Michael J. Neville

Barrister and Solicitor

309 Cooper St., Suite 201
Ottawa, Ontario K2P 0G5
Telephone (613) 237-7092
Facsimile (613) 237-1156
Toll Free Line 1-888-677-7092

* *Michael J Neville, B.A., L.L.B.*
Giuseppe Cipriano, B.A., L.L.B.

* *Certified By the Law Society As A Specialist in Criminal Litigation*

Nov. 7/05
Exhibit # 12

Via Fax (613) 938-7463
October 24th, 2005

The Cornwall Public Inquiry
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7

Attention: Mr. Peter Engelman

Dear Mr. Engelman:

Re: Father Charles MacDonald

I am writing this letter as a follow up to our telephone conversation of last week. Unfortunately, we were not able to finish our conversation because of your other commitments. I am writing now because of the apparent deadline of October 25th, 2005 for submissions to the Inquiry in relation to the issues of standing and funding.

In my opinion, it is still too early to determine the issue of standing, at least for Father Charles MacDonald. Given the wording of Part I, it is not entirely clear to me that Father MacDonald would have a role during Part I, let alone a need to seek standing and funding. The focus of Part I appears to be on institutional issues, not the role of individuals, although there can be inter-connections of course. In relation to Part II, there is some potential for Father MacDonald's needing standing, as it would appear to be possible for complainants against Father MacDonald to provide statements or something approximating the giving of evidence with allegations about him. Again, that is not entirely clear; nor is it clear whether he would be a participant in Part II either.

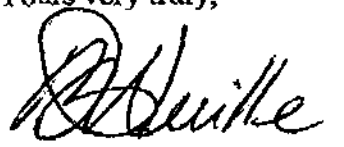
I have indicated, in our telephone conversation, that the "role" of Father Charles MacDonald in the events in Cornwall goes back to the very inception. As you know, the first Cornwall complainant was a complainant against Father Charles MacDonald, as well as against Mr. Kenneth Seguin, the deceased probation officer. That complainant elected not to proceed with a police investigation of Mr. Seguin when he

first came forward. As you also know, that complainant obtained a "without prejudice" settlement from the Diocese in relation to his allegations against Father MacDonald and, at that point, the criminal investigation by the Cornwall Police Service was terminated, on the advice of the Senior Crown Attorney. Cst. Perry Dunlop of the Cornwall Police Service, as he then was, was unhappy with this outcome and provided a copy of the complainant's statement to the Children's Aid Society of Cornwall. Shortly thereafter, someone anonymously leaked a copy of the complainant's statement to the media, in particular to Mr. Charlie Greenwell of CJOH Television here in Ottawa. That statement was displayed on television, including the name of the complainant. That led to further litigation, including the re-opening of the original litigation that had resulted in the above-mentioned settlement. The publicity and controversy over the settlement led to a further brief review of the Cornwall investigation by the Ottawa Police Service and also to a detailed, one-year investigation by the Ontario Provincial Police. That investigation resulted in a press release stating that no charges were warranted.

As indicated to you, eventually two other complainants came forward against Father Charles MacDonald and, after some investigation, the Ontario Provincial Police elected to lay the first set of charges, involving three complainants, against Father Charles MacDonald in March, 1996. As a result of a so-called "investigation" by Cst. Dunlop and his lobbying of various persons, Project Truth was created in 1997. As you know, Project Truth resulted in the laying of many criminal charges against various individuals, including charges related to five complainants against Father Charles MacDonald. On the eve of what should have been Father MacDonald's trial in the Superior Court of Justice, in the spring of 2000, an additional complaint was brought against him, resulting in a delay of his trial for another two years. At the same time, the voluminous materials assembled by Cst. Dunlop were finally turned over to the authorities and partial disclosure was made of those materials. Eventually our office received some ten boxes of documentary material, purportedly assembled by Cst. Dunlop, from the Crown, Mr. McConnery.

The procedural history of the case against Father Charles MacDonald is lengthy and complex. In our telephone conversation, you requested a copy of the trial decision by Mr. Justice Chilcott, in which he stayed all charges against Father Charles MacDonald. I am enclosing a copy of that decision for you. That decision sets out much of the convoluted procedural history. In theory, Father Charles MacDonald could be a "player" at the Cornwall Public Inquiry. As stated above, it is not entirely clear to me how that would be. I do wish to reserve the right to seek standing and funding and I would suggest that perhaps it is still somewhat premature to insist on a deadline of October 25th , 2005 and to conduct hearings on November 8th and 9th, 2005 on the issues of standing and funding. I would suggest that considerable further background work may be needed in order to fully develop the issues and the roles of various persons at the Inquiry. If it is possible to extend the deadline of October 25th , 2005 and the hearing dates of November 8th and 9th, 2005, I would appreciate hearing from you at your convenience.

Yours very truly,



MICHAEL J. NEVILLE

MJN:ao:enc.

Indictment # CR-97-001975

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

CHARLES F. MacDONALD

****

RULING RE: SECTION 11(b) MOTION

DELIVERED ORALLY BY THE HONOURABLE MR. JUSTICE D. CHILCOTT,
on Monday, May 13, 2002, at CORNWALL, Ontario.

****

CHARGES: S. 156 CC (12 counts)
S. 148 C.C. (2 counts)
S. 157 C.C. (4 counts)
S. 246.1 C.C. (1 count)

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APPEARANCES:

Lorne McConnery, Esq.	Counsel for the Crown
Kevin Phillips, Esq.	Counsel for the Crown
Michael Neville, Esq.	Counsel for the accused

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**NON-PUBLICATION ORDER, S. 486(3) C.C.,
WITH THE EXCEPTION OF JOHN MacDONALD**

SUPERIOR COURT OF JUSTICE

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TRANSCRIPT ORDERED: May 13, 2002

TRANSCRIPT COMPLETED: May 13, 2002

ORDERING PARTY NOTIFIED: May 24, 2002

Monday, May 13th, 2002

RULING

CHILCOTT, J. (Orally):

[1] At the outset, just let me say that, if there is any disturbance while I am giving my reason, the person or persons causing that will be removed from the courtroom.

[2] This matter was put over until this morning for decision. I, of course, reserve the right to edit, amend, delete from the reasons without changing the substance.

[3] The Applicant brings his application for an order staying the proceedings herein on the grounds that the Applicant's right to be tried within a reasonable time has been infringed or denied, contrary to Section 11(b) of the *Charter of Rights and Freedoms*.

[4] The accused was arraigned before this Court on April 29th, 2002 on an Indictment containing 19 counts. This was a consolidation of counts in Informations sworn March 6th, 1996, seven counts; January 26th, 1998, eight counts; and April 10th, 2000, four counts. The accused entered a plea of not guilty to all counts in the Indictment. On May 1st, 2002 the

Crown withdrew counts two, three, 16, 17, 18 and 19. The four counts in the Information sworn on April 10th, 2000 were included in the counts that were withdrawn.

[5] The hearing on the application took place on April 29th, 30th, May 1st, 2nd, 3rd, 6th and 7th, comprising five days of evidence and one and a half days of submissions.

[6] I have set out at some length in these reasons the facts surrounding this proceeding because, in my view, they are unusual to say the least, if not bizarre in some aspects. I wish to make it clear, as I did during the hearing, that I am not here presiding over a public inquiry or a judicial inquiry in order to attribute or attach blame to any police agency, or to the Office of the Crown Attorney, or the media, or to determine if there was or is a "clan of pedophiles" operating in and about the Cornwall area, nor am I sitting to determine if there was a cover-up or conspiracy to cover-up the existence of an alleged "clan of pedophiles". My role is as the presiding judge in this trial, and the immediate task is to make an adjudication and give a decision on

the application under Section 11(b) of the *Canadian Charter of Rights and Freedoms*.

[7] In my view, some of the most salient and germane facts surrounding the charges against former Father MacDonald are as follows. December 9th, 1992, David Silmser complains to Cornwall Police of being sexually abused as a child by the accused. Silmser subsequently gives an eight-page statement to the police outlining sexual assault allegations against the accused MacDonald as well as Ken Séguin, a local probation officer, but Silmser did not wish or want to pursue the Séguin allegations. One Wayne Riley was also located at that time, who alleged he had been sexually assaulted by Father MacDonald, but that he did not wish to pursue the charge, later he changed his mind in the fall of 1995 and outlined the allegations to the police. During this period, 1992-1993, Silmser was reaching an agreement with Father MacDonald and the Catholic Diocese that, in return for $32,000, Silmser would instruct the police that he no longer wanted his complaint to result in criminal charges against Father MacDonald.

[8] The Crown Attorney Murray MacDonald's advice to the police, for numerous reasons, was not to proceed with the charges. Constable Perry was with the Cornwall Police Services when he ascertained that no charges were to be laid. He made a copy of Silmser's statement and gave it to the Children's Aid Society, Mr. Richard Abell. Mr. Dunlop was under internal investigation for his conduct. In September 1994 charges under the *Police Services Act* against Constable Dunlop were heard by a Board of Inquiry. The charges were dismissed. That decision was upheld by the Divisional Court on appeal.

[9] In December 1993, information about Mr. Silmser's complaint and settlement was reported in the media, and a copy of Silmser's statement was displayed on a local TV station.

[10] In February 1994, the Ontario Provincial Police (OPP) were asked to conduct an entirely new investigation of the Silmser allegation and how it had been handled by the police, the Crown's office and others. The Ottawa Police had done an investigation of the same matter in early January of 1994 and reported on January

24th, 1994.

[11] In the fall of 1995, John MacDonald came to the police with allegations of a sexual assault committed by the accused on him when he was a teenager.

[12] Also, during the first few months of 1995, the controversy continued in the media.

[13] On March 6th, 1996, an Information was sworn charging Charles MacDonald, the accused, with offences against Silmser, MacDonald and Riley. I will call those the first charges. It is clear that, during the period of pre-charge - that is December 1993 to March 6th, 1996 - that the allegations against Father MacDonald must have been well known in the community.

[14] On March 25th, 1996, Charles MacDonald made his first appearance in Cornwall court.

[15] On August 19th, 1996, after disclosure was completed and two pre-trials had been held, a date for the preliminary inquiry was set for February 24th, 1997 in Ottawa. The setting of the date had been somewhat complicated by the discoveries in the civil action of the three complainants. During this same period, the

second Ontario Provincial Police investigation was taking place.

[16] In the evening of February 24th, 1997, one Donald Labelle appeared on the news broadcast of an Ottawa TV station telling the interviewer he was sexually assaulted by the accused. Defence asked for an adjournment of the preliminary inquiry in order to view and consider the tape of this interview. The adjournment was reluctantly granted, and the matter was put over to March 25th, 1997 to be spoken to, and on that date it was further adjourned to May 9th, 1997 to set a date at that time for the continuation of the preliminary inquiry. The formal committal on these charges was on October 24th, 1997.

[17] On March 20th, 1997 and May 8th, 1997, the Crown sent further disclosure to the defence. This disclosure included some of the material uncovered by Mr. Dunlop and his group, and included an affidavit of Robert Renshaw.

[18] Commencing in March 1997, Inspector Tim Smith of the Ontario Provincial Police was conducting a further investigation of the Applicant, which resulted in new charges being

laid against the accused MacDonald in relation to five complainants, namely Donald Labelle, Robert Renshaw, Kevin Upper, Percy St. Louis and Michael Flipsen. This investigation was eventually named "Project Truth". The Crown was aware of this new investigation while it was going on, but the defence was unaware of it until September 25th, 1997.

[19] During this period, March 26th, 1996 to October 24th, 1997, a period of some 19 months which, although somewhat longer than normal, I do not think in all the circumstances the length of time was the fault of anyone or fatal to the prosecution.

[20] On the second set of complaints, the charges were not laid until January 26th, 1998. The preliminary inquiry was held March 1st, 9th, 10th, 11th and 24th, 1999, and the accused Charles MacDonald was committed to stand trial on May 3rd, 1999, and the matter was put over to the Assignment Court of May 12th, 1999, on which date a pre-trial hearing date of September 1999 was set. There is nothing in this period that is unnecessarily delaying the proceedings, in my view.

[21] On September 15th, 1999, both Indictments were brought before the Court and were withdrawn and replaced by a new Indictment, which included both the first and second sets of charges. A trial date was set for May 1st, 2000. Even in the event that the trial had proceeded on that date, that is May 1st, 2000, the delay, in my calculation, of the elapsed time or period of time between the laying of the first charges would be the period March 6th, 1996 to May 1st, 2000, a period of some four years and almost two months. On the second set of charges, the elapsed time would be the period January 1998 to May 1st, 2000, two years and three months.

[22] In respect to the second charges, although in excess of the suggested guidelines, I do not feel that they were excessively in violation. In respect of the first set of charges, the delay was well in excess of the guidelines. I must conclude that the Crown was aware at the time that the trial date was set and be aware of a looming risk that a Section 11(b) application would be made.

[23] On January 17th, 2000, Constable Dunlop

informed the Project Truth officers about Stephen Mesman, although he had first interviewed Mesman in February of 1998. The OPP took a statement from Mesman on January the 26th, 2000, and the defence were first advised of the new charges on April 6th, 2000.

[24] In court on April 18th, 2000, the Crown advised the defence that Dunlop had turned over nine boxes of material, and they advised that Dunlop was under investigation for possible perjury and that he, Dunlop, had provided a 110-page will-state or say statement. As a result of this, the trial date of May 1st, 2000 was vacated, and the matter was put over to be spoken to on August 23rd, 2000.

[25] On August 23rd, 2000, the Crown provided to defence the will-state material and the material from the nine banker's boxes that Dunlop had produced. I must ask myself why, if Ms. Hallett had this material since April 18th, was it just turned over on this date, some four months later?

[26] On the Mesman charges, a preliminary inquiry was held on August 28th, 29th and 30th, 2000, and Charles MacDonald, the accused, was

committed to stand trial, with a date for trial to be set on August 19th, 2000. On that date, although the Crown was ready to proceed on the earliest possible date, which was April 2nd, 2001, the defence could not, and a trial date was set for May the 28th, 2001.

[27] On April 25th, 2001, the defence brought an application to cancel the May 28th, 2001 trial date. The grounds for the application was that defence counsel was to have commenced a first degree murder trial on December 14th, 2000, but apparently the assigned trial judge was changed at the last moment, and the newly assigned trial judge could not start that trial until January 16th, 2001. There were some pre-trial issues, including a *voir dire* into the admissibility of expert evidence. The trial was slated to last some six to eight weeks. Just before the *voir dire* on the expert evidence was to start, the Crown realized that their expert's opinion was based on flawed data, and the next two weeks were spent correcting that error. A ruling on admissibility was not made by the presiding judge until April 6th, 2001, a date on which

the trial would have been over if it had not run into these problems. The Crown in the MacDonald case refused to consent to the adjournment unless the accused waived his right under Section 11(b) of the *Charter*. In my view, that was an unreasonable request of the Crown. The Crown indicated that they were ready to proceed on the trial date as set, however, a new trial date was set for March 18th, 2002.

[28] I think it must be clear that the trial could not have proceeded on May 28th, 2001 as the Crown did not deliver the nine boxes of Dunlop material comprising of some 10,462 pages of documents until August 15th, 2001, and it was discovered after delivery that the lengthy interview notes with David Silmser extracted by Ms. Hallett had not been turned over on August 23rd, 2000. The Crown points out that these pages were not part of the Dunlop investigation but related to an interview by Officer Lefebvre with David Silmser on January 28th, 1993 and should have been part of the disclosure in 1996, however they were not.

[29] The Crown was willing to proceed on an

earlier date, and attempted to arrange an earlier trial date. However, there was no cooperation from the defence, which was either unable or unwilling to proceed earlier. The trial was adjourned from March 18th, 2002 to April 29th, 2002 because of the non-availability of a judge.

[30] As of April 29th, 2002, the Applicant will have been before the courts for 73 months and some weeks on the first series of charges, and on a second set of charges, a total of four years and three months. Some of the unusual aspects of the evidence, which the transcripts will disclose, are the charge of obstruction against Malcolm MacDonald; the extraordinary amount and extent of media coverage; the untimely death of Mr. Séguin, the probation officer; the continuing and extensive investigation by Mr. Dunlop; the succession of Crown Attorneys on this prosecution; the numerous civil actions commenced by some of the complainants; the civil action for millions commenced by Dunlop against the Police Chief of Cornwall, the Cornwall Police Services Board, the Roman Catholic Diocese of Alexandria-

Cornwall, and numerous others; the allegations of death threats against Mr. Dunlop and his family; the delivery to Chief Fantino by Mr. Dunlop of a brief alleging "a clan of pedophiles"; the Samuels trial being delayed; the Leduc proceeding being stayed; the continued delays of Mr. Dunlop in handing over the notes and documents from his investigation; and the fact that there were three police investigations carried out; the unusual security with respect to people entering this courtroom; the unusual interest in the proceedings by the community and, as I have noticed, this courtroom is usually full. I am sure that there are other aspects which I have not noted here.

[31] The Crown argues that there is nothing untoward in the time between the laying of the first set of charges and being ready for trial. Some delays were the fault of the accused, and some the fault of the Crown, but nothing outrageous. In respect of the second set of charges laid January 26th, 1998 until they got to Assignment Court May 12th, 1999, there was no unnecessary delay.

[32] On September 15th, 1999 a new Indictment was issued including all charges. The Crown maintains that it was a sound decision to hold back the first set of charges to allow the second set of charges to work their way through the system so all charges could be tried together. The rationale being that it was more convenient for the accused, the Court and witnesses because of the similar fact component of the two sets of charges. If they were proceeded with separately, all the complainants would have to be called twice, and the accused would have to face each accuser twice, thus, it was less prejudicial to the accused to try them all at once.

[33] The Crown further argues that they made disclosure of Constable Dunlop's material as soon as practicable after its receipt.

[34] Further, the Crown submits that the decision to use Mr. Mesman as a complainant was not the primary cause of the adjournment of the May 1st, 2000 trial date, but the disclosure issue put before the Court on April 18th, 2000 was the main reason for the adjournment.

[35] The Crown states that the delay in the

Regina v. Samuels case in Perth has not been established as having been caused by the Crown. Crown submits that the actions of Ms. Shelley Hallett in *Regina v. Leduc* have no bearing on the case at bar because no delay was caused by the replacement of Ms. Hallett by Mr. McConnery and Mr. Phillips. Crown argues as well that the defence request for an adjournment of the May 28th, 2001 trial date caused a delay for which the accused is responsible.

[36] In my view, the Crown should have proceeded with the first set of charges and set a trial date as soon as possible after the October 24th, 1997 committal for trial. It was to that point, as pointed out, approximately a 19-month delay, well outside the guidelines, and I am cognizant that they are only guidelines and not limitation periods. With respect to the second set of charges, it might seem, at first blush, reasonable and desirable to try all the charges together. However, the reasonableness aspect should have been superseded by the fear of an application for the relief as provided in Section 11(b) of the *Charter*.

[37] In my view, the Crown could have made a more thorough and timely disclosure of the Dunlop material. However, I do not consider that a major factor in the delay. Again, with respect to the use of Mesman, it was an important factor in the request for an adjournment by the defence and justified the request.

[38] Again, I cannot fathom that a Section 11(b) concern could not have been a dominant consideration or factor in every decision that the Crown was making at that point, even if they had not considered it earlier, as pointed out above.

[39] The matter in Perth, in my opinion, is not a delay that should be attributed to either the defence or the Crown. It is one of those unforeseen problems that arise during a trial. However, let me make it clear that the request for an adjournment by the defence that flowed from that was a responsible request and any minor delay in this trial was, in part, as a consequence of *Regina v. Samuels* being delayed.

[40] Also I do not believe that the actions of Ms. Hallett in the *Leduc* trial caused any delay

in the matter before me.

[41] There is no dispute as to the case-law that is applicable to the present application. Both Crown and defence factums note many of the same cases. It is clear that the seminal cases are *Morin* (1992), 71 C.C.C. (3d) 1 (S.C.C.), and *Regina v. Askov* (1990), 59 C.C.C. (3d) 449 (S.C.C.).

[42] *Regina v. Morin* sets out the factors that must be taken into consideration in assessing whether the total delay is unreasonable. They are:

A. the length of delay;

B. the waiver of any time periods;

C. the reasons for the delay:

(i) inherent time requirements;
(ii) actions of the accused;
(iii) actions of the Crown;
(iv) limits on institutional resources;
(v) other reasons for delay.

D. prejudice to the accused.

[43] The relevant time period for analysis is from the date of the charge to the end of the trial. The accused bears the burden of showing that the total length of time is exceptional. Crown concedes that, in the present case, there

is an exceptional delay. The Crown does not allege any significant waiver in this case on the part of the accused, and the Court finds none.

[44] Therefore, let me consider D, prejudice to the accused before I consider C, the reasons for delay.

[45] Here the delay is 73 months, and the guidelines set out 18 months, the inferences of prejudice is virtually irrebuttable. The Applicant has set out in his affidavit that, although he was only charged with crimes on March 6th, 1996, that he has been living with the criminal allegations since December 1992. He has made some 50 court appearances, and the allegations have received massive publicity, both locally, nationally and internationally. The purpose of Section 11(b), in relation to an accused's security interests, is to protect an accused from having criminal charges "hanging over him for a substantial period of time".

[46] Sopinka J. in *Regina v. Smith* (1989), 52 C.C.C. (3d) 97 (S.C.C.), at page 111 states, in respect of prejudice, the following:

> Having found that the delay is substantially longer than can be

justified on any acceptable basis, it would be difficult indeed to conclude that the appellant's s. 11(b) rights have not been violated because the appellant has suffered no prejudice. In this particular context, the inference of prejudice is so strong that it would be difficult to disagree with the view of Lamer J. in Mills and Rahey that it is virtually irrebuttable. It is a more difficult question in contexts in which greater resort is made to this factor because the case is otherwise closer to the line. In such circumstances, the accused may wish to bolster the presumption that there is prejudice by leading evidence that there has been unusual prejudice by reason of special circumstances. On the other hand, the Crown may wish to assert that a delay which is not excessively beyond the norm should be excused because there has been minimal prejudice. Should the accused or the Crown in such circumstances be precluded from arguing or leading evidence to show what the actual prejudice was? This is a question that will have to be resolved, but that is not necessary to a decision in this case. To the extent that a finding of prejudice is necessary, the motions judge has found on the evidence that there is actual prejudice. Although the motions judge took into account some factors that are irrelevant (e.g., the stress and embarrassment to members of the appellant's family), there was sufficient relevant evidence to support his finding. I prefer that finding to that of the Court of Appeal. In any event, the statement of Huband J.A. quoted above acknowledges that there is prejudice in that "a criminal charge will be hanging over him for a substantial period of time". This is the very

> essence of prejudice to the security interests of a person charged with an offence.

[47] There is no doubt in my mind that the accused here has suffered severe prejudice.

[48] Considering again the reasons for delay, the inherent time requirements, it is clear that the Crown could have proceeded to trial with the first charges within a reasonable period after the October 24th, 1997. In my view, the Crown should have been alert to the possibility of a Section 11(b) application being made and set a date for trial. Their failure to do so clearly caused delay.

[49] (ii) actions of the accused. In the opinion of this Court, the accused did not waive any of his rights, nor was he one who did not wish an early trial or thought that delaying the trial would benefit him.

[50] (iii) actions of the Crown. The failure of the Crown to notify the defence that they planned to lay five new charges before January 26th, 1998, and the failure of the Crown to make disclosure in respect of Mesman until just before the Applicant's trial on May 1st, 2000 contributed to the delay. Also, in my opinion,

the Crown contributed to the delay when they chose to use Mesman as a complainant and appreciating the impact it would have on the pending May 1st, 2000 trial date.

[51] (iv) limits on institutional resources. In the Court's opinion, there was no real limit on institutional resources in relation to this trial.

[52] (v) other reasons for delay. In the Court's opinion, the greatest contributor to the delay in this matter was Mr. Dunlop, formerly a police officer on the Cornwall Force. Mr. Dunlop has been described with many colourful adjectives, few if any I would disagree with, but I do not propose to add to or embellish them further. Mr. Dunlop had significant information relating to this prosecution. He had conducted his own investigation, and continued to investigate while the proceedings were ongoing. He continued to undertake to provide, and promised to provide, the material he had and to have no contact with the media. There were oral and written instructions that he was ordered to comply with. He refused to provide the

statements and documentation until he had seriously imperiled this prosecution and it was too late to be salvaged. It is easy to say in hindsight why didn't they come down harder on Dunlop, but remember, at the time that he had been through a hearing under the *Police Act* and had been successful, he was suing the Police Chief of Cornwall and the others that I mentioned earlier, including the Diocese, for millions of damages in a civil action. He kept promising to produce and, as his inspector at the time said, they were afraid that, if they were too harsh on him, he would provide nothing and refuse to cooperate at all. That I can appreciate in the circumstances at the time.

[53] Now it is clear that Dunlop was trusted at the time, and that was a mistake. Mr. Dunlop was the cause of a large part of the delay. I do not attribute that delay to the Crown. In my opinion, it would fall under subsection (v) in *Regina v. Morin*, i.e. other reasons for delay. I do not attribute the delay by reason of Dunlop's actions or lack thereof to any party because of his purposeful deceit and deception. However, if I had to

charge that delay to some party, I would, as a result of considering all the circumstances, have to lay it at the feet of the Crown because the Crown and the police were aware of Dunlop's procrastination and deception and his reluctance to provide the material.

[54] In assessing the reasonableness of the delay under Section 11(b), I must balance the interest of society, the citizens of this community and elsewhere, in having the matter brought to trial as against the interest of the accused person's right to be brought to trial in a reasonable time. McLachlin J., as she then was, in *Morin*, *supra*, page 29 and 30, states as follows:

> It is easy, in considering the factors which can bear on that determination, to lose sight of the true issue at stake -- the determination of where the line should be drawn between conflicting interests. On the one hand stands the interest of society in bringing those accused of crimes to trial, of calling them to account before the law for their conduct. It is an understatement to say that this is a fundamental and important interest. Even the earliest and most primitive of societies insisted that the law bring to justice those accused of crimes. When those charged with criminal conduct are not called to account before the law, the administration of justice suffers.

Victims conclude that justice has not been done and the public feels apprehension that the law may not be adequately discharging the most fundamental of its tasks.

On the other side of the balance stands the right of a person charged with an offence to be tried within a reasonable time. When trials are delayed, justice may be denied. Witnesses forget, witnesses disappear. The quality of evidence may deteriorate. Accused persons may find their liberty and security limited much longer than necessary or justifiable. Such delays are of consequence not only to the accused, but may affect the public interest in the prompt and fair administration of justice.

The task of a judge in deciding whether proceedings against the accused should be stayed is to balance the societal interest in seeing that persons charged with offences are brought to trial against the accused's interest in prompt adjudication. In the final analysis the judge, before staying charges, must be satisfied that the interest of the accused and society in a prompt trial outweighs the interest of society in bringing the accused to trial.

The factors to be considered include the length of the delay, any waiver by the accused of the delay, the reasons for the delay and prejudice to the accused. But simply listing factors does not resolve the dilemma of a trial judge faced with an application for a stay on grounds of delay. What is important is how those factors interact and what weight is to be accorded to each. In this connection, we must remind ourselves that the best test will be

> relatively easy to apply; otherwise, stay applications themselves will contribute to the already heavy load on trial judges and compound the problem of delay.

[55] I am fully aware how this community is emotionally charged over this matter, and properly so, in my view. The Crown stated that the police have acted reasonably and responsibly during this investigation and, in my opinion, that is totally correct.

[56] I am always reluctant to dispose of criminal charges without a trial, but given the real prejudice to the accused and to the 73-month delay, I must conclude that his trial has been unreasonably delayed. In the present case, I am satisfied that the interest of the accused and society in a prompt trial outweighs the interest of society in bringing the accused to trial. In my view, the Applicant's rights under Section 11(b) of the *Charter* have been infringed. The relief sought in the application is granted, and the proper remedy is a stay of proceedings. To conclude otherwise would render meaningless a right enshrined in the *Charter* as the supreme law of the land.

[57] I wish to thank counsel for their assistance in this difficult and perplexing matter.

* * * * * * * * * *

Certification

THIS IS TO CERTIFY that the foregoing is a true and accurate computer-aided transcription of my stenotype notes, as approved by the Honourable Mr. Justice Chilcott on May 24, 2002, to the best of my skill and ability.

.....

Lynn Carrière
Certified Court Reporter

Michael J. Neville

Barrister and Solicitor

309 Cooper St., Suite 201
Ottawa, Ontario K2P 0G5
Telephone (613) 237-7092
Facsimile (613) 237-1156
Toll Free Line 1-888-677-7092

* *Michael J Neville, B.A., L.L.B.*
Giuseppe Cipriano, B.A., L.L.B.

* *Certified By the Law Society As A Specialist in Criminal Litigation*

Via Fax (613) 938-7463
October 31st, 2005

The Cornwall Public Inquiry
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7

Attention: **Mr. Peter Engelman and**
Mr. Pierre Dumais

Dear Sirs:

Re: Father Charles MacDonald

Further to our correspondence to Mr. Engelman of October 24th, 2005, with the enclosed trial reasons of Chilcott, J., I wish to advise you that I will be attending on November 7th, 2005 to make submissions as to why Father Charles MacDonald should be granted standing and funding at The Cornwall Public Inquiry.

The events that led to the creation of The Cornwall Public Inquiry commenced in December, 1992, when the first complainant, David Silmser, came forward against Father Charles MacDonald and Mr. Kenneth Seguin. The events that took place in Cornwall eventually lasted well in excess of 10 years, culminating in the stay of proceedings of charges against Mr. Jacques Leduc. The "without prejudice" settlement negotiated by Mr. Silmser started the chain of events, particularly after Cst. Perry Dunlop, as he then was, took exception to the termination of criminal proceedings against Father MacDonald. Most of the salient details are set out in my letter of October 24th, 2005 and the Reasons of Chilcott, J.

Depending on the direction the Inquiry takes, and the issues eventually explored, I would respectfully suggest that Father Charles MacDonald may well become a significant participant in the Inquiry and, therefore, I am seeking standing and funding on his behalf.

Yours very truly,

MICHAEL J. NEVILLE

MJN:ao