

**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 153

Held at :

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

Friday, October 26 2007

Tenue à:

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

Vendredi, le 26 octobre 2007

ERRATA

October 25th, 2007
Volume 152

Page 110, lines 7 and 19

MR. BOURGEOIS: Okay.

I want to read part of paragraph 26.

Dunlop states:

"It appeared to him the victim had a very good memory, remembering smells, sights and places. As a police officer, Dunlop had taken and read many statements and Dunlop's of the opinion the statements made by the victim in his witness statement were solid and credible."

Paragraph 27 is also evidence, and again in a narrative form; correct?

Should have read:

MR. MANSON: Okay.

I want to read part of paragraph 26.

Dunlop states:

"It appeared to him the victim had a very good memory, remembering smells, sights and places. As a police officer, Dunlop had taken and read many statements and Dunlop's of the opinion the statements made by the victim in his witness statement were solid and credible."

Paragraph 27 is also evidence, and again in a narrative form; correct?

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. Deirdre Harrington M ^e Simon Ruel	Commission Counsel
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
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. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Frank T. Horn Mr. Ian Paul	Mr. Carson Chisholm

Table of Contents / Table des matières

	Page
List of Exhibits :	iv
Ruling on request for supplementary funding by the Commissioner/Décision sur la demande de financement Supplémentaire par le Commissaire	1
CHARLES BOURGEOIS, Resumed/Sous le même serment	1
Cross-Examination by/Contre-interrogatoire par Mr. Peter Chisholm	3
Cross-Examination by/Contre-interrogatoire par Mr. Claude Rouleau	21
Cross-Examination by/Contre-interrogatoire par Mr. David Sherriff-Scott	37
Cross-Examination by/Contre-interrogatoire par Mr. John Callaghan	121

LIST OF EXHIBITS/LISTE D'EXHIBITS

NO.	DESCRIPTION	PAGE NO
P-740	(117668 1112093-95) Notes of Det Cst. D.C. Genier dated fr 21 Jan 97 to 27 Jan 97	72
P-741	(721626 7080787-800) "Letter fr Thomas R. Swabey to Charles Bourgeois dated 15 May 97	98
P-742	(723589) Reasons for Judgment - Yegendorf, Brazeau, Seller, Prehogan & Wyllie vs. Perry Dunlop dated 25 Sep 98	123
P-743	(102189 102189-90) Letter fr Allan R. O'Brien to Acting Chief Carl Johnston re: Perry Dunlop dated 05 Oct 94	138
P-744	(706388) Letter fr Bryce Geoffrey to Daniel Raymond re: Complaint David Silmser dated 13 Jun 94	153
P-745	(717739) Notice of Appeal - Police Complaints Commissioner vs. Perry Dunlop dated 01 Mar 95	158
P-746	(722331) Factum of the Appellant - Police Complaints Commissioner vs. Perry Dunlop dated 12 May 95	159
P-747	(122755) Letter fr Stephen Rubino to Charles Bourgeois re: Smith et al vs. McIntyre and enclosures dated 16 Oct 96	189

1 --- Upon commencing at 9:04 a.m./

2 L'audience débute à 9h04

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 **--- RULING BY/DÉCISION PAR JUSTICE NORMAND GLAUDE :**

12 Before we begin, I need to issue a ruling on
13 the request for supplementary funding for the Coalition for
14 Action. I apologize that I didn't do so earlier but I'm
15 sure that my comments will not be a great surprise.

16 So on September 12th, 2007, I granted the
17 Coalition for Action full standing before this Inquiry for
18 Parts 1 and 2; limited to those issues that directly affect
19 its interest. I also recommended funding for one senior
20 counsel and one junior counsel limited to one counsel
21 attendance fee.

22 On October 10th, 2007, I heard submissions
23 from counsel for the Coalition for Action in respect of a
24 request for supplementary funding. The Coalition for
25 Action also filed written materials in support of its

1 request.

2 The Coalition for Action's request is that I
3 recommend funding for a researcher to assist counsel in
4 becoming familiar with the evidence that has been heard by
5 this Commission to date and to thereby allow counsel to
6 dedicate more of its focus to upcoming witnesses and
7 evidence. Counsel explained that the researcher would
8 review Inquiry transcripts and documents and summarize them
9 as well as assist in preparing counsel. Counsel submitted
10 that this would be a cost-effective use of public funds.

11 In its oral submissions, the Coalition for
12 Action indicated that it would be looking for someone who
13 would be qualified to do the work and agreed that this
14 person would be a paralegal.

15 Accordingly, based on the submissions of the
16 Coalition for Action, I will recommend funding for one
17 paralegal limited to a maximum of 400 hours. This funding
18 recommendation is active from October 10th, 2007. Should
19 more hours be required in the future, the Coalition for
20 Action may reapply for further funding amendment.

21 I am mindful that the Coalition for Action
22 has only recently been granted standing in this Inquiry and
23 I am hopeful that a paralegal will assist counsel in
24 getting up to speed on the evidence that has been heard to
25 date.

1 And there is my decision. Thank you.

2 Mr. Chisholm, how are you today?

3 **MR. CHISHOLM:** I am well, sir, how are you?

4 **THE COMMISSIONER:** Well, it's Friday so we
5 all want to get home but other than that, it's a bright and
6 sunny day.

7 **MR. CHISHOLM:** Indeed it is, so I'll see
8 what I can do to get you on your way as quickly as
9 possible.

10 **THE COMMISSIONER:** Oh, not only my way, I
11 think everyone else has things to do today.

12 **MR. CHISHOLM:** This is true.

13 **THE COMMISSIONER:** Thank you.

14 **CHARLES BOURGEOIS:** Resumed/Sous le même serment:

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

16 **CHISHOLM:**

17 **MR. CHISHOLM:** Good morning sir. My name is
18 Peter Chisholm. I am counsel for the local Children's Aid
19 Society.

20 If I can take you back to December of 1996
21 and if you can, can you tell us about what your
22 understanding was of the duty to report a child in need of
23 protection under the *Child and Family Services Act*?

24 **MR. BOURGEOIS:** What I -- if I have a memory
25 of what I thought that was then?

1 MR. CHISHOLM: Yes.

2 MR. BOURGEOIS: It would have been probably
3 limited knowledge of what it was back then.

4 MR. CHISHOLM: Okay. Would you have been
5 aware generally of the requirement to report the suspicion
6 of child in need of protection?

7 MR. BOURGEOIS: Generally, yes.

8 MR. CHISHOLM: Okay. And how about the
9 information upon which that suspicion was based, would you
10 have been aware of the obligation to report that
11 information as well?

12 MR. BOURGEOIS: Probably not.

13 MR. CHISHOLM: No.

14 MR. BOURGEOIS: In terms of the specifics,
15 no.

16 MR. CHISHOLM: And would you have been aware
17 of the obligation and that the person who had the suspicion
18 had the obligation to make the report directly to a
19 society?

20 MR. BOURGEOIS: I hadn't done any sort of
21 extensive research on it.

22 MR. CHISHOLM: If I could take you back to
23 December 19th, '96. Yesterday, Mr. Ruel was speaking with
24 you about your interaction with Richard Abell ---

25 MR. BOURGEOIS: Yes.

1 **MR. CHISHOLM:** --- and with respect to a
2 telephone conversation that you had on December the 20th?

3 **MR. BOURGEOIS:** I don't remember dates.

4 **MR. CHISHOLM:** Now I could take you back a
5 day to the 19th, is it fair -- your first conversation with
6 Richard Abell. Do you recall -- you don't recall a
7 conversation on the 19th?

8 **MR. BOURGEOIS:** No.

9 **MR. CHISHOLM:** And if Richard Abell were to
10 come and testify that you had a conversation with him on
11 that date, a telephone conversation at 11:45 a.m., I take
12 it you wouldn't disagree with him?

13 **MR. BOURGEOIS:** I wouldn't be in a position
14 to, no.

15 **MR. CHISHOLM:** If you had that conversation,
16 if you would have made notes during that conversation, they
17 no longer exist. Is that right?

18 **MR. BOURGEOIS:** I don't know if I made them
19 and I certainly don't have anything like that.

20 **MR. CHISHOLM:** When you were speaking with
21 Mr. Ruel yesterday, you surmised that the purpose of any
22 conversation that you had with Mr. Abell would have been
23 due to the fact you had something to report. Is that fair
24 to say?

25 **MR. BOURGEOIS:** I'd just be assuming, sir.

1 It's fair to say, yes, sir. I think it's fair to say.

2 **THE COMMISSIONER:** You weren't calling him
3 up to discuss the weather ---

4 **MR. BOURGEOIS:** Correct.

5 **THE COMMISSIONER:** --- you didn't know him
6 before?

7 **MR. BOURGEOIS:** No, I didn't know him.

8 **THE COMMISSIONER:** Okay.

9 **MR. BOURGEOIS:** He came off as a pleasant
10 man, I didn't -- there was no problem.

11 **MR. CHISHOLM:** And if Mr. Abell were to come
12 here and testify that during that conversation of the 19th
13 of December, you left him with the impression that you were
14 calling in order to comply with your duty to report your
15 suspicion of a child in need of protection, I take it you
16 wouldn't disagree with him?

17 **MR. BOURGEOIS:** I couldn't -- I don't think
18 I could, but I don't remember the specifics of the
19 conversation. Certainly makes sense, what you're saying.

20 **MR. CHISHOLM:** With respect to the specifics
21 of the conversation, if I suggested to you that during that
22 conversation, December the 19th, you listed 11 people, the
23 names of 11 males, whom you described as suspected
24 pedophiles. Would you agree with that?

25 **MR. BOURGEOIS:** Same thing, I don't know --

1 I don't remember independently one way or another.

2 MR. CHISHOLM: If Mr. Abell were to testify
3 to that effect, you wouldn't disagree with him I take it?

4 MR. BOURGEOIS: If that's his position.

5 MR. CHISHOLM: And if Mr. Abell were to
6 testify that with respect to the 11 names that you
7 provided, you gave no other information about these people
8 other than to say that you suspected they were pedophiles.
9 Would you agree with that evidence?

10 MR. BOURGEOIS: Like I said, I don't
11 remember.

12 MR. CHISHOLM: I take it you're not in a
13 position to disagree with Mr. Abell if ---

14 MR. BOURGEOIS: Correct.

15 MR. CHISHOLM: --- he testifies to that
16 effect.

17 Now, if Mr. Abell would come and testify
18 that on December the 19th you also told him that you had
19 given information to an outside force, do you know which
20 force you were speaking of? Was that a police force?

21 MR. BOURGEOIS: I'd just be guessing, but I
22 assume that's Mr. Fantino, Chief Fantino.

23 MR. CHISHOLM: So your guess would be it was
24 the London Police force?

25 MR. BOURGEOIS: That would be my guess, yes.

1 **THE COMMISSIONER:** Well, that's the only
2 police force you disclosed to isn't it at that time?

3 **MR. BOURGEOIS:** Yeah.

4 **MR. CHISHOLM:** And if you were to have
5 described an expert to Mr. Abell, would that person likely
6 have been Chief Fantino?

7 **MR. BOURGEOIS:** Again, I don't want to
8 speculate but if you're asking likely, I would assume that
9 who it would be.

10 **MR. CHISHOLM:** And if Mr. Abell were to
11 testify that you told him that you'd given the information
12 to an individual who is looking into it, who would give us
13 instructions again, can we assume you were speaking of
14 Chief Fantino?

15 **MR. BOURGEOIS:** Your Honour, I would say
16 that's likely.

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

18 **MR. CHISHOLM:** If Mr. Abell were to come and
19 testify that on December the 19th, '96 he told you that he
20 needed the information on which your suspicions were based
21 with respect to the 11 people that you named, would you
22 disagree with that?

23 **MR. BOURGEOIS:** I don't have a memory one
24 way or another.

25 **MR. CHISHOLM:** So you're not in a position

1 to disagree with it?

2 **THE COMMISSIONER:** Isn't a lot of this
3 covered in the letter back-and-forth from Mr. Abell to Mr.
4 Bourgeois? Isn't that all covered in correspondence?

5 **MR. CHISHOLM:** It is, Mr. Commissioner, the
6 genesis of that correspondence is the December 19th
7 conversation ---

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

9 **MR. CHISHOLM:** --- yes, it is.

10 During that conversation of December the
11 19th, if Mr. Abell were to testify that you told him that
12 you would bring in statements upon which your suspicions
13 were based, I take it you wouldn't disagree with him?

14 **MR. BOURGEOIS:** Like I said, I don't
15 remember the conversation.

16 **MR. CHISHOLM:** So you're not in a position
17 to disagree with him?

18 **MR. BOURGEOIS:** Exactly.

19 **MR. CHISHOLM:** Moving on to December the
20 20th, I take it you don't recall receiving a message from
21 Mr. Abell asking you to call him?

22 **MR. BOURGEOIS:** No.

23 **MR. CHISHOLM:** And if Mr. Abell were to
24 testify that -- and, again, this is set out in Exhibit 734.
25 Perhaps you could turn to Exhibit 734, please?

1 **MR. BOURGEOIS:** Sure. I have it.

2 **MR. CHISHOLM:** Okay. I'll just wait for it
3 to get up on the public screen.

4 **MR. BOURGEOIS:** Okay.

5 **MR. CHISHOLM:** You reviewed that document,
6 Mr. Bourgeois?

7 **MR. BOURGEOIS:** Yesterday, yes.

8 **MR. CHISHOLM:** And is there anything in
9 there that -- you understand these to be the notes of Mr.
10 Abell that were made with respect to his contact with you
11 on Friday, December the 20th, 1996. Is that right?

12 **MR. BOURGEOIS:** They're his notes; you'll
13 have to ask him.

14 **MR. CHISHOLM:** But I'm trying to get your
15 understanding of what you understand Exhibit 734 to be.

16 **MR. BOURGEOIS:** I understand it because
17 you're telling me. I don't have any knowledge of the
18 creation of this document.

19 **MR. CHISHOLM:** I understand that, sir. You
20 don't take exception to what has been told to you?

21 **MR. BOURGEOIS:** I don't take any position
22 one way or another. I don't have any problem with Mr
23 Abell; I thought he was a professional gentleman. So I
24 don't have any issue with Mr. Abell whatsoever.

25 **THE COMMISSIONER:** I guess the question is,

1 having reviewed the note to file ---

2 MR. BOURGEOIS: Yes, sir.

3 THE COMMISSIONER: --- is there anything in
4 there that shocks you that says, "Oh, I would never had
5 said that"? Or are you in a position to say, "Well,
6 there's nothing in there that I can seriously object to",
7 or, "Yes, I remember some parts of this", or -- one way or
8 the other?

9 MR. BOURGEOIS: Okay, sir, one moment?

10 THE COMMISSIONER: Yeah, you can read it, go
11 ahead.

12 (SHORT PAUSE/COURTE PAUSE)

13 MR. BOURGEOIS: No, sir.

14 THE COMMISSIONER: No, sir, what?

15 MR. BOURGEOIS: I can't -- there's nothing
16 that jumps out at me in terms of saying I can object
17 strenuously one way or another.

18 THE COMMISSIONER: Okay.

19 MR. CHISHOLM: Is there anything in Exhibit
20 734 that you can object to in the slightest degree?

21 MR. BOURGEOIS: I don't have any memory of
22 this, so ---

23 MR. CHISHOLM: I understand that, sir, but
24 is there anything that you would object to?

25 MR. BOURGEOIS: No, not at all.

1 **MR. CHISHOLM:** I take it that you may have
2 had a conversation with Lenore Jones, and I'm looking at
3 the second-last paragraph of the first page of Exhibit 734
4 where Mr. Abell states:

5 "I suggested he take his issue to the
6 Ministry, and gave him Lenore Jones'
7 name and home number."

8 Do you recall having a conversation with Ms.
9 Jones?

10 **MR. BOURGEOIS:** No.

11 **MR. CHISHOLM:** If you did have a
12 conversation, would you have suggested to Ms. Jones, "I
13 don't have a whisper on a kid"?

14 **MR. BOURGEOIS:** If I would have ---

15 **MR. CHISHOLM:** If you would have had a
16 conversation with Ms. Jones, would you have used the
17 phrase, "I don't have a whisper on a kid"?

18 **MR. BOURGEOIS:** I don't think so.

19 **MR. CHISHOLM:** You don't think so?

20 **MR. BOURGEOIS:** No.

21 **MR. CHISHOLM:** Exhibit 734 suggests you had
22 two conversations with Mr. Abell on the evening of December
23 20th. You have no recollection of either of those
24 conversations; right?

25 **MR. BOURGEOIS:** Correct.

1 **MR. CHISHOLM:** If I could take you to the
2 last paragraph of Exhibit 734 on the first page:

3 “He called me back about a half-an-
4 hour later to say everything was clear
5 for him. Lenore had taken the position
6 that if he had no present concerns
7 about specific children, then he had no
8 duty to report. He insisted, and
9 repeated several times, this was the
10 case, everything he had was historical.
11 We got into a lengthy debate about
12 whether an individual’s history of
13 abuse presented a present risk to
14 children, a debate he found frustrating
15 and that he seemed to not to want to
16 have deal with the judgment call that
17 those circumstances require.”

18 Would it be fair, sir, to conclude that
19 during that second conversation with Mr. Abell on the
20 evening of December the 20th, you told him that you had no
21 knowledge of any specific children being at risk of harm?

22 **MR. BOURGEOIS:** Like I said, I don’t have
23 any memory of that, sir, sorry.

24 **MR. CHISHOLM:** But having read that last
25 paragraph I just put to you, is that a fair conclusion?

1 **MR. BOURGEOIS:** I don't know how to answer
2 that. I don't have any difficulty with Mr. Abell so I
3 don't -- if you're wondering do I question Mr. Abell, no,
4 so it's pretty clear.

5 **MR. CHISHOLM:** Moving on to Exhibit 735, the
6 letter of December 23, '96 ---

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

8 **MR. CHISHOLM:** Sorry, Bates pages 708, 09,
9 04. The document is up on the screen, Mr. Bourgeois, and
10 you have it in front of you. Is that right?

11 **MR. BOURGEOIS:** Yeah, I have it, yes.

12 **MR. CHISHOLM:** You don't take issue with
13 having received this letter. Is that right?

14 **MR. BOURGEOIS:** No.

15 **MR. CHISHOLM:** And the enclosed pamphlet
16 that was referred to in the first paragraph of the letter?

17 **MR. BOURGEOIS:** Well, I don't know about
18 that.

19 **MR. CHISHOLM:** You don't know about that?

20 **MR. BOURGEOIS:** I don't know why -- I can't
21 help you one way or another on that.

22 **MR. CHISHOLM:** You're not in a position to
23 disagree that ---

24 **MR. BOURGEOIS:** No.

25 **MR. CHISHOLM:** --- you did not receive -- or

1 not in a position to disagree that you did not receive that
2 pamphlet?

3 MR. BOURGEOIS: Not in a position one way or
4 another.

5 MR. CHISHOLM: So if Mr. Abell comes here
6 and testifies that along with a letter he enclosed a
7 pamphlet, you would not disagree with him?

8 MR. BOURGEOIS: I wouldn't be able to help
9 Your Honour one way or another on that.

10 MR. CHISHOLM: But you wouldn't disagree
11 with him. Is that fair to say?

12 MR. BOURGEOIS: I wouldn't be able to help
13 him so ---

14 MR. CHISHOLM: Because you have nothing to
15 say to the contrary. Is that fair to say?

16 MR. BOURGEOIS: That's right.

17 MR. CHISHOLM: And having reviewed this
18 letter, sir, you are aware of the Society's position with
19 respect to the obligation to report, in terms of you had
20 not provided the Society with the suspicions -- with the
21 grounds upon which your suspicions were based with respect
22 to those 11 names? And, again, it's the last paragraph on
23 that page that will give you some assistance.

24 You understood the Society's position that
25 you had not provided the information upon which your

1 suspicions were based. Is that fair to say?

2 **MR. BOURGEOIS:** Looking at those documents
3 yesterday, it appeared to me that certainly there was a
4 disagreement between both parties by the correspondence ---

5 **MR. CHISHOLM:** Right.

6 **MR. BOURGEOIS:** --- and I don't think I
7 would suggest that Mr. Abell was acting in bad faith but
8 I'm certain I wasn't either.

9 **MR. CHISHOLM:** But if I could just take you
10 back to the document we're looking at right now, the third
11 paragraph of that document.

12 I take it there was no doubt in your mind as
13 to the Society's position with respect to you providing the
14 information upon which your suspicions were based. Is that
15 fair to say?

16 **MR. BOURGEOIS:** What ---

17 **MR. CHISHOLM:** When you received this
18 letter, sir, you read the third paragraph, was there any
19 doubt in your mind with respect to the Society's position
20 that you had not provided the CAS with the information upon
21 which your suspicions were based with respect to those 11
22 people that you named?

23 **MR. BOURGEOIS:** Well, if I read the letter
24 today, it's very obvious what they were saying.

25 **MR. CHISHOLM:** And ---

1 **MR. BOURGEOIS:** You're asking me if I
2 remember that back then, no.

3 **MR. CHISHOLM:** If I put it to you, sir, that
4 when you read this letter upon receipt, your understanding
5 of the Society's position would be the same as it was
6 today. Is that fair to say?

7 **MR. BOURGEOIS:** No, that's not fair to say.

8 **MR. CHISHOLM:** You think you may have had a
9 different understanding?

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

11 **THE COMMISSIONER:** I think the letter, Mr.
12 Chisholm, stands for itself and it will be up to someone
13 else to interpret other than this gentleman.

14 **MR. CHISHOLM:** Thank you, sir.

15 If I could take you to Exhibit 736, and this
16 is Mr. Bourgeois' letter of February 21, '97, Bates page
17 7080897. You have that, sir, in front of you?

18 **MR. BOURGEOIS:** Yeah.

19 **MR. CHISHOLM:** I'm interested in the last
20 paragraph of your letter. You indicate:

21 "It is my view that you have been given
22 'the information on which it is based'
23 with respect to my recent report of
24 suspected pedophiles having reviewed
25 your letter yesterday and again today."

1 Does that give you any assistance in terms
2 of recalling what information you may have provided to the
3 CAS?

4 **MR. BOURGEOIS:** No, sir.

5 **MR. CHISHOLM:** Then you can't help us today
6 in terms of telling us what you provided, apart from the 11
7 names, to Mr. Abell?

8 **MR. BOURGEOIS:** I cannot assist you in what
9 I provided, period.

10 **MR. CHISHOLM:** If during that first
11 conversation that you had with Mr. Abell on December the
12 19th, you told him that you were going to provide statements
13 to him. If you said that, did you ever comply with that
14 promise, if you will?

15 **MR. BOURGEOIS:** I don't know one way or
16 another, sir.

17 **MR. CHISHOLM:** You have no knowledge of
18 giving Mr. Abell any statements?

19 **MR. BOURGEOIS:** I just don't remember any of
20 that one way or another.

21 **MR. CHISHOLM:** So you had ---

22 **MR. BOURGEOIS:** Mr. Abell would probably be
23 able to assist the Commission more on those issues in the
24 correspondence. That's all I can tell you.

25 **MR. CHISHOLM:** So if Mr. Abell told you he

1 received nothing further from you, you wouldn't disagree
2 with him?

3 **MR. BOURGEOIS:** I don't know why he would
4 say that if it wasn't the truth, so, I've no reason to
5 disbelieve him.

6 **MR. CHISHOLM:** And you told us -- if I could
7 take you again to Exhibit 736 which is Bates page 7080896
8 and it's your letter of March 29th, 1997 -- sorry, it's Mr.
9 Abell's letter of March 29th, '97. You have that in front
10 of you, sir?

11 **MR. BOURGEOIS:** Yeah.

12 **MR. CHISHOLM:** Yesterday, you told us you
13 don't take issue with having received that letter from Mr.
14 Abell. Is that right?

15 **MR. BOURGEOIS:** Yes, I vaguely remember
16 because of the letterhead.

17 **MR. CHISHOLM:** And looking at the last
18 paragraph of Mr. Abell's letter, you understood Mr. Abell's
19 looking for a prompt response to his request for further
20 information. Is that fair to say?

21 **MR. BOURGEOIS:** That what? Sorry?

22 **MR. CHISHOLM:** You looked at this letter
23 when you received it I take it; right?

24 **MR. BOURGEOIS:** You're asking me to assume.

25 **MR. CHISHOLM:** Well, you told us you had a

1 vague recollection of having received it.

2 MR. BOURGEOIS: Yes.

3 THE COMMISSIONER: You said yesterday the
4 letterhead ---

5 MR. BOURGEOIS: Yes.

6 MR. CHISHOLM: So can I assume from that
7 that you read it whenever you -- we know you looked at the
8 letterhead ---

9 MR. BOURGEOIS: For the Commission, there's
10 a highlight that I read it. I'm sure, I -- you know, I
11 just don't remember it.

12 MR. CHISHOLM: And would it be fair for us
13 to conclude, looking at the fourth paragraph of that
14 letter, that you understood that Mr. Abell was making a
15 formal request to you with respect to each of the named
16 suspected pedophiles that you provide a detailed written
17 account that supports your concerns regarding each
18 individual?

19 MR. BOURGEOIS: I don't know what he wanted
20 by this letter. I mean, I don't know.

21 MR. CHISHOLM: So reading this letter today,
22 you don't know what Mr. Abell wanted. Is that your
23 evidence?

24 MR. BOURGEOIS: No, by reading the letter
25 today, it's very obvious, but you're asking me back then.

1 **MR. CHISHOLM:** Yes, sure. And you were a
2 graduate of law school and an undergraduate degree whenever
3 you read this letter the first time. Is that fair to say?

4 **MR. BOURGEOIS:** Yes.

5 **MR. CHISHOLM:** High school graduate before
6 that; right?

7 **MR. BOURGEOIS:** I'm sure, yeah.

8 **MR. CHISHOLM:** You understood looking at the
9 last paragraph of Mr. Abell's letter that he was looking
10 for a prompt response from you with respect to his request.
11 Is that fair to say?

12 **MR. BOURGEOIS:** If I read it, his letter
13 says that, yes.

14 **MR. CHISHOLM:** And you have no knowledge of
15 ever responding to Mr. Abell's request. Is that fair to
16 say?

17 **MR. BOURGEOIS:** I've already answered.

18 **THE COMMISSIONER:** Yes.

19 **MR. CHISHOLM:** Thank you, sir. Those are my
20 questions.

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

22 Maître Rouleau?

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

24 **ROULEAU:**

25 **MR. ROULEAU:** Good morning.

1 **MR. BOURGEOIS:** Good morning.

2 **MR. ROULEAU:** My name is Claude Rouleau. I
3 represent Corrections and Probations.

4 **MR. BOURGEOIS:** Okay.

5 **MR. ROULEAU:** I have a few questions for
6 you.

7 I'd like to bring you to your statement or
8 the Statement of Claim you prepared; that's Exhibit 726.
9 And it's the June 6th, 1996 Statement of Claim.

10 **THE COMMISSIONER:** Exhibit 726, okay.

11 **MR. ROULEAU:** Yeah.

12 **MR. BOURGEOIS:** Yes.

13 **MR. ROULEAU:** And bring you to the style of
14 cause that we have on the screen now. Would you agree with
15 me that the Ministry of Correctional Services or the
16 Solicitor General was not a part of that or was not
17 involved in that? In the style of cause or in the
18 Statement of Claim as a party?

19 **THE COMMISSIONER:** It wasn't a party in the
20 action?

21 **MR. ROULEAU:** Yes.

22 **THE COMMISSIONER:** Okay.

23 **MR. BOURGEOIS:** Yes.

24 **MR. ROULEAU:** Okay. And in the Statement of
25 Claim, there is no mention of an individual by the name of

1 Jos van Diepen?

2 MR. BOURGEOIS: No.

3 MR. ROULEAU: You know who Jos van Diepen
4 is?

5 MR. BOURGEOIS: No.

6 MR. ROULEAU: You have no idea who is Jos
7 van Diepen? If I suggest to you he was, at the time and
8 still is a Cornwall probation officer, would that ring a
9 bell?

10 MR. BOURGEOIS: Not particularly.

11 MR. ROULEAU: No. I bring you to Exhibit
12 567 and that's the affidavit of Ron Leroux.

13 THE COMMISSIONER: Five-six-eight (568)?

14 MR. ROULEAU: Five-six-seven (567); December
15 -- November 13th affidavit of Ron Leroux.

16 MR. BOURGEOIS: Yes, sir.

17 MR. ROULEAU: If you go to paragraph 6,
18 number 33.

19 MR. BOURGEOIS: Okay.

20 MR. ROULEAU: You see the name of Jos van
21 Diepen?

22 MR. BOURGEOIS: Yes, I do.

23 MR. ROULEAU: Okay. And he is listed by Mr.
24 Leroux as somebody that went to Ken Seguin's house.

25 MR. BOURGEOIS: Okay.

1 **THE COMMISSIONER:** And at Malcolm
2 MacDonald's home residence, but okay.

3 **MR. ROULEAU:** Yeah. Paragraph 6. Also in
4 paragraph 36. I'll let you read it.

5 Do you remember that paragraph?

6 **MR. BOURGEOIS:** I read it, yeah.

7 **MR. ROULEAU:** Pardon me?

8 **MR. BOURGEOIS:** I did read it, yes.

9 **MR. ROULEAU:** Do you remember reading this
10 back then, when you prepared the affidavit for Ron Leroux?

11 **MR. BOURGEOIS:** No, not back then.

12 **MR. ROULEAU:** No. Would you agree with me
13 that paragraph 36 is more than a suggestion, is information
14 about Ken Seguin having confessed to Jos van Diepen? Is
15 this the way you understand this?

16 **MR. BOURGEOIS:** Not in this ---

17 **MR. ROULEAU:** Pardon me?

18 **MR. BOURGEOIS:** You mean when I read it now?

19 **MR. ROULEAU:** Yeah, when I read it now, do
20 you understand that what is being said is that there's a
21 written confession from Ken Seguin in Jos van Diepen's
22 possession, according to Ron Leroux.

23 **MR. BOURGEOIS:** Okay.

24 **THE COMMISSIONER:** Well, the report was
25 later verified by Jos Van Diepen.

1 **MR. ROULEAU:** Fair enough. Let's put it
2 this way, that at least Jos Van Diepen, according to this,
3 was in a position to provide you with information about a
4 confession from Ken Seguin. Would that be fair to say?

5 **THE COMMISSIONER:** Yeah, that's good.

6 **MR. BOURGEOIS:** A report of some sort, yes.

7 **MR. ROULEAU:** Okay.

8 **MR. BOURGEOIS:** As I read it.

9 **THE COMMISSIONER:** Well, you drafted it.
10 You drafted this.

11 **MR. BOURGEOIS:** No, I'm talking about when
12 he saying the confession, sir, it says -- talking about the
13 wording in the ---

14 **THE COMMISSIONER:** He was going to draft the
15 confession in a report form and put his position.

16 **MR. ROULEAU:** And later on that ---

17 **THE COMMISSIONER:** And then he says:

18 "Ken stated that he was going to write
19 it all down in a report, and the report
20 was later verified by Jos Van Diepen at
21 Ken's funeral."

22 **MR. BOURGEOIS:** Okay.

23 **MR. ROULEAU:** Okay. Did you follow up at
24 that time on this information?

25 **MR. BOURGEOIS:** I don't know one way or

1 another. I wouldn't be able to help you.

2 **MR. ROULEAU:** Do you have a recollection of
3 you or -- you or Mr. Dunlop trying to find out from Mr. van
4 Diepen if he had any knowledge about a confession?

5 **MR. BOURGEOIS:** I don't have any memory of
6 doing any sort of thing like that, no.

7 **MR. ROULEAU:** Do you agree with me that it
8 would have been -- and I know you had the discussion
9 yesterday about -- with Mr. -- when Mr. Neville was asking
10 questions, you had the discussion about verifying the
11 information.

12 Would you agree with me that this goes one
13 step further? It's not just verifying information, it's
14 gathering some more information, something that would be
15 maybe helpful. We're talking about a confession from --
16 from Ken Seguin. Is that a fair statement?

17 **MR. BOURGEOIS:** Looking at it now,
18 absolutely.

19 **MR. ROULEAU:** Okay. And it would have been
20 -- it would have been easy to simply go to Mr. van Diepen
21 and say, "Listen, I have this information. Can you provide
22 me with some more information about what is being stated?"
23 It's not only corroboration in this case but it's
24 additional information. Is that correct?

25 **MR. BOURGEOIS:** You could have probably got

1 more information from him, judging by what that says, yes.

2 MR. ROULEAU: Okay. And you cannot deny the
3 fact that this was never done.

4 MR. BOURGEOIS: I can't affirm it or deny
5 it, no, absolutely not.

6 MR. ROULEAU: The same document, I bring you
7 to the last paragraph, paragraph 39. I'd like you to
8 explain to me that you meant by this paragraph, or what it
9 meant to you:

10 "I make this affidavit...no other or
11 improper purpose."

12 MR. BOURGEOIS: I don't know.

13 MR. ROULEAU: You don't know?

14 MR. BOURGEOIS: I don't know what it meant
15 to me back then.

16 MR. ROULEAU: Do you know what it means to
17 you now?

18 MR. BOURGEOIS: Probably legalese.

19 MR. ROULEAU: You have no explanation?

20 MR. BOURGEOIS: No.

21 MR. ROULEAU: What did you tell Mr. Leroux
22 about the fact that he needed to be sworn?

23 MR. BOURGEOIS: I don't remember one way or
24 another.

25 MR. ROULEAU: You don't remember?

1 **MR. BOURGEOIS:** No.

2 **MR. ROULEAU:** Do you remember yourself why
3 you decided to swear an affidavit for Mr. Leroux?

4 **MR. BOURGEOIS:** My best answer would be to
5 make it under oath so it was more formal. But, again, you
6 know, I don't remember specifically back then.

7 **THE COMMISSIONER:** Well, this is the second
8 time. I mean, you had a handwritten one?

9 **MR. BOURGEOIS:** Yes, sir.

10 **THE COMMISSIONER:** An affidavit sworn under
11 oath.

12 **MR. BOURGEOIS:** Yeah.

13 **THE COMMISSIONER:** And then a few days later
14 you had one typed up. I guess that's the question is, why
15 -- and we kind of covered that one yesterday, but why would
16 you do that?

17 **MR. BOURGEOIS:** And as I said, sir, Your
18 Honour, I don't know if it wanted -- because it wanted to
19 be in typed or -- I don't know. I can't assist Your Honour
20 on that, I'm sorry.

21 **MR. ROULEAU:** Is it possible -- I suggest to
22 you that you wanted to pin down his evidence; make sure he
23 wouldn't change it. Is that a possibility?

24 **MR. BOURGEOIS:** I don't know one way or
25 another. Is it possible that -- maybe.

1 **MR. ROULEAU:** I suggest to you that maybe
2 you had doubts about certain parts of Ron Leroux's evidence
3 and you were afraid that he was going to change it. That's
4 why ---

5 **MR. BOURGEOIS:** No.

6 **MR. ROULEAU:** --- you swore ---

7 **MR. ROULEAU:** No.

8 **MR. ROULEAU:** You deny that?

9 **MR. BOURGEOIS:** No, I didn't ---

10 **MR. ROULEAU:** I want to bring you to a C
11 exhibit, which is C-606. It's the C-8 statement of
12 December 12, 1996, and page 3.

13 **MR. ROULEAU:** Page 3.

14 **THE COMMISSIONER:** Sorry, page what?

15 **MR. ROULEAU:** Page 3, number 3; and number
16 24. You see the name Jos van Diepen mentioned again?

17 **MR. BOURGEOIS:** Yes.

18 **MR. ROULEAU:** Okay. By the way, you -- do
19 you have a recollection of you deciding how to spell the
20 name of Jos van Diepen? Do you remember if anybody told
21 you, "Listen, this is his name, this is how we spell it"?

22 **MR. BOURGEOIS:** No.

23 **MR. ROULEAU:** Okay. And do you agree with
24 me that up to now we've seen the name of Jos van Diepen
25 spelled the same way in the affidavit of Mr. Leroux and

1 also here in this statement from C-8? It's the same
2 spelling? The other exhibit was 567, it was paragraphs 6
3 and 36 where it was mentioned.

4 **MR. BOURGEOIS:** Yes, it's spelled the same.

5 **MR. ROULEAU:** Spelling. Are you aware that
6 the spelling is incorrect?

7 **MR. BOURGEOIS:** No.

8 **MR. ROULEAU:** You just don't know? All
9 right.

10 Would you agree with me that in the C-8
11 statement of December 12th, 1996, Mr. van Diepen is
12 mentioned at paragraph 24 ---

13 **THE COMMISSIONER:** Not Paragraph 24.

14 **MR. ROULEAU:** Oh, number 24 ---

15 **THE COMMISSIONER:** Paragraphs 6 and 24.

16 **MR. ROULEAU:** Yeah, that's it, page 3,
17 number 24. Being named as, again, one of the individuals
18 being seen at Seguin's place or Malcolm MacDonald's
19 cottage. But there's an assertion top of page 4, first
20 line:

21 "Jos van Diepen knew what was going on
22 at Ken Seguin's."

23 No other details; nothing else.

24 Now, you're a practising criminal lawyer.
25 What would be your reaction to, for example, a police

1 officer swearing in an information to search to get a
2 warrant? There's a grow operation at this address, that's
3 it. No details, nothing to support it. How would you
4 react as a defence lawyer?

5 **MR. BOURGEOIS:** You would deal with it.

6 **MR. ROULEAU:** Pardon me?

7 **MR. BOURGEOIS:** I mean, how would you react?

8 **MR. ROULEAU:** Yeah. Would you take the
9 statement as being okay? Would you not want to get some
10 more details?

11 **MR. BOURGEOIS:** I'm sure you would, yes.

12 **MR. ROULEAU:** Would you accept that bold
13 assertion without question? No, right?

14 **MR. BOURGEOIS:** Correct.

15 **MR. ROULEAU:** Okay. And upon seeing that C-
16 8 statement and this allegation, did you take any steps, do
17 you remember taking any steps, you or Mr. Dunlop or anybody
18 else, to try to get some more details of how Mr. van Diepen
19 knew what was going on?

20 **THE COMMISSIONER:** All right. I just want
21 to make sure as I did yesterday that, you know, you have
22 the right to ask him questions about criminal law.

23 I just don't want people to assume that the
24 same standard applies with respect to someone who's
25 contesting the validity of a search warrant in a criminal

1 proceeding with someone who is contemplating -- well, and
2 this is in an affidavit to start off with.

3 **MR. ROULEAU:** It's a statement.

4 **THE COMMISSIONER:** It's a statement.

5 **MR. ROULEAU:** Yeah.

6 **THE COMMISSIONER:** So you know, we're
7 talking apples and oranges here very clearly. So I'll let
8 you go but as long as everybody understands that I am not
9 going without -- we will wait for the submissions to see
10 where you people want to go with this. But I'm telling you
11 right now that a red flag, to use Allan's expression ---

12 **MR. ROULEAU:** Let's ---

13 **THE COMMISSIONER:** --- but a warning sign
14 goes up.

15 **MR. ROULEAU:** Let's leave it at this then.

16 Do you have a recollection of trying again,
17 like I asked you for with Mr. Leroux with C-8, when you saw
18 that? Did you have a reflex or do you remember trying to
19 get some more information?

20 **MR. BOURGEOIS:** No.

21 **MR. ROULEAU:** No. I want to bring you to
22 Exhibit 552 which is an affidavit of Mr. Gerald Renshaw.
23 It's paragraph 17 I want you to take a look at.

24 Again, I am going to ask you the same
25 question. You're the one that commissioned this affidavit

1 I believe; right? Should have kept the same page ---

2 MR. BOURGEOIS: Yes, sir.

3 MR. ROULEAU: --- the last page.

4 MR. BOURGEOIS: Yes, sir.

5 MR. ROULEAU: That's January 30, 1997?

6 MR. BOURGEOIS: Yes, sir.

7 MR. ROULEAU: Again, same question. Did
8 you, when you've seen that, do you remember taking any
9 steps to ---

10 MR. BOURGEOIS: No.

11 MR. ROULEAU: --- verify or get some more
12 details?

13 MR. BOURGEOIS: No.

14 MR. ROULEAU: And would you agree with me
15 that we see also the same spelling of Jos van Diepen then
16 in the other statement from C-8 and the affidavit from Ron
17 Leroux?

18 MR. BOURGEOIS: Yes.

19 MR. ROULEAU: All right. Lastly, I want to
20 bring you to the first exhibit, the Statement of Claim,
21 Exhibit 726.

22 MR. BOURGEOIS: Yes.

23 MR. ROULEAU: And I want you to take a look
24 at paragraph 36, it's on page 21.

25 MR. BOURGEOIS: Yes.

1 **MR. ROULEAU:** Do you agree with me that
2 basically what is alleged here is -- or the reproach you're
3 making is that Mr. Ken Seguin was not investigated, neither
4 was Mr. MacDonald. We're not met -- nobody went to see
5 them to get some evidence and that's something that you
6 hold against the Cornwall Police Service?

7 **THE COMMISSIONER:** Well, you is not ---

8 **MR. ROULEAU:** Well ---

9 **THE COMMISSIONER:** --- if you're talking
10 about him.

11 **MR. ROULEAU:** I understand, yeah.

12 **THE COMMISSIONER:** Okay.

13 **MR. ROULEAU:** Being your client, Mr. Dunlop.
14 Do you want me to rephrase the question?

15 **THE COMMISSIONER:** Yes. Let's try that,
16 yes.

17 **MR. ROULEAU:** Do you agree with me that
18 paragraph 36 basically says Ken Seguin and MacDonald --
19 Charles MacDonald, should have been met. You should have
20 gone to see them?

21 **THE COMMISSIONER:** Should have confronted
22 them; there should have been interviews; there should have
23 been surveillance; and that's about it, yeah.

24 **MR. BOURGEOIS:** Correct.

25 **MR. ROULEAU:** Correct, okay. Now, bringing

1 you back to Jos van Diepen, would you agree with me that on
2 one hand, in the statement of claim, this is what you say
3 should have been done, but when confronted with the same
4 situation with Mr. van Diepen, you never did that nor
5 anybody -- nor Mr. Dunlop or anybody else?

6 **THE COMMISSIONER:** Okay. Again, I question
7 the relevance of that. We're talking about criticising a
8 police force ---

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

10 **THE COMMISSIONER:** --- about a police
11 investigation in a criminal matter and you're trying to
12 compare it to a civil action where, you know, in my --
13 historically, you know, civil action is a different ball of
14 wax.

15 A defendant or someone can sue for libel and
16 slander; can cross-claim; can counter -- well, can counter-
17 claim, and can defend in the civil courts. So there is a
18 whole different recourse there than here.

19 So I don't know how, you know, I mean, sure
20 he is going to say he did not follow up and knew those
21 things, but I don't know how relevant that is.

22 **MR. ROULEAU:** Okay. Well, it's -- I believe
23 ---

24 **THE COMMISSIONER:** You've made your point.

25 **MR. ROULEAU:** --- the point is made ---

1 **THE COMMISSIONER:** The point is made, sure.

2 **MR. ROULEAU:** --- that there was an
3 opportunity for corroboration and to get some more
4 information from Mr. van Diepen and that was never done.
5 There is no evidence that this was done.

6 **THE COMMISSIONER:** What -- right. All
7 right.

8 **MR. ROULEAU:** All right.

9 **THE COMMISSIONER:** What duty does a civil --
10 in a civil action -- at their own peril -- at their own
11 peril; right? If they don't do that, they can be hit with
12 costs; they can be counter-claimed; the whole thing; right?

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

14 **THE COMMISSIONER:** Right? So that's at his
15 own risk. But you're comparing duty of a public
16 institution to go and do on criminal matters what this --
17 what Mr. Dunlop did in a civil action.

18 **MR. ROULEAU:** I understand.

19 **THE COMMISSIONER:** Okay.

20 **MR. ROULEAU:** Those are my questions.

21 **THE COMMISSIONER:** Thank you.

22 Mr. Scharbach.

23 **MR. SCHARBACH:** Good morning, Mr.
24 Commissioner.

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

1 **MR. SCHARBACH:** Mr. Commissioner, in the
2 interest of avoiding duplication and using our time here
3 most efficiently today, I've had some discussions with my
4 colleagues about the respective areas ---

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

6 **MR. SCHARBACH:** --- where we may cross-
7 examine. It appears that Mr. Callaghan intends to cover
8 the fairly discrete area that I was interested in, so I
9 think it may be suitable for Mr. Callaghan to go before me.

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

11 **MR. SCHARBACH:** And I'm hoping he'll allow
12 me to ask any questions that may remain after he is
13 finished.

14 **THE COMMISSIONER:** So long as it's on
15 agreement, that's fine. Thank you. Yes.

16 So, Mr. Sherriff-Scott?

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

18 **SHERRIFF-SCOTT:**

19 **MR. SHERRIFF-SCOTT:** Yes.

20 Good morning, Mr. Bourgeois.

21 **MR. BOURGEOIS:** Good morning, sir.

22 **MR. SHERRIFF-SCOTT:** How are you today?

23 **MR. BOURGEOIS:** M'hm ---

24 **MR. SHERRIFF-SCOTT:** You've been better?

25 **MR. BOURGEOIS:** I've been better, yeah.

1 **MR. SHERRIFF-SCOTT:** Okay. Well, you'll be
2 on your way today so that's some relief in any event.

3 Now, just before we start, I know this
4 happened a long time ago and I've heard you testifying over
5 the last bit about the fact that you don't have a lot of
6 memory about these events. Just remember when I'm asking
7 you questions that we're at a Commission and Inquiry and
8 not at a trial.

9 And so what we're driving for here is to
10 educate the public and to give the Commissioner the best
11 information in terms of reconstruction because sometimes
12 reconstruction is all we can do -- that we can achieve
13 obviously.

14 **MR. BOURGEOIS:** I understand that.

15 **MR. SHERRIFF-SCOTT:** Present memory is the
16 optimum but when it's not available -- I want you to work
17 with me to try and reconstruct events as best we can based
18 on the paper and the questions that I'm asking; okay?

19 **MR. BOURGEOIS:** That's fair.

20 **MR. SHERRIFF-SCOTT:** All right. So if we
21 can just begin with some issues pertaining to Mr. Leroux
22 that I want to chat with you about and what I'd consider to
23 be some fairly self-evident propositions that arise out of
24 your work in 1996 and going down to Maine and so forth.

25 So let's start with this shall we, and see

1 if we can agree on a few things?

2 MR. BOURGEOIS: Okay.

3 MR. SHERRIFF-SCOTT: First, that Mr.
4 Leroux's statements and his evidence as it came to be known
5 to you, as a drafter of the material, became, I think it
6 would not be an overstatement to say one of the main planks
7 in the pedophile allegations that you had with Mr. Dunlop?

8 MR. BOURGEOIS: No doubts.

9 MR. SHERRIFF-SCOTT: No doubt. Of course,
10 and that evidence was also the main evidence in support of
11 a general community conspiracy, leaving apart the
12 conspiracy allegations specific to the CPS and the
13 prosecution, but it was the main plank in the community
14 broader conspiracy, to use the expression, in the
15 affidavit. Is that fair?

16 MR. BOURGEOIS: It was certainly one of the
17 main piece -- witnesses, for sure.

18 MR. SHERRIFF-SCOTT: Okay. And he was in
19 fact as it turned out, as a result, a pretty significantly
20 important witness, and his evidence was pretty important in
21 the context of the civil case as you had constructed it on
22 behalf of your client?

23 MR. BOURGEOIS: Yeah, he would have been
24 important for sure.

25 MR. SHERRIFF-SCOTT: All right. And as we

1 know, the Amended Statement of Claim incorporated almost
2 all of his evidence and, at some points, quoted from it
3 liberally; fair?

4 **MR. BOURGEOIS:** Yes.

5 **MR. SHERRIFF-SCOTT:** Okay. And you
6 obviously at the time, in your practice and doing this
7 work, considered him to be an important witness and his
8 evidence to be important to the case, if I can use that
9 expression; fair?

10 **MR. BOURGEOIS:** Yes, that's fair.

11 **MR. SHERRIFF-SCOTT:** And so did your client,
12 Mr. Dunlop?

13 **MR. BOURGEOIS:** Well, I'm assuming he did.

14 **MR. SHERRIFF-SCOTT:** Well, you know he did.

15 **MR. BOURGEOIS:** Yeah, there's no doubt that
16 he would have.

17 **MR. SHERRIFF-SCOTT:** And so can we agree on
18 this as a result of what we consider to be important in
19 your mind and your client's mind at the time, that it was
20 in Mr. Dunlop's litigation interests, if I can use that
21 expression, to get all of that evidence from Mr. Leroux and
22 to have him remain available and to testify for you, if
23 necessary?

24 **MR. BOURGEOIS:** In -- I don't understand in
25 what ---

1 **MR. SHERRIFF-SCOTT:** Well, you wanted to
2 make sure you got all of that evidence from Mr. Leroux
3 because as we've just agreed and established ---

4 **MR. BOURGEOIS:** Yeah.

5 **MR. SHERRIFF-SCOTT:** --- it's important and
6 supportive of your client's case; right?

7 **MR. BOURGEOIS:** There was that and there was
8 the fear as well.

9 **MR. SHERRIFF-SCOTT:** Yes. Okay, but let's
10 -- fear, I'm not going to talk about, okay?

11 **MR. BOURGEOIS:** Okay.

12 **MR. SHERRIFF-SCOTT:** But let's just talk
13 about ---

14 **MR. BOURGEOIS:** Well, it was clearly a very
15 relevant thing; whether it was a founded fear, whether it
16 was exaggerated in his own mind or his family's mind;
17 whether it was without merit; it was there.

18 **MR. SHERRIFF-SCOTT:** Okay.

19 **MR. BOURGEOIS:** They had an absolute fear.
20 So that putting these things and documenting them was
21 important to them in terms of a protection thing for their
22 own family as well.

23 **MR. SHERRIFF-SCOTT:** Okay, so there are two
24 things that we can agree on.

25 First, in was in his litigation interests to

1 get this all wrapped up and tied down to make sure it was
2 available if a trial occurred?

3 MR. BOURGEOIS: Of course.

4 MR. SHERRIFF-SCOTT: Of course, and perhaps
5 even for negotiations if there was going to be that phase
6 of the lawsuit; correct?

7 MR. BOURGEOIS: That's always a possibility.

8 MR. SHERRIFF-SCOTT: Of course. You're
9 always going to use documentary evidence you compiled that
10 supports your case and negotiate with the opponent, if a
11 negotiation scenario for resolution is available.

12 MR. BOURGEOIS: That's the normal course of
13 litigation.

14 MR. SHERRIFF-SCOTT: Okay. So it was in his
15 interest to get all that, to tie it down, and it was also
16 in his interests for the reasons you've articulated because
17 they had a fear for their own safety.

18 MR. BOURGEOIS: Okay.

19 MR. SHERRIFF-SCOTT: Can we agree on those
20 propositions as general matters?

21 MR. BOURGEOIS: Yeah. Yes.

22 MR. SHERRIFF-SCOTT: Thank you.

23 Now, we know -- and the first day I stood up
24 -- that you sent materials to Mr. Fantino on December 18th,
25 1996, and the letter that was the covering letter, you and

1 I authenticated that as being your authorship and your
2 signature, on the first day of the proceeding where you
3 testified; correct?

4 MR. BOURGEOIS: Okay.

5 MR. SHERRIFF-SCOTT: And what your evidence
6 is, following my cross-examination on those points was, and
7 I think I say it fairly here, that you sent him -- that is
8 to say Fantino ---

9 MR. BOURGEOIS: M'hm.

10 MR. SHERRIFF-SCOTT: --- the statements that
11 you and Mr. Dunlop had collected up to that point in time,
12 i.e., December 18, 1996. Is that fair?

13 MR. BOURGEOIS: I don't remember what we
14 sent them, but we would have sent -- we obviously sent
15 Chief Fantino a package.

16 MR. SHERRIFF-SCOTT: Okay. Well, let me put
17 it this way. You would obviously have sent him Mr.
18 Leroux's stuff, m'hm?

19 MR. BOURGEOIS: Well, I can't see why it
20 would have been left out. So ---

21 MR. SHERRIFF-SCOTT: Let's work ---

22 MR. BOURGEOIS: --- I would say that I can't
23 -- it would have been done.

24 MR. SHERRIFF-SCOTT: Of course it would have
25 been done. Let's work to reconstruct this as best we can.

1 At that point, you've conceded that's one of
2 the most fundamental pieces of evidence you've gathered;
3 right? So you're not going to leave that out.

4 **MR. BOURGEOIS:** No.

5 **MR. SHERRIFF-SCOTT:** Right. Now, also by
6 that point in time, you had the December 12th, 1996
7 statement of C-8, which has been marked and put to you as
8 Exhibit 606. Do you remember that document?

9 Now, you said you didn't prepare it in
10 typing but that you had read it and was available to you.
11 Do you want to turn it up to look at it?

12 **THE COMMISSIONER:** I'm sorry. What document
13 again?

14 **MR. SHERRIFF-SCOTT:** It's 606, C-606,
15 Commissioner. It's the first of the two typed statements
16 of C-8.

17 **THE COMMISSIONER:** Right.

18 **MR. BOURGEOIS:** Yeah, I don't know one way
19 or another on this one.

20 **MR. SHERRIFF-SCOTT:** Just wait for my
21 question.

22 **MR. BOURGEOIS:** Okay.

23 **MR. SHERRIFF-SCOTT:** Do you want to have a
24 look at that and just skim through it. You've already
25 identified that you would have read it at some point and

1 were familiar with it.

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. SHERRIFF-SCOTT: Do you know the one I'm
4 talking about?

5 MR. BOURGEOIS: Not -- like, if you're
6 asking would I ---

7 MR. SHERRIFF-SCOTT: Wait until I ask.

8 MR. BOURGEOIS: Okay.

9 MR. SHERRIFF-SCOTT: I'm just asking, you've
10 perused the document?

11 MR. BOURGEOIS: Yes.

12 MR. SHERRIFF-SCOTT: For the purpose of my
13 question, sir?

14 MR. BOURGEOIS: Yes.

15 MR. SHERRIFF-SCOTT: Okay. Now, what I want
16 to suggest to you is, in addition to Mr. Leroux at this
17 juncture in time, your evidence was that you personally had
18 attended on C-8 on a number of times for oral discussions
19 in advance of December 18th. That was your evidence
20 yesterday. And that he ---

21 MR. BOURGEOIS: I -- I did speak to him at
22 some occasions, yes.

23 MR. SHERRIFF-SCOTT: Yes. And your evidence
24 was here at the Commission yesterday, was that he had told
25 you about his allegations about Mr. Leroux.

1 **MR. BOURGEOIS:** Correct.

2 **MR. SHERRIFF-SCOTT:** Okay. So the fact is
3 you were aware of his allegations historically, but the
4 statement -- leaving apart Mr. Leroux for the present
5 discussion -- of C-8 was also an important statement in
6 terms of the overall picture that you were striving to
7 understand here in the piece. Was it not?

8 **MR. BOURGEOIS:** In what sense?

9 **MR. SHERRIFF-SCOTT:** Well, in the obvious
10 sense that he's another person, and perhaps one of the most
11 important people, that corroborates the activities of the
12 whole Seguin cabal, if I can use that expression, and I
13 shouldn't use it so lightly, but I mean it in terms of a
14 general description of Mr. Seguin, his residence, the
15 goings on there and so forth. Mr. C-8 was a pretty
16 significant guy on that score, wasn't he, sir?

17 **MR. BOURGEOIS:** He was certainly an
18 important witness, yes.

19 **MR. SHERRIFF-SCOTT:** He certainly was an
20 important witness. And his statement was drawn either by
21 your client or by you and/or your client and taken, it
22 looks like, on December 12th, 1996; correct?

23 **MR. BOURGEOIS:** I can't give you any
24 evidence on who drafted it and things like that, but it
25 looks like it's the 12th of December, and C-8 signed it.

1 **MR. SHERRIFF-SCOTT:** Okay, and certainly,
2 you and your client would have had it in our around that
3 time. I mean it's the same -- let's cut to the chase here,
4 it's the same font. It looks like it's on the same
5 computer and even passages are the same as the January 23rd
6 one. So I mean, surely, this was either Mr. Dunlop's work
7 product or someone in his group of people?

8 **MR. BOURGEOIS:** What you are asking me
9 though to answer is, you know, something -- I'm asked to
10 answer what I remember. You're asking me what ---

11 **MR. SHERRIFF-SCOTT:** I'm asking you ---

12 **MR. BOURGEOIS:** --- I assume or what I think
13 happened, that's different. You're asking me what I
14 remember, and I'm telling you I don't remember that. You -
15 --

16 **MR. SHERRIFF-SCOTT:** And I'm asking you ---

17 **MR. BOURGEOIS:** You've lived this case. I
18 haven't.

19 **MR. SHERRIFF-SCOTT:** I am asking you to try
20 and be helpful to us here.

21 **THE COMMISSIONER:** Excuse me.

22 **MR. RUEL:** Two points. I just want to make
23 sure that everybody understands again that we have to be
24 mindful of naming ---

25 **THE COMMISSIONER:** Oh, no. That I know.

1 **MR. RUEL:** --- the witness with the moniker.

2 And the second ---

3 **THE COMMISSIONER:** That I know. Just a
4 minute, just a second. And the instructions are to the
5 reporters that when that happens, the transcript will not
6 reflect the name but the moniker.

7 **MR. RUEL:** The second point I would ask my
8 friend is to let the witness answer when he asks a
9 question.

10 **THE COMMISSIONER:** Mr. Sherriff-Scott?

11 **MR. SHERRIFF-SCOTT:** Yes, thank you, sir.

12 **THE COMMISSIONER:** No, no. Just -- another
13 one though is that could you just slow it down just a
14 little bit for me?

15 **MR. SHERRIFF-SCOTT:** Yes, thank you.

16 **THE COMMISSIONER:** Because I -- you're
17 cross-examining and you're quite able at doing that. It's
18 just that for the witness and I, we have to listen to the
19 question, remember what he said yesterday and then process
20 that also. You know, just to be helpful to ---

21 **MR. SHERRIFF-SCOTT:** I'll try not to be
22 carried away, sir. Thank you.

23 **THE COMMISSIONER:** No, no. You're quite --
24 no.

25 **MR. SHERRIFF-SCOTT:** It's one of my

1 failings, I find.

2 Really, what I'm trying to get you to help
3 us with, sir, and remember my discussion at the outset is I
4 want you to try and be helpful to us, so that ---

5 **MR. BOURGEOIS:** And I ---

6 **MR. SHERRIFF-SCOTT:** Just wait for my
7 question, now.

8 **THE COMMISSIONER:** Yes.

9 **MR. BOURGEOIS:** Sorry.

10 **MR. SHERRIFF-SCOTT:** If we are going to
11 operate on those rules.

12 **MR. BOURGEOIS:** Sorry, sir.

13 **MR. SHERRIFF-SCOTT:** I want to try and
14 reconstruct this as best as possible, given your failing
15 memory on these points; okay?

16 **MR. BOURGEOIS:** Yes.

17 **MR. SHERRIFF-SCOTT:** All right. So would it
18 not be fair that this is one of the documents, given that
19 it was drawn and signed six or seven days before you sent
20 your package to Mr. Fantino, and given its relative
21 importance as we've discussed to the pedophile allegations
22 and conspiracy issues pertaining to Mr. Seguin and so
23 forth, that it surely was one of the documents too that was
24 sent to Mr. Fantino. Isn't that a reasonable conclusion,
25 sir?

1 **MR. BOURGEOIS:** If you're asking me if it's
2 a reasonable conclusion, that's yes, but I can't tell you
3 one way or another.

4 **MR. SHERRIFF-SCOTT:** All right.

5 **THE COMMISSIONER:** No. We know that you
6 can't tell us. What the gentleman is simply asking you is,
7 is it a reasonable ---

8 **MR. BOURGEOIS:** Yes.

9 **THE COMMISSIONER:** --- conclusion based on
10 what's in that affidavit that you would have sent that ---

11 **MR. BOURGEOIS:** Yes, that's a reasonable
12 conclusion.

13 **THE COMMISSIONER:** There you go.

14 **MR. SHERRIFF-SCOTT:** And let me take it
15 further. At the time, if you were cobbling together
16 materials, in particular statements that you had taken in
17 your evidence up to that time, surely this would have been
18 an important one that, looking at it in retrospect, you
19 would have wanted to have included in your package to Chief
20 Fantino?

21 **MR. BOURGEOIS:** Looking at it in retrospect,
22 yes.

23 **MR. SHERRIFF-SCOTT:** Okay. Exhibit 729,
24 please.

25 **THE COMMISSIONER:** There you go.

1 **MR. SHERRIFF-SCOTT:** Now, I am advised, sir,
2 for your purposes, this is the Table of Contents to which
3 reference was made yesterday. Do you remember a lawyer
4 putting this to you?

5 **MR. BOURGEOIS:** Yes.

6 **MR. SHERRIFF-SCOTT:** Okay. I'm advised that
7 it will be Chief Fantino's evidence that this was the Table
8 of Contents of documents which you sent to him December
9 18th. And assuming that would be correct, and did you --
10 do you remember preparing a package that would've had some
11 directive in terms of contents, like a Table of Contents?

12 **MR. BOURGEOIS:** No, I don't.

13 **MR. SHERRIFF-SCOTT:** You don't remember
14 anything?

15 **MR. BOURGEOIS:** Not preparing it, no.

16 **MR. SHERRIFF-SCOTT:** Okay. Assuming this is
17 it, it seems to indicate that the importance -- or the
18 content here is there's Mr. Leroux's statements, and
19 following that at number 8 is C-8. And you have no memory
20 of that?

21 **MR. BOURGEOIS:** No.

22 **MR. SHERRIFF-SCOTT:** No reason to disagree
23 if it's Mr. Fantino's evidence that this was part of your
24 package that he got?

25 **MR. BOURGEOIS:** No.

1 **MR. SHERRIFF-SCOTT:** Okay. Would you agree
2 with me that's it's likely, sir, that you sent that
3 statement in your package of materials, given its
4 importance and what we've discussed?

5 **MR. BOURGEOIS:** Likely.

6 **MR. SHERRIFF-SCOTT:** Okay. Now, the
7 statement of Mr. C-8 on December 12th of 1996, Exhibit 606,
8 if you can turn that back up, sir?
9 And I just want you to scan that again, sir, before I ask
10 you about it. Just look at it from the point of view of
11 getting a flavour of the subjects that are raised in it,
12 please. Tell me when you're ready.

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

14 **MR. SHERRIFF-SCOTT:** Okay?

15 **MR. BOURGEOIS:** Yeah.

16 **MR. SHERRIFF-SCOTT:** Okay. Can I fairly say
17 that what appears to be in this document, from the point of
18 view of substance, is that on the first page he records his
19 allegations of his own victimization and abuse. Is that
20 fair?

21 **MR. BOURGEOIS:** Yes.

22 **MR. SHERRIFF-SCOTT:** And then on the pages
23 that follow he deals with the broader conspiracy type
24 issues. Fair enough?

25 **MR. BOURGEOIS:** Yes.

1 **MR. SHERRIFF-SCOTT:** And may I take it that,
2 assuming that we agree that's it's likely this would've
3 been sent by you on behalf of Mr. Dunlop, that one of the
4 purposes at least of sending this statement to Chief
5 Fantino was to report, essentially, the allegations of
6 abuse by C-8, and hopefully thus to stimulate some sort of
7 investigation of that among other things; make sense?

8 **MR. BOURGEOIS:** What do you mean, "Amongst
9 other things"?

10 **MR. SHERRIFF-SCOTT:** Well, there are other
11 issues in there, right, not just his own abuse. That was
12 my question. So let's break it up a bit.

13 Since we agree the content pertains, number
14 one, to his own abuse and number two, to the broader
15 conspiracy type issues, surely we can agree that sending
16 this to Fantino, assuming that's likely what happened, you
17 would want to have stimulated some sort of investigation of
18 a report of these allegations by authorities? Fair enough?
19 Why is that so hard to understand?

20 **MR. BOURGEOIS:** It's -- it's -- there's no
21 doubt that the whole reason that we would've contacted
22 Chief Fantino was for that anyways.

23 **MR. SHERRIFF-SCOTT:** Exactly right. This
24 man, among other men, whose statements you would've
25 enclosed, had specific abuse allegations and because if I

1 may say of a concern about the local authorities, you were
2 sending them off to another authority to stimulate an
3 investigation of this man's complaint, among others, and
4 among other issues that arose. Is that a fair summary?

5 **MR. BOURGEOIS:** I think a fair summary was
6 for -- to get guidance and direction, as from -- from ---

7 **MR. SHERRIFF-SCOTT:** You were not doing this
8 to stimulate something?

9 **MR. BOURGEOIS:** Well, that would've been up
10 to him to give guidance and direction in ---

11 **MR. SHERRIFF-SCOTT:** Was it not your
12 objective to cause that to happen or were you just doing it
13 for guidance and direction? Surely, we can agree on this
14 basic proposition. You were sending this material for the
15 purpose of stimulating some institutional response,
16 particularly ---

17 **MR. BOURGEOIS:** Well ---

18 **MR. SHERRIFF-SCOTT:** --- given your lack of
19 trust for the local authorities. I don't understand ---

20 **MR. BOURGEOIS:** My ---

21 **MR. SHERRIFF-SCOTT:** --- why that's --

22 **MR. BOURGEOIS:** --- my lack of trust?

23 **MR. SHERRIFF-SCOTT:** No, your client's, sir.

24 **MR. BOURGEOIS:** Oh, okay.

25 **MR. SHERRIFF-SCOTT:** Well, why would -- you

1 sent the material to Fantino. The rationale, sir, to send
2 it to Fantino was because of distrust of local authorities.

3 **MR. BOURGEOIS:** Well, it was -- it was to
4 get direction on what to do with this stuff because, as
5 you had indicated, there was -- some of the information was
6 -- getting out was into the criminal realm as well.

7 **MR. SHERRIFF-SCOTT:** Really, sir, please.
8 The CPS is a local police force and you're not sending to
9 them for local -- for direction from the local authority
10 that has jurisdiction possibly in the matter. You're
11 sending it to some police force which doesn't even have
12 jurisdiction. I don't understand why we have to argue
13 about this. Surely, you agree with me?

14 **MR. BOURGEOIS:** About what though?

15 **MR. SHERRIFF-SCOTT:** That you were sending
16 it to Chief Fantino because of a distrust of local
17 authorities and what they might do.

18 **MR. BOURGEOIS:** Well, in the circumstances,
19 given what had already occurred, it would've -- had to have
20 been reviewed by a third-party authority anyways.

21 **MR. SHERRIFF-SCOTT:** Well, there you go, as
22 the Commissioner would say.

23 And the reason for that is because you were
24 concerned about local authorities; right?

25 **MR. BOURGEOIS:** I'm sure that was part of

1 the equation.

2 **MR. SHERRIFF-SCOTT:** Well, of course, it
3 was. And by sending it to Fantino -- Mr. Fantino, you
4 didn't want just advice and direction, you wanted something
5 done?

6 **MR. BOURGEOIS:** Well, my client might have
7 wanted something done.

8 **MR. SHERRIFF-SCOTT:** Of course, he did.
9 And, thus, he asked you to send the letter to get something
10 done, in part at least. Can't we agree on that much?

11 **MR. BOURGEOIS:** There's no doubt it was sent
12 to Mr. Fantino to have this matter reviewed, and where it
13 went after that would've been up to him.

14 **MR. SHERRIFF-SCOTT:** Yes, but you wanted an
15 investigation of these allegations by these men; right?

16 **MR. BOURGEOIS:** Yeah, that was why we sent
17 it to him. Yes.

18 **MR. SHERRIFF-SCOTT:** You weren't filing
19 their complaints with the local cops, you were filing their
20 complaints with Fantino to achieve that by another avenue?

21 **MR. BOURGEOIS:** Yes.

22 **MR. SHERRIFF-SCOTT:** Right. Okay. So we
23 got to the point we need to be.

24 All right. Now -- and you wanted by sending
25 this package to be assistance to the authorities, whoever

1 may end up with the materials. Obviously, you wanted to
2 give them the best information you could give them;
3 correct?

4 **MR. BOURGEOIS:** I sent him whatever we had.

5 **MR. SHERRIFF-SCOTT:** And you wanted to be
6 helpful. You didn't want to be a hindrance, did you?

7 **MR. BOURGEOIS:** I can't remember whether I
8 wanted to be helpful or not. I mean ---

9 **MR. SHERRIFF-SCOTT:** You can't remember if
10 you wanted to be helpful. All right, sir, if that's your
11 evidence.

12 **MR. BOURGEOIS:** I mean, I don't know why I
13 wouldn't want to be helpful. But you're asking me to
14 testify to whether I wanted to be helpful. I can't
15 remember that one way or another.

16 **MR. SHERRIFF-SCOTT:** Okay. All right then.
17 Now, in December of 1996, a short time after
18 this, we know that you would've been called by Mr. C-8
19 pertaining to his own matter; that is to say the charge of
20 sexual assault that he was facing; correct?

21 **MR. BOURGEOIS:** I don't know if he called
22 me, but at some point I obviously spoke to him about it,
23 yes.

24 **MR. SHERRIFF-SCOTT:** Right. And I think
25 what you said the other day -- and I wrote it down so I

1 could make sure that I got it right:

2 "C-8 was charged with a serious matter
3 and he wanted to deal with it."

4 That's what you said. Is that consistent
5 with your recollection, sir?

6 **MR. BOURGEOIS:** Yeah.

7 **MR. SHERRIFF-SCOTT:** Okay. Now, you know
8 from acting for C-8 in this matter, that this matter, for
9 reasons which are obvious, caused a great deal of turmoil
10 within his own family?

11 **MR. BOURGEOIS:** Yes.

12 **MR. SHERRIFF-SCOTT:** And within his own
13 mind?

14 **MR. BOURGEOIS:** I'm sure.

15 **MR. SHERRIFF-SCOTT:** And when you said he
16 wanted to deal with it, he was telling you right away he
17 wanted to plead guilty. He didn't want to fight this?

18 **MR. BOURGEOIS:** I'm sure that was his
19 position.

20 **MR. SHERRIFF-SCOTT:** Well, it was his
21 position right away, wasn't it? That's what he wanted. He
22 wanted to get on with it; right?

23 **MR. BOURGEOIS:** Yes.

24 **MR. SHERRIFF-SCOTT:** Okay. So he wanted to
25 get on with it and he retained you right away, and so the

1 strategy, if I can use that expression -- and let me just
2 give you a parenthetical aside before I ask these
3 questions.

4 Your strategy, as it played out, was a good
5 one. You used factors which played out in terms of
6 mitigating his sentence, and I don't mean played out in a
7 pejorative way. Within the available options to an
8 advocate, you picked mitigating factors that you advanced
9 before the court and they were successful, and I'm not
10 criticizing you for that; understand?

11 **MR. BOURGEOIS:** Yes.

12 **MR. SHERRIFF-SCOTT:** Okay. So now I'm going
13 to ask you some questions about that, but it's not to say -
14 - and I don't care about what C-8 said or didn't say in
15 terms of what was true and false, all right? What I want
16 to get at is what happened.

17 **MR. BOURGEOIS:** Okay.

18 **MR. SHERRIFF-SCOTT:** So the strategy was to
19 put his past abuse -- first of all, having told you that he
20 wanted to plead this or he didn't want to contest it,
21 basically, that right away, you would have focused, as an
22 advocate, as was your duty, on how you were going to deal
23 with this at the end of the -- at the end. In other words,
24 how you were going to deal with this guy on the sentencing
25 issue because viability, to use the civil law expression,

1 or the culpability was going to be established. What
2 you're going to have to deal with now as his lawyer is
3 sentence; fair?

4 **MR. BOURGEOIS:** Fair.

5 **MR. SHERRIFF-SCOTT:** Okay. And the strategy
6 as an advocate that you developed with your client, and
7 particularly, I take it, because you had been involved in
8 dealing with this historical abuse package was, "I'm going
9 to place this man's history of abuse before the court and
10 I'm also going to argue that the first available
11 opportunity for a plea was taken advantage of". Both
12 mitigating factors; right?

13 **MR. BOURGEOIS:** Right.

14 **MR. SHERRIFF-SCOTT:** That's in fact what you
15 ended up doing?

16 **MR. BOURGEOIS:** Yes.

17 **MR. SHERRIFF-SCOTT:** Okay. Now, what I want
18 to do is reconstruct a little chronology with the documents
19 here, and it will take just a few minutes.

20 First, I want to refer you to the Crown
21 Brief and some notes of Officer Genier. Your recollection
22 is he was the arresting officer; correct? Genier? I can
23 put it to you, but is that your recollection?

24 **MR. BOURGEOIS:** It's -- I don't have that
25 recollection one way or another, but I accept if you say he

1 was the arresting officer. There's no reason ---

2 MR. SHERRIFF-SCOTT: All right.

3 MR. BOURGEOIS: --- to dispute that.

4 MR. SHERRIFF-SCOTT: The document is 116282.

5 THE COMMISSIONER: That's the Crown Brief?

6 MR. SHERRIFF-SCOTT: That's the Crown Brief,
7 and I don't think we marked it, sir, but I may just have
8 missed the exhibit number.

9 THE COMMISSIONER: Well, that's the same
10 question I have because it's on a legal brief?

11 MR. SHERRIFF-SCOTT: Yeah, and it didn't
12 have the Bates pages copied onto it and so -- but I went
13 through the database and cross-referenced the Bates pages,
14 so if we use it on the screen it might be easier.

15 THE COMMISSIONER: No, but I'm -- it's
16 important that we nail down whether or not it was made an
17 exhibit yesterday.

18 MR. SHERRIFF-SCOTT: It's my recollection it
19 was not, so perhaps it's the time to do that.

20 THE COMMISSIONER: Yes.

21 THE REGISTRAR: It was Exhibit 739.

22 MR. SHERRIFF-SCOTT: Oh, there we go.

23 THE COMMISSIONER: Seven-thirty-nine (739)?

24 THE REGISTRAR: Yes.

25 THE COMMISSIONER: Okay. It was reduced.

1 **MR. SHERRIFF-SCOTT:** Commissioner, it might
2 be easier for the witness if I used the Bates pages and he
3 can see following on the screen.

4 **THE COMMISSIONER:** Sure. No, that's fine.
5 That's fair.

6 So, sir, when we're talking about Bates
7 pages, those are the numbers on the top left-hand side.
8 They're small, on the top left-hand side.

9 **MR. BOURGEOIS:** Yes, top left. Okay.

10 **THE COMMISSIONER:** That's what we call Bates
11 pages. So because the pages aren't numbered, we're going
12 to use those numbers.

13 **MR. BOURGEOIS:** Sure.

14 **MR. SHERRIFF-SCOTT:** Does his copy have that
15 in the binder now?

16 **THE COMMISSIONER:** Of course.

17 **MR. BOURGEOIS:** Yes, they do, sir.

18 **THE COMMISSIONER:** What happened, it was an
19 exhibit and it was reduced ---

20 **MR. SHERRIFF-SCOTT:** Okay.

21 **THE COMMISSIONER:** --- so that it could be
22 put in binders.

23 **MR. SHERRIFF-SCOTT:** Yes, it looked like the
24 copying chopped off the top there, sir.

25 **THE COMMISSIONER:** Okay.

1 **MR. SHERRIFF-SCOTT:** Okay. So Mr. Neville,
2 remember, took you through the information that was laid in
3 the release document and the conditions, et cetera. You
4 remember that yesterday?

5 **MR. BOURGEOIS:** Yes.

6 **MR. SHERRIFF-SCOTT:** Okay. And those
7 indicated that the arresting officer was Genier; okay?

8 **MR. BOURGEOIS:** Okay.

9 **MR. SHERRIFF-SCOTT:** We can take that as a
10 given?

11 **MR. BOURGEOIS:** I see that here in the
12 document.

13 **MR. SHERRIFF-SCOTT:** Right.

14 And the reason I want to try and refresh
15 your memory on Officer Genier is that it appears from the
16 record that you had some discussions with him that
17 followed; okay?

18 **MR. BOURGEOIS:** Okay.

19 **MR. SHERRIFF-SCOTT:** Now, if we can -- what
20 I want to do is go to his notes here because he talks about
21 speaking to you on the phone, and I just want to confirm
22 the chronology.

23 So the Bates page I want to go to, looking
24 in the upper left corner, is 1102486. Do you see that
25 page?

1 **MR. BOURGEOIS:** Yes, I do.

2 **MR. SHERRIFF-SCOTT:** Now, you look up in the
3 upper middle you'll see D.C. Don Genier. Do you see that,
4 sir?

5 **MR. BOURGEOIS:** Yeah.

6 **MR. SHERRIFF-SCOTT:** This is the Crown
7 Brief. You would have got disclosure of this as counsel at
8 some point, the Crown Brief?

9 **MR. BOURGEOIS:** I'm sure I would have, yes.

10 **MR. SHERRIFF-SCOTT:** Okay. So if we look at
11 the chronology in the Genier notes, if we can turn to --
12 just looking at the last three digits of the Bates page,
13 488, do you see that page? And down at the bottom, 18:34
14 "C-8 called"? Are you with me?

15 **MR. BOURGEOIS:** Yes.

16 **MR. SHERRIFF-SCOTT:** Okay. Just to refresh
17 your memory, there was an issue about -- sorry, there was
18 an issue about C-8 having some firearms. Do you remember
19 that as part of the piece initially?

20 **MR. BOURGEOIS:** I didn't really. I only
21 remembered the other portion of it.

22 **MR. SHERRIFF-SCOTT:** Okay.

23 **MR. BOURGEOIS:** And I don't really remember
24 ---

25 **MR. SHERRIFF-SCOTT:** Okay. Well, let's flip

1 forward then two pages to 490 which has that entry "THU, 19
2 December". Do you see that entry in the middle -- it's
3 towards the bottom third of the page. Do you see the entry
4 where there's a break in the page and it's got a "Thursday,
5 19 December '96"?

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

7 **MR. SHERRIFF-SCOTT:** Okay. So I just want
8 to orient you in terms of days. So that's the date, and
9 the next page the officer is recording a conversation with
10 you and C-8, okay?

11 **MR. BOURGEOIS:** Okay.

12 **THE COMMISSIONER:** Just to help out though,
13 Mr. Bourgeois, if you're having trouble reading it, the
14 screen shows it up a lot better than -- okay. So what page
15 were you on now?

16 **MR. SHERRIFF-SCOTT:** Four-nine-one (491).

17 **THE COMMISSIONER:** Four-nine-one (491).

18 Okay. Next page.

19 **MR. SHERRIFF-SCOTT:** And if we could scroll
20 to the bottom third of the page?

21 **THE COMMISSIONER:** Yes. Okay.

22 **MR. SHERRIFF-SCOTT:** A little higher. Thank
23 you. Yes, that's good.

24 Now, sir, you'll see that about 10 or 12
25 lines up it says, "C-8 stated" in the right-hand margin, to

1 start our -- right there where the cursor is on the screen.
2 Do you see the cursor arrow on the right-hand margin of the
3 screen?

4 MR. BOURGEOIS: Yeah.

5 MR. SHERRIFF-SCOTT: Okay. Just follow
6 along from there.

7 "C-8 stated he has spoken to his lawyer
8 and chooses not to speak of the
9 incident at this time. I advised him I
10 would attend in 20 minutes, et cetera."

11 Then it looks like the officer goes to the
12 residence of C-8 and says:

13 "C-8 passed phoned to me and stated,
14 'My lawyer wants to speak to me'. I
15 got on phone and asked who he was. He
16 stated Charlie Bourgeois and I
17 identified myself. He said he would be
18 in area tomorrow and if we would wait
19 then to talk to C-8. He said C-8 is
20 like a pebble of sand in the ocean. I
21 advised Bourgeois that I finally
22 located C-8 and we're dealing with this
23 right now. Bourgeois was becoming
24 louder and stated he was speaking with
25 [it looks like] Staff Sergeant Lyloff

1 and it was okay for us to wait 'til
2 tomorrow before interviewing C-8. I
3 advised Bourgeois that Lyloff was not
4 familiar totally with the case and that
5 because of certain circumstances, he
6 will be dealt with today for the
7 August, 1996 incident."

8 Which is the incident in question of sexual assault,
9 correct? That's the August 1996 incident for which you
10 were retained, sir?

11 **MR. BOURGEOIS:** Yeah.

12 **MR. SHERRIFF-SCOTT:** Yeah, okay.

13 "Bourgeois then asked what police are
14 doing about the pedophiles in the area
15 and asked if I was taking good notes
16 because there's going to be a public
17 inquiry and I'd better have good notes.
18 Bourgeois now was talking louder and
19 began to be ignorant so I told him 'C-8
20 will be arrested now and taken to [it
21 looks like] detachment, where he would
22 call him back'. I passed the phone to
23 C-8."

24 Just stopping there, sir, would it be fair
25 that you had a discussion with Officer Genier December 19

1 on the phone when your client was being taken into custody
2 and that this might have reflected it?

3 **MR. BOURGEOIS:** I can't -- I can't help you
4 one way or another.

5 **MR. SHERRIFF-SCOTT:** You can't help us one
6 way or another? In other words, you can't help us? You
7 couldn't say that this didn't happen, et cetera?

8 **MR. BOURGEOIS:** Correct.

9 **MR. SHERRIFF-SCOTT:** Right. You have no
10 information to contradict Officer Genier on this material?

11 **MR. BOURGEOIS:** I don't remember that
12 conversation.

13 **MR. SHERRIFF-SCOTT:** Are you saying it
14 didn't happen or you just don't have any information?

15 **MR. BOURGEOIS:** No, I'm not saying it didn't
16 happen.

17 **MR. SHERRIFF-SCOTT:** Okay. And you can't
18 contradict him?

19 **MR. BOURGEOIS:** Correct.

20 **MR. SHERRIFF-SCOTT:** All right.

21 Now, down at the bottom of the page it says:

22 "On the way to Lancaster, I told C-8
23 that..."

24 **THE COMMISSIONER:** I'm sorry ---

25 **MR. SHERRIFF-SCOTT:** On the very bottom of

1 the page, Commissioner, last two lines.

2 **THE COMMISSIONER:** Right. Right. Okay.

3 **MR. SHERRIFF-SCOTT:** "On the way to
4 Lancaster, I told C-8 that perhaps his
5 lawyer did not understand..."

6 Over the top of the next page, Mr. Bourgeois:

7 "...the entire story. Today we are
8 dealing with the sexual assault on the
9 family member, the threats C-8 made on
10 his life, the guns we had seized. I
11 told C-8 Bourgeois is more than welcome
12 to present during the interview ---

13 **THE COMMISSIONER:** --- "To be present".

14 **MR. SHERIFF-SCOTT:** "To be present", sorry:
15 " ...during the interview that is
16 related to C-8's abuse in his past, but
17 that right now, C-8 would be given an
18 opportunity to tell us his side of the
19 story if he chooses and would have to
20 be released before a Justice of the
21 Peace, etc."

22 And then if you look down towards the bottom
23 of that page, while he's in custody without you present, it
24 says:

25 "C-8 is remaining silent on allegations

1 of assault towards the victim."

2 Okay? Now, in terms of orienting you, your
3 advice is a standard matter before you could see your
4 client would have been, "Silence is your constitutional
5 right; don't say anything until I get there"?

6 **MR. BOURGEOIS:** That would normally be the
7 advice you would give.

8 **MR. SHERIFF-SCOTT:** Well, you know that he
9 had been taken into custody, right? You're not there,
10 they're refusing to let you -- to wait for you to come --
11 so mum's the word until I get there. That's prudent
12 practice, isn't it?

13 **MR. BOURGEOIS:** Yes.

14 **MR. SHERIFF-SCOTT:** And that's the practice
15 you would have followed, surely. You didn't know what he
16 was going to say.

17 **MR. BOURGEOIS:** I -- I don't remember it but
18 that's likely what I would have followed.

19 **MR. SHERIFF-SCOTT:** Yeah, sure. Okay, so
20 that -- and we know from the documents that we looked at as
21 well that C-8 was released from custody on his undertaking
22 and that the first appearance out of custody was January
23 23, '97 that followed; correct?

24 **MR. BOURGEOIS:** Correct.

25 **MR. SHERIFF-SCOTT:** We've agreed on that

1 much. Now, just to just complete the little chronology,
2 there is a further note of the officer in question, and
3 that is to say the arresting officer, Genier, which is
4 Document 117668.

5 **THE COMMISSIONER:** That's a new one, Mr. ---

6 **MR. SHERIFF-SCOTT:** That's a new one you
7 won't have in your binder, but there are copies here for
8 the Commission and I believe copies have been distributed.
9 Miss Lahaie will be using these in a more elaborate way.
10 I'm only referring to one reference ---

11 **THE COMMISSIONER:** And what is this
12 document?

13 **MR. SHERIFF-SCOTT:** These are the further
14 notes of Detective Constable Genier, sir.

15 **THE COMMISSIONER:** So they must be in the
16 database.

17 **MR. SHERIFF-SCOTT:** They're in the database,
18 yes, so I -- just the witness -- I've highlighted the
19 section that I want the witness to refer to. It's only
20 three lines. If I can hand it to the witness, if that's
21 permissible?

22 **THE COMMISSIONER:** Sure.

23 **MR. BOURGEOIS:** Sure.

24 **THE COMMISSIONER:** Madam Clerk, do you have
25 -- pardon me? It's on the screen, yes, okay. I need

1 copies. So this will be number?

2 **THE REGISTRAR:** Exhibit 740.

3 **THE COMMISSIONER:** Exhibit 740 is extracts
4 of notes of Detective Constable Genier. Okay.

5 **---EXHIBIT NO./PIÈCE NO P-740:**

6 (117668 1112093-95) Notes of Det Cst.

7 Genier dated from 21 Jan 97 to 27 Jan 97

8 **MR. SHERIFF-SCOTT:** There are a couple of
9 pages there, Commissioner. And I am interested in the
10 January 22nd, 1997 entry which starts about a quarter of the
11 way in the first page.

12 And, in particular, Mr. Bourgeois, what I
13 want to draw your attention to is right towards the bottom
14 of the page with the entry of time in the left marginal
15 note, 15:24. Are you with me?

16 **MR. BOURGEOIS:** Yes.

17 **MR. SHERIFF-SCOTT:** Okay.

18 "Received call from Charles Bourgeois."

19 Now in the chronology, we've agreed that
20 you're retained, you obviously have some interface with the
21 officer and your client on the arresting day, and that your
22 client is telling you he wants to plea. He wants to settle
23 his family problems because this is an emotional roller-
24 coaster for him. We've agreed on that much.

25 And here now we know that there's a court

1 appearance on the 23rd, and the day before you're calling
2 the officer -- or so it appears:

3 "I received calls from Charles
4 Bourgeois lawyer for C-8. He will
5 contact me tomorrow morning after court
6 to speak of C-8's past problems with
7 Lalonde."

8 You see that, sir?

9 **MR. BOURGEOIS:** Yeah.

10 **MR. SHERIFF-SCOTT:** Again, I anticipate
11 you'll tell me you have no present memory of this, but
12 would you have anything that would suggest that Officer
13 Genier was wrong in recording this event?

14 **MR. BOURGEOIS:** Yeah, I can't help you one
15 way or another, sir, in that regard.

16 **MR. SHERIFF-SCOTT:** Okay. We know that you
17 did go to see the officer the next day with your client in
18 tow and so someone would have had to set that up, it didn't
19 happen by magic. So I guess it would be likely that you
20 had some contact with Genier in advance of the 23rd to
21 establish that that was going to happen. Is that fair
22 reconstruction?

23 **MR. BOURGEOIS:** It's likely.

24 **MR. SHERIFF-SCOTT:** Okay. All right.

25 And so this is consistent with your advocate

1 strategy that bore such fruit at the end of the day. You
2 want to get the past into the picture here so that you can
3 deal with, you know, mitigating this guy's sentence, and
4 which is ultimately what you did in terms of your
5 submissions before the court; correct?

6 **MR. SHERIFF-SCOTT:** I am not criticizing ---

7 **MR. BOURGEOIS:** No, I am not. I'm just
8 saying that's likely the -- the meeting was set ---

9 **MR. SHERIFF-SCOTT:** Well, I put it this way.
10 At this point, knowing that your client's going to plead,
11 it's your duty as an advocate to get the best sentence you
12 can. You want to get all the information to the Crown
13 through the police as fast as possible so that you can make
14 these submissions. Is that a reasonable statement?

15 **MR. BOURGEOIS:** It's a reasonable statement.

16 **MR. SHERIFF-SCOTT:** Okay. And it's likely
17 what happened, isn't it?

18 **MR. BOURGEOIS:** Likely.

19 **MR. SHERIFF-SCOTT:** Okay. And so then we
20 know that you are in Cornwall that night it looks like,
21 from what we hear from C-8; that you stayed at Mr. Dunlop's
22 house and that happened from time-to-time in your role as
23 his counsel, you'd come and stay?

24 **MR. BOURGEOIS:** Yeah, because of their
25 budget, yeah.

1 **MR. SHERIFF-SCOTT:** Yeah, sure, it'd save
2 them money.

3 And the next morning, you have no present
4 memory, but it's possible you went to court with your
5 client and thence on to Orillia or Lancaster, or wherever
6 it was, for the statements to be given; correct?

7 **MR. BOURGEOIS:** Possible.

8 **MR. SHERIFF-SCOTT:** All right. Well likely,
9 isn't it? Can we not agree on that?

10 **MR. BOURGEOIS:** Well, I definitely went to
11 the police station after that.

12 **MR. SHERIFF-SCOTT:** You wouldn't hang around
13 for nothing and you knew your client had a court
14 appearance; you're going to be doing one. It's likely you
15 did both?

16 **MR. BOURGEOIS:** Likely, yeah.

17 **MR. SHERIFF-SCOTT:** Okay, fair enough.

18 Now, so we know also -- and I -- just to
19 refresh your memory on your evidence, you said yesterday or
20 when you were being examined in-chief with Commission
21 counsel, that the usual process that was followed, not that
22 you followed necessarily, but that was followed in terms of
23 your awareness when Mr. Dunlop had statements typed up, was
24 that a statement was taken either orally or somebody wrote
25 something out and then it was reduced to a typed form.

1 That was your indication to us when you were testifying in-
2 chief that that was the sort of practice that Mr. Dunlop
3 followed?

4 **MR. BOURGEOIS:** I wouldn't say there was any
5 real practice.

6 **MR. SHERIFF-SCOTT:** Otherwise, you have to
7 sort of sit there in dictation; right?

8 **MR. BOURGEOIS:** Yeah, I don't like -- to say
9 that there was a steady way that it was done every time, I
10 don't think so. It wasn't that organized ---

11 **MR. SHERIFF-SCOTT:** When you had a typed
12 document is what I am talking about, at the end of the ---

13 **MR. BOURGEOIS:** Sometimes it was typed,
14 sometimes it was handwritten.

15 **MR. SHERIFF-SCOTT:** But I'm talking about --
16 now we're going to come to the 23rd, okay ---

17 **MR. BOURGEOIS:** Yes.

18 **MR. SHERIFF-SCOTT:** --- which is Exhibit
19 610. And that's the statement that was prepared and signed
20 on that date by C-8.

21 **MR. BOURGEOIS:** Okay.

22 **MR. SHERIFF-SCOTT:** Okay? What I'm going to
23 suggest to you based on your evidence to Commission counsel
24 in-chief, is that you would have had some form of aide-
25 mémoire or something, or your client would, before this was

1 reduced to a typed form, which I took from your evidence
2 was reasonably consistent with how things were done, in a
3 general way, if I can use that expression. Is that fair?

4 **MR. BOURGEOIS:** Yeah. If you're asking me
5 that's likely how it happened, I would agree with you.

6 **MR. SHERIFF-SCOTT:** Okay. Well, C-8
7 testified that he had a sort of handwritten thing that he
8 prepared and was given to Mr. Dunlop and that it was
9 reduced to a typed form and that C-8 threw the thing away
10 because it was his hand --- would that be consistent with
11 how things happened from time-to-time?

12 **MR. BOURGEOIS:** That could be how it
13 happened on that occasion, sir, I can't deny that. I just
14 don't remember.

15 **MR. SHERIFF-SCOTT:** Now, we know that C-8's
16 evidence is that he went with Mr. Dunlop to the neighbour
17 and you agree the neighbour's computer was used?

18 **MR. BOURGEOIS:** Yes.

19 **MR. SHERIFF-SCOTT:** For this very purpose?

20 **MR. BOURGEOIS:** Yes, on a few times, I don't
21 know how many, but ---

22 **MR. SHERIFF-SCOTT:** Okay. And we do know
23 that you went that day to the OPP detachment with Exhibit
24 610 because it is read in to the record, in effect; right?

25 **MR. BOURGEOIS:** Okay.

1 **MR. SHERIFF-SCOTT:** Is that fair, sir?

2 **MR. BOURGEOIS:** If it was read in the
3 record, I'm sure he had it.

4 **MR. SHERIFF-SCOTT:** Okay. Well, I'm sure
5 you had it and brought it with your client?

6 **MR. BOURGEOIS:** Right.

7 **MR. SHERIFF-SCOTT:** Right. Okay. And it
8 was -- it looks like it was constructed on that day. And I
9 think we can fairly agree, based on what's followed, that
10 at least one of your purposes was to rapidly get before the
11 crown, through the arresting officer, Genier, because
12 that's who gave the interview, the relevant evidence
13 pertaining to sentencing in part?

14 **MR. BOURGEOIS:** Yes, sir.

15 **MR. SHERIFF-SCOTT:** All right. Now -- and
16 you agree with me that you didn't type this statement up,
17 610?

18 **MR. BOURGEOIS:** I don't think so, no.

19 **MR. SHERIFF-SCOTT:** So Mr. Dunlop would be
20 the one who typed it up?

21 **MR. BOURGEOIS:** Again, I don't remember who
22 typed it up, but ---

23 **MR. SHERIFF-SCOTT:** It wouldn't be anybody
24 else. You didn't have a secretary up here in Cornwall.
25 Neither did Mr. Dunlop.

1 **MR. BOURGEOIS:** It could have been Mrs.
2 Dunlop.

3 **MR. SHERRIFF-SCOTT:** Okay. Mr. Dunlop, Mrs.
4 Dunlop.

5 **MR. BOURGEOIS:** Maybe the neighbour helped,
6 I don't know, but it would have been someone.

7 **MR. SHERRIFF-SCOTT:** Someone in the Dunlop
8 circle of people who either were being represented by you
9 or were reflective of that interest; is that fair?

10 **MR. BOURGEOIS:** Likely.

11 **MR. SHERRIFF-SCOTT:** Okay. Now, did you or
12 would you have advised C-8 that he ought not to go with Mr.
13 Dunlop to prepare such a statement?

14 **MR. BOURGEOIS:** I can't remember one way or
15 another, sir.

16 **MR. SHERRIFF-SCOTT:** You'll see my -- you'll
17 apprehend my point ---

18 **THE COMMISSIONER:** No, it's just I didn't
19 hear.

20 **MR. SHERRIFF-SCOTT:** Oh, I'm sorry. I asked
21 the witness if he would have advised C-8 not to go with Mr.
22 Dunlop for the purpose of preparing Exhibit 610, and he
23 said "I have no ---

24 **MR. BOURGEOIS:** I don't remember one way or
25 another what I would have told him. I don't remember any

1 specifics.

2 **MR. SHERRIFF-SCOTT:** Did you tell or would
3 you have told C-8 that it was in Mr. Dunlop's litigation
4 interests that C-8 should not criticize or undermine the
5 credibility of Ron Leroux?

6 **MR. BOURGEOIS:** No, I don't think so.

7 **MR. SHERRIFF-SCOTT:** Did you tell C-8 that
8 perhaps Mr. Dunlop would not want C-8 to put in that
9 statement, and it did not appear there, C-8's own
10 allegations about Mr. Leroux?

11 **MR. BOURGEOIS:** I can't remember one way or
12 another, but I don't think so.

13 **MR. SHERRIFF-SCOTT:** Having regard to the
14 strategy that you decided to adopt in terms of sentencing,
15 can you tell the Commissioner why, being aware as you've
16 testified about C-8's allegations of abuse, that Mr. Dunlop
17 and/or you, when you got the statement, would not have
18 advised your client to put in approximately 12 years of
19 abuse at the hands of Mr. Leroux?

20 **MR. BOURGEOIS:** I can't help you one way or
21 another on that.

22 **MR. SHERRIFF-SCOTT:** Would you not have
23 considered your duty as counsel to have put the best and
24 most favourable case forward on behalf of your client C-8
25 to ensure the best possible mitigated sentence?

1 **MR. BOURGEOIS:** I'm sure that happened.

2 **MR. SHERRIFF-SCOTT:** I'm sure it didn't
3 happen in this statement, and I'm asking you why it was not
4 in the statement if ---

5 **MR. BOURGEOIS:** In what statement, sir?

6 **MR. SHERRIFF-SCOTT:** In 610, sir. There is
7 no mention of C-8's allegations about Mr. Leroux in there.

8 **MR. BOURGEOIS:** Well, I can't help you with
9 why it's not in there.

10 **MR. SHERRIFF-SCOTT:** Well, I think I know
11 why and I'm going to ask you about it, and I'm suggesting
12 to you, sir, that in the circumstances, Mr. Manson referred
13 to a conflict of interest being divided loyalties. Here
14 you were acting for C-8; correct, at this very time?

15 **MR. BOURGEOIS:** At that very time, yeah.

16 **MR. SHERRIFF-SCOTT:** And at the very time,
17 you were also acting for Mr. Dunlop in a civil case;
18 correct?

19 **MR. BOURGEOIS:** Correct.

20 **MR. SHERRIFF-SCOTT:** And we've agreed it was
21 in Mr. Dunlop's interest to preserve the Leroux evidence
22 and we've agreed it was in C-8's interest to have the best
23 possible situation put forward in mitigation of sentence.

24 Now, how did you resolve those conflicting
25 interests, sir, on that day when you got that document?

1 **MR. BOURGEOIS:** I can't -- I don't know how
2 I resolved those.

3 **MR. SHERRIFF-SCOTT:** Well, you didn't
4 resolve it, did you? And the only way it came out was
5 because of the inadvertent questions of the Officer Genier,
6 not at you, not as a result of your efforts. You said
7 nothing about this during the whole interview process.
8 Isn't that right?

9 **MR. BOURGEOIS:** If that -- if you -- that's
10 what you see on the tape, I'll accept you. I didn't review
11 it, but if you're saying I didn't, I'll accept that.

12 **MR. SHERRIFF-SCOTT:** Fair enough. You
13 accept that.

14 Did you not advise him about the prudence of
15 putting forward this issue, having reviewed the document
16 and your note is in the margin of the document indicating
17 such a review?

18 **MR. BOURGEOIS:** I can't tell you one way or
19 another whether I did or not.

20 **MR. SHERRIFF-SCOTT:** Did you, sir, discuss
21 with Mr. Dunlop at any time why you would not put forward a
22 criticism of Mr. Leroux in that document?

23 **MR. BOURGEOIS:** I don't remember. I don't
24 remember one way or another whether I did.

25 **MR. SHERRIFF-SCOTT:** Do you accept that you

1 were in a conflict of interest at that time and that you
2 were not able professionally to advise C-8 on whether he
3 ought to have included that in his statement?

4 **MR. BOURGEOIS:** I can't -- I don't know one
5 way or another.

6 **MR. SHERRIFF-SCOTT:** I suggest to you that
7 you decided to prefer the interests of Mr. Dunlop and to
8 protect the credibility of the Leroux evidence by keeping
9 that statement out or those pieces of information out.

10 **MR. BOURGEOIS:** No, there was never anything
11 contrived.

12 **MR. SHERRIFF-SCOTT:** You have no explanation
13 for why it wasn't in there?

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

15 **MR. SHERRIFF-SCOTT:** Now, sir, coming back
16 to the December 12th statement, Exhibit 606, let's look at
17 the statement, page 2, please. Having regard to the fact I
18 want you to keep in mind that this document was likely sent
19 to Chief Fantino for the purpose of stimulating or
20 assisting the administration of justice, did you not think
21 it advisable to tell Mr. Dunlop or do you know why Mr.
22 Dunlop would not have included Mr. Leroux in this document
23 in terms of his abuse of C-8, sir?

24 **MR. BOURGEOIS:** No.

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

1 **MR. BOURGEOIS:** I can't assist you in ---

2 **MR. SHERRIFF-SCOTT:** Well, this document
3 presumably came into your possession as counsel to send to
4 a public authority, and you tell us why you wouldn't have
5 put that in.

6 **MR. BOURGEOIS:** I can't tell you why.

7 **MR. SHERRIFF-SCOTT:** You don't know why?

8 **MR. BOURGEOIS:** I have no memory of that.

9 **MR. SHERRIFF-SCOTT:** I suggest to you, sir,
10 that as this document is constructed, it is perfectly
11 compatible with Mr. Leroux's statement in every particular,
12 is it not?

13 **MR. BOURGEOIS:** I can't help you with that
14 one way or another. In what regard?

15 **MR. SHERRIFF-SCOTT:** In every regard. There
16 is every compatibility between these documents. Nothing in
17 here contradicts the Leroux evidence. In fact, it supports
18 it, doesn't it?

19 **MR. BOURGEOIS:** I don't understand what you
20 mean by the question.

21 **MR. SHERRIFF-SCOTT:** Why don't you read it
22 over again, because I wanted you to do that -- but I want
23 you to be comfortable with these questions, sir.

24 **MR. BOURGEOIS:** You're asking me whether or
25 not there's an allegation in this document by C-8 regarding

1 Mr. Leroux?

2 MR. SHERRIFF-SCOTT: Well, we know there is
3 not.

4 MR. BOURGEOIS: Exactly.

5 MR. SHERRIFF-SCOTT: Exactly correct?

6 MR. BOURGEOIS: Fair.

7 MR. SHERRIFF-SCOTT: But it's more than
8 that.

9 MR. BOURGEOIS: Okay.

10 MR. SHERRIFF-SCOTT: The document is
11 consistent with the evidence given by Mr. Leroux. It talks
12 about the goings on at Mr. Seguin. It gives a list of
13 names which are compatible or similar.

14 THE COMMISSIONER: Not completely, but ---

15 MR. SHERRIFF-SCOTT: Not completely, but
16 there is some overlap.

17 THE COMMISSIONER: No, no, the overlap is
18 there.

19 MR. SHERRIFF-SCOTT: And I wish to draw your
20 attention to page 3, sir, in particular, the third-last
21 paragraph.

22 MR. BOURGEOIS: Yes.

23 MR. SHERRIFF-SCOTT: "The witness says 'I
24 lived with Ron Leroux...'"

25 Sorry?

1 **THE COMMISSIONER:** We have a problem with
2 that in that that was evidence that was heard in camera.

3 **MR. SHERRIFF-SCOTT:** Okay.

4 **THE COMMISSIONER:** And so ---

5 **MR. SHERRIFF-SCOTT:** Well, why don't I just
6 refer the witness to it?

7 **THE COMMISSIONER:** Exactly.

8 **MR. SHERRIFF-SCOTT:** And for the record,
9 we're referring to the third paragraph from the bottom of
10 page 3 on Exhibit 606.

11 Can you read that paragraph, sir? It's two
12 lines and a bit.

13 **THE COMMISSIONER:** To yourself.

14 **MR. SHERRIFF-SCOTT:** To yourself, not out
15 loud.

16 **MR. BOURGEOIS:** Okay.

17 **MR. SHERRIFF-SCOTT:** I suggest to you that
18 this statement is compatible with bolstering the
19 credibility of the named individual, is it not?

20 **MR. BOURGEOIS:** C-8, you mean?

21 **MR. SHERRIFF-SCOTT:** No, sir, the person
22 referred to in the first line.

23 **MR. BOURGEOIS:** Okay.

24 **MR. SHERRIFF-SCOTT:** It talks about the
25 cohabitation of the individuals, but absent from this is

1 abuse for 12 years, right?

2 MR. BOURGEOIS: Right.

3 MR. SHERRIFF-SCOTT: And gives a sympathetic
4 description of the other individual, the abuser. Now, why
5 is that when this is going to a public authority at the
6 same time as Mr. Leroux's statements?

7 MR. BOURGEOIS: You would have to ask C-8
8 that.

9 MR. SHERRIFF-SCOTT: I suggest to you, sir,
10 that you and/or you and Mr. Dunlop made a conscious
11 decision to protect Mr. Leroux's evidence, and this is a
12 reflection of that process, is it not?

13 MR. BOURGEOIS: No.

14 MR. SHERRIFF-SCOTT: Page 4, sir, the middle
15 paragraph which is five lines, above the paragraph with the
16 list.

17 Commissioner, can I refer to the first two
18 words for the record?

19 THE COMMISSIONER: "My life"?

20 MR. SHERRIFF-SCOTT: Yes, just to make sure,
21 for the record, we are on the same ---

22 THE COMMISSIONER: Yes.

23 MR. SHERRIFF-SCOTT: Read that paragraph
24 please sir.

25 (SHORT PAUSE/COURTE PAUSE)

1 MR. BOURGEOIS: Yes.

2 MR. SHERRIFF-SCOTT:

3 "Here the witness testifies about what
4 he wants to prevent and talks about two
5 abusers and nothing of 12 years of
6 abuse is mentioned again."

7 Now, if you wanted to give -- let's put it
8 this way; if you wanted to give a fair, accurate and
9 complete version of this man's evidence, you would have
10 gone on to have done that or it would be there. Right?

11 MR. BOURGEOIS: Those are your words.

12 MR. SHERRIFF-SCOTT: And do you agree with
13 them, sir?

14 MR. BOURGEOIS: No.

15 MR. SHERRIFF-SCOTT: You don't?

16 MR. BOURGEOIS: No.

17 MR. SHERRIFF-SCOTT: Okay. Well, fine.

18 If you wanted to give a fair and accurate
19 picture to a public institution seized with the
20 responsibility of investigating this matter, you would want
21 that information to be there. Surely you would agree with
22 that, sir.

23 MR. BOURGEOIS: Well, it's C-8's.

24 MR. SHERRIFF-SCOTT: Would you agree with my
25 statement, sir?

1 MR. BOURGEOIS: No.

2 MR. SHERRIFF-SCOTT: I suggest to you this
3 document is perfectly consistent with your client Mr.
4 Dunlop's interests.

5 MR. BOURGEOIS: That's your position.

6 MR. SHERRIFF-SCOTT: I suggest to you sir
7 and that you would be obliged to admit that putting that
8 statement in or a history of the abuse would be
9 inconsistent with your client's interests at the time.

10 MR. BOURGEOIS: Not necessarily.

11 MR. SHERRIFF-SCOTT: Now, let's go to the
12 last page. I would like you to read the large paragraph
13 starting with "I remember" down to the bottom where the
14 paragraph finishes with the word "again".

15 (SHORT PAUSE/COURTE PAUSE)

16 MR. BOURGEOIS: Okay.

17 MR. SHERRIFF-SCOTT: This paragraph, sir,
18 would you agree with me, provides an explanation for Mr.
19 Leroux, at least having possession -- perhaps not
20 consciously -- but having possession in his residence of
21 unflattering, potentially damaging pornographic material.
22 It provides an innocent explanation; doesn't it?

23 MR. BOURGEOIS: It says what it says.

24 MR. SHERRIFF-SCOTT: Isn't that an innocent
25 explanation? In other words, it would be unflattering to

1 Mr. Leroux if there were no such explanation or if there
2 was simply a fact and that was he was in possession of such
3 material. That would be unflattering to him. Surely, you
4 can agree with that?

5 **MR. BOURGEOIS:** Yeah, but it's C-8's --
6 that's his position.

7 **MR. SHERRIFF-SCOTT:** It's his conjecture,
8 sir. It's not even fact, and it's in a statement prepared
9 by your client.

10 **THE COMMISSIONER:** Well, I'm sorry to
11 interrupt you, but there's belief there. I don't think
12 we're going into facts.

13 **MR. SHERRIFF-SCOTT:** Oh, no. I didn't say
14 it was fact. I said it's C-8's conjecture about the belief
15 of another person. The belief; he believed that Mr. Leroux
16 had an innocent explanation in other words. He doesn't
17 believe they were his. He's offering ---

18 **THE COMMISSIONER:** But he believed they were
19 Leroux'.

20 **MR. SHERRIFF-SCOTT:** That's right. He's
21 offering his explanation and belief of the ownership of the
22 materials.

23 In any event, would you not accept, sir,
24 that this document, having been prepared by your client,
25 Mr. Dunlop, was here attempting to assist the credibility

1 of Mr. Leroux?

2 MR. BOURGEOIS: No.

3 MR. SHERRIFF-SCOTT: You wouldn't agree with
4 that?

5 MR. BOURGEOIS: No.

6 MR. SHERRIFF-SCOTT: All right.

7 Now, in the same month and may I just finish
8 this by asking you, sir, as counsel, as an officer of the
9 court and a person who's in the profession that relates to
10 the administration of justice, were you not concerned about
11 this document having no such material in it about Mr.
12 Leroux potentially misleading authorities?

13 MR. BOURGEOIS: I can't tell you whether I
14 did or not.

15 MR. SHERRIFF-SCOTT: All right. Now, on
16 December 19th, my friend, Mr. Chisholm, in a very detailed
17 way, as is his fashion, talked to you about meetings --
18 phone calls between yourself and Mr. Abell, and one thing
19 you agree is that you would have talked to him at some
20 point and given him a list of names. Agree on that much?

21 MR. BOURGEOIS: I don't know what I gave
22 him, but I would have given him something.

23 THE COMMISSIONER: If he says you gave him
24 12 names, you don't have any reason to disagree with that?

25 MR. BOURGEOIS: No.

1 THE COMMISSIONER: Okay.

2 MR. SHERRIFF-SCOTT: That's all I was trying
3 to establish. And I know you've been through that
4 exhaustively with another lawyer, but I'm going to suggest
5 to you that one of the names that was missing from your
6 list was Mr. Leroux. You didn't tell him about that.

7 MR. BOURGEOIS: I can't assist you with
8 that.

9 MR. SHERRIFF-SCOTT: Well, I'm advised
10 that's what his evidence will be, and I have his notes to
11 that effect, which will come through him, but I suggest to
12 you not only did you not tell him, you would not have told
13 him.

14 MR. BOURGEOIS: No.

15 MR. SHERRIFF-SCOTT: Because you and your
16 client had decided you wished to protect Mr. Leroux'
17 integrity and credibility.

18 MR. BOURGEOIS: No.

19 MR. SHERRIFF-SCOTT: As the main plank in
20 your case.

21 MR. BOURGEOIS: No.

22 MR. SHERRIFF-SCOTT: Now, sir, Mr. Manson
23 asked you in a detailed way about the pleadings and Mr.
24 Neville was about to ask you about a document yesterday,
25 which I will just briefly put to you. It's Document number

1 721626, and there are a number of lawyers' letters here
2 that are sent to you personally in your capacity as counsel
3 for Mr. Dunlop.

4 Commissioner, I'll be about 25 minutes. Do
5 you wish to break now?

6 **THE COMMISSIONER:** Yes, let's take a break
7 now.

8 **THE REGISTRAR:** Order. All rise. À l'ordre.
9 Veuillez vous lever.

10 This hearing will resume at 11:05.

11 --- Upon recessing at 10:50 a.m./

12 --- L'audience est suspendue à 10h50

13 --- Upon commencing at 10:54 a.m./

14 L'audience débute à 10h54

15 **THE REGISTRAR:** Order. All rise. À
16 l'ordre. Veuillez vous lever.

17 This hearing is now resumed. Please be
18 seated. Veuillez vous asseoir.

19 **MR. SHERRIFF-SCOTT:** Thank you. Just let me
20 know when you're ready, sir.

21 **THE COMMISSIONER:** Okay?

22 **MR. BOURGEOIS:** Yeah.

23 **THE COMMISSIONER:** Okay.

24 **CHARLES BOURGEOIS:** Resumed/Assermenté

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

1 **SHERRIFF-SCOTT: (Continued/Suite)**

2 **MR. SHERRIFF-SCOTT:** Now, yesterday, you
3 were cross-examined by Mr. Manson, here to my right, and he
4 asked you a couple of questions, that given the chronology
5 we've just established, I want to just close the loop on;
6 okay?

7 What he asked you about was you attending
8 the OPP station with Mr. Ron Leroux on February 7, 1997.
9 And he attempted to establish, but he didn't have the
10 documentation that we went through, you and I, the fact of
11 your existing retainer at that time by Mr. Dunlop and by
12 Mr. C-8. Okay?

13 **MR. BOURGEOIS:** Yeah.

14 **MR. SHERRIFF-SCOTT:** Am I refreshing your
15 memory?

16 **MR. BOURGEOIS:** Yes.

17 **MR. SHERRIFF-SCOTT:** Remember that exchange?
18 So we know now, objectively from the
19 documents, that in February of 1997 and on the 7th, when
20 you went with Mr. Leroux to the OPP, you were counsel for
21 C-8 and for Mr. Dunlop; correct?

22 **MR. BOURGEOIS:** Yes.

23 **MR. SHERRIFF-SCOTT:** Okay. Fair enough.
24 Who asked you to take Mr. Leroux to the OPP?

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

1 **MR. SHERRIFF-SCOTT:** Did you do it on your
2 own initiative, unprompted?

3 **MR. BOURGEOIS:** I have no idea.

4 **MR. SHERRIFF-SCOTT:** Well, it didn't happen
5 --

6 **THE COMMISSIONER:** You have to speak up,
7 sir.

8 **MR. BOURGEOIS:** I don't -- I don't remember
9 one way or another.

10 **MR. SHERRIFF-SCOTT:** Well, let's try and
11 reconstruct. It didn't happen sort of by magic; it had --
12 someone had to decide it was going to happen and then do
13 it. So is your best attempt at reconstruction that Mr.
14 Dunlop would have asked you to do that?

15 **MR. BOURGEOIS:** I don't know one way or
16 another.

17 **MR. SHERRIFF-SCOTT:** Well, let's see what's
18 likely. Mr. Leroux didn't come up here all by himself
19 without any assistance or prompting to go to the OPP. At
20 that point you and your client were interacting with him.
21 Is it not likely that either you and/or you and Mr. Dunlop
22 decided he would be brought to the OPP?

23 **MR. BOURGEOIS:** I just don't remember how
24 that happened. So ---

25 **MR. SHERRIFF-SCOTT:** You're not prepared to

1 concede that that's the most probable course of events,
2 sir?

3 **MR. BOURGEOIS:** No.

4 **MR. SHERRIFF-SCOTT:** You're not?

5 **MR. BOURGEOIS:** No.

6 **MR. SHERRIFF-SCOTT:** Okay.

7 Okay, now I was going to refer to a couple
8 of documents and they were under hospice of a large
9 document, 721626, Commissioner, and there are a number of
10 letters in there that I wanted to put to the witness, which
11 are addressed to him in/or around May of 1997. The first
12 has the Bates page, the last three digits 793, and I
13 believe the Registrar is with me on this.

14 **THE COMMISSIONER:** Not quite.

15 **MR. SHERRIFF-SCOTT:** There are -- there is -

16 -

17 **THE COMMISSIONER:** Hold on. Seven nine
18 three (793)? Okay.

19 **MR. SHERRIFF-SCOTT:** Yeah.

20 **THE COMMISSIONER:** It's not ---

21 **MR. SHERRIFF-SCOTT:** Seven zero eight zero
22 seven nine three (7080793).

23 **THE COMMISSIONER:** Yes.

24 **MR. SHERRIFF-SCOTT:** It's a letter of May
25 15, '97, from the firm Adams, Sherwood, Swabey & Follow.

1 **THE COMMISSIONER:** Okay. Just so we can get
2 it -- what I have in front of me now is a number of
3 letters, which will be Exhibit 741. The first one on is a
4 letter to Mr. Bourgeois from Mr. Rudden?

5 **MR. SHERRIFF-SCOTT:** Yes.

6 **THE COMMISSIONER:** Okay. Then the next one
7 I have is a letter by Kevin -- Father Kevin Maloney?

8 **MR. SHERRIFF-SCOTT:** No. That's just part
9 of the exhibit package.

10 **THE COMMISSIONER:** Okay. All right. But
11 I'm just identifying.

12 **MR. SHERRIFF-SCOTT:** Yeah.

13 **THE COMMISSIONER:** And then there's a letter
14 to Mr. Bourgeois from Mr. Swabey --

15 **MR. SHERRIFF-SCOTT:** Yes.

16 **THE COMMISSIONER:** -- Thomas Swabey?

17 **MR. SHERRIFF-SCOTT:** Yes.

18 **THE COMMISSIONER:** Okay. And, lastly --

19 **MR. SHERRIFF-SCOTT:** Another letter to Mr.
20 Bourgeois from Mr. Swabey as well.

21 **THE COMMISSIONER:** Okay. Good.

22 **MR. SHERRIFF-SCOTT:** It's the lawyer's
23 letters that I'm interested in.

24 **THE COMMISSIONER:** Go ahead.

25 **MR. SHERRIFF-SCOTT:** Okay. And we marked

1 that package as a group, sir. Was it Exhibit 741?

2 **THE COMMISSIONER:** Seven four one (741).

3 --- **EXHIBIT NO./PIÈCE No. P-741:**

4 (721626 7080787-800)

5 "Letter fr Thomas R. Swabey

6 to Charles Bourgeois

7 dated 15 May 97

8 **MR. SHERRIFF-SCOTT:** Thank you.

9 The first one I want to refer you to, and
10 I'd like you to take a moment to read it, sir -- Mr.
11 Bourgeois, is the May 15th, '97, from Adams, Sherwood,
12 Swabey, which is on the screen. Just take a moment to read
13 that, if you could.

14 **MR. BOURGEOIS:** I read it.

15 **MR. SHERRIFF-SCOTT:** You've read it?

16 **MR. BOURGEOIS:** I was given those letters
17 yesterday to prepare.

18 **MR. SHERRIFF-SCOTT:** Okay. This is back now
19 when you're two and a half years into your practice and
20 you're getting letters from fairly senior lawyers talking
21 about the Law Society, at the second page, in the middle
22 paragraph, in terms of their reaction to the pleadings in
23 the main here.

24 Did this stimulate you to, perhaps in your
25 own mind, put the brakes on or go and get some advice about

1 what you were doing?

2 MR. BOURGEOIS: I'd just be assuming.

3 MR. SHERRIFF-SCOTT: You'd just be assuming.

4 You would have no memory of that?

5 MR. BOURGEOIS: No.

6 MR. SHERRIFF-SCOTT: As a junior lawyer,
7 would you not have been concerned that, sort of senior
8 barristers in the community are writing to you and --

9 MR. BOURGEOIS: I likely would've, sir.

10 MR. SHERRIFF-SCOTT: Yeah. Would you have
11 gone off to consult with a senior person in your profession
12 down in Newmarket?

13 MR. BOURGEOIS: Likely, but I don't ---

14 MR. SHERRIFF-SCOTT: You don't have a memory
15 of that?

16 MR. BOURGEOIS: I don't have a memory what I
17 did one way or another.

18 MR. SHERRIFF-SCOTT: All right. Would you
19 have -- would this have concerned you in terms of the
20 propriety of what you were doing in terms of the pleadings?
21 Or would you have treated it potentially, alternatively as
22 an advocate's letter to you that you could ignore; not
23 ignore, but an advocate's letter that was part of the cut
24 and thrust that you could put on the file and not
25 necessarily respond to?

1 **MR. BOURGEOIS:** I just don't have a memory
2 one way or another.

3 **MR. SHERRIFF-SCOTT:** Did you not have a
4 growing concern in your mind as a counsel, at this time,
5 that maybe the course you were following was the wrong one?

6 **MR. BOURGEOIS:** I can't remember. If
7 you're asking me is it likely some -- whether the contents
8 of this letter would concern me, the answer is yes, but I
9 just can't remember what I did or getting these letters or
10 anything like that.

11 **MR. SHERRIFF-SCOTT:** So you wouldn't have
12 recalled sort of being stimulated to become concerned about
13 the propriety of your own actions here, and the propriety
14 of the strategy that was being followed in the litigation
15 pleadings?

16 **MR. BOURGEOIS:** I can't tell you one way or
17 another.

18 **MR. SHERRIFF-SCOTT:** See, I'm just thinking
19 back in my own life as a practitioner a couple of years
20 out, I probably would have run to the nearest senior lawyer
21 and said, "Am I doing the right thing?" Wouldn't you have
22 done that?

23 **MR. BOURGEOIS:** It's possible that I did.
24 I'm not saying that I didn't. I just don't remember what I
25 did one way or another.

1 **MR. SHERRIFF-SCOTT:** But, in any event, was
2 your decision, may I take it, to stay the course; in other
3 words, to do nothing in response to this?

4 **MR. BOURGEOIS:** I just have -- the only
5 thing I can help you with on that, sir, is that I must
6 have, for a short period anyway, because the retainer
7 continued for another few months.

8 **MR. SHERRIFF-SCOTT:** Yeah. Okay.

9 And were you -- may I suggest to you that
10 you were -- if you had that concern at this juncture, and
11 you didn't react to it in terms of departing from the
12 strategy that you had been following, were you feeling
13 pressured or -- how may I say -- pressured or unduly
14 controlled by your client to stay the course, inconsistent
15 with perhaps the wishes that you may have developed at this
16 time?

17 **MR. BOURGEOIS:** I would love to be able to
18 help you. I just can't remember what I would have done at
19 that time, but it's fair to say that they're very serious
20 letters and I'm sure they would have concerned me, sir, but
21 what I did with that information, I just can't recollect.

22 **MR. SHERRIFF-SCOTT:** Okay. Well, let's move
23 to another subject, which is the last one I want to discuss
24 with you.

25 Now, let's see if we can agree on some

1 specific propositions pertaining to the summer of 1996,
2 okay, just focusing you on that timeframe when you were
3 first retained and up to -- between when you were first
4 retained and when you went down to Maine, okay?

5 **MR. BOURGEOIS:** Okay.

6 **MR. SHERRIFF-SCOTT:** All right.

7 Would it be fair to say that the only person
8 that you're aware of that told Mr. Dunlop about Mr. Leroux
9 was C-8? In other words, you and Mr. Dunlop got your
10 information about Mr. Leroux from C-8? Does that comport
11 with your recollection, sir?

12 **MR. BOURGEOIS:** Well, I wouldn't know that
13 or I couldn't answer that because he -- you'd have -- that
14 would be more to Mr. Dunlop. I don't know what he did
15 before.

16 **MR. SHERRIFF-SCOTT:** Certainly, we can agree
17 that you met with C-8 before you went to Maine and he would
18 have apprised you of his allegations against Mr. Leroux.
19 That was your evidence to Mr. Riel?

20 **MR. BOURGEOIS:** Yes.

21 **MR. SHERRIFF-SCOTT:** Okay. And as far as
22 you're aware, the allegations that Mr. Leroux may have been
23 a pedophile, are you aware of any other source you were
24 getting that information from at the time?

25 **MR. BOURGEOIS:** I don't remember if any of

1 the other witnesses, sir, said anything like that or not.

2 **MR. SHERRIFF-SCOTT:** All right.

3 To your knowledge, sir, had Mr. Dunlop ever
4 met Mr. Leroux before he went down in October of 1996?

5 **MR. BOURGEOIS:** I have no idea.

6 **MR. SHERRIFF-SCOTT:** Certainly before
7 October, did Mr. Dunlop ever talk to you about having met
8 or ever met -- ever having met Mr. Leroux? Did he ever
9 tell you he knew who he was or anything like that?

10 **MR. BOURGEOIS:** Not that I can recollect.

11 **MR. SHERRIFF-SCOTT:** Is the best
12 reconstruction that he wouldn't have known Mr. Leroux
13 personally before he went to Maine?

14 **MR. BOURGEOIS:** That's most likely, sir, but
15 I don't know if he did or not.

16 **MR. SHERRIFF-SCOTT:** All right.

17 You're not aware of anybody in the group of
18 people who were -- who reflected Mr. Dunlop's interests, if
19 I can say it that way, who had information about Mr. Leroux
20 or had met him prior to going to October 1996 trips to
21 Maine?

22 **MR. BOURGEOIS:** That's a pretty wide-open
23 question.

24 **MR. SHERRIFF-SCOTT:** I'm just -- I mean,
25 first of all, you can't help me with Mr. Dunlop or the

1 others like Mr. Chisholm or his wife.

2 MR. BOURGEOIS: Mr. ---

3 MR. SHERRIFF-SCOTT: You're not aware of
4 anybody knowing ---

5 MR. BOURGEOIS: Mr. Chisholm might have
6 known him. He's lived here for a lot of years.

7 MR. SHERRIFF-SCOTT: No. Do you know -- do
8 you know anybody who would have met or known him before
9 October '96?

10 MR. BOURGEOIS: Not that I can remember, but
11 I don't know.

12 MR. SHERRIFF-SCOTT: And when I say do you
13 know anyone, I mean the people in Mr. Dunlop's circle that
14 you would have run into assisting him or working with you?
15 No?

16 MR. BOURGEOIS: No.

17 MR. SHERRIFF-SCOTT: That's fine.

18 Could we turn up Exhibit 579? This is a
19 large document, Mr. Bourgeois, which is the Will State that
20 ultimately was prepared by Mr. Dunlop.

21 MR. BOURGEOIS: Okay.

22 THE COMMISSIONER: Exhibit 579?

23 MR. SHERRIFF-SCOTT: Yes.

24 Now, I'd like to draw your attention to a
25 specific page, which is page 49. Do you see the page

1 references, Mr. Bourgeois?

2 **THE COMMISSIONER:** At the bottom.

3 **MR. SHERRIFF-SCOTT:** Now, if you look
4 towards the bottom of the page, there's some description of
5 Mr. Leroux and Mr. Dunlop's belief. He refers to before he
6 ever met him, being ---

7 **THE COMMISSIONER:** I'm sorry. Where are we
8 now; page 49?

9 **MR. SHERRIFF-SCOTT:** Page 44, I'm sorry. My
10 handwritten note here is not clear.

11 **THE COMMISSIONER:** Okay.

12 **MR. SHERRIFF-SCOTT:** At the bottom of that
13 page you'll see there's a little paragraph entry after he
14 stops talking about C-8. It's the second-last paragraph,
15 "It became clear to me." Just read that.

16 **MR. BOURGEOIS:** Yeah.

17 **MR. SHERRIFF-SCOTT:** Is this consistent with
18 what your recollection of what Mr. Dunlop's view would have
19 been or the information you would have had at the time?

20 **MR. BOURGEOIS:** No.

21 **MR. SHERRIFF-SCOTT:** It's not? You don't
22 remember or it's not?

23 **MR. BOURGEOIS:** I don't remember.

24 **MR. SHERRIFF-SCOTT:** Okay.

25 **MR. BOURGEOIS:** Yeah.

1 **MR. SHERRIFF-SCOTT:** Mr. Dunlop certainly
2 would have shared his information with you and his views on
3 this subject?

4 **MR. BOURGEOIS:** No, I don't think so.

5 **MR. SHERRIFF-SCOTT:** You don't think so?

6 **MR. BOURGEOIS:** No.

7 **MR. SHERRIFF-SCOTT:** You travelled to Maine
8 to meet this man with Mr. Dunlop in the car for -- and you
9 didn't discuss your views about the man?

10 **MR. BOURGEOIS:** I don't remember the
11 discussions. If you're asking me if he was ever discussed,
12 I'm sure he was, but you're asking me for specifics.

13 **MR. SHERRIFF-SCOTT:** Just if we could turn
14 up Exhibit 624, sir? Now, you remember Commission counsel
15 referred to two documents with you -- or one document
16 first, and I want to refer to an earlier one. So we'll
17 start with Exhibit 624.

18 Now, you may have seen this document before
19 because we're advised these are Mr. Dunlop's notes
20 reflecting his first meeting with C-8 in early June of
21 1996. Do you have that? Have you read that document, sir?

22 **MR. BOURGEOIS:** Now?

23 **MR. SHERRIFF-SCOTT:** I mean, did you do it
24 as part of your preparation or are you familiar with the
25 document?

1 **MR. BOURGEOIS:** I'm not familiar with the
2 document.

3 **MR. SHERRIFF-SCOTT:** Mr. Dunlop would have
4 showed you the information he had about Mr. C-8's meetings,
5 surely?

6 **MR. BOURGEOIS:** No, not surely.

7 **MR. SHERRIFF-SCOTT:** You're not -- not
8 surely?

9 **MR. BOURGEOIS:** No.

10 **MR. SHERRIFF-SCOTT:** No? Okay.

11 So you can't help us with this document at
12 all?

13 **MR. BOURGEOIS:** No.

14 **MR. SHERRIFF-SCOTT:** All right.

15 Let's go to the next document, which was one
16 referred to by Commission counsel, Exhibit C-605. And this
17 is the document that you testified was created by Randy
18 Porter, remember? You see his signature at the end?

19 **MR. BOURGEOIS:** You're correct.

20 **MR. SHERRIFF-SCOTT:** Yeah. And you remember
21 talking to my friend to the left here about that when you
22 testified in-chief?

23 **MR. BOURGEOIS:** Yeah.

24 **MR. SHERRIFF-SCOTT:** Okay. And you remember
25 that he put to you that there was no reference to Mr.

1 Leroux being a potential abuser in here? Do you remember
2 that?

3 **MR. BOURGEOIS:** Correct.

4 **MR. SHERRIFF-SCOTT:**and could you turn to the
5 -- the pages are not well numbered, but you'll see in the
6 lower right they have a handwritten number which is
7 circled. Do you see those? Little numbers on the right-
8 hand bottom of each page?

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

10 **MR. SHERRIFF-SCOTT:** I want you to turn up
11 page 4.

12 **MR. BOURGEOIS:** Okay, yes.

13 **MR. SHERRIFF-SCOTT:** Now, Mr. Porter was
14 your agent in effect, if I can use that expression. He was
15 retained by your firm?

16 **MR. BOURGEOIS:** Yes.

17 **MR. SHERRIFF-SCOTT:** Okay. And he records
18 here the statements of C-8 saying:

19 "I lived with a guy since I was 15 at
20 his residence, Ron [looks like a
21 spelling mistake] Laroux. He
22 associated with Ken, Charlie MacDonald,
23 Ron Wilson, Shaver. Never saw Shaver a
24 lot like the rest of them at Seguin's.
25 Ron attempted to groom me into his ways

1 and the ways of others. Ron made my
2 life rough. Any relationship that I
3 attempted to develop with a female ..."

4 Next page:

5 " ...he would ruin it."

6 Now you would have come into possession of
7 this document from your agent, Mr. Porter, who took it, no
8 doubt?

9 **MR. BOURGEOIS:** I'm sure I did.

10 **MR. SHERRIFF-SCOTT:** And in order -- in
11 supplement to the information that you had verbally from
12 Mr. C-8 you would have also had this?

13 **MR. BOURGEOIS:** I'm sure that I did, yeah.

14 **MR. SHERRIFF-SCOTT:** And you would have
15 interpreted this:

16 " ...attempted to groom me into his
17 ways... "

18 as a sexual relationship?

19 **MR. BOURGEOIS:** You're asking me what I
20 would have interpreted back then, I don't know.

21 **MR. SHERRIFF-SCOTT:** Well, in combination
22 with the information you had with C-8, that's the only
23 interpretation you would have placed on it, surely?

24 **MR. BOURGEOIS:** I'm sure that that's what --

25 -

1 **MR. SHERRIFF-SCOTT:** You're not sure? **MR.**

2 **BOURGEOIS:** I said I'm -- I'm -- it's likely that's what I
3 would have interpreted. I think that you're making a fair
4 interpretation of it, but I just don't remember back then
5 what ---

6 **MR. SHERRIFF-SCOTT:** All right, so, we have
7 at least the Porter interview in terms of a document, and
8 then we have your own meetings and discussions with him,
9 and we have potentially some discussions with Mr. Dunlop,
10 which you may or may not have had about Mr. Leroux and/or
11 Mr. Leroux and C-8, right? This all in the period June to
12 October '96. That a fair summary?

13 **MR. BOURGEOIS:** You're saying all kinds of
14 things ---

15 **MR. SHERRIFF-SCOTT:** Okay, I've already
16 broken it down and I'm trying to summarize it, but you've
17 given me these -- these answers, so I'm just trying to
18 orient you for my next questions, okay?

19 "You had oral information that he
20 was abusing C-8, correct, based on
21 your meetings?"

22 "We've agreed with that already."

23 **MR. BOURGEOIS:** M'M'hm.

24 **MR. SHERRIFF-SCOTT:** You had this document
25 from Mr. Porter which has a likely interpretation which

1 we've agreed on; correct?

2 **MR. BOURGEOIS:** Right.

3 **MR. SHERRIFF-SCOTT:** You may have spoken to
4 Mr. Dunlop about both C-8 and Mr. Leroux?

5 **MR. BOURGEOIS:** If you want to say, "you may
6 have and may not have" ---

7 **MR. SHERRIFF-SCOTT:** Well, it's likely you
8 would have certainly talked about Mr. Leroux?

9 **MR. BOURGEOIS:** I'm sure that I spoke to him
10 about Mr. Leroux, obviously at some point.

11 **MR. SHERRIFF-SCOTT:** Certainly, you would
12 have probably talked about the potential clash between
13 C-8 and Leroux. Not the substance but the general heading.
14 Isn't that a most likely subject that you would have
15 debated with your client?

16 **MR. BOURGEOIS:** I don't think so.

17 **MR. SHERRIFF-SCOTT:** You don't think so.

18 Okay, so you go down there at some point in
19 October. Your client's will say -- he says he believes this
20 man is an undercover pedophile operator and a pedophile
21 before he's met him, and you've heard the allegations of C-
22 8.

23 Now, do you not concede, sir, that when you
24 went down there, having regard to what you knew or had
25 heard about Mr. Leroux, that there was a material risk you

1 would be lied to if these allegations were true?

2 **MR. BOURGEOIS:** No.

3 **MR. SHERRIFF-SCOTT:** Do you not concede,
4 sir, that going down there with that information if it were
5 true, that this man may lie to you in order to preserve his
6 own self-interest? Wouldn't that be a risk that would --
7 you would concede would have existed at the time? Whether
8 you averted your attention to it or not is another matter.
9 Wouldn't that have been a risk ---

10 **MR. BOURGEOIS:** If I look at it now, but
11 back then ---

12 **MR. SHERRIFF-SCOTT:** It may not have been in
13 your consciousness, but you acknowledge it was a risk you
14 faced going there now at this point in time, surely?

15 **MR. BOURGEOIS:** It depends in what regard.
16 I mean ---

17 **MR. SHERRIFF-SCOTT:** You're going to see a
18 man your client believes is a pedophile, what he calls "The
19 undercover operator of the pedophile world", and you've
20 heard allegations, both of you, that he is a sexual abuser
21 of a minor, at least one, in your words?

22 **MR. BOURGEOIS:** M'hm.

23 **MR. SHERRIFF-SCOTT:** And I'm suggesting to
24 you that you would have confronted or faced a material risk
25 that this man would have lied to protect his own self-

1 interest. And when I say that, I mean to be uncovered as a
2 pedophile or a potential pedophile.

3 **MR. BOURGEOIS:** M'hm. I don't know how to
4 help you with that. You're ---

5 **MR. SHERRIFF-SCOTT:** It's easy. Would you
6 have faced the risk or not?

7 **MR. BOURGEOIS:** Faced what risk?

8 **MR. SHERRIFF-SCOTT:** The risk that he would
9 have lied to you in telling stories to protect his own self
10 interest?

11 **MR. BOURGEOIS:** You face the risks of that
12 with any witness.

13 **MR. SHERRIFF-SCOTT:** But would the risk not
14 have been augmented given this man's history if it were
15 true?

16 **MR. BOURGEOIS:** That would be like saying --
17 m'hm, because a prostitute says she got raped, there's less
18 likely it's the truth.

19 **MR. SHERRIFF-SCOTT:** Well, I think your
20 metaphor is not an appropriate one. This man has a history
21 which you believe to be true or because you believe C-8.

22 **MR. BOURGEOIS:** That may be so, but that
23 doesn't mean he's not telling the truth either.

24 **MR. SHERRIFF-SCOTT:** You're not even
25 prepared to acknowledge you faced the risk is what I'm

1 asking you, sir.

2 MR. BOURGEOIS: If I look at it
3 retrospectively now, but you're asking me about then.

4 MR. SHERRIFF-SCOTT: Okay, let's deal with
5 now. Do you acknowledge that that's what you would have
6 faced now?

7 MR. BOURGEOIS: Yeah, but ---

8 MR. SHERRIFF-SCOTT: Okay.

9 MR. BOURGEOIS: --- it's not comparable to
10 back then.

11 MR. SHERRIFF-SCOTT: Well, back then you may
12 not have figured that out, right? But now you look at it
13 with hindsight and you can see that you may well have faced
14 that risk.

15 MR. BOURGEOIS: Yeah, but I'm not in close
16 to the same position I was back then.

17 MR. SHERRIFF-SCOTT: I'm not criticizing
18 what you -- the fact that you weren't -- it wasn't on your
19 radar screen. I'm asking you whether or not it was a risk
20 you faced. And you concede now as you look at it ---

21 MR. BOURGEOIS: In retrospect, now, yes.

22 MR. SHERRIFF-SCOTT: Fair enough. That's
23 all I want to establish with you; okay?

24 MR. BOURGEOIS: Okay.

25 MR. SHERRIFF-SCOTT: Now, it was the

1 evidence of Mr. Leroux that initial contacts requesting
2 that he be interviewed either by you and-or you and Mr.
3 Dunlop were resisted. In other words, he didn't want to
4 talk to you. You aware of that?

5 **MR. BOURGEOIS:** No.

6 **MR. SHERRIFF-SCOTT:** No. You're not aware
7 of any initial reticence of the witness?

8 **MR. BOURGEOIS:** No.

9 **MR. SHERRIFF-SCOTT:** So you called him up
10 and said, "Hey we're -- I'm Mr. Dunlop, a police officer
11 and his lawyer, we're coming to interview you". And he
12 just said, "Come on down", or did he express any concern?

13 **MR. BOURGEOIS:** I don't know what kind of
14 conversations Mr. Dunlop would have had with him before
15 hand, sir, but I don't remember any resistance.

16 **MR. SHERRIFF-SCOTT:** Can we fairly agree
17 that as -- that on the subject of his various statements
18 and documents and there are many, that as I read them, and
19 you can help me with your understanding of them and if
20 necessary I'll ask you to read them to confirm this,
21 there's just four points that emerge from my analysis; that
22 in the early statements, there are not any allegations of
23 his own personal abuse, of him.

24 Two, then there are allegations that emerge
25 of abuse of him, but without attribution, and by that I

1 mean saying person A, B or C.

2 Three, then there are allegations of abuse,
3 with attribution but without any detail, and ultimately the
4 metamorphosis ends in allegations of abuse of him with
5 attribution and with detail.

6 Would you agree with that?

7 **MR. BOURGEOIS:** That's pretty -- a pretty
8 loaded question. I don't know what you mean by that.

9 **MR. SHERRIFF-SCOTT:** Okay. Did his story
10 emerge over time?

11 **MR. BOURGEOIS:** Yes.

12 **MR. SHERRIFF-SCOTT:** Okay. And you were
13 there during some of the time?

14 **MR. BOURGEOIS:** That's the evidence that he
15 had. That's the evidence I -- you have to deal with it as
16 it is.

17 **MR. SHERRIFF-SCOTT:** But the story came out
18 in pieces, not all at once, full blown?

19 **MR. BOURGEOIS:** Yeah.

20 **MR. SHERRIFF-SCOTT:** Right?

21 **MR. BOURGEOIS:** That was of his doing.

22 **MR. SHERRIFF-SCOTT:** Okay. And during some
23 of these discussions, for example, it must have been that
24 you had to orient him on where you wanted to go in your
25 questioning, correct? He didn't just spill it out

1 extemporaneously, you had to ask questions?

2 **MR. BOURGEOIS:** I'm sure we -- yeah, of
3 course.

4 **MR. SHERRIFF-SCOTT:** And you must have, in
5 the context of your meetings and as the story unfolded in
6 bits and starts or bits and pieces, referred to the fact
7 that you had been introduced to him by C-8. You surely
8 would have wanted how you knew -- how you found him to know
9 that?

10 **MR. BOURGEOIS:** Likely.

11 **MR. SHERRIFF-SCOTT:** Likely. Fair enough.

12 And surely you would have had to orient him
13 about the fact that C-8 put him in Florida with others as a
14 point of discussion because there is much discussion by Mr.
15 Leroux about Florida. Is that likely?

16 **MR. BOURGEOIS:** I -- I don't have any memory
17 of it, but likely.

18 **MR. SHERRIFF-SCOTT:** Okay. And surely you
19 would have had to put him at Mr. Seguin's in the context of
20 these discussions and C-8's the one that did that?

21 **MR. BOURGEOIS:** Again, likely.

22 **MR. SHERRIFF-SCOTT:** Okay. You have no
23 memory of confronting Mr. Leroux, and incidentally neither
24 does your former client, as he admitted in the transcript
25 that he didn't confront Mr. Leroux with the allegations of

1 C-8, the abuse allegations. But, is it not likely that as
2 the meetings progressed his -- the subject of him would
3 have come up from time-to-time as the evidence came out in
4 fits and starts, placing Mr. Leroux in various places and
5 so forth?

6 MR. BOURGEOIS: I can't tell you one way or
7 another.

8 MR. SHERRIFF-SCOTT: Isn't that the most
9 likely course of events?

10 MR. BOURGEOIS: I'd be guessing.

11 MR. SHERRIFF-SCOTT: Mr. Leroux knew Mr.
12 Dunlop was a law enforcement officer? I'm not saying he
13 went down there in that capacity, but he knew of him --
14 that he was a police officer?

15 MR. BOURGEOIS: I'm sure he did.

16 MR. SHERRIFF-SCOTT: Okay. Would you
17 concede that he knew that you had been to C-8?

18 MR. BOURGEOIS: I don't know that, sir, one
19 way or another. I don't know if he knew that or not.

20 MR. SHERRIFF-SCOTT: The witness testified
21 that you told him that C-8 is the person who told you how
22 to find Mr. Leroux. Wouldn't you concede that Mr. Leroux
23 was aware that you had been to see C-8 before you started
24 interviewing him?

25 MR. BOURGEOIS: Like I answered you earlier,

1 it's likely.

2 **MR. SHERRIFF-SCOTT:** Okay.

3 Now, Mr. Leroux says a number of things
4 which are -- have been covered with you a bit, that there
5 was coercion and threats and intimidation and badgering, et
6 cetera, and we referred to a discussion with you on the
7 phone about obstruction of justice. And I take it your
8 evidence is you deny that these things or strategies were
9 followed to extract evidence from him?

10 **MR. BOURGEOIS:** Yeah.

11 **MR. SHERRIFF-SCOTT:** But from time to time
12 during the interviews you would have referred to things
13 like C-8 that were potentially unflattering to Mr. Leroux?

14 **MR. BOURGEOIS:** They should be if he did it.

15 **MR. SHERRIFF-SCOTT:** Without confronting
16 him?

17 **MR. BOURGEOIS:** I can't assist here. I'd be
18 guessing.

19 **MR. SHERRIFF-SCOTT:** Were you not concerned,
20 sir -- as this story emerged it became more bizarre, if I
21 can use that expression, and certainly it was pretty wild
22 and out there in terms of the allegations -- were you not
23 concerned that, based on the colour of what you were
24 hearing that that was a concern, that the integrity of the
25 story was so significant and so extreme, so bizarre to use

1 the words of Justice Chilcotte when he was talking to Mr.
2 Dunlop in a trial setting, that there was some concern
3 about its integrity?

4 **MR. BOURGEOIS:** I can't say one way or
5 another. I don't remember what I thought about that at the
6 time, but there certainly was some very significant
7 allegations, as I said earlier.

8 **MR. SHERRIFF-SCOTT:** Why wouldn't you and/or
9 Mr. Dunlop, if there was any concern you had and,
10 certainly, going down there to meet the man, why wouldn't
11 you have confronted him with Mr. C-8's allegations?

12 **MR. BOURGEOIS:** I don't know if we did or
13 not.

14 **MR. SHERRIFF-SCOTT:** You don't have any
15 memory of that happening?

16 **MR. BOURGEOIS:** No. I don't know if I did
17 or not.

18 **MR. SHERRIFF-SCOTT:** So going down to meet
19 this extraordinary witness, surely at the beginning of your
20 career with all this explosivity, you wouldn't have
21 remembered sitting down and saying "By the way, someone I
22 have a statement from or information from says you're a
23 paedophile and abused him for 12 years".

24 You surely would have a memory of that if
25 you did it?

1 **MR. BOURGEOIS:** That's your opinion. You've
2 lived this case; I didn't. Once it was over, it was over.
3 You've been on this case for a long time, so -- I haven't.

4 **MR. SHERRIFF-SCOTT:** Okay. Thank you very
5 much, sir. I appreciate your patience.

6 Thank you, Commissioner.

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

8 **THE COMMISSIONER:** Mr. Callaghan.

9 **MR. CALLAGHAN:** If I may be permitted a
10 minute to get organized?

11 **THE COMMISSIONER:** Yes. Time will become a
12 factor for today at least. You say three hours?

13 **MR. CALLAGHAN:** I think Mr. Sherriff-Scott
14 did a little bit of it. I would have to see how quickly
15 the witness responds.

16 **THE COMMISSIONER:** So we'll go with you, and
17 then we'll probably go for a shortened lunch and we'll see
18 where we go.

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

20 **CALLAGHAN:**

21 **MR. CALLAGHAN:** Mr. Bourgeois, as you know,
22 I'm John Callaghan and I represent the Cornwall Police.

23 I want to sort of cover a little bit on sort
24 of the same vein but in a different way some of the
25 development of the affidavits and the development of the

1 lawsuit and how they interacted.

2 When we met the other day we talked about
3 your retainer, and I want to start by maybe situate when
4 your retainer might have started.

5 I'd ask that you be shown Document 7092410.

6 **THE COMMISSIONER:** Just hold on one second.

7 **MR. CALLAGHAN:** I'm sorry. I gave you the
8 Bates pages -- 723589.

9 **THE COMMISSIONER:** It's not an exhibit yet.

10 **MR. CALLAGHAN:** I know that.

11 **THE COMMISSIONER:** No, no, I'm just telling
12 that to the witness ---

13 **MR. CALLAGHAN:** Sorry.

14 **THE COMMISSIONER:** --- who started to look
15 through the book.

16 **MR. CALLAGHAN:** Without Mr. Crane I'm lost,
17 I've been told, but notice was given on this document.

18 **THE COMMISSIONER:** Of course it was. I
19 expect no less.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **THE COMMISSIONER:** Okay. Hold on a second
22 now. Exhibit 742 ---

23 **MR. CALLAGHAN:** It should be a decision
24 between Yegendorf and Dunlop.

25 **THE COMMISSIONER:** Yes. Okay.

1 --- EXHIBIT NO./PIÈCE NO. P-742:

2 (723589) Reasons for Judgment -
3 Yegendorf, Brazeau, Seller, Prehogan &
4 Wyllie vs. Perry Dunlop dated 25 Sep 98

5 **MR. CALLAGHAN:** Now, this is a decision
6 between Mr. Yegendorf and Mr. Dunlop. You know Mr.
7 Yegendorf as a lawyer in Ottawa, sir?

8 **MR. BOURGEOIS:** No.

9 **MR. CALLAGHAN:** You've never heard of Mr.
10 Yegendorf?

11 **MR. BOURGEOIS:** I've heard the name.

12 **MR. CALLAGHAN:** All right.

13 Did you know that Mr. Yegendorf had been
14 retained prior to you by Mr. Dunlop?

15 **MR. BOURGEOIS:** Possibly.

16 **MR. CALLAGHAN:** Possibly? It seems that
17 according to this Mr. Yegendorf was retained on December
18 21st, 1995 to deal with damages related to a possible civil
19 action. That's in paragraph 1.

20 Mr. Yegendorf presented to the Court on this
21 occasion, which was the Small Claims Court. It was a -- he
22 was suing Mr. Dunlop over his fees for work done between
23 December 22nd, 1995 and the 3rd day of June 1996 in paragraph
24 4. Do you see that?

25 **MR. BOURGEOIS:** Yes.

1 **MR. CALLAGHAN:** Turn to the next page, it
2 refers in paragraph 5 to the student spending 25 hours
3 reviewing media reports, reviewing transcripts, reviewing
4 board reports and preparing research memos.

5 Do you see that?

6 **MR. BOURGEOIS:** Yes.

7 **MR. CALLAGHAN:** Paragraph 6 refers that Mr.
8 Yegendorf, on March 5th, 1996 met with Mr. and Mrs. Dunlop
9 to provide the advice that he had been requested provide,
10 and paragraph 7 indicates that Mr. Yegendorf received a
11 voicemail message on May 31st, 1996 from the defendant
12 advising him that the defendant did not want to proceed any
13 further.

14 Do you see that?

15 **MR. BOURGEOIS:** Yes.

16 **MR. CALLAGHAN:** All right.

17 Were you aware that Mr. Yegendorf had been
18 retained by Mr. Dunlop?

19 **MR. BOURGEOIS:** I don't ---

20 **MR. CALLAGHAN:** No?

21 **MR. BOURGEOIS:** I don't remember that, but
22 he might have. The name is familiar.

23 **MR. CALLAGHAN:** Well, have you dealt with
24 Mr. Yegendorf on any other context, to your knowledge?

25 **MR. BOURGEOIS:** I don't believe so, sir.

1 **MR. CALLAGHAN:** All right.

2 And are you aware of whether Mr. Yegendorf
3 started an action for Mr. Dunlop?

4 **MR. BOURGEOIS:** I don't know one way or
5 another.

6 **MR. CALLAGHAN:** All right.

7 By the time Mr. Dunlop comes to you there's
8 no action with respect to the matters in issue for which
9 you started an action, correct? He doesn't have a
10 malicious prosecution action out there on top of yours?

11 **MR. BOURGEOIS:** No that I knew of, no.

12 **MR. CALLAGHAN:** All right.

13 You -- I take it you were never privy to the
14 fact that he had sought prior legal advice?

15 **MR. BOURGEOIS:** I don't know if I did or
16 not, sir.

17 **MR. CALLAGHAN:** All right.

18 And it refers to Mr. Yegendorf's services
19 being terminated at about May 31st, 1996. Would that be
20 thereabouts upon which you were retained, in about that
21 date?

22 **MR. BOURGEOIS:** Well, it's not a big
23 difference between the June date we had, I think.

24 So I don't know if it was.

25 **MR. CALLAGHAN:** And it's fair to say that

1 notice of action was issued soon after your retainer,
2 correct? The one we saw the other day and we're going to
3 come to?

4 **MR. BOURGEOIS:** I would assume so.

5 **MR. CALLAGHAN:** All right. And when you met
6 Mr. Dunlop, was it fair to say that it was your impression
7 that he was upset about having been charged under the
8 *Police Services Act*? That was one of the complaints?

9 **MR. BOURGEOIS:** Oh, for sure.

10 **MR. CALLAGHAN:** All right. And he came to
11 you with a story about a possible cover-up in Cornwall; did
12 he not?

13 **MR. BOURGEOIS:** Well, certainly that's what
14 he felt, yeah.

15 **MR. CALLAGHAN:** Right. And do you recall
16 him being particularly upset with former Chief Claude
17 Shaver?

18 **MR. BOURGEOIS:** Amongst others, I'm sure.

19 **MR. CALLAGHAN:** But you didn't hear the
20 story about how Mrs. Dunlop confronted former Chief Shaver?
21 Never heard that story?

22 **MR. BOURGEOIS:** It rings a bell.

23 **MR. CALLAGHAN:** It rings a bell, does it?

24 You don't recall anybody telling you that
25 there was a confrontation between Helen Dunlop and Chief

1 Shaver?

2 **MR. BOURGEOIS:** Oh, through the -- through
3 reading materials.

4 **MR. CALLAGHAN:** Through reading materials,
5 all right.

6 But it's fair to say, they were very upset
7 with Chief Shaver, were they not? When they came to see
8 you?

9 **MR. BOURGEOIS:** They were -- they were upset
10 with the force; he's the chief, so ---

11 **THE COMMISSIONER:** I'm sorry, Mr. ---

12 **MR. RUEL:** Just to guide my friend, Mr.
13 Callaghan, you've indicated in your ruling that we were not
14 to -- counsel were not to go into discussions between Mr.
15 Dunlop and his counsel with respect to the claim. We're
16 very, very close to that now, so I just want to make the
17 point.

18 **THE COMMISSIONER:** Okay.

19 **MR. CALLAGHAN:** I was asking about how
20 things were presented to Mr. Bourgeois when he got retained
21 and that was the purpose.

22 **THE COMMISSIONER:** Aren't we getting into
23 the discussion, now, about exactly the nature of the claim?

24 **MR. CALLAGHAN:** The nature of the claim?

25 Well, I mean I don't see how we -- it would

1 be my position -- I was going to ask questions because I
2 think -- and I may have to ask the witness to step out to
3 tell you where I'm going.

4 **THE COMMISSIONER:** Yes. Okay.

5 **MR. CALLAGHAN:** Would you like me to do
6 that?

7 **THE COMMISSIONER:** Sure.

8 Could you step outside, sir, and we'll have
9 the court officer go or someone go with you and then we'll
10 call you back in after we've had this discussion?

11 If you don't mind waiting.

12 **(WITNESS LEAVES THE ROOM/LE TÉMOIN QUITTE LA SALLE)**

13 **MR. CALLAGHAN:** Sir, the -- I'm sorry --
14 you've heard a lot about these statements and ---

15 **THE COMMISSIONER:** What statements?

16 **MR. CALLAGHAN:** The statements from Mr.
17 Leroux, C-8, et cetera.

18 **THE COMMISSIONER:** Yes, yes.

19 **MR. CALLAGHAN:** It's my contention that when
20 one looks at the information that this gentleman had and
21 what he was retained to do, which was start a malicious
22 prosecution action and an action on conspiracy, and having
23 regard to what's required for that, he said he didn't have
24 any information; that's why they embarked to find the
25 information so they could advance the claim.

1 He's pretty much conceded that all the
2 statements for the lawsuit, but I think it's important for
3 you to hear this so you understand the position. It's the
4 only way I can call the evidence. And maybe we should take
5 it bit by bit, but it seems to me that you have to
6 understand the whole flow of what they were doing; what the
7 lawsuits were about -- because he said in his view this was
8 done just for the lawsuits; and the evolution of the claims
9 which I think has already been dealt with; I don't think
10 that's a problem, from what I've been witnessing.

11 **THE COMMISSIONER:** Right, except there is a
12 ruling out there saying that solicitor/client privilege
13 exists and conversations that they would have had directly
14 on those instructions would be.

15 **MR. CALLAGHAN:** Okay, I will stay away from
16 that then, thank you.

17 And the intention, I must have misphrased it
18 -- my intention was to ask for his impression. If I gave
19 or articulated it as I was asking what he was being told, I
20 apologize; I intended to reflect his impression of what was
21 going on when he got retained.

22 But I've got the admonition and I'll
23 continue.

24 **THE COMMISSIONER:** All right.

25 Madam clerk, could you have the witness come

1 back, please.

2 **CHARLES BOURGEOIS, Resumed/Sous le même serment:**

3 **MR. CALLAGHAN:** Thank you, Mr. Bourgeois.

4 Continuing, I take it when you were
5 retained; you viewed the Fifth Estate program?

6 **MR. BOURGEOIS:** I don't know when.

7 **MR. CALLAGHAN:** But at some point you must
8 have?

9 **MR. BOURGEOIS:** Yes.

10 **MR. CALLAGHAN:** All right. And I take it, I
11 mean you'll recall the Commissioner talking about this
12 being the first real big case you've ever had; do you
13 recall that evidence earlier?

14 **MR. BOURGEOIS:** I thought he had asked the
15 biggest, but.

16 **MR. CALLAGHAN:** Well, it was the biggest by
17 far?

18 **MR. BOURGEOIS:** Yeah, yeah.

19 **MR. CALLAGHAN:** And I take it, is it the
20 first case and probably the only case you've had with
21 national media attention?

22 **MR. BOURGEOIS:** I'm sure, yeah.

23 **MR. CALLAGHAN:** All right. You know, it
24 doesn't come around every day, does it, national media
25 attention?

1 MR. BOURGEOIS: Yeah.

2 MR. CALLAGHAN: And you were just starting
3 to build your practice; correct?

4 MR. BOURGEOIS: Yes.

5 MR. CALLAGHAN: All right. And did you
6 appear on television with the Dunlops on occasion?

7 MR. BOURGEOIS: I don't know whether I did or
8 not.

9 MR. CALLAGHAN: You don't recall Pamela
10 Wallen, for example?

11 No?

12 MR. BOURGEOIS: Wallen?

13 MR. CALLAGHAN: You weren't on that show?

14 MR. BOURGEOIS: Oh, I might have been, but --
15 -

16 MR. CALLAGHAN: You don't recall?
17 You don't recall whether you were on any
18 television programs?

19 MR. BOURGEOIS: Not that I can remember.

20 MR. CALLAGHAN: Do you recall being
21 interviewed by the media, the print media?

22 MR. BOURGEOIS: Largely because of everything
23 I read in preparation for here.

24 MR. CALLAGHAN: All right. Now when the
25 Dunlops come to see you, I take it you were given certain

1 information from them and certain documents?

2 MR. BOURGEOIS: Yes.

3 MR. CALLAGHAN: You would have had
4 documents?

5 All right.

6 And that's on what you would have based the
7 claim?

8 MR. BOURGEOIS: The information we had, yeah.

9 MR. CALLAGHAN: All right. And I take it,
10 as we've talked about earlier, the two principle tenets of
11 your claim were malicious prosecution and a civil
12 conspiracy; correct?

13 MR. BOURGEOIS: Those would be the greater
14 ones, yes.

15 MR. CALLAGHAN: Fair to say that's sort of
16 the major ones as you say?

17 MR. BOURGEOIS: I think so, yeah.

18 MR. CALLAGHAN: Right. And you're aware
19 that when you plead malicious prosecution and conspiracy,
20 you have to plead it with great particularity; are you
21 familiar with that rule?

22 MR. BOURGEOIS: Likely -- I'll accept if you
23 say that's what you've got to do.

24 MR. CALLAGHAN: Well, I mean, these are
25 serious allegations; correct?

1 MR. BOURGEOIS: Yes.

2 MR. CALLAGHAN: All right. And do you
3 remember what the test was ---

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

5 MR. CALLAGHAN: --- for malicious
6 prosecution?

7 MR. BOURGEOIS: No.

8 MR. CALLAGHAN: You would have known at the
9 time; would you not, sir?

10 MR. BOURGEOIS: I'm sure I would have.

11 MR. CALLAGHAN: And you would have known at
12 least the malicious prosecution, you would have had to
13 establish a lack of reasonable and probably grounds for
14 laying the charge in the first place?

15 MR. BOURGEOIS: If those are the -- if you're
16 saying those are the criteria.

17 MR. CALLAGHAN: But I thought you did this
18 work. I thought you said you work for the York Police
19 Association.

20 MR. BOURGEOIS: Those aren't malicious
21 prosecutions; they're Police Act matters.

22 MR. CALLAGHAN: Sorry, did you not have a
23 malicious prosecution claim for Randy Porter, your
24 investigator? You were suing on his behalf, weren't you,
25 the York Region Police for malicious prosecution amongst

1 other things?

2 It's in January of that year. You were
3 retained by Randy Porter and issued a claim for malicious
4 prosecution; correct?

5 **MR. BOURGEOIS:** There was a claim but I don't
6 know if I did it. I didn't think -- I didn't think I did
7 that, but I thought I only did his defence; I don't know.
8 I don't remember.

9 **MR. CALLAGHAN:** Yes. But Randy Porter was
10 your client; right?

11 **MR. BOURGEOIS:** He was my client, yes.

12 **MR. CALLAGHAN:** And, sir, would you accept
13 that proving a lack of reasonable and probable grounds is a
14 notoriously difficult task?

15 **MR. BOURGEOIS:** Yes.

16 **MR. CALLAGHAN:** And that's, in fact,
17 "notoriously difficult task", I'm quoting from the Supreme
18 Court in Nelles. You knew Nelles was the leading case in
19 that area?

20 **MR. BOURGEOIS:** I'm not going to say I knew
21 Nelles was but ---

22 **MR. CALLAGHAN:** But presumably, as a careful
23 lawyer, you would have gone out, investigated what you had
24 to plead before you started an action; am I not correct on
25 that front?

1 **MR. BOURGEOIS:** I can't remember what I did.

2 **MR. CALLAGHAN:** Well, no, no, I didn't ask
3 what you did. But you're not here saying you're a sloppy
4 lawyer; are you?

5 **MR. BOURGEOIS:** Well, you're -- I don't know
6 how to answer that.

7 **MR. CALLAGHAN:** No, but it's not very
8 difficult. I'm assuming you researched what you have to do
9 to prove your case before you ---

10 **MR. BOURGEOIS:** I've already admitted that
11 I, in retrospect, would do a lot of things differently, so.

12 **MR. CALLAGHAN:** Is one of the retrospects
13 that you didn't know what you were doing by way of pleading
14 the case?

15 **MR. BOURGEOIS:** Certainly in looking at it
16 in retrospect, it should have been done differently, yes.

17 **MR. CALLAGHAN:** But did you not know the law
18 when you pled it?

19 **MR. BOURGEOIS:** I'm sure I did but I can't
20 say that I can remember if I did research or -- I'd just be
21 guessing.

22 **MR. CALLAGHAN:** All right. And another
23 element of malicious prosecution is some sort of malice?

24 **MR. BOURGEOIS:** Yes.

25 **MR. CALLAGHAN:** All right. Malice on the

1 person who charged the individual; correct?

2 MR. BOURGEOIS: Correct.

3 MR. CALLAGHAN: And carried the prosecution
4 forward; correct?

5 MR. BOURGEOIS: Yes.

6 MR. CALLAGHAN: All right. And so that's
7 something you would have looked into; correct?

8 MR. BOURGEOIS: Likely.

9 MR. CALLAGHAN: Well, likely; you would have
10 had to look into it in order to plead it; correct?

11 MR. BOURGEOIS: I'm sure.

12 MR. CALLAGHAN: All right.

13 Now, with respect to conspiracy, civil
14 conspiracy, you agree that's a very serious allegation as
15 well; correct?

16 MR. BOURGEOIS: Yes.

17 MR. CALLAGHAN: All right. And you agree
18 that lawyers are required to plead such a serious
19 allegation with clarity and precision; correct?

20 Can't just sort of throw it out there?

21 MR. BOURGEOIS: I'll accept that, sir.

22 MR. CALLAGHAN: And you know you have to
23 plead an alleged agreement between the defendants; correct?
24 That's what conspiracy is, an agreement between defendants?

25 MR. BOURGEOIS: I believe so.

1 **MR. CALLAGHAN:** All right. And you've got
2 to plead the overt acts which are alleged to have been done
3 by each of the alleged conspirators; right?

4 **MR. BOURGEOIS:** I'll accept that.

5 **MR. CALLAGHAN:** And those overt acts have to
6 have caused injury to the plaintiff; correct? It's simple.

7 **MR. BOURGEOIS:** Yes.

8 **MR. CALLAGHAN:** And our law, I'd suggest to
9 you when you were doing your pleading, required details
10 when you pled conspiracy, times, dates, documents with
11 respect to the overt acts; do you accept that?

12 **MR. BOURGEOIS:** Yes.

13 **MR. CALLAGHAN:** All right. Now, when you
14 were retained by Mr. Dunlop, I suggest one of the things he
15 gave you was the disclosure from his prosecution under the
16 *Police Services Act*, the disclosure.

17 Let's take a look at it. It's document
18 116244 ---

19 **MR. BOURGEOIS:** I don't agree with that.

20 **THE COMMISSIONER:** He doesn't agree with it.

21 **MR. CALLAGHAN:** All right. We'll take a
22 look at it and see if we can find little bits and pieces in
23 his pleading.

24 Document 116244.

25 **(SHORT PAUSE/COURTE PAUSE)**

1 **THE COMMISSIONER:** Exhibit No. 743 is Part
2 I, File History. Is there a date on here some place?
3 Anyway, the complainant is David Silmser; the officer
4 involved was Perry Dunlop.

5 All right.

6 **--- EXHIBIT NO./PIÈCE No. P-743:**

7 (102189 102189-90) Letter from Allan R. O'Brien
8 to Acting Chief Carl Johnston re: Perry Dunlop
9 dated 05 Oct 94

10 **MR. CALLAGHAN:** Are you ---

11 **THE COMMISSIONER:** Just a second, I'm sorry.

12 **MR. CALLAGHAN:** Sorry.

13 **THE COMMISSIONER:** There's also a Part II,
14 the Evidence.

15 **MR. CALLAGHAN:** Yes, that should start, Mr.
16 Commissioner, on page -- on Bates page 1092753.

17 **THE COMMISSIONER:** Yeah, but I just wanted,
18 for purposes of identification, identify what 743 was.

19 All right. So you want to go to the
20 evidence part?

21 **MR. CALLAGHAN:** Well I wanted to first talk
22 about this document, if I might?

23 **THE COMMISSIONER:** Okay, go ahead.

24 **MR. CALLAGHAN:** Now, you're aware that an
25 officer is entitled to disclosure when they appear on a

1 *Police Services Act* matter; correct?

2 **MR. BOURGEOIS:** Yeah.

3 **MR. CALLAGHAN:** Isn't it likely you would
4 have wanted to look at the disclosure if you're doing a
5 malicious prosecution claim, sir?

6 **MR. BOURGEOIS:** Most likely. I'm just
7 saying I don't remember.

8 **MR. CALLAGHAN:** Oh, you don't remember, I
9 see. So you don't recall but you're not saying you
10 wouldn't have got it; you just don't recall getting it?

11 **MR. BOURGEOIS:** I just don't -- you're
12 asking me, do you remember these documents.

13 **MR. CALLAGHAN:** I'm asking you -- well,
14 let's be clear. What were you looking at when you created
15 the Statement of Claim?

16 **MR. BOURGEOIS:** Whatever material was there
17 at the time.

18 **MR. CALLAGHAN:** And as a prudent lawyer
19 would you have not asked for the disclosure and the
20 documents underlying the malicious prosecution claim?

21 **MR. BOURGEOIS:** As I'm saying, it's likely
22 but you're asking me to say 100 percent; I don't remember.

23 **MR. CALLAGHAN:** Well, would a prudent lawyer
24 ask for it?

25 **MR. BOURGEOIS:** Yes.

1 **MR. CALLAGHAN:** All right. And you're a
2 prudent lawyer?

3 **MR. BOURGEOIS:** At this time, yes.

4 **MR. CALLAGHAN:** Well -- all right.

5 Well, let me ask you, would you have taken
6 the time to look at the charge sheets? And you can find
7 those at Bates page 1092747 or page -- the handwritten page
8 87 of the Volume 1.

9 Okay?

10 **MR. BOURGEOIS:** Yes.

11 **MR. CALLAGHAN:** All right. So you would
12 have averted to the fact, I take it, that Carl Johnston
13 charged Mr. Dunlop on May 12th, 1994; correct?

14 It's in the Statement of Claim, sir; you're
15 not going to deny you didn't know who charged him?

16 **MR. BOURGEOIS:** No, I'm not -- you're
17 missing the point. I'm not denying that I didn't see these
18 documents; I just don't remember right now. So ---

19 **MR. CALLAGHAN:** I'm clear on that. I'm just
20 trying to go through what you might have done and what I'm
21 suggesting to you, sir, that you would have -- having
22 regard to malicious prosecution, having regard to malice
23 being proved on the party advancing the prosecution, you
24 would have had regard to who Carl Johnston was; correct, as
25 the Chief of Police?

1 **MR. BOURGEOIS:** Likely.

2 **MR. CALLAGHAN:** Well, you know because you
3 do Police Act work, that the charge is that of the Chief of
4 Police; correct?

5 **MR. BOURGEOIS:** Yes.

6 **MR. CALLAGHAN:** Did you know that Carl
7 Johnston started with the Cornwall Police some time the
8 first week of January 1994?

9 **MR. BOURGEOIS:** Because I reviewed some
10 documents with Mr. Ruel.

11 **MR. CALLAGHAN:** Well, at the time I suggest
12 you would have known that.

13 **MR. BOURGEOIS:** I'm sure I did but I just
14 don't remember.

15 **MR. CALLAGHAN:** And you're aware that your
16 client went on sick leave in and about January 12th, 1994,
17 from the Cornwall Police; were you aware of that? Wasn't
18 that a fact that you knew?

19 **MR. BOURGEOIS:** The specifics of that, no,
20 sir, but did I know that he was on a leave at some point,
21 yes.

22 **MR. CALLAGHAN:** All right. So Carl Johnston
23 and Perry Dunlop were only actively involved in the same
24 police force for a very short period of time; a matter of a
25 couple of days, 10 days maybe; correct?

1 **MR. BOURGEOIS:** I'll accept that if you're
2 saying that.

3 **MR. CALLAGHAN:** Are you aware that Carl
4 Johnston had never met Perry Dunlop before and to this day
5 has never met Perry Dunlop?

6 **MR. BOURGEOIS:** I'm not aware one way or
7 another, sir.

8 **MR. CALLAGHAN:** Wouldn't you want to know
9 the relationship between the person charging and your
10 client when you start a malicious prosecution claim?

11 **MR. BOURGEOIS:** I'm sure you would.

12 **MR. CALLAGHAN:** All right. And did you --
13 would you have further learned that Carl Johnston had
14 formerly been an Assistant Deputy Minister with the
15 Solicitor General's office in Toronto?

16 **MR. BOURGEOIS:** I wouldn't know that one way
17 or another right now.

18 **MR. CALLAGHAN:** But would you have done an
19 investigation before you alleged malicious prosecution to
20 find the background of the person who charged your client?

21 **MR. BOURGEOIS:** I doubt it.

22 **MR. CALLAGHAN:** Okay. And you're aware that
23 Mr. Johnston or Chief Johnston chose to have the matter
24 heard by a Board of Inquiry; correct?

25 **MR. BOURGEOIS:** Yeah.

1 **MR. CALLAGHAN:** And you know that that is a
2 prerogative of a Chief of Police, under the *Police Services*
3 *Act* at the time; correct?

4 **MR. BOURGEOIS:** Yeah.

5 **MR. CALLAGHAN:** And they often do that so as
6 to ensure there's no allegation of bias with the police
7 force; correct? You send it out to the Board of Inquiry?

8 **MR. BOURGEOIS:** Yeah.

9 **MR. CALLAGHAN:** And you're aware, sir, if
10 you take a look at the page before -- pardon me, if you
11 look at the summary of the public complaint, which can be
12 found at the second page, Bates page 1092662 ---

13 **THE COMMISSIONER:** We have pages on this
14 thing, so ---

15 **MR. CALLAGHAN:** Sorry, it's page 6 at the
16 top, the handwritten 2, Mr. Commissioner. I'm sorry.

17 So would you take a quick read of that, sir?

18 **THE COMMISSIONER:** This is the claim as
19 against ---

20 **MR. BOURGEOIS:** Where is this, sir?

21 **MR. CALLAGHAN:** I'm sorry?

22 **THE COMMISSIONER:** What are you reading at
23 page 6?

24 **MR. CALLAGHAN:** I'm at Appendix A. This is
25 the summary of the incident that makes the basis of the

1 complaint ---

2 **THE COMMISSIONER:** One-zero-nine-two-six-
3 six-six (1092666)?

4 **MR. CALLAGHAN:** --- and the charge.

5 **THE COMMISSIONER:** Now I'm lost. So summary
6 of the incident? Pardon? Page 2, really?

7 **MR. CALLAGHAN:** I apologize, Mr.
8 Commissioner.

9 **THE COMMISSIONER:** You're getting old, Mr.
10 Callaghan.

11 **MR. CALLAGHAN:** I know, I admit. I have to
12 get bifocals.

13 **THE COMMISSIONER:** It makes you look more
14 scholarly as well.

15 **MR. CALLAGHAN:** That couldn't hurt.

16 **THE COMMISSIONER:** No, that's only a
17 justification, a rationalization for all of us.

18 **MR. CALLAGHAN:** So if you could quickly read
19 that, Mr. Bourgeois.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **MR. BOURGEOIS:** Yes, sir.

22 **MR. CALLAGHAN:** And you'll agree that the
23 facts on which the complaint was brought and prosecuted
24 weren't in dispute, that Mr. Dunlop had released the
25 statements to Mr. Abell. That was never in dispute,

1 correct?

2 **MR. BOURGEOIS:** I don't believe so.

3 **MR. CALLAGHAN:** All right.

4 And you knew that the complaint that was
5 advanced against Mr. Dunlop was that he should have gone
6 through the chain of command, correct? He shouldn't have
7 done it on his own but, rather, he should have gone through
8 the chain of command? You agree with me? That was the
9 gist of -- those were the facts initially?

10 **MR. BOURGEOIS:** I believe so. I think that
11 was the ---

12 **MR. CALLAGHAN:** And the issue became a legal
13 issue as to whether or not he got the protection of the
14 *Child and Family Services Act*, right? That was the issue?

15 **MR. BOURGEOIS:** I wasn't involved back then,
16 no.

17 **MR. CALLAGHAN:** Well, no, but you must have
18 had regard to it when you did the malicious prosecution
19 claim. You would want to know this. I mean, you'd want to
20 know it, I would suggest to you, because as you agreed with
21 me, reasonable probable grounds is a notoriously difficult
22 task to prove, about the absence of reasonable probable
23 grounds, I should say. So you would have looked at this?

24 **MR. BOURGEOIS:** Very likely.

25 **MR. CALLAGHAN:** And since Chief Shaver

1 featured prominently in the complaint, would you have
2 looked at his conduct?

3 MR. BOURGEOIS: In what regard?

4 MR. CALLAGHAN: In regard to his involvement
5 with the prosecution, if any, of Perry Dunlop. That was
6 the nature of your complaint?

7 MR. BOURGEOIS: Likely.

8 MR. CALLAGHAN: Right.

9 MR. BOURGEOIS: I just don't remember.

10 MR. CALLAGHAN: And you know as a fact that
11 Claude Shaver had left the Cornwall Police some five months
12 earlier to make way for Carl Johnston; correct?

13 MR. BOURGEOIS: If you say so.

14 MR. CALLAGHAN: Well, there can't be two
15 chiefs. You know that?

16 MR. BOURGEOIS: Eh?

17 MR. CALLAGHAN: You knew that? You knew
18 he'd ---

19 MR. BOURGEOIS: I don't know; you said after
20 five months and ---

21 MR. CALLAGHAN: Well ---

22 MR. BOURGEOIS: At some point Mr. Shaver
23 left.

24 MR. CALLAGHAN: Right. And he wasn't there
25 in May of 1994 when Carl Johnston charged your client;

1 correct? Surely that's not in dispute?

2 MR. BOURGEOIS: I don't think it's disputed.

3 MR. CALLAGHAN: All right.

4 And were you aware that the issue regarding
5 Mr. Dunlop's conduct with the statement had been the
6 subject of an attempted informal discipline of Mr. Dunlop?

7 MR. BOURGEOIS: I don't remember that at
8 all.

9 MR. CALLAGHAN: You don't remember?

10 MR. BOURGEOIS: No.

11 MR. CALLAGHAN: And if it were, I suspect
12 you would have known at the time though, wouldn't you? You
13 would want to know that as a fact, whether or not the issue
14 had come up previously?

15 MR. BOURGEOIS: Definitely, you're right
16 that it's relevant, but I don't know if I knew that or --
17 it's certainly a factor.

18 MR. CALLAGHAN: And you're aware, of course,
19 that -- because you do this work -- that informal
20 discipline is below a *Police Services Act*?

21 MR. BOURGEOIS: Well, you're saying because
22 I do -- because I did that work.

23 MR. CALLAGHAN: Right. Well, actually, more
24 importantly, you did it at the relevant time?

25 MR. BOURGEOIS: Yeah.

1 **MR. CALLAGHAN:** Fine.

2 So informal discipline is a step below a
3 *Police Act* charge, correct?

4 **MR. BOURGEOIS:** Yes.

5 **MR. CALLAGHAN:** And that if the officer
6 doesn't accept the informal discipline, the Chief has an
7 election as to whether to go to a *Police Act* charge,
8 correct?

9 **MR. BOURGEOIS:** Yes.

10 **MR. CALLAGHAN:** All right.

11 And that if -- you would also know that if
12 there's a public complaint, that has to take precedent of
13 the internal system, correct? You have to give it ---

14 **MR. BOURGEOIS:** Yes.

15 **MR. CALLAGHAN:** All right.

16 And so in this informal discipline process,
17 if you go to page 169 ---

18 **THE COMMISSIONER:** Can I just -- a
19 housekeeping measure -- I think we've filed this twice.
20 Unless I am very wrong, 643. So just to -- can we look at
21 it and agree that it's the same, and if it's the same, can
22 we cancel out Exhibit 743 and go to 643?

23 **MR. CALLAGHAN:** It's only one digit
24 different, ironically, but yes, that's fine. That's 643.
25 I can't remember -- I can't imagine how we would have ---

1 **THE COMMISSIONER:** It's also half a tree, I
2 would say.

3 **MR. CALLAGHAN:** All right. So ---

4 **THE COMMISSIONER:** So what page?

5 **MR. CALLAGHAN:** We're at Bates page 1092825,
6 page 169 at the top or page 157 handwritten.

7 Were you aware that ---

8 **MR. BOURGEOIS:** I haven't found that yet,
9 sir.

10 **MR. CALLAGHAN:** All right. If you go ---

11 **MR. BOURGEOIS:** The handwritten 157.

12 **MR. CALLAGHAN:** One-fifty-seven (157) is
13 probably the easiest.

14 **MR. BOURGEOIS:** Okay.

15 **MR. CALLAGHAN:** And this all appears in part
16 of your Statement of Claim, but Sergeant Durocher did an
17 investigation regarding the situation in which it was made
18 apparent that Helen Dunlop had been speaking to the
19 complainant and that there was a subsequent release in part
20 from Children's Aid. And if we could go look at what he
21 says about Chief Shaver, it says:

22 "Chief Shaver wanted Cst. Dunlop
23 formally counselled for his action. He
24 had an outline of what should be
25 covered in the counselling session and

1 what strategy should be used. Chief
2 Shaver provided a document which
3 contained those subjects he wanted
4 raised. The counselling session would
5 be formally documented and the
6 documentation would be added to Cst.
7 Dunlop's personnel file."

8 If you go over two pages, this is what the
9 counselling session was to look like:

10 "You have placed my office in a
11 difficult position. On the one hand,
12 your unauthorized actions has allowed
13 this investigation to continue to the
14 Children's Aid Society, which I most
15 certainly agree with. On the other
16 hand, your duty, should you have felt
17 nothing was being done, was to go
18 through the proper chain of command.
19 It appears you allowed your beliefs to
20 interfere with your duty as a police
21 officer in following proper protocol.
22 Your action of telling unauthorized
23 civilians, family or otherwise, causes
24 me some concern and you should
25 seriously consider that information

1 from inside the police service is
2 confidential and should not be
3 released. Your personal beliefs are no
4 different than the beliefs of many in
5 this service, including myself, and all
6 of us are concerned and must ensure the
7 safety of children. For that reason,
8 there will be no disciplinary action
9 against you, but you must look deep
10 into your belief system as you will no
11 doubt be placed in the position over
12 and over again in your police career.
13 Use whatever internal process you are
14 satisfied with but stay within the
15 service."

16 Do you see that?

17 **MR. BOURGEOIS:** Yeah.

18 **MR. CALLAGHAN:** It doesn't look like Chief
19 Shaver was coming for his head, for example, does it, when
20 you're reading that?

21 **MR. BOURGEOIS:** When I'm reading that, no.

22 **MR. CALLAGHAN:** No.

23 And, in fact, he's not even criticizing the
24 result. He's just criticizing the manner in which Mr.
25 Dunlop did it, right; that is, that the information got to

1 the Children's Aid?

2 **MR. BOURGEOIS:** As I read that, yes.

3 **MR. CALLAGHAN:** All right.

4 And I take it you were also aware, as we
5 indicated, that there had been a public complaint. And
6 you're aware, obviously, the public complaint takes
7 precedent when it comes in. And you were aware that Mr.
8 Dunlop wouldn't come in for informal discipline or is that
9 something you weren't aware of?

10 **MR. BOURGEOIS:** I'm not aware.

11 **MR. CALLAGHAN:** You're not aware. All
12 right.

13 And eventually, in early January, under
14 Chief Johnston's watch, DS comes in and makes a complaint,
15 correct?

16 **MR. BOURGEOIS:** Yeah.

17 **MR. CALLAGHAN:** Right.

18 You're further aware, I take it, that when
19 the Police Complaints Commissioner gets a complaint and it
20 goes to a board of inquiry, that they're the ones that
21 prosecute, right?

22 The Cornwall Police doesn't prosecute the
23 claim before a Board of Inquiry; are you aware of that?

24 **MR. BOURGEOIS:** Yes.

25 **MR. CALLAGHAN:** Yes. All right. And are

1 you aware that the Police Complaints Commissioner reviews
2 the investigation done so as to ensure that the claim ought
3 to go forward?

4 **MR. BOURGEOIS:** I think they can.

5 **MR. CALLAGHAN:** And for example, if I can
6 show the witness Document 706388.

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

8 **THE COMMISSIONER:** Thank you.

9 Exhibit No. 744 is a letter to the Police
10 Complaints Commissioner from Mr. Bryce Geoffrey.

11 **--- EXHIBIT NO./PIÈCE No P-744:**

12 (706388) Letter fr Bryce Geoffrey
13 to Daniel Raymond
14 re: Complaint David Silmser
15 dated 13 Jun 94

16 **MR. CALLAGHAN:** All right. And you're
17 aware, sir, that Bryce Geoffrey was Mr. D.S.'s lawyer?

18 **MR. BOURGEOIS:** It rings a bell, yeah.

19 **MR. CALLAGHAN:** All right. Would you just
20 take a quick read of that letter?

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

22 **MR. CALLAGHAN:** Have you had a chance to
23 look at it, sir?

24 **MR. BOURGEOIS:** Yes.

25 **MR. CALLAGHAN:** And you'll agree that Mr.

1 Geoffrey, on behalf of D.S., is confirming that his
2 complaint dealt with all unauthorized disclosure to any
3 persons. This would include both, representatives of the
4 Children's Aid Society and the media? You'll agree that
5 that's what the import of the letter is?

6 **MR. BOURGEOIS:** Yeah.

7 **MR. CALLAGHAN:** All right.

8 Now, you're aware that during the hearing
9 before the Board of Inquiry, Mr. Dunlop was represented by
10 Allan O'Brien?

11 **MR. BOURGEOIS:** No.

12 **MR. CALLAGHAN:** No?

13 **MR. BOURGEOIS:** No. I'm not denying it.

14 **MR. CALLAGHAN:** That's fine.

15 **MR. BOURGEOIS:** But I don't remember who he
16 was represented by.

17 **MR. CALLAGHAN:** Well, at one stage, you
18 would have known at this stage who his lawyer was before
19 the Board of Inquiry, because you're dealing with the
20 malicious prosecution of that case.

21 **MR. BOURGEOIS:** I'm sure that I knew at the
22 relevant time, sir, yes.

23 **MR. CALLAGHAN:** And did you get any
24 information from Allan O'Brien before you started your
25 claim, as far as you recall?

1 **MR. BOURGEOIS:** I don't recall, no.

2 **MR. CALLAGHAN:** And if I -- and was it
3 reported to you by any source that no one took issue with
4 the motives of Mr. Dunlop in releasing the statement?

5 **MR. BOURGEOIS:** No.

6 **MR. CALLAGHAN:** No? Let me show you
7 Document 102189.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **THE COMMISSIONER:** Thank you.

10 This is a letter addressed to Acting Chief
11 Carl Johnston, dated October 5th, 1994. I've only got one
12 page.

13 **MR. CALLAGHAN:** There is a back page, but
14 this will suffice -- what I want to refer to is in the
15 first page.

16 **THE COMMISSIONER:** All right and this ---

17 **MR. CALLAGHAN:** We will get the rest ---

18 **THE COMMISSIONER:** So Allan O'Brien is the
19 one who wrote -- I'm just trying to see who the author was.

20 **MR. CALLAGHAN:** It's Allan O'Brien.

21 **THE COMMISSIONER:** All right. And it's
22 dated October 5th, 1994. Exhibit -- okay, what happened to
23 743, Madam Clerk?

24 **MR. CALLAGHAN:** Do you want to make this
25 743?

1 **THE REGISTRAR:** I just want to make sure
2 that (inaudible - off mic).

3 **THE COMMISSIONER:** In which one, 643? I
4 certainly don't want to get cross-examined by the Clerk,
5 but I would think that it's all in there, Madam Clerk; 205,
6 224. I have made a diligent search of the file, Madam
7 Clerk, and I believe it's all there.

8 **MR. CALLAGHAN:** So do you want to use this
9 as ---

10 **THE COMMISSIONER:** Yes, why don't we do this
11 letter. Pardon me? It's 743.

12 **MR. CALLAGHAN:** What I want to draw your
13 attention to, Mr. Bourgeois, is the second paragraph. It
14 says:

15 "At the recent preliminary hearing of
16 the Board of Inquiry, none of the
17 parties argued that Constable Dunlop
18 released the information for a purpose
19 other than out of his concern for the
20 welfare of the children in his
21 community. The preliminary hearing
22 proceeded on the basis that Constable
23 Dunlop's decision to disclose
24 information to the Children's Aid
25 Society was made out of good faith,

1 concern for the safety of the children
2 of the Cornwall community and for no
3 other improper purpose."

4 Do you see that?

5 **MR. BOURGEOIS:** Yup.

6 **MR. CALLAGHAN:** All right. Is that how you
7 understood it proceeded before the Board of Inquiry?

8 **MR. BOURGEOIS:** No, I don't remember that.

9 **MR. CALLAGHAN:** You don't remember.

10 **MR. BOURGEOIS:** No.

11 **MR. CALLAGHAN:** All right. But you earlier
12 agreed with me that the discussion of the Board of Inquiry
13 and the discussion -- and the decision of the Div Court
14 dealt with the applicability of the *Child and Family*
15 *Services Act* and the protections thereunder?

16 **MR. BOURGEOIS:** Yes.

17 **MR. CALLAGHAN:** All right. And are you
18 aware, sir, that it was the Police Complaints Commissioner
19 and not the Cornwall Police that appealed the decision of
20 the Board of Inquiry to the Divisional Court?

21 **MR. BOURGEOIS:** I'm aware now out of
22 preparing for these matters.

23 **MR. CALLAGHAN:** Let me show you a Document
24 717739.

25 (SHORT PAUSE/COURTE PAUSE)

1 **THE COMMISSIONER:** Thank you.
2 Exhibit 745 is the Notice of Appeal.

3 **--- EXHIBIT NO./PIÈCE No P-745:**
4 (717739) Notice of Appeal
5 - Police Complaints Commissioner
6 - vs. Perry Dunlop
7 dated 01 Mar 95

8 **MR. CALLAGHAN:** All right. Mr. Bourgeois,
9 can you recall now whether you would have
10 reviewed the Notice of Appeal prior to drafting
11 the Statement of Claim?

12 **MR. BOURGEOIS:** No.

13 **MR. CALLAGHAN:** As in you don't recall?

14 **MR. BOURGEOIS:** No.

15 **MR. CALLAGHAN:** All right. But you will
16 agree with me that the Appellant is The Police Complaints
17 Commissioner?

18 **MR. BOURGEOIS:** Yes.

19 **MR. CALLAGHAN:** And you're aware that the
20 Cornwall Police Service took no position and did not appear
21 on that appeal?

22 **MR. BOURGEOIS:** That's your -- if you say
23 that, I'm sure that's accurate.

24 **MR. CALLAGHAN:** All right. And I would like
25 to take you to Document 722331.

1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: Exhibit 746 is the court
3 documents of Police Complaints Commissioner and Constable
4 Perry Dunlop Factum of the Appellant.

5 MR. CALLAGHAN: Right.

6 --- EXHIBIT NO./PIÈCE No P-746:

7 (722331) Factum of the Appellant - Police
8 Complaints Commissioner vs. Perry Dunlop
9 dated 12 May 95

10 MR. CALLAGHAN: And do you recall one way or
11 the other whether you would have seen this before you
12 prepared your Statement of Claim for Mr. Dunlop?

13 MR. BOURGEOIS: No.

14 MR. CALLAGHAN: All right. Well, I am just
15 going to illustrate a few things, but it was largely, if
16 not totally, an issue of the interpretation of the *Child*
17 *and Family Services Act*.

18 For example, if you go over to the 10th page
19 of the Factum, Bates page 7086589, and this is the
20 provincial body who has duty to report; paragraph 28. And
21 if you go over to paragraph 29, it says:

22 "With respect we submitted that the
23 general duty applies only when the
24 suspected abuse is current and the
25 child is identified."

1 Subsection 72(2) refers to "a child" and not
2 "children" or "group of childrens".

3 "Specific reference to a "child" in the
4 singular excludes children in general
5 who may be at risk because of a
6 potential exposure to a historic
7 pedophile."

8 See that?

9 **MR. BOURGEOIS:** Yeah.

10 **MR. CALLAGHAN:** All right. And I take it,
11 we heard earlier, that's what Mr. Abell says you were
12 eventually told by, I believe, Lenore Jones. Remember Mr.
13 Chisholm took you to that?

14 **MR. BOURGEOIS:** Yeah.

15 **MR. CALLAGHAN:** All right. So if you go on,
16 you'll see at paragraph 35, they're talking about the scope
17 of the protection which is to say that the protection, when
18 it says that:

19 "You're protected from actions doesn't
20 apply to a discipline hearing under the
21 Police Services Act."

22 Do you see that, paragraph 37?

23 "Further submitted that the protection
24 established in section 72(7)..."

25 **MR. BOURGEOIS:** Yes.

1 **MR. CALLAGHAN:** "...applies only to actions
2 and not to discipline hearings under
3 the Police Services Act."

4 So it's really a legal argument on
5 undisputed facts; correct?

6 **MR. BOURGEOIS:** According to this, yes.

7 **MR. CALLAGHAN:** Right. And that's your
8 recollection?

9 **MR. BOURGEOIS:** No.

10 **MR. CALLAGHAN:** All right. No? Or you have
11 no recollection?

12 **MR. BOURGEOIS:** I don't have recollection of
13 that but it seems very obvious on these documents that's
14 what it is.

15 **MR. CALLAGHAN:** Okay. So let's review the
16 malicious prosecution claim that you've got going when you
17 get these documents.

18 You have Carl Johnston, who may or may not
19 ever have met Perry Dunlop; you have Carl Johnston charging
20 Perry Dunlop, four and a half, five months after Claude
21 Shaver leaves the police service; you have Claude Shaver
22 who wanted to do informal discipline; you have basically no
23 facts in dispute, or actually no facts in dispute, and no
24 one taking issue with the intent of Mr. Dunlop.

25 You have a public body, a provincial body,

1 who prosecutes; a provincial body and not the Cornwall
2 Police appeal; and an argument proceeding as a matter of
3 law, in fact an argument that was repeated to you a year
4 after -- two years after this; correct?

5 **THE COMMISSIONER:** Two years after what now?

6 **MR. CALLAGHAN:** Well, two years after the
7 charge.

8 **THE COMMISSIONER:** The charge?

9 **MR. CALLAGHAN:** Well, in May '96, by, by --
10 pardon me, May '94 by December '96, he is being told
11 exactly the same thing by Lenore Jones.

12 **THE COMMISSIONER:** That you don't have to
13 report historic sexual assaults because they don't come
14 under the act. Right.

15 **MR. CALLAGHAN:** All I'm getting at is that
16 at the time, what Mr. Bourgeois knows is there is a legal
17 issue of dispute. There was no factual issue and I'm going
18 to ask him that doesn't meet the threshold, either of the
19 reasonable probable grounds that we talked about or the
20 motion of prosecution in itself does it?

21 **MR. BOURGEOIS:** You're asking me to answer
22 for something that now versus then, so ---

23 **MR. CALLAGHAN:** All right. Well now, you'd
24 agree with me, looking at it now?

25 **MR. BOURGEOIS:** Yes.

1 **MR. CALLAGHAN:** In the cold light of day.

2 **MR. BOURGEOIS:** Yes.

3 **MR. CALLAGHAN:** All right. And I take it,
4 sir, what was really happening was that you had Mr. Dunlop
5 coming forward. He was an experienced police officer;
6 correct?

7 **MR. BOURGEOIS:** I don't remember how many
8 years, sir, but I don't think he was a rookie.

9 **MR. CALLAGHAN:** Right. But you had the
10 perception that he was an experienced police officer?

11 **MR. BOURGEOIS:** He certainly had some
12 experiences.

13 **MR. CALLAGHAN:** Had been lauded in the
14 national press, for example, the W-5. Right? Came with an
15 incredible story of a cover-up.

16 **MR. BOURGEOIS:** M'hm.

17 **MR. CALLAGHAN:** Yes?

18 **MR. BOURGEOIS:** Yes.

19 **MR. CALLAGHAN:** You understood that he was
20 upset about the way he was treated by having been
21 prosecuted?

22 **MR. BOURGEOIS:** Yeah.

23 **MR. CALLAGHAN:** And you knew he was upset at
24 Chief Shaver, right? That's what you had in front of you,
25 as an example.

1 **MR. BOURGEOIS:** Well, do I have to answer
2 that, sir?

3 **MR. CALLAGHAN:** Well, your impression, I'm
4 not asking you what he said.

5 **THE COMMISSIONER:** Oh yeah. You're not
6 supposed to say what he said, but your impression of ---

7 **MR. BOURGEOIS:** Yeah, my ---

8 **MR. CALLAGHAN:** I am not asking what he
9 said, I am not interested -- I am interested how you get
10 caught up in all this, 'cause with great respect, Mr.
11 Bourgeois, you're very essential to this.

12 And I'm doing my best to help you with your
13 memory but you're very central and what comes back to a
14 little bit what was earlier said.

15 Is it fair to say you got swept up in the
16 moment in the objectivity of what we just went through, you
17 may not have applied, at that time, either because you were
18 junior, either because this is the biggest case in your
19 life, or for a whole host of reasons.

20 **MR. BOURGEOIS:** Looking at it in retrospect,
21 I'd do a lot of things differently. I think I've been very
22 candid about that. I don't know how more candid you want
23 me to be. I mean, if you want to keep embarrassing me
24 about it, go ahead.

25 **MR. CALLAGHAN:** No, I just want you to say

1 yeah.

2 **MR. BOURGEOIS:** It's very clear.

3 **MR. CALLAGHAN:** But you're ---

4 **MR. BOURGEOIS:** I've said it time and time
5 again.

6 **THE COMMISSIONER:** No, no ---

7 **MR. BOURGEOIS:** I mean, I don't know how
8 many times you want me to tell you; I would do a lot of
9 things differently. But at all times I acted in good faith
10 and believed that Perry did too. And still do now.

11 **MR. CALLAGHAN:** Sir, I'd ask you -- I
12 recognize this is difficult. But in fairness, you didn't
13 bother preparing to come today.

14 When you came in, sir, you didn't bother to
15 prepare, did you? When you showed up and sat down, you
16 hadn't looked at anything, had you?

17 **MR. BOURGEOIS:** Yes I did.

18 **MR. CALLAGHAN:** Oh, you had.

19 **MR. BOURGEOIS:** I met with Mr. Ruel for a
20 day.

21 **MR. CALLAGHAN:** For a day? In what, July?

22 **MR. BOURGEOIS:** Yeah.

23 **MR. CALLAGHAN:** But I thought we'd been
24 reported that you had no time to look at anything between
25 then and when you appeared here in the middle of October.

1 **MR. BOURGEOIS:** Well, do you really want me
2 to go into my life?

3 **MR. CALLAGHAN:** No, I just want you to say
4 yes or no.

5 **MR. BOURGEOIS:** I mean, I've given up
6 already five days for this matter and I'm not complaining.
7 I haven't even asked for cost for it.

8 I mean, I don't know what you want me -- and
9 I don't care. It's not about that. I've given up a lot of
10 days.

11 **THE COMMISSIONER:** You wouldn't get cost.
12 Nobody gets cost.

13 **MR. BOURGEOIS:** No, no, I mean for even for
14 my rooms and stuff. I don't even -- it's not really that
15 relevant. I am just saying ---

16 **MR. CALLAGHAN:** Well Mr. Bourgeois, here is
17 what -- here is the concern, your Statement of Claim, all
18 the statements you took, have done a lot of damage in the
19 community. And I am going to go through it and try to help
20 you remember so maybe we can undo some of the damage.
21 Okay?

22 And what I was trying to illustrate is that
23 perhaps a little more objectivity at the beginning, we
24 wouldn't even have had a malicious prosecution claim, and I
25 take it you agree with me. And you're saying you were

1 young. I understand that. I just would like to get it
2 confirmed for the record.

3 MR. BOURGEOIS: It depends on how -- it
4 depends on how you look at it. That will be up for the
5 Commissioner to decide, quite frankly.

6 MR. CALLAGHAN: All right.

7 MR. BOURGEOIS: I mean I think I've been
8 very candid on what my position is on looking at it now.

9 MR. CALLAGHAN: Right. And looking at it
10 now, having looked at those facts ---

11 MR. BOURGEOIS: Yes.

12 MR. CALLAGHAN: --- do you agree with me?

13 MR. BOURGEOIS: That what?

14 MR. CALLAGHAN: That objectively looking at
15 it, you today, would not have started a malicious
16 prosecution claim.

17 MR. BOURGEOIS: I may not have, sir, but I
18 will say the following; same as I can question myself and
19 have; it is highly unusual for a chief of police, if he
20 knew a potential individual was an alleged accused, to not
21 refer that to a third party police, as well as a third
22 party prosecutor. That's standard in the work place. I
23 wouldn't have known that now but I know -- then -- but I
24 know that now.

25 MR. CALLAGHAN: Okay, let's look at who

1 charged Perry Dunlop; Carl Johnston.

2 MR. BOURGEOIS: Yes.

3 MR. CALLAGHAN: Are you aware that's exactly
4 what he did when he came in? That he referred out the
5 allegations?

6 MR. BOURGEOIS: No, I'm just talking about
7 initially with the first complaint by the DS, sir.

8 MR. CALLAGHAN: I see. And how does that
9 relate to Mr. Dunlop in the clarity with which his case
10 went forward, merely on whether he had to follow the chain
11 of command?

12 I suggest you wrapped it all together
13 because you didn't have a malicious prosecution. Is that
14 what happened?

15 MR. BOURGEOIS: No, I felt at the time we
16 did.

17 MR. CALLAGHAN: That's because you wrapped
18 it all together. You took what happened over here, what
19 happened here, which is what happened to DS case and about
20 Dunlop and you mushed it all together, and you didn't
21 objectively look at it. That's what I'm suggesting
22 happened, sir.

23 MR. BOURGEOIS: I'll leave that for you to
24 make a determination.

25 MR. CALLAGHAN: Let's then go to your

1 Statement of Claim, Exhibit 726.

2 **THE COMMISSIONER:** First of all, sir, you
3 know, it's not -- it's a statement of claim he prepared;
4 it's Mr. Dunlop's statement of claim. You know. So --

5 **MR. CALLAGHAN:** That's a good point, sir.

6 **THE COMMISSIONER:** I make one or two every
7 day; I try.

8 **MR. CALLAGHAN:** Regrettably, they all seem
9 to be at my expense.

10 (LAUGHER / RIRES)

11 **MR. CALLAGHAN:** Some points are easier to
12 make that way.

13 **THE COMMISSIONER:** No, that's not true;
14 that's not true; that's not true.

15 (LAUGHER / RIRES)

16 **THE COMMISSIONER:** I distribute my learning
17 equally amongst everyone.

18 **MR. CALLAGHAN:** So ---

19 **THE COMMISSIONER:** And I inflict them on
20 myself.

21 **MR. CALLAGHAN:** I know. You're -- this is a
22 self-deplecating (sic) group, except -- with the exception
23 of Mr. Sherriff-Scott.

24 (LAUGHER / RIRES)

25 **MR. CALLAGHAN:** The ---

1 **THE COMMISSIONER:** Levity, as you know, sir,
2 is sometimes a good thing ---

3 **MR. CALLAGHAN:** Yes.

4 **THE COMMISSIONER:** --- in proceedings like
5 this. Don't take offence to it.

6 **MR. BOURGEOIS:** I'm not taking offence.

7 **MR. CALLAGHAN:** Well, I think Mr. Bourgeois
8 has been around this kind of (inaudible) before.

9 Now, so you start your notice of action on
10 June 6. You then do the statement of claim on July 5th,
11 '96. And the only thing that it appears that you have is
12 the document of the interview between C-8 and Randy Porter;
13 correct?

14 **MR. BOURGEOIS:** I don't know if that's all I
15 had, sir.

16 **MR. CALLAGHAN:** Well, that's the only -- let
17 me say it this way: Ron Leroux had yet to be identified
18 and interviewed as of July 5th, 1996. You don't --

19 **MR. BOURGEOIS:** From everything I see here,
20 that's seems accurate, sir, yes.

21 **MR. CALLAGHAN:** And just to go over it
22 again: Randy Porter was your client?

23 **MR. BOURGEOIS:** He was my client, yes.

24 **MR. CALLAGHAN:** Right.

25 **MR. BOURGEOIS:** That's Randy Porter.

1 **MR. CALLAGHAN:** And were you paying him as a
2 disbursement, out of your fees or was Mr. Dunlop paying him
3 directly?

4 **THE COMMISSIONER:** I don't know if we -- can
5 we ---

6 **MR. CALLAGHAN:** Well, I want to figure out
7 how objective Mr. Randy Porter's statement taking will be.

8 **THE COMMISSIONER:** Well, you know, he says -
9 - well, first of all, I don't know if he's supposed to even
10 acknowledge that Mr. Porter was his client, like, you know,
11 this is ---

12 **MR. CALLAGHAN:** It's in a statement of claim
13 with his name on it; it's a public record. So, I mean, I
14 don't ---

15 **THE COMMISSIONER:** Okay.

16 **MR. CALLAGHAN:** I mean, I'm not suggesting
17 this is all public record. I don't know anything special
18 of Mr. Bourgeois. All I'm suggesting is he was his client;
19 he now shows up as an investigator in the -- the same time
20 as Mr. Porter's claim, it's extent, as I understand it, and
21 I'm trying to figure out: What's the relationship? Was
22 Mr. Porter an objective investigator?

23 **THE COMMISSIONER:** Well -- okay, so -- just
24 a second here. We know that Porter was in the employ of --
25 on the Dunlop file.

1 MR. CALLAGHAN: Right.

2 THE COMMISSIONER: Okay.

3 MR. CALLAGHAN: I think Mr. Bourgeois has
4 indicated that he was his investigator.

5 THE COMMISSIONER: So you're investigating;
6 is that right?

7 MR. BOURGEOIS: Yeah.

8 THE COMMISSIONER: Okay. So ---

9 MR. CALLAGHAN: Well, I just want to -- I
10 mean, I find it peculiar that you're retaining someone with
11 whom you have a financial interest, and I want to know what
12 ---

13 THE COMMISSIONER: You're retaining someone
14 with whom you have -- Mr. Porter?

15 MR. CALLAGHAN: Right. His client.

16 THE COMMISSIONER: Yes.

17 MR. CALLAGHAN: So my scratch your -- I
18 scratch your back; you scratch my back. I'll retain you;
19 I'll give you some work. I just want to know the
20 relationship. Mr. Porter is taking statements in this
21 case.

22 THE COMMISSIONER: So, I guess if -- it's
23 like the small town car dealership. If you're acting for
24 them, you go buy a car there, you're public?

25 MR. CALLAGHAN: Were talking Newmarket. It

1 ain't that small a town. But I hear -- maybe. Okay.

2 Let me ask you this -- I'm moving on.

3 **THE COMMISSIONER:** Yes.

4 **MR. CALLAGHAN:** I'm taking the
5 Commissioner's point.

6 Who instructed Randy Porter; you or your
7 client?

8 **MR. BOURGEOIS:** I wouldn't remember.

9 **MR. CALLAGHAN:** All right.

10 You don't know what he was told?

11 **MR. BOURGEOIS:** It would've been -- it
12 would've been to take a statement and ---

13 **MR. CALLAGHAN:** Why did you get Randy Porter
14 to take a statement when you were taking statements
15 yourself?

16 **MR. BOURGEOIS:** I assume -- I would just
17 have -- I'd have to be assuming.

18 **MR. CALLAGHAN:** All right.

19 **MR. BOURGEOIS:** I'd be guessing.

20 **MR. CALLAGHAN:** And what's your best
21 estimate?

22 **MR. BOURGEOIS:** For impartiality, I'm
23 assuming?

24 **MR. CALLAGHAN:** Right. Isn't that the
25 prudent practice then to get someone impartial; right?

1 MR. BOURGEOIS: Yes.

2 MR. CALLAGHAN: All right.

3 MR. BOURGEOIS: But ---

4 MR. CALLAGHAN: And that ---

5 MR. BOURGEOIS: --- that couldn't be done
6 all -- and ---

7 MR. CALLAGHAN: That fell of the -- that
8 fell by the wayside at some point, right, having Mr. Porter
9 do this?

10 MR. BOURGEOIS: Yes.

11 MR. CALLAGHAN: And this is the only
12 statement we find of Mr. Porter. Was he no longer
13 involved? Was he? I may be wrong. Let me ask you: Do
14 you remember him doing any other statements? And we'll
15 check the record.

16 MR. BOURGEOIS: I don't think so.

17 MR. CALLAGHAN: You don't think so. All
18 right.

19 Well, the record will show it one way or the
20 other.

21 So you can't tell me what instructions Mr.
22 Porter had?

23 MR. BOURGEOIS: I can't. I'd be guessing,
24 sir.

25 MR. CALLAGHAN: And do you know whether Mr.

1 Porter took rough notes ---

2 MR. BOURGEOIS: No.

3 MR. CALLAGHAN: --- on the manner in which
4 he did his interview?

5 MR. BOURGEOIS: No, I don't know.

6 MR. CALLAGHAN: No. And did you take
7 possession of anything other than the statement?

8 MR. BOURGEOIS: I'm sure I would've, but I
9 can't remember.

10 MR. CALLAGHAN: All right.

11 You can't recall. And that it would've been
12 destroyed with the rest of your file?

13 THE COMMISSIONER: I don't know. He says it
14 was destroyed.

15 MR. CALLAGHAN: Sorry. You're absolutely
16 right. What happened to your file?

17 MR. BOURGEOIS: I know that the only thing
18 that could maybe -- and again, I'd be guessing, sir -- is
19 in the letter it clearly states -- in Mr. Dunlop's letter
20 terminating the retainer, it clearly indicates to return
21 the materials to him. So I'm assuming that that's what I
22 did.

23 MR. CALLAGHAN: And what about your own
24 notes of interviews?

25 MR. BOURGEOIS: I would assume that those

1 would be destroyed.

2 **MR. CALLAGHAN:** All right.

3 You wouldn't have given over your own notes
4 back to Mr. Dunlop?

5 **MR. BOURGEOIS:** I don't think so, no.

6 **MR. CALLAGHAN:** So your notes that you
7 would've have taken, for example, when you went down to
8 Maine?

9 **MR. BOURGEOIS:** If I had any, yes. I
10 would've destroyed those through the years.

11 **MR. CALLAGHAN:** But you're not suggesting
12 that you wrote that long affidavit we saw without any
13 notes?

14 **MR. BOURGEOIS:** Yes, but I don't know from
15 what I had.

16 **MR. CALLAGHAN:** All right.

17 And referring to your statement of claim, if
18 I can just take you to -- Mr. Dunlop's statement of claim,
19 can I take you to page 21?

20 **THE COMMISSIONER:** What exhibit, please?

21 **MR. CALLAGHAN:** I'm sorry. I thought it was
22 one I had up, and was Exhibit 726, sir.

23 **THE COMMISSIONER:** M'hm. What page?

24 **MR. CALLAGHAN:** Page 21.

25 Mr. Manson took you through this earlier.

1 Paragraph 36 through 38 deals with Staff Sergeant Luc
2 Brunet. Do you see that?

3 MR. BOURGEOIS: Yes.

4 MR. CALLAGHAN: All right.

5 Do you recall what his involvement was?

6 MR. BOURGEOIS: No.

7 MR. CALLAGHAN: All right.

8 Just take a look at that. Those paragraphs
9 purport to be a verbatim discussion, do they not?

10 MR. BOURGEOIS: Yeah.

11 MR. CALLAGHAN: All right.

12 Did Mr. Dunlop provide you a tape of that
13 discussion?

14 MR. BOURGEOIS: I don't know, sir. I don't
15 know if it was. I can't remember one way or another
16 whether it was a handwritten note or what it would've been.

17 MR. CALLAGHAN: That discussion happened in
18 the fall of 1993, and you're preparing this in the summer
19 of 1996?

20 MR. BOURGEOIS: Yes.

21 MR. CALLAGHAN: All right.

22 When you -- did you take receipt from Mr.
23 Dunlop of any tapes in order to produce the statement of
24 claim?

25 MR. BOURGEOIS: No, I can't remember one way

1 or another what the material was, sir.

2 **MR. CALLAGHAN:** Because we can find no
3 notes, no tapes produced by Mr. Dunlop relative to this
4 discussion; yet, it shows up in a verbatim format.

5 **MR. BOURGEOIS:** You'd have to ask him then.

6 **MR. CALLAGHAN:** All right.

7 And is we could move over to paragraph 93,
8 at page 36. And I'm going to suggest to you, sir, that
9 paragraph 93 is a plea of a conspiracy between the Catholic
10 diocese, the Cornwall Police and other members. See that?

11 **MR. BOURGEOIS:** Yes.

12 **MR. CALLAGHAN:** And reading through this
13 claim I can see no facts to establish time, place or
14 document. Is it fair to say that you had none at that time
15 when you made this plea?

16 **MR. BOURGEOIS:** I don't remember one way or
17 another.

18 **MR. CALLAGHAN:** All right.

19 **MR. BOURGEOIS:** If you ---

20 **MR. CALLAGHAN:** Well, you certainly didn't
21 know about the VIP meeting that Mr. Leroux alleged to have
22 happened? He didn't tell you about that until October.

23 **MR. BOURGEOIS:** Yeah.

24 **MR. CALLAGHAN:** All right.

25 And paragraph 95, if you could take a look

1 at that. That refers to a conspiracy to continue the
2 malicious prosecution; correct?

3 MR. BOURGEOIS: Yeah.

4 MR. CALLAGHAN: And in that paragraph, you
5 make the allegation against the Police Complaints
6 Commission that they were part of this conspiracy in
7 Cornwall. It's not just the Diocese now; it's the Police
8 Complaints Commissioner is part of the conspiracy; correct?

9 MR. BOURGEOIS: That's what my client did,
10 yeah.

11 MR. CALLAGHAN: Right. And your client had
12 to do that because it was the Police Complaints
13 Commissioner that had carriage of that prosecution and
14 appeal; right?

15 MR. BOURGEOIS: I take it. I don't remember
16 that but looking at it now, it looks ---

17 MR. CALLAGHAN: You had no information and
18 had no information that you can recall today that the
19 Police Complaints Commission was directed or somehow
20 influenced by the Cornwall Police? You have no information
21 in that regard, do you?

22 MR. BOURGEOIS: I don't have any to give you
23 today, no.

24 MR. CALLAGHAN: If I could take you to
25 paragraph 100, this is your plea with respect to damages

1 suffered by Mr. Dunlop and it's alleged he suffered major
2 depressive episodes and agitated feature, short-term memory
3 loss and on and on and on.

4 **MR. BOURGEOIS:** Yes.

5 **MR. CALLAGHAN:** Did you have any evidence of
6 that at the time when you advanced that plea?

7 **MR. BOURGEOIS:** I don't know if I did or not
8 sir.

9 **MR. CALLAGHAN:** Okay. And you knew Mr.
10 Dunlop was on long-term disability, sir, from work?

11 **MR. BOURGEOIS:** I knew he was on disability,
12 yes.

13 **MR. CALLAGHAN:** So you were aware that he
14 was unable to carry out his ordinary duties of employment?

15 **MR. BOURGEOIS:** As a consequence.

16 **MR. CALLAGHAN:** All right. And you knew his
17 ordinary duties of employment involved the investigation of
18 crime; right? That's what he does?

19 **MR. BOURGEOIS:** Yeah.

20 **MR. CALLAGHAN:** All right. And yet, from
21 June '96 through to the time he returns in May '97, he is
22 investigating an allegation of a pedophile ring; right?

23 **MR. BOURGEOIS:** Those are your words. I
24 mean ---

25 **MR. CALLAGHAN:** Well, what would you call

1 it; meeting with all these people? Just advancing his
2 lawsuit?

3 **MR. BOURGEOIS:** There is no doubt that
4 within his lawsuit there is some information that came to
5 him that turned into criminal, yes.

6 **MR. CALLAGHAN:** But we don't have to quibble
7 about that because you being a criminal lawyer know what
8 police do.

9 **MR. BOURGEOIS:** Yes.

10 **MR. CALLAGHAN:** And they take statements;
11 and they interview and they analyze and they put together
12 cases; correct?

13 **MR. BOURGEOIS:** If you look at it in that
14 regard, yes.

15 **MR. CALLAGHAN:** Right. And as far as you're
16 concerned, Mr. Dunlop didn't show any impairment in his
17 ability to do that when you were dealing with him from July
18 through April of '97?

19 **THE COMMISSIONER:** Wait a minute now.
20 What's the reason?

21 **MR. CALLAGHAN:** I'm trying to figure out
22 what is proceeding at the time. We have a plea that this
23 man has got all these ailments.

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

25 **MR. CALLAGHAN:** I'm just trying to figure

1 out are we dealing with a man who is incapable of
2 conducting an investigation which might explain why we have
3 all these statements, et cetera? Or is this a man who is
4 fully capable of conducting himself as an investigator such
5 that Mr. Bourgeois would have no concerns about the
6 information being brought to him by Mr. Dunlop?

7 Which is being assimilated into claims,
8 statements, Affidavits. If we're going to hear that ---

9 **THE COMMISSIONER:** So you're asking him, Mr.
10 Bourgeois, for his opinion as to his client's mental
11 health?

12 **MR. CALLAGHAN:** I'm asking his observations.

13 **THE COMMISSIONER:** Yeah.

14 **MR. CALLAGHAN:** I'm not asking for his
15 opinions. I've asked whether he thought whether he was --
16 in his view, he was capable of conducting the duties of a
17 police officer as we know them for the investigation.

18 **THE COMMISSIONER:** Well, first of all,
19 you're saying that he is acting under the guise of a police
20 officer which is up for grabs at this point.

21 **MR. CALLAGHAN:** No, I'm not saying. What I
22 have said -- what I think my line of questioning was a
23 police officer carries out investigations, assimilating
24 information, et cetera.

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

1 **MR. CALLAGHAN:** And I thought that Mr.
2 Bourgeois said yes. And that's what he was doing in
3 respect of all these interviews. I thought the answer was
4 yes. So I have a parallelism.

5 And so what I am asking is does Mr.
6 Bourgeois think, having witnessed Mr. Dunlop, whether there
7 was any impairment in that ability? Because it's all being
8 assimilated. It's coming back to Mr. Bourgeois.

9 If we're going to see that oh, Mr. Dunlop
10 had a short-term memory loss or all this other stuff that's
11 pleaded, I think it's relevant to know what's going on.
12 How these -- can we rely on the statements? To what
13 extent?

14 **THE COMMISSIONER:** Okay. But what caught my
15 attention was you seemed to be rolling it into that of a
16 police officer. And ---

17 **MR. CALLAGHAN:** And it's not in my interest
18 to roll it in as a police officer as you can tell because
19 he wasn't operating as a police officer, as an active
20 police officer with the Cornwall Police at the time, by
21 which I mean under authority ---

22 **THE COMMISSIONER:** Well, you said somewhere
23 along the lines we're going to come to the issue as to
24 whether or not -- on the disclosure issue; all right?

25 **MR. CALLAGHAN:** Yeah.

1 **THE COMMISSIONER:** Whether or not he is
2 obligated to give the disclosure over because he was acting
3 as police officer even on disability ---

4 **MR. CALLAGHAN:** Right.

5 **THE COMMISSIONER:** --- and so I don't want
6 you to think that just because ---

7 **MR. CALLAGHAN:** Oh, that wasn't the purpose.
8 If you'd like me to rephrase it. No, it wasn't the
9 purpose. What happened happened; I mean I think it's
10 pretty clear what happened but if I could just ask you
11 didn't see any impairment or didn't note any impairment of
12 Mr. Dunlop that would have you be concerned about the
13 manner in which he took statements, returned statements, or
14 was able to assimilate information?

15 **MR. BOURGEOIS:** Do I have to respond to
16 that, Your Honour?

17 **THE COMMISSIONER:** Yes.

18 **MR. BOURGEOIS:** Okay. No.

19 **MR. CALLAGHAN:** Sorry, I missed that
20 exchange between you. The answer is no?

21 **THE COMMISSIONER:** Yeah. He wanted to know
22 whether he should answer. I said yes.

23 **MR. CALLAGHAN:** Oh, sorry.

24 **MR. BOURGEOIS:** He said no. There you go.

25 **MR. CALLAGHAN:** All right.

1 **THE COMMISSIONER:** Okay. But I just don't
2 want this to be seen as well that what you're intimating is
3 that while he is on disability that he could have been
4 fulfilling police officer's duties. And I'm saying, no,
5 no, no, that wouldn't be proper at this point.

6 **MR. CALLAGHAN:** Okay. So you issue this
7 Statement of Claim and I take it you'd never issued, as
8 described by Commission counsel, such an explosive
9 statement of claim before; right?

10 **MR. BOURGEOIS:** No.

11 **MR. CALLAGHAN:** And have you ever done one
12 since?

13 **MR. BOURGEOIS:** As to what?

14 **THE COMMISSIONER:** An explosive one or a
15 statement of claim?

16 **MR. CALLAGHAN:** Well, let's start with -- I
17 assume he's done statement of claims after this. Is this
18 the only statement of claim you've done?

19 **MR. BOURGEOIS:** I'm sure I've done a few
20 others.

21 **MR. CALLAGHAN:** But nothing of this level?

22 **MR. BOURGEOIS:** No.

23 **MR. CALLAGHAN:** All right. So on the --
24 just to have clarity, Exhibit 563 which is the October 10th
25 statement of Ron Leroux, you were not present when that was

1 done; correct?

2 MR. BOURGEOIS: Which one was that?

3 MR. CALLAGHAN: The October 10th.

4 MR. BOURGEOIS: I don't believe so.

5 MR. CALLAGHAN: But you did have that?

6 There's no doubt that you had this statement?

7 MR. BOURGEOIS: I don't remember but like I
8 said earlier, I think, I can't see why I wouldn't sir.

9 THE COMMISSIONER: How much time do you
10 think you're going to be, sir?

11 MR. CALLAGHAN: About another hour.

12 THE COMMISSIONER: Another hour. So the
13 likelihood of finishing this today is ---

14 MR. CALLAGHAN: I'll be done.

15 (LAUGHTER/RIRES)

16 THE COMMISSIONER: So ---

17 MR. BOURGEOIS: Sir, could I make a comment?
18 I really would appreciate whatever you could do that I
19 don't have to come back on Monday.

20 THE COMMISSIONER: Oh, you're not coming
21 back on Monday. No, we got other things to do. I was
22 thinking more on Thursday. We'll have some time then to
23 finish the matter.

24 Okay. So what we'll do is we'll take a
25 break till two o'clock; we'll come back for an hour. We'll

1 let Mr. Callaghan finish, of course, and then we'll see
2 where we go with the rest of the folks. We're not sitting
3 past three o'clock.

4 What I am suggesting is that we come -- what
5 we do, from what I understand of next week, it's Chief
6 Fantino who is coming in on Thursday and then he will not
7 be very long, I don't think. The silence means acceptance.

8 **MR. CALLAGHAN:** Accepted by me.

9 **THE COMMISSIONER:** And then we can finish
10 off for an hour with this gentleman. So let's look at our
11 calendars for Thursday, Mr. Bourgeois, and let's take an
12 hour for lunch, come back at two.

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

15 This hearing will resume at 2:00 p.m.

16 --- Upon recessing at 12:54 p.m. /

17 L'audience est suspendue à 12h53

18 --- Upon resuming at 2:03 p.m. /

19 L'audience est reprise à 14h03

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

22 This hearing is now resumed. Please be
23 seated. Veuillez vous asseoir.

24 **THE COMMISSIONER:** Thank you.

25 Fifty-nine (59) minutes, but no pressure.

1 **MR. CALLAGHAN:** No pressure. None felt.

2 **CHARLES BOURGEOIS, Resumed/Sous le même serment:**

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

4 **CALLAGHAN (cont'd/suite):**

5 **MR. CALLAGHAN:** Now, Mr. Bourgeois, I want
6 to take you back down to Maine that time on October 30th,
7 but before I do, let's talk about Steve Rubino for a
8 minute, shall we? Do you remember him? He was the
9 plaintiffs' class action lawyer from New Jersey who you
10 were in contact with?

11 **MR. BOURGEOIS:** If you say so.

12 **MR. CALLAGHAN:** Sorry, I thought you
13 actually had some recollection of this yesterday. You
14 don't have any recollection of Steve Rubino?

15 **MR. BOURGEOIS:** Of his specific name, no,
16 but that I did speak to an individual.

17 **MR. CALLAGHAN:** Well, let me have you take a
18 look at Document 122755.

19 **THE COMMISSIONER:** Is that an exhibit?

20 **MR. CALLAGHAN:** It's not an exhibit yet.

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

22 **THE COMMISSIONER:** All right. So this is a
23 document with a covering letter of Ross and Rubino,
24 Attorneys at Law to Mr. Charles Bourgeois, October 16th,
25 1996.

1 **MR. CALLAGHAN:** And -- sorry, Exhibit?

2 **THE COMMISSIONER:** I'm sorry, 747.

3 **--- EXHIBIT NO./PIÈCE NO. P-747:**

4 (122755) Letter from Stephen Rubino to
5 Charles Bourgeois re: Smith et al vs.
6 McIntyre and enclosures dated 16 Oct
7 '96

8 **MR. CALLAGHAN:** Now, Mr. Bourgeois,
9 obviously you've made a request of Mr. Rubino for this
10 document. Do you recall having a discussion with him?

11 **MR. BOURGEOIS:** At some point a conversation
12 not the contents thereof but a conversation with an
13 attorney.

14 **MR. CALLAGHAN:** And how did you come in
15 contact with Mr. Rubino?

16 **MR. BOURGEOIS:** I don't remember.

17 **MR. CALLAGHAN:** You don't remember.

18 Does it jog your memory that Mr. Rubino
19 specializes in class actions against religious
20 institutions? Does that help?

21 **MR. BOURGEOIS:** I know he was very familiar
22 with the subject matter.

23 **MR. CALLAGHAN:** But, I mean, he -- and you
24 were aware that he was a relatively senior lawyer in New
25 Jersey?

1 **MR. BOURGEOIS:** Was I aware of that? I'm
2 sure I knew that he was senior counsel, yeah.

3 **MR. CALLAGHAN:** Right.

4 And I take it you were seeking guidance
5 about how you might address allegations against the Church
6 from Mr. Rubino?

7 **MR. BOURGEOIS:** I'm just assuming that's
8 what he was used as, but that would make sense.

9 **MR. CALLAGHAN:** Right.

10 Because he concludes a Statement of Claim
11 that he has done in the United States and, for example, at
12 paragraph 3, he refers to the Council of Trent. I take it
13 you weren't familiar with the Council of Trent?

14 **THE COMMISSIONER:** There's different
15 paragraphs here.

16 **MR. CALLAGHAN:** Page 5 of the claim, Bates
17 page 11 ---

18 **THE COMMISSIONER:** Okay.

19 **MR. CALLAGHAN:** --- 40607.

20 **THE COMMISSIONER:** The papal views of
21 priests and bishops; is that what you're talking about?

22 **MR. CALLAGHAN:** Right.

23 And if you look at -- it says "The catechism
24 of the Council of Trent". Do you see that?

25 **MR. BOURGEOIS:** No.

1 **MR. CALLAGHAN:** Paragraph -- it's on the
2 screen at the moment, right before the quote.

3 **MR. BOURGEOIS:** Yeah, I don't have the ---

4 **MR. CALLAGHAN:** Okay. You don't have it as
5 in ---

6 **MR. BOURGEOIS:** I have it on the screen, but
7 it's a different number.

8 **MR. CALLAGHAN:** Okay. Well, let me ask you
9 this.

10 **MR. BOURGEOIS:** It's okay. That's fine.

11 **MR. CALLAGHAN:** You didn't have any
12 familiarity with the Council of Trent?

13 **MR. BOURGEOIS:** No.

14 **MR. CALLAGHAN:** I mean you did an undergrad
15 in business. You wouldn't have known about the Council of
16 Trent?

17 **MR. BOURGEOIS:** Yeah. I'm a Catholic, but
18 not to that level.

19 **MR. CALLAGHAN:** And if you go over two more
20 pages, they refer to a meeting under "Secret Report to the
21 Bishops". The meeting was held in Collegeville, Minnesota,
22 Saint John's Abbey. Do you see that?

23 **MR. BOURGEOIS:** Oh there, yes, okay.

24 **MR. CALLAGHAN:** All right.

25 Do you see that? Do you see what I'm

1 talking about, this meeting in Collegeville, Minnesota at
2 Saint John's Abbey, in terms of discussions about what --
3 regarding representatives of the Pope on the issue of
4 pedophilia and the Roman Catholic priests?

5 MR. BOURGEOIS: Yes.

6 MR. CALLAGHAN: All right.

7 Both those allegations made its way into the
8 Amended Statement of Claim. Do you recall that?

9 MR. BOURGEOIS: No.

10 MR. CALLAGHAN: All right.

11 So did you discuss this with Mr. Rubino, you
12 think, or you can't recall at all?

13 MR. BOURGEOIS: I can't recall. I might
14 have, sir. I guess.

15 MR. CALLAGHAN: And I take it -- was there
16 some idea that Mr. Rubino would mentor you in this claim at
17 all?

18 MR. BOURGEOIS: I don't remember if he -- if
19 there was an idea like that or not.

20 MR. CALLAGHAN: Now, it's fair to say, I
21 think you've articulated, your practice was just starting
22 to take off. Did you have envisions of following in sort
23 of Mr. Rubino's footsteps and commencing class actions
24 against religious institutions?

25 MR. BOURGEOIS: No.

1 **MR. CALLAGHAN:** No? Not even with things
2 like Mount Cashel out there and Alfred School? That wasn't
3 of any interest?

4 **MR. BOURGEOIS:** No.

5 **MR. CALLAGHAN:** All right.

6 And if we ---

7 **MR. BOURGEOIS:** In fact, it would be
8 probably not my interest. My daughter was baptized. I
9 don't have anything against the Catholic Church whatsoever.

10 **THE COMMISSIONER:** Right. But that's
11 insinuating that ---

12 **MR. BOURGEOIS:** Well, the incidents that he
13 mentioned, I think, were more -- I thought he said mostly
14 against religious ---

15 **MR. CALLAGHAN:** Well, I mean, as it turns
16 out -- I mean, when you say that, you did plead a lot of
17 this stuff. You did ---

18 **MR. BOURGEOIS:** Yeah.

19 **MR. CALLAGHAN:** You did -- I mean, just for
20 clarity, I don't mean to -- in your Amended Statement of
21 Claim ---

22 **MR. BOURGEOIS:** Yes, it's in there.

23 **MR. CALLAGHAN:** It's all there.

24 **MR. BOURGEOIS:** Yeah.

25 **MR. CALLAGHAN:** I mean the Council of Trent

1 is there.

2 MR. BOURGEOIS: It is there.

3 MR. CALLAGHAN: I mean the Council of Trent
4 is in paragraph 134 of your Statement of Claim -- Amended
5 Statement of Claim, Exhibit 672, the Minnesota meetings,
6 paragraph 136. You allege that the Catholic Church, its
7 policy is to tolerate the presence and keep secret the
8 identities of pedophiles.

9 MR. BOURGEOIS: Yeah.

10 MR. CALLAGHAN: You did make all those
11 pleadings?

12 MR. BOURGEOIS: I did make those pleadings,
13 yeah.

14 MR. CALLAGHAN: All right.

15 So now you go down -- and if I could have
16 you take another look at Exhibit 712, by which, I mean, you
17 go down to Maine. I think in 712 are the notes that I
18 think you looked at the other day.

19 MR. BOURGEOIS: Yes, sir.

20 MR. CALLAGHAN: We'll just wait for that Mr.
21 Commissioner.

22 THE COMMISSIONER: Seven-one-two (712).

23 MR. CALLAGHAN: Seven-one-two (712), sir.
24 They're the notes of the evening of October 30th, '96.

25 THE COMMISSIONER: Yes.

1 **MR. CALLAGHAN:** Now, we read this the other
2 day.

3 **THE COMMISSIONER:** Wait a minute. Just to
4 be clear, those are the notes that Mrs. Dunlop apparently
5 made?

6 **MR. BOURGEOIS:** Right.

7 **MR. CALLAGHAN:** Right. We looked at them
8 the other day.

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

10 **MR. CALLAGHAN:** And I think you read these
11 the other day. Is this the gist of what you're being told
12 or is this what you're being told, I should say, by Mr.
13 Leroux? Is this the information you recall?

14 **MR. BOURGEOIS:** I can't say one way or
15 another.

16 **MR. CALLAGHAN:** Well, you must have -- I
17 mean, you're down in Maine. You're with Mr. Dunlop and Mr.
18 Leroux; correct?

19 **MR. BOURGEOIS:** Yeah.

20 **MR. CALLAGHAN:** And I just -- you may have
21 put this on the record. There wasn't anybody else. Carson
22 Chisholm, for example, wasn't there?

23 **MR. BOURGEOIS:** No.

24 **MR. CALLAGHAN:** And nobody else was there?

25 **MR. BOURGEOIS:** No.

1 **MR. CALLAGHAN:** Now, when this allegation
2 came out which is recorded here, were you shocked?

3 **MR. BOURGEOIS:** Yes.

4 **MR. CALLAGHAN:** In other words, Mr. Dunlop
5 hadn't said that "We were expecting to find this" when you
6 went down? Was he expecting this kind of information to
7 come out to your knowledge?

8 **MR. BOURGEOIS:** I wouldn't remember.

9 **MR. CALLAGHAN:** Okay.

10 **THE COMMISSIONER:** Well, were you expecting
11 to find out that there was a hit put on, a discussion of a
12 hit?

13 **MR. BOURGEOIS:** No.

14 **MR. CALLAGHAN:** I'm talking about the cults,
15 all that, all the cults, et cetera. I'm not interested in
16 the hits on Mr. Dunlop at the moment. I'm interested in
17 the Catholic Church and the cult that's referenced there.

18 **MR. BOURGEOIS:** I don't think I -- I don't
19 think we would have expected that, no.

20 **MR. CALLAGHAN:** All right.

21 Well, in the middle of the paragraph, or
22 maybe at the top, it says:

23 "He was interviewing Ron Leroux and
24 Perry, and Ron told them that there was
25 a RC cult surrounding the RCC which

1 includes a list of a number of
2 members."

3 Do you see that?

4 **MR. BOURGEOIS:** Yes.

5 **MR. CALLAGHAN:** And he lists, actually,
6 Chief Shaver and another one of our officers, a staff
7 sergeant. Do you see that?

8 **MR. BOURGEOIS:** Yes.

9 **MR. CALLAGHAN:** All right.

10 He said the information that was obtained
11 from New York lawyer Steve Rubino concerning pedophiles in
12 the Church in the U.S. was linked with the cult -- this
13 cult here.

14 Did you have some understanding that there
15 was a cult in the U.S. regarding pedophiles of the Roman
16 Catholic Church?

17 **MR. BOURGEOIS:** No, not that I can remember.

18 **MR. CALLAGHAN:** Well, I mean did you -- do
19 you recall speaking to Mr. Rubino about that?

20 **MR. BOURGEOIS:** No.

21 **MR. CALLAGHAN:** And sir, it's interesting;
22 it referred to a cult and the pleading refers to a
23 pedophile clan. Could it be that someone, and you say it's
24 not you, but someone seized on the word "clan" from the
25 October 10th statement to convey a cult in the pleading --

1 amended pleading of Mr. Dunlop?

2 MR. BOURGEOIS: No.

3 MR. CALLAGHAN: No?

4 MR. BOURGEOIS: No.

5 MR. CALLAGHAN: Coincidence that you're
6 talking about a cult here and a clan on October 31st?

7 MR. BOURGEOIS: I don't know if you'd call
8 that a coincidence but ---

9 THE COMMISSIONER: Sorry, I can't hear you,
10 sir.

11 MR. BOURGEOIS: I don't know if you'd call
12 that a coincidence but that's what it is.

13 MR. CALLAGHAN: Well, clearly, the reference
14 here is to a discussion from Mr. Rubino. Did you know
15 whether Mr. Leroux ever spoke to Mr. Rubino?

16 MR. BOURGEOIS: I have no idea.

17 MR. CALLAGHAN: All right.

18 Do you know if Mr. Dunlop ever spoke to Mr.
19 Rubino?

20 MR. BOURGEOIS: I couldn't tell you one way
21 or another.

22 MR. CALLAGHAN: But -- so obviously,
23 somebody -- and so far you're the only one that's spoken to
24 Mr. Rubino -- is referencing a cult, both in Canada and the
25 United States; right? That's what that reference is?

1 **MR. BOURGEOIS:** That reference?

2 **MR. CALLAGHAN:** Well he said:

3 "The information that was obtained from
4 New York lawyer, Stephen Rubino,
5 concerning pedophiles in the Church in
6 the U.S. was linked with a cult here."

7 **MR. BOURGEOIS:** These are not my notes, sir.

8 **MR. CALLAGHAN:** All right. And if you go
9 over to the next page.

10 **MR. BOURGEOIS:** Yes, sir.

11 **MR. CALLAGHAN:** And it says, halfway through
12 the paragraph, after the "Frenchmen in charge", it lists a
13 number of people. Do you see that?

14 And it says:

15 "Ron Leroux observed on more than, on
16 more than occasion cult..."

17 -- I think it's supposed to be "one occasion" --

18 "...cult seminars when there were kids,
19 age 11, 12, and 13 with candles up
20 their anuses, sheets over their heads.
21 There were other priests fondling,
22 molesting other kids during these
23 meetings held mostly on Friday and
24 Saturday night."

25 Do you see that?

1 **MR. BOURGEOIS:** Yup.

2 **MR. CALLAGHAN:** And you'll agree with me,
3 what's being transcribed here would be a description of a
4 repetitive cult seminars; right?

5 It says:

6 "...cult seminars with kids, 11, 12, and
7 13, with candles up their anus and
8 sheets over their heads."

9 Correct?

10 **MR. BOURGEOIS:** That's what it says in Ms.
11 Dunlop's ---

12 **MR. CALLAGHAN:** Do you have any recollection
13 that this is what you're being told? This is what you were
14 told by Mr. Leroux? This purports to be a conversation
15 that you're told by Mr. Leroux.

16 Do you recall that being ---

17 **MR. BOURGEOIS:** What ---

18 **MR. CALLAGHAN:** Does this sound like the
19 story that you were hearing from Mr. Leroux on October 30th?

20 **MR. BOURGEOIS:** Mr. Leroux did give an
21 account of incidents with candles, yes.

22 **MR. CALLAGHAN:** Yeah, but did he give an
23 account of cult seminars that happened on Friday and
24 Saturday nights?

25 **MR. BOURGEOIS:** I can't -- I can't remember

1 one way or another the exact ---

2 **MR. CALLAGHAN:** And you know, when you get
3 to the October 31st statement, he refers to candles in
4 anuses happening at Cameron's Point in 1962; right?

5 **MR. BOURGEOIS:** Yes.

6 **MR. CALLAGHAN:** In abouts that?

7 **MR. BOURGEOIS:** Yes.

8 **MR. CALLAGHAN:** Wouldn't you agree with me
9 what's being transcribed here is a current cult seminars on
10 Friday and Saturday night, not something that happened in
11 1962?

12 **MR. BOURGEOIS:** I -- I can't assist you with
13 that.

14 **MR. CALLAGHAN:** All right. And it goes on
15 to say that:

16 "Bishop LaRocque is the ringleader of
17 the local cult. There were general
18 cult activities held in Florida."

19 And then he goes on.

20 Again, they're talking about a current cult
21 happening. Isn't that the way you'd read it?

22 **MR. BOURGEOIS:** Yes, but it's Ms. Dunlop's
23 note. I don't know what -- how she got -- where she got
24 her notes; how she did them. That's for her.

25 **MR. CALLAGHAN:** But you can't help us then,

1 sir, as to what actually you were told on October 30th?

2 MR. BOURGEOIS: In terms of verbatim?

3 MR. CALLAGHAN: Well the detail. I'm going
4 to suggest to you this account is entirely different than
5 what gets transcribed on October 31st.

6 MR. BOURGEOIS: I can't assist you with
7 that.

8 MR. CALLAGHAN: Now, if we could go to
9 Exhibit 576.

10 Now, do you recall, in terms of these notes,
11 whether you did a draft of the affidavit, based on what
12 you'd heard the night of October 30th or did you do it
13 during the day on October 31st?

14 THE COMMISSIONER: Okay. First of all ---

15 MR. BOURGEOIS: I think I already answered
16 that.

17 THE COMMISSIONER: Just a second.

18 MR. BOURGEOIS: I'm sorry, sir.

19 THE COMMISSIONER: Get to the 576.

20 MR. CALLAGHAN: Oh, I'm sorry, I didn't
21 realize ---

22 THE COMMISSIONER: It's the affidavit of Ron
23 Leroux that's in your handwriting.

24 MR. BOURGEOIS: Yes.

25 THE COMMISSIONER: All right. So the

1 question is?

2 **MR. CALLAGHAN:** I'm just -- whether he
3 drafted this -- went away and drafted it or drafted it the
4 next day in the presence of Mr. Leroux?

5 **THE COMMISSIONER:** And?

6 **MR. BOURGEOIS:** I don't remember.

7 **THE COMMISSIONER:** He doesn't recall.

8 **MR. CALLAGHAN:** And there are a couple of
9 elements here. It describes the clan in paragraph 6;
10 correct?

11 **MR. BOURGEOIS:** Yup.

12 **MR. CALLAGHAN:** And in this description,
13 they have Murray MacDonald as part of the clan?

14 **THE COMMISSIONER:** At the bottom. Before
15 last sentence there.

16 **MR. BOURGEOIS:** Yes.

17 **THE COMMISSIONER:** "Murray MacDonald, Crown
18 attorney..."

19 **MR. BOURGEOIS:** Yes.

20 **MR. CALLAGHAN:** And you knew him to be a
21 Crown attorney?

22 **MR. BOURGEOIS:** No, I didn't know him to be,
23 no. Subsequently.

24 **MR. CALLAGHAN:** You subsequently knew, all
25 right.

1 Well, then if you ---

2 **MR. BOURGEOIS:** I was told he was a Crown
3 attorney.

4 **MR. CALLAGHAN:** And you're aware that Mr.
5 Leroux has testified that, for example, both he and Claude
6 Shaver have never seen any sexual improprieties by either
7 of those two men; you're aware of that now?

8 **MR. BOURGEOIS:** If you say so.

9 **MR. CALLAGHAN:** This is unclear. How hard
10 did you quiz him?

11 **MR. BOURGEOIS:** How hard did I quiz him?

12 **MR. CALLAGHAN:** Yeah. These are pretty
13 outrageous allegations. How hard did you challenge him?

14 **MR. BOURGEOIS:** I don't know what you mean
15 by that, like ---

16 **MR. CALLAGHAN:** Well, you know, as if you
17 were a defence counsel, for example. Where? When? How?
18 Who? Where did you see this activity? When did you see
19 it? Who did you see it with? How did it happen?

20 Did you ask those questions with respect to
21 those individuals?

22 **MR. BOURGEOIS:** I would be -- I would like
23 to give you an answer, but I'd be guessing if I tell you I
24 remember exactly what I asked him.

25 **MR. CALLAGHAN:** All right. If we go over to

1 paragraph 26, and I take it that paragraphs 26 and 27 and a
2 few others essentially address the VIP meeting that's
3 supposed to have happened at Mr. Malcolm MacDonald's
4 cottage; correct?

5 **MR. BOURGEOIS:** Yes.

6 **MR. CALLAGHAN:** All right. So it says:

7 "On or about a Friday evening in early
8 September '93, I was told by Ken Seguin
9 that there's going to be a gathering at
10 Malcolm's summer home on Sunday."

11 Do you see that?

12 **THE COMMISSIONER:** No. Neither do I,
13 because 27 may have been cut out there. At the bottom,
14 right in middle there's page numbers, so can you help me
15 there, Mr. Callaghan?

16 **MR. CALLAGHAN:** I'm looking at paragraph 26,
17 am I ---

18 **THE COMMISSIONER:** Yes, I know, but what I'm
19 saying is the photocopy has been cut off. So can you tell
20 me ---

21 **MR. CALLAGHAN:** I'm on the third page.

22 **THE COMMISSIONER:** Third page of?

23 **MR. CALLAGHAN:** The affidavit, Exhibit 564.

24 **THE COMMISSIONER:** And you're at the third
25 page, but you're saying paragraph 27.

1 **MR. CALLAGHAN:** I said -- I thought I said
2 paragraph 26.

3 **THE COMMISSIONER:** Okay, 26. So I guess I'm
4 getting ---

5 **MR. CALLAGHAN:** I'm in Exhibit 564; I think
6 you're in 567.

7 **THE COMMISSIONER:** Five sixty-four (564),
8 okay. Okay.

9 **MR. CALLAGHAN:** Oh, I'm sorry, my apologies,
10 Mr. Commissioner, I'm working off the typed version.

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

12 **MR. CALLAGHAN:** So, I apologize.

13 **THE COMMISSIONER:** Five sixty-four (564),
14 Mr. Bourgeois.

15 **MR. CALLAGHAN:** I apologize. It's just my
16 note's on the hard copy. I apologize.

17 This is a typed version, Mr. Bourgeois; it
18 might be easier to read. I apologize. This is the same as
19 567.

20 **MR. BOURGEOIS:** Okay.

21 **MR. CALLAGHAN:** All right. So it says:

22 "On or about Friday evening in early
23 September '93, I was told by Ken Seguin
24 that there's going to be a gathering at
25 Malcolm's summer home on Sunday."

1 Do you see that?

2 **THE COMMISSIONER:** Paragraph 27, on the
3 right -- left, yeah, right there.

4 **MR. BOURGEOIS:** Yeah.

5 **MR. CALLAGHAN:** And then it goes on, in
6 paragraph 27 to describe some of the people who were there
7 and how they arrived; right?

8 **MR. BOURGEOIS:** Yes.

9 **MR. CALLAGHAN:** All right. And I take it
10 that the meeting at Malcolm MacDonald's cottage was a
11 central component of your statement of claim or Mr.
12 Dunlop's Amended Statement of Claim?

13 **MR. BOURGEOIS:** I'd say that's fair.

14 **MR. CALLAGHAN:** All right. It was at that
15 meeting that you allege that the conspiracy happened;
16 correct?

17 **MR. BOURGEOIS:** Mr. Dunlop did.

18 **MR. CALLAGHAN:** Okay, Mr. Dunlop did.

19 And if I could ask you to turn up the Demand
20 for Particulars, Exhibit 728?

21 **THE COMMISSIONER:** Exhibit 728.

22 **MR. CALLAGHAN:** And I'm at Bates page
23 7092583; and it's paragraph 15; 7092583.

24 Now I'm at 515C, sir:

25 "The meeting on Stanley Island,

1 Ontario, as applied in paragraphs 84,
2 85 and 86 of the Amended Statement of
3 Claim. This meeting was held on a
4 Sunday, on an island only accessible by
5 boat and an out-of-court settlement was
6 reached that day."

7 Do you see that?

8 **MR. BOURGEOIS:** Yes.

9 **MR. CALLAGHAN:** And that was centralized, I
10 suggest, to the theory of the Amended Statement of Claim;
11 correct? That's where a conspiracy took place?

12 **MR. BOURGEOIS:** Yes.

13 **MR. CALLAGHAN:** Yes?

14 **MR. BOURGEOIS:** Yes.

15 **MR. CALLAGHAN:** And these are the dates and
16 the times that we saw missing in the first claim, you bring
17 them into the Amended Statement of Claim based on the
18 Affidavit of Ron Leroux; right?

19 **MR. BOURGEOIS:** Well, they're -- it's
20 changed, yeah.

21 **MR. CALLAGHAN:** And we're going to come back
22 to these paragraphs, but I take it you then go away and you
23 go back to Newmarket and you start working on the Amended
24 Statement of Claim right away?

25 **MR. BOURGEOIS:** I can't tell you one way or

1 the other.

2 **MR. CALLAGHAN:** But you know Mr. Leroux
3 comes and visits on November 13th, because we had the
4 Affidavit sworn, Exhibit 567, which is sworn in Newmarket
5 on November 13th.

6 **MR. BOURGEOIS:** Okay.

7 **MR. CALLAGHAN:** And I take it that the
8 Affidavit of Ron Leroux, sworn on November 13th, was
9 preceded by meetings and discussions with Ron Leroux?

10 **MR. BOURGEOIS:** On what day?

11 **MR. CALLAGHAN:** November 13th, 1996.

12 **MR. BOURGEOIS:** No, I don't know one way or
13 another.

14 **MR. CALLAGHAN:** Well, I mean, you wouldn't
15 have drafted it without meeting him. It was drafted it at
16 your office. I mean it's got the style of cause, it's got
17 -- you've sworn it as a commissioner. The evidence is it's
18 at your office.

19 **MR. BOURGEOIS:** Okay.

20 **MR. CALLAGHAN:** Right. But you would have
21 met with him -- was Perry Dunlop meeting with him and
22 drafting up these? Or did you have any part in that?

23 **MR. BOURGEOIS:** No, I certainly would have
24 had a part in that, but whether Perry had met him other
25 times on top of that, I don't know sir; I can't -- he may -

1 - he may have.

2 **MR. CALLAGHAN:** Okay. So is it a good
3 assumption that if an affidavit is sworn in Newmarket,
4 commissioned by you, you would have met with him to prepare
5 it or is that not a good assumption?

6 **MR. BOURGEOIS:** It's an assumption.

7 **MR. CALLAGHAN:** And I want you to go over to
8 paragraph 27.

9 **THE COMMISSIONER:** Twenty seven (27) of what
10 now?

11 **MR. CALLAGHAN:** Of Exhibit 567.

12 **THE COMMISSIONER:** Okay.

13 **MR. BOURGEOIS:** Yes, sir.

14 **MR. CALLAGHAN:** All right. And it says:

15 "On or about a Friday evening in late
16 August, '93 - early September '93, I
17 was told by Ken Seguin that there was
18 going to be a gathering at Malcolm's
19 summer home on Sunday."

20 Do you see that?

21 **MR. BOURGEOIS:** Yes.

22 **MR. CALLAGHAN:** All right. Do you see that
23 someone's added -- you've added in the words "in late
24 August '93 - early September '93"? "Late August" is added?

25 **MR. BOURGEOIS:** No.

1 **MR. CALLAGHAN:** You don't see that?

2 **MR. BOURGEOIS:** Which paragraph, sorry?

3 **MR. CALLAGHAN:** Paragraph 27.

4 **MR. BOURGEOIS:** Oh, sorry, okay.

5 **MR. CALLAGHAN:** The paragraph in the
6 previous affidavit referenced an evening in early September
7 and now it's been changed to "late August - early
8 September"; do you see that?

9 **MR. BOURGEOIS:** Okay. Between the
10 handwritten one sir you're saying?

11 **MR. CALLAGHAN:** The handwritten one.
12 I was using ---

13 **MR. BOURGEOIS:** Yes.

14 **MR. CALLAGHAN:** --- the typed version, but
15 in comparison to the handwritten one, we've now gone from
16 early September '93 to "late August - early September '93";
17 do you see that?

18 **MR. BOURGEOIS:** I accept that if you say
19 there's ---

20 **MR. CALLAGHAN:** Well, I mean you can check
21 it yourself.

22 **MR. BOURGEOIS:** No, no, I ---

23 **MR. CALLAGHAN:** Okay. Well, sir, I suggest
24 that is a fundamentally important change. That's the crux
25 of your conspiracy. That's the meeting in which the deal

1 was purportedly done on the settlement of the DS case;
2 correct? Did you -- spoke of that?

3 **MR. BOURGEOIS:** When you say "correct";
4 what's correct?

5 **MR. CALLAGHAN:** That that's a fundamental
6 meeting? This is a meeting of the VIP ---

7 **MR. BOURGEOIS:** It's an important meeting.

8 **MR. CALLAGHAN:** All right. I'm going to
9 suggest to you, sir, that what's happened is, it became
10 apparent to you or to Mr. Dunlop or to somebody that the
11 meeting could not have been the first Sunday in September,
12 because the deal with DS was done the first Friday in
13 September.

14 **MR. BOURGEOIS:** Okay.

15 **MR. CALLAGHAN:** Let me show you something.
16 Let's go back to Exhibit 643, and this is the disclosure.

17 **MR. BOURGEOIS:** This?

18 **THE COMMISSIONER:** Six forty-three (643) is
19 a disclosure?

20 **MR. CALLAGHAN:** Public complaints.

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

22 **MR. CALLAGHAN:** And I'm at page 176, Bates
23 page 1092844.

24 Do you see this document? It's a letter to
25 the Cornwall Police from Malcolm MacDonald?

1 And do you see the next page? Do you see
2 there was attached to that was the direction from Mr.
3 Silmsers that he no longer wanted to proceed?

4 And the date of that document, sir, is
5 September 3rd, 1993 which is a Friday.

6 **MR. BOURGEOIS:** Okay.

7 **MR. CALLAGHAN:** All right. It's pretty
8 clear, sir, that the deal that was done between the diocese
9 and Mr. Silmsers was done before the first Sunday in
10 September; correct?

11 **MR. BOURGEOIS:** Okay.

12 **MR. CALLAGHAN:** Well, do you recall having
13 gone back to your office and looked and say "Ron's got the
14 wrong date."

15 **MR. BOURGEOIS:** No.

16 **MR. CALLAGHAN:** Well, do you think it's a
17 coincidence, then, that he changes his affidavit so it fits
18 the facts as known?

19 **MR. BOURGEOIS:** I can't assist you with
20 that, sir. That was his evidence.

21 **MR. CALLAGHAN:** Well, his evidence changed,
22 sir. You were careful. You said that detail was important
23 to you when we first spoke -- when you first testified I
24 should say -- and here's a very crucial piece of detail
25 that's being changed. It so happens that the change

1 corresponds with facts that Mr. Dunlop has because he's got
2 the disclosure; correct?

3 **MR. BOURGEOIS:** That was his evidence.

4 **MR. CALLAGHAN:** And, sir, I take it that it
5 was -- that you were aware that the Cornwall Police
6 received legal advice from the Crown Attorney, Murray
7 MacDonald. We go back to our -- where we were -- if you
8 put it away maybe you should open it -- Exhibit 643, back
9 to page 178, which is Bates 1092846.

10 And, sir, you'll recall that the theory
11 being advanced is that there was a cover-up, Cornwall
12 Police wouldn't do anything.

13 You're aware that Murray MacDonald gave an
14 opinion to the Cornwall Police with respect to what they
15 should do?

16 **MR. BOURGEOIS:** I ---

17 **MR. CALLAGHAN:** Not aware of that?

18 **MR. BOURGEOIS:** No.

19 **MR. CALLAGHAN:** You never saw this?

20 Here's the letter from Luc Brunet, the staff
21 sergeant, to Murray MacDonald advising of the settlement on
22 September 3rd, '93 and the information he's been advised,
23 that D.S. doesn't want to proceed and he's seeking the
24 advice, or confirming the advice, of Murray MacDonald.

25 "It is my understanding after our

1 conversation, your office does not
2 prosecute without the full cooperation
3 of the victim."

4 We go over to the next page, September 14th,
5 '93, Mr. Murray MacDonald confirms that advice. See that?

6 **MR. BOURGEOIS:** Yeah, I do.

7 **MR. CALLAGHAN:** All right. I'm going to
8 suggest to you, sir, in terms of the theory of a conspiracy
9 that Murray MacDonald, whilst not named in the pleading,
10 was essential to the conspiracy because you didn't want --
11 or Mr. Dunlop, more particularly, didn't want the Cornwall
12 Police to assert they relied on legal advice.

13 They wanted to suggest that Mr. Murray
14 MacDonald, too, was part of the conspiracy. Sound
15 familiar?

16 **MR. BOURGEOIS:** No.

17 **MR. CALLAGHAN:** No. All right.

18 Let's just see -- let's take Murray
19 MacDonald, for example. Let's take a look back at -- and
20 you're welcome to use whichever you want, the handwritten
21 version or the typed, either Exhibit 576 or Exhibit 564.

22 **MR. BOURGEOIS:** Yes.

23 **MR. CALLAGHAN:** All right. They go at
24 paragraph 27 -- and we're going to come back to it --
25 discusses people arriving at Ken Seguin's house to go by

1 boat to Murray MacDonald's house. Do you see that?

2 **THE COMMISSIONER:** Sorry. Take me back to
3 which exhibit were you looking at?

4 **MR. CALLAGHAN:** I was looking -- I'm looking
5 at Exhibit 564.

6 **THE COMMISSIONER:** Yes, that's ---

7 **MR. CALLAGHAN:** I just find it's easier. I
8 hope that's not a problem for your notes, sir.

9 **THE COMMISSIONER:** Okay.

10 **MR. CALLAGHAN:** I was referring to paragraph
11 27 and I'm going to come back to that, so if you want to
12 put a sticky there, I'm going to be back to that document.

13 Paragraph 27 refers to sightings by Ron
14 Leroux of people arriving; okay?

15 **MR. BOURGEOIS:** Yes.

16 **MR. CALLAGHAN:** And then if you go over to
17 paragraph 28, he says:

18 "Ken advised me also that Rory was
19 present as well as a bunch of VIPs."

20 He also advised that Murray MacDonald, Crown
21 Attorney, was there. Do you see that?

22 **MR. BOURGEOIS:** Yes.

23 **MR. CALLAGHAN:** Okay. So it's fair enough
24 to say he's advised that Murray MacDonald was there in this
25 affidavit; correct?

1 **MR. BOURGEOIS:** Yes.

2 **MR. CALLAGHAN:** All right. Let's go back to
3 paragraph 27. It says about a third of the way down:

4 "At approximately 11:30 or so, ..."

5 **THE COMMISSIONER:** Just a minute now. I got
6 it.

7 **MR. CALLAGHAN:** "At approximately 11:30 or
8 so, I observe Malcolm MacDonald turn
9 into Ken Seguin's driveway with two
10 other males. They exit the car and I
11 observe the two other males to be Chief
12 Claude Shaver and Stewart McDonald.
13 They go to Ken's wharf and get into
14 Malcolm's boat. They, Malcolm, Claude
15 and Stewart, head towards the island
16 and wave at me as they are leaving."

17 Now, that's the kind of detail I suggest to
18 you that made Mr. Leroux persuasive, seeing the waving and
19 seeing them go, all that little detail that he puts in
20 there. Is that what persuaded you?

21 **MR. BOURGEOIS:** I don't know one way or
22 another.

23 **MR. CALLAGHAN:** All right.

24 And then they go on:

25 "A second car arrives with two males in

1 it. They exit the car and I observe
2 Bishop Larocque and another priest.
3 Both of them go to Ken's wharf and
4 Malcolm and turned. Just before they
5 were to leave Malcolm, Bishop Larocque
6 and the priest, Father Charles
7 MacDonald, arrived in his car with
8 another priest."

9 See that?

10 **MR. BOURGEOIS:** Yes.

11 **MR. CALLAGHAN:** Now if we go to the
12 statement or the affidavit, I should say, that you took on
13 November 13th from Mr. Leroux, Exhibit 567, and at page 28.

14 **THE COMMISSIONER:** Page 28. Maybe paragraph
15 28?

16 **MR. CALLAGHAN:** Paragraph 28. My apologies.

17 **MR. BOURGEOIS:** Yes, sir.

18 **MR. CALLAGHAN:** It says:

19 "At approximately 11:30 or so, I
20 observe Malcolm turn into Ken Seguin's
21 driveway."

22 Do you see that?

23 **THE COMMISSIONER:** Okay, say again now?

24 Where are you?

25 **MR. CALLAGHAN:** Paragraph 28.

1 **THE COMMISSIONER:** I know that, yes.

2 **MR. CALLAGHAN:** "At approximately 11:30 or
3 so I observe Malcolm turn into Ken's
4 driveway."

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

6 **MR. CALLAGHAN:** All right. And then he
7 says:

8 "I then observed Rory MacDonald exit
9 Ken's back door. I clearly observed
10 Murray in the back yard."

11 See that? He's gone from hearing about
12 Murray MacDonald to seeing Murray MacDonald.

13 **MR. BOURGEOIS:** Yes.

14 **MR. CALLAGHAN:** It's a very significant
15 detail wouldn't you think, when you're trying to put
16 someone at a conspiracy?

17 **MR. BOURGEOIS:** Yeah.

18 **MR. CALLAGHAN:** Do you remember saying
19 something to Ron Leroux like, "Sir, I don't understand it.
20 It's different". No?

21 **MR. BOURGEOIS:** No.

22 **MR. CALLAGHAN:** No recollection. Okay.
23 Then they go on:

24 "Afterwards, Shaver arrived with two
25 other males. They exit the car and I

1 observe the two other males to be
2 Stewart McDonald and another cop."

3 Do you see that?

4 **MR. BOURGEOIS:** Which -- sorry, sir ---

5 **MR. CALLAGHAN:** Sorry, we're just carrying
6 on:

7 "I clearly observed Murray MacDonald in
8 the back yard afterwards ..."

9 **MR. BOURGEOIS:** Oh, yes.

10 **MR. CALLAGHAN:** All right.

11 Remember the last statement?

12 "Claude Shaver and Stewart McDonald
13 came in Malcolm MacDonald's car."

14 Now, Claude Shaver's coming in his own car.
15 Do you see that? Do you see that change?

16 **MR. BOURGEOIS:** I just don't see it. Where
17 is it, sir? Sorry.

18 **MR. CALLAGHAN:** Well, if you go back, if you
19 wish, to five ---

20 **MR. BOURGEOIS:** No, where is it here?

21 **THE COMMISSIONER:** He's just trying to
22 locate things. So we're looking at Exhibit 567.

23 **MR. BOURGEOIS:** Yes, sir.

24 **MR. CALLAGHAN:** Top of page six.

25 **THE COMMISSIONER:** Top of page six, all

1 right. So this is the later affidavit which is changing --
2 -

3 **MR. CALLAGHAN:** Starting at, "Afterwards,
4 Shaver arrived" and then at the top. If you follow on the
5 screen in front of you, Mr. Bourgeois.

6 **MR. BOURGEOIS:** Yeah, okay.

7 **MR. CALLAGHAN:** "Afterwards Shaver arrived
8 with two other males. They exit the
9 car and I observed the two other males
10 to be Stewart McDonald and another
11 cop."

12 **MR. BOURGEOIS:** Okay.

13 **MR. CALLAGHAN:** If you want, you can put up
14 -- put it in front of yourself, leave that on the
15 teleprompter there and you can see that that's a different
16 scenario that what was done -- was said on October 31st. On
17 October 31st, Mr. Claude Shaver and Mr. Stewart McDonald
18 arrived not with MacDonalld. Do you see that?

19 **MR. BOURGEOIS:** If you tell me there's
20 differences, I accept ---

21 **MR. CALLAGHAN:** Well, I mean, okay. All
22 right.

23 Now, what they've added was another cop. Do
24 you see that? Now we have another cop at the VIP meeting;
25 correct?

1 **MR. BOURGEOIS:** There's an addition in the
2 document.

3 **MR. CALLAGHAN:** Right. And isn't it fair to
4 say, sir, that to make the conspiracy complete we needed to
5 have the person who Murray MacDonald was corresponding
6 with, Luc Brunet, another cop. That fit the theory?

7 **MR. BOURGEOIS:** No.

8 **MR. CALLAGHAN:** No.

9 **MR. BOURGEOIS:** I have no memory of that at
10 all.

11 **MR. CALLAGHAN:** And if we could go down,
12 there's yet another little change. Not a significant one
13 but we might as well point it out.

14 **MR. BOURGEOIS:** Yes?

15 **MR. CALLAGHAN:** If you go down to, -- sorry,
16 if you could go further up, just the next line -- talking
17 about who's arriving next.

18 "Just before they were to leave,
19 Malcolm, Bishop Larocque and the
20 priest, Father Charles MacDonald,
21 arrived in his car with another priest,
22 Rory MacDonald."

23 Do you see that? They added Rory MacDonald
24 into arriving and being seen; whereas previously they said
25 you heard about "Rory" being there. It's another change.

1 MR. BOURGEOIS: Okay.

2 MR. CALLAGHAN: All right. Now, if you go
3 over -- and I take it you can't explain why these changes
4 are made?

5 MR. BOURGEOIS: No.

6 MR. CALLAGHAN: Okay. If you go over to the
7 next page, page ---

8 MR. BOURGEOIS: Page 7, sir?

9 MR. CALLAGHAN: Yes.

10 MR. BOURGEOIS: Okay.

11 MR. CALLAGHAN: Now, there is this
12 discussion at paragraph 38, and it talks about this
13 discussion that apparently happens at Ron Wilson's funeral
14 home at the day of the funeral.

15 MR. BOURGEOIS: Yes.

16 MR. CALLAGHAN: And it says at the bottom:

17 "Ron Wilson then repeated the names of
18 Claude Shaver, Bishop LaRocque, the
19 Catholic Church, the Diocese of
20 Alexandria, Malcolm MacDonald, Father
21 Charles MacDonald, and a Crown attorney
22 as being into it up to their necks."

23 Do you see that?

24 MR. BOURGEOIS: Yes.

25 MR. CALLAGHAN: By the way, Mr. Leroux

1 talked like -- is he able to say the Catholic Church, the
2 Diocese of Alexandria? Was that the way he spoke?

3 **THE COMMISSIONER:** No, he would have said
4 "Alexandria", but ---

5 **(LAUGHTER/RIRES)**

6 **MR. CALLAGHAN:** I've got to do something
7 about my image around here, but at least they're not making
8 me say the Episcopal words. But leaving aside my diction -
9 - he doesn't talk like that; does he? Ron Leroux would no
10 more say the Catholic Diocese of Alexandria; would he?
11 We've met Ron Leroux. Ron Leroux doesn't talk like this;
12 does he?

13 **MR. BOURGEOIS:** I don't know how to answer
14 that.

15 **MR. CALLAGHAN:** Well, that's fair. I think
16 you just did.

17 Now, if we go back to the previous
18 affidavit, you can take my word for it, he's added in ---

19 **THE COMMISSIONER:** Previous? Which one?

20 **MR. CALLAGHAN:** The previous affidavit on
21 October 31st, paragraph 37.

22 **MR. BOURGEOIS:** Yes, sir.

23 **MR. CALLAGHAN:** So Exhibit 564.

24 **THE COMMISSIONER:** Yes.

25 **MR. CALLAGHAN:** Which is the typed version.

1 The handwritten version 576.

2 I'm not going to be able to meet my
3 commitment, sir.

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

5 **MR. CALLAGHAN:** I'm not going to be able to
6 make my commitment to you. I just ---

7 **THE COMMISSIONER:** Well, first of all, it
8 wasn't a commitment. It was an estimate.

9 **MR. CALLAGHAN:** I know, but I feel like I
10 tried ---

11 **THE COMMISSIONER:** No, no, no. That's fine.
12 He's coming back so. But as long as the next time, we ---

13 **MR. CALLAGHAN:** All right. So you see they
14 added Crown attorney. You can take my word for it or you
15 can look it up yourself.

16 **MR. BOURGEOIS:** Okay.

17 **MR. CALLAGHAN:** But this affidavit has Ron
18 Wilson now talking about the Crown attorney. Again ---

19 **MR. BOURGEOIS:** Is that at 564, sir?

20 **MR. CALLAGHAN:** Five sixty-four (564) at
21 paragraph 37.

22 **MR. BOURGEOIS:** Because this one is not
23 signed.

24 **MR. CALLAGHAN:** Well, this is -- I'll tell
25 you what this is, Mr. Bourgeois. This is a typed version

1 that was used because it was hard to read your handwriting
2 by some.

3 **MR. BOURGEOIS:** Okay.

4 **MR. CALLAGHAN:** Okay? So it's word for
5 word.

6 **MR. BOURGEOIS:** Okay.

7 **MR. CALLAGHAN:** And so the last paragraph --
8 all I'm trying to direct your attention to is there is an
9 addition. If you'll see, it says, "Malcolm MacDonald and
10 Father Charles MacDonald" on that one; and then in the
11 Exhibit 567, it's added "and a Crown attorney".

12 So Malcolm -- okay -- and you're aware, now
13 you're aware, I'm not sure whether you knew it at the time,
14 but Murray MacDonald was the local Crown attorney; right?

15 **MR. BOURGEOIS:** Okay.

16 **MR. CALLAGHAN:** So we then get to the
17 Amended Statement of Claim. And I just want to ask you a
18 few questions about what is transpiring ---

19 **THE COMMISSIONER:** What ---

20 **MR. CALLAGHAN:** Exhibit 672.

21 **THE COMMISSIONER:** So give us a chance ---

22 **MR. CALLAGHAN:** I am going to ask some
23 preparatory questions. I should just slow down. I'm
24 coming back, so there's no point ---

25 **MR. BOURGEOIS:** Okay.

1 **MR. RUEL:** Okay. So let's just set the
2 scene. You've got Ron Leroux in your office; you swear an
3 affidavit on November 13th, 1996. This Statement of Claim
4 is issued -- the Amended Statement of Claim is issued on
5 November 15th, 1996.

6 **MR. BOURGEOIS:** Okay.

7 **MR. CALLAGHAN:** So I assume that this case
8 is consuming your entire practice at this time, over these
9 couple of days?

10 **MR. BOURGEOIS:** Okay, you're assuming.

11 **MR. CALLAGHAN:** Okay. I just -- I say that
12 as a litigator; that to draft an affidavit to re-draft a
13 Statement of Claim to the extent you did took an awful lot
14 of work, and all I'm suggesting is that's what's going on.

15 **MR. BOURGEOIS:** Certainly was work done.

16 **MR. CALLAGHAN:** Okay. And Ron Leroux has
17 testified that he didn't even know any of this was going
18 on. He was in the office. He had no idea that a Statement
19 of Claim was being amended based on the evidence he gave.
20 Would that be consistent with your recollection that you
21 wouldn't have told him?

22 **MR. BOURGEOIS:** No.

23 **MR. CALLAGHAN:** Do you think you might have
24 told him about the use to which you were going to put his
25 affidavit?

1 **MR. BOURGEOIS:** I'd be guessing if I -- I'd
2 be guessing if I did or not, sir. I would suggest -- I
3 would believe that I would have, but I'd be guessing. I
4 don't have that kind of recollection of that or not.

5 **THE COMMISSIONER:** Pick a good time to stop,
6 Mr. Callaghan.

7 **MR. CALLAGHAN:** As in right this second, I
8 could stop, if you wish.

9 **THE COMMISSIONER:** No, no. I'm just -- if
10 you want to ask a few more questions.

11 **MR. CALLAGHAN:** I'll ask a few more
12 questions. Then I'll come back on something different but
13 -- Mr. Bourgeois' exhibit book.

14 **MR. BOURGEOIS:** That's okay.

15 **THE COMMISSIONER:** Madam Clerk, could you go
16 and help Mr. Bourgeois with these.

17 **MR. BOURGEOIS:** Thank you.

18 **MR. CALLAGHAN:** I am at, if I might,
19 paragraph 36, page 24, Bates page 7166532.

20 Thank you. Can you just go -- you have it.

21 That's it. I am just down at paragraph 36.

22 We looked at these paragraphs earlier. These are the
23 verbatim sort of allegations regarding the discussion
24 regarding Dunlop and Staff Sergeant Brunet.

25 I just want to draw your attention to what

1 is added, which underlined. It says:

2 "Dunlop states that Brunet..."

3 -- and this part is added --

4 "...became enraged and made the following
5 threats against Dunlop."

6 And then, if you go over to paragraph 44,
7 and if you go down halfway through that paragraph -- 47, I
8 misspoke, paragraph 47 -- it says halfway through that
9 paragraph:

10 "Dunlop pleads that Brunet threatened
11 him with punishment and banishment, all
12 in an effort to maintain secrecy and to
13 protect the reputation and finances of
14 the Catholic Church, the Diocese of
15 Alexandria, Bishop LaRocque, Father
16 MacDonald, Shaver, Defendant MacDonald,
17 Ken Seguin and other parties..."

18 Do you see that?

19 **MR. BOURGEOIS:** Yes.

20 **MR. CALLAGHAN:** And I have seen no
21 additional evidence through all the affidavits regarding
22 anything relating to either the way he spoke to Dunlop or
23 anything to suggest banishment to the protection and the
24 reputation and finances.

25 Do you recall any evidence about that?

1 **MR. BOURGEOIS:** No.

2 **MR. CALLAGHAN:** No.

3 But these are serious allegations because it
4 goes on and says:

5 "...the reputation and finances of the
6 Catholic Church, the Diocese of
7 Alexandria, Bishop LaRocque, Father
8 MacDonald, Shaver, Defendant MacDonald,
9 Ken Seguin and other parties involved
10 directly or indirectly in the cover-up
11 of lewd, lascivious and unlawful sexual
12 abuse perpetrated upon children."

13 Do you see that?

14 **MR. BOURGEOIS:** Yes.

15 **MR. CALLAGHAN:** All right. And I don't want
16 to belabour the point, but you sort of go into the same
17 thing against Staff Sergeant Wells and Luke Brunet
18 regarding their involvement in the church, "...alleged
19 manipulation and threatening to keep secret..."

20 Do you know now or can you explain now why
21 these allegations were added against these men?

22 **MR. BOURGEOIS:** If you are asking me by
23 memory, no.

24 **MR. CALLAGHAN:** But you do appreciate that
25 this Statement of Claim played up quite prominently in

1 Cornwall and that these men live here, Luc Brunet, S/Sgt.
2 Wells.

3 MR. BOURGEOIS: Okay.

4 MR. CALLAGHAN: And we'll come back -- do
5 you feel any responsibility for this?

6 THE COMMISSIONER: He's the author of the
7 Statement of Claim.

8 MR. CALLAGHAN: I understand.

9 THE COMMISSIONER: Point.

10 MR. CALLAGHAN: I think, you know, one of
11 the things that has to be kept in mind is this caused
12 disarray, created victims out of people on the other side,
13 allegations like this. And if he just said there was no
14 additional evidence that he's aware of ---

15 THE COMMISSIONER: M'hm.

16 MR. CALLAGHAN: -- and I'm just wondering
17 how is it we get to this stage?

18 THE COMMISSIONER: That's a different
19 feeling -- that's a different story as to asking whether he
20 has any responsibility. That's ---

21 MR. CALLAGHAN: All right, if you prefer I'd
22 stay away from that area, all right I will.

23 I think that's a good time to break. Thank
24 you, Mr. Bourgeois.

25 THE COMMISSIONER: All right. Thank you

1 very much.

2 **THE COMMISSIONER:** So now when are we coming
3 back? I understand from the Clerk that Mr. Bourgeois you
4 may have some other time to suggest to us, other than the
5 Thursday.

6 **MR. BOURGEOIS:** I would prefer that only
7 because Wednesday night is Halloween, sir, I think and I
8 have two young daughters.

9 **THE COMMISSIONER:** Yes, so when would you be
10 available?

11 **MR. BOURGEOIS:** Monday would be great.

12 **THE COMMISSIONER:** All right. How much time
13 do we have left in cross-examination Mr. Callaghan?

14 **MR. CALLAGHAN:** Roughly I would estimate, I
15 would say an hour, 45 minutes to an hour.

16 **THE COMMISSIONER:** Okay, Mr. Scharbach?

17 **MR. SCHARBACH:** Not much, I would say at the
18 maximum 20 minutes.

19 **THE COMMISSIONER:** Okay.

20 **MS. LAHAIE:** Approximately 30 to 45 minutes.

21 **THE COMMISSIONER:** Okay, so we're talking
22 two-and-a-half hours. What's on for Monday? Anybody know?
23 Madam Clerk?

24 **MR. MANSON:** The schedule for Monday
25 afternoon is Professor Mary Lynn Young, the media expert

1 from B.C.

2 **THE COMMISSIONER:** Right.

3 **MR. MANSON:** She is scheduled for Monday
4 afternoon and Wednesday, I believe.

5 **THE COMMISSIONER:** So we have two hours.
6 We'd need -- how is Mr. Dumais? Could you get Mr. Dumais,
7 please? Someone get Maître Dumais? Or Mr. Engelmann
8 whoever has got a suit on.

9 **(LAUGHTER/RIRES)**

10 Actually Mr. Engelmann came in with a
11 turtleneck and a sports jacket and he said it was his
12 professorial look. Another myth.

13 **MR. MANSON:** I don't own a turtle neck.

14 **THE COMMISSIONER:** I thought he needed some
15 leather patches on his sports jacket.

16 **(SHORT PAUSE/COURTE PAUSE)**

17 So how old are the children?

18 **MR. BOURGEOIS:** Three and seven.

19 **THE COMMISSIONER:** Oh, they'll certainly
20 enjoy Halloween.

21 **MR. BOURGEOIS:** Yes.

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **THE COMMISSIONER:** Good afternoon, Mr.
24 Engelmann.

25 **MR. ENGELMANN:** Good afternoon, Mr.

1 Commissioner. I wasn't expecting to be here today.

2 **THE COMMISSIONER:** No, no and I've already
3 explained your dress for today.

4 **MR. ENGELMANN:** My phase two outfit.

5 **THE COMMISSIONER:** I didn't put it that way.
6 I put it "professorial look", so there you go.

7 **MR. ENGELMANN:** Thank you.

8 **THE COMMISSIONER:** All right, Mr. Bourgeois
9 has ---

10 **MR. MANSON:** Another well-dressed counsel.

11 **THE COMMISSIONER:** There you go.

12 Mr. Bourgeois will need another couple of
13 hours. He wants to come back on Monday. I am prepared to
14 start at 1:00, so is it possible that we finish off Mr.
15 Bourgeois before we start the next witness?

16 **MR. ENGELMANN:** Sir, it is if -- maybe I
17 could speak to counsel briefly. Yes, we can make that
18 work, we'll make that work. The witness has to leave --
19 she has got a flight out on Tuesday at the supper hour but
20 I think we can -- let me speak to counsel.

21 I think we can make it work. What we may
22 have to do is sit late on Monday with the witness. Maybe I
23 can finish the chief on Monday and that will give people
24 the day on Tuesday for cross. So I'd certainly like to
25 accommodate this witness if we can.

1 **THE COMMISSIONER:** All right, so we'll start
2 Monday at 1:00, sir. If you can come back at 1:00, we'll
3 get you out of the way first.

4 **MR. BOURGEOIS:** I appreciate that Your
5 Honour.

6 **THE COMMISSIONER:** And then we'll start with
7 the witness and we'll sit a bit later on Monday night. All
8 right?

9 **MR. ENGELMANN:** Thank you. And I'll speak
10 to counsel about the cross.

11 **THE COMMISSIONER:** Thank you.

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

14 This hearing is adjourned until October 29th,
15 at 1:00 p.m.

16 --- Upon adjourning at 2:58 p.m./

17 L'audience est ajournée à 14h58

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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