

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Robinson v. Furlong*,  
2015 BCSC 1690

Date: 20150918  
Docket: S140603  
Registry: Vancouver

Between:

**Laura Robinson**

Plaintiff

And

**John Furlong, Twentyten Group Strategic Marketing  
Communications Inc., and Twentyten Group Holdings Inc.**

Defendants

Before: The Honourable Madam Justice Wedge

## Reasons for Judgment

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Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and a reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.

*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 108.

Never forget that investigation is a weapon, and you can hurt people with it--deliberately, or by your own carelessness. [Not enough is made of the fact that Woodward and Bernstein of Watergate fame, by their own admission, destroyed the careers of several innocent people along with Richard Nixon's.] In the course of your career, you are going to be the best and the worst thing that ever happens to some other people. Be careful about which role you play, and for whom, and why.

Mark Lee (with others), *Story-Based Inquiry: A Manual for Investigative Journalists* (France: UNESCO, 2011) at 12 online:  
<<http://unesdoc.unesco.org/images/0019/001930/193078e.pdf>>.

## **I. INTRODUCTION**

### **A. The Issue**

[1] This is a defamation claim brought by a journalist against the person about whom she wrote.

[2] At the outset, it is important to understand what this case is *not* about as well as what it is about. This is not a case concerning the right of a journalist to publish information about matters of public interest, or the defences that ought to be available to a journalist who does so. This case concerns a journalist who wrote about a well-known citizen and criminal acts of child abuse he is alleged to have committed some forty years ago. The citizen responded to these allegations in strong terms, saying, among other things, that the journalist had displayed a “shocking lack of diligence” in her reporting. The journalist claims that she was defamed by the citizen in his responses to her articles.

[3] The plaintiff in this case is Laura Robinson, an experienced investigative journalist and extensively-published author. The defendant is John Furlong, a

prominent citizen. The issue arising on the facts of this case is the right -- or the scope of the right -- of a person whose character and conduct is impugned by a journalist to respond with strong criticisms of the journalist.

[4] The question is whether Ms. Robinson attacked Mr. Furlong's character and conduct in a manner that entitled him to strike back with the words he used. In legal terms, the question is whether Mr. Furlong's response was an occasion of qualified privilege which protects him from Ms. Robinson's defamation claim.

**B. Overview of the Claim**

[5] Ms. Robinson wrote a number of articles in 2012 and 2013 about, among other things, allegations of child abuse, both physical and sexual, said to have been committed by Mr. Furlong, the former President and Chief Executive Officer of the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games ("VANOC").

[6] Ms. Robinson had previously written several articles and books as an investigative journalist about the abuse of, and discrimination against, athletes in competitive sport. She was herself a competitive athlete of note, and an accredited journalist who reported on several Olympic Games. Mr. Furlong and his past were of interest to Ms. Robinson as a result of his prominent role in the 2010 Winter Olympics.

[7] In 2011, Ms. Robinson came to believe that Mr. Furlong had misrepresented various aspects of his past in his book, *Patriot Hearts: Inside the Olympics that Changed a Country* (Vancouver: Douglas & McIntyre, 2011), published following the 2010 Winter Olympics. This book is a memoir recounting the path that he and others travelled to successfully stage the Winter Olympics in Vancouver. In the book, he does not mention that he first came to Canada in 1969 at the age of 18 to teach at parochial schools in Burns Lake and Prince George, B.C. Ms. Robinson believed Mr. Furlong was deliberately concealing an aspect of his past.

[8] In early 2012, an individual told Ms. Robinson she should look into Mr. Furlong's time as a teacher at Immaculata School in Burns Lake in about 1969. As a result, she decided to travel to the town and interview persons who had attended the school when Mr. Furlong was a member of the teaching staff.

[9] A few days before travelling to Burns Lake, Ms. Robinson drafted a poster announcing she was investigating allegations of abuse at the school in question and wanted to interview any persons who had attended the school and were taught by Mr. Furlong. The poster was to be placed in the Babine Lake Band office and the post office in Burns Lake.

[10] Ms. Robinson ultimately collected statements from eight individuals of Aboriginal heritage about their alleged interactions with Mr. Furlong. She then retained a lawyer in Burns Lake to formalize the statutory declarations from the statements she had collected, and had them sworn by the individuals.

[11] Ms. Robinson did not interview other individuals who had taught at the school with Mr. Furlong, nor did she interview family, friends or peers of the individuals who swore the statutory declarations in an attempt to verify the accuracy of the statements she had collected.

[12] Ms. Robinson then contacted Mr. Furlong through the publisher of his book and put the allegations to him. Mr. Furlong, through his legal counsel, advised Ms. Robinson that he categorically denied the allegations. He refused her requests for a meeting and declined to answer questions she posed to him through his counsel.

[13] On the strength her investigation, Ms. Robinson wrote an article that describes her unearthing allegations of physical and emotional abuse of Aboriginal children by Mr. Furlong when he was a teacher at a parochial school in Burns Lake in 1969. The article was published by a Vancouver weekly paper, the *Georgia Straight*, on September 27, 2012. At the same time, an article was published by the *Anishinabek News*, a weekly paper published by the Ontario Union of Indians under

Ms. Robinson's byline, stating that a former student of Mr. Furlong had gone to the RCMP to report that she had been sexually assaulted by him.

[14] Other publications by Ms. Robinson followed in which she wrote that Mr. Furlong had misstated aspects of his past in *Patriot Hearts*, and described other allegations of abuse she had collected.

[15] Allegations of physical and sexual abuse of Aboriginal children levelled against a public figure such as Mr. Furlong, particularly given VANOC's partnership with First Nations to host the Winter Olympics, attracted a great deal of media coverage, both nationally and internationally.

[16] Mr. Furlong denied the allegations in the strongest of terms. He countered the allegations by giving press conferences and interviews. In the course of these occasions, Mr. Furlong made a number of statements that were strongly critical of Ms. Robinson's journalistic methods and reporting accuracy.

## **II. POSITIONS OF THE PARTIES**

[17] Ms. Robinson brought this action against Mr. Furlong, arguing that she was defamed by him in the series of statements he made in response to the articles she had written about him. She argues that the defamatory statements fall into several broad categories: (a) Mr. Furlong's accusation that she is a heartless individual who behaved in a reprehensible manner when she wrote about him, and a cruel and callous activist who showed a shocking lack of diligence in her reporting; (b) the accusation that her publications about him were motivated by contempt for male authority figures in sport; (c) the assertion that she brought a complaint of sexual assault to the RCMP on behalf of a former student of Mr. Furlong; and (d) the assertion that she attempted to extort money from Mr. Furlong in exchange for remaining silent about his past.

[18] Mr. Furlong's position is that Ms. Robinson's articles constituted repeated attacks on his character and conduct and, in the face of these attacks, he was entitled to respond in equally strong terms. He acknowledges that some of the

statements he made may meet the legal definition of defamation. However, to the extent that any of his answers were defamatory of Ms. Robinson, he says his statements were made on occasions of qualified privilege known as “response to attack”. Mr. Furlong argues in the alternative that in the event the Court finds any of the comments were not made on an occasion of qualified privilege, those comments (a) are not defamatory; (b) are in fact true; and (c) constitute fair comment.

[19] By way of reply, Ms. Robinson argues that Mr. Furlong’s responses to her articles far exceeded the occasions of privilege and were actuated by malice. She submits further that in her articles it is not *she* who asserts that Mr. Furlong committed the misconduct; rather, she has simply quoted others who allege Mr. Furlong committed the misconduct. A journalist quoting a source who alleges misconduct is not the person mounting the attack, but is merely the person reporting on the attack. Accordingly, she argues, Mr. Furlong may have been entitled to retaliate against his actual accusers but he was not entitled to retaliate against her.

**III. THE GOVERNING LEGAL PRINCIPLES**

**A. The Law of Defamation**

[20] A plaintiff in a defamation action is required to prove three things: (i) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person; (ii) that the words in fact referred to the plaintiff; and (iii) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[21] If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

[22] Statements of both fact and opinion may attract the defence of privilege, depending on the occasion on which they were made. Some occasions, such as legal proceedings, are absolutely privileged. Others, such as reference letters, “enjoy ‘qualified’ privilege, meaning that the privilege can be defeated by proof that

the defendant acted with malice”: *Grant v. Torstar*, 2009 SCC 61 at para. 30 [*Torstar*].

## B. Qualified Privilege

### 1. *The law of response to attack*

[23] The law recognizes that a response to an attack on a person’s character or conduct constitutes an occasion of qualified privilege and, absent malice, defamatory statements made in the course of responding to an attack are privileged. In *Richardson v. Vancouver (City)*, 2006 BCCA 36, our Court of Appeal said the following at para. 38 with respect to this aspect of privilege:

...[A] person whose character or conduct has been attacked is entitled to answer the attack, and any defamatory statements he makes about the person who attacked him will be privileged provided they are *bona fides* and are fairly relevant to the accusations made. [Emphasis added.]

[24] Raymond E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed. (Toronto: Carswell, 1999) (loose-leaf updated 2014, release 3) vol. 4 at 13-236.56-13.236.61, observed that the qualified privilege is much like the right of self-defence in criminal law. The person being attacked is entitled to respond by way of vindication, and need not follow the rules of *Queensbury* when doing so. The learned author has usefully summarized the principle as follows:

... There is a “privilege to hit back when one’s reputation is attacked”. A person has a right, within limits, to defend himself or herself against false accusations. This privilege has been likened to a man’s right of self-defence in criminal law. Where a defendant is attacked by another, he or she is privileged to meet the attack with an appropriate rejoinder, and where the attack is a public one, the public has a corresponding interest in the reply. There is available to him or her the common law privilege of self-defence. A defendant is not obliged to keep one hand behind his or her back and retaliate with respect to only some of the blows. Nor is he or she obliged to follow the rules of *Queensbury*. A person...is entitled to respond by way of vindication. ... He or she may deny or explain the defamatory matter, correct any misstatements, reflect adversely on the assailant, label a personal attack as a “lie” and the attacker as a “liar”, “attack in proper language the accuracy of the conclusions”, “impugn the truth of the charges”, question the purity of

the accuser's motives, and, in an appropriate case, even defame the assailant in the process.

[25] To attract the privilege, the response must be “germane and reasonably appropriate to the occasion”: *Botiuk v. Toronto Free Press Publications Ltd*, [1995] 3 S.C.R. 3 at para. 86 [*Botiuk*].

[26] In the case of *Ward v. Clark*, 2001 BCCA 724 [*Ward*], the Court stated at para. 56 that in the event the response is “directed at countering the criticisms made”, that will satisfy the requirement that it be germane and reasonably appropriate to the occasion. The Court went on to say that the law “does not require either blandness or accuracy as a condition of successfully invoking qualified privilege”, citing the well-established principle from *Adam v. Ward*, [1917] A.C. 309 at 339 [*Adam*]:

These authorities, in my view, clearly establish that a person making a communication on a privileged occasion is not restricted to the use of such language merely as is necessary to protect the interest or discharge the duty which is the foundation of his privilege; but that, on the contrary, he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.

[27] Another leading authority on the issue is *Horrocks v. Lowe*, [1975] A.C. 135 (HL) [*Horrocks*], which has been cited with approval in our courts on numerous occasions. The generous approach to be taken in assessing a defendant's “response to attack” was described by Lord Diplock at 151 as follows:

The exception [to the protection of qualified privilege] is where what is published incorporates defamatory matter that is not really necessary to fulfilment of the particular duty or the protection of the particular interest upon which the privilege is founded. Logically it may be said that such irrelevant matter falls outside the privilege altogether. But if this were so it would involve the application by the court of an objective test of relevance to every part of the defamatory matter published on the privileged occasion; whereas, as everyone knows, ordinary human beings vary in their ability to distinguish that which is logically relevant from that which is not and few, apart from lawyers, have had any training which qualifies them so to do. So the protection afforded by the privilege would be illusory if it were lost in respect of any defamatory matter which upon logical analysis could be shown to be

irrelevant to the fulfilment of the duty or the protection of the right upon which the privilege was founded.

[28] In other words, a defamatory statement made in response to an attack on one's character or conduct must be clearly and obviously irrelevant to the substance of the attack before the qualified privilege is lost.

**2. Presumption against Malice**

[29] On an occasion of qualified privilege, such as defence to an attack, the law presumes that defamatory statements were made honestly and in good faith unless the plaintiff can prove that the statements were actuated by express or actual malice: *Martin v. Lavigne*, 2011 BCCA 104 at paras. 33-35 [*Martin*]. The burden of proving malice is not easily discharged: *Martin* at para. 44.

[30] Express malice will only be found where the defendant's desire to protect his or her interest plays no significant part in the motive for publishing what he or she believes to be true: *Cimolai v. Hall et al.*, 2007 BCCA 225 at para. 41.

[31] Malice is not established where the defendant was merely aware that the publication would injure the plaintiff. Injuring the plaintiff must be the *dominant* motive of the defendant before malice will be found: *Horrocks*, at 149-50.

[32] Further, dislike is not malice. The fact that the defendant "disliked the person whom he defamed or was indignant at what he believed to be that person's conduct and welcomed the opportunity of exposing it" is not sufficient to establish malice: *Horrocks*, at 151.

[33] Unless the words published are wholly unconnected or irrelevant to the occasion of qualified privilege, they are presumed to be published in good faith, unless the plaintiff can prove with evidence either extrinsic or intrinsic that they were published maliciously: *Netupsky v. Craig*, [1973] S.C.R. 55 at 60-61.

### 3. The Concept of “Reportage”

[34] As noted earlier, Ms. Robinson argues that the defence of qualified privilege is not available to Mr. Furlong because she did not, herself, accuse Mr. Furlong of the serious misconduct at issue; instead, she merely reported the accusations of others.

[35] Counsel for Ms. Robinson did not identify the legal principle he was raising on her behalf. However, in defamation law, the principle is known as “reportage”. It is almost always invoked as a defence to a defamation claim; it is a shield rather than a sword. There are certain preconditions that must be satisfied before the defence of reportage is made out. The most recent articulation of the defence is found in *Torstar*, cited earlier.

[36] In *Torstar*, the main issue before the Court was whether to introduce into Canadian law the defence of “responsible comment”. The defence was not available in Canada before *Torstar*, and the issue was whether defendants in defamation actions should be entitled to invoke it. The *Toronto Star* successfully argued that there was something wrong with the traditional law of libel:

...a journalist or publisher who diligently tries to verify a story *on a matter of public interest before publishing it can still be held liable in defamation* for massive damages, simply because the journalist cannot prove to the court that all of the story was true or bring it within one of the “privileged” categories exempted from the need to prove truth (at para. 6). [Emphasis added.]

The Court agreed that the common law should be modified to recognize the defence of responsible comment.

[37] As the Court recognized at para. 98, responsible comment has two essential elements: public interest and responsibility.

[38] In the context of describing factors that may aid in determining whether a defamatory communication on a matter of public interest was responsibly made, the Court discussed at para. 119 the “repetition rule”, which holds that:

...repeating a libel has the same legal consequences as originating it. This rule reflects the law's concern that one should not be able to freely publish a scurrilous libel simply by purporting to attribute the allegation to someone else.... Maintaining the repetition rule is particularly important in the age of the Internet, when defamatory material can spread from one website to another at great speed.

[39] The Court went on to observe that there is an exception to the repetition rule: The rule does not apply "to fairly reported statements whose public interest lies in the fact that they were made rather than in their truth or falsity". This exception is known as "reportage", which is only available where four preconditions are met. The Court described those preconditions as follows at para. 120:

If a dispute is itself a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue, provided (1) the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability (2) the report indicates, expressly or implicitly, that its truth has not been verified (3) the report sets out both sides of the dispute fairly and (4) the report provides the context in which the statements were made.

[40] Where the defendant in a defamation action claims that the impugned publication constitutes reportage and is therefore responsible, the court must have regard to the four criteria described above. As the Court in *Torstar* observed at para. 121, "As always, the ultimate question is whether the publication was responsible in the circumstances".

[41] With this legal framework in mind, I will turn to the factual matrix of the case.

#### **IV. THE FACTS**

##### **a) The Parties**

[42] Ms. Robinson's background and professional career is succinctly described in an article found in *York Media Relations*, a publication of York University, announcing that Ms. Robinson was to be the recipient of an honorary Doctor of Laws on June 8, 2012 from the University. The article states the following:

Laura Robinson is a distinguished athlete, an accomplished author and freelance journalist, a coach and mentor, and a pioneer in the movement for

women's visibility, equity and opportunity in athletics. As a young athlete, Laura Robinson witnessed first-hand the pressures, inequities and risks that were faced by women athletes. Through her journalism, Robinson has educated the Canadian public and sports authorities about gender and race disparity. Through her coaching and mentorship – particularly in the chronically under-served First Nations communities – she has put remedies into practice.

The author of five books on issues in sport, Robinson's work has appeared in international media and she has produced several documentaries. Robinson's contributions to the sports world as an advocate, thought leader and mentor are mirrored by her athletic achievements – she is a former member of Canada's national cycling team, a provincial skiing champion and a national champion in rowing.

Robinson is the recipient of several awards, including the Investigative Reporters and Editors Award, the Robertine Barry Prize by the Canadian Research Institute for the Advancement of Women, the Debwewin Citation for excellence in journalism and Best Short Live Film at the American Indian Film Festival in Stuttgart, Germany, for her documentary on First Nations athletes.

[43] Mr. Furlong is a well-known figure provincially, nationally and internationally as a result of his contribution to amateur sport. He was the president of the Vancouver 2010 Bid Corporation which succeeded in bringing the Winter Olympics to Vancouver. Thereafter, he was the President and CEO of VANOC, the organization responsible for organizing and delivering the 2010 Olympic and Paralympic Winter Games. He is currently executive chair of Whitecaps FC. Mr. Furlong is an Officer of the Order of Canada and a Member of the Order of British Columbia. He is the recipient of an honorary Doctor of Laws degree from the University of British Columbia and an honorary degree from the British Columbia Institute of Technology. He was named one of 25 Transformational Canadians in 2010. Mr. Furlong is an inductee of the BC Sports Hall of Fame. He has received many other such awards for his work in amateur sport.

#### **b) Early articles about Mr. Furlong and VANOC**

[44] As an amateur athlete and journalist who had reported on numerous Olympic Games, Ms. Robinson was also involved in reporting on the 2010 Winter Olympics, both before and during the Games. Prior to the Games, Ms. Robinson expressed her views in an opinion piece in the *Ottawa Citizen* entitled "Human Rights Are No Game". Like many others, she was critical of the decision of the International

Olympic Committee (the “IOC”) (colourfully described by Ms. Robinson as the “antiquated Boys Own Club”), to deny international female ski jumpers the opportunity to compete at the Winter Games in 2010. She was equally critical of VANOC’s position that it was bound by the IOC’s directive.

[45] Ms. Robinson testified that she received a “tip” in late 2009 that she should look into Mr. Furlong’s past because it was rumoured that he had “beaten kids up” while working at a residential school when he first came to Canada. Her search of the Internet yielded no information about Mr. Furlong and residential schools, and she thought no more of the matter.

[46] Ms. Robinson covered the Winter Games as an accredited journalist for *SkiTrax* magazine and *Anishinabek News*. None of her coverage of the Games mentioned Mr. Furlong in particular.

[47] In 2011, Ms. Robinson was asked to write a review of *Patriot Hearts* for the *Anishinabek News*. The book contains some of Mr. Furlong’s personal history, including his decision to immigrate to Canada with his family in the mid-1970s, having been recruited to be an athletic director at a high school in northern B.C. Recalling the information she had received about Mr. Furlong in 2009, Ms. Robinson did some research and learned that he had originally come to Canada in 1969 under the auspices of an organization known as Frontier Apostles. They were sponsored by the Oblate Order of priests, whose mandate was to teach at a number of Catholic schools in some remote areas of B.C., most of which were attended predominantly by First Nations children. Mr. Furlong was 18 or 19 years of age at the time. Ms. Robinson learned that Mr. Furlong taught for a year at Immaculata Elementary School in Burns Lake and, following that, taught for a couple of years at Prince George College. He then returned to Ireland where he lived until he decided to move permanently to Canada with his spouse and children.

[48] Ms. Robinson wondered why Mr. Furlong had not included his work with the Frontier Apostles in his book, and speculated that he was attempting to hide the fact that he had been a teacher in Catholic schools that provided education to First

Nations children. In February 2011 she emailed the editors of *Patriot Hearts* as follows:

Really enjoyed Patriot Hearts and finding it difficult to put it down. I would like to mention the school John Furlong first came to in Prince George in my review, and confirm that he taught there as well as managed the athletic program. He talks about being recruited by the school, but does not give its name. Could you get back to me on that?

[49] The editors contacted Mr. Furlong about the inquiry, and he responded as follows:

The School was Prince George College ([C]atholic high school) that later became Bishop O’Grady High School. And yes I did teach there and manage athletic program.

[50] In early March 2011, Ms. Robinson followed up with another email to Mr. Furlong’s publishers, identifying an issue that became a predominant theme in her reporting about Mr. Furlong -- that he had hidden aspects of his past in order to obtain the good will of First Nations on whose traditional territory much of the Olympic competitions were to be held:

Why did Mr. Furlong not disclose in Patriot Hearts that he was teaching at Prince George Catholic High School and that it was a residential school?

....

Does Mr. Furlong believe not revealing that he was recruited to do missionary work as a Frontier Apostle at a Catholic residential school made it easier to win over First Nations and other Aboriginal groups to give support to the Olympics?

[51] At about the same time, Ms. Robinson corresponded by email with a CBC reporter in Prince George, Betsy Trumpener, who was helping her gather information about Mr. Furlong. In the email, Ms. Robinson describes having had a “good talk” with a person who had attended the high school in Prince George:

He told me lots--but said he hadn’t heard any bad stuff about Furlong. I also talked to Margo Sagalonon, who went there and is working on trying to get compensation for people as they were not included under the Common Experience Payment. Have good quotes from her about what the school did to people in terms of losing language and culture. But she said her brothers liked Furlong and that he was a good coach.

Whether or not students liked Furlong is not the story of course--it is that he hid this past as a secret and had he revealed it, FN people may have had a very different relationship with VANOC and the Olympics. Perhaps he would not have even been hired as the CEO if the board knew he came as a missionary as it would have been too "loaded" with problems.

[52] In April 2011 the *Anishinabek News* published Ms. Robinson's commentary on *Patriot Hearts*. It reads as follows:

John Furlong, CEO of Vanoc...tells us many things in his book *Patriot Hearts*, but how he got from Dublin, Ireland to Prince George, B.C. in 1974 with his wife and two children is not one of them. He wrote he was "recruited" to be the "athletic director" of a high school in Prince George but mysteriously fails to mention who recruited him and the name of the school.

Would Aboriginal people have supported the Games if they'd known Furlong was a missionary--a Frontier Apostle--working in a school that stole culture and language and replaced it with Christianity?

What else has Furlong fudged? *Patriot Hearts* is one big propaganda exercise.

[53] On April 13, 2011 Ms. Robinson published an article on the website of *Play the Game*, an institution funded by the Danish Ministry of Culture and various Danish sports organizations, entitled "The Vancouver Olympics and John Furlong's Sins of Omission". In the article, Ms. Robinson recounts her research into Mr. Furlong's time in northern B.C. as a Frontier Apostle. It begins as follows:

How exactly did VANOC CEO John Furlong manage to emigrate from Dublin, Ireland to Prince George, B.C.--a remote part of Canada in 1974 when he was twenty-four with a wife and family?

He wrote in his recently released book about the Vancouver Olympics, *Patriot Hearts*, that he was "recruited" to be the "athletic director" of a high-school in Prince George, B.C., but fails to mention who recruited him. Had he delved into the details of his passage to Canada, not just in his book, but in the decade when he was the front man for the Olympic bid and then the organizing committee, perhaps there would have been less likelihood of him getting the job--and support from Aboriginal organizations across the country.

....

Furlong kept his past a secret.

[54] In "Sins of Omission", Ms. Robinson quotes one of Mr. Furlong's former students, Terry Sam, who said Mr. Furlong was a "decent guy"; a "motivational guy

who brings out the good in you”. That quote is followed by a less generous observation:

By 1978 Furlong says he was the regional Parks and Recreation Director for Nanaimo, a city on Vancouver Island, over 800 km south. He was gone, says Sam, but left in a fashion that did not impress his former students. “He left his wife and kids in Prince George to go to Nanaimo. Who does that?”

[55] Ms. Robinson then links Mr. Furlong’s time as a teacher in northern B.C. to the wrongs of the residential school system:

Furlong talks about “vision” and “values” in Patriot hearts frequently, but never actually defines the words. Did he bring his strong missionary vision to sport--one based on the conviction that other belief systems are simply wrong because they do not share the values of the missionary? Would Aboriginal organizations and provinces across the country have footed the bill to send dancers to the opening ceremonies and other cultural performers to the Aboriginal pavilion if they’d known Furlong came to Canada to work at a school that took away First Nation languages and replaced them with English, while killing their culture and replacing it with Christianity? Would they have believed him when he told them Aboriginal youth would receive lasting legacies from these Games?

[56] The article also contains statements such as “Furlong plays with the facts all the way through Patriot Hearts” and “Patriot Hearts skips all of these truths, and many others too lengthy to go into here. But Furlong has made his way up the sport administration food chain”.

[57] The article ends as follows: “John Furlong certainly has come a long way since his first missionary position”.

[58] The only face-to-face contact between Ms. Robinson and Mr. Furlong occurred on April 29, 2011 at a conference of the Canadian Newspaper Association. Mr. Furlong had been invited to deliver the keynote address at the conference. Ms. Robinson attempted to ask him questions about the Frontier Apostles and his teaching at a residential school. They had differing recollections of what was said during the interaction. Suffice to say that Mr. Furlong brought the interaction to a halt soon after it began.

[59] Ms. Robinson sent an email the following week to the CEO of the Canadian Newspaper Association, who was present at the conference and to whom Ms. Robinson recounted the interaction with Mr. Furlong shortly after it occurred. Her email states, in part, the following:

In the 1970's, Catholic missionaries did not have to be trained teachers. If someone had teacher training, fine, but first and foremost the Catholic Church recruited missionaries to staff their schools and it was under this auspice that Mr. Furlong came to Canada--information he conveniently left out of his book that was stacked on each of our tables at lunch. There is a great deal of information missing, like how the diocese also sent him to Burns Lake to work at Immaculata School. The source who tipped me off to Mr. Furlong's past also told me he liked to "beat the kids" at the school. I found a quote from a former student from Immaculata writing in the SFU student paper about the beatings he received at Immaculata from nuns and priests. He did not mention Mr. Furlong, but I did want to talk to the latter about how long he was at each school, which years he was at each, and his specific job at Immaculata.

....On April 29 Mr. Furlong did what he has done since leading the bid for the Vancouver Olympics.... As a journalist covering the buildup to the Games and as an accredited journalist during the Games, I can tell you Vanoc refused to acknowledge any question that did not enhance their spin. They shut down news conferences as soon as real questions were asked, they shut out certain journalists when we indicated we wanted to ask a question in phone-in news conferences, and they did everything possible to block FOI requests to government Partners. Mr. Furlong ran an organization that played very fast and loose with the truth. ....

[60] I pause at this point in the chronology to note that Mr. Furlong gave evidence at trial that while he did not mention in *Patriot Hearts* the time he spent in Canada prior to his decision to immigrate to this country, he was not attempting to conceal the fact of his time in Burns Lake. Mr. Furlong testified that those years were uneventful, and he had no intention of immigrating to Canada at the time. The point he wished to make in his book was the momentous decision he and his family took in 1975 to leave Ireland for good and settle permanently in Canada.

[61] In an interview with the *Prince George Citizen* newspaper in 1976, shortly after he was named the city's new recreation director, Mr. Furlong stated that he first came to Canada in 1969 and, after spending a year working in Burns Lake, took a teaching job at Prince George College before returning to Ireland.

[62] Mr. Furlong's evidence, which was not challenged, was that he visited Burns Lake many times after immigrating to Canada. One such visit occurred when Mr. Furlong was CEO of VANOC. He decided, over the objections of VANOC colleagues, that the Olympic torch relay must pass through Burns Lake, in part because of his prior connection to the community. Mr. Furlong went to Burns Lake with other VANOC representatives to announce that decision and made a public speech about the torch relay.

[63] The evidence of Renee Smith-Valade, who was the Vice-President of Communications of VANOC from 2005 to 2010, was that it was well-known within VANOC that Mr. Furlong had lived and taught in Burns Lake as a young adult. She described Mr. Furlong's trip to Burns Lake with other VANOC representatives to announce that the Olympic torch relay would pass through Burns Lake. Ms. Smith-Valade testified that Mr. Furlong made a public speech and that several First Nations people helped organize the event at which Mr. Furlong spoke. The event occurred without incident.

**c) Investigation of Mr. Furlong's past in the spring of 2012**

[64] Ms. Robinson testified that in March 2012 she received an email from an individual who was previously unknown to her. He had read her article "Sins of Omission", and told her she should look into Mr. Furlong's time at Immaculata School in Burns Lake where he had allegedly physically abused two students. He gave Ms. Robinson the name of a friend of one of the two students; the friend was a woman named Deb Hogan.

[65] Ms. Robinson said she contacted Ms. Hogan, who recounted to her a meeting that had occurred at Ms. Hogan's home between the student and Mr. Furlong shortly before the Winter Olympics. According to Ms. Hogan, in the course of the meeting, the student alleged that Mr. Furlong had beaten her. She said Mr. Furlong denied any such conduct.

[66] Ms. Robinson then sent an email to the publishers of *Patriot Hearts* which states, in part, the following:

As you may know my article on John Furlong was published just over a year ago on the Danish sport website, Play the Game. Recently First Nation people from Canada were in touch with me to give me more related information about Mr. Furlong's tenure as a Frontier Apostle missionary at the Prince George High-School. I hope, as his publisher, you will forward this inquiry.

Very unfortunately, Mr. Furlong was alleged to have beaten a young girl very badly at the school and as an adult this woman recognized him on television.... A First Nations employee of VANOC arranged a meeting between the woman and Mr. Furlong so he could in fact apologize.

....

[Mr. Furlong] is alleged to have denied the beating and did not apologize.

My research now leads me to ask Mr. Furlong for his version of these events. Is he still denying the beating took place?

I know for sure the meeting took place so very much need his version of what happened.

[67] Ms. Robinson then asked that her inquiry be forwarded to Mr. Furlong as soon as possible so she could finish an article she was writing. The request was forwarded to Marvin Storrow, who was Mr. Furlong's personal solicitor at the time. Mr. Storrow replied that Mr. Furlong denied wrongdoing of any kind, and warned that anyone who wrote anything defamatory about him did so at their own risk.

[68] Mr. Furlong testified at trial that he was approached in late 2009 by Gary Youngman, a First Nations lawyer working for VANOC and partner of Ms. Hogan. Mr. Youngman told Mr. Furlong he had met with a young woman who alleged she had been strapped by Mr. Furlong. Mr. Furlong responded that if a former student said she had a bad experience with him, he would like to meet with her. A meeting took place at the home of Mr. Youngman and Ms. Hogan. Mr. Furlong told the group he had never strapped anyone -- that only the principal of the school could do that, and he had never witnessed it happening. According to Mr. Furlong, he shook hands with the student and the meeting ended.

[69] Mr. Furlong testified that at some point during the meeting, Mr. Youngman raised the issue of the Truth and Reconciliation Commission. He then said that for

\$5,000, the complaint of the former student “could probably go away”. After the meeting, Mr. Furlong called a police officer responsible for Olympic security and reported the threat and its context. The police officer told Mr. Furlong to report the incident to the Vancouver Police Department, which he did. Correspondence sent and received at that time confirms that Mr. Furlong reported the matter to the police.

[70] Ms. Robinson testified that following her conversation with Ms. Hogan, she spoke by telephone to several individuals in Burns Lake. On the strength of those conversations, she sent an email to Mr. Storrow on April 16, 2012. The email states, in part, the following:

There have been so many alleged abuse incidents committed by Mr. Furlong against former students it would be impossible for him to have forgotten about the abuse though he may have forgotten the names of the children as they were many.

He did, however, seem to forget in his book that he was at Immaculata Elementary School from at least 1971 if not earlier. I have the documentation.

....

.... You know as well as I that children who experience abuse at the hands of those in power regularly take decades to disclose it. It is very difficult for people to speak about this sort of pain. There was no one to tell.

I would appreciate straight answers to my original questions....

[71] Ms. Robinson then arranged with persons in the Babine Lake Band office to travel to Burns Lake and meet with any individuals who had attended Immaculata School or Prince George College during Mr. Furlong’s tenure there. She drafted an announcement and sent it to the Band office for display at the Burns Lake post office and the Band office a few days before her arrival. The announcement stated the following:

DID YOU ATTEND IMMACULATA SCHOOL OR PRINCE GEORGE COLLEGE?

A JOURNALIST WHO IS INVESTIGATING ABUSE AT BOTH SCHOOLS WILL BE AT THE BURNS LAKE BAND OFFICE ON SATURDAY, APRIL 21 FROM NOON UNTIL 6:00 P.M.

LUNCH PROVIDED

PLEASE COME AND TELL YOUR STORY IN CONFIDENCE OR LEAVE YOUR CONTACT INFO AND SHE WILL CONTACT YOU

SHE IS INTERESTED IN STUDENTS WHO ATTENDED BETWEEN 1969 AND 1976 AND HAD JOHN FURLONG AS A PHYS ED TEACHER OR HAD RELATIVES WHO HAD HIM.

HE WAS A TALL MAN FROM IRELAND AND A FRONTIER APOSTLE.

[72] The announcement ended with this quote: “No legacy is so rich as Honesty. -- William Shakespeare”.

[73] Approximately 35 individuals gathered at the Band office on April 21, 2012. Ms. Robinson’s train was an hour late, which gave those assembled the opportunity to discuss the subject of the meeting as a group. As none of the group testified at trial, it is impossible to know what information was shared by the group during that hour.

[74] Ms. Robinson testified that when she arrived, she met with each of those in attendance separately. Most of them had nothing to offer about Mr. Furlong; rather, they wanted to speak generally about their experiences as First Nations children in a school system that in many cases brutalized and traumatized them.

[75] However, eight of the individuals had things to say about Mr. Furlong. Seven alleged that they were physically abused by him and a few said they were the target of racist comments by him. One individual said she had been sexually abused by him. Ms. Robinson wrote down what they had to say, and had them initial what she had written.

[76] On April 22, 2012, Ms. Robinson wrote to Charlie Smith, an editor with the *Georgia Straight*. She reminded Mr. Smith of the article she had written about Mr. Furlong for *Play the Game* in 2011. She told Mr. Smith about her meeting with the 35 people in Burns Lake, and that she had signed statements from several of them about Mr. Furlong. She indicated that she would be back in Vancouver in a few days and wanted to meet with him immediately and provide him with the statements. She wrote, “This is obviously a massive, massive story”.

[77] Ms. Robinson then returned to Vancouver and met with Mr. Smith. She showed him the statements she had obtained as well as her earlier correspondence

with Mr. Storrow. Mr. Smith was interested in the story Ms. Robinson was researching, but told her he would not run it unless she obtained sworn declarations from the individuals who had provided the statements.

[78] On April 27, 2012, after receiving from Ms. Robinson a copy of an email she had sent to Richard Pound of the IOC, Mr. Smith wrote an email to Ms. Robinson advising her, in part, of the following:

Please don't send me so many emails. You may not know this, but everything you write is discoverable.

We haven't assigned you to write this story for us yet.

On a story of this magnitude, I would have preferred to have been involved in the outset because methodology is important, particularly in B.C.

....

If we had been involved at the outset, I would not have recommended that you provide the types of replies that you gave to Marvin Storrow.

[79] Mr. Smith testified that he was not aware of the contents of the notice that Ms. Robinson had drafted for posting in Burns Lake or that she had identified Mr. Furlong in the notice as the individual she was investigating concerning allegations of abuse. He acknowledged that he was never told by Ms. Robinson the questions that she asked the individuals in their interviews to elicit the responses contained in their statements.

[80] At the same time as she contacted the *Georgia Straight*, Ms. Robinson contacted an editor at the *Toronto Star* about the story. His response was that it was a local story and the newspaper was not interested in publishing it.

[81] On April 28, 2012, Ms. Robinson emailed her contact in Burns Lake, Cecelia Sam, and asked for her assistance in contacting the individuals who had provided statements and with finding a lawyer in Burns Lake who would take the statutory declarations from them. She cautioned Ms. Sam that these steps should be kept confidential "as we don't want Furlong saying we conducted a witch hunt".

[82] Ms. Robinson drafted the eight statutory declarations from the statements she had taken earlier. She returned to Burns Lake to meet with some former students of

Immaculata with whom she had not met on her first trip there. She also met with the eight individuals whose statutory declarations she had drafted, and went over the documents with them. Ms. Robinson then attended with the eight individuals at the office of the lawyer she had retained in Burns Lake when the declarations were sworn. Ms. Robinson paid the lawyer's fee for the finalizing of the declarations and the swearing of them.

[83] In or about this time, Ms. Robinson also visited Prince George to search through the archives of the Diocese of Prince George. She found collections of school yearbooks for Immaculata Elementary School and Prince George College for the years 1969 to 1972 that contain photos of Mr. Furlong and that document his time as a teacher at the schools.

[84] At some point during the summer of 2012, while back in Ontario, Ms. Robinson travelled to Ottawa to visit the archives of the Oblate Order, the Order of Roman Catholic priests which recruited Frontier Apostles to teach in their schools. The archives contained considerable information about the Prince George Diocese and Bishop O'Grady, the Oblate bishop who oversaw the diocese at the time, as well as many of the priests who were part of the diocese. There was no information about Mr. Furlong.

**d) Dissemination of the allegations**

[85] Ms. Robinson returned to Vancouver from her second trip to Burns Lake on about May 4, 2012. She immediately contacted a producer at CBC with whom she had worked in the past, hoping that CBC would partner with Ms. Robinson and the *Georgia Straight* on the Furlong story. Ms. Robinson met with the producer and provided him with the eight statutory declarations, other statements she had obtained, and photocopies of school yearbooks she had obtained which indicated that Mr. Furlong had taught in Burns Lake and Prince George between 1969 and 1971. The CBC was interested, and assigned a reporter, Duncan McCue, to the story. (Ultimately, the CBC decided to run its own story; a representative of the

network told Ms. Robinson that in his view, she was part of the story rather than simply the journalist who found it.)

[86] In early May 2012, Ms. Robinson placed a telephone call to Rusty Goepel, former chair of the VANOC hiring committee. Mr. Goepel testified at trial that Ms. Robinson began by asking him whether he knew when Mr. Furlong had first come to Canada, and that she had reports of him abusing children. She wanted to know what due diligence had been exercised before hiring him as the CEO of VANOC. When Mr. Goepel told Ms. Robinson that he did not believe the allegations, she offered to send him some of the statutory declarations she had gathered in Burns Lake. He replied that she could send him anything she wished.

[87] Mr. Goepel advised Mr. Furlong of his conversation with Ms. Robinson.

[88] On May 4, 2012, Ms. Robinson emailed Dimitri Soudas, the executive director of communications for the Canadian Olympic Committee (the “COC”). She asked him a series of questions, including what form of due diligence the COC performed before hiring VANOC members, but most of the questions were directed to the COC’s prior knowledge of Mr. Furlong’s background. Ms. Robinson then set out her knowledge of Mr. Furlong’s history dating from his first arrival in B.C. in 1969 as a Frontier Apostle. Finally, she wrote the following:

I have seven affidavits from former students and many other former students who are on the record alleging very serious physical and verbal abuse from Mr. Furlong, that included racist slurs. There is an affidavit describing sexual abuse too. I am not prepared to send the affidavits at this time as they have the students’ names and addresses and many of them are still quite afraid of Mr. Furlong. I have, however, pasted in below some of the drafts former students gave me that became formal affidavits that do not have names attached.

[89] Ms. Robinson included in the email to Mr. Soudas the statements she had obtained from three of the former students.

[90] On May 10, 2012 Ms. Robinson wrote an email entitled “Investigating John Furlong” to the mayor of Vancouver, Gregor Robertson. In the email, she described her research into Mr. Furlong’s first visit to Canada as a Frontier Apostle assigned to

teach at “Immaculata elementary school in Burns Lake where it is clear he was a very abusive phys ed teacher to young children”. She then advised that she had some questions she hoped the City could answer by the weekend as she was working to a deadline. One of her questions was as follows: “As mayor of the host city [of the 2010 Winter Olympics] could you comment on the fact that Mr. Furlong did not disclose the correct date of his arrival in Canada nor did he disclose the correct location in which he taught”.

[91] Ms. Robinson’s penultimate question to Mayor Robertson was as follows:

6. Many people in Burns Lake are on the record saying the presence of Mr. Furlong in TV coverage of the Olympics made them very upset and triggered flashback (sic) to their experiences with him at Immaculata. A number were unable to watch the Games and suffered depression as they had worked hard at trying to put those memories behind them. What can the city do to address this problem?

[92] Ms. Robinson posed a similar question to Mr. Goepel in an email to him on May 5, 2012, which contained the same information as that contained in the email to Mayor Robinson. However, the last sentence of question 6 to Mr. Goepel read: “As chair of the hiring committee, and someone committed to the values of Olympism, could you comment on this?”

[93] Ms. Robinson forwarded to Richard Pound of the IOC the email she had written to Mr. Goepel. She also provided in the email a “synopsis” of her research into Mr. Furlong’s past and the various discrepancies that she believed she had unearthed.

[94] In June 2012 Ms. Robinson wrote to Mayor Robertson’s communications director, Braeden Caley, outlining the results of her research into Mr. Furlong’s time in northern B.C. from 1969 to 1975. She also referred to the allegations of abuse as follows:

Please find attached five of the eight affidavits signed by former students of John Furlong that outline physical and emotional abuse endured at his hands. Former students also allege racial slurs from him. I will send two more affidavits in another email and withhold the affidavit that describes sexual abuse given there is no statute of limitations in that case.

[95] Ms. Robinson concluded her email to Mr. Caley with a series of questions, including the following:

5. Does the City have any protocol in situations when individuals did not disclose past events or circumstances that would impact on their selection for a position[?]
6. Could Mayor Robertson provide a comment about this new information about Mr. Furlong[?]
7. Will the City seek to investigate Mr. Furlong to see if the other information provided on his CV is accurate[?]

[96] Mr. Furlong was aware of Ms. Robinson's communications with these various entities, not only from Mr. Goepel and persons within the City of Vancouver and the COC, but as a result of Ms. Robinson's ongoing correspondence with Mr. Storrow.

**e) The Allegation of Sexual Abuse**

[97] The one individual who had told Ms. Robinson that she had been sexually abused by Mr. Furlong was Beverly Abraham. She was one of the individuals who swore a statutory declaration. On May 8, 2012, approximately a week after her second trip to Burns Lake, Ms. Robinson emailed Ms. Abraham to inquire after her. She ended her email with the following queries:

Let me know also if you (and others) plan on proceeding with civil action against Furlong.

Since there is no statute of limitations on sexual abuse, will you move forward on criminal charges?

[98] Ms. Abraham responded that she had "thought a lot about it" and was "ready and willing". However, Ms. Robinson heard nothing further for several weeks. This was a concern to Ms. Robinson, because she was hoping to publish the story on Mr. Furlong to coincide with the 2012 Summer Olympics in London, England which were to commence the third week of July. On July 5, 2012, Ms. Robinson again emailed Ms. Abraham to say, in part, the following:

I am going to report on the physical and emotional abuse and if you have or are going to go to the police about the sexual abuse, I will certainly report on that. As you know there is no statute of limitations on sexual abuse so this really is a criminal matter.

I was wondering how you are going to proceed with this? Is it possible for me to either say (by July 25 when I hope it will be published), "Beverly Abraham has contacted the RCMP about the sexual abuse she alleges John Furlong committed when she was between the ages of 11-12?"

Do I have your right age? It appears he came to the school in the spring of 1969, went to Prince George in June 1970. I don't know if he came back.

If you went to kindergarten at age 5 in 1963, you would have been 11 in the spring of 1969; 12 in 1970. I don't know if I have the correct dates though.

If you have contacted the RCMP, could you give me the name of the investigating officer?

I am also interested in knowing if there were other girls who may have been sexually abused who are still alive? If they have committed suicide, could you give me their names? I would contact their families before I would write about them.

[99] Ms. Robinson was asked in cross-examination why, if Ms. Abraham had said she would go to the RCMP when she was ready, Ms. Robinson did not simply wait until Ms. Abraham decided she was ready. Ms. Robinson's response was as follows:

Well, I hadn't contacted her--this is July 5th. And the other one is from May--the other email is May 8th. So that's two months. And I'm going to--definitely the registry(sic) is wanting to run the article at the end of July. And either I'm going to write it with the fact that she--the first draft anyway, I'm going to write it with the fact that she has gone to the RCMP, or I'm not going write that allegation at all. And I need to know. It's July 5th, and if you work back from when I was leaving for the Olympics, I was leaving on July 17th, I had to get this entire story--I was hoping to get this entire story finished, get ready to go the Olympics.... So this is just--either I'm going to include--either she is going to go, or I'm not going to put it in. Those are my two options.

[100] Ms. Robinson had further contact with Ms. Abraham sometime between July 5 and 10, 2012 -- this time by telephone -- about going to the RCMP. On July 10, Ms. Robinson wrote the following email to Mr. Smith:

Beverly Abraham, whose affidavit we have and contains sexual abuse, is going to the RCMP Sargeant in BL [Burns Lake] on W[e]dnesday and asking that sexual abuse charges be laid against JF.

[101] Ms. Abraham did go to the Burns Lake RCMP on July 12, 2012 with her allegation against Mr. Furlong. She advised Ms. Robinson the same day that she had done so. Ms. Robinson then immediately called the RCMP in Burns Lake to

verify that Ms. Abraham had filed the complaint. Ms. Robinson's evidence at trial was as follows:

Yes, on the 12th she told me that she had gone to the RCMP. So right away I called the RCMP in Burns Lake to ask them, in fact, did she come in? Because I couldn't go on what one person alleged they did. And at that time the Burns Lake RCMP told me that they wouldn't give that kind of information out. And I left my number with them. And then about 20 minutes later a PR person from the Prince George RCMP called me, and she wouldn't confirm or deny that the RCMP were investigating.

[102] Although the RCMP would not confirm or deny that Ms. Abraham had filed a complaint against Mr. Furlong, Ms. Robinson said she believed that a complaint had been filed because, as she testified, "there was no indication in my conversation with the Burns Lake RCMP that they did not know what I was talking about".

[103] Once she learned from Ms. Abraham that she had gone to the RCMP with her complaint, Ms. Robinson completed an article recounting allegations that Mr. Furlong had physically abused students at Immaculata Elementary School, and that one of his former students had filed a complaint alleging sexual abuse. She sent the draft article to Mr. Smith at the *Georgia Straight* on July 13, 2012 saying she did "not want to leave this hanging".

**f) The First Publication of Ms. Robinson's Articles**

[104] On July 17, 2012 Ms. Robinson sent two emails to Mr. Storrow enclosing the eight statutory declarations she had gathered while in Burns Lake as well as some biographical information she had found in the Irish press indicating that Mr. Furlong was still in Ireland in 1974. In his book he said he had immigrated to Canada that year with his family. As it turned out, Mr. Furlong was mistaken: it was 1975 that he and his family came to Canada permanently.

[105] With respect to the allegations contained in the statutory declarations, Mr. Furlong reiterated his categorical denial that any of them had any substance whatsoever.

[106] The *Toronto Star* had advised Ms. Robinson previously that it was not interested in a story about Mr. Furlong and allegations of physical abuse. Ms. Robinson hoped that the complaint made by Ms. Abraham about sexual abuse would change the mind of the editor, Colin MacKenzie. She wrote an email to Mr. MacKenzie on July 13, the day after Ms. Abraham had filed the complaint with the RCMP, stating in part the following:

I know you thought the piece on John Furlong and allegations of physical and verbal abuse were better suited to Vancouver-based media-I am working with them.

But as of yesterday Furlong is being investigated for child sexual abuse after one of his former students went to the RCMP....

If Penn State was worth writing about, then I really think covering one of our own alleged sports abusers is worth writing about. I believe the complainant--watched as she broke down more than once while she told me what he did. The other three girls he kept after phys ed class (they were kept individually) started drinking with the complainant when they were 12. Other three committed suicide.

I can send you the piece I have written plus all the documentation by later today. I leave for the UK to do more investigation of Furlong (why leave a sports career as a teen-age rising star for middle-of-nowhere Canada?) and then cover the Olympics as of Monday, so hope to hear back from you as soon as possible.

[107] Mr. MacKenzie replied:

Glad to look.

Olympix (and mid-july) make it all the more attractive.

[108] Ms. Robinson sent Mr. MacKenzie the same draft article that she had sent to Mr. Smith at the *Georgia Straight*. After reviewing the story, Mr. MacKenzie edited it to remove the sexual abuse allegation and sent it back on July 24, 2012 to both Ms. Robinson and the *Georgia Straight*.

[109] The following day, however, Mr. MacKenzie advised Ms. Robinson by email that the *Toronto Star* had decided not to run the story at all, saying "Squeamishness on high means we're not going to run".

[110] On the same day, July 25, Mr. Smith advised Ms. Robinson by email of the following:

We actually liked the Toronto Star's editing because it went very far in taking away any legal claim.

[111] From that point forward, the *Georgia Straight* story did not contain any allegations of sexual abuse.

[112] Ms. Robinson sent the unedited version of her article (that is, the one containing the allegation of sexual abuse) to the *New York Times*, the *Irish Independent*, the *Guardian* and *Sports Illustrated*, but none expressed an interest in publishing the story.

[113] On August 17, 2012, Ms. Robinson sent an email to Maurice Switzer, the editor of the *Anishinabek News* for whom Ms. Robinson frequently reported. The email states in part the following:

Finally it looks like the big piece on Furlong (4500 words) is coming out on Thursday. Do you want me to send you the big piece and you can let me know what you would like me to emphasize for a much smaller piece?

.....

[Furlong] is now being investigated by the Prince George RCMP as the woman who alleged sexual abuse when she was a girl in his phys. ed class did end up reporting him. The *Georgia Straight* decided not to include the information on the police investigation but are keeping [it] "in their back pocket" as the story unwinds.

[114] Mr. Switzer replied that he would take what his newspaper wanted from Ms. Robinson's long piece once she sent it along.

[115] Ms. Robinson forwarded to the *Anishinabek News* in early September 2012 the original story she had submitted to the *Georgia Straight*, reiterating that the *Straight* had decided not to include the fact that Mr. Furlong was being investigated for child sexual abuse.

[116] Ms. Robinson testified that she had a telephone conversation with Mr. Switzer in which she told him the *Toronto Star* had "killed the piece" altogether, and the *Georgia Straight* would not go with the sexual abuse allegation. Mr. Switzer advised Ms. Robinson that he had decided to publish the sexual abuse aspect of the story.

[117] On September 17, Mr. Switzer sent Ms. Robinson a significantly pared down version of the article for her approval as it was to be published under her byline. What had been a story several pages in length was now seven paragraphs long. Ms. Robinson responded the same day, saying “All looks good Maurice on the Furlong story”.

[118] On the same day, Ms. Robinson sent an email to the editors of the *Georgia Straight* with her *Anishinabek News* article attached. The email reads, in part, as follows:

I thought you would like to see what Anishinabek News is running re: JF. As I mentioned earlier, I did a much shorter piece for them, timed for mid-September, never thinking the Straight piece would not yet be out.

They have chosen to go with the allegations of sexual abuse, so, as Maurice Switzer told me on the phone, this story will be noted.

[119] In response to concerns from Mr. Smith of the *Georgia Straight* about being “scooped”, the *Anishinabek News* complied with Ms. Robinson’s request to hold off posting its version of her article on its website until September 27, 2012 when the *Straight* would be releasing its version of the article.

[120] Both articles were published on September 27, 2012 in hard copy and online. The *Georgia Straight* published the story in hard copy in its weekly paper, which is distributed throughout Vancouver early in the morning, and posted it online. The *Anishinabek News* posted its story online sometime in the morning (Eastern Time) of September 27.

[121] The *Georgia Straight* article was titled, “John Furlong Biography Omits Secret Past in Burns Lake”. It begins with quotes from *Patriot Hearts* in which Mr. Furlong describes coming to Canada in 1974 having been recruited in Dublin to set up an athletic program at a school in Prince George, B.C. Mr. Furlong recounts the comment of the agent who stamped his passport and said, “Welcome to Canada. Make us better”. Ms. Robinson’s article goes on to state:

But Furlong had actually come to B.C. years earlier, living in another town. And there are a lot of people from those days who think that he not only didn't make his new country better--he made their lives considerably worse.

The fact that most of those people are Natives puts a cruel spin on the fact that the 2010 Winter Games are widely remembered as the first Games to include aboriginal peoples as official hosts.

[122] The article describes Mr. Furlong's arrival in Canada in 1969 as a Frontier Apostle Missionary: "He went not to Prince George to direct a high-school athletic program but to Immaculata Elementary School in Burns Lake, B.C. to help save the souls of First Nations children". Then, the following comment:

But if his goal was to persuade First Nations children of the virtues of Catholicism, he chose, say former students, a brutal way to do it.

[123] Ms. Robinson then recounts the stories of most of the individuals who swore statutory declarations at her request. By way of example, Ms. Robinson described the experiences of Paul Joseph and his cousin Richard who, they alleged, were physically abused by Mr. Furlong while playing basketball. Ms. Robinson then writes:

**Like at least four** other former Immaculata students from those days, Paul Joseph's cousin Richard committed suicide. Now, Joseph says, he is fighting for the truth, just as much for Richard as he is for himself. (Frontier Apostle records are tightly guarded by the Roman Catholic Diocese of Prince George; the *Straight* was told in April in Prince George that those records were closed.) He says he can move on from Richard's suicide "as long as we bring out the truth so no other students will be so abused".

Joseph says students were told by one nun that "we had to be quiet about the abuse. God would strike us down. I thought God did that to Richard, but later I realized God didn't act in that way". Joseph says that ensuring Furlong is made to answer to those he allegedly abused is part of the healing process involved in truth-telling.

[Emphasis in original.]

[124] The article goes on to describe the effect on some of the former students of seeing Mr. Furlong on television in his role as CEO of VANOC, and a meeting with a former student shortly before the Winter Olympics:

For some of his former students, seeing Furlong oversee the Olympics brought frightening memories as well as shock over how he kept his past secret--and even more surprise that Olympic authorities didn't research who he really was. ....

When [Mr. Furlong] met with one former student (who does not want to be named; the *Straight* has been informed of the name) before the start of the Games, he allegedly brought along Dan Doyle, the Vanoc executive vice president of construction and then-chair of B.C. Hydro. Doyle, when asked in an email about his presence at that meeting, responded only through a May 13 email, without denying that he was at the get-together in a private residence in Surrey. "I am not a spokesperson for Vanoc on any issues. You should continue to deal with Mr. Furlong and his lawyer". (On September 24, 2012, B.C. premier Christy Clark announced Doyle's appointment as her chief of staff.)

[Emphasis in original.]

[125] Part of the article is dedicated to describing Ms. Robinson's efforts to determine whether those organizations responsible for hiring Mr. Furlong as COO for the Vancouver 2010 Bid Team and as CEO of VANOC had performed appropriate due diligence with respect to his past. The following excerpts are examples of this:

The Canadian Olympic Committee was pivotal to Vancouver's bid and the Games themselves, with COC members sitting on both Vanoc and the bid committee. The *Straight* emailed questions in April about whether or not the COC practised due diligence -- did a background check, received a Furlong CV--prior to Furlong's hiring. None have been answered....

.....

The City of Vancouver, through Mayor Gregor Robertson's office, has also been asked to comment on its role in Vanoc and how it practiced due diligence in terms of hiring. There has been, to date, no response.

[126] The apparent implication is twofold: first, that the individuals responsible for hiring Mr. Furlong failed in their due diligence to properly investigate his past; second, that had these individuals delved into Mr. Furlong's distant past, they would not have hired him.

[127] Ms. Robinson's article describes a further aspect of her research into Mr. Furlong's past as a result of a story he told in *Patriot Hearts* about the impetus for his decision to emigrate to Canada. In the book, Mr. Furlong recounted the death of his cousin, Siobhan Roice, in the terrorist bombing of Dublin in 1974 which killed 26 people and seriously injured countless more. He wrote that the task of identifying the young woman's body was too difficult for her parents, so his father went to the

temporary morgue set up in Dublin at the time. The body was so devastated by the blast that it was a ring on a finger that helped Mr. Furlong's father identify her. Mr. Furlong's father could not dispel the feelings he was left with after seeing his niece in that condition, and died of a heart attack less than a month later.

[128] With this account of the tragedy in mind, Ms. Robinson stopped in Dublin following her stint as a reporter at the 2012 Summer Olympics in London to do some research on the 1974 Dublin bombing. She also spoke by telephone with Siobhan Roice's brother, Jim Roice. In the *Georgia Straight* article, Ms. Robinson sets out quotes from *Patriot Hearts* about the event, and then describes the results of her research as follows:

Furlong's cousin, Jim Roice tells the tragedy quite differently. When Siobhan did not arrive home, they were in despair. The next morning, her father, Ned, his son-in-law and brother-in-law boarded the train to Dublin. "My father, distraught as he was--no one could have stopped him from getting on that train," 60-year-old Jim Roice told the *Georgia Straight* by phone from Ireland. Roice learned the details of the bombing from his family when he returned home the week after it happened, he had been at sea, in the merchant marine. "Uncle Jack [Mr. Furlong's father] was a lovely man, but he did not identify my sister's body".

[129] Ms. Robinson's article goes on to quote a 2003 report in the Irish *Independent* newspaper, quoting Siobhan's father, Ned, as saying that when he went to the morgue in Dublin, he had to have someone with him to identify his daughter in case he identified the wrong person. However, the newspaper report went on to say, "He need not have worried about that. He spotted his daughter immediately, her body mercifully intact". Ms. Robinson ends the topic with the following:

Furlong uses the story as the jumping-off point for why he came to Canada in 1974--ostensibly for the first time--saying, in his book and in interviews, that the death of his cousin and father had left him "feeling a little empty, and open to new adventures....I decided to take the [athletic director] position, thinking I would return to Ireland in a few years.

Except it seems that, for whatever reason, he already had done that.

[130] Ms. Robinson's article ends on the following note:

Inside his book's inside dust jacket, Furlong is described as "a born storyteller". And in his addresses as a motivational speaker, he likes to give

“lessons” for life. He lists the following values as essential: respect, accountability and inclusion, trust, integrity, honesty, fairness, and compassion.

Some of his former students wish he would come back to Burns Lake. They want to discuss what these lessons really mean to him.

[131] The second of the two articles published on September 27, 2012 under Ms. Robinson’s byline in the *Anishinabek News* (“John Furlong’s Fame Causes Nasty Flashbacks”) cites verbatim parts of Ms. Robinson’s article that were contained in the *Georgia Straight* article, but also includes passages from her original unedited version that she had provided to the *Straight* and others. An example is the following:

One student called “Anne” from Babine Lake First nation had [Furlong] as a phys-ed teacher and school disciplinarian when she was 11 and 12. On July 12, 2012 she went to the Burns Lake RCMP Detachment and alleged that Furlong had sexually abused her. She said earlier in an affidavit: “He worked us to the bone. His attitude was very bad. ‘You good for nothing Indians come on, come on. If you don’t do this you’re going to be good for nothing”.

[132] On the same morning that the *Georgia Straight* published its version of Ms. Robinson’s article, Ms. Robinson wrote an email addressed to “Friends and Colleagues” stating, in part the following:

Please see the link to my Georgia Straight piece on the CEO of the Vancouver Olympics John Furlong.

.... VANOC, the COC and the City of Vancouver have not answered questions about due diligence. How could \$1 billion be spent on security for the Games, while no one investigated the background of the man with the most power?

Later today Anishinabek News, published by the Union of Ontario Indians, will carry my piece about a RCMP investigation that is presently occurring of Furlong after one of his former students went to them this summer with allegations of child sexual abuse.

[133] Ms. Robinson testified that she sent the above email to approximately 180 individuals she knew personally, many of whom were national and international journalists.

[134] One of the individuals who received Ms. Robinson’s email was Bob Mackin, a Vancouver reporter. He emailed Ms. Robinson at 8:00 a.m. on September 27 to say

he could not find the story about the sexual abuse allegation on the *Anishinabek News* website. She explained that the *Anishinabek News* article was being held until 11:00 a.m. Pacific Time to coordinate with the release of the *Georgia Straight* article.

[135] That afternoon, Ms. Robinson emailed Mr. Switzer to say: “Hope you get one million hits with the newspaper this month. Thank you so much”.

[136] On the evening of September 27, 2012, Ms. Robinson wrote an email to Mr. Switzer giving him credit for the wide publication of the sexual abuse allegation: “Because you put the info that the RCMP are investigating Furlong in, they all know that too. Well done”.

**g) Mr. Furlong’s First Response**

[137] Mr. Furlong testified that he was forewarned the *Georgia Straight* was planning to publish an article about him, written by Ms. Robinson, in the September 27 edition of the paper. He was aware of Ms. Robinson’s email communications with Mr. Storrow and others. He was aware that Ms. Robinson had been investigating his background since 2011. He also knew that Ms. Robinson had been contacting people within his inner circle for several months about the allegations she had gathered.

[138] The paper edition of the *Georgia Straight* was delivered to various locations throughout Vancouver in the early hours of September 27, 2012, and the online version was posted on the Internet at about the same time. It immediately generated a significant amount of media coverage nationally and internationally, given the reach of the Internet. As a result of the widespread dissemination of the article, Mr. Furlong decided to hold a press conference that same day in order to put on the record his categorical denial of the allegations.

[139] Shortly before the press conference, Mr. Furlong learned that allegations of sexual abuse had been made against him as well as the allegations of physical and emotional abuse contained in the *Georgia Straight* article, and that the sexual abuse allegations had been published on the Internet. He did not know the source of the

publication, but assumed it was the work of Ms. Robinson because she (and, to his knowledge, only she) had been sending emails about the allegations to various organizations and individuals for several months.

[140] The source of the sexual abuse allegation was the *Anishinabek News*. The CBC posted a story that afternoon, but not until after the press conference held by Mr. Furlong.

[141] The press conference consisted of Mr. Furlong reading a prepared statement. He began by saying that he categorically denied any wrongdoing whatsoever, and that he believed the RCMP would discredit the complaint entirely “because it JUST didn’t happen”. He explained that he did not mention his time in Burns Lake in his book because it was fairly brief and uneventful, after which he returned to Ireland before coming to Canada years later as a landed immigrant. However, he said, he had friends in Burns Lake and had visited there many times since; he visited the community with a First Nations delegation before the Olympics and brought the Olympic Torch Relay through the community -- “all without incident”.

[142] Mr. Furlong went on to say the following:

Further, I am very disappointed, in spite of numerous written cautions, by the reporter’s shocking lack of diligence in researching the article. As a result of inaccurate reporting, I feel that my character has been recklessly challenged.... It is also beyond all belief that the Georgia Straight newspaper did not place a single call to me to validate any of the elements of the story.

Advancing this after more than 40 years, particularly when I have been in the public eye constantly for the past 14 plus years is beyond me. Having experienced this reporter on many occasions in the past this feels very much like a personal vendetta. And finally let me just say on the very first occasion that this was brought to my attention prior to the Olympic Games I was advised that for a payment it could be made to go away. And as such I reported this matter to the police.

[143] Ms. Robinson says that the words “shocking lack of diligence” and “inaccurate reporting” are defamatory of her reputation as a journalist. She also says it is untrue that Mr. Furlong “experienced her as a reporter on many occasions in the past” as she only met him once, and that the suggestion her reporting is a “personal vendetta” is untrue and defamatory. She says it is untrue that no efforts were made

to contact Mr. Furlong before the article was published. Finally, she says that the words “I was advised that for a payment it could be made to go away” are defamatory because they infer that she attempted to extort him, which is untrue.

**h) Mr. Furlong’s Second Response**

[144] Media coverage of the contents of Ms. Robinson’s articles was intense in the days following their publication. Mr. Furlong testified about the immediate and devastating impact of the articles on his children and grandchildren. He said he decided to make a more detailed statement in order to tell his side of the story and to respond fully to the attacks on his character.

[145] To that end, on October 2, 2012 Mr. Furlong published a statement by way of a news release entitled “Setting the record straight on my life and family”. In the statement, he sharply criticized Ms. Robinson’s reporting of the death of his cousin, and said he could not understand how his recollection of her death could be newsworthy in 2012:

I risk great pain to my family in Canada and Ireland in clarifying why I left Ireland for good but Ms. Robinson’s disgraceful mockery of a deeply difficult period must be addressed.

Ms. Robinson incorrectly and for reasons I find incomprehensible, attempts to describe the circumstances of my cousin Siobhan Roice’s death at the hands of terrorists in the Dublin Bombings on May 17th, 1974. She challenges my father’s role in identifying her body, how he identified her, his subsequent death, the damage it did to us and my resulting decision to leave Ireland permanently for Canada. Ms. Robinson’s cruel words are entirely wrong, having inflicted agony and stress and have revisited a horrible tragedy on us.

[146] Mr. Furlong’s statement went on to say that his father identified Siobhan’s body precisely as he had recounted it in his book, and that his father died of a massive heart attack shortly thereafter. Mr. Furlong then explained the discrepancy in the story he told in his book and the one told by his cousin (who was at sea during the bombing and its aftermath) and reported in the Irish press:

To protect Siobhan’s mother (my aunt), her family told her that Siobhan had died quickly with little suffering from a heart attack. I have been reminded again by my family in Ireland recently that this is how they have spoken of

this tragedy ever since in a caring and continuous show of compassion to help her and the whole family try to heal.

[147] In his October 2, 2012 statement, Mr. Furlong went on to address what he termed “Laura Robinson’s open contempt for the Olympic Games and male authority figures in sport”:

Ms. Robinson’s contempt for me and for the Olympics was well known to the leadership at VANOC. She was openly acerbic in her articles about VANOC’s activities especially as they related to First Nations and female athletes, my leadership, and the International Olympic Committee. She is particularly known for her caustic criticism of male authority figures in sport. At VANOC we accepted her scrutiny--biased as it consistently was--as part of the job. We thought our interaction with her ended with the Games.

My family and I are at a loss to try to understand her motivation for this latest attack that is both personal and destructive to the extreme. The damage to us is massive and will be immeasurably detrimental to us for years to come.

[148] Ms. Robinson says the October 2, 2012 statement by Mr. Furlong is defamatory of her because it was meant to convey that (i) Ms. Robinson behaved in a callous and reprehensible manner by authoring the article; (ii) she disgracefully mocked Mr. Furlong; (iii) she is contemptuous of male authority figures in sport and of the Olympics in general; and (iv) she was motivated to write the article and attack Mr. Furlong by her contempt for male authority figures in sport.

**i) “Keeping the Story Alive”**

[149] On September 28, 2012, following the publication of the *Georgia Straight* and *Anishinabek News* articles, Ms. Robinson offered to provide both Mr. Smith and Mr. Switzer with correspondence she had sent in 2011 about Mr. Furlong to the Canadian Newspaper Association and the Writer’s Union of Canada. She wrote as follows:

I would be happy with posting this, or not, or using a quote to demonstrate how difficult it has been to get John Furlong to answer a simple question. I will send you all the queries I sent through his publisher too.

[150] Mr. Switzer responded:

Hi Laura: Only thing I'd suggest is to manage timing of release of information in a way that it's spaced out to keep story alive.

[151] Ms. Robinson replied: "Agreed".

[152] Ms. Robinson testified that at some point following the publication of her articles on September 27, 2012, she returned to Burns Lake to take more statements from individuals claiming to be former students of Mr. Furlong.

[153] On November 8, 2012, Ms. Robinson emailed Chris Dornan, a representative of Own the Podium. The email is titled: "Follow up on the John Furlong story". Ms. Robinson notes at the outset of the email that Mr. Dornan, following the September 27 articles, stated that Own the Podium considered Mr. Furlong to be "a man with the utmost integrity and ethical behavior" and that it continued to have "complete and full support [of Mr. Furlong] through this difficult time". Ms. Robinson goes on to say, in part, the following:

Since the Sept. 27 article many, many more former students of Mr. Furlong have contacted the Georgia Straight and myself....There is a great deal of confirmation that Mr. Furlong was violent and a racist.

I need to meet a mid-November deadline and my questions are as follows:

- 1) How did OTP research their position before issuing the above statement? For instance, did they do their own quick investigation and determine [Mr. Furlong] had to be telling the truth?
- 2) Since OTP issued the statement what have they done to determine that indeed their position is correct?
- 3) The statement is clear that OTP supports Mr. Furlong. He has said "it didn't happen" when speaking about the abuse. Does this mean OTP believes First Nation are lying?

[There is no 4]

- 5) How many First Nations people have to come forward about Mr. Furlong's abuse before OTP partner believes them?
- 6) With so many former students alleging serious abuse and racism will OTP take action on this matter?
- 7) If OTP decides not to take action on this matter, could you explain why?

[154] Mr. Dornan replied on the same day that the issue was now a legal one and that all requests concerning Mr. Furlong would be handled through his lawyer. Ms. Robinson's email and Mr. Dornan's response were then forwarded to Mr. Furlong.

[155] On the same date, Ms. Robinson emailed several representatives of the COC. The email states, in part, the following:

The COC is a major partner of Own the Podium. Media spokesperson Chris Dornan issued a quote after my article in the Georgia Straight cited eight First Nation former students of John Furlong's who signed affidavits describing abuse at the hands of Mr. Furlong.... As you probably read in my article, there were other students who were on-the-record and willing to swear affidavits who also described physical and racial abuse from Mr. Furlong.

[156] Ms. Robinson goes on to state, as she did in the email to Mr. Dornan, that "there is a great deal of confirmation that Mr. Furlong was violent and a racist", and then poses a number of questions, stating that she needed them answered to meet a mid-November deadline. The questions included a variation on several of those she had put to Own the Podium (e.g. "if the COC supports the OTP statement, then does this mean the COC believes the First Nation students are lying?" and "if the COC decides not to take action on this matter with OTP, could you explain why?")

[157] On November 25, 2012, Ms. Robinson wrote an email to the CEO of Own the Podium, Anne Merklinger, titled "Questions for John Furlong", which states, in part, the following:

Former students of John Furlong's have made very serious allegations recently in signed documents about his violence against women and children.

....

Please forward [to Mr. Furlong] the following questions:

1. Was Mr. Furlong ever violent towards his first wife Margaret Furlong?
2. Did Mr. Furlong reprimand any of the girls in his hostel (Hostel #2) at 3. Prince George College, telling them they did not see him beat or hit his wife?
3. Was Mr. Furlong ever violent to his former fiancée Dawn Furlong?
4. Does Mr. Furlong still stand by his two original statements denying committing any physical or psychological violence of his former students?

[158] Ms. Robinson did not identify the source or sources of the allegations which apparently underlie these questions.

[159] On November 27, 2012, Mr. Furlong filed a defamation claim against Ms. Robinson.

[160] Ms. Robinson filed a Response to Civil Claim, in which she made new allegations against Mr. Furlong not previously reported. They included allegations of rape and repeated domestic abuse against Mr. Furlong's former wife, Margaret Furlong, and another previous partner of Mr. Furlong.

[161] In January 2013, members of Mr. Furlong's family, including Margaret Furlong, issued a statement denying any truth to the allegations. In part, it reads as follows:

We, Maria, Johnnie, Damien, Emma, Molly, our mother Margaret, our step-mother Gail and our children--11 of them--feel compelled to make a public statement. Serious, unsubstantiated allegations regarding abuse inside our family have been published. These shocking allegations are without merit and portray a character whom none of us recognizes. .... The public should be deeply concerned at the power of a single journalist whose words can smash into a family like a wrecking-ball.

[162] Ms. Robinson was undeterred. She posted her Response to Civil Claim on her website. Its contents were widely reported in the media.

[163] In April 2013, Ms. Robinson encountered Ms. Smith-Valade (as noted earlier, the former Vice-President of Communications of VANOC) as they were both boarding an Air Canada flight in Toronto. The aircraft was delayed, and Ms. Robinson took advantage of the time to handwrite Ms. Smith-Valade a letter and deliver it to her during the delay. Referring to former students of Mr. Furlong, Ms. Robinson wrote:

...They have nothing to gain and everything to lose by making an enemy of such a powerful person. They have been generous in trying to understand what happened to him to make him so violent towards children and women.

They are extremely traumatized, not only by his denial, but by the way in which other powerful people and organizations have stood behind him with no research or investigation. There has already been one suicide....

[164] In June 2013, Ms. Robinson wrote emails to a First Nations newswire service, *NationTalk*, which had been advertising a Whitecaps FC event, and to the Musqueam First Nation, which had also been planning an event with Whitecaps FC. The emails were similar in content. The email to *NationTalk* stated, in part, the following:

I am the journalist who investigated John Furlong and wrote the piece “John Furlong Biography Omits Secret Past in Burns Lake”...

I see that you are advertising First Nations evening with the Whitecaps.

Did you know that John Furlong remains executive chair of the Whitecaps?

When the students had Mr. Furlong as a phys ed teacher, some of them would sometimes run away, only to be brought back by the RCMP or Mr. Furlong himself. Subsequently they were punished for “lying to the police”. (Furlong was not the only alleged abuser at Immaculata Day School.)

....

This has been an extremely difficult and stressful time for those brave people and when organizations such as the Whitecaps not only kept Mr. Furlong in a position of decision-making, but publicly supported him, it was clear to the students that once again they were not believed. Thus the re-traumatization of already traumatized people occurred. ....

.... I am wondering if events such as First Nations Night with the Whitecaps is a way in which there can be an appearance of supporting First Nations people, while still having an alleged abuser in a top decision-making position?

[165] The same statements as those reproduced above, with the exception of the last paragraph, were contained in Ms. Robinson’s email to the Musqueam First Nation. The email to the Musqueam ended as follows:

I am writing a paper on how the sport community has re-traumatized those who alleged abuse by Mr. Furlong by dismissing their statements and supporting Mr. Furlong. Could you please explain the decision-making process by the Musqueam First Nation when they decided to be honoured on the field Wednesday evening by the Whitecaps, while the same organization harbours an alleged abuser of First Nation children?

[166] Ms. Robinson attached to the two emails her Response to Civil Claim, and said she would also forward Mr. Furlong’s Statement of Claim. It is not clear whether she did so.

[167] Upon receiving Ms. Robinson’s email, *NationTalk* removed from its website its publicity for the Whitecaps FC event. The Musqueam First Nation, which was one of

the four Host First Nations for the 2010 Winter Olympics, did not modify its relationship with Whitecaps FC.

[168] The recipient of Ms. Robinson's email to the Musqueam was Johnna Sparrow-Crawford, the head of the Protocol and Communications Department for the Musqueam First Nation. Ms. Sparrow-Crawford testified at trial that Ms. Robinson had not contacted her before sending the email.

[169] Ms. Sparrow-Crawford knew Mr. Furlong prior to the Winter Games because their daughters attended kindergarten and elementary school together, and had a strong friendship. The girls played soccer together, and Ms. Sparrow-Crawford's daughter has spent a great deal of time in Mr. Furlong's home. However, it was not until the partnership between the Musqueam and VANOC that she worked closely with Mr. Furlong.

[170] Ms. Sparrow-Crawford acted as the coordinator for the Musqueam in its role as one of the four Host Nations for the Winter Olympics. She testified about the relationship between the Musqueam and VANOC and, in particular, the relationship with Mr. Furlong. She stated that it was apparent to her that Mr. Furlong was committed to showing First Nation's culture to the world and to help the world understand it. In her view, he lived up to his word that the four Host Nations would be equal players in the Winter Olympics.

[171] Ms. Sparrow-Crawford testified that Mr. Furlong was personally involved in all aspects of the relationship between VANOC and the Musqueam. He attended all of the Musqueam Aboriginal Days and forged a relationship with their Chief. The Musqueam received significant "Legacy Dollars" from the Games, and Mr. Furlong was integral to ensuring that the money was utilized for sport. As a result, the Musqueam now have an artificial turf soccer field and a gymnasium, as well as the First Nations pavilion that was built for the Games and that was gifted to them by VANOC.

**j) Prelude to the Play the Game Paper**

[172] In September 2013, Ms. Robinson sent a series of emails to each individual director of several organizations with which Mr. Furlong was associated. She attached her Response to Civil Claim to every email. In each email, Ms. Robinson advised that she was presenting a paper at a *Play the Game* conference in Denmark the following month on the manner in which the Canadian sport and corporate communities had responded to the abuse allegations she had unearthed about Mr. Furlong. She also requested that the directors provide her with answers to a number of questions before she completed her paper.

[173] Among those to whom Ms. Robinson wrote (and enclosed her Response to Civil Claim) were all of the directors of Own the Podium, which Mr. Furlong chaired. The ostensible purpose of her correspondence was to ask about the statement of support for Mr. Furlong that Own the Podium had issued a year earlier (which said, in part, that Own the Podium considered Mr. Furlong to be “a man with the utmost integrity and ethical behavior”). Ms. Robinson wrote, in part, the following:

I am writing to you because I am presenting a paper in Denmark in October at the Play the Game conference on how the Canadian sport community and corporate community responded to the allegations of abuse made by First Nations students about John Furlong, chair of Own the Podium.

....

My paper is looking at how those in the sport community decided that Mr. Furlong should not be asked to step aside from decision-making roles until the allegations against him are resolved.

....

How was it determined that the First Nations people were not telling the truth?

.... Given that Mr. Furlong remains chair, did the Board re-visit this issue more recently and determine that the allegations made by more students and Mr. Furlong’s common-law wife in my Response (see attached) and in the media were also untrue and therefore, in the Board’s point-of-view, Mr. Furlong remained a man of “utmost integrity and ethical behavior”?

[174] Ms. Robinson sent similar emails to each director of Whistler-Blackcomb, Canadian Tire and Rocky Mountaineer. By way of example, she wrote (in part) the following to the directors of Canadian Tire:

I am writing to you because I am presenting a paper in Denmark at the Play the Game conference on how the Canadian sport and corporate communities responded to the allegations of abuse made by First Nations students about John Furlong, who is also a member of the Canadian Tire board of directors. The paper also looks at the retraumatization Mr. Furlong's former students are going through as they tried to tell Canadians what happened to them, and feel completely let down by the Canadian sport and corporate community. I was the journalist who broke the story and have provided my Response to Mr. Furlong's Statement of Claim against me, though I am sure you are familiar with it already.

I note from the 2013 Canadian Tire report that Mr. Furlong remains on the board. My paper is looking at how those in the sport and business community decided Mr. Furlong should not be asked to step aside until the allegations against him are resolved.

Could you let me know how the board determined their decision?

[175] Absent from Ms. Robinson's correspondence is any suggestion as to the process by which the allegations against Mr. Furlong could be "resolved", given that they were merely allegations at that point.

[176] With respect to the emails Ms. Robinson sent to the directors of Own the Podium, she received a reply from Mr. Dornan. He responded that his organization had not changed its position. Ms. Robinson then emailed Mr. Dornan to say that her questions had still not been answered. She ended her email with the following:

I will be naming the board members [of Own the Podium] in the paper I am delivering at the Play the Game conference.

[177] Ms. Robinson denied at trial that her purpose in sending the email was to pressure Own the Podium to answer her questions, but she did acknowledge that she was attempting to obtain answers.

**k) The Play the Game Paper: "Truth, Lies and History: John Furlong and Canadian Sport's Moral Vacuum"**

***i. The Paper***

[178] Ms. Robinson presented her paper at *Play the Game* on October 30, 2013. It was entitled "Truth, Lies and History: John Furlong and Canadian Sport's Moral Vacuum". The paper began with a description of the residential school system in

Canada and the terrible damage it inflicted on Aboriginal children, their parents, their communities and, ultimately, their culture. It recounts Ms. Robinson's discovery that Mr. Furlong had taught at a residential school (although Immaculata Elementary School was not residential). Ms. Robinson then asks:

How could someone who worked within a system based so deeply on racist notions become the CEO of VANOC and host an Olympic Games?

[179] After describing the partnership between VANOC and the four host First Nations, she asks:

Given the history of abuse of First Nation children in residential schools, however, it is impossible to imagine partnerships could have been formed if Furlong's history had been known....

[180] Ms. Robinson mentions her earlier *Play the Game* paper, "Sins of Omission", and says "the article was mainly about his secret past as a Catholic missionary in a residential school and his role as CEO of VANOC". She then writes of her telephone conversations with persons who "spoke very emotionally about the abuse they said they endured from Furlong", her trips to Burns Lake to investigate Mr. Furlong, and the resulting *Georgia Straight* article.

[181] The paper goes on to describe the sexual abuse allegations brought by Beverly Abraham and another individual claiming to be a former student of Mr. Furlong, Grace Jessie West, and states that both had filed civil lawsuits against Mr. Furlong. The paper also recounts the allegations of an unnamed male to the effect that he was fondled, then raped, by Mr. Furlong. The unnamed male was in fact Daniel Morice, who filed a civil lawsuit soon after Ms. Abraham had filed hers. All three were individuals who gave statements to Ms. Robinson during her investigations in Burns Lake.

[182] Ms. Robinson states in the paper that Mr. Furlong was sued for sexual assault by another individual, Audrey George. In fact, no such civil suit was ever filed.

[183] In her paper, Ms. Robinson repeated the allegations contained in her Response to Civil Claim that Mr. Furlong had regularly beaten two former spouses. She did not include in the paper that Mr. Furlong’s family had issued an unequivocal denial of those allegations.

[184] Ms. Robinson also describes her email correspondence with representatives of Own the Podium, Canadian Tire, Whistler-Blackcomb Holdings, Rocky Mountaineer and Whitecaps FC, and the unhelpful responses she received -- where she received any response at all.

[185] Ms. Robinson’s paper ends with the following comment on the “moral vacuum” of the Canadian sport and corporate community that “stood by their man”:

That the Canadian sport and business community either stand behind a man, or stay silent when dozens of First Nations people allege he brutalized them and others when they were just innocent children, is beyond reprehensible. They are quite happy to let these survivors experience all the nightmare pain, sorrow, and trauma that surfaced when they gathered the courage to speak about their past and devastating disappointment as the Canadian sport and corporate community stood by their man. The virtues and values these individuals and organizations spout are haunting mistruths as they attempt, along with Furlong, to tell a revisionist and dangerous version of Canadian sport history.

[186] Ms. Robinson posted a copy of the paper on her website. On November 2, 2013, she sent a copy of the paper to a colleague of Mr. Furlong at Own the Podium with the comment that the paper “was very well received by an international audience”. She also noted that the paper was available on the *Play the Game* website.

**ii. Mr. Furlong’s Statement: “Enough is Enough”**

[187] As a result of the emails Ms. Robinson had sent to the various organizations with which he was associated, Mr. Furlong was aware that Ms. Robinson was intending to deliver the paper about his alleged transgressions at *Play the Game* on October 30, 2013 and that it was to be titled “Truth, Lies and History: John Furlong and Canadian Sport’s Moral Vacuum”. He instructed his counsel to write to *Play the Game* requesting that Ms. Robinson not be given the opportunity to present her

paper that -- given the contents of Ms. Robinson's emails -- he believed would contain many defamatory statements about him. His request was not favorably received.

[188] Accordingly, the day before Ms. Robinson was scheduled to deliver her paper, Mr. Furlong published a news release which began as follows:

For the last year, I have remained largely silent on the horrible, heartless lies and innuendo that have been published and broadcast about me, originating in articles and court documents from the activist Laura Robinson.

Today that silence ends. Enough is enough. I have been declared innocent by the RCMP and I am dropping one legal action and will escalate another.

[189] The news release then states that the RCMP had advised Mr. Furlong that it had concluded its investigation into the complaint by Beverly Abraham and that in their view there was no truth to the allegations she had made against him. The news release goes on to say that Mr. Furlong intended to pursue "the source of these lies", Laura Robinson, who "has a two decade-long pattern of inaccuracy in her writing. Her words have hurt innocent people".

[190] Mr. Furlong then described four instances of inaccurate reporting, the first dating back to 1994 when Ms. Robinson wrote an article published by the *Globe and Mail* alleging that the former coach of the Canadian national men's basketball team, Ken Shields, was guilty of racism in his selection of white players over black players for the national team. As a result of the article, an inquiry by an independent panel of investigators was undertaken. The panel found no substance to the allegations of racism.

[191] The news release then goes on to say:

Laura Robinson has used the courts as a platform in a campaign to publish horrendous and false accusations she could not write or publish under her own byline, even in the original article in the *Georgia Straight*.

More importantly, this was a calculated form of irresponsible, back-door publishing designed to ruin my hard earned reputation. Again, it is a deeply damaging misuse of the court and the media. ....

.....

Instead of respectfully waiting for the court and the RCMP to do their jobs properly, as I have, she is now sending defamatory letters and documents to my friends, employers and other organizations that I work with, slurring my reputation. This is palpable harassment.

This activist is now spreading these horrible allegations about me in Europe, at a conference called Play the Game. Her talk is titled--*Truth, Lies and History: John Furlong and Canadian Sports' Moral Vacuum*.

Well--enough is enough.

In forty years of living, working and public service in BC, there had never been a complaint about me. Never a criminal charge, nor a reason for one. Laura Robinson then made one. The RCMP has found her allegation against me to be completely unfounded. And any other allegations out there are just as false.

[192] Ms. Robinson says the October 29, 2013 statement of Mr. Furlong is defamatory of her because the words were meant to convey that Ms. Robinson (i) publishes lies; (ii) is an activist rather than a professional journalist; (iii) is heartless; (iv) publicly attacked other individuals with false statements that were proven wrong; (v) engaged in "backdoor publishing" by using the courts as a platform to publish false accusations that she could not publish under her own byline; and (vi) is the source of the complaint of Ms. Abraham that Mr. Furlong sexually abused her.

[193] Mr. Furlong repeated his assertion that Ms. Robinson had been the source of Ms. Abraham's complaint to the RCMP on two other occasions. The first occurred when Mr. Furlong appeared in an interview with Chris Gailus of Global Television on October 28, 2013. In the course of the interview, Mr. Furlong stated:

And what's odd about it is that this activist in fact filed a complaint, not the student. She filed it, she went into the RCMP and made the complaint which is highly unusual. And...and so you know, she was the one who did that.

[194] Then, on October 29, 2013 Mr. Furlong gave an interview with *Maclean's* magazine, in the course of which he said the following:

Enough is enough. When this started, I thought this would take a week, maybe two, or a month--max--and then it would be over.... It was a ridiculous charge. It was a lie. And it was placed before the RCMP by Laura Robinson.

[195] Ms. Robinson says the assertion that she filed the sexual abuse claim for Ms. Abraham is untrue and defamatory of her.

**I) The RCMP Investigation into the Beverly Abraham complaint**

[196] As I have already noted, Ms. Abraham went to the RCMP with her complaint on July 12, 2012 following her email correspondence with Ms. Robinson.

Cpl. Quinton Mackie, a member of the RCMP stationed at the Prince George detachment as of July 2012, was the lead investigator into the complaint.

Cpl. Mackie testified at trial about the steps he took and his findings in the course of the investigation.

[197] Cpl. Mackie gave evidence that he was contacted shortly after Ms. Abraham filed her complaint by his colleague at the Prince George detachment who was responsible for media relations. The colleague told him that Ms. Robinson had called inquiring about the status of the investigation and requesting confirmation that a complaint had been filed. The colleague had said that she could not confirm whether a complaint had been filed.

[198] Cpl. Mackie interviewed Ms. Abraham several times. He also interviewed Ms. Abraham's mother, using an interpreter because she spoke only Carrier, and a brother and sister of Ms. Abraham. In addition, he interviewed many of the persons Ms. Abraham told him would corroborate her information, although some of them he could not locate. Cpl. Mackie's evidence was that the persons he interviewed did not give him the corroborating information Ms. Abraham indicated they would provide. He was also of the view that her description of the events contained many troubling inconsistencies. Among other information, names and dates changed with each interview.

[199] Ms. Robinson testified that she did not interview Ms. Abraham's mother because she had been told the mother was suffering from dementia and spoke only Carrier. She said she did not interview other members of Ms. Abraham's family because Ms. Abraham had told her she suffered trauma within her immediate family.

[200] Cpl. Mackie received a telephone message from Ms. Robinson on July 15, 2012, and spoke with her in person on July 16. According to the notes he took

during the conversation, Ms. Robinson told him she believed Mr. Furlong had attempted to cover up his past in Burns Lake and Prince George. Ms. Robinson said she had concerns about both Immaculata Elementary School and Prince George College where Mr. Furlong had taught. Ms. Robinson told him about the affidavits she had gathered but thought the RCMP would be getting a court order to have her release them. Cpl. Mackie suggested it would be easier if she just gave him the names of the individuals who had sworn affidavits. Ms. Robinson did give him the name of four of the individuals but told Cpl. Mackie that, while she wanted to help, she did not want to appear to be working with the police.

[201] Ms. Robinson also told Cpl. Mackie she thought he should interview everyone who was taught by Mr. Furlong. She said she had statements from numerous individuals alleging abuse, but she would not give Cpl. Mackie their names. She also said she wondered what happened to the girl students when they were left alone at the school with Mr. Furlong.

[202] Cpl. Mackie told Ms. Robinson that Ms. Abraham's statement that she gave to Ms. Robinson was inconsistent with the statements she gave police. Ms. Robinson told Cpl. Mackie that Ms. Abraham was very clear, consistent and concise when she gave her statement to Ms. Robinson. Cpl. Mackie advised Ms. Robinson that Ms. Abraham had been nothing like that when she gave her statements to the RCMP. He said the statement she first gave to the RCMP was inconsistent with each of the later statements she gave.

[203] Ms. Robinson emailed to Cpl. Mackie her Response to Civil Claim so that the RCMP could investigate the new allegations against Mr. Furlong that she had raised in the Response.

[204] On April 12, 2013, Cpl. Mackie emailed counsel for Mr. Furlong to advise that the RCMP had concluded its investigation into the Abraham complaint. The email states as follows:

With respect to the sexual abuse allegation brought forward by Beverly Abraham through Laura Robinson. I can tell you that the RCMP have

concluded their investigation into that matter and have found nothing to substantiate the complaint, as a result there will be no report to Crown Counsel forwarded.

[205] Cpl. Mackie was asked at trial why he stated in the email that the complaint had been brought “through Laura Robinson”. He said that when he spoke with Ms. Abraham, she told him that it was Ms. Robinson coming to Burns Lake that sparked the complaint. Further, he said he was aware from Ms. Abraham and several other individuals he interviewed that Ms. Robinson assisted them with their affidavits and was present when they swore them.

[206] Cpl. Mackie advised in his email that the RCMP would continue to speak to the persons mentioned in Ms. Robinson’s Response to Civil Claim to determine whether there had been any criminal wrongdoing. That group of persons included Margaret Furlong, Mr. Furlong’s former spouse.

[207] On June 27, 2013, Cpl. Mackie wrote to inform Mr. Furlong’s counsel that he was proceeding to conclude the investigation and close the file. However, he was then advised that his superiors had directed that there be a file review by an independent investigative team from RCMP ranks in Alberta.

[208] The file review did not disclose any matters with respect to the Abraham complaint that would require further investigation. The team conducting the review had many recommendations, but most pertained to the general allegations of abuse made by many former Immaculata students which did not involve Mr. Furlong.

[209] In August 2013, while the RCMP investigation into her complaint was ongoing, Ms. Abraham filed a civil suit against Mr. Furlong seeking damages on the basis of the sexual abuse allegation she had earlier brought to the police.

[210] On December 5, 2013, Cpl. Mackie wrote to Mr. Furlong’s counsel to formally advise that the investigation into the Abraham complaint was concluded on the basis that the allegations were not supported and there were no reasonable and probable grounds on which to recommend charges against Mr. Furlong.

**m) Mr. Furlong's December 12, 2013 Statement**

[211] On December 12, 2013, following notification by Cpl. Mackie that the RCMP had concluded its investigation into the Abraham complaint, Mr. Furlong issued a news release in which he stated that he had instructed his legal counsel to seek a trial date in the civil claim brought by Ms. Abraham. The news release went on to state, in part, the following:

- a) The decision to seek a trial date was prompted by notification from the RCMP that it had exonerated him with respect to Ms. Abraham's allegations, "some of which were also published by the activist Laura Robinson";
- b) The conclusion by the RCMP was "further proof of a pattern of reckless inaccuracy by the activist Laura Robinson";
- c) "On September 27, 2012 this activist published an article in *The Georgia Straight*, outlining some of Ms. Abraham's false allegations. Laura Robinson then expanded her attack by using the courts to back-door publish even more damaging allegations she could not put in her original article because they were not grounded in fact"; and
- d) "This is part of a historic pattern of inaccuracy by Laura Robinson. In addition to the untrue statements she wrote about me, Laura Robinson has made egregious errors in at least four other cases".

[212] The news release then sets out the same four occasions of alleged false reporting described by Mr. Furlong in his October 29, 2013 news release.

[213] Ms. Robinson says that these statements are defamatory of her because they were meant to convey that she (a) exhibited a pattern of recklessness and inaccuracy throughout her career; (b) is an activist rather than a journalist; and (c) falsely attacked other individuals publicly on at least four occasions.

**n) The Civil Suits Filed against Mr. Furlong**

[214] In 2013, three civil suits were filed against Mr. Furlong and the Diocese responsible for Immaculata Elementary School. All were filed by persons from whom Ms. Robinson had taken statements in the course of her investigation -- Grace Jessie West, Daniel Morice and, as already noted, Ms. Abraham.

[215] Ms. West filed her claim in July 2013. She alleged that Mr. Furlong was her physical education teacher at Immaculata Elementary School in the school year 1969-70, and that he physically and sexually abused her.

[216] Mr. Furlong brought an application to dismiss the claim on the basis that Ms. West did not attend Immaculata in 1969 or 1970, and he was successful in his application: *West v. Furlong*, 2015 BCSC 216. I will summarize the findings of Madam Justice Gropper, the judge who heard the application:

- In November 2012, Beverly Abraham arranged for Laura Robinson to meet Ms. West. Ms. Robinson prepared a statement for Ms. West's signature in which she state that she attended Immaculata from 1964 to 1977;
- In July 2013, Ms. West commenced her action along with that of Ms. Abraham. Both alleged they attended Immaculata and were abused by Mr. Furlong in 1969-70. Jason Gratl was acting as legal counsel for both women;
- In Ms. West's examination for discovery in April 2014, she listed the various schools she attended. Immaculata was not one of them. At a different point in her examination, she could not recall the name of the school she alleged she attended when Mr. Furlong taught her. At another point she said she attended Immaculata from 1964 to 1977. At yet another point she said she attended Immaculata for only one year when she was 6 years old and in kindergarten;

- Following this discovery, Mr. Gratl withdrew as Ms. West’s lawyer;
- Mr. Furlong made many efforts to move the lawsuit along including obtaining trial dates, scheduling a case planning conference and a judicial management conference. Mr. Furlong agreed that Ms. West could attend the conferences by telephone. Ms. West did not respond to any of the documentation concerning these efforts and could not be reached by telephone for the conferences;
- During the judicial management conference in December 2014 Mr. Gratl also withdrew as counsel for Ms. Abraham, who attended by telephone. Ms. Abraham advised that she did not wish to proceed with her action and it was dismissed by consent; and
- The evidence adduced at the application to dismiss established that Ms. West attended St. Joseph’s School in Smithers from 1966 to 1970. The school register for Immaculata at no time recorded Ms. West’s attendance at that school.

[217] As a result, Gropper J. concluded that Ms. West did not ever attend Immaculata, and specifically did not attend the school during the 1969-70 school year.

[218] Mr. Morice filed his civil suit against Mr. Furlong in September 2013, alleging that he attended Immaculata in 1969 and 1970, and that he was sexually abused by Mr. Furlong during that time. Mr. Morice was initially represented by Mr. Gratl. In December 2014, Mr. Gratl was given leave to withdraw as counsel. The trial date was originally set for December 2014 but adjourned after Mr. Gratl withdrew as counsel. A new trial date of March 15, 2015 was set. Mr. Morice did not appear on that date.

[219] The trial judge, Mr. Justice Myers, dismissed Mr. Morice’s claim: *Morice v. Furlong*, 2015 BCSC 627. Myers J. sets out in some detail the conduct of Mr. Morice following the withdrawal of Mr. Gratl as his counsel. Mr. Morice ignored all orders for

production of documents, and his conduct became increasingly abusive. He left a series of voice mail messages for Mr. Furlong’s counsel that may be more accurately described as rants, some of which were more than disrespectful or disparaging; they were obscene (see para. 6 of the judgment in which Myers J. sets out the voice messages).

[220] Myers J. made the following findings:

- Mr. Morice referred to photographs of himself and Mr. Furlong that did not exist. He used the non-existent photographs as a threat, saying he was going to take them to the press;
- Mr. Morice threatened Mr. Furlong with physical harm; and
- Mr. Morice was disrespectful during telephone appearances and refused to comply with any orders.

[221] Mr. Justice Myers observed (at para. 15 of his reasons) that Mr. Morice had filed a claim under the Indian Residential Schools Alternative Dispute Resolution Process for alleged abuse at another school he said he attended during the same period of time he alleged Mr. Furlong abused him at Immaculata. He received compensation for that claim.

[222] Mr. Justice Myers dismissed Mr. Morice’s claim and awarded special costs to Mr. Furlong as a result of Mr. Morice’s “egregious, reprehensible” conduct (at para. 19).

[223] As noted by Gropper J. in her reasons, Ms. Abraham consented to the dismissal of her civil claim against Mr. Furlong after Mr. Gratl withdrew as legal counsel for her and Ms. West.

[224] Ms. Abraham, Ms. West and Mr. Morice are the three individuals to whom Ms. Robinson referred in her *Play the Game* paper as the former students of Mr. Furlong who had brought civil claims of sexual abuse against him. As I have

already noted, Ms. Robinson referred in her paper to a fourth individual having filed a claim, but in fact that individual did not do so.

**o) Mr. Furlong’s civil suit against Ms. Robinson**

[225] Mr. Furlong withdrew his defamation claim against Ms. Robinson shortly after the rulings of the Court concerning the West and Morice claims were released. He had earlier decided to discontinue his suit against the *Georgia Straight* and put all of his resources into his suit against Ms. Robinson, who he regarded as the source of all of the allegations against him. However, he rethought that course of action after receiving the West and Morice rulings and the RCMP decision to close the Abraham file. He testified that he discontinued his suit against Ms. Robinson because first, he believed he had been vindicated by the RCMP investigation into the Abraham complaint and the Court rulings concerning the West and Morice claims; and second, defending the various lawsuits had exhausted him and his family emotionally and financially, and he wanted to get on with his life.

**p) The Expert Opinions**

[226] Both Ms. Robinson and Mr. Furlong advanced expert opinion evidence at trial with respect to Ms. Robinson’s investigative techniques when looking into Mr. Furlong’s past.

**i. Opinion of John Miller**

[227] Ms. Robinson tendered the expert opinion of John Miller (the “Miller Report”), who also testified at trial. Mr. Miller was qualified as an expert in the field of journalism generally and, more specifically, on professional standards of investigative journalism. He was senior executive newsroom editor for 13 years at the *Toronto Star*, including five years as senior deputy managing editor in charge of news and feature coverage. Mr. Miller taught reporting and newsroom leadership for 23 years at Ryerson University’s School of Journalism.

[228] Broadly speaking, the purpose of tendering the Miller Report was to establish that Mr. Furlong’s assessment of Ms. Robinson’s reporting, which he said demonstrated a “shocking lack of diligence”, was unfounded and untrue.

[229] Counsel for Mr. Furlong objected to many passages in the Miller Report on the basis that they contained inflammatory allegations founded solely on hearsay, which Mr. Miller had accepted as true for purposes of his opinion. Other passages were objectionable because they were advocacy and argument, and amounted to a partisan attack on Mr. Furlong. I ruled that those objections were well founded, and redacted significant portions of the Miller Report before it was marked as an exhibit at trial.

[230] The Miller Report advanced a definition of investigative journalism found in *Story-Based Inquiry: A Manual for Investigative Journalists*, authored by Mark Lee Hunter and published by the United Nations Educational, Scientific and Cultural Organization (UNESCO): “Investigative journalism involves exposing to the public matters that are concealed -- either deliberately by someone in a position of power, or accidentally, behind a chaotic mass of facts and circumstances that obscure understanding” (at 8).

[231] Mr. Miller acknowledged that he was not familiar with the manual itself; he took the definition from the UNESCO website but had not read the manual. However, Ms. Robinson testified that the manual was generated by well-respected members of the Global Investigative Journalists Network (of which she is also a member). She commented favourably on several passages from it, and accepted it as an authoritative work on investigative journalism. The manual was entered as an exhibit at trial by Ms. Robinson.

[232] Mr. Miller explained that much of journalism typically involves providing the public with contemporaneous news about what is going on in the public sphere. In contrast, investigative journalism “involves reporters *themselves* uncovering and documenting activities that would have been previously unknown to the public or even to some of the participants” (Miller Report, at 5, emphasis in original).

[233] Mr. Miller cited passages from *The Elements of Journalism*, Bill Kovach and Tom Rosenstiel (New York: Crown, 2001), a textbook used in several schools of journalism in Canada. He said that the learned authors “stress that journalism’s first obligation is to the truth”:

“Democracy depends on citizens having reliable, accurate facts put in a meaningful context” they say, and add: “Journalists should be as transparent as possible about sources and methods so audiences can make their own assessment of the information” (Miller Report, at 8).

[234] It was Mr. Miller’s opinion, citing a book titled *Newsthinking* written by Bob Baker, an editor with *The Los Angeles Times*, that a good reporter begins his or her story with a “running mental hypothesis -- a crude outline, a sense of where the story is headed. Each piece of new information either helps confirm that hypothesis or persuades the reporter to modify his impression of the story as a whole”. According to the author, said Mr. Miller, a good reporter “can set up a story framework early in the fact-gathering process because he or she is confident of being able to adjust the framework in response to new evidence” (Miller Report, at 6).

[235] Mr. Miller offered the opinion that Ms. Robinson began her investigation of Mr. Furlong with a “tip” that “he was not all he said he was”, and worked with that hypothesis during the following months as she investigated his past (Miller Report, at 6). He testified that being guided in that manner by a hypothesis was accepted journalistic practice.

[236] In cross-examination, it was put to Mr. Miller that if an investigative journalist begins with a working hypothesis, he or she should first try to disprove it otherwise the journalist may succumb to “confirmation bias”. Mr. Miller was not familiar with the concept of confirmation bias, but agreed that the reporter should at least seek out as many persons as possible to obtain all sides of an issue; this may lead to disproving the hypothesis if the reporter maintains an open mind.

[237] A fact assumed by Mr. Miller was that Ms. Robinson interviewed separately the individuals in Burns Lake and arranged to have them sign sworn declarations. In his opinion, sworn declarations are “the gold standard for investigative reporters”,

and they “enabled Ms. Robinson to avoid any possible collusion among her sources, assess their credibility as individuals, and examine their independent statements for any common patterns” (Miller Report, at 8).

[238] It emerged in cross-examination that Mr. Miller was not aware that the 35 individuals who attended at the Band office in Burns Lake were assembled together in a room for approximately an hour before Ms. Robinson arrived.

[239] It also emerged that Mr. Miller was not aware of the contents of the announcement Ms. Robinson had drafted concerning her impending visit to Burns Lake, which was posted publicly before she arrived in the town. He was not aware that the announcement stated that she was investigating abuse at Immaculata in a specified time period and identified Mr. Furlong as the subject of her investigation. Mr. Miller testified that he assumed Ms. Robinson did not “telegraph her intention” prior to the interviews. He agreed that the journalist would obtain better information from an interview if she or he did not telegraph the reason for the interview because telegraphing intent could otherwise influence the answers given in the interview. He said, however, that a journalist might include specific information if he or she “wished to zero in on a particular topic”.

[240] Mr. Miller acknowledged that he had never investigated allegations of historical physical or sexual abuse in his years as a journalist.

***ii. Opinion of Dr. John Yuille***

[241] Mr. Furlong tendered the expert opinion of Dr. John Yuille, who was qualified as an expert in human memory and, more specifically, the procedures for conducting interviews to obtain reliable information concerning allegations of historical (childhood) sexual abuse. Dr. Yuille was formerly a Professor in the Department of Psychology at UBC and is now a Professor Emeritus. He has conducted research into human memory for over 50 years. His many publications include standard practices for the investigation of childhood sexual abuse. Among other things, he

has been engaged in training those persons -- police officers, social workers and others -- responsible for investigating abuse at residential schools.

[242] Dr. Yuille's opinion was tendered to establish the potential impact of Ms. Robinson's investigation on the reliability of the statements she obtained, and the reasonableness of Mr. Furlong's criticism of the practices she used to gather the statements which formed the basis of her publications about his past.

[243] Dr. Yuille testified that interviewer bias is the single most serious obstacle to determining the truth in an investigation into childhood abuse. An investigator must not begin his or her investigation with a single hypothesis. He or she must formulate alternative hypotheses or possibilities -- for example, that the abuse happened; that it did not happen; that a person other than the one accused committed the abuse; and so on. Abstaining from a single hypothesis ensures that the gathering of evidence is done by asking questions that are not leading or suggestive of the information the interviewer is seeking to obtain. An impermissible question would be, for example: Did Mr. Furlong abuse you when you were a student at Immaculata in 1969?

[244] Dr. Yuille was asked to assume that an announcement using the wording contained in the poster drafted by Ms. Robinson was displayed in circumstances such as those existing in Burns Lake, and whether such an announcement would cause him concern. He expressed the opinion that such an approach was fundamentally flawed because it identified, before the interviews, the alleged perpetrator, the nature of the behavior being investigated and the time frame and place in which the behavior occurred. These are crucial facts that must come from the persons being interviewed in a non-leading, non-suggestive way. When these facts are provided in advance, it is impossible to obtain a spontaneous story. The interviewer cannot know with any certainty whether the story came from the person's memory or the information provided in advance of the interview.

[245] Dr. Yuille was also asked to assume that all of the persons to be interviewed were left in the same room for an hour or more (in this case, knowing that the

investigation was about abuse during a specified period of time at a named school by a named person). He testified that it is basic investigative protocol to ensure that witnesses do not interact with one another before the interview, as they can, and will, unwittingly contaminate one another's memories.

[246] It was suggested to Dr. Yuille in cross-examination that as he was not an expert in journalism, he could not say that the investigative standards he was espousing applied to journalists. Dr. Yuille responded that "an investigation is an investigation, and the context does not forgive bad practice": All investigations into childhood abuse, regardless of who is conducting them, should be conducted in the manner he has described otherwise the investigator cannot be confident that the information obtained is reliable.

[247] Dr. Yuille offered the opinion that it is dangerous to use a particular hypothesis as the basis for an investigation into allegations of abuse because it can give rise to confirmation bias. At the very least, the investigator should consciously attempt to disprove the hypothesis even before attempting to prove it.

**q) The Evidence of a Former Principal of Immaculata School**

[248] Mr. Furlong called Sister Marie Melling as a witness at trial, who was the principal of Immaculata Elementary School from 1967 to 1971. Sister Melling replaced the former principal, Sister Alphonsus. She was responsible for the overall administration of the school, and also taught classes.

[249] Sister Melling testified that an Oblate priest by the name of Father Silke lived in the school; his office and bedroom were on the main floor and he was very involved in the running of the school. All of the lay teachers at the school were Frontier Apostles. There was no public funding for the schools under the auspices of the Prince George Diocese, and the diocese was not wealthy. Bishop O'Grady had a committee that recruited Frontier Apostles as the means of keeping the Roman Catholic schools functioning. They received no pay for their teaching, but were provided food and shelter.

[250] Immaculata was not a residential school. None of the teachers lived within Immaculata, nor did any of the students. The children went home to their families at the end of every school day and during the holidays.

[251] Sister Melling met Mr. Furlong in 1969 when he came to the school as the physical education teacher for one year; she recalled that he was very young. She found him to be knowledgeable and committed. At times, she observed him interacting with the students in his physical education classes, and also in the playground and the corridors of the school. From what she observed, he ran very good classes and was kind and respectful to the students.

[252] If children had complaints about a teacher, they would bring them to Sister Melling. She recalled hearing only one complaint from a student concerning Mr. Furlong, who was making his classes run backward up the hill behind the school as fitness training. The student told Sister Melling his legs were sore. Sister Melling went to Mr. Furlong and told him the students were only children and were not training for the Olympics. Mr. Furlong respected what she said and discontinued the exercise.

[253] Sister Melling testified that discipline policies were set by the staff as a whole. In those days, schools still used the strap. Individual teachers decided whether to use it as a form of discipline. The strap was administered in the classroom or the corridor by the classroom. Sister Melling never saw Mr. Furlong using the strap. At one point during her time at Immaculata, she initiated a procedure whereby a teacher was required to note in a book any occasion on which he or she used the strap. From her review of the book, she determined there was one teacher who used the strap frequently on one student. Sister Melling put a stop to it. The teacher was not Mr. Furlong.

[254] Sister Melling has lived at the same place in Vancouver for fifteen years. Her name is in the phone book. She said that Ms. Robinson had never contacted her.

V. **ANALYSIS**

A. **The Arguments**

[255] To reiterate, the central issue in this case is whether Mr. Furlong was entitled to answer, in the manner he did, Ms. Robinson’s published comments about him. His primary position is that the publications were repeated attacks on his character and conduct and, as such, he was entitled to respond. For that reason, to the extent that any of his responses were defamatory of Ms. Robinson, they were made on occasions of qualified privilege.

[256] Mr. Furlong’s alternative position is that if any of his statements were not made on an occasion of qualified privilege, then (a) they are not defamatory; (b) any that are defamatory are in fact true; and (c) any defamatory statements constitute fair comment.

[257] Ms. Robinson’s position is as follows:

- a) Mr. Furlong was not subject to any “attack” by Ms. Robinson and accordingly his responses were not made on an occasion of qualified privilege;
- b) Alternatively, if Ms. Robinson’s publications were attacks, Mr. Furlong’s responses were not “germane and reasonably appropriate” such that any occasion of privilege was exceeded; and
- c) If the defence of qualified privilege remains, Mr. Furlong’s defamatory statements were motivated by an improper purpose and/or made with reckless disregard for the truth and thus any privilege that attaches to them is defeated by malice.

B. **Mr. Furlong’s Defence of Qualified Privilege**

[258] Mr. Furlong’s primary argument is that his responses were protected by qualified privilege. That issue gives rise to the following questions:

- i. Were the statements made by Mr. Furlong responses to an attack by Ms. Robinson on his character and conduct, and as such, made on occasions of qualified privilege?
- ii. Were any of Mr. Furlong's statements actuated by express malice such that the defence of qualified privilege is not available?

**1. Were Mr. Furlong's responses made on occasions of privilege?**

[259] The question is whether Mr. Furlong's statements were responses directed at countering the criticisms Ms. Robinson made of him. If so, his responses were "germane and reasonably appropriate to the occasion" and, even if defamatory, are protected by the privilege: *Ward*, at para. 56.

[260] I will first address the opinion evidence advanced by the parties and its relevance to the issue. Thereafter, I will examine Ms. Robinson's argument that any attack on Mr. Furlong was not made by her, as she was merely reporting what others had said. I will then review the significance of Ms. Robinson's email correspondence with various individuals and organizations. Finally, I will address Mr. Furlong's responses to Ms. Robinson's articles.

**a) The opinion evidence**

[261] Mr. Miller's opinion primarily addressed the nature of investigative journalism and how it differs from other forms of journalism. That aspect of his opinion was not controversial.

[262] Mr. Miller has never investigated allegations of childhood abuse and did not offer an opinion as to the manner by which one should conduct interviews of persons making those kinds of allegations in order to obtain the most reliable information possible. He was only able to provide a general comment to the effect that an investigative journalist in most cases should not telegraph in advance the objective of the interview.

[263] Mr. Miller was of the view that obtaining sworn declarations is the “gold standard” for investigative journalists. He said that such declarations enabled Ms. Robinson to avoid collusion among her sources, assess their credibility, and examine their statements for common patterns. Mr. Miller did not explain how or why the statutory declarations could operate in that manner.

[264] I do not accept that aspect of Mr. Miller’s opinion. In the present case, assuming the good faith of the witnesses, the issue is not collusion; it is the potential of one witness to unwittingly contaminate the memory of another with respect to childhood events forty years past. Such contamination is a significant risk if the witnesses know in advance the nature of the information being sought, and had any opportunity to speak with one another about it. Nor do I accept, in the circumstances of this case, that statutory declarations could assist in credibility assessment. As I will explain further below, the issue is the *reliability* of the witnesses’ memories as distinct from their *credibility*, again assuming the good faith of the witnesses.

[265] I accept Dr. Yuille’s opinion that the questions asked by any investigator concerning childhood memories may well shape the answers the investigator receives. As Dr. Yuille testified, an investigation is an investigation, regardless of who conducts it, and the context does not forgive bad practice. Whether the investigator is a journalist, a social worker or a police officer, the object is to obtain the truth.

[266] I do not accept that there is a sliding scale by which a journalist is held to a lesser standard than any other person who undertakes to investigate historical child abuse. Whatever the investigator’s professional credentials, he or she must be up to the task of determining, to the greatest extent possible, the accuracy of the information where guilt or innocence -- or the reputation of an individual -- is at stake.

[267] Quite aside from Dr. Yuille’s expertise in this area, in my view it is common sense that to use suggestible comments and questions is fraught with risk, and may

well affect the integrity of the information obtained, particularly where the events in question occurred many decades ago when the subjects were children.

[268] In this case, the subjects of the interviews were adults who were children at the time of the events in question. Further, as Ms. Robinson acknowledged, most of the former students who met with her and provided statements had nothing to say about Mr. Furlong. Rather, they wanted to talk about the trauma they experienced as First Nations children prevented from using their language and taught to deny their Aboriginal heritage and culture. Many described having multiple abusers. Some experienced abuse within their own families as well. These were First Nations individuals who had clearly suffered numerous traumas as children.

[269] In light of all the variables at play in the case of these individuals, the greatest of care should have been taken to ensure that the stories were completely spontaneous and not influenced in any way by the interviewer. Instead, Ms. Robinson telegraphed in her written announcement, posted days before the interviews, the subject of her investigation -- childhood abuse -- its location, its timing, and the identity of the alleged abuser. As none of the interviews was recorded, it is impossible to know the nature of the questioning which elicited the responses Ms. Robinson obtained.

[270] Ms. Robinson and Mr. Smith of the *Georgia Straight* believed that statutory declarations would provide a guarantee of the truth of the allegations in a way that initialled statements could not, because the individuals would understand that they were under oath to tell the truth. However, in the circumstances of this case, statutory declarations could not deliver that guarantee. That is because the issue in this case is not whether the individuals who swore them believed they were telling the truth. They may well have believed their stories, but the issue is whether their memories of childhood trauma, related some forty years later, were reliable in the sense of being accurate recollections of their experiences with a particular person, namely John Furlong.

[271] A more prudent course would have been to seek independent verification of the stories Ms. Robinson was told. Ms. Robinson testified that one student gave her a copy of his report card, which verified his attendance at Immaculata. Beyond that, she had no information from any independent source to support the allegations the students had made.

[272] A fundamental first step in the investigation would have been to establish whether the individuals in question had even attended Immaculata during the small window of time that Mr. Furlong taught there. As the record now illustrates, proper questioning and investigation disclosed that neither Ms. West nor Mr. Morice were students at Immaculata. Ms. West never attended the school, and Mr. Morice was attending a different school in 1969-70. Ms. West may well have believed that she attended the school that year, given her age at the time and the significant passage of time since then, but she was demonstrably wrong. Mr. Morice's *bona fides* are much less clear; in any event, it was accepted by a tribunal that he was a student at a residential school in a different location in 1969-70, and he received compensation for the abuse he apparently suffered there at the time.

[273] Ms. Abraham's complaint also underscores the necessity of obtaining independent verification of an allegation as serious as child sexual abuse. The RCMP obtained from Ms. Abraham the names of individuals who could verify such basic information as time, dates and places. They interviewed Ms. Abraham's mother, brother, sister and others. They interviewed Ms. Abraham herself several times to determine the consistency of her recollections. Cpl. Mackie, who conducted most of the investigation, testified at trial. He formed the view that Ms. Abraham had experienced a very hard life and much trauma in her past, but that the information she gave the police was contradictory and inconsistent, and that the independent sources did not support her recollections.

[274] I also accept Dr. Yuille's opinion concerning the danger of using a particular hypothesis as the basis for an investigation as it may lead to confirmation bias. In his

view, which I accept, the investigator should attempt to disprove the hypothesis at least as vigorously as he or she attempts to prove it.

[275] Dr. Yuille's cautionary note concerning the use of hypotheses is supported by the authors of *Story-Based Inquiry: A Manual for Investigative Journalists*, a work that I have cited earlier in these reasons. In a section titled "Hypotheses can be dangerous", the authors say the following:

So keep this in mind please: ....Investigation is about more than proving you are right. It's about finding the truth. Hypothesis-based investigation is a tool that can dig up a lot of truth, but it can also dig a deep grave for the innocent.

....Our theory is that there are lots of journalists in Hell, and misusing hypotheses is one way they got there. So be honest and careful about how you use hypotheses: Try to disprove them as well as prove them [at 17].

[276] The statements of Ms. Abraham, Ms. West and Mr. Morice were the only three statements obtained by Ms. Robinson that were even minimally tested in a way that we, as a society, believe our system of justice requires when a citizen faces such serious and devastating allegations. All three proved to be unreliable.

**b) Ms. Robinson's articles and "reportage"**

[277] Ms. Robinson argued that the attacks of which Mr. Furlong complained were not attacks made by her. Rather, if they could be characterized as "attacks" at all, they were made by the various students who had sworn the statutory declarations and brought the civil suits. Moreover, if Mr. Furlong was entitled to respond, his responses must be confined to those who brought the allegations -- that is, the former students -- and those to whom the allegations were made -- that is, the RCMP.

[278] This argument overlooks the fact that the former students of Mr. Furlong did not come forward of their own accord. Ms. Robinson initiated the investigation and set its parameters, solicited the statements after telegraphing the purpose of her investigation, and then published the contents of the statements in her articles for her own purposes.

[279] As discussed earlier, “reportage” has four requirements: (i) the report attributes the statement to a person, preferably identified; (ii) the report indicates, expressly or implicitly, that its truth has not been verified; (iii) the report sets out both sides of the dispute fairly; and (iv) the report provides the context in which the statements were made.

[280] Ms. Robinson’s articles do not meet at least two of these requirements. First, although she refers to the statements of former students as “allegations”, she neglects to state in her articles that the truth of the allegations had not been verified. On the contrary, the overall tone of the articles suggests that the allegations -- at least in her view -- are true. Second, Ms. Robinson does not describe in her articles the context in which she obtained the statements.

[281] Further, given the tone of Ms. Robinson’s publications, they cannot be fairly characterized as a simple reporting of what others told her. By way of example, the following passage from early paragraphs of the *Georgia Straight* article is consistent with the overall tone of the piece:

“He went not to Prince George to direct a high-school athletic program but to Immaculata Elementary School in Burns Lake, B.C. to help save the souls of First Nations Children. But if his goal was to persuade First Nations children of the virtues of Catholicism, he chose, say former students, a brutal way to do it”.

[282] Nor can it be said that the article “Truth, Lies and History: John Furlong and Canadian Sport’s Moral Vacuum” is the mere reporting of others’ allegations. Read as a whole, it is highly critical of Mr. Furlong’s character and conduct. It alleges that both Mr. Furlong and the sports community have attempted “to tell a revisionist and dangerous version of Canadian sport history”. The paper may not expressly state that the persons making the allegations were speaking the truth (and that, accordingly, Mr. Furlong was lying), but the implication is apparent.

**c) The correspondence preceding the Robinson articles**

[283] I have earlier reproduced verbatim the emails and commentaries authored by Ms. Robinson preceding the articles she published, or relevant portions of them. I

will summarize them briefly here as they relate to the defence of qualified privilege. Mr. Furlong's responses to Ms. Robinson's publications must be viewed in the context of not only the articles themselves but the correspondence generated by Ms. Robinson both before and after the articles were published.

[284] The investigation Ms. Robinson launched in Burns Lake in April of 2012, and the September 2012 articles which were written as a result, were the continuation of a campaign begun much earlier.

[285] Ms. Robinson began focussing on Mr. Furlong in February of 2011 with her commentary in *Anishinabek News* on *Patriot Hearts* in which she posed rhetorical questions as to whether Mr. Furlong had lied about his past and other unspecified matters. That focus intensified in March of 2011 when Ms. Robinson wrote to Mr. Furlong's publisher asking, among other things, whether Mr. Furlong believed that by hiding his work as a Frontier Apostle at a Catholic residential school "made it easier to win over First Nations and other Aboriginal groups to give support to the Olympics?"

[286] Those were questions to which Ms. Robinson surely did not expect a response from Mr. Furlong.

[287] In April 2011, Ms. Robinson published her "Sins of Omission" article on the *Play the Game* website. Although purportedly focussed on Mr. Furlong's alleged concealment of his past in his book, the article gratuitously attacked his character in several other ways. She implicitly linked Mr. Furlong to the "litany of...unspeakable practices" that occurred in residential schools across Canada over several decades. She ended her article with the comment that "Patriot Hearts" contained many other untruths "too lengthy to go into here".

[288] In her May 2011 correspondence with the Canadian Newspapers Association, Ms. Robinson stated that Mr. Furlong had conducted himself at a recent conference in the same manner as he did when leading the bid for the Winter Olympics. She claimed he determined which information would and would not be allowed as topics

at news conferences, refused “to acknowledge any question that did not enhance [VANOC’s] spin”, “shut down news conferences as soon as real questions were asked”, and “played fast and loose with the truth”.

[289] Ms. Robinson’s investigation continued until early April 2012, when she learned from Ms. Hogan of the meeting that took place in her home shortly before the Olympics between Mr. Furlong and a former student. That second-hand report was sufficient, in Ms. Robinson’s view, to contact Mr. Furlong’s publisher to advise that Mr. Furlong was “alleged to have beaten a young girl very badly” but that he denied the beating took place and did not apologize. She then asked whether Mr. Furlong was “still denying that the beating took place”.

[290] Ms. Robinson’s investigation continued with the trips to Burns Lake in April and May 2012, and the gathering of the statutory declarations and other statements. However, before going to Burns Lake the first time, she appears to have developed a working hypothesis, which she set out in her email of April 16, 2012 to Mr. Storrow. I reproduced that email earlier but for convenience will do so again here:

There have been so many alleged abuse incidences committed by Mr. Furlong against former students it would be impossible for him to have forgotten about the abuse though he may have forgotten the names of the children as there were many.

[291] Given the tone of emails such as this, Ms. Robinson could not have been surprised that Mr. Furlong declined to answer her inquiries other than through his counsel.

[292] It was after her first interviews in Burns Lake on April 21 and 22, 2012 that Ms. Robinson contacted Mr. Smith at the *Georgia Straight* about her potential story that Mr. Furlong had abused children while a Frontier Apostle in Burns Lake. Following her second trip to Burns Lake, and obtaining the statutory declarations, Ms. Robinson began contacting Mr. Furlong’s associates and prominent members of the national and international sports community. She did this with the apparent objective of obtaining an answer to her question as to what due diligence they had undertaken when researching Mr. Furlong’s background before becoming

associated with him. Although such an inquiry did not require it, Ms. Robinson referred to the allegations she had gathered against Mr. Furlong to every individual with whom she communicated, and in many instances sent copies of the statutory declarations in her possession or descriptions of their contents.

[293] In her email to Mayor Robertson, Ms. Robinson stated as fact that Mr. Furlong was “a very abusive phys ed teacher to young children”. She also said that many people in Burns Lake were upset by the presence of Mr. Furlong in coverage of the Winter Olympics, which triggered flashbacks of their childhood abuse at his hands and caused depression as they tried to put the memories behind them. She then asked: “What can the city do to address this problem?”

[294] The question is what possible involvement the City of Vancouver could have had in Ms. Robinson’s investigation or the reactions of citizens to the coverage of the Olympics. In her evidence at trial, Ms. Robinson did not say how she thought the City, as either a practical or legal matter, could “address this problem”.

[295] In her email communication to the organizations of which Mr. Furlong was a member, Ms. Robinson repeatedly asked why Mr. Furlong had not been asked to step aside from those organizations until the allegations of abuse had been resolved. Again, the obvious question is by what process the allegations could possibly be resolved. Who, or what entity, would determine the truth or falsity of the allegations when complaints were not brought to the police and civil claims (other than the three that foundered) were not filed? In her testimony at trial, Ms. Robinson did not set out her expectations in that regard.

**d) Mr. Furlong’s responses**

[296] Mr. Furlong was well aware of Ms. Robinson’s communications with the various individuals and organizations who received her emails, dating at least from early 2011 when Ms. Robinson first contacted his publisher. That correspondence set the stage not only for Ms. Robinson’s articles that followed, but also for the responses of Mr. Furlong.

[297] Counsel for Ms. Robinson argued that her correspondence to various individuals and organizations are not relevant to Mr. Furlong's defence of response to attack because, unlike the published articles, they were not published to the world at large. As I understand the argument, Mr. Furlong could respond to those individuals and organizations receiving Ms. Robinson's emails but could not respond to the world at large.

[298] I accept, as a matter of law, that a person attacked by another is protected by qualified privilege where the response is in kind and is made in the same way and to the same audience as that chosen by the person making the attack; in other words, to maintain the privilege a defendant must communicate appropriate information to appropriate people: *RTC Engineering Consultants Ltd. v. Ontario (Solicitor General)* (2002), 58 O.R. (3d) 726 (Ont. C.A.) at paras. 17-18.

[299] I do not understand Mr. Furlong to argue that he was entitled to respond in his press conferences and media interviews to the contents of Ms. Robinson's emails *per se*. His argument, put simply, is there was much water under the bridge by the time Ms. Robinson wrote the September 27, 2012 *Georgia Straight* and *Anishinabek News* articles, and it cannot be ignored or divorced from consideration of the manner in which Mr. Furlong responded to the articles or the contents of his responses. I accept that argument.

[300] By way of example, in his response to the *Georgia Straight* article Mr. Furlong stated, "Having experienced this reporter on many occasions in the past this feels very much like a personal vendetta". Ms. Robinson says this statement is untrue and defamatory of her, particularly as she only met Mr. Furlong once. However, that is not what the statement says. Mr. Furlong said he had "*experienced* this reporter...in the past", referring to the numerous emails he was aware Ms. Robinson had sent to individuals and organizations in the months leading up to the *Georgia Straight* article. He said the article felt like a "personal vendetta" in light of those past experiences. The issue is whether, given the content of Ms. Robinson's emails, Mr. Furlong's response was reasonably appropriate to the occasion. In order to

answer that question, one must review not only the articles Ms. Robinson published, but also the emails and commentaries she authored along the way.

[301] In response to Ms. Robinson's 2013 paper presented at *Play the Game* (which was also posted on the Internet), Mr. Furlong referenced the letters and documents Ms. Robinson sent to his friends, employers and other organizations he had worked with. He described the correspondence as "palpable harassment" and an effort to slur his reputation. Again, in order to assess whether Mr. Furlong's comment exceeded the occasion of privilege, one must consider the frequency of emails sent by Ms. Robinson and their contents.

[302] In any event, many of the emails sent by Ms. Robinson contained the same criticisms of Mr. Furlong's character and conduct as the articles themselves.

[303] Moreover, Mr. Furlong need not establish that his responses were true, just that they were directed at Ms. Robinson's criticisms of him. As observed by the Court in *Adam*, cited earlier, even if Mr. Furlong's language was "violent or excessively strong", he will be protected by qualified privilege if he "might have honestly and on reasonable grounds believed that what he said was true and necessary for the purpose of his vindication, though in fact it was not so" (at 339).

[304] Ms. Robinson stated in her articles that she had given Mr. Furlong every opportunity to respond to her emails and that he declined to give any response other than a bare denial of the various allegations. However, to properly test that assertion, one must consider Ms. Robinson's emails themselves. As noted earlier, in my view it is not surprising that Mr. Furlong responded only with denials given the tone of many of the emails and the nature of the questions Ms. Robinson posed.

[305] I will turn now to the occasions on which Mr. Furlong responded to Ms. Robinson's publications.

*i. The Furlong response to the September 27, 2012 articles*

[306] By the time the September 27, 2012 articles were published, Mr. Furlong had been aware of Ms. Robinson's investigation and correspondence with others for well over a year, but maintained his silence. He knew almost immediately that the *Georgia Straight* article was generating a great deal of press coverage and decided to hold a press conference on the day of its publication to respond. He learned shortly before the press conference that an allegation of sexual abuse had been made against him as well, although he did not know where it had been published. Mr. Furlong assumed that it was Ms. Robinson who had published it, because of the correspondence she had been generating for several months.

***The "shocking lack of diligence" comment***

[307] In his press conference, after stating that the allegations were unfounded and "completely without merit", Mr. Furlong stated that he was disappointed in Ms. Robinson's "shocking lack of diligence" in researching the article and that the *Georgia Straight* had made no effort to contact him to validate any aspect of the story. Mr. Furlong testified that he made these statements because he knew the allegations were not true, and he had communicated this to Ms. Robinson through his counsel. He did not believe that a reporter who engaged in a thorough investigation could publish such devastating, untrue allegations. Mr. Furlong said he had been told by someone in Burns Lake that Ms. Robinson had placed what was described as a "wanted" poster about him in the Burns Lake post office, which he considered to be inconsistent with a diligent investigation.

[308] Mr. Furlong also said he expected that the *Georgia Straight*, as a reputable newspaper, would have made an effort, itself, to contact him before publishing such a story. Mr. Furlong was correct in his assertion that the newspaper did not attempt to contact him. While Ms. Robinson had emailed him with questions from time to time, the editors of the *Georgia Straight* did not advise him that it was publishing the article or attempt to seek his verification of any of its contents.

[309] There can be few allegations more serious than those of physical and sexual abuse of children. Given the nature of the attacks on Mr. Furlong's character and reputation, the responses were appropriate to the occasion. They were clearly relevant to Ms. Robinson's allegations and directed at countering them.

***The "personal vendetta" comment***

[310] As previously noted, Mr. Furlong also made reference to having "experienced" Ms. Robinson in the past and that he felt as though she had a "personal vendetta" against him. He testified that he made this statement in light of Ms. Robinson's correspondence about the allegations against him to his friends, former colleagues and public officials for many months before September 27. He was aware Ms. Robinson had been attempting for many months to discover damaging facts about his past and telling people that he had abused children. In light of Ms. Robinson's sustained correspondence about him, Mr. Furlong was entitled, in the words of Professor Brown, "to question the purity of the accuser's motives". His response was also directed at countering the attack and germane to the contents of the attack.

***The extortion attempt comment***

[311] Lastly, Mr. Furlong noted in his September 27 press conference that the first occasion on which these allegations had been brought to his attention was shortly before the Olympics, when he was advised they could be "made to go away" for the payment of money, and that he reported this to the police. Mr. Furlong was adamant in his evidence at trial that he was not suggesting Ms. Robinson had tried to extort him. He testified that this statement related to the incident shortly before the Olympics when Mr. Youngman came to him with the allegation of abuse by a former student. The point he was attempting to make was that the first time he had heard of any alleged abuse, it was tied to an attempt to extract money from him. As such, it was an allegation motivated solely by pecuniary interest, made on the eve of the Olympics, in the hope that he would buy the woman's silence even though the allegation was untrue. Further, he wished to emphasize that had there been any

truth to the allegation, he would not have immediately contacted the police and reported the interaction.

[312] Mr. Furlong did not explicitly state that Ms. Robinson was involved in the extortion incident. It is its juxtaposition to the preceding comments about Ms. Robinson that may imply a link between her and the extortion attempt. I accept that a person hearing or reading Mr. Furlong's words may have made such a connection.

[313] Having said that, Mr. Furlong's response must be viewed in context. Ms. Robinson had that morning published an article accusing him of deliberately concealing his past involvement in residential schools in order to obtain the cooperation of First Nations to stage the Olympics and lying about the events that brought him to Canada. Her article described allegations of child abuse and racism dating back forty years that could only be met with a bare denial. Then, an hour before the press conference was to begin, he learned that he was also facing an allegation of sexual abuse which he believed had also originated from publications of Ms. Robinson.

[314] Viewed in that context, the question is whether Mr. Furlong's failure to take care in structuring his statement in a manner that made clear it was someone other than Ms. Robinson who asked for money to maintain her silence exceeded the occasion of the privilege. Here, the comment of Lord Diplock in *Horrocks*, cited earlier, is apposite: The qualified privilege does not involve "the application by the court of an objective test of relevance to every part of the defamatory matter published on the privileged occasion" (at 151). Were it otherwise, said Lord Diplock, the protection afforded by the privilege would be illusory.

[315] Having considered Mr. Furlong's evidence on this matter, and on a review of the record as a whole, I am satisfied that his response was a *bona fide* attempt to counter the allegations of child abuse by indicating that they were motivated by monetary gain and that he immediately reported what had occurred. The evidentiary

record discloses that when he was interviewed by the police, Mr. Furlong made clear that Ms. Robinson was not the person who had attempted to extort him.

[316] As a matter of law, Mr. Furlong's good faith in making the impugned comment is presumed, and therefore protected by the privilege, unless there is proof of malice. There can be no finding of malice unless it is clear that Mr. Furlong's desire to protect his interests played no significant part in his motivation to make the comment. I am satisfied the comment was not a gratuitous attempt, unconnected to the abuse allegations, to injure Ms. Robinson. That being the case, the fact that the structuring of the statement had the potential to link Ms. Robinson to the extortion attempt did not remove the protection of the qualified privilege.

#### ***Publication of the sexual abuse allegation***

[317] Ms. Robinson took issue with Mr. Furlong's suggestion that she was responsible for the sexual abuse allegation becoming public on September 27, 2012. She suggested that it was the CBC that first ran the story about Ms. Abraham's allegation of sexual abuse, which was posted the same day as the *Georgia Straight* article was run.

[318] I am satisfied that the source of the sexual abuse allegation to which Mr. Furlong referred was Ms. Robinson's article, posted on the Ontario website of the *Anishinabek News* on September 27, 2012. The press conference was held at 2:30 p.m., and Mr. Furlong stated that he had been told approximately an hour earlier about the allegation of sexual abuse. The CBC did not did not publish its story until 2:48 p.m. and, accordingly, could not have been the source.

[319] Second, on the morning of September 27, Ms. Robinson emailed to over 180 recipients, including members of the national and international media, a link to the *Georgia Straight* article. She also included a description of her *Anishinabek News* article as her piece about an RCMP investigation into sexual abuse "presently occurring of Furlong after one of his former students went to them this summer".

[320] Third, on the evening of September 27, Ms. Robinson emailed Mr. Switzer of the *Anishinabek News* to congratulate him for publishing her article. (“Because you put the info that RCMP are investigating Furlong in, they all know that too. Well done”.)

[321] Finally, to the extent that other news agencies reported on any of the abuse allegations against Mr. Furlong, the source of the information was Ms. Robinson. She provided copies of the statutory declarations to the CBC, as well as the phone numbers of the affiants, and provided information about the allegations, including the sexual abuse allegation of Ms. Abraham, to many journalists.

**ii. The October 2, 2012 Press Conference**

[322] There are two impugned aspects of Mr. Furlong’s October 2, 2012 statement. The first is the reference to Ms. Robinson’s reporting of the death of Mr. Furlong’s cousin in 1974 as a “disgraceful mockery of a deeply difficult period” and her words as a “cruel” and “entirely wrong” revisiting of a horrible tragedy on his family. The second is Mr. Furlong’s reference to Ms. Robinson’s “open contempt for the Olympic Games and male authority figures in sport”.

[323] With respect to the first statement, Mr. Furlong explained in his evidence the discrepancy between his version of the events surrounding his cousin’s death as described in *Patriot Hearts* and the version reported in the Irish press. The death of Mr. Furlong’s cousin in the Dublin bombings was clearly a family tragedy of great proportions. His response to Ms. Robinson’s publication concerning the discrepancy was his honestly held opinion that Ms. Robinson had used the circumstances surrounding the violent death of the young woman as an opportunity to challenge his credibility and his integrity.

[324] There can be little doubt that the response was germane to Ms. Robinson’s allegation that Mr. Furlong had manipulated the truth about the tragedy in order to add dramatic effect to the story of his immigration to Canada. As such, Mr. Furlong’s opinion that the publication was a “disgraceful mockery”, designed as it was to

protect not only his interests but those of his family, did not exceed the occasion of privilege. To use the words of the Court in *Ward*, the words need not be “bland or accurate” in order to attract the privilege.

[325] Mr. Furlong testified that the second statement was based on discussions with others from VANOC concerning Ms. Robinson’s conduct toward VANOC representatives during the court challenge brought by the women ski jumpers to the refusal of the IOC to recognize their sport, as well as opinion pieces she had written on the issue prior to the Winter Olympics. The statement was made to counter Ms. Robinson’s criticism of VANOC and of him as CEO of the organization.

[326] A theme of the *Georgia Straight* article is Mr. Furlong’s role as CEO overseeing the Olympics and -- described in the article as factual -- the traumatic effect on former First Nations students who observed him in that role on television. The article describes Ms. Robinson’s correspondence with the COC in which she questioned the due diligence exercised by both the COC and VANOC before hiring Mr. Furlong as CEO of VANOC, implying that had his “hidden past” been known he would not have been retained. Ms. Robinson referred in her publication to her emails to the various organizations about their due diligence and their apparent reluctance to respond to her inquiries.

[327] I am satisfied that the words chosen by Mr. Furlong were intended as a direct refutation of Ms. Robinson’s allegations. Part of that refutation involved undermining Ms. Robinson’s reliability and impartiality as a reporter with respect to the matters on which she was reporting. As the law makes clear, these are legitimate ways to respond to an attack on one’s character and conduct which do not vitiate the protection of qualified privilege. Although Mr. Furlong used direct and strong language in his criticism of Ms. Robinson, the words he used did not go beyond countering the September 27 articles, both of which contained not only their own strong language but allegations that Mr. Furlong lied about his past and committed criminal acts against children.

**iii. The response to the 2013 *Play the Game* article**

[328] Following the September 27, 2012 articles, Ms. Robinson did her best to keep the story alive. She returned to Burns Lake to collect more statements. She continued to email representatives of Own the Podium and the COC, in which she stated, “There is a great deal of confirmation that Mr. Furlong was violent and a racist”.

[329] When Mr. Furlong filed a defamation claim against her, Ms. Robinson’s Response to Civil Claim included new allegations of rape and domestic abuse against his former spouse and another previous partner. Ms. Robinson attached her Response to Civil Claim to the emails she sent to two First Nations organizations and all of the directors of the various boards on which Mr. Furlong sat.

[330] In the emails Ms. Robinson sent to these various organizations, she indicated that she was writing a paper for *Play the Game* and needed responses to a series of questions. She described her paper as one in which she was examining “how the sport community has re-traumatized those who alleged abuse by Mr. Furlong by dismissing their statements and supporting Mr. Furlong”. In the emails to the First Nations, she described the Whitecaps FC (of which Mr. Furlong is executive chair) as an organization that “harbours an alleged abuser of First Nations children”.

[331] As a result of Ms. Robinson’s extensive correspondence, Mr. Furlong was aware that Ms. Robinson was preparing a paper about him to present at *Play the Game*, an international sport organization that posted its papers on its website.

[332] Ms. Robinson’s correspondence prior to presenting her paper on October 30, 2013 is relevant because it repeatedly and purposefully sent the message that Ms. Robinson would be delivering a paper about the purported failure of the Canadian sports community to appropriately respond to Mr. Furlong’s alleged criminal acts against First Nations children. Her evidence was that she hoped, by sending the emails, to persuade the various organizations to answer her questions before she completed her paper and presented it at *Play the Game*.

[333] Mr. Furlong was well aware of the correspondence and, because of it, he was aware of the subject matter of the paper. It was the reason he held a press conference the day before the paper was to be delivered.

[334] Counsel for Ms. Robinson argues that the law does not recognize “anticipatory response” to defamation. There is no case law, he submits, in which it has been held that a response to an anticipated attack may be covered by qualified privilege; an occasion of privilege cannot be created retroactively.

[335] In written argument, Ms. Robinson submits, “It is settled law that a defendant may not plead justification and then seek to rely on facts learned subsequent to the publication of the defamatory statements”. The authority cited for that proposition is *Fletcher-Gordon v. Southam Inc.* (1997), 28 B.C.L.R. (3d) 187 (S.C.) at para. 10: “The facts to justify a libel must have been in the hands of the defendant at the time of the libel [citations omitted]”.

[336] I have difficulty with this argument for a couple of reasons. First, *Fletcher-Gordon* and authorities cited therein deal with the defence of justification, not response to attack as a qualified privilege. The defence of justification is a plea that a defamatory statement is true. The policy imperative underlying the principle in *Fletcher-Gordon* is that a defendant cannot comb through a plaintiff’s documents after the fact to buttress his or her claims of truth with facts that were unknown to the defendant at the time the impugned statement was made.

[337] Second, the facts of the present case are far removed from such a scenario. Ms. Robinson described in some detail the subject matter of her *Play the Game* paper in her email correspondence to the various sports and corporate entities with which Mr. Furlong was associated. She did so with a view to requiring them to either take a position on the allegations against Mr. Furlong or indicate on the record their refusal to do so. Ms. Robinson made clear her intention to give the paper and gave the recipients of her emails a preview of its contents. As a result, Mr. Furlong reasonably anticipated the timing of the presentation and at least some of its contents. He correctly assumed that it would reiterate the allegations of physical and

sexual abuse and would likely describe the new allegations of spousal abuse made in Ms. Robinson's Response to Civil Claim.

[338] I cannot accept in these circumstances that the law would require a person in Mr. Furlong's position to wait until after the harm was done before attempting to undo it, particularly where the intended attack is spelled out in advance as it was in this case. As observed by the Court in *Hill v. Church of Scientology of Toronto* (cited at the outset of these Reasons), a tarnished reputation can seldom be restored to its former luster.

[339] In other contexts, the law requires litigants to mitigate their loss -- that is, to take steps to prevent the loss from becoming any greater than it is when first experienced. Having been unsuccessful in his attempt to prevent Ms. Robinson from presenting her paper, Mr. Furlong took steps to mitigate the damage he accurately anticipated would result from the paper. I am satisfied that he was entitled to attempt to prevent (or at least reduce) the tarnishing of his reputation instead of attempting to restore its luster after the damage had been done.

[340] As Mr. Furlong anticipated, Ms. Robinson wrote about the allegations of former students that she had published in her earlier article. She described the civil claims of sexual abuse brought by Ms. Abraham, Ms. West and Mr. Morice, and stated inaccurately that a fourth civil claim had been filed by Audrey George.

[341] Ms. Robinson also wrote of the allegations of spousal abuse contained in her Response to Civil Claim. The theme of the paper was the "moral vacuum" in the Canadian sports community as a result of its apparent support of Mr. Furlong and its failure to support the First Nations individuals whom he had allegedly abused. The paper is highly critical of Mr. Furlong and the sports community as a whole. The tone is set in the introduction: "How could someone who worked within a system based so deeply on racist notions become the CEO of VANOC and host an Olympic Games?"

[342] I have already set out the substance of the statement Mr. Furlong made the day before Ms. Robinson's paper was delivered and published on the *Play the Game* website. I will address those aspects of the statement alleged to be defamatory.

***“Horrible, heartless lies”***

[343] Mr. Furlong spoke of the “horrible, heartless lies” originating from the articles and court documents of “the activist Laura Robinson”, and her “recklessness” in publishing them. In doing so, he was addressing the sexual abuse claim of Ms. Abraham that had already been investigated by the RCMP and found to be unsubstantiated, the physical abuse allegations that he had repeatedly and categorically denied, and the allegations of spousal abuse contained in the Response to Civil Claim which dated back approximately 35 years, had never been reported and were otherwise unsubstantiated.

[344] These claims were all lies, in Mr. Furlong's view. On all of the evidence, his *bona fides* in countering them cannot be doubted. Given their grave nature, the qualified privilege entitled Mr. Furlong to describe them as horrible and heartless, and Ms. Robinson as reckless. As observed by Professor Brown in *The Law of Defamation in Canada* (cited earlier), a defendant may label a personal attack as a “lie” and the attacker as a “liar”, impugn the truth of the allegations and question the purity of the accuser's motives -- all without losing the protection of the qualified privilege.

***Ms. Robinson as “activist”***

[345] Mr. Furlong twice referred in his statement to Ms. Robinson as an “activist”. It is apparent that Mr. Furlong's characterization of Ms. Robinson was intended to convey his view that her activism was the driving force behind her publications about him. In other words, her writing about him is activism rather than journalism. Ms. Robinson says that is defamatory of her as a professional journalist.

[346] Ms. Robinson acknowledged that her work as an advocate for the advancement of women and First Nations in sport, among many other important issues, has earned her the description of “activist”, a label she has quite appropriately worn with pride. Her activism in these areas was, in part, the impetus behind the decision of York University to bestow on her an honorary degree. However, Ms. Robinson says she regards her role as an activist as something quite separate and apart from her role as a journalist.

[347] I have difficulty accepting that the line between the two is so clear. Ms. Robinson’s expert, Mr. Miller, emphasized that an investigative journalist is not simply a conduit of information, unlike a beat reporter. The investigative journalist creates the story by unearthing facts, making connections between the facts, and interpreting the relevance of those connections. He also emphasized that an investigative journalist is not free from bias, and that his or her biases are likely to shape, to some degree, the story that is being told. However, any bias must be clearly understood by the journalist and stated to be such to his or her readers.

[348] Anyone who follows public events in the media knows that journalists who are not strictly beat reporters have opinions on matters and express them in their articles. They distinguish between fact and opinion, and either expressly or implicitly reveal their personal views on matters. As readers, we assume the facts are fairly and accurately described, and we are interested in the viewpoint of the journalist with respect to those facts.

[349] I have reviewed dozens of Ms. Robinson’s excellent and informative articles on issues other than those engaged in this case, which were filed by her counsel as exhibits at trial to demonstrate the breadth and depth of her experience as a journalist. Where the article is in the nature of an “Op Ed” piece, it advocates a particular viewpoint. Advocacy -- and activism -- are not antithetical to good journalism so long as the line between fact and opinion is clear, and, where the facts are controversial, the nature of the controversy is fairly described.

[350] One might reasonably conclude upon reading Ms. Robinson's articles about Mr. Furlong that they were informed by her role as an advocate -- or activist -- against the exploitation of First Nations and for the equality of women and minorities in sport. In the circumstances, I am satisfied that Mr. Furlong was entitled to characterize Ms. Robinson's reporting as activism without losing the protection of the qualified privilege.

***"A two decade-long pattern of inaccuracy"***

[351] Mr. Furlong's statement that Ms. Robinson "has a two decade-long pattern of inaccuracy in her writing" and "on at least four previous occasions...is known to have publicly attacked or damaged the reputations of good people" is based on four specific instances he then goes on to describe. The first was the allegation in the *Globe and Mail* article about Ken Shields and racism in the selection process for the national men's basketball team, which resulted in an investigation clearing Mr. Shields and the team of the allegation and a retraction by the newspaper; the second, an article Ms. Robinson published in *Chatelaine* magazine about inappropriate telephone usage by the Vancouver Fire Department which was not confirmed by an investigator retained by the Department; the third, a sexual harassment lawsuit filed by Ms. Robinson against a professor which was withdrawn; and finally, the allegation in Ms. Robinson's Response to Civil Claim that Mr. Furlong had abused his former wife, Margaret, which she refuted in a press release the following day.

[352] Ms. Robinson's evidence at trial with respect to the article about Ken Shields, as well as that concerning the Vancouver Fire Department, provided a different perspective on the circumstances surrounding those events. While Mr. Furlong's statements about the investigations and their results may not be accurate in Ms. Robinson's view, they have some support in the public record. They are accurate with respect to Margaret Furlong having refuted the contents of Ms. Robinson's claims in her Response to Civil Claim. Ms. Robinson did not dispute Mr. Furlong's statement that the sexual harassment claim was unfounded.

[353] Most importantly, Mr. Furlong clearly set out the basis for his statement that Ms. Robinson had damaged reputations in the past, and his comments were germane to his efforts to counter her criticisms of him.

***“Backdoor publishing” and the use of the Response to Civil Claim***

[354] Mr. Furlong alleged in his press release that Ms. Robinson had “used the courts as a platform in a campaign to publish horrendous and false accusations” which she could not publish otherwise, and had engaged in “irresponsible backdoor publishing”. His comments were based on Ms. Robinson’s extensive dissemination of her Response to Civil Claim, which contained the new allegations of domestic abuse and rape. Those allegations date back approximately 35 years, had never been reported by the alleged targets of the abuse, and were made in the Response without attribution. The allegations were vehemently denied by Mr. Furlong’s former wife, and all other members of his family, immediately after they became known.

[355] I am satisfied that Mr. Furlong was entitled to respond in the manner he did because his response was clearly an attempt to counter the damning allegations of spousal abuse. His response was, therefore, protected by qualified privilege.

[356] However, that is not the only reason his response is protected. Ms. Robinson’s dissemination of her Response to Civil Claim was an improper use of the court’s process. She attached the Response to dozens of emails she sent to organizations with which Mr. Furlong was associated, and posted it on her website. At the time, the allegations contained in the Response did not form any part of her previous publications, and were not truly responsive to Mr. Furlong’s defamation suit against her. The question is why she included them in her Response.

[357] A reasonable inference is that Ms. Robinson included these new allegations because the contents of her Response are privileged as part of the litigation record and could not give rise to a defamation claim.

[358] Parties to litigation may use the court record solely for purposes related to the litigation; use for any extraneous purpose is an abuse of the court process. Accordingly, Mr. Furlong was entitled to say that Ms. Robinson improperly used her Response to Civil Claim as a means of furthering her public campaign against him.

***Ms. Robinson's role in the Abraham complaint***

[359] In his October 29, 2013 news release, Mr. Furlong stated that the RCMP had cleared him of “the allegations that Ms. Robinson brought to the RCMP on behalf of Beverley Abraham”. He also stated that Ms. Robinson had made the criminal charge against him, and that the RCMP “has found her allegation against me to be completely unfounded”.

[360] In both of his subsequent interviews, the first with Global Television and the second with Maclean's magazine, Mr. Furlong asserted that it was Ms. Robinson who brought the complaint of sexual abuse of Ms. Abraham to the police. Ms. Robinson says that assertion is untrue and defamatory of her.

[361] The evidence at trial established that it was Ms. Abraham who attended the RCMP detachment in Burns Lake on July 12, 2012 to file the complaint against Mr. Furlong. However, the email correspondence of Ms. Robinson to Ms. Abraham in May and early July 2012, reproduced earlier, can fairly be characterized as Ms. Robinson encouraging Ms. Abraham to make the complaint. There is no evidence to suggest that Ms. Abraham, after providing her statement to Ms. Robinson in late April 2012, intended to go any farther with it. It was Ms. Robinson, in her email of May 8, 2012, who advised Ms. Abraham that there was no statute of limitations on sexual abuse and asked whether, in that case, she would move forward with criminal charges.

[362] Ms. Robinson heard nothing from Ms. Abraham for several weeks after an initial response that she was thinking about it. Ms. Robinson had hoped to release her article about Mr. Furlong to coincide with the London Summer Olympics, and needed a timely indication from Ms. Abraham about her intentions. In her email of

July 5, 2012 to Ms. Abraham, Ms. Robinson reiterated that there was no statute of limitations on sexual abuse. She asked whether it was possible to say in an article she hoped to publish within the next two weeks that Ms. Abraham had contacted the RCMP about sexual abuse committed by Mr. Furlong “when she was between the ages of 11-12”. Ms. Robinson then provided Ms. Abraham the following suggestions concerning dates and times: “If you went to kindergarten at age 5 in 1963, you would have been 11 in the spring of 1968; 12 in 1969. I don’t know if I have the correct dates though”.

[363] If Ms. Robinson did not know whether she had the correct dates, then one might assume Ms. Abraham had not offered them in her previous statements. That being the case, it is possible to infer that Ms. Robinson was helping Ms. Abraham “do the math” to calculate her age as 11 or 12 at the time Mr. Furlong was a teacher at Immaculata.

[364] Immediately upon being advised by Ms. Abraham that she had filed her complaint with the RCMP, Ms. Robinson called the Burns Lake detachment in order to confirm that the complaint had indeed been filed. One must ask why Ms. Robinson felt she needed independent verification of the fact that Ms. Abraham had filed the complaint, when she saw no such need for verification of the facts underlying Ms. Abraham’s sexual abuse allegation before publishing her story.

[365] In any event, when the RCMP refused to verify that Ms. Abraham had attended the detachment in Burns Lake with her complaint, Ms. Robinson took it as a sign that the complaint must have been filed; otherwise the RCMP would have expressed ignorance of it. On that basis, Ms. Robinson proceeded to include the sexual abuse allegation in her draft article and forwarded it to the *Georgia Straight* the next day.

[366] Cpl. Mackie’s evidence of his telephone conversation with Ms. Robinson on July 16, 2012, detailed in notes he took at the time, indicates that Ms. Robinson was invested in the RCMP taking Ms. Abraham’s complaint seriously. Among other things, she told Cpl. Mackie she believed Mr. Furlong was attempting to hide his

past in Burns Lake and Prince George, and “had concerns” about the schools in which he had taught. She urged him to interview every student he had taught. She also forwarded to Cpl. Mackie her Response to Civil Claim so that he could investigate the allegations contained in it.

[367] Cpl. Mackie did investigate the allegations contained in the Response to Civil Claim as best he could, given their vintage.

[368] Cpl. Mackie met with Mr. Furlong and his counsel on two occasions in the course of his investigation, and advised them of the information he had obtained from those he had interviewed.

[369] When Cpl. Mackie first advised Mr. Furlong and his counsel by email in April 2013 that the RCMP had concluded its investigation into the Abraham complaint, he referred to “the sexual abuse allegation brought forward by Beverly Abraham through Laura Robinson”.

[370] The suggestion that Ms. Robinson walked the complaint into the RCMP detachment was not literally true. However, in light of what he was told by Cpl. Mackie, Mr. Furlong’s belief that Ms. Robinson was responsible for the filing of Ms. Abraham’s complaint was not an unreasonable one. The qualified privilege Mr. Furlong invokes does not require proof of the truth of his statements, or even that they constitute fair comment. The seriousness of the sexual abuse allegation disseminated by Ms. Robinson entitled Mr. Furlong, as expressed by the Court in *Ward*, to be neither bland nor accurate in his response. Nevertheless, the fact that Mr. Furlong had information suggesting to him that Ms. Robinson was responsible for Ms. Abraham’s complaint is relevant to his honest belief, on reasonable grounds, that what he said “was true and necessary for the purpose of his vindication, though in fact it was not so” (*Adam*, cited in *Ward* at para. 56).

[371] I have concluded that Mr. Furlong’s responses were *bona fides* and relevant to the accusations made in Ms. Robinson’s articles.

**iv. Mr. Furlong's December 12, 2013 News Release**

[372] Mr. Furlong issued the December 12, 2013 news release after being advised by the RCMP that the facts uncovered in the investigation did not support the complaint of Ms. Abraham and that, accordingly, the file was being closed. The statements which Ms. Robinson argues are defamatory of her are the same as those contained in Mr. Furlong's October 29, 2012 news release. I will not address those statements as I have already concluded that they are protected by the qualified privilege.

[373] In conclusion, I am satisfied that Mr. Furlong's responses were occasions of qualified privilege. The remaining question is whether the responses were actuated by malice.

**2. Was malice the motive for Mr. Furlong's responses?**

[374] As noted earlier, where an occasion is privileged, the *bona fides* of the defendant is presumed unless the plaintiff can prove that the statements were actuated by malice. The defence of qualified privilege will only be defeated if the *dominant purpose* of the statements was malice.

[375] "Malice is commonly understood as ill will toward someone, but it also relates to any indirect motive which conflicts with the sense of duty created by the occasion": *Botiuk* at para. 79.

[376] Ms. Robinson argues that Mr. Furlong's actions are not the actions of a man legitimately interested in protecting his reputation. Rather, she argues, they represent a deliberate campaign to discredit the journalist who asked questions, investigated omissions in his narrative, and reported on statements and allegations made by First Nations students. Ms. Robinson submits that Mr. Furlong's dominant purpose was to discredit her and the fact that what she reported was true.

[377] I cannot accept Ms. Robinson's argument. There is no basis in the evidence for a finding of malice. Each of Mr. Furlong's statements was connected to the

occasion of the privilege; each was responsive to the attacks made by Ms. Robinson in her publications on his conduct and character. The purpose of his responses was to defend his reputation.

[378] Further, although the law of qualified privilege does not require objective truth, each impugned statement had some basis in facts known to Mr. Furlong at the time.

[379] Mr. Furlong testified at trial and was vigorously cross-examined. His evidence was that he had an honest belief in the truth of his statements at the time he made them. That evidence was unshaken on cross-examination. The documentary record supports his evidence. Ms. Robinson led no evidence capable of establishing that Mr. Furlong was aware that any of his statements were untrue or that he was reckless as to their truth or falsity.

[380] Accordingly, I am satisfied that Mr. Furlong's statements were not actuated by malice.

## **VI. SUMMARY OF CONCLUSIONS**

[381] As I indicated at the outset of these reasons, the issue in this case is whether Mr. Furlong was entitled to respond in the manner he did to Ms. Robinson's publications about him. To summarize, my conclusions are the following:

- a) Ms. Robinson's publications concerning Mr. Furlong cannot be fairly characterized as the reporting of other persons' allegations against him. Rather, the publications constitute an attack by Ms. Robinson on Mr. Furlong's character, conduct and credibility.
- b) Each of Mr. Furlong's statements was *bona fide* and responsive to Ms. Robinson's attack on him. His statements were, accordingly, occasions of qualified privilege.
- c) Mr. Furlong's responses did not exceed the privileged occasions on which they were made, nor were they actuated by malice.

[382] In the result, Mr. Furlong's defence of qualified privilege is a full answer to Ms. Robinson's defamation claim.

[383] In light of those conclusions, I will not address Mr. Furlong's alternative defences of justification and fair comment.

[384] For the reasons provided, Ms. Robinson's claim is dismissed.

[385] If necessary, the parties may speak to costs.

The Honourable Madam Justice C.A. Wedge