

NOV 7 / 05
Exhibit # 5

**Application of The Children's Aid Society of the United Counties
of Stormont, Dundas and Glengarry With Respect To Standing At
The Cornwall Public Inquiry**

Introduction

1. In accordance with the *Rules of Practice and Procedure* of The Cornwall Public Inquiry [hereinafter referred to as the "Inquiry"], The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry [hereinafter referred to as the "C.A.S." and/or the "Society"] respectfully seeks standing for Part I and Part II of the Inquiry.

2. This application for standing will set out a brief history of the C.A.S., an overview of the Society's statutory functions and a statement of how the Society satisfies the criteria for standing set out in the *Rules of Practice and Procedure*.

The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry

3. The C.A.S. was referred to in an order in council, approved by the Lieutenant Governor on October 9, 1908, which stated,

Upon the recommendation of the Honourable the
Provincial Secretary, the Committee of Council advise that the
Children's Aid Society of Stormont, Dundas and Glengarry be
authorized to exercise the usual powers conferred upon such
organizations by the Children's Protection Act.

4. A copy of the order in council of October 9, 1908 is attached and marked as Schedule "A" to this application.

5. The C.A.S. was incorporated as a corporation without share capital on December 3, 1936, when it received its letters patent pursuant to the *Companies Act*, R.S.O. 1927, c. 218. Attached

hereto and marked as Schedule "B" to this application are the letters patent which incorporated the Society.

The Society's Purposes And Objects

6. As indicated in the letters patent, the C.A.S. was incorporated for the following purposes and objects:

(a) To protect children from cruelty and neglect on the part of the parents, guardian or others;

(b) To care for and control neglected children;

(c) To improve the home life of children;

(d) To secure foster homes for children who have no homes or proper homes of their own;

(e) Generally to discharge the functions of a Children's Aid Society under *The Children's Protection Act* and to co-operate in carrying out the provisions of the said Act and other legislation in the interests of children; and

(f) To do all things incidental or conducive to the foregoing objects or any of them.

Statutory Functions

7. The C.A.S. has been exercising its statutory child protection powers in Cornwall and the United Counties of Stormont, Dundas and Glengarry, since at least as far back as October 9, 1908, when it acted pursuant to *The Children's Protection Act of Ontario*, S.O. 1893, c. 45.

8. At present, the C.A.S. carries out the functions set out in subsection 15(3) of the *Child and Family Services Act*, R.S.O. 1990, c. C.11. Subsection 15(3) of the *Child and Family Services Act* states,

15. (3) The functions of a children's aid society are to,

(a) investigate allegations or evidence that children who are under the age of sixteen years or are in the society's care or under its supervision may be in need of protection;

(b) protect, where necessary, children who are under the age of sixteen years or are in the society's care or under its supervision;

(c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;

(d) provide care for children assigned or committed to its care under this Act;

(e) supervise children assigned to its supervision under this Act;

(f) place children for adoption under Part VII; and

(g) perform any other duties given to it by this or any other Act.

[emphasis added]

9. Subsection 37(2) of the *Child and Family Services Act* provides as follows,

37. (2) A child is in need of protection where,

(a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,

(i) failure to adequately care for, provide for, supervise or protect the child, or

(ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

(b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,

(i) failure to adequately care for, provide for, supervise or protect the child, or

(ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

(c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

(d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c);

(e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by serious,

(i) anxiety,

(ii) depression,

(iii) withdrawal,

(iv) self-destructive or aggressive behaviour, or

(v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(f.1) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

(g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;

(h) the child suffers from a mental, emotional or developmental condition

that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;

(i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;

(j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;

(k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or

(l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part.

[emphasis added]

The Society's Mission Statement

10. The Society's mission statement which is set out in the Society's Strategic Plan for 2004-2005 is as follows,

The Children's Aid Society of Stormont, Dundas and Glengarry protects children from abuse and neglect, while supporting the safe and healthy development of children in their families and community.

The Society's Numbers

11. The C.A.S. is one of 53 children's aid societies in the province of Ontario. At present, the Society has in excess of 100 permanent employees and has in excess of 360 children in its care.

12. While carrying out its statutory functions, the Society comes in contact with a number of other service providers in the community such as various police services, health care providers, and women's shelters.

Cst. Perry Dunlop's Report To The Society

13. Indeed, as a result of carrying out his statutory duty, which was contained in subsection 72(3) of the *Child and Family Services Act*, as that subsection read on September 30, 1993, former Cornwall Community Police Service Cst. Perry Dunlop was prosecuted for alleged misconduct, pursuant to the provisions of Part VI of the *Police Services Act*, R.S.O. 1990, c. P.15.

14. It was alleged that Cst. Dunlop was guilty of misconduct due to the fact that, on September 30, 1993, he provided a copy of a complainant's statement to Mr. Richard Abell, the Executive Director of the Society. The complainant's statement contained allegations that the complainant had been sexually assaulted by a member of the local clergy and by a local probation officer. The Divisional Court determined, in *Ontario (Police Complaints Commissioner) v. Dunlop* 1995 CarswellOnt 1741 (Div. Ct.), that Cst. Dunlop, in providing Mr. Abell, in his capacity as Executive Director of the Society, with the complainant's statement, had

a duty to report the information to the Society and that subsection 72(7) of the *Child and Family Services Act*, as it read on September 30, 1993, was a bar to the *Police Services Act* prosecution against Cst. Dunlop. A copy of the Divisional Court's reasons for decision is attached as Schedule "C" to this application.

15. As a result of the complainant's statement being provided to the Society by Cst. Dunlop, the Society carried out an investigation pursuant to the provisions of the *Child and Family Services Act*.

The Issue of Standing

16. Sections 2 and 3 of O.C. 558/2005 set out part of the mandate of The Cornwall Public Inquiry. These sections read as follows,

2. The Commission shall inquire into and report on the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to:

(a) allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations, and

(b) the creation and development of policies and practices that were designed to improve the response to allegations of abuse in order to make recommendations directed to the further improvement of the response in similar circumstances.

3. The Commission shall inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall.

17. Rule 8 of the *Rules of Practice and Procedure* state the following with respect to the granting of standing for Part I of the Inquiry,

8. Commission counsel, who will assist the Commissioner throughout the Inquiry and are to ensure the orderly conduct of the Inquiry, have standing throughout the Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Inquiry, including the responsibility to ensure that all interests that bear on the public interest are brought to the Commissioner's attention. Persons or groups may be granted standing by the Commissioner, if the Commissioner is satisfied that they:

(a) are directly and substantially affected by Part I of the Inquiry in which event the party may participate in accordance with s. 5 (1) of the *Public Inquiries Act*, or

(b) represent distinct ascertainable interests and perspectives that are essential to his mandate in Part I, which the Commissioner considers ought to be separately represented before the Inquiry, in which event the party may participate in a manner to be determined by the Commissioner.

18. Rule 55 of the *Rules of Practice and Procedure* state the following with respect to the granting of standing for Part II of the Inquiry,

55. Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that

(a) they are sufficiently affected by Part II of the Inquiry; or

(b) they represent distinct ascertainable interests and perspectives that are essential to his mandate in Part II, and which the Commissioner considers ought to be separately represented before the Inquiry. In order to avoid duplication, groups of similar interest are encouraged to seek joint standing.

19. Subsection 5(1) of the *Public Inquiries Act*, R.S.O. 1990, c. P.41, deals with the granting of standing. Subsection 5(1) states as follows,

5. (1) A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.


20. With respect to Part I of the Inquiry, it is respectfully submitted that the C.A.S. has a substantial and direct interest in the subject-matter of Part I of the inquiry, which is the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations and the creation and development of policies and practices that were designed to improve the response to allegations of abuse.

21. It is further submitted that the C.A.S. represents a distinct ascertainable interest and perspective that is essential to the Commission's mandate in Part I which ought to be separately represented before the Inquiry.

22. With respect to Part II of the Inquiry, it is respectfully submitted that the C.A.S. has a substantial and direct interest in the subject-matter of Part II of the inquiry, which will be an opportunity to investigate processes, services or programs that would encourage community healing and reconciliation in Cornwall. This is especially so given that the Society is a provider of services and programs to abuse victims.

23. Given the above, it is respectfully submitted that the Commission ought to grant full standing to the C.A.S. with respect to both Part I and Part II of the Inquiry.

All of which is respectfully submitted the 25th day of October, 2005.

A handwritten signature in black ink, appearing to read 'Peter E. Chisholm', written over a horizontal line.

Peter E. Chisholm

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(613) 938-2746 (fax)

Solicitors For The The Children's Aid Society of
the United Counties of Stormont, Dundas and
Glengarry

SCHEDULE 'A'



Copy of an Order-in-Council approved by His Honour
the Lieutenant Governor, the *9th* day of October, A.D. 1908

Upon the recommendation of the Honourable the Provincial
Secretary, the Committee of Council advise that the Children's Aid
Society of Stormont, Dundas and Glengarry be authorized to exercise
the usual powers conferred upon such organizations by the Children's
Protection Act.

Certified,

Clerk, Executive Council.



Province of Ontario

By the Honourable

WALTER CORNISH FITZGERALD,

Provincial Secretary.

To all to whom these Presents shall Come
Greeting

Whereas *The Companies Act provides that with the exception therein mentioned the Lieutenant Governor may by Letters Patent or other underwritten instrument constitute and authorize for any of the purposes therein the authority of the Legislature of Ontario extends;*

And Whereas *by the said Act it is further provided that the Provincial Secretary may under the seal of his office have use, exercise and enjoyment of power, right or authority conferred by the said Act on the Lieutenant Governor;*

And Whereas *by their Petition in that behalf the persons herein mentioned have prayed for a Letters Patent or other instrument underwritten and public for the due carrying out of the said Statute therein made set forth;*

And Whereas *it has been made to appear that the said persons have complied with the conditions precedent to the grant of the desired Letters Patent and that the said undertaking is within the scope of the said Act;*

Now Therefore Know Ye *that under the authority of the herebefore in full recited Act I do by these Letters Patent constitute the persons hereinafter named that is to say:*

The Children's Aid Society of
the United Counties of Stormont,
Dundas and Glengarry.

for the following purposes and objects, that is to say:

- (a) TO protect children from cruelty and neglect on the part of the parents, guardian or others;
- (b) TO care for and control neglected children;
- (c) TO improve the home life of children;
- (d) TO secure foster homes for children who have no homes or proper homes of their own;
- (e) Generally to discharge the functions of a Children's Aid Society under The Children's Protection Act and to co-operate in carrying out the provisions of the said Act and other legislation in the interests of children; and
- (f) TO do all things incidental or conducive to the purposes or any of them;

THE HEAD OFFICE of the Corporation to be situate at the

THE FIRST DIRECTORS of the Corporation shall be William
McLennan, Charles James Hamilton, William Hart Weston, Henry
John Nugent and George Edward Whangan, hereinafter mentioned;

AND IT IS HEREBY ORDAINED AND DECLARED THAT:

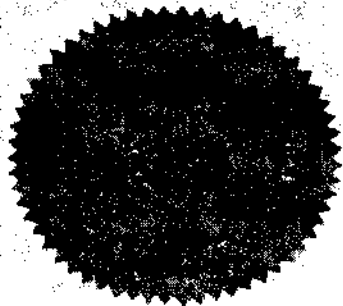
1. The subscribers to the Memorandum of Agreement of the Corporation shall be the first members and the Corporation shall consist of the subscribers and of those who shall hereafter be duly elected as members of the Corporation in accordance with the by-laws and regulations from time to time in force;
2. The interest of a member in the Corporation shall not be transferable and shall lapse and cease to exist upon the death of such member, or when such member shall cease to be a member by resignation or otherwise in accordance with the by-laws and regulations from time to time in force;
3. The directors of the Corporation shall constitute the Committee of Management of the Corporation;
4. The directors may, from time to time, make by-laws and regulations, not contrary to law or the Letters Patent or Supplementary Letters Patent or The Companies Act, and, from time to time, amend, vary or repeal the same, to regulate:
 - (a) the admission of members and the election or appointment of directors, trustees and officers;
 - (b) the time at which and place where the meetings of the Corporation shall be held; the calling of meetings of the Corporation; the procedure in all things at such meetings; and the requirements as to proxies;
 - (c) the payment of officers and employees; and
 - (d) the conduct, control and management of the affairs of the Corporation;
5. Every by-law and regulation and every repeal, amendment or

meetings shall be held at the office of the Corporation; and in default of confirmation thereof shall then cease to have force; and in that case no new by-law or regulation to the same or the like effect or re-enactment thereof shall have any force until confirmed at a general meeting of the Corporation; and

C. Such by-laws, regulations and amendments shall replace, exclude or modify the regulations set out in Form 4 in the Schedule to The Companies Act, save that in any matters covered by such Form 4 and not provided for in the Corporation's by-laws, regulations or amendments, the provisions of said Form 4 shall apply and be in force but all such matters which, after the passing of the Corporation's first by-laws and regulations, may be left to be governed by such Form 4, may be varied, amended, excluded or modified by any by-laws or regulations;

AND IT IS HEREBY FURTHER ORDAINED AND DECLARED that the said Corporation shall be carried on without the purpose of gain for its members, and that any profits or other accretions to the Corporation shall be used in promoting its objects.

Given under my hand and Seal of office at the City of Toronto
in the said Province of Ontario this third
day of December in the year of Our Lord one
thousand nine hundred and thirty-six.



H. H. Nelson
Registrar of Companies

Dated December 3, 1936

Province of Ontario

Letters Patent

Incorporating

The Children's Aid
Society of the United
Counties of Stormont,
Dundas and Glengarry

*Received for
Registration 10/19/36
No. 127.*

L. J. Johns
Assistant Provincial Secretary

PROVINCIAL SECRETARY & DEPT. OF
EDUCATION, ONTARIO

SCHEDULE "C"

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C
1995 CarswellOnt 1741

Ontario (Police Complaints Commissioner) v. Dunlop

Police Complaints Commissioner, Plaintiff/(Appellant) and Police Constable
Perry Dunlop, Defendant/(Respondent)

Ontario Divisional Court

Southey, McRae, Desmarais JJ.

Heard: November 23, 1995
RELEASE: December 7, 1995
Judgment: December 7, 1995
Docket: 873/95

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Counsel: W.J. Manuel, for the plaintiff.

Al O'Brien and Steve Welchner, for the defendant.

Subject: Public; Torts; Family

Police --- Duties, rights and liabilities of officers -- Conduct of officers.

Family Law --- Children in need of protection -- Offences under child welfare legislation.

Duty to report suspected child abuse superseding confidentiality of police investigation -- Police Services Act, R.S.O. 1990, c. P.15 -- Child and Family Services Act, R.S.O. 1990, c. C.11, s. 72.

Police had conducted a criminal investigation into allegations of sexual assault against a priest. The assaults had occurred when the victim, who was now an adult, was a child. After a financial settlement was reached with the Catholic Church, the victim decided not to pursue the charges. Although D., who was a police constable, was not involved in the investigation, he became concerned for the safety of other children and decided to contact the Children's Aid Society. Although the police had been asked to return all copies of the victim's statements, D. provided a copy of the victim's statement to the Society. The victim alleged that D. had violated the Police Services Act and filed a complaint of police misconduct. The Board of Inquiry stayed the disciplinary proceedings against D. after concluding that D. had a duty to report suspicions of child abuse pursuant to s. 72 of the Child and Family Services Act. Police Complaints Commissioner appealed. Held, the appeal was dismissed. The duty imposed by the

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Child and Family Services Act was paramount notwithstanding the information reported was confidential or privileged. Since D. had obtained the information in the course of his professional duties, and had reasonable grounds to suspect that a child may have suffered abuse, he had an obligation to report his suspicion to the Society. That the victim was no longer a child and that D. had not been assigned to the investigation were of no consequence.

Police had conducted a criminal investigation into allegations of sexual assault against a priest. The assaults had occurred when the victim, who was now an adult, was a child. After a financial settlement was reached with the Catholic Church, the victim decided not to pursue the charges. Although D., who was a police constable, was not involved in the investigation, he became concerned for the safety of other children and decided to contact the Children's Aid Society. Although constables had been asked to return all copies of the victim's statements, D. provided a copy of the victim's statement to the Society. The victim alleged that D. had violated the Police Services Act and filed a complaint of police misconduct. The Board of Inquiry stayed the disciplinary proceedings against D. after concluding that D. had a duty to report suspicions of child abuse pursuant to s. 72 of the Child and Family Services Act. Police Complaints Commissioner appealed. Held, the appeal was dismissed. The duty imposed by the Child and Family Services Act was paramount notwithstanding that the information reported was confidential or privileged. Since D. had obtained the information in the course of his professional duties and had reasonable grounds to suspect that a child may have suffered abuse, he had an obligation to report his suspicion to the Society. That the victim was no longer a child and that D. had not been assigned to the investigation were of no consequence.

McRae J.:

1 This is an appeal by the Police Complaints Commissioner from the decision of a Board of Inquiry to stay misconduct proceedings against the respondent, a constable with the Cornwall Police Service.

The Facts:

2 Constable Dunlop is an 11 year veteran police officer with an impeccable record of service.

3 On September 23, 1993, he learned that a sexual assault complaint had been made against Father Charles MacDonald and against a probation officer Ken Séguin. The complainant, identified as D.S., is now an adult but the complaint related to incidents which allegedly occurred when he was a child.

4 Constable Dunlop was not the officer in charge of the investigation into these complaints, he was with the Drug Enforcement Squad. However, he was present and on duty in the police station when the allegations were discussed by other officers. He also heard from other officers that the investigation had been terminated because the local Roman Catholic Archdiocese had made a financial settlement with D.S. and D.S. was no longer interested in proceeding with charges.

5 Const. Dunlop knew Father MacDonald well. He was a member of Father MacDonald's parish. Father MacDonald had presided at the officer's wedding and had baptized his eldest daughter.

6 Having read the statement given by D.S., Const. Dunlop became concerned about the safety of other children in light of the fact that the prosecution was not continuing. He obtained a photocopy of the statement from the officer in charge of the investigation and on September 25, 1993, he reported the allegations to Mr. Richard Abell, Executive Director of the local Children's Aid Society. On September 26, 1993, as a result of a request from Mr. Abell, Const. Dunlop brought the statement to Mr. Abell's home where he showed it to him, but did not leave a copy with Mr. Abell.

7 On September 29, 1993, S/Sgt. Brunet advised Const. Dunlop that the police investigation was at an end and

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asked Const. Dunlop to return any copies of the statement taken from D.S.

8 On September 30, 1993, Mr. Abell asked for a copy of the statement of D.S. That same day Const. Dunlop complied.

9 A public complaint against Const. Dunlop was made by D.S. By notice of referral dated May 12, 1994, the Chief of Police of Cornwall Police Service, ordered that part of the complaint be heard by a Board of Inquiry pursuant to Part VI of the *Police Services Act*, R.S.O. 1990, c. p. 15.

10 The misconduct alleged is as follows:

It is alleged that you are guilty of misconduct contrary to Section 56 of the *Police Services Act* 1990.

In that you did act in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Police Force, in that on or about the 30th day of September, 1993, you did provide a copy of a statement to Mr. Richard Abell, a representative of the Children's Aid Society, which statement had been provided by D.S. during a criminal investigation conducted by the Cornwall Police Service, and did thereby commit the offence of discreditable conduct contrary to Section 1(a)(i) of the *Schedule Code of Offences* described in Regulation 791 of the *Police Act*, R.S.O. 1980 as amended, which continues in force pursuant to Section 15 of the *Interpretation Act*, R.S.O. 1990.

And further that you did on or about the 30th day of September, 1993, divulge a matter which it was your duty to keep secret, namely, you did provide a copy of a statement to Mr. Richard Abell, a representative of the Children's Aid Society, which statement had been obtained from D.S. during the course of a criminal investigation conducted by the Cornwall Police Service, and did thereby commit the offence of breach of confidence contrary to Section 1(e)(i) of the *Schedule Code of Offences* described in Regulation 791 of the *Police Act*, R.S.O. 1980, as amended which continues in force pursuant to Section 15 of the *Interpretation Act*, R.S.O. 1990.

And further that you did on or about the 30th day of September, 1993, without proper authority, show to Mr. Richard Abell, a representative of the Children's Aide Society being a person who is not a member of the Cornwall Police Service, a statement obtained form D.S., which statement had been obtained during the course of a criminal investigation conducted by the Cornwall Police Service, and did thereby commit the offence of breach of confidence contrary to Section 1(e)(iv) of the *Schedule Code of Offences* described in Regulation 791 of the *Police Act*, R.S.O. 1980, as amended which continues in force pursuant to Section 15 of the *Interpretation Act*, R.S.O. 1990.

11 Const. Dunlop brought a motion to stay the proceedings which was argued September 13, 1994. On January 31, 1995, the Board rendered its decision ordering a stay.

12 It is from that decision that the Police Complaints Commissioner appeals.

The Issues:

13 The Board ordered a stay of the prosecution of Const. Dunlop because of the operation of s. 72 of the *Child and Family Services Act*, R.S.O. 1990, c. 11, which provides:

72.(1) In this section and in sections 73, 74 and 75, "to suffer abuse". When used in reference to a child, means to be in need of protection within the meaning of clause 37(2)(a), (c), (e), (f) or (h).

(2) A person who believes on reasonable grounds that a child is or may be in need of protection shall

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forthwith report the belief and the information upon which it is based to a society.

(3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society.

(4) Subsection (3) applies to every person who performs professional or official duties with respect to a child, including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth and recreation worker;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

(5) In clause (4)(b), "youth and recreation worker" does not include a volunteer.

(6) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director.

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

(8) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. 1984, c. 55, s. 68.

14 Counsel for the appellant argued that Const. Dunlop was not entitled to the protection provided to informants by s. 72(7) for several reasons. Most of those reasons were not strenuously pursued by him and can be quickly dealt with.

15 In my view, Const. Dunlop was an active duty police officer who gained information in the course of his "professional or official duties" - it does not matter that he was not the officer specifically assigned to the case - all police officers have a primary duty to prevent the commission of crime. Nor does it matter that the complainant D.S. was no longer a child as he was at the time of the alleged abuse.

16 Const. Dunlop in September 1993 had "reasonable grounds to suspect that a child --- may have suffered abuse". He had a duty, therefore, to "forthwith report the suspicion and information on which it is based to a society."

17 The more difficult issue ably argued and strongly urged upon us by counsel for the appellant is whether a prosecution under the *Police Services Act* is intended to be prohibited by s. 72(7).

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18 The subsection bears repeating:

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

19 There is no suggestion that Const. Dunlop acted maliciously or that he acted without reasonable grounds.

20 Counsel for the Commissioner suggested that "action" refers exclusively to "civil proceeding", as defined in the *Courts of Justice Act*, R.S.O. 1990, c. 43, s. 1(a), and not to disciplinary proceedings under the *Police Services Act*. He submitted that the Board should not have granted a stay, but should have proceeded to hear the complaints particularly on the facts of this case. Here the officer handed over to the C.A.S. a copy of the complainant's statement the day following a request from Sgt. Brunet that he return to him any copy he had in his possession.

21 I disagree. In my opinion, a prosecution under the *Police Services Act* is precisely the type of action intended to be prohibited by s. 72(7).

22 Section 1 of the *Child and Family Services Act* provides:

1. The purposes of this Act are,

(a) as a paramount objective, to promote the best interests, protection and wellbeing of children.

23 Section 72(7) should be interpreted broadly to best achieve this paramount objective of the Act.

24 Section 72(7) provides for protection to police, medical, and other professionals who are impressed with the duty to disclose abuse. The very wording of the subsection makes this clear: "This section applies although the information reported may be confidential or privileged, ...".

25 To find otherwise would place a police officer, or other persons referred to in s-s.(4) in an impossible position. Such persons would be subject to prosecution under the *Child and Family Services Act* and liable to a fine of up to \$1,000 if they fail to report abuse. If on the other hand they do report a suspected case of abuse they would be subject to professional disciplinary prosecution.

26 I am of the view that the duty imposed by s. 72 is paramount. Sub-section (3) begins "Despite the provisions of any other Act ..." To treat the duty of disclosure as subject to orders of a superior officer would be contrary to the intention of s-s. (7) and would defeat the paramount purpose of the *Child and Family Services Act*.

27 This conclusion, in my view, is consistent with the provisions of s. 1(1) of the *Interpretation Act*, R.S.O. 1990, c. 1.11, which provides:

1.(1) The provisions of this Act apply to every Act of the Legislature contained in these Revised Statutes or here-after passed, except in so far as any such provision,

(a) is inconsistent with the intent or object of the Act;

(b) would give to a word, expression or provision of the Act an interpretation inconsistent with the context; or

26 O.R. (3d) 582, 88 O.A.C. 115

(c) is in the Act declared not applicable thereto.

28 Const. Dunlop was asked on September 29, 1993, to turn in any copy of D.S.'s statement in his possession. He refused to comply with this request but rather gave the C.A.S. a copy on September 30. His refusal to comply did not avoid the protection to which he was entitled under s-s. (7). He was under a duty pursuant to s-s. (3) to report the abuse "and the information on which it is based" to the C.A.S.

29 For these reasons the appeal is dismissed with costs, hereby fixed at \$2,500.

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