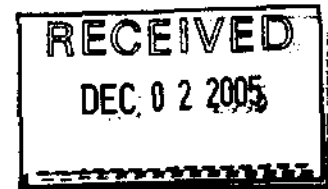


Dec. 6/05  
Exhibit # 10.6



**Supplementary Submissions of the Episcopal Corporation of  
the Diocese of Alexandria-Cornwall, and Bishop Eugène  
LaRocque Regarding Funding for Parts I and II of the  
Cornwall Public Inquiry**

**Borden Ladner Gervais LLP**  
1100 - 100 Queen Street  
Ottawa, Ontario K1P 1J9

613-787-3527 (telephone)  
613-230-8842 (facsimile)

David Sherriff-Scott  
Andre Ducasse

## Table of Contents

I.	An Overview.....	3
II.	Structural Considerations.....	2
III.	The Reserve Fund.....	7
IV.	Outside Sources of Funding.....	12
V.	Other Non-Profit Organizations or Charities which were Funded at Walkerton .....	13
	A. The Association of Municipalities of Ontario (AMO) .....	14
	B. Professional Engineers and Architects of Ontario Public Service (PEGO).....	17
	C. The Walkerton Public Utilities Commission .....	18
	D. The Ontario Farm Environmental Coalition .....	19
	E. Energy Probe Research Foundation (EPRF) .....	21
	F. Sierra Legal Defence Fund .....	22
VI.	Conclusions .....	26

## **Supplementary Submissions of the Episcopal Corporation of the Diocese of Alexandria-Cornwall, and Bishop Eugène LaRocque Regarding Funding for Parts I and II of the Cornwall Public Inquiry**

### **I. An Overview**

1. These Supplementary Submissions have been written to provide additional information to the Cornwall Public Inquiry (hereinafter “the Inquiry”) in furtherance of the application for funding of the Episcopal Corporation of the Diocese of Alexandria-Cornwall (hereinafter “the Diocese”) and Bishop Eugene LaRocque (hereinafter “Bishop LaRocque”) for Parts I and II of the Inquiry.

2. In particular, these Supplementary Submissions have been written to:

- identify the religious and financial structure of the Catholic Church and of the Diocese itself;
- to provide information concerning the nature, composition and historical use of the Diocese’s financial reserve fund;
- to identify if there are any sources outside of the Diocese to provide funding to it in order to facilitate its participation in the Inquiry; and
- to identify the financial circumstances of other non-profit and charitable organizations which received funding at the Walkerton Inquiry thereby demonstrating that the Diocese and Bishop LaRocque should receive funding to facilitate their participation in the Inquiry.

## II. Structural Considerations

3. There is no entity in Canada corresponding to the "Catholic Church" or "Roman Catholic Church". The structure of the Church has two components: a religious structure which is centralized and a financial structure which is completely decentralized.

**Report of Reverend F.G. Morrissey, p. 10, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

4. The religious structure of the Church is centralized. The centre of the Church's religious administration is located at the Vatican. The Vatican is a City State, an autonomous state at international law. The Pope is the head of the Church at the Vatican.

**Report of Reverend F.G. Morrissey, p. 3, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

5. In light of the fact that the Vatican is a State, the Pope is assisted by the "Roman Curia". This entity would correspond to a cabinet in the civil service of a secular society. The Curia is divided into departments. These are known as "congregations" with a Cardinal as the head of each. The "Congregation of Bishops" is responsible for the religious organization of Dioceses, while the "Congregation of the Evangelical Peoples" is responsible for missionary activities and missionary Dioceses which are in their initial stages of development. There are other departments.

**Report of Reverend F.G. Morrissey, pp. 3-4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

6. At a national and local level, the religious structure of the Church is divided into ecclesiastical provinces. These correspond with the Archdioceses containing a number of

individual Dioceses. An Archdiocese is headed by an Archbishop. An Archbishop has minimal authority over individual Dioceses. He has no authority over the financial affairs of a Diocese and can only intervene in very specific situations, largely relating to questions of religious policy. The purpose of ecclesiastical provinces is only to foster common pastoral or religious action and personal relationships between Bishops. It is not a governance structure. It is not a financial structure.

**Report of Reverend F.G. Morrissey, p. 4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

7. There also exists in Canada a Conference of Bishops. The Conference of Bishops is an assembly of Bishops designed to facilitate their inter-reaction on policy and religious issues and to promote uniformity of practice within the Church. The Conference of Bishops has absolutely no authority over financial affairs of Dioceses.

**Report of Reverend F.G. Morrissey, p. 4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, p. 4, para. 6(f)**

8. There are also Dioceses. They are autonomous in their own right. Dioceses do not receive funding from any higher authorities within the religious structure of the Catholic Church.

**Report of Reverend F.G. Morrissey, p. 9, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, p. 4, para. 6(g)**

9. Unlike the religious structure of the Church, the financial structure of the Church is totally decentralized.

**Report of Reverend F.G. Morrissey, p. 8, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

10. At the smallest level there are parishes. In Ontario parishes are not recognized as distinct entities at civil law. However, they are independent juridical persons at Canon law. The parishes in the Diocese are also each independently registered charities which report independently to the Canada Revenue Agency.

**Report of Reverend F.G. Morrissey, p. 3, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, pp. 4-5, para. 6 (h)**

11. Parishes own their own property and assets. Their property is not available to a Diocese. A Bishop cannot control the property of an individual parish or use it for any purpose. At Canon law the parish property is its own and when held by a Diocese it is trust money. The Diocese has no beneficial interest in such money.

**Report of Reverend F.G. Morrissey, pp. 8-9, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, pp. 9-10, paras. 15-16**

12. Typically, because in Ontario parishes are not individual civil entities, Diocesan corporations hold and invest parish property on behalf of parishes.

**Report of Reverend F.G. Morrissey, p. 9, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, p. 5, para. 6 (i)**

13. A Diocese is totally financially autonomous and cannot access funding from any higher authority in the Church whether it is the Vatican or Conference of Bishops. It separately accounts for its own property as opposed to parish property. It is autonomous and independent in respect of its financial affairs.

**Report of Reverend F.G. Morrissey, p. 9, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, p. 2, para. 5**

14. The Canadian Conference of Bishops is an organization designed to facilitate and promote debate and implementation of policy on a religious basis. It has no financial responsibilities. It has no financial relationship with any Diocese. It cannot control the financial affairs of any Diocese. It does not fund any Diocesan corporation and has no assets for that purpose.

**Report of Reverend F.G. Morrissey, p. 4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, pp. 5-6, paras. 7-9**

15. The Vatican is an independent City State at international law. In the 1900s all of its properties in Italy were expropriated, with the exception of the Vatican City. In 1929 the Vatican received a compensation endowment to compensate it for the expropriation of its properties previously known as the "Papal States". The Vatican invests its endowment fund. The income from that fund is used for the functioning of the Holy See. The Vatican does

not provide funding to Diocesan corporations. The Vatican operates at a financial break-even point.

**Report of Reverend F.G. Morrissey, p. 4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

16. The financial independence of Diocesan corporations and their inability to access higher funding in the Church is underscored by recent bankruptcies of Diocesan corporations, both in Canada and the United States. Further, there is no recognition in Canadian law of the existence of an entity called the Catholic Church and it is for that reason that in respect of claims arising from the operation of residential schools, the Federal Government has had to negotiate with over 40 individual Diocesan corporations, not with any entity on a higher plane within the Catholic Church.

**Report of Reverend F.G. Morrissey, pp. 9-10, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

17. Therefore, from a structural point of view, the Diocese is totally financially independent. It cannot access any funding from the Conference of Bishops, the Vatican or any other organization within the Catholic Church. It stands or falls based on its own ability to raise money within its geographical Diocesan territory.

18. Similarly the Diocese does not own all of the property within its geographic territory. All property and money generated by parishes is owned by those parishes at Canon law. Such money is only invested by the Diocese, because the Diocese is a corporation recognized at civil law.



### **III. The Reserve Fund**

19. The reserve fund identified in the Diocese's 2004 financial statement is not between \$5 and \$6 million. The largest portion of the reserve fund identified in the financial statement is owned by individual parishes.

**2004 Financial Statement, Statement of Financial Position, Exhibit K to the Affidavit of Bishop P.A. Durocher, pp. 9-10**

**Affidavit of Bishop P.A. Durocher, para. 16**

20. Parishes are juridical people at Canon law and in that regard own all of their own property. In Ontario parishes are not recognized as civil entities; therefore, the Diocese is the vehicle through which parish money is invested and held. However, that money is held in trust for the parishes and a Bishop is not entitled to access, spend or use the money in any way. Therefore a Diocesan corporation cannot encroach on the money of parishes.

**Report of Reverend F.G. Morrissey, pp. 3, 8 and 9, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, paras 6 (h) and 16**

21. The financial statements of the Diocese demonstrate through their "annexes" that the Diocese separately accounts for those monies owned by the parishes as distinct from those monies owned by the Diocese.

**Annexes to Financial Statements, Exhibits C – K of Affidavit of Bishop P.A. Durocher, Tabs C - K**

22. In each of the years from 1994 to 2004, the Diocese has produced its financial statements together with relevant portions of its annexes which identify "parish deposits"

held on account at the Diocese. In each financial statement under the Statement of Financial Position, there is a sum indicated at the line item called "Loans – Cemeteries and Parishes". That number represents the portion of the reserve owned by parishes. In 2004, the parishes owned \$3,466,051, while the portion of the Diocese reserve was \$2,259,003.

**Annexes to Financial Statements, Exhibits C – K of Affidavit of Bishop P.A. Durocher, Tabs C - K**

23. Parish deposits are the total of the amounts referred to in the annex as parish deposits, trust money for the saying of Masses and cemeteries. Cemetery and Masses monies are trust funds designed to support and maintain cemeteries and, in the case of the saying of Masses, are monies donated by certain parishioners to fund the saying of Masses for loved ones.

**2004 Financial Statement, Statement of Financial Position and Annex, Exhibit K to the Affidavit of Bishop P.A. Durocher**

24. Therefore, the Diocese's present financial reserve is only slightly in excess of \$2 million.

**2004 Financial Statement, Statement of Financial Position and Annex, Exhibit K to the Affidavit of Bishop P.A. Durocher**

25. The Diocese requires not less than \$2,700,000 to achieve a basic break-even position to fund its programs and operating costs, all of which are detailed in the Diocese's first submission filed with the Inquiry. That level is not being achieved. In the result, the Diocese is barely able to maintain its programs.

26. Historically, the Diocese's reserve fund has been used only to fund its core operations. Parish reserve funds are used to fund their core activities and objects. Without the income generated from these reserves neither the Diocese nor the parishes would be able to carry on their programs and activities.

**Affidavit of Bishop P.A. Durocher, pp. 12 and 17, paras. 20, 21 and 36**

27. Historically, the parish reserve funds have been drawn upon by parishes to fund their activities, to pay for extraordinary expenses, as well as to pay for maintenance upkeep, programming and other activities. The income generated from parish reserves and donations they receive represent the only sources of financial support for parishes.

**Affidavit of Bishop P.A. Durocher, p. 12, para. 20**

28. Interest generated from the Diocese's share of the reserve fund, as well as some of the capital of the fund has been used historically to fund legal fees over the last ten years relating to cases in which allegations of sexual abuse have been asserted. The payment of those legal fees related specifically to a number of civil lawsuits in which the Diocese was sued for damages based on allegations of vicarious liability and negligence, as well as for the defence of individual priests facing criminal allegations of wrongdoing.

**Affidavit of P.A. Durocher, pp. 13-14, paras. 22 and 26**

29. These legal fees totalled in excess of \$800,000. In the civil proceedings, only one case was settled for a minor sum, while all others were dismissed with no payment being made to any claimant. In the criminal proceedings, all allegations of wrongdoing against

individual priests were dismissed, stayed or the priests were acquitted of the individual allegations of wrongdoing.

**Chart, Exhibit M to the Affidavit of Bishop P.A. Durocher, pp. 13-14, paras. 24-25**

30. The Diocese made the decision to fund the defences of individual priests facing criminal charges because priests had little or no income or assets to fund their defences. In the circumstances the Diocese concluded that it would be just to fund defence costs to ensure that individual priests received a fair trial and capable legal representation.

**Affidavit of Bishop P.A. Durocher, p. 4, para. 25**

31. The financial impact on the Diocese of funding legal expenses over the last 10 years has been significant. The Diocese has gone from having a complement of full-time staff of 16 people in 1994, to 6 full-time staff with several part-time employees in 2005. The cost of legal fees, associated reductions in Diocesan income and increased expenses has also meant a reduction in programs and services.

**Affidavit of Bishop P.A. Durocher, pp. 14-15, paras. 26-31**

32. Now, there are nine new civil claims against the Diocese which were launched in the spring and summer of 2005. The Diocese faces \$27,900,000 in claims in these actions, \$18,000,900 of which are uninsured. As well, a portion of the legal costs for the defences of these cases is uninsured and, in the result, the Diocese must pay a share of those costs.

**Affidavit of Bishop P.A. Durocher, pp. 15-16, paras. 32-33**

33. Therefore, the reserve fund of the Diocese is not \$5 to \$6 million. It is only slightly over \$2 million. The Diocese cannot fund its basic operations and activities without a reserve fund of a least \$2,700,000. It is currently not achieving that level and, in the result, will not be able to properly continue to carry on its mandate in the face of costs which will be associated with the Inquiry.

34. The cost of fees associated with legal proceedings in the past have caused severe financial strain. The Diocese has had to significantly cut staff and trim programs and initiatives. It is already one of the smallest Diocesan facilities in Canada. It is now facing nine lawsuits claiming millions of dollars. Further reductions in the Diocese's reserve fund will cause significant financial harm to it and a corresponding additional reduction in its ability to carry out its mandate.

#### **IV. Outside Sources of Funding**

35. The Diocese has no outside source of funding. The Vatican does fund Diocesan corporations and has confirmed through the Papal Nuncio, the Vatican's Ambassador to Canada that it will not under any circumstances provide funding to the Diocese.

**Report of Reverend F.G. Morrissey, pp. 4, 9 and 10, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, paras. 6 (d), 10, 11, 12 and 13**

36. Similarly, the Diocese cannot access funding from the Canadian Conference of Bishops. That organization does not fund Diocesan corporations and has no assets to do so. The Conference has specifically refused a request by the Diocese to provide funding.

**Report of Reverend F.G. Morrissey, p. 4, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**Affidavit of Bishop P.A. Durocher, pp. 4-6, paras. 6 (f), 7-9**

37. The fact that Diocesan corporations, including the Diocese, are financially independent and cannot access outside funding is demonstrated clearly by the recent bankruptcies of a number of Diocesan corporations in the United States, and one in Canada.

**Report of Reverend F.G. Morrissey, p. 10, Exhibit B to the Affidavit of Bishop P.A. Durocher, Tab B**

**V. Other Non-Profit Organizations or Charities which were Funded at Walkerton**

38. There is described in this section a list of organizations, which are either non-profit corporations or charitable organizations, which received funding at the Walkerton Inquiry. Funding was recommended for those organizations notwithstanding the availability to them of significant financial reserves. Indeed, it is apparent from the Submissions filed by those parties, as well as from the funding granted to them, that the Commissioner at Walkerton concluded that the existence of their financial reserves should not form the basis upon which a recommendation for funding should be refused. Rather, the Commissioner applied a liberal and flexible interpretation to his funding terms of reference which are identical to the terms of reference of the Cornwall Public Inquiry.

39. The Commissioner at Walkerton recognized the fact that the expression "the party would not otherwise be able to participate in the Inquiry without such funding" did not require a demonstration of impecuniosity before funding could or should be recommended. In particular, in relation to charitable organizations, or other organizations of the type which also received funding at Walkerton, O'Connor J.A. was satisfied that where the financial reserves for such organizations were dedicated to financing their core objects, purposes or activities it was appropriate to conclude that, without funding, such organizations would not otherwise be able to participate in the Inquiry. This was entirely consistent with the terms of reference. Therefore, the Commissioner at Walkerton recommended funding for the following organizations:

- (a) the Association of Municipalities of Ontario (hereinafter "AMO");
- (b) the Professional Engineers and Architects of the Ontario Public Service (hereinafter "PEGO");
- (c) Pollution Probe Research Foundation;
- (d) Walkerton Public Utilities Commission;
- (e) Ontario Farm Environmental Coalition;
- (f) the Sierra Legal Defence Fund Coalition.

**Appendix B(1) to Report of the Walkerton Inquiry, Tab 1**

**A. The Association of Municipalities of Ontario (AMO)**

40. The AMO is a non-profit organization. It represents the vast majority of municipalities, cities, in the Province of Ontario and has a mandate to promote, support and enhance strong and effective municipal government in Ontario. The AMO undertakes a broad range of activities on behalf of its membership including policy development, reports on issues having impact on and of general interest to municipal governments, advocacy before other levels of government and authorities, representation of the municipal sector in intercontinental discussions, education services, media and communication issues, market initiatives, services to the municipal sector and the maintenance of a resource sector on issues of municipal governments. At the time of AMO's application for funding at Walkerton, the AMO membership consisted of 498 of the



then 571 municipalities in the Province of Ontario including its largest cities. It is and was a large and well funded entity.

**Application for Standing and Funding by the Association of Municipalities of Ontario, Exhibit A to the Affidavit of Neal Ferguson**

41. At page 15 of the AMO's standing and funding application, it stated that it had "insufficient financial resources to participate in the Inquiry". It identified itself as a non-profit organization whose "sources of revenue include membership fees, conferences and membership services." The AMO attached its financial statements to the year ended 1999.

**Application for Standing and Funding by the Association of Municipalities of Ontario, Exhibit A to the Affidavit of Neal Ferguson, p. 15**

42. The AMO's submission stated that it could not "approach its members for contributions for the purpose of funding its participation in the Inquiry. Ontario's municipalities face considerable financial pressures and many do not have the ability to contribute." This submission was made notwithstanding that the AMO represented 498 municipalities across the province, in circumstances where contributions by its membership constituency on a pro-rated or weighted scale would have represented a miniscule impact on their budgets.

**Application for Standing and Funding by the Association of Municipalities of Ontario, Exhibit A to the Affidavit of Neal Ferguson, pp. 15-17**

43. The AMO's Submission also contained the following a statement with respect to its request for funding:

"AMO prepares a budget which predicts its expected revenues and expenses for the year. Revenues come in the form of membership fees, are fixed and have largely been realized for this year and, to a great extent, cover AMO's predicted expenses. The Walkerton tragedy was unexpected and participation in this Inquiry, with accompanying expense, was not foreseen."

**Application for Standing and Funding by the Association of Municipalities of Ontario, Exhibit A to the Affidavit of Neal Ferguson, p. 16**

44. The financial statement attached by the AMO to its Submission listed assets of cash investments, accounts receivable and prepaid expenses, investments in subsidiary and capital assets in the amount of \$1,144,369. After deducting liabilities, the AMO had an accumulated net reserve of \$756,707. It was not prepared to encroach on that reserve to pay for its counsel at the Walkerton Inquiry. Its submission on this point at page 16 was:

"In AMO's financial statements, there is reference to an unrestricted surplus amount. This surplus is not available for AMO to use for the purpose of the Inquiry. In 1998, AMO's auditor recommended that it establish a stability reserve fund equal to 50% of AMO's annual budgeted expenses. The auditor recommended the creation of this fund in part to ensure that AMO would not go bankrupt in the event of an unforeseen incident and that the AMO could meet certain important financial obligations in the event that it were wound up. Without the fund in place AMO's financial future would be in jeopardy. AMO is working towards implementing the auditor's recommendation but the stability reserve fund is only at approximately 35% of AMO's annual budgeted expenses. The fund must be built up; it cannot be depleted for this Inquiry."

**Application for Standing and Funding by the Association of Municipalities of Ontario, Exhibit A to the Affidavit of Neal Ferguson, p. 16**

45. The AMO was given funding at Walkerton Commission. Although the Commissioner's reasons are not recorded, his recommendation can only be seen as an endorsement of the AMO's submissions. Therefore, notwithstanding a more than three-quarters of a million dollar reserve and annual revenues from membership fees,

conferences, investments and other matters, of \$2,146,500, the AMO's submissions concerning funding were accepted.

46. The funding of the AMO at Walkerton demonstrates that the Commissioner took the view that impecuniosity was not required to be demonstrated before a recommendation for funding could issue. Funding for the AMO must be seen as an endorsement of the point of view that when a charitable or non-profit organization has a reserve and uses it to fund its charitable or core purposes, that money should not be disturbed or seen as a basis to refuse a funding recommendation.

#### **B. Professional Engineers and Architects of Ontario Public Service (PEGO)**

47. PEGO made submissions for funding to the Walkerton Inquiry on August 29, 2000. In its written application it stated that "PEGO has insufficient financial resources to enable it to adequately represent itself and assist the Inquiry".

##### **Standing and Funding Submissions of PEGO, Exhibit B to the Affidavit of Neal Ferguson**

48. PEGO attached a financial and budget statement to justify its position. That document identified the presence of a more than half a million dollar reserve representing "a contingency fund" maintained by PEGO, "built up over several years to support its members during strike or lockout by management". PEGO also claimed that for the year 2000, the income that it would generate would largely be required "to meet PEGO's operating expenses".

**Standing and Funding Submissions of PEGO, p. 2 and Exhibit A, Exhibit B to the Affidavit of Neal Ferguson**

49. PEGO's document showed annual income of \$184,400 with a reserve fund of \$550,359.

**Standing and Funding Submissions of PEGO, Exhibit A, Exhibit B to the Affidavit of Neal Ferguson**

50. PEGO's submission was accepted. The Commissioner at Walkerton stated at page 78 of his ruling that since PEGO's reserve fund represented a contingency fund devoted to servicing PEGO's objectives it would not be appropriate to require it to spend that money. In other words, the organization's reserve fund was required for its objects and purposes. The Commission therefore considered it appropriate to recommend funding based on its liberal interpretation of its mandate.

**Report of Walkerton Inquiry, Ruling on Standing and Funding, p. 78, Tab 5 to October 25, 2005 Submissions of the Diocese and Bishop LaRocque**

**C. The Walkerton Public Utilities Commission**

51. The Walkerton Public Utilities Commission (hereinafter "WPUC") filed a written submission for standing and funding. It attached its 1999 financial statements which identified annual revenue in the amount of \$535,000 with a reserve fund of \$463,000.

**Standing and Funding Submission of WPUC, Exhibit C to Affidavit of Neal Ferguson**

52. The WPUC's submission to the Commission included the statement that:

"The WPUC has not contacted any other groups or individuals in an effort to create an amalgamated group."

**Standing and Funding Submissions of WPUC, p. 2, Exhibit B to Affidavit of Neal Ferguson**

53. With respect to its annual income and financial reserve WPUC's only submission was:

"No funds have been set aside for these or similar purposes and such expenditures [which] are completely beyond its anticipated financial resources."

**Standing and Funding Submissions of WPUC, p. 2, Exhibit B to Affidavit of Neal Ferguson**

54. Based on these submissions, WPUC was granted funding. It was not required to draw down its financial reserve to fund the presence of its lawyers.

**D. The Ontario Farm Environmental Coalition**

55. The Ontario Farm Environmental Coalition was granted funding. The Ontario Farm Environmental Coalition is not a separate legal entity, but rather an umbrella name for a group of non-profit corporations including, among others, the Ontario Farm Animal Council, the Ontario Federation of Agriculture, the Christian Farmers' Federation of Ontario and AG Care (Agricultural Groups Concerned About Resources and the Environment).

**Ontario Farm Environmental Coalition Funding Application, Exhibit D to Affidavit of Neal Ferguson**

56. The only financial statement made by the Ontario Farm Environmental Coalition its submissions seeking funding was that "the organizations represented by the OFEC are not-for-profit and do not have discretionary/unbudgeted funds. These organizations raise

money from their farm family members. To ask these members for additional funds is not prudent in our opinion.”

**Ontario Farm Environmental Coalition Funding Application, Exhibit D to Affidavit of Neal Ferguson, p. 2**

57. Although there is no description of the financial status of the constituent organizations of the Ontario Farm Environmental Coalition, it is known that:

- (a) the Christian Farmers’ Federation (“CFF”) was a non-profit corporation with 4,450 members across Ontario comprising farm businesses;

**Christian Farmers Federation of Ontario August 25, 2000 Submissions, Exhibit D to Affidavit of Neal Ferguson**

- (b) the Ontario Farm Animal Council is a non-profit corporation representing 35,000 livestock and poultry farmers and many other groups involved in animal agriculture and food production. Its founding members include the Dairy Farmers of Ontario. The Dairy Farmers of Ontario is a non-profit milk marketing corporation which represents Ontario dairy farmers. The 2000 financial position of the Dairy Farmers of Ontario is unavailable, but its website indicates that in 2004 it had a net asset balance, after liabilities, of \$14,418,050 with annual revenue of \$11,026,568. It had a surplus of revenue over expenses in that year alone of \$961,675.

**Ontario Farm Animal Council August 25, 2000 Submission, Exhibit D to Affidavit of Neal Ferguson**

**OFAC website extracts, Exhibit D to Affidavit of Neal Ferguson**

**Ontario Dairy Farmers website extracts including financial statements,  
Exhibit D to Affidavit of Neal Ferguson**

58. Therefore, although there are only some financial documents available to demonstrate the depth of resources of these organizations, it is also clear from their size, breadth and significance in the farming community that they are organizations of significant financial substance. However, the submission that these organizations did not have "discretionary unbudgeted funds" available to pay for the Walkerton Inquiry was accepted and funding was recommended for the OFEC.

**E. Energy Probe Research Foundation (EPRF)**

59. The EPRF was granted funding by the Commissioner at the Walkerton Inquiry. In the year of its application for funding, EPRF's Annual Information Return to Canada Revenue Agency stated that it had total assets of \$812,825 with total liabilities of \$644,486 for a net carry forward into its reserve in that year alone of \$168,339. Its annual income from all sources in 2000 was \$1,595,876. Of that sum, \$550,312 was tax-receipted income requiring the application of the disbursement quota under the *Income Tax Act*. The remainder of its annual income, \$1,045,564, was not covered by the disbursement quota and could be spent or allocated by EPRF in any fashion it considered appropriate.

**EPRF 2000 Annual Information Return, Exhibit G to Affidavit of Neal  
Ferguson**

60. In the circumstances, while there is little information about the extent and nature of its total financial reserve, it is clear that EPRF's financial strength was significant and the granting to it of funding represented a consistent approach to charities and non-profit

organizations by the Commissioner which did not require a demonstration of impecuniosity.

#### **F. Sierra Legal Defence Fund**

61. The Sierra Legal Defence Fund ("SLDF") applied for funding at the Walkerton Inquiry on behalf of the "Sierra Legal Coalition". That coalition comprised a number of non-profit organizations, including the Canadian Association of Physicians for the Environment, the Council of Canadians and Great Lakes United.

**January 30, 2001 Letter to SLDF from Walkerton Commission and SLDF Application for Standing and Funding, Exhibit E to Affidavit of Neal Ferguson**

62. At the time of the application, the Council of Canadians had annual revenue from memberships and contributions of \$3,069,969, program funding of \$126,236, interest income of \$38,701 and product sales income of \$20,364 for a total annual revenue of \$3,255,270. In 1999 alone, it had a surplus revenue over expenses of \$302,917. It stated in its financial submission to the Walkerton Inquiry that "the surplus has been allocated for core projects and none of the funds are available for funding participation in the Walkerton Inquiry".

**Council of Canadians' Statement of Revenue and Expenditures, Exhibit E to Affidavit of Neal Ferguson**

63. The Great Lakes United organization's financial statement specified a reserve of \$190,353. At page 14 of the submissions for the coalition, the SLDF stated, "the members



of the Sierra Legal Coalition do not have sufficient financial resources to enable them to adequately represent themselves in this Inquiry.

**Great Lakes United Financial Statement, Exhibit E to Affidavit of Neal Ferguson**

64. Since the SLDF itself is an organization dedicated to funding litigants in the advancement of worthy causes before courts and tribunals, it was also incumbent on the SLDF to identify its own financial position and ability to fund the coalition members it was representing. Although SLDF's submission stated that its budget in 2000 would not permit it to fund the Sierra Legal Coalition, SLDF's 2000 charitable information return with the Canada Revenue Agency showed total assets of \$2,155,000 with net assets after liabilities of \$882,195. Annual receipts from fundraising activities were \$4,169,233.

**SLDF 2000 Annual Information Return, Exhibit F to Affidavit of Neal Ferguson**

65. There are no written reasons why the SLDF was funded at Walkerton. However, its submission that monies available to coalition members were committed to their core objects and were used in pursuit of their charitable or non-profit activities must have been accepted by the Commissioner and, as such, his consistent point of view that charities or non-profit organizations would not be required to draw down their reserves to fund their participation at the Walkerton Inquiry brought them within the language of his funding mandate.

66. The following principles emerge from the decision at Walkerton to recommend funding for the preceding organizations:

- (a) section 10 of the Terms of Reference for funding state that where a party would not otherwise be able to participate in the Inquiry without funding it is appropriate for the Commissioner to recommend funding;
- (b) in analyzing the funding threshold, O'Connor J.A. identified the following guidelines:
  - (i) the nature of the party's interest and proposed involvement in the Inquiry;
  - (ii) whether the party has an established record of concern and a demonstrated commitment to the interest it seeks to represent;
  - (iii) whether the party has a special experience or expertise with respect to the Commission's mandate; and
  - (iv) whether the party can reasonably be included in a group of others of similar interest.
- (c) O'Connor J.A. also approached his Terms of Reference using a liberal interpretation. His approach to funding therefore considered not only the factors he identified explicitly, but also the nature and characteristics of the individual organizations which were seeking funding before the Commission. In particular, he took into account the fact that many organizations were registered charities or non-profit organizations which did not have budgets to support paying significant legal fees for a lengthy

inquiry. Where such organizations had financial reserves, he concluded that those reserves should not be disturbed when they were dedicated to funding the core activities of the organizations in question.

- (d) It is clear from the funding recommendations that issued at Walkerton that O'Connor J.A. accepted the submissions from a variety of parties contending that their reserve monies were not available because they were otherwise spoken for the purpose of either funding or generating income to fund their core activities. O'Connor J.A. therefore concluded that such organizations would not otherwise be able to participate in the Inquiry within the meaning of the Terms of Reference.
- (e) O'Connor J.A. did not use a test which required parties seeking funding to establish impecuniosity. Organizations for which he recommended funding, such as the AMO, the Sierra Legal Defence Fund, PEGO, the Energy Probe Research Foundation, the Walkerton Public Utilities Commission and the Ontario Farm and Environmental Counsel were not impecunious.
- (f) The financial position of the Diocese cannot be distinguished from the organizations which received funding at Walkerton. The Diocese has specifically identified that all of its money is devoted to the advancement of its charitable programs and objects. The Diocese is currently operating in a deficit situation, has suffered significant financial damage from the need to pay legal fees arising out of law suits against it over the last 10 years. That,

together with nine new law suits and the Diocese's inability to secure funding make its position indistinguishable from those organizations at Walkerton for which funding was recommended. In the circumstances, it would be unfair and unjust to refuse a funding recommendation to the Diocese.

## **VI. Conclusions**

67. The following conclusions arise from these submissions:

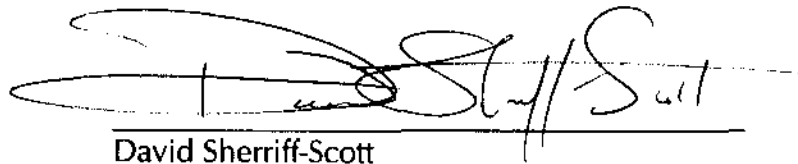
- (a) Although the religious structure of the Catholic Church is centralized, its financial structure is completely decentralized. Individual organizations such as dioceses are totally, financially independent with no access to funding from higher authorities within the church;
- (b) Diocesan corporations do not own all church property within their territorial jurisdiction. Parishes are distinct juridical persons at Canon law and own all of their assets. These are not available to a Diocese or a Bishop;
- (c) Since parishes in Ontario are not civil legal entities, parish monies are deposited with a Diocese which holds that money in trust for the parish. These monies are separately accounted for and identified in the annexes to the financial statements of the Diocese;

- (d) The reserve fund of the Diocese is only slightly over \$2 million. The Diocese needs \$2,700,000 to break even financially. It is presently operating at a deficit position;
- (e) The Diocese has suffered severe financial strain as a result of legal fees incurred over the past 10 years in connection with cases alleging sexual abuse. In the result, the Diocese has had to reduce its full-time staff by more than half; cut programs; and otherwise operate on a reduced scale;
- (f) The Diocese is now facing nine new civil lawsuits with claims of \$27,900,000. Nearly \$20 million of these claims are uninsured. Also, a portion of the fees which are payable for the defence of those actions are uninsured;
- (g) The test for whether an organization should receive funding should be interpreted using a liberal construction to ensure the widest possible participation at the Inquiry. This was the approach taken at Walkerton where organizations with the same financial circumstances as the Diocese were given funding because the Commissioner concluded that the funding of such organizations was just and consistent with his terms of reference;
- (h) Many organizations for which funding was recommended at Walkerton were in financial circumstances which are indistinguishable from those facing the Diocese. There is therefore no basis to distinguish between the Diocese and

those who also received funding at Walkerton and it would be unfair to do so;

- (i) In all the circumstances, it is submitted that it would be unjust to deny a recommendation for funding to the Diocese.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 1st day of December, 2005.

A handwritten signature in black ink, appearing to read "David Sherriff-Scott", written over a horizontal line.

David Sherriff-Scott

**Borden Ladner Gervais LLP**  
1100 - 100 Queen Street  
Ottawa ON K1P 1J9  
613-787-3527 (telephone)  
613-230-8842 (facsimile)

**LIST OF PARTIES****APPENDIX B (I)**

THE WALKERTON INQUIRY



Ontario

LA COMMISSION  
D'ENQUÊTE WALKERTON**List of Parties in Part 1A**

<i>Party</i>	<i>Standing</i>
Concerned Walkerton Citizens*	Full standing
Walkerton Community Foundation*	Full standing
Province of Ontario	Full standing
Office of the Chief Coroner	Full standing
Town of Walkerton	Full standing
Walkerton PUC/Commissioners Richard Field and Jim Kieffer*	Full standing/Limited to matters relating to their personal or official involvement
Injured Victims Group	Limited to the impact of the contamination upon them
Dr. Murray McQuigge	Limited to public health issues
OFEC*	Limited to farming and agricultural issues
Environmental Coalition - ALERT/ Sierra Club only*	Limited to environmental issues relating to farming and agriculture

David Thomson	Limited to matters relating to his personal or official involvement; shared cross-examination with Town where common interest
<i>Party</i>	<i>Standing</i>
James Bolden	Limited to matters relating to his personal or official involvement; shared cross-examination with Town where common interest
Steven Burns	Limited to matters relating to his performance of water-related engineering functions for the Town; shared cross-examination with Town where common interest
Allan Buckle*	Limited to his personal interests
Stan Koebel*	Limited to matters relating to his performance in his role as Manager of the PUC
Frank Koebel*	Limited to matters relating to his performance in his role as Foreman of the PUC
Bargaining Agents Coalition (OPSEU, CUPE Local 255, PEGO)	Special standing; limited to issues affecting municipal, public sector, and provincial government employees.
AMO	Special standing
Environmental Coalition (ALERT/ Sierra Club Coalition, Canadian Environmental Defence Fund/ Pollution Probe Coalition, Sierra Legal Defence Fund Coalition)	Special standing (except as noted above)



\* denotes recommendation for full or partial funding

## List of Parties in Part 1B

<i>Party</i>	<i>Standing</i>
Concerned Walkerton Citizens*	Full standing
Walkerton Community Foundation*	Full standing
Province of Ontario	Full standing
Office of the Chief Coroner	Full standing
Town of Walkerton	Full standing
Walkerton PUCommission/ Commissioners Richard Field and Jim Kieffer*	Full standing/Limited to matters relating to their personal or official involvement
AMO*	Limited to the interests of municipalities
Dr. Murray McQuigge	Limited to public health issues; shared cross-examination with Health Unit/ ALPHA where common interest
BGOSHU/ALPHA	Limited to public health issues; shared cross-examination with Dr. McQuigge where common interest
OFEC*	Limited to farming and agricultural issues
Environmental Coalition* (ALERT/ Sierra Club Coalition, Canadian Environmental Defence Fund/ Pollution Probe Coalition, Sierra Legal Defence Fund Coalition)	Full standing

<i>Party</i>	<i>Standing</i>
Energy Probe Research Foundation*	Limited to the issue of whether private ownership of the water system would have made a difference to what happened in Walkerton
Bargaining Agents Coalition* (OPSEU, CUPE Local 255, PEGO)	Limited to issues affecting municipal, public sector, and provincial government employees. (CUPE Local 255 and PEGO may have limited separate standing – see below)
CUPE Local 255	Separate standing where there is a conflict within the Bargaining Agents Coalition due to different perspective for the Walkerton PUC employees as opposed to provincial employees
PEGO*	Separate standing on issues of decredentialization
David Thomson	Limited to matters relating to his personal or official involvement
James Bolden	Limited to matters relating to his personal or official involvement
Steven Burns	Limited to matters relating to his performance of water-related engineering functions for the Town
Allan Buckle*	Limited to his personal interests
Stan Koebel*	Limited to matters that affect his substantial and direct personal interest
Frank Koebel*	Limited to matters that affect his substantial and direct personal interest

\*denotes recommendation for full or partial funding