This is Exhibit B to the Affidavit of Paul-André Durocher sworn this 1st day of November, 2005

Commissioner for Taking Affidavits, etc.

MARY LYN'S DUMBLE 2 Commissioner, etc., United 1 1000 1000 1000 1000 1000 Barnsters and Solicitors, Expires December 31, 2005.

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REPORT OF THE REV. FRANCIS G. MORRISEY, O.M.I., IN RESPONSE TO QUESTIONS RELATING TO FINANCIAL MANAGEMENT IN THE ROMAN CATHOLIC CHURCH IN CANADA

A. CURRICULUM VITAE

I am an ordained priest of the Roman Catholic Church, a member of a religious institute, the Missionary Oblates of Mary Immaculate.

I am a Titular Professor at the Faculty of Canon Law of Saint Paul University, Ottawa, Ontario, Canada. From 1972 to 1984, I was the Dean of the Faculty.

I hold eleven academic degrees in Canon Law, Philosophy, Theology, and Religious Education. In the field of Canon Law, I hold the following degrees: J.C.B. (Bachelor of Canon Law) from the University of Ottawa (1965); J.C.L. (Licentiate in Canon Law) from Saint Paul University (1966); M.C.L. (Master of Canon Law) from the University of Ottawa (1966); Ph.D. in Canon Law from the University of Ottawa (1972); and J.C.D. (Doctorate in Canon Law) from Saint Paul University (1972).

I am a member of the Canadian Canon Law Society and served as its Secretary-Treasurer from 1966 to 1973, President from 1973 to 1975, past-President from 1975 to 1977, and Executive Coordinator from 1977 to 1983. I am an honorary life member of the Canon Law Society of America, the Canadian Canon Law Society, the Canon Law Society of Great Britain and Ireland, and the Canon Law Society of Australia and New Zealand.

From 1967 to 1994, I was the Editor of *Studia canonica*, a professional journal in Canon Law. I am the author of some 300 articles and translations written in nine languages in the fields of Canon Law and Church history.

From 1985 to 2000, I served three five-year terms as a Consultor to the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law in Vatican City (since March 1, 1989, this Commission is known as the Pontifical Council for the

Interpretation of Legislative Texts). From 1994-1999, I also served a five-year term as a Consultor to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, Vatican City. From 1966-2005, I was a Consultor to the Canadian Conference of Catholic Bishops (Canon Law Commission). In 1983 I was appointed a Judge on the Canadian Appeal Tribunal, the highest Church court in Canada for the adjudication of marriage cases.

I have testified as an expert witness and have offered affidavits as expert witness in numerous court proceedings in Canada (British Columbia, Ontario, Quebec, Newfoundland and Labrador), in the United States, as well as in Namibia and in Singapore.

B. GENERAL CONSIDERATIONS IN RELATION TO THE LAWS OF THE ROMAN CATHOLIC CHURCH

I. The laws of the Catholic Church

The laws of the Catholic Church, were first gathered together in one organized Code and promulgated in 1917 in the *Code of Canon Law*. Prior to 1917, existing laws were in the form of decrees or other norms, but were not codified.

The 1917 Code remained in effect until November 27, 1983, when it was replaced by the current Code of Canon Law. (Another Code was issued in 1990 for Catholics belonging to the Eastern-rite Churches). The 1983 Code (or its equivalent Oriental Code) is considered to be universal law applicable to Catholics everywhere. This law is complemented by what is known as "particular law", that is, laws applicable to a given territory (such as Canada, the United States, etc.).

II. The operation of canon law

One of the basic principles operative in Canon Law is that activities in the Church are carried out by "persons".

The present Code of Canon Law distinguishes three types of persons:

- (1) "physical persons", that is, individuals who have become members of the Church through baptism (see canon 96);
- (2) "moral persons" who come into existence without the operation of any external authority, such as a family and an informal association (see canon 113, §1); as such, they

are not subject of rights and obligations in canon law, although the individual members of such groupings are bound by the legislation (see canon 310); and

(3) "juridical persons" which come into existence either by virtue of the law itself, or by special decree of the competent legislator (see canon 113, §2). These are, in general, the equivalent of "corporations", "companies", "associations", "trusts" or "sociétés anonymes", as we find them in various civil jurisdictions.

Among juridical persons recognized as such by the law, we could mention: dioceses (see canon 373); parishes (see canon 515); religious institutes and their provinces (see canon 634); Conferences of Bishops (see canon 449); and so forth.

It is a principle of Canon Law that each juridical person is autonomous, with the right to acquire, possess, administer and alienate its own temporal goods (see canon 1255). A juridical person is perpetual by nature, and can sue and be sued in ecclesiastical courts (see canons 120 and 1480 of the 1983 Code).

A juridical person is represented by one or more physical persons. Thus, a diocese is represented by the diocesan bishop (see canon 393); a parish is represented by its parish priest (see canon 532). A religious institute is represented by the major superiors who look after its interests (see canon 1279).

C. THE INTERNAL ORGANIZATION OF THE ROMAN CATHOLIC CHURCH

The Catholic Church has as its leader the Pope, who is the successor of St. Peter, and the head of the Church (canon 131).

He is assisted in his day-to-day administration of the Church by what is known as the "Roman Curia" – which would correspond to a Cabinet and Civil Service in secular society.

The Curia is under the direction of the Secretary of State, who acts as the equivalent of a Prime Minister.

The major departments are known as "Congregations", with a Cardinal as the head of each Congregation. Thus, the "Congregation for Bishops" is responsible for the functioning of established dioceses, while the "Congregation for the Evangelization of Peoples" is responsible for missionary dioceses, that is, dioceses which are in their initial stages of development. There is also a third Congregation, the "Congregation for the Oriental Churches" which has jurisdiction over the Churches belonging to those originally established in the Middle East or in Eastern Europe. The various dioceses in Canada are subject to one of these three Roman Congregations.

In addition to the Roman "Congregations", there are also "Tribunals" and "Pontifical Councils" (the latter being somewhat similar to Crown corporations).

The heads of these various Congregations, Tribunals and Councils constitute, as it were, with the Secretary of State, the "Cabinet" of the Pope.

The Church is then divided at the local level into ecclesiastical provinces, usually comprising an archdiocese and a certain number of dioceses. Thus, in Canada, the Diocese of Alexandria-Cornwall is part of the ecclesiastical province of Kingston. However, the Archbishop has no direct authority over the suffragan dioceses in his Province (see canon 436); he can intervene only in very specified situations. The purpose of the ecclesiastical province is to foster common pastoral action and to foster personal relations between diocesan bishops (see canon 431). It is not a governance structure.

Even more so for the Conference of Bishops; it is only an assembly of bishops promoting "greater good" (see canon 447). Various provinces are grouped together in "Conferences of Bishops" which coordinate pastoral activities, but have no authority in the running of individual archdioceses or dioceses or in relation to their financial affairs. Moreover, Conferences do not fund diocesan corporations. Rather, they depend from their financing on the contributions of the various dioceses that are part of the Conference.

Each unit, whether a diocese, an archdiocese, or a Conference of Bishops is autonomous in its own right.

The centre of the Church's administration is located in Vatican City State, an autonomous State totally surrounded by Italy. While, originally, much of present-day Italy was known as the "Papal States", where the Pope also acted as temporal ruler, these lands were taken in 1870 when the movement for Italian unification was at its height. The Church protested the spoliation of its estates, and it was only in 1929 that, through what are known as the "Lateran Pacts", the matter was resolved. Vatican City was recognized as an autonomous State in the international order, and compensation was given to it for the lands and buildings that had been seized.

The money received on this occasion constitutes what is known as the "Patrimony of the Holy See' and is duly administered in the Vatican. In addition, dioceses and the faithful also make donations on an annual basis to the Pope for Papal Charities and similar works. The Vatican does not tax the dioceses. Each year it issues a financial statement, showing that it is usually at or near the break-even point.

The Congregation for the Evangelization of Peoples gives token grants each year to those new dioceses (and similar entities) which are in the process of becoming established, and are usually found in more remote areas. Such money is generally used for the formation of future priests and religious, so that a local clergy can eventually be put in place. Other dioceses do not receive funds from the Vatican; rather, they make donations to it to assist it in its various operations (see canon 1271).

D. THE DEVELOPMENT OF THE FUNCTIONING OF ECCLESIASTICAL ENTITIES IN CANADA

Under the early French regime (from 1534 to 1663), there was union of Church and State in Canada. The Catholic Church was the established Church. Church legislation required promulgation by the King of France (who considered himself to be the secular arm of the Church), for it to be effective in the country. The Church laws of the time were considered to be part of the laws of the Kingdom (see Privy Council, 1874, in the "Guibord" affair).

Of course, there were disadvantages to this system, because the State could easily intervene in internal Church matters, and in fact it did so on occasion.

In 1663, Louis XIV established the first formal government in New France, the Sovereign Council of Quebec, with the Bishop a senior member of the Council. (The first bishop, François de Laval, was appointed in 1659).

The right of patronage was introduced by royal edict in 1679, allowing those persons who endowed a church, to present the candidate for appointment as parish priest.

The King reserved to himself the authorization for religious institutes to come to Canada, or to be founded in Canada. The King would even limit the number of religious in a convent (women were needed in the country to establish families and build up the population).

In 1759, the entire situation changed. With the capitulation of Quebec, although the free exercise of the Catholic religion was theoretically allowed, the Church lost its official status; this was confirmed in 1763 with the Treaty of Paris. A situation of mere tolerance, without recognition, became even more evident the next year (1760) with the capitulation of Montreal.

Communities of men were ordered to vacate the colony, and were given one year to leave. Communities of women were allowed to remain (in gratitude for the nursing assistance given to the British soldiers during the war).

The Catholic Bishop could not establish parishes without the prior intervention and approval of the British authorities.

According to the Treaty of Paris (February 10, 1763), the "new subjects" were allowed to profess the worship of their religion, but in as far as the laws of Great Britain did permit the same. We have to remember that in England, Catholics were subject to the "penal laws" and were not allowed to undertake any public office, or to be recognized. Many were even put to death during this same period for refusing to take the prescribed oaths. So, the right to practice the Catholic religion was subject to very serious possible restrictions.

For instance, in 1764, Governor Murray was instructed to have all the citizens take the oath of allegiance, the oath against Transsubstantiation, and the Declaration of Abjuration.

The Church of England became the established Church, with all the rights attached to this situation. In order not to have two competing bishops, London would not even recognize a Catholic "bishop"; instead, he was called the "Superintendent of the Romish Church". He did not have civil recognition, nor any corporate status. As the Secretary of State for the Colonies noted (August 13, 1763): the laws of Great Britain "prohibit absolutely all Popish Hierarchy in any of the Dominions..."

However, in order to secure the loyalty of the Citizens during the American Revolution period, the Quebec Act of 1774 allowed for the freedom to practice the Catholic religion, for the payment of tithes to priests for support, and it abolished the various oaths to be taken (substituting a new and acceptable one in their place). But, it still did not recognize the Bishop as a bishop.

As the Privy Council stated (in Despatie v. Tremblay, February 11, 1921), after the Quebec Act, although Church authorities could act, their decisions had no legal effect as far as the State was concerned.

The Constitutional Act of 1791 made practical arrangements for the support of the Anglican and Presbyterian clergy (both established Churches in the UK), since the Catholic clergy had been restored in their right to collect tithes.

The Anglican Bishop of Quebec was given formal civil recognition, but not the Catholic Bishop.

However, after the War of 1812, because Bishop Plessis had supported the Government, he was granted an annual pension (July 1813). On June 6, 1817, as a further recognition, the Bishop of Quebec was given civil recognition, and became a member of the legislative Council as "the Bishop of the Roman Catholic Church of Quebec", without any reference to a specific city.

In 1825, permission was granted by London to establish a diocese in Ontario (Kingston), in gratitude for Bishop Macdonell's loyalty in assuring that "not a single Scots Catholic is to be found at this day in any part of the United States."

In 1830, the Government had authorized the recognition of religious communities with the right to own land for religious purposes and to hold schools (law in effect, April 29, 1831). The groups could apply to become corporations and own up to 200 acres of land outside Quebec City and Montreal.

In 1836, the British Government finally gave permission for another diocese to be established (Montreal).

In 1839 (March 3), a new law authorized that parishes be recognized as corporations.

It was only in 1846 (April 10, 1846) that an Ecclesiastical Province was authorized by the Government for the Catholic Church.

The last Bishop to have to take the civil oath before his appointment was Bishop Eugene Guigues, OMI, first bishop of Ottawa (1847).

E... THE SITUATION TODAY

It is easy to see how it took nearly 80 years after the Conquest for the Government to allow Catholic corporations. But, in no way did it recognize the "Catholic Church" as an entity. It proceeded by recognizing certain individuals because of their loyalty to the Crown. (Indeed, it was for the same reason that the Government agreed to fund Separate Schools in Ontario).

These corporations do not correspond to canonical juridical personality. Thus, for instance, Catholic parishes in Ontario (which are canonical juridical persons) do not have civil recognition. They operate under the "Roman Catholic Episcopal Corporation of N.N."

Canada has not accepted to enter into a Concordat with the Holy See, as have so many countries around the world. While it did agree to establish diplomatic relations with the Holy See, a sovereign State (note: relations were not established with "the Catholic Church"), October 16, 1969, there is no international treaty between Canada and the Holy See governing the situation of the Church or its recognition.

Today, in Canada, the Church has to operate on two planes: it operates civilly through corporations which the Government recognizes, and it operates canonically through juridical persons, which usually do not correspond to the civil reality (except for dioceses today).

All in all, this system has functioned well and gives the Church the latitude it needs to carry out its mission through its various dioceses and institutes.

Although the law today allows readily for the establishment of separate corporations, there is no provision for an incorporation or recognition of the Catholic Church. The Church has functioned in this way since the first corporation under the British Regime was authorized in 1817.

The Code of Canon Law does not refer directly to "corporations" or similar entities because these are not of its domain. Rather, canon 1284, §2, 2°, calls for administrators of ecclesiastical temporal goods to take the appropriate measures recognized in the civil law of the country to ensure that the ownership of ecclesiastical goods is protected.

Today, the Diocese of Alexandria-Cornwall operates civilly through a corporation known as "The Roman Catholic Episcopal Corporation of Alexandria-Cornwall".

F. FINANCIAL MANAGEMENT IN THE ROMAN CATHOLIC CHURCH

I. Decentralized financial operations

As distinct from other Churches and ecclesial communities, the Roman Catholic Church is highly centralized when it comes to matters of doctrine and belief. However, when it comes to financial matters, it is highly decentralized. There is no one central financial authority in the Church. This approach was necessary because the Catholic Church is found in almost every country of the world, each with its own customs and practices, not to mention its own laws.

Many of the norms governing financial administration are found in Book V of the Code of Canon Law (canons 1254-1310), but these are complemented by other canons interspersed throughout the Code.

The focus of financial administration rests on the "juridic person". Canon 1256 provides that goods legitimately acquired by a juridic person belong to it, and not to another entity. Thus, for instance, the goods of a parish do not belong canonically to the diocese; those of a diocese do not belong to the Conference of Bishops; those belonging to a Conference of Bishops in a country do not belong to the central Church offices in Vatican City (usually referred to as "the Holy See").

II. Relations between the Canon Law and the operative Secular Law

Difficulties arise in some of the Anglo-Saxon countries (which do not have a concordat with the Holy See) when the civil recognition given to an entity does not correspond to the recognition is has in canon law. Thus, for instance, as distinct from Quebec and Saskatchewan (as well as parts of Manitoba), there is no civil legislation in Ontario granting civil recognition to parishes. Civilly, they function under the corporate umbrella of the diocese.

However, this does not mean that a Bishop, functioning as a corporation sole, can disregard the canonical rights of the various entities subject to his authority. He does not have access to parish funds, except through a form of taxation provided for in canon 1263.

Goods belonging to canonical juridical persons, which are administered civilly under the auspices of one corporation, are considered to be trusts in canon law. The Bishop who

acts in the name of the civil corporation is not the beneficial owner of the goods belonging to parishes and related juridical persons. Although he can make provision for goods belonging to the Diocese itself, because he represents it in all canonical matters (canon 393), he cannot dispose of parish goods at will (because, again, a parish is represented by its parish priest – canon 532).

A fundamental principle in canon law is spelled out in canon 1267, §3: "Offerings given by the faithful for a specified purpose may be used only for that purpose." The respect of intentions of donors is fundamental in canon law, and this can be seen in numerous canons, such as: 121, 122, 123, 1307, 1310. Goods given by the faithful to a parish are not given to the diocese, and their destination must be respected.

III. Accountability on the part of the Diocesan Bishop

Every five years, each Bishop in the Church must send to the Vatican a detailed report on the state of his diocese. This includes an overview of the financial situation (see canon 399). If necessary, oversight arrangements can be made to correct any anomalies.

There are no consolidated financial statements for all the dioceses and religious institutes in Canada. Such statements could not be mandated by the Conference of Bishops; it is simply not their business.

The Vatican does not order a Bishop to spend money for a given purpose. However, it can exercise a negative control by refusing to grant permission for acts which exceed a certain threshold. This maximum sum is proposed by the Conference of Bishops and approved by the Vatican offices. Likewise, the Conference has no taxing or spending authority over dioceses, other than being involved in the setting of limits.

While a bishop on his own may, in 2005, authorize expenditures up to \$219.226 for acts of extraordinary administration, or up to \$438,451 for acts of alienation, for acts exceeding these amounts he needs consent of various bodies (see canons 1277, 1292). For acts exceeding \$4,384,511, the consent of the Holy See is also required. (These sums are based on the threshold sum of \$3,500,000, indexed to January 1 1993).

G. THE AUTONOMY OF JURIDICAL PERSONS

I. No central or common fund in the Church

Because of the decentralization of funds, there is no central fund in the Catholic Church. There is no "common pot", as it were, in which people can dip to complete what is lacking

in their own situation. Therefore, money is not available to the Diocese of Alexandria-Cornwall from some higher authority within the Church.

It is for this reason that, within the past year, one Canadian diocese (St. George's, Cornerbrook, Newfoundland and Labrador) and three United States dioceses (Phoenix, AZ, Portland, OR, and Spokane, WA) have all filed for bankruptcy protection – the so-called "Chapter XI" in the USA).

II. The practice of the Government and of the Secular Courts in Canada

In Canada, the Department of Justice had tried on numerous occasions to establish a blanket umbrella for "the Catholic Church" in regard to liability arising from the Indian Residential Schools claims, suggesting that there was but one entity, "the Catholic Church" that was responsible. However, it was demonstrated that this was not possible, and the Federal Government eventually ended up negotiating with 41 distinct Catholic entities. The results of this process were announced on November 23, 2005, when a memorandum of understanding with the various Catholic entities was made public, after receiving Cabinet approval.

In the same vein, various efforts were made to have the Courts in Canada recognize that there existed the "Catholic Church". Lately, the Courts have been recognizing the distinctions between the incorporated dioceses and the spiritual body known as the "Catholic Church". See, for instance, Ontario Superior Court of Justice, Justice K.F. ROSS, File 33504 (Swales v. The Roman Catholic Church, *et al.*), July 17, 2000, where it was held that the "Catholic Church" as such was not to be a party in an action, "but rather the Bishop as the Diocese". See also, the Supreme Court of Canada, in the Bennett decision March 25, 2004 (John Doe v. Bennett, 2004 S.C.J. No. 17, File No: 29426), par. 35. In other words, at the present time, there is no "Catholic Church" at civil law. There are only corporations.

CONCLUSION

For these reasons, a number of conclusions come to the fore:

- Each juridic person in the Catholic Church is distinct from other juridic persons.
- 2. A parish is a juridic person. A diocese is a juridic person.
- 3. What belongs to one juridic person does not belong to another, even though goods might be administered in common because of the corporation status in Ontario;
- 4. Intentions of donors must be respected;
- 5. There is no common pool of financial resources; each entity is distinct.

Contrary to the assumptions of misconceptions of many people, the Diocese of Alexandria-Cornwall does not receive funding from any higher entity.

OTTAWA, November 28, 2005

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