

**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 3

Held at :

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

Tuesday, December 6, 2005

Tenue à:

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

Mardi, le 6 décembre 2005

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
M ^e Lise Kosloski	Registrar
Me Pierre R. Dumais	Commission Counsel
Mrs. Raija Pulkkinen	Commission Counsel
Ms. Christine Morris	Commission Counsel
Mr. David Sherriff-Scott Bishop Paul-André Durocher	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque

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1 --- Upon commencing at 10:05 a.m./

2 L'audience débute à 10h05

3 **THE REGISTRAR:** Order; all rise. Veuillez
4 vous lever.

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude, Commissioner, presiding.

8 Please be seated.

9 **THE COMMISSIONER:** Oui, bonjour. Good
10 morning, everyone.

11 Housekeeping matters, I suppose, are always
12 in order, and so we have Exhibit 6.2 which is a letter
13 dated November 24th, 2005 addressed to Mr. Peter Engelmann,
14 and it's from Mr. Wardle, Citizens for Community Renewal,
15 together with -- that's that for that.

16 --- **EXHIBIT/PIECE NO. 6.2:**

17 Letter dated November 24, 2005
18 addressed to Mr. Peter Engelmann from
19 Mr. Wardle re: Citizens for Community
20 Renewal.

21 **THE COMMISSIONER:** There's also an Exhibit
22 Number 8.1 which is a letter dated November 30th, 2005
23 addressed to Mr. Peter Engelmann from Anne Mullins who was
24 at that point, I suppose, representing the Coalition for
25 Action on Child Sexual Abuse in Cornwall.

1 Supplementary Submissions of the
2 Episcopal Corporation of the Diocese of
3 Alexandria-Cornwall and Bishop Eugene
4 LaRocque re: funding for Parts I and II
5 of the Cornwall Public Inquiry

6 **THE COMMISSIONER:** I take it the
7 housekeeping matters have been done. Thank you.

8 All right. So by way of background and to
9 recap a little bit, I suppose, on November 17th, 2005, I
10 rendered a number of decisions in respect of the
11 applications for standing and funding received by me.

12 With respect to two applicants, I indicated
13 that I required further submissions from them to enable me
14 to render my decisions. I invited the Coalition for Action
15 Against Child Sexual Abuse in Cornwall to provide further
16 submissions in support of its application for standing.

17 I also asked the Diocese of Alexandria-
18 Cornwall and Bishop Eugene LaRocque for further submissions
19 in support of its application for funding.

20 I asked both applicants to provide their
21 written submissions to me by December 1st, 2005. I also
22 instructed Commission counsel to inform them that they
23 could also make oral submissions today if they so desired.

24 And so I understand that the Diocese wishes
25 to take up that opportunity and make further oral

1 submissions, sir?

2 **MR. SHERRIFF-SCOTT:** Yes, Your Honour.

3 Thank you.

4 David Sherriff-Scott for the Diocese.

5 You have marked the exhibits that I've
6 tendered by way of additional evidence, and I'm here today
7 with Bishop Durocher. With your permission, he can sit
8 beside me. Just in the event there are any questions you
9 have, he may be able to answer if I cannot.

10 **THE COMMISSIONER:** Yes.

11 **MR. SHERRIFF-SCOTT:** I attempted to
12 structure the affidavit material that I tendered to you in
13 an effort to address the concerns you articulated last day
14 ---

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

16 **MR. SHERRIFF-SCOTT:** --- in terms of topics.
17 And so I propose to do the same in oral submissions, and so
18 I propose to just review a number of things with you on a
19 brief basis to highlight some issues in the material.

20 The first is the structural issue that Your
21 Honour identified as a concern. That is important for two
22 reasons. First, because there is, outside of the Church, I
23 find, a significant sort of misconception about what the
24 Church is and how it operates both structurally and
25 financially. And so it's important for you to understand,

1 and I think you asked about that issue.

2 Secondly, I think that the structural issue
3 will illuminate the two following submissions that I want
4 to make on the issue of the reserve, as well as the
5 question of outside funding and its availability to the
6 Diocese itself.

7 And last, I just want to touch on the
8 Walkerton material which is the attachments to
9 Mr. Ferguson's affidavit.

10 And by way of a brief digression on that,
11 what we did, Your Honour, is we searched the Ontario
12 Archives at the direction of Frea Christensen who was then
13 counsel for the Inquiry under Justice O'Connor. They found
14 some material that we have extracted, not all the material,
15 because they are, as I said last date, in a state of
16 construction and so their documents are not fully
17 organized. So I've pulled out what I would consider to be
18 an illustration of what was done, and we got some material
19 from Ms. Christensen herself.

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

21 **MR. SHERRIFF-SCOTT:** So just on the
22 structural issues of the Church, I have tendered the
23 evidence of Bishop Durocher, as well as Reverend Morrissey
24 who, as you know from the brief, is a world-leading
25 authority on canon law and the structure and history of the

1 Church. His report is at Exhibit "B" to the Affidavit of
2 Bishop Durocher.

3 If Your Honour has had an opportunity to
4 review it, you will know that he is probably more well-
5 suited or the best suited person to talk about these issues
6 based on his extensive educational background and
7 experience.

8 In particular, I would point to the two
9 things that he has done after his vast educational
10 experience, which was for 15 years he served as the
11 consultant to the Pontifical Commission in Vatican City.
12 In other words, if the Vatican had a question on structure
13 and canon law, they went to Mr. Morrissey and, similarly,
14 he remains in that position for the Canadian Conference of
15 Catholic Bishops. And so if they have a question about the
16 subject, he is the person to go to. So he is a world-
17 renowned authority on these issues, and we considered it
18 appropriate to give Your Honour the structure.

19 The report goes on a bit in terms of
20 history, but Mr. Morrissey warms to his subject when you
21 give him an opportunity.

22 So just by way of introduction, he states
23 here what the applicable canon law principles are because
24 he considers those important to the structural issues --
25 and that is, how does the Church operate -- and it's

1 through the recognition in canon law of types of persons,
2 principally at page 3, juridical persons at canon law,
3 examples of which are the dioceses, which has a civil
4 corporate status as well, and parishes. As well, the
5 Canadian Conference of Catholic Bishops is a recognized
6 juridical person.

7 So Reverend Morrissey starts with the
8 precept that the Church operates through juridical persons
9 recognized at canon law, and then he talks about the --
10 what he describes as the religious structure as distinct
11 from the financial structure, starting at page 3 under the
12 heading "Internal Organization" and he gives the obvious
13 points that the Pope is the leader of the Church. He is
14 supported by Cabinet and congregations.

15 Congregations are headed by individuals of
16 the Church who are in charge of separate -- they amount to
17 separate departments and there are those that are in charge
18 of existing dioceses, developing dioceses and other
19 entities.

20 At the local level, at page 4, he highlights
21 what is of concern to us. There are ecclesiastical
22 provinces which usually are in the form of archdioceses,
23 which is probably a term you've heard, comprising a number
24 of discrete diocesan entities. He makes the point,
25 however, that it is not a governance structure. In other

1 words, the archbishop doesn't have financial control at the
2 local level. It's a pastoral function in order to ensure
3 uniformity of religious and policy action in terms of the
4 implementation of the Church's religious precepts.

5 The Conference of Bishops essentially has
6 the same function. It is not a governance structure from
7 the point of view of how the individual dioceses operate
8 beyond the religious and policy issues. In other words,
9 they don't have financial controls. The only control that
10 is exerted at the diocesan level is an upper cap of
11 spending which ---

12 **THE COMMISSIONER:** A what?

13 **MR. SHERRIFF-SCOTT:** An upper limit of
14 spending, Your Honour, which Mr. Morrissey identifies.

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

16 **MR. SHERRIFF-SCOTT:** When a diocese proposes
17 to dispose of or spend certain very high financial limits,
18 they would need Vatican approval. Subject to that, there's
19 no control exerted over any diocesan corporation by either
20 the Conference of Bishops or the Vatican.

21 **THE COMMISSIONER:** So what kind of upper
22 limits are we looking at?

23 **MR. SHERRIFF-SCOTT:** They're identified in
24 the report.

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

1 **MR. SHERRIFF-SCOTT:** And they are at page 9,
2 Your Honour, under "Accountability of the Diocesan Bishop"
3 at the last paragraph under that heading.

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

5 **MR. SHERRIFF-SCOTT:** So if a bishop proposes
6 to expense more than \$200,000, \$220,000 for administration
7 or \$438,000 for alienation or disposition and for acts
8 exceeding \$4,300,000, consent is required.

9 So he sets out the negative financial
10 controls that are exerted, beyond which he testifies that
11 essentially there are no other controls.

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

13 **MR. SHERRIFF-SCOTT:** So it's a negative
14 spending cap as opposed to any other financial management
15 issue.

16 So that essentially is the governance
17 structure in terms of the religious organization.

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

19 **MR. SHERRIFF-SCOTT:** And he talks at the
20 beginning -- the middle of page 4, he starts to shed light
21 on the financial issues, where he talks about the Church
22 and the -- the Catholic Church, the Vatican and how it came
23 into possession of property. He gives the history of that
24 from the expropriation of the Papal States and the
25 compensation fund, and he indicates at the second-last

1 paragraph at that page that it operates essentially at a
2 break-even point financially.

3 And then he talks about what he described
4 here as the Congregation of the Evangelization of Peoples,
5 which is a department in the Vatican, which would be
6 equivalent to a department in the Government of Canada, and
7 that has authority over developing diocesan corporations.
8 No other diocesan corporation receives money from the
9 Vatican.

10 And on this subject, I just want to -- his
11 point here is that the Vatican may make donations to assist
12 the creation of a diocese and, typically, in the Third
13 World or remote areas where there is no accessibility to
14 services.

15 Bishop Durocher augments this discussion at
16 page 10 of his affidavit based on his interaction with the
17 Papal Nuncio and a discussion they had in response to the
18 questions you posed, and the Papal Nuncio, at paragraph 6
19 and 7, you will see ---

20 **THE COMMISSIONER:** Just a second. We're at
21 ---

22 **MR. SHERRIFF-SCOTT:** I'm sorry, we're at
23 page 9 of Bishop Durocher's Affidavit in the textual
24 portion.

25 **THE COMMISSIONER:** Yes.

1 **MR. SHERRIFF-SCOTT:** It recounts the
2 discussion that Bishop Durocher had in response to your
3 questions about accessibility of outside funding ---

4 **THE COMMISSIONER:** Yes.

5 **MR. SHERRIFF-SCOTT:** --- with the Papal
6 Nuncio, who is the Pope's Ambassador to Canada.

7 **THE COMMISSIONER:** Right.

8 **MR. SHERRIFF-SCOTT:** Sorry, it's ---

9 **THE COMMISSIONER:** You gave me the ---

10 **MR. SHERRIFF-SCOTT:** The wrong reference.
11 It's paragraph 10.

12 **THE COMMISSIONER:** It's page 6, paragraph
13 10.

14 **MR. SHERRIFF-SCOTT:** That's right, and
15 following.

16 **THE COMMISSIONER:** Yes.

17 **MR. SHERRIFF-SCOTT:** And on the subject of
18 what diocesan corporations that the Vatican does give money
19 to, he discusses that and explains at paragraph 13 --
20 excuse me, paragraph 12, what happens and that there are
21 annual collections taken up across the world and that the
22 Vatican acts as a conduit.

23 In other words, it doesn't draw down on its
24 own reserves to give money to these developing
25 corporations. It collects worldwide and funds, as it does

1 also with charitable relief for ad hoc things such as
2 disasters, tsunami relief, et cetera. So it doesn't draw
3 down on its own financial reserve which it operates on on a
4 break-even basis to fund the administration of the state.

5 Then just back to Reverend Morrissey's
6 report at Exhibit "B", he gives a lengthy description of
7 the reason for civil corporate status of a diocesan
8 corporation as distinct from the parish at pages 5 and 6 of
9 his report.

10 But for our position, he talks at page 8
11 about the financial management.

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

13 **MR. SHERRIFF-SCOTT:** Now, here is where he
14 returns to his thesis about the parish and its canon law
15 legal status. It owns all of its own goods and monies,
16 which are not accessible to a bishop, who cannot encroach
17 on parish monies.

18 Now, in the case here, in this diocese, as
19 Your Honour may know from the affidavit of Bishop Durocher,
20 each individual parish is a discrete registered charity
21 with Revenue Canada. So even though CCRA, or CRA as it is
22 now called, recognizes that they're not corporations in
23 civil law, you don't have to be a corporation to be a
24 registered charity. You can be a non-incorporated
25 association.

1 But the parishes account directly to Revenue
2 Canada for their monies and the disbursement quota rules of
3 any money that comes from a parish to the diocese applies.

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

5 **MR. SHERRIFF-SCOTT:** So they are not -- the
6 bishop is not permitted to alienate their property at canon
7 law and/or encroach on their property. That money is the
8 money of the parish, and the money of the parish, as will
9 appear from the financial material, is, every year in the
10 annexes to the statements, separately accounted for. They
11 have each a fund of money that is used for their
12 administration purposes.

13 There is a description here about the
14 negative financial controls that we have already looked at,
15 and there is a discussion at page 9 and following, which I
16 don't need to highlight overly, which talks about the
17 absence of a common fund of money available to diocesan
18 corporations.

19 Reverend Morrissey cites the example of one
20 Canadian diocese in Newfoundland as well as a number in the
21 United States that have recently gone bankrupt because they
22 do not have access to outside funding and they are in the
23 process of bankruptcy proceedings. He uses that to
24 illustrate his point, as well as the question of the legal
25 recognition of the Catholic Church as a distinctive entity,

1 which it is not at civil law as opposed to individual
2 diocesan corporations.

3 So we provided you with this opinion for two
4 purposes: to demonstrate that at the parish level, that
5 money is the parish's, which we can't alienate or encroach
6 on and; secondly, to demonstrate that there is a lack of
7 availability of outside funding, from a structural point of
8 view, to the Diocese, which is supplemented by Bishop
9 Durocher's Affidavit where he talks to both the
10 representative of the Catholic Conference of Bishops as
11 well as the representative of the Vatican from Rome.

12 So that's the structural issue that I wanted
13 to touch on.

14 And just for the purpose of the reserve
15 fund, the points I wanted to make, which are highlighted,
16 are, I would say, this. First, the Diocese does not have a
17 reserve fund of between \$5 and \$6 million. My submission
18 is that it's \$2.2 million when you account for the parish
19 money, based on the structure. Therefore, the greatest
20 part of the reserve is owned by the individual parishes in
21 identifiable amounts set out in the annexes, which I will
22 show you briefly.

23 And the parishes, because they are juridical
24 persons at canon law and each are registered charities, are
25 entitled to that money and the Diocese can't encroach on

1 it.

2 The Diocese essentially holds that money in
3 trust and it separately accounts for it, as I have
4 indicated.

5 Second, the Diocese -- the sworn information
6 before you from Bishop Durocher -- it needs approximately
7 \$2.7 million in reserve to meet its operational expenses,
8 based on the evidence of its Bursar, who is its Chief
9 Financial Officer, Reverend Brian, and as Your Honour will
10 know -- at least I know from my own modest portfolio --
11 rates are not high these days, and so the return and yield
12 of these investment certificates and vehicles is not high
13 and the Diocese is essentially operating in a deficit
14 position in terms of its yield to fund current operations.

15 If you take out, for example, the sale of
16 the former bishop's residence last year, you will see they
17 are in the red, not in the black.

18 **THE COMMISSIONER:** I'm more interested in
19 your portfolio.

20 **(LAUGHTER/RIRES)**

21 **MR. SHERRIFF-SCOTT:** You wouldn't be; I
22 assure you.

23 There is also the point on the subject of
24 the reserve, that we have had to spend money on litigation
25 and legal fees over the last 10 years, which is a question

1 I think Your Honour suggested as being of importance.

2 **THE COMMISSIONER:** Yes.

3 **MR. SHERRIFF-SCOTT:** There were, just so you
4 know, seven civil proceedings and six criminal proceedings.

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

6 **MR. SHERRIFF-SCOTT:** In the exhibit that
7 I've highlighted, the costs are approximately \$120,000.

8 **THE COMMISSIONER:** Well, that raises a
9 point.

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

11 **THE COMMISSIONER:** When you were last here
12 we had a discussion and what you indicated to me was that
13 the civil actions are funded by insurance policies.

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

15 **THE COMMISSIONER:** So I'm a little surprised
16 to see that then you're coming and saying, "Well, we spent
17 \$800,000 defending things." There seems to be a little
18 discrepancy there.

19 **MR. SHERRIFF-SCOTT:** Okay. Well, let me
20 elaborate on that. I don't have the evidence, but I can
21 give you an assurance and further evidence, if you wish.
22 There was no coverage for those prior civil actions.

23 **THE COMMISSIONER:** Yes, but you did -- I
24 have the transcript here.

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

1 **THE COMMISSIONER:** And you did say ---

2 **MR. SHERRIFF-SCOTT:** The current nine
3 actions are insured to limits.

4 **THE COMMISSIONER:** Okay.

5 **MR. SHERRIFF-SCOTT:** There are insurance
6 policies in place which cover the current nine lawsuits
7 which have been initiated this year against the Diocese.

8 **THE COMMISSIONER:** Right.

9 **MR. SHERRIFF-SCOTT:** In connection with the
10 last lawsuits, there were fights with the insurers over
11 coverage ---

12 **THE COMMISSIONER:** Right.

13 **MR. SHERRIFF-SCOTT:** --- which did not yield
14 coverage.

15 One of the proceedings, for example, was a
16 Criminal Injuries Compensation Board in which damages were
17 sought. There was no insurance. The insurers denied
18 coverage for the preceding civil cases. They have now
19 accepted coverage.

20 I was not counsel on all of those cases.
21 There were other counsel. We were on on the Criminal
22 Injuries Compensation Board case. There was a fight about
23 insurance. The insurance did not pay, nor did it fund the
24 diocesan fees on the civil side.

25 It is now paying. There is a portion,

1 however, of the ---

2 **THE COMMISSIONER:** The underinsured part.

3 **MR. SHERRIFF-SCOTT:** Yes, there's an excess
4 claim.

5 **THE COMMISSIONER:** Excess claim.

6 **MR. SHERRIFF-SCOTT:** But there's also a
7 portion of approximately between, depending on the case --
8 there are nine cases -- they range from 2 to 10 per cent
9 uninsured. Because of the years of coverage, there are
10 gaps.

11 So the Diocese is roughly exposed to 10 per
12 cent of the fees in the nine cases that are now before it
13 to deal with.

14 So, yes, we have insurance now. The
15 insurers have been, as I described, brought to heel. In
16 the preceding cases, with the exception of one that I was
17 involved in, the insurers resisted paying.

18 And so the Diocese had to pay out, on the
19 civil side, its own fees and then on the criminal side, I
20 have elaborated why -- what its rationale was for payment
21 of the defence costs of those priests.

22 The long and short is it has suffered the
23 burden of a lot of fees, and if you look at its overall
24 financial position relative to what it needs to operate,
25 the cost of this inquiry, which present predictions, I

1 think, realistically would be possibly as much as a year
2 or, who knows, possibly longer, would be a very significant
3 financial burden for the Diocese.

4 So that ---

5 **THE COMMISSIONER:** Can I just ---

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

7 **THE COMMISSIONER:** Let's finish this point
8 off then.

9 What you're telling me is that they have
10 spent \$800,000 over the last 10 years?

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

12 **THE COMMISSIONER:** Foreseeably, they will
13 have to pay less money now that the insurance companies are
14 involved?

15 **MR. SHERRIFF-SCOTT:** In terms of fees?

16 **THE COMMISSIONER:** Yes.

17 **MR. SHERRIFF-SCOTT:** Yes. Yes, they will
18 only have -- of those nine proceedings that are presently
19 before them, they will only have to pay between 5 and 10
20 per cent of the fees for those cases. Yes, that's true.

21 And then there is the excess claim which is
22 approximately \$18,900,000 over their limits which is
23 claimed against them. Yes, I know ---

24 **THE COMMISSIONER:** We all know that people
25 claim big amounts and ---

1 **MR. SHERRIFF-SCOTT:** True.

2 **THE COMMISSIONER:** --- the odds of an
3 overage is debatable.

4 **MR. SHERRIFF-SCOTT:** True. That's what's on
5 the books essentially.

6 **THE COMMISSIONER:** Right.

7 **MR. SHERRIFF-SCOTT:** And you're correct.
8 Whether or not those cases are worth that amount or whether
9 there will be any liability, I don't know.

10 **THE COMMISSIONER:** Right.

11 **MR. SHERRIFF-SCOTT:** In terms of the
12 financial reserves on the financial statements, I just
13 wanted to highlight, if you turn to Exhibit "C" ---

14 **THE COMMISSIONER:** Which one now?

15 **MR. SHERRIFF-SCOTT:** In the Affidavit of
16 Bishop Durocher.

17 **THE COMMISSIONER:** Yes.

18 **MR. SHERRIFF-SCOTT:** These are the earlier
19 financial statements.

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

21 **MR. SHERRIFF-SCOTT:** And this is just to
22 illustrate my point. The fourth page in from the 1995
23 financial statement ---

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

25 **MR. SHERRIFF-SCOTT:** --- you will see the

1 balance sheet, and down in the left margin, three entries
2 from the bottom, "Long-term debt - loans payable to
3 parishes with interest" is the accounting mechanism by
4 which they identify the parish monies. That's \$1,518,000.
5 And if Your Honour -- if you can hold that number and look
6 at the very last page of that tab, which is the annex to
7 the financial statement, "Details of parish deposits" ---

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

9 **MR. SHERRIFF-SCOTT:** --- you will see the
10 number is the same.

11 If you look at the balance of December 31,
12 '95, which is the second column or margin in from the
13 right-hand column, \$1,518,000. So those are the two
14 numbers; in other words, the collection of the parish
15 deposits and monies held by the parishes for masses and
16 cemeteries equals the amount on the financial statement as
17 payable to the parishes.

18 **THE COMMISSIONER:** Right.

19 **MR. SHERRIFF-SCOTT:** Which you would
20 subtract from the investments under "Assets" up above to
21 come up with the total reserve of the Diocese. And that is
22 the same case in each of the years that follow, except in
23 2003 and 2004 where there are minor discrepancies, because
24 as Bishop Durocher deposes, the parishes put their money in
25 shortly after the diocesan year end, and so the

1 reconciliation couldn't be made to the fact of the
2 financial statement but could be in the annex.

3 **THE COMMISSIONER:** But in theory, they are
4 having a profit. The excess of revenue over expenditures
5 in 1995 was \$83,000, up by \$23,000, let's say, from 1994?

6 **MR. SHERRIFF-SCOTT:** Yes. Whatever the
7 statements say in terms of excess over revenue, that's
8 correct. You may see that that's probably as a result as
9 they begin to cut costs. For example, they eliminated half
10 of their staff over the 10-year period. They've gone from
11 16 full time to six full time with three part time. So
12 they basically cut their complement of staff more than half
13 to eliminate costs, as well as to reduce and trim programs,
14 some of which were run by the people who were eliminated in
15 terms of their full-time positions.

16 So the statements will show what they show
17 in terms of excess for particular years. My point is to
18 illustrate what the parish owns versus the Diocese.

19 **THE COMMISSIONER:** I understand.

20 **MR. SHERRIFF-SCOTT:** Okay. The one thing I
21 wanted to draw your attention to, if you do look at the
22 annex, and this holds true for each of the years, at the
23 last page of 1995, which is Exhibit "C", you see the total
24 amounts held by these parishes are quite varying in their
25 numbers.

1 **THE COMMISSIONER:** Yes.

2 **MR. SHERRIFF-SCOTT:** Some have as little as
3 \$8,000, some as much as \$200,000 or \$400,000.

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

5 **MR. SHERRIFF-SCOTT:** And as Bishop Durocher
6 deposes, they draw down on these monies in various amounts
7 throughout the year. As you can see from refunds, which is
8 withdrawals, throughout the year the parishes draw directly
9 on their discrete fund. So whatever their costs are, they
10 operate and they need this money to cover their operational
11 expenses and their programs, et cetera, as well as the
12 interest there from which funds their activities.

13 So I wanted to give you the legal structure
14 of who owns this money and how it operates, because it is a
15 bit complex in terms of the reserve.

16 The other points that I have already made
17 which are that the Diocese faces these proceedings. It has
18 had to cut its costs as a result of spending.

19 And if I may just say that in terms of the
20 spending, at least on the civil side, it hasn't been a
21 matter of discretion. The Diocese has had to pay its
22 lawyers to defend these proceedings. You can't just not
23 defend a lawsuit. The result has been that most of them
24 were dismissed with the exception of one which was settled
25 for a modest amount.

1 Now, on the subject of outside funding, Your
2 Honour has the Affidavit of Bishop Durocher in which he
3 talks directly to the Vatican representative in Canada ---

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

5 **MR. SHERRIFF-SCOTT:** --- as well as the
6 representative of the Catholic Conference of Bishops.

7 The Conference does not have the assets to
8 fund, nor does it fund on policy, nor does it have any
9 financial relationship or fund any diocese anywhere.
10 That's the essential upshot of the affidavit material in
11 terms of the Vatican. It doesn't fund diocesan
12 corporations and will not do so. I suppose, from its
13 perspective, if it looked at that question, it would be
14 funding everybody, but it has a church and a diocese
15 virtually in every country in the world. And so that is
16 the point.

17 And then on the Walkerton material, I have
18 summarized that as best I could in the factum which talks
19 about the nature and description of these entities. The
20 financial documents of each of them are there.

21 The ones I would emphasize -- the others are
22 there to read -- are the Association of Municipalities of
23 Ontario, which is a non-profit organization designed to
24 further the interests of municipalities, and its financial
25 statement indicates annual revenues at the Statement of

1 Revenue and Expenses, which is towards the back of that Tab
2 A of Mr. Ferguson's Affidavit. There is attached to the
3 AMO's submission its annual report of the year in which it
4 filed, and this was filed with Walkerton. And towards the
5 back, at page 13 of the financial documents or the brief,
6 there is the balance sheet ---

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

8 **MR. SHERRIFF-SCOTT:** --- indicating its
9 unrestricted reserve, towards the bottom, of accumulated
10 surplus of \$720,000, and over to the next page, annual
11 revenues at 2.1 for \$6 million and an excess over revenue
12 in that year alone of \$195,000, down at the bottom of the
13 page on the Statement of Revenue and Expenses.

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

15 **MR. SHERRIFF-SCOTT:** So my point about this
16 is, first of all, this is an organization of some means.
17 Its only submission to the Inquiry was that it didn't have
18 budgeted expenses and couldn't talk to municipalities
19 because the economy wasn't so good, and those
20 municipalities comprise the biggest municipalities in
21 Ontario, including Ottawa, Toronto, London, Kitchener, et
22 cetera. So it would have been a minuscule portion of their
23 budget, prorated, to fund.

24 There are other ---

25 **THE COMMISSIONER:** I don't know that I

1 really need to hear you on that.

2 **MR. SHERRIFF-SCOTT:** Fair enough. I don't
3 need to elaborate on those. I have summarized them in the
4 brief.

5 My point is that from the point of view of
6 comparing apples to apples, I would say the Diocese is in a
7 position of not being able to be distinguished from these
8 organizations, and for reasons -- I think you have to infer
9 from Justice O'Connor's approach -- he doesn't talk about
10 it explicitly, with the exception of the PEGO case, but my
11 perception of his reasoning is that when these
12 organizations don't have the budgeted money and they would
13 have to compromise their programs to fund counsel, then
14 they ought to receive funding, which is a sufficiently wide
15 interpretation of his Terms of Mandate.

16 **THE COMMISSIONER:** M'hm. Thank you.

17 **MR. SHERRIFF-SCOTT:** Thank you, Your Honour.
18 Are there any other questions, Your Honour?

19 **THE COMMISSIONER:** Not now.

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

21 **THE COMMISSIONER:** We will take a short
22 break. Let's say 15. Come back in 15.

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

24 **THE REGISTRAR:** All rise. The hearing will
25 reconvene in 15 minutes.

1 --- Upon recessing at 10:36 a.m./

2 L'audience est suspendue à 10h36

3 --- Upon resuming at 11:02 a.m./

4 L'audience est reprise à 11h02

5 **THE REGISTRAR:** All rise. Veuillez vous
6 lever. The hearing will now resume. Please be seated.

7 **THE COMMISSIONER:** Well, luckily, I can
8 assure you that I will be brief. I will start with the
9 Diocese and deal with my ruling on that matter, and then I
10 will address matters dealing with the Coalition for Action
11 Against Child Sexual Abuse in Cornwall, an amendment sought
12 by the Citizens for Community Renewal and some last
13 comments with respect to where do we go from here, and then
14 we will call it a day.

15 So on November 17th, 2005, I granted the
16 Diocese and Bishop Eugene LaRocque standing. I provided
17 them with an opportunity to make further submissions in
18 support of their application for funding.

19 On December 1st, 2005, I received extensive
20 written submissions in two affidavits from the Diocese and
21 Bishop LaRocque. Counsel for the Diocese and Bishop
22 LaRocque made oral submissions today.

23 I can tell you that these further materials
24 and today's submissions from the Diocese were, in large
25 part, very useful.

1 I must admit that I was initially
2 disinclined to recommend funding to the Diocese.
3 Conventional wisdom, I suppose, and history had always
4 portrayed the Church as being an entity with vast
5 resources.

6 The material provided by the Diocese,
7 particularly the report of Reverend F.G. Morrissey of
8 St. Paul's University shed some interesting light on the
9 Church's organization in Canada and the world.

10 In his report, Reverend Morrissey clearly
11 separated the religious duties of the Church from that of
12 its financial arrangements. Having done so, it is clear
13 that conventional wisdom gives way to a new reality, one
14 which I, for one, was clearly in the dark.

15 All of this to demonstrate that this Inquiry
16 is not about conventional wisdom but about facts. This
17 Inquiry will take the time to listen and, as I often say,
18 to ponder all aspects of the evidence presented.

19 Thus, upon reviewing and considering their
20 written and oral submissions, I am satisfied that the
21 Diocese and Bishop LaRocque would not be able to
22 participate in this Inquiry without funding.

23 I also say that, accordingly, I will
24 recommend funding for one senior, one intermediate and one
25 junior counsel, limited to one counsel attendance fee.

1 Now let me deal with the Coalition for
2 Action Against Child Sexual Abuse in Cornwall.

3 Again on November 17th, 2005, in the context
4 of my rulings on standing and funding, I advised counsel
5 for the Coalition that I needed more information before I
6 could make a decision on their application for standing and
7 funding. I indicated to them that there may well be a
8 place for the Coalition should they wish to submit to me
9 further details outlining the following: a more detailed
10 list of its members; a more detailed summary of the group's
11 history and mandate; how their participation is different
12 from the perspective offered by the Victims Group and the
13 Citizens for Community Renewal and the role they intended
14 to play in the Inquiry.

15 I indicated that after receiving this
16 information I would further consider whether and to what
17 degree standing should be granted.

18 After the hearings, I instructed Commission
19 counsel to reconfirm with counsel for the Coalition that I
20 would appreciate receiving their further written
21 submissions by December 1st, 2005 and that they would be
22 welcome to make oral submissions today.

23 In that regard, given the vast attendance
24 today, I simply ask, is there anyone here who wishes to
25 make any submissions on behalf of the Coalition?

1 That having been said, it's clear that no
2 one is in attendance today.

3 Accordingly, and continuing on my
4 instructions, Commission counsel received a letter from
5 counsel for the Coalition that indicated that the Coalition
6 would not be making further written submissions.
7 Commission counsel was also informed that no one from this
8 group would be appearing to make oral submissions.

9 It would appear, therefore, that the
10 Coalition has decided not to seek standing in this Inquiry.
11 This is, in my view, unfortunate, and I say unfortunate
12 because this group has shown a genuine concern in this
13 matter.

14 However, all is not lost. I am convinced
15 that notwithstanding this turn of events the group remains
16 committed to having this matter cleared up and I am hopeful
17 that the group will provide useful information to the
18 Inquiry if and when called upon.

19 As well, I shall leave the door open to hear
20 further submissions in respect of an application for
21 standing and funding for this group, mainly for Phase II
22 and perhaps for Phase I, depending on how that phase
23 develops.

24 I ask that if it wishes that I consider its
25 application further, it provide me with the information

1 that I have requested.

2 Now turning to the Citizens for Community
3 Renewal, I have one issue to address with respect to their
4 request. As you may recall, on November 17th, 2005, I
5 granted funding to the Citizens for Community Renewal. At
6 that time, I granted funding for two senior counsel, one
7 junior counsel and one clerk, limited to one counsel
8 attendance fee.

9 Since then the group has asked that I
10 reconsider my funding request and instead recommend funding
11 for one senior counsel, one intermediate counsel and one
12 junior counsel.

13 I have considered the submissions of the
14 Citizens for Community Renewal and I will revise my
15 recommendation as requested by them. My recommendation
16 with respect to one counsel attendance fee will remain
17 unchanged.

18 Now, with respect to further comments -- are
19 there any other questions arising out of this ruling?

20 Thank you.

21 I wish to advise you that a number of
22 parties have asked that I intervene and suggest and provide
23 some counselling with respect to persons involved with this
24 Inquiry for counselling, and I have taken the view that it
25 may well be a worthwhile endeavour and I am continuing to

1 examine that request, and I will be providing an update
2 hopefully in the new year -- in the early new year.

3 As well, I wish to remind the parties that I
4 have asked them to submit their comments on the Rules of
5 Practice and Procedure of the Cornwall Public Inquiry by
6 December 15th, 2005.

7 And so now that we have, in my view,
8 completed the task of standing and funding, we can look
9 forward to the beginnings of Part I and Part II of the
10 Inquiry, which again will be beginning in the new year.

11 More information will be forthcoming about
12 the process and timelines for each part, and I urge all of
13 the participants to verify with our website for any further
14 developments in that regard.

15 Thank you.

16 **THE REGISTRAR:** All rise. This hearing is
17 now adjourned.

18 --- Upon adjourning at 11:11 a.m./

19 L'audience est ajournée à 11h11

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

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

Je, Johanne Laporte, une 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.



Johanne Laporte, CVR-CM