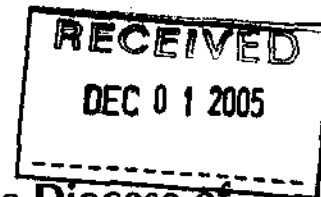


Dec. 6/05  
Exhibit # 10.5



## Cornwall Public Inquiry

### On Behalf of the Episcopal Corporation of the Diocese of Alexandria-Cornwall and Bishop Eugène LaRocque

I, Paul-André Durocher, of the City of Cornwall, Province of Ontario, MAKE OATH  
AND SAY AS FOLLOWS:

1. That I am the Bishop of the Roman Catholic Episcopal Corporation for the Diocese of Alexandria-Cornwall (hereinafter referred to as "the Diocese".) I have held that position since the spring of 2002. I therefore have knowledge of the matters to which I hereinafter depose. Where I have expressly stated that my affidavit is based on information and belief, I have identified the source of that information.

2. In preparation for the making of this affidavit, I have reviewed a number of documents at the Diocese and have had discussions with a variety people and Diocesan staff. In this regard, I have reviewed the financial statements of the Diocese, together with the annexes relevant to them for the years 1994 to 2004. I have also reviewed Diocesan staffing files including T-4 slips. I have reviewed Diocesan program files and I have had extensive discussions concerning the financial status of the Diocese with Reverend Gordon Bryant, the Bursar and Chief Financial Officer of the Diocese. I otherwise, of course, have knowledge of the financial affairs of the Diocese based on my administration of the Diocese and detailed historical review of its financial information and the discussions and

meetings I have had with its accountants and auditors. I have also had discussions with a number of other Diocesan personnel, the head of the Canadian Conference of Catholic Bishops and the Papal ambassador from the Holy See in Canada.

3. I adopt as my own evidence the Submissions filed by the Diocese and Bishop Eugene LaRocque dated October 25, 2005.

### **Structural Considerations and Funding from Other Sources**

4. The Diocese is a non-profit corporation and a registered charity with the Canada Revenue Agency. A copy of the Diocese's incorporating statute and amendments to it are attached at my affidavit as Exhibit "A".

5. The Diocese is a corporation. It is a distinct, independent corporate person. It has complete autonomy and jurisdiction over all of its financial affairs. Its financial affairs are controlled by it. The Diocese, alone, decides if and when it will hire employees, who they will be, their remuneration and the terms of their employment. The Diocese alone controls its spending subject to certain extraordinary limits. The Diocese does not now, nor has it ever to my knowledge received or been entitled to receive funding from any other Diocesan corporation in Canada, or from any other Catholic religious organization. Therefore the Diocese, alone, raises the money upon which it relies for its purposes. It essentially stands or falls financially based on its own efforts.

6. I have attached to my affidavit as Exhibit "B" a memorandum of opinion that I have received from Reverend Francis G. Morrissey, O.M.I., at St. Paul's University

in the City of Ottawa. The memorandum also includes a summary of Mr. Morrissey's Curriculum Vitae. Mr. Morrissey is one of the world's leading authorities on Canon law and the history of the Catholic Church. The following points emerge from Mr. Morrissey's memorandum, as well as from my own knowledge of the status, structure and history of the Catholic Church:

- (a) The Vatican, The Holy See, had all of its properties in Italy, save and except for Vatican City, expropriated by the Italian government during the unification of the Italian State in the late 1900s. The Vatican City was not expropriated.
- (b) In 1929 the Holy See received a compensation endowment from the Italian government for the properties taken from it. The Holy See uses that fund to generate income to finance its affairs. It also depends financially on voluntary donations. Since the Holy See is a "state" it must fund all of its affairs including its internal government, structure, personnel, and the execution of its policies and procedures both domestically and abroad.
- (c) The Holy See has basically historically operated financially at a break even position. Rarely does it generate any surplus revenue.
- (d) The Holy See does not fund established Diocesan corporations such as the Diocese of Alexandria-Cornwall.

- (e) The Diocese has no ability to seek or obtain funding from the Holy See.
- (f) The Canadian Conference of Catholic Bishops is a juridical person at Canon law. As a Bishop I am a member of the organization. The Conference has no assets of any significance. It operates only to facilitate the debate, review and implementation of policy issues as between Catholic Bishops. It has no financial relationship of any kind with any Canadian Diocesan corporation. It does not fund Diocesan corporations, has never funded Diocesan corporations and cannot fund Diocesan corporations.
- (g) The Diocese has no recourse to outside funding. It cannot access funding from the Conference of Canadian Bishops, nor can it access funding from the Holy See. It is for this reason, for example, that various Diocesan corporations in the United States and Canada have very recently filed for bankruptcy protection or have become bankrupt. Quite simply they cannot secure funding outside of their own territorial area because none is available. They, like the Diocese in Cornwall, stand or fall based on their own ability to raise revenue from within their own Diocesan geographical area;
- (h) All parishes within the Diocese are "juridical persons" at Canon law. Parishes own all of their own assets and revenues. The Diocese does

not have the right to take or use any of the property or assets of the parishes within its jurisdiction;

- (i) Since Ontario law does not acknowledge parishes as having a separate legal existence, Diocesan corporations typically act as a vehicle to hold and invest money owned by parishes. This is the case in Cornwall.

7. On November 22, 2005 at approximately 2:30 p.m. I had a telephone conversation with Benoit Bariteau. He is the Assistant Secretary General of the Canadian Conference of Catholic Bishops in Canada. In that discussion, I asked him if there was any possibility of the Canadian Conference of Catholic Bishops providing any funding or money to the Diocese to meet any financial obligations which may arise as a result of the Cornwall Public Inquiry. I also asked whether or not the Canadian Conference of Catholic Bishops ever funds Diocesan corporations or has the financial resources for such funding. I was specifically told by Mr. Bariteau and I believe that at no time does the Canadian Conference of Catholic Bishops fund Diocesan corporations and does not have any resources to provide such funding. It would therefore not be able to provide any funding to the Diocese.

8. Mr. Bariteau explained and I believe that the Canadian Conference of Catholic Bishops is an association of Bishops. There is no financial relationship between the Canadian Conference of Catholic Bishops and any Diocesan corporation. I was advised by Mr. Bariteau and I believe that the Canadian

Conference of Catholic Bishops has neither the mandate nor the capacity to intervene financially in the affairs of any Diocese and, in particular, in the affairs of the Diocese of Alexandria-Cornwall.

9. Finally, Mr. Bariteau explained to me and I believe that the Canadian Conference of Catholic Bishops is not the Catholic Church in Canada. In fact, there is no such body or corporation. There is therefore no entity which would correspond to a description of the Catholic Church in Canada. There are Catholics in Canada who individually belong to various Catholic Diocesan corporations and parishes.

10. On November 29, 2005 I had a telephone discussion with the Apostolic Nuncio to Canada, His Excellency the Most Reverend Luigi Ventura. Reverend Ventura is the Holy See's ambassador to Canada.

11. In my discussion with Reverend Ventura, I asked him if there was any possibility of the Vatican providing funding to the Diocese to meet its financial obligations in connection with participation in the Cornwall Inquiry. I was advised by Reverend Ventura and I believe that there is no possibility whatsoever of the Vatican providing any funding. He explained and I believe that the financial resources of the Holy See are used exclusively for the administration of the Holy See itself and that it does not fund Diocesan corporations.

12. I also asked Reverend Ventura about the issue relating to missionary Dioceses which are just being established and why Dioceses of that kind may

receive money from the Vatican. Reverend Ventura advised me and I believe that the Holy See does not fund such Dioceses. Rather, throughout the world once a year there are special collections taken to fund missionary Dioceses. Those monies, which are held in trust for the specific purpose of establishing Diocesan missions in remote, poor or otherwise difficult to access areas, are then conveyed by the Vatican simply acting as a conduit to further such special purpose collections. In other words, the Vatican does not fund these initiatives out of its own revenues. Reverend Ventura also advised me and I believe that the same holds true for contributions made by the Holy See in connection with various ad hoc situations such as disasters. For example, the Pope has personal charities which are established to fund relief of the sick, poor or war torn or disaster stricken areas. Funding drives are undertaken by those specific charities and monies received for those purposes are donated through the management of the Vatican, but not from its own resources.

13. I was advised by Reverend Ventura and I believe that the Vatican does not fund Diocesan corporations anywhere and will not fund the Diocese of Alexandria-Cornwall. He explained to me that Diocesan corporations throughout the world are financially independent and responsible for their own financial affairs and do not rely on contributions from the Vatican in any way. I asked Reverend Ventura what would happen if any particular Diocese faced dire financial circumstances or circumstances such that it could no longer function financially. He explained to me that in those cases the only option available to such a Diocese is to declare

bankruptcy and be dissolved. He pointed to examples of this having happened already in Canada and in the United States. In short, there is no funding available to the Diocese from any other higher authority within the Catholic Church.

### **The Reserve Fund**

14. I also have attached to my affidavit as Exhibit "C" a copy of the financial statement for the Diocese for the year ended December 31, 1995, together with the relevant sections of its annexes. At Exhibit "D" I have attached the financial statement for the Diocese for the year ended December 31, 1996, together with the relevant sections of its annexes. At Exhibit "E" I have attached the financial statement for the Diocese for the year ended December 31, 1997, together with the relevant sections of its annexes. At Exhibit "F" I have attached the financial statement for the Diocese for the year ended December 31, 1999, together with the relevant sections of its annexes. At Exhibit "G" I have attached the financial statement for the Diocese for the year ended December 31, 2000, together with the relevant sections of its annexes. At Exhibit "H" I have attached the financial statement for the Diocese for the year ended December 31, 2001, together with the relevant sections of its annexes. At Exhibit "I" I have attached the financial statement for the Diocese for the year ended December 31, 2002, together with the relevant sections of its annexes. At Exhibit "J" I have attached the financial statement for the Diocese for the year ended December 31, 2003, together with the relevant sections of its annexes. At Exhibit "K" I have attached the financial statement for the Diocese



for the year ended December 31, 2004, together with sectors of the relevant annexes to it.

15. In view of the fact that Diocese does not own those monies and properties belonging to the individual parishes, I believe the Commissioner was operating under a misapprehension when he concluded that the Diocese had an approximately \$6 million financial reserve. That approximate number, to which the Commissioner alluded in his recent Reasons, was referred to in the 2004 Statement of Financial Position in the Financial Statement of the Diocese.

16. The Diocese's financial statements and their relevant annexes that I have attached demonstrate that the portion of those monies specifically owned by the Diocese, as well as those monies specifically owned by the parishes are precisely identified and accounted for on a separate basis. For example, in the Statement of Financial Position of the 2004 financial statement, there is a category under Liabilities, headed "Loans - Cemeteries and Parishes" with a line item of \$3,466,051. That number represents the money owned by the parishes. If one reviews the annex to the 2004 statement describing parish deposits, it can be seen that the Diocese separately accounts for all parish monies held on deposit by the Diocese. The Diocese manages these monies and holds them because it is a registered civil corporation. The parishes do not have that status at civil law although they are each individual charities registered with the Canada Revenue Agency. The parishes accordingly account for their own annual receipts to the Canada Revenue Agency in separate Information Returns. The monies owned by the

parishes, together with monies identified in the annex as being held in trust for the "saying of Masses", as well as for "cemeteries", comprise total parish property invested by the Diocese. Therefore, the reserve identified in the Statement of Financial Position of the 2004 financial statement is not solely owned by the Diocesan corporation. It is owned, to a significant degree by individual parishes and the Diocese. I have therefore prepared a table summarizing the Diocese's financial reserve which shows for the years 1995 to 2004, the net reserve of the Diocese and the net reserve of the individual parishes. There are also columns in the chart indicating "cemetery deposits" and deposits for Masses which are monies held in trust by the parishes for the maintenance and upkeep of cemeteries managed by them and for the saying of Masses. When the line items described as parish deposits, cemetery deposits and Masses are totalled, they equal the total balance of individual parish deposits on reserve in each of the annexes and which are also referred to in the financial statements as "Loans - Cemeteries and Parishes". Therefore, for example, the 2004 financial statement shows that the reserve owned by the Diocese is \$2,259,03. The chart is attached as Exhibit "L". There are some years in which the financial statement entry under "Loans - Cemeteries and Parishes" does not exactly correspond with the numbers in the applicable annex. I am advised by Gord Bryant and I believe that in those years, some parish deposits were received after the Diocese's year end of December 31. Therefore, the figure in the annex was adjusted, but the Financial Statement figure could not be adjusted

since the deposit was not received by the Diocese's year end. The differences are modest.

17. When the chart at Exhibit "L" is examined, one can see the net reserve of the Diocese has essentially remained constant since 1994 with a slight reduction of approximately \$200,000. At the same time our expenses have increased and donations have declined.

18. One can also see that the parish deposits have increased. An explanation for that increase is identified in the footnotes under the columns in Exhibit "L" which indicate that a number of churches were sold. The Diocese is in the process of remitting the sale proceeds back to the parishes where the parishioners have been dispersed. Since the money cannot be remitted all at once, the Diocese establishes an "internally restricted reserve" fund. For example, there is a \$382,177 internally restricted reserve number under the "net assets" section of page 2 of the 2004 Statement of Financial Position for the Diocese. That money is a fund which must be returned to the parishes over time. The churches sold include the Christ the King Church, the Church of St. Jean Bosco, etc. Therefore, the internally restricted reserve is not part of the Diocese's reserve fund.

19. Increases in the parish deposits have also been due to the 1995, 1997 and 2004 payments received by parishes for various reasons. For example, the Nativity Parish received a specific \$250,000 legacy from a deceased parishioner. That money is held in trust by the parish for specific purposes identified by the donor. It

increased the parish's deposits referred to in the 2004 annex. Similarly in 1997, Our Lady of Grace Parish received a fire insurance claim deposit of \$898,155 as a result of the destruction by fire of a church. The money was used to rebuild that church. Similarly, insurance money was paid to the Parish of St Francis de Sales in the amount of \$743,980 in 1995 in respect of a collapsed church in order to fund its reconstruction.

20. All parishes face extraordinary costs in the form of the need for replacement of church roofs and windows which will average between \$130,000 to \$210,000. Their deposits are also used and drawn down for extraordinary costs as well as for upkeep, maintenance, programs and other expenses. Income from the parish deposits is used to fund core Parish activities. Without this income parishes cannot carry on their activities.

21. The Diocese therefore only receives interest income which is generated from its net reserve identified in the first column of Exhibit "L". Since investment rates are currently exceptionally low, I am advised by Reverend Gordon Bryant and I believe that the Diocese essentially needs \$2,700,000 to achieve a basic break even position for its programs. That is not being achieved at the present time and, if as noted in our last Submissions, there was not a sale of the former Bishop's residence in 2004, there would have been a shortfall of revenue as compared to expenses last year. The Diocese therefore currently can barely maintain its programs and any further erosion of its reserve will fundamentally restrict its ability to carry on its

mandated activities. The reserve has only been used to fund the operations of the Diocese.

### **Historical Expenditures on Legal Fees**

22. Like every corporation the Diocese has to pay legal fees. However, over the last 10 years the Diocese has faced extraordinary legal fees. The need to pay those fees has arisen because of a number of civil lawsuits against priests of the Diocese and the Diocese itself. The claims against the Diocese were based on allegations of vicarious liability and negligence. Legal fees during the ten year time frame were also incurred for defence costs for proceedings in which allegations of criminal wrongdoing were made against a number of priests of the Diocese.

23. I have attached as Exhibit "M" a copy of a chart summarizing legal fees incurred by the Diocese from 1994 to the year 2004. These numbers are drawn from financial statements and demonstrate the total yearly payments for the cases referred to in paragraph 18. The fees total \$818,947.00 over the ten year period.

24. The civil proceedings against the Diocese were claims for damages. The Diocese had no choice but to defend those cases to resist the claims. Legal fees were paid to our own lawyers. Only one lawsuit was settled in the ten year period. A minor sum was paid. All other civil cases were dismissed and the Diocese did not settle, nor did it pay any sum to any claimant, nor was it obliged to do so by any order of the Court.

25. Legal fees were also incurred in respect of individual priests facing allegations of criminal wrongdoing. A decision was made to fund the defences of these people because individual priests receive only very small income from the Diocese. They had no way to fund their own legal defences. They had no equity against which they could borrow to finance their legal defences. In the circumstances, the Diocese reached the conclusion that it would be just to fund the defence costs of these people to ensure that they received a fair trial and capable legal representation. Therefore, defence counsel were engaged and the individual priests were defended. The result was that charges against all of the priests were either withdrawn, stayed by the courts or the priests were acquitted of the allegations of criminal wrongdoing against them.

26. Meeting the costs of legal fees I have described was extremely difficult for the Diocese. The money spent on legal fees was taken from interest income generated from the Diocese's share of its reserve fund and, to some extent, from the Diocese's own capital share of the reserve fund. No money was ever taken from either interest due to the parishes or their share of the reserve fund.

27. The impact of legal fees paid out was significant. In 1994 the Diocese employed sixteen full-time personnel. As a result of the payment of legal fees and at the same time reductions in contributions from donors and an increase in other expenses, the Diocese had to eliminate seven full-time positions and to reduce three additional full-time positions to part-time status. Therefore, instead of 16 full-time staff, the Diocese now has six full-time staff with three part-time employees.

28. The reductions in staff have also meant a corresponding reduction in programs and services to the people of Cornwall. For example, the Youth Minister position had to be eliminated. Therefore, the Diocese no longer has a coordinator to organize retreats, to run programs, or to coordinate and train volunteers to do our outreach with young people in both languages across the Diocese.

29. Similarly, the elimination of the hospital chaplain position has meant the Diocese has no staff dedicated to forming teams or organizing parishioners for ministry to the sick and shut-ins for the aging population of the Diocese.

30. The reduction of the full-time positions relating to the French sector lay formation, English sector lay formation and family life and marriage programs to part-time positions has resulted in a reduction of the number of programs and activities offered to couples, families and lay people interested in leadership roles in our parishes.

31. While many other Diocesan corporations in Ontario and across Canada have coordinators for faith education, social justice, volunteer management, personnel, liturgical and sacramental life, music ministry, permanent diaconate, community formation and other, we have no one in any of these positions and no Diocesan programs in any of these areas. We do not have the financial vitality to fund these programs or to hire staff to fulfill roles in these areas.

32. In addition to the financial strain caused by the legal fees paid out over the last 10 years, the Diocese now faces nine new civil lawsuits for damages. Those

cases were commenced against a number of Diocesan priests, four of whom have been deceased for many years. The Diocese has been named as a defendant in each case on the basis of an allegation of vicarious liability and negligence for failing to supervise or exercise sufficient control over the individual priests in question. The allegations date back to 1956. Those cases were launched in the spring and summer of 2005.

33. The nine new civil claims assert claims against the Diocese for damages in the amount of \$27,900,000. \$18,900,000 of those claims are uninsured. As well, the Diocese is required to pay a portion of the legal fees for its defence in the cases since a portion of those fees are also uninsured. The defence of those cases and the costs associated with them is not a discretionary matter. The burden of the costs will severely affect the Diocese.

34. Therefore, the prospect of having to fund counsel to attend a provincial Inquiry for a lengthy period of time will cause serious financial harm to the Diocese.

### Conclusion

35. The Diocese is keenly aware of the importance of the Cornwall Public Inquiry, however, the Diocese's reserve fund is relatively small, and barely adequate to provide for the implementation of its objects. The further erosion of that reserve fund will significantly harm the Diocese and prevent it from engaging in its activities.



36. The Diocesan reserve fund is not a fund of money just put aside for a rainy day. It is the lifeblood of the Diocese. It is used only to generate income for the purpose of carrying out its mandate and to fund our core objects. It cannot be fair that the Diocese would be required to pay for significant legal expenses thereby undermining its ability to fulfill its objects because a decision is taken by the Ontario Government to call a provincial Inquiry. While the Diocese recognizes the importance of the Inquiry, it is the Diocese's own financial position which is driving its application for funding. No decision has been taken to seek funding based on a failure to recognize the importance of the Inquiry, both to the community and to the Diocese itself. It is rather essential for the Diocese to receive funding in order to facilitate its participation in the Inquiry and to provide meaningful input and assistance to it.

Sworn before me at the )  
City of Cornwall )  
In the Province of Ontario )  
this 15<sup>th</sup> day of December, 2005 )  
Mary Lynn Burns )  
A Commissioner etc. )

Paul-André Durocher  
Bishop Paul-André Durocher

MARY LYNN BURNS, a Commissioner, etc.,  
United Counties of Stormont, Dundas & Glengarry, Ont  
Gundog, MacLean & Castle, Barristers and Solicitors,  
Cornwall, Ontario  
Expires December 31, 2005.