

**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 348

Held at :

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

Wednesday, February 25, 2009

Tenue à:

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

Mercredi, le 25 février 2009

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Lori Beaudette	Registrar
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. Tilton Donihee	
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Joe Neuberger	
Mr. Darrell Kloeze	Ministry of the Attorney General
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Ms. Michele Allinotte	
Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. David Bennett	The Men's Project
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police
Mr. Mark Wallace	Association
Mr. Frank T. Horn	Coalition for Action
Mr. Ian Paul	

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DESCRIPTION

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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, sir.

15 **MR. ENGELMANN:** Today we have a number of
16 parties making submissions, commencing with the Children's
17 Aid Society of Stormont, Dundas and Glengarry.

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

19 **MR. ENGELMANN:** My friends, Ms. Allinotte
20 and Mr. Chisholm, will be making those submissions shortly.

21 Afterwards, we have the submissions of
22 Jacques Leduc, just before the lunch hour. So right now
23 the plan, sir, was 9:30 to 11:30 for the CAS, a 15-minute
24 break and then 11:45 to 12:30, the submissions of Jacques
25 Leduc. Ms. Robitaille is here this morning.

1 THE COMMISSIONER: M'hm.

2 MR. ENGELMANN: This afternoon we have the
3 submissions of the OPP ---

4 THE COMMISSIONER: M'hm.

5 MR. ENGELMANN: --- from 1:30 to 3:30 and
6 the OPPA from 3:45 to 4:45, and that is our schedule for
7 today.

8 THE COMMISSIONER: Okay, thank you.

9 MR. ENGELMANN: Thanks.

10 THE COMMISSIONER: All right.

11 Ms. Allinotte?

12 --- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MS.

13 ALLINOTTE:

14 MS. ALLINOTTE: Good morning, sir.

15 THE COMMISSIONER: Good morning.

16 MS. ALLINOTTE: As you know, my name is
17 Michele Allinotte and I'm counsel for the Children's Aid
18 Society of the United Counties of Stormont, Dundas and
19 Glengarry.

20 I'll be speaking to you about some of the
21 themes we've seen here at the Inquiry ---

22 THE COMMISSIONER: M'hm.

23 MS. ALLINOTTE: --- to provide a context for
24 discussion of the actual cases reviewed which will be done
25 by my colleague, Mr. Chisholm.

1 I will start with some introductory comments
2 and then I'll move on to review a brief history of the CAS;
3 legislation and standards over time; the definition of
4 caregiver; comparative responses to historical sexual
5 abuse; records disclosure; development of protocols;
6 screening, training and supervision of foster parents and
7 employees; investigation of foster parents; corporal
8 punishment; and notifying employers.

9 So, firstly, thank you for the opportunity
10 to allow us to do oral submissions.

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

12 **MS. ALLINOTTE:** In our opening statement, we
13 indicated that if the CAS had failed to respond
14 appropriately to the matters addressed at the Inquiry, we
15 wanted to be told about it. That being said, we must
16 remember that what we heard at the Inquiry is not the full
17 story.

18 There was only a handful of CAS files that
19 were reviewed and we had had an open-door policy throughout
20 that Inquiry regarding file disclosure. Every one of the
21 20,000 files that the CAS has would have been produced if
22 it had been requested. We understand that the Commission
23 could not look at all of these cases. It was obviously not
24 possible, but we trust that you appreciate that there have
25 been many more stories over the last century of the local

1 CAS and one only has to look at the number of registrations
2 we've made with the Child Abuse Register to know that we've
3 intervened in many cases of child sexual abuse and
4 registered a large number of individuals on that registry.

5 It is said that you view yourself
6 differently when looking through another's eyes and the CAS
7 has seen the evidence unfold over the last three years and
8 this has assisted in an understanding of our operations in
9 the past.

10 We acknowledge that the CAS did, at times,
11 fail to respond appropriately to certain matters addressed
12 here at the Inquiry. We also recognize that at times we
13 failed to fully protect wards in our care from
14 mistreatment.

15 We are also aware of the frustration and
16 dissatisfaction former wards expressed here with the
17 records disclosure services they received from the agency.
18 We have learned from former wards and their need for
19 information about their past. We have already made changes
20 to improve this service and we will continue to strive to
21 improve it to fully meet client needs.

22 We also want to acknowledge and thank all of
23 the alleged victims and witnesses who testified here in
24 regards to the CAS. We recognize that it was not an easy
25 task for anyone. In particular, we want to thank the

1 witnesses for their recommendations that they provided at
2 the end of their testimony.

3 We offer all of the individuals impacted our
4 deep regret for any harm that may have been caused as a
5 result of the shortcomings of the CAS. Again, by coming
6 forward here at the Inquiry, these witnesses have given us,
7 the other institutions involved and the Commission a chance
8 to make it right.

9 Long before the Inquiry began, many of the
10 problems discussed in evidence here had been addressed and
11 corrected. The CAS of today operates much differently than
12 the agency of the past. We are confident that this is true
13 for child welfare agencies generally.

14 As I indicated earlier, we must remember the
15 context in which these events that we discussed happened.
16 When you look with today's eyes, some of the past actions
17 of the CAS and other institutions seem deeply flawed, even
18 shocking and ignorant, but we must remember that the
19 mandate of the Inquiry is to look forward and back at the
20 same time to determine if the response was appropriate at
21 that time.

22 Some have expressed the opinion that it is
23 not enough for institutions to say, "We didn't know". To
24 put the thinking of the times into perspective, let's think
25 about some other things that society did not know during

1 the sixties, seventies and eighties at various times.

2 We didn't think that using seatbelts could
3 save lives. We didn't even think of using seatbelts until
4 many people died tragically in accidents that could have
5 been prevented.

6 For the longest time, we were oblivious to
7 the damage of second-hand smoke, and even before that we
8 didn't even think that smoking cigarettes could be harmful
9 to your health.

10 We thought it was reasonable and acceptable
11 to punish children in schools by hitting them on the hand
12 with a leather strap.

13 I could cite many more examples here, but as
14 we all know, there were many things done or not done in the
15 past, then when you look at them today they seem illogical
16 and primitive. It is hard to believe that people did not
17 recognize that certain things were so wrong and could be so
18 easily prevented.

19 Coming back to the topic of child sexual
20 abuse, one of the experts who testified here at the
21 Inquiry, Dr. Wolfe, described the response to allegations
22 of child sexual abuse as an evolving process. Dr. Wolfe
23 stated that no one can be blamed for not being as aware as
24 we are today about how to address these problems because we
25 simply didn't know how paedophiles worked and some of the

1 warning signs as well as we do today.

2 As stated in your opening statement, Mr.
3 Commissioner, the purpose of the Inquiry is to find out
4 what happened, what went wrong, and look at what can be
5 done to avoid similar occurrences. The CAS has supported
6 this mandate as reflected by its full cooperation with the
7 work of the Commission. We look forward to your
8 recommendations in a final report so that our agency and
9 other agencies across Ontario can better serve the public
10 and better fulfill our child protection mandate.

11 In order to consider the response of the
12 agency at different points in time, it is helpful to review
13 what the CAS of the past has looked like.

14 The agency began in 1908. Mr. O'Brien
15 testified that in the mid-1960s the agency had 15 employees
16 including himself, Executive Director, and two supervisors
17 and clerical staff. There were two units of frontline
18 workers ---

19 **THE COMMISSIONER:** I'm sorry. There were?

20 **MS. ALLINOTTE:** Excuse me? Two units of
21 frontline workers, sorry.

22 One did investigation, follow-up services
23 for protection investigations and looking after the
24 temporary wards. The other unit handled foster care,
25 adoption and looking after permanent wards.

1 During the sixties and seventies, the Child
2 Protection Department was the largest department and each
3 worker in that department carried 20 to 30 files.

4 As one would expect at that time, all agency
5 records were in paper form and all forms of record
6 retrieval were done manually.

7 A review of the agency was conducted in
8 1998, which I will call the "Dawson Review". Caseload
9 levels were much higher than the standard of the time; up
10 20 cases per worker. The workload for supervisors was also
11 higher than the numbers found in other agencies and Mr.
12 Dawson noted that they were impossibly high. This placed
13 excessive demands on supervisors and made it difficult to
14 provide the level of supervision necessary in child
15 protection cases. Mr. Dawson noted that ideally at the
16 time, supervisors should have -- excuse me, should
17 supervise six ---

18 **THE COMMISSIONER:** Excuse me. The
19 interpreters are asking me to tell you ---

20 **MS. ALLINOTTE:** To slow down ---

21 **THE COMMISSIONER:** --- to just ---

22 **MS. ALLINOTTE:** --- I have ---

23 **THE COMMISSIONER:** --- to slow down.

24 **MS. ALLINOTTE:** I have provided them my
25 notes, but I will slow down.

1 **THE COMMISSIONER:** All right. Great, thank
2 you.

3 **MS. ALLINOTTE:** Okay.

4 Mr. Dawson noted that at the time
5 supervisors should ideally supervise six to eight staff.

6 Bill Carriere, when he testified -- he was a
7 supervisor at the time of the review -- he said his own
8 situation at the time was that he was supervising 10 staff
9 and, in addition, he was responsible for a number of
10 programs.

11 The case that precipitated the Dawson Review
12 was dealt with only briefly here at the Inquiry. Bill
13 Carriere testified to this issue and no other witnesses
14 were questioned about it.

15 Most of my colleagues do not buy into the
16 argument about lack of resources in child welfare. It is
17 widely acknowledged in the 1970s and eighties and even into
18 the early nineties, agencies -- and not just the CAS --
19 were plagued by severe shortages of resources to deal with
20 child sexual assault.

21 Professor Stalker in her report for the
22 Inquiry titled "Policies and Practices of Child Welfare
23 Agencies in Response to Complaints of Child Sexual Abuse,
24 1960 to 2006 which is Exhibit 236A -- I will call this the
25 "Stalker Report" -- this report refers to this lack of

1 resources, concluding that limited resources appeared to
2 lead restrictions in the involvement of CAS in cases of
3 extra-familial child sexual abuse and limited availability
4 of police in some regions to conduct joint interviews.

5 By the 1990s when Mr. O'Brien retired, the
6 CAS had 53 employees and 5 supervisors. In 2006, when our
7 corporate presentation was submitted, there were 121
8 employees, 21 managers, including 12 contract positions
9 both full- and part-time. As of March 1st, 2006, there were
10 363 children in care and 112 open foster homes.

11 The numbers of children in care have
12 fluctuated very little since the '60s and we've heard
13 evidence here that the population of this community has not
14 increased dramatically either. In fact it may be that this
15 actual City of Cornwall population has decreased since the
16 '60s, yet the numbers of staff to deal with these resources
17 has increased dramatically at the CAS. It is respectfully
18 submitted that the CAS of a generation ago cannot be judged
19 by the CAS of today's standards.

20 Moving on now to the law and standards that
21 existed at various points in time; the first child
22 protection legislation was enacted in 1927. From then
23 until today and especially in the '60s and '70s, child
24 protection law has changed dramatically. Before 1960,
25 there was no legislation or standards related specifically

1 to child sexual abuse anywhere, and this is from the
2 Stalker Report.

3 In Ontario, sexual abuse was not defined in
4 the law until 1978, and the duty to report was not part of
5 the law until 1966. There were major changes to child
6 protection law in 1984 with a new Act called the *Child and*
7 *Family Services Act*, and the duty to report at this time
8 was made even stronger and there were subsequent amendments
9 to that duty as well.

10 The 1984 changes to the legislation were the
11 first time that sexual abuse was referred to in the context
12 of a child in need of protection.

13 **THE COMMISSIONER:** I'm sorry, when was that
14 again?

15 **MS. ALLINOTTE:** In 1984.

16 **THE COMMISSIONER:** Yes.

17 **MS. ALLINOTTE:** The 1984 changes also set up
18 the criteria for alleged abusers so that alleged abuse may
19 fall under the responsibility of the Society. Section
20 79(2) of that Act prohibits anyone from having charge of a
21 child from afflicting abuse on that child or permitting
22 that child to suffer abuse by failing to care and provide
23 for or supervise and protect the child adequately.

24 So what does this mean? What it means is
25 that the abuse of a child by a person who is not in charge

1 of that child or does not have responsibility for caring
2 for that child is not reportable abuse as defined under the
3 Act.

4 Before 1979, the CAS had no standards as to
5 how a referral to them was to be categorized, be it serious
6 or not serious and what time of response was appropriate.
7 There were also no standards on how to conduct a child
8 abuse investigation. Child protection workers of the day
9 were truly working without a net. Guidelines were
10 introduced in 1979 that mandated that allegations of abuse,
11 as opposed to neglect or other mistreatment, were to be
12 managed differently.

13 Revised standards were introduced in '92.
14 These were no longer guidelines but now are mandatory
15 standards. In '92, this is the first time that historical
16 abuse is referenced. Even then at the time, those
17 guidelines stated that a person making an allegation of
18 historical abuse should be referred to the police and
19 offered assistance by the CAS only if there was an
20 allegation or evidence that a child under 16 is at risk or
21 may be abused; and this is in '92.

22 In 1998, with the introduction of the risk
23 assessment model for child protection in Ontario, or ORAM,
24 and the eligibility spectrum, referrals were now
25 categorized. For the first time there was a section that

1 specifically considered historical child maltreatment in
2 the eligibility spectrum. For the time also CASs were
3 given direction on situations that may be outside their
4 mandate for investigation, so the eligibility spectrum in a
5 sense was an intervention line created. ORAM was updated
6 again in 2000 and 2006, and the 2006 standards are used
7 today.

8 In terms of file recording, everything has
9 been standardized across the province since '98. Before
10 then there was no set format for file recording. We have
11 evidence here that it was standard of this CAS to make
12 notes as the information came to the worker or within
13 24 hours of that event. Many witnesses testified that this
14 was the case as far back as the '70s.

15 The CAS has retained all of its files,
16 either in vaults or on microfiche and there were no
17 standards introduced here or in the legislation as to what
18 our document retention policy should be, so the CAS has
19 kept every file.

20 Moving on now to the definition of
21 caregiver, which has been a theme here; there is a common
22 misperception that the CAS will get involved any time a
23 child is harmed. This isn't true. CAS and its workers are
24 expected by the current legislation, standards and
25 guidelines to direct their attention only to cases where

1 the abuser or alleged abuser is perceived to be in charge
2 of or a caregiver to the child. The challenge here is to
3 interpret the phrase "having charge of". There's been
4 different standards introduced to assist in this.

5 In 1981, the standards told workers that for
6 a person to be found to have abused a child that person
7 must have a relationship with the child and the child abuse
8 must occur within this relationship. Only someone who is
9 in the role of a parent or a substitute parent figure could
10 be found to be the abuser of a child at that time.

11 In 1992, the standards changed the
12 definition of "in charge of" to expand it to anyone having
13 responsibility for a child. The determination of whether
14 or not a person is in charge of a child will depend on the
15 facts of the situation. Examples might be babysitters,
16 teachers, a big brother or sister, a recreation worker.

17 So child protection workers may not
18 necessarily have a role in cases where the abuser doesn't
19 meet this definition of a caregiver or a person in charge
20 of. The 1992 standards said that the abuse of a child by a
21 person who is not in charge of the child is not reportable
22 abuse. For an example, they cite the situation of sexual
23 molestation by a stranger. The involvement of the CAS in
24 such situations would be discretionary and in most cases
25 this would be dealt with by the police under the *Criminal*

1 *Code.*

2 Beginning in 1998 with the eligibility
3 spectrum, situations where a child has been harmed by
4 someone who is not a family member and not a caregiver are
5 below the intervention line on the eligibility spectrum.
6 In other words, these cases are not generally seen to be
7 within the mandate of the CAS to investigate. Bill
8 Carriere in his corporate presentation and his
9 institutional response testimony pointed out that it is not
10 always easy to determine if one was in a caregiving role.
11 His thinking in 2008 was very different than in 1985. It's
12 still in the '80s. Mr. Carriere broke new ground when he
13 became a supervisor and accepted cases for investigation
14 that were previously seen to be outside of the mandate.

15 We submit that clarification in the
16 definition of caregiver is required in order to provide
17 certainty as to when the Agency does or does not get
18 involved in an allegation of abuse, especially in
19 extrafamilial situations. John Liston, an expert who
20 testified here at the Inquiry and is an expert regarding
21 child welfare responses to sexual abuse agreed that it is
22 not always an easy task to determine if someone is in
23 charge of a child:

24 "While we think of a child primarily in
25 the care of their parents, mother and

1 father or guardian, a parent, and that
2 can be a step-parent and so on, so we
3 think primarily in terms of those terms
4 but 'in charge of' can be and has been
5 spoken of within the -- when the child
6 is with a teacher, can be a Scout
7 leader, can be a big brother. But when
8 you get into that area, when you get
9 into that 'in charge of' there is some
10 interpretation and it's not going to be
11 black and white. You're going to have
12 to take a look at, 'Is that a
13 physician?' or a person would say,
14 'Yes, I thought my child was being
15 cared -- you know, somebody was in
16 charge of them,' and that's a ..."

17 And that's the end of the quote and that's a
18 direct quote from Mr. Liston. I apologize, it was a little
19 jumbled. If Mr. Liston in his testimony was questioning
20 whether or not a physician is in a caregiving role, it does
21 not seem unreasonable that one would consider whether a
22 park caretaker, a zamboni driver, is in a caregiving role.

23 Another expert here testified, Dr. Wolfe.
24 He also indicated that when the perpetrator is outside of
25 the family, it is almost always the police who investigate

1 allegations of extrafamilial child sexual abuse. He also
2 explains that child welfare authorities would become
3 involved if the accused has any child care
4 responsibilities, such as a family member living in the
5 home or a babysitter who would be caring for other
6 children.

7 In addition, the Stalker Report which I've
8 already referred to also found that child welfare agencies
9 were limited by the eligibility spectrum in terms of their
10 involvement in extrafamilial sexual abuse cases and that in
11 Ontario, where involvement does not always fall within the
12 eligibility spectrum, involvement in such cases by the CAS
13 is discretionary.

14 Another focus that we looked at here,
15 obviously, is historical child sexual abuse. Again the
16 Stalker Report looked at this issue and their researchers
17 commented on lack of information available about responses
18 to historical sexual abuse. After an extensive literature
19 search, the researchers were surprised to find that no
20 documents other than child welfare legislation and Ministry
21 standards and guidelines addressed the topic of how child
22 welfare agencies have responded to historical child sexual
23 abuse over the years.

24 The report also noted that child welfare
25 agencies in historical sexual abuse cases response depended

1 on the circumstances of the case. The degree of perceived
2 risk, the availability of background information and the
3 availability of staff determined how the agency would
4 respond. This is a quote from the paper:

5 "All agencies, when historical abuse is
6 reported to them and it is believed
7 that a child under 16 years is at risk,
8 do background checks, attempt to obtain
9 police reports or past treatment
10 reports on the alleged offender and
11 sometimes do a safety
12 interview/screening with potential
13 victims. The decision to take these
14 steps depends on the degree of risk the
15 alleged offender is perceived to pose,
16 the availability of background
17 information on the alleged offender and
18 the availability of staff to conduct
19 safety assessments."

20 The three agencies reviewed in the Stalker
21 Report all indicated that, as of the time the research was
22 conducted -- so, when this Inquiry was going on -- they had
23 no formal policy or protocol with respect to response to
24 allegations of historical sexual abuse, and the responses
25 to these allegations must be individualized in each case in

1 order to balance the rights of the alleged offender with
2 the degree of risk to children. This is not any different
3 in the situation here in Cornwall.

4 Another issue that was frequently discussed
5 here is records disclosure. John Liston, in his testimony,
6 indicated that, and I quote:

7 "Well, the Societies, I mean, it's in
8 terms of disclosure. It's got a whole
9 lot of issues in terms of disclosure to
10 former clients, to adoption, to
11 adoptees in a whole variety of areas
12 and information-sharing, and what are
13 the guidelines around that, and it
14 hasn't been clarified because the
15 legislation hasn't been proclaimed."

16 And, this is an expert who testified here at
17 the Inquiry.

18 We heard evidence that disclosure of
19 records, until recently, at the CAS, was done on an ad hoc
20 basis by intake workers who worked on such requests as they
21 had time, and there were not enough resources directed to
22 the issue of records disclosure.

23 The historical procedure was that summaries
24 of a file would be provided, but the file itself would not
25 be reviewed and would not be directly provided to the

1 former ward. This position was consistent throughout the
2 request, by the witnesses heard here, Ms. Sutherland, Ms.
3 Judd and C-14.

4 Eventually, policy did change, commencing
5 with Ms. Sutherland and redacted or blacked-out versions of
6 the child care file would be provided directly to the
7 individual. Any information about third parties would be
8 taken out.

9 When this was first done, the agency saw it
10 as breaking new ground, and the first time it's ever
11 happened was when a worker travelled to Hamilton to meet
12 with Catherine Sutherland to review the blacked-out version
13 of her file. Subsequently, the file was provided directly
14 to Ms. Sutherland as well.

15 Most of the former wards who testified here
16 about he disclosure issues had requested their entire file.
17 It is the position of the CAS now, and then, that the full
18 file can't be disclosed. There must be a balancing act
19 between a former wards' right to know and the privacy of
20 third parties whose names and information are in the
21 documents. One does not simply give up the right to
22 privacy by virtue of being involved in the life of a CAS
23 ward.

24 In testimony, and in submissions, there's
25 been a suggestion that CAS has tampered with records, and

1 that there had been rampant non-disclosure and self-
2 protection, and that the CAS has actively misled people
3 about what information was in their file. We submit that
4 there is simply no evidence to support these allegations.

5 All of the CAS witnesses who testified about
6 records disclosure indicated they were following the
7 procedures they had at various points in time, and Mr.
8 Carriere specifically indicated that he'd been directed to
9 deal with disclosure issues in such a way as to avoid
10 litigation.

11 Currently, there's no law enforced that
12 mandates records to be provided to a former ward. If the
13 CAS were trying to blatantly not disclose records, or
14 exercise self-protection, it could have simply refused to
15 disclose records, as there is no legal obligation upon them
16 to do so.

17 Instead, in the absence of any guidance or
18 legislation on this issue, or adequate resources to deal
19 appropriately with it, the local CAS developed practices
20 that they thought were appropriate at the time, in an
21 attempt to deal with all of the interests at stake.

22 Evidence was heard from several CAS
23 witnesses that the demand for records disclosure far
24 exceeded the resources available to meet this demand in a
25 timely fashion.

1 While there's no law presently regarding
2 records disclosure, there is a draft law in Part 8 of the
3 *Child & Family Services Act*. This section has been in
4 draft form since 1990. It has not been proclaimed by the
5 legislature and has no legal force and effect.

6 If this section, or another section with
7 alternate provisions, were proclaimed, it would provide an
8 effective mechanism, both for former wards and for CAS --
9 the Children's Aid Societies to have a consistent framework
10 to work with and for handling disclosure requests, and it
11 gives the wards a mechanism on how to get the request and
12 to grieve decisions that may be made.

13 Another complaint that many of the former
14 wards had, regarding records disclosure, was that
15 information was kept from them. In certain decisions --
16 excuse me -- in certain instances, a decision was made not
17 to release some information because it might have been
18 emotionally damaging. It should be noted that the draft
19 law, in Part 8 of the current Act, continues to maintain
20 this practice, information can be withheld if it would be
21 emotionally damaging, although there is a board that the
22 ward can go to, to challenge that.

23 One of the things we've heard here from the
24 wards is the importance of information to them. We've
25 already taken steps to improve our practices, to meet this

1 need.

2 We have no evidence here as to what other
3 agencies do regarding records disclosure. We can't point
4 to another CAS and say, "This is how you handle disclosure
5 requests," because we don't have any evidence of that.

6 Having said that, we now know that our
7 records disclosure experiences with many clients have been
8 satisfactory and people were pleased with the efforts we
9 made and with what they received. There were no examples
10 of this heard here, but we also know from the evidence that
11 some people have not been satisfied.

12 As we stated in our written submissions, and
13 we are again stating today, we apologize. We have made
14 changes to our disclosure processes and we will continue to
15 strive to improve this service as far as our resources
16 allow.

17 Another issue we talked about here is the
18 development of protocols between various agencies. Many of
19 the institutions are here today. The Stalker Report, in
20 another paper commissioned for the Inquiry -- I don't have
21 the full name, but it was by Dr. Hornick, and I will call
22 it the Hornick Report -- both of those reports show us that
23 communities outside of Cornwall have created protocols as
24 well, but at different points in time. There is no point
25 in time when every community has had a protocol.

1 The protocols can be short or long, and can
2 involve only two agencies, or multiple agencies. There is
3 no evidence presented here to indicate when all other
4 Children's Aid Societies in the province had such
5 protocols, or even if they have such protocols now.

6 Even before this area had a formal child
7 sexual abuse protocol, our agency had a good rapport with
8 all of the agencies involved in the response to child
9 sexual abuse. Mr. O'Brien testified to this.

10 When a protocol was developed, our agency
11 had a lead role in developing it, with the creation of the
12 Child Abuse Prevention Council in '86, and then the sub-
13 committee to deal with the protocol.

14 The sub-committee worked for several years
15 at developing a protocol, but, in the meantime, we've heard
16 testimony from more than one agency that many of the
17 measures that became part of the protocol were being
18 followed even before it was proclaimed. Cooperation
19 between the CAS, the police, hospitals and boards of
20 education were enhanced through this process.

21 A final protocol was in force in 1992, and
22 then it was amended in 2001 to include Eastern Ontario.

23 Moving on now to screening of foster parents
24 and employees, this is another process that has continually
25 evolved. Before '84, screening requirements were not the

1 same as they are today. The '84 legislation made screening
2 for foster parents, including police checks, pre-service
3 training, interviews of birth children, and interviews with
4 each applicant individually and then the couple together,
5 plus a health safety check of the home, mandatory.

6 Before '84, Society policy was that criminal
7 records checks on foster parent applicants were not
8 performed. This is as a result of policy decisions at
9 upper levels, not in the agency. We did start doing
10 criminal record checks as early as 1984 -- perhaps earlier,
11 but we couldn't find evidence of that, although the
12 requirement to do so was not in force until 1985. And the
13 requirement to do checks on all volunteers, employees, and
14 anyone providing direct service to children was not in
15 effect until 1995. We have been doing this since '84, and
16 we're ahead of the curve regarding obtaining these checks.

17 Since 2005, a police involvement in
18 vulnerable sector reference is also completed for foster
19 homes on all individuals over 18 in the home.

20 We haven't been able to use Fast Track or
21 the CAS Register -- excuse me -- the Child Abuse Register,
22 to search for screening of staff, foster parents,
23 volunteers, et cetera, but we do search our internal
24 records and provincial records.

25 In addition to the screening processes used

1 on foster parents, employees obviously have to go through
2 the regular résumés, reference checks, et cetera.

3 We've heard no evidence as to how other
4 Children's Aid Societies have handled the screening of
5 foster parents in place through the years, and we submit
6 that our procedures were appropriate for the time.

7 Training of foster parents and employees
8 was also a concern. Again, before '85 there was really no
9 training for foster parents. We didn't have the resources
10 to deal with it, and resources did not improve on this
11 issue until the late '80s and '90s.

12 But, commencing in '85, a very comprehensive
13 pre-service training program was mandatory for all existing
14 foster parents, and new foster parents, and, when this
15 program was first established in '95, a full-time foster
16 parent trainer was hired.

17 John Liston testified about the lack of
18 training that professionals had regarding child sexual
19 abuse, in the past. They felt bewildered and unsure. When
20 John Liston was giving this testimony, you commented that
21 the professionals' reactions were reflecting that they were
22 learning at the time about child sexual abuse.

23 In the '60s and '70s, there were no minimum
24 educational or training requirements for child protection
25 workers, and no training standards existed, and there was

1 really no training available for sexual abuse in the '70s.
2 And we've heard this from many witnesses.

3 Another expert who testified here, Professor
4 Bala, stated that there was considerably more training
5 available in '88 compared to '78.

6 If you compare 1988 to 1978, we've gone up a
7 very steep slope and had enormous change and a lot more was
8 available by '88. The Stalker Report also reviews this
9 issue. The first training program on child sexual abuse
10 for child welfare workers in Ontario wasn't offered until
11 1982. Before this, there was no formal training available
12 for child protection workers who were dealing with cases of
13 child sexual assault. If there was no training for the
14 workers, there clearly was no training for child sexual
15 abuse for foster parents.

16 The three agencies examined by the Stalker
17 Report, one was in Ontario - excuse me, two were in Ontario
18 and one was outside of Ontario. All of these agencies
19 noted a marked increase in referrals of child sexual abuse
20 in the '80s, and they all had a consensus that child
21 welfare workers at the time had little to no training to
22 deal with these referrals and they did not receive training
23 on this topic until at least the late 1980s.

24 We didn't hear any benchmark evidence here
25 as to what would constitute an acceptable level of training

1 regarding child sexual abuse during the periods where these
2 incidents that would have been discussed occurred.
3 Further, no evidence was offered to reflect that any
4 limitations in the level of training the local CAS had at
5 certain points in its history were any different than other
6 any agencies of the day. The training processes have
7 evolved over time as more resources were made available and
8 as people became more knowledgeable about the topic.

9 Regarding extra-familial sexual abuse
10 training, the Stalker Report suggests that the first
11 mention of such training doesn't occur until 1996. Our
12 CAS, like most other CASs in the province do not have a
13 position for staff training. No discreet funding is
14 provided for such a position. One of our recommendations
15 made is that such a position be established. This was made
16 by the -- this recommendation was made by the Dawson Report
17 in 1988 and it still hasn't occurred. Most CASs in the
18 province do not have a full-time staff trainer, except some
19 of the larger agencies. For most agencies, the person
20 doing the staff training also has a number of other
21 responsibilities.

22 Moving on now to supervision of foster homes
23 and employees. Before '84, the workers who were involved
24 in a foster home were required to do an annual assessment.
25 We heard evidence that this wasn't always done. In '84,

1 annual reviews became mandatory and foster homes were
2 licensed. As a direct result of recommendations made at
3 this Inquiry, random spot-checks for foster homes will
4 begin in March, 2009.

5 We haven't heard any evidence as to what the
6 standards regarding supervision were at the time. Evidence
7 was heard that workers had a regular schedule of contacts
8 with foster homes and also, workers had regular scheduled
9 contacts with their supervisors to review files, and there
10 was an open door policy at the agency. This policy and the
11 regular contacts were identified in 1988 by Ross Dawson.

12 Investigations of foster parents have
13 certainly evolved over time. We've heard about many
14 investigations here. Angelo Towndale, when he learned of
15 C-14's allegations in the Barber home, decided to close the
16 home immediately. Mr. Towndale also played an active role
17 in the events surrounding the Second Street Group Home by
18 responding to the allegations made to the children and
19 removing them from the home.

20 Also when Mr. Kehoe learned about the
21 allegations in the Barber home, he immediately commenced an
22 investigation.

23 Our workers took allegations of abuse very
24 seriously. When Mr. MacLean and Ms. Miller learned of the
25 allegations against Brian Lapensée at the Lapensée Group

1 Home, an investigation was commenced immediately and then
2 later, when Roberta Judd made further allegations, the home
3 was closed.

4 While the investigation process did vary, an
5 investigation was conducted, generally with the approval of
6 a supervisor. Consultations with the Crown attorney were
7 made and the Ministry was notified by a Serious Occurrence
8 Report. The agency remained focused on its goal of keeping
9 children safe during these investigations. Mr. Kehoe
10 testified that they were doing the best they could at the
11 time.

12 When the common practice was to report to
13 the Crown and to the Ministry, Mr. O'Brien saw this as
14 reporting to a public authority. Had the agency been
15 advised to contact the police, they would have done so.
16 Once in the 1980s, a policy of advising the police did
17 develop and generally, joint investigations were conducted.

18 At one time, it was a foster home worker who
19 would have conducted the investigation but later on, it was
20 an independent worker who'd commence the investigations and
21 investigations now would be conducted by an outside agency.
22 And this is the same for allegations against employees.

23 We've consistently tracked the outcomes of
24 allegations against foster parents and reports on foster
25 parent investigations are always presented to the Board of

1 Directors.

2 One of the hot topics here was corporal
3 punishment. We all know that, now and then, the
4 distinction between corporal punishment and child abuse is
5 very different. The distinction lies with the intention or
6 motivation behind the use of physical force on the child.
7 The motivation behind corporal punishment is direct
8 behaviour not to cause injury. Today when we look back,
9 any methods of corporal punishment seem unacceptable but we
10 must remember that the larger society standards were very
11 different 30 years ago when corporal punishment was
12 generally accepted as a method of correction.

13 Before 1990, there was no criminal law
14 prohibiting the use of corporal punishment by foster
15 parents or service providers. Even now, natural parents
16 are still not completely prohibited from using corporal
17 punishment on their children, although the use of it is
18 very limited. The CAS over time has developed policies
19 regarding corporal punishment. In '78, shortly after the
20 Second Street Group Home incidents, the Board did approve a
21 child care policy which cautioned workers to be careful of
22 over-zealous foster parents whose disciplinary methods may
23 border on or be brutal in severity. In '78, this is a
24 policy, not a direction prohibiting the use of corporal
25 punishment. A few months later, there was another policy

1 which defined discipline and on the negative results and
2 concerns related to spanking. This is only a policy, not a
3 prohibition.

4 It wasn't until 1983 that the Board
5 developed a policy which set out approved disciplinary
6 measures for group homes and prohibited the use of corporal
7 punishment of a resident of a group home, at parents,
8 employees or residents of that home. And finally, in '85,
9 a discipline policy was approved by the agency which still
10 is in effect today. This prohibits any form of corporal
11 punishment and includes a list of approved methods of
12 discipline and a list of methods that will never be used on
13 CAS wards. It also indicates the consequences of violating
14 the disciplinary policy.

15 We need to remember that at this time period
16 where we were talking about corporal punishment is being
17 used in foster homes or in group homes. On a daily basis,
18 children across this province are being struck on the hand
19 with a leather strap as a form of punishment for
20 misbehaviour. Looking back on this practice, we now
21 recognise it to be both as shocking and inappropriate.

22 The last topic I'm speaking about is
23 notifying employers when there's an allegation of sexual
24 abuse. This isn't an easy decision to make and it's not
25 one that any CAS takes lightly, not just this CAS. Many of

1 the other institutions have also spoken about the
2 complexity of this matter. In the past and today, these
3 decisions will be made on a case by case basis.

4 Generally, if an allegation is made that
5 abuse has occurred in the course of the alleged offender's
6 employment, and the individual still has access to children
7 through employment, there would be a notification of the
8 employer. If there was no notification made at the time of
9 the allegation, when abuse is verified, the employer is
10 notified.

11 There are many issues to consider here.
12 Obviously, we need to ensure the protection of children but
13 also privacy interests of individuals, and this includes
14 victims, must be considered. The interests of the accused
15 are also a concern, so there has to be a balance between
16 notifying the employer to ensure that the employer has
17 enough information to act but that privacy concerns are
18 respected.

19 We've heard no evidence here that the
20 Ministry has ever produced standards or guidelines
21 regarding notifying employers of allegations of abuse.
22 There was also no evidence tendered as to what is and was
23 the norm for agencies across Ontario. The only evidence we
24 have was the practice of the local agency who had notified
25 the employer of Bernie Campbell when abuse was verified and

1 charges were pending. The circumstances in the Bernie
2 Campbell matter and the Earl Landry, Jr. case are similar
3 but should not be seen to be identical. The only
4 coincidence is that they both involved the Cornwall Parks
5 and Recreation Department as the employer.

6 Bill Carriere spoke in his testimony that
7 the provincial Directors of Services group is still looking
8 at this issue of notifying the employer. It's still an
9 ongoing debate and it hasn't been resolved at the
10 provincial level.

11 Now that I've provided some context for
12 discussion of the specific cases reviewed at the Inquiry,
13 I'll turn things over to my colleague, Mr. Chisholm.

14 Thank you very much.

15 **THE COMMISSIONER:** Thank you.

16 **MR. CHISHOLM:** Good morning, sir.

17 **THE COMMISSIONER:** Good morning.

18 --- **FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**
19 **CHISHOLM:**

20 **MR. CHISHOLM:** If I can, I'd like to take
21 this opportunity to comment on a few of the cases that
22 we've heard about over the course of the evidence at this
23 Public Inquiry.

24 In assessing the institutional response of
25 the CAS, you will be asked to examine the actions and/or

1 inactions of the CAS. In some cases this activity took
2 place over 50 years ago. Some of what we've seen in the
3 course of the evidence would be alarming by today's
4 standards.

5 However, I'd submit that your task is not to
6 look at what was done or what was not done through today's
7 standards, but rather you will have to consider whether the
8 conduct of the CAS was appropriate given the standards that
9 existed at the points in time that are in question, if in
10 fact those standards can be determined; again, thinking
11 back to the cases of the fifties and sixties. You may have
12 a difficult time determining what the standards are.

13 The first case I'd like to speak to is that
14 of Cathy Sutherland. She was born on June the 28th of 1955
15 and she gave evidence here in May of 2007. From what I
16 recall of her evidence, she presented as someone who was
17 intelligent and interesting. She was represented -- or is
18 represented now by Mr. Lee as part of the Victims' Group
19 and, as we know from Mr. Lee's submissions, Ms. Sutherland
20 had several concerns with respect to the CAS.

21 The first of those concerns related to the
22 alleged failure to protect Ms. Sutherland from her mother.
23 Ms. Sutherland questioned how the CAS could leave her in
24 the care of her mother. It was her position that the CAS
25 failed to protect her throughout her childhood. It was her

1 evidence, Ms. Sutherland's evidence, that she suffered both
2 physical and sexual abuse and at different times she would
3 disclose this to a number of different individuals,
4 including Blaine Grundy, a former CAS worker.

5 The record indicates that Ms. Sutherland
6 first came into the care of the CAS on October the 25th,
7 1957. We heard during the course of Ms. Sutherland's
8 evidence that her brother Steven, according to Ms.
9 Sutherland, was murdered by her mother when he was three
10 months old. She gave evidence that she observed her mother
11 throw her brother Steven across the room into a crib and
12 she gave evidence that she recalled her mother carrying
13 Steven around in a suitcase.

14 We know from Exhibit 479, which is the child
15 care file of Catherine Donnelly, who is Catherine
16 Sutherland today -- we know from a review of that file that
17 Steven was born on July the 27th, 1963 and that he died on
18 October the 13th, 1963.

19 Ms. Sutherland alleged that her mother
20 abused her physically and sexually. With respect to her
21 allegation that the CAS failed to protect Ms. Sutherland
22 from her mother, I would like to go through some of the
23 steps that are laid out in her child care file. I would
24 submit that at the end of that analysis you can conclude
25 that the CAS did in fact take steps to protect Ms.

1 Sutherland in her childhood.

2 It's clear from a review of her file that
3 Ms. Sutherland's mother failed to adequately care for Ms.
4 Sutherland and there was a suggestion that her mother
5 rejected her. The file would disclose a plan developed by
6 the CAS with the goal that Ms. Sutherland would be placed
7 into foster care and "build-up" was referred to in the
8 file. When she was taken into care she was somewhat frail.
9 The plan was to put her into the care of the foster parents
10 and at the same time work with her mother over the issue of
11 Ms. Sutherland's rejection.

12 We see that Ms. Sutherland was apprehended
13 on April 14th of 1958 and placed in foster care and on the
14 following day the matter was spoken to in court, and the
15 Court granted temporary wardship for a period of nine
16 months.

17 On July the 21st, 1959 the matter was in
18 court again. The CAS gave evidence that the last period of
19 temporary wardship had expired and that the mother was
20 making progress with respect to HER rehabilitation but was
21 not ready to have Ms. Sutherland returned to her home. On
22 that date, Mr. Justice Bergeron extended the temporary
23 wardship for a period of six months from that date. The
24 record would indicate that the CAS visited Ms. Sutherland's
25 mother during visits between mother and child, overseeing

1 those visits.

2 The record indicates that permanent wardship
3 of Ms. Sutherland was granted on April the 12th of 1960. On
4 May the 26th, 1960 Ms. Sutherland was returned home on a
5 permanent basis.

6 I would suggest that Exhibit 479 would
7 demonstrate that during the two years that Ms. Sutherland
8 was in foster care, the CAS worked closely with her mother
9 and the mother also attended a psychiatrist's office on
10 several occasions. Following Ms. Sutherland's return to
11 her home, the CAS carried out visits at her mother's home
12 in order to monitor the relationship between the mother and
13 the daughter.

14 On October the 3rd, 1961 the Society's
15 wardship was terminated. I would point out that the orders
16 with respect to wardship were not those of the CAS but
17 orders of the court. Presumably the court was in agreement
18 with respect to the decisions that were made by the CAS.

19 Between July of 1967 and June of 1968 there
20 were further CAS interventions with respect to Ms.
21 Sutherland. On July the 9th, 1968 temporary wardship for a
22 period of one year was granted. Then on July the 11th, 1968
23 Ms. Sutherland was placed in the Virgin foster home. I
24 would submit that the timeframe that we're looking at with
25 respect to Ms. Sutherland's case must be placed in context.

1 A couple of points are worth noting with respect to the
2 development of child welfare in Ontario. Dr. Bala
3 testified about the growing awareness of issues relating to
4 physical abuse in the early 1960s and he referenced Dr.
5 Henry Kempe's 1962 article where the battered child
6 syndrome was discussed, and Dr. Bala testified at Volume 5
7 of the CPI transcript at page 124.

8 I would also point out that when Ms.
9 Sutherland was born there was no duty to report a child in
10 need of protection. That legislation did not appear until
11 January the 1st of 1966 when Ms. Sutherland would have been
12 10 years old. Also, Ms. Sutherland was born at a time when
13 there were no child protection standards. It was not until
14 1979 that those standards came out, and at that point Ms.
15 Sutherland would have been 24 years old.

16 **THE COMMISSIONER:** Were we not still in the
17 philosophy that a child should be returned to a parent,
18 that kind of philosophy, as opposed to the evolution that
19 we've seen towards the best interests of the child?

20 **MR. CHISHOLM:** That may be the case. I'm
21 not sure that on the record that we have at the Inquiry
22 that we can say with certainty, but I would submit that
23 over a period of time -- and I can't tell you when that
24 started -- as I understand it, you have the progression of
25 the child welfare view correct; that we're now at a point

1 what is the best interest of the child, but back then --
2 where we are today certainly evolved from where we were
3 back then. I'm not sure, given the evidentiary record that
4 we have, that I can tell you with certainty what the
5 philosophy was back in the 1950s and '60s.

6 **THE COMMISSIONER:** I think, isn't it a
7 question of law? I mean, I thought the case law has
8 evolved and it's a question of just reviewing the case law
9 in that regard.

10 **MR. CHISHOLM:** That may be one way to do it.
11 What I was suggesting, Mr. Commissioner, is we don't have
12 any evidence from social workers who were around in the
13 1950s, 1960s that spoke to the issue of what the philosophy
14 was -- the child welfare philosophy. But ---

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

16 **MR. CHISHOLM:** --- I would suggest in terms
17 of legal principles, we don't need that as being part of
18 the evidentiary record.

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

20 **MR. CHISHOLM:** Ms. Sutherland also testified
21 that she was sexually abused by her foster father, Mr.
22 Virgin, shortly after going into that foster home at the
23 age of 13 years old. And it was her evidence that she told
24 several people about the sexual abuse that she suffered.
25 She told us that she told children at school about the

1 abuse. She testified that she told Dr. Burns, her
2 psychiatrist. She told us that CAS workers, Mr. Blaine
3 Grundy and subsequent workers were told. And she testified
4 that she disclosed the alleged sexual abuse at subsequent
5 foster homes; that's in Volume 111, page 64.

6 I would submit there's no information in the
7 CAS file that would state that anyone had ever indicated
8 that Ms. Sutherland had disclosed such abuse by Mr. Virgin.

9 Mr. Grundy was not called as a witness. We
10 don't have his evidence other than what we see in the file.
11 There was nothing in the file that would, in my submission,
12 that would suggest that Ms. Sutherland ever told anyone of
13 those concerns or relayed to the CAS.

14 Again, no suggestion from Mr. Burns -- from
15 Dr. Burns, excuse me, contained in the file that there was
16 any suggestion of a report by Ms. Sutherland to Dr. Burns.

17 Ms. Sutherland suggested she reported to her
18 grandmother Blanche Shaver as well. We do see in the file
19 contacts between the CAS and her grandmother as she had
20 contacted the CAS with respect to Ms. Sutherland's mother.

21 I would submit that it's reasonable to
22 conclude that if, in fact, the grandmother had been advised
23 by Ms. Sutherland of these allegations, she would have
24 passed them on to the CAS.

25 Another complaint that Ms. Sutherland had

1 was that of records disclosure and I won't dwell on it as
2 my colleague, Ms. Allinotte, has spoken about it. I would
3 point out that one's perspective has a large influence with
4 respect to the views of the forum on any particular issue.

5 Mr. Lee's submissions suggested that the CAS
6 was engaged in obstructing his client's attempts to gain
7 access to the information contained in the CAS files. Mr.
8 Lee used phrases such as "self protection" and "willful
9 non-disclosure" in describing the conduct of the CAS with
10 respect to Ms. Sutherland's request for the file. The --
11 as you've heard from the evidence -- the perspective of the
12 CAS was that it had never done more for a former ward with
13 respect to releasing records and you recall the evidence
14 demonstrated that Patricia Garrahan went to Hamilton to
15 attempt to help Ms. Sutherland.

16 **THE COMMISSIONER:** And that's after how many
17 years?

18 **MR. CHISHOLM:** Well, sir, I'm not going to
19 quarrel with you in terms of the difficulties that Ms.
20 Sutherland encountered in getting her records. But the
21 point that I raise here is her difficulties are documented
22 in the file, but in terms of the motivation of the CAS ---

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

24 **MR. CHISHOLM:** --- is the point that I raise
25 here. Ms. Sutherland sees it as being a deliberate attempt

1 to hide information in order to protect the interests of
2 the CAS.

3 I would submit that the CAS -- on the
4 evidence, the CAS did not have that position, but I'm not
5 going to quarrel with Mr. Lee or Ms. Sutherland with
6 respect to the difficulties that she encountered. And that
7 was discussed in the evidence of Mr. Carriere and I believe
8 Mr. Abell as well. The record's there. It should not have
9 taken that long to allow Ms. Sutherland to get what she
10 ultimately received. But in terms of the motivation, ---

11 **THE COMMISSIONER:** No, I understand.

12 **MR. CHISHOLM:** --- I would take issue with
13 Mr. Lee's characterization of that.

14 I'd like to move on to the next case I would
15 like to speak of is the Cieslewicz home. That was a home
16 that served as a foster home and receiving home from 1972
17 until 1978. And that home was ultimately closed because
18 the foster father made inappropriate sexual advances
19 towards several female wards in the home and those wards
20 were C-76, C-77, C-78 and C-79.

21 I would submit, sir, that there's no
22 question that the circumstances in that home were tragic
23 and I would recall the evidence of Mr. Angelo Towndale and
24 suggest that was made clear in his testimony.

25 What I would like to do is provide some

1 context with respect to those events and submit that those
2 events took place in the 1970s, over 30 years ago, and that
3 everything that happened in that home took place prior to
4 any child protection standards or foster care standards
5 being in place.

6 One wants to believe that one's organization
7 is at least as good as any other. One wants to believe
8 that they were able to avoid the problems and weaknesses
9 plaguing similar organizations; that they had insights and
10 knowledge before others similarly situated or agencies did.
11 Regrettably, the incidents of harm that took place in the
12 Cieslewicz home clearly demonstrate that the CAS was no
13 better than others at that point in time.

14 Drawing on the testimony of Dr. Wolfe here
15 at the Public Inquiry, he suggested -- or the point I would
16 take from Dr. Wolfe's evidence is the CAS could not believe
17 a good person -- a foster parent -- could do such a bad
18 thing.

19 **THE COMMISSIONER:** I guess the other
20 comment, though, that Mr. Lee made -- and I don't want to
21 unduly interrupt, but the Children's Aid Society, when
22 there's an allegation of sexual abuse, takes the position
23 prima facie that the child is telling the truth. And once
24 they come into care, they're liars.

25 **MR. CHISHOLM:** Well, I'm going to address

1 that later in my submission. And I'm going to take you
2 through some of the examples ---

3 **THE COMMISSIONER:** Okay.

4 **MR. CHISHOLM:** --- to hopefully persuade you
5 that that is not the position that was taken on a
6 consistent basis with respect to allegations that are made
7 by the foster parent.

8 You recall, it's Mr. Angelo Towndale's
9 evidence that comes most clearly into my mind when he
10 suggested that that was the -- back then -- and I think he
11 may have been speaking of the Cieslewicz home -- that was
12 the mindset at the time to disbelieve the children.

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

14 **MR. CHISHOLM:** I believe Mr. Towndale was
15 speaking of the Cieslewicz home -- and I stand to be
16 corrected on that point -- when he gave that evidence, but
17 I'm going to show you later examples of -- in fact, the CAS
18 did believe the child and did take steps to remedy the --
19 to deal with the situation. So I do have that in the back
20 of my mind.

21 **THE COMMISSIONER:** Good.

22 **MR. CHISHOLM:** Mr. Lee may have put that
23 suggestion forth and I think it may also have been advanced
24 in the CCR's submissions.

25 **THE COMMISSIONER:** I may be mistaken as to

1 who, but there you go. All right, I'll sit back and wait
2 for your submissions.

3 **MR. CHISHOLM:** I draw your attention to Mr.
4 Wolfe's testimony on February the 13th of 2006, and that was
5 at Volume 4 at page 82 of the transcript.

6 Dr. Wolfe said:

7 "I say that because it's human nature
8 again to think that when someone's
9 accused of something, to look at who
10 they are and say, 'Well, there are all
11 these good things. How could there be
12 this bad thing?' And similarly, when a
13 child makes an accusation it's typical
14 to think, 'Well, you know, he's lied
15 before. He can lie again'."

16 So Dr. Wolfe is touching upon the mindset
17 that Mr. Towndale spoke of there, but later on I'm going to
18 show you examples of where the CAS, if you will, believed
19 the child in a number of situations it took steps to
20 respond to the complaint.

21 The Stalker Report, which is Exhibit 2346A,
22 is also relevant to this point, I would submit. This is
23 what the authors of the Stalker Report said at page 97:

24 "Another change that was noted by
25 informants is the way that professional

1 judgements are made about the
2 credibility of a child's disclosure of
3 sexual abuse. In the past, informants
4 indicated that sometimes it was the
5 child whose credibility was judged
6 rather than 'the statement' that the
7 child made. For example, if a child or
8 adolescent was behaving
9 inappropriately, e.g. using drugs or
10 alcohol or running away, they might be
11 judged to be less credible."

12 As Dr. Wolfe stated in his testimony about
13 the field in general, the CAS knew nothing about how child
14 molesters operated and it certainly knew nothing about
15 managing and controlling their behaviours.

16 Looking back on the events in the Cieslewicz
17 home, I submit it was very naive of the CAS to think that
18 Mr. Cieslewicz, once confronted with the allegations, would
19 never repeat them. At that time, I would submit there was
20 no body of knowledge to inform the CAS differently.

21 The CAS at the time, I would submit, in the
22 mid-seventies had little or no expertise in investigating
23 allegations of child sexual abuse. You'll recall the
24 testimony of Bryan Keough on October the 9th, which is
25 Volume 284 of the transcript at page 9 -- when he was

1 speaking about the prospect of interviewing Mr. and Mrs.
2 Cieslewicz, he said he had no clue what to do when faced
3 with interviewing those two people.

4 As we've indicated before, there was no
5 training on child sexual abuse in place at that time. The
6 course Investigating Sexual Offences against Children was
7 still 20 years in the future and the child protection
8 standards were not yet in place. The CAS acknowledges,
9 Mr. Commissioner, its failures in the Cieslewicz home. It
10 regrets the harm the children suffered. The CAS wishes it
11 had been beyond the standard at the time but,
12 unfortunately, it was not.

13 The next case I'd like to speak to,
14 Mr. Commissioner, is that of Jeannette Antoine and the
15 Second Street Group Home. Ms. Antoine was a former ward of
16 the CAS who was first placed in care in February of 1962
17 when she was less than two years old. She stayed in care
18 until August of 1978. She lived in a number of foster
19 homes before going to reside at the Second Street Group
20 Home in September of 1975.

21 In June of 2007 when she testified here, the
22 CAS issued an apology to her for a number of reasons,
23 including the inappropriate and demeaning child care
24 measures that were used in the Second Street Group Home
25 while she resided there, and the fact that Ms. Antoine was

1 unable to achieve stability and a sense of permanency while
2 in the care of the CAS given the number of foster homes
3 that she ended up in during the course of her time with the
4 CAS.

5 When she did testify, Ms. Antoine spoke of
6 being physically and sexually abused by a number of
7 individuals during the time that she was in the care of the
8 CAS. Her alleged abusers included Bill Reynen, Betty
9 Reynen, the Reynens' daughter, Mrs. Looyen, Mrs. Looyen's
10 father, a handyman who worked at the Looyen's, Mrs.
11 Heemskerk, Bryan Keough and her father, Ernest Lapointe.

12 During the course of her testimony
13 Ms. Antoine alleged she told the following CAS workers
14 about the abuse that she had suffered: Mavis Nixon, Bryan
15 Keough, Fran LePage, Angelo Towndale, Michael Keough,
16 Heather Tenger, Derry Tenger, Cam Copeland, Greg Bell,
17 Sister Theresa Quesnelle, and Mary Gratton. In addition,
18 Ms. Antoine alleged that she told her schoolteachers, Ernie
19 Seguin and Mrs. Clancy, about some of the abuse that she
20 allegedly suffered.

21 I would submit, Mr. Commissioner, it became
22 clear during the course of Ms. Antoine's testimony that she
23 did not like Bryan Keough, the former CAS worker who also
24 testified in these proceedings. She alleged that
25 Mr. Keough did such things as punch her in the mouth,

1 administer beatings with a strap, and fondle her in bed.
2 She further alleged that she observed Bryan Keough having
3 sex with one of the female residents in the Second Street
4 Group Home.

5 In addition, she alleged that she saw Bryan
6 Keough bite C-75's breast. She also alleged that she had a
7 fight with Mr. Keough on March the 10th of 1976 and broke
8 her arm, and you may recall her allegations that on a
9 number of occasions Mr. Bryan Keough placed Ms. Antoine in
10 the trunk of his car.

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

12 **MR. CHISHOLM:** We heard a fair amount of
13 evidence on the events of the Second Street Group Home that
14 came to a head in March of 1976. That was a time when Mr.
15 O'Brien, Tom O'Brien, was on sick leave and Angelo Towndale
16 was asked to be the Acting Executive Director. It was Mr.
17 Towndale's evidence that he first became aware of concerns
18 with respect to the group home on March the 4th of 1976. I
19 would submit that the record would establish that once Mr.
20 Towndale became aware of those concerns he moved quickly to
21 deal with them.

22 Exhibit 2212 is the April 1, 1976 report of
23 the Personnel Committee. That document sets out the
24 actions taken by the CAS as well as the dates that those
25 actions were taken.

1 We see that on March the 5th of 1976 Mr.
2 Towndale held a meeting with the group home staff in order
3 to discuss the use of physical punishment in the home. On
4 March the 8th, a second meeting was held with the group home
5 staff and on that date interviews were conducted with the
6 children from the group home who were residing in that
7 home.

8 The following day, on March the 9th, 1976 a
9 Personnel Committee meeting was held at which time a
10 report, based upon the interviews of the children that were
11 made on the day prior thereto, was read into the -- read
12 during the course of the meeting. That committee also
13 heard from John McKee, the Director of Laurencrest, and
14 then Laurencrest as I point out in my submissions is a
15 youth residence within the City of Cornwall I would submit
16 has no affiliation to the CAS.

17 In addition to hearing from Mr. McKee on
18 March 9th, 1976, personnel committee meeting also heard from
19 Ron Adams with respect to the issues involved in the
20 punishment of children. That meeting resulted in a motion
21 being put forth requiring that the group home staff refrain
22 from strapping children. It was the following day, sir,
23 March the 10th, 1976, that five children, including Ms.
24 Antoine ran from the group home, you'll recall that's when
25 they ended up at a cottage in Summerstown.

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

2 **MR. CHISHOLM:** I would submit the record
3 establishes that, on the following day, March the 11th,
4 1976, Mr. Towndale moved Derry Tenger, the Director of the
5 Second Street Group Home, out of the home. Eventually Mr.
6 Tenger and the group home staff tendered their resignations
7 to the CAS which were accepted.

8 During Mr. Towndale's evidence, he testified
9 the CAS Board of Directors was divided on the issue
10 concerning the use of corporal punishment and I would draw
11 your attention to Exhibit 2215. These are the minutes from
12 the March 24, 1976 CAS annual meeting. Those minutes
13 indicate that a panel discussion on the use of corporal
14 punishment and the disciplining of children was held and it
15 was suggested in the minutes that this was a most
16 controversial topic and sparked a great deal of response
17 from the audience. The concluding paragraph of the minutes
18 state:

19 " In summing up, Father Villeneuve
20 remarked that corporal punishment has
21 been used by a large majority of our
22 society in the raising of children and
23 it will take a great deal of education
24 as to its harmfulness before it is seen
25 as a practice of the past."

1 I would submit, Mr. Commissioner, that those
2 minutes from that 1976 meeting gives us a flavour as to
3 society's use of and views concerning corporal punishment
4 with respect to the disciplining of children. Mr. Towndale
5 testified that he never heard any allegations of sexual
6 abuse at the group home.

7 I would like to comment if I may on Miss
8 Antoine's credibility? It's the position of the CAS that
9 Miss Antoine is not a credible person, given the evidence
10 that she gave before you and that she's not to be believed
11 on any contentious issue I would submit unless there is
12 corroboration with respect to the event that she speaks of.
13 An example would be the date, for instance, that the
14 children ran from the home -- we can use the personnel
15 committee report to establish dates -- clearly some of what
16 Ms. Antoine has said before you took place but I would
17 submit that it would be unsafe to rely upon her evidence
18 with respect to some of the allegations that you heard her
19 put forth.

20 If you look at the evidence as a whole with
21 respect to the Second Street Group Home, Mr. Commissioner,
22 I would submit that it demonstrates that, once the CAS
23 determined that there was a problem with respect to the
24 administration of harsh discipline in the home, it took
25 decisive action to meet with the children, hear what they

1 had to say and then address the issue by removing the group
2 home staff from the home.

3 While the treatment that some of the
4 children in the home received is no doubt harsh by today's
5 standards, when considering the issue, one must keep in
6 mind society's views concerning corporal punishment were
7 far different from what they are today.

8 **THE COMMISSIONER:** But assuming that that's
9 true, do you not think that -- well, you've already said
10 that, I believe, the CAS agrees that what went on in that
11 home did not fall within the standards, even at that time.
12 Is that a fair comment?

13 **MR. CHISHOLM:** That's a fair comment.

14 **THE COMMISSIONER:** Okay.

15 **MR. CHISHOLM:** At the very least, the
16 treatment is excessively harsh and demeaning.

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

18 **MR. CHISHOLM:** I would point out, sir, as
19 indicated in the evidence, there were no standards for the
20 CAS to turn to at that time. There was also no policy with
21 respect to conducting investigations of its staff members.
22 The police were not involved back then in 1976 and we heard
23 evidence it was not the practice to do so back at that
24 point in time.

25 I would submit, Mr. Commissioner, that if we

1 look back at the events of the Second Street Group Home,
2 one can see that as time went on, the CAS refined its
3 response. While in 1976, the CAS did not turn to outside
4 agencies for assistance, that was no longer the case when
5 the matter arose again in 1989. And you'll recall, Mr.
6 O'Brien sought the assistance of the local Crown and the
7 local police.

8 I would submit that in '94, the CAS
9 cooperated fully with the investigation conducted by
10 Constable White. You heard Mr. Towndale's evidence on that
11 point. There was a search warrant obtained. That was, I
12 would submit, a matter of course. There were certainly no
13 difficulties with respect to the Cornwall police having
14 access to the files of the CAS.

15 In looking back, sir, at the Second Street
16 Group Home events, I would submit that the CAS certainly
17 learned a number of important lessons with respect to how
18 to deal with such allegations. And I would submit that if
19 such allegations were to surface today, one would see an
20 entirely different response whereby the police and perhaps
21 an outside Children's Aid Society was involved with respect
22 to the initial investigation.

23 With respect to the institutional response
24 of the CAS at that time, I would submit it was by no means
25 perfect, but given the environment that the CAS was

1 operating in, in terms of the lack of policy and
2 guidelines, it was not out of line with the expectations
3 that would have existed in the 1970s.

4 Those expectations may have varied but the
5 point is there was no clear guidance for the Society in
6 terms of what it should be doing.

7 Before I leave the Second Street Group Home,
8 I want to touch upon a submission made by Mr. Horn during
9 his submissions. And you will recall what I would call the
10 Coalition's conspiracy theory.

11 Earlier this week, Mr. Horn advanced to you
12 a theory that the CAS did not investigate Ken Seguin in
13 1993 because there was concern -- and I'm perhaps
14 paraphrasing what Mr. Horn said -- but there was concern
15 that Ken Seguin had the goods on the CAS and that the CAS
16 was afraid to investigate for fear that Mr. Seguin would
17 disclose the events surrounding the Second Street Group
18 Home.

19 According to Mr. Horn's theory, Ken Seguin
20 was Jeannette Antoine's probation officer while she was
21 residing in the Second Street Group Home. I'm not sure
22 that there's any evidentiary foundation or link to
23 establish that Mr. Seguin was Ms. Antoine's probation
24 officer during the course of time that she was residing in
25 the Second Street Group Home. And if I'm wrong, I stand to

1 be corrected, but that - if I'm right in that point, that
2 would be a problem, I would submit, with respect to Mr.
3 Horn's theory.

4 Another difficulty that, I would submit, Mr.
5 Horn has with his theory is that, by 1989, Mr. O'Brien has
6 already raised the issue with the Cornwall Police Service
7 and the Crown attorney. So, if you will, by 1989 which is
8 a number of years before the Project Blue project arose,
9 the cat was already out of the bag, if you will.

10 I would submit that Mr. Horn's theory does
11 not stand up when you examine the evidence surrounding the
12 Second Street Group Home.

13 The next matter I'd like to touch on is the
14 Earl Landry, Jr. investigation.

15 During the course of Ms. Daley's oral
16 submission she drew a comparison between the CAS handling
17 of the Bernie Campbell case and the Earl Landry, Jr. case.
18 I took it to be Ms. Daley's suggestion that Mr. Landry, Jr.
19 was treated differently from Mr. Campbell by virtue of the
20 fact that Earl Landry, Jr. was the son of a former chief of
21 police of the Cornwall Police Service.

22 Mr. Carriere testified that at no time were
23 the actions of the CAS influenced by the fact that Mr.
24 Landry was the son of a former chief of police.

25 I would submit, sir, that if the CAS was

1 protecting Earl Landry, Jr. because his father was the
2 former Chief of Police, the CAS did a very poor job of it.
3 If the goal of the CAS was to protect Mr. Landry from
4 arrest and prosecution for sexual abuse of children and to
5 protect him from being labelled as a verified child abuser,
6 then the CAS failed miserably.

7 I would submit, Mr. Commissioner, that
8 through the actions of the CAS, Mr. Landry was arrested and
9 convicted for historical child sexual assault.

10 Ms. Daley spoke at some length about the
11 rumours and atmosphere that existed in Cornwall throughout
12 the 1990s. She talked about misinformation and how efforts
13 on the part of certain organizations, particularly the
14 Cornwall Police Service, could have been taken to reassure
15 the citizens of Cornwall and area.

16 I would submit that Ms. Daley's submission
17 on this point, on the Earl Landry, Jr. case, can be viewed
18 in a similar light with respect to the rumours and
19 atmosphere that she was speaking of. I would suggest that
20 the evidentiary record certainly does not bear out Ms.
21 Daley's suggestion that Earl Landry, Jr. was treated
22 differently by the CAS as a result of his relationship to
23 his father who was the former Chief of Police.

24 On that investigation, Mr. Commissioner, the
25 CAS would certainly acknowledge that it failed with respect

1 to some aspects of dealing with Earl Landry, but trying to
2 have justice served was not one of its failures.

3 Ms. Daley, also in her submissions and the
4 submissions of CCR, took the position that the CAS
5 developed an institutional blindness to any complaints of
6 physical and sexual mistreatment of the wards. The CCR
7 took the position of when complaints were received, the
8 CAS' first response was to disbelieve the complainant and
9 that's what you touched upon in our earlier dialogue, Mr.
10 Commissioner.

11 It's the position of the CAS that Ms.
12 Daley's or the CCR's submission at this point is a
13 generalization. It may have application of the Cieslewicz
14 home but other examples -- if you look at the other
15 examples of cases that were under consideration, I would
16 submit that the CAS did in fact believe the children and
17 action was taken.

18 C-14's allegation with respect to the Barber
19 home, the physical abuse taking place in the Barber home,
20 resulted in the Barber home being closed down. You will
21 recall Roberta Archambault's allegation with respect to the
22 Lapensée Group Home, allegations involving Brian Lapensée;
23 that home was closed down.

24 And an example I've touched upon already is
25 the Second Street Group Home. The children in that

1 situation, as you know, were interviewed individually at
2 the CAS offices. That information was processed in a short
3 period of time and matters were taken to get the staff
4 members out of the home.

5 **THE COMMISSIONER:** Well the staff members
6 there had acknowledged, to a certain degree, that the
7 discipline that the children had related was in fact true.

8 **MR. CHISHOLM:** To some degree, you will
9 recall the evidence of Bryan Keough, if I recall his
10 evidence correctly, when the -- and it may have been the
11 personnel committee report that was being put to him, he --
12 I'm not sure that he totally agreed with what was contained
13 in the records of the CAS, but certainly I would submit
14 that the staff members of the Second Street Group Home took
15 the position that yes they were using corporal punishment
16 as a means of discipline and those staff members took the
17 view that it was -- that they were correct in using those
18 methods and that they saw nothing wrong with respect to
19 what they were doing.

20 **THE COMMISSIONER:** No, but all I'm saying --
21 you're saying you're using this as an example of "Listen
22 when somebody speaks, a child speaks, the Children's Aid
23 Society acts." And all I'm saying is "Wait a minute now,
24 wait a minute now." In this case you did have some
25 admission of -- to corroborate what the children were

1 saying.

2 **MR. CHISHOLM:** It may have been an easier
3 catch in that case than in other cases where you have the
4 individuals who were the subject of the complaint
5 acknowledging to some degree the actions. But I would
6 submit, Mr. Commissioner, that this is another example that
7 does not fit the suggestion by the CCR that there was --
8 that the CAS developed institutional blindness.

9 **THE COMMISSIONER:** Okay.

10 **MR. CHISHOLM:** The last case I'd like to
11 touch upon is -- deals with the Jacques Leduc matter. And
12 that was -- if we look at the submissions of the Victims
13 Group, you will see one of the concerns of the Victims
14 Group was that there was the May 21, 1998 meeting with OPP
15 Officers Tim Smith and Pat Hall concerning pending charges
16 with respect to Mr. Leduc.

17 The Victims Group took the position or takes
18 the position that the CAS did not look into the Leduc
19 matter at all at any time. I would just point out that the
20 CAS takes the position that at no time did it receive any
21 evidence that children under 16 were presently at risk.

22 If I can, sir, I'd like to give a brief
23 conclusion to my submissions.

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

25 **MR. CHISHOLM:** I would submit, Mr.

1 Commissioner that the evidence relating to the CAS
2 establishes that the CAS has evolved considerably over the
3 last century and certainly over the last 50 years.

4 I would submit that the cases that we've
5 examined here at the Cornwall Public Inquiry demonstrate
6 that while the institutional response to allegations of
7 historical abuse has evolved, it was in accordance with the
8 standards that existed at the time. And where there were
9 no standards, the -- we may have been left to our own
10 devices -- the CAS may have been left to its own devices in
11 terms of arriving at what the appropriate response would
12 be.

13 I would submit that it is clear from the
14 evidence that over the years that this community, the City
15 of Cornwall and the surrounding area, has had the good
16 fortune of being served by a number of dedicated CAS
17 professionals, people such as Tom O'Brien, Angelo Towndale,
18 Bill Carriere and Rick Abell.

19 All those individuals, I would submit based
20 upon the evidence, have worked hard developing an
21 institution that the public can have confidence in.

22 I will leave you with my best wishes, sir.
23 You have a very large task in front of you, considering all
24 the evidence that you've heard over these last number of
25 years, and I wish you the best of luck with that, and I

1 look forward to receiving your report when it is prepared.

2 Subject to your questions, sir, those would
3 be my submissions. Thank you.

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

5 So, Mr. Engelmann, we'll take the morning
6 break and come back at, let's say, 11:30? Thank you.

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

9 This hearing will resume at 11:30 a.m.

10 --- Upon recessing at 11:04 a.m. /

11 L'audience est suspendue à 11h04

12 --- Upon resuming at 11:32 a.m. /

13 L'audience est reprise à 11h32

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

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

18 --- **FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MS.**

19 **ROBITAILLE:**

20

21 **THE COMMISSIONER:** Good morning.

22 **MS. ROBITAILLE:** Good morning,

23 Mr. Commissioner.

24 For the record, my name is Danielle
25 Robitaille and I'm counsel for Jacques Leduc here at the

1 Inquiry.

2 Mr. Commissioner, I'm going to begin my
3 submissions by talking about an invitation that you
4 received on Monday from Mr. Lee, Mr. Horn and Mr. Hall.

5 **THE COMMISSIONER:** M'hm. I don't get very
6 many invitations, so I was surprised at that word.

7 **MS. ROBITAILLE:** Well, you're a very popular
8 guy, Mr. Commissioner.

9 (LAUGHTER/RIRES)

10 **THE COMMISSIONER:** Oh, I'm sure. Yes, and
11 how's that go? Flattery will get you nowhere.

12 (LAUGHTER/RIRES)

13 **MS. ROBITAILLE:** Fair enough.

14 **THE COMMISSIONER:** Sorry -- go ahead.

15 **MS. ROBITAILLE:** They invited you to their
16 party of conspiracy theorists. They invited you to find,
17 among other things, that my client, Mr. Leduc, was part of
18 a conspiracy to obstruct justice.

19 In my respectful submission, Mr.
20 Commissioner, you are bound to decline their invitation,
21 and you are bound to do so on three grounds:
22 jurisdictional, evidentiary, and a common sense ground.

23 First, jurisdictional. I won't spend too
24 much time on this, Mr. Commissioner. You're familiar with
25 your jurisdiction and you've heard from other parties about

1 it.

2 The mandate of this Inquiry was to inquire
3 and report on institutional response in the form of
4 policies, practices -- past, present and future -- and to
5 report on systemic failures in that response. As the Court
6 of Appeal articulated, it's not within this Inquiry's
7 mandate to make findings with respect to individuals who
8 are not part of the institutions, or make findings with
9 respect to individualized errors of misconduct that are not
10 systemic in nature. To do so would exceed your
11 jurisdiction.

12 We know from the Supreme Court of Canada in
13 *Krever*, that findings of misconduct should only be made
14 where they are necessary to carry out the mandate of the
15 Inquiry. Therefore, findings of misconduct must
16 necessarily meet the following criteria.

17 The findings can only be made against the
18 institutions themselves, or institutional actors, and the
19 conduct that is subject to comment must demonstrate a
20 systemic failure to respond appropriately to allegations of
21 historical sexual abuse.

22 Now, how does this relate to Mr. Leduc?
23 Well, Mr. Leduc, I'll submit, was not an institutional
24 actor. He appeared before you seeking standing and funding
25 before this Inquiry, and unlike many witnesses who sought

1 standing before you, at no time did you, your counsel or,
2 indeed, counsel for the Diocese, suggest that Mr. Leduc's
3 interests for the purpose of this Inquiry could be subsumed
4 under the umbrella of the Diocese.

5 And this is for the simple reason that
6 Mr. Leduc is not and was never an employee or member of
7 that institution. Mr. Leduc was counsel to the Diocese and
8 engaged on the basis of discreet and limited retainers, on
9 specific legal matters and, as you heard, largely
10 pertaining to real estate.

11 From time-to-time, Mr. Leduc was retained by
12 the Diocese to act on certain files. He did not have a
13 standing retainer, he was not employed by the Diocese on an
14 annual basis, and he was not retained to act in the
15 capacity of a compliance officer, advising the Diocese on
16 their adherence to whatever internal guidelines may have
17 been in place at the time. And that is corroborated by the
18 evidence of Bishop LaRocque that I will go to.

19 You will recall that Bishop LaRocque
20 testified that it was Monsignor McDougald's responsibility,
21 chief responsibility, to ensure that the protocol was
22 followed in the Silmser matter, and he also placed a
23 responsibility squarely on the shoulders of Father
24 Vaillancourt, who drafted the protocol.

25 Mr. Leduc is an outsider to the hierarchy of

1 the Diocese. The hierarchy of the Diocese, as you know,
2 Mr. Commissioner, shows the Bishop on the top of the
3 pyramid, with the vicar general, the chancellor, the
4 finance officer and the parish priests below him.

5 No client is required or compelled to follow
6 the advice or suggestion of their counsel, and the
7 provision of legal advice does not render Mr. Leduc a
8 member of the church institution.

9 Mr. Commissioner, at all relevant times,
10 Bishop Eugène LaRocque had complete, exclusive, and final
11 authority over all matters within the Diocese. The Bishop
12 of the Diocese is the sole officer, director, and chief
13 administrator of the corporation, and Bishop LaRocque here
14 admitted before you that he was at all times aware of his
15 complete, final and exclusive authority over all diocesan
16 matters, including the systemic institutional response to
17 allegations of sexual abuse.

18 And, Mr. Commissioner, you had the
19 opportunity to observe Bishop LaRocque over the course of,
20 I believe it was, eight days, and I'm sure you got a sense
21 of the type of man he was, the type of leader he was, his
22 management style, and I suggest that Bishop LaRocque was
23 the type of leader that made decisions based on his own --
24 and these are his words, "moral certitude or conscience" --
25 and he was the type of man who would stand so firmly by his

1 decisions that not even the threat of jail would make him
2 change his mind.

3 Now, Mr. Commissioner, I deal extensively
4 with some of the allegations made against my client in the
5 course of this Inquiry. I deal with them in my written
6 submissions.

7 Because of my time limitations here today, I
8 am focusing primarily on rebuttal, but by way of example,
9 there has been an allegation that Mr. Leduc should have
10 notified the CAS about the Silmsler complaint. And in
11 response to that, there are several issues I wish to
12 address.

13 Firstly, had Mr. Leduc advised the CAS of
14 the Silmsler complaint? It would have been a serious breach
15 of solicitor-client privilege to do so without
16 authorization. Mr. Leduc was retained to act on the phase
17 4 committee, pursuant to the protocol, and not to advise
18 generally on the compliance of that protocol.

19 And, I'll give you a reference,
20 Mr. Commissioner. In volume 271, starting at page 293,
21 Mr. Sherriff-Scott, cross-examining his own client, puts to
22 the Bishop that he had the expectation that Mr. Leduc would
23 ensure compliance to the protocol, and Bishop LaRocque
24 specifically rejects that suggestion. And he tells his own
25 counsel in cross-examination:

1 "I don't think so. No, because he
2 didn't write it. Father Denis
3 Vaillancourt, who wrote it, would be
4 the one that I would put more
5 responsibility on."

6 And Mr. Sherriff-Scott says;

7 "Mr. Leduc's role there, was he an
8 advisor to the committee?"

9 And Mr. (sic) LaRocque replies:

10 "He was a member of the committee."

11 I submit also, Mr. Commissioner, that the
12 matter is somewhat academic given that by the time
13 Mr. Leduc meets with Mr. Silmsler on February 9th,
14 Mr. Silmsler has had his complaint lodged at the CPS for
15 approximately two months.

16 And I'm further guided by the written and
17 oral submissions of the CAS, which casts doubt as to
18 whether or not the Silmsler complaint was even reportable
19 abuse under the CFSA given the concerns that they've
20 articulated thoroughly in their written submissions about a
21 person in charge or a caregiver, and the issue of
22 historical abuse. Further ---

23 **THE COMMISSIONER:** So you're saying that
24 based on Mr. Silmsler's allegations, that Father MacDonald
25 was not a caregiver? Is that what you're saying?

1 **MS. ROBITAILLE:** What I'm saying is, it
2 would be unfair to suggest that Mr. Leduc had a
3 responsibility of reporting an allegation that -- it may
4 not even be a reportable allegation under the duty to
5 report based on the interpretation of the CAS and the
6 interpretation available to you. Unfortunately, there's a
7 dearth of evidence. We don't have any case law on the
8 interpretation of the section beyond the Divisional Court
9 ruling of Mr. Dunlop and I'd suggest that that's not
10 persuasive. I'm sure you'll hear from Mr. Sherriff-Scott
11 further on this point.

12 **THE COMMISSIONER:** Okay.

13 **MS. ROBITAILLE:** Mr. Leduc did advise the
14 Diocese to follow their own protocol and that protocol,
15 Exhibit 58 at Tab 25, was replete with references to notify
16 the CAS including phase 5 that directs the designated
17 person to notify the CAS. It's inconceivable that the
18 Diocese could say that it was not aware of the existence of
19 the CAS or the possibility of a duty to report when one
20 looks at the face of that document.

21 Now returning, Mr. Commissioner, to the
22 theme of my presentation -- the theme of invitation -- I'm
23 now moving to the second grounds upon which you need to
24 reject the invitation by the Victims Group and the
25 Coalition for Action and that's the evidentiary ground.

1 Mr. Commissioner, you'll recall that several
2 times in the course of this Inquiry, Mr. Horn would stand
3 where I'm standing right now and submit to you that his
4 client has always believed in the conspiracy. It's a very
5 candid remark representing his client's interests and his
6 client's position. And I'd submit to you that that is the
7 case; that the Coalition has always believed in the
8 conspiracy and it may be the Victims Group also. And what
9 they have done in their written submissions and their oral
10 submissions before you, Mr. Commissioner, is gone through
11 the evidence and cherry picked those pieces of evidence
12 that fit within the framework of their conspiracy theory.
13 And I know Mr. Neville warned you about certain weaknesses
14 in that evidence and I'd like to do the same right now on a
15 few specific pieces.

16 The Victims Group at page 386 of their
17 written submission asks you to find that there was a
18 meeting between Malcolm MacDonald, my client and the Bishop
19 on February 22nd, 1993. He urges you to make this finding
20 firstly, by rejecting the evidence -- the sworn evidence of
21 Mr. Leduc and the Bishop and then to found your conclusion
22 on the basis of a singular note that was contained in
23 Malcolm MacDonald's unsworn affidavit of documents.

24 This is a note that has not been
25 authenticated in any way and is very frankly, sir, open to

1 interpretation. The letters F-e-b on the note, for
2 example, look to me as though they could be J-u-l and that
3 is Exhibit 1900.

4 The other piece of evidence that these
5 groups rely on firmly in making -- in supporting their
6 conspiracy theory are certain utterances and certain
7 statements made by Malcolm MacDonald found within his three
8 OPP statements about the settlement.

9 Mr. Commissioner, I ask that you apply the
10 whole statement principle in your review of Mr. MacDonald's
11 statements to police. When you review the entirety of Mr.
12 MacDonald's statements, I suggest it is impossible to find
13 any cogency, any clarity, coherence or indeed, credibility.
14 When reviewing those statements any trier would be led to
15 Detective Inspector Smith's conclusion that Malcolm
16 MacDonald was "slippery as an eel" and had no credibility
17 whatsoever.

18 The next piece of evidence that these groups
19 urge you to rely on is the evidence of Ms. Karen Derochie.
20 In the Victims Group's written submission, they ask you to
21 find that Ms. Derochie was truthful and that her evidence
22 was plausible and that it showed that there was a meeting
23 of conspirators that shook the faith of Duncan MacDonald.
24 He points to the fact that neither I nor counsel for Mr.
25 Adams were able to explain why Ms. Derochie was lying and

1 with respect, that's not the threshold for your assessment
2 of her *viva voce* evidence.

3 Mr. Commissioner, if we assume for a moment
4 that you reject the denials of Mr. Leduc and Mr. Adams --
5 and I know there was a question yesterday as to whether Mr.
6 Leduc was asked about these ---

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

8 **MS. ROBITAILLE:** --- attendances and he
9 indeed was and you'll find his denial ---

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

11 **MS. ROBITAILLE:** --- at Volume 255, page 7
12 and page 9.

13 **THE COMMISSIONER:** Yes.

14 **MS. ROBITAILLE:** So assume for a moment that
15 you reject their denials. It's open for you to accept some
16 or none or all of Ms. Derochie's evidence and you may, of
17 course, find that Ms. Derochie was completely credible in
18 attempting to tell the truth, but that her evidence was
19 unreliable. You may also find, on the basis of Ms.
20 Derochie's evidence, that you're unable to make any
21 inferences or findings of fact that assist you in any way
22 in your mandate.

23 I just want to point to a couple of issues
24 with regards to reliability in Ms. Derochie's evidence.
25 You'll recall that she testified that these attendances by

1 my client, Mr. Adams, and Mr. MacDonald, at Duncan
2 MacDonald's office ---

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

4 **MS. ROBITAILLE:** --- occurred in her first
5 year of employment with Duncan MacDonald. She testified
6 that she could not remember what year that was and that in
7 her preparation for testifying before you, she telephoned a
8 friend -- a former colleague, Bonnie Chisholm, to help her
9 determine what year it was she worked for Duncan MacDonald
10 -- what year she started working for Duncan MacDonald. And
11 so that's how we get to the year 1993. We don't get there
12 from any record of employment or any tax document or any
13 calendar or any diary. We get there through two legal
14 assistants putting their minds together and trying to
15 figure out what year it was.

16 There's also the issue of possible media
17 tainting, Mr. Commissioner. After many years and much
18 water under the bridge, Ms. Derochie testified that the
19 event that made her remember these attendances was a
20 newspaper article about the Inquiry and Mr. Malcolm
21 MacDonald. And so what inferences can you draw from this
22 evidence?

23 You'll recall that Ms. Derochie had no idea
24 what the purpose of the attendances were or what happened
25 in that meeting. And yet, you're being asked to presume

1 that the meeting was about Silmser when you've heard
2 evidence that Mr. Malcolm MacDonald, Duncan MacDonald, Mr.
3 Adams and Mr. Leduc all practiced real estate and estate
4 here in Cornwall. It cannot be that everywhere Mr. Leduc,
5 Mr. Adams, Mr. MacDonalds were in the early 1990s, they are
6 presumed to be there because of Silmser; talking about
7 Silmser.

8 According to Ms. Derochie, Mr. Duncan
9 MacDonald made an utterance about an institution. He
10 didn't specify that it was the Catholic Church or the
11 Diocese. He didn't specify which institution. And I
12 submit to you that it's equally possible, Mr. Commissioner,
13 that he was talking about the local Bar Association or the
14 court systems in general. We just don't know.

15 Ms. Derochie testified that the meeting
16 could have happened in September, October or November. And
17 notwithstanding this witness' evidence, the Victims Group
18 has asked you to find that it happened before September 3rd.

19 In my respectful submission, Mr.
20 Commissioner, you're being asked to make a death-defying
21 leap of logic from the evidence tendered by Ms. Derochie at
22 this Inquiry. The conclusions you're being asked to make
23 are unsupported. And it's not necessary for me to prove
24 that she's lying to show some malicious purpose. It is
25 open for you to find that her evidence is unreliable, that

1 she could be mistaken or that the entirety of her evidence
2 does not support any inference that it relates at all to
3 Silmsler or the settlement or any institutional response in
4 any way.

5 You must decline their invitation, Mr.
6 Commissioner, on the basis of common sense.

7 Mr. Leduc testified before you for
8 approximately five days and I suggest that there are
9 corroborating elements to Mr. Leduc's testimony. His
10 after-the-fact conduct demonstrates that he had absolutely
11 no knowledge of Clause (2) in the settlement until he was
12 advised of it on January 18th, 1994.

13 And I have a bit of a list here for you,
14 Mr. Commissioner, of those corroborating elements. In the
15 last week of August 1993, Mr. Leduc advised the Crown
16 attorney, Murray MacDonald, that he was acting for the
17 Diocese with respect to the settlement. And you'll recall
18 Murray MacDonald's evidence that he received -- he had that
19 conversation with Mr. Leduc, that he was not suspicious of
20 the conversation and that he believed Mr. Leduc was trying
21 to take the high ground.

22 On or about September 3rd, 1993, Mr. Leduc
23 provided the Executed Release to Reverend Bryan and advised
24 him that it is to be opened by the Bishop only. When
25 Reverend Bryan suggests that he also should be permitted to

1 view the release, Mr. Leduc unhesitatingly agrees. He
2 doesn't say, "No, no, you're not allowed to open that
3 envelope." He says, "Fine, you too."

4 In October of 1993, Mr. Leduc advised the
5 CAS that they should assure Mr. Silmsler that he will not
6 forfeit his settlement funds if he chooses to speak to the
7 CAS, and that was consistent with his knowledge of the
8 release at the time.

9 On January 13th, Mr. Leduc faxed a draft
10 press statement to Sean Adams, Malcolm MacDonald and Bryce
11 Geoffrey, all of whom had copies of the release, clearly
12 stating that he intended to represent to the media the next
13 day that the settlement does not in any way inhibit a
14 criminal process.

15 And on January 14th, Mr. Leduc went ahead
16 with that press statement and indicated to the national
17 press that the settlement did not in any way inhibit
18 criminal process. On January 19th, upon reading the final
19 Executed Release, Mr. Leduc immediately advises his client
20 and removes himself as counsel.

21 On January 24th, despite absolutely no
22 obligation to do so, Mr. Leduc makes a public media
23 coverage statement admitting his own negligence and his
24 conduct on the file.

25 Mr. Commissioner, Mr. Leduc had absolutely

1 no motive for entering into any sort of conspiracy. The
2 only person who would benefit from such an agreement and
3 the resulting misapprehension held by Mr. Silmsner that it
4 was enforceable would be Father MacDonald. At no point did
5 Mr. MacDonald allege that it was really Mr. Leduc who
6 included Clause Number (2). There is absolutely no
7 evidence, and it flies in the face of logic, that Malcolm
8 MacDonald would be publicly humiliated, admit to
9 obstruction of justice and risk his licence to practise law
10 as a favour to Mr. Leduc, a person with whom he had no
11 personal relationship.

12 Mr. Commissioner, there's another invitation
13 that I need to address. It's an invitation from Ms. Daley
14 in her written submissions for the CCR. They have asked
15 you to find that Mr. Leduc was negligent and that he
16 departed from the standard of care expected of a reasonably
17 prudent solicitor. As you know, you're prohibited from
18 making any findings with respect to negligence or civil
19 liability, and that's from Section 7 of your mandate. It's
20 also not in your jurisdiction because it does not present
21 any institutional systemic failure.

22 And that brings me to certain questions your
23 counsel asked my client when he was testifying before the
24 Inquiry. But firstly, Mr. Commissioner, you heard
25 absolutely no evidence regarding training, education,

1 qualification, code of conduct, standards of competence and
2 discipline of lawyers practising in the Province of
3 Ontario.

4 And by analogy, Mr. Commissioner, the Gouge
5 Inquiry was specifically tasked with the mandate of
6 inquiring into the qualifications and discipline of doctors
7 practising forensic pathology in the province. And a
8 result of that mandate, that Commission heard from a range
9 of experts in the field who testified as to practices in
10 other jurisdictions including England, Wales and Finland.
11 The College of Physicians and Surgeons, the disciplinary
12 and regulatory body in question, had standing at the Gouge
13 Inquiry due to their obvious interest in the mandate of
14 that Commission.

15 Now, there's good reason why the Law Society
16 did not have standing and funding here, Mr. Commissioner,
17 and that's because it wasn't within your mandate. Your
18 counsel expressed from time to time certain views on the
19 rules and norms of professional conduct of legal counsel.

20 And those questions -- those submissions
21 were subsumed in certain questions relating to the level of
22 expertise and training required to interview alleged
23 victims of sexual assaults, the appropriate standard for
24 lawyers with respect to taking notes, the appropriate
25 standard with respect to preserving notes, the appropriate

1 standard with respect to counsel -- when counsel should
2 open a file, how long the file should be preserved, the
3 propriety of speaking to witnesses during judicial
4 proceedings, the appropriate division of labour between co-
5 counsel and the preparation and realization of a civil
6 settlement, and the appropriate level of inquiry regarding
7 the qualification and potential conflict of an opposing
8 party's lawyer to provide independent legal advice.

9 But absolutely no evidence was called on any
10 of those points.

11 The Rules of Professional Conduct were from
12 time to time referred to here at the Inquiry, on occasion
13 erroneously, but no experts were called to testify about
14 rules, standards applicable to civil lawyers practising and
15 dealing in cases of historical sexual assault. There is
16 absolutely no evidentiary foundation to make conclusions
17 about Mr. Leduc's practises as counsel, specific habits or
18 level of competence because there was no evidence called
19 with respect to the standards, norms and rules against
20 which such conduct would be measured.

21 Mr. Commissioner, I must address the issue
22 of the *quid pro quo* as alleged by Ms. Hallett in her
23 testimony. You'll recall that Ms. Hallett testified that
24 upon learning -- and I'm jumping around here,
25 Mr. Commissioner; you'll have to excuse me -- upon learning

1 that Inspector Smith would not be called as a witness by
2 the defence, she came to believe that the OPP and the
3 defence had come to an agreement whereby the defence had
4 agreed to withdraw their allegation of wilful nondisclosure
5 against them in exchange for ammunition showing the Crown
6 had wilfully not disclosed.

7 And Mr. Commissioner, in my respectful
8 submission, this is either the worst deal or no deal. The
9 defence never abandoned their position that the police had
10 wilfully not disclosed. Mr. Campbell stood before Mr.
11 Justice Chadwick and said -- characterized the police
12 conduct as "a cogent circumstantial case for wilful
13 nondisclosure". Mr. Campbell further submitted to the
14 Court that bad faith was more logical for the police
15 officers' omissions than the explanation of coincidence.
16 The police officers were not let off the hook, as suggested
17 by Ms. Hallett's theory.

18 The allegation also has to include that the
19 officers provided the defence with the silver bullet, the
20 evidence that would incriminate Ms. Hallett, and that
21 suggestion is untenable because of their testimony on the
22 motion. You'll recall that all of the Project Truth
23 investigators testified that at no time did Ms. Hallett
24 wilfully not disclose anything to the Defence.

25 And lastly the spark, if you will, the thing

1 that leads Ms. Hallett to believe that there is an
2 agreement is the not calling of Inspector Smith. I've made
3 written submissions that I won't turn to right now about
4 why Inspector Smith's evidence was not necessary for the
5 defence but I'll leave that to you.

6 You'll recall that I asked Ms. Hallett in my
7 cross-examination that if Inspector Smith was so critical
8 to the motion, why it was that consistent with her duties
9 as a Crown attorney she did not call him?

10 And I submit to you that her explanation was
11 not reasonable in that regard, and she could provide no
12 explanation to the Inquiry as to why she didn't call a
13 witness that she believed was critical.

14 And the fact that Inspector Smith was not
15 called as a witness cannot be viewed as evidence of any
16 agreement between the defence and the police; it is simply
17 evidence that his testimony was not required.

18 **THE COMMISSIONER:** But what does this have
19 to do with Mr. Leduc?

20 **MS. ROBITAILLE:** Well, my client, with
21 respect Mr. Commissioner, has been tainted throughout this
22 Inquiry as some sort of grand conspirator. This is another
23 conspiracy that's -- it's alleged that Mr. Leduc had a hand
24 in it. He was presumably advising and instructing his
25 counsel to act in this regard.

1 Ms. McIntosh yesterday made some comments
2 about the possibility of you making some findings, Mr.
3 Commissioner, on the issue of civility between counsel and
4 that's in relation to the notice issue at the Stay
5 Application in 2001, and I've referred you to the Court of
6 Appeal's decision many times in the past and I'll refer you
7 again, Mr. Commissioner. The Court of Appeal examines the
8 Notice issue and if Ms. McIntosh and the Ministry of the
9 Attorney General relies on the Court of Appeal for the full
10 exoneration of Ms. Hallett, I rely on that Decision in
11 regards to the Notice issue.

12 The Court of Appeal found that the Notice in
13 Leduc was not ideal, but it was adequate. They found that
14 Ms. Hallett seemed aware of the allegation against her and
15 prepared to respond to it. They found that Ms. Hallett did
16 not object to the adequacy of the Notice she was given.

17 In their discussion of the law in relation
18 to Notice, they -- in these types of contexts, they wrote
19 that the Crown is in the best position to know the reason
20 why relevant information was withheld and who withheld it.
21 The law is clear that it is the Crown, not the defence,
22 that has the burden of explaining nondisclosure. And they
23 make certain comments about the constitutional rights of an
24 accused as opposed to the concerns of a Crown counsel.

25 Civility was not at issue at this Inquiry,

1 Mr. Commissioner. Civility was indeed not an issue raised
2 by Ms. Hallett. The relationship at issue in 2001 was the
3 relationship between the police, the Crown -- the police
4 and the Crown, not the defence and the Crown.

5 And if you can believe it, Mr. Commissioner,
6 I am going to finish before my time is over.

7 And I'm going to summarize by saying that
8 you must decline Mr. Lee's invitation, Ms. Daley's
9 invitation, Mr. Horn's invitation, Mr. Paul's invitation
10 and Ms. Hallett's invitation. You must reject their
11 invitation, not only on the basis of logic and the
12 evidentiary weaknesses and there are theories, but you must
13 reject their invitations because you have another
14 commitment.

15 You have another engagement that prevents
16 you from attending their party of conspiracy theories. Way
17 back in 2005, you accepted the invitation, as set out in
18 the Order-in-Council, to enquire into and to report on the
19 institutional response and systemic failures to allegations
20 of historical sexual abuse in Cornwall.

21 The invitation to find criminal conspiracy
22 involving Mr. Leduc must be rejected. And frankly, Mr.
23 Commissioner, you could just tell them that you're too busy
24 to attend their party.

25 Subject to any questions, those are my

1 submissions.

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

3 Well, I do have a luncheon date though.

4 (LAUGHTER/RIRES)

5 **MR. ENGELMANN:** Sir, we are, if time
6 permits, we're scheduled to come back at 1:30 to start with
7 the OPP submissions from Mr. Kozloff.

8 **THE COMMISSIONER:** All right, so be it.

9 Thank you.

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

12 This hearing will resume at 1:30 p.m.

13 --- Upon recessing at 12:06 p.m. /

14 L'audience est suspendue à 12h06

15 --- Upon resuming at 13:33 p.m. /

16 L'audience est reprise à 13h33

17 **THE REGISTRAR:** Order, all rise. À l'ordre;
18 veuillez vous lever.

19 This hearing has now resumed. Please be
20 seated; veuillez vous asseoir.

21 **THE COMMISSIONER:** Mr. Kozloff. Good
22 afternoon.

23 --- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.
24 KOZLOFF:

25 **MR. KOZLOFF:** Good afternoon, Mr.

1 Commissioner.

2 For the record, my name is Neil Kozloff, and
3 beside me are Gina Brannan, Diane Lahaie, and Tilton
4 Donihee, and together we represent the Ontario Provincial
5 Police as an organization, as well as the members, both
6 current and retired of its commissioned ranks,
7 commissioners, deputy commissioners, chief superintendents,
8 superintendents and inspectors.

9 It is my privilege to deliver closing
10 submissions to you on their behalf.

11 I want to begin, sir, by referring to some
12 of the things I said when I addressed you on October the
13 4th, 2006 as we were about to embark on the substantive
14 evidence portion of this Inquiry.

15 I said it would be important to keep in mind
16 that we would be looking back in history with the benefit
17 of hindsight. And I will return to that theme a little
18 later in the submissions.

19 I said that the Ontario Provincial Police
20 welcomed public scrutiny of its work in this community and
21 also that the OPP recognizes as an organization that
22 introspection, and by that I mean constantly looking
23 inward, assessing and reassessing in an honest and
24 constructively critical way how it conducts business,
25 serves the public good.

1 And so the OPP, both as an organization and
2 in concert with the provincial government, is continuously
3 examining and evaluating the quality and delivery of its
4 services to the people of Ontario. That is because the
5 ultimate focus for the OPP is and must be the wellbeing and
6 safety of the people of Ontario.

7 I want to touch for a moment on the OPP as
8 an organization. The OPP is responsible for a vast
9 geographical area, a very large workforce and a complex
10 infrastructure that is staggering for most to appreciate.

11 The OPP serves many richly diversified
12 communities within the Province of Ontario and fulfills its
13 mandate as one of North America's largest deployed police
14 services with more than 5600 uniformed officers, 1750
15 civilian employees and 850 auxiliary officers.

16 The OPP is divided into six regions; regions
17 are divided into detachment areas. OPP Eastern Region and
18 the detachments it supports are responsible for policing in
19 all areas of Eastern Region. They are not served by a
20 regional city or municipal police service, as in the case
21 with the City of Cornwall which is well served by the
22 Cornwall Community Police Service.

23 The involvement of the Ontario Provincial
24 Police in the Cornwall Public Inquiry commenced within 24
25 hours of the announcement being made by Premier Dalton

1 McGuinty in the Ontario Legislature on November 4th, 2004
2 that a Public Inquiry would be held.

3 From that date forward, sir, the OPP engaged
4 in preparing for participation at the Inquiry, immediately
5 dedicating personnel to this undertaking, the OPP Inquiry
6 Team, that would support its efforts including the work of
7 the legal team that was retained to represent the interests
8 of the OPP here until the conclusion of the Inquiry
9 process.

10 OPP involvement in the subject matter that
11 gave rise to the calling of this Inquiry was substantial.
12 To this end, huge amounts of money have been taken from
13 within the OPP's operating budget and a significant number
14 of officers and civilian staff were assembled that had to
15 be sourced from within the organization.

16 Those precious resources were allocated to
17 this endeavour in order to ensure that the participation of
18 the OPP at the Cornwall Public Inquiry would to the
19 greatest extent possible be conducted effectively and
20 thoroughly in an open, cooperative, transparent and
21 professional manner.

22 I turn now, Mr. Commissioner, to your
23 mandate. In your opening statement on November 7th, 2005
24 you said, and I quote:

25 "The purpose of an inquiry is generally

1 to find out what happened, what went
2 wrong and to look at what can be done
3 to avoid similar occurrences. As a
4 result inquiries look backwards and
5 forwards at the same time. This dual
6 mandate is what makes public inquiries
7 both unique and perhaps unusual to some
8 observers. This dual mandate, however,
9 is also what makes public inquiries
10 useful in our democracy and why they
11 provide a valuable service."

12 Mr. Commissioner, you went on to say:

13 "The terms of reference involved
14 reviewing actions taken by public
15 institutions on the allegations of
16 abuse, spanning a great many years and
17 involving a great number of people.
18 Simply put, there were allegations of
19 sexual abuse made, and my job is to
20 determine just how our public
21 institutions responded to those
22 allegations. That is the fact-finding
23 portion of the Inquiry."

24 To that end, sir, during the substantive
25 evidence portion of this Inquiry that commenced on October

1 the 4th, 2006, we have critically examined numerous
2 investigations conducted by the Ontario Provincial Police
3 in this area.

4 These included investigations that preceded
5 but were factually related to Project Truth investigations,
6 as well as investigations that touched on the institutional
7 response of other public institutions under scrutiny at
8 this Inquiry and, of course, we examined more than 30
9 Project Truth investigations. These included
10 investigations of historical as well as current sexual
11 abuse cases and the investigation of an alleged conspiracy
12 based on the contents of what has been referred to as the
13 Fantino brief.

14 In the written submissions of the Ontario
15 Provincial Police and its commissioned officers on Phase 1
16 which were filed with the Commission last week and posted
17 on the Commission website on Monday, some 290 pages are
18 devoted to a detailed presentation and analysis of those
19 investigations.

20 I do not intend to repeat what is set out in
21 our written submissions. I would however, sir, like to
22 mention a few things that apply to all of those
23 investigations and to the processes that we have been
24 engaged in here at the Cornwall Public Inquiry.

25 First, in order to fairly assess these

1 police investigations, it must be understood that the
2 police are governed by rules that have been developed over
3 centuries. The police in a free and democratic society
4 like Canada cannot force people, whether they are
5 complainants, witnesses, or suspects, to cooperate with
6 their investigations by demanding that they submit to
7 interviews and insisting that they answer all questions
8 asked until the police are satisfied. The police in a
9 society governed by the Rule of Law cannot arbitrarily
10 demand that people turn over whatever documents the police
11 wish to use in furtherance of their investigations.

12 The police must instead satisfy a judicial
13 authority that they are in possession of information and
14 belief that meets a legal standard. They must do this
15 before they can resort to powers of search and seizure,
16 before they can enter people's homes and businesses, search
17 law offices and diocesan files; before they take away what
18 they hope will help them to make their case.

19 What does this mean? It means that we do
20 not live in a police state. It means that nobody has to
21 talk to the police or to cooperate with a police
22 investigation. It means that the police do not have
23 unlimited powers to access and obtain what they suspect may
24 possibly be evidence of a crime under investigation.

25 Just by way of example, Perry Dunlop refused

1 to provide a statement to the OPP in his capacity as a
2 witness in April, 1997 when Pat Hall was beginning his
3 investigation into the allegations of death threats against
4 Dunlop, his wife and children that were set out in the
5 Fantino brief. In addition, Perry Dunlop refused to turn
6 over documents to the OPP, ostensibly on the advice of his
7 civil counsel.

8 Second, sir, by contrast, commissioners of
9 public inquiries under the *Public Inquiries Act* are given
10 wide-ranging investigative powers. Public inquiries are,
11 in the words of the late Supreme Court of Canada Justice
12 Gerald E. Le Dain:

13 "...released from many of the
14 institutional constraints placed upon
15 the various branches of government.
16 They are able to operate free from the
17 safeguards which ordinarily protect
18 individual rights in the face of
19 government action. Endowed with the
20 power to summons witnesses and to
21 subpoena documents, they can do things
22 in pursuance of the investigation of
23 matters relevant to their mandates that
24 the police cannot do."

25 What does that mean? It means that the

1 police are governed by rules far more restrictive than a
2 public inquiry. A public inquiry has, by definition and
3 legislative intent, the powers to conduct an investigation
4 with the benefits of all relevant documents and the
5 participation of all of the relevant parties that have been
6 identified through the exercise of those extraordinary
7 powers referred to above; identified with the benefit of
8 hindsight and with the luxury of time to reflect and to
9 adapt as new information becomes available and
10 circumstances warrant.

11 The Cornwall Public Inquiry in its Terms of
12 Reference was given the power to summons any individual to
13 testify and the power to subpoena all relevant documents
14 from all the relevant players. Commission counsel and
15 counsel for the parties have had the luxury of time; over
16 three years to digest, to analyze, to assess and to reflect
17 upon all of the evidence, including the evidence gathered
18 by the Commission with its powers and the power to cross-
19 examine the witnesses called. In light of all of the
20 above, sir, it only stands to reason that the roles of the
21 significant players in the various investigations could be
22 and would be canvassed more closely at this Inquiry.

23 Counsel who spoke on behalf of the three
24 parties on Monday -- the Citizens for Community Renewal,
25 the Coalition for Action and the Victims' Group --

1 addressed what they saw as the shortcomings in the 1994
2 investigations conducted by Tim Smith; one into an alleged
3 conspiracy by the Cornwall Police Service, the Diocese of
4 Alexandria-Cornwall and the Crown Attorney of Cornwall to
5 effect a civil settlement with David Silmser that
6 terminated the CPS investigation of his allegations of
7 historical sexual abuse against a local priest, Father
8 Charles MacDonald, and the other into an alleged
9 obstruction of justice by the lawyers who brought about
10 that civil settlement.

11 They argue, with the benefit of all the
12 material now at their disposal, that Smith and Fagan did
13 not drill down deeply enough, that the investigations Smith
14 conducted were perfunctory, or that their conclusions were
15 pre-ordained by assumptions made early on. They allege
16 that there was a failure by Smith to seriously and properly
17 investigate the alleged conspiracy involving the Cornwall
18 Police Service, the Diocese and Murray MacDonald; a failure
19 to appropriately seek out and assess the evidence.

20 They concluded that because Smith testified
21 here, almost 15 years after the fact, that he felt then in
22 1994 that there was no conspiracy involving the Cornwall
23 Police Service because no one came and reported it to him
24 and because Chief Shaver and Bishop LaRocque would not and
25 could not have conspired to do anything due to their prior

1 relationship, that Smith therefore decided he needed to do
2 no more than confirm in his own mind that Claude Shaver was
3 not involved in the conspiracy in order to wrap-up his
4 investigation.

5 They argued that the investigation of the
6 roles played by Jacques Leduc, Murray MacDonald and Sean
7 Adams, and any others who may have brought about that civil
8 settlement, were not properly and thoroughly investigated.

9 Many pieces of evidence were presented at
10 this Inquiry, documents, records, notebook entries that
11 were not provided to or obtained by the officers,
12 examinations for discovery conducted after these
13 investigations, and statements that were only obtained in
14 subsequent OPP investigations and therefore did not exist
15 in 1994.

16 None of this evidence was in the possession
17 of Smith in 1994 when he and Detective Constable Fagan
18 conducted their investigations, assembled the Crown briefs
19 and submitted them to Regional Crown Mr. Griffiths for his
20 opinion and recommendations.

21 It's submitted that Smith was at all times
22 candid with the Commission in his evidence. When, with the
23 benefit of all the material at their disposal, Commission
24 counsel and counsel for the parties questioned his
25 investigations, Smith conceded his errors and his

1 oversights.

2 Having said that, in my respectful
3 submission, upon a proper consideration of all the
4 evidence, documentary and testimonial, that has now been
5 placed before the Inquiry, there is still insufficient
6 evidence to form, objectively or subjectively, the
7 necessary reasonable and probable grounds to charge anyone
8 other than Angus Malcolm MacDonald with an offence under
9 the *Criminal Code*. Sloppy lawyering, bad management, even
10 civil negligence, perhaps; a criminal offence, no.

11 And upon a proper consideration of all the
12 evidence that is now before you, there would still be
13 insufficient evidence to form, objectively and
14 subjectively, the necessary grounds to charge anyone from
15 the Cornwall Police Service or the Diocese of Alexandria-
16 Cornwall or the local Crown Attorney with conspiring to
17 obstruct justice.

18 Tim Smith relied upon his training, his
19 experience, and the instincts that he had developed over
20 his more than quarter-of-a-century as a police officer and
21 investigator. It was on the basis of that training,
22 experience, and those instincts that he testified about
23 what he felt at the time. His findings were confirmed by
24 the opinion of an experienced Crown Prosecutor, Peter
25 Griffiths, now Justice Griffiths, who testified here. And

1 his findings, sir, have stood up to scrutiny in hindsight
2 here. Tim Smith was right.

3 As for the suggestion made by Ms. Daley that
4 the OPP was being used as a proxy for or by the Cornwall
5 Police Service when they came to investigate in 1994, I can
6 only say that if the Cornwall Police Service had chosen
7 instead to make representations at town hall meetings to
8 explain their conduct, right-thinking people might have
9 been left suspicious at what was being said by the very
10 people being accused of wrongdoing.

11 And, sir, with regard to the conspiracy
12 investigation spearheaded by Pat Hall during Project Truth,
13 those findings too have stood the test of time. The
14 conclusions were confirmed by the opinion of an experienced
15 Crown Prosecutor, Lorne McConnery, who testified here.

16 The rightness of those conclusions, if it
17 was ever in doubt, was confirmed for all time during the
18 cross-examination of Ron Leroux by Professor Manson on June
19 28th, 2007 when he retracted the allegations on which the
20 conspiracy theory was based. I said to you then, Mr.
21 Commissioner, and I say it again today, June 28th, 2007 was
22 a great day for the people of Cornwall. Pat Hall was
23 right.

24 I will say only one more thing about various
25 portions of the written and oral submissions of the parties

1 who addressed you on Monday, particularly as they related
2 to the OPP. With great respect, sir, some of those
3 submissions are a classic example of advocacy by hyperbole.
4 The use of an inflammatory descriptive, words such as
5 "outrageous", "inept", "ineffective", "incompetent",
6 "corrupt", as the sole foundation offered in support of a
7 factual submission rather than reliance upon the evidence
8 informed by a knowledge and understanding of the subject
9 matter and the application of logical analysis does not
10 make the argument, does not sustain the submission, does
11 not make it so.

12 As for the substantive criminal
13 investigations into allegations of historic and current
14 sexual abuse conducted by the Project Truth team, it is my
15 respectful submission that they were done thoroughly,
16 conscientiously, competently, compassionately and
17 professionally.

18 Indeed, I can do no better than to
19 paraphrase the oral submissions of Ms. Daley on behalf of
20 the CCR; for all the evidence we have heard about Project
21 Truth, it did terrific work with the individual allegations
22 of complainants.

23 Well, what was the problem? Why so few
24 convictions if the investigations were done properly?

25 You heard evidence, Mr. Commissioner, at the

1 outset of our journey about some of the difficulties
2 inherent in these kinds of investigations and the
3 prosecutions that follow them, even assuming the most *bona*
4 *fide* of complainants. Many of those problems have been
5 alluded to in the submissions filed last Thursday and in
6 the oral presentations this week.

7 To name just a few, diminished, altered or
8 failed memories; unavailability of supporting witnesses;
9 lack of forensic supportive evidence; compulsory
10 application of outdated law. What is clear, Mr.
11 Commissioner, at the end of the day, is that it is unfair
12 and unproductive to judge the quality of a police
13 investigation solely on the outcome in court.

14 There is, however, in the case of Cornwall
15 and the Project Truth investigations another unique set of
16 factors to weigh in the mix. I speak, of course, of the
17 roles played by Perry Dunlop, Garry Guzzo and Dick Nadeau.
18 These men and the impediments they placed in the way of
19 both the investigations and prosecutions are addressed
20 briefly in our written submissions.

21 They have been dealt with at length by Mr.
22 Sherriff-Scott on behalf of the Diocese of Alexandria-
23 Cornwall in his written closing submissions. In
24 particular, I refer and commend you to Section 3 in his
25 submissions at pages 31 to 104 under the heading "What

1 Happened in Cornwall?".

2 Mr. Sherriff-Scott's submissions are, in my
3 respectful submission, an accurate, thorough and articulate
4 presentation of the facts surrounding the role of Mr.
5 Dunlop in particular. I rely on and adopt the contents of
6 Mr. Sherriff-Scott's written submission in his Section 3.
7 And, sir, insofar as Mr. Sherriff-Scott does not stray from
8 that script tomorrow, I adopt what he will say then as
9 well.

10 Tim Smith gave Mr. Dunlop three simple rules
11 to follow at the outset in 1997. One, provide the
12 disclosure which you as a police officer know is necessary
13 in any criminal investigation. Two, stop speaking with
14 alleged victims and potential witnesses and direct them to
15 Project Truth or you will contaminate the investigation.
16 Three, stop speaking with the media. Smith was concerned
17 that Dunlop would undermine the confidence of the community
18 in what Project Truth was trying to do and especially
19 concerned that he would deter potential complainants from
20 coming forward.

21 Perry Dunlop chose to break every one of
22 those rules repeatedly. Instead, he became an impediment
23 to the OPP Project Truth investigations and to the
24 prosecutions that followed. It is obvious that the OPP,
25 among other stakeholders, was at a loss in trying to deal

1 with the roadblocks being put in their way by Mr. Dunlop.

2 It is equally obvious that neither the OPP
3 nor the others were ever able to deal effectively with the
4 rumours, innuendo, half-truths and outright lies that
5 originated with Mr. Dunlop and his group and were further
6 exploited by political opportunists like Garry Guzzo and
7 zealots like Richard Nadeau, at times through the
8 manipulation of an all too willing media.

9 The role Mr. Dunlop played was described far
10 more eloquently than I can by the various members of the
11 judiciary who heard the evidence about his activities at
12 the trials that followed the Project Truth investigations.

13 Some of them of have the benefit of hearing
14 from Mr. Dunlop himself. In his reasons for judgement in
15 the matter of *Regina v Leduc* dated March 1, 2001, Justice
16 Chadwick made the following observations and findings.

17 Paragraph 14:

18 "Crown counsel also disclosed materials
19 relating to the Marcel Lalonde case and
20 Perry Dunlop's involvement with the
21 witness C-8. C-8 was counselled by
22 Dunlop to change his evidence in order
23 that he would have grounds for a civil
24 suit against the school board."

25 Paragraph 16:

1 "Dunlop was also using the media to
2 disclose information. The Fifth Estate
3 had done a program. CBC National News
4 had reported on the allegations, along
5 with local radio stations and print
6 media."

7 Paragraph 18:

8 "Detective Hall had received the first
9 binder of Perry Dunlop's material in
10 March of 1997. He observed that
11 Dunlop's notes were not in the binder.
12 Perry Dunlop was still contacting
13 witnesses but the OPP did not have any
14 of Perry Dunlop's notes relating to the
15 interviews of those witnesses and
16 complainants."

17 Paragraph 24:

18 "When one looks at the notes of Perry
19 Dunlop, one becomes suspicious as to
20 when entries were actually made and
21 whether they were complete."

22 Paragraph 29:

23 "Dunlop was subpoenaed by the defence
24 but did not appear. Dunlop resides in
25 British Columbia and had agreed

1 verbally to accept service of the
2 subpoena by Federal Express. Defence
3 agreed to reimburse him for his air
4 fare. At the last moment, he reneged
5 and refused to appear."

6 Paragraph 39:

7 "It was apparent to the Project Truth
8 team from the start that Dunlop was a
9 problem. Dunlop was a self-appointed
10 investigator, prosecutor, judge, jury
11 and executioner. Dunlop's vigilante
12 approach permeated the complete Project
13 Truth investigations."

14 In his reasons for judgement on a Section
15 11(b) delay motion in the matter of *Regina v Charles*
16 *MacDonald*, May 13, 2002, Justice Chilcott made the
17 following findings in relation to Dunlop.

18 Paragraph 52:

19 "In the court's opinion, the greatest
20 contributor to the delay in this matter
21 was Mr. Dunlop, formerly a police
22 officer on the Cornwall force. Mr.
23 Dunlop has been described with many
24 colourful adjectives few, if any, I
25 would disagree with, but I do not

1 propose to add to or embellish them
2 further. Mr. Dunlop had significant
3 information relating to this
4 prosecution. He had conducted his own
5 investigation and continued to
6 investigate while the proceedings were
7 ongoing. He continued to undertake to
8 provide, and promised to provide, the
9 material he had and to have no contact
10 with the media. There were oral and
11 written instructions that he was
12 ordered to comply with. He refused to
13 provide the statements and
14 documentation until he had seriously
15 imperilled this prosecution and it was
16 too late to be salvaged. It is easy to
17 say in hindsight, why didn't they come
18 down harder on Dunlop? But, remember,
19 at the time that he had been -- at the
20 time, he had been through a hearing
21 under the *Police Act* and had been
22 successful."

23 He was suing the police chief of Cornwall,
24 and the others that I mentioned earlier, including the
25 Diocese, for millions of damages in a civil action.

1 He kept promising to produce, and, as his
2 inspector at the time said, they were afraid that if they
3 were too harsh on him he would provide nothing, and refuse
4 to cooperate at all. That I can appreciate in the
5 circumstances at the time. Now it is clear that Dunlop was
6 trusted at the time, and that was a mistake.

7 In the unanimous decision of the Ontario
8 Court of Appeal in *Regina and Leduc* released on July 24th,
9 2003, Mr. Justice Laskin, writing for the Court, made the
10 following observations:

11 "The Project Truth team interviewed
12 approximately 850 people.
13 Dunlop had no official role in the
14 investigation. Nevertheless, he
15 maintained an interest in Project Truth
16 and managed, without authorization, to
17 inject himself into the OPP
18 investigation.

19 The Project Truth investigators soon
20 became concerned that Dunlop was
21 interviewing both witnesses and
22 complainants, and trying to colour
23 their evidence. They viewed him as a
24 potential obstacle to successful
25 prosecutions, and made numerous

1 attempts, mostly unsuccessful, to stop
2 him from contacting complainants or
3 witnesses in the Project Truth inquiry.
4 The investigators also repeatedly asked
5 Dunlop to surrender all his notes and
6 to produce a detailed history in the
7 form of a Will Say statement,
8 recounting his involvement in Project
9 Truth matters. At a meeting on July
10 23rd, 1998, Dunlop was told to turn over
11 his notes because they were needed for
12 inclusion in disclosure briefs for
13 defence counsel, on a number of Project
14 Truth cases. He refused to comply.
15 Not until the spring of 2000 did Dunlop
16 hand over to the investigators his
17 notes, a Will Say statement, and other
18 materials."

19 Crown counsel Lidia Narozniak indicated to
20 the Commission that she had concerns about Dunlop's
21 credibility and reliability, and made the following
22 observations with respect to Dunlop, based upon her review
23 of the Project Truth material:

24 "However, my review of Project Truth,
25 and the MacDonald case, and the Lalonde

1 case, clearly provided me with the
2 following information:
3 This was a witness that continued to
4 persist in contacting victims and
5 witnesses, contrary to direct orders by
6 his superiors.
7 This was a witness who persisted in
8 contacting media, contrary to requests
9 and orders to cease and desist.
10 This is a witness who has been
11 described as being overzealous, to use
12 one description, in his approach to
13 investigating and contacting victims
14 and witnesses.
15 This is a witness that has been
16 described as being one who pushed
17 victims to come up with certain
18 evidence, and, in fact, there were
19 allegations that he counselled them to
20 falsify their testimony, resulting in
21 the withdrawal of counts.
22 And, finally, this is a witness who,
23 clearly, was not truthful while under
24 oath.
25 This is a witness that you have to

1 approach with extreme caution."

2 Mr. Commissioner, I'd like to address the
3 issue of findings of misconduct.

4 The Ontario Provincial Police and its
5 commissioned officers adopt the submissions made by the
6 Cornwall Police Service as set out in their written
7 submissions.

8 In my respectful submission, sir, it would
9 be unfair to assess the conduct of the Ontario Provincial
10 Police as an institution, and the conduct of its officers,
11 by the standards of today, rather than the standards that
12 applied at the time of the pre-Project Truth and Project
13 Truth investigations. Those investigations were carried
14 out many years ago, when, as we know, the standards were
15 much different than they are today.

16 It is equally unfair to assess the conduct
17 of the Ontario Provincial Police and its officers with the
18 luxury of hindsight. Just as Archie Campbell stated in the
19 SARS Commission:

20 "It is easy now to say which systems
21 were inadequate and which decisions
22 were mistaken."

23 The Ontario Provincial Police did not have a
24 crystal ball. They could not have foreseen what became a
25 virtual explosion of cases, allegations of historic sexual

1 abuse against priests, teachers, hockey coaches, scout
2 leaders, and others; a crystal ball, which would have
3 permitted them to develop and put in place appropriate
4 policies, procedures and training. Instead, the Ontario
5 Provincial Police and its officers had to rely on the
6 policies, procedures and training available to them at the
7 time.

8 In addition, the OPP did not have the luxury
9 of being able to throw all its resources at these
10 investigations, when at the time, as both Detective
11 Inspector Millar and Deputy Commissioner Chris Lewis
12 testified, the OPP was addressing a very high level of
13 criminal activity in the East Region. While these were
14 important investigations, they were not the only
15 investigations that the Ontario Provincial Police and its
16 officers in East Region had to address.

17 Hindsight is an excellent tool to assist us
18 in developing better policies and procedures to address
19 various situations. Hindsight is not an appropriate tool
20 to judge the conduct of either an individual or an
21 institution.

22 It is respectfully submitted that you cannot
23 hold the Ontario Provincial Police and its officers to any
24 higher standard of care than the policies and procedures in
25 place at the time of the pre-Project Truth and Project

1 Truth investigations.

2 To quote the Chief Justice, in 2007, in the
3 case of *Hill*:

4 "The standard is not perfection, or
5 even the optimum, judged from the
6 vantage of hindsight. It is that of a
7 reasonable officer, judged in the
8 circumstances prevailing at the time
9 that the decision was made,
10 circumstance that may include urgency
11 and deficiencies of information."

12 If I can turn now, sir, to the corporate
13 issues, what the OPP has done to address those corporate
14 issues canvassed during its institutional response.

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

16 **MR. KOZLOFF:** Mr. Commissioner, in doing so
17 I will review some of Deputy Lewis' evidence, followed by
18 the presentation of the recommendations of the Ontario
19 Provincial Police.

20 Firstly, Officer Training. While in the
21 1990s very few members in the SD&G, the Stormont, Dundas
22 and Glengarry Crime Unit, had any specialty training beyond
23 criminal investigation techniques. Today, that is no
24 longer the case.

25 Efforts have been made to train officers in

1 respect of the conduct of sexual assault investigations,
2 where the allegations are historical, and to understand the
3 issues surrounding male victimization.

4 The biggest change in policy -- or, in
5 policing, sorry -- occurred in 1999, with the enactment of
6 the adequacy and effectiveness of police services
7 regulation, referred to as the *Adequacy Standards*
8 *Regulation*, which became mandatory in 2001 after a two-year
9 transition period. As Deputy Lewis put it, "These
10 regulations changed everything."

11 As well, in the post-Bernardo world, and as
12 a result of the recommendations made by Mr. Justice Archie
13 Campbell, the major case management manual and course were
14 developed. This course is now mandatory for all detective
15 sergeants, detective staff sergeants, and detective
16 inspectors.

17 The sexual assault investigative course, now
18 being offered through the OPP Academy, is accredited by the
19 Ontario Police College.

20 While there is currently a component that
21 addresses the investigation of an historical sexual
22 assault, there is also an ongoing analysis of the OPP's
23 training programs. All abuse training, all sexual assault
24 investigative training, is being evaluated in terms of any
25 gaps that may be within the training curriculum.

1 The OPP Academy staff are constantly
2 evaluating the OPP training curriculum and course training
3 standards, in conjunction with changes at law and
4 recommendations made through public inquiries and coroners'
5 inquests, in an effort to identify gaps.

6 Other initiatives to address the issue that
7 relate to the conduct of an investigation of historic
8 sexual assault include the crime conferences put on by each
9 region, on an annual basis, in order to address in a timely
10 way changes in the law, procedures, investigative
11 techniques, and evidence gathering.

12 In 2008, the Eastern Region presented a
13 crime conference for their detectives, which included a
14 significant session on investigating and prosecuting
15 historical cases.

16 Deputy Commissioner Lewis told us about the
17 work of Sergeant Shelley Tarnowski, the OPP provincial
18 coordinator for abuse issues, who works in the OPP crime
19 prevention section. Her group developed and hosted two
20 conferences attended by police agencies, Children's Aid,
21 victims and witness assistance personnel, and others,
22 specifically focused on understanding and responding to
23 male victimization. These conferences were well-attended
24 with over 150 delegates per session.

25 Sexual Abuse Management Protocols. It is

1 apparent, sir, from the evidence we have heard at this
2 Inquiry that sexual abuse protocols vary in application and
3 content across the Province. What is lacking is
4 consistency in approach. OPP detachment commanders are
5 required to ensure protocols are developed with CAS and
6 similar agencies within their detachment areas. Protocols
7 must be kept current and there must be regular meetings
8 with such agencies to further develop relationships and
9 ensure the protocols are being utilized by OPP personnel.

10 Deputy Commissioner Lewis testified that the
11 OPP, through its Crime Prevention Section, recently
12 approached the Ontario Association of Chiefs of Police and
13 discussed the concept of developing a standardized
14 provincial protocol for sexual abuse management. It is
15 clear that consideration should be given to the inclusion
16 of protocols that address allegations of historic sexual
17 assault.

18 In addition to the present duty to report,
19 Deputy Commissioner Lewis addressed whether there should be
20 a duty to advise employers and volunteer organizations of
21 alleged sexual abuse, whether current or historical, in
22 cases where allegations are made against individuals whose
23 employment or volunteer activities bring them in close
24 association with children.

25 Human Resources. Another issue raised

1 during the OPP institutional response was in relation to
2 human resources and the lack of those resources to both the
3 area crime manager and the CIB case managers. Deputy
4 Commissioner Lewis addressed these issues, explaining that
5 the OPP's staffing situation in 2008 is far different than
6 it was in the 1990s. In the 1990s, sir, the OPP were
7 facing a huge vacancy rate. A lot of positions were not
8 filled and Eastern Region experienced a resource drain.

9 You heard how Officer Millar's plate was
10 full. He had homicides to investigate, an attempt murder,
11 other sexual assault investigations, organized crime
12 investigations, and the usual gamut of robberies et cetera,
13 all of which taxed human resources to the limit.

14 Since then a lot of changes have taken
15 place. In East Region, for example, there is now a
16 community response team which consists of 10 highly trained
17 officers, trained to deal with significant benchmark
18 crimes. They work out of Eastern Region Headquarters and
19 are used to front-end load serious investigations. This
20 community response team supports the detectives in the
21 detachments on a daily basis.

22 The OPP has additional abuse issues officers
23 that were not available in the 1990s. Today, the SD&G
24 Detachment has a full-time officer that addresses abuse
25 issues and is there to assist the CIB case managers and

1 detectives.

2 All the detachment commanders, regional
3 commanders and crime officers in the OPP know that if they
4 need people, the OPP will find them. That had not always
5 been the case. The mindset has shifted. As Lewis put it,
6 today the OPP has more people, better trained and available
7 to assist in major crime and special projects.

8 CIB Case Management and Assignment. During
9 the OPP institutional response evidence, each of the OPP
10 case managers -- Smith, Hamelink and Hall -- addressed the
11 heavy caseload of major cases in distant locations around
12 the Province that they were carrying at any given time.
13 The current director of the CIB has taken a number of steps
14 to bring some work-life balance to the lives of these
15 officers in terms of the development of junior officers to
16 relieve some workload pressure, changes to case assignment
17 protocols, a workload analysis, efforts to lessen their
18 travel requirements and administrative reporting
19 requirements.

20 Deputy Commissioner Lewis said that it is
21 unlikely that there can be a cap in cases because cases are
22 fluid and 10 cases may mean that some are before the courts
23 and others are still under active investigation. The
24 workload fluctuates depending on the level of major cases
25 that have to be addressed at any given time. The

1 difference is that the situation is being monitored
2 regularly by the deputy directors and support is provided
3 when and where it is needed.

4 Media Relations. During any criminal
5 investigation media relations present a challenge to law
6 enforcement. On the one hand, the police want to keep the
7 public informed with accurate information. At the same
8 time, it is obviously necessary to insulate the
9 investigators from the media so that they can get on with
10 the job of investigating without interference or
11 distraction.

12 To complicate matters, police-media
13 relations are subject to the agenda of the particular media
14 person. It is also trite to say, sir, that any member of
15 the public, particularly a person of prominence in the
16 community, can attract and even manipulate media attention.
17 When inaccurate information finds its way into the
18 newspaper or onto a newscast it is immaterial whether the
19 source has done so unknowingly, carelessly or deliberately.
20 Once a story is in print or aired, the damage is done.
21 Retractions are a poor substitute for accuracy. And as the
22 saying goes, never argue with a man who buys ink by the
23 barrel.

24 The age of the World Wide Web or Internet
25 presents an opportunity for unlimited and virtually

1 ungovernable access to the public. Where the information
2 being put on the Web concerns an ongoing police
3 investigation the police may be at a loss to respond
4 effectively. When the subject matter of the investigation
5 is allegations of historical sexual abuse involving
6 multiple alleged victims and multiple suspects, the
7 investigating police agency must strike an especially
8 delicate balance.

9 The police will want to put out a sufficient
10 amount of information to draw out potential victims. At
11 the same time, they will want to avoid the suggestion that
12 any of the information released by the police during an
13 investigation undermined the right to a fair trial; a right
14 guaranteed under our criminal justice system which features
15 the presumption of innocence as one of its pillars. It
16 would be counterproductive for the police to conduct a
17 successful investigation only to see a potentially
18 successful prosecution compromised as a result of having
19 improperly disseminated information through the media.

20 Finally, when there are allegations
21 circulating in a small community through the various media
22 agencies of the existence of a group of its prominent
23 citizens engaging in a conspiracy to protect paedophiles,
24 the potential impact on that community is incalculable.
25 When allegations such as these are being investigated,

1 simultaneously and in conjunction with an investigation
2 into historical sexual abuse by some of the same prominent
3 citizens, the challenges faced by the police in dealing
4 effectively with the media are, in light of all the
5 foregoing, enormous.

6 Deputy Commissioner Chris Lewis had this to
7 say about the changes in OPP media relations since Project
8 Truth:

9 "We've really gone from an organization
10 in probably the early nineties on some
11 fronts -- it was a police organization
12 that would only speak to the press if
13 we were forced to, and then we'd only
14 tell them what we thought we could get
15 away with and as little as possible.
16 And organizationally now the mindset --
17 and we've ingrained this in everybody
18 that we can -- we tell the media all we
19 can except those things that might
20 jeopardize an investigation or hurt the
21 judicial process in some way or
22 identify a victim or witness
23 unnecessarily."

24 Deputy Commissioner Lewis testified that
25 more people in the organization are trained in media

1 relations, including CIB inspectors. They did not take
2 media relations courses in the seventies, eighties and
3 nineties. In those days, "We weren't going to tell anybody
4 anything, so there wasn't much reason to train anybody".

5 In respect of correcting inaccurate
6 statements made in the media, Lewis testified that it is
7 always a challenge for the OPP because it can become a "he
8 said this" and a "he said that" and while it is not easy,
9 the OPP's policy is to correct inaccuracies in the media
10 when the inaccuracies will hurt someone or will affect
11 public safety in some way.

12 I come now, sir, to the recommendations.

13 The Ontario Provincial Police respectfully
14 submits the following recommendations for consideration by
15 you, sir, Commissioner of the Cornwall Public Inquiry. 1)
16 Training. While the Ontario Provincial Police Academy and
17 the Ontario Police College has offered training in general
18 investigative techniques and in sexual assault
19 investigations historically, specialty training of police
20 officers in respect to the investigation of historic sexual
21 assaults and male victimization has not been offered.

22 While recently the Ontario Provincial Police
23 has offered crime conferences and conferences for police
24 services, Children's Aid Societies and victim witness
25 assistance personnel focused on understanding and

1 responding to male victimization; a review of the present
2 training programs to address the need for specialized
3 training is now underway.

4 It is recommended, sir, that the Ontario
5 Provincial Police in consultation with the sub-committee of
6 the Provincial Crime Management Review Committee which is
7 composed of representatives of the OPP Academy review all
8 of the present training programs offered by the Ontario
9 Police College and the Ontario Provincial Police Academy in
10 respect of the investigation of sexual assaults and were
11 not addressed; proposed training programs or training
12 modules that should be added to existing training programs
13 that addressed the following areas; the investigation of
14 historical sexual assaults, understanding and responding to
15 male victimization, the investigation of sexual offences
16 against children and joint training of police and CAS
17 workers.

18 2) Standardized Protocol and Amendments to
19 Provincial Legislation to include the Duty to Advise. Mr.
20 Commissioner, evidence heard at the Cornwall Public Inquiry
21 revealed that sexual abuse protocols vary in application
22 and content across the province and what is needed is
23 consistency in approach.

24 The OPP recently approached the Ontario
25 Association of Chiefs of Police and discussed the concept

1 of developing a standardized provincial protocol for sexual
2 abuse management fully understanding that a standard
3 protocol would require some autonomy due to local nuances.
4 As a result, a committee has been struck and will use the
5 recently developed Durham Regional Police model as a
6 starting point for further discussions with the Ontario
7 Association of Children's Aid Societies.

8 It is recommended that this Commission
9 endorse the development of a standardized provincial
10 protocol by the Ontario Association of Children's Aid
11 Societies and the Ontario Association of Chiefs of Police
12 which would provide for consistency in approach with
13 respect to the rules of the CAS and the police and sexual
14 abuse investigations including historical sexual abuse
15 investigations permitting local CAS and local police
16 services the freedom to include addendums to the provincial
17 protocol to address local issues.

18 It is further recommended, sir, that this
19 committee also review and consider whether legislative
20 change should be proposed to amend the *Child and Family*
21 *Services Act* such that in addition to the present duty to
22 report, there should be a duty to advise employers and/or
23 volunteer organizations of alleged sexual abuse whether
24 current or historical in cases where the allegations are
25 made against individuals whose employment or volunteer

1 activities bring them into close association with children.

2 3) Human Resources Abuse Issues Officers. A
3 comprehensive overall OPP staffing model has been developed
4 so that the OPP can properly assess its staffing needs
5 based on workload and articulate those needs to
6 municipalities and to the Government of Ontario to support
7 an enhanced complement. As part of this staffing model,
8 the Commissioner's Committee has approved a plan where each
9 detachment in the OPP would be staffed with an abuse issues
10 officer who would be available as a resource to the case
11 managers and investigators in respect of child abuse and
12 sexual assault investigations.

13 It is recommended that this Commission
14 endorse that part of the OPP staffing model approved by the
15 OPP Commissioner's Committee which calls for the provision
16 of an abuse issues officer in every OPP detachment.

17 4) Access to Information by Law Enforcement
18 Agencies. Law enforcement agencies need 24/7 access to all
19 available information with respect to known and potential
20 sex offenders, including historical, to provide accurate
21 threat assessments in a timely manner, to facilitate
22 issuance of public safety alerts and to prioritize police
23 resource allocation in the interests of public safety.

24 In order to achieve this goal, it will be
25 necessary for the Ministry of Children and Youth Services,

1 the Ministry of Community Safety and Correctional Services,
2 the Ontario Association of Children's Aid Societies and the
3 Ontario Association of Chiefs of Police to work together to
4 develop a policy for a mechanism to interface with all
5 relevant provincial information databases with respect to
6 known and potential sex offenders.

7 It is recommended that in order to address
8 the critical need for law enforcement agencies to have
9 reliable access to all relevant data information from all
10 other mandated child protection agencies and corrections at
11 both the provincial and federal levels that the Ontario
12 Government develop policies to establish a mechanism that
13 permits law enforcement agencies to interface with all
14 associated provincial databases available with respect to
15 known and potential sex offenders and to provide the
16 funding to do so.

17 It is further recommended in respect of
18 federal databases available with respect to known and
19 potential sex offenders that the Ontario Government, the
20 Ontario Association of Chiefs of Police and the Ontario
21 Association of Children's Aid Societies present this need
22 for access to information databases, to the appropriate
23 departments of the Government of Canada to permit and
24 facilitate access by Ontario municipal and provincial law
25 enforcement agencies to federal information databases

1 available with respect to known and potential sex
2 offenders.

3 5) Sex Offender Registries. Ontario's
4 Christopher's Law (Sex Offender Registry) 2000 provides for
5 the establishment and maintenance of a provincial sex
6 offender registry and requires persons convicted of a sex
7 offence or found not criminally responsible of a sex
8 offence on account of mental disorder to register in person
9 at their local police station on certain triggering events;
10 for example, upon being released from custody for a sex
11 offence and annually thereafter.

12 *Christopher's Law* proclaimed on December 5th,
13 2008 -- I'm sorry, the *Christopher's Law, Ontario Sex*
14 *Offender Registry Amendment Act 2008* proclaimed on December
15 5th, 2008 allows police to track more sex offenders in the
16 community. Sex offenders are very transient and commonly
17 move from province to province and are difficult to
18 monitor. All Canadian police services require the
19 assistance of federal and provincial corrections
20 authorities in order to monitor all sex offenders who are
21 incarcerated, paroled or on probation.

22 In August 2008, the Canadian Association of
23 Chiefs of Police issued a resolution to request that the
24 Federal Government consider using the Ontario Sex Offender
25 Registry as a model for required enhancements to the

1 National Sex Offender Registry.

2 It is recommended that the legislature and -
3 - sorry, that the legislative and software features of the
4 Ontario Sex Offender Registry should be considered as a
5 model for enhancing the National Sex Offender Registry
6 Program including but not limited to:

7 1) mandated automatic registration of sex offenders upon
8 conviction rather than pursuant to a judge's order;

9 2) ensuring members of all police services in Canada have
10 access, use and disclosure of registered offender
11 information for crime prevention or law enforcement
12 purposes;

13 3) creation of an electronic link between all provincial
14 and federal corrections agencies to the National Sex
15 Offender Registry which will assist provincial centres and
16 police services in identifying offenders being released
17 from institutions and ensure their compliance;

18 4) ensuring the police services of jurisdiction, verify the
19 registered offenders reported home address, allowing data
20 matching, which includes comparison of other electronic
21 applications with the National Sex Offender Registry that
22 is currently prohibited by the *Sex Offender Information*
23 *Registration Act*;

24 5) mandating federal and provincial and correctional
25 services to notify sex offender registry centres of

1 offender release dates;

2 6) amending the *Criminal Code of Canada* to allow for

3 hybridization of the first offence provision in Section

4 490.031, the fail to comply with order, that to support

5 municipal and provincial police services in implementing

6 the National Sex Offender Registry using the Ontario Sex

7 Offender Registry as a model, the federal government

8 provide the costs required for development, implementation

9 and maintenance of the program; and

10 7) that the Government of Canada through the Ministry of

11 Justice and Attorney General and the Minister of Public

12 Safety conduct a review and consider adoption of Ontario

13 Sex Offender legislation and software application as a

14 model to maximize public safety in all of Canada's

15 provinces.

16 6) Enhanced DNA Legislation. The *DNA*

17 *Identification Act*, which establishes the National DNA Data

18 Bank, is federal legislation that came into force on June

19 30th, 2000. The federal government is responsible for the

20 *DNA Identification Act* and the National DNA Data Bank.

21 The NDDB is operated and maintained by the

22 RCMP and includes convicted offenders' index or COI

23 containing sample information from offenders convicted of

24 specified primary offences, such as sexual assault, murder,

25 aggravated assault, as well as secondary offences such as

1 indecent acts, robbery, break and entry with intent.

2 DNA helps the police protect the public by
3 increasing the chance of detection, which is a more
4 powerful deterrent than tougher sentences. It brings more
5 offences to justice and reassures communities. It ensures
6 that high risk offenders are linked to other and previously
7 unsolved crimes, if their DNA matches on arrest. It makes
8 the process easier for victims, particularly in sexual
9 offences for the significant proportion of cases where DNA
10 evidence provokes early guilty pleas and removes the need
11 for cross-examination.

12 It is recommended that the Ontario
13 Association of Chiefs of Police work with the Canadian
14 Association of Chiefs of Police to address the need to
15 enhance the authority to secure mandatory upon arrest DNA
16 samples from accused persons charged with any form of child
17 sexual exploitation or abuse offences for the purpose of
18 recommending to the federal government the necessary
19 amendments to the *Criminal Code of Canada*.

20 7) Justice Sector Interdisciplinary
21 Approach. Training of law enforcement officers relative to
22 sexual abuse including historical sexual abuse, child
23 abuse, victim care and male victimization has been enhanced
24 over time. Case management experience in the handling of
25 multi victim, multi perpetrator, multi jurisdiction cases

1 has improved greatly over the years with experience and
2 training.

3 Partnerships based on experience, early
4 engagement and dedicated Crown resources between law
5 enforcement officers and Crown prosecutors have produced
6 excellent results.

7 It is recommended that the Ontario
8 government, through the cooperation between the Ministry of
9 Community Safety and Correctional Services and the Ministry
10 of the Attorney General, develop and implement a justice
11 sector interdisciplinary team approach to Crown, police
12 training opportunities, consultation and special
13 prosecutions relative to sexual offences including
14 historical offences committed against children and to
15 provide the necessary funding to do so.

16 It is further recommended that the Ontario
17 Government establish intergovernmental protocols and
18 interdisciplinary teams to ensure that Crown prosecutors
19 and assigned law enforcement officers engage in early
20 consultations on investigations and prosecutions of child
21 sexual offenders and to provide the necessary funding to do
22 so.

23 And it is further recommended that the
24 Ontario Government increase the capacity of the Ministry of
25 the Attorney General to have dedicated, fully trained and

1 experienced prosecutors assigned to child sexual
2 exploitation, sexual assault and sexual abuse, including
3 historic sexual abuse, prosecutions and to provide the
4 necessary funding to do so.

5 Standardized Disclosure Tracking Systems.
6 Police and Crown disclosure and the lack of a formalized
7 codified tracking system is one of the most critical issues
8 for the justice system across Canada, and it must be
9 addressed.

10 It is recommended that the Ontario
11 Government, through the Ministry of Community Safety and
12 Correctional Services Policing Services and the Ministry of
13 the Attorney General in association with the Ontario
14 Association of Chiefs of Police and the Ontario Association
15 of Crown Attorneys, research and develop a codified policy
16 that would address the standardization of methodologies to
17 track disclosure in the justice system and provide the
18 necessary funding to do so.

19 Prioritization of Sexual Offence
20 Prosecutions. The delays that are encountered by the
21 police and Crown attorneys in processing sexual assault
22 cases through the courts impact negatively on all concerned
23 and most importantly the victims who look to the justice
24 system for assistance and closure.

25 It is recommended that the Ontario

1 Government, through the Ministry of the Attorney General
2 and the Ministry of Community Safety and Correctional
3 Services Policing Services in association with the Ontario
4 Association of Chiefs of Police and the Ontario Crown
5 Attorneys Association, develop and establish a special
6 fast-tracked process to help ensure that cases involving
7 sexual offences, including historical and particularly in
8 relation to children are expedited in the courts and to
9 provide the necessary funding to do so.

10 The Gender Sexual Assault -- the
11 Genderization of Sexual Assault Victims Services. Sexual
12 assault victim services have traditionally focussed on the
13 female victim, including rape crisis centres and publicly
14 funded Ontario hospitals.

15 It is recommended that the Ontario
16 Government, through the Ministry of the Attorney General,
17 the Minister of Health and Long-term Care in association
18 with the Men's Project and other victim advocacy groups,
19 enhance the access to services for sexual assault victims
20 in Ontario, including the Rape Crisis Centres in Ontario's
21 publicly-funded hospitals regardless of gender, and to
22 provided training of service providers on the subject of
23 male victimization and public education relative to equal
24 access to services regardless of gender and to provide the
25 necessary funding to do so.

1 Mr. Commissioner, it is the express desire
2 of the Commissioner of the Ontario Provincial Police,
3 Julian Fantino, the organization and its commissioned
4 officers to remain accountable to the people of Ontario and
5 to the people and to the communities they serve. In that
6 way, the OPP will maintain for the next century the respect
7 and the trust that has been earned over the past hundred
8 years as a dedicated professional police service.

9 Final words, sir.

10 This has been a long and often difficult
11 process for all involved, not the least for those who were
12 directly involved as witnesses.

13 Terrible and painful memories have been
14 stirred up. For those who did summon the courage to
15 testify and for their loved ones, we sincerely hope that
16 some good will come from this effort and that our children
17 and grandchildren will be the beneficiaries. And to the
18 people of Cornwall, who extended a warm welcome to those of
19 us who came from other places to participate at this
20 Inquiry, we sincerely thank you for all the kindnesses
21 you've showed us over the past three years and assure you
22 that they and you will never be forgotten.

23 Thank you.

24 **THE COMMISSIONER:** Let's take a break until
25 3:00 then.

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

3 This hearing will resume at 3:00 p.m.

4 --- Upon recessing at 2:38 p.m. /

5 L'audience est suspendue à 14h38

6 --- Upon resuming at 3:04 p.m. /

7 L'audience est reprise à 15h04

8 **THE REGISTRAR:** This hearing is now resumed.
9 Please be seated; veuillez vous asseoir.

10 **THE COMMISSIONER:** Good afternoon, Mr.
11 Wallace.

12 **MR. WALLACE:** Good afternoon, Mr.
13 Commissioner.

14 --- **FINAL SUBMISSIONS BY/REPRESENTATIONS FINALES PAR**
15 **MR. WALLACE:**

16 **MR. WALLACE:** My name is Mark Wallace.
17 Beside me is Bill Carroll and together we represent the
18 Ontario Provincial Police Association. Mr. Commissioner,
19 I'd like to begin by adding a few words to the sentiments
20 that have been expressed by others regarding the Inquiry.
21 Firstly, and most importantly, I'd like to
22 acknowledge the remarkable courage of the victims who have
23 come forward and shared their experiences with us. For
24 some of them, this was the first time they had publicly
25 talked about these matters. They wanted to participate and

1 contribute to the Inquiry's important work even though it
2 was undoubtedly a painful experience. Their participation
3 and contribution was critical to the mandate and it was
4 obvious how seriously they took their role.

5 One only has to look at their evidence to
6 see that it included many very thoughtful recommendations
7 on improving institutional responses in the future. Those
8 recommendations were accompanied oftentimes by an emotional
9 yet non-vindictive description of how the institutional
10 response had affected them.

11 As well, we want to acknowledge and express
12 our gratitude to all counsel involved for embracing a
13 general atmosphere of collegiality notwithstanding marked
14 differences in interest and opinions. And as others have
15 said, we thank you, sir, for your patience and constant
16 attention to the evidence as it unfolded here for the last
17 three years.

18 I'd like to say a few words about our
19 client, the Ontario Provincial Police Association. The
20 Ontario Provincial Police Association came into existence
21 in 1954. The Association represents the employment-related
22 interests of the non-commissioned officers of the Ontario
23 Provincial Police, up to and including the rank of staff
24 sergeant. The Ontario Provincial Police Association also
25 provides representation to the civilian members employed by

1 the Ontario Provincial Police.

2 Amongst many services provided to the
3 membership, the Association provides representation and
4 assistance to all of its members for matters that are
5 related to their employment with the Ontario Provincial
6 Police. The Ontario Provincial Police Association, through
7 legal counsel, represents the individual and collective
8 interests of its members, including retired members, at the
9 Inquiry.

10 Sir, going back as far as early 2007, 19
11 members and former members of the Association were
12 identified and notified by Commission counsel that they
13 were potential witnesses to be called to give evidence at
14 the Inquiry. Of those 19, Commission counsel interviewed
15 14. The preparation for those interviews was extensive,
16 given the years to be covered and the passage of time since
17 the events in question. Of the 14 officers interviewed, 6
18 members or retired members of the Ontario Provincial Police
19 Association actually testified.

20 Some of the interviews extended over a
21 number of days. In some instances, travel arrangements
22 over significant distances were required to be made. In
23 all cases, the OPPA members attended as requested, remained
24 until Commission counsel completed the interviews, and at
25 all times were thoughtful in their presentations and

1 respectful to Commission counsel during this process. In
2 our submission, those members who were actually called to
3 testify did so with dignity and civility.

4 Many of the events under consideration at
5 the Commission date back decades. In each and every
6 instance the OPPA members, using what aide-memoires were
7 available, did their best to recall and recount their part
8 in the investigations under scrutiny. All members appeared
9 before the Commission when required to do so, in some
10 instances testifying for several days. A fair review of
11 the evidence, in our submission, establishes that these
12 officers and former officers carried out their duties in
13 good faith with skill and dedication of purpose under the
14 direction of their supervisors.

15 In giving their evidence, these frontline
16 and former frontline officers quite rightly expressed their
17 concern over the plight of the victims of sexual abuse. It
18 is to be remembered as well that frontline workers,
19 including police officers, may be subject to experience
20 vicarious trauma as a result of their involvement in these
21 investigations of this type.

22 Our officers' performance in carrying out
23 their duties was not perfect. No human endeavour of such
24 complexity can lay claim to that level of achievement.
25 They should not be judged against a standard of perfection

1 or even by today's standards, given the developments in
2 investigative techniques and training which the Commission
3 has heard that have taken place in just the past few years.
4 One only need recall the training referred to in Mr.
5 Kozloff's submission to see the contrast between then and
6 now.

7 When one looks at the lack of formalized
8 training and education on the subject of historical sexual
9 abuse investigations, particularly involving male victims
10 during the relevant time periods, the accomplishments of
11 the officers can readily be seen as significant.

12 It is our submission to you,
13 Mr. Commissioner, that the appropriate evaluation of the
14 officers' performances of their duties should be measured
15 against a standard of conduct that could reasonably be
16 expected of an officer at the time when the conduct under
17 consideration occurred. It may be that in some instances
18 such standards will be articulated or published; for
19 example, policies. In other instances, the standards may
20 be obvious based on reasonable expectations or, indeed,
21 common sense.

22 This Inquiry has been examining, among other
23 things, a number of OPP investigations. It's our
24 submission that the officers conducting those
25 investigations did so in a professional and competent

1 fashion. It is important to consider the context in which
2 those investigations took place and not to judge the
3 quality of investigations by simply saying that more could
4 have been done or it could have been done differently. No
5 human endeavour is immune to the criticism that perfect
6 hindsight affords.

7 It is a sincere hope of the Ontario
8 Provincial Police Association and its members, that their
9 participation in this Inquiry has assisted the work of the
10 Commission in ultimately achieving the goals as set forth
11 in the Commission mandate.

12 I want to say a few words at this time about
13 the conspiracy to obstruct justice investigation, since the
14 matter was raised with you earlier in the week.

15 I think it should be pointed out at the
16 outset that in these proceedings the word "conspiracy" has
17 been used in several different contexts. It's been
18 used in the context of the phrase "clan of paedophiles",
19 and as well as to describe the Stanley Island obstruction
20 of justice. Sometimes the word has been used with
21 specifying what conspiracy is being addressed. It's
22 important, in our submission, to keep them distinct.

23 The Project Truth mandate, in broad strokes,
24 was to investigate the allegations contained in the Dunlop-
25 Fantino brief. That brief contained allegations that a

1 number of persons, many of whom were in positions of trust
2 or authority, had sexually assaulted a number of male
3 youths.

4 The concept -- the contents rather --
5 further alleged the existence of two different yet
6 intersecting concepts. The first one is the existence of a
7 clan of paedophiles. It was alleged that many of the
8 perpetrators of the alleged sexual abuses formed a group
9 who were aware of the abuse and assisted or facilitated
10 others in the commission of these offences.

11 The second concept contained in the Dunlop
12 brief was the existence of a conspiracy to obstruct
13 justice. It was alleged that the investigation of David
14 Silmser's allegations against Ken Seguin and Father Charles
15 MacDonald were corruptly terminated. The allegation was
16 that the conspirators agreed to end the investigation into
17 Father Charles and Ken Seguin and effect a monetary
18 settlement that would prevent any further investigation.

19 This conspiracy to obstruct justice was said
20 to have been committed by Bishop LaRocque, Claude Shaver,
21 Malcolm MacDonald and others, on Stanley Island. It was
22 alleged that the covering up of this investigation of David
23 Silmser's allegations against Father Charles and Ken Seguin
24 would prevent the discovery of the illegal acts of other
25 clan members. That is, this conspiracy, it would inure to

1 the benefit of other clansmen. In that way, the two
2 concepts are linked. The benefit to the clansmen links the
3 clan to the conspiracy to obstruct justice, and it's
4 important to keep that in mind when considering the timing
5 of the investigation.

6 The clan of paedophiles rather than being a
7 recognized criminal concept, as is a conspiracy, is really
8 a description, a description of persons assisting each
9 other to sexually abuse children. To attach criminal
10 liability to the term, you would have to describe it, or
11 you could describe it, as a conspiracy to commit sexual
12 assault or engage the partyship sections of the *Criminal*
13 *Code* of persons acting in concert -- in concert with one
14 another to facilitate the commission of sexual assaults.

15 So while the term, "a clan of paedophiles"
16 could be descriptive of conspiratorial activity, it was a
17 different conspiracy than described in the Stanley Island
18 meeting which was much more narrow and was, in fact, an
19 allegation of conspiracy to obstruct justice.

20 The conspiracy to obstruct justice
21 investigation involved looking at the Silmsler settlement as
22 well as the evidence that would be relevant to establishing
23 whether or not the Stanley Island meeting ever took place.

24 Because the clan of paedophiles was linked
25 to the conspiracy to obstruct justice in the sense that the

1 Silmsner settlement, it was alleged, was in part for the
2 benefit of other members of the clan of paedophiles,
3 evidence relevant to establishing the existence of a clan
4 of paedophiles could be relevant to the allegation that
5 there was a conspiracy to obstruct justice.

6 Simply put, the conspiracy, as one of its
7 objects, was to protect persons beyond the orbit of Ken
8 Seguin and Father Charles MacDonald.

9 It was suggested earlier this week that the
10 OPP should have conducted the conspiracy to obstruct
11 justice investigation a lot sooner and sought a Crown
12 opinion a lot sooner. The rationale for this suggestion,
13 amongst other things, was that this was because in the
14 final analysis Lorne McConnery found that Ron Leroux was
15 not credible by any standard. In the final analysis,
16 therefore, no charges were laid in connection with
17 conspiracy to obstruct justice.

18 It was suggested to you that if the
19 investigation and its eventual result were made public
20 sooner, this would have restored public confidence in a
21 more timely fashion.

22 However, Project Truth decided that the
23 conspiracy to obstruct justice investigation would be done
24 last, really for two reasons. The first one was that
25 sexual assault investigations were done first because they

1 were crimes against a person and OPP policy directs that
2 such investigations have priority over the conspiracy.

3 The second, the sexual assault
4 investigations may have yielded evidence that was relevant
5 to the conspiracy to obstruct justice and as it turned out,
6 in our submission, it did.

7 And I would draw your attention to Jacques
8 Leduc. Jacques Leduc had originally come to the attention
9 of Project Truth as having acted for the Diocese in the
10 Silmsen settlement. In June of 1998, Leduc was alleged to
11 have sexually assaulted young males.

12 The fact that Leduc now had the status of an
13 alleged perpetrator was a factor Lorne McConnery considered
14 very seriously in his review of the conspiracy to obstruct
15 justice brief. He considered it because with Leduc's
16 additional status -- that is, as an alleged perpetrator --
17 he may have had a motive to cover-up the Silmsen
18 allegations.

19 This sexual assault evidence became relevant
20 in considering the existence of the conspiracy to obstruct
21 justice.

22 If the conspiracy investigation had been
23 done at the outset of Project Truth in the timeframe that
24 was suggested to you -- my recollection was over the span
25 of a few months -- this evidence would not have been

1 considered because obviously it didn't even exist at that
2 time. The decision to wait and seek a Crown opinion at the
3 end, in our submission, made sense for both of the reasons
4 I previously mentioned. Had Project Truth investigated
5 this at the start, the OPP would probably have been
6 criticized for making a rush to judgement; to say nothing
7 of the comments likely to flow from those victims'
8 advocates about the skewing of priorities.

9 I want to mention at this time a few words
10 about the Jacques Leduc case and more specifically about
11 the stay proceedings in the first trial. That case had an
12 unfortunate ending for the victims. It ended without a
13 decision on the merits of the allegations.

14 I would like to offer a few thoughts on some
15 of the events that led to that ending, and would like to
16 use as our starting point the 7th of February, 2001 after
17 the evidence of C-16's mother has been heard and the
18 prosecution and defence teams meet.

19 In the first meeting on the 7th of February -
20 - this is the one where defence counsel Skurka and Campbell
21 meet with the prosecution team: Ms. Hallett, her assistant,
22 Inspector Hall, Constables Dupuis and Seguin. Inspector
23 Hall brought with him photocopies of those portions of
24 Perry Dunlop's will say and notes that referenced Dunlop's
25 contacts with C-16's mother, as well as his own notes for

1 the 23rd of July, '98. He explained where the documents had
2 come from and when the police had received them.

3 Shelley Hallett for her part said, "This is
4 all news to me". In that meeting, both Inspector Hall and
5 Constable Seguin were of the view that the defence was
6 accusing the police of wilfully holding this back.
7 Hallett, who had received those materials from the police
8 in mid-April, 2000, did not tell defence counsel this at
9 that time.

10 When Hall left that meeting he was of the
11 belief that defence counsel felt that the police had not
12 disclosed the Dunlop materials and Constable Dupuis' notes
13 to Hallett. I pause to note that the failure to disclose
14 Dupuis' notes was an easily explainable and understandable
15 oversight on his part.

16 There was a second meeting that immediately
17 followed the first, this time without the defence counsel.
18 Hall brought up the fact that the police were being accused
19 of wilful non-disclosure. He reminded Hallett of the fact
20 that they were being accused of this, as well as the fact
21 that those materials had been previously provided to her.
22 She responded by saying, "Yeah, yeah, yeah, I know". On
23 account of that answer, Hall was of the view that she had
24 not been truthful with defence counsel minutes earlier.

25 On the 7th of February, nothing was done on

1 either part to straighten out defence counsel's
2 misunderstanding about the police disclosure to the Crown.
3 On the 8th, Inspector Hall had Constable Seguin deliver to
4 Hallett her letter of the 4th of July, 2000 that she had
5 written to Constable Dupuis, and the letter simply
6 confirmed that Hallett was in possession of the Dunlop
7 materials and of her intention to review them in the
8 future.

9 Hall had the letter delivered to her to
10 remind her of its existence and also so that it would be in
11 her possession if she chose to disclose it. On the 12th,
12 defence counsel made a written request for disclosure from
13 Hallett. The disclosure request made it abundantly clear
14 that their position remained one of wilful non-disclosure
15 by the police.

16 On the 14th, Hallett acknowledged in court
17 that the police had provided her with the materials in
18 March and April previously ---

19 **THE COMMISSIONER:** Except for Dupuis' notes.

20 **MR. WALLACE:** Correct, yeah. Yes, my
21 remarks are really dealing with everything but the Dupuis
22 notes.

23 **THE COMMISSIONER:** Okay.

24 **MR. WALLACE:** She acknowledged that she had
25 reviewed them but in a cursory fashion. She accepted

1 responsibility for the non-disclosure. Hall was not
2 present in court and did not learn of that acknowledgment
3 until the 22nd of February when he testified at the hearing
4 of the application for a stay of proceedings.

5 On the 15th, Hall provided Hallett a written
6 response to the February 12th disclosure request. The
7 wording of his letter clearly showed that he continued to
8 have the belief that the police were being accused of
9 wilful non-disclosure. On the 19th, Hallett, Hall and Smith
10 -- Inspector Smith -- met to discuss the stay application.
11 Hallett's February 14th acknowledgment was not brought up in
12 this discussion.

13 On the 20th, Hall, Dupuis and Smith met with
14 defence counsel to find out what they were going to be
15 asked, since they were defence witnesses. Smith left a
16 short time after since it appeared he might not be called
17 to testify on the stay application. Hallett approved of
18 the police attendance at this meeting. On the 20th, in the
19 meeting the defence position was still police wilful non-
20 disclosure. They examined Dupuis' notebook for entries
21 shortly before and after the 15th of June.

22 Hall was asked about the Dunlop will say and
23 notes. He was asked when Hallett had received them and
24 whether there was any correspondence relating to them.
25 Hall indicated that there was correspondence, referring to

1 the July 4th, 2000 letter, and the defence requested a copy
2 of it. Hall agreed to provide it to the defence and had
3 Dupuis make a copy from the one Hall had earlier sent to
4 Hallett.

5 He provided the letter to defence counsel
6 without telling Hallett he was going to do so. We
7 acknowledge that he should have told her.

8 However, in our respectful submission, the
9 evidence does not support the suggestion that providing the
10 letter -- but that by providing the letter Hall was
11 intentionally jeopardizing the case. It was a fact that
12 there had been non-disclosure; that was beyond question.
13 The only real issue was whether the non-disclosure was
14 wilful or inadvertent.

15 The letter established that the police had
16 provided the material to Hallett. It did not speak to her
17 knowledge of the contents of the Dunlop materials and hence
18 its relevance to the Leduc case. The letter provided
19 evidence in support of the police on the issue of wilful
20 non-disclosure, however, it was completely neutral on the
21 issue of whether the Crown had wilfully held back
22 disclosure.

23 The judge hearing the application stayed the
24 charges on the basis of wilful non-disclosure by the Crown.
25 That decision was overturned by the Court of Appeal which

1 found that there was no evidence to support that finding.
2 The Court of Appeal found that the application judge had
3 completely misconstrued not only the meaning of the July 4th
4 letter but also the significance of how it came to the
5 defence. In fact, on the issue of whether Hallett had
6 wilfully held back disclosure, both Hall and Dupuis
7 testified on the application that they did not believe she
8 had done so.

9 In summary, we submit that the fact that the
10 application judge erred cannot be laid at the feet of Pat
11 Hall.

12 I want to say a few words with respect to
13 Garry Guzzo and the detrimental effect. He first became
14 involved with this issue in December of 1995. He had
15 received a call from Duncan MacDonald who was concerned
16 about the Silmsler settlement. He felt that Guzzo, as an
17 elected official and Catholic, should be concerned. He
18 asked Guzzo to speak to some people who were allegedly
19 victims of child sexual abuse.

20 Over time, Guzzo claimed that he had spoken
21 to a number of persons who gave him information concerning
22 child sexual abuse in the Cornwall area. He said he was
23 hearing from people who said that complaints to the police
24 had been ignored.

25 In the summer of 1998, Guzzo met with Helen

1 and Perry Dunlop who provided him with documents. Within
2 months of receiving those documents, Guzzo started
3 advancing a theory of police cover-up and/or incompetence
4 in connection with the investigation of an alleged ring of
5 paedophiles. He was saying that an alleged paedophile ring
6 operating in Cornwall had been the subject of three prior
7 investigations, yet no charges had been laid.

8 Guzzo claimed that Project Truth started to
9 investigate the allegations and suddenly people were being
10 charged. For him, this meant one of two things; either
11 there had been a cover-up or the prior investigations were
12 incompetent. He was wrong. The prior investigations did
13 not miss the charges Project Truth uncovered; they were not
14 investigated. Guzzo had not done anything meaningful to
15 inform himself about the actual mandate of the three prior
16 investigations before advancing this theory in the public
17 forum.

18 The OPP, understandably, were concerned
19 about these public statements. He was after all a person
20 of influence. They were concerned that Guzzo's public
21 statements would undermine the public's confidence in the
22 integrity and competency of Project Truth. Amongst other
23 considerations, his public statements had the potential of
24 scaring off victims from reporting.

25 In an effort to try to get him to stop

1 misinforming the public, Inspector Hall and Superintendent
2 Lewis met with Guzzo on the 22nd of November, 2000. The
3 precise scope of those prior investigations was explained
4 to Guzzo, and before this Commission he said he accepted
5 this explanation.

6 In addition to explaining the scope of the
7 prior investigations, Hall and Lewis told him of other
8 significant errors in his public pronouncements and gave
9 him the correct information. When Lewis left the meeting,
10 he felt it had been a success; they had achieved their
11 stated purpose that was to education him -- being Guzzo --
12 on the true state of the facts.

13 Unfortunately, Guzzo persisted making public
14 pronouncements of his cover-up and incompetency theory. He
15 had been asking publicly for answers to why all those
16 charges were missed, yet the answers provided to him by
17 Hall and Lewis fell on deaf ears. Why he would persist in
18 spreading this misinformation at the police expense and
19 just as importantly at the expense of the people of
20 Cornwall, remains a mystery. One would have thought that
21 he wanted Project Truth to succeed. His actions and words
22 would say otherwise. We really can't know how much he
23 hampered the investigations thereby doing a great
24 disservice to this community.

25 I'd like to take a few moments and remind

1 you of some victims' comments concerning the officers'
2 performances in the investigations of their complaints.

3 It's common ground, Mr. Commissioner, that
4 very little in the way of victim services were available to
5 the victims of Cornwall unlike the Alfred and St. John's
6 prosecutions.

7 Our written submissions reference the
8 additional burden displaced on the Project Truth
9 investigators. The difficulties in locating the
10 appropriate resources and attempting to make these services
11 available to the victims was addressed in the evidence of
12 Detective Inspectors Smith and Hall. Nevertheless, many of
13 these victims and alleged victims who testified here had
14 very positive comments to make about their interactions
15 with the OPP frontline officers.

16 It is our submission that it is worth
17 spending a few moments to review some of those comments to
18 better inform the people of Cornwall how the victims saw
19 the efforts made by the officers who addressed their needs
20 in the course of these investigations.

21 Detective Joe Dupuis was the primary OPP
22 contact with Jody and Scott Burgess, childhood victims of
23 Jean-Luc Leblanc. Taken together, they acknowledged
24 Dupuis' efforts to keep them advised of charges and court
25 dates. He assisted Jody in the preparation of his victim

1 impact statement and provided assistance to Scott in the
2 preparation of his. Dupuis also assisted Scott in his
3 application to the Criminal Injuries Compensation Board.

4 According to Scott, the OPP responded
5 quickly and thoroughly. They made him comfortable in the
6 interview; they did not rush him and generally treated him
7 fairly.

8 Detective Dupuis kept Jason Tyo, another
9 victim of Jean-Luc Leblanc abreast of court dates. He
10 assisted Jason in the preparation of his victim impact
11 statement and referred him to the Men's Project. Jason
12 characterised both Dupuis and Genier as compassionate and
13 understanding.

14 The victim known here as C-10 alleged abuse
15 by Ken Seguin, Father Don Scott, Malcolm MacDonald and Carl
16 Allen. Once he contacted the Project Truth hot line,
17 Constable Seguin got back to him quickly to arrange an
18 interview. In addition to taking the statement, Constables
19 Seguin and Genier recognised his need for counselling and
20 referred him to the Men's Project. They also assisted him
21 in the preparation of an application to the Criminal
22 Injuries Compensation Board. C-10 testified that the
23 officers believed in him and did their job.

24 Marc Carrière alleged abuse by Keith Jodoin
25 and Armand Lavigne. Mr. Carrière was initially reluctant

1 to pursue a criminal prosecution. He was first interviewed
2 by Dupuis and Seguin. He was provided information about
3 counselling services. He testified that the OPP officers
4 treated him well and that he felt comfortable during the
5 interview process.

6 Kevin Upper alleged abuse by Marcel Lalonde.
7 His initial OPP contact was Inspector Hall and Constable
8 Dupuis. He was subsequently interviewed by Dupuis and
9 Seguin. He told you that the officers sought his
10 permission before interviewing his wife. He received
11 update calls from Dupuis and he also told you that Dupuis
12 treated him with respect and dignity.

13 C-11 alleged abuse by Richard Hickerson. At
14 the request of Constable Dupuis, he provided a statement to
15 the OPP, detailing his abuse. He had ongoing
16 communications with the OPP by fax, phone, letters and
17 emails. When he was contacted and advised of Hickerson's
18 death, he described that communication as a very, very good
19 conversation. It was a very emotional conversation and the
20 officer stayed on the phone with him for a long time.

21 How the police handled the call about
22 Hickerson's suicide was very important to C-11. He said
23 the officers were very sensitive towards him and the
24 situation. From his perspective, the OPP treated him
25 throughout with sensitivity and professionalism.

1 Claire Renshaw, wife of Robert Renshaw,
2 expressed several concerns about the manner in which the
3 OPP dealt with her and her husband. She did agree that
4 Constable Dupuis was supportive of accessing counselling
5 services for Robert, presenting as many options as
6 possible. Regrettably, they could not afford the
7 counselling options that were available to them. Detective
8 Dupuis was described as being sympathetic to Robert from
9 the very start. She described him as well as being patient
10 and generally concerned about Robert's counselling needs.

11 Robert Renshaw testified Constables Dupuis
12 and Seguin were polite and courteous and respectful towards
13 him in his initial interview with them. He was, however,
14 dissatisfied with some aspects of his interactions with the
15 OPP, however he did fairly state that Constable Dupuis, who
16 was his main OPP contact over the five years that he was
17 involved with Project Truth was generally concerned about
18 him.

19 Mr. Commissioner, a very important aspect of
20 your mandate is to help to restore confidence in public
21 institutions in the community. In furtherance of this
22 goal, it would be helpful, in our submission, to hear what
23 the hands-on prosecutors had to say about the work and
24 efforts of the front-line officers.

25 Lorne McConnery, a prosecutor with over 30

1 years' experience, testified, in our submission, in a
2 thoughtful, perceptive and unbiased fashion. He dealt with
3 all the Project Truth team in connection with the Father
4 Charles prosecution in 2001-2002.

5 In addition, he dealt with the officers in
6 respect of the opinions that he rendered on the last six
7 briefs, including the conspiracy to obstruct justice in
8 August 2001. He said this about Hall and his team:

9 "Generally speaking, when I meet an
10 officer because he is who he is, I have
11 some respect for him in his position.
12 But then, there is earned respect.
13 And as I worked with these officers
14 over the 10 months that I did, they
15 certainly earned my respect. Pat Hall
16 was very focused. He was a very driven
17 investigator and I believed him to be
18 trying to do what he was doing
19 properly. I thought he was properly
20 motivated, properly directing his mind
21 to things and I can tell you, sir, I
22 thought the other officers were
23 superb."

24 Other Crowns who dealt with the front-line
25 officers in these prosecutions echoed Mr. McConnery's

1 comments in one fashion or another. Robert Pelletier, who
2 was initially assigned to the Father Charles prosecution
3 said:

4 "There was appropriate investigative
5 work carried out in a timely, efficient
6 and professional manner."

7 Pelletier was -- also characterised
8 Detective Inspector Smith's work as "beyond reproach".
9 Alain Godin, Crown counsellor in the Claude Marleau cases
10 said the officers carried out their work professionally
11 leaving no stone unturned.

12 Shelley Hallett said that, from her
13 perspective, she had a good working relationship with the
14 officers. She further stated that the briefs she reviewed
15 were well prepared and put her in a very good position to
16 prosecute the cases.

17 Lidia Narozniak in her preparation for the
18 Leduc number two prosecution, testified that she reviewed
19 the work product of Hall, Dupuis, Seguin and Genier from
20 the investigatory and preparatory stages of the first Leduc
21 trial. She was of the view that all work was performed in
22 a thorough and professional manner.

23 We would like to specifically mention Don
24 Genier. He unfortunately was unable to participate in
25 these proceedings on account of serious health issues. Pat

1 Hall said the following about his contribution to the
2 Project Truth team:

3 "He put his heart and soul into this
4 investigation. He was responsible for
5 identifying most of the members of the
6 clergy and made many trips to Montreal
7 regarding the Quebec prosecutions,
8 working with our Quebec counterparts.
9 We would not have accomplished the
10 success that we did without his
11 efforts, particularly in the French
12 language."

13 Mr. Commissioner, we offer the following
14 recommendations on behalf of the Ontario Provincial Police
15 Association. The recommendations are not intended to be a
16 criticism of any institution but are offered in the spirit
17 of improving the status quo.

18 Firstly, we would request that you consider
19 making a recommendation to expand the counselling services
20 for male victims of sexual abuse. Barriers of
21 availability, cost and transportation should be removed.

22 Secondly, we request that you consider
23 making a recommendation to bring more clarity to or create
24 a duty for institutions to report allegations of sexual
25 abuse to an alleged perpetrator's employer. It may be that

1 there should be legislation in place to define, among other
2 things, when the obligation arises and upon whom.

3 Number three, We request that you consider
4 making a recommendation that front line officers
5 investigating large-scale sexual abuse cases receive timely
6 counselling, if necessary.

7 Inspector Smith spoke of the burn-out that
8 can occur when an officer is in this type of investigation.
9 Dealing with these tragic and horrific cases can easily
10 take its toll. Supervisors should be vigilant in looking
11 out for the emotional well-being of their staff and should
12 be able to offer a professional referral in appropriate
13 cases.

14 We would also ask you consider making a
15 recommendation that officers investigating large-scale
16 sexual abuse allegations should be seconded full-time to
17 the investigation. They should be freed up from their
18 existing case load as much as possible. This, as we have
19 seen, would allow investigations to be done in a more
20 timely fashion. The timelines of the investigations have
21 been mentioned by more than one victim as a source of
22 frustration.

23 We would request as well that you make a
24 recommendation, that in large-scale sexual abuse
25 investigation, that there be a dedicated Crown attorney.

1 This would allow the officers to get their legal advice in
2 a more timely and consistent fashion. In addition, by
3 virtue of being dedicated, he or she would be more aware of
4 the investigations and would be able to provide more
5 helpful suggestions to the investigators concerning areas
6 that could pose future evidentiary problems.

7 Mr. Commissioner, it's the hope of our
8 association and its members that this three-year process,
9 and ultimately your report, will help to renew the sense of
10 community pride and confidence in the public institutions
11 that we've been examining.

12 An institution, although a legal entity unto
13 itself, is in reality a group of individuals working
14 towards a common goal.

15 The ultimate goal of the OPP officers here
16 and throughout the Province is to serve the communities'
17 needs and to protect its citizens from harm.

18 Our officers are policemen and -women by
19 profession. They are also members of the community. They
20 have both a personal and professional stake in the future
21 of this area. The great advances in the training and
22 education of our front line officers will better serve them
23 to carry out their duties.

24 It is respectfully submitted that, in
25 hindsight, despite what we now see as deficiencies in

1 training that existed at the time of the investigations,
2 that our officers exhibited a high degree of dedication and
3 professionalism.

4 Thank you.

5 **THE COMMISSIONER:** Thank, you, Mr. Wallace.

6 Thank you.

7 We'll come back tomorrow morning at 9:30.

8 **THE REGISTRAR:** Order; all rise. À

9 l'ordre; veuillez vous lever.

10 This hearing is adjourned until tomorrow
11 morning at 9:30 a.m.

12 --- Upon adjourning at 3:58 p.m. /

13 --- L'audience est ajournée à 15h58

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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