

**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 30th,
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 1st, 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 30th, 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 1st, 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 25th and you seemed to know on that date that the trial had
19 been delayed to April the 29th?

20 **C-4:** I heard through the media.

21 **MS. McINTOSH:** Okay. And victim witness
22 promised to get back to you on March 25th 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 13th
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 7th, 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 7th, 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 Maître 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:** Maitre 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 26th, 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 26th, 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 9th, 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 25th, 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