

Court File No. CV-17-573587

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GAIL HERRINGTON

Applicant

- and -

IAN HARVEY and LAURENTIAN BANK OF CANADA

Respondents

IN THE MATTER OF: That property municipally known as
299 Warden Avenue Toronto, Ontario

AND IN THE MATTER OF: *The Partition Act R.S.O. 1990,*
c. P4

AND IN THE MATTER OF: *The Real Property Limitations*
Act R.S.O. 1990 c. L15

APPLICATION UNDER RULE 14.05(3)(e) and Rule 66.01(1) of
the Rules of Civil Procedures

This is the Examination Under Oath of IAN
HARVEY, a Respondent herein, taken at the offices of
Network North Reporting & Mediation, Suite 1200, 25
Sheppard Avenue West, Toronto, Ontario, on the 27th day
of September, 2018.

A P P E A R A N C E S:

IRA E. BOOK

Solicitor for the Applicant

SAGE HARVEY

Solicitor for the Respondent
(IAN HARVEY)

ALSO PRESENT:

GAIL HERRINGTON.

APPLICANT

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1 --- UPON COMMENCING AT 1:06 P.M.

2 IAN HARVEY; Affirmed

3 EXAMINATION BY MR. BOOK:

4 1. Q. Your name in full, please, sir?

5 A. Ian John Harvey.

6 2. Q. Present residence?

7 A. 299 Warden Avenue, Toronto, M1N 3A3.

8 3. Q. Date of birth?

9 A. 27th of June, 1956.

10 4. Q. You're the Respondent in this
11 application number CV-17-573587, correct?

12 A. That appears to be so, yes.

13 5. Q. Because there's many other applications
14 going on, as we know and we'll get to.

15 A. As we may well know.

16 6. Q. We'll try to be quick. I'm showing
17 you, sir, the -- what purports to be an affidavit that
18 was sworn the 13th day of July, 2017.

19 A. Yes, sir.

20 7. Q. Is that your signature, sir?

21 A. Yes, it is.

22 8. Q. When you swore this affidavit, were the
23 facts true at that time?

24 A. As far as -- to the best of my
25 knowledge.

1 9. Q. Are there any changes you want to make
2 to that affidavit today?

3 A. Well, we put substantially more money
4 into the house. At the time that I signed that, we
5 were in the middle of a kitchen renovation which was
6 about \$30,000.00, so that has to be added to the total
7 investments. And as far as I can remember, that -- I
8 mean, perhaps I could read it again, because some time
9 has passed.

10 10. Q. Have you got a copy?

11 A. I don't know if I have a copy of what
12 you have, sir.

13 11. Q. You haven't got a copy of your
14 affidavit?

15 MR. HARVEY: I can provide it to you.

16 MR. BOOK: Pardon me?

17 MR. HARVEY: I can provide it now.

18 MR. BOOK: Okay.

19 THE DEPONENT: From 2017, no. I don't have

20 --

21 BY MR. BOOK:

22 12. Q. But you have --

23 A. -- it, no.

24 13. Q. -- another affidavit. I want you to
25 identify that too, but --

1 A. Yes.

2 14. Q. -- if you want to make a -- if you want
3 to ---

4 A. Well, that's why I just want to read
5 the affidavit and see -- if you ask me a specific
6 question ---

7 15. Q. Okay, that's fine.

8 A. You know, I just want to read it and
9 say, 'has anything changed?' It's been over a year.
10 Things change. My son, for example, no longer lives
11 with us.

12 16. Q. I might have another copy somewhere.

13 A. Well, I'm willing to flip through --

14 MR. HARVEY: I have a copy here.

15 THE DEPONENT: -- here, don't worry. I'm
16 pretty familiar with it. Yes. I don't believe that
17 there are any substantial changes that I can recall
18 from a quick review of this.

19 MR. BOOK: Maybe we can make your responding
20 application as Exhibit A -- or Exhibit 1. Let's call
21 it Exhibit 1. That's okay, so we can refer to it.

22 MR. HARVEY: Okay.

23 MR. BOOK: It's your record.

24 MR. HARVEY: Yes.

25 MR. BOOK: Your responding record.

1 MR. HARVEY: Yes.

2 --- EXHIBIT NO. 1: Deponent's responding application.

3 BY MR. BOOK:

4 17. Q. Then I'm showing you a supplementary --

5 -

6 A. Sorry, I'll take my phone off.

7 18. Q. I'm showing you a Supplementary

8 Affidavit sworn the 24th of September. There's no

9 year in it, but I assume it's 2018?

10 A. I believe that's the last one I signed,

11 yes --

12 19. Q. Okay, and --

13 A. -- and that was a response to her

14 Supplementary ---

15 20. Q. -- that's your ---

16 A. Yes, yes.

17 21. Q. That's your signature?

18 A. Yes, it is.

19 22. Q. Again, the facts are true at the time

20 you swore it?

21 A. As far as I know.

22 23. Q. Can we agree that even though there's

23 no "18" on it, it's 2018?

24 A. 2018 --

25 24. Q. Right?

1 A. -- yeah --

2 25. Q. Yes?

3 A. -- fair enough.

4 26. Q. And there's -- any addition to it you
5 want to make to this affidavit?

6 A. Not at this time.

7 27. Q. We can make this Exhibit 2.

8 --- EXHIBIT NO. 2: Supplementary Affidavit sworn by
9 Deponent on September 24th, 2018.

10 BY MR. BOOK:

11 28. Q. With respect to this house at 299
12 Warden Avenue, correct me if I'm wrong, but the house
13 is presently registered in both your name and Gail
14 Herrington's name as tenants in common --

15 A. Right.

16 29. Q. -- not as joint tenants. Is --

17 A. We were --

18 30. Q. -- that correct?

19 A. -- joint tenants, and then somebody
20 changed it without my knowledge or authority.

21 31. Q. Having said that, there's no
22 disagreement that you -- that the joint tenancy was
23 severed. You're now tenants in common?

24 A. Yes. Although that's the point of
25 contention.

1 32. Q. Pardon me?

2 A. It's a point of contention.

3 33. Q. That she severed the joint tenancy?

4 A. Without discussion.

5 34. Q. Your lawyer can answer that. I don't
6 know what discussions you have to have on something
7 like that, but ---

8 A. Well, because, when the mortgage was
9 put on we were tenants in common, so she couldn't have
10 mortgaged her half of the house if we were tenants in
11 common.

12 35. Q. It's not a mortgage.

13 A. Well, it is listed as a mortgage. As a
14 second mortgage.

15 36. Q. Here, I'm showing you -- which is a
16 fairly up-to-date -- so we can have a complete -- we
17 want to be able to complete the record.

18 A. Of course.

19 37. Q. I'm showing you a search of the title.

20 A. Yes.

21 38. Q. This search of the title shows that on
22 March the 20th of 1992, Gail Elizabeth [ph] Herrington
23 transferred the property from herself to herself,
24 which is -- the result of which was to --

25 A. Sever the joint ---

1 39. Q. -- sever the joint tenancy.

2 A. Yes.

3 40. Q. Other than that, and ---

4 A. And, again, without my consent.

5 41. Q. You mentioned that already.

6 A. Yes.

7 42. Q. Maybe this -- you want to take a look

8 at that, Counsel? I just want to make this as an
9 exhibit. This is a search of the title that's up to
10 date, listed by -- it's dated 2016, but nothing has
11 changed, so -- unless you know of something that's
12 changed.

13 MR. HARVEY: I know in the affidavit of Ms.
14 Herrington there is a title search.

15 MR. BOOK: Is there a more recent one? That
16 was the one that I got from John Freeman's file. But
17 I just copied it, but it -- I think that's the last
18 one, but we could say it's effective the date of the -
19 - whatever date it is on ---

20 MR. HARVEY: I would submit this as the --
21 basically, a title search as of 2016, July 19th.

22 MR. BOOK: Fine. We'll make this the next -
23 - Exhibit 3.

24 --- EXHIBIT NO. 3: Title search as of July 19th, 2016.

25 BY MR. BOOK:

1 43. Q. Correct me if I'm wrong, but you and
2 Gail Herrington have separated. You're former
3 spouses, you were separated on June 24th, 1991?

4 A. Yes, that's correct.

5 44. Q. There was a lawsuit that went on. It
6 was a petition for divorce in the Ontario Superior
7 Court of Justice?

8 A. That's correct.

9 45. Q. Correct? And just ---

10 A. Hold on, was it called the Superior
11 Court at that point? I don't know.

12 46. Q. It was called the Ontario Court
13 (General Division) --

14 A. Yeah --

15 47. Q. -- at the time.

16 A. -- General Division, yeah.

17 48. Q. The reason I wanted to just file this
18 is that -- because, at the end, you put it in as a
19 settlement in the context of that litigation.
20 Remember, that was part of one of your exhibits.

21 A. Is it?

22 49. Q. Well, I'm telling you. Okay, I'll come
23 back to it. I just want you to identify -- there is -
24 - and there is the answer -- there's your answer.
25 There's your petition, and there's your answer. And

1 then there's a reply, so I should give you the whole
2 package. And there's your reply. I'd like to make --
3 these are the pleadings in that case. Here's the list
4 of them. That includes your answer. That's her
5 petition, followed by your answer and her reply. I
6 just want you to identify them for the record, please.

7 A. It's been a while since I read it.

8 50. Q. Pardon me?

9 A. It's been a while since I read it.

10 51. Q. Well...

11 A. All right. Yes, yes, yes, yes. Yes.

12 52. Q. And there's the -- and then her reply.

13 I'm going to put them all together as one exhibit if
14 that's okay, Counsel. Just to complete the record.

15 MR. HARVEY: Okay.

16 THE DEPONENT: Yes.

17 MR. BOOK: Thank you. We'll make this
18 package of pleadings consisting of a petition for
19 divorce in file number N91-ND-186967 issued on the 9th
20 of October, 1991. An answering counter petition of
21 Mr. Harvey dated the 11th of November, 1991. That was
22 your signature on there, right here on the front?

23 THE DEPONENT: Yes, sir.

24 MR. BOOK: Steve Skaulnik was your lawyer at
25 the time?

1 THE DEPONENT: Skaulnik, yes.

2 MR. BOOK: Yes? And then there's a reply,
3 an answer to counter petition dated November 15th,
4 1991. If these three documents can be marked as the
5 next exhibit, which I'll just stamp as exhibit number
6 4. Right?

7 --- EXHIBIT NO. 4: Package of pleadings: petition for
8 divorce issued October 9th, 1991; Deponent's answering
9 counter petition dated November 11th, 1991; answer to
10 counter petition dated November 15th, 1991.

11 BY MR. BOOK:

12 53. Q. In your affidavit of July 13th, 2017 --
13 it might be useful if you had it in front of you.
14 Just take a look at that. Have you got that in front
15 of you?

16 A. Yes, I do, sir.

17 54. Q. You talk in Paragraph 6 through
18 Paragraph 16 about the Minutes of Settlement. You
19 say, "the Minutes of Settlement is a headache. The
20 Minutes of Settlement dated April 12th" ---

21 A. Yes. Yes, sir, I have the section.

22 55. Q. I have to read it into the record.

23 A. Oh, okay.

24 56. Q. Bear with me, okay? Thanks. "The
25 Minutes of Settlement dated April 12th, 1995, prevent

1 the Applicant from seeking partition and sale of the
2 property." And then you go on and you make some
3 comments about it. What I want to show you -- in your
4 material, Exhibit A is the Minutes, and -- I don't
5 know if you happen to have a copy, but I have extra
6 copies.

7 A. Yes.

8 57. Q. I'm going to present that to you.

9 A. Well, I can get a copy. I have some in
10 my collections.

11 58. Q. You don't have to do that. I have ---

12 MR. HARVEY: Here's the Minutes if you want.

13 MR. BOOK: Whatever you want.

14 THE DEPONENT: Okay, yes. Fair enough.

15 MR. BOOK: Whatever you want.

16 THE DEPONENT: Yes, sir.

17 MR. BOOK: Let's go through that afterwards.

18 THE DEPONENT: Yes.

19 BY MR. BOOK:

20 59. Q. Give me a second, now. We're trying to
21 get everything organized. I'm showing you what
22 purports to be a copy of the Minutes, and there's two
23 signatures on it dated the 12th of April, 1995 ---

24 A. That's correct.

25 60. Q. Can you identify the signatures of --

1 A. They all --

2 61. Q. -- them all on that page?

3 A. -- are mine.

4 62. Q. Let me ask the question before you
5 answer it, because it's hard to go on the transcript
6 when you talk at the same time as I do, okay? It just
7 makes life easier for everybody. All right, so you
8 identified the Minutes. Can you identify -- is it
9 Steve Skaulnik's -- is the witness to your signature?
10 It looks like it. He was ---

11 A. I don't know.

12 63. Q. He was your lawyer at the time?

13 A. He was my lawyer at the time.

14 64. Q. Okay. I'm suggesting to you that the
15 word Skaulnik is pretty clear on that. It's a ---

16 A. It may well be, but it's -- he's
17 retired, and I haven't had dealings with him in 30
18 years.

19 65. Q. He's sitting as a part-time Small
20 Claims Court judge.

21 A. Oh, that's right. I heard that, yeah.

22 66. Q. To the best of your recollection, when
23 you signed the Minutes of Settlement, he was there?
24 He witnessed it then?

25 A. Yes, as was her counsel. We did it at

1 her counsel's offices up here in North York.

2 67. Q. Okay. Looking at the Minutes,
3 Paragraph 1A talks about you having the -- call it an
4 option to buy your wife out on certain conditions.

5 A. That's correct.

6 68. Q. One of them was to arrange for legal
7 real estate appraisers to do an appraisal.

8 A. That was done.

9 69. Q. That was done?

10 A. Yes.

11 70. Q. It goes on to say that "if the
12 Respondent," being you, "is unable or unwilling to
13 purchase the partitious [ph] half-interest in the
14 matrimonial home after the deductions set out herein,
15 the matrimonial home will be listed for sale." All
16 right. Were you willing to purchase her interest?

17 A. Absolutely.

18 71. Q. All right.

19 A. Still am today.

20 72. Q. Were you able ---

21 A. Right now.

22 73. Q. Were you able to purchase her ---

23 A. I am able.

24 74. Q. Were you able at the time to purchase -

25 --

- 1 A. Once the title was cleared, yes.
- 2 75. Q. Okay.
- 3 A. Can't sell a house with that title
- 4 stained on it.
- 5 76. Q. Okay. Paragraph 1B. You came up with
- 6 an -- you and your -- the lawyers came up with an
- 7 equalization payment of \$6,500.00.
- 8 A. Right.
- 9 77. Q. Did you ever pay that \$6,500.00?
- 10 A. No. I was holding it pending receiving
- 11 cleared title.
- 12 78. Q. It says it was to be held in trust.
- 13 Did you have that money in trust?
- 14 A. No.
- 15 79. Q. All right, and ---
- 16 A. I have the money. You can have the
- 17 money tonight if the title has cleared.
- 18 80. Q. When this says "in trust," I assume
- 19 that meant that Mr. Skaulnik was to hold the money in
- 20 trust?
- 21 A. There was no discussion of that.
- 22 81. Q. It says right there, "in trust."
- 23 A. No. There was no trust.
- 24 82. Q. Okay. And ---
- 25 A. I just filed with my financial

1 institution, which is in trust.

2 83. Q. Say again?

3 A. It's held in my financial institution.

4 84. Q. You had the \$6,500.00 in the bank at
5 the time?

6 A. Yes, I had access to it.

7 85. Q. You had the cash on hand?

8 A. Well, I had my father -- my father set
9 aside -- set money aside.

10 86. Q. Your father set it aside?

11 A. Yes.

12 87. Q. Do you have any evidence of that?

13 A. I have my father's account stamp.

14 88. Q. You have your ---

15 A. Father's account stamp.

16 89. Q. But there's no -- your father never
17 provided your lawyer or you with the funds at the time
18 to hold in trust so you could --

19 A. No --

20 90. Q. -- complete the deal?

21 A. -- no one asked for it. She didn't ask
22 for it, no one asked for it.

23 91. Q. Okay, but your lawyer -- somebody
24 drafted this where it said that the money would be
25 held in trust and it would be on-hand.

1 A. The money is on-hand.

2 92. Q. But it was not provided, it was held by
3 your father?

4 A. It was made available by my father, as
5 would have been the mortgage.

6 93. Q. Go to Paragraph 1G of the Minutes, on
7 Page 3.

8 A. Yes.

9 94. Q. It says, "the terms of the Minutes of
10 Settlement as set out herein are further conditional
11 upon the following occurring: that the present holder
12 of the second mortgage (inaudible 0:20:56.3, 1259PM)
13 registered by the petitioner is satisfied."

14 A. Yes. That would be the mortgage.

15 95. Q. No -- that's the Laurentian Bank
16 mortgage?

17 A. No -- well, the RRSP the current had
18 put on.

19 96. Q. Has that been satisfied?

20 A. No, because that was her job.

21 97. Q. Did you make any efforts to try to
22 satisfy ---

23 A. I did try to make efforts, but I just
24 couldn't keep spending money without getting any
25 progress. And if she fought me at every turn, it

1 would -- became ridiculous. She didn't want to
2 settle. There was nothing in it for her. She'd
3 already gotten her money. She got \$36,000.00, plus
4 she got \$20,000.00 with interest. Those are far
5 exceed the value of the house at the time. Before
6 that ---

7 98. Q. What \$20,000.00 are you talking about?

8 A. Well, Legal Aid gave her \$20,000.00,
9 which is now \$40,000.00 or more with interest. Plus
10 the \$36,000.00 at 49 percent. Do the math. There's
11 nothing in it for her.

12 99. Q. It says -- another condition in
13 Paragraph 1G, number 3, is that "the action commenced
14 by the Respondent," you, "against Laurentian Bank
15 (inaudible 0:21:58.6, 1259PM) is satisfied." Has that
16 been satisfied?

17 A. No. It's abandoned.

18 100. Q. When you say "abandoned," what do you
19 mean by that?

20 A. Well, there's -- it was set down for --
21 all three matters were combined into one file and set
22 down for trial by Justice Dunnet in 2000. I believe
23 that's in the record as well.

24 101. Q. That's 18 years ago.

25 A. Yes.

1 102. Q. What's happened in the last 18 years?

2 A. I have no money. Raising two kids with
3 no child support.

4 103. Q. So it's fair to say that that action
5 has not been satisfied?

6 A. It's been abandoned. But it's all been
7 wrapped into one matter. At the time, they were
8 separate matters. Now it's wrapped into one matter.

9 104. Q. Just so we have a complete record ---

10 A. I believe that your client has
11 resurrected that matter by bringing the motion to
12 strike the mortgage. But I'll take counsel on that.

13 105. Q. Thank you. I'm showing you what
14 purports to be a copy of an application record between
15 you as number -- court file number RE4413/94, where
16 you're the Applicant. Laurentian Bank, Robert
17 Kernahan and Gail Herrington are Respondents. Let's
18 just ---

19 A. That was one that was -- that was one
20 of the ones that was combined into one action. One
21 file.

22 106. Q. I'd like you to look at the Notice of
23 Motion. It's got an affidavit of yours sworn the 2nd
24 of September, 1994. And then there's an endorsement
25 of Dunnet J. combining that and the bank's motion and

1 the bank's claim, into one. Could you just identify
2 that so we can complete the record? Is that accurate,
3 and is ---

4 A. Yeah, I believe it is. Yes. That's
5 correct.

6 107. Q. Thanks. We'll make that the next
7 exhibit, number 5. And that consists of the
8 application record, the affidavit of Mr. Harvey of
9 September the 2nd, 1994, and the endorsement of Dunnet
10 -- Justice Dunnet dated July 5th of 2000. That's the
11 next exhibit. All right.

12 --- EXHIBIT NO. 5: Application record: Deponent's
13 affidavit dated September 2nd, 1994; endorsement of
14 Justice Dunnet dated July 5th, 2000.

15 BY MR. BOOK:

16 108. Q. I don't think I made the Minutes of
17 Settlement an exhibit.

18 MR. HARVEY: No, I don't think so.

19 MR. BOOK: I'd like the Minutes of
20 Settlement to be the next exhibit. We'll call it
21 exhibit number 5.

22 MR. HARVEY: I think it's six.

23 MR. BOOK: Six? Is it six?

24 THE REPORTER: Yes.

25 MR. BOOK: Okay.

1 --- EXHIBIT NO. 6: Minutes of Settlement dated April
2 12th, 1995.

3 BY MR. BOOK:

4 109. Q. I'll show you another document which
5 you can maybe identify, because if you -- if you're
6 familiar with it. Statement of Claim, file number 93-
7 CQ-45325, which is a claim by the Laurentian Bank of
8 Canada as trustee against Gail Elizabeth Herrington.
9 Have you seen that document ---

10 A. Oh yes, I've seen that one.

11 110. Q. All right.

12 A. The interesting thing here is that you
13 should know that Laurentian Bank says, officially it's
14 not part of the action. That was brought by Kernahan,
15 who used the name Laurentian Bank to cover up what he
16 was doing.

17 111. Q. We'll call this a Statement of Claim in
18 action number 93-CQ-45325 as exhibit number 7.

19 --- EXHIBIT NO. 7: Statement of Claim in action number 93-
20 CQ-45325 against Gail Herrington.

21 BY MR. BOOK:

22 112. Q. That action was combined by Justice
23 Dunnet in 1990. The one we just talked about.

24 A. 2000.

25 113. Q. 2000, sorry. 2000. Correct. And ---

1 A. Oh, sorry. I believe Justice Dunnet --
2 oh, I can't remember now. I thought he set it down in
3 2000 for trial, but he combined it in '94. I may be
4 confused. In any event, they're combined.

5 114. Q. I'm showing you your Affidavit of
6 Documents in this case, and it consists of two
7 volumes. Maybe you just could identify the signature.
8 It's sworn the -- February the 16th, 2018. That's
9 your signature?

10 A. Yes, it is, sir.

11 115. Q. Are there any other documents you want
12 to add to this --

13 A. Not at this --

14 116. Q. -- Affidavit of Documents?

15 A. -- point. I mean, you know.

16 117. Q. Okay. In your Affidavit of Documents,
17 which is -- we'll call that the two-volume Affidavit
18 of Documents. We'll call that exhibit number 8.

19 A. From 2018? Or 2017?

20 118. Q. 2017. Did I say '18?

21 A. Yeah, I think you did.

22 119. Q. I apologize. It should be 20 -- it's
23 sworn ---

24 A. 2017.

25 MR. HARVEY: Should be 2018.

1 BY MR. BOOK:

2 120. Q. No, '18.

3 A. No, '18?

4 121. Q. February 16th, 2018.

5 A. Oh, February 26th.

6 122. Q. February 16th, 2018. Want to look at
7 it again?

8 A. Yeah, let me have a look at that again.

9 Thank you.

10 123. Q. The date you signed it?

11 A. Yeah.

12 124. Q. All right, well ---

13 A. Yeah, I guess --

14 125. Q. Do I --

15 A. -- I did.

16 126. Q. -- have it right?

17 A. Yeah, I just want to refresh my memory
18 as to what -- oh, this is the document that I said I
19 would be relying on. Right, okay, yes. Now I'm
20 refreshed. Yes.

21 127. Q. All right, so I was right. It's --

22 A. You are right.

23 128. Q. -- February 16th --

24 A. Sorry, my --

25 129. Q. -- 2018.

1 A. -- mistake. My mistake.

2 130. Q. All right, these things happen. All
3 right, we'll call that exhibit number 8.

4 A. Which, by the way, contains many of the
5 documents that you exhibited -- made exhibits earlier.

6 131. Q. Thank you.

7 A. So you're duplicating.

8 --- EXHIBIT NO. 8: Deponent's two-volume Affidavit of
9 Documents dated February 16th, 2018.

10 BY MR. BOOK:

11 132. Q. Yes. In this exhibit, you produced
12 some transcripts. And one of the transcripts is in
13 the Laurentian Bank v. Gail Herrington -- just hold on
14 a second, I'll tell you. One of the transcripts is in
15 your action number 4413, where you sue the Laurentian
16 Bank and Robert Kernahan and Gail Herrington. And you
17 provided the transcript of that evidence.

18 A. I did.

19 133. Q. Yes, all right. That was taken on the
20 2nd of September, 1994.

21 A. Whose testimony is it, mine or Gail's?

22 134. Q. This is the Cross-Examination of Ian
23 Harvey.

24 A. Okay.

25 135. Q. That's at Tab 2 of your Affidavit of

1 Documents.

2 A. Well, it was discovery. But anyway,
3 yeah.

4 136. Q. It says "Cross-Examination" on this.

5 A. Well, that's interesting, because it
6 was a discovery. It wasn't in court.

7 137. Q. Well, that's something -- it was heard
8 before -- at the offices of Gordon Trab at 121 King
9 Street West, and maybe you can talk to the court
10 reporter, but they called it a cross-examination.
11 Okay. Then you provided as well a transcript, a
12 cross-examination of -- the affidavit -- of Robert
13 Kernahan, and it was taken at the offices of A.C.
14 Davenport, Special Examiner. And that was heard on
15 the 15th of December, 1994. You were represented by a
16 guy name Bernstein. N. Bernstein --

17 A. Norm Bernstein, yes.

18 138. Q. -- and C. Bernstein ---

19 A. Norm Bernstein.

20 139. Q. You had two lawyers?

21 A. Yes, I had Cory and Norm. Cory is the
22 son.

23 140. Q. Okay.

24 A. He was articling at the time with his
25 father. So Bernstein handled the property issue, and

1 Skaulnik handled the matrimonial.

2 141. Q. Then you provide another transcript of
3 the -- of a lawyer by the name of Eric Nadler.

4 A. Yeah, Nadler was acting for Kernahan.

5 142. Q. There's a transcript of this
6 examination. It's a cross -- it's an examination of a
7 witness on a pending motion, and it was held on the
8 18th of October, 1995.

9 A. I wasn't there for that, but I know the
10 transcript is true. Mr. Nadler was examined because
11 he did the legal paperwork for the mortgage that Gail
12 put on the house for that length of -- without my
13 knowledge.

14 143. Q. Then you filed another transcript, a
15 cross-examination of Kernahan in the context of the
16 combined action between the Laurentian Bank v. Gail
17 Herrington, and your action against the Laurentian
18 Bank and Gail Herrington and Kernahan.

19 A. Yes.

20 144. Q. And there's another -- that cross-
21 examination was held on the 5th of January, 1995. I
22 don't know if you ---

23 A. It was.

24 145. Q. Were you present then?

25 A. I don't know. I never -- I was not,

1 and Herrington and Kernahan as Respondents. There's
2 another transcript of Gail Herrington, and it's dated
3 -- it was taken on the 5th of January, 1995. Were you
4 there at that time?

5 A. I believe I was.

6 151. Q. Yes, okay. I haven't been able to --
7 it's been difficult to recover all of the material
8 that's --

9 A. Sure.

10 152. Q. -- (inaudible 0:33:57.4, 1259PM) open.
11 In the consolidation order by Justice Dunnet, there's
12 reference to a third case. There's the case 44-RE-
13 441394. That's your case against the Laurentian Bank.
14 Case 93-CQ-45325. That's the Laurentian Bank against
15 you and Gail Herrington and Kernahan.

16 A. Correct.

17 153. Q. There's another case ---

18 A. No, no -- I don't why the Laurentian
19 Bank was suing Kernahan.

20 154. Q. There is an issue, but -- then there's
21 another case referred to by Justice Dunnet called case
22 number RE-4843/95.

23 A. I believe that's Elizabeth Smith.

24 155. Q. Good. Okay.

25 A. Elizabeth Smith, I believe, is or was

1 the wife of Robert Kernahan who benefited from this
2 mortgage, quote unquote.

3 156. Q. That's right, that's right. Now I
4 remember, okay.

5 A. He transferred that document -- that
6 instrument to her RRSP and, at the face value, gained
7 -- she gained substantial benefit.

8 157. Q. To the best of your knowledge, have you
9 seen or talked to Elizabeth Smith since the 1990's?
10 Have you ever met --

11 A. I've never --

12 158. Q. -- her?

13 A. -- met her. I think I called her, or I
14 left messages for her. I wrote her a letter. I, you
15 know, tried to get a hold of her. She sent me a
16 letter back saying that, you know -- that she wasn't
17 interested. That she -- either she wanted the full --
18 she was really noncommittal to anything in terms of
19 like, look, we've got to do something with -- my
20 position was, and has been all along, we've got to do
21 something about this. Why can't we sit down and work
22 this out? There's a contract we have here. I will
23 pay this, but I can't pay that if there's a stain on
24 the title. So we have to clear both the Legal Aid
25 debt and this mortgage, somehow. And Gail fought me

1 I could never -- neither sell nor mortgage. I was
2 screwed, I was a victim here. I was held hostage by
3 this situation.

4 162. Q. So the answer is, after they were
5 consolidated by Justice Dunnet, nothing has been done?

6 A. I tried. In 2006, I brought a motion
7 to the court asking for the mortgage to be struck
8 under Section 23 of the Family Law Act. I was
9 rebuffed -- Mr. Freeman acted for Gail. I was
10 rebuffed. I did get child support. It was paid for
11 the first couple of months and then never paid
12 subsequently.

13 163. Q. You asked for what to be struck?

14 A. For the mortgage to be struck under
15 Section 23 of the Family Law Act. But Gail opposed
16 me, and that's why she started asking for the house to
17 be sold at market value, which was ridiculous because
18 we had Minutes of Settlement.

19 164. Q. So, the ---

20 A. So, I mean, in 2006 I did that myself
21 with a little assistance from friends. I didn't
22 really know much about -- in detail about the law at
23 the time. I've obviously been through the process on
24 covering courts. I can tell you I have a much better
25 understanding of the law now because, in the ensuing

1 twelve years, I've covered a lot of law and talked to
2 a lot of lawyers. That's part of my job. But at the
3 time I was naive. But I tried. And after that, I got
4 to tell you, it was like a gut punch. I just didn't
5 have the heart to go on. At that point my kids were
6 in college -- getting into college. And, you know, I
7 tried to get on with my life. Oh, and Gail got really
8 sick.

9 165. Q. What do you do for a living?

10 A. I'm a journalist.

11 166. Q. How long have you been doing that?

12 A. 1977.

13 167. Q. In 2000, who were you employed with?

14 A. Well, in 2000, I was with the Toronto
15 Sun. Or Canoe at the time, which is part of Sun
16 Media. Just say Sun Media.

17 168. Q. Could you give me an idea of what kind
18 of salary you were earning in 2000? Do you have any
19 recollection?

20 A. It was around \$75,000.00, \$80,000.00 a
21 year.

22 169. Q. I just want to ask you a few questions
23 about your affidavit. Before I do, I want to look
24 back at the Minutes, all right? There's something
25 that came out of these Minutes that bothered me, but

1 you could help me here, and I'm going to ask you about
2 it. On Page 3 of the Minutes, it says -- Paragraph F
3 -- Paragraph 1F, there's something that you don't
4 normally see. It says, "these Minutes of Settlement
5 are subject to either party and their respective
6 counsel receiving third-party independent legal advice
7 in order to satisfy themselves that these Minutes of
8 Settlement can be acted upon without any liability to
9 either party." What does that mean?

10 A. I have no idea, I'm not a lawyer.

11 170. Q. Did you and Mr. Skaulnik get
12 independent legal advice as anticipated ---

13 A. No. No, I didn't ---

14 171. Q. Let me finish first.

15 A. Yeah.

16 172. Q. Did you and Mr. Skaulnik get the
17 anticipated legal advice as contemplated by this
18 paragraph to satisfy that there's no liability on --
19 that could be acted on?

20 A. I would assume that Mr. -- I would have
21 to assume that Mr. Skaulnik did whatever he did with
22 his -- the other lawyer who shared his office.

23 173. Q. What ---

24 A. You'd have to ask him.

25 174. Q. I'm not going to ask him, I'm asking

1 you. I don't want an assumption, and I don't want ---

2 A. So, the fact is, I don't know.

3 175. Q. To the best of your knowledge,
4 information and -- believe -- is it fair to say that
5 you have no information about this Paragraph F being
6 complied with by Mr. Skaulnik or you?

7 A. I don't know. I don't. That's not to
8 say it didn't happen.

9 176. Q. Counsel, do you want to undertake to
10 contact Mr. Skaulnik and see if he obtained the
11 independent legal advice contemplated by Paragraph 1F
12 of the Minutes?

13 MR. HARVEY: I can ask him if I can find
14 him.

15 --- UNDERTAKING NO. 1

16 THE DEPONENT: He's a Small Claims judge.

17 MR. BOOK: He sits in Oshawa.

18 THE DEPONENT: Oh, in Oshawa?

19 MR. BOOK: If he's still there.

20 THE DEPONENT: He's been living in Richmond
21 Hill last I heard.

22 MR. BOOK: Anyway, maybe check on him to see
23 if -- and if he did obtain the certificate of
24 independent legal advice as anticipated by this ---

25 THE DEPONENT: It didn't say certificate, it

1 just says 'obtaining independent legal advice.'

2 MR. BOOK: "Third-party independent legal
3 advice." Okay, if --

4 THE DEPONENT: Right, advice.

5 MR. BOOK: -- he did obtain third-party
6 independent legal advice, I'd like to have the
7 particulars, including the name of the lawyer, what
8 the lawyer who -- and contact information, and exactly
9 what the lawyer said.

10 THE DEPONENT: Given the time, that lawyer
11 may well be dead.

12 BY MR. BOOK:

13 177. Q. Could be. Are you aware of whether or
14 not your former spouse, Gail Herrington, obtained the
15 independent legal advice that -- and ---

16 A. We don't talk.

17 178. Q. Were you advised by Skaulnik that her
18 lawyer confirmed that he had obtained independent
19 legal advice?

20 A. The only thing I can remember in
21 relation to this was that I got a letter of report
22 [ph] from Skaulnik saying, 'this is done,' and now,
23 you know, 'move on. The matrimonial part is done
24 and,' you know, 'you're going to have to move on.' I
25 mean, pending Gail getting cleared title.

1 179. Q. Do you have a copy of that letter, or
2 is it --

3 A. I would --

4 180. Q. (inaudible 0:43:38.3, 1259PM)

5 A. -- have to go through all the files and
6 see if I could -- that's all I remember, is that, you
7 know, there's a standard reporting letter, right?

8 181. Q. The reason I'm asking, is this ---

9 A. I think he even closed his bill at the
10 time. So, you know.

11 182. Q. He did? Okay, well, that's good. The
12 reason I'm asking is, you look at Paragraph L, the
13 last paragraph in the Minutes, it says, "if one or
14 more of the terms of these Minutes of Settlement is
15 not satisfied, then the entire Minutes of Settlement
16 are null and void."

17 A. Right.

18 183. Q. All right. You've told me that the
19 mortgage part has not been satisfied.

20 A. Well, that's her problem, not mine.
21 You can't sign a contract and then not live up to the
22 terms, and then -- can get -- claim that the contract
23 is void. Come on.

24 184. Q. Do you disagree with me that it's not
25 been satisfied?

1 A. Well, that's her problem. Yes, she's
2 failed.

3 185. Q. Do you disagree with me that there's no
4 evidence that the independent legal advice was
5 obtained?

6 A. I don't know.

7 186. Q. Do you agree with me, if I suggest to
8 you, that because the terms of the Minutes of
9 Settlement have not been complied with, these Minutes
10 of Settlement are null and void?

11 A. I disagree with you.

12 187. Q. There was an order made by Master Cork
13 [ph].

14 A. That's correct.

15 188. Q. The order was to the effect -- I'm
16 going to show it to you. It's found at Tab G -- Tab
17 1G of our supplementary application record. And the
18 order of Master Cork makes reference to Paragraph --
19 of you leaving the house. And it says on Page --
20 Paragraph 6 on Page 3, "this court orders that the
21 husband shall not attend at the matrimonial home save
22 for purposes of access or such other errands only
23 after providing the petitioner with 24 hours' notice."
24 How did that come about?

25 A. I don't -- as far as I know it was a

1 standard clause.

2 189. Q. That implies that you were not in the
3 house.

4 A. Yes, I'd left the house.

5 190. Q. Okay, and ---

6 A. By agreement. We had come to an
7 agreement before we went to the interim agreement.
8 Before that, and within a couple of weeks of
9 separation, I agreed to move out to my parents' place
10 -- or my father's place at that point -- while she
11 lived there with the kids, and I would have access
12 every weekend.

13 191. Q. Okay. And ---

14 A. And that was by arrangement.

15 192. Q. My information is that, notwithstanding
16 you weren't supposed to live there, and that was by an
17 agreement, you continually came back to the house and
18 in fact broke into the house a number of times.

19 A. That's not correct at all, sir.

20 193. Q. No? It's not --

21 A. It's a --

22 194. Q. -- true?

23 A. -- complete fabrication. A lie ---

24 195. Q. All right.

25 A. Slander.

1 196. Q. How did you get back in that house?

2 A. She moved out.

3 197. Q. Do you have any information about how
4 that occurred?

5 A. Well, there was discussions over the
6 winter. She couldn't carry the house, she couldn't
7 live there with Rick [ph]. She wanted to move out, so
8 she was -- she moved out. And then she told me that
9 she'd moved out, and I moved back in.

10 198. Q. When you said "she couldn't carry the
11 house," weren't you paying child support -- spousal --

12 A. I was --

13 199. Q. -- support?

14 A. -- paying child support, yes.

15 200. Q. Just child support, not spousal
16 support?

17 A. I -- no, no spousal support, no. She
18 was working.

19 201. Q. You're saying that she voluntarily
20 vacated the house?

21 A. Yes, absolutely. They moved to 10
22 Ledge [ph] Avenue, I believe.

23 202. Q. I'm suggesting to you that the police
24 were called as a result of violence, and that you ---

25 A. No --

- 1 203. Q. That you ---
- 2 A. -- that's not true, sir.
- 3 204. Q. You abused your wife --
- 4 A. That's not -- sir ---
- 5 205. Q. -- during your relationship ---
- 6 A. That is not true, sir.
- 7 206. Q. Is that true?
- 8 A. Produce the police records. The police
- 9 were never called for domestic violence at my house
- 10 involving me and my ex-spouse. That is an absolute
- 11 lie, a bald-faced lie, and a novelty. Because, in the
- 12 27 years since we separated, this is the first time
- 13 it's been raised. Where are all the other pleadings,
- 14 sir? This just came out, 'oh, I'm a victim too.'
- 15 207. Q. In your recent Supplementary Affidavit,
- 16 you said there was never any violence involved in ---
- 17 A. No.
- 18 208. Q. Didn't you break Rick's nose? Didn't
- 19 you punch him in the face? Sucker punch him and break
- 20 his nose?
- 21 A. No, sir.
- 22 209. Q. You didn't?
- 23 A. No, sir.
- 24 210. Q. All right. In your affidavit,
- 25 Paragraph 16, we talk about finding the rotted turkey

1 out on the back deck. You say you moved back into the
2 house, and you say, quote, "I returned and, on the
3 advice of my lawyer, changed the locks and took full
4 possession as had been discussed between the parties."

5 Is there any -- was there ever an order for you to
6 have exclusive possession of the house? Any --

7 A. No.

8 211. Q. -- court order?

9 A. No. She moved out.

10 212. Q. Was there ever any agreement in writing
11 that you would have exclusive possession and ---

12 A. Not that I recall.

13 213. Q. What authority did you have to change
14 the locks on the house?

15 A. My lawyer's advice. 'Change the
16 locks.'

17 214. Q. This was Skaulnik?

18 A. Yes, sir.

19 215. Q. All right. Did you give your ex-wife
20 Gail Herrington a key to the house?

21 A. No, I did not.

22 216. Q. So you barred her from the house as of
23 that time?

24 A. I didn't bar her from the house. Then
25 she came -- actually, she came back a couple of times.

1 217. Q. But you never gave --
2 A. She came back --
3 218. Q. -- her ---
4 A. -- once and took a bottle of vodka.
5 219. Q. You never gave her a key --
6 A. No.
7 220. Q. -- and so -- and you had changed the
8 locks, and she didn't have a key, so isn't that
9 effectively barring her from the house?
10 A. No. She was welcome to come in and
11 pick up the kids.
12 221. Q. But she's not welcome to come into her
13 own house, is that what you're --
14 A. She is welcome --
15 222. Q. -- saying?
16 A. -- to come into the house.
17 223. Q. Pardon me?
18 A. She is welcome to come into the house.
19 224. Q. But you wouldn't give her a key?
20 A. No. She wouldn't get in -- you know, I
21 didn't have a key either. She shouldn't have it --
22 you know, I don't remember this, but I didn't have a
23 key to get into the house either.
24 225. Q. How did you get into the house?
25 A. I used a -- I got a locksmith to open

1 the door.

2 226. Q. So, you didn't -- you changed the
3 locks, but you didn't keep a key?

4 A. No. I gave up my key when I moved out
5 -- or she changed the locks. Either way, I didn't
6 have a key to get in. So, then she moved out, and
7 then just left the house half-empty with, you know,
8 like, stuff strewn everywhere. Believe there was a
9 mattress in the living room, propped up, that they
10 hadn't managed to move, and I think I ended up helping
11 them move that back to their new location at 10 Ledge,
12 along with some other stuff that she'd left behind
13 which I dropped off for her. If you're inferring that
14 I forced her out of the house, how then did they
15 manage to arrange rental premises under such sudden
16 turn of events?

17 227. Q. That's exactly what I'm suggesting.
18 I'm suggesting that she left the house for fear for
19 her safety from you. That you were a violent --

20 A. That's not true at all ---

21 228. Q. -- abusive --

22 A. That's not true, that's bullshit.

23 229. Q. -- husband.

24 A. That's absolute bullshit.

25 230. Q. How can you say ---

1 A. And it's never been -- it's never been
2 pled before, it's a complete novelty and a complete
3 fabrication.

4 231. Q. All right.

5 A. We're talking about a woman who lives
6 in a complete fantasy world. She doesn't know -- she
7 lives in a delusion. This is not true, it was never
8 true, and it's now being conjured up to curry sympathy
9 for her as a victim, which is -- and the opposite is
10 true. I am the victim, my children are the victim
11 here. They were abused. Emotionally abused,
12 physically abused while they lived with their mothers,
13 and still suffer to this day.

14 232. Q. What evidence do you have of that? Are
15 you going to call your -- the children as witnesses?

16 A. We may well do.

17 233. Q. I think we might have to do that.

18 A. I think we will. We'd have to fly them
19 in from Edmonton, though. If you're going to make
20 accusations like that, then I am going to respond.

21 234. Q. Absolutely. That's what it's all
22 about.

23 A. With the facts.

24 235. Q. Give me one indulgence for one second,
25 I just want to go through something. We just want to

1 get this on for trial, is what we really want to do if
2 we can. Gail says that she was so afraid of you she
3 slept in the closet. Your evidence was, there's no
4 doors on the closet.

5 A. There were no doors on the closet at
6 the time we separated.

7 236. Q. Weren't there three -- weren't there
8 more than one closet?

9 A. Yes, but none of them had doors.

10 237. Q. I suggest to you that two or three of
11 them had doors.

12 A. Which ones?

13 238. Q. I wasn't there -- I'm just --

14 A. I'm telling you that --

15 239. Q. -- suggesting ---

16 A. We didn't put ---

17 240. Q. It's not for you to say -- it's not for
18 you ---

19 A. We didn't start putting doors on the
20 closets until about '95.

21 241. Q. Your evidence is that your father was
22 going to be the source of your mortgage down ---

23 A. That's correct.

24 242. Q. Financing.

25 A. That's correct.

1 243. Q. All right. Isn't there a closet under
2 the stairs, and there's a door?

3 A. A closet under the stairs? Oh my God,
4 yes. It's a little tiny cubby hole, but it's full of
5 vacuum cleaners and is full of stuff.

6 244. Q. That's where it is -- that's what it's
7 like now, but if your wife had to go there because she
8 was afraid of you ---

9 A. Oh, that's an absolute fabrication.

10 245. Q. I see. Okay.

11 A. An outright lie, sir. An outright lie.

12 246. Q. That's going to be for someone else to
13 decide.

14 A. Well, what evidence? We have no police
15 records, nothing complained of in 27 years. And now,
16 suddenly there's this novel claim of abuse, which is
17 absolutely, patently ridiculous. It's absurd.

18 247. Q. All right, we'll see. Subject to the
19 undertaking that you gave me, and a right to ask other
20 questions arising out of that undertaking, those are
21 my questions for Mr. Harvey in this case. Thank you.

22 MR. HARVEY: Thank you.


23

24 --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 2:03 P.M.

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I hereby certify that this is the examination of IAN HARVEY, taken before me to the best of my skill and ability on the 27th day of September, 2018.



Pooja Joshi - Court Reporter

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