

**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 10

Held at :

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

Thursday, February 23, 2006

Tenue à:

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

Jeudi, le 23 février 2006

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Louise Mongeon	Registrar
Ms. Christine Morris	Commission Counsel
Mr. Neil Kozloff	Ontario Provincial Police
Det. Insp. Colleen McQuade	
Ms. Gina Saccoccio Brannan, Q.C.	
M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	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
Mr. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Ms. Sara Siebert	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association

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DESCRIPTION

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1 --- Upon commencing at 10:08 a.m. /

2 L'audience débute à 10h08

3 **THE REGISTRAR:** Order. All rise. À
4 l'ordre. Veuillez vous lever.

5 **THE COMMISSIONER:** Thank you. Good morning,
6 all.

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

10 Please be seated. Veuillez vous asseoir.

11 **THE COMMISSIONER:** Good morning all.

12 Mr. Englemann, I understand there are a
13 couple of motions that we should be discussing today?

14 **MR. ENGELMANN:** Yes, Mr. Commissioner. We
15 have one motion that's been filed.

16 **THE COMMISSIONER:** Right.

17 **MR. ENGELMANN:** By counsel for Father
18 MacDonald. We also have an issue of law to be determined.

19 **THE COMMISSIONER:** All right.

20 **MR. ENGELMANN:** And that's with respect to
21 the Diocese.

22 **THE COMMISSIONER:** All right.

23 Well, let's deal with that one first, then.

24 **MR. ENGELMANN:** If I could just have a
25 moment?

1 **THE COMMISSIONER:** Sure.

2 **(SHORT PAUSE/COURTE PAUSE)**

3 **MR. ENGELMANN:** With respect to the Diocese,
4 there have been discussions ongoing with counsel for all
5 parties over the last few months, and one of the things we
6 have been canvassing counsel about is their clients' views
7 on our mandate. We have had conflicting views on the
8 status of the Diocese as a public institution. The Diocese
9 asserting that it is not a public institution under our
10 mandate and a couple of other parties asserting that it
11 should be considered as a public institution.

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

13 **MR. ENGELMANN:** So we've tried to resolve
14 those issues. They are clearly issues, I think, that need
15 to be adjudicated. I don't view this as something that
16 needs a motion. Parties have their views and it is -- we
17 have been told that counsel who wish to take a position on
18 this issue include, not surprisingly, counsel for the
19 Diocese, counsel for the Victims Group, counsel for the
20 Citizens for Community Renewal ---

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

22 **MR. ENGELMANN:** --- the Men's Project and, I
23 believe, the Attorney General.

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

25 **MR. ENGELMANN:** So what we need to resolve

1 and what we have asked counsel to come today to resolve is
2 the process for determining the question. So I think, more
3 specifically, we have to set the question and, in a letter
4 to counsel on Monday, I suggested some wording, but we may
5 hear from counsel with respect to alternative wording. The
6 wording was:

7 "The particular issue in question is
8 what is a public institution and,
9 perhaps more specifically, can the
10 institutional response of the Catholic
11 Church, in this case the Diocese of
12 Alexandria-Cornwall, be examined within
13 the inquiry's mandate."

14 The parties were advised -- those parties
15 that wished to participate in this issue and make
16 submissions with respect to this question of law, that they
17 should come here today with ideas about whether or not they
18 wish to file written submissions ---

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

20 **MR. ENGELMANN:** --- and if so when and in
21 what process.

22 We have some ideas on that, Mr.
23 Commissioner, but in fairness to counsel, I think we should
24 hear from them. Also, a time for oral argument, how long
25 this will take and whether or not there will be any

1 evidence filed in support by any party or whether they're
2 simply going to rely on the wording of the Order in Council
3 and/or other materials that have already been filed with
4 the inquiry.

5 **THE COMMISSIONER:** All right.

6 **MR. ENGELMANN:** So perhaps I'll turn the
7 floor over to some of those other counsel. If I'm mistaken
8 in the numbers, again, it would be Mr. Sherriff-Scott for
9 the Diocese; Mr. Manson for the Citizens for Community
10 Renewal; Mr. Lee for the Victims Group; Mr. Bennett for the
11 Men's Project and Mr. Kloeze for the Attorney General.
12 Those would be the parties who might want to speak to some
13 of these process issues.

14 **THE COMMISSIONER:** Well, I will leave it
15 open to any party to ---

16 **MR. ENGELMANN:** Yes. There may be others
17 that I have missed.

18 **THE COMMISSIONER:** All right. Thank you.

19 Did you wish to -- well, in any event, if we
20 are going to go with the -- if I can use the baseball term
21 "batting order" that we normally do, it would be you in any
22 event.

23 **MR. MANSON:** Thank you, Mr. Commissioner.

24 **THE COMMISSIONER:** All right.

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

1 **MR. MANSON:** I want to make some brief
2 remarks. We do have a proposal that touches all of the
3 issues that Mr. Engelmann raised, but I want to discuss the
4 importance of the issue, the scope of the motion and then
5 make the proposal.

6 I should first say that I know, Mr.
7 Commissioner, you are very concerned to move these matters
8 forward, but we were relying on Rule 31 ---

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

10 **MR. MANSON:** --- which you'll note starts
11 with the sentence:

12 "The Commission expects all relevant
13 documents to be produced to the
14 Commission by any party with standing
15 where the documents are in the
16 possession, control or power of the
17 party..."

18 And then goes on to provide a process for dealing with
19 privilege-based issue.

20 It was our view that this is in essence a
21 relevance-based issue, that we had heard that the Diocese
22 was taking the position that according to the Terms of
23 Reference and their interpretation of what is a public
24 institution, various matters were not relevant. So we were
25 expecting a motion by them under Rule 31, which is just by

1 way of explaining that Mr. Engelmann's letter of February
2 20th, while we clearly have known this is a live issue; that
3 was the first formal joining of the issue, and the first
4 formal notice we had of the Diocese's particular views.

5 I want to say, Mr. Commissioner, that it's
6 controversial in two respects. The first respect is what
7 is a public institution? But the second respect, and I
8 don't want to put words into Mr. Sherriff-Scott's mouth and
9 I am relying on Mr. Engelmann's letter that paraphrases the
10 Diocese's position. If either the letter or my remarks are
11 inaccurate I'm sure Mr. Sheriff-Scott will correct me.

12 But the second aspect is what I would like
13 to call the interaction arm of the Commission's mandate.
14 You'll note in the Terms of Reference the phrase "The
15 interaction of that response", meaning a public
16 institution's response with other public and community
17 sectors. It's our position that Mr. Engelmann's letter
18 suggests that the Diocese is taking a very narrow view of
19 that arm and because these are two related issues, I want
20 to address them briefly this morning so that we all
21 understand what we are going to argue when we come back to
22 argue them.

23 In general, it is the position of the
24 Citizens for Community Renewal that if the Diocese only
25 plays a marginal role in this Commission of Inquiry, the

1 Commission's integrity will be undermined dramatically in
2 the eyes of the Cornwall community. On the streets people
3 will be shaking their heads in dismay wondering why we are
4 all here in Cornwall.

5 I want to -- when we come back to deal with
6 the issue, we will be making the argument that what is a
7 public institution has to be determined in a purposive and
8 contextual way in light of the Terms of Reference of this
9 inquiry and in light of the role that this Diocese plays in
10 this community.

11 Those will be the two thrusts of our
12 position and, I'll be completely frank. It's our view that
13 "public institution" is not a label that gets attached at
14 birth to some institution. It's a function of why you are
15 asking the question and how the institution has evolved and
16 how the institution plays its role within that context.
17 Here, the context is obviously a Commission of Inquiry into
18 historical allegations of sexual abuse in Cornwall.

19 On the interaction arm, Mr. Commissioner ---

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

21 **MR. MANSON:** --- it's our position that it
22 should not be interpreted narrowly but, more importantly,
23 it can't be resolved as a preliminary issue in the
24 abstract. By that I mean that it's a fluid concept. It
25 will need to be interpreted both broadly to reflect the

1 aims of the Commission but, as well, it will have
2 dimensions that will only unfold as the evidence unfolds.

3 By this I mean, Mr. Commissioner, I'm sure
4 all of us could give you some specific examples today of
5 what would be an interaction within the terms of the
6 mandate, but I would be very hesitant to suggest that my
7 views would be exhaustive.

8 I'm sure there will be other matters that
9 will come out in the evidence that will be open to argument
10 that they fit within the interaction arm.

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

12 **MR. MANSON:** And that we would need to see
13 the evidence before we make that decision.

14 So our position is the motion should be
15 restricted to the meaning of public institution and should
16 not deal with the scope of interaction. Accordingly, Mr.
17 Engelmann's wording of the scope of the motion isn't as
18 precise as I think it ought to be because it talks about in
19 this case whether the Diocese -- whether the institutional
20 response will be examined within the inquiry's mandate. As
21 I said, there is two branches, two potential ways that
22 could be examined.

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

24 **MR. MANSON:** So I would prefer that we cast
25 the issue simply in terms of whether within the Terms of

1 Teference and given the purpose of this Commission: Should
2 the Diocese of Alexandria, Cornwall be considered a public
3 institution, period.

4 **THE COMMISSIONER:** All right.

5 **MR. MANSON:** This is the fundamental
6 question and it's our position that it's central to the
7 inquiry.

8 Now, getting onto timing ---

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

10 **MR. MANSON:** --- we need some time, Mr.
11 Commissioner. This argument has to be developed and
12 brought forward in the clearest and most efficient way
13 because this is a central issue. Once this is decided by
14 you, Mr. Commissioner, we'll know ---

15 **THE COMMISSIONER:** Yes, where we're going.

16 **MR. MANSON:** We need an evidentiary basis
17 for the second prong of our argument that relates to the
18 role the Diocese plays in the community.

19 I can tell you that we have been busy trying
20 to develop that part of our submission. We have some leads
21 and we have some material, but we're not as yet ready.
22 We're looking at questions of historical in a structural
23 nature and we expect to be ready soon.

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

25 **MR. MANSON:** The procedural -- if I can get

1 to our proposal in terms of procedure and timing, we would
2 be prepared to argue this issue on May 27th --

3 **THE COMMISSIONER:** May?

4 **MR. MANSON:** On March. I apologize.

5 **(LAUGHTER/RIRES)**

6 **MR. MANSON:** So many dates have been
7 floating around about so many things. I apologize, Mr.
8 Commissioner.

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

10 **MR. MANSON:** My note actually says May 27th -
11 - no, wait, March 27th.

12 **THE COMMISSIONER:** That was your first
13 salvo.

14 Okay. Now, let's get to ---

15 **MR. MANSON:** Now, let's get to March 27th.

16 We would propose that all participating
17 parties file and serve written submissions by Tuesday,
18 March 21st. That would be the Tuesday preceding the Monday
19 of the argument.

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

21 **MR. MANSON:** Furthermore, that any evidence
22 should be included with the submissions by way of
23 affidavit, but that any exhibits or documents already filed
24 with the Commission be available without -- be available
25 for reference purposes in the submission without the need

1 to file copies.

2 **THE COMMISSIONER:** Anything filed, do you
3 mean with the applications for standing, the evidence we've
4 heard, any of the exhibits?

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

6 **THE COMMISSIONER:** All right.

7 **MR. MANSON:** I'm not going beyond those
8 three areas.

9 **THE COMMISSIONER:** So what happens if the
10 evidence that you have by affidavit is contested? Are we
11 going to get into a battle of affidavits or at some point
12 should we be thinking of oral evidence?

13 **MR. MANSON:** I would propose that -- well,
14 I'm optimistic that that won't be the case, but if that is
15 the case, perhaps we could say that if notice is given to
16 any party filing an affidavit by the Thursday that the
17 affiant ought to be produced on the Monday to answer
18 questions or give other material. I'm certainly happy to
19 go along with that.

20 I don't want to see everything delayed with
21 requests for cross-examinations and affidavits. You're
22 absolutely right. Let's deal with it now.

23 **THE COMMISSIONER:** All right.

24 **MR. MANSON:** If the other parties are
25 content with that, I would be content with that as well.

1 **THE COMMISSIONER:** All right.

2 **MR. MANSON:** I'm not sure if there's any
3 other questions for me, but I'm trying to think through how
4 we ought to organize this. This is the extent of the
5 proposal, and I think it addresses all of the issues.

6 **THE COMMISSIONER:** All right.

7 **MR. MANSON:** Thank you, Mr. Commissioner.

8 **MR. ENGELMANN:** It's just a question on
9 timing, Mr. Manson. About how long do you think ---

10 **MR. MANSON:** Oh, right.

11 I'm accustomed to working with time limits,
12 Mr. Commissioner. I'll be coming back to deal with this.
13 I would not -- I would certainly not expect to be more than
14 hour.

15 **THE COMMISSIONER:** All right. Okay.

16 Those are your submissions.

17 **MR. MANSON:** Thank you, Mr. Commissioner.

18 **THE COMMISSIONER:** Let's go down the normal
19 list, then.

20 Mr. Lee.

21 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

22 **MR. LEE:** Thank you, Mr. Commissioner.

23 I'd like to act on a lot of what Mr. Manson
24 said. I think he's framed the issue well and that I think
25 the main issue we need to deal with is whether or not the

1 Diocese is a public institution. I think we're going to
2 get into trouble if we get bogged down in considering its
3 role in both branches, as Mr. Manson put it. The question
4 we need to answer preliminarily, in my submission, is
5 whether or not the Diocese is a public institution who is
6 going to be treated as such.

7 And I also agree that in terms of the
8 interaction branch, I agree that it is a -- it's fluid and
9 it's something we're look at as the evidence comes up. We
10 don't know what the evidence is going to be at this point.
11 I'm not sure Commission counsel knows what the evidence is
12 going to be at this point, and we need to see what comes
13 about from that.

14 I'd obviously like to reiterate, in terms of
15 timing, it was also my understanding that you're obviously
16 anxious to get these preliminary issues dealt with as
17 quickly as possible. At the same time, this is an
18 important issue. I've had discussions with my clients,
19 with the Victims Group. Obviously, it's a tremendously
20 important issue to them. It wasn't one that I think they
21 were fully aware it was going to come to fruition. Now
22 that it has, obviously, they are very concerned. We also
23 need time to develop some kind of argument here.

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

25 **MR. LEE:** Mr. Manson and I had discussed the

1 timeline before hand. I'm in complete agreement that his
2 timeline is reasonable. It's fairly soon, but it does give
3 enough time to do what we need to do.

4 I would expect that we would also want to
5 file some form of affidavit evidence. We, too, have been
6 in the process, but haven't pinned down exactly what we'll
7 need yet or haven't made strict arrangements to get that
8 done. So I think I agree with his submission as far as the
9 timeline goes.

10 I also agree with your suggestion that there
11 is a very real possibility that this affidavit evidence may
12 be opened to some scrutiny and people may have some issue
13 with it. It may well be that we need -- there may need to
14 be cross-examination and I think his proposal there is
15 reasonable.

16 So I guess I agree that written submissions
17 are necessary and I don't see any reason why they need to
18 filed any earlier than a week beforehand, as Mr. Manson has
19 suggested. March 27th seems like a reasonable date to argue
20 this, and it's the date that we've all set aside, anyways,
21 as being back here.

22 In terms of oral evidence, I would think --
23 obviously, I'm not in a position to say definitively right
24 now, but I would think that an hour, an hour and a half
25 would be reasonable for us as well in terms of how long it

1 might take to argue that.

2 **THE COMMISSIONER:** All right. Thank you.

3 I should say at the outset that what I was
4 anxious to get going was this meeting here, to get the
5 issues going. I'm not going to rush and we're going to
6 take the time that it takes for parties to get their
7 submissions together. We will not tardy, but what I wanted
8 to do was get things rolling so that we can get a process
9 established.

10 So as long as people are very clear that, as
11 I indicated before, the public -- and I think we owe it to
12 the public and to our mandate that we proceed efficiently
13 and quickly, but not to the detriment of completeness.

14 All right?

15 **MR. LEE:** I think we all appreciate that,
16 Mr. Commissioner.

17 **THE COMMISSIONER:** Thank you.

18 **MR. LEE:** Thank you.

19 **THE COMMISSIONER:** All right.

20 I'm sorry. I don't have the list in front
21 of me.

22 **MR. BENNETT:** Bennett.

23 **THE COMMISSIONER:** There you go, Mr.
24 Bennett.

25 The other thing I should say, though, and

1 upfront is if we do go down this route, and we talked about
2 March 27, we are going to have to have a discussion as to
3 where we're going to fit this matter in with that week of
4 hearings because we do have the contextual hearing that
5 will continue. We've got other things lined up. So I
6 don't think we should be sitting and assuming right off the
7 bat that it will necessarily be the 27th. It will be
8 somewhere down that road.

9 **MR. MANSON:** Can I briefly address that, Mr.
10 Commissioner?

11 **THE COMMISSIONER:** Yes.

12 **MR. MANSON:** As you know, Peter Wardle and I
13 are co-counsel, and both of us have other obligations and
14 we're meeting your expectations as far as the notification
15 for the dates that you expect us here.

16 I will be here March 27th and March 28th.
17 Peter will be here the other two days that week.

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

19 **MR. MANSON:** So when I said March 27th, I
20 don't mind if it's March 28th, but I am concerned that those
21 are the two days that I will be here, Mr. Commissioner.

22 **THE COMMISSIONER:** And that's why I'm
23 throwing that out now. So I'll take note of that and then
24 we'll see. I'm sure Mr. Wardle is equally competent and up
25 to the task.

1 **MR. MANSON:** This has been -- determined my
2 response a little bit.

3 **THE COMMISSIONER:** Exactly. All right.

4 **MR. MANSON:** Thank you, Mr. Commissioner.

5 **THE COMMISSIONER:** We'll take that in
6 consideration.

7 Mr. Bennett.

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

9 **MR. BENNETT:** Good morning, Mr.
10 Commissioner.

11 With respect to the dates, my only comment
12 is as long as it's with any of the dates that have been set
13 aside for hearings that's fine. It's when we start talking
14 about dates outside which makes it very difficult because
15 many of us may have other obligations and we've blocked off
16 time to participate in this hearing and make this a
17 priority, but it becomes very difficult, for example, when
18 we're talking would we be back here next week. And I just
19 would like to -- I think that's similar to a point that was
20 just being made. So as we're moving this forward, whether
21 it's March 27th or the next dates or whatever, I don't have
22 a position. We can be ready when that's necessary.

23 I think the way the question is being raised
24 is probably a good one. One of the difficulties I see with
25 this at this point is we don't know what it is that's

1 trying to be hidden. And that's how my client's
2 perspective is, and I'm sure Mr. Sherriff-Scott will have a
3 different perception, but yesterday we heard from a witness
4 "secrecy is the enemy of sexual abuse". We don't know if
5 the reason for this is some documents have been asked for
6 by the Commission or some access and they're saying,
7 "Absolutely no way, you're not going to get this". We
8 don't really understand yet what the implications of this
9 issue being raised.

10 I'm not saying I'm taken by surprise that
11 it's being raised. We've been aware that it could be a
12 potential issue, but that's -- the difficulty is what is
13 out there that they don't want to disclose, because that's
14 the only thing I can imagine.

15 When we received the letter, I had to get
16 instructions from my client because it wasn't clear whether
17 this was something we would take a position on. But as we
18 had discussion, there was -- I'll tell you the emotions
19 that went through it; first, was outrage that it was again
20 another example of trying to close things down in Cornwall,
21 not get at the truth, what's going on again. Then, sort of
22 appalled at, we'll say, the gall of this coming forward
23 from an institution that's an integral part.

24 Obviously, from my client's perspective,
25 which is going to be not as legal, is that community and

1 public are one and the same. Obviously, I will get more
2 into that on the day. I'm not going to make all my
3 arguments. But, as we talked about it more, I think it was
4 disappointment that one of the major institutions involved
5 in this was going to go down a route that was going to make
6 everyone wonder again, "Is this Commission going to be able to
7 get to the bottom of what the interactions were, what
8 exactly happened between the different parties"?

9 And I just want to put that out there, that
10 there is great disappointment and there's also concern how
11 it's going to affect the healing of different people who
12 have been affected by this if they don't feel they know the
13 truth and what really went on.

14 So I'm just sort of foreshadowing where we
15 will be going with this.

16 **THE COMMISSIONER:** All right.

17 **MR. BENNETT:** But again, the difficulty of
18 not knowing what might be out there because we don't have
19 the same access that the Commission does. We don't know
20 what they've asked for because of their other
21 investigations, other documents they may have seen from
22 other organizations; for example, from Children's Aid or
23 the police, which have led them to say, "The church must be
24 in possession of this or might be", and then hearing "No,
25 you can't have access to that". So that's our real

1 concern.

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

3 **MR. BENNETT:** In terms of our argument, I
4 realistically can't see it being more than a half hour. It
5 will be pretty brief. It probably won't be much different
6 than what I've said this morning.

7 **THE COMMISSIONER:** M'hm, all right.

8 **MR. BENNETT:** That's my submission this
9 morning.

10 **THE COMMISSIONER:** Thank you.

11 **MR. BENNETT:** Thank you.

12 **THE COMMISSIONER:** And Mr. Cipriano.

13 **MR. CIPRIANO:** I have no comment. Thank
14 you.

15 **THE COMMISSIONER:** All right.

16 Mr. Chisholm.

17 **MR. CHISHOLM:** Good morning, Mr.

18 Commissioner.

19 My client is not taking a position with
20 respect to this issue. Thank you.

21 **THE COMMISSIONER:** Thank you.

22 And I'm sorry, Probations and Corrections is
23 Monsieur?

24 **MR. ROULEAU:** Rouleau.

25 **THE COMMISSIONER:** Rouleau, oui.

1 **MR. ROULEAU:** We leave the issue to your
2 good appreciation.

3 **THE COMMISSIONER:** Pardon me?

4 **MR. ROULEAU:** We leave the issue to your
5 appreciation.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Kloeze is it? I'm sorry. I never did
8 get the pronunciation correctly.

9 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KLOEZE:**

10 **MR. KLOEZE:** Sorry. The pronunciation is
11 Kloeze.

12 Mr. Commissioner, Mr. Engelmann indicated
13 that the Attorney General wished to take a position on this
14 motion. I can say that I have sought instructions of the
15 Attorney General. I have not received those instructions
16 yet, whether or not the Attorney General intends to appear
17 on the motion or on the question and take a position.

18 I can say that if the Attorney General does
19 decide to take a position, it would be merely to offer any
20 assistance that the Commissioner may wish to receive on
21 this issue and we would accommodate any timetable that the
22 other parties have put forward. And I can't imagine that
23 we would make submissions anywhere in excess of 15 minutes.

24 **THE COMMISSIONER:** All right. So I suppose
25 the issue would be if -- well, when do you think you'll get

1 instructions and when will you advise the parties as to
2 what your position will be once you get those instructions?

3 **MR. KLOEZE:** As soon as we get instructions
4 which I hope will be by middle of next week, I'll advise
5 Commission counsel and other parties whether or not the
6 Attorney General intends to appear on the issue.

7 **THE COMMISSIONER:** So then let's put it that
8 you'll advise the parties by March 3rd, which is next
9 Friday?

10 **MR. KLOEZE:** Okay, yes.

11 **THE COMMISSIONER:** All right. So that way
12 we'll know where you stand and it won't be left up in the
13 air, all right?

14 **MR. KLOEZE:** Yes, that's perfectly
15 appropriate. Thank you, Mr. Commissioner.

16 **THE COMMISSIONER:** Thank you.
17 Solicitor for Jacques Leduc.

18 **MS. SIEBERT:** We are not taking a position.

19 **THE COMMISSIONER:** Thank you.
20 Mr. Sherriff-Scott.

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

22 **MR. SHERRIFF-SCOTT:** Thank you, Mr.
23 Commissioner.

24 First of all, I recoil from the suggestions
25 that have been made about my client. We voluntarily sought

1 standing here to participate in this inquiry within its
2 Terms of Reference, when we did not have to do so, to
3 assist the inquiry, as well as to make representations and
4 to ensure our interests were represented as all parties
5 wish to do in any public inquiry.

6 These criticisms are not founded. We are
7 committed to the inquiry and have demonstrated that in our
8 meetings and discussions with your counsel. We have been
9 at pains to produce material to him and have reviewed
10 materials at this suggestion on matters that he has
11 identified for us to go back and review. And I have
12 received, I would say, no criticism from him on this issue
13 at all, not only with respect to my position but with
14 respect to any other matter. So the suggestion that it
15 would have behoved me to bring a motion is not well
16 founded.

17 **THE COMMISSIONER:** Let's clear that up right
18 now in the sense that the Commission and I, as
19 Commissioner, are not taking any -- making any conclusions
20 adverse to that. I think, in fairness to everyone, it is a
21 live issue. It's been out there and one of the things I
22 wanted to do by having this meeting today is bring it to a
23 head.

24 **MR. SHERRIFF-SCOTT:** Fair enough.

25 **THE COMMISSIONER:** So there is no -- I think

1 at this point nothing should be read into the fact that
2 I've called this meeting other than -- other than I wanted
3 to bring it to a head.

4 **MR. SHERRIFF-SCOTT:** Fair enough.

5 **THE COMMISSIONER:** All right.

6 **MR. SHERRIFF-SCOTT:** I just wanted to say
7 that I've been consistent since the start since last fall
8 with your counsel on this subject and have not been
9 criticized by him or no suggestion has been made by him
10 that my interpretation is wrong.

11 In terms of the Terms of Reference, when we
12 studied them when we got them, we were of the view and have
13 acted consistently on the view that they breakdown into two
14 groups and I'm not going to make submissions on that; those
15 groups with a mandate institutionally to receive and
16 examine allegations, and then those groups that may have
17 interacted.

18 In a point of agreement with my friend Mr.
19 Manson, the question to be framed is: Is the Diocese of
20 Alexandria-Cornwall, which is the only party that has
21 standing, public institution? Full stop. It should not be
22 the institution of the Catholic Church, et cetera. I was
23 at pains to elaborate on that kind of issue on the standing
24 issue. For your benefit, I provided the very historically
25 interesting opinion of Mr. Morrissey. It's the Diocese of

1 Alexandria-Cornwall.

2 Is it or is it not a public institution;
3 full stop. I agree as well the question of the interaction
4 should be left for the development of the evidence and I'm
5 not taking a position on that at this moment. I agree my
6 client is a community sector organization and therefore the
7 concept of its standing relates to those issues and
8 interactions with the system which are public. And so that
9 will develop as it does and if issues arise, they will be
10 addressed at that time.

11 In terms of the question of the process, I'm
12 available to argue this anytime. I'll argue it next week,
13 the week after. The only time in March I can't argue it is
14 the March break, but other than that, I'll argue it the 27th
15 or forward or any other time at your convenience.

16 **THE COMMISSIONER:** All right.

17 **MR. SHERRIFF-SCOTT:** With respect to
18 evidence, I can't conceive how this would be a significant
19 evidentiary base. This is a question of interpretation of
20 the document.

21 There is substantial evidence about what the
22 Diocese is. Its constating documents are in the record, 10
23 years of financial statements and so forth.

24 The question will be -- the factual one will
25 follow, if there is a factual one -- your interpretation of

1 the document. In other words, does this class out into two
2 separate groups, what are the indicia of a public
3 institution and then there'll be a factual answer to that
4 and I don't think the evidentiary overlay will be of any
5 significance. But I will respond to what is tendered and
6 have an opportunity to be heard on the subject at your
7 convenience.

8 **THE COMMISSIONER:** All right. Timeline?

9 **MR. SHERRIFF-SCOTT:** In terms of the time of
10 my submissions at the hearing?

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

12 **MR. SHERRIFF-SCOTT:** I wouldn't imagine more
13 than an hour.

14 **THE COMMISSIONER:** All right.

15 **MR. SHERRIFF-SCOTT:** And an opportunity to
16 respond.

17 Thank you.

18 **THE COMMISSIONER:** Thank you very much.

19 Cornwall Police. Cornwall Police, anyone
20 here?

21 **MR. ENGELMANN:** Mr. Manderville indicated to
22 me he had no position ---

23 **THE COMMISSIONER:** All right.

24 OPP?

25 **MR. KOZLOFF:** We take no position, Mr.

1 Commissioner.

2 **THE COMMISSIONER:** Thank you.

3 And the OPP Association.

4 **MR. CARROLL:** No position.

5 **THE COMMISSIONER:** No position. All right.

6 **MR. ENGELMANN:** Mr. Commissioner, just a
7 brief comment. I'm happy to hear that all counsel are *ad*
8 *idem* on the issue and the question, we agree, is an
9 appropriate question: is the Diocese of Alexandria-Cornwall
10 a public institution for the purposes of the inquiry.

11 **THE COMMISSIONER:** All right.

12 **MR. ENGELMANN:** I just wanted to say in a
13 comment to -- just in response to a couple of comments that
14 have been made, we were not seeking a motion from any
15 party. This arose as a result of discussions and feedback
16 from parties, so we weren't expecting any party to file a
17 motion, and I think we made that clear to counsel.

18 Mr. Sherriff-Scott is correct; he has taken
19 a consistent position from the start with respect to the
20 status of his client.

21 **THE COMMISSIONER:** All right.

22 So now the issue then, I suppose, Mr.
23 Engelmann, is that we had some people lined up, I suppose,
24 to come and testify. So what are your thoughts with
25 respect to when? Should we set aside -- it looks maybe a

1 day and a half to two days on this issue?

2 **MR. ENGELMANN:** I think we're okay with the
3 timeline in having the matter heard within a day. My
4 difficulty -- I've just listened to the timelines from the
5 various parties ---

6 **THE COMMISSIONER:** Yes.

7 **MR. ENGELMANN:** --- and we should be able to
8 argue this orally in one day.

9 **THE COMMISSIONER:** All right.

10 **MR. ENGELMANN:** We're just juggling a little
11 bit with a couple of our contextual witnesses, but I should
12 be able to advise the parties early next week, I would
13 hope, as to whether we can go on the 27th of 28th, but I'm
14 confident we could go on one of those two days.

15 **THE COMMISSIONER:** All right. So that would
16 take care of your concern.

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

18 **THE COMMISSIONER:** All right. So then what
19 we'll do is the question will be is the Diocese of
20 Alexandria -- whatever the full name is and I'm sorry -- is
21 it a public institution within the terms of the mandate.
22 Is that fair?

23 **MR. SHERRIFF-SCOTT:** That is satisfactory.
24 Thank you.

25 **THE COMMISSIONER:** All right.

1 **MR. MANSON:** That's fine, Mr. Commissioner.

2 **THE COMMISSIONER:** Thank you.

3 So then written submissions or affidavits
4 and whatever material is to be filed on or before March 21st
5 at the end of the business day and that the matter will be
6 heard either March 27th or 28th, and that we will advise you
7 by which date, Mr. Engelmann.

8 **MR. ENGELMANN:** By March 1st ---

9 **THE COMMISSIONER:** Okay.

10 **MR. ENGELMANN:** --- I can advise the
11 parties.

12 **THE COMMISSIONER:** By March 1st we will know
13 which date it will be, the 27th or the 28th. All right.

14 Now, does that take care of that issue? All
15 right.

16 Now, let's move on. We do have a motion
17 brought by -- well, there is -- do you have any comments at
18 this point, Mr. Engelmann?

19 **MR. ENGELMANN:** No. The motion was filed
20 this morning and perhaps Mr. Cipriano would like to speak
21 to it.

22 **THE COMMISSIONER:** All right.

23 So Mr. Cipriano, I guess the first thing
24 when I'm looking at this, and I've just perused it, is that
25 you're purporting to bring this on behalf of Father Charles

1 MacDonald and the Estate of Kenneth Séguin.

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CIPRIANO:

3 MR. CIPRIANO: Yes.

4 THE COMMISSIONER: This is a Phase I matter.
5 We are in Phase I and Corrections is acting for the Estate
6 of Ken Séguin with respect to Phase I.

7 MR. CIPRIANO: I should clarify, and I
8 didn't, I apologize, in my materials. I think the motion
9 applies to both phases, I would argue.

10 THE COMMISSIONER: Well, I think what you
11 might want to do then is bring leave to bring the motion on
12 behalf of the Estate of Ken Séguin because there might be
13 some issue from Corrections and from other parties as to
14 whether or not you have the ability or the standing to do
15 that at this point.

16 MR. CIPRIANO: Very well. I can do that.

17 THE COMMISSIONER: All right. So I've
18 indicated with respect to this motion that this one is more
19 -- may have more effect on the -- the other one might if
20 it's appealed or anything, but this one here I would rather
21 have heard it before we leave for March -- not leave it to
22 March 27th.

23 What are your views with respect to how long
24 this motion would take, when you're going -- well, the
25 other thing, I suppose, is you've given us the motion but

1 there's no material.

2 **MR. CIPRIANO:** No. As I indicated to
3 Commission counsel over the past few days, they were -- and
4 as well as the Commission itself wanted the motion to be
5 brought.

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

7 **MR. CIPRIANO:** We thought it would have been
8 a bit too premature, especially if other parties may or may
9 not join. I do know there are conversations going back and
10 forth with other parties. It may result in similar motions
11 being brought. I don't know at this point. I don't want
12 to speak on behalf of other parties, but to avoid duplicity
13 of bringing the same motions, I thought it might be well to
14 hold off bringing the motion, but because of comments made
15 by the Commission to file it, I thought I should file
16 something in order to ---

17 **THE COMMISSIONER:** Sure.

18 **MR. CIPRIANO:** --- put it out there. But it
19 may have to be amended or other parties -- I don't know
20 what positions other parties will take, but obviously there
21 will be a motion record.

22 I can't see submissions, at least on my
23 part, being more than an hour. I don't know about other
24 parties, if they intend to lead evidence or so on, so I
25 can't speak for how long other parties would be.

1 I think, given the comments that have been
2 made already at the Commission during the taking of
3 evidence and so on, I think the ideal course of action
4 would be to state a question to the Divisional Court. I
5 think that would be the easiest way. I think part of the
6 issues have already been answered by the Commission and
7 Commission counsel and I think we know where it's going.

8 **THE COMMISSIONER:** No, I don't know that. I
9 think we have to air this out publicly and we have to see.
10 I don't know that the Commission has made any final rulings
11 with respect to what we're going to do, and I think that
12 the process should be that we have this discussion publicly
13 so that the public will know what the issues are and then I
14 will rule. And I'm not saying -- I may well rule that,
15 yes, you should go by way of stated case, but let's take it
16 one step at a time here.

17 **MR. CIPRIANO:** Very well.

18 The other aspect I think that could help
19 speed up the process is -- I know it's been stated to
20 myself that certain witnesses will be called by Commission
21 counsel. If we could find out ---

22 **THE COMMISSIONER:** Certain witnesses are
23 going to be called for the motion?

24 **MR. CIPRIANO:** No, not for the motion. The
25 intent is to call certain witnesses. If we could find out

1 which ones specifically, I think that might help in
2 addressing who will want to argue the motion and who may
3 not want to argue the motion and then what -- and just
4 narrow some of the issues.

5 **THE COMMISSIONER:** Well, the issue really
6 is, isn't it, that whether or not I should hear evidence
7 from alleged victims?

8 **MR. CIPRIANO:** Well, I think that's been
9 answered by Commission counsel. You will hear evidence
10 from alleged victims.

11 **THE COMMISSIONER:** They proposing to, yes.

12 **MR. CIPRIANO:** So I think we've moved beyond
13 that to can you, given that's it's a provincial commission
14 of inquiry and obviously the division of powers and the
15 duties placed upon a provincial commission of inquiry is to
16 protect the interests of those who have standing -- can it,
17 given it's mandate, can it possibly proceed without
18 entering into that realm which it's prohibited to enter
19 into; that is, make certain findings -- sorry; that is,
20 make certain findings, and when I say findings I don't mean
21 simply a finding of beyond a reasonable doubt. I also mean
22 a finding that a certain complaint has merit with respect
23 to -- similar to a *prima facie* case.

24 I think we're going to hear evidence that in
25 order to fulfill the Commission's mandate, the Commission

1 will necessarily have to make some sort of finding, at
2 least to whether a witness' complaint had merit or not and
3 I think when we do that, we're entering into the realm of
4 what the Commission cannot do.

5 **THE COMMISSIONER:** What I want to do, I
6 suppose, is frame the argument, because again that may be
7 subject to interpretation. It may be as to why is the
8 witness being called and what questions will be put to that
9 person.

10 **MR. CIPRIANO:** I can only articulate what's
11 been told to me by Commission counsel.

12 **THE COMMISSIONER:** Right.

13 **MR. CIPRIANO:** And I think I've tried to
14 express it in the application. What I've been told is that
15 witnesses will be called. Their statements will be put to
16 them, to identify and verify that those statements were
17 accurate in the sense that they were made truthfully.

18 **THE COMMISSIONER:** Well ---

19 **MR. CIPRIANO:** I don't want to misquote
20 Commission counsel, but that's what my understanding was.

21 **THE COMMISSIONER:** That's exactly why we're
22 having this session. And we'll have to determine exactly
23 what is supposed to be done to the -- I don't think we can
24 go down to every question that will be asked, but I think
25 that we should set and frame the issue correctly and

1 accurately, I suppose.

2 **MR. CIPRIANO:** I guess what happens is if a
3 statement is put to a witness and they're asked to identify
4 whether they were being truthful when they made the
5 statement ---

6 **THE COMMISSIONER:** But you're assuming that
7 that's what the question would be.

8 **MR. CIPRIANO:** I am only going by what was
9 told to me by Commission counsel.

10 **THE COMMISSIONER:** I think you might want to
11 look at -- and that's why there's some confusion here and
12 we might want to look at that.

13 **MR. CIPRIANO:** But if -- what I'm getting at
14 is if then we go beyond it to look at how agencies, whoever
15 they may be, responded to that statement --

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

17 **MR. CIPRIANO:** --- and there's a finding
18 that the agencies either did not respond well or did
19 respond well, that necessarily has to include a finding of
20 merit to the complaint.

21 **THE COMMISSIONER:** Well, that's part of the
22 argument and we'll deal with that later. I think we just
23 want to make sure that we set the ground rules here and
24 we'll see. I'm sure Commission counsel will enlighten us
25 once we get to the merits of your application.

1 **MR. CIPRIANO:** Thank you.

2 **THE COMMISSIONER:** Okay. So when will you
3 have your application completed?

4 **MR. CIPRIANO:** I indicated -- I know you had
5 said there was time available next week. Unfortunately,
6 I'm not available. I didn't know that you were going to
7 open that time up. I have prior commitments. I could be
8 available the week after. I believe that would take us
9 into the first full week into March. And I believe the
10 week subsequent to that, other than the 16th and 17th.

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

12 **MR. CIPRIANO:** And after that, I can make
13 myself available. I don't want to shorten anyone's March
14 Break but I will make myself available. If dates are
15 offered, you know, we can perhaps at a break, look at what
16 dates are available by all parties.

17 **THE COMMISSIONER:** And you said one hour for
18 your position?

19 **MR. CIPRIANO:** Yes, I can't see myself going
20 over an hour.

21 **THE COMMISSIONER:** Terrific.

22 **MR. CIPRIANO:** Subject to right of reply, as
23 well.

24 **THE COMMISSIONER:** Sure. Okay, thank you.
25 Mr. Manson.

1 **MR. MANSON:** Our instructions are ---

2 **THE COMMISSIONER:** I think you have to come
3 up so that ---

4 **MR. MANSON:** Okay.

5 **THE COMMISSIONER:** --- you can be on camera.

6 **MR. ENGELMANN:** Maybe just before you hear
7 from counsel, perhaps just a very brief reply ---

8 **THE COMMISSIONER:** Sure.

9 **--- REPLY BY/RÉPLIQUE PAR MR. ENGELMANN:**

10 **MR. ENGELMANN:** --- Mr. Commissioner, just
11 to frame. I don't know if counsel have been canvassed by
12 Mr. Cipriano as to whether or not they are actually going
13 to participate in this motion and so I understand you're
14 probably asking them that now. But I just -- just by way
15 of background, this arose when we were essentially advised
16 that if any alleged victims were going to give viva voce
17 evidence, Mr. MacDonald's counsel, Father MacDonald's
18 counsel would bring a motion saying that this was beyond
19 the scope of this inquiry, that it was unconstitutional.

20 And we never used the word, "examine
21 truthfulness" and I realize that will come up later, but
22 what we've talked about is the fact that alleged victims of
23 his client and alleged victims of others will be called to
24 testify. It's our present intention to do that so that we
25 can examine the public institutional response to their

1 allegations. So yes, if a statement is talked about, we
2 may talk about whether that accurately reflects the
3 statement they gave the institutional official.

4 We have never suggested we'd go into the
5 truthfulness of the statement and a criminal trial, civil
6 trial, what have you. I think we've been very consistent
7 on that.

8 In any event, this is an issue that needs to
9 be resolved and I think it would be a good idea to see
10 where people stand on it and whether they wish to take a
11 position.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Manson.

14 **--- REPLY BY/RÉPLIQUE PAR MR. MANSON:**

15 **MR. MANSON:** We will be taking a position on
16 this matter, Mr. Commissioner. Our position is very
17 consistent with Mr. Engelmann's position.

18 I should say now, without getting into
19 argument, I think it's wrong to assume that simply because
20 this is a provincial commission and that criminal
21 prosecutions flow from Section 91 rather than Section 92,
22 that that inhibits this Commission from hearing from
23 victims of abuse, even if that abuse has been the subject
24 of a prosecution. Our view is that you have a
25 constitutional mandate to do that and that it's a pith and

1 substance test that relates to your function. We don't
2 need to get into that now, but that's -- I just wanted to -
3 --

4 **THE COMMISSIONER:** I have the flavour.

5 **MR. MANSON:** Yes.

6 It's our position that victims will need to
7 be called and that in order to hear their evidence in the
8 proper context, I'm sure that somebody will have to ask
9 something about the nature of their complaint. We
10 certainly do not need to get into exorbitant details and
11 it's quite clear that there's no issue of guilt or
12 innocence on the table. So we do want to take a position
13 on this matter.

14 Scheduling is a problem for us. I'm not
15 sure that we can get anybody here before the week of March
16 27th.

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

18 **MR. MANSON:** Peter Wardle will be dealing
19 with this issue, so he would be I'm sure happy to deal with
20 it on the 29th or the 30th, but we certainly do want to take
21 a position. In substance our position is very similar to
22 that of Commission counsel's.

23 **THE COMMISSIONER:** All right. Thank you.

24 **MR. MANSON:** Thank you, Mr. Commissioner.

25 **THE COMMISSIONER:** Mr. Lee.

1 **MR. ENGELMANN:** Just wondering if the
2 parties could make a statement or give the estimated time
3 of how long ---

4 **THE COMMISSIONER:** Yes. I'm sorry.
5 Mr. Manson?

6 **MR. MANSON:** My guess would be around a half
7 an hour. I think the cases are very limited. There's few
8 of them and they can be explained and put in front of ---

9 **THE COMMISSIONER:** You should be going to
10 the microphone, Mr. Manson.

11 Not only are you on video, but we're also on
12 audio and we want to get the transcript clear, God forbid.

13 **MR. MANSON:** I'm sorry, Mr. Commissioner. I
14 would think our position could be made in no more than half
15 an hour.

16 **THE COMMISSIONER:** Thank you.

17 **MR. MANSON:** Thank you.

18 **THE COMMISSIONER:** All right.

19 --- **REPLY BY/RÉPLIQUE PAR MR. LEE:**

20 **MR. LEE:** Obviously the Victims Group will
21 be taking a position on this.

22 I guess, first off let me say, and again I
23 have no intention either of getting into argument, but our
24 position is obviously that we can't see how we can possibly
25 have a public inquiry into allegations of sexual abuse

1 without hearing from victims.

2 It goes contrary to what the purpose of this
3 inquiry is, in our position.

4 I agree -- or at least I don't think you've
5 necessarily given a position on anything today, but I agree
6 with some of your comments and some of your questions when
7 Mr. Cipriano was here. My understanding is that, as Mr.
8 Manson said, we're not going to get into long, drawn-out
9 testimony about details of sexual abuse at this inquiry.
10 We've understood that from the start and the victims
11 understand that. There's going to need to be some kind of
12 comment on whether an allegation was made, what the
13 allegation was, if there was any basis to it, clearly.
14 Again we obviously don't see how this puts some kind of
15 burden on you to draw findings that amount to criminal
16 liability or criminal guilt or anything like that.

17 In terms of timing, I mean obviously, and I
18 think Mr. Bennett referenced it earlier today, there are
19 going to be certain problems with trying to get people here
20 on dates that the inquiry was not originally scheduled to
21 sit. That being said, I'll make myself available when you
22 order us to be here.

23 I don't think I'm in a great position at
24 this point to estimate how long I might be in making my
25 submissions. I would think somewhere in the neighbourhood

1 of an hour, an hour and a half, but that really is a guess
2 at this point.

3 And again, I'm perfectly happy with the week
4 of March 27th. It sounds like perhaps you will not be happy
5 with that week. But that's my suggestion anyways.

6 **THE COMMISSIONER:** All right.

7 **MR. LEE:** And just to be clear, Mr.
8 Commissioner, can we expect that this will take -- the
9 procedure on this will be as a normal motion -- we will get
10 all of Mr. Cipriano's material beforehand and we will
11 respond to it. Is that -- can we assume that?

12 That would be my suggestion, at the very
13 least, that we be entitled to respond to a full set of
14 materials.

15 **THE COMMISSIONER:** You're absolutely right.

16 **MR. ENGELMANN:** I'm hopeful that -- I better
17 follow protocol -- I'm hopeful that if people know what
18 position or what side they might be taking, it would be
19 helpful. I think we've been careful about trying to avoid
20 duplication and maybe some of the length of the argument
21 could be shortened, if people are on one side or the other.

22 **THE COMMISSIONER:** All right.

23 So Mr. Cipriano is bringing the motion. I
24 suppose what we should be doing is saying that those who
25 wish to endorse that position, that their material should

1 be in by -- I guess that would be determined by when we
2 will hear this matter.

3 And I suppose I can tell you that while I
4 did have Monday, Tuesday and Wednesday of next week open,
5 herding 14 lawyers into days that they haven't committed to
6 is, I suppose, using the expression, like herding a bunch
7 of cats. And so I guess the best laid plans of mice and
8 men would be to have it heard next week, but I would
9 suspect that from what I'm going to hear from the rest of
10 you, that the week of March 27th would probably be -- or
11 thereafter but as soon as possible -- the timeframe when we
12 will hear this motion.

13 So assuming that it's not before March 27th,
14 Mr. Cipriano, when do you suggest? Do you have timelines
15 as to when you would file and when the replies would be in?

16 Mr. Engelmann, have you given any thought to
17 that, either one?

18 **MR. ENGELMANN:** Given that this issue is a
19 motion as opposed to the other issue, seeing that Mr.
20 Cipriano and any party that wish to endorse the position of
21 his client, I should file first.

22 **THE COMMISSIONER:** Yes.

23 **MR. ENGELMANN:** And the week of March 13th is
24 March Break.

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

1 **MR. ENGELMANN:** So if it's possible perhaps
2 to -- again, it's going to depend on when we're arguing
3 this. If we're trying to fit this into the week of the
4 27th, we may want something filed by March 10th for those in
5 support of the motion ---

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

7 **MR. ENGELMANN:** --- and then something early
8 the week of the 20th by way of a response.

9 I realize those counsel that are
10 participating in both these issues, that will be more work,
11 but perhaps the 22nd or 23rd, and we'll have -- if we're
12 looking at dates -- and again I'm cognizant of what Mr.
13 Manson said about Mr. Wardle -- perhaps later in the week
14 of March 27th actually arguing this motion.

15 **THE COMMISSIONER:** Well, I'm worried about,
16 if you say March -- well, March 23rd would be a little late
17 to put in a reply to the motion.

18 **MR. ENGELMANN:** Yes. The only thing I'm
19 concerned about is if counsel are away during March Break,
20 if we get something in just before March Break, people may
21 want a day or two after as well. That's the only concern.
22 Otherwise, we're looking at arguing this the week of our
23 second week back, which would be that first week in April,
24 and if that's the case, then we could look at a later date
25 for Mr. Cipriano and people ---

1 **THE COMMISSIONER:** March 10th should be
2 plenty of time for him. Okay. Well, we'll see where we go
3 with the rest of the folks.

4 All right. So we've heard from Mr. Lee now.
5 Yes, sir, Mr. Bennett.

6 **--- REPLY BY/RÉPLIQUES PAR MR. BENNETT:**

7 **MR. BENNETT:** I don't have specific
8 instructions, but given how my instructions were for the
9 last issue and I think this is a pretty similar issue of
10 making sure that all the evidence is out there and, in
11 particular, I think my client's concern will be with
12 respect to Part II. I mean, obviously it's important for
13 Part I, but Part II, if we're looking at some type of
14 healing for the community, if we can't -- the people who
15 are affected will not be able to give evidence, I wonder
16 how you'll even be able to conduct Part II.

17 So given that, my guess is that my client
18 will be instructing me to participate.

19 **THE COMMISSIONER:** Yes.

20 **MR. BENNETT:** The same thing with respect to
21 dates.

22 I just want to point out as we're doing
23 this, we have March 20th for opening submissions. March 21st
24 is the date for filing submissions on the motion with
25 respect to the Diocese so that we don't -- the other one

1 might be later that week so we don't have all the material
2 that we have to file all falling within one day.

3 **THE COMMISSIONER:** Right.

4 **MR. BENNETT:** Especially given that the week
5 before is March Break for many people.

6 **THE COMMISSIONER:** Okay. So what would you
7 suggest then?

8 **MR. BENNETT:** Well, I believe we're -- if
9 it's being heard the second week in April, because I
10 presume there's some more contextual evidence that we're
11 going to hear ---

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

13 **MR. BENNETT:** And quite frankly, my
14 perspective is that that's more important, to get that --
15 get us through that and that these -- either of these
16 issues could wait until after the contextual.

17 They definitely have to be dealt with.

18 **THE COMMISSIONER:** Yes.

19 **MR. BENNETT:** But if we can get through the
20 contextual, because I would imagine it's hard to get those
21 witnesses in and rearrange their schedules.

22 **THE COMMISSIONER:** Yes.

23 **MR. BENNETT:** So that everything else be
24 worked around whatever is happening for the experts who
25 have been extremely helpful, and I would hate to see that

1 we lose an expert because of the way we're dealing with
2 these motions.

3 **THE COMMISSIONER:** You're not going to lose
4 an expert.

5 **MR. BENNETT:** Well, that's encouraging.

6 **THE COMMISSIONER:** You're not going to lose
7 an expert.

8 **MR. BENNETT:** I didn't think that would
9 happen, but I just would -- so when we're suggesting dates,
10 I would almost say that we try to say that they file by
11 such and such a date; we have time to reply, but that we
12 leave it to the Commission counsel to try working with
13 their witnesses to come back with proposed dates that work
14 within their schedule.

15 **THE COMMISSIONER:** Fair enough. All right.

16 **MR. BENNETT:** Thank you. And I would
17 anticipate again it would be less than half an hour, our
18 submissions on this.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Chisholm.

21 --- **REPLY BY/RÉPLIQUE PAR MR. CHISHOLM:**

22 **MR. CHISHOLM:** Mr. Commissioner, I would
23 like to put Mr. Cipriano's Notice of Motion to my client
24 and get instructions. I would think certainly I will be in
25 a position to advise counsel by early next week as to

1 whether or not we will be taking a position once we review
2 the Notice of Motion.

3 In terms of if we do involve ourselves in
4 that motion, I've heard the comments of Mr. Engelmann with
5 respect to determining which side you're on and bringing
6 the arguments together. I do not anticipate that our
7 arguments would be very lengthy in terms of oral
8 submissions.

9 **THE COMMISSIONER:** So by March 1st you'll
10 advise the parties of if you're intervening and what
11 position you're taking ---

12 **MR. CHISHOLM:** Yes.

13 **THE COMMISSIONER:** --- one way or the other
14 so we know where to expect your documents?

15 **MR. CHISHOLM:** Correct. March 1st.

16 Thank you, Mr. Commissioner.

17 **THE COMMISSIONER:** All right. Thank you.
18 Probation and Corrections.

19 --- **REPLY BY/RÉPLIQUE PAR MR. ROULEAU:**

20 **MR. ROULEAU:** Claude Rouleau for Probation.

21 We will get instructions from our client.

22 We can advise the Commission by March 1st.

23 **THE COMMISSIONER:** All right. Thank you.
24 Ministry of the Attorney General.

25 **MR. KLOEZE:** Mr. Commissioner, on Tuesday

1 when I started the process of seeking instructions on the
2 other issue, I anticipated this would arise and we've also
3 set in process seeking instructions on Mr. Cipriano's
4 motion as well. I will be able to advise the Commission --
5 I think you had given me earlier until March 3rd, which is
6 Friday of next week.

7 **THE COMMISSIONER:** I thought it was the same
8 date. I have that problem with dates. I'm date
9 challenged.

10 Why don't we put March 1st?

11 **--- REPLY BY/RÉPLIQUE PAR MR. KLOEZE:**

12 **MR. KLOEZE:** March 1st, by next week? Okay.

13 **THE COMMISSIONER:** Let's be consistent.

14 **MR. KLOEZE:** Okay. Thank you, Mr.
15 Commissioner.

16 **THE COMMISSIONER:** All right. Thank you.
17 Jacques Leduc. Yes, Madame.

18 **--- REPLY BY/RÉPLIQUE PAR MS. SIEBERT:**

19 **MS. SIEBERT:** Thank you, Mr. Commissioner.
20 Sara Siebert for Jacques Leduc.

21 I can advise that we are not in a position
22 today to advise you what we will be doing with this motion,
23 whether we will be joining the motion or not.

24 I know that counsel, Ms. Henein, has a
25 meeting scheduled with Commission counsel on March 6th. So

1 it may be that at that meeting they will discuss some of
2 these issues and there's a possibility that following that
3 meeting we'll be in a position to advise both you,
4 Commissioner, and the other parties as to where we will fit
5 into this motion and whether we will respond and how we
6 will respond and on what side we will respond. That's what
7 I can tell you for today.

8 **THE COMMISSIONER:** Well, that's past March
9 1st though.

10 **MS. SIEBERT:** It is indeed.

11 **THE COMMISSIONER:** So you do have a meeting
12 scheduled?

13 **MR. ENGELMANN:** Mr. Commissioner, as you may
14 know, we've been attempting to meet with all of the
15 parties. We've offered them a meeting to have them explain
16 to us their position, issues on mandate, overview,
17 documents, witnesses to be called, et cetera, and we've met
18 with almost every party. We've not yet met with Ms. Henein
19 on behalf of Mr. Leduc. That meeting has been set for the
20 6th.

21 I'm not sure whether or not they can form a
22 position on this motion by March 1st.

23 **THE COMMISSIONER:** March the 8th then. We
24 will advise parties by March the 8th of your position?

25 **MS. SIEBERT:** We'll endeavour to do that,

1 yes, Mr. Commissioner.

2 I don't know what the outcome of the meeting
3 will be.

4 **THE COMMISSIONER:** No, but by the outcome of
5 the meeting on March 6th, you will have a very good idea of
6 whether you're going to participate or not?

7 **MS. SIEBERT:** I think we should certainly
8 have a better idea, but I'm not sure whether we'll have yet
9 formulated our full position.

10 **THE COMMISSIONER:** Tell you what, March 8th,
11 you will and you'll give us an answer.

12 **MS. SIEBERT:** Fair enough, Mr. Commissioner.

13 **THE COMMISSIONER:** Thank you.

14 The Diocese.

15 --- **REPLY BY/RÉPLIQUE PAR MR SHERRIFF-SCOTT:**

16 **MR. SHERRIFF-SCOTT:** The Diocese will not
17 participate in the motion, Mr. Commissioner. My friend Mr.
18 Engelmann and I have exchanged some correspondence. I've
19 tried to express the concerns on the process issue that I
20 have. I believe this is a witness-centric type of issue,
21 that there are some mechanisms possibly to deal with and
22 that -- a witness-by-witness basis if there are objections,
23 then we'll deal with it rather than, from my point of view,
24 a larger constitutional issue. So I won't be participating
25 in the motion. Thank you.

1 **THE COMMISSIONER:** Thank you.
2 Cornwall Police. Oh, he's not here.
3 Any comments from the Cornwall Police?
4 **MR. ENGELMANN:** They did not have the motion
5 so perhaps we could give them until March 1st.

6 **THE COMMISSIONER:** March 1st.

7 **MR. ENGELMANN:** And I will speak to Mr.
8 Manderville ---

9 **THE COMMISSIONER:** Fine.

10 **MR. ENGELMANN:** --- and Mr. Callaghan.

11 **THE COMMISSIONER:** Thank you.

12 From the OPP?

13 --- **REPLY BY/RÉPLIQUE PAR MR. KOZLOFF:**

14 **MR. KOZLOFF:** Good morning, Mr.
15 Commissioner.

16 Mr. Commissioner, the Ontario Provincial
17 Police supports the work of this Commission and the
18 fulfillment of its mandate and we believe in an open and
19 transparent process.

20 Having said that, I received this motion at
21 10:00 o'clock this morning. I will seek instructions from
22 my client and we'll have an answer for you by March 1st.

23 **THE COMMISSIONER:** Thank you very much.

24 All right. And from the OPP association,
25 Mr. Carroll.

1 --- REPLY BY/RÉPLIQUE PAR MR. CARROLL:

2 **MR. CARROLL:** Good morning.

3 I would essentially take the same position
4 as Mr. Kozloff and we will seek instructions. Intuitively
5 I don't expect that I'll receive instructions to support
6 the motion, but I'll formally advise Commission Counsel by
7 March 1st.

8 **THE COMMISSIONER:** By March 1st; all right.

9 So now, Mr. Engelmann, I think what we need
10 to do is try to crystal ball and see when we could possibly
11 earmark a date for this matter and then we could work back
12 and see what dates we should be asking the material to be
13 filed.

14 **MR. ENGELMANN:** I'm wondering, Mr.
15 Commissioner, if we took our morning break, ---

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** --- if I had some
18 discussions with a couple of my colleagues about proposed
19 witnesses, if they've been able to speak with them and also
20 just get a sense from counsel here, and we could come back
21 and perhaps ---

22 **THE COMMISSIONER:** Sure.

23 **MR. ENGELMANN:** --- set dates for both these
24 motions.

25 **THE COMMISSIONER:** Thank you very much. All

1 right. Why don't we take the morning break. We will see
2 you back in 15, 20 minutes?

3 **MR. ENGELMANN:** Perhaps 20 minutes.

4 **THE COMMISSIONER:** All right. Thank you.

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

7 The hearing will reconvene at 11:30. Thank
8 you.

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

10 L'audience est suspendue à 11h11

11 --- Upon resuming at 11:34 a.m./

12 L'audience est reprise à 11h34

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

15 This hearing of the Cornwall Public Inquiry
16 is now in session. Please be seated; veuillez vous
17 asseoir.

18 **MR. ENGELMANN:** Mr. Commissioner, I would
19 suggest just a certain scheduling of these issues. What I
20 would propose is that the Diocese issue be argued on the
21 27th and that the motion of Mr. Cipriano follow on the 28th.

22 **THE COMMISSIONER:** All right.

23 **MR. ENGELMANN:** If there is contentious
24 evidence on the Diocese issue and there is a requirement to
25 have some evidence heard, then we would require the 27th and

1 28th and then Mr. Cipriano's motion would be bumped to the
2 29th.

3 So what we're proposing is we already have
4 dates for the Diocese issue and that is that all parties
5 are to file by the 21st and then there will be immediate
6 decisions made by counsel as to whether or not -- if there
7 is affidavit evidence, if it's contentious, and we will
8 have a discussion and advise immediately whether or not
9 some of this evidence will have to be given orally.

10 With respect to Mr. Cipriano's motion, he
11 will file his full motion materials by the 10th; that is a
12 Friday. Respondents to the motion -- and people supporting
13 that motion will file by then as well -- respondents will
14 file their response by Thursday, March 23rd and Mr. Cipriano
15 and anyone else supporting the moving party will file a
16 brief reply, if they wish, by noon on the 27th. That is our
17 proposal.

18 **THE COMMISSIONER:** All right. Does that
19 meet with any grave opposition?

20 **--- REPLY BY/RÉPLIQUE PAR MR. SHERRIFF-SCOTT:**

21 **MR. SHERRIFF-SCOTT:** I would just add one
22 point.

23 **THE COMMISSIONER:** Yes.

24 **MR. SHERRIFF-SCOTT:** If the parties are
25 going to file evidence about the Diocese issue by the 21st -

1 - and I'll file whatever I have; I'm not even sure there
2 will be any evidence -- but I should have an opportunity of
3 a couple of days to supplement a reply ---

4 **THE COMMISSIONER:** Sure.

5 **MR. SHERRIFF-SCOTT:** --- from an evidentiary
6 point of view, if that's satisfactory.

7 **THE COMMISSIONER:** So when would we do that
8 then?

9 **MR. SHERRIFF-SCOTT:** I would say two days
10 would be sufficient.

11 **THE COMMISSIONER:** Fine. So ordered. All
12 right.

13 **MR. ENGELMANN:** I just wanted to alleviate
14 another concern that was expressed by counsel, and in
15 particular Mr. Bennett, on the issue of the written
16 submissions of the parties' sort of opening statements. As
17 you know, when you granted standing to these parties
18 they're allowed to file written submissions with respect to
19 their party's position on the mandate of Phase I. We had
20 all discussed that this would be done on March 20th, hoping
21 that the evidentiary phase of Phase I would start on the
22 27th. That will obviously be delayed until either the
23 following week of April 3rd or even the week immediately
24 after Easter when we're sitting.

25 So we'll keep counsel apprised of that

1 issue, but Mr. Bennett and others should be aware that they
2 will not be required to file those written submissions on
3 their party's views by March 20th. I would think the
4 earliest that would be would be March 27th and possibly even
5 later.

6 **THE COMMISSIONER:** All right. Well, we
7 can't leave them in the air, though.

8 **MR. ENGELMANN:** No. We'll have a good
9 sense, sir, by the week of March 20th.

10 **THE COMMISSIONER:** I don't know if I like
11 that. Why don't we just fix a date now and say ---

12 **MR. ENGELMANN:** All right. Then I would
13 propose and I realize this may be a burden on some counsel,
14 but it would have to be sometime in the week of March 27th.

15 **THE COMMISSIONER:** All right.

16 **MR. ENGELMANN:** And I don't know if counsel
17 wishes to speak to that, but perhaps the 29th would be
18 appropriate.

19 **THE COMMISSIONER:** All right.

20 Does anyone have any comments about written
21 submissions on the opening remarks to be filed by the 29th
22 of March?

23 --- **REPLY BY/RÉPLIQUE PAR MR. MANSON:**

24 **MR. MANSON:** Mr. Commissioner, I wanted to
25 go back to the motions issue briefly.

1 **THE COMMISSIONER:** Yes.

2 **MR. MANSON:** Earlier you asked about the
3 question of challenges to affidavit evidence and you were
4 speaking of the Thursday, which I believe would be March
5 23rd.

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

7 **MR. MANSON:** Can we put that into the
8 agreement about the scheme that if affidavits are filed by
9 March 21st and if there's a challenge to them that requires
10 oral evidence, that the party serving the affidavit would
11 be notified by the Thursday, because we would obviously
12 have to make arrangements ---

13 **THE COMMISSIONER:** Sure.

14 **MR. MANSON:** --- to bring our **affiance**.

15 **THE COMMISSIONER:** Sure. All right.

16 **MR. MANSON:** Thank you, Mr. Commissioner.

17 **THE COMMISSIONER:** That's fair. So on the
18 24th of March, if anyone has ---

19 **MR. ENGELMANN:** I think the 23rd, sir,
20 because we'll have -- the Thursday, in any event. I
21 believe that's the 23rd, and that should also, if Mr.
22 Sherriff-Scott has materials to file by the Wednesday, Mr.
23 Manson and others by the Tuesday, hopefully we'll have
24 those decisions made and people can notify by Thursday.

25 **THE COMMISSIONER:** By Thursday, March 23rd.

1 **MR. ENGELMANN:** Right.

2 **THE COMMISSIONER:** On March 23rd we're going
3 to hear from the parties on the issue of the Diocese,
4 whether or not it's a public institution. So by the 23rd,
5 if we're contesting the affidavit evidence and we want viva
6 voce evidence, we will be advised by that time.

7 All right. Any other comments? All right.
8 So let me just say this: we will be adjourning now until
9 the 27th. That doesn't mean that the Commission staff and
10 Commission lawyers and the rest of the lawyers with
11 standing are off to the races. They have a lot of work to
12 do and so do we. I say that because for the public and for
13 those who are not used to, I suppose, public inquiries,
14 there's a lot of work being done in the background and that
15 work is a very big one and it's huge in size. We are
16 preparing for, I suppose, the 100 days that I've set aside.

17 These motions and these, we call them
18 arguments, but they're not really arguments. They're made
19 to have the Commission progress and continue in its
20 mandate.

21 So while it may take some time, I would
22 think that -- and as I've expressed before, I'm prepared to
23 give time when necessary in order to ensure that this
24 thing, this inquiry progresses well and completely.

25 Accordingly, we'll see you back on March 27th

1 at 10:00.

2 Thank you.

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

5 This hearing is now adjourned. L'audience
6 est ajournée.

7 --- Upon adjourning at 11:48 p.m./

8 L'audience est ajournée à 11h48

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

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I, Sean Prouse 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, Sean Prouse, 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.



Sean Prouse, CVR-CM