

IN THE MATTER OF: The Public Inquiries Act,
R.S.N.S., 1967, Chapter
250

- and -

IN THE MATTER OF: The Royal Commission on
the Donald Marshall, Jr.,
Prosecution

SUBMISSION ON BEHALF OF HERB DAVIES

Submitted by: Guy LaFosse, Esq.

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Sgt. Herb Davies is a member of the Royal Canadian Mounted Police, who testified before the Royal Commission in Halifax on January 28, 1988. His evidence is found in Volume 47, Pages 8639 through to 8709. Although his evidence and involvement in the second R.C.M.P. investigation are relatively brief, the evidence that he gave is highly significant because it raises grave concerns about the credibility of Chief MacIntyre.

At this Inquiry, Sgt. Davies testified that he was asked by Staff Sgt. Wheaton to accompany Wheaton to Chief MacIntyre's office to pick up the Sydney Police files on the Marshall case. According to Sgt. Davies, his role was to be that of an observer.

Sgt. Davies' evidence is that he has no independent recollection of the exact date of their meeting. His best recollection is that the meeting occurred on the 26th of April, 1982. He reconstructs the date by recalling that he read Attorney General Howe's letter of April 20, 1982 before they met with the Chief. Davies also indicated that the inventory that the Chief provided to Staff Wheaton during their meeting was dated at that time and the date of the inventory is April 26, 1982. In reviewing these two events, Sgt. Davies concluded that his meeting with the Chief and Wheaton occurred on April 26, 1982. Davies' evidence establishing the date of this meeting is found on Pages 8644 through to and including Page 8646 in Volume 47.

In his testimony, Sgt. Davies indicated that he had not met the Chief before their April 26, 1982 meeting and that when they met at that time, he was then introduced to the Chief by Wheaton. After the introductions,

Davies says that Chief MacIntyre sat behind his desk while Wheaton sat across the desk from him. Meanwhile, Davies says that he sat near the end of the Chief's desk in a position where he could observe what Chief MacIntyre was doing. Pages 8648 and 8649 deal with Sgt. Davies' evidence on this point. As well, on Exhibit 09, Sgt. Davies marked in a red square his recollection of where he was sitting during the course of the meeting with Chief MacIntyre and Staff Sgt. Wheaton.

Sgt. Davies also testified that after the three men took their seats, Chief MacIntyre began to go through his files and pass various documents across the desk to Staff Sgt. Wheaton. On one occasion during the course of this meeting, Sgt. Davies noticed that the Chief took a document in his left hand and placed it on the floor. In Sgt. Davies' opinion, this was a deliberate action taken by the Chief and was not an accident. After observing the Chief dropping this particular document on the floor, Sgt. Davies elected not to say anything during the course of the meeting because, according to his evidence at Page 8651:

"...the meeting between Chief MacIntyre and Harry Wheaton and myself was running so smooth. I said to myself, "I will let it continue this way and bring it to Staff Wheaton's attention as we are leaving". I didn't want to have any conflict between Chief MacIntyre and Harry Wheaton and myself if it was not necessary."

According to Sgt. Davies, after Staff Sgt. Wheaton received what he thought was everything pertaining to the Marshall file, Wheaton then asked the Chief, on at least two occasions:

"Now, Chief, do we have it all? Do we have it all?" (Reference Page 8652, Line 1-3)

In response to those questions, Sgt. Davies indicates that the Chief responded, "Yes".

After that response, Staff Wheaton then thanked the Chief and the three men left their chairs and walked out of the room. Once outside of the Chief's door, Davies says that he then stopped Wheaton and advised him that he had observed the Chief dropping a document on the floor during their meeting. As a result, he felt that they did not get the complete file from the Chief.

Following this discussion, Wheaton and Davies immediately went back into the Chief's office. Wheaton then advised the Chief that Davies had observed the Chief dropping a document on the floor. As soon as Wheaton mentioned this, the Chief then went over behind the desk, picked up the document from the floor and made a remark to the effect:

"I might just as well give you it all." (This evidence is found on Page 8652 of Sgt. Davies testimony)

Sgt. Davies indicated that after they had left the Chief's office, he recalls Staff Sgt. Wheaton reading the document to him as they were driving back to the R.C.M.P. detachment. However, as Sgt. Davies indicated in his testimony, the statement did not mean anything to him, particularly since he was not involved in the investigation and really did not know what it was all about. The only thing that Sgt. Davies can recall about the statement that Staff Sgt. Wheaton read to him was that

it was a statement from Patricia Harris.

The evidence concerning whether the Chief deliberately dropped a document on the floor is denied by Chief MacInyre. At this Inquiry, Sgt. Davies was asked by Mr. George MacDonald to comment on Chief MacIntyre's evidence on this issue. The following exchange on this point occurred between Mr. MacDonald and Sgt. Davies:

Q. (George MacDonald Page 8657 Line 21)

"And the Chief said, and I might say my recollection is he said it in very vigorous tones: "Well I'm testifying now under oath here that I never done such a thing, sir." What do you say to that?"

A. (by Sgt. Davies Page 8658 Line 1)

"What I'm saying to that, sir, is I just gave evidence before the Commission I'm telling the truth and what Chief MacIntyre is telling you there is not true."

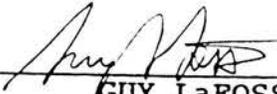
There is an obvious discrepancy between the evidence of Chief MacIntyre and that of Sgt. Davies on whether Chief MacIntyre deliberately dropped a document on the floor as is suggested by Sgt. Davies. The discrepancy between the evidence of Chief MacIntyre and Sgt. Davies no doubt will be a matter of concern for the Commission and will be one that will have to be resolved.

On this point it is submitted that Sgt. Davies gave his evidence in a straightforward, reliable manner. There is nothing in the evidence to suggest that Sgt. Davies had any reason or motivation to fabricate his evidence. All indications are that he enjoyed a good

relationship with the Sydney Police Department and harbored no feelings of ill will toward Chief MacIntyre. In essence, there really would be no motivation whatsoever for Sgt. Davies to fabricate his evidence. Also, it should be remembered that his evidence on this point was corroborated by Staff Wheaton, who indicated that the Chief went behind his desk and retrieved the paper that was on the floor.

Finally, at all times in this investigation, Sgt. Davies was strictly in the role of a disinterested, impartial observer during the meeting with Chief MacIntyre. Consequently, when one considers his evidence and involvement in this investigation with that of Chief MacIntyre, it is submitted that Sgt. Davies' testimony should be considered more reliable and credible.

All of which is respectfully submitted on behalf of Sgt. Davies this 25th day of October, 1988.



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