

**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 65

Held at :

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

Tuesday November 7, 2006

Tenue à:

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

Mardi, le 7 novembre 2006

Appearances/Comparutions

Mr. Pierre R. Dumais	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Suzanne Costom	
Dect.Staff Sgt. Colin Groskopf	
M ^e Claude Rouleau	Ontario Ministry of Community
Mr. Mike Lawless	and Correctional Services and
	Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of
	the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police
	Association
Mr. Tony S.K. Wong	Canadian Broadcasting
Ms. Susanne Reber	Corporation

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1 --- Upon commencing at 2:04 p.m./

2 L'audience débute à 14h04

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 presiding.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you. Good
10 afternoon, all.

11 **MR. DUMAIS:** Good afternoon, Commissioner.

12 We do have a witness scheduled to testify
13 today, Commissioner.

14 Before we go to that witness, there are a
15 few matters that we must address.

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

17 **MR. DUMAIS:** The first of which is we do
18 have a Tony Wong here that requested that he be able to
19 make submissions like all the parties did last Thursday on
20 the confidentiality orders. You will remember,
21 Commissioner, that Mr. Wong did make submissions initially
22 on this issue. Your decision on directions was forwarded
23 to his office last week. He did contact us and advise that
24 he could not be here on the Thursday and asked us whether
25 or not he would be able to make submissions at a further

1 date. Mr. Ruel advised you of that last Thursday. He is
2 here today and has provided us with written submissions and
3 I understand that he wishes to address you.

4 We did advise the parties late last night of
5 the fact that Mr. Wong wanted to make submissions on this
6 issue. It was past 5:00 when we advised the parties. We
7 did receive a copy of the submissions sometime this morning
8 and we circulated those submissions to the parties. I'm
9 advised that at least one of the parties did not receive
10 those submissions.

11 So that's the first thing that we have that
12 we must deal with today, Commissioner.

13 **THE COMMISSIONER:** All right.

14 So do any of the parties have any comments
15 about what we're doing here today?

16 **MR. MANSON:** Mr. Commissioner, we were
17 advised of this at various times last night depending on
18 how high-tech you are. At least one counsel, Mr. Cipriano,
19 was not planning to be here ---

20 **THE COMMISSIONER:** Yes.

21 **MR. MANSON:** --- and has circulated a letter
22 indicating that he's very concerned about one of the
23 submissions that Mr. Wong intends to make and I think it
24 would be quite unfair if we went in that direction. From
25 Mr. Ruel's letter, there are three points that Mr. Wong

1 intends to raise and it seems to me that the first one, the
2 issue of waiverability, that counsel can probably deal
3 with, but that it would be certainly unfair to Mr. Cipriano
4 and I see Mr. Rose isn't here either, if we pursued the
5 other two matters on such short notice.

6 **THE COMMISSIONER:** Well, it depends now.
7 What are the matters?

8 **MR. MANSON:** I'm just -- perhaps we should
9 hear from Mr. Wong.

10 **THE COMMISSIONER:** No, no, I understand
11 that, but is Mr. Cipriano ---

12 **MR. MANSON:** There are three points in Mr.
13 Ruel's letter. One is about -- I've called it
14 "waiverability".

15 **THE COMMISSIONER:** Right.

16 **MR. MANSON:** Whether an order needs to be
17 rescinded or whether it can be waived. That's point
18 number one.

19 **THE COMMISSIONER:** Right.

20 **MR. MANSON:** Point number two deals with two
21 particular witnesses, one of whom will be the subject of an
22 application that Mr. Cipriano intends to bring.

23 **THE COMMISSIONER:** Right.

24 **MR. MANSON:** And he ---

25 **THE COMMISSIONER:** Okay. Well, let's ---

1 **MR. MANSON:** --- quite fairly, I think,
2 said, "I'm caught by surprise by this."

3 The third one I'm not sure I understand the
4 details of it, but I just want to point out that it was
5 very late notice to all counsel.

6 **THE COMMISSIONER:** Sure. No, no, I
7 understand that. I understand.

8 All right. Anybody else have any comments
9 before we hear from Mr. Wong? Okay.

10 **MR. LEE:** I'm closer.

11 **THE COMMISSIONER:** So that was Mr. Manson.
12 Mr. Lee?

13 **MR. LEE:** I can tell you that as a general
14 rule, I have no idea what Mr. Manson was just talking
15 about. I haven't received any letters from anybody today.
16 I haven't received -- I didn't even know of the submissions
17 until I arrived in the hearing room. I was left off of the
18 email, so I don't know of the three propositions. I don't
19 know what they are. I can't speak to them. I quite
20 honestly have absolutely no idea of what Mr. Manson was
21 just talking about.

22 **THE COMMISSIONER:** You're going to listen
23 very attentively?

24 **MR. LEE:** I am very much going to listen
25 attentively, sir.

1 **THE COMMISSIONER:** Terrific. Thank you.
2 Mr. Chisholm, do you have any comments?

3 **MR. CHISHOLM:** No, sir. Thank you.

4 **THE COMMISSIONER:** Thank you.
5 Maître Rouleau.

6 **Me ROULEAU:** Bonjour, monsieur le
7 commissaire.

8 **LE COMMISSAIRE:** Bonjour.

9 **MR. ROULEAU:** We were a bit caught by
10 surprise by this. We have no objections to the submissions
11 being made today. We would just like to have the
12 opportunity, if possible, to have a short reply tomorrow
13 and I can tell you that Mr. Neuberger is going to be here
14 tonight and he would be available to reply to the arguments
15 tomorrow morning.

16 **THE COMMISSIONER:** All right.
17 Who is here for Jacques Leduc? Is it ---

18 **THE REGISTRAR:** She's not in today.

19 **THE COMMISSIONER:** Oh, okay. All right.
20 Mr. Kloeze?

21 **MR. KLOEZE:** Mr. Commissioner, I echo the
22 comments of my friends. I was caught a bit unaware of
23 this. I did receive a notice of submissions when I was on
24 the train this morning, but I wasn't able until very
25 recently to receive those submissions.

1 One of the points that Mr. Wong wishes to
2 raise concerns the applicability of publication bans that
3 have been sought by the Attorney General and certainly the
4 Attorney General would want to make submissions on that
5 issue.

6 **THE COMMISSIONER:** M'hm. All right.
7 Mr. Callaghan.

8 **MR. CALLAGHAN:** I'm in the same boat as the
9 others insofar as I would like to hear the submissions. I
10 haven't had an opportunity to read the material.

11 **THE COMMISSIONER:** All right.
12 Mr. Kozloff

13 **MR. KOZLOFF:** I see Ms. Makepeace is here.

14 **THE COMMISSIONER:** Yes.

15 **MR. KOZLOFF:** I don't want to -- good
16 afternoon, sir.

17 **THE COMMISSIONER:** If you're not here, you
18 lose your place.

19 **MR. KOZLOFF:** I support Mr. Manson's
20 submissions and those of my friends. It's not part of my
21 function to address the issues of scheduling except to say
22 that when one is told on the record that one can expect
23 Albert Roy to be called at 2:00 p.m. on Tuesday, one comes
24 with that expectation and I suppose other counsel make
25 their plans on that basis. And so when we find out on the

1 eve that a change has been made to accommodate counsel who
2 couldn't be here last week ---

3 **THE COMMISSIONER:** We will get to Mr. Wong
4 in due course on that issue, Mr. Kozloff.

5 All right. Mr. Carroll, do you wish to echo
6 everyone or do you have any ---

7 **MR. CARROLL:** I would like to get to Mr.
8 Wong too.

9 **(LAUGHTER/RIRES)**

10 **THE COMMISSIONER:** All right. And that's it
11 for everyone else. All right.

12 Mr. Wong, would you come forward, please?

13 Now, Mr. Wong, I am prepared and I
14 understand that as one of the many lawyers for CBC/Radio-
15 Canada, that you have an important role to play in this
16 Inquiry because of your duty to report to the public, and
17 so with every right that you have to come here and address
18 me, you also have some obligations. And the obligations
19 now that we see that you may well become a more regular
20 fixture here is that you have to be available.

21 And so while we try to accommodate counsel
22 as much as possible, we are now in a stage where we're
23 calling victims that are maybe somewhat fragile and in
24 doing so, one of the things we have to ensure is that we
25 try to get them to testify when they're supposed to. So I

1 thought I heard about this through an email that I received
2 and I thought it would be important to hear from you, but I
3 can tell you that while I'm prepared to recognize your
4 special status with respect to confidentiality issues, you
5 have a duty -- and I'm sure you're probably one of the best
6 lawyers that the CBC had to send -- we might have to
7 contend with others, but you're either going to be here or
8 we're just going to go on without you.

9 **MR. WONG:** Thank you for the directions, Mr.
10 Commissioner.

11 I would like to respond briefly to that
12 point. We certainly -- the Canadian Broadcasting
13 Corporation does not want to delay or interfere in the
14 progress of the Inquiry. We recognize that the witnesses
15 are -- some may be vulnerable and the timing issues are
16 important for their testimony and we certainly would have
17 liked to be here last Thursday.

18 The difficulty we had and one of the sub-
19 issues I was going to address with you, sir, is the issue
20 of notice. We received your decision or guidelines Tuesday
21 at around 4:36 p.m. and were told that the issue of
22 publication bans on the facts would be addressed that
23 Thursday. And it's a concern because if you read *Dagenais*
24 we interpret that as entitling the media to standing when
25 standing is sought and there has to be, I submit,

1 reasonable notice both from a temporal standpoint, timely
2 notice. Under the Criminal Proceedings Rules, for example,
3 notices of applications are brought on 15 days notice.
4 Now, that may be extreme, but in civil cases we have four
5 days notice.

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

7 **MR. WONG:** And that's also, I guess,
8 informed notice. The people seeking the publication ban
9 deliver a notice motion in which they settle their grounds
10 and we get to respond. I certainly didn't receive a notice
11 of motion prior to coming here or, in fact, have access to
12 the documents or the justifications for the various
13 redactions that were sought and I think what's important to
14 keep in mind is I am responding to an application. I'm
15 here. I could have very well have stood up. I'm the
16 respondent in the application for the publication ban on
17 the names of victims who appear in exhibits and I think
18 that's an important point to keep in mind in the sense that
19 if you keep the sequence of events, this is an application
20 that was initiated by my friends or some of my friends for
21 a publication ban.

22 We wanted, of course, to participate, but
23 other than the letter that was received from Simon Ruel, we
24 had no particulars as to the precise redactions that are
25 being sought or the grounds for those redactions and we're

1 responding in the best way we can. And in fact, we had a
2 chance to look at some of the exhibits last night and fully
3 understand or more fully understand the position we were
4 responding to.

5 Now, I did in fact circulate the submissions
6 to my friends or I was asked to circulate submissions to my
7 friends, and that was done this morning, but I guess my
8 thinking there is they were circulated as soon as
9 reasonably practicable. I would have loved to circulate
10 them -- maybe I could have circulated them earlier if I had
11 in mind more clearly the precise redactions that are being
12 sought or the justifications for those, but I guess that
13 was a position that Terry Saunders had raised with you last
14 week which is the difficulty, really, in the media being
15 here and responding and assisting this Commission without
16 being provided in advance the notice, i.e. the information
17 sought to be redacted, and, I guess more importantly, the
18 justification.

19 **THE COMMISSIONER:** I guess we're going to
20 have to get you a table here.

21 **(LAUGHTER/RIRES)**

22 **THE COMMISSIONER:** No, in seriousness now,
23 what we do and I believe the rule is this, is that a week
24 before -- correct me if I'm wrong -- a week before the
25 witness is set to testify, we send out a "Will State" and

1 we're supposed to or the Commission counsel are supposed to
2 set out what they think may be some confidentiality issues.

3 **MR. WONG:** Yes.

4 **THE COMMISSIONER:** And then two days, 48
5 hours before the witness is to begin to testify, which is a
6 rule that I understand has not been followed and will be
7 followed from now on by everybody or face some
8 consequences, I suppose, they are to highlight what
9 documents they want to use in cross-examination and to
10 bring forward any confidentiality issues they may see in
11 there. So in the best of worlds and the way we run this
12 Inquiry, 48 hours is the notice. So you have to be ready
13 to run on 48 hours notice.

14 **MR. WONG:** And the media would also then be
15 provided with access to the exhibits or the proposed
16 redactions to the exhibits?

17 **THE COMMISSIONER:** If you're going to be
18 here, yes. You want to be here, we will set you up a table
19 and -- because, you see, every confidentiality issue will
20 be dealt on a witness-by-witness basis.

21 **MR. WONG:** Right.

22 **THE COMMISSIONER:** All right? And so if
23 this is important to you, then I suggest you assign a
24 counsel here to be here every day.

25 **MR. WONG:** Or notice is given within ---

1 **THE COMMISSIONER:** Forty-eight (48) hours.

2 **MR. WONG:** --- a reasonable period of time
3 so as to allow a decision to be made as to whether to
4 attend or not.

5 **THE COMMISSIONER:** Just be very careful,
6 sir. What I'm saying is everyone here is on a tight
7 schedule.

8 **MR. WONG:** M'hm.

9 **THE COMMISSIONER:** We have got over -- we
10 have got hundreds of witnesses to call and if you want to
11 participate, you must be here. That's all I'm telling you.

12 **MR. WONG:** Thank you for the direction,
13 Commissioner.

14 **--- SUBMISSIONS ON ISSUES OF CONFIDENTIALITY**

15 **BY/REPRÉSENTATIONS SUR QUESTIONS DE CONFIDENTIALITÉ PAR MR.**
16 **WONG:**

17 **MR. WONG:** So I understand now. I would
18 like to review my submissions then. I'm not sure if,
19 Commissioner, you have a copy of ---

20 **THE COMMISSIONER:** Yes, I do.

21 **MR. WONG:** --- the submissions.

22 They really break down to the following
23 three categories and I'll come to my friend's concern about
24 addressing the one witness in the absence of Mr. Cipriano,
25 but what I plan to settle today is, first, the rationale or

1 the justification for the ban on the publication of the
2 identity of victims or alleged victims of sexual assault.

3 Then I would like to review an example of a
4 regime under the *Youth Criminal Justice Act*, where waiver
5 of confidentiality protections is permitted at ---

6 **THE COMMISSIONER:** I'm sorry?

7 **MR. WONG:** Where waiver of confidentiality
8 protections given to victims and witnesses is permitted at
9 the discretion of the victim or witness.

10 **THE COMMISSIONER:** Right.

11 **MR. WONG:** So I will review that regime with
12 you briefly.

13 Thirdly, I want to deal with the issue of
14 the relevance of the names of the victims in the context of
15 this Inquiry. I recall on the last occasion and perhaps
16 also on Thursday, an argument being made that the names of
17 the witnesses aren't strictly relevant to the purposes of
18 this Inquiry, and I would strongly disagree with that
19 proposition, and I would like to make some brief
20 submissions as to the relevance of the names or identity of
21 victims to this Inquiry and to your ultimate determination
22 on this Inquiry.

23 The three other points which are points I
24 would like to deal with today are the issue of notice and I
25 think I have covered that point; the issue of reasonable

1 and timely notice to the media so that it can effectively
2 exercise its right to participate in these proceedings and
3 argue for the protection of openness and full public
4 access.

5 Secondly, the issue of editing of exhibits
6 to remove information that would or could identify the
7 names of victims or alleged victims. And I had a chance
8 yesterday to review some of the submissions, I believe,
9 made by Mr. Rose on editing. Certainly, if you were to
10 determine that a victim or alleged victim's name ought to
11 be redacted, that permits the name to be redacted. What
12 concerned me was the other information that allegedly
13 disclosed the identity of the victim or alleged victim.
14 What I will be submitting later on is that some of the
15 information sought to be redacted is just so vague and the
16 risk of identification is so speculative that there ought
17 not to be editing of that information.

18 So what I will deal with in that part of my
19 submissions is the issue of what is the information that
20 could or would allow a member of the public to identify the
21 victim. So it's the information other than the name. Is
22 the fact that a person went to a certain university or went
23 to a summer camp, is that information that should be
24 blacked out because it would identify the victim in the
25 eyes of the public? I would like to make brief submissions

1 on that point.

2 As for the names of the two victims or
3 alleged victims, I understand that Mr. Cipriano isn't here
4 today. What I would be happy to do is to make my
5 submissions in respect to these two witnesses and they are
6 essentially that these are victims or alleged victims who
7 have been publicly identified by the Canadian Broadcasting
8 Corporation and by other media outlets appearing, for
9 example, in CBC national news, national radio news, and
10 being identified in the course of that program not only in
11 Cornwall but across the country. We would be submitting
12 that such a person whose identity is already public ought
13 not to be subject to a further publication ban.

14 **THE COMMISSIONER:** Wait a minute.

15 That's a problem with arguing in a vacuum in
16 a sense that you're talking about two alleged victims, Mr.
17 ---

18 **MR. WONG:** Well, I don't -- yes, yes.

19 **THE COMMISSIONER:** Is there someone -- is
20 anyone bringing an application to have these gentlemen's
21 names not published or broadcast?

22 **MR. WONG:** They came off a list that we were
23 provided by Mr. Ruel about names of persons who appear in
24 exhibits that may potentially be subject to a publication
25 ban. So I don't want ---

1 **THE COMMISSIONER:** Ah, Ah.

2 **MR. WONG:** I don't want to speak those
3 names.

4 **THE COMMISSIONER:** Yes, I know exactly what
5 you mean.

6 **MR. WONG:** Thank you.

7 **THE COMMISSIONER:** Yes. The problem with
8 that, and if you were here more often, is that the name
9 that I think is in an exhibit might be the same name of
10 someone who may have been public. So we may be talking
11 about two different people. Is that about -- is that
12 possible or have we determined that?

13 **MR. DUMAIS:** Well, I mean, just so that
14 we're clear, Commissioner.

15 **THE COMMISSIONER:** Yes.

16 **MR. DUMAIS:** The ruling on the process for
17 making that determination ---

18 **THE COMMISSIONER:** Right.

19 **MR. DUMAIS:** --- was released by you last
20 week.

21 **THE COMMISSIONER:** Yes.

22 **MR. DUMAIS:** What we did last Thursday ---

23 **THE COMMISSIONER:** Right.

24 **MR. DUMAIS:** --- is we did apply those
25 directions to all of the interim "C" exhibits that had been

1 set aside over the last couple of weeks.

2 **THE COMMISSIONER:** Right.

3 **MR. DUMAIS:** We were applying your ruling to
4 those specific ---

5 **THE COMMISSIONER:** The directions.

6 **MR. DUMAIS:** Your directions, sorry,
7 Commissioner, to those specific exhibits.

8 **THE COMMISSIONER:** Yes.

9 **MR. DUMAIS:** And I view Mr. Wong's
10 submission today as just a continuation of submissions that
11 people made last Thursday.

12 **THE COMMISSIONER:** Oh, okay.

13 **MR. DUMAIS:** If I can then address
14 specifically the -- Mr. Cipriano indicated that he may
15 bring a motion next week and we have not been served by
16 that yet and perhaps after Mr. Wong has finished making his
17 submissions, I can address that issue.

18 So I do have an email from Mr. Cipriano,
19 but, Commissioner, you are correct that there's two
20 identical names. One is an alleged victim, as far as we
21 know, and the other is a witness that we are calling next
22 week. So they are two different things.

23 With respect to the other individual, who is
24 someone that has testified, Mr. Benoit Brisson,
25 Commissioner ---

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

2 **MR. DUMAIS:** --- there is an outstanding
3 publication order which I made reference to in prior
4 proceedings and we're in the process of lifting that order.
5 It's not an order that was requested by Mr. Brisson or
6 ourselves. It's just an outstanding non-publication order
7 issued by a judge.

8 **THE COMMISSIONER:** Mr. Lee.

9 Hang on there, Mr. Wong, you're getting
10 help.

11 **MR. LEE:** If it's helpful. I represent Mr.
12 Brisson. He is not seeking any kind of confidentiality in
13 relation to these proceedings at all. He's testified here
14 openly.

15 **THE COMMISSIONER:** No, but the difficulty
16 is, of course, the publication ban that's outstanding ---

17 **MR. LEE:** Right.

18 **THE COMMISSIONER:** --- in a criminal matter
19 and as any good journalist informed, the CBC is going to
20 have to make their decision in law as to whether they wish
21 to deal with that, pending any lifting of that ban.

22 **MR. LEE:** Right. I'm simply up here to say
23 that aside from that ban, there is nothing new being sought
24 here within the context of the Inquiry in relation to Mr.
25 Brisson.

1 **THE COMMISSIONER:** Yes, right.

2 **MR. WONG:** Well, it may be then, Mr.

3 Commissioner, that my last issue, i.e. the names of people
4 who sought to be protected by a publication ban ought not
5 to be granted because they are already public, may not be
6 an issue I will have to address today. I was under the
7 impression that Benoit Brisson was, for example, a name of
8 someone who was thought to be protected by a publication
9 ban ordered by you in the context of these proceedings.

10 **THE COMMISSIONER:** Get your facts straight.

11 **MR. WONG:** And the other individual -- it
12 was from a list actually from Simon Ruel. We were provided
13 a list by Simon Ruel and that was the name that appeared on
14 the list of people who were supposed to be protected by a
15 publication ---

16 **THE COMMISSIONER:** And you assumed that it
17 was the same person. Quite understandable but wrong.

18 **MR. DUMAIS:** Just so that we are clear,
19 Commissioner, the list that Mr. Wong is referring to is a
20 list of all publication orders issued by either Ontario
21 Court of Justice judges or Superior Court judges in the
22 past.

23 **THE COMMISSIONER:** Ah, there you go.

24 **MR. DUMAIS:** They are not our orders.

25 **THE COMMISSIONER:** Well, no, I think you're

1 mistaken there because I believe that I put a temporary "C"
2 order on the document that contains the same name as a
3 prospective -- and I don't know whether that person is the
4 same person, when in the same -- my understanding, they
5 weren't.

6 **MR. DUMAIS:** I think that's correct,
7 Commissioner. You did, for some of the witnesses or
8 exhibits, issue a mirror order when there was an
9 outstanding publication ban which had not been lifted, but
10 I think the list that ---

11 **THE COMMISSIONER:** Okay.

12 **MR. DUMAIS:** --- Mr. Ruel gave to Mr. Wong
13 was a list of outstanding publication bans that existed
14 elsewhere.

15 **THE COMMISSIONER:** All right. Sorry about
16 that. Thank you.

17 **MR. WONG:** Mr. Commissioner, I would like to
18 begin my submissions just in briefly reviewing the
19 rationale under the Criminal Code legislation relating to
20 the protection of victims of sex-based offences, and I have
21 given you or hopefully you have three cases in front of
22 you. The one case that I am referring to is the *Canadian*
23 *Newspapers Co. v. Canada (Attorney General)*, which is the
24 decision of the Supreme Court of Canada relating to the
25 constitutional challenge to the provision in the Criminal

1 Code, which allows for the mandatory publication ban on the
2 names of sexual assault or sex-based offence victims upon
3 request of the prosecutor or the complainant. And if you
4 look at paragraph 18 of that decision, Justice Dickson --
5 Justice Lamer, I'm sorry, refers to the rationale of this
6 mandatory ban.

7 **THE COMMISSIONER:** Sorry, page 18?

8 **MR. WONG:** Paragraph 18.

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

10 **MR. WONG:** And I guess we will go back to,
11 first, principles. Why do we have these mandatory bans on
12 the names of victims of sexual assault? Paragraph 18 sets
13 out the rationale as being to address the historic under-
14 reporting of sex-based offences and the connection of that
15 under-reporting to a fear of treatment by police or
16 prosecutors, fear of trial procedures and fear of publicity
17 or embarrassment.

18 That was the evil that the mandatory ban was
19 directed at addressing and the Supreme Court of Canada
20 found that by creating a mandatory ban, the Parliament
21 addressed this concern about under-reporting by assuring a
22 victim that when they decide to report the crime, the judge
23 must prohibit, upon request, the publication of the
24 complainant's identity and any information that could
25 identify the victim.

1 That section by the way was upheld under the
2 *Canadian Newspapers* case, but what I want to draw your
3 attention to, Mr. Commissioner, is a comment, I would say a
4 very relevant comment made by Justice Lamer at the
5 conclusion of his decision. And so just by way of
6 background, Justice Lamer accepted that a mandatory
7 publication ban does violate section 2(b) of the Charter,
8 but then he proceeded to conduct an *Oakes* analysis under
9 section 1 and he was satisfied that notwithstanding the
10 violation of section 2(b), there was a limit demonstrably
11 justified in a free and democratic society.

12 But I draw your attention to paragraph 26
13 because there he makes a point that if the publication ban
14 under the section had not been sought or supported by the
15 complainant, the constitutionality of the section may not
16 have been upheld. In that paragraph, he says specifically:
17 "Before concluding I should mention that this case has been
18 argued and decided throughout on the assumption that what is
19 being weighed is a restriction to the freedom of the press in
20 order to ensure to victims of sexual assaults that their
21 identity will not be disclosed through the media, if that is
22 their wish."

23 And really it points back to the fact, I
24 submit, that this protection is very much the right of the
25 victim. It is the protection of the victim.

1 "The section, however, enables an
2 application to be made by the
3 "prosecutor" alone. Obviously, the
4 arguments invoked and successfully so
5 under s. 1 in this case would not
6 necessarily carry the day in a
7 situation where the prosecutor was not
8 acting on behalf of the complainant.
9 As this is not our case, we need not
10 [address] and should not decide the
11 matter. However, it must be understood
12 that the answers to the constitutional
13 questions and the disposition of this
14 appeal apply only to a case where under
15 the section, the application has been
16 made by or on behalf of the
17 complainant."

18 Having regard to this comment and the fact,
19 I submit, this is a protection that is a right of the
20 victim that a mandatory ban that can be waived at the
21 discretion of the victim or alleged victim is fully
22 consistent with the underlying rationale of a publication
23 ban and, that is, as I said, the historic under-reporting
24 of sex-based offences.

25 So long as the victim or alleged victim

1 consents to the publication of his or her identity, I would
2 submit that there is no inconsistency with disclosing
3 identity of victims or alleged victims and the goal of
4 addressing under-reporting.

5 The control is kept in the hands of the
6 victim. If the victim says, "I don't want my identify
7 published", the mandatory ban continues to apply.

8 **THE COMMISSIONER:** You are saying then that
9 if in the Criminal Code a ban on publication is put, then
10 the victim can waive it unilaterally? He doesn't have to
11 go back to the court and ask for -- you mean we are doing
12 all this for nothing then?

13 **MR. WONG:** Well, the section under the
14 Criminal Code doesn't provide for this situation. It
15 doesn't have -- and I'll take you later to the *Youth*
16 *Criminal Justice Act* -- it doesn't have an exception or a
17 waiver provision, but the reason I brought you to Justice
18 Lamer's comments is because if at some point a member of
19 the media or any member of the public decides to launch a
20 challenge to section 46.4 on the basis that it's not
21 constitutional because the victim doesn't support it, that
22 issue is to be answered.

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

24 **MR. WONG:** And I will actually take you to a
25 decision of the Saskatchewan Provincial Court where ---

1 **THE COMMISSIONER:** No, no. I understand
2 that. If a victim is saying, "I don't want to be
3 protected" ---

4 **MR. WONG:** Yes.

5 **THE COMMISSIONER:** --- and the judge imposes
6 a ban, well I can see that. But if it's properly requested
7 and granted, once granted you are telling me that a victim
8 can change their minds and say, "Disregard that. I'm
9 giving you permission to do this?"

10 You don't have to go back to court?

11 **MR. WONG:** That remedy isn't provided under
12 this section 46 or its predecessors. I guess just my
13 understanding, the rule that would be required in the
14 absence of direction of Parliament is an application to
15 vary or set aside the publication ban order.

16 **THE COMMISSIONER:** Right.

17 **MR. WONG:** Because this section as currently
18 drafted does not provide as the *Youth Criminal Justice Act*
19 does with a procedure for getting around the publication
20 ban that's been imposed.

21 That issue hasn't been dealt with by the
22 Supreme Court of Canada, but I have given you a decision of
23 the Saskatchewan Provincial Court where this very issue was
24 dealt with and the Provincial Court struck down or read
25 down section 46.4 -- or section 46 on the basis that

1 imposing a publication ban against the wishes or desires of
2 the complainant ---

3 **THE COMMISSIONER:** You're right. I don't
4 disagree with ---

5 **MR. WONG:** M'hm.

6 **THE COMMISSIONER:** I think we're talking
7 about if someone here comes and there's a ban that's
8 imposed either by me ---

9 **MR. WONG:** Right.

10 **THE COMMISSIONER:** --- or by another court.

11 Is your argument that if I impose a ban and
12 the witness says, "I want to withdraw from that ban," that
13 you don't have to come and ask for leave of this Court?

14 **MR. WONG:** Well, I think there's two
15 distinct situations. In the event that there's an existing
16 Criminal Code publication ban ---

17 **THE COMMISSIONER:** Right.

18 **MR. WONG:** --- I would submit that that ban
19 continues subject to an application to vary it.

20 **THE COMMISSIONER:** Right.

21 **MR. WONG:** But in that situation I would
22 submit that it's not necessary for this Inquiry, this
23 Commission, to impose a further ban. The existing ban is
24 there. By the language, it's a ban that operates with no
25 end date, I guess, subject to an application by the victim,

1 and the question there is why would this Court -- this
2 Inquiry then need to impose a further ban.

3 The other question though is many of the
4 complainants may not have been part of court proceedings
5 and may not have been protected by a Criminal Code
6 publication ban.

7 **THE COMMISSIONER:** Right.

8 **MR. WONG:** In which case then the discretion
9 is wholly within this Inquiry to decide what ban ought to
10 apply and what mechanism ought to be put in place for
11 allowing that ban to be waived or set aside.

12 **THE COMMISSIONER:** Right.

13 **MR. WONG:** And that, I guess, really takes
14 me to, first, the case in Saskatchewan involving *Regina v.*
15 *Canadian Broadcasting Corporation*. I have given you the
16 decision of Justice Jackson of the Provincial Court and the
17 appeal decision of Justice Klebuc of the Judicial Centre of
18 Saskatchewan, the Queen's Bench, and that was a case where
19 the scenario presented by Justice Lamer -- what happens in
20 terms of constitutionality if the ban is not supported by
21 the victim. Can the section still be upheld in a scenario
22 where the victim did not or does not support the
23 publication ban?

24 And it's interesting in that case because
25 the first-level court, Justice Jackson's decision, the

1 finding was that the publication ban under section 46 was
2 not constitutional and what Justice Dickson found -- and
3 I'm at paragraph 5 of my submissions -- is that in a
4 situation where you have a victim subject to a publication
5 ban that he doesn't support, that's a violation of section
6 2(b) of the Charter. And what Justice Jackson said is that
7 based on the evidence before him, a publication ban that
8 was imposed on the identity of a victim, where that victim
9 does not seek a ban, is unconstitutional.

10 And if you go to paragraph 64 of the
11 decision, what he says is that:

12 "Where the complainant does not wish
13 the protection of an identity ban, and
14 bearing in mind the therapeutic or
15 personal reasons for this position, the
16 complainant's wishes should not be
17 thwarted by a simple request by the
18 Crown counsel for an underage witness
19 for such a ban. In other words, to
20 allow this can no longer be said to
21 meet the criteria set out in the second
22 prong of *Oakes* nor on the wording of
23 *Sharpe*. The opposite may in fact be
24 true. Such lack of control by the
25 complainant is potentially harmful and

1 through a publication ban that they don't support could
2 potentially be, I would submit, a further victimization of
3 these victims.

4 So when we look at publication bans and the
5 importance of allowing a waiver, I would submit that that
6 waiver is important because it's not only an issue of
7 freedom of press; it's really an issue of the victim's
8 rights. The victim has a right to talk about their abuse,
9 be it for therapeutic reasons or because they want to share
10 with other abuse victims so they can help them in their
11 recovery. That right shouldn't be subject to having to
12 come back to the Inquiry to make an application because
13 it's their right. It's their story.

14 **THE COMMISSIONER:** So we have some people
15 that are not named -- that are named in affidavits as
16 potential alleged victims.

17 **MR. WONG:** M'hm.

18 **THE COMMISSIONER:** Don't know where they
19 are, what they're doing, and so do you agree that -- or do
20 I have -- is it a proper analysis that I'm supposed to
21 balance the thing between -- what happens if their name
22 gets out and they are fragile and the last thing they ever
23 wanted was their name to come out and they do something
24 very drastic? And then I guess we'd have your argument to
25 say, "Well, yes, but we can't brim that right of self-

1 expression." Do I not have a duty to protect people?

2 **MR. WONG:** Well, in court proceedings and, I
3 submit, in these proceedings, a presumption of openness
4 applies.

5 **THE COMMISSIONER:** Yes.

6 **MR. WONG:** If you're satisfied that these
7 people are victims or alleged victims of sexual abuse, then
8 it's certainly within your discretion to protect them by a
9 publication ban, but that's always got to be the first
10 question. Is this person -- am I satisfied, sitting up
11 there, that the person who a party wants to protect by
12 publication ban is, in fact, a victim or alleged victim?

13 If you're satisfied, then it's certainly
14 within your discretion to impose a publication ban.

15 What I'm talking about is what are the
16 consequences? Say you impose a publication ban on John
17 Smith. John Smith wasn't here at any time, but then John
18 Smith finds out or decides, "I want to speak to the media."
19 And then the media says, "Well, we'd love to tell your
20 story, but we're sorry; you are protected by a publication
21 ban of the Cornwall Inquiry. We can't talk to you or we
22 can't report on you because there is a pub ban in place.
23 Go back before the Commissioner and ask for a lifting of
24 the publication ban or hire a lawyer to do that if you're
25 not comfortable appearing in a public forum and making

1 those submissions."

2 **THE COMMISSIONER:** They can go and see you?

3 **MR. WONG:** Excuse me?

4 **THE COMMISSIONER:** He can go and see you?

5 **MR. WONG:** That's a possibility, if they
6 choose to speak to the CBC. They may want to hold their
7 own press conference. They may want to circulate -- start
8 a blog and say, "My victimization". Potentially, they
9 could, if you accepted a blog as a publication, be
10 prevented from doing so unless they come back to you or
11 hire a lawyer to come back to you and make an application.

12 And that really takes me to -- I told you
13 the second part of my submission is that there is a regime
14 in place which allows for waiver of protection from
15 publication bans without coming back to a court, and those
16 submissions start at paragraph 6.

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

18 **MR. WONG:** You'll know, Mr. Commissioner,
19 that under the *Youth Criminal Justice Act*, Parliament has
20 created a mandatory publication ban that can be waived by
21 the beneficiary of the ban without returning to the court,
22 and that ban is set out in section 111 of the *Youth*
23 *Criminal Justice Act*, and I have reproduced the section at
24 paragraph 7 of my submissions. You will see that that
25 section creates a mandatory ban on the identity of victims

1 or witnesses in proceedings under the *Youth Criminal*
2 *Justice Act*. It's a wide and absolute mandatory ban:

3 "No person shall publish the name of a
4 child or young person or any other
5 information related to a child or young
6 person if it would..."

7 We'll get back to that later.

8 "...if it would identify the child or
9 young person as having been a victim or
10 as having appeared as a witness in
11 connection with an offence committed or
12 alleged to have been committed by a
13 young person."

14 So there you have an example of a mandatory
15 ban on the identity of a victim or witness who is a young
16 person who appears at a *Youth Criminal Justice Act*
17 proceeding.

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

19 **MR. WONG:** However, if you go on to
20 paragraph 8 of my submissions, I set out the exception to
21 that mandatory ban. It provides in section 111(2) that the
22 mandatory ban does not apply where the child or young
23 person who has attained the age of 18 publishes or causes a
24 publication of identifying information.

25 The text is set out in paragraph 8, but if

1 this young person who was a victim or young person decides,
2 after turning 18, that, "Now I want to start a blog and I
3 want to tell everyone that I was a victim as a young person
4 or that I was a witness at a proceeding under the *Youth*
5 *Criminal Justice Act*," they can do so.

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

7 **MR. WONG:** All they have to do is prove that
8 they have turned 18 and that they published or caused it to
9 be published.

10 And by cause to be published, I would submit
11 that that means, for example, going to the Toronto Star or
12 the Canadian Broadcasting Corporation and saying, "I want
13 you to tell my story and I want to be on camera."

14 Or alternatively, if the young person has
15 not reached 18, they can get the consent of the parents.
16 So in a case where the media has the consent of the mom or
17 dad or the parents, they can also publish.

18 **THE COMMISSIONER:** So what about if -- what
19 about the argument that -- let's assume there's a rationale
20 ---

21 **MR. WONG:** M'hm.

22 **THE COMMISSIONER:** --- that one would say,
23 look, if this Inquiry has commissioned me, if I impose a
24 ban on publication, I would want the person to come back to
25 me to lift it for some good reason.

1 For example, given the fact that this is a
2 difficult hearing; we're dealing with sexual assault; we're
3 dealing with allegations of conspiracy and all kinds of
4 things and that there's a cloak of darkness that's hanging
5 over the City of Cornwall, and in order to keep things very
6 clean and straight, so for an articulable purpose, I say
7 that until such time as Phase 1 is finished, which is the
8 evidentiary part of it, and so that there can be no
9 misunderstanding, people must come back and ask me to lift
10 the ban, but after Phase 1 is finished, or maybe Phase 2,
11 but at some definite point that then there won't be any
12 need to come back.

13 Would that be a compromise?

14 **MR. WONG:** I would submit the difficulty
15 there is -- I would submit that any ban to protect the
16 identity of victims must be consistent with the underlying
17 purpose of the ban, which I outlined earlier.

18 **THE COMMISSIONER:** Yes.

19 **MR. WONG:** And I submit that if this is a
20 right of the victim and the goal is to protect
21 underreporting, the system -- and I say this with respect -
22 - which you suggest does not necessarily further the goal
23 of underreporting and, in fact, may frustrate the victim
24 because this is not a case where all these victims have
25 come before you as part of an application and said, "Hello,

1 Mr. Commissioner, my name is John Smith. I appear in
2 Exhibit 5. I would like you to impose a publication ban on
3 my name."

4 And in that case I guess there is some logic
5 to say, "Well, you came the first time. You should now
6 come back later if you want the ban to be lifted or
7 varied."

8 This is a case, as I understand it, where a
9 number of the victims have been protected under a
10 publication ban without explicitly saying, "I want a
11 publication ban."

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

13 **MR. WONG:** And in such a case, I would
14 submit that since they weren't part of the original order,
15 it would be an unfairness on them to require them to come
16 back. Again, this is a right -- this is a protection
17 afforded to them by this Commission and by the Criminal
18 Code. If they choose to not avail themselves of that
19 protection, it should be their option. It should be a
20 right that they can waive on their own as is available
21 under the *Youth Criminal Justice Act*.

22 **THE COMMISSIONER:** Okay.

23 **MR. WONG:** And the contrast under the *Youth*
24 *Criminal Justice Act* which I draw to your attention is I
25 submit it's clear that if this young person who attains the

1 age of 18 or if his parents consent to disclosure, there's
2 no need to go back to the court. And that point is
3 illustrated, I submit, if you look at section 111(3) of the
4 *Youth Criminal Justice Act*, and that's a further exception
5 to the mandatory ban.

6 And so if you don't meet the criteria in
7 111(2), you can make an application to the Youth Court of
8 Justice.

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

10 **MR. WONG:** So there are separate and
11 distinct exceptions. Under 111(2), there is no need to
12 make an application to the Youth Court of Justice. You
13 just have to attain 18 and you have to cause it to be
14 published or you have to publish it yourself or your
15 parents consent to the publication.

16 **THE COMMISSIONER:** If you're dead.

17 **MR. WONG:** Yes, or if you're dead. If
18 you're dead, then the parents can consent.

19 But that's a regime that Parliament created,
20 I submit, to protect perhaps one of the more vulnerable
21 members of society, young persons who are witnesses or
22 victims. They are vulnerable members of society.
23 Parliament imposed a mandatory ban on their identity and
24 yet they trust these victims or witnesses enough to allow
25 them to waive the protection under 111(1) by, after they

1 turn 18, publishing on their blog, "My Life as a Victim",
2 or if they are under 18, trusting the parents to take that
3 initiative by consenting. And, I would submit that that's
4 a regime, which provides a good example of balancing, on
5 the one hand, the protection of privacy while also
6 respecting freedom of expression and the freedom of press,
7 not only the media but also the victims. It's very much
8 the victims and their story, which a publication ban may
9 potentially prevent from being told.

10 The final aspect of the *Youth Criminal*
11 *Justice Act* that I want to bring to your attention, Mr.
12 Commissioner, is section 112. That section I have
13 reproduced at paragraph 10 of my submissions, and it
14 relates to what happens after a young person has used an
15 exception under 111(2). So what if a young person has
16 published on a blog, "Everyone, my name is John Smith. I
17 was a victim or I testified at this hearing." What happens
18 after that has been done? Can the pub ban be reconstituted
19 or brought back into place after that has been done? The
20 answer, according to section 112, is clearly "No".

21 You will see in 112 that information that is
22 published under subsection, among others, 111(2), no longer
23 -- in that case, the pub ban under 111 no longer applies in
24 respect of the information.

25 So if you have a 111 ban and then someone

1 uses the exception under 111(2), the pub ban will no longer
2 apply at a later date. Once published, it's public and you
3 can't later revert back to the mandatory ban. You can't
4 sort of change your mind and say, "Oh, yes, I published it
5 on a blog. I told everyone my story. I identified myself.
6 Now I've changed my mind". I submit that this section is a
7 recognition by Parliament of the delicate balance that has
8 to be drawn between privacy and protection of freedom of
9 expression and freedom of the press.

10 **THE COMMISSIONER:** You know, we have got
11 someone who went to the press, told the whole story three
12 years ago ---

13 **MR. WONG:** M'hm.

14 **THE COMMISSIONER:** --- and since that time
15 has been institutionalized, is fragile, and comes to the
16 court to this Inquiry and says, "Look it, I'm afraid for my
17 well-being. In fact, I've got a letter here from a
18 psychiatrist saying that publicity might just be too much
19 for me and I'd like to be able to testify in-camera".

20 **MR. WONG:** And I think I have made this
21 point. The test really is under *Dagenais/Mentuck*, real and
22 substantial risk to fair trial, a real -- a serious risk to
23 the proper administration of justice. If that evidence is
24 before you ---

25 **THE COMMISSIONER:** Right.

1 **MR. WONG:** --- and if it satisfies you that
2 you have a psychiatrist's report; if the psychiatrist has
3 cross-examined and you're satisfied on the evidence in-
4 chief and on the cross-examination that publication would,
5 in fact, result in a serious risk, then perhaps that's the
6 case, but the onus is always going to be on the party
7 seeking the ban. I submit you can't assume, we ought not
8 to assume that merely because someone comes to you and
9 says, "Well, yes, I spoke to the CBC three years ago. I've
10 changed my mind. I'd be really embarrassed."

11 Embarrassment, of course, is not enough to
12 impose publication ban. Economic harm is not a basis for
13 imposing publication ban.

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

15 **MR. WONG:** Reputation is not a basis for
16 imposing publication ban. You have all my cases from
17 before ---

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

19 **MR. WONG:** --- but I think the reality that
20 section 112 addresses is that, you know, once something is
21 public, it's beyond the jurisdiction of the court or of
22 this body to change it. You can't unring the bell. You
23 can't wipe out someone's memory. Someone who has watched
24 or listened to CBC national radio news and has been told
25 that John Smith was a victim of abuse in Cornwall will

1 remember that. The friends will say, "Oh my God, he was a
2 victim." It's not something you forget and there's nothing
3 that this court or this Commission or the court could ever
4 do to remove that memory from the people who heard the
5 initial news story. Nor can this Inquiry ask that
6 newspaper archives be changed ---

7 **THE COMMISSIONER:** --- What's that? The
8 what?

9 **MR. WONG:** Archives?

10 **THE COMMISSIONER:** Right.

11 **MR. WONG:** Quite often, most newspapers have
12 -- you go a library and you can look at the microfilm,
13 microfiche or today by databases, computer databases. If
14 they wanted to type in "Cornwall Public Inquiry" and if
15 this person has gone public in the past, they did a
16 newspaper interview, it will appear ---

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

18 **MR. WONG:** --- and there is nothing that
19 this Commission can do to change that. You can't change
20 public record.

21 **THE COMMISSIONER:** Absolutely not.

22 **MR. WONG:** You can't change court records,
23 you can't alter books that may have been written on this.

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

25 **MR. WONG:** That is why, I submit, that when

1 information is public, courts are loath to impose a ban on
2 public information because it's not an efficacious ban.

3 **THE COMMISSIONER:** Absolutely.

4 **MR. WONG:** So certainly that is a regime, I
5 submit, the *Youth Criminal Justice Act* regime is one which,
6 I submit, could be applied to this Inquiry.

7 The discretion is wholly within your
8 discretion as to the nature of the bans to be imposed and
9 the system that should be put in place to waive the bans.
10 You are not bound to apply the criminal law publication
11 bans and, in fact, you have a clear direction from -- a
12 clear statement from Justice Lamer saying that, you know,
13 if a ban were mandatory, where the complainant didn't
14 support it, you know, it may not have been upheld under
15 section 1.

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

17 **MR. WONG:** You have the Saskatchewan
18 Provincial Court decision where it was found to be
19 unconstitutional and now to be fair, that decision was
20 actually set aside on appeal ---

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

22 **MR. WONG:** --- but on the basis of the
23 collateral attack rule; on the basis that you can't breach
24 the publication ban and then argue that the section is
25 unconstitutional. But you certainly have a finding of a

1 court that, you know, if I examine the facts, it's just not
2 constitutional to impose a ban over the wishes of a
3 complainant. What Justice Jackson did was he read in an
4 exception whereby it could be waived by the complainant.

5 The final aspect of these submissions I want
6 to deal with is just the relevance of names of the victims.
7 As I said at the outset, some submissions have been made to
8 the effect that while this is an Inquiry looking into the
9 inquiring and reporting of the institutional response of
10 the justice system and other public institutions, including
11 the interaction of that response with other public and
12 community sectors.

13 I have heard this submission more than once
14 that, well, on this Inquiry and having regard to the
15 objectives of this Inquiry, the names are not that relevant
16 and, therefore, there should be less reluctance, for
17 example, to ban names so long as the other information is
18 out there.

19 I guess the first point I would make is that
20 relevance has never been the test for openness. There is a
21 presumption of openness of the full hearing, the full court
22 proceedings, and the only rationale or justification of
23 limiting openness is *Dagenais/Mentuck* or if there is a
24 statutory ban in place.

25 **THE COMMISSIONER:** So would not relevance --

1 not relevance per se but in weighing -- in the exercise of
2 discretion ---

3 **MR. WONG:** Yes.

4 **THE COMMISSIONER:** --- all right, would
5 there not be, the issue of relevance play -- fit into that?

6 **MR. WONG:** Yes, it would go into the
7 analysis, but only after you find the real essential risk.
8 It's an element, I guess, of the salutary effects of the
9 publication ban versus the deleterious effects on -- and
10 fair trial interest.

11 So, yes, there is some relevance, but
12 certainly, I submit, not the determinative factor.

13 **THE COMMISSIONER:** No, I understand what
14 you're saying, yes.

15 **MR. WONG:** But I would say in response to,
16 "Well, it's not relevant" that the names of victims is very
17 relevant to this Inquiry.

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

19 **MR. WONG:** The determination of how to
20 improve the institutional response to the justice system
21 and other public institutions cannot be done in a vacuum.

22 In order to determine whether the response
23 of public institutions to complaints of victims or alleged
24 victims was adequate or inadequate, it is necessary, I
25 submit, to know who those victims or alleged victims are,

1 including the families they came from; the neighborhoods or
2 communities in which they lived; their socio-economic
3 background; their religious affiliation; the public
4 institutions and public bodies that served them or were
5 responsible for serving them; their relationship with their
6 abuser; their relationship with each other. Such
7 information can only be gleaned or determined if the names
8 of the victims are known. So to the extent that the
9 victims were all members of the same family, it may
10 disclose the fact that, well, in single family homes with
11 single parents, the children are more susceptible to abuse.
12 Look at this case. This is the family of Mr. Jones or Mrs.
13 Jones, and her three children were all abused. Look at Mr.
14 Smith and Mr. Jones and Mr. Marks, they are all in this one
15 neighborhood; or they all were members of this one church;
16 or they all were Irish Catholic.

17 To make recommendations as to public
18 institutions and their response and the adequacy of their
19 response, I would submit, you have to know who the victims
20 are and, in that way, the recommendations can be drafted as
21 to identify where the gaps exist and where resources, both
22 monetary and time, ought to be focused. Is there a
23 particular community that is vulnerable? Are there
24 particular family structures where help is needed, or more
25 attention is needed? If we are going -- if policies are

1 going to be developed that target the areas of need, it's
2 vital to know who the victims are and where they come from
3 and who they are.

4 I guess the argument could be, "Well, the
5 Commission will know or the parties will know". I would
6 submit that is not an adequate response.

7 This is a public inquiry. The public ought
8 to be able to fully scrutinize and examine the decision
9 reached by this Commission and to fully scrutinize and
10 examine whether the parties to this Commission have
11 fulfilled or met the objective of this Inquiry. In order
12 to do that, to fully scrutinize, debate and discuss whether
13 the objectives have been made, they have to do so on an
14 informed basis to know, "These recommendations are fine
15 because see here they recommend that, for example, more
16 resources should be directed at single family, single
17 parent homes because these victims all came from this
18 background". Without knowing it, you could say, "Well,
19 trust us. We've look at this stuff. We can tell you that
20 all the victims were Irish Catholic who lived in this
21 particular community; or all the victims happened to go on
22 camping trips with these particular people."

23 It's not enough, I submit, a public inquiry
24 to say, "Just trust us." If that is going to figure into
25 your recommendations, which, I submit, it ought to, the

1 public ought to be able to scrutinize or look at the
2 information to the extent possible; that is the basis of
3 decision.

4 **THE COMMISSIONER:** All right.

5 **MR. WONG:** I have other submissions as to
6 the importance of openness that, you know, allowing the
7 publication of names of victims may result in more people
8 coming forward.

9 John Smith may be sitting at his home and if
10 he reads that Mike Jones, his friend from way back, has
11 come forward or has been identified, or is another victim,
12 he may not feel as alone. He may feel that for 20 years,
13 "I was the only victim", but to read that, you know, in one
14 of the exhibits, Mike Jones is also identified as a victim,
15 it may embolden him to come forward and may provide this
16 Commission with more evidence.

17 I will leave you with the other benefits of
18 allowing publication of the names of victims. They are
19 paragraphs 19, 20 and 21 ---

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

21 **MR. WONG:** --- of my written submissions, but
22 my concluding remarks are on page 8. What I set out there
23 is a proposed publication ban and, again, in proposing this
24 ban I don't want to be taken as saying that there ought to
25 be a publication ban.

1 It's always the case, Mr. Commissioner,
2 where you have to be satisfied the ban is justified under
3 *Dagenais/Mentuck* and, first and foremost, you have to be
4 satisfied that the person is a victim or alleged victim.

5 But assuming that you decide that a
6 publication ban is justified for the name of a victim, what
7 the proposal I have set out addresses is how do you allow
8 for exceptions to the ban?

9 The first element that -- actually, before I
10 deal with exceptions, the scope of the ban. So the name
11 will be covered; the name of the victim or alleged victim
12 will be covered, but how about the other information? This
13 is the information that Mr. Rose dealt with on the last
14 date; the information that would allegedly identify the
15 victim, and I deal with that in paragraph 22(b) of my
16 submissions ---

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

18 **MR. WONG:** --- and I submit that the
19 information -- the identifying information ought to be
20 limited to that which would enable a reasonable member of
21 the public unacquainted with the victim or alleged victim
22 to identify him or her as a victim of sexual abuse. So
23 it's an objective test. Whenever people say, "Well, the
24 ban also covers information that would identify the
25 victim", the first question has got to be, "Identify to

1 who?" Aunt Mary may see a fact such as, "Went to summer
2 camp in Thunder Bay in '55" and take that back to one and
3 say, "Oh, that's my nephew, John"; but the average member
4 of the public will see, "Went to summer camp in Thunder Bay
5 in '55" and say, "That provides me no clue at all as to who
6 the victim is". So, I would submit that ---

7 **THE COMMISSIONER:** So are you -- have you
8 seen what Mr. Rose was talking about?

9 **MR. WONG:** I have looked at the in-camera
10 transcript and without going into the details, I would
11 submit that some of the information -- and I don't want to
12 go into details, but in terms of you applying your
13 discretion in determining whether it should be blacked out
14 as identifying, I would submit that you have to apply an
15 objective test.

16 **THE COMMISSIONER:** Absolutely.

17 **MR. WONG:** Put yourself in the position of a
18 member of the public who doesn't know the victim and say,
19 well, does this fact identify the victim? Does this fact
20 identify the victim?

21 **THE COMMISSIONER:** All right.

22 What about if in the community of Cornwall,
23 if someone in the community of Cornwall could identify him?
24 Is that the test? But what is the public? You're saying
25 the public who, unacquainted with the victim or alleged

1 victim -- enable a reasonable member of the public,
2 unacquainted with the victim or alleged victim, to identify
3 him.

4 **MR. WONG:** I would submit you have to look
5 beyond Cornwall. It's a publication ban. It's a ban that
6 applies to the public at large and that's why when you, for
7 example, look at a publication ban it doesn't stop any
8 member of the public in Cornwall and, practically speaking,
9 if you're going to come and sit in on the Inquiry, it's
10 more likely than not that you're a resident of the
11 community. If you come in and you sit in and you watch the
12 Inquiry, it's open for you to discuss the names of victims
13 who come out. If you're a relative of a victim and you
14 know that cousin Joe was abused as a young boy, your
15 publication ban doesn't prevent relatives or friends from
16 telling everyone ---

17 **THE COMMISSIONER:** Absolutely not.

18 **MR. WONG:** --- in a conversation or family
19 dinner ---

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

21 **MR. WONG:** --- that, you know, Joe was
22 abused.

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

24 **MR. WONG:** So a publication ban, I think, I
25 submit, has to be looked at from the perspective of

1 publication to the public at large, and from that
2 perspective, you say someone who is unacquainted with the
3 victim, whether Cornwall changes that analysis, I would
4 submit it ought not to because the publication ban you
5 impose is not limited to Cornwall.

6 **THE COMMISSIONER:** The funny part though is
7 the people who really care are here in Cornwall.

8 **MR. WONG:** Right.

9 **THE COMMISSIONER:** So what you're saying is
10 apply this test and if the fact that the test is going to
11 be at this level, which means that a great number of people
12 in Cornwall will be able to identify this person, that's a
13 higher test. You know, I find that a little disconcerting.

14 **MR. WONG:** Well, it's only disconcerting if,
15 I submit -- it's not disconcerting, I submit, if you look
16 at *Dagenais* and *Mentuck*.

17 **THE COMMISSIONER:** Right.

18 **MR. WONG:** And what the Supreme Court of
19 Canada makes clear is that you only impose publication bans
20 to prevent real and substantial risks.

21 **THE COMMISSIONER:** Yes.

22 **MR. WONG:** Serious risks. Remote and
23 speculative dangers are not enough.

24 **THE COMMISSIONER:** Yes, but you're there.
25 You have to be through that analysis to get at the point

1 where you're going to be determining what you're going to
2 black out.

3 MR. WONG: Right.

4 THE COMMISSIONER: So work through that.

5 MR. WONG: Right.

6 THE COMMISSIONER: So there is real and
7 substantial risk. There's the whole thing.

8 MR. WONG: Well, not necessarily. I would
9 submit that when you're doing the blacking out, you have to
10 apply again this issue of what is the real substantial
11 risk.

12 THE COMMISSIONER: Right.

13 MR. WONG: So if there's a reference to he
14 went to school at Elm Public School.

15 THE COMMISSIONER: Right.

16 MR. WONG: Quite frankly, if you look at
17 that, I mean, what's the size of the school, is there a
18 year given and if you decide, well, saying the name of the
19 school and the year may be too much, then you can redact
20 maybe the year.

21 THE COMMISSIONER: M'hm.

22 MR. WONG: But I think it's important to be
23 rigorous in editing because the goal is, I submit, to give
24 the public as much as possible ---

25 THE COMMISSIONER: Absolutely.

1 **MR. WONG:** --- without identifying the
2 victim or alleged victim. And I would submit that if you
3 apply a rigorous threshold, which *Dagenais* and *Mentuck*
4 mandates, that unless there's a real substantial risk of
5 identification, there ought to be no editing.

6 **THE COMMISSIONER:** Okay. And would you
7 agree with me that you have to sit back and not only look
8 at he went to school in that year, but then once you've
9 decided not to black that out, that the second step is to
10 read the whole text as a whole to see if maybe the school
11 in one sentence links into something else and then comes up
12 to a subtotal of identifiables, and at that point you have
13 to decide whether you take some others out, always with the
14 primary goal of editing the least possible?

15 **MR. WONG:** Yes, I would submit that you have
16 to be very careful and sort of -- you take into account
17 that this is a news story. When people read a newspaper or
18 they watch a newscast, they don't spend hours pouring over
19 every word and connecting the dots. It goes really back to
20 the remote and speculative dangers, and I would submit that
21 if you were to say that potentially the whole document, if
22 the reader were to connect fact "A" with fact "B" or fact
23 "C" or fact "D", then they could come to the name of the
24 victim, I would submit that that might be -- there would be
25 a situation of a remote and speculative danger because you

1 have to assume that, first of all, people would be able to
2 know that there's a connection between "A", "B", "C", "D"
3 and "E".

4 **THE COMMISSIONER:** So you're saying people
5 don't read your newspapers seriously?

6 **MR. WONG:** No, I'm saying ---

7 **THE COMMISSIONER:** They don't read them all?

8 (LAUGHTER/RIRES)

9 **MR. WONG:** I'm saying that you have to make
10 a determination of whether the risk is real and
11 substantial. I guess anything is possible ---

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

13 **MR. WONG:** --- but it's not enough that it's
14 possible. If I connect "A", "B", "C", "D" and "E", it's a
15 possibility that it will happen, but is there a real and
16 substantial risk that that would happen? Is there a
17 serious risk that that would happen? And that's the only
18 guidance I can draw you on that point, which is
19 possibilities are endless, you know. Anything is possible,
20 but it's not enough that it's possible. There has to a
21 serious risk, a real and substantial risk. And that's why
22 when you say, well, if you look at the whole document they
23 might be able to possibly draw connections, I submit that's
24 something that we should be very careful in sort of jumping
25 into and say, well, we better black out the name of the

1 school because fact "A", "B", "C", "D" and "E", if you put
2 it together with the school, you might be able to --
3 because at that point it does become, I submit, very
4 speculative.

5 **THE COMMISSIONER:** That's very good. Okay.
6 So then have you -- so Mr. Rose came up and then in camera
7 said "Strike this, this, this and that."

8 **MR. WONG:** Right.

9 **THE COMMISSIONER:** You weren't here to argue
10 ---

11 **MR. WONG:** Yes.

12 **THE COMMISSIONER:** --- but are you going to
13 make submissions sometimes about what I should take out and
14 what I should keep in?

15 **MR. WONG:** I haven't had a chance to go
16 through all the exhibits or to make specific submissions on
17 those edits. I would just leave you with my general
18 principles on editing, and unfortunately I can't be of more
19 help to you in respect to the specific edits, but I would
20 again urge this Commission to follow the general principle
21 that there has to be a real and substantial risk of
22 identification ---

23 **THE COMMISSIONER:** Absolutely.

24 **MR. WONG:** --- that we submit is impossible
25 and that remote and speculative dangers ought not to be the

1 test for editing. There has to be a real and substantial
2 risk. And I unfortunately can't be of further assistance
3 to you on that point.

4 **THE COMMISSIONER:** All right. Thank you.

5 **MR. WONG:** So let me conclude then with the
6 exceptions to the ban, and they're set out at section --
7 paragraph 22(c). The first exception is the large category
8 where the identity of the victim or alleged victim as a
9 victim of sexual abuse has been previously disclosed to the
10 public, including where the victim or alleged victim has
11 participated in public disclosure of his or her identity.
12 And that -- and you'll see the three situations that I've
13 set out, the first one being that the victim has
14 participated in disclosure by providing consent to
15 disclosure to the media outlet that will be publishing or
16 disclosing the name; advising the Commissioner of his or
17 her desire to have his or her name made public; or,
18 disclosing or causing to be disclosed his or her identity
19 as a victim of sexual abuse.

20 And I would submit that these exceptions
21 recognize that the right is that of the victim, makes it
22 possible for the victim to waive the protection granted by
23 this Commission without having to come back or hire a
24 lawyer to come back to set aside the ban, and also
25 recognizes the reality that when information is public,

1 this Commission has limited power to un-ring the bell or to
2 take back information that's in the public domain.

3 **THE COMMISSIONER:** And you're saying this is
4 an absolute rule?

5 **MR. WONG:** I'm not sure what you mean by
6 absolute rule. It's our proposal for how to deal with
7 situations where a publication ban has been imposed on the
8 name of a victim who appears in an exhibit and, in part,
9 I'm trying in this proposal to mirror the system in place
10 under the *Youth Criminal Justice Act*, section 111(2), as I
11 took you to earlier. That was a situation where it could
12 be waived without coming back to a court.

13 Well, I have already dealt with the issue of
14 notice and also the issue of what does information that
15 would identify the victim means.

16 So subject to any further question that you
17 may have for me, those are my submissions.

18 **THE COMMISSIONER:** Thank you.

19 **MR. WONG:** Thank you.

20 **THE COMMISSIONER:** All right.

21 Does anyone wish to make any comments at
22 this time? Mr. Manson.

23 **MR. MANSON:** Since I wasn't here last week,
24 if we're going to have substantive comments now, I would
25 prefer to wait until the other counsel who did participate

1 make their views known and maybe I could save a lot of time
2 by agreeing with them.

3 **THE COMMISSIONER:** All right.

4 Mr. Lee.

5 **MR. LEE:** As you might imagine from my
6 comments to date on these issues, I disagree with a large
7 percentage of what Mr. Wong had to say. I didn't have the
8 opportunity, as I suggested earlier, to review his
9 submissions beforehand. This is the first time I'm hearing
10 them. If you insist upon submissions now, I can make some.
11 My preference would be to be given some time to respond
12 with a little more preparedness.

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

14 Mr. Chisholm, any comments?

15 **MR. CHISHOLM:** I would echo those of Mr.
16 Manson and Mr. Lee, Mr. Commissioner.

17 **THE COMMISSIONER:** Thank you.

18 Maître Rouleau.

19 **MR. ROULEAU:** We would like time to consult
20 Mr. Rose for his comments.

21 **THE COMMISSIONER:** Yes.

22 **MR. ROULEAU:** I have a few comments I would
23 be prepared to make if you insist, but since ---

24 **THE COMMISSIONER:** I'm not an insistent guy
25 today, so if you wish to put it off, that's fine.

1 Mr. Kloeze.

2 **MR. KLOEZE:** Mr. Commissioner, the only
3 comment I'm prepared to make right now, I can say that I'm
4 somewhat relieved by some of the things that Mr. Wong had
5 to say. I understood from some of the correspondence last
6 night that Mr. Wong was concerned with a publication ban
7 that had -- as regards Mr. Brisson.

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

9 **MR. KLOEZE:** And that is a court-ordered
10 publication ban and I had understood from the
11 correspondence last night that he intended his submissions
12 to have some bearing on that publication ban, but I heard
13 Mr. Wong say that if there is a publication ban that's been
14 ordered in the course of a criminal proceeding by another
15 court, then he acknowledges there would need to be an
16 application made to a court of competent jurisdiction to
17 vary or rescind that ban. And as the Commissioner is
18 probably aware, the Attorney General has been making such
19 applications to the Superior Court to waive or rescind the
20 bans in respect of witnesses that are testifying here that
21 have indicated openly their consent and those applications
22 have been brought in the name of the Attorney General to
23 rescind those bans.

24 As to Mr. Wong's comments about publication
25 bans that would be ordered by this Commission, by yourself,

1 I think I echo the comments of my friends that I would need
2 some time to reflect on those submissions and ---

3 **THE COMMISSIONER:** All right.

4 I guess I should be looking at when should
5 we -- how much time would we need to do this?

6 **MR. KLOEZE:** I think I would be in a
7 position to make any submissions by Thursday at the end of
8 this week.

9 **THE COMMISSIONER:** Okay. All right.

10 Thank you.

11 **MR. KLOEZE:** Thank you, sir.

12 **THE COMMISSIONER:** Ms. Makepeace.

13 **MS. MAKEPEACE:** Nothing, thank you.

14 **THE COMMISSIONER:** Thank you.

15 Mr. Callaghan.

16 **MR. CALLAGHAN:** I would like to wait as
17 well, but I would like to give some thought or for all to
18 give thought to what I see is a sort of a perplexing
19 parallelism in this issue to the Inquiry issue which is the
20 right of the individual in respect of complainants and the
21 right of the collective, that is, people who might want to
22 be protected, because it does seem to be a parallelism.

23 And I also would ask people to consider
24 about the *Inquiries Act* which I would have thought would
25 have been your jurisdiction and that we should be driving

1 back towards that. I mean, people have to and I think the
2 public has to understand that while you are a judge, you
3 don't sit as a judge; you sit as a commissioner and that's
4 a very different position and it's imbued with an Order in
5 Council and it's imbued with the Act and I don't hear any
6 discussion about that, and I'd like time to reflect on that
7 because I think that that may be where we have to go,
8 because you're in a very interesting balancing position.
9 People should also understand, as the Supreme Court of
10 Canada says, a mandatory ban on publication is not akin to
11 someone not having an open trial. It only restricts the
12 publication of facts and that's all this is about and again
13 it comes back to that balancing. I would ask people to
14 think about that as I will, if you'll permit.

15 **THE COMMISSIONER:** All right. Thank you.
16 Mr. Kozloff?

17 **MR. KOZLOFF:** Thank you, sir. I am very
18 sympathetic to Mr. Manson's position and Mr. Lee's
19 position. I should also tell you without seeking to
20 embarrass Mr. Manson that my views are always informed by
21 the Professors. I would like an opportunity to consider
22 our decision. Thank you.

23 **THE COMMISSIONER:** Thank you.
24 Mr. Carroll?

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

1 **THE COMMISSIONER:** Thank you.

2 Mr. Dumais.

3 **MR. DUMAIS:** Just as a general comment,
4 Commissioner, I have made the argument last week. I don't
5 think there is anything else to add. I think if I'm to
6 comment on what's new before the Commission today is that
7 the proposal by Mr. Wong is that the publication ban that
8 is imposed by this Commission mimic the one that's
9 elaborated in the *Youth Court Justice Act*. I think the
10 distinction in that ban is that obviously it's a mandatory
11 ban. I think that's part of the distinction here. And
12 certainly it is not our intent to attempt to silence
13 victims here and as the Solicitor for the Ministry of the
14 Attorney General has indicated, we had taken the position
15 to lift those bans even if they've existed historically
16 when the victims have consented to do so.

17 I think the other risk with the proposal
18 that the Solicitor for CBC has put forth today is that he
19 is indicating if victims, at any point in time, have
20 consented or have gone public with their story, therefore,
21 we should never consider that a new publication ban should
22 be granted or ordered by the Commission. The difficulty is
23 that we are dealing with sexual abuse that is historical in
24 nature and more often than not or in many scenarios, many
25 cases, people have gone public 10 years, 15 years, 20

1 years, 25 years ago and I don't think we can assume,
2 because they consented way back when, that they're still
3 consenting today.

4 I think that has to go into the weighing as
5 to whether or not to grant the ban today.

6 I think what is really interesting about
7 some of the comments that Mr. Wong has made with respect to
8 submissions he wanted to make about an alleged victim or a
9 victim is that he was mistaken about that. That was the
10 incorrect name and, in theory, CBC could have gone and
11 published that information under the mistaken belief that
12 that victim had consented. There is a risk with what the
13 Solicitor for the CBC is proposing, and I just think we
14 should keep that in mind.

15 That being said, I maintain my position, the
16 position which I have set out last week on this issue.

17 We are right at the afternoon break,
18 Commissioner. I'm not sure what your intentions are with
19 respect to further submissions that parties may wish to
20 make.

21 I think out of fairness certainly to Mr.
22 Rose who argued this matter last week, perhaps some time
23 should be set aside for him to respond to Mr. Wong's
24 submissions, but I'm in your hands. Thank you.

25 **THE COMMISSIONER:** Mr. Wong?

1 **MR. WONG:** Mr. Commissioner, I just wanted
2 to clarify a point. I guess my submissions were made in
3 response, so that any further submissions would be
4 characterized as reply, such that they would only be
5 dealing with new issues raised in the course of my response
6 as opposed to re-litigating what has been very fully argued
7 by the parties on Thursday.

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

9 **MR. WONG:** Thank you.

10 **THE COMMISSIONER:** Why don't we take the
11 afternoon break? I will come back and we'll start the
12 first witness when we come back.

13 **MR. WONG:** We have a train to catch at 4:46.
14 We may excuse ourselves for the balance of the ---

15 **THE COMMISSIONER:** At your peril. I'm going
16 to come back and give some instruction as to when we are
17 going to hear these things and that kind of thing, but as
18 you wish.

19 **MR. WONG:** Thank you.

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

22 The hearing will resume at 3:40 p.m.

23 --- Upon recessing at 3:25 p.m./

24 L'audience est suspendue à 15h25

25 --- Upon resuming at 3:44 p.m./

1 L'audience est reprise à 3h44

2 **THE REGISTRAR:** This hearing of the Cornwall
3 Public Inquiry is now in session.

4 Please be seated. Veuillez vous asseoir.

5 **THE COMMISSIONER:** Thank you very much.

6 What I have decided on doing is trying to
7 streamline the operation somewhat in a sense of Mr. Kozloff
8 is quite correct that when we have a schedule of witnesses
9 to be called, unless there is something that is about to
10 prevent us from hearing those witnesses, we should proceed
11 with the witnesses out of respect for them and the
12 preparation that we've done.

13 This is part of the learning curve, I
14 suppose, in the sense that the media has come and exercised
15 their right to be here and to participate. As I have
16 indicated, participation is a give and take and that we
17 will, of course, give as much notice as we can to the
18 media. However, they have to be aware that our notice
19 periods for all the parties here is a quick turnaround and
20 so what is good for us is good for everyone else, I'm
21 afraid.

22 In that regard, what I would like to do is
23 certainly permit the parties to reply to the comments of
24 Mr. Wong, and what I propose to do is have that on Thursday
25 at 9:00 o'clock in the morning. Hopefully, that will not

1 interfere with the witness that is scheduled for Thursday;
2 that we should be able to deal with that promptly.

3 That having been said, Me Dumais.

4 **MR. DUMAIS:** Just a few other housecleaning
5 matters, Commissioner.

6 Firstly, I did allude to the fact that Mr.
7 Cipriano advised us of his intention to bring a motion for
8 a publication on either the name or some of the information
9 with respect to the next victim we intend to call or the
10 witness we intend to call next week.

11 There has been back and forth discussions
12 and email and correspondence between Mr. Engelmann and Mr.
13 Cipriano and we have indicated to him that we would ask him
14 to bring his motion for Tuesday of next week, which should
15 be November 14th at 2:00 p.m., and we are asking him to file
16 his Notice of Motion and supporting materials by Thursday,
17 November 9th at 5:00 p.m. Certainly, it has been indicated
18 to him that he needs to serve all parties and that we are
19 going to ask all parties that wish to respond to the Motion
20 to respond no later than 11:00 a.m. on Tuesday, November
21 14th and to have the matter argued at 2:00 p.m. that
22 afternoon.

23 **THE COMMISSIONER:** Right. And that is
24 because the 13th is a statutory holiday here in Ontario.

25 **MR. DUMAIS:** That is correct, Commissioner.

1 **THE COMMISSIONER:** All right.

2 I guess we should make a rule that whenever
3 someone wants to bring a motion for a ban of publication or
4 confidentiality issues that Mr. Wong should also be served,
5 and so Mr. Wong should give us his coordinates so that we
6 include him in the loop.

7 **MR. DUMAIS:** We will advise Mr. Cipriano
8 since he is not here.

9 **THE COMMISSIONER:** Yes.

10 **MR. DUMAIS:** There is one outstanding
11 matter, a quick matter that Mr. Manson wanted to address.
12 Perhaps if I -- it's dealing with the issue that Mr. Wardle
13 brought up last week re in camera hearings and who could be
14 present.

15 My understanding is that Mr. Wardle
16 canvassed between all parties as to who could be present in
17 the hearing room during the in camera session, and all
18 parties were agreeable to have one representative of the
19 client present so long as that person had signed the
20 undertaking. Is that correct?

21 **MR. MANSON:** That's our position, Mr.
22 Commissioner, with your permission.

23 **THE COMMISSIONER:** Is that on consent?

24 Is everybody agreeing to this rule that we
25 have one client, so to speak, per party so long as that

1 person has signed an undertaking?

2 Fine; so ordered.

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

4 **THE COMMISSIONER:** Thank you.

5 **MR. DUMAIS:** I believe then, Commissioner, I
6 am in a position to call my next witness, Mr. Albert Roy.

7 **THE COMMISSIONER:** Thank you.

8 **ALBERT ROY, Affirmed/Sous affirmation solennelle:**

9 **THE COMMISSIONER:** Thank you, Mr. Roy.

10 Let me begin by apologizing for not calling
11 you exactly at 2:00 o'clock. We had some other matters
12 that needed attending to, but I can tell you that your
13 evidence will not be interrupted any further and I will
14 attempt to ensure that all other witnesses proceed as best
15 as we can on the times that we've described.

16 Thank you.

17 I would like to begin by again thanking you
18 for coming this afternoon. It is a little late in the day,
19 but we will begin. I think it is important that we start
20 getting through this. It is likely that you will have to
21 come back tomorrow.

22 If at any time there are any questions that
23 you don't understand or there is something that is not
24 quite right, just tell me, please, and I will be happy to
25 help you out with that.

1 If there are some questions that lawyers ask
2 that you might not quite understand, ask them to be
3 repeated. Don't be shy. You have water and if there's
4 anything you need, just let me know.

5 **MR. ROY:** Thank you.

6 **THE COMMISSIONER:** Thank you.

7 **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
8 **DUMAIS:**

9 **MR. DUMAIS:** Good afternoon, Albert.

10 Just before we begin, I must advise,
11 Commissioner, that when Albert attended the plea and
12 sentencing on allegations of sexual abuse against Mr.
13 Nelson Barque, the judge, Mr. Justice Renaud, did impose a
14 publication ban. A publication ban was issued by him on
15 January 11th, 1995, and further repeated on August 18th,
16 1995. We did address the issue with Mr. Roy and he
17 indicated his willingness to testify today in a public
18 fashion. We brought a notice of application with the
19 assistance of the Ministry of the Attorney General. The
20 ban was lifted and I do have a copy of the Honourable Mr.
21 Justice Panet lifting the ban.

22 **THE COMMISSIONER:** Thank you.

23 **MR. DUMAIS:** Now, Albert, I understand that
24 you were born in Cornwall. Is that correct?

25 **MR. ROY:** Yes.

1 **MR. DUMAIS:** So then on October 20th, 1960?

2 **MR. ROY:** Yes.

3 **MR. DUMAIS:** Can you just give us a bit of
4 an idea of your background, your family life as you were
5 growing up here in Cornwall?

6 **MR. ROY:** We weren't a rich family. We
7 lived mostly on a kind of a hobby farm most of my life.

8 **MR. DUMAIS:** Did you have brothers and
9 sisters?

10 **MR. ROY:** I have three brothers -- well, one
11 brother is deceased. I have two brothers and a sister.

12 **MR. DUMAIS:** Are they still residing and
13 living in Cornwall?

14 **MR. ROY:** My sister lives in Brockville and
15 my other two brothers live here in Cornwall, yes.

16 **MR. DUMAIS:** I understand, Albert, that you
17 are married. Is that correct?

18 **MR. ROY:** Yes, I am.

19 **MR. DUMAIS:** And with who are you married
20 with?

21 **MR. ROY:** Victoria Roy.

22 **MR. DUMAIS:** And you were married to
23 Victoria or Vicky in 1995. Is that correct?

24 **MR. ROY:** Yes.

25 **MR. DUMAIS:** All right.

1 And I understand as you were growing up that
2 you attended different schools. Do you recall the school
3 that you attended or high school?

4 **MR. ROY:** Yes, CCVS, the Cornwall Collegiate
5 and Vocational School.

6 **MR. DUMAIS:** All right.

7 And did you -- do you recall what years you
8 attended at that high school?

9 **MR. ROY:** Seventy-four ('74) until, I think,
10 the end of '77 school year.

11 **MR. DUMAIS:** All right.

12 And I understand that ---

13 **MR. ROY:** Or '78. I'm not quite sure.

14 **MR. DUMAIS:** I understand as a result of
15 your attendance at the high school, you obtained a number
16 of credits. I believe you completed the equivalent of
17 Grade 10; is that correct?

18 **MR. ROY:** Yes.

19 **MR. DUMAIS:** All right.

20 Now, I understand, Albert, that sometime
21 during your attendance at the high school that you did run
22 into some trouble with the law. Is that correct?

23 **MR. ROY:** Yes, I did. I was drinking one
24 night and I stole a parked car and drove it to Kingston. I
25 then left it there and hitchhiked back to Cornwall the next

1 day.

2 MR. DUMAIS: And I understand following this
3 incident that you were charged. Is that correct?

4 MR. ROY: Yes, I was.

5 MR. DUMAIS: All right.

6 Do you recall approximately when those
7 events occurred?

8 MR. ROY: Well, I stole the car in '95, and
9 I believe I was -- in '95, sorry -- in 1975, and I believe
10 I was charged in 1976.

11 MR. DUMAIS: Does it make sense, Albert,
12 that you would have -- do you recall how old you were?

13 MR. ROY: When I took the car I was 15, but
14 when I was charged, I was 16 because my birthday came up
15 during -- before the police came and arrested me, I turned
16 16.

17 MR. DUMAIS: All right.

18 So shortly -- sometime -- does it make sense
19 that was shortly before your birthday, sometime in the
20 month of October?

21 MR. ROY: That I stole the car?

22 MR. DUMAIS: Correct.

23 MR. ROY: Yes.

24 MR. DUMAIS: All right.

25 And your birthday is on October 20th; is that

1 correct?

2 MR. ROY: Yes.

3 MR. DUMAIS: All right.

4 So then as a result of charges being laid
5 against you, do you recall what happened, what the process
6 was? Did you go to court?

7 MR. ROY: Yes, I went to court.

8 MR. DUMAIS: All right.

9 And were you represented by a lawyer?

10 MR. ROY: Yes, I was. I believe his name
11 was Stevens, his last name.

12 MR. DUMAIS: All right.

13 And was he just a duty counsel? Was he a
14 court-appointed lawyer? Do you recall?

15 MR. ROY: I went and got him. My parents at
16 the time, they didn't -- I don't know what to say. They
17 weren't there. I had to find a lawyer on my own and he was
18 a lawyer around the corner from where I lived, so I just
19 went there. I didn't know anything about him or anything.
20 It just happened that he was close.

21 MR. DUMAIS: You did go to court on a number
22 of occasions?

23 MR. ROY: Only the once that I can recall.

24 MR. DUMAIS: So as far as you recall,
25 Albert, you went to court. Did you have a trial on that

1 day? Did you enter a plea?

2 **MR. ROY:** I entered a plea of guilty, but my
3 lawyer came out in the hallway and he told me that I was
4 being charged for grand theft auto, and I told him that I
5 thought I was being charged with joyriding, and he told me
6 that he would have to go talk to the prosecutor. He left
7 and came back and he said, "The prosecutor wouldn't budge,
8 that you would be charged with grand theft auto." And he
9 advised me the best thing would be to plead out with the
10 court, or I don't know what the wording was, but just talk
11 to the judge and admit that you stole the car and accept
12 whatever charge they had for you.

13 **MR. DUMAIS:** All right.

14 So you did finally plead guilty to one
15 charge, and my understanding is that the matter was
16 adjourned for sentencing. Does that make sense? Do you
17 recall if there was a pre-sentence report that was prepared
18 for you?

19 **MR. ROY:** Ah yes, that's right. Yes, there
20 was a -- I -- they did the pre-sentence report, I think,
21 before I went to court, because when I went in to court,
22 the judge kept reading from the pre-sentence report that
23 Ken Seguin had done. I can only recall going into the
24 courtroom once.

25 **MR. DUMAIS:** All right.

1 **MR. ROY:** But I know there was a pre-
2 sentence report done before I went into that courtroom
3 because I remember the judge reading from the pre-sentence
4 report.

5 **MR. DUMAIS:** Okay. Now, do you remember
6 whether or not you had met with Ken Seguin? And I assume
7 by Ken Seguin you mean the probation officer; is that
8 correct?

9 **MR. ROY:** That's correct.

10 **MR. DUMAIS:** All right.

11 And do you remember meeting with him to give
12 him information for the preparation of this report?

13 **MR. ROY:** Yes, I did.

14 **MR. DUMAIS:** Okay. And you did meet with
15 him. Do you know if he met with any of your teachers or
16 your parents?

17 **MR. ROY:** I don't recall my parents saying
18 that they talked to him at that time and I have no
19 knowledge if he talked to my teachers or anything.

20 **MR. DUMAIS:** All right.

21 Now, do you recall receiving and revising a
22 copy of that pre-sentence report?

23 **MR. ROY:** No.

24 **MR. DUMAIS:** Do you recall, Albert, just in
25 general what it said, what the tone was?

1 **MR. ROY:** I only know what the judge -- as
2 far as I can remember, the only thing I know of that pre-
3 sentence report is what the judge read in the courtroom.

4 **MR. DUMAIS:** Okay. Now, do you recall
5 whether or not the probation officer, Mr. Ken Seguin, was
6 present in the body of the courtroom at your sentence
7 hearing?

8 **MR. ROY:** Sorry, I didn't hear you.

9 **MR. DUMAIS:** Sorry, Albert. Your sentence,
10 was Ken Seguin there?

11 **THE COMMISSIONER:** When you were sentenced,
12 do you remember if Ken Seguin was there?

13 **MR. ROY:** No, I don't remember.

14 **MR. DUMAIS:** Okay. Now, do you recall what
15 your sentence was?

16 **MR. ROY:** Eighteen (18) months probation and
17 I wasn't allowed to go in hotels or drink alcohol.

18 **MR. DUMAIS:** Okay. So ---

19 **MR. ROY:** I think there was a curfew too
20 implied, but I'm not sure on that.

21 **MR. DUMAIS:** Okay. So there were a number
22 of conditions attached to your probation order?

23 **MR. ROY:** Yes.

24 **MR. DUMAIS:** So then one of them was a non
25 drinking and non attendance in bars?

1 **MR. ROY:** Yes.

2 **MR. DUMAIS:** Okay. Now, do you recall
3 whether or not your probation order provided that you must
4 meet with a probation officer on a regular basis?

5 **MR. ROY:** I don't know what the wording was,
6 but I mean I know that my lawyer told me that I would have
7 to go in and see the probation officer. I don't remember
8 what he said of the frequency.

9 **MR. DUMAIS:** All right.
10 So you think there was a reporting
11 condition, that you had to report on a regular basis?

12 **MR. ROY:** Oh yes.

13 **MR. DUMAIS:** All right.
14 You just don't recall how often?

15 **MR. ROY:** That's right.

16 **MR. DUMAIS:** And do you recall how the first
17 arrangements to meet with your probation officer were made?

18 **MR. ROY:** Ken, see -- you asked me if I
19 remember him being in the courtroom whenever I was
20 sentenced, but I did talk to him after everything was done
21 out in the hallway, and he told me I would have to go, I
22 think, the following week.

23 **MR. DUMAIS:** All right.

24 So arrangements had been made then to meet
25 with him; is that right?

1 **MR. ROY:** Yes.

2 **MR. DUMAIS:** And as a matter of fact, you
3 did attend at that date and you did meet with Ken Seguin,
4 who was to be your probation officer; is that correct?

5 **MR. ROY:** Yes.

6 **MR. DUMAIS:** And do you recall how often you
7 would meet with him?

8 **MR. ROY:** In the beginning it was like, I
9 think, every second week.

10 **MR. DUMAIS:** And do you think that that
11 changed at any point in time?

12 **MR. ROY:** Well, it changed like -- I was
13 moved over to Nelson Barque because Ken was going on
14 vacation, or as far as I remember, that was the reason.
15 And when I started to see Nelson Barque, it was like every
16 week. At the time, I believe Nelson told me that it was
17 because I wasn't doing so well in school, which was true; I
18 wasn't. But, I mean -- and then after I went back to Ken,
19 after Ken took back my file, with Ken it was like two or
20 three times a week.

21 **MR. DUMAIS:** All right.

22 Now, let's just go back a bit, Albert. I
23 just want to make sure that we get the right picture. So
24 you were initially being supervised, if I can put it that
25 way, by Ken Seguin. He was your probation officer?

1 **MR. ROY:** That's right.

2 **MR. DUMAIS:** Right. And you were reporting
3 to him on a regular basis?

4 **MR. ROY:** That's right.

5 **MR. DUMAIS:** And you did so for a certain
6 period of time before he transferred you or asked you to
7 see another probation officer. Is that correct?

8 **MR. ROY:** That's right.

9 **MR. DUMAIS:** All right.

10 And do you recall for what length of time
11 you met with Ken Seguin before you were transferred?

12 **MR. ROY:** I think it was about three months,
13 maybe a little bit more, maybe less.

14 **MR. DUMAIS:** All right.

15 So you met for a certain period of time and
16 then Mr. Seguin was leaving on holiday, I think you
17 indicated?

18 **MR. ROY:** From what I remember. Like I
19 don't know if somebody actually told me that. It was just
20 -- it just seems to be -- it just seems to be what I
21 remember was the reason.

22 **MR. DUMAIS:** Is it fair to say that
23 something changed which meant that you were no longer
24 seeing Ken or reporting to Ken and that meant that you were
25 reporting with Mr. Barque. Is that ---

1 **MR. ROY:** That's right.

2 **MR. DUMAIS:** All right.

3 And do you recall, Albert, how many
4 probation officers there was in this office at that time?

5 **MR. ROY:** There was three: Ken Seguin;
6 Nelson Barque and another probation officer. I remember
7 what he looks like, but I don't remember his name.

8 **MR. DUMAIS:** All right.

9 Well, what did he look like?

10 **MR. ROY:** He was a tall guy. He had kind of
11 -- either dark brown hair or black hair. I believe he had
12 like a goatee or some form of beard or something.

13 **MR. DUMAIS:** Was there staff working there
14 as well, administrative staff?

15 **MR. ROY:** Yes, there was a secretary. There
16 was other probation officers off to the side. I think they
17 were for youth offenders. I remember one woman working
18 there, but I don't know her name. I just remember that it
19 was a woman and the secretary was a woman.

20 **MR. DUMAIS:** And do you think that the --
21 are you saying the woman was involved with young offenders?

22 **MR. ROY:** I believe she was a probation
23 officer, yes.

24 **MR. DUMAIS:** All right.

25 And is it your recollection, Albert, that at

1 the time you were placed on probation, you would have been
2 considered as an adult by the court?

3 MR. ROY: I don't know.

4 MR. DUMAIS: All right. Okay.

5 Now, I understand that Nelson supervised you
6 for a certain period of time and during that period of
7 time, Albert, he sexually abused you. Is that correct?

8 MR. ROY: Yes.

9 MR. DUMAIS: And after this occurred, you
10 did report this to someone; is that correct?

11 MR. ROY: At the time, I thought Ken Seguin
12 was his supervisor, so I reported it to Ken Seguin.

13 MR. DUMAIS: And what happened after that,
14 Albert?

15 MR. ROY: Ken Seguin started abusing me.

16 MR. DUMAIS: So for a certain period of time
17 you were supervised by Mr. Seguin and during that period of
18 time, nothing occurred; is that right?

19 THE COMMISSIONER: For the first three
20 months when you were seeing Mr. Seguin at the beginning of
21 your probation, nothing happened?

22 MR. ROY: No.

23 THE COMMISSIONER: All right.

24 MR. DUMAIS: And then when you were being
25 supervised by Mr. Barque, he sexually abused you?

1 MR. ROY: Yes.

2 MR. DUMAIS: And then Mr. Seguin did so as
3 well after you advised him of what occurred with Mr.
4 Barque?

5 MR. ROY: Yes.

6 MR. DUMAIS: And do you recall, Albert, how
7 long you had been supervised by Mr. Barque?

8 MR. ROY: It was a few months.

9 MR. DUMAIS: And then after you advised Mr.
10 Seguin of the occurrence, did you continue being supervised
11 by Mr. Barque?

12 MR. ROY: No.

13 MR. DUMAIS: So from then on, it was Mr. Ken
14 Seguin who was your probation officer? You were reporting
15 to him?

16 MR. ROY: Yes.

17 MR. DUMAIS: All right.

18 And my understanding, Albert, is that the
19 abuse at the hands of Mr. Seguin continued on for a certain
20 period of time. Is that correct?

21 MR. ROY: Yes.

22 MR. DUMAIS: And at the time, and by that I
23 mean in 1977, you did not report these incidents to anyone
24 else?

25 MR. ROY: No.

1 **MR. DUMAIS:** All right.

2 So the first person that you actually told
3 about this would have been Ken Seguin; is that correct?

4 **MR. ROY:** Yes.

5 **MR. DUMAIS:** All right.

6 **MR. ROY:** There was no -- at the time, I was
7 -- I mean, in my eyes there was no one else to tell.

8 **MR. DUMAIS:** And as a matter of fact,
9 Albert, you did not tell anyone for a good number of years;
10 is that correct?

11 **MR. ROY:** That's right, until ---

12 **MR. DUMAIS:** Now, who would have been the
13 first other person that you would have told about this?

14 **MR. ROY:** It was a male nurse that tried to
15 restrain me at the General Hospital.

16 **MR. DUMAIS:** And do you recall approximately
17 when this would have happened?

18 **MR. ROY:** It would have been in the late
19 '80s or maybe early '90s. I seem to remember telling a
20 social worker way back in the '80s, in the real early '80s,
21 but I can't be sure.

22 **MR. DUMAIS:** And who would have been this
23 social worker?

24 **MR. ROY:** Bob Payette.

25 **MR. DUMAIS:** And he ---

1 **MR. ROY:** Robert Payette, sorry.

2 **MR. DUMAIS:** Were you seeing Mr. Payette on
3 a regular basis?

4 **MR. ROY:** Off and on, yes, for quite a
5 while.

6 **MR. DUMAIS:** And you were seeing him on a
7 voluntary basis?

8 **MR. ROY:** Yes.

9 **MR. DUMAIS:** All right.

10 And if we can just go back just a bit, you
11 indicated that in the late '80s, early '90s, that you would
12 have told this male nurse. Is that correct?

13 **MR. ROY:** That's correct.

14 **MR. DUMAIS:** You don't recall his name,
15 Albert?

16 **MR. ROY:** No.

17 **MR. DUMAIS:** All right.

18 Do you recall which hospital he was working
19 at?

20 **MR. ROY:** At the General Hospital.

21 **MR. DUMAIS:** And do you recall whether or
22 not you were hospitalized at that time?

23 **MR. ROY:** Yes.

24 **MR. DUMAIS:** You believe you were?

25 **MR. ROY:** Yes, I was.

1 **MR. DUMAIS:** All right.

2 And what then did you tell this male nurse,
3 Albert?

4 **MR. ROY:** I was upset because my wife was
5 leaving me and I had -- my son was around four years old
6 then. This is my first wife. I was angry or something,
7 and he went to grab me to try and get me to sit down. When
8 he grabbed me, I told him, you know, "Don't touch me. You
9 don't have the right to touch me."

10 Then after he got me calmed down, I think it
11 was quite a while later, he came to talk to me and then he
12 asked me and he said, you know, "I seem to sense that
13 there's something else that you want to tell me." That's
14 when I told him about Nelson and Ken.

15 **MR. DUMAIS:** All right.

16 So you would have told him about ---

17 **MR. ROY:** I don't think I used their names
18 at the time. I just said two probation officers.

19 **MR. DUMAIS:** And do you recall what his
20 response was?

21 **MR. ROY:** I think we talked a bit about --
22 he was telling me that I have to deal with this before I
23 can deal about the separation between me and my wife and
24 the problems I was having there. And I think he told me at
25 the time that he was going to have to put it in his report,

1 and I remember getting upset about that. I don't know if
2 he put it in the report between -- that they do a daily
3 report when you're there. Those records are at the General
4 Hospital. So I don't know if he ever put it in a report.

5 **MR. DUMAIS:** All right.

6 Did you ever have the occasion to check your
7 medical file to see whether or not that was in there?

8 **MR. ROY:** No.

9 **MR. DUMAIS:** Do you recall whether or not
10 you had advised this nurse that charges had never been laid
11 or the matter had never been investigated? Was it clear
12 from what you were telling him that he was the first person
13 that you were telling?

14 **MR. ROY:** I think so, yes. Yes, I know I
15 told him that I hadn't told anybody else, because I told
16 him that, you know, even my first wife didn't know.

17 **MR. DUMAIS:** All right.

18 And did you have any discussions with him
19 regarding whether or not the police should be involved or
20 whether or not you should call them or he should call them?

21 **MR. ROY:** No, we never talked about the
22 authorities.

23 **MR. DUMAIS:** Any discussion with the fact
24 that these perpetrators who were working at the Probation
25 Office, any concerns about that? Any discussion with

1 respect to that?

2 MR. ROY: No. Well, not that I can recall,
3 no.

4 MR. DUMAIS: Do you -- any further mention,
5 Albert, as to whether or not he would put anything in your
6 file when you indicated that you had some difficulties with
7 that?

8 MR. ROY: Like did he come back later, you
9 mean?

10 MR. DUMAIS: Did he indicate to you, "Well,
11 listen, maybe I won't put it in your file"?

12 MR. ROY: No, I never knew if he did or not.

13 MR. DUMAIS: And during that period of time,
14 Albert, were you under the care of a doctor?

15 MR. ROY: Yes, I was under -- wait a minute.
16 I don't think so. I think Bob Payette had facilitated me
17 getting into the hospital.

18 MR. DUMAIS: Okay.

19 MR. ROY: I mean, shortly after Dr.
20 Almudevar, a psychologist, came in the picture, but at that
21 time I think it was just Bob that I was seeing.

22 MR. DUMAIS: You think it was just Bob
23 Payette that was involved with you?

24 MR. ROY: Yes.

25 MR. DUMAIS: All right.

1 And were you -- was this an overnight stay
2 at the hospital? Were you there for a certain period of
3 time or were you ---

4 **MR. ROY:** Three months.

5 **MR. DUMAIS:** Okay. And do you recall -- and
6 you indicated that a doctor became involved at one point in
7 time?

8 **MR. ROY:** Yes, Dr. Almudevar.

9 **MR. DUMAIS:** Right. Do you know if he's a
10 psychiatrist, a psychologist?

11 **MR. ROY:** He's a psychiatrist.

12 **MR. DUMAIS:** A psychiatrist.

13 And he was working at that hospital; is that
14 correct?

15 **MR. ROY:** Well, I don't think he worked for
16 the hospital, but he worked out of the ---

17 **THE COMMISSIONER:** He had privileges?

18 **MR. ROY:** Privileges, yes.

19 **MR. DUMAIS:** All right.

20 And you began seeing him on a regular basis;
21 is that correct?

22 **MR. ROY:** Yes.

23 **MR. DUMAIS:** All right.

24 And did he follow you throughout your stay
25 at the hospital for that three-month period?

1 **MR. ROY:** Yes.

2 **MR. DUMAIS:** And following your release from
3 the hospital, did you attend at his office on a regular
4 basis afterwards?

5 **MR. ROY:** Yes, I did.

6 **MR. DUMAIS:** Okay. So he became your
7 psychiatrist; is that correct?

8 **MR. ROY:** Yes.

9 **MR. DUMAIS:** Until what time, Albert? Do
10 you recall when you stopped seeing him?

11 **MR. ROY:** I can't remember the year.

12 **THE COMMISSIONER:** Ballpark. Did he follow
13 you for six months, a year?

14 **MR. ROY:** Oh, I seen him for, I believe,
15 about six years.

16 **THE COMMISSIONER:** Okay.

17 **MR. DUMAIS:** All right.

18 And I understand that this doctor now is
19 deceased; is that correct?

20 **MR. ROY:** Yes, he is.

21 **MR. DUMAIS:** Do you know what happened to
22 your file, Robert?

23 **MR. ROY:** My new doctor, Dr. Augustine, has
24 it.

25 **MR. DUMAIS:** Okay. So he's got your old

1 file from Dr. Almudevar; is that correct?

2 MR. ROY: I believe so, yes.

3 MR. DUMAIS: All right.

4 And your -- who is your new doctor today,
5 Albert?

6 MR. ROY: It's still Dr. Augustine.

7 MR. DUMAIS: Okay. And is he a
8 psychiatrist? Is he a medical doctor?

9 MR. ROY: A psychiatrist.

10 MR. DUMAIS: All right.

11 Now, during that whole period of time that
12 you were seeing Dr. Almudevar, were you as well in contact
13 with Mr. Bob Payette?

14 MR. ROY: Yes.

15 MR. DUMAIS: So you were seeing him on a
16 regular basis as well?

17 MR. ROY: Yes.

18 MR. DUMAIS: And did you at any point in
19 time have any discussion with either -- well, let's just
20 start with Mr. Payette. Did you have any discussion about
21 the abuse with him?

22 MR. ROY: Yes. And ---

23 MR. DUMAIS: Sorry.

24 MR. ROY: --- many, many times he tried to
25 get me to come forward with it.

1 **MR. DUMAIS:** And how did you find out,
2 Albert, that you had been abused?

3 **MR. ROY:** Bob?

4 **MR. DUMAIS:** Yes.

5 **MR. ROY:** I had told him about it during one
6 of our sessions. I can't remember if it was in his office
7 or at the hospital.

8 **MR. DUMAIS:** So you can't recall whether or
9 not -- and when you're saying at the hospital, you mean
10 that three-month period of time where you were
11 hospitalized; correct?

12 **MR. ROY:** At the time, I was having a
13 recurring nightmare about somebody hurting my son, and
14 that's when I told Bob because I was upset about the
15 nightmare.

16 **MR. DUMAIS:** And ---

17 **MR. ROY:** I'm sorry, you asked me if it was
18 during that three months at the hospital.

19 **THE COMMISSIONER:** No, just to help out a
20 little bit, he was asking you about Mr. Payette, when you
21 would have told him, and you don't recall whether it was in
22 his office or when you were at the hospital. And the
23 question was during that hospital stay of three months?
24 Basically all he wanted to know was if you told him at the
25 hospital, it would have been during that three months when

1 you were there?

2 **MR. ROY:** Yes.

3 **THE COMMISSIONER:** Okay.

4 **MR. DUMAIS:** You said you discussed this
5 with Bob on a number of occasions. What was the
6 discussion? What was he suggest that you do?

7 **MR. ROY:** Bob felt that if Nelson and Ken
8 had abused me, that they could still be abusing other kids,
9 and that was mostly the conversation that, you know, I
10 should feel responsible to come forward because if there's
11 a chance that they were still abusing then it's my
12 responsibility to come forward.

13 **MR. DUMAIS:** So Bob was trying to encourage
14 you to report the matter to the police. Is that correct?

15 **MR. ROY:** That's right.

16 **MR. DUMAIS:** Do you recall whether or not he
17 had any involvement with communicating with Cornwall Police
18 or making arrangements for having you communicate with
19 them?

20 **MR. ROY:** I believe he called Heidi Sebalj
21 to let her know that I'd be coming over.

22 **MR. DUMAIS:** Do you recall ---

23 **MR. ROY:** I think we called Heidi from his
24 office.

25 **MR. DUMAIS:** You think you would've called

1 her from the office? You're saying Heidi. You're speaking
2 of?

3 MR. ROY: Sorry.

4 THE COMMISSIONER: No, that's okay.

5 MR. ROY: Officer Sebalj is with the
6 Cornwall Police Force. She's the first one I had talked
7 to.

8 MR. DUMAIS: Okay. And you ---

9 MR. ROY: I ---

10 MR. DUMAIS: Sorry, Albert.

11 THE COMMISSIONER: Go ahead.

12 MR. ROY: I know I left Bob's office and
13 went straight to the police station and I reported it.

14 MR. DUMAIS: It was after one of these
15 sessions with Bob or following one of these sessions that
16 you attended at the Cornwall Police. Is that correct?

17 MR. ROY: That's right.

18 MR. DUMAIS: You told us that you were --
19 you called Constable Sebalj. Is there any reason why you
20 were calling her? Did you know at that time that she was
21 the person that you were supposed to speak to?

22 MR. ROY: I don't know. I don't remember
23 how that went. See, that's -- Bob, I think, would've had
24 to have done something because I told Bob I didn't want to
25 talk to a male officer.

1 **MR. DUMAIS:** Yes.

2 **MR. ROY:** So I believe Paul had -- Bob had
3 initiated -- he must've found out who to ask for or ---

4 **MR. DUMAIS:** Did these discussions on this
5 issue happen over a certain period of time?

6 **THE COMMISSIONER:** Discussions with Bob.

7 **MR. ROY:** You mean how long did it take him
8 for -- to make me -- well, not make me but convince me to
9 go report?

10 **MR. DUMAIS:** I guess what I want to know is
11 was there a number of discussions on this issue?

12 **MR. ROY:** Oh yes, it was over, like, a
13 three-year period.

14 **MR. DUMAIS:** Okay. So it took quite a bit
15 of time for you to make the decision to report the matter
16 to Cornwall Police?

17 **MR. ROY:** Yes.

18 **THE COMMISSIONER:** There's nothing wrong
19 with that, you know. It just takes the time that it takes
20 sometimes.

21 **MR. DUMAIS:** During that period of time,
22 Albert, were you being followed by your psychiatrist as
23 well?

24 **MR. ROY:** Yes, I was.

25 **MR. DUMAIS:** Did you have the occasion to

1 report these incidents to Dr. Almudevar?

2 MR. ROY: See, I told Dr. Almudevar about
3 it, but he didn't want to deal with it right then, because
4 he felt it was more important to stabilize me and get me on
5 the proper medication and to make sure I was well enough to
6 deal with the abuse. He was more worried about having some
7 stability than -- I'm manic-depressive and, I mean, it --
8 I've probably been manic-depressive all my life, and he
9 wanted to stabilize that before he started dealing with
10 other things.

11 MR. DUMAIS: So is it fair to say that he
12 was not being as encouraging as Mr. Payette was about
13 reporting the incident?

14 MR. ROY: Well, he never talked about
15 reporting it.

16 MR. DUMAIS: Did you talk at all about the
17 incident per se? Did you discuss the details?

18 MR. ROY: Well, even with Bob, I never
19 talked about the details. I just told him it happened.

20 MR. DUMAIS: All right.

21 MR. ROY: And with Dr. Almudevar, the same
22 thing.

23 MR. DUMAIS: Did you discuss with them both
24 that you had been abused by two probation officers?

25 MR. ROY: Yes.

1 **MR. DUMAIS:** So they were aware of that?

2 **MR. ROY:** Yes.

3 **MR. DUMAIS:** Commissioner, it's 4:30,
4 perhaps a very appropriate time to stop with Mr. Roy's
5 evidence. I'm about to move into another subject and, as
6 well, I need to file a number of the exhibits and address a
7 number of issues of confidentiality. I was hoping to get
8 through the first section because I knew I didn't have to
9 file anything, but I would need to start with that tomorrow
10 morning.

11 **THE COMMISSIONER:** All right.

12 So Mr. Roy, are you okay with coming back
13 tomorrow?

14 **MR. ROY:** Yes.

15 **THE COMMISSIONER:** All right.

16 So what I would ask you to do is not to
17 discuss any of your evidence with anyone and to report to
18 me if anybody tries to talk to you about your evidence.

19 We will come back at 9:30 tomorrow morning.
20 Is that all right?

21 **MR. ROY:** That's fine.

22 **THE COMMISSIONER:** Great.

23 **MR. DUMAIS:** Thank you, Commissioner.

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

1 The hearing is now adjourned.

2 L'audience est ajournée.

3 --- Upon adjourning at 4:31 p.m./

4 L'audience est ajournée à 16h31

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

I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Sean Prouse, 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.



Sean Prouse, CVR-CM