

IN THE MATTER OF the *Public Inquiries Act*, R.S.O. c. P-41;

AND IN THE MATTER OF the Order in Council 558/2005, establishing the Commission with the Honourable G. Normand Glaude as Commissioner, ("The Cornwall Public Inquiry");

AND IN THE MATTER OF an Application for Standing by the Upper Canada District School Board;

Application of the Upper Canada District School Board seeking Standing in the Cornwall Public Inquiry

APPLICATION

(returnable Tuesday, June 27, 2006 at 10:00 a.m.;
709 Cotton Mill Street, Cornwall, Ontario K6H 7K7)

1. In accordance with the *Rules of Practice and Procedure* and the *Terms of Reference* of The Cornwall Public Inquiry (hereinafter the "Inquiry") the Upper Canada District School Board makes application for full standing for Part I and Part II of the Inquiry limited to those issues which directly affect the interests of the Upper Canada District School Board.

- (a) The Upper Canada District School Board seeks standing with respect to the inquiry regarding the institutional response of the justice system and other public institutions in relation to "*allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations; and the creation and development of policies and practices that were designed to improve the response to allegations of abuse*" as it applies to publicly funded educational institutions; and

- 2 -

(b) The Upper Canada District School Board seeks standing to make recommendations to the further improvement of the response of public institutions and specifically, publicly funded educational institutions, in similar circumstances.

2. The grounds for the application are:

- (a) The Upper Canada District School Board (hereinafter the "Board") is a publicly funded school board established in accordance with the *Education Act*, R.S.O. 1990, c. E-2 and Regulations.
- (b) Pursuant to the *Fewer School Boards Act*, 1997, S.O. 1997, c.3 section 1 and section 7 district school boards were established throughout the Province of Ontario pursuant to regulation; and, pursuant to s.28 of Ontario Regulation 185/97 Establishment and Areas of Jurisdiction of District School Boards, English-language Public District School Board No. 26 became responsible for the County of Lanark, the United Counties of Leeds and Grenville, the United Counties of Prescott and Russell and the **United Counties of Stormont, Dundas and Glengarry**. English-language Public District School Board No. 26 was thereafter named the Upper Canada District School Board.
- (i) These jurisdictions were formerly served by the Prescott-Russell County Board of Education, the **Stormont, Dundas and Glengarry County Board of Education**, the Leeds-Grenville County Board of Education and the Lanark County Board of Education.
- (c) Pursuant to Ontario Regulation 486/01, Continuation, Areas of Jurisdiction and Names of District School Boards, (as amended from time to time) s.4(28), the area of jurisdiction of the Upper Canada District School Board consists of the geographic areas of the following upper-tier municipalities: Lanark; Leeds and Grenville; Prescott and Russell; and **Stormont, Dundas and Glengarry**. And,

- 3 -

the Board has the geographic areas of the following local municipalities: Brockville, Cornwall, Gananoque, Prescott and Smith Falls.

- (i) The Board has approximately 21,000 students enrolled in its elementary schools and just under 13,000 secondary students and employs just over 5,500 staff, including teaching staff.
- (d) Pursuant to ss.21(1)(a) of the *Education Act*, every child who attains the age of six years on or before the first school day in September shall attend an elementary or secondary school on every school day until the child attains the age of sixteen years.
- (i) Moreover, pursuant to ss.32(1) of the *Education Act*, a resident pupil has the right to attend school without the payment of a fee. Further, s.33 and ss.36 of the *Education Act* outline the resident pupil qualifications, including when a pupil will be a resident pupil of an English language public district school board for the purpose of registration and attendance.
- (e) Pursuant to ss.265(1)(j) and 265(1)(m) of the *Education Act* it is the duty of a principal of a school to give attention to the health and comfort of pupils and to refuse to admit to the school or classroom a person whose presence in the school or classroom would be detrimental to the physical or mental well-being of pupils.
- (f) Moreover, it is the common law requirement that teachers and principals act in *loco parentis* while children are under the care and supervision of the Board.
- (g) Pursuant to ss.72(4) of the *Child and Family Services Act*, R.S.O. 1990, c.C-11 it is the duty of a teacher, school principal and social worker (among others) to report a child who is suspected to be a child in need of protection pursuant ss.72(1) of the Act.
- (i) A duty to report a child in need of protection pursuant to ss.72(1)(3) includes where a teacher, school principal or social worker has reasonable grounds to suspect that "*the child has been sexually molested or sexually*

- 4 -

exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.” And, ss.72(1)4 where “there is a risk that the child is likely to be sexually molested or sexually exploited . . .”

- (h) The Board has been requested by the Inquiry to provide specific student related information, specific employee related information, as well as information regarding various Board policies during the time frames being examined by the Inquiry.
- (i) Further, the Inquiry has heard evidence from witnesses on behalf of the Children’s Aid Society (hereinafter the “CAS”) and City of Cornwall Police Service (hereinafter the “Police”) regarding protocols between the Board, CAS and Police, as well as other community members. Moreover, evidence was heard regarding programs being delivered in the Board’s schools by the Red Cross.

Evidence of Bill Carriere, Special Assistant to the CAS Executive Director, April 4, 2006; Evidence of Ian MacLean, Special Assistant to the CAS Executive Director, April 5, 2006; Evidence of Daniel Parkinson, Chief of Police, City of Cornwall, April 20, 2006; and Evidence of Danny Aikman, Deputy Chief of Police, City of Cornwall, April 19, 2006.

- (j) The mandate of the Inquiry, as set out by Order in Council, dated April 14, 2005 is as follows:

“The Commission shall inquire into and report on the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to:

- (a) allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations, and*

- 5 -

(b) the creation and development of policies and practices that were designed to improve the response to allegations of abuse

in order to make recommendations directed to the further improvement of the response in similar circumstances.

The Commission shall inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall."

- (k) Pursuant to s. 8 of the *Rules of Practice and Procedure* of the Inquiry ". . .Persons or groups may be granted standing by the Commissioner, if the Commissioner is satisfied that they: (a) are directly and substantially affected by Part 1 of the Inquiry in which event the part may participate in accordance with s.5(1) of the *Public Inquiries Act*, or (b) represent distinct ascertainable interests and perspectives that are essential to his mandate in Part 1, which the Commissioner considers ought to be separately represented before the Inquiry. . ."
- (l) And, pursuant to s.54 of the Rules, "Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that (a) the are sufficiently affected by Part II of the Inquiry; or (b) the represent distinct ascertainable interests and perspectives that are essential to his mandate in Part II , and which the Commissioner considers ought to be separately represented before the Inquiry."
- (m) The *Public Inquiries Act*, at section 5(1) provides that "A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest."

3. It is respectfully submitted that the following guiding principles, among others, may be identified from the initial Ruling on Standing and Funding, November 7, 2005, firstly: it is the purpose of the Inquiry to include as many people as possible; and, secondly, "*a mere concern*

- 6 -

about the issues to be examined, if the concern is not based upon the possible consequences to the personal interests of the person expressing the concern, is generally not sufficient to justify granting standing.”[pg.5]

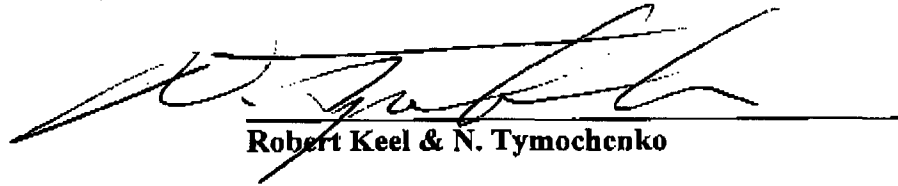
4. It is respectfully submitted that the Board in accordance with the *Education Act* is a public institution with responsibility for **educating in a safe and secure environment**, free from sexual misconduct or the risk of sexual misconduct, all children under its jurisdiction, which includes the Municipality of Cornwall, between the ages of 6 and 16 who are not Catholic, French or French Catholic pupils. Moreover, the Board is the successor school board of the school boards of the Stormont, Dundas and Glengarry County Board of Education, and as such has been approached by the Inquiry to provide both policy and specific evidence regarding the issues before the Inquiry.

- (a) As such, the Board respectfully submits that it has more than a mere concern about the issues to be examined by the Inquiry in Part I; it has a substantial and direct interest in the subject-matter of the Inquiry.
- (b) In addition, or in the alternative, as a public institution with responsibility for the education of children in the Cornwall community, the Board has distinct ascertainable interests and perspectives that are essential to the mandate in Part I of the Inquiry.
- (c) Similarly, the Board respectfully submits that its on-going responsibilities to children in the Cornwall community mean that the Board and its pupils will be sufficiently affected by Part II of the Inquiry, and, or in the alternative, these responsibilities represent distinct ascertainable interests and perspectives that are essential to the mandate in Part II.

5. For all of these reasons the Board respectfully submits that it should be granted full standing for Part I and Part II of the Inquiry limited to those issues which directly affect the interests of the Board.

- 7 -

All of which is respectfully submitted this 21st day of June, 2006.



Robert Keel & N. Tymochenko

Keel Cottrelle
Barristers and Solicitors
36 Toronto Street, Suite 920
Toronto, Ontario M5C 2C5
Robert G. Keel & Nadya Tymochenko
Tel: 416-367-2900
Fax: 416-367-2791
Email: ntymochenko@keelcottrelle.on.ca
Counsel for the Upper Canada District School Board

TO: Christine Morris, Commission Counsel
The Cornwall Public Inquiry
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7
Tel: 613-938-2461
Fax: 613-938-7463

AND TO: David Sherriff-Scott
Borden Ladner Gervais
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, Ontario
K1P 1J9
Tel: 613-787-3527
Fax: 613-230-8842
Counsel for Diocese of Alexandria-Cornwall

AND TO: Peter C. Wardle
Wardle Daley
250 Yonge Street, Suite 2010
P.O. Box 20
Toronto, Ontario
M5B 2L7
Tel: 416-351-2771
Fax: 416-351-9196
Counsel for Citizens for Community Renewal

- 8 -

AND TO: Dallas Lee
Ledroit Beckett
630 Richmond Street
London, Ontario
N6A 3G6
Tel: 519-673-6244
Fax: 519-432-1660
Counsel for Victims' Group

AND TO: Neil Kozloff
439 University Avenue, Suite 1900
Toronto, Ontario
M5G 1Y8
Tel: 416-408-1114
Fax: 416-408-2372
Counsel for Ontario Provincial Police

AND TO: William J. Carroll
Carroll & Wallace
66 Slater Street, Suite 502
Ottawa, Ontario
K1P 5H1
Tel: 613-236-5494
Fax: 613-232-7322
Counsel for Ontario Provincial Police Association

AND TO: Peter E. Chisholm
McDonald Duncan
206 Pitt Street
Cornwall, Ontario
K6J 3P6
Tel: 613-938-2333
Fax: 613-938-2746
Counsel for Children's Aid Society of the United Counties of Stormont, Dundas
and Glengarry

AND TO: Joseph A. Neuberger
Neuberger Rose
1392 Eglinton Avenue West
Toronto, Ontario
M6C 2E4
Tel: 416-364-3111
Fax: 416-364-3271
Counsel for Ministry of Community Safety & Correctional Services

- 9 -

- AND TO: Marie Henein
Henein & Associates
445 King Street West, Suite 202
Toronto, Ontario
M5V 1K4
Tel: 416-368-5000
Fax: 416-368-6640
Counsel for Mr. Jacques Leduc
- AND TO: Leslie McIntosh
Ministry of the Attorney General
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, Ontario
M5G 2K1
Tel: 416-326-4148
Fax: 416-326-4181
Counsel for Ministry of the Attorney General
- AND TO: Michael J. Neville
201 – 309 Cooper Street
Ottawa, Ontario
K2P 0G5
Tel: 613-237-7092
Fax: 613-237-1156
Counsel for Father Charles MacDonald
and the Estate of Ken Seguin
- AND TO: John E. Callaghan
Gowlings Lafleur Henderson LLP
Gowlings Toronto
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario
M5X 1G5
Tel: 416-369-6693
Fax: 416-862-7661
Counsel for Cornwall Police Board and the Cornwall Community
- AND TO: David Bennett
P.O. Box 4641, Station E
Ottawa, Ontario
K1S 5H8
Tel: 613-569-7171
Fax: 613-569-7272
Counsel for The Men's Project