

**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 94**

**Held at :**

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

Tuesday, February 20, 2007

**Tenue à:**

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

Mardi, le 20 février 2007

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Lise Kosloski	Registrar
Mr. Pierre R. Dumais	Commission Counsel
Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Mr. Joe Neuberger	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
M <sup>e</sup> André Ducasse	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Mark Wallace	Ontario Provincial Police Association

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1 --- Upon commencing at 10:06 a.m./

2 L'audience débute à 10h06

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

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you.

8 Good morning all.

9 Mr. Engelmann?

10 **MR. ENGELMANN:** Good morning, Mr.  
11 Commissioner.

12 This morning, sir, we have three motions for  
13 you to deal with.

14 The first motion will be on the record and  
15 that is an application by the Diocese for supplementary  
16 funding. Then, we have two motions dealing with  
17 confidentiality measures that are being sought by Mr. Lee  
18 on behalf of two of his clients, the members of the  
19 Victims' Group.

20 **THE COMMISSIONER:** Right.

21 **MR. ENGELMANN:** Those should be done in  
22 camera, sir, given that's what has been requested, and I  
23 think it will be a lot easier to actually argue those  
24 motions or present on those motions in camera.

25 **THE COMMISSIONER:** All right.

1                   But we still have to go through the Mentuck  
2           Test to see if we should ---

3                   **MR. ENGELMANN:** Absolutely!

4                   **THE COMMISSIONER:** --- decide whether or not  
5           we should be in camera.

6                   **MR. ENGELMANN:** Okay.

7                   Well, perhaps we could deal with the Diocese  
8           motion first and then we could deal with those other two?

9                   **THE COMMISSIONER:** Exactly.

10                  **MR. ENGELMANN:** All right.

11                  So, we've received a letter dated February  
12           19<sup>th</sup>, from Mr. David Sherriff-Scott, and I believe the Clerk  
13           has the letter and you should have a copy, sir, as well.  
14           This sets out in brief form the request being made by the  
15           Diocese for an additional 760 hours of time for a  
16           paralegal.

17                  Sir, if that could be made Exhibit 10.8.

18                  **THE COMMISSIONER:** Yes.

19                  --- **EXHIBIT NO./PIÈCE NO P-10.8:**

20                  Application to Amend Funding

21                  **MR. ENGELMANN:** Exhibit 10 has the standing  
22           and funding requests that have been made by the Diocese in  
23           the past.

24                  Sir, you may recall the Diocese was issued  
25           standing back in November of 2005.

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

2                   **MR. ENGELMANN:** Then, in December of 2005,  
3 the Diocese was granted funding. Then on June 30th,  
4 shortly after a request was made for supplementary funding  
5 by the Diocese, and, quite frankly, I think by all of the  
6 publicly-funded parties; certainly, the Victims' Group and  
7 the CCR, requested additional funding at that time as well.

8                   I will just wait for Madam Clerk because  
9 there is a copy of your ruling that I would like to just  
10 have shown on the screen.

11                  **THE COMMISSIONER:** All right.

12                  While there's a lull in the action, I might  
13 indicate to the members of the public, and to the parties,  
14 and to the people on the website that I will be giving some  
15 comments at 2 o'clock this afternoon to deal with the  
16 submissions that were heard yesterday with respect to  
17 continued cross-examination and the like.

18                  **MR. ENGELMANN:** I have advised counsel as  
19 well, sir, while we are waiting, that Mr. Silmsen is  
20 scheduled for tomorrow morning.

21                  **THE COMMISSIONER:** Yes.

22                  **MR. ENGELMANN:** I have spoken to his  
23 counsel. It is not yet clear whether he will be attending,  
24 he being Mr. Silmsen.

25                  I have asked Mr. Culic to be here to speak

1 to this matter one way or the other.

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

3 **MR. ENGELMANN:** I have also informed  
4 counsel, who have not yet had an opportunity to cross-  
5 examine Mr. Silmser, that Commission counsel would like to  
6 meet with him today, and I have a full day tomorrow with  
7 Mr. Silmser, or we'll certainly have submissions from the  
8 various parties as to how we proceed with respect to his  
9 evidence.

10 **THE COMMISSIONER:** Right.

11 Well, in any event, in anticipation of my  
12 comments this afternoon, it might be a good idea to meet  
13 this afternoon to talk about ways in which to present the  
14 evidence ---

15 **MR. ENGELMANN:** Certainly!

16 **THE COMMISSIONER:** --- with respect to Mr.  
17 Silmser.

18 **MR. ENGELMANN:** Thank you.

19 **THE COMMISSIONER:** All right.

20 Thank you.

21 Madam Clerk is back.

22 **MR. ENGELMANN:** Madam Clerk, there is a  
23 supplementary ruling on the funding dated June 30<sup>th</sup>, 2006,  
24 and I'm wondering if that could be put up on the screen.  
25 And if you just put up the previous page; yes, right there.



1                   So this is your ruling, sir, the  
2                   supplementary ruling on funding. And the first party that  
3                   is listed is the Diocese of Alexandria-Cornwall. You will  
4                   note at the bottom of that page it references the fact that  
5                   on December 6<sup>th</sup> you recommended funding, and it sets out  
6                   what it was.

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

8                   **MR. ENGELMANN:** And then if we flip over to  
9                   the next page, you set out in the ruling the additional  
10                  request that is being sought by the Diocese. Then, the  
11                  decision that was made with respect to the paralegal  
12                  services is in the third paragraph, where it states:

13                                 "At this time, based on the submissions  
14                                 of the Diocese, I will recommend  
15                                 additional funding for one paralegal  
16                                 but limit it to a maximum of 400 hours.  
17                                 Should more hours be required, the  
18                                 Diocese may reapply for a further  
19                                 amendment."

20                  And that's, in fact, what has happened, sir.

21                  So that was some seven-and-a-half months ago  
22                  where 400 hours was given to the Diocese for that support.  
23                  At the same time, if we look further down that page --  
24                  thank you -- you'll see the CCR was requesting 750 hours  
25                  for a law clerk, and you gave them, in the last paragraph

1 of the page, 400 hours, similar to the Diocese and again  
2 said that you would review that with counsel at a later  
3 date, if necessary.

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

5 **MR. ENGELMANN:** So that's what has taken  
6 place. The Diocese has now written as I've said. In  
7 Exhibit 10.8, they have set out their request, and they've  
8 set out some details of the tasks, and Mr. Ducasse is here  
9 to speak to this issue. I simply asked him if he could  
10 elaborate a little bit on the distinction, and I'm looking  
11 at page 2 of Exhibit 10.8.

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

13 (SHORT PAUSE/COURTE PAUSE)

14 **MR. ENGELMANN:** You will note there are four  
15 different tasks set out there ---

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

17 **MR. ENGELMANN:** --- and I simply asked him  
18 if he could elaborate on the difference between the  
19 estimated tasks for remaining alleged victim witnesses,  
20 which is set out at 150 hours; the estimated searches and  
21 activities with respect to allegations pertaining to  
22 members of the Diocese, that is set out at 300 hours.

23 So I will turn the floor over to Mr.  
24 Ducasse. I'm not sure if other counsel will have comments.

25 **THE COMMISSIONER:** Okay.

1                   **MR. ENGELMANN:** In any event, I'll turn it  
2 over to him.

3                   **THE COMMISSIONER:** That's fine.  
4 Thank you.

5                   Mr. Ducasse?

6                   **---** APPLICATION TO AMEND FUNING BY ME ANDRÉ DUCASSE FOR THE  
7 DIOCESE/DEMANDE POUR AMENDER LES FONDS PAR ME ANDRÉ  
8 **DUCASSE:**

9                   **MR. DUCASSE:** Good morning, Mr.  
10 Commissioner.

11                   **THE COMMISSIONER:** Good morning, sir.

12                   **MR. DUCASSE:** I have been asked by Mr.  
13 Sherriff-Scott to fill in this morning to make some brief  
14 submissions with respect to the Diocese request for further  
15 funding for paralegal time.

16                   As Mr. Engelmann has already pointed out to  
17 you, on June 30<sup>th</sup> of last year, you issued a supplementary  
18 ruling on funding and, in that ruling, in recognition of  
19 the extensive documentary disclosure in this matter, and  
20 the expanded role to be played by the Diocese, you had  
21 recommended additional funding for paralegal limited to 400  
22 hours of time and that we could reappear before you in the  
23 event that more time was requested; thus, our appearance  
24 before you this morning, Mr. Commissioner.

25                   I would like to refer you to Exhibit 10.8,

1       which is Mr. Sherriff-Scott's correspondence, and  
2       specifically the second paragraph, which is the bulleted  
3       list. And just to briefly outline for you, Mr.  
4       Commissioner, this list outlines the work that has been  
5       performed by our paralegal to date, and the work that our  
6       paralegal will continue to have to perform on a going  
7       forward basis, as the Inquiry progresses.

8               Briefly, just to review them, this work  
9       includes, amongst other things, Mr. Commissioner, searching  
10      the extensive documentary database to isolate documents  
11      relevant to specific witnesses; coding the documents so  
12      that the search results can be manipulated; eliminating the  
13      extensive duplication in the search results; briefing hard  
14      copies of relevant documents -- and this would include  
15      documents that are identified by Commission counsel --  
16      identified by the other parties and their section 38  
17      notices; as well as documents that the Diocese intends to  
18      rely on in their cross-examination.

19             And just to round out the list, Mr.  
20      Commissioner, the tasks also include importing further  
21      disclosure by the Commission, and technical issues such as  
22      database maintenance, troubleshooting, so on and so forth.

23             As Mr. Engelmann has already pointed out to  
24      you, the estimate of time of additional paralegal time  
25      required is set out at page 2 of Mr. Sherriff-Scott's

1           correspondence, and it is broken down into four headings.  
2           The first one is the estimate of search time and task  
3           required for remaining alleged victim witnesses.

4                       Mr. Engelmann has already pointed out the  
5           third, and that is the estimate of search time and task  
6           with respect to allegations pertaining to members of the  
7           Diocese.

8                       Maybe I can shed some light on the issue  
9           raised by Mr. Engelmann. The first category, we know -- we  
10          have been advised by Commission counsel of specific  
11          witnesses who will be testifying within the next few weeks.

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

13                      **MR. DUCASSE:** So that first, the estimate of  
14          task remaining for alleged victim witnesses, is with  
15          respect to those witnesses.

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

17                      **MR. DUCASSE:** Now, some witnesses have not  
18          yet been identified, but we know, through discussions with  
19          Commission counsel, that they will be likely testifying in  
20          the future. That's where those witnesses would be  
21          encapsulated in the estimate of searches and activities  
22          with respect to allegations pertaining to Diocesan members.

23                      If I could just elaborate as well on that  
24          category. As you are aware, Mr. Commissioner, several  
25          Diocesan members were investigated but never charged. Some

1 were investigated and charged. In all of these cases, the  
2 database has to be searched and reviewed to identify  
3 documents pertaining to the nature of the allegations that  
4 were being made, by whom they were being made, how the  
5 Diocese responded to those allegations, with which  
6 institutions did interact, and what was the outcome of  
7 those interactions.

8 So that is the reason why we have to make  
9 the searches with respect to Diocesan members, that is not  
10 only to respond to certain allegations which may be made  
11 but, more specifically, to identify evidence with respect  
12 to the Diocese's institutional response to the allegations.

13 Hopefully, that sheds some light on the  
14 issue, which was raised by Mr. Engelmann.

15 Just to go back to estimates, the second  
16 estimate of time is estimate of tasks and time with respect  
17 to the institutional evidence, and we estimate that that  
18 will require an additional 250 hours of paralegal time, and  
19 that's assuming that 10 or 15 institutional witnesses will  
20 adduce evidence.

21 Finally, estimate of technical requirements;  
22 that is with respect to database maintenance, further  
23 disclosures, so on and so forth. The estimate there is  
24 that an additional 60 hours of paralegal time will be  
25 required, which gives a total of 760 hours of additional

1        paralegal time, which is being sought. I would submit to  
2        you, Mr. Commissioner, that under the circumstances, the  
3        request is reasonable.

4                    As you know, we are about to enter a  
5        witness-intensive phase of the Inquiry. Many of these  
6        witnesses will require extensive documentary review, both  
7        in terms of documents that the Commission is likely to rely  
8        upon, documents that the other parties identify in their  
9        section 38 documents, and documents that the Diocese needs  
10       to review to determine whether or not it needs to rely on  
11       those documents in their cross-examinations.

12                   I would suggest to you that using a  
13        paralegal is a cost-effective means of carrying out this  
14        required work. My understanding is that paralegals' hourly  
15        rate is less than half of my hourly rate, and I'm a junior  
16        lawyer on the file, as you very well know. Moreover, they  
17        can do the work much more quickly than probably any of the  
18        lawyers on the file could do. So not only can they do it  
19        more cheaply, they can do it in a more time-effective  
20        manner.

21                   As you also know, Mr. Commissioner, hearing  
22        dates have been scheduled to the end of the year. There is  
23        a lot of work yet to be done in the Inquiry, and Mr.  
24        Sherriff-Scott and myself, undoubtedly, will need the  
25        assistance of a paralegal to carry out this required work.

1                   Subject to any questions which you may have,  
2                   Mr. Commissioner, those are my submissions.

3                   **THE COMMISSIONER:** I have one or two. The  
4                   Diocese has been involved in a number of judicial reviews  
5                   and appeals, and I just want to confirm that none of the  
6                   hours that have been used up to date were used for that  
7                   purpose.

8                   **MR. DUCASSE:** I can confirm that, Mr.  
9                   Commissioner.

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

11                  **MR. DUCASSE:** Those judicial review matters  
12                  were dealt with entirely separately; different file number  
13                  and in no way are incorporated in any of these hours.

14                  **THE COMMISSIONER:** Fine. The other thing,  
15                  and this is when you're looking at your clients, I mean,  
16                  and just pondering a little bit ---

17                  **MR. DUCASSE:** Pardon me?

18                  **THE COMMISSIONER:** I am just pondering a  
19                  little bit and am just looking at a few things.  
20                  You know what your institutional response was and so I'm  
21                  just wondering how difficult would it be, since you have  
22                  that knowledge, I can understand, like, the Citizens'  
23                  Group, they're coming in here, and they're seeing documents  
24                  for the first time. But your client has had your documents  
25                  all along, and you have your historical corporate knowledge



1 and things. So, I don't understand quite how it would be  
2 that difficult to go through all of that. But ---

3 **MR. DUCASSE:** Well, as you know, there are a  
4 number of potential witnesses who are going to come forward  
5 ---

6 **THE COMMISSIONER:** Right.

7 **MR. DUCASSE:** --- to implicate a number of  
8 Diocesan members or potential implicate a number of  
9 Diocesan members. And the fact is that there have a number  
10 of interactions between the Diocese and various  
11 institutions including the Children's Aid Society ---

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

13 **MR. DUCASSE:** --- the various police forces,  
14 so on and so forth.

15 But there are also documents which we  
16 haven't necessary seen, and we also have to keep in mind  
17 that there are documents on which other parties will rely  
18 on in cross-examine witnesses.

19 So, despite the fact that there is somewhat  
20 of an institutional history, nonetheless, there is a  
21 significant amount of work to be done to address  
22 evidentiary issues, which will be adduce by witnesses that  
23 will be likely testifying before the Commission.

24 **THE COMMISSIONER:** All right.

25 Thank you.

1                   **MR. DUCASSE:** Thank you, Mr. Commissioner.

2                   **THE COMMISSIONER:** Does anybody wish to  
3 comment on the submission?

4                   Mr. Manson?

5                   **MR. MANSON:** No, Mr. Commissioner.

6                   **THE COMMISSIONER:** Alright.

7                   Let's -- instead of doing roll call, why  
8 don't -- anyone have any comments one way or the other with  
9 respect to this request?

10                   I'll take that as a no.

11                   Alright.

12                   Thank you.

13                   I will give my decision sometimes this  
14 afternoon, after 2:00.

15                   **MR. ENGELMANN:** Sir, that then leaves us  
16 with the two motions being sought by the Victim's Group.  
17 And perhaps I can just speak very briefly to why Commission  
18 counsel believes this should be done in camera.

19                   **THE COMMISSIONER:** Alright.

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

21                   **MR. ENGELMANN:** We are live on the web cast,  
22 live on Cogeco and, in the past, when we've been dealing  
23 with confidentiality measures and motions of this nature,  
24 we have tended to do the argument as to whether or not any  
25 form of confidentiality measures should be applied in

1 camera. That is for reason of efficiency. That is also  
2 because, if we use people's names, the request for the  
3 confidentiality measures may be moot after it's spoken to  
4 in camera unless it's spoken to very carefully. So, there  
5 are certainly efficacy and other reasons why this should be  
6 done.

7 You've set out, in a number of your  
8 decisions, a number of principles that are important,  
9 including the open court principle in reference to *The*  
10 *Vancouver Sun* case and the *Supreme Court of Canada*. The  
11 fact that open court principles apply to proceedings of  
12 Commission of Inquiry, and that was the *Phillips* or the  
13 *Westray* case.

14 You've talked about openness and why it's  
15 particularly important in this Inquiry, and that you set  
16 out in your initial ruling on process for confidentiality  
17 measures back in October of last year.

18 You also said this will be done on a case by  
19 case basis, and I know that that kind of test will be  
20 applied in these particular motions.

21 You have said, as you did this morning and  
22 on many other occasions, that you're going to apply the  
23 Dagenais/Mentuck Test. And that the burden of displacing  
24 the general Rule of Openness falls on the person making the  
25 application; in this case, that would be Mr. Lee on behalf

1 if his clients, the Victim's Group.

2 And that test, as you've set out in many  
3 decisions, requires a two-part test. And I just want to  
4 cite it, very briefly:

5 "A publication ban or other  
6 discretionary order that limits freedom  
7 of expression and freedom of the press  
8 in relation to legal proceedings should  
9 be ordered only when an order is  
10 necessary to prevent a serious risk to  
11 the proper administration of justice or  
12 to an important interest because  
13 reasonably alternative measures will  
14 not prevent the risk.

15 And, secondly, that the salutary  
16 effects of the order outweigh the  
17 deleterious effects on the rights and  
18 interests of the parties and the  
19 public, including the effects on the  
20 right to free expression, the right of  
21 the accused to a fair and public trial  
22 and the efficacy of the administration  
23 of justice."

24 On the first test, given that we're just  
25 dealing with a momentary argument in camera and not the

1 actual evidence, I don't believe there are reasonable  
2 alternatives to preventing the risk. So I think the first  
3 test is met.

4 With respect to the second test, it requires  
5 a balancing act, and it's almost premature to look at that  
6 balancing act until you hear it. So I would simply rely on  
7 the submission that it may well be moot if we don't do it  
8 this way and there is certainly a great deal of efficiency  
9 and I don't think it's being opposed.

10 I'm speaking to this only, not actually  
11 speaking to the application on the merits, I will leave  
12 that to Mr. Lee and the other parties. But I think for the  
13 purposes of the argument, Commission counsel is of the view  
14 that the argument should be made in camera.

15 Those are my submissions. I'm not sure if  
16 my colleagues have further comments.

17 **THE COMMISSIONER:** Thank you.

18 Mr. Lee?

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

20 **MR. LEE:** Good morning.

21 **THE COMMISSIONER:** Good morning, sir.

22 **MR. LEE:** I agree with Mr. Engelmann that --

23 -

24 **THE COMMISSIONER:** I thought you might.

25 **MR. LEE:** --- they should proceed in camera.

1 The focus of the reason why, I believe that is, as Mr.  
2 Engelmann said, I don't see a reasonably alternative  
3 measure. I'm going to be asking for confidentiality  
4 measures in relation to two clients. The measures I'll ask  
5 for are different.

6 One of them, I have wracked my brain, sir, I  
7 see absolutely no way that I can do it without completely  
8 defeating the purpose of the motion in the first place.  
9 It's a bit of a unique request, and I need to fully explain  
10 it to you, and I just don't see how I can do it without  
11 clearly identifying who this person is. Perhaps not right  
12 now but when he's eventually called, it will be very clear  
13 that that's the person I was speaking of.

14 The other person I -- in terms of efficiency  
15 and in terms of the ease of the argument and my ability to  
16 speak freely would certainly be easier, it's -- I think it  
17 might be possible to do it publicly. It will be difficult,  
18 but I'm willing to give it a shoot and, obviously, I would  
19 not be able to name the person. There are certain  
20 information I would not be able to give you.

21 And my opinion is, obviously, the reasonably  
22 alternative measures, it's a bit of a long shot but I think  
23 I can do it. And in terms of the salutary against the  
24 deleterious effects, I have a little bit of a concern that  
25 doing it not in camera might affect the quality of the

1 argument, and my ability to make you understand what I'm  
2 seeking, and that affects my clients' interest.

3 And I believe that the right to free  
4 expression, the right to media to report on is important,  
5 but in this narrow circumstance where we're simply asking  
6 to go in camera to make the request, I think that my  
7 clients' interest outweigh those.

8 **THE COMMISSIONER:** Well, I like the fact  
9 that you think you can make me understand things. I think  
10 some ---

11 **MR. LEE:** I'm hopeful, sir.

12 **THE COMMISSIONER:** --- some of the other  
13 parties think I'm beyond that. It's okay.

14 Good!

15 **MR. LEE:** Thank you.

16 **THE COMMISSIONER:** Thank you.

17 Any other parties wish to make any  
18 submissions on this matter?

19 Very well.

20 I don't know if the Cornwall Freeholder --  
21 Standard Freeholder was advised of this or if they wish to  
22 make any comments?

23 **MR. ENGELMANN:** Yes, they were advised. Ms.  
24 Saunders is present. My understanding is that they were  
25 not opposed to either of these motions. I'm not talking

1 just about the fact that we're going in camera but the  
2 motions themselves.

3 **THE COMMISSIONER:** Right.

4 **MR. ENGELMANN:** And I believe counsel for  
5 the CBC was informed, and CBC had a reporter here  
6 yesterday, and he's clearly aware that these motions were  
7 being brought.

8 **THE COMMISSIONER:** Okay.

9 Mr. Manson?

10 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

11 **MR. MANSON:** Mr. Commissioner, in the body  
12 of the Inquiry room I have two of my clients, both of whom  
13 have signed confidentiality undertakings.

14 Would it be permissible if they both stay  
15 for the in camera?

16 **THE COMMISSIONER:** Unless there is some  
17 grave objections from other people who are here, no, I  
18 don't think so. I think they ---

19 **MR. MANSON:** Usually we have one stay but in  
20 these unusual circumstances perhaps it ---

21 **THE COMMISSIONER:** Well, the two of them  
22 look like fixtures here. So it might ---

23 **MR. MANSON:** Thank you, Mr. Glaude.

24 **THE COMMISSIONER:** Alright.

25 Well, I'm going to rule that we will go in



1 camera and the reason for that is I believe, in my  
2 experience in this Inquiry, that the discussions are much  
3 more open and frank, and permits me an opportunity really  
4 to correctly assess the situation.

5 So what we're going to do is go into an in  
6 camera session. What we're going to do as well is when we  
7 come back I will explain to those who are watching exactly  
8 what went on, to the extent possible, and the reasoning for  
9 any ruling that I may give.

10 To give some estimate of time to those who  
11 are watching on Cogeco or the web cast, any idea? I know  
12 it takes 15 minutes to go down and go into an in camera  
13 session takes another 15 minutes to boot everything up.

14 So how long do we foresee?

15 Just some ballpark figures for those who  
16 want to ---

17 **MR. ENGELMANN:** I should let Mr. Lee speak to  
18 this. But, sir, I'm not sure if you want to go back live  
19 this morning or whether he would want to wait till this  
20 afternoon if you're issuing a decision.

21 **THE COMMISSIONER:** Okay.

22 That'll make it convenient. Sure.

23 So why don't we reconvene at 2 o'clock for  
24 website and ---

25 **MR. ENGELMANN:** On the record.

1                   **THE COMMISSIONER:** --- on the record. Well,  
2                   on the public record.

3                   **MR. ENGELMANN:** Yes.

4                   **THE COMMISSIONER:** We will be on another  
5                   record once we go in camera.

6                   Alright.

7                   That's a very suggestion.

8                   **MR. ENGELMANN:** So we need ---

9                   **THE COMMISSIONER:** So we're then going to  
10                  break for 15 minutes and then we'll resume.

11                  I take it we will be finished the argument  
12                  before lunchtime?

13                  **MR ENGELMANN:** Yes.

14                  **THE COMMISSIONER:** Okay. Good!

15                  So, right, that's what we'll do.

16                  **MR. ENGELMANN:** Thank you.

17                  **THE COMMISSIONER:** Thank you.

18                  --- Upon recessing in public at 10:32 a.m. to resume in  
19                  camera/

20                  L'audience est suspendue en public à 10h32 pour  
21                  reprendre à huis clos.

22                  --- Upon resuming in public at 2:18 p.m./

23                  L'audience est reprise en public à 14h18

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

1                   This hearing of the Cornwall Public Inquiry  
2                   is now in session. Please be seated. Veuillez vous  
3                   asseoir.

4                   **--- RULING BY THE COMMISSIONER RE: CROSS-EXAMINATION/  
5                   DÉCISION PAR LE COMMISSAIRE RE: CONTRE-INTERROGATOIRE:**

6                   **THE COMMISSIONER:** Thank you.

7                   Good afternoon all.

8                   As I have indicated, I have prepared some  
9                   directions on process with respect to cross-examination and  
10                  I'd like to share them with you.

11                  First of all, let me say that public  
12                  inquiries are an important and interesting institution in  
13                  Ontario and indeed in other jurisdictions of Canada. They  
14                  usually bring together a number of parties whose interests  
15                  are often adverse to review a certain issue pursuant to a  
16                  mandate that was generated by a government body acting in  
17                  the public interest.

18                  While our mandate is to examine  
19                  institutional responses, one would hope and expect that the  
20                  manner in which this Inquiry proceeds would incorporate the  
21                  knowledge already acquired during this Inquiry to ensure  
22                  that we continue to facilitate the testimony of witnesses  
23                  without compromising principles of fairness. While our  
24                  mandate is to examine -- whoops there we go -- we have been  
25                  prepared at this Inquiry to be responsive to participants.

1                   I am pleased to say that we have  
2           incorporated witness support and counseling support, and  
3           that has proven to be successful in supporting those  
4           affected by the Inquiry's work. This has been a unique  
5           initiative for a public inquiry. We then began to hear  
6           from witnesses.

7                   To date, most witnesses acknowledge, that  
8           although testifying has at times been difficult, it has  
9           been a satisfying experience both personally and because of  
10          their desire to make a public contribution. I am of the  
11          view that such evidence of individuals from this community  
12          is essential in order to fulfill the mandate of the  
13          Inquiry. But just as Dr. Wolfe and Dr. Jaffe have  
14          predicted, not all witnesses will sail through their  
15          evidence, particularly in cross-examination.

16                   We have come to such a point in this  
17          Inquiry. It is my intention to pause from time to time to  
18          frame an issue, to seek the input of the parties and then  
19          implement measures to meet the challenges that present  
20          themselves.

21                   In this case, the issue is how to elicit  
22          evidence from witnesses, even in cross-examination, in a  
23          manner that is both effective and non-threatening. All  
24          counsel have been mindful of their obligations to be  
25          respectful and aware of the needs of witnesses. I have

1 attempted to make witnesses feel comfortable and explained  
2 the process to them.

3 Clearly, that is not enough. We need to do  
4 more; we need to do it differently and more importantly, we  
5 need to act together. I am counting on the continued  
6 cooperation and assistance of all parties. On this issue,  
7 there are several things to be done. And, yes, from the  
8 witnesses, I will ask for more.

9 Witnesses will be asked to cover more areas  
10 in their examination in-chief. Witnesses will be given  
11 documents in advance that will be used in cross-examination  
12 in order to maximize their comfort level. Witnesses need  
13 to spend more time with Commission counsel to review the  
14 vast number of documents that will be related to them.

15 With respect to the parties, counsel should  
16 focus on the issues that pertain to institutional responses  
17 as they affect their client. Counsel for the parties will  
18 need to be more specific as to the areas to be covered in  
19 cross-examination.

20 We need full adherence to the rules of  
21 practice and procedure. Parties must provide their list of  
22 documents in a timely fashion to permit an opportunity for  
23 witnesses to review them. Counsel needs to be prepared to  
24 explain the relevance of cross-examination and why it is  
25 needed when asked by the Commissioner or as a result of an

1 objection.

2 Finally, counsel should exercise discretion  
3 and good judgment in deciding to address personal opinions  
4 or impressions and if they do, to focus on the underlying  
5 reasons for the opinion or impression.

6 With respect to Commission counsel, I have  
7 asked Commission counsel to lead more of the evidence in  
8 examination in-chief and to anticipate questions on cross-  
9 examination. Given that the parties will be providing more  
10 documents in advance, I have asked Commission counsel to  
11 review these documents with witnesses prior to taking the  
12 stand. I have asked Commission counsel to carefully  
13 monitor to ensure that questions posed to the witnesses are  
14 relevant.

15 And, yes, for the Commissioner; speaking as  
16 the Commissioner, I intend to be vigilant in ensuring that  
17 the process is fair to all concerned. This may necessitate  
18 greater interventions than I have made in the past. I will  
19 be more clear on the scope of the permitted examination.

20 While the rules and value of cross-  
21 examination have been in use for many centuries, that does  
22 not mean that we are shackled to those ways. We know that  
23 modern administrative law processes are far more flexible  
24 than the historic rules of the criminal courts and the old  
25 courts of equity and law.

1                   The right way to adduce and test evidence  
2                   evolves and will continue to evolve. Wisdom is to have the  
3                   knowledge, the tools and the creativity to adapt to change  
4                   in a principled manner.

5                   The number of changes over the last 20 years  
6                   have recognized that the process in cases of sexual assault  
7                   and child sexual abuse including cross-examination needs to  
8                   evolve.

9                   Both, Parliament and the Supreme Court of  
10                  Canada have authorized the use of screens and video  
11                  testimony to facilitate the giving of evidence. As well,  
12                  accused are no longer permitted to personally cross-examine  
13                  a complainant.

14                  This is an opportunity for all of us to make  
15                  this Inquiry proceed in fulfilling its public mandate. It  
16                  will require the cooperation and assistance of everyone  
17                  involved. The witnesses already assume a great  
18                  responsibility by coming to testify about matters that are  
19                  difficult for them, but we ask them to come nonetheless.

20                  We ask them to work through a process that  
21                  strives to be balanced in principle and facilitates their  
22                  evidence in addressing the important issues before this  
23                  Inquiry. It is a challenge, but it is a challenge that I  
24                  hope and expect that we will meet.

25                  Accordingly, with those comments, we will be

1 resuming evidence hopefully tomorrow morning at 9:30.

2 Now, before we broke to go into camera, we  
3 heard one motion by the Diocese.

4 **MR. MANSON:** Mr. Commissioner.

5 **THE COMMISSIONER:** Yes.

6 --- SUBMISSION BY/REPRÉSENTATION PAR MR. ALLAN MANSON:

7 **MR. MANSON:** I apologize for interrupting,  
8 but you made one remark that I circled and I feel obliged  
9 to raise it. When you were discussing your views on cross-  
10 examination by parties ---

11 **THE COMMISSIONER:** Yes.

12 **MR. MANSON:** --- the first remark you made  
13 was counsel should focus on issues that pertain to  
14 institutional responses as they affect their client.

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

16 **MR. MANSON:** And I wanted to submit that my  
17 particular client is not an institution but represents  
18 members of the community, and our perspective is,  
19 therefore, all institutions affect members of the  
20 community. And I would simply submit that I hope that  
21 wasn't intended to be a particularly restrictive comment on  
22 our ability to cross-examine in respect of institutional  
23 responses.

24 **THE COMMISSIONER:** I don't think anyone has  
25 really objected to any of your questions so far.



1                   **MR. MANSON:** Thank you, Mr. Commissioner.

2                   --- RULING BY THE COMMISSIONER RE: APPLICATION TO AMEND  
3                   FUNDING FOR THE DIOCESE / DÉCISION PAR LE COMMISSAIRE SUR  
4                   LA CEMANDE POUR AMENDER LES FONDS POUR LE DIOCÈSE:

5                   **THE COMMISSIONER:** Thank you.

6                   With respect to the Diocese, you will recall  
7                   that this morning the Diocese has applied for supplementary  
8                   funding. This is the second application for supplementary  
9                   funding, and after I recommended funding for the Diocese on  
10                  December 6, 2005, the Diocese sought additional funding in  
11                  June of 2006.

12                  On June 30, 2006, I recommended that the  
13                  Diocese receive supplementary funding. As part of that  
14                  recommendation, I gave the Diocese a maximum of 400 hours  
15                  of paralegal funding. I also said that if more hours  
16                  should be required, the Diocese was free to apply for  
17                  further amendment.

18                  By letter dated February 19, 2007, the  
19                  Diocese requested an additional 760 hours of paralegal  
20                  funding. In its written and oral submissions, the Diocese  
21                  set out what it proposes the paralegal will do to make up  
22                  the time estimates. The Diocese stressed that its use of  
23                  paralegal help was a more cost-effective and efficient use  
24                  of public resources. No parties opposed the supplementary  
25                  funding request.

1           I have decided to recommend further  
2           supplementary funding for the Diocese. While I agree that  
3           such funding can be more efficient and cost-effective than  
4           having counsel do the work described, I must be mindful of  
5           the public expenditures of funds.

6           Over the last seven-and-a-half months, the  
7           Diocese has used up its 400 hours of allotted time. During  
8           this time, the vast majority of Commission documents have  
9           been disclosed and many victims and alleged victims have  
10          been heard from and several more have been rescheduled.

11          For these reasons, I am not convinced that a  
12          full 760 hours additional funding is required. I will  
13          recommend an additional 400 hours in paralegal funding.

14          Should more hours be required to fulfill the  
15          tasks outlined, I would ask the Diocese to reapply for  
16          further amendment with the full explanation of what has  
17          been done with the 400 hours thus ordered, and also to  
18          provide further explanations as to why the additional  
19          resources will be required.

20          As well, I have heard two motions in camera  
21          from the Victims' Group concerning confidentiality  
22          measures. I have determined that in both cases, the  
23          principles set out in the *Mentuck Test* has been met and  
24          that the moving party has met its burden. Both of the  
25          alleged victims seeking confidentiality have roots in the

1 community. Their cases have not been publicly aired or  
2 with some limited publicity. Their children do not know  
3 about the allegations and I'm satisfied that the public  
4 disclosure of intimate and personal information may  
5 seriously jeopardize those privacy interests.

6 In one case, the individual seeks an in  
7 camera hearing and in the other a much less in the way of  
8 confidentiality measures, i.e. a publication ban on his  
9 identity or any evidence that would identify him.

10 I will give my full reasons for courting  
11 confidentiality measures when we go back into our in camera  
12 session. Before doing so, I would add that on both of  
13 these motions, they were unopposed by all the parties  
14 including the media.

15 Thank you.

16 So, Mr. Engelmann, I think we've completed  
17 what we had to do today short of going into in camera  
18 session to complete the motions.

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

20 I believe it takes about 15 minutes.

21 **THE COMMISSIONER:** All right. And so we  
22 will resume the web cast and open the doors to the public  
23 tomorrow morning for 9:30.

24 **MR. ENGELMANN:** Correct.

25 **THE COMMISSIONER:** All right.

1 Thank you.

2 **MR. ENGELMANN:** Thank you.

3 **THE REGISTRAR:** Order. All rise.

4 The hearing will reconvene at 2:45 in  
5 camera.

6 --- Upon adjourning in public at 2:31 p.m. to resume in  
7 camera/

8 L'audience est ajournée en public à 14h31 pour reprendre à  
9 huis clos

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I, Marc Demers 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, Marc Demers, 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.



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Marc Demers, CR