

**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 349**

**Held at :**

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

Thursday, February 26, 2009

**Tenue à:**

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

Jeudi, le 26 février 2009

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Lori Beaudette	Registrar
Mr. John E. Callaghan	Cornwall Community Police
Mr. Mark Crane	Service and Cornwall Police
Mr. Peter Manderville	Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community
Mr. Joe Neuberger	and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Ministry of the Attorney General
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
Mr. David Bennett	The Men's Project
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall
M <sup>e</sup> Gisèle Levesque	and Bishop Eugene LaRocque
Mr. William Carroll	Ontario Provincial Police Association
Ms. Nadya Tymochenko	Upper Canada District School
Ms. Kimberley Ishmael	Board

**Table of Contents / Table des matières**

	<b>Page</b>
List of Exhibits :	iv
Opening remarks by/Remarques d'ouverture par Mr. Peter Engelmann	1
Final Submissions by/Représentations finales par Mr. David Sherriff-Scott	3
Final Submissions by/Représentations finales par Ms. Nadya Tymochenko	61
Final Submissions by/Représentations finales par Mr. John Callaghan	63
Final Submissions by/Représentations finales par Mr. Peter Manderville	86
Final Submissions by/Représentations finales par Mr. John Callaghan (Cont'd/Suite)	110
Submissions by the Commissioner/Représentations par le Commissaire	139

**LIST OF EXHIBITS/LISTE D'EXHIBITS**

**NO.**

**DESCRIPTION**

**PAGE NO**

1 --- Upon commencing at 9:40 a.m./

2 L'audience débute à 9h40

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:** Good morning, Mr.  
12 Commissioner.

13 **THE COMMISSIONER:** Good morning.

14 **MR. ENGELMANN:** I apologize for my delay  
15 this morning.

16 Sir, I just want to give you an indication  
17 of the line-up for today.

18 **THE COMMISSIONER:** Thank you.

19 **MR. ENGELMANN:** We'll be starting with final  
20 oral submissions from the Diocese of Alexandria-Cornwall.

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** My friend, David Sherriff-  
23 Scott, is here to make those submissions, and that will be  
24 from -- well, it will be for two hours; so approximately  
25 11:40 or so.

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

2                   **MR. ENGELMANN:** Then we have submissions  
3 from the Upper Canada District School Board. My friend,  
4 Ms. Tymochenko, is here to make those submissions and then  
5 this afternoon we have the submissions of the Cornwall  
6 Community Police Service and I note that Mr. Callaghan is  
7 not present today, but I know he will be here this  
8 afternoon.

9                   Mr. Manderville and Mr. Crane are here and  
10 those submissions will be -- are currently scheduled, sir,  
11 from 1:05 to 3:05 this afternoon.

12                   **THE COMMISSIONER:** Thank you.

13                   **MR. ENGELMANN:** And that will be then the  
14 Phase 1 submissions.

15                   **THE COMMISSIONER:** Right.

16                   **MR. ENGELMANN:** We will have the Phase 2  
17 submissions tomorrow and I'll be commenting on this briefly  
18 before the end of the day.

19                   **THE COMMISSIONER:** Thank you.

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

21                   **THE COMMISSIONER:** Thank you.

22                   Good morning, sir.

23                   **MR. SHERRIFF-SCOTT:** Good morning.

24                   --- FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.  
25 **SHERRIFF-SCOTT:**

1                   **MR. SHERRIFF-SCOTT:** Commissioner, I just  
2 would like to thank my colleague, Mr. Engelmann, for  
3 accommodating me to have my submissions this morning. I  
4 was in the Court of Appeal this week and so otherwise  
5 unavailable and I appreciate the indulgence.

6                   If I may just say in opening, originally the  
7 Diocese was scheduled for a Phase 2 Submission tomorrow and  
8 I spoke with the coordinator to indicate that wouldn't  
9 happen, but what I do want to say is this.

10                   Bishop Durocher has been extensively  
11 involved with PrévAction is Phase 2, including its founding  
12 and development and its work as well as the development of  
13 its report and recommendations, and the Diocese fully  
14 endorses and supports that document and its  
15 recommendations, including the five-year plan by PrévAction  
16 for the establishment of a child advocacy centre as a pilot  
17 project; the community education project that's contained  
18 in its recommendations that would seek to foster the  
19 transformation of knowledge and attitudes regarding sexual  
20 abuse as well as the establishment of a Boys and Girls Club  
21 of Canada in Cornwall. And so that effectively embodies  
22 the Diocese's work in Phase 2 and its recommendations and  
23 that is what the Diocese endorses.

24                   **THE COMMISSIONER:** Thank you.

25                   **MR. SHERRIFF-SCOTT:** Now, if I may, I would

1 say, Commissioner, that the development and writing of a  
2 report arising from a public inquiry can probably best be  
3 analogised to child bearing. I would submit the gestation  
4 period is long, although I don't know of any creature in  
5 the animal kingdom that gestates as long as this one has.

6 **THE COMMISSIONER:** Elephants.

7 (LAUGHTER/RIRES)

8 **MR. SHERRIFF-SCOTT:** It has moments of  
9 anxiety and pain and many contractions and frightening  
10 occasions, but I submit there will be positive outcomes and  
11 I can think of two of many. First, one that touches you  
12 personally, and that is given that you live in the north  
13 and I live in Ottawa, you won't have to hear from me again.

14 The second will be that there will be  
15 created something that embodies what has transpired here  
16 which will take on a life of its own in that regard. Like  
17 a life, it will go on to have impacts and influence beyond  
18 what has happened here, perhaps even in ways not expected  
19 or anticipated.

20 However, a report embodying what has  
21 happened here in the evidence is what I wish to emphasize,  
22 and as many commentators and those who have experienced  
23 public inquiries up close have observed, the instinct of  
24 commissions of inquiry tends to be that once tasked with an  
25 assignment relating to a controversy there is an instinct

1 to find the goods or justify an inquiry with substantial  
2 findings.

3 And I would say that public and political  
4 expectations and pressures to do this are significant as no  
5 doubt you already know. Institutions and organizations, I  
6 submit, know this and it is a factor which I suggest  
7 ultimately concerns them in the assessment of the  
8 credibility of a report that emanates from a public inquiry  
9 and their willingness to accept it.

10 I will say the stakeholders here will have  
11 those concerns and no doubt will be heightened in view of  
12 the many public comments that have been made about the  
13 length and cost of the process. And, therefore, while  
14 resisting these temptations and pressures is not easy, I  
15 would say it is a fundamentally essential precondition to  
16 have institutions accept a report and wholeheartedly invest  
17 in its conclusions.

18 With those comments, I intend to make  
19 submissions about the evidence and I stress the evidence in  
20 three areas or subjects and they are, first, what I refer  
21 to in the written document as what happened in Cornwall and  
22 here I want to talk about community crisis in Cornwall, the  
23 scandal that erupted, and public perceptions that drove the  
24 controversy here in the city. This will involve talking  
25 about the clan of paedophiles allegations and conspiracy.

1 I want to develop who was involved in creating those  
2 allegations, how they were developed and propagated or --  
3 and protected as well as perpetuated.

4 I will also, second, want to review some of  
5 the aspects of the Charles MacDonald case as it relates to  
6 the Diocese's response concerning David Silmser.

7 And, finally, I will want to touch on a  
8 number of developments that have taken place since 2002  
9 when the current Bishop assumed office here.

10 So if I can turn to the first point of the  
11 submissions.

12 **THE COMMISSIONER:** You haven't talked to me  
13 about how you find -- I want to hear from you on your  
14 submission that you're not a public institution.

15 **MR. SHERRIFF-SCOTT:** Well, I've already  
16 given my submissions on that, sir. They're here in writing  
17 and they were made earlier.

18 **THE COMMISSIONER:** No, no.

19 I gave the decision that the Diocese was a  
20 public institution.

21 **MR. SHERRIFF-SCOTT:** Yes.

22 **THE COMMISSIONER:** You got up and you said,  
23 "Well, we don't agree but we exceed to the decision". Was  
24 that decision appealed?

25 **MR. SHERRIFF-SCOTT:** Sir, I got up and said

1 to you, "I don't accept your decision. Your decision is  
2 wrong and we will appear here for reasons of assuaging  
3 public concerns that are based of criticisms that the  
4 Diocese were hiding things."

5 That's what I said clearly in my  
6 submissions, sir.

7 **THE COMMISSIONER:** And then you sought some  
8 financing, and I thought in a letter of June 23<sup>rd</sup>, in the  
9 last paragraph, you said:

10 "Finally, I would suggest the  
11 following."

12 And that's for --

13 "That the ruling of Commissioner my  
14 client has been enlarged. Whereas  
15 previously you and I considered the  
16 Diocese to be a community sector  
17 organization, it is clear now the  
18 Commissioner's view is the role that  
19 the Diocese is a much wider one on the  
20 same footing of a public institution.  
21 In the circumstances, that increased  
22 role will require an allocation of more  
23 efficient resources."

24 **MR. SHERRIFF-SCOTT:** That's correct.

25 **THE COMMISSIONER:** So one -- I don't know, I

1 -- you know, I'm just a judge from Northern Ontario, you  
2 regularly appear in the Court of Appeal, so you'll be able  
3 to help me out on this.

4           Wouldn't one think that because you did not  
5 appeal the ruling that my ruling stands and, secondly, the  
6 acts that your client has instructed you to take would  
7 assume that you accepted that role and took those funds to  
8 present your case as your client deemed fit?

9           **MR. SHERRIFF-SCOTT:** First of all, sir, as a  
10 matter of law, jurisdiction exists or it doesn't.

11           **THE COMMISSIONER:** That's right.

12           **MR. SHERRIFF-SCOTT:** Right, and so I said to  
13 you quite clearly here when I came back after your ruling  
14 that we didn't accept that. That it was wrong, okay?

15           **THE COMMISSIONER:** Well, yes.

16           **MR. SHERRIFF-SCOTT:** And ---

17           **THE COMMISSIONER:** And so when a decision  
18 from the Inquiry -- from a judicial officer in the Inquiry  
19 -- you may say it's wrong, but in law aren't you -- if you  
20 don't accept the ruling, aren't you supposed to appeal?

21           **MR. SHERRIFF-SCOTT:** Sir, if there's no  
22 jurisdiction, there's no jurisdiction. I'm not here to  
23 debate this with you today. It's in the submissions.

24           I made my point clear to you I thought in  
25 unequivocal terms about my position in terms of the

1           correctness of the decision and I made it perfectly clear,  
2           I submit, the reason and rationale for the Diocese's  
3           participation, that was to answer public concerns and  
4           criticisms that had been levelled against my client that it  
5           was suppressing information. So the Diocese came here ---

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

7                           **MR. SHERRIFF-SCOTT:** --- at your request,  
8           sir, and it opened up all of its files and it tendered all  
9           of its people at your request. Those were witnesses that  
10          you asked for and we gave you.

11                          **THE COMMISSIONER:** Okay.

12                          **MR. SHERRIFF-SCOTT:** All right.

13                          **THE COMMISSIONER:** I am going to ask you one  
14          last question though and then we'll call it quits.

15                          These are instructions that you received  
16          from Monsignor Durocher to make that submission that I have  
17          no jurisdiction?

18                          **MR. SHERRIFF-SCOTT:** I beg your pardon, sir?

19                          **THE COMMISSIONER:** I said, are those  
20          submissions pursuant to your instructions from Monsignor  
21          Durocher with respect to the jurisdictional issue?

22                          **MR. SHERRIFF-SCOTT:** My instructions you may  
23          assume are reflected in the report, sir.

24                          **THE COMMISSIONER:** M'hm. Thank you very  
25          much. We'll take a short break.

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

3                   This hearing will resume at 10:00 a.m.

4                   --- Upon recessing at 9:49 a.m./

5                   L'audience est suspendue à 9h49

6                   --- Upon resuming at 9:56 a.m./

7                   L'audience est reprise à 9h56

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

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

12                   **THE COMMISSIONER:** Thank you.

13                   Mr. Sherriff-Scott, you may proceed with  
14                   your submissions.

15                   **MR. SHERRIFF-SCOTT:** Thank you.

16                   --- **FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.**  
17                   **SHERRIFF-SCOTT:**

18                   **MR. SHERRIFF-SCOTT:** I start with the  
19                   question which is posed at the written submission on page  
20                   31 and following, "What happened in Cornwall?" And what  
21                   happened in Cornwall is posed as a question and, "Was it  
22                   different from what happened anywhere else?"

23                   I submit that what happened here has to be  
24                   measured against the fundamental reality that the rate of  
25                   incidents of historical sexual abuse of young people by

1 persons in a position of trust or authority in Cornwall has  
2 not been shown by the evidence to be different from what it  
3 is or was in any other place.

4 What was different, however, was how certain  
5 people in the media as well as the public reacted to what  
6 unfolded in an era that was an era of ignorance about the  
7 issue. I submit, as does my client, it is the nature of  
8 the reaction to those events that caused the public's  
9 consciousness to become gripped with the idea that the  
10 heads of its institutions and community organizations were  
11 involved in a widespread organized clan which was engaged  
12 in a conspiracy.

13 Now, what was the impact of those  
14 allegations? First of all, they stuck and as preposterous  
15 as they were, I submit, they nevertheless became rooted in  
16 the public's consciousness.

17 **THE COMMISSIONER:** Can I stop you for a  
18 second? Could you bring the microphone closer so that I  
19 can hear?

20 **MR. SHERRIFF-SCOTT:** Yes.

21 **THE COMMISSIONER:** It's not picking up as  
22 well.

23 **MR. SHERRIFF-SCOTT:** Oh, thank you.

24 The allegations stuck and they undermined  
25 the public's confidence in its police forces, its Crown

1 attorneys, judges, its institutions and organizations. And  
2 the clan concept became routed, I submit, in the psyche of  
3 the community. Now, the clan concept also did another  
4 thing. It polarised the community thinking. Either there  
5 was not a clan and therefore there was no issue or there  
6 was a clan and society was falling apart.

7 The "no clan" argument like the "pro-clan"  
8 position tend to be cast or articulated in absolutist  
9 terms, there was no middle ground being articulated  
10 anywhere. And the result was that real victims became  
11 tainted in the minds of certain segments of the community  
12 that disbelieved the clan allegations as being dishonest,  
13 which was an unfounded injury to them. And clan proponents  
14 similarly advanced an absolutist polarised view of what was  
15 going on. Everyone in positions of authority was either a  
16 perpetrator or a potential one and they were organized and  
17 acting together.

18 The result was that many innocent people  
19 were badly harmed, real victims were badly harmed, and the  
20 entire community self-image was badly damaged. Now, I  
21 submit these concepts took root notwithstanding the  
22 evidence that the rates of incidents of abuse in this  
23 context as I've described was no different than anywhere  
24 else. When there was no real or credible evidence that  
25 Cornwall's institutions were populated by a dark clan, and

1 the idea of a conspiracy was not founded on real or  
2 credible evidence, notwithstanding that it was investigated  
3 and no evidence was found by two police forces.

4 The answer, I submit, in terms of why this  
5 happened lies in a combination of a number of factors,  
6 including community psychology, technology and the speed of  
7 communications, and the actions of a number of individuals  
8 that created what I describe as a powerful environment of  
9 fear and negative imagery. Now, that stage to receive  
10 these allegations was set by what I describe, starting at  
11 page 33 and following, as an environment of ignorance.

12 And as you know, Commissioner, experts came  
13 here and described this phenomenon. For example, Dr. Wolfe  
14 testified extensively about the ignorance of social  
15 institutions, organizations, awareness and understanding as  
16 well as sophistication about historical sexual abuse was  
17 extremely low. And he used the word, when it was put to  
18 him, "acute" in terms of the absence of information in the  
19 '60s, '70s, '80s, and so he was writing articles even up to  
20 the beginning of this decade and in 2003 describing this  
21 issue, the need for development of professional and  
22 scientific understanding and the dearth of information, as  
23 well as the need to identify processes and outcomes for  
24 institutions to handle these issues.

25 Others came here, like Nicholas Bala, who

1 testified that major developments in policy, the common law  
2 and legislation didn't really begin until the 1990s. And  
3 so in the early '90s when these events began to unfold  
4 here, there was very serious, I submit, public ignorance  
5 about how to contextualize a lack of understanding and  
6 misconception as well as experience and judgement in  
7 institutions, and the public was ill-equipped to understand  
8 the issues.

9 A factor compounding that was that  
10 identified by Dr. Young when she came here that media  
11 analysis lacked in-depth detail verification, systemic  
12 sourcing, descended into rumour and conjecture. And I  
13 think the reason for that was that the media too became  
14 polarised in this community. As the battle lines emerged,  
15 the pro clan media emerged and so did the contra clan media  
16 emerged and objectivity and in-depth analysis wasn't on the  
17 screen.

18 And that was perhaps understandable because  
19 these two groups were part of the same community. There  
20 were those among them who, based on what they saw, didn't  
21 believe the allegations had credibility and forecasted  
22 accurately in their minds the damage it would do. There  
23 were others advancing the interests of real victims, and  
24 both of them were angry, and as interested participants in  
25 the success of their community it's not surprising that

1 objectivity went by the boards.

2 Now, it's into this environment, I submit,  
3 that Mr. Dunlop emerged in 1993 when he released the  
4 statement to the CAS of David Silmser, and later and  
5 following when Mr. Silmser's settlement with the Diocese  
6 became public, as well as Mr. Silmser's commencement of the  
7 complaint against Mr. Dunlop. These processes, as they  
8 emerged and took time to develop, radicalised the Dunlop  
9 family, I submit.

10 Mr. Dunlop became convinced that he was  
11 being scapegoated; "bullied", "harassed" and "isolated"  
12 were all descriptors that he applied to his circumstances.  
13 And in the ensuing storm, he simply fell apart in this  
14 environment. And by January of 1994, he was in a state  
15 where he had to leave work. He began to experience very  
16 serious mental health challenges. He began to be treated  
17 by two psychiatrists, on multiple medications. He was  
18 diagnosed with anxiety, agitation, concentration problems.  
19 He described his condition as having paranoia and  
20 depression and was on multiple medications right up until  
21 his wife -- as she said when she testified here.

22 Now, this condition, I submit, was  
23 exacerbated, as was disclosed by Mr. Wardle's cross-  
24 examination of Mrs. Dunlop, by factors such as there was a  
25 protracted legal dispute with the Dunlops and the CPS which

1 did not resolve until December of 1995. They experienced a  
2 major concern and fight with the CPS' long-term disability  
3 carrier in terms of Mr. Dunlop's income. Third, in the  
4 same timeframe they contended that their daughter was the  
5 subject of threats from neighbours and they themselves felt  
6 they had been abandoned by their police association, and  
7 it's in that environment that they commenced their lawsuit.

8 Mrs. Dunlop said:

9 "We had been taking some pretty tough  
10 blows from the police department. The  
11 Association wasn't stepping up to the  
12 plate to help us. We strongly felt  
13 there was a lot of abuse of process and  
14 abuse of power at the Cornwall police  
15 station especially due to those charges  
16 they trumped up on Perry."

17 Ironically it was Mr. Silmser's complaint  
18 that launched those processes.

19 "We felt we had to put them on notice  
20 that we weren't going just to be a  
21 punching bag and had to defend  
22 ourselves and they should come to the  
23 party with damages."

24 And yet it wasn't just the CPS they sued.  
25 They sued, I submit, many people. Mr. Swabey's letter

1 which you saw, which described the lawsuit as "Dunlop  
2 Versus the World" was tongue-in-cheek but it was aptly fair  
3 comment, I submit.

4 Now, he started his lawsuit and then, as he  
5 admitted, he was -- became involved in an investigation but  
6 not until his lawsuit started. And the lawsuit is  
7 important because it embodies Mr. Dunlop's anger, I submit,  
8 his lack of judgement and sense of personal victimization.  
9 Sadly, I submit, Mr. Dunlop's litigation adviser displayed  
10 very poor judgement in putting it together, and that no  
11 doubt legitimized Mr. Dunlop's sense that it was a proper  
12 and permissible response.

13 Mr. Bourgeois' activity, I submit, did, in  
14 what we call our client interaction training, feed the  
15 client's unfounded or unrealistic expectations through his  
16 actions. The lawsuit in its sweep and its anger and tone  
17 and its aggressivity, its reductionist reasoning, became a  
18 symbol for Mr. Dunlop -- not only what he believed but how  
19 he behaved and would continue to behave over the ensuing  
20 years, and its main thesis was, "The end justifies the  
21 means," and I submit it could not have been wrong.

22 Now, there are some other points to develop  
23 to emphasize about Mr. Dunlop when he began his  
24 investigation. The first was he had certified to his  
25 employer that he was incapable from a medical point of view

1 of working and, therefore, we have to assume incapable of  
2 conducting an investigation which he was doing. He had, as  
3 he admitted on cross-examination, no training from the  
4 police force as to how to conduct a sexual assault  
5 investigation.

6 Mrs. Dunlop admitted to Mr. Wardle in cross-  
7 examination Mr. Dunlop was "on his own". He had no team or  
8 police resources behind him, no supervision, no one else  
9 looking over his shoulder to give him advice or advise him  
10 or to second guess his judgement, and so alone in this  
11 condition that he was on disability leave, he began his  
12 investigation at the same time he commenced his lawsuit and  
13 I submit it was no wonder that things went as wrong as they  
14 did.

15 Now, importantly, I developed at page 40 and  
16 following what I considered to be Mr. Dunlop's knowledge of  
17 Mr. Leroux before he met him and this is an area which, I  
18 suggest, explains much of what unfolded between these two  
19 men.

20 It's clear from the evidence of C-8, as well  
21 as Mr. Dunlop's papers that he filed -- or that were filed  
22 here such as his will state, that during the months of the  
23 summer of 1996, Mr. Dunlop interviewed C-8 and found out  
24 all of C-8's evidence regarding Ron Leroux and the  
25 allegations C-8 made against him; all of the abuse which

1 spanned nearly a decade or more, the grooming, gifts, et  
2 cetera and all of the damage that had been done. C-8  
3 described Mr. Leroux as a person who lied repeatedly, was  
4 manipulative, charismatic and C-8 -- it took until 1992 to  
5 gather the strength to finally leave the environment of  
6 abuse.

7 Mr. Dunlop knew all that before he met Mr.  
8 Leroux, and it was C-8's testimony that he fully briefed  
9 Mr. Dunlop as well as his lawyer on all of these issues.  
10 In fact, he contended, here and before the police, that he  
11 gave a four-page handwritten statement to Mr. Dunlop  
12 particularizing his abuse by Mr. Leroux and that would have  
13 taken place before December of 1996, the statement.  
14 Certainly he confirmed over and over again during cross-  
15 examination he orally told him in the summer months the  
16 whole story about Ron Leroux. And that is why it's no  
17 coincidence, and I submit, a corroborating fact that the  
18 will state of Mr. Dunlop said:

19 "It became clear to me that Ron Leroux  
20 was the inside man; the operator who  
21 ran these players, the undercover  
22 operator of the paedophile world.  
23 Although I had never met him as of this  
24 time, I believed he was also a  
25 paedophile."

1                   That's what Mr. Dunlop believed and knew  
2                   when he arrived and met Ron Leroux.

3                   Now, I submit at pages 44 and following that  
4                   how Mr. Dunlop with C-8 as a witness forecasted how he  
5                   would behave with respect to other witnesses, including Mr.  
6                   Leroux, and it forecasted the damage he would do because  
7                   the way he interacted with C-8 was not competent; it was  
8                   contrary to police procedures. He admitted on cross-  
9                   examination -- and it's in the transcripts -- that he knew  
10                  he was influencing the behaviour of witnesses; what they  
11                  said and how they reacted.

12                  C-8 was, at the time, a vulnerable and  
13                  confused person who'd lost his father at 15. He was  
14                  estranged from his mother. He had been sexually abused as  
15                  a minor and then for nearly a decade by Mr. Leroux. He was  
16                  recruited by the Dunlops who took him in. According to C-  
17                  8, he was always at their house; dinner. He was made to  
18                  feel he belonged. Mr. Dunlop got so close to this witness  
19                  that C-8 testified that he looked upon Mr. Dunlop as a  
20                  father figure and he pressured Mr. C-8 for the information  
21                  he didn't have and so C-8 conceded he lied. He testified  
22                  and disclosed to police that Mr. Dunlop's primary concern  
23                  was to get information about people he knew nothing about,  
24                  when C-8's prime motivation in going to Mr. Dunlop was to  
25                  talk about Mr. Leroux.

1 C-8's evidence, I submit, amounted to this;  
2 that he was recruited and, intentionally or not,  
3 effectively cultivated into a state where he was willing to  
4 and did provide demonstrably and, ultimately, admittedly  
5 false information about Charles MacDonald. His entire  
6 complaint was false and portions of his complaint about  
7 Marcel Lalonde were false.

8 This not only affected the administration of  
9 justice, but may well have imperilled his own case against  
10 Marcel Lalonde, and Mr. Dunlop's behaviour towards C-8, I  
11 submit, set the stage for his interactions with others,  
12 including the most important person he met in this piece,  
13 Mr. Leroux.

14 Mr. Leroux and Mr. Dunlop met in the fall of  
15 1996. Mr. Leroux admitted that he knew Mr. Dunlop had  
16 already spoken to C-8 and I submit that's why he said, "I  
17 seen what was coming". Mr. Leroux forecasted why Mr.  
18 Dunlop was there. And, I submit, the effect of Mr.  
19 Dunlop's arriving at Mr. Leroux and identifying that he had  
20 been to see C-8 was to, not just persuade, but to coerce or  
21 threaten implicitly or otherwise.

22 Mr. Dunlop's evidence through Mr. Leroux was  
23 that he unsuccessfully was attempting to persuade him by  
24 telephone and when that didn't work, Mr. Bourgeois was  
25 enlisted. Mr. Leroux testified he threatened him with

1 obstruction of justice.

2 The idea that Mr. Leroux possibly may have  
3 been involved in the Seguin death also loomed on the  
4 screen, I submit, and that is the environment which I  
5 submit led Mr. Leroux to lie. He decided that he would  
6 become an essential witness to Mr. Dunlop and protect  
7 himself by creating stories that made him important and  
8 essential.

9 Now, he described, over many pages to your  
10 counsel here, the nature of the -- I would submit --  
11 dysfunctional investigation that occurred with Mr. Dunlop.  
12 He described it by saying he was hounded, coerced,  
13 pressured, manipulated. He was kept running. Statements  
14 were drafted for him, not by him. He didn't read them. He  
15 was told what to say, what language to use, how to say  
16 things.

17 He told Mr. Dunlop, he alleged, and Mr.  
18 Bourgeois that statements in his affidavit were false or  
19 untrue, but they contended he should sign anyway. He was  
20 not allowed to read over statements. He was never given  
21 copies of his evidence. Evidence was taken from him, he  
22 described, in a carnival environment where participants  
23 were drinking. Evidence suggests that names on the lists  
24 were told -- he told Mr. Dunlop that they were not people  
25 he could identify, but that he should leave the names in.

1                   Leroux was used to investigate David Silmser  
2                   as well as the allegations about Florida. He was told what  
3                   to say in his affidavits. He told Mr. Dunlop he said that  
4                   he didn't know people on these lists, but he should leave  
5                   them in and, importantly, he testified that when he went to  
6                   talk to police he had rehearsed his evidence with Mr.  
7                   Bourgeois who told him what to say and how to say it.

8                   He denied or had no memory of signing many  
9                   documents. He was told it didn't matter if he didn't know  
10                  people. His evidence indicates that Mr. Dunlop didn't  
11                  follow appropriate procedures on any objective standard, I  
12                  submit. He even said that he'd been contacted prior to  
13                  coming here to give evidence and told not to deviate from  
14                  his original stories.

15                  Now, I submit very serious problems arose in  
16                  Mr. Dunlop -- with Mr. Dunlop. In his condition, as he  
17                  was, he engaged in what can only be cast as a dysfunctional  
18                  and bizarre investigation which did not have objectivity as  
19                  its hallmark or proper procedure. And that allowed Mr.  
20                  Leroux, I submit, to dominate the agenda and resulted in  
21                  the publication and the dissemination of the many lies that  
22                  he told, and I suggest that it is at the epicentre of what  
23                  generated the scandal in the city.

24                  At page 57 and following in the written  
25                  submissions of the Diocese, we recount Mr. Leroux's false

1 statements in the material that he signed, swore to or  
2 otherwise uttered.

3 Mr. Leroux indicated that he had at the time  
4 an angry relationship with C-8 and that he knew C-8 had  
5 made allegations against him to Mr. Dunlop.

6 He first decided not to say anything. He  
7 opted for then an approach which would make him important  
8 and I submit Mr. Dunlop, who had been radicalized by his  
9 experiences and suffering from the problems he was having,  
10 was too lacking in judgment to do anything but snap at this  
11 story. He first attempted, I submit, to persuade Mr.  
12 Leroux; then he held out, I suggest, the prospect of C-8's  
13 evidence over his head. Mr. Leroux said, "I seen what was  
14 coming" and I suggest that even Mr. Leroux could divine Mr.  
15 Dunlop's plan which was anything but subtle.

16 Ultimately, Mr. Dunlop did not have the  
17 judgement left to seriously question the veracity of these  
18 outrageous allegations that were made and it's no wonder, I  
19 submit, that they were made and therefore propagated to the  
20 extent they were.

21 Mr. Leroux's lies were, well, numerous is an  
22 understatement. He said things like, "I did anything they  
23 told me to do" to which he responded to a counsel from your  
24 question that that was Perry Dunlop. "If I'd say anything  
25 about it, he'd say, don't worry about it". In other words,

1 if it was inaccurate, leave it in.

2 He admitted at the outset of his cross-  
3 examination, on examination by Mr. Englemann -- by Mr.  
4 Manson, that the stories about Bernard Cameron and  
5 Monsignor McDougald, as described in this material, were  
6 wrong -- a mistake, lot of discrepancies. "This is all  
7 wrong," he said.

8 "This was orchestrated by someone else.  
9 The words are wrong. The dates, the  
10 ages are wrong. It's way off. I never  
11 read anything of this. They wrote it  
12 down."

13 He said. Mr. Leroux made admissions about  
14 one of the monsters stories he had told, the abuse rituals  
15 at Cameron's Point, and he was, I submit, unequivocal in  
16 resiling from this proposition which he described as a lie.  
17 He first described in this context that neither Monsignor  
18 McDougald or Bernard Cameron were at this location. They  
19 were not there and he said -- your counsel responded, "So  
20 that's inaccurate?" He said:

21 "Yes, they were not there. I would  
22 remember if they were."

23 He referred to the candles, sheets and other  
24 particulars:

25 "It's something that I didn't see,

1                   didn't visualize that. That's a lie or  
2                   something. I didn't see it."

3                   He said in his affidavit that the ritual had  
4                   gone on on a weekly basis, but in response to your own  
5                   question he said "No, that didn't happen." In referring to  
6                   how Cameron's Point incident was described in his  
7                   statements, he said,

8                   "Anything could have been written in  
9                   there. I wouldn't even say anything  
10                  about it. I just was so tormented  
11                  constantly with this."

12                  He rolled on in his testimony he never saw  
13                  anyone engaged in sexual activity at Fort Lauderdale in  
14                  Florida. His explanation for pushing these statements in  
15                  his affidavit was:

16                  "I was pressured into trying to  
17                  establish if there was anyone from here  
18                  to find out, to chat to, ask around. I  
19                  mean, if there was any -- could anybody  
20                  find out who had gone down there with  
21                  him."

22                  "You were pressured by whom?" Mr. Engelmann  
23                  asked. "By Perry," he responded. On the similar issue,  
24                  you, yourself, asked:

25                  "I guess the question is did you see

1                                   any one of the folks that you named?  
2                                   You leave Ontario and go there from  
3                                   Cornwall area -- to Cornwall with  
4                                   adolescent boys."

5                                   "No," the response was. He admitted the  
6                                   story about being assaulted by Gary Ostler was "like a joke  
7                                   really". He admitted he never saw what was on videotapes  
8                                   alleged to have been seized by the OPP and that Ken Seguin  
9                                   never described to him what was on those tapes. Referring  
10                                  to statements in his material, he said -- he admitted that  
11                                  he didn't even know if Ken Seguin had told him that the  
12                                  briefcase contained personal pornographic tapes.

13                                  He admitted it was a lie that he was told by  
14                                  Mr. Seguin that he was under investigation for assault and  
15                                  the tapes would clinch a conviction. He admitted parts of  
16                                  his conversation with Ron Wilson at the funeral home at the  
17                                  death of Mr. Seguin were false, that police officers during  
18                                  the investigation of Mr. Seguin's death had been lied to by  
19                                  him about Ken Seguin's phone book.

20                                  He was extensively examined not only by  
21                                  Mr. Engelmann but Mr. Manson regarding the planned hit, the  
22                                  death plot of the Dunlop family. Not only did he admit  
23                                  that he lied in the documents about this whole issue but  
24                                  that he lied when he read them under oath to police and  
25                                  then, to Mr. Manson, not only that he falsely read them out

1 but that he invented particulars and embellished his story,  
2 adding his own fearfulness about his personal safety and  
3 the safety of his wife as the fabricated reason for not  
4 having come forward at an earlier time.

5 He then went on to admit that the names in  
6 the list format were people he didn't know or didn't see,  
7 many of whom he had no idea about or had never met. He  
8 used expressions like, "I have no recollection of observing  
9 anything like that." He admitted that he never witnessed  
10 any taping of sexual impropriety of Ken Seguin's. He  
11 admitted that allegations about young people like  
12 probationers or others or altar boys being abused at  
13 Malcolm MacDonald's cottage, St. Andrew's Parish or Ken  
14 Seguin's were false. He said he didn't even know the ages  
15 of people he had seen at Ken Seguin's house and attempted  
16 to say the only minors he saw were Mr. Renshaw's children  
17 accompanied by their parents.

18 He admitted that contrary to his many  
19 statements, he never saw improprieties at Ken Seguin's, St.  
20 Andrew's or Malcolm MacDonald's cottage. Many of the  
21 people he named and placed there he said should not have  
22 been on the list. He never saw altar boys at these  
23 locations. He admitted he never saw Murray MacDonald there  
24 or C-5. He admitted the "clan of pedophiles" statement was  
25 not his but, as Mr. Manson put it to him, concocted by

1 Mr. Dunlop or Mr. Bourgeois, to which he agreed.

2 He then went on to say -- and resile from  
3 the statement that, "I have witnessed sexual improprieties,  
4 molestations et cetera from 1957 to 1993," and said he  
5 never witnessed any sexual improprieties. He admitted that  
6 he had never seen people on Birch Road. He admitted he  
7 never witnessed people with prostitutes in Florida; that  
8 they was no sexual impropriety by Malcolm MacDonald with a  
9 minor.

10 He admitted that he never saw sexual  
11 activity between Kevin Maloney and a young person, although  
12 he had described it graphically in his material. He never  
13 saw the same thing with respect to Eugene LaRocque, Claude  
14 Shaver. He admitted that they were not friends or he  
15 didn't know because he'd never seen them together, contrary  
16 to his affidavit.

17 These admissions went on and on. He  
18 admitted that he didn't know and never had any information  
19 about Father Rory MacDonald or David Ostler, Claude Shaver.  
20 Contrary to his affidavit, he admitted he never witnessed  
21 improprieties by R.J. MacDonald, John Donihee, John  
22 McPhail. Norman Loney, he said, "I wouldn't know him if I  
23 fell over him."

24 He admitted that he never saw kiddie porn at  
25 Malcolm MacDonald's cottage. And he again abandoned

1           totally the allegations that he had seen photographs of  
2           naked minor boys at Malcolm MacDonald's cottage and was  
3           specifically questioned in detail on this by not only your  
4           counsel but you, yourself, Commissioner. In trying to  
5           explain why he frequently lied so often, Mr. Leroux said:

6                                "Yes, this was orchestrated. I  
7                                followed through with it. Didn't  
8                                bother changing anything. Told lately  
9                                not to change anything, not to change  
10                              my story."

11                            These admissions rolled on. People like  
12                            Raoul Poirier, Thomas Swift, Ron Wilson. He never knew  
13                            anything about them in terms of sexual improprieties. He  
14                            admitted importantly that the whole "VIP on Stanley Island"  
15                            story was a falsehood. "It's not true," he said, "it's an  
16                            impossibility". These lies I submit were the upshot of  
17                            Mr. Dunlop's reckless and dysfunctional investigation and  
18                            the lies came to dominate the psyche of this city. Mr.  
19                            Bourgeois testified here and Mr. Dunlop's lawyer, and his  
20                            role was an important one.

21                            In connection with Mr. Leroux, I contend the  
22                            evidence establishes clearly that he and/or he and  
23                            Mr. Dunlop decided to minimize the impact on the Leroux  
24                            evidence that was occasioned by C-8. Mr. Bourgeois  
25                            conceded to me in cross-examination that he knew C-8 in the

1 summer of 1996, all of his allegations about Mr. Leroux.  
2 He admitted that the Leroux evidence was fundamentally  
3 important to Mr. Dunlop to his statement of claim for \$80  
4 million then launched and that it was important for him to  
5 preserve that evidence.

6 What happened then was that Mr. C-8 was  
7 involved in charges of his own in connection with a person  
8 he abused. He wanted to plead guilty and therefore the  
9 evidence of his prior abuse as a victim became central and  
10 important which Mr. Bourgeois admitted. And yet when Mr.  
11 Bourgeois and Mr. Dunlop developed the statements, one of  
12 which was particularly described and developed for the  
13 purpose of going to the police and providing the Crown  
14 attorney with evidence of the abuse, they omitted, I  
15 submit, the most fundamental and lengthy abuse the man had  
16 suffered.

17 They also omitted it from the December 1996  
18 statement which was sent to Chief Fantino. And there is no  
19 explanation for this, I submit, other than the obvious  
20 conflict of interest in which Mr. Bourgeois found himself  
21 and did not reconcile. He preferred the interests of  
22 Mr. Dunlop over the interests of C-8. And it was  
23 coincidence, I submit, that the information came out as a  
24 result of police probing, not as a result of Mr. Bourgeois.

25 Mr. Bourgeois couldn't remember discussing

1       this issue with Mr. Dunlop but I submit he could barely  
2       remember anything at all. And his testimony, I submit, was  
3       an illustration of a witness feigning no memory to avoid  
4       being accountable for his conduct. I suggest that Mr.  
5       Bourgeois in his role with his counsel demonstrated the  
6       extent to which both of them were prepared to go to protect  
7       the "clan of pedophiles" theory and the Leroux evidence.  
8       And that is the kind of thing which made these allegations  
9       stick.

10               Now, Mr. Dunlop was cross-examined in 2004  
11       extensively in the Jacques Leduc proceeding. And there he  
12       made -- which has not been the subject of an overview, for  
13       reasons that I'm not going to discuss and I don't criticize  
14       -- there he made a series of admissions which I describe as  
15       startling.

16               He confirmed that he had conducted his  
17       investigations in a fashion that was inconsistent with  
18       acceptable behaviour, that he had affected and influenced  
19       witnesses ---

20               **THE COMMISSIONER:** Police behaviour.

21               **MR. SHERRIFF-SCOTT:** Yes. Exactly.

22               That he refused to disclose materials to his  
23       superiors, that he hid documents, that he was suffering  
24       from acute paranoia and, ultimately, that he misled or was  
25       untruthful not only to his superiors but to a judge of the

1 Superior Court. I submit these admissions are very  
2 significant and I just want to touch on a few of them.

3 First, he admitted that he'd launched his  
4 civil proceeding against the CPS and others and that he  
5 began -- but only after -- he launched his investigation,  
6 excuse me, first and then began -- he launched his lawsuit  
7 first and then began his investigation which I recount at  
8 Page 84.

9 He admitted that virtually all of the  
10 allegations, including the clan, the ritual abuse, the  
11 abuse of minors in Fort Lauderdale and the conspiracy to  
12 suppress information were all founded on the Ron Leroux  
13 evidence, that the Ron Leroux evidence was the exclusive  
14 source of information that a senior Crown Attorney and  
15 Chief of Police of the CPS and numerous priests of DAC were  
16 involved in a conspiracy.

17 He admitted the basis of his information and  
18 belief that the conspirators were going to kill him was Ron  
19 Leroux. He admitted that Mr. Leroux was the source of the  
20 information that police had searched Mr. Seguin's house and  
21 found child pornography involving alleged clan members. He  
22 admitted Mr. Leroux was one of the persons he used to  
23 conduct his investigations.

24 Mr. Dunlop admitted that he didn't check  
25 information such as provided by Mr. Leroux and in response

1 to that when he testified, Justice Chilcott asked him:

2 "But did you not think as a  
3 responsible citizen, more or less a  
4 policeman, that you should at least  
5 check these what I'll call bizarre  
6 allegations, check a bit of it to see if  
7 they were authentic?"

8 And then Mr. Dunlop gave him an explanation  
9 which, I submit, was just inconsistent with the truth.

10 He contended that in 1996 and following, he  
11 had no time to do that because he was facing *Police Act*  
12 charges, which was a misrepresentation of the facts because  
13 those charges had long been disposed of by that point.

14 He went on to talk about his view of  
15 authorities, in particular police officers. He said he  
16 didn't trust Pat Hall and the reason for that is he said he  
17 didn't like his demeanour; at Exhibit 722, page 116.

18 He didn't trust Officer Smith. He didn't  
19 trust the entire CPS or the entire OPP. He testified that  
20 he was "Just about the only police officer who was not  
21 corrupt"; at Exhibit 722, Page 115. He even said his own  
22 uncle, an OPP officer in Kingston, may be "dirty".

23 He believed these people and organizations,  
24 including the Crown, were not only untrustworthy but  
25 actually corrupt and that some of them were "criminals".

1                   He admitted that in June of 1997, he was  
2 brought to the office of Inspector Trew and ordered to stop  
3 investigating matters relating to Project Truth,  
4 specifically instructed, these are his admissions, to hand  
5 over all notes and materials and audio tapes. He admitted  
6 that this was a specific order by his superiors and that he  
7 left them with no equivocation that he would comply.

8                   He admitted in cross-examination that he  
9 didn't comply with that order and again met them in August.  
10 He agreed that he was specifically ordered again to hand  
11 over his materials. He left the meeting agreeing to do  
12 that but he agreed that he didn't. He was met again by his  
13 superiors and they made the same demands. He admitted that  
14 he met Inspector Hall and that he only gave him a one-page  
15 document with a list of victims' names on it.

16                   He admitted that he was asked by Inspector  
17 Hall for his notes and Mr. Dunlop agreed he didn't provide  
18 them because he wanted more time, he said, to think about  
19 it and discuss releasing his notes with victims. In fact,  
20 thereafter, he admitted that he never spoke to any victim  
21 about releasing the materials

22                   He admitted that in September of 1997 he  
23 received a written order from his superiors demanding and  
24 ordering him to disclose all notes, tapes et cetera, and  
25 that notwithstanding prior requests, he had not given the

1 police his notes, taped statements and written statements.  
2 He then asked for an extension of a deadline to October  
3 10<sup>th</sup>.

4 He admitted that on the 10<sup>th</sup>, he gave  
5 Inspector Hall the Fantino brief and led him to believe, he  
6 admitted, that he had completed his disclosure. A year  
7 later, Mr. Dunlop, in response to further demands, admitted  
8 that he handed over four volumes of material, including the  
9 Fantino brief, and he also gave three audio-taped  
10 statements of Renshaw's and Leroux and others, but he  
11 didn't provide the video statement of Ron Leroux until  
12 October, 1998.

13 By July of '98, he admitted that he still  
14 hadn't provided disclosure. He conceded later and admitted  
15 that, in spite of orders, he didn't hand over this thick  
16 file with many statements in June of '97; that he didn't  
17 turn the file over throughout 1998 and that he handed over  
18 only bits and pieces. It wasn't until the January 3<sup>rd</sup>, 2000  
19 order, he admitted, which demanded disclosure of all  
20 evidence in the Marcel Lalonde matter, including notes et  
21 cetera, that he produced material.

22 Even then, at the end of the cross-  
23 examination, he testified before Justice Plantana that  
24 there may be more materials he hadn't disclosed and that  
25 was the reason Justice Plantana issued a warrant and

1 officers travelled to Vancouver which was dramatically  
2 described here as an "unfounded fishing expedition".

3 He admitted that he was untruthful in his  
4 sworn evidence before the court in the Marcel Lalonde trial  
5 when he told the court that he had not - that he had in  
6 fact disclosed all of his personal notes to investigators  
7 by 1998, which he didn't do until 2000.

8 He admitted that his lack of faith and  
9 mistrust rubbed off on victims and not only did this happen  
10 as a result of his personal actions but, as I submit, he  
11 recruited Mr. Dunlop's (sic) help who took that cause on  
12 and made it his own in a particular way.

13 His mistrust of police was so significant he  
14 admitted in cross-examination to hiding his notes and  
15 papers in a variety of locations across the city and  
16 changing his path of travel to those locations every time  
17 he went to them in order to cover his tracks. But,  
18 tellingly, the only people wanting those documents at the  
19 time were the police. The only inference I submit to be  
20 drawn from the circumstances was that he was refusing to  
21 give them to authorities.

22 He also admitted that he didn't create or  
23 keep his notes in accordance with professional practice  
24 known as -- known to police procedures. He admitted he  
25 received multiple written orders to cease communicating

1 with the media and he didn't comply with them. He admitted  
2 specifically in his cross-examination to breaching those  
3 orders.

4 He admitted as well, importantly, that he  
5 gave Richard Nadeau statements and affidavits of witnesses  
6 to put on the web site of www.projecttruth2.com and that he  
7 did so without their consent. And then he testified before  
8 Justice Chilcott that he told him -- and told him under  
9 oath that he had not given Richard Nadeau those statements  
10 and affidavits.

11 Finally, the evidence of other witnesses, I  
12 submit, is important. There was the evidence of C-18 and  
13 this was canvassed with Officer Hall. That individual made  
14 statements and allegations about a Diocesan personnel. The  
15 individual said that as an altar boy at St John Bosco, he  
16 recalls advances made by a priest. And that is why Officer  
17 Hall actioned Officer Genier to go out and make inquiries  
18 about this incident. And when the individual was  
19 interviewed, he said:

20 "C-18 told Dunlop, whom he knew, and  
21 said he chose not to pursue it. Next,  
22 Dunlop stated he would put together a  
23 statement for C-18 and later would have  
24 him sign it. C-18 later did sign it  
25 because he felt it wasn't going

1                                    anywhere. C-18 said that Dunlop  
2                                    sweetened it up. C-18 will write out a  
3                                    statement and will contact us. C-18  
4                                    states he was never abused and is not  
5                                    aware of any person that was."

6                                    And so Officer Hall learned that C-18 had  
7                                    lied in his accusation against the DAC person and that Mr.  
8                                    Dunlop had been not only involved in that evidence but had  
9                                    written it out for the witness. And I submit there is  
10                                   great symmetry between his behaviour in connection with  
11                                   this witness as there was between the evidence of C-8 and  
12                                   Ron Leroux. And whether this was as bad as it is alleged  
13                                   from the point of view of actual misconduct, it certainly  
14                                   was as bad as it looks from the point of view of the  
15                                   drawing of obvious inferences of incompetence and  
16                                   recklessness.

17                                   I submit, Commissioner, that when the  
18                                   evidence of C-8, Leroux, Mr. Renshaw, Mr. Bourgeois and Mr.  
19                                   Dunlop's own admissions are considered together, there can  
20                                   be no doubt that he bears the most serious responsibility  
21                                   for creating, generating and propagating the allegations  
22                                   that gripped the consciousness of this community. Not only  
23                                   did he generate it, I submit, but he preserved it,  
24                                   protected it, and promoted it.

25                                   And that led to Mr. Guzzo. Mr. Guzzo

1 arrived on the scene in the summer of 1998, having obtained  
2 from Mr. Dunlop his materials. Then he ran with the story.  
3 He used the metaphor here of the Heisman trophy, and I  
4 submit it's an apt comparison because the trophy is of a  
5 player with an outstretched straight arm carrying a  
6 football and Mr. Guzzo's story was like the ball; it had  
7 nothing in it but air. But he certainly ran with it with  
8 his outstretched arm.

9 His campaign began in September and he wrote  
10 letters to the Premier. I submit, as he admitted, he used  
11 his position in letters and statements to the media and to  
12 the Premier as a former judge, as a former lawyer and then  
13 as an MLA to enhance the credibility of the positions and  
14 evidence which he was contending was true. I suggest, he,  
15 more than anyone else should have known better, but he did  
16 not. I suggest he fastened on to this issue for his own  
17 electoral pretensions. And what he did amounted to a  
18 cynical display of disregard for the interest of his  
19 community. He assiduously courted the media and he was  
20 reckless in doing so.

21 His main theories were first, that there had  
22 been, prior to Project Truth, three investigations which he  
23 characterized specifically and attempted to persuade the  
24 media and the public had been broad based; thorough  
25 complete investigations into the existence of a clan of

1 pedophiles in this city. He promoted that theory in the  
2 Legislative Assembly. He promoted it in his draft bills.  
3 He promoted it to the media and in public statements.

4 He concluded and created a straw man which  
5 was these investigations that preceded Project Truth had to  
6 be incompetent, mismanaged or worse, affected by a  
7 conspiracy which suppressed the information because how  
8 could it be otherwise when Project Truth suddenly came up  
9 with 115 charges when, he said falsely, the same thing had  
10 been investigated three times thoroughly and completely.

11 He admitted in cross-examination here to me  
12 and to Ms. Costom that he had no evidence that those three  
13 prior investigations had the scope that he contended and as  
14 the evidence demonstrated clearly, I submit, they did not.  
15 The first was in the Charles MacDonald. The second was a  
16 review of Charles MacDonald and conspiracy. The third was  
17 the same. These were not broad based investigations and  
18 his theory was not only wrong, he did absolutely nothing to  
19 check it.

20 The second main thesis that he advanced was  
21 that Mr. Dunlop had provided extensive materials to the  
22 government and the OPP and that many, if not all of, the  
23 complainants identified in those materials had never been  
24 interviewed by the dates of his letters; the first being  
25 September of 1998.

1                   He went on to say this again and again and  
2 again. This was clear evidence, he contended, of  
3 incompetence or worse; conspiracy and yet, it was false.  
4 It was wrong as he admitted. He said to me:

5                                 "The comments with regard to the  
6                                 individuals referred to Mr. Dunlop; I  
7                                 was wrong."

8                   And of course he was wrong. He didn't  
9 check. Many, if not all of those people, had been not only  
10 interviewed, but as Ms. Costom established, one at least  
11 had been charged by the time he was writing his letters and  
12 he simply had no information on which to found his  
13 assertions. And these assertions came to dominate the  
14 psyche of the community because here was a former judge, a  
15 lawyer and a member of the Legislative Assembly taking on  
16 this script and contending that society in this city was  
17 affected and plagued by a clan and conspiracy.

18                                 His third claim was about Florida and I  
19 submit is one of his most grotesquely inaccurate claims.  
20 He claimed that he had factual information; that he had  
21 documents that he had seen and that others had provided  
22 including by inference or directly, the good citizens of  
23 Cornwall that had gone down there to conduct an  
24 investigation at their own cost and these he conceded were  
25 Mr. Leroux and Mr. Chisholm. And when he talked to me

1 about that, he admitted he never saw what they had; never  
2 saw the documents they generated and he never talked to  
3 them at all about it. He never saw registration slips with  
4 the names of perpetrators and young men from Cornwall.

5 He had no evidence on this issue and he was  
6 extensively cross-examined on this issue and agreed over  
7 and over again that he didn't have the information; that he  
8 led the Premier, the province, the Legislative Assembly,  
9 the media and Cornwall to believe he did.

10 Then Pat Hall came here and testified and he  
11 demonstrated what the OPP investigation of the Saltaire  
12 Motel was and what happened. I submit it demonstrates  
13 again that Mr. Guzzo had not only no information, but the  
14 information that he was propagating was simply inaccurate  
15 in a profoundly clear way.

16 Mr. Hall denied all of Mr. Guzzo's  
17 contentions that he had information with the Bishop's name  
18 on it in terms of a registration slip; never saw it, never  
19 had it and Mr. Guzzo never saw it and certainly Mr.  
20 Chisholm and Mr. Leroux didn't get it.

21 I submit Mr. Guzzo then engaged in what can  
22 only be described as an outrageous media stunt. Over a  
23 period of weeks, he held multiple interviews with the  
24 media, television and radio. He said:

25 "I am going to name names of these

1 kingpin pedophiles in Cornwall unless  
2 an inquiry is called by the Minister or  
3 the Premier."

4 He contended, specifically, that OPP had  
5 made recommendations to make these charges against people  
6 who were the kingpins, but that others in some  
7 conspiratorial, clandestine way had thwarted the  
8 administration of justice and suppressed that. This was  
9 false and he had no evidence of it, but he did damage.  
10 Names were leaked. People were hurt. And the result was,  
11 I submit, the community continued to be damaged.

12 I suggest Mr. Guzzo profoundly exacerbated  
13 the damage Mr. Dunlop caused and started. And although Mr.  
14 Dunlop set the wheels of the controversy in motion, Mr.  
15 Guzzo took on the cause and made it his own. Mr. Dunlop,  
16 by accessing Mr. Guzzo, accessed an institutional player;  
17 an individual who had discreet access to the media and  
18 others to ratchet up the story to political levels that had  
19 been unprecedented in the city.

20 The piece, I submit, is completed by Richard  
21 Nadeau who developed the website. Although there was a  
22 brief iteration of a similar website before it, Mr.  
23 Nadeau's website was the one that lasted the longest. It  
24 was shrill. It was hysterical and it was judgmental. It  
25 accused everyone and anyone whether you were guilty or not,

1           whether you were charged or not, whether you were innocent  
2           or not; it didn't matter. If you were named as a  
3           pedophile, that was what you were and he explicitly said  
4           over and over again, "The ends justify the means."

5                       I submit that's what happened here in terms  
6           of the clan of pedophiles and the conspiracy story. That's  
7           how it was generated. The pillars of those falsehoods, I  
8           submit, came down here at the Inquiry. Those falsehoods  
9           generated what amounted to community hysteria and sadly,  
10          the community is plagued by it to this very day.

11                      Moving on, sir, to briefly emphasize some  
12          points about the Charles MacDonald case -- well, I'm not  
13          sure I'll have enough time for that so what I'll do is I'll  
14          pass on to ---

15                      **THE COMMISSIONER:** Well, just a second now.  
16          You were on from 9:30 to 11:30, but let's say there was --  
17          how much time before I came back and you started?

18                      **MR. SHERRIFF-SCOTT:** I'm not sure, sir, 10  
19          minutes or so.

20                      **THE COMMISSIONER:** So add on 10 minutes so  
21          we can give you your full time.

22                      **MR. SHERRIFF-SCOTT:** I hope to finish before  
23          my time, but if I go through this I may -- I would have  
24          gone over 11:30, sir.

25                      So why don't I just emphasize some selective

1 points about the Charles MacDonald and David Silmser case  
2 insofar as the evidence of the Diocese is concerned and its  
3 response.

4 The first is developed at page 200 and  
5 following of the written submissions which I would ask you  
6 to read and that is that there was no evidence to  
7 demonstrate that the Diocese should have heightened  
8 concerns about Charles MacDonald before the David Silmser  
9 allegations surfaced in December of 1992.

10 I've reviewed the evidence on this in detail  
11 at pages 6 -- excuse me, at paragraphs 618 to 633 of the  
12 submission which I would invite you to read carefully in  
13 terms of our position on that.

14 Second, in a similar summary way, at page  
15 203 and following, I talk about first contact with David  
16 Silmser and then the issue of reporting to the CAS and CPS.  
17 In terms of first contact, I've developed those points at  
18 paragraphs 634 and following to 649. And it's my  
19 submission that the evidence to be preferred here is that  
20 first contact was with Monsignor Schonenbach and that  
21 evidence to the contrary should not be preferred. Mr.  
22 Silmser, himself, was the one who testified exclusively  
23 that he had first contacts with Monsignor Schonenbach.

24 And I've developed the evidence in response  
25 to the suggestions about Monsignor Guindon -- if that took

1 place at all -- in those paragraphs, Commissioner, which I  
2 would ask you to read.

3 Then there is the issue of what happened  
4 after the letter from Mr. Schonenbach arrived at the  
5 Diocese. And I submit a number of things happened which  
6 disclose, I suggest, that what happened was not  
7 inappropriate and that from a substantive point of view  
8 complied with the protocol.

9 First, Monsignor McDougald met with Charles  
10 MacDonald, as the protocol required, and put the Silmsers  
11 allegations to him. The allegations were denied and  
12 Mr. MacDonald retained a lawyer. Then Monsignor McDougald  
13 as required, I submit, spoke to David Silmsers whom he  
14 called on the telephone, and David Silmsers repeated the  
15 same allegations he had made and which were summarized in  
16 the Schonenbach Exhibit 311 letter.

17 The protocol did not require some specific  
18 form of meeting but the evidence was that this happened,  
19 from Monsignor McDougald, and when I cross-examined Mr.  
20 Silmsers, as you'll see from the references at page 207, he  
21 admitted it was possible he had these phone discussions  
22 with Monsignor McDougald about his complaint in advance of  
23 the February 9<sup>th</sup> meeting, which is in Mr. Silmsers's CPI  
24 transcript at Volume 86 and the references are at page 207.

25 Then Charles MacDonald's lawyer wrote to

1 Monsignor McDougald on the 21<sup>st</sup> of December. The  
2 allegations were denied again and he made certain requests  
3 and that letter was passed on to Monsignor Schonenbach.  
4 Monsignor Schonenbach testified that he spoke with David  
5 Silmser, put the information in Malcolm MacDonald's letter  
6 to him, who rejected the position and said in the  
7 circumstances he was going to the police and this is  
8 important, I submit, since he had already gone to the  
9 police and he was not being accurate with Monsignor  
10 Schonenbach about that issue.

11 Monsignor Schonenbach admitted that if  
12 anyone had been critical about Mr. Silmser's character at  
13 the time, it was possible that that was Malcolm MacDonald  
14 because the criticisms he remembered seemed to be  
15 consistent with what was contained in Malcolm MacDonald's  
16 correspondence and he couldn't identify anyone at DAC who  
17 was critical.

18 Then there was an intervening Christmas  
19 period and a meeting was scheduled with Mr. Silmser. Mr.  
20 Silmser expressed no concern about that time delay. And he  
21 admitted that he was contacted by Monsignor McDougald to  
22 set up the meeting. Monsignor McDougald briefed the Bishop  
23 about developments as they progressed, including in  
24 December as well as after the meeting of February 9<sup>th</sup>. At  
25 the meeting of February 9<sup>th</sup>, Mr. Silmser was told the

1 purpose of the meeting was to ascertain details of his  
2 complaint. This is at page 208.

3 He recounted allegations of abuse. His  
4 allegations were vague and lacked detail and he was asked  
5 to provide specifics, which he did not do or refused to do,  
6 and became agitated. Importantly on this point, on the  
7 same day, contemporaneous recording of Heidi Sebalj in her  
8 notes was, "They wanted victim to provide details of the  
9 assault", referring to Mr. Silmsers telling her about the  
10 meeting of that very day.

11 Mr. Silmsers was offered psychological help  
12 and "any other help he needed". This was in the evidence  
13 of Father Vaillancourt, Jacques Leduc and, importantly  
14 again, Ms. Sebalj recorded on her contemporaneous note of  
15 February 9<sup>th</sup>, "Victim was offered psychological help". Mr.  
16 Silmsers didn't deny that the offer was made when he was  
17 testifying here and cross-examined on this point. Mr.  
18 Silmsers closed by saying that he had the best lawyers in  
19 Ottawa, implying he intended to sue DAC, and Mr. Silmsers  
20 said he was either going to the police or already had been  
21 to the police. But one thing is clear, within days DAC  
22 knew he had gone to the police, and that is developed in  
23 the evidence as I submit in paragraphs 652 to 657,  
24 including quotations and cites.

25 Now, then Monsignor McDougald explained, I

1 submit, a number of important points and his evidence  
2 contributes to understanding why the CAS was not contacted.  
3 But I submit the fact that there was knowledge that the CPS  
4 had contacted explains why the Diocese didn't go there  
5 itself. Monsignor McDougald said:

6 "I think we assumed that if he was  
7 taking his complaint to the police that  
8 they would see to it the CAS was  
9 advised. We did not go to the CAS  
10 because we knew he had already gone to  
11 the police and assumed everything  
12 required would be done."

13 From the point of view of a layperson,  
14 that's probably a fairly reasonable assumption; maybe not  
15 technically.

16 Moreover, others testified that they were  
17 not even sure there was a requirement to report to the CAS  
18 since Mr. Silmsler was not a minor at the time of his  
19 complaint and there was "some doubt about whether we had an  
20 obligation or not". Bishop LaRocque testified to the same  
21 effect and, importantly, the quotation at paragraph 661  
22 refers to lawyers:

23 "On the last point, I must say there  
24 was some confusion both with the  
25 lawyers and the police..."

1                   He said. Not even the lawyer was clear  
2                   about what should be done. Jacques Leduc was cross-  
3                   examined on this point by me. He agreed that he was the  
4                   lawyer for the Diocese, the lawyer advising the committee.  
5                   And I asked him if the subject of going to the CAS came up  
6                   in his advice or his discussions, and he said "Yes".

7                   "Did you read the protocol and advise  
8                   the committee that, well, at the time  
9                   of the events Mr. Silmsler may have been  
10                  a minor and therefore the CAS must be  
11                  dealt with?"

12                  "I recall there was a discussion about  
13                  that subject matter, yes."

14                  "You do?"

15                  "Yes."

16                  "Did you give advice to the Bishop to  
17                  report this matter?"

18                  "No. All I can tell you is that there  
19                  was an issue as to whether or not the  
20                  matter should be reported to the CAS  
21                  and my recollection, as you pointed out  
22                  a while ago, was that this was a 30  
23                  year-old man who is reporting  
24                  allegations that had occurred when he  
25                  was a young person and there was an

1                                   issue as to whether or not reporting  
2                                   requirements were triggered."

3                                   I submit the Bishop relied on the advice, or  
4                                   the Diocese did. The lawyer there advising the committee  
5                                   did not make the advice. And technically whether or not  
6                                   there was a breach, they Diocese believed and knew he had  
7                                   gone to the police. I submit there was no technical  
8                                   breach. Mr. Silmsler was not a minor at the time and, as  
9                                   Project Blue demonstrated clearly, not a single person  
10                                   could be found who was at risk. And in the circumstances,  
11                                   objectively there was no person at risk, at least insofar  
12                                   as the evidence is concerned, and thus DAC did not have an  
13                                   obligation.

14                                   I would suggest there would be an  
15                                   inconsistency between a need to clarify the *CFSA* in terms  
16                                   of this issue and one articulated by the Commission if  
17                                   others who made this decision based on the lack of clarity  
18                                   did not report and thus were criticized in this regard.  
19                                   Those are my submissions on the question of the CAS.

20                                   There is and was great debate about whether  
21                                   this individual ought to have been suspended in the interim  
22                                   period. I suggest there are a variety of reasons disclosed  
23                                   in the evidence for this.

24                                   The first was that Charles MacDonald had  
25                                   virtually 25 years of unblemished service. Nothing had

1           happened to indicate a problem or defect. That alone is  
2           not enough for a dispositive, I certainly concede, but the  
3           allegations of Mr. Silmsers were vague and lacked detail and  
4           specificity and the complainant would not either provide  
5           them to DAC or to police, as it turned out.

6                        The allegations as they were presented to  
7           DAC were fundamentally inconsistent with what they knew of  
8           this individual. The complainant had what appeared to be a  
9           lengthy criminal record. DAC also came into possessions of  
10          letters from people like Mr. Meilleur or Mr. Sauvé, who  
11          testified unequivocally to his good character. And while  
12          character evidence is not in itself of huge moment, the  
13          fact of these letters is important because the  
14          circumstances of them is telling. These individuals were  
15          very young men and lived with Charles MacDonald free of any  
16          issue.

17                       Mr. Silmsers had, notwithstanding his  
18          allegations, gone back to Charles MacDonald many years  
19          after the alleged abuse and continued to exhibit friendship  
20          and asked for help and was given it. On this point,  
21          Monsignor McDougald succinctly summarized the matter in his  
22          statement to police when he said:

23                                "When the complainant got in trouble  
24                                later on by breaking into the hall and  
25                                stealing a car and the like, Father

1 Charles helped him out. Father Charles  
2 was instrumental in getting him back  
3 when he went on the lam. He took him  
4 back to the rectory, visited him in the  
5 reform school. He later received a  
6 letter of appreciation from the  
7 complainant which Father Charles showed  
8 me. I found this difficult to  
9 reconcile with the complainant's claims  
10 that he had been abused. When  
11 requesting specifics, however, the  
12 complainant got angry and agitated. He  
13 figured we were ganging up on him. The  
14 complainant's lack of precision, the  
15 fact that a friend became an enemy, the  
16 inconsistency of his position and the  
17 fact that the notion of financial  
18 remuneration entered his mind all made  
19 me uneasy. It appeared that the  
20 accusations revealed certain things  
21 that were out of character of Father  
22 Charles. He was not a violent man.  
23 The allegations of course were  
24 vigorously denied by Charles  
25 MacDonald."

1                   Now, it's easy to look back at this and say  
2                   through the lens of hindsight "You were wrong, you should  
3                   have punched his ticket right away and suspended him". But  
4                   what happened here is the Bishop at the time did not  
5                   believe the allegations based on the information he was  
6                   fed. And while one might criticize his judgement, it was a  
7                   judgement call. He didn't breach his protocol in making  
8                   it.

9                   Whether it was the right one in the  
10                  circumstances, whether he had the experience or foresight  
11                  to do the right thing in terms of objective assessment is  
12                  another matter. The reality is he made a discretionary  
13                  decision, I submit, which was not based on *mala fides* or  
14                  some conspiratorial desire to hide the truth.

15                 Commissioner, at page 216 and following I  
16                 developed a number of points in which I contend that DAC  
17                 complied with its protocol, which are repetitive of the  
18                 points that I just identified, but I submit, essentially,  
19                 the complaint was received. The complainant was  
20                 interviewed on the phone by Monsignor McDougald. No form  
21                 of meeting was prescribed. Monsignor McDougald clearly had  
22                 correspondence and materials in his possession. No form of  
23                 file opening was required.

24                 They met with Charles MacDonald, they got  
25                 his position. Then they met with the victim, they offered

1           him help which he conceded he could not deny and which is  
2           objectively corroborated by the notes of Ms. Sebalj.

3                       Then, I submit, the evidence is clear from  
4           Mr. Silmser's own testimony in cross-examination by me.  
5           That Monsignor McDougald and him talked after the meeting  
6           and he was told in no uncertain terms, that there would be  
7           no apology from Charles MacDonald and that the only thing  
8           on the table was an offer of help from the Diocese.

9                       He said:

10                                "And it's clear, it's what should  
11                                have been the 9<sup>th</sup>, I believe, 1993,  
12                                probably Father McDougald."

13                                "Was that in terms of telephone  
14                                conversations?"

15                                This is following the 9<sup>th</sup>.

16                                "I would believe so, yes. I'm not  
17                                sure if he called me or I called  
18                                him. We spoke on the phone saying  
19                                the apology -- they wouldn't give  
20                                me an apology. They also advised  
21                                me the priest's lawyer was Malcolm  
22                                MacDonald."

23                                "Does that refresh your memory?"

24                                I asked.

25                                "Somewhat, yes."

1 Well he knew the priest's lawyer was Malcolm  
2 MacDonald, he interacted with Monsignor Schonenbach. That  
3 complied, I submit Commissioner, substantively with the  
4 provisions of its protocol, the first time the document was  
5 used and I submit, a substance over form analysis should be  
6 applied to that assessment.

7 Now the settlement agreement issue, I submit  
8 the following points emerge from the evidence. Settlement  
9 discussions were not initiated by the Diocese. Mr.  
10 Silmsler, when I cross-examined him said he never spoke to  
11 Monsignor McDougald about settlement and he's the only one  
12 he talked to from DAC.

13 The Bishop insisted, and his evidence, I  
14 submit was corroborated by others, that there should be no  
15 interference with a criminal process. He gave specific  
16 instructions that the settlement be drafted in that regard.  
17 DAC's lawyer was negligent as he admitted here in the  
18 witness box. He did not properly protect his client's  
19 interests or handle the matter.

20 The evidence establishes clearly, I submit,  
21 that we had no knowledge of the illegality of the clause  
22 until January of 1994. There is no evidence, I submit, on  
23 which a finding could be made to impute knowledge to the  
24 Bishop or even to Gordon Can -- Gordon Bryan.

25 What followed, I submit, was that DAC fully

1 and extensively cooperated with Project Blue. Bishop  
2 Larocque was, I submit, a person who never was told by  
3 Charles MacDonald that he admitted to the David Silmser  
4 allegations and I've summarised that evidence.

5 I suggest there is no conspiracy evidence.  
6 The only evidence from DAC was that they were never  
7 contacted by the CPS at any time until October the 7<sup>th</sup> when  
8 Chief Shaver showed up with Claude Brunet. They had never  
9 been spoken to.

10 **THE COMMISSIONER:** Luc -- Luc Brunet.

11 **MR. SHERRIFF-SCOTT:** And so I submit that  
12 the last point on this issue was that DAC had never been  
13 involved in prior settlements which was alleged by the  
14 media and that the information on that front was what  
15 happened with the *Deslauriers* matter, where they had made  
16 payments to some victims in connection with counselling.

17 Now, turning to my last point, what happened  
18 after the new Bishop arrived here. I submit that since  
19 arriving in 2002, Bishop Paul-André Durocher has worked  
20 diligently and assiduously to serve his community as well  
21 as to foster community confidence and to restore confidence  
22 and trust in the Catholic Church.

23 And his role is a complex one with many  
24 tasks, but the first thing he did when he came here was to  
25 focus on the issue that you have had to confront yourself.

1           Within five weeks of arriving, he created an *ad hoc*  
2           committee. The mandate of the committee was, as the  
3           evidence established on August 15<sup>th</sup>, 2002; the Bishop  
4           arrived in July. He embraced the public; he hired  
5           consultants who were facilitators; the media was embraced  
6           with announcements; the public was invited to have input.

7                        The committee was tasked with becoming  
8           familiar with the history of these issues From Pain to Hope  
9           and developments that should take place. Bishop Durocher  
10          was convinced that they needed a policy that was completely  
11          consistent with From Pain to Hope.

12                      A number of senior community stakeholders  
13          and important people were asked to sit on the *ad hoc*  
14          committee. A facilitator was hired and, importantly, an  
15          expert in the area, Everett MacNeil was consulted. He was  
16          the Bishop's delegate for the Archdiocese in Ottawa and an  
17          international expert, ethicist and canon lawyer who had  
18          been a member of the Winter Commission and had been hired  
19          by the American bishops early in the 1990s to study the  
20          same issue which informed the *Dallas Charter*.

21                      He was appointed not only as an expert but  
22          as an interim delegate. Others were the representatives  
23          such as managers of seniors' homes, teachers; Mr. Abell  
24          from the CAS and others including lawyers and parishioners  
25          were involved.

1           The committee deliberated through the fall  
2           of that year and in December, issued its recommendations  
3           and draft documents which were then circulated. Each step  
4           of the way was public and transparent. The Bishop embraced  
5           public commentary. Over 30 submissions were received from  
6           groups and individuals. There were personal sessions where  
7           people made presentations to the Diocese Committee. And in  
8           the end, the document that was prepared was sent to Roch  
9           Pagé, a canon lawyer who was on the From Pain to Hope  
10          Committee that had drafted that document.

11          The outcome was the creation of an advisory  
12          committee and a specific policy which you have in the  
13          evidence before you, together with a Victims' Care  
14          Committee which was promulgated effective July of 2003.

15          Other developments were creation of a  
16          screening policy to be completely consistent with the  
17          screening initiative in Ontario which the Bishop had  
18          participated in. And he developed and promulgated that  
19          policy in September -- excuse me, in 2004, which replaced  
20          another document.

21          I submit that the Bishop's work has been  
22          productive. He is to be applauded in the courage for  
23          working the way he has to reconcile the Church to the  
24          community and he's continued -- committed to continuing  
25          that work with the community to foster reconciliation. And

1 he has worked through Phase 2 to accomplish that, including  
2 PrevAction, as well as outreach with victims with whom he's  
3 met personally and has participated in healing circles with  
4 victims as well.

5 Those are my submissions, sir. Thank you  
6 very much for the opportunity to present.

7 **THE COMMISSIONER:** Okay. So when -- the  
8 School Board is presenting, is it?

9 **MR. ENGELMANN:** Sir, we had that scheduled  
10 from 11:45 to 12:05 for about 20 minutes. Do you want to  
11 take a break 'til about 11:30, or ---

12 **THE COMMISSIONER:** Yes. Oh, yes. Yes,  
13 sure. Thank you.

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

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

17 --- Upon recessing at 11:04 a.m.

18 ----L'audience est suspendue à 11h04.

19 --- Upon resuming at 11:32 a.m.

20 --- L'audience est reprise à 11h32.

21 **THE REGISTRAR:** Order; all rise. This  
22 hearing is now resumed. Please be seated. Veuillez vous  
23 asseoir.

24 **THE COMMISSIONER:** Good morning.

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

1 TYMOCHENKO :

2 MS. TYMOCHENKO: Good morning, Mr.  
3 Commissioner.

4 THE COMMISSIONER: Yes.

5 MS. TYMOCHENKO: We do not intend to make  
6 any oral submissions this morning.

7 THE COMMISSIONER: M'hm.

8 MS. TYMOCHENKO: We've provided written  
9 submissions, we rely on those.

10 I wanted to express our appreciation for  
11 being part of this process and also again, express the  
12 appreciation we have for the extraordinary courage of the  
13 victims who testified and provided us with their personal  
14 histories. That must have been very difficult for them and  
15 we do appreciate that.

16 If you have any questions of us, I'm  
17 available to answer those.

18 THE COMMISSIONER: No. Thank you. I've  
19 read your material and I have no questions of you.

20 MS. TYMOCHENKO: Great. Well, thank you  
21 very much.

22 THE COMMISSIONER: Thank you very much.

23 So that leaves us with -- the Cornwall  
24 Police Services was supposed to start at one o'clock. And  
25 I understand that some people may have timed their schedule

1 to be here or to view it on the worldwide web or on the  
2 cable. So I would suggest we take our lunch now and we  
3 come back at one o'clock and then we deal with it as we had  
4 scheduled.

5 All right? Thank you.

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

8 This hearing will resume at 1:00 p.m.

9 --- Upon recessing at 11:33 a.m.

10 ----L'audience est suspendue à 11h33.

11 --- Upon resuming at 1:06 p.m.

12 --- L'audience est reprise à 13h06.

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

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

17 **THE COMMISSIONER:** Thank you. Good  
18 afternoon. Mr. Callaghan?

19 **MR. CALLAGHAN:** Good afternoon, Mr.  
20 Commissioner.

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

22 ---FINAL SUBMISSIONS BY/REPRÉSENTATIONS FINALES PAR MR.  
23 CALLAGHAN:

24 **MR. CALLAGHAN:** It would seem that we've  
25 come full circle. I believe I had the honour of being the

1 first one to speak to you at the standing hearings, and I  
2 am now the one that gets to usher out the last words so to  
3 speak.

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

5 **MR. CALLAGHAN:** On behalf of the Cornwall  
6 Police Service, I would like to start by recognising the  
7 efforts of all those involved in this Inquiry.

8 While this Inquiry has been educational for  
9 the public, the institutions and those involved, it has not  
10 always been easy. It has not been easy for the victims.  
11 It has not been easy for the institutional employees whose  
12 conduct we have examined, and it has not been easy for  
13 those of us who have had to address the issues.

14 Somehow, we've come to the end of the  
15 Inquiry and in doing so we are about to leave one phase and  
16 embark on another. The next phase will involve digesting  
17 your report, your recommendations and moving forward to  
18 ensure that Cornwall, and indeed the Province, is better  
19 able to comprehend the scourge of child sexual abuse,  
20 better able to respond to the challenges facing survivors  
21 of child abuse, and for the institutions, being better able  
22 to respond to society's needs in addressing this problem.

23 However, before we get to the next stage, we  
24 are required to review where we've been and what lessons  
25 we've learned in the last three-and-a-half years review of

1 conduct that stretches back some 30 years.

2 As you know, Mr. Commissioner, we filed  
3 extensive submissions, some 480 pages. Time does not  
4 permit me to go through all that is said there, so our  
5 submissions will be focussed. Our submissions will  
6 generally break down as follows.

7 I will address the mandate and try to put  
8 the conduct of the police in its historical perspective and  
9 hopefully assist you in understanding my client's  
10 perspective.

11 Second, Mr. Manderville will briefly speak  
12 to you about a number of cases. I will then return to  
13 address how the spiteful conspiracy allegation came to be.

14 First, a word about the mandate. As  
15 mentioned by others, this Inquiry was called because of  
16 specific concerns. Mr. Justice Moldaver in the Court of  
17 Appeal described the motivators for calling this Inquiry as  
18 follows.

19 He said:

20 "It was a clan of paedophiles allegedly  
21 operating in the Cornwall area for a  
22 very long period of time. Prominent  
23 local citizens allegedly conspired to  
24 cover up the activities of the clan of  
25 paedophiles and Project Truth and the

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

6                   It is these issues that brought us to this  
7                   Inquiry, and it's these issues that obviously need to be  
8                   addressed in your final report. If it were otherwise, the  
9                   cloud of suspicion and mistrust would continue to hang over  
10                  Cornwall.

11                  However, there's another phase to this  
12                  Inquiry. We were also asked to assess the institutional  
13                  response to child sexual assaults, including the policies  
14                  and protocols then in place and assess what improvements  
15                  should be made. The Court of Appeal described this phase  
16                  of the Inquiry as:

17                                "Broad issues of public policy  
18                                affecting the public at large. This is  
19                                not just a Cornwall issue."

20                  The Court of Appeal went on to say that the  
21                  Commissioner was:

22                                "...not asked to resolve a bipolar  
23                                dispute over specific legal or factual  
24                                issues..."

25                  But rather the Court of Appeal said your mandate was to

1 address:

2 "...a polycentric issue involving a  
3 large number of interlocking and  
4 interacting interests and  
5 considerations."

6 Clearly, this part of your mandate is  
7 intended to have broad reach for the people of Ontario.

8 You have now heard from a great number of  
9 agencies who play a role in the protection of children,  
10 from the police to schools, to the CAS, to Crowns. What  
11 has not been discussed as much is the competing values in  
12 society that some of these agencies are required to  
13 address.

14 For example, the police have a role in  
15 ensuring victims of crime are dealt with fairly and  
16 compassionately. At the same time, they must follow the  
17 rule of law and the constitutional principles such as the  
18 presumption of innocence.

19 In addition, we heard of concerns over  
20 privacy rights.

21 These three issues alone, we have seen often  
22 lead to conflict and discussion about priority,  
23 particularly as between society's desire to protect  
24 children, society's belief in the presumption of innocence,  
25 and the society's desire for privacy.

1                   These are serious issues. These are serious  
2 challenges for you when you come to write your report and  
3 they have been serious issues for those involved in the  
4 protection of children.

5                   This clash was demonstrated when we reviewed  
6 the officers' duty of confidentiality. That duty is  
7 embodied in the oath of secrecy and privacy legislation and  
8 in the regulations of the *Police Services Act*.

9                   During the investigative stage, the police  
10 do not have a free hand to release information to the  
11 public or, as some suggest, employers. It's not an issue  
12 of moral obligation for the police but an issue of  
13 following the law. This issue is illustrative of the clash  
14 between wanting to protect children, wanting to adhere to  
15 the rule of law in the presumption of innocence, and the  
16 duty of privacy. These are difficult issues. You heard  
17 from Staff Sergeant Derochie that he'd like more clarity on  
18 this issue.

19                   We recognise clarity is important, but we  
20 recognise that there's a clash of these values that has to  
21 be dealt with. The clash often takes place when officers  
22 deal with reasonable, probable grounds. You have heard  
23 officers testify that on more than one occasion, while they  
24 believed a complainant, they could not lay charges.  
25 Sergeant Carroll and Inspector Smith testified to that.

1           They said they believed something happened to victims, but  
2           they had insufficient grounds to say where, when or how.

3                       The decision to charge a person and place  
4           his or her liberty at risk is not taken lightly by the  
5           police. Similarly, the decision not to charge is also not  
6           taken lightly. Objectivity, reason, common sense and our  
7           tested and tried legal traditions are not to be thrown away  
8           because of society's equal value in assisting victims of  
9           sexual assaults.

10                      I submit that the community needs to hear  
11           from you, sir, of this difficult balance. Some parties  
12           want to focus on specific officers, probation officers,  
13           social workers and what they did right or wrong. You have  
14           had an opportunity to review the administrative reviews  
15           done by the Cornwall Police which clearly set out  
16           circumstances where we could have done better, but to focus  
17           on an individual officer, social worker, Crown Attorney, in  
18           many respects ignores the wider issues that the government  
19           has asked you to address. It cannot be that we spent  
20           three-and-a-half years simply to chastise public servants  
21           in Cornwall. Your report needs to be balanced and address  
22           the wider problems. Progress is needed beyond any one  
23           group and beyond Cornwall.

24                      The submissions of the first three parties  
25           focussed almost entirely on the CPS and the CAS. To issue

1 a report on that basis ignores the evidence that we've  
2 heard that all participants in the justice system need  
3 assistance. Professor Balla spoke of a need for more  
4 knowledge with the judges and with the Crown Attorneys.  
5 Accordingly, to focus only on the police or only on the  
6 Children's Aid misses the wider issue in addressing this  
7 problem.

8 Similarly, Ms. Daley made mention of  
9 Cornwall being "tiny town" and in her written submission  
10 said:

11 "Activities that in a less homophobic  
12 community would have been benign, in  
13 Cornwall became evidence of a  
14 paedophile ring."

15 The sentiment in both comments is neither  
16 supported by the evidence nor helpful. To suggest that  
17 Cornwall is "tiny town" or inherently different than the  
18 rest of Ontario is a concept that can only limit the impact  
19 of what you have found and the lessons you can convey to  
20 the rest of the Province.

21 To be clear, Cornwall is not "tiny town" nor  
22 is it any more homophobic than elsewhere. Both are  
23 pejorative and unfair labelling; neither promote community  
24 renewal.

25 As I say, limiting your commentary to either

1 a segment of society's responders or to localize them to  
2 Cornwall is not only wrong but it will ultimately limit the  
3 influence of your work. It cannot be left to the rest of  
4 the Province to say, that only happens in "tiny town" or as  
5 a Crown or a lawyer or a judge to smugly say, "I know  
6 better than the police; I know better than Children's Aid".  
7 Both results should be avoided.

8 One of the challenges of this type of  
9 Inquiry is that the subject matter is emotionally charged.  
10 Real people's complaints are being addressed. There's been  
11 a tendency to get into the minutiae of cases. I urge you  
12 to step back and look at the whole of the evidence.

13 In Martensville, Saskatchewan, there was a  
14 circumstance where child abuse allegations were made  
15 against adults. Those accused were acquitted. The  
16 allegations were found to be false. There was a subsequent  
17 malicious prosecution case and a 98-page judgement. While  
18 I recognize you have lots to read, sir, I've given a copy  
19 of the decision to Mr. Engelmann because I believe it sets  
20 out some of the clashes between society, its values of  
21 wanting to protect children and what happens when that  
22 overrides our societal values, including the presumption of  
23 innocence.

24 In that case there were false allegations of  
25 a ring of pedophiles similar to what happened in Cornwall.

1 The judge actually commented in that decision that his  
2 decision was more like a report in a public inquiry. His  
3 comments though, on stepping back and looking at the whole,  
4 are instructive. The judge said:

5 "The primary difficulty I encountered  
6 during the issues was in keeping the  
7 case in proper perspective. An analogy  
8 can be made to the zoom lens of a  
9 camera that is trained on a flower.  
10 Although the lens can be zoomed in to  
11 reveal a minute detail of the flower,  
12 the image of the whole flower is  
13 temporarily lost until the lens is  
14 zoomed back out. Throughout the  
15 lengthy trial, the images I was given  
16 of the case before me were ones of  
17 minute detail."

18 Over the last three and a half years, we've  
19 had the zoom lens on. It is important that we step back  
20 and look at the whole, including the developments that have  
21 occurred over the last 30, 20, 10 and yes, even five years.  
22 In our opening, we cautioned people from using hindsight  
23 reviewing the events. We did so in the hopes that the  
24 conduct of individuals would be seen in their correct  
25 historic perspective. We did so to ensure that we did not

1 judge 1986 conduct from the smugness of 2009 knowledge. To  
2 do so sets up an easy mark for those who wish to knock down  
3 people. Contrary to what Mr. Lee said, things have changed  
4 and when looking back, it is important to ensure that we  
5 see those changes and acknowledge those changes.

6 You have also been urged to find misconduct.  
7 Misconduct is not the purpose of this part of the Inquiry.  
8 The Supreme Court of Canada said findings of misconduct  
9 should not be the principle focus. Rather, they should be  
10 made when only absolutely necessary. As a commissioner,  
11 you're not acting as a judge but you're acting as an  
12 adviser to government. You're acting so that a government  
13 can act on your recommendations, policies or legislations  
14 for necessary improvements.

15 To limit the review to individuals ignores  
16 this policy objective. In the case of judging police  
17 officers, as Chief Repa said, they are not free agents.  
18 They are bound by the *Police Act* and the policies of their  
19 police force. As you've heard from Mr. Kozloff, the  
20 Supreme Court in the *Hill* case said police are to be judged  
21 by the "reasonable officer standard" which "incorporates a  
22 degree of judicial discretion, denies liabilities for minor  
23 errors or mistakes and rejects liability by hindsight".

24 The Supreme Court prescribed this stat so  
25 the standard "reflects the realities of police work". The

1 quote went on to state:

2 "We must also avoid the counsel of  
3 perfection. The reasonable officer  
4 standard allows for minor mistakes and  
5 misjudgments. Finally, proper scope  
6 must be accorded to the discretion  
7 police officers properly exercise in  
8 conducting an investigation."

9 Let me be clear though. Although hindsight  
10 is not a tool to be used to judge conduct, it is a tool to  
11 be used in recommending improvements. If the standard of  
12 the day was inadequate in light of today's experience then  
13 that standard should be changed. But that does not mean  
14 those who followed the standard of the day can or should be  
15 criticized in your report. As I said, we have areas of  
16 standards changing over periods of time; for example, the  
17 duty to report.

18 Throughout the past 15 years, people have  
19 questioned why the Cornwall police did not report the David  
20 Silmsler matter to the Children's Aid. After three and a  
21 half years, it is now clear the state of knowledge was  
22 deficient in 1993. It was clearly deficient amongst  
23 members of the Cornwall police; it was deficient amongst  
24 members of the Children's Aid; it was deficient at the  
25 Children's Aid's lead Ministry; it was deficient in other

1 government ministries. There was a failure to appreciate  
2 the need to report sexual assaults where the victim was now  
3 well over the age of 16, as was the case of Mr. Silmser.

4 You heard evidence that the Police  
5 Complaints Commission took the view before the Divisional  
6 Court that there was no duty to report in that case. You  
7 heard that even though after the Divisional Court decision,  
8 Charles Bourgeois was erroneously told by senior ministry  
9 staff that he had no obligation to report the details of  
10 the alleged clan of pedophiles. You heard Mr. Liston from  
11 London describe how London police failed to appreciate the  
12 need to report Project Guardian allegations.

13 In 1993, the duty to report was not clear.  
14 When Mr. Lee rattled off all those CPS officers who knew of  
15 Mr. Silmser's complaint but did not report them, he failed  
16 to put it in its proper historical context and we ask that  
17 you do so. This does not mean the failure to report was  
18 correct. It just puts it in its proper historical context.  
19 We submit that the aftermath of the issue of the duty to  
20 report is instructive as to how local agencies in Cornwall  
21 worked effectively.

22 While senior Ministry officials are giving  
23 Bourgeois the wrong advice in 1997, Mr. Carriere and Staff  
24 Sergeant Brunet resolved that everything gets reported.  
25 Frankly, however, this is a local solution to what is

1 clearly a provincial problem. Nonetheless we concur with  
2 those recommendations that legislative clarity in this area  
3 is required, followed by education.

4 Similarly, you've heard that the law on  
5 sexual abuse has changed over the last 30, 20, 10 and even  
6 five years. The changes have been both to the substantive  
7 law and the procedural law. The change of what is and is  
8 not a sexual offence has given rise to great change under  
9 the *Criminal Code*, perhaps more than any other offence.  
10 Added to this are changes in the *Evidence Act*, the *Charter*,  
11 disclosure laws.

12 It becomes clear that the era in which you  
13 were inquiring was an era of great change. We cannot  
14 divorce the changes in the law with the work of the police.  
15 First, in historical cases, the substantive current law  
16 often has no application. Consider Mr. Silmsler's  
17 complaint. It had its origins in the late '60s and early  
18 '70s. Constable Sebalj had to consider and seek advice on  
19 the offences of that era.

20 Similarly, even offences reviewed at the  
21 time require some historical perspective. For example, in  
22 the *Landry* case, the law at the time in 1986, required  
23 there be corroboration for those of tender years who could  
24 not take the oath. When Mr. Lee and Ms. Daley questioned  
25 the results in *Landry*, they failed to point out that the

1 first victim's mental capacity was a real issue for the  
2 police. They also neglect to advise it was not only the  
3 police that made the observation of the child's mental  
4 capacity but so did the CAS worker.

5 Staff Sergeant Lefebvre could not testify  
6 but clearly without corroboration, of which there was never  
7 any, the state of the law at the time made conviction  
8 impossible. That law changed. By the time Sergeant Snyder  
9 did his investigation, the procedural law requiring  
10 corroboration no longer applied. Again, things have to be  
11 seen in their proper historical perspective.

12 The Crown's role has also changed over time,  
13 as you heard from Ms. McIntosh. Clearly the formal and  
14 rigid divisions between Crown and police were not always  
15 present. In the 1980s, Tom O'Brien of the CAS liaised with  
16 the Crown. This was not just a local practice.  
17 Corrections too went to the Crown attorney on the *Barque*  
18 matter. Considering the Deputy Minister of Corrections who  
19 made that suggestion to go directly to the Crown was Archie  
20 Campbell, who later would become the Deputy Attorney  
21 General and later a senior judge in Toronto and the author  
22 of the Bernardo Report, it seems clear that this was much  
23 more -- this much more informal practice was not just a  
24 Cornwall phenomenon.

25 Similarly, the communication with Crowns was

1 very informal over much of the period. You heard of  
2 informal discussion between -- with Don Johnson, Murray  
3 MacDonald and Alan Ain. There had been a number of  
4 opinions expressed by Crowns regarding reasonable and  
5 probable grounds. RPG was clearly a matter on which police  
6 sought and received advice.

7 The 1992 child sexual abuse protocol  
8 directed that "a Crown Attorney should be assigned to the  
9 case as soon as possible". The Crown was to give advice as  
10 to the appropriate charges. The protocol provided:

11 "Whenever there is a question as to the  
12 appropriateness of charges in a  
13 specific instance, consultation shall  
14 take place between the Crown and the  
15 police."

16 The police were urged to consult with the  
17 Crown as not only to the appropriateness of charges but  
18 other legal matters.

19 The protocol said:

20 "The police should consult with the  
21 Crown Attorney in cases where legal  
22 matters -- example, sufficiency of  
23 evidence, capacity of the child to  
24 testify, possibility of hostile  
25 witnesses et cetera -- are an issue."

1                   In fact, if one reviews the 1992 protocol,  
2                   it sounds much like the LeSage-Code recommendations that  
3                   you heard about.

4                   The police recognise and accept that they  
5                   alone had the final say in laying charges but that does not  
6                   negate the need or desirability for seeking advice. I  
7                   don't think it's fair to say the police used the Crown as a  
8                   crutch as was suggested on the opening day.

9                   Historical sexual assault cases are  
10                  difficult and pose significant legal challenges.  
11                  Consultation should not be discouraged. To do so would go  
12                  against not only the LeSage-Code report but would give rise  
13                  -- but could well give rise to serious misjustices.  
14                  However, it would be of assistance for the Cornwall Police  
15                  to hear from you, sir, as to what type and how much  
16                  assistance is appropriate.

17                  Another area where we've seen things shift,  
18                  even in the last five years, is the issue of the police  
19                  investigating the police. In discipline matters and  
20                  criminal matters involving police, you have heard from a  
21                  number of officers as to the standards that applied in the  
22                  1980s, 1990s and 2000s. Those who testified advised how  
23                  they investigated and charged police officers. Chief Repa  
24                  told you of his 28 years in Halton. His experience in  
25                  Halton was that police officers were capable of

1           investigating their own. Pat Hall testified similarly.  
2           The request of the CPS to have Doug Seguin's public  
3           complaint of Perry Dunlop taken over by the Police  
4           Complaints Commission is illustrative.

5                        Cornwall raised many of the issues that were  
6           later raised here. It suggested there might be an  
7           apprehension of bias. The Police Complaints Commissioner  
8           acknowledged the apprehension of bias but said:

9                                "It would be preferable if your force  
10                                would retain responsibility for  
11                                conducting the investigation."

12                        He cited the standard of police  
13           investigating police as a rationale.

14                        Nonetheless, the issue of apprehension of  
15           bias received the greater focus in the last five years. In  
16           response, the Province had the Honourable Pat LeSage do a  
17           report on police discipline. While he acknowledged the  
18           issue of apprehension of bias was real, he did not go so  
19           far as to recommend every case be sent to an outside  
20           agency. He did, however, suggest the creation of an  
21           outside agency to review circumstances when cases should be  
22           sent out of a police force. I can report that Chief  
23           Parkinson is presently on an implementation committee for  
24           that recommendation.

25                        But when one looks at Chief Repa, for

1 example, one has to ask whether or not he exercised his  
2 discretion honestly and in good faith. We say he did just  
3 that. Chief Repa is an honest man. He had 28 years of  
4 experience on which he relied, and he often sought legal  
5 advice about how to proceed. However, again, to be clear,  
6 that does not impede you from making recommendations for  
7 future changes. It just provides some perspective.

8 The above are only illustrative of changes  
9 that have happened over time. We outline more in our  
10 written material.

11 The Commissioner also has to be alive to the  
12 fact that as the Supreme Court of Canada said, the police  
13 have scope in which they conduct their investigation.  
14 Simply because a party believes an investigator should have  
15 taken an extra step or done something differently does not  
16 give rise to misconduct.

17 For example, people have criticized the  
18 failure to seek a polygraph in the Charles MacDonald case,  
19 however, you've heard from more than one officer that it's  
20 appropriate to wait to the end of an investigation. It  
21 happens to be one of the policing philosophies. The fact  
22 that others would choose a different philosophy does not  
23 assist.

24 The Commissioner also needs to be satisfied  
25 that there is strong evidentiary foundation for any finding

1 of misconduct. We have stated in the past that ODEs do not  
2 provide that foundation. We also say that where cross-  
3 examination could have addressed the issue, that the  
4 benefit of the doubt must go to the person whose conduct is  
5 being examined.

6 Part of the reason this is so is that this  
7 is not a "gotcha" exercise. This is intended to be a look  
8 back so as to see what can be done to look forward.

9 A couple of examples. Ms. Daley criticises  
10 the Landry investigation by comparing it to the Bernie  
11 Campbell investigation yet there was not a single question  
12 asked of a single Cornwall Officer about Bernie Campbell.  
13 It would be fundamentally unfair to contrast the  
14 investigations when you've heard no evidence from the  
15 Cornwall Police about the Campbell investigation.

16 Similarly, Mr. Lee and I will never agree as  
17 to what the interpretation of Constable Sebalj's notes are  
18 regarding her being told by Ken Seguin -- pardon me -- her  
19 being told by David Silmser as to when she was instructed  
20 not to investigate Ken Seguin. He says March 10<sup>th</sup>; I say  
21 February 10<sup>th</sup>. There is insufficient evidence for you to  
22 make a basis of misconduct as suggested by Mr. Lee. We did  
23 not hear from Heidi Sebalj and the Cornwall Police did not  
24 have an opportunity to examine Mr. Silmser.

25 Parenthetically, I would note that Mr. Silmser handed over

1 his statement on February 16<sup>th</sup>, and while it mentioned Ken  
2 Seguin it had none of the detail which, in my submission,  
3 foreshadowed the fact that he did not want to speak about  
4 Ken Seguin.

5 We've also asked you look to the Cornwall  
6 Police -- look at the Cornwall Police in respect of  
7 similarly situated police forces. This is consistent with  
8 the direction of the Supreme Court of Canada in *Hill*.  
9 Frankly, we've actually heard little or nothing from forces  
10 such as Belleville, Kingston, Chatham or other similarly  
11 situated police forces.

12 But you have heard some positive changes at  
13 the Cornwall Police. They've happened over time, and  
14 they've happened in accordance with the standards of the  
15 day. For example, the CPS was one of the first forces to  
16 embrace OMPPAC. You've heard the evidence that it was  
17 difficult and Chief Shaver said it was likely too fast for  
18 some, but at least it shows willingness and a  
19 progressiveness for a police force.

20 You heard that in 1995, a survey of  
21 similarly situated police forces -- Cornwall was one of the  
22 few forces that provided specialization when it came to  
23 investigating child abuse and child sexual assaults.  
24 You've heard how training changed. There is no doubt there  
25 is great improvement in training to be had, but if you go

1 back and you review Constable Sebalj's training record with  
2 that of others who testified, we would say her training  
3 stacks up well.

4 Ms. Barrath (phonetic) from the Ontario  
5 Police College who was investigating crime at the same time  
6 as Constable Sebalj was conducting sexual assault cases  
7 after just two years of policing in Peel and did so with  
8 much less formal training.

9 Yet, we recognise more needs to be done. We  
10 recognise things have changed. We recognise that Justice  
11 Campbell's report was critical of policing. His criticism  
12 was in fact of large police forces such as Peel and  
13 Niagara. His criticism led to change. Mr. DeBruyne of the  
14 Ontario Police College acknowledged that in Ontario up  
15 until the Adequacy Standards in 2000, people entered units  
16 like SACA without being formally changed -- trained, I  
17 should say. That is no longer the case.

18 Like Justice Campbell's report, we would  
19 anticipate that you will shine a spotlight on the need for  
20 more training. We urge you to have regard to Justice  
21 Campbell's warning though that in tough economic times  
22 training is the first to go. You heard that after his  
23 report, the Ontario Police College had 35 percent cuts to  
24 their budget. If we are serious about the problem, we have  
25 to sound the alarm that tough economic times require an

1 even tougher resolve.

2 The evidence of the Inquiry also examined  
3 the various administrative reviews done by the Cornwall  
4 Police. These reviews reflect desire for self-reflection  
5 and change. These are not reviews done in the glare of a  
6 public inquiry or with the intent of showing that we will  
7 change in the face of an inquiry, rather they reflect a  
8 robust organization prepared to face its problems.

9 In respect to the reviews you have seen,  
10 they have given rise to change. In fact, some changes were  
11 not implemented after robust debate but I would suggest the  
12 robust debates, such as whether they should be bound or  
13 loose notebooks, is instructive of a willingness to face  
14 problems.

15 Finally, you heard from Chief Parkinson and  
16 his vision for the police force, including CALEA, and his  
17 force's focus on crime prevention and community outreach.

18 My purpose of going through the above  
19 examples is to counter the perception that CPS and the City  
20 of Cornwall have a "tiny town" philosophy. Nothing could  
21 be further from the truth. This is a progressive town.  
22 Its police force is progressive. Cornwall seeks to better  
23 itself and your report will no doubt address a deficiency  
24 in a fair and balanced manner with appropriate  
25 prescriptions for improvement.

1 I will now ask Mr. Manderville to address a  
2 few cases and then I will rejoin you towards the end.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Manderville?

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

6 **MANDERVILLE:**

7 **MR. MANDERVILLE:** Good afternoon,

8 Mr. Commissioner.

9 **THE COMMISSIONER:** Good afternoon, sir.

10 **MR. MANDERVILLE:** As Mr. Callaghan

11 indicated, I'll be making submissions to you regarding some  
12 specific investigations that this Inquiry has examined over  
13 the past three years and which were discussed in oral  
14 submissions with you earlier this week.

15 As you know, Mr. Commissioner, police  
16 officers are sworn to uphold the law and they are to carry  
17 out their duties in accordance with the laws in effect at  
18 the time, as well as practices and procedures which are in  
19 effect at the time. You also know that in writing your  
20 report, you must have regard to the evidence you've heard  
21 or read and the laws in place at various points in time.

22 You have heard repeatedly that police  
23 officers are not to lay charges in response to allegations  
24 of a complainant unless and until they have reasonable and  
25 probable grounds to believe that an offence has been

1 committed against the complainant by an identifiable  
2 individual.

3 You have heard that the concept of RPG,  
4 reasonable and probable grounds, has both a subjective  
5 component and an objective component. You heard testimony  
6 from Crowns Murray MacDonald and Lorne McConnery, as well  
7 as former Crown Johnson and Justice Griffiths, to the  
8 effect that it is not for the Crown or anyone else to go  
9 behind or second guess an officer's subjective belief as to  
10 whether he or she has reasonable and probable grounds.

11 And among other things, for example as Mr.  
12 Callaghan alluded to moments ago, you've also heard about  
13 how the law regarding corroboration, for instance, has  
14 changed. If one ignores the law and ignores or misstates  
15 the evidence, one can put forward any number of theories,  
16 conspiratorial or otherwise, as to what happened with  
17 respect to certain investigations and why. In reality,  
18 this is nothing more than fanciful speculation, something  
19 you know that your report cannot engage in.

20 Similarly, the suggestion has been made that  
21 everything could have been resolved by a revised media  
22 strategy. Again this is fanciful speculation. Police  
23 services never have that irresponsible luxury.

24 Policing, like other professions, is an  
25 ever-evolving one. Police services must keep pace with

1 changes in the law, technological advances, societal  
2 changes and so on. Part of doing so, as Mr. Callaghan  
3 mentioned, is periodic self-analysis in an effort to  
4 improve. The CPS has engaged in that self-analysis. Two  
5 of the investigations I will discuss involved just that  
6 exercise.

7 The first investigation I want to review  
8 with you now is the Landry, Jr. investigation. As you  
9 know, Mr. Landry, Jr. was charged in 1997 with 14 counts of  
10 various sexual offences in relation to five complainants.  
11 In August 1999, he pled guilty to five of the 14 counts and  
12 was sentenced to five years' imprisonment. Mr. Landry, Jr.  
13 is the son of former Cornwall Police Chief Earl Landry, Sr.  
14 There are, in our view, three issues that have been raised  
15 in the context of the Earl Landry, Jr. investigation.

16 First, on June 24, 1985, C-51's mother  
17 contacted the CPS and advised that her son, aged nine, had  
18 been sexually abused by Earl Landry, Sr. (sic).  
19 Subsequently in July of 1985, C-51's mother also raised a  
20 complaint that C-51, his brother -- and his brother had  
21 been sexually abused by one Gary Seguin on separate --  
22 these were separate acts.

23 The investigation of the Earl Landry, Jr.  
24 complaint was assigned to Officer Ron Lefebvre and Staff  
25 Sergeant Stan Willis. C-51 and his mother were interviewed

1 on June 25, 1985, the day after the complaint was made. At  
2 the time C-51 was nine years old. He was mentally  
3 challenged. He was at an age where he would have been in  
4 Grade 5; he was in Grade 2. This is specifically  
5 documented as fact by Sergeant Lefebvre in his  
6 contemporaneous notes, which encompass among other things  
7 his interview of C-51 and his mother.

8 Jean Dupuis of the CAS was involved at the  
9 time and he noted specifically:

10 "I do recall that the child in question  
11 had a great deal of difficulty  
12 communicating any information regarding  
13 his alleged victimization, due to  
14 various intellectual limitations."

15 At the time, Mr. Commissioner, 1985, Section  
16 16 of the *Canada Evidence Act* and Section 586 of the  
17 *Criminal Code* required that the unsworn evidence of a child  
18 of tender years had to be corroborated by other material  
19 evidence. Therefore Officer Lefebvre and Staff Sergeant  
20 Willis needed corroboration of C-51's allegations. That  
21 was the law then. Murray MacDonald confirmed this in his  
22 testimony here. One needed corroboration.

23 There was no indication of witnesses to  
24 C-51's complaint; there was no indication of physical or  
25 forensic evidence. Officer Lefebvre alerted the CAS to the

1       allegations and he also consulted with Crown Alan Ain.  
2       Lefebvre and Willis brought Landry, Jr. in for  
3       interrogation on June 26, '85. At the time, they had no  
4       other corroborating evidence. They were seeking to extract  
5       a confession from Mr. Landry, Jr.

6                       And I want to pause, or a little side bar.  
7       Mr. Lee in his written submissions suggested that Officer  
8       Lefebvre's note make reference to Landry, Jr. being  
9       arrested, and I brought the notes and Officer Lefebvre's  
10      statement of 1997 to Mr. Lee's attention, and Mr. Lee  
11      correctly did not raise it in his oral submissions. But  
12      Officer Lefebvre's contemporaneous notes make it quite  
13      clear that Mr. Landry, Jr. was never arrested when he was  
14      brought into the station. I wanted to simply clarify that  
15      for you.

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

17                      **MR. MANDERVILLE:** During his interrogation  
18      on June 26, '85 Mr. Landry, Jr. denied the allegations  
19      against him, so the officers had no corroboration, but he  
20      agreed during the interrogation to take a polygraph test at  
21      a later date in Ottawa. At the time Cornwall did not have  
22      a polygraph equipment. It was hoped that if Mr. Landry,  
23      Jr. underwent a polygraph -- the results of which are, as  
24      you know, Mr. Commissioner, inadmissible as evidence in  
25      Court -- that he might confess to the allegations.

1           Otherwise there was no corroboration.

2                           The next day Landry, Sr. contacted Willis  
3           and advised that Landry, Jr. would not be undergoing a  
4           polygraph exam at the time. It subsequently emerged that  
5           Chief Shaver, on hearing of the allegations against Landry,  
6           Jr., went to the home of Landry, Sr. to advise him of the  
7           allegations, to commiserate with him and to try to console  
8           him.

9                           Chief Shaver, in response to questions from  
10          you, Mr. Commissioner, realized that although his heart was  
11          in the right place, it was a mistake to have gone to  
12          Landry, Sr.'s home to tell him about the complaint. The  
13          result was that Landry, Sr. learned of his son's situation  
14          when he otherwise might not have.

15                          However, I submit to you it is pure  
16          speculation to suggest that (1) Landry, Jr. would not have  
17          changed his mind about a polygraph prior to having it. One  
18          can certainly envision him leaving the police station,  
19          going home and calling his father and saying, "Guess what  
20          happened to me today? They want me to take a polygraph."  
21          "Son, I don't think you are."

22                          Or, on leaving the police station he  
23          contacted legal counsel and said, "This is what happened to  
24          me today. They want me to take a polygraph. What do you  
25          think?" Any competent legal adviser, Mr. Paul or Mr. Horn,

1 would have said, "You're not taking a polygraph." It's  
2 speculation to suggest that he would have taken one in any  
3 event.

4 Secondly, sir, it's speculation upon  
5 speculation to say that had he taken the polygraph he would  
6 have confessed. We can never know these things. We can  
7 only speculate and that is not what you are engaged in.  
8 What we do know is that the law in 1985 required  
9 corroboration of C-51's allegations against Landry, Jr. and  
10 the Cornwall police had no corroboration at the time. And  
11 so as testified to by Murray MacDonald, they had no basis  
12 to lay a charge against Mr. Landry based on C-51's  
13 uncorroborated allegations.

14 Ms. Daley, as Mr. Callaghan mentioned, tried  
15 to draw a comparison with Bernie Campbell and Mr. Landry,  
16 Jr. There was no evidence before you about the Bernie  
17 Campbell investigation. No Cornwall police documents have  
18 been made exhibits regarding Bernie Campbell. I don't know  
19 how Bernie Campbell could be a remotely useful comparison  
20 for you.

21 As I mentioned earlier, C-51 and his brother  
22 and a third boy also made allegations at the time against  
23 Gary Seguin. It is clear that with respect to the  
24 allegations against Gary Seguin, there was corroboration.  
25 There were three complainants. Seguin was charged and

1 convicted.

2 Chief Shaver testified before you that  
3 roughly two weeks after the conclusion of the investigation  
4 regarding C-51's complaint he was told by Crown Alan Ain  
5 that his officers had carried out a good investigation and  
6 the case presented real problems due to C-51's  
7 difficulties.

8 **THE COMMISSIONER:** And that's with respect  
9 to Earl Landry, Jr.?

10 **MR. MANDERVILLE:** Correct.

11 **THE COMMISSIONER:** Thank you.

12 **MR. MANDERVILLE:** Another exhibit around the  
13 time was a letter from Doctor Park concerning his  
14 examination of C-51. That letter is dated September 1995  
15 concerning an examination he conducted in July 1985. That  
16 letter was never provided to the Cornwall police until 2001  
17 and they were not aware of its contents until that time.  
18 But as Officer Snyder testified here, Doctor Park's letter  
19 did not constitute corroboration. Rather, it was a matter  
20 of C-51 telling another person what had happened to him.  
21 Repeating an allegation does not corroborate the  
22 allegation.

23 In 1993, a local psychologist, Mr. Nadler,  
24 advised the CAS that a patient of his had alleged sexual  
25 abuse by Landry, Jr. some 13 years previously. The CAS

1 notified the Cornwall police who, through Luc Brunet,  
2 opened up an occurrence. Nadler's patient who only agreed  
3 to be known by the moniker Steven, refused to identify  
4 himself and refused to initiate a complaint.

5 However the important point is that Officer  
6 Lefebvre of the CPS and Pina DeBellis of the CAS liaised,  
7 discussed Landry Jr. and Lefebvre reminded the CAS of the  
8 1995 allegations against Landry, Jr. The CAS re-  
9 established contact with C-51 in an effort to flesh-out his  
10 allegations which, at the time, they were unable to do.

11 In January 1996, C-52 made allegations to  
12 the CAS of previous sexual abuse by Landry, Jr. The CPS  
13 became involved later, in January 1996. Cornwall police  
14 interviewed C-52 and took his statement to initiate the  
15 investigative process. We concede that the Cornwall police  
16 took too long to get the investigation going. It's not  
17 until after Sergeant Snyder took over the investigation  
18 that it really started to move.

19 You heard Staff Sergeant Brunet testify that  
20 he was dissatisfied by the Cornwall police's early  
21 investigative efforts and their pace and this continued  
22 until Staff Sergeant Snyder took over the investigation.

23 Snyder met with C-52 in February 1997. In  
24 March 1997, Snyder contacted C-51 again. By 1997, C-51's  
25 evidence did not require corroboration. Ms. Daley

1 neglected to mention that critical difference.

2 The evidence also shows that in the cases of  
3 C-51, C-54 and C-55, Sergeant Snyder was faced with a  
4 situation where they had periods of doubt about whether  
5 they were ready to proceed. In each case, Snyder urged  
6 them to think about it and come forward only when they felt  
7 they were ready to. In each case, after deliberation, they  
8 decided they were ready to.

9 Following Landry, Jr.'s conviction, Cornwall  
10 police carried out an internal review of the investigation.  
11 Mr. Lee and Ms. Daley were critical of the internal reviews  
12 carried out by the Cornwall police and suggested they were  
13 half-hearted attempts to justify past conduct. I submit  
14 this completely misunderstands why these reviews were  
15 conducted.

16 Staff Sergeant Derochie testified here that  
17 in the immediate aftermath of Landry, Jr.'s conviction, a  
18 concern was expressed in the media that C-51 had brought a  
19 complaint forward in 1985 and no charges were laid. Chief  
20 Repa tasked Derochie with looking into what had transpired.  
21 Derochie issued a report to Repa, Exhibit 1348, in which he  
22 noted that there had been some delays associated with  
23 getting the investigation going with C-52 complaint in  
24 1996.

25 The police notes were attached to completed

1       investigative reports and therefore destroyed at the end of  
2       retention periods for the reports and occurrences  
3       concerning historical sexual assaults which could not be  
4       prosecuted were classified as "police information" and, as  
5       such, had a somewhat shorter retention period. And most  
6       significantly, Staff Sergeant Derochie noted that it seemed  
7       that historical sexual assaults were not pursued with the  
8       same type of urgency that was given to recently occurring  
9       assaults.

10                   In response to Staff Sergeant Derochie's  
11       report, later that same month, Chief Repa issued a standing  
12       order, mandating that investigations involving sexual  
13       assaults be given highest priority and that historical  
14       sexual assaults be given the same priority as recently-  
15       occurring assaults.

16                   Staff Sergeant Derochie testified that the  
17       order was not so easy to follow, given the tight timelines.  
18       My submission to you is it's a reflection of the police  
19       examining themselves and taking steps where they feel they  
20       need to improve.

21                   This is a police service that takes its  
22       duties seriously and tries to adapt to situations as they  
23       arise. Even in a situation where there is a successful  
24       prosecution and conviction of the accused Cornwall police  
25       is engaged in self-analysis. "What did we do well? What

1 do we need to work on?"

2 Derochie's review was not prepared in order  
3 to release it to the media. It was not prepared with the  
4 notion that there would be an inquiry in the future where  
5 the report would be made public. It was a review prepared  
6 for Chief Repa at the request of Chief Repa to analyse how  
7 the CPS carried out its investigative efforts. It's  
8 exactly the sort of practice that institutions should  
9 engage in.

10 In June 2000, C-53 started a civil suit  
11 alleging Earl Landry, Sr. had abused his former position to  
12 prevent Cornwall police from investigating legitimate  
13 complaints, from proceeding against his son - I didn't say  
14 that very well. You shouldn't nod.

15 (LAUGHTER/RIRES)

16 THE COMMISSIONER: No, I ---

17 (LAUGHTER/RIRES)

18 THE COMMISSIONER: That's an admission  
19 against interest. What I'm saying is I understand what  
20 you're saying. I've been with you for three years, Mr.  
21 Manderville.

22 MR. MANDERVILLE: True enough. One would  
23 have thought I would have got a little better at it.

24 Once again, Chief Repa directed Derochie and  
25 Snyder to investigate the allegations made by C-53 and they

1 conducted a thorough investigation.

2           You've heard Mr. Callaghan's comments about  
3 the police investigating themselves and investigating  
4 internal complaints and how the practice has evolved, and I  
5 need not repeat them. However, a few points can be made  
6 about this investigation.

7           One, Commission counsel, during Sergeant  
8 Snyder's testimony here, quizzed him about his method of  
9 questioning, suggesting he used closed-end questions which  
10 may have yielded less information than open-ended ones.  
11 Snyder, who is highly experienced as a polygraph operator  
12 and statement analyst, as well as in interviewing  
13 techniques, an expertise acknowledged by Superintendent  
14 Skinner of the Ottawa Police Service at his testimony here,  
15 and by Mr. DeBruyne of the Ontario Police College at his  
16 testimony here.

17           Snyder advised Commission counsel that he  
18 deliberately chose that questioning format to parallel a  
19 polygraph examination so that he could observe non-verbal  
20 responses like body language and eye movement. You have  
21 heard no evidence to contradict that of Snyder on this  
22 issue. You have no reason not to accept his evidence on  
23 this point.

24           Secondly, Snyder interviewed C-51's mother  
25 who, contrary to the suggestion made by Ms. Daley,

1 expressed that she had never contacted -- confronted  
2 Landry, Jr. at any time concerning C-51's allegations. She  
3 thought that her brother-in-law had. Snyder interviewed  
4 the brother-in-law who denied confronting Landry, Jr. at  
5 any time and indicated he didn't even know about C-51's  
6 complaint until he read about Landry, Jr.'s conviction in  
7 the newspaper.

8 Thirdly, Snyder and Derochie, on concluding  
9 their investigation, concluded that there was no evidence  
10 of interference by Landry, Sr. with the Cornwall police  
11 investigations, beyond Landry, Sr. calling to say, "My son  
12 has changed his mind about a polygraph".

13 I want to talk to you for a period of time  
14 about the Antoine investigation. Ms. Antoine's allegations  
15 were investigated in 1990 and again in 1994. In his  
16 written submissions and in his oral submissions as well,  
17 Mr. Lee cited the expert testimony of Professor Wolfe and  
18 Professor Jaffe concerning some of the adverse effects  
19 experienced by victims of abuse. He cited substance abuse  
20 issues, psychiatric disorders, an inability to trust  
21 others, a propensity for incremental disclosure stemming  
22 from a reluctance to reveal what occurred, or a misplaced  
23 sense of shame.

24 Further, Wendy Leaver testified that  
25 historical sexual abuse allegations are particularly

1 difficult to investigate and to prosecute, in part because  
2 victims' and witnesses' recollection of events may have  
3 faded or been altered or failed with the passage of time.

4 Here is some of the evidence you have heard  
5 about the Antoine investigation in 1989-90. You have heard  
6 that the investigation was assigned to Constable Malloy at  
7 the end of September 1989 in a somewhat unusual fashion in  
8 that Ms. Antoine had yet to come forward to the Cornwall  
9 police with a complaint.

10 Constable Malloy contacted Ms. Antoine on a  
11 number of occasions through the fall of 1989 to urge her to  
12 come to the police station so he could take a statement  
13 from her and start to investigate her complaint. Ms.  
14 Antoine did not respond.

15 You have heard repeatedly that victims are  
16 to be encouraged to come forward at their own pace. For  
17 Ms. Antoine, this meant that she wasn't ready to come until  
18 February 1990. She came to the Cornwall police station on  
19 February 5, 1990, unannounced, with a handwritten statement  
20 she had prepared on her own initiative. Malloy met with  
21 her and interviewed her at length.

22 At the time, the Cornwall police had  
23 recently introduced the OMPPAC system of record keeping.  
24 Malloy failed to place the Antoine investigation on the  
25 OMPPAC system.

1 Malloy testified here that he found Ms.  
2 Antoine's story kept changing. As such, he had problems  
3 with her credibility and he did not have a subjective  
4 belief that he had reasonable and probable grounds to lay a  
5 charge against Bryan Keough, the principal individual  
6 against whom Ms. Antoine made allegations.

7 Malloy consulted with Inspector Trew who  
8 suggested that he also consult with Crown Johnson. Malloy  
9 consulted with Crown Johnson concerning the evidence he  
10 had. Exhibit 1509 indicates that Malloy presented all of  
11 the case facts and Ms. Antoine's statement to Crown Johnson  
12 and was advised by Johnson that insufficient evidence  
13 existed to proceed with the charges. This confirmed  
14 Malloy's view that he lacked reasonable and probable  
15 grounds at the time.

16 Johnson also advised Malloy that he would  
17 consult with the Regional Crown to request direction.  
18 Malloy expected to hear further from Johnson.

19 We know that Johnson wrote to Regional Crown  
20 Norm Douglas on April 4, 1990. And we also know that  
21 Douglas wrote back to Johnson on April 10, 1990 suggesting,  
22 among other things, that Malloy be asked to dig a little  
23 deeper. We know Johnson never received Douglas' reply  
24 letter and that, as such, Malloy was never advised of Crown  
25 Douglas reply and the suggestion contained therein.

1                   We also know that Tom O'Brien's notes from  
2                   May 1990 indicate a conversation with Crown Johnson wherein  
3                   Crown Johnson advised that criminal charges were not  
4                   warranted in the circumstances.

5                   In January 1994, the Cornwall police heard  
6                   further from Ms. Antoine expressing dissatisfaction with  
7                   the way the 1990 investigation had been conducted. Deputy  
8                   Chief St. Denis assigned Staff Sergeant Derochie to do two  
9                   things: 1) to review the 1990 investigation; 2) to meet  
10                  with Ms. Antoine and determine what she would like to have  
11                  done.

12                  Derochie met with her and Ms. Antoine  
13                  indicated she wanted all of her allegations of physical and  
14                  sexual assault pursued. Staff Sergeant Derochie assigned  
15                  Officer Shawn White to re-investigate Ms. Antoine's  
16                  complaints.

17                  As you know, Sergeant Derochie reviewed the  
18                  1990 investigation and prepared a report, Exhibit 1286, for  
19                  Acting Chief Carl Johnston in which he identified certain  
20                  shortcomings in the 1990 investigation. We concede Staff  
21                  Sergeant Derochie's conclusions were correct.

22                  Through an inadvertence, Constable Malloy  
23                  failed to open an occurrence for the Antoine investigation  
24                  on OMPPAC. Moreover, we concede the 1990 investigation was  
25                  insufficient. Malloy cannot be faulted or questioned for

1 his subjective belief, but deeper digging should have been  
2 done.

3 The concerns expressed by Derochie in his  
4 report were acted upon. Cornwall police specifically  
5 issued directives and orders concerning OMPPAC entries.  
6 Moreover, as Mr. Callaghan mentioned, his concerns about  
7 notebooks provoked a discussion. You heard from Staff  
8 Sergeant Brunet that he contacted a number of other police  
9 services around the province to determine what their  
10 notebook practices were.

11 Sergeant White carried out a thorough  
12 investigation of Ms. Antoine's complaints. He interviewed  
13 Ms. Antoine at length. He interviewed 36 potential  
14 witnesses in an effort to substantiate Ms. Antoine's  
15 allegations. No one could corroborate her allegations.

16 As a consequence of his investigation,  
17 Officer White was unable to formulate the subjective view  
18 that he had reasonable and probable grounds to lay a  
19 charge. White prepared an extensive Crown brief and  
20 forwarded same to Crown Griffiths as he then was.  
21 Griffiths wrote to White on October 24, 1994 and advised  
22 that he concurred with White's view that there were no  
23 reasonable and probable grounds to lay charges and that if  
24 charges had been laid, there was no reasonable prospect of  
25 conviction.

1           As I stated to you earlier, we have heard  
2           expert evidence to the effect that victims of sexual abuse  
3           can present with a number of issues and that the  
4           investigation of historical sexual assault is plagued by  
5           several issues including faded, altered or failed memories.  
6           Certain obstacles can be insurmountable.

7           We saw Ms. Antoine here, Mr. Commissioner.  
8           One cannot help but have sympathy for her. It seems  
9           apparent that her childhood was a very sad one.

10           **THE COMMISSIONER:** Yes.

11           **MR. MANDERVILLE:** Unfortunately, her story  
12           to Malloy in 1990 and to White in 1994 kept changing and  
13           White could find no one to substantiate her story. These  
14           facts meant that the officers simply could not form the  
15           subjective belief that an offence had been committed.

16           With enhanced training, with the acquisition  
17           of experience, with enhanced understanding of the issues  
18           victims of historical sexual abuse may present, policing  
19           agencies may be better able to investigate these  
20           complaints. However, we should not alter the requirement  
21           that the police must form reasonable and probable grounds  
22           to believe the offence has been committed by a particular  
23           person before they charge that person and seek to deprive  
24           him or her of his liberty.

25           I want to talk to you briefly about the

1 Albert Lalonde investigation. In May 2002, in the  
2 immediate aftermath of the charges being stayed against  
3 Father MacDonald by Justice Chilcott, Albert Lalonde was  
4 brought to the Cornwall police headquarters by Richard  
5 Nadeau to advise that Albert wished to make a complaint  
6 against Father MacDonald.

7 Sergeant Carroll was assigned carriage of  
8 the investigation. He interviewed Lalonde at length;  
9 obtained a statement from him during which Albert Lalonde  
10 advised that he had made prior statements to the OPP and to  
11 his doctors, including his family doctor and psychiatrist.

12 Sergeant Carroll obtained copies of the OPP  
13 statements; three of them. In one, Mr. Lalonde says his  
14 abuse -- his abuser was Marcel Lalonde. In another,  
15 Lalonde advised that he was watching television when a  
16 story came on about an altar boy suing the Church for \$2  
17 million. At that moment, upon hearing the story, Albert  
18 Lalonde claimed he began to have a memory that he might  
19 have been assaulted by Father MacDonald.

20 In addition, Sergeant Carroll reviewed the  
21 notes of Dr. Richter, Albert Lalonde's psychiatrist. Dr.  
22 Richter's notes indicated that Albert Lalonde was never  
23 sure if the assaults actually occurred or had just been a  
24 dream and he was unable to identify the person who might  
25 have assaulted him.

1                   Sergeant Carroll interviewed Dr. Clement,  
2                   Lalonde's family physician, who advised that Lalonde had  
3                   held the view that the assaults were merely a dream which  
4                   might have involved an unnamed priest. Clement advised  
5                   that in his view, Lalonde had a personality disorder which  
6                   was characterized by lying, cheating and stealing. Dr.  
7                   Clement advised that he felt Lalonde's issues rendered him  
8                   with zero credibility. In the result, Sergeant Carroll  
9                   lacked reasonable and probable grounds to believe an  
10                  offence had been committed by Father MacDonald against  
11                  Albert Lalonde.

12                  In July 2002, Sergeant Carroll provided all  
13                  of his materials including Lalonde's OPP statements and  
14                  doctors' notes to Crown McConnery. McConnery wrote to  
15                  Carroll in January 2003 and fully concurred that Sergeant  
16                  Carroll's view that there was no reasonable and probable  
17                  grounds to lay charges in the circumstances.

18                  Mr. Lee and Mr. Horn have advanced the  
19                  notion that Sergeant Carroll should have taken it upon  
20                  himself to lay charges based upon the phenomenon of  
21                  recovered-memory syndrome which I know is also called  
22                  false-memory syndrome.

23                  In the case of *R v. AJR* -- which I will hand  
24                  up to you in a moment -- a 2001 decision of the Ontario  
25                  Superior Court, the court had this to say about recovered

1 memory syndrome.

2 "I agree with Mr. Rob, this is not a  
3 case involving what has come to be  
4 known as the recovered memory syndrome.  
5 No expert evidence was called and it is  
6 not for me to pass comment on that so-  
7 called syndrome which to a large extent  
8 now has been subject to sound criticism  
9 by established science."

10 Similarly, in the case of *Rod v. Greco*, a  
11 British Columbia Supreme Court decision of 2003, the court  
12 has this to say:

13 "Ms. Rod's symptoms are much more  
14 consistent within the so-called  
15 recovered-memory syndrome or false-  
16 memory syndrome. In this phenomenon,  
17 it is evident that individuals who tend  
18 to be suggestible may have flashes or  
19 stimulation they interpret to be real  
20 events and over time, elaborate these  
21 flashes into what they perceive to be  
22 actual memories."

23 This has been a major issue in psychiatry  
24 and psychology for the past decade, resulting in numerous  
25 court cases. Scientists have issued position papers

1           expressing grave concern over treatments that assist  
2           individuals in recovering memories, given the likelihood of  
3           the development of false memories.

4                         Police officers, sir, are not psychiatrists.  
5           They cannot and should not take it upon themselves to  
6           charge people with crimes based upon controversial or  
7           discounted theories, particularly those which have been  
8           "soundly criticized by established science". Sergeant  
9           Carroll lacked reasonable and probable grounds. His view  
10          was based upon the medical evidence provided by Lalonde's  
11          family doctors and psychiatrist to him. His view was  
12          confirmed by McConnery, who testified here about Albert  
13          Lalonde's case. His view was correct.

14                        Finally I want to discuss with you the  
15          Father Deslauriers investigation. In January 1986, as you  
16          know, Benoit Brisson revealed to his parents the sexual  
17          abuse he had been subject to by Father Deslauriers in  
18          Deslauriers' role as school pastor/guidance counsellor at  
19          La Citadelle.

20                        Being devout Catholics, the Brisson's first  
21          instinct was to go to the Church for redress. They were  
22          dissatisfied with the Diocese's response and the work of  
23          the *ad hoc* committee the Bishop established.

24                        The Brissons came to the Cornwall police in  
25          May 1986. On May 22, 1986, Benoit Brisson attended at the

1 Cornwall police and was interviewed by Sergeant Ron  
2 Lefebvre and Constable Herb Lefebvre.

3 In the 30 days that followed, the Cornwall  
4 police officers interviewed numerous witnesses and obtained  
5 statements from a number of additional victims of  
6 Deslauriers. They sought to interview members of the *ad*  
7 *hoc* committee struck by the Bishop. They sought to  
8 interview the Bishop, who advised that he would not speak  
9 to them and he would go to jail rather than testify in  
10 court concerning the information he had concerning the  
11 Deslauriers matter.

12 In response the Cornwall police arranged for  
13 Madame Brisson to wear a listening device to secretly tape-  
14 record conversations with the Bishop in an effort to  
15 determine whether the Bishop was obstructing justice. It  
16 did not appear that he was. They also established  
17 informants within the Diocese. The efforts of the Cornwall  
18 police resulted in a number of additional victims coming  
19 forward, including two men who had gone on to become  
20 priests themselves, one of whom testified here.

21 Deslauriers was charged with 16 counts of  
22 sexual offences in July of 1986. In November of 1986,  
23 Deslauriers pled guilty to four counts of gross indecency.  
24 Madame Brisson and Benoit Brisson testified here that to  
25 this day, they still have periodic contact with Officer Ron

1 Lefebvre as he was of such assistance to them in dealing  
2 with a very difficult time in their lives.

3 Professor Bala testified here that in 1986,  
4 it was the very rare investigation of a multi-victim sexual  
5 assault that would be successful, and I submit the  
6 Deslauriers investigation was just that successful -- rare  
7 and considerable success Bala spoke of.

8 Now I'll return the floor to Mr. Callaghan.

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

10 **CALLAGHAN (cont'd/suite):**

11 **MR. CALLAGHAN:** Thank you.

12 Mr. Commissioner, we recognize other victims  
13 would like us to discuss their cases in final submissions  
14 but regrettably there isn't unlimited time.

15 **THE COMMISSIONER:** No, but they have your  
16 submissions on the website.

17 **MR. CALLAGHAN:** Yes. Thank you for putting  
18 that out there. As I indicated, they're quite lengthy and  
19 I believe each case is reviewed.

20 **THE COMMISSIONER:** Yes. Thank you.

21 **MR. CALLAGHAN:** Your mandate, as I said at  
22 the outset, was not only to examine the broad policy issues  
23 but to address the cloud of suspicion that has hung over  
24 the people of Cornwall this last 15 years.

25 At the outset of this Inquiry, we suggested

1 that the Inquiry was an opportunity to have the swirl of  
2 rumour and innuendo that had gripped this community put to  
3 rest. As stated earlier, the Court of Appeal identified as  
4 one of the motivating factors for calling this Inquiry was  
5 the allegations that "prominent local citizens allegedly  
6 conspired to cover-up the activities of clan of  
7 pedophiles".

8 In doing so, the Court of Appeal was  
9 addressing the allegations raised by Ron Leroux which form  
10 the basis of Perry Dunlop's \$80 million lawsuit against the  
11 Diocese, the Cornwall police, members of the Cornwall  
12 police and others.

13 At the commencement of the Inquiry, we  
14 challenged those who wished to assert and promote such a  
15 conspiracy theory to come forward and adduce credible  
16 evidence of such a conspiracy. After three and a half  
17 years, there remains not a shred of evidence of a  
18 conspiracy involving the Cornwall police. Ron Leroux, as  
19 was discussed by Mr. Sherriff-Scott, has come forward and  
20 recanted his conspiracy allegations.

21 The Victims' Group and Coalition for Action  
22 came before you at the beginning of these submissions after  
23 three years and not once did they acknowledge there was no  
24 conspiracy. Rather, the Coalition began to attack  
25 Inspector Smith's 1994 investigation. Yet after three and

1 a half years, 160 witnesses and over 345 days of evidence,  
2 they adduced no evidence of a conspiracy involving the  
3 Cornwall police or prominent members of the community  
4 covering up a clan of pedophiles.

5 The allegation that has brought us together  
6 was fabricated by Ron Leroux; a fabrication that Ron Leroux  
7 has now recanted. The allegation was used to great effect  
8 over the years by Perry Dunlop, Garry Guzzo and the media.  
9 It is now important that not only the recantation be  
10 memorialized in your report but also how the vicious mean-  
11 spirited lies came into being.

12 It is important for you to set out exactly  
13 how these allegations were constructed and by whom. It is  
14 important not just because of those maligned who are  
15 entitled to know, it is not important just to remove the  
16 cloud of suspicion, but it's important because the  
17 conspiracy theorists will never die. Long after you leave  
18 town the bloggers, the gossip hounds will continue to  
19 gather behind some grassy knoll in Cornwall and tell of a  
20 conspiracy in Cornwall.

21 In years gone by, that might not be a big  
22 concern but in this Internet age you have seen the damage  
23 done. Salacious allegations are formed, are out the door,  
24 around the world before the truth has a chance to put its  
25 boots on. It has taken over 11 years to have the truth

1 exposed at this Inquiry. It needs to be memorialized.  
2 People need to have an objective and reliable source to  
3 point to when the conspiracy theorists come back and try to  
4 envelop Cornwall once again in a cloud of suspicion.

5 I do not intend to review all that Mr.  
6 Sherriff-Scott or Mr. Kozloff have reviewed to date, but  
7 rather I propose to review with you and the people of  
8 Cornwall the evidence of how this conspiracy was concocted  
9 and by who and perhaps, just perhaps, why.

10 There is no doubt you are hampered by the  
11 fact that the main players in the conspiracy either didn't  
12 testify in this Inquiry, such as Perry Dunlop, were not  
13 cross-examined by those who they accused, such as Ron  
14 Leroux, or frankly feigned memory lapses as in the case of  
15 Charles Bourgeois. We say notwithstanding these  
16 impediments there is sufficient evidence to conclude that  
17 Perry Dunlop and Charles Bourgeois engineered the  
18 affidavits and statements of Ron Leroux.

19 You saw Ron Leroux. He was both an  
20 emotional and intellectual wreck. Ron Leroux made heinous  
21 allegations against numerous people which we know now not  
22 to be true. Nonetheless the story he told, particularly of  
23 the conspiracy, the VIP meeting, was well crafted and  
24 intended to fill a theory advanced in Perry Dunlop's  
25 lawsuit. A careful review of the alterations of the story

1 clearly point to not only the motive for making these  
2 allegations but at whose hands these allegations were made.

3 There is no doubt that Dunlop and Bourgeois  
4 received moral support and assistance from Helen Dunlop and  
5 Carson Chisholm, but it is the creation of the evidence by  
6 Dunlop and Bourgeois that gave rise to the explosive  
7 allegation and it is their conduct which I will now  
8 explore.

9 You've heard that the investigation of Tim  
10 Smith and the Ottawa police in 1994 revealed no cover-up in  
11 the DS investigation. Contrary to Ms. Daley's comments,  
12 there is no evidence of any moral panic in the ensuing two  
13 years. Indeed I think the phrase "moral panic" is intended  
14 to create its own hysteria; something that should be  
15 avoided.

16 The evidence we have between 1994 and 1995  
17 is that Perry Dunlop is successful in his appeal. He does  
18 a show on "The Fifth Estate" called "The Man Who Made  
19 Waves". In that show, he is portrayed as a man who did the  
20 right thing. When asked by the reporter about helping  
21 children he said in order to help children he was entitled  
22 to throw out the rulebook.

23 We say that this is instructive of his  
24 attitude, of his philosophy, because that is exactly what  
25 he went on to do, and he is doing it to this day. His non-

1 attendance at this Inquiry was another example of throwing  
2 the rulebook out.

3 Nonetheless, after the Divisional Court  
4 decision, nothing happens for approximately six months.

5 Indeed, the only thing that happens is he  
6 speaks to John MacDonald and David Silmser in late 1995,  
7 but there's no crusade per se. On New Year's Eve of 1995  
8 he is told about C-8 but not for another six months, only  
9 after he starts his lawsuit does he make contact with C-8.

10 At some point, he seeks legal counsel. We  
11 know he spoke to Howard Yegendorf, senior Ottawa counsel.  
12 That relationship does not last. He goes to Newmarket and  
13 meets Charles Bourgeois, a young lawyer who professes of  
14 have acted for police officers suing their police forces  
15 for malicious prosecution. It's at this point that we say  
16 that we have to carefully scrutinize the activity of Perry  
17 Dunlop and Charles Bourgeois.

18 The initial action alleged malicious  
19 prosecution and conspiracy against members of the Cornwall  
20 Police. However, the notice of action in the ensuing the  
21 statement of claim disclosed no details of a conspiracy.  
22 In the summer of 1996, Dunlop and Bourgeois had no facts to  
23 support a conspiracy theory. What they had were  
24 unsubstantiated allegations.

25 There is little doubt that Dunlop was upset

1 over the Police Act charges. He was seeking redress. A  
2 claim of malicious prosecution was started. A claim of  
3 malicious prosecution is very difficult to prove. The  
4 Supreme Court of Canada described it as "a notoriously  
5 difficult task."

6 Bourgeois, although young, professed to have  
7 done this work. There is little doubt that he would have  
8 known of the onerous task of proving malicious prosecution.  
9 During the cross-examination of Bourgeois, I reviewed the  
10 law and facts as known in Dunlop's police prosecution.

11 The charges against Perry Dunlop arose as a  
12 result of the public complaint of David Silmser. His  
13 prosecution was conducted not by the Cornwall Police but by  
14 the Police Complaints Commission. The Police Complaints  
15 Commission appealed. The case involved an issue of law,  
16 the interpretation of the *Police Services Act* and its  
17 interaction with the *Child and Family Services Act*. It was  
18 a legal argument.

19 The charge was indeed issued by Acting Chief  
20 Johnston, but he had no history with Perry Dunlop and the  
21 charges were started on the advice of legal counsel. Allan  
22 O'Brien, Dunlop's own lawyer, agreed that no one was taking  
23 issue with Dunlop's motive.

24 All in all, even Dunlop -- pardon me -- even  
25 Bourgeois agreed, when rationally reviewed, there was an

1 insufficient basis for a claim of malicious prosecution.

2 So what did they do? They went looking for  
3 something more. Where no claim existed on its face, they  
4 sought to find one. Dunlop speaks to C-8 in June, 1996.  
5 Dunlop's notes of the meeting are instructively entitled  
6 "The Case".

7 In those early interviews, he is probing C-8  
8 about knowledge he has of people like Chief Claude Shaver.  
9 The outstanding theory of conspiracy involves senior  
10 members of the police department, including Claude Shaver.  
11 Still, little is learned. What is learned is that C-8  
12 claims his former roommate, Ron Leroux, molested him when  
13 he was younger and that he was molested also by Marcel  
14 Lalonde.

15 As Mr. Sherriff-Scott took you to, C-8  
16 testified that what he really wanted was for Perry Dunlop  
17 to help him address his allegations against these men.

18 C-8 testified here, and I quote:

19 "It was always Ron Leroux and Marcel  
20 Lalonde. Ron Leroux, he's the guy that  
21 assaulted me. That's the guy I wanted  
22 to go after, but he was too important  
23 to Perry. He didn't want to do  
24 anything with Ron."

25 Notwithstanding that Perry Dunlop trumpeted

1 the cause of many assault victims, he never addressed C-8's  
2 complaint about Ron Leroux. He never went to the CAS. He  
3 never went to the police. C-8's estimation was correct;  
4 Ron Leroux was too important.

5 If you believe Perry Dunlop's will state,  
6 and we say it should be taken with a huge grain of salt,  
7 his will state, as Mr. Sherriff-Scott pointed out earlier,  
8 speaks of these early days as follows, and I quote:

9 "It became clear to me that Ron Leroux  
10 was the inside man. He was the  
11 operator who ran these players. He was  
12 the undercover operator of the  
13 paedophile world. Although I had never  
14 met him as of this time, I believed  
15 that he was a paedophile."

16 Dunlop clearly sees Ron Leroux as the key to  
17 getting to the paedophile world. Yet, as I say, he never  
18 tells anyone about it, not the police, not the CAS, and not  
19 even his good friend, Rick Abell.

20 After pumping C-8 for information, Dunlop  
21 and Bourgeois then try to get Leroux's cooperation. When  
22 Leroux testified, Dunlop befriended he and his family. At  
23 the outset, Dunlop did not speak to Leroux about a  
24 conspiracy; rather, he spoke to him about Leroux's good  
25 friend, Ken Seguin. Leroux was close to Ken Seguin.

1                   Dunlop tells Leroux that, in fact, Leroux  
2           (sic) did not commit suicide but rather ---

3                   **THE COMMISSIONER:** Seguin.

4                   **MR. CALLAGHAN:** --- Seguin, sorry. What did  
5           I say?

6                   **THE COMMISSIONER:** Leroux.

7                   **MR. CALLAGHAN:** Sorry, pardon me, tells --  
8           did not commit suicide but rather was murdered. He sought  
9           Leroux's help with finding the culprits of his friend's  
10          murder.

11                   According to Leroux, Dunlop told him:

12                                "We are kicking some doors down there.  
13                                We're going to get these guys arrested.  
14                                We're going to investigate all this."

15                   Of course, by 1996, it's long known that Ken  
16          Seguin committed suicide.

17                   Leroux is still uncomfortable about talking.  
18          Dunlop gets him some help from his good friend and lawyer  
19          now, Charles Bourgeois. Leroux says he gets a call from  
20          Bourgeois where Bourgeois says that C-8 tells Bourgeois  
21          that Leroux has lots of information that could help with  
22          the murder investigation and that Leroux is holding out on  
23          Dunlop and Bourgeois.

24                   Leroux testified as follows:

25                                "And then he, Bourgeois, said, 'Well,

1                   you could be charged with obstruction  
2                   of the justice'. He was throwing a lot  
3                   of things at me, very fast talking."

4                   While Bourgeois denied the conversation, I  
5                   would suggest that Leroux was telling the truth on this  
6                   point. First, I don't think Bourgeois was at all truthful  
7                   in his testimony. No one remembers so little as Charles  
8                   Bourgeois.

9                   Second, if you look at the early statements,  
10                  Ron Leroux speaks of who is at Ken Seguin's home but does  
11                  not speak of paedophiles, does not speak of a church and  
12                  police cover-up. His first statements speak of someone  
13                  trying to find out what has happened to his friend.

14                  And looking at the first statement on  
15                  October 10<sup>th</sup>, 1996, you can see how things are slowly  
16                  manipulated. It is in the first statement that the word  
17                  "clan" is used. He speaks of certain people being  
18                  "clannish". He says:

19                                "I knew that all these guys went to the  
20                                Highland Games together. They were  
21                                like a clan."

22                  Of course, the phrase "clan" takes on a  
23                  prominent position in later statements, affidavits in  
24                  Dunlop's amended statement of claim.

25                  Most of Leroux's first statement is admitted

1 conjecture by Leroux. For example, in his first statement,  
2 Leroux states as follows:

3 "It is my opinion that Ken Seguin,  
4 Father MacDonald and Malcolm MacDonald  
5 are all homosexuals. They all give off  
6 a certain air and I put the bits and  
7 pieces together."

8 Note that the preface of his statement is  
9 that it's an opinion. He finishes it by saying he puts  
10 bits and pieces together. In later affidavits, his opinion  
11 becomes fact. He asserts that they are not only  
12 homosexuals but are paedophiles.

13 This October 10<sup>th</sup> statement is so different  
14 than later statements as to be almost drafted by a  
15 different hand.

16 Sometime before October 16<sup>th</sup>, we know that  
17 Bourgeois is in contact with a U.S. plaintiff lawyer, Steve  
18 Rubino, whose practice was to sue the church. We know that  
19 Rubino sent Bourgeois a precedent claim that Bourgeois used  
20 to draft the amended statement of claim.

21 The ultimate role of Rubino is uncertain.  
22 When asked if Rubino was to have mentored Bourgeois in the  
23 lawsuit, Bourgeois once again said he could not remember.  
24 His exact words were:

25 "I don't remember if he -- if there was

1 an idea like that or not."

2 It is remarkable that he would not recall  
3 the role of a senior U.S. counsel in what was undoubtedly  
4 the biggest action of his career. The role of Rubino was  
5 more than just providing precedent.

6 There is an October 30<sup>th</sup> note by Helen Dunlop  
7 recording a conversation while Charles -- from Charles  
8 Bourgeois while Bourgeois and Dunlop were in Maine meeting  
9 with Leroux. The note was not produced until 2004.

10 The note is instructive as it is the day  
11 before the October 31<sup>st</sup> affidavits in which Leroux sets out  
12 his allegations of a clan of paedophiles and a VIP meeting.  
13 The note relays, in part, information from Rubino and  
14 information being learned by Leroux.

15 As for Rubino, Helen Dunlop's note says as  
16 follows:

17 "He [being Bourgeois] said information  
18 that was obtained from New York lawyer  
19 Steve Rubino concerning paedophiles in  
20 the church in the U.S. was linked with  
21 this cult here."

22 So even before any written utterance by  
23 Leroux of paedophiles in Canada, Bourgeois is describing  
24 paedophiles in the church in the U.S. as being "linked with  
25 this cult here".

1                   It is not Ron Leroux speaking to the U.S  
2                   counsel, it is Bourgeois. Indeed, you heard earlier that  
3                   Dunlop raised the prospect of an allegation of a paedophile  
4                   ring as far back as 1993 when he spoke to Greg Bell. Of  
5                   course, he would provide no details at that time because he  
6                   had none.

7                   But prior to the October 31<sup>st</sup> affidavit, we  
8                   know the following. There is really no sound basis for a  
9                   malicious prosecution case. There are unsubstantiated  
10                  allegations of a conspiracy without any details or facts.  
11                  Perry Dunlop talks about a paedophile ring as far back as  
12                  1993. Bourgeois speaks to Rubino about the cults and all  
13                  Leroux is talking about is a clan of Scotsmen.

14                  As you've heard, Bourgeois and Dunlop travel  
15                  to Maine in late October, 1996. There is, according to  
16                  Leroux, both drafting of affidavits and drinking. It is  
17                  the October 31<sup>st</sup> affidavit that first sets out the  
18                  conspiracy allegations and the VIP meetings.

19                  As I indicated, what nobody knows until 2004  
20                  was that the affidavit was preceded by an information  
21                  session in which Bourgeois relayed -- which Bourgeois  
22                  relayed to Helen Dunlop. The October 30<sup>th</sup> note of Helen  
23                  Dunlop describes events that are materially different from  
24                  what is signed the next day. When questioned at this  
25                  Inquiry, Bourgeois did not, surprisingly, recall giving the

1 conflicting information to Helen Dunlop.

2 The note clearly described the Roman  
3 Catholic cult to which I just referred, not a clan as  
4 described a day later. The Bishop, Malcolm MacDonald,  
5 members of the Cornwall Police were described as apparently  
6 observed by Leroux having cult seminars where kids 11 and  
7 13 were being assaulted. These cult meetings were held on  
8 Friday or Saturday nights and were not relegated to the  
9 distant past as would be the subsequent allegation.

10 Of course the allegation morphed. It  
11 morphed into an historical one, one that happened on  
12 Cameron's Island on one occasion and didn't involve any  
13 current members of the Cornwall Police.

14 **THE COMMISSIONER:** At Cameron's Point, I  
15 think.

16 **MR. CALLAGHAN:** Cameron's Point.

17 We know that both allegations are  
18 fictitious.

19 On October 31<sup>st</sup>, an affidavit is sworn, but  
20 now for the first time there is the explosive and damning  
21 phrase "clan of paedophiles". We know of course the word  
22 "clan" is "clan of Scotsmen"; it was used on the October  
23 10<sup>th</sup> statement. We know the phrase was used to great  
24 effect, yet none of the three will take credit for the  
25 phrase. Leroux testified here, "I didn't orchestrate this

1       clan of paedophiles. That's -- I don't know where the hell  
2       it came from."

3                 Similarly, Bourgeois denies it was his  
4       phrase and said it was Leroux's phrase. Dunlop testified  
5       before the Superior Court that it was his lawyers who  
6       drafted the claim with the phrase in it, and he didn't coin  
7       the phrase. In the end, no one will take responsibility  
8       for introducing the explosive phrase "clan of paedophiles".

9                 Having watched the testimony of Leroux, it  
10       is frankly hard to imagine that Leroux had either the  
11       mental wherewithal to coin such a phrase or the need to do  
12       so. Bourgeois and Dunlop had both the need and the  
13       wherewithal. The night before Leroux signed the affidavit,  
14       as we saw, Bourgeois is referring to a "paedophile cult" as  
15       relayed by lawyer Rubino. Dunlop was discussing ring of  
16       paedophiles in '93.

17                However it came into existence, the phrase  
18       was used to great effect in Dunlop's action. It was used  
19       to great effect in the press. With the impressionable  
20       Leroux, it would not be hard for Dunlop and Bourgeois to  
21       utilise the phrase "clan" and arrive at a "clan of  
22       paedophiles."

23                This new affidavit identifies a number of  
24       people as paedophiles. Leroux swore that he witnessed the  
25       clan. The clan included Claude Shaver and Murray

1 MacDonald. These men were centred for special treatment.  
2 They were branded paedophiles. You'll recall that  
3 Inspector Smith said that labelling someone a paedophile is  
4 worse than labelling them a murderer and in some quarters  
5 is tantamount to a death sentence.

6 The heinous allegation that these men were  
7 paedophiles is patently false. Leroux finally admitted so  
8 when he testified. In fact, all Leroux could say when he  
9 reviewed the affidavit and the number of people he swore  
10 were part of the clan was, "Wow, a lot of people", as if he  
11 were reading someone else's document for the first time.

12 The affidavit, as I said, also talks about  
13 Leroux's attendance at Cameron's Point where he's alleged  
14 to have observed ceremonious ritual candles and altar boys'  
15 rectums and sheets over them, and these altar boys were  
16 walking around with candles in their rectums. This would  
17 appear to be an adaptation of the cult seminars of the  
18 night before. During his entire testimony at the Inquiry,  
19 Leroux testified that he never saw such an incident but  
20 heard of such incidences.

21 The cornerstone of the conspiracy theory was  
22 an alleged meeting on Stanley Island attended by, amongst  
23 others, the Chief of Police, the Crown Attorney, the  
24 Bishop, Charles MacDonald, Ken Seguin and Malcolm  
25 MacDonald. It was on Stanley Island where the settlement

1 was allegedly done in the David Silmsler matter.

2 After the October visits to Maine, for  
3 Dunlop and Bourgeois there was more work to do, in  
4 particular because of sloppiness and the need to fill holes  
5 in the story. Successive affidavits and statements were  
6 needed to bolster the allegations. As Leroux was the only  
7 witness, Leroux was sent to Toronto to meet Bourgeois and  
8 Dunlop in mid-November and again in the start of December.  
9 Again, the drafting was accompanied by alcohol. Leroux  
10 swore an additional affidavit on November 13<sup>th</sup>, 1996.

11 At the same time as Leroux was providing  
12 affidavits, Bourgeois and Dunlop were drafting Dunlop's  
13 amended statement of claim. Remarkably, Leroux testifies  
14 he was unaware while in Toronto that an amended statement  
15 of claim was being prepared utilising his false allegations  
16 of a clan of paedophiles, Cameron's Point and the VIP  
17 meeting.

18 When asked why there was need for yet  
19 another affidavit, Bourgeois testified:

20 "Probably just to get one in typed  
21 form, you know, I don't know really why  
22 we did that."

23 In reality, changes were needed to rectify  
24 factual flaws in the earlier affidavit and to bolster the  
25 allegations in the soon-to-be-released amended statement of

1 claim.

2 It was important that Leroux's story be as  
3 airtight as possible, as he was the only witness to the  
4 allegations in the amended statement of claim, including  
5 the VIP meeting. An example of the sloppiness was the need  
6 to change the date of the VIP meeting. It is only by  
7 examining these details that the truth as to whose hand was  
8 really doing the drafting becomes apparent.

9 In Leroux's first affidavit, he swears the  
10 VIP meeting occurred on a Sunday in early September, 1993.  
11 According to the first affidavit, Sunday, September 5<sup>th</sup>,  
12 1993 was the earliest date that the alleged conspiracy  
13 could have taken place. However, the evidence at this  
14 Inquiry has revealed the settlement between the Diocese and  
15 Silmsler was finalised on Thursday, September 2<sup>nd</sup>, 1993.  
16 Surely if a group of VIPs were going to meet on a remote  
17 island for the purpose of conspiring to cover-up  
18 allegations of David Silmsler, such a meeting would have  
19 occurred prior to the settlement documents having been  
20 executed.

21 According to Dunlop's response to demand for  
22 particulars in his lawsuit, the shutting down of the  
23 allegations was the centre point of the alleged conspiracy.  
24 The theory only works if the VIP meeting is before the  
25 settlement. Because Dunlop had the disclosure from the

1        *Police Services Act* hearing, he had the actual dates of the  
2        settlement and knew that early September was too late.  
3        Dunlop and Bourgeois were therefore able to recognise their  
4        sloppy error and amended this oversight in Leroux's  
5        November affidavit.

6                    The story line to the alleged conspiracy was  
7        backdated to late August '93-early September '93, thereby  
8        permitting the meeting to happen prior to the settlement.

9                    The change is instructive. As indicated,  
10       Dunlop and Bourgeois knew the date of the civil settlement  
11       because they had the Police Act disclosure, but it is  
12       unlikely that that date would be known to Ron Leroux. What  
13       Dunlop and Bourgeois could not have known, of course, was  
14       that Bishop LaRocque was at the Council of Catholic Bishops  
15       the last weekend of August and that date could in the end  
16       yield no conspiracy. Nonetheless, the story was modified  
17       around the facts that were known to Dunlop and Bourgeois.

18                   The second flaw in the theory was the cast  
19       of characters included at the VIP meeting. In Leroux's  
20       first affidavit, the affidavit in October -- or second, I  
21       should say, the one of October 31<sup>st</sup> -- he swears he  
22       personally witnessed the following people travel to Stanley  
23       Island: Malcolm MacDonald, Ken Seguin, Claude Shaver,  
24       Stuart McDonald, Bishop LaRocque and another priest, Father  
25       MacDonald and another priest, Ron Wilson and two other

1 males. Leroux states in the October 31<sup>st</sup> affidavit that  
2 Seguin "Advised that Murray MacDonald, Crown Attorney, was  
3 there". There is no citing of Murray MacDonald in this  
4 affidavit by Ron Leroux

5 In Leroux's second affidavit, dated November  
6 13<sup>th</sup>, the cast of characters that Leroux personally  
7 witnessed expanded to include the following additional  
8 participants: another police officer, likely meant to be  
9 Luc Brunet, Murray MacDonald and Rory MacDonald. The  
10 evolution in this cast of characters is important because  
11 any conspiracy to cover up the actions of Father MacDonald  
12 would be more compelling if Leroux had first-hand knowledge  
13 of the attendance of the Crown Attorney, being Murray  
14 MacDonald, and Staff Sergeant Brunet, the person  
15 responsible for the Silmsler investigation. Without Murray  
16 MacDonald and Luc Brunet the conspiracy does not hold  
17 together.

18 By November 13<sup>th</sup>, 1996 Leroux had placed the  
19 Chief of Police, the Crown Attorney, the Bishop, Malcolm  
20 MacDonald and Charlie MacDonald at the fictitious VIP  
21 meeting. The only person he forgot was the church's  
22 lawyer, Jacques Leduc. That mistake would soon be  
23 rectified.

24 In the meantime, other amendments are made  
25 to implicate Murray MacDonald. Leroux swears to

1 discussions with Ron Wilson at the funeral of Ken Seguin.  
2 Ron Wilson purportedly gave a list of people involved in  
3 the alleged conspiracy. In the October 31<sup>st</sup> affidavit he  
4 does not mention Murray MacDonald but Murray MacDonald's  
5 name is added to the November 13<sup>th</sup> affidavit. Ron Wilson  
6 was not able to testify due to declining health, but he  
7 denied any conversation with Leroux at Ken Seguin's funeral  
8 when interviewed by the OPP. Indeed, Wilson told the OPP  
9 he was in Florida during Ken Seguin's funeral.

10 The details of who arrived with whom also  
11 changed. In the earlier affidavit there is no mention of  
12 Murray MacDonald but in the later affidavit he is now  
13 observed by Leroux. In the first affidavit Malcolm arrives  
14 with Chief Shaver and Stuart McDonald. In the second,  
15 Chief Shaver arrives in a car with Stuart McDonald and  
16 another cop. The second vehicle and the arrival of Rory is  
17 different in the second affidavit.

18 Nonetheless, by November, 1996, Dunlop and  
19 Bourgeois felt they now had attained the foundation to  
20 support the Dunlop lawsuit with respect to the conspiracy  
21 allegations, even though later more amendments were made to  
22 the story. An amended statement of claim was issued on  
23 November 15<sup>th</sup>, 1996.

24 For the first time a public document  
25 contained details relating to a clan of paedophiles and an

1       alleged VIP conspiracy. The amended statement of claim was  
2       gargantuan. Like Leroux's allegation, it was largely  
3       incoherent. It was eventually struck by the Superior  
4       Court.

5                       On December 1<sup>st</sup>, 1996 Leroux goes back to  
6       Toronto for more preparation. The cast of characters in  
7       attendance at the VIP meeting continued to expand during  
8       Leroux's videotaped interview with Dunlop on December 1<sup>st</sup>,  
9       1996.

10                      For the first time Jacques Leduc is  
11       identified as having attended the VIP meeting. The  
12       information was elicited from Leroux by Dunlop. You will  
13       recall, Mr. Commissioner, the large gap in the tape of that  
14       attendance where there were pictures shown to Mr. Leroux by  
15       Mr. Dunlop. Of course, if they did not have Leduc as one  
16       of the conspirators it would be possible for Bishop  
17       LaRocque to defend the \$80 million lawsuit on the basis he  
18       acted on advice of counsel.

19                      After what Leroux describes as a gruelling  
20       week in Toronto, he was put on the bus and sent back to  
21       Cornwall. At that time he was expecting to go back to  
22       Maine. Instead, Carson Chisholm was waiting for him.  
23       Chisholm was going to drive Leroux to Florida. As noted by  
24       Leroux, "Chisholm didn't ask me" if he wanted to go to  
25       Florida, "he told me". Carson Chisholm and Leroux went to

1 the Saltaire Motel in Florida, which featured prominently  
2 in Leroux's affidavits.

3 According to Leroux's story, Malcolm  
4 MacDonald and a host of others stayed at the Saltaire  
5 Motel. The police investigation eventually revealed that  
6 the only two guests of interest from Cornwall at the  
7 Saltaire Motel were Malcolm MacDonald and, of course, Ron  
8 Leroux. During his visit to the Saltaire Motel, Chisholm  
9 represented himself as an investigator.

10 It is not clear when Chisholm and Leroux  
11 left for Florida. It is clear that Leroux was at least in  
12 Toronto on December 1<sup>st</sup>, 1996 as there is video of him in  
13 Toronto on that date. At the earliest he would have  
14 arrived in Cornwall was December 2<sup>nd</sup>, 1996. According to  
15 Chisholm he was in Florida for a week and as such he would  
16 not likely have returned home to Maine until sometime after  
17 December 9<sup>th</sup>, 1996. It is an absolute certainty that Leroux  
18 and Chisholm were in Florida on December 6<sup>th</sup>, 1996, as they  
19 received a statement from the owner of the Saltaire Motel  
20 signed on that date.

21 Notwithstanding he was likely in Florida,  
22 there are two statements signed by Leroux during this  
23 period. He denies signing either. The first is dated  
24 December 4<sup>th</sup>, 1996 and another dated December 7<sup>th</sup>, 1996. The  
25 December 7<sup>th</sup> statement was originally dated December 6<sup>th</sup> and

1           overwritten with the date December 7<sup>th</sup>. Both statements  
2           appear to have Leroux's signature and initials.

3                         Both Chisholm and Bourgeois testified they  
4           had no knowledge of the statements. However, on February  
5           7<sup>th</sup>, 1997, two months later, Bourgeois walked Leroux into  
6           the OPP office in Orillia and had him read the December  
7           6<sup>th</sup>/7<sup>th</sup> statement as part of his complaint. It is therefore  
8           hard to believe that Bourgeois knew nothing of the December  
9           6<sup>th</sup>/7<sup>th</sup> statement, as he testified. A close examination of  
10          the statement would appear to indicate a different  
11          signature from the earlier statements. Clearly, unless he  
12          signed the statement in Florida, Leroux was not available  
13          in Canada from December 4<sup>th</sup> to December 7<sup>th</sup>, 1996.

14                        The difference between the statements is  
15          slight but telling. As discussed earlier, Leroux's first  
16          statement on October 10<sup>th</sup>, 1996 proffered an opinion that  
17          Ken Seguin, Father MacDonald and Malcolm MacDonald were  
18          homosexuals. As he said, he put the bits and pieces  
19          together to arrive at his opinion. Thereafter, in later  
20          statements, Leroux swore that he knew them to be known  
21          paedophiles.

22                        The December 4<sup>th</sup>, 1996 statement reads as  
23          follows in part:

24                                 "I know for the fact that Ken Seguin,  
25                                 Malcolm MacDonald and Charlie MacDonald



1 being in Stuart McDonald's home, a person he'd never met,  
2 and who he and his fellow trial lawyers accused of  
3 consorting with paedophiles. This happened on  
4 November 19<sup>th</sup>, two weeks before the December 6<sup>th</sup>-7<sup>th</sup>  
5 statement.

6 Ron Leroux had no reason to tarnish the good  
7 name of Stuart McDonald. The same cannot be said for the  
8 others. A review of the changes and the various statements  
9 and affidavits clearly demonstrates that they were done  
10 with knowledge of the facts and intended to prove a theory.

11 The allegations against Chief Shaver, Murray  
12 MacDonald and Stuart McDonald demonstrate a personal  
13 animosity. As indicated, Leroux alone did not have the  
14 wherewithal to fabricate this story; he had help. Indeed,  
15 he was not the only person who was assisted by Dunlop  
16 making fabricated allegations.

17 It is impossible to view Dunlop's and  
18 Bourgeois' dealings with Leroux without reviewing their  
19 relations with C-8. Like Leroux, C-8 recanted much of what  
20 he swore to in written statements provided for or by Dunlop  
21 and Bourgeois. Like Leroux, C-8 has a loose association  
22 with the truth.

23 As noted earlier, when he went to Dunlop, C-  
24 8's principal concern was in regards to allegations he had  
25 regarding Leroux. He alleged that Leroux began to abuse

1 him when he was 15. He also had his own problems with an  
2 outstanding allegation by a niece, but he had been defended  
3 by Dunlop. Dunlop was one of the few people who was nice  
4 to C-8.

5 Eventually, in the presence of Dunlop, C-8  
6 would swear false allegations against two men. The false  
7 allegations against Father Charles MacDonald were eerily  
8 similar to the allegations advanced by Ron Leroux and those  
9 of David Silmsler. There's no evidence C-8 had either  
10 Silmsler's or Leroux's statements, but Dunlop had both.

11 In the end, it seems clear that however this  
12 story started it was not the work of Ron Leroux alone. As  
13 I say, he does not have the mental wherewithal or the  
14 emotional stamina to make up this story. He did not have  
15 access to the details which were necessary for the lawsuit,  
16 and he did not have the personal animosity to bring in  
17 people whom he didn't know.

18 Perry Dunlop and Charles Bourgeois had the  
19 knowledge, the cunning, and the wherewithal. Bourgeois  
20 appeared before this Inquiry in a virtual state of amnesia.  
21 His feigned memory lapses should be seen for what they are.

22 Perry Dunlop's failure to attend was  
23 reflective of his fear of facing the truth, facing those of  
24 us who would ask him to account for his actions. His  
25 silence is not only an act of cowardice, but an admission

1 of his complicities in these falsehoods.

2 In the end, it has been a long wait for  
3 those wrongfully and unjustly accused of being paedophiles  
4 and of being conspirators of a clan of paedophiles.

5 Those in law enforcement quietly endured the  
6 last 15 years. They did so out of a respect for the  
7 administration of justice and in faith that the truth would  
8 one day be told.

9 I would ask you in your report to clearly  
10 state, one, that the allegations are not true and, two, to  
11 identify those who were responsible for fabricating and  
12 fermenting these falsehoods. These people and their  
13 families deserve no less, as do the people of Cornwall.

14 So before I depart, I might say this. When  
15 we started this Inquiry, I referred to a train and how we  
16 were all going on a train ride and that some people didn't  
17 know they were on it. Some people didn't pick up their  
18 ticket to get on it. But, as we leave, you are the last  
19 one on the train, Mr. Commissioner, and on behalf of all of  
20 us, we wish you Godspeed in your work and look forward to  
21 your results.

22 ---SUBMISSIONS BY THE COMMISSIONER/REPRÉSENTATIONS PAR LE  
23 COMMISSAIRE:

24 THE COMMISSIONER: Thank you.

25 Thank you. We have now completed the

1 process of receiving submissions in respect to the first  
2 part of the Commission's mandate, that is, of course, the  
3 institutional response of the justice system and other  
4 public institutions to allegations of historical abuse of  
5 young people in the Cornwall area. And we've also received  
6 recommendations on possible future improvements for  
7 response in similar circumstances.

8 I would like to thank all counsel for their  
9 advocacy work before me during the course of this Inquiry.  
10 I would also like to recognize those who are not counsel,  
11 but had significant and valuable roles in providing  
12 information, support and perspectives to their counsel.  
13 This also advanced the work of this Inquiry.

14 The work of counsel and their colleagues  
15 culminated in the provision of extensive written  
16 submissions and oral submissions made this week. As I  
17 indicated on Monday, these submissions will be carefully  
18 reviewed and considered in the formulation of my report to  
19 the Government to Ontario.

20 I'm aware that in formulating written  
21 submissions and focussing on key points for oral  
22 submissions, there is a considerable volume of material to  
23 go through. This Inquiry did, in fact, hear from 167  
24 witnesses and received 12 Overviews of Documentary Evidence  
25 over a total of 345 hearing days. There is a total of

1 3,640 exhibits, including 57 books of documents for  
2 contextual and expert witnesses.

3 Many hard-working and capable individuals  
4 have worked together to make sure the infrastructure is in  
5 place to conduct this Inquiry. I would like to recognize  
6 the work of some of these individuals. In doing so, I  
7 believe I speak for many who have worked with these  
8 individuals and not only for myself as Commissioner.

9 Each day of hearings has been reflected in  
10 transcripts delivered overnight, without fail, and posted  
11 on our web site. This has facilitated the work of all  
12 counsel and enhanced access and transparency for the  
13 public. I want to thank International Reporting and all of  
14 their staff who carried out this critical work so  
15 consistently since our first hearing day.

16 L'un des aspects forts de l'Enquête a été  
17 publique sur Cornwall a été son caractère bilingue. Il  
18 était important pour moi d'offrir aux témoins la  
19 possibilité de s'exprimer en français ou en anglais. Il  
20 était tout aussi important que ceux qui ne comprennent pas  
21 les deux langues puissent entendre les témoignages avec une  
22 bonne traduction. Je remercie les excellents interprètes  
23 simultanés de Raymond St-Laurent et associés qui nous ont  
24 aidés à remplir notre obligation de communiquer en français  
25 et en anglais.

1 L'accès aux documents pour le public et la  
2 transparence ont été améliorés grâce aux technologies sur  
3 l'internet. Je remercie Guy Bennett et Will Rose de  
4 Avolution Multimedia des services de diffusion qui nous ont  
5 fourni notre site web détaillé, a été construit et mis à  
6 jour d'une main experte par Djordje Sredojevic. And I  
7 apologize for the pronunciation of the last name.

8 In any event, I have spoken of the extensive  
9 documentary record before this Inquiry. All counsel are  
10 aware of the significant effort and expertise required to  
11 manage these documents.

12 I'd like to recognize the outstanding work  
13 of Sherri McArthur and her research team of Janet George  
14 and Lori Beaudette in this essential undertaking on behalf  
15 of us all.

16 Commission staff had the responsibility for  
17 the management of the facilities and processes that permit  
18 hearings to proceed smoothly on a day-to-day basis. They  
19 ensure we have what is needed to conduct hearings and to  
20 communicate on our web site.

21 I'd like to thank all of the court clerks  
22 who have helped us so ably in this room, Brigitte Beaulne,  
23 Julie Gauthier, Louise Mongeon, and Lori Beaudette.

24 I also want to recognize those who managed  
25 so capably behind the scenes: Anna DeVuono and Lise

1 Kosloski.

2 Many thanks also go to Monique Seguin who  
3 established our processes and facilities here in Cornwall.

4 So tomorrow we will move to Submissions  
5 related to Phase 2, Healing and Reconciliation, and I  
6 invite you all to return for this important conclusion to  
7 the submissions process. Thank you.

8 So we'll come back at 9:30.

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

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

13 --- Upon adjourning at 2:55 p.m. /

14 L'audience adjournée à 14h55

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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.



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Dale Waterman, CVR-CM