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 42

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Mr. James Foord	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
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--- Upon commencing at 10:03 a.m./

L'audience débute à 10h03

THE REGISTRAR: This hearing of the Cornwall Public Inquiry is now in session. The Honourable Mr. Justice Normand Glaude presiding.

Please be seated. Veuillez vous asseoir.

THE COMMISSIONER: Good morning, all.

MR. DUMAIS: Good morning, Commissioner.

THE COMMISSIONER: Mr. Dumais.

MR. DUMAIS: We have a few housekeeping matters before we get started with our first witness. Just firstly, there are a number of new counsels present in the hearing room and I have asked them to identify themselves, Commissioner.

THE COMMISSIONER: Yes. Mr. Wardle?

MR. WARDLE: Mr. Commissioner, you know me of course but I just wanted to point out that I have with me today Steven Canto who has just joined our firm and you'll be seeing him from time to time hereafter. Thank you.

THE COMMISSIONER: Good morning, sir. Welcome aboard.

Also we have down -- there we go.

MR. FOORD: Good morning, Mr. Commissioner. James Foord appearing for Mr. Cipriano today for Father

MacDonald.

THE COMMISSIONER: Thank you.

MR. FOORD: I'll be here tomorrow as well.

THE COMMISSIONER: Great. Thank you.

MR. FOORD: Thank you.

MS. McINTOSH: Mr. Commissioner, I haven't been here for a while. So I'll just say hello again; Leslie McIntosh for the Attorney General.

THE COMMISSIONER: Yes.

MS. McINSTOSH: And I'm accompanied today by Stephen Scharbach whom you know.

THE COMMISSIONER: Yes, good morning.

MS. McINTOSH: And to his right Lisa Jacek who is with the Criminal Law Division and has been advising us with respect to this matter.

THE COMMISSIONER: Terrific. Thank you.

MS. McINTOSH: Thank you.

THE COMMISSIONER: Good morning, all.

MR. DUMAIS: I think that's it, Commissioner.

THE COMMISSIONER: All right. Thank you.

MR. DUMAIS: Just a general overview for what's scheduled for this week, I'll be calling the first witness from the Ministry of the Attorney General this morning, Mary Nethery. I expect that her evidence will

take most of the day. We may get done today.

THE COMMISSIONER: M'hm.

MR. DUMAIS: If not, we'll continue over tomorrow morning and then there is the second witness from the Ministry as well, Sonia Faryna. Mr. Engelmann will be leading that evidence.

On Wednesday, the Commissioner has indicated that he'll be introducing members of the Research Panel.

THE COMMISSIONER: Yes.

MR. DUMAIS: There will be a new formal reception. Parties have been advised of that.

As well, late last week, Commissioner, I did serve all the parties with the new application for standing and funding from Mr. Ken McLennan who is a citizen from Cornwall and we have advised him that he can make submissions on Wednesday at 2:00 p.m.

THE COMMISSIONER: M'hm.

MR. DUMAIS: At one point in time, we are considering calling one witness from the Diocese on Thursday. That has been tabled for now and we will be calling Bishop Durocher on August the 10th.

THE COMMISSIONER: Yes.

MR. DUMAIS: As you know, Commissioner, we are trying to get the disclosure out this week. We have advised the parties that they should be present in the

hearing room on Friday morning where we will be releasing the drive to all the parties.

THE COMMISSIONER: M'hm.

MR. DUMAIS: There is going to be as well an informal training session. I have advised some of the parties that perhaps we will be able to get the disclosure ready for Thursday afternoon and we would try to have the training session on Thursday afternoon. That would save everyone the burden of staying overnight on Thursday waiting for it on Friday morning and we'll advise the parties a little later on this week as to whether or not that's going to be possible.

THE COMMISSIONER: All right. Thank you.

MR. DUMAIS: And on that note, Commissioner, I'd like to call from the Ministry of the Attorney General Ms. Mary Nethery.

THE COMMISSIONER: Thank you.

Good morning.

MARY CAMERON NETHERY, Sworn/Assermentée:

EXAMINATION ON QUALIFICATIONS BY/INTERROGATOIRE SUR QUALIFICATIONS PAR MR. DUMAIS:

MR. DUMAIS: Good morning, Ms. Mary Nethery. Welcome to the Cornwall Public Inquiry.

MS. NETHERY: Thank you very much. It's a pleasure to be here.

MR. DUMAIS: Ms. Nethery, you should have five volumes before you and they are identified as Books of Documents, Ministry of the Attorney General, with your name following. If I can just turn your attention to Volume 1, the first tab that you should have is an index and these are a list of all the documents forming part of your Book of Documents.

Is that correct?

MS. NETHERY: Yes, that's correct.

MR. DUMAIS: All right. And at Tab 1, we find the outline of evidence which essentially summarizes the evidence that you'll be giving today.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: And at Tab 2, we have a biography, and that is your biography and it is up to date?

MS. NETHERY: Yes, that's correct.

MR. DUMAIS: And following your biography there is a curriculum vitae as well and that's current and that was provided by yourself.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: All right. And all the other tabs in the five volumes are the documents from the Ministry; correct?

MS. NETHERY: Yes, that's right and they've been provided to the Commission for the purpose of my evidence.

MR. DUMAIS: Thank you.

If we can then file Volumes 1 through 5 as Exhibit 46?

THE COMMISSIONER: Yes, Volumes 1, 2, 3, 4 and 5. Okay.

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 1 - Tabs 1 to 19

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 1 - Tabs 1 to 19

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 2 - Tab 20

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 3 - Tabs 21 to 54

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 4 - Tabs 55 to 81

--- EXHIBIT NO./PIÈCE No. P-46:

BOOK OF DOCUMENTS - Ministry of Attorney General - Mary Nethery - Volume 5 - Tabs 82 to 95

MR. DUMAIS: Ms. Nethery, before we get started with your outline, if we could just turn to Tab 3 and have a look at your curriculum vitae, I understand that you are presently the Executive Lead and Director on the Justice Modernization Project with the Ministry of the Attorney General.

Is that correct?

MS. NETHERY: Yes, that's correct.

MR. DUMAIS: All right.

If you could just turn your attention to page 5 of your resume, I understand that you were called to the Bar in 1976.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: And you were in private practice in the city of Sarnia for a number of years?

MS. NETHERY: That's right, for two years.

MR. DUMAIS: And then you became a part-time

Assistant Crown Attorney in the city of Ottawa in 1979?

MS. NETHERY: Yes, and that was for two years as well.

MR. DUMAIS: And then I understand that you returned to private practice in 1983?

MS. NETHERY: Yes, that's right, for about a year.

MR. DUMAIS: But that principally between 1982 and 1991, you held the position of Assistant Crown Attorney in the city of Sarnia?

MS. NETHERY: I'm sorry. I just want to make a correction. The private practice of law was not in 1983 in Sarnia. It was in 1981 and then I went to the Crown Attorney’s office in 1982.

MR. DUMAIS: So noted.

MS. NETHERY: Thank you.

MR. DUMAIS: And what general areas did you practice in as an Assistant Crown in Sarnia? Did you have any specific duties or responsibilities?

MS. NETHERY: Well, I had general responsibilities when I started out for prosecutions in the criminal courts, in the Ontario Court and what is now the Superior Court of Justice. I prosecuted jury trials for sexual assaults, fraud, homicide, child abuse cases. I also acted as the coroner’s counsel.

In addition, I was, at least for some period of time, a coordinator for the child abuse cases in the office and for the domestic violence prosecutions in the Sarnia Crown's office. And I think as we'll get into later on in my evidence, each office in the province is to have a designated person to coordinate those types of prosecutions.

MR. DUMAIS: And I understand during that nine or 10-year period that at one point in time you obtained the designation of Senior Crown Counsel as well?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: Now, my understanding is that after that in 1991, you were seconded to the Ministry of the Attorney General with the Criminal Law Policy Branch.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: And what office did you hold at that time?

MS. NETHERY: I was counsel in the Criminal Law Policy Branch.

MR. DUMAIS: All right.

And at one point in time, you were seconded as counsel to the Crown Law Office. Is that something that's different?

MS. NETHERY: Yes. What happened in 1993 is

the Criminal Law Policy Branch was disbanded and folded into the Crown Law Office - Criminal. The Crown Law Office - Criminal has the primary responsibility for all appellate work for the Ministry. So when became a counsel in the Crown Law Office - Criminal, I had both policy-related duties as well as some appellate duties.

MR. DUMAIS: All right.

And did you return to the Crown Attorney's office in Sarnia from 1994 to 1999?

MS. NETHERY: Yes, that's correct, and my duties were similar to those that we have just discussed.

MR. DUMAIS: All right.

And you returned to the Ministry of the Attorney General on a secondment once again in January 1999?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: And you returned as the Director of Crown Policy Manual Review.

Is that correct?

MS. NETHERY: Yes. That was an acting position in 1999 and the idea was that we wanted to update the Crown Policy Manual.

MR. DUMAIS: And my understanding, Ms. Nethery, is that you were involved in issuing the original Crown Policy Manual back in 1994.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: All right.

And you were part of the group. You were -- were you chairing that group?

MS. NETHERY: I was the Chair of the Crown Policy Manual Review Committee and that's the committee under which the original 1994 Crown Policy Manual was issued.

MR. DUMAIS: So those are the responsibilities that you had between ’93 and July of 1994.

Is that right?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: All right.

Now, in June 2001, you became the Director of Criminal Law Policy?

MS. NETHERY: Yes. The branch was reinstituted at that time and I became the director of it.

MR. DUMAIS: And you held that position until March 2006 and then you became the Executive Lead and Director on the Justice Modernization Project. Perhaps you can just briefly explain what that is?

MS. NETHERY: Well, it's a project to develop mechanisms to streamline the criminal justice system and reduce delay, so one of the things that we want

to do is to institute something called the “Case Management Protocol” across the province.

We are working on methods to streamline the bail processes, increase the amount of diversion and diversion programming for minor offences, work with the police more closely on pre-charge consultation; improve our disclosure practices.

Those are just a few of the things that we're currently looking at in the project. It's very wide-ranging.

MR. DUMAIS: All right.

And then just briefly you've enclosed as well in your resume at page 6 a number of training and teaching engagements and conferences and presentations that you've been involved with from 1983 to 2006.

Is that correct?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: All right. Thank you.

EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR. DUMAIS:

MR. DUMAIS: If I can then just turn your attention to Tab 1, which is the outline, and if I can just get you firstly to describe to us how the Ministry organized, and my understanding is that you've prepared an org chart, the first of which is located at Tab 4.

MS. NETHERY: Yes. Okay. Well, you can see on the screen Tab 4 and the printing is very small, but it does outline the structure of the Ministry of the Attorney General. The Ministry is divided into a number of divisions, including the Criminal Law Division, and I think there's a second organization chart that we can deal with in perhaps a little more detail which is Tab 5, but Tab 4 does outline the general structure of the Ministry.

The Ministry of course is headed by the Attorney General for the province. His second-in-command is the Deputy Attorney General and then under the Deputy Attorney General are a number of Assistant Deputy Attorney Generals who head up the various divisions. So there are divisions that relate to Court Services, Criminal Law Division, Legal Services, Family Justice Services, Business and Corporate Planning, and you'll see that on the organizational chart that's Tab 4.

And as well underneath the Assistant Deputy Attorney Generals, there are a number of directors and then we can move down to sort of more operational individuals who report to directors. But that’s the general scheme of reporting within the Ministry and, perhaps, what we might -- what might be more useful would be to turn to Tab 5, which is the organizational chart for the Criminal Law Division. I hope it’s -- oh, it’s also got fairly small

print.

THE COMMISSIONER: Oh, but we have the technology. It will magnify the images.

MS. NETHERY: I think -- I mean, I hope everyone can see this now. I can with my -- so in Tab 5 we've really outlined the -- yes, we've outlined the organization in the Criminal Law Division, which is headed by an Assistant Deputy Attorney General. He leads the Criminal Law Division.

Through the Criminal Law Division, Crown attorneys and Assistant Crown attorneys provide legal representation for the Crown and criminal matters, which includes both trials and appellate work under the *Criminal Code* and other federal statutes, including the *Youth Criminal Justice Act*.

There are approximately 900 Crown counsel in Ontario who prosecute a wide range of offences, which include anything from fraud, domestic violence, child abuse, sex assaults, impaired driving, robberies; homicides and so on.

The Division is divided into six geographic regions and you'll see on the organization chart Toronto Central East, Central West, East Region and West Region, and we've included sort of a bigger scan of the East Region, and you'll notice that the place that we're in now,

Stormont-Dundas and Glengarry is the -- we are in the County seat for that, I guess, Cornwall.

So there are -- each region is headed up by a Director of Crown Operations, and each of the individual jurisdictions or we used to call them "County seats", have a Crown attorney in charge of them. There are 54 Crown attorney offices in the province ranging in size from one Crown attorney to 95 Crowns.

As you can see, in Stormont, Dundas, Glengarry, there would be a Crown attorney who would then report to the Director for the East Region who would then report to the Assistant Deputy Attorney General. That's the reporting structure that we have and that would be the same sort of situation for the other regions although we haven't outlined that in detail.

So we also have in addition to the offices that are the Crown offices, the trial offices are their head office branches, and these include areas of specialized responsibility. We have the Director of Divisional Planning and Administration. They look after all of our HR issues; our administration; our finances. The Director of Criminal Law Policy Branch, and we will talk about that, I think, in a moment, which is my usual job. The Director of Crown Operations -- or I'm sorry, those are the Directors of Crown Operations, the six

directors that we have spoken about.

The Director of the Crown Law Office, Criminal, who is responsible for an office of primarily appellate counsel and some trial counsel; and a Director of Law and Technology to assist us with, you know, the challenges of moving into a technological era.

That's the description of the Division.

MR. DUMAIS: And you have alluded to the Criminal Law Policy Branch, which I understand is part of the Criminal Law Division and that was set up in 2001; is that correct?

MS. NETHERY: Yes, that's correct. It was set up in May of 2001. It has a variety of functions, but one of the functions is to provide policy guidance to individual Crown prosecutors on the day-to-day exercise of Crown discretion. We also are responsible for the creation and updating of the Ontario Crown Policy Manual, which contains the directives and guidelines relating to the exercise of Crown discretion.

So that's, I think, the area that may be of most interest to this Inquiry. So we are responsible for ensuring that the Crowns are kept up to date on the latest legal developments, both case law and statute, as well as any changes in policy and possibly social environment that would impact on their prosecutions.

MR. DUMAIS: And you have enclosed as part of your Book of Documents at Tab 6 a copy of the Criminal Law Policy Branch Mandate, which sort of sets out the duties and responsibilities of that Branch?

MS. NETHERY: Yes, that's right. I have really just outlined the one area of responsibility, which has to do with Crown policy. There are other areas, which involve what we call criminal law policy, which has to do with developing advice on potential changes in the *Criminal Code*; participation in federal/provincial/territorial discussions about those sorts of issues and, as well, assistance on what we call provincial justice policy.

So there may be, for example, you know, another ministry that's developing a policy that may impinge or relate to our work. For example, the Ministry of Health is, I think, developing policies related to mentally-disordered individuals in the criminal justice system. So that's an area where there would be overlap. We call that provincial justice policy because it would relate to ministries such as the Ministry of Health, the Ministry of Community, Safety and Correctional Services and our ministry as well.

MR. DUMAIS: Now, before we get into the different policy areas of the ministry, I understand that you've outlined the process of a criminal charge. Just

give us a general overview and then what we will do is develop each and every one of these points and see what policies and practice memoranda apply to each step in the process.

If you could just then take us through the process, and I'm looking at page 2 of the Outline?

MS. NETHERY: Okay. And that's at Tab 7, Madam Clerk.

MR. DUMAIS: So you have provided us as well with a flow chart of the process and my understanding as well at Tab 55 -- no need to go to that tab yet -- is a summary to a certain extent of the processes as well; is that correct?

MS. NETHERY: Yes. Yes, it is. It's a PowerPoint presentation and I don't know that we need to go through that as well as going through the chart. There might be a bit of overlap.

MR. DUMAIS: So then if you can just take us through the first step, which is the laying of a criminal charge?

MS. NETHERY: Okay. I must apologize. It's a very simplistic chart for those of you who are already familiar with the criminal justice system, but it's really more of an aide-mémoire, I suppose.

The laying of the criminal charge, well, of

course, there's one area that comes before this usually, which is the police investigation. And as a result of the police investigation, there may be a criminal charge which occurs and the laying of the criminal charge rests solely in the discretion of the police, except where there is some individual cases where the consent of the Attorney General is required by statute. There aren't too many of those, but examples would include child abduction where there is no custody order, which is section 283 of the *Criminal Code*; public nudity, section 174 and something that's called sex tourism, section 7 of the *Code*.

But by and large, the laying of a criminal charge is solely in the discretion of the police.

Once potential criminal activity comes to the attention of the police, they commence an investigation, which may include interviewing potential witnesses, gathering evidence, executing search warrants and so on; executing wire taps too. The police then make the decision about whether an individual should be charged. While other Canadian jurisdictions have what's called pre-charge approval and screening by Crowns, Ontario does not have an official system of that. I think we'll talk a little more about the relationship between the Crown and the police later on but, strictly speaking, the police make the decision about whether a person should be charged.

Once the decision has been made to charge an individual, the police officer swears in information, which is the charging document, before a Justice of the Peace. There is also a provision in the *Criminal Code* for private citizens to lay charges and this provides direct access to the courts in the event that a complainant disagrees with the police decision about laying a charge although it's frankly not something that we recommend. Once that happens, the Crown does become involved does the screening and usually asks the police to become involved and investigate the matter. But it is there as, I guess, a safeguard to justice.

So that's the process of laying a charge. Of course, the police may seek advice of the Crown as to whether or not there are other reasonable grounds and whether there is the legal basis for a charge, but I think we'll deal with that later on.

MR. DUMAIS: Yes. And the next step in the process is the bail process.

MS. NETHERY: Yes, okay.

So once the charges are laid, then the next decision point is bail. And once a police officer has charged an individual the *Criminal Code* provides various means by which the person can be processed and an accused can either be released from custody by the police or

detained in custody on charges.

In most cases the police will decide whether to release an accused directly from the police station or whether they should be brought to court for a bail hearing. If they are held for a bail hearing, then a Justice of the Peace determines whether an accused can be released, and this judicial determination is made in the Ontario Court of Justice in all but the most serious cases; for example, homicides.

Although the ultimate decision about bail rests with a Justice of the Peace, the Crown may consent to an accused person's release or seek a detention order. If we oppose the release, then the Crown will seek a detention order unless the accused person consents to detention. If an accused person is released by a Justice, there are often a number of different conditions and types of releases that can be ordered. It can be with a surety, without a surety, with deposit and conditions and so on. Some of the conditions include orders including prohibition of contact with the alleged victims or Crown witnesses; geographical restrictions, curfews, no weapons charges.

So there can also be no contact orders even when the accused person is detained in custody to prevent them from trying to telephone a victim or witness from custodial institutions, which sometimes happens almost

immediately upon arrest. The police can still be at someone's house interviewing the victim, alleged victim, and there is a phone call from the jail. So that provision prevents that.

So that's the next step in the process, is a determination of bail; will the person be detained? If he isn't detained, what potential conditions might be imposed?

MR. DUMAIS: Now, then, the next step of where the Assistant Crown or the Crown would be involved would be in the screening process, and there is a specific heading that deals with the Crown's screening a little later on, but can you just give us a general overview of what the Crown's screening process is?

MS. NETHERY: All right.

Okay. In Ontario the Crown reviews the case in more detail, usually after the bail hearing. This is a process that's known as charge screening, and it is to occur usually early in the process, certainly before the trial and before a preliminary hearing. This involves a careful review of the material that is provided by the police, what is usually called the Crown brief, to determine if a proper charge has been laid and then there are two points in our charge screening test. One is whether or not there is what we call a reasonable prospect of conviction and whether or not it's in the public

interest to proceed.

This particular screening obligation, although we suggest it be done early in the process is a continuing obligation of the Crown throughout the case even through the trial process. We always have to have a reasonable prospect of conviction. If at some point we determine there is not a reasonable prospect of conviction, then the matter must be discontinued.

And the Crown Policy Manual provides guidance with respect to both the reasonable prospect of conviction and the public interest tests.

The other thing that frequently happens at the screening stage is that the Crown may determine that further disclosure material is required with respect to certain offences and then will be in touch with the police to attempt to obtain those disclosure materials because there is an obligation on the Crown to make sure that we can make full disclosure to the accused or to defence. And sometimes it’s quite clear that we don’t have everything and, in that case, you know, we do have certain processes set up to ensure that we get the materials or try to get the materials from the police. So that’s another aspect of screening.

We also determine whether or not the matter -- if it’s what we call a hybrid offence which is an

offence that can be proceeded with either by summary conviction or by way of indictment. We make a determination as to whether we'll proceed summarily. If we proceed summarily then a trial date will be set in the Ontario Court of Justice. If we proceeded by way of indictment or it is an indictable matter, then the accused has a choice of where he or she will be tried. It could be in the Ontario Court of Justice or the Superior Court of Justice. If it's in the Superior Court of Justice, there's also an option for a jury trial.

So if the accused has elected Ontario Court of Justice then the entire proceedings are heard there. If not there are, you know, the potential for other hearings; specifically he has a right to a preliminary hearing date which is a hearing to determine whether there is enough evidence to put the accused on trial and witnesses are, not always but often called at those hearings. A decision is made. That's done in the Ontario Court of Justice.

And then if the accused is committed to stand trial then the matter is heard in the Superior Court of Justice and as I say, that can either be with a jury or by a judge alone.

So I think -- oh yes, the other point is, as I said, we do have the option of proceeding either summarily or by way of indictment in many offences; sexual

offences and offences involving child abuse. There is a limitation period of six months after the alleged offence. So unless the defence consents to waive the time period, then the Crown can't proceed summarily if the offence occurred more than six months ago.

MR. DUMAIS: Typically, that decision of proceeding either by summary conviction or by indictment is made at the Crown screening process stage?

MS. NETHERY: Yes, it is because it's something that really affects the rest of the process in terms of preliminary hearing or not a preliminary hearing and so on and sentencing.

MR. DUMAIS: The next step is the disclosure and set date court which is typically referred to as a first appearance court. Is that correct?

MS. NETHERY: Yes, that's right. So after the -- you know, the Crown screening is supposed to be done prior to the first appearance, at least the initial Crown screening. As I've said, it's a continuing obligation. So after appearing in the bail court or the first appearance court, the accused person is remanded to a set date court in the Ontario Court of Justice. This is an opportunity to set a trial date or preliminary hearing date but it also provides an opportunity for the Crown to provide disclosure, initial disclosure of the Crown's case to the

accused.

It's also the time when the accused, you know, typically will retain legal counsel, if desired and where there can be, at least initially some discussion between the Crown and defence counsel about various resolution issues. And that's the next thing that happens. And that's number five on our little chart.

MR. DUMAIS: Perhaps you can just tell us a bit about that; the discussions and the pre-trial conferences. Is that something that's set at this stage?

MS. NETHERY: Well, usually, it's part of the intake process of the criminal charging process or the criminal court process. So once disclosure has been provided to the defence then there's often an attempt to resolve the matter; either resolve specific issues in the case or to actually resolve the whole case by way of a plea. So it's really recommended that there be discussions between the defence and the Crown to see whether some of these things can be resolved, to see whether some of the issues can be narrowed.

In addition, or sometimes in the alternative, there can be a pre-trial conference before a judge with the Crown and the defence counsel to determine, again, whether or not there's any opportunity for narrowing the issues or for, you know, a guilty plea to be entered,

for example. And there may be some discussion about potential sentences and what charges might be plead to.

MR. DUMAIS: All right.

So then the difference between the judicial pre-trial and the Crown pre-trial is the involvement of the judge. Is that correct?

MS. NETHERY: Yes, and I mean sometimes it's good to have that judicial overview. You know, counsel may not be able to agree between themselves but sometimes the judge can make some suggestions and preside over the conference in a way that the two parties can't do themselves.

MR. DUMAIS: Then if the matter does proceed, either a date for preliminary hearing is set or a trial date is set depending on the election.

MS. NETHERY: Yes, that's right. If there's a -- at either a trial or a preliminary hearing, witnesses are called by the Crown generally. If there's a preliminary hearing, I think we've already mentioned this; that the individual may be committed to trial or may be discharged if there isn't sufficient evidence to put him on trial.

At the trial, the accused either may be convicted, acquitted or the charges can be stayed. If the accused is convicted, the matter proceeds to a sentencing

hearing and at that point in time, the Crown may call evidence about victim impact and put forward positions on sentencing.

Now I didn't, of course, mention but I suppose it's just a fundamental part of our system, that an accused is presumed innocent until proven guilty. The accused has a number of rights under the *Charter of Rights and Freedoms* which support the presumption of innocence and these rights include the right to a fair trial which includes disclosure and the right to a trial without undue delay.

MR. DUMAIS: Now, you did mention that an accused may be convicted or acquitted. You also mentioned that the charges could be stayed. Could you explain to us what that is; the staying of a charge? And how does that occur?

MS. NETHERY: Well, there are two types of stays. One is a judicial stay which is more akin to an acquittal and can occur within the context of, for example, Charter breaches. The other type of stay is a stay that's entered by the Crown and with that sort of a stay the Crown has a year to determine whether or not it will reinstitute charges.

So an example of situations where the Crown might decide to stay a charge would be where a witness is

perhaps completely emotionally unavailable for the next while. It may be apparent that in a year's time the witness will be available or other evidence is not available at that point, but it may be expected that it will be within a year.

So it's really -- the Crown stays the charge; there's a year's period in which it can be determined whether it should be reinstituted.

MR. DUMAIS: So then, let's suppose then that there would be a reasonable prospect of conviction and it would not be in the best interests or in the public interest of proceeding with a charge. Is that where one of the options would be to enter a stay of a charge?

MS. NETHERY: Yes, it is.

MR. DUMAIS: All right.

Now, you did mention as well, that at the sentencing hearing, sometimes victim impact statements are filed and we'll be discussing that a little further on. As well, are pre-sentence reports sometimes ordered?

MS. NETHERY: Yes. And those are reports that are prepared by a probation officer outlining the background of the accused and are there for the assistance of the court in determining a proper sentence.

MR. DUMAIS: All right.

Now, I'm looking at your next heading which

is the role of the Crown and that's at page 5 of your outline, if we can firstly look at the statute provisions that are applicable to the role of the Crown?

MS. NETHERY: Excuse me, I'm just -- okay.

The role of Crown counsel in Ontario is rooted in the ancient office of the Attorney General in England. The office really predates the *Confederation Act* of 1867. It has evolved however, in a uniquely Canadian or Ontario way.

The Ontario -- or pardon me, the Attorney General is the chief public prosecutor in the province. Crown counsel are governed by a number of statutes, pieces of legislation including the *Public Service Act*, the *Crown Attorneys Act* and the *Ministry of the Attorney General Act* as well as, of course, the *Criminal Code* and the Rules of Professional Conduct of the Law Society of Upper Canada.

The authority of the Attorney General with respect to all matters relating to the administration of justice is found in section 5 of the *Ministry of the Attorney General Act*. Authority is delegated from the Attorney General to Crown attorneys under section 10 of the *Crown Attorneys Act* whereby they become agents of the Attorney General for the purposes of prosecutions under the *Criminal Code.*

The Attorney General very seldom goes to

court or becomes involved in specific ongoing prosecutions. However, he or she remains responsible to the legislature for every prosecutorial decision made in the province and generally for the administration of justice and is sometimes called upon in the legislature to explain some Crown decisions.

MR. DUMAIS: You have included in your Book of Documents, the *Ministry of the Attorney General Act* at Tab 8 and as well, the *Crown Attorneys Act* which is found at Tab 9. You've also enclosed Rule 4 of the Rules of Professional Conduct and if you can just take us through the sections that apply specifically to Crown attorneys and I believe ---

MS. NETHERY: All right.

So perhaps we should start then with Tab 8, which is the *Ministry of the Attorney General Act*, section 5. Can we scroll down to section 5, please?

All right. So section 5 really sets out -- of the *Ministry of the Attorney General Act* -- sets out the duties of the Attorney General. He's the law officer of the Executive Council. So he provides legal advice to cabinet and he is responsible for the administration of public affairs in accordance with the law and he is to superintend -- and part (c) is one of the sections that you see quoted most frequently -- that he is to superintend all

matters connected with the administration of law and justice in the province of Ontario.

And then part (d) is the aspect that relates to prosecutorial duties. He is to:

> "perform the duties and have the powers that belong to the Attorney General and Solicitor General of England by law or usage, so far as those duties and powers are applicable to Ontario, and also shall perform the duties and have the powers that, until the Constitution Act, 1867 came into effect, belonged to the offices of the Attorney General and Solicitor General in the provinces of Canada and Upper Canada..."

et cetera.

So that goes back to, as I say, the ancient office of the Attorney General in England. Part of that office was indeed responsibility for the prosecution of all criminal cases.

So that applies. Then if we look at Tab 9, which is the *Crown Attorneys Act*, section 10.

So section 10:

> "Every Crown Attorney and every provincial prosecutor is the agent of

the Attorney General for the purposes of the Criminal Code …"

As you know, under section 2 of the *Criminal Code*, the Attorney General for the province is tasked with criminal prosecutions under the *Criminal Code* and so there's been a delegation by the Attorney General to Crown attorneys pursuant to section 10 of the *Crown Attorneys Act*.

MR. DUMAIS: At Tab 10 then, the Rules of Professional Conduct that apply specifically to Crowns -- and I believe the duties of the Crown are set out at page 60-61, which would be the fourth page in that tab.

MS. NETHERY: So I think its part (3) and part (4) -- pardon me, part (3) -- of Rule 4 of the Rules of Professional Conduct outline the obligations of a lawyer who acts as a prosecutor and it indicates that we:

"...act for the public in the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect."

As well, the commentary outlines that the prosecutor's duty is not to seek to convict but to see that justice is well and truly done through a fair trial on the

merits. We have as prosecutors a great deal of discretion of power and so we have to act fairly and as passionately. The prosecutor cannot do anything that might prevent the accused from being represented by counsel or communicating with counsel and should make timely disclosure to defence counsel or directly to a non-represented accused of all relevant and known facts and witnesses whether intending to show the guilt or the innocence of the accused.

So those obligations I think are ones that must be taken very seriously and, indeed, are a part of our rules of professional conduct, and I think we will probably talk a bit more about the role of the Crown later on but that's one statement of the role.

MR. DUMAIS: All right.

And although there is no need to go through Tab 11, but I understand that someone from your office did prepare a more detailed historical evolution of the mandate of the Ministry of the Attorney General. Is that correct?

MS. NETHERY: Yes, and I think for anyone who wants to read more about the history and the ancient Office of the Attorney General, it would be an excellent reference document.

MR. DUMAIS: All right.

Now, if we could move on then, Ms. Nethery, to the next item, which is what accountability structure

exists within the Ministry?

MS. NETHERY: Okay.

Yes, there is a -- I think as we alluded to in the Organization Chart, there is a continuum of responsibility within the Ministry which has been established with each Crown counsel reporting to a Crown attorney or to a Director of Crown Operations or a director of things like law and technology or a director of criminal law policy. And we as directors, then in turn, report to the Assistant Deputy Attorney General, Criminal Law Division, who reports to the Deputy Attorney General and, of course, the Deputy is responsible to the Attorney General for the administration of the Ministry in all of its aspects.

And although it is often said, and it's an important point, that Crown attorneys and other agents of the Attorney General are independent in the sense of being independent of any partisan political influence, they are not themselves independent of the direction of the Attorney General. The Attorney General has the legal authority to give direction to Crown attorneys even in particular cases and to personally intervene in any prosecution. However, given the danger of allegations of political interference, it's very unusual for the Attorney General to have direct involvement in individual cases absent a legislative

requirement.

And I think we've talked about that in terms of there are some particular offences which require Attorney General consent to lay and there are also, for example, sentencing provisions such as the dangerous offender provisions or long term offender provisions, which do require Attorney General intervention.

But also, given the fact that we have, I think it's approximately 500,000 criminal charges that flow through the courts every year in Ontario, it would be impractical for the Attorney General to become involved in individual cases on a routine basis.

So the common practice is for the Attorney General to grant discretion, broad areas of discretion in criminal prosecutions to Crown counsel, and this granting of discretion reflects, I think, respect for the professional judgement of Crown counsel and is really consistent with the role of Crown counsel as a Minister of Justice, i.e., to see that justice is done in individual cases. And that was in part what was alluded to in Rule 4 of the Law Society Rules.

I do understand at one point that -- probably about 50 years ago -- that individual Crowns could phone up the Attorney General and discuss their cases with him, but that was before we had 900 Crown counsel in the

province and there might have been, I don't know, 54 or 55 at that time.

MR. DUMAIS: All right.

Now, you have as well at Tab 17 a Practice Memorandum which sets out the role of the Crown attorney and the relationship and discusses the independence of every Crown. Is that correct?

MS. NETHERY: Yes, and that I think outlines the -- in part -- the accountability structure that we've just talked about and also emphasizes the role of the Crown which was, as I say, mentioned in Rule 4 but also has been spoken about in many judicial decisions particularly in the Supreme Court of Canada. The most often quoted decision is the case of *Regina v. Boucher* in 1954. There is a quote in my will-state and basically that case stands for:

> "...the proposition that the purpose of a criminal prosecution is not to obtain a conviction but to put credible evidence forward. The Crown is to be forceful but fair. Her role excludes any notion of winning or losing."

We do perform a dual role both as advocates for the public and as Minister of Justice. And in that Minister of Justice role, we have duties not just to the public, to victims, to witnesses and to accused persons.

So the role of the Crown is often described as being more a part of the Court than as a regular advocate.

MR. DUMAIS: And we do find those principles paraphrased in the Crown Policy Manual both in the 1993 and the most recent one and as you've indicated, we find the paraphrase and the commentary which is part of the Rules of Professional Conduct as well.

MS. NETHERY: Yes. I think the Minister of Justice role is absolutely critical to the proper functioning of the criminal justice system.

So the -- I don't know whether you want me to speak to Crown discretion at this point in time?

MR. DUMAIS: Yes, you've mentioned that briefly; perhaps you could just elaborate a bit on that.

MS. NETHERY: Okay. We have spoken about the fact that the Attorney General has granted broad areas of discretion to individual Crowns and that does allow us to ensure that every prosecution is carried out in a way that is consistent with the public interest and that there is justice done in individual cases. So it is really required to provide that fairness to victims, to the public, to specific accused because we can't always foresee the specific circumstances of individual cases, local conditions.

I think things may be -- you know, prosecutions and the society may be somewhat different in the north from the way it is in Toronto, and those are some of the things that Crowns have to take into account when we're prosecuting.

So it is often said, and again we have a quote from the Supreme Court of Canada in *Regina v. Beare* about the importance of discretion and in *Beare* it refers to the discretion of the police. But discretion is really an essential feature of the criminal justice system. It allows us to respond to local conditions, unique circumstances and, as I say, ensure justice is done in individual cases.

So our discretion -- do you want me to proceed on with the role of the Crown Policy Manual and Crown Discretion and how those things relate?

MR. DUMAIS: Certainly.

MS. NETHERY: Okay.

I am sorry, if I'm getting ahead of myself, just please let me know.

The Crown Policy Manual serves a number of functions in the administration of criminal justice and really is a fundamental cornerstone of Crown practice. The Attorney General has set out and established policies and procedures for Crown counsel in order to meet the

accountability obligations to the public and also to direct and guide Crown counsel on the exercise of discretion, which is really, as I say, necessary to the effective prosecution service.

So there's always a natural tension between policy guidance on the one hand and discretion on the other. But if I can put it this way, on the one hand, policies are intended to provide some overall consistency and transparency in Crown practice while still providing for individualized responses in specific cases.

So the Policy Manual is actually divided into three specific areas and the policies themselves provide the overall philosophy, direction and priorities of the Ministry. They do not usually purport to provide specific or absolute direction in all cases and these policies are, as I say, consolidated in the Crown Policy Manual and are integral to the accountability process in the Criminal Law Division.

You know, an example of an overall priority would be the child abuse cases. Domestic violence, sex assault; gun violence are all very high priority cases but at the same time it doesn't mean that every single allegation of those cases, of those sorts of things will be prosecuted. There still has to be a reasonable prospect of conviction that has to be reviewed thoroughly and a public

interest in proceeding.

So that's I think the best way that I can describe the tension between the need for discretion and the need for policies to structure that discretion. You also know that mandatories in the Crown Policy Manual are few and far between and most of the Policy Manual is written as good general best practices, so that most of the policies are written as "shoulds" rather than "musts". This is consistent with some of the Supreme Court of Canada recommendations, but it's also consistent with the Martin Committee recommendations, which we will get into later and also with the criminal justice review recommendations.

So the Crown Policy Manual is not intended to be an automatic decision maker for Crowns because really policies, if they're too directive; can create timid Crowns who are afraid to make decisions and simply the manual is sort of like a checklist that tells them what to do.

So the Manual provides the overall guidance to Crowns about how they exercise their discretion. It's also an indication to the public about where the priorities of the Ministry and of Crown attorneys lie.

Let me see ---

MR. DUMAIS: If I can, you've provided us with a number of documents as well that illustrate the evolution of that Policy Manual and perhaps we can just

move on to your next item, which is Item 4. Perhaps you can just point them out as we go through the historical evolution of the Policy Manual.

And if I can take you firstly to what existed pre-manual, which is -- and actually if I take you to the period of time, which is pre-1988, and how were the policies drafted and disseminate between the different Crown attorneys and Assistant Crown attorneys in the province? We will start with that firstly.

MS. NETHERY: Okay.

Before 1988, the system for providing policy advice and really practical and legal advice was very *ad hoc*, and you may remember that we at least -- we were in the paper world.

So what would happen is there might be a memo that would come out from the Attorney General. There might be a memo that would come out from the Assistant Deputy, from the Deputy. There could be memos that came out about changes in the law from the Crown Law Office Criminal, and it was very difficult to tell are these things that we have to follow, are these recommendations? And because they were in the paper world too, it was often hard to keep track of all of these documents, and there was little -- there just wasn't sort of the comprehensive view of the policy world. So for example, at one point, there

was a policy that indicated that we should prosecution hockey violence with vigour and these cases were of serious and pressing concern but at the same time there was no policy that related to the prosecution of child abuse.

So that was the milieu or the context before 1988 and I think there are some examples of these pre-1988 policies found at Tab 90 of -- is it Exhibit 46?

MR. DUMAIS: Yes.

MS. NETHERY: Yes.

And they relate to -- you know, I think, some of the examples we pulled out are things like what are the minimum library requirements for Crowns.

So in any event, as I say, it was a very ad hoc process with a number of topics covered but not really a comprehensive vision of how the Ministry would deal with criminal prosecutions.

Then, in 1988, it was the first effort to put together a set of directives and guidelines and I think these are also in your materials. I'm just not sure where. But in any event, this was a first effort to put together a set of -- a compilation of directives and guidelines that were really already in effect. You'll notice, if you look at these, some of them are a paragraph or two paragraphs long. So the advice was extremely brief.

Then, in 1994, the Crown Policy Manual came

out and that was really the first effort to put together a very comprehensive manual that would provide the overall vision of the Minister and the Ministry and set out the priorities for prosecution. It covered current issues such as child abuse, domestic violence, the treatment of victims generally and, at the same time, it put the recommendations in the Martin Report into effect.

So it was really, I guess, a critical point in terms of the development of Crown policy in our Ministry. Now, it, of course as well, was pre-electronic and was paper in a paper world, initially at least in 1994. But it did attempt to bring together the areas that were key or very significant in Crown practice.

There was a preamble to the 1994 Crown Policy Manual which contemplated that policies should be flexible, that they would change or evolve over time and that the Crown Policy Manual itself should be a flexible or responsive document. It also provided a policy on the role of the Crown that we have already alluded to.

So then between 1994 and 2006, the manual was updated and supplemented by memos and new policies but, again, we were just in a transition period then between the paper world and the electronic world. So in order to promote the consistency and fairness and transparency in Crown policy, the Criminal Law Policy Branch is responsible

for updating and maintaining the Crown Policy Manual. So we do have counsel now who are assigned specifically to that task. We have support staff who are assigned.

The Crown Policy Manual is a public document. Every policy is available on the Attorney General website. They provide the guiding principles for Crowns and therefore, I think, enhance public accountability.

The 2006 Crown Policy Manual is divided into three portions; policies which are the brief statements of principles and they are issued by the Attorney General. They can be a couple of paragraphs long; for example, in the area of victims, it will set up principles such as Crowns owe victims a special duty of candour and respect. These polices were drafted in order to withstand the test of time as broad principles and broad brushstrokes.

The other parts of the manual include practice memoranda and confidential legal memoranda. The memoranda address detailed legal practical and policy issues. Some of them provide confidential advice because they are providing our legal advice to Crowns.

So the idea is that by providing both policies and memoranda, we can have the consistency of overall approach and philosophy with the flexibility to change things in the practice memos and the confidential

legal memos. And the memos themselves are issued by the Assistant Deputy General. As I say, our branch is responsible for -- we're the keepers of the manual, if I can put it that way.

As well, all the practice memos are provided to the Criminal Lawyers Association, to I think some various victims advocacy groups, other ministries, law schools and so on, so that people who have an interest in our practice will have access to not just the policies but also to the detailed advice that we provide.

MR. DUMAIS: And you enclosed a number of documents that deal with the issues of role of the Crown and the issues of Crown Policy Manual. Just briefly, Tab 12 is the memorandum from the Assistant Deputy Attorney General when the manual was issued back in or released back in end of '93, beginning of '94?

MS. NETHERY: Yes.

MR. DUMAIS: And even at that time the intent was to make that manual available to the public, to the defence and to the court offices.

Is that correct?

MS. NETHERY: Yes, I think that may have been observed sometimes more in the breach.

MR. DUMAIS: Now, you have enclosed as well at Tab 13, which is dated April 29, 2003, which is a

practice memorandum on the Crown Policy Manual. Is that fair to say that that was a transitional practice memorandum, so prior to the issuance of the most recent policy manual?

MS. NETHERY: Yes, it was. I think it was meant to be a bridge between the old Crown Policy Manual of the 1994 version as updated and the new manual just to let particularly Crowns but also members of the public know about how they can obtain access to it and what the distribution system and the format was going to be.

MR. DUMAIS: And you have enclosed at Tab 14 a document which is a preamble to the new policy manual which sets out the role of the Crown?

MS. NETHERY: Yes, that particular document is issued by and signed by the Attorney General and the Deputy Attorney General because the role of the Crown is considered to be so pivotal in the administration of justice. I think the idea is that public confidence is bolstered by a system where the Crown acts both as an effective advocate but also as a minister of justice.

The Attorney General and the Deputy wanted to emphasize the importance of the role and describe, I think, their vision for it. *Boucher,* of course, is quoted in the preamble and it also talks about our obligations, our accountability obligations to the Attorney General.

It speaks to, further down, our relationship to victims, that while we are not the victim's lawyer, we do owe the victims a special duty of candour and respect.

It outlines the constitutional foundation for the role of the Crown which I think we have probably spoken enough of already, and our duty of fairness; the leadership role that we should play in terms of ensuring that institutional discrimination does not become a part of our prosecution or part of the criminal justice system.

The example would be the discrimination that, I think, used to be shown in the criminal justice system many years ago against child witnesses and female witnesses and over the years, I think, Crowns have worked very hard to overcome that in cases such as *Khan* or, I think *J.B. & A.B.* in the Supreme Court of Canada.

The document outlines the role of the Crown but also makes it clear that while we are setting out guidelines for Crowns, we also expect that Crowns will take a leadership role in some of these significant areas to address wrongs.

We also reviewed, in this particular document, briefly our relationship with the police. Let me see if we can find it here.

MR. DUMAIS: And finally, just ---

(SHORT PAUSE/COURTE PAUSE)

MS. NETHERY: In any event, I know what it says. It says that we had to work closely with the police but we do perform separate and independent functions and that that independence is fundamental to the administration of justice, that the police investigate and lay charges. The Crown will review the charges to ensure the screening standard is met and the distinction really puts the responsibility and accountability where it should be. It's really a part of the set of checks and balances but also we acknowledge and recognize -- I see now the role of the Crown in relation to the police is now up on the screen.

We also recognize that given the reality of large and complex cases that the police should have access to the advice of Crowns on legal issues; for example, in taskforce work that we do, but there always must be that respect for the independence of the roles and responsibilities.

So the initial preamble gives the traditional view of the role of the Crown as embodied in *Boucher* and also provides some more specific points in relation to victims and our relation to the police amongst others.

MR. DUMAIS: And just to finish off that section, you've enclosed as well Tabs 16 and 17, two practice memoranda which are the most recent discussions on

the Crown Policy Manual and the role of the Crown, both of which are dated this year, 2006?

MS. NETHERY: Yes, that's correct.

MR. DUMAIS: And Mr. Commissioner, I am now heading into the next item which is Item 5, the Impact of the Badgley Report.

THE COMMISSIONER: After the break?

MR. DUMAIS: Yes.

THE COMMISSIONER: It's 11:15. Why don't we take a break?

MR. DUMAIS: Yes.

THE COMMISSIONER: Thank you.

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

The hearing will reconvene at 11:30.

--- Upon recessing at 11:15 a.m. /

L'audience est suspendue à 11h15

--- Upon resuming at 11:36 a.m. /

L'audience est reprise à 11h36

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

This hearing of the Cornwall Public Inquiry is now in session.

Please be seated. Veuillez vous asseoir.

MARY CAMERON NETHERY, Resumed/Sous le même serment:

--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR. DUMAIS, (cont'd/suite):

MR. DUMAIS: Now, Ms. Nethery, I understand now that you have taken a look at different reports and set out how, for example, the 1984 Badgley Report influenced policy within the Ministry.

If I can bring your attention to page 10, Item 5, which is the impact of both the 1984 Badgley Report and the 1990 Rix Rogers Report, and if you can just tell us how that influenced the Crown policy?

MS. NETHERY: Well, as you know, what's called the Badgley Report was a report commissioned by the Department of Justice Canada and the Ministry of Health and came out in 1984. It related to sexual offences against children and youths and there were some key recommendations in it about the reform of criminal law and rules of evidence to assist in overcoming social stereotypes which had become a part of the criminal law. So the view was that children are unreliable witnesses and needed corroboration, for example.

So one of the key aspects, I think, of the Badgley Report was the recommendations for changes in the *Criminal Code* and the *Canada Evidence Act*. The *Canada Evidence Act* governs some rules of evidence particularly relating to child witnesses. And the second aspect of the

report was to address and bring to everyone's attention, the prevalence of child sexual abuse and the fact that it was still a largely hidden problem so therefore, part of the purpose of the report, as I understand it, was to encourage reporting, investigation and prosecution of the sexual abuse of children; ultimately I think, through some of the recommendations; the recommendations relating to *Criminal Code* reform specifically, but others, to reduce the trauma and revictimization of children through the court process.

So some of the recommendations of the Badgley Report related directly to the everyday work of Crowns. It recommended reform of sexual offences against children to create specific offences, which ultimately occurred in the context of Bill C-15, which was enacted, I think, in 1988. I think we're going to be talking about that a bit later. But there were certain offences that were recommended, such as sexual interference with a child under 14, offences of sexual exploitation where a person was in a position of abuse of trust or authority.

One of the -- ultimately, one of the advantages of having offences that were specifically related to children is that when you see one of these offences listed on an Accused record, it would be apparent to you that the individual had been convicted of a sexual

offence against a child as opposed to an adult. So prior to this, we would usually -- prior to these recommendations, which ultimately came to fruition in Bill C-15, what we call Bill C-15, when there was a sexual assault on a child, it was frequently charged as simply a sexual assault. So on the record it wouldn't necessarily show up as a child sex assault. So that's one of the prime advantages that ultimately came out of it.

Also, as I say, made some recommendations about the need for corroboration of children's evidence, that they should be able to testify on a promise to tell the truth. Also some more specific recommendations about publication bans of a child's identity or name. And ultimately, as I've alluded to, there was a legislative response in terms of Bill C-15, where these new offences came about, as I say, sexual interference, another offence entitled "Invitation to Sexual Touching", sexual exploitation of a young person between the ages of 14 and 18, when the perpetrator was in a position of trust or authority.

There were some changes in the evidentiary provisions that came about in Bill C-15, that it was possible to convict on the unsworn evidence of a child on the promise to tell the truth, whereas previously there had been a requirement for corroboration, pursuant to section

586 of the *Criminal Code* and pursuant to section 16(2) of the *Canada Evidence Act* for those of you who want to look those up. And so, you know, I mean these were very difficult and still are, frankly, very difficult offences to prove, because they often occur in secret; people don't normally sexually abuse children in a public location or in front of witnesses. So there would often be no corroboration or no other supporting evidence. So these cases often had very little chance of success in court.

So this was a very significant step forward in terms of at least, opening the door to children being able to testify in court.

The other thing that the Badgley Report recommended and I think the Rix Rogers Report did as well, was the enhanced use of what we call testimonial aids for children in the courtroom to attempt to reduce the revictimization and retraumatization, which often occurs when children have to testify. So there were certain provisions relating to introducing videotapes of the child's evidence as long as the child adopted the videotape, the use of closed circuit provisions where a child could testify outside of the courtroom in a separate room and would not have to physically face the alleged abuser, the use of a screen in the courtroom so that the child could testify from behind a screen and the use of

publication bans. So as I say, these were, I think, recommendations that came out of, specifically out of the Badgley Report and that ultimately found their way into Bill C-15.

The Rix Rogers Report came out in 1990. It made a number of recommendations. Some of them involved things like joint training for Crowns, police and judges. Another recommendation, which came to fruition was to allow a support person to sit near a child. Another recommendation related to protocols to facilitate the inter-disciplinary and inter-jurisdictional cooperation.

So I think the recommendations in the Rix Rogers Report really followed up on perhaps some of the gaps after Bill C-15 because you know, hindsight is always 20:20. If we had a little bit of time to see how Bill C-15 was working out and Rix Rogers Report then recommended something that was more of a holistic coordinated approach between the Children's Aid, the police and the Crowns working together on these child abuse sorts of cases.

So in terms of the Badgley Report specifically, there were at the time, mailings and as I say, we're back in the paper world, back in 1984 and even into the '90s. There were mailings to Crown attorneys about the Badgley Report and the Rogers Report and specifically, in I think 1987-1988, when the Victim Witness

Assistance Program was actually a part of the criminal law division and there was a very close relationship between victim witness personnel and Crown counsel, the victim witness legal counsel was actually a seconded Crown. That individual acted as the child abuse and sex assault coordinator for our Ministry and for the Crown system and she was a -- Crown was a resource person for all of us. You know, I was out in the field prosecuting these sorts of cases, in the trial world at that time and there were educational sessions set up for Crowns on child abuse, sex assault, other victim related issues that came out of, I think, the Badgley Report, the Rix Rogers Report and the legislative changes that followed along.

As well, when we issued the first Crown Policy Manual in 1994, we referred specifically to Bill C-15 and referred as well, to the Rix Rogers Report in our child abuse policy. That is located at Tab 59. That was really the first effort to bring together at least in one place, some of the issues that Crown should be aware of relating to child abuse; physical and sexual abuse.

So you'll see up on your screen, Tab 59, the introduction to the child abuse and physical and sexual assault of children that the Rix Rogers Report is cited and Bill C-15 is cited. And as I say, this was also a follow-up to some of the educational sessions that we had with

Crowns relating specifically to Bill C-15 and as I've said, some of the increased awareness relating to child sexual abuse.

Perhaps it bears repeating, the introduction:

> "As children become a more scarce and precious resource, we must take concerted efforts to ensure that all children are nurtured in their development. We can ill afford to lose the value of thousands of children because of abuse, neglect, and alienation. Canada needs competent and responsible adults to ensure our survival and posterity into the twenty-first century. Our children are our future."

So that really sets the tone for, you know, our child abuse policy.

The policy does go on to outline the testimonial aids that we've spoken about, the need for inter-agency coordination between Children's Aid, the police and Crown attorneys. We also suggest that each jurisdiction develop protocols to ensure that we have a coordinated response and so, for example, when there's an

allegation of a child sexual abuse, there's sometimes a question as to who is going to take the lead in questioning the child; should it be the police, should it be the Children's Aid, should it be videotaped? So the protocols establish that those sorts of inter-agency procedures so that the investigations can move along smoothly.

I think that each local Crown's office -- you know there was a Crown who was involved in developing those protocols. I was involved in developing ours in Sarnia when I was there and also in doing some joint educational work with the police, the Children's Aid and Crowns, specifically about Bill C-15 and how we could best use the new provisions to greatest effect.

Let's see -- I hope I'm not getting too far off topic here.

MR. DUMAIS: You've mentioned the testimonial aids; for example, closed circuit television and screens. Who is responsible for making sure that the courtrooms are equipped with those aids?

MS. NETHERY: Because those are part of the physical plant of courthouses, if I can put it that way, the Court Services Division -- they're the people who look after our courtrooms and staff them. The Court Services Division is responsible for ensuring that we have things like the proper videotaping equipment in the courtroom;

that there are potentially closed circuit provisions; and that there are screens.

Now, some of the other things that we have for child witnesses include microphones, secure waiting area and so on. But these are what we call the provisions for child-friendly courts. As I understand it, we do have 16 of these child-friendly courts in the province -- courtrooms. They're generally smaller and therefore considered to be less intimidating. There's a separate entrance for the kids. There is a screen that actually comes down between the witness and the people on the other side of the bar. There is a room adjacent to the courtroom where there's a closed circuit facility, so that the child can testify from there.

If the child is going to testify in the court, there are microphones that amplify their voices, booster seats, I think I mentioned a secure waiting area. And this is now a Ministry standard for all new courthouses that are built in the province. So any new courthouse that's being built has one of these child-friendly facilities.

Some courthouses, as you know, and when we talk about the ancient, you know, the ancient role of the Attorney General, some of our courthouses are older as well, and it's very difficult to retrofit them to have

these child-friendly facilities, but we have done it in some locations; Toronto does have them, for example; Peel, in the relatively new courthouse that they have there; and the plans for the Oshawa Courthouse, that there is also a plan for the child-friendly courts. Chatham has a relatively new courthouse, and it has one of these child-friendly courtrooms in it.

So you know, we do have those facilities. When you ask, who's responsible now for these child-friendly courts -- as I say, it is a court services responsibility, but they certainly get advice from victim witness about some of the Victim Witness Assistance Program about it and from the Criminal Law Division, so that the facilities are consistent with, you know, what is good practice in criminal law and what can best assist the victims from the victim witness assistance perspective.

The other thing that I should say, because this has been an evolving area; initially some of these facilities for children really came within the responsibility of the Criminal Law division. So for example, you would find Crown offices that, in the storage closets, there would be the screens and the microphones and the booster seats and so on but we have evolved a little bit more so that the responsibility because, as I say, it's a responsibility for the court rulings that this is now a

court service's responsibility.

The other thing that we have that's been developed over time are -- you know, more of it consensitive; interview practices for police and Crowns. Two examples of these are what's called "Gatehouse" in Toronto which was established in the 1990s and as well the London Family Court Clinic which I'm a little more familiar with, which created a program of offsite user-friendly facilities for children to be -- where children can be interviewed and victim witnesses or the clinic, the London Family Court Clinic can assist the children in terms of their preparation for attendance in court.

THE COMMISSIONER: But the Gatehouse is a private -- it's not attached to the Crown Attorney's Office?

MS. NETHERY: No, it is not.

THE COMMISSIONER: It's not publicly funded or anything like that?

MS. NETHERY: It may have some public funding as, I think, does the London Family Court Clinic, but they're not attached to the criminal justice system per se. They're not a part of our ministry.

MR. DUMAIS: Now, you've enclosed as well the excerpts and summaries of both of these reports at Tabs 18, 19 and 22 and I believe that they had been previously

filed ---

THE COMMISSIONER: Yes.

MR. DUMAIS: --- in any event.

If we can then look at the next item which is the impact that the Martin Report had on policy for the Ministry of the Attorney General, and if you can look at page 11, Item 6 of your outline? My understanding is that sometime in 1993 your Crown Policy Manual had been completed and you delayed the release of the Policy Manual waiting for the recommendations that you were expecting from the Martin Report. Is that correct?

MS. NETHERY: Yes, it is.

MR. DUMAIS: All right.

MS. NETHERY: Do you want me to explain that further?

MR. DUMAIS: Yes, please.

MS. NETHERY: Okay.

The Supreme Court of Canada in a case called *Regina v. Askov* set out some parameters for trial within a reasonable time and this happened -- I believe it was in 1990 that this case came out. As a result of this, approximately 50,000 cases, criminal cases, were lost due to undue delay because although there were guidelines they were taking more than a six to eight-month time period to get through the criminal court process. So this really

focused public attention on delay in courts and focused ministry attention on it as well, obviously.

So in 1991 the Attorney General formed an advisory committee to study the early stages of the criminal process and this advisory committee was chaired by the Honourable G. Arthur Martin who was formerly one of Canada's leading defence counsel and a former Ontario Court of Appeal justice.

In addition to Mr. Justice Martin, members of the Committee included defence counsel, Crowns, police, federal department of justice, other members of our division, representatives of the Ministry of the Solicitor General and they also asked for recommendations and submissions from, I think, various victims groups.

The committee put out a report which was released in 1993 and it focused on the increased awareness of the need to reserve the criminal justice system for the most serious of cases. There was a recognition that the criminal justice system is a blunt instrument for minor cases which may best be dealt with through community alternatives. So the committee focused on the potential for efficiencies particularly at the front end of the system and viewed that it was very important to make sure that part of the system works well. So instead of waiting until trial to resolve cases the idea was to create what we

might call a reverse telescope whereby the focus was on the early stages including disclosure, charge screening and resolution discussions in order to increase efficiency, have more uniformity, reduce delays and in that way really provide for a more just system because nobody really benefits from delays and, certainly, the victims and the witnesses don't benefit from having to wait long periods of time and, you know, according to the Askov case neither do accused persons because they have a constitutional right under section 11(b) of the *Canadian Charter of Rights and Freedoms* to a trial without undue delay.

So that was the focus of the inquiry and the idea was to resolve, ultimately to see whether we couldn't resolve as many cases as possible at the front end of the system and that the report which was released and I think is also a part of the materials; the whole report is located at Tab 20 of the materials. But the report also noted that from the point of view of the public often the front end of the system is the only part that the public sees if there is a guilty plea. And so it was important to make sure that we have the increased accountability and transparency of that part of the stage.

So the report addressed three specific areas relating to disclosure, charge screening and resolution discussions. It also made some other comments about the

role of the Crown and the relationship between the Crown and the police.

In terms of disclosure we ultimately issued three policies; the disclosure policy; the charge screening policy and resolution discussion policy based on the recommendations that were made by Mr. Justice Martin and the committee in what's known as the Martin Committee Report.

The disclosure policy as recommended by Mr. Justice Martin mandates that all Crown counsel must make timely disclosure of relevant information in the Crown's possession or control to the defence subject to certain established legal limitations on the duty to disclose in order to protect the privacy and safety of witnesses or due to some other recognized legal privilege.

The charge screening policy mandated that every case be reviewed with the new standard that we have spoken about, the Reasonable Prospect of Conviction and Public Interest Test.

The resolution discussion policy mandates that Crown counsel should attempt to balance the interests of the victims, the public, the protection of the public and the rights of the accused when coming to a resolution of a case. I think the idea is that this is not shall we say bargaining on the part of the Crown or defence. It

really outlines that resolution discussions are intended to come to the best and most just result for everybody involved. And so it sets out certain principles which may seem fairly obvious but the Crown counsel should not accept -- cannot accept a guilty plea to a charge knowing that the accused is innocent or when they are aware that a material element of the charge can't be proven unless they have disclosed that to defence counsel.

So those were the three prime areas that the Martin Committee dealt with.

They also made some comments on -- or the report also made some comments on the Crown discretion and the importance of Crown discretion in the criminal justice system, that it is a very important aspect of it and that any mandatory policies that -- I'm sorry -- mandatory policy should be few and far between and went on to explain why that is, because it's impossible to formulate detailed instructions that are going to apply to the multitude of situations which arise.

So it was really a seminal document in terms of Crown -- certainly, in terms of Crown practice and in terms of potential changes to the criminal justice system. Naturally, because the committee and the report dealt with the role of the Crown and dealt with disclosure there were some comments made about the role of the Crown and our

relationship to the police and reiterated what I have said before, which is that the prosecutorial function and the police functions are deliberately separated as a safeguard against misuse of both; that there is an independent review of police decisions once the Crown makes a -- does their charge screening and puts the responsibility in the place where it belongs according to the functions of the police or the Crown, that the police seek the Crown's advice when they think it's appropriate, that it's not every case, that it may be prudent to follow that advice but they are not bound to, and that the police on the other hand are required to bring all information bearing on the guilt or the innocence of the accused to the attention of the Crown.

As I say, I think we'll talk about that in a little more detail when we talk specifically about Major Case Management and the relationship between the police and the Crown and our policy relating to that. But that was, I think, the beginning of our thinking in more concrete and definite terms about the relationship between the Crown and the police.

Now, once the Martin Committee released its report and it was released in December of 1993, then we released the Crown Policy Manual I think on January 15th of 1994 and we included in the new policy manual the policies on disclosure, charge screening and resolution discussions

and, as I say, primarily or largely as recommended by that report.

We had never had a formal charge screening practice before then or policy before then. So once the Crown Policy Manual was released then senior Crown counsel travelled around the province of Ontario explaining the new processes, particularly relating to charge screening because it was so new. We also added some Crown resources in order to implement the charge screening practices.

So there were practical changes made in the Crown's office and it really represented a shift of focus to the front end of the system to make sure that any cases that could be resolved early would be resolved early and that that was viewed as being in the public interest and in the interest of a specific victim.

So pre-trial conferences with judges and resolution meetings were held between Crowns and defence really before trial dates were set. That was the theory and that was -- although they had been done on an *ad hoc* basis before this really was the beginning of institutionalizing those sorts of practices.

MR. DUMAIS: And Martin's Report as well specifically brought about a change on the common law screening policy and changed it from a trial role case to a reasonable prospect of conviction. Is that correct?

MS. NETHERY: Yes. I think before the Martin Committee recommendations, really, we didn't have a policy on charge screening and the common law, I think, was that the Crown should review these cases based on what's called a "tryable case" and public interest. But those terms were not really defined and so it was a much more discretionary process on the part of Crowns.

So this brought some more guidance and some more rigour to the process of determining whether or not we should go ahead. Really, in many ways, I think it's of great assistance to victims and to the public to know that only cases where there is a reasonable prospect of conviction will be going ahead and I think there's nothing that could be more heartbreaking to someone who has been victimized than to have the false hope or desire that there will be a conviction when there is no reasonable prospect.

So it's something that is seen as being beneficial to all for a variety of reasons that we've just talked about.

MR. DUMAIS: So then the adoption of this policy on charge screening not only codified the common law test, it raised the standard.

Is that fair to say?

MS. NETHERY: Yes, that's accurate.

MR. DUMAIS: All right.

And as you've indicated, you have enclosed at Tab 20 the Martin Report in its entirety and part of the reason for that is it had not been filed in evidence prior to today in its entirety.

The next item is the impact that the Criminal Justice Review Committee Report had and I believe that report came out in 1999?

MS. NETHERY: Yes.

MR. DUMAIS: And was that review meant to be a follow up to the Martin Report or not as to where we were at?

MS. NETHERY: Yes. It was a follow up to the Martin Committee Report. Let me see.

There were a number of -- I think it was chaired by a member of the judiciary but as well we had a number of senior Crowns and defence counsel involved in the review process and the idea was to step back and take a look at what we had done in terms of implementing the Martin Committee Report and what could be done in terms of really specific practical recommendations.

So one of the, I think, very important recommendations in the Criminal Justice Review Committee Report was the identified need for all justice participants to work cooperatively to implement efficiencies in the court process and to decrease the length of time that it

took cases to get through the process.

Now, I mean I think we can -- I think the idea is that we all have our independent functions and roles to play but we can respect those roles while still working together on some common goals such as efficiencies in the court process and decreasing the amount of time that it takes cases to come to trial.

At the same time that the Criminal Justice Review Process or Committee had made its report, there was also a heightened awareness of issues relating to domestic violence. So for example, during this timeframe, we had the recommendations of the May-Iles Inquest Jury and the Hadley Inquest.

So at this point, the Ministry was responding to a number of different recommendations and issues in developing new policies and processes designed to protect the victims of domestic violence. At the same time, there were very significant pressures being seen in terms of the increase in the number of criminal charges. I think by 2003, the number of charges received had increased from 13 per cent overall and in some jurisdictions as many as 59 per cent in the increase in the number of charges.

Many police services instituted aggressive charging policies and were instituting successful strategies to deal with serious crime. So the Ministry --

our Ministry began to develop what's called the Justice Delay Reduction Initiative which is set out -- I'll speak out about a little bit more but that was in part the Ministry's primary response to the Criminal Justice Review Committee's recommendations because the Criminal Justice Review Committee noted that we needed to have criminal case management processes in place. We needed to have sufficient staff to fully implement charge screening. There needed to be strong support for Crown discretion so that if Crowns decided there was insufficient evidence of a charge and that it wasn't in the public interest, they would be supported when they make that kind of a decision that a charge would not go ahead.

There were also recommendations relating to standard disclosure from the police to the Crown because the committee noted that there were disclosure delays causing stays of proceedings and that some of this related to delays in disclosure from the police to the Crown. So there were a number of recommendations, again, that related to efficiency in the system while at the same time ensuring justice.

So in terms of our response to that, and I guess there is an excerpt at Tab 21 of the report of the criminal justice review, but our response was at least initially twofold. Part of the response was to develop a

process entitled “The Justice Summit” and this was started out by the Deputy Attorney General, as well as the Chief Justices, both of the Superior Court of Justice and the Ontario Court of Justice, who co-hosted, I think, the first Justice Summit in the year 2002.

They brought together senior Crowns, defence counsel, members of the judiciary, other senior officials to determine what we could do to work together to develop some efficiencies and recognizing, as I think it must be apparent, that the criminal justice system is complex, that the answers aren’t always easy particularly when we have so many independent, necessarily independent actors, but that there could be some coordination of effort between Bench and Bar.

So the -- and part of this was an effort to implement some of the 1999 recommendations in the report of the Criminal Justice Review Committee. Some of them were implemented before this. For example, one of the recommendations had to do with providing to Crowns in bail courts in busy jurisdictions. That one was implemented similarly to duty counsel in bail court in busy jurisdictions.

But in terms of actually developing case management processes, that is something that really requires this sort of joint effort of all the parties.

It's not going to be any -- it's not going to help to have Crowns develop their own criminal case management protocols if no one else wants to sort of cooperate with them.

So the idea of this summit was to bring together all of the justice -- they're sometimes called justice partners but participants in the justice system that included Legal Aid, Office of the Children's Lawyer, representatives from the federal government, the defence bar. And the summit looked at not just criminal justice delay but also delays in the child welfare courts because that was a significant -- there was a significant backlog going there.

So there was an agreement amongst the various parties in 2002 that there was a need to have case management processes that everybody could agree to and that we should have a case management protocol; that we should also have some processes and protocol relating to bail and remand. So working groups were set up which again involved judges, Crowns and so on, and at the 2003 Justice Summit, the Bail and Remand Best Practices Protocol was presented and was adopted and it was agreed at that time that it should be implemented across the province.

One of the key objectives was to ensure that bail hearings would proceed in an expeditious fashion and one of the things that I'm doing in my project of justice

modernization is to focus on certain very large jurisdictions to make sure we're implementing it there and then migrate it across the province.

At the 2004 Justice Summit, we presented the -- sorry, maybe I'm getting ahead of myself. I'm sorry.

At the 2005 Justice Summit, we presented the Criminal Case Management Protocol. It was actually voted on by everyone who was there. As I say, it represented all the participants and it was agreed that it should be implemented across the province and it has been implemented in -- I know it says the majority but I would say some sites in the province which has increased efficiency in this area and we're attempting to implement it in other places.

It provides for -- covers the full process between the bail and the Criminal Case Management Protocol. It covers things from arrest, bail, trial, plea, provides for things like first appearance disclosure, a dedicated case management team in each Crown’s office. On the third appearance a trial date is to be set or else the matter goes to -- I call it judicial management but it has explained to a judge why there isn’t a trial date being set.

It involves things like focussing hearings and trial readiness hearings to make sure everybody is

ready for trial at a certain point. I think it's about six weeks before trial. It sets up or recommends reservoir courts in bigger jurisdictions so if cases collapse in one court there are a set of other cases ready to go, and so on.

So it's a case management blueprint really for the future and we're in the process of implementing those things right now, but in order to do that, we determined that we, in the Crown Attorney system, needed more resources and, hence, we move into the Justice Delay Reduction Initiative.

I'm sorry. What I've just given you are little summaries of our Tabs 23 and 24.

THE COMMISSIONER: M'hm.

MS. NETHERY: If anybody wants to look at those.

So in the Justice Delay Reduction Initiative, this was primarily an initiative to ensure that we had the infrastructure in place to implement case management and bail and remand best practices. So 63 Crowns were hired for -- we call JDRI, Justice Delay Reduction Initiative, and 67 what we all Case Management Coordinators were hired. These are people who are not lawyers. They are paralegals to assist us with file organization and file management and we set up case

management teams in each -- or we are setting them up in each Crown's office consisting of assisting Crowns and these legal assistants who perform disclosure-related functions, liaise with the police. The police are very much involved in most of the major jurisdictions in this case management process.

The Case Management Coordinators, that's a relatively new thing. Because the Case Management Coordinators are like paralegals, they review the incoming prosecutions for completeness of the brief, completeness of evidence before the case actually goes to a Crown for their review, so that we're trying to fix up any of the holes and do we have a statement from the neighbour; do we have the second statement that the alleged victim gave and so on. They will identify the serious or complex cases for Crown assignment. And then after this, the Crown or Assistant Crown does the more traditional charge screening.

So I think that's the general description I would give of what we call JDRI.

MR. DUMAIS: Ms. Nethery, do you know when these Crowns and these Case Management Coordinators were hired? Were they all hired in a bulk hiring or was it over a certain period of time?

MS. NETHERY: No, they weren't hired as a bulk. I mean we had to phase it in because just the

process of interviewing that number of -- the number of people that you have to interview to hire 60 people as Crowns and then 67 Case Management Coordinators. So it was phased in and I think that's just completed perhaps within the last six months.

MR. DUMAIS: Okay. And do you know when they first started the hiring of these new Crowns?

MS. NETHERY: I think it was in 2004.

MR. DUMAIS: All right.

(SHORT PAUSE/COURTE PAUSE)

MR. DUMAIS: In 2004?

MS. NETHERY: Yes, because -- yes, excuse me. The Criminal Case Management Protocol was issued in September of 2004 and the hiring, I think, began later on in the fall of 2004 and carried on, you know, I think actually literally for a period of two years.

MR. DUMAIS: All right.

Now, the next item, you've looked at the evidentiary and procedural provisions as they relate to child and sexual abuse and you've looked at two or three different things, the criminal legislation which is found at Tab 25.

If you can just briefly take us through the contents of that tab, which I believe is an evolution of the criminal legislation on the subject; just briefly.

MS. NETHERY: All right. This is a summary form of the legislative changes as they related to sexual offences and particularly relating to children.

So, from 1955 through to 1976, and probably before that -- but I wasn't able to complete the research -- but from 1955 through to 1976, there was a requirement for corroboration for any sexual offences including rape, attempt rape, sexual intercourse with a female under 14, indecent assault on a female, and there was a requirement that the judge warn the jury that it was unsafe to convict in the absence of corroboration. The jury was still entitled to convict but that section, you'll see, section 134 is a little bit contradictory. While on the one hand it says it's unsafe to convict, it still says that there could be potentially a conviction.

So that was the old rule and it really reflected the view that allegations of sexual offences were, I guess, easy to make and hard to disprove and also reflected the view that, you know, women -- I suppose, women and children were inherently unreliable as witnesses.

So there was a beginning of a shift, you'll see, in 1976 and then ultimately much more significant changes in the 1980's and we've talked a little bit about that in terms of Bill C-15. So the next -- the change or the shift from that, in 1976, was that section 134, the

general requirement for instructions on corroboration of a complainant's testimony was -- or the corroboration warning rather, was repealed.

There were also some changes in terms of provisions for rules relating to questioning on complainants' prior sexual conduct. Now there was a legislated requirement for notice in writing about some questions that there should be an in-camera hearing to determine whether or not those questions were appropriate and there would also be a publication ban on those hearings. So that was a shift.

And while the requirement for corroboration was repealed, as a general requirement, the requirement for corroboration with respect to the evidence of children still remained. It remained because of section 586 of the *Criminal Code* which still required corroboration of the unsworn evidence of children and also section 16(2) of the *Canada Evidence Act* which required corroboration where a child witness does not understand the nature of an oath and testifies in an unsworn fashion.

Secondly, the case of *Kendall*, *Regina v. Kendall* in the Supreme Court of Canada, was still in effect and continued to be applied. This was the case, that -- a 1962 case that held that the practice of requiring a warning on the danger of convicting on the evidence of a

child, even if sworn, is based on the mental immaturity of the child, that there were four particular issues that related to this: the capacity of observation, the capacity of recollection, the capacity to understand questions put and frame intelligent answers and an understanding of the moral responsibility.

So it was not until other legislative changes occurred that this rule requiring corroboration or a warning about corroboration, where a child is a witness, was removed.

In 1983, the instruction on corroboration was actually prohibited, at least for adults. In 1987, in Bill C-15, the instruction on corroboration was prohibited for the newly created sexual offences. You'll recall I mentioned things like invitation to sexual touching and sexual interference. And then in 1993, to make it absolutely, I guess, clear, the rules requiring corroboration where a child is a witness were abrogated.

So there's a general trend toward, at least, providing the most vulnerable amongst us to have a voice in the courtroom and it certainly didn't change any of the requirements in terms of a presumption of innocence or proof beyond a reasonable doubt, but at least allowed the evidence to be introduced.

Then in 1983, there was another significant

shift in the law and that related to repealing of the offence of rape and some others; indecent assault. These offences were replaced with new offences of sexual assault, sexual assault causing bodily harm or with a weapon and aggravated sexual assault.

So the new offences were more gender neutral and covered both males and females and covered a broader range of activity as opposed to pigeonholing something as a rape or something as an attempted rape or something as an indecent assault, with the idea that, you know, sometimes some behaviour that wasn't a rape for example, could be ultimately just as serious and just as violent as a rape in terms of the effect on the victim.

So at the same time, there had been a rule relating to recent complaint. The old rule was that if a victim did not complain at the first opportunity, then that would give rise to a negative comment to the jury indicating that people who have been raped or sexually assaulted would be expected to complain right away. That old rule, in 1983, was abrogated, and in fact, initially Crowns are precluded from adducing recent complaint as a part of the prosecution case. Judges were precluded from instructing the jury about it. If it was raised by the defence in cross-examination, then the Crown could adduce evidence to rebut it.

Now there was still -- I suppose there has to be an element of common sense in some of this but, resulting from judicial decisions allowing the judge the discretion to instruct the jury about corroboration, because it was viewed that the repeal of the corroboration rules in the Code resurrected the old common law rule about the requirement for corroboration in sexual type offences, then the Code was amended to disallow the judge from raising this with the jury. I think the section is set out -- section 246.4 is set out in the tab.

Also at the same time, in 1983, there were changes in the restrictions concerning evidence about prior sexual conduct. The rules became clearer on when such questions would be allowed and still there was a notice provision. There was an amendment allowing the complainants to apply for orders banning publication and there was a codification of the common law relating to belief in the complainant's consent.

So that was 1983. I think it was in January -- January 4th of 1983 that those provisions came in.

In 1987, ---

MR. DUMAIS: Perhaps, if we can stop you there.

MS. NETHERY: Oh, I'm sorry.

MR. DUMAIS: I think it's an appropriate

time for a break, Commissioner.

THE COMMISSIONER: Yes. Let's take the lunch break. We'll come back at 2:00.

MS. NETHERY: Okay. Thank you.

THE COMMISSIONER: Thank you very much.

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

The hearing will reconvene at 2:00 p.m.

--- Upon recessing at 12:33 p.m./

L'audience est suspendue à 12h33

--- Upon resuming at 2:02 p.m./

L'audience est reprise à 14h02

THE REGISTRAR: This hearing of the Cornwall Public Inquiry is now in session.

Please be seated. Veuillez vous asseoir.

MARY CAMERON NETHERY, Resumed/Sous le même serment:

--- EXAMINATION IN-CHIEF/INTERROGATOIRE EN-CHEF PAR MR. DUMAIS (CONT'D/SUITE):

MR. DUMAIS: Ms. Nethery, if I can just take you back, we had just finished going through the 1983 amendments and we had left off at 1987, so Bill C-15.

MS. NETHERY: Yes, thank you.

I think these are the -- the 1987 Bill C-15 amendments are the amendments that I mentioned as being the legislative response to the Badgley Report and I've already

reviewed those, at least briefly in my evidence this morning.

So I would not propose to go over them in any detail here, except to say that, you know, this is sort of a further indication of a change in the view of the legislature and, ultimately, I suppose society at large in terms of, you know, ensuring that children's voices can be heard in the court process.

So after Bill C-15, the next significant legislation came about in 1988 and that was Bill C-89. It related to victim impact statements and the provisions were designed to improve the impact of proceedings on victims and to give them a greater role and also there was an expansion to the publication ban provisions.

Then in 1992, Bill C-49 added provisions to deal with clarifications of what consent means in the context of sexual offences. As well, there were amendments to the provisions dealing with the evidence relating to the complainant's prior sexual history, to address a case that was heard in the Supreme Court of Canada, *Seaboyer*, that established that the current provisions were unconstitutional. So the new provisions were put into place then and I think ultimately found to be Charter consistent.

In 1993, there were further amendments to

the *Criminal Code*. Bill C-46 provided amendments to create the offence of child pornography. Bill C-126 created the offence of criminal harassment, sometimes called stalking, created prohibition orders concerning persons under the age of 14 as a potential sentencing provision and there's a practice memorandum dealing with that later on in the materials and to be dealt with later on in my evidence.

It also, again, abrogated the rule requiring corroboration where a child is a witness. You've seen that, it seems to be a constant theme with the legislation that they're moving toward really saying it's mandatory that the court not provide that warning, you know, unless there's a good reason for it.

There's also the prevention of cross-examination of witnesses under 14 by an accused, personally. I know that we've set up a system for the appointment of counsel and payment of counsel so that the alleged victim and alleged perpetrator do not necessarily have to face each other in that sort of question and answer situation.

In 1994, there were further changes. The summary conviction penalty for sexual assault was raised to 18 months from 6 months. This was not done, at that point, for the sexual interference and child-related offences. But the significance of that is that sometimes the Crown

would proceed by way of indictment, where they felt that the penalty should be greater than six months. This provides a little bit more leeway in terms of being able to proceed by way of summary conviction, not have a preliminary hearing, have a more summary proceeding and potentially have, you know, higher than six-month sentence.

In 1995, Bill C-104 provided for search warrants to obtain DNA samples. That's a more general application than just to the child abuse cases, of course.

In 1997, there were some changes that related specifically to child abuse. These were creating the offence of child sex tourism, i.e. sexual offences against children that occurred outside of Canada. It created offences relating to living on the avails of prostitution, relating to young people; amending the Code dealing with aids to victim witnesses to broaden the use of testimonial aids and allowing for *voir dires*, specifying a *voir dire* for the use of testimonial aids.

Bill C-46 provided a criteria for a process for the production of records from third parties. These would be records often relating to the psychiatric or psychological counselling history for a potential victim and this follows the common law decisions of, I think, O'Connor and Aubé and Behariel and sets out a procedure for the obtaining of those records.

In 1999 there were some changes, I think, that reflected some of the recommendations in the Rix Roger's Report. So for example, 46(1.1) and following authorizing a judge to allow a support person to be present with a witness under 14 or for somebody suffering from a physical or mental disability; again, expanding the provisions of preventing personal cross-examination by an accused of a witness under 18. And again, there is a provision for appointment of counsel to cross-examine that witness.

Bail: It makes a specific provision that the safety and security of the victim or the witness is an explicit factor in the pre-trial release decisions made by police, Crown or a judicial officer. It also provides for a non-communication order while the accused is in custody waiting trial. I think I mentioned that earlier in my evidence -- and as well provides for the victim -- it specifically provides that the victim may read the victim impact statement in court on the sentencing and I think also allows a videotape of the victim impact statement to be introduced.

So those were the provisions up until 2005 and in 2005 there were another set of amendments in Bill C-2 which I think can be seen at Tab -- or not the Bill rather, but a practice memo that was issued to Crowns

relating to Bill C-2 can be found at Tab 62.

And just to finish off, I would suggest that I go through those provisions so that we've covered off the legislative provisions if that's acceptable.

MR. DUMAIS: Yes.

MS. NETHERY: Okay.

We have a blank screen.

MR. DUMAIS: Yes, so do I.

There we go.

MS. NETHERY: Okay. So this is a practice memo that was issued to Crowns. It's practice memo No. 33 of 2005 and it gives the highlights of Bill C-2 which was an amendment to the *Criminal Code* entitled "Protection of Children and Other Vulnerable Persons" and Amendments to the *Criminal Code* and *Canada Evidence Act*.

The bill was phased in. Part of it came into effect in November of 2005 and part of it on January 2nd, 2006. There were five principle components, one relating to a broader definition for child pornography; a broader category of the sexual exploitation offence; creation of a new offence of voyeurism; testimonial supports and elimination of the child competency hearings. So you remember we referred to section 16 of the *Canada Evidence Act*. Now, unless the defence or accused objects to the competency of the child to testify then they will be

deemed to be competent to testify.

And the final portion is the -- which I think received a considerable amount of media attention -- is the creation of minimum mandatory sentences for sexual offences against children and, as well, hybridization and a provision for the maximum 18-month period of incarceration when we proceed summarily on those child-related offences.

So the bill itself was an effort to protect children, the most vulnerable in our society as well as disabled and to, again, encourage witnesses and victims to come forward and participate in the process.

So in terms of the sexual exploitation offence I think I've already said it expands it and really, although it doesn't provide a new, specific offence, it expands the criteria of what is an exploitation and really puts people on notice if they are going to have sex with somebody under the age of 18 that it may very well be lawful -- unlawful, excuse me.

The testimonial aids, again, the closed circuit TV and so on, are available to all child witnesses under the age of 18 upon request. There is, again, the order for a support person. The order will be mandatory unless it is seen to interfere with the administration of justice. The testimonial capacity, as I have said, now there is a presumption that a witness under the age of 16

has the capacity to testify on a promise to tell the truth and the court must be satisfied that there is a real issue as to capacity in order to enter into a hearing about that. Usually, in the past we have been in a position where we would have to ask -- go through a number of issues with a child witness about their ability to either understand the nature of an oath or understand the promise to tell the truth.

The sentencing provisions: there are the minimum mandatory sentencing provisions and they are found -- they are outlined on -- let me see.

(SHORT PAUSE/COURTE PAUSE)

MS. NETHERY: They are outlined on page 16 of the practice memo in summary form at the bottom of the page. So you'll see that they range from -- it depends on whether you proceed by way of indictment or whether they are proceeded with by way of summary conviction but for some of the offences it's a year, those relating to the making and distribution of child pornography. When we proceed by way of indictment on sexual interference and so on it's 45 days; summarily it's 14 days. And some of the other related offences of being household or permitting sexual activity, six months if we proceed by way of indictment or 45 days if we proceed summarily.

So there are a number of these provisions

to, I guess strengthen the response, the legislative response and the criminal justice response to child abuse.

We've also provided advice to Crowns, policy advice to Crowns and you'll see on page 17 of this particular practice memo that if there's a reasonable prospect of conviction Crown counsel should not reduce or withdraw a charge in order to avoid the mandatory minimum sentence absent exceptional circumstances and then only with the approval of the Crown attorney or the Deputy Director of the Trials in the Crown office, Criminal, depending on who the Crown reports to.

So I think that brings us up to date in terms of legislative changes in the *Criminal Code* from 1955 up until 2006 which is kind of a whirlwind tour of the *Criminal Code.*

MR. DUMAIS: And you have done the similar type of evolution with the case law; is that correct?

MS. NETHERY: Well, with the case law -- excuse me, I'll just find where that is. That's Tab ---

MR. DUMAIS: Twenty-seven (27).

MS. NETHERY: --- twenty-seven (27).

With the case law I only provided highlights rather than providing a complete evolution of the change in the law so in terms of some substantive development and procedural developments.

MR. DUMAIS: And a lot of -- did you want to go through some of these highlights or do they speak for themselves?

MS. NETHERY: Well, I think they speak for themselves, myself.

MR. DUMAIS: And actually, a lot of the changes brought about by some of these cases were later legislated by the different acts that we've just gone through.

MS. NETHERY: I think that's a fair statement.

MR. DUMAIS: If we can then just look at the next item which is Item 11 on page 16, so the relationship between the police and the Crown. You have spoken about that briefly this morning and perhaps you can just touch on Crown policies on separation between the role of the Crown and the role of the police.

MS. NETHERY: So I'm just still back on my highlights.

THE COMMISSIONER: He is going to page 16 of your ---

MS. NETHERY: Package.

THE COMMISSIONER: And discussing the relationship between the police and the Crown, similarities and differences, I guess.

MS. NETHERY: Okay, thank you.

I think I have said this before in a rather summary fashion but the Crown counsel and police agencies have separate responsibilities in the criminal justice system and the separation between the Crown and the police is of fundamental importance to the proper administration of justice. The police and the Crown obviously often are required to and should work in partnership in a collegial way to enforce the criminal law effectively. The police have the sole responsibility for the charging decision except with the consent of the Attorney General as required by statute and the Crown counsel are solely responsible for determining whether a charge is to proceed and be prosecuted once a charge is laid.

So there is a distinct line between these two functions which allows both the police and the Crown to exercise their discretion independently and objectively and this forms a part of the system of checks and balances in the criminal justice system.

Now, the police may and we encourage them to seek advice from Crown counsel concerning legal issues arising in the investigation of offences. Particularly, given the current reality of large, complex cases; access to timely advice from Crown counsel may be of crucial importance. And this is particularly so in cases such as

homicides, historical and other sexual assaults where there are a number of alleged victims and alleged perpetrators. The role of the Crown, of course, is advisory only; not directive. The recommended practice which we have set out in our initial practice memo at Tab 30 -- I'm sorry -- for initial policy at Tab 30 and our practice memo at Tab 31 is that in large and complex cases we recommend that a full brief be provided by the police to the Crown and that the Crown provide a written response and this gives clearly -- I think it's important that it not be simply advice provided in the courtroom -- pardon me -- in the halls of the courthouse or in the courtroom as you're just starting a case. It's important in these very major prosecutions to have a full understanding of the facts. The advice that the Crown gives about the law can only be as good as the information that they are given by the police and that's why we recommend that a full written brief be provided to the Crown and that that can form the basis of the discussions between the Crown and the police.

I suppose that many Crowns have seen notations in police notes: No charges per Crown Attorney Nethery or Assistant Crown Attorney Nethery and it may not quite reflect what our understanding, the Crown's understanding of the discussion that's happened between the police and the Crown. So that's why I'm saying that I

think, and the policy is that there should be a full discussion based on material provided in writing to the Crown and that the Crown can then provide a written response.

So we'll often be asked about whether there is the legal basis for the reasonable grounds to believe that an offence has occurred, which is what the test that the police are looking to, but it's also quite appropriate for the Crown, when they're given this brief, to look at it from the point of view of whether or not there is a reasonable prospect of conviction and whether it's in the public interest, i.e., whether it would meet the charge screening test.

So it may very well be, for example, the advice of the Crown that while you have reasonable grounds in our opinion or there's the legal basis for it, that in our view there either is or is not a reasonable prospect and it may or may not be in the public interest to proceed.

So it's quite appropriate for the Crown to provide those two types of advice to the police, and this is also supported, I think, by the Martin Committee Report, which I've already alluded to previously.

So once -- now, do you want me to go through the specific references in the policy that was issued in, I think, the policy and the practice memo at Tabs 30 and 31?

THE COMMISSIONER: And before you go there, there's a couple of comments that I'd like to ask your advice on.

The first one is on page 17, the sixth bullet, it's a large paragraph saying,

> "The practice memorandum notes that if the advice sought by police…"

and on the last line there, it says,

> "… Crown counsel should reply in writing indicating clearly that Crown counsel is providing a legal opinion only and that Crown counsel's legal opinion is not binding on the police."

So that's to reinforce your previous comment, I take it that the final decision as to whether or not to lay charges, in your view, lies with the police?

MS. NETHERY: Yes.

THE COMMISSIONER: We might get some questions about that later on.

The other thing is, two down, it indicates,

> "It should be noted that the police are not obligated to comply with requests from Crown counsel but most often they do comply with these requests".

Now, I take it that goes back to disclosure

or investigation?

MS. NETHERY: Let me just see.

THE COMMISSIONER: Yes.

"… Crown counsel requesting further investigation to be conducted".

MS. NETHERY: Yes, it's not unusual for us to -- during our charge screening -- to realize that some things are missing.

THE COMMISSIONER: Absolutely.

MS. NETHERY: And so we will ask the police to do some further investigation.

THE COMMISSIONER: And what you are saying though is that they are not obligated to comply.

MS. NETHERY: We don't direct them to do things, but usually they do comply.

THE COMMISSIONER: That's interesting. It's an interesting position. Thank you.

Mr. Dumais.

MR. DUMAIS: Perhaps then if we can perhaps just have a look at the Crown Policy Manual, the one that's found at page 30.

THE COMMISSIONER: You mean Tab 30?

MR. DUMAIS: Tab 30, sorry.

And I think the policy distinguishes between pre-charging decision and post-charge.

MS. NETHERY: In my binder, this is actually Tab 31. Is that the Practice memo?

THE COMMISSIONER: No. I've got it at Tab 30 in my book, and it's Tab 30 on the electronic version.

MS. NETHERY: It is. I'm sorry, yes, it is, thank you.

THE COMMISSIONER: Okay. Right.

MS. NETHERY: Okay. So this is the policy that was issued in August of 1997 as an update to the original Crown Policy Manual issued in 1994, and it outlines the police relationship with Crown counsel.

So you know the first premise that I think we've been talking about and we quote from Mr. Justice Martin in the Introduction, as follows:

> "As a matter of law, police officers exercise their discretion in conducting investigations and laying charges entirely independently of Crown counsel. The police seek the advice of the Crown only when they "think" it is appropriate. And while it is no doubt prudent to do so in many cases, the police are not bound to follow the advice of Crown counsel as that advice relates to the conduct of the

investigation and the laying of charges. The Crown likewise exercises independent discretion in the conduct of prosecution before the court, having no obligation to prosecute simply because a charge is laid by the police."

So that's what Mr. Justice Martin said in his report about the relationship between the Crown and the police in terms of considering the charge screening function, I think, specifically.

So we start off with that fundamental premise and then move on to obviously while there is that mutual independence, it's very important that there be the mutual cooperation in all stages between the Crown and the police and the usual practice in the criminal courts is that there is a very good working relationship between the Crown and the police on these various issues as well there should be. Because there's been an increasing complexity associated with many of the investigative tools, which has led really for a greater need for the police to obtain the advice and assistance of Crown counsel during the investigation; so particularly in relation to issues such as wiretap or search warrants and advice about the application of the *Charter of Rights*, these are things that

the police frequently come to the Crown to seek advice about. And as we say, the relationship shifts and changes depending on the stage of the investigation of the proceedings.

So at the pre-charge stage, as we said before, generally the role of the Crown counsel is advisory in nature and not directive. The exceptions are those procedures requiring by statute the involvement of an agent of the Attorney General, such as wiretap applications, and we don't provide an overall blueprint for the investigation; however, it is proper for Crown counsel to advise on legal issues. They may seek advice on complex areas relating to gathering of evidence, DNA warrants, particularly, and the use of wiretaps and search warrants.

They also may ask for advice in the areas where the law is changing, and at the time that this policy was put out, KGB, which is the use of videotape statements or the use of under-cover agents were fairly new and the police would come to the Crown for advice about the law relating to those things; and so those are a couple of examples, not exhaustive, about the areas where the Crown might be asked for advice by the police.

So we suggest, you know, first of all, that the

"Crown counsel who gives advice to the

police is a potential witness. If charges are laid, Crown counsel may be subpoenaed to testify on the trial proper, the *voir dire* determining admissibility of evidence, or a Charter motion."

So there are times when it may be appropriate to have two Crowns involved in the matter; one who would provide the advice to the police and another one who actually is involved in the prosecution with some level of independence between the two.

Then we note that our advice may very well be "recorded in the notebooks of police officers." So it's probably a good idea for Crowns to keep a record of their advice, and this can be done by way of "obtaining a copy of the officer's notes" or confirming the advice in writing. And sometimes we'll keep "contemporaneous notes of the advice" and sometimes some Crown counsels keep a notebook in which records of all their advice to the police is kept, so that they can ultimately, if there is a motion where the Crown is called on to testify or if there is any question about it, we would have a record of it. So we are not in the situation that I've kind of alluded to before about simply seeing a notation in a police officer's notebook about our advice, which may be a bit cryptic about, well,

you know, Assistant Crown Attorney Nethery says no charges, and I may not have the same view of the advice and the discussion.

So we also make it clear that we shouldn't be directly participating in the gathering of evidence.

The next area after "Pre-Charge", we deal with "The Charging Decision". And the final selection of the appropriate charge with the exception of those offences requiring the Attorney General's consent is made by the police. The police will seek advice from Crown counsel on these issues and, as I say, it's usually followed.

Now, the police may wish to, in difficult cases, seek practical direction from the Crown about how to proceed but really to protect the independence of both the police and the Crown, it's recommended that certain practices be put into place, and that they are requiring the police, as I've said, to provide a full written investigative brief that will provide the basis of your advice and where feasible, to put your reply in writing and set out the legal advice, and it's based solely on the written brief that is before you.

Now, I think, that's the Pre-Charge and the Charging stage that we deal with in the policy.

Then there's another area "Post-Charge" and at that point -- another area of the policy rather that is

"Post-Charge" and at that point, "the Crown is obligated" to charge the screen -- "to screen the charge" -- excuse me -- as set out in the policy CS-1, and at that point in time, you know, "the control over the charge with authority to withdraw it or proceed with the prosecution" rests solely with the Crown.

So sometimes there will be some "frailties in the charging decision, the absence of materials" and so on and at that point in time, the "Crown has the authority under s. 11(a) 'to cause such charges to be further investigated'".

So the recommendation in the Martin Committee Report is that you know, when this happens, the police should be in a position to spend a bit more time anticipating and avoiding some of these investigative problems. The sooner that we get the full investigation, I think the better off we all are in terms of knowing whether we can proceed with the charges as laid or whether there has to be some other course of action taken.

"The police are not obligated to take the direction of Crown counsel post-charge and may not lay a requested new information or may fail to provide material"; now that situation isn't going to arise very often because, as I say, generally there's an excellent working relationship between the Crown and the police with mutual

respect but if there is a concern, ultimately that would have to be dealt with through the management chain of the police and Crown counsel.

Now, then we talk about in this particular policy, the disclosure obligations of the Crown and the police and that is quite frankly one of the areas of potential friction between the Crown and the police, particularly at the post-charge stage. We don't want the police to be required to do unnecessary work; it can waste their valuable time and resources, but on the other hand "if they ignore our legitimate requests, then the courts can order costs against the Crown or stay charges". So it's a delicate balance. Certainly, the police are obligated to disclose the fruits of their investigation to the Crown and that's a duty that is independent of any specific request by the Crown, and I think the quotes from Martin really outline that.

There's also jurisprudence, I think, *LAT* in the Ontario Court of Appeal outlines that. There are regulations to the *Police Services Act* as well that provide that duty on the police and makes some -- at least makes some recommendations about how the police should organize their brief and their investigative file, which ultimately would come to the Crown in the form of a Crown brief.

MR. DUMAIS: And the final section of that

policy deals with Crown participation in police training and I think there's a separate heading on training that we'll be dealing with shortly.

MS. NETHERY: Okay. All right.

That's fine. We do encourage the Crowns to be come involved in and continue their involvement in police training.

MR. DUMAIS: Now, you have enclosed as well a number of historical policies dealing with relationship with Crown and police and the first one is found at Tab 28. It's dated January 20th, 1976 and it appears to be a note to all Crown attorneys on the prosecution of police officers and reminding all Crowns that they're retaining their discretion as to whether or not to prosecute the police officers or whether or not to use a Crown attorney from another jurisdiction.

MS. NETHERY: Yes. I think one of the key points is to make sure that not only is justice done but that it appears to be done and that was the idea of bringing in an outside prosecutor who would not be familiar with the police service or the individual police officer. So this was, I guess, the beginning of a process that ultimately ended up in a branch that we have now called Justice Prosecution. That was the beginning of really looking at and making sure, in writing at least, that there

would be this bringing in of somebody outside with fresh eyes to prosecute if it's a police officer, for example.

MR. DUMAIS: And that note or policy reversed the prior policy which is found at Tab 32 and dated May 14th, 1971 that essentially made it mandatory that the Crown outside the jurisdiction prosecute these matters?

MS. NETHERY: I'm sorry. I just didn't quite hear you.

MR. DUMAIS: The policy that we just looked at Tab 29 reversed the prior policy at Tab 32 which made it mandatory that -- or am I reading that incorrectly?

MS. NETHERY: Sorry. I ---

MR. DUMAIS: Thirty-two (32).

MS. NETHERY: I have Tab 32 as charge screening policy.

MR. DUMAIS: Sorry. My Tab 32 is a memorandum to all Crown attorneys dated May 14th, 1971 which is on the screen now.

(SHORT PAUSE/COURTE PAUSE)

MR. DUMAIS: I'm advised that is 30.3.

(SHORT PAUSE/COURTE PAUSE)

MR. DUMAIS: I'll just make sure afterward, Commissioner, that everyone has the same exhibit in the same order at the end of the day. So it's on the screen now.

MS. NETHERY: Okay. Thank you. I think I have it as Tab 30, part (c) and it may be part 3 in some people's materials.

So this was a -- I don't think the memorandum we just spoke of, the 1976 memorandum from Mr. Langdon, reversed this one. I think it was simply a reiteration and a reminder of the original 1971 policy which was "please bring in counsel from outside of the jurisdiction to ensure that justice is done" and it seemed to be done.

MR. DUMAIS: All right.

Although the 1971 one appears to make it mandatory that it be conducted by an outside Crown, whereas the other one reiterates the Crown's discretion as to ---

MS. NETHERY: Well, what I would say about that, counsel, is that I think that's a perfect example of why we needed to have a Crown Policy Manual and a Criminal Law Policy Branch such as mine to make sure that we do have that kind of consistency because I don't think there was an intention to soften the approach in 1976, although I wasn't a Crown then but I'm very doubtful that it was an intention to actually change the direction. I think it was more intended to be a reminder but the language may be somewhat different.

MR. DUMAIS: All right.

Now, the other policies that you were able to produce dealing with the relationship between Crown and police -- and I hope I've got the tab number correct, Tab 29 -- that's correct -- which is dated November 15, 1982, refers to a question that the Attorney General had been asked in the House as to essentially reminding Crown attorneys to prosecute police officers lying under oath if they had -- essentially if they had a case.

MS. NETHERY: Yes, that's correct.

MR. DUMAIS: And I believe that that's the last historical policy dealing with that matter.

MS. NETHERY: And then I think we move on to Tab 30 and Tab 31 which are really simply updates of the 1994 policy on the relationship between the Crown and the police -- I'm sorry, the 1997 policy on the relationship between the Crown and the police.

MR. DUMAIS: And they are the policies presently in effect?

MS. NETHERY: Yes. Tab 30, P-1, and Tab 31, PM2005, number 34, provides really essentially similar advice to what we have discussed in the 1997 memorandum of policy.

MR. DUMAIS: All right.

Then I believe we can move on to the next item which is the charge screening process, and that's at

page 18 of the outline, Item 12.

MS. NETHERY: Well, charge screening is one of the most difficult processes for Crown counsel to follow because the community relies on the Crown to vigorously pursue provable charges but also to protect those people who are innocent from serious repercussions of the criminal charge if there is no reasonable prospect of conviction.

So this is a relatively new process, as I have said. It started in 1994 after the recommendations in the Martin Committee Report came out. It is an area of Crown discretion that's often misunderstood and difficult to apply in practice because we don’t provide a single formula that can be taken in every single criminal case.

So Crown counsel have historically been encouraged to consult with more senior counsel when presented with a challenging or difficult screening decision and even amongst senior counsel it's not uncommon for a debate to ensue as to how these principles should be applied. I think it's an example of the principle that reasonable and intelligent people can disagree on certain points.

So in terms of a history of Crown screening, as I say, January 1994, the first Charge Screening Policy came out as a part of the Crown Policy Manual. And then in order to clarify the obligations of Crown counsel in the

area of charge screening, the policies were updated by way of two commentaries. One was issued in 1995 by then Assistant Deputy Attorney General Michael Code and again in 1997.

The first commentary that was issued -- and we can look at them in a little more detail if you wish later on, but the first commentary that was issued in 1995 outlined the applicable legal principles and encouraged consultation among senior colleagues and related to how to approach a situation when one had a single fragile witness, that that could still be the basis of a reasonable prospect of conviction in the circumstances and that if one has, as I've said, a difficult charge screening decision to make that Crown should not be criticized if they review all of the circumstances and speak to senior counsel for further advice and guidance and then make a decision. And that's often what we do.

If an Assistant Crown is having difficulty making a particularly hard call on a charge screening decision, he or she will often consult with the Crown Attorney. Sometimes the Director of Crown Operations will be brought in to provide an opinion. At times, Crowns from other jurisdictions, outside jurisdictions may be brought in as well so that there is no apparent perception of -- and no bias. A fresh set of eyes is sometimes very

helpful.

So that particular commentary outlined the basis of the conviction could be a single fragile witness and notes the *François* case in the Supreme Court of Canada and, as well, it's of note in *François* which dealt with -- which dealt with the reasonable basis for a conviction that there was a 4-3 split in the Supreme Court of Canada and four Supreme Court justices thought the verdict was reasonable based on the testimony of the fragile witness, where three other justices did not agree.

Then a second commentary was issued in March of 1997 and this commentary outlined the approach to be taken when we have a witness who is recanting his or her evidence. The commentary indicates that the proper approach is really three-pronged. If there is a recantation, it should be investigated by the police. The Crown should refer it to the police. The matter -- any fruits of that investigation should be disclosed and then the matter should be re-screened to determine whether or not there is still a reasonable prospect of conviction.

That particular commentary also deals specifically with recantations in the area both of child abuse and domestic violence because those are the types of cases in which we so frequently see recantations. It's not an unusual thing. It's not -- how should I say -- it's not

unusual.

So those are the historical policies and I'll get into the test in a minute. But in the present world, the most addition of the Crown Policy Manual, which was released March 31st, 2006, we've set out both a policy and a practice memo and the practice memo outlines the threshold test for reasonable prospect of conviction, as well as defining the public interest.

It also outlines that each Crown office or each jurisdiction should have a protocol for all charges to be screened. That was really the situation as well in the 1994 policy and, as I have said, in terms of our case management system, often this function is performed by a case management team of Crowns. Frequently there are police officers associated with that case management system.

So the charges are to be screened as soon as possible and in any event, we try to do it before first appearance for the routine run-of-the-mill cases, but as soon as practicable after the charges arrive in the Crown Attorney’s office and certainly prior to setting a date for preliminary hearing or trial.

Something that's an update from the original one is the fact that we deal with how to approach in-custody informants and we also make reference to the In-

custody Informant Review Committee and the In-custody Informant Policy and Practice Memo.

So what are the tests that we apply, the legal test, what we call the legal test, the reasonable prospect of conviction and the public interest?

So we say, as I said before, that the obligation to screen is ongoing as new information is received by the Crown in preparation particularly for pre-trials, preliminary hearings, trials and appeals. It isn't unusual for defence counsel, for example, to bring certain cases of evidence to our attention or for the police to, as I say, be asked to do further investigation and then conduct the investigation and provide us with the fruits of it.

So it is an ongoing obligation and if at any point we determine that there is no reasonable prospect of conviction then the prosecution must be discontinued. The test is considered to be an objective test and it is higher than a *prima facie* case or the test for committal at a preliminary inquiry that requires that there be evidence whereby a reasonable jury properly instructed could convict. It also at the same time doesn't require a probability of conviction, i.e. a conclusion that a conviction is more likely than not.

So it falls somewhere between that *prima*

facie test and the probability of conviction test. So then the question is what do we look to in terms of the test to apply as a reasonable prospect of conviction? First, are the facts supported by the legal elements of the charge or do the facts support the legal elements of the charge?

Secondly, we look at the availability of evidence, the admissibility of evidence, although we don't want to necessarily maintain the status quo on cases like *Khan* and *KGB* in the Supreme Court of Canada where cases where the Crown used at that time what were novel arguments which ultimately resulted in a change in the law relating to the admissibility of hearsay evidence. So it's not just a rigid, here is the status quo but there has to be some realistic assessment of admissibility and the determination as to whether or not there is a credible argument to be made that perhaps the law should change in a particular area.

There is some assessment of the credibility of witnesses although that's a small assessment, a tiny assessment if I can call it that because we don't want to usurp the function of the trier of fact, the judge or the jury. So we look at issues such as has there been a history of dishonesty, is there a motive to lie, what is the ability to observe in a case. For example, where there is an eye witness identification case, is there some

irrefutable evidence that the witness is lying or mistaken? And, finally, some assessment of known defences; is there a clear Charter violation?

So those are the issues that we look at in terms of determining whether or not there is a reasonable prospect of conviction. Presuming that there is a reasonable prospect of conviction after we have applied the test, taking into account those various issues that I've just outlined, then after that the Crown would determine whether or not it's in the public interest to proceed.

Of course, the public interest is only considered after we have determined that there is a reasonable prospect of conviction because no public interest no matter how compelling can be the basis of a prosecution absent a reasonable prospect of conviction.

In terms of the public interest, again, these factors are outlined in the original policy as well as in the updated practice memorandum issued, I think, in 2002 and in the materials, but there are certain things that we can't consider in terms of the public interest. We can't be influenced by personal views or fears about our careers. We can't be influenced by stereotypes.

Then, in terms of -- there is a non-exhaustive list of factors that is set out, including the gravity of the offence, the views of the victim, physical

or mental health of any victim, witness or accused, crimes of violence. Obviously, there is a greater public interest in proceeding.

We also look at other policy statements of the Attorney General to determine public interest issues. So for example, in the area of child abuse, sex assault and domestic violence, we have what is called and sometimes misunderstood a vigorous prosecution policy. So we would look at those to determine whether it is that sort of offence, whether it's a public interest in proceeding.

So I think that those are the general comments that I would make about the two tests. I have already said if there are some difficult decisions to be made, we really recommend, as outlined in the policy, that one should consult with senior colleagues for further advice.

So the current situation, we do have a current policy and practice memo. Perhaps you'd like me to refer to those now?

MR. DUMAIS: Sorry?

MS. NETHERY: Would you like me to refer to the current policy and practice memo at this point?

MR. DUMAIS: Perhaps just indicate which tab the memo is found?

MS. NETHERY: Okay.

The charge screening practice memo is found at Tab 37 and the charge screening policy is found at Tab 40.

MR. DUMAIS: And is there as well the 2006 policy that came out with the policy manual?

MS. NETHERY: The policy that you see at -- excuse me.

(SHORT PAUSE/COURTE PAUSE)

MS. NETHERY: The policy that you see at Tab 40 is the policy that came into effect with the Crown Policy Manual, the new Crown Policy Manual in 2006.

MR. DUMAIS: Okay.

MS. NETHERY: I think March 21st, 2005 reflects the date that it was approved by the Attorney General.

MR. DUMAIS: And essentially, that policy reiterates the test of reasonable prospect of conviction and the public interest which you've just discussed?

MS. NETHERY: Yes, that's right.

MR. DUMAIS: All right.

If you then look at the next item which, I believe, are other related policies affecting screening and that's IV, page 20?

MS. NETHERY: Yes.

MR. DUMAIS: The policy on recanting

witnesses which you mentioned previously as well.

MS. NETHERY: Yes. In terms of the policy on recanting witnesses, there was one issued initially in 1997 and that's at Tab 36 of your materials. Subsequently, that was updated.

MR. DUMAIS: In 2002 at Tab 38.

MS. NETHERY: Yes, thank you.

So I think I have indicated the general practice that we would follow in terms of having it investigated, re-screened and then disclose the fruits of the investigation or the new statement.

The fact that there has been a recantation is not in itself a bar to conviction and we do set out in the practice memo particularly the process that should be followed by Crown counsel in determining whether or not to proceed with a charge.

So perhaps we can scroll down a bit just to take a look at that section?

(SHORT PAUSE/COURTE PAUSE)

MS. NETHERY: Okay. So we indicate, I guess, in point (a) of the practice memo that once there has been a further re-investigation that we do re-screen the file. We look at the fruits of the police investigation, whether or not the witnesses returned to the original statement following or during the police

investigation -- that sometimes happens -- the circumstances of the original statement, as well as the recantation. Has there been some pressure on the witness to recant? Is the recantation under oath?

We take a look at some of the jurisprudence about recantation, *KGB, FJU* and *Khan* in the Supreme Court of Canada dealing with the admissibility of hearsay evidence and *KGB*, of course, was a case where there was a recantation and videotaped statements of the original statements were introduced in court and that was upheld in the Supreme Court of Canada.

So the fact that a witness recants doesn't automatically eliminate the reasonable prospect of conviction. We take a look and see what other evidence might be available to prove the charge aside from the original statement. Sometimes when you're dealing with these sorts of cases, it's akin to -- the police will sometimes say and Crowns will sometimes say that it's akin to an investigation and a prosecution of a homicide-type case because often a witness is not available and so we have to look at all the other potential supporting evidence in order to determine whether or not there is a reasonable prospect of conviction and whether we have a case that we can go ahead in.

And then we suggest that, you know, Crowns

be aware of the special dynamics that can be involved in the prosecutions involving things like spousal abuse and child abuse as well as the evidence of unsavoury witnesses.

So that's not an exhaustive list and not every -- there isn't one fact that is going to be determinative but those are the issues that we would look at in terms of determining whether or not we have sufficient evidence to proceed.

And then, if we can scroll down further in the document, please?

Then, we give advice to Crowns about which cases should proceed, which may proceed and which shouldn't proceed. So if there is other evidence available to prove the charge, then the case should proceed to trial provided that there is the -- that it does meet the charge screening standard of reasonable prospect and public interest; cases which may proceed where the Crown has no means other than a recanted statement to prove the charge but the Crown's best professional assessment is that the witness may return to the original statement and that the original statement was truthful.

And then the third situation if you can scroll down a little further, please?

Cases which should not proceed to trial where the Crown has no other means other than witness's

recanted evidence to prove the charge and Crown counsel's best professional assessment is that the original statement is not true, then the prosecution should be discontinued.

So we set forth, really, the cases that should proceed, those that should not and those where the Crown has the discretion to determine whether or not they should proceed with it. And that's the practice that we recommend to Crowns as to how to go ahead with these.

I should say that this portion, the cases which should not proceed and cases which should and cases which may proceed is a section that was new in 2002. It was not in the original 1997 commentary on recanting witnesses. So it's a new process that we recommend to Crowns.

MR. DUMAIS: And other -- if we can just move on then with other related policies that form part of the screening process? There is one dealing with elections in hybrid offences and community justice programs including diversion and extra judicial sanctions.

MS. NETHERY: Yes, right. Well, I think -- you know, we've talked about the Crown election process previously. So I don't think I'll belabour that point, but, you know, you'll recall that if we proceed summarily, then we don't have to have a preliminary hearing and from the point of view of a child witness, that's often a good

thing.

MR. DUMAIS: And the policies on community justice programs are alternatives to proceeding with charges through the normal court process?

MS. NETHERY: Yes. This provides for -- these policies support diversion for minor criminal offences. They're not applicable to child abuse or other serious violent offences. In other words, we can't divert those.

MR. DUMAIS: Now, another policy I am looking at, at the top of page 21, which is found at Tab 34, is principles that have been mandated with respect to resolution discussions, following the Martin Report's recommendation.

MS. NETHERY: Yes, this was the third policy that we issued post the Martin Committee Report, Resolution Discussions, Charge Screening and Disclosure. So this sets out the principles for resolution discussions and basically says that if we can resolve cases on an early basis, it may very well be in the best interests of the victim, the protection of the public and the rights of the accused.

But those are the types of things that we have to balance when we're determining whether or not to resolve a particular case, and the memorandum provides advice and guidance to Crowns relating to the factors to

consider about resolving a case. And I think I've already mentioned Crown counsel must not accept a guilty plea knowing the accused is innocent. We can't accept a guilty plea when we can't prove a material element of a charge unless we've disclosed that to the defence. We can't bind the Attorney General's right to appeal any sentence and we must honour all agreements reached during resolution discussions absent exceptional circumstances.

So it sets out -- it's a framework for resolution of charges but also provides some of the principles that we would live by in order to ensure that justice is done.

MR. DUMAIS: And the original policy issued in 1994, Tab 34, was updated in 2006, and that's found at Tab 46.

MS. NETHERY: Yes, there's a policy on resolution discussions, the brief statement of principles at Tab 43, and then a practice memo at Tab 46, and it hasn't really substantially changed from the initial 2000 -- sorry -- 1994 policy.

MR. DUMAIS: Sorry, you're right. It is the practice memo at 46.

MS. NETHERY: Thank you.

MR. DUMAIS: Now, there is a reference to a number of tabs at the end of that section, but I think

we've addressed all of them in the outline, which would then take us to page 22, Item 13, The Prosecution of Child and Sexual Abuse Cases. The first item is how does the Ministry of the Attorney General liaise with other public institutions in child and sexual abuse cases?

MS. NETHERY: So the Crown Policy Manual specifically recommends local protocols with other parties, the police, Victim Witness, Children's Aid established in child abuse cases. And that's outlined in the 1994 policy on child abuse, which is C -- I think it's C-3, which would be found -- if I can find a tab number -- sorry, but in any event, in 1994, that was set out. It has also recently been updated as of last week in a practice memo, which I think was provided to you ---

MR. DUMAIS: Yes, and actually we will provide the new -- that's the practice memorandum?

MS. NETHERY: That's correct.

MR. DUMAIS: It is being copied right now and we will be filing those after the afternoon break.

MS. NETHERY: Okay, thank you.

All right. So but in any event, that hasn't changed. We still recommend local protocols. We recommend that the Crowns take a leadership role in developing those protocols. We ask that there be joint -- or suggested there be joint training sessions between child protection

agencies and police at a local and regional level. We work with groups such as the Institute for the Prevention of Child Abuse, which did exist in Toronto, and the Metro Toronto Child Abuse Committee on the development of our policies and procedures.

In 1988, when Bill C-15 was released, Crown counsel were involved on a local level on an inter-disciplinary or cross-disciplinary training with various Children's Aid Societies and police services. And then there are other -- I think we've talked about the Criminal Law Division at least working closely with institutions such as or groups such as the London Family Court Clinic, Gatehouse in Toronto, Victim Witness Assistance Program coordination with the Hospital for Sick Children, and there's Crown representation on the Coroner's Paediatric Death Review Committee, which reviews, I think, every suspicious child death in the province.

Victim Witness Assistance Program liaises with outside agencies. I know you will hear from another witness about that.

I think Crown counsel have a particular obligation to liaise with child protection agencies and that's outlined in the policy and then ultimately the practice memo that has just been issued.

So we also have a duty to report any case

where we have a reasonable suspicion of child abuse or neglect under the *Child and Family Services Act* and we've issued a practice memo, which is at Tab 47 setting out a procedure for Crowns to do this reporting. It involves initial telephone calls and then a follow-up faxed reporting sheet for local child welfare authorities.

So that's the -- I think those are my comments about liaison with other public agencies.

MR. DUMAIS: Perhaps we can take the afternoon break here, Mr. Commissioner.

THE COMMISSIONER: Yes. Thank you.

Back at 3:30.

THE REGISTRAR: Order. All rise. À l'ordre; veuillez vous lever.

The hearing will reconvene at 3:30 p.m.

--- Upon recessing at 3:16 p.m./

L'audience est suspendue à 15h16

--- Upon resuming at 3:34 p.m./

L'audience est reprise à 15h34

THE REGISTRAR: This hearing of the Cornwall Public Inquiry is now in session.

Please be seated; veuillez vous asseoir.

THE COMMISSIONER: Thank you.

MARY CAMERON NETHERY, Resumed/Sous le meme serment:

--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.

DUMAIS, (cont'd/suite):

MR. DUMAIS: So I believe we were at the specialized Crown resources with respect to the different tools that they have and specialized resources that they have with respect to child and sexual abuse cases, Roman Numeral (ii), at page 23.

MS. NETHERY: Yes. Thank you.

We have in the Criminal Law Division various legal research tools to assist Crown counsel in the prosecution of child and sexual abuse cases.

Specifically, we now have -- we call it the "CLD Net", the Criminal Law Division Net, which has legal databases on it relating to a wide variety of legal issues, legislation, case law, sentencing provisions. All of our research papers from the Crown summer schools, all of our practice memos, our confidential legal memos, we have a link to all the policies, a link to all legislation, all educational papers from our spring and fall conferences -- and I don't know if I've mentioned -- in our summer schools, are available in electronic form to Crowns.

There is a search engine so that you can search your particular topic. Certain areas have their own Web page. For example, when the DNA databank legislation came in, we set up a Web page on that and it contains all of our relevant practice memos, confidential legal memos,

as well as summaries of the case law.

We also have a research counsel who sends out summaries of all of the Ontario Court of Appeal and Supreme Court of Canada cases relating to criminal law issues, and I checked for 2005, there were over 200 of them sent out. So I think that's more than one per business day that we received. They are summaries. They are sent out on the email system to every Crown in the province and they're also then down -- whether it's downloaded or uploaded onto the CLD Net site for Crowns.

We also have a system whereby we can send inquiries province-wide to all Crowns and all Assistant Crowns for feedback. For example, have you had this sort of argument before? Have you had that sort of argument? And then responses will come in. Counsel in the Crown Law Office - Criminal, which you will recall is our appellate branch, have areas of responsibility and those areas usually are given to them because they've argued some of the significant cases in the Court of Appeal and Supreme Court of Canada on whatever their area is.

For example, we've talked about wiretapping and search warrants and DNA. We have one -- we have several counsel actually who have expertise in that area and their contact information is all available to Crowns throughout the system.

Counsel in the Criminal Law Policy Branch are also available to provide advice on our practice memos and our confidential legal memos. As I said, really the primary legal advice to Crowns though is given through the Crown Law Office - Criminal, the appellate branch. So if we don't know the answer, we refer them on to appellate counsel.

We obviously have QuickLaw, as I think most Defence counsel do.

MR. DUMAIS: Do you recall when the CLD Net came online?

MS. NETHERY: Well, when we first -- when we issued our first practice memo, which was in 1999, we did not have the CLD Net and so I think it was around the year 2000 when we started it.

So it's now been in existence and we've been gradually adding to it and refining it, I guess, over the past six years.

MR. DUMAIS: And the CLD Net system is accessible by all Crown offices; correct?

MS. NETHERY: Yes, it is. Every individual assistant, every Crown has access to it.

MR. DUMAIS: But certainly the public does not have access to that.

MS. NETHERY: No. Many -- no it would

provide legal advice to Crowns. It's really more of an internal system.

MR. DUMAIS: So where is the Crown Policy Manual published? On the Ministry's Website?

MS. NETHERY: Yes. The Crown Policy Manual itself is on the Attorney General's public website.

MR. DUMAIS: Now, the next item is "Specialized Child Abuse Crowns and Courts".

And I think you've spoken briefly about that throughout different topics in your presentation, but you spoke of the 1988 mandatory designation of Crown in each Crown Attorney's office.

MS. NETHERY: Yes, that's correct. And in 1988, each Crown's office was mandated to establish a Child Abuse Coordinator with specific training, and that person was to act as a resource and mentor for other Crowns in the office and also would act as a contact person with Victim Witness.

The counsel to the Victim Witness Assistance Program was the -- I guess we call it the Child Abuse Coordinator for the province and that provided a good bridge between Crowns and the Victim Witness staff. There was very high volume, unfortunately, of child abuse cases in Toronto and that led to the establishment of the Toronto Child Abuse Court. It's called “J” Court. There's no

magic in that. It just happened to be the courtroom lettering. It was courtroom “J”. It was created in 1993 and it has a designated team of Assistant Crowns who have specialized in this area.

All of the cases in Toronto from all of the various boroughs come into that court. It's at Old City Hall and these cases are all handled by the specialized team. It's a child-friendly courtroom equipped with the closed-circuit equipment. There are not designated police officers to deal with the child abuse cases in Toronto but there's a variation on the theme. They're all handled through the Toronto Police Service Youth Bureau and so the same group of officers will appear on these cases and they can have a close working relationship with the Crown counsel from the child abuse team and I understand that's working very well.

This often involves joint training initiatives and there are victim witness staff who are associated with this particular court and they have early contact with the child witnesses to ensure that they are appropriately prepared and we've talked about too the use of the Gatehouse facility in Toronto as well to assist.

So in that particular court I know that they do use the closed-circuit TV. Throughout the province, the use of the testimonial aids is encouraged; videotapes,

screens, closed circuit. Booster seats and microphones are also available.

The “J” Court is the only designated child abuse court and it's used as regional resources, resource for cases from other jurisdictions involving child witnesses. The court itself is only to be used for the actual appearances where the child is testifying so that there can be the best use of resources. There are also the child-friendly courtrooms in -- sorry, I don’t think it's eight -- I think it's more than eight locations throughout the province and I've mentioned that that's now the standard for new courthouses to have child- friendly courtrooms.

THE COMMISSIONER: Would you know if there is one in Cornwall? Is the courtroom -- in Cornwall is there a child-friendly courtroom here?

MS. NETHERY: I don’t know the answer to that.

THE COMMISSIONER: Thank you.

MR. DUMAIS: Now, I understand that, as well, there are specialized prosecution teams to help deal with conflicts.

Is that correct?

MS. NETHERY: Yes. Historically, the Ministry has set up practices to avoid conflict of interest

or suggestion of bias and this originally started out with the practice of relying on Crowns from outside the jurisdiction to take care of cases where police officers or political officials or other influential members of the community were charged. I think you saw that reflected in the 1976 and 1971 memos.

Then from this initial model we moved to seeking or we moved to setting up a Director of Criminal Prosecutions Branch at the Ministry of the Attorney General in Toronto. That was created in 1989 and this office was responsible for, again, prosecutions of justice-related officials, police officers and others who might be charged.

This office evolved in 1994. It became a part of the Crown Law Office - Criminal. It was renamed at that time Special Investigations, which is a bit of a misnomer. Then the name was changed in May of 2002 to Justice Prosecutions and this is also still part of the Crown Law Office - Criminal and it conducts many but perhaps not all of these sorts of prosecutions.

In addition, the Crown Law Office - Criminal has what's called a “Trial Practice Group”. Crown Law Office - Criminal has the primary responsibility for the appeals in the province but also has a small group of individuals who handle high-profile complex trials and can be brought into a particular jurisdiction to take on these

sorts of prosecutions. Example, organized crime prosecutions are frequently handled by the Trial Practice Group of the Crown Law Office - Criminal.

In addition, senior counsel from other jurisdictions are frequently consulted and asked to do an independent review of complex problematic cases where reasonable prospect may be an issue and in some cases asked to take carriage of the prosecution because of their expertise in a specific area.

So that's the general -- those are my general comments on the specialized prosecution teams.

The other area -- do you want me to move into major case management at this point in time?

MR. DUMAIS: Yes, please.

MS. NETHERY: Okay. There is a reference to the major -- managing major cases -- a resource document which is at Tab 48 in your documents, and this resource document is an example and is one of the documents and is on the Criminal Law Division net site for Crown Attorneys. This grew out of -- the document itself was created in 2001 and provides recommended practices for handling major cases.

The document is broken into three basic components. The first one has to do with the -- setting out the roles and responsibilities of the various players.

The second part relates to the Major Case Advisory Group and the third part relates to other supports in place for major case teams.

So if I can just go through this, as I say, the document itself was devised and the process was devised after consultation with senior Crowns and grew out of a growing realization that there were a number of projects of increased complexity within the -- and prosecutions within the Ministry and that we needed to deal with some specific issues relating to the management of major cases.

So the first area, part one, deals with setting out roles and responsibilities in major cases.

You can just maybe scroll down a bit, please.

So what we say is that everyone has a role to play in the Ministry, if I can put it that way. The Attorney General, the Deputy Attorney General, the Assistant Deputy Attorney General, the senior managers of the Ministry if you will, have obligations to make sure that their process is in place to support the directors of Crown operations, the Crowns and the Assistant Crowns in these prosecutions.

The Crown Attorneys have an obligation to assign lead Crowns, work with the police pre-charge or assign the lead Crown to work with the police on a pre-

charge basis. The team will include victim witness assistants, program staff -- will include the Victim Witness Assistance Program staff. The team is to develop a media liaison, contact system, a system whereby the victims can be contacted about significant issues.

At page 21 of the document, if you can skip to that -- at page 21, we talk as well about our relationship with the police on case management and disclosure and obviously it's critical to ensure that there is a good working relationship between the Crown and the police, particularly relating to case management and disclosure. Sometimes a joint system between the Crown and the police is required and the police, for example, may choose certain software to use on their Crown briefs and it's important that it be Crown friendly and have a search capacity that the Crowns can use.

So there is a real requirement for that close working relationship. Often there will be a disclosure Crown who is assigned specifically to these major cases who will have the primary responsibility for disclosure from the Crown and often a disclosure officer or an information and evidence management officer on the police side, which is kind of similar, I guess, to the exhibit officer that some of us older people might be more familiar with.

So it's also clear when you've got a major prosecution that really you need a full-time police support team and on the other hand the Crowns have to have a system whereby they are available to the police for pre-charge legal advice. The police involvement, of course, doesn't stop when the arrest or the charge is laid. There has to be a continuing support and a continuing relationship throughout the case.

Now, I've also mentioned the document also outlines relations with the media, that there has to be a communications plan. There also has to be a plan for wellness, if I can put it that way.

We want to make sure that the Crowns who go into these cases come out as the same people because if you're working on a file for months and years and it's a very serious case, then there are real issues about life/work balance. So we do also provide for Crown Attorneys some employee assistance for them and some seminars on how to handle that aspect of dealing with a major case. So that's something -- a more specific support for Crowns, as well as how do we just set up and manage a major case.

This has been -- sorry. So that's one part. We suggest that there be a set of roles and responsibilities and an organization.

The other aspect has to do with a Major Case Management Advisory Group. I'm sorry, I don't have a page number for that, but in any event, the major -- oh, it's at page 31. The Major Case Management Advisory Group is a group of senior Crowns, MCAG, Major Case Advisory Group, and is a, you know, resource for people and for Crowns involved in these major cases. They can provide advice, help to problem solve, provide some legal and strategical advice, assist with any issues that come up relating to the police, and they've also developed an inventory of major cases that are going on beginning in July of 2001.

They are documenting lessons learned and have done education for Crowns on this process since, I think, since 2001, since this document was made up at Crown summer school. I think there's been one year when the education was missed, I think, due to the unavailability of one of the speakers, but we've basically had education for the past, I guess, six years and one out of six being missed.

So we've got organization structure setting out roles and responsibilities. We've got the Major Case Advisory Group for Crowns and this group as well acts as the liaison between the senior management and the Ministry and the Crowns who are involved in these large prosecutions to make sure that we're providing adequate resources to

some of these projects. And that's really the third piece of the major case management strategy.

The Major Case Advisory Group can recommend that more Crowns be assigned, more victim witness staff be assigned, look at issues such as security and safety for Crowns because that can be a significant issue in some of the -- for example, some of the organized crime prosecutions that have occurred and are ongoing. So there are really the three things; the organization, the advisory group and the potential for resources for Crowns as well as, of course, what I called the wellness strategy.

MR. DUMAIS: Before I move on, Commissioner, and before I forget, perhaps I can just file the additional exhibits that form part of the Book of Documents.

THE COMMISSIONER: Yes.

MR. DUMAIS: They should be filed as Exhibits 47 -- and Exhibit 47 is the new “Child Abuse and Offences Involving Children Practice Memorandum”, which is dated July 20th, 2006.

THE COMMISSIONER: All right.

--- EXHIBIT NO./PIÈCE No P-47:

PRACTICE MEMORANDUM - Child Abuse and Offences Involving Children - July 20, 2006

MR. DUMAIS: And Exhibit 48 is the Practice Memorandum entitled “Sexual Assault and Other Sexual

Offences" and that is dated July 21st, 2006.

THE COMMISSIONER: All right.

--- EXHIBIT NO./PIÈCE No P-48:

PRACTICE MEMORANDUM - Child Abuse and Offences Involving Children - July 21, 2006

MR. DUMAIS: So we have made copies for all the parties, and we will give them the opportunity to review them tonight if they have any questions for Ms. Nethery tomorrow.

THE COMMISSIONER: All right.

MR. DUMAIS: If we can then move on to the disclosure requirements that Crowns have and the different policies associated with disclosure?

MS. NETHERY: Okay. All right.

Well, this is page 25 of my will-state and there are, of course, some policies, Tabs 36 and following, at the end of this portion that I may refer to.

> "Crown counsel must make disclosure according to law - proper disclosure to the defence, of information in the Crown's possession, is one of the underpinnings of a fair trial process. This is a fundamental right of the accused under the Canadian *Charter of Rights and Freedom*".

"This standard was initially stated by the Supreme Court of Canada in 1991 in a decision of *Regina v. Stinchcombe*…"

"The governing principle is that Crown counsel is under a duty to disclose all information in his or her possession relevant to the guilt or innocence of the accused unless the information is excluded from disclosure by a legal privilege."

So we are under an obligation to provide the information that we have whether it points to the guilt or the innocence and whether or not we intend to call the evidence at trial.

In terms of the information that we disclose it's the information of course that we receive from the police usually by way of the Crown brief.

So the history of this is that prior to *Stinchcombe* -- *Stinchcombe* isn't the first, I guess, statement about disclosure at the time, the first time that we have been told to provide disclosure. In 1981, the then Attorney General, the Honourable R. Roy McMurtry as he then was, made a statement in the House and tabled a set of disclosure guidelines, which are found at, I think, Tab 49

of the materials. These disclosure guidelines, however, were somewhat restricted in comparison with the current law and practice and policy relating to disclosure.

For example, although it provided that we should provide the defence with all of the evidence against the accused, one of the things that was left out were specific witness statements. The will-states would be provided but if there was actually a written statement that provided the exact words of the witness, that was not necessarily provided under the disclosure guidelines. Police notes were not needed to be disclosed.

So from 1981, that's really the beginning of a more formalized disclosure practice because prior to that, the Crown would disclose as he or she felt was appropriate in the particular case. So 1981 is the beginning of a more formalized process. In 1987, Mr. Justice Zuber in a report suggested that the Disclosure Guideline was not necessarily being evenly applied or followed across the province and suggested that it should be a directive, so that it would have a more uniform application. So in 1989, a directive was issued, and it was issued under the name of Douglas Hunt who was the Assistant Deputy Attorney General of the Criminal Law Division at that time. It can be found at Tab 51 of the materials.

Then, as I say, *Stinchcombe* was decided in 1991 and, at the same time in 1991, our Attorney General set up the Martin Committee Report to review, among other things, disclosure practices and, ultimately, in 1994, the first Crown Policy Manual came out with a Disclosure Policy which was, as I say, consistent with *Stinchcombe* and followed the recommendations of Mr. Justice Martin in his report.

So that's -- I'm sorry -- and then after that -- and that disclosure policy can be found at Tab 52. That was the ---

MR. DUMAIS: The original 1994 policy?

MS. NETHERY: Yes, and then the update in February of 1995 was extremely minimal. I think it was more a matter of cross-referencing with other policies. So essentially it's the same.

And then in the new Crown Policy Manual at Tabs 53 and 54 there is both a -- there is a policy, the brief statement of principle, which has the date of March 21st of 2005 and then the practice memo on disclosure, which provides more detailed guidance at Tab 54, issued on March 31st of 2006.

So that's the brief history of policy advice to Crowns in regard to disclosure. I have reviewed the *Stinchcombe* decision with you and also we have spoken, I

think previously, about the Martin Committee Report and the fact that it made recommendations, which are found in our current Crown Policy as well as the previous 1994 and 1995 versions.

So excuse me.

(SHORT PAUSE/COURTE PAUSE)

MR. DUMAIS: So then perhaps the next item is the second-last bullet of that section, which deals with duty on the part of the police for a full disclosure to Crown counsel.

MS. NETHERY: Yes, thank you.

Yes, once a criminal charge is before the courts, as I think I have mentioned before, there is a duty on the police to provide full disclosure to Crown counsel. The Martin Committee Report made that clear that there was an obligation on police to disclose the fruits of their investigation and that it's really a duty independent of any specific request by Crown counsel.

As I say, that is -- we have indicated this before, that this is also confirmed in an Ontario Court of Appeal case called *LAT*. Now, certainly, the Crown has an obligation to make inquiries of the police as well to make sure that they do have the full disclosure. So it's really in that sense a joint obligation. The Crown is obliged to provide the disclosure to the police -- I'm sorry -- to the

defence counsel and the police are obliged to provide full disclosure to the Crown counsel.

And we have talked about our Crown case management teams that provide support to the system of screening but also to the system of disclosure and keeping track of disclosure.

MR. DUMAIS: I think we've dealt with all the documents listed in your nine tabs following that section. If we can then look at policies dealing with child sexual abuse cases?

(SHORT PAUSE/COURTE PAUSE)

MS. NETHERY: Okay.

When we initially put out the Crown Policy Manual as I have mentioned, we have C-3, Policy C-3, which relates to the prosecution of child abuse cases. I think I have reviewed that a bit with you. It's at Tab 59 and that purported to provide guidance to Crowns on prosecution of both -- of child abuse and there are also prosecution of sexual abuse cases.

We also at that time provided other resources to Crowns including, for example, the U.S. Prosecutor's Manual on prosecution of child abuse, which was a very useful resource tool, and it was provided to every Crown's office in the province.

We have already gone through the 1994

policy, I think, in terms of talking about the influence of the Rix Rogers Report and the Badgley Report, which are both cited in that particular policy. The 1994 policy covered issues such as inter-agency coordination, preferred practice of vertical prosecutions; and that's a system whereby the same Crown counsel handles the case from the beginning to the end, so that there is that continuity. That's a good general practice with most serious cases but particularly with child abuse cases, so that they are not -- the children are not seeing too many different faces; that they have too many different people that they have to deal with. The cases should be handled by a local child abuse coordinator or by somebody who has some expertise in child abuse prosecutions, and we also set out some preferred interviewing and prosecuting techniques as well as some updates of evidentiary matters for Crowns.

And we also in that particular policy document acknowledged the special requirements of cases involving multiple victims and multiple offenders and suggest that there be protocols put in place to deal with those. So that piece of advice is fine as far as it goes, but I think it's been largely overtaken by the major case management process or resource document, because it does apply to -- major case management resource document and processes apply to cases of child abuse where there are

multiple victims and multiple accused persons.

MR. DUMAIS: And then you refer to Tab 56, which is Bill C-2, and we have gone through that this morning as well as Tab 57, the reporting requirements pursuant to the *Child and Family Services Act*.

I think we have dealt as well with Tab 58, which dealt with recommendations found in the Robbins Report and Orders that could protect children.

I think one of the Practice Memorandum that we have not dealt with are the ones at Tab 85 and 87; the first one being the Practice Memorandum on the Sex Offender Registry, the provincial one and the second one being the National Sex Offender Registry.

MS. NETHERY: The Province of Ontario passed a bill, which became known as "*Christopher's Law*".

It was the Ontario Sex Offender Registry. It provided or created a provincial sex offender registry. It was proclaimed into force in April of 2001. The legislation was created in memory of Christopher Stephenson, who was murdered in 1988, at the age of 11. He was kidnapped, confined, sexually assaulted before being killed. And his killer was on federal parole release at the time of the murder and the killer's home was located very near the scene of the abduction.

So the impetus behind the legislation was

the urgent need for a quick focus police investigation where children are abducted for sexual purposes. So it really differs from CPIC and other police search processes in that it has a geographic mapping database. So if you've been convicted of a sexual offence, then there's a requirement of reporting to this provincial sex offender registry and an obligation to notify them of your address and any change of address.

It has the software capability of being able to say, for example, well, John Smith was abducted at a local mall located on a certain street and then within a geographic area be able to determine the addresses of people who are registered on the sex offender registry so that, in theory at least, there can be a focus on the registered offenders living near a particular crime scene.

So this registration process is automatic upon conviction of the designated offences and you'll see some of them listed in -- it's up on the screen now -- in Part 2 of the practice memo that was issued to Crowns and there have been challenges to that particular legislation. It has been upheld so far, I think at the Court of Appeal level.

The other thing that happened after this piece of legislation was passed, the federal government then set up its own or set up a National Sex Offender

Registry. Let me see, there's a practice memo relating to that as well ---

MR. DUMAIS: Tab 87?

MS. NETHERY: Tab -- I have it as Tab 89? Is that it? Anyway, it's on the screen now.

So in December of 2004, the National Sex Offender Registry was established and it is, I suppose, in some ways superior to the Ontario registry, in that it is nationwide. On the other hand, at this point I don't think it has the geographic mapping capacity. And it's not automatic upon conviction but rather Crowns have to apply for the sex offender registry order. I think that's a provision that's intended to make this particular registry more Charter consistent and Charter-proof than it might otherwise be.

So that came into effect in December of 2004 and can be accessed, I think, by the police nationwide.

MR. DUMAIS: The last relevant tab is Tab 63 and you've enclosed a number of historical memos and directives that had been issued and circulated between 1975 and 1988 relevant to the disclosure process. Right?

MS. NETHERY: That's correct.

MR. DUMAIS: All right.

So I don't intend to have you go through all of the different memos.

The next area is victim and witness interviews and what is the role of the Crown in dealing with that, as described in different policies.

MS. NETHERY: Okay.

In terms of our obligations to victims and this is styled as victim witness interviews as a beginning point but it really might more properly be styled as the Crown's relationship with victims and witnesses. Obviously, we do interview them. So that's a part of the process, but our policy -- and you remember I spoke about the preamble to the Crown Policy Manual from 2006. When we talked about the role of the Crown we also talk about the Crown counsel's obligations relating to victims and witnesses. We do owe victims a special duty of candour and respect. When I say "candour" I mean to be honest with them about the criminal process. I think nothing can be as heartbreaking for a victim than to think that the whole thing is going to be easy once they've come forward with a complaint or with a statement because it's often just the beginning of the process and it can be very difficult and potentially very traumatic to victims to have to go through the court process.

So sometimes I think it's important to explain that to victims and it doesn't always have to be the Crown who's actually making the explanation but it

could be the victim witness or it could be the police, and also explain certainly the presumption of innocence and the need for proof beyond a reasonable doubt so that that's really understood by them when they're going into the process. I'm speaking here more of, you know, the adult victims when I'm talking about explaining any sort of legal concepts. But with children as well, just to be honest with them about what they can expect to see and have happen in the courtroom. Obviously we owe them a special duty of respect, given the fact that they've come forward with an allegation and they're a member of the public and I think it's an obligation on Crowns to treat them with a special level of respect.

The Crown counsel, however, is not the victim's lawyer. I think it's important to explain to them what our role is in terms of being the impartial representative of the public with duties to everybody and that we do have prosecutorial discretion. Maybe sometimes it's at odds with what the victims may want in a particular case but it's important to be sensitive and realistic and candid with the victims about the process.

Often it goes -- I think it goes a long way toward -- I don't know -- toward having a good relationship with the victim when you can explain to them your position. They may not like it or they may not agree with it but just

to be able to explain it to them, I think, is an important thing.

I often say, when I'm doing training with Crowns on our relationship to the victim that the golden rule applies: Do unto others as you would have them do unto you. How would you want to be treated if you were coming forward with an allegation or a complaint? That really is the kind of rule that should apply to the Crown's relationship to victims.

So it's a professional -- it's a matter of being professional and showing a level of professional respect and courtesy to them as we really should with all of the parties in a prosecution.

So we also -- and this is, I think, outlined in our policy on our relations with the victim in our policy on the role of the Crown that I've alluded to before. It's detailed a bit more in the practice memo that we may refer to later on.

THE COMMISSIONER: Okay.

MS. NETHERY: So we say that the administration of justice is best served by a process that ensures that the witnesses provide complete, honest and independent evidence. So properly conducted witness interviews can contribute significantly to that goal. So we will, I think, particularly in child abuse cases,

interview the witnesses and although this deals generally with victim witness interviews, I know in the child abuse policy we say that the Crowns are to interview the children prior to their going to court to testify at least once and do it early on in the process.

We do have a specific practice memo that relates to the conduct of witness interviews. I think that can be found at Tab 66. This, as I say, is a more generic memo and doesn't deal just with child witnesses but it is, I think, you know an important memo in terms of our relationship with witnesses to ensure that we don't use -- I think one of the points is we don't use suggestive techniques which could improperly influence a witness' testimony and that's very important with all witnesses but particularly with children who may be suggestible. As I say, that practice memo is there and that point in it may be very salient for child witness cases.

We also comment in the practice memo that pre-charge witness interviews with witnesses and Crowns are rare and restricted to limited occasions and there was of course a recent case in the Supreme Court of Canada dealing with this; the *Regan* case which comes out of Nova Scotia. Although the court said that it was possible that it was not always the usual practice.

As well, the Crown attorney system has a

policy and a practice memo on victims and witnesses with special needs and those are individuals who because of their age, or perhaps impairment of intellectual or physical abilities or emotional abilities, really aren't able to access the criminal justice system fully and so we set out some recommended practices for Crowns about that involving supports for those individuals, sometimes interpreters to assist us in -- cultural interpreters to assist us in interviewing them. If we've got hearing-impaired people we may have sign language interpreters and so on.

So in this particular practice memo, it puts an obligation on the Crown attorney's office to set up, to have a protocol, to identify these sorts of sensitive cases and assign Crown counsel early to them. The practice memo outlines procedures for publication bans, victim notification from the bail to the appeal stage and processes by which we seek input from victims at the sentencing stage, the victim impact statements that we talked about a bit previously.

Now, I don't -- of course we note that there's a need for a close relationship with the victim witness office in terms of interviewing the victims and witnesses and preparing them for trial, attending at Crown interviews. I know that you'll hear from the victim

witness -- someone from the victim witness program about that so I won't go into that in more detail. I will leave that to her to do.

MR. DUMAIS: Yes. We've enclosed all these Crown policy manuals and they are part of your Book of Documents; all the policy that you just referred to.

MS. NETHERY: Yes. The one thing that hasn't -- well, you've mentioned that the new child abuse practice memo -- but the other thing that isn't in your documents that I think will be filed at some point, is a booklet entitled "What's My Job in Court?" that we use to assist child victims in preparation for proceedings. I understand ---

THE COMMISSIONER: We got that.

MS. NETHERY: Oh.

MR. DUMAIS: Yes. And that's -- perhaps just as a brief explanation, Tab 73 is blank in the Book of Documents and the reason for that is we are not able to do justice to the reproduction of this book and I believe your colleague will be addressing the contents of that booklet tomorrow.

MS. NETHERY: Okay.

MR. DUMAIS: The next item is the delay applications which is found at page 30 (ix).

THE COMMISSIONER: We'll make that the last

question for today.

MR. DUMAIS: Yes, Commissioner.

THE COMMISSIONER: Thank you.

MS. NETHERY: Section 11(b) of the *Canadian Charter of Rights and Freedoms* guarantees that any person charged with an offence has the right to be tried within a reasonable time. We've cited two of the leading cases in the Supreme Court of Canada, *Askov* and *Morin* and if an accused right to a trial within a reasonable time is breached, the rule is the charge will be stayed and will not be tried on the merits.

So delays do exist in our system, given the increase in volume of cases before the courts and also, even where there isn't an increase in volume, the increase in complexity of the trials that are coming forward.

So through the use of Criminal Case Management Protocol, the Justice Summit, the Bail and Best Practices Protocol, we have taken a number of steps to address the backlog of criminal cases. You've heard that we have added Crowns and case management coordinators; a significant infusion of resources to help us with this.

In terms of diversion of the minor criminal case -- charges out of the criminal system, both for youth and adults, that's something that we are addressing in the

Justice Modernization Project that I am involved in. And they are minor cases. The idea, at least in part, is that sometimes dealing with these cases outside of the regular criminal justice system can bring more justice to those individual offenders, that they don't really need to be dealt with, with a full-court press.

But on the other side of the coin, if we do divert them, the theory is that we will have more room in the criminal courts to be able to deal with the more serious cases such as the child abuse and have more time as Crowns to be able to devote to them.

So those are some of our delay reduction processes.

Under the JDRI Project, as I say, there were additional judges, as I understand it, dedicated Crowns and support staff.

In addition, this is a backlog reduction initiative and certainly in the larger jurisdictions we send in what we call, blitz teams of Crowns and judges, who can handle some of the unresolved backlogged matters. You know, these teams have been going around the province to particularly the larger backlogged jurisdictions to have these blitz-related courts.

Now, there are a number of factors that have been identified as causing delays. We've talked about

police delays and providing adequate disclosure to the Crown. Crown delays, in their ability to screen cases and provide further disclosure in a timely fashion to the defence. Sometimes there are delays in the Legal Aid applications. Accused persons may, either deliberately or unintentionally avoid retention of counsel. Defence counsel may not be able to appear on the date agreed to. Justices of the peace and judges -- I hesitate to say this but failing to case manage the cases.

These are some of the things that are pointed to, as being a number of factors involved in delays by various experts.

So our response to this has been to create these dedicated Crown case management teams to develop this Justice Modernization process that I've spoken about, to develop the Criminal Case Management Protocol and so on.

Legal Aid as well, is setting up onsite application processes in bigger jurisdictions.

MR. DUMAIS: I think we've spoken about the Crown case management team earlier today as well.

So on that note, Commissioner, perhaps we can adjourn to tomorrow morning at 10:00.

THE COMMISSIONER: All right. Thank you.

Thank you very much. Have a good evening.

MS. NETHERY: Thank you, sir.

THE REGISTRAR: Order; all rise. À l'ordre; veuillez vous lever. This hearing is now adjourned. L'audience est ajournée.

--- Upon adjourning at 16:31 p.m./

L'audience est ajournée à 16h31

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

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

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Marc Demers, CVR-CM