

**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 71

Held at :

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

Monday, November 27, 2006

Tenue à:

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

Lundi, le 27 novembre 2006

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Raija Pulkkinen	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. Peter Manderville	Cornwall Police Service Board
Actg.Det.Supt.Colleen McQuade	Ontario Provincial Police
Ms. Suzanne Costom	
Ms. Diane Lahaie	
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Mike Lawless	
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Robert Duncan	The Children's Aid Society of the United Counties
Mr. Peter Wardle	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott M ^e André Ducasse	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Bishop Eugene LaRocque
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Colin S. Baxter	Canadian Broadcasting Corporation

Table of Contents / Table des matières

	Page
List of Exhibits :	iv
Preliminary Matters/Matières preliminaries	1
Ruling by/Décision par Justice Normand Glaude	23
Submission by/Représentation par Mr. David Sherriff-Scott	24
Submission by/Représentation par Mr. Colin Baxter	25

LIST OF EXHIBITS/LISTE D'EXHIBITS

NO.	DESCRIPTION	PAGE NO
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1 --- Upon commencing at 2:04 p.m./

2 L'audience débute à 14h04

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 afternoon, all.
10 Mr. Engelmann, good afternoon.

11 **MR. ENGELMANN:** Good afternoon.

12 In keeping with usual custom, I just wanted
13 to identify a new face.

14 **THE COMMISSIONER:** Great.

15 **MR. ENGELMANN:** It's Mr. Bill Duncan who is
16 here on behalf of Peter Chisholm ---

17 **THE COMMISSIONER:** Right.

18 **MR. ENGELMANN:** --- acting for the
19 Children's Aid Society.

20 **THE COMMISSIONER:** Thank you.

21 Good afternoon, sir.

22 **MR. ENGELMANN:** Mr. Baxter you may have met

23 ---

24 **THE COMMISSIONER:** Yes.

25 **MR. ENGELMANN:** --- who is counsel for the

1 CBC.

2 THE COMMISSIONER: Yes.

3 MR. ENGELMANN: And I believe other counsel
4 are known to you, I would hope.

5 THE COMMISSIONER: Mr. Manderville ---

6 MR. ENGELMANN: Mr. Manderville has a
7 colleague ---

8 THE COMMISSIONER: --- has a colleague.

9 MR. ENGELMANN: --- that I don't know.

10 MR. MANDERVILLE: I would like to introduce
11 Ms. Amy Then, student-at-law of our office ---

12 THE COMMISSIONER: All right.

13 MR. MANDERVILLE: --- who will be absolutely
14 critical to me.

15 THE COMMISSIONER: Good afternoon. Okay.

16 MR. ENGELMANN: Sir, as you know, we have a
17 motion this afternoon from the Diocese of Alexandria-
18 Cornwall ---

19 THE COMMISSIONER: Yes.

20 MR. ENGELMANN: --- asking for a redaction
21 of a name from the record in the first instance and,
22 secondly, in the alternative, asking for a publication ban
23 with respect to a particular individual.

24 There's just a couple preliminary remarks I
25 would like to make and that is we have had some issues,

1 sir, with respect to service of notice and service of
2 notice with respect to the CBC, and I thought that was
3 something that we could perhaps address this afternoon with
4 counsel and with counsel for the CBC, who is present.

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

6 **MR. ENGELMANN:** And there is also issues
7 about when -- let's just call it timely filing of
8 materials. I would just like to address those two issues
9 briefly if I could.

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

11 **MR. ENGELMANN:** Firstly, with respect to the
12 CBC, the CBC was not served by the moving party with the
13 materials, and I certainly recall, as I'm sure you do, a
14 ruling or direction you gave on November 7th with respect to
15 service on the CBC. Commission counsel ended up serving
16 the CBC late the afternoon Thursday, November 23rd.

17 In future, I would certainly like any party,
18 or certainly would make the submission that any party
19 moving for a publication ban or some form of
20 confidentiality serve the CBC's counsel as per your earlier
21 direction on November 7th. It would just make things much
22 easier for us in dealing with the flow of documents,
23 especially when these things happen on fairly short notice.
24 So I just want to make that comment, sir.

25 Secondly, of course, with rights come

1 responsibilities and the concern, of course, in a situation
2 like this, and I'm sure it was a concern of the moving
3 party in this case -- I know it was, given email
4 correspondence between Commission counsel and Borden Ladner
5 Gervais -- that when people are seeking a publication ban
6 or some form of confidentiality, obviously if counsel for
7 the CBC or any counsel, for that matter, share information
8 with the media and if in fact this information is
9 published, it defeats the whole purpose of the motion
10 before it's even heard, and surely that isn't how we wish
11 to do business.

12 So I just wanted to make that point, sir. I
13 recall at the time it was Tony Wong who was present and
14 acting for the CBC on November 7th when you gave that
15 direction.

16 I don't know if more needs to be said on it.
17 I don't know if any of the parties wish to speak to it, but
18 that involved the CBC only at the time. They were the only
19 media outlet that came forward with counsel to make
20 submissions in that regard.

21 **THE COMMISSIONER:** But there's the issue of
22 filing affidavits after affidavits as well.

23 **MR. ENGELMANN:** Yes. That was the second
24 issue that I wanted to speak to very briefly. The last
25 couple of motions, we have had to do things quickly, and

1 what that means is the moving party files the materials;
2 responding parties respond, and then we argue. We haven't
3 had a right of reply. There hasn't been time, and that's
4 something that can be dealt with orally.

5 Three things came in late. We had an
6 affidavit filed by Roxanne Landry, a secretary at the law
7 firm of Borden Ladner Gervais on behalf of the Diocese's
8 motion Friday at around 6:00. We had an affidavit filed --
9 sworn by Maître Ducasse also of the same law firm this
10 morning, and then we had the CBC materials, their factum
11 filed this morning at around 10:30.

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

13 **MR. ENGELMANN:** Obviously guidelines had
14 been set out as per your direction. Commission counsel
15 wrote to the parties to set out the schedule. We had asked
16 that the moving parties have their materials filed and
17 served on Wednesday; anybody in support to file I can't
18 remember when on Thursday, but I think it was around the
19 noon hour on Thursday, and the responding parties all to
20 file by the end of business on Friday. So we had two sort
21 of responding affidavits, if I can call them that, and we
22 also had a late filing.

23 So I just bring this to your attention, sir.
24 This is an issue. There are fairness issues that are
25 involved for all. We're trying to be even-handed, but it

1 creates difficulties.

2 As far as I know, and I have canvassed this
3 with counsel beforehand, the only people that will be
4 speaking to the motion are those people that have filed
5 written submissions.

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

7 **MR. ENGELMANN:** So you have the Diocese, of
8 course, speaking in favour. They are the moving party.
9 The CCR, the Cornwall Police Service, the Victims Group and
10 the CBC are four parties opposing the motion. So you will
11 hear from counsel for five parties. No other counsel have
12 asked to speak to the motion.

13 Those are some preliminary comments.
14 Counsel may want to comment on the service on the CBC or
15 late filing of materials. I leave that with you to start.

16 **THE COMMISSIONER:** Thank you.

17 Anybody want to make any comment? I'm
18 sorry.

19 **MR. ENGELMANN:** One last point, sir. I
20 canvassed with the parties. You will note in the motion
21 there is a request that this particular motion be argued
22 either in camera or, alternatively, with the use of
23 monitors, and I have asked Mr. Sherriff-Scott, who is
24 speaking to the motion on behalf of the Diocese, to speak
25 to that issue first, and if counsel for the four other

1 parties have views on that, that they should express those
2 so that we can determine that issue before you deal with
3 the substantive motion.

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

5 Anyone want to comment about the issues of
6 service and late filings and that kind of thing?

7 Mr. Wardle.

8 **MR. WARDLE:** No, sir.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Lee?

11 **MR. LEE:** No thank you.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Cipriano?

14 **MR. CIPRIANO:** No thank you.

15 **THE COMMISSIONER:** Mr. Duncan?

16 **MR. DUNCAN:** No thank you.

17 **THE COMMISSIONER:** Mr. Neuberger?

18 **MR. NEUBERGER:** No thank you.

19 **THE COMMISSIONER:** Mr. Kloeze?

20 **MR. KLOEZE:** No, sir.

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

22 **MS. MAKEPEACE:** No thank you.

23 **THE COMMISSIONER:** Mr. Sherriff-Scott?

24 **MR. SHERRIFF-SCOTT:** Yes, sir.

25 In connection with the suggestion of late

1 filing, I don't accept that criticism, in fairness.

2 Number one, the affidavit of Ms. Landry
3 served Friday at 2:30 is a list of documents which intend
4 to be tendered through cross-examination and otherwise by
5 your lawyers and other parties.

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

7 **MR. SHERRIFF-SCOTT:** These document lists
8 are obviously germane to my motion because they identify
9 the kind of documents I'm concerned about prejudicing my
10 client. Those lists came in Wednesday, Thursday and Friday
11 morning.

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

13 **MR. SHERRIFF-SCOTT:** So I'm trying to
14 determine and put before you the evidence which is of
15 concern for the disposition of my motion vis-à-vis
16 identifying documents that obviously affect the issue of
17 prejudice that I'm trying to outline.

18 So the idea that I'm trying to be late here
19 is not substantiated.

20 Moreover, the affidavit of today is in
21 response to Mr. Wardle's affidavit which was served Friday
22 afternoon and there was an evidentiary contention in that
23 affidavit which suggested that the Diocese did not conduct
24 an independent investigation in connection with the moving
25 party at issue.

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

2 **MR. SHERRIFF-SCOTT:** And there is a specific
3 answer to that which is necessary to be before you, which I
4 served as soon as possible.

5 So that is my comment in connection with
6 late filing. I don't characterize it as late filing.
7 These are responses. This is a short, compressed period
8 and we are doing exactly as much as we can to respond and
9 put before you what is germane. I don't think there's any
10 concern about listing the documents that are effectively at
11 issue in my motion.

12 Second, in terms of service, there is one --
13 I did not interpret your direction, if there was one, on
14 November 7th on a go-forward basis for the CBC. First of
15 all, the CBC is not a party here to this proceeding.

16 Secondly, if I have to serve the CBC, then
17 in theory I have to serve every media outlet in Eastern
18 Ontario. I'm not sure why the CBC would merit special
19 privilege on some upcoming motion when I don't know whether
20 they're going to take a position or not. I never routinely
21 serve the media and I can tell you I'm the Chair of my
22 national firm's media group and the media never gets
23 service or preferential treatment. They monitor
24 proceedings. They ask the Court for access, and if
25 conditions are warranted, they are imposed by the Court.

1 Those are my only comments. Thank you.

2 **THE COMMISSIONER:** Okay. Mr. Manderville?

3 **MR. MANDERVILLE:** No comment, Mr.

4 Commissioner.

5 **THE COMMISSIONER:** Thank you.

6 Ms. Brannan.

7 **MS. SACCOCCIO-BRANNAN:** No comments.

8 **THE COMMISSIONER:** Mr. Carroll?

9 **MR. CARROLL:** Nothing. Thank you.

10 **THE COMMISSIONER:** So that's everybody?

11 **THE REGISTRAR:** The CBC.

12 **THE COMMISSIONER:** Sorry, the CBC. Yes, of
13 course.

14 **MR. BAXTER:** Thank you, Mr. Commissioner.

15 If we could just have some clarification
16 with respect to your direction? Is it an ongoing direction
17 to serve the CBC? We would certainly think that would be
18 appropriate. We are here today. We will continue to be
19 here for these types of issues and we request that that be
20 clarified in Mr. Sherriff-Scott's mind.

21 **THE COMMISSIONER:** Well, we'll have to clear
22 it up for Mr. Sherriff-Scott and for everyone else because
23 on November 7th it wasn't as clear.

24 I suspect that there are a couple of things.
25 First of all, there's the issue of whether or not the CBC

1 want to participate. They made it very clear on November
2 7th. I thought in my own way I had made that clear that you
3 would be served with documents.

4 And so, Mr. Sherriff-Scott, they may not be
5 parties per se, but when it comes to confidentiality
6 matters, I want them served as if they were a party.

7 Number two, if you're not here, Mr. CBC,
8 while we're dealing with a matter that comes up, we're not
9 going to stop the hearings to serve you. We go on. In
10 fact, I think one Friday afternoon after you had left or
11 someone else had left, there was an issue of
12 confidentiality and we're just going to go. If the CBC
13 wishes to participate on things that come up, then they
14 have -- they need a seat at the table.

15 Is that clear?

16 **MR. BAXTER:** That's understood.

17 **THE COMMISSIONER:** All right.

18 Now, the next -- no. I'm also understanding
19 that there was some issue as to what you would do with
20 those documents after you were served, as in give them to
21 the reporters so they could report on it.

22 **MR. BAXTER:** That may have been Mr.
23 Sherriff-Scott's fear, sir.

24 **THE COMMISSIONER:** Yes.

25 **MR. BAXTER:** But I understood the request

1 for his relief and I was immediately in contact with
2 Commission counsel when I learned of this motion to
3 understand the restrictions on any use and, certainly,
4 those have been respected. I think your counsel will tell
5 you that I was in constant contact with them Thursday and
6 Friday.

7 **THE COMMISSIONER:** And Saturday.

8 **MR. BAXTER:** And Saturday.

9 **THE COMMISSIONER:** Until one o'clock in the
10 morning to decide whether or not an article was going to
11 go?

12 **MR. BAXTER:** No, sir, to understand the
13 restrictions that you would like to see observed, and I
14 believe they have been observed faithfully.

15 **THE COMMISSIONER:** Well, that's well. I
16 just don't think we have to have this going on a marathon
17 until one o'clock in the morning and having Commission
18 counsel, who have a lot of things to do, to be working that
19 late.

20 In any event ---

21 **MR. BAXTER:** Just to be clear, I was unclear
22 whether an order had been issued -- an interim order, such
23 as is being sought by Mr. Sherriff-Scott. We didn't want
24 to effectively infringe on something that had been made
25 without notice to us.

1 **THE COMMISSIONER:** All right.

2 Well, it's always a wonder to me that we
3 have senior counsel here, cutting-edge lawyers in the
4 Province of Ontario, and we can't seem to understand or
5 agree on the time of day. I find that unfortunate.

6 So what it's going to mean, it's going to
7 mean that where I thought I could leave it to you people to
8 orchestrate properly, then it's going to be by the letter
9 of the law. For every motion from here on in, I will give
10 you people a specific time, and be very careful if you miss
11 it. I suppose that's the problem with a lot of lawyers and
12 a lot of people trying to do a lot of things.

13 In any event, very well.

14 Ruling number 1, for evermore, if we know
15 that there is a motion to be brought on confidentiality,
16 the CBC, Mr. Baxter, is to be served as solicitor of record
17 as with any other parties. All right?

18 You will respond and with that motion we
19 will be giving, through Commission counsel -- I will order
20 when the documents are to be filed, and if you can't file
21 them by that time, you better bring a motion for leave
22 because we're not going to accept it. And I am not saying
23 you, sir, specifically. I am saying to everybody.

24 Number two, if there are any other media
25 outlets who want to be served, then let them bring their

1 solicitor of record and let us know about them.

2 What else? I think that will do for now.

3 **MR. BAXTER:** Thank you.

4 **THE COMMISSIONER:** Thank you.

5 All right. So now we are onto the motion as
6 to whether or not it should be held in camera.

7 Mr. Sherriff-Scott.

8 **MR. SHERRIFF-SCOTT:** Might I just add,
9 Commissioner, that you may consider, at your own
10 discretion, a third ruling on the last subject which is
11 that when motions are brought vis-à-vis confidentiality and
12 publication bans, and if the CBC is to be so served, that
13 they be effectively enjoined pending disposition of your
14 reasons of the motion from publishing so that we don't go
15 through this sort of ---

16 **THE COMMISSIONER:** It depends on what your
17 relief sought is. Like in your relief, right, I would have
18 -- I am comparing it to Father MacDonald's. Father
19 MacDonald's had nothing in it and so I don't think I should
20 be restricting anyone from publishing anything.

21 In your motion, you put a relief sought that
22 it be in camera to start off with. That should be an
23 inkling to somebody. I would think though, and I am not
24 the drafter of motions -- I gave that up a long time ago --
25 but that we order *nunc pro tunc* that the name not be used,

1 and then you're for sure on safe ground.

2 **MR. SHERRIFF-SCOTT:** Yes, except that when
3 the material is served in the usual course in accordance
4 with the guidelines, then the CBC has to play ball, as it
5 were, so that these things aren't rendered useless.

6 **THE COMMISSIONER:** I think ---

7 **MR. SHERRIFF-SCOTT:** We went through some
8 hysteria on Friday. Mr. Wardle's material was
9 inadvertently served as was Mr. Lee's.

10 **THE COMMISSIONER:** Yes.

11 **MR. SHERRIFF-SCOTT:** I was on the phone.
12 Maître Dumais was on the phone, et cetera.

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

14 **MR. SHERRIFF-SCOTT:** All because we weren't
15 clear on ---

16 **THE COMMISSIONER:** Well, I think it -- let
17 the material speak for itself. If you bring an application
18 and say "I want it retroactive to the time I gave you the
19 paper", then I think the CBC, as a responsible and big law
20 firm, will be able to understand that.

21 **MR. SHERRIFF-SCOTT:** Okay. Thank you,
22 Commissioner.

23 The question of whether this ought to be in
24 camera, I would say that it's my submission it's the
25 practice in the courts to hear these matters in camera for

1 the very reason that the judge has to determine whether
2 there is sufficient record in the first instance so as to
3 dispose of the hearing, and if there isn't then, there is
4 no issue at the end of the hearing. All is open for
5 publication. If there is, then the judge will decide. And
6 the fact that it ought to be in camera prevents the horse
7 getting out of the barn, as it were.

8 The CBC's own authority which is M5-J2, the
9 book that was filed on last day, has the *CBC v. the*
10 *Attorney General for New Brunswick* case which speaks to
11 that practice, Commissioner, at page 24 of 29. That's
12 their old brief file for the Charles MacDonald ---

13 **THE COMMISSIONER:** Well, I have the -- I'm
14 just trying to find that now. M5-C2?

15 **MR. SHERRIFF-SCOTT:** I have M5-J2.

16 **THE COMMISSIONER:** J2. Okay.

17 **MR. SHERRIFF-SCOTT:** I hope I've got that
18 right.

19 **THE COMMISSIONER:** No, I don't think I have
20 it. There we go. All right. Thank you.

21 And you're saying what?

22 **MR. SHERRIFF-SCOTT:** It's Tab 1,
23 Commissioner.

24 **THE COMMISSIONER:** Yes.

25 **MR. SHERRIFF-SCOTT:** Page 24 of 29, and it's

1 paragraph 72 where the court says:

2 "There must be a sufficient evidentiary
3 basis from which the trial judge may
4 assess the application upon which he
5 may exercise his or her discretion
6 judicially. In some cases, in which
7 the facts are not at dispute, the
8 statement of counsel will suffice if
9 there is insufficient evidence placed
10 before the trial judge. Where there is
11 a dispute as to the relevant facts, the
12 application should seek to have the
13 evidence heard in camera. This may be
14 done by way of voir dire from which the
15 public is excluded. For example, in
16 the present case, a voir dire could
17 have been held to permit the Crown to
18 disclose the facts..."

19 In other words, I submit this demonstrates
20 the practice that voir dires are held to determine these
21 matters so as to prevent the matter from becoming a waste
22 of time or having the motion defeated in advance. And
23 that's all I have to say about that, I think it should be
24 conducted in camera pending disposition.

25 **THE COMMISSIONER:** Well, what about if we

1 use monikers or ---

2 **MR. SHERRIFF-SCOTT:** Well, that doesn't
3 prevent the evidence from getting out that's referred to in
4 the applications and the affidavits.

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

6 **MR. SHERRIFF-SCOTT:** So that I suppose you
7 could follow that course if you had the webcast off so that
8 the material that is being alluded to by counsel in the
9 affidavits or up on the screens is not disclosed in advance
10 because they have statements and documents and affidavits,
11 et cetera.

12 **THE COMMISSIONER:** Thank you.

13 **MR. SHERRIFF-SCOTT:** Thank you.

14 **THE COMMISSIONER:** Mr. Wardle?

15 **MR. WARDLE:** I have no position on behalf of
16 my client on this issue. I would indicate for your
17 benefit, Mr. Commissioner, that some of the people who will
18 be responding to the motion may make submissions that would
19 have the effect of potentially identifying the individual
20 in question. So this may be a case where having the motion
21 in camera may be the most efficient way to proceed.

22 **THE COMMISSIONER:** Thank you.

23 Mr. Lee?

24 **MR. LEE:** The Victims Group isn't taking a
25 position on this issue either, but I would agree with Mr.

1 Wardle that there may be some problem with the information
2 tending to identify the Applicant if not heard in camera.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Cipriano?

5 **MR. CIPRIANO:** I have no comment.

6 **THE COMMISSIONER:** Mr. Duncan?

7 **MR. DUNCAN:** Nothing, sir.

8 **THE COMMISSIONER:** Thank you.

9 Mr. Neuberger?

10 **MR. NEUBERGER:** Nothing. Thank you very
11 much.

12 **THE COMMISSIONER:** Mr. Kloeze?

13 **MR. KLOEZE:** No comment, sir.

14 **THE COMMISSIONER:** Ms. Makepeace?

15 **MS. MAKEPEACE:** Nothing, thank you.

16 **THE COMMISSIONER:** Mr. Manderville?

17 **MR. MANDERVILLE:** Mr. Commissioner, I would
18 echo Mr. Wardle's comments that administrative expediency
19 may militate in favour of an in-camera session on this
20 issue.

21 **THE COMMISSIONER:** Thank you.

22 Ms. Brannan?

23 **MS. SACCOCCIO-BRANNAN:** No comment, sir.

24 **THE COMMISSIONER:** Mr. Carroll?

25 **MR. CARROLL:** Nothing to add. Thank you.

1 **THE COMMISSIONER:** Thank you.

2 All right. Commission counsel, do you have
3 any -- I am sorry. Just a second, Commission counsel. We
4 still have the CBC who ---

5 **MR. ENGELMANN:** I have no submissions.

6 **THE COMMISSIONER:** Thank you.

7 **MR. BAXTER:** Thank you, Commissioner.

8 We've put in our position on this point in
9 our responding submissions. If you have them before you,
10 they are in paragraph 3. It's in paragraph 3. And perhaps
11 it shouldn't be shown up on the screen because there is the
12 identity of the individual in there, but I certainly don't
13 intend to make reference to it.

14 **THE COMMISSIONER:** Right. Let me see if I
15 can find it. Here we go. Thank you. Paragraph 3.

16 **MR. BAXTER:** It's just a short -- "CBC
17 submits" is how it begins.

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

19 **MR. BAXTER:** I don't think this should be --

20 -

21 **THE REGISTRAR:** Not for public?

22 **THE COMMISSIONER:** It's not public.

23 **MR. BAXTER:** Okay. Very good.

24 So essentially, the middle of that paragraph
25 is the position that in order to succeed on this argument,

1 that this motion should be argued in camera, there has to
2 be evidence before you that to argue this otherwise would
3 irreparably harm the individual's interests.

4 Now, in this case, the fact that the Diocese
5 is bringing a motion on behalf of an individual is readily
6 understandable by the public, that it's the exercise of
7 rights, it's appropriate and it won't cause the public to
8 lead to any adverse conclusions.

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

10 **MR. BAXTER:** So as we say there, it cannot
11 credibly be maintained that public awareness of the mere
12 fact of this motion will harm their rights.

13 Then we go on, on the second part, to
14 suggest an alternative remedy if you're inclined to limit
15 the publicity of this in any way.

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

17 **MR. BAXTER:** So without going any further,
18 might defeat the purpose.

19 **THE COMMISSIONER:** Thank you.

20 All right. I've listened to the arguments
21 with respect to whether or not this matter should be in
22 camera and I find that given the affidavits that will have
23 to be reviewed and the submissions that will have to be
24 made, that it would be more important that we have the
25 matter held in camera so that people can be free to express

1 and to demonstrate their cases as cogently and directly as
2 possible.

3 Accordingly, for the purposes of this
4 motion, we will be operating in camera, which means that
5 the webcast will be turned off, and when we return to the
6 webcast, I will explain what went on during the motion and
7 give my decision with respect to the substantive issues
8 dealing with the motion.

9 So, Madam Clerk, I understand we will need
10 five or ten minutes?

11 **THE REGISTRAR:** Ten (10).

12 **THE COMMISSIONER:** All right. So we will
13 take a 10-minute break and then we'll go with the
14 substantive ---

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

17 --- Upon recessing in public at 2:29 p.m. to resume in
18 camera/

19 L'audience est suspendue en public à 14h29 pour
20 reprendre à huis clos

21 --- Upon resuming in public at 5:20 p.m./

22 L'audience est reprise en public à 17h20

23 **THE REGISTRAR:** This hearing of the Cornwall
24 Public Inquiry is now in session.

25 Please be seated. Veuillez vous asseoir.

1 **THE COMMISSIONER:** Thank you. I was going
2 to say for members of the public that are in the audience
3 here, but those are few tonight at this time, but for those
4 of you who may have been or may still be on the web cast,
5 we had an in camera session wherein lawyers for the Diocese
6 and for a certain individual brought a motion to obtain a
7 ban on publication or other confidentiality measures vis-à-
8 vis the evidence that the witness tomorrow, Mr. Marleau, is
9 undertaking to give.

10 Much of the arguments for those who have --
11 followed the general lines of what Father MacDonald
12 indicated for his relief and the arguments against were
13 somewhat similar to the arguments that were presented by
14 those opposing this motion.

15 That having been said, I've taken a break
16 and what I want to do is organize this matter logistically,
17 and I should tell you first of all, Mr. Sherriff-Scott,
18 that your motion is dismissed for reasons to be given
19 tomorrow.

20 Now, what I'm concerned about, of course, is
21 that the witness is about to leave the country, as he does
22 regularly, and I'm intent on having that evidence completed
23 this week, which will mean that it either will -- we will
24 either work late and/or a combination of working late and
25 sitting on Friday.

1 Now, Mr. Sherriff-Scott, did you wish to
2 make any further submissions at this point?

3 **MR. SHERRIFF-SCOTT:** Sorry, Commissioner?

4 **MR. COMMISSIONER:** Did you wish to make any
5 further submissions at this point?

6 **MR. SHERRIFF-SCOTT:** In connection with
7 what, sir?

8 **MR. COMMISSIONER:** Well --

9 **MR. SHERRIFF-SCOTT:** Do you mean in terms of
10 the stay?

11 **MR. COMMISSIONER:** Yes.

12 **MR. SHERRIFF-SCOTT:** Yes.

13 I have instructions to seek a review.

14 **THE COMMISSIONER:** Yes.

15 --- SUBMISSION BY/REPRÉSENTATION PAR **MR. SHERRIFF-SCOTT:**

16 **MR. SHERRIFF-SCOTT:** And I would,
17 accordingly, ask for a stay in the form of a publication
18 ban, pending disposition of that review. I will file the
19 material on an urgent basis with the Divisional Court in
20 order to ensure it proceeds expeditiously.

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

22 **MR. SHERRIFF-SCOTT:** And there's nothing
23 else I can say about that. I was trying to alert the
24 Commission to the fact that that may happen, depending on
25 your disposition.

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

2 **MR. SHERRIFF-SCOTT:** And that's what I'd
3 asked for.

4 **MR. COMMISSIONER:** Okay, well no, I don't
5 think I'm inclined to give you a stay until they dispose of
6 the matter. I think I'd be inclined, subject to any other
7 -- to give you a stay for a few days, so that you can argue
8 the stay there and they can make the decision there.

9 **MR. SHERRIFF-SCOTT:** Well, I'll have to live
10 with that and move along expeditiously.

11 **THE COMMISSIONER:** Well, that's subject to
12 any other comments I may have.

13 **MR. SHERRIFF-SCOTT:** Thank you.

14 **THE COMMISSIONER:** Anybody else wish to make
15 any comments?

16 **MR. WARDLE:** No, sir.

17 **THE COMMISSIONER:** Anybody else?

18 **MR. BAXTER:** May I? Very briefly.

19 **THE COMMISSIONER:** Sure.

20 **--- SUBMISSION BY/REPRÉSENTATION PAR MR. BAXTER:**

21 **MR. BAXTER:** In our submission, Mr.
22 Commissioner, the interim stay that sounds like you're
23 proposing would effectively negate the public benefit that
24 we spoke of in camera. If the evidence is going to go in
25 without a web cast, which is what I understand it would do,

1 that would deprive the public of the right to follow this
2 evidence and all of the benefits that we stressed in the
3 hearing motion.

4 **THE COMMISSIONER:** Well, it would -- first
5 of all, it's always a balancing. It would not prevent
6 people from coming here.

7 **MR. BAXTER:** Correct.

8 **THE COMMISSIONER:** All right, so those
9 people who are listening in on the web cast would know that
10 if they really want to follow, they'll have to come here,
11 as in the old days, I suppose. And so I have to balance
12 the fact that I can't have Mr. Sherriff-Scott tonight at
13 5:30 deny his motion and get on with it tomorrow morning.
14 I don't think that would be fair or it would be unfair, as
15 Mr. Sherriff-Scott likes to use that word.

16 **MR. BAXTER:** So the proposal, as I
17 understand then, is that you would allow the evidence to
18 proceed, open court, but are you contemplating a
19 publication ban until the disposition of Mr. Sheriff-
20 Scott's motion?

21 **THE COMMISSIONER:** No. No. What I'm
22 suggesting is this as a compromise. There be a ban on
23 publication until Thursday at five, so he's got to hurry up
24 and get his -- and if the Divisional Court issues him a
25 stay, then it goes on -- the publication ban would go on

1 until Divisional Court has dealt with this.

2 In the meantime, we would hear Mr. Marleau's
3 evidence. There would be a ban on publication of only that
4 evidence that deals with the moving party or any
5 identifiers of the moving party.

6 **MR. BAXTER:** The individual in question.

7 **THE COMMISSIONER:** All right.

8 And what that would mean is that -- and
9 Commission counsel will have to orchestrate this -- is that
10 we would keep the webcast on for that part of the evidence,
11 if we can break it down that way, that does not deal with
12 Mr. Sherriff-Scott's client. And I think that would be
13 fair.

14 In the event that -- and we go through the
15 whole rest of the evidence -- it will be taped. And then,
16 for example, if Cogeco wants the tape to air that evidence,
17 if the Divisional Court upholds my decision, then it will
18 be available for distribution to the public.

19 What do you think?

20 **MR. BAXTER:** Well, I'm a bit concerned about
21 the non contemporaneous nature of any subsequent
22 distribution. I mean, events will have passed by. This
23 evidence will be largely overtaken by whoever the next
24 witnesses are that would be online.

25 **THE COMMISSIONER:** Right.

1 I know, but ---

2 **MR. BAXTER:** I understand you're trying to
3 do a fair balance, and certainly I -- the other thing I
4 think is that getting this matter heard and determined in
5 three days -- in two days, effectively, before the
6 Divisional Court ---

7 **THE COMMISSIONER:** No, no, just the stay.
8 All they are going up there to ask is -- well, filing their
9 material, which I'm sure is already prepared, and then just
10 arguing whether or not the stay is there, and you'll be
11 invited to go and everyone else will be invited to attend.

12 **MR. BAXTER:** I would certainly expect to
13 receive service of his materials. That's subject to your
14 ruling.

15 **THE COMMISSIONER:** That has already been
16 ordered.

17 **MR. BAXTER:** Yes.

18 **THE COMMISSIONER:** So does anybody have any
19 comment about that idea, because the witness must be heard
20 this week?

21 **MR. WARDLE:** Mr. Commissioner, I certainly
22 don't have anything to add to that discussion, but I simply
23 want to indicate that Mr. Lee and I for certain will want
24 to consult our clients and get instructions on whether if -
25 - well, it's not if -- when Mr. Sherriff-Scott goes to the

1 Divisional Court, we want to be there with him.

2 **THE COMMISSIONER:** Yes.

3 **MR. WARDLE:** And in that event, we may bring
4 an application for funding.

5 So that's a discussion that we don't need to
6 have at this point in time.

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

8 **MR. WARDLE:** But I just want to alert you to
9 the fact that we may have -- we may approach you on that
10 subject tomorrow.

11 **THE COMMISSIONER:** All right.

12 **MR. SHERRIFF-SCOTT:** Commissioner, I don't
13 want to part company today without addressing this point
14 that you've raised about my comments. I was taken aback
15 when you kept referring to fairness. I did not perceive my
16 comments to be disposed to criticizing you. We had an
17 exchange on ---

18 **THE COMMISSIONER:** I thought for sure you
19 said I was unfair.

20 **MR. SHERRIFF-SCOTT:** No, I said the comment,
21 I felt, was an unfair characterization. I was trying to
22 convey to you, given the importance of the individual's
23 evidence and his testimony, that the characterization that
24 you were placing on it was inconsistent with my perceptions
25 in terms of how it ought to be fairly treated.

1 I'm not suggesting anything about you and I
2 don't want you to walk away today ---

3 **THE COMMISSIONER:** I wouldn't.

4 **MR. SHERRIFF-SCOTT:** --- with that
5 impression because I would be alarmed if that were the
6 case.

7 **THE COMMISSIONER:** I would never think that,
8 sir.

9 **MR. SHERRIFF-SCOTT:** Thank you.

10 **THE COMMISSIONER:** Okay. Now, let's get
11 back to the issue at hand.

12 So the bottom line is we're starting at 9:30
13 tomorrow morning. There is a publication ban on that
14 evidence dealing with that individual which is the subject
15 matter of this motion.

16 Anything else we can do?

17 **MR. ENGELMANN:** I just wanted to say, and I
18 think you've said it, that counsel can expect full days
19 this week.

20 **THE COMMISSIONER:** Yes, full days and nights
21 and Friday. So you might want to make -- well, no, we're
22 going on on Friday.

23 **MR. ENGELMANN:** If it's necessary.

24 **THE COMMISSIONER:** If it's necessary. So be
25 prepared.

1 Thank you.

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

4 The hearing is now adjourned. L'audience
5 est ajournée.

6 --- Upon adjourning at 5:30 p.m./

7 L'audience est ajournée à 17h30

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

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

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



Sean Prouse, CVR-CM