

**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 129**

**Held at :**

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

Wednesday, August 22, 2007

**Tenue à:**

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

Mercredi, le 22 août 2007

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
MR. Pierre R. Dumais	Commission Counsel
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
M <sup>e</sup> Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Bennett	The Men's Project
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Me Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. R. Paul Marshall	Catholic District School Board

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1 --- Upon commencing at 9:37 a.m./

2 L'audience débute à 9h37

3 **THE REGISTRAR:** This hearing of the Cornwall  
4 Public Inquiry is now in session. The Honourable Mr.  
5 Justice Normand Glaude, Commissioner, presiding.

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you.

8 Good morning, Mr. Engelmann.

9 New faces?

10 **MR. ENGELMANN:** Yes, and sometimes I'm not  
11 great with names.

12 **THE COMMISSIONER:** Paul Marshall.

13 **MR. ENGELMANN:** That's right.

14 **THE COMMISSIONER:** Thank you.

15 **MR. ENGELMANN:** From Edmond Harnden on  
16 behalf of the Catholic District School Board.

17 **THE COMMISSIONER:** Terrific.

18 **MR. ENGELMANN:** Mr. Bennett is back with us  
19 I see.

20 **THE COMMISSIONER:** Cameo appearance.

21 **MR. ENGELMANN:** Yes. And Mr. Cipriano is  
22 back with us this morning.

23 **THE COMMISSIONER:** Good morning.

24 **MR. ENGELMANN:** I think everybody else has  
25 been here for some time or at least recently.

1                   **THE COMMISSIONER:** All right, thank you.

2                   Good morning all.

3                   **MR. ENGELMANN:** Sir, we're here now with our  
4 next witness.

5                   **THE COMMISSIONER:** Yes.

6                   **MR. ENGELMANN:** The witness has previously  
7 been given a moniker.

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

9                   **MR. ENGELMANN:** The witness has asked that  
10 he give his evidence in camera.

11                   **THE COMMISSIONER:** Right.

12                   **MR. ENGELMANN:** And parties were advised of  
13 this I believe on Monday the 20<sup>th</sup>.

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

15                   **MR. ENGELMANN:** Were also provided, I  
16 believe late afternoon, with a copy of a letter from the  
17 witness's psychologist.

18                   **THE COMMISSIONER:** Right.

19                   **MR. ENGELMANN:** The witness does not have  
20 counsel. The witness is here under a summons. And the  
21 witness therefore has asked that we as Commission counsel  
22 make an application so that he be allowed to give his  
23 evidence in camera.

24                   So I'd like to start with that motion, if I  
25 can call it that.

1                   **THE COMMISSIONER:** Has the CBC and the other  
2 media outlets been advised?

3                   **MR. ENGELMANN:** Yes.

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

6                   **MR. ENGELMANN:** I know that the letter was  
7 given to the CBC. I didn't personally give something to  
8 Ms. Saunders. I hope that staff did. I believe they did.  
9 She's been here throughout, but I haven't spoken to her  
10 personally.

11                   **THE COMMISSIONER:** Okay. So go ahead.

12                   **MR. ENGELMANN:** So, sir, what I'd like to do  
13 then is make this application.

14                   I understand that -- and I don't know if  
15 I've read all of the emails I've received well into the  
16 night. I know there are some parties opposing the motion.  
17 Those parties would include the OPP, the OPPA, the Cornwall  
18 police. I'm not sure about others. I got an email from  
19 Mr. Cipriano saying that his client might be opposing.

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

21                   **MR. ENGELMANN:** I didn't hear from some of  
22 the counsel. And then there were several who said they  
23 were supporting the motion.

24                   **THE COMMISSIONER:** All right.

25                   **MR. ENGELMANN:** So perhaps what we'll do is

1 I'll speak first, present this witness's case for an in  
2 camera hearing, and then those parties speaking in support  
3 can follow, followed by those parties opposing it.

4 **THE COMMISSIONER:** Okay.

5 **MR. ENGELMANN:** My understanding is, and I  
6 haven't had a chance to speak to counsel for the OPP, but I  
7 believe Mr. Manson had submissions to make on this motion  
8 and I don't know the circumstances but there was an  
9 emergency. I don't know if it was personal. He's unable  
10 to be here.

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

12 **MR. ENGELMANN:** Perhaps I could just ask  
13 quickly. I believe there are some submissions that he  
14 wanted to be made. So I'll make sure I get them so that I  
15 can put them forward to you as well.

16 **THE COMMISSIONER:** All right.

17 **MR. ENGELMANN:** Ms. Brannan has kindly  
18 provided me with the position of the CCR which I will put  
19 forward as well.

20 **THE COMMISSIONER:** Terrific. Thank you.

21 **MR. ENGELMANN:** I've always advised counsel  
22 that if they were unable to make it and wanted a position  
23 put forward that Commission counsel would do so.

24 **THE COMMISSIONER:** Okay.

25 **MR. ENGELMANN:** So, sir, in this particular

1 case, I do have -- I had indicated that I might be doing  
2 this in camera because I thought I wasn't going to be able  
3 to separate some of my submissions sufficiently, but I will  
4 try and do this publicly. I think if possible we should  
5 try and do these things publicly if we can, and I'll be  
6 very careful about referring to the witness. I'm not even  
7 going to use the moniker that this witness has already been  
8 given. As you know, we've given 15 or so monikers. I  
9 don't even want to use the moniker at this point.

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

11 **MR. ENGELMANN:** So, sir, there is a letter  
12 from the witness's psychologist; the parties were provided  
13 this letter. I'm wondering if it could be marked as -- and  
14 Ms. McArthur's been kind enough to make a suggestion for  
15 the number M5-A1, and if it could be confidential.

16 And the reason that I'm seeking that the  
17 letter be confidential, sir, is it does contain intimate  
18 personal medical information. I don't believe anybody will  
19 be opposing this letter going in as a confidential exhibit.

20 **THE COMMISSIONER:** All right.

21 **MR. ENGELMANN:** And I would submit, sir, it  
22 should go in as M5C-A1.

23 **THE COMMISSIONER:** All right.

24 Anyone opposed? No. Very well. Let's go.

25 **MR. ENGELMANN:** Thank you.

1                   **THE COMMISSIONER:** So M5C-A1 is a letter  
2 from Heather MacIntosh.

3                   **---EXHIBIT NO./ PIÈCE NO M5C-A1:**

4                   Motion record of August 22,  
5                   2007

6                   **MR. ENGELMANN:** That's correct.

7                   Sir, if you have a moment then to look at  
8 that?

9                   **THE COMMISSIONER:** August 17<sup>th</sup>, 2007 is the  
10 date.

11                   **(SHORT PAUSE/COURTE PAUSE)**

12                   **THE COMMISSIONER:** All right.

13                   **MR. ENGELMANN:** Sir, you'll see in the  
14 second paragraph of the letter, the psychologist sets out  
15 the witness's desire with respect to how he wishes to give  
16 his evidence.

17                   Commission counsel has canvassed a less  
18 private way of dealing with this that we have used with  
19 some witnesses. You'll note, sir, that there has been some  
20 evidence given in camera to date. I don't want to -- for  
21 example -- I don't even have a moniker for this person so I  
22 can't ---

23                   **THE COMMISSIONER:** We have this list here.

24                   **MR. ENGELMANN:** Yes.

25                   **THE COMMISSIONER:** Do you want to -- Madam

1 Clerk, could you just provide ---

2 **MR. ENGELMANN:** No, I have ---

3 **THE COMMISSIONER:** Oh, you have it.

4 **MR. ENGELMANN:** --- the list, sir.

5 I will just say, sir, that there has been  
6 some evidence given by individuals who have a moniker and a  
7 publication ban, and what we've done is we've turned off  
8 the camera and we've just had the audio.

9 So, for example, we've done that with C11.  
10 We've done that with C14. We've done that with C10, and I  
11 believe there was one other witness. We've also had a  
12 witness who doesn't have a moniker, who probably should  
13 have a moniker, who gave his evidence completely in camera.

14 So both those options were discussed with  
15 this witness. The witness had a strong preference for  
16 doing this in camera because he thought that the telling of  
17 his story publicly over the audio would identify him to a  
18 number of people in the community and would therefore cause  
19 him some of the pain that is set out in the psychologist's  
20 letter.

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

22 **MR. ENGELMANN:** The witness thought that was  
23 unavoidable and was very seriously concerned about the less  
24 private option that I had posed to him as a compromise  
25 option. So he was very strong in his view that he is here

1 under a summons. He is not here because he wants to be and  
2 he is undergoing psychotherapy and does not want his name  
3 bandied about in the community and thinks that's inevitable  
4 if we use the less private method that has been used with  
5 some.

6 So just by way of background, there is a  
7 publication ban that was issued in a criminal proceeding in  
8 the year 2000. With many of our witnesses, we have asked  
9 them to consent to a lifting of that ban, and they have.  
10 This individual has not. So we still have the ban from the  
11 criminal proceeding that was issued under section 46 of the  
12 *Criminal Code*.

13 **THE COMMISSIONER:** So that ban would be that  
14 the name of this individual or any evidence tending to  
15 identify him is prohibited from being published or  
16 broadcast in any way?

17 **MR. ENGELMANN:** That's correct. That's  
18 correct.

19 **THE COMMISSIONER:** Okay.

20 **MR. ENGELMANN:** And we then get into the  
21 difficulties, sir, with even the audio feed because even if  
22 his name isn't used and we are simply using the moniker, we  
23 have to be careful about talking and giving evidence that  
24 might tend to identify him and whether or not we are  
25 publishing that by playing the audio feed over Internet.

1                   **THE COMMISSIONER:** Well, haven't we looked  
2 at that and thought that by the very fact of a 46  
3 prohibition still in existence, that we would be precluded  
4 from having it heard on the webcast?

5                   **MR. ENGELMANN:** Yes. So what I -- so  
6 obviously the moniker would deal with identifying the name.  
7 The question would be then, would we be able to do this  
8 without talking about evidence that might tend to identify  
9 him. And it is a ---

10                   **THE COMMISSIONER:** No, no, but what I'm  
11 saying is that that existing order ---

12                   **MR. ENGELMANN:** Yes?

13                   **THE COMMISSIONER:** --- precludes us from  
14 having it on the camera -- having it on at all.

15                   **MR. ENGELMANN:** The camera certainly.

16                   **THE COMMISSIONER:** Yes.

17                   **MR. ENGELMANN:** And it would preclude us  
18 from, I believe, playing over the audio any evidence ---

19                   **THE COMMISSIONER:** Oh, that too, yes.

20                   **MR. ENGELMANN:** --- that would tend to  
21 identify him.

22                   **THE COMMISSIONER:** Yes.

23                   I thought we had crossed that bridge, but I  
24 -- see what they say.

25                   --- SUBMISSIONS BY/REPRÉSENTATIONS PAR **MR. ENGELMANN:**

1                   MR. ENGELMANN: All right.

2                   So, sir, as you know, as you will many times  
3                   in circumstances like this, the *Dagenais-Mentuck Test* comes  
4                   into play, and obviously a publication ban or any other  
5                   confidentiality measures that are sought here that limit  
6                   freedom of expression, freedom of the press in relation to  
7                   legal proceedings should be ordered only when the two-part  
8                   test is met. The first part of that test reads:

9                                 "Such an order is necessary to prevent  
10                                a serious risk to the proper  
11                                administration of justice or to an  
12                                important interest because reasonably  
13                                alternative measures will not prevent  
14                                the risk."

15                   As you can see from the letter from the  
16                   psychologist, there are a number of serious risks that are  
17                   set out if confidentiality measures in the form requested  
18                   are not granted. Again, I am going to be careful going  
19                   through these.

20                   There is the issue of -- I guess first and  
21                   foremost, there is the comment at the end of the letter  
22                   that:

23                                "Given the witness's current level of  
24                                psychological distress, he may  
25                                experience a significant mental health

1 crisis should he be put in a position  
2 of testifying without these measures in  
3 place".

4 These are the measures that are requested  
5 being full in camera.

6 He fears that his association with some of  
7 the individuals referenced would resurface in the media and  
8 that this would have an impact on both his personal and  
9 career situation.

10 He talks about a term that has been  
11 attributed to him, and you will that in the third paragraph  
12 in the letter, and about being blamed for some of the abuse  
13 that he suffered. This is a witness who is a confirmed  
14 victim of child sexual abuse by a person in authority.

15 He talks about concern about him being  
16 insulted and ridiculed by members of the community, and  
17 issues such as dealing with misunderstandings and  
18 misattributions of those in the community who may not fully  
19 understand the nature of his confirmed child abuse.

20 This individual continues to live in the  
21 Cornwall area. So I understand that he has lived here for  
22 all of his life or almost all of his life in any event. So  
23 he has firm ties to the community.

24 And as I indicated earlier, he believes that  
25 the accommodations that we had suggested, audio with

1 moniker and publication ban continuing, would not be  
2 sufficient; that his voice and the information that he  
3 would be providing to the Inquiry would allow members of  
4 the public in the Cornwall area to identify him.

5 Sir, the second branch of the test:

6 "The salutary effects of the order outweigh the  
7 deleterious effects on the rights and interests  
8 of the parties and the public, including the  
9 effects on the right to free expression, the  
10 right of the accused to a fair, public trial, and  
11 the efficacy of the administration of justice."

12 Clearly, if you grant what he is requesting,  
13 which is the full confidentiality measures, there would be  
14 an impact on the press. There would be an impact on  
15 freedom of expression, and it would be making what is a  
16 public inquiry, at least with respect to some of this  
17 evidence, quite private and we, as Commission counsel, have  
18 been trying to avoid that whenever possible.

19 However, sir, we already have a situation  
20 where we have an outstanding publication ban, which is  
21 already limiting what the press and the public through the  
22 press can hear about this particular witness. So I am not  
23 sure how much more the granting of the order requested  
24 would have a negative effect on freedom of information or  
25 freedom of expression.

1                   This individual has not been the subject of  
2                   publicity during the hearings of the Inquiry. He already  
3                   has been the subject of a moniker, as I have said, and with  
4                   that outstanding publication ban, if you are weighing the  
5                   salutary effects, which are the protection of a witness who  
6                   was a victim of child sexual abuse and who is going to be  
7                   testifying about his dealings with various institutions,  
8                   the protection of his psychological health as set out in  
9                   the letter, it is my respectful submission that this case,  
10                  the second branch of the test is met as well.

11                  Sir, those are some brief submissions. I  
12                  will turn it over to my friends if I may.

13                  **THE COMMISSIONER:** Well ---

14                  **MR. ENGELMANN:** But before I do ---

15                  **THE COMMISSIONER:** Mr. Manson's?

16                  --- SUBMISSIONS FROM MR. ALLAN MANSON PRESENTED  
17                  BY/REPRÉSENTATIONS DE MR. ALLAN MANSON PRÉSENTÉES PAR MR.  
18                  **ENGELMANN:**

19                  **MR. ENGELMANN:** Yes. The position of the  
20                  CCR is if this particular witness is content with a  
21                  moniker, publication ban of his name, and no camera on him,  
22                  then the CCR supports that option. Otherwise, the CPR  
23                  supports an in camera hearing.

24                  **THE COMMISSIONER:** CCR.

25                  **MR. ENGELMANN:** Yes.

1                   **THE COMMISSIONER:** You said CPR.

2                   **MR. ENGELMANN:** Oh, I'm sorry, CCR.

3                   As I said, I broached the CCR's first option  
4 with the witness. He clearly doesn't want that option;  
5 wants the in camera hearing. So from what I'm reading, I  
6 take it they support that motion under those circumstances.

7                   **THE COMMISSIONER:** Thank you.

8                   **MR. ENGELMANN:** So maybe I will turn it over  
9 to those parties who are speaking in support of the motion  
10 first.

11                   **THE COMMISSIONER:** Mr. Lee?

12                   **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

13                   **MR. LEE:** Good morning, sir.

14                   **THE COMMISSIONER:** Good morning.

15                   **MR. LEE:** the victims' group is supporting  
16 this motion.

17                   As Mr. Engelmann suggested, in camera  
18 hearings at this Inquiry have not been taken lightly. They  
19 certainly have not been abused -- counsel. I believe the  
20 witnesses to date, many of whom have been my clients, have  
21 not abused that option. It's not been requested very often  
22 and it hasn't been granted very often.

23                   I just speak from my experience in dealing  
24 with Commission counsel and my clients that confidentiality  
25 measures are taken very seriously. They are very well

1 explained to the witnesses in the case of my clients by  
2 myself and my dealings with Commission counsel by  
3 Commission counsel as well. I can presume that the same is  
4 done with other witnesses and Mr. Engelmann has explained  
5 today that it has been done with this witness.

6 In particular, we go to great pains to  
7 explain the nature of a public inquiry and the importance  
8 of the public contribution to a public inquiry and the  
9 importance of faith in the process. All alternative  
10 measures are explained and Mr. Engelmann has clearly set  
11 out today that these have been explained to the witness  
12 that is coming up and that both he and his psychologist  
13 have, in quite strong terms in this letter, suggested that  
14 anything short of an in camera hearing just isn't good  
15 enough.

16 I'd like to say to you, Mr. Commissioner,  
17 that I fully agree with what the witness is telling Mr.  
18 Engelmann, that it will not be possible for him to come up  
19 here and tell his story and not be readily identifiable to  
20 anybody who has some kind of understanding of what's  
21 happened in Cornwall. His voice, his story, the  
22 transcript, with any confidentiality measure, cannot help  
23 but identify this person. I don't see any way around that.

24 We have before you what I submit is a  
25 persuasive letter from his psychologist that clearly sets

1 out his concerns about potential harm. There are issues of  
2 economic interest here but, as Mr. Engelmann pointed out,  
3 there is some very strong language about his emotional  
4 health and his wellbeing.

5 The phrase is used "extensive interpersonal  
6 distress" that he has suffered in the past. She speaks to  
7 his current level of psychological distress and goes so far  
8 as to say that he may experience, and I quote:

9 "...a significant mental health crisis  
10 should he put in a position of  
11 testifying without these measures in  
12 place."

13 I submit, Mr. Commissioner, this is about  
14 the health and wellbeing of a victim who has been compelled  
15 by a summons to be here against his will to attend an  
16 inquiry dealing with issues of sexual abuse. This is  
17 serious stuff and we can understand why it's so serious to  
18 this witness.

19 And as Mr. Engelmann pointed out, for what  
20 it's worth, this is a man who one of his perpetrators has a  
21 conviction. We are not using the word "alleged" with this  
22 man. This is a victim of sexual abuse.

23 So I submit that under the balancing you  
24 have to weigh under the *Dagenais/Mentuck* test, in this case  
25 has to fall in favour of the witness and we submit that you

1 should grant the relief being sought.

2 **THE COMMISSIONER:** Thank you very much.

3 **MR. LEE:** Thank you.

4 **THE COMMISSIONER:** Anyone else? Anyone else  
5 to speak in favour?

6 Mr. Bennett? Good morning, sir.

7 ---SUBMISSIONS BY/RÉPRESENTATIONS PAR MR. BENNETT:

8 **MR. BENNETT:** Good morning, Mr.  
9 Commissioner.

10 When this Inquiry first started, as you  
11 know, the Men's Project came forward and said one of our  
12 primary concerns was to make sure that no survivors of  
13 abuse were re-victimized.

14 Again, I would like to commend the  
15 Commission on the efforts and steps that have been taken to  
16 date, steps like the Witness Support Program, the  
17 counselling program that has been put in place.

18 One of the reasons the counselling was  
19 suggested and put in place was exactly for these types of  
20 situations where reliving what has occurred to people would  
21 bring back -- was an awareness that it would bring back  
22 certain traumas that have happened in the past and would  
23 have potential negative impacts on some of the witnesses.

24 We also heard that from our experts. Dr.  
25 Jaffe warned us of exactly the type of situation we face

1           today.

2                           You will recall that when we were talking  
3           about the issue of summoning witnesses, my client took the  
4           position that even receiving a summons was some sort of re-  
5           victimization. Obviously, we have a difference of opinion  
6           on that and I don't want to revisit that.

7                           However, in those cases where the evidence  
8           of a potential witness, which clearly in the Commission's  
9           mind this is a very important one because I know that  
10          Commission counsel has endeavoured not to subpoena people  
11          and only when it's essential to get certain testimony, that  
12          we then have to look at how to minimize the impact on that  
13          person who is being summonsed to give testimony.

14                          So we are in a situation where a witness  
15          knows that they are going to be testifying, sees a medical  
16          professional for assistance to deal with this, and we have  
17          a letter from the professional which is unequivocal in what  
18          it says. I don't think there is any issue about what Dr.  
19          MacIntosh says especially in the last line that:

20   "Given the witness's current level of  
21   psychological distress, the witness may  
22   experience a significant mental health  
23   crisis should he put in a position of  
24   testifying."

25                          And, quite frankly, I don't think it's a

1 risk that the Commission should be prepared to even look at  
2 taking because we have already seen with a few witnesses  
3 the crisis that it has come for them by testifying, and I  
4 am not suggesting at all that it was intentional or that  
5 the Commission is playing fast and loose with people to get  
6 the story out. I'm not suggesting that whatsoever. I  
7 think, in fact, the Commission is going to the other  
8 extreme. It has been very careful.

9 There was some question, I think, from some  
10 people about whether this letter is more an economical  
11 letter. I think we are going to hear arguments that this  
12 is not a health issue; this is about someone's economical  
13 factor.

14 But one of the things is that in the letter  
15 Dr. MacIntosh refers to the past -- this is in the bottom  
16 paragraph in the third line down:

17 "During the past 10 years, the witness  
18 has reportedly had to deal with  
19 extensive interpersonal distress due to  
20 the misunderstanding and  
21 misattributions of those in the  
22 community who did not understand the  
23 nature of child abuse and who would  
24 instead insult and ridicule the witness  
25 for his relationship with his abusers,

1 calling him faggot and blaming him for  
2 his own abuse..."

3 And this is not just typical to this  
4 community but others where sometimes there is a shunning of  
5 people who are identified as victims, depending on the  
6 perspective of people and the understanding.

7 "...that this shunning can be much of a  
8 psychological distress as just an  
9 economic."

10 And I know it's portrayed a little bit as an  
11 -- well, it may affect the person's business but, clearly,  
12 it's also identified that it would be a psychological  
13 distress for this witness.

14 The other points that I would like to make  
15 is that symptom relapse is not uncommon in trauma survivors  
16 who are experiencing significant stress. Coming here to  
17 give evidence is a significant stress. And it's referred  
18 to again by Dr. MacIntosh:

19 "...but significant mental health  
20 issues are significant health issues  
21 and the Inquiry can only be guided by  
22 his health professionals."

23 **THE COMMISSIONER:** I thought that was a note  
24 for you.

25 **MR. BENNETT:** Clearly, we have a person who

1 is best able to judge what will be the repercussions for  
2 this witness and they have written us a letter and said,  
3 "Don't do it".

4 So we are supporting the full  
5 confidentiality measures that this witness is requesting  
6 with no changes whatsoever to what's being requested by  
7 this witness.

8 Those are my submissions. Thank you.

9 **THE COMMISSIONER:** Thank you very much.

10 Me. Rouleau.

11 **---SUBMISSIONS BY/RÉPRESENTATIONS PAR MR. ROULEAU:**

12 **MR. ROULEAU:** I support the motion. This  
13 witness clearly is a very fragile witness and we're not  
14 here to cause any harm whatsoever.

15 So we fully support the motion, Mr.  
16 Commissioner.

17 **THE COMMISSIONER:** Thank you.

18 Mr. Sherriff-Scott.

19 **---SUBMISSIONS BY/RÉPRESENTATIONS PAR MR. SHERRIFF-SCOTT:**

20 **MR. SHERRIFF-SCOTT:** I would just offer this  
21 additional factor for you to consider on the second branch  
22 of the test.

23 **THE COMMISSIONER:** Yes.

24 **MR. SHERRIFF-SCOTT:** With respect to the  
25 impact or deleterious effects on the administration of

1 justice, the story that will unfold is inextricably linked  
2 to the last story and we are in the unusual circumstance of  
3 having the last story adjourned. I would be very concerned  
4 about potential further impact on the integrity of the  
5 presentation of the last story if the last witness was able  
6 to hear this story.

7 Thank you.

8 **THE COMMISSIONER:** Thank you.

9 All right. So Mr. Engelmann.

10 **MR. ENGELMANN:** Sir, I have been advised  
11 that those parties who had initially indicated they were  
12 opposed to the motion would like a few minutes to consider  
13 their position. I wonder if we could take a brief recess,  
14 sir?

15 **THE COMMISSIONER:** We certainly will.

16 All right. So 15 minutes.

17 **MR. ENGELMANN:** Thank you.

18 **THE COMMISSIONER:** All right. We'll come  
19 back.

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

22 The hearing will resume at 10:20 a.m.

23 --- Upon recessing at 10:07 a.m. /

24 L'audience est suspendue à 10h07

25 --- Upon resuming at 10:38 a.m./

1 L'audience est reprise à 10h38

2 **THE REGISTRAR:** The hearing is now resumed.  
3 Please be seated. Veuillez vous asseoir.

4 **THE COMMISSIONER:** Thank you.

5 **MR. ENGELMANN:** I will just be a moment,  
6 sir.

7 (SHORT PAUSE/CAUTE PAUSE)

8 **THE COMMISSIONER:** Thank you.

9 Yes, sir.

10 **MR. ENGELMANN:** Sir, it's my understanding  
11 that there are no further submissions that any of the  
12 parties wish to make to you on the motion.

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

14 **MR. ENGELMANN:** If I'm wrong, someone will  
15 correct me but that's my understanding.

16 **THE COMMISSIONER:** All right. Is there  
17 anyone else that wishes to say anything at this point?

18 All right. Thank you.

19 --- **RULING BY THE COMMISSIONER/DÉCISION PAR LE COMMISSAIRE:**

20 Well, I'm going to grant the order with some  
21 clarification.

22 First of all, I wish to point out that it  
23 has been one of my more dedicated tasks to keep the matters  
24 in this Inquiry as public as possible within the limits of  
25 the law, giving consideration to the nature of the

1 evidence, and the witnesses that are before me. We have  
2 taken great care in seeing to the mental health and the  
3 wellbeing of all witnesses that have testified and will  
4 testify in the future.

5 The *Dagenais-Mentuck Test* clearly indicates  
6 that the public has a right to know what goes on in these  
7 types of hearings, and I cherish and defend that principle.  
8 However, one has to balance the need of the individuals  
9 testifying here.

10 In this case, much of my balancing is dealt  
11 with by an existing order under a previous case dealing  
12 with this person, which is section 46(4), as it then was,  
13 which basically says that the identity or any facts tending  
14 to identify the witness shall not be published or broadcast  
15 in any way, and that is still outstanding.

16 Accordingly, in order to give effect to that  
17 order, it is clear that my putting this on the webcast,  
18 that it would be broadcasting and would certainly interfere  
19 and breach that directive from another court.

20 Accordingly, it is clear to me that the  
21 webcast will have to be shut off, both audio and video.

22 With respect to the request that it be in  
23 camera, I want to stipulate that while the psychologist has  
24 indicated that by removing all non-Inquiry persons, that I  
25 am not prepared to exclude persons who have signed

1           undertakings. And so that will be made clear to the  
2           witness, just to explain who is here and who is not here,  
3           knowing full well that the full extent and the care with  
4           which those undertakings were crafted and the  
5           responsibility of the persons who are here of the public  
6           that have signed those undertakings have with respect to  
7           the dissemination of that information.

8                         The transcript will be, of course, in camera  
9           and, therefore, not available to the public.

10                        The only other matter I wish to stipulate is  
11           that I don't know that I will go further than prohibit --  
12           or extend the prohibition that is involved in the 46 order,  
13           in the sense that the press, if they wish to publish a  
14           rendition of what has occurred here, will be able to do so,  
15           so long as it does not violate section 46(4), which is the  
16           existing order.

17                        On that basis then, I will ask that the  
18           hearing room be equipped so that the audio be turned off,  
19           and that will necessitate another break. And so we shall  
20           break at this time, Mr. Engelmann.

21                        **MR. ENGELMANN:** Sir, I believe it takes  
22           about 10 minutes. Should we get back at five to eleven?

23                        **THE COMMISSIONER:** Yes, and the other thing  
24           I should say is that I have had some concerns about down  
25           time when we are switching back and forth. I have asked

1 the staff to look into that, and they have reported back to  
2 me that it is absolutely necessary to take that 10- or 15-  
3 minute break in order to ensure that the orders are given  
4 full effect. So while I regret that we have to take these  
5 breaks often, it is absolutely necessary and we'll continue  
6 with that practice.

7 **MR. ENGELMANN:** Thank you.

8 **THE COMMISSIONER:** Thank you.

9 **THE REGISTRAR:** Order; all rise. À l'ordre.  
10 Veuillez vous lever.

11 The hearing will resume at 10:55 a.m.

12 --- Upon recessing in public at 10:43 a.m. to resume in  
13 camera

14 L'audience est suspendue en public à 10h43 pour reprendre à  
15 huis-clos

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

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

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



---

Marc Demers, CVR-CM