

**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 93

Held at :

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

Monday, February 19, 2007

Tenue à:

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

Lundi, le 19 février 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. Joe Neuberger Mr. Mike Lawless	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Ms. Judie Im	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
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association
Ms. Jennifer Birrell	Catholic District School Board

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(none entered)

1 --- Upon commencing at 2:36 p.m. /

2 L'audience débute à 14h36

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:** Good afternoon all.

8 For members of the public and those watching
9 on the web cast, I apologize for the delay in starting.

10 However, as it is Monday, and I have certain
11 comments to make, I thought it *à propos* that counsel be
12 permitted to meet with lawyers for the different parties in
13 order to discuss what we will be doing this afternoon.

14 What I want to do is to bring you up to date
15 on my activities since the last day. You will recall that
16 I expressed concern of the wellbeing of the witnesses
17 testifying here before me. What I had said in part, last
18 week or another day, was that I expect that all parties,
19 but specifically public institutions who, by their very
20 nature, have, as their mandate, to seek the greater good,
21 to instruct their counsel to be fair in their cross-
22 examination, to stay within the boundaries of the mandate
23 and to ensure that there is no unnecessary pain and anguish
24 revisited on these witnesses.

25 Having said that, I am also mindful of the

1 rights of the parties to fairly cross-examine on issues
2 that relate to their institutional response and which sheds
3 light on important issues, and we all know that Mr. Silmser
4 has experienced some difficulties in completing his cross-
5 examination.

6 Following the giving of his evidence in
7 cross-examination, Mr. Petepiece has also voiced concern
8 about the manner in which some aspects of his evidence was
9 elicited. Both gentlemen were before us giving testimony
10 as part of the work of this inquiry. They had been asked
11 to attend and have attended in response to their public
12 duty.

13 My focus and concern is on the right
14 processes for this inquiry and to figure out whether we are
15 on the right balance. And let there be no misunderstanding
16 me now. The balance is ever-changing, and I intend to
17 readjust or to respond to that balance as we proceed
18 throughout the inquiry, as need be.

19 The bottom line is to create an environment
20 in which the risk of harm to individuals is managed while
21 affording a proper scope for cross-examination. Again, let
22 me be quite clear, this is not an indictment on the right
23 to ask questions of probative value and it is not intended
24 as a finger-pointing exercise in respect to individual
25 counsel.

1 Having made that clear, I do want to address
2 an issue that arises frequently, and to me it raises the
3 kind of question of balance that concerns me.

4 Some questions may pertain to institutional
5 response but also engage questions of individual
6 credibility or veracity of accounts.

7 In this situation, how should the right
8 balance be struck and how can we avoid backing into
9 attempts to demonstrate guilt or innocence in response to
10 certain allegations?

11 Based on my concerns about process and
12 impact on individuals, I have asked the lead counsel, Mr.
13 Engelmann, to write to all of the parties to outline the
14 issues that have arisen and how they might impact on our
15 work. I want to hear from all counsel and today they will
16 have the opportunity to express their views.

17 Following the information and suggestions
18 given by counsel today, I will consider all that has been
19 said and provide further direction within the next day or
20 so. This is important and a timely discussion; important
21 to our work, to counsel and to future witnesses. I welcome
22 an informed and professional debate.

23 So now I will -- we will hear from Mr.
24 Engelmann who will set out the issue and then I'll hear
25 from the parties on this matter.

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:

2 MR. ENGELMANN: Thank you, Mr. Commissioner.

3 Again, just by way of background, after your
4 comments on February 8th, I wrote to counsel for all the
5 parties on February 14th, 2007 and then again on February
6 15th, 2007, and I'll just spend a bit of time to paraphrase
7 what I wrote and give you a sense as to some of the
8 responses I received, although counsel are here and will
9 speak, obviously, on their own behalf.

10 The reason why these letters were sent were
11 that concerns were expressed by several people to
12 Commission counsel about some of the harm that can be
13 caused. Words like "re-victimization" were used; some of
14 the harm that might be caused through some of the
15 questioning and just the fact of being a witness at a
16 public inquiry like ours. And there were suggestions made
17 by -- and phone calls, emails, et cetera, received from
18 members of the public, from individuals who had been
19 witnesses and from individuals who we hope will be
20 witnesses, so potential witnesses, about some of the
21 process that witnesses have gone through here.

22 So these concerns were expressed and,
23 essentially, the concerns were that our process, as an
24 institution examining allegations of child sexual abuse,
25 were such that people were being harmed by our own process

1 and suggestions and comments were being made that, by doing
2 what we're doing in Phase 1, we are perhaps losing sight
3 of our role in Phase 2, and/or that there is a conflict
4 between examining the institutional response, and how we're
5 doing it, and that if there's a conflict with that in our
6 healing and reconciliation mandate in Phase 2.

7 And then I received a letter from a witness
8 that I had just called as well on top of some of these
9 other concerns that were expressed, and it was for that
10 reason that a letter was written to counsel for all the
11 parties on February 14th bringing this matter up. And I'll
12 just refer to that letter briefly, if I may, in a couple of
13 points.

14 But, essentially, the letter talked about
15 the fact that at least initially the witnesses who had come
16 forward, the victims and alleged victims who had testified,
17 in 2006 and the early part of 2007, had, in the main, a
18 relatively positive experience. Some of them had had some
19 difficulty with some parts of the process, but the overall
20 feeling they had, after they left the witness stand, was
21 that there had been some closure; what they had done had
22 helped them in telling parts of their story, in dealing
23 with the institutional response, and in achieving some
24 closure to the experience that they have been through.

25 It was only recently with Mr. Silmsler, and

1 you've mentioned him and Mr. Petepiece, that we heard
2 directly from a couple of victims, or alleged victims I
3 should say, that this experience had been harmful and that
4 was indicated to us by Mr. Silmser's counsel, Mr. Culic,
5 and as well by Mr. Petepiece directly.

6 So it was in that context that I wrote to
7 counsel and we talked about the fact that, in essence, that
8 we wanted people to focus their cross-examination. Much
9 has been said of restricting or curtailing or limiting, but
10 the focus, and if I can use that word again, of my letter
11 was to talk about focussing the cross-examination to ensure
12 that the cross-examination was relevant to the mandate,
13 that it was relevant to that institution's particular
14 institutional response, that the probative value of that
15 cross-examination was such that it -- I mean it should, in
16 all cases, outweigh harm that may be done.

17 And I think you mentioned yourself sometimes
18 the difficulty when we are perhaps testing the veracity of
19 credibility of a witness. If it's dealing with concerns
20 that a witness has with the institutional response, that's
21 going to happen. There are going to be questions that are
22 put.

23 If it's more leading to the credibility of
24 the witness with respect to the allegation itself or other
25 matters that are incidental, I have mentioned to counsel,

1 both in my letters and at the meeting we had today, that
2 Commission counsel will be more vigilant in objecting to
3 questions that we feel do not go right to the mandate and
4 may be more harmful than helpful to what we're trying to
5 achieve.

6 There are ways to do that. There are ways
7 to do that that aren't -- that are respectful of the
8 witness and that are respectful of counsel, and we've
9 talked about -- and concerns were expressed to me about
10 interfering with the flow of cross-examination. These
11 types of objections can be made; perhaps they are group
12 objections and, in many instances, if it's appropriate, the
13 witness can leave the room and there can be a discussion
14 about how it's relevant to the institutional response.

15 So I, certainly, in writing to counsel,
16 expressed my views that it wasn't going to be sufficient,
17 that while this question relates to our institutional
18 response, we're going to be expecting an answer as to how
19 or why it relates to that institutional response if it's
20 not clear to us as counsel.

21 So we've had those types of discussions and
22 the concern is not a new one about possibly hurting or
23 harming victims or alleged victims of child sexual abuse.
24 Dr. Jaffe spoke to us about this. Dr. Wolfe spoke to us
25 about this in our context-setting evidence.

1 There are several comments about this in
2 Volume 9 of the transcript in the evidence of Dr. Jaffe and
3 he said things like,

4 "I think it's difficult to come forward
5 and tell your story; so I think in the
6 telling of the story, people are going
7 to be re-traumatized."

8 Since the Commissioner to -- you went on
9 about how you should be careful and how you thought you
10 would be with respect to people having difficulty telling
11 their stories, having appropriate groups, providing support
12 people, et cetera, and the Commission has done this, in the
13 main, by providing witness support, by allowing people to
14 have some accommodation.

15 There are certainly other accommodations
16 we're now looking at for witnesses that are available, but
17 he said:

18 "I think it's important and, obviously,
19 I fully understand the importance of
20 good cross-examination, but ensuring
21 that there are some lines that aren't
22 crossed in cross-examination, so in
23 informing counsel about how to get the
24 truth out as part of the inquiry, but
25 also be respectful to the dignity both

1 of alleged victims and also alleged
2 offenders."

3 And there were parts in the Robins Report
4 that went in Dr. Jaffe's evidence, where Justice Robins
5 noted:

6 "The nature and extent of the emotional
7 impact or trauma suffered by witnesses,
8 whether children or adults, varies in
9 each case. There are witnesses who may
10 regard the testimonial experience as
11 cathartic. However, the potential for
12 significant emotional distress or
13 trauma in cases involving sexual
14 misconduct is clear and
15 incontrovertible."

16 And we had other reports and other
17 witnesses, and, clearly, what we're being told is that a
18 victim or alleged victim of child sexual abuse may react
19 differently than another victim or alleged victim and we
20 just have to be sensitive to their needs as we proceed.
21 And I'm not saying, however, that witnesses can't be
22 challenged from time to time with respect to their
23 concerns, assuming we're dealing with matters that are
24 relevant to this inquiry.

25 The concerns that were expressed to me by

1 Mr. Petepiece were done in a letter, and let me just
2 paraphrase a little bit about that letter, if I can.

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

4 **MR. ENGELMANN:** He asked that I consider
5 publicly sharing his letter as he thought it was a message
6 that needed to be heard. He maintains, in his letter, that
7 he's one of the least victimized people that we're going to
8 hear from in the community. He accepted that the process
9 had to test facts, but thought that there were less
10 confrontational ways to achieve that end and he gave some
11 examples from him own experience.

12 He talked about the negative impact on both
13 himself and his family and that it was not part of
14 community healing. And when I spoke to him about that, he
15 was very emotional about the impact on himself and his
16 family and I didn't prod further on that.

17 He talked about the concern that, if people
18 are re-victimized in any way by this process, that others
19 who have important stories to tell may not feel they can.
20 And he, again, closed by saying "The problem, as I perceive
21 it, lies with the process and not the people," and I would
22 echo those comments and concerns.

23 There are concerns that individuals are
24 watching the experience that others are having in the
25 witness stand. Some of those individuals are witnesses

1 that have yet to come, and we've had some expression of
2 concern by some of those individuals that they're
3 reconsidering whether they want to come forward and do this
4 as a public duty or a sense of public duty because they
5 don't want to be hurt by our process.

6 So, obviously, those are concerns that we
7 have as commission counsel and we're sure that other
8 counsel here respect those concerns and have concerns about
9 the well-being of all witnesses just as we do. And we're
10 talking about ways to do this process with causing as
11 little as possible any harm or re-victimization of
12 individuals.

13 And, again, it's always much better to have
14 all the necessary relevant evidence before this inquiry
15 that we can have, and those witnesses that are able to come
16 forward to be examined and cross-examined will help us in
17 finding solutions for dealing with this very difficult
18 problem of child sexual abuse.

19 It's always preferable to have that evidence
20 in person and to have that evidence with the full rights of
21 examination and cross-examination. But there maybe times
22 when we have to divert from that. There are times we have
23 to divert from that because witnesses are dead or otherwise
24 unavailable. There may be times we have to look at other
25 options that are less perfect from a procedural fairness

1 point of view with respect to factual overviews; some form
2 of written questions. There are other accommodations;
3 whether we talk about screens for individuals or other
4 things that are done for vulnerable witnesses.

5 But there are a number of areas that we're
6 thinking about, as commission counsel, that we're
7 considering. We've talked to the parties today about how
8 perhaps some of those questions that need to be put with
9 respect to the institutional response can perhaps be put by
10 commission counsel. Some of those tougher questions put by
11 commission counsel as a more familiar face to the witness
12 that might be of some assistance in allowing people to
13 complete their evidence or to start their evidence and
14 follow it through.

15 Sir, those are some of the comments that I
16 have. I'll certainly be listening for other people's views
17 and may have some brief comments before we finish this
18 afternoon. But it's out of concern with respect to the
19 feedback we've been receiving, as I said, from witnesses,
20 from potential witnesses, from members of the public, and
21 we just thought it was important to take action now, to be
22 vigilant, and to not be another institution that might be
23 perceived, in any event, as an institution that has caused
24 harm in any way to victims or alleged victims of child
25 sexual abuse.

1 That's what we're talking about today, and
2 look forward to hearing from my friends as to their views
3 and possible solutions for dealing with this issue.

4 **THE COMMISSIONER:** Thank you, Mr. Engelmann.
5 Mr. Manson, would you care to venture forth?

6 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:**

7 **MR. MANSON:** Yes, Mr. Commissioner.

8 First, I want to say, both personally and on
9 behalf of my client, the Citizens for Community Renewal,
10 how much we regret having learned that some of the
11 witnesses have experienced difficulties before this
12 Inquiry.

13 I also want to say, Mr. Commissioner,
14 that if you're contemplating issuing any directions with
15 respect to examination and cross-examination, perhaps
16 before that's done we could see a draft or at least get a
17 general sense of what it is you're contemplating so that
18 people could make specific submissions. It's very
19 difficult to address these issues in the abstract.

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

21 **MR. MANSON:** But I am going to make a few
22 points in the abstract.

23 First, I want to say that, certainly, on
24 behalf of my clients, and after raising it in the counsel
25 meeting, I think I can say this on behalf of all counsel

1 that everyone accepts and supports the importance of a full
2 and fair Inquiry, touching on all aspects of your mandate.
3 And what that means, Mr. Commissioner, is that we should be
4 hearing only relevant evidence, and that any questions, the
5 purpose of which is to embarrass a witness, ought to be
6 prohibited. And I think all counsel would agree with that.

7 Secondly, I want to say that all counsel
8 would agree that every witness ought to be treated with
9 respect. I've been present for many of the witnesses. I
10 certainly wasn't here for any Mr. Silmsler and Mr. Petepiece.
11 I've read the transcripts. I've also seen bits on the web
12 cast and my impression is that counsel have kept to those
13 two basic tenants, Mr. Commissioner.

14 But I want to raise one thing with you.
15 It's clear that, as part of your mandate, at times, you and
16 your counsel pursue what I would call the subjective
17 perception of witnesses to events as they happened to them.
18 And I can understand and I agree that that is a relevant
19 part of your mandate. And when you were in the courtroom
20 and "X" said such and such to "Y", how did you feel?

21 But, Mr. Commissioner, if we accept that
22 those subjective perceptions are relevant, we're opening a
23 box of unpredictable dimensions. The individual will be
24 honestly telling you how they felt and someone sitting at
25 one of these tables beside me will quite legitimately want

1 to know: what's the basis for that perception; is the
2 basis blameworthy; could it have been avoided?

3 My sense is these are some of the
4 difficulties that have arisen because the individual in the
5 witness stand quite legitimately will now feel that they're
6 being challenged. Yet, it's their subjective perception;
7 they know how they felt.

8 Having raised this, I can't do anymore than
9 say that this ought to alert everyone whether it's
10 commission counsel, counsel for the parties or yourself,
11 Commissioner, that we need to be careful when going down
12 these roads.

13 I'm reminded of a line I read earlier this
14 morning "It takes wit and courage to make our way while our
15 way makes us." That may seem a little allusive, but I
16 think it means that, as we learn more about events, we also
17 evolve and our processes evolve.

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

19 **MR. MANSON:** And, subject to any question
20 you have, Mr. Commissioner, I don't believe I can say
21 anything else that would be helpful.

22 Thank you.

23 **THE COMMISSIONER:** That's fine.

24 Thank you.

25 Mr. Lee?

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

2 MR. LEE: Good afternoon, Mr. Commissioner.

3 THE COMMISSIONER: Yes, sir.

4 MR. LEE: I just want to address you very
5 briefly. I want to start by saying that I've discussed
6 these issues with many of my clients as you can examine --
7 or imagine rather, and the consensus is that the very fact
8 that we're having this discussion today publicly, privately
9 before this in terms of letters in the all counsel meeting
10 today is, we believe, incredibly helpful.

11 My clients, and we understand the public
12 have expressed some concern about the cross-examination of
13 witnesses. The concerns of my clients have largely focused
14 on the effects on the witnesses, all of whom who have been
15 victims or alleged victims, that they've been concerned
16 about.

17 My clients don't generally come to me and
18 say that they didn't appreciate a specific line of
19 questioning or they didn't appreciate a specific question
20 or a specific document being put to witnesses. That's not
21 their concern, they leave that to me. Their concern is
22 when they see people being upset. When I tell them that
23 we've received a letter from a witness here who has
24 explained that he felt re-victimized by this process, that
25 is a paramount concern of my clients.

1 And, as I said, the fact that we are
2 publicly acknowledging that these issues are of concern is
3 an important step in this process; it's an important step.
4 And I think it's helpful to communicate the fact that --
5 really, what I think it comes down to, is that we're
6 looking for increase sensitivity in the cross-examination,
7 where possible obviously, and increase vigilance by
8 everybody in this room with respect to how this phase of
9 the Inquiry should be handled.

10 In the end, we know that evidence is going
11 to be called, objections will be made, where appropriate,
12 objections will be ruled on. But, it's my submission, that
13 counsel can go a very long way in helping this process
14 along by very carefully considering how to approach these
15 witnesses and these issues that we're discussing today.

16 I suspect we're going to hear about the
17 importance of cross-examination to this process, and why it
18 matters, and why it's necessary, to some extent, to help
19 explain to the public the way this process is, the way that
20 it is, and I'd like to say that the well-being of witnesses
21 here, and of victims, and alleged victims is even more
22 important, and my clients applaud this Commission for
23 raising this issue now.

24 Many of my clients, who I have discussed
25 with in the last few days and the last week or so, have yet

1 to testify, and many have testified, and many will not
2 testify. All of them across the board look forward to
3 hearing from the institutions present here in this public
4 forum, about they intend to work at striking the
5 appropriate balance that we should all be interested in
6 here.

7 And, finally, it's a point raised over and
8 over again by my clients, that the fact that witnesses are
9 being scared off at this Inquiry are rethinking whether
10 they should testify, is not in the best interest of anyone
11 in this room or anyone in this city. That's all I have to
12 say, sir.

13 Thank you.

14 **THE COMMISSIONER:** Mr. Bennett?

15 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. BENNETT:**

16 **MR. BENNETT:** Good afternoon, Mr.
17 Commissioner. I'd like to start out by indicating that the
18 Men's Project fully and unconditionally supports the
19 Commission for bringing this issue to the public forum and
20 to be dealt with out in the open.

21 The interesting aspect is, when I appeared
22 here a couple weeks ago, many people asked me why I was
23 here. And one of the reasons I was here is my client
24 indicated and said -- called me up and said "David, what's
25 going on down in Cornwall? It seems there is a poisoned

1 environment down there. There's a -- victims are being re-
2 victimized. What's going on?"

3 So they were starting to hear from people
4 that there was maybe some difficulties here.

5 So, I attended a meeting with my clients
6 last week, and we discussed this, and start off with
7 someone who had been a witness here saying "If I had seen
8 what it happened recently I wouldn't have appeared in front
9 of the Commission." Someone who had a fairly positive
10 experience here, but was indicating their observations.

11 And I report -- well, it seemed to me the
12 Commission was aware of the issue by the comments you made
13 the day I was here at the beginning, where you indicated
14 how you would like the institutions to review how they
15 would be doing their fact-finding through this.

16 But the board wanted to know what to do and
17 they instructed to me to set up a meeting with Mr.
18 Engelmann. But before I could even reach Mr. Engelmann, I
19 received a letter from the Commission, and I have to say
20 that my client was delighted to realize that the Commission
21 had identified this issue on its own, and was taking steps
22 to deal with it.

23 And, again, demonstrate the sensitivity this
24 commission has displayed to date with respect to dealing
25 with survivors of sexual abuse, similar to the Witness

1 Assistance Program that has been set up and, by all
2 accounts, has been extremely successful. There has been
3 many comments on the record and off the record of what an
4 excellent job Patrick has been doing with witnesses, and
5 also the Counseling Program that was set up.

6 So, again, it was consistent that, clearly,
7 if there were anything happening, it was not the intention
8 of the Commission to be causing harm, and my client was
9 very please about that aspect.

10 Now, during the contextual evidence, we
11 heard from the expert of the damage done to survivors of
12 sexual abuse. We heard how there would be memory issues.
13 We heard how it may lead to substance abuse and the
14 inability to trust, form relationships and to lead a more
15 conventional lifestyle.

16 We heard how some survivors would have a
17 checkered past. Ironically, these are the things that are
18 presenting difficulties for the Commission in some of the
19 issues.

20 And, now, I looked at the mandate of the
21 Inquiry from the Order-in-Counsel, and the mandate of this
22 Commission is to inquire into and report on the events
23 surrounding allegations of abuse of young people in
24 Cornwall by examining the response of the justice system
25 and other public institutions to those allegations.

1 The Commission will make recommendations to
2 improve the response in similar circumstances. As well,
3 the Commission will inquire into and report on processes,
4 services and programs that will encourage community healing
5 and reconciliation in Cornwall.

6 So the real issues for this Inquiry is not
7 necessarily the credibility of survivors who come forward
8 and present poorly in a traditional way. In some ways, it
9 illustrates the problem. One of the things that you're
10 going have to struggle with is: how do institutions deal
11 with people who come forward and present in such a way;
12 what should the police do when there is a credibility
13 issue; how does the Crown attorney deal with this when
14 someone's version of the events may change over the
15 different accounting of what occurred; how should other
16 public institutions deal with survivors in a compassionate
17 way; and how do we prevent future Cornwalls?

18 Now, in our opening submissions we tried to
19 alert everyone to this and we said the following:

20 "As we go through the process, it's
21 essential that all parties are mindful
22 of all witnesses. This will be a
23 painful process for all participants.
24 It will be important that all
25 witnesses, whether survivors, people in

1 positions of authority or community
2 members be treated fairly and
3 respectfully. We recognize that it is
4 important to proceed cautiously so as
5 not to needlessly damage reputations.
6 At the same time, we wouldn't be here
7 if something hadn't happened."

8 We have heard from the experts, during the
9 contextual evidence, that false allegations of abuse are
10 extremely rare. We must balance the right to be presumed
11 innocent, a concept we fully embrace, with the importance
12 of not having the survivors feel that their veracity is
13 being undermined.

14 Now, why do we have such a charged
15 atmosphere here?

16 Before ---

17 **THE COMMISSIONER:** Well, that's a conclusion
18 you're raising.

19 **MR. BENNETT:** Well, from my client's
20 perception, a charged atmosphere.

21 And before I comment on that, I want to make
22 a couple of observations, and I think they are very
23 important to what I am going to say.

24 First, I'd like to say that I've been very
25 impressed by the counsel at this Inquiry. We have some

1 very talented counsel. Their dedication and commitment to
2 the success of this Inquiry is very evident. The
3 professionalism, which has been shown, has been unmatched
4 and, in my experience, as a group, they've been extremely
5 collegial and helpful.

6 I was trying to figure out why, if -- these
7 are my observations -- do we seem to find this difficulty
8 with some people and perceptions? And I thought about it
9 and it came back to something. My friend, Mr. Callaghan,
10 is always teasing me, and in a very good-natured way, that
11 I present or seem to argue both sides of the issue.

12 And I realize it's a fundamental difference
13 and demonstrates some of the difference, is that we have a
14 group of highly-skilled litigators in this room who tend to
15 see issues in black and white, and I come from a background
16 of mediation where black and white can easily co-exist
17 together with no difficulty.

18 And one of the difficulties of what may work
19 in a civil courtroom and a criminal courtroom, and works
20 very successfully, may not always be the best in this forum
21 here of a public inquiry. And that maybe we have to look
22 at how we move forward from here. And I have couple of
23 concrete suggestions Mr. Commissioner.

24 One (1) is whether there perhaps should be a
25 witness advocate. It's different from the witness support,

1 but my observation is that Commission counsel walks a very
2 fine line when they are trying to make objections,
3 especially because they don't want to be perceived as being
4 in the interest just of the witness. Their interest is the
5 public interest of everybody, whether it's survivors or
6 public institutions as the nature of Commission counsel's
7 role.

8 And another difficulty is when some parties
9 are represented, their counsel are really coming in quite
10 cold. This is a very new process. And perhaps having
11 someone who understands fully the mandate of the Commission
12 and the overriding big picture, it may be useful to assist
13 witnesses unless, of course, party wants counsel of choice,
14 which certainly I wouldn't be suggesting otherwise.

15 The other aspect I would like to deal with
16 is sometimes when questions are being asked, it may be
17 useful to acknowledge that a point has been made before
18 saying that it's time to move on. And this is something
19 that I find in my mediation practice works is that I'll
20 acknowledge, this is the point you're trying to make I
21 believe; have I missed something here? Then is there
22 something to the bigger picture that we need to go into in
23 this area? And I realize it's highly unusual for a court
24 situation, but it's a tool that works in another form and
25 may be something that may be tried here.

1 Finally, I would just like to thank the
2 Commission again for bringing this issue into the open and
3 confronting it head on. I am confident that we will move
4 forward in a productive and respectful way which will allow
5 witnesses to come forward and tell their story.

6 Thank you.

7 **THE COMMISSIONER:** Thank you, Mr. Bennett.

8 Mr. Chisholm?

9 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:**

10 **MR. CHISHOLM:** Good afternoon, Mr.

11 Commissioner.

12 **THE COMMISSIONER:** Good afternoon, sir.

13 **MR. CHISHOLM:** I'd start by indicating I
14 agree with Professor Manson with respect to the first two
15 comments that he made about we're not here to ask questions
16 that embarrass witnesses and we are to treat each witness
17 with respect.

18 Having said that, I would move on to examine
19 one of the roles of the Commission which is, at the end of
20 the day, to determine the truth of what transpired here in
21 Cornwall over the last several years. The cross-
22 examinations that I have witnessed over the course of the
23 last year, I would submit, were conducted in an appropriate
24 and tasteful fashion.

25 Having regard to the sensitivities of the

1 witnesses who have presented themselves before the Inquiry,
2 I would draw to your attention the importance of cross-
3 examination.

4 Wigmore indicated that cross-examination is,
5 beyond any doubt, the greatest legal engine ever invented
6 for the discovery of the truth.

7 The public institutions that are here before
8 you with party status, each have played a role in the
9 history of the events that we're hearing about through the
10 witnesses, and with respect to my client, when a witness
11 makes an allegation concerning a public institution that is
12 at odds with the facts as understood by that public
13 institution, I would submit, it's necessary to allow the
14 counsel for the public institution to conduct a full cross-
15 examination of the witness as it's relevant to the public
16 institutional response.

17 At the end of the day, I would submit, one
18 of the goals that this Commission will have is to either
19 restore or maintain the public confidence in the public
20 institutions and, I would submit, the public will not be
21 well-served if erroneous evidence is left unchallenged. I
22 would submit and I would say to you Mr. Commissioner that I
23 will continue to do my best to be respectful of the
24 witnesses as they appear, and be as sensitive as I can to
25 their needs while, at the same time, fulfilling the

1 obligations that I have to my client.

2 Subject to your questions, sir, those would
3 be my comments.

4 **THE COMMISSIONER:** Thank you.

5 Mr. Neuberger?

6 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:

7 **MR. NEUBERGER:** Good afternoon, Mr.

8 Commissioner.

9 Some of what I am going to say is quite
10 obvious to you, Mr. Commissioner, but because of the nature
11 of the immediacy of this Inquiry to the public, I think
12 it's important just to make some points.

13 The task that a witness has in this Inquiry
14 to come forward and give evidence about something by its
15 very nature is personal and incredibly sensitive, is
16 difficult. It's even more difficult to do it in a room
17 with strangers; many of those strangers being lawyers; and
18 then, on top of that, having to answer questions that are
19 posed by lawyers you have not had some familiarity with
20 prior to giving your evidence. That's acknowledged by all
21 parties. I think it's important to say, at this juncture,
22 maybe as a reminder that we are all very cognizant of that
23 difficulty that the witnesses experience.

24 And I believe quite firmly that all of us,
25 as lawyers representing various parties, both public and

1 private sector institutions, are guided by the ultimate
2 objective of this Inquiry, and wish to ensure that
3 witnesses are capable of giving their evidence without
4 experiencing any harm, but while protecting the integrity
5 of the fact-finding process, maintains intact and will
6 assist you, Mr. Commissioner, ultimately, in making your
7 decisions, recommendations and findings at the end of the
8 day.

9 As lawyers, we are all very experienced with
10 those guidelines for cross-examinations; namely, is the
11 question relevant? And any questions which are
12 embarrassing or abusive ought not to be asked or permitted
13 to be asked.

14 Here we have a third issue, which Mr.
15 Commissioner has -- Mr. -- Commission counsel has commended
16 to you for consideration. And that's where we look at the
17 probative value of questions versus the harm that could or
18 is being done to a particular witness. And this is
19 difficult because it's forcing a reconciliation of the
20 particular needs and sensitivities of a witness with the
21 need for integrity in the fact-finding mission.

22 It is difficult because this is a, by its
23 very nature, an Inquiry, where questions are asked and
24 answers have importance to us.

25 And so, any time that there is a battle

1 going on, to some extent, in that area, it is going to
2 impact, to some extent, upon a witness. Unfortunately,
3 it's how it's perceived. Cross-examination is not meant to
4 embarrass but to clarify and correct where necessary and we
5 are -- at least, my client is working within that mandate.

6 There are times, unfortunately, where it may
7 appear to a witness that their credibility, on a particular
8 point of their evidence, may be at issue. It is not
9 necessarily their credibility but it may be forgetfulness;
10 it may be that they need a reminder in the face of
11 documents or other notes; and the way that it's coming
12 across by being asked in cross-examination. It is that
13 manner in which they may be sensitive to the issue but it
14 is, nevertheless, important.

15 Witnesses in the overall process, however,
16 will be challenged on various points. Some more than
17 others, maybe some witnesses not at all, depending upon
18 their evidence. The evidence of the particular witness
19 will guide us in that regard.

20 And I guess what I am indicating is that
21 cross-examination, in order to be meaningful in this fact-
22 finding process will, at times, have to be probing. The
23 nature of this Inquiry is interesting because the motto is
24 about the fact-finding mission and Phase 2 a portion which
25 is involving quite innovative techniques which are being

1 developed to deal with community healing and
2 reconciliation.

3 This Inquiry isn't just all about what
4 happened last week or the week before, but about what will
5 happen in weeks to come. And Phase 2 is going to be
6 something which is innovative, which will help people in
7 this community, victims and those who are not victims, come
8 to terms with what went on over several decades in this
9 Inquiry. And so we must not lose focus that there is other
10 objectives, at the end of the day, which is coming.

11 I think what's important is just to
12 reiterate cross-examinations and how we deal with witnesses
13 is not something which is done in the dark; it's not
14 something that is being broad-opened today for the first
15 time; and I understand those comments are meant only to
16 applaud what the Commission is doing.

17 But every day a witness testifies, Mr.
18 Commissioner, you deal with whether questions are relevant;
19 Commission counsel will object where necessary and cross-
20 examination; and its very value is dealt with every day
21 that a witness is called. It's nothing that we do in the
22 dark.

23 But what is a benefit to the public is that
24 we have an ongoing dialogue as we do with the Commission
25 staff. Today, we've had a meeting which was very fruitful.

1 We try and combine together, as counsel for
2 various parties, to find other alternative ways of helping
3 witnesses give their evidence. We may not all agree. Some
4 suggestions of factual overviews for certain witnesses may,
5 in fact, be a way to go. However, we will always work
6 together to try and find other ways.

7 So, in closing, what I am just commending,
8 as far as my comments, Mr. Commissioner, is that in order
9 for us to have an accurate evidentiary basis, for you to
10 make your very important decisions upon, cross-examination
11 will have to continue. It will have to be guided by those
12 three pillars, I guess, that we've set out, bearing in mind
13 what everybody's interests are.

14 And I hope that the public, in hearing our
15 comments, will at least be somewhat assured by the fact
16 that we are very sensitive to the needs of these witnesses,
17 by that token, still interested in pursuing what will be an
18 accurate reflection of what we think the evidence is.

19 Thank you very much.

20 **THE COMMISSIONER:** Thank you, sir.

21 Ms. Im?

22 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. IM:**

23 **MS. IM:** Thank you.

24 I want to start off by saying that the
25 Attorney General fully appreciates the concerns and

1 comments made by Commission counsel in its letters of
2 February 14th and 15th of 2007, and the Attorney General
3 agrees that cross-examinations conducted by party should be
4 strictly limited to those areas of evidence that are
5 relevant to assisting the Commissioner in fulfilling -- to
6 assisting you in fulfilling your mandate.

7 As well, this cross-examination should of
8 evidence that is directly relevant to the institutional
9 response and, of course, as agreed by everybody in this
10 room, should be conducted in a fair and respectful manner.

11 I echo the comments of my friends previously
12 that it's the Ministry's position that cross-examinations
13 conducted by parties up until now have been fair and
14 respectful of the sensitive and difficult areas of
15 testimony that witnesses are giving. Almost without
16 exception, counsel for the Parties have limited their
17 cross-examination to issues that are directly relevant to
18 their institutional response, and have made attempts not to
19 duplicate cross-examinations covered by other parties and
20 take on areas of cross-examination that are most relevant
21 to their own clients' institutional response.

22 I also reiterate some comments that my
23 friend has made, which you are very well-aware of, that
24 cross-examination, as you are very well-aware, plays a very
25 important part of the evidentiary process. When comments

1 are made that are directly critical of either institutions
2 or employees or agents acting for institutions, fairness to
3 the institutional party dictates that these parties can ask
4 questions regarding that evidence and can ask questions
5 regarding the factual basis for conclusions or criticisms.

6 As well, as you're well-aware, if it is to
7 be later suggested by an institutional party that the
8 witness was mistaken, or if the institutional party wishes
9 to lead evidence refuting these conclusions or criticisms,
10 fairness to the witness dictates that the institutional
11 party put this to the witness while the witness is still
12 giving evidence so that the witness can respond.

13 This Inquiry -- and I think all the parties
14 in this room can agree that this Inquiry is not well-served
15 if witnesses are unwilling to come forward with important
16 and relevant evidence because they feel intimidated by the
17 process. The Ministry appreciates that cross-examination
18 can be challenging and intimidating for the witnesses.

19 In order to protect witnesses from any
20 surprise and undue stress when they are giving testimony,
21 we seek the assistance of Commission counsel to advise
22 witnesses in advance of areas of their testimony where they
23 are likely to be cross-examined by institutional parties.

24 As well, it is important to remember that
25 cross-examination is informed by the testimony and evidence

1 that arises out of examination in-chief by Commission
2 counsel and, in that regard, we endorse a greater dialogue
3 between counsel for the institutions and Commission counsel
4 so that much of what the parties wish to ask the witnesses
5 may, where appropriate, be brought out in-chief by
6 Commission counsel.

7 And I give one example. For example, in
8 instances where we have seen witnesses making comments
9 directly critical of institutions based on perhaps a
10 misreading of some of the documentary evidence, an open
11 dialogue in advance between institutional parties and
12 Commission counsel can correct this and, therefore,
13 decrease the need for cross-examination.

14 In closing, the Ministry is committed to
15 working closely with Commission counsel through an open
16 dialogue process to ensure the cross-examination is focused
17 and that it is sensitive to the concerns both of the
18 witnesses and all the parties to the Inquiry.

19 Thank you, Mr. Commissioner.

20 **THE COMMISSIONER:** Thank you.

21 Ms. Makepeace?

22 **MS. MAKEPEACE:** I have nothing to add.

23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Sherriff-Scott?

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

2 **MR. SHERRIFF-SCOTT:** Good afternoon,
3 Commissioner.

4 **THE COMMISSIONER:** Good afternoon, sir.

5 **MR. SHERRIFF-SCOTT:** I would start by saying
6 the Diocese embraces and supports the need for cross-
7 examination to be fair, complete, respectful and sensitive.
8 I would suggest that I adopt Mr. Manson's point. But since
9 we don't have, for example, a motion before us seeking
10 specific relief, my comments are a bit in the abstract, but
11 they are as follows:

12 First, cross-examination does not occur in a
13 vacuum, but it is typically a reactive or responsive tool
14 and, in this regard, counsel have expressed, I think as a
15 group, these following views this afternoon about how
16 potentially the extent of cross-examination could be
17 reduced. And, in no particular order, they are as follows:

18 First, Commission counsel should strive or
19 endeavor wherever possible to limit putting institutional
20 response documents to witnesses potentially about which
21 witnesses have no specific knowledge, thus, creating the
22 potential for an additional need of cross-examination and
23 scope.

24 Two (2), counsel should avoid (Commission
25 counsel) in direct or chief, putting what I would describe

1 without any innuendo, a motive evidence, opinions or
2 beliefs or other non-fact evidence from witnesses, which
3 typically is productive of engendering more cross-
4 examination than less.

5 Third, counsel should strive for what I
6 would describe as greater balance with the witness and,
7 therefore, where there are significant inconsistencies with
8 the evidence of a witness, to put those to the witness in-
9 chief, thus, ensuring balance and preventing the need for
10 cross-examination on points of significant inconsistency or
11 on credibility issues arising in the context of
12 institutional response issues.

13 Those are three points that I think counsel
14 group discussed in terms of what may be of assistance in
15 reducing the scope of cross-examinations.

16 I would close with two points in saying that
17 I suggest that, to date, cross-examinations have been fair
18 and respectful of witnesses and you have made rulings on
19 objections as they have occurred, striking an appropriate
20 balance that is necessary and, no doubt, that will
21 continue. All counsel, including myself as counsel for the
22 Diocese, are striving to be fair and respectful in asking
23 questions in most difficult circumstances sometimes.

24 Cross-examination is a necessary tool to
25 elicit balance and consistency and truth. It only works

1 when it is full and complete. I submit that has been
2 demonstrated here and I submit that all counsel are
3 striving to realize the need for respect and sensitivity.

4 Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Manderville?

7 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANDERVILLE:

8 **MR. MANDERVILLE:** Good afternoon, Mr.
9 Commissioner.

10 **THE COMMISSIONER:** Yes, sir, good afternoon.

11 **MR. MANDERVILLE:** I want to start with a
12 comment on my friend, Mr. Bennett's remark that one of the
13 things this Inquiry is tasked with doing is to avoid future
14 Cornwalls. The reason I want to raise that is this city
15 should not become an acronym or a buzzword for bad things
16 happening to good people.

17 This Inquiry has to be about a search for
18 truth, and it is, and you know that, and cross-examination
19 has been repeatedly referred to as one of the greatest
20 engines in the search for truth.

21 As you know, the *Public Inquiries Act'*
22 pursuant to which you were appointed, provides at Section 5
23 that:

24 "All parties withstanding shall, and
25 it's imperative, have the right to

1 cross-examine on relevant issues."

2 That has happened to date in this Inquiry,
3 as recently as February 5th, you observed that. You
4 observed that counsel for the parties had been respectful
5 throughout and sensitive to all of the witnesses who had
6 come before it. And that's true. That is accurate.

7 My friend, Mr. Engelmann, has the right to
8 object if anyone strays into irrelevance in their cross-
9 examination, and he has done so. You have the right to
10 sustain or overrule the objections, and you have done so.
11 We can say that, thankfully, the objections and the
12 sustaining of objections have been few and far between, and
13 that is because counsel have consistently been sensitive to
14 the situations of these witnesses and have striven to ask
15 appropriate, relevant cross-examination questions on issues
16 that are observant of the delicate situation that some of
17 these witnesses are in.

18 The Supreme Court of Canada in the Blood
19 Inquiry -- and I've given a copy to my friend -- had
20 occasion to consider a situation where Mr. Justice Krever
21 had issued the federal equivalent of notices of potential
22 misconduct to a number of parties on the last day of the
23 Inquiry and objection was taken to that.

24 Now, 47 of those notices were quashed. The
25 remainder were allowed to stand, and they were allowed to

1 stand for one reason, and that was that that Commission had
2 assiduously observed procedural fairness and the hallmark
3 of it, Mr. Justice Krever felt, was the right of all
4 parties withstanding to cross-examine witnesses to the
5 extent of their interest. And, again, as recently as
6 February 5th, you did mention the one caveat that is
7 important for one to consider in cross-examining, and that
8 is that the cross-examination deal with relevant issues.

9 And I would stand before you today and
10 wholeheartedly agree with that caveat so long as counsel
11 are confining their cross to relevant issues, Commission
12 counsel should have no objection, and it should be allowed
13 to proceed unimpeded.

14 In this Inquiry, we've had examples where
15 some witnesses' credibility has had to be tested. I say
16 "credibility" not in the pejorative sense that witnesses
17 are telling false things. I say it in the sense that their
18 recollection may not be accurate; their impression may not
19 be accurate.

20 An example was Mr. Lavoie some months ago.
21 His impression was that an officer of my client had not
22 sought out other potential witnesses. However, based on
23 the notes of that officer, it was apparent that she had
24 sought out a number of individuals. Mr. Lavoie's
25 impression was merely inaccurate and without cross-

1 examination on that issue, Mr. Lavoie's impression would
2 have been unchallenged, would have been uncontested, and
3 the inaccuracy would have remained.

4 As you are aware, procedural fairness,
5 including full rights of cross-examination, is essential
6 because the findings of this Commission, like other
7 Commissions, may well damage the reputations of
8 individuals. That is why the right to full cross-
9 examination is so important.

10 A critical part of this Inquiry's mandate is
11 its attempt to search for the truth, as best it can
12 discover it, of what has happened in this community over
13 the years and to sort out that truth or facts, if you will,
14 associated with the public institutional response from all
15 the rumors, and innuendos, and the conspiracy theories that
16 have abounded in this community over the years.

17 Mr. Petepiece, a well-educated and clearly
18 intelligent man, is an example of that. His personal
19 experience with my client was, according to him,
20 characterized by professionalism. He stated he had a high
21 regard for my client.

22 Yet, despite his education, his intelligence
23 and his personal experience with my client, Mr. Petepiece
24 testified that he was reluctant to bring his complaint to
25 my client because he had heard that my client was under a

1 cloud of suspicion.

2 This is the insidious and dangerous aspect
3 of all these rumors and innuendos. It makes educated,
4 intelligent people ignore their personal experiences in
5 favour of some of the conspiracy theories circulating
6 around, and counsel in this room, Mr. Commissioner, would
7 be remiss in not testing the basis on which statements like
8 that are made.

9 All this to say that the right to full
10 cross-examination on relevant issues is a hallmark of our
11 legal system. It is a critical component in the search for
12 truth, which is what this Inquiry is tasked with doing. It
13 is very important. It is the law of the land and it should
14 not be curtailed here.

15 Thank you very much.

16 **THE COMMISSIONER:** Thank you.

17 Mr. Kozloff?

18 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF:**

19 **MR. KOZLOFF:** Good afternoon, sir.

20 Mr. Commissioner, let me apologize at the
21 outset for what will inevitably be repetition in my
22 remarks. I have given this matter very careful thought.
23 I'd like to put my submissions to you.

24 The first point I'd like to make is that
25 Commission counsel have chosen to elicit from the

1 victim/witnesses not only the alleged facts regarding their
2 abuse and the report of that abuse to the institutions and
3 the institutional responses to those reports, but also
4 their opinions and their feelings regarding the
5 institutional response, and the individual or individuals
6 within the subject institution or institutions with whom
7 they dealt.

8 The result is that the witnesses are being
9 invited to criticize the actions of those with whom they
10 dealt in the public institutions. Often, no invitation is
11 necessary. The witness volunteers his criticism. Given
12 the subject matter of this inquiry, that criticism is
13 generally expressed in unequivocal terminology.

14 It is only a matter of procedural fairness,
15 more about which I will have to say in a minute, that
16 counsel representing the subject institutions be permitted
17 to challenge the witness in respect of those opinions and
18 feelings and the underlying basis of the criticism being
19 offered.

20 I say this without questioning the bone
21 fides of counsel in eliciting the testimony. I am simply
22 addressing the consequences of that approach.

23 Secondly, sir, we are in the midst of the
24 Inquiry. We are in the midst of the evidence of the
25 alleged victims. To this point in time, the parties, in

1 their examination of witnesses, could look for guidance to
2 the common law, to the *Public Inquiries Act*, to the Rules
3 of Practice and Procedure of the Cornwall Public Inquiry
4 and to you, Mr. Commissioner.

5 During Mr. Silmsers's evidence, you yourself
6 stated that so far, leaving Mr. Silmsers aside, everyone has
7 comported themselves in an outstanding fashion. And you
8 also made the point at the time that Mr. Silmsers originally
9 walked off the stand, that given the subject matter of this
10 Inquiry and the consequences of historic sexual abuse, one
11 of the situations we might run into is something we run
12 into today.

13 We have to be very much alive to
14 institutions such as this -- sorry -- to situations such as
15 this and to respect people's need for some time. And,
16 also, we are all in a very difficult Inquiry and we'll have
17 to be sensitive to the needs of all parties, all the while
18 understanding that there is work to be done.

19 In my respectful submission, sir, it would
20 be inappropriate to attempt to reinvent the wheel or now or
21 at any time in this Inquiry to accommodate the specific
22 needs or sensitivities of any particular witness at the
23 expense of procedural fairness to the parties. And I say
24 that for the following reasons:

25 There is no basis for suggesting that

1 changing the rules in midstream will ameliorate the effects
2 of testifying for any given witness and we need only go
3 back to the evidence given by Professor Wolfe and Dr. Jaffe
4 that different witnesses react differently to what is
5 obviously a very potentially traumatic experience.

6 For example, what Mr. Silmsler may find
7 upsetting or what Mr. Petepiece may deem to be
8 confrontational might be seen by other witnesses whose
9 evidence was challenged, such as Mr. Marleau, as part of a
10 process which allowed him to have his say and achieve
11 closure while getting at the truth.

12 Secondly, sir, the guidance that we receive
13 from 900 years of experience distilled into legal
14 precedent, and the statute, and our rules, and your
15 availability to supervise and ensure that witnesses are
16 treated fairly, and with courtesy, and respect should
17 suffice.

18 Lastly, sir, you in your role as
19 Commissioner, with your fact-finding obligation, will not
20 be assisted by hamstringing counsel for the parties, by
21 preventing counsel from challenging evidence in a manner
22 which has stood the test of time.

23 Again, quoting Professor Wigmore, and I'll
24 quote him accurately:

25 "Beyond any doubt, the greatest legal

1 engine ever invented for the discovery
2 of truth, which is cross-examination."

3 I'd like to speak about the application of
4 *Browne v. Dunn* very briefly.

5 "It is designed to accord fairness to
6 witnesses and the parties."

7 According to Sopinka and Lederman:

8 "Fairness requires that a witness
9 should not have his character impugned
10 by a finding of dishonesty unless he
11 has been given an opportunity to
12 explain the circumstances relating to
13 the testimony subject to impeachment.
14 It would be unjust to make any finding
15 or draw any inference with respect to
16 character or conduct or credibility
17 because the witness had not previously
18 been questioned with respect to those
19 findings or inferences, and, thus, had
20 not been given an opportunity to
21 explain."

22 *Browne v. Dunn* and the cases following it
23 enunciate certain principles which have as their object the
24 affording of procedural fairness to witnesses and to
25 parties in judicial procedures.

1 Each of the parties here, Mr. Commissioner,
2 are separately represented by counsel. The reason for that
3 is obvious; each party has separate interests. It is the
4 duty and the obligation of counsel to zealously guard those
5 interests albeit in a fair and a courteous manner.

6 I don't want there to be any doubt in the
7 minds of anyone in this room or within the hearing of my
8 voice. I and the members of the Ontario Provincial Police
9 legal team will zealously guard the interests of my client,
10 while conducting ourselves in a fair and courteous manner.

11 We will challenge any witness whose evidence
12 we believe to be inconsistent with the truth, whether by
13 error or by intent. That is our role and it is our duty.
14 It is no part of our function to be hurtful or unfair to
15 any witness. My client's interests are not served by that
16 anymore than the welfare of the witness. We have not --
17 sorry -- we have been and we will continue to be sensitive
18 to the feelings of the witnesses while, at the same time,
19 advocating when and where it is appropriate to do so.

20 Thank you, sir.

21 **THE COMMISSIONER:** Mr. Wallace?

22 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:**

23 **MR. WALLACE:** Good afternoon, sir.

24 **THE COMMISSIONER:** Good afternoon, sir.

25 **MR. WALLACE:** Sir, all counsel have

1 endeavoured to protect the rights of their respective
2 clients by conducting relevant and respectful cross-
3 examinations, in my submission. Different victims deal
4 with the experience of participating in this inquiry in
5 different fashions.

6 Generally speaking, Commission counsel have
7 much more insight into the particular witness' specific
8 concerns and I would suggest, and this was a matter of
9 conversation this afternoon, that a number of the problems
10 that have been expressed to you can be dealt with in the
11 witness preparation stage.

12 Mr. Sherriff-Scott, in his submissions
13 earlier this afternoon, outlined a series of three specific
14 considerations or procedures that can be put in place to
15 address these things. Essentially, they arrive at the same
16 place; that is curtailing the need for specific cross-
17 examination.

18 I echo the comments of all of my colleagues
19 in indicating to you that you are inquiring into the facts
20 and all the parties withstanding must be able to test the
21 witnesses. If the questioning is respectful and relevant,
22 there will not be any objection by Commission counsel, nor
23 should there be any reasonable criticism of counsel or the
24 process.

25 This is a fact-finding exercise, this part

1 of the Inquiry, and from the facts flow your conclusions
2 and recommendations, and I suggest that the comments that
3 you've heard this afternoon point to a tweaking of the
4 process and not a reason to jettison it.

5 Thank you.

6 **THE COMMISSIONER:** Thank you.

7 Anyone here for the Upper Canada School
8 Board?

9 No.

10 Ms. Birrell?

11 **MS. BIRRELL:** Nothing further to add.

12 **THE COMMISSIONER:** Thank you.

13 All right.

14 Mr. Engelmann, any closing comments?

15 **MR. ENGELMANN:** Mr. Commissioner, I think
16 I've made the comments I wanted to make. I have nothing
17 further to add at this time.

18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 I have chosen to bring this on this
21 afternoon because I think it's an important matter that we
22 need to reflect on a bit. It's not to say that there will
23 be -- won't be other times during the evolution of this
24 Inquiry that I will seek guidance in counsel from the
25 parties here and I appreciate the comments that they have

1 set up and given me.

2 I will be providing you with my thoughts
3 probably tomorrow in the afternoon sometime I hope and, if
4 not, well then a little further down.

5 I think tomorrow morning we're starting at
6 10:00 which motions, Mr. Engelmann?

7 **MR. ENGELMANN:** Yes, sir. We have three
8 motions tomorrow morning.

9 **THE COMMISSIONER:** All right.

10 So what I'll do is -- so we won't be hearing
11 any evidence tomorrow then?

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

13 **THE COMMISSIONER:** All right.

14 So, hopefully, we'll have this out before --
15 certainly before any further evidence is heard.

16 Thank you very much for your kind
17 assistance.

18 Thank you.

19 **MR. ENGELMANN:** Thank you.

20 **THE REGISTRAR:** All rise. Veuillez vous
21 lever.

22 This hearing is adjourned until 10:00 a.m.
23 tomorrow morning. L'audience est ajournée.

24 --- Upon adjourning at 3:50 p.m. /

25 L'audience est ajournée à 15h50

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

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

Jamie Savard

Jamie Savard, CR