

**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 107

Held at :

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

Wednesday, May 09, 2007

Tenue à:

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

Mercredi, le 9 mai 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
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. William Carroll	Ontario Provincial Police Association

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1 --- Upon commencing at 10:04 a.m. /

2 L'audience débute à 10h04

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you. Good morning
10 all. Nice and fresh in here this morning.

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

13 **THE COMMISSIONER:** Good morning.

14 **MR. ENGELMANN:** I'll just be one moment.

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** Sir, I just want to -- just
17 before we start -- give some background as to why we're
18 starting today and not earlier this week, and what we have
19 planned for the next couple of days.

20 Monday afternoon, we had intended to deal
21 with the motion we're dealing today and that's the motion
22 for directions on the OPP FOI issue that is before us this
23 morning.

24 Some counsel were unavailable, the matter
25 was therefore not heard Monday afternoon. Tuesday we had a

1 witness coming in from out-of-town who unfortunately became
2 unavailable and she will be with us later.

3 Today we're dealing with the motion for
4 directions. Tomorrow we have a witness who will be
5 spending the day with us and that is André Bissonnette.

6 Monday the 14th and Tuesday the 15th another
7 witness, Jeanette Antoin, who will be with us over that
8 day-and-a-half period.

9 So I just want to give you that by way of
10 background. Additionally, the motion this morning, there
11 are some documents that I believe you should have handy and
12 should be up on the screen as well, just to set the stage
13 for the motion. I believe it's M-6 and we'll give the
14 first document number, which is the OPP List of
15 Documents/Albert Lalonde -- if that could be marked M6-A1.

16 **---EXHIBIT NO./PIÈCE M6-A1**

17 OPP Freedom of Information Motion for
18 Direction - List of Documents - May 9, 2007.

19 And then -- and these are documents that I
20 know Ms. Brannan, who's speaking on behalf of the OPP, will
21 be relying on. M6-A2, if that could be the Summons to
22 Witness, and that is a summons directed to Detective
23 Inspector Colleen McQuade.

24 **---EXHIBIT NO./PIÈCE M6-A2**

25 OPP Freedom of Information Motion for

1 Direction - Summons to Witness - October 25,
2 2006.

3 Okay, we'll have to have copies made. This
4 will be referred to -- I don't know, sir, if you have a
5 copy, it's a one page document?

6 **THE COMMISSIONER:** Here you go.

7 **MR. ENGELMANN:** All right.

8 **THE COMMISSIONER:** Madame Clerk, we can use
9 this as the exhibit, I guess.

10 **MR. ENGELMANN:** If M6 -- so M6-A1 is the
11 List of Documents; M6-A2, a Summons to Witness; M6-A3,
12 Undertaking of Counsel to the Cornwall Public Inquiry.

13 **---EXHIBIT NO./PIÈCE M6-A3**

14 OPP Freedom of Information Motion for
15 Direction - Undertaking of Counsel.

16 **MR. ENGELMANN:** M-6A4, Undertaking of
17 Parties to the Cornwall Public Inquiry.

18 **--- DOCUMENT NO./DOCUMENT NO M6-A4**

19 OPP Freedom of Information Motion for
20 Direction - Undertaking of Parties to the
21 Cornwall Public Inquiry.

22 So those are the four documents that I know
23 Ms. Brannan intends to refer to, so if they could be
24 marked. There may be other documents.

25 We have in the past, on occasion, marked

1 authorities. I don't know if that's necessary, sir.

2 **THE COMMISSIONER:** No.

3 **MR. ENGELMANN:** I know that counsel for the
4 Attorney General has at least provided one authority
5 they'll be relying on.

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

7 **MR. ENGELMANN:** I also understand that we
8 have the *Freedom of Information Act* ---

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

10 **MR. ENGELMANN:** --- available on the screen
11 for the purposes of argument and there may be other
12 authorities that are also posted on the screen.

13 **THE COMMISSIONER:** Right.

14 **MR. ENGELMANN:** So I'm going to turn things
15 over to Ms. Brannan, who will start. I know that Mr.
16 Cloutier has arguments to make and I understand that Mr.
17 Lee, Mr. Sherriff-Scott, also want to wade in on this.
18 There may be others ---

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

20 **MR. ENGELMANN:** --- but I'll turn it over to
21 Ms. Brannan.

22 **THE COMMISSIONER:** Thank you.

23 Good morning.

24 --- OPP FREEDOM OF INFORMATION MOTION FOR DIRECTION

25 BY/REQUÊTE POUR LA LIBERTÉ D'INFORMATION DE L'OPP PAR MS.

1 **GINA SACCOCCIO BRANNAN:**

2 **MS. SACCOCCIO BRANNAN:** Good morning, Mr.
3 Commissioner, how are you this morning?

4 **THE COMMISSIONER:** Good.

5 **MS. SACCOCCIO BRANNAN:** I think the first
6 thing that I'm going to do is to set out for you the issue.

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

8 **MS. SACCOCCIO BRANNAN:** And the issue as I
9 see it, I would submit, is the summons issued to Acting
10 Detective Superintendent Colleen McQuade, as she is now,
11 and the undertakings signed by the counsel to the Ontario
12 Provincial Police, and the undertakings signed by members
13 of the Ontario Provincial Police, both officers and
14 civilian employees.

15 Are these documents an impediment to the
16 Ontario Provincial Police delivering the appropriate
17 documents in response to a Freedom of Information request?
18 And I phrase it in that general sense, Mr. Commissioner,
19 because my concern is that there may be other FOI requests
20 -- and when I say FOI, for members of the public, that's
21 Freedom of Information requests out there, and the Ontario
22 Provincial Police is not the only government institution
23 that is a party with standing here before you in this
24 Inquiry.

25 The next step in the process is to set for

1 you, Mr. Commissioner, the context of this particular
2 request. And in order for me to present the name of the
3 requestor and the -- as the Freedom of Information
4 legislation calls it, "the affected person". I can only,
5 in general terms, tell you that the requestor is a law firm
6 and that the affected person is a party with standing
7 before this Inquiry.

8 My colleague, Mr. Lee, is in a better
9 position to provide you with the name of the requestor and
10 the affected person, and he will do so before I continue on
11 with the facts so that you have it in context.

12 **THE COMMISSIONER:** Okay.

13 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DALLAS LEE:

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

15 **THE COMMISSIONER:** Good morning.

16 **MR. LEE:** As Ms. Brannan said, there are
17 certain limitations on her in the statute that will not
18 permit her to give you this information, so I'll give it to
19 you.

20 The requesting party is Robert Talach, who
21 is an associate at my law firm, and the affected party is a
22 client of ours named Albert Lalonde, who is a member of the
23 victims' group and, as Ms. Brannan will explain, he is also
24 the plaintiff in a civil action that's been commenced.

25 **THE COMMISSIONER:** Okay.

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. GINA SACCOCCIO
2 BRANNAN :

3 MS. SACCOCCIO BRANNAN: Thank you, Mr. Lee.
4 So how did we arrive here today? As you've
5 heard from Mr. Lee, an FOI, or Freedom of Information,
6 request for certain documents was made by his law firm in
7 respect of Mr. Lalonde. That request that was made was in
8 respect of complaints made by Mr. Lalonde against Father
9 Charles MacDonald and Raymond St-Jean.

10 THE COMMISSIONER: I'm sorry, and ---

11 MS. SACCOCCIO BRANNAN: Raymond St-Jean?
12 This is not an unusual request for --

13 THE COMMISSIONER: M'hm.

14 MS. SACCOCCIO BRANNAN: --- lawyers to make
15 in the context of litigation.

16 So what litigation are we talking about?
17 Mr. Lalonde has commenced litigation against the diocese.
18 Mr. Lalonde is represented by Mr. Talach at the law firm of
19 Ledroit-Beckett and the diocese is represented by Mr. David
20 Sherriff-Scott of Borden Ladner Gervais.

21 In July of 2006, in the ordinary course of
22 the civil suit examinations for discovery were held, and
23 for the assistance of the public, this is a process whereby
24 the parties come together and each lawyer is permitted an
25 opportunity to ask questions of the other party litigant.

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

2 **MS. SACCOCCIO BRANNAN:** And during that
3 procedure, often, questions are asked and requests are made
4 for documents where you may not have the answer to the
5 question at that particular point in time, or you may not
6 have the document with you or immediate access to that
7 document. So we have a process in the civil process which
8 is called "undertakings". And in the process of this
9 examination for discovery, Mr. Talach was asked if he would
10 make his best efforts to obtain OPP and police documents
11 regarding the complaints made by Mr. Lalonde in respect t
12 of Father Charles MacDonald and Raymond St-Jean. And
13 naturally, Mr. Talach had to say to him, "I don't have
14 those documents. I will give you my undertaking to make my
15 best efforts to obtain them".

16 None of this is unusual in civil litigation.

17 The next step, of course, is responding to
18 those undertakings, and that would have been the
19 responsibility of the Ledroit Beckett firm. And once
20 again, in the ordinary course of litigation, when a request
21 is made and an undertaking given for documents that would
22 be in the hands or in the possession of potential -- in the
23 hands or possession of government, one of the ministries,
24 the automatic response is to make an application under the
25 Freedom of Information legislation for those documents.

1 And, indeed, that's what was done in this particular case.

2 The next step of the process, and I might
3 say that the knowledge of this request being made doesn't
4 come to the attention of the Ontario Provincial Police
5 until earlier this year, in February, when we are asked to
6 put together the documents. And I'll get to that in a
7 moment.

8 The one point that I would like to make is
9 that when we look at the way the process unfolded, I have
10 to say that -- I have to commend the law firm of Ledroit
11 Beckett because it's apparent that they have kept their
12 civil litigation process separate from the Inquiry. Mr.
13 Lee, of course, was not aware of the FOI request and nor
14 should he have been. So he's not aware of what's going on
15 in the day-to-day basis in the litigation. And for that
16 the firm should be commended.

17 So what happens when that request comes in?
18 It arrives at the Ministry of Community Safety and
19 Correctional Services, and that particular ministry, like
20 other ministries, has what we call an FOI Office. That
21 ministry then looks at the request and makes a
22 determination; these are Ontario Provincial Police
23 documents. They send correspondence to the OPP and require
24 them, under the Freedom of Information legislation which I
25 will get to in a moment -- require them to respond to the

1 request by gathering all the documents that relate to the
2 request in unredacted form; to prepare a package and
3 deliver the package of documents to the Freedom of
4 Information Office for the Ministry of Community Safety and
5 Correctional Services. And the general practice is for the
6 part of the ministry, of which the OPP is part of that
7 particular ministry, to provide a cover letter setting out,
8 you know, their concerns about these documents, where else
9 these documents might be used, what issues might relate to
10 these documents. But the Ontario Provincial Police are not
11 required to redact. Unredacted documents go to FOI Office
12 of the Ministry of ---

13 **THE COMMISSIONER:** Not permitted to redact.

14 **MS. SACCOCCIO BRANNAN:** They're not --
15 sorry, not permitted to redact. Absolutely.

16 **THE COMMISSIONER:** Now can I stop you there?

17 **MS. SACCOCCIO BRANNAN:** Yes.

18 **THE COMMISSIONER:** In the case of police
19 officers' notes, for example, is that in issue here?

20 **MS. SACCOCCIO BRANNAN:** Yes, they're ---

21 **THE COMMISSIONER:** Okay.

22 **MS. SACCOCCIO BRANNAN:** --- you'll see on
23 the list that there are police officers' notes.

24 **THE COMMISSIONER:** Okay. Would you,
25 however, be permitted -- let's assume we're dealing with

1 Mr. Lalonde, and in part of the running tally of the notes,
2 black out those parts that have nothing to do with that
3 investigation?

4 **MS. SACCOCCIO BRANNAN:** My understanding is,
5 no, we are not, but we are to identify ---

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

7 **MS. SACCOCCIO BRANNAN:** --- that for the FOI
8 Office of our ministry.

9 **THE COMMISSIONER:** Yes. Okay.

10 **MS. SACCOCCIO BRANNAN:** Those documents are
11 then transported to the FOI Office, and the employees of
12 that office review those documents and begin the redaction
13 process in accordance with the *Freedom of Information and*
14 *Protection of Privacy Act*, otherwise known as FIPPA. F-I-
15 P-P-A. For the purposes of today, I'll just use the word
16 FOI Act.

17 And they go through that process and redact
18 information that the Freedom of Information, of FOI
19 legislation, tells them that they must.

20 They also have to address issues of
21 surrounding third parties. For example, in this particular
22 case, there will be documents that the Ontario Provincial
23 Police in the course of its investigation may have received
24 from the Children's Aid Society or from the Cornwall Police
25 Service. Those are considered third party documents.

1 **THE COMMISSIONER:** Yes.

2 **MS. SACCOCCIO BRANNAN:** In addition,
3 throughout the documents, you'll find names of other third
4 parties, and it's incumbent upon the FOI Office of the
5 ministry to notify those third parties that this request
6 has been made, and to advise them that their name is in a
7 particular document, and ask them what their position is
8 with respect to the release of that.

9 So now, you've got the requestor, you've got
10 the OPP documents, you have third parties notified, and the
11 time comes for the FOI Office to deliver the documents to
12 the requestor. And generally, from my own personal
13 experience in making those requests, those documents come
14 to you redacted. It's a rare occasion that you get a
15 document that doesn't have at least one black mark on it.

16 The requestor will then look at what they
17 have received, and they're either -- and in the case of Mr.
18 Lee, he would then take those documents and deliver them to
19 Mr. Sherriff-Scott, and that would have put him in a
20 position of complying with his undertaking.

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

22 **MS. SACCOCCIO BRANNAN:** Now, Mr. Lee may
23 look at them and say, "Well, gee-whiz, there's too many
24 black-outs here. I'm not very happy with this". And he
25 has the right under the legislation to appeal.

1 And that basically, sir, is the context
2 within which we're here.

3 **THE COMMISSIONER:** Yes.

4 **MS. SACCOCCIO BRANNAN:** Now before I get to
5 the legislation, let's talk about these documents.

6 **THE COMMISSIONER:** Yes.

7 **MS. SACCOCCIO BRANNAN:** The exhibit is
8 entitled, "OPP List of Documents and Albert LaLonde".

9 And I just wanted to make one thing clear,
10 Mr. Commissioner, just for the public in particular. The
11 Freedom of Information legislation is not the OPP Freedom
12 of Information legislation as it was reported today in the
13 press. It is a piece of legislation, enacted by the
14 Government of Ontario, and the purpose of it is to allow
15 access to government documents by the public, and all
16 ministries are institutions under that legislation, and
17 then there is of course a schedule of other institutions.
18 But this is piece of provincial government legislation.

19 So there's a list of documents that you have
20 in front of you and the question here is, what are these
21 documents?

22 First of all, these documents are the
23 documents gathered by Detective Constable Penny Fulford, of
24 the Ontario Provincial Police, in response to the FOI
25 request.

1 **THE COMMISSIONER:** Yes.

2 **MS. SACCOCCIO BRANNAN:** And she is one of
3 our officers who has signed one of the undertakings. It
4 would have been inappropriate to have anybody else gather
5 them who had not signed an undertaking.

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

7 **MS. SACCOCCIO BRANNAN:** So she gathered
8 those documents.

9 Then, in preparation for today, we asked
10 Detective Constable Fulford is she could cross-check these
11 documents, and she did, and she cross-checked them in two
12 ways. One, are all of the documents, documents that the
13 Ontario Provincial Police turned over to the -- or
14 disclosed to the Commission pursuant to the summons dated
15 October 25th of 2005?

16 The answer is that is yes, with the
17 exception of two documents.

18 **THE COMMISSIONER:** Yes.

19 **MS. SACCOCCIO BRANNAN:** And those two
20 documents are marked over in the very right hand column and
21 they're marked as, "Not Applicable, disclosed May 7th to the
22 CPI". And I will tell you that the first one shows up, Mr.
23 Commissioner, on page 5 at the bottom of the notes of
24 Detective Constable Zebruck.

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

1 **MS. SACCOCCIO BRANNAN:** And the second one
2 shows up on the next page, at the top, and it says,
3 "Disclosed May 7th, 2007 to CPI". And that is the OMPPAC
4 Niche Reports in R. v. Raymond St-Jean.

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

6 **MS. SACCOCCIO BRANNAN:** These two documents
7 were not in those initial 57 boxes of the Project Truth
8 documents but were discovered when the OMPPAC Niche search
9 was carried out. When we discovered this, we immediately
10 notified Mr. Engelmann and asked if he wished us to turn
11 those documents over to him. He did, and I believe that
12 was done on May the 8th; yesterday.

13 I can now say that every single one of these
14 documents has been disclosed under the summons.

15 The next cross-check that was necessary to
16 do was to determine whether any or all of these documents
17 had been part of the bulk disclosure that commenced
18 sometime in July of 2006 by the Commission to the Parties
19 with standing, subject to the undertakings.

20 Detective Constable Fulford carried out that
21 process, and you can see over on the right hand side of the
22 document, she has provided the corresponding Bates page
23 numbers. And again, the answer is, "Yes" qualified, of
24 course, by those two documents I referred to previously,
25 which I am told by Ms. McArthur will be in the next

1 disclosure.

2 I am now, Mr. Commissioner, going to move to
3 address the legislation that unfortunately seems to butt up
4 against each other and not merge. That would be the *Public*
5 *Inquiries Act* and the *Freedom of Information and Protection*
6 *of Privacy Act*. These are both important pieces of
7 legislation, Mr. Commissioner.

8 Under the *Freedom of Information and*
9 *Protection of Privacy Act*, very important piece of
10 legislation that allows public access to government
11 documents, one that my client respects and one that my
12 client recognizes -- that the OPP recognizes that it has
13 obligations and duties under it.

14 No less important, Mr. Commissioner, is the
15 *Public Inquiries Act*, which is the piece of legislation
16 that permitted the provincial government to call this
17 Public Inquiry, to appoint you as the Commissioner and to
18 set out your Terms of Reference. Again, my client, who is
19 a Party with standing, the Ontario Provincial Police,
20 respects that piece of legislation, your Terms of
21 Reference, your rules of civil procedure and practice and
22 the summons and the undertaking.

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

24 **MS. SACCOCCIO BRANNAN:** Needless to say -- I
25 don't know, maybe we were like the child where the father

1 was telling the child to do one thing and the mother the
2 other, and the child is sitting there saying, "What do I
3 do?" I think that's where the Ontario Provincial Police
4 are right now. We do not want to breach the Freedom of
5 Information legislation but, at the same time, we want to
6 be certain that we are not in breach of the summons or the
7 undertaking, hence our request for your direction.

8 So the first -- I am going to just address
9 the legislation and I will, for the benefit -- my
10 colleagues know how to read legislation, at least I hope
11 they do -- but for the benefit of the public, I will not go
12 through the legislation and read it. I will try and
13 paraphrase it in ordinary language that is common sense.
14 Some of this stuff is written in a manner that is a little
15 bit of a throwback.

16 But in any event, no disrespect to the
17 drafters, of course, let's go to the *Public Inquiries Act*
18 and, in particular, Section 3. There is no need for me to
19 go through your appointment and the Terms of Reference.
20 The legislation will be of assistance to us in what I have
21 to present.

22 Section 3 basically says that -- and there
23 are sections that you have to read in conjunction with them
24 but not for this purpose. It says that the conduct of this
25 Inquiry and the procedures of this Inquiry are under the

1 control and direction of the Commission conducting the
2 Inquiry. We often refer to that as you being the
3 Commissioner of an inquiry being the master of his or her
4 own process. That is what that section provides. That is
5 the section that, of course, allows the commission of
6 inquiry to prepare its own rules of practice and procedure,
7 which this Commission has done and they're published on the
8 Website.

9 The next section is found in Part 2 and
10 that's Section 7. This is the section that gives the
11 Commissioner the power to issue summons. You have a power
12 to summons any person to this Inquiry, and you also have
13 the power to summons an individual, a corporation, a
14 government body, to produce in evidence to you documents
15 that you may specify and documents that are relevant to the
16 subject matter of the Inquiry.

17 That is what you did in October of 2005 with
18 the Ontario Provincial Police when you issued the summons
19 to then Detective Inspector Colleen McQuade, and you will
20 recall that there was a time when we presented our
21 disclosure before you here. I think now our disclosure is
22 fully complete, with the exception of those investigations
23 that were not part of Project Truth that Commission counsel
24 from time-to-time ask us to provide documents, but still
25 under that summons.

1 Now, if you went down to Section 8 -- and
2 this is the section that gave us some concern -- Section 8
3 gives you the power, if a person does not respond to your
4 summons, to state a case to the Divisional Court, to set
5 out the facts. The Divisional Court then has the power,
6 under this legislation, to punish that individual, as it
7 says, take step, but most importantly find them in guilty
8 -- pardon me, find them guilty in contempt of that
9 particular summons for not having responded to it.

10 So you can see the Ontario Provincial
11 Police, they are concerned. We have a summons. You have
12 asked for documents. Our FOI office needs them. Is this a
13 legal impediment to us handing those documents over to our
14 ministry FOI office.

15 There is another section that might be of
16 some assistance to you in reviewing this particular issue,
17 and that is Section 12. The only problem with Section 12
18 is that it relates to documents and things already produced
19 in evidence. And produced in evidence, in my view, are the
20 operative words. So in the ordinary course, we go through
21 the Inquiry and of course a number of documents have been
22 produced in evidence as the substantive witnesses have
23 taken stand and what happens here is the party who produced
24 those documents can request their return and the
25 legislation says you shall return them.

1 Now, we haven't finished that process
2 because that is a very difficult cross-checking process and
3 Ms. McArthur's assisting us, but we are certain that there
4 will be at least one or two of these documents that were
5 produced into evidence. And I believe, in speaking with
6 Ms. McArthur that we thought that it was in around the
7 alternative method that was chosen to address the cross-
8 examination procedure, and Mr. -- in the case of the
9 witness, Mr. Silmser. But, by and far, the majority of
10 these documents have not been produced in evidence yet.

11 **THE COMMISSIONER:** Nor do we know to what
12 extent they will be.

13 **MS. SACCOCCIO BRANNAN:** Correct. So while
14 it's an interesting section to look at, it doesn't give us
15 any assistance.

16 The other, I think, important issue or an
17 important piece of the legislation for you to look at so
18 that the public understands the powers the provincial
19 government has given you is, you, Mr. Commissioner, are a
20 Part 3 Commissioner; that's what the Terms of Reference
21 say.

22 **THE COMMISSIONER:** H'hm.

23 **MS. SACCOCCIO BRANNAN:** That is a very --
24 that Part 3 is not always handed out; those powers are not
25 always handed out to a Commissioner but they were in this

1 case. And this is the part of the legislation that permits
2 the issuing of a warrant. So, you can see in that
3 legislation you can appoint -- that part of the legislation
4 you can appoint investigators.

5 The investigators, in carrying out their
6 investigations, may run into a road block. They need to
7 get into premises or they need to get documents and you,
8 sir, then are permitted to go to the Divisional Court, make
9 application -- actually not the Divisional Court. The
10 Ontario Court General Division says you have now the
11 Superior Court of Justice to make application in order to
12 obtain that warrant. And then, when you exercise that
13 warrant, you can see in Section 17(3), and your
14 investigators remove those documents, they deliver them to
15 the Commission and you are to keep custody of it or them.

16 So, in summary, with respect to the *Public*
17 *Inquiries Act*, you, sir, as the Commissioner have the power
18 as the master of your own house, to establish your own
19 procedure, your own rules. You have the power of summons
20 for both documents and individuals. If those summons are
21 either breached or not responded to, you can ask the
22 Divisional Court to find those individuals -- that
23 individual in contempt. And you have the power of a Part 3
24 Commissioner in respect of the issue of obtaining search
25 warrants.

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

2 **MS. SACCOCCIO BRANNAN:** So that's the *Public*
3 *Inquiries Act*.

4 So as a result of that, your rules of
5 practice and procedure were promulgated and the whole issue
6 surrounding documents begins at Section 31. And you can
7 see here in Section 31:

8 "The Commission expects all relevant
9 documents to be produced to the
10 Commission by any party with standing."

11 So we've got the summons, we've got the rule
12 and we've delivered the documents.

13 But this particular section on documents
14 goes even further to address the documents that the
15 Commission then hands over to the parties or discloses to
16 the parties with standing and says, "We will do that but
17 you must sign an undertaking"; which brings me to the
18 undertakings.

19 And as you know, Mr. Commissioner, there
20 were two types of undertakings; the one signed by counsel
21 to the party with standing which is significantly longer
22 and requires more of counsel, and the one for parties if
23 the parties are going to be shown the documents.

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

25 **MS. SACCOCCIO BRANNAN:** And in respect of

1 the one for parties, I think the one with respect to
2 counsel is really not an issue here, we're talking about
3 the party ---

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

5 **MS. SACCOCCIO BRANNAN:** --- in particular in
6 this case Detective Constable Penny Fulford, and I might
7 add at this point with respect to Detective Constable
8 Fulford, as you know, the Ontario Provincial Police
9 represents the corporate -- Mr. Kozloff, myself, Ms. Lahaie
10 and Ms. Costom represent the corporation Ontario -- the
11 corporate body of the Ontario Provincial Police and the
12 commissioned officers.

13 It's important to note that Detective
14 Constable Fulford is not a commissioned officer. She is a
15 non-commissioned officer and is therefore at this Inquiry
16 represented by Mr. Carroll and Mr. Wallace. I just wanted
17 to make that clear.

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

19 **MS. SACCOCCIO BRANNAN:** Now, in that
20 undertaking, I draw your attention to paragraphs 4 and 5.
21 And number 4, it is pretty plain English here:

22 "I understand that the Commissioner may
23 impose sanctions for any breach of this
24 undertaking including loss or
25 limitation of standing, status or

1 funding."

2 And if you look back up at paragraph 1, the
3 reason why you have the person sign this, make that
4 statement, is because they undertake to you, the
5 Commission, that the documents and information that are
6 shown to them by their counsel will be used solely for the
7 purpose of this Inquiry and will not be disclosed to anyone
8 else or made public.

9 Now, Section 5 though talks again about once
10 those documents are introduced how the undertaking has no -
11 - it's not in effect once there are in the public domain.
12 The most important sentence here in number 5 which is also
13 found in the counsel one, is the second sentence:

14 "The Commissioner may, upon
15 application, release me from the
16 undertaking or part thereof in respect
17 to any document or information that's
18 been shown to me by my counsel in
19 connection with the Commission's
20 proceedings."

21 I would submit, Mr. Commissioner, that both
22 in respect of the undertaking and with respect to the
23 summons, this being the process you have put into place,
24 you therefore can make the decision as to whether or not
25 there is any legal impediment to the Ontario Provincial

1 Police doing what the Freedom Of Information legislation
2 says it must do. And if there isn't, we can then know that
3 in handing those documents over, we are not being
4 disrespectful or in breach of this process of the
5 undertaking and the summons.

6 And I'd like to just take you to some
7 sections in the Freedom of Information legislation. As I
8 had said before, the purpose of this Act, which is set out
9 in Section 1, an extremely important purpose is Section
10 1(a):

11 "To provide a right of access to
12 information under the control of
13 institutions in accordance with the
14 principles that: information should be
15 available to the public; that there is
16 necessary exemptions from the right of
17 access should be limited and very
18 specific."

19 In other words, in this legislation coming
20 forward, the whole public policy aspect behind it was the
21 transparency of government. And that any decisions that
22 are made by the government to release those documents
23 should be reviewable by an independent body.

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

25 **MS. SACCOCCIO BRANNAN:** And the most

1 important section for the Ministry of Community Safety and
2 Correctional Services, and therefore for the Ontario
3 Provincial Police, is Section 11. And that's the
4 obligation to disclose.

5 And that says despite any other provision in
6 this particular piece of legislation, the head, and in the
7 case of our ministry it's the minister that has been
8 delegated to our FOI Office as it can be, shall, as soon as
9 practicable, disclose any record to the public or persons
10 affected, if the head has reasonable and probable grounds
11 to believe that it's in the public interest to do so.

12 So, it's a definite, "shall". And the
13 unfortunate part of all of this is that the exemptions in
14 this piece of legislation, which begin at Section 12 and
15 right through to section 23, nowhere say, "Documents that
16 have been disclosed to a public inquiry". So there's no
17 specific exemption in this legislation.

18 In addition, a commission or public inquiry
19 is not under this legislation considered to be an
20 institution. And, "institution" is defined in Section 2(1)
21 as:

22 "The legislative assembly, a Ministry
23 of the Government of Ontario, and then
24 any agency, board, commission,
25 corporation or other body that has been

1 designated as an institution in the
2 regulations."

3 And I did go to those regulations in order
4 to see who the designated institutions are, and that does
5 not include public inquiry's or commissions of public
6 inquiry. It includes things such as universities, and
7 actually names the universities in fact, and the like.

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

9 **MS. SACCOCCIO BRANNAN:** I've talked to you
10 in general, or I've submitted to you -- or presented to you
11 in general, the procedure that we go through. I've talked
12 to you about the access procedure. I've talked to you
13 about the appeal procedure.

14 There's one other section I would like to
15 bring to your attention. I'm not certain that it's
16 necessarily helpful, but I must bring it to you because I -
17 - from an administrative law perspective, I see the
18 commission of Inquiry as a tribunal, and one that exercises
19 what we call in administrative law, Statutory Power of
20 Decision.

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

22 **MS. SACCOCCIO BRANNAN:** And, therefore, any
23 decisions made in your capacity, sitting as a Commissioner
24 of Inquiry, are reviewable by way of judicial review.

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

1 **MS. SACCOCCIO BRANNAN:** So I look at Section
2 64, and it says -- 64(1) says:

3 "This Act does not impose any
4 limitation on the information otherwise
5 available by law to a party to
6 litigation."

7 Well, this isn't helpful to us. Here we're
8 not saying that it's the litigations that has brought us to
9 you today. And then there's Section 64(2):

10 "This Act does not affect the power of
11 a court or tribunal to compel a witness
12 to testify, or compel the production of
13 a document."

14 So that section tells me that this piece of
15 legislation does not stand in your way, Mr. Commissioner,
16 for you to summons documents that happen to be government
17 documents.

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

19 **MS. SACCOCCIO BRANNAN:** This doesn't stand
20 in your way to compel somebody to testify; this particular
21 legislation. In other words, it doesn't freeze your
22 process.

23 And I would have to submit, then, that if
24 Freedom of Information legislation does not freeze the
25 process of a public inquiry, it should follow that a public

1 inquiry should not freeze the process under Freedom of
2 Information. That would be my submission.

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

4 **MS. SACCOCCIO BRANNAN:** And, as a result,
5 the two pieces of legislation should try to work together,
6 not withstanding that the legislature in its infinite
7 wisdom didn't give us a little more help in that regard.

8 So I come back to the issue that's before
9 you, and that is the question of whether or not there is an
10 impediment to the Ontario Provincial Police exercising, or
11 carrying out, its obligations under the Freedom of
12 Information legislation.

13 And I believe that I have provided for you
14 today, all that is necessary to assist you in determining
15 whether or not this issue is within your jurisdiction,
16 because it is a one of procedure ---

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

18 **MS. SACCOCCIO BRANNAN:** --- which you've
19 established today. The Ontario Provincial Police, of
20 course, will abide by any ruling you make, sir.

21 **THE COMMISSIONER:** Really?

22 **MS. SACCOCCIO BRANNAN:** And if there are any
23 questions ---

24 **(LAUGHTER/RIRES)**

25 Well, we will. That's why we're here. You

1 know, some people said, "Why are you here? Why are you
2 here?" I said, "There's a summons. There's an
3 undertaking. You have to respect the process".

4 **THE COMMISSIONER:** All right.

5 **MS. SACCOCCIO BRANNAN:** So that's why we're
6 here. So, I'm happy to answer any questions that you have
7 with respect to these issues, and I guess there's other
8 people who have something to say.

9 **THE COMMISSIONER:** Okay. Do you see any
10 ill-effect to the workings of the Inquiry if these
11 documents are given?

12 **MS. SACCOCCIO BRANNAN:** You know, I should
13 have addressed that. That is an excellent question. In
14 this particular situation, no. I do not see any ill
15 effects for the following reasons. Mr. Lee's client is a
16 party with standing.

17 **THE COMMISSIONER:** Yes.

18 **MS. SACCOCCIO BRANNAN:** Mr. Scott's client
19 is a party with standing. Both those counsel are here in
20 this Inquiry, albeit Mr. Talach is taking on the civil
21 litigations side of this matter for Ledroit Beckett. Each
22 of those parties already have the documents, in some form
23 redacted.

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

25 **MS. SACCOCCIO BRANNAN:** And, so there's no

1 ill effect, in my view, on the Commission for the Freedom
2 of Information ministry staff to receive those documents,
3 redact them in accordance with this piece of legislation,
4 and then deliver them to Mr. Lee, the very man who already
5 -- the very party who already has them in his super text,
6 to use only for the purpose of the litigation.

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

8 **MS. SACCOCCIO BRANNAN:** So, I don't see any
9 ill effect on the Inquiry in this case. And what I do see
10 is the opportunity for Mr. Lee's firm to -- while the
11 Inquiry is going on, not to be held up in moving Mr.
12 Lalonde's litigation forward with the diocese.

13 **THE COMMISSIONER:** Right. What about
14 inconsistent disclosure, in the sense that is there a
15 possibility that those two parties will get more than what
16 parties to this Inquiry have?

17 **MS. SACCOCCIO BRANNAN:** Actually, Mr.
18 Commissioner, I would bet 100 percent they'll get less.
19 This legislation is very strict ---

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

21 **MS. SACCOCCIO BRANNAN:** --- with respect to
22 the privacy interests, and with respect to the various
23 items that must be redacted. If I was a betting person,
24 I'd be betting on they would get less. I can't say that
25 for certain, but what I can say is that because you have

1 control over this process ---

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

3 **MS. SACCOCCIO BRANNAN:** --- Mr. Lee and Mr.
4 Scott are not relieved from their undertaking with respect
5 to the documents that are listed there that are in their
6 super text disclosure.

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

8 **MS. SACCOCCIO BRANNAN:** All they're going to
9 be able to use, for the purposes of their litigation are
10 the documents redacted by the Freedom of Information
11 office. So for that reason, I don't see any ill-effect on
12 this Commission of Inquiry, for those reasons.

13 **THE COMMISSIONER:** Thank you.

14 Who's next? Mr. Lee?

15 **MR. LEE:** Mr. Commissioner, as my
16 understanding is the Ministry of the Attorney General is
17 going to take a position on this and has some points to
18 make, I think it proper for him to go first.

19 **THE COMMISSIONER:** Okay.

20 **MR. LEE:** Before me ---

21 **THE COMMISSIONER:** What?

22 **MR. LEE:** --- please, thank you.

23 **THE COMMISSIONER:** Thank you.

24 Good morning, sir.

25 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DARRELL KLOEZE:

1 **MR. KLOEZE:** Good morning, Mr. Commissioner.

2 We are taking a position on this and I can
3 say that our position is identical to that of the OPP ---

4 **THE COMMISSIONER:** You can or cannot?

5 **MR. KLOEZE:** We are taking a position.

6 **THE COMMISSIONER:** Yes.

7 **MR. KLOEZE:** And I will say that our
8 position is identical to that of the OPP.

9 **THE COMMISSIONER:** Right.

10 **MR. KLOEZE:** I just want to make some
11 further comments about the issues raised by Ms. Brannan.

12 Ms. Brannan is making a request for a
13 direction from the Commissioner on behalf of the OPP and I
14 think that's perfectly appropriate for her to do so ---

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

16 **MR. KLOEZE:** --- in light in the undertaking
17 in the summons.

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

19 **MR. KLOEZE:** The issue that she has stated
20 is whether those documents, the summons and the
21 undertakings that the Commissioner has issued and the
22 undertakings that are signed by counsel and members of the
23 OPP, whether they present an impediment to the OPP
24 delivering the appropriate documents in response to an FOI
25 request.

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

2 **MR. KLOEZE:** And our submission is that the
3 summons -- neither the summons nor the undertakings present
4 any impediment to the OPP requiring or complying with
5 appropriate legislation.

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

7 **MR. KLOEZE:** The FOI Act has, as Ms. Brannan
8 has set out very fully, has a process by which documents --
9 the public has a right to access documents and there is
10 nothing in that Act that excludes this Commission, or any
11 documents that are in the possession of this Commission,
12 from an appropriate request, under the FOI legislation.

13 I want to make just two clarifications to
14 the submissions of Ms. Brannan and, firstly, is which
15 documents are subject to FOI legislation? And I think we
16 can parse out the documents that may now be, I guess, in
17 the super text database Ms. Brannan has mentioned at one
18 point.

19 Firstly, documents that were previously in
20 the possession of the OPP -- and I'm going to call them
21 original OPP documents ---

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

23 **MR. KLOEZE:** --- and those were documents
24 that were produced to the Commission of Inquiry under a
25 summons -- those original OPP documents are disclosable

1 under the FOI legislation.

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

3 **MR. KLOEZE:** And I don't think that the
4 summons or the undertaking has any effect ---

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

6 **MR. KLOEZE:** --- on the disclosability of
7 those documents or the obligation of the OPP to disclose
8 those documents; these original OPP document that were
9 previously in their possession before this Inquiry started
10 and before those documents were summonsed.

11 However, documents that this Commission
12 provided to the OPP from other Parties ---

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

14 **MR. KLOEZE:** --- documents that were part of
15 the disclosure and are now part of the -- I guess, in the
16 super text database that the OPP has and all other parties
17 have. Those documents are not in the control of the OPP
18 and are not disclosable under FOI legislation. So I don't
19 think that other Parties to this Inquiry need to be
20 concerned that ---

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

22 **MR. KLOEZE:** --- you know, there can be an
23 FOI request of any of the Parties to this Inquiry, and that
24 because of an FOI request, all of a sudden all of the
25 documents in the super text database are disclosable. The

1 request for information under FIPPA, or under the FOI
2 legislation, is only for those documents that are in the
3 custody and control of an institution, and we would make
4 the submission that that only applies to those original OPP
5 documents ---

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

7 **MR. KLOEZE:** --- that were already in their
8 custody and control.

9 And so, with that important distinction, I
10 want to, in the rest of my submissions, just concur with
11 what Ms. Brannan has said.

12 She has made the submission that the FOI
13 legislation and the *Public Inquiries Act* butt up against
14 each other and do not merge. And I would say that it's not
15 necessary for them to merge in this case, there are
16 separate processes. Any Parties -- any person and the
17 public of Ontario has the right to make a Freedom of
18 Information request and there is nothing that prevents them
19 from doing so. The OPP documents -- the original OPP
20 documents that were already in their control and possession
21 prior to the commencement of this Inquiry, are appropriate
22 documents that can be requested under FOI and the OPP under
23 that legislation, the FOI legislation.

24 The OPP has an obligation to comply with the
25 legislation to produce the documents and let it take its

1 ordinary course. The Freedom of Information coordinator of
2 the Ministry of Community Safety and Correctional Services
3 will look at the documents, will make whatever redactions
4 are appropriate under the FOI legislation and produce them
5 to the Parties -- to the person who is requesting them.

6 And as Ms. Brannan has said, it's very
7 likely, it's extremely likely, that the person requesting
8 those documents will receive documents that are heavily
9 redacted. All unnecessary third -- and confidential third
10 party information ---

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

12 **MR. KLOEZE:** --- will be redacted from those
13 documents and the person receiving them will probably --
14 will, in all likelihood, receive far less than ---

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

16 **MR. KLOEZE:** --- than what these Parties
17 have at this Commission.

18 With respect to the *Public Inquiries Act*,
19 and the summons that was issued under that Act in
20 particular, I will say that the summons was issued under
21 Section 7 of the *Public Inquiries Act* not under Part 3 ---

22 **THE COMMISSIONER:** M'hm

23 **MR. KLOEZE:** --- and so the Section 17(3) of
24 the *Public Inquiries Act* that says that documents are in
25 the custody of the Commission only applies to those

1 documents that were received pursuant to a Superior Court
2 search warrant. However, this summons that this Inquiry --
3 that you issued under the powers of the *Public Inquiries*
4 Act was issued under Section 7 of that Act and so the -- I
5 would submit that Section 17(3) does not apply to this and
6 that the documents that the OPP has provided to you -- the
7 original OPP documents that they provided to you, remain in
8 the custody of the OPP for the purposes of FOI legislation.

9 And I would also say that the undertaking
10 that Parties and counsel have signed to the Commission, by
11 its terms, applies to those documents that the Commission
12 has provided to the Parties as part of its disclosure
13 obligation, and not to the original OPP documents that were
14 already in its control. And I would go to Section 12 -- or
15 Paragraph 12 of the undertaking, at the very end of it,
16 which provides that:

17 "Documents or information disclosed
18 to the Parties and their counsel, at
19 the end of the Inquiry will be returned
20 to the Commission and destroyed in
21 accordance with the procedures adopted
22 by this Commission."

23 Obviously, that does not apply to those
24 original OPP documents that were already in its control and
25 possession prior to the Inquiry.

1 The only other comment I would make is, I
2 think as -- this issue arose because of a legitimate
3 concern on the part of the OPP as to what it can do with
4 the original documents that it previously had and that it
5 disclosed to the Commission.

6 And the OPP is seeking your directions as to
7 whether or not you believe the undertaking applies to those
8 original OPP documents, or whether or not they can comply
9 with their FOI obligations without need of a direction or
10 need of an order from you relieving them from their
11 undertaking. And we would submit that there is no need for
12 an order from you relieving the OPP from it's undertaking
13 in respect of the original OPP documents because those
14 documents are not necessarily subject to that undertaking -
15 --

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

17 **MR. KLOEZE:** --- and that the FOI
18 legislation requires the OPP, in any event, to produce
19 those documents.

20 The other section of the FOI I do want to
21 bring to your attention is Section 67 at the very end of
22 the Act. And that says that this Act, the FOI Act:

23 "Prevails over the confidentiality
24 provision in any other act unless
25 subsection (2) or the other act

1 specifically provides otherwise."

2 And in subsection (2) there's a list of acts
3 that contain confidentiality provisions that override the
4 FOI Act ---

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

6 **MR. KLOEZE:** --- and there is nothing in the
7 *Public Inquiries Act* that's mentioned there. So we would
8 submit that any powers you have under the *Public Inquiries*
9 *Act* do not override the provisions of FIPPA.

10 **THE COMMISSIONER:** So, you know, leaving
11 aside this case, let's assume for a moment that the OPP did
12 have a document that by itself was innocuous, but combined
13 with something in this Inquiry would lead a reasonable
14 person to think that the life and liberty of someone,
15 putting it to the extreme, would be in danger by disclosing
16 it to the public at this time before the Inquiry is
17 completed. What you are saying is I would have no
18 jurisdiction to do anything.

19 **MR. KLOEZE:** I am trying to imagine a
20 situation where that might arise. So the OPP -- there is a
21 document in the possession of the OPP that's -- disclosure
22 is requested under FIPPA.

23 **THE COMMISSIONER:** But for this Inquiry,
24 because of the special knowledge and the depth that we have
25 gone to, that it is going to expose that document plus some

1 of the knowledge here, somebody's physical well-being.

2 **MR. KLOEZE:** It's hard to imagine where such
3 a situation might arise because you're considering
4 information from this Inquiry that's already been made
5 public.

6 **THE COMMISSIONER:** Let's assume it's in
7 camera.

8 **MR. KLOEZE:** If it's in camera, then in our
9 submission, the person making the request for the OPP
10 documents is probably not aware of that information. If it
11 comes to your attention that a situation might arise where
12 disclosure of a document could be in the detriment of the
13 public interest ---

14 **THE COMMISSIONER:** Right, okay.

15 **MR. KLOEZE:** --- I think you still have some
16 control in terms of public disclosure of documents. And
17 you've issued a publication ban ---

18 **THE COMMISSIONER:** Yes.

19 **MR. KLOEZE:** --- on a number of documents
20 that are in your control under the Parties' disclosure
21 obligations. I think if that comes to your attention, it
22 doesn't remove your authority to make a publication ban on
23 the disclosure of a document. That doesn't stop
24 necessarily that document from going to the person or to
25 the requestor ---

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

2 **MR. KLOEZE:** --- if none of the FIPPA
3 exemptions apply.

4 **THE COMMISSIONER:** Right.

5 **MR. KLOEZE:** But it would stop the requestor
6 from making any further public disclosure of that document.
7 There is also a section in the FOI legislation ---

8 **THE COMMISSIONER:** So, okay, well, we will
9 let you finish this one off and then I will ask you another
10 question.

11 **MR. KLOEZE:** Pardon?

12 **THE COMMISSIONER:** Go ahead.

13 **MR. KLOEZE:** It's Section 20 of the FOI
14 legislation that gives the head of an institution, upon a
15 request, to refuse to disclose a record where that
16 disclosure could be expected to seriously threaten the
17 safety or health of an individual.

18 **THE COMMISSIONER:** Okay, but that's in the
19 OPP's. So you're saying I would have --

20 **MR. KLOEZE:** That's in the OPP's hands or in
21 this case the ministry's hands ---

22 **THE COMMISSIONER:** Right.

23 **MR. KLOEZE:** --- to make that exemption.

24 **THE COMMISSIONER:** So what you are saying
25 then is that, for any further requests under this

1 legislation, no one should have to come before me for
2 directions.

3 **MR. KLOEZE:** That would be my submission.

4 **THE COMMISSIONER:** Okay.

5 **MR. KLOEZE:** That the FIPPA legislation does
6 not require any notice to other Parties if requests are
7 made under FOI.

8 **THE COMMISSIONER:** Right.

9 **MR. KLOEZE:** Certainly, the OPP would be
10 aware of the documents that are going to be disclosed and
11 when they are submitting the documents to the FOI
12 coordinator at the Ministry, certainly has the ability to
13 say to the FOI coordinator this particular document should
14 not be disclosed because of Section 20 or any other
15 applicable exemption.

16 **THE COMMISSIONER:** Okay. So let's assume
17 for a minute that the only people that really know about
18 this so far is Commission counsel. That they know that
19 this document with these facts may well lead to put
20 somebody in danger pursuant to Section 20, and nobody else
21 knows. Nobody came here for directions, and so the Inquiry
22 never knew about what was going on. The documents get
23 released and the damage is done.

24 Do you not think that there is some residual
25 reason for coming forward and asking us about that?

1 **MR. KLOEZE:** Under the terms of the
2 legislation, no. I think if we add another step into the
3 whole FOI request, that -- I mean, government institutions
4 are routinely inundated with requests for information.

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

6 **MR. KLOEZE:** I think that requiring a
7 request or requiring any of the institutions to come to
8 this Inquiry and ask for your directions each time an FOI
9 request happens might unduly encumber the workings of this
10 Inquiry as well.

11 **THE COMMISSIONER:** I'm not looking for more
12 work, but what I'm saying is that the inquiries are not an
13 everyday occurrence to start off with. Some may be more
14 delicate, involve more complicated issues, which may affect
15 people's mental health, their physical health, that kind of
16 thing. And what you're saying is no, just pass Go and go
17 directly to the Commissioner.

18 **MR. KLOEZE:** Normally under FOI legislation,
19 what the requestor gets are documents that pertain to the
20 requestor.

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

22 **MR. KLOEZE:** Any third-party information is
23 redacted out of those documents. So any information that
24 relates to people who are not the requestors, including
25 mental health records or any kind of health records of

1 third parties, those are all redacted from the documents.

2 **THE COMMISSIONER:** Yes, I'm not talking
3 necessarily about mental health records. I am thinking
4 about situations where the mental health of someone will be
5 affected when A and B come together in a public way.

6 **MR. KLOEZE:** As I said, under FOI
7 legislation, there are a number of redactions that are made
8 to the documents ---

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

10 **MR. KLOEZE:** --- that relate to third party
11 information. Normally, what the requestor gets, as I said,
12 are documents that pertain only to that requestor,
13 documents that -- I mean, the FOI legislation allows people
14 to get access to documents and government institutions that
15 relate to them.

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

17 **MR. KLOEZE:** I am trying to think of a
18 situation that would be out of the knowledge of the OPP or
19 any other institution where harm might come to an
20 individual and ---

21 **THE COMMISSIONER:** In a Crown brief or in an
22 OPP document, they uncover that somebody was about to kill
23 this guy or had in the past conspired to or maybe was
24 suspected of conspiring to deal with this individual.

25 **MR. KLOEZE:** I think the OPP and certainly

1 the FOI office of the ministry are sensitive to such
2 issues. I think if an issue arises where there's
3 uncertainty of the document, certainly the OPP is sensitive
4 to that.

5 **THE COMMISSIONER:** Right, but what you are
6 doing though is you are saying that we'll let other people
7 decide, other than this Inquiry, about certain issues which
8 might be in the exclusive domain of the Inquiry. And
9 again, this isn't to cover up or anything. This is to
10 protect people. And what you are saying is that I don't
11 have that jurisdiction at all.

12 **MR. KLOEZE:** I am saying you do not have
13 that jurisdiction at all.

14 **THE COMMISSIONER:** That's right. Thank you.

15 **MR. KLOEZE:** Thank you.

16 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PETER

17 **MANDERVILLE:**

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

19 **MR. MANDERVILLE:** Good morning, Mr.

20 Commissioner.

21 If I could preface what I'm about to submit
22 by expanding briefly on your discussion with Mr. Kloeze.

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

24 **MR. MANDERVILLE:** As you are aware, as a
25 last resort, if the hypothetical scenario you presented to

1 Mr. Kloeze were to play out, as a last resort Commission
2 counsel on your behalf could, pursuant to Section 6 of the
3 *Inquiries Act*, move with a stated case before Superior
4 Court and engage their inherent jurisdiction to deal with
5 such things, if it came to that.

6 **THE COMMISSIONER:** Yes, but we wouldn't
7 know. Dealing with Mr. Kloeze, he would say no one has to
8 come before this Inquiry anymore. So when there is a
9 Freedom of Information Act, they just act and the way you
10 go.

11 **MR. MANDERVILLE:** I think what I would like
12 you to do today, and I think I have the support of at least
13 some of the people in the room, which would be a rarity,
14 are three things, directions-wise.

15 The first -- and we are using the OPP in
16 this case because they are the recipient of the request,
17 but it does apply to other public institution Parties with
18 standing here -- we would need your direction as to whether
19 or not relevant documents that the OPP possessed before
20 this Inquiry was called. In some instances, those would be
21 documents of third parties because we know that at least a
22 couple of the documents in the OPP's possession before this
23 Inquiry was called concerning this requestor are documents
24 from my client.

25 The issue is do those documents change their

1 character somehow once the Inquiry has been called, because
2 they're relevant documents, and fall entirely under the
3 auspices of the Commission. And I join with Mr. Kloeze in
4 saying those types of documents that the OPP had in their
5 care and control before this Inquiry was called, do not
6 fall entirely under the auspices of the Commission, and are
7 properly subject to the FOI legislation and disclosure, and
8 the exemptions and redactions that flow from it.

9 Secondly, -- the second issue that all of us
10 would like your direction on, is do the documents that, in
11 this case the OPP, acquired pursuant to the Commission's
12 disclosure process become subject to the FOI process and
13 thereby producible, contrary to the undertakings.

14 And again, I would join Mr. Kloeze's
15 submission in saying those disclosure documents, documents
16 from Mr. Lee's client, from Mr. Sherriff-Scott's client,
17 from my client, that the OPP acquired in the disclosure
18 process, are not documents in the care and control of the
19 OPP. And, therefore, we would seek your direction that
20 those documents are exempt from the FOI process, because
21 they are documents that are in the care and custody of the
22 Commission.

23 And thirdly, the issue as I see it before
24 you is, is it appropriate for this Commission to be waiving
25 compliance with the undertakings or permitting parties to

1 get an exemption from compliance with the undertaking,
2 merely to advance the process of an unrelated civil action?

3 It's pure coincidence that the parties to
4 the civil action are both parties with standing here. And
5 so, I would submit, that you should not be exercising your
6 discretion to allow a waiver of the undertaking, purely to
7 advance an extraneous or unrelated lawsuit.

8 And I think, if I might venture a guess,
9 that the ability to waive compliance with the undertaking
10 was geared towards a circumstance where, for example,
11 Citizen's for Community Renewal wanted to retain an expert
12 and have that expert look at some of the documents. The
13 expert is not the solicitor and the expert is not the
14 client, but you'd want that person to have an opportunity
15 to look at some things. And that might be a circumstance
16 where, to use my hypothetical, Citizens for Community
17 Renewal would come before you and request that sort of a
18 waiver. Not to advance the goals of an unrelated civil
19 action.

20 And those are my submissions before you.

21 **THE COMMISSIONER:** Thank you.

22 **(SHORT PAUSE/CAUSE PAUSE)**

23 **MR. MANDERVILLE:** Thank you, Mr.

24 Commissioner.

25 **THE COMMISSIONER:** Thank you.

1 Who would like to go now? Mr. Carroll?

2 (SHORT PAUSE/COURTE PAUSE)

3 --- SUBMISSION BY/REPRÉSENTATIONS PAR MR. WILLIAM CARROLL:

4 MR. CARROLL: Good morning, sir.

5 THE COMMISSIONER: Good morning, sir.

6 MR. CARROLL: In totality, I adopt the
7 submissions of Ms. Brannan and would add only a couple of
8 points, sir.

9 In your exchange and discussion with counsel
10 for the Attorney General, you talked about a
11 residual power that you had. I would perhaps
12 phrase it differently, sir, and say that you're
13 the primary power, and that the first step is a
14 vetting by you before it gets to other bodies to
15 make a determination of whether or not the
16 information should be released.

17 I would also suggest, or add, that in
18 addition to Detective Constable Penny Fulford's name, add
19 to that Detective Sergeant Sherri Belair.

20 THE COMMISSIONER: I'm sorry. Sherri?

21 MR. CARROLL: Detective Sergeant Sherri
22 Belair, who is also a signed-on party.

23 And the only other comment I might make is
24 that -- and it relates to a comment counsel for the
25 Cornwall Police just made, and that is that there should

1 not be an exemption or a release of the undertaking merely
2 to -- I think I have it correct -- merely to advance the
3 process of an unrelated civil action.

4 It seems to me, sir, this Inquiry was set up
5 for a number of reasons. One of which is to assist victims
6 in the healing process, and should not find itself as an
7 impediment to those victims in their efforts to seek civil
8 redress. And I suggest to you that adopting the position
9 as just advanced to you, may well do that.

10 Those are the only comments I have. Thank
11 you.

12 **THE COMMISSIONER:** Thank you.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **---FURTHER SUBMISSION BY/REPRÉSENTATIONS SUPPLÉMENTAIRES**
15 **PAR MR. DALLAS LEE:**

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

17 **THE COMMISSIONER:** Mr. Lee.

18 **MR. LEE:** I'm going to use the breakdown
19 proposed by Mr. Manderville in terms of the three issues
20 that he set out, the first one being what Mr. Kloeze called
21 the, "original OPP documents".

22 I share the position advanced by Mr. Kloeze
23 and Mr. Manderville on that, that that subset of documents
24 is subject to the FOI process, that they should be produced
25 in the normal course. And that the undertaking and the

1 summons don't put some kind of wall up between the OPP and
2 the MCSCS FOI Office, and that they can't -- they're now
3 bound and they have no control over their own documents
4 that they had all along. My position is that they can
5 comply with the FOI request as they would have without this
6 Inquiry in place and that we can move along.

7 I'm in complete agreement with Mr.
8 Manderville in terms of -- my comments a moment ago do not
9 apply to documents that were produced to the OPP by the
10 Inquiry. The wording of the undertakings make it extremely
11 clear, and common sense dictates that the OPP should not be
12 in a position to disclose, pursuant to and FOI request, all
13 documents received from any other party at this Inquiry.
14 I'm not sure that is where the fight's going to be or where
15 we're going to have any problems with this.

16 The last point that Mr. Manderville raised
17 was in relation to you waiving compliance with
18 undertakings. There are a couple of issues there. Whether
19 or not -- one of ideas we -- there's been a lot of
20 discussion on this, let me say, since the last time that
21 parties have come together and largely at the doing of Ms.
22 Brannan who has, I imagine, put together quite a phone bill
23 this month, coordinating everybody, and trying to come to
24 an agreement. One of the things we considered was Mr.
25 Sherriff-Scott and I coming here and asking for our clients

1 to be relieved from the undertaking. That way, we could
2 just take the documents and we could use them in
3 litigation. For various reasons, that's not going to work,
4 and that's fine.

5 However, the other problem is if you
6 disagree with the submissions that have been made, and you
7 find that the undertaking and the summons do prevent the
8 OPP from producing the documents that they've put together
9 to the FOI office, I think we need to consider whether or
10 not it would be appropriate for you to waive the OPP's
11 compliance with the undertaking in that situation.

12 So you may well find, to be clear, that the
13 OPP -- the summons and the undertaking operating together
14 would prevent the OPP from disclosing the documents that
15 they have identified to the Ministry's FOI office. In
16 which case, the next question obviously is, okay, so is
17 that the end of it and they can't produce them, or will you
18 waive compliance with the undertaking and allow them to
19 produce them for this purpose?

20 And I say -- obviously my first point is
21 it's not a decision you have to make because that wall
22 doesn't exist, but if it does I would urge you to relieve
23 them from the undertaking.

24 The important point I want to make is that
25 Ms. Brannan in her submissions, answering a question you

1 had asked her at the end about, in this case -- in this
2 particular example we're dealing with now, does production
3 of these documents harm the Inquiry in some way? Does it
4 impede its work? And she replied, in part, that in this
5 particular case it doesn't, because I already have the
6 documents and Mr. Sherriff-Scott already has the documents
7 and we're Parties here, and, you know, it's a different
8 situation. As Mr. Manderville said, that's not always
9 going to be the case.

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

11 **MR. LEE:** It will be the case, for example,
12 where my firm represents a plaintiff and the defendants
13 aren't at all involved in this Inquiry. And there are
14 going to be other requests and I think the same principles
15 apply. The fact that Mr. Sherriff-Scott's client is the
16 defendant here doesn't change the fact that these summons
17 and the undertakings shouldn't affect the relationship
18 between the OPP and the Ministry's FOI office. Those
19 documents, and those original documents, apply to the FOI
20 process. They should be produced.

21 And the point that needs to be made, and
22 frankly I'm making it for the benefit of my clients who may
23 be listening and for the benefit of the public, the fact
24 that I as counsel for the victims' group have these
25 documents and the fact that Mr. Sherriff-Scott as counsel

1 for the Diocese has these documents, does not mean anything
2 to us in the conduct of the civil litigation.

3 We have the documents, I've seen the
4 documents, and they're entirely useless to me as counsel in
5 civil litigation. I can't use them and Mr. Sherriff-Scott
6 can't use them and that's why they were here. And I just
7 think that point need to be made, just in terms of
8 understanding, because it's a question my client asked me,
9 "Well, if you already have them, why don't you just use
10 them." And the whole point here is that I can't ---

11 **THE COMMISSIONER:** What do you mean that
12 they're useless to you?

13 **MR. LEE:** I can't pull anything off the
14 disclosure hard drive and use it in the course of civil
15 litigation.

16 **THE COMMISSIONER:** No, no, no.

17 **MR. LEE:** Mr. Sherriff Scott couldn't have
18 gone to the discovery with his laptop in the civil -- and
19 the disclosure hard drive and asked my client questions
20 about it. We have to separate that in our minds and we
21 can't do anything about it. That's why the FOI request is
22 made, so we can get some documents that we can actually use
23 in the civil litigation.

24 And everybody here obviously understands
25 that, but I wanted to make the point clear because it's one

1 my client had, and I think other people may be wondering
2 that as well.

3 Subject to any questions, I have nothing
4 else. Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Sherriff-Scott?

7 **MR. SHERRIFF-SCOTT:** Just a second.

8 Good morning, sir.

9 **THE COMMISSIONER:** Good morning.

10 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DAVID SHERRIFF-
11 SCOTT:

12 **MR. SHERRIFF-SCOTT:** I would, sir, invite --
13 resort to what I'd refer Justice Laskin used to call, "The
14 wisdom of judicial minimalism" ---

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

16 **MR. SHERRIFF-SCOTT:** --- in answering only
17 the narrow issue that's before you. And let's put the issue
18 in context.

19 There was a request in the ordinary course
20 of litigation for documents acknowledged to be relevant
21 where the requestor representing the person to whom the
22 documents relate, consents. So, putting that in context,
23 but for the Inquiry all the documents originally in the
24 possession of the OPP, which is all we're talking about Mr.
25 Lee and I, would have been disclosed under FOI in redacted

1 form because, one, they were in possession of the OPP
2 before the Inquiry was called.

3 Two, they relate to the person, the
4 requestor, and are subject to disclosure by the obligatory
5 terms of the FOI legislation.

6 And I would say, three, they can be made
7 available not only through the terms and instruments of the
8 Act by way of government doing its job and following the
9 restrictions, but also because the Superior Court of
10 Justice retains jurisdiction to order them to be disclosed
11 in unredacted form under the legislation, in order to
12 facilitate ongoing litigation between litigants,
13 particularly where one of them is the person about whom the
14 documents relate.

15 So this is sort of standard fare ---

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

17 **MR. SHERRIFF-SCOTT:** --- in many cases, and
18 the only difference here is the existence of the
19 Commission. And so, put another way, does the incidental
20 possession of the documents by the Commission transmute
21 them into something where they then take on a character
22 which takes them outside of the Freedom of Information Act?
23 And I say, "no", not the ones originally in the possession
24 of the OPP. I take no issue with Mr. Manderville's point
25 about ---

1 **THE COMMISSIONER:** No.

2 **MR. SHERRIFF-SCOTT:** --- what happens after
3 that, of course.

4 So I would submit the -- there is no
5 question about their availability, and it is not restricted
6 by the existence of the Inquiry because they are going to
7 be released in highly redacted forms and that will leave
8 the opportunity to go to a Superior Court judge and justify
9 further disclosure of the redactions and that decision will
10 be taken.

11 And I would just simply say there is one
12 point that my friend made, from the Attorney General's
13 office, about the power of the summons here being a Part 1
14 as opposed to Part 3 summons, but even if it were a Part 3
15 summons under Section 17(4) of your Act ---

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

17 **MR. SHERRIFF-SCOTT:** --- the *Public*
18 *Inquiries Act*, you'll see that it permits co-extensive
19 possession of the documents by the Commission and the
20 original party from whom disclosure is ---

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

22 **MR. SHERRIFF-SCOTT:** --- obtained by
23 summons. Subsection (4) of Section 17, where there's the
24 obligatory warrant, allows the person disclosing them to
25 have them back in a reasonable time if they ask for copies.

1 But in this case, there's co-extensive possession.

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

3 **MR. SHERRIFF-SCOTT:** And so the operation of
4 your legislation doesn't prevent co-extensive possession
5 and Section 16, as my friend pointed out, trumps in terms
6 of pre-eminence, from a statutory point of view, of a
7 restriction being imposed. So, therefore, I would say just
8 the custodial reference earlier does not militate against
9 co-extensive custody, which is in this case.

10 So, I would say that in order to -- if you
11 were concerned and you -- and what you said -- "What are
12 the ill effects?" Well, I suggest there aren't any for it
13 because the documents that do become produced, first of
14 all, go through the rigors of the process, but secondly are
15 disclosed pursuant to the civil procedure implied
16 undertakings ---

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

18 **MR. SHERRIFF-SCOTT:** -- which enjoined my
19 friend and I from the use thereof except for the purposes
20 of litigation. And if they are to become public through
21 the vehicle of a public trial ---

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

23 **MR. SHERRIFF-SCOTT:** --- then, in the kind
24 of case about which we're talking, the judge retains
25 jurisdiction to publication ban the matter because of the

1 sensitivity of the victim. Moreover, they have to pass the
2 threshold of relevance to become part of the public record
3 in a trial in any event and so I can't just throw them up.

4 The discovery stage you know from, I'm sure,
5 your own practice and judging is a semblance of relevancy,
6 so it catches a little more than what goes into a trial
7 court. And that which is left over remains tied up by the
8 undertaking and can never be used. So I'd say there are no
9 ill effects and subject to any questions, those are my
10 comments.

11 I would just make one last point that if --
12 no, those are my comments, thank you.

13 **THE COMMISSIONER:** Thank you. Anyone else?
14 Mr. Chisholm?

15 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PETER CHISHOLM:

16 **MR. CHISHOLM:** Good morning, sir.

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

18 **MR. CHISHOLM:** With respect to Ms. Brannan's
19 list of documents that she produced, Exhibit 6A1, I would
20 just note there is only one CAS document that is on there.
21 It is on the second last page and it would be the third
22 item, "Investigative notes of Richard Abell from November
23 13, 1997".

24 In hearing Ms. Brannan's submission today, I
25 understand that that document was in the possession of the

1 OPP prior to the calling of this Commission, and I surmise
2 that it's a result of the interaction between the CAS and
3 the OPP.

4 With respect to the nature of that document,
5 I'd take comfort in the processes described by Ms. Brannan
6 at the FOI office in terms of how that document would be
7 redacted.

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

9 **MR. CHISHOLM:** There would be third-party.
10 There is third-party information on that document that I
11 would expect to be redacted prior to it being released to
12 the litigants in the civil action.

13 With respect to the issues raised by Mr.
14 Manderville, sir, the -- I take no issue with the -- his
15 suggestion dealing with the first two issues, but with
16 respect to the third issue, he asked if it was appropriate
17 for parties to be given a waiver merely because -- merely
18 to advance the process of a civil action. I believe Mr.
19 Justice Rosenberg in the *Wagg Decision* -- and Madame Clerk,
20 you may have that. Do you have that on the screen? If you
21 could pull it up, and it would be page 16 of your copy I
22 believe, and paragraph 53, the very bottom of the page, and
23 it would be the last sentence on the bottom of that page:

24 "Society has an interest in seeing
25 that justice is done in civil cases

1 as well as in criminal cases, and
2 generally speaking that will occur when
3 the parties have the opportunity to put
4 all relevant evidence before the
5 court."

6 I would simply draw your attention to that
7 passage with Mr. Justice Rosenberg, sir.

8 Subject to your questions or comments, those
9 would be my submissions.

10 **THE COMMISSIONER:** Well, I thought the
11 disclosure they were looking for was on the Sexual Abuse
12 Registry.

13 (LAUGHTER/RIRES)

14 And I know we're not going to go there.

15 **MR. CHISHOLM:** No, sir.

16 **THE COMMISSIONER:** Thank you.

17 **MR. CHISHOLM:** Thank you sir, those are my
18 submissions.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Engelmann, do you have any comments?

21 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PETER ENGELMANN:**

22 **MR. ENGELMANN:** I just had a question but I
23 think I know the answer. When Mr. Manderville was talking
24 about original documents, I'm sure he meant not just OPP

1 documents but documents the OPP had in possession from his
2 client and from the CAS, before the calling of the Inquiry.

3 **MR. MANDERVILLE:** (Off mic) ...sir, I think I
4 made reference to that.

5 **MR. ENGELMANN:** Yes, I just wanted to -- I
6 think I just missed something he said but, no, I don't have
7 any comments, sir.

8 **THE COMMISSIONER:** All right, so -- Ms.
9 Brannan, yes?

10 ---**FURTHER SUBMISSIONS BY/REPRÉSENTATIONS SUPPLÉMENTAIRES**
11 **PAR MS. GINA SACCOCCIO BRANNAN :**

12 **MS. SACCOCCIO BRANNAN:** I just wanted to --
13 I sense, Mr. Commissioner, that you're -- when you were
14 asking Mr. Kloeze the questions about, "What if ---

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

16 **MS. SACCOCCIO BRANNAN:** --- "... the
17 document".

18 And I was, as I was sitting here, thinking
19 is there a way to bring you and the Commission some
20 comfort? And possibly one way is, is because you are in
21 control of your process and can make rules, you may
22 consider the possibility of a protocol where, when we are
23 asked to make an FOI request, if your decision is there is
24 no impediment, that we merely put Commission counsel on
25 notice of what those documents -- and so are either they

1 are going to be handed over, because it may be that
2 Commission counsel can say to us, "Well, gee, when you're
3 writing to the FOI, you might draw their attention to this
4 particular document and the reasons why this should not be
5 released and be redacted".

6 Just a suggestion.

7 **THE COMMISSIONER:** Oh, yes. Thank you.

8 Mr. Kloeze, would that gravely obstruct the
9 proper administration and flow of documents to the public?

10 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DARRELL KLOEZE:

11 **MR. KLOEZE:** I believe it would not and as
12 Ms. Brennan said, that's entirely in your authority to make
13 any rules relevant to the conduct of this Inquiry.

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

15 **MR. KLOEZE:** I just think that is
16 appropriate that you have the jurisdiction to make such a
17 rule; setting out a protocol whereby if documents are
18 requested, that have been provided this Commission, that
19 notice be given to Commission counsel.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Kozloff wanted to know what kind of
22 coffee you wanted ---

23 (LAUGHTER/RIRES)

24 ---FURTHER SUBMISSIONS BY/REPRÉSENTATIONS SUPPLÉMENTAIRES
25 PAR MS. GINA SACCOCCIO BRANNAN :

1 **MS. SACCOCCIO BRANNAN:** Actually, no, he is
2 excellent co-counsel and always brings me back to sort of
3 the basics, but what he was addressing was the one problem
4 that we do have with the protocol is -- there is an
5 impediment to us revealing the name of the requestor and
6 the name of the affected person.

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

8 **MS. SACCOCCIO BRENNAN:** I don't think that's
9 such an impediment because you can obtain a waiver of that
10 from the individual who is making the request that we are
11 able to go to Commission counsel, and I don't think that is
12 a huge deal. I think we can make those arrangements with
13 the requestor, if you think a protocol like that is
14 important to consider.

15 **THE COMMISSIONER:** I am just worried because
16 Parliament has deemed fit to cause an Inquiry to be held,
17 it means that we will be delving into matters in a certain
18 depth and a width that has not been seen by all of the
19 other Parties, in fact all of the Province of Ontario. And
20 so, I'm just looking at a safeguard, that's all.

21 **MS. SACCOCCIO BRENNAN:** And rightfully so,
22 and I think you have the jurisdiction to look at that
23 safeguard and to establish rules to make sure that those
24 safeguards are in place.

25 **THE COMMISSIONER:** Right.

1 **MS. SACCOCCIO BRENNAN:** Thank you.

2 **THE COMMISSIONER:** Thank you.

3 So, Mr. Engelmann, I'll ponder this and
4 write Reasons at a later date, so what else can we do
5 today?

6 **MR. ENGELMANN:** That's what we had on today.
7 We weren't sure of the length of time this would take.

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

9 **MR. ENGELMANN:** So we're ready to go
10 tomorrow morning at 9:30 with Mr. Bissonnette.

11 **THE COMMISSIONER:** All right.

12 So Mr. Kozloff, I am sure that you'll be
13 paying coffee. It would be coffee break time in any event,
14 so ---

15 **MR. KOZLOFF:** It's the life of a junior
16 counsel!

17 **(LAUGHTER/RIRES)**

18 **THE COMMISSIONER:** Thank you.

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

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

22 This hearing is adjourned until tomorrow
23 morning at 9:30 a.m.

24 --- Upon adjourning at 11:37 a.m. /

25 --- L'audience est ajournée à 11h37

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

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-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Marc Demers, CVR-CM