

**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 151

Held at :

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

Wednesday, October 24 2007

Tenue à:

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

Mercredi, le 24 octobre 2007

Appearances/Comparutions

Ms. Julie Gauthier	Registrar
Mr. Deirdre Harrington M ^e Simon Ruel	Commission Counsel
Mr. John E. Callaghan Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
Mr. David Rose M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Frank T. Horn Mr. Ian Paul	Mr. Carson Chisholm

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1 --- Upon commencing at 9:52 a.m./

2 L'audience débute à 9h52

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning all.

11 **MR. RUEL:** Good morning, Mr. Commissioner.

12 **THE COMMISSIONER:** It almost feels like we
13 are missing someone today.

14 **MR. RUEL:** I am told that there is some
15 counsel in the outside I guess, they were waiting for us to
16 come in.

17 **THE COMMISSIONER:** Oh. Mr. Sherriff-Scott's
18 going to get his golden star again today.

19 (LAUGHTER/RIRES)

20 **MR. SHERRIFF-SCOTT:** I need some of that.

21 (SHORT PAUSE/COURTE PAUSE)

22 **THE COMMISSIONER:** There we go.

23 **MR. RUEL:** Well, Mr. Commissioner, today we
24 have Mr. Charles Bourgeois as a witness ---

25 **THE COMMISSIONER:** Thank you.

1 **MR. RUEL:** --- so I would ask Madam Clerk if
2 the witness could be sworn.

3 **THE COMMISSIONER:** Sworn or affirmed. Thank
4 you. Good morning sir.

5 **--- CHARLES BOURGEOIS:** Sworn/Assermenté

6 **THE COMMISSIONER:** Thank you. Maître
7 Bourgeois, good morning. Have a seat.

8 **MR. BOURGEOIS:** Bonjour. Thank you.

9 **THE COMMISSIONER:** You will be asked
10 questions today obviously. And it seems a little unusual
11 to tell a lawyer but please take your time in answering.

12 If there is something you don't understand,
13 let me know. If you feel uneasy about something, ask me
14 and we'll clear things up as we go. There is water there.
15 There is a -- volume, a speaker there if you need it. And
16 if we use documents, they'll either be in hard -- they will
17 be in hard copy or on the computer depending on what you're
18 more comfortable with. All right.

19 **MR. BOURGEOIS:** Okay.

20 **THE COMMISSIONER:** Thank you.

21 **MR. BOURGEOIS:** Thank you.

22 **--- EXAMINATION IN CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**
23 **RUEL:**

24 **MR. RUEL:** So Mr. Commissioner, I have a few
25 preliminary questions to ask Mr. Bourgeois. Then, I'll

1 discuss with him the issue of the protection of the
2 solicitor/client privilege. And I believe we're going to
3 have a debate before you on the scope of this privilege and
4 what questions could be asked the witness with respect to
5 those areas. So I'll just start with a few questions.

6 **THE COMMISSIONER:** Thank you.

7 **MR. RUEL:** Mr. Bourgeois, thank you for
8 being here today.

9 **MR. BOURGEOIS:** Thank you, sir.

10 **MR. RUEL:** I guess you -- we've met once in
11 the summer of 1997 for a preparation meeting?

12 **MR. BOURGEOIS:** You said 1997?

13 **MR. RUEL:** Sorry, 2007, this year.

14 **MR. BOURGEOIS:** Yes.

15 **MR. RUEL:** And you haven't been able to meet
16 with us since then for further preparation.

17 **MR. BOURGEOIS:** No, because of my schedule,
18 I'm really sorry but I haven't been able to.

19 **MR. RUEL:** So you've got, I guess, limited
20 knowledge of the documents I would be presenting today to
21 you?

22 **MR. BOURGEOIS:** That's fair, yes.

23 **MR. RUEL:** You've been summoned in June of
24 2007 to produce all documents relevant to the Inquiry and
25 in particular Perry Dunlop's litigation claim. Do you

1 remember that?

2 MR. BOURGEOIS: Yes.

3 MR. RUEL: And you produced certificate of
4 production on June 27, 2007 where you indicated that you
5 had no document with respect to -- relevant to the Inquiry
6 or relevant to Perry Dunlop's claim. Is that correct?

7 MR. BOURGEOIS: That's correct.

8 MR. RUEL: So that's still your position
9 today? You've got no documents?

10 MR. BOURGEOIS: No, I don't.

11 MR. RUEL: I sent you a letter yesterday
12 asking you to produce the criminal file of a witness that's
13 testified here before the Commission and he's been
14 identified as C-8. You know who I'm talking about?

15 MR. BOURGEOIS: Yes, I do, yeah.

16 MR. RUEL: And asking you to produce his
17 file. So do you still have his criminal file?

18 MR. BOURGEOIS: No.

19 MR. RUEL: Because you've represented C-8 in
20 criminal proceedings?

21 MR. BOURGEOIS: Once, yeah, once, yeah.

22 MR. RUEL: What about your -- I also asked
23 you yesterday about your agendas, diaries, for the period
24 when you were representing Mr. Dunlop.

25 MR. BOURGEOIS: No, I wouldn't have that. I

1 don't even know if I have last year's.

2 MR. RUEL: So may I ask you what happened to
3 those documents?

4 MR. BOURGEOIS: I have no idea.

5 MR. RUEL: Have you destroyed them?

6 THE COMMISSIONER: Wait a minute. What
7 documents? We've gone through a bunch of them. I think we
8 should go back and do each individually.

9 MR. RUEL: Well, let's say the documents
10 that relates to Mr. Dunlop.

11 MR. BOURGEOIS: Well, they would have been
12 given back to, I think -- they must have been given back to
13 Perry, they're like 10 years ago. I have had no dealings
14 with this matter for like over 10 years.

15 THE COMMISSIONER: You have no ledgers; any
16 ledgers about any payments?

17 MR. BOURGEOIS: No, I don't think I would
18 have anything like that.

19 THE COMMISSIONER: What's the Law Society
20 rule with respect to retention of files? Do you know?

21 MR. BOURGEOIS: I think it's seven years.
22 I'm not sure to be honest.

23 THE COMMISSIONER: Okay.

24 MR. BOURGEOIS: I don't know.

25 MR. RUEL: So you believe that the Perry

1 Dunlop documents have been returned to Mr. Dunlop. That's
2 what you believe?

3 MR. BOURGEOIS: Yes, or were destroyed or
4 lost through the years but I would've given everything to
5 Perry years ago, I would assume.

6 MR. RUEL: So what about the file, the C-8
7 file?

8 MR. BOURGEOIS: I can't say that I did any
9 sort of exhaustive research because you indicated that you
10 sent the letter yesterday while I was on transit here, but
11 I would expect that I wouldn't have that file. I can have
12 my staff check but I doubt I'd have a file from 10 years
13 ago.

14 MR. RUEL: So can I ask you to ask your
15 staff to check this?

16 MR. BOURGEOIS: I will sir, yeah.

17 MR. RUEL: And confirm -- we'll confirm that
18 later on.

19 MR. BOURGEOIS: Sure.

20 MR. RUEL: I gather you spoke to -- well, I
21 left you a message I believe last week suggesting to you
22 that you may want to contact Mr. Dunlop to verify if he was
23 maintaining his claim of privilege -- solicitor/client
24 privilege. Is that right?

25 MR. BOURGEOIS: Yeah.

1 **MR. RUEL:** So did you call Mr. Dunlop?

2 **MR. BOURGEOIS:** Yes, I did.

3 **MR. RUEL:** Can you tell us what was the
4 nature of the conversation?

5 **MR. BOURGEOIS:** Well, he still maintains his
6 privilege.

7 **MR. RUEL:** So I gather you represented him
8 between June of '96 and November of 1997?

9 **MR. BOURGEOIS:** If you say so. Those would
10 be the approximate dates. I can't remember exactly but
11 that's the ball park.

12 **MR. RUEL:** So did you consult the Law
13 Society about your professional obligation with respect to
14 protecting Mr. Dunlop's privilege?

15 **MR. BOURGEOIS:** Yes, because on our first
16 meeting, I think you asked that I not contact Perry. And
17 then I got a letter from you, I think, on Friday or last
18 week, something like that, asking me to contact Perry.

19 And then I finally spoke to him I think
20 Monday of this week and he maintained his privilege. So I
21 called the practice advisory yesterday and they indicated
22 to me that I had to maintain the privilege unless I was
23 legally bound.

24 **MR. RUEL:** And legally bound, what does that
25 mean?

1 **MR. BOURGEOIS:** That's what they advised me.

2 **MR. RUEL:** So is it your understanding that
3 if the Commissioner allows you -- orders you to respond,
4 you're legally bound to respond. Is that your
5 understanding?

6 **MR. BOURGEOIS:** That's my understanding of
7 what they told me, yes.

8 **MR. RUEL:** With respect the witness C-8, so
9 you represented him at some point?

10 **MR. BOURGEOIS:** Yes.

11 **MR. RUEL:** So you know that I faxed you a
12 letter, or I sent you a waiver that he signed with respect
13 to any solicitor/client privilege that he may have or have
14 had in the past?

15 **MR. BOURGEOIS:** Yeah, you provided me with
16 that document, thank you.

17 **MR. RUEL:** So with respect to the privilege
18 as it applies to Mr. Dunlop, do you have any -- because I
19 guess we're going to debate this in a few minutes, but do
20 you have any views as to the scope of the privilege type of
21 questions that you are not ready to answer on that basis?

22 **MR. BOURGEOIS:** From my perspective, I don't
23 want to answer anything unless I am obligated to that
24 involves him. He's my client. I have to protect his
25 interests.

1 **MR. RUEL:** So is it your position that you
2 can answer questions on the discussions you had or may have
3 had with witnesses with respect to Mr. Dunlop's claim?

4 **MR. BOURGEOIS:** Yes.

5 **MR. RUEL:** So do you maintain -- do you
6 believe that there was a privilege over that?

7 **MR. BOURGEOIS:** Yes.

8 **MR. RUEL:** And what about the general
9 litigation strategy?

10 **MR. BOURGEOIS:** Definitely a privilege on
11 that.

12 **MR. RUEL:** So all of these issues would be
13 privileged in your view ---

14 **MR. BOURGEOIS:** Yes.

15 **MR. RUEL:** --- unless the Commissioner
16 allows you to respond?

17 **MR. BOURGEOIS:** Correct.

18 **MR. RUEL:** Okay. So Mr. Commissioner, I
19 have some submissions to ---

20 **THE COMMISSIONER:** Right. Wait a minute.

21 Before we go there, I think if we're going
22 to be talking about solicitor/client privilege and
23 litigation privilege and those things, I think we should
24 set out some more parameters to establish that, did this
25 gentleman start an action for Mr. Dunlop, what his

1 knowledge of it and whether it's finished. Because my
2 understanding is litigation privilege is something that
3 ends when the litigation ends. So you might want to
4 canvass ---

5 **MR. RUEL:** Thank you, Mr. Commissioner.

6 So you launched a civil suit on behalf of
7 Mr. Dunlop in the summer of 1996. Is that correct?

8 **MR. BOURGEOIS:** There was an action
9 commenced, yeah.

10 **MR. RUEL:** And that action remained alive
11 until you were told by ---

12 **THE COMMISSIONER:** A change of solicitor.

13 **MR. RUEL:** Until there was a change of
14 solicitor in 1997. Is that correct?

15 **MR. BOURGEOIS:** Correct.

16 **MR. RUEL:** It was still active?

17 **MR. BOURGEOIS:** I have no knowledge what
18 happened after that.

19 **MR. RUEL:** You don't know what happened
20 after that, okay.

21 **THE COMMISSIONER:** Well, do we not have
22 documents that say that the action was completed?

23 **MR. RUEL:** Well, I have them but Mr. -- I
24 don't think Mr. Bourgeois would know that. That would be
25 part of my submissions, I submit.

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

2 **MR. RUEL:** So I have the order which
3 terminated this litigation so I can ---

4 **THE COMMISSIONER:** Okay, so now the exercise
5 is to determine what scope of questions, if any, I will
6 permit or order Mr. Bourgeois to answer. Is that the
7 issue?

8 Okay. Will you wish to make representations
9 during this argument or are you just taking the innocent
10 bystander kind of ---

11 **MR. BOURGEOIS:** I'm -- quite frankly, I'm
12 going to leave it in Your Honour's capable hands. You
13 know, I didn't do any exhaustive research on it. It's a
14 very complex area and I'll leave it Your Honour's hands to
15 what those -- all I could to do is get advice from the Law
16 Society and that's what they told me.

17 **THE COMMISSIONER:** Well, sir, that's fine.
18 I certainly will listen to legal argument. I should remind
19 you though that the privilege is your client's and it is
20 your responsibility to protect that, but I'll listen to
21 argument and we'll see where we go from there.

22 **MR. BOURGEOIS::** If Your Honour feels I will
23 have to get more information, I am happy to do that.
24 Unfortunately, the timing was very -- I was only given --
25 just recently to contact Mr. Dunlop, and I only got those

1 instructions from him a few days ago, sir.

2 **THE COMMISSIONER:** Right. But you knew --
3 well, regardless of whether or not he gave you that, you've
4 known you were going to come and testify here for some
5 time?

6 **MR. BOURGEOIS:** Yes, I did, yeah I did, sir,
7 yes.

8 **THE COMMISSIONER:** All right. That's your
9 responsibility.

10 All right, so you may step down, sir.

11 Is that what you -- Mr. ---

12 **MR. MANSON:** Before we start submissions, I
13 have two questions to ask.

14 **THE COMMISSIONER:** On the issue of?

15 **MR. MANSON:** Privilege. I just want to
16 clarify exactly what he said a minute ago.

17 **THE COMMISSIONER:** Okay, so could you --
18 well, all right.

19 **MR. MANSON:** Well, it would be much easier
20 if I --

21 **THE COMMISSIONER:** Sure. I think then we'll
22 do a little voir dire then, you know, if we can use that
23 example.

24 **MR. MANSON:** Just to lay the groundwork.

25 **THE COMMISSIONER:** Exactly, exactly. As

1 long as everybody understands that's all we're going to do
2 here.

3 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
4 MANSON:

5 MR. MANSON: Yes. Mr. Bourgeois ---

6 THE COMMISSIONER: Your name?

7 MR. MANSON: My name is Allan Manson and I
8 represent a party called the Citizens for Community
9 Renewal, which is a group of Cornwall citizens concerned
10 with institutional reform and the protection of children.

11 THE COMMISSIONER: Good.

12 MR. MANSON: I just want it to be clear.
13 Your position is that you will claim privilege if asked
14 about your involvement with any witnesses. Is that
15 correct?

16 MR. BOURGEOIS: Yes, that's correct.

17 MR. MANSON: And that would include Ron
18 Leroux?

19 MR. BOURGEOIS: Yes.

20 MR. MANSON: And that would include the
21 taking of statements from Ron Leroux?

22 MR. BOURGEOIS: Correct.

23 MR. MANSON: You also said that you would
24 claim privilege with respect to litigation strategy?

25 MR. BOURGEOIS: Correct.

1 **MR. MANSON:** Are you including in that the
2 drafting of pleadings?

3 **MR. BOURGEOIS:** Correct.

4 **MR. MANSON:** Thank you.

5 **THE COMMISSIONER:** All right. Does anybody
6 else have any questions with respect to the framework only,
7 please?

8 Mr. Callaghan?

9 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

10 **CALLAGHAN:**

11 **MR. CALLAGHAN:** Mr. Bourgeois, I'm John
12 Callaghan. I act for the Cornwall Police, as you might
13 recall.

14 First, I think he ought to be shown and
15 identified the amended -- at least the amended Statement of
16 Claim that was Exhibit 672.

17 **THE COMMISSIONER:** Fine. Madam Clerk, could
18 you help with that?

19 And, Mr. Bourgeois, would he have a binder
20 to look at?

21 **MR. CALLAGHAN:** Can you verify that that's
22 an amended Statement of Claim that you initiated on behalf
23 of Perry Dunlop?

24 **MR. BOURGEOIS:** I would say that's accurate,
25 yeah.

1 **MR. CALLAGHAN:** And whether you recall now,
2 but maybe you do, that that was preceded by a Notice of
3 Action, an original Statement of Claim and then it was
4 subsequently placed in this form, this amended Statement of
5 Claim, Exhibit 672. Does that accord with your
6 recollection?

7 **MR. BOURGEOIS:** Not really.

8 **MR. CALLAGHAN:** You don't recall issuing a
9 Notice of Action during 1996?

10 **MR. BOURGEOIS:** No.

11 **MR. CALLAGHAN:** All right.

12 **MR. BOURGEOIS:** But I remember this
13 document. We prepared that, yeah.

14 **MR. CALLAGHAN:** You'll see that it's an
15 amended Statement of Claim. It says, "Notice of Action
16 issued June 6th, '96." So you don't doubt that you issued a
17 Notice of Action on June 6, '96?

18 **THE COMMISSIONER:** No, 671. The exhibit
19 before is the Notice of Action.

20 **MR. CALLAGHAN:** Oh, I'm sorry, Mr.
21 Commissioner. I don't have it in that order. But Exhibit
22 671 then. Do you see that, that's the Notice of Action?

23 **MR. BOURGEOIS:** Yeah, I see that.

24 **MR. CALLAGHAN:** And I take it so you began -
25 - it's fair to say that the list, if I could put it that

1 way, for which you retain at least -- began publicly on
2 June 6th, 1996, correct, when you issued the Notice of
3 Action?

4 **MR. BOURGEOIS:** I just don't see a date on
5 this one.

6 **MR. CALLAGHAN:** Why don't you take a look at
7 Exhibit 672 and you can see what you wrote in the amended
8 Statement of Claim which says, "Notice of Action issued on
9 June 6th, 1996."

10 **THE COMMISSIONER:** Well, then it's -- but
11 the Notice of Action itself says June 7th, 1996.

12 **MR. CALLAGHAN:** All right. Either the 6th or
13 the 7th. I'm not particularly concerned. I'm just trying
14 to get a start at least about you having a list -- having
15 created a list for Mr. Dunlop and then started the action
16 on behalf of Mr. Dunlop; okay?

17 **MR. BOURGEOIS:** Yes.

18 **MR. CALLAGHAN:** Fine.

19 **MR. BOURGEOIS:** The last page says, "June
20 7th", so ---

21 **MR. CALLAGHAN:** There must have been an
22 error on Exhibit 672.

23 Let me ask you then you, as Mr. Manson
24 indicated, interviewed a number of people between the time
25 you were retained and the time of the end of your retainer

1 in approximately November, 1997 ---

2 **THE COMMISSIONER:** Just a minute. You're
3 assuming something there that he had been retained before
4 he took the statements.

5 **MR. CALLAGHAN:** Ah, well ---

6 **THE COMMISSIONER:** Who knows?

7 **MR. CALLAGHAN:** When were you retained?
8 Start with the basics, walk before you run. When were you
9 retained?

10 **MR. BOURGEOIS:** I don't know.

11 **MR. CALLAGHAN:** Am I able to safely say that
12 you were retained before you issued a Notice of Action?

13 **MR. BOURGEOIS:** That would be safe to say.

14 **MR. CALLAGHAN:** All right. So you were
15 retained some period before June 7th, 1996?

16 **MR. BOURGEOIS:** That would be fair, yes.

17 **MR. CALLAGHAN:** All right. And your
18 retainer seems to have come to an end, and if the counsel
19 can be shown -- or the witness should be shown Document
20 723547?

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. CALLAGHAN:** And that's a letter dated
23 November 21st, 1997 and it is a letter addressed to you by
24 Perry Dunlop and in it is said:

25 "I have determined to terminate your

1 services as my solicitor."

2 Do you see that?

3 **MR. BOURGEOIS:** Yep.

4 **MR. CALLAGHAN:** All right. Now, there's a
5 little wrinkle here. You'll recall that there was a motion
6 to strikeout the amended Statement of Claim that took place
7 in Newmarket. Do you recall that?

8 **MR. BOURGEOIS:** No.

9 **MR. CALLAGHAN:** You don't recall being
10 ordered to go before Mr. Justice Logan approximately the
11 22nd of November?

12 **MR. BOURGEOIS:** No.

13 **MR. CALLAGHAN:** You have no recollection of
14 that?

15 **MR. BOURGEOIS:** No.

16 **MR. CALLAGHAN:** So let's just take it then,
17 for the purpose of our discussion today, that at least you
18 got a letter terminating your services from Mr. Dunlop on
19 November 21st, 1997?

20 **MR. BOURGEOIS:** Yes.

21 **MR. CALLAGHAN:** Okay. So as between June of
22 '96 and November 21st, 1997, were you acting for Mr. Dunlop
23 in respect of his civil suit?

24 **MR. BOURGEOIS:** Yes.

25 **MR. CALLAGHAN:** All right. And were you

1 interviewing people in respect of that civil suit?

2 **MR. BOURGEOIS:** I was certainly having
3 conversations and meeting with potential witnesses, yes.

4 **MR. CALLAGHAN:** All right. So let's take
5 Ron Leroux. Was there any other reason why you interviewed
6 Ron Leroux other than for Mr. Dunlop's civil suit?

7 **MR. BOURGEOIS:** No.

8 **MR. CALLAGHAN:** And we've talked about C-8.
9 Did you meet with C-8? My apologies; C-8. Did you meet
10 with C-8?

11 **MR. BOURGEOIS:** Yes.

12 **MR. CALLAGHAN:** And you were retained by him
13 at what time? Do you recall?

14 **MR. BOURGEOIS:** I don't at all.

15 **MR. CALLAGHAN:** All right. So we'll have to
16 sort out when you were retained by him, but prior to that,
17 would you have interviewed him for the benefit of Mr.
18 Dunlop's civil law suit, or do you recall?

19 **MR. BOURGEOIS:** I don't recall. I probably
20 did. I would assume I did.

21 **MR. CALLAGHAN:** And if the witness could be
22 shown -- it's a document that I think the Commission was
23 intending to show, which is Document 731902. Do you have
24 that in hand?

25 **MR. BOURGEOIS:** No.

1 **THE COMMISSIONER:** Not yet. Hang on.

2 **MR. BOURGEOIS:** Sorry.

3 **THE COMMISSIONER:** Exhibit number 718.

4 **--- EXHIBIT NO./PIÈCE No. P-718:**

5 (731902) Order of Mr. Justice Aitken
6 between Perry Dunlop and Claude Shaver
7 et al dated February 24, 2003 - Court
8 File No. 40752/96

9 **MR. CALLAGHAN:** And you'll see that this has
10 the same court file number as Exhibit 672, this order.
11 That's court file number 40752-96 from the Superior Court
12 of Justice. Do you see that?

13 **MR. BOURGEOIS:** Yep.

14 **MR. CALLAGHAN:** Okay. And by this time, I'm
15 just going to ask you to confirm that it would be your
16 understanding when you read this order that it references
17 in the proviso that the action has already been dismissed
18 against Doug Seguin, the Diocese, Malcolm MacDonald and the
19 Crown in the Right of Ontario. Do you see that; "...and on
20 being advised..."?

21 **MR. BOURGEOIS:** Where is that, sorry?

22 **MR. CALLAGHAN:** If you look at the proviso,
23 the third -- the proviso says:

24 "...and on being advised that this
25 action has been previously discontinued

1 as against the Defendants Douglas
2 Seguin, the Roman Catholic Episcopal
3 Corporation of the Diocese of
4 Alexandria-Cornwall in Ontario, Malcolm
5 MacDonald and the Crown in the Right of
6 Ontario as represented by the Police
7 Complaints Commission."

8 Do you see that?

9 **MR. BOURGEOIS:** Yes.

10 **MR. CALLAGHAN:** All right. And then it goes

11 on:

12 "This Court Order for this action is
13 hereby dismissed as against the
14 Defendants Claude Shaver, Carl
15 Johnston, Joe St-Denis, Luc Brunet,
16 Brennan Wells, the Cornwall Police
17 Services Board and the Cornwall Police
18 Services without costs."

19 Do you see that?

20 **MR. BOURGEOIS:** Yep.

21 **MR. CALLAGHAN:** All right. Do you accept

22 then that the action which you started was finally
23 dismissed in its entirety on February 24, 2003?

24 **THE COMMISSIONER:** Well, ---

25 **MR. BOURGEOIS:** Yeah.

1 **MR. CALLAGHAN:** Okay.

2 **THE COMMISSIONER:** It was discontinued
3 against some and dismissed against others?

4 **MR. CALLAGHAN:** Yes. Well, it's concluded.
5 It was completely concluded.

6 **THE COMMISSIONER:** Okay.

7 **MR. BOURGEOIS:** Yes, according to the
8 document, it appears so, sir.

9 **MR. CALLAGHAN:** Thank you. Those would be
10 the questions.

11 **THE COMMISSIONER:** Thank you.
12 Anyone else?

13 **MR. CALLAGHAN:** Sorry, Mr. Commissioner.
14 Did we get this put in as an exhibit? I'm not sure ---

15 **THE COMMISSIONER:** Seven one eight (718).

16 **MR. CALLAGHAN:** Thank you.

17 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

18 **SHERRIFF-SCOTT:**

19 **MR. SHERRIFF-SCOTT:** Good morning, Mr.
20 Bourgeois. I'm David Sherriff-Scott. I act for the
21 Diocese.

22 **MR. BOURGEOIS:** Good morning.

23 **MR. SHERRIFF-SCOTT:** And, Commissioner, just
24 so you know, this is not part of my main examination plan.
25 I had anticipated some issue and so I had a series of short

1 questions strictly focussed on the extent of the privilege
2 and the character of things.

3 **THE COMMISSIONER:** Yes.

4 **MR. SHERRIFF-SCOTT:** So I'm just trying to
5 be helpful in terms of illustrating the character of things
6 that went on. Okay?

7 Just sort of to set the stage here, we've
8 established that sometime in the spring/summer of '96, you
9 were retained to assist Mr. Dunlop; correct?

10 **MR. BOURGEOIS:** Correct.

11 **MR. SHERRIFF-SCOTT:** And you know that he
12 started what we could call loosely an investigation on his
13 own sometime around the summer of June, 1996. He started
14 interviewing people. You're aware of that surely?

15 **MR. BOURGEOIS:** He was talking to people,
16 yeah.

17 **MR. SHERRIFF-SCOTT:** Yeah, okay. Well, he
18 was doing more than that. You participated in interviews
19 that followed as well; right?

20 **MR. BOURGEOIS:** Yeah.

21 **MR. SHERRIFF-SCOTT:** Okay. So that started
22 in the summer of 1996; right?

23 **MR. BOURGEOIS:** I don't know that.

24 **MR. SHERRIFF-SCOTT:** Well, you're not aware
25 of it starting any sooner than that, are you?

1 **MR. BOURGEOIS:** I think his complaint
2 started in '93, didn't it?

3 **MR. SHERRIFF-SCOTT:** No, no, no. You were
4 retained in '96.

5 **MR. BOURGEOIS:** Yes.

6 **MR. SHERRIFF-SCOTT:** You drafted a lawsuit?

7 **MR. BOURGEOIS:** Correct.

8 **MR. SHERRIFF-SCOTT:** And thereafter, it's
9 your understanding that in support of that lawsuit, it's
10 your evidence I take in connection with the privilege
11 claim, that people were interviewed?

12 **MR. BOURGEOIS:** Correct.

13 **MR. SHERRIFF-SCOTT:** Okay. So there's no
14 mystery to this. This started around the summer of '96.

15 **MR. BOURGEOIS:** The action, yes.

16 **MR. SHERRIFF-SCOTT:** Okay. And ---

17 **THE COMMISSIONER:** I'm sorry, Mr. Sherriff-
18 Scott.

19 Okay, the action started. How far before
20 that do you say you were retained by Mr. Dunlop, ballpark?
21 A week; 10 days; a month; two months; six months; a year?

22 **MR. BOURGEOIS:** Best guess, a few months.
23 Best guess, sir.

24 **THE COMMISSIONER:** Okay.

25 **MR. SHERRIFF-SCOTT:** And so over the months

1 that followed from the time you were retained, the time the
2 investigation or the interview of people started, he was
3 interviewing people and from time-to- time, you were with
4 him when he was doing that?

5 **MR. BOURGEOIS:** I met with certain
6 witnesses, yes.

7 **MR. SHERRIFF-SCOTT:** Yes. And sometimes
8 with Mr. Dunlop in tow; correct?

9 **MR. BOURGEOIS:** I'll say that definitely
10 with Mr. Leroux. I don't know about with anybody else.

11 **MR. SHERRIFF-SCOTT:** So it could be ---

12 **MR. BOURGEOIS:** Probably -- probably I did.
13 Probably he was in tow on some of them.

14 **MR. SHERRIFF-SCOTT:** Some of them but not
15 all of them?

16 **MR. BOURGEOIS:** No, not all of them.

17 **MR. SHERRIFF-SCOTT:** Okay. So there were
18 times when you met with witnesses on your own and there
19 were times when you met with witnesses in the company of
20 your client Mr. Dunlop; correct?

21 **MR. BOURGEOIS:** Yes, and there's times where
22 a private investigator met with them or an individual who
23 worked for me to take statements.

24 **MR. SHERRIFF-SCOTT:** He was in your employ?

25 **MR. BOURGEOIS:** Yes.

1 MR. SHERRIFF-SCOTT: And so then ---

2 MR. BOURGEOIS: Not in my employ but
3 retained by my firm to take statements.

4 MR. SHERRIFF-SCOTT: On behalf of your
5 client?

6 MR. BOURGEOIS: Yes.

7 MR. SHERRIFF-SCOTT: Okay. Sort of an
8 expert retainer, an independent contractor, as it were?

9 MR. BOURGEOIS: Yes, I guess so.

10 MR. SHERRIFF-SCOTT: Okay. Not a member of
11 your staff?

12 MR. BOURGEOIS: No.

13 MR. SHERRIFF-SCOTT: Okay. So and when --
14 and when he went out and did his thing he would give his
15 work product to you and Mr. Dunlop or you?

16 MR. BOURGEOIS: Correct.

17 MR. SHERRIFF-SCOTT: Okay. Now, while you
18 started doing that, at least I take it your evidence is in
19 support of the lawsuit, was it not true, sir, that you
20 quickly realized that you were uncovering things that were
21 broader than the lawsuit in scope and detail? In other
22 words, you were uncovering issues of abuse that affected
23 the public interest at large?

24 MR. BOURGEOIS: I don't know if that's
25 accurate or not.

1 **MR. SHERRIFF-SCOTT:** Well, of course it's
2 accurate. For example, you would have interviewed people
3 who had nothing to do with conspiracy claims but who were
4 just asserting they were abused from time-to-time by
5 various people; right?

6 **MR. BOURGEOIS:** No.

7 **MR. SHERRIFF-SCOTT:** No?

8 **MR. BOURGEOIS:** No, they would have links to
9 the main parties.

10 **MR. SHERRIFF-SCOTT:** Okay. Well, let me
11 just put it this way. Let's just turn up a document that
12 you authored which demonstrates my point, so I'll come at
13 it more directly.

14 And this is the -- Commissioner, this is the
15 Document Number 103216. It is a Commission document which
16 is likely to be entered as exhibit. It is dated 18
17 December 1996 authored by the witness.

18 **THE COMMISSIONER:** Okay. That's Exhibit
19 719. Is there anything in here that ---

20 **MR. SHERRIFF-SCOTT:** No, sir, there is not.

21 **THE COMMISSIONER:** Okay.

22 So it is a letter addressed to Chief
23 Fantino, London Police Service, dated December 18th, 1996.

24 --- **EXHIBIT NO./PIÈCE No P-719:**

25 (103216) Letter from Charles Bourgeois to

1 Chief Fantino dated December 18, 1996

2 MR. SHERRIFF-SCOTT: And just turn to the
3 second page, sir.

4 THE COMMISSIONER: Hang on. We will let him
5 read it through.

6 MR. SHERRIFF-SCOTT: Yes, thank you.

7 (SHORT PAUSE/COURTE PAUSE)

8 MR. BOURGEOIS: Okay, yes. I read it now.

9 MR. SHERRIFF-SCOTT: Did you. Can you flip
10 to the second page.

11 MR. BOURGEOIS: Yes, sir.

12 MR. SHERRIFF-SCOTT: That's your signature?

13 MR. BOURGEOIS: Yup.

14 MR. SHERRIFF-SCOTT: You prepared this
15 letter?

16 MR. BOURGEOIS: Yup.

17 MR. SHERRIFF-SCOTT: Okay. And if you look
18 at the third paragraph, may I take it that what is
19 reflected there is something similar to what I was
20 suggesting; that while you were doing this investigation,
21 if I can use that expression, not only were you allegedly
22 uncovering matters germane to your civil suit, but you were
23 uncovering other things, i.e., criminal acts as you
24 described, sufficient that you thought it behoved you to
25 report it to the authorities in the public interest. Is

1 that so?

2 **MR. BOURGEOIS:** It appears that way from
3 this letter, yes.

4 **MR. SHERRIFF-SCOTT:** Okay, and if I may just
5 draw your attention to the second page, you ask there the
6 recipient, Mr. Fantino, you ask for his opinion and
7 direction concerning this matter and await his reply quite
8 promptly from the date of the letter.

9 What did you anticipate in terms of getting
10 from him his opinion and direction?

11 **MR. BOURGEOIS:** Who could assist with
12 dealing with those issues.

13 **MR. SHERRIFF-SCOTT:** With those issues,
14 which were the investigation of these issues?

15 **MR. BOURGEOIS:** I take it, yes.

16 **MR. SHERRIFF-SCOTT:** Okay. So you were ---

17 **MR. BOURGEOIS:** And, in fact, he did give us
18 ---

19 **MR. SHERRIFF-SCOTT:** Some direction?

20 **MR. BOURGEOIS:** Yes. And whoever we went to
21 see was at his recommendation.

22 **MR. SHERRIFF-SCOTT:** So you were asking him
23 sort of what do we do with all this, this investigation,
24 where should we go? To whom should we send it? Et cetera.

25 **MR. BOURGEOIS:** Well, I wouldn't call it an

1 investigation. The information we had.

2 MR. SHERRIFF-SCOTT: The information process
3 that you were engaged in.

4 MR. BOURGEOIS: Yeah.

5 MR. SHERRIFF-SCOTT: Is that fair?

6 MR. BOURGEOIS: Yes.

7 MR. SHERRIFF-SCOTT: Okay. So you were
8 asking a public official for his input and opinion
9 regarding the course of what you should do and what you
10 should do with it?

11 MR. BOURGEOIS: Correct.

12 MR. SHERRIFF-SCOTT: Okay. So this makes my
13 point, does it not, that as you were doing this whatever
14 you want to call it, investigation, information gathering,
15 whatever nomenclature you wish to use, you were engaged in
16 this process? You were finding out things on the one hand
17 pertaining to your client, and you were finding out things
18 on the other hand pertaining to the public interest, and
19 thus you put things in the hands of an official who was
20 seized with responsibility of looking after the public
21 interest?

22 MR. BOURGEOIS: Yeah. I think at some
23 point, it -- there must have been a concern that there's
24 matters that needed to be investigated by the proper
25 authorities.

1 **MR. SHERRIFF-SCOTT:** At some point, you
2 recognized what you were doing had basically a dual
3 character. Isn't that fair?

4 **MR. BOURGEOIS:** No, I wouldn't say that.

5 **MR. SHERRIFF-SCOTT:** At some point, Mr.
6 Dunlop wanted to pursue this did he not with your
7 assistance and that of Mr. Fantino, for the purpose of
8 uncovering these issues in pursuit of the public interest?
9 Surely, Mr. Dunlop had that desire. Is that not so?

10 **MR. BOURGEOIS:** I don't know what the desire
11 would be. I mean, it would certainly be that they properly
12 investigated and deal with it according to what they have
13 to do.

14 **MR. SHERRIFF-SCOTT:** Mr. Dunlop, no doubt --
15 well, maybe I shouldn't put words in Mr. Dunlop's mouth
16 because I'm not sure what he'd say, but if I would hazard a
17 guess I would suggest to you that Mr. Dunlop decided at
18 some point that he was going to do this investigation, not
19 just for his own selfish reasons of the lawsuit, but that
20 perhaps because of his distrust of authorities and his lack
21 of faith in their ability to investigate, he was going to
22 do it himself as well. Is that not fair?

23 **MR. BOURGEOIS:** I'm not going to answer
24 what's in Perry's mind.

25 **THE COMMISSIONER:** And I think that's a fair

1 comment.

2 **MR. SHERRIFF-SCOTT:** Would that not fairly
3 be your understanding of the situation, sir?

4 **MR. BOURGEOIS:** No, it would not.
5 Absolutely not. At all times, Perry acted in good faith in
6 my opinion.

7 **MR. SHERRIFF-SCOTT:** No, no, no. You are
8 misunderstanding me entirely. I'm not suggesting he was
9 acting in bad faith in this issue.

10 **MR. BOURGEOIS:** Well, you just said
11 selfishly and, you know, your comments were negative, and
12 it was very clear to me that's how you were coming across.
13 I don't know how anybody could see it any other way.

14 **MR. SHERRIFF-SCOTT:** Well, perhaps others
15 could. I meant the word "selfish" in its literal way. In
16 other words, his self-interest was at stake in a lawsuit,
17 as opposed to ---

18 **MR. BOURGEOIS:** Oh, he certainly didn't ---

19 **MR. SHERRIFF-SCOTT:** Just wait until I
20 finish my question.

21 **MR. BOURGEOIS:** He certainly didn't make any
22 money off the lawsuit.

23 **MR. SHERRIFF-SCOTT:** Well, that's another
24 matter. The advisability of it is another matter. Whether
25 he made money is another matter.

1 The point is a lawsuit pursues damages for a
2 person.

3 **MR. BOURGEOIS:** Correct.

4 **MR. SHERRIFF-SCOTT:** Right. That's in their
5 self-interests without connotation one way or another.

6 What I am suggesting to you is, did you not
7 know Mr. Dunlop's belief or view as he may have expressed
8 to you, that he had no confidence in the authorities and
9 thus he wanted to do this investigation?

10 **MR. BOURGEOIS:** No, that's in his mind.

11 **THE COMMISSIONER:** Okay. Monsieur Ruel is
12 rising.

13 **MR. RUEL:** Mr. Commissioner, I think --
14 sorry -- we are right in the middle of the substance of the
15 -- further of the examination of Mr. Bourgeois.

16 The question is, what was under -- what was
17 Mr. Bourgeois doing as counsel with respect to some issues
18 and what Mr. Dunlop may have done with respect to other
19 issues? I mean, I guess we're not protected by solicitor-
20 client privilege.

21 So I would ask Mr. Sherriff-Scott to focus
22 on the real issues here, and I think some of the issues
23 that he's raising are fair ones. They're going to be
24 covered by yself.

25 **THE COMMISSIONER:** I think they are fair,

1 but they're -- the cart is in front of the horse. I think
2 you got in too close to the meat of it now. Let's -- I
3 understand what you are saying, but ---

4 **MR. SHERRIFF-SCOTT:** You understand what I'm
5 trying to establish?

6 **THE COMMISSIONER:** Yes.

7 **MR. SHERRIFF-SCOTT:** And I'm doing that in
8 aid of the issue of privilege only.

9 **THE COMMISSIONER:** Yes.

10 **MR. SHERRIFF-SCOTT:** And so the witness has
11 refused to come with me on this proposition that the
12 investigation had a dual character, at least in his
13 client's view as expressed to him. That's what I'm trying
14 to establish.

15 **THE COMMISSIONER:** Yes, but I don't think we
16 should go there now. It's fine.

17 **MR. SHERRIFF-SCOTT:** Okay. Thank you.

18 **THE COMMISSIONER:** Thank you. Anyone else?
19 All right. Mr. Bourgeois, if you can step
20 down.

21 **MR. BOURGEOIS:** Thank you, sir.

22 **THE COMMISSIONER:** You are free to
23 participate in the -- if you have any submissions, because
24 again, I indicate to you that the privilege is yours to
25 protect.

1 **MR. BOURGEOIS:** Well, I'm certainly putting
2 on the record, sir, that I want to protect it.

3 **THE COMMISSIONER:** Fine, fine. Merci.

4 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SIMON RUEL:**

5 **MR. RUEL:** So, Mr. Commissioner, our -- or
6 my position is that I'm -- we are ready to recognize the
7 privilege of Mr. Dunlop with respect to his communications
8 with Mr. Bourgeois as it relates to the civil litigation
9 itself.

10 Mr. Sherriff-Scott is making good points.
11 If there was a dual role, then I can -- we are going to
12 come into that when we cross that bridge I guess.

13 But if Mr. Dunlop was doing investigations
14 for other purposes, I guess those questions do not fall
15 within the scope of the litigation, and that would be my
16 view. So we'll get to those questions when we ask them to
17 the witness.

18 The communications for the purpose of
19 getting legal advice or for the purpose of preparing the
20 claim between Mr. Dunlop and Mr. Bourgeois, in my view,
21 remain privileged. However, the process for drafting the
22 Statement of Claim and legal proceedings, meaning the
23 general legal strategy, who drafted what; what was Mr.
24 Dunlop's role in preparing the claim; the legal -- the
25 causes of actions, as they appear in the legal proceedings;

1 everything that appears, in fact, in the legal proceedings,
2 the allegations I mean can -- I guess questions can be
3 asked on those points because they don't go into
4 communications -- or direct communications between Mr.
5 Dunlop and Mr. Bourgeois.

6 With respect to the communications between
7 Mr. Bourgeois and potential witnesses, whoever they may be
8 and based on a case I'm going to read to you in a few
9 minutes, based on a recent case from the Supreme Court,
10 *Blank v. Canada*, the -- all the work that Mr. Bourgeois has
11 done in meeting third parties, witnesses, in the presence
12 or in the absence of Mr. Dunlop are not communications
13 between Mr. Dunlop and his clients and therefore everything
14 that Mr. Bourgeois had to do with witnesses are legitimate
15 areas of questioning. There is -- so with respect to -- so
16 that's for Mr. Dunlop.

17 I have another issue to deal with with
18 respect to Mr. Dunlop, but for Mr. C-8 I guess there is no
19 issue. A waiver has been given by ---

20 **THE COMMISSIONER:** Given and recognized by
21 the witness. Okay.

22 **MR. RUEL:** Yes. So I had a few -- just a
23 last point on Mr. Dunlop before going to the cases.

24 There is one area, and I am going refer you
25 to a couple of transcripts where Mr. Dunlop has testified

1 in criminal cases.

2 At some point, we understand that Mr. Dunlop
3 was asked to produce his -- if I can call it --
4 investigative materials to the OPP when Project Truth was
5 created. So I gather from documentation that Mr. Bourgeois
6 had some involvement in this process, so at some point --
7 and I'm going to refer you to Document Number 120898.

8 So that's a transcript of Mr. Dunlop's --
9 well, and other witnesses -- but transcripts of testimonies
10 in the prosecution involving Father Charles MacDonald, so
11 that's on May 1st, 2002, and I'm going to refer you to page
12 436 of the document.

13 **THE COMMISSIONER:** Hold on a sec. We don't
14 have a paper copy of it. Okay, so what page do you want to
15 go to?

16 **MR. RUEL:** The page is -- the Bates page is
17 1129962.

18 So there is a question here. It starts
19 with, "All right". So just to give you some background
20 here and it's going to be covered in the evidence.

21 Inspector Trew from the Cornwall Police
22 Service summoned, essentially, Mr. Dunlop to produce all
23 the investigative materials he had gathered concerning --
24 well, his dealings with the victims and alleged victims,
25 and Mr. Dunlop is questioned in-chief here and the question

1 is:

2 "Subsequent to the delivery of this
3 letter from Inspector Trew, sir, that
4 you understand that the demand being
5 made on you was for everything,
6 including material that was at your
7 lawyer's office, that related to sexual
8 assaults?"

9 The answer:

10 "Well, it was my understanding that the
11 lawyer would go through it, pick out
12 the pertinent parts that were the
13 criminal parts and pass them on."

14 So he is putting into question the work of
15 his lawyer with respect to this specific issue here.

16 **THE COMMISSIONER:** He's putting into
17 question ---

18 **MR. RUEL:** What was that?

19 **THE COMMISSIONER:** What do you mean by,
20 "He's putting into question"?

21 **MR. RUEL:** Well, he's saying that his lawyer
22 had a role in selecting the documents that would be passed
23 on to the police.

24 **THE COMMISSIONER:** Right.

25 **MR. RUEL:** So he's putting into question the

1 role of his lawyer with respect to this issue of
2 disclosure. And in the same document ---

3 **THE COMMISSIONER:** Okay. Well, first of
4 all, how do you know that the lawyer is Mr. Bourgeois?

5 **MR. RUEL:** Well, we can -- that's a good
6 question. I guess we can establish that in the documents,
7 but those discussions, those issues, happen while Mr.
8 Bourgeois was on file. There's correspondence to that
9 effect.

10 **THE COMMISSIONER:** Well, well, okay. When
11 is the date of this transcript?

12 **MR. RUEL:** This is dated May 1st, 2002.

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

14 **MR. RUEL:** And I can refer you to further ---

15 **THE COMMISSIONER:** Well, in any event,
16 you've pointed out that as far as Dunlop was concerned, at
17 some point in 2002 when he was asked or ordered to -- okay,
18 so he's basically saying I -- that his lawyer was to go
19 through an pick up pertinent parts that were criminal parts
20 and pass them on. Okay.

21 **MR. RUEL:** Yes. I'm just going to refer you
22 to another transcript which is -- if you can go to Bates --
23 Madame Clerk, it's easier to refer to the Bates page. In
24 another document.

25 **THE REGISTRAR:** What is the document?

1 **MR. RUEL:** The Doc Number is 120899 and it's
2 at -- sorry.

3 **THE COMMISSIONER:** All right. Here's the
4 hard copy of Exhibit 720, which is a transcript of a
5 Superior Court proceeding, *Her Majesty the Queen v. Charles*
6 *MacDonald*. This is Volume 3 on May 1st, 2002.

7 **--- EXHIBIT NO./PIÈCE No P-720:**

8 (120898) Transcript of *Her Majesty the Queen*
9 *vs. Charles F. MacDonald* Section 11(b)
10 Motion volume 3 dated May 1, 2002

11 **THE COMMISSIONER:** Okay, so what page are we
12 on?

13 **MR. RUEL:** So the one that I am referring to
14 now is May 2nd, so the page of the transcript is 588 and
15 it's at the middle of the page.

16 So the question starts with -- and I think
17 it's Mr. Neville cross-examining. Mr. Neville's here so I
18 guess he knows these facts quite well. So the question
19 starts with, "Thank you, top cop" and now the question ---

20 **THE COMMISSIONER:** Just a second. I don't -
21 - it's not on the screen yet.

22 **MR. RUEL:** Sorry. The Bates page is
23 1130118. So the middle of the page, so the question is:

24 "Now, one of the people that you have I
25 gather pointed the finger of blame at

1 for this disclosure problem that's now
2 being litigated in this court, is your
3 lawyer. You got bad legal advice or
4 misguided legal advice. Is that
5 right?"

6 And Mr. Dunlop answers:

7 "Yes, I did."

8 And at the bottom of the page:

9 "Which ones ..."

10 because there was, I guess, there was two lawyers
11 representing Mr. Dunlop at different times:

12 "Which one, or ones, gave you, in your
13 opinion, misguided legal advise?"

14 The answer is:

15 "Bourgeois."

16 And two lines below:

17 "And what was the misguided legal
18 advice or what do you mean by misguided
19 legal advice?"

20 And he answers:

21 "That he would go through the file and
22 determine what was criminal and what
23 was civil, okay, and the answer,
24 further answer and forward it [sic]."

25 So, again, he's putting -- with respect to

1 disclosure issues, he's putting into question the advice or
2 the role of Mr. Bourgeois.

3 So my submission is that with respect of
4 this specific issue, Mr. Dunlop has waived any privilege he
5 may have with respect to the issue of disclosure of
6 information to the OPP. So I'm just going to go ---

7 **THE COMMISSIONER:** Well, why is that?

8 **MR. RUEL:** Well, because he's putting into
9 question the legal advice that he received from his counsel
10 with respect to disclosure. So I'm just going to go
11 through the case law, and I think it's fairly clear, which
12 indicates that when you -- before a court, you put into
13 question or you raise the issue of legal advice that you
14 received then ---

15 **THE COMMISSIONER:** Okay.

16 **MR. RUEL:** --- there is an implied waiver.

17 So the first case I indicated I would refer
18 to is *Descôteaux v. Mierzwinski*; I'm not going to go
19 through it. This is Supreme Court 1982 1 S.C.R. 860 and it
20 just establishes that ---

21 **THE COMMISSIONER:** Mr. Neville is getting
22 up, sir -- no.

23 **MR. NEVILLE:** I'm getting my documents
24 actually.

25 **THE COMMISSIONER:** Okay. So, *Descôteaux*,

1 yes.

2 **MR. RUEL:** This just case just establishes
3 the scope of solicitor/client privilege, essentially that
4 all communications made with a view of obtaining an -- I
5 can refer briefly at page 23 of the case. This a unanimous
6 decision from the court ---

7 **THE COMMISSIONER:** Page 23?

8 **MR. RUEL:** There's no paragraphs, but it's
9 page 23.

10 **THE COMMISSIONER:** Good, but it's a 1 of 18
11 decision.

12 **MR. RUEL:** So, well, I guess we don't have
13 the same version. So it's in the Conclusion, so it should
14 be the last two or three pages.

15 **THE COMMISSIONER:** Page 16.

16 **MR. RUEL:** Around 16, Conclusion.

17 **THE COMMISSIONER:** Well, 16 is where the
18 Conclusion is, yes.

19 **MR. RUEL:** Yes. So just under Conclusion:

20 "In summary, a lawyer's client is
21 entitled to have all communications
22 made with a view of obtaining legal
23 advice kept confidential."

24 So a little bit below:

25 "Whether communications are made to the

1 lawyer himself or employees, whether
2 they deal with matters of
3 administrative nature such as financial
4 means and the actual nature of legal
5 problem..."

6 **THE COMMISSIONER:** What paragraph are you
7 in?

8 **MR. RUEL:** That's the same paragraph.

9 **THE COMMISSIONER:** The first in Summary?

10 **MR. RUEL:** Yes.

11 **THE COMMISSIONER:** Okay.

12 **MR. RUEL:** "All information which a person
13 must provide in order to obtain legal
14 advice, and which is given in
15 confidence for that purpose, enjoys the
16 privileges attached to
17 confidentiality."

18 **THE COMMISSIONER:** Okay. That's the general
19 principle?

20 **MR. RUEL:** That's the general principle.

21 That's the only reason why I was giving that to you.

22 So the case -- the following case is *Blank*
23 *v. Canada (Minister of Justice)* 2006 2 S.C.R. 319.

24 **THE COMMISSIONER:** Mr. ---

25 **MR. LEE:** I just think it should be noted

1 for Mr. Bourgeois that these cases are being shown on
2 monitors. They may want to move so that he can follow
3 along with them more easily.

4 **THE COMMISSIONER:** Fine.

5 Mr. Bourgeois, if you want to, you can sit
6 in the witness stand without -- and, yes, you can give him
7 copies as well.

8 **(SHORT PAUSE/CORTE PAUSE)**

9 **THE COMMISSIONER:** So we're looking at Blank
10 right now?

11 **MR. RUEL:** So at Blank. This is a recent
12 Supreme Court case which established a clear distinction
13 between what is known as the solicitor/client privilege or
14 legal advice privilege and litigation privilege. And this
15 is an Access to Information case, so just a general
16 background, I guess; it may have been presented to you
17 before.

18 The defendant had been accused of some
19 federal offences and the offences -- I mean, the charges
20 were quashed and he was suing the Attorney General, I
21 gather, for I guess the malicious prosecution or he was
22 suing the government with respect to the criminal
23 prosecution. He was seeking, through access to
24 information, some information from the government on the
25 criminal litigation process and the government objected and

1 balked to any information, including what is discussed
2 here as being the litigation privilege.

3 And I'm going to refer you to paragraph 27.
4 And this is Judge -- Mr. Justice Fish, sorry, writing for
5 the majority and he indicates here what is litigation
6 privilege.

7 And he writes:

8 "Litigation privilege on the other hand
9 is not directed at, still less,
10 restricted to communication between
11 solicitor and client. It contemplates
12 as well communication between the
13 solicitor and third parties or, in the
14 case of an unrepresented litigant,
15 between the litigant and third parties.
16 Its object is to ensure the efficacy of
17 the adversarial process and not to
18 promote the solicitor/client
19 relationship. And to achieve that
20 versus parties to litigation
21 represented or not must be left to
22 prepare their contending positions in
23 private without adversarial
24 interference and without fear of a
25 premature disclosure."

1 And he is referring to reasons of Mr.
2 Justice Sharpe in a case where the distinction between the
3 two privileges were made and it's the paragraph starting
4 with:

5 "Litigation privilege on the other hand
6 is geared directly to the process of
7 litigation."

8 So the litigation process itself is part of
9 litigation privilege. Those are not communications.

10 And a bit below:

11 "Its purpose is more particularly
12 related to the needs of the adversarial
13 trial process. Litigation privilege is
14 based upon the need for protected area
15 to facilitate investigation in
16 preparation of a case for trial and by
17 the adversarial advocate. In other
18 words, litigation privilege aims to
19 facilitate the process, namely, the
20 adversarial process, while
21 solicitor/client privilege aims to
22 protect the relationship, namely, the
23 confidential relationship between a
24 lawyer and a client."

25 So again, the process and the communication

1 between the counsel or solicitor and the third parties, in
2 this case, witnesses are protected while the litigation is
3 ongoing by litigation privilege.

4 So at paragraph 34:

5 "The purpose of the litigation
6 privilege, I repeat, is to create a
7 zone of privacy in relation to pending
8 or apprehended litigation. Once
9 litigation has ended, the privilege to
10 which it gave rise has lost its
11 specific and concrete purpose and,
12 therefore, its justification. But to
13 borrow a phrase, the litigation is not
14 over until it's over. It cannot be
15 said to have terminated in any
16 meaningful sense of that term where the
17 litigants or related parties remain
18 locked in what is essentially the same
19 legal combat."

20 So once the litigation is terminated, what
21 the court is saying is that the privilege does not apply
22 unless there is some, I guess, remaining litigation or
23 other issues that may come up between the parties or
24 further litigation or related litigation ---

25 **THE COMMISSIONER:** Some -- well, no, same

1 legal combat. Some people might argue that in this
2 Inquiry, these people are still at the same spot and
3 fighting the same battle.

4 **MR. RUEL:** Well, this is -- I would argue
5 this is a totally different beast, I would say. This is
6 not as this has been argued before you I guess on a number
7 of occasions. This is not an adversarial process; there is
8 no parties before the Commission. There is no list, so
9 it's -- the parties -- there is no parties remaining locked
10 in any issue that still -- that was covered by this
11 specific litigation.

12 So just on litigation strategies, paragraph
13 41, because what the government, I gather, was arguing
14 there is that this -- the privilege should extend or should
15 -- the litigation strategies of the government should be
16 protected because they would apply to other cases. And if
17 those strategies were revealed, then it would give an
18 advantage, I guess, to litigants against the government.
19 And the court is responding to that at paragraph 41.

20 I'm going to read; it's in the middle of
21 paragraph:

22 "When the claim belonging to that
23 particular group of causes of action
24 has been dealt with, however,
25 litigation privilege would have been

1 exhausted even if subsequent disclosure
2 of the files would reveal aspects of
3 government operations or general
4 litigation strategies that the
5 government would prefer to keep from
6 its adversaries or other requestors
7 under the *Access Act*."

8 So litigation strategies, and they're
9 talking here about government operations, I guess, as it
10 relates -- what may or may not relate to litigation, are
11 open to disclosure once the litigation has ended.

12 So based on that case, all the meetings,
13 discussions, interviews that Mr. Bourgeois had with
14 witnesses or third parties are litigation -- or were
15 covered at some point by litigation privilege, or an
16 argument could be made that they were covered by this
17 privilege but this privilege has ended. So any interview,
18 discussion or meeting with Mr. Bourgeois and potential
19 witnesses for the claim -- or if it's not for the claim
20 then it's not privileged at all, then since the litigation
21 came to an end, I believe it was 2002, those issues are not
22 privileged. The litigation process, the litigation
23 strategy are not privileged anymore.

24 And I contend that the process, the --
25 certainly, the content of the legal documents, the

1 Statement of Claim, Amended Statement of Claim, and similar
2 documents -- those documents are public so certainly
3 questions could be asked to the witness with respect to the
4 content of those documents.

5 So the other case I'm going to refer to you
6 -- I'm going to refer to ---

7 **THE COMMISSIONER:** Okay, but wait a minute.
8 Paragraph 50, for example, it says:

9 "Commensurate with its importance, the
10 solicitor/client privilege has, over
11 the years, been broadly interpreted by
12 this court. In that light, anything in
13 the litigation file that falls within
14 the solicitor/client privilege will
15 remain clearly and forever privileged."

16 **MR. RUEL:** That, Mr. Commissioner, I think
17 would apply, for example, to legal advice given by the
18 litigator in the file. So those are -- remain as --
19 because those are issues related to legal advice so those
20 issues, even though they may appear in the litigation file,
21 would remain privileged.

22 However, other issues, which -- for example,
23 interviews or summaries or transcripts of interviews of
24 witnesses that would appear in the litigation file, would
25 be litigation privileged. So what the Court is saying is

1 that in the litigation file you could have both types of
2 documents, essentially.

3 So the next case is The Queen -- *R. v.*
4 *Campbell* (1999) 1 S.C.R. 565. This is a criminal case, and
5 in the context of this affair, I gather that the -- there
6 was a request by the defence to obtain, after the testimony
7 of a police officer dealing with the legality of the
8 reverse sting operation, so there was -- the defence wanted
9 to obtain the legal opinion based on which the officer was
10 acting.

11 So I'm going to refer you -- and this is --
12 the judgment of the court was written by Mr. Justice
13 Binnie, so I -- this is a unanimous decision.

14 So it's at Paragraph 67 and the title or the
15 heading is "Waiver of Solicitor/Client Privilege", and the
16 court is writing here on this point:

17 "The record is clear that the RCMP put
18 in issue Corporal Reynold's good faith
19 belief in the legality of the reverse
20 sting and asserted its reliance upon
21 his consultation with the Department of
22 Justice to buttress that position."

23 The RCMP factum in the Ontario Court of
24 Appeal had already been quoted in Paragraph 46:

25 "In my view, the RCMP waived the right

1 to shelter behind solicitor/client
2 privilege, the content of the advice
3 thus exposed and relied upon."

4 So that's in support of the argument that
5 when the legal advice is put into question by a person in
6 litigation, the waiver is -- the person has waived the
7 privilege, so ---

8 **THE COMMISSIONER:** But wait a minute, wait a
9 minute. Wait a minute here.

10 He's using this, if I can understand this
11 case, he's using this as a shield. He's saying, "Wait a
12 minute here, I acted properly. I went and got legal
13 advice."

14 **MR. RUEL:** Yes.

15 **THE COMMISSIONER:** And so he's using it as a
16 shield this way. So he's not accusing -- you're using this
17 to say that in -- given the transcript that he's given --
18 Mr. Dunlop has given in prior criminal proceedings where
19 he's just a witness, that he's waiving the solicitor/client
20 privilege?

21 **MR. RUEL:** Well, I think, Mr. Commissioner,
22 once you waive privilege, you waive for all purposes. I'm
23 not aware of a principle that says that if you waive in a
24 specific proceeding, then it's limited to that proceeding.

25 But I just want to refer you to ---

1 **THE COMMISSIONER:** But, wait a minute now,
2 wait a minute.

3 Let's assume I accept your principle that,
4 "Look it, I got legal advice to buttress my argument". So
5 what you're saying then is in the -- that when it came to
6 the legal advice he got with respect to separating what was
7 criminal and civil, that that wipes out all
8 solicitor/client privilege or just the solicitor/client
9 privilege that attaches to that opinion?

10 **MR. RUEL:** To that opinion only.

11 **THE COMMISSIONER:** Okay.

12 **MR. RUEL:** That's my view.

13 **THE COMMISSIONER:** Okay.

14 **MR. RUEL:** And I guess that the RCMP, or the
15 officer in that case, did not say what the legal advice
16 said, they just said, you know, "I acted on the basis of
17 legal advice".

18 And on that point, at paragraph 70, the
19 court wrote, and I'm going to bring you to the -- well,
20 it's the third -- I guess the last third of the paragraph
21 starting with, "As Roger's".

22 **THE COMMISSIONER:** Paragraph 70.

23 **MR. RUEL:** Yeah:

24 "As Roger's *supra* shows, it is not
25 always necessary for the client

1 actually to disclose part of the
2 contents of the advice in order to
3 waive privilege to the relevant
4 communication of which it forms a part.
5 It is sufficient in this case for the
6 RCMP to support its good faith argument
7 by undisclosed advice from legal
8 counsel in circumstances where, as
9 here, the existence or non-existence of
10 the asserted good faith dependent on
11 the content of that legal advice."

12 So I guess Mr. Dunlop didn't say exactly
13 what advice he got on that but that doesn't matter
14 according to the Supreme Court, so my submission is that on
15 that specific issue he waived privilege. And once you
16 waive it, you can't claim it back.

17 So those are my submissions. So I think
18 I've covered the litigation privilege, the waiver issue and
19 so those are my ---

20 **THE COMMISSIONER:** So let me get it
21 straight, then.

22 You're not saying -- or are you saying that
23 anything Mr. Dunlop would have said to Mr. Bourgeois is
24 fair game? Are you saying that?

25 **MR. RUEL:** Except for that.

1 **THE COMMISSIONER:** Except for what?

2 **MR. RUEL:** Except for the disclosure issue.

3 **THE COMMISSIONER:** So ---

4 **MR. RUEL:** Sorry, maybe I'm misunderstanding
5 the question.

6 **THE COMMISSIONER:** And maybe -- can anyone
7 ask this gentleman about any conversation he had with Mr.
8 Dunlop? Are you saying that all of the solicitor/client
9 privilege is gone?

10 **MR. RUEL:** The only area where I saw an
11 implied waiver is with respect to that specific issue. The
12 rest, I think, I haven't seen -- and we have -- we act in
13 public interest; we have an obligation to protect those
14 privileges when they apply, and I haven't seen any waiver
15 with respect to the rest of the privilege, so ---

16 **THE COMMISSIONER:** So as far as you are
17 concerned, any communications that Mr. Bourgeois would have
18 had with other parties, other than Mr. Dunlop, would be --
19 the privilege on that would have been a litigation
20 privilege only and the litigation is ended and, therefore,
21 that's fair game?

22 **MR. RUEL:** Exactly.

23 **THE COMMISSIONER:** All right and then what
24 you're telling me then is the only conversations that Mr.
25 Bourgeois and Mr. Dunlop had, which is open for discussion,

1 is that part that dealt with the waiver of the bad legal
2 advice he got with respect to the criminal and civil?

3 **MR. RUEL:** Yes, that's my position.

4 **THE COMMISSIONER:** Okay, thank you.

5 All right. Mr. Manson?

6 **MR. MANSON:** I'm going to be a while.

7 **THE COMMISSIONER:** Oh well, then I'm going
8 to take a break.

9 (LAUGHTER/RIRES)

10 **THE REGISTRAR:** All rise. À l'ordre;
11 veuillez vous lever.

12 --- Upon recessing at 11:02 a.m.

13 --- L'audience est suspendue à 11h02

14 --- Upon resuming at 11:20 a.m.

15 --- L'audience est reprise à 11h20

16 **THE REGISTRAR:** This hearing is now resumed.
17 Please be seated. Veuillez vous asseoir.

18 **MR. RUEL:** Mr. Commissioner, I'm sorry, just
19 a little point. I haven't been before you that often so I
20 guess I'm a bit rusted.

21 I forgot to introduce as an exhibit the last
22 transcript I referred to.

23 **THE COMMISSIONER:** Yes.

24 **MR. RUEL:** Which was Document Number, again,
25 120898.

1 **THE COMMISSIONER:** Nine, nine, (99) which is
2 Exhibit 721, Superior Court of Justice, Transcript of *Her*
3 *Majesty the Queen and Charles F. McDonald*, Volume 4, May
4 2nd, 2002.

5 **MR. RUEL:** Yes, sorry, yes. It's that one.

6 **THE COMMISSIONER:** Okay.

7 **MR. RUEL:** So that should be made an
8 exhibit.

9 **THE COMMISSIONER:** It is, 727; 721 sorry.

10 **--- EXHIBIT NO./PIÈCE No. P-721:**

11 (120899) Transcript of *Her Majesty the*
12 *Queen v. Charles F. MacDonald* Section 11(b)
13 Motion, Volume 4, dated May 2, 2002

14 **MR. RUEL:** Thank you.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Manson?

17 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ALLAN MANSON:**

18 **MR. MANSON:** Yes, Mr. Commissioner.

19 I guess this is an example of everyone
20 trying to the best they can in difficult circumstances. So
21 I'll try to lay this out for you as clearly and succinctly
22 as I can, but as I indicated from my questions to Mr.
23 Bourgeois, I have a specific interest in being able to
24 cross-examine him, and it's that interest that underlays
25 this argument.

1 I want to be able to examine him on the
2 statements taken from Ron Leroux.

3 **THE COMMISSIONER:** Yes.

4 **MR. MANSON:** And they are October 10th;
5 October 31st; November 13th; the Ron Leroux interview with
6 the OPP on February 7th.

7 With respect to those, I think Mr. Ruel is
8 completely right that if they were protected by litigation
9 privilege at one point, that's over.

10 **THE COMMISSIONER:** And I don't need to hear
11 from you any further on that.

12 **MR. MANSON:** Thank you.

13 I also am interested in cross-examining Mr.
14 Bourgeois on the construction of the civil litigation,
15 particularly the pleadings, the Statement of Claim, the
16 Amended Statement of Claim and the Response to Particulars.

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

18 **MR. MANSON:** Here's where I need to expand
19 slightly because while Mr. Ruel is completely right when he
20 referred to the line in *Blank and Canada* that said -- I
21 apologize, my printer in the hotel room takes a sixteenth
22 of an inch off of every page. So if we could just put
23 *Blank* up please.

24 **THE COMMISSIONER:** Luckily it has
25 paragraphs.

1 **MR. MANSON:** Yes, but it's the paragraph
2 numbers I am missing.

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

4 **MR. MANSON:** So I believe it's just before
5 part 4.

6 **THE COMMISSIONER:** Okay, Paragraph 41.

7 **MR. MANSON:** It is paragraph 41:

8 "In such a situation, the advocate's
9 protected area would extend to work
10 related to those underlying liability
11 issues even after some, but not all, of
12 the individual claims have been
13 disposed of. There were common issues
14 in the cause of action in terms of the
15 advocate's work product were closely
16 related [sic]. When the claims
17 belonging to that particular group of
18 cause of action had all been dealt
19 with, however, litigation privilege
20 would have been exhausted ..."

21 That's the situation we're in here, Mr.
22 Commissioner:

23 "... even if subsequent disclosure of
24 the files would reveal aspects of
25 government operations or general

1 litigation strategies ..."

2 In the plural.

3 " ... that the government would prefer
4 to keep from its former adversaries."

5 I can't say with confidence that that
6 reference to general litigation strategies is sufficient to
7 permit me to ask some of the questions that I want to ask.

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

9 **MR. MANSON:** Arguably it is, but the
10 questions I will be asking might -- I can't predict Mr.
11 Commissioner -- but might require the witness to refer to
12 conversations with Mr. Dunlop about the particular
13 litigation strategy.

14 And so with that caveat about that phrase
15 "general litigation strategies", it is our position that
16 with respect to the pleadings, Mr. Dunlop has waived
17 privilege.

18 **THE COMMISSIONER:** And how has he done that?

19 **MR. MANSON:** If I could start by just
20 explaining the legal framework, and then I want to go to
21 transcripts of his cross-examinations in an effort to meet
22 the legal tests.

23 I think Mr. Ruel was completely right when
24 he made reference to *Campbell* and *Shirose*, and Mr.
25 Commissioner, you've got the point when you said in

1 *Campbell* and *Shirose* they were trying to use the legal
2 advice as a protection by a) asserting it and then b)
3 saying but you can't go behind it. And that certainly
4 covers, in my view, Mr. Ruel's point about the disclosure
5 and I think the references to the transcript make that
6 clear that that was what Mr. Dunlop was attempting to do,
7 to say for the disclosure issues, "I relied on legal
8 advice".

9 I agree with Mr. Ruel that for that aspect,
10 that is an implied waiver.

11 It's my submission that if we look through
12 the transcripts, and I'll take you to them in a minute,
13 that we see implied waiver as well with respect to the
14 pleadings.

15 If I could start, Mr. Commissioner, by
16 referring to a paragraph in *Sopinka*, *Letterman* and *Bryant*,
17 The Law of Evidence, and this is just general background,
18 that it explains how the notion of implied waiver plugs
19 into these issues.

20 It is page 758, paragraph 14.103:

21 "The notion of fairness has also been
22 invoked as a basis for waiver when the
23 party directly raises in a pleading or
24 proceeding the legal advice that he or
25 she received, thereby putting that

1 advice in issue."

2 And the next reference is to *Campbell* and
3 *Shirose*. Later in the paragraph, right at the end is the
4 sentence that I'm interested in:

5 "Also, when a party asserts that
6 statements contained earlier affidavits
7 were the results of errors made by his
8 or her solicitors, the party is taken
9 to have waived privilege and the
10 solicitors are examinable."

11 And I should point out with respect to those
12 documents; this is not a general waiver. And the
13 reference, Mr. Commissioner, is to a British Columbia Court
14 of Appeal case which, I believe, has been circulated.

15 *Souter versus 375561 B.C. Limited*, 1995,
16 British Columbia Court of Appeal, Macfarlane, Goldie and
17 Prowse JJA.

18 This is a case, Mr. Commissioner ---

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. MANSON:** It's up on the screen now.

21 This is a commercial case where a number of
22 affidavits were filed and all of a sudden one of the
23 parties' files an affidavit saying:

24 "My earlier affidavits were erroneous,
25 but that's the fault of my solicitors,

1 not mine."

2 And the question is:

3 "Is the third affidavit and the
4 solicitors' advice producible? Can the
5 solicitors be examined?"

6 And it's paragraph 32 that I'm interested
7 in.

8 Again, I've got the wrong numbers. It's
9 paragraphs 21 and 22, sorry.

10 You will see above, in paragraph 20:

11 "That affidavit was drafted by a junior
12 solicitor who was not completely
13 familiar. When I swore the affidavit,
14 I did not detect the error."

15 Paragraph 21:

16 "Now, it's clear by this assertion, Mr.
17 Nonis deflects responsibility for the
18 substance of the earlier affidavits
19 insofar as they contain the assertion
20 that moneys were advanced by the
21 Plaintiff from himself to the solicitor
22 in question. By necessary implication,
23 he is saying, I gave the solicitor the
24 correct instructions. He was
25 responsible for a mistake which

1 misrepresented the true state of
2 affairs. It does not require extended
3 discussion to conclude that when a
4 party identifies his solicitor as
5 responsible for a material mistake in
6 an affidavit sworn by that party and
7 claims solicitor/client privilege in
8 respect of his knowledge and that of
9 the solicitor, he is using the
10 confidentiality protected by privilege
11 as a sword rather than as a shield."

12 And it is my submission, Mr. Commissioner,
13 that that's what has gone on here with respect to the
14 pleadings.

15 If I could take you to some of the
16 transcripts?

17 **THE COMMISSIONER:** Yes.

18 **MR. MANSON:** This is why I indicated it
19 might take a while, Mr. Commissioner, because I have to
20 work through these. Let's do it in chronological order.

21 Exhibit 720, I've got May 2nd, 2002. I'm not
22 sure if the exhibits were broken down into dates.

23 **THE COMMISSIONER:** I suspect so.

24 **MR. MANSON:** Then this may be 721.

25 **THE COMMISSIONER:** May 2nd?

1 MR. MANSON: Yes, May 2nd, 2002.

2 THE COMMISSIONER: Yes, 721.

3 MR. MANSON: It's 721?

4 THE COMMISSIONER: Yes.

5 MR. MANSON: These are the proceedings in
6 front of Mr. Justice Chilcott, the Stay Application.

7 THE COMMISSIONER: Oh, yes. What page then?

8 MR. MANSON: Do you have the hard copy, Mr.
9 Commissioner?

10 THE COMMISSIONER: Yes.

11 MR. MANSON: Page 511.

12 THE COMMISSIONER: Yes.

13 MR. MANSON: There's a number of references.
14 In my submission, you have to look at them in their
15 totality. So I'll just read through them and then if you
16 have any questions, we can talk about them after.

17 Line 25:

18 "And that Statement of Claim in your
19 lawsuit was prepared by Charles
20 Bourgeois?"

21 "A. That's correct."

22 "Did you work with Mr. Bourgeois in
23 preparing it?"

24 Answer:

25 "A little bit."

1 Question:

2 "What did you do to assist him?"

3 Answer:

4 "I did some typing."

5 Next page. Question:

6 "Some typing?"

7 Answer:

8 "M'hm."

9 Question:

10 "Okay. Well, what did Mr. Bourgeois
11 have to work with to craft the details,
12 the specifics? He didn't make them up
13 off the top of his head. What did he
14 use?"

15 "Well, he interviewed me and stuff, you
16 know, talked to me."

17 "He interviewed you?"

18 "M'hm."

19 "Okay. Did you provide him with
20 materials to use to assist him; things
21 like witness statements, affidavits?"

22 "Yes."

23 "Did you? And he reviewed some of
24 those kinds of materials with him."

25 "He would draft up what he had and I

1 would read it over."

2 Question:

3 "See what you thought of it? Whether
4 you had any input to it or recommended
5 changes? That type of thing as the
6 client?"

7 "Yeah. Well, he had lawyers sort of
8 vernacular, and I had police
9 vernacular."

10 Mr. Commissioner, what I want to suggest by
11 going through these transcripts is number one, at no point
12 does Mr. Dunlop assert any privilege; and number two, as
13 you will see later on, he does put responsibility on Mr.
14 Bourgeois for inaccuracies and exaggerations. And it's my
15 submission that that is what brings us within Souter, the
16 British Columbia Court of Appeal.

17 **THE COMMISSIONER:** Yes, okay, well, you
18 might want to -- maybe he didn't know the Claimant?

19 But in any event, there's that -- there's
20 that ---

21 **MR. MANSON:** Let me address that right now.
22 I want to go back to Sopinka and Letterman.

23 **THE COMMISSIONER:** Ah, the professor is
24 showing now.

25 (LAUGHTER/RIRES)

1 **MR. MANSON:** This is at page 757, and it's
2 paragraph 14.98.

3 **THE COMMISSIONER:** Fourteen, point, nine,
4 eight (14.98), yes.

5 **MR. MANSON:** "If the communication is
6 elicited in cross-examination of the
7 client..."

8 Which is this situation.

9 "...it seems that unless it can be shown
10 that the witness was misled or did not
11 comprehend what was being asked of him
12 or her, the assertion of the
13 communication would amount to a waiver.
14 Of course, if the client merely
15 testifies as a witness to the facts in
16 issue, that will not constitute a
17 waiver of privilege nor would
18 solicitor-client privilege be lost by a
19 party merely because his or her memory
20 was refreshed from notes made by him or
21 her for counsel in preparation for
22 trial."

23 I would suggest that this paragraph supports
24 the view that even during cross-examination, unless someone
25 is misled or trapped into disclosing communications, once

1 they're out there, once it's put on the table, that can, in
2 fairness -- and in fairness to other parties, in fairness
3 to other processes -- that can constitute an implied
4 waiver.

5 **THE COMMISSIONER:** Right. But you said --
6 the query whether in that scholarly book of Mr. Sopinka --
7 Mr. Justice Sopinka ---

8 **MR. MANSON:** The late Mr. Justice Sopinka,
9 Yes.

10 **THE COMMISSIONER:** Of course.

11 **MR. MANSON:** And Mr. Justice Bryant and Mr.
12 Justice Letterman. They're all -- if we are going that
13 route, we might as well be complete.

14 **THE COMMISSIONER:** All right.

15 I can see that if it's in the civil
16 litigation, the person's on the stand; he's got his lawyer
17 sitting there, and they're going through everything. Was
18 this in a criminal case or was it in a civil case?

19 **MR. MANSON:** This was a criminal case.

20 **THE COMMISSIONER:** Okay.

21 **MR. MANSON:** My understanding -- Mr. Neville
22 may know better, but Mr. Dunlop had no representation at
23 that time in the room.

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

25 **MR. MANSON:** I accept that. But I think

1 when we go through the rest of the transcripts ---

2 THE COMMISSIONER: Let's go.

3 MR. MANSON: --- you will see that Mr.
4 Dunlop was prepared to put these issues on the table, and
5 that's what I think constitutes the implied waiver.

6 THE COMMISSIONER: Okay.

7 MR. MANSON: So I just finished with page
8 512.

9 THE COMMISSIONER: Yes.

10 MR. MANSON: If we go to 513, right at the
11 top, you've got Mr. Neville saying:

12 "Is that the Statement of Claim?"

13 "Mr. Dunlop: It appears to be."

14 Later down, again Mr. Neville is asking him
15 about a paragraph in the Statement of Claim:

16 "...and he is suggesting that there were
17 two components to your claim. One is
18 that you were suing for malicious
19 prosecution, that *Police Act* charge
20 that you've explained ended up stayed
21 and stayed upheld in Divisional Court.
22 So you were suing in part for that. Is
23 that correct?"

24 Answer:

25 "That's right."

1 Next page:

2 "But it had another component. The
3 other component was your allegation
4 about a so-called clan of pedophiles
5 and conspiracies to obstruct justice.
6 Is that right?"

7 Answer:

8 "That's how my lawyer drafted it up."

9 Question:

10 "And that was your position, wasn't it?
11 Your name is on it?"

12 Answer:

13 "Yeah, my name is on it, but I didn't
14 coin the phrase 'clan'."

15 Question:

16 "I know you didn't. Ron Leroux did,
17 didn't he?"

18 Answer:

19 "That's -- I can't answer yes to that,
20 but it sure wasn't me."

21 Later down the page, again to show that Mr.
22 Dunlop is prepared to discuss the Statement of Claim and
23 his instructions:

24 "That's part of your allegation that
25 there was somehow this wide-ranging

1 conspiracy here in this city and that
2 this conspiracy to obstruct justice by
3 covering up criminal activity, that was
4 part of your allegations in this claim.
5 Is that right?"

6 Answer:

7 "Yes."

8 Next page:

9 "Okay. And in some fashion, you were
10 claiming that this activity and this
11 conspiracy by the clan somehow caused
12 you damages for which you should be
13 compensated. Is that right?"

14 Answer:

15 "Right."

16 If we could turn to page 525, Mr.
17 Commissioner, there is a series of these references and I
18 know this is tedious, but there's no other way to do it,
19 Mr. Commissioner.

20 **THE COMMISSIONER:** No, that's fine. It's an
21 important issue.

22 **MR. MANSON:** Down at line 22.

23 Question:

24 "I see. You also put out into the
25 public domain an allegation that Bishop

1 LaRocque abused altar boys in the early
2 '60s, didn't you?"

3 Answer:

4 "I put it out in the public domain,
5 yes."

6 Question:

7 "How? In your law suit, in your
8 affidavits, again the source being Ron
9 Leroux; right?"

10 Answer:

11 "Well, it was my lawyer that drafted up
12 the ---"

13 Question:

14 "Oh, please, Mr. Dunlop, how would he
15 know what to put in it if you didn't
16 give it to him?"

17 Answer:

18 "Well, he's a lawyer."

19 Question:

20 "Did you give him the material?"

21 Answer:

22 "He had my material."

23 Question:

24 "Yes, and it came from you and you got
25 it from Leroux; right?"

1 Answer:

2 "Yes."

3 Next reference is page 583, Mr.

4 Commissioner.

5 **THE COMMISSIONER:** Five-eighty-three (583)?

6 **MR. MANSON:** Five-eight-three (583).

7 **(SHORT PAUSE/PAUSE COURTE)**

8 **THE COMMISSIONER:** So where are you at?

9 **MR. MANSON:** I'm just waiting for it to come
10 up on the screen, Mr. Commissioner.

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

12 **MR. MANSON:** Sorry. Thank you.

13 Line 17:

14 "Yes, now your Statement of Claim has
15 as a major component that there is or
16 was in your view this vast clan of
17 pedophiles preying on the Cornwall area
18 and you were bringing forward various
19 names as part of the clan; right?"

20 Answer:

21 "In the Statement of Claim?"

22 Question:

23 "No, in all of this stuff you turned
24 over to people, briefs, the Fantino and
25 all of that, that's who you were saying

1 some of these people were, part of this
2 group; right?"

3 Answer:

4 "I brought names. Again, I got to say
5 I didn't coin the 'clan' phrase."

6 Question:

7 "No, you borrowed it from Mr. Leroux.
8 That's fine."

9 Answer:

10 "I don't know that I borrowed it."

11 Question:

12 "Well, it's in your Statement of Claim,
13 isn't it?

14 "Yeah, my lawyer might have borrowed
15 it."

16 Question:

17 "Oh fine, your lawyer. He just dreamed
18 it up, did he? Where did he find the
19 phrase? He found it in Leroux's
20 material, didn't he?"

21 Answer:

22 "I guess."

23 Question:

24 "That you gave him?"

25 Answer:

1 "I guess, maybe."

2 And later down that page, Mr. Commissioner,
3 you'll see Mr. Neville puts to him a few paragraphs from
4 the Statement of Claim, paragraph 81.

5 He says:

6 "That's you saying it."

7 Answer:

8 "That's my lawyer writing the Statement
9 of Claim."

10 Question:

11 "'Dunlop', please, is that you?"

12 Answer:

13 "That's a legal document that -- that
14 my lawyer made."

15 Next question:

16 "M'hm. So do you understand?"

17 The Court:

18 "Is that supposed to be sexual
19 perpetrators or sexual predators?"

20 Answer:

21 I don't know, Your Honour, I didn't
22 write it."

23 The next reference I had is the misguided
24 legal advice that Mr. Ruel has already referred to; that's
25 with respect to disclosure.

1 I want to now refer to the Cross-
2 Examination by Ms. Henein in front of Justice Platana. I
3 have the document numbers, but I am not sure if it's been
4 made an exhibit yet. It's the dates -- this from October -
5 - August 16th, '04 to August 19th, and I want to refer to --
6 the document is -- the first one is 109978.

7 This is the Leduc's stay application, Mr.
8 Commissioner, in front of Mr. Justice Platana.

9 **THE COMMISSIONER:** Platana, I think.
10 Platana?

11 **MR. MANSON:** I'm sure you're right.
12 One-zero-nine-nine-seven-eight (109978).
13 There are four documents, one for each day.

14 **THE COMMISSIONER:** M'hm. So this is Exhibit
15 722. It's an extract of the pre-trial motion on August
16 16th, 2004, Volume 2.

17 And I should point out if I haven't already
18 -- hang on, no -- on this one in any event, that there is a
19 486(iii) prohibition of publication -- Ban of Publication
20 on the victim's ---

21 --- **EXHIBIT NO./PIÈCE No. P-722:**

22 (109978) Transcript of *Her Majesty the*
23 *Queen v. Jacques Leduc*, Extract Pre-
24 Trial Motion, Volume 2, dated August
25 16, 2004

1 **MR. MANSON:** I won't be referring to any
2 names, Mr. Commissioner.

3 **THE COMMISSIONER:** No, just for others, they
4 may -- and I don't know if that publication ban has been
5 dropped, and so I think ---

6 **MR. MANSON:** Yes.

7 **THE COMMISSIONER:** --- out of the abundance
8 of caution.

9 **MR. MANSON:** If we can go to page 89, please?

10 **THE COMMISSIONER:** Eighty-nine (89); sure.

11 **MR. MANSON:** Line 15:

12 "So you sue for \$70 million; right?"

13 Answer:

14 "Actually, my lawyer sued for the \$70
15 million."

16 Question:

17 "Now, this lawyer sued on your
18 instructions; right? On your
19 instructions, Mr. Dunlop?"

20 "Yes. He was my lawyer."

21 Question:

22 "No ---"

23 Answer:

24 "I ---"

25 Question:

1 "He sued on your instructions, sir?"

2 Answer:

3 "Well ---"

4 Question:

5 "He acted on your instructions?"

6 Answer:

7 "Okay."

8 Question:

9 "That's what lawyers do; right?"

10 Answer:

11 "Okay, and who picks the number."

12 The next reference is at the bottom of page
13 103, Mr. Commissioner; right at the bottom, line 28.

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

15 **(SHORT PAUSE/COURTE PAUSE)**

16 **MR. MANSON:** Question:

17 "Paranoid, sir. Maybe I'm not clear in
18 my question. You had a belief that
19 these priests were conspiring to kill
20 you. That's what you pleaded in your
21 Statement of Claim?"

22 Next page:

23 Answer:

24 "Yeah. Again with the assistance of my
25 learned lawyer."

1 Question:

2 "Well, your lawyer didn't make that up,
3 Mr. Dunlop, did he?"

4 Answer:

5 "Well, he might, may have embellished
6 like some lawyers do. I think he may have used some words
7 and modelled some things or -- or ---

8 Question:

9 "It's in the statement that you took,
10 the video statement of Ron Leroux. You
11 took it."

12 Answer:

13 "M'hm."

14 Now, ---

15 **THE COMMISSIONER:** Yeah, but then he comes
16 back, like in fairness, he goes -- lower down, he said:

17 "All right..."

18 at number 25:

19 "...so that wasn't your lawyer putting
20 words in your mouth, you conducted an
21 interview in your lawyer's office and
22 gave him the transcript?"

23 "Yes."

24 "All right. So those are your words,
25 your information?"

1 "Right."

2 So ---

3 **MR. MANSON:** Yes.

4 My point simply is, he's being asked about
5 allegations, he's prepared to put some responsibility on
6 his lawyer, making suggestions of embellishment. When he's
7 pushed because these allegations are found in a statement
8 that he took from Ron Leroux, he says:

9 "So those are your words, your
10 information; right?"

11 "Right."

12 The implication later on in the page you
13 read is that he must have given that material to Mr.
14 Bourgeois. My only point is this let's me ask Mr.
15 Bourgeois about these issues.

16 I am not suggesting that it goes any further
17 than that; that Mr. Dunlop was prepared when asked about
18 allegations in the pleadings, (a) to talk about them
19 without asserting privilege; (b) when challenged, to put
20 responsibility on his solicitor.

21 **THE COMMISSIONER:** Okay. I'll be up front
22 with you then.

23 So far, all I've got is a fellow who has no
24 lawyer, who's in a criminal proceeding as a witness, is
25 being Cross-Examined and maybe he's saying, "Look it, this

1 is a legalese to me and -- but when pushed to it, "Yeah,
2 yeah, okay. I told him. I gave him the material."

3 So he may be just on the brink of that and
4 had they left it at, "It was my lawyer who embellished it"
5 and not cross-examined any further, he may have fallen over
6 the brink. But right now, isn't he just sitting on the
7 fence or on the wall rather?

8 **MR. MANSON:** I would submit not, but I only
9 have a few more references.

10 **THE COMMISSIONER:** No, no, I understand.
11 I'm just trying to give you as I go, my thoughts. So where
12 are we going next?

13 **MR. MANSON:** There's a reference at page 82
14 to the ---

15 **THE COMMISSIONER:** Same transcript?

16 **MR. MANSON:** No, I'm sorry. I have now
17 moved to the next, 109979. So this would be August 17th,
18 2004.

19 **THE COMMISSIONER:** Thank you.

20 Exhibit 723 is a pre-trial motion before Mr.
21 Justice Platana and again the publication ban is on and
22 it's *Her Majesty the Queen versus Leduc* and you want me to
23 go to page 82.

24 --- **EXHIBIT NO./PIÈCE No. P-723:**

25 (109979) Transcript of Her Majesty the

1 Queen vs. Jacques Leduc Extract Pre-
2 Trial Motion dated August 17, 2004

3 **MR. MANSON:** Yes.

4 **THE COMMISSIONER:** Thank you.

5 **MR. MANSON:** And I know we've already dealt
6 with the Ron Leroux issue under litigation privilege.

7 **THE COMMISSIONER:** Yes.

8 **MR. MANSON:** But this is part and parcel of
9 the implied waiver claim.

10 **THE COMMISSIONER:** Fine.

11 **MR. MANSON:** Because this document that they
12 are referring to was styled with the style of cause of the
13 civil action if you recall, Mr. Commissioner.

14 **THE COMMISSIONER:** Where do you see -- the
15 statement dated November 13th, 1996?

16 **MR. MANSON:** Yes.

17 "Can you look at the statement, sir,
18 and tell me whether you recognize this
19 affidavit?"

20 Answer:

21 "Yes."

22 Question:

23 "All right. And that's an affidavit
24 that was in your possession?"

25 Answer:

1 "Yes."

2 "And it was signed -- or a statement,

3 I'm sorry. It's just a statement.

4 It's signed by Ron Leroux again, taken

5 in Maine, right, and typed; right?"

6 Answer:

7 "Yes, I believe it was done by my

8 lawyer. He was in Maine with me."

9 So question:

10 "He was with you?"

11 "Yes."

12 "All right. And this was also in your
13 possession?"

14 "It was with the case file wherever it
15 was travelling to."

16 There's another Ron Leroux reference in the
17 next day, August 18th, which is Document 109980. I suppose
18 we need another exhibit number, Mr. Commissioner.

19 **THE COMMISSIONER:** Yes, we're getting there.

20 So, Mr. Manson, are you telling me that I am
21 not -- the statement of Ron Leroux dated November 13th,
22 1996, you know, they go back whether it's an affidavit,
23 whether it's signed or whatever.

24 **MR. MANSON:** If you recall, there were in
25 fact three.

1 **THE COMMISSIONER:** Yes.

2 **MR. MANSON:** And it's the third one -- and I
3 don't have the exhibit number ready at hand but I could get
4 it -- that was styled with the style of cause.

5 **THE COMMISSIONER:** So you're telling that
6 this November 13th, 1996 statement, the one they're
7 referring to there, had the style of cause?

8 **MR. MANSON:** Yes.

9 **THE COMMISSIONER:** Okay.

10 **MR. MANSON:** I'll get you the exhibit
11 number, Mr. Commissioner.

12 **THE COMMISSIONER:** That's fine.

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

14 **MR. MANSON:** Yes, it's Exhibit 567, sworn
15 November 13th, 1996, and the commissioner's signature
16 appears to be Charles Bourgeois and it has the style of
17 cause of the civil action.

18 **THE COMMISSIONER:** Okay. Let me just look;
19 567. Yes. Okay. Thank you.

20 All right. So the next exhibit is Exhibit
21 724, which is a transcript of an extract of a pre-trial
22 motion, August 18th, 2004, *Her Majesty and Jacques Leduc*.
23 And, again, there is 46(iii) ban on publication.

24 **--- EXHIBIT NO./PIÈCE No. P-724:**

25 (109980) Transcript of *Her Majesty the*

1 *Queen v. Jacques Leduc* Extract Pre-
2 Trial Motion dated August 18, 2004

3 **THE COMMISSIONER:** Okay. So now you'd like
4 to go to where?

5 **MR. MANSON:** And then at page 68 ---

6 **THE COMMISSIONER:** Page 68.

7 **MR. MANSON:** It's a reference to another Ron
8 Leroux document. This is not styled as an affidavit. It's
9 not part of the style of cause:

10 "I'm showing you what's been identified
11 as the affidavit of Ron Leroux. It
12 appears to be dated December 4th, '96.
13 Can you just indicate to me, sir,
14 whether you can identify that document,
15 please?"

16 Answer:

17 "Yes, my lawyer took this."

18 But then with respect to this document at
19 page 70, after some other questions are asked, line 8:

20 "All right. And in fact, in 1997, do
21 you recall that your lawyer on your
22 behalf files a Response to Demand for
23 Particulars and identifies Jacques
24 Leduc as part of the conspiracy of
25 people that are trying to obstruct

1 justice?"

2 Now, we have the Response to Demand for
3 Particulars. I don't believe it's been made an exhibit,
4 but I'm not sure it's necessary right at the moment.

5 Answer:

6 "Is this Bourgeois? What does he call
7 it; document?"

8 Question:

9 "It's a Response to Demand for
10 Particulars."

11 "Okay."

12 "Did you recall that?"

13 "I recall him doing it."

14 Question:

15 "All right."

16 "I mean yeah."

17 Question:

18 "Well, let me remind you or refresh
19 your memory. I'm going to show you a
20 document that says Response to Demand
21 for Particulars."

22 "Okay."

23 "And I'm going to ask you to look at
24 the back page which gives the date of
25 March 25th, '97. Can you just indicate

1 to me, sir, whether you can identify
2 that document?"

3 "Yes, it was done by my lawyer."

4 "On your behalf?"

5 "I guess that's how they work."

6 "Yes, work on your behalf."

7 "Right."

8 And then later on the next page going back
9 to the -- we see right at the top, "I guess -- I guess
10 sequentially that's what they do", and then there's a
11 suggestion about the addition of Mr. Leduc's name and the
12 answer at line 17:

13 "I don't know that I added the name or
14 my lawyer added the name."

15 Question:

16 "Well, you provided information. Are
17 you prepared to accept that? You would
18 have provided information to your
19 lawyer."

20 Answer:

21 "Or he gathered information on his
22 own."

23 Question:

24 "On your behalf, sir?"

25 Answer:

1 "Well, I think they gather information
2 sometimes on their own, but it was
3 anyway the information ..."

4 And then the Court intervenes:

5 "I think you can leave it up to me to
6 determine how pleadings operate."

7 So we don't quite get the end of Mr.
8 Dunlop's answer.

9 (SHORT PAUSE/COURTE PAUSE)

10 MR. MANSON: And then at page 78 of the same
11 document, these questions are in reference to Murray
12 MacDonald, Your Honour.

13 THE COMMISSIONER: M'hm.

14 MR. MANSON: Question:

15 "Did you not place him, sir, at the
16 meeting at the cottage with the other
17 individuals who were conspiring,
18 including the Chief of Police, to cover
19 it up?"

20 Answer:

21 "A witness put them there."

22 Question:

23 "Right, and did you not then file that
24 information in support of your claim
25 for \$70 million that there was a

1 conspiracy to cover up your
2 investigation?"

3 Answer:

4 "Yes."

5 And my last reference, Your Honour, in the
6 same transcript, page 82.

7 Question:

8 "Mr. Dunlop, do we need to go through
9 as we did a day ago all of your
10 Statements of Claim where you allege
11 that senior members of the police
12 force, including the Chief of Police,
13 were conspiring to bury information
14 about sexual abuse in this community?
15 Or do you acknowledge now that that was
16 one thing you believed?"

17 Answer:

18 "I did believe it."

19 Question:

20 "All right. And you believe it to this
21 day; right?"

22 Answer:

23 "To this day."

24 Question:

25 "Absolutely, and ---"

1 Answer:

2 "For 'til I die."

3 Question:

4 "And until you die, there will be
5 nothing that can change your mind about
6 that fact; right?"

7 "Exactly."

8 Mr. Commissioner, I think what you see from
9 these references -- and granted this is cross-examination
10 in a criminal context, and granted he is unrepresented but
11 when confronted with the pleadings, he is; (a) prepared to
12 discuss them; (b) prepared to discuss his instructions to
13 Mr. Bourgeois and; (c) from time to time suggest that Mr.
14 Bourgeois is responsible for language, language that was
15 either erroneous, embellished, or exaggerated.

16 And in my submission, that constitutes an
17 implied waiver, assuming that litigation privilege doesn't
18 permit us to go into the areas that I want to get into.
19 The fact -- by that I mean determination of litigation
20 privilege.

21 I would submit that confidential
22 conversations between Mr. Dunlop and Mr. Bourgeois, for the
23 purpose of obtaining legal advice are privileged and
24 protected because he continues to assert his claim. Mr.
25 Bourgeois, given that litigation privilege has ended, can

1 be asked about the construction of the pleadings that is no
2 longer privileged.

3 At the same time, I can ask him about
4 conversations with Mr. Dunlop, specifically about the
5 pleadings.

6 And I want to be very clear, Mr.
7 Commissioner, I mean specifically about the pleadings and
8 the construction of the pleadings, I don't mean other areas
9 of legal advice. But I can ask him that because it has
10 been impliedly waived, right out of Mr. Dunlop's mouth.

11 Those are my submissions, Mr. Commissioner.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Horn?

14 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. FRANK HORN:**

15 **MR. HORN:** I'd like to follow along with the
16 words of my friend who just finished and discuss a little
17 further on the question of the waiver of privilege when Mr.
18 Dunlop went on the stand.

19 It said that if he was misled or did not
20 comprehend what he was being asked, then he is not waiving
21 his privilege. In the context of those hearings that took
22 place back then, Mr. Dunlop was left in a position where he
23 should have been able to rely on the Crown Attorney who was
24 conducting the in-chief and then afterwards making sure
25 that the evidence that was going in was not going to be one

1 where the third witness, which was Mr. Dunlop, as he was
2 the witness of the Crown ---

3 **THE COMMISSIONER:** Just a minute. No, I
4 don't know about that.

5 **MR. HORN:** Pardon?

6 **THE COMMISSIONER:** Well, see, we get into a
7 little hobbyhorse of mine in the sense that when we have
8 applications for a stay; right, under the Charter, the onus
9 is on the person asking for the relief, which would be the
10 Defendant, Mr. Leduc, to call the witness.

11 Now, I understand that I hold the minority
12 view in this regard, in the sense that the practice has
13 been that the Crown, I think, puts people up on the stand
14 and let other people cross-examine, and I think that's the
15 procedure that they use now, if I'm correct. And I am of
16 the view, of course, that that isn't the case; that it
17 should have been Mr. Leduc's witness on the motion, so ---

18 **MR. HORN:** So then Mr. Leduc should have
19 supplied legal advice to Mr. Dunlop when ---

20 **THE COMMISSIONER:** No.

21 **MR. HORN:** --- he was on the stand.

22 **THE COMMISSIONER:** No, no, but I think I see
23 your point. Regardless of who is putting him on the stand,
24 the Crown Attorney has perhaps that residual public
25 interest.

1 **MR. HORN:** That's right. And I think that
2 in fairness to the individual who is on the stand, who is
3 being cross-examined, he has to know that he is waiving his
4 privilege, he's not being misled, and that if he did ---

5 **THE COMMISSIONER:** Well, I don't know that
6 he's being misled.

7 **MR. HORN:** Well, I don't think that anybody
8 came to him and said that you were -- you realize that
9 we're getting into that ground of you and your lawyers had
10 conversations in his office and there was discussions and
11 this is an area in which he should have been warned by
12 someone who is there, and it would have to be the Crown
13 Attorney.

14 **THE COMMISSIONER:** I don't want to split
15 hairs with you but misled is not the proper word;
16 uninformed?

17 **MR. HORN:** Well, he didn't realize what he
18 was doing because he was put into a spot where he was now
19 discussing a very controversial area and he just went ahead
20 and he didn't realize that he was going into an area where
21 somebody who was there to make sure that he was not being
22 taken advantage of, should have intervened. And that would
23 be the Crown Attorney, I believe, or the judge, or someone
24 -- the judge, to make sure that Mr. Dunlop was aware that
25 he was waiving his privilege and he knew -- and that he

1 knew what he was doing.

2 Instead, he was being allowed to just
3 continue to talk in this direction and talking about things
4 that went on between him and his lawyer, and nobody was
5 warning him of that ground that he was in. And I think
6 that it should have been either the judge or the Crown
7 Attorney, or Mr. Leduc if it was his lawyer -- his -- he
8 was - it was his witness, then he should have hired a
9 lawyer to object to this line of questioning. And I think
10 that that's really where -- and he was just allowed to sit
11 there.

12 And this falls in with our position, is that
13 there was -- the Coalition's position is that there was a
14 conspiracy; that's what we've always alleged, and that they
15 were allowing Mr. Dunlop to be put into a position where he
16 was being cross-examined and put into these spots and
17 nobody was there to help him.

18 **THE COMMISSIONER:** Hold on now.

19 **MR. HORN:** And he's a lay person.

20 **THE COMMISSIONER:** Hold on.

21 So you're telling me that the Coalition is
22 saying that at that hearing, with Leduc, that the
23 conspiracy was continuing, that Justice Platana and the
24 Crown were part of the conspiracy to ambush Mr. Dunlop; is
25 that what you're saying?

1 **MR. HORN:** Maybe not directly that way but I
2 think ---

3 **THE COMMISSIONER:** No ---

4 **MR. HORN:** --- when we look at it back
5 there, that's what did happen. It did happen.

6 He was allowed to be standing there with no
7 guidance and direction as to his rights and what his
8 privileges are with his lawyer and there was nobody there
9 and they allowed him to be there and then just start
10 talking about an area which was something that somebody in
11 that court should have intervened.

12 And there was other people there with legal
13 training, lawyers, Officers of the Court that were there,
14 they should have told them, "We are now entering very
15 delicate grounds and you have to realize what you're
16 doing." And somebody should have done that.

17 **THE COMMISSIONER:** Now, just a minute, just
18 a minute.

19 Whether I agree or not, you're saying that
20 something happened in there and something should have been
21 done.

22 At the beginning, you say that this is a
23 conspiracy. Now, I want you to be -- and if that's what
24 you want to say, that's fine. But you be very careful now.

25 Are you accusing Justice Platana and the

1 Crown of being part of the conspiracy in this hearing to
2 perpetuate a cover-up?

3 **MR. HORN:** My clients have been saying that
4 all along. They're saying the whole system has been geared
5 to do that to the -- Mr. Dunlop, Mr. Chisholm, Coalition,
6 and that the whole system has been prejudiced against them.

7 I'm just saying that that's the view that
8 they have always had right from the very beginning and
9 they're saying that this was all part of it because they
10 allowed him to be put on the stand and they were allowing
11 him to be cross-examining in this way and allow him to be
12 basically let out to -- you know, hang there and ---

13 **THE COMMISSIONER:** Hang to dry.

14 **MR. HORN:** Hang to dry. And I think that
15 basically that's what happened to him on that day because
16 they just kept cross-examining him and cross-examining him
17 and he was never warned about the privilege between himself
18 and his lawyer.

19 He was never advised in that regard and I
20 think that that is very important.

21 **THE COMMISSIONER:** Do you have any case law
22 or any ---

23 **MR. HORN:** Well, I am just going by the same
24 quotation that was used by my friend from the Law of
25 Evidence in Canada in which there was a -- he mentioned on

1 ---

2 **THE COMMISSIONER:** Mr. Manson may be able to
3 help you.

4 **MR. HORN:** That's right. It was Sopinka,
5 Letterman and Bryant, page 757, 14.98. That's where --
6 that was the whole question of ---

7 **THE COMMISSIONER:** Say it again?

8 **MR. HORN:** Pardon?

9 **THE COMMISSIONER:** What's the principle?
10 What's the enunciation?

11 **MR. HORN:** "If the communication is
12 elicited in cross-examination of a
13 client, it seems that unless it has
14 been shown that the witness was misled
15 or did not comprehend what was being
16 asked of him or her, the assertion of
17 communication would amount to a
18 waiver."

19 In this case, I am suggesting that he was
20 misled by the fact that he was allowed to go there and he
21 was not advised that there were -- he was going into very
22 sensitive grounds and somebody -- I think the Crown
23 attorney would have had an obligation to do that and I
24 think that they didn't.

25 They should have told him that this is an

1 area and they should have stopped it right there or the
2 judge should have intervened right then and say we're
3 getting in -- instead, you know, it happened, and he was
4 allowed to just make all of these assertions and statements
5 regarding conversations that he had with his lawyer.

6 And I think everybody would have stopped
7 then. They would have said, okay, we'd better be more
8 careful in our cross-examination. Instead, they just kept
9 going along because they knew that Mr. Dunlop was not aware
10 of where he was going. And I'm just suggesting that's what
11 happened.

12 Now, there is another area that was interest
13 to me. When Mr. Dunlop was with Mr. Bourgeois and they
14 were having conversations and there were other individuals
15 in the room, the suggestions that -- that would also deal
16 with the question of whether it was a waiver because there
17 was a third party that was there listening in.

18 **THE COMMISSIONER:** I don't know, that's not
19 the argument. The argument is they were asking -- I think
20 people want to know what happened when the statements of
21 Leroux were taken at different times.

22 I think if there was a stop, for example,
23 and they went outside and huddled, I don't know that we can
24 find out exactly what they were saying back and forth,
25 because that might be solicitor/client privilege.

1 MR. HORN: Okay.

2 THE COMMISSIONER: But when they get back in
3 and they talk to the client -- or to Mr. Leroux, I think
4 the argument is that's fair game because litigation
5 privilege has ended.

6 MR. HORN: Except the -- also, this is the
7 law of evidence at 14108.2 where they're saying that there
8 may well be a common interest privilege which is available
9 when there is no litigation in existence or even
10 contemplated. This is not what we're suggesting. It was
11 not -- we were not dealing with litigation. We were
12 dealing with Dunlop and the other individuals who went to
13 the lawyer and their common interest was they were making
14 allegations of a cover-up and that was their common
15 interest and they were there to seek legal advice in that
16 area, and that was the area that they were there.

17 So they were there and they had to talk
18 openly among themselves before the lawyer and ---

19 THE COMMISSIONER: You're saying that's what
20 happened with Leroux?

21 MR. HORN: I'm suggesting that when they had
22 conversation in his office, if Leroux was there and he was
23 the third party, there was a common interest among all of
24 them to ---

25 THE COMMISSIONER: Expose criminal ---

1 **MR. HORN:** --- you know, illegal activities
2 and so forth and they were seeking advice from their
3 lawyer.

4 And I say that that's one situation in which
5 there is not a waiver of privilege. And I'm suggesting --
6 and also there's another situation, that is when Mr. Dunlop
7 came forward and was giving documents to the police ---

8 **THE COMMISSIONER:** Right.

9 **MR. HORN:** He was obligated to do so because
10 that's necessary but that doesn't mean that he's waiving
11 his privilege by doing so. Because what he's doing is
12 something that he was compelled to do in these situations.

13 **THE COMMISSIONER:** Well, he was very well
14 aware, from what I read in the transcripts, that there was
15 a difference between what he had to give to the police as
16 part of the criminal investigation and what he saw as his
17 civil litigation. And what he's saying, from what I
18 understand is he gave that to Mr. Bourgeois and left him to
19 decide and he says, "I got bad advice".

20 **MR. HORN:** I'm suggesting that because he
21 was -- he had to do what he had to do. He had to give
22 those documents. That does not mean that he has waived his
23 rights to solicitor and client privilege.

24 **THE COMMISSIONER:** Well, no. Well ---

25 **MR. HORN:** That's not what he did.

1 **THE COMMISSIONER:** Let's get things straight
2 here. The documents he gave over, right?

3 **MR. HORN:** Yes.

4 **THE COMMISSIONER:** He gave over because
5 there was no solicitor/client privilege, or he's saying, "I
6 got bad -- I shouldn't have given them over because they
7 were bound by solicitor/client privilege".

8 **MR. HORN:** He says, "They may have been
9 bound but I had to give it because it's part of a criminal
10 process and I had to do it anyways whether I wanted to or
11 not".

12 But once it's in the hands of the -- once
13 he's given it up, that doesn't mean whatever went on
14 between him and the lawyer has been waived.

15 The documents had to be given, but that's as
16 far as it went. There's the documents but you can't
17 question me about it because you can have the documents
18 because they're part of the criminal process but once
19 they're in your hands, whatever went on between me and my
20 lawyer is between him and me. I didn't waive that
21 privilege, and that's the position.

22 I'm saying that would be in again Law of
23 Evidence 14.99; that's the same sort of situation. It's a
24 little -- or it's a different situation I'm saying, but
25 it's one where by him giving those documents, he's not

1 waiving his -- that's our assertion. He didn't waive his
2 privilege.

3 **THE COMMISSIONER:** What privilege did he not
4 waive?

5 **MR. HORN:** Anything pertaining to those
6 documents. Anything pertaining to his discussions
7 regarding those documents.

8 **THE COMMISSIONER:** That he did not release?

9 **MR. HORN:** Pardon?

10 **THE COMMISSIONER:** That he did not release?

11 **MR. HORN:** No, he released them.

12 **THE COMMISSIONER:** Not all of them.

13 **MR. HORN:** Well, he released -- the ones he
14 did release, those are in the hands of the courts but they
15 can't say, "Well, what did you discuss with your lawyer
16 about those documents?" and Dunlop should have been told, I
17 don't have to talk to you about that. That's between me
18 and my lawyer.

19 **THE COMMISSIONER:** But he never did talk
20 about it. He just said I got bum advice.

21 **MR. HORN:** Maybe there was a lot more
22 discussions that we don't -- now this is what -- he's going
23 to be put on the stand and he's going to be asked about was
24 there more besides that.

25 **THE COMMISSIONER:** I don't know what he's

1 going to be asked.

2 MR. HORN: Pardon?

3 THE COMMISSIONER: I don't know what he's
4 going to be asked, frankly.

5 MR. HORN: I understand there's probably
6 more than just that part.

7 THE COMMISSIONER: No, I think -- just a
8 second. Just a second.

9 I think with respect to that portion of the
10 evidence where he said, you know, "I was asked and I
11 consulted my lawyer about what I should give and not give
12 and I got bad advice".

13 The only thing that they can talk about as
14 far as I'm concerned right now, unless I am convinced
15 otherwise and upon further reflection when I take a break,
16 is that what were the discussions with respect to the
17 disclosure of the documents themselves. Point finale,
18 that's it.

19 That doesn't mean that he waives
20 solicitor/client privilege for everything else. As we've
21 indicated in the case law, what he's doing apparently is
22 he's saying, "Look it, it's not my fault. I got bum
23 advice." So he's opened the door to saying, as in the RCMP
24 case, you can't use it as a shield and then -- use it as a
25 sword and then come back and use it as a shield. So he's

1 opened the door there on that issue ---

2 MR. HORN: Well, okay, but it's a narrow --
3 it's a narrow ---

4 THE COMMISSIONER: Very narrow, yes.

5 MR. HORN: Okay. But the -- our position is
6 that solicitor/client privilege -- when a document is being
7 prepared and is handed into the court system, all the
8 discussions could have gone for years, a month, you know.
9 They've had been talking back and forth for a long period
10 of time. We're not saying now it --- it opens the door to
11 all of that. They can talk about -- I mean they can
12 question him on maybe conversations that have been going on
13 the phone, conversations for a long period of time
14 regarding building this -- you know, to put this document
15 together.

16 And I'm suggesting that it ends at the
17 document. They can't go any further than that, because
18 that's between him and his lawyer.

19 That's all I've got to say.

20 THE COMMISSIONER: Thank you.

21 Mr. Lee?

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

23 MR. LEE: Good afternoon, sir.

24 THE COMMISSIONER: Good afternoon.

25 MR. LEE: I'll be brief; I just have a few

1 general comments.

2 **THE COMMISSIONER:** Is that a promise?

3

4 **MR. LEE:** Yes, it is. Definitely by lunch.

5 The first point I want to make is that we're
6 clearly concerned about the privilege issues that have
7 arisen here. We can't be absolutely certain whether or not
8 Mr. Bourgeois' evidence here, whatever he eventually gives,
9 how that is going to impact on our clients; whether it will
10 directly involve our clients or not, given the amount of
11 contact that we know Mr. Dunlop had with some of our
12 clients, and we can probably presume Mr. Bourgeois were
13 alive of that concern.

14 The point is that this is not just a Perry
15 Dunlop issue; there are broader principles at stake here
16 that we are concerned about and that we're sensitive to.

17 The second point I want to make is that
18 rules of evidence and decisions relating to evidence are
19 often based upon an analysis of the importance of the
20 evidence to the process.

21 What we're dealing with here are obviously
22 extremely important as -- the issues, as they relate to
23 privilege. We have a lawyer here, a practicing lawyer,
24 telling us that he has certain information that he can't
25 divulge because of privilege.

1 It's important to point out that he is the
2 only person in this room that has all the facts relating to
3 his relationship with his clients; relating to
4 conversations he had; relating to instructions, and our
5 position is that you need to be wary, at the very least, of
6 ordering him to answer a question or disclose information
7 over which he has certain privilege on behalf of his former
8 client.

9 And one of the considerations, we submit,
10 that you have to look at is how vital the proposed evidence
11 is to this process. As you well know, we're here to look
12 at institutional responses. That's the focus of this
13 Inquiry and it always has been.

14 What we know about Mr. Bourgeois is that he
15 was Mr. Dunlop's lawyer for a year and a half, two years,
16 whatever the exact time period was.

17 One of the questions that need to be asked
18 is whether his evidence, whatever it might be, is
19 absolutely vital to this process.

20 Our submission and it's been our position
21 throughout is that the focus here needs to be on
22 institutions and we fear that, at least a little bit here,
23 we're at risk of being distracted from that focus. We need
24 to be worried about what the institutions received by way
25 of allegation; how they respond to the allegation.

1 So this witness being examined and cross-
2 examined extensively about the form of an allegation, the
3 content of an allegation when he had it or when his client
4 had it doesn't distract from the issue of what the
5 institutions got and what they did with what they got,
6 whatever it was, regardless of what ended up in the end,
7 being the truth or not the truth. That's the focus of this
8 thing.

9 So the basic point is that we ask you to
10 keep the importance of the evidence in mind when you are
11 considering which side of, what I submit, is a pretty fine
12 line you're going to fall on here.

13 The other thing ---

14 **THE COMMISSIONER:** Would you not agree
15 though that with respect to the Leroux statement, for
16 example ---

17 **MR. LEE:** Sorry, the?

18 **THE COMMISSIONER:** The Leroux statement.

19 **MR. LEE:** Right.

20 **THE COMMISSIONER:** Where we now have Mr.
21 Leroux saying what he said; that some people were putting
22 words in my mouth. That wouldn't be an issue that would be
23 important to be discussed?

24 **MR. LEE:** Well, I mean -- the Leroux issue,
25 the Dunlop issue, the C-8 issue, the Bourgeois' issues,

1 those are all -- I mean, they're all on the periphery of
2 what we are dealing with here.

3 **THE COMMISSIONER:** Yes.

4 **MR. LEE:** And at the end of the day, my
5 clients' position and mine is that, you know, regardless of
6 happened over there ---

7 **THE COMMISSIONER:** Right.

8 **MR. LEE:** --- on the periphery, at some
9 point, something came forward.

10 **THE COMMISSIONER:** Yes.

11 **MR. LEE:** I'm not nearly as concerned with
12 how that came about or the way that got shaped or who
13 formed it or who did what; eventually, it came about. Some
14 of these, the suggestion has been made here, are completely
15 bogus, absolutely ridiculous. They had no truth to them
16 whatsoever. That's fine.

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

18 **MR. LEE:** What did the institution do with
19 it? Did they do a proper job?

20 **THE COMMISSIONER:** With what they had.

21 **MR. LEE:** With what they had. And that's my
22 only concern is what they had. They can't do anymore than
23 that.

24 Did they do a proper job? Did they
25 recognize the allegation for what it was and deal with it

1 appropriately and we all would have been better off or did
2 they not deal with it appropriately, and that's fine.

3 So you know, the point I'm trying to make is
4 just that let's be cognizant of the fact that we are
5 dealing with institutional responses here.

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

7 **MR. LEE:** The other point is that we have
8 Mr. Bourgeois, who is here wearing a few different hats;
9 he's a witness, he's a practicing lawyer, he's got his own
10 reputation, his career to think about. I mean these are
11 privilege issues; he's a lawyer. And then he's got his
12 former client, Dunlop, on the other hand who he's got to be
13 worried about too, and he's told us he has come here to --
14 he has contacted Dunlop. He has refused to waive
15 privilege, and he is here saying I'm stuck with that.

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

17 **MR. LEE:** At this particular Inquiry, as you
18 well know, the word "fairness" gets thrown around a lot
19 here in the media and the community. It's something we
20 need to be particularly sensitive to.

21 The concern that struck me while I was
22 listening to what's going on today is exactly what we can
23 presume Mr. Dunlop knows about what's happening here today.
24 He presumably knows that Mr. Bourgeois is coming to testify
25 as a witness; that he's been summoned.

1 I'm not sure, and we have really no way of
2 getting this answer -- I'm not sure he knows that -- the
3 privilege that he's been asked to waive and has refused is
4 now being challenged. I'm not sure he understands ---

5 **THE COMMISSIONER:** Oh, no. No, no, no.

6 I think we start with the premise that the
7 solicitor/client privilege is being claimed, and we know
8 it's being claimed.

9 **MR. LEE:** Yes.

10 **THE COMMISSIONER:** All right. Then it's a
11 matter of law as to the interpretation to the extent of
12 that. And we have to say, "Well, first of all, I certainly
13 will not order this man to breach his solicitor/client
14 privilege."

15 What we're looking though is as a study of
16 the case law and one of the things, first of all, is the
17 difference between solicitor/client privilege and
18 litigation privilege; all right?

19 And so whether or not Mr. Dunlop was here,
20 he might argue that -- he may make arguments about
21 litigation privilege being the same as the other, but
22 that's a question of law. So he may have assisted us in
23 that regard, but we've got everyone here arguing and Mr.
24 Horn making arguments to protect, to narrow that. So ---

25 **MR. LEE:** Well, that leads into a point I

1 was trying to make, is that every lawyer is here
2 representing his or her client's interests.

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

4 **MR. LEE:** Mr. Dunlop is not represented here
5 in a full way. He -- you know ---

6 **THE COMMISSIONER:** Mr. Dunlop had the
7 opportunity to -- just a minute, no, no, no -- to seek
8 standing. He could have sought standing a long time ago,
9 you know, and so it's not as if anybody is preventing him
10 from being here.

11 **MR. LEE:** I got the impression from Mr.
12 Dunlop's -- I don't know if you call it -- testimony, when
13 he was here and his comments, and his comments on the media
14 that he may not feel he would have met the test for
15 standing. He doesn't seem to think that he particularly
16 has a whole lot to contribute to this process.

17 **THE COMMISSIONER:** That's his decision;
18 isn't it?

19 **MR. LEE:** It absolutely is his decision. I
20 know very well, standing up here, I'm not taking a popular
21 position when I'm advocating for the rights of Mr. Dunlop,
22 in this room with some of ---

23 **THE COMMISSIONER:** Well ---

24 **MR. LEE:** The point I'm trying to make, sir

25 ---

1 **THE COMMISSIONER:** No, no, no. Let me just
2 stop you there, thought I don't -- and I know you don't
3 mean it badly -- whether it's popular -- this isn't a
4 popularity contest. This is trying to determine what the
5 legal basis is to ask and order this gentleman to answer
6 certain questions.

7 There is no right or wrong answer, and you,
8 as an Officer of this Court, are doing an admirable job of
9 giving your point of view --point.

10 **MR. LEE:** Thank you.

11 The public -- my interest and my clients'
12 interests and the point I'm trying to make is that we have
13 an interest, and the public has an interest, and the
14 Commission has an interest in a fair proceeding.

15 **THE COMMISSIONER:** Absolutely.

16 **MR. LEE:** Not only a proceeding that is fair
17 in reality but one that is perceived as being fair. In the
18 absence of counsel here representing Mr. Dunlop's interests
19 specifically, my submission is that the Commission, both
20 Commission counsel and you, Mr. Commissioner, fulfil some
21 kind of gatekeeper role in that regard.

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

23 **MR. LEE:** We're dealing with important
24 issues here. The Commission has a duty to protect the
25 process, protect privilege, and that is especially

1 important today; is the point I want to make.

2 Simply to say that, you know, these are
3 critical issues that go beyond Mr. Dunlop. They go beyond
4 Mr. Bourgeois, and that is just the point we want to get on
5 the record in the hopes that we all tread very carefully
6 here today.

7 **THE COMMISSIONER:** Thank you.

8 **MR. LEE:** Thank you, sir.

9 **THE COMMISSIONER:** Mr. -- I can't even
10 follow a list anymore. Mr. Neville, do you wish to make
11 any comments?

12 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MICHAEL NEVILLE:

13 **MR. NEVILLE:** Thank you, Mr. Commissioner.
14 I would adopt the learned submissions of Professor Manson.
15 A few of us could improve on those.

16 I just wanted to leave you with a couple of
17 thoughts here. My client, of course, both of my clients
18 before the Commission ---

19 **THE COMMISSIONER:** Just a second. There is
20 something; both of your clients?

21 **MR. NEVILLE:** Father MacDonald and the
22 Estate of Mr. Seguin.

23 **THE COMMISSIONER:** I don't know that you
24 represent the Estate of Mr. Seguin.

25 **MR. NEVILLE:** Well, we haven't had a ruling

1 per se. That will depend on whether the Correctional
2 Services agree there is a conflict you left that open.

3 **THE COMMISSIONER:** Yes.

4 **MR. NEVILLE:** So we haven't asked for that
5 ruling. I'm just simply telling you but if you -- I'll
6 make my comments in relation to Father MacDonald.

7 **THE COMMISSIONER:** Yes, that's better.

8 **MR. NEVILLE:** That's fine.

9 Mr. Horn, on behalf of his client, Mr.
10 Commissioner, I have some concern as to whether his
11 submissions are really on behalf of the Coalition, whether
12 that be Mr. Chisholm or otherwise, or on behalf of Mr.
13 Dunlop. The thrust of it was all on behalf of Mr. Dunlop.

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

15 **MR. NEVILLE:** And, frankly, that is not
16 acceptable. He should not be making submissions whether
17 directly or indirectly that operate to the benefit of Mr.
18 Dunlop and I'll leave it at that. Mr. Dunlop has refused -
19 --

20 **THE COMMISSIONER:** I'll tell you just right
21 now. I disagree with your position. People here have been
22 taking positions for everybody else all over the map
23 throughout this.

24 **MR. NEVILLE:** All I can go on is the content
25 and the content was entirely in support of Mr. Dunlop; that

1 ---

2 **THE COMMISSIONER:** That's fine.

3 **MR. NEVILLE:** --- he was misled; that he
4 wasn't properly protected. He's blamed Crowns; he's blamed
5 judges, et cetera. He is not here for Mr. Dunlop, he is
6 here for something called the Coalition. I'll leave it at
7 that.

8 Mr. Dunlop has refused to participate here;
9 you have the history of that unfortunate episode.

10 I'd also point out that vast amounts of the
11 material, almost every piece of paper, in fact, every piece
12 of paper ultimately in the nine boxes, were disclosed.
13 They were disclosed by being turned over to the Crown and
14 the police by April of 2000 and they were in turn disclosed
15 by Crowns to various defence lawyers, myself included. So
16 the documents have lost any protection of privilege through
17 that process.

18 Officer Dunlop, as he then was, had a duty,
19 a constitutional duty, to assist the Crown in making full
20 disclosure. It took a long time to secure compliance but
21 eventually the compliance, such as we were able to find,
22 took place. But that was his constitutional obligation to
23 turn that material over as required both by his superiors
24 and Crown prosecutors.

25 And finally, Mr. Dunlop, and this is

1 somewhat in reply to what Mr. Lee just said, aided by Mr.
2 Bourgeois as his lawyer, put out into the public domain
3 very serious, scandalous, allegations about institutions,
4 not just about individuals, be it my client or anyone else,
5 but about institutions.

6 That's what you're here to determine is
7 institutional response and the Amended Statement of Claim
8 in particular is a series of allegations about the conduct
9 of institutions. So it is within your mandate and it is --
10 what I'm saying to you, sir, is it is not a tangent as Mr.
11 Lee would characterize it.

12 He directly put into the public domain in a
13 Statement of Claim and an Amended Statement of Claims which
14 are public documents, apart from any statements made to the
15 media at the same time, put into the public domain those
16 allegations about institutions. He can't have it both ways
17 and those are my submissions.

18 **THE COMMISSIONER:** So when you were saying
19 on behalf of the institutions that ---

20 **MR. NEVILLE:** No, I am not speaking on their
21 behalf ---

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

23 **MR. NEVILLE:** --- I am replying to previous
24 arguments which I suggest to you are not helpful. Either
25 those are Mr. Horn or Mr. Lee. This is not a tangent.

1 **THE COMMISSIONER:** Okay, well then ---

2 **MR. NEVILLE:** I am also, on behalf of my
3 client, sullied by those documents but I don't represent
4 directly an institution, I represent an individual with
5 standing. But I think it's appropriate to identify what's
6 actually happening here and it's been done partly by Mr.
7 Manson.

8 Well, I would say to you, with all due
9 respect, you are not aided by the tangents you're invited
10 to go down by Mr. Horn and Mr. Lee.

11 Thank you.

12 **THE COMMISSIONER:** The word "scandalous"
13 doesn't help in the submission, sir.

14 **MR. NEVILLE:** Well, I suggest to you, sir,
15 that there's few other appropriate words for the things
16 that were said.

17 **THE COMMISSIONER:** Choose them better next
18 time. Thank you.

19 **MR. NEVILLE:** Thank you.

20 **THE COMMISSIONER:** We'll take lunch now.
21 Thank you.

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

24 This hearing will resume at 2:00 p.m.

25 --- Upon recessing at 12:33 p.m. /

1 L'audience est suspendue à 12h33

2 --- Upon resuming at 2:03 p.m. /

3 L'audience est reprise à 14h03

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

6 This hearing is now in resumed. Please be
7 seated. Veuillez vous asseoir.

8 **THE COMMISSIONER:** Thank you.

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

10 **MR. CHISHOLM:** Good afternoon, sir.

11 **THE COMMISSIONER:** Good afternoon. How are
12 you doing?

13 **MR. CHISHOLM:** Well. How are you?

14 **THE COMMISSIONER:** Good.

15 **MR. CHISHOLM:** I would adopt the submissions
16 of Professor Manson with respect to this issue.

17 **THE COMMISSIONER:** Terrific.

18 **MR. CHISHOLM:** Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Messrs. Rose or Rouleau? Rose, all right.

21 **MR. ROSE:** Good afternoon, Mr. Commissioner.

22 **THE COMMISSIONER:** Good afternoon.

23 **MR. ROSE:** We're not taking position on
24 this.

25 **THE COMMISSIONER:** Okay. Thank you.

1 Mr. Scharbach?

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. STEPHEN
3 SCHARBACH:

4 MR. SCHARBACH: Good afternoon, Mr.
5 Commissioner.

6 THE COMMISSIONER: Good afternoon, sir.

7 MR. SCHARBACH: The area of Mr. Bourgeois'
8 potential evidence that is of concern to the Ministry of
9 the Attorney General involves the statements of Mr. Leroux
10 and that area appears to be covered by litigation privilege
11 and you've heard submissions on that. There doesn't appear
12 to be much of a controversy concerning the application of
13 the *Blank* case under those circumstances.

14 With respect to the waiver issue, that's an
15 area that -- that involves an area of Mr. Bourgeois'
16 potential evidence that the Ministry of the Attorney
17 General is not primarily interested in. So we'll take no
18 position on that.

19 THE COMMISSIONER: Thank you.

20 MR. SCHARBACH: Thank you.

21 THE COMMISSIONER: Mr. Sherriff-Scott?

22 MR. SHERRIFF-SCOTT: Yes.

23 Sorry, I had to ---

24 THE COMMISSIONER: No, that's fine.

25 MR. SHERRIFF-SCOTT: --- disconnect so I

1 could come up here without a battery.

2 **THE COMMISSIONER:** What's that? I heard
3 somebody over there say you were wired for sound anyways?

4 **(LAUGHTER/RIRES)**

5 **MR. SHERRIFF-SCOTT:** Mr. Callaghan is my
6 ever present detractor in these situations.

7 **THE COMMISSIONER:** No, it came from the far
8 right or your far left.

9 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:**

10 **MR. SHERRIFF-SCOTT:** I won't comment on
11 that.

12 Just a couple of evidentiary pieces to flesh
13 out your record for this decision, Commissioner, and this
14 is partly in aid of what I asked the witness about this
15 morning.

16 First, if I could prevail on you to turn up
17 Exhibit 723 which is one of the transcripts at page 83.

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

19 **MR. SHERRIFF-SCOTT:** Now, Commissioner, the
20 relevant extract is from line 10 to the bottom of the page
21 and then over page 84 from the first line to about line 10.
22 And the substance of this is the witness acknowledges the
23 character of the investigation.

24 And starting with the answer just after line
25 10:

1 "Did I speak? I can't remember but --
2 I mean -- probably my lack of faith you
3 know sort of rubbed off on them,
4 maybe."

5 --referring to people interviewed.

6 "Your lack of faith in the
7 investigation rubbed off on them?"

8 Answer:

9 "Maybe a little bit probably."

10 **THE COMMISSIONER:** Just a minute. I'm
11 sorry?

12 **MR. SHERRIFF-SCOTT:** Are you on -- I'm at
13 page 83 of Exhibit 723 and I'm starting at -- around line
14 10.

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

16 **MR. SHERRIFF-SCOTT:** There's a question:
17 "You had spoken to victims that had
18 expressed to you also distrust of the
19 investigation; right?"

20 **THE COMMISSIONER:** Well, okay, hang on. I
21 think we've ---

22 **MR. SHERRIFF-SCOTT:** Sorry, let me just
23 recheck; 724, my apologies. I had the wrong number down
24 in the margin. This is the August 18th transcript, Volume
25 4, page 83.

1 THE COMMISSIONER: And page 83, right?

2 MR. SHERRIFF-SCOTT: Same page. There we
3 are, that's the right reference.

4 So it starts at:

5 "All right. You had spoken to victims
6 ..."

7 THE COMMISSIONER: Yes.

8 MR. SHERRIFF-SCOTT: "... that had
9 expressed to you also distrust of the
10 investigation; right?"

11 Answer:

12 "Did I speak? I can't remember but I
13 mean -- maybe -- probably my lack of
14 faith, you know, sort of rubbed off on
15 them maybe."

16 Question:

17 "Your lack of faith in the
18 investigation rubbed off on them?"

19 Answer:

20 "Maybe a little bit, probably."

21 "I see all right. Well, I'm interested
22 in your lack of faith in the
23 investigation. You had, according to
24 you, reason to believe and you told us
25 about some numerous reasons why you

1 were suspicious of these people;
2 right?"

3 Answer:

4 "Yes."

5 "And certainly, if you were suspicious
6 of them, you were also suspicious that
7 they weren't interested in conducting a
8 proper investigation; right?"

9 "No."

10 -- he says.

11 Question:

12 "Well, it's why you were doing all
13 this, isn't it? It's why you were
14 going out and actively collecting
15 statements from witnesses. You were
16 recording them; right?"

17 Answer:

18 "Yes."

19 "Recording statements?"

20 Answer:

21 "Yes."

22 "You were getting affidavits from these
23 people; right?"

24 Answer:

25 "Yes."

1 "Because you knew the police weren't
2 going ..."

3 Over the top next page:

4 " ...to do it right?"

5 Answer:

6 "Well, I wanted to give them a
7 vehicle to get justice."

8 Question:

9 "That's right, and you knew the police
10 here were not going to do it?"

11 Answer:

12 "That's why I went to Fantino."

13 And then if we can go to one further
14 reference which is at Exhibit 720, page 421, on or about
15 line ---

16 **THE COMMISSIONER:** Hang on, 720, yes. What
17 page?

18 **MR. SHERRIFF-SCOTT:** Page 421. I'll need
19 that on the screen, I don't have my hard copy.

20 **THE COMMISSIONER:** Hang on a second; 421.
21 Okay, I'm with you.

22 **MR. SHERRIFF-SCOTT:** I just need it on the
23 screen, Mr. Commissioner. I don't have my hard copy.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MR. SHERRIFF-SCOTT:** And I believe just if

1 we can scroll down, he's referring at ---

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. SHERRIFF-SCOTT: Starting at line 25,
4 Mr. Commissioner, the witness answers:

5 "That's correct."

6 "And it has been suggested that that
7 was basically delivered on your behalf,
8 referring to Mr. Bourgeois delivering
9 the brief to Mr. Fantino; is that fair
10 to say?"

11 Answer:

12 "I would say it was, you know."

13 Question:

14 "I'm sorry?"

15 "Well, what we saw develop from the
16 civil case was something turning
17 criminal and it was decided we had to
18 get to police services that could be
19 trusted and [over to the top of the
20 next page] felt that Fantino was the
21 right person."

22 And then he says:

23 "All right. But my question was more
24 aimed at this, sir. Was it delivered
25 on your behalf at your request even

1 though -- even though delivered by Mr.
2 Bourgeois?"

3 "I believe that Charles Bourgeois found
4 Mr. Fantino. I had no prior knowledge
5 to police services at the end of the
6 province. I'd have to say it was him
7 that, you know, pointed us in that
8 direction."

9 "Pointed you in that direction?"

10 "Pointed the file I guess."

11 The next reference, sir, is Exhibit 721 at
12 page 526, which is the Neville cross-examination in the
13 context of the MacDonald prosecution.

14 **THE COMMISSIONER:** Yes.

15 **MR. SHERRIFF-SCOTT:** And at page 526 at
16 about line 20.

17 **THE COMMISSIONER:** Yes.

18 **MR. SHERRIFF-SCOTT:** And it's not on the
19 screen, sir. I can start reading when it suits your
20 purpose. There we are.

21 "My main purpose in response to what he
22 was doing, as I saw this developing
23 from something other than a civil suit
24 that I had launched, there's a bunch of
25 criminal activity going on here. I

1 couldn't just take it on myself. There
2 was just no way. It has too many
3 tentacles and too many places it was
4 going. I just wanted to gather this
5 stuff and, as quickly as I could, get
6 it to an agency that I could trust to
7 deal with it because I, as one man,
8 can't go running around checking CVs
9 and checking dates and whatever. It
10 wasn't my investigation. I was just --
11 I just knew as a human being that.
12 Soon into my civil suit, I went, 'Oh,
13 my God, this isn't civil anymore. This
14 is criminal'."

15 So that is the point I was trying to
16 illustrate with the cross-examination of the witness this
17 morning.

18 I would add to that that Mr. Dunlop was, at
19 the relevant period of time, a police officer subject to
20 disclosure obligations throughout the course of the late
21 1990s, including the time when he was doing this
22 investigation.

23 Thus, there could be no privilege to his
24 interactions with the witnesses, as well as Mr. Bourgeois
25 in connection with the witnesses, decisions about to how

1 approach them; decisions about what they might tell him;
2 strategic decisions and discussions they may have had about
3 those witnesses.

4 Mr. Dunlop would be subject to an overriding
5 disclosure obligation in the public interest that would
6 militate against a privilege applying.

7 And just if I can give you a couple of
8 references, there were starting, sir -- and I'll just give
9 you these references because I don't want to read them to
10 you but they are in the transcripts, and these are where,
11 Mr. Dunlop, in the context of his cross-examination -- and
12 I'll just summarize this -- acknowledged that starting in
13 June of 1997, he was ordered by the Cornwall Police Service
14 to stop investigating, as well as to turn over all of his
15 materials.

16 In the context of these discussions and
17 debates in the transcripts, the references for which I'll
18 give you, he acknowledged that he was a police officer and
19 subject to orders of his superiors, which he didn't comply
20 with.

21 But importantly, it makes the point I just
22 raised earlier that as a police officer, he was subject to
23 these disclosure obligations.

24 The first reference is in the first day of
25 transcripts in the Leduc matter which -- or the second day,

1 which is Exhibit 723, and if I can give you the page
2 references, it's page 47, lines 15, all the way over to
3 page 48, line 22.

4 He then was ordered again on August 7th, 1997
5 to comply with his disclosure obligations and the
6 references for that are in the same transcript, Mr.
7 Commissioner, at page 48, line 22, all the way to page 49
8 at line 22.

9 And then on September 25th, a written Order
10 of Compulsion was sent to him by his superiors demanding
11 disclosure and that is referred to in his cross-examination
12 in the same transcript at page 60, lines 27, al the way
13 through, inclusive to page 61, line 14.

14 And then there was further orders in the
15 year 2000, in January, which was the subject of cross-
16 examination before Platana J. and I'm just trying to find
17 the reference. That is at page 29, lines 22 to 29 of the
18 last transcript marked -- I'm sorry, that one wasn't
19 marked. That is the last day of the proceedings in that
20 matter, sir, the last day of the extract which was August
21 19th.

22 --- EXHIBIT NO./PIÈCE No. P-726:

23 (109981) Transcript of Her Majesty the
24 Queen v. Jacques Ledu, Extract Pre-
25 Trial Motion dated 19 Aug. 04

1 **MR. SHERRIFF-SCOTT:** I don't believe we
2 marked it. It was 109981 and it's the last of a series of
3 four transcripts. And if we could mark that, that would be
4 complete in terms of the references I wish to draw your
5 attention to on that subject.

6 So the thrust of it is he was a police
7 officer. He was subject to these disclosure obligations.
8 He can't contend for privilege in connection with his
9 interactions on the witnesses.

10 **THE COMMISSIONER:** On the witnesses, but
11 what about the solicitor/client? You're saying it doesn't
12 exist?

13 **MR. SHERRIFF-SCOTT:** Well, I'm saying it
14 doesn't exist for two reasons. First of all, when he's
15 doing it, he acknowledges in the transcripts he's wearing
16 two hats and he's acknowledging right here, as I tried to
17 elicit from the witness, that he was doing this for reasons
18 unrelated as well, perhaps in part but unrelated for the
19 public interest because he didn't believe the police were
20 going to do it. So he was off doing it.

21 And thus, interactions between him and this
22 individual in that context, I would submit, are not
23 privileged because that's not for the retainer that's in
24 issue.

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

1 **MR. SHERRIFF-SCOTT:** I would also supplement
2 that by saying that as a police officer, his interactions
3 on this subject, when he was wearing that hat, whether he
4 liked it or not, he was wearing that hat and he can't not
5 wear it. And thus, his interactions with Mr. Bourgeois
6 come -- what I'm talking about now are how they dealt with
7 the witnesses; how they would have interacted with them;
8 discussions about strategy, about how to take their
9 evidence; when to, how to, et cetera, should be open for
10 inspection by the Commission.

11 Thank you, sir.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Callaghan?

14 I guess one of the things I should raise at
15 this point -- no, you may sit down, sir -- is over the
16 lunch hour, I was thinking about this and there is a spot
17 in the transcript of the August 18th where Mr. Dunlop does
18 ask for a lawyer and feels that he's being pigeonholed here
19 or something. So, you know, there is that request.

20 **MR. RUEL:** If you allow me, Mr.
21 Commissioner, we found the reference to that, since you
22 mention it. It's at Exhibit 724.

23 **THE COMMISSIONER:** M'hm, page 16?

24 **MR. RUEL:** At page 4.

25 **THE COMMISSIONER:** Oh, yes, right.

1 **MR. RUEL:** So I gather this was his cross-
2 examination in the voir dire in the Leduc matter and he
3 read the statement at the beginning, and you'll find that
4 at page 4 and he says he testified for these reasons.
5 Well, we won't go through the reasons but he says:

6 "For these reasons, again today I'm
7 asking for my rights under the Charter
8 and I request a criminal lawyer to
9 assist me and guide me."

10 So this is, I guess, the reference you ---

11 **THE COMMISSIONER:** Right, but it then goes
12 on at some point I believe and if I -- I haven't been able
13 to really touch it down correctly. I think there is some
14 offer of duty counsel, and then they went on and I don't
15 think he took advantage of the duty counsel.

16 **MR. SHERRIFF-SCOTT:** I can give you the
17 reference (off mic).

18 **THE COMMISSIONER:** Well I think it's page
19 16.

20 **MR. SHERRIFF-SCOTT:** It runs all the way
21 from page 4 to 20.

22 **THE COMMISSIONER:** Right, exactly.

23 **MR. SHERRIFF-SCOTT:** The duty counsel
24 actually comes to the room, gives the advice, et cetera.

25 **THE COMMISSIONER:** All right, thank you.

1 **MR. CALLAGHAN:** As an aside, Mr.
2 Commissioner, on that point you will note that on the face
3 page of Exhibit 723, which is August 17th, duty counsel
4 appears as record for Mr. Dunlop and again on Exhibit 724,
5 being the August 18th, duty counsel appears on record for
6 Mr. Dunlop at the face page now.

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

8 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. JOHN CALLAGHAN:**

9 **MR. CALLAGHAN:** Mr. Commissioner, my
10 submissions, first of all, will echo a little bit of what
11 you've heard. I obviously and I won't repeat them, I agree
12 that litigation privilege which has come to an end and that
13 the conduct of the litigation, including interviews with
14 witnesses, particularly Mr. Leroux, the Renshaws, that
15 group clearly is no longer privileged and any meetings with
16 them in the presence of Mr. Dunlop or otherwise is no
17 longer privileged.

18 I do want to flesh out a little bit of a
19 point that was being made, and not so badly, by Mr.
20 Sherriff-Scott, and that is, is that I think there is a
21 debatable issue as to whether there is litigation privilege
22 in the context of Mr. Dunlop, where in fact he was
23 operating, to use Mr. Sherriff-Scott's phrase, with two
24 hats and in particular in the end of the day the decisions
25 of the various courts have determined that Mr. Dunlop was

1 an operative, if I could put it that way, of the Crown and
2 therefore *Stinchcombe* applied, and that became a big issue.

3 I had intended to take you to a few
4 references. I won't belabour the point but it is something
5 I think Mr. Sherriff-Scott touched on, but you may wish to
6 see the references for yourself, a few of them, and I would
7 first take you to Exhibit 720, page 426.

8 This would be the Examination in-Chief at
9 the ---

10 **THE COMMISSIONER:** I'm sorry, what page
11 again?

12 **MR. CALLAGHAN:** Four twenty-six (426). It's
13 the first day, I believe, Volume 3 of the *Regina vs*
14 *MacDonald* in front of Mr. Justice Chilcott. It's
15 Examination in-Chief of Mr. Dunlop by the Crown.

16 **THE COMMISSIONER:** Got it.

17 **MR. CALLAGHAN:** I'm just doing this to point
18 out that the issue; the whole issue regarding his capacity
19 was a big issue in this case. At:

20 "Question:

21 "Sir, did you at the time have an
22 understanding of the kind of material
23 the OPP investigators were looking for
24 -- to you for about any prior
25 involvement you had investigations or

1 interviews of people."

2 Answer:

3 "I had a general sense of, you know,
4 what they were looking for."

5 Question:

6 "Can we presume, sir, that in your
7 police experience that you've been
8 responsible for compiling police briefs
9 or Crown's briefs for prosecution
10 matters?"

11 Answer:

12 "Yes."

13 Question:

14 "Did you have some understanding, sir,
15 of the obligations incumbent upon
16 police and Crown to make disclosure?"

17 Answer:

18 "Yes I did."

19 Question:

20 "Were you familiar with a decision
21 called *Stinchcombe*?"

22 Answer:

23 "Yes, full disclosure isn't it?"

24 Question:

25 "Full disclosure."

1 Answer: "

2 Is that the one?"

3 Question:

4 "Did you understand that, sir, to mean
5 everything?"

6 Answer:

7 "Yes."

8 Question:

9 "Okay, you indicated you did it, if not
10 exactly say the words cooperate 100
11 percent, that certainly was indicative
12 of your attitude at the time?"

13 Answer:

14 "Yes, of course."

15 And if we can go over to page 444 and I'm
16 not sure how much of this has all been played out in the
17 Inquiry by recollection, but obviously you've heard that
18 there were a number of orders issued to Mr. Dunlop and this
19 just reviews one such order, and this is in October of '97.
20 And so it starts:

21 Question:

22 "And was this in fact your full
23 compliance with that order after your
24 visit to your lawyer's office?"

25 Answer:

1 "Yes."

2 Question:

3 "Okay, what can we estimate as that,
4 approximately 20 pages?"

5 Answer:

6 "Yeah."

7 Question:

8 "That was all you had?"

9 Answer:

10 "That was all that was determined by my
11 lawyer at the time that was relevant to
12 what I had to turn over."

13 Question:

14 "Okay. I'm going to ask you to read it
15 again."

16 Answer:

17 "Uh-huh."

18 Question:

19 "Paragraph 3, I'm going to ask you to
20 read it out loud for us."

21 And this is the order given to him by Staff

22 Inspector Trew.

23 Answer:

24 "I therefore order you to disclose to
25 Inspector Tim Smith or his

1 investigators all of your notes, tapes,
2 statements, et cetera that you have
3 made or received relating to Inspector
4 Tim Smith's request of August 7th, '97."

5 Question:

6 "You felt this complied with that?"

7 Answer:

8 "I was following legal advice."

9 Question:

10 "Did you feel this complied with that
11 order?"

12 Answer:

13 "As far as my lawyer was concerned,
14 yes."

15 Question:

16 "Did you feel that complied with
17 paragraph 3 of the order of your
18 Inspector Trew?"

19 Answer:

20 "Yes."

21 Question:

22 "You would turn over all your notes?"

23 Answer:

24 "Yes."

25 What then transpires, of course, is that not

1 all the notes were turned over on that occasion. In fact,
2 not all notes were turned over until 2004 when, as you
3 heard through Mrs. Dunlop, the police had to go out there
4 to get the notes.

5 The next transcript reference I'd like to
6 take you to for the purpose of this, is to take you to
7 Exhibit 722, which is *Regina vs Leduc* matter, and again
8 Exhibit 722 and I'd be at page 15.

9 **THE COMMISSIONER:** Five 0?

10 **MR. CALLAGHAN:** Page 15.

11 **THE COMMISSIONER:** One five?

12 **MR. CALLAGHAN:** One five, sir.

13 And again this is -- you'll see this is a
14 very similar exchange to what Mr. Ruel read to you in the
15 *Regina vs. MacDonald*.

16 Question:

17 "Following that information, let me
18 present to you a chronology and you can
19 agree or disagree with me. It wasn't
20 until September 23rd, '97 that Inspector
21 Hall again calls you with respect to
22 notes. Do you remember that?"

23 Answer:

24 "I possibly remember it."

25 Question:

1 "Does this help trigger your memory?
2 You advised him to contact your lawyer,
3 Charles Bourgeois."

4 Answer:

5 "Yes, I know I was doing a lot of
6 things through my legal counsel."

7 Question:

8 "And you advised Inspector Hall that
9 there was a lawyer/client privilege
10 that you were attaching to your notes;
11 is that fair to say?"

12 Answer:

13 "There was a lawyer/client I think with
14 regard to my civil notes, perhaps."

15 Question:

16 "But no notes were transferred or
17 delivered to Inspector Hall at that
18 time; is that fair to say?"

19 "Probably fair to say, yes."

20 And then if we go over to page 30, and it
21 says at 15:

22 Question:

23 "On August 1st, '98 Inspector Hall meets
24 you at your residence and presents you
25 with a letter asking you to disclose

1 everything associated with a criminal
2 investigation and he asks you to sign
3 it. Do you recall such a document
4 being presented to you?"

5 Answer:

6 "I don't recall that particular
7 document but again I signed a lot."

8 Question:

9 "Well this specific one, sir, you
10 actually wanted some legal advice."

11 Answer:

12 "Okay."

13 Question:

14 "And ultimately in October of '98,
15 October 1st, '98 specifically when this
16 was again asked from you to sign a
17 document asserting that you have given
18 everything to the police, you refused
19 to sign it on the basis of advice from
20 your lawyer. Do you ---"

21 Answer:

22 "Okay."

23 Question:

24 "--- recall that?"

25 Answer:

1 "Yes."

2 Question:

3 "Although initially you had advised
4 Inspector Hall that you were prepared
5 to sign this letter?"

6 Answer:

7 "Yes."

8 Question:

9 "Is that what happened, sir?"

10 Answer:

11 "Yes. Well, again with legal advice on
12 civil litigation going on, I had to
13 follow whatever my legal advisors were
14 saying."

15 Question:

16 "That legal advisor changed in November
17 of '98 from Charles Bourgeois to John
18 Morris; is that correct?"

19 Answer:

20 "That's right."

21 And if I could then move to a discussion on
22 this; what you're seeing, obviously, is the issue of
23 disclosure and advice surrounding disclosure; not as a
24 civil litigant but as a police officer because -- and I'm
25 not suggesting as one who is doing his job, but as a person

1 that had the documents. And you heard Mr. Sherriff-Scott
2 read to you what Mr. Dunlop thought he was doing.

3 But it became clear in those proceedings
4 that it was a *Stinchcombe* issue for the disclosure of those
5 documents.

6 It's my submission, that in circumstances
7 like that, that the documents no longer have a litigation
8 privilege character. They lose that character and in fact
9 in the case of *Regina v. Blank*, or *Blank v. Canada*, which
10 is the case that Mr. Ruel took you to and as he indicated,
11 it spawned out of a federal prosecution that Mr. Blank felt
12 was a malicious prosecution. He was trying to get
13 documents from the Crown and I'm at paragraph 56, and it
14 says, paragraph 56:

15 "I'm not unmindful of the fact that
16 *Stinchcombe* does not require the
17 prosecution disclose everything in its
18 file, privileged or not. Materials
19 that might in civil proceedings be
20 covered by one privilege or another
21 will nonetheless be subject, in the
22 criminal context, to the innocence at
23 state exception, at the very least."

24 And he cites McClure.

25 And at paragraph 57:

1 "On any view of the matter, I would
2 think it incongruous if the litigation
3 privilege were found in civil
4 proceedings to insulate the Crown from
5 the disclosure it was bound, but failed
6 to provide in criminal proceedings that
7 have ended."

8 I take the Supreme Court to say that when
9 you have a *Stinchcombe* obligation, whatever that obligation
10 was, you can't hide behind litigation privilege. And in
11 this context, it's been determined by a number of courts --
12 I cite Mr. Justice Chilcott, Mr. Justice Platana -- have
13 all ordered that Dunlop's documents were subject to a
14 *Stinchcombe* disclosure.

15 And far be it for me to tell you what kind
16 of questions that you would permit to be allowed asked in a
17 criminal proceedings, as you do them far more than I, but I
18 wouldn't have thought that we even get to a litigation
19 privilege. It happens to be the litigation privilege in
20 this instance has come to an end.

21 But it may be that the involvement with the
22 lawyer in producing the documents, not acting as lawyer but
23 actually sitting in and producing documents, changes the
24 complexion completely. We're talking about not a Crown
25 saying to two police officers, "You go out and you go get

1 this information". We're talking about scenarios which
2 have been described by C-8 and Mr. Leroux as sitting in a
3 room with Mr. Bourgeois and Mr. Dunlop creating the
4 document.

5 So my submission that if it's -- if it is
6 truly an issue that we've transcended into a *Stinchcombe*-
7 type disclosure, which is what has been determined in the
8 criminal proceedings, then it doesn't stop, with my
9 respectful submission, with Mr. Dunlop with respect to the
10 creation of those documents. So that discussions as
11 between Mr. Bourgeois and Mr. Leroux clearly would be open
12 for discussion -- his discussions with Mr. Leroux.

13 But I would also say that his discussions
14 with Mr. Dunlop vis-à-vis what Mr. Leroux might, or might
15 be persuaded to say, is also open for questioning. I take
16 it that having C-8 having waived his privilege, that
17 discussions, for example, in relation to the creation of
18 the January 23rd statement -- you'll recall that -- you'll
19 recall how it was described to you, how Mr. Bourgeois came
20 and slept with -- at Mr. Dunlop's house the night before,
21 and then they went off and they created this statement in
22 the morning, and then they went off to the police station.

23 That seems to me to be in furtherance of a
24 privilege associated with Mr. C-8 and any discussion
25 between Mr. Dunlop and Mr. Bourgeois, plainly, in my

1 respectful submission, would be open for discussion. And I
2 -- as I said to you, I think all discussions relative with
3 Mr. Dunlop regarding the witnesses who were subject to
4 production, not only production in the sense of production
5 in *Stinchcombe*, they also produced them obviously to Chief
6 Fantino -- that those discussions, as between Dunlop and
7 Bourgeois, are not privileged.

8 I would also add that I think as we get
9 along, one has to remember what we're dealing with. We're
10 dealing with statements made to the OPP. In the case of
11 Mr. Leroux, on February 7, 1997, in the presence of Mr.
12 Bourgeois wherein he reads the December 7th statement, which
13 is Exhibit 570 ---

14 **THE COMMISSIONER:** Can I stop you?

15 I don't know where we're going here in the
16 sense that I think I'd rather go through headings in the
17 sense that -- we're saying that if you're arguing that the
18 discussions between Leroux, Dunlop, and Mr. Bourgeois
19 should be admissible, I don't need to hear from you any
20 more about that.

21 **MR. CALLAGHAN:** Okay, fine.

22 **THE COMMISSIONER:** All right.

23 So then there are discussions about whether
24 or not the issues of disclosure as a waiver, if we're going
25 to argue that he says he got some not so good advice and he

1 was relying on legal advice ---

2 MR. CALLAGHAN: Right.

3 THE COMMISSIONER: All right?

4 MR. CALLAGHAN: That I agree with Mr.
5 Manson.

6 THE COMMISSIONER: Okay, that's covered. So
7 ---

8 MR. CALLAGHAN: So my argument is two-fold.

9 THE COMMISSIONER: For what?

10 MR. CALLAGHAN: For the waiver of the
11 discussions as between Mr. Bourgeois and Mr. Dunlop, as it
12 relates to their discussions as to witnesses, that they are
13 -- or people who are giving witness statements. For
14 example, you had indicated earlier that -- don't have a
15 problem with what is said in the hotel room in Maine when
16 Mr. Leroux is present.

17 THE COMMISSIONER: Okay.

18 MR. CALLAGHAN: And then you said it may be
19 different if they go out and talk about it outside.

20 I'm saying if they talk about it outside,
21 given the fact that they have become the subject of a
22 *Stinchcombe* disclosure, that this has now got a different
23 character, that the discussions as between Mr. Bourgeois
24 and Mr. Dunlop would be admissible. It's not as if -- this
25 isn't a situation where a cop goes to the Crown and says,

1 "By the way, I've got an issue on this witness. What do I
2 do?" "Well, you might consider this. Go back and do it."
3 They're doing it together. This is a common enterprise as
4 between the two of them and it seems to me that that is a
5 very different thing. So that would be position one.

6 **THE COMMISSIONER:** Okay.

7 **MR. CALLAGHAN:** Position two -- and I'll
8 confess that I think that you have -- you know, we're at
9 the very early stages in Mr. Bourgeois' testimony, and it
10 may be that you have to -- this is something I just alert
11 you to, that you may have to consider in the future.

12 But what you do have, and we've heard the
13 evidence of it, you have statements by Ron Leroux to the
14 OPP in the presence of Mr. Bourgeois on February 7th, 1997
15 wherein he, in part, discusses his own thing, but he reads
16 his statement of December 7th, Exhibit 570, and his -- one
17 of his statements of November 13th, Exhibit 567.

18 Now, we know as a fact because Mr. Leroux
19 testified to this extent -- we didn't get a chance to
20 cross-examine him -- that statements he gave to the OPP on
21 that occasion were untrue. He was cautioned before that
22 and so, consequently, there's going to be an issue and you
23 -- pardon me, and you also heard Mr. Leroux say that he was
24 prepped for the meeting with the OPP. I'm not suggesting
25 we're there yet, but I want to alert the court that we may

1 be in a situation as to whether or not the *bona fides* of
2 what happened in terms of the preparation of that material
3 and the giving of that statement, may come up. And I'm not
4 suggesting you have to rule on it but I think it would be
5 unfair not to raise it.

6 The same would have applied to C-8 but for
7 the fact he's waived the privilege so I don't think I have
8 to go there.

9 Unless you have any questions, those would
10 be my submissions.

11 **THE COMMISSIONER:** No, that's fine.

12 Mr. Kozloff? Or Ms. Lahaie? Okay.

13 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. LAHAIE:

14 **MS. LAHAIE:** Thank you, Mr. Commissioner.

15 We adopt these submissions of Professor
16 Manson in their entirety, sir. Thank you.

17 **THE COMMISSIONER:** Thank you.

18 Mr. Wallace?

19 **MR. WALLACE:** Good afternoon.

20 **THE COMMISSIONER:** Good afternoon. Long
21 time.

22 **MR. WALLACE:** Given your remarks concerning
23 the issues of litigation privilege and the disclosure
24 issue, I have nothing further to add of a helpful nature.
25 Thank you.

1 **THE COMMISSIONER:** Thank you.

2 Maître Ruel, anything to say further?

3 **--- REPLY BY/RÉPLIQUE PAR MR. SIMON RUEL:**

4 **MR. RUEL:** Very briefly, Mr. Commissioner.

5 On the issue brought up by Mr. Manson about
6 the references when Mr. Dunlop testifies in those criminal
7 proceedings about the drafting process of the Statement of
8 Claim or the civil litigation document, I don't believe I -
9 - my view would be that there's -- I didn't see any waiver
10 there. It's different from the situation -- the other
11 situation where Mr. Dunlop said, and put in question
12 directly, legal advice he's received, the drafting process
13 of a legal proceedings is not, I guess, putting into
14 question legal advice. It's just outlining the obvious, as
15 he seemed to say is, "I had a role, my counsel had a role
16 in drafting that". So I don't see that as a waiver of
17 privilege. This is just -- he was just explaining the
18 process for drafting those proceedings.

19 So the other point is concerning the common
20 interest privilege which was raised by my friend, Mr. Horn.
21 I just want to -- I didn't bring the case on that but I'm
22 quoting from Supreme Court decision here, *Pritchard v. The*
23 *Ontario Human Rights Commission*, 2004, 1 S.C.R. 809 which
24 this decision talked or defined the common interest
25 privilege and this is what has been written in that case.

1 The authorities are clear that where two or
2 more persons, each having an interest in some matter,
3 jointly consult a solicitor, their confidential
4 communication with the solicitor, although known to each
5 other, are privileged against the outside world.

6 So I don't think that any of the -- the only
7 persons that consulted Mr. Bourgeois as counsel is Mr.
8 Dunlop and C-8. We got some testimony this morning from
9 Mr. Bourgeois and I didn't get from that that any of the
10 person he met -- the other person he met were his clients
11 or in any way they were witnesses according to his
12 testimony or individuals he met for the purpose of the
13 civil claim, according to what he said.

14 So I don't think this exception would apply
15 in anyway to shield the -- any testimony we want to get
16 concerning Mr. Bourgeois' discussion with witnesses.

17 **THE COMMISSIONER:** Thank you.

18 All right, so we'll take 20 minutes. I'll
19 come back at 3:00, render a decision.

20 I wish to begin hearing evidence. We'll
21 probably sit late tonight. We'll have a long day tomorrow
22 and if we're not finished tomorrow we'll do -- we'll finish
23 it off on Friday.

24 So give me twenty minutes and I'll render my
25 decision.

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

3 ---Upon recessing at 2:41 p.m./

4 L'audience est suspendue à 14h41

5 ---Upon resuming at 3:04 p.m./

6 L'audience est reprise à 15h04

7 **THE REGISTRAR:** This hearing is now resumed.
8 Please be seated. Veuillez vous asseoir.

9 **CHARLES BOURGEOIS: Resumed/Sous le même serment**

10 --- **RULING BY THE COMMISSIONER ON THE QUESTION OF EVIDENCE**
11 **TO BE ADMITTED/DÉCISION DU COMMISSAIRE SUR LA QUESTION DE**
12 **LA PREUVE ADMISSIBLE :**

13 **THE COMMISSIONER:** Thank you.

14 Mr. Bourgeois you can sit where you wish.

15 It matters not.

16 This is -- Mr. Bourgeois is on the stand,
17 about to give evidence. He obviously was a lawyer engaged
18 by Mr. Dunlop for a period of time between 1995 and 1996 or
19 thereabouts.

20 The issue has become whether or not his
21 testimony is subject to a solicitor/client privilege or any
22 type of privilege including that of litigation privilege
23 and to the extent to which questions should be put to him.

24 What I want to do in this oral judgement is
25 to give it orally so that we can proceed with the cross

1 examination. And, of course, if there are those who
2 strenuously oppose my decision, I will provide more
3 detailed reasons for our colleagues at the Divisional
4 Court.

5 Let me begin by saying that I view, as I
6 must, solicitor/client privilege as a cornerstone to our
7 judicial system. It is there to assist citizens to obtain
8 legal advice so that they can order their affairs in
9 society. It is as important as a seal of confessional for
10 those of the Roman Catholic Church or faith.

11 I want to begin by saying a few comments
12 about things that I find relevant or not relevant. First
13 of all, the fact that Mr. Dunlop has chosen not to testify
14 figures not in this equation nor does the fact that he has
15 not sought standing in this inquiry.

16 As well, whether the coalition makes
17 submissions that might appear to represent Mr. Dunlop's
18 interests is not -- and arguments to that effect are not
19 helpful, in my view, and the coalition is free to -- while
20 I don't necessarily agree with the type of words used by
21 the coalition, they have standing and their views are
22 always welcome.

23 What I want to do then is to set out some
24 general principles and decisions I suppose with respect to
25 the questions to be asked of Mr. Bourgeois. And in that

1 regard, I am guided by the four cases that I've received,
2 *Regina v Campbell*, *Descôteaux v Mierzwinski*, *Souter v The*
3 *Numbered Company* and *Blank v Canada*, which of course is a
4 very important decision dealing with litigation privilege.

5 I am of the view that there may be questions
6 as we go through the examination where we might have to
7 revisit some questions but I want people to be guided by
8 this decision.

9 First of all, with respect to any
10 discussions Mr. Bourgeois, Mr. Dunlop would have had in the
11 company of witnesses, and I allude to the Leroux example.
12 That was covered by litigation privilege and I am satisfied
13 that the litigation privilege has been exhausted and
14 accordingly Mr. Bourgeois will be ordered to answer
15 questions with respect to that area of the evidence.

16 With respect to discussions of Mr. Dunlop
17 and Mr. Bourgeois alone for the purposes of preparing
18 witnesses, I find that that is what I will consider
19 specific litigation strategies which are conversations
20 between Mr. Bourgeois and Mr. Dunlop. That is not
21 extinguished by litigation privilege and will be covered by
22 solicitor/client privilege.

23 I note that when reviewing the Blank case
24 that what the -- I read that to mean is that the general
25 litigation strategies of a government, for example, might

1 be a policy that would say that any claim under a certain
2 amount of money will not be litigated but will be settled
3 because of economics, or whatever policy the government
4 has. And so I would say that the Blank decision covers
5 those types of general litigation strategies but does not
6 cover specific litigation strategies, which is a discussion
7 directly between a solicitor and his client.

8 With respect to the waiver argument, I find
9 that waiver has not been established, generally speaking.
10 I find that Mr. Dunlop did not go as far as to waive the
11 privilege as is required in law. However, there is quite
12 clearly two incidents that -- where he invoked his advice
13 of a solicitor and therefore pursuant to the -- which case
14 was that now -- the Campbell case -- yes, the Campbell case
15 -- I find that questions will be able to be asked about the
16 quality and/or the advice that he received from Mr.
17 Bourgeois which he deemed to be -- and I forget the exact
18 word -- inadvisable, or in any event, bad advice or advice
19 that wasn't the best, in his view.

20 Mr. Callaghan has also raised a matter in
21 the *Regina v Leduc* matter where it is clear that there he
22 again adopted the legal advice and he had to follow
23 whatever my legal advisors were saying and that also opens
24 the door with respect to that issue.

25 With respect to the pleadings, I am going to

1 permit questions with respect to the pleadings as they deal
2 with process, and I am going to reserve to revisit that
3 area once we get to that area to see what type of questions
4 will be asked.

5 Again, I say that generally speaking that's
6 the way we want to deal with matters and again we will
7 proceed on that basis until there are further objections.
8 All right.

9 Mr. Bourgeois, do you understand my
10 direction?

11 **MR. BOURGEOIS:** I do sir.

12 **THE COMMISSIONER:** All right.

13 And so for the beginning, in any event,
14 while Maitre Ruel is asking you questions, I doubt that he
15 will go anywhere, and if he does, others will stop him, or
16 I will. But, in any event, I think we are fairly clear at
17 this point.

18 **MR. RUEL:** So thank you, Mr. Commissioner.

19 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
20 **RUEL(cont'd/suite):**

21 **MR. RUEL:** So Mr. Bourgeois, can you give us
22 some background about -- thank you; the microphone is now
23 working -- some background about ---

24 **THE COMMISSIONER:** Can you bring down the
25 microphone closer to you, sir? Thank you.

1 MR. BOURGEOIS: Sure.

2 MR. RUEL: Some background about yourself.

3 So I guess you were born in New Brunswick?

4 MR. BOURGEOIS: Moncton, New Brunswick,
5 yeah.

6 MR. RUEL: And brought up there?

7 MR. BOURGEOIS: Yes.

8 MR. RUEL: And when did you move to Ontario?

9 MR. BOURGEOIS: In 1992.

10 MR. RUEL: So you're a lawyer, practising
11 lawyer?

12 MR. BOURGEOIS: Yes.

13 MR. RUEL: In Ontario?

14 MR. BOURGEOIS: Yes.

15 MR. RUEL: Your office is in Newmarket?

16 MR. BOURGEOIS: Correct.

17 MR. RUEL: Where did you -- can you give the
18 Commission some background about your legal studies and
19 your ---

20 THE COMMISSIONER: Call to the Bar.

21 MR. RUEL: --- legal training, I guess, and
22 your legal practice as well?

23 MR. BOURGEOIS: I did an undergrad in
24 business administration at l'Université de Moncton four
25 years and then I did three years of law at l'Université de

1 Moncton. And then I articulated at Blake, Cassels and
2 Graydon.

3 MR. RUEL: That was when?

4 MR. BOURGEOIS: Nineteen ninety-two (1992)
5 until late '93 I articulated.

6 THE COMMISSIONER: Is that Blake, Cassels in
7 Toronto?

8 MR. BOURGEOIS: Yes.

9 THE COMMISSIONER: M'hm.

10 MR. RUEL: So when were you called to the
11 Bar?

12 MR. BOURGEOIS: In I think it's February
13 '94, but it was early '94.

14 MR. RUEL: So you were a member of the Law
15 Society of Upper Canada; is that correct?

16 MR. BOURGEOIS: Correct.

17 MR. RUEL: Are you a member of the New
18 Brunswick Bar as well?

19 MR. BOURGEOIS: No.

20 MR. RUEL: So then you articulated at Blake you
21 said?

22 MR. BOURGEOIS: Yes.

23 MR. RUEL: And then what; did you stay
24 there?

25 MR. BOURGEOIS: No, I ended up setting up a

1 practice in Newmarket.

2 MR. RUEL: Immediately after?

3 MR. BOURGEOIS: Yes.

4 MR. RUEL: After you were articling I guess?

5 MR. BOURGEOIS: Correct.

6 MR. RUEL: And what type of practice did you
7 start? That's in 1994.

8 MR. BOURGEOIS: Yeah, it was myself and
9 another lawyer that had articulated at Blake's. We started an
10 office there and probably more -- started off more in
11 litigation but specifically in labour and employment at the
12 time. That was more the idea.

13 MR. RUEL: When you say litigation, what
14 type of litigation were you doing at the time?

15 MR. BOURGEOIS: Most of the work would have
16 been more labour and employment. We did some work for York
17 Regional Police Association; so *Police Act* sort of work,
18 and work of that nature.

19 MR. RUEL: So I gather you represented Mr.
20 Dunlop from -- I don't know if you remember the exact dates
21 -- we've discussed that earlier from June 1996 until
22 November of 1997.

23 MR. BOURGEOIS: Yeah. On or about, yeah.

24 MR. RUEL: So you had a little over two
25 years of experience when you took that retainer; is that --

1 -

2 MR. BOURGEOIS: That would be fair, yeah.

3 MR. RUEL: So in 1996, like between 1996 and
4 1997, had your practice evolved in any way?

5 MR. BOURGEOIS: In what respect?

6 MR. RUEL: Well, did you -- were you still
7 involved with, you know, as you said, civil litigation and
8 labour law and police matters?

9 MR. BOURGEOIS: Yeah.

10 MR. RUEL: Still the same thing?

11 MR. BOURGEOIS: Yeah, it was generally the
12 same thing.

13 MR. RUEL: Were you doing criminal law at
14 the time?

15 MR. BOURGEOIS: A little bit, yeah. A
16 little bit at that time. That's when I started doing some
17 and eventually evolved to that's all I do.

18 MR. RUEL: So in your firm, was there any --
19 how many lawyers were members of your firm at the time?
20 I'm talking 1996.

21 MR. BOURGEOIS: I think there would have
22 been -- there was one individual that was practising in an
23 association called Alain Robichaud.

24 MR. RUEL: Was he at the same level as
25 yourself or younger?

1 **MR. BOURGEOIS:** No, one or two years behind
2 me and Mr. Karnis.

3 **MR. RUEL:** Between you and?

4 **MR. BOURGEOIS:** The other gentleman that I
5 had started the office with was Mr. Karnis.

6 **MR. RUEL:** Okay.

7 **MR. BOURGEOIS:** K-A-R-N-I-S, for the record,
8 and he -- the other gentleman was -- I don't remember if it
9 was one or two years behind us. It might have been one,
10 but he ---

11 **MR. RUEL:** And Mr. Karnis was about your ---

12 **MR. BOURGEOIS:** Yeah, he articulated at Blake
13 at the same time as me.

14 **MR. RUEL:** Oh, I see. So you had no other
15 counsel senior than your ---

16 **MR. BOURGEOIS:** No.

17 **MR. RUEL:** --- more senior than yourself ---

18 **MR. BOURGEOIS:** No.

19 **MR. RUEL:** --- in the firm, a three-lawyer
20 firm at the time.

21 **MR. BOURGEOIS:** Yes.

22 **MR. RUEL:** It grew though? By 1996 or '97,
23 there's a whole bunch of people on the letterhead?

24 **MR. BOURGEOIS:** Oh, really?

25 **THE COMMISSIONER:** Well, what's the name of

1 your firm now?

2 MR. BOURGEOIS: Well, I just practise by
3 myself now.

4 THE COMMISSIONER: Oh, okay.

5 MR. BOURGEOIS: Charles Bourgeois.

6 THE COMMISSIONER: Okay. But at the height
7 of the -- wasn't there four or five people, Hunter and ---

8 MR. BOURGEOIS: Yes.

9 MR. RUEL: Hunter, Corbett, Loselle and
10 Bourgeois, that's later or ---

11 MR. BOURGEOIS: Yes. I thought I hadn't
12 terminated my relationship with Mr. Karnis yet but maybe I
13 had, because that's the next office I went with was those
14 gentlemen, Hunter, Corbett, Loselle.

15 MR. RUEL: When was that? Do you remember?

16 MR. BOURGEOIS: I don't exactly. I don't.
17 It would have been -- I thought it was a couple of years,
18 two to three years, but ---

19 THE COMMISSIONER: Where were you when you
20 met Monsieur Bourgeois? What firm were you at?

21 MR. RUEL: Mr. Dunlop, not Mr. ---

22 THE COMMISSIONER: I'm sorry; Mr. Dunlop.
23 Thank you, Maître Ruel.

24 MR. BOURGEOIS: I think that -- I thought
25 that originally I was still with Mr. Karnis on a different

1 street in Newmarket, which would be Main Street South.

2 That's where I thought I was.

3 **THE COMMISSIONER:** Okay. We have the letter
4 dated December 18th, 1996.

5 **MR. BOURGEOIS:** Yeah, I see that, sir.

6 **THE COMMISSIONER:** All right. So can you --
7 just setting your memory back, you know, would you have
8 been there in June of 1996, do you know? Can you help us
9 at all?

10 **MR. RUEL:** Mr. Commissioner, maybe I can ---

11 **THE COMMISSIONER:** Go ahead.

12 **MR. RUEL:** I was going to go very shortly to

13 ---

14 **THE COMMISSIONER:** All right.

15 **MR. RUEL:** --- the civil litigation, but
16 maybe we can go to that right now, which is Exhibit 671,
17 which is the Notice of Action at the last page.

18 **THE COMMISSIONER:** Okay. And what does it
19 say?

20 **MR. RUEL:** Well, it says Charles Bourgeois
21 and it was with Karnis and Bourgeois on June 7, 1996.

22 **THE COMMISSIONER:** Okay. Well, there you
23 go.

24 **MR. BOURGEOIS:** Yeah, I thought so.

25 **MR. RUEL:** So that's consistent with your

1 memory I suppose?

2 **MR. BOURGEOIS:** Yeah, it must be then in
3 between that time and obviously December 18th was the time I
4 switched firms. I don't know the exact date.

5 **MR. RUEL:** Okay. So how do you get to
6 represent Mr. Perry Dunlop?

7 **MR. BOURGEOIS:** I don't remember exactly how
8 it happened. I vaguely remember that it was to do with
9 somebody in the York Regional Police Association knew
10 somebody in the Cornwall Police Association and that's how
11 the referral was made I believe.

12 **MR. RUEL:** Did you have a busy practice
13 involving police issues at the time?

14 **MR. BOURGEOIS:** I had enough work in that
15 area.

16 **MR. RUEL:** So what type of work exactly were
17 you doing?

18 **MR. BOURGEOIS:** It's mostly when officers
19 are charged under the *Police Services Act*.

20 **MR. RUEL:** So discipline issues?

21 **MR. BOURGEOIS:** So it's a quasi-criminal,
22 quasi-labour sort of proceeding, administrative tribunal
23 sort of setting.

24 **MR. RUEL:** So you would appear typically
25 before which type of Board?

1 **MR. BOURGEOIS:** It's a Chairperson that
2 sits, named pursuant to the statute and to hear the
3 complaint against the officer and they make a determination
4 and a finding on -- based on the evidence that they hear.

5 **MR. RUEL:** So do you remember when you were
6 retained by Mr. Dunlop? I think the question was asked
7 this morning but I'm just ---

8 **MR. BOURGEOIS:** No.

9 **MR. RUEL:** So then I can -- I'm going to
10 bring you to this document, Exhibit 671.

11 **MR. BOURGEOIS:** Yes.

12 **MR. RUEL:** So this is a Notice of Action in
13 a case, an Ontario Court General Division, Perry Dunlop and
14 a number of defendants.

15 Do you remember that, preparing this and
16 issuing it and getting it served?

17 **MR. BOURGEOIS:** Certainly we did that, yes.

18 **MR. RUEL:** And you do recall if you had met
19 with witnesses -- apart from Mr. Dunlop, had you met with
20 other witnesses before preparing this?

21 **MR. BOURGEOIS:** I'll just say I'll assume
22 that I did, but I don't remember -- I don't have an
23 independent recollection of what dates I met with those
24 witnesses.

25 **MR. RUEL:** So then I would ask you to -- and

1 this is a new document to be entered into evidence; that's
2 document 718279.

3 **THE COMMISSIONER:** It's not there yet, Mr.
4 Bourgeois. It's coming.

5 **MR. BOURGEOIS:** Oh, okay.

6 **THE COMMISSIONER:** Exhibit 726 is a
7 Statement of Claim. I thought this had been -- in any
8 event, I'm probably wrong -- 726 is a Statement of Claim
9 issued July 5th, 1976.

10 **--- EXHIBIT NO./PIÈCE No. P-726:**

11 (718279) Statement of Claim (Action
12 commenced by Notice of Action) Perry
13 Dunlop vs. Claude Shaver et al dated 05
14 Jul 96

15 **MR. RUEL:** Yes, I don't think it's been
16 entered into evidence. I believe the amended statement of
17 claim was filed, but not the initial statement of claim.

18 So Madam Clerk, do we have an exhibit
19 number?

20 **THE COMMISSIONER:** It's 726.

21 **MR. RUEL:** Sorry, 726?

22 **THE COMMISSIONER:** Yes.

23 **MR. RUEL:** So, Mr. Bourgeois, do you
24 remember -- do you recognize this document?

25 **MR. BOURGEOIS:** Yes.

1 MR. RUEL: So you were, I guess, the lawyer
2 on file?

3 MR. BOURGEOIS: Yes.

4 MR. RUEL: Were you involved in its
5 preparation?

6 MR. BOURGEOIS: Yes.

7 MR. RUEL: So can you just describe here,
8 and I don't want to get into the discussions you had with
9 Mr. Dunlop, but what was the process for preparing this
10 thing in terms of the role of Mr. Dunlop and your role and
11 the role of potentially other people in preparing this?

12 MR. BOURGEOIS: In what respect?

13 MR. RUEL: Well, who drafted this? Is it
14 you?

15 MR. BOURGEOIS: Either myself or Mr.
16 Robichaud.

17 MR. RUEL: So did Mr. Dunlop have any role
18 in drafting this statement of claim?

19 MR. BOURGEOIS: Not that I could remember.
20 I mean providing information obviously, but in terms of
21 specific drafting itself, I don't remember that he would
22 have. He would have definitely reviewed it.

23 MR. RUEL: So again the same question. When
24 you got this statement of claim issue, do you remember if
25 you had met with other individuals than Mr. Dunlop for the

1 preparation of this statement of claim?

2 **MR. BOURGEOIS:** Like I said, I don't have an
3 independent recollection of -- like the time and so I don't
4 want to answer in a vacuum, but I'm going to say that, you
5 know, I'm sure I met with some people prior to drafting
6 this claim. But do I remember that, like, specifically in
7 terms of the dates? No.

8 **MR. RUEL:** We are going to go through some
9 of the paragraphs, but can you explain to the Commission
10 what you were seeking against the defendants in that
11 statement of claim from what you can recall?

12 **MR. BOURGEOIS:** Damages, I guess.

13 **MR. RUEL:** So I made the calculation; maybe
14 you can confirm that. The damages, the total amount of the
15 damages claimed was \$78 million. Is that your
16 recollection?

17 **MR. BOURGEOIS:** No. I don't -- like, I
18 don't remember a specific number, but I know that it was,
19 obviously, a significant number for sure.

20 **MR. RUEL:** And do you remember how you came
21 to this number or, you know, to -- you don't remember the
22 number, but do you remember how you established the
23 figures?

24 **MR. BOURGEOIS:** No, I don't.

25 **MR. RUEL:** But it was in the millions of

1 dollars?

2 MR. BOURGEOIS: Yes.

3 MR. RUEL: Had you had such a large case
4 before in terms of numbers, dollars, in your practice?

5 MR. BOURGEOIS: Probably not. No.

6 MR. RUEL: So I would like to go through
7 some of the paragraphs with you just to prompt your memory.
8 I don't want to go through all of them. It's just to
9 establish the framework.

10 So is it fair to say that in the earlier
11 paragraphs, what is covered in there is the issue of Mr.
12 Dunlop becoming involved in the Silmsler investigation
13 within the Cornwall Police Service or finding out about
14 this investigation and becoming involved at some point. So
15 you described -- this is described in the statement of
16 claim?

17 MR. BOURGEOIS: Yes.

18 MR. RUEL: And at paragraph 53 -- well, just
19 before that. At some point, and I don't have the paragraph
20 here, but I gather that Mr. Dunlop was alleging that he had
21 disclosed the statement of Mr. Silmsler to the Children's
22 Aid Society.

23 MR. BOURGEOIS: Yes.

24 MR. RUEL: And there's been an internal
25 investigation within the Cornwall Police Service concerning

1 that point. Is that correct?

2 **MR. BOURGEOIS:** That -- I wasn't involved at
3 that point, but my understanding was, yes, that he had been
4 involved and got charged, et cetera.

5 **MR. RUEL:** So paragraph 53 reads:

6 "Staff Sergeant Derochie completed his
7 investigation into Dunlop's conduct on
8 January 4th, 1994, after receiving the
9 results of two related OPP
10 investigations. On January 4th, he
11 submitted his report to Johnston
12 concerning Dunlop's involvement in
13 disclosing the victim's statement to
14 the Children's Aid Society. The
15 conclusion of the report stated that he
16 had uncovered no evidence to suggest
17 that Dunlop's motives in providing the
18 Children's Aid Society with a copy of
19 the victim's statement were other than
20 out of a concern for the safety of the
21 community. Derochie concluded that no
22 discipline should be imposed against
23 Dunlop."

24 So you remember that?

25 **MR. BOURGEOIS:** I remember that the finding

1 against him ultimately was, by the Divisional Court, was
2 that he was exonerated.

3 MR. RUEL: I am just trying to go through
4 the facts here with you because I want to compare this with
5 the subsequent amended statement you filed.

6 MR. BOURGEOIS: Okay.

7 MR. RUEL: And paragraph 54, it is written
8 here that:

9 "The victim statement was obtained by
10 the media on January 6th, 1994."

11 So after the Derochie investigation; is that
12 -- I mean this is written here. So I guess you agree that
13 you prepared this?

14 MR. BOURGEOIS: Yeah, it's in the claim.

15 MR. RUEL: So was it not the thrust -- and
16 I'm trying to understand this -- of this action, because
17 initially, the Cornwall Police Service exonerated Mr.
18 Dunlop for releasing the statement and following the
19 disclosure to the public, he was charged under the *Police*
20 *Act* for disclosing the same statement essentially to the
21 Children's Aid Society.

22 Is that the thrust of the matter, so being
23 exonerated and then charged for the same issue, which
24 constituted, I guess in your view, malicious prosecution?

25 MR. BOURGEOIS: Yeah, that was certainly a

1 big part of it, yes.

2 MR. RUEL: Okay. So was there anything else
3 than malicious prosecution in that statement of claim, that
4 you remember, as causes of action?

5 MR. BOURGEOIS: I don't remember what the
6 other causes of actions were, but I know there was
7 information of Mr. Leroux regarding evidence that he had
8 heard and been privy to that grouped several of the people
9 together. So I don't know exactly who they were, but I
10 remember him having some information of conversations that
11 he was privy to and things that he observed and heard.

12 MR. RUEL: Is it possible, Mr. Bourgeois,
13 that this came later and we are going to go through that,
14 but it seems that those allegations were included later in
15 the amended statement of claim, and that you had not met
16 Leroux at the time of the filing of the initial Statement
17 of Claim, is that possible?

18 MR. BOURGEOIS: That's very possible, yes.

19 MR. RUEL: So can I suggest to you that
20 another cause of action in this lawsuit was defamation?

21 MR. BOURGEOIS: Yes.

22 MR. RUEL: So we have that at paragraph 78:
23 "By way of innuendo Dunlop believe
24 that Shaver Johnson, the police board
25 and the Cornwall Police made defamatory

1 false and slanderous statements in the
2 presence of the media, knowing that the
3 words would be reproduced in the media
4 and expressly or impliedly authorized
5 the publication of the defamatory,
6 false and slanderous statements."

7 So that was another cause of action,
8 defamation on the part of the police against Dunlop; right?

9 **MR. BOURGEOIS:** Yes.

10 **MR. RUEL:** So with respect to malicious
11 prosecution, I gather that Mr. Dunlop was charged and was
12 exonerated in the end by Divisional Court? He won his case
13 essentially?

14 **MR. BOURGEOIS:** Yes he did.

15 **MR. RUEL:** So thus the reason why, I mean
16 thus the basis, one of the basis for suing those
17 individuals?

18 **MR. BOURGEOIS:** Yes.

19 **MR. RUEL:** Why did you have -- there's a
20 number of individuals or entities listed here. You have
21 Claude Shaver as defendants, Carl Johnston, Joseph St.
22 Denis, Lucien Brunet. I won't list all of them but there's
23 a number of police officers, then there's the Cornwall
24 Police Service and Cornwall Police Board, Doug Seguin,
25 Douglas Seguin; the Roman Catholic Corporation for the

1 Diocese of Alexandria, Malcolm MacDonald; the Crown as
2 represented by the Police Complaint Commissioner.

3 So why did you have all of those defendants
4 listed in the claim?

5 **MR. BOURGEOIS:** That's who Mr. Dunlop was
6 complaining of.

7 **MR. RUEL:** So what was the complaint? Is
8 there something here that you remember in the Statement of
9 Claim that would support the action against the suit
10 against those people?

11 **MR. BOURGEOIS:** I don't know what you're
12 alleging -- what you mean.

13 **MR. RUEL:** Well, maybe I can point to you
14 paragraph 65.

15 **MR. BOURGEOIS:** Okay.

16 **MR. RUEL:** And it reads:

17 "Dunlop believes that Shaver,
18 Johnston, St. Denis, Brunet, Wells, the
19 Police Service Board and the Cornwall
20 Police conspired to single out Dunlop
21 as this would change the focus on the
22 outgoing scrutiny which was then
23 directed toward the Cornwall Police
24 over their handling of the
25 investigation into the allegation of

1 sexual abuse brought by the victim, the
2 victim, D.S. Dunlop believes that this
3 was part of the greater conspiracy to
4 keep a lid on allegations of sexual
5 abuse involving prominent members of
6 Cornwall, which included Father Charles
7 MacDonald and the late Ken Seguin."

8 So do you remember that?

9 **MR. BOURGEOIS:** I don't remember it but I'm
10 reading it.

11 **MR. RUEL:** So the greater conspiracy, is
12 that the reason why those other entities were included in
13 the Statement of Claim?

14 **MR. BOURGEOIS:** Well, yeah some of them were
15 obviously entities that certain individuals that Perry
16 complained about they worked for or related to, and the
17 others were the individuals that his complaint were that
18 they had done wrong to him that he wanted redressed.

19 **MR. RUEL:** At paragraph 95, it's written
20 here:

21 "Despite the complete and flagrant lack
22 of reasonable and probable cause,
23 Shaver, Johnston, St. Denis, Brunet,
24 Wells, the Cornwall Police, Police
25 Board and the Police Complaint

1 Commission continued to press on with
2 malicious prosecution. Dunlop believes
3 that the decision to press on with
4 malicious prosecution results from
5 conspiracy between Shaver, Johnston,
6 St. Denis, Brunet, Wells, the Police
7 Board, the Cornwall Police, the
8 Catholic Diocese, the defendant
9 MacDonald, and the Police Complaints
10 Commission to derail the investigation
11 involving Father Charles MacDonald and
12 the late Ken Seguin."

13 So you were alleging, I mean you, I mean
14 through Dunlop through you that there was a broad -- or a
15 conspiracy of all of those defendants to derail the
16 investigation involving Father MacDonald and Ken Seguin;
17 that's essentially the allegation? That's the reason why
18 you had all of those defendants listed in the claim; right?

19 **MR. BOURGEOIS:** Yes, and Mr. Dunlop
20 complained that the manner that he was treated by those
21 parties from the time -- I take it -- that he was charged
22 onwards.

23 **MR. RUEL:** What was the information you had
24 at the time, if I may ask, that for example, the Catholic
25 Diocese and the defendant, MacDonald, which is -- who is

1 Malcolm MacDonald, had something to do with the decision to
2 press on with malicious prosecution against Dunlop? Was
3 there any information you had at that point to back that
4 up?

5 **MR. BOURGEOIS:** I don't remember if he did
6 but I assume we did from other witnesses.

7 **MR. RUEL:** Just a couple of questions on
8 this. You -- Mr. Dunlop was a police officer so did you
9 know if he was unionized or not?

10 **MR. BOURGEOIS:** I think they had an
11 association.

12 **MR. RUEL:** Did you ever think about -- I
13 don't know if there was a grievance process within the
14 Cornwall Police Service or other provincial mechanisms to
15 bring grievances against labour decisions of the employer.
16 Have you ever -- have you reviewed that possibility before
17 conducting this?

18 **MR. BOURGEOIS:** I think that had been
19 exhausted for some reason.

20 **MR. RUEL:** Sorry, I missed that.

21 **MR. BOURGEOIS:** I think that had been
22 exhausted.

23 **MR. RUEL:** Okay.

24 **MR. BOURGEOIS:** And I vaguely remember that
25 I think some conversation was had with the police force to

1 try to resolve it with Mr. Dunlop, on behalf of the
2 association, with the Cornwall Police Service and I don't
3 think that a resolution could be had.

4 MR. RUEL: So you don't remember at that
5 point if you had met with other people that Mr. Dunlop in
6 preparing this?

7 MR. BOURGEOIS: What I'm saying, I don't
8 have an independent recollection of the timing but I'm sure
9 that I met with some of the individuals prior to drafting
10 this claim.

11 MR. RUEL: Was there any other purpose --
12 well did you intend to go to trial with this case?

13 MR. BOURGEOIS: Well that certainly would
14 have been the intention ultimately. Most matters do
15 resolve and it would have been hopeful that it would have
16 resolved like every other matter.

17 MR. RUEL: Is it possible that this was
18 launched as -- partially for the purpose of gathering some
19 facts that would be useful to Mr. Dunlop in any way?

20 MR. BOURGEOIS: Not that I know of, no.

21 MR. RUEL: I'd like to show you a document
22 that hasn't been entered in exhibit. It's document number
23 1151626. Too many numbers, okay, so just give me a second;
24 115626.

25 (SHORT PAUSE/COURTE PAUSE)

1 **THE COMMISSIONER:** Thank you. Exhibit 727
2 is what; a newspaper article by Jackie Leroux?

3 **MR. RUEL:** What I have here is a newspaper
4 article by Frank MacEachern from the Standard Freeholder.

5 **THE COMMISSIONER:** Well, 727, there's two --
6 which document are you looking at, 115636?

7 **MR. RUEL:** Oh no, 526 -- 626.

8 **THE COMMISSIONER:** Take this back.

9 **MR. RUEL:** One fifteen six two six (115626).

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **THE COMMISSIONER:** Thank you. Exhibit 727
12 is a newspaper report. It is written in pen "Freeholder
13 18th of July 1996 by Frank MacEachern".

14 **--- EXHIBIT NO./PIÈCE No P-727:**

15 (115626) Standard Freeholder

16 Media Clipping

17 re: Perry Dunlop dated 18 Jul '96

18 **MR. RUEL:** Yes. You have that, Mr.

19 Bourgeois?

20 It's not on the screen, Madam Clerk.

21 **MR. BOURGEOIS:** Yes, I have a copy.

22 **MR. RUEL:** So, Mr. Bourgeois, do you
23 remember speaking to the press about this lawsuit?

24 **MR. BOURGEOIS:** No.

25 **MR. RUEL:** Well, this is dated -- you are

1 familiar with the Freeholder, the Standard Freeholder?
2 That's the local newspaper here in Cornwall.

3 **MR. BOURGEOIS:** Yup.

4 **MR. RUEL:** That seems to be -- there's a
5 handwritten note here "Freeholder, July 18, 1996", and the
6 title is "Dunlop suit's totals \$87 million". So I said 78,
7 maybe it's 87; but it's many millions of dollars. And at
8 the bottom of the page, I'm going to read this to you:
9 "'We are going to fast-track this matter'; Bourgeois said
10 speaking on behalf of Dunlop. 'We are not going to
11 tolerate any abuse of time.' Bourgeois said that they hope
12 to begin discovery process sometime in the fall. He said
13 that it was important for the case to go forward as fast as
14 possible 'to find out what really happened in this case,
15 why it took Mr. Dunlop to bring out into the forefront,
16 especially when it considers children.'"

17 Do you remember saying that?

18 **MR. BOURGEOIS:** No, I don't.

19 **MR. RUEL:** I'm just trying to understand
20 here if the purpose was to get damages for Mr. Bourgeois
21 (sic) or if there was another purpose, which was to get --
22 to find out what really happened in the case that Mr.
23 Dunlop was involved in.

24 **MR. BOURGEOIS:** That certainly wasn't my
25 understanding. What Perry might want to obtain, I mean,

1 that's him.

2 **THE COMMISSIONER:** Yes, and we are getting
3 close to solicitor/client privilege here. So you've asked
4 the question once.

5 **MR. RUEL:** That's fine, Mr. Commissioner.
6 Of course, I'm asking about Mr. Bourgeois' understanding of
7 those issues.

8 **THE COMMISSIONER:** Yes.

9 **MR. RUEL:** So the next document I am going
10 to show -- I would like to show the witness is Exhibit 672.

11 **(SHORT PAUSE/COURTE PAUSE)**

12 **MR. RUEL:** Mr. Bourgeois, this is document
13 -- the title of this document or it's an Amended Statement
14 of Claim on the same case, and it is dated November 15th,
15 1996. And you had the date at the last page and then it
16 appears that you were with Hunter, Corbett, Loselle and
17 Bourgeois -- so you had changed law firms, if that seems --
18 well, you confirmed that, but that seems to be the case.

19 Do you remember preparing this Amended
20 Statement of Claim?

21 **MR. BOURGEOIS:** Yes.

22 **MR. RUEL:** We are going to go a bit later --
23 I am going to ask you questions about the witnesses that
24 you have met and things that have happened specifically,
25 but I gather that between June and November, there was some

1 action going on in this file. You've met some people.

2 MR. BOURGEOIS: Correct.

3 MR. RUEL: Do you remember who you met with
4 respect to this lawsuit? Remember that there is ---

5 MR. BOURGEOIS: Because of what I've been
6 told today, Ron Leroux.

7 MR. RUEL: Why do you say, "because of what
8 I've been told"?

9 MR. BOURGEOIS: I wouldn't have remembered
10 independently what time I met, what day, year. I wouldn't
11 have remembered specifically, but because of the context of
12 here, it clearly seems that that's when I would have met
13 Mr. Leroux.

14 MR. RUEL: Okay. So have you read this
15 document before coming in today?

16 MR. BOURGEOIS: No.

17 THE COMMISSIONER: It's unfortunate that you
18 weren't available to prep for this, because we would have
19 been able to get through this a lot quicker and maybe your
20 memory would be a little better if you would have had a
21 chance to read it over, but we'll take the time it takes
22 then. Go ahead.

23 MR. RUEL: So I guess I went, I can say
24 that, I guess, I had a brief discussion with you at
25 lunchtime. We went over some of the issues that are

1 included in this Amended Statement of Claim. Is that -- I
2 guess you would agree with that.

3 And would you agree that this Statement of
4 Claim here deferred, I mean, was different in many respects
5 from the initial Statement of Claim that you have produced?

6 **MR. BOURGEOIS:** Yes.

7 **MR. RUEL:** It was broader in scope?

8 **MR. BOURGEOIS:** Yes.

9 **MR. RUEL:** Do you remember in what respect
10 it was broader?

11 **MR. BOURGEOIS:** The allegations were broader
12 and the parties, I think.

13 **MR. RUEL:** Do you recall if there were more
14 parties added to this?

15 **MR. BOURGEOIS:** I don't recall if there were
16 more parties, but I know there was certainly more
17 allegations.

18 **MR. RUEL:** Okay. Do you remember what type
19 -- just before we go into the document -- do you remember
20 what type of allegations were added to this claim?

21 **MR. BOURGEOIS:** Not specifically, no.

22 **MR. RUEL:** For example, I'm just going to go
23 through the document.

24 **MR. BOURGEOIS:** Yes.

25 **MR. RUEL:** Where the changes were made, I

1 guess, is when you have text, underlined text. Is that
2 correct?

3 **MR. BOURGEOIS:** Yes. Correct.

4 **MR. RUEL:** So for example, paragraph 47 is
5 new? Forty-seven (47) refers to:

6 "Dunlop further pleads that Brunet..."

7 Do you remember who Brunet was?

8 **MR. BOURGEOIS:** No, I don't. Sorry.

9 **MR. RUEL:** "...did exercise duress, coercion,
10 criminal coercion and obstruct justice
11 in a conspiracy concert of action to
12 conceal the aforementioned cases of
13 sexual abuse and other cases of abuse
14 within the Diocese of Alexandria,
15 within the Cornwall Probation Office,
16 and within the City of Cornwall in
17 general. Dunlop pleads that Brunet
18 threatened him with punishment and
19 banishment, all in an effort to
20 maintain secrecy and to protect the
21 reputation and finances of the Catholic
22 Church, Diocese of Alexandria, Bishop
23 LaRocque, Father MacDonald, Shaver,
24 defendant McDonald, Ken Seguin and
25 other parties."

1 Do you remember this allegation?

2 **MR. BOURGEOIS:** No, I don't. I'm sorry.

3 **MR. RUEL:** It's pretty far-reaching if --
4 it's pretty serious allegation, if I can make the comment;
5 you would agree with me?

6 **MR. BOURGEOIS:** I'd agree with that.

7 **MR. RUEL:** Do you know if it came from Mr.
8 Leroux or from other sources?

9 **MR. BOURGEOIS:** Definitely, Mr. Leroux would
10 have been one of the sources, yes.

11 **MR. RUEL:** Paragraph 49, I think, is new as
12 well. Parts of it is new -- are new.

13 "Dunlop pleads that Brunet and Wells
14 have close ties..."

15 Do you remember who is Wells?

16 **MR. BOURGEOIS:** No.

17 **MR. RUEL:** "...have close ties with the senior
18 management of the Cornwall Police, in
19 particular, with Shaver. Brunet and
20 Wells are also Roman Catholics and are
21 members of the Knights of Columbus.
22 Wells is also an Eucharistic minister
23 for the Diocese of Alexandria and is
24 also a member of the Parish Centre of
25 -- Council of St. Columban's Church.

1 Accordingly, Dunlop pleads that Brunet
2 and Wells were guilty of civil and
3 criminal conspiracy. They are liable
4 at law for conspiring to derail the
5 investigation involving Father Charles
6 MacDonald and Ken Seguin; that Brunet
7 had participated in the pattern of
8 manipulating and threatening acts
9 purposely to keep secret the existence
10 of paedophilic crimes, avoidance of
11 criminal prosecution and prevention of
12 publicity, all for the purpose of
13 protecting the reputation of the
14 Catholic Church, Diocese of
15 Alexandria."

16 Do you remember that?

17 **MR. BOURGEOIS:** Specifically no, but that's
18 definitely -- we would have drafted that.

19 **THE COMMISSIONER:** Who's "we"?

20 **MR. BOURGEOIS:** Myself and Monsieur
21 Robichaud, I think ---

22 **THE COMMISSIONER:** Monsieur Robichaud is not
23 with that -- was he with the firm?

24 **MR. BOURGEOIS:** No.

25 **THE COMMISSIONER:** That's drafted under ---

1 **MR. BOURGEOIS:** He wouldn't have been with
2 that firm. I don't know if this was started to be prepared
3 before I moved, sir, or not. But I would -- I think
4 Monsieur Robichaud worked on it with me, but can't be 100
5 per cent sure on that.

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

7 **MR. RUEL:** So just on the allegation:

8 "Dunlop pleads that Brunet participated
9 in the pattern of manipulating and
10 threatening acts purposely to keep
11 secret the existence of pedophilic
12 crimes."

13 So you -- well, what's mentioned here is
14 crime. Do you remember if there was any other crimes or
15 pedophilic crimes that Brunet was involved in and, I guess,
16 covering up, except for the Silmsen matter?

17 **MR. BOURGEOIS:** No, I don't know of any
18 other.

19 **MR. RUEL:** So what does this have to do with
20 -- and I'm going to ask this for a few paragraphs. I'm
21 just trying to understanding your mindset at the time.
22 What was the link between this and Mr. Dunlop?

23 **MR. BOURGEOIS:** What link sir?

24 **MR. RUEL:** What was the link between this
25 allegation and Mr. Dunlop?

1 **MR. BOURGEOIS:** Which allegation is that?

2 **MR. RUEL:** Well, the allegation against
3 Brunet and Wells conspiring, I guess, to derail the
4 investigation involving MacDonald and to keep secret the
5 existence of pedophilic crimes. So this -- what's the link
6 with Mr. Dunlop, with Mr. Dunlop's suit? I guess you're
7 alleging that Mr. Dunlop suffered damages as a result of
8 the actions of the Defendants, but I'm just trying to
9 understand how the actions of those fellows or those people
10 contributed to any damage to Mr. Dunlop?

11 **MR. BOURGEOIS:** I think Mr. Dunlop's
12 position was that they were part and parcel of what he
13 suffered when he was with the police and how they dealt
14 with him as a police officer in terms of shunning and all
15 that sort of activity that he felt he had suffered through
16 their conduct.

17 **MR. RUEL:** Paragraph 54, I'm just going to
18 go through some of the most obvious allegations.

19 "Dunlop pleads that Shaver, Brunet,
20 Constable Heidi Sebalj, St-Denis for
21 whom the Police Board and the Cornwall
22 Police are liable at law purposely and
23 deceitfully hid the sexual assault
24 report and the highly confidential
25 project file to keep a secret -- to

1 keep secret the existence of
2 pedophilic crimes, avoidance of
3 criminal prosecution and prevention of
4 publicity to protect personal and/or
5 professional reputation and financial
6 well-being of the Catholic Church, the
7 Diocese, Bishop LaRocque, Father
8 MacDonald, Shaver, McDonald, Ken Seguin
9 and all other parties directly and
10 indirectly involved in lewd,
11 lascivious, and unlawful activities
12 against children."

13 Do you remember that allegation?

14 **MR. BOURGEOIS:** Not specifically, no.

15 **MR. RUEL:** So again, can you explain the
16 link with this allegation and Mr. Dunlop and any damages
17 that may have been suffered by Mr. Dunlop?

18 **MR. BOURGEOIS:** Well, I think the link is
19 that those are individuals whom had the opportunity to
20 affect his career ---

21 **MR. RUEL:** We do not talk about ---

22 **MR. BOURGEOIS:** --- affect his reputation in
23 that career and in the community.

24 **MR. RUEL:** But they're not talking about
25 him. There is no reference to him and those -- and this --

1 I mean in this paragraph, it's "Dunlop pleads", but there
2 is no reference to him being directly affected by those
3 events or those allegations.

4 **MR. BOURGEOIS:** I agree with you.
5 Obviously, not specifically, but I think that was the
6 context that he wanted to ---

7 **MR. RUEL:** It's context?

8 **MR. BOURGEOIS:** Yeah.

9 **MR. RUEL:** Paragraph 81:
10 "Dunlop pleads that there was or is a group of people from
11 Cornwall and surrounding area that are directly and/or
12 indirectly members of a clan of pedophiles and/or sexual
13 perpetrators. Dunlop pleads that there was at the very
14 least sexual improprieties, fondling, molesting, oral sex,
15 intercourse and other sexual activities performed by the
16 clan members with minors from on or about 1957 to on or
17 about 1994. Dunlop pleads that these illegal and improper
18 sexual activities may well still be ongoing. Sexual
19 improprieties occurred at many locations."

20 Again, this seems to be far reaching
21 allegations, and I'm just wondering what's the link with
22 Mr. Dunlop's claim. Is that context again? Is that your
23 position?

24 **MR. BOURGEOIS:** Well, it's context, but it's
25 the information that was provided by witnesses under oath

1 and that created the links between individuals that were in
2 positions to cause him harm that had relationships with the
3 people alleged to have committed these activities.

4 MR. RUEL: But you say caused him harm; you
5 say Mr. Dunlop -- caused harm to Mr. Dunlop?

6 MR. BOURGEOIS: Correct.

7 MR. RUEL: So which individuals are you
8 talking about?

9 MR. BOURGEOIS: The people involved with the
10 police. The people that were his supervisors or worked
11 over him or were his boss; the chief.

12 MR. RUEL: So this is, I guess, I think the
13 question has been covered in part with you with Mr.
14 Sherriff-Scott, those are allegations of criminal
15 activities. You would agree with me? Molesting boys and
16 molesting ---

17 MR. BOURGEOIS: Yes.

18 MR. RUEL: --- minors?

19 MR. BOURGEOIS: Correct.

20 MR. RUEL: So what does this have to -- why
21 does this belong to a civil lawsuit? Is it not a criminal
22 matter that should have been turned over to the
23 authorities?

24 MR. BOURGEOIS: I think ultimately a lot of
25 the information was, if not all, to the authorities.

1 **MR. RUEL:** It was?

2 **MR. BOURGEOIS:** To my knowledge, the
3 information was provided to the OPP.

4 **MR. RUEL:** Is it possible Mr. Bourgeois that
5 Mr. Dunlop -- well, I shouldn't say that because I am
6 delving into a privilege area -- that the intention of
7 those amendments were not to support Mr. Dunlop's claim but
8 to get out this information to the public for their
9 knowledge?

10 **MR. BOURGEOIS:** I can't tell you what Mr.
11 Dunlop was thinking, firstly. And secondly, while they're
12 obviously very serious allegations, the information that
13 was provided was very serious too.

14 **MR. RUEL:** So this allegation here
15 concerning the clan of pedophiles and the perpetrators and
16 the information concerning a group or a clan or whatever
17 it's called, is it -- did it come from Mr. Leroux?

18 **MR. BOURGEOIS:** Yes.

19 **MR. RUEL:** Any other witness that may have
20 been providing information on this subject?

21 **MR. BOURGEOIS:** On that particular word?

22 **MR. RUEL:** Well, not the word but, you know,
23 something to that effect that there was a group of
24 pedophiles that was -- had been operating in Cornwall from
25 '87 to 1994? So any other witnesses you met that provided

1 information supporting that allegation?

2 MR. BOURGEOIS: I thought there was -- I
3 have a memory that ---

4 MR. RUEL: And just remember that some
5 witnesses are being identified by monikers if you ---

6 MR. BOURGEOIS: Yes. Certainly, it would
7 have been that position of other individuals, C-8, and the
8 only other name that I remember was Renshaw.

9 MR. RUEL: Renshaw, which? There is a
10 couple of Renshaws.

11 MR. BOURGEOIS: I think there was one of
12 them that had lived with the probation officer and that
13 would have been the individual I think that certainly
14 identified the same sort of pattern as well.

15 MR. RUEL: Probation officer being Ken
16 Seguin?

17 MR. BOURGEOIS: Yes.

18 MR. RUEL: This person would be Gerry,
19 Gerald Renshaw, Gerry Renshaw?

20 MR. BOURGEOIS: Yeah, that's correct.

21 MR. RUEL: So paragraph 84, there is
22 reference to a meeting convened to cover up the allegation
23 made by the victim Silmsler against Father MacDonald and
24 that the meeting was held at the defendant MacDonald's
25 summer residence -- so that's Malcolm MacDonald -- and that

1 the following persons were involved over there. I guess
2 they were participants. So Bishop LaRocque, Eugene
3 LaRocque, Father MacDonald, Malcolm MacDonald, Ken Seguin,
4 Claude Shaver, Murray MacDonald.

5 So again, this -- I don't see the link with
6 this and Mr. Dunlop apart from the context I guess. Is
7 that still your position on this point?

8 **MR. BOURGEOIS:** It would be context but it
9 was also information provided by Mr. Leroux of some very
10 serious nature about discussions regarding Perry, his
11 wellbeing and the wellbeing of his family. So that's
12 certainly what Mr. Leroux was indicating.

13 **MR. RUEL:** And paragraph 92 ---

14 **MR. BOURGEOIS:** And I believe that
15 ultimately was there not a deal -- there was a deal made
16 with Silmsler, right, financial agreement, and then there
17 was a -- there was a criminal charge as well, right?

18 **MR. RUEL:** So paragraph 92, there is
19 reference here to a conspiracy to injure Dunlop and his
20 family. Do you remember that?

21 **MR. BOURGEOIS:** Yes.

22 **MR. RUEL:** So again, is that fair to say
23 that this came from Mr. Leroux?

24 **MR. BOURGEOIS:** Yes.

25 **MR. RUEL:** So I'm just trying to understand

1 this. This is -- those are far-reaching and broad
2 allegations that, if I can -- you can express your
3 disagreement with my opinion but it seems that it goes well
4 beyond the claim against -- that Perry Dunlop had at least
5 initially that dealt with malicious prosecution that had to
6 do with a clan of pedophiles, involving pedophiles and
7 pedophilic activities and a broad plan to cover up the
8 criminal -- those criminal activities and to cover up any
9 action to try to investigate those matters.

10 So it seems to be well beyond what Mr.
11 Dunlop -- well beyond Mr. Dunlop's involvement in this
12 matter. Is this a fair characterization of this statement
13 of claim, the amended one here?

14 **MR. BOURGEOIS:** If I look at it now, I would
15 agree with that.

16 **THE COMMISSIONER:** Let's take the afternoon
17 break.

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

20 This hearing will resume at 4:20.

21 --- Upon recessing at 4:07 p.m. /

22 L'audience est suspendue à 16h07

23 --- Upon resuming at 4:22 p.m. /

24 L'audience est reprise à 16h22

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

1 Please be seated. Veuillez vous asseoir.

2 **CHARLES BOURGEOIS:** Resumed/Sous le même serment

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

4 **RUEL:** (Continued/Suite)

5 **MR. RUEL:** Mr. Bourgeois, Mr. Commissioner,
6 we're to go?

7 **THE COMMISSIONER:** Yes, ready to go.

8 **MR. RUEL:** Mr. Bourgeois, with respect to
9 the civil litigation, was it fair -- would it be fair to
10 say that Mr. Dunlop had a significant role in assisting you
11 to prepare this lawsuit?

12 **MR. BOURGEOIS:** In terms of gathering
13 information, yes.

14 **MR. RUEL:** But you said that this was
15 drafted by you or your office, not by him.

16 **MR. BOURGEOIS:** Definitely it was through
17 our office.

18 **MR. RUEL:** Is it fair to say that this was
19 not a very financially interesting retainer for you, this
20 lawsuit?

21 **THE COMMISSIONER:** Well, ---

22 **MR. BOURGEOIS:** I don't think I can answer
23 that, sir, can I?

24 **THE COMMISSIONER:** No. No.

25 **MR. RUEL:** Did you get advice from other

1 persons, a law firm or from an outside source with respect
2 to taking such a type of action?

3 **MR. BOURGEOIS:** Yes, we did some research
4 and I remember speaking to a lawyer in the United States
5 that had done similar type actions. I don't remember his
6 name but I'm sure I could find it, who had done similar
7 type actions in the past and certainly he was a resource.

8 **MR. RUEL:** When you say "similar type", was
9 it action involving abuse against children or it was
10 something else? Was it the ---

11 **MR. BOURGEOIS:** I think it was. I think it
12 was actions against the church and similar actions where
13 there had been victims, yes.

14 **MR. RUEL:** Then I'm going to refer you to
15 another document which is at -- which is Document 723642.

16 **THE COMMISSIONER:** Exhibit 728 is a Response
17 to Demand for Particulars.

18 **MR. RUEL:** Yes.

19 **THE COMMISSIONER:** In a court action with
20 Perry Dunlop as the plaintiff and Claude Shaver et al. as
21 defendants and it's dated March 25th, 1997; Charles
22 Bourgeois, solicitor for the plaintiff.

23 --- **EXHIBIT NO./PIÈCE No. P-728:**

24 (723642) Response to Demand for
25 Particulars Perry Dunlop vs. Claude

1 Shaver et al dated 25 Mar 97

2 MR. RUEL: I don't believe we have an
3 exhibit number for that.

4 THE COMMISSIONER: Seven twenty-eight (728).

5 MR. RUEL: So Mr. Bourgeois, do you remember
6 this document?

7 MR. BOURGEOIS: Yes.

8 MR. RUEL: So some of the defendants had
9 made demands for particulars and I gather this is the
10 response where you provided the particulars requested by
11 the defendants. Is that correct?

12 MR. BOURGEOIS: Yes.

13 MR. RUEL: So for example, at paragraph 1,
14 clarification was sought or particulars were sought with
15 respect to the allegation contained in paragraph 53 of the
16 amended statement of claim, and what's mentioned here is
17 the other parties involved in the greater conspiracy
18 involving the defendants include Father MacDonald, Ken
19 Seguin, Bishop LaRocque, Monsignor McDougald, Murray
20 MacDonald and Stewart MacDonald.

21 Do you remember that?

22 MR. BOURGEOIS: Yes.

23 MR. RUEL: So where did you get this
24 information, if I may ask?

25 MR. BOURGEOIS: In what paragraph, sir,

1 sorry?

2 **MR. RUEL:** Paragraph 3 -- paragraph 1,
3 sorry.

4 **MR. BOURGEOIS:** That would have been from
5 Ron Leroux.

6 **MR. RUEL:** Do you remember or you assume?

7 **MR. BOURGEOIS:** I'm assuming, yeah.

8 **MR. RUEL:** I'm just going to bring you --
9 there is a number of particulars that are provided here,
10 but I'm just going to bring you to paragraph 3.

11 And there it's what's being sought or what
12 was sought, from what I gather, are particulars with
13 respect to paragraph 81 of the Amended Statement of Claim.
14 So the people who were members of the clan of pedophiles
15 and you list a number of -- well, you -- I mean a number of
16 people are listed here as additional members of the clan of
17 pedophiles.

18 Do you remember that?

19 **MR. BOURGEOIS:** Yes.

20 **MR. RUEL:** So did that come from Mr. Leroux
21 as well?

22 **MR. BOURGEOIS:** I'm assuming, yes.

23 **MR. RUEL:** Do you recall receiving letters
24 from counsel for some of those individuals here where they
25 indicated to you that those allegations were false and if

1 they were repeated in the courtroom, they would report you?
2 I mean you would be liable, I guess, to be reported to the
3 Law Society. Do you remember that?

4 **MR. BOURGEOIS:** No, not particularly.

5 **MR. RUEL:** And the ---

6 **MR. BOURGEOIS:** I do remember that there
7 were certain -- that certainly there was complaints about
8 the pleadings and ultimately there was some that were
9 excised.

10 **MR. RUEL:** Was that when you were there?

11 **MR. BOURGEOIS:** I don't remember ---

12 **THE COMMISSIONER:** What do you mean by when
13 you were there?

14 **MR. RUEL:** I'm sorry; when you were acting
15 as counsel for Mr. Dunlop?

16 **MR. BOURGEOIS:** It may have been or it may
17 have been shortly prior to me leaving or shortly -- it was
18 around that time I believe.

19 **THE COMMISSIONER:** You leaving, you mean?

20 **MR. BOURGEOIS:** Sorry. It would have been
21 around when change of solicitor, sir, yes. It was around
22 that time that it occurred, to my best recollection.

23 **MR. RUEL:** So those names here, and I won't
24 repeat them or read them but it didn't come from you; it
25 came from -- I guess it came from Leroux. That's what

1 you're saying.

2 **MR. BOURGEOIS:** Yes.

3 **MR. RUEL:** And I'm going to go to Mr.
4 Leroux' issues I guess, but did you just accept the version
5 of Mr. Leroux with respect to those -- well, the allegation
6 he was making, for example, this one in the clan of
7 pedophiles, or did you challenge that in any way? Because
8 those are -- well, the first question is, did you accept
9 that without challenging him?

10 **MR. BOURGEOIS:** Well, I certainly -- I
11 believed him and he was willing to swear it under oath and
12 he seemed to certainly have a tremendous amount of detail
13 and context. He lived right beside Monsieur Seguin; a
14 relationship with C-8; information provided by C-8 in that
15 regard, et cetera.

16 There was confirmation of these individuals
17 being together in any event from other individuals, in
18 terms of having a relationship of what sort and Mr. Leroux
19 brought it to a different level and that was -- that was
20 his position. He maintained it throughout and never did he
21 change it, to my knowledge, when I was involved.

22 **MR. RUEL:** So you believed him?

23 **MR. BOURGEOIS:** Yeah. I believed him, yeah.

24 **MR. RUEL:** Again, I think I have covered
25 that earlier but I mean this didn't seem to have much

1 relevance to Mr. Dunlop's claim which I think initially, at
2 least, was malicious prosecution, so why repeating or why
3 having that in the Statement of Claim, this business about
4 the clan of pedophiles?

5 **MR. BOURGEOIS:** He was answering the
6 question certainly for context. Obviously, some of it was
7 ultimately, I understand, excised as being evidence or not
8 appropriate. So if I look at it from that way, obviously
9 the courts indicated that some of it shouldn't have been in
10 the pleading.

11 **MR. RUEL:** In retrospect or in hindsight,
12 would you have drafted those legal documents differently or
13 would you have acted differently based on what you know now
14 and based on your experience?

15 **MR. BOURGEOIS:** Now, yes, I would.

16 **MR. RUEL:** In what way?

17 **MR. BOURGEOIS:** It wouldn't be as
18 boilerplate and as much evidence in the pleadings if you
19 want.

20 **MR. RUEL:** More focussed maybe?

21 **MR. BOURGEOIS:** Yes, more focussed.

22 **MR. RUEL:** I would like to bring you to the
23 following document which is 723545.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **THE COMMISSIONER:** Thank you. Exhibit 729

1 is a letter dated November 20th, 1997.

2 Wait a minute now. This is a without
3 prejudice letter. Just a second; wait a minute. It's
4 without prejudice and it deals with an offer to settle. So
5 I don't know if we've crossed that bridge yet.

6 **MR. RUEL:** I'm not sure if there is --
7 you're asking if there is ---

8 **THE COMMISSIONER:** If there's a
9 solicitor/client privilege?

10 **MR. RUEL:** If there's a privilege or
11 settlement privilege attached to that document. It's very
12 possible, Mr. Commissioner, and I may want to hold ---

13 **THE COMMISSIONER:** You might want to
14 reconsider that. Bring that back.

15 **MR. RUEL:** Yes.

16 And I'm sorry, Mr. Commissioner, I'll just
17 review that matter tonight and if need be, I'll put it
18 back.

19 If you can please -- I'd like to refer you
20 to Exhibit 723547 -- it's Document number 723547, and I
21 think this one has been entered as exhibit this morning.

22 **THE COMMISSIONER:** Exhibit 717.

23 --- **EXHIBIT NO./PIÈCE No. P-717:**

24 (723547) Letter from Perry Dunlop to
25 Charles Bourgeois re: Termination of

1 services dated 21 Nov 97

2 **THE COMMISSIONER:** Mr. Bourgeois, if you
3 could look in the binder?

4 **MR. BOURGEOIS:** Okay.

5 I have that, sir.

6 **MR. RUEL:** So I guess you were shown this
7 document this morning, dated November 21st, 1997?

8 **MR. BOURGEOIS:** Yes.

9 **MR. RUEL:** And Mr. Dunlop is advising you
10 that he is terminating your services, I guess, as his
11 solicitor. Do you remember this?

12 **MR. BOURGEOIS:** Yes.

13 **MR. RUEL:** So November 21st. Without delving
14 into any discussion you had with Mr. Dunlop, can you
15 explain broadly the circumstances which led to the
16 termination of your retainer with Mr. Dunlop? You believe
17 this is something you should protect?

18 **MR. BOURGEOIS:** I think so. I don't see what
19 usage there is.

20 **MR. RUEL:** No, that's fine.

21 **THE COMMISSIONER:** You know, that's clearly
22 solicitor/client privilege in my view.

23 **MR. RUEL:** Are you aware that after you
24 ceased to be the counsel for Mr. Dunlop, that this
25 Statement of Claim or his Statement of Claim was entirely -

1 --

2 THE COMMISSIONER: Revamped.

3 MR. RUEL: --- redrafted?

4 MR. BOURGEOIS: No, I wasn't aware of that.
5 I knew there was some excising of numerous paragraphs.

6 MR. RUEL: So you were not aware of that?

7 MR. BOURGEOIS: That a new claim was
8 revamped?

9 MR. RUEL: Yes.

10 MR. BOURGEOIS: No.

11 MR. RUEL: And the excising of paragraphs,
12 you were aware of it?

13 MR. BOURGEOIS: I was aware of that, yeah.

14 MR. RUEL: And you don't remember if it was
15 while you were counsel or after?

16 MR. BOURGEOIS: No, I don't.

17 MR. RUEL: So I'd like to talk to you about
18 the individual identified before the Commission as C-8.

19 MR. BOURGEOIS: M'hm.

20 MR. RUEL: So when did you hear about C-8
21 for the first time; do you remember that?

22 MR. BOURGEOIS: I can't remember
23 specifically but it would be around the date that I would
24 have been retained by Mr. Dunlop. So it would have been in
25 sometime in '96.

1 **THE COMMISSIONER:** Would that have been the
2 first one person that you would have been aware of?

3 **MR. BOURGEOIS:** Likely, sir, it was him,
4 likely; either him or Mr. Renshaw.

5 **THE COMMISSIONER:** All right.

6 **MR. BOURGEOIS:** One of those two.

7 **MR. RUEL:** So what did you -- what was told
8 about C-8 from those people?

9 **MR. BOURGEOIS:** Well, C-8 had some
10 complaints about himself being a victim.

11 **MR. RUEL:** And do you remember speaking or
12 meeting with C-8?

13 **MR. BOURGEOIS:** Yes.

14 **MR. RUEL:** And did that happen often?

15 **MR. BOURGEOIS:** Definitely, more than once
16 for sure; so, yeah, I would say.

17 **THE COMMISSIONER:** Can you help me out a
18 little bit here?

19 **MR. BOURGEOIS:** Yes?

20 **THE COMMISSIONER:** I just want to get a
21 picture of this, okay?

22 **MR. BOURGEOIS:** Yes, sir.

23 **THE COMMISSIONER:** So you get a referral
24 from somebody from the association and ---

25 **MR. BOURGEOIS:** Yes.

1 **THE COMMISSIONER:** --- so Mr. Dunlop comes
2 to Newmarket to meet you or do you come up here?

3 **MR. RUEL:** I really don't remember the first
4 meeting sir, but likely in Newmarket.

5 **THE COMMISSIONER:** Okay. So he talks to you
6 about a malicious prosecution thing. That's how it starts;
7 right?

8 **MR. BOURGEOIS:** Correct.

9 **THE COMMISSIONER:** And I don't -- okay.
10 Just generally speaking now, okay.

11 **MR. BOURGEOIS:** Okay.

12 **THE COMMISSIONER:** And so you get your file
13 up and you get going and then what? Then he comes up and
14 says, "Well, I want you to meet C-8?"

15 **MR. BOURGEOIS:** I don't know if he told me I
16 wanted to meet him or I met him incidentally, sir.

17 **THE COMMISSIONER:** Okay.

18 **MR. BOURGEOIS:** But I would have met him
19 fairly early on when I met Perry for sure.

20 **THE COMMISSIONER:** All right. And where did
21 you meet C-8?

22 **MR. BOURGEOIS:** I would have probably met
23 him either at Mr. Dunlop's residence, sir, or some other
24 third-party place.

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

1 MR. BOURGEOIS: I've met him before at his
2 residence.

3 THE COMMISSIONER: I'm sorry. You met who
4 at ---

5 MR. BOURGEOIS: With C-8 before ---

6 THE COMMISSIONER: You had met C-8 before?

7 MR. BOURGEOIS: No, no. During this
8 process, you asked which locations; those would have been
9 those locations.

10 THE COMMISSIONER: Okay. So you're meeting
11 with Mr. Dunlop and different people in different areas?

12 MR. BOURGEOIS: Yes, that's accurate.

13 THE COMMISSIONER: House calls. You were
14 doing house calls?

15 MR. BOURGEOIS: Some of them or some of them
16 would go to Perry's.

17 THE COMMISSIONER: Right.

18 MR. BOURGEOIS: What happens, sir, is a lot
19 of people would -- my recollection and I can't tell you
20 exactly who they were but there were people that were
21 contacting him ---

22 THE COMMISSIONER: Right.

23 MR. BOURGEOIS: --- out of the blue. How
24 that happened, I don't know.

25 THE COMMISSIONER: Right.

1 **MR. BOURGEOIS:** And then obviously they
2 shared information with him.

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

4 **MR. BOURGEOIS:** Then if he felt that it was
5 relevant to his claim, then he would indicate it to me.

6 **THE COMMISSIONER:** Okay. So now we're at
7 the first one, you say, C-8. You want to go in to talk
8 about C-8 now.

9 **MR. RUEL:** Yes.

10 **THE COMMISSIONER:** All right. So let's see
11 how we can go through that.

12 **MR. BOURGEOIS:** Okay. Thank you, sir.

13 **MR. RUEL:** So do you remember the first time
14 you spoke with C-8?

15 **MR. BOURGEOIS:** Can't say I remember the
16 first time but I know I did, yes.

17 **MR. RUEL:** Okay. And the first time you met
18 with him, do you remember?

19 **MR. BOURGEOIS:** I don't know what you mean
20 by do I ---

21 **THE COMMISSIONER:** What happened the first
22 time that you met him?

23 **MR. BOURGEOIS:** Oh, okay. Well, he would
24 have certainly spoken to me about his complaint with
25 respect to certain things that happened to him.

1 **MR. RUEL:** So can you expand a little bit on
2 that in terms of what his complaint was or any other issue
3 that was discussed with him?

4 **MR. BOURGEOIS:** His complaint would have
5 been versus Father MacDonald, Monsieur Lalonde -- and that
6 name came back to me through things this morning, sir, I
7 would have not remembered that name -- and Mr. Leroux.

8 **MR. RUEL:** So when you say Mr. Lalonde, is
9 it Mr. Marcel Lalonde?

10 **MR. BOURGEOIS:** Correct.

11 **MR. RUEL:** What did he tell you about Mr.
12 Leroux?

13 **THE COMMISSIONER:** Careful now that we don't
14 want things that would identify who C-8 was.

15 **MR. BOURGEOIS:** Okay.

16 **THE COMMISSIONER:** There may be some
17 circumstances that you can't give us.

18 **MR. BOURGEOIS:** That's fair. He had
19 complaints that he had been violated by him when he was a
20 minor.

21 **MR. RUEL:** By Leroux. Did you feel that
22 what this person was providing was useful to Mr. Dunlop's
23 civil claim?

24 **MR. BOURGEOIS:** Yes, because it established
25 a link between some of the people that Perry complained

1 about had caused him harm. So in that regard, yes.

2 **MR. RUEL:** Which people are you referring
3 to?

4 **MR. BOURGEOIS:** The late Mr. Seguin, Father
5 MacDonald, Chief Shaver, Mr. Wilson, those sort of
6 individuals that he created the link in terms of their
7 friendship and what he had observed.

8 **MR. RUEL:** So he had seen those people with
9 -- I mean, in what circumstances he determined this link?

10 **MR. BOURGEOIS:** In terms of having
11 relationships. His allegations were that -- of
12 relationships with minors. That they would go down to
13 Florida and ---

14 **THE COMMISSIONER:** Whoa, whoa, whoa. That's
15 not -- is that C-8 telling you that?

16 **MR. BOURGEOIS:** Yes.

17 **THE COMMISSIONER:** Oh, okay. Can we maybe
18 take a statement? Did you take a statement from C-8?

19 **MR. BOURGEOIS:** Somebody would have, sir,
20 yes. Either it was Mr. Porter that did or Mr. Dunlop or
21 myself. But yes, somebody would have taken a statement.

22 **MR. RUEL:** So I'd like to refer you to
23 Exhibit 605.

24 **THE COMMISSIONER:** Six zero five (605) might
25 be in a different book then, Mr. Bourgeois.

1 MR. RUEL: It may be, yes.

2 MR. BOURGEOIS: I think I have it here sir.

3 THE COMMISSIONER: Okay. So Exhibit 605, as
4 a reminder, is a confidential document and there is a
5 publication ban on it. So okay.

6 MR. RUEL: Sorry, Mr. Commissioner, I was
7 not present. Is this a document that should be on the
8 screen or not?

9 THE COMMISSIONER: No, not on the screen.

10 MR. RUEL: So Madam Clerk, can you remove
11 that from ---

12 MR. BOURGEOIS: Sir, on the top ---

13 MR. RUEL: --- the public screen. Okay.
14 Thank you.

15 THE COMMISSIONER: Pardon me. No, that
16 screen is ours.

17 MR. RUEL: Okay.

18 THE COMMISSIONER: We're talking about the
19 two public screens.

20 MR. RUEL: Okay.

21 THE COMMISSIONER: All right.

22 MR. RUEL: So first of all, do you know Mr.
23 Randy Porter?

24 MR. BOURGEOIS: Yes, I do, sir.

25 MR. RUEL: So who is that person?

1 **MR. BOURGEOIS:** He is -- used to be a police
2 officer, York Regional Police, and then he went into
3 private practice doing paralegal type of work; fending
4 traffic tickets and like-type of situations.

5 **MR. RUEL:** So should I understand that he
6 worked for you as an investigator essentially?

7 **MR. BOURGEOIS:** Yes.

8 **THE COMMISSIONER:** Did he take this
9 statement pursuant to your instructions?

10 **MR. BOURGEOIS:** Yes, he did, sir. And I can
11 see that that's his signature at the back, the last page.
12 It looks like his signature underneath the ---

13 **THE COMMISSIONER:** So do you know prior to
14 sending him out to get this statement, had you met with C-8
15 before that?

16 **MR. BOURGEOIS:** I'm sure I would have, yes.

17 **THE COMMISSIONER:** Yes. Okay.

18 **MR. BOURGEOIS:** Yes.

19 **MR. RUEL:** So do you remember reading that
20 statement?

21 **MR. BOURGEOIS:** I would have read it.

22 **MR. RUEL:** In that statement, I guess, he --
23 I mean the witness is indicating that he lived close to Mr.
24 -- I guess he was indicating that he had witnessed some
25 people at the residence of Mr. Ken Seguin; is that right?

1 **MR. BOURGEOIS:** Where are you referring to?

2 **MR. RUEL:** Well, for example at page -- at
3 the fourth page of the document ---

4 **MR. BOURGEOIS:** Yes.

5 **MR. RUEL:** I guess he was saying the
6 information he was providing is that Ken Seguin was
7 associating with a number of people, including Charlie
8 MacDonald, Ron Wilson, Shaver. He said Shaver, "I never
9 saw Shaver a lot like the rest of them". So he was
10 mentioning people with whom Seguin was associating with.

11 **MR. BOURGEOIS:** That's it. Sorry, was that
12 a question?

13 **MR. RUEL:** I was saying, do you remember --
14 you said you read the statement and I guess -- was it your
15 understanding from the statement that this witness was
16 telling, or was saying, that he knew that Ken Seguin was
17 associating with a number of individuals, including Charlie
18 MacDonald, Ron Wilson and Claude Shaver?

19 **MR. BOURGEOIS:** Yes.

20 **MR. RUEL:** Okay. I didn't see any reference
21 in the statement to allegations of abuse on the part of
22 either Father MacDonald ---

23 **THE COMMISSIONER:** Or Mr. Lalonde.

24 **MR. RUEL:** --- Mr. Lalonde, or by Mr.
25 Leroux. Is that a fair comment?

1 **MR. BOURGEOIS:** If you're telling me it's
2 not in there I'll accept that. I'm just -- I'm telling you
3 originally that's what he advised me of.

4 **MR. RUEL:** Okay. So I'd like to refer you
5 to Exhibit 606.

6 **THE COMMISSIONER:** So the first statement by
7 Mr. Porter was taken -- do we have a date?

8 **MR. BOURGEOIS:** The 24th of June.

9 **THE COMMISSIONER:** Yes, the 24th or 25th of
10 June '96. All right. So now the next statement we're
11 looking at is one ---

12 **MR. RUEL:** That's dated December 12th, 1996.

13 **MR. BOURGEOIS:** Yes.

14 **MR. RUEL:** So do you remember this second
15 statement?

16 **(SHORT PAUSE/COURTE PAUSE)**

17 **MR. BOURGEOIS:** Yes.

18 **THE COMMISSIONER:** Did you have any
19 involvement in taking this statement?

20 **MR. BOURGEOIS:** I would take it that some
21 way or another, sir, maybe indirectly, in that it was
22 provided to me, but I don't know, this certainly wasn't --
23 I don't think this was prepared by Mr. Porter, sir.

24 **THE COMMISSIONER:** No, I'm talking about you
25 personally.

1 **MR. BOURGEOIS:** No, I don't think I would
2 have prepared that.

3 **MR. RUEL:** So can you explain to me what's
4 the reason why you would take multiple -- I'm saying
5 multiple because I know that there is another statement and
6 for other witnesses there's others. There's multiple
7 statements. So why would multiple statements be taken from
8 those people?

9 **MR. BOURGEOIS:** Obviously because they'd
10 provide more information.

11 **MR. RUEL:** Is there not a risk of when you
12 take multiple statements like this of -- when we're talking
13 about individuals who have been victims of abuse, of re-
14 victimization each time they retell or they tell their
15 story?

16 **MR. BOURGEOIS:** I'm not a psychiatrist. I
17 really can't say that, but I think that everybody that
18 works in the criminal law field would probably debate that
19 differently. Some of them it's healing for them and some
20 of them it's not. Some of them it's really hard on them.

21 **MR. RUEL:** What about the potential concern
22 that if you get multiple statements you, I guess,
23 inevitably will end up with having discrepancies within the
24 statements which can be used against the witness and --
25 potentially used against a witness in criminal

1 prosecutions. Is that something that ever crossed your
2 mind in ---

3 **MR. BOURGEOIS:** No. No, because you can't
4 do that. It's inappropriate. You have to take what they
5 tell you. So if that's a problem that's where it is.

6 **MR. RUEL:** So in that statement here, and
7 you say you remember it, C-8 makes specific allegations of
8 abuse against Father Charles MacDonald, and makes also an
9 allegation of abuse against Mr. Lalonde?

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **MR. BOURGEOIS:** Yes.

12 **MR. RUEL:** So that's different from the
13 previous statement which made no mention of those
14 allegations?

15 **MR. BOURGEOIS:** Correct.

16 **MR. RUEL:** Did that raise any concern with
17 you?

18 **MR. BOURGEOIS:** No. The statement was taken
19 by Mr. Porter and Mr. C-8 had indicated those things to me
20 verbally.

21 **MR. RUEL:** So you mentioned that at some
22 point, I gather, C-8 made an allegation against Leroux
23 himself?

24 **MR. BOURGEOIS:** M'hm.

25 **MR. RUEL:** So it doesn't appear in either of

1 those statements. So did he make that verbally to you?

2 MR. BOURGEOIS: Yes.

3 MR. RUEL: So what did you do with this
4 allegation? Was there -- did that raise any concern with
5 you?

6 MR. BOURGEOIS: I certainly would have told
7 C-8 that he should report it.

8 MR. RUEL: Is that what you told him or you
9 assumed you told him?

10 MR. BOURGEOIS: I'm assuming, but I'm -- I'm
11 assuming. I can't recollect specifically telling him that,
12 sir.

13 MR. RUEL: So at the second page of the
14 statement, the witness is indicating remembering parties at
15 Ken Seguin's house and Malcolm MacDonald's cottage and
16 lists a number of people there, including Bishop Laroque
17 and Stewart MacDonald, Claude Shaver. So did that -- did
18 you feel that was useful to your civil claim?

19 MR. BOURGEOIS: Correct.

20 MR. RUEL: So are you -- should I understand
21 that those interviews were done, in your view, in support
22 of the claim?

23 MR. BOURGEOIS: Yes.

24 MR. RUEL: Not for other purposes?

25 MR. BOURGEOIS: No.

1 **MR. RUEL:** So we know from our review of the
2 records, the Commission record, that there's been a number
3 of meetings with C-8 between June 1996 up to January of
4 1997.

5 So do you remember being part or being
6 involved in those meetings?

7 **MR. BOURGEOIS:** What meetings?

8 **MR. RUEL:** Well, we know for example that
9 there has been -- Mr. Dunlop met with C-8 on, for example,
10 September 11, 1996; December 6, 1996.

11 **MR. BOURGEOIS:** Oh, I don't know, sir.

12 **MR. RUEL:** You don't remember that; okay.

13 **THE COMMISSIONER:** How many times do you
14 think that you would have met with C-8?

15 **MR. BOURGEOIS:** Involving this matter, sir,
16 or in total?

17 **THE COMMISSIONER:** In total.

18 **MR. BOURGEOIS:** Six to 10 times maybe.

19 **THE COMMISSIONER:** Okay.

20 **MR. RUEL:** At some point, I gather that you
21 came to represent C-8 in criminal proceedings?

22 **MR. BOURGEOIS:** Yeah, a very brief matter,
23 yes.

24 **THE COMMISSIONER:** How did it come about?

25 **MR. BOURGEOIS:** I think at some point, my

1 best recollection, sir, that is that he approached me
2 regarding a situation he had himself. I'm going to assume
3 that maybe he entrusted in me; so he told me that he had
4 been charged with a serious matter and he just wanted to
5 deal with it, and if I could help him.

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

7 **MR. BOURGEOIS:** And at that point, I
8 indicated I would.

9 **THE COMMISSIONER:** So you opened a file?

10 **MR. BOURGEOIS:** Yes, I would have opened a
11 file.

12 **MR. RUEL:** And did you remember appearing as
13 counsel on behalf of C-8 on January 23, 1997?

14 **MR. BOURGEOIS:** Not the date but I do
15 remember appearing in Cornwall here for him, yes.

16 **MR. RUEL:** So was that a trial or it was a
17 representation on sentence?

18 **MR. BOURGEOIS:** No, I remember we had a
19 judicial pre-trial with -- and I'm sorry, sir -- Madam
20 Justice -- I don't remember her name but I remember it was
21 a female justice and we had a judicial pre-trial and we had
22 a joint position, I believe, and we went in and dealt with
23 it after I had his instructions.

24 **MR. RUEL:** Sorry, so that I understand, you
25 don't remember if there was -- it was -- there was a

1 sentence?

2 **THE COMMISSIONER:** No, it was a judicial
3 pre-trial.

4 **MR. BOURGEOIS:** It was a judicial pre-trial.

5 **THE COMMISSIONER:** So just Maître Ruel
6 doesn't -- in the area at the time, you had a judicial pre-
7 trial. It was joint submission. You went into court and
8 you took care of it that day?

9 **MR. BOURGEOIS:** That day.

10 **MR. RUEL:** Okay. Sorry.

11 **MR. BOURGEOIS:** The day we did the judicial
12 pre-trial is the day we went in and I can indicate that a
13 large reason why he got the disposition that he got was
14 based on the fact that he had been a victim in the past.

15 **MR. RUEL:** So how did the -- I guess you
16 made some submissions or did you bring some evidence on
17 this point before the court?

18 **MR. BOURGEOIS:** I don't know if I brought
19 evidence but certainly submissions, yes.

20 **MR. RUEL:** Do you remember if a statement
21 was prepared the same day or was given the same day by C-8,
22 on January 23rd, 1997?

23 **MR. BOURGEOIS:** No, I don't -- I don't have
24 any independent recollection.

25 **MR. RUEL:** Okay.

1 **THE COMMISSIONER:** Well, let's see about
2 that. All right.

3 **MR. BOURGEOIS:** Okay.

4 **THE COMMISSIONER:** My understanding is you
5 slept at Dunlop's that night, the night before?

6 **MR. BOURGEOIS:** Well, I would have slept at
7 Dunlop's several times I'm sure through the years.

8 **THE COMMISSIONER:** All right. Okay. And so
9 the understanding is that C-8 would have met there at the
10 house, that a statement would have been prepared dated that
11 day; that you would have gone to a pre-trial but you went
12 to the wrong city and then you had to go back some other
13 place. That doesn't ring a bell?

14 **MR. BOURGEOIS:** Not particularly, sir, but I
15 do remember meeting C-8 at the Dunlop's.

16 **THE COMMISSIONER:** Okay. So we've -- at
17 where?

18 **MR. BOURGEOIS:** I'm sure I met Mr. ---

19 **THE COMMISSIONER:** C-8.

20 **MR. BOURGEOIS:** --- C-8 at the ---

21 **THE COMMISSIONER:** Dunlop residence?

22 **MR. BOURGEOIS:** Yes.

23 **THE COMMISSIONER:** Okay. Let's take it from
24 there.

25 **MR. RUEL:** Okay. And maybe I can show you

1 Exhibit 610.

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. BOURGEOIS: Yes.

4 MR. RUEL: So this is a statement dated
5 January 23, 1997, signed by C-8.

6 MR. BOURGEOIS: Six one zero (610)?

7 MR. RUEL: Six one zero (610).

8 THE COMMISSIONER: Yes.

9 MR. BOURGEOIS: Oh, I'm sorry, sir. I have
10 the wrong one.

11 Okay. Yes.

12 MR. RUEL: So I don't know if you want to
13 take a few seconds to take a look at it.

14 THE COMMISSIONER: So our understanding, Mr.
15 Bourgeois, is that on January 23rd, the day of the
16 statement, the day that you went to court, Mr. C-8 would
17 have come to the Dunlop residence and then Mr. Dunlop would
18 have gone away to the neighbours to type this up, and then
19 that you would have had come in receipt of it on your way
20 to the court appearance.

21 So with that light, can you read that,
22 please?

23 MR. BOURGEOIS: Okay. Thank you, sir.

24 (SHORT PAUSE/COURTE PAUSE)

25 MR. BOURGEOIS: Okay.

1 **MR. RUEL:** So have you been involved in the
2 preparation of this statement; do you remember?

3 **MR. BOURGEOIS:** I don't remember preparing
4 that, no.

5 **MR. RUEL:** Do you remember the statement
6 itself?

7 **MR. BOURGEOIS:** Yes, I remember Mr. C-8
8 doing that.

9 **MR. RUEL:** So at page 2, there's an
10 allegation -- well, at page 1, I guess, the witness repeats
11 the allegation of abuse by Father MacDonald. Then at page
12 2, he makes reference to being abused by the same person
13 using a candle.

14 Does that ring a bell? Do you remember this
15 statement?

16 **MR. BOURGEOIS:** Yes.

17 **MR. RUEL:** And then at page 3 -- sorry, at
18 page 2 again, he talks about Marcel Lalonde and repeats, I
19 guess, the allegations that were made in the previous
20 statement. And then at page 3, speaks about school trips
21 in Toronto with Marcel Lalonde and being abused there
22 during those school trips.

23 Is that something that rings a bell?

24 **MR. BOURGEOIS:** Yes.

25 **MR. RUEL:** So I just want to understand

1 this. Sorry, again; you said that you don't believe you've
2 been involved in preparing this.

3 **MR. BOURGEOIS:** Well, I wouldn't have typed
4 it up.

5 **THE COMMISSIONER:** Were you there when any
6 of the discussions went on?

7 **MR. BOURGEOIS:** Yes, I'm sure I would have.
8 Mr. C-8 would have read all of this and before he signed
9 it, and he would have went thoroughly through ---

10 **THE COMMISSIONER:** Well, do you recall? Is
11 this just that's what you think happened or do you have an
12 independent recollection that on the day in question that's
13 what happened with C-8?

14 **MR. BOURGEOIS:** Yes, with C-8, the only
15 reason I say that, sir, is that on the first page, it would
16 appear like something has been added in writing.

17 **THE COMMISSIONER:** Where is that?

18 **MR. BOURGEOIS:** The copy I have here.

19 **THE COMMISSIONER:** Is that your writing?

20 **MR. BOURGEOIS:** Yes. And that would have
21 only been added at Monsieur ---

22 **THE COMMISSIONER:** C-8.

23 **MR. BOURGEOIS:** --- C-8 would have indicated
24 to add that. So that's why I'm -- I'll say that it's very
25 likely that he read that, sir, but do I have an independent

1 recollection of visually seeing him read it? No.

2 **MR. RUEL:** So C-8 testified before the
3 Commission and -- I guess I can say that -- indicated that
4 this statement was given or taken at Mr. Dunlop's
5 neighbour's residence. Do you remember this?

6 **MR. BOURGEOIS:** I remember that Mr. Dunlop
7 would, on occasion, use the neighbour's resources, that he
8 didn't have them. So ---

9 **THE COMMISSIONER:** So you mean a computer?

10 **MR. BOURGEOIS:** Yes. So that rings true to
11 me, sir, yes. That would make sense.

12 **MR. RUEL:** So why was -- so for this
13 statement, do you remember whether or not it was taken at
14 Mr. Dunlop's neighbour's residence?

15 **MR. BOURGEOIS:** I would -- no, I don't
16 remember if it was taken there. I'm just saying in
17 practice, what I'm, again, assuming what happened was a
18 statement would have been taken and then it was typed up.

19 **MR. RUEL:** So you don't remember who typed
20 it?

21 **MR. BOURGEOIS:** It would have been either --
22 one of the Dunlops, most likely.

23 **MR. RUEL:** So your testimony today is that
24 you've reviewed this, at least with the witness, because
25 those are -- this is your handwriting here.

1 **MR. BOURGEOIS:** Yes.

2 **MR. RUEL:** And those would be, I guess,
3 clarifications made by the witness himself.

4 **MR. BOURGEOIS:** Correct.

5 **MR. RUEL:** Okay. Do you know why the
6 statement was taken from C-8?

7 **MR. BOURGEOIS:** I don't remember why, no.

8 **MR. RUEL:** The testimony has been that -- of
9 C-8 that on the same day he went to Court with you for his
10 criminal case. So is that your recollection that it was
11 the same day?

12 **THE COMMISSIONER:** And further that on the
13 same day you went to an OPP station and made a statement to
14 the police, with you. He gave the statement; you were in
15 his company.

16 **MR. BOURGEOIS:** I don't have an independent
17 recollection of that, sir, but from what my colleague has
18 said, there's evidence of that. So I'm -- I do know that
19 he went to the OPP, sir. I just didn't remember that it
20 was on the same day.

21 **MR. RUEL:** So you don't remember the purpose
22 of taking this statement, whether or not it was for the
23 criminal case, for example?

24 **MR. BOURGEOIS:** No, I don't.

25 **MR. RUEL:** Or whether it was to go to the

1 OPP?

2 MR. BOURGEOIS: I don't remember if it was
3 for one thing or another.

4 MR. RUEL: So how did that work when you
5 were involved in taking statements from individuals such as
6 C-8? Would you like -- you would use what techniques of
7 interrogation, I guess, to get the information, if I can
8 say? Would you be suggestive?

9 MR. BOURGEOIS: No.

10 MR. RUEL: You would let the witness talk?

11 MR. BOURGEOIS: With who? With C-8?

12 MR. RUEL: Yes.

13 MR. BOURGEOIS: Yes, C-8 certainly would
14 talk quite openly but he was definitely reserved and
15 conflicted, which he probably still is now. So some of his
16 information came as it went along in the process, if you
17 want. So it did vary in time.

18 MR. RUEL: But did you see any problem with
19 that?

20 MR. BOURGEOIS: Not really because it was
21 just -- he was adding information that he may not wanted to
22 divulge for his personal reasons. I mean, this is not
23 untypical in those type of cases in the criminal judicial
24 system; it's a well-known fact.

25 MR. RUEL: Sir, do you know if Mister -- in

1 some cases, whether or not Mr. Dunlop was involved, just by
2 himself, in taking statements from victims or alleged
3 victims?

4 **MR. BOURGEOIS:** He definitely took a lot of
5 statements by himself, for sure.

6 **MR. RUEL:** Did he do that under your
7 direction as counsel?

8 **MR. BOURGEOIS:** Some of them I'm sure he
9 did.

10 **MR. RUEL:** And do you know how? I mean,
11 what -- the way he took those statements, I mean, did you
12 give him any directions?

13 **MR. BOURGEOIS:** No. No.

14 **MR. RUEL:** So I'd like to show you Exhibit
15 607 ---

16 **THE COMMISSIONER:** Well, before we leave
17 this one, I don't know that there's any allegations against
18 Mr. Leroux in this statement.

19 **MR. BOURGEOIS:** Correct, sir, there is none.

20 **THE COMMISSIONER:** Okay. So is there a
21 reason why there wouldn't be?

22 **MR. BOURGEOIS:** No, I don't know why there
23 isn't but that must be what Mr. C-8 chose -- I'm so sorry,
24 sir, C-8 chose that.

25 **MR. RUEL:** So Document 6 -- Exhibit 607.

1 **THE COMMISSIONER:** This is a videotaped
2 statement that would have -- of C-8, on January 23rd at
3 3:34.

4 **MR. BOURGEOIS:** Okay.

5 **MR. RUEL:** So Mr. Bourgeois, did you
6 remember ---

7 **THE COMMISSIONER:** Exhibit 314.

8 **MR. RUEL:** Sorry.

9 **THE COMMISSIONER:** Go ahead.

10 **MR. RUEL:** So this is an OPP interview,
11 Lancaster Detachment. It's a transcript of an interview.
12 Present, Detective Constable Genier and listed here is
13 Charles Bourgeois, counsel. And the interview is the
14 interview of this witness, C-8.

15 So you mentioned that you remembered an OPP
16 interview. Could it be this one?

17 **MR. BOURGEOIS:** Now that you say Detective
18 Constable Genier, I remember him. I remember his name.

19 **MR. RUEL:** So what was the purpose of
20 bringing -- of C-8 going to the OPP?

21 **MR. BOURGEOIS:** He wanted to file his
22 complaint.

23 **MR. RUEL:** Criminal complaint against the
24 individual who ---

25 **MR. BOURGEOIS:** Yes.

1 MR. RUEL: --- he alleged abused him?

2 MR. BOURGEOIS: Yes.

3 MR. RUEL: So was that at your prompting?

4 MR. BOURGEOIS: No.

5 MR. RUEL: So do you remember what Mr. C-8
6 did during this interview?

7 MR. BOURGEOIS: No.

8 MR. RUEL: If I tell you that he read the
9 statement that was prepared on January 23, 1997 into --
10 well, he read that to Constable Genier and this is what was
11 recorded.

12 Would that be consistent with any memory you
13 would have of this incident?

14 MR. BOURGEOIS: Yes, I believe he was -- he
15 would have been asked questions after that.

16 MR. RUEL: So what was your role with
17 respect to this interview? Did you prepare C-8 in any way
18 before he went to the OPP?

19 MR. BOURGEOIS: I don't recollect preparing
20 him. I think it was more a comfort thing, more or less,
21 for him.

22 MR. RUEL: But I guess you went over the
23 statement with him because you've made -- I mean, you've
24 made annotations on the statement. So, I mean, you went
25 over the facts ---

1 MR. BOURGEOIS: Yes.

2 MR. RUEL: --- with him?

3 MR. BOURGEOIS: Yes.

4 MR. RUEL: Did you ever have any concern
5 with respect to the truthfulness of those facts?

6 MR. BOURGEOIS: By C-8?

7 MR. RUEL: Yes.

8 MR. BOURGEOIS: No.

9 MR. RUEL: Did you give any advice to C-8
10 with respect to this interview?

11 MR. BOURGEOIS: Not that I can recollect.

12 MR. RUEL: In the -- I'm going to bring you
13 to Exhibit 608 ---

14 THE COMMISSIONER: Well, before we go
15 further, you're at the OPP station.

16 MR. BOURGEOIS: Yes, sir.

17 THE COMMISSIONER: He's making declarations
18 against Father MacDonald and Mr. Lalonde. You know that he
19 has allegations as against Mr. Leroux, and they're not
20 disclosed at this point. So there must have been something
21 going on in your mind about that, no?

22 MR. BOURGEOIS: I don't know why not, sir,
23 no. I guess not. No.

24 MR. RUEL: Mr. Commissioner, on that
25 subject, Exhibit 608 is the continuation of that OPP

1 interview.

2 So Mr. Bourgeois, this is the same
3 interview, the second part I guess. A videotaped interview
4 report number two. So I guess it's the -- I guess it's
5 another tape or a -- the first tape was finished so they
6 moved to another one. And at page ---

7 **THE COMMISSIONER:** Sorry.

8 **MR. RUEL:** At page 14 of this interview --
9 and it's Genier asking a question -- and by then, Mr.
10 Bourgeois, the witness had finished reading his statement.

11 And there was a question by Genier who asks:

12 "Have you been assaulted sexually by
13 anybody else."

14 And C-8 answers:

15 "Except for the people I've been
16 assaulted a lot. Many times by
17 different people in my past. I was
18 assaulted by Ron."

19 "Ron..." [That's the question from
20 Genier] "...Leroux when I was young. It
21 did ended..." ---

22 **THE COMMISSIONER:** No. It's okay.

23 **MR. RUEL:** "I did ended up..." ---

24 **THE COMMISSIONER:** No. He said he was
25 assaulted by Leroux when he was 15 years of age.

1 MR. RUEL: Yes.

2 So do you remember C-8 making that ---

3 MR. BOURGEOIS: Obviously I didn't, no.

4 MR. RUEL: You didn't know?

5 MR. BOURGEOIS: I answered the Commissioner
6 already that I didn't remember that, but now that I read
7 it, it's there.

8 MR. RUEL: Okay. You remember him saying
9 that at that point?

10 MR. BOURGEOIS: I didn't remember it when
11 Your Honour asked me.

12 MR. RUEL: Okay. No, that's fine.

13 So again, I mean, I guess the Commissioner
14 covered it in his question. It seems -- and maybe you will
15 want to give your comments to the proposition -- not
16 proposition, comment I'm going to make.

17 It seems surprising that C-8 would make any
18 -- well, according to you he had a complaint or he had some
19 -- he brought the concerns against Leroux earlier to you
20 but didn't make them in the statements?

21 MR. BOURGEOIS: Correct.

22 MR. RUEL: And then when interviewed by the
23 OPP he makes that allegation, well, spontaneously I guess?

24 MR. BOURGEOIS: M'hm.

25 MR. RUEL: So is there any -- I mean, you

1 didn't have any concern with respect to this new allegation
2 coming up at that point?

3 **MR. BOURGEOIS:** No. It wasn't new to me.

4 **MR. RUEL:** So let's talk about -- unless,
5 Mr. Commissioner, you have other questions with respect to
6 C-8 we'll move to another area.

7 **THE COMMISSIONER:** Go ahead.

8 **MR. RUEL:** Which is Ron Leroux.

9 **THE COMMISSIONER:** Well, you sent C-8 a
10 bill?

11 **MR. BOURGEOIS:** He would have paid me, sir,
12 yes.

13 **THE COMMISSIONER:** Okay. Go ahead.

14 **MR. RUEL:** So when did you -- well, I guess
15 you said that you heard from Leroux from -- about Leroux
16 from C-8. Is that correct? Who told you about Leroux?

17 **MR. BOURGEOIS:** Numerous -- there would have
18 been other -- C-8, Gerry Renshaw, the other Renshaw brother
19 as well.

20 **MR. RUEL:** So what was told to you about
21 this person?

22 **MR. BOURGEOIS:** Before I met him?

23 **MR. RUEL:** Yes.

24 **MR. BOURGEOIS:** Well, C-8 had indicated that
25 originally to myself, and regarding his background with C-

1 8, what his allegations were and what his relationships
2 would have been with the various parties to the action.

3 MR. RUEL: So can you be more specific?

4 MR. BOURGEOIS: As indicated earlier,
5 proximity to ---

6 THE COMMISSIONER: So C-8 and Renshaw would
7 have told you that Leroux lived next door to Seguin?

8 MR. BOURGEOIS: Correct. Exactly.

9 As well as his relationship with him and his
10 relationship with numerous of the other named parties, both
11 on a personal level, on a visiting other areas level, and
12 his familiarity with some of these young individuals that
13 would be at the Seguin residence frequently or the other
14 named locations.

15 MR. RUEL: So did you feel this was an
16 important person to meet for your civil claim?

17 MR. BOURGEOIS: Yes.

18 MR. RUEL: So how did the contact -- how was
19 the contact established with Mr. Leroux?

20 MR. BOURGEOIS: I don't remember
21 specifically but I would -- it wasn't me. So it was -- it
22 would have had to have been one of the Dunlops, and I'll
23 assume it was Perry.

24 MR. RUEL: So you've met at some point Mr.
25 Leroux. That's correct?

1 **MR. BOURGEOIS:** Yes.

2 **MR. RUEL:** You've met him in Maine?

3 **MR. BOURGEOIS:** Yes.

4 **MR. RUEL:** Before going to Maine -- we're
5 going to get into that -- but before going to Maine, did
6 you ever call or speak to Mr. Leroux on the telephone?

7 **MR. BOURGEOIS:** I believe I did once, yes.

8 **MR. RUEL:** And do you remember what was
9 discussed during this conversation?

10 **MR. BOURGEOIS:** No, I don't. It would have
11 been the surroundings of what we're discussing here today.
12 But he wasn't overly talkative at that point over the
13 phone.

14 **MR. RUEL:** What kind of language did you
15 use? If you don't remember the specific, what tone did you
16 use with Mr. Leroux when you spoke to him? Do you remember
17 that?

18 **MR. BOURGEOIS:** It might have been a very
19 collegial tone I would think.

20 **THE COMMISSIONER:** Let's finish off for
21 today and carry on tomorrow at 9:30.

22 You may want to stay back a little bit and
23 speak with Mr. Ruel about ---

24 **MR. BOURGEOIS:** Yes.

25 **THE COMMISSIONER:** --- further documents you

1 might want to review tonight.

2 **MR. BOURGEOIS:** I will do that, sir.

3 You had mentioned about Friday.

4 **THE COMMISSIONER:** Yes.

5 **MR. BOURGEOIS:** And I have a childcare
6 commitment on Friday.

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

8 **MR. BOURGEOIS:** Is there any way we could
9 continue it on Monday instead?

10 **THE COMMISSIONER:** I would suggest you make
11 arrangements for your childcare, and if you absolutely
12 cannot, then we'll talk.

13 **MR. BOURGEOIS:** Okay, sir.

14 **THE COMMISSIONER:** Thank you.

15 **THE REGISTRAR:** Order. All rise. A
16 L'ordre. Veuillez vous lever.

17 This hearing is adjourned until tomorrow
18 morning at 9:30 a.m.

19 --- Upon adjourning at 5:37 p.m./

20 L'audience est ajournée à 17h37

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

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

Je, Marc Demers, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Marc Demers, CVR-CM