

**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 110**

**Held at :**

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

Tuesday, May 29, 2007

**Tenue à:**

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

Mardi, le 29 mai 2007

**Appearances/Comparutions**

Mr. Peter Englemann	Lead Commission Counsel
Mr. Pierre R. Dumais	Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. Mark Crane Ms. Reena Lalji	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. David Rose	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. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Mark Ertel	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association

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1 --- Upon commencing at 9:35 a.m./

2 L'audience débute à 9h35

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning all. For  
10 those of you who are joining us through the website or  
11 otherwise, the witness today will not be on camera pursuant  
12 to an order that I gave yesterday. As well, he has a  
13 moniker of C-4 I believe; is that right?

14 **MR. DUMAIS:** That's correct, Commissioner.

15 **THE COMMISSIONER:** Good. And from what I  
16 understood yesterday, Maître Dumais, you had completed your  
17 examination?

18 **MR. DUMAIS:** That's correct.

19 **THE COMMISSIONER:** All right and then we're  
20 prepared to proceed with cross-examination.

21 `Good morning, sir, how are you doing today?

22 **C-4:** I am doing fine, thank you.

23 **THE COMMISSIONER:** Good. So there will be  
24 folks who will be asking you questions. They'll identify  
25 themselves and tell you who they represent.

1                   Again, the same applies as yesterday. If  
2                   you have any questions, just turn to me and ask me for some  
3                   help. If you need a break at any time, let me know. And  
4                   if there is something that makes you uneasy or  
5                   uncomfortable, please let me know as soon as possible. All  
6                   right?

7                   **C-4:** Okay. Thank you.

8                   **THE COMMISSIONER:** Ready to go?

9                   **C-4:** Yes, ready to go.

10                  **THE COMMISSIONER:** Thank you. And this is  
11                  Mr. Manson.

12                  **C-4, Resumed, Sous le même serment**

13                  **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

14                  **ALLAN MANSON:**

15                  **MR. MANSON:** Hello sir.

16                  **C-4:** Good morning.

17                  **MR. MANSON:** I am Allan Manson. I am one of  
18                  the lawyers for the Citizen's for Community Renewal which  
19                  is a group of Cornwall citizens who are committed to  
20                  promoting institutional reform.

21                  And I'll be very brief, and I'm not pursuing  
22                  any specific details. I think your testimony yesterday was  
23                  very helpful to the Commissioner and I think there is one  
24                  area that could provide some more help and I just want to  
25                  put some questions to you.

1 C-4: Okay.

2 MR. MANSON: I want to take you back. I  
3 know it's difficult, but I want to take you back to the  
4 period 1981, after this event in Eganville. And I want to  
5 suggest that the reasons why you didn't talk to people  
6 about this are complicated. Certainly one reason was you  
7 just didn't think people would believe you; correct?

8 C-4: That's correct.

9 MR. MANSON: But there was probably other  
10 more personal, emotional reasons, given what you were  
11 suffering, what you were going through. Is that correct?

12 C-4: That's correct.

13 MR. MANSON: And those would include the  
14 personal emotional responses, things like self doubt,  
15 embarrassment, shame and maybe even some guilt. Is that  
16 true?

17 C-4: That is true.

18 MR. MANSON: And what I want to suggest to  
19 you is that for you to have been able to talk to somebody  
20 about this, and I'm not referring to any kind of public  
21 disclosure, but just to get advice from somebody. You  
22 would have needed someone who a) you trusted would believe  
23 you and b) you trusted would have some understanding for  
24 what you were going through. Is that correct?

25 C-4: That's correct.

1                   **MR. MANSON:** And for you, in 1981 in  
2 Cornwall, there really wasn't anyone who could fill that  
3 role?

4                   **C-4:** That's correct.

5                   **MR. MANSON:** Those are my only questions.  
6 Thank you very much, sir.

7                   **THE COMMISSIONER:** Thank you Mr. Manson.  
8 Mr. Lee?

9                   **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

10                  **DALLAS LEE:**

11                  **MR. LEE:** Good morning, sir.

12                  **C-4:** Good morning.

13                  **MR. LEE:** My name is Dallas Lee. I  
14 represent the Victims Group at the Inquiry. The Victims  
15 Group is a group of about 50 individuals who are all  
16 victims of abuse in the Cornwall area and have come  
17 together as a group to be represented as a party  
18 withstanding at the Inquiry.

19                         I just have a few questions for you as well.  
20 I'd like to start with a clarification of something you  
21 said yesterday. During your examination in-chief with Mr.  
22 Dumais, you told us that -- you talked about disclosing the  
23 abuse to your father and your mother and you told us about  
24 their reactions. And talking about your mother in  
25 particular, you told us that there was shock and disbelief.



1 Do you recall telling us that?

2 C-4: Yes.

3 MR. LEE: And you also said, and I quote:

4 "But she knew exactly when it had  
5 occurred."

6 Do you recall saying that?

7 C-4: Yes.

8 MR. LEE: What do you mean by that, sir?

9 C-4: When I approached my parents to tell  
10 them that this event had occurred, there was a lot of  
11 turmoil going on in our family, but when I did tell her  
12 that I was sexually abused by a person, she said, "It  
13 happened at the cottage, didn't it?" just right like that.  
14 So she knew exactly where it happened and when it happened.

15 MR. LEE: Did that surprise you?

16 C-4: A little bit, yes.

17 MR. LEE: Do you know why she would have  
18 immediately pointed to that time?

19 C-4: Probably because she knows me as well  
20 as she does. I mean, she is my mother after all. She  
21 knows what kind of a person I was, certainly back then.  
22 You know just -- I was always quiet and reserved so I never  
23 told her of anything. So she must have noticed when I came  
24 back from that short trip that something was wrong with me  
25 but she never approached me to ask.

1                   **MR. LEE:** And to be clear, you never  
2 approached her either.

3                   **C-4:** And I never approached her either, no.

4                   **MR. LEE:** At the end of the day yesterday,  
5 you were asked by Mr. Dumais about -- it's kind of a double  
6 question about the effects of abuse and/or recommendations  
7 and you read your prepared statement.

8                   One of the things that you talked about  
9 during that time was about how you are a different person  
10 now than you were as an 18-year-old when the abuse  
11 occurred. And you also stated that had this happened  
12 today, you would fight back. Do you recall saying that  
13 sir?

14                   **C-4:** I do.

15                   **MR. LEE:** Can you help us understand why you  
16 weren't able to fight back at the time?

17                   **C-4:** It had more to do with my relationship  
18 with the church. We were always raised that, you know, the  
19 church was an important part of our life and priests in  
20 general were pretty much irreproachable. You didn't  
21 question them. You didn't go against them, simply.

22                   **MR. LEE:** Do you recall when you spoke to  
23 the OPP getting into some of those details with them?

24                   **C-4:** Yes.

25                   **MR. LEE:** About the relationship to the

1 church and the effect of this person being a priest as  
2 opposed to being a ---

3 C-4: Yes.

4 MR. LEE: --- regular guy on the street.  
5 There was a clear distinction in your mind. Is that right?

6 C-4: Yes.

7 MR. LEE: And had this been a guy on the  
8 street, things may have gone differently?

9 C-4: I can't speculate on that. At 18,  
10 like I was, you know, a quiet reserved person. I was very  
11 naïve, so, it may have turned out the same, I don't know.

12 MR. LEE: Fair enough. Yesterday, you told  
13 us about a conversation you had with Father Gary Ostler at  
14 St. Columban's Parish. Is that right?

15 C-4: Yes.

16 MR. LEE: And I believe what you told us is  
17 that Father Ostler told you that you shouldn't be alone  
18 with Father MacDonald?

19 C-4: Right.

20 MR. LEE: And there wasn't much more to that  
21 conversation?

22 C-4: It was a very brief, brief  
23 conversation, yes.

24 MR. LEE: And you also told Mr. Dumais that  
25 that comment wasn't prompted by you disclosing your abuse

1 to Father Ostler. Is that correct?

2 C-4: That's correct.

3 MR. LEE: You hadn't gone in with a  
4 complaint about Father MacDonald ---

5 C-4: No, I did not.

6 MR. LEE: Do you recall what you were  
7 discussing at the time?

8 C-4: Not exactly, no.

9 MR. LEE: Is it likely that -- I understand  
10 you weren't discussing abuse, you weren't making a point,  
11 but likely you were discussing Father MacDonald in some way  
12 to prompt that comment from Father Ostler?

13 C-4: Probably. Like I said, it's a long  
14 time ago and I don't really recall the terms of the  
15 conversation.

16 MR. LEE: After Father Ostler made that  
17 comment, did you disclose your abuse to him?

18 C-4: No.

19 MR. LEE: Do you remember where the  
20 conversation went from there? Was there anything else to  
21 it at all?

22 C-4: No.

23 MR. LEE: Do you recall what your reaction  
24 or how you felt after hearing what Father Ostler said?

25 C-4: It didn't strike me at the time. It

1 was probably some time later that, you know, it struck me  
2 as odd that maybe he knew more than he disclosed at that  
3 point, yes, also.

4 **MR. LEE:** One of the documents that Mr.  
5 Dumais entered as an exhibit yesterday was your statement  
6 to the OPP, your first statement, it's Exhibit 446 now?

7 **C-4:** I have it right here in front of me.

8 **MR. LEE:** I'm interested in -- if you look  
9 at the -- it's the second last page of the document. The  
10 Bates number is 7041036, so in the top right, you'll see  
11 464?

12 **C-4:** Yes.

13 **MR. LEE:** And if you go slightly below the  
14 middle of the page, Constable Seguin asked you:

15 "Now, if we speak to Father Ostler, you  
16 think he will recall this conversation  
17 if we were to talk to him?"

18 Do you see that?

19 **C-4:** Yes.

20 **MR. LEE:** And you reply:

21 "I don't know. My biggest worry is  
22 what he insinuated to me at the time.  
23 I am just worried that what he say --  
24 anything that he is privy to, as far as  
25 him and Father Charlie go, it was all

1                   said in the confessional and he'll use  
2                   that to keep it mum."

3                   **C-4:** Right.

4                   **MR. LEE:** Do you recall saying that to the  
5                   OPP?

6                   **C-4:** I do.

7                   **MR. LEE:** What did you mean by that sir?

8                   **C-4:** Well, priests in a confessional have  
9                   the same kind of doctrine as doctor/patient privileges  
10                  where they don't disclose anything that was said in the  
11                  confessional. So I don't know where he got his information  
12                  from but he knew something. That's basically what I was  
13                  trying to get across.

14                  **MR. LEE:** Do you have any specific  
15                  information that Father Ostler knew something or was it  
16                  just what ---

17                  **C-4:** No.

18                  **MR. LEE:** --- you took out of that  
19                  conversation?

20                  **C-4:** That's what I took out of the  
21                  conversation. I have no specific information.

22                  **MR. LEE:** And you never had a subsequent  
23                  conversation with Father Ostler at all?

24                  **C-4:** No, I don't think I've even spoke to  
25                  him ever since.

1                   **MR. LEE:** So it's just being part of the  
2 original conversation ---

3                   **C-4:** That's correct.

4                   **MR. LEE:** --- you've drawn from that that he  
5 must have known something.

6                   **C-4:** That's right.

7                   **MR. LEE:** You spoke yesterday very, very  
8 briefly about a letter you had received from Charles  
9 MacDonald at one point.

10                   **C-4:** Yes.

11                   **MR. LEE:** I am not sure I understood the  
12 evidence on that point, so I'd just like to clarify a  
13 couple of things. You told us, as I understood, that your  
14 brother approached you with a letter from Father MacDonald.  
15 Is that right?

16                   **C-4:** That's correct.

17                   **MR. LEE:** Do you know when your brother has  
18 received that letter?

19                   **C-4:** I believe he received it shortly after  
20 it was written.

21                   **MR. LEE:** And do you have any understanding  
22 of why your brother was the one who received the letter and  
23 not you?

24                   **C-4:** Because he was still in contact with  
25 Father MacDonald.

1                   **MR. LEE:** And you were not at that point?

2                   **C-4:** And I was not.

3                   **MR. LEE:** And after receiving the letter,  
4 your brother provided it to you at some point. Is that  
5 correct?

6                   **C-4:** At some point later, yes.

7                   **MR. LEE:** Do you recall when that was?

8                   **C-4:** Not exactly, it was -- best guess --  
9 spring of '98.

10                   **THE COMMISSIONER:** I'm sorry.

11                   **MR. LEE:** Spring of '98?

12                   **C-4:** Spring.

13                   **THE COMMISSIONER:** Of 1998?

14                   **C-4:** Yes.

15                   **THE COMMISSIONER:** Yes, okay.

16                   **MR. LEE:** I'd like to take you to that, sir.  
17 It's Document Number 732406. You won't have this yet.

18                   **C-4:** Okay.

19                   **MR. LEE:** Madam Clerk will provide it to  
20 you.

21                   Mr. Commissioner, the witness's first name  
22 appears in the document twice.

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

24                   **MR. LEE:** So I think it should be subject to  
25 the publication ban as well.



1                   **THE COMMISSIONER:** All right.

2                   So this will be Exhibit Number 449 and the  
3 stamp of a publication ban will be applied to indicate that  
4 the name of, and any identifiers to this witness, should  
5 not be published in any way.

6                   **---EXHIBIT NO./PIÈCE NO P-449:**

7                   (732406) Letter from Father Charles  
8 MacDonald to C-4 dated December 30, 1007

9                   **MR. LEE:** Do you have the document, sir?

10                  **C-4:** I have it.

11                  **MR. LEE:** I'll give you a moment just to  
12 read it.

13                  **C-4:** I'm just reading it.

14                  **MR. LEE:** Sure.

15                  **C-4:** Okay.

16                  **MR. LEE:** This letter is dated December 30<sup>th</sup>,  
17 1997 at the top. Is that correct?

18                  **C-4:** Yes.

19                  **MR. LEE:** Do you recognize this?

20                  **C-4:** I do.

21                  **MR. LEE:** And what is it?

22                  **C-4:** It's the letter that Father MacDonald  
23 wrote to me.

24                  **MR. LEE:** And this is the one that you  
25 received from your own brother?

1 C-4: That is right, yes.

2 MR. LEE: And on the exhibit we have here,  
3 the copy of the letter, we have on the left-hand side,  
4 you'll see there is a stamp from the Ontario Court of  
5 Justice dated March 1<sup>st</sup>, 1999?

6 C-4: Yes.

7 MR. LEE: It's my understanding that this  
8 document was made an exhibit during the criminal  
9 proceedings at the preliminary inquiry during your  
10 testimony. Is that correct?

11 C-4: That's correct.

12 MR. LEE: And you recall that, sir?

13 C-4: Yes.

14 MR. LEE: Now the date on the letter as I  
15 have stated is December 30<sup>th</sup>, 1997, so this after you've  
16 spoken to the police for the first time.

17 C-4: Yes.

18 MR. LEE: As I recollect, my understanding  
19 is the first meeting with the police is October 21, '97?

20 C-4: Yes.

21 MR. LEE: So this is after that time?

22 C-4: Yes.

23 MR. LEE: Sir, I'll leave this entirely up  
24 to you but I would like this short letter read in. Would  
25 you mind reading that or would you prefer that I do it?

1 C-4: I can read it.

2 MR. LEE: Thank you. Just ---

3 C-4: Yes?

4 MR. LEE: --- skip over your name the couple  
5 of times it appears.

6 C-4: It says:

7 "Dear Sir,

8 I realize now I should have said or

9 written these words to you a long time

10 ago. I honestly didn't realize you

11 were hurting. What's done is done but

12 I want to tell you, sir, that I am very

13 sorry for causing you any hurt or pain.

14 It was never my intention to hurt you.

15 I wish I could change things but again

16 I am sorry. I hope you can find it in

17 your heart to forgive me. Sincerely,

18 Charles F."

19 MR. LEE: Did you respond to this letter?

20 C-4: No.

21 MR. LEE: Did you speak to Father MacDonald  
22 after you received this?

23 C-4: No.

24 MR. LEE: You didn't write him back?

25 C-4: No.

1                   **MR. LEE:** Didn't deliver a message through  
2                   your brother?

3                   **C-4:** No.

4                   **MR. LEE:** Did you produce this letter to the  
5                   police at any point to assist with their investigation?

6                   **C-4:** Yes, I did.

7                   **MR. LEE:** Do you recall when that was?

8                   **C-4:** It was early in 1999.

9                   **MR. LEE:** Early in 1999. Who did you  
10                  produce it to?

11                  **C-4:** To Constable Detective Joe Dupuis.

12                  **MR. LEE:** Joe Dupuis. Did you ever provide  
13                  any employee of the diocese with a copy of this letter?

14                  **C-4:** No, I did not.

15                  **MR. LEE:** You can put the letter away.  
16                  Who did you first tell about the incident  
17                  with Father MacDonald?

18                  **C-4:** My wife.

19                  **MR. LEE:** Your wife? Was she told before  
20                  the police contacted you?

21                  **C-4:** A long time actually; told her before  
22                  we were married.

23                  **MR. LEE:** Before you were married. So your  
24                  wife knew at the time you were contacted by the police?

25                  **C-4:** Yes.

1                   **MR. LEE:** Did anybody else know at that  
2 point?

3                   **C-4:** At that time, no.

4                   **MR. LEE:** And then the police contacted you.  
5 You explained yesterday you had an idea why they were  
6 contacting you. You hesitated a little bit to get back to  
7 them. Eventually, you decide you're going to speak with  
8 the police. Is that correct?

9                   **C-4:** That's correct.

10                  **MR. LEE:** Who do you next tell after  
11 speaking to the police?

12                  **C-4:** After the police, my brother, the one  
13 that delivered this message to me.

14                  **MR. LEE:** And then from there?

15                  **C-4:** And from there, he and I visited my  
16 parents and I told them.

17                  **MR. LEE:** Your brother accompanied you to  
18 your parents, is that right? That was you evidence  
19 yesterday.

20                  **C-4:** That's right, yes.

21                  **MR. LEE:** You were aware, based on your  
22 evidence in-chief, that the OPP interviewed your mother at  
23 some point. Is that correct?

24                  **C-4:** Yes.

25                  **MR. LEE:** The notes that we have indicate

1 that she was interviewed first in December of 1997 and then  
2 again in February of 1998. Does that make sense to you?

3 C-4: That makes sense, yes.

4 MR. LEE: During the second interview, so  
5 the one of February 1998, she told the police that she and  
6 your father went to see the bishop of the diocese the day  
7 after you disclosed the abuse to them. Were you aware of  
8 that?

9 C-4: Yes.

10 MR. LEE: Did you go with them to that  
11 meeting?

12 C-4: No, I did not.

13 MR. LEE: At the time that you disclosed  
14 your abuse to your parents, was there any discussion of  
15 them visiting the diocese ---

16 C-4: No.

17 MR. LEE: --- the bishop? So you didn't  
18 know that they were going?

19 C-4: That's right. Nothing.

20 MR. LEE: Did your parents advise you after  
21 the fact?

22 C-4: Yes, they did. Mom called me at some  
23 point after that visit with the bishop and asked me to call  
24 the bishop.

25 MR. LEE: And did you do that?

1 C-4: No, I didn't.

2 MR. LEE: Do you know what came out of that  
3 meeting, if anything?

4 C-4: No.

5 MR. LEE: You've told us that your mother  
6 asked you to contact the bishop and you did not. Did you  
7 ever hear from the bishop?

8 C-4: No.

9 MR. LEE: So that's at the disclosure stage.  
10 You've talked to the police, you've talked to your parents,  
11 they've gone to visit the Bishop and you've declined the  
12 invitation to call him?

13 C-4: Right.

14 MR. LEE: And he hasn't in return called  
15 you. So there has been no contact there?

16 C-4: That's right.

17 MR. LEE: What about after Father MacDonald  
18 was charged by the police. Did you hear from the diocese  
19 at any point?

20 C-4: No.

21 MR. LEE: During the criminal proceedings,  
22 after the criminal proceedings, at any point after that  
23 time, did you hear from the diocese?

24 C-4: I have had no contact with them at  
25 all.

1                   **MR. LEE:** What about before you told the  
2 police; before the police came to you and you disclosed the  
3 incident with Father MacDonald? You told us yesterday that  
4 one victim of Father MacDonald at least had already come  
5 forward and spoken with the police and was in the media at  
6 the time?

7                   **C-4:** Right.

8                   **MR. LEE:** And you told us -- I don't  
9 remember the exact words you used -- but I got the  
10 impression that there was a lot of media at the time?

11                   **C-4:** There was quite a bit of media.

12                   **MR. LEE:** And you knew about that?

13                   **C-4:** I did.

14                   **MR. LEE:** And you told us yesterday that the  
15 police contacted you, not the other way around. You didn't  
16 go to the police, they came to you?

17                   **C-4:** That's correct.

18                   **MR. LEE:** Unsolicited. You hadn't written  
19 to them or called them or anything like that. Is that  
20 right?

21                   **C-4:** Right.

22                   **MR. LEE:** And you told us yesterday that you  
23 had a pretty good idea of why they were calling you. Do  
24 you recall saying that?

25                   **C-4:** Yes.



1                   **MR. LEE:** And why did you believe they were  
2                   contacting you?

3                   **C-4:** They were simply contacting everybody  
4                   that had contact with Father Charlie and just wanted to  
5                   know what, if anything, anybody knew.

6                   **MR. LEE:** What do you mean by anybody that  
7                   had contact with Father Charlie?

8                   **C-4:** Just people who have had contact with  
9                   Father MacDonald in the past. They were just questioning  
10                  everybody.

11                  **MR. LEE:** And you would, as you told us  
12                  yesterday, had contact with Father MacDonald because you  
13                  had served as an altar boy. Is that correct?

14                  **C-4:** That's right, as an altar boy, yes.

15                  **MR. LEE:** How long had you served as an  
16                  altar boy?

17                  **C-4:** Approximately eight years.

18                  **MR. LEE:** Eight?

19                  **C-4:** Eight.

20                  **MR. LEE:** And how many of those years were  
21                  under Father MacDonald?

22                  **C-4:** Just the last little bit. It wasn't  
23                  very long.

24                  **MR. LEE:** And that -- he was in his role as  
25                  the parish priest at that time?

1 C-4: Right.

2 MR. LEE: At the parish you and your family  
3 attended?

4 C-4: Yes.

5 MR. LEE: And so as part of the OPP's  
6 attempts to contact former altar boys, they found you?

7 C-4: Right.

8 MR. LEE: Was that the first time that any  
9 institution investigating Father MacDonald's activities had  
10 contacted you as part of an investigation?

11 C-4: That's right.

12 MR. LEE: And that would included the  
13 diocese?

14 C-4: That's correct.

15 MR. LEE: You'd never been contacted by  
16 them?

17 C-4: No.

18 MR. LEE: Sir, those are my questions.  
19 I would like to very much thank you for  
20 coming here. As Mr. Manson said, your testimony is going  
21 to be very useful to this Commission. Thank you.

22 C-4: Thank you.

23 THE COMMISSIONER: Thank you.

24 Mr. Ertel -- oh, I'm sorry, Mr. Chisholm, I  
25 am sorry. No, actually not.

1                   **MR. CHISHOLM:** Mr. Ertel is in front of me  
2 but I thought he might be towards the end of the line  
3 today.

4                   **THE COMMISSIONER:** Okay.

5                   **MR. CHISHOLM:** Good morning, sir, my name is  
6 Peter Chisholm. I am counsel for the Children's Aid  
7 Society of the United Counties of Stormont Dundas &  
8 Glengarry.

9                   I have no questions for you today, but I  
10 would like to thank you for coming yesterday and today to  
11 tell us your story.

12                   Thank you very much.

13                   **C-4:** Thank you.

14                   **THE COMMISSIONER:** Is there any change in  
15 the order of cross-examination today? Does anyone -- have  
16 you made any arrangements or ---

17                   **MR. DUMAIS:** There has been no discussion  
18 here, sir.

19                   **THE COMMISSIONER:** All right.

20                   Good morning, MS. McIntosh.

21                   --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

22                   **LESLIE McINTOSH :**

23                   **MS. McINTOSH:** Good morning, Mr.

24 Commissioner. Nice to see you.

25                   Good morning, sir. My name is Leslie

1 McIntosh and I am from the Ministry of the Attorney General  
2 for Ontario.

3 And I have just a few questions for you  
4 about your meetings with the Crown attorneys and your  
5 contacts with the Victim Witness Assistant Program, VWAP as  
6 we call it for short.

7 Now you told us you met with Mr. Pelletier  
8 in February of 1999 to prepare for your -- for giving  
9 evidence at the preliminary hearing on March the 1<sup>st</sup>, 1999?

10 C-4: That's correct.

11 MS. McINTOSH: And then he was replaced as  
12 the Crown by a female Crown and do you recall that being  
13 Shelley Hallett? Is that a name you recognize?

14 C-4: Yes. That name I do recognize, but I  
15 don't remember exactly as far as who she was.

16 MS. McINTOSH: All right. And you told Mr.  
17 Dumais that you met with this female Crown. The first  
18 meeting was in May of 2000, and she would of introduced  
19 herself then at that meeting?

20 C-4: Yes.

21 MS. McINTOSH: And do you recall that she  
22 was not from the Cornwall area? She was from Toronto?

23 C-4: She was from out of town, yes.

24 MS. McINTOSH: Fine. And do you recall her  
25 saying that that was the reason she was replacing Mr.

1 Pelletier, that they wanted a Crown who had no involvement  
2 in the Cornwall area? Or something to that effect?

3 C-4: I don't recall exactly what was said,  
4 but something similar, yes.

5 MS. McINTOSH: All right. And did she  
6 explain to you why the trial dates had been adjourned? Not  
7 perhaps in detail but that there were disclosure problems  
8 that they were dealing with?

9 C-4: I don't recall a lot of that meeting.  
10 It was a very brief meeting and you know I was just at a --  
11 not a lot of that part of that I remember very well.

12 MS. McINTOSH: So you don't recall a  
13 discussion of why the trial dates had been adjourned?

14 C-4: That's correct.

15 MS. McINTOSH: Okay. And do you recall any  
16 discussion about new charges being laid against Father  
17 MacDonald and that would take some time to process as well?

18 C-4: There was some talk of that, yes.

19 MS. McINTOSH: All right. And from  
20 Constable Dupuis's notes, they seem to show that there was  
21 a fairly lengthy discussion of your evidence on that day,  
22 and would you disagree with his notes if I told you that  
23 the meeting lasted a couple of hours?

24 C-4: The meeting did last probably that  
25 long anyway. It was a lengthy enough meeting, yes.

1                   **MS. McINTOSH:** And so it was the next  
2 meeting with Miss Hallett perhaps that was the brief  
3 meeting?

4                   **C-4:** It was a very brief one possibly, yes.

5                   **MS. McINTOSH:** Yes. All right.

6                   And then after that May 2000 meeting, you  
7 were in contact with the Victim Witness Assistance Program.  
8 We know from their notes which Mr. Dumais showed you  
9 yesterday that there is an entry for October of 2000?

10                   **C-4:** Yes. We had brief phone contacts.  
11 That was the only contact I've had.

12                   **MS. McINTOSH:** All right. And after that  
13 October of 2000 contact, apparently according to their  
14 notes, you called the VWAP people in May of 2001 to tell  
15 them that you had not had notice of the -- the adjournment  
16 of the trial date in March. Do you recall that?

17                   **C-4:** Yes.

18                   **MS. McINTOSH:** All right. And VWAP,  
19 according to their notes, followed up with Constable Dupuis  
20 about that and were told that he had left messages for  
21 those that he didn't reach. Do you know whether you got a  
22 message from Constable Dupuis? Is that possible?

23                   **C-4:** That is very possible, yes.

24                   **MS. McINTOSH:** It might have been one of  
25 those occasions when you were hard to get a hold of?

1 C-4: Right.

2 MS. McINTOSH: And then as we mentioned  
3 earlier, you had the brief meeting with Miss Hallett in  
4 February of 2002 and this was the one where you were given  
5 the transcript of your preliminary inquiry. Is that  
6 correct?

7 C-4: That is correct.

8 MS. McINTOSH: And served with a subpoena or  
9 a summons, and do you recall any discussion on that date  
10 about possible motions at the trial; motions for a stay for  
11 example?

12 C-4: I don't recall that, but it could have  
13 happened.

14 MS. McINTOSH: All right. And then you met  
15 with a male Crown attorney in March of 2002, early March of  
16 2002?

17 C-4: Yes. His name escapes me totally  
18 though.

19 MS. McINTOSH: Okay. Would that have been  
20 Kevin Phillips? Does that ring a bell?

21 C-4: Yes, like I said, his name totally  
22 escapes me.

23 MS. McINTOSH: Okay. And that was for  
24 preparation for a trial date later on in March. Is that  
25 correct?

1 C-4: Right.

2 MS. McINTOSH: So that was a fairly lengthy  
3 meeting again to go over your evidence. Is that correct?

4 C-4: Yes.

5 MS. McINTOSH: And that trial -- after that  
6 prep meeting, do you recall that VWAP called you just to  
7 confirm that you had in fact met with the Crown and to  
8 discuss the question of supporting you at the trial date at  
9 that time?

10 C-4: Yes.

11 MS. McINTOSH: All right. And -- but that  
12 trial date was adjourned because I understand a judge was  
13 not available to conduct a trial on that day?

14 C-4: It never took place and I'm not sure  
15 exactly what the reasons were.

16 MS. McINTOSH: All right. And according to  
17 -- again to the VWAP notes, you called them on March the  
18 25<sup>th</sup> and you seemed to know on that date that the trial had  
19 been delayed to April the 29<sup>th</sup>?

20 C-4: I heard through the media.

21 MS. McINTOSH: Okay. And victim witness  
22 promised to get back to you on March 25<sup>th</sup> and give you an  
23 update sometime in April. Is that something you recall?

24 C-4: That's -- probably yes.

25 MS. McINTOSH: And victim witness had also



1 told you earlier -- sorry, I skipped over this -- that  
2 there would be a new Crown Attorney named Lorne McConnery.  
3 Do you remember that?

4 C-4: Yes.

5 MS. McINTOSH: Yes. All right.

6 And as promised, victim witness did follow  
7 up with you in April and gave you an update. The notes  
8 don't say what it was, but we know that that April trial  
9 date didn't go ahead and you didn't show up for court on --  
10 in April, I gather?

11 C-4: It wasn't necessary for me to show up  
12 at that.

13 MS. McINTOSH: So you had been advised that  
14 it wasn't necessary for you to show up?

15 C-4: Right.

16 MS. McINTOSH: Do you remember who advised  
17 you of that?

18 C-4: No, I don't.

19 MS. McINTOSH: And then in -- again in May,  
20 you had a lengthy discussion with Lorne McConnery and I  
21 think Constable Dupuis was there too, about your evidence  
22 in preparation for yet another trial date I gather?

23 C-4: Yes.

24 MS. McINTOSH: All right. And you were told  
25 at that meeting, I understand, about the motion -- there

1 would be motion to stay the charges?

2 C-4: Yes.

3 MS. McINTOSH: So when the fact that there  
4 was going to a motion was not a surprise to you when you  
5 heard it on the radio?

6 C-4: That is correct.

7 MS. McINTOSH: And do you know whether  
8 anyone attempted to get in touch with you on May the 13<sup>th</sup>  
9 about the stay?

10 C-4: I don't remember if anybody tried to,  
11 no.

12 MS. McINTOSH: All right. And then the next  
13 day you spoke to victim witness to express your  
14 disappointment about the stay of the charges. Is that  
15 correct?

16 C-4: I did. I called them, yes.

17 MS. McINTOSH: Those are my questions, sir.  
18 Thank you for your testimony today and yesterday.

19 C-4: Thank you.

20 THE COMMISSIONER: Mr. Rose are you -- what  
21 did you say?

22 MR. ROSE: (Off mic).

23 THE COMMISSIONER: Well, actually you are  
24 not. You -- on your agreed order but on the sheet here you

25 ---

1                   **MR. ROSE:** I have no questions. I can get  
2 that out of the way now.

3                   **THE COMMISSIONER:** You have no questions?

4                   **MR. ROSE:** I will have no questions --

5                   **THE COMMISSIONER:** Okay. Go ahead. Thank  
6 you.

7                   **MR. ROSE:** Good morning, sir. My name is  
8 David Rose. I am here from the Ministry of Community  
9 Safety and Correctional Services.

10                   I have no questions for you. Thank you for  
11 coming.

12                   **C-4:** Thank you.

13                   **THE COMMISSIONER:** Okay.

14                   Mr. Sherriff-Scott?

15                   **MR. SHERRIFF-SCOTT:** Good morning, sir. I  
16 act for the diocese. My name is David Sherriff-Scott. I  
17 want to thank you for coming and giving your evidence and I  
18 have no questions for you.

19                   Thank you.

20                   **C-4:** Thank you.

21                   **THE COMMISSIONER:** Ms. Lalji?

22                   **MS. LALJI:** Actually, it will be Mr. Crane.

23                   **THE COMMISSIONER:** I'm sorry.

24                   Mr. Crane.

25                   **MR. CRANE:** Good morning, sir.

1                   **THE COMMISSIONER:** Good morning, sir.

2           **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. MARK**  
3           **CRANE:**

4                   **MR. CRANE:** Good morning, sir.

5                   **C-4:** Good morning.

6                   **MR. CRANE:** My name is Mark Crane and I am  
7           one of the lawyers representing the Cornwall Police  
8           Service.

9                   Sir, I only have a few questions for you  
10           this morning and they primarily relate to your experience  
11           at the preliminary inquiry, so that will form the context  
12           of my questions. All right?

13                   **C-4:** Okay.

14                   **MR. CRANE:** Sir, yesterday Pierre Dumais  
15           asked you questions relating to your experience at the  
16           preliminary inquiry. Do you recall that?

17                   **C-4:** Yes.

18                   **MR. CRANE:** And Mr. Dumais advised you that  
19           both David Silmser and John MacDonald were present in the  
20           courtroom prior to the commencement of your testimony. Do  
21           you recall that?

22                   **C-4:** Yes.

23                   **MR. CRANE:** And you stated to the  
24           Commissioner and to us that you had no previous experience,  
25           any discussions with either of those two gentlemen. Is

1           that correct?

2                           **C-4:** That's correct.

3                           **MR. CRANE:** And that remains true today?

4                           **C-4:** That remains true today.

5                           **MR. CRANE:** Were you aware in advance that  
6 these two gentlemen were intending to be present during  
7 your testimony?

8                           **C-4:** No, I was not.

9                           **MR. CRANE:** Now, you spoke with Perry Dunlop  
10 outside the courtroom. Is that correct?

11                           **C-4:** A very brief discussion, basically  
12 just saying hello.

13                           **MR. CRANE:** You shook hands and said hello.

14                           **C-4:** That's correct.

15                           **MR. CRANE:** That's what you said yesterday.  
16 Correct?

17                           **C-4:** Yes.

18                           **MR. CRANE:** Now, are you aware whether he  
19 provided you or your wife with a business card during those  
20 communications or during that day at some point?

21                           **C-4:** I don't recall having received one,  
22 no.

23                           **MR. CRANE:** No? I'm going to pull up a  
24 document, sir, just to see whether that refreshes your  
25 memory.

1                   **C-4:** Okay.

2                   **MR. CRANE:** Madam Clerk, if we could pull up  
3 doc no. 110815.

4                   **THE COMMISSIONER:** Mr. Crane, do you know if  
5 we should be stamping this with a publication ban?

6                   **MR. CRANE:** We should, Mr. Commissioner. I  
7 see C-4's name is at the top of the document.

8                   **THE COMMISSIONER:** Terrific. Thank you.  
9 So exhibit 450.

10                   **--- EXHIBIT NO./PIECE NO P-450:**

11                                   (110815) CPS Notes re C-4 dated March  
12                                   7, 2002

13                   **THE COMMISSIONER:** And what are these notes,  
14 sir?

15                   **MR. CRANE:** Sir, these are the -- my friend,  
16 Ms. McIntosh, has advised me that these are the handwritten  
17 notes of Kevin Phillips dated March 7<sup>th</sup>, 2002.

18                   **THE COMMISSIONER:** Okay. Kevin Phillips?

19                   **MR. CRANE:** I believe so, yes.

20                   **THE COMMISSIONER:** Okay. Kevin, yes.

21                   **MR. CRANE:** Sir, you can see just at the top  
22 of the page of the first page that's on the screen, my  
23 friend Ms. McIntosh confirmed with you that you met with  
24 Mr. Phillips in March of 2002, and these appear to be his  
25 notes dated March 7<sup>th</sup>, 2002 from your meeting with him.

1                   If we scroll down towards the middle of the  
2 page, Madam Clerk. That's fine.

3                   So you can see there's a bullet here that  
4 begins, "Went to Kemptville Agricultural College. Dairy  
5 business." He appears to be taking notes of his  
6 conversation with you.

7                   **C-4:** M'hm.

8                   **MR. CRANE:** Madam Clerk, if we can scroll to  
9 the second page, on the top third of the second page.  
10 That's fine.

11                   The third bullet down, sir, I'm going to  
12 read into the record and then ask you a few questions.

13                   "Perry Dunlop, I know of him. He was  
14 at the pre-trials. We said hello.  
15 Gave my wife his business card.  
16 Dunlop was in uniform I think. Know  
17 him from press. Not really following  
18 press. I didn't actively seek out  
19 more info or anything."

20                   Sir, does this refresh your memory as to  
21 whether your wife may have received a business card from  
22 Mr. Dunlop?

23                   **C-4:** Yes. Yes, it does.

24                   **MR. CRANE:** And as far as you're aware, what  
25 was the purpose of receiving that business card?

1 C-4: I'm not exactly sure.

2 MR. CRANE: Are you aware whether Mr. Dunlop  
3 spoke to you or your wife about a lawsuit that he had  
4 initiated? Does that ring a bell?

5 C-4: Not at all, no.

6 MR. CRANE: Not at all.

7 Thank you, sir. Those are my questions.

8 And I want to thank you for participating in this process.

9 C-4: Thanks.

10 THE COMMISSIONER: Thank you.

11 Mr. Kozloff?

12 MR. KOZLOFF: Good morning, Mr.

13 Commissioner.

14 THE COMMISSIONER: Good morning, sir.

15 MR. KOZLOFF: Good morning, sir.

16 I have no questions. I represent the  
17 Ontario Provincial Police. I would like to thank you for  
18 coming.

19 THE COMMISSIONER: Thank you.

20 Mr. Carroll?

21 MR. CARROLL: Good morning, sir.

22 THE COMMISSIONER: Good morning.

23 MR. CARROLL: Good morning.

24 My name is Bill Carroll and I represent the  
25 Ontario Provincial Police Association and I have no



1 questions for you, sir, but to thank you for your  
2 attendance and for your testimony yesterday and today.

3 C-4: Thanks.

4 THE COMMISSIONER: Thank you.

5 Then Mr. Ertel. Is that how you pronounce  
6 your name, sir?

7 MR. ERTEL: Thank you, sir.

8 THE COMMISSIONER: Do I have that right, Mr.  
9 Ertel?

10 MR. ERTEL: Ertel, that's good.

11 THE COMMISSIONER: Thank you.

12 MR. ERTEL: Thanks. I've been called worse.

13 THE COMMISSIONER: Stay long enough and  
14 you'll see.

15 (LAUGHTER/RIRE)

16 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. MARK  
17 ERTEL:

18 MR. ERTEL: Sir, I just have a couple of  
19 questions to ask you on behalf of Father MacDonald.

20 In your meetings with police, Crown  
21 attorneys, victim witness people, discussions that you had  
22 with them, did anyone ever discuss with you the potential  
23 problem with your evidence, that a judge or a jury  
24 listening to your evidence might feel that your evidence  
25 didn't really indicate a lack of consent to the activity

1           that was taking place?

2                       **C-4:** Not specifically, no.

3                       **MR. ERTEL:** In other words, did anyone ever  
4 suggest to you that there was a pretty good chance that  
5 Father MacDonald might be acquitted on your evidence?

6                       **C-4:** No.

7                       **MR. ERTEL:** Never?

8                       Thank you, sir.

9                       **THE COMMISSIONER:** Thank you.

10                      Mâitre Dumais.

11                      **MR. DUMAIS:** I have no re-examination.

12                      Thank you, Commissioner.

13                      **THE COMMISSIONER:** Thank you.

14                      That ends your participation in this  
15 Inquiry, sir.

16                      However, I can tell you that I do appreciate  
17 your participation. I can tell you that your evidence will  
18 be considered. Certainly your recommendations and your  
19 thoughts that you gave us yesterday will certainly be  
20 considered with my recommendations as well.

21                      **C-4:** I also like to thank you, sir, for  
22 doing this. It's helping everybody.

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

24                      Have a good day, sir.

25                      **C-4:** Thanks.

1                   **THE COMMISSIONER:** Mâitre Dumais.

2           **--- HOSKEEPING MATTERS/MATIÈRES ADMINISTRATIVES:**

3                   **MR. DUMAIS:** We're done quicker than I  
4 expected, Commissioner.

5                   We do have the two decisions which are to be  
6 released.

7                   **THE COMMISSIONER:** Yes.

8                   **MR. DUMAIS:** As well, I understand Mr.  
9 Engelmann wishes to address some documents that had been  
10 filed with the previous witnesses. I know that he's tied  
11 up right now and expected to be tied up until 2:00 this  
12 afternoon. So it makes sense to adjourn until such time.

13                   **THE COMMISSIONER:** All right.

14                   So I understand that -- yes, I will be  
15 giving two decisions this afternoon. And the witness that  
16 was to come is coming tomorrow. He's from out of town I  
17 understand?

18                   **MR. DUMAIS:** That's correct, Commissioner.  
19 She has driven from Hamilton. She is represented by Mr.  
20 Dallas Lee. Her name is Cathy Sutherland. She is set to  
21 testify tomorrow morning at 9:30.

22                   **THE COMMISSIONER:** All right.

23                   Considering the circumstances then we'll  
24 adjourn until 2:00.

25                   **MR. DUMAIS:** Thank you.

1                   **THE COMMISSIONER:** Thank you.

2                   **THE REGISTRAR:** Order. All rise. Veuillez  
3 vous lever.

4 --- Upon adjourning at 10:16 a.m./

5                   L'audience est ajournée à 10h16

6 --- Upon resuming at 2:03 p.m. /

7                   L'audience est reprise à 14h03

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

10                   This hearing is now resumed. Please be  
11 seated. Veuillez vous asseoir.

12 --- **RULING ON THE OVERVIEW OF THE DOCUMENTARY EVIDENCE OF**  
13 **C-3/DÉCISION SUR LE SURVOLE DE LA PREUVE DOCUMENTAIRE DE**  
14 **C-3**

15                   **THE COMMISSIONER:** Thank you. Good  
16 afternoon all.

17                   I am here to give two rulings; the first one  
18 in relation to the overview of documentary evidence of C-3.

19                   On April 26<sup>th</sup>, 2007, Commission counsel  
20 proposed to present the overview of documentary evidence  
21 pertaining to C-3, a witness whose name and any information  
22 that tends to identify him continues to be protected by a  
23 publication ban from a criminal court process. It is the  
24 unavailability of C-3 to testify before the Inquiry that  
25 prompted the proposed use of an overview.

1           C-3 is an individual who reported to a  
2           number of public institutions that he was abused when he  
3           was a young person. It is Commission's counsel's view that  
4           the overview of C-3 should be read into the record and that  
5           both the overview and the documents referenced within it  
6           should be entered as exhibits to these proceedings.

7           Counsel for a number of the parties made  
8           submissions on the use of the overviews generally, however,  
9           only counsel for the Diocese of Alexandria-Cornwall  
10          objected to the overview of C-3 being entered as an  
11          exhibit.

12          The subject matter of this ruling is whether  
13          this overview should be entered as an exhibit.

14          On April 26<sup>th</sup>, 2007, the overview of C-3 was  
15          read into the record by Commission counsel. The documents  
16          upon which the overview was based were entered as exhibits.  
17          Given the objection of counsel for the diocese, I ordered  
18          the overview of C-3 to be marked as an exhibit solely for  
19          identification purposes pending my decision.

20          After considering this matter, I have  
21          concluded that the overview of C-3 should be marked as an  
22          exhibit. Before providing my reasons, however, I think it  
23          is useful to outline the background of the issue at hand.

24          The overview of C-3 is the first overview  
25          that Commission counsel has brought before me. Commission

1       counsel indicated that while they prepared the overview,  
2       counsel for the parties were consulted and invited to  
3       provide comments on the use of overviews generally and on  
4       draft versions of the overview of C-3 in particular.  
5       Commission counsel advised that in many respects the  
6       comments of counsel were incorporated into the overview of  
7       C-3.

8                   I understand that during their consultation  
9       with the parties, Commission counsel advised the parties  
10      that they would be entitled to object to an overview, or  
11      any documents referenced therein, on the basis of  
12      relevance.

13                   As well, Commission counsel indicated that  
14      it would not argue that any party would be a stop from  
15      objecting to a particular overview if it had chosen not to  
16      object to a previous one. According to Commission counsel,  
17      the purpose of the overview is to enable Commission counsel  
18      to place evidence that might not otherwise be available by  
19      way of viva voce evidence into the record.

20                   Commission counsel noted his hope that  
21      overviews would be used sparingly, only in circumstances in  
22      which witnesses are unavailable for medical or health  
23      reasons; witnesses who are deceased; witnesses who are out  
24      of jurisdiction; and when a witness's evidence is of such  
25      significance to justify drawing it out in a manner separate

1 and apart and prior to the Institutional Response Phase.

2 Commission counsel explained that C-3 is not  
3 available to testify for the following reasons. C-3 has  
4 said that he has all of the indicators of a serious medical  
5 illness and is concerned about aggravating this illness and  
6 other conditions that were identified during the course of  
7 the investigation and prosecution of his complaint. He has  
8 expressed concern about being re-victimized by the inquiry  
9 process. And his concern about the effect that testifying  
10 may have on his livelihood as a small businessperson.

11 Because C-3 is not available to testify, the  
12 Commission counsel proposed to tell his story through the  
13 use of the overview. In general terms, the overview  
14 document is said to outline the sequence of summary of  
15 events related to a particular individual.

16 The primary focus, according to Commission  
17 counsel, is the individual's contact with various  
18 institutions. The overview also attempts to capture themes  
19 and issues that arise in a document pertaining to the  
20 individual, in a neutral and thorough fashion.

21 Commission counsel advised that the source  
22 of the information in the overview is the relevant  
23 documents that had been produced to the Commission by  
24 parties with standing. References to selected relevant  
25 documents are contained in the overview. Commission

1           counsel was clear in his position that in the event of any  
2           inconsistency between the overview and the documents  
3           referenced therein, the documents would prevail.

4                        It was explained that the entire  
5           institutional response is unlikely to be developed within  
6           an overview. This is because portions of the institutional  
7           response, such as contact between institutions or within an  
8           institution, may be outside of the knowledge and personal  
9           experience of the individual who is the subject of the  
10          overview.

11                      I also noted similar practice was followed  
12          by Commission counsel in leading the evidence in-chief of  
13          witnesses. These portions will be covered during the  
14          Institutional Response stage of the Inquiry. By way of  
15          example, the overview of C-3 primarily outlines his contact  
16          with various institutions surrounding his report of  
17          allegations of abuse.

18                      Commission counsel indicated that an  
19          overview document would be useful for a number of reasons.  
20          First, it would help to provide me with a starting point to  
21          review the evidence. Second, it would help the parties to  
22          identify relevant evidence from the database and to  
23          comprehend the scope of issues and themes to be examined  
24          during the Institutional Response stage.

25                      Commission counsel suggested this would



1 maximize fairness, efficiency and thoroughness. Finally,  
2 the overview would allow the public to be better able to  
3 follow the information coming before the Inquiry.

4 Another point addressed by Commission  
5 counsel was the Commission's authority to receive  
6 overviews. In Commission counsel's view, a number of  
7 provisions in the *Public Inquiries Act*, the Order-in-  
8 Council establishing this Inquiry and the Rules of Practice  
9 and Procedure of the Cornwall Public Inquiry, support the  
10 use of alternative forms of evidence such as overviews.

11 For ease of reference, I will summarize  
12 these provisions. First, section 3 of the *Public Inquiries*  
13 *Act* states that:

14 "Subject to sections 4 and 5, the  
15 conduct and procedure be followed on  
16 inquiries under the control and  
17 direction of the commission conducting  
18 the inquiry."

19 This provision is mirrored in Rule 6 of the  
20 Inquiry's rules. Subparagraph 5(b) of the Order-in-Council  
21 indicates that the commission may refer to and rely on  
22 factual overview reports prepared by any party.

23 Commission counsel suggested that paragraph  
24 5 in its entirety can be read to suggest that the  
25 commission can receive evidence in a manner other than

1 through witness testimony. Rule 14 of the Inquiry's rules  
2 expands upon paragraph 5, stating the Commission and I  
3 quote:

4 "The Commission may refer to and rely  
5 on material listed in paragraph 5 of  
6 the Order-in-Council and to such other  
7 material as the Commission considers  
8 relevant to its duties."

9 Finally, rule 13 of the Inquiry rules  
10 provide that the Commission is entitled to receive any  
11 relevant evidence which might otherwise be inadmissible in  
12 a court of law and that the strict rules of evidence will  
13 not apply to determine admissibility of evidence.

14 The Submissions by the Diocese of  
15 Alexandria-Cornwall: counsel of the diocese took the  
16 position that no overview, including that of C-3, should be  
17 received as evidence. He submitted that only the documents  
18 that formed the basis of the interview, subject -- the  
19 overview, sorry, subject to any argument on the basis of  
20 relevance should be entered as evidence.

21 According to counsel for the diocese, the  
22 three purposes for the overview, educating the public,  
23 assisting the Commissioner in being a vehicle for exhibits,  
24 could be met without making the overview a piece of  
25 evidence. In his view, the overview, if marked at all,

1 should only be marked as a summary or narrative similar to  
2 a factum or submission in writing.

3 With respect to the overview of C-3, counsel  
4 for the diocese was concerned with one particular paragraph  
5 of the overview. His concern was that this paragraph,  
6 which contained a quotation and very brief summary from  
7 Exhibit 421, a letter from Monsignor McDougald to C-3, was  
8 drafted in a manner that had an innuendo unhelpful to his  
9 client which would be eliminated in the greater context of  
10 the letter.

11 He indicated that there was no direct  
12 conflict between the overview and the letter; was of the  
13 view that the letter was more generous than one might  
14 gather from the paragraph in the overview and wish the  
15 record to reflect that.

16 In an effort to address this, Counsel for  
17 the diocese read another paragraph of the letter into the  
18 record to supplement what was in the overview.

19 As part of my analysis, I must begin by  
20 saying that it is preferable to have viva voce evidence.  
21 For the most part, this is the legal framework within which  
22 we all are used to working. As we have already seen in  
23 this process, however, having viva voce evidence may not  
24 always be possible.

25 For any number of reasons such as medical

1 condition, concern about revictimization, death, or being  
2 out of the jurisdiction, for example, witnesses may not be  
3 available to testify. I will consider these reasons on a  
4 case-by-case basis.

5 As for C-3, I am satisfied that he is not  
6 presently available to testify. I am also of the view that  
7 his evidence will be helpful to the parties, the public,  
8 and me, in understanding the institutional response to  
9 allegations of sexual abuse of young people.

10 As a result, it is important to find an  
11 alternative method to bring the relevant evidence that  
12 pertains to him before the Inquiry.

13 Ideally, this alternative method should  
14 strive to be fair, thorough and efficient.

15 The overview of C-3 is an alternative method  
16 that achieves these objectives.

17 The provisions referred to me by Commission  
18 counsel from the *Public Inquiries Act*, the Order-in-Council  
19 then rules in this Inquiry, allow me to receive and rely  
20 upon alternative forms of evidence, such as overviews.

21 Taken in their totality, these provisions  
22 highlight the following: my discretion to control the  
23 conduct and procedure in this Inquiry; that more flexible  
24 rules of evidence apply to the Inquiry process; and that  
25 alternatives to viva voce evidence are permissible.

1 Paragraph 5 of the Order-in-Council is  
2 significant in that it clearly outlines the use of various  
3 alternatives to viva voce evidence.

4 Rule 14 goes one step further. It indicates  
5 that the commission can refer to and rely on the material  
6 listed in paragraph 5, as well as such other material as  
7 the commission considers relevant to it's duties. This  
8 reinforces a broad discretion to accept alternate forms of  
9 evidence.

10 Based on these provisions, I have the  
11 authority to receive overviews of documentary evidence.

12 The question remains whether the overview of  
13 C-3 should be entered as an exhibit.

14 After having heard Commission counsel's  
15 presentation on the overview, the submissions of counsel  
16 for the diocese, as well as the submissions of those  
17 parties who commented on the use of overviews generally, I  
18 am of the view that the overview of C-3 should be entered  
19 into evidence.

20 I found the overview of C-3 to be of great  
21 assistance to me in understanding a sketch of the contacts  
22 that C-3 had with public institutions in relation to his  
23 allegations of abuse.

24 It is drafted in a neutral fashion,  
25 detailing contacts. I note however that I did not view the

1 overview of C-3 as a substitute for his testimony. It is  
2 clearly different.

3 The evidentiary value of the overview is  
4 admittedly less than that of the documents used in its  
5 preparation. And in the case of conflict between the  
6 overview of C-3 and the documents, the contents of the  
7 documents will clearly prevail.

8 Despite this, for reasons of transparency  
9 and openness, the overview should be entered as an exhibit  
10 so that subject to any confidentiality measures in place,  
11 it is available for all to review.

12 I think it is important to note that the  
13 overview of C-3 is just that. It is an overview, or  
14 summary, which was prepared by Commission counsel through a  
15 documentary review.

16 It does not contain all of the information  
17 that is included in the documents and it does not fully  
18 address the institutional response to C-3's allegation of  
19 abuse. Thus, the circumstances surrounding the response of  
20 C-3's allegations are not closed with the entering of his  
21 overview and relevant documents as exhibits.

22 Parties will have an opportunity to address  
23 this during Institutional Response Phase of the Inquiry.  
24 At that time, I anticipate that we will be revisiting the  
25 C-3 documents already entered as exhibits and will be

1 introduced to additional institutional response.

2 We are also likely to hear viva voce  
3 evidence from witnesses who work within the institutions  
4 who are parties to this Inquiry, about the role that they  
5 played in response to allegations of abuse. It is possible  
6 that this evidence may or may not be consistent with the  
7 contents of the overview and the documents used in its  
8 preparation.

9 If there are inconsistencies, I will take  
10 them into account in my weighing of all of the evidence  
11 that is before me.

12 While I am cognizant of Counsel for the  
13 diocese's concerns with a particular paragraph in the  
14 overview, I must make it clear that I will form my opinion  
15 on the content of the letter. upon review of the overview  
16 and the related exhibits.

17 And while I appreciate that counsel for the  
18 diocese is concerned about how the public may understand  
19 the paragraph, he must bear in mind that he will have  
20 another opportunity to explore the exhibit further before  
21 me during the Institutional Response Phase.

22 Given the foregoing, there is no prejudice  
23 in entering the overview of C-3 as an exhibit, particularly  
24 given my caveat with regard to the weight that I will  
25 assign to the overview.

1           As the result, I order that the overview of  
2           documentary evidence of C-3 be entered as an exhibit in  
3           these proceedings.

4           Publication ban on the name of C-3 and any  
5           information that tends to identify him applies to the  
6           overview as it also does to the documents that have already  
7           been entered in relationship to him.

8           Before concluding, a few further comments  
9           are suitable.

10          Overviews may not be appropriate in all  
11          cases and I will consider them on a case-by-case basis.

12          I expect that Commission counsel will  
13          continue to consult with counsel for the parties on any  
14          future proposed overviews.

15          At that time, parties will have an  
16          opportunity to express to Commission counsel their views as  
17          to the content and/or appropriateness of an overview.

18          Should there be disagreement during this  
19          consultation, or should I have concerns about the use of a  
20          particular overview, I will hear submissions on that matter  
21          as well.

22          And there you go.

23          ---DIRECTIONS IN RELATION TO FREEDOM OF INFORMATION  
24          REQUEST/DIRECTIVES CONCERNANT LA LIBERTÉ DE DEMANDE  
25          D'INFORMATION:



1                   **THE COMMISSIONER:** So, I also was asked to  
2 give directions in relation to a freedom of information  
3 request.

4                   On May 9<sup>th</sup>, 2007, counsel for the OPP sought  
5 directions from me on the issue of whether certain  
6 documents are an impediment to the Ontario Provincial  
7 Police complying with freedom of information requests.

8                   While I have chosen to use the generic term,  
9 FOI request, I should note that such requests can be made  
10 pursuant to legislative schemes at municipal, provincial  
11 and federal levels.

12                   Documents that the OPP are concerned may be  
13 an impediment to the FOI requests, are documents that  
14 originate from this Inquiry process. They are the summons  
15 issued by me to OPP and the undertakings signed by both  
16 counsel to the OPP and members of the OPP. The summons  
17 requires the parties to produce to the Inquiry all relevant  
18 documents.

19                   The undertakings arise as a result of the  
20 Commission's obligation to disclose to the parties all  
21 relevant documents that it has received from them.

22                   The undertaking to the parties, the one that  
23 counsel for the OPP submitted might be at issue here,  
24 requires those who sign it to agree that any documents and  
25 information shown to them by their Counsel will be used

1 solely for the purpose of the Inquiry and will not be  
2 disclosed to anyone else or made public.

3 This question has arisen before me because  
4 of an FOI request received by the OPP from an associate of  
5 the law firm representing the victims group, a party before  
6 this Inquiry, their request for access to certain documents  
7 pertaining to an individual or affected person who is a  
8 member of the victim's group and also plaintiff of a civil  
9 action. The request for documents was made in the normal  
10 course of a civil action which happens to be against the  
11 Diocese of Alexandria-Cornwall. The diocese is also a  
12 party.

13 The associate who made the request is  
14 representing the affected person in a civil action. The  
15 OPP is concerned that releasing documents pursuant to an  
16 FOI request, may result in a breach of the undertakings  
17 then, or summons, issued in the Inquiry process.

18 In addition, the OPP is concerned that if  
19 the undertakings and/or summons are an impediment to  
20 releasing the documents, it will not be in compliance with  
21 it's obligations pursuant to the FOI legislation.

22 To assist me, the OP prepared a document,  
23 which is exhibit M6-A1, containing a list of those  
24 documents gathered by the OPP in response to the FOI  
25 request. The list of documents was cross-checked by the

1 OPP in two ways; to determine whether the documents on the  
2 list were disclosed to this Commission pursuant to my  
3 summons dated October 25<sup>th</sup>, 2005, and determine whether any  
4 or all of the documents on the list were in turn disclosed  
5 to the parties, subject to the undertakings as a part of  
6 the Commission's disclosure obligation to the parties.

7 The public's right to access government  
8 documents, as set out in the FOI legislation, is an  
9 important element of maintaining the transparency and  
10 openness of government. I must begin by saying that I do  
11 not wish to interfere with the rights of persons to request  
12 access to information pursuant to FOI legislation.

13 In my view, in this case, the FOI process  
14 and this Inquiry can operate side-by-side without conflict.  
15 Furthermore, the summons issued by me and the undertaking  
16 signed by counsel for the OPP and its members are not an  
17 impediment to compliance with the FOI request.

18 It is clear from the submissions of counsel  
19 and from the list of documents provided by the OPP, that  
20 the documents compiled by the OPP pursuant to the FOI  
21 request are all OPP original documents. By original  
22 documents, I'm referring to documents that were in the  
23 possession of the OPP prior to receiving disclosure  
24 documents from this Commission.

25 Given that the listed documents are original

1 OPP documents, there is no breach of the undertakings when  
2 the documents are released pursuant to the FOI request.  
3 These documents were not obtained by the OPP pursuant to  
4 the Commission's disclosure to parties. They were in the  
5 control of the OPP prior to Commission disclosure and  
6 continue to be after Commission disclosure.

7 Given the possibility that other public  
8 institutions who are parties to this Inquiry may be in the  
9 position of receiving FOI requests, I was asked by counsel  
10 for the Cornwall Police to provide some direction on three  
11 related questions.

12 First, do documents that a party possess  
13 prior to the calling of this Inquiry changing character as  
14 a result of the Inquiry process? In my view, the answer to  
15 that question is no. As I have indicated above, with  
16 respect to the OPP situation, documents that were possessed  
17 by them prior to the calling of this Inquiry continue to be  
18 OPP documents. These are what I earlier called original  
19 documents. These documents do not become Commission  
20 documents subject to the undertaking simply because they  
21 have been disclosed to the Commission pursuant to my  
22 summons. Furthermore, as original documents, they continue  
23 to be in the control of the party.

24 Second, do documents that a party acquired  
25 pursuant to the Commission's disclosure process become

1 subject to an FOI request and thereby become producible  
2 contrary to the signed undertakings? The answer to this  
3 question is also no. Documents that were provided to the  
4 parties by the Commission through the Commission's  
5 disclosure process are not in the control of the parties  
6 and therefore should be exempt from the FOI process. If  
7 parties have any doubt as to whether particular documents  
8 are original documents acquired through the Commission's  
9 disclosure process, they may seek directions from me.

10 The third question posed was whether it is  
11 appropriate for the Commission to waive compliance with or  
12 permit parties to be exempt from compliance with the signed  
13 undertakings because there has been an FOI request in the  
14 context of civil litigation? Given my previous comments,  
15 I'm of the view that in the normal course there will be no  
16 need to waive or permit an exemption from compliance with  
17 signed undertakings. Accordingly, at this time, there is  
18 no need to give directions in respect to this question. To  
19 do so in a general sense would be speculative.

20 I hope that my comments thus far have been  
21 of some assistance to the parties. Given the sensitive  
22 nature of many of the subjects touched upon by this  
23 Inquiry, however, I would understand if parties that are  
24 government institutions may continue to have some  
25 trepidation about potential FOI requests. If parties are

1           unsure about how to proceed in the face of an FOI request,  
2           I respectfully recommend the use of the following protocol.

3                       If a party receives an FOI request for  
4           documents, and the documents are ones that have been  
5           disclosed to the Commission pursuant to a summons to  
6           witness or pursuant to rule 31 of the Commission's Rules of  
7           Practice and Procedure and which may or may not be the  
8           subject of the undertakings given to the Commission, the  
9           party may contact Commission counsel and provide notice of  
10          the FOI request. Notice may include a list of those  
11          documents that the party will be delivering to its ministry  
12          FOI office, as well as a list of those documents that were  
13          included in the party's documentary disclosure to the  
14          Commission. The notice should be sufficiently timely to  
15          enable Commission counsel to have an opportunity to review  
16          the documents and provide comments, if any, before they  
17          become part of the FOI process.

18                      The purpose of this recommended protocol is  
19          not to interfere with FOI requests. Instead, its purpose  
20          is to facilitate the working relationship between the  
21          Commission and the parties and to provide Commission  
22          counsel with the opportunity to comment when the party  
23          desires such comments on the documents proposed to become  
24          part of the FOI process. Given their familiarity with the  
25          documents and the issues in this Inquiry, Commission

1           counsel may have used possible redactions or reasons why  
2           particular documents should not be included in the FOI  
3           process.

4                                So Mr. Engelmann ---

5           ---HOUSEKEEPING MATTERS/MATIÈRES ADMINISTRATIVES:

6                                **MR. ENGELMANN:** Just a quick comment, sir,  
7           if I may.

8                                **THE COMMISSIONER:** Yes.

9                                **MR. ENGELMANN:** If we could then have the  
10          note for C-3 marked as an exhibit.

11                               **THE COMMISSIONER:** Certainly.

12                               **MR. ENGELMANN:** I note it was marked for  
13          identification purposes.

14                               **THE COMMISSIONER:** Yes.

15                               **MR. ENGELMANN:** I don't know if that number  
16          was kept.

17                               **THE COMMISSIONER:** Oh, yes, the number was  
18          kept.

19                               **MR. ENGELMANN:** Okay. So if it could just  
20          be changed from an "I" to a "P" exhibit that would be  
21          helpful.

22                               **THE COMMISSIONER:** Agreed.

23                               **MR. ENGELMANN:** Sir, there are no further  
24          witnesses today. We have witnesses for tomorrow and  
25          Thursday. Cathy Sutherland will be first up tomorrow

1 morning at 9:30.

2 **THE COMMISSIONER:** All right.

3 So we'll resume at 9:30.

4 **MR. ENGELMANN:** Thank you.

5 **THE COMMISSIONER:** Thank you.

6 **THE REGISTRAR:** Order. All rise. Veuillez vous  
7 lever.

8 --- Upon adjourning at 2:28 p.m./

9 L'audience est ajournée à 14h28

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

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

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



---

Marc Demers, CVR-CM