you heard
9 evidence about this memo that Mr. Seguin gave to Emile
10 Robert, and that documentation going to the regional office
11 to Mr. Hawkins. You also heard a lot of evidence from the
12 local staff saying that they were quite shocked by this.

13 So in terms of what the local staff knew,
14 did the local staff know that a probationer was living with
15 Mr. Seguin? Answer is, yes. Not only did the local staff
16 know but management knew as well, and the local staff knew
17 that management was taking care of it. In other words,
18 this was being documented.

19 That, I expect, will be something that that
20 event -- in other words, Gerald Renshaw moving in with Ken
21 Seguin in 1989 I expect is something that you are going to
22 spend some time focussing on and examining in your
23 decision.

24 From our perspective, from the Ministry's
25 perspective, Mr. Commissioner, that issue is very curious.

1 So, for instance, one of the questions which I think
2 remains unanswered to this day is why did Gerald Renshaw
3 move in with Ken Seguin? You'll see from the evidence that
4 Mr. Renshaw at that time is in his mid-twenties. I seem to
5 recall that his birth date is around 1965; this is 1989.
6 Whether he's 24 or 25, it suffices to say that he's in his
7 mid-twenties. He's not a teenager.

8 You'll also see from the evidence that Mr.
9 Renshaw had places to go. He was in a relationship at the
10 time, he had a sister who was in the area, he had a job, so
11 when Mr. Renshaw moves in with Ken Seguin in 1989 it's not
12 as if we're dealing with an individual who's destitute and
13 has no other place to go.

14 So recall as well there's the claim that Mr.
15 Renshaw had made before you that he had been abused by Mr.
16 Seguin in the past. We now have Mr. Seguin moving in and
17 we also have his evidence ---

18 **THE COMMISSIONER:** Mr. Renshaw moving in.

19 **MR. ROSE:** Sorry, Mr. Renshaw moving in.

20 We also have the evidence from Mr. Renshaw
21 that he had actually appeared at the Probation Office and
22 signed a document. Now, we don't have that document. I
23 don't think it's necessary. There's no reason to doubt Mr.
24 Renshaw's word on that. It seems like the kind of thing
25 that might have happened. But I think the point is that

1 there's no question about this being hidden from
2 management. In other words, this is not the type of
3 conduct which is being hidden from cohorts and from
4 employers.

5 **THE COMMISSIONER:** Just one comment on that
6 though.

7 When you say "management", all right, I
8 understand we know that it went from Robert to Mr. Hawkins.
9 Is not my understanding correct that the staff was under
10 the impression that it had just gone to Robert?

11 **MR. ROSE:** That may be.

12 **THE COMMISSIONER:** Well, it might change the
13 argument a little bit in the sense that -- well, continue
14 on with your argument. But if we're looking at suspicion
15 and what -- you see, I would have thought that since they
16 didn't know -- if that's correct that they didn't know it
17 went up to Hawkins, that there would be even more distrust
18 and more curiosity because of the rapport supposedly that
19 Robert had with Seguin.

20 **MR. ROSE:** It certainly contributes to a
21 difficult working environment at the office. There's no
22 question about that.

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

24 **MR. ROSE:** But the important thing from a
25 staff perspective is that the manager of Mr. Seguin is

1 aware of this.

2 **THE COMMISSIONER:** Right.

3 **MR. ROSE:** And whether or not local staff is
4 in the loop, as it were, between their superior and his
5 superior, in my respectful submission it really doesn't
6 matter. What they know is that it's being documented and
7 that the superior is aware of this. So in other words,
8 there is a transparency at that level, and that's very
9 important.

10 **THE COMMISSIONER:** Okay.

11 **MR. ROSE:** So in other words it can't be
12 said that local staff are aware that Mr. Seguin is living
13 with Mr. Renshaw and this is something that they're keeping
14 to themselves because they know that it's going up to Mr.
15 Robert, and Mr. Robert is aware of this through official
16 channels. So the evidence discloses, as you've heard, that
17 Mr. Seguin seemed to be abiding by a policy and that policy
18 has now been changed.

19 We're still left with the question, why did
20 Mr. Renshaw move in with Mr. Seguin? It's my submission,
21 Mr. Commissioner, that we probably don't have an answer to
22 that. It is simply a mystery to this day. Mr. Renshaw, I
23 don't believe, provided an adequate answer and it is simply
24 one of those things which yields a very, very curious
25 incident but yet one that was aware by management.

1 So the first incident which would, you would
2 think, cause some concern is when Mr. Renshaw moves in with
3 Mr. Seguin in 1989. But as I've just said, there is an
4 element of transparency to that. There is also a curiosity
5 about it as well.

6 The second incident would be, as it's been
7 described, the Travis Varley incident. In other words,
8 you've heard evidence that some individuals arrived at Mr.
9 Seguin's place of residence, 1992, on a January evening.
10 There was alcohol consumed and an individual got killed
11 later on at a different location by one of those
12 individuals.

13 So, again, is that the kind of thing that
14 would cause concern from the local staff? Well, that too
15 is something that had been raised with Mr. Robert. There's
16 an incident report and you have that in your evidence. I
17 have no doubt you'll take a look at it. We know that Mr.
18 Seguin, in that incident report, did not disclose the
19 alcohol.

20 However, from the local staff perspective
21 what they know is that there's an incident report filed.
22 It's not for local -- for the cohorts of Mr. Seguin to
23 scrutinize his incident report to his superior. This is
24 for the superior, for Mr. Robert to scrutinize and explain
25 a delay. We talk about this in our submissions and we know

1 now that there was a delay in reporting it to Mr. Robert.
2 There is a delay in Mr. Robert reporting it to Mr. Hawkins,
3 and we've talked about that in our submissions.

4 **THE COMMISSIONER:** You mean the delay by the
5 OPP?

6 **MR. ROSE:** No. There's a delay between Mr.
7 Hawkins reporting it to -- sorry, Mr. Robert reporting it
8 to Mr. Hawkins. I haven't had enough coffee yet this
9 morning; I apologize.

10 **THE COMMISSIONER:** No, no, I'm trying to get
11 it clear, that's all.

12 **MR. ROSE:** So that incident as well,
13 Mr. Commissioner, is -- the local staff is aware but
14 they're also aware that management -- it's become a
15 management issue. So in other words if local staff is
16 aware they have -- they can assume less understanding than
17 management because management has received an incident
18 report and they know that the incident report doesn't go to
19 cohorts; it goes to a superior.

20 You also heard evidence that the local staff
21 are quite upset about this and, as sort of hinted in your
22 question earlier, it seems to contribute to a difficult
23 work environment. But nonetheless there is some aspect of
24 transparency in the sense that this is being reported
25 through the channels.

1 I think when you examine that argument that
2 local staff knew of something that was going on that was
3 abusive and didn't report it, I think you also have to
4 consider the broader context of what Mr. Seguin was doing.
5 What we have, and we've heard throughout the last couple of
6 days -- we've heard a lot in the evidence about Mr. Seguin
7 being "Mr. Probation".

8 So, in my submission, I think it's open for
9 you to conclude that because Mr. Seguin had this extremely
10 professional persona where he seemed to be the standard of
11 professionalism in the office, that seemed to have given
12 him some berth of latitude in his operations. In other
13 words, people didn't seem to scrutinize him as a
14 professional because he had this idea that he was Mr.
15 Probation. People weren't looking at him very closely all
16 the time, scrutinizing him, because he had this reputation.
17 So that's the first thing. There was Mr. Seguin's
18 professional persona -- was that which by its nature gave
19 him a wide berth of latitude. So he's exploiting his
20 professional reputation.

21 The other thing is that we seem to see
22 evidence from the local staff that Emile Robert is not
23 scrutinizing Ken Seguin as closely as others, so we come
24 back -- we see that from other various people. Jos van
25 Diepen had testified to that, amongst others, that it

1 seemed that there was an element of favouritism.

2 So people are aware of that as well, but
3 again that is -- it falls to the manager who is not
4 scrutinizing a staff member and it's not really for staff
5 to say to their manager, "By the way, we take the view as
6 people below you that you're actually behaving
7 inappropriately vis-à-vis another staff member". They're
8 allowed to say,

9 "You're management. We disagree with
10 what you're doing and, frankly, it's
11 yielding a difficult work environment,
12 but yet you are management."

13 So, again, this is something that Ken Seguin
14 is playing on, that he has been getting -- given
15 favouritism by Mr. Robert.

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

17 **MR. ROSE:** And it's also possible for you to
18 infer from all the evidence that Mr. Seguin's effectively
19 designing this whole situation in an element and the way to
20 deceive. So that's something I want to focus on right now,
21 and I think it's a telling -- it's an important point in
22 the narrative.

23 So, let's consider, for instance, all the
24 people who knew Ken Seguin but didn't know what was going
25 on, and these actually are probation staff.

1 Now, Mr. Commissioner, one of the
2 interesting times in the last three years that I, as
3 counsel, found -- and I hope you'll agree -- was when Carol
4 Hesse testified. You recall she is Gerald Renshaw's
5 sister.

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

7 **MR. ROSE:** And so she's uniquely situated.
8 She's the brother (sic) of Gerry Renshaw and it turns out,
9 quite as a surprise to us, that she was a confidante of Ken
10 Seguin.

11 It's significant, Mr. Commissioner, because
12 she was the only one who testified before you to say that
13 she had --- she knew about Ken Seguin's sexuality from Ken
14 Seguin himself.

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

16 **MR. ROSE:** No one else could say that, and
17 it was one of those moments when, frankly, in my mind the
18 evidence kind of took a turn. So here we have an
19 individual who's between her brother Gerald Renshaw and Ken
20 Seguin, she knows that -- of his sexuality. But the other
21 thing is that she testifies very clearly that had someone
22 told her at that time ---

23 **MR. COMMISSONER:** M'hm.

24 **MR. ROSE:** --- that Ken Seguin was abusing
25 young boys -- or younger boys, I think her phrase was she

1 would have sort of clocked them on the nose kind of thing.
2 In other words, it was repugnant to her that this was going
3 on and yet she is a confidante of Ken Seguin.

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

5 **MR. ROSE:** It doesn't stop there with Carol
6 Hesse, Mr. Commissioner, because she actually talks about
7 going down to Summerstown to see her brother and getting no
8 sense from visiting him in the house that this was going
9 on. So it sort of adds to the mystery of Mr. Renshaw at
10 the house.

11 She's a confidante, she has no idea what's
12 going on, and the point for you, in my respectful
13 submission, is that Ken Seguin was doing all this in a
14 manner to deceive those who were closest to him.

15 And, Carol Hesse, as a confidante, is closer
16 than the cohorts, is closer than the probation staff
17 because you never heard anything from probation staff that
18 they -- that Mr. Seguin had talked openly with them about
19 his sexuality. It's something that people knew or didn't
20 know or they pieced things together, maybe they didn't see
21 him dating women, and that's where they drew the sense that
22 perhaps he was gay. It was Carol Hesse, the only person
23 that Ken Seguin opened up to, and she didn't know.

24 The same is true, Mr. Commissioner, for Mr.
25 Seguin's brother, Doug. He also testified that he had no

1 idea about any of this, no idea of his sexuality.

2 MR. COMMISSIONER: M'hm.

3 MR. ROSE: And, in my respectful submission,
4 those who were really closest to Ken Seguin had no idea.
5 So how can it be said that those who were further away from
6 Mr. Seguin, professional cohorts, would have had a better
7 understanding of what Mr. Seguin was doing, than those who
8 were his confidantes?

9 In my respectful submission, the conclusion
10 that you're bound to accept, and draw, is that the local
11 staff didn't know, any more than Carol Hesse knew, or Doug
12 Seguin knew.

13 So, in my respectful submission, this is
14 part of the overall context and narrative of Ken Seguin
15 which will drive you to conclude that no one knew what was
16 going on with Ken Seguin until after he had died and things
17 started to come out.

18 I also ask you to consider, in terms of the
19 argument that staff knew at the local level, that what
20 you've heard in -- and, perhaps, Mr. Commissioner, you
21 haven't memorized the document as I have and Mr. Neuberger
22 has, Exhibit 1179, which is the local protocol.

23 We presented it to you, and this has our
24 statistics, it has the protocol in it and so forth, and it
25 represents a lot of work. It represents a lot of work to

1 develop the document, but also it displays tremendous work
2 at the local level from a number of staff.

3 So, for instance, Carole Cardinal, Ron
4 Gendron, Jos van Diepen, Sue Larivière, they partake in the
5 local protocol, genuinely. They are also cohorts and co-
6 workers of Ken Seguin.

7 In my respectful submission, the only
8 conclusion that you could possibly draw from their evidence
9 in Exhibit 1179 is that there is a tremendous amount of
10 dedicated, caring -- you know, committed staff who are
11 currently employed in the office. Mr. van Diepen's left,
12 and now we have Mr. Legault, who wasn't a cohort of Ken
13 Seguin, but he's also in the staff.

14 And these people are delivering the protocol
15 and dealing with victims right now in the last several
16 years, and I don't think that anyone is challenging before
17 you that there's genuine care in delivering that protocol.

18 So I put that to you because when you
19 consider the argument that these people knew about the
20 abuse at the time, in my respectful submission, you have to
21 reflect that upon what has been going on since 1998 when
22 the first disclosures came in. There's no hint, there's no
23 suggestion, at all, that the local staff had been running
24 from this, that they've been reluctant to accept this and
25 in some way that there's -- and I use the phrase quite

1 loosely -- that there's any guilt involved.

2 What there is are people who are genuinely
3 troubled by this form of disclosure, about how difficult it
4 is to deliver the service that they're mandated to do, and
5 care for these individuals.

6 I would go further, Mr. Commissioner, and
7 say that if it were the case that these individuals knew
8 about what Mr. Seguin was doing during his lifetime and sat
9 on that information to the harm of probationers, you would
10 not have a local protocol which reflects that type of
11 genuine concern and genuine reflection. You would have had
12 individuals who'd be running away from it, trying to hide
13 and avoid something that they created. But they didn't
14 create it, they're part of the solution, Mr. Commissioner.

15 They've developed at the local protocol --
16 and they're the people as we say in our written argument
17 who will, after the conclusion of this Inquiry, still be
18 here, still implementing a protocol and still dealing with
19 this.

20 So, in my respectful submission, before you
21 -- or as you consider this argument that the local staff
22 knew, consider that as well; there's been no running away.
23 And this is something at a local level that the local staff
24 members very thoughtfully developed and implemented.

25 I want to move on, Mr. Commissioner, to

1 something more general. As Mr. Neuberger said, we have
2 some general themes and one of them -- it should be no
3 surprise because it was actually raised by counsel
4 yesterday -- was that there's been evolution of the
5 Ministry, so I talk about this as the Ministry, then and
6 now.

7 Over the last three-and-a-half years, you've
8 heard evidence about a Ministry going back 40 years. Mr.
9 Sequin was hired in the late '60s ---

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

11 **MR. ROSE:** --- and we've already talked
12 about things happening in the early 1960s.

13 I don't think it's going to be any surprise
14 to you that our argument is that the Ministry has effected
15 significant change over those 40 to 50 years, and I'd like
16 to talk a little but about that.

17 Exhibit 35 was the Ministry's institutional
18 context.

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

20 **MR. ROSE:** I think it was one of the first
21 things that you heard going back three years; that's
22 Exhibit 35.

23 And you recall at the very beginning of this
24 narrative, the Ministry actually offered probation services
25 as part of the Ministry of the Attorney General, and one of

1 the things that when we were drafting our submissions, I
2 realized that it's actually a different Ministry right now.

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

4 **MR. ROSE:** It's a stand-alone Ministry,
5 providing probation services, and so at the organizational
6 level it's actually become something stand-alone.

7 I think more significantly are some of the
8 operational changes which have affected the Ministry going
9 back from the time that Ken Seguin would have been
10 initially hired in the late 1960s, and it's my submission
11 that there's really two significant changes that you can
12 look to which reflect some of these themes of transparency
13 and professionalism.

14 One of them is the implementation of the
15 OTIS system, and it's my submission that it really matters.

16 One of the things you've heard about
17 probation officers is that they kept hard-copy files and
18 there seemed to be a sense that when a probation officer
19 acted or was supervising a probationer, it's almost as if
20 they owned the file and the file was in their locked
21 cabinet and it was really not easy for another probation
22 officer to go in and access it; look at it. There was file
23 reviews, but that obviously took a completely different
24 procedure if it was a hard copy kept under lock and key at
25 a probation officer's office.

1 So now OTIS -- you've heard evidence -- is a
2 form where any probation officer can access the probation
3 file of any probationer. So in terms of transparency,
4 there's no monopoly over a particular file. A probation
5 officer might be assigned to a probationer, but it's not as
6 if these records are owned by an individual and they're
7 kept under lock and key. Anyone in the Ministry can access
8 it and find out what's going on. File review is a lot
9 easier and, in my submission, it's an incremental but it's
10 a very important step in transparency of the Ministry.

11 The next operational change -- it's sort of,
12 of implementational (sic) value is -- the long phrase is
13 The Probation and Parole Service Delivery Model. We've
14 discussed it in the evidence before you as what's called
15 "service delivery". And you recall that that was brought
16 about by Morris Zbar when he was the Deputy Minister,
17 responding to a need as he saw it. And in the closing
18 arguments, it's important to focus on why that is
19 significant because the Ministry's focus with probationers
20 is now on the needs of the client and before the service
21 delivery model was implemented, the focus was really about
22 reporting; how many times did you report, what was the
23 quality of the reporting.

24 What the Ministry now does -- and I have to
25 keep reading this because it's one of those loaded phrases

1 -- "core criminogenic needs".

2 **THE COMMISSIONER:** Say that again.

3 **MR. ROSE:** Core criminogenic needs.

4 **THE COMMISSIONER:** Right.

5 **MR. ROSE:** So service delivery model
6 assesses core criminogenic needs and assigns the right
7 services to that individual so it's tailored to every
8 individual, and remembering that all of this is in the step
9 towards rehabilitation. And the mission statement of
10 Probation Services which, again, is in Exhibit 35, this is
11 something that there's a statutory obligation to deliver
12 and the public expects this.

13 So, again, in terms of transparency, service
14 delivery model results in referrals to outside agencies.
15 So it's no longer the case that a probationer will come in,
16 see a probation officer, and that's as far as it goes.
17 Referrals to outside individuals ---

18 **THE COMMISSIONER:** Yeah.

19 **MR. ROSE:** --- part of service delivery
20 model, again, assessing core criminogenic needs is to
21 seeing things -- for instance, anger management. There's
22 an anger management group going on that's being organized
23 by another probation officer. You're going to go down and
24 partake in that group. It's a referral outside that
25 individual probation officer.

1 **THE COMMISSIONER:** But still within the
2 probation office?

3 **MR. ROSE:** That's right. Sometimes they go
4 outside but, again, it's within the office. So it can't be
5 said that one probation officer effectively has this
6 monopoly over a probationer and that's all they're going to
7 see. They're going to see outside individuals. This is
8 part of transparency.

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

10 **MR. ROSE:** It's a new way of thinking.
11 Going on as well you will have heard -- this
12 actually came up with Mr. Legault in terms of the hiring
13 practices. The hiring for staff many, many years ago was
14 very fixed. They were looking for a specific type of
15 individual. It seemed as if probation officers tended to
16 come out of the clergy or they decided not to go into the
17 clergy. A lot of them had theological background. As
18 you've seen from our corporate presentation, hiring
19 practices have changed.

20 **THE COMMISSIONER:** Just to complete the
21 picture, I thought I heard that the hiring of staff came
22 from military and the clergy, kind of.

23 **MR. ROSE:** I think you heard that from Mr.
24 Sirrs that there was a military background.

25 **THE COMMISSIONER:** And Mr. Sirrs certainly

1 fit that picture.

2 MR. ROSE: That's right. That's right, as
3 opposed to Mr. Legault who's a dairy farmer.

4 THE COMMISSIONER: M'hm.

5 MR. ROSE: We broke the mould there.

6 THE COMMISSIONER: All right.

7 MR. ROSE: In other words, there's a new way
8 of thinking and it's a more open Ministry. It's drawing
9 from various sources. There's also -- at the training
10 level, taking the new hires, the Ministry has its own
11 training facility. So, again, the Ministry has control
12 over exactly what new hires are being taught and they have
13 control over the agenda for continuing education, which is
14 significant. And the important thing, as well, is that
15 there's a uniformity to this that the Ministry's working
16 towards.

17 The other important thing, Mr. Commissioner,
18 that I think is really significant is that there's changes
19 in the clientele and that was brought about by the *Youth*
20 *Criminal Justice Act* and the creation of the Youth
21 Ministry. So we actually heard Mr. Semple who started off
22 with the Ministry of Community Safety and Correctional
23 Services and now he's part of the Youth Ministry.

24 THE COMMISSIONER: M'hm.

25 MR. ROSE: And that's because our clientele

1 has changed. The Ministry no longer deals with young
2 persons. And I'm sure you're aware from your experience as
3 a Provincial Court judge that up until the new Youth
4 Ministry and the *Youth Criminal Justice Act*, the Ministry
5 of Correctional Services provided services toward what were
6 called phase 2 ---

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

8 **MR. ROSE:** --- seventeen (17) and 18-year
9 olds. And, certainly, part of the complainants -- people
10 who testified before you talked about things that happened
11 when they were young persons.

12 And whether or not it was the old *Juvenile*
13 *Delinquents Act*, in my respectful submission, it's
14 irrelevant to the extent that the Ministry no longer deals
15 with youth. So that's significant as well. Significant
16 because youth had different needs and it's really a
17 specialized type of clientele. So the government as a
18 whole has decided to, sort of, specialize it's delivery of
19 probation services and correctional services.

20 In my respectful submission, that's also a
21 very good thing. It's also a great development. And in
22 terms of assessing what may have happened in the past with
23 the Ministry, you can't escape the conclusion that it's a
24 different Ministry serving a more specialized clientele.

25 So my respectful submission, when you retire

1 to review all of this, it's my submission that you're going
2 to come to the conclusion, Mr. Commissioner, that it's a
3 different Ministry than it was in either the time that Ken
4 Seguin was hired, 1982; we're going to take salient events,
5 1993, another salient event or 1992 around the same time.
6 In my respectful submission, this is a different Ministry
7 with different clientele that's operating much more
8 transparently with a higher degree of professionalism.

9 So that concludes my comments, Mr.
10 Commissioner.

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

12 **MR. ROSE:** And thank you for your patience
13 over the last few years.

14 **THE COMMISSIONER:** Thank you, Mr. Rose.

15 ---FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.

16 **NEUBERGER (cont'd/suite):**

17 Mr. Neuberger?

18 **MR. NEUBERGER:** Thank you, Mr. Commissioner.

19 At the sake of being somewhat repetitive,
20 the next topic I'm going to talk about is to focus on the
21 local response, and I use the year 1998 simply because we
22 know in '97 there was one disclosure, but two new
23 disclosures occurred in '99, but Mr. Legault comes into his
24 position in December of 1998 and that to us is a hallmark
25 time period.

1 The Factual Overview which Mr. Rose
2 identified to you as Exhibit 1179 is an embodiment of a
3 fair amount of data to help you and inform you in preparing
4 your report, but what I think comes quite clearly to the
5 fore is that the staff in Cornwall have developed an
6 expertise in receiving and supporting disclosures of sexual
7 victimization.

8 And what buttresses the argument of Mr. Rose
9 about many of these very same probation officers who were
10 around in 1990, '91, '92, '93 was that when the first
11 disclosure came in and then the two further ones in 1999,
12 got together as a group and realized that they lacked
13 certain expertise in handling that type of disclosure and -
14 - as Deborah Newman had actually commented on -- were
15 mortified at some of the allegations they were receiving.
16 And they came together as a group with Mr. Legault and came
17 up with essentially three guiding principles.

18 To support and encourage disclosures through
19 a transparent and consistent process and asking the right
20 questions; providing support services for the clients; and
21 documenting all disclosures and measures taken. They were
22 dedicated to and committed to a transparent process and a
23 process which supported the clients who disclosed. They
24 did not challenge the veracity of the allegations. They
25 wanted to receive them and what they were concerned about

1 was their own limitations at being able to provide that
2 type of environment for them that would be safe and
3 supportive for them to disclose, and they went off and then
4 contracted with the Men's Project, which has provided
5 tremendous assistance in training, and I think that's
6 outlined in some detail in our report is that this now --
7 training module is going on the Corrections side of the
8 Ministry to be a training module for all of Probations
9 staff, probation officers in the province, and it's being
10 rolled out in that manner.

11 **THE COMMISSIONER:** Do you know if it's being
12 migrated to the Youth Ministry?

13 **MR. NEUBERGER:** I don't have specific
14 information on that but it will not -- this information is
15 being shared with the Youth Ministry and there's somebody -
16 - Mr. Semple is actually here from the Youth Ministry and
17 they have been working in conjunction and information has
18 been shared with them.

19 So this is -- I don't have the specific
20 information now but the idea is that -- the module and
21 training which is going into the initial training of
22 probation officers, this is something that probably will
23 become Ministry-wide and then will be shared with other
24 ministries if they haven't developed those on their own.
25 Just like what you've seen also in our update is that a

1 protocol is also being developed Ministry-wide.

2 The elements of their actions, in my
3 respectful submission, at the local level go far to
4 providing this community with confidence that they have the
5 community's best interests at heart and their clients. And
6 what was very important for them was the documentation of
7 the disclosures, which was provided to the Area Manager,
8 Mr. Legault, sent through the Information Management Unit
9 and then sent to the Regional Office and higher with
10 respect to management knowledge.

11 They were clear, and I think they've tried
12 to be as candid as possible in the Factual Overview, with
13 what steps they took in advising clients of their
14 obligation to disclose the allegations to the police and to
15 encourage the client to self-report to the police. And in
16 some examples, support was offered where the probation
17 officer attended with the client to disclose to the police,
18 to be there as a support person.

19 In my respectful submission, whether that
20 factored into an investigation of the allegation or not,
21 the intent was to be transparent and provide to the
22 appropriate authority the allegation. They also advised
23 clients of advocacy, of their ability to sue the Ministry
24 and seek civil remedy, which in my respectful submission is
25 also a strong example of their commitment to transparency

1 and empowering the clients to understand that there are
2 remedies available.

3 Most significantly is the support which went
4 hand in hand with the service delivery module, which in
5 many respects provided additional help to the clients; an
6 aspect of the commitment to healing. There's an in-house
7 psychologist who has been available and provides services
8 on a cognitive counselling basis; mental health services
9 where there's connections in the community to experts in
10 that area, for example addictions counselling and of course
11 the engagement of the Men's Project for male victimization
12 counselling.

13 In other words, there is a very strong and
14 what has been one of the good offshoots of the service
15 delivery module or strong connections to community-based
16 resources which are outside of the Probation Office. And
17 these individuals who have come forward and disclosed
18 their abuse have different symptoms as a result of that,
19 different problems that have developed. They have been
20 sent out to these resources in the community. In many of
21 these instances, there is a very quick, as outlined in the
22 Factual Review -- a very quick follow-up with the
23 individual client to determine have they gone to these
24 appointments, are they helping to provide additional
25 supports?

1 In some cases as well, the manner in which
2 probation and parole services were provided came under
3 consideration as well, and there's a reminder to the
4 evidence where one individual could not physically come
5 into the office and the probation officer actually walked
6 around the block with them, taking the information. Others
7 were assessed as to whether they really need to report and
8 eventually the office was moved. Not completely as a
9 result of this issue; they were growing. But it was
10 identified earlier on that because of the trauma associated
11 with coming to the office something had to be done about
12 that and you've heard from Deborah Newman about that, as
13 well as Morris Zbar.

14 The protocols themselves actually formed
15 into written format and through their preparation developed
16 a checklist to assess their own compliance with the
17 protocols, and again in my respectful view this, combined
18 with the service delivery module, really connotes a
19 holistic view of clients and in our respectful submission
20 makes for the Cornwall office's delivery of service in an
21 effective and sensitive module towards clients.

22 I say all of this for one other reason.
23 There was some evidence and some argument about whether
24 there was a culture of turning a blind eye. And, in my
25 respectful submission, the efforts made by staff and

1 probation and parole officers since 1998 does not support
2 that. And the emotional toll on the clients also had an
3 effect on those that were delivering services to them. It
4 had an effect on many of the probation and parole officers
5 who testified and on Claude Legault.

6 And the changes that we speak about,
7 Mr. Commissioner, and the evolution of the Ministry is also
8 something which happened over time when our understanding
9 of how people behave and where abuse can occur has
10 similarly changed.

11 I submit that all staff, including probation
12 and parole officers, are dramatically more aware of the
13 victimization issues, signs and vulnerability and that the
14 office came together under considerable pressure and stress
15 in order to address these issues. And as Mr. Rose said,
16 they did not duck and hide from this but dealt with it
17 straight on.

18 These same people will continue to deliver
19 these services and are very committed to their
20 institutional response which will go on beyond July 31st,
21 2009.

22 I encourage you in my closing argument,
23 Mr. Commissioner, to find that at least since 1998 or 1999,
24 the local office, supported by the regional office, have
25 shown real and genuine commitment to supporting clients and

1 providing services that promote healing.

2 With that comment, I move on to my last area
3 which is the recommendations and the implementation which
4 is a much higher level which I think is important for us to
5 discuss because this needs to be forward thinking. We have
6 outlined in our written argument the recommendations made
7 by Deputy Minister Newman, and these recommendations I know
8 you've looked at and we commend to you and look for your
9 support in your report.

10 Over the last year, there's already been
11 considerable work done by the Ministry at all levels and
12 there has been a tremendous mobilization of people and
13 resources within the Ministry to respond to these
14 recommendations in order to address deficits which were
15 demonstrated by the evidence and to put the Ministry in a
16 position to swiftly respond to your anticipated report.

17 And we feel quite fortunate,
18 Mr. Commissioner, to be able to have provided you with a
19 progress update, as we've termed it, that outlines various
20 steps that have been taken in this regard.

21 I call this a functional approach because
22 the Ministry has sought a dialogue to go beyond today's
23 submissions with you in providing you with draft policies
24 and directives and steps that are planned in order to
25 submit it to your scrutiny, Mr. Commissioner, to obtain the

1 best possible product at the end of the day. As I
2 emphasize, this will allow the Ministry to be in the best
3 possible position to receive your report and act
4 responsively.

5 And I can just take a few minutes -- I think
6 we're way ahead of schedule, so what I'd like to do is just
7 go over a few of those recommendations ---

8 **THE COMMISSIONER:** Sure.

9 **MR. NEUBERGER:** -- and highlight a few
10 things.

11 The recommendation about sharing of
12 information I think is a theme which comes out from many of
13 the submissions that you have heard and will continue to
14 hear, and the steps which are taken at this stage I think
15 are quite helpful. The Ministry is to -- and is planning
16 to meet with its justice partners to develop a protocol
17 that allows for the sharing information concerning
18 complaints against current and former Ministry employees of
19 allegations of sexual impropriety or other serious employee
20 conduct.

21 The protocol will ensure timely response and
22 action to protect clients and staff while at the same time
23 ensuring the Ministry's response does not interfere with a
24 police investigation. In protocol discussions, the
25 Ministry will request that any complaints received from

1 police or alleged victims against the Ministry employees be
2 relayed to the Ministry to ensure timely action response
3 and the Ministry has set out timelines. A Working Group
4 has already been established as of January of this year.
5 September/October 2009, they're looking at the completion
6 of a draft protocol subject to, Mr. Commissioner, your
7 report and comments in that regard. And by
8 October/November, they're hoping to have a signed protocol
9 in place in all offices.

10 It's an aggressive schedule and it's my
11 respectful submission that this is an incredibly important
12 step taken by the Ministry and there are significant
13 efforts because I think you can imagine at higher levels,
14 for ministries to meet and upper officials to meet is a
15 tremendous undertaking, and they're trying to address that
16 immediately.

17 The second recommendation regarding what I
18 could focus on here, looking at the current policies and
19 procedures to facilitate reviews either conducted by staff
20 or involving the police, is an important step forward and
21 it's the subject of much comment. And in our materials,
22 one of the attachments we have is a document entitled
23 "Allegations of Criminal Conduct and
24 Sexual Impropriety by Staff against
25 Offenders".

1 And this is a draft policy which is in place
2 right now, which talks about ministry employees who are
3 investigated or charged with criminal conduct and/or sexual
4 impropriety against offenders. It says:

5 "Will have the impacts of their
6 behaviour on the workplace as well as
7 their continued ability to perform
8 assigned duties considered within the
9 framework and principles set out in
10 this policy."

11 I should add also that, when we talk about
12 these policies, there are a whole host of accountability
13 mechanisms in place. You have many of them before you, Mr.
14 Commissioner, and there's no reason for me to go into them
15 now, but all these are interlinked.

16 This policy deals with an area manager. If
17 this information comes to his or her knowledge, that the
18 information should be provided in an incident report and of
19 course, sent up the chain, but area managers who receive
20 reports or allegations:

21 "Will initiate a fact-finding process
22 and inform and consult with ministry
23 officials and justice partners as
24 appropriate, and conduct a review of
25 the employee's case files to identify

1 actual, potential or continuing risks
2 or threats to employees and offenders,
3 eliminate potential threats of further
4 victimisation and ensure that formal
5 ministry investigations are conducted
6 where warranted."

7 The document then goes on to look at the
8 procedures. But this document which is quite detailed,
9 talks about the type of review and the steps that need to
10 be taken and these are, as you can see from many of the,
11 sort of, underlined portions, are all interlinked with
12 other policies.

13 It is important, on page 2 of that document,
14 towards the last part, where it talks about "conduct a
15 review of the employee's case files to establish whether
16 there is evidence of irregularities or inconsistencies."

17 I'm not going to read all of it to you. You
18 can see that before you and when you have the time to
19 review it. The idea is to try and cover off factors which
20 can be identified which may lead to discovering problems,
21 and it's important to carefully review that.

22 There may be other suggestions, factors that
23 we have missed, that the Ministry has missed and you can
24 then further build on to strengthen this policy, but it is
25 directed at doing the file review. And there's some

1 comment about whether file review in 1982 or 1993 and now
2 doing it back in time may have been effective.

3 The Ministry has concluded that some form of
4 file review is important, and it's acknowledging that. And
5 I think what's important is, timely response is the most
6 effective way to deal with it. And then to build on these
7 policies and to build on the factors as outlined there I
8 think will go a long way to filling the gap which has been
9 identified in the evidence, especially with respect to any
10 attempts to try and detect abuse or victimisation.

11 And this will cover other issues. It's not
12 just most importantly revealing what sexual impropriety,
13 but this will have a far-reaching implication for other
14 conduct which may be harmful to clients or harmful to the
15 community or harmful to the Ministry.

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

17 **MR. NEUBERGER:** The third recommendation has
18 actually resulted in a directive. And actually, Mr.
19 Commissioner, there is -- if I could just back up for a
20 second?

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

22 **MR. NEUBERGER:** There is a document which is
23 1 of 2, it's entitled, "Introduction: Disclosures of
24 Sexual Abuse". There is a further document being developed
25 in conjunction with the one I was just speaking about which

1 talks about disclosures.

2 And what I might add is that in the works is
3 the idea to have the type of protocol which is drafted
4 locally to become a standard protocol for all abuse
5 throughout the system, so that when clients complain, other
6 probation officers in other jurisdictions are aware of a
7 protocol to assist in eliciting this information.

8 Now I'll move on to the third
9 recommendation, as I promised. There is a directive in
10 place now with respect to conducting a file review for
11 probation/parole officers who leave or die under suspicious
12 circumstances, and I think this is an important point.

13 We've noticed in the evidence that certain
14 events may have, or ought to have sparked, as some people
15 term "a red flag" if a probation officer leaves under
16 suspicious circumstances or unfortunately dies. You have
17 to take a look at what those circumstances are, and there
18 is a directive now to conduct a file review, and that's
19 drafted and in place, it is operational as we speak.

20 It's subject to your scrutiny again and your
21 input. And again, we emphasise that there may be further
22 building on this, but it's addressed to try and fill the
23 gap that we've noticed in the evidence. And you'll see on
24 that page, what it does is identify that:

25 "The purpose of this direction,

1 suspicious circumstances include any
2 circumstances that give rise to a
3 concern, presumption or belief that
4 something is amiss or deviates from the
5 norm."

6 It's tried to be broad as possible, and the
7 purpose of the case review is set out, again:

8 "To identify actual or potential risks
9 or threats to employees and clients and
10 to eliminate those threats."

11 And it goes on to page 2, and I think this
12 is a very helpful document and a very meaningful step
13 forward for the Ministry in recognising these issues.

14 The fourth recommendation, I don't have a
15 document for you as I've entitled it here "Under
16 Construction", which is the Statement of Ethical
17 Principles.

18 There is a policy in place now, there is a
19 statement that's in place but it is being assessed and
20 being re-drafted and the idea is to spell it out in a much
21 more clear manner. It's, as we've indicated, something
22 which will be provided both in hard copy and
23 electronically, and it's under development now and should
24 be completed. Not to say that we don't have a Statement of
25 Ethical Principles, that's already in existence. This is

1 going to be an enhanced version. Things need to be updated
2 over time and that's what's being done.

3 The fifth recommendation, which is something
4 which I think is also of incredible significance to this
5 Ministry, was to address the problem in transmission of
6 information between various levels in the Ministry, to
7 inform those who need to be informed, because it's clear
8 that we've understood from house notes that the Information
9 Management Unit or, as we term it at times, IMU, had
10 certain information that seemed to go up one side of the
11 Ministry but never made it to people who needed to have
12 that information.

13 So for example, a Lenna Bradburn who, when
14 she was faced in 1993 with a complaint, did not have those
15 other background information to help her; Loretta Eley
16 commented on this so did Lenna Bradburn.

17 Prior to -- 1993 and prior, a database did
18 not exist. So, at that level, there was no such database
19 where incident reports were filed and compiled and kept
20 electronically, so that did not exist. However, since that
21 time, there has been a database and there is a centralised
22 database which tracks significant occurrences related to
23 staff and we outline this in our report.

24 But what is of, I think quite significant
25 benefit to this Inquiry, is that, as we say, cost centres,

1 which is local offices, identify serious staff-related
2 issues. The area manager will request a search of the
3 database -- will request a search of the database to
4 determine if there are similar fact issues on file. If so,
5 the Regional Office will be informed and a determination
6 made as to the appropriate action.

7 So the first step then is to, if there is an
8 issue, is to search that database. And if there are other
9 incidents which are filed in that database, the information
10 will be brought together by one person and then provided to
11 the regional office.

12 This policy which is currently under
13 development will go hand in hand with other policies that
14 we've reviewed. And again, once all these policies are
15 produced, they are all electronic which have interlinks, so
16 that when, and not to bore you, when we go into the
17 accountability measures which is listed at some length in
18 our Corporate Overview and also in our submissions, there's
19 all sorts of contentious issues, policies, conflict of
20 interest, they are all interlinked, so that when an
21 individual has to look at that policy, they also have
22 reference to the other ones.

23 It's a bit convoluted when you're seeing
24 them one at a time, but when it's on the computer system,
25 it actually makes good sense to people and is very holistic

1 in nature.

2 THE COMMISSIONER: So are you saying that,
3 for example, the *Varley* incident.

4 MR. NEUBERGER: Yeah.

5 THE COMMISSIONER: Let's take that one.
6 That would now, or will, whenever this is all set up, go in
7 there. So, if someone were to, three years down the road,
8 type in -- and I don't want to ---

9 MR. NEUBERGER: Yeah, I understand.

10 THE COMMISSIONER: --- Ken Seguin, boom, the
11 *Varley* incident would be there?

12 MR. NEUBERGER: Correct.

13 THE COMMISSIONER: All right.

14 MR. NEUBERGER: I'm not as knowledgeable
15 about the key word search, but the idea is to be able to
16 track anything related to that probation officer or
17 incident.

18 THE COMMISSIONER: Exactly.

19 MR. NEUBERGER: And that's correct, because
20 those are watershed moments. The *Travis Varley* incident is
21 a serious incident ---

22 THE COMMISSIONER: M'hm.

23 MR. NEUBERGER: --- and that would be in the
24 database, along with anything else, and that's the idea.

25 And the current database which is in place

1 now needs to be changed, and we've itemized that in this
2 progress update, due to organizational demands and its
3 structure.

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

5 **MR. NEUBERGER:** So the Ministry is, right
6 now, seeking to replace it with newer technology. They
7 will be able to provide enhanced cross-referencing of
8 incident reports, at corporate, regional and local levels,
9 and so the idea is to make that as user-friendly as
10 possible.

11 It's difficult, in using any sort of
12 database system, whether it's for us, Quick Law, or for the
13 police, a CPIC or an ICON system, to try and get a very
14 user-friendly, intuitive type of system, but they're going
15 to try.

16 And the cost of the new system is
17 significant, and there's ongoing costs and they've already
18 allocated for that. And they're looking at the design and
19 implementation of the new technology which they believe is
20 going to be around in 15 months, but it's underway.

21 Aside from these recommendations, and the
22 progress update which we have provided to you, one last
23 thing which we've already mentioned is the staff of the
24 office had one, sort of, common recommendation, which was
25 about the need for provincial training in the area of male

1 sexual victimization.

2 And the Ministry has developed a new three-
3 day awareness training course. Mr. Bennett spoke about
4 this yesterday, "Working with Male Victims of Sexual
5 Abuse," for probation and parole staff, to provide them
6 with the tools necessary to effectively deal with
7 disclosures.

8 The curriculum has been developed with the
9 assistance and expertise of the Men's Project in Cornwall.
10 The training manual is to be finalized this month -- if
11 it's not by now, it will be soon. And the training is
12 scheduled to commence, the pilot project in Cornwall,
13 starting in April, with the involvement of some Cornwall
14 community partners.

15 Training will be provided to all probation
16 and parole officers and will become a requirement of
17 probation and parole officer basic training.

18 In conclusion, Mr. Commissioner, we submit
19 that the actions taken, and that I've noted both with
20 Mr. Rose in our written submissions and orally, is an
21 ongoing process that we believe looks forward in time and
22 does further the themes that we've indicated about the
23 transparency, commitment to healing, and rehabilitation and
24 change.

25 And we look forward to receiving the Inquiry

1 report, and we wish you the best in drafting it, and thank
2 you for your patience throughout these three years. Thank
3 you.

4 **THE COMMISSIONER:** Thank you very much.
5 All right, so, Mr. Englemann, we'll come
6 back at 2:00? Thank you.

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

9 This hearing will resume at 2:00 p.m.

10 --- Upon recessing at 11:58 a.m. /

11 L'audience est suspendue à 11h58

12 --- Upon resuming at 2:05 p.m. /

13 L'audience est reprise à 14h05

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

16 This hearing is now resumed. Please be
17 seated. Veuillez vous asseoir.

18 **THE COMMISSIONER:** Ms. McIntosh?

19 --- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR

20 **MS. MCINTOSH:**

21 **MS. MCINTOSH:** Good afternoon,
22 Mr. Commissioner.

23 **THE COMMISSIONER:** Good afternoon.

24 **MS. MCINTOSH:** For the record, my name is
25 Leslie McIntosh and I act for the Ministry of the Attorney

1 General.

2 I'd like to divide my -- first of all, let
3 me thank you for the opportunity to make oral submissions -
4 --

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

6 **MS. MCINTOSH:** --- and, by way of
7 introduction, let me say that my submissions are divided
8 into three main parts.

9 The first is what I'm calling the nature of
10 public inquiries and the role of the Ministry of the
11 Attorney General with respect to Phase 1.

12 And I start with that because, as you'll see
13 in a moment, that informs the second and third parts of my
14 submissions, the second of which is dealing with some
15 specific actions taken by Crowns and whether those actions
16 raised systemic issues.

17 And the third is to comment on some of the
18 recommendations sought in the oral and written submissions
19 of the various parties, hopefully for your assistance in
20 deciding whether to adopt them, and, if so, what sorts of
21 features some of those things ought to have.

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

23 **MS. MCINTOSH:** So let me turn first then to
24 the nature of public inquiries and the role of the Ministry
25 at Phase 1. And, Mr. Commissioner, I won't be telling you

1 anything new here, but, for the benefit of the public ---

2 **THE COMMISSIONER:** I understand.

3 **MS. MCINTOSH:** You may have noticed, and
4 the public may notice, that unlike most of the parties
5 here, the Ministry of the Attorney General has not offered
6 an overarching theory of what happened here and why, and
7 what ought to be done about it, and that is because of the
8 nature of public inquiries and the role of the Ministry in
9 Phase 1.

10 And what I mean by "nature of public
11 inquiries," is this, that when an issue of concern arises
12 in the province, or an issue of concern to a community in a
13 province arises, and a fact-finding is required that goes
14 beyond the scope of what a normal government department can
15 handle -- and that's by reason of the size of the fact-
16 finding that's required or sometimes the procedures that
17 would be required in connection with it, or both -- and
18 especially when the problem involves a government
19 department, the government turns to a well-respected
20 individual, usually a judge, often a judge, to conduct that
21 fact-finding and to give the executive, led by a Minister
22 of the Crown, to give the executive his or her views about
23 what happened and why, and his or her best advice about
24 what ought to be done to keep that from happening in the
25 future.

1 So that's what I mean by "nature of a public
2 inquiry." And what I mean by the dual role of the Ministry
3 of the Attorney General in Phase 1, what I mean by "the
4 role" is that there is a dual role.

5 And, on the one hand, the Ministry of the
6 Attorney General is, as everyone knows, here as a party,
7 and I and my co-counsel have been here putting forward a
8 case on behalf of the Criminal Law Division and the Crown
9 attorneys of that division.

10 But, on the other hand, there is another
11 whole division of the Ministry of the Attorney General
12 responsible for the administration, if I can call it that,
13 in connection with this Inquiry.

14 And, so, when you deliver your report,
15 Mr. Commissioner, as the Order-in-Council says, you will be
16 delivering it to the Attorney General, and I wanted
17 everyone to be clear that your report will not go into the
18 hands of my group and my counsel acting for the Crown
19 attorneys. It will go into this separate division which
20 has been scrupulously separated from our group. And it is
21 that group who will review your report, obviously together
22 with the Attorney, and consider what you've had to say
23 about what ought to be done.

24 So it follows, in my respectful submission,
25 from that dual role, that our submissions are necessarily

1 circumspect about advancing or suggesting to you an overall
2 theory of what happened, and why it happened, and what you
3 ought to do. And it's from that perspective then that we
4 make our -- the substance of our arguments, our second and
5 third submissions.

6 And so let me turn then to the specific
7 actions of the Crown attorneys and whether they have
8 implications for the justice system. This is the second
9 part of my submissions.

10 And I emphasize the second part of that
11 phrase, because as you know, Mr. Commissioner, it is not
12 your -- you are not here to examine the actions of anyone,
13 including any Crown attorney, in a vacuum. It is only
14 whether the actions raise any systemic issues that you need
15 to address, that the action needs examination.

16 Obviously, some things will be needed to be
17 looked at for context, but I don't want to, in this fairly
18 focused discussion of the actions of the Crowns, ever to
19 lose sight of the fact that it is not about finding fault
20 with individual Crown attorneys, and the examination of
21 their actions is relevant only to eliminate a systemic
22 issue with respect to the administration of justice.

23 And today I want to touch on only five
24 issues raised in the oral submissions yesterday and it
25 seemed to be common themes in some of the written

1 submissions. The first one is what Ms. Daley called
2 yesterday the unusual role, I think was her expression,
3 that the local Cornwall Crown, Murray MacDonald, played in
4 giving investigative advice to the Cornwall Police in the
5 1993 investigation of Mr. Silmser's complaint. And I
6 wanted to highlight a couple of things about that,
7 Mr. Commissioner.

8 First of all, Mr. MacDonald was asked by
9 Officer Sebalj for advice, so that he didn't inject himself
10 into this investigation. She was an inexperienced officer,
11 although Mr. MacDonald was quick to say that she was not,
12 in his view, an incompetent officer, just an inexperienced
13 officer in a busy department. And he, as you will have
14 observed when he was on the stand, is a helpful, thoughtful
15 and thoroughly decent fellow and undertook to help her.

16 He did acknowledge here with hindsight that
17 he probably should not have done so because he's not an
18 expert investigator. And you very kindly,
19 Mr. Commissioner, pointed out that probably Luc Brunet was
20 not as good a Crown attorney as he was.

21 There is -- and I think that Ms. Daley
22 concluded or Ms. Daley remarked in her submissions that
23 this particular instance was not -- I think she said not
24 important to the ultimate result in Project Truth, was the
25 way she characterized it. Mr. Lee calls it a recurring

1 problem. He lists it under the heading of recurring
2 problem in his -- and I think he referred to it yesterday
3 as that, so I wanted them to respond to the question of
4 whether this does illuminate some kind of systemic issue.
5 And the answer, in my respectful submission,
6 Mr. Commissioner, has to be no.

7 There is no evidence that Mr. MacDonald gave
8 investigative advice to the police before or after this
9 matter in connection with any other matters that this
10 Inquiry has looked at in which Murray MacDonald was
11 involved. And I don't think there's any other evidence
12 offered in respect of any other Crown doing so.

13 And I would submit, Mr. Commissioner, that
14 the respective roles of the Crown and police were generally
15 well understood by everyone from those two institutions who
16 testified. And that in any event there is a great deal of
17 authority with respect to the role of the Crowns and the
18 police, and we've set it out in our submissions at pages 4
19 to 11 including the Martin Report and our various practice
20 directions.

21 So contrary to what has been submitted by a
22 couple of the parties, in our respectful submission this
23 particular action did not impact on the ultimate results of
24 Project Truth and it certainly is not an example of a
25 systemic problem.

1 The second issue that I wanted to address
2 under this heading is the -- again what Mr. Lee called the
3 recurring problem of advice based on incomplete
4 information. It's interesting that the specific examples
5 that Mr. Lee gave were the Cieslewicz and Lapensée foster
6 homes. And I remind you, Mr. Commissioner, that those
7 incidents -- the advice in those cases was given in 1978,
8 31 years ago, and 1982 respectively. We've addressed those
9 situations in our submissions at pages 184 to 189.

10 The other example is of course the 1993
11 Silmser investigation; investigation into Mr. Silmser's
12 complaint which we've addressed in our submissions at pages
13 31 to 40. And essentially what we say there is that
14 Mr. MacDonald was not giving RPG or RPC advice; he was
15 advising the police with respect to a Crown policy.

16 Now, again the question, though, is does
17 this raise a systemic issue? And the answer again, in my
18 respectful submission, is that it does not for a few
19 reasons. I think again one has to start with the
20 respective roles of the Crown and the police.

21 Crowns are like other lawyers,
22 Mr. Commissioner. They rely on their clients for the
23 facts, they don't go out and do their own investigation,
24 and that's why when they give their opinions, they
25 generally recite the material they've reviewed which is the

1 information given to the lawyer by the client. If one
2 views a Crown's opinion from that perspective I think one
3 understands a little better how to approach this particular
4 problem.

5 The next thing I will point to,
6 Mr. Commissioner, is that there is a Crown Policy Manual
7 now which specifically -- a policy in the Crown Policy
8 Manual which now specifically addresses this issue, and
9 it's at pages 25 and 26 of our submissions. Just turn it
10 up, rather than paraphrasing it. It is Policy 2005 Number
11 34 and one of the things -- it does a number of things but
12 one of the things it says is that:

13 "Where the police are seeking an
14 opinion regarding whether a legal basis
15 exists to lay a criminal charge in
16 difficult, complex or potentially
17 controversial cases, ..."

18 And that is specifically stated to include
19 historical sexual assault cases.

20 "... Crowns should require that the
21 police provide a full written
22 investigative brief that will form the
23 basis of the Crown's advice."

24 And it goes on to say:

25 "Where feasible the advice should be in

1 writing. It should deal with both the
2 objective and subjective elements of
3 the threshold test and it should
4 clearly note that it is an opinion only
5 and not binding on the police."

6 So the manual, in my respectful submission,
7 addresses any suggestion that there's some kind of systemic
8 lacuna here that needs to be filled. The other evidence,
9 it seems to me, that addresses the question of whether this
10 amounts to a systemic problem is Peter Griffiths', as he
11 then was, letters of December 21st, 1994, Exhibits 1147 and
12 1148. Remember he did two letters on that day, one with
13 respect to the allegations of sexual assault against Father
14 MacDonald and one with respect to the collusion or cover-
15 up.

16 Those letters, Mr. Commissioner, are
17 textbook letters that follow that Crown Policy Manual, so
18 the lesson is learned, in my respectful submission, on the
19 evidence in the Inquiry.

20 One of the questions I think that's raised
21 in connection with this issue is, well, what if in the
22 material that's submitted to the Crown there are obvious
23 gaps in the brief? And I believe that Justice Griffiths
24 says he now is -- pointed that out in a couple of his
25 letters and said, you know, "There doesn't seem to be

1 this," without purporting to direct the police to go back
2 and do it.

3 But in my respectful submission, if one goes
4 back to the respective roles of the Crown and police, I
5 think the Crown is entitled to assume that because the
6 police are the experts at investigations that if they don't
7 find, for example, corroborative evidence in a brief that
8 it's because the police have looked and not found that
9 corroborative evidence. So that's the way that I would
10 respond to that particular issue which has come up.

11 Also I guess a sub-issue on this particular
12 point about advice based on incomplete evidence. I wanted
13 to address one particular remark that Mr. Lee made
14 yesterday, about the calls to Murray MacDonald from Malcolm
15 MacDonald and Jacques Leduc, advising Murray MacDonald that
16 they were engaged in a civil settlement with Mr. Silmsner.

17 And in my respectful submission, much as
18 I've come to like and admire Mr. Lee, this is an egregious
19 example of Monday morning quarterbacking. And if anyone is
20 tempted to engage in this, I ask you think about -- think
21 in your own mind about the most senior and respected lawyer
22 in your jurisdiction, whom you know. And then think about
23 the President of your local Bar Association, and I imagine
24 that those persons, in your experience, for anyone in the
25 room, have unblemished reputations.

1 And now imagine one of those individuals
2 called you and said: "I just wanted you to know that I'm
3 engaged in settlement discussions with this individual."
4 In my respectful submission, it is well within the range of
5 reasonable responses to think that that was a courtesy
6 call, and in fact it would be unreasonable to think
7 otherwise in those circumstances.

8 So Mr. MacDonald's evidence, that he
9 understood those individuals just to be making a call so as
10 to be seen not to interfere with any criminal
11 investigation, and to be on the high ground, is completely
12 consonant with, I suggest, the experience of everyone in
13 this room.

14 Even when Mr. Silmsler reported that he
15 wanted to withdraw the charges, in my respectful submission
16 that would not lead a reasonable person to assume that
17 there had been an illegal clause in the release. Rather,
18 Mr. MacDonald's -- in the settlement -- rather Mr.
19 MacDonald's reaction was perfectly understandable and that
20 is that he thought, as a lay person, Mr. Silmsler
21 misunderstood the effect of a civil release. And that's
22 why Mr. MacDonald, as he said, sent the Cornwall police
23 back, not once, but twice to make sure that Mr. Silmsler
24 understood and was under no misapprehension that the civil
25 action would end the criminal proceedings.

1 I think that Murray MacDonald ended by
2 saying, as far as he was concerned it was not over, that
3 Mr. Silmsler might well change his mind that other
4 complainants might go forward. And so, in my respectful
5 submission, these unique facts don't give rise to a
6 systemic issue in this case.

7 I wanted to, as a third point, address one
8 of Mr. Horn's points which is that Mr. Silmsler was not
9 properly prepared for testimony throughout these
10 proceedings. We strongly disagree with Mr. Horn's
11 characterisation of the facts and I just direct ---

12 **THE COMMISSIONER:** I'm sorry. You said Mr.
13 Silmsler?

14 **MS. McINTOSH:** I'm sorry. Did I say Mr.
15 Silmsler? I meant Mr. Dunlop. Sorry.

16 **THE COMMISSIONER:** That's what -- okay.

17 **MS. McINTOSH:** Yes, I apologise.

18 **THE COMMISSIONER:** No.

19 **MS. McINTOSH:** Long lunch, too much to eat
20 at lunch. I should have gone for the salad.

21 Yes.

22 **THE COMMISSIONER:** It's the beverages I'm
23 concerned about.

24 **(LAUGHTER/RIRES)**

25 **MS. McINTOSH:** No. No, no. I was

1 supervised at lunch. I didn't go there.

2 **THE COMMISSIONER:** Okay. I'm sure you
3 didn't.

4 **MS. McINTOSH:** Yes. So it's ---

5 **THE COMMISSIONER:** We're talking about Mr.
6 Dunlop and about his lack of preparation, or the allegation
7 of that.

8 **MS. McINTOSH:** That's right, and I was just
9 indicating for the record that we strongly disagree with
10 Mr. Horn's characterisation of those facts. And I direct
11 you, Mr. Commissioner, to our submissions at pages 141 to
12 147. I don't need to repeat very much of the evidence
13 here.

14 You know that Ms. Narozniak, for example,
15 spoke to Mr. Dunlop in July. She tried to persuade him to
16 come to Cornwall a few days before the court appearance.
17 He refused to do so because he had, I gather, an engagement
18 for his band.

19 She told him that there were two issues that
20 he needed to be aware of; the question of his notes and
21 other documents and the question of contacts with victims
22 and witnesses. And she told him that his experience might
23 be like the MacDonald prosecution. And so he asked for the
24 transcripts; she made the transcripts available to him and,
25 I think that Ms. Henein's cross-examination revealed that

1 he basically chose not to review them before he testified.

2 Ms. Narozniak testified that these issues
3 that she wanted him to testify about were not difficult
4 issues for a professional witness who was going to be
5 truthful. I wanted to highlight here, from a systemic --
6 those are the facts, Mr. Commissioner, as we urge them upon
7 you.

8 From a systemic point of view, to follow my
9 own theme, here. In my submission, it is not the job of
10 the Crown to protect a police officer who is giving
11 testimony. It is the job of the Crown to present truthful,
12 reliable, credible evidence to the trier of fact, and I
13 again recommend to you, Mr. Commissioner, our submissions
14 on the role of the Crown at pages 1 to 3.

15 It is not the role of the Crown to secure a
16 conviction at all costs, rather the Crown, as Ms. Narozniak
17 said, is equally interested in making sure that the truth
18 of an issue comes out, if not more interested but equally
19 interested in making sure that the truth of an issue comes
20 out and that justice is done.

21 As Ms. Narozniak said, she wanted to know
22 whether everything that Mr. Dunlop had, had been disclosed
23 and she wanted to know about all of the contacts, whether
24 there were any other contacts with victims and witnesses,
25 so that there would be no surprises at the trial and so she

1 could prepare to deal with the implications of that
2 information at the trial.

3 Those are my submissions with respect to the
4 third area.

5 And let me move to the fourth Crown action
6 and the question of whether there's a systemic issue here,
7 Mr. Commissioner, and that is the issues involving Ms.
8 Hallett and Inspector Hall.

9 You have our submissions at pages 124 to
10 127, about the effect of the Court of Appeal decision that
11 -- that cannot be second-guessed, and it was clear that
12 there was no wilful non-disclosure.

13 I wanted to be clear about a couple of other
14 points under this heading, some factual points. First of
15 all, the Ministry of the Attorney General does not
16 subscribe to the theory that there was deliberate collusion
17 between the police and the defence with respect to the
18 handing over of the July 2000 letter.

19 We think that it had unintended consequences
20 but we certainly don't think there was a deliberate --
21 anything deliberate there.

22 **THE COMMISSIONER:** Just a minute, now.
23 Deliberate, I mean, it was a deliberate act, that they gave
24 the document. So I mean, there was some -- it wasn't just
25 found on a corner of the desk.

1 **MS. McINTOSH:** No, absolutely, yeah.

2 **THE COMMISSIONER:** Okay. So take that away

3 ---

4 **MS. McINTOSH:** But it wasn't intended -- the
5 point I'm trying to make is that it wasn't intended in the
6 Ministry's view to a) deliberately shift the blame to Ms.
7 Hallett or b) to undermine the prosecution, is the
8 Ministry's position.

9 The Ministry does assert that there was no
10 need for Inspector Hall to go to the defence because Ms.
11 Hallett appropriately accepted responsibility for missing
12 the references.

13 So we do dispute, as I read it, we do
14 dispute the OPP and the OPPA's submissions on that point.
15 But I think we are all agreed, as I read the submissions,
16 that Inspector Hall should have told Ms. Hallett that he
17 was going to do so, so that she could have taken
18 appropriate steps to defend herself and, more importantly,
19 protect this prosecution.

20 So that's just to lay out, in a very summary
21 form, what's in our submissions. And to which I would add,
22 as we added in our submissions, that although, legally, the
23 Notice of Application may have been broad enough to include
24 both Crown and police conduct, in the words of the Court of
25 Appeal, simple fairness required both the trial judge and

1 the defence counsel to advise Ms. Hallett that her conduct
2 was going to come under attack. And again, she would have,
3 in those circumstances, been able to take appropriate steps
4 to defend herself and protect this prosecution.

5 So if there's a systemic lesson to be
6 learned here, in my respectful submission, it is the need
7 for civility and collegiality in the bar, and certainly one
8 of the lessons.

9 There is not, however, in my respectful
10 submission, a systemic problem with the working
11 relationship between the Crown and the police and to the
12 contrary, in my respectful submission, in almost all of the
13 matters that you've looked at, the relationship has been a
14 very good one with some minor issues.

15 **THE COMMISSIONER:** What about the issue of
16 police giving disclosure unbeknownst to the Crown?

17 **MS. McINTOSH:** You mean if that's a systemic
18 issue as opposed to -- well, we put a whole passage on
19 disclosure in our materials and there are some additional
20 things that I want to draw to your attention in the
21 recommendation portion, but it's clear -- the respective
22 roles are clear, in my respectful submission, and the
23 relationship between -- the point at which disclosure
24 should be made, should be made in a formal way through the
25 Crown Attorney, obviously. I don't think there's any doubt

1 about that from a systemic point-of-view.

2 **THE COMMISSIONER:** Okay.

3 **MS. McINTOSH:** The last Crown action area
4 that I wanted to address is the -- what I call the joinder
5 of charges issue, and that is addressed in our Submissions
6 at pages 106 and 107.

7 Again, just for the public, let me summarize
8 because I know that Mr. Horn's clients considered this to
9 be a very big mistake, and let me summarize the reasons why
10 an experienced Crown exercised his judgement in this way.

11 The first was that he was of the view that
12 this would improve the merits of the case by reason of
13 having a volume of similar-fact evidence.

14 The second was out of consideration for both
15 the victims and the accused; that the Crown was of the view
16 that there should not be two identical trials. One where
17 the first set of victims would testify with the second set
18 giving similar-fact evidence, and then a second trial where
19 the second set of victims would be the complainant and the
20 first set would give similar-fact evidence. That did not
21 seem to be in the interests of either the victims or the
22 accused.

23 And the third main reason in the judgement
24 of this experienced Crown was the potential problem of the
25 witnesses giving different testimony in different

1 proceedings and that would be, as I think he said in his
2 testimony -- I'm referring of course to Robert Pelletier as
3 he then was -- just human nature; that you're bound to get
4 some of the details different in different testimonial at
5 different times. And this would serve to give the defence
6 ammunition.

7 Even though Justice Chilcott ultimately
8 found that the delay outweighed these considerations, he
9 did say that this assessment was a reasonable one although,
10 as I say, in the end found that the consideration of delay
11 outweighed it.

12 Now, from a systemic point-of-view, what do
13 we make of this? We did have here, as I said, an
14 experienced person; someone who had successfully prosecuted
15 the Alfred cases and obviously had experience and knowledge
16 about how to do this. But I think the answer from a
17 systemic view is in the LeSage-Code Report. I'll just give
18 you the reference, Mr. Commissioner. We deal with it at
19 page 76 of our Submissions. It's Recommendation 31, which
20 is at page 179 of the report, and the report is Exhibit
21 3433.

22 That report calls for a mandatory peer
23 review of Crown decision-making in major, large, complex
24 major cases, and you'll recall when the Deputy Attorney
25 General was here that he said that the Ministry has already

1 moved to implement that recommendation and is instigating a
2 system of mandatory peer review for those cases already.

3 It's certainly an issue where judgement
4 calls have to be made. One cannot, it seems to me, remove
5 judgement from the system. Crowns are hired for their
6 judgement and trained to exercise it, and you've heard a
7 lot about education of Crowns. But this new mandatory peer
8 review system will assist, in our submission, in helping
9 make these difficult judgement calls.

10 Those are my submissions with respect to the
11 particular actions that I wanted to touch on and whether
12 they gave rise to any systemic issues, and I want to turn
13 now to recommendations. And, again, because of this dual
14 role and nature of the public Inquiry that I talked about
15 at the beginning, our comments here are in the nature of
16 commenting on recommendations made by other parties,
17 matters to consider when you consider which recommendations
18 to adopt and how to frame them.

19 And I wanted to touch on 10 things here. I
20 think someone mentioned last day apologies legislation, and
21 I just wanted to be clear that there is apologies
22 legislation before the Legislative Assembly now. This is
23 addressed at page 276 of our submissions. It is a
24 government bill, Bill 108. It received first reading on
25 October the 7th of 2008 and second reading on October the

1 23rd.

2 One of the other reasons I wanted to raise
3 that today was -- I've got it under phase 2 in our
4 submissions -- but I wanted to raise it today because in
5 fact I understand that the Standing Committee on Justice
6 Policy will be considering this bill on February the 26th,
7 so that if anyone is interested in those debates they
8 should go to the Legislative Assembly websites and avail
9 themselves of the significant resources on that website to
10 track the progress of bills. So I wanted just to cover-off
11 the notion that there was somehow a need for apologies
12 legislation. This legislation is under way.

13 I think it was Mr. Horn who said that there
14 ought to be an ombudsman.

15 **THE COMMISSIONER:** No, well ---

16 **MS. McINTOSH:** Was it Mr. Bennett? Sorry.

17 **THE COMMISSIONER:** Mr. Bennett, yes.

18 **MS. McINTOSH:** And I wanted to point out
19 that effective 2007 there is now a Provincial Advocate for
20 Children and Youth. That office -- I suppose it's fair to
21 say it's an expanded office but it's a new piece of
22 legislation called the *Provincial Advocate for Children and*
23 *Youth Act 2007*, and that provincial advocate is an
24 independent officer of the legislature, so that advocate
25 will not report to any Ministry of government. They will

1 report to the legislature.

2 And among other duties, the advocate's
3 office will provide advocacy to children and youth seeking
4 and receiving services under the *Child and Family Services*
5 *Act*, and we've described that at page 250 of our
6 Submissions. So it seems to me that the call for an
7 ombudsman should take into account this office and what it
8 does and whether there's a need for an ombudsman or whether
9 there's a need perhaps to add something to the mandate
10 there and so on. I just wanted to bring that to your
11 attention, Mr. Commissioner, so as not to -- so that you
12 have all the information about that particular type of
13 office.

14 **THE COMMISSIONER:** But that office doesn't
15 necessarily advocate for historical sexual abuse where the
16 child who was abused is now an adult and the adult is in
17 need.

18 **MS. McINTOSH:** Mr. Commissioner, I confess
19 that I don't know enough about the office to answer that
20 question. If it doesn't, that may be something that you
21 wish to add.

22 My only point was that one ought to consider
23 if one's considering the question of an ombudsman whether a
24 whole other office reporting to the legislative assembly is
25 necessary or whether this will do and whether there ought

1 to be something added or subtracted from the mandate.

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

3 **MS. McINTOSH:** The third recommendation that
4 we've heard a lot about is institutions making public
5 statements. And we have addressed this in our submissions
6 at pages 256 to 260 under the subjudicy rule; a discussion
7 which we've called "Media and the Subjudicy Rule." And I
8 won't take you through that, Mr. Commissioner, except to
9 say -- to highlight that the question of the Attorney
10 General making statements is a particularly sensitive one
11 and because of the unique role of the Attorney General in
12 conducting prosecutions. And we've highlighted for you,
13 Mr. Commissioner, a recent case at page 258 of the brief --
14 -

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

16 **MS. McINTOSH:** --- where the Attorney
17 announced initiatives to deal with biker gangs ---

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

19 **MS. McINTOSH:** --- and there was a stay
20 application in one of these biker gang trials simply on the
21 basis of the announcement of an initiative. Now, that stay
22 was dismissed, but it still illustrates the sensitivity of
23 any public institution, but particularly Attorney General
24 making statements in these areas. So I won't go farther
25 than that except to recommend those pages to you should you

1 be considering something in that area.

2 Fourthly, I wanted to touch on some of the
3 issues involving the Children's Aid Society so I've got a
4 couple of points under this heading.

5 The first is this question of file
6 disclosure and in particular, the question of whether Part
7 7, I think it is ---

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

9 **MS. McINTOSH:** --- of the *Child and Family*
10 *Services Act* ought to be ---

11 **THE COMMISSIONER:** Proclaimed?

12 **MS. McINTOSH:** --- ought to be enacted. I
13 think that the Ministry of Children and Youth Services
14 would say that there's been a lot of water under the bridge
15 since that part was drafted ---

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

17 **MS. McINTOSH:** --- and it may not be
18 entirely relevant to the situation today. The Ministry
19 requires -- I guess one of the things I would recommend to
20 you here, Mr. Commissioner, are submissions about the role
21 of the Ministry in relation to Children's Aid Societies at
22 pages 239 and 240 of the brief.

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

24 **MS. McINTOSH:** And basically, the point that
25 Children's Aid Societies are independent, not-for-profit

1 organizations with local boards of directors and that the
2 Ministry certainly has some supervisory powers over them
3 which we've set out in the material there. And in this
4 area, there are policies and procedures and the Ministry
5 does require the Children's Aid Societies to have their own
6 policies and procedures with respect to maintaining the
7 confidentiality of and access to records.

8 The Ministry also has something called a
9 case information disclosure policy with which the
10 Children's Aid Society policies have to comport dealing
11 with the collection, retention and disclosure of
12 information including access by third parties, correction
13 of facts and various options for reviewing one's file
14 whether it's a copy or an opportunity to review it and
15 timelines for responding to requests to review files.

16 But the bottom line, Mr. Commissioner, is
17 that the files are within the control of the Children's Aid
18 Society and subject to the policy guidance that I've just
19 described from the Ministry. The Children's Aid Society
20 decides these access issues.

21 On the question of duty to report, we've
22 addressed the framework in our submissions at pages 241 to
23 250. And I wanted just to focus on Crown duty to report
24 and draw to your attention something that probably hasn't
25 come out in the evidence and that is that there is a Crown

1 policy with respect to the duty to report. It's PM 2000
2 number 4 and it was consolidated in the March '06
3 consolidation. And it really makes two points, Mr.
4 Commissioner.

5 First of all, it makes the point that
6 generally speaking Crowns only get information about child
7 abuse at the post-charge stage so that it's already --
8 there's already a formal process going on.

9 And the second point it makes -- and I think
10 more implicitly than explicitly -- is that at the pre-
11 charge stage, if the police do elect to come for pre-charge
12 advice and the Crowns have that information, their
13 information is from the police so it's at least second hand
14 and maybe more so. So that the question, I think, arises
15 about the quality, if you like, of information necessary to
16 report to the Child Abuse Registry. So the policy ---

17 **THE COMMISSIONER:** To report to the Child
18 Abuse Registry?

19 **MS. McINTOSH:** I'm sorry. To the Children's
20 Aid Society, thank you. So I ---

21 **THE COMMISSIONER:** Don't you think that the
22 responsibility grows as the matter grows? So if, for
23 example, if a teacher or police officer knows of it and
24 either forgets or is not aware of it and then he's speaking
25 to the Crown attorney and the Crown attorney -- the light

1 goes on; do you not think that the responsibility includes
2 the Crown attorney?

3 **MS. McINTOSH:** I think that it may be a
4 different responsibility at that stage for the Crown
5 attorney. I mean, the Crown attorney is the lawyer to the
6 police officer ---

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

8 **MS. McINTOSH:** --- and so it may well be
9 that the Crown attorney should be saying to the police
10 officer, "You know, there is this legal obligation and if
11 you have the quality of information necessary to make that
12 report, you should make that report." But whether it
13 transfers ---

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

15 **MS. McINTOSH:** --- to the Crown at that
16 stage ---

17 **THE COMMISSIONER:** Yes.

18 **MS. McINTOSH:** --- I think is a different
19 question then. And it's not one, frankly, that the policy
20 grapples with entirely but ---

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

22 **MS. McINTOSH:** --- I wanted you to know, Mr.
23 Commissioner, that the issue is on the radar and the policy
24 attempts to deal with it in the two ways that I've
25 described and ---

1 **THE COMMISSIONER:** Right.

2 **MS. McINTOSH:** --- obviously your guidance
3 on this issue will be closely considered.

4 The last area under Children's Aid Society
5 issues that I wanted to discuss briefly was the Child Abuse
6 Register.

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

8 **MS. McINTOSH:** And our view is slightly
9 different than the Children's Aid Societies about the
10 degree of discretion there is about ---

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

12 **MS. McINTOSH:** --- reporting.

13 **THE COMMISSIONER:** Yes.

14 **MS. McINTOSH:** And you have the cross-
15 examination of Mr. Carriere by our counsel here for that --
16 to illustrate that purpose.

17 My point today, Mr. Commissioner, is that
18 the Child Abuse Registry has a limited purpose. Its
19 purpose is to enable Children's Aid Societies to arrive at
20 appropriate decisions about the level of intervention and
21 to track children to make sure they are protected.

22 And so when people say, well, there should
23 be other uses of the Registry, the Children's Aid Society
24 should be able to use it for other purposes or other
25 agencies ought to be able to use it, it seems to me it

1 misses the point. It misses the point that the Registry is
2 trying to do it; misses the balance that the Registry is
3 using because recall, Mr. Commissioner, that you do not
4 have a hearing -- one who is reported to the Register does
5 not have a hearing before his or her name goes on the
6 Register. And you do not have to be convicted of a crime
7 beyond a reasonable ---

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

9 **MS. McINTOSH:** --- doubt to have your name
10 put on the Register. And indeed, I've heard an example of
11 where an individual is acquitted of a crime in the
12 strongest possible terms and his name remains on the
13 Register.

14 So to say that the Register should be used
15 for broader purposes by the Children's Aid Society or used
16 by other agencies seems to me to upset that balance a bit
17 because if you're going to share the names on the Registry
18 in those circumstances when that's how you get on it then
19 you're going to, it seems to me, have to make it harder to
20 get on it.

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

22 **MS. McINTOSH:** And it thereby, perhaps,
23 sacrificing some level of protection for children. So the
24 issue is not as simple as -- none of the issues are before
25 you regrettably, Mr. Commissioner.

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

2 **MS. McINTOSH:** The issue is not as simple as
3 saying, well, let everybody who wants to see it, see it.

4 **THE COMMISSIONER:** I understand that. M'hm.

5 **MS. McINTOSH:** And similarly, the notion
6 that one is re-victimising the abused child by sharing
7 their name with the person whose name is going to be on the
8 register.

9 It certainly is a difficult balance but it's
10 again a balance because the person who's name is on the
11 register has the right to a hearing to attempt to persuade
12 an official to have their name taken off. And, naturally,
13 unless you know something about the person who's alleged --
14 whom you've alleged -- whom one has alleged to have abused
15 and the circumstances, it's very difficult for a person to
16 make the case that their name should come off.

17 So these issues are, again, not easy and I
18 wanted to make sure that we had a complete picture of some
19 of the considerations that arise.

20 The fifth recommendation I wanted to touch
21 on was Ms. Daley's recommendation. I think she said that
22 the Crown could have been more helpful to the OPP in
23 assisting them to think critically about the scope and
24 direction of the Project Truth investigation. And I think
25 the OPP, at least the OPP have made a somewhat similar

1 recommendation.

2 And, again, I note that historically it
3 certainly was not the role of the Crown to actively
4 participate at the investigative stage, and we've said that
5 in our submissions at pages 4 to 11. But more recently,
6 you may recall from the evidence of the Deputy Attorney
7 General, the Lesage-Code report says that that principle
8 ought to be re-thought in large and complex cases, and
9 recommended in -- and, again, it's Recommendations 1 and 2
10 at page 173 of Exhibit 3433 -- recommended active
11 participation by Crowns in large and complex cases. This
12 is something that the Deputy Attorney General referred to
13 as "embedded Crowns", I think, when he was here, and
14 indicated that the Ministry had in fact moved to implement
15 this recommendation in five areas of the Province for major
16 and complex cases.

17 So, again, just to comment on that
18 recommendation and to let you know that there are other
19 resources available to you when you're considering that and
20 other information about the status of those
21 recommendations.

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

23 **MS. McINTOSH:** A number of parties -- the
24 sixth recommendation -- a number of parties have talked
25 about expert training and having expertise in the

1 prosecution -- investigation and prosecution of child abuse
2 allegations. I wanted to remind you, Mr. Commissioner,
3 that the Ministry of the Attorney General already does this
4 and has for a very long time.

5 I ask you to look at Ms. Nethery's will say
6 at pages 19 to 21 for a good summary of this.

7 You will recall the evidence that since 1988
8 every Crown's office in the Province has had a designated
9 special offences -- sexual offences co-ordinator with
10 specialised training in child sexual abuse. And you will
11 also recall, Mr. Commissioner -- and we've set this out at
12 pages 28 to 30 of our submissions -- that there are Crown
13 policies dealing with the prosecution of sexual offences
14 and a specific Crown policy dealing with the prosecution of
15 child sexual abuse. So this area has long been identified
16 as an area where there needs to be specialized training,
17 specialised policies.

18 You will recall that in Toronto, for
19 example, there's a special court for the prosecution of
20 child sexual abuse offences and regular education at Crown
21 summer school with respect to these matters.

22 The seventh area that I wanted to talk about
23 was disclosure issues and there are a couple of different
24 recommendations under disclosure issues.

25 One of the things that Ms. Daley said

1 yesterday was that it should have been anticipated that Mr.
2 Dunlop would be a disclosure problem.

3 I go back, Mr. Commissioner, to our
4 Submissions with respect to the independent duty of the
5 police, the independent duty of the police to make
6 disclosure, to provide disclosure to the Crown in order for
7 the Crown to discharge it's obligation to make disclosure,
8 and we've addressed that in our disclosure submissions.
9 So, in my respectful submission, the Crowns rightfully
10 anticipated that Mr. Dunlop would abide by the duty of the
11 police officer to disclose and would be bound by that.

12 One of the -- a couple of other disclosure
13 issues that have been raised, whether there ought to be
14 some kind of disclosure registry or ledger, whether there
15 ought to be a dedicated disclosure Crown. I think here,
16 Mr. Commissioner, I would refer you to the Crown policy
17 which is set out at pages 18 -- or at least referred to at
18 pages 18 and 19 of our Submissions, Policy 2005, Number 35.

19 That policy basically requires local Crowns'
20 offices to have a system for tracking disclosure. And the
21 reason that it comes down to the local level, as I
22 understand it, is for flexibility frankly, that not all
23 jurisdictions have the same needs and not all cases require
24 the same kind of tracking.

25 So I ask you simply to consider in

1 connection with these sorts of recommendations, Mr.
2 Commissioner, that one size may not fit all and that -- I'm
3 sure that you want to avoid contributing to "red tape" and
4 having people fill out one more form when it might not be
5 necessary.

6 Some cases will clearly require a level of
7 tracking of disclosure that others might not, and the
8 Ministry has two initiatives under way to deal with that as
9 we speak.

10 One is called the 2007 Disclosure
11 Initiative, which is an internal initiative, which is
12 described at Page 19 of our Submissions. This is a working
13 group designed to establish best disclosure practices
14 dealing with topics like the organization of Crown briefs,
15 the sort of formatting or pagination of Crown briefs, the
16 cross-referencing of Crown briefs when there are multiple
17 accused and so on. So there is an internal initiative
18 under way.

19 The Lesage-Code report also deals with
20 disclosure issues. We've summarised that at page 20 and
21 the actual references in the report are Recommendations 3
22 to 8 at pages 173 and 174 of the report. One of the
23 interesting things they recommend is electronic disclosure
24 and, again, they talk about the joint responsibility of the
25 Crown and police to make sure that disclosure is done in an

1 orderly way in major cases.

2 The eighth topic under Recommendations that
3 I wanted to talk about is the concept of dedicated Crowns
4 or teams of Crowns for prosecuting these cases. We deal
5 with that at pages 67 to 77 of our Submissions.

6 The chief point I wanted to make here is
7 that normally a local Crown Attorney's office would
8 constitute a dedicated team for the prosecution of a number
9 of related offences. And the normal practice would be that
10 if there is an administration -- a figure involved in the
11 administration of justice, that would be done by a special
12 prosecutor from the Crown Law Office, Criminal.

13 If there were workload issues or other
14 issues like a conflict, that historically the local Crown
15 Attorney would rely on the goodwill of a neighbouring
16 jurisdiction or ask the regional director to arrange for
17 resources.

18 And that is the way that it was done in the
19 Alfred prosecutions to which Project Truth has been
20 compared on a number of occasions at this Inquiry. That's
21 exactly the process that was followed in terms of
22 resourcing these things for the Crown Attorneys.

23 Mr. Pelletier's office where the team leads.
24 They needed resources. They asked for and got
25 Mr. MacDonald and Mr. Simard from the neighbouring

1 jurisdiction. And Mr. Pelletier, who was involved in both
2 Project Truth and the Alfred prosecutions, considered that
3 Project Truth was adequately resourced for the number of
4 Crowns -- from the point of view of the number of Crowns,
5 in his view as being I think the only person who was
6 directly involved in both.

7 I think in the Alfred situation, there were
8 20 accused and 165 complainants, and that was known from
9 the outset. In Project Truth, if my math is right, there
10 were 15 accused, some of whom I think died -- I know some
11 died; I just have lost the number for the moment -- and 34
12 complainants. In fact I think three of those 34 were
13 Project Truth. So certainly from Mr. Pelletier's
14 perspective, as he then was, the number of Crowns was not
15 inadequate.

16 It was -- so but for these unfounded
17 allegations against Murray MacDonald, what would have
18 happened is that the local Crown's office would have been
19 the team prosecuting these offences, perhaps with --
20 certainly with assistance from Special Prosecutions for the
21 administration of justice, figures, lawyers and coroners
22 and so on. And perhaps if necessary with someone from a
23 neighbouring jurisdiction returning the favour from the
24 Alfred prosecutions, and would have had a built-in
25 experienced team in Mr. MacDonald and Mr. Simard, who had

1 both successfully prosecuted these sorts of offences in
2 Alfred.

3 Now, as I said, historically those kinds of
4 arrangements were made based on good will. I think there's
5 an email in the material where Mr. Stewart says, "The East
6 is really going to owe you one." It was that sort of
7 arrangement. But obviously since that time the Ministry
8 has developed a Major Case Management Policy that you've
9 heard about both from Ms. Nethery on the theoretical level
10 and from Mr. Stewart on a more practical level.

11 I wanted to point out that there is a typo
12 in our submissions in the Executive Summary at Roman
13 numeral VI and again at page 235 where it says the policy
14 came into force in 2003. That's not correct; it should say
15 2001. I apologize for that. It says 2001 elsewhere but
16 for some reason ---

17 **THE COMMISSIONER:** Major Case Management
18 Protocol?

19 **MS. McINTOSH:** Yes.

20 **THE COMMISSIONER:** Established in 2001 and
21 not 2003?

22 **MS. McINTOSH:** Yes, thank you.

23 And of course this is a more formal process
24 for resourcing major cases, and I think a number of
25 witnesses here acknowledged that certainly the protocol was

1 not in existence at the time that Project Truth was
2 founded, and again the scope of the charges was not known
3 at the outset. But a number of people have acknowledged
4 that in hindsight that this probably should have been
5 recognized as a major case somewhere along the line.

6 In practical terms, the protocol operates
7 the same way. In other words, there is a formal -- while
8 there's a formal identification, the resources -- the
9 protocol still assumes that the local Crown's office will
10 be the team prosecuting the offences, and the policy
11 provides for other Crowns to come in and do the day-to-day
12 work of the office to free up the local Crown's office. So
13 that's the way the Major Case Management Policy works.
14 And, as I say, it is a more formal process. You don't have
15 to rely on the good will of your neighbouring Crown's
16 offices to get resources.

17 The Major Case Management Protocol does not
18 address what happens when the built-in team of the local
19 office cannot conduct the prosecution by reason of conflict
20 or being engaged, for example, in another major case, or
21 illness or something like that. And that is an area where
22 the Ministry has undertaken review the policy in connection
23 with any recommendations that might come out of this
24 Inquiry.

25 Two more recommendations I wanted to touch

1 on, Mr. Commissioner. The next is the recommendation that
2 priority be given to sexual assault cases. And the point I
3 want to make here, Mr. Commissioner, is that the Ministry
4 of the Attorney General has historically and continues to
5 recognize the need to prioritize important cases including
6 sexual assault cases, and especially including sexual
7 assault cases against children.

8 And I refer again, Mr. Commissioner, to
9 Policy 2006 Number 8, which is at page 28 of our
10 submissions, and it says that:

11 "Crown counsel in each jurisdiction
12 should make best efforts to expedite
13 trials in cases of child abuse and
14 other serious cases involving children
15 ..."

16 And it continues that:

17 "... this is because the passage of time
18 may affect a child's recall of details,
19 may increase the child's anxiety and
20 prolong trauma to a child."

21 So this was, as I say, a 2006 policy. So
22 historically the Ministry recognized the need to expedite
23 these cases, and again there are two recent initiatives
24 that recognize the need to prioritize these important
25 cases.

1 One is Justice on Target, which the Deputy
2 Attorney General spoke about when he was here and we've
3 summarized that at page 75 of our submissions. You'll
4 recall that he said there are some 600,000 charges in
5 Ontario annually, a quarter of a million accused. Ninety
6 (90) to 95 percent of those are what one might call
7 routine. I think that was -- this is my word, not his --
8 not to diminish their importance to those involved, but
9 routine cases as opposed to large and complex cases.

10 And the initiative, the Justice on Target
11 initiative is to reduce court appearance time, length of
12 trial time by one-third in those 90 to 95 percent of cases
13 so that there are more resources and more time available to
14 these large complex cases. So that's one initiative that's
15 ongoing.

16 And the other is again from the LeSage Code
17 Report. The relevant sections are -- relevant
18 recommendations are 9, 10, 12, 14 and 39 as I read the
19 report, beginning at page 174 of the report and following.

20 Very quickly, those recommendations include
21 appointing a trial judge as soon as possible. If that's
22 not feasible, appointing a case management judge. That
23 particular recommendation, the case management judge
24 recommendation, according to the LeSage Code Report,
25 requires a *Criminal Code* amendment and so Recommendation

1 Number 12 is a complementary recommendation saying that the
2 federal/provincial justice ministers ought to get together
3 and move that amendment -- try to move that amendment
4 along.

5 And you'll recall in his evidence,
6 Mr. Commissioner that the Deputy Attorney General said that
7 that's what he had been doing just before he came to
8 testify. He'd been at this federal, provincial and
9 territorial justice ministers' meeting where he moved for -
10 - to obtain the approval of that group to move those
11 recommendations to a senior committee in order to advance
12 that *Criminal Code* amendment.

13 Number 14 deals with pre-hearing
14 conferences. And number 39 deals with audits of long and
15 complex trials after the fact, should there be a perception
16 that there was something ineffective about the prosecution.
17 So all of those things are under consideration and some of
18 them have already started.

19 The last recommendation, I think it's
20 fitting that I deal with that here, is -- concerns victim
21 services, and again we deal with this at pages 77 to 88 of
22 our submissions. And, just generally, the victim witness
23 supports program was established by the Attorney General
24 for Ontario in 1986, with 12 VWAPs in eight court sites, in
25 the highest volume sites.

1 It was a response to the Badgley report,
2 which you've heard a lot about. Ontario was a trailblazer,
3 a leader in this area. Today there are 56 VWAPs all over
4 the province, including one in Cornwall which was
5 established in October of 2001.

6 We deal specifically with victims services
7 for Project Truth, beginning at page 78 and following of
8 our submissions. And note that as early as 1999, the
9 Ministry of the Solicitor General, as it then was, funded
10 the Men's Project to provide counselling services for the
11 complainants in Project Truth.

12 As you well know, there was no Cornwall VWAP
13 office at the time the first charges were laid, and so Ms.
14 Chase, from the Ottawa office, did work one or two days a
15 week in -- beginning, I think, in January or February of
16 2000.

17 I think the -- may I respectfully submit
18 that the efforts of Shelley Hallett in connection with
19 obtaining victims services in Project Truth ought to be
20 recognized here.

21 She certainly went, in my respectful
22 submission, the extra mile here to arrange for these
23 services and to make sure that the other Crowns were
24 reminded of the availability of the services, and provided
25 with precedents, and so on, to use in arranging for these

1 services.

2 By August -- by June of 2000, the Ministry
3 had approved additional VWAP services for Project Truth,
4 and in August and September, Ms. Lamoureux began to provide
5 those services, not only to victims or complainants, but
6 also, although it's not normally part of the mandate, to
7 the families of victims and complainants in these
8 particular cases.

9 And, again, I wanted to remind you,
10 Mr. Commissioner, that there is a Crown policy. Again,
11 it's Policy 2005 Number 11, also cited at page 28 of our
12 submissions, which is a practice memorandum dealing with
13 communication with victims of -- between victims and -- by
14 Crowns with victims, in sensitive cases. The practice
15 memorandum requires that there is a protocol in place in
16 each jurisdiction to identify sensitive cases.

17 It suggests that Crown counsel should be
18 assigned at an early stage and, where practicable, continue
19 with the carriage of the case throughout the proceedings.
20 It does oblige Crowns to ensure that the victim is made
21 aware of significant changes in the status of cases, and to
22 consult with them about resolutions, and so on.

23 All of that much more -- that policy was
24 dated 2005 -- all of that much more efficiently handled,
25 now that there is VWAP in Cornwall, than it was

1 historically.

2 You'll remember that Mr. MacDonald offered a
3 sincere apology to any victim or complainant who did not
4 get that kind of information from the local Crown's office,
5 and indicated that before there was a VWAP office, there
6 were sometimes gaps in that kind of service provided.

7 In this area, I just wanted to conclude by
8 saying that within the role of the Crown -- which is not to
9 secure a conviction, as I said before, but, rather, to put
10 the best credible evidence before the trier of fact, and
11 understanding that Crowns are not lawyers for victims or
12 complainants.

13 I think it's fair to say that, while there
14 may have been some mistakes made during the course of these
15 prosecutions, there is no way, in my respectful submission,
16 that any finding could be supported that would suggest that
17 the Crowns did not make an honest effort and demonstrate
18 full commitment to the prosecution of these cases, to the
19 best of their ability.

20 So, in conclusion, Mr. Commissioner, with
21 respect to these various recommendations, I just wanted to
22 emphasize to you that there are -- again, there have been a
23 great many changes since these events.

24 There are Crown policies, both the Policy
25 Manual, the Major Case Management Protocol, and the Victim

1 Witness Services -- the Ontario Victim Services Secretariat
2 Policies which cover a number of these areas, and then a
3 number of these recent initiatives, that I've discussed,
4 that address many of the areas that you are concerned with
5 in this Inquiry.

6 But, simply to conclude, by assuring you
7 that the Ministry of the Attorney General is always looking
8 for ways to improve the justice system, and will undertake
9 to review these major policies in light of your
10 recommendations in your report.

11 Thank you.

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

13 So we come back at 9:30 tomorrow?

14 **MR. ENGELMANN:** Yes, sir.

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

17 This hearing is adjourned until tomorrow
18 morning at 9:30 a.m.

19 --- Upon adjourning at 3:18 p.m. /

20 --- L'audience adjournée à 15:18

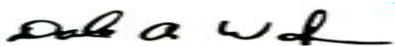
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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM