

**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 93**

**Held at :**

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

Monday, February 19, 2007

**Tenue à:**

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

Lundi, le 19 février 2007

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. Joe Neuberger Mr. Mike Lawless	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Ms. Judie Im	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Bennett	The Men's Project
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association
Ms. Jennifer Birrell	Catholic District School Board

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(none entered)

1 --- Upon commencing at 2:36 p.m. /

2 L'audience débute à 14h36

3 **THE REGISTRAR:** This hearing of the Cornwall  
4 Public Inquiry is now in session. The Honourable Mr.  
5 Justice Normand Glaude, Commissioner, presiding.

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Good afternoon all.

8 For members of the public and those watching  
9 on the web cast, I apologize for the delay in starting.

10 However, as it is Monday, and I have certain  
11 comments to make, I thought it *à propos* that counsel be  
12 permitted to meet with lawyers for the different parties in  
13 order to discuss what we will be doing this afternoon.

14 What I want to do is to bring you up to date  
15 on my activities since the last day. You will recall that  
16 I expressed concern of the wellbeing of the witnesses  
17 testifying here before me. What I had said in part, last  
18 week or another day, was that I expect that all parties,  
19 but specifically public institutions who, by their very  
20 nature, have, as their mandate, to seek the greater good,  
21 to instruct their counsel to be fair in their cross-  
22 examination, to stay within the boundaries of the mandate  
23 and to ensure that there is no unnecessary pain and anguish  
24 revisited on these witnesses.

25 Having said that, I am also mindful of the

1 rights of the parties to fairly cross-examine on issues  
2 that relate to their institutional response and which sheds  
3 light on important issues, and we all know that Mr. Silmser  
4 has experienced some difficulties in completing his cross-  
5 examination.

6 Following the giving of his evidence in  
7 cross-examination, Mr. Petepiece has also voiced concern  
8 about the manner in which some aspects of his evidence was  
9 elicited. Both gentlemen were before us giving testimony  
10 as part of the work of this inquiry. They had been asked  
11 to attend and have attended in response to their public  
12 duty.

13 My focus and concern is on the right  
14 processes for this inquiry and to figure out whether we are  
15 on the right balance. And let there be no misunderstanding  
16 me now. The balance is ever-changing, and I intend to  
17 readjust or to respond to that balance as we proceed  
18 throughout the inquiry, as need be.

19 The bottom line is to create an environment  
20 in which the risk of harm to individuals is managed while  
21 affording a proper scope for cross-examination. Again, let  
22 me be quite clear, this is not an indictment on the right  
23 to ask questions of probative value and it is not intended  
24 as a finger-pointing exercise in respect to individual  
25 counsel.

1                   Having made that clear, I do want to address  
2                   an issue that arises frequently, and to me it raises the  
3                   kind of question of balance that concerns me.

4                   Some questions may pertain to institutional  
5                   response but also engage questions of individual  
6                   credibility or veracity of accounts.

7                   In this situation, how should the right  
8                   balance be struck and how can we avoid backing into  
9                   attempts to demonstrate guilt or innocence in response to  
10                  certain allegations?

11                  Based on my concerns about process and  
12                  impact on individuals, I have asked the lead counsel, Mr.  
13                  Engelmann, to write to all of the parties to outline the  
14                  issues that have arisen and how they might impact on our  
15                  work. I want to hear from all counsel and today they will  
16                  have the opportunity to express their views.

17                  Following the information and suggestions  
18                  given by counsel today, I will consider all that has been  
19                  said and provide further direction within the next day or  
20                  so. This is important and a timely discussion; important  
21                  to our work, to counsel and to future witnesses. I welcome  
22                  an informed and professional debate.

23                  So now I will -- we will hear from Mr.  
24                  Engelmann who will set out the issue and then I'll hear  
25                  from the parties on this matter.

1        --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:

2                    MR. ENGELMANN: Thank you, Mr. Commissioner.

3                    Again, just by way of background, after your  
4        comments on February 8<sup>th</sup>, I wrote to counsel for all the  
5        parties on February 14<sup>th</sup>, 2007 and then again on February  
6        15<sup>th</sup>, 2007, and I'll just spend a bit of time to paraphrase  
7        what I wrote and give you a sense as to some of the  
8        responses I received, although counsel are here and will  
9        speak, obviously, on their own behalf.

10                   The reason why these letters were sent were  
11        that concerns were expressed by several people to  
12        Commission counsel about some of the harm that can be  
13        caused. Words like "re-victimization" were used; some of  
14        the harm that might be caused through some of the  
15        questioning and just the fact of being a witness at a  
16        public inquiry like ours. And there were suggestions made  
17        by -- and phone calls, emails, et cetera, received from  
18        members of the public, from individuals who had been  
19        witnesses and from individuals who we hope will be  
20        witnesses, so potential witnesses, about some of the  
21        process that witnesses have gone through here.

22                   So these concerns were expressed and,  
23        essentially, the concerns were that our process, as an  
24        institution examining allegations of child sexual abuse,  
25        were such that people were being harmed by our own process

1 and suggestions and comments were being made that, by doing  
2 what we're doing in Phase 1, we are perhaps losing sight  
3 of our role in Phase 2, and/or that there is a conflict  
4 between examining the institutional response, and how we're  
5 doing it, and that if there's a conflict with that in our  
6 healing and reconciliation mandate in Phase 2.

7 And then I received a letter from a witness  
8 that I had just called as well on top of some of these  
9 other concerns that were expressed, and it was for that  
10 reason that a letter was written to counsel for all the  
11 parties on February 14<sup>th</sup> bringing this matter up. And I'll  
12 just refer to that letter briefly, if I may, in a couple of  
13 points.

14 But, essentially, the letter talked about  
15 the fact that at least initially the witnesses who had come  
16 forward, the victims and alleged victims who had testified,  
17 in 2006 and the early part of 2007, had, in the main, a  
18 relatively positive experience. Some of them had had some  
19 difficulty with some parts of the process, but the overall  
20 feeling they had, after they left the witness stand, was  
21 that there had been some closure; what they had done had  
22 helped them in telling parts of their story, in dealing  
23 with the institutional response, and in achieving some  
24 closure to the experience that they have been through.

25 It was only recently with Mr. Silmsler, and

1       you've mentioned him and Mr. Petepiece, that we heard  
2       directly from a couple of victims, or alleged victims I  
3       should say, that this experience had been harmful and that  
4       was indicated to us by Mr. Silmser's counsel, Mr. Culic,  
5       and as well by Mr. Petepiece directly.

6               So it was in that context that I wrote to  
7       counsel and we talked about the fact that, in essence, that  
8       we wanted people to focus their cross-examination. Much  
9       has been said of restricting or curtailing or limiting, but  
10      the focus, and if I can use that word again, of my letter  
11      was to talk about focussing the cross-examination to ensure  
12      that the cross-examination was relevant to the mandate,  
13      that it was relevant to that institution's particular  
14      institutional response, that the probative value of that  
15      cross-examination was such that it -- I mean it should, in  
16      all cases, outweigh harm that may be done.

17             And I think you mentioned yourself sometimes  
18      the difficulty when we are perhaps testing the veracity of  
19      credibility of a witness. If it's dealing with concerns  
20      that a witness has with the institutional response, that's  
21      going to happen. There are going to be questions that are  
22      put.

23             If it's more leading to the credibility of  
24      the witness with respect to the allegation itself or other  
25      matters that are incidental, I have mentioned to counsel,

1 both in my letters and at the meeting we had today, that  
2 Commission counsel will be more vigilant in objecting to  
3 questions that we feel do not go right to the mandate and  
4 may be more harmful than helpful to what we're trying to  
5 achieve.

6 There are ways to do that. There are ways  
7 to do that that aren't -- that are respectful of the  
8 witness and that are respectful of counsel, and we've  
9 talked about -- and concerns were expressed to me about  
10 interfering with the flow of cross-examination. These  
11 types of objections can be made; perhaps they are group  
12 objections and, in many instances, if it's appropriate, the  
13 witness can leave the room and there can be a discussion  
14 about how it's relevant to the institutional response.

15 So I, certainly, in writing to counsel,  
16 expressed my views that it wasn't going to be sufficient,  
17 that while this question relates to our institutional  
18 response, we're going to be expecting an answer as to how  
19 or why it relates to that institutional response if it's  
20 not clear to us as counsel.

21 So we've had those types of discussions and  
22 the concern is not a new one about possibly hurting or  
23 harming victims or alleged victims of child sexual abuse.  
24 Dr. Jaffe spoke to us about this. Dr. Wolfe spoke to us  
25 about this in our context-setting evidence.

1                   There are several comments about this in  
2                   Volume 9 of the transcript in the evidence of Dr. Jaffe and  
3                   he said things like,

4                                "I think it's difficult to come forward  
5                                and tell your story; so I think in the  
6                                telling of the story, people are going  
7                                to be re-traumatized."

8                   Since the Commissioner to -- you went on  
9                   about how you should be careful and how you thought you  
10                  would be with respect to people having difficulty telling  
11                  their stories, having appropriate groups, providing support  
12                  people, et cetera, and the Commission has done this, in the  
13                  main, by providing witness support, by allowing people to  
14                  have some accommodation.

15                  There are certainly other accommodations  
16                  we're now looking at for witnesses that are available, but  
17                  he said:

18                                "I think it's important and, obviously,  
19                                I fully understand the importance of  
20                                good cross-examination, but ensuring  
21                                that there are some lines that aren't  
22                                crossed in cross-examination, so in  
23                                informing counsel about how to get the  
24                                truth out as part of the inquiry, but  
25                                also be respectful to the dignity both

1 of alleged victims and also alleged  
2 offenders."

3 And there were parts in the Robins Report  
4 that went in Dr. Jaffe's evidence, where Justice Robins  
5 noted:

6 "The nature and extent of the emotional  
7 impact or trauma suffered by witnesses,  
8 whether children or adults, varies in  
9 each case. There are witnesses who may  
10 regard the testimonial experience as  
11 cathartic. However, the potential for  
12 significant emotional distress or  
13 trauma in cases involving sexual  
14 misconduct is clear and  
15 incontrovertible."

16 And we had other reports and other  
17 witnesses, and, clearly, what we're being told is that a  
18 victim or alleged victim of child sexual abuse may react  
19 differently than another victim or alleged victim and we  
20 just have to be sensitive to their needs as we proceed.  
21 And I'm not saying, however, that witnesses can't be  
22 challenged from time to time with respect to their  
23 concerns, assuming we're dealing with matters that are  
24 relevant to this inquiry.

25 The concerns that were expressed to me by

1 Mr. Petepiece were done in a letter, and let me just  
2 paraphrase a little bit about that letter, if I can.

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

4 **MR. ENGELMANN:** He asked that I consider  
5 publicly sharing his letter as he thought it was a message  
6 that needed to be heard. He maintains, in his letter, that  
7 he's one of the least victimized people that we're going to  
8 hear from in the community. He accepted that the process  
9 had to test facts, but thought that there were less  
10 confrontational ways to achieve that end and he gave some  
11 examples from him own experience.

12 He talked about the negative impact on both  
13 himself and his family and that it was not part of  
14 community healing. And when I spoke to him about that, he  
15 was very emotional about the impact on himself and his  
16 family and I didn't prod further on that.

17 He talked about the concern that, if people  
18 are re-victimized in any way by this process, that others  
19 who have important stories to tell may not feel they can.  
20 And he, again, closed by saying "The problem, as I perceive  
21 it, lies with the process and not the people," and I would  
22 echo those comments and concerns.

23 There are concerns that individuals are  
24 watching the experience that others are having in the  
25 witness stand. Some of those individuals are witnesses

1 that have yet to come, and we've had some expression of  
2 concern by some of those individuals that they're  
3 reconsidering whether they want to come forward and do this  
4 as a public duty or a sense of public duty because they  
5 don't want to be hurt by our process.

6 So, obviously, those are concerns that we  
7 have as commission counsel and we're sure that other  
8 counsel here respect those concerns and have concerns about  
9 the well-being of all witnesses just as we do. And we're  
10 talking about ways to do this process with causing as  
11 little as possible any harm or re-victimization of  
12 individuals.

13 And, again, it's always much better to have  
14 all the necessary relevant evidence before this inquiry  
15 that we can have, and those witnesses that are able to come  
16 forward to be examined and cross-examined will help us in  
17 finding solutions for dealing with this very difficult  
18 problem of child sexual abuse.

19 It's always preferable to have that evidence  
20 in person and to have that evidence with the full rights of  
21 examination and cross-examination. But there maybe times  
22 when we have to divert from that. There are times we have  
23 to divert from that because witnesses are dead or otherwise  
24 unavailable. There may be times we have to look at other  
25 options that are less perfect from a procedural fairness

1 point of view with respect to factual overviews; some form  
2 of written questions. There are other accommodations;  
3 whether we talk about screens for individuals or other  
4 things that are done for vulnerable witnesses.

5 But there are a number of areas that we're  
6 thinking about, as commission counsel, that we're  
7 considering. We've talked to the parties today about how  
8 perhaps some of those questions that need to be put with  
9 respect to the institutional response can perhaps be put by  
10 commission counsel. Some of those tougher questions put by  
11 commission counsel as a more familiar face to the witness  
12 that might be of some assistance in allowing people to  
13 complete their evidence or to start their evidence and  
14 follow it through.

15 Sir, those are some of the comments that I  
16 have. I'll certainly be listening for other people's views  
17 and may have some brief comments before we finish this  
18 afternoon. But it's out of concern with respect to the  
19 feedback we've been receiving, as I said, from witnesses,  
20 from potential witnesses, from members of the public, and  
21 we just thought it was important to take action now, to be  
22 vigilant, and to not be another institution that might be  
23 perceived, in any event, as an institution that has caused  
24 harm in any way to victims or alleged victims of child  
25 sexual abuse.

1                   That's what we're talking about today, and  
2                   look forward to hearing from my friends as to their views  
3                   and possible solutions for dealing with this issue.

4                   **THE COMMISSIONER:** Thank you, Mr. Engelmann.  
5                   Mr. Manson, would you care to venture forth?

6                   --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

7                   **MR. MANSON:** Yes, Mr. Commissioner.

8                   First, I want to say, both personally and on  
9                   behalf of my client, the Citizens for Community Renewal,  
10                  how much we regret having learned that some of the  
11                  witnesses have experienced difficulties before this  
12                  Inquiry.

13                  I also want to say, Mr. Commissioner,  
14                  that if you're contemplating issuing any directions with  
15                  respect to examination and cross-examination, perhaps  
16                  before that's done we could see a draft or at least get a  
17                  general sense of what it is you're contemplating so that  
18                  people could make specific submissions. It's very  
19                  difficult to address these issues in the abstract.

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

21                  **MR. MANSON:** But I am going to make a few  
22                  points in the abstract.

23                  First, I want to say that, certainly, on  
24                  behalf of my clients, and after raising it in the counsel  
25                  meeting, I think I can say this on behalf of all counsel

1 that everyone accepts and supports the importance of a full  
2 and fair Inquiry, touching on all aspects of your mandate.  
3 And what that means, Mr. Commissioner, is that we should be  
4 hearing only relevant evidence, and that any questions, the  
5 purpose of which is to embarrass a witness, ought to be  
6 prohibited. And I think all counsel would agree with that.

7 Secondly, I want to say that all counsel  
8 would agree that every witness ought to be treated with  
9 respect. I've been present for many of the witnesses. I  
10 certainly wasn't here for any Mr. Silmsler and Mr. Petepiece.  
11 I've read the transcripts. I've also seen bits on the web  
12 cast and my impression is that counsel have kept to those  
13 two basic tenants, Mr. Commissioner.

14 But I want to raise one thing with you.  
15 It's clear that, as part of your mandate, at times, you and  
16 your counsel pursue what I would call the subjective  
17 perception of witnesses to events as they happened to them.  
18 And I can understand and I agree that that is a relevant  
19 part of your mandate. And when you were in the courtroom  
20 and "X" said such and such to "Y", how did you feel?

21 But, Mr. Commissioner, if we accept that  
22 those subjective perceptions are relevant, we're opening a  
23 box of unpredictable dimensions. The individual will be  
24 honestly telling you how they felt and someone sitting at  
25 one of these tables beside me will quite legitimately want

1 to know: what's the basis for that perception; is the  
2 basis blameworthy; could it have been avoided?

3 My sense is these are some of the  
4 difficulties that have arisen because the individual in the  
5 witness stand quite legitimately will now feel that they're  
6 being challenged. Yet, it's their subjective perception;  
7 they know how they felt.

8 Having raised this, I can't do anymore than  
9 say that this ought to alert everyone whether it's  
10 commission counsel, counsel for the parties or yourself,  
11 Commissioner, that we need to be careful when going down  
12 these roads.

13 I'm reminded of a line I read earlier this  
14 morning "It takes wit and courage to make our way while our  
15 way makes us." That may seem a little allusive, but I  
16 think it means that, as we learn more about events, we also  
17 evolve and our processes evolve.

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

19 **MR. MANSON:** And, subject to any question  
20 you have, Mr. Commissioner, I don't believe I can say  
21 anything else that would be helpful.

22 Thank you.

23 **THE COMMISSIONER:** That's fine.

24 Thank you.

25 Mr. Lee?

1           --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

2                   MR. LEE: Good afternoon, Mr. Commissioner.

3                   THE COMMISSIONER: Yes, sir.

4                   MR. LEE: I just want to address you very  
5 briefly. I want to start by saying that I've discussed  
6 these issues with many of my clients as you can examine --  
7 or imagine rather, and the consensus is that the very fact  
8 that we're having this discussion today publicly, privately  
9 before this in terms of letters in the all counsel meeting  
10 today is, we believe, incredibly helpful.

11                   My clients, and we understand the public  
12 have expressed some concern about the cross-examination of  
13 witnesses. The concerns of my clients have largely focused  
14 on the effects on the witnesses, all of whom who have been  
15 victims or alleged victims, that they've been concerned  
16 about.

17                   My clients don't generally come to me and  
18 say that they didn't appreciate a specific line of  
19 questioning or they didn't appreciate a specific question  
20 or a specific document being put to witnesses. That's not  
21 their concern, they leave that to me. Their concern is  
22 when they see people being upset. When I tell them that  
23 we've received a letter from a witness here who has  
24 explained that he felt re-victimized by this process, that  
25 is a paramount concern of my clients.

1                   And, as I said, the fact that we are  
2                   publicly acknowledging that these issues are of concern is  
3                   an important step in this process; it's an important step.  
4                   And I think it's helpful to communicate the fact that --  
5                   really, what I think it comes down to, is that we're  
6                   looking for increase sensitivity in the cross-examination,  
7                   where possible obviously, and increase vigilance by  
8                   everybody in this room with respect to how this phase of  
9                   the Inquiry should be handled.

10                   In the end, we know that evidence is going  
11                   to be called, objections will be made, where appropriate,  
12                   objections will be ruled on. But, it's my submission, that  
13                   counsel can go a very long way in helping this process  
14                   along by very carefully considering how to approach these  
15                   witnesses and these issues that we're discussing today.

16                   I suspect we're going to hear about the  
17                   importance of cross-examination to this process, and why it  
18                   matters, and why it's necessary, to some extent, to help  
19                   explain to the public the way this process is, the way that  
20                   it is, and I'd like to say that the well-being of witnesses  
21                   here, and of victims, and alleged victims is even more  
22                   important, and my clients applaud this Commission for  
23                   raising this issue now.

24                   Many of my clients, who I have discussed  
25                   with in the last few days and the last week or so, have yet

1 to testify, and many have testified, and many will not  
2 testify. All of them across the board look forward to  
3 hearing from the institutions present here in this public  
4 forum, about they intend to work at striking the  
5 appropriate balance that we should all be interested in  
6 here.

7 And, finally, it's a point raised over and  
8 over again by my clients, that the fact that witnesses are  
9 being scared off at this Inquiry are rethinking whether  
10 they should testify, is not in the best interest of anyone  
11 in this room or anyone in this city. That's all I have to  
12 say, sir.

13 Thank you.

14 **THE COMMISSIONER:** Mr. Bennett?

15 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. BENNETT:**

16 **MR. BENNETT:** Good afternoon, Mr.  
17 Commissioner. I'd like to start out by indicating that the  
18 Men's Project fully and unconditionally supports the  
19 Commission for bringing this issue to the public forum and  
20 to be dealt with out in the open.

21 The interesting aspect is, when I appeared  
22 here a couple weeks ago, many people asked me why I was  
23 here. And one of the reasons I was here is my client  
24 indicated and said -- called me up and said "David, what's  
25 going on down in Cornwall? It seems there is a poisoned

1 environment down there. There's a -- victims are being re-  
2 victimized. What's going on?"

3 So they were starting to hear from people  
4 that there was maybe some difficulties here.

5 So, I attended a meeting with my clients  
6 last week, and we discussed this, and start off with  
7 someone who had been a witness here saying "If I had seen  
8 what it happened recently I wouldn't have appeared in front  
9 of the Commission." Someone who had a fairly positive  
10 experience here, but was indicating their observations.

11 And I report -- well, it seemed to me the  
12 Commission was aware of the issue by the comments you made  
13 the day I was here at the beginning, where you indicated  
14 how you would like the institutions to review how they  
15 would be doing their fact-finding through this.

16 But the board wanted to know what to do and  
17 they instructed to me to set up a meeting with Mr.  
18 Engelmann. But before I could even reach Mr. Engelmann, I  
19 received a letter from the Commission, and I have to say  
20 that my client was delighted to realize that the Commission  
21 had identified this issue on its own, and was taking steps  
22 to deal with it.

23 And, again, demonstrate the sensitivity this  
24 commission has displayed to date with respect to dealing  
25 with survivors of sexual abuse, similar to the Witness

1 Assistance Program that has been set up and, by all  
2 accounts, has been extremely successful. There has been  
3 many comments on the record and off the record of what an  
4 excellent job Patrick has been doing with witnesses, and  
5 also the Counseling Program that was set up.

6 So, again, it was consistent that, clearly,  
7 if there were anything happening, it was not the intention  
8 of the Commission to be causing harm, and my client was  
9 very please about that aspect.

10 Now, during the contextual evidence, we  
11 heard from the expert of the damage done to survivors of  
12 sexual abuse. We heard how there would be memory issues.  
13 We heard how it may lead to substance abuse and the  
14 inability to trust, form relationships and to lead a more  
15 conventional lifestyle.

16 We heard how some survivors would have a  
17 checkered past. Ironically, these are the things that are  
18 presenting difficulties for the Commission in some of the  
19 issues.

20 And, now, I looked at the mandate of the  
21 Inquiry from the Order-in-Counsel, and the mandate of this  
22 Commission is to inquire into and report on the events  
23 surrounding allegations of abuse of young people in  
24 Cornwall by examining the response of the justice system  
25 and other public institutions to those allegations.

1                   The Commission will make recommendations to  
2                   improve the response in similar circumstances. As well,  
3                   the Commission will inquire into and report on processes,  
4                   services and programs that will encourage community healing  
5                   and reconciliation in Cornwall.

6                   So the real issues for this Inquiry is not  
7                   necessarily the credibility of survivors who come forward  
8                   and present poorly in a traditional way. In some ways, it  
9                   illustrates the problem. One of the things that you're  
10                  going have to struggle with is: how do institutions deal  
11                  with people who come forward and present in such a way;  
12                  what should the police do when there is a credibility  
13                  issue; how does the Crown attorney deal with this when  
14                  someone's version of the events may change over the  
15                  different accounting of what occurred; how should other  
16                  public institutions deal with survivors in a compassionate  
17                  way; and how do we prevent future Cornwalls?

18                  Now, in our opening submissions we tried to  
19                  alert everyone to this and we said the following:

20                                "As we go through the process, it's  
21                                essential that all parties are mindful  
22                                of all witnesses. This will be a  
23                                painful process for all participants.  
24                                It will be important that all  
25                                witnesses, whether survivors, people in

1 positions of authority or community  
2 members be treated fairly and  
3 respectfully. We recognize that it is  
4 important to proceed cautiously so as  
5 not to needlessly damage reputations.  
6 At the same time, we wouldn't be here  
7 if something hadn't happened."

8 We have heard from the experts, during the  
9 contextual evidence, that false allegations of abuse are  
10 extremely rare. We must balance the right to be presumed  
11 innocent, a concept we fully embrace, with the importance  
12 of not having the survivors feel that their veracity is  
13 being undermined.

14 Now, why do we have such a charged  
15 atmosphere here?

16 Before ---

17 **THE COMMISSIONER:** Well, that's a conclusion  
18 you're raising.

19 **MR. BENNETT:** Well, from my client's  
20 perception, a charged atmosphere.

21 And before I comment on that, I want to make  
22 a couple of observations, and I think they are very  
23 important to what I am going to say.

24 First, I'd like to say that I've been very  
25 impressed by the counsel at this Inquiry. We have some

1 very talented counsel. Their dedication and commitment to  
2 the success of this Inquiry is very evident. The  
3 professionalism, which has been shown, has been unmatched  
4 and, in my experience, as a group, they've been extremely  
5 collegial and helpful.

6 I was trying to figure out why, if -- these  
7 are my observations -- do we seem to find this difficulty  
8 with some people and perceptions? And I thought about it  
9 and it came back to something. My friend, Mr. Callaghan,  
10 is always teasing me, and in a very good-natured way, that  
11 I present or seem to argue both sides of the issue.

12 And I realize it's a fundamental difference  
13 and demonstrates some of the difference, is that we have a  
14 group of highly-skilled litigators in this room who tend to  
15 see issues in black and white, and I come from a background  
16 of mediation where black and white can easily co-exist  
17 together with no difficulty.

18 And one of the difficulties of what may work  
19 in a civil courtroom and a criminal courtroom, and works  
20 very successfully, may not always be the best in this forum  
21 here of a public inquiry. And that maybe we have to look  
22 at how we move forward from here. And I have couple of  
23 concrete suggestions Mr. Commissioner.

24 One (1) is whether there perhaps should be a  
25 witness advocate. It's different from the witness support,

1 but my observation is that Commission counsel walks a very  
2 fine line when they are trying to make objections,  
3 especially because they don't want to be perceived as being  
4 in the interest just of the witness. Their interest is the  
5 public interest of everybody, whether it's survivors or  
6 public institutions as the nature of Commission counsel's  
7 role.

8 And another difficulty is when some parties  
9 are represented, their counsel are really coming in quite  
10 cold. This is a very new process. And perhaps having  
11 someone who understands fully the mandate of the Commission  
12 and the overriding big picture, it may be useful to assist  
13 witnesses unless, of course, party wants counsel of choice,  
14 which certainly I wouldn't be suggesting otherwise.

15 The other aspect I would like to deal with  
16 is sometimes when questions are being asked, it may be  
17 useful to acknowledge that a point has been made before  
18 saying that it's time to move on. And this is something  
19 that I find in my mediation practice works is that I'll  
20 acknowledge, this is the point you're trying to make I  
21 believe; have I missed something here? Then is there  
22 something to the bigger picture that we need to go into in  
23 this area? And I realize it's highly unusual for a court  
24 situation, but it's a tool that works in another form and  
25 may be something that may be tried here.

1                   Finally, I would just like to thank the  
2                   Commission again for bringing this issue into the open and  
3                   confronting it head on. I am confident that we will move  
4                   forward in a productive and respectful way which will allow  
5                   witnesses to come forward and tell their story.

6                   Thank you.

7                   **THE COMMISSIONER:** Thank you, Mr. Bennett.

8                   Mr. Chisholm?

9                   --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:

10                  **MR. CHISHOLM:** Good afternoon, Mr.

11                  Commissioner.

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

13                  **MR. CHISHOLM:** I'd start by indicating I  
14                  agree with Professor Manson with respect to the first two  
15                  comments that he made about we're not here to ask questions  
16                  that embarrass witnesses and we are to treat each witness  
17                  with respect.

18                  Having said that, I would move on to examine  
19                  one of the roles of the Commission which is, at the end of  
20                  the day, to determine the truth of what transpired here in  
21                  Cornwall over the last several years. The cross-  
22                  examinations that I have witnessed over the course of the  
23                  last year, I would submit, were conducted in an appropriate  
24                  and tasteful fashion.

25                  Having regard to the sensitivities of the

1 witnesses who have presented themselves before the Inquiry,  
2 I would draw to your attention the importance of cross-  
3 examination.

4 Wigmore indicated that cross-examination is,  
5 beyond any doubt, the greatest legal engine ever invented  
6 for the discovery of the truth.

7 The public institutions that are here before  
8 you with party status, each have played a role in the  
9 history of the events that we're hearing about through the  
10 witnesses, and with respect to my client, when a witness  
11 makes an allegation concerning a public institution that is  
12 at odds with the facts as understood by that public  
13 institution, I would submit, it's necessary to allow the  
14 counsel for the public institution to conduct a full cross-  
15 examination of the witness as it's relevant to the public  
16 institutional response.

17 At the end of the day, I would submit, one  
18 of the goals that this Commission will have is to either  
19 restore or maintain the public confidence in the public  
20 institutions and, I would submit, the public will not be  
21 well-served if erroneous evidence is left unchallenged. I  
22 would submit and I would say to you Mr. Commissioner that I  
23 will continue to do my best to be respectful of the  
24 witnesses as they appear, and be as sensitive as I can to  
25 their needs while, at the same time, fulfilling the

1 obligations that I have to my client.

2 Subject to your questions, sir, those would  
3 be my comments.

4 **THE COMMISSIONER:** Thank you.

5 Mr. Neuberger?

6 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:

7 **MR. NEUBERGER:** Good afternoon, Mr.

8 Commissioner.

9 Some of what I am going to say is quite  
10 obvious to you, Mr. Commissioner, but because of the nature  
11 of the immediacy of this Inquiry to the public, I think  
12 it's important just to make some points.

13 The task that a witness has in this Inquiry  
14 to come forward and give evidence about something by its  
15 very nature is personal and incredibly sensitive, is  
16 difficult. It's even more difficult to do it in a room  
17 with strangers; many of those strangers being lawyers; and  
18 then, on top of that, having to answer questions that are  
19 posed by lawyers you have not had some familiarity with  
20 prior to giving your evidence. That's acknowledged by all  
21 parties. I think it's important to say, at this juncture,  
22 maybe as a reminder that we are all very cognizant of that  
23 difficulty that the witnesses experience.

24 And I believe quite firmly that all of us,  
25 as lawyers representing various parties, both public and

1 private sector institutions, are guided by the ultimate  
2 objective of this Inquiry, and wish to ensure that  
3 witnesses are capable of giving their evidence without  
4 experiencing any harm, but while protecting the integrity  
5 of the fact-finding process, maintains intact and will  
6 assist you, Mr. Commissioner, ultimately, in making your  
7 decisions, recommendations and findings at the end of the  
8 day.

9 As lawyers, we are all very experienced with  
10 those guidelines for cross-examinations; namely, is the  
11 question relevant? And any questions which are  
12 embarrassing or abusive ought not to be asked or permitted  
13 to be asked.

14 Here we have a third issue, which Mr.  
15 Commissioner has -- Mr. -- Commission counsel has commended  
16 to you for consideration. And that's where we look at the  
17 probative value of questions versus the harm that could or  
18 is being done to a particular witness. And this is  
19 difficult because it's forcing a reconciliation of the  
20 particular needs and sensitivities of a witness with the  
21 need for integrity in the fact-finding mission.

22 It is difficult because this is a, by its  
23 very nature, an Inquiry, where questions are asked and  
24 answers have importance to us.

25 And so, any time that there is a battle

1 going on, to some extent, in that area, it is going to  
2 impact, to some extent, upon a witness. Unfortunately,  
3 it's how it's perceived. Cross-examination is not meant to  
4 embarrass but to clarify and correct where necessary and we  
5 are -- at least, my client is working within that mandate.

6 There are times, unfortunately, where it may  
7 appear to a witness that their credibility, on a particular  
8 point of their evidence, may be at issue. It is not  
9 necessarily their credibility but it may be forgetfulness;  
10 it may be that they need a reminder in the face of  
11 documents or other notes; and the way that it's coming  
12 across by being asked in cross-examination. It is that  
13 manner in which they may be sensitive to the issue but it  
14 is, nevertheless, important.

15 Witnesses in the overall process, however,  
16 will be challenged on various points. Some more than  
17 others, maybe some witnesses not at all, depending upon  
18 their evidence. The evidence of the particular witness  
19 will guide us in that regard.

20 And I guess what I am indicating is that  
21 cross-examination, in order to be meaningful in this fact-  
22 finding process will, at times, have to be probing. The  
23 nature of this Inquiry is interesting because the motto is  
24 about the fact-finding mission and Phase 2 a portion which  
25 is involving quite innovative techniques which are being

1 developed to deal with community healing and  
2 reconciliation.

3 This Inquiry isn't just all about what  
4 happened last week or the week before, but about what will  
5 happen in weeks to come. And Phase 2 is going to be  
6 something which is innovative, which will help people in  
7 this community, victims and those who are not victims, come  
8 to terms with what went on over several decades in this  
9 Inquiry. And so we must not lose focus that there is other  
10 objectives, at the end of the day, which is coming.

11 I think what's important is just to  
12 reiterate cross-examinations and how we deal with witnesses  
13 is not something which is done in the dark; it's not  
14 something that is being broad-opened today for the first  
15 time; and I understand those comments are meant only to  
16 applaud what the Commission is doing.

17 But every day a witness testifies, Mr.  
18 Commissioner, you deal with whether questions are relevant;  
19 Commission counsel will object where necessary and cross-  
20 examination; and its very value is dealt with every day  
21 that a witness is called. It's nothing that we do in the  
22 dark.

23 But what is a benefit to the public is that  
24 we have an ongoing dialogue as we do with the Commission  
25 staff. Today, we've had a meeting which was very fruitful.

1                   We try and combine together, as counsel for  
2 various parties, to find other alternative ways of helping  
3 witnesses give their evidence. We may not all agree. Some  
4 suggestions of factual overviews for certain witnesses may,  
5 in fact, be a way to go. However, we will always work  
6 together to try and find other ways.

7                   So, in closing, what I am just commending,  
8 as far as my comments, Mr. Commissioner, is that in order  
9 for us to have an accurate evidentiary basis, for you to  
10 make your very important decisions upon, cross-examination  
11 will have to continue. It will have to be guided by those  
12 three pillars, I guess, that we've set out, bearing in mind  
13 what everybody's interests are.

14                   And I hope that the public, in hearing our  
15 comments, will at least be somewhat assured by the fact  
16 that we are very sensitive to the needs of these witnesses,  
17 by that token, still interested in pursuing what will be an  
18 accurate reflection of what we think the evidence is.

19                   Thank you very much.

20                   **THE COMMISSIONER:** Thank you, sir.

21                   Ms. Im?

22                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. IM:**

23                   **MS. IM:** Thank you.

24                   I want to start off by saying that the  
25 Attorney General fully appreciates the concerns and

1 comments made by Commission counsel in its letters of  
2 February 14th and 15th of 2007, and the Attorney General  
3 agrees that cross-examinations conducted by party should be  
4 strictly limited to those areas of evidence that are  
5 relevant to assisting the Commissioner in fulfilling -- to  
6 assisting you in fulfilling your mandate.

7 As well, this cross-examination should of  
8 evidence that is directly relevant to the institutional  
9 response and, of course, as agreed by everybody in this  
10 room, should be conducted in a fair and respectful manner.

11 I echo the comments of my friends previously  
12 that it's the Ministry's position that cross-examinations  
13 conducted by parties up until now have been fair and  
14 respectful of the sensitive and difficult areas of  
15 testimony that witnesses are giving. Almost without  
16 exception, counsel for the Parties have limited their  
17 cross-examination to issues that are directly relevant to  
18 their institutional response, and have made attempts not to  
19 duplicate cross-examinations covered by other parties and  
20 take on areas of cross-examination that are most relevant  
21 to their own clients' institutional response.

22 I also reiterate some comments that my  
23 friend has made, which you are very well-aware of, that  
24 cross-examination, as you are very well-aware, plays a very  
25 important part of the evidentiary process. When comments

1 are made that are directly critical of either institutions  
2 or employees or agents acting for institutions, fairness to  
3 the institutional party dictates that these parties can ask  
4 questions regarding that evidence and can ask questions  
5 regarding the factual basis for conclusions or criticisms.

6 As well, as you're well-aware, if it is to  
7 be later suggested by an institutional party that the  
8 witness was mistaken, or if the institutional party wishes  
9 to lead evidence refuting these conclusions or criticisms,  
10 fairness to the witness dictates that the institutional  
11 party put this to the witness while the witness is still  
12 giving evidence so that the witness can respond.

13 This Inquiry -- and I think all the parties  
14 in this room can agree that this Inquiry is not well-served  
15 if witnesses are unwilling to come forward with important  
16 and relevant evidence because they feel intimidated by the  
17 process. The Ministry appreciates that cross-examination  
18 can be challenging and intimidating for the witnesses.

19 In order to protect witnesses from any  
20 surprise and undue stress when they are giving testimony,  
21 we seek the assistance of Commission counsel to advise  
22 witnesses in advance of areas of their testimony where they  
23 are likely to be cross-examined by institutional parties.

24 As well, it is important to remember that  
25 cross-examination is informed by the testimony and evidence

1 that arises out of examination in-chief by Commission  
2 counsel and, in that regard, we endorse a greater dialogue  
3 between counsel for the institutions and Commission counsel  
4 so that much of what the parties wish to ask the witnesses  
5 may, where appropriate, be brought out in-chief by  
6 Commission counsel.

7 And I give one example. For example, in  
8 instances where we have seen witnesses making comments  
9 directly critical of institutions based on perhaps a  
10 misreading of some of the documentary evidence, an open  
11 dialogue in advance between institutional parties and  
12 Commission counsel can correct this and, therefore,  
13 decrease the need for cross-examination.

14 In closing, the Ministry is committed to  
15 working closely with Commission counsel through an open  
16 dialogue process to ensure the cross-examination is focused  
17 and that it is sensitive to the concerns both of the  
18 witnesses and all the parties to the Inquiry.

19 Thank you, Mr. Commissioner.

20 **THE COMMISSIONER:** Thank you.

21 Ms. Makepeace?

22 **MS. MAKEPEACE:** I have nothing to add.

23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Sherriff-Scott?

1           --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

2                           **MR. SHERRIFF-SCOTT:** Good afternoon,  
3 Commissioner.

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

5                           **MR. SHERRIFF-SCOTT:** I would start by saying  
6 the Diocese embraces and supports the need for cross-  
7 examination to be fair, complete, respectful and sensitive.  
8 I would suggest that I adopt Mr. Manson's point. But since  
9 we don't have, for example, a motion before us seeking  
10 specific relief, my comments are a bit in the abstract, but  
11 they are as follows:

12                                   First, cross-examination does not occur in a  
13 vacuum, but it is typically a reactive or responsive tool  
14 and, in this regard, counsel have expressed, I think as a  
15 group, these following views this afternoon about how  
16 potentially the extent of cross-examination could be  
17 reduced. And, in no particular order, they are as follows:

18   First, Commission counsel should strive or  
19 endeavor wherever possible to limit putting institutional  
20 response documents to witnesses potentially about which  
21 witnesses have no specific knowledge, thus, creating the  
22 potential for an additional need of cross-examination and  
23 scope.

24   Two (2), counsel should avoid (Commission  
25 counsel) in direct or chief, putting what I would describe

1 without any innuendo, a motive evidence, opinions or  
2 beliefs or other non-fact evidence from witnesses, which  
3 typically is productive of engendering more cross-  
4 examination than less.

5 Third, counsel should strive for what I  
6 would describe as greater balance with the witness and,  
7 therefore, where there are significant inconsistencies with  
8 the evidence of a witness, to put those to the witness in-  
9 chief, thus, ensuring balance and preventing the need for  
10 cross-examination on points of significant inconsistency or  
11 on credibility issues arising in the context of  
12 institutional response issues.

13 Those are three points that I think counsel  
14 group discussed in terms of what may be of assistance in  
15 reducing the scope of cross-examinations.

16 I would close with two points in saying that  
17 I suggest that, to date, cross-examinations have been fair  
18 and respectful of witnesses and you have made rulings on  
19 objections as they have occurred, striking an appropriate  
20 balance that is necessary and, no doubt, that will  
21 continue. All counsel, including myself as counsel for the  
22 Diocese, are striving to be fair and respectful in asking  
23 questions in most difficult circumstances sometimes.

24 Cross-examination is a necessary tool to  
25 elicit balance and consistency and truth. It only works

1 when it is full and complete. I submit that has been  
2 demonstrated here and I submit that all counsel are  
3 striving to realize the need for respect and sensitivity.

4 Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Manderville?

7 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANDERVILLE:

8 **MR. MANDERVILLE:** Good afternoon, Mr.  
9 Commissioner.

10 **THE COMMISSIONER:** Yes, sir, good afternoon.

11 **MR. MANDERVILLE:** I want to start with a  
12 comment on my friend, Mr. Bennett's remark that one of the  
13 things this Inquiry is tasked with doing is to avoid future  
14 Cornwalls. The reason I want to raise that is this city  
15 should not become an acronym or a buzzword for bad things  
16 happening to good people.

17 This Inquiry has to be about a search for  
18 truth, and it is, and you know that, and cross-examination  
19 has been repeatedly referred to as one of the greatest  
20 engines in the search for truth.

21 As you know, the *Public Inquiries Act'*  
22 pursuant to which you were appointed, provides at Section 5  
23 that:

24 "All parties withstanding shall, and  
25 it's imperative, have the right to

1 cross-examine on relevant issues."

2 That has happened to date in this Inquiry,  
3 as recently as February 5th, you observed that. You  
4 observed that counsel for the parties had been respectful  
5 throughout and sensitive to all of the witnesses who had  
6 come before it. And that's true. That is accurate.

7 My friend, Mr. Engelmann, has the right to  
8 object if anyone strays into irrelevance in their cross-  
9 examination, and he has done so. You have the right to  
10 sustain or overrule the objections, and you have done so.  
11 We can say that, thankfully, the objections and the  
12 sustaining of objections have been few and far between, and  
13 that is because counsel have consistently been sensitive to  
14 the situations of these witnesses and have striven to ask  
15 appropriate, relevant cross-examination questions on issues  
16 that are observant of the delicate situation that some of  
17 these witnesses are in.

18 The Supreme Court of Canada in the Blood  
19 Inquiry -- and I've given a copy to my friend -- had  
20 occasion to consider a situation where Mr. Justice Krever  
21 had issued the federal equivalent of notices of potential  
22 misconduct to a number of parties on the last day of the  
23 Inquiry and objection was taken to that.

24 Now, 47 of those notices were quashed. The  
25 remainder were allowed to stand, and they were allowed to

1 stand for one reason, and that was that that Commission had  
2 assiduously observed procedural fairness and the hallmark  
3 of it, Mr. Justice Krever felt, was the right of all  
4 parties withstanding to cross-examine witnesses to the  
5 extent of their interest. And, again, as recently as  
6 February 5th, you did mention the one caveat that is  
7 important for one to consider in cross-examining, and that  
8 is that the cross-examination deal with relevant issues.

9 And I would stand before you today and  
10 wholeheartedly agree with that caveat so long as counsel  
11 are confining their cross to relevant issues, Commission  
12 counsel should have no objection, and it should be allowed  
13 to proceed unimpeded.

14 In this Inquiry, we've had examples where  
15 some witnesses' credibility has had to be tested. I say  
16 "credibility" not in the pejorative sense that witnesses  
17 are telling false things. I say it in the sense that their  
18 recollection may not be accurate; their impression may not  
19 be accurate.

20 An example was Mr. Lavoie some months ago.  
21 His impression was that an officer of my client had not  
22 sought out other potential witnesses. However, based on  
23 the notes of that officer, it was apparent that she had  
24 sought out a number of individuals. Mr. Lavoie's  
25 impression was merely inaccurate and without cross-

1 examination on that issue, Mr. Lavoie's impression would  
2 have been unchallenged, would have been uncontested, and  
3 the inaccuracy would have remained.

4 As you are aware, procedural fairness,  
5 including full rights of cross-examination, is essential  
6 because the findings of this Commission, like other  
7 Commissions, may well damage the reputations of  
8 individuals. That is why the right to full cross-  
9 examination is so important.

10 A critical part of this Inquiry's mandate is  
11 its attempt to search for the truth, as best it can  
12 discover it, of what has happened in this community over  
13 the years and to sort out that truth or facts, if you will,  
14 associated with the public institutional response from all  
15 the rumors, and innuendos, and the conspiracy theories that  
16 have abounded in this community over the years.

17 Mr. Petepiece, a well-educated and clearly  
18 intelligent man, is an example of that. His personal  
19 experience with my client was, according to him,  
20 characterized by professionalism. He stated he had a high  
21 regard for my client.

22 Yet, despite his education, his intelligence  
23 and his personal experience with my client, Mr. Petepiece  
24 testified that he was reluctant to bring his complaint to  
25 my client because he had heard that my client was under a

1 cloud of suspicion.

2 This is the insidious and dangerous aspect  
3 of all these rumors and innuendos. It makes educated,  
4 intelligent people ignore their personal experiences in  
5 favour of some of the conspiracy theories circulating  
6 around, and counsel in this room, Mr. Commissioner, would  
7 be remiss in not testing the basis on which statements like  
8 that are made.

9 All this to say that the right to full  
10 cross-examination on relevant issues is a hallmark of our  
11 legal system. It is a critical component in the search for  
12 truth, which is what this Inquiry is tasked with doing. It  
13 is very important. It is the law of the land and it should  
14 not be curtailed here.

15 Thank you very much.

16 **THE COMMISSIONER:** Thank you.

17 Mr. Kozloff?

18 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF:**

19 **MR. KOZLOFF:** Good afternoon, sir.

20 Mr. Commissioner, let me apologize at the  
21 outset for what will inevitably be repetition in my  
22 remarks. I have given this matter very careful thought.  
23 I'd like to put my submissions to you.

24 The first point I'd like to make is that  
25 Commission counsel have chosen to elicit from the

1 victim/witnesses not only the alleged facts regarding their  
2 abuse and the report of that abuse to the institutions and  
3 the institutional responses to those reports, but also  
4 their opinions and their feelings regarding the  
5 institutional response, and the individual or individuals  
6 within the subject institution or institutions with whom  
7 they dealt.

8 The result is that the witnesses are being  
9 invited to criticize the actions of those with whom they  
10 dealt in the public institutions. Often, no invitation is  
11 necessary. The witness volunteers his criticism. Given  
12 the subject matter of this inquiry, that criticism is  
13 generally expressed in unequivocal terminology.

14 It is only a matter of procedural fairness,  
15 more about which I will have to say in a minute, that  
16 counsel representing the subject institutions be permitted  
17 to challenge the witness in respect of those opinions and  
18 feelings and the underlying basis of the criticism being  
19 offered.

20 I say this without questioning the bone  
21 fides of counsel in eliciting the testimony. I am simply  
22 addressing the consequences of that approach.

23 Secondly, sir, we are in the midst of the  
24 Inquiry. We are in the midst of the evidence of the  
25 alleged victims. To this point in time, the parties, in

1 their examination of witnesses, could look for guidance to  
2 the common law, to the *Public Inquiries Act*, to the Rules  
3 of Practice and Procedure of the Cornwall Public Inquiry  
4 and to you, Mr. Commissioner.

5 During Mr. Silmsers's evidence, you yourself  
6 stated that so far, leaving Mr. Silmsers aside, everyone has  
7 comported themselves in an outstanding fashion. And you  
8 also made the point at the time that Mr. Silmsers originally  
9 walked off the stand, that given the subject matter of this  
10 Inquiry and the consequences of historic sexual abuse, one  
11 of the situations we might run into is something we run  
12 into today.

13 We have to be very much alive to  
14 institutions such as this -- sorry -- to situations such as  
15 this and to respect people's need for some time. And,  
16 also, we are all in a very difficult Inquiry and we'll have  
17 to be sensitive to the needs of all parties, all the while  
18 understanding that there is work to be done.

19 In my respectful submission, sir, it would  
20 be inappropriate to attempt to reinvent the wheel or now or  
21 at any time in this Inquiry to accommodate the specific  
22 needs or sensitivities of any particular witness at the  
23 expense of procedural fairness to the parties. And I say  
24 that for the following reasons:

25 There is no basis for suggesting that

1 changing the rules in midstream will ameliorate the effects  
2 of testifying for any given witness and we need only go  
3 back to the evidence given by Professor Wolfe and Dr. Jaffe  
4 that different witnesses react differently to what is  
5 obviously a very potentially traumatic experience.

6 For example, what Mr. Silmsler may find  
7 upsetting or what Mr. Petepiece may deem to be  
8 confrontational might be seen by other witnesses whose  
9 evidence was challenged, such as Mr. Marleau, as part of a  
10 process which allowed him to have his say and achieve  
11 closure while getting at the truth.

12 Secondly, sir, the guidance that we receive  
13 from 900 years of experience distilled into legal  
14 precedent, and the statute, and our rules, and your  
15 availability to supervise and ensure that witnesses are  
16 treated fairly, and with courtesy, and respect should  
17 suffice.

18 Lastly, sir, you in your role as  
19 Commissioner, with your fact-finding obligation, will not  
20 be assisted by hamstringing counsel for the parties, by  
21 preventing counsel from challenging evidence in a manner  
22 which has stood the test of time.

23 Again, quoting Professor Wigmore, and I'll  
24 quote him accurately:

25 "Beyond any doubt, the greatest legal

1 engine ever invented for the discovery  
2 of truth, which is cross-examination."

3 I'd like to speak about the application of  
4 *Browne v. Dunn* very briefly.

5 "It is designed to accord fairness to  
6 witnesses and the parties."

7 According to Sopinka and Lederman:

8 "Fairness requires that a witness  
9 should not have his character impugned  
10 by a finding of dishonesty unless he  
11 has been given an opportunity to  
12 explain the circumstances relating to  
13 the testimony subject to impeachment.  
14 It would be unjust to make any finding  
15 or draw any inference with respect to  
16 character or conduct or credibility  
17 because the witness had not previously  
18 been questioned with respect to those  
19 findings or inferences, and, thus, had  
20 not been given an opportunity to  
21 explain."

22 *Browne v. Dunn* and the cases following it  
23 enunciate certain principles which have as their object the  
24 affording of procedural fairness to witnesses and to  
25 parties in judicial procedures.

1           Each of the parties here, Mr. Commissioner,  
2           are separately represented by counsel. The reason for that  
3           is obvious; each party has separate interests. It is the  
4           duty and the obligation of counsel to zealously guard those  
5           interests albeit in a fair and a courteous manner.

6           I don't want there to be any doubt in the  
7           minds of anyone in this room or within the hearing of my  
8           voice. I and the members of the Ontario Provincial Police  
9           legal team will zealously guard the interests of my client,  
10          while conducting ourselves in a fair and courteous manner.

11          We will challenge any witness whose evidence  
12          we believe to be inconsistent with the truth, whether by  
13          error or by intent. That is our role and it is our duty.  
14          It is no part of our function to be hurtful or unfair to  
15          any witness. My client's interests are not served by that  
16          anymore than the welfare of the witness. We have not --  
17          sorry -- we have been and we will continue to be sensitive  
18          to the feelings of the witnesses while, at the same time,  
19          advocating when and where it is appropriate to do so.

20          Thank you, sir.

21          **THE COMMISSIONER:** Mr. Wallace?

22          --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:**

23          **MR. WALLACE:** Good afternoon, sir.

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

25          **MR. WALLACE:** Sir, all counsel have

1       endeavoured to protect the rights of their respective  
2       clients by conducting relevant and respectful cross-  
3       examinations, in my submission. Different victims deal  
4       with the experience of participating in this inquiry in  
5       different fashions.

6                       Generally speaking, Commission counsel have  
7       much more insight into the particular witness' specific  
8       concerns and I would suggest, and this was a matter of  
9       conversation this afternoon, that a number of the problems  
10      that have been expressed to you can be dealt with in the  
11      witness preparation stage.

12                      Mr. Sherriff-Scott, in his submissions  
13      earlier this afternoon, outlined a series of three specific  
14      considerations or procedures that can be put in place to  
15      address these things. Essentially, they arrive at the same  
16      place; that is curtailing the need for specific cross-  
17      examination.

18                      I echo the comments of all of my colleagues  
19      in indicating to you that you are inquiring into the facts  
20      and all the parties withstanding must be able to test the  
21      witnesses. If the questioning is respectful and relevant,  
22      there will not be any objection by Commission counsel, nor  
23      should there be any reasonable criticism of counsel or the  
24      process.

25                      This is a fact-finding exercise, this part

1 of the Inquiry, and from the facts flow your conclusions  
2 and recommendations, and I suggest that the comments that  
3 you've heard this afternoon point to a tweaking of the  
4 process and not a reason to jettison it.

5 Thank you.

6 **THE COMMISSIONER:** Thank you.

7 Anyone here for the Upper Canada School  
8 Board?

9 No.

10 Ms. Birrell?

11 **MS. BIRRELL:** Nothing further to add.

12 **THE COMMISSIONER:** Thank you.

13 All right.

14 Mr. Engelmann, any closing comments?

15 **MR. ENGELMANN:** Mr. Commissioner, I think  
16 I've made the comments I wanted to make. I have nothing  
17 further to add at this time.

18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 I have chosen to bring this on this  
21 afternoon because I think it's an important matter that we  
22 need to reflect on a bit. It's not to say that there will  
23 be -- won't be other times during the evolution of this  
24 Inquiry that I will seek guidance in counsel from the  
25 parties here and I appreciate the comments that they have

1 set up and given me.

2 I will be providing you with my thoughts  
3 probably tomorrow in the afternoon sometime I hope and, if  
4 not, well then a little further down.

5 I think tomorrow morning we're starting at  
6 10:00 which motions, Mr. Engelmann?

7 **MR. ENGELMANN:** Yes, sir. We have three  
8 motions tomorrow morning.

9 **THE COMMISSIONER:** All right.

10 So what I'll do is -- so we won't be hearing  
11 any evidence tomorrow then?

12 **MR. ENGELMANN:** That's correct.

13 **THE COMMISSIONER:** All right.

14 So, hopefully, we'll have this out before --  
15 certainly before any further evidence is heard.

16 Thank you very much for your kind  
17 assistance.

18 Thank you.

19 **MR. ENGELMANN:** Thank you.

20 **THE REGISTRAR:** All rise. Veuillez vous  
21 lever.

22 This hearing is adjourned until 10:00 a.m.  
23 tomorrow morning. L'audience est ajournée.

24 --- Upon adjourning at 3:50 p.m. /

25 L'audience est ajournée à 15h50

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

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

*Jamie Savard*

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Jamie Savard, CR