

**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 11

Held at :

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

Monday, March 27, 2006

Tenue à:

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

Lundi, le 27 mars 2006

ERRATA

Volume 10
February 23rd, 2006

Page 58, line 14

affiance

Should read:

affiants

Appearances/Comparutions

| | |
|--|---|
| Mr. Peter Engelmann | Lead Commission Counsel |
| Ms. Louise Mongeon | Registrar |
| M ^e Simon Ruel | Commission Counsel |
| Mr. John E. Callaghan Mr. Mark Crane | Cornwall Police Service Board |
| Mr. Neil Kozloff Det. Insp. Colleen McQuade Ms. Gina Saccoccio Brannan, Q.C. | Ontario Provincial Police |
| Mr. Joe Neuberger Mr. Mike Lawless | Ontario Ministry of Community and Correctional Services and Adult Community Corrections |
| Ms. Leslie McIntosh | Attorney General for Ontario |
| Mr. Peter Chisholm | The Children's Aid Society of the United Counties |
| Mr. Allan Manson | Citizens for Community Renewal |
| Mr. Rob Talach Mr. Dallas Lee | Victims Group |
| Mr. David Bennett | The Men's Project |
| Mr. David Sherriff-Scott M ^e André Ducasse | Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque |
| Mr. Giuseppe Cipriano | The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald |
| Mr. Mark Wallace | Ontario Provincial Police Association |

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1 --- Upon commencing at 10:15 a.m. /

2 L'audience débute à 10h15

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

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude, Commissioner, presiding.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Yes, good morning all.

10 As you may be aware, we're here on the
11 hearing on the Terms of Reference; more succinctly put, as
12 to whether or not for the purposes of this Commission of
13 Inquiry whether or not the Diocese is in fact a public
14 institution.

15 The last time we were here we had set out
16 who would be responding when and when the material should
17 be due and that's all been done. So we're at the
18 beginning, I suppose, of hearing from the different parties
19 their oral submissions.

20 Before doing that, I suppose we have some
21 administrative matters that Mr. Engelmann would want to
22 address, I suppose.

23 **MR. ENGELMANN:** Thank you. Good morning,
24 Mr. Commissioner.

25 We do, indeed and as you've indicated, we're

1 dealing with the Diocese issue this morning.

2 **THE COMMISSIONER:** Yes.

3 **MR. ENGELMANN:** And we will be dealing with
4 the motion that Mr. Cipriano filed after this matter is
5 concluded. I anticipate that may well be Wednesday
6 morning.

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

8 **MR. ENGELMANN:** So just by way of
9 background, the parties that have indicated they wish to
10 make oral submissions are the Citizens for Community
11 Renewal; Mr. Manson is here and my understanding is his
12 submissions will take approximately one hour.

13 Then, we have counsel for the Victims Group
14 and we have Mr. Lee and Mr. Talach present and, again, I
15 understand perhaps about an hour in their oral submissions.

16 And then for The Men's Project we have Mr.
17 Bennett present anticipating 15 to 20 minutes.

18 Then, for the Cornwall Police Service Mr.
19 Callahan, anticipating approximately an hour; and then for
20 the Diocese of Alexandria-Cornwall to respond as all of
21 those parties, those first four parties, are arguing that
22 the Diocese is a public institution for the purposes of
23 this Inquiry. Mr. Sheriff-Scott will be arguing for the
24 Diocese and indication was approximately three hours in
25 response. There may well be a brief reply after that.

1 So we've had a number of materials filed,
2 Mr. Commissioner, and just perhaps we could mark things.
3 As this is a hearing within a hearing, or a hearing on the
4 Terms of Reference, we thought it appropriate to mark
5 various documents that have been filed so they form part of
6 the public record. There were a couple of affidavits that
7 were filed where some parties took some issue. One of
8 those affidavits was withdrawn effectively and a
9 supplementary affidavit put in place.

10 **THE COMMISSIONER:** Yes.

11 **MR. ENGELMANN:** And that is now the
12 affidavit of Reverend Morrissey on behalf of the Diocese.

13 **THE COMMISSIONER:** Right.

14 **MR. ENGELMANN:** And the objection has now
15 been withdrawn.

16 Then, there were some issues dealing with
17 the affidavit of Mr. Talach and when we get there I will
18 have Mr. Talach and/or Mr. Lee speak from the Victims Group
19 and I'm sure Mr. Sheriff-Scott from the Diocese. As I
20 understand, they have had some discussions on resolving
21 some of the conflict they had over the filing of the
22 affidavit.

23 **THE COMMISSIONER:** All right.

24 **MR. ENGELMANN:** So to start, then, with
25 respect to material and since we're following a certain

1 order, I'll just follow that order with these exhibits.

2 We have the Factum of the CCR, if I can use
3 the acronym.

4 **THE COMMISSIONER:** Yes.

5 **MR. ENGELMANN:** If that could be filed as
6 Exhibit A1?

7 If anybody has any objection at any time to
8 the filing I'm sure they'll speak up or jump up, but the
9 factum would be Exhibit A1 for the purposes of the Hearing
10 on the Terms of Reference.

11 **--- EXHIBIT NO./PIÉCE NO. A1:**

12 Memorandum of fact and law of the Citizens
13 for Community Renewal.

14 **MR. ENGELMANN:** The record, if it could be
15 filed as A2, and the record includes an affidavit from
16 Professor Choquette and also from Mr. Paul Scott of the
17 Citizens for Community Renewal.

18 **THE COMMISSIONER:** Yes.

19 **--- EXHIBIT NO./PIÉCE NO. A2:**

20 Record of the Citizens for Community
21 Renewal, including affidavits from Professor
22 Choquette and Mr. Paul Scott.

23 **MR. ENGELMANN:** And you'll recall there was
24 some discussion about possibly requiring parties to attend
25 and give evidence *viva voce*. None of the parties requested

1 that as of last week so we'll be doing this all on the
2 basis of the affidavit evidence before you and not --
3 without the need to call an actual witness.

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

5 **MR. ENGELMANN:** So A3 if that could be the
6 Book of Authorities of the Citizens for Community Renewal.

7 --- **EXHIBIT NO./PIÉCE NO. A3:**

8 Book of Authorities of the Citizens for
9 Community Renewal.

10 **MR. ENGELMANN:** And there's one other
11 document, sir, and I'm not sure if you have it. It's a
12 loose document. It's a letter we -- I'm sorry. It's a
13 letter we received, I believe, some time this weekend or
14 early this morning from Mr. Manson and it is a two-page
15 letter. I'm not sure if you have a copy of it, sir?

16 **THE COMMISSIONER:** Yes, I do.

17 **MR. ENGELMANN:** If that could be, then,
18 marked as Exhibit A4?

19 **THE COMMISSIONER:** Certainly.

20 --- **EXHIBIT NO./PIÉCE NO. A4:**

21 Two-page letter received March 27, 2006 from
22 Mr. Manson of the Citizens for Community
23 Renewal.

24 **MR. ENGELMANN:** The next exhibits that we
25 wish to file were those from the Victims Group and we had

1 two exhibits we wish to file there. First, B1 ---

2 **THE COMMISSIONER:** Just a second. Let me
3 catch up to you.

4 Oh, yes, all right. Okay, B1 is?

5 **MR. ENGELMANN:** Well, B1 is the submissions.

6 **THE COMMISSIONER:** Right.

7 I'm sorry.

8 --- **EXHIBIT NO./PIÉCE NO. B1:**

9 Submissions of the Victims Group, including
10 affidavit of Robert P.M. Talach.

11 **MR. ENGELMANN:** But I note that B1 also has
12 a copy of the affidavit of Robert P.M. Talach, which we
13 also have in a separate document as well.

14 **THE COMMISSIONER:** Exactly.

15 **MR. ENGELMANN:** So I was going to have one
16 filed as B1 and B2.

17 --- **EXHIBIT NO./PIÉCE NO. B2:**

18 Copy of Affidavit of Robert P.M. Talach.

19 **MR. ENGELMANN:** Now, I know there is an
20 issue about some of the contents of Mr. Talach's affidavit.

21 **THE COMMISSIONER:** Right.

22 **MR. ENGELMANN:** So what I'd prefer to do,
23 before asking you to file these either as "P" exhibits or
24 "C" exhibits or anything else, is just have those two
25 parties speak to this affidavit. I'm not sure who wishes

1 to address it first, but it might be more appropriate to
2 have Mr. Talach speak to it or Mr. Lee and also Mr.
3 Sherriff-Scott.

4 **THE COMMISSIONER:** Yes.

5 **MR. TALACH:** Good morning, Mr. Commissioner.

6 **THE COMMISSIONER:** Good morning.

7 **MR. TALACH:** If I can refer you to my
8 affidavit?

9 **THE COMMISSIONER:** Yes.

10 **MR. TALACH:** There's been some issue, and
11 I'll let Mr. Sherriff-Scott speak about the Diocese's
12 concerns but, essentially, to the level of detail and some
13 of the content of it. Of course, from a review of it it's
14 intended to set the context of the issue that will be
15 debated today.

16 We have come to agreement and I will speak -
17 - I'm sure if I speak out of turn Mr. Sherriff-Scott will
18 come up and correct me -- of modifying certain aspects of
19 it so that at least both the Diocese and the Victims Group
20 are in agreement onto what portion of the affidavit will go
21 forward so we can avoid a lengthy debate this morning.

22 If I can take you to page 6?

23 **THE COMMISSIONER:** I'm on page 6.

24 **MR. TALACH:** And the agreement of these

1 modifications would essentially be for the purposes of the
2 submission, not just a media ban. It would be stricken
3 from the affidavit.

4 **THE COMMISSIONER:** All right.

5 **MR. TALACH:** Okay. So at page 6 there is
6 paragraph 17, and I won't refer to how it presently reads
7 but I will read the portion we have agreed on. So it would
8 state:

9 "Bishop Laroque was later named in a
10 highly-publicized, unsigned, anonymous
11 document..."

12 **THE COMMISSIONER:** Unsigned?

13 **MR. TALACH:**

14 "...anonymous document as a
15 perpetrator of sexual abuse."

16 And that exhibit will be expunged.

17 The next paragraph I'll address is paragraph
18 20.

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. TALACH:** Paragraph 20 is at the bottom
21 of page 7.

22 **THE COMMISSIONER:** I'm sorry?

23 **MR. TALACH:** Paragraph 20 is at the bottom
24 of page 7.

25 **THE COMMISSIONER:** Yes, sorry.

1 **MR. TALACH:** Now, this paragraph contains
2 sub-paragraphs, 23 sub-paragraphs of some clergy that were
3 publicly alleged to have committed acts of sexual abuse
4 against young persons. The individuals named which were
5 not criminally charged nor civilly sued we've agreed to
6 expunge, and I'll simply read off the sub-para letter to
7 you.

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

9 **MR. TALACH:** A, B ---

10 **THE COMMISSIONER:** These are the ones to be
11 expunged?

12 **MR. TALACH:** Yes.

13 **THE COMMISSIONER:** Yes.

14 **MR. TALACH:** So it's A and B.

15 **THE COMMISSIONER:** Yes.

16 **MR. TALACH:** C, E, L, M and P.

17 **THE COMMISSIONER:** M and P, yes.

18 **MR. TALACH:** Yes, R, S, T, and the remainder
19 either being subject to criminal charges or the civil
20 lawsuit will stand.

21 Now, because the Exhibit K contains a mix of
22 references, some that actually pertained to individuals
23 both charged and those not, we've agreed to expunge the
24 series of documents of Exhibit K.

25 **THE COMMISSIONER:** All of them?

1 **MR. TALACH:** Yes, there is essentially a
2 series of media and website reports. The intention of
3 attaching those is, of course, to show the substantiation
4 of the public allegation nature.

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

6 **MR. TALACH:** Linked to that, then, is
7 paragraph 22.

8 **THE COMMISSIONER:** Yes.

9 **MR. TALACH:** And the last sentence of
10 paragraph 22 which makes specific reference to, again, to
11 clergy by name.

12 **THE COMMISSIONER:** The last sentence, you
13 mean?

14 **MR. TALACH:** Yes. We're agreed that that
15 last sentence will be removed.

16 **THE COMMISSIONER:** And what about the ---

17 **MR. TALACH:** Of course, the exhibit would
18 have to go since it simply substantiates those individuals
19 still being in parish work.

20 And then there's two other short paragraphs
21 at page 11, paragraph 31 and on the following page, page
22 12, paragraph 34.

23 **THE COMMISSIONER:** So you want 31 omitted?

24 **MR. TALACH:** Yes.

25 **THE COMMISSIONER:** And?

1 **MR. TALACH:** Paragraph 34.

2 **THE COMMISSIONER:** Thirty-four (34).

3 **MR. TALACH:** Which are both commentary on
4 the Vatican document.

5 **THE COMMISSIONER:** Right.

6 **MR. TALACH:** So my understanding is that we
7 are in agreement that the expunging of those portions of
8 the affidavit will allow the remainder to stand with no
9 objection, and I will let Mr. Sherriff-Scott verify that.

10 I just want to note that the purpose of the
11 detail in there, Mr. Commissioner, was to allow you to
12 assess the context and the veracity of some of the issues
13 that will set the stage for your decision today.

14 Thank you.

15 **(SHORT PAUSE/COURTE PAUSE)**

16 **MR. TALACH:** We're okay, Mr. Commissioner.

17 Thank you.

18 **THE COMMISSIONER:** Mr. Sherriff-Scott,
19 please.

20 **MR. SHERRIFF-SCOTT:** Thank you, Mr.
21 Commissioner.

22 For the purpose of avoiding an argument this
23 morning, we have agreed to this. I have concerns about
24 this affidavit which I expressed to counsel last week in a

1 phone call as well as in correspondence. And the principle
2 genesis of my concern is twofold.

3 First, as we proceed forward on this
4 Inquiry, mindful of the interdiction you gave on the first
5 day, my concern was that this process needs to be balanced
6 and fair to all parties and I perceive this affidavit to be
7 highly prejudicial in its orientation.

8 Moreover, although we have resolved many
9 things I still have concerns but I am not going to make a
10 formal issue of it. But I do want to say the affidavit
11 contained many un-sworn documents, unsigned statements,
12 anonymous statements. It is a lawyer's affidavit in this
13 very contentious matter which shields the evidence
14 effectively from cross-examination by me.

15 I think, as we go forward, this kind of
16 affidavit should have no place before the Commission in
17 terms of how we deal with process and I was very concerned
18 about the fairness of it or the lack of fairness of it to
19 my client. It may be in vogue to criticize my client but
20 my client needs its fairness rights protected as well.

21 So we had this debate this morning. I
22 remain concerned that there are portions of this affidavit
23 which express opinion and don't have identified sources of
24 information and belief and so forth. I'll refer to those
25 and urge you to consider them in the light in which they

1 are therefore cast as I go through my submissions, but from
2 the purposes of addressing the paragraphs to be expunged
3 I'm satisfied for the moment.

4 Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Let me just say for the members of the
7 public and those who may be listening and looking in,
8 again, what we have to do is put everything in context, I
9 suppose, and what we're really doing here is looking at the
10 material that the parties have filed on the issue of
11 whether or not the Church should be a public institution in
12 terms of the mandate.

13 And so it is not common, but it's not that
14 unusual for people to make comments about the material that
15 has been filed. What is important here of course is the
16 Commission wants to balance to ensure that the community,
17 the people and the press and medias have access to all of
18 the material and that is, of course, subject to my decision
19 as to what should be expunged or not.

20 In the circumstances of these affidavits,
21 it's fairly simple for me to say and easy for me to say
22 that I agree that those matters should be taken out of the
23 affidavits. That doesn't mean that -- and in fact I think
24 we all realize that somewhere down the line the issues that
25 have been objected to will be revisited and we will deal

1 with those issues in the proper form at the proper time.

2 And I think that that having been said, I'm
3 going to want of course that the rest of the material be
4 provided to the media as soon as possible. What we're
5 going to have to do is ensure that whatever is released is
6 properly done. So what I'm going to do is at the break we
7 will -- I will certainly speak with Madam Clerk and we will
8 make arrangements to have the documents altered or --
9 what's that word you used again?

10 **MR. ENGELMANN:** Redacted.

11 **THE COMMISSIONER:** Redacted. There it is;
12 the big word for me this morning.

13 So what we'll do is before it goes out to
14 anywhere I'm going to ask for Mr. Sherriff-Scott and, of
15 course, Mr. Talach and someone from Mr. Engelmann's team to
16 look at the document, make sure that it confirms with what
17 we have decided this morning.

18 Fair enough? And so that document should be
19 available as soon as humanly possible once we've reproduced
20 it for the parties in question. All right?

21 **MR. ENGELMANN:** So perhaps for the time
22 being then, Mr. Commissioner, we won't mark it. We'll
23 reserve a spot for Exhibit B1 and ---

24 **THE COMMISSIONER:** Exactly.

25 **MR. ENGELMANN:** --- once we've had a look at

1 that, we'll have that introduced.

2 **THE COMMISSIONER:** Well, B1 and B2.

3 **MR. ENGELMANN:** Actually, B2, my error.

4 That is an affidavit for the motion ---

5 **THE COMMISSIONER:** Oh, okay.

6 **MR. ENGELMANN:** --- of Mr. Cipriano.

7 **THE COMMISSIONER:** Oh, all right.

8 **MR. ENGELMANN:** So it's ---

9 **THE COMMISSIONER:** So there's just B1?

10 **MR. ENGELMANN:** Yes.

11 **THE COMMISSIONER:** All right.

12 **MR. ENGELMANN:** It's, in effect, a motion
13 record. It has written submissions. It has the affidavit
14 of Mr. Talach and those exhibits and we'll make sure that
15 that document is redacted in accordance with the agreement
16 of the parties and your decision, and before it's then
17 released, all three counts, we'll have a look.

18 **THE COMMISSIONER:** Terrific. Thank you.

19 **MR. ENGELMANN:** All right.

20 If I could carry on then just with other
21 housekeeping matters before the submissions, we have The
22 Men's Project and there we have some loose submissions
23 which I believe you have, Mr. Commissioner, and if those
24 could then be filed as Exhibit C1.

25 --- EXHIBIT NO./PIÈCE NO C1:

1 Submissions of The Men's Project.

2 **THE COMMISSIONER:** Yes, it can.

3 **MR. ENGELMANN:** And then we have next from
4 the Cornwall Police Service ---

5 **THE COMMISSIONER:** Yes.

6 **MR. ENGELMANN:** --- you should have a book
7 in front of you and what you have are submissions of the
8 Cornwall Police Service in respect of this issue of the
9 Diocese and you have a number of attachments including the
10 Order-in-Council submissions from the standing and funding
11 issues and other reports that are out in the public domain.
12 There's no affidavit. There's just submissions and
13 attachments. I haven't heard of any concern about that so
14 I'd like that to be Exhibit D1 for the purposes of this
15 hearing.

16 **THE COMMISSIONER:** Certainly.

17 --- **EXHIBIT NO./PIÈCE NO D1:**

18 Submissions of the Cornwall Police Services
19 in respect of whether the Diocese of
20 Alexandria-Cornwall is a "public
21 institution" as described in the Terms of
22 Reference of the Order-in-Council.

23 **MR. ENGELMANN:** And then, lastly, with
24 respect to the Diocese of Alexandria-Cornwall, there are a
25 number of documents that I propose we mark. The first is

1 the factum and submissions of the Episcopal Corporation of
2 the Diocese of Alexandria-Cornwall and that's the hearing
3 regarding the Terms of Reference for the Cornwall Public
4 Inquiry, if that could be Exhibit E1.

5 **THE COMMISSIONER:** And this is the smallest
6 of the ones?

7 **MR. ENGELMANN:** Yes.

8 **THE COMMISSIONER:** Okay.

9 **--- EXHIBIT NO./PIÈCE NO E1:**

10 Submissions of the Episcopal Corporation of
11 the Diocese of Alexandria-Cornwall - Hearing
12 Regarding the Terms of Reference of the
13 Cornwall Public Inquiry.

14 **MR. ENGELMANN:** And then next you have the
15 affidavit of Neil Ferguson, sworn March 21st, with a number
16 of attachments, exhibits to the affidavit, if that could be
17 E2.

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

19 **--- EXHIBIT NO./PIÈCE NO E2:**

20 The Episcopal Corporation of the Diocese of
21 Alexandria-Cornwall including the affidavit of
22 Neal Ferguson sworn March 21, 2006.

23 **MR. ENGELMANN:** We had a supplementary affidavit
24 from Mr. Ferguson that has now been withdrawn.

25 The next affidavit that I propose we mark as an

1 exhibit on behalf of the Diocese is the affidavit of Paul-
2 André Durocher, sworn March 22nd, 2006, if that could be E3.

3 **THE COMMISSIONER:** All right.

4 **--- EXHIBIT NO./PIÈCE NO E3:**

5 The Episcopal Corporation of the Diocese of
6 Alexandria-Cornwall, including Affidavit of Paul-
7 André Durocher, sworn March 22, 2006.

8 **MR. ENGELMANN:** Then we have the affidavit of
9 Francis Morrisey, sworn March 24th, 2006, if that could be
10 E4.

11 **THE COMMISSIONER:** Yes.

12 **--- EXHIBIT NO./PIÈCE NO E4:**

13 The Episcopal Corporation of the Diocese of
14 Alexandria-Cornwall, including affidavit of
15 Francis G. Morrisey, OMI, sworn March 24, 2006.

16 **MR. ENGELMANN:** And then we have two volumes of
17 authorities from the Diocese if Volume 1 could be E5 and
18 Volume 2, E6.

19 **--- EXHIBIT NO./PIÈCE NO E5:**

20 Brief of Authorities of the Episcopal Corporation
21 of the Diocese of Alexandria-Cornwall - Hearing
22 Regarding the Terms of Reference of the Cornwall
23 Public Inquiry - VOLUME 1.

24 **--- EXHIBIT NO./PIÈCE NO E6:**

25 Brief of Authorities of the Episcopal Corporation

1 of the Diocese of Alexandria-Cornwall - Hearing
2 Regarding the Terms of Reference of the Cornwall
3 Public Inquiry - VOLUME 2.

4 **MR. ENGELMANN:** And lastly I understand that the
5 Diocese, I believe in its arguments, will be making
6 reference to Exhibit 10.5 which was already filed in the
7 Standing Hearing. I also understand that some counsel have
8 filed some loose case law. We're not going to mark it but
9 there may well be some cases that are referred to that have
10 been exchanged between counsel. We're not sure if they'll
11 actually be argued, but if they are, copies are available
12 and can be filed at the time.

13 **THE COMMISSIONER:** Great.

14 **MR. ENGELMANN:** So I believe that's all we have
15 by of introduction. So I don't think any counsel has
16 objected to the proposed order and that would see Mr.
17 Manson starting on behalf of the Citizens Community
18 Renewal. Then, I believe, it's Mr. Lee on behalf of the
19 Victims Group; Mr. Bennett on behalf of The Men's Project;
20 Mr. Callaghan on behalf of the Cornwall Police Service and
21 then David Sherriff-Scott on behalf of the Diocese.

22 **THE COMMISSIONER:** All right.

23 **MR. ENGELMANN:** And we'll attend to the matter of
24 the affidavit, as proposed, during the morning break.

25 **THE COMMISSIONER:** All right.

1 I take it that the Citizens committee won't be
2 referring to that affidavit?

3 **MR. MANSON:** I will be making reference to one
4 exhibit that was not mentioned, Exhibit E, and one
5 paragraph that was not mentioned in this discussion.

6 **THE COMMISSIONER:** Yes. I'm just wondering
7 whether we should get the -- because what we're going to
8 want to do is put it up on the screen.

9 **MR. ENGELMANN:** We can either break now and deal
10 with the issue or we can break when Mr. Manson gets there.

11 **THE COMMISSIONER:** No, no. Let's break now and
12 get it done.

13 **MR. ENGELMANN:** All right.

14 **THE COMMISSIONER:** I don't want any mix-ups or
15 anything like that.

16 So how long do you think this is going to take,
17 15 minutes; will it take that long?

18 **MR. ENGELMANN:** We can get it done within 15
19 minutes.

20 **THE COMMISSIONER:** All right.

21 Yes, sir?

22 **MR. SHERRIFF-SCOTT:** One minor administrative
23 matter.

24 **THE COMMISSIONER:** I don't know if the reporters
25 can hear you, sir. You might want to come up.

1 **MR. SHERRIFF-SCOTT:** Just before we complete the
2 record, Mr. Commissioner, there's one small error in the
3 Exhibit E4 affidavit of Reverend Morrisey.

4 **THE COMMISSIONER:** Yes.

5 **MR. SHERRIFF-SCOTT:** At the bottom of page 3 ---

6 **THE COMMISSIONER:** The bottom of page 3.

7 **MR. SHERRIFF-SCOTT:** --- of the report ---

8 **THE COMMISSIONER:** Yes.

9 **MR. SHERRIFF-SCOTT:** --- which is the Exhibit A
10 report.

11 **THE COMMISSIONER:** Yes.

12 **MR. SHERRIFF-SCOTT:** And it's subparagraph FA.

13 **THE COMMISSIONER:** Yes.

14 **MR. SHERRIFF-SCOTT:** It's three lines from the
15 bottom. It should be "does not make the Bishop," which
16 should be a little more consistent with my argument.

17 **(LAUGHTER/RIRES)**

18 **MR. SHERRIFF-SCOTT:** I can have Dr. Reverend
19 Morrisey correct that. I just noticed the error. That's a
20 typographical error. There should be an interlineation of
21 "not" and I will have him file something if my friends have
22 a concern with that.

23 **THE COMMISSIONER:** Does anyone have any concerns
24 that the word "not" be put in?

25 **MR. MANSON:** I found the omission and pointed it

1 out to Mr. Sherriff-Scott ---

2 **THE COMMISSIONER:** There you go.

3 **MR. MANSON:** ---because it -- there should be a
4 "not" to be consistent with the rest of the paragraph. So
5 I'm content that it was an omission and it can easily be
6 corrected.

7 **THE COMMISSIONER:** All right. Mr. Manson gets
8 one star.

9 (LAUGHTER/RIRES)

10 **THE COMMISSIONER:** So there's no disagreement
11 with that then? All right.

12 So why don't we take -- I prefer -- and you know,
13 for members that are here maybe looking on, I know we want
14 to get to the argument and we want to hear what's going on
15 but these are all little things that we have to keep doing
16 to make sure that the ship is still pointed in the right
17 direction. And so bear with us a little bit and then we'll
18 get to the crux of the matter later on.

19 Thank you. Let's take a short break.

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

22 --- Upon recessing at 10:40 a.m./

23 L'audience est suspendue à 10h40

24 --- Upon resuming at 11:40 a.m./

25 L'audience est reprise à 11h40

1 **THE REGISTRAR:** This hearing of the Cornwall
2 Public Inquiry is now in session. Please be seated;
3 veuillez vous asseoir.

4 **THE COMMISSIONER:** Thank you.

5 It seems, Mr. Manson, that it's taking a little
6 more time than we thought. What I thought we'd do is deal
7 with a few housekeeping matters and then take an early
8 lunch and that way it would reduce the stress on the people
9 who are doing all of this and encourage more accuracy and
10 less unfortunate accidents, I think.

11 So that's there. So what I propose to do is take
12 the early lunch now and come back for 1:15. Does that
13 sound fair or does anybody have any other pressing
14 engagements? Sorry; I'm losing my voice.

15 **MR. ENGELMANN:** Mr. Commissioner, just while we
16 have a moment then, a couple of things that I didn't get
17 to. One was counsel had asked about their written opening
18 submissions and the deadline for that and have proposed
19 that those be now set for sometime the week of April 10th.

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

21 **MR. ENGELMANN:** And I hadn't had an opportunity
22 to correspond with counsel, but with your permission, if
23 counsel could file those written opening submissions
24 sometime during the week of April 10th, 2006, I know that
25 would be appreciated.

1 **THE COMMISSIONER:** So we'll take Monday morning
2 at 9:00 o'clock, unless I have some other suggestions.

3 Midweek someplace, would that be ---

4 **MR. ENGELMANN:** I think counsel wanted, yes,
5 sometime later in the week, perhaps the Wednesday or the
6 Thursday.

7 **THE COMMISSIONER:** How about the Wednesday? That
8 way I can have it for the weekend and I can review it.

9 **MR. ENGELMANN:** Certainly. That would be April
10 the 12th then.

11 **THE COMMISSIONER:** Thank you. April 12th.

12 **MR. ENGELMANN:** Aside from that, I just wanted to
13 make reference to the fact that there had been a minor
14 copying error on the website with respect to a couple of
15 exhibits. I have spoken to counsel who might've been
16 affected and those were just, as I said, minor copying
17 errors and they have been corrected with respect to some
18 exhibits on the website.

19 Other than that, then I think we'll all be ready
20 to go at 1:15 and carry on.

21 Perhaps what I could do, though, if counsel have
22 a few minutes, we can talk about where we're going with the
23 procedure, quickly, and we'll go from there.

24 **THE COMMISSIONER:** Terrific.

25 All right. So we'll see you back at 1:15. It's

1 also possible that we'll lengthen the afternoon session to
2 make up for the time that we've missed this morning.

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

5 The hearing will reconvene at 1:15.

6 --- Upon recessing at 11 :43 a.m./

7 L'audience est suspendue à 11h43

8 --- Upon resuming at 1:18 p.m./

9 L'audience est reprise à 13h18

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

12 This hearing of the Cornwall Public Inquiry is
13 now in session. Please be seated; veuillez vous asseoir.

14 **THE COMMISSIONER:** Thank you. Good afternoon.

15 So I take it that all of the documents are now in
16 order, Mr. Engelmann?

17 **MR. ENGELMANN:** Yes, they are and I think we're
18 ready to go.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Manson.

21 ---SUBMISSION BY/REPRÉSENTATION PAR **Mr. MANSON:**

22 **MR. MANSON:** Mr. Commissioner, thank you.

23 I just want to confirm, I know Mr. Engelmann
24 mentioned it, but that there would be time for a brief
25 reply.

1 **THE COMMISSIONER:** Yes, there will.

2 **MR. MANSON:** Excellent. Thank you.

3 The letter that we filed, it's simply there so
4 that I can refer to two excerpts from the related
5 commissions, related in time, Arar and Walkerton and I
6 didn't want anybody to be taken by surprise.

7 The other authorities were there in respect of
8 the affidavit controversy that has disappeared so I'm not
9 going to be referring to those.

10 But now that I understand that we're in the
11 gold star business, I want to make another claim. Just so
12 that people know, I gave Mr. Ruel a document. I'm not
13 using it today but I found it in an old file. It's a
14 catalogue from the Legislative Library at Queen's Park and
15 it lists every Royal Commission from 1792 to 1991. Just in
16 case anyone is ever concerned he has that.

17 All right. And now I'm going to start with
18 the real business.

19 **THE COMMISSIONER:** Terrific.

20 **MR. MANSON:** Our position is set out in
21 paragraph 4 of our Factum. With respect to the issue at
22 hand; that is, how do we define public institution for the
23 purpose of this inquiry, it's our position that there is no
24 precise legal definition for the term public institution.
25 It derives its meaning from the context and purpose of the

1 Commission and that on a fair interpretation of the
2 Cornwall Commission's mandate, the Diocese of Alexandria-
3 Cornwall must be considered a public institution for the
4 purpose of this inquiry.

5 I want to start by saying a few words about
6 Mr. Sherriff-Scott's argument. I want to point out a
7 number of areas that I agree with entirely as to their
8 premises so that you'll know, Mr. Commissioner, that
9 they're not in dispute. What we do dispute is what they
10 establish. But we don't dispute the premises, for example,
11 on the facts. Mr. Sherriff-Scott has a lot of detail in
12 his material about a member of the provincial legislature,
13 Mr. Guzzo, and two private member's bills which he
14 supported, Bills 103 and 48. I'm assuming that all that
15 material is accurate and the reference to the fact that
16 some of the members of the CCR supported that, I assume, is
17 accurate as well.

18 I want to point out two things though.

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

20 **MR. MANSON:** First, supporting Mr. Guzzo's
21 narrow inquiry; I say narrow because it's quite clear from
22 those bills that he was only concerned about the police and
23 said publicly he wasn't concerned about the Diocese. What
24 I want to say is that by supporting a narrow inquiry that
25 doesn't mean that our clients didn't also support a broader

1 inquiry. As well, I think it's very important to note that
2 your Terms of Reference are in fact broader.

3 Mr. Sherriff-Scott, himself, when we were
4 here last week in February, indicated that he considered
5 the Diocese to be part of the community sector branch.
6 Those two Bills, 103 and 48, would not have gone that far.
7 So quite clearly, you have a broader mandate than what was
8 suggested by those bills. As well, there's no material
9 supports the claim that your mandate was generated entirely
10 by that effort. It's our submission that there were a lot
11 of other things going on in the world and especially in the
12 community of Cornwall.

13 Secondly, with respect to the affidavits of
14 Bishop Durocher and Professor Morrissey about the Diocese
15 history and the questions that they raise about our
16 affidavit by Professor Choquette, I would submit that their
17 differences can best be characterized as quibbles in the
18 sense that they don't undermine the salient facts that we
19 want to put before you.

20 The third point, with respect to canons of
21 interpretation, subject to the City of Montreal case that
22 I'm going to speak of in a minute, we agree with the
23 Diocese that every effort should be made to give meaning to
24 separate words within the context. We don't dispute those
25 canons of interpretation.

1 My friend also refers to the McRuer
2 Commission as the backdrop for the 1971 *Public Inquiries*
3 Act in Ontario and we agree that that was the source of
4 those amendments and it's also completely clear that Chief
5 Justice McRuer was very concerned about precision in
6 drafting Terms of Reference. Those remarks and
7 recommendations, however, were in respect of the exercise
8 of drafting the terms. We're already past that, Mr.
9 Commissioner. If we had precise Terms of Reference, we
10 wouldn't be here.

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

12 **MR. MANSON:** That's where I want to point
13 out the two matters raised in my letter. First, the
14 Walkerton Commission Terms of Reference ---

15 **THE COMMISSIONER:** Just a moment now.

16 **MR. MANSON:** Yes.

17 **THE COMMISSIONER:** Hang on. No. I need to
18 find ---

19 **MR. MANSON:** A4. Exhibit A4.

20 **THE COMMISSIONER:** Okay. A4.

21 All right. Thank you.

22 **MR. MANSON:** And you'll recall, Mr.
23 Commissioner, that many people relied on the Walkerton
24 rulings during the standing and funding applications. This
25 is quite a recent and important inquiry. In the Terms of

1 Reference, after going through the specifics of the tainted
2 water issues, you see the phrase, "and the causes of these
3 events, including the effect if any of government policies,
4 procedures and practices".

5 If the Attorney General of Ontario had used
6 the word "government" in front of "institution" in your
7 Terms of Reference, I wouldn't be standing here making this
8 argument.

9 In Mr. Sherriff-Scott's material, at
10 paragraph 13, he talks about your Terms of Reference and
11 says,

12 "The Terms of Reference therefore
13 contemplate an inquiry into the
14 handling of allegations of abuse by
15 those governmental institutions with a
16 mandate to investigate, handle and
17 process such allegations on behalf of
18 the public."

19 I'm only raising that to say if indeed the Attorney General
20 had said that, governmental institutions -- a phrase that
21 they used in Walkerton -- again, I wouldn't be here.

22 Another point about the McRuer Commission
23 and some of the cases relating to commissions of inquiry
24 that Mr. Sherriff-Scott raises; he makes the point that the
25 definition of the scope of an inquiry shouldn't be

1 delegated, and I agree completely with that. I think what
2 you can see by looking at, again A4, the letter, the Arar
3 Commission Terms of Reference; after going through the
4 specifics of Mr. Arar's detention and deportation, the
5 terms of reference end with:

6 "...any other circumstance directly
7 related to Mr. Arar, that Justice
8 O'Connor considers relevant to
9 fulfilling this mandate."

10 That last phrase is critical because if it was Justice
11 O'Connor, any other thing you consider relevant; that would
12 be past delegating the scope of the inquiry to Mr.
13 O'Connor. This phrase doesn't -- this phrase merely says,
14 within the terms of your reference you can look at other
15 relevant issues about Mr. Arar, but always within the terms
16 of your reference. And that is what you are being asked to
17 interpret. You're not being asked to define the scope.
18 The scope has been defined for you. You have to interpret
19 it.

20 So my argument is simply the government
21 hasn't delegated the definition of the scope to you. It
22 might be that there's a subtle distinction, but if you
23 think of the typical notice of motion that lawyers
24 regularly file and such other matters as, et cetera, et
25 cetera, et cetera that would be a delegation of scope to

1 yourself. This isn't.

2 The fifth point I want to make is with my
3 friend's Charter arguments. We don't dispute those at all
4 but they're all about section 32 of the Charter and what is
5 government action. So it's a circular question. If we
6 were dealing with the phrase "government action" we'd know
7 where we were going. We wouldn't be having this argument.
8 What the Supreme Court and other courts have said about the
9 scope of governmental action for the purpose of the Charter
10 doesn't help you interpret your mandate.

11 And here is where I want to, again, go back
12 to the Arar and the Walkerton terms of reference, where
13 they make it quite clear, if the government wants to
14 restrict an inquiry to government, they know how to do it.

15 I want to move to our argument now, Mr.
16 Commissioner ---

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

18 **MR. MANSON:** --- and I'm going to stick very
19 closely to our factum and I want to start by going through
20 the areas of fact that I submit are necessary to properly
21 understand the contextual, interpretive argument that I'm
22 going to make in a minute, and I'm going to do this broadly
23 to save some time.

24 The first factual issues that we talk about
25 as necessary to a contextual interpretation are the

1 allegations of historical sexual abuse of young people in
2 Cornwall. You'll find this between paragraphs 8 and 14 of
3 our factum. They go back, clearly at least to 1992. I'm
4 not going to read through these. Much of this comes from
5 the Diocese' own standing application or reported cases
6 like MacDonald and Leduc. So that's the first important
7 clump of facts.

8 The second one is the role that the Diocese
9 played in relation to the allegations of historical sexual
10 abuse and that appears at paragraphs 15 to 21. Here is
11 where I want to supplement with two quick references -- and
12 I apologize. I know this provoked the delay but there are
13 two quick references to the affidavit of Mr. Talach.

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

15 **MR. MANSON:** Because I think they are very
16 important to this contextual argument. The first is simply
17 ---

18 **THE COMMISSIONER:** So we're looking at B1,
19 Tab 1?

20 **MR. MANSON:** Yes.

21 **THE COMMISSIONER:** Okay.

22 **MR. MANSON:** I would simply read paragraph
23 35 and I would point out that from the new Morrissey
24 affidavit, there may be some controversy about the accuracy
25 or the cogency of this statement, but that controversy is

1 certainly at this point, beyond me. But I'll simply read
2 the statement,

3 "From both the code of canon law and
4 the instruction, it is clear that the
5 Diocese had internal procedures to
6 follow in cases of allegations of
7 sexual abuse by its clergy."

8 The second point I want to raise is Exhibit
9 E, and it's a photocopy of a page from the Standard
10 Freeholder of January 15, 1994, where there's obviously
11 been an interview or some press conference with Bishop
12 Laroque and what I want to point out is in the left-hand
13 column -- oh, Exhibit E to Exhibit B1. It's an exhibit to
14 an affidavit that's included in B1.

15 **THE COMMISSIONER:** So Mr. Talach's -- yes.
16 In the Victims Group's Exhibit No. B1 there is a Tab E.
17 There you go; is this the one?

18 **MR. MANSON:** Exactly.

19 **THE COMMISSIONER:** All right.

20 **MR. MANSON:** If I could just read it, Mr.
21 Commissioner?

22 "Laroque admitted he was at first
23 against the idea of paying a
24 settlement. 'I could see that by
25 giving money, it would show that it

1 would prevent justice. I gave in
2 because this young man had a
3 considerable bill with counselling',
4 Laroque said adding..."

5 And it's this next part that is critical:

6 "...adding the Diocese has in the past
7 agreed to similar settlements involving
8 alleged victims of child- molesting
9 priests."

10 **THE COMMISSIONER:** I'm sorry, where do you
11 see that now?

12 **MR. MANSON:** In the left-hand column.

13 **THE COMMISSIONER:** Yes.

14 **MR. MANSON:** This is an article titled
15 "Bishop was Reluctant to Make Deal".

16 **THE COMMISSIONER:** No, I have it. I have
17 it.

18 **MR. MANSON:** Half-way down it starts:
19 "Laroque admitted he was at first
20 against..."

21 **THE COMMISSIONER:** Yes. Thank you.

22 **MR. MANSON:** And then the next paragraph
23 starts, "I gave in." and it's the last part of that
24 paragraph, where Laroque said ---

25 **THE COMMISSIONER:** Yes.

1 **MR. MANSON:**

2 "...adding the Diocese has in the past
3 agreed to similar settlements involving
4 alleged victims of child-molesting
5 priests."

6 Now, again assuming that this is an accurate
7 quotation from Bishop Laroque, it is our position it
8 confirms that allegations of sexual abuse had been made to
9 the Diocese before this particular incident. That seems to
10 be what he is admitting.

11 Along the same lines, paragraph 20 of our
12 Factum refers to Paul Scott's affidavit ---

13
14 **THE COMMISSIONER:** Yes.

15 **MR. MANSON:** --- which is in our record, and
16 our record is Exhibit A-2 ---

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

18 **MR. MANSON:** --- and paragraph 5 of that
19 relates to this history, and I will just read you our
20 paraphrase in paragraph 20 of the Factum:

21 "It would have been clear to anyone in Cornwall
22 and anyone who was familiar with these issues
23 that from the early 1990s, the allegations of
24 abuse and the subsequent investigations involved
25 amongst others..."

1 I am going to stop there for a second, Mr.
2 Commissioner, because at no point have we suggested that
3 the stage should be filled only with the Diocese. There
4 are a lot of other institutions that should be center
5 stage. Our position today is along with them should be the
6 Diocese.

7 "... and the subsequent investigations involved
8 amongst others, priests affiliated with the local
9 Roman Catholic Diocese. In addition, concerns
10 had been expressed within the community and from
11 time to time in local media that allegations had
12 been suppressed by representatives of the
13 Diocese."

14 The next -- Group 3 of 'Relevant Facts' are the
15 official pronouncements about your mandate.

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

17 **MR. MANSON:** When the Premier announced in
18 Queen's Park on November 4, 2004, that there would be a
19 public inquiry into these issues, he assured the citizens
20 of Cornwall that there would be a full public inquiry.
21 Again, that is Exhibit A to the affidavit of Paul Scott.

22 Following that announcement, the Attorney General
23 approached our clients, the CCOR and invited them to submit
24 recommended terms of reference.

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

1 **MR. MANSON:** The document which they submitted is
2 Exhibit B to the affidavit of Paul Scott, and you will see
3 from that document that after going through the various
4 police agencies and other institutions, front and center,
5 is then the Diocese.

6 Paragraph 24.

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

8 **MR. MANSON:** After your Terms of Reference were
9 announced, there was a press conference held here in
10 Cornwall by the Attorney General, and he was quite pleased
11 to make this announcement. You can see from paragraph 8 of
12 Mr. Scott's affidavit, Mr. Scott was at that conference,
13 and he expressed some concern about the phrasing of the
14 Terms of Reference in regard to prosecutions and the
15 Church. During that conference, Mr. Bryant, the Attorney
16 General, made three comments about your Terms of Reference.

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

18 **MR. MANSON:** At one point, he said:

19 "The Commissioner will go where he sees fit."

20 He then said:

21 "He will follow the facts where he sees fit."

22 He said:

23 "The point of a public inquiry in this case is to
24 find out what happened."

25 A few days later, the local member of the Provincial

1 Legislature, Mr. Brownell, rose at Queen's Park and asked
2 Mr. Bryant whether he was satisfied that you had the tools
3 necessary to finally get to the heart of the matter and to
4 resolve this issue for the victims and their families. The
5 Attorney General responded:

6 "Yes, with the public inquiry, under the *Public*
7 *Inquiries Act*, he has all the tools at his
8 disposal to leave no stone unturned."

9 That is Exhibit C to Mr. Scott's affidavit.

10 I should stop right there for one second, Mr.
11 Commissioner.

12 The reference to the *Public Inquiries Act* this is the
13 one place where we definitely dispute Mr. Sherriff-Scott's
14 position. The source of your power comes from an
15 appointment made under Section 2 of the *Public Inquiries*
16 Act. If I can just quickly read it:

17 "Whenever the Lieutenant Governor in Council
18 considers it expedient to cause inquiry to be
19 made concerning any matter connected with or
20 affecting the good government of Ontario or the
21 conduct of any part of the public business
22 thereof or of the administration of justice
23 therein or that the Lieutenant Governor in
24 Council declares to be a matter of public
25 concern..."

1 My friend, Mr. Sherriff-Scott has focused on that last
2 branch, "...declares to be a matter of public concern..." and
3 says there hasn't been any declaration in this case about
4 public concern in relation to the Diocese. That's true,
5 but it is our submission there is no need for one.

6 The source of your mandate comes from one or a number
7 of the other powers all of which are separated by -- or,
8 for example, affecting the good government of Ontario or
9 the conduct of any part of the public business or of the
10 administration of justice. That is the source, we would
11 submit, of your appointment in this inquiry, the impact on
12 the administration of justice.

13 And, as I am sure you are going to hear over the next
14 few days, especially with respect to the next motion, the
15 cases consistently say so long as the pith and substance of
16 your object is governed by appropriate powers under
17 appropriate provincial legislation, there can be ancillary
18 matters included. The ancillary matters might be federal,
19 they might be private.

20 If, for example, instead of being concerned about
21 allegations of historical sexual abuse in Cornwall, there
22 was some concern about rampant abuse in a supermarket, in
23 order to make that part of a section 2 inquiry, there would
24 have to be a declaration that the issue in the supermarket
25 is a matter of public concern.

1 On the other hand, if the inquiry had other legitimate
2 purposes as an ancillary objective problems at the
3 supermarket might be encompassed. So we don't agree with
4 Mr. Sherriff-Scott in that regard. There is no need for
5 any declaration of public concern about the Diocese.

6 I am now going to the fourth Group of Facts, which is
7 at paragraph 26 to 35 of our Factum. The first group from
8 26 to 29 comes from the Diocese own material on their
9 Standing and Funding Application. It sets out the objects
10 of the Diocese.

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

12 **MR. MANSON:** The more significant ones for us
13 come from Professor Choquette's affidavit. It is Tab No. 1
14 in our record, which is Exhibit ---

15 **THE COMMISSIONER:** A-2.

16 **MR. MANSON:** A-2.

17 **THE COMMISSIONER:** Yes.

18 **MR. MANSON:** I would first point out that Exhibit
19 A to that affidavit is Professor Choquette's Curriculum
20 Vitae.

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

22 **MR. MANSON:** He is, in my submission, a respected
23 and qualified historian of religious studies. His most
24 recent book is, and it is at page 4 of that exhibit,
25 Canada's Religion and Historical Introduction, 2004,

1 published by the University of Ottawa Press.

2 The reason we have sought his help in this matter is
3 this: He was hired in the late 1980s by this Diocese to
4 write their history and while they didn't publish his book,
5 it was subsequently published -- you see it on page 4 again
6 -- De la controverse à la concorde that is all about this
7 Diocese.

8 As you see it from his material, he did the typical
9 historian's work at the archival and primary document level
10 with respect to this Diocese. While there may be some
11 dispute about his language, in one paragraph, I know, of
12 Professor Morrissey's affidavit, he suggests the conclusion
13 was an overstatement, that does not, in my submission,
14 undermine the salient facts.

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

16 **MR. MANSON:** And these are paraphrased from
17 paragraphs 30 to 35 of our Factum and I will just read some
18 of them.

19 The point we are trying to make, Mr. Commissioner, is
20 that the Diocese has been for a 100 years a major
21 institution in the public life of the Cornwall community.
22 To support that, you have their own objects from paragraphs
23 26 to 29, as well from Professor Choquette's affidavit,
24 which we paraphrase at paragraph 30:

25 "Since its establishment, the Diocese has been a

1 major institution in the lives of the people of
2 Cornwall with particular influence, aside from
3 religious practice (sic) and doctrine, in matters
4 of education, language, social welfare, health
5 and various issues of private morality including
6 birth control, abortion, sex and sexuality, and
7 marriage and divorce."

8 In the next paragraph, he says:

9 "Catholic hospitals, social service agencies and
10 schools were always open to people of all
11 faiths".

12 And then there is a caveat about the extent to which
13 Catholic children were required to be enrolled in separate
14 schools, and I know that there is some controversy raised
15 by Professor Morrissey in respect of that wording. There
16 is also controversy raised by Professor Morrissey about
17 Catholic hospitals since that was a different juristic
18 entity than the Diocese.

19 Our point, using Professor Choquette's language, is
20 the Diocese continued to be influential. One of the examples
21 of that influence, for example, because, of course, someone
22 might make a similar argument about the Separate School
23 Board, that it has a statutory authority, and it is separate
24 as a legal entity from the Diocese, but if you look at
25 paragraph 16 of Professor Choquette's affidavit, he says,

1 "As an example..."

2 This is at page 4, Mr. Commissioner.

3 "As an example of the influence of the Church, in
4 the Diocese, a person could not be elected to a
5 position on the Separate School Board without the
6 tacit endorsement of the local church perhaps
7 from the Pastor or even the Bishop."

8 This is included by Professor Choquette to indicate,
9 in fact, the kind of influence the Diocese played in a
10 community where, you see in paragraph 34 of our Factum:

11 "In 1891, 46.5% of the population was Catholic.
12 In 1951, 65.7% was Catholic and in 1987, 50% of
13 the population was Catholic".

14 Professor Choquette I think is very frank and
15 objective in pointing out that the influence of the
16 Catholic Church began to diminish. We paraphrase this in
17 paragraph 35:

18 "While the Diocese's hold on the "conscience of
19 its flock" began to diminish rapidly in the
20 1960s, its role in the community has never become
21 significant (sic)."

22 **THE COMMISSIONER:** "Has never become
23 insignificant".

24 **MR. MANSON:** "...insignificant".

25 Gold star, Mr. Commissioner!

1 **THE COMMISSIONER:** Easy come, easy go!

2 **(LAUGHTER)**

3 **THE COMMISSIONER:** All right.

4 **MR. MANSON:** So just to wrap up this factual
5 background it's our submission that the Diocese has always
6 been, for 100 years, a major institution in the public life
7 of the community. It's played this role in social service
8 areas, education. It's played this role with respect to
9 language issues. There is another reference in Professor
10 Choquette's affidavit about some of the linguistic disputes
11 throughout Ontario and that both the Catholic bishops and
12 the local officials of the Diocese participated in that
13 controversy, and aside from language issues we have all the
14 issues of private morality. I'll come back to these later.

15 I am conscious of the time so I want to move
16 to the legal ---

17 **THE COMMISSIONER:** Just a second. Never
18 mind the time. You are usually very concise and so let's
19 not use that.

20 **MR. MANSON:** Thank you, Mr. Commissioner.
21 I will try to stick to it and I think I can
22 do it.

23 **THE COMMISSIONER:** Okay.

24 **MR. MANSON:** Your mandate comes from an
25 Order in Council. It is a subordinate legal instrument.

1 It's not statute. It's not -- but it's akin to a
2 regulation.

3 Recently, the Supreme Court of Canada,
4 dealing with the question of interpretation of a bylaw --
5 this is last December in the City of Montreal, a case which
6 we cite at paragraph 37 -- had to interpret the meaning of
7 the word "noise" in a bylaw; noise. For the majority,
8 Chief Justice McLachlin and Justice Deschamps explained how
9 a bylaw should be interpreted. I quote:

10 "As this Court has reiterated on
11 numerous occasions, today there is only
12 one principal approach..."

13 **THE COMMISSIONER:** Paragraph 38, Madam
14 Clerk. There you go.

15 All right. Go ahead.

16 **MR. MANSON:**

17 "...there is only one principal
18 approach; namely, the words of an Act
19 are to be read in their entire context
20 and in their grammatical and ordinary
21 sense harmoniously with the scheme of
22 the Act, the object of the Act and the
23 intention of Parliament."

24 This is the *Rizzo & Rizzo Shoes* statement.

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

1 **MR. MANSON:** The significance of the City of
2 Montreal is they apply it to the bylaw. It's not just
3 statutes. But they also go on and say:

4 "Words that appear clear and
5 unambiguous like noise may in fact
6 prove to be ambiguous once placed in
7 their context."

8 Further:

9 "In our view, although it appears to be
10 clear the vision is in fact ambiguous.
11 In interpreting legislation the guiding
12 principle is the need to determine the
13 lawmaker's intention. To do this it's
14 not enough to look at the words of the
15 legislation. Its context must also be
16 considered."

17 And then in the next paragraph, Mr.
18 Commissioner, they help the rest of us by pointing to some
19 of the factors that are relevant to this contextual
20 analysis and you'll see that paragraph-long quotation is
21 ended with:

22 "We will accordingly address each of
23 these contextual indicia; history,
24 purpose and the bylaw itself."

25 That is our submission, that your job in

1 interpreting the Terms of Reference requires you to look at
2 the history of this inquiry, the purpose of this inquiry
3 and the language itself of your Terms of Reference.

4 We have included in paragraphs 41 and 43 a
5 reference to how some other commissioners have spoken about
6 interpreting their mandate. Chief Justice O'Connor in *Arar*
7 says:

8 "I also agree with submissions that the
9 scope of my mandate should be
10 interpreted broadly and that the
11 actions in question must be viewed in
12 context."

13 Justice Wright, the Commissioner in the
14 *Stonechild* inquiry in Saskatchewan -- this is at Tab 5 of
15 our Book of Authorities which must be A3.

16 **THE COMMISSIONER:** Well, you've also got it
17 in paragraph 43.

18 **MR. MANSON:** Yes, but the larger excerpt is
19 in the Book of Authorities at page 20.

20 But he goes back to some comments made by
21 Justice Cory in the Supreme Court, what Justice Wright
22 called the "tainted blood inquiry", the Krever case, Krever
23 Commission case, and what they are arguing about there is
24 whether it's a narrow or broad kind of inquiry.

25 The tainted blood case decision also

1 established that the circumstances surrounding an inquiry
2 can be a factor in determining whether a commission is
3 broad or narrow in scope. This factor includes background
4 facts leading up to the inquiry. It would seem the purpose
5 of this factor is twofold. It's intended to aid in the
6 determination of the inquiry's true purpose. Second, it's
7 intended to aid in determining what purpose the public will
8 attribute to the inquiry.

9 This is, of course, a public inquiry and
10 it's our submission that what Justice Wright has recognized
11 is the importance of public expectations. Public
12 expectations play a role in the contextual analysis.

13 Were you about to ask me a question?

14 **THE COMMISSIONER:** I'm thinking about it.

15 As demonstrated how? I mean the public is
16 as represented by the media, as reported by the media? We
17 all know even following this inquiry that -- and that's why
18 we have it on the webcast and publicized because what comes
19 out of here sometimes gets changed a little bit and not
20 maliciously but because of time restraints, that kind of
21 thing.

22 So how do we know what the public expects?
23 Where is the pulse?

24 **MR. MANSON:** That's obviously an important
25 question and a hard question. All that I would say in

1 answer is we have to do the best we can in looking at the
2 material that's available and try to come to grips with the
3 subject matter of this inquiry is allegations of historical
4 sexual abuse. That subject has generated concerns in the
5 community of Cornwall and elsewhere. Those public concerns
6 -- if this is to be a full inquiry you and your staff
7 should be doing the best you can to address those public
8 concerns.

9 So for example, if you or Mr. Engelmann had
10 decided, well, historical means within the past five years,
11 I think everyone in the room would agree that you would not
12 be meeting public expectations of a full inquiry if you
13 said, "Great, let's start at 1999 and every example".

14 This is another example of that scope. All
15 we can do is make the best call we can. You've got media
16 material. You've got material from public documents, the
17 record of the Leduc trial, the MacDonald trial. You've got
18 our affidavits from Mr. Scott. This is all you can do is
19 make the best assessment you can of what the public
20 expectations are.

21 And furthermore, I'm only suggesting that's
22 one factor.

23 **THE COMMISSIONER:** No, no.

24 **MR. MANSON:** But it's certainly something
25 that cannot be ignored and this is why we say later in

1 these submissions given the role -- I'm not saying the
2 singular role but the important role that the Diocese has
3 played in this drama as it's unfolded, the onus is on those
4 who say your mandate does not put them front and centre
5 with the other institutions to satisfy you because everyone
6 knew that there are police officials, Children's Aid
7 officials and Diocesan officials that played a role.

8 So it's the same point in the sense that you
9 have to make the best assessment you can of public
10 expectations as one factor.

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

12 **MR. MANSON:** I raise this because I think
13 it's important that Justice Wright recognized. In many
14 other contexts someone would say public expectations don't
15 matter, but in the context of a public inquiry they are an
16 interpretive factor.

17 **THE COMMISSIONER:** I guess I just have --
18 it's a nebulous kind of thing.

19 **MR. MANSON:** Yes.

20 **THE COMMISSIONER:** Because the public and
21 those who don't really understand where we are going with
22 the process here -- we're not here to retry individuals
23 and, yet, the public probably thinks that that's what we
24 should be doing or that that's what we're going to do.

25 **MR. MANSON:** I'm hesitant because -- I'm

1 hesitant to say this because I know it requires a
2 particular perspective but I would add to -- you're
3 absolutely right. I would add to that the public informed
4 of the Terms of Reference so that an uninformed public
5 we're not concerned with; a public who have views but it
6 has to be consistent with the Terms of Reference. But the
7 Terms of Reference have to be consistent with a full
8 inquiry into the subject matter. There is nothing in
9 either the preamble or the Terms of Reference.

10 If I could use an example, Mr. Commissioner,
11 the Attorney General is not saying to you, "Go conduct the
12 Cornwall half a public inquiry". He's saying "Go conduct
13 the Cornwall public inquiry".

14 **THE COMMISSIONER:** What about the -- why
15 didn't he put "Diocese" in the Terms of Reference? It
16 would have been a lot easier.

17 **MR. MANSON:** Absolutely. I mean, had he
18 said "including the Diocese" or had he said "excluding the
19 Diocese" or had he said "governmental institution" we
20 wouldn't be having this argument. That's one of the points
21 I want to get to next ---

22 **THE COMMISSIONER:** I'll let you go.

23 **MR. MANSON:** --- is this nebulous phrase
24 "public institution". But before I do that I want to just
25 go to the actual Terms of Reference and say that there are

1 essentially two streams that we have been talking about to
2 your Terms of Reference. But there's no question that the
3 first stream, the most important stream is about
4 institutional responses. That's the phrase "institutional
5 responses". So we know we're talking about institutions,
6 not individuals, and I don't think anyone would dispute
7 that the Diocese is an institution.

8 And when we're talking about responses, I
9 think the important point we make in paragraph 45 is
10 responses must include failures to respond. When something
11 comes to an institution's attention there are three kinds
12 of responses; appropriate, inappropriate and nothing.
13 They're all responses.

14 An institution, we can look in dictionaries
15 for definitions but there isn't any doubt that the Church
16 is an institution. The key here is the addition of the
17 word "public" to institution and whether the use of the
18 word "public" in connection with "institution" narrows your
19 mandate to exclude the Diocese as a prominent focus for
20 inquiry. Had your mandate said the justice system and
21 other institutions, again, we wouldn't be having this
22 argument.

23 Mr. Sherriff-Scott spends a fair bit of time
24 in his material dissecting the Terms of Reference and I
25 think he's absolutely right; that is important. So what I

1 want to do before I go on to some more of the case law
2 about interpreting institution is offer you our view of the
3 structure and wording of the Terms of Reference that is,
4 again, clearly part of the purpose, history and context.

5 There are two streams. The first stream is
6 the institutional response stream, but it's institutional
7 response by the justice system and other public
8 institutions in the plural. And I'm not trying to anchor
9 our argument with the use of the word "s" but clearly there
10 is the justice system and other public institution. Who
11 would we include in the justice system? Perhaps the
12 courts, depending on the scope of the inquiry; the
13 prosecutors; police agencies, and I would include
14 correctional agencies which might include in this context
15 probation.

16 So the question is who are the other public
17 institutions?

18 That is where we submit the Diocese falls.

19 So we have institutional response from this
20 group of institutions, justice system and other.

21 Institutional response to what?

22 To the allegations of historical abuse of
23 young people in the Cornwall area. This is the first
24 branch of your mandate.

25 The second branch is the interaction of

1 those responses, be they appropriate, inappropriate or non-
2 existent, with other public and community sectors. This is
3 where Mr. Sherriff-Scott, last day, said the Diocese bits.

4 I want to offer a definition of public
5 institution for the purpose of this inquiry, partly because
6 it is central to our argument, but also because I think you
7 are about to ask me -- eventually, you were going. So what
8 is it?

9 I would submit that the appropriate test for
10 the purposes of this inquiry is public institution include
11 any institution that has played a major role in the public
12 life of Cornwall; any institution that has played a major
13 role in the public of Cornwall and -- and the "and" is
14 significant -- either did or ought to have responded to
15 allegations of historical abuse of young people in the
16 Cornwall area.

17 This is one of the reasons I referred to
18 Exhibit "A" of Mr. Talach's affidavit and the -- assuming
19 it is correct -- admission by Bishop Laroque that there had
20 been several cases settled that way in the past.

21 So it is a combination of playing a major
22 role in the public life of the community and either did or
23 should have responded to allegations of historical sexual
24 abuse.

25 My friend, Mr. Sherriff-Scott, says "What

1 about public and community sectors; they need to have
2 meaning?" And he is completely right about that. I would
3 suggest though they don't need to have distinct meaning.
4 There can be overlap.

5 They can include public institutions that
6 are not included in the institutional response arm. For
7 example, perhaps -- and I don't know the facts and I don't
8 want to prejudge the facts -- but perhaps the Public School
9 Board, which would clearly be a public institution, but it
10 may not have been the recipient of allegations.

11 It may, however, have played some role as an
12 interactor. So they could be included in the second arm.
13 It could also include private institutions. It could also
14 include individuals or groups. For example, physicians,
15 counsellors, voluntary sector organizations that interacted
16 with responses of the first group of institutions.

17 If the probation service sent someone to do
18 community service with the Lions Club, the Rotary, those
19 would become part of the -- potentially part of the
20 interaction arm.

21 In my reply, depending on how Mr. Sherriff-
22 Scott deals with this issue, I may say more about it, but I
23 think it is critical to parse the Terms of Reference
24 starting with "We are talking about institutional
25 responses."

1 Next question, which institutions? The
2 justice system institutions and other public institutions.

3 Who are those public institutions? Well, as
4 I said, they are major -- institutions that play a major
5 role in the public life of the community.

6 If I can go right to paragraph 52 of our
7 Factum ---

8 **THE COMMISSIONER:** Yes.

9 **MR. MANSON:** --- a quotation from the Chief
10 Justice of Canada in the *University of British Columbia v.*
11 *Berg*, which is a human rights case. It is all about
12 determining whether certain -- she was a graduate student
13 of nursing at the University of British Columbia, were
14 certain reactions of her faculty to her, were they public
15 services; were they services customarily available to the
16 public and in starting the case, right at the beginning,
17 Chief Justice Lamer says:

18 "It hardly requires repeating, however,
19 that the words "public" and "private"
20 have no self-evident meaning and serve
21 as the starting point rather than the
22 conclusion of the analysis in this
23 case."

24 The next few paragraphs are a survey of some
25 Canadian cases that we found that deal with public

1 institution or related phrases, and they show the variety
2 of approaches and meanings, all of which should not be
3 taken out of their particular context.

4 For example, *Figueroa*, another Supreme Court
5 of Canada case, Justice LeBel, for the three judges from
6 Quebec, in dealing with the issue of whether a non-
7 mainstream party ought to be excluded from being a
8 registered party because they didn't amount 50 candidates -
9 --

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

11 **MR. MANSON:** --- both judgments in the case
12 say this violated Section 3 of the Charter, but for
13 different reasons.

14 In the course of his reasons, dealing with a
15 political party, Justice LeBel says:

16 "Parties are such important actors in
17 our political system that although they
18 are private and voluntary
19 organizations, they also possess some
20 of the characteristics of a public
21 institution. It is therefore to be
22 expected that the identification and
23 regulation of parties should have
24 become one of the functions of Canada's
25 elections law."

1 This is simply an example that a political
2 party, notwithstanding its private and voluntary nature for
3 this purpose, was considered a public institution.

4 Paragraph 55, moving to the area of property
5 taxes, we have a decision of the Divisional Court of
6 Ontario, the case of *Aeric*, dealing with the Conference
7 Board of Canada which wants to say, "Well, we have a
8 library. The public has access to it. Surely that makes
9 us a public institution and we should be exempt from
10 taxation under this kind of rubric."

11 The Divisional Court concluded that the
12 Conference Board didn't qualify, even though it had this
13 library, because most of its work was intended solely for
14 its subscribers.

15 But in the course of dealing with this
16 issue, in 1998 -- and if I could refer you to Tab 8 of our
17 Book of Authorities at page 2, Justice Osborne, who later
18 went to the Court of Appeal, at page 2, he says:

19 "Although dictionary definitions of
20 "public" are of some assistance when
21 referred to by both counsel, no single
22 dictionary definition of the word
23 "public" resolves the issue before us."

24 This is why I skipped over the paragraphs in
25 our Factum. It's filled with dictionary definitions. They

1 fit our arguments. Some of them fit Mr. Sherriff-Scott's
2 argument. They are not going to resolve the issue.

3 But if we turn to the next page, there is an
4 interesting discussion about access. This is the point ---

5 **THE COMMISSIONER:** Just a second now. We
6 are at page 3?

7 **MR. MANSON:** Yes, page 3 of the *Aeric*
8 decision, and we quoted it at page 55 of our Factum, and
9 this is the point of the reference to Professor Choquette's
10 affidavit about the access to social services beyond the
11 Catholic community.

12 In *Aeric* the Court says:

13 "The crucial question is what is the
14 true nature in character of the
15 Conference Board's undertakings? Yes,
16 they provide some access, but it is
17 really intended just for their
18 subscribers."

19 But as a counter-example, they agree with a
20 decision made many, many years earlier by Justice Stewart
21 in an unreported case that we could not find; so, this is
22 the only reference to it. *The Corporation of the City of*
23 *Toronto v. Toronto Jewish Library Association:*

24 "Stewart, J. considered that a
25 library containing about 5000 books

1 and schools were always opened to people of all faiths.
2 And then, of course, there is the controversy about
3 schools, but hospitals, social service agencies, my
4 understanding is the Diocese would not turn the poor and
5 hungry away.

6 **THE COMMISSIONER:** I guess school is a
7 different game there, I suppose?

8 **MR. MANSON:** Yes, and there is some
9 controversy that is addressed by Professor Morrissey about
10 exactly why it was that Catholic children were -- I don't
11 know if "encouraged" is the right word, but directed
12 towards separate schools.

13 But if we leave that out, we certainly have
14 hospitals and social service agencies, so that there is
15 some access beyond the membership.

16 The next case we referred to is simply a
17 *Planning Act* case from British Columbia where there --
18 about the City of Nanaimo where there is a specific bylaw
19 called "Public Institutions" that includes churches. I
20 just use it as another example.

21 In Cornwall, we have searched. We didn't
22 find, regrettably, a public institution bylaw that included
23 churches. There is nothing comparable, but it is just an
24 example.

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

1 MR. MANSON: "Are not..."

2 And there is an error in paragraph 57; it
3 should be Justice Estey, not Justice Kellock.

4 THE COMMISSIONER: And where are we now?

5 MR. MANSON: Paragraph 57 of our Factum.

6 THE COMMISSIONER: Yes.

7 MR. MANSON: This is a case -- a defamation
8 case and there is an argument about qualified privilege,
9 whether the newsletter of the College of Physicians and
10 Surgeons is of a type that would attract qualified
11 privilege and Justice Estey, says:

12 "It is statutory body charged with
13 registration, supervision and
14 discipline of the practice of
15 physicians and surgeons."

16 Then he goes on to say:

17 "But it doesn't exist merely for the
18 protection of its members in a
19 professional capacity, but also for
20 the purpose of safeguarding the health
21 and welfare of the people. It is at
22 least..."

23 As he describes it:

24 "...a quasi-public institution."

25 I will just remind you, Mr. Commissioner, I

1 am not suggesting that any of these have magic to them.
2 They are examples. That is our problem; there is no magic
3 test.

4 The next two cases, paragraph 58, is
5 Struthers in Sudbury dealing with public hospital. The
6 Ontario Court of Appeal concludes that the Sudbury General
7 Hospital is a public hospital, even though at the time it
8 was under private control for profit.

9 Conversely ---

10 **THE COMMISSIONER:** No, no. It wasn't for
11 profit. It was not private control or profit motive. The
12 Sudbury General Hospital was never run for profit. Maybe
13 it is -- I am showing my bias then, because I am from
14 Sudbury, but ---

15 **MR. MANSON:** Well, no, what you are -- you
16 are requiring me to go look at the case and ---

17 **THE COMMISSIONER:** Well, in any event, I
18 don't think -- I think basically what he means is that a
19 public hospital is determined by public access not private
20 control and forget about the profit motive. It doesn't
21 even apply in this case, in any event. But if you're
22 saying that the hospital was under private control; yes, it
23 was. It was by religious order, I thought.

24 **MR. MANSON:** This is going back to 1895, but
25 it does say that an institution that is established for --

1 that an institution is established for private gain or is
2 held in a private hand is not necessarily inconsistent with
3 its being in its nature of a public character.

4 **THE COMMISSIONER:** Right.

5 **MR. MANSON:** I would have to go back and
6 read the Factum, but I believe at the time there was some -
7 - one of the plaintiffs said it was managed by him and his
8 associates as a private institution until the end of
9 December 1894. I'm sure somewhere it does say that they
10 made profit out of it.

11 **THE COMMISSIONER:** Very well.

12 **MR. MANSON:** But that's up to -- it's over
13 100 years ago.

14 **THE COMMISSIONER:** They were ahead of their
15 time.

16 **MR. MANSON:** Yes.

17 **(LAUGHTER/RIRES)**

18 **MR. MANSON:** The point being that private
19 control doesn't necessarily preclude a label of public
20 hospital.

21 The next case, *Tufford Rest Homes*, is a very
22 interesting case because it's about a statute now repealed
23 called *The Public Institutions Inspection Act* which
24 surprisingly had no definition of public institution and it
25 was -- performed a function similar to the old grand juries

1 that it would inspect public institutions, and all of a
2 sudden this regime decided it should be looking at the
3 Tufford Rest Homes, two nursing homes. And in this context
4 Justice Kovacs said that whether they were privately-owned
5 nursing homes established for profit, they still could be
6 subject to inspection under the *Public Inspections Act*
7 although he concluded they weren't. It's just another
8 example of the dilemma of what is a public institution that
9 an act designed solely for the inspection of public
10 institutions didn't define them.

11 I will conclude very, very quickly, Mr.
12 Commissioner.

13 Paragraph 60 lists all the reasons why, in
14 our submission, the Diocese is, according to the proper and
15 fair interpretation -- paragraph 60 of our Factum.

16 **THE COMMISSIONER:** Sixty (60)?

17 **MR. MANSON:** Yes, why it is a public
18 institution for the purpose of your mandate; looking at the
19 context within which the question is posed; looking at the
20 history and background of the Order in Council; the purpose
21 of the Order in Council; the expectations of the public;
22 the nature and scope of the Diocese historically within the
23 relevant community; the extent to which the public had
24 access to services and whether the institution has engaged
25 in public objects compared to simply private goals for its

1 own benefit.

2 It's our submission, Mr. Commissioner, that
3 a reasonable member of the Cornwall community, a reasonable
4 informed member, would expect that a full inquiry of these
5 allegations would include examining how the criminal
6 justice system and all public institutions, including the
7 Diocese, responded to them. The onus is on those arguing
8 for narrow interpretation to satisfy you that the Attorney
9 General intended to exclude the Diocese. There can't be
10 any question about the important role the Diocese has
11 played in the public life of the community.

12 I would repeat that looking at the structure
13 of the Terms of Reference and the emphasis on institutional
14 response, the question is twofold: Are they an institution
15 that's played a major role in the community? Yes. And
16 two, did they or ought they have -- did they or should they
17 have responded to allegations? They received some. They
18 should have responded. Those are the two branches of our
19 definition of public institution for your mandate.

20 Subject to any questions, Mr. Commissioner -
21 --

22 **THE COMMISSIONER:** Why do you think it's
23 that important that we have the Diocese named as a public
24 institution? Why don't we treat them as community sectors?

25 **MR. MANSON:** I would submit the reason is

1 that your powers to investigate are different depending on
2 whether you're looking at responses including failures to
3 respond, or whether you're looking at interactions.

4 Again, to use a hypothetical example of the
5 public school board, if it turned out that none of the
6 major institutions ever interacted with the public school
7 board but it also turned out that many children had made
8 allegations to the public school board, which they ignored
9 time and time again, I would say that that would turn the
10 public school board into a public institution for these
11 purposes and that would mean that your investigative powers
12 would apply to them.

13 On the other hand, if we took a very narrow
14 view of public institution -- and the school board is a
15 public institution so it's a different example -- but if we
16 took a narrow view, all you've got is interaction. And
17 while I don't want to be held to a position on interaction,
18 because that's not what we're arguing, but it seems to me -
19 - it's easy for me to argue that response includes non-
20 response.

21 It's harder for me to argue that interaction
22 includes non-interaction. Two people on opposite sides of
23 the room who ignore each other are not interacting. So
24 that your investigative powers might be limited by the
25 scope of actual interactions whereas we may find out, just

1 as Bishop Laroque, that there were allegations in the past
2 that were not pursued. If that is a public institution
3 you're entitled to investigate those non-responses. If
4 they're not a public institution, you might have to -- and
5 I am not -- I don't want to be held to this view, but you
6 might have to wait until there's actually an interaction so
7 that every allegation that was ignored or stopped or
8 suppressed never got to the interaction stage.

9 That's the difference that I see in terms of
10 your investigative powers, this question of allegations
11 that may have been kept entirely within an internal
12 cloister.

13 **THE COMMISSIONER:** I guess the other
14 question I have is -- and I don't want to put words in Mr.
15 Sherriff-Scott's mouth but the impression I get, when it
16 comes up is, he says, "Look it. We're here. We're willing
17 to cooperate 100 per cent".

18 **MR. MANSON:** Within your mandate, which we
19 view narrowly.

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

21 **MR. MANSON:** Not wanting to put words in Mr.
22 Sherriff-Scott's mouth.

23 I mean, that's my sense of his material. So
24 he is prepared to say, "You show us where we interacted
25 with this stream of responses and we will cooperate".

1 Without a doubt that's his position. He's not sitting here
2 saying we're uncooperative.

3 **THE COMMISSIONER:** Oh no.

4 **MR. MANSON:** But if we can't -- my
5 suggestion is if the Commission can't show an interaction,
6 then you have hit the investigative wall.

7 **THE COMMISSIONER:** So the bottom line is
8 you're saying that if the Church is a public institution,
9 it will give the Commission the power to go in and
10 investigate their actions?

11 **MR. MANSON:** And non-actions.

12 **THE COMMISSIONER:** Or non -- no, no.

13 **MR. MANSON:** Yes, absolutely. Absolutely.

14 **THE COMMISSIONER:** That's the only thing?

15 **MR. MANSON:** I would ---

16 **THE COMMISSIONER:** And I don't want to
17 diminish that only thing.

18 **MR. MANSON:** That's certainly the principal
19 aspect.

20 It would also relate to, like everything
21 else, the scope of questions that can be asked because
22 relevance is determined by your Terms of Reference. The
23 narrower your Terms of Reference, the narrower the concept
24 of relevance. Conversely, the broader ---

25 So it may be a narrow interpretation of the

1 Terms of Reference which would permit Mr. Sherriff-Scott
2 come May or June to object to a particular line of
3 questioning because, again, where's the interaction? So
4 that's potentially equally important. I mean, I'm just
5 looking into the future and speculating.

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

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

8 **MR. COMMISSIONER:** All right.

9 **MR. MANSON:** I did go overtime and I
10 apologize.

11 **THE COMMISSIONER:** It's not a problem.

12 Who are we hearing from next?

13 Oh, just a second. We might be taking a
14 break now. We will see where we go. Let's see, 2:30, and
15 you're going to be approximately?

16 **MR. LEE:** I would guess somewhere around an
17 hour, Mr. Commissioner.

18 **THE COMMISSIONER:** All right. Why don't we
19 take a short break now? We'll change the documents around
20 and we'll be ready for you at a quarter to 3:00.

21 **THE REGISTRAR:** Order. All rise. Veuillez
22 vous lever.

23 The hearing will reconvene at 2:45.

24 --- Upon recessing at 2:30 p.m.

25 --- Upon resuming at 2:54 p.m./

1 L'audience est reprise à 14h54

2 **THE REGISTRAR:** This hearing of the Cornwall
3 Public Inquiry is now in session. Please be seated;
4 veuillez vous asseoir.

5 **THE COMMISSIONER:** Mr. Lee.

6 ---SUBMISSION BY/REPRÉSENTATION PAR Mr. Lee:

7 **MR. LEE:** Good afternoon, Mr. Commissioner.
8 The only documents at this point that I
9 intend to rely on are the submissions of the Victims Group,
10 including the affidavit of Robert Talach. I am sorry; I
11 have completely lost track of what exhibit number that is.

12 **THE COMMISSIONER:** That would be B1.

13 **MR. LEE:** Exhibit B1.

14 I also intend to briefly refer to the
15 affidavit of Francis G. Morrisey filed by the Diocese, and
16 I will very briefly refer to the submissions of the
17 Memorandum of Fact and Law of the Citizens for Community
18 Renewal; primarily though, it will be the Victims Group's
19 submissions that I will refer to.

20 I would like to begin by addressing a
21 question that you asked Mr. Manson a moment ago. Mr.
22 Commissioner, this issue at its best is about the Diocese
23 asserting that it is a private institution and that it
24 should not be forced to participate or cooperate fully. It
25 is clear that the Diocese --

1 **THE COMMISSIONER:** Say that over again.

2 **MR. LEE:** The purpose of this argument, I
3 would submit to you, is to determine whether or not the
4 Diocese is a public institution within the Terms of
5 Reference. The only reason that we are arguing this is the
6 Diocese's submission that it is not a public institution.
7 If the Diocese had no problem with full participation or
8 full cooperation, this argument would be unnecessary. I
9 think we have to assume that full participation in this
10 case needs to be ordered and that it is not going to be
11 given voluntarily.

12 That is my submission to you.

13 In this case that we are considering today,
14 the public deserves the inquiry that it was promised and
15 that is an inquiry that is comprehensive, that is public
16 and that accomplishes what it was created to do.

17 Obviously, the starting point for this is
18 the mandate that you have been assigned. When we examine
19 the Order-in-Council that sets out that mandate, we have to
20 do this with a big picture in mind, if you will. We need
21 to be constantly aware of why this inquiry was called, what
22 it is in response to and what it is intended to do. It's
23 with that idea in mind that I am going to make my
24 submissions today.

25 I would submit to you, Mr. Commissioner,

1 that this inquiry is all about getting at the truth. It's
2 about finding out what happened here in Cornwall, finding
3 out why it happened and finding out how it could have
4 happened. My submission is that it is not possible to
5 answer these questions about the full involvement of the
6 Diocese and for that to happen, the Diocese needs to be
7 deemed to be a public institution within the terms of the
8 mandate.

9 Now, if we can pull up the Victims Group's
10 submissions at paragraph 1. We have the mandate that we
11 have obviously already looked at today. I would just like
12 to make a couple of small points about the wording of the
13 mandate. In particular, a key word here is that:

14 "The Commission shall inquire into and report on
15 the institutional response of the justice system
16 and other public institutions, including the
17 interaction of that response with other public
18 and community sectors..."

19 I would submit to you, and I think it echoes
20 what Mr. Manson was saying earlier, that a response can be
21 an action or it can be an inaction, and it can be somebody
22 showing concern or somebody showing indifference. A
23 response is not always a positive response in that
24 something positive was done. It can be inaction.

25 The question when we were last here and we

1 were discussing the timelines and the procedure of what
2 would be argued today, the question that you posed was is
3 the Diocese of Alexandria-Cornwall a public institution
4 within the terms of the mandate? Again, I would like to
5 reiterate that the discussion today needs to be with the
6 specific mandate that you were given in mind at all times.

7 Paragraph 7 of our submissions, we very
8 broadly break down the various areas that we intend to
9 touch on; being allegations, the policies of the Diocese,
10 the definition of "public," and finally, the jurisdiction
11 and authority of the Commission.

12 I will attempt to follow this fairly
13 closely, so I will begin with allegations.

14 As has already been discussed today, there
15 were a number of public allegations of sexual abuse of
16 young persons in the Cornwall area which ultimately led to
17 the creation of the inquiry. I would submit to you that
18 there is a duty to react and respond to allegations, and we
19 are dealing with allegations here, Mr. Commissioner. We
20 are not dealing with convictions. We are not dealing with
21 guilt or innocence. We are dealing at the allegation stage
22 where it is unknown whether there is any foundation to it.
23 It is unknown the veracity of the complainant. Everything
24 is unknown. It is just the allegations. Those
25 allegations, whether they prove to be founded or unfounded

1 in the end, require a response at the initial stages, and
2 without those appropriate responses it is impossible to
3 determine which allegations are founded and which are not.

4 All parties from my reading, and I am sure
5 if anybody disagrees they will bring it up when it's their
6 turn to speak, from my reading of the materials everyone
7 seems to agree that the allegation that first sparked
8 public debate was made by DS, the victim that has been
9 referred to at various times today. As I think most people
10 know and as I'm sure you know, Mr. Commissioner, DS's
11 allegation was against Father Charles MacDonald who
12 obviously was a priest at the Diocese. Bishop Eugene
13 Laroque was the Bishop at that time and he was operating
14 under the advice of his legal counsel, Jacques Leduc, who
15 obviously has standing here. Counsel for Father MacDonald
16 at the time was Malcolm MacDonald.

17 In Mr. Talach's affidavit, at paragraph 10
18 of his affidavit, I believe, if we can turn to that
19 briefly. It's at Tab 1 of this exhibit. I am sorry, that
20 is not the paragraph I want to go to. If we can look at
21 paragraph 12 of the affidavit, Mr. Talach states that he
22 has conducted his own investigation; more specifically, he
23 has been dully informed by both Gerry Renshaw and Ron
24 Leroux, both of whom are members of the Victims Group who
25 have sworn affidavits for the purposes of this inquiry.

1 They have advised Mr. Talach of various
2 things; in particular, of the connection between Ken Séguin
3 who is the Probation Officer who had various allegations
4 made against him. The first is that Ken Séguin and Father
5 MacDonald attended Saint Paul's Seminary in Ottawa at the
6 same time. That is where they originally met; that later
7 on a friendship developed and eventually Ken Séguin and
8 Father MacDonald were sexual partners.

9 Now, the reason that this is relevant is
10 that DS, in his allegation, not only accused Father
11 MacDonald, but he also alleged that he was abused by Ken
12 Séguin. So there are various parties involved in this DS
13 affair, the DS case or whatever you want to call it, Mr.
14 Commissioner. They were investigated and they were -- some
15 were charged and some were not with respect to the criminal
16 sexual offences against young people.

17 Father MacDonald was charged, and his
18 charges were stayed for Charter violations. Malcolm
19 MacDonald died before trial. Ken Séguin died before
20 charges could be laid and Jacques Leduc also had his
21 charges stayed for Charter violations.

22 The point of this and the reason that I am
23 telling you this is that we can see the DS Case in its
24 whole, from inside and out, involving nothing but people
25 associated closely with the Diocese. We have the Diocese

1 lawyers, we have the Bishop, we have priests, and we have
2 friends of those people that are all involved in this
3 cover-up --

4 **THE COMMISSIONER:** In a what?

5 **MR. LEE:** Excuse me?

6 **THE COMMISSIONER:** In a cover-up?

7 **MR. LEE:** In a cover-up, yes. I think we
8 take it and I can take you to Mr. Talach's affidavit and
9 some of the associated exhibits, if you like, that in the
10 DS case the evidence showed that clearly there was an
11 attempt to -- would you find it useful for me to go through
12 the facts of the DS case?

13 **THE COMMISSIONER:** No. I missed what your
14 --

15 **MR. LEE:** You object to the words "cover-
16 up," I guess?

17 **THE COMMISSIONER:** No, no. I guess I was
18 thinking if you are using "cover-up" widely or for this
19 specific incident.

20 **MR. LEE:** I am solely discussing the DS
21 matter. If you don't like the term "cover-up," at the very
22 least, giving the Diocese every benefit of the doubt, we
23 can certainly use the word "incompetence".

24 **THE COMMISSIONER:** No, no. I guess what I
25 am trying to do is, without being overly sensitive -- I

1 mean, those kinds of words just inflame people; "cover-up".
2 It's true I think from reading the material that the
3 gentleman who drew up this agreement was charged with
4 obstruct justice.

5 **MR. LEE:** Yes.

6 **THE COMMISSIONER:** And pleaded guilty.

7 **MR. LEE:** Yes.

8 **THE COMMISSIONER:** Okay. So if you meant
9 that somewhere along the line there was something illegal
10 that went on and it was for the purpose of -- if you think
11 it's -- of a cover-up for that item, that's fine. Those
12 are your submissions, and that's okay.

13 **MR. LEE:** Well then, those are my
14 submissions.

15 **THE COMMISSIONER:** There you go.

16 **MR. LEE:** Now, we also have -- and I am
17 being very sensitive, Mr. Commissioner, to respecting the
18 changes to the affidavit and to the submissions that were
19 made earlier, so I apologize if at points I move a little
20 bit slowly to make sure that I get this right.

21 While I have gone through kind of the nature
22 of the involvement of Charles MacDonald and Malcolm
23 McDonald and Ken Séguin and Jacques Leduc, we also have the
24 bishop who at some point was named and again an allegation
25 was made in a -- I believe the wording we are using is a

1 highly publicized, unsigned anonymous document. I will
2 leave it at that. It is not attached as an exhibit any
3 longer and I will leave it at that.

4 As I have said, the DS affair was the one
5 single event that ignited the fire, if you will, that
6 caused the media uproar that drew the public's attention to
7 the affair that ultimately, in my submission, led to the
8 creation of an inquiry.

9 The Diocese is intimately involved in that
10 entire affair. The Diocese is really the only institution
11 involved in that affair at the early stages of DS. That
12 case is all about how the Diocese conducts itself, its
13 close interaction with a layperson, its tremendous
14 influence on the other public institutions in that the
15 Diocese's actions prevented the Complainant from continuing
16 with his criminal complaint. They prevented the justice
17 system from getting its hands on it. There was no
18 complaint made to CAS. What the Diocese did affected all
19 of the other institutions that we are here to examine.

20 Again, I will tread carefully here.
21 Paragraph 16 of my submissions suggests that for Mr.
22 Talach, and Mr. Talach swears this in his affidavit, from
23 his review of media reports, website contents and other
24 documents, it appears that there are 23 dioceses -- clergy,
25 Cornwall Diocese clergy that were alleged to have committed

1 acts of sexual abuse, and I want to be clear here that
2 these were allegations only. They were made in some kind
3 of public form. However, while we have this high number of
4 clergy, these are simply the clergy alleged to have been
5 abusers. This doesn't speak to the number of people
6 involved in the investigation. It doesn't speak to the
7 number of people within the Diocese that would have dealt
8 with handling these allegations if anything was done and
9 deciding not to do anything, whatever the case may be.

10 So the scale here, Mr. Commissioner, I would
11 suggest is enormous. We don't know how the Diocese reacted
12 to these allegations. We simply know that allegations in
13 one format or another in some form were made, and I would
14 submit that when those allegations were made in whatever
15 form they came, something should have been done. Some
16 preliminary investigation should have been undertaken. We
17 don't know if that happened or not. Again, we just know
18 the details of the DS case and we know what the effects of
19 that were.

20 Now, we have the DS case, which is the one
21 case that we know the details of. As I said, giving the
22 Diocese the benefit of the doubt, it was at the very least
23 handled incompetently and irresponsibly. It in all
24 likelihood went beyond that. We then know that we have --

25 **MR. SHERRIFF-SCOTT:** Mr. Commissioner.

1 **THE COMMISSIONER:** If you want to come to
2 the microphone, please.

3 **MR. SHERRIFF-SCOTT:** I've listened to this
4 and there is nowhere in this affidavit an allegation that
5 the Diocese was involved in the drafting of this release.
6 There is nowhere in this affidavit an allegation that the
7 Diocese, through the bishop, was aware of the terms of the
8 release. The bishop has been on the public record a
9 zillion times saying to the contrary. Malcolm MacDonald
10 was charged and pleaded guilty to the drafting of the
11 release as the lawyer for Charles MacDonald, not the lawyer
12 for the Diocese. Jacques Leduc was the lawyer for the
13 Diocese at the time. He was not charged and so I am just
14 concerned that we are getting a little bit aggressive here
15 and unfair and this -- we should stick to the evidence.

16 **THE COMMISSIONER:** All right.
17 Mr. Lee, any comments?

18 **MR. LEE:** As I said, Mr. Commissioner, my
19 point is that at very least this was handled incompetently.
20 In response to that, I am trying to quickly look over what
21 we do have in the exhibit here, at the risk of having Mr.
22 Sherriff-Scott rise again, I think at the very least it
23 would be fair, and I hope you would agree with me, there
24 was -- my recollection is at some point the bishop at the
25 very least said that he hadn't read the release; that was,

1 he didn't realize that it prohibited the victim from going
2 to the police or forced him to drop his complaint. At the
3 very least, he hadn't read it. In my submission, that at
4 the very least is incompetence and irresponsibility.

5 **THE COMMISSIONER:** Maybe. I don't know how
6 relevant it is to throw out those kinds of words at this
7 point. I mean we're just making submissions as to whether
8 it should be a public institution. In any event, go ahead.

9 **MR. LEE:** What I'm attempting to do, Mr.
10 Commissioner, is give you some kind of context. Context is
11 a word that's been thrown around a lot today and I expect
12 it will continue to be thrown around. We need to
13 appreciate what the situation was, how these different
14 allegations -- well, not specifically the allegations, the
15 fact that allegations were mishandled or not handled at all
16 -- came to light. Regardless, I'll be more sensitive to
17 the words that I choose.

18 Now, given the sheer number of allegations,
19 given the involvement in the D.S. case, I would submit to
20 you that not only is the Diocese a central institution in
21 the entire situation here in Cornwall, it is perhaps the
22 central institution based solely on numbers, Mr.
23 Commissioner. The numbers are staggering in the number of
24 alleged abusers, in the number of people associated with
25 the Diocese in one way or another that have been alleged.

1 In our submission, this reason alone should
2 be sufficient to justify your scrutiny of the Diocese at
3 this inquiry.

4 Moving on to the policies of the Diocese --
5 and again for the purpose of giving you some kind of
6 context and some kind of understanding of why it would be
7 useful to have the Diocese included as a public
8 institution, I'd like to discuss the policies of the
9 Diocese.

10 The Diocese isn't an institution that simply
11 had a memo passed around or something along those lines in
12 terms of how to deal with allegations of sexual abuse. The
13 Diocese operates under the Code of Canon Law. It's a
14 comprehensive code of church laws and that Code
15 specifically deals with sexual abuse by clergy and the
16 response to it.

17 Now, my submissions set out various sections
18 of Canon Law. These are all -- whether it was necessary or
19 not, they're all taken directly from Mr. Talach's
20 affidavit. They're attached as exhibits there too but
21 really it's just setting out the different sections.

22 So the first would be Canon 528(1) in which
23 the obligations of a parish priest are outlined and amongst
24 those duties is that, and I quote:

25 "He is to have special care for the

1 Catholic education of children and
2 young people".

3 As I set out in my materials, it's trite to
4 say that a Roman Catholic priest is involved regularly with
5 children, with young people.

6 Now, more specifically when dealing with
7 sexual abuse of children we move on to Canon 1395(2) which
8 reads:

9 "A cleric who has offended in other
10 ways against the sixth commandment of
11 the Decalogue, if the crime was
12 committed by force or by threats or in
13 public..."

14 Or, more importantly for our purposes:

15 "...or with a minor under the age of
16 sixteen years, is to be punished with
17 just penalties, not excluding dismissal
18 from the clerical state if the case so
19 warrants."

20 So clearly under Canon Law child sexual
21 abuse is an offence.

22 The bigger question that we need to be
23 concerned with is what is supposed to be done when an
24 allegation is made.

25 If you move to paragraph 23 of my

1 submissions, when there's an allegation made that would
2 constitute a crime against Canon Law, the Canon Code
3 requires that the bishop investigate, and that's under
4 Canon 1717(1). The word "ordinary" here could be taken to
5 mean "bishop".

6 "Whenever an ordinary receives
7 information which has at least the
8 semblance of truth about an offence, he
9 is to inquire carefully either
10 personally or through some suitable
11 person about the facts and
12 circumstances and about the
13 imputability of the offence unless its
14 inquiry would appear to be entirely
15 superfluous."

16 So there are a couple of parts that I'd like
17 to draw your attention to. The first is the semblance of
18 truth. This isn't a high standard, this is -- if there's
19 any potential merit to it the bishop is required to
20 investigate and I say he's required to investigate because
21 it's positive language that's used here; "he is to inquire
22 carefully." This is not a "should inquire carefully", this
23 is "he shall inquire carefully." There's a positive
24 obligation.

25 Now, once the allegation is made and the

1 bishop deems that there is some semblance of truth and he's
2 required to begin an investigation the Code goes so far as
3 to lay out the procedure and structure of the
4 investigation.

5 So we move on. According to Canon 1719:

6 "All records of any investigation and
7 documents which precede or follow are
8 to be retained in the Diocese's secret
9 curia archive."

10 So generally we have two options. When an
11 allegation is made and the bishop receives the allegation
12 he has two options, really. He can follow -- three
13 options, I suppose. He can decide it's entirely
14 superfluous and presumably that's the end of it; he can
15 decide that there's some semblance of truth and he can
16 follow the Canon Law which means that there are records
17 kept and they are kept in the secret curia archive; or in
18 the alternative he can do nothing, I suppose.

19 Now, in addition to the Codes of the Canon
20 Law which, as I say, set out what needs to be done a more
21 specific document was produced on March 16th, 1962 and it's
22 known as an instruction -- I won't bother with the Latin
23 name of it but the English name of it is "On the Manner of
24 Proceeding in Cases of Solicitation."

25 I'd like to take you to this document, Mr.

1 Commissioner, and the reason that I'd like to do that is I
2 think it's important before moving on to the public
3 argument that we again have -- and I'll use word "again" --
4 that we have some context about the nature of the protocols
5 that we're referring to and what was in place. I don't
6 intend to go through it at great length or anything along
7 those lines. I just briefly want to illustrate the detail
8 of the procedure set out and the fact that, as I say, this
9 is not a short document that was thrown together quickly.
10 It really is detailed as you'll see.

11 If we can turn then to Tab Q. Now, Mr.
12 Talach in his affidavit, and I suppose I can -- again, I
13 apologize; I'm just dealing with the edits here. Okay.

14 I'd like to just briefly draw your attention
15 to the affidavit of Francis Morrissey that was filed by the
16 Commission or by the Diocese, rather, because Father
17 Morrissey comments on this document specifically in response
18 to Mr. Talach's affidavit.

19 **THE COMMISSIONER:** He says something like it
20 wasn't widely distributed?

21 **MR. LEE:** Yes. If we can go to the very
22 last page of that document under ---

23 **THE COMMISSIONER:** So E4?

24 **MR. LEE:** --- the heading G.

25 **THE COMMISSIONER:** Huh?

1 MR. LEE: The affidavit of Francis Morrisey.

2 So if it's B4 then ---

3 THE COMMISSIONER: E4, yes. Page 4?

4 MR. LEE: Yes, under G.

5 THE COMMISSIONER: M'hm.

6 MR. LEE: The second paragraph, second
7 sentence reads:

8 "This document never had the importance
9 that is attributed to it in the
10 affidavit. Indeed, it was not readily
11 available to bishops or the
12 representatives."

13 At a minimum I take what's written here by
14 Father Morrisey to at the very least be a concession that
15 it is an official Vatican document. His concern seems to
16 be with the importance of the document. I would suggest
17 that importance is a subjective analysis and I submit that
18 perhaps we should let the document speak for itself.

19 And I'd like to take you to the document.
20 That's all I want to say about Father Morrisey. His
21 explanation is noted and I'm sure Mr. Sherriff-Scott will
22 discuss that.

23 On the first page of the document in Exhibit
24 Q to Mr. Talach's affidavit the title at the very top
25 begins:

1 "From the Supreme and Holy Congregation
2 of the Holy Office."

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

4 **MR. LEE:** It continues:

5 "For All Patriarchs, Archbishops,
6 Bishops and Other Diocesan and
7 Ordinaries..."

8 And then in quotations:

9 "'Even of the Oriental Rite'."

10 And again, it's an instruction on the manner
11 of proceeding in cases of solicitation set out by the
12 Vatican Press in 1962.

13 The last page of that document before the
14 appendix which would be -- sorry; these aren't numbered.
15 Anyways, the document ends by saying -- there are 74
16 sections to this document, if that helps at all.

17 So I'm looking at the part right after
18 section 74, Madam Clerk. Yes.

19 **THE COMMISSIONER:** The quote in Latin?

20 **MR. LEE:** Yes, that's perfect. It's on your
21 screen here.

22 **THE COMMISSIONER:** Oh, I'm reading the Latin
23 part.

24 (LAUGHTER/RIRES)

25 **THE COMMISSIONER:** Okay. Hang on.

1 **MR. LEE:** I have to say I'm impressed that
2 you're reading the Latin part, Mr. Commissioner.

3 **THE COMMISSIONER:** It just shows how old I
4 am. Okay.

5 **MR. LEE:** So after it sets out the
6 instruction, which I'll go through in a little bit, it says
7 "From the Audience of the Holy Father, March 16, 1962" and
8 I'd like to read that.

9 "Our Most Holy Father John XXIII, in an
10 audience granted to the most eminent
11 Cardinal Secretary of the Holy Office
12 on March 16, 1962, deigned to approve
13 and confirm this instruction, ordering
14 upon those to whom it pertains to keep
15 and observe it in the minutest detail.
16 At Rome, from the Office of the Sacred
17 Congregation, March 16, 1962."

18 And then obviously there's the place of the
19 seal and it's signed by the most eminent Cardinal Secretary
20 of the Holy Office.

21 So again, I prefer to have the importance of
22 the document speak for itself.

23 Now, if we turn back to the first page of
24 the document where the instruction itself is set out, and
25 again, Mr. Commissioner, I won't go through this in a

1 tremendous amount of detail. I'm not going section by
2 section or anything, but there are -- I think it is
3 important to get a little bit of an understanding about
4 what this document is about.

5 It begins -- again, it's on the manner of
6 proceeding in cases of the crime of solicitation. Now,
7 they go through how the document should be diligently
8 stored in the secret archives and it's strictly
9 confidential.

10 Under "Preliminaries" it explains what it
11 means by solicitation and it reads:

12 "The crime of solicitation takes place
13 when a priest tempts a penitent..."

14 If we go further down, about midway there's
15 a paragraph in square brackets -- or sentence, rather, that
16 begins "[The object of this temptation]".

17 [The object of this temptation] is to
18 solicit or provoke the penitent toward
19 impure and obscene matters..."

20 So we get a fairly good idea of what they
21 mean by solicitation here.

22 Now, at paragraph 2 of the instruction, it
23 reads:

24 "The right or duty of addressing this
25 unspeakable crime in the first instance

1 pertains to the Ordinaries of the place
2 in whose territory the accused has
3 residence..."

4 And if you can flip over just quickly to the
5 next page at paragraph 3, it explains what it means by
6 Ordinaries.

7 It reads:

8 "By the name of Ordinaries of the place
9 are understood to be, each for his own
10 territory, first the residential
11 bishop, abbot or prelate nullius, the
12 administrator, any vicar or Prefect
13 Apostolic, and, in the absence of these
14 aforementioned dignitaries, those who
15 succeed them in power..."

16 So the bishop obviously, the residential
17 bishop, as they put it, is an ordinary.

18 Now, the importance of dealing with cases of
19 solicitation I think is illustrated nicely in the sentences
20 I've already read from paragraph 2 where they would call it
21 "the unspeakable crime."

22 And they go on in the second sentence to
23 explain that when we have one of these unspeakable crimes
24 the bishop:

25 "...is enjoined upon these aforementioned

1 persons to the fullest extent possible,
2 in addition to their being gravely
3 encumbered by their own consciences,
4 that, after the occurrence of cases of
5 this type, that they, as soon as
6 possible, take care to introduce,
7 discuss and terminate these cases with
8 their proper tribunal."

9 And again, the purpose of this document is to
10 set out the detailed procedure to be followed. This is the
11 protocol that is to be followed when there's an allegation
12 of sexual abuse.

13 If we can turn to paragraph 11 of the
14 instructions, please, it reads:

15 "Because, however, what is treated in
16 these cases has to have a greater degree
17 of care and observance so that those
18 same matters be pursued in a most
19 secretive way, and, after they have been
20 defined and given over to execution,
21 they are to be restrained by a perpetual
22 silence, each and everyone pertaining to
23 the tribunal in any way or admitted to
24 knowledge of the matters because of
25 their office, is to observe the

1 strictest secret, which is commonly
2 regarded as a secret of the Holy Office,
3 in all matters and with all persons,
4 under the penalty of excommunication..."

5 So again, we get a really good idea of the
6 importance of this.

7 Interesting and -- I'll leave it at
8 interestingly -- paragraph 13:

9 "The oath of keeping the secret must be
10 given in these cases also by the
11 accusers or those denouncing the priest
12 and the witnesses. To non of these,
13 however, is there a subjection to a
14 censure, unless by chance toward these
15 same persons some censure has been
16 expressly threatened upon the person
17 himself, for his accusation, his
18 deposition or of his violation of such
19 by act. The accused, however, should be
20 most seriously warned that even he, with
21 all the others, especially when he
22 observes the secret with his defender,
23 is under the penalty of suspension a
24 *divinis* in case of a transgression to be
25 incurred *ipso facto*."

1 Now, that sets it up, and again, I don't
2 intend to go through the rest of the document in that much
3 detail.

4 What I do want to point out is that under
5 Title Number 1 we have the first knowledge of the crime.
6 So this deals with the procedure upon learning of the
7 allegation. And to just kind of summarize, it starts with
8 a denunciation. Somebody has to make an allegation. There
9 has to be something come forth that somebody has done
10 something wrong.

11 Paragraph 18 sets out strict timelines. The
12 denunciation should be made within a month, and if it's not
13 made within a month, there's a threat of ex-communication.
14 So again, diligence is required.

15 Paragraph 23 -- and I won't go through this,
16 but if you would like to make a note, you can review it on
17 your own at some point. Paragraph 23 deals with the
18 procedure to follow in interviewing the accuser, so the
19 person making the allegation.

20 And then in paragraph 27 we have the
21 bishop's duty once the complaint is received, where he has
22 the discretion to dismiss it and actual investigation is
23 not required at this stage if the bishop deems there would
24 be no basis for it.

25 On the next page, Title Number 2 is the

1 process. So here we get the inquisition process in which
2 there is investigation.

3 If we go over a couple more pages, right
4 before paragraph 42 of the instruction, we have the
5 decision phase. So we've had the allegation phase. We've
6 had the investigation phase, and now we have the decision
7 phase.

8 In the decision phase, I'd like to read this
9 at paragraph 42:

10 "When the inquisitorial process has
11 been closed, the Ordinary, having heard
12 the promoter of justice, should proceed
13 as follows, namely: a) if it is evident
14 that the denunciation totally lacks a
15 foundation, he should order this to be
16 declared in the Acts, and the documents
17 of the accusation should be destroyed;
18 b) if the indications of the crime are
19 vague and indeterminate or uncertain,
20 he should order that the Acts be put
21 into the archives, to be taken up again
22 if something else happens in the
23 future;"

24 So obviously these are escalating.

25 "c) if, however, there are indications

1 of a crime serious enough but not yet
2 sufficient to institute an accusatorial
3 process, as especially in the case
4 where only one or two denunciations are
5 had, where indeed the regular process
6 was followed with diligence but were
7 not corroborated by any or insufficient
8 proofs, or even many proofs but with
9 uncertain procedures or procedures that
10 are deficient, he should order that the
11 accused be admonished..."

12 And then d), obviously, is the most serious:
13 "...if then certain or at least probable
14 arguments to institute the accusation
15 are present, he should order the
16 accused to be cited and be subjected to
17 the matters which are prescribed for
18 this trial."

19 So again, elevating.

20 Down at the bottom of that page we have
21 Chapter 3, the decrees for the accused person, and this is
22 essentially the trial phase.

23 And then finally, over a few more pages,
24 right under paragraph 54, we have the decision phase which
25 also sets out the rights of appeal.

1 And on the next page, at title number 3, we
2 have penalties.

3 Now, if you'll flip over a couple of pages,
4 at the top of the page is the number 22 and Title 4,
5 Official Communications. I think you need to go down a few
6 more. The bottom of that page, under Title 5 is the "Worst
7 Crime". Paragraph 71 reads:

8 "By the name of the worst crime is
9 understood at this point a
10 signification of any obscene external
11 deed, gravely sinful in any perpetrated
12 by a cleric or a temp with a person of
13 his own sex..."

14 So essentially homosexuality.

15 Now, paragraph 72 is important where it
16 reads:

17 "Those things that have been stated
18 concerning the crime of solicitation up
19 to this point are also valid, changing
20 only those things necessary to be
21 changed by their very nature for the
22 worst crime."

23 So in other words, the rest of the
24 instruction still applies and all the protocols and
25 standards set out in there also apply to the worst crime.

1 Now, over the page, number 73 is where we're
2 particularly concerned.

3 “To have the worst crime for the penal
4 effects, one must do the equivalent of
5 the following: any obscene, external
6 act, gravely sinful, perpetrated in any
7 way by a cleric or attempted by him
8 with youths of either sex or with brute
9 animals.”

10 So again, there's a specific section of this
11 Code to address pedophilia and it's referred to as the
12 worst crime.

13 While I haven't gone through this in
14 tremendous detail and read all of this, it's my submission,
15 Mr. Commissioner, that clearly this is a detailed protocol.
16 Clearly, between the canon laws and the more specific
17 instruction, the Diocese had a process with which to deal
18 with allegations.

19 Presumably then, should they be found to be
20 a public institution and should they be investigated as a
21 public institution by this Inquiry, there will be something
22 there to investigate. There was a process in place. There
23 were protocols that we can examine. We can look at the
24 propriety of the institutional response given those
25 protocols.

1 Now, if we can turn back to page 12 of the
2 Victims Group Submissions, paragraph 31, we've provided
3 just our suggestions in a non-exhaustive list of reasons
4 why it might be important to Part I of the mandate of the
5 inquiry to investigate the existence and extent of the
6 Diocese's own investigations.

7 For example, it would help to determine
8 whether investigations occurred in that whether they
9 occurred at all, whether these investigations followed the
10 internally mandated procedure that we've just looked at,
11 whether these investigations involved seeking out and
12 speaking with witnesses, whether other alleged victims were
13 located, the findings of these investigations. For
14 example, what happens when allegations prove true? How do
15 the findings of these investigations compare with the
16 findings of the police and the Children's Aid Society
17 investigations and, finally, whether the Diocese shared its
18 findings with the police and the Children's Aid Society.

19 As for Part II of the mandate, it would be
20 important to know whether any investigative cooperation
21 between the Diocese and the police or the Children's Aid
22 Society was effective and, of course, whether the mandatory
23 reporting or cooperation by the Diocese should be
24 recommended in your final report.

25 And again, I would submit that this has

1 significant ramifications on the comprehensiveness of the
2 report and the -- I don't want to use the word "success" --
3 and what the recommendations mean.

4 We know based on the Affidavit of Mr.
5 Talach, paragraph 31 of that affidavit, which is more or
6 less restated in the submissions here, that certain members
7 of the Victims Group have advised that they actually
8 reported their abuse to Bishop Laroque and that they are
9 not satisfied with his internal handling of their
10 complaints.

11 Specifically, we have GR who reported his
12 abuse and was told that he could not be assisted in the
13 matter, and we have Benoit Brisson who was told that the
14 priest he made the allegation against would not be an
15 active parish minister again. That proved not to be the
16 case and, at that point, Benoit Brisson went to the police.

17 We've also heard mention of the *Child and*
18 *Family Services Act*. We heard some of the expert
19 contextual witnesses discuss it and we've heard some
20 reference to it today, I believe, and as you know, that Act
21 requires that any person who believes, on reasonable
22 grounds, that a child is or may be in need of protection or
23 is or has suffered abuse, shall forthwith report the
24 suspicion and the information upon which it is based at the
25 Children's Aid Society.

1 If we look at Tab S or Exhibit S, rather, to
2 the Affidavit of Robert Talach, it reproduces section 72 of
3 that Act. Section 72(1) is the requirement that I just
4 read to you there.

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

6 **MR. LEE:** On the second page, at the very
7 bottom, section 72(4) sets out the offence for somebody who
8 doesn't report and then subsection (5) lists those persons
9 who this section applies to, and it reads:

10 "Subsection (4) applies to every person
11 who performs professional or official
12 duties with respect to children,
13 including..."

14 And at (b)(1) we have:

15 "...a religious official, including a
16 priest, a rabbi and a member of the
17 clergy."

18 Obviously this is the current wording of the
19 Act, but we've heard from the contextual experts that that
20 obligation was in place before this current Act.

21 We have currently at this point no
22 information one way or the other about whether the bishop,
23 the Diocese or any of its personnel ever reported anything
24 to the Cornwall Children's Aid Society. We just don't know
25 at this point. That would be something that could be

1 investigated.

2 Do you have a question?

3 **THE COMMISSIONER:** No.

4 **MR. LEE:** Now, I would like to move on to
5 the definition of "public" which is, as you said, why we're
6 here today.

7 It is my submission that this issue has been
8 unduly concerned with determining whether the Diocese is a
9 public institution in the strict, legal sense. And what I
10 mean by that is, again, that the wording in the mandate
11 needs to be taken in context. This is all about context.

12 Nobody here is going to dispute that the
13 Diocese is a large and significant component of the
14 Cornwall social and community fabric. We all know that.

15 We also know, however, from the submissions
16 of Mr. Manson, as well as the written submissions of those
17 who have yet to speak, that nobody is going to be able to
18 get up here and tell you definitively what public or
19 private means because, as I say, it's all about context.

20 My submission is that this inquiry is a
21 response to the public's demand for answers and, more
22 specifically, that the only reasonable interpretation of
23 the Order-in-Council, given the context in which it was
24 drafted, is that the inquiry was called to fully examine
25 the situation in Cornwall as it relates to allegations of

1 sexual abuse by young persons.

2 In essence, your mandate is to get to the
3 bottom of what happened here. It's about getting at the
4 truth, and I would like to just briefly bring you back to
5 Mr. Manson's written submissions from earlier today.

6 **THE COMMISSIONER:** Well, let me stop you
7 there for a minute. Is getting to the truth -- you know,
8 we can throw that out -- you know, there was the Project
9 Truth and all of this. Well, what we're trying to get at
10 is the truth of how institutions responded to the
11 allegations.

12 **MR. LEE:** I do not at any point today, to be
13 very clear, want to be taken and suggesting by truth that
14 I'm talking in any way about whether abuse occurred, how it
15 occurred, which victims are telling the truth, which
16 victims are not telling the truth.

17 I think we need to just take it as
18 understood that we're dealing with allegations and the
19 response to them.

20 **THE COMMISSIONER:** Okay.

21 **MR. LEE:** And that is what I'm concerned
22 with. I'm concerned with getting at the truth of what
23 allegations were made, when were they made, to whom were
24 they made and what was done about them. That is my concern
25 here.

1 **THE COMMISSIONER:** Okay.

2 **MR. LEE:** In Mr. Manson's written
3 submissions at page 7, he relies on the Affidavit of Paul
4 Scott, one of the members of the Citizens for Community
5 Renewal ---

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

7 **MR. LEE:** --- who was at the press
8 conference with Michael Bryant, as paragraph 24 says, on
9 April 18th, 2005.

10 And again, to reiterate, Mr. Bryant said:

11 "The Commissioner will go where he sees
12 fit. He will follow the facts where he
13 sees fit and the point of a public
14 inquiry in this case is to find out
15 what happened."

16 And I would like to draw particular
17 attention to "He will follow the facts where he sees fit"
18 because I will return to that.

19 And lower on the page, again, in the
20 legislature there was the exchange between Mr. Browneau and
21 Mr. Bryant, and we have the bolded portion at the bottom of
22 the page:

23 "He..."

24 Being you, Mr. Commissioner:

25 "...has all the tools at his disposal to

1 leave no stone unturned."

2 And again, I would submit, to leave no stone
3 unturned in getting to the bottom of the allegations of
4 abuse and the response to them.

5 I would submit to you that while the Diocese
6 is clearly not funded by government, it is in every other
7 way a public institution as it relates to Cornwall,
8 Ontario.

9 To recognize something as public is not
10 automatically to conclude that it is political or that it
11 is subject to governmental control or regulation. As Mr.
12 Manson put it very well, nobody is suggesting that the
13 Diocese is a government institution.

14 And again, speaking of the strict legal
15 sense of whether or not there is a legal definition of
16 public or a legal definition of private, I think we've seen
17 so far and I think you'll agree at the end of everyone's
18 submissions that we are not going to be able to give you a
19 strict legal definition of public that everyone can agree
20 on and that is acceptable, because it's context-sensitive.

21 Our submission, being the submission of the
22 Victims Group, is that the Diocese's failure to respond to
23 allegations of sexual abuse directly impacted upon the
24 response by other institutions. So far, at this point, I
25 can only speak of the D.S. case, that is the case we know

1 some details of. We know in the D.S. case, that D.S.
2 signed a document, he received some money and part of the
3 agreement was that he would go to the police and say that
4 he was no longer interested. That directly impacts the
5 other public institutions we're looking at.

6 This community and its institutions work
7 together. They need to work together. In dealing with
8 sexual abuse, there has to be cooperation. There has to be
9 openness. There can't be secrecy because the system falls
10 apart if there is.

11 The Victims Group submits that it will not
12 be possible for this Commission to fully satisfy its
13 mandate, as it was intended, as evidenced at least in part
14 by Mr. Bryant's statements, without recognizing that the
15 Diocese has played a prominent role as it relates to the
16 allegations of sexual abuse and that it needs to be
17 examined along with the other institutions.

18 Now turning to the *Public Inquiries Act*, and
19 I'm looking at paragraph 49 of my submissions, I've set out
20 there section 2 of the Act, which deals with the
21 appointment of a Commission and it reads:

22 "Whenever the Lieutenant Governor in
23 Council considers it expedient to cause
24 inquiry to be made concerning any
25 matter connected with or affecting..."

1 And I'll stop there.

2 This is not -- we need to pay attention to
3 the word "affecting". It's connected with or affecting the
4 good government of Ontario. The rule is not that the
5 inquiry can only be able to good government of Ontario. It
6 can be about anything that affects the good government of
7 Ontario or it can be about anything that affects the
8 conduct of any part of the public business or the
9 administration of justice.

10 It's my submission to you that the word
11 "affecting" in that section gives the Lieutenant Governor a
12 wide latitude. And as Mr. Manson rightly stated, there's
13 no requirement that the right of the Lieutenant Governor to
14 order the examination of a private institution or a public
15 institution or the Diocese or whoever it might be, relies
16 on it being a matter of public concern. There are other
17 parts to that section, including anything affecting the
18 good government of Ontario, for example, that would allow
19 the Diocese to be brought in.

20 I submit to you that given that broad
21 wording, it's clear that it would be within the Lieutenant
22 Governor in Council's authority to order a full examination
23 of the Diocese.

24 So the question obviously is, did it? We
25 know that the Lieutenant Governor could have ordered a full

1 examination of the Diocese. It could have -- as you said,
2 it could have said public institutions and the Diocese or,
3 as Mr. Manson said, or public institutions but not the
4 Diocese. It didn't do that.

5 I submit that the Order in Council that we
6 were given should be given a broad interpretation that
7 recognizes the need for a full public investigation of the
8 issues. Should the Order in Council be interpreted as
9 narrowly as the Diocese suggests, its involvement in the
10 inquiry will be quite limited.

11 We submit that you, Mr. Commissioner, need
12 to use your full discretion to ensure that the inquiry is
13 complete and comprehensive. It's critical that the process
14 is sufficiently broad to permit you to understand the full
15 story of what happened here and its effects, because after
16 this inquiry, the people of Cornwall are going to be left
17 with your report and your recommendations and they have to
18 be meaningful and they have to be complete.

19 The Diocese of Alexandria-Cornwall's
20 influence is all over this community and it's all over the
21 situation that directly gave rise to the inquiry. Secrecy
22 or non-disclosure or whatever you want to call it is the
23 enemy of a public inquiry. And in my submission, a
24 comprehensive, open public inquiry trumps the desire of an
25 institution to keep its affairs sheltered from the public's

1 attention.

2 I also submit to you that the Commissioner's
3 mandate must be seen as flexible. It must be capable of
4 evolving as the process continues and that's -- I asked you
5 earlier when I read the quote from Mr. Bryant, where he
6 said he will follow the facts where he sees fit. I asked
7 you to keep that in mind. That's what I mean, because
8 there's a recognition inherent in the inquiry process that
9 a commissioner needs to be able to go in whatever direction
10 the investigation of the evidence takes him, within reason.

11 Mr. Commissioner, if all the facts of this
12 situation were known at the time the Order in Council was
13 drafted, there would have been no reason to call an inquiry
14 in the first place. We need to recognize that flexibility
15 is required.

16 Furthermore, regardless of all the rules and
17 the McRuer Report relied on by Mr. Sherriff-Scott, and the
18 ideal drafting of the Order in Council which, as you said,
19 would have specifically answered for us the Diocese
20 question, the fact remains that there is a distinction
21 between what should have been set out in the mandate when
22 it was drafted and the reality of what it takes to hold an
23 inquiry.

24 In this specific case, given these specific
25 circumstances, it is my submission that you must have the

1 authority and the power to recognize what needs to be done
2 and to do it. The spirit of the mandate is to uncover the
3 truth and to make recommendations. My submission is that
4 you cannot do either of those things, if an institution at
5 the very heart of the problem and of the issue is not
6 forced to participate.

7 The Diocese, as I understand their argument,
8 submits that the mandate is not clear enough to remit its
9 inclusion.

10 I, on the other hand, submit that the
11 intention of the mandate is perfectly clear. You are
12 instructed to get to the bottom of this situation, if you
13 will.

14 I suggest that we construe the mandate as
15 being intentionally broad in recognition of the scale of
16 the subject matter being considered.

17 In closing, Mr. Commissioner, to go back to
18 where I started; we need to look at the big picture. In
19 order to truly understand what happened in Cornwall, the
20 Diocese needs to cooperate fully. It is our submission
21 that it is not possible to have a full meaningful inquiry
22 without all of the players fully involved.

23 Without understanding what happened and why
24 and how it happened, it's difficult to imagine how you can
25 satisfy your mandate in terms of making recommendations.

1 We need to assume that you were appointed to get to the
2 truth of the situation. We need to assume that you were
3 given the power and the tools to do your job and we know
4 that your mandate is subject to your interpretation and to
5 some level of discretion.

6 So it's the position of the Victims Group
7 that the purposes of the public inquiry or for the purposes
8 of this inquiry, the Diocese is a public institution.

9 Subject to any questions you might have,
10 those are my submissions.

11 **THE COMMISSIONER:** Thank you.

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

13 **THE COMMISSIONER:** All right. Thank you.
14 Mr. Bennett.

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

16 **MR. BENNETT:** Good afternoon, Mr.
17 Commissioner.

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

19 **MR. BENNETT:** The Men's Project is of the
20 view that the Diocese is a public institution for the
21 purposes of this inquiry.

22 As you look at the creation of this inquiry
23 and the comments that have been made, you'll notice I
24 haven't referred to a lot of law or documents, but I have
25 on page 5 -- there is an interview where Mr. Bryant is

1 quoted with CBC before you were appointed and before the
2 Terms of Reference were drafted, as saying:

3 "We heard again and again about the
4 dark cloud hanging over this community
5 and the deep-seated concerns that we
6 get to the truth and get to the bottom
7 of what happened and come up with
8 recommendations to prevent what
9 happened from ever happening again."

10 This Commission was established because of
11 the rumours, innuendo and conspiracy theories that have
12 been floating around. You have a very difficult job. Your
13 job is to look at what happened, separate the rumours from
14 the facts or maybe it's the facts from the rumours, I'm not
15 sure which, but to come up with a determination of what
16 occurred here and how to prevent the Cornwalls from
17 happening again.

18 When one thinks of what occurred here, it's
19 hard to escape that the Diocese is involved. I'm sure when
20 you tell people what you're doing right now -- I'll put it
21 this way, when I tell people what I'm doing these days,
22 "I'm involved in the Cornwall Inquiry" one of the comments
23 I tend to hear is, "Oh, the church thing". And I go on to
24 explain, well there's more parties involved, but the
25 viewpoint out there is that the Diocese is a major player

1 in this and not to include the Diocese as a public
2 institution, in my submission, would undermine both the
3 intent and the purpose of the government when they
4 established this inquiry.

5 Now, we heard very comprehensive submissions
6 this morning from Mr. Manson, absolutely fabulous. I
7 listened to his submissions. I was totally convinced. But
8 I have also read Mr. Sherriff-Scott's submissions and I'm
9 equally convinced. I think they are equally compelling and
10 I'm quite confident that if they were representing the
11 other side's party, they could do as excellent a job,
12 because we have excellent counsel who are putting very
13 thorough ---

14 **THE COMMISSIONER:** Absolutely.

15 **MR. BENNETT:** --- and very impressive
16 arguments. So the real issue is how do you deal with the
17 law where the law is ambiguous? Because that's what I
18 would submit. The drafting is ambiguous. It's lousy
19 drafting. If it was drafted well, we wouldn't be here.

20 **THE COMMISSIONER:** I passed your comments on
21 to the Attorney General here, Mr. Bennett.

22 **(LAUGHTER/RIRES)**

23 **MR. BENNETT:** I would be pleased. I'd be
24 more pleased if the Attorney General was up here and
25 saying, "This is what we meant by this. We either intended

1 to include them or we didn't." But unfortunately they
2 didn't and that's why we're spending today and probably
3 part of tomorrow dealing with this issue.

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

5 **MR. BENNETT:** So the issue is how do you
6 deal with it where the law is ambiguous and, quite frankly,
7 either party could be right?

8 So what I'm going to be dealing with is,
9 what is the right decision for this Commission and why it
10 is the right decision.

11 I want to give you a bit of perspective from
12 my clients' viewpoint.

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

14 **MR. BENNETT:** When this inquiry was first
15 announced, there was a relief that there was going to be
16 finally some answers to what happened in Cornwall. I'm not
17 talking about necessarily the truth of the allegations and
18 what happened with each individual incident but what was
19 happening in this community, how was it dealt with by the
20 various institutions. But I have to tell you that given
21 their history and who was involved over time of the very
22 public institutions or various institutions -- I won't even
23 use the word "public" at this point -- and how they feel
24 that they've been burned by those different institutions,
25 and that's why this inquiry was created.

1 There's also a great deal of scepticism
2 around this actual inquiry and we've all heard it. We've
3 read about it in the media over time. And one of the
4 things is that the Commission, through baby steps, has to
5 earn -- I don't know if that's the right word, but I'll say
6 is earning the trust of one of the interested parties of
7 this, which is the survivors of the abuse. They're
8 observing what's happening and they have scepticism about,
9 you know, why was this created; was it created as some
10 people are saying, to get to the truth or is the purpose
11 not to get to the truth, to have a whitewash.

12 Now, I have to say, to date, the Commission
13 has been doing an excellent job from my clients'
14 perspective. They looked at the issue of who got standing
15 and funding, felt that you were fair and heard everyone,
16 that the decision in that was good; how the contextual
17 evidence has been introduced and to set a certain tone for
18 the inquiry and a certain sensitivity to the issue to make
19 sure that all parties have that; similarly how the issue
20 of counselling. They're looking at this going, "You know
21 this inquiry seems to be getting it. They seem to be going
22 where we want them to. We're starting to develop some
23 confidence in them."

24 The difficulty is, is some of these issues,
25 they look at every single issue and they look at every

1 single one and say, "How is this going to affect the
2 credibility of this?"

3 When we first applied for standing, we
4 indicated one of the things that we wanted to do was to
5 assist the inquiry in having a handle on how the inquiry is
6 affecting the survivors and in lessening the impact of
7 witnesses who have been abused.

8 Well, quite frankly, the credibility is very
9 important and one of the aspects of this, and part 2
10 especially is important, it is for the healing of those who
11 have gone through this experience and how the -- this issue
12 and both that of the witness will have a huge impact on the
13 wellbeing of the survivors, their families and their
14 community.

15 And the concern is that the decision to not
16 include the Diocese will seriously undermine your ability
17 to get to what others are calling the bottom of this or
18 what Mr. Bryant referred to as the bottom of this, and that
19 once again people will not know exactly what really went
20 on.

21 And the danger with that is not that your
22 recommendations may not be excellent at the end of the day,
23 because I am quite confident, at the end of the day, we are
24 going to see some very good recommendations come out of
25 this inquiry, but there will always be, if the Diocese is

1 not involved, a bit of suspicion or a cloud over any
2 recommendations no matter how great they are, that perhaps
3 the inquiry did not have a full picture of what happened.

4 And I want to relate a story to you. In my
5 life away from this inquiry, I have a fulltime mediation
6 practice. That is really what I am. I am a mediator and I
7 have been doing it for eight years. And one of the things
8 we always do is lawyers come in and they build up their
9 case "My case is fabulous for this reason." The other
10 counsel will say "That..."

11 And the one thing I can always get them to
12 agree on, on the right day, with the right judge, a
13 decision can go any way.

14 And what we are asking you is to have this
15 be the right day and you be the right judge.

16 **THE COMMISSIONER:** Thank you.

17 That is very good of you.

18 **(LAUGHTER/RIRES)**

19 **THE COMMISSIONER:** I've got to tell you
20 though that I do have some concerns about what you are
21 telling me, and I think we have learned that alleged
22 victims have gone through something -- a life experience
23 that none of us would want to experience.

24 And so when you are saying, well, the
25 credibility of the inquiry will be undermined because I

1 find them in the law and in my heart-of-heart as a judge,
2 let's assume I must make the decision that the Church is
3 not a public institution. I find that a little difficult
4 then that I would be spurned, the inquiry would be spurned
5 because we didn't go your way.

6 **MR. BENNETT:** Well ---

7 **THE COMMISSIONER:** I find that -- I find
8 that a little difficult you see.

9 **MR. BENNETT:** I can understand that and I
10 was a bit uncomfortable when I was putting this proposition
11 forward, but ---

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

13 **MR. BENNETT:** --- that is the reality that
14 is out there and regardless of how well counsel and how
15 well we may be able to -- I don't necessarily agree with
16 that and clearly, because my view, as I said, I think both
17 sides are equally compelling.

18 But let's say, for example, you are -- you
19 were to side with the Diocese on this issue and accept
20 that, and from your perspective, Mr. Sherriff-Scott's
21 arguments had more weight.

22 Clearly, that is the way you have to go.

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

24 **MR. BENNETT:** But when we go back and
25 explain to our clients, they are not going to care about

1 the niceties of the law; they are going to quite frankly
2 say, "This is another example of the justice system out to
3 get us." And whether we like it or not, that is a reality
4 and that is what -- and that is why I am saying where you
5 are sitting there, you've got to balance this and you've
6 got an extremely difficult job and I don't envy you. You
7 are going to have lots of difficult -- and this is very
8 difficult because it affects the future of this inquiry.

9 But as you are balancing that, and you are
10 looking and saying "Well, I'm not really sure that
11 actually..." Maybe they both are compelling. I ---

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

13 **MR. BENNETT:** --- you know, as I looked at
14 this I, you know, I am not quite sure, maybe -- well, you
15 have to say, "What was the broader intent when this was set
16 up? What will be best for this inquiry? What is..." Given
17 that, have those things that -- maybe in the back of your
18 mind; maybe they have to come to the forefront. That is
19 all we are asking.

20 **THE COMMISSIONER:** No, I understand that and
21 my lament was that I think that the Commission, and I don't
22 mean 'moi' ---

23 **THE COMMISSIONER:** Yes. Yes.

24 **THE COMMISSIONER:** --- I mean the
25 Commission, has worked long and hard to establish that, if

1 anything else, if nothing else, we are going to be fair,
2 and I am not asking for the Court of Public Opinion to be
3 behind any and all decisions of the Commission, but I am
4 saying to all parties, to the Diocese, if I declare them to
5 be a public institution, that they come back the next
6 morning saying, "We either appealed or you people have
7 appealed or we are here and we are going to function within
8 the terms of the Commission."

9 And so I suppose my only lament is that --
10 to put it cynically, I am not going to be courting the
11 Court of Public Opinion in making my decision.

12 **MR. BENNETT:** And I guess with all fairness,
13 that is why you get to sit up there by yourself because
14 you've got to make those decisions.

15 **THE COMMISSIONER:** Ah, but the Divisional
16 Court will be three. So there you go; three wise people.
17 Thank you very much for ---

18 **MR. BENNETT:** Thank you.

19 **THE COMMISSIONER:** --- a very good
20 presentation, sir.

21 Thank you.

22 Yes, sir.

23 **MR. CALLAGHAN:** Good afternoon, Mr.
24 Commissioner.

25 **THE COMMISSIONER:** How are you doing today?

1 MR. CALLAGHAN: Well. Thank you.

2 THE COMMISSIONER: Is it warm in here ---

3 MR. CALLAGHAN: I'm boiling ---

4 THE COMMISSIONER: --- or is it just me?

5 MR. CALLAGHAN: I was just saying and I was

6 -- I don't know if I am coming down with something or I am

7 hot ---

8 LE COMMISSAIRE: Baissez la chaleur.

9 MR. CALLAGHAN: --- or both.

10 THE COMMISSIONER: All right.

11 Well, nothing but hot air in here either.

12 MR. CALLAGHAN: Not yet; it's coming.

13 THE COMMISSIONER: All right, all right.

14 (LAUGHTER/RIRES)

15 MR. CALLAGHAN: Shall I proceed?

16 THE COMMISSIONER: Hang on. Just give me a

17 moment here.

18 MR. CALLAGHAN: Fine.

19 THE COMMISSIONER: I am going to get your

20 materials.

21 MR. CALLAGHAN: I believe I am D-1 and they

22 should have ---

23 THE COMMISSIONER: Yes.

24 MR. CALLAGHAN: --- a large book for you.

25 THE COMMISSIONER: Go ahead.

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

2 **MR. CALLAGHAN:** Mr. Commissioner, the
3 difficulty that I think people are having here in respect
4 of this particular issue, and it has been articulated by
5 others, is the import of it; that is what happens if the
6 Diocese is not a public institution?

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

8 **MR. CALLAGHAN:** The structure of this motion
9 in hindsight is somewhat problematic. I think that it
10 should have been made clear, both by Commission counsel and
11 by all the parties, as to what they believe the import of
12 your decision is.

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

14 **MR. CALLAGHAN:** That would address -- what
15 Mr. Bennett's is talking about, is what the public is to
16 understand. It would address the concerns perhaps by
17 others expressed outside, who have not participated, that
18 they might well have participated had they known the full
19 impact of this.

20 And, thirdly, if this case or this issue
21 goes elsewhere to get some context, true context to a
22 different Court. Like so much in life, if I had no
23 difficulty understanding that the impact shouldn't be
24 enormous, but the fear that it might be has brought us to
25 say that we need full participation of the parties,

1 including the Diocese, to, as others have said, get to the
2 bottom of what happened and how one might avoid a future
3 occurrence.

4 The -- what drew us into the discussion was
5 a letter provided by Commission counsel outlining the
6 position of the Diocese, and I am referring to the letter
7 of February 20, 2006 -- I believe it is Tab 11 of the book
8 -- and I am referring to the second paragraph wherein the
9 Diocese, as being reported by Commission counsel, says --
10 it says:

11 "The Diocese has told us that it is not
12 a public institution and therefore
13 while it wishes to 'participate and
14 cooperate fully' any examination should
15 be limited to its institutional
16 response with public institutions such
17 as the preparation of an interagency
18 protocol on sexual abuse or any
19 investigation it may have done
20 regarding its clergy that it did
21 jointly with the public institution or
22 otherwise shared with a public
23 institution."

24 I can say emphatically for the Cornwall
25 Police Services and it probably goes for the OPP, there was

1 no joint investigation. That is not how the police
2 operate.
3 But it does show an intention to limit participation and
4 that is what has drawn us here because, frankly, I don't
5 think that the end result that -- it should limit
6 participation. I think the summons power, as witnesses,
7 allows you to summons both the Diocese and their documents.
8 I don't think the powers under Section 5(2) with respect to
9 notice of misconduct are limited in any way and I think
10 that there is wide breadth.
11 But there is this fear because it is not being addressed up
12 front and that is what brings us here because, as has been
13 articulated, I think it has been articulated by everybody -
14 --

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

16 **MR. CALLAGHAN:** --- the concern isn't as
17 expressed in this letter, that is the interactions with the
18 Diocese and the other institutions. Presumably, you will
19 get that in part from the other institutions.

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

21 **MR. CALLAGHAN:** It is that we are talking
22 about acts of commission, that is what they did, and acts
23 of omission, that is what they didn't do.
24 And it is difficult because I would have thought all of
25 that would fall under the rubric of an inquiry of this

1 nature.

2 So, I make my comments prefaced on the incomplete
3 understanding, because it isn't being argued -- I was so
4 quickly told, when I put in my factum -- the import of the
5 decision, that really what we are here is -- I don't want
6 to call it a sterile exercise, but it does come down to a
7 bit of a sterile exercise as to what the words "public
8 institution" means.

9 Unlike others -- once again I have complete clarity as to
10 what public institution means and it includes the Diocese;
11 it will be of no surprise.

12 But I raise that upfront because I think we are a bit of
13 shadow boxing here.

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

15 **MR. CALLAGHAN:** We are not actually certain
16 what we are doing. I mean, ideally, we would have had all
17 the documents relative to the Diocese here. So, you had
18 some context as to what their involvement is.

19 And I don't think we can leave it as a sterile discussion
20 on the issue of public institution. I will try to go
21 beyond that, but that is the difficulty.

22 So I raise or start my argument with that caveat.

23 I think the starting point as being articulated in others
24 is your Order-in-Council.

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

1 **MR. CALLAGHAN:** And I think that there has
2 been expressed and there is being expressed an unfortunate
3 limitation on the intent of the Order-in-Council.
4 This is an inquiry called as a matter of public concern.
5 It is not just an inquiry into the administration of
6 justice. If anyone needs a declaration of public concern,
7 and Mr. Manson -- Professor Manson correctly indicated that
8 there probably isn't any authority that one is needed, but
9 it is clearly encapsulated in the first proviso of the
10 Order-in-Council. It is -- and the Order-in-Council for
11 the -- can be found at Tab 1 of my material, if that helps.

12 And the Order-in-Council proviso says:

13 "Whereas allegations of abuse of young
14 people have surrounded the City of
15 Cornwall and its citizens for many
16 years. The police investigations and
17 criminal prosecutions relating to these
18 allegations have concluded. Community
19 members have indicated that a public
20 inquiry will encourage individual and
21 community healing."

22 Now, if that is not an expression of a public concern with
23 respect to allegations of abuse of young people, then I
24 don't know what one would be.

25 When one looks then at the mandate, and it is important

1 that we don't just focus on the administration of justice,
2 because as we heard earlier from the contextual witnesses,
3 this is a problem that is far wider than Cornwall and it
4 should not be -- there should be no community in Ontario
5 that is smug enough to think it isn't.

6 The grooming of young children is happening elsewhere and
7 it is not an administrative justice problem alone.

8 And if one goes to the mandate, which is at paragraph 2.

9 The mandate says:

10 "The Commission shall inquire into and
11 report on the institutional response of
12 the justice system and..."

13 And!

14 "...other public institutions including
15 the interaction of that response with
16 other public and community sectors in
17 relation to:

18 a) allegations of historical abuse
19 of young people in the Cornwall
20 area including the policies and
21 practices then in place to
22 respond to such allegations, and

23 b) the creation and development of
24 policies and practices that were
25 designed to improve the response

1 what, when, where, how regarding what the Attorney General
2 said, et cetera.

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

4 **MR. CALLAGHAN:** I think you have to look at
5 the Order in Council with respect to some of the historical
6 context, but I don't think you can rely on a statement by
7 the Attorney General or anybody else as to what the intent
8 of the Order in Council is.

9 For that proposition I refer to the
10 *Consortium* case which should be with the -- it was handed
11 up, Mr. Commissioner. It's not in the bundle that was
12 provided.

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

14 **MR. CALLAGHAN:** And I say this because I
15 think it's important, when we deal with the Order in
16 Council, when we deal with -- because this issue, Mr.
17 Commissioner, I think you're going to see time and time
18 again -- I'm not sure it makes an enormous difference to
19 the discussion regarding public institutions, but I suspect
20 we should be on the right track as to what we can look at
21 and what we can't look at.

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

23 **MR. CALLAGHAN:** And what use we can make of
24 it.

25 In this case, the *Consortium* case was a

1 situation wherein it was a land development -- inquiry into
2 a land development setup by a municipality and there was an
3 issue that it was a colourable proceeding insofar as it was
4 intended to be a disguised criminal inquiry.

5 And the intention by the Council was to call
6 various municipal members to get their intentions as to why
7 they passed the resolution that led to the public inquiry,
8 and at paragraph 44, the Supreme Court of Canada says --
9 Binnie speaking:

10 "This case provides a good illustration
11 of why the rule in Thorn's Hardware is
12 salutary. In that case, the Court was
13 invited to concluded that federal
14 cabinet was motivated by crass and
15 improper financial considerations to
16 extend the boundaries of St. John's
17 Harbour to include new deep water
18 liquid bulk terminals which Irving Oil
19 and its wholly-owned subsidiaries had
20 carefully located outside the previous
21 harbour limits. The result was that
22 the harbour dues not previously payable
23 at the new facility became payable."

24 Dickson, for the Court, said:

25 "Counsel for the Appellants was

1 critical of a failure of the Federal
2 Court of Appeal to examine and weigh
3 the evidence for the purpose of
4 determining whether the Governor and
5 Council had been motivated by improper
6 motives in passing the impugned Order
7 in Council. We have invited to
8 undertake such an examination, but I
9 think that with all due respect, we
10 must decline. It is neither our duty
11 nor our right to investigate the
12 motives which impelled the federal
13 cabinet to pass the Order in Council.
14 The motives of a legislative body
15 composed of numerous persons are
16 unknowable except by what it lacks.
17 Here the municipal council possessed a
18 section 100 power and exercised it in
19 the form of a resolution which speaks
20 for itself."

21 So I think when one considers the Order in
22 Council, one has to consider it's speaking for itself and
23 that the verbiage around what someone said and didn't say
24 isn't particularly helpful.

25 Frankly, I have no difficulty with

1 understanding what a public institution is, because I think
2 it is informed by the case law around the phrase "public"
3 and even the word "institution". And I think you have to
4 look at similar contexts.

5 The word "institution" I don't think anybody
6 has debated, but it's worth looking at that Tufford Funeral
7 Home case at Tab 12. In that case the judge goes to the
8 dictionary definitions using the ordinary meaning approach,
9 and he's at page 639, the very bottom. He cites Maxwell
10 interpretations and then says:

11 "I was given various definitions of
12 'institution'. The new Oxford
13 Dictionary defines "institution" as
14 'organization; promotion of some public
15 object; religious, charitable,
16 reformatory, etc; building used by
17 this, especially population; building
18 used by a benevolent or educational
19 institution...' And then it goes on.
20 The Oxford English Dictionary gives the
21 definition: 'an establishment,
22 organization or association instituted
23 for the promotion of some object,
24 especially one of public or general
25 utility; religious, charitable,

1 educational, etc., example: a church,
2 school, college, hospital, asylum,
3 reformatory, mission or the like.'
4 It would appear that the connotation of
5 institution bears with it the concept
6 of having a public object."

7 And so the definition relied upon for
8 institution includes religious, charitable and educational,
9 all of which fit the Diocese insofar as their works go.

10 If one then focuses on the word "public",
11 Mr. Manson took you to the *Struthers* case from 1900. And
12 it's the *Struthers* case that actually hits on the proper
13 definitional tone. And the *Struthers* case is at Tab 14,
14 and I'm at page 231. And it's the phrase that was read,
15 but I'd like to put a little different emphasis on it.

16 **THE COMMISSIONER:** How about 221?

17 **MR. CALLAGHAN:** Two-twenty-one (221). Did I
18 say -- sorry, my apologies.

19 **THE COMMISSIONER:** You did say 231.

20 **MR. CALLAGHAN:** My apologies.

21 "That an institution established for
22 private gain or is held in a private
23 hand is not necessarily inconsistent
24 with its being in its nature of a
25 public character."

1 The phrase "public character" you will see
2 repeated in other cases, and that is the genesis of what
3 public means; a public institution. It is not
4 governmental. It is an institution with a public
5 character.

6 It goes on to say:

7 "In Attorney General v. Pierce, the
8 question was as to the meaning of the
9 word 'public' as applied to charities,
10 where Hardwick was of the opinion that
11 the word 'public' was only by way of
12 description of a nature and not by way
13 of distinguishing one charity from
14 another. The Charter or the Crown
15 cannot make a charity more or less
16 public but only more permanent than it
17 otherwise would be, but it is the
18 extensiveness which will constitute it
19 as a public one."

20 Now, it should be noted that, of course, the
21 Diocese has a public Charter passed by the Province of
22 Ontario or enacted.

23 If one then goes to the *Aeric* decision, and
24 this was, again, a decision that was referred to by Mr.
25 Manson ---

1 **THE COMMISSIONER:** Tab 15?

2 **MR. CALLAGHAN:** Tab 15, my apologies, page
3 397. And that had to do with a library. And in that case
4 they were actually looking -- if I could actually go back
5 to 396? It refers to, in paragraph 14 there, it says -- or
6 pardon me, paragraph 14:

7 "The property of every public library
8 and other public institutions."

9 So the exact wording that appears here,
10 "public institution" and this was an issue about the
11 Conference Board of Canada's library.

12 And if you go to paragraph 6 -- and it
13 becomes an evidentiary issue as to whether they meet the
14 public character test. And in this case, paragraph 6, it
15 says:

16 "Although dictionary definitions of
17 'public' are of some assistance and
18 were referred to by both counsel, no
19 single dictionary definition of the
20 word 'public' resolves the issue before
21 us. The word 'public' as used in the
22 *Assessment Act* should be giving a
23 meaning consistent with its plain,
24 ordinary meaning and its use in the
25 *Assessment Act*, having in mind the

1 underlying purpose of the Act and the
2 exemptions from taxation set forth in
3 the Act. Further, the federal
4 government's characterization of the
5 Conference Board as a charitable
6 institution and the fact that the
7 Conference Board is a non-profit
8 corporation are not determinative of
9 the issue whether the Conference Board
10 is a public institution, although those
11 factors do make that position more
12 plausible. The evidence going to the
13 Conference Board activities and
14 undertakings is not in any real
15 dispute. While there may be little
16 doubt that the public generally
17 benefits from most of the Conference
18 Board's work, it is apparent the work
19 of the Conference Board is primarily
20 intended to benefit its subscribers.
21 The extent to which the public has
22 direct access to the Conference Board
23 through its unencumbered membership
24 rules enhances the Respondent's
25 position. It does not convert an

1 institution intended to provide a
2 service, generally economic, data and
3 forensic, to its subscribers from a
4 membership or subscriber-oriented
5 institution to a public institution.
6 Similarly, public access to the
7 Respondent's library seems to us to be
8 more theoretical than real. The public
9 is generally unaware of the
10 Respondent's library facilities and
11 does not make use of them to any
12 significant degree. The Respondent
13 does not attempt to market its Ottawa
14 library facilities or its telephone
15 information service to the public."

16 And here is where the test is set out:

17 "In our opinion, it is important to
18 consider not only the public's capacity
19 to benefit from the Respondent's
20 undertakings, but also the extent to
21 which the public is involved and is
22 intended to be involved in the
23 Respondent's work and facilities. It
24 seems to us that the crucial question
25 to be considered is what is the true

1 nature and character of the Conference
2 Board's undertaking?"

3 And it goes down at the very bottom of
4 paragraph 10:

5 "The public character or otherwise of
6 the institution is the crucial issue.
7 As stated, this requires a
8 consideration of the Board and of the
9 Respondent's service-based
10 undertakings."

11 So basically we're into a fact-based
12 inquiry. The same language, public character, was provided
13 by Commission counsel when they provided us the
14 *Lindenburger v. United Church of Canada* decision. I'm not
15 sure where the Commission's technology people are going to
16 find it, but it's somewhere. And in the decision of
17 Rosenberg, J., which was the decision upheld in the Court
18 of Appeal at paragraph 21, and this case dealt with the
19 right of courts to apply *certiorari* to religious orders or
20 religious institutions. Paragraph 21, it says:

21 "On the application to quash, it was
22 argued that the common law tradition
23 has not been affected by the *Judicial*
24 *Review Procedure Act*. As a church,
25 courts do not exercise a statutory

1 power of decision. The right to
2 intervene in church affairs should be
3 rarely exercised by the Court.
4 However, since the Church is a creature
5 of statute of both the federal and
6 provincial legislature and it is common
7 knowledge that it administers to the
8 spiritual needs of a large segment of
9 the Canadian public, it has sufficient
10 public character..."

11 Again the phrase "public character".

12 "...that it should be amenable to the
13 process of *certiorari*."

14 And it goes on to talk about what those are.

15 At the end of the day, the Court decided not
16 to exercise *certiorari*, but the key was, even in the common
17 law, it's the public character that drives the discussion.

18 And so when you're examining the Church's or
19 the Diocese's role, one has to look at its interaction with
20 others, how it presents itself, how it's presented itself
21 to the Commission and see whether it has a public character
22 here in Cornwall.

23 And we, in our Factum, have addressed a few
24 issues which have come out of the Diocese's standing
25 application. In paragraph 9 of our Factum we cite various

1 charitable works and other works that the Diocese put
2 forward as warranting standing and why they were a pillar
3 of the community.

4 I don't intend to review them. They're in
5 the factum, but clearly they have a public character. They
6 clearly have reached out to the public, not just within the
7 catholic community. Even if it were just the catholic
8 community as was the situation with respect to churches,
9 there's a public character. So the word public cannot be
10 narrowed.

11 I think it also worthy to look at some of
12 the statements by the Council of Catholic Bishops, and I
13 say that because -- I won't go through the history and it
14 sets out somewhat in Mr. Sherriff-Scott's factum, but of
15 course the bishop is, under statute, responsible for all
16 hands et cetera, has a statutory requirement and he's also
17 a member of the Council of Catholic Bishops. And the
18 Council of Catholic Bishops issued a very public document
19 called "From Pain to Hope" and it was in a series of
20 documents to address the concerns relating to the very
21 topic we're talking about here today.

22 It goes through how the Council of Catholic
23 Bishops has tried to deal with the issue and has tried to
24 direct bishops to deal with it at the diocesan level. And
25 if I could take you to page 21 -- and when you read the

1 document you'll see that, you know, they're responding to
2 the public requirements -- I'm sorry; I meant Tab 6 -- the
3 public issues that we've heard about last day, Badgley, Rix
4 Rogers.

5 **THE COMMISSIONER:** It does say "draft" at
6 the top, but am I ---

7 **MR. CALLAGHAN:** No, I think we're in the
8 wrong document. I'm at -- unless I misspoke. I said Tab
9 6, unless ---

10 **THE COMMISSIONER:** Yes and it's ---

11 **MR. CALLAGHAN:** "From Pain to Hope."

12 **THE COMMISSIONER:** "From Pain to Hope," yes.
13 And on page 21, if you see at the top it says "draft".

14 **MR. ENGELMANN:** It appears that there's two
15 reports under Tab 6. They've put both reports.

16 **MR. CALLAGHAN:** I'm sorry. I think that
17 there have been two reports put on Tab 6. It's "From Pain
18 to Hope" and it's the 1992 as opposed to 2005.

19 **THE COMMISSIONER:** Okay; I see.

20 **MR. CALLAGHAN:** And I should point out, as
21 Commission counsel noted, what they've done is there's a
22 follow-up report I was going to speak about in just a
23 moment, done in 2005, I believe, which is first in your tab
24 and behind that is the 1992 report which was indeed
25 preceded -- I don't have any that were preceded by 1987.

1 **THE COMMISSIONER:** Okay.

2 So you're on the second report, page 21.

3 **MR. CALLAGHAN:** Right.

4 **THE COMMISSIONER:** I guess with respect to
5 the first one, though, my comment is that -- "From Pain to
6 Hope"?

7 **MR. CALLAGHAN:** Right.

8 **THE COMMISSIONER:** But the document I have
9 shows "draft" "The bishop's duty to delegate," et cetera --
10 well, all of those.

11 Are you saying that they are still draft or
12 are you saying that ---

13 **MR. CALLAGHAN:** Well, I think what was on
14 the second one was a report in 2005 as to work to be done
15 and then there was a proposal for the working group
16 regarding the protocol and that was draft; in other words -
17 --

18 **THE COMMISSIONER:** Okay.

19 **MR. CALLAGHAN:** --- the comments in the
20 underlying report were not draft.

21 **THE COMMISSIONER:** Okay. So page 21 ---

22 **MR. CALLAGHAN:** Right.

23 **THE COMMISSIONER:** --- 'Perspectives of the
24 Mandate.'

25 **MR. CALLAGHAN:** Right.

1 **THE COMMISSIONER:** Okay.

2 **MR. CALLAGHAN:** And if I could take you down
3 to A.

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

5 **MR. CALLAGHAN:** It says:

6 "As a first part of our mandate we were
7 asked to complete and expand the 1987
8 guidelines prepared by the Canadian
9 Conference of Catholic Bishops. We
10 noted, with satisfaction, that the
11 bishops' decision was taken shortly
12 after major government initiatives and
13 preceded most professional corporate
14 bodies in this respect."

15 And then they go on to talk about Badgley
16 and Rix Rogers. Down at the bottom they say:

17 "In 1987, the ecclesiastical
18 authorities had reacted in a
19 predictable and normal manner given the
20 circumstances."

21 In other words, they attempted to respond to
22 the crisis resulting from the scandal brought about by
23 disclosures of child sexual abuse by priest or religious.

24 Three years later, at the end of 1989, this
25 led the bishops to ask that the guidelines be expanded and

1 completed.

2 Going down the page, it says:

3 "At that time, however, the public was
4 not sufficiently conscious of an
5 essential element in the problem of
6 abuse. The ideal breeding ground for
7 the development and repetition of child
8 sexual abuse is a general conspiracy of
9 silence motivated by the fear of
10 scandal and has major repercussions for
11 the institutions directly or indirectly
12 concerned. A family is shaken by the
13 incestuous relationship between father
14 and daughter coming to light. The good
15 name of a profession is smeared by the
16 publication of facts implicating some
17 of its members and reprehensible acts
18 against children for whom they were
19 responsible. The Church finds itself
20 in a position that contradicts its own
21 message when a priest or religious is
22 accused of child sexual abuse."

23 It then goes on at page 24. In this context
24 the report that the ad hoc committee -- this ad hoc
25 committee issued was not to a limited audience. It was to

1 the greater public and it says:

2 "1) in contrast to what was done in
3 1987 we are not simply formulating
4 guidelines to be communicated to the
5 bishops alone to help them draft their
6 own plans. The final report of the ad
7 hoc committee will be available to
8 anyone interested in joining the fight
9 against the current flood of sexual
10 abuse cases, regardless of the identity
11 of the abusers. The bishops will no
12 longer feel that they are the only ones
13 expected to take action."

14 And then paragraph 2:

15 "Unlike the 1987 text our
16 recommendations are addressed to a much
17 wider audience including those at the
18 crossroads of the Canadian church and
19 the Canadian society; catholic men and
20 women in Canada; dioceses and bishops;
21 those responsible for priestly
22 formation; those responsible for
23 clergy; the Canadian Conference of
24 Catholic Bishops.

25 Three:

1 "In addition, a number of our
2 recommendations are specifically
3 intended to break through the wall of
4 silence that has been and continues to
5 be a key factor in allowing abusers to
6 persist for years in their intolerable
7 behaviour towards children."

8 Then they go on to make recommendations
9 which we noted are a factum which include the appointment
10 of a bishop's delegate for the purpose of investigating and
11 they list a number of investigations on the back.

12 And then if you go to page 26 under
13 "Pastoral care of the victims and their families," the
14 second paragraph:

15 "We believe that this touches on an
16 essential part of the church's mission;
17 compassion for the victims of
18 injustice. This is true especially
19 when the injustice is perpetrated by a
20 member of the church personnel. The
21 direct and personal responsibility of
22 the abuser for the deed should not
23 prevent the ecclesiastical community
24 from showing kindness and compassion to
25 innocent victims. Too often in the

1 past the uneasiness felt by Catholics
2 in such circumstances prevented them
3 from responding adequately to the
4 victims. Consequently, the victims and
5 their families once more felt rejected.
6 The word "revictimization" has been
7 used to denote the second ordeal."

8 If you go over to paragraph or page 27 at
9 the bottom, it goes on to say:

10 "A second focus needed in pastoral care
11 may be less evident at first glance.
12 It involves restoring the confidence
13 lost in an institution which that,
14 through the misdeeds of one of its
15 ministers, betrayed this confidence.
16 Children should be able to rely
17 instinctively and implicitly on the
18 good care of their parents. They come
19 to learn through repeated testing on
20 their part that their mother and father
21 are always there ready to meet their
22 primary needs.

23 As they pass from early childhood, the
24 parents teach them that they can extend
25 this act and implicit trust to other

1 special individuals and that the
2 capacity to care about the welfare of
3 children can be found in other people;
4 adults they meet on a regular basis,
5 including members of the extended
6 family, daycare workers, teachers and
7 priests.

8 For children sexually abused by a
9 priest or a religious this entire
10 system of protection and competence is
11 destroyed. Children feel that the
12 basis on which they have built
13 relationships with a small group of
14 special people has collapsed beneath
15 them. The damages done extend well
16 beyond a deep psychological wound. It
17 causes radical soul searching about the
18 meaning of life and the pertinence of
19 all that has been taught about God and
20 religion. This sort of spiritual
21 crisis goes so far as to render
22 impossible, at least temporarily, the
23 capacity to forgive."

24 And finally, over at page 39, "We believe..."

25 "We believe the publication and wide

1 distribution of these discussion
2 materials has engaged our church in a
3 movement of hope and there has been
4 positive response to the booklet in
5 trying to shatter the conspiracy of
6 silence that was a major factor in the
7 repeated incidences of abuse in the
8 past. We call upon all Catholics to
9 make a commitment to react vigorously
10 against all forms of sexual abuse
11 including that perpetrated by ministers
12 of the Church.

13 We feel that the most appropriate way
14 for the church to address the wrongs
15 committed by some of its ministers
16 against children is to cooperate
17 closely with the child sexual abuse
18 programs already begun by Health and
19 Welfare Canada, that the federal and
20 provincial territory governments
21 continue to support community-based
22 primary prevention public awareness
23 programs so that all sectors of society
24 are encouraged to participate in the
25 prevention of child sexual abuse."

1 The records would indicate that the
2 archdiocese -- the Diocese did pass a protocol, and it was
3 at Tab 10, in 1995.

4 I read these sections for this reason.
5 "From Pain to Hope" clearly demonstrates that the issue,
6 aside from all the issues that the Diocese has been doing,
7 a very public pronouncement of the Church trying to grapple
8 with an issue in the public domain and they have developed
9 protocols. They've developed issues about how they, with
10 public character -- and I use that word because of the case
11 law -- public character as an institution, has attempted to
12 address this problem.

13 And so I come back to the Order-in-Council.
14 I think we make a grave mistake by limiting this to the
15 criminal justice system and those who are government
16 agencies. I don't think that was the intention of public
17 institutions.

18 I think if one goes back to the Order-in-
19 Council one talks about public institutions and then they
20 talk about public and community sectors. Well, the public
21 and community sectors, properly understood, in my
22 submission, are the people, those out in the public, and
23 whether every child under the age of 18 is the public or
24 whether every altar boy is a community sector is a little
25 bit of an irrelevancy.

1 The question is, is there's an issue out
2 there and I don't think the definition of public
3 institution can be so confined as to prohibit you from
4 addressing it, particularly in light of the fact that this
5 public institution has taken, that is the Diocese, a very
6 public role, at least in the last 15 to 20 years, and
7 probably should be applauded for that part of it.

8 I don't subscribe to some of the talk
9 earlier by other people making these presentations of
10 slandering people. That's not what this is about. It's
11 about getting to the bottom of things and all public
12 institutions, including the Diocese, have a role to play.

13 **THE COMMISSIONER:** Thank you.

14 So who else do we have?

15 Are we done everyone who argues that the
16 church should be a public institution?

17 **MR. ENGELMANN:** Yes, everyone who's
18 supporting the argument that the Diocese is a public
19 institution has now made submissions, as I understand it.

20 **THE COMMISSIONER:** All right.

21 **MR. ENGELMANN:** Unless there's people I'm
22 not aware of that have indicated they were making oral
23 submissions.

24 **THE COMMISSIONER:** All right.

25 Then I think it would be unfair to ask Mr.

1 Sherriff-Scott to begin his argument now given the time of
2 the day. So why don't we come back at 10:00 o'clock
3 tomorrow morning.

4 I should tell you, so that people can make
5 plans, that I'm being called away on a personal matter and
6 so Thursday will not be a sitting day, and depending on how
7 the flights go for Wednesday I may have to leave at 1:00
8 o'clock.

9 So what we'll do is tomorrow once I get
10 further details and we'll see how we go with this argument,
11 we'll see where we go on the constitutional argument.

12 All right. Thank you very much.

13 **THE REGISTRAR:** Order. All rise. À
14 l'ordre. Veuillez vous lever.

15 This hearing is now adjourned. L'audience
16 est ajournée.

17 --- Upon adjourning at 16:40 p.m./

18 L'audience est ajournée à 16h40

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