

**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 132

Held at :

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

Tuesday, August 28, 2007

Tenue à:

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

Mardi, le 28 août 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Ms. Raija Pulkkinen	Commission Counsel
Mr. Mark Crane Mr. Daniel Boivin	Cornwall Police Service Board
Ms. Gina Saccoccio Brannan, Q.C.	Ontario Provincial Police
Mr. David Rose	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. Peter Wardle	Citizens for Community Renewal
Mr. Rob Talach 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 9:36 a.m./

2 L'audience débute à 9h36

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 sir.

11 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PETER
12 ENGELMANN :

13 **MR. ENGELMANN:** Good morning, Mr.
14 Commissioner.

15 We do not have a witness in the witness box
16 yet.

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

18 **MR. ENGELMANN:** Father Frank Morrissey is
19 here in the building and he is ready, willing and able to
20 start.

21 I received a letter late yesterday afternoon
22 from David Sherriff-Scott, counsel for the Diocese. I am
23 going to let him speak to it, but if I can paraphrase for a
24 minute, objecting to the evidence of the second context
25 expert the Commission has given intentional calling ---

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

2 **MR. ENGELMANN:** --- and that is Father Tom
3 Doyle.

4 **THE COMMISSIONER:** Right.

5 **MR. ENGELMANN:** And he wishes Father Doyle
6 excluded because of overt bias or words to that effect and
7 -- overt advocacy and bias -- I am sorry -- and I believe
8 he is also requesting that if he is not excluded, that he
9 doesn't want the evidence of Father Morrissey to proceed
10 because he wishes to put some of the references in
11 anticipated evidence summary we gave with respect to Father
12 Doyle, some references to Father Morrissey.

13 I'll let him speak to it because I may not
14 have set it out completely accurately, and I do have a copy
15 of this letter that perhaps I can hand up. I just have one
16 copy, sir.

17 **THE COMMISSIONER:** And have the parties seen
18 this letter?

19 **MR. ENGELMANN:** Well, it was faxed late
20 yesterday afternoon.

21 **THE COMMISSIONER:** Okay.

22 **MR. ENGELMANN:** Most of us were in the
23 hearing room until 5:15-5:30, so I am assuming people would
24 have received it last evening.

25 **THE COMMISSIONER:** So what -- we put this as

1 an exhibit?

2 **MR. ENGELMANN:** No, I just wanted to give it
3 to you so you're able to understand perhaps what I just
4 said.

5 By way of background, sir, on August 20th,
6 which I believe was last -- I am just trying to remember
7 the date last week that would have been -- that would have
8 been last Monday. I received a call from Mr. Sherriff-
9 Scott pointing out some concerns with respect to Father Tom
10 Doyle and concerns about some correspondence that he had
11 been informed existed, and we had become aware actually
12 that some of that documentation was on our web -- in our
13 database. This was on Monday the 20th.

14 So I indicated to him that I would send
15 those documents because he said at the time he didn't have
16 them, so I said I would get them out of the database.
17 These are documents with respect to Father Doyle and
18 involvement he had here in Cornwall. I indicated to him
19 that, as I have indicated to all the parties, that both of
20 the proposed context experts have some connection to this
21 community.

22 And so I sent out documents that were
23 evidence of some of those contexts and -- some of those
24 contacts, and I asked all of the parties, all of the
25 counsel to the parties to give me their comments on whether

1 or not we should call Father Doyle in light of this issue
2 and also whether we should call Father Morrissey in light of
3 some of the contacts he'd had.

4 I received a number of letters and emails.
5 They covered the spectrum from the Diocese's position,
6 which was supported by the OPP, that he just can't testify
7 ---

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

9 **MR. ENGELMANN:** --- to the other end of the
10 spectrum, the Victims Group and the CCR saying of course he
11 can and they should both testify, or if one goes, the other
12 goes or words to that effect. And then there was the
13 middle ground position -- I am not sure if all these
14 positions will be the same today, but from the CAS and the
15 Ministry of the Attorney General saying that they can both
16 testify. Evidence of any bias they may have will go to the
17 weight that you give their evidence.

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

19 **MR. ENGELMANN:** So at that point, by now, we
20 are a couple days later in the week. We decided on the
21 basis of the letters we received to continue and prep
22 Father Doyle to at least come and be a witness. Therefore,
23 that preparation started much later than that of Father
24 Morrissey and it culminated with an anticipated evidence
25 summary only being released yesterday to the parties.

1 I had an email sent to the parties on Friday
2 afternoon apologizing for the delay and we sent an
3 anticipated evidence summary on Monday.

4 I think there are some concerns at least
5 referenced in Mr. Sherriff-Scott's letter about over 50
6 publications.

7 I can advise him and all parties that aside
8 from the 15 or so documents that are in Father Morrissey's
9 Book of Documents that we will also be referring Father
10 Doyle to, there are only about four or five documents that
11 I am going to refer Father Doyle to over and above the 15
12 or so that are mutual.

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

14 **MR. ENGELMANN:** I'm certainly not going to
15 go through many of his historical documents that are
16 referenced by way of historical background in the
17 anticipated evidence summary.

18 So, sir, that's where we are. I had
19 anticipated that we would finish the evidence of Father
20 Morrissey no later than noon tomorrow; that we would finish
21 the evidence of Father Doyle no later than Thursday
22 afternoon.

23 We do not have witnesses to fill the gap, so
24 to speak, if you agree with a request for an adjournment,
25 so I would just make that point up front. Both these men

1 have busy schedules. I'm not sure when we can get them
2 back. You know, we can get them back this fall if we had
3 to, but obviously we'd lose the time this week.

4 So with that in mind, maybe I'll turn the
5 floor over to Mr. Sherriff-Scott ---

6 **THE COMMISSIONER:** Certainly.

7 **MR. ENGELMANN:** --- who has written the
8 letter and raised the concern. I'm sure that counsel here
9 will have some comments as well.

10 **THE COMMISSIONER:** Thank you.

11 Mr. Sherriff-Scott.

12 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. DAVID SHERRIFF-
13 SCOTT:

14 **MR. SHERRIFF-SCOTT:** I have a motion
15 Commissioner that is being driven down. It will come later
16 this morning or early this afternoon. It's in writing with
17 an affidavit and authorities.

18 But just some of my points here in terms of
19 what I am looking for and what I am not looking for ---

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

21 **MR. SHERRIFF-SCOTT:** --- in terms of the
22 chronology, the Commission confirmed a number of days
23 before Monday of last week that it would in fact call
24 Father Doyle. I expressed concern based on information
25 provided to me about a number of emails that Mr. Doyle had

1 written to the Project Truth website supporting the naming
2 of the alleged perpetrators and outlining other
3 circumstances that I'll get to.

4 The emails are extraordinary in their lack
5 of temperament. They refer to the Catholic Church as
6 Nazis. Mr. Doyle uses language like narcissists, evil, the
7 most corrupt regime on the planet, power-hungry, amoral,
8 inquisitorial, et cetera, et cetera. So I became
9 concerned. Not all of that is in the emails, but that is
10 also part of his public profile. And the emails are
11 troubling for the reason of his obvious disposition, but
12 also for reasons of a personal connection that they
13 disclose. And they are on the website, so they will be put
14 to you in due course and in the motion record.

15 But to wit, that he spent a number of his
16 years as a youth here, was a parishioner as a child at St.
17 Columban's and he describes an incident with respect to one
18 of the priests which clearly by way of innuendo indicates
19 either an attempted or aborted allegation of sexual abuse
20 of him by one of the members of the Diocese.

21 And he writes in that letter, which you will
22 see, that this is something that Mr. Nadeau, the purveyor
23 of the website, should use for his purposes. There is a
24 host of other similar type of information and evidence that
25 I will be putting to you in the record that's coming

1 regarding the disposition of the witness, but just backing
2 up chronologically. So we got confirmation from the
3 Commission that he would be called. I objected on the
4 basis of this information. The views of counsel were
5 sought. Confirmation came that he would, in fact, be
6 called on Friday with the notice that his anticipated
7 evidence would be delivered at some juncture, either Friday
8 or Monday.

9 Yesterday, at about 2:45, we got his
10 anticipated evidence, and I don't criticize my friend
11 opposite for the lateness of it, but the fact is that it is
12 a day and a half or less before the witness testifies. It
13 is very skeletal. It is unaccompanied last night by the
14 documents. The document list came last night, and I was
15 handed the CD this morning. I have had no time to study or
16 prepare for the examination and his opinions will, I
17 conjecture at least, and I think well informed conjecture,
18 be significantly at variance on very serious points with
19 Reverend Morrissey's evidence. And so I won't have an
20 opportunity to put his evidence, as I understand it,
21 because it hasn't been disclosed in detail to this witness
22 that was scheduled today.

23 Moreover, I'm advised by Mr. Dumais last
24 week when I expressed concerns that I needed to have Father
25 Doyle's evidence. Mr. Dumais told me that Father Doyle had

1 given a written outline of his evidence to the Commission
2 but that was not disclosed. We got a very bare bones
3 descriptor in the anticipated evidence summary.

4 So that leaves me unable to put the opinions
5 of the witness later this week to this witness today
6 scheduled when they will be significantly, intellectually
7 at variance with one another over the meaning of various
8 Vatican documents and others. They are being called as
9 Canon lawyers.

10 **THE COMMISSIONER:** So are you making a
11 motion now or are you making ---

12 **MR. SHERRIFF-SCOTT:** Well, no, I'm not
13 trying to -- first of all, there was response to my concern
14 about Reverend Doyle saying, "Well, Father Morrissey at one
15 time gave a seminar in this and other dioceses about sexual
16 abuse and gave an affidavit in the funding matter regarding
17 the structure of the church and, thus, he has a connection
18 with Cornwall" as if this answered the concern.

19 And Father Morrissey I put forward as a
20 person who would be knowledgeable to inform the Commission
21 about church structure and Canon Law, but it matters not to
22 me or it matters a whole lot less to me whether Father
23 Morrissey is called. What matters most to me is that the
24 witnesses that be called, whether it's Father Morrissey or
25 someone from Timbuktu, be objective and even-handed, thus

1 serving the interests of the Commission and the public in
2 fairness.

3 So I really could care less whether Father
4 Morrisey is the candidate or others, and I proposed a
5 person who the Commission investigated and found to be
6 suitable, Dr. Stephen Rossetti who has similar credentials
7 to Dr. Loftus. But this ying and yang approach has been
8 selected, Doyle versus Morrisey sort of approach, which is
9 what it will amount to, sir.

10 And I am not concerned about -- the answer
11 to my concern seems to be fed to others not only -- but
12 circulated that, in effect, somehow because Morrisey has a
13 connection that I have described, I shouldn't have any
14 concerns about Doyle.

15 And so my concerns about Mr. Doyle are quite
16 apart from Mr. Morrisey and, as I said, I'm not an advocate
17 to have Mr. Morrisey testify. I'm a person who wants the
18 witness to be objective and unbiased.

19 So I have a motion and here is what I'm
20 going to be looking for. I don't propose to interrupt Mr.
21 Morrisey, but if that's the implication, then that may
22 follow.

23 But number one, I would ask that Mr. Doyle's
24 evidence be adjourned so that I have time to study it.
25 Unfortunately, I won't be able to put a lot of it to Mr.

1 Morrisey because I don't know what it is. Number two --
2 but that will allow me an opportunity at least to cross-
3 examine the witness in an informed way.

4 Number two, but out of order because it
5 should be number one; I object to the witness being called,
6 and I submit there should be a *voir dire* on my motion or my
7 motion should be treated as a *voir dire* to disqualify this
8 person and whose evidence should not be received.

9 I've set out the reasons in the affidavit
10 material and if he is here, he can be cross-examined and if
11 you rule against me, then he can proceed from the point of
12 view of efficiency. But I'm very concerned that this be
13 put forward now before his evidence is offered because it's
14 very serious, and I think you'll see from the material that
15 I'm going to put forward, there is absolutely no question
16 that this individual, whether or not he is a Canon lawyer,
17 is an advocate for a position, which I submit on the law
18 will disqualify him.

19 So that's what I propose. I have a motion.
20 It's being driven down. It will arrive late this morning
21 or early this afternoon after the break for that relief.

22 Thank you.

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

24 Mr. Lee. Are you speaking on this -- oh,
25 I'm sorry.

1 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. PETER WARDLE:

2 MR. WARDLE: Well, sir, when Mr. Sheriff-
3 Scott's motion arrives, we will oppose it. But until I see
4 it and I know exactly what Mr. Sherriff-Scott is arguing,
5 and he hasn't made reference to any authorities this
6 morning. I'm assuming that he'll bring the relevant
7 authorities that he says supports his position. I'll want
8 an opportunity to study that material and respond.

9 THE COMMISSIONER: M'hm.

10 MR. WARDLE: In the meantime, as I hear it,
11 he is not opposing to proceeding with Father Morrissey
12 today, and my suggestion is that we simply go ahead on that
13 basis.

14 THE COMMISSIONER: All right. Thank you.

15 Mr. Lee, are you speaking on this matter?

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

17 MR. LEE: I'm in a similar position to Mr.
18 Wardle, Mr. Commissioner, in terms of I don't know what the
19 argument is. My concern is that -- you know, my
20 understanding when the email came last night and Mr.
21 Engelmann responded was that we would hear the motion the
22 first thing this morning. We would put the law to you; we
23 would put our positions to you, and you would make some
24 kind of -- my position is there is no basis in law for
25 excluding an expert witness on the basis of bias or

1 advocacy or whatever it is. It goes to weight, not
2 admissibility, and we should hear from both of these
3 witnesses.

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

5 **MR. LEE:** If you disagree, our position may
6 change slightly in terms of what we do with these two
7 witnesses. It's a bit of -- it's a bit of a perfect storm
8 here for the Diocese in the sense that the proposition now
9 is that Father Morrissey proceeds, after which a motion is
10 brought to exclude Father Doyle.

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

12 **MR. LEE:** I think it would be far preferable
13 to have these motions heard immediately. I'm ready to go.

14 I don't have written materials. This came
15 up at five o'clock last night, but I certainly can make an
16 argument. And that would be my preference. But if we're
17 going to wait for written materials, obviously I am also
18 going to want an opportunity to review those before
19 responding.

20 **THE COMMISSIONER:** Is there any -- well,
21 other than Mr. Sherriff-Scott saying he wants time to
22 cross-examine Father Morrissey ---

23 **MR. LEE:** Yes.

24 **THE COMMISSIONER:** --- on the documents, the
25 four or five extra documents that Mr. Engelmann says he

1 has, is there any prejudice to let's start in chief?

2 **MR. LEE:** No, I mean, as Mr. Engelmann says,
3 there are four or five additional documents. Mr. Sherriff-
4 Scott can't expect to be on his feet with Mr. Doyle until
5 Thursday -- Father Doyle, sorry.

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

7 **MR. LEE:** So I am not sure the time concern
8 is a huge issue there.

9 I don't object to Father Morrissey beginning.
10 I just think we need to get this motion heard as soon as
11 possible and have this decided before we get too far.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Chisholm, any comments?

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

15 **THE COMMISSIONER:** Good morning.

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

17 **MR. CHISHOLM:** I would propose that if we
18 are in a position to start with this witness we can do so
19 and then when Mr. Sherriff-Scott's motion material arrives,
20 it can be distributed and, at an appropriate time, at a
21 break in Father Morrissey's evidence, we can deal with the
22 issue relating to Father Doyle.

23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Rose, any comments?

1 **MR. ROSE:** Nothing further.

2 **THE COMMISSIONER:** Thank you.

3 Ms. Im?

4 **MS. IM:** No further comments to add. Thank
5 you.

6 **THE COMMISSIONER:** Ms. Robitaille?

7 **MS. ROBITAILLE:** Nothing to add.

8 **THE COMMISSIONER:** Mr. Crane.

9 **MR. CRANE:** No comments.

10 **THE COMMISSIONER:** Thank you.

11 Mr. -- I mean, sorry -- Ms. Brannan?

12 **MS. BRANNAN:** We have nothing further to
13 add.

14 **THE COMMISSIONER:** Thank you.

15 Mr. Carroll?

16 **MR. CARROLL:** Nothing, thank you.

17 **THE COMMISSIONER:** All right.

18 The School Board, anyone here; no.

19 Mr. Engelmann, any suggestions?

20 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR **MR. PETER**

21 **ENGELMANN :**

22 **MR. ENGELMANN:** Sir, I'm prepared to proceed
23 with Father Morrisey. I don't want to waste time. I
24 realize the point that Mr. Lee is making.

25 I wanted this spoken to first thing. I

1 didn't necessarily think we would be arguing a motion.
2 When motions like this are brought in adversarial
3 proceedings, typically a motion is brought during the
4 qualification of the expert. So if it's your decision to
5 proceed with Father Morrissey, I don't know whether anybody
6 will try and challenge his qualifications. It may just be
7 they'll ask him questions about some of his involvement.
8 But I haven't heard anybody seeking to disqualify him.

9 But if you are intent on proceeding with
10 Father Morrissey, I think the most appropriate thing to do
11 would be to have this issue dealt with when Father Doyle is
12 on the witness stand and there's an effort to qualify him,
13 and that's typically when, as I said, in an adversarial
14 hearing you might see a challenge of this sort. That's
15 just my observation, sir.

16 **THE COMMISSIONER:** Well, let's -- one step
17 at a time. We'll start with Father Morrissey. We'll see
18 when we get the motion and you people can look it over, and
19 then we can revisit it.

20 **MR. ENGELMANN:** Okay.

21 **THE COMMISSIONER:** Okay.

22 **MR. ENGELMANN:** All right.

23 **THE COMMISSIONER:** Let's get the witness.

24 **MR. ENGELMANN:** If I could just have a few
25 minutes to get Father Morrissey?

1 **THE COMMISSIONER:** You want a break?

2 **MR. ENGELMANN:** Yes.

3 **THE COMMISSIONER:** Okay. A short break.

4 **THE REGISTRAR:** Order; all rise. A l'ordre;
5 veuillez vous lever. The hearing will resume at 10:05.

6 --- Upon recessing at 9:57 a.m./

7 L'audience est suspendue à 9h57

8 --- Upon resuming at 10:07 a.m./

9 L'audience est reprise à 10h07

10 **THE REGISTRAR:** The hearing is now resumed.

11 Please be seated. Veuillez vous asseoir.

12 **THE COMMISSIONER:** Thank you.

13 Good morning, sir.

14 **MR. ENGELMANN:** Mr. Commissioner, the next
15 witness for the Commission will be Father Frank Morrissey.

16 If the witness could be sworn?

17 **FRANCIS G. MORRISEY, Sworn/Assermenté:**

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

19 --- EXAMINATION ON QUALIFICATIONS BY/INTERROGATOIRE SUR LES
20 QUALIFICATIONS PAR MR. PETER ENGELMANN:

21 **MR. ENGELMANN:** Good morning, Father
22 Morrissey. You'll have a screen that will come on
23 immediately to your left and a speaker there as well, if
24 you need it, and some water.

25 We're going to be giving you some documents

1 in just a moment. In fact, there should be a book of
2 documents, Volume 1 and 2 for the Reverend Francis G.
3 Morrisey, if those could just be given to the witness?

4 **THE COMMISSIONER:** Should we be giving these
5 exhibits numbers?

6 **MR. ENGELMANN:** I'll come to that in just a
7 minute, if I can. I just want him to describe what they
8 are.

9 **THE COMMISSIONER:** Right. Thank you.

10 **MR. ENGELMANN:** Mr. Commissioner, as you
11 know, Father Morrisey is here today as a context expert.
12 It's been some time since we had our last context expert,
13 but just to refresh everyone's memory, the Commission
14 started this Inquiry by calling a number of context
15 experts. There were a couple that were called after the
16 start because they were not available earlier; for example,
17 Wendy Van Tongueren-Harvey, who was, I think, our last
18 context expert dealing with the Ministry of the Attorney
19 General and the response to child sexual abuse from their
20 perspective.

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

22 **MR. ENGELMANN:** And as you know, some time
23 ago we had intended to call Father J.A. Loftus and there
24 were discussions with the parties about alternative
25 replacements.

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

2 **MR. ENGELMANN:** Father Morrisey has kindly
3 agreed to join us. He's got a very busy schedule,
4 travelling an awful lot.

5 So Father Morrisey, welcome to the Inquiry.

6 You should have both books, Volume 1, Tabs 1
7 to 14, and Volume 2, Tab 15 to 27.

8 Mr. Commissioner, just before starting, it's
9 Commission counsel's intention to ask that Father Morrisey
10 be qualified as an expert in canon law with a particular
11 interest and involvement in the Church's response to clergy
12 sexual abuse.

13 So I will now just go through his
14 qualifications and take him through to identify the book of
15 documents, if I may.

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

17 **MR. ENGELMANN:** Father Morrisey, if you
18 could turn to Tab 1? Can you just confirm for us if that
19 is a current curriculum vitae for you?

20 **REVEREND MORRISEY:** Yes.

21 **MR. ENGELMANN:** Okay. And at Tab 2, that
22 would as well be a current and accurate biographical
23 summary, if I can call it that?

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** And at Tab 3 we have a

1 bibliography, sir, and this is, as I understand it, a
2 listing of articles and/or chapters that you have written
3 throughout your career?

4 **REVEREND MORRISEY:** That's correct.

5 **MR. ENGELMANN:** Or maybe I shouldn't say
6 throughout, but since '68. Is that fair?

7 **REVEREND MORRISEY:** That's the first time I
8 wrote.

9 **MR. ENGELMANN:** Okay. And then, sir, at Tab
10 4 a selected bibliography, and as I understand it, sir,
11 this is a listing of articles you have indicated may be
12 relevant to the subject before us?

13 **REVEREND MORRISEY:** That's right.

14 **MR. ENGELMANN:** And sir, then Tabs 5 through
15 27 are either a compilation of some of the articles that
16 you have written or that others have written on this
17 subject and also some church documents like From Pain to
18 Hope and documents of that nature. Is that fair?

19 **REVEREND MORRISEY:** That's right.

20 **MR. ENGELMANN:** All right.

21 Sir, I'm wondering then if the two-volume
22 Book of Documents could be the next Commission exhibit?

23 **THE COMMISSIONER:** All right.

24 That would be Exhibit 632.

25 --- EXHIBIT NO./PIECE NO. **C-632:**

1 Book of Documents (Volume I) for The
2 Reverend Francis G. Morrisey

3 **MR. ENGELMANN:** Father Morrisey, I
4 understand that you're an ordained priest of the Roman
5 Catholic Church?

6 **REVEREND MORRISEY:** Yes.

7 **MR. ENGELMANN:** And that you are a member of
8 a religious institute?

9 **REVEREND MORRISEY:** Yes.

10 **MR. ENGELMANN:** And that is the Missionary
11 Oblates of Mary Immaculate?

12 **REVEREND MORRISEY:** Yes.

13 **MR. ENGELMANN:** Thank you.

14 So as a member of a religious institute, you
15 are not a priest that is incardinated in a diocese?

16 **REVEREND MORRISEY:** That's correct.

17 **MR. ENGELMANN:** And, sir, throughout your
18 career as a priest, you've been very involved in
19 educational issues?

20 **REVEREND MORRISEY:** Yes, at St. Paul
21 University mostly.

22 **MR. ENGELMANN:** All right.

23 And, sir, not only have you been very
24 involved in teaching, but you've been very involved in
25 learning?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: And I understand you have
3 some 11 degrees.

4 REVEREND MORRISEY: Yes.

5 MR. ENGELMANN: Is that correct?

6 REVEREND MORRISEY: Yes.

7 MR. ENGELMANN: All right.

8 So for example, if we take a look at your
9 bio at Tab 2, we have a listing of various degrees in the
10 third paragraph. Am I right?

11 REVEREND MORRISEY: Yes.

12 MR. ENGELMANN: And amongst them there are -
13 - there's a Bachelor of Canon Law, and I may mispronounce
14 this, a licentiate in canon law, a Master of canon law and
15 a PhD in canon law?

16 REVEREND MORRISEY: Yes.

17 MR. ENGELMANN: And you also have a
18 doctorate in canon law from St. Paul's University?

19 REVEREND MORRISEY: That's right.

20 MR. ENGELMANN: And the difference between
21 the doctorate in canon law and the PhD in canon law, sir?

22 REVEREND MORRISEY: The PhD is a civil
23 degree at the University of Ottawa and it's got certain
24 requirements. The JCD is a pontifical degree given in
25 virtue of a charter from Rome that's granted to St. Paul

1 University.

2 **MR. ENGELMANN:** And your areas of study
3 aside from canon law have included philosophy, theology and
4 religious education?

5 **REVEREND MORRISEY:** Yes.

6 **MR. ENGELMANN:** And would it be fair to say,
7 sir, that canon law is one of your areas of specialization?

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** Sir, your status currently
10 with St. Paul University is what?

11 **REVEREND MORRISEY:** I'm an adjunct professor
12 now as of the 1st of May.

13 **MR. ENGELMANN:** All right.

14 And prior to that, sir, what was your title?

15 **REVEREND MORRISEY:** Well, I was titular
16 professor of canon law. Then I was Dean of the Faculty of
17 Law and professor.

18 **MR. ENGELMANN:** And that's all with St.
19 Paul's University in the City of Ottawa?

20 **REVEREND MORRISEY:** Yes, and those were dual
21 functions with the University of Ottawa also.

22 **MR. ENGELMANN:** And, sir, can you give us a
23 sense as to the areas you would have taught when you were
24 teaching at St. Paul's?

25 **REVEREND MORRISEY:** I've been teaching

1 courses in property law, church finances and penal law,
2 crimes and penalties, procedural law, law for religious
3 institutes, methodology of law and areas related to that.

4 **MR. ENGELMANN:** And, sir, I understand for
5 many of the years while at St. Paul's, you were the editor
6 of Studia Cano ---

7 **REVEREND MORRISEY:** Canonica.

8 **MR. ENGELMANN:** --- Canonica, sorry.

9 Can you tell us what that is, Studia
10 Canonica?

11 **REVEREND MORRISEY:** That's a publication in
12 canon law. It's a bilingual publication that is recognized
13 worldwide, I guess I would say. There is about 1,800
14 subscribers to it.

15 **MR. ENGELMANN:** And, sir, you're a member,
16 as I understand it, of a number of canon law societies
17 around the world?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** And you have also -- and I'm
20 looking at your CV -- received various awards from both the
21 American and Canadian Canon Law Societies?

22 **REVEREND MORRISEY:** And other ones too, yes.

23 **MR. ENGELMANN:** Yes. Well, two that I was
24 interested in particularly were the Canon Law Society of
25 America, Role of Law Award, 1990.

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: Can you tell us what that
3 is?

4 REVEREND MORRISEY: Each year the Canon Law
5 Society of America honours one of its members for work that
6 they have done in the area of development of law, the
7 understanding of law, the teaching and future research.

8 MR. ENGELMANN: And, sir, the Canadian Canon
9 Law Society, Award of Merit, 1992, can you tell us about
10 that?

11 REVEREND MORRISEY: It's sort of a similar
12 thing as for the American one.

13 MR. ENGELMANN: Sir, I understand you've
14 received some other awards, for example, the Grand Cross
15 "Pro Piis Meritis", Sovereign Order of Malta 1997?

16 REVEREND MORRISEY: Yes.

17 MR. ENGELMANN: Tell us what that is.

18 REVEREND MORRISEY: That was an award that I
19 was given for re-writing their constitutions that date back
20 to 1215. And they are trying to take a legal text of 800
21 years and bring it to terms for today.

22 MR. ENGELMANN: All right.

23 And one other that I wanted to just
24 reference across; it's Pro Ecclesia et Pontifice, Vatican
25 City 1997?

1 **REVEREND MORRISEY:** Yes, that's an award
2 from the Pope thanking me for my work that I did on the
3 preparation of the Code of Canon Law and similar work.

4 **MR. ENGELMANN:** That work, sir, would that
5 have been working with the revised Code in 1983?

6 **REVEREND MORRISEY:** Yes. I was consulter to
7 the Pontifical Council for what they call legislative
8 texts.

9 **MR. ENGELMANN:** All right.

10 And the Vatican have called upon you in
11 relation to that expertise, and you have worked for the
12 Vatican for several years in that respect?

13 **REVEREND MORRISEY:** Yes.

14 **MR. ENGELMANN:** And sir, if I'm correct, you
15 served three five-year terms from 1985 to 2000 as a
16 consulter to the Pontifical Commission for the authentic
17 interpretation of the Code of Canon Law in Vatican City?

18 **REVEREND MORRISEY:** Yes, and that's the one
19 that's now called Interpretation of Legislative Texts.

20 **MR. ENGELMANN:** All right.

21 As well, sir, from 1966 to 2005, did you
22 serve as a consulter to the Canadian Conference of Catholic
23 Bishops?

24 **REVEREND MORRISEY:** Yes, their Canon Law
25 Inter-Rite Committee.

1 **MR. ENGELMANN:** Sir, over the years, you
2 have written a number of articles. We looked, and there
3 are several pages of your publications listed at Tab 3.
4 Correct?

5 **REVEREND MORRISEY:** Yes.

6 **MR. ENGELMANN:** Then at Tab 4, on the
7 selected bibliography of those articles that may deal with
8 this subject matter involving sexual abuse by clergy of
9 minors and reports and responses to it. A number of these
10 articles were written by you?

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** You also have reference to
13 other articles written by others or by the Canadian
14 Conference of Catholic Bishops.

15 **REVEREND MORRISEY:** Articles that were
16 related to the topic.

17 **MR. ENGELMANN:** Yes. Sir, you have been, as
18 I understand it from your bio and your C.V., you have been
19 qualified as an expert witness and have testified as an
20 expert witness?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** You have also been offered
23 affidavits as an expert witness?

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** And as I understand it, this

1 has been in court proceedings in this country, in the U.S.,
2 Namibia and Singapore?

3 REVEREND MORRISEY: Yes.

4 MR. ENGELMANN: Can you give us some
5 indication, sir, how you've been qualified previously?

6 THE COMMISSIONER: On what subjects, I
7 think?

8 MR. ENGELMANN: Yeah.

9 REVEREND MORRISEY: Well, like, for
10 instance, in some of the Canadian courts, the issues were
11 church finances or questions of property disputes and
12 because I was teaching in that area I was qualified in
13 that.

14 THE COMMISSIONER: M'hm.

15 MR. ENGELMANN: Sir, were you qualified as
16 an expert in canon law?

17 REVEREND MORRISEY: Yes.

18 MR. ENGELMANN: On those occasions?

19 REVEREND MORRISEY: Yes.

20 MR. ENGELMANN: And whether the subject
21 matter was dealing with a property issue or perhaps with an
22 alleged abuse case, you were always qualified as an expert
23 in canon law?

24 REVEREND MORRISEY: Yes.

25 MR. ENGELMANN: Have you ever been

1 qualified, sir, as an expert in the Church's response to
2 child sexual abuse in either the spiritual, pastoral or
3 historical background or context?

4 **REVEREND MORRISEY:** No, not as such.

5 **MR. ENGELMANN:** Yes. But, sir, I understand
6 from your articles that you have been involved in this area
7 and written a number of articles?

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** And it is an interest of
10 yours?

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** And has been now for
13 approximately 20 years?

14 **REVEREND MORRISEY:** Yes.

15 **MR. ENGELMANN:** Sir, as I understand it,
16 aside from cases where you have acted as an expert witness,
17 you have also from time to time acted as a consultant?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** To parties in litigation,
20 and that litigation could either be church litigation or
21 secular?

22 **REVEREND MORRISEY:** That's correct.

23 **MR. ENGELMANN:** Sir, whether as an expert or
24 consultant have some of these cases involved alleged abuse
25 of young people by clergy?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: In these cases, sir, have
3 you been called by a diocese or diocesan officials?

4 REVEREND MORRISEY: Yes.

5 MR. ENGELMANN: Have you also been called or
6 acted as a consultant for individual priests who are
7 alleged abusers?

8 REVEREND MORRISEY: For priests, yes.

9 MR. ENGELMANN: Have you ever been called or
10 acted for victims or alleged victims?

11 REVEREND MORRISEY: No.

12 MR. ENGELMANN: Now, all of this work aside
13 from the civil and canonical work, have you ever been
14 called as an expert or acted as a consultant in a criminal
15 matter?

16 REVEREND MORRISEY: No.

17 MR. ENGELMANN: Okay. When I say criminal,
18 I mean secular criminal.

19 REVEREND MORRISEY: Yeah.

20 MR. ENGELMANN: Not the penal provisions
21 under canon law.

22 REVEREND MORRISEY: Yeah.

23 MR. ENGELMANN: Sir, those are all my
24 questions for Father Morrisey on his qualifications. As I
25 stated at the beginning, I am seeking to qualify Father

1 Morrisey as an expert in canon law with a particular
2 interest and involvement in the Church's response to clergy
3 sexual abuse.

4 I will just sit down for a moment and see if
5 any of my friends have any questions on his qualifications.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Wardle.

8 **MR. WARDLE:** No questions, sir.

9 **THE COMMISSIONER:** Mr. Lee or Mr. Talach.

10 **MR. TALACH:** No questions, sir.

11 **THE COMMISSIONER:** Thank you.

12 Mr. Chisholm.

13 **MR. CHISHOLM:** No questions. Thank you.

14 **THE COMMISSIONER:** Thank you. Mr. Rose.

15 **MR. ROSE:** None.

16 **THE COMMISSIONER:** Ms. Im.

17 **MS. IM:** No questions. Thank you.

18 **THE COMMISSIONER:** Ms. Robitaille.

19 **MS. ROBITAILLE:** No questions.

20 **THE COMMISSIONER:** Mr. Sherriff-Scott.

21 **MR. SHERRIFF-SCOTT:** No questions.

22 **THE COMMISSIONER:** Mr. Crane.

23 **MR. CRANE:** No questions.

24 **THE COMMISSIONER:** Thank you.

25 Ms. Brannan.

1 MS. BRANNAN: No questions, sir.

2 THE COMMISSIONER: Mr. Carroll.

3 MR. CARROLL: No questions. Thank you.

4 THE COMMISSIONER: And that does it.

5 All right. So therefore, you are asking me
6 to accept his evidence as an expert of canon law with a
7 special interest in abuse cases involving members of the
8 clergy?

9 MR. ENGELMANN: Yes.

10 THE COMMISSIONER: So then.

11 MR. ENGELMANN: Thank you.

12 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.
13 ENGELMANN:

14 MR. ENGELMANN: Father Morrissey, I would
15 like to start by asking you a few questions about the
16 internal structure organization of the Roman Catholic
17 Church. You did prepare a report for the local diocese on
18 that issue. Is that correct?

19 REVEREND MORRISEY: Yes.

20 MR. ENGELMANN: Sir, if you could go to Tab
21 11 of Volume I of Exhibit 632, is that the report that I
22 just referenced?

23 REVEREND MORRISEY: It is.

24 MR. ENGELMANN: I understand the date may
25 not be completely accurate. Is that right?

1 **THE COMMISSIONER:** I'm sorry. What tab are
2 you on?

3 **MR. ENGELMANN:** I am at Tab 11, sir.

4 **THE COMMISSIONER:** Sorry.

5 **REVEREND MORRISEY:** The date I did the
6 report is November 28th, 2005.

7 **MR. ENGELMANN:** All right. And that's noted
8 at the last page of the Tab?

9 **REVEREND MORRISEY:** Yes.

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

11 **MR. ENGELMANN:** Now, sir, if we look at page
12 3 of that report, under the caption "Internal Organization
13 of the Roman Catholic Church", we see a number of
14 references to points with a Canon written in brackets after
15 it. Am I right?

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** So for example, we see:

18 "The Catholic Church has as its leader
19 the Pope who is the successor of St.
20 Peter and the Head of the Church."

21 There is a reference to a Canon 131?

22 **REVEREND MORRISEY:** Yes.

23 **MR. ENGELMANN:** All right. Is it fair to
24 say, sir, that the structure of the church is set out in
25 canon law?

1 **REVEREND MORRISEY:** Yes, that's one of the
2 purposes of Canon Law.

3 **MR. ENGELMANN:** And just if you were to
4 describe canon law for us in layperson's language, how
5 would you describe it?

6 **REVEREND MORRISEY:** It's the collection of
7 regulations that govern the outward or social activities of
8 the church; its membership, its leadership, those who are
9 appointed to it, the responsibilities, the rights and
10 obligations of members of the church.

11 **MR. ENGELMANN:** And sir, I understand these
12 canons have been in existence many of them for many, many
13 years?

14 **REVEREND MORRISEY:** The first formal
15 collection of canons is dated 1234.

16 **MR. ENGELMANN:** Okay. And we will get into
17 this, but major revision in 1917?

18 **REVEREND MORRISEY:** Nineteen seventeen
19 (1917) was the first time that the canons were codified.
20 Before that, they were something like the revised Statutes
21 of Ontario, collections of, you know, documents and then,
22 in 1917, they were put in a code form as was common in
23 Europe in those days, based sort of on the Napoleonic Code,
24 and then that Code was totally revised after Vatican II and
25 a new Code was issued for the Latin Church in 1983.

1 **THE COMMISSIONER:** I'm sorry, for the Latin
2 Church?

3 **REVEREND MORRISEY:** Latin Church, yes. And
4 in 1990, there was a second code for what we call the
5 Eastern Rite Catholics, the Ukrainian Catholics and those
6 in the Middle East.

7 **THE COMMISSIONER:** And how would they
8 differ, if any?

9 **REVEREND MORRISEY:** As if for instance, in
10 the Oriental Church, Catholic priests are married.

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

12 **REVEREND MORRISEY:** Or may be married. In
13 the Latin Church, they can't. The Order is completely
14 different because they have what they call patriarchs.
15 They are subject to the pope, but the patriarch has much
16 more autonomy than they would in the Latin Church.

17 The eastern churches are the original ones.

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

19 **REVEREND MORRISEY:** And then, as the Church
20 moved to Rome in the time of the Roman Empire and so on, it
21 became different from what we had in the Middle East.

22 **MR. ENGELMANN:** So the status is they are in
23 but they are a bit different?

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** I think of Canadian

1 constitutional law, but in any event, sir, I want to ask
2 you about departments of the Church. And you list at the
3 bottom of paragraph 3 major departments known as
4 congregations.

5 **REVEREND MORRISEY:** Yes.

6 **MR. ENGELMANN:** Are there a number of
7 congregations in the Roman Catholic Church?

8 **REVEREND MORRISEY:** Yes, there is about nine
9 of them. They are the equivalent of ministries here in
10 Canada, like the Ministry of National Defence or Department
11 of National Defence, and so on. So there they are called
12 congregations.

13 **MR. ENGELMANN:** And the heads of those
14 congregations, would they be cardinals?

15 **REVEREND MORRISEY:** They're cardinals.

16 **MR. ENGELMANN:** And are they all posted or
17 working from Rome?

18 **REVEREND MORRISEY:** Yes, they reside in
19 Rome.

20 **MR. ENGELMANN:** And I just -- I wanted to
21 ask you about a couple -- there are nine congregations,
22 correct?

23 **REVEREND MORRISEY:** Yes.

24 **MR. ENGELMANN:** I wanted to ask you about a
25 couple of them that might be relevant here. The first one

1 is called the Congregation for the Doctrine of the Faith.

2 REVEREND MORRISEY: Yes.

3 MR. ENGELMANN: Can you tell us what that
4 congregation is about and why it might be applicable to
5 this subject matter?

6 REVEREND MORRISEY: Yes, that's the
7 congregation that's responsible for the unity of faith in
8 the Church and also for overseeing morals in the Church.
9 Cardinal Ratzinger was the head of that for years before he
10 became pope.

11 MR. ENGELMANN: And, for example, he was the
12 head of that particular congregation in 2001?

13 REVEREND MORRISEY: Yes.

14 MR. ENGELMANN: And so I understand that one
15 of the other congregations might also have some relevance
16 to the subject matter here, and that is the Congregation
17 for the Clergy.

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: Can you explain to us what
20 that is and what it deals with?

21 REVEREND MORRISEY: This is the office in
22 the Vatican that looks after priests in the sense if a
23 priest has a complaint against his bishop and he wants to
24 have it heard, he will go to the Congregation for Clergy.
25 If the bishop is lodging a complaint or there is a

1 complaint against the bishop, it would go to the
2 Congregation of Bishops.

3 **MR. ENGELMANN:** So, for example, if there
4 was an individual priest who had allegedly sexually abused
5 a minor, he would have some rights and have some -- would
6 have some ability to go to the Congregation for the Clergy
7 if there were some kind of sanction imposed?

8 **REVEREND MORRISEY:** I am hesitating to
9 answer yes. All cases since 2001 involving priests first
10 have to go to the Congregation for Doctrine of the Faith.

11 **MR. ENGELMANN:** Yes.

12 **REVEREND MORRISEY:** Then if a decision is
13 given there and has gone through a formal trial, there is
14 no appeal or recourse to another ---

15 **MR. ENGELMANN:** They are the final level?

16 **REVEREND MORRISEY:** They are the final
17 level.

18 **MR. ENGELMANN:** Okay.

19 **REVEREND MORRISEY:** But if the congregation
20 said, "No, we don't find any cause here" and the bishop
21 still would say, "Well, I'm not accepting you" then the
22 priest could have recourse to the Congregation of Clergy.

23 **MR. ENGELMANN:** All right.

24 And, sir, there are also tribunals in Rome?

25 **REVEREND MORRISEY:** Yes.

1 **MR. ENGELMANN:** And there are three of them?

2 **REVEREND MORRISEY:** There are three of them.

3 **MR. ENGELMANN:** And can you tell us the
4 names of the three and which of the three would be perhaps
5 relevant to this subject matter?

6 **REVEREND MORRISEY:** Okay. There is one
7 tribunal for what we call the internal forum and that's
8 called the Apostolic Penitentiary, the Sacrament of
9 Penance. That one is totally -- it's private. There are
10 no written documents or acts on that because those are
11 matters of conscience.

12 **MR. ENGELMANN:** Okay.

13 **REVEREND MORRISEY:** Then there is what we
14 call the Roman Rota, which is the ordinary supreme court of
15 the Church. It's composed of 21 judges who work on a
16 rotation basis, a minimum of three for each case.

17 There is also then the third tribunal which
18 is called the Apostolic Signatura. In France that would be
19 the equivalent to the Cour de Cassation. It's sort of the
20 highest of all and its focus is on the procedures that were
21 followed, not on the content of the case.

22 **MR. ENGELMANN:** So of these tribunals which
23 of them may be significant to this matter and why?

24 **REVEREND MORRISEY:** Since 2001 the Doctrine
25 of Faith has set up a parallel tribunal to the Signatura.

1 **MR. ENGELMANN:** Okay.

2 **REVEREND MORRISEY:** And so it's parallel, so
3 none of those three at this moment, since 2001, would be
4 handling those cases.

5 **MR. ENGELMANN:** What about before 2001?

6 **REVEREND MORRISEY:** Before the Signatura
7 would have been the highest. It would be something like
8 the Privy Council years ago before we stopped at the
9 Supreme Court in Canada.

10 **MR. ENGELMANN:** Sir, at page 4 of your
11 report you say that:

12 "The heads of these various
13 congregations, tribunals and councils
14 constitute, with the Secretary of
15 State, the Cabinet of the Pope."

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** So that is in effect the
18 government, the executive of the Church?

19 **REVEREND MORRISEY:** That's the central
20 government.

21 **MR. ENGELMANN:** And do they meet on a
22 regular basis, sir?

23 **REVEREND MORRISEY:** Yes, like every Friday
24 the Pope meets with the Doctrine of Faith; every Wednesday
25 the Congregation of Bishops. But on occasion, and there is

1 no set date for this, he brings all the heads of those
2 offices together.

3 **MR. ENGELMANN:** Let's talk briefly about the
4 Conference of Bishops for a minute. How does a Conference
5 of Bishops in a country fit into the structure or hierarchy
6 of the Church?

7 **REVEREND MORRISEY:** In practice, the
8 Conference of Bishops is not a legislative body. Its
9 purpose is to coordinate a pastoral approach to issues so
10 that neighbouring bishops will sort of have the same
11 information and as much as possible the same outlook, while
12 saving their own autonomy.

13 Conferences existed in Canada since 1941.
14 The Vatican too made them obligatory around the world in
15 '65 and now there is about 118 conferences throughout the
16 Church. If the Code of Canon Law allows for particular
17 legislation for a country, it's the Conference that passes
18 that and there are about 100 canons that provide for that.

19 **MR. ENGELMANN:** I was just going to ask if
20 the Conference of Bishops, like the Canadian Conference of
21 Catholic Bishops, if they have the power to make policies
22 or procedures that are then binding on Canadian Diocese?

23 **REVEREND MORRISEY:** Only in those cases that
24 have been specified in a court of law where it says the
25 Conference will legislate on this matter.

1 **THE COMMISSIONER:** So can you give us any
2 examples of where ---

3 **REVEREND MORRISEY:** For instance, the Holy
4 Days of Obligation are different from one country to
5 another. The sums of money that a bishop can spend without
6 having to go to a higher authority, that depends on each
7 country. The program of formation of priests varies
8 according to the educational standards of each country.

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

10 **REVEREND MORRISEY:** Issues like the
11 organization of tribunals at the national level.

12 **MR. ENGELMANN:** Would it be fair to say,
13 sir, that most of their policies and procedures are not
14 binding or mandatory on dioceses?

15 **REVEREND MORRISEY:** Most are not binding.

16 **MR. ENGELMANN:** And do most countries have
17 conferences of bishops?

18 **REVEREND MORRISEY:** All the Church is part
19 of a conference. In some places one conference will cover
20 six countries. I'm thinking like Estonia, Lithuania, you
21 know, Finland, some of the smaller countries. The United
22 Kingdom has three conferences; one for Scotland, one for
23 Ireland, for the north, and one for England. United States
24 has four conferences.

25 **MR. ENGELMANN:** But we have just one in

1 Canada?

2 REVEREND MORRISEY: Just one in Canada.

3 MR. ENGELMANN: All right.

4 THE COMMISSIONER: Thank you.

5 MR. ENGELMANN: So, sir, if we move from
6 bodies like congregations and tribunals and go to sort of a
7 local level, we have the Church divided into provinces, do
8 we not?

9 REVEREND MORRISEY: Yes.

10 MR. ENGELMANN: Ecclesiastical provinces.

11 And do we have ecclesiastical provinces in this country?

12 REVEREND MORRISEY: We do.

13 MR. ENGELMANN: And what are they?

14 REVEREND MORRISEY: Those are groups, about
15 four or five dioceses brought together. Like here in
16 Cornwall is the ecclesiastical province of Kingdom. The
17 Archbishop resides in Kingston. There is another one in
18 Ottawa for Pembroke and, you know, going north.

19 MR. ENGELMANN: And, sir, does the
20 archbishop in a province have any authority over the other
21 bishops in the province?

22 REVEREND MORRISEY: Very, very little;
23 almost nothing. He has got a precedence of honour and he
24 would have a primacy of place if he was in one of his
25 suffragan dioceses. The only time that he can intervene is

1 that if the diocese is vacant and they don't elect an
2 administrator, he has the right to come in. And there are
3 a couple of very, like exceptional cases like that.

4 **MR. ENGELMANN:** All right.
5 What about, just very briefly,
6 responsibilities of priests in dioceses?

7 **REVEREND MORRISEY:** There is a section in
8 the Code called the obligations and rights of priests which
9 spell out obligations that are applicable to all priests.
10 Then there are special sections like on the obligations of
11 a parish priest or someone who is attached to a parish or
12 in a different -- depending on the different
13 responsibilities they have.

14 **MR. ENGELMANN:** It would just depend on
15 their role within a diocese ---

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** --- or and then, of course,
18 we have many priests that are part of religious institutes.

19 **REVEREND MORRISEY:** Yes. Let's say, for
20 instance, I cannot go into a parish and celebrate a
21 wedding. I have a license from the Government of Ontario,
22 but since I am not assigned to a parish, I have to get the
23 parish priest's permission before I could do a wedding in
24 that parish.

25 **MR. ENGELMANN:** Can you tell us a little

1 bit, sir, about the responsibilities of bishops?

2 **REVEREND MORRISEY:** For all practical
3 purposes, the bishop is the person who has the full
4 responsibility locally for a diocese. So he has got three
5 types of power we call legislative, executive and judicial
6 and it all comes down to him. Naturally, he has people
7 assisting him, but except for those matters that have been
8 withdrawn from his authority and are reserved to a higher
9 authority, the buck stops there as we could say.

10 **MR. ENGELMANN:** So the bishop is the
11 authority, so to speak, in the diocese?

12 **REVEREND MORRISEY:** He is the authority in
13 the diocese except for those matters that have been
14 withdrawn.

15 **MR. ENGELMANN:** Right.

16 **THE COMMISSIONER:** Any examples of those?

17 **REVEREND MORRISEY:** For instance, a bishop
18 cannot institute new penalties depriving a priest of
19 priesthood, only the holy -- the Vatican can do that.

20 **THE COMMISSIONER:** Okay. Sure.

21 **MR. ENGELMANN:** I think we'll talk a little
22 bit about how bishops' powers have evolved with respect to
23 this issue.

24 **REVEREND MORRISEY:** Very much.

25 **MR. ENGELMANN:** Yes. So let's just talk --

1 you mentioned a training formation. Is there a formal
2 training program for priests in Canada?

3 **REVEREND MORRISEY:** There is. This program
4 -- there are two programs, one for French-speaking priests
5 and one for English-speaking priests because the education
6 system in Quebec, you know, going through the CEGEPs and
7 all of that is different from the high school systems in
8 the other provinces. And basically, the two programs are
9 the same, but there are adaptations regarding prerequisites
10 for admission and so on.

11 **MR. ENGELMANN:** Sir, the U.S. Conference of
12 Catholic Bishops has published a program of priestly
13 formation, have they not?

14 **REVEREND MORRISEY:** Yes.

15 **MR. ENGELMANN:** If you turn to Tab 20 of the
16 second volume of your exhibit, Exhibit 632? Now, Father
17 Morrisey, is there an equivalent to this from the Canadian
18 Conference of Bishops?

19 **REVEREND MORRISEY:** Well, the two documents
20 that I mentioned are there, but they have to be revised.

21 **MR. ENGELMANN:** Okay.

22 **REVEREND MORRISEY:** A few years ago, John
23 Paul II issued a document called "Pastores Dabo Vobis" on
24 the formation of priests. And this U.S. document that you
25 have at Tab 20 took that document and brought it up to

1 date. It's the most recent of all the ones around the
2 world that addresses this. The Canadian ones have to do
3 it, but it's always the difficulty of getting the French
4 and the English views together to come up with one
5 document.

6 **MR. ENGELMANN:** And as I understand it, sir,
7 this particular document, the American document, is
8 required or mandatory for priestly formation in the U.S.?

9 **REVEREND MORRISEY:** It is.

10 **MR. ENGELMANN:** Is that the same in Canada
11 right now or is that directory or directive?

12 **REVEREND MORRISEY:** Well, what we would do
13 in Canada, we would, I think for practical purposes, the
14 seminaries are using this one because it's more up to date.
15 Everything is combined in one and as many of the things
16 that are possible, we take here.

17 **MR. ENGELMANN:** All right. So whether it's
18 codified or not in Canada, the practice is to import some
19 of the formation from the U.S.?

20 **REVEREND MORRISEY:** Some of the formation
21 principles.

22 **MR. ENGELMANN:** Yes. Okay.

23 And, sir, I understand you wanted to take us
24 to a couple of those principles that you thought might be
25 relevant to this subject matter?

1 **REVEREND MORRISEY:** Yes, on page 97 of that
2 document there are the four poles of formation of priests
3 that that's what John Paul II had worked out. There is
4 Human Formation, Spiritual Formation, Intellectual
5 Formation and Pastoral Formation.

6 **MR. ENGELMANN:** Sir, did you mean page 91?
7 I just have a peek.

8 **REVEREND MORRISEY:** I am sorry, 91, yes, I
9 am sorry.

10 **MR. ENGELMANN:** So, sorry, you said Human
11 Formation ---

12 **REVEREND MORRISEY:** There was Human
13 Formation, Spiritual, Intellectual and Pastoral.

14 **MR. ENGELMANN:** Okay. And how do these, in
15 your view, interrelate to this subject matter, the issue of
16 possible clergy abuse of minors?

17 **REVEREND MORRISEY:** Well, for instance, the
18 section on Human Formation, that's the bottom part of
19 Article 280, you'll notice there they're asking for judging
20 persons on their effective maturity, healthy psychosexual
21 development, clarity of male sexual identity, ability to
22 establish and maintain relationships, capacity to have
23 appropriate boundaries and relationships, you know, skill
24 for leadership, collaboration with women and men, good
25 knowledge, self discipline, self mastery, self control, you

1 know, all those things that try to make a person a well
2 balanced person as a person.

3 **MR. ENGELMANN:** So if I understand what's
4 being suggested here, these are areas that would be
5 evaluated on an annual basis?

6 **REVEREND MORRISEY:** Yes.

7 **MR. ENGELMANN:** And this is while priests
8 are in seminary, receiving their training?

9 **REVEREND MORRISEY:** Well, there are in a
10 seminary -- yes.

11 **MR. ENGELMANN:** Before they become ordained
12 priests.

13 **REVEREND MORRISEY:** Exactly.

14 **MR. ENGELMANN:** Any of the other formations
15 that you wanted to highlight, sir, or was that ---

16 **REVEREND MORRISEY:** Well, for instance,
17 pastoral formation is going to be the attitude to work with
18 people.

19 **MR. ENGELMANN:** M'hm.

20 **REVEREND MORRISEY:** And have pastoral
21 skills, but particularly today, work collaboratively and
22 especially if you are in a multicultural area, people that
23 are sensitive to people of different languages, backgrounds
24 and so on.

25 **MR. ENGELMANN:** Now, sir, I wanted to turn

1 to another topic and that's the topic of records or record
2 keeping, if I may. And as I understand it, Father
3 Morrisey, there are canons that deal specifically with
4 record keeping for the church?

5 **REVEREND MORRISEY:** Yes.

6 **MR. ENGELMANN:** And are those canons
7 specific to the diocesan level?

8 **REVEREND MORRISEY:** There is a section under
9 the diocese, around canon 489, in that area, that's going
10 to refer to the diocesan archives. A religious order would
11 then use like a parallel section. Canon 19 says we are to
12 proceed by analogy when something is not directly covered
13 in the code. We take what's covered in parallel sections
14 and apply them.

15 **MR. ENGELMANN:** Okay. So if we want to look
16 at canons that deal with the issue of record keeping, we
17 could find the current ones at Tab 27; am I right?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** I am looking at about five
20 or six pages in, Father Morrisey. That Code of Canon Law -
21 - by the way, can you tell us what we are looking at here
22 by way of a -- whether this is official or unofficial or
23 where it comes from?

24 **REVEREND MORRISEY:** Okay. This English
25 translation that you've taken from the Vatican website is

1 not an official translation. It was prepared by the Canon
2 Law Society of America and it was made available to put on
3 this site. If there is any dispute, it's only the Latin
4 text which is the official legal text.

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

6 **MR. ENGELMANN:** You've brought a copy of the
7 Code as it currently exists in Latin?

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** And there is no official
10 translation?

11 **REVEREND MORRISEY:** No. There are
12 recognized approved translations. And so, in Canada,
13 England, Ireland, Australia, we have a different one, as we
14 say with correct English.

15 **MR. ENGELMANN:** All right.

16 **REVEREND MORRISEY:** And the American English
17 is slightly different.

18 **MR. ENGELMANN:** And you also have a Code
19 from 1917 as well?

20 **REVEREND MORRISEY:** Yes.

21 **MR. ENGELMANN:** All right.

22 And that Code, as I understand it, is only
23 in Latin?

24 **REVEREND MORRISEY:** Yes, it was forbidden to
25 translate it into any language.

1 **MR. ENGELMANN:** So let's go then to the
2 canons that we've taken off the website and hopefully
3 they're going to be pretty close to what it says in the
4 Latin text. The ones dealing with record keeping and
5 safeguarding and archiving, do they start at approximately
6 Canon 42?

7 **REVEREND MORRISEY:** That's correct.

8 **MR. ENGELMANN:** And, sir, you've written
9 about the issue of record keeping and archiving in
10 accordance with Canon Law?

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** So if we want to just leave
13 this book open, and if we look at the previous volume of
14 Exhibit 632, Tab 8; is that one of your articles or
15 publications?

16 **REVEREND MORRISEY:** Yes, from last year.

17 **MR. ENGELMANN:** All right.

18 And that's an article entitled
19 "Confidentiality, Archives and Records Management"?

20 **REVEREND MORRISEY:** That's correct.

21 **MR. ENGELMANN:** And it's written -- is this
22 -- this is a journal called Catholic Archives?

23 **REVEREND MORRISEY:** Yes, it's published in
24 England.

25 **MR. ENGELMANN:** All right.

1 And can you tell us who it's published for,
2 who the intended audience is?

3 **REVEREND MORRISEY:** It's the archivist of
4 dioceses and religious institutes and Catholic institutions
5 around the world.

6 **MR. ENGELMANN:** And, sir, if I remember
7 correctly, every diocese has an archivist or someone who
8 performs that function?

9 **REVEREND MORRISEY:** Yes. If there's not an
10 official archivist as such named, the chancellor of the
11 diocese, by law, is automatically the archivist too.

12 **MR. ENGELMANN:** And, sir, what was your
13 purpose or intent in writing this article? What were you
14 trying to get across?

15 **REVEREND MORRISEY:** Two or three things.
16 One of the first things is trying to develop a policy of
17 retention because the paper is just expanding and expanding
18 and there is -- there comes a moment when the archives are
19 bigger than the offices. And so we're trying to develop a
20 policy of what would be retained in church archives.
21 There's a few canons in the Code, and I list them in the
22 article, which say that you are to keep these, for
23 instance, records of marriage, of ordination, of baptism,
24 of property titles. You know, things like that are to be
25 kept, but there's a lot of other things that do not have to

1 be kept but could be.

2 MR. ENGELMANN: So at page 17 of your
3 article you talk about the nature and purpose of archives?

4 REVEREND MORRISEY: Yes.

5 MR. ENGELMANN: And you set out a number of
6 the canons that deal with this issue?

7 REVEREND MORRISEY: That's correct.

8 MR. ENGELMANN: For example, the nature of
9 ecclesiastical archives. There are a number of canons that
10 set out rules that must be followed ---

11 REVEREND MORRISEY: That's correct.

12 MR. ENGELMANN: --- in the archives?

13 REVEREND MORRISEY: Yes.

14 MR. ENGELMANN: And as well, on page 18 you
15 talk about three types of articles -- I'm looking at the
16 third bullet on the left: the general archives; the
17 historical archives and the secret archives.

18 Now, these are all set out in Canon 489(1);
19 am I right?

20 REVEREND MORRISEY: In 489(1) -- you said --

21 -

22 MR. ENGELMANN: Yes.

23 REVEREND MORRISEY: I thought you said 49.

24 MR. ENGELMANN: Four eighty-nine (489).

25 REVEREND MORRISEY: Four-eight-nine (489),

1 yes.

2 **MR. ENGELMANN:** Yes.

3 And can you tell us what the distinction is
4 between those three types of archives?

5 **REVEREND MORRISEY:** Okay. The -- very often
6 here in Canada the current archives, we call them just the
7 secretariat. And then there's historical archives that we
8 have, for instance, in Quebec City and Montreal because
9 those dioceses go back 200 to 300 years, or Quebec 400
10 years almost. So things that are over 100 years have been
11 classified as historical and are open to researchers and so
12 on.

13 **MR. ENGELMANN:** I was just going to ask you
14 what we'd find in each of those.

15 **REVEREND MORRISEY:** Yeah.

16 **MR. ENGELMANN:** So with historical archives,
17 they would be records from when? Is there a rule on that?

18 **REVEREND MORRISEY:** Well, they're -- if
19 something has been classified as historical, it cannot be
20 destroyed. It's protected in church law. The question is
21 what of current articles today would be potentially
22 historical down the road. That's a judgment call.

23 **MR. ENGELMANN:** And whose judgment is that,
24 sir in interpreting ---

25 **REVEREND MORRISEY:** It's up to the bishop to

1 approve the retention policy. See, I could mention
2 something to understand that's behind this. In most of the
3 countries of the world, church documents are privileged.

4 **MR. ENGELMANN:** And what do you mean by
5 privileged?

6 **REVEREND MORRISEY:** That they cannot be
7 taken by a court, that there's a concordat with the Vatican
8 and an international treaty and you cannot just -- like you
9 can't go into a lawyer's office and take his files. Those
10 church documents are protected.

11 But in Canada and the U.S., they're not
12 protected and the police have just been going in and just
13 taking documents, and even like they'll -- they want one
14 file, but they go in and take 20 files at random to compare
15 that one file with others.

16 And so it's become ---

17 **MR. ENGELMANN:** Can I just stop you for a
18 second? They don't just come in and take them; they have a
19 search warrant?

20 **REVEREND MORRISEY:** Well, they come in with
21 a search warrant.

22 **MR. ENGELMANN:** Yes. Okay.

23 **REVEREND MORRISEY:** But 20 at random.

24 **MR. ENGELMANN:** All right.

25 So the laws dealing with church documents

1 are different in Canada and the U.S. Would that also be
2 true of some other western countries?

3 **REVEREND MORRISEY:** It's most of the -- what
4 you would call the former British colonies or countries
5 don't have a concordat. Most of the other countries do.

6 **MR. ENGELMANN:** So common law countries?

7 **REVEREND MORRISEY:** Most of the common law
8 countries would not.

9 **MR. ENGELMANN:** All right.

10 So I wanted to just ask a little bit about -
11 - you've talked about historical archives. General
12 archives are current archives?

13 **REVEREND MORRISEY:** Yes.

14 **MR. ENGELMANN:** So would have just about
15 everything in them.

16 What about secret archives? What is
17 different about them? What kinds of documents?

18 **REVEREND MORRISEY:** Okay. Secret archives,
19 first of all, the name is not a good name in our context.
20 They should really be restricted archives, but it's only
21 the bishop and the chancellor who have access to those.
22 And those are like top secret cases.

23 **MR. ENGELMANN:** Can you give us some
24 examples of what would be a secret archive or what would be
25 kept ---

1 **REVEREND MORRISEY:** The most common thing we
2 find in the secret archives are consultations about the
3 appointment of future bishops and where there's evaluations
4 done of persons and so on. And that's kept secret because
5 if the person is not named a bishop, why, you know, and so
6 on.

7 Also criminal cases, church criminal cases,
8 not the secular courts, those are also kept in order to
9 protect the person's reputation if necessary.

10 **MR. ENGELMANN:** Sir, if we have allegations
11 of the nature that we're looking at and allegations of
12 sexual abuse against minors; would documents of that nature
13 be kept in secret archives?

14 **REVEREND MORRISEY:** Since 2001, they all
15 have to go to Rome.

16 **THE COMMISSIONER:** All the -- anything
17 that's in the secret archives?

18 **REVEREND MORRISEY:** No, anything related to
19 a sex abuse case, anyone under 18.

20 **THE COMMISSIONER:** M'hm. And before then?

21 **REVEREND MORRISEY:** Before then they could
22 have been kept at the diocesan level, and very often that's
23 where they would be, in the secret archives. So only the
24 bishop and the chancellor would have access.

25 **MR. ENGELMANN:** Now, since 2001, they go to

1 Rome. Would copies also be kept at the diocesan level in
2 the secret archives, to your knowledge?

3 **REVEREND MORRISEY:** At this moment, this is
4 one of the reasons why we're taking -- we're trying to
5 develop a retention policy so as not to keep the same
6 things everywhere, that there's one copy that's guaranteed.
7 It just takes too much space to ---

8 **MR. ENGELMANN:** Okay. And I think you said
9 this, but what you're saying is the copy of documents
10 involving any type of sexual abuse charge, that one copy
11 goes to Rome?

12 **REVEREND MORRISEY:** That copy goes to Rome.
13 It's up to a bishop to decide. You see, what you've got to
14 distinguish is that very often as the church gets
15 information there is also parallel proceedings going on in
16 the secular courts.

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

18 **MR. ENGELMANN:** So then a bishop would make
19 a decision presumably whether or not he wanted to keep a
20 copy locally?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** But often they would just
23 send it to Rome?

24 **REVEREND MORRISEY:** Now they have to.

25 **MR. ENGELMANN:** Yes. Do they have some

1 discretion to keep copies or not?

2 REVEREND MORRISEY: They can keep a copy if
3 they decide to.

4 MR. ENGELMANN: But you're saying that in
5 some common law jurisdictions, documents like that would
6 then be accessible to police and/or others?

7 REVEREND MORRISEY: Exactly.

8 MR. ENGELMANN: Okay. I want to ask you a
9 little bit about some of the captions in your article, sir.
10 For example, at page 10, when you talk about secrecy and
11 confidentiality in canonical legislation, there are a
12 number of different captions. The first one -- and I just
13 want to ask you about the secrecy or confidentiality that
14 would apply to each.

15 REVEREND MORRISEY: Yes.

16 MR. ENGELMANN: The seal of confession?

17 REVEREND MORRISEY: That's inviolable and no
18 law or no permission or anything would justify breaking
19 that. That's totally inviolable. That's the highest form
20 and any priest who would ever do that is a major
21 excommunication reserve to the Pope. It's the protection
22 of people's consciences.

23 MR. ENGELMANN: So that would be any
24 communication of -- any communication to a priest in the
25 confessional?

1 REVEREND MORRISEY: In the confessional.

2 THE COMMISSIONER: What about if the person
3 released him of that, would that -- does that work?

4 REVEREND MORRISEY: In a church court,
5 that's not even admissible.

6 THE COMMISSIONER: M'hm.

7 REVEREND MORRISEY: And in practice, we do
8 everything we can to ask the person not to release because
9 that person might be willing, but it could put pressure on
10 another person to feel that they have to release when they
11 don't want to.

12 THE COMMISSIONER: M'hm.

13 REVEREND MORRISEY: So it's to protect that
14 level of conscience.

15 MR. ENGELMANN: Sir, we have heard, and
16 you're certainly aware of, duty to report provisions ---

17 REVEREND MORRISEY: Yes.

18 MR. ENGELMANN: --- that might conflict with
19 that.

20 REVEREND MORRISEY: Yes.

21 MR. ENGELMANN: And I'm wondering if that
22 might be a circumstance where there might be a discussion
23 about consent to release?

24 REVEREND MORRISEY: Not as far as the Church
25 is concerned.

1 **MR. ENGELMANN:** All right.

2 So that wouldn't be church policy or
3 practice to speak about that possibility?

4 **REVEREND MORRISEY:** No.

5 **MR. ENGELMANN:** Pontifical secrecy, the next
6 caption, can you tell us what that means?

7 **REVEREND MORRISEY:** Okay. That's --
8 pontifical means coming from the Pope and that's a secrecy
9 that's like the appointment of bishops and a number of
10 things like that are under that high form of secrecy.
11 There are serious penalties imposed against a person who
12 would break that. I suppose like cabinet ministers have
13 special oaths of office and it's sort of the same thing if
14 you're involved at that level.

15 **MR. ENGELMANN:** What's the difference
16 between pontifical secrecy and the secret of the Holy
17 Office?

18 **REVEREND MORRISEY:** Okay, the secret of the
19 holy office in tradition was also a major ex-communication.
20 That has been dropped now since 1983 in formal documents
21 and instead they just use the general term "pontifical
22 secrecy".

23 **MR. ENGELMANN:** Okay, so it's sort of a
24 subset of pontifical secrecy?

25 **REVEREND MORRISEY:** Yes.

1 **MR. ENGELMANN:** And now it's just called
2 pontifical secrecy?

3 **REVEREND MORRISEY:** Now, it's called
4 pontifical, yes.

5 **MR. ENGELMANN:** All right. Because one of
6 the documents I think we are going to come to from 1962 was
7 a document that was covered by the Secret of the Holy
8 Office.

9 **REVEREND MORRISEY:** Exactly.

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

11 "Secrecy in penal and contentious
12 trials".

13 **REVEREND MORRISEY:** Yes.

14 **MR. ENGELMANN:** What is that referring to?

15 **REVEREND MORRISEY:** Well, for instance, I'm
16 the judge in the Churchgate Courts, but I'm not allowed --
17 but most of our cases are three judges -- but I'm not
18 allowed to say afterwards I voted against it. See in some
19 of these secular courts, you can have, like, -- it'll be a
20 four -- a five-to-four decision, and you know which judges
21 are on which side. We just give one decision on behalf of
22 the College of Judges and that's -- so there's the secrecy
23 there.

24 **MR. ENGELMANN:** So there's no dissent that's
25 issued?

1 **REVEREND MORRISEY:** No, there's no dissent.
2 If a judge really dissents and the case goes to appeal, the
3 dissenting judge can send observations to the Appeal Court.

4 **MR. ENGELMANN:** Okay. I just note, sir,
5 with respect to the last one, the "Secret of the Holy
6 Office", you actually do reference to the fact that this
7 became an issue in dealing with some of the clergy abuse
8 cases.

9 **REVEREND MORRISEY:** Yes.

10 **MR. ENGELMANN:** And I think we will come to
11 that, but that's the 1962 document?

12 **REVEREND MORRISEY:** Exactly.

13 **MR. ENGELMANN:** All right. Well, I'll wait
14 and we'll come to that.

15 Secrecy of office, sir?

16 **REVEREND MORRISEY:** Yes, well, that's --
17 it's like a confidentiality agreement. If a Bishop, or
18 let's say a seminary rector, is dealing with issues that a
19 seminarian has, he is not free to go and tell everybody,
20 "Guess what I heard last night".

21 **MR. ENGELMANN:** All right.

22 **REVEREND MORRISEY:** So in some instance, as
23 you take an oath of office, before you assume your
24 functions.

25 **MR. ENGELMANN:** So that might be if you're

1 performing -- I'm just thinking out loud -- maybe a
2 counselling role or some other kind of role?

3 **REVEREND MORRISEY:** It could be that. It
4 could be things that you learn in virtue of your office
5 that are not public by nature.

6 **MR. ENGELMANN:** Okay. And what is meant by
7 the next caption, "A Committed secrecy"; that's "A
8 committed secret"?

9 **REVEREND MORRISEY:** Like it's a committed --
10 if I ask someone, for instance, for a recommendation
11 regarding someone that I wish to hire or someone that I
12 wish to accept as a priest and I promise that this will be
13 confidential, if I made the promise, I made the commitment
14 to keep it private, and ---

15 **MR. ENGELMANN:** There's a canon that
16 actually sets that out?

17 **REVEREND MORRISEY:** Yes.

18 **MR. ENGELMANN:** All right. And
19 "professional secrecy", sir?

20 **REVEREND MORRISEY:** Well, professional
21 secrecy, for instance, in a church court, if I had like say
22 a psychiatrist/psychologist coming to testify, unless the
23 parties have released him I can't accept his testimony. It
24 is non-acceptable if he's bound by professional standards
25 or agreements.

1 **MR. ENGELMANN:** So a doctor-patient
2 relationship?

3 **REVEREND MORRISEY:** Very similar.

4 **MR. ENGELMANN:** Yes, okay.

5 Sir, next in the article, you refer to the
6 right to privacy?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** And I note on page 15, you
9 say:

10 "There are some immediate practical
11 applications".

12 I want to just talk to you about that. And
13 I think there are mainly treatment issues there, and I
14 think some of those may be particularly relevant to the
15 matter at hand if we have a priest who is either a
16 confirmed or alleged abuser.

17 Can you take us through, on page 15, some of
18 the right to privacy with respect to treatment?

19 **REVEREND MORRISEY:** Yes. Say, for instance,
20 a priest goes for treatment at a facility the bishop cannot
21 receive a report from the treatment facility unless the
22 priest has released the doctors to make it public but even
23 then if ---

24 **THE COMMISSIONER:** I'm sorry to interrupt
25 you. "To make it public"?

1 **REVEREND MORRISEY:** To make it public. I
2 mean to make it available.

3 **THE COMMISSIONER:** Well, presumably there
4 would be a difference between making it available to the
5 bishop as an employer or whatever, or to the public.

6 **REVEREND MORRISEY:** That's exactly the next
7 point.

8 **THE COMMISSIONER:** I'm sorry.

9 **REVEREND MORRISEY:** No, no. It's a -- see
10 what's happening is these reports are released to the
11 bishop very often, and the bishop has been making them
12 available to the consultants in the diocese or the members
13 of the priest council or personnel board and so on, and
14 that's where -- this is what I've been writing this about,
15 that if it was released to the bishop, it was released to
16 him and not to others, and he's bound by confidentiality.
17 Then those reports from the centres, most of the time it's
18 written on them. They're released for a period of six
19 months after which time they are to be destroyed. Yet,
20 very often those reports are found in files six, eight
21 years later.

22 **MR. ENGELMANN:** So unless that individual
23 priest consents, the bishop is not to share the document.
24 Is that what you are saying?

25 **REVEREND MORRISEY:** Exactly.

1 **MR. ENGELMANN:** All right.

2 **THE COMMISSIONER:** But you are saying not
3 only that. You're saying that if the -- we'll say the
4 priest does not consent, the bishop shall not see.

5 **REVEREND MORRISEY:** Shall not see, yes.

6 And the question is the bishop says, "Well,
7 I'm paying for this; I'm paying for the treatment. I have
8 a right to have the report." And that's the -- it's a
9 balance of two values here.

10 **THE COMMISSIONER:** M'hm. Well, let's assume
11 for a minute that a priest is an abuser, goes for
12 treatment, does not want an unfavourable report to come out
13 to the bishop and says, "No". Then the bishop will not see
14 that report?

15 **REVEREND MORRISEY:** You see, that's correct.
16 See the idea behind the treatment -- and there's been a
17 deviation here in the last couple of years -- the idea
18 behind the treatment was to help the priest come to terms
19 with himself.

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

21 **REVEREND MORRISEY:** But very often, there's
22 been a tendency to take those reports of treatment and use
23 them, turn around and condemn the priest. And so there's
24 been -- what was used in one ---

25 **MR. ENGELMANN:** In what sense, as proof of

1 the wrongdoing?

2 **REVEREND MORRISEY:** Proof of wrongdoing,
3 proof of guilt and it was there to help the priest -- that
4 was the purpose of the therapy centre. You know, to help
5 them gain health again. And now we are using it instead as
6 a detection method to find out did they do something wrong.

7 **THE COMMISSIONER:** No. No, no. Well, can I
8 make it a more neutral suggestion? Let's assume the priest
9 goes into -- to better himself or to get some treatment,
10 and the prognosis is nothing is going to change.

11 **REVEREND MORRISEY:** Change.

12 **THE COMMISSIONER:** And therefore it prevents
13 him -- it would effectively prevent him or if the bishop
14 was aware that -- let's not mince words here -- let's
15 assume that a person is a pedophile and the report says
16 there is no cure; this man is going to be like this for the
17 foreseeable future. And the priest does not want that to
18 go to the bishop because effectively if the bishop finds
19 that out, I would hope that he would not send this person
20 back into a parish. Is that ---

21 **REVEREND MORRISEY:** Absolutely. What will
22 happen is the bishop will say, "If I don't have a report
23 from you, there's absolutely no way you will have any
24 assignment or any salary or anything."

25 So as you can see, there's pressure on the

1 priest to release that.

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

3 **MR. ENGELMANN:** So there is power the bishop
4 has to coerce, for lack of a better word, a priest to go to
5 treatment if he doesn't want the treatment?

6 **REVEREND MORRISEY:** See in the Latin Church,
7 a priest does not have a right to ministry. It's up to the
8 bishop to decide if he sees him fit for ministry.

9 **MR. ENGELMANN:** M'hm.

10 **REVEREND MORRISEY:** In the Eastern Churches,
11 if a priest has been ordained, there's a right to ministry
12 that flows from ordination. So in the Latin Church, which
13 is the one that we are most common with or familiar with,
14 if a priest wants to do ministry, he has to be certified by
15 the bishop and then the bishop will say, "I'm withdrawing
16 your certification if I don't have, you know, reasonable
17 proof that you are ready for it."

18 **MR. ENGELMANN:** And some of what we are
19 dealing with on paragraph 15 are your views or your
20 opinions, if I can state that. Like if we look at "B":

21 "A priest or religious..."

22 And a religious, Father Morrisey, could be a
23 priest like yourself?

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** Or it could be a nun?

1 REVEREND MORRISEY: A nun.

2 MR. ENGELMANN: Or a brother?

3 REVEREND MORRISEY: A brother in an order
4 who's not ordained.

5 MR. ENGELMANN: Yes. It says:

6 "...who freely consents to an
7 evaluation or ongoing therapy should be
8 invited to release the results of the
9 evaluation or the therapy to his or her
10 superior or ordinary."

11 So you are suggesting that they should be
12 invited to do this?

13 REVEREND MORRISEY: Yes.

14 MR. ENGELMANN: And you say:

15 "He or she cannot be compelled to
16 release such results following the
17 assessment or to sign a release prior
18 to an assessment agreeing to the later
19 result..."

20 Sorry.

21 "...or to sign a release prior to an
22 assessment agreeing to the later
23 release of the results."

24 So what you are essentially saying is that
25 the priest should be able to look at the report before

1 making a decision as to whether he wishes to release it.

2 **REVEREND MORRISEY:** That's the standard
3 practice in the therapy centres where we send priests to
4 and before the report is sent the patient goes through the
5 report and sees if there are lines that are not considered
6 correct, and he can ask to have those removed.

7 **MR. ENGELMANN:** But that could lead to the
8 problem the Commissioner mentioned where the facility says
9 this fellow is a pedophile, there's nothing we can do ---

10 **REVEREND MORRISEY:** Yup.

11 **MR. ENGELMANN:** --- and he may just decide
12 not to release that to the bishop.

13 **REVEREND MORRISEY:** Yeah. Now, don't forget
14 the recommendation of the centre is not part of the
15 evaluation of the person.

16 **MR. ENGELMANN:** Okay.

17 **REVEREND MORRISEY:** You know what I mean?
18 The evaluation is going to say so and so is this type, et
19 cetera. At the end, the centre is going to give a basic
20 report to just say, "We cannot under any circumstance
21 recommend this person for ministry."

22 **MR. ENGELMANN:** That's the bishop's
23 responsibility.

24 **REVEREND MORRISEY:** That goes to the bishop.

25 **MR. ENGELMANN:** Yes, they just give the

1 medical evaluation?

2 **REVEREND MORRISEY:** Yes.

3 **MR. ENGELMANN:** You say at the bottom:

4 "Under no circumstances can a priest or
5 religious be required to undergo
6 invasive testing which elicits
7 information over which the individual
8 has no freedom or personal control."

9 And you give some examples like the use of a polygraph.

10 **REVEREND MORRISEY:** Yes. And like say, for
11 instance, there are some procedures for instance at the
12 Clarke Institute here in Ontario, that are not considered
13 to be morally correct, and if a priest accepts that, well,
14 that's his choice, but he can't be forced under church law
15 to do something that would be against his conscience.

16 **MR. ENGELMANN:** And there are other things,
17 other tests like this -- the penal test and drug-induced
18 responses and others that you say they can't be forced to -
19 --

20 **REVEREND MORRISEY:** No.

21 **MR. ENGELMANN:** --- undergo?

22 **REVEREND MORRISEY:** Because it's considered
23 an invasion of privacy.

24 **THE COMMISSIONER:** Mr. Engelmann, it might
25 be a good time for a break?

1 **MR. ENGELMANN:** Certainly.

2 **THE COMMISSIONER:** All right. Why don't we
3 take a short break?

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

6 --- Upon recessing at 11:07 a.m./

7 L'audience est suspendue à 11h07

8 --- Upon resuming at 11:29 a.m./

9 L'audience est reprise à 11h29

10 **THE REGISTRAR:** This hearing is now resumed.

11 Please be seated. Veuillez vous asseoir.

12 **FATHER FRANCIS G. MORRISEY, Resumed/Sous le même serment:**

13 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**

14 **ENGELMANN (Cont'd/Suite):**

15 **MR. ENGELMANN:** Father Morrissey, when we
16 left off we were dealing with your article at Tab 8 of the
17 first volume on Catholic archives. I just had a couple
18 more questions for you on the article.

19 Sir, at page 22, the bottom left-hand
20 corner, there's a reference to personal files. And I just
21 -- there's often confusion between personal files and
22 personnel files. Is there some overlap here or is this
23 completely different?

24 **REVEREND MORRISEY:** No, obviously there's
25 overlap.

1 **MR. ENGELMANN:** Okay.

2 **REVEREND MORRISEY:** But the personal files
3 very often contain seminary reports, requests for admission
4 to orders, you know, situations like that.

5 But personnel files, officially a diocese
6 could be like the list of priests who have been assigned to
7 such and such a parish or place, but often ---

8 **MR. ENGELMANN:** Would they actually have,
9 though, files for when a priest gets incardinated into a
10 diocese and what some of the functions might be over time?

11 **REVEREND MORRISEY:** Yes. There's lists,
12 like a curriculum vitae of each priest, the assignments
13 that he has had.

14 **MR. ENGELMANN:** So there would be
15 information about who worked where, when, et cetera?

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** That would be on your
18 individual personnel file?

19 **REVEREND MORRISEY:** Yes.

20 **MR. ENGELMANN:** So for example -- and I
21 think we'll come to this later -- sometimes priests are
22 transferred within a diocese and sometimes they get
23 transferred outside of the diocese.

24 **REVEREND MORRISEY:** That's correct.

25 **MR. ENGELMANN:** And I'm assuming that if

1 they get transferred outside of the diocese, would their
2 personnel file follow them?

3 **REVEREND MORRISEY:** Normally it would, or at
4 least the major parts of it.

5 **MR. ENGELMANN:** Now, I wanted to ask you a
6 little bit about retention. And you said this was an area
7 that's, I guess, evolving over time and you make a comment
8 about it at the top of page 23, that:

9 "There are no hard and fast canonical
10 rules regarding how long certain
11 materials should be kept."

12 You say:

13 "There are advantages and disadvantages
14 to keeping material. If retention
15 schedules have been determined, they
16 should be scrupulously adhered to so
17 that no inference can be made of the
18 fact that only certain documents were
19 destroyed and others retained."

20 Are there specific documents that must be
21 kept for periods of time as opposed to other documents
22 where the retention period may be different or may be
23 flexible?

24 **REVEREND MORRISEY:** Canon 489 gives a rule
25 on that and that's ---

1 **MR. ENGELMANN:** That's at Tab 27, sir?

2 **REVEREND MORRISEY:** At Tab 27.

3 **THE COMMISSIONER:** You said 489?

4 **REVEREND MORRISEY:** Canon 489.

5 **THE COMMISSIONER:** That's the one about
6 there is to be a secret archive or, at least, in the common
7 archive there is to be a safe or cabinet completely closed
8 or locked which cannot be removed?

9 **MR. ENGELMANN:** Yes. If you see the -- do
10 they call these subsections?

11 **REVEREND MORRISEY:** Okay, paragraph two,
12 section 2 of that canon.

13 **MR. ENGELMANN:** Okay. So Canon 489,
14 paragraph two, what was it you wanted to relate?

15 **REVEREND MORRISEY:** So there, you see, they
16 give a rule:

17 "Each year documents of criminal cases
18 [that's church criminal cases, not the
19 public domain] in matters of morals in
20 which the accused parties have died or
21 10 years have elapsed from the
22 condemnatory sentence are to be
23 destroyed. A brief summary of what
24 occurred along with the text of the
25 definitive sentence is to be retained."

1 **MR. ENGELMANN:** So that's an example of a
2 retention policy that's found right in the canons?

3 **REVEREND MORRISEY:** Yes.

4 **MR. ENGELMANN:** Are there other retention
5 policies, sir, that would be relevant to what we're dealing
6 with?

7 **REVEREND MORRISEY:** Not in the Code, but the
8 Apostolic Signatura has sent a letter to bishops around the
9 world saying that for the Marriage Tribunal, for instance,
10 that cases after 10 years may be destroyed and that the
11 original sentence is kept. It's a parallel sort of to what
12 we have here, but we don't need to keep all the testimonies
13 and all the letters and documents.

14 **MR. ENGELMANN:** Okay. Some of the documents
15 we'll be coming to, sir, from Rome in or about 2001, do
16 they deal with the need to preserve records dealing with
17 clergy abuse cases?

18 **REVEREND MORRISEY:** No.

19 **MR. ENGELMANN:** They do not?

20 **REVEREND MORRISEY:** No.

21 **MR. ENGELMANN:** So there's no actual
22 required retention policy with this type of document,
23 anything that would deal with clergy sexual abuse?

24 **REVEREND MORRISEY:** No, except that what we
25 have to send to Rome, then they will have their policies --

1 -

2 MR. ENGELMANN: Fair enough.

3 REVEREND MORRISEY: --- over there.

4 MR. ENGELMANN: Okay. And, sir, are there
5 also retention policies dealing with things like the
6 personal notes of bishops and what happens when a new
7 bishop is ordained or appointed?

8 REVEREND MORRISEY: Yes, and a distinction
9 we have to make is between the personal notes that a bishop
10 would take -- let's say he's having a conversation with
11 someone and he can just write notes for his memory, which
12 are going to be different from official notes that he would
13 sign, like letters or things like that that could be -- you
14 know, that would become public. He's not obliged -- his
15 own personal notes he's not obliged to give them to a
16 successor.

17 MR. ENGELMANN: All right.

18 So he could either take those with him or
19 destroy them?

20 REVEREND MORRISEY: Yes.

21 MR. ENGELMANN: Whereas if they were public-
22 type documents, he would be -- he would need to leave them
23 behind for his ---

24 REVEREND MORRISEY: They remain.

25 MR. ENGELMANN: --- successor?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: Sir, you also give some
3 advice -- I think it's advice, if I can call it that, at
4 para -- sorry, page 28. This is advice, as I understand
5 it, you're giving to archivists or chancellors at dioceses
6 ---

7 REVEREND MORRISEY: Yes.

8 MR. ENGELMANN: --- about what to do if a
9 subpoena is served for documents that are kept in your
10 archives?

11 REVEREND MORRISEY: M'hm.

12 MR. ENGELMANN: So this would only be
13 applicable in sort of a common law jurisdiction?

14 REVEREND MORRISEY: Yes. See, what is
15 happening is so many of the things that we have are related
16 to matters of conscience.

17 MR. ENGELMANN: Yes.

18 REVEREND MORRISEY: And the question is, is
19 there privilege or not? You know, when the Supreme Court
20 reasserted like those four Wigmore principles where you
21 could claim confidentiality, and so in a number of
22 instances, what we do, we claim it's confidentiality.
23 Here, these are privileged. They are sealed and then given
24 to the police who come for them.

25 MR. ENGELMANN: Okay.

1 REVEREND MORRISEY: But ---

2 MR. ENGELMANN: So ---

3 REVEREND MORRISEY: --- a judge decides if
4 it's ---

5 MR. ENGELMANN: The typical response of the
6 diocese would be to claim the privilege and then have a
7 third party decide?

8 REVEREND MORRISEY: Exactly, for matters
9 that are in that category.

10 MR. ENGELMANN: In what category, sir?

11 REVEREND MORRISEY: That would touch
12 conscience.

13 MR. ENGELMANN: Okay. All right.

14 And if they were documents dealing with any
15 form of alleged abuse by a priest, might they fit into that
16 category?

17 REVEREND MORRISEY: They could, because,
18 see, many of these are moral issues ---

19 MR. ENGELMANN: Yes.

20 REVEREND MORRISEY: --- that they're sins in
21 addition to ---

22 MR. ENGELMANN: They're sins in addition to
23 criminal acts.

24 REVEREND MORRISEY: Exactly.

25 MR. ENGELMANN: Okay. So in any event, what

1 we see at paragraph 28, if I can call it as -- is some
2 advice from you to archivists about how to deal with this
3 type of situation?

4 **REVEREND MORRISEY:** Yes, because I'm in no
5 position to tell them, "This is what you have to do."

6 **MR. ENGELMANN:** No. You're just making a
7 suggestion.

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** Because there's some
10 flexibility, is there, with the canon law?

11 **REVEREND MORRISEY:** There is.

12 **MR. ENGELMANN:** Yes. And this has become
13 more of an issue, and I think you say this, because of the
14 number of civil cases that have arisen over the last few
15 years, and I just note you have a reference to that in the
16 conclusion.

17 **REVEREND MORRISEY:** Yes. And there's a
18 tension right now. The historians would like to see us
19 keep things.

20 **MR. ENGELMANN:** Yes.

21 **REVEREND MORRISEY:** And others will say,
22 "No, you're just putting a cord around your neck."

23 **MR. ENGELMANN:** Right. So you might have
24 certain advice from historians; you might have other advice
25 from lawyers?

1 **REVEREND MORRISEY:** Your lawyers will tell
2 you not to.

3 **MR. ENGELMANN:** All right.

4 Let's talk a little bit about the canon law
5 and, in particular, I think you've answered this already.
6 You said in some countries the canon law is the law of the
7 nation.

8 **REVEREND MORRISEY:** Yes. Well, what we have
9 is there is a concordat or international agreement where
10 the canon law has civil effects. And so for instance, in
11 those countries a diocese does not have to be incorporated
12 civilly if it's already a church entity. We have that in
13 Israel. We have that with the Palestinian state. We have
14 that with a number of African countries, all of Latin
15 America and most of Europe. But we don't have it with the
16 Anglo-Saxon common law countries and so that's where you
17 would just have to ---

18 **THE COMMISSIONER:** Except for Quebec and
19 Manitoba, parts of Manitoba dioceses?

20 **REVEREND MORRISEY:** There is a separate law
21 like for parishes.

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

23 **REVEREND MORRISEY:** But that's a law. It's
24 not a concordat. It's a law of the provincial legislature.

25 **MR. ENGELMANN:** So that it creates a

1 concordance, in effect? Is that ---

2 **REVEREND MORRISEY:** Well, in -- no, it
3 doesn't because what it does is the -- like the Fabrique
4 law in Quebec gives to a parish that is legitimately
5 established, it gives the status of a corporation, but then
6 you have to follow the corporation law.

7 Now, fortunately, the Fabrique Act has
8 integrated a number of prescriptions of the Code of Canon
9 Law regarding like the appointment of a parish priest and
10 so on. So it's a happy compromise.

11 **MR. ENGELMANN:** All right.

12 So let's talk a little bit about the period
13 of time before 1917. Of course, 1917 is, I presume, a huge
14 amount of work so you get all of these revised statues --
15 for a lack of a better word -- that you've been talking
16 about that have been piling up over the centuries and put
17 them into a Code.

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** Prior to that, there were
20 some earlier documents, were there not, that had provisions
21 dealing with sexual abuse of minors by clergy or by
22 individuals, laity; is that fair?

23 **REVEREND MORRISEY:** Yes, that's fair. The
24 first councils that we had in the Church that were
25 legislative but were local; they weren't universal, you can

1 trace them back to 314 and 325 and so on.

2 MR. ENGELMANN: This is the Council of
3 Elvira?

4 REVEREND MORRISEY: Well, that's -- Elvira
5 is just a little later.

6 MR. ENGELMANN: Okay.

7 REVEREND MORRISEY: Council of Arles was the
8 first and Council of Nicea, but they didn't have the
9 universal role of law. It's only in 1234 that the first
10 official formal collection of church laws was promulgated.

11 MR. ENGELMANN: All right.

12 And some of those laws, did they deal with
13 allegations of sexual abuse of children?

14 REVEREND MORRISEY: Yes.

15 MR. ENGELMANN: And did they deal with that
16 from the point of view of either laity or clergy possibly
17 committing those acts?

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: All right.

20 And was that a universal law?

21 REVEREND MORRISEY: That was a universal
22 law. Now, don't forget in the 13th century the universe was
23 rather limited to the Mediterranean and northern Africa.

24 MR. ENGELMANN: Yes, much smaller world as
25 far as the Roman Catholic Church universe.

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: Okay. So can you -- what if
3 anything does that tell us about the Church's awareness of
4 this issue and how it viewed it?

5 REVEREND MORRISEY: Well, I was looking on
6 Sunday through some of these old laws and I came to this
7 1234 where anyone who abused a child, any priest who abused
8 a child was sentenced to seven years imprisonment in a
9 monastery and fasting with bread and water for seven years,
10 which is a pretty serious penalty.

11 MR. ENGELMANN: Is there any historical work
12 on whether they survived?

13 REVEREND MORRISEY: I have no idea. I just
14 found the law.

15 MR. ENGELMANN: All right.

16 So it appears in any event that there was
17 some awareness of an issue and some serious treatment?

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: Or serious penalty?

20 REVEREND MORRISEY: Serious response, yes.

21 MR. ENGELMANN: Okay.

22 What was the next significant historical
23 document, sir, that you're aware of?

24 REVEREND MORRISEY: Well, after that we had
25 the Council of Trent in the middle of the 16th century which

1 reorganized the whole way in which the Church functioned
2 and operated, and so on. And by then, you see, we've got
3 the New World. Now, we've got Latin America, so it's taken
4 on a new ---

5 **MR. ENGELMANN:** All right.

6 So this is 1560s?

7 **REVEREND MORRISEY:** Yes, 1565 it ended.

8 **MR. ENGELMANN:** And this is just after the
9 Reformation?

10 **REVEREND MORRISEY:** It's right after. It
11 was the Catholic Church's response to the Reformation.

12 **MR. ENGELMANN:** And was there some
13 indication of an awareness of a problem of child sexual
14 abuse and a view that it should be treated seriously?

15 **REVEREND MORRISEY:** There is a whole section
16 on what they call the morality of the clergy. And so it
17 wasn't focused on child sexual abuse. It was on issues.
18 Like one of the major issues at the time too was the
19 question of simile, money and, you know, there were an
20 awful lot of irregularities there too at the same time.

21 **MR. ENGELMANN:** Yes.

22 **REVEREND MORRISEY:** So it's not just sexual
23 matters.

24 **MR. ENGELMANN:** So that would have been one
25 of several crimes or penal matters, for lack of a better

1 word, that were recognized as wrongs?

2 REVEREND MORRISEY: As wrongs.

3 MR. ENGELMANN: And were there prescribed
4 punishments as well?

5 REVEREND MORRISEY: No, Trent did not go
6 into issuing like a new penal law or penal code. It just
7 took what was -- what it focused on were the principles.

8 MR. ENGELMANN: Okay. And in your view
9 then, sir, what was the next significant event in the
10 development of some of these laws that might deal with
11 clergy abuse of minors?

12 REVEREND MORRISEY: Well, then you move to
13 Benedict the 14th in 1741 who reorganized the Church's
14 tribunals almost on the form we have today. We've had some
15 tweaking of procedural rules but the basic setup was there.

16 MR. ENGELMANN: These are the three
17 tribunals you talked about earlier?

18 REVEREND MORRISEY: Yes, they're not exactly
19 the three at that time, but there was the three levels; a
20 trial court, an appeal court and then a supreme court, if
21 you wanted to call it that. And he's the one that
22 organized that.

23 While the major focus of those courts was
24 for marriage cases, also all penal cases went there too.

25 MR. ENGELMANN: All right.

1 And again, was there some recognition of an
2 issue of clergy abuse of minors and that it should be
3 viewed seriously?

4 **REVEREND MORRISEY:** Yes, by that time we
5 started having a consistent list of crimes ---

6 **MR. ENGELMANN:** All right.

7 **REVEREND MORRISEY:** --- that you see
8 repeated, continuing on in the documents.

9 **THE COMMISSIONER:** But would you see --
10 would anybody know back then -- I guess the word statistics
11 comes to mind -- was anybody ever brought forward on abuse
12 cases?

13 **REVEREND MORRISEY:** Honestly, Mr.
14 Commissioner, I don't know.

15 **THE COMMISSIONER:** Because it's secret?

16 **REVEREND MORRISEY:** It's secret and I don't
17 even know if those documents now have been ever kept or
18 whether they were at one moment or another destroyed. But
19 the principle I look on is if there was a law addressing
20 that, that probably meant there was a problem. Usually you
21 wouldn't invent a law for some of those things if there
22 hadn't been instances arising.

23 **MR. ENGELMANN:** And there were -- I guess
24 we'll come to this, but there were a select few worst
25 crimes ---

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: --- that are identified as
3 we get into the 20th century?

4 REVEREND MORRISEY: Yes.

5 MR. ENGELMANN: And abuse of -- sexual abuse
6 of minors by clergy or laity is one of those?

7 REVEREND MORRISEY: Yes.

8 MR. ENGELMANN: So what happens after the
9 tribunal system is set up? What is the next significant
10 event ---

11 REVEREND MORRISEY: Well, then Pius the IX
12 who called for Vatican I, he decided to reorganize the
13 whole penal code of the Church and to bring it up to date
14 and so forth and so on. So we find provisions there.

15 MR. ENGELMANN: Okay. And they again set
16 out, for example, an awareness of this issue of sexual
17 abuse of minors and a serious view taken of it?

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: And this would have been, as
20 I understand it, right about the time of Confederation, the
21 late 1860s?

22 REVEREND MORRISEY: Late 1860s. From the
23 Church point of view, Vatican I started 1870.

24 MR. ENGELMANN: Okay.

25 REVEREND MORRISEY: And so it's -- it's that

1 period.

2 **MR. ENGELMANN:** And, sir, in your view then
3 the next significant timeframe of laws or rules that would
4 possibly touch on this issue?

5 **REVEREND MORRISEY:** Well, Pius the Xth after
6 Vatican 1, which had asked to have the laws codified, but
7 then it was the whole time when the papal states were taken
8 by Garibaldi and all of that. The Vatican had other issues
9 to handle at that moment. But Pius the Xth became pope in
10 the early 20th century and then he reorganized all the way
11 in which the Vatican functions and called for the 1917 Code
12 -- called for the Code which was then promulgated.

13 **MR. ENGELMANN:** Did Pope Pius the Xth pass
14 any rules or revise any rules dealing with how these types
15 of cases ---

16 **REVEREND MORRISEY:** He coordinated again the
17 penal law that Pius the IXth had updated.

18 **MR. ENGELMANN:** All right.

19 And again, sexual abuse of minors by clergy
20 would have been recognized and a penalty would have been --
21 or some form of penalties might have been prescribed?

22 **REVEREND MORRISEY:** Yes.

23 **MR. ENGELMANN:** And a process for dealing
24 with it; an internal process.

25 **REVEREND MORRISEY:** And, in fact, what he

1 did was taken literally into the 1917 Code.

2 **MR. ENGELMANN:** All right. So throughout
3 the period from 1234 through to the 1917 Code, there was a
4 recognition in church laws or rules that child sexual abuse
5 or sexual abuse of minors by clergy was a serious matter?

6 **REVEREND MORRISEY:** A most serious matter.

7 **MR. ENGELMANN:** And that -- and during that
8 period of time from 1234 to 1917, there were some
9 procedures in place for dealing with it?

10 **REVEREND MORRISEY:** There were procedures in
11 place, but like in answer to the question a while ago, I
12 cannot tell you ---

13 **MR. ENGELMANN:** If they were actually
14 utilized?

15 **REVEREND MORRISEY:** Yes or how many cases
16 there were.

17 **MR. ENGELMANN:** And was it a time when if
18 you didn't use a process to remove a priest for allegedly
19 abusing children, were there other ways that a bishop or
20 other church officials could remove the priest?

21 **REVEREND MORRISEY:** Yes, there was a
22 procedure that was set up. In fact, Trent had even
23 authorized it in the 16th century, and it got formalized in
24 the 17th Code and it's -- in Latin, it's called procedure *ex*
25 *informata conscientia* that a bishop is acting with an

1 informed conscience. And for all practical purposes, what
2 was done, where a lot of these cases were taken out of the
3 tribunal context and sent back to the bishop personally who
4 could handle it based on his evaluation of the situation.

5 **MR. ENGELMANN:** So the bishop had a lot of
6 discretion as to how, if at all, these types of cases would
7 be dealt with?

8 **REVEREND MORRISEY:** Yes.

9 **THE COMMISSIONER:** Just a minute now. You
10 say it was sent back to him. So it had gone to some
11 tribunal?

12 **REVEREND MORRISEY:** Well, it might. But
13 what I was meaning -- was that if complaints had come to
14 somebody else, you know, everything went to the bishop's
15 office for all practical purposes.

16 **THE COMMISSIONER:** Right.

17 **REVEREND MORRISEY:** They could go to the
18 tribunal ---

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

20 **REVEREND MORRISEY:** --- but then you had a
21 whole full formal procedure, you know, that could go on and
22 on.

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

24 **REVEREND MORRISEY:** And so bishops often
25 times preferred "I'll handle this".

1 **MR. ENGELMANN:** And sometimes the complaints
2 would just be made to the bishop's office as opposed to
3 going to a tribunal.

4 **REVEREND MORRISEY:** Yes.

5 **MR. ENGELMANN:** That's your understanding?

6 **REVEREND MORRISEY:** That's the
7 understanding; because while we had tribunals on paper, in
8 practice they were not that active. It's only in 1946 that
9 the bishops in Canada seriously took the idea of setting up
10 tribunals from coast to coast. And that was right after
11 World War II and -- so then the system got in place that we
12 have today.

13 **THE COMMISSIONER:** Okay.

14 **MR. ENGELMANN:** Father Morrisey, I just
15 wanted to ask -- and I don't know; again, this is a bit of
16 history but -- were you aware of the numbers of people
17 who'd actually be trained in those types of processes and
18 would be able to conduct some of these trials or processes?

19 **REVEREND MORRISEY:** Well, I'll tell you
20 quite frankly, when I did my law studies, we just said
21 these cases never happened. So if they ever do, you'll
22 reason, but we didn't even have a course of them.

23 **MR. ENGELMANN:** So you were sort of starting
24 as first principals?

25 **REVEREND MORRISEY:** We were starting as

1 first principals when suddenly they came up. But
2 fortunately, we did have very extensive training on
3 marriage nullity cases and much of the procedures were the
4 same, but there were differences.

5 **MR. ENGELMANN:** All right. So that -- okay,
6 so let's go to 1917 then. You've talked about how
7 significant the codification of the Canon Laws was for the
8 Roman Catholic Church. Did the 1917 Code set out
9 provisions for dealing with allegations of sexual abuse of
10 minors?

11 **REVEREND MORRISEY:** Very detailed.

12 **MR. ENGELMANN:** All right. And some of
13 those were by laity, and some were by clergy?

14 **REVEREND MORRISEY:** Yeah, they
15 distinguished.

16 **MR. ENGELMANN:** All right. And we have some
17 excerpts, do we not, of the 1917 Code in Tab 26? Is that
18 correct?

19 **REVEREND MORRISEY:** Yes.

20 **MR. ENGELMANN:** Sir, this is a -- just help
21 us out as to -- this is not from a website, of course?

22 **REVEREND MORRISEY:** No, this is a -- as I
23 mentioned earlier, to 1983, it was totally forbidden to
24 translate the 1917 Code into any other language. That was
25 dropped in '83. And so this edition was made by Peters is

1 his name, Edward Peters. He prepared this on his own. I
2 don't like the translation, but that's a completely
3 different issue. This is -- there is no official status.
4 It's only the Latin text that does.

5 **MR. ENGELMANN:** And because of the fact that
6 you don't like that translation, I know you've brought your
7 own Code in Latin ---

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** --- if someone has a
10 question for you about some of those distinctions. Is that
11 fair?

12 **REVEREND MORRISEY:** That's fair.

13 **MR. ENGELMANN:** Yes. So we have -- if I can
14 just run them off, we have Canons 2354, 57, 58 and 59 that
15 deal with this issue?

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** And you, sir, first of all,
18 talked about an informed conscience a couple minutes ago.
19 Can you tell us what we see in 2186 and how that's applied?
20 It's right at the beginning of the tab.

21 **REVEREND MORRISEY:** Yes, you have the text.

22 And there it's says:

23 "An ordinary could suspend a priest
24 from office whether in whole or in
25 part".

1 It meant you're suspended from everything.
2 You can't do anything or, in part, you could no longer act
3 as a parish priest, but you could celebrate mass privately
4 and so on.

5 And the protests against this were so
6 strong. It was removed in '83 because there was no right
7 of defence, no right of recourse, no appeal. It was total
8 discretion on the part of the bishop.

9 **MR. ENGELMANN:** All right. But this was
10 something that was an issue within the church structure?

11 **REVEREND MORRISEY:** It was.

12 **MR. ENGELMANN:** Priests were upset about it?

13 **REVEREND MORRISEY:** Very.

14 **MR. ENGELMANN:** And when we're talking about
15 ordinaries, as I understand it, and that could be a bishop,
16 but it also could be one or two other titles within the
17 church?

18 **REVEREND MORRISEY:** Yes, like the vicar
19 general of a diocese; what we call the Episcopal Vicar; the
20 provincial self-religious orders like the Jesuits,
21 Franciscans, Oblates, they are all ordinaries also. Every
22 diocesan bishop is an ordinary.

23 **MR. ENGELMANN:** So do you report to an
24 ordinary or bishop within your religious institute?

25 **REVEREND MORRISEY:** You have to report to an

1 ordinary. My ordinary is not a bishop. He is my
2 provincial -- but he -- in the end, they all report to the
3 Pope.

4 **THE COMMISSIONER:** I am sorry. Who do you
5 report to?

6 **REVEREND MORRISEY:** My provincial superior.

7 **THE COMMISSIONER:** Who is?

8 **REVEREND MORRISEY:** Father Jean-Claude
9 Gilbert. He lives in Montreal.

10 **THE COMMISSIONER:** Okay.

11 **MR. ENGELMANN:** And he is a superior within
12 the Oblate Order?

13 **REVEREND MORRISEY:** Within the Oblate Order,
14 yes. So he is my ordinary.

15 **MR. ENGELMANN:** Yeah. But typically, if you
16 were a parish priest, your first ordinary, if I can call it
17 that, would be the bishop?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** And there would be others
20 that could stand in his place?

21 **REVEREND MORRISEY:** Exactly.

22 **MR. ENGELMANN:** Okay.

23 **THE COMMISSIONER:** Where do you stand, for
24 example, vis-à-vis a bishop in Ontario?

25 **REVEREND MORRISEY:** I need faculties from --

1 because I reside in Ottawa, so the Archbishop of Ottawa has
2 given me faculties to function as a priest. I can
3 celebrate mass publicly in a church and so I can do what --
4 I am authorized to do weddings if a parish priest lets me
5 do it.

6 **THE COMMISSIONER:** Right.

7 **REVEREND MORRISEY:** But I have no right to
8 go in and do one in a parish.

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

10 **MR. ENGELMANN:** What do you mean by the term
11 "faculties", sir?

12 **REVEREND MORRISEY:** Faculties, it's a
13 licensing if you want to use. So the major one right now
14 is I need faculties to be able to hear confessions. And
15 once the Archbishop of Ottawa has given it to me, then I
16 can hear confessions anywhere in the world. But if he
17 withdraws my faculties, then I'm ---

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

19 **MR. ENGELMANN:** That's not something you can
20 get from your ordinary in your Order?

21 **REVEREND MORRISEY:** No, no. That's the --
22 there the Code is going to say it's the diocesan bishop who
23 gives it.

24 **THE COMMISSIONER:** M'hm. Okay. Thank you.

25 **MR. ENGELMANN:** And what is referred to in

1 2187? Again, you've talked about this discretion of the
2 bishop and some of the controversy in 2186. What about
3 2187?

4 **REVEREND MORRISEY:** Yes, well you notice it
5 says there and I can -- "neither judicial forms nor
6 canonical admonitions are required". There was no warning.
7 There was -- you didn't have like a canonical advocate to
8 support you; you know, to help you prepare a case and so
9 on. So those two Canons were considered probably the most
10 unjust of the 1917 Code.

11 **MR. ENGELMANN:** Now, let's talk about the
12 crimes, if I can use the term, or delicts; 2354 sets out a
13 number of a variety of different types of delicts. Is that
14 fair?

15 **REVEREND MORRISEY:** Yes.

16 **MR. ENGELMANN:** One of them is "rape of a
17 youth of the opposite sex".

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** And then there are some
20 property and other types of crimes that are set out there.
21 And if we want -- and it talks about, if I am correct, in
22 the first paragraph, when it's a lay person who might
23 commit the crime; and in the second paragraph, if it's a
24 cleric?

25 **REVEREND MORRISEY:** Exactly.

1 **MR. ENGELMANN:** All right.

2 **REVEREND MORRISEY:** Now a cleric in the 1917
3 Code is anyone who had received tonsure; who had started
4 the seminary. Today, it's someone who's been ordained.

5 **MR. ENGELMANN:** Okay. So it was broader?

6 **REVEREND MORRISEY:** Much broader.

7 **THE COMMISSIONER:** So there was no law
8 against someone raping a youth of the same sex?

9 **REVEREND MORRISEY:** No, that's ---

10 **MR. ENGELMANN:** I'm going to come to that --

11 -

12 **THE COMMISSIONER:** Okay.

13 **REVEREND MORRISEY:** --- 59.

14 **MR. ENGELMANN:** --- in my questions.

15 Do you have any idea sir why that was? We
16 talk about opposite sex here and then in 2357, we have --
17 in one, we have laity legitimately convicted of a delict
18 against the 6th Commandment of the Decalogue with a minor
19 below the age of 16. So we have nothing setting out same
20 or opposite sex, and then in 2 we have "whoever". So I
21 guess this would include the clerics in the second
22 paragraph?

23 **REVEREND MORRISEY:** Yes.

24 **MR. ENGELMANN:** "...publicly commits the
25 delict of adultery or publicly lives in

1 concubinage or who has been
2 legitimately convicted of another
3 delict against the 6th ..."

4 So it doesn't actually spell it out there,
5 but are you saying that the minor below the age of 16 that
6 we see in 1 would also be part of 2?

7 **REVEREND MORRISEY:** Yes. And then -- but
8 you go to 2359.

9 **MR. ENGELMANN:** Yes, (2)?

10 **REVEREND MORRISEY:** Okay. Well, part 1 to
11 start with and then part (2) sure.

12 **MR. ENGELMANN:** Oh yes, it refers to clerics
13 as well.

14 **THE COMMISSIONER:** What's a concubinist
15 cleric?

16 **REVEREND MORRISEY:** Concubinage? That's --
17 today we call it common law, living together without
18 marriage.

19 **MR. ENGELMANN:** And at that point in time it
20 was considered on par with sexual abuse of minors?

21 **REVEREND MORRISEY:** Yes. The word they used
22 to use is "without benefit of clergy".

23 **MR. ENGELMANN:** Okay. All right.

24 So that's what we had in the Code. And
25 where is it then, sir, that we have the processes for

1 dealing with this? If we're not dealing with the informed
2 conscience of the bishop and if the bishop isn't just sort
3 of taking the law into his own hands; how were these cases
4 dealt with after 1917?

5 **REVEREND MORRISEY:** Okay. After 1917, in
6 1922, there was what we call an instruction that was sent
7 around to the bishops saying how to apply this canon.
8 Particularly in -- there's another section we haven't got
9 in here because it doesn't refer to this issue, but it was
10 on solicitation in the confessional. If a priest who was
11 hearing confessions used that as an opportunity to set up
12 appointments for himself and abused the sacrament, then
13 there were -- there were terrible penalties.

14 The only problem was the priest is not
15 allowed to talk about anything that was said in the
16 confessional, so there was absolutely no defence. So if
17 there were accusations, they had to make sure that the
18 accusations were verified one way or another.

19 **MR. ENGELMANN:** So as I understand it, sir,
20 they needed some corroboration?

21 **REVEREND MORRISEY:** Yes. And so in 1922 a
22 document was sent to every bishop saying, "If you have a
23 case of this, here is what -- here's how you proceed."

24 **MR. ENGELMANN:** All right.

25 And so solicitation in the confessional,

1 where the priest would be taking advantage of either --
2 well, an individual who confesses to some difficulties and
3 then the priest takes advantage of that and solicits -- I
4 assume that's some sort of sexual act?

5 **REVEREND MORRISEY:** Yes, it is for that.

6 **MR. ENGELMANN:** That that was considered a
7 very serious crime?

8 **REVEREND MORRISEY:** It was an abuse of the
9 sacrament in addition to everything else.

10 **MR. ENGELMANN:** But the difficulty was in
11 proving it. And one would require some kind of
12 corroboration to prove that type of crime?

13 **REVEREND MORRISEY:** That's why usually,
14 usually in practice, if there was one denunciation, the
15 bishop couldn't act. But if he had two denunciations, two
16 people that said they were solicited, then that gave him,
17 you know, the -- gave him more ammunition to proceed.

18 **MR. ENGELMANN:** Okay. And as you're saying,
19 priests couldn't reveal what the parishioner told him?

20 **REVEREND MORRISEY:** Exactly. He couldn't
21 even be called in to testify.

22 **MR. ENGELMANN:** So let's talk about the 1922
23 document for a minute, and I think it is found at Tab 21.

24 **REVEREND MORRISEY:** Part of it, yes.

25 **MR. ENGELMANN:** Yes. And perhaps you could

1 explain that first? Well, can you tell us -- this is a
2 Latin document?

3 **REVEREND MORRISEY:** Yes.

4 **MR. ENGELMANN:** And this was a secret
5 document, if I can use that term?

6 **REVEREND MORRISEY:** Yes.

7 **MR. ENGELMANN:** And it was secret because of
8 -- was this the secrecy of the Holy Office or was it
9 pontifical secrets?

10 **REVEREND MORRISEY:** No, this was the secrecy
11 of the Holy Office because it came -- you notice the first
12 line on the first page -- from the supreme sacred
13 Congregation of the Holy Office.

14 In the '17 Code, that Vatican office was the
15 highest. It's something like the Prime Minister's Office,
16 the PMO, in a sense. It controls an awful lot of other
17 things even though officially it doesn't.

18 **MR. ENGELMANN:** Okay. So do you know how --
19 I mean, I know this was a secret document, you don't know,
20 but do you know how it came into being in 1922?

21 **REVEREND MORRISEY:** Well, when bishops were
22 saying "What do we do" and if they were trying to have a
23 priest removed for doing this. If they found he was
24 excommunicated -- he had done this, he was excommunicated
25 and it was reserved to the Vatican to remove the

1 excommunication. And then they wanted to know how did you
2 reach this conclusion.

3 **MR. ENGELMANN:** All right.

4 And can you just translate for us the title
5 of the document? I'm looking at the first page of Tab 21.

6 **REVEREND MORRISEY:** Okay. So the Supreme
7 Sacred Congregation of the Holy Office, and then:

8 "To all patriarchs, archbishops,
9 bishops, and other local ordinaries,
10 even belonging to the Oriental rites .
11 . ."

12 And then the way of proceeding in cases or
13 causes of solicitation, and then it's called instruction.

14 An instruction is not a law. It's like
15 regulations spelling out the way in which a law is applied.

16 **MR. ENGELMANN:** So if we had the canon law
17 as the law, this would be the regulation or bylaw to ensure
18 the law has a process?

19 **REVEREND MORRISEY:** Exactly.

20 **MR. ENGELMANN:** But it was a binding process
21 then?

22 **REVEREND MORRISEY:** It was a binding
23 process.

24 **MR. ENGELMANN:** And that is if the bishop
25 didn't use the more informal conscience about ---

1 **REVEREND MORRISEY:** In these particular
2 cases he was told that he had to use this.

3 **MR. ENGELMANN:** All right. Okay.

4 So if it was a case involving solicitation
5 in the confessional, that type of sexual abuse had to go
6 through this process?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** All right.

9 Now, I have only copied a little bit of
10 this, the first page and then the last two pages that I
11 wanted to talk to you about. Is the process, the actual
12 trial process, set out there or is it set out in the body
13 of the text?

14 **REVEREND MORRISEY:** The actual process,
15 first of all, is set out in the Code.

16 **MR. ENGELMANN:** In the Code. Okay.

17 **REVEREND MORRISEY:** And then each section
18 says these are what the canons -- these are the things the
19 canons mean, just to help a bishop go through it step by
20 step.

21 **MR. ENGELMANN:** All right.

22 Now, sir, I understand that the last two
23 pages that we have reproduced deal with other types of
24 crimes over and above or separate from solicitation in the
25 confessional?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: And could you just translate
3 for us the title?

4 REVEREND MORRISEY: On the last page it's
5 called "the worst crime".

6 MR. ENGELMANN: This is on the last page of
7 the tab, yes.

8 REVEREND MORRISEY: Just before paragraph
9 71.

10 MR. ENGELMANN: All right.

11 REVEREND MORRISEY: And that's called "the
12 worst crime".

13 MR. ENGELMANN: And then if you wouldn't
14 mind, if you could tell us briefly what para 71 says?

15 REVEREND MORRISEY: Okay, 71 is going to
16 say:

17 "By the worst crime, it's understood in
18 this document any obscene, external act
19 which is gravely sinful carried out by
20 a cleric in any way, or attempted by a
21 cleric in any way with a person of the
22 same sex."

23 MR. ENGELMANN: All right.

24 So the first worst crime that's set out is
25 homosexuality?

1 REVEREND MORRISEY: Homosexuality, yes.

2 MR. ENGELMANN: And that's in 71?

3 REVEREND MORRISEY: Yes.

4 MR. ENGELMANN: What do we see in 72?

5 REVEREND MORRISEY: Seventy-two (72) says
6 you follow the same procedures as for cases of solicitation
7 but with the appropriate adaptations. That's what it's
8 really -- it's a procedural canon.

9 MR. ENGELMANN: And does it talk about --
10 when you say -- sorry, I missed your phrase -- "with
11 appropriate adaptation"?

12 REVEREND MORRISEY: Yes.

13 MR. ENGELMANN: How -- do you know, sir,
14 we're dealing with homosexuality in the first one. So then
15 we're dealing with how homosexuality cases are to be
16 processed?

17 REVEREND MORRISEY: Yes. And one of the
18 reasons there's adaptations is that most of the time these
19 cases are not related to the confessional. But there could
20 have been a case where a priest in the confessional would
21 have solicited another man. So then you've got a double --
22 a double crime there.

23 MR. ENGELMANN: And does it say, sir, that
24 the process should be the same as the process for a
25 solicitation in the confessional?

1 **REVEREND MORRISEY:** Yes, but then as they
2 say, "with the appropriate adaptations".

3 **MR. ENGELMANN:** Yes.

4 **REVEREND MORRISEY:** You know, *mutates*
5 *mutandes*, making the changes that are necessary.

6 **MR. ENGELMANN:** Fair enough.

7 And what about Article 73?

8 **REVEREND MORRISEY:** Okay. Now, 73 is an
9 important one. It says:

10 "As far as the most serious crime is
11 concerned in relation to penal effects
12 are to be considered equally as obscene
13 external which are gravely sinful
14 carried out in any way or attempted by
15 a cleric with a person who has not
16 reached the age of puberty of either
17 sex or with animals."

18 What they call bestiality.

19 **MR. ENGELMANN:** Okay. So in '71 and '73, we
20 have three more crimes set out as worst crimes?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** In addition to the
23 solicitation in the confessional?

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** And '72 talks just about the

1 fact that they should follow a similar process to
2 solicitation in the confessional with some adaptation,
3 where required?

4 **REVEREND MORRISEY:** That's it.

5 **MR. ENGELMANN:** Now, sir, it appears there
6 were a limited number of people who received this document?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** I'm looking at the title and
9 do you know if it was sent out by Rome, by the Vatican, in
10 1922 to this group of individuals?

11 **REVEREND MORRISEY:** This one was sent out.

12 **MR. ENGELMANN:** All right. And were they
13 instructed on how to keep the documents secret or where to
14 keep the document?

15 **REVEREND MORRISEY:** Yes, and this was to be
16 kept in the Secret Archives and, unfortunately, you weren't
17 even allowed to refer to it when teaching in class. You
18 were not allowed to make any comment on it; write any
19 article on it or anything. So what happened was nobody
20 knew about it.

21 **MR. ENGELMANN:** You weren't allowed to, but
22 you didn't know. Is that what you are saying; people
23 teaching in the seminaries?

24 **REVEREND MORRISEY:** Well, I never saw the
25 document until I became a judge and suddenly had one of

1 these cases, and I had to look at it and try to do some
2 research to try to find it and get my hands on it. An un-
3 promulgated law is very difficult to apply.

4 **THE COMMISSIONER:** So is it really un-
5 promulgated?

6 **REVEREND MORRISEY:** No, no because it's
7 regulations, you know.

8 **THE COMMISSIONER:** So it's there?

9 **REVEREND MORRISEY:** It's there.

10 **MR. ENGELMANN:** So you've described -- at
11 least the Vatican has described four serious or worst
12 crimes. Are those worst crimes -- those four that they've
13 equated as worst crimes, are they found somewhere else so
14 that it's obvious to clerics and -- not only clerics in the
15 church but parishioners, that these are the worst crimes?
16 Or is it just they're set out and they're some form of
17 crime?

18 **REVEREND MORRISEY:** Like again, this was not
19 made public so it was really a note for bishops to say if
20 such and such a case came up, he had to give special
21 attention to it. And what happened was that this 1922
22 document spelled out the -- like they elaborated on the
23 canons but they didn't give the formulae that were to be
24 used, or how do you describe all this?

25 So the document was repeated in 1962 and

1 there were two changes that were made. They applied it
2 also to religious. This one here applies only to dioceses.
3 The next one applied also to religious ---

4 **MR. ENGELMANN:** Okay, and you are referring
5 to Tab 22 now, sir?

6 **REVEREND MORRISEY:** Yes.

7 But there that document is much longer
8 because to help the people it gave all the formulas, and
9 you just had to fill in the blanks at each line almost.

10 **MR. ENGELMANN:** So when you say formulas,
11 like an indictment to fill out or something like that?

12 **REVEREND MORRISEY:** Exactly, yes.

13 **MR. ENGELMANN:** All right. So a bit of
14 spoon-feeding for the prosecutor, if I can call him that?

15 **REVEREND MORRISEY:** Exactly, because again
16 what happened was people didn't know that this existed.

17 **MR. ENGELMANN:** So 1922, the document goes
18 into secret archives in the dioceses throughout the world
19 at the time?

20 **REVEREND MORRISEY:** Yes.

21 **MR. ENGELMANN:** It's not taught in
22 seminaries?

23 **REVEREND MORRISEY:** No.

24 **MR. ENGELMANN:** If there are cases and
25 processes that are prosecuted under it, are they known?

1 **REVEREND MORRISEY:** If they are, I've -- see
2 I was only involved in one of those cases. That's how I
3 got to ---

4 **MR. ENGELMANN:** And the case you were
5 involved in was it done in camera, if I can use the term?

6 **REVEREND MORRISEY:** Oh, yeah, totally. It
7 was under what we call pontifical secrecy.

8 **MR. ENGELMANN:** All right.

9 So the awareness of this document and the
10 use of this document may have been greatly restricted
11 because of the secrecy surrounding it.

12 **REVEREND MORRISEY:** See, if it was sent to a
13 bishop in 1922 and a new bishop came in 1929 or '35, and he
14 didn't go through those old archives, he wouldn't even know
15 it existed.

16 **MR. ENGELMANN:** So he gets the key because
17 the bishop keeps the key for the archives, the secret
18 archives?

19 **REVEREND MORRISEY:** Yeah.

20 **MR. ENGELMANN:** But he doesn't necessarily
21 read everything?

22 **REVEREND MORRISEY:** No, I mean he's got
23 other things to do.

24 **THE COMMISSIONER:** I don't know, I would
25 have thought curiosity.

1 (LAUGHTER/RIRES)

2 MR. ENGELMANN: So in any event, if he's a
3 serving bishop in 1962, presumably he and other ordinaries
4 received the second document. Correct?

5 REVEREND MORRISEY: There's a lot of
6 controversy whether they did or not. The 1962 document was
7 redone, but it was just done exactly at the same time that
8 John XXIII was opening Vatican II. And so this document
9 never got -- it never got distributed. A few people might
10 have had it but in practice, I had to -- when I was dealing
11 with this case, I had to go to Rome to get a copy. I
12 couldn't find a copy in Canada.

13 MR. ENGELMANN: All right.

14 But the real distinction between the two
15 documents if I may is -- well, help me out. The worst
16 crimes, did they change in any way?

17 REVEREND MORRISEY: No, they're absolutely
18 the same.

19 MR. ENGELMANN: So we still have
20 homosexuality, bestiality and abuse of minors by clergy as
21 worst crimes and we also have, of course, the solicitation
22 in confessional, which is the bulk of the document?

23 REVEREND MORRISEY: Yes, and that is the
24 purpose of the document.

25 MR. ENGELMANN: And really the only

1 significant change, if I may, is now of course we're
2 expanding the scope of who may be charged with the worst
3 crime to religious?

4 **REVEREND MORRISEY:** Yes. And that's ---

5 **MR. ENGELMANN:** So you wouldn't have been
6 chargeable on the 1922 document, but you would have been on
7 the '62 document.

8 **REVEREND MORRISEY:** Well, I would have been
9 on the '22 because I'm also a priest.

10 **MR. ENGELMANN:** Oh, okay, yes. So it's just
11 religious who aren't also priests?

12 **REVEREND MORRISEY:** Yes.

13 **MR. ENGELMANN:** Okay. All right.

14 Now, there's no -- we are just talking about
15 processes. We are not talking about penalties. With
16 respect to penalties for some of these worst crimes, we go
17 back to the Code of Canon Law.

18 **REVEREND MORRISEY:** They're in the Code.

19 **MR. ENGELMANN:** All right.

20 So for the purposes of processes, these are
21 recognized as worst crimes?

22 **REVEREND MORRISEY:** Yes.

23 **MR. ENGELMANN:** And they have -- do you know
24 why we have this total secrecy with respect to these two
25 documents or apparent total secrecy? So that people like

1 yourself who are active educators in the Roman Catholic
2 Church don't even know about it until you get a case to
3 judge?

4 **REVEREND MORRISEY:** And even then you
5 mightn't get it.

6 But I think so many of these cases were also
7 matters of conscience, and I think they were bending over
8 backwards to try to protect anything that would have been
9 related to confession.

10 I'm not sure there is not another reason and
11 I just don't know. Was it fear of scandal? Was it fear of
12 things getting out? That's quite possible too.

13 **MR. ENGELMANN:** Okay. I was just curious.

14 **REVEREND MORRISEY:** Yes.

15 **MR. ENGELMANN:** Because I mean if you're
16 treating something as a worst crime, and we've seen from
17 1234 on by your account, sir, that the Church as a whole
18 recognized clergy abuse of minors as serious, it just
19 struck me strange that you wouldn't want to get this out
20 there and have more awareness.

21 **REVEREND MORRISEY:** The first time that this
22 document is mentioned officially in a Roman document is in
23 2001 when Cardinal Ratzinger at the time comes with those
24 new norms and he says, "The previous ones were still in
25 effect, but it's time to revise them". So then, everybody

1 said, "What are these previous norms?"

2 So that's when people started looking for
3 them.

4 **MR. ENGELMANN:** So that's when they first
5 became known in effect?

6 **REVEREND MORRISEY:** Yes, he's the one who
7 made them known.

8 **MR. ENGELMANN:** And this was in his letter
9 as the head of the Congregation for the Doctrine of Faith?

10 **REVEREND MORRISEY:** At that time.

11 **MR. ENGELMANN:** Okay. So I think I've
12 covered this, but the Code of Canon Law sets out the law.
13 This sets out the process. So it's sort of like the bylaw
14 or regulation for dealing with certain crimes?

15 **REVEREND MORRISEY:** Yes.

16 See there was a parallel document that was
17 totally public carrying out the procedures of the Code for
18 marriage cases.

19 **MR. ENGELMANN:** Okay.

20 **REVEREND MORRISEY:** That was distributed
21 everywhere and gave it step by step.

22 **MR. ENGELMANN:** What about other types of
23 penal or criminal cases? Were there public instruction or
24 other things to deal with them?

25 **REVEREND MORRISEY:** The only public

1 instruction was that one for marriage cases.

2 MR. ENGELMANN: All right.

3 REVEREND MORRISEY: And the other one ---

4 MR. ENGELMANN: So you had a public one for
5 marriage cases. You had a secret one for certain crimes.

6 REVEREND MORRISEY: Yes.

7 MR. ENGELMANN: What about other crimes?

8 REVEREND MORRISEY: See, in practice, the
9 other crimes all went to the bishop's ---

10 MR. ENGELMANN: Informed conscience.

11 REVEREND MORRISEY: --- informed conscience.

12 MR. ENGELMANN: And in fact many of these
13 worst crimes, in your view, went there as well?

14 REVEREND MORRISEY: That's -- I'm sure they
15 went there.

16 MR. ENGELMANN: So in a practical sense,
17 sir, again in your view, did the 1922 document change much
18 about how bishops dealt with allegations of clergy sexual
19 abuse?

20 REVEREND MORRISEY: I'm going to say no, but
21 the only thing is is that this 1922 document raised that
22 issue to one of the highest by saying it's considered the
23 worst crime.

24 MR. ENGELMANN: Fair enough.

25 In fact, those worst crimes, including

1 homosexuality, stay on the books until 2001?

2 **REVEREND MORRISEY:** Oh, they're still --
3 today they're still in the Code.

4 **MR. ENGELMANN:** Okay. But I'm saying as
5 worst crimes?

6 **REVEREND MORRISEY:** No, they're not
7 mentioned as worst crimes.

8 **MR. ENGELMANN:** Right.

9 **REVEREND MORRISEY:** What they're mentioned
10 now, the word they use in Latin is *graviora delicta*, more
11 serious delicts.

12 **MR. ENGELMANN:** All right.

13 So maybe not quite as serious as a worst
14 crime but still very serious?

15 **REVEREND MORRISEY:** Yes.

16 **THE COMMISSIONER:** Well, are there still
17 some worst crimes?

18 **REVEREND MORRISEY:** No, no.

19 **THE COMMISSIONER:** Okay.

20 **MR. ENGELMANN:** There's just a broader list?

21 **REVEREND MORRISEY:** It's a broader list.
22 There's about 12 now that are there.

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

24 **MR. ENGELMANN:** And there's no hierarchy
25 amongst those more serious crimes?

1 **REVEREND MORRISEY:** No, they're all equally
2 bad.

3 **THE COMMISSIONER:** Can you give me an
4 example of the newer ones?

5 **REVEREND MORRISEY:** Well, for instance, one
6 of the newer ones is somebody who is not ordained a priest
7 and pretends to celebrate mass in a parish for the people
8 and defrauds the people in that sense.

9 **THE COMMISSIONER:** Money.

10 **MR. ENGELMANN:** Are some of these set out,
11 sir, in Tab 27 -- I'm not sure if we went there -- some of
12 the more serious crimes?

13 **REVEREND MORRISEY:** No, they're not in 27.
14 They're partly in 25 and we find them all in 23.

15 **THE COMMISSIONER:** These are the new ones?

16 **REVEREND MORRISEY:** These are the new ones.

17 **THE COMMISSIONER:** Right. Oh no, it is in
18 English.

19 **REVEREND MORRISEY:** Yes, English in one
20 column.

21 **THE COMMISSIONER:** Can you direct me to the
22 12?

23 **REVEREND MORRISEY:** So it's on page 108.

24 **THE COMMISSIONER:** Right.

25 **REVEREND MORRISEY:** There's been four added

1 since this list, but -- so for instance, you see article 2.
2 There's delicts against the most holy sacrament of the
3 Eucharist, like retaining for a sacrilegious purpose the
4 host, like at black masses, attempting liturgical
5 celebrations -- if somebody is not ordained a priest, they
6 refer to canons -- concelebration with somebody who is not
7 ordained. We invoked this in Canada recently when a priest
8 concelebrated with some of the women who were ordained on
9 the St. Lawrence River last year, that big ---

10 **THE COMMISSIONER:** Yes.

11 **REVEREND MORRISEY:** Then you have number 2
12 on the middle of the page, consecration of the sacred
13 species for a sacrilegious purpose. There's delicts
14 against the sacrament of penance, so absolution of an
15 accomplice, solicitation and direct violation of the seal;
16 and then turning the page, you also have here the delicts
17 against the 6th Commandment of the Decalogue, and that's the
18 ones that we -- and with a minor below the age of 18. In
19 the Code of '83, it was 16 and they've raised that to 18
20 here in this document.

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

22 **MR. ENGELMANN:** We're not following on the
23 screen, I guess, but this was Tab 23 and, sir, you were
24 dealing with the bottom of page 108 and onto page 109?

25 **REVEREND MORRISEY:** Yes.

1 **MR. ENGELMANN:** Am I right?

2 **REVEREND MORRISEY:** Yes.

3 **THE COMMISSIONER:** So let me get this
4 straight now. The issue of consent, for example, it
5 doesn't apply in this canon law?

6 **REVEREND MORRISEY:** Do you mean like if a
7 minor consented to ---

8 **THE COMMISSIONER:** Yes.

9 **REVEREND MORRISEY:** No. If the person is
10 under 18 ---

11 **THE COMMISSIONER:** That's it.

12 **REVEREND MORRISEY:** That's it, you've
13 committed the crime.

14 **MR. ENGELMANN:** The increase of the age to
15 18 from puberty or from some other age, when would that
16 have taken place?

17 **REVEREND MORRISEY:** Well, in -- it was
18 puberty in the 1917 Code.

19 **MR. ENGELMANN:** Yes.

20 **REVEREND MORRISEY:** Then 1983 said anyone
21 under 16. Now they've raised it in 2001 to anyone under
22 18. So they made it stricter in that sense.

23 **THE COMMISSIONER:** And it isn't retroactive?

24 **REVEREND MORRISEY:** It's not retroactive,
25 no.

1 **MR. ENGELMANN:** Okay. Sir, I wonder if this
2 might be an appropriate time?

3 **THE COMMISSIONER:** Yes.

4 **MR. ENGELMANN:** I was going to just explain
5 what happened in 2001 through the witness.

6 **THE COMMISSIONER:** No, that's fine. Let's
7 take a short -- well, the lunch break now. Thank you.

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

10 The hearing will resume at 2:00 p.m.

11 --- Upon recessing at 12:22 p.m./

12 L'audience est suspendue à 12h22

13 --- Upon resuming at 2:02 p.m./

14 L'audience est reprise à 14h02

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

17 **THE COMMISSIONER:** Thank you.

18 Good afternoon, sir. Have a seat.

19 **MR. ENGELMANN:** Good afternoon, Mr.
20 Commissioner.

21 **FATHER FRANCIS G. MORRISEY, Resumed/Sous le même serment:**

22 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**
23 **ENGELMANN (cont'd/suite):**

24 **MR. ENGELMANN:** Good afternoon, Father
25 Morrisey.

1 **THE COMMISSIONER:** I understand that you
2 were favoured with a lavish lunch here from Tim Horton's.

3 **MR. ENGELMANN:** Believe it or not, Father
4 Morrisey indicated to me it was the first time he's eaten
5 at Tim Horton's. So I said, "When you're in Cornwall,
6 enjoy a true Canadian experience."

7 **THE COMMISSIONER:** I thought when in Rome,
8 do like the Romanians.

9 **(LAUGHTER/RIRES)**

10 **THE COMMISSIONER:** Okay.

11 **MR. ENGELMANN:** So, Father Morrisey, we had
12 jumped ahead a bit into 2001, and I just want to pull back
13 for a moment. You've talked to us about what happened in
14 1983 and its significance and some of what happened in 1983
15 with the Code were new rights for priests, and those were
16 rights dealing with due process. Is that correct?

17 **REVEREND MORRISEY:** Those rights were for
18 all the members of the Church, not just for priests.

19 **MR. ENGELMANN:** Yes. And this was at a time
20 when informed conscience was coming to an end?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** All right.

23 And these new rights and protections for
24 individual clergy were being codified?

25 **REVEREND MORRISEY:** And that's why Canon 221

1 on the right of due process of law was an extremely
2 important canon.

3 **MR. ENGELMANN:** All right. And we'll see
4 that, if people want to look at it further, at Tab 27. And
5 Canons 220 and 221 provide some protection to someone who
6 might have been an individual priest or religious who is
7 alleged to have abused a minor.

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** All right.

10 **REVEREND MORRISEY:** Canon 220 is on the
11 right to privacy and reputation.

12 **MR. ENGELMANN:** All right.

13 **REVEREND MORRISEY:** And 221 is on due
14 process of law.

15 **MR. ENGELMANN:** Right.

16 And how then is this significant, dealing
17 with this issue, if we had a member of the clergy or
18 religious who might have been charged or accused of child
19 sexual abuse?

20 **REVEREND MORRISEY:** Well, the major
21 advantage of this is that he has a right to counsel,
22 canonical counsel.

23 **MR. ENGELMANN:** Yes.

24 **REVEREND MORRISEY:** He has a right to appeal
25 or recourse against a decision. He has a right to know

1 what the accusations are against him. He has the right to
2 know who is testifying against him, which is really basic
3 principles of natural law in a sense ---

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

5 **REVEREND MORRISEY:** --- that are now in the
6 Code.

7 **MR. ENGELMANN:** They were not in the 1917
8 Code though?

9 **REVEREND MORRISEY:** No.

10 **MR. ENGELMANN:** And there were new
11 provisions dealing with the issue of sexual abuse of young
12 people as well in the Code?

13 **REVEREND MORRISEY:** Yes, there was a new
14 canon -- it's like we're taking the one from 1917, but it's
15 canon 1395, section 2.

16 **MR. ENGELMANN:** And we see that just a
17 little bit further in Tab 27.

18 **THE COMMISSIONER:** It's under Title 5.

19 **MR. ENGELMANN:** Yes.

20 **THE COMMISSIONER:** At 1395(2)?

21 **REVEREND MORRISEY:** Thirteen ninety-five
22 (1395).

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

24 **MR. ENGELMANN:** As you've indicated to us
25 here, Father Morrisey, the age changes from puberty to 16.

1 REVEREND MORRISEY: Yes, in this -- in that
2 canon.

3 MR. ENGELMANN: And that's in 1983?

4 REVEREND MORRISEY: In '83.

5 MR. ENGELMANN: Now, sir, in 1395(2), we do
6 not have specific penalties set out. Is that correct?

7 REVEREND MORRISEY: They simply say just
8 penalties and not excluding the highest one, dismissal from
9 the clerical state if the case so warrants.

10 So you have to go back in the first part of
11 that book of the Code, which mentions what are the various
12 penalties.

13 MR. ENGELMANN: Now, how did the 1983 Code
14 change how allegations of sexual abuse against young people
15 would be handled? Would it be still using the bishop's
16 discretion? Was there a more structured process in place
17 as of 1983?

18 REVEREND MORRISEY: As of 1983, they were
19 supposed to follow the procedural law that was in the new
20 Code.

21 MR. ENGELMANN: Okay. And how did that then
22 interact with the 1962 document that was still in place?

23 REVEREND MORRISEY: It didn't.

24 MR. ENGELMANN: All right.

25 So would there have been conflicts from time

1 to time between these two documents?

2 **REVEREND MORRISEY:** Well, nobody knew the
3 '62 document existed, so if there were any -- like people
4 who were handling it. So if there were conflicts, nobody
5 knew.

6 **MR. ENGELMANN:** Nobody knew. So they were
7 following the new Code in effect?

8 **REVEREND MORRISEY:** Yeah. It's not our
9 proudest moment.

10 **MR. ENGELMANN:** No.

11 All right, sir. So then in -- so this whole
12 document, 1962 document, the 1922 document -- and you told
13 us this, "remains secret until Cardinal Ratzinger's letter"
14 -- then Cardinal Ratzinger's letter in 2001?

15 **REVEREND MORRISEY:** Yes.

16 **MR. ENGELMANN:** And you were taking us to a
17 few of these documents, so I just want to ask you if you
18 could describe for us the documents at Tab 23, Tab 24 and
19 Tab 25 and how they relate to one another, starting with
20 Tab 23?

21 **REVEREND MORRISEY:** Tab 23 is the -- that
22 was in 2001 when the Pope decided that certain crimes in
23 church law had to be handled in a more reserved way. In
24 one sense, those 2001 documents and the following, they
25 took away from the bishops' rights that had been given to

1 them both in Vatican II and in the '83 Code.

2 **MR. ENGELMANN:** And brought some of this
3 back to Rome?

4 **REVEREND MORRISEY:** Brought it back to Rome.

5 **MR. ENGELMANN:** All right.

6 And these are particularly issues dealing
7 with child sexual abuse by clergy?

8 **REVEREND MORRISEY:** Well, that's one of
9 them.

10 **MR. ENGELMANN:** Yes.

11 **REVEREND MORRISEY:** I mentioned this morning
12 against the Eucharist and against the Sacrament of Penance
13 and against morals.

14 **MR. ENGELMANN:** All right.

15 And what do we see attached at Tab 23 with
16 the letter from the Pope?

17 **REVEREND MORRISEY:** Okay, what we have are
18 two sets of norms; substantive norms and then procedural
19 norms. In a sense, how do we handle this? And for
20 instance, the norms are going to say if a case comes to the
21 bishop's attention, he immediately -- if he sees the case
22 has any reality, he immediately has to notify Rome about
23 it.

24 **MR. ENGELMANN:** All right.

25 So how do these norms or laws co-exist with

1 the canons?

2 **REVEREND MORRISEY:** Well, it's the same
3 legislator. It was John Paul II who promulgated the Code
4 and promulgated these norms.

5 **MR. ENGELMANN:** All right.
6 So presumably there is no conflict between
7 them?

8 **REVEREND MORRISEY:** No, and these norms
9 supercede.

10 **MR. ENGELMANN:** All right.
11 They supercede the Code?

12 **REVEREND MORRISEY:** They supercede the Code.

13 **MR. ENGELMANN:** And, for example -- and when
14 we talk about substantive norms or substantive laws, as
15 opposed to procedural norms, what is the distinction, sir?

16 **REVEREND MORRISEY:** Well, the substantive
17 law is the law itself, like what are the cases that are
18 reserved. And then the procedural law is if a case is
19 reserved how do you process it?

20 **MR. ENGELMANN:** All right. So ---

21 **THE COMMISSIONER:** Sorry, Mr. Engelmann.
22 Can you show me where it says that it has to
23 go to the Pope?

24 **MR. ENGELMANN:** If you look at the bottom of
25 page 108, I believe.

1 **THE COMMISSIONER:** Yes, that's what I'm at.

2 **MR. ENGELMANN:** Is that where it says:

3 "Reservation to the congregation for
4 the Doctrine of the Faith is also
5 extended to a delict against the Sixth
6 Commandment of the Decalogue committed
7 by a cleric with a minor below the age
8 of 18."

9 **REVEREND MORRISEY:** Yes, and it's -- so it
10 goes to the Vatican.

11 **MR. ENGELMANN:** All right.

12 So it goes to the Vatican and not to the
13 Pope per se, but ---

14 **REVEREND MORRISEY:** No, I'm sorry.

15 **MR. ENGELMANN:** --- to this congregation.

16 **THE COMMISSIONER:** So "reservation to the
17 congregation for the Doctrine of the Faith".

18 **REVEREND MORRISEY:** Of the Faith.

19 **THE COMMISSIONER:** Okay.

20 **MR. ENGELMANN:** And what do we see, sir,
21 just after that in Article 5 with respect to a statute of
22 limitations?

23 **REVEREND MORRISEY:** Yes, that again was
24 slightly changed. In the Code we have a canon on statute
25 of limitations for certain penal cases, for three years and

1 five years for some. But in these cases here, the statute
2 period was raised to 10 years but for minors it only began
3 to run when they reached 18.

4 And then since that law came out the next
5 year in 2002, the Pope also granted a derogation from that
6 by allowing a bishop to request a dispensation from
7 prescription of the statute of limitations. So that in a
8 particular case, even if it was more than the 10 years,
9 that it could still be examined.

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

11 Well, a number of the allegations involving
12 -- allegations of clergy child sexual abuse have involved
13 historical reporting.

14 **REVEREND MORRISEY:** M'hm.

15 **MR. ENGELMANN:** And where we have adults
16 coming forward saying, "When I was an altar boy when I was
17 at a certain age". So how does this change then deal with
18 that, with respect to action that a diocese or the Church
19 may take after a trial is concluded?

20 **REVEREND MORRISEY:** Okay. If the bishop
21 does not get a dispensation he cannot do a penal trial
22 against a priest if the time limit has elapsed.

23 **MR. ENGELMANN:** All right.

24 And that time limit is, as of 2001, a 10-
25 year limit?

1 REVEREND MORRISEY: A 10-year after the
2 person reaches the age of 18.

3 MR. ENGELMANN: Okay.

4 REVEREND MORRISEY: So if he was 14 at the
5 time of the -- it's 14 years after.

6 MR. ENGELMANN: All right.

7 THE COMMISSIONER: Excuse me, and that's for
8 2001. And what was it before?

9 REVEREND MORRISEY: Before there were three
10 years and five years for quite a number of them. It's
11 Canon 1363.

12 THE COMMISSIONER: Canon 1363.

13 MR. ENGELMANN: And that would be in the
14 1983 Code.

15 REVEREND MORRISEY: Sorry, '62.

16 MR. ENGELMANN: And what was the prescribed
17 statute of limitations then, sir, for this type of delict?

18 REVEREND MORRISEY: Okay. So then they're
19 going to say, "An action arising from Canon 1395" which is
20 this one ---

21 MR. ENGELMANN: Yes.

22 REVEREND MORRISEY: --- which is
23 extinguished after five years.

24 THE COMMISSIONER: And with no possibility
25 of a bishop asking ---

1 REVEREND MORRISEY: No, at that time.

2 THE COMMISSIONER: Right. And that was in
3 effect from?

4 REVEREND MORRISEY: '83 to 2001.

5 THE COMMISSIONER: Okay.

6 REVEREND MORRISEY: To 2002.

7 THE COMMISSIONER: Right. And what happened
8 before 1983?

9 REVEREND MORRISEY: Before 1983 there was
10 the similar -- a similar statute.

11 THE COMMISSIONER: So five years.

12 REVEREND MORRISEY: Five years.

13 THE COMMISSIONER: So for my purposes I can
14 say that 1940 to 1983 there was three to five years and
15 from 2000 -- 1983. And between 1983 to ---

16 REVEREND MORRISEY: 1983 and 2002 it was
17 five years.

18 THE COMMISSIONER: Right. So it's all the
19 same from 1940 to 2001?

20 REVEREND MORRISEY: One.

21 THE COMMISSIONER: Where it's added on to 10
22 years from the date that the minor becomes -- turns 18, and
23 in 2002 there is the right of a bishop to seek the waiver
24 of the 10-year limitation period?

25 REVEREND MORRISEY: That's correct, yes.

1 **THE COMMISSIONER:** Thank you.

2 **MR. ENGELMANN:** I just want to make sure I
3 have got that straight now.

4 So we go from five-year statute of
5 limitations to 10 years when, 2001?

6 **REVEREND MORRISEY:** 2001, yes.

7 **MR. ENGELMANN:** And also in 2001 we go to
8 perhaps more than 10 years because it's 10 years from the
9 date the alleged victim reaches the age of 18?

10 **REVEREND MORRISEY:** 2002.

11 **MR. ENGELMANN:** 2002, I'm sorry.

12 **REVEREND MORRISEY:** That's when they -- they
13 moved.

14 **MR. ENGELMANN:** All right.

15 So before then, if we have a cleric who
16 perhaps is accused of a criminal charge but the matter
17 never runs its way through trial and the matter is not
18 adjudicated formally, if the bishop wanted to take some
19 action against that particular priest, would he be
20 restricted by a five-year limitation?

21 **REVEREND MORRISEY:** He'd be restricted by a
22 five-year limitation and also he could not conduct a full
23 formal trial leading to dismissal from the clerical state.

24 **MR. ENGELMANN:** Now, was there any way to
25 seek dispensation from Rome on that?

1 **REVEREND MORRISEY:** At that moment -- well,
2 first of all, you know, in those times we weren't doing
3 like those types of cases. Again, it was up to the bishop
4 to decide, you know, with his ---

5 **MR. ENGELMANN:** Even after 1983?

6 **REVEREND MORRISEY:** --- practice.

7 **MR. ENGELMANN:** Okay.

8 **THE COMMISSIONER:** Okay. I'm just ---

9 **MR. ENGELMANN:** So the bishop, from -- could
10 still impose some kind of a sanction?

11 **REVEREND MORRISEY:** Oh, he could remove the
12 priest from ministry. He could remove and so on, but he
13 couldn't dismiss him from the clerical state and say he is
14 no longer a cleric.

15 **MR. ENGELMANN:** All right.

16 **THE COMMISSIONER:** Okay. Well, let's talk
17 about that a little bit.

18 Isn't taking him out of the ministry an act
19 of discipline?

20 **REVEREND MORRISEY:** It's an act of
21 discipline, but the man remains a priest. Therefore, he
22 still gets a salary.

23 **THE COMMISSIONER:** Right. Okay.

24 **REVEREND MORRISEY:** If he is dismissed from
25 the clerical state, he's out.

1 **THE COMMISSIONER:** Okay.

2 **MR. ENGELMANN:** And there are other forms of
3 administrative dismissal or discipline that could be
4 imposed as well by bishops; is that correct?

5 **REVEREND MORRISEY:** There is quite a number
6 of them.

7 **MR. ENGELMANN:** Can you just give us some
8 examples of what they might be?

9 **REVEREND MORRISEY:** Deprivation of office. If
10 he was a parish priest, he can be removed as parish priest.
11 He can be -- if he were a teacher, he can be deprived of
12 the right to teach.

13 **THE COMMISSIONER:** Even after a limitation
14 period?

15 **REVEREND MORRISEY:** Even after limitation
16 period.

17 **THE COMMISSIONER:** Okay.

18 **MR. ENGELMANN:** What about a transfer,
19 either with or within a diocese?

20 **REVEREND MORRISEY:** He could be transferred
21 from -- depending on the seriousness of the accusation and
22 the proof that was available. He couldn't remove him from
23 a parish work and put him in -- like offer a desk job or
24 something like that.

25 See sometimes what would happen in a lot of

1 these cases, it would go to the criminal court and it was
2 rejected in the criminal court. You know, he was found not
3 guilty but that didn't mean that he didn't do it. It means
4 it wasn't proven.

5 **THE COMMISSIONER:** That's right.

6 **REVEREND MORRISEY:** And sometimes the bishop
7 then still would know that he had to take other actions.

8 **MR. ENGELMANN:** Was administrative -- I know
9 I am going to mispronounce the word -- laicization an
10 option as well?

11 **REVEREND MORRISEY:** Well, the Pope ---

12 **MR. ENGELMANN:** To that end after 1983?

13 **REVEREND MORRISEY:** No, it was -- at that
14 time John Paul II was totally opposed to it. And he just
15 said that he wanted there to be a full process so that
16 there could be a right of appeal. In the end, what
17 happened was in 2002, that's when everything broke in
18 Boston. And then that's when there were so many former
19 cases and old cases, that that's when the bishops put
20 pressure on and asked the Pope to change and allow a
21 dispensation from even that length and statute.

22 **MR. ENGELMANN:** All right. So that really
23 was the crux of the change then, the scandal in Boston?

24 **REVEREND MORRISEY:** Yes, that's what broke
25 it open.

1 **MR. ENGELMANN:** Okay. So sir, just to go
2 back to 2001, the year before, there were more and more of
3 these cases coming to fruition and was that part of -- do
4 you have a sense as to why things were happening in the
5 Vatican in 2001?

6 **REVEREND MORRISEY:** This is just me. I am
7 on my own. If the Vatican had known what was going to
8 happen in Boston, they would never have reserved those
9 cases to them because they are just not equipped to handle
10 them when there was a flood of cases coming in.

11 **MR. ENGELMANN:** This is the Congregation for
12 the Doctrine of the Faith?

13 **REVEREND MORRISEY:** Yeah.

14 **MR. ENGELMANN:** And have they been swamped
15 with cases since 2002?

16 **REVEREND MORRISEY:** Absolutely. There is
17 about 1,600 cases worldwide that have come in.

18 **MR. ENGELMANN:** And do they have the ability
19 to actually deal with these cases?

20 **REVEREND MORRISEY:** Well, they are dealing
21 with them. But you know, as they say, justice delayed is
22 justice denied. I mean, if it takes three years for a case
23 to work its way through, the poor people in the meantime
24 are sort of, you know, they are on a branch.

25 **MR. ENGELMANN:** Now, these cases, sir, are

1 they held in the country of origin or do they take place in
2 Rome?

3 **REVEREND MORRISEY:** It can be either.

4 **MR. ENGELMANN:** Okay. All right.

5 So let's just talk about the other two
6 documents then; the document at Tab 24, and that's just
7 part of a journal. So it's not the statement from cardinal
8 law that I am interested in. It's the letter that is set
9 out on the next page.

10 **REVEREND MORRISEY:** Yes.

11 **MR. ENGELMANN:** And which letter is this?
12 What is its import?

13 **REVEREND MORRISEY:** That's a letter from
14 Cardinal Ratzinger to the bishop saying "We're sending out
15 these 2001 things and look at them."

16 So that was sent out and made public.

17 **MR. ENGELMANN:** All right.

18 **REVEREND MORRISEY:** At the time this was
19 sent out, the Pope's documents that you have in 23, those
20 first two pages; that had not yet been issued but he wanted
21 this to be out.

22 **MR. ENGELMANN:** And is this the letter, sir,
23 where there is reference made to these earlier secret
24 documents?

25 **REVEREND MORRISEY:** Yes, and if you look at

1 footnote 3, it's on page 529, that's where he mentions
2 this.

3 **MR. ENGELMANN:** The 1962 document?

4 **REVEREND MORRISEY:** Yeah.

5 **MR. ENGELMANN:** Yes. So he breaks the
6 secret, so to speak?

7 **REVEREND MORRISEY:** Yeah. He is the one
8 that brought it open.

9 **MR. ENGELMANN:** Okay. And sir, what is it
10 then that we see at Tab 25 and how does it relate to these
11 previous two documents?

12 **REVEREND MORRISEY:** Okay, 25, what happened
13 was when the abundance of cases came into the Congregation
14 of Doctrine and Faith -- don't forget, they came from all
15 parts of the world and so there were different situations.
16 So then they within their own congregation, developed an
17 internal policy saying how do we handle these cases. And
18 so they -- that paper you have in 25, Monsignor Scicluna,
19 who is what we call the promoter of justice in Doctrine and
20 Faith, he is the one who decides if a case goes.

21 **MR. ENGELMANN:** So he is the Attorney
22 General?

23 **REVEREND MORRISEY:** He is the Attorney
24 General for the Church.

25 **MR. ENGELMANN:** All right.

1 **REVEREND MORRISEY:** And he was born in
2 Canada.

3 So he did this paper that was given to
4 bishops and so on, just to say how are we handling this in
5 our -- you know, within our own office?

6 This is not an official law; this is just
7 purely his understanding of it.

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

9 **MR. ENGELMANN:** So sir, if we just look at
10 these three documents as fairly -- they are fairly
11 significant documents?

12 **REVEREND MORRISEY:** Yes.

13 **MR. ENGELMANN:** They were issued in 2001,
14 the letters, the norms -- the letters and the procedure
15 maybe 2001-2002.

16 What is the most significant feature of what
17 changes in this timeframe?

18 **REVEREND MORRISEY:** Well, for me, the most
19 significant was that the bishop can no longer handle these
20 cases.

21 **MR. ENGELMANN:** All right. So we've moved
22 away from the bishop's discretion on informed conscience.

23 **REVEREND MORRISEY:** Yes, he's got no choice
24 at this moment. They have to be processed.

25 **MR. ENGELMANN:** Okay. Now, let's talk a

1 little bit about some of the national initiatives that were
2 taking place in the '80s, '90s and in this last decade.
3 And perhaps we can start in the United States. Thinking
4 back to the 1980s, Father Morrisey, is there something
5 significant that happens in or around the mid-'80s with
6 respect to how the Roman Catholic Church, at least in the
7 United States, is going to be addressing these types of
8 issues?

9 **REVEREND MORRISEY:** At that moment, Father
10 Tom Doyle who was working at the Vatican Embassy in
11 Washington, drew up a major paper for the U.S. bishops
12 saying, "This is going to cause problems and you've got to
13 do something about it". And the bishops would not accept
14 his paper. They said, "We'll handle it individually and
15 not as a group".

16 **MR. ENGELMANN:** Okay. So the paper at the
17 time, Father Doyle was one of the authors?

18 **REVEREND MORRISEY:** Yes, he was one of three
19 authors.

20 **MR. ENGELMANN:** All right. And what was the
21 timing? Was there something significant happening in the
22 U.S. at or about that time?

23 **REVEREND MORRISEY:** Yes, there was a major
24 case in the Diocese of Lafayette. In one of the articles I
25 wrote, I mentioned Diocese of Baton Rouge but it's not

1 that. It's Lafayette. And that's the first one where the
2 church -- the bishop was found liable for the actions of
3 one of his priests and there were a number of -- quite a
4 number of millions of dollars in damages awarded. That was
5 the first case that opened this wide. So Father Doyle was
6 seeing this and he said, "We've got to do something because
7 there is going to be more".

8 **MR. ENGELMANN:** All right.

9 And as you said he was working at the
10 Vatican Embassy in Washington at the time?

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** And do you remember the two
13 other co-authors?

14 **REVEREND MORRISEY:** Yes, the other one was
15 Father Pederson who was a psychiatrist and who was the
16 founder and director at that time at St. Luke's Institute,
17 which is one of the major centres for priests.

18 **MR. ENGELMANN:** That's a treatment centre in
19 Washington?

20 **REVEREND MORRISEY:** In Washington, yes.
21 Just outside of Washington. And the other was Ray Mouton
22 who was the lawyer for the Diocese of Lafayette in that
23 case. So it was the psychological, the canonical and the
24 legal.

25 **MR. ENGELMANN:** So we had a Dominican

1 priest. And Father Doyle at the time, was he involved in
2 assisting one of the priests or individuals charged?

3 REVEREND MORRISEY: I don't think so at that
4 moment.

5 MR. ENGELMANN: All right. But he was a
6 Dominican priest at the time?

7 REVEREND MORRISEY: Yes. But you see it
8 wasn't because he was Dominican, it's because he was
9 working at the Vatican Embassy where those reports came in
10 and he saw this.

11 MR. ENGELMANN: Fair enough, fair enough.

12 And the other fellow was the lawyer for the
13 diocese in this large case that had just taken place?

14 REVEREND MORRISEY: Exactly, from Lafayette.

15 MR. ENGELMANN: And yet another was ---

16 REVEREND MORRISEY: Father Pederson.

17 MR. ENGELMANN: --- who was the Director of
18 St. Luke's at the time?

19 REVEREND MORRISEY: That's right.

20 MR. ENGELMANN: All right.

21 REVEREND MORRISEY: Who was a priest
22 psychiatrist.

23 MR. ENGELMANN: So what -- these three
24 individuals then collaborate on this report. Where is this
25 report presented? What's done with it?

1 **REVEREND MORRISEY:** It was presented to the
2 U.S. Conference of Bishops at the time. It was suggested
3 that the conference take a stand on it which,
4 unfortunately, the conference didn't do.

5 **MR. ENGELMANN:** All right. And do you
6 recall just some of the major proposals that Father Doyle
7 and the others were suggesting at that time?

8 **REVEREND MORRISEY:** One of the major things
9 -- he was very concerned with due process. He was very
10 concerned for the rights of all the parties involved in all
11 of this.

12 But he also drew attention to the fact that
13 the issue was much more than a legal issue. It was a
14 complicated one that called for the -- for psychiatry or
15 psychology, social work and so on. So his major
16 contribution at that moment was to suggest that we setup a
17 team approach.

18 **MR. ENGELMANN:** A team approach?

19 **REVEREND MORRISEY:** A team approach to
20 handle this, not just one person. We moved from the
21 bishop, you know, with his conscience to a team.

22 **MR. ENGELMANN:** Now, that approach was not
23 accepted?

24 **REVEREND MORRISEY:** It was not accepted by
25 the Conference.

1 **MR. ENGELMANN:** Right.

2 And would it be fair to say that it wasn't
3 really accepted by the Conference until much more recently?

4 **REVEREND MORRISEY:** Yes. A certain number
5 of bishops issued diocesan protocols, but they were, you
6 know, individual actions.

7 **MR. ENGELMANN:** Right.

8 So this really comes to fruition perhaps
9 when we see what comes out of the Vatican in 2001 and then
10 what will become known as the Dallas Charter in 2002?

11 **REVEREND MORRISEY:** Yes, but the Dallas
12 Charter is a completely different perspective.

13 **MR. ENGELMANN:** Fair enough. And I want to
14 get your perspective on that.

15 **REVEREND MORRISEY:** M'hm.

16 **MR. ENGELMANN:** But really, the change on
17 taking this away from a bishop and going to a team approach
18 takes place in or around 2001. Is that fair?

19 **REVEREND MORRISEY:** In the U.S.

20 **MR. ENGELMANN:** In the U.S.

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** And, sir, you address this
23 issue, addressing the issue of clergy abuse in an article
24 which we have at Tab 7 of Volume 1, Exhibit 632; correct?

25 **THE COMMISSIONER:** Tab 7?

1 **MR. ENGELMANN:** Yes, addressing the issue of
2 clergy abuse.

3 **THE COMMISSIONER:** It's at Tab 7.

4 **MR. ENGELMANN:** And this is something
5 published in Studia Canonica?

6 **REVEREND MORRISEY:** Yes.

7 **MR. ENGELMANN:** So we have the French head
8 note, for lack of a better word, or summary and then we
9 have your article in English?

10 **REVEREND MORRISEY:** Yes.

11 **MR. ENGELMANN:** And on the first page of the
12 article, at 404, you're talking about what's happening
13 at/or about that time, a fairly painful situation in the
14 Church. Is that fair?

15 **REVEREND MORRISEY:** Yes. And this article
16 was written just after the 2001 norms came out.

17 **MR. ENGELMANN:** All right.

18 **REVEREND MORRISEY:** But before Dallas or
19 before the U.S. ---

20 **MR. ENGELMANN:** Okay. And you talked about
21 four factors that were coming into play at that time, if
22 I'm not mistaken. Could you identify those for us and
23 their significance and give a perspective?

24 **REVEREND MORRISEY:** One of the major factors
25 was this renewed insistence on human rights. And we've got

1 to back to 1979 to the United Nations Year of the Child,
2 which was sort of a watershed year when people became very
3 sensitive to what was happening to children, to minors and
4 so on. It started with the question of forced labour of
5 children in other countries, but it didn't take long until
6 it moved to abuse, physical abuse, and then everything else
7 that followed from there. So that was the first factor,
8 this sensitivity to rights.

9 And then just two years later we get the
10 Canadian Charter of Rights coming in.

11 **MR. ENGELMANN:** Yes.

12 **REVEREND MORRISEY:** You, know it's all part
13 of a movement. And in '83 our Code of Canon Law has that
14 Charter of Rights at the beginning there. We just read
15 those Canons 220 and 221.

16 **MR. ENGELMANN:** Yes.

17 **REVEREND MORRISEY:** They're from that
18 section.

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

20 **MR. ENGELMANN:** So we have a renewed
21 emphasis on human rights as being one of your factors?

22 **REVEREND MORRISEY:** Yes.

23 A second factor is the greater
24 understanding, as we move along, -- the greater
25 understanding of the harm done by sexual abuse and the

1 long-term consequences. Just as we moved at a greater
2 understanding of alcoholism, you know, that it was an
3 illness and not a perversion, and we moved there. So the
4 same thing with this; we were becoming much more sensitive
5 in the world to these issues and they took on an importance
6 that they didn't have before.

7 **MR. ENGELMANN:** And your third factor, sir?

8 **REVEREND MORRISEY:** The third factor was the
9 fact that the priest, after Vatican II, was no longer
10 considered like a god or on a pedestal and he was fair game
11 for attacking too, which people would never have done
12 before. So that sort of -- there was a leveling there.

13 **MR. ENGELMANN:** Okay. And the fourth
14 factor?

15 **REVEREND MORRISEY:** And the fourth factor
16 then is that people -- Canada is becoming much, much more a
17 litigious society and people will sue for a lot of things
18 that they would not have sued for before. It's sort of the
19 influence of the States coming through.

20 **MR. ENGELMANN:** Okay. And, sir, at the
21 beginning in your introduction you -- in the first
22 paragraph, you said:

23 "First accusations were generally met
24 with denial. Later on, when it became
25 evident that there was indeed a

1 foundation to at least some of the
2 accusations, grudging steps were taken
3 to address individual cases. With time
4 though, conferences of bishops began to
5 address the issue on a more systematic
6 basis, eventually issuing protocols, et
7 cetera."

8 Now, are you talking about the Canadian
9 Conference of Bishops when you're talking there, sir?

10 **REVEREND MORRISEY:** The major protocols were
11 issued in Canada, the U.S.A., in Great Britain, in Ireland,
12 Australia, New Zealand. They're the ones that got this
13 going. South Africa has just come out with one now and
14 other countries haven't yet issued a protocol.

15 **MR. ENGELMANN:** So you're writing this in
16 2001?

17 **REVEREND MORRISEY:** Yes.

18 **MR. ENGELMANN:** And if you're talking about
19 a systematic approach by conferences of bishops, what are
20 you referring to from a Canadian context?

21 **REVEREND MORRISEY:** Well -- okay, you've
22 moved from the U.S. to Canada now?

23 **MR. ENGELMANN:** Sorry, I'm in your article.

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** The Dallas Charter came

1 after 2001. What was there in Canada?

2 REVEREND MORRISEY: We've got to go back to
3 Canada.

4 THE COMMISSIONER: Okay. Let's go back.

5 REVEREND MORRISEY: Yes, we go back.

6 MR. ENGELMANN: To From Pain to Hope, sir?

7 REVEREND MORRISEY: Even before that.

8 See, what happened was after -- I'm coming
9 back to Father Doyle's document ---

10 THE COMMISSIONER: M'hm.

11 REVEREND MORRISEY: He's one of my former
12 pupils and he gave me a copy of that document, and I met
13 with him in New Jersey, where we discussed it. I was
14 teaching in class some of these canons on penal law and
15 three of the students objected to me in class and said
16 "You're wrong. You're not interpreting the canons
17 correctly." So that Sunday afternoon I sat down with them
18 and we went through and saw where I was wrong and where I
19 was right. And that's what led to -- I prepared the first
20 document for Canada on a procedure to be used. I was doing
21 it just purely from a legal perspective, not a pastoral,
22 not a social or anything like that.

23 MR. ENGELMANN: So no one asked you to do
24 this?

25 REVEREND MORRISEY: No one asked me to do

1 it.

2 MR. ENGELMANN: You had met with Tom Doyle.

3 REVEREND MORRISEY: Yes.

4 MR. ENGELMANN: You had reviewed his work.
5 You had had discussions with your students?

6 REVEREND MORRISEY: Yes.

7 MR. ENGELMANN: And you went from there?

8 REVEREND MORRISEY: And thank God the
9 students objected. I was pleased they did because it --
10 and -- but, you see, we used Tom Doyle's work and the
11 Canadian bishops immediately adopted what he had proposed,
12 which then got fleshed out in From Pain to Hope, which made
13 it a much more complete document.

14 THE COMMISSIONER: Can you give me some
15 times there? Father Doyle wrote his article in ---

16 REVEREND MORRISEY: It's '85.

17 THE COMMISSIONER: --- '85.

18 REVEREND MORRISEY: And the Canadian
19 document, the one that I first did was '87.

20 THE COMMISSIONER: Right.

21 And then when did the Conference of Bishops
22 adopt it?

23 REVEREND MORRISEY: Well, the Conference,
24 what they did is they sent it to each bishop and said,
25 "This is not a Conference document" because it was just

1 done by me, but they suggested that it be used in each
2 diocese.

3 **THE COMMISSIONER:** Right.

4 **REVEREND MORRISEY:** And it was used.

5 **MR. ENGELMANN:** As a standard protocol ---

6 **REVEREND MORRISEY:** Yes.

7 **MR. ENGELMANN:** --- for dealing with these
8 cases?

9 **REVEREND MORRISEY:** Yes. And then when you
10 had the Winter Commission in Newfoundland, they referred to
11 that document too, showing how the Church was starting to
12 address it in Canada in a particular way. But the Winter
13 Commission also suggested that this procedure should be
14 elaborated on with other dimensions. And that led the
15 bishops to set up the Commission that led to Pain to Hope
16 in '92.

17 **MR. ENGELMANN:** And did they suggest then
18 that the Canadian Conference of Catholic Bishops take it on
19 as their work?

20 **REVEREND MORRISEY:** Exactly, and it was the
21 Conference that initiated in that next step following the
22 Winter Report.

23 **MR. ENGELMANN:** All right.

24 And, sir, we have jumped around -- and I
25 apologize -- between the countries, but chronologically

1 then, in '87, you're coming up with a draft protocol. In
2 '88 or thereabouts, it's being sent out to diocesan
3 bishops.

4 What happens in/or around 1990? Is it the
5 Winter Commission?

6 **REVEREND MORRISEY:** In 1990 it's the Winter
7 Commission.

8 **MR. ENGELMANN:** And at/or about that time,
9 are there workshops set up by the Canadian Conference of
10 Catholic Bishops?

11 **REVEREND MORRISEY:** There are workshops set
12 up by the Canon Law Societies ---

13 **MR. ENGELMANN:** Okay.

14 **REVEREND MORRISEY:** --- both of Canada and
15 of the U.S. that were trying to get the canonist dioceses
16 sensitive to these issues. That's why I was invited to
17 speak at those different types of meetings, to sort of
18 build on that procedure that I had prepared.

19 **MR. ENGELMANN:** So were you invited, sir, to
20 speak at a number of dioceses in the country?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** Okay. And the protocol we
23 have in a couple of places. I'm going to take you to it,
24 but the first place is in your Book of Documents at Tab 12.
25 There's an article by Reverend Jerome Paulson. Can you

1 tell us who he is and his connection to this protocol?

2 **REVEREND MORRISEY:** Okay. Well, Jerry
3 Paulson is a priest, the Diocese of New Ulm, Minnesota, and
4 he's one of the three who objected to what I was saying in
5 class and sat down with me and helped work this out.

6 **MR. ENGELMANN:** So he, like Father Doyle, is
7 a former student of yours?

8 **REVEREND MORRISEY:** Yes, and then he decided
9 to do his Master's paper on this issue, and this is a
10 summary of what he had done following our discussion.

11 **MR. ENGELMANN:** So the formal - sorry formal
12 draft protocol, is that what we then see set out at page
13 121?

14 **REVEREND MORRISEY:** One-twenty-one (121) at
15 Appendix H, yes.

16 **MR. ENGELMANN:** All right.

17 And you have an introduction and then there
18 is sort of a procedure established before any denunciation
19 is made, all right. And what do you mean by a
20 denunciation, sir?

21 **REVEREND MORRISEY:** Well, a denunciation
22 could be a complaint. So this first section is the
23 infrastructure that every diocese should have in place so
24 that if a complaint comes in, how do we handle it, what do
25 we do?

1 **MR. ENGELMANN:** And so we see a number of
2 provisions under Article 1 about processes and people that
3 you wanted to have in place within a diocese before
4 complaints came in?

5 **REVEREND MORRISEY:** Exactly.

6 **MR. ENGELMANN:** Then on point 2, when a
7 denunciation is made, what is it you're calling for there,
8 sir?

9 **REVEREND MORRISEY:** Well, that's -- what I'm
10 trying to do is to work in what we have in Canon 1717 of
11 the Code which says that when a bishop receives a
12 denunciation, that he is to conduct immediately an informal
13 inquiry to see if there is any substance to this.

14 **MR. ENGELMANN:** And these were your
15 suggestions at the time?

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** Were they in the main picked
18 up by others, by the Canadian Conference?

19 **REVEREND MORRISEY:** Yes, and by the
20 Australian and English and Irish bishops; you know, with
21 adaptations as we moved along.

22 **MR. ENGELMANN:** All right.

23 You have provisions in Article 2, first of
24 all, about dealing with the parents of an alleged victim.

25 **REVEREND MORRISEY:** Yes.

1 **MR. ENGELMANN:** In 2.1. There is a
2 provision in Article 2.2 about:

3 "...the diocese providing an accused
4 cleric immediately with a trial lawyer
5 who is different from the diocesan
6 attorney."

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** What was the rationale
9 there; do you recall?

10 **REVEREND MORRISEY:** Yeah, well, one of the
11 reasons behind it is that anything that a priest said was
12 not privileged.

13 **MR. ENGELMANN:** Yes.

14 **REVEREND MORRISEY:** And if he was there in
15 the company of his lawyer there could be a privilege there
16 and that this could not be taken and, you know, bandied
17 about afterwards. There was -- you see, we're still at the
18 denunciation stage. We're not yet at the stage of a trial
19 or anything. But at this moment we had to find some way to
20 protect the reputation of the priest too who was accused.

21 **MR. ENGELMANN:** All right.

22 And is that same logic then applied in 2.3?

23 **REVEREND MORRISEY:** Yes.

24 **MR. ENGELMANN:** And that would be to ensure
25 that any discussions with the priest and/or the diocesan

1 bishop were covered by some form of solicitor-client
2 privilege?

3 **REVEREND MORRISEY:** Well, you know,
4 hopefully they were covered. That hadn't been tested at
5 that time in '87, you know, in that perspective.

6 **MR. ENGELMANN:** Okay. Now, were you at all
7 criticized for this at that time or later because of the
8 privilege or confidentiality or secrecy nature of it, do
9 you recall?

10 **REVEREND MORRISEY:** Well, there are
11 different views of this. My view, and I have admitted it -
12 - my view was to make sure that we protected the priests
13 who were accused because of the number of false accusations
14 and to make sure that before we moved on, that we're sure
15 that there was a base there. If there was a base, then you
16 followed all the procedures afterwards. But it was just
17 open game season at that time.

18 **MR. ENGELMANN:** Okay. But, sir, I'm
19 assuming that often when the denunciations were made --
20 well, I don't know -- was typically by a layperson or lay
21 victim or ---

22 **REVEREND MORRISEY:** Fortunately, most of the
23 cases came to us through the police.

24 **MR. ENGELMANN:** Okay.

25 **REVEREND MORRISEY:** People had gone to the

1 police or Children's Aid or, you know, a public authority,
2 and then we were notified. So the matter was already out
3 of our hands by the time it came to us. That's why there
4 is an article somewhere there. It's going to say if
5 proceedings in the secular were ever going on, that we
6 suspend the church proceedings until they're finished.

7 **MR. ENGELMANN:** Okay. So you put the
8 internal proceedings on hold until the secular courts,
9 either criminal or civil, deal with the issues?

10 **REVEREND MORRISEY:** Yes.

11 **MR. ENGELMANN:** And is that just advice or -
12 --

13 **REVEREND MORRISEY:** Advice, you know,
14 because I mean this was just ---

15 **MR. ENGELMANN:** Yeah, that's not a canon.

16 **REVEREND MORRISEY:** --- my suggestion.

17 **MR. ENGELMANN:** That's not a canon?

18 **REVEREND MORRISEY:** No, that's not a canon
19 at all.

20 **MR. ENGELMANN:** All right.

21 And what is the import of 2.4?

22 **REVEREND MORRISEY:** Well, 2.4 says that at
23 no time should the people involved hear the sacramental
24 confession because if a bishop is going to be in charge of
25 government of a diocese and there is accusations and he has

1 heard the confession, his hands are tied because then he
2 can't act. And so it was to make sure that there would not
3 be an additional obstacle in the way.

4 **MR. ENGELMANN:** Are there not also canons on
5 that point about giving confession to a superior?

6 **REVEREND MORRISEY:** Yes, Canon 530 is going
7 to recommend that -- well, it's going to say superiors
8 should not hear confessions unless the subject person, you
9 know, spontaneously asks for it.

10 **MR. ENGELMANN:** And then, sir, you talk --
11 there is a number of other points. And I'm wondering about
12 2.10:

13 "A cleric is then to be referred
14 immediately, no later than the next day
15 to the selected treatment centre for
16 medical and psychological evaluation."

17 I'm assuming, sir, given what you've told us
18 before that that would only be with that individual
19 cleric's consent?

20 **REVEREND MORRISEY:** Yes, he had to do that.
21 But what had come out in some of the other cases, the
22 bishops were accused of stalling, and that's why I put in
23 here that, you know, no later than the next day that they
24 would move.

25 **THE COMMISSIONER:** All right.

1 **MR. ENGELMANN:** So they would at least
2 attempt to get the priests to get into treatment.

3 **REVEREND MORRISEY:** Yeah. Now, sometimes
4 what happens was there were no spaces available at some of
5 those, so you were put on a waiting list for a while.

6 **MR. ENGELMANN:** All right.

7 And what do we see under Article 4.1?

8 **REVEREND MORRISEY:** Okay, in 4.1 what I'm
9 recommending is that we keep a written log of what's
10 happened here to show what has gone -- to show the due
11 process has been respected; you know, just what has been
12 done.

13 **MR. ENGELMANN:** All right.

14 So it's sort of an internal report from the
15 actions that have been taken?

16 **REVEREND MORRISEY:** Yes, and it's just --
17 it's a prudential document. You see, what could happen too
18 is that in the middle of all of this you change bishops, so
19 that there is a continuity.

20 **MR. ENGELMANN:** And again, sir, in keeping
21 with, I guess, a desire to maintain some form of privilege,
22 it's being endorsed as being prepared for the benefit and
23 assistance of counsel.

24 **REVEREND MORRISEY:** Yes.

25 **MR. ENGELMANN:** Sir, in a like way, was your

1 protocol also shared with a lawyer who was either hired by
2 the CCCB or a diocese to review it, a secular lawyer?

3 REVEREND MORRISEY: Yes, Jeffrey King.

4 MR. ENGELMANN: And who would have engaged
5 him to do that?

6 REVEREND MORRISEY: The Conference of
7 Bishops, when I sent the document to them and they looked
8 at it they said, "Well, have you had this checked through
9 with a lawyer?" and I said, "No, I have just done this.
10 I'm sending it to you". So they said, "Well, before we
11 take it, we would like to have it evaluated by a lawyer and
12 somebody who knew what this was about."

13 MR. ENGELMANN: And Mr. King at the time was
14 a local lawyer in Ottawa?

15 REVEREND MORRISEY: He's a lawyer in Ottawa.

16 MR. ENGELMANN: And he has since become a
17 priest?

18 REVEREND MORRISEY: He has since become a
19 priest.

20 MR. ENGELMANN: All right. So --

21 REVEREND MORRISEY: He saw the light.

22 (LAUGHTER/RIRES)

23 MR. ENGELMANN: You never know.

24 Sir, I don't want to take you into it in any
25 detail, but you do recall him reviewing it for you?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: Yeah, all right. I'll leave
3 that. It was already in evidence.

4 All right. So you were not -- you were
5 involved, sir, were you not, in some of these work groups
6 that were set up by the Canadian Conference in 1990?

7 REVEREND MORRISEY: Yes.

8 MR. ENGELMANN: And was that to continue
9 with some of the work you were doing on the protocol?

10 REVEREND MORRISEY: Yes, that was following
11 the Winter Report, conditions, recommendation that the
12 Canadian Bishops' document be broadened.

13 MR. ENGELMANN: Yes. And how did they want
14 it broadened, sir; do you recall?

15 REVEREND MORRISEY: Yes, there were four
16 subcommittees. One subcommittee they wanted on the
17 selection and training formation of future priests, what
18 was being done to weed out people before.

19 MR. ENGELMANN: M'hm.

20 REVEREND MORRISEY: There was one on the
21 rehabilitation of priests afterwards.

22 MR. ENGELMANN: Yes.

23 REVEREND MORRISEY: There was one committee
24 on the procedures to be followed and the other was on the
25 question of impact on victims.

1 **MR. ENGELMANN:** Is that the committee that
2 wanted to adopt -- or where they suggested adopting a more
3 pastoral tone?

4 **REVEREND MORRISEY:** Yes.

5 **MR. ENGELMANN:** With respect to the
6 protocols?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** All right.

9 And this was as a result of what they had
10 just gone through in the Winter Report, Mount Cashel, et
11 cetera?

12 **REVEREND MORRISEY:** Yes, and don't forget,
13 those were real learning curve years. We got this started
14 and suddenly the ball was moving. But thank God to see the
15 Canadian bishops acted at that moment.

16 **MR. ENGELMANN:** All right. And this was
17 before the American bishops were acting. Is that fair?

18 **REVEREND MORRISEY:** Yes, exactly.

19 **MR. ENGELMANN:** And what work groups were
20 you either leading or taking part in?

21 **REVEREND MORRISEY:** Well, I chaired the work
22 group on procedures and I was on the work group on the
23 rehabilitation of priests and their possible re-entry into
24 ministry.

25 **MR. ENGELMANN:** Sir those work groups, then

1 reported in the From Pain to Hope document?

2 REVEREND MORRISEY: Yes. They reported to a
3 central committee which then made a synthesis of the
4 reports of the four subgroups.

5 MR. ENGELMANN: So if we are looking at Tab
6 13, which is the From Pain to Hope document from 1992, you
7 are referenced on page 9?

8 REVEREND MORRISEY: Yes.

9 MR. ENGELMANN: And as chairing the first
10 group.

11 REVEREND MORRISEY: That's right. That's
12 the procedures group.

13 MR. ENGELMANN: And it also says you were a
14 resource person for the third group. Which group was that
15 sir?

16 REVEREND MORRISEY: That's the group on the
17 re-entry of priests.

18 MR. ENGELMANN: All right. And from your
19 perspective, sir, looking back, what did you feel were the
20 most significant aspects of this new document From Pain to
21 Hope.

22 REVEREND MORRISEY: From Pain to Hope?

23 MR. ENGELMANN: Yes?

24 REVEREND MORRISEY: Well it presented a much
25 broader approach to the issue than simply a legal issue. I

1 mean many of the points involved here were social. They
2 were psychological. They were medical. They were
3 religious and not just legal.

4 **MR. ENGELMANN:** And the appendices that your
5 workgroup would have been responsible for, would that have
6 been Appendix 3, sir, that we see at page 73?

7 **REVEREND MORRISEY:** Yes, Appendix 3 is --
8 it's taken -- it's part of our report. They did not
9 publish the whole report, and if I'm not mistaken, Appendix
10 4 is also taken from our committee's work.

11 **MR. ENGELMANN:** So when you're talking about
12 the canonical preliminary inquiry at Appendix 3, what is it
13 you are talking about there in a general sense?

14 **REVEREND MORRISEY:** Well, that's what does a
15 bishop do when he gets a complaint?

16 **MR. ENGELMANN:** All right.

17 **REVEREND MORRISEY:** And those are the steps
18 to be taken.

19 **MR. ENGELMANN:** And then at Appendix 4, when
20 you're talking about administrative procedures?

21 **REVEREND MORRISEY:** Well, administrative
22 procedures is if he sees there is enough smoke to say
23 there's fire, then what is the next step? You'll see a lot
24 of overlap with my 1987 document.

25 **MR. ENGELMANN:** Okay. So many of the

1 initial issues that you raised in your initial protocol
2 were actually picked up on in this document?

3 REVEREND MORRISEY: Yes.

4 MR. ENGELMANN: But you said they obviously
5 went a lot further and looked at all sort of other issues
6 including treatment issues; psychological issues; social
7 issues, et cetera.

8 REVEREND MORRISEY: Yes, and that was great.

9 MR. ENGELMANN: Because your initial
10 document was more of a legal document. Is that fair?

11 REVEREND MORRISEY: My document was
12 exclusively a legal document.

13 MR. ENGELMANN: Now, we could jump around
14 back to the United States, but maybe let's just follow
15 through with this for a minute. The protocols that are set
16 out in From Pain to Hope, that's the Canadian Conference of
17 Catholic Bishops?

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: Those protocols are
20 directives in nature.

21 REVEREND MORRISEY: They're directives, yes.
22 They're not binding. In a sense, the Conference had no
23 authority, as you mentioned this morning ---

24 MR. ENGELMANN: Yes.

25 REVEREND MORRISEY: --- to impose a law. So

1 it was sent to each bishop, and every bishop in Canada
2 promulgated a diocesan policy, which was, in some cases, 98
3 percent taken from here; in some other cases, there were
4 slight differences.

5 **MR. ENGELMANN:** So you are actually aware,
6 sir, that every diocese promulgated some form of policy?

7 **REVEREND MORRISEY:** Yes, and what happened
8 was the diocesan insurance companies also insisted at the
9 same time -- so that put a little bit of additional
10 pressure.

11 **MR. ENGELMANN:** All right. Sir, as I
12 understand it, 10 years after From Pain to Hope, in the
13 year 2002, a follow-up took place and a further sub-
14 committee was created.

15 Is that correct?

16 **REVEREND MORRISEY:** That's correct. See in
17 2002, there's two things in between. We had 10 years of
18 practice with this. You know, knowledge has moved a lot in
19 those 10 years but also we had all those new Roman laws
20 that had to be taken into effect too, to the way in which
21 these cases were being handled.

22 **MR. ENGELMANN:** All right. And the people
23 that are indicated -- and I'm looking at Tab 14, second
24 page in -- are these people that were involved in From Pain
25 to Hope or were they new people?

1 **REVEREND MORRISEY:** No, the principle was
2 that nobody who was on the initial committee would be on
3 this evaluation committee 10 years later. That was like,
4 you know, a policy.

5 **MR. ENGELMANN:** All right.

6 **THE COMMISSIONER:** A basic principle.

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** And so this task force or
9 this group looked at this issue for three years and
10 reported in approximately in the fall of 2005?

11 **REVEREND MORRISEY:** Two thousand and five
12 (2005).

13 **MR. ENGELMANN:** And they listed a number of
14 concerns that they found. Is that fair?

15 **REVEREND MORRISEY:** Yes, yes.

16 **MR. ENGELMANN:** And those concerns would
17 start on page 5?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** For example, "greater
20 sensitivity to the suffering of victims". There was a lot
21 of feedback from victims about the need for that?

22 **REVEREND MORRISEY:** M'hm, yes.

23 **MR. ENGELMANN:** And avoiding double
24 victimization was an issue that was also expressed?

25 **REVEREND MORRISEY:** Yes.

1 **MR. ENGELMANN:** And that is this -- when
2 they say "re-victimization", what is meant by that having
3 to go through some kind of a legal process after alleged
4 abuse?

5 **REVEREND MORRISEY:** Yes, they were already
6 victims once and then having to go through complete details
7 again and cross-examination and so on.

8 **MR. ENGELMANN:** All right. There were also
9 a number of other concerns raised, including consolidating
10 measures proposed in From Pain to Hope by a firm commitment
11 from the bishops to implement them systematically.

12 **REVEREND MORRISEY:** M'hm.

13 **MR. ENGELMANN:** So were they looking for a
14 national protocol in effect?

15 **REVEREND MORRISEY:** Well, see, don't forget,
16 this is 2005.

17 **MR. ENGELMANN:** Yes.

18 **REVEREND MORRISEY:** Dallas came out in 2002.
19 So at that time, the committee had the new American norms
20 to, you know, to work in.

21 **MR. ENGELMANN:** Yes.

22 **REVEREND MORRISEY:** But they did not accept
23 to have a national protocol in Canada.

24 **MR. ENGELMANN:** That has not happened to
25 date.

1 **REVEREND MORRISEY:** No. No, From Pain to
2 Hope is still the national protocol. A new one has not yet
3 been issued.

4 **MR. ENGELMANN:** All right. So there's other
5 concerns listed and, in fact, a draft protocol was attached
6 to this document. The proposal of the working group?

7 **REVEREND MORRISEY:** Yes, a proposal and, as
8 far as I know, I have not seen any ---

9 **MR. ENGELMANN:** Follow up?

10 **REVEREND MORRISEY:** --- any follow-up yet.

11 **MR. ENGELMANN:** Yes. So this came out of
12 the fall of 2005, and we are still waiting for some kind of
13 timelines and future action from the Conference?

14 **REVEREND MORRISEY:** Yes because I don't
15 think they would want just a protocol without having the
16 whole rationale like something like we found in From Pain
17 to Hope.

18 **MR. ENGELMANN:** Do you know if there have
19 been meetings to discuss the proposed protocol here sir?

20 **REVEREND MORRISEY:** No, I don't know.

21 **MR. ENGELMANN:** All right. Now, let's jump
22 back to the United States. We talked about the Doyle-
23 Mouton letter or report in the mid-'80s. Were there some
24 discussions taking place in the United States between the
25 mid-'80s and the time of the Dallas Protocol in 2002 on

1 this issue?

2 **REVEREND MORRISEY:** Yes, some of the U.S.
3 bishops were working on this to try to see what should we
4 do, what should come out, but the Conference of the United
5 States is so big, it's almost 400 bishops. And to get 400
6 to agree just was most difficult.

7 **THE COMMISSIONER:** It's like getting 400
8 lawyers to agree.

9 **MR. ENGELMANN:** Sir, I understand that in
10 the early '90s, there were Canon Law Society discussions on
11 this issue?

12 **REVEREND MORRISEY:** Yes.

13 **MR. ENGELMANN:** And in fact you would have
14 participated in some of those in the U.S.?

15 **REVEREND MORRISEY:** Yes.

16 **MR. ENGELMANN:** And at Tab 5, you have a
17 paper that you would have presented at one of these Canon
18 Law discussion groups. Is that fair?

19 **REVEREND MORRISEY:** That's correct.

20 **MR. ENGELMANN:** And in that paper, you
21 review some history and you talk about current canons and
22 you talk about a number of unresolved questions or issues I
23 believe towards the end. And I am looking at page 237.

24 Sir, perhaps more appropriately, you were
25 making suggestions?

1 **REVEREND MORRISEY:** Yes, this was -- this
2 was a seminar ---

3 **MR. ENGELMANN:** M'hm.

4 **REVEREND MORRISEY:** --- for people who are
5 involved in this, and I was trying to say like be the cat
6 among the pigeons. This is where, you know, get the
7 discussion going. And so I was coming up with suggestions
8 that are not law or anything like that, but just based on
9 my experience.

10 **MR. ENGELMANN:** All right. And sir there
11 would have been a number of these discussions throughout
12 the '90s in the United States?

13 **REVEREND MORRISEY:** Yes, and then especially
14 2001.

15 **MR. ENGELMANN:** All right.
16 There it became more and more of these cases
17 came to light; is that fair?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** And consequently, is it the
20 U.S. bishops that got together to take some action or was
21 that action initiated from the Vatican?

22 **REVEREND MORRISEY:** The Dallas Norms were
23 started by the U.S., not by the Vatican.

24 **MR. ENGELMANN:** All right.

25 And at that point in time, when the Dallas

1 Charter and the Dallas Norms were coming about, how would
2 you view sort of the land -- things on the ground in the
3 U.S. at that time with respect to the U.S. Conference of
4 Catholic Bishops?

5 **REVEREND MORRISEY:** Well, I am exaggerating
6 a bit, but it's CNN that was running the Church and CNN had
7 decided that they were going to have a continual
8 bombardment on the news service every day to force the
9 bishops into action.

10 **MR. ENGELMANN:** Okay. So ---

11 **REVEREND MORRISEY:** I am exaggerating a wee
12 bit, but not ---

13 **MR. ENGELMANN:** There was a lot of publicity
14 about this issue?

15 **REVEREND MORRISEY:** Especially since what
16 happened in Boston.

17 **MR. ENGELMANN:** Yes.

18 **REVEREND MORRISEY:** And they just -- it just
19 became an issue.

20 **MR. ENGELMANN:** All right.

21 **THE COMMISSIONER:** But you don't bemoan the
22 fact that the bishops were led to action?

23 **REVEREND MORRISEY:** No, I bemoan the fact
24 they didn't act on Tom Doyle's paper.

25 **THE COMMISSIONER:** Thank you. Okay.

1 **MR. ENGELMANN:** So you thought they should
2 have taken some actions much, much sooner.

3 **REVEREND MORRISEY:** Sure, like the Canadian
4 bishops did.

5 **MR. ENGELMANN:** Yeah. And what was the
6 consequence, sir, from your perspective, of waiting that
7 long and only dealing with it in 2001?

8 **REVEREND MORRISEY:** Well, then they went in
9 and they nuked it. They nuked all the priests. Like in a
10 sense, they just took that policy, one strike you're out.
11 There was no question or rehabilitation, no question of
12 discernment of one size fits all.

13 **MR. ENGELMANN:** So this is this one-strike-
14 you're-out-policy ---

15 **REVEREND MORRISEY:** Yes.

16 **MR. ENGELMANN:** --- that was initiated as a
17 result of the Dallas Charter?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** And I take it from your view
20 then you thought that was going too far?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** All right.

23 And the situation, if we look at it and if
24 we look at Volume 2 of your Book of Documents, Tab 15; this
25 is the Dallas Charter; correct?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: And how is it different then
3 from the Dallas Norms as you've called them?

4 REVEREND MORRISEY: The Charter is sort of a
5 rationale that accompanied the Norms. And the Norms are on
6 Tab 16. This was sort of -- this is not law. The Charter
7 was something that the bishops committed themselves to.

8 MR. ENGELMANN: So these were pledges ---

9 REVEREND MORRISEY: They're pledges ---

10 MR. ENGELMANN: --- if I can use that term?

11 REVEREND MORRISEY: That's a good word.

12 MR. ENGELMANN: And they do say, and I am
13 looking at the preamble, sir -- they talk about this
14 unprecedented crisis and on the second page, they say:

15 "The Conference of Bishops has been
16 addressing the evil of sexual abuse of
17 minors by a priest and at its June 1992
18 meeting established five principles to
19 be followed."

20 REVEREND MORRISEY: M'hm.

21 MR. ENGELMANN: So they were doing something
22 during the '90s; is that fair?

23 REVEREND MORRISEY: Yes.

24 MR. ENGELMANN: Or at least some of them
25 were?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: Okay. But you didn't have
3 this coordinated action by the Conference?

4 REVEREND MORRISEY: No, there was a
5 Commission of Bishops that worked. But what they decided
6 to do in the end was simply to collect documents and they
7 sent these binders of documents around to bishops and said
8 "Here, this could be of help to you".

9 MR. ENGELMANN: I'll just be a moment.

10 (SHORT PAUSE/COURTE PAUSE)

11 So the Charter itself, before the Norms --
12 where they issued at the same time?

13 REVEREND MORRISEY: They came out together.

14 MR. ENGELMANN: All right.

15 So the Charter is directive; the Norms are
16 mandatory or required; is that fair?

17 REVEREND MORRISEY: Yes.

18 MR. ENGELMANN: Because they are the law.

19 REVEREND MORRISEY: They're law.

20 MR. ENGELMANN: And how did they become the
21 law? How did they become norms? What happened there as
22 opposed to the CCCB From Pain to Hope?

23 REVEREND MORRISEY: Yeah. Well, what
24 happened there was the U.S. cardinals decided that they
25 were going to make this mandatory and they went to Rome and

1 they said "We're not leaving Rome until you accept this".
2 And I think the only word I can use is they bullied the
3 Vatican people finally into accepting these Norms.

4 **MR. ENGELMANN:** And at the time, that would
5 have been Pope John Paul II?

6 **REVEREND MORRISEY:** John Paul II, yeah.

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

8 So they went to the Vatican. They spent
9 some time there.

10 **REVEREND MORRISEY:** Yes.

11 **MR. ENGELMANN:** And they came back with
12 their Norms?

13 **REVEREND MORRISEY:** Well, the Norms came a
14 month or two later.

15 **MR. ENGELMANN:** Now, any other national
16 conferences have Norms like, this to your knowledge?

17 **REVEREND MORRISEY:** Nothing of this type,
18 but there are very, very good Irish Norms, an excellent
19 book. That's the latest in these series of countries and
20 if Canada was revising, there are some excellent points in
21 there that we could use.

22 **MR. ENGELMANN:** All right.

23 And one of the things you talked about, this
24 one-strike-you're-out- policy; is that what we see -- and
25 I am just looking at it from the perspective of a pledge

1 now, not the norm, at page 8 of the Charter, at the top of
2 the page?

3 REVEREND MORRISEY: I can't see a page
4 number, I'm sorry.

5 MR. ENGELMANN: It's at the bottom; it
6 starts with "Sexual abuse ---

7 REVEREND MORRISEY: Okay. Thank you. I see
8 it.

9 MR. ENGELMANN: That first bullet.

10 REVEREND MORRISEY: Yes.

11 MR. ENGELMANN: Is that what we are talking
12 about?

13 REVEREND MORRISEY: Yeah. Even for a single
14 act, yes.

15 MR. ENGELMANN: All right. And it says that
16 that person, either priest, deacon, will be permanently
17 removed from ministry.

18 REVEREND MORRISEY: Yes.

19 MR. ENGELMANN: All right.

20 But it does go further and say they will be
21 offered professional assistance, et cetera; correct?

22 REVEREND MORRISEY: Yes.

23 MR. ENGELMANN: But your concern was the
24 permanent removal from the ministry?

25 REVEREND MORRISEY: Well, I've got to

1 explain a little bit.

2 **MR. ENGELMANN:** Yes.

3 **REVEREND MORRISEY:** When this was done, the
4 American bishops took the Canadian definition of Pain to
5 Hope and put that in, but From Pain to Hope, the definition
6 was put in with a sense that these are the instances where
7 a bishop will intervene to help a priest and look at it.

8 **MR. ENGELMANN:** Sir, let me just clarify.
9 The Canadian -- the definition of what?

10 **REVEREND MORRISEY:** Of sexual abuse.

11 **MR. ENGELMANN:** All right.

12 So fairly broad definition? Is that what
13 you're saying?

14 **REVEREND MORRISEY:** Yes, the Canadian
15 definition is a very broad one, but it was done in a
16 completely different perspective. And so, for instance,
17 this is purely an example, if somebody said he was leering
18 at me, if I take the Canadian definition, that can be a
19 definition of sexual abuse. But leering is in the eyes of
20 the beholder too at times. And so that's why the bishops
21 in the U.S. afterwards realized they'd gone way too far
22 because they took that broad thing and used it for
23 everybody, you're out.

24 **MR. ENGELMANN:** All right.

25 Did they then narrow that definition later

1 on?

2 **REVEREND MORRISEY:** They did significantly
3 and that's why the Norms were revised in 2006 and the
4 definition was clarified.

5 **MR. ENGELMANN:** So we've got the Norms from
6 2002 at Tab 16; is that correct?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** So those were the rules.
9 And is there a definition of sexual abuse there, sir? I
10 see the one-strike-you're-out policy at paragraph 8.

11 **REVEREND MORRISEY:** Yeah. If you take the
12 preamble, the fourth paragraph at Tab 16, the first page,
13 it says:

14 "Sex abuse of a minor includes sexual
15 molestation, sexual exploitation and
16 other behaviour by which an adult uses
17 a minor as an object of sexual
18 gratification."

19 And then it says it's been defined by
20 different civil authorities in various ways. And these
21 Norms do not adopt any particular definition provided in
22 civil law. And it was so broad.

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

24 **REVEREND MORRISEY:** There was a strong
25 reaction.

1 **MR. ENGELMANN:** All right.

2 So then we have essential Norms that were
3 issued in 2006?

4 **REVEREND MORRISEY:** Yes.

5 **MR. ENGELMANN:** Also by the U.S. Conference
6 of Catholic Bishops. They're at Tab 17?

7 **REVEREND MORRISEY:** Yes.

8 **MR. ENGELMANN:** And we have a comparison
9 chart at Tab 18 between the two?

10 **REVEREND MORRISEY:** Yes, which is much more
11 useful.

12 **MR. ENGELMANN:** And your comment that the
13 definition of sexual abuse has been narrowed to some
14 extent. Is that we see when we are looking on page 2 of
15 Tab 18?

16 **REVEREND MORRISEY:** Right near the top and
17 what is in bold in the right-hand column of page 2, that's
18 the new definition and there you notice they've limited it
19 to the 6th Commandment of the Decalogue rather than just the
20 broad one that they had before.

21 **MR. ENGELMANN:** Now, I mean, has there been
22 some reaction the other way saying now we are too narrow or
23 do you know?

24 **REVEREND MORRISEY:** I haven't heard of it.
25 I think there was a sigh of relief.

1 **MR. ENGELMANN:** Okay.

2 **THE COMMISSIONER:** Well, from the clergy?

3 **REVEREND MORRISEY:** From the clergy.

4 Because you don't do a second wrong to correct one wrong.

5 That was the problem here. It was one extreme to another.

6 **MR. ENGELMANN:** All right.

7 That's your view, sir; is that fair?

8 **REVEREND MORRISEY:** Yes.

9 **MR. ENGELMANN:** And at Tab 16 in the Norms,
10 para 11 -- and there are a number of Norms here, but para
11 11 talks about ---

12 **THE COMMISSIONER:** Sorry, Tab 16?

13 **MR. ENGELMANN:** Yes, Tab 16, Norm 11. What
14 is meant by this, sir, from your perspective and why would
15 that have been necessary in 2002 in the United States?

16 **REVEREND MORRISEY:** Well, you see, the
17 bishops were accused of a cover up.

18 **MR. ENGELMANN:** Yes?

19 **REVEREND MORRISEY:** And so what they've made
20 is they've done a commitment here or they made a commitment
21 in these norms that reporting laws and so on will be
22 observed.

23 **MR. ENGELMANN:** So when they are referring
24 to reporting laws they are talking about sort of child
25 welfare legislation?

1 **REVEREND MORRISEY:** Yes, by whatever name it
2 would be known.

3 **MR. ENGELMANN:** All right.

4 So if there is a duty to report, for
5 example, things like that, that they are making a positive
6 statement that they must comply?

7 **REVEREND MORRISEY:** Now, naturally one of
8 the other articles are going to say the seal of confession
9 is inviolate.

10 **MR. ENGELMANN:** Okay, so with that
11 exception?

12 **REVEREND MORRISEY:** With that exception,
13 yes.

14 **MR. ENGELMANN:** They are going to follow
15 reporting laws?

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** Now, sir, very quickly, Tab
18 19, the Dallas Charter and the Norms required some annual
19 reports; did they not?

20 **REVEREND MORRISEY:** Yes, that's what they
21 asked for.

22 **MR. ENGELMANN:** Right, and to your
23 knowledge, have there been annual reports or reports every
24 couple of years?

25 **REVEREND MORRISEY:** Well, the one you have

1 there on Tab 19 is an example that was the 2000 -- report
2 presented in 2004.

3 **MR. ENGELMANN:** And this was -- was this
4 also a controversial report from the clergy's perspective?

5 **REVEREND MORRISEY:** Well, this was showing
6 what they were doing.

7 **MR. ENGELMANN:** Yes.

8 **REVEREND MORRISEY:** The priests, you know,
9 felt very abandoned at this moment. That's the sad part of
10 this.

11 **MR. ENGELMANN:** By church leaders?

12 **REVEREND MORRISEY:** Yes.

13 **MR. ENGELMANN:** All right.

14 And there is some pretty strong language in
15 this report.

16 **REVEREND MORRISEY:** Yes.

17 **MR. ENGELMANN:** You agree with that?

18 **REVEREND MORRISEY:** Yes.

19 **MR. ENGELMANN:** About the situation, the
20 crisis and how much more needs to be done?

21 **REVEREND MORRISEY:** Yes.

22 **MR. ENGELMANN:** And one of the things that
23 it talks about is not just priests, though. It talks about
24 church leaders and a failure to respond. I'm looking at
25 page 8, sir, where the report goes so far as to say:

1 "Even more troubling than the criminal
2 and sinful acts of priests engaged in
3 abuse of minors was the failure of some
4 bishops to respond to the abuse in an
5 effective manner."

6 **REVEREND MORRISEY:** M'hm.

7 **MR. ENGELMANN:** So it seems that the authors
8 of the report -- it may be viewed as an attack on
9 individual priests but they seem to be taking rounds out of
10 bishops and people in authority as well.

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** All right.

13 I just had one question on this and it's --
14 is this a document that you're very familiar with, sir?

15 **REVEREND MORRISEY:** No.

16 **MR. ENGELMANN:** All right.

17 Just on page 9, there is a reference to
18 Canon Law and I just wanted your opinion on it; the last
19 bullet.

20 **REVEREND MORRISEY:** M'hm.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. ENGELMANN:** Well, given what you've said
23 about one strike you're out and this controversial policy -
24 - controversial from the views of individual priests, what
25 about the comment here about Canon Law and canonical

1 procedures made it too difficult to remove a predator
2 priest from ministry, et cetera?

3 REVEREND MORRISEY: Can I answer that by a
4 parallel?

5 MR. ENGELMANN: Sure.

6 REVEREND MORRISEY: I've just been following
7 the Picton trial in B.C.

8 THE COMMISSIONER: M'hm, go ahead.

9 REVEREND MORRISEY: Which would have been
10 very easy to say "You did it. You're out".

11 THE COMMISSIONER: M'hm.

12 REVEREND MORRISEY: But they've been going,
13 going, going, you know steady. They're following the
14 procedure.

15 MR. ENGELMANN: Yes.

16 REVEREND MORRISEY: They're following the
17 steps. It takes months to do.

18 MR. ENGELMANN: Yes.

19 REVEREND MORRISEY: But in the end we have a
20 much better chance of justice being administered. You see,
21 some people want an immediate action on this and my role is
22 to try to be "Hold on. We follow due process. And if you
23 don't follow due process it's the reign of the arbitrary".

24 MR. ENGELMANN: So do you take it to mean
25 that canon law canonical procedures made it too difficult

1 that they're referring to those due process provisions in
2 220 and 221?

3 **REVEREND MORRISEY:** Yes. Yes, see and some
4 of them wanted to be able to act immediately.

5 **THE COMMISSIONER:** Well, is there -- has
6 there been any change in the sense that from your
7 experience and your expertise that convicted pedophiles or
8 priests then are subjected to the Canon Law?

9 **REVEREND MORRISEY:** Yes, as long as they are
10 a priest. Now, if they have been convicted, say, in a --
11 you know, in a criminal trial.

12 **THE COMMISSIONER:** Yes.

13 **REVEREND MORRISEY:** The bishop does not have
14 to go through and gather all the evidence again. It's
15 there. He can just take that and send it to Rome and ask
16 for dismissal from the clerical state.

17 **THE COMMISSIONER:** I guess what I'm asking
18 is, in your experience is that now being done?

19 **REVEREND MORRISEY:** Yes, it is,
20 unfortunately. The reason I'm saying unfortunately is that
21 very often we're just relying on the civil procedures.

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

23 **REVEREND MORRISEY:** And the civil -- you
24 know, like and ---

25 **MR. ENGELMANN:** With civil being secular

1 courts?

2 **REVEREND MORRISEY:** Secular courts, yeah.
3 And we're relying on that but there are some other issues
4 too that should be looked at. What I'm trying to do is to
5 find a balance.

6 **THE COMMISSIONER:** Right.

7 **MR. ENGELMANN:** Okay. I have a few more
8 questions for Father Morrisey.

9 I want to ask you, you have some experience
10 in both Ireland and in Australia?

11 **REVEREND MORRISEY:** Yes.

12 **MR. ENGELMANN:** And could you just briefly
13 comment on some of the national initiatives that have taken
14 place in those countries in responding and sort of the
15 institutional response of the Church in those countries to
16 this problem with clergy abuse of minors?

17 **REVEREND MORRISEY:** Yes, okay.

18 What Australia did, which was very creative
19 and which I hope we would do in Canada, is that they began
20 with a document which eventually was called Integrity in
21 Ministry and they were looking at it from a positive point
22 of view. What does anyone in ministry have -- what do they
23 expect to do, where are they going and so on. It was not
24 just priests. It was also religious and lay people who
25 were involved in parish ministry or in other types of

1 works. That was a very, very positive document.

2 **THE COMMISSIONER:** What's it called again?

3 I'm sorry.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **REVEREND MORRISEY:** There were two parts, so
6 one is Integrity in Ministry and then the second part was
7 called Towards Healing. Once they knew what was expected
8 of anybody in ministry how then we could go and heal the
9 situation.

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

11 **MR. ENGELMANN:** Father Morrissey, when were
12 these two reports issued, sir?

13 **REVEREND MORRISEY:** These are 2000.

14 **MR. ENGELMANN:** All right.

15 **REVEREND MORRISEY:** Now, the Irish one is
16 called Our Children, Our Church. This is certainly the
17 best one to date and this is -- it's either 2005 or 2006.
18 It just -- 2005.

19 **MR. ENGELMANN:** And who was on that
20 particular document?

21 **REVEREND MORRISEY:** Okay, in Ireland there
22 is a slightly different situation. First of all, we're
23 dealing with two countries. Like we have the north and we
24 have the republic. So there were different laws there but
25 it is one conference of bishops.

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

2 **REVEREND MORRISEY:** For the republic, the
3 government insisted on what they called an audit, an annual
4 audit of each diocese. And so -- not financial but you
5 looked at cases. So this was done jointly with their help
6 too and their involvement in saying how we are going to
7 proceed and what is to be done.

8 **MR. ENGELMANN:** So there were some state
9 supervision or auditing of how individual dioceses were
10 dealing with sexual abuse cases?

11 **REVEREND MORRISEY:** Yes and the bishops
12 there made the commitment that they would follow the state
13 audit.

14 **MR. ENGELMANN:** That has also been the
15 result -- just to go back to North America -- in a few
16 American cities after grand juries as well?

17 **REVEREND MORRISEY:** Yes.

18 **MR. ENGELMANN:** Okay.

19 **REVEREND MORRISEY:** But you see the grand
20 jury is not a voluntary thing.

21 **MR. ENGELMANN:** No.

22 **THE COMMISSIONER:** No.

23 **MR. ENGELMANN:** And sir, this came out --
24 this report came out when?

25 **REVEREND MORRISEY:** Two thousand and five

1 (2005).

2 MR. ENGELMANN: All right.

3 There is also the Ferns Report from Ireland?

4 REVEREND MORRISEY: Well, you see, Ferns is
5 one diocese but that was just an investigation to what went
6 on there and the bishop's negligence.

7 MR. ENGELMANN: All right, whereas this is a
8 national issue.

9 REVEREND MORRISEY: This is the national
10 from the ---

11 MR. ENGELMANN: Our Children, Our Church.

12 REVEREND MORRISEY: Our Children, Our
13 Church, from the full conference.

14 MR. ENGELMAN: And sir, you're familiar with
15 all of these national initiatives now? We've got the U.S.
16 Charter and/or Norms. We have the Canadian Conference of
17 Bishops, From Pain to Hope. We have work being done in
18 Ireland; the work being done in Australia to deal with this
19 significant problem of clergy abuse of minors. Do you have
20 a preference for one or more of these national initiatives
21 over others?

22 REVEREND MORRISEY: Well, at this moment the
23 Irish one is like a funnel. You know, all the others have
24 come in and each one is building on the other as we move
25 ahead. You see, we're almost -- we're 20 years from the

1 first document I prepared.

2 MR. ENGELMANN: Yes.

3 REVEREND MORRISEY: And things have moved an
4 awful lot since then, fortunately, and we're learning.

5 MR. ENGELMANN: How would you describe, if
6 you were, the difference between the approach in From Pain
7 to Hope and the Dallas Charter?

8 REVEREND MORRISEY: Well, From Pain to Hope,
9 first of all, had the idea is the rehabilitation possible
10 for these priests while mentioning that in many cases there
11 is no possibility and that they will have to be -- either
12 request a dispensation or even dismissed.

13 The Dallas document starts from the idea
14 that once there you're out and that's it. And so, see,
15 what has happened is that those persons were out. In most
16 dioceses in the U.S. there's no pension plan. They have an
17 internal ecclesiastical society. The priests were put on
18 the street with absolutely not a cent; no place to live, no
19 pension, nothing.

20 That's where I've been trying to -- it
21 doesn't justify what they did, not for a second. But at
22 the same time they have certain rights to be treated, you
23 know, decently.

24 MR. ENGELMANN: So that's a significant
25 difference then between the Canadian Conference of Catholic

1 Bishops' approach and the one in the U.S.?

2 **REVEREND MORRISEY:** Oh, absolutely.

3 **MR. ENGELMANN:** All right.

4 Sir, I just wanted to close with a few
5 questions. You've written a few articles now about various
6 issues that still remain unresolved and I remember you
7 wrote something in 1991 about that and you've written more
8 recently about that.

9 Do there continue to be several unresolved
10 questions for you dealing with this difficult and painful
11 issue?

12 **REVEREND MORRISEY:** Yes. I mean, one of
13 them is what are the consequences of incardination? For
14 instance, is incardination a meal ticket for life or can
15 the bishop, in the case of a priest who is guilty and has
16 done these things and no repentance or nothing, can a
17 bishop cut the subsistence and when and how? And the law
18 is just not clear on that.

19 **MR. ENGELMANN:** All right.

20 And many of these issues like the one you've
21 just mentioned can be found in your article at Tab 7
22 addressing the issue of clergy abuse?

23 **REVEREND MORRISEY:** Yes.

24 **MR. ENGELMANN:** That's an article from 2001.

25 And the one you just talked about, sir, is that what we

1 find at page 417 right under the caption, "Rights and
2 Obligations of the Diocesan Bishop"?

3 **REVEREND MORRISEY:** Yes, and I would go back
4 even the page before, the rights of the accused cleric,
5 because I took the two together.

6 **MR. ENGELMANN:** All right.

7 And there are still issues for you or
8 questions for you about treatment and how it takes place
9 and some of those issues?

10 **REVEREND MORRISEY:** Yes. And, for instance,
11 like one issue that's -- it's really delicate. What if in
12 a secular criminal trial a priest is found not guilty and
13 yet the bishop knows something -- the priest insisting and
14 found not guilty; the bishop knows something. How do we
15 combine those two strains? There is no one answer on that
16 yet.

17 See, in Scotland they have a very
18 interesting thing. Instead of saying "not guilty", they
19 say "not proven", and we don't have that in Canada in our
20 court cases. So it says "not proven". So it leaves it
21 like in abeyance.

22 **MR. ENGELMANN:** But we certainly have a
23 number of employers who take positions on taking job action
24 against employees even after a not guilty finding in a
25 criminal court?

1 REVEREND MORRISEY: Yes.

2 MR. ENGELMANN: So you're not saying that
3 that's not possible?

4 REVEREND MORRISEY: No, no, I'm not saying
5 it's not possible. I'm trying to find a happy medium.

6 MR. ENGELMANN: Fair enough. Fair enough.

7 THE COMMISSIONER: For example, if a priest
8 is found not guilty on a reason that -- I don't know, a
9 technical thing ---

10 REVEREND MORRISEY: Yes, his rights weren't
11 read to him or something.

12 THE COMMISSIONER: Right. Then that would
13 leave it open for the bishop to do something on a balance
14 of probabilities as opposed to beyond reasonable doubt.

15 REVEREND MORRISEY: Exactly. That's exactly
16 it.

17 MR. ENGELMANN: And, sir, a number of these
18 unresolved questions -- and I don't want to get into them
19 in any detail -- but they are set out, for example, with
20 respect to the rights of the accused cleric, starting at
21 page 415; correct, when you talk about what is the cleric
22 entitled to, things necessary for decent support.

23 REVEREND MORRISEY: And for that, what's
24 necessary for decent support, see, I was using the Supreme
25 Court of Canada in the *Marshall* decision.

1 **MR. ENGELMANN:** Yes.

2 **REVEREND MORRISEY:** Which sort of said what
3 were the necessities of life.

4 **MR. ENGELMANN:** Okay. And there are a
5 number of questions there about -- other questions about if
6 the cleric is accused, does he have a right to civil and
7 canonical advice? If so, who is to pay the expenses? You
8 pose a number of questions.

9 **REVEREND MORRISEY:** Yes.

10 **MR. ENGELMANN:** And you have views on some
11 of these questions, but some of them still remain
12 unresolved even for you.

13 **REVEREND MORRISEY:** Yes, because the law --
14 see, our canon law was not written in the perspective of
15 these cases. It was written in '83. The cases started
16 erupting in '88, and so what we're continually trying to do
17 is to take a law and move it ahead, like push the envelope
18 a bit but trying to see how far can the law go.

19 **MR. ENGELMANN:** Sir, I believe those are my
20 questions.

21 **REVEREND MORRISEY:** Thank you.

22 **MR. ENGELMANN:** So thank you very much,
23 Father Morrisey, for answering them and for being here.

24 Right after the afternoon break, some of the
25 other lawyers for some of the parties here will have some

1 questions for you.

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

3 Let's take the afternoon break.

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

6 The hearing will resume at 3:40.

7 --- Upon recessing at 3:23 p.m./

8 L'audience est suspendue à 15h23

9 --- Upon resuming at 3:44 p.m./

10 L'audience est reprise à 15h44

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

13 **THE COMMISSIONER:** Thank you.

14 Mr. Wardle, the floor is yours.

15 **FATHER FRANCIS G. MORRISEY, Resumed/Sous le même serment:**

16 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

17 **WARDLE:**

18 **MR. WARDLE:** Good afternoon, Father
19 Morrisey. I'm Peter Wardle. I'm here for a group called
20 Citizens for Community Renewal. You may remember us from
21 some earlier proceedings in which you filed a report. My
22 client is an organization of concerned citizens in Cornwall
23 which is determined to promote needed institutional reform
24 so as to ensure the protection of children and justice for
25 all.

1 So with that introduction, I want to just
2 ask you, picking up on your last comments about the United
3 States, I take it, sir, that you acknowledge that there has
4 been and continues to be a crisis in the Church in the
5 United States?

6 **REVEREND MORRISEY:** There was a very serious
7 crisis. It has been addressed. It's being addressed, but
8 it's not resolved yet.

9 **MR. WARDLE:** It's not resolved yet, but it
10 continues to attract publicity, adverse publicity for the
11 Church in that country and probably internationally,
12 correct?

13 **REVEREND MORRISEY:** Yes.

14 **MR. WARDLE:** And revelations continue to
15 come out and are reported in the press. I'm thinking, for
16 example, of the recent situation in Los Angeles, correct?

17 **REVEREND MORRISEY:** Yes, well, that's been
18 in the pipeline for a while.

19 **MR. WARDLE:** Correct.

20 **REVEREND MORRISEY:** What happened was the
21 State of California lifted all statutes of limitation for
22 one year and said anyone can go back and take any case.

23 **MR. WARDLE:** And you describe in your
24 evidence and in the questions my friend, Mr. Engelmann
25 asked you, you described this evolution in the Church

1 dealing with the problem going back to the mid-1980s,
2 correct? And we start with Father Doyle's seminal work
3 which you referred to, correct?

4 You have to say yes or no. You can't just
5 nod your head.

6 **REVEREND MORRISEY:** Yes.

7 **MR. WARDLE:** And then your own work, which
8 led in turn to From Pain to Hope, and then all the steps
9 that have taken place internationally in the United States,
10 in places like Ireland and Australia since then; correct?

11 **REVEREND MORRISEY:** Yes.

12 **MR. WARDLE:** Okay. But it's true, isn't it,
13 that even with all of those steps, we continue to have
14 allegations come out, for example, like the allegations
15 that recently surfaced in London, Ontario?

16 **THE COMMISSIONER:** Help us out.

17 **MR. WARDLE:** Father Sylvester.

18 **THE COMMISSIONER:** Yes, okay.

19 **REVEREND MORRISEY:** But those have been in
20 the pipeline now for a while, for a few years.

21 **MR. WARDLE:** They have been, but they
22 haven't been in the pipeline for 10 years or 15 years.

23 **REVEREND MORRISEY:** I couldn't tell you when
24 they started.

25 **MR. WARDLE:** Okay. But those are

1 allegations that have surfaced fairly recently involving
2 allegations, in the London case, against a particular
3 priest and evidence that local officials had covered that
4 up, if I can put it that way, for a significant period of
5 time; correct?

6 **REVEREND MORRISEY:** Yes. You see, the
7 procedures that were set in are not retroactive. They were
8 for new cases coming in.

9 **MR. WARDLE:** I understand that, but what's
10 the year of From Pain to Hope?

11 **REVEREND MORRISEY:** 1992.

12 **MR. WARDLE:** And the events in London have
13 become public long after From Pain to Hope went into
14 effect; correct?

15 **REVEREND MORRISEY:** The events became
16 public? When did the events take place?

17 **MR. WARDLE:** Well, they took place many
18 years ago, in the 1960s; correct?

19 **REVEREND MORRISEY:** I can't tell you. I
20 don't know.

21 **MR. WARDLE:** Okay. But all I'm suggesting
22 to you, sir, is that even with the steps that have been
23 taken like From Pain to Hope, there's certainly room to
24 refine and elaborate and hopefully come up with further
25 steps in the future to make sure that these kinds of events

1 don't reoccur; correct?

2 **REVEREND MORRISEY:** Yes. If we had all the
3 answers, we wouldn't need an inquiry like this or we
4 wouldn't need -- you know, everybody is looking and we are
5 trying to find what's the best answer.

6 **MR. WARDLE:** Fair enough and you are one of
7 the people who has been in the forefront of sort of moving
8 this issue along and trying to look for answers. Correct?

9 **REVEREND MORRISEY:** I was, yes.

10 **MR. WARDLE:** Okay. Can I just ask some
11 basic questions? And these are really follow-up questions
12 from Mr. Engelmann's questions to you earlier about the
13 structure of the church, and I want to keep it on a very
14 simple basis, and you correct me if I'm making it overly
15 simplistic.

16 But first of all, just dealing with the
17 relationship of a parish priest to a bishop, there are some
18 elements like an employment relationship in that
19 relationship, but it's not an employment relationship.
20 Correct?

21 **REVEREND MORRISEY:** In a number of
22 instances, the courts in Canada have held that the parish
23 priest is an independent contractor.

24 **MR. WARDLE:** Is it fair to say that it's
25 much broader than what we would think of as an employment

1 relationship?

2 **REVEREND MORRISEY:** Yes.

3 **MR. WARDLE:** For example, it can be a
4 lifelong relationship between the parish priest and, I
5 guess it would not be the same bishop, but with the
6 diocese. Correct?

7 **REVEREND MORRISEY:** Yes, depending what you
8 mean by a lifelong relationship. As long as he's
9 incardinated in that diocese, he's subject to however is
10 the bishop at that moment.

11 **MR. WARDLE:** And there's an obligation to
12 support the priest, as I understand it, on the part of the
13 diocese. Is that correct?

14 **REVEREND MORRISEY:** It's Canon 1350; unless
15 the priest has been dismissed from the clerical state. And
16 then there's special provisions.

17 **THE COMMISSIONER:** "Support" you mean
18 financially ---

19 **MR. WARDLE:** Financial support.

20 **REVEREND MORRISEY:** Yes.

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

22 **MR. WARDLE:** And am I correct as well that
23 there's an obligation of loyalty that the priest has
24 towards the bishop?

25 **REVEREND MORRISEY:** Yes, Canon 273.

1 **MR. WARDLE:** And did I hear in your evidence
2 earlier that the bishop of a particular diocese has no
3 direct supervisor; that person is only responsible to Rome.
4 Is that correct?

5 **REVEREND MORRISEY:** That's correct. He is
6 accountable to Rome.

7 **THE COMMISSIONER:** The bishop is?

8 **REVEREND MORRISEY:** The bishop is.

9 **MR. WARDLE:** And in fact, in many ways the
10 bishop has a large amount of autonomy within the diocese?

11 **REVEREND MORRISEY:** Yes, unless there are
12 complaints against him.

13 **MR. WARDLE:** In other words, the bishop
14 doesn't have someone looking over their shoulders on a day-
15 to-day basis.

16 **REVEREND MORRISEY:** No. They have to go to
17 Rome every five years, and they have to do -- in
18 preparation for that visit, they have to do a lengthy
19 report of a few hundred pages on the state of the diocese,
20 all details. And then they go to Rome and then they are
21 questioned on that and examined.

22 **MR. WARDLE:** And I think you've also made it
23 clear that there's no central church authority within a
24 particular country. So Canada doesn't have a central
25 church authority here?

1 **REVEREND MORRISEY:** That's correct.

2 **MR. WARDLE:** The only place that authority
3 exists is in the Vatican?

4 **REVEREND MORRISEY:** A central authority;
5 correct.

6 **MR. WARDLE:** Canon law, as I understand it,
7 is a set of laws that apply to all priests and religious.
8 Correct?

9 **REVEREND MORRISEY:** Apply to all members of
10 the Catholic Church.

11 **MR. WARDLE:** And that would include lay
12 members as well?

13 **REVEREND MORRISEY:** Of course.

14 **MR. WARDLE:** Does a priest, as part of
15 becoming a priest, take a vow to follow Canon law?

16 **REVEREND MORRISEY:** No.

17 **MR. WARDLE:** Is that the way it works?

18 **REVEREND MORRISEY:** No. He takes the vow of
19 obedience or promise of obedience to his bishop.

20 **MR. WARDLE:** So it is simply -- how do you
21 become part of this set of laws? Is it just automatic when
22 you become a priest?

23 **REVEREND MORRISEY:** Well, in your seminary
24 training, you are to learn the basic laws of the Church
25 regarding the running of a parish and so on. You would not

1 learn the detailed things about conducting a trial or stuff
2 like that. That's specialized learning afterwards.

3 **THE COMMISSIONER:** But he would be -- you
4 are subject to the laws by becoming a member of the
5 Catholic Church?

6 **REVEREND MORRISEY:** Yes, adhere to the laws
7 that apply to you.

8 **THE COMMISSIONER:** Right.

9 **REVEREND MORRISEY:** Yes.

10 **MR. WARDLE:** So with respect to the -- if
11 I'm a Catholic certain parts of the canon apply to me, and
12 if I became a priest other provisions would apply to me.
13 Is that the way it works?

14 **REVEREND MORRISEY:** That's exactly -- so you
15 have to look at the section of the Code to whom that part
16 of the Code is addressed.

17 **MR. WARDLE:** Does canon law say anything
18 about conflict with the secular law?

19 **REVEREND MORRISEY:** There is Canon 1290
20 that's going to say matters of contract. We defer to the
21 secular law unless it's contrary to divine law or contrary
22 to the provisions of the Code. Canon 22 is going to have a
23 very similar thing, a very similar statement.

24 **MR. WARDLE:** And am I right from your
25 earlier evidence -- I mean Mr. Engelmann didn't explore

1 this in detail, but there are certain countries around the
2 world where canon law dovetails with the domestic law?

3 **REVEREND MORRISEY:** Yes, it's considered a
4 private law but applicable to the people for whom it is
5 subject. So for instance, the canon law in the concordat
6 country would not apply to a Lutheran or to an Anglican.
7 It would apply only to Catholics as such or a Catholic
8 community.

9 **MR. WARDLE:** But in the common law
10 countries, there's no dovetailing, as I understand it?

11 **REVEREND MORRISEY:** No official dovetailing,
12 no.

13 **MR. WARDLE:** Okay.

14 **REVEREND MORRISEY:** There are statutes and,
15 like for instance in Ontario, we have for the Catholic
16 hospitals a document that the Government of Ontario has
17 approved to put in the articles of incorporation of our
18 hospitals. "In the operation of the corporation, the canon
19 law of the Roman Catholic Church, as amended from time to
20 time, except where such is contrary to civil law, will be
21 complied with and observed", and we find that in the actual
22 articles of incorporation of the Catholic hospitals in
23 Ontario.

24 **MR. WARDLE:** Now, do I understand that canon
25 law is administered for some respects from the diocese?

1 REVEREND MORRISEY: Yes.

2 MR. WARDLE: In other words, by the bishop?

3 REVEREND MORRISEY: Yes, in some respects.

4 MR. WARDLE: And in some respects, it's
5 administered from the Vatican by one of the tribunals or by
6 one of the congregations that you described?

7 REVEREND MORRISEY: Yes, depending on the
8 competence of the case.

9 MR. WARDLE: And canon law is a set of laws
10 that is one-size-fits-all, if I can put it that way? It
11 applies around the world?

12 REVEREND MORRISEY: It applies around the
13 world to the situation that is addressed but remembering, I
14 mentioned this morning, there's about 100 canons that call
15 for the bishops of that country to come up with what we
16 call particular law, which is geographical.

17 MR. WARDLE: But the area that we are
18 focused on today isn't one of those areas?

19 REVEREND MORRISEY: No, except for the U.S.

20 MR. WARDLE: Just dealing briefly with the
21 1917 Code and bringing us up to date, do I understand that
22 first of all, under the 1917 Code, sexual abuse with a
23 minor was a delict, a wrong?

24 REVEREND MORRISEY: Yes.

25 MR. WARDLE: And the local bishop had

1 authority to take steps on his own to deal with that?

2 **REVEREND MORRISEY:** That's correct.

3 **MR. WARDLE:** And that was what you described
4 as acting with informed conscience?

5 **REVEREND MORRISEY:** Yes.

6 **MR. WARDLE:** So the bishop could, without
7 anything further, without any form of trial, suspend the
8 priest or take other steps. Correct?

9 **REVEREND MORRISEY:** The informed conscience
10 was he could suspend the priest, remove all his faculties
11 and all his right to function. He could not dismiss a
12 priest from the clerical state by informed conscience.
13 There were other procedures for that.

14 **MR. WARDLE:** And that is called laicisation,
15 as I understand it?

16 **REVEREND MORRISEY:** Yes, it was called
17 laicisation. The problem was that a lot of people objected
18 the term saying -- they used to call it reduction to the
19 lay state, and they said no, lay people are not lower than
20 clergy. So now, they talk about -- to laicise a priest
21 means to bring him back to the lay state. So now, they
22 simply call it dismissal from the clerical state.

23 **MR. WARDLE:** One of the things I just wanted
24 some clarification on is -- maybe we can talk about this
25 when we talk about the '83 Code -- but do I take it that

1 under the 1917 Code, dismissal from the clerical state
2 could not be handled by the local bishop?

3 REVEREND MORRISEY: It could have been
4 handled by a formal tribunal.

5 MR. WARDLE: That was established by the
6 local bishop?

7 REVEREND MORRISEY: Established by the local
8 bishop and then appealed in court, you know, and moving up
9 the line.

10 MR. WARDLE: Okay. Now, the 1922 document;
11 again, very, very quickly, it as I understand it is simply
12 a letter or a proclamation.

13 REVEREND MORRISEY: No, it's called an
14 instruction.

15 MR. WARDLE: All right. I'm sorry, an
16 instruction.

17 REVEREND MORRISEY: Yes.

18 MR. WARDLE: And what is the effect of an
19 instruction?

20 REVEREND MORRISEY: Well, an instruction is
21 what you would call the regulations for applying -- a
22 circular letter is merely an attitude letter. An
23 instruction, you have to follow it.

24 MR. WARDLE: So this was a set of
25 instructions to bishops around the world saying there are

1 four particular offences which are the most serious and
2 setting out certain procedures that had to be followed?

3 **REVEREND MORRISEY:** Yes, this is the
4 procedures to be followed in those instances.

5 **MR. WARDLE:** Okay. And what were the
6 procedures of that time, in that 1922 document, very
7 briefly?

8 **REVEREND MORRISEY:** Well, the major
9 procedure was trying to determine the credibility of the
10 person making the accusation. Don't forget the document
11 was on solicitation in the confessional, and the priest
12 could not defend himself. There was no -- he was not a
13 witness or nothing. So it was to determine was this
14 credible and that, at times, was a judgment call.

15 **MR. WARDLE:** And did this 1922 document deal
16 with setting up any particular body to deal with these
17 kinds of offences?

18 **REVEREND MORRISEY:** Well, there already were
19 the tribunals. At least, there were supposed to be the
20 tribunals in the diocese.

21 **MR. WARDLE:** But as a matter of practice in
22 Canada, for example, there wasn't until the 1940s, as I
23 understand.

24 **REVEREND MORRISEY:** No, in fact, that's what
25 I said this morning. Yes.

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

2 **MR. WARDLE:** All right.

3 And it's not clear, as I understand it, who
4 exactly knew about the 1922 document. All bishops at the
5 time would have received it, but it's not very clear about
6 whether their successors would have read the document.

7 **REVEREND MORRISEY:** That's correct.

8 **MR. WARDLE:** And then am I correct that the
9 1922 document basically said that everything involved in
10 the process of investigating and prosecuting one of these
11 four offences within the Church was to be secret?

12 **REVEREND MORRISEY:** Yes, it was subject to
13 the secret of the Holy Office.

14 **MR. WARDLE:** All right.

15 So that would include even an internal --
16 what we would call an internal investigation but an
17 investigation, for example, by the local bishop?

18 **REVEREND MORRISEY:** Well, the ---

19 **MR. WARDLE:** Or by a committee?

20 **REVEREND MORRISEY:** No, the investigation is
21 prior to those procedures taking place. The purpose of the
22 investigation was to see is there any substance to the
23 allegation? It's what we call in Latin the *fumes iuris*,
24 the smoke of law. If there is smoke there is fire.

25 **MR. WARDLE:** So once a preliminary

1 investigation had determined that there was some substance
2 to the allegations then there would be a formal process
3 envisaged; is that correct?

4 **REVEREND MORRISEY:** There was supposed to be
5 a formal process.

6 **MR. WARDLE:** And that process would be
7 secret?

8 **REVEREND MORRISEY:** Yes.

9 **MR. WARDLE:** And then as I understand it,
10 that document that we've been talking about, was re-
11 promulgated in 1962 but not successfully.

12 **REVEREND MORRISEY:** Yeah, reissued, yes.

13 **MR. WARDLE:** Okay.

14 Now, just dealing with the new Code that
15 came out in 1983, did I understand that you had something
16 to do with the new Code; you were one of the people
17 involved in drafting it?

18 **REVEREND MORRISEY:** I was very actively
19 involved in its preparation.

20 **MR. WARDLE:** And first of all, as I
21 understand it, there is a delict described for sexual abuse
22 of a minor by clergy. That's set out in -- is it 1395?

23 **REVEREND MORRISEY:** Part two.

24 **MR. WARDLE:** Okay. And secondly, there are
25 a series of penalties that are set out, correct?

1 **REVEREND MORRISEY:** Yes.

2 **MR. WARDLE:** And I want to come back to the
3 penalties in a moment, but I understand from reading some
4 of your articles that the penalties are progressive in
5 nature.

6 **REVEREND MORRISEY:** Exactly, and that's the
7 big difference with the U.S. document. You see, the U.S.
8 document goes immediately for the jugular and not the
9 progressive thing that the law had foreseen.

10 **MR. WARDLE:** All right. Well, we could
11 maybe come back to that in a moment.

12 Do I understand that between 1983 and 2001
13 these kinds of offences would have been handled by local
14 tribunals set up at the diocesan level?

15 **REVEREND MORRISEY:** If there was a trial.
16 Yes, they would have been handled locally.

17 **MR. WARDLE:** All right.

18 In practice did that take place very often
19 in Canada as far as you know?

20 **REVEREND MORRISEY:** No, in Canada, I am not
21 aware of any case of that nature that went to a trial.
22 There were in the U.S., and I'm aware of some of those, but
23 I do not know -- I am not saying there weren't any. I just
24 do not know of any case in Canada that went to a full-blown
25 trial.

1 **THE COMMISSIONER:** Because they would be
2 secret.

3 **REVEREND MORRISEY:** They were secret but, I
4 mean -- don't take this wrong, but there is a good chance
5 if there had been a trial, I would have been consulted.

6 **MR. WARDLE:** It's a fairly small world, as I
7 understand it, and you're one of the people in this world,
8 and you have been consulted by a number of priests in
9 trouble over the years. Correct?

10 **REVEREND MORRISEY:** Yes, yes.

11 **MR. WARDLE:** Okay. So between '83 and '01
12 in Canada, it's unlikely that there were any kind of formal
13 trials at the diocesan level.

14 **REVEREND MORRISEY:** And what we did -- you
15 see From Pain to Hope and even my own original document of
16 '87 had recommended that if a priest was in this situation
17 that he request a dispensation from clerical obligations
18 and leave their clerical state, which is -- a lot of
19 priests did that rather than going through a trial.

20 **MR. WARDLE:** I didn't quite understand from
21 your evidence earlier, before the events that took place in
22 2001, was there any role for the Vatican Congregation of
23 the Doctrine of the Faith in connection with these types of
24 offences?

25 **REVEREND MORRISEY:** Those cases were all

1 handled practically speaking by the Congregation for the
2 Clergy.

3 **MR. WARDLE:** Congregation for the Clergy.

4 **REVEREND MORRISEY:** Yeah.

5 **MR. WARDLE:** And so do you know from your
6 own experience if there were any cases from Canada during
7 that time period involving 1395 that were dealt with by the
8 Congregation of the Clergy?

9 **REVEREND MORRISEY:** Yes, there were. But
10 don't forget, 1395 also includes -- is not only minors.
11 There is cases of priests -- like public acts, scandals and
12 so forth or so on.

13 **MR. WARDLE:** Okay. So my question is,
14 really, did that Congregation deal with any of the kinds of
15 issues that we are concerned about in this hearing?

16 **REVEREND MORRISEY:** I'm going to say "yes".

17 **MR. WARDLE:** But fairly rare, I take it?

18 **REVEREND MORRISEY:** Fairly rare.

19 **MR. WARDLE:** Okay.

20 And one of the things that I wanted to just
21 find out is if, for example, a Canadian priest was dealt
22 with by this Congregation in Rome, we've established I
23 think that the process, the canonical trial process, would
24 be a secret process. Correct?

25 **REVEREND MORRISEY:** Yes.

1 **MR. WARDLE:** At the end of the day there
2 would be a decision. Would that decision be a public
3 decision?

4 **REVEREND MORRISEY:** Very often what would
5 happen is the bishop would announce that The Holy See has
6 relieved Father X of his clerical status. At least, he
7 might send like a memo to the priest. It wouldn't be in
8 the -- you know, the Globe & Mail or anything like that,
9 but he would notify the priest that Father X is no longer a
10 priest.

11 **MR. WARDLE:** But what about the laity?
12 Would they understand, for example, that this priest had
13 been dismissed from the clerical state because of sexual
14 abuse?

15 **REVEREND MORRISEY:** Usually not.

16 **MR. WARDLE:** Okay.

17 And then, as I understand it, in 2001 and
18 2002, there were a number of things that happened and you
19 have described them. But one of the things was that
20 Cardinal Ratzinger, through this footnote, made it clear
21 that the 1962 documents still apply. Correct?

22 **REVEREND MORRISEY:** That's what he said.
23 That statement has been contested by many, many people.

24 **MR. WARDLE:** All right. So it's still a
25 matter of some dispute whether the 1962 document applies?

1 REVEREND MORRISEY: Yes.

2 MR. WARDLE: All right.

3 REVEREND MORRISEY: You see most canonists
4 felt that if it had existed, it would have stopped in 1983
5 because in '83 Canon 6 says the previous legislation is
6 abolished unless it's taken up again in the new Code.

7 MR. WARDLE: So is it fair, there is an
8 unresolved issue about that document and its legal effect
9 for Canon Law purposes?

10 REVEREND MORRISEY: Yes.

11 MR. WARDLE: And is it also correct that
12 what Cardinal Ratzinger did was for offences under Canon
13 Law 1395, subsection 2, they were removed from local
14 diocese and put under the control, for purposes of
15 prosecution, of the Congregation of the Doctrine of the
16 Faith?

17 REVEREND MORRISEY: Yes, that's what
18 happened in 2001.

19 MR. WARDLE: So that now, post-2001, a local
20 bishop, for example here in Cornwall or any other Canadian
21 diocese, can't deal with those matters on his own.
22 Correct?

23 REVEREND MORRISEY: Yes.

24 MR. WARDLE: And what is his role at this
25 point in time? Is it fairly limited?

1 **REVEREND MORRISEY:** Well, it's going to
2 depend. His first role will be to conduct that preliminary
3 inquiry to see is there any -- the Code used the words,
4 "Does the accusation have a semblance of truth?" If he
5 finds that, then he gathers everything he has and sends it
6 to Rome. But you see, sometimes he can look at something
7 and just say there is nothing here. And if there is
8 nothing here and says, "I can't find anything", well then
9 he doesn't have to send it to Rome unless he is convinced
10 that there is a semblance of truth.

11 **MR. WARDLE:** So let's just deal with sort of
12 post-2001 because it perhaps makes it more easy.

13 If an allegation comes forward to a bishop,
14 first of all, if the allegation comes to the attention of
15 another priest or religious, does that person have an
16 obligation under Canon Law to do something about it to
17 report it?

18 **REVEREND MORRISEY:** To the bishop, no.

19 **MR. WARDLE:** So that's -- you would agree
20 that that's a defect in Canon Law?

21 **REVEREND MORRISEY:** I didn't say that, no.

22 **MR. WARDLE:** No, I'm asking you to agree
23 with me.

24 **REVEREND MORRISEY:** No.

25 **MR. WARDLE:** You don't agree with that?

1 **REVEREND MORRISEY:** No, because you'd have
2 to distinguish how did that information come to the priest.

3 **MR. WARDLE:** Well, let's say it's
4 information that did not come through the confessional.

5 **REVEREND MORRISEY:** No, but if it came in
6 spiritual direction or something similar.

7 **MR. WARDLE:** Well, I think what you're
8 saying is if it came in confidence, for example?

9 **REVEREND MORRISEY:** Yes.

10 **MR. WARDLE:** Then the priests would feel
11 themselves bound by some obligation not to disclose it. Is
12 that fair?

13 **REVEREND MORRISEY:** Yes.

14 **MR. WARDLE:** Okay. And this is irrespective
15 of any secular obligations they might have?

16 **REVEREND MORRISEY:** Yes, because, you see,
17 in a lot of cases, depending on the province you're in, the
18 obligation to report exists if a person is a child. If
19 they are no longer under 16, there is no obligation on the
20 part of a person to report because that person -- the
21 victim is considered able to report personally.

22 **MR. WARDLE:** All right.

23 Let's say someone comes forward to a priest
24 in confidence and, after 2001, tells him about an incident
25 that took place many years ago, when they were a youth,

1 would the priest -- if that -- I take it what you're saying
2 is it would depend of the context of that conversation,
3 whether it was in confidence or not?

4 **REVEREND MORRISEY:** See, each Canadian
5 diocese has a delegate for this and any priest who receives
6 information outside of confession, the first thing he would
7 do is say "Here's the delegate's name and address and phone
8 number. You contact that person" who then -- he is aware
9 of, you know, the legal ramifications and, you know, the
10 things that have to be done.

11 **MR. WARDLE:** But I guess what I was getting
12 at is, you know, we'll look at From Pain to Hope in a
13 minute, but there is nothing in canon law that really deals
14 with any reporting obligation to the bishop?

15 **REVEREND MORRISEY:** No, you don't have to
16 denounce a crime.

17 **MR. WARDLE:** All right.

18 And does the bishop have any obligations
19 under canon law when the bishop becomes aware of
20 information?

21 **REVEREND MORRISEY:** Oh, of course, and
22 that's where Canon 1717 comes in. If he is aware of
23 information that has a semblance of truth, then he has to
24 set the ball in motion.

25 **MR. WARDLE:** Okay. And I take the

1 preliminary investigation stage, which is what's dealt with
2 by your protocol and by the draft protocol that's set out
3 as the appendix to From Pain to Hope, that's really dealing
4 with that preliminary stage before the formal procedure
5 kicks in?

6 **REVEREND MORRISEY:** Exactly.

7 **MR. WARDLE:** Okay. Once the formal
8 procedure kicks in, as I understand it, that is still a
9 secret process; correct?

10 **REVEREND MORRISEY:** Yes, but again, we can't
11 do the formal procedure now until we send it to Rome and
12 Rome sends instructions back. But all trials in the
13 church, just like marriage nullity trials, are secret.

14 **MR. WARDLE:** Okay. So in terms of dealing
15 with the secular authorities, that really has to be dealt
16 with at the preliminary stage; right? In other words, if
17 something hasn't been reported to the authorities and it
18 comes to the attention of someone within a diocese, it's
19 too late to do anything about it once you have a formal
20 process in place because then you are bound to keep the
21 process separate -- secret; correct?

22 **REVEREND MORRISEY:** Well, first of all,
23 you've got to determine is it a case that's reportable.
24 Not every case is reportable.

25 **MR. WARDLE:** No, I am assuming a reportable

1 case.

2 **REVEREND MORRISEY:** Oh, then if it is a
3 reportable case, that's where the delegate comes in and
4 takes over and then handles it. And as I mentioned this
5 morning, the standard practice is we suspend church
6 procedures until the criminal civil cases are resolved so
7 as not to have two simultaneous things going.

8 **MR. WARDLE:** Right. Just one of the things
9 that I don't think you really dealt with all that clearly
10 or perhaps exhaustively; the Congregation of the Doctrine
11 of the Faith, who exactly is that?

12 **REVEREND MORRISEY:** Well, there is four
13 major officers that are four permanent persons who are
14 there.

15 There is a cardinal who is the prefect.
16 Right now it's Cardinal Levada who was the Archbishop of
17 San Francisco. And then there is the secretary who is an
18 archbishop. That's Archbishop Amato. Then there is
19 another secretary and there is a promoter of justice. They
20 are the four basic officers of the Congregation.

21 Then after that, there are members which are
22 mostly cardinals and bishops residing in Rome, but there is
23 a second group of bishops around the world who are
24 appointed to that Congregation.

25 And then there are a series of what they

1 call consultants or advisors for it.

2 **MR. WARDLE:** And the process that's taking
3 place since 2001, you described the fact that it sounds
4 like this body has become a little overwhelmed by the
5 number of cases?

6 **REVEREND MORRISEY:** Yes. And so they
7 brought in three priests full time now just to handle that
8 increased load.

9 **MR. WARDLE:** And do we have any sense at
10 this point as to -- I guess we don't because the results of
11 all those cases are not shared widely; correct?

12 **REVEREND MORRISEY:** I would have results
13 from the priests I am working with or dioceses I am
14 consulting because when the answer comes back -- my problem
15 is that a lot of my information is anecdotal in the sense I
16 am not there in that commission, so I don't see the whole
17 picture.

18 **MR. WARDLE:** All right.

19 And the Vatican doesn't release statistics
20 on this kind of thing?

21 **REVEREND MORRISEY:** Not yet.

22 **MR. WARDLE:** All right.

23 **REVEREND MORRISEY:** There is an annual
24 statistical report, but it's four years out, so I expect
25 that possibly next year there will start being a section on

1 how many cases were dealt with. See, this went into effect
2 2001, but really 2002 and, you know, it took to 2003 to get
3 going.

4 **MR. WARDLE:** You were asked a little bit
5 earlier by my friend, Mr. Engelmann, some questions about
6 the secret archives and all of this. And I think he tried
7 to sort of get an opinion out of you as an archivist I
8 think was the way he put it.

9 Is it fair to say that the secrecy
10 surrounding some of these issues and some of these secret
11 documents and their existence or non existence has become a
12 bit of an issue for the Church?

13 **REVEREND MORRISEY:** It's become a bit of an
14 issue for lawyers who are trying to get in behind the
15 Church.

16 **MR. WARDLE:** Right. But it's also been
17 embarrassing for the Church; has it not?

18 **REVEREND MORRISEY:** It's going to depend.
19 See, the church is going to put the protection of
20 conscience of people as primary.

21 **MR. WARDLE:** Oh, I understand that, but I
22 guess we're dealing with allegations particularly in the
23 United States that, you know, senior people within the
24 Church, fairly powerful people, bishops, archbishops in
25 certain cases, you know, hid information. And that's one

1 of the things that led to the Dallas Charter.

2 REVEREND MORRISEY: M'hm.

3 MR. WARDLE: And all the steps that you've
4 described; correct?

5 REVEREND MORRISEY: Yes.

6 MR. WARDLE: And I guess what I am sort of
7 probing a little bit is do you have a personal view on
8 whether, for example, you know, these kinds of processes
9 should remain secret in the future?

10 REVEREND MORRISEY: Oh, that's another
11 story. That's a completely different thing. Our laws, as
12 I said a while ago, were not written in this perspective.
13 What we really need is to sit down and have a commission to
14 rewrite Book 5 of -- Book 6 of the Code, our penal law.

15 But you don't legislate in a time of crisis.
16 You've got to wait until the dust settles and see where it's
17 going. And then -- you see, the other thing is, because I
18 worked on that commission for so many years, when you do a
19 new law, you have to test it; does it apply in the jungles
20 of Brazil and does it apply in Southern Africa and does it
21 apply in Vietnam where the Church can't exist publicly?
22 Before you make a change you've got to test it that way.

23 MR. WARDLE: All right.

24 So I take it what you're saying, you're not
25 opposed to greater transparency; you just think that when

1 the Church legislates, it should do so in a measured
2 fashion?

3 **REVEREND MORRISEY:** Yes, and it should do so
4 in a comprehensive fashion.

5 **MR. WARDLE:** Is it fair to say that prior to
6 2001, canon law alone had been inadequate in dealing with
7 this sexual abuse problem we've been talking about all day?

8 **REVEREND MORRISEY:** It was adequate if it
9 had been used.

10 **MR. WARDLE:** But it wasn't used.

11 **REVEREND MORRISEY:** It wasn't used as it
12 could have been.

13 **MR. WARDLE:** And there are a number of
14 reasons why it wasn't used; isn't that correct?

15 **REVEREND MORRISEY:** Yes.

16 **MR. WARDLE:** Can you just elaborate on that
17 please?

18 **REVEREND MORRISEY:** Yeah. One of the major
19 reasons and unfortunately, is like bishops came back from
20 Vatican II. Cardinal Léger got off the plane in Montreal
21 after the first session and said "We just put an end to
22 canon law". That were his words that he said at the
23 airport in Dorval getting -- when you say that, and the
24 bishops are saying "We threw canon law out the window"; you
25 can't expect the others to say "We're going to start

1 observing it now".

2 And so we had a vacuum. We had a serious
3 vacuum from '67 to '83. So the priests who were ordained
4 during those 20 years or 18 years, whatever they were,
5 those priests, most of them did not study canon law in the
6 seminary and those are the ones who many of them today are
7 the bishops. And so we have a -- what do you want to call
8 it -- there is a gap there.

9 **MR. WARDLE:** Okay. Let me just turn up one
10 of your articles, if I can, the article at Tab 7 which Mr.
11 Engelmann took you to earlier. This is your most recent
12 article that I could find on clergy sexual abuse. So it's
13 really at the time, as I understand it, of the new reform;
14 correct?

15 **REVEREND MORRISEY:** They had just, just come
16 out and we hadn't yet experienced what was going to happen
17 and Dallas hadn't happened yet either, or Boston and all
18 that.

19 **MR. WARDLE:** I just want to turn you, if I
20 can, to page 414, and maybe we can just start at 413 where
21 there's the heading -- the heading is "Eventual Return to
22 Ministry".

23 **REVEREND MORRISEY:** M'hm.

24 **MR. WARDLE:** And if we could go over to the
25 top of 414, this is really -- you're outlining the

1 penalties, and I thought actually this would be a little
2 faster than going back and forth through the various
3 provisions in the canon.

4 So we're dealing here with the '83 Code,
5 correct?

6 **REVEREND MORRISEY:** Correct.

7 **MR. WARDLE:** Okay. And, first of all -- we
8 talked about this already -- these penalties are
9 progressive?

10 **REVEREND MORRISEY:** Yes.

11 **MR. WARDLE:** And there has to be warning
12 given?

13 **REVEREND MORRISEY:** There has to be warnings
14 if there's going to be a suspension, a censure, like a
15 suspension or excommunication or something like that, yes.

16 **MR. WARDLE:** So the priest, as I understand
17 it, is to be given an opportunity to mend his ways?

18 **REVEREND MORRISEY:** He's supposed to be.

19 **MR. WARDLE:** Okay. And, for example, if a
20 priest was -- you know, let's say there was an allegation,
21 a founded allegation of fondling ---

22 **THE COMMISSIONER:** I'm sorry, founded or
23 unfounded?

24 **MR. WARDLE:** I shouldn't have used two "Fs".
25 A founded allegation of fondling, all right?

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

2 **MR. WARDLE:** Would canon law -- would the
3 outcome under canon law be that the priest would be warned?

4 **REVEREND MORRISEY:** I'm going to look and
5 see when did that happen. If you're saying it happened
6 today, it would be much -- it wouldn't be just a warning
7 because now, since 2001, that's enough of a case to warrant
8 sending the thing to Rome and then seeing what Rome would
9 say.

10 **MR. WARDLE:** All right.

11 So if it was a substantiated allegation --

12 -

13 **REVEREND MORRISEY:** Yes.

14 **MR. WARDLE:** --- it would go to Rome and
15 Rome would deal with it, but it would still be dealt with
16 under Canon 1395 and the other provisions you've outlined
17 here; correct?

18 **REVEREND MORRISEY:** Exactly.

19 **MR. WARDLE:** Okay. So it talks about:

20 "...just penalties not including
21 dismissal from the clerical state if
22 the case so warrants."

23 **REVEREND MORRISEY:** Not excluding.

24 **MR. WARDLE:** Not excluding. I'm sorry.

25 And then it says:

1 "The law does not provide for immediate
2 dismissal from the clerical state.
3 It's considered to be the final stage
4 in a process of correction."

5 So when I read this it seems to suggest that
6 there are a series of penalties and that's the last one.

7 **REVEREND MORRISEY:** That's the -- what the
8 Code says.

9 **MR. WARDLE:** Okay.

10 **REVEREND MORRISEY:** Now, in the 2002
11 adaptations to the 2001 norm, there it was provided that
12 the Pope was going to authorize administrative laicization
13 or administrative dismissal from the clerical state. He
14 was authorizing that.

15 **MR. WARDLE:** And then towards the end of
16 this long paragraph, there's a description of the
17 penalties:

18 "If other means are available,
19 dismissal is to be considered as the
20 last step. When the Code speaks of
21 just penalties, it includes prohibition
22 against residents in a certain place or
23 territory in order to reside in a
24 certain place, deprivation of office,
25 prohibition against the exercise of

1 offices, penal transfer to another
2 office and eventually dismissal from
3 the clerical state."

4 So you're saying that the Pope has pre-
5 empted this a little bit with the 2002 document?

6 **REVEREND MORRISEY:** Yes, except -- and you
7 notice the next line. I said it's possible that if those
8 canons were re-written today, the wording would be
9 different. I mean, I can see that there are some things in
10 those canons that should be adjusted.

11 **MR. WARDLE:** And how do we know, for
12 example, how the Congregation of the Doctrine of the Faith
13 is interpreting these provisions in the series of cases
14 that are going through it right now?

15 **REVEREND MORRISEY:** I wish I knew the answer
16 to that. Again, I've got anecdotal evidence for some
17 cases, but I just -- I do not have a full view.

18 **MR. WARDLE:** Okay. I want to just turn
19 briefly, if I can, to -- this was Exhibit 59, but I believe
20 it's also in your materials as well. This is the National
21 Review Board Report. It's the 2004 document, Tab 19.

22 Now, this document, of course, as I
23 understand it -- first of all, it's an American document.
24 It's written for the Church in the United States; correct?

25 **REVEREND MORRISEY:** Correct.

1 **MR. WARDLE:** And it's written post all of
2 the reforms that you've described, including the Dallas
3 Charter and the norms?

4 **REVEREND MORRISEY:** Yes.

5 **MR. WARDLE:** Okay. And it's also after the
6 2001-2002 Vatican reforms that you've described?

7 **REVEREND MORRISEY:** Yes.

8 **MR. WARDLE:** Okay. I just want to take you
9 to page 101.

10 And it describes on this page, starting at
11 the bottom, some of the difficulties with the Code of Canon
12 Law, and as I read it, if you look at page 102, just going
13 to the middle of the page, it says:

14 "Canon law has proven to be an
15 inadequate method of dealing with cases
16 of sexual abuse of minors for many
17 reasons. First, the canonical
18 tribunals and dioceses simply did not
19 have the expertise to handle
20 involuntarily laicization cases. These
21 tribunals dealt almost exclusively with
22 annulment cases."

23 Would you agree with that comment?

24 **REVEREND MORRISEY:** Totally.

25 **MR. WARDLE:** Okay. And then it also talks

1 on the next page about the concept of imputability.

2 I don't want to spend a huge amount of time
3 here on imputability, although you and I could probably
4 enjoy a discussion of it, but as I understand it, it's a
5 concept that deals with whether the priest is completely
6 responsible for his actions because of some illness of some
7 kind or infirmity.

8 **REVEREND MORRISEY:** It's with malice and
9 forethought that you have to carry out an action you knew
10 with malice that it's wrong. You knew what you were doing
11 and you did it. And if there's something that removes the
12 imputability or the responsibility, then you have to look
13 and see when does it come in and override.

14 **MR. WARDLE:** So if I can put it that way,
15 it's a complicating factor in these cases; correct?

16 **REVEREND MORRISEY:** Yes, fortunately, in one
17 sense.

18 **MR. WARDLE:** I understand where you're
19 coming from. You're saying that, you know, the penalty has
20 to fit the crime, if I can put it that way?

21 **REVEREND MORRISEY:** Exactly.

22 **MR. WARDLE:** Okay.

23 **REVEREND MORRISEY:** It's like a difference
24 between manslaughter and murder.

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

1 **REVEREND MORRISEY:** The person is dead, but
2 there's a completely different set of factors.

3 **MR. WARDLE:** But it's being described here
4 as a reason why, in the United States at least, canon law
5 was not seen as being a way of dealing with these kinds of
6 cases.

7 **REVEREND MORRISEY:** That's what they said.
8 Now, personally -- this is just my opinion -- I think this
9 was the best protection we had, but you had to look -- you
10 just don't look at an act. You have to look at the
11 circumstances of an act, the context of it, how was it
12 done, what did it lead to? So in that sense, it was a
13 protection.

14 **MR. WARDLE:** And then just going further on
15 page 103; and I don't know whether you agree with this, but
16 the authors of this report are saying that:

17 "Process often took precedence over
18 substance. Under canon law, some
19 convictions could be reversed by
20 tribunals in Rome years after the
21 fact."

22 And these are all reasons that the bishops
23 are saying for why they avoided the use of canon law in
24 these cases.

25 **REVEREND MORRISEY:** But we had the very same

1 thing with our secular courts. An appeal court can
2 overturn a first instance court because the procedures
3 weren't followed. Sometimes they call it a technicality,
4 but sometimes it's more than a technicality.

5 **MR. WARDLE:** M'hm. I guess what I took from
6 this document was that, you know, the U.S. Church went in
7 the direction they did because they had a crisis and
8 because the mechanisms that they had, the existing
9 mechanisms, were felt to be inadequate. Is that a fair
10 characterization?

11 **REVEREND MORRISEY:** They were felt to be
12 inadequate. If they had been used properly, they would
13 have been quite -- they could have been appropriate.

14 **MR. WARDLE:** This report wasn't written by a
15 canon lawyer like yourself?

16 **REVEREND MORRISEY:** No.

17 **MR. WARDLE:** Okay. And just dealing with
18 what has happened in the United States, the one-strike-
19 you're-out policy, I don't know if we can turn up the
20 norms, but ---

21 **THE COMMISSIONER:** What ---

22 **MR. WARDLE:** Tab 16.

23 **THE COMMISSIONER:** Right. Yes.

24 **MR. WARDLE:** And I think it is Norm 8, if I
25 have that right.

1 **THE COMMISSIONER:** Yes, the one strike
2 you're out? Yes.

3 **MR. WARDLE:** Yes.

4 So what's happened in the United States is
5 that public pressure, and you described it as CNN, but I'd
6 call it public pressure on the bishops eventually forced
7 the bishops to go to Rome and pressure the Pope to really
8 amend Canon Law specifically for the United States.
9 Correct?

10 **REVEREND MORRISEY:** Yes.

11 **MR. WARDLE:** All right.

12 And so what we see here in Item 8 is this
13 new, you know, one strike you're out policy.

14 **REVEREND MORRISEY:** You mean 18, do you?

15 **MR. WARDLE:** I'm sorry, it's Tab 16 and it's
16 -- I guess it's paragraph -- norm 8. I don't know if norm
17 ---

18 **REVEREND MORRISEY:** Okay.

19 **MR. WARDLE:** Okay?

20 But I just wanted to make sure that I
21 understand this. It is not simply an allegation. There
22 has to be an investigation and it has to be admitted or
23 established, is the words that are used. Correct?

24 **REVEREND MORRISEY:** Yes. See, one of the
25 difficulties is Canon 9 of the Code says the law concerns

1 the future. Law is not retroactive.

2 **THE COMMISSIONER:** Okay.

3 **REVEREND MORRISEY:** And so you have to judge
4 a case by the law that was in effect at the time the act
5 took place. But what's happening here is we are changing
6 laws now and making them retroactive and from a law point
7 of view, I don't think that's correct.

8 **MR. WARDLE:** I understand that, but my point
9 was simply that it's not simply a single allegation that
10 leads to dismissal. It has to be substantiated in some
11 fashion.

12 **REVEREND MORRISEY:** Yes.

13 **MR. WARDLE:** And there still has to be an
14 investigation. Correct?

15 **REVEREND MORRISEY:** Yes.

16 **MR. WARDLE:** Okay. And I wasn't clear from
17 reading this whether this investigation is done locally or
18 whether it does involve the Vatican. Can you tell us?

19 **REVEREND MORRISEY:** It's going to be both.

20 **MR. WARDLE:** All right.

21 **REVEREND MORRISEY:** It has to start locally.

22 **MR. WARDLE:** So that even under the Dallas
23 Charter and the norms, let's say a fondling allegation,
24 there has to be an investigation and someone somewhere,
25 perhaps locally; perhaps the Vatican, has to determine that

1 it's either admitted or established. Correct?

2 **REVEREND MORRISEY:** Exactly.

3 **MR. WARDLE:** Okay.

4 And we don't have that in Canada, as I
5 understand it. We don't have anything like these norms?

6 **REVEREND MORRISEY:** No.

7 **MR. WARDLE:** So ---

8 **REVEREND MORRISEY:** The U.S. is the only
9 country in the world that has them.

10 **MR. WARDLE:** All right.

11 So we simply have the Code, the 2001, 2002
12 changes that you have spoken about and we have From Pain to
13 Hope, which is not an official part of Canon Law, is it?

14 **REVEREND MORRISEY:** But we can also have the
15 particular law. If the bishop has promulgated the protocol
16 in his diocese, it's binding in his diocese.

17 **MR. WARDLE:** So just starting from -- let's
18 just start with From Pain to Hope itself is -- I mean, I
19 would call it a precatory document, if you know what that
20 is.

21 **REVEREND MORRISEY:** M'hm.

22 **MR. WARDLE:** It's a wish or intention for
23 all of the dioceses across Canada, but it's not binding on
24 them, correct?

25 **REVEREND MORRISEY:** It's not binding as

1 such, and that's why one of the first articles says each
2 diocese has to set up its own protocol. And one of the
3 major reasons was the reporting laws vary in Canada from
4 province to province and territory to territory, and we
5 just couldn't come up with one norm.

6 **MR. WARDLE:** And as I understand it, the
7 follow-up document, From Pain to Hope, which we went
8 through a few minutes ago, the 10-year review recommends
9 some kind of a national policy. Correct?

10 **REVEREND MORRISEY:** Yes.

11 **MR. WARDLE:** And there is some concern
12 expressed in that document that not all dioceses have
13 bought into From Pain to Hope.

14 **REVEREND MORRISEY:** There is a difference
15 between buying in From Pain to Hope and having a diocesan
16 protocol.

17 **MR. WARDLE:** Well, is it your understanding
18 that all dioceses have a protocol now?

19 **REVEREND MORRISEY:** I don't know of anyone
20 that doesn't.

21 **MR. WARDLE:** Okay.

22 **THE COMMISSIONER:** Can I just add?

23 But being that it's a diocesan protocol, the
24 bishop can turn around and say, "In this case, I decide not
25 to apply the protocol" and do something else.

1 **REVEREND MORRISEY:** He could, but if he has
2 a protocol in place and doesn't follow it, he's asking for
3 trouble, particularly for insurance purposes.

4 **MR. WARDLE:** I guess the Commissioner's
5 point is that the protocol is only as good as the people
6 who are implementing it.

7 **REVEREND MORRISEY:** In a sense it's the same
8 with Canon Law.

9 **MR. WARDLE:** Of course. But you're saying,
10 as I understand it, Father Morrisey, that once the protocol
11 is in place, it becomes part of a local law of the diocese.

12 **REVEREND MORRISEY:** That's what we call
13 "particular" law; yes, geographical law.

14 **MR. WARDLE:** All right. So would that mean
15 that everyone within the diocese has an obligation under
16 Canon Law to follow that protocol?

17 **REVEREND MORRISEY:** If it's been
18 promulgated, yes. And that's why the United States bishops
19 asked for Rome to impose it, rather than having it go
20 through each diocese.

21 **MR. WARDLE:** Right, and one of the other
22 things the U.S. bishops did, as I understand it, through
23 the norms and the Charter -- and perhaps it's in the norms
24 -- is that they are now all obligated to comply with
25 secular reporting laws. Correct?

1 **REVEREND MORRISEY:** Inasmuch as they are not
2 contrary to Canon Law, yes.

3 **MR. WARDLE:** Well, we'll come to that in a
4 moment.

5 But the U.S. church felt it necessary to
6 take that step, presumably because there were instances
7 where that wasn't happening. Isn't that fair?

8 **REVEREND MORRISEY:** There were instances --
9 where there was a reporting obligation -- see, what's
10 happening to that is that people are -- in some states the
11 bishops have made a commitment that every case, whether
12 it's a reportable case or not, that every case will be
13 brought to the District Attorney. That's not the law of
14 the state, but that was a commitment that bishops in some
15 places made.

16 **MR. WARDLE:** Can we just find the provision
17 I'm referring to? Is it in the norms or in the Charter?

18 **REVEREND MORRISEY:** It's number 11 of the
19 norms.

20 **MR. WARDLE:** All right, if we could just
21 turn up number 11, then.

22 So this is a somewhat extraordinary
23 provision. It's not in Canon Law. We agree on that,
24 correct?

25 **REVEREND MORRISEY:** Yes.

1 **MR. WARDLE:** And it was thought in the
2 United States that this had to be added even though, you
3 know, bishops and religious across the country are
4 presumably bound by all sorts of secular laws. Correct?

5 **REVEREND MORRISEY:** Yes, they're bound --
6 that's why you notice number 11 says:

7 "They will comply with applicable civil
8 laws."

9 **MR. WARDLE:** Right. And again, we don't
10 have a provision like this in Canada presumably because no
11 one has thought it necessary at this point in time.

12 **REVEREND MORRISEY:** No, From Pain to Hope
13 says that very clearly.

14 **MR. WARDLE:** From Pain to Hope says it but,
15 as we discussed, it doesn't have the status of the norms.
16 Correct?

17 **REVEREND MORRISEY:** No, it doesn't have the
18 status of the norms, but it's a policy for bishops.

19 **MR. WARDLE:** And would it be found in local
20 protocols in Canada?

21 **REVEREND MORRISEY:** Yes, I don't know of any
22 that doesn't have it.

23 **MR. WARDLE:** Okay. So now, today, if we
24 looked at protocols around the province, they would have
25 something equivalent to this, which would be like the local

1 law?

2 REVEREND MORRISEY: Yes.

3 MR. WARDLE: Okay.

4 REVEREND MORRISEY: If the law was
5 promulgated.

6 MR. WARDLE: All right.

7 And how does the law get promulgated?

8 REVEREND MORRISEY: You see, sometimes what
9 can happen is the bishop will say, "I'm just going to issue
10 guidelines and not make it a formal law" ---

11 THE COMMISSIONER: M'hm.

12 MR. WARDLE: M'hm.

13 REVEREND MORRISEY: --- and we'll test them.
14 You see, what can happen is this. In a lot of cases, you
15 wanted an experimental period of two, three years to see is
16 this working; is this correct, is it not? And you fine-
17 tune it afterwards before making it into formal law.

18 MR. WARDLE: So I think what you're saying
19 is you're confident that these protocols exist across the
20 country. You can't say that in each diocese they have
21 reached the status of local law?

22 REVEREND MORRISEY: That's correct.

23 MR. WARDLE: Where are the situations where
24 there is a conflict between this provision and Canon Law?
25 Given me an example. I take it the seal of a confessional

1 is one?

2 **REVEREND MORRISEY:** Well, that's the one.

3 **MR. WARDLE:** Okay. And there are others?

4 **REVEREND MORRISEY:** You know but the others,
5 you'd have to look at and see is it a real contradiction.
6 That's the only one that I'm like absolutely aware of, is
7 the -- that conflict.

8 **MR. WARDLE:** I suppose another one could be
9 someone who comes forward to a priest and makes an
10 allegation in confidence and that person is a minor and
11 there is an obligation to report, but the priest feels that
12 they are bound in conscience not to report.

13 **REVEREND MORRISEY:** I'm not going to give a
14 categorial answer on that. You'd have to look and see what
15 were the conditions under which this communication was
16 made. Was it -- usually what you try to do in those cases,
17 say it was a minor, you try to get the minor to go to the
18 appropriate people and you move that way.

19 **MR. WARDLE:** All right.

20 And in Canada, we haven't had -- I'm
21 assuming you are aware of the John Jay College study in the
22 United States?

23 **REVEREND MORRISEY:** Yes.

24 **MR. WARDLE:** And I am sure the Commissioner
25 is aware of this; they did a comprehensive study. It is

1 referred to in this report and they came up with statistics
2 about the prevalence of sexual abuse by priests and
3 religious in the United States over a lengthy period of
4 time.

5 **REVEREND MORRISEY:** Yes.

6 **MR. WARDLE:** And we haven't had that kind of
7 study in Canada?

8 **REVEREND MORRISEY:** If it has, I've never
9 seen the results of it.

10 **MR. WARDLE:** All right.

11 And as far as you are aware, there's no
12 other study of that kind internationally?

13 **REVEREND MORRISEY:** No. Well,
14 internationally, you said?

15 **MR. WARDLE:** Internationally.

16 **REVEREND MORRISEY:** No, but see, but right
17 now in Ireland, that's where I mentioned the audits that
18 are taking place at this moment, that they are looking --
19 they're going back to 1940. They are going back 67 years
20 or 65 years when they started. And so at the end of those
21 audits, there's a chance we'll have like a better view from
22 what went on there.

23 **MR. WARDLE:** Does From Pain to Hope deal
24 with information to be provided to the laity about sexual
25 abuse allegations involving the priesthood?

1 **REVEREND MORRISEY:** If I'm not mistaken,
2 there is one article there that is going to say if a priest
3 were reappointed to a parish or something like that --
4 certainly, it's one of the recommendations in there that
5 the appropriate people be notified if ever a priest were to
6 be reassigned to a parish.

7 Now, don't forget that's 1992. Thinking has
8 changed and in practice, no priest today will be reassigned
9 to a parish.

10 **MR. WARDLE:** All right.

11 A lot of what we've been talking about
12 today, you seem to have assumed that the administrative
13 process would, you know, await the outcome of a criminal
14 process, for example.

15 **REVEREND MORRISEY:** You mean the church
16 process?

17 **MR. WARDLE:** Yes.

18 **REVEREND MORRISEY:** Yes.

19 **MR. WARDLE:** And I was thinking about the
20 situation where there might not be a criminal process.

21 **REVEREND MORRISEY:** No, exactly. And if
22 there's not, then in that case it's up to the bishop to
23 decide how to proceed.

24 **MR. WARDLE:** And is there anything that says
25 that the bishop has some kind of obligation to tell the

1 laity, you know, what has taken place?

2 **REVEREND MORRISEY:** Before a trial, no.

3 **MR. WARDLE:** Okay. And after a trial?

4 **REVEREND MORRISEY:** It's only going to be if
5 he's put back into some type of ministry. Other than that,
6 the bishop wouldn't put that in the press or anything like
7 that.

8 **MR. WARDLE:** So if a priest is accused of
9 something, sexual abuse of a minor, and it doesn't involve
10 criminal charges, but the bishop -- either the bishop or
11 the bishop and Rome take some action, the laity may not
12 find out, in fact, the details of that action. They'll
13 just -- the priest will be gone.

14 **REVEREND MORRISEY:** Yes, he could be gone or
15 the priest would be in retirement or something else.

16 **MR. WARDLE:** All right.

17 Last question for you. I just want to
18 follow up Mr. Engelmann's last question, this issue about
19 what you described as a difficult issue; that is, where
20 there has been a criminal process, but it's been an
21 unsuccessful prosecution, but the bishop has information.
22 And I assume that information might be either from the
23 criminal process itself or from some other investigation
24 that suggests that the offence has actually taken place.

25 You know, in conventional employment law,

1 these days that wouldn't be a difficult question, and I'm
2 wondering why you consider that to be such a difficult
3 issue for the Church?

4 **REVEREND MORRISEY:** Because what I want to
5 look at is -- see, the bishop could have received
6 allegations or rumours about another party who was involved
7 with that priest at some time, not enough to go ahead. It
8 wasn't perhaps criminal, so there wasn't a criminal trial,
9 but he's got like a dossier. You know, there's too many
10 indicators there to say, no, there's nothing wrong.

11 And so he might decide to go further. Even
12 though it might not be a criminal action, he might say this
13 priest is not to be in ministry.

14 **MR. WARDLE:** But why is that a difficult
15 question? That's what I don't understand.

16 **REVEREND MORRISEY:** It's difficult ---

17 **MR. WARDLE:** Why wouldn't we err on the side
18 of caution in those cases?

19 **REVEREND MORRISEY:** Well, hold on, you see,
20 the priest can say, "The courts found me not guilty. How
21 come you are punishing me now for this?"

22 **MR. WARDLE:** Well, that's the vantage point
23 of the priest. I would have thought a perhaps more
24 relevant vantage point would be the vantage point of the
25 community in which that priest would be working and exposed

1 to children.

2 **REVEREND MORRISEY:** Oh, I would never use
3 the word "more relevant".

4 All the values have to be taken into account
5 otherwise the thing becomes lopsided.

6 **MR. WARDLE:** All right.

7 Well, thank you very much. Those are all my
8 questions for you, sir.

9 **REVEREND MORRISEY:** Thank you.

10 **THE COMMISSIONER:** Thank you.

11 And so we'll call it a day for now. If you
12 could come back for 9:30 tomorrow morning, we will resume
13 then.

14 **REVEREND MORRISEY:** Thank you.

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

17 This hearing is adjourned until tomorrow
18 morning at 9:30 a.m.

19 --- Upon adjourning at 4:44 p.m./

20 L'audience est ajournée à 16h44

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

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

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



Marc Demers, CVR-CM