

**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 24
1 of 2**

RULINGS ON MOTIONS

Held at :

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

Monday, May 1, 2006

Tenue à:

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

Lundi, le 1 mai 2006

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Mr. Pierre R. Dumais M ^e Simon Ruel	Commission Counsel
Ms. Louise Mongeon	Registrar
Ms. Reena Lalji	Cornwall Police Service Board
Mr. Neil Kozloff Acting Supt. Colleen McQuade Ms. G. Saccoccio Brannan,Q.C.	Ontario Provincial Police
M ^e Claude Rouleau Mr. Mike Lawless Mr. Lorenzo D. Policelli	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Christopher Thompson	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee Ms. Lauren Schellenberger	Victims Group
Mr. David Bennett	The Men's Project
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Guiseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Mike Lawless M ^e Claude Rouleau Mr. Lorenzo D. Policelli	Ms. Marg Hughes

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

2 L'audience débute à 10:08

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

6 Please be seated. Veuillez vous asseoir.

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

8 So we have convened this morning so that we
9 can do a number of things. First of all, I will be
10 advising you that with respect to Father MacDonald's motion
11 to have parts of the transcript or the exhibits taken away
12 from the web cast, that matter is under reserve and I will
13 advise you in due course, as to what date I will be
14 rendering that decision.

15 So this morning I have two decisions to
16 give; one with respect to the Ruling on the Terms of
17 Reference and the other, a Ruling on the Jurisdictional
18 Motion. After that, before we take a break, I will be
19 addressing -- making some further comments as is my want
20 from time to time, when dealing with matters of the
21 inquiry.

22 So bear with me. Once we finish the
23 rulings, I will have some other further words.

24 So I'd like to begin with the Ruling on the
25 Jurisdictional Motion.

1 --- 1st RULING - JURISDICTIONAL MOTION

2 THE COMMISSIONER : So this matter rises by
3 way of Motion, filed by counsel for Father Charles
4 MacDonald and the Estate of Kenneth Séguin. In their
5 written Motion materials, the Applicants requested an order
6 that the Commission has no constitutional or other
7 jurisdiction to inquire into specific allegations of sexual
8 abuse or other wrongdoings made by alleged victims against
9 the Applicants.

10 In their written motion materials, the
11 Applicants also ask that a question by way of a stated case
12 be referred to the divisional court regarding the
13 jurisdictional and constitutional authority of the
14 Commission to hear evidence regarding past wrongdoings and
15 allegations from past alleged victims.

16 The Citizens for Community Renewal, the
17 Victims Group, the Ontario Provincial Police, the Ontario
18 Provincial Police Association and the Cornwall Community
19 Police Service filed written submissions.

20 On March 29th, 2006, I also heard oral
21 arguments from these parties. Counsel for Jacques Leduc
22 and The Men's Project also gave brief oral submissions.

23 The Cornwall Public Inquiry was established
24 by Order in Council dated April 14th, 2005. The Order in
25 Council directs the Commission to

1 "... inquire into and report on the
2 institutional response of the justice
3 system and other public institutions,
4 including the interaction of that
5 response with other public and
6 community sectors in relation to
7 allegations of historical abuse of
8 young people in the Cornwall area, ... in
9 order to make recommendations directed
10 to the further improvement of the
11 response in similar circumstances."

12 To fulfill the Commission's mandate, the
13 parties were advised of Commission counsel's intention to
14 call alleged victims of child sexual abuse to testify
15 before the Commission. As stated by Commission counsel at
16 the hearing, the nature of the evidence sought from the
17 victims would be the following; when they complained, to
18 whom they complained, about whom they complained and some
19 brief details about the nature of the complaint and the
20 resulting action or response of the public institutions and
21 their employees and/or officials.

22 The parties were also advised that in all
23 likelihood, the statements that they gave to the police
24 and/or other authorities containing their allegations would
25 be tendered as evidence. The parties were told that those

1 statements would not be tendered for the truth of their
2 contents.

3 Commission counsel indicated that the
4 purpose of calling evidence from alleged victims is to
5 examine the response of the justice system and other public
6 institutions.

7 Commission counsel and I have clearly and
8 repeatedly said that it was not the intention of the
9 Commission to try or retry the criminal or civil matters
10 arising out of the facts that are part of my mandate. In
11 fact, this was expressly prohibited by section 7 of the
12 Order in Council, which provides quite clearly that:

13 "The Commission shall perform its
14 duties without expressing any
15 conclusion or recommendation regarding
16 the civil or criminal liability of any
17 person or organization. The Commission
18 in the conduct of its inquiry shall
19 ensure that it does not interfere with
20 any ongoing legal proceedings relating
21 to those matters."

22 In my opening remarks made on February 13th,
23 2006, I stressed that and I quote:

24 "There have been criminal proceedings
25 in the courts and there are ongoing

1 civil proceedings. This inquiry does
2 not and cannot seek, in effect, to try
3 or re-try these matters. It is not
4 within my mandate to determine who did
5 what to whom, although I may make
6 findings of fact about what allegations
7 were made to various public
8 institutions and how those institutions
9 responded, including the interaction of
10 the response with other public and
11 community sectors."

12 This being said, I am asked to find that the
13 Commission has no constitutional or other jurisdiction to
14 inquire into specific allegations of sexual abuse or other
15 wrongdoings made by alleged victims against the Applicants.

16 I first note that counsel for the Applicants
17 did not challenge the validity of the Order in Council but
18 stated that the Commission would exceed its jurisdiction
19 and delve into the area of criminal law by calling evidence
20 from the alleged victims. The core of the Applicants'
21 position is based on the assertion that by calling evidence
22 from the alleged victims the Commission would be in fact
23 trying or retrying those matters and leave the Applicants
24 factually guilty, with no recourse to clear their names.

25 I do not agree with those arguments. The

1 Commission is entitled to call alleged victims of sexual
2 abuse for the purposes set out by Commission counsel. As
3 pointed out in the case of *Starr v. Houlden*, the Supreme
4 Court and other courts have consistently upheld the
5 validity of provincial commissions of inquiry which may
6 incidentally have an impact upon the federal criminal law
7 and criminal procedure powers, as long as the pith and
8 substance of the commission is firmly anchored to a
9 provincial head of power and that a commission does not
10 purposely or through its effect investigate and determine
11 the criminal responsibility of specific individuals for
12 specific offences.

13 Those principles were repeated by the
14 Supreme Court in *Consortium Developments (Clearwater) v.*
15 *Sarnia* and then recently by the Ontario Divisional Court in
16 *Jakobek v. Toronto*, more commonly known as the Computer
17 Leasing Inquiry. Calling of alleged victims is essential
18 in order for the Commission to investigate the
19 institutional response of the justice system and other
20 public institutions in relation to the allegations of
21 historical abuse of young people.

22 The core of the Commission's mandate is
23 firmly anchored to provincial heads of power and is
24 directed at institutional response of public institutions
25 including Ontario government institutions. As part of its

1 mandate, the Commission will have to review criminal
2 allegations, investigations and criminal proceedings.
3 However, this will be done for the sole purpose of
4 fulfilling the provincial purposes of the inquiry. As
5 pointed out by Mr. Justice Lamer as Commissioner of the
6 Lamer Inquiry in Newfoundland in a ruling on the terms of
7 reference and I quote:

8 "A commission may review the same
9 subject matter as that of a criminal
10 investigation and trial, but it must do
11 so for a different and legitimate
12 provincial purpose."

13 Which is the case here. However, as indicated while the
14 Commission will look at criminal allegations,
15 investigations and proceedings, it is not allowed and does
16 not intend to try or retry cases and make findings
17 expressing an opinion as to criminal or civil
18 responsibility in law.

19 The Applicants relied on *Nelles et al* and
20 *Grange*, an Ontario Court of Appeal decision for the
21 proposition that by calling alleged victims to testify on
22 criminal accusations, the Commission would seriously
23 prejudice the Applicants and leave them factually guilty,
24 without recourses which would not be permitted.

25 *Nelles* concerned an Ontario provincial

1 inquiry into the death of children in a public hospital.
2 Nurse Susan Nelles was charged with first degree murder of
3 four of the children but was discharged at a preliminary
4 inquiry. That inquiry was created to look at the
5 circumstances surrounding the death of children and the
6 subsequent criminal proceedings against Mrs. Nelles. The
7 question was whether the Commissioner could express an
8 opinion as to whether deaths were the result of actions of
9 any main person. The Ontario Court of Appeal answered the
10 question in the negative and found that the Commissioner
11 was authorized to report on the circumstances of deaths,
12 but could not identify any individual who might be
13 responsible for such deaths, as this would be tantamount to
14 a finding of civil or criminal liability.

15 This is not what we're dealing with here.
16 As stated in the Supreme Court in *Krever*, which is a
17 commission of inquiry on the blood system in Canada -- the
18 *Krever* Commission:

19 "The Nelles case was unique as it was
20 dealing with specific incidents and
21 specific individuals during the course
22 of specific investigations."

23 The court pointed out that the test set out in *Nelles* would
24 be appropriate when dealing with commissions investigating
25 a particular crime but not to inquiries engaged in wider

1 investigations, such as this one.

2 In addition, it is now clear since *Krever*,
3 that a commission of inquiry is entitled to draw from the
4 findings of fact appropriate conclusions as to whether
5 there has been misconduct and who appears responsible for
6 it. In that regard, the Applicants' concern with respect
7 to findings of misconduct against them is misplaced. The
8 Commission is allowed to make findings of misconduct and
9 name individuals but such findings considering the mandate
10 of this Commission would be directed at actors of public
11 institutions or at the institutions themselves.

12 I thus have no doubt that, with the caveats
13 set out above, the Commission, as part of its mandate, may
14 allow alleged victims of child sexual abuse to testify
15 before the Commission for the purpose of gauging the action
16 or response of public institutions to the complaints that
17 were made. However, I must say that the concerns expressed
18 by the Applicants are understandable. Any allegations,
19 particularly potentially false allegations made against the
20 Applicants could have serious impacts on their reputations.
21 However, this does not preclude the Commission from hearing
22 the evidence for the purpose set out above.

23 I believe that the true concerns of the
24 Applicants lie not with the jurisdiction of the Commission
25 to call such evidence but with the protection of their

1 reputation and of their privacy.

2 In *Krever*, the Supreme Court stated that:

3 "The conclusions, and I would also say,
4 the hearings of a commission of
5 inquiry, may have an adverse effect on
6 a party or witness to the inquiry. For
7 that reason, procedural fairness is
8 essential as the findings of
9 commissions of inquiry may damage the
10 reputations of witnesses."

11 Father Charles MacDonald is a party before
12 this Commission with full standing, limited to those issues
13 which directly affect his interests.

14 For Phase I of this inquiry, the interests
15 of Mr. Kenneth Séguin are represented by the Ontario
16 Ministry of Community Safety and Correctional Services and
17 Adult Community Corrections who is also a party with full
18 standing.

19 Now, parties with full standing have the
20 right to make opening submissions, access to relevant
21 documents, advance notice of documents which are proposed
22 to be introduced as evidence, advance provision of
23 statements of anticipated evidence, to have a seat at
24 counsel table, an opportunity to suggest witnesses, an
25 opportunity to cross-examine witnesses and an opportunity

1 to make closing submissions. They, thus, have at their
2 disposal a significant array of tools that may be used in
3 order to protect their right to a fair hearing.

4 With respect to privacy, the Applicants may
5 seek the benefit of provisions of the *Public Inquiries Act*.
6 The Order in Council then rules to seek confidentiality
7 measures so that disclosure of evidence and other materials
8 balances the public interest, the principle of open
9 hearings and privacy interests. I am conscious that
10 reputation and privacy are important values to all parties
11 and witnesses. I am required to balance those rights
12 against the public interest and the principle of open
13 hearings. Parties and witnesses can rest assured that I
14 will treat them at all times with dignity and respect.

15 The concerns brought by the Applicants are
16 serious ones but, as indicated, do not affect the
17 jurisdiction of the Commission to call alleged victims for
18 the purposes set out by Commission counsel. The Applicants
19 are entitled to a fair process and can avail themselves of
20 the rights afforded to the parties with standing. Any
21 specific concern of the Applicants will be dealt with on a
22 case-by-case basis applying the provisions of the *Public*
23 *Inquiries Act*, the Order in Council and the Rules.

24 In written motion materials, the Applicants
25 also ask that a question by way of stated case be referred

1 to the divisional court regarding the jurisdiction and
2 constitutional authority of the Commission to hear evidence
3 from alleged victims. The issue was not further discussed
4 in oral arguments. I do not believe that this is a matter
5 for a stated case. The law is clear and the intentions of
6 Commission counsel with respect to the calling of alleged
7 victims have been carefully set out and crafted to stay
8 within the boundaries of the law.

9 I should note that this ruling applies only
10 to Phase I. Phase II is governed by a different set of
11 rules. Both Father MacDonald and the estate of Mr. Séguin
12 and Doug Séguin have standing for Phase II. Should they
13 have concerns with respect to Phase II they may address
14 them in that particular context.

15 I would thus dismiss this Motion, thanking
16 counsel for all parties who had made submissions on this
17 issue and for their thoughtful assistance.

18 --- 2nd RULING - TERMS OF REFERENCE

19 **THE COMMISSIONER:** Now, I wish to make the
20 Ruling with respect to the Terms of Reference.

21 The Cornwall Public Inquiry was established
22 by Order in Council dated April 14th, 2005. The Order in
23 Council directs the Commission to carryout the following
24 mandate:

25 "The Commission shall inquire into and

1 report on the institutional response of
2 the justice system and other public
3 institutions, including the interaction
4 of that response with other public and
5 community sectors in relation to
6 allegations of historical abuse of
7 young people in the Cornwall area,
8 including the policies and practices
9 then in place to respond to such
10 allegations, and the creation and
11 development of policies and practices
12 that were designed to improve the
13 response to allegations of abuse in
14 order to make recommendations directed
15 to the further improvement of the
16 response in similar circumstances."

17 The Order in Council also directs the

18 Commission:

19 "To inquire into and report on
20 processes, services or programs that
21 would encourage community healing and
22 reconciliation in Cornwall."

23 On March 27th and 28th, 2006 I heard arguments
24 from a number of parties on the issue of whether the
25 Diocese of Alexandria-Cornwall is a public institution

1 within the mandate of the Commission.

2 The Citizens for Community Renewal, the
3 Cornwall Community Police Service, the Diocese of
4 Alexandria-Cornwall, The Men's Project and the Victims
5 Group made written and oral submissions on this issue.
6 Aside from the Diocese of Alexandria-Cornwall, all of the
7 parties that made submissions urged me to find that the
8 Diocese is a public institution.

9 Now, when dealing with the question, is the
10 Diocese of Alexandria-Cornwall a public institution, well,
11 let's look at the general principles. At the outset, it is
12 important to emphasize that the language of the Order in
13 Council establishing a commission of inquiry shapes its
14 work. In essence, an inquiry is captive to its mandate,
15 subject to additional constraints that are imposed by the
16 law. It is the mandate which I outlined at the start of
17 this decision that is in issue in this matter.

18 In my view, the question of whether the
19 Diocese of Alexandria-Cornwall is a public institution
20 within the terms of the mandate is a matter of pure
21 statutory interpretation. "Public institution" is not
22 defined in the Order in Council nor in the governing
23 statute. The Order in Council is drafted in broad terms,
24 which is consistent with investigative functions of
25 commissions of inquiry and the role of commissions of

1 inquiry in general. I am of the view that the language of
2 the Order in Council leaves it open for interpretation.

3 Now, let me speak of contextual analysis.
4 Contextual analysis is the modern approach to statutory
5 interpretation. This is the approach that I will apply
6 when interpreting the language of the Order in Council in
7 this case.

8 Simply put, words in isolation are virtually
9 meaningless. The meaning of the text depends upon its
10 context. Here, I refer to Sullivan and Dreiger on the
11 construction of statutes. Recently, in Montreal -- it's
12 the *Montreal City* case -- the Supreme Court of Canada
13 applied the contextual analysis. In that case, the Supreme
14 Court of Canada was dealing with the interpretation of a
15 municipal bylaw. Now, municipal bylaw is analogous to an
16 Order in Council as both are subordinate legislative
17 instruments issued under the authority of a statute by a
18 body with the delegated power to do so.

19 In *Montreal City* the court explained that:

20 "The words to be read are to be read in
21 their entire context and in their
22 grammatical and ordinary sense
23 harmoniously, with the scheme of the
24 Act and with the objects of the Act and
25 the intention of Parliament. The more

1 general the wording adopted by the
2 lawmakers the more important the
3 context becomes."

4 The case went on to state that the context
5 of the legislation involves the consideration of a number
6 of factors: the legislative history, the purpose of the
7 legislation and the immediate context of the legislative
8 provision. In a moment, I will examine each of these
9 factors in turn.

10 Before beginning this analysis, I should say
11 that the parties presented to me a number of cases on the
12 interpretation of the words "public", "institution" and
13 "public institution". Some of the parties also presented
14 dictionary definitions of these words. One such case law
15 example is *University of British Columbia v. Berg* wherein
16 Lamar, Chief Justice wrote the words "public and private
17 have no self-evident meaning and serve as a starting point
18 rather than the conclusion of the analysis in this case."
19 It is not difficult to recognize that such a description
20 does little to further my analysis in this case and
21 highlights the challenge of this interpretive task.

22 Now, a number of cases were also presented
23 to me on section 32 of the *Canadian Charter of Rights and*
24 *Freedoms*. These cases are not helpful in the context of
25 the current analysis.

1 Section 32 makes the Charter applicable to
2 government action, which means that it would only be useful
3 if the scope of my mandate was limited to government
4 bodies. As I will explain, I am of the view that the scope
5 of my mandate is not limited to government bodies.

6 These many cases and definitions have simply
7 highlighted the fact that the interpretation of words in
8 the mandate such as "public" and "institution" for example,
9 is context driven. Accordingly, not much reliance can be
10 placed upon these cases and definitions in addressing the
11 specific issue here.

12 Now, I turn to the legislative history of
13 the Order in Council. The first factor to consider when
14 engaging in a contextual analysis is legislative history.
15 The statutory instrument I must examine is the Order in
16 Council adopted under the *Public Inquiries Act*. There is
17 no legislative history for this particular instrument. The
18 Order in Council is adopted by the Lieutenant Governor and
19 Council of the Province of Ontario and the Commission
20 neither has access to nor is entitled to consider the
21 motives of the Lieutenant Governor and Council for adopting
22 the instrument. That is stated in *Consortium Developments*
23 (*Clearwater*) *Ltd. v. Sarnia*.

24 Now, in my view, this limits the relevance
25 of the evidence that was introduced by the parties on the

1 background leading to the adoption of the Order in Council
2 for this inquiry. Therefore, while the progress and focus
3 of private members' bill 103 and 48, tendered by Mr. Guzzo,
4 may be interesting, private members' bills that were
5 tendered before a different government and that were not
6 passed are of little assistance in determining the
7 intention of the government of the day when it passed the
8 Order in Council establishing this inquiry.

9 Also, in evidence, are a number of
10 pronouncements made by the Attorney General with respect to
11 the Order in Council. For example, in the Legislature on
12 April 19th, 2005 in the context of speaking of his visit to
13 Cornwall and of my appointment to this inquiry, the
14 Attorney General said the following -- and I'm quoting the
15 Honourable Mr. Bryant:

16 "Yes, with the public inquiry under the
17 *Public Inquiries Act* he has all of the
18 tools at his disposal to leave no stone
19 unturned and to provide recommendations
20 that ultimately, we hope, will lead to
21 some reconciliation and healing for the
22 people of Cornwall. Along the way we
23 will work with the Commission as the
24 Commissioner sees fit to ensure that
25 victims get the services they need

1 during what will inevitably be a very
2 painful time for them. Ultimately,
3 with this public inquiry, we will
4 finally get to the bottom of what
5 happened and we'll get recommendations
6 so we can proceed better in the future
7 in a way that not only can everybody
8 have confidence in the system but the
9 victims can feel that justice has been
10 done."

11 And while these comments suggest a broad
12 mandate they, much like the previous private members'
13 bills, are of limited relevance in the true meaning of the
14 Order in Council. They do not shed light on the question
15 of whether the government intended that the Diocese of
16 Alexandria-Cornwall be examined as a public institution.
17 Having said that private members' bills and some comments
18 made by the Attorney General are of limited relevance, I
19 will briefly outline some of the factual background that
20 appears to have preceded the creation of this inquiry. In
21 doing so I acknowledge that this factual background is of
22 limited relevance in interpreting the Order in Council, but
23 I am of the view that it warrants mention.

24 The first of these is that there were --
25 there was, sorry, considerable attention in the Cornwall

1 area with respect to the issue of child sexual abuse;
2 complaints made to authorities and a response of
3 institutions in that regard.

4 Second, a number of alleged perpetrators of
5 historical sexual abuse were employees of the Diocese of
6 Alexandria-Cornwall. However, there were allegations
7 against others as well.

8 Next, the Diocese of Alexandria-Cornwall has
9 stated that it was involved in cooperating with various
10 levels of police investigation in relation to those
11 matters.

12 As well, concerns which stimulated the
13 initial request for a public inquiry appear to have focused
14 mainly on police investigations and judicial proceedings.
15 However, there is evidence that interested members of the
16 Cornwall community also wish the public inquiry to cover
17 the role of the Roman Catholic Church institutions that
18 were involved.

19 Now, even if this factual background were
20 relevant, it is inconclusive with respect to the
21 interpretation of the question before me. Based on the
22 evidence presented by the parties, I would still be left to
23 speculate on the real intention of the government in
24 creating this Commission of Inquiry and whether it wished
25 the Diocese of Alexandria-Cornwall to be examined as a

1 public institution.

2 Now, let me turn to the purpose of the Order
3 in Council.

4 When examining the purpose of the Order in
5 Council, reference must be made to the role of public
6 inquiries in Canada. As Justice Cory explained in *Phillips*
7 *v. Nova Scotia*, commonly known as the commission of inquiry
8 in the *Westray Mine* tragedy, commissions of inquiry are
9 often prompted by tragedies such as industrial disaster,
10 plane crashes, unexplained infant deaths, allegations of
11 widespread child sexual abuse or grave miscarriages of
12 justice.

13 "One of the primary functions of a
14 commission of inquiry is fact finding
15 and such commissions are often convened
16 in the wake of public shock, horror,
17 disillusionment or skepticism in order
18 to discover the truth."

19 Again, a citation from the *Westray Mine*
20 inquiry.

21 "In times of public questioning, stress
22 and concern, public inquiries provide
23 the means for members of a community to
24 be apprised of the conditions
25 pertaining to a worrisome community

1 problem and to be part of the
2 recommendations that are aimed at
3 resolving the problem. The status and
4 high respect of commissioners and the
5 open and public nature of the hearings
6 help to restore public confidence in
7 the institution, situation and
8 processes of the government."

9 Again, that is a quote from the *Westray Mine*
10 case.

11 In this context, the Supreme Court has
12 indicated that the public inquiry's role of investigation
13 and education of the public are of great importance.

14 In my view, those principles justify a broad
15 interpretation of the mandate of public inquiries. As the
16 Commissioner of the Arar inquiry, Associate Chief Justice
17 O'Connor said, and I quote: "The scope of my mandate should
18 be interpreted broadly, and the actions in question must be
19 viewed in context."

20 The specific Order in Council of this
21 inquiry also clearly provides that the government intended
22 that the issues be looked at from the broadest perspective.
23 For example, the Order in Council mentions "individual and
24 community healing", which are encompassing words. The
25 Commission is specifically directed to inquire into

1 processes, services and programs that would encourage
2 community healing and reconciliation in Cornwall.

3 Thus, aside from fact finding and the making
4 of recommendations directed to the further improvement of
5 the response in similar circumstances, an essential purpose
6 of this enquiry is individual and community healing and
7 reconciliation. It is my belief that for healing and
8 reconciliation to be truly effective, all facts,
9 institutions, bodies or individuals that would have any
10 bearing with respect to the allegations of abuse of young
11 people need to be examined by this Commission.

12 Given that the government visibly intended
13 the work of this Commission to be encompassing, and
14 considering the issues this Commission will be facing,
15 namely allegations of abuse against children, the most
16 vulnerable part of our society, I believe that I should be
17 interpreting my mandate as broadly as possible to ensure
18 the fulfillment of these purposes of this inquiry.

19 However, that is not the end of the
20 discussion. A Commission of Inquiry can only go as far as
21 its mandate will allow. A Commission of Inquiry is, in
22 fact, captive to its terms of reference and must therefore
23 consider the rest of the wording of the Order in Council.
24 So I turn to the immediate context of the legislative
25 provision, and that is the third factor to consider.

1 In the case of delegated legislation, the
2 consideration of the immediate context of the legislative
3 provision involves a consideration of the provision itself,
4 the other provisions of the instrument, and the enabling
5 statute. In this case the consideration of the immediate
6 context of the legislative provision involves consideration
7 of the *Public Inquiries Act*, along with the Order in
8 Council.

9 Now with respect to the Public Inquiries
10 Act, Section 2 of that Act grants discretion to Lieutenant
11 Governor in Council, to appoint a public inquiry in the
12 broadest terms, and I quote:

13 "Concerning any matter connected with,
14 or affecting the good government of
15 Ontario, or the conduct of any part of
16 the public business thereof, or of the
17 administration of justice therein, or
18 that the attending Governor in Council
19 declares to be a matter of public
20 concern, and the inquiry is not
21 regulated by any special law..."

22 ...et cetera.

23 Now the Diocese of Alexandria/Cornwall
24 submitted that, in order to cause an inquiry into the
25 matters of a private body, such as the Diocese, the

1 government must declare the matter to be one of public
2 concern under Section 2 of the *Public Inquiries Act*. The
3 Diocese submitted that if such a declaration has not been
4 made, the inquiry may only be directed at governmental
5 matters or bodies under the first branch of Section 2 of
6 the Act, i.e. any matter connected with or affecting the
7 good government of Ontario or the conduct of any part of
8 the public business thereof of the administration of
9 justice therein.

10 It is clear that the Order in Council
11 establishing Cornwall public inquiry does not contain in
12 this explicit declaration of public concern. By way of
13 comparison, the Order in Council for the Walkerton inquiry
14 stated: "The Lieutenant Governor in Council considers it
15 desirable to inquire into the following matters of public
16 concern." However, I believe that the lack of an explicit
17 declaration of public concern is not determinative of the
18 issue before me.

19 Even without a declaration, the government
20 may rely on the first branch of Section 2 of the *Public*
21 *Inquiries Act* to include the Diocese as an institution to
22 be examined. This portion of Section 2 of the *Public*
23 *Inquiries Act* is not directed solely at government
24 institutions. In fact, the language is much broader. An
25 actor may not be a government actor to affect the good

1 government of Ontario.

2 The Diocese cited two cases in which the
3 courts have found that private affairs could not be
4 inquired into in light of the language of the relevant
5 *Provincial Inquiries Act*, that provided that the government
6 may cause an inquiry to be made into and concerning any
7 matter, and I quote: "...connected with the good government
8 of the province or the conduct of a public business
9 thereof." And that's a quote from the *Black Diamond*
10 *Oilfield* case in Carpenter.

11 In those two cases -- I'm sorry, and another
12 *Sargeant v. McPhee* -- in those two cases the inquiries were
13 directed primarily at private affairs; in the first case
14 the private affairs of private companies, and in the second
15 an alleged invasion of privacy of an individual and a Union
16 of which he was the President. Those cases may be
17 distinguished from the case at hand.

18 This inquiry clearly covers government
19 bodies and also bodies in connection with matters of public
20 interest, the most prominent being abuse of young people.
21 In addition, the wording of Section 2 of the *Public*
22 *Inquiries Act* is broader than the provincial statutes
23 considered in those two cases.

24 Under Section 2 of the Ontario Public
25 Inquiries Act, a Commission may be called to inquire into,

1 and I quote: "Any matter connected with, or --"
2 ..and I underline.. "-- affecting the good government of
3 Ontario, the conduct of any part of the public business or
4 the administration of justice."

5 A suggestion that a number of individuals
6 belonging to an organized body having a public character
7 significant influence in the community and who were
8 allegedly involved in the abuse of young people is, in my
9 view, a matter affecting the good government of Ontario. I
10 would add that various legislative provisions deal with the
11 protection of children and impose norms of conduct and
12 obligations.

13 In some cases, positive obligations are
14 imposed by statute such as the duty to report child abuse
15 imposed on professionals dealing with children, including
16 members of the clergy under Section 72 of the *Child and*
17 *Family Services Act* and its predecessors. The suggestion
18 that individuals belonging to a body of the type described
19 above may have known about abuse by its members and failed
20 to report is also, in my view, a matter affecting the good
21 government of Ontario.

22 Finally, when a number of government
23 institutions are involved in the matter, and I quote:
24 "..connected with or affecting the good government of
25 Ontario, the conduct of the business or the administration

1 of justice.." as is the case here, I do not see why a
2 privately incorporated body, concurrently involved in the
3 same matter, could not be included under the same umbrella
4 as the first branch of section 2 of the *Public Inquiries*
5 *Act*.

6 Now as I turn back to the terms of the Order
7 in Council, having determined that an examination of the
8 affairs of the Diocese in relation to the events of
9 Cornwall may be ordered by the government under Section 2
10 of the Public Inquiries Act, I must now determine if this
11 is, in fact, warranted by the wording of the Order in
12 Council.

13 Firstly, I must determine the meaning of
14 institutional response of the justice system and other
15 public institutions. There is no doubt that the Diocese is
16 an institution. The Diocese has, in fact, admitted that it
17 is an institution. "An institution involved in
18 establishment, organization or association instituted for
19 the promotion of some object, especially one of public or
20 general utility." And that's quoted in the Attorney
21 General of Ontario in Tufford Rest Homes.

22 Now, given that the Diocese is an
23 institution, the question is whether -- is it a public
24 institution? In interpreting this phrase, I was asked to
25 apply the associated words rule. And, as stated in

1 *Dreidger*, this rule is properly invoked when two or more
2 words susceptible of analogous meaning are coupled together
3 in a way that invites the reader to look at a common
4 feature between the terms.

5 The Diocese argued the words "public
6 institution" are qualified by the preceding words "justice
7 system". And the Order in Council said that only
8 government institutions could be public institutions. I do
9 not think that the words "justice system" and "other public
10 institutions" are analogous terms. While the justice
11 system is clearly made up of public institutions, public
12 institution is a broader term which could encompass more
13 than governmental bodies and also bodies separate in part
14 from the justice system.

15 In fact, had the government wanted to make
16 it clear that the mandate was directed only at government
17 bodies, it could have used the words "other government
18 institutions". It did not use those words. In addition,
19 the associated words rule is not an absolute rule. And as
20 pointed out in *Dreidger*, and I quote:

21 "While words must be read in context,
22 determining the impact of a given
23 context on the meaning of a disputed
24 word or phrase is a matter of judgment
25 which must be exercised on a case-by-

1 case basis, taking into account all
2 relevant sources of legislative
3 meaning.”

4 It was argued before me that words “public”
5 and “public institutions” bear certain characteristics such
6 as public access, the fact that an institution is open for
7 use, enjoyment or participation of all; the public’s
8 capacity to benefit from the institution; the extent to
9 which the public is involved in the institution and that
10 the institution has a public mandate or is publicly funded,
11 et cetera.

12 In addition, it was stressed that the fact
13 that an institution is under government control is an
14 indicator that it is governmental in nature. The Diocese
15 argued that it is not a government institution and I agree
16 with that. However, there are many indicators that it has
17 a public character. The concept of public character was
18 the subject of a fair amount of discussion during oral
19 submissions in this matter.

20 In its oral submissions the Diocese, through
21 its council, acknowledged that it has a public character.
22 Further, as stated in its application for standing and
23 funding, the objects of the Diocese include the promotion
24 of the Catholic faith, melioration of poverty and the
25 provision of assistance to the poor, the strengthening of

1 family values, the strengthening and promotion of
2 education, the promotion of community values and the
3 elimination of disease and sickness. Many of these objects
4 are of a public nature.

5 The Diocese promotes its objectives by
6 providing services and programs for the community including
7 masses, services, counseling, charitable activities, the
8 provision of clothing and furnishings for the
9 underprivileged, as well as food supplies to those in
10 extreme need, the liaison in religious education for
11 schools, courses in counseling, the provision of facilities
12 for charitable organizations, charitable working hours and
13 financial assistance to charities.

14 The Diocese was historically and is still a
15 major institution in the community of Cornwall and in the
16 Cornwall area. Historically and into the present it has
17 been involved in a number of activities and has exerted
18 influence in a number of areas beyond religious practice in
19 doctrine, such as in social services, education, teachings
20 covering not only religious practice in doctrine, but also
21 morals, birth control, abortion, sexuality, marriage and
22 divorce.

23 Additionally, these activities and services
24 have always been open to people of all faiths, and there I
25 refer to the affidavit of Robert Choquete in his

1 submissions regarding standing and funding.

2 Earlier in this decision I found that the
3 purpose of this inquiry called for an interpretation of my
4 mandate in the broadest sense. In the circumstances, I
5 believe that an institution with sufficient public
6 characteristics quantitatively or qualitatively would
7 qualify as a public institution under the Order in Council.

8 Considering the above, I believe the Diocese
9 of Alexander/Cornwall possesses sufficient characteristics
10 to be qualified as a public institution. This finding,
11 however, does not end my interpretation exercise. This is
12 because the government also include in the Order in Council
13 the mandate for this inquiry to look at, not only the
14 institutional response of the justice system and other
15 public institutions, but also to look at the interaction of
16 that response with other public and community sectors. As
17 a result, I must look at the phrase "other public and
18 community sectors".

19 The Diocese of Alexandria/Cornwall submits
20 that rather than being a public institution, it falls
21 within the phrase "other public and community sectors". As
22 a result, the inquiry would be limited to looking at its
23 interaction with the justice system and other public
24 institutions. This would, of course, amount to a more
25 restricted examination than that which public institutions

1 would undergo.

2 I agree with the Diocese that various canons
3 of interpretations, such as the presumption against
4 psychology, the presumption against absurdity and the
5 presumption that different terms must have different
6 meanings imply that the terms "other public and community
7 sectors" must have a meaning, and a meaning that is
8 separate and distinct from other public institutions. The
9 Diocese argues that if it is found to be a public
10 institution, the phrase "other public and community
11 sectors" would have no meaning as the Diocese would fit
12 under both branches, i.e. as both a public institution and
13 as in "other public and community sectors".

14 I do not agree with the Diocese's
15 submission on this point. The phrase "public and community
16 sectors" has a separate and logical meaning consistent with
17 the wording of the Order in Council as a whole.

18 Now, without prejudging its application to
19 other specific instances, I believe that public and
20 community sectors could include bodies, organizations, or
21 groups of people informally created or established for a
22 specific purpose or for the promotion of some object.
23 Those could be more loosely organized bodies. Also
24 included could be bodies, organizations, or groups of
25 people not having a public character.

1 Example of such organizations could include
2 an organization involved in benevolent or humanitarian
3 works, such as youth servicing organizations, sporting
4 clubs, or an adhoc group of citizens involved in the
5 distribution of food to the elderly.

6 The insertion of the phrase "other public
7 and community sectors" in the Order in Council is, in my
8 view, a residual basket provision which allows the inquiry
9 to canvass other bodies, organizations, institutions or
10 groups of people that may have been peripherally involved
11 with the main participants, the public institutions, in the
12 issues that are the subject of this inquiry. Such
13 organizations may have brought themselves under the mandate
14 of this Commission by interacting with public institutions.

15 Those bodies, organizations, or groups of
16 people are not the primary focus of this inquiry. The
17 inquiry is to focus on the institutional response of public
18 institutions to allegations of historical abuse against
19 young people in the Cornwall area.

20 In conclusion, I believe that the Diocese is
21 a public institution involved in the response to
22 allegations of abuse in the Cornwall area and is allegedly
23 one of the most significant players in this matter.

24 As a public institution, the response of the
25 Diocese to allegations of historical abuse can be examined.

1 In addition, recommendations may be made for how the
2 Diocese, together with other such public institutions can
3 and should respond to such allegations in the future.

4 Having said that, the fact remains that this
5 should not, and cannot, be looked upon as an investigation
6 of the church, its doctrine or its beliefs. Rather, the
7 Diocese is a corporate entity, a human resources arm of the
8 Roman Catholic church which employed the priests who worked
9 in this area. As such, the mandate will be applied to the
10 Diocese in the same way that it is being applied to other
11 public institutions involved in this inquiry.

12 I am hopeful that through this inquiry
13 process we will be able to assist the community in taking
14 positive steps to move beyond these difficult circumstances
15 in the history of Cornwall and of the area, and to provide
16 recommendations that will improve the response to
17 allegations of historical abuse against people here and
18 elsewhere.

19 I wish as well to thank all of the counsel
20 for their thoughtful assistance in discussing this matter.

21 Now, as I've indicated, I would like to take
22 a moment to speak and offer some comments with respect to
23 process. I will not be discussing the matters of my
24 judgment or my decisions for it is not the role of the
25 judiciary to explain any further those matters.

1 What I would like to do before we take a
2 break and before we continue on with the hearings is speak
3 to you a little bit about where we've been, where we are
4 and where we're going.

5 When I first accepted this Commission I was
6 more than a little surprised by the controversy, the
7 rumors, the opinions that swirled around the City of
8 Cornwall and this inquiry. As a result, I took the unusual
9 step of convening a press conference to explain my role and
10 to advise that this Commission would deal with facts. It
11 would be an open process and that I would endeavor to keep
12 the public advised of all developments because, as Dr.
13 Wolfe and Dr. Jaffe have stated, secrecy is the worst enemy
14 in this process.

15 It is for that reason that the inquiry is
16 open to the public. It's also for that reason that the
17 website provides updated information as well as a live
18 broadcast and transcripts of the proceedings are provided
19 on a daily basis. It is for that reason that we have
20 constructed a media room in order to provide the media with
21 the best, the fairest and timely disclosure for their
22 reporting.

23 We are now at the point of completing our
24 context hearings. We have heard from a variety of experts
25 whose purpose has been to provide us background and

1 information and to set the scene for the main task at hand.
2 We should be completing that evidence by the end of May.
3 And along the way these issues have come up, issues that
4 have led to the two decisions that I have made today.
5 Again, I think that these issues have led to some
6 confusions and controversy, and rather than let these
7 matters simmer I chose today to make the following
8 comments.

9 First of all, on the matter of the Order in
10 Council; one of the matters I've ruled on is how to
11 interpret the Order in Council. Now, some people may be
12 confused because on the one hand the Attorney General has
13 indicated that the mandate was broad and sufficiently broad
14 to leave no stone unturned. And yet, an issue has arisen
15 with respect to its interpretation. The Attorney General
16 has chosen not to intervene and to participate in this
17 discussion. Some may be wondering why the Order in Council
18 doesn't specifically include the Diocese or exclude it for
19 that matter. The fact is that an Order in Council is
20 prepared by Cabinet. It is an order that is prepared by
21 the legislative arm of the government and is left to me as
22 a member of the judiciary to interpret that matter in a
23 fair fashion. Accordingly, as an Order in Council it must
24 be given the respect it deserves.

25 Now, the issue to be determined dealt with

1 the position of the Diocese in all of this. The fact is
2 that I am the one who brought this matter to a head. At
3 the beginning some parties disagreed as to what the role of
4 the Diocese should be. I am the one that asked that
5 submissions be made.

6 Now, some would ask why does the Diocese on
7 the one hand seek party status on the basis that it's an
8 integral part of the community, and yet, to be found to be
9 part of the community sector group as opposed to one of the
10 institutional public institutions in this inquiry. The
11 fact is that the Diocese is free to argue its position and
12 is deserving of respect as it advances its arguments.

13 On the issue of Father MacDonald's motion,
14 Father MacDonald has full party standing as regards to his
15 interests in this matter. He is a man of a certain age and
16 no doubt, like any other alleged perpetrator, this inquiry
17 will review allegations which he would rather put to rest.

18 Some of you might have little sympathy for
19 Father MacDonald based on the thought that by invoking the
20 Charter he got off on a technicality. The fact is, ladies
21 and gentlemen, that the charges against Father MacDonald
22 and/or other alleged perpetrators have been stayed, and as
23 such Father MacDonald is entitled to his presumption of
24 innocence and to full respect by this inquiry and all of
25 its participants.

1 Submissions by the Men's Group; it was
2 submitted to me that my decision as to whether to include
3 the Diocese as a public institution would determine whether
4 or not certain individuals would continue to have trust in
5 the inquiry. While that is understandable, given what we
6 have heard from Dr. Wolfe and Dr. Jaffe, this type of
7 reasoning can have no place in this inquiry, because
8 respect should not be determined by some kind of score card
9 about who I side with and who I don't, but I would hope
10 that respect and trust would come from the fact that
11 whatever decision is made its based on the fact that
12 everyone had a fair hearing, they were treated with
13 respect, and that the decision was made to the best of my
14 abilities. And in fact, trust should have nothing to do
15 with me but with the process that we're engaged in.

16 Now, I should tell you that issues like this
17 crop up in any inquiry. C'est tout à fait normal et en plus
18 des appels dans ces décisions doivent être attendues. If
19 there are appeals I am hopeful that an agreement can be
20 reached to permit us to complete the context hearings.

21 In the meantime, ladies and gentleman there
22 is so much work to be done.

23 As you know, we have implemented a
24 counseling service, not only available to alleged
25 perpetrators and alleged victims and their families, but to

1 anyone affected by this inquiry. Its apparent success is
2 due in large part to our Policy Director Colleen Parish who
3 has worked wonders in getting this project underway. As
4 well, I will be announcing shortly the creation of a
5 witness support program, something that was recommended by
6 the various experts, and that will be up and running very
7 shortly. Steps are being taken to complete the selection
8 of the Advisory Panel who will serve to advise me on topics
9 for research papers and to provide their expertise in areas
10 contained within my mandate.

11 Now, on May 4th I've convened the session to
12 discuss the matter of disclosure from the parties. Now,
13 this should not be taken necessarily as a criticism of the
14 parties. Disclosure involves the preparation of not
15 thousands, not tens of thousands, but of hundreds of
16 thousands of pages, and along the way issues as to
17 confidentiality and privacy arise. So in order for the
18 Commission to be in position to in turn make full
19 disclosure of the material to the parties, I must ensure
20 that each and every party has fully complied with its duty
21 to disclose. Accordingly, it is my intention to finalize
22 these matters as quickly as possible.

23 Now, my team continues to review the
24 documents and to follow-up with the preparation of the
25 witnesses. Accordingly, in the event of any appeals, the

1 process will continue in other fields and we will be in a
2 position to continue the hearings in a prompt and efficient
3 manner. As well, the summer break is fast approaching and
4 I shall be reviewing our proposed schedule and will advise
5 you shortly if any adjustments are necessary.

6 Now, as we complete this stage of the
7 inquiry, the context setting, and prepare for the main part
8 of the mandate, it is important that we consider what tone
9 we should adopt. I've used the words fact and respect
10 often in my comments, and that is the tone I wish to adopt.

11 Now, for the institutional parties, and I
12 state for the institutional parties, I would recommend that
13 you review with your principles the example used by Dr.
14 Jaffe of the president of the Toronto Maple Leafs in the
15 Maple Leaf Garden sex scandal as your principles consider
16 their instructions to you as to what tone should be given
17 to this inquiry.

18 In conclusion, issues and appeals are not
19 unusual and should be taken in stride knowing that the
20 inquiry will not be completed until its mandate is fully
21 realized.

22 So I've said a mouthful and I think it's
23 time for me to take a break and for the rest of you as
24 well. So what I'm going to do is adjourn the matter until
25 2:00 p.m. and at that time we'll resume with the context

1 hearings that we've planned for this week.

2 Thank you.

3 - - - Upon adjourning at 11:06 a.m.

4 L'audience est suspendue à 11h06

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

I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

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



Sean Prouse, CVR-CM