Warned VD Rem

EX R. I.
E.B.V.

9 March 82.
Dorchester, N.B.
12:03 pm

Statement of: Donald Marshall Jr.
No: 19978:13 & 9531 Dorchester Pen.

Ex 114

In 1971 I was convicted of the murder of Sandy Seale in Sydney N.S. At this time I was seventeen years old and living with my parents on Membertou Reservation. I guess you could say I was a bad young guy. I drank alot and generally hung around with the wrong crowd. I was picked up by the Sydney City Police on several occasions. I was questioned alot by John MacIntyre for things like knocking over gravestones, dynamite caps and I was kicked out of Wentworth park. MacIntyre didn't like me. As I wouldn't take a confession to these Crimes.

On the night of the murder I was not with Sandy Seale until around midnight. I was with Roy Gould, Pauline Bernard and some other women. We came from Wpr and arrived in Sydney around 9:30 pm. Artie Paul, Roy Gould and I then went to the Liquor Store. Artie and I then went to Terry Tobins on Inverlochie St. From there we went to the Celtic Tavern. I left the Tavern alone at roughly a quarter to 11 pm. I walked from Dorchester St. to George St in the area of Wentworth Park.

J. Marshall

Witness -

When I arrived in Wentworth park that night I enter the Park on the little path that runs off George Street. I remember seeing Sandy coming down the path that runs from the little store on George street that would be Mack's Dairy. Sandy and I met in the center of the park on this path. I remember Sandy telling me he came from the dance, and he said he was heading home. I think this is when Bobbie Patterson came down from behind the bandshell. Patterson was very drunk so we put him under some bushes so the police wouldn't get him. I recall asking Patterson if he knew us as he was also stoned on acid. He said he did. I asked Sandy if he wanted to make some money. He asked how and I explained to him we would roll someone. I had done this before myself a few times. I don't know if Sandy had ever rolled anyone before. We agreed to roll someone so we started to look for someone to roll. The first time I saw the two fellows we later decided to rob was on the George St side of the Park. The short old guy I now know as Ebsary was dressed like he came off a boat. He had a blue. [illegible] my memory is poor on just how we got over to the Crescent St side of the Park but I do remember seeing Patricia Harris and Terry Gushue and giving Terry a slight. Sandy went over and talked to Ebsary and the other guy. The three of them would be maybe 20 yards from Patricia Terry and I.

Mitchell

Marshall

I then walked down Crescent Street to Sandy and the two guys. We talked about everything except booze and not about them being drunk. hinted around about money. The two guys started to walk away from us and I called them back. They then knew we meant business about robbing them. I got in a shoving match with the tall guy. Sandy took the short fat guy. I don't remember exactly what Bob said but I definitely remember Ebsary saying I got something for you and then stabbing Sandy. I let go of the guy I had and Ebsary came at me. He swung the knife at me and I held the knife off with my left hand. The knife sort of caught in my jacket and I pulled free and then and felt blood running from chest. The knife and Sandy fell and stayed there. I ran across the bridge and ran into Chant. I told him what happened. I met people coming from the stores and we went over to where Sandy was. I remember going up to a house and asking a guy to call an ambulance. A girl gave me a [illegible] arm.

I definitely did not stab Sandy Seaf. I saw Ebsary do it. When questioned about this I did not mention that Sandy and I were robbing these two as I thought I would get into more trouble. I never told my lawyers or the Court that I just

(3)

thought I would get in more trouble. I felt bad about Sandy dying as it was my idea to rob these guys. I knew Sandy but not real well and its to bad he died but I didnt kill him Ebsary did. I am willing to take a polygraph test to prove I am innocent. I did not Stab Sandy. I gave the Police a statement when it happened and a week later I was picked up by Mac Intyre he didnt question me very much he said he had two witnesses to say I did it and locked me up. J. Marshall

12.39 Pm

Witnesses Cpl. J. E. Carroll

[signature]

#115

N O T E S O F

I N S P E C T O R D. S C O T T

/.

P.A. Marshall File MARSHALL CASE

PAGE TWO - Witnesses in Chief —

Pratico first statements say he saw some 2 fellows night of 28th around park \ - 1 night of lumber

124 Testimony Line 25
Sgt. McIntyre sent for me
Gadie Lynch
Mary Therese Paul.
Thomas Christmas
Donald Joe. - Drinking together that night
148 used his right hand (Marshall left handed

Artie Paul

174 — no - of whether Jr Marshall struck Chuin.

CHANT
Summary A after Midnight 28 May 71
Shall it be 28/29

M. R. McDonald - Chant Questioned Chant originally at Hospital - Re Johnson & McKenzie
(Marshall a 4:50 - 5 1/2 30th)
Chant Statement May 30th ends 535
Pratico at 4pm same date

June 4th Pratico 10:45 AM. 11:30 Chant 2:55pm
rolled shirt Short sleeves up to elbows

91 - 28 He showed his arm & it was bleeding

102 - 1 - 10 Should not have been permitted

114 - 39 Told them stay that wasn't true

115 Took him to Sydney on Sunday

Questioned for 2 hrs.

117 Mr. [illegible] that the court would clarify all these points for cross examination in front of Jury.

Patricia Harriss

Re Seale & Marshall

Strolled around on June 18th to Compound to Pirates & Chants

Donald Marshall

May 30 5'9" - 190 lbs - is this correct or original

He would not let

Det MacDonald in Room with Seale at [illegible]

John Parish's statement.

states that he John Pratt & Tom Simpson were setting on

Steps at John Pratt's house. Sunday Marshall came along said he was arrested this morning & he related thing of Seale Murder including V.W.

82-04-

Autopsy report on Seale.

Any statements or any other evidence

"First Case — Second Case."

"nothing to do with your investigation, only first part."

"Dept of co-operation between two departments."

Statements

[redacted]

"What I done in 1971"

"Marshall set the scene."

Quotes of Chief Medaglia re meeting between he + Gordon Cole.

May 28/29 1971. [illegible] 2 [illegible]

1 eye Witness Maynard Chant - 14 / 25 yrs - [illegible]

2 " " John Pratico 16 / 27 [illegible]

3 believes in Q. James MacNeil + 35 yrs Still [illegible] Seale

4 Roy Newman EBSARY [illegible]

5 Donald Jr Marshall [illegible] 27 yrs

6 1979 Mitchell Rain Sarson. 25 yrs
Confirms MacNeil's [illegible]
Ebsary.

Steven ARONSON.
Sol Gent

Sandra Cole.

120 [illegible] 32

EIGHTY-SIXTH YEAR, NO.143 SYDNEY, NOVA SCOTIA, THU
40 CENTS

June 19, 1986
Cape Breton Post p.1

DM 57

#116

Giffin breaks the silence

Probe into City Police wasn't quashed, says attorney general

By BETSY CHAMBERS
Halifax Bureau
Cape Breton Post

The RCMP did investigate the Sydney police department's role in the wrongful conviction of Donald Marshall Jr., Attorney-General Ron Giffin said Wednesday.

Giffin said the report remains confidential.

He said the CBC's libel lawyer, Robert Murrant, should go to the RCMP if he has new evidence that might spark reopening of the file on the City Police role in Marshall's conviction.

But Murrant said the RCMP already knows what information he unearthed in the 2½ years he was preparing the CBC's defence against a related libel suit that was dropped hours before it was to go to trial this month.

"It's at their discretion now as to what, if anything, they do," Murrant said.

Giffin has ruled out for the moment any public inquiry into the events leading to Marshall's conviction for the 1971 murder of Sandy Seale in Sydney's Wentworth Park, for which Marshall served about 11 years in prison. But the attorney general has said the RCMP is free to look into the Sydney police role in the investigation.

"The RCMP are always at liberty as an investigative police force to pursue any matter they feel appropriate to investigate," said Giffin. Reopening the file would require new evidence, he added.

Giffin said that contrary to repeated allegations, the RCMP completed a report to his department in 1983 on the actions of the Sydney force after the killing. The report has never been made public.

During the 1984 provincial election campaign in Truro, Giffin's Liberal opponent Kirby Grant released parts of a report indicating the RCMP had been told to put its investigation of the Sydney force on hold. In 1982 the RCMP had wanted to interview Sydney police officers involved in the Marshall case after one witness from the original trial admitted she had lied on the witness stand because of pressure from the police.

"What happened is that when the case was reopened back in 1982 the first concern the department here had was to get the rehearing before the appeal division so Marshall's status could be dealt with," Giffin explained.

Marshall was still in Dorchester Penitentiary for the Seale slaying when his lawyer brought forward new information and the attorney general's office was trying to prepare for a hearing which subsequently acquitted Marshall in May, 1983.

When the RCMP expressed interest in pursuing Sydney police involvement in the case, the department thought the Mounties had their priorities wrong. Gordon Gale, director of criminal matters for the department, responded with a note.

Giffin said: "Gordon sent a memo to the RCMP and said look, let's get this business of Marshall straightened out first. We will get the rehearing done and just put those other inquiries — just hold them in abeyance until we get them out of the way first."

Giffin added: "Those are the words he used — 'in abeyance' — and that is exactly what he meant, because after that, after Marshall's conviction had been set aside, Gordon sent a memo to the RCMP instructing them to investigate what had happened in 1971. 'Poor Gordon, who is a civil servant, can't get up and defend himself with these things. He has been wearing this for years, this accusation that he stopped an RCMP investigation."

When Grant's accusation first surfaced, Giffin said, "to respond to her allegation I would have had to make public a confidential RCMP report to my department, which I couldn't do. So we just had to sit there and let the allegations stand."

Murrant said, "That's new to me." He had never heard of the confidential RCMP report before. When he read "abeyance" in the memo, "we took it as a euphemism for meaning stop."

The aborted libel case Murrant was launched by former Sydney police chief John MacIntyre, angered at statements on CBC radio that he believed reflected poorly on his involvement in the 1971 investigation.

In a November, 1983, broadcast on the national network's Sunday Morning, freelancer Parker Barss Donham said that contrary to the view of the Supreme Court of Nova Scotia, Marshall had not been the author of his own misfortune. Donham blamed racism, the judicial system, police coverups, and coercion of witnesses.

When the suit was withdrawn, there was concern voiced that evidence amassed in the case could not be made public for fear of inviting further lawsuits. That prompted renewed calls for a public inquiry into the whole Marshall affair.

Giffin said Murrant should take his information to the RCMP if he's so concerned.

"He's like any other citizen. He is perfectly at liberty to go to the RCMP and say, 'Here is what I've got'."

Murrant has obtained new information. But he said it is more along the lines of a reinterpretation or reanalysis of existing material.

The RCMP knew about it because of all the interviews they sat through in connection with libel case, the lawyer said.

"At least six members of the RCMP would have testified on our behalf."

To go to the RCMP now would be redundant, he suggested.

Murrant maintains that the information he has could be used for a new detailed investigation.

"It's really back at their court as to what they do about it," he said, referring to the RCMP.

The attorney general's department mainly limits dealings with the RCMP to legal advice, Giffin said. Most of it comes locally through Crown attorneys who are sought to give counsel on whether and what charges should be laid.

"If it's a matter of great importance, then they may come to the senior staff here in the department," he said. "It's the kind of thing that just happens on a case-by-case basis.

"Now, on something like the reopening of the Marshall case, that was obviously something of great importance."

The attorney general's department was in close touch with the RCMP over the matter, Giffin said.

He added that if the RCMP uncovered new evidence and reopened the investigation, "they might tell us they were doing it but they wouldn't ask our permission."

On criminal director Gordon Gale:

Poor Gordon, who is a civil servant, can't get up and defend himself with these things

He has been wearing this for years —this accusation that he stopped an RCMP investigation

lway at the J.O. Ruddy Hospital
fused admission to Ajax-Picker-
l was bleeding heavily when she

lamed doctors

tragic event," Robert Stephens

said his wife went first to Ajax
ckering General Hospital — five
from the couple's home. But the
l, experiencing one in a series of
ency department shutdowns to
e with the provincewide strike,
d her to the Whitby hospital —
a 15-minute drive away.
ctor in the hospital's emergency
old Mrs. Black it was "only hand-
fe-threatening cases," said the
n's sister, Pat Ferguson.

OYAL CANADIAN MOUNTED POLICE

GENDARMERIE ROYALE DU CANADA

"H" Division

YOUR NO.
VOTRE N°

OUR NO.
NOTRE N°

Sydney, N.S.
80-01-08

Chief A. Christmas,
Membertou Indian Reserve,
Sydney, N.S.

Dear Chief Christmas:

I would like at this time to express my appreciation for the excellent assistance rendered by Cst. Dan PAUL of your Reserve, in connection with the recent Murder investigation involving Fraser Joseph MacLEAN and Percy Roland MURRIN, who have been charged at court.

The successful conclusion of our investigation was clearly as a result of a team effort by all personnel involved. The assistance rendered by Cst. PAUL was an integral part of that team effort. Please convey my sincere appreciation to Cst. PAUL and to other members of your Council who were most cooperative during this investigation.

Yours truly,

D.B. Scott, Insp.
Commanding Sydney Sub/Division

WILLIAM ALEXANDER URQUHART

#119

BORN: February 23, 1919

SCHOOLING: Grade 10; West Bay School (1938)

EMPLOYMENT:

Canadian Armed Forces (Army) (September 5, 1939). Overseas - England, France, Belgium, Holland, Germany.
Cape Breton Highlanders: Private, Lance-Corporal, Corporal (1939-1944). Royal Regiment of Canada - Sergeant (June 1944-October 25, 1945). Taught at Officers' Training Centre in Brockville, Ontario for eleven months (1943). Wounded twice overseas. Honourable discharge: October 25, 1945.

Farming: 1945-1949

Canadian National Railways: Spare Board Brakeman (1948-1949)

Sydney City Police: Hired February 14, 1949 as a Constable. Walking and car patrol until approximately 1960. Between 1960 and 1965 - By-law enforcement. 1965-1983 Detective Department (Sergeant of Detectives, 1973; Inspector of Criminal Investigation, 1980). Retired June 30, 1983.

COMMUNITY INVOLVEMENT:

Atlantic Police College Board of Directors (1972-1978).
Board of Directors of Howard House (1978-1986).
Board of United Appeal (1979-1984).
Board of Directors Sydney Credit Union (1977-1982). President and Chairman of the Board (1980-1981).

15 Glebe Avenue

RIED
LE V
RCED

WEIGHT	HEIGHT	COMPLEXION	RELIGION
115	5'2	Fair	R.C.

ONALITY	HAIR	EYES	FACE	OCCUPATION
	Brown	Blue		Student

	CHARGE	GOODS	VALUE	DISPOSITION	BOOK NO.	MAGISTRATE
ug. 1?, 1970	Sec. 282 (1)(b) C.C. (5 counts)			Two Yrs. Sus. Sentence	#52935	J.F.McDonald
eb. 1, 1971	Sec. 280 A C.C.			One Month Co. Jail-Feb.8th	#55189	R.J.McDonald
March 17,	1971 Sec. 282 (1)(b) C.C. C.N.R.	Box Car		Three months Co. Jail	#55263	WAD Gu
ay 21, 1971	Sec. 76(2) L.C.A.			$10.00 and costs or 10 days	#12336	
Sept. 1, 1971	Sec. 288(1) C.C. - Sept.8th-4 mos.Co. Jail				#55520	Judge O'Connell
28, 1971	Sec 57-1 M.V.A.			$10.00 & costs or 10 days	#18818	R.R.MacIntyr

8 x 120

0152
RE: 0152

As of 19 Jan

Q CR LANG:E LVL: 2
REM: HFX

*ROYAL CANADIAN MOUNTED POLICE - IDENTIFICATION SERVICES

*RESTRICTED - INFORMATION SUPPORTED BY FINGERPRINTS SUBMITTED BY LAW
*ENFORCEMENT AGENCIES - DISTRIBUTION TO AUTHORIZED AGENCIES ONLY.

FPS: 422521A

PATTERSON. ROBERT BRUCE BENJAMIN

*CRIMINAL CONVICTIONS AND RELATED INFORMATION

1970-08-12 SYDNEY NS	BE & THEFT SEC 292(1)(B) CC (6 CHGS)	2 YRS SUSP SENT ON EACH CHG CONC
1971-02-08 SYDNEY NS	THEFT OVER $50 SEC 280(A) CC	1 MO
1971-03-18 SYDNEY NS	BE & THEFT SEC 292(1)(B) CC	3 MOS
1971-09-08 SYDNEY NS	DAMAGE TO PROPERTY SEC 388(1) CC	4 MOS
1973-08-01 TORONTO ONT	(1) POSS OF STOLEN AUTO (2) THEFT UNDER $200 (3) FRAUD	(1-3) SUSP SENT & PROBATION FOR 1 YR
1973-08-15 TORONTO ONT	(1) BE & THEFT (4 CHGS) (2) THEFT OF AUTO (3) THEFT UNDER $200 (4) POSS OF STOLEN PROPERTY UNDER $200 (5) FAIL TO APPEAR	(1) 12 MOS ON EACH CHG CONC (2-4) 3 MOS ON EACH CHG CONSE & CONSEC TO #1 (5) 1 MO CONSEC
1974-02-04 TORONTO ONT	FAIL TO OBEY PROBATION ORDER	1 DAY CONSEC TO SENT DATED 1973-08-15
1974-04-09 TORONTO ONT	POSS OF A CONTROLLED DRUG FOR THE PURPOSE OF TRAFFICKING	6 MOS CONC WITH SENT DATED 1973-08-15
1975-01-21 TORONTO ONT	POSS OF CONTROLLED DRUG FOR THE PURPOSE OF TRAFFICKING	1 YR

1975-02-11 TORONTO ONT	(1) THEFT OVER $200 (2) POSS OF STOLEN PROPERTY OVER $200 (2 CHGS) (3) THEFT UNDER $200	(1-3) 2 YRS LESS 1 DAY ON CHG CONC
1975-02-13 TORONTO ONT	THEFT UNDER $200	2 YRS CONC WITH SENT NOW SERVING
1975-11-10 KINGSTON ONT	(1) FRAUD (2) THEFT OVER $200	(1) 6 MOS CONSEC TO SENT SERVING (2) 6 MOS CONSEC TO SENT SERVING BUT CONC
1975-12-16 KINGSTON ONT	ESCAPE LAWFUL CUSTODY SEC 133 (1)(A) CC	3 MOS
1977-05-25		RELEASED ON MANDATORY SUPERVISION
1977-10-13	MANDATORY SUPERVISION VIOLATOR	RECOMMITTED
1978-02-07		RELEASED ON MANDATORY SUPERVISION
1978-03-02	MANDATORY SUPERVISION VIOLATOR	RECOMMITTED
1978-03-09 TORONTO ONT	POSS OF STOLEN PROPERTY OVER $200	3 MOS
1978-03-21 TORONTO ONT	THEFT UNDER $200	2 MOS CONSEC TO SENT NOW SERVING
1978-04-27		RELEASED ON MANDATORY SUPERVISION
1978-06-22 BRAMPTON ONT	USE STOLEN CREDIT CARD SEC 301.1(1)(C)(I) CC	2 YRS
1978-06-22	MANDATORY SUPERVISION VIOLATOR	RECOMMITTED
1980-05-09 TORONTO ONT	DRIVE WITH MORE THAN 80 MGS OF ALCOHOL IN BLOOD	$150 I-D 10 DAYS
1980-06-25 TORONTO ONT	CONSPIRE TO COMMIT FRAUD	18 MOS
1981-05-28		RELEASED ON MANDATORY SUPERVISION

*END OF CONVICTIONS

No. 52935

POLICE COURT
CITY OF SYDNEY

Aug 12 1920

Det. Arquhart ..... Prosecutor

Robt. Burke Patterson ..... Defendant

CHARGE:

292 - 1 B
(5 counts)

Age May 12/54

Residence 13 Bleche Ave

Place of Birth Antigonish

Occupation student

Married or Single single Time when committed Aug 12/20

State of education Gr 9.

Religion R C

No. of Prior Convictions

Use of Liquor

Convicted of offence charged and adjudged to pay a fine of ..... $

and costs ..... $
to be paid forthwith.

Total ..... $

In default of payment ..... days in the Common Jail at Sydney.

Warrant Issued .....

Defendant .....

Stipendiary Magistrate in and for the City of Sydney

RECEIVED PAYMENT ..... 19 .....

City Collector

~~BRITISH~~
RCMP - 8896

SWSM

THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY

SEX: M | *CONTRIBUTOR'S NO. | F.P.S. NO. 422521A

NAME: Robert Bruce Patterson
SURNAME | GIVEN NAMES

FORMER NAMES, ALIASES, NICKNAMES, MAIDEN NAME, ETC.

*RESIDENT ADDRESS: 13 Glebe Ave. Sydney Cape Breton N.S.

NAME AND ADDRESS OF NEXT OF KIN: Geraldine Patterson(Mother) Same Adress

	THUMB	INDEX	MIDDLE	RING	LITTLE
RIGHT	13 L M	7	13	11	
LEFT	20	8	12 01	18	

(IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON FOR OMISSION – IF AMPUTATED, GIVE DATE)

SIGNATURE OF OFFICIAL TAKING PRINTS: Det. Sgt. Urquhart

DATE: 13 Aug 70

*NAME AND ADDRESS OF CONTRIBUTOR: Sydney City Police Dept.

*SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS): Robert Bruce Patterson 13 Glebe Ave Sydney
Robert Bruce Patterson 13 Glebe Ave Sydney

*NATIONALITY	*RACIAL ORIGIN	*OCCUPATION – EMPLOYER	*APPARENT AGE
Canadian	Irish	Labourer	16

*DATE OF BIRTH	PLACE OF BIRTH	IF FOREIGN BORN, ARRIVAL DATE IN CANADA
12 May 1954	Antiganish Nova Scotia	

HEIGHT	WEIGHT	BUILD	EYES	HAIR	COMPLEXION
5' 3"	116	Slight	Grey	Blond	Fair

*PECULIARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC.

DATE ARRESTED	DATE REMANDED TO	☒ ON BAIL	☐ IN CUSTODY	COURT
11 Aug 70	12 Aug 70			Sydney Police Court

DATE CONVICTED	DATE SENTENCED	PLACE OF CONFINEMENT	*CAUTIONED BY
12 Aug 70	12 Aug 70	County Court House Sydney	Sydney City Police

*OFFENCE(S) AND DISPOSITION(S)

Five(5) seperate charges of break & enter
Recived two(2) Years Probation
Judge John F. MacDonald

No. 55189

POLICE COURT
CITY OF SYDNEY

Feb 1 19 71

Det Sergt J J MacIntyre ..... Prosecutor

Robert Bruce Watterson ..... Defendant

CHARGE:

Age May 12 1953

Residence 138 George St.

Place of Birth Wellington N.Z.

Occupation Labourer

Married or Single Single

State of education Std IX

Religion R.C.

No. of Prior Convictions

Use of Liquor

Time when committed

Jan 29 71

Adj. Feb 8 71

Convicted of offence charged and adjudged to pay a fine of $ .....

and costs $ .....
to be paid forthwith.

Total $ .....

In default of payment ..... days in the Common Jail at Sydney.

Warrant Issued Feb 8/71

Defendant .....

Stipendiary Magistrate in and for the City of Sydney.

RECEIVED PAYMENT ..... 19 .....

City Collector

RCMP - 6996

SEX	*CONTRIBUTOR'S NO.	F.P.S. NO.	THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY
M			

NAME: Patterson — Robert Bruce
SURNAME — GIVEN NAMES
FORMER NAMES, ALIASES, NICKNAMES, MAIDEN NAME, ETC.

*RESIDENT ADDRESS: 130 George St., Sydney, N.S.

NAME AND ADDRESS OF NEXT OF KIN: Geraldine Patterson, mother, same address

	THUMB	INDEX	MIDDLE	RING	LITTLE
RIGHT					
LEFT					

(IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON FOR OMISSION – IF AMPUTATED, GIVE DATE)

Four Fingers Taken Together

Right Four Fingers Taken Together

SIGNATURE OF OFFICIAL TAKING PRINTS	DATE	*NAME AND ADDRESS OF CONTRIBUTOR
[signature]	1-2-71	Sydney Police Dept.

*SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS)
+ Robert Bruce Patterson 130 George Sydney

*NATIONALITY	*RACIAL ORIGIN	*OCCUPATION – EMPLOYER	*APPARENT AGE
Canadian	Scottish	Labor	

DATE OF BIRTH	PLACE OF BIRTH	IF FOREIGN BORN, ARRIVAL DATE IN CANADA
May 18, 1953	Antigonish, N.S.	

HEIGHT	WEIGHT	BUILD	EYES	HAIR	COMPLEXION
5'4	117	slight	Blue	Blonde	fair

*PECULIARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC.
back-
Scar on left hand

DATE ARRESTED	DATE REMANDED TO	☐ ON BAIL	☒ IN CUSTODY	*COURT
Feb. 1, 1971	Feb. 8th			Police

DATE CONVICTED	DATE SENTENCED	PLACE	*CASE HANDLED BY
Feb. 1/71		Sydney, N.S.	Sydney P.D.

*OFFENCE(S) AND DISPOSITION(S)

Sec. 260 A C.C. - theft, over $50.00

3
REGISTRATION

1971

March 17-71 Arrested and Charged with
Following With B & E Theft
Robert Patterson & Barry
Cameron.
Charged Following With Sec 296 A
C.C.
(68) Brian Pushie, Richard Hill
Gordon Parker, Lawrence
Jardine, Kenneth Cooke,
Dennis Delaney, Myles
Muller, Gerard Kelso,
Michael Joseph Lively,
Thomas Stephen Kuba,
Barry MacKenzie.
This was from Theft of
three kegs of beer from
C.N.R. Box Car.

Sgt. Det. Joseph MacIntyre
Det. Sgt. Hazelwood & Det. McDonald.

Mon 18 Mr Hugh MacQueen 211
Donald St, reports His Car
#69 1960 Chev Sed #2-27-51
stolen from the Y.M.C.A.
some time this evening.
On May 19, picked up one
Greg Gordon, Dorchester,
and he admitted taking
the Car, and was charged
with the offense.

Sgt John MacIntyre
Sgt M. R. MacDonald

No. 00203

POLICE COURT
CITY OF SYDNEY

March 18 19 71

Mr Talyis - M J Mr Donald - Unqualified Prosecutor

Robert Bruce Benjamin Patterson Defendant

CHARGE:

Age May 12, 53 Sec 292-1-B CC

Residence 138 George St.

Place of Birth Cantgrovich

Occupation Unemployed

Married or Single Single. Time when committed March 18/

State of education Ex

Religion R.C

No. of Prior Convictions 3 mos County Jail

Use of Liquor

Convicted of offence charged and adjudged to pay a fine of $

and costs $
to be paid forthwith.

Total $ J A Yeomans

In default of payment days in the Common Jail at Sydney.

Warrant Issued March 18/71

Defendant Exp.

Stipendiary Magistrate in and for the City of Sydney.

RECEIVED PAYMENT 19

City Collector

RCMP – 6888

SEX: M

CONTRIBUTOR'S NO.

F.P.S. NO.

THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY

NAME: PATTERSON (SURNAME) ROBERT BRUCE BENJAMIN (GIVEN NAMES)

FORMER NAMES, ALIASES, NICKNAMES, MAIDEN NAME, ETC.: "BOBBY"

RESIDENT ADDRESS: 138 George St., Sydney, N.S.

NAME AND ADDRESS OF NEXT OF KIN: Mrs. Geraldine Patterson, mother, same add.

	THUMB	INDEX	MIDDLE	RING	LITTLE
RIGHT					
LEFT					

(IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON FOR OMISSION – IF AMPUTATED, GIVE DATE)

Four Fingers Taken Together

Four Fingers Taken Together

SIGNATURE OF OFFICIAL TAKING PRINTS: Robert Wilson

DATE: 18-3-71

NAME AND ADDRESS OF CONTRIBUTOR: Sydney Police Dept.

SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS): Robert Bruce Benjamin Patterson 138 George St

CITIZENSHIP: Canadian	RACIAL ORIGIN: Irish	OCCUPATION – EMPLOYER: Unemployed	APPARENT AGE
DATE OF BIRTH: May 12, 1953	PLACE OF BIRTH: Antigonish, N.S.	IF FOREIGN BORN, ARRIVAL DATE IN CANADA	
HEIGHT: 5'4	WEIGHT: 132	BUILD: small	EYES: Green
HAIR: blonde	COMPLEXION: fair		

PECULIARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC.: Two scars on left hand - long hair

DATE ARRESTED: March 17, 1971	DATE REMANDED TO: March 18	☐ ON BAIL	☒ IN CUSTODY
COURT: Police Court			
DATE CONVICTED: March 18	DATE SENTENCED: March 18	PLACE: Sydney, N.S.	CASE HANDLED BY: Sydney P.D.

OFFENCE(S) AND DISPOSITION(S)

Sec. 292 (1)(b) C. C. - B.& E. and theft - C.N.R. Box Car -

Three Months County Jail

55520
No.

POLICE COURT
CITY OF SYDNEY

Sept 1 19 71

Det. Sr J Mc Donald-Cpl McDonald-A Joseph
Prosecutor

Robert Bruce Patterson
Defendant

CHARGE:
Sec. 388(1) CC
Damage, under $50.00

Age May 12, 1953
Residence 778 Victoria Road
Place of Birth Gibraltar
Occupation Labr
Married or Single Single
State of education IX
Religion R.C.
No. of Prior Convictions
Use of Liquor

Time when committed
Sept. 1/71

Remand to Jail Sept 8th

Convicted of offence charged and adjudged to pay a fine of $
and costs $
to be paid forthwith.
Total $

4 mos. to Jail

In default of payment days in the Common Jail at Sydney.

Warrant Issued Sept 8/71
Defendant

Stipendiary Magistrate in and for the City of Sydney.

RECEIVED PAYMENT 19

City Collector

CONTRIBUTOR'S NO. | F.P.S. NO. 399634A | THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY

NAME EDWARDS Roy Herman Jr.

FORMER NAME(S), ALIASES, NICKNAMES, MAIDEN NAME, ETC. SURNAME GIVEN NAMES

DOMICILE 126 Argyle St., Sydney, N.S.

NEXT OF KIN NAME AND ADDRESS Mrs. Mary Edwards, wife, same address

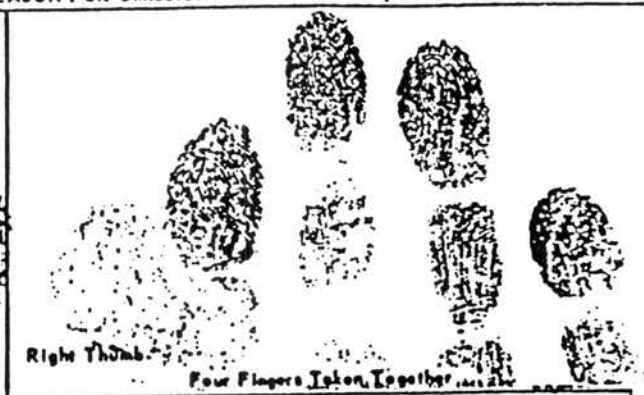
(144-6) 34-4

19 70 / 19 14

Ex #121

	THUMB	INDEX	MIDDLE	RING	LITTLE
RIGHT	17	13 (4)	16	0	19
LEFT	17	12 (3)	15	14	14

(IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON FOR OMISSION – IF AMPUTATED, GIVE DATE)



SIGNATURE OF OFFICIAL TAKING PRINTS: Det. Jim Mephenbach | DATE: 9-4-70 | NAME AND ADDRESS OF CONTRIBUTOR: Sydney Police Dept.

SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS): Roy Edwards, 126 Argyle St., Sydney, N.S.

RACIAL ORIGIN: Canadian	ETHNIC ORIGIN: English	OCCUPATION – EMPLOYER: Cook	APPARENT AGE
DATE OF BIRTH: June 2nd 1912	PLACE OF BIRTH: Newfoundland	IF FOREIGN BORN, ARRIVAL DATE IN CANADA	
HEIGHT: 5'2	WEIGHT: 150	BUILD: Small	EYES: Blue
HAIR: Grey	COMPLEXION: Red.		

PECULIARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC.: Tattoo - upper left arm -emblem

DATE: April 8, 1970	DATE REMANDED TO: April 8	☐ ON BAIL	☒ IN CUSTODY	COURT: Police
CONVICTED: April 8	SENTENCED: April 8	PLACE: Sydney, N.S.	CASE HANDLED BY: Sydney P.D.	

OFFENCE(S) AND DISPOSITION(S)

1. Sec. 85 I.C.A. - $10.00 and costs or 10 days
2. Sec. 83 C.C. - Possession of concealed weapon, a knife,

   $100.00 1/d two months (time to pay)

Ex. #122

accused, if a ground for
sses,
in so far as it is dispensed
9, s. 141.

and any objections that
ript is transmitted to the
bmitted to the judge who
ertify that the charge and
iately certify to the court

any, and any objections

ve, upon payment of any
or transcript of any mate-
) and (3). 1974-75-76,

equest, to receive a copy
nder subsections (1), (2)
s. 26; 1960-61, c. 44,

that the Judge be enabled
al: *BARON v. THE KING*
D.L.R. 945 (5:0).

] Que.Q.B.884*n* (C.A.), it
only contain his views on
bility of witnesses and, in
ex parte explain or justify
N (1978), 39 C.C.C. (2d)

C.R.N.S. 1 (Ont. C.A.) the
ny supplementary reasons
of the trial and by reason
t be unreasonable for the
ut himself into the appel-

sed upon the address of
ere taken a conviction for
w trial ordered: *R. v.*
3.255*n* (Que. C.A.).

notes have been lost, this
not entitled automatically
t no miscarriage of justice
ts of the transcript which
1977), 34 C.C.C. (2d) 73

This subsection is not a curative provision and does not relieve against the mandatory provisions of ss. 487 and 468 which require a record to be made of the evidence at trial: *R. v. TROTCHIE* (1982), 66 C.C.C. (2d) 396, [1982] 3 W.W.R. 751 (Sask. C.A.).

Subsec. (3). Where there is no dispute between the parties as to the accuracy of the transcript of his charge the death of the trial Judge preventing his certification will not affect the hearing of the appeal: *R. v. JOHNSTON* (1975), 28 C.C.C. (2d) 222, 35 C.R.N.S. 164 (N.B.S.C. App. Div.).

POWERS OF COURT OF APPEAL—Parties entitled to adduce evidence and be heard—Other powers—Execution of process—Power to order suspension—Revocation of suspension order.

610. (1) For the purposes of an appeal under this Part the court of appeal may, where it considers it in the interests of justice,

***(a)* order the production of any writing, exhibit, or other thing connected with the proceedings;**

***(b)* order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial,**

(i) to attend and be examined before the court of appeal, or

(ii) to be examined in the manner provided by rules of court before a judge of the court of appeal, or before any officer of the court of appeal or justice of the peace or other person appointed by the court of appeal for the purpose;

***(c)* admit, as evidence, an examination that is taken under subparagraph (*b*)(ii);**

***(d)* receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness;**

***(e)* order that any question arising on the appeal that**

(i) involves prolonged examination of writings or accounts, or scientific or local investigation, and

(ii) cannot in the opinion of the court of appeal conveniently be inquired into before the court of appeal,

be referred for inquiry and report, in the manner provided by rules of court, to a special commissioner appointed by the court of appeal;

***(f)* act upon the report of a commissioner who is appointed under paragraph (*e*) in so far as the court of appeal thinks fit to do so, and**

***(g)* amend the indictment, unless it is of the opinion that the accused has been misled or prejudiced in his defence or appeal. 1985, c. 19, s. 142(1).**

(2) In proceedings under this section the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under paragraph (1)(*e*), are entitled to be present during the inquiry and to adduce evidence and to be heard.

(3) A court of appeal may exercise in relation to proceedings in the court any powers not mentioned in subsection (1) that may be exercised by the court on appeals in civil matters, and may issue any process that is necessary to enforce the orders or sentences of the court but no costs shall be allowed to the appellant or respondent on the hearing and deter-

Section 610—*Continued*

mination of an appeal or on any proceedings preliminary or incidental thereto.

(4) Any process that is issued by the court of appeal under this section may be executed anywhere in Canada. 1953-54, c. 51, s. 589.

(5) Where an appeal or an application for leave to appeal has been filed in the court of appeal, that court may, where it considers it to be in the interests of justice, order that any obligation to pay a fine or any order of forfeiture or disposition of forfeited property be suspended until the appeal has been determined.

(6) The court of appeal may revoke any order it makes under subsection (5) where it considers such revocation to be in the interests of justice. 1985, c. 19, s. 142(2).

Subsec. (1)(*a*). Where the trial Judge incorrectly refused to admit a document into evidence, it was accepted upon appeal by the appellate Court and considered in allowing the appeal and entering a verdict of acquittal: *R. v. PARTRIDGE* (1973), 15 C.C.C. (2d) 434, 5 Nfld. & P.E.I.R.420 (P.E.I.S.C.).

Subsec. (1)(*b*). Approval was given to an appellate Court receiving *viva voce* evidence of analysts whose certificates had been admitted as evidence at trial: *KISSICK et al. v. THE KING* (1952), 102 C.C.C.129, 14 C.R.1 (S.C.C.) (4:1).

Where the appellant's co-accused deposed by affidavit to an improper communication between a Crown witness and the jury foreman the appellate Court conducted a *viva voce* examination of six persons: *R. v. MAYHEW* (1975), 29 C.R.N.S. 242 (Ont.C.A.).

Subsec. (1)(*d*). Where the trial Judge refused to allow a deceased preliminary inquiry witness' evidence to be read in because the Crown had overlooked first proving that the accused had been present there, an appellate Court allowed this technical defect to be cured before it: *R. v. HULUSZKIW* (1962), 133 C.C.C.244, 37 C.R.386 (Ont.C.A.).

If the fresh evidence is considered to be of sufficient strength that it might reasonably affect the verdict of the jury it should not be excluded on the grounds of an earlier failure to exercise reasonable diligence to present it at trial: *McMARTIN v. THE QUEEN*, [1965] 1 C.C.C.142, 43 C.R. 403 (S.C.C.) (9:0).

Fresh affidavit evidence was received where the appellant satisfied the appellate Court that the failure to call the deponent at trial was not due to a lack of diligence: *R. v. MILLER*, [1966] 1 C.C.C.60 (N.B.S.C.App.Div.).

In *HORSBURGH v. THE QUEEN*, [1968] 2 C.C.C.288, 2 C.R.N.S. 228 (S.C.C.), it was held (4:3) that the fact that two witnesses had testified and been cross-examined at trial is not a valid ground for refusal by the Appeal Court to admit their affidavits retracting and contradicting their own evidence.

Before receiving the proposed new evidence, the appellate Court must first be satisfied that it is of sufficient cogency to warrant the granting of a new trial: *R. v. YOUNG and three others*, [1970] 5 C.C.C.142, 11 C.R.N.S. 104 (N.S.S.C.App.Div.).

The power of an appellate Court to admit new evidence is broad and where this evidence, clearly relevant to the issue of guilt, was known to the

Section 612—*Continued*

appeal is referred under this section, the court of appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing. 1968-69, c. 38, s. 59.

Powers of the Court of Appeal

POWERS—Order to be made—Substituting verdict—Appeal from acquittal—New trial under Part XVI—Where appeal against verdict of insanity allowed—Appeal court may set aside verdict of insanity and direct acquittal—Additional powers.

613. (1) On the hearing of an appeal against a conviction or against a verdict that the appellant is unfit, on account of insanity, to stand his trial, or against a special verdict of not guilty on account of insanity, the court of appeal

(a) may allow the appeal where it is of the opinion that

(i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(iii) on any ground there was a miscarriage of justice;

(b) may dismiss the appeal where

(i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (*a*),

(iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (*a*)(ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred, or

(iv) notwithstanding any procedural irregularity at trial, the trial court had jurisdiction over the class of offence of which the appellant was convicted and the court of appeal is of the opinion that the appellant suffered no prejudice thereby; 1985, c. 19, s. 143(1).

(c) may refuse to allow the appeal where it is of the opinion that the trial court arrived at the wrong conclusion as to the effect of a special verdict, and may order the conclusion to be recorded that appears to the court to be required by the verdict, and may pass a sentence that is warranted in law in substitution for the sentence passed by the trial court;

(d) may set aside a conviction and find the appellant not guilty on account of insanity and order the appellant to be kept in safe custody to await the pleasure of the lieutenant governor where it is of the opinion that, although the appellant committed the act or made the omission charged against him, he was insane at the time

the act was committed or the omission was made, so that he was not criminally responsible for his conduct; or

(e) may set aside the conviction and find the appellant unfit, on account of insanity, to stand his trial and order the appellant to be kept in safe custody to await the pleasure of the lieutenant governor.

(2) Where a court of appeal allows an appeal under paragraph (1)(*a*), it shall quash the conviction and

(a) direct a judgment or verdict of acquittal to be entered, or

(b) order a new trial.

(3) Where a court of appeal dismisses an appeal under subparagraph (1)(*b*)(i), it may substitute the verdict that in its opinion should have been found and

(a) affirm the sentence passed by the trial court; or

(b) impose a sentence that is warranted in law or remit the matter to the trial court and direct the trial court to impose a sentence that is warranted in law. 1985, c. 19, s. 143(2).

(4) Where an appeal is from an acquittal the court of appeal may

(a) dismiss the appeal; or

(b) allow the appeal, set aside the verdict and

(i) order a new trial, or

(ii) except where the verdict is that of a court composed of a judge and jury, enter a verdict of guilty with respect to the offence of which, in its opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law, or remit the matter to the trial court and direct the trial court to impose a sentence that is warranted in law. 1985, c. 19, s. 143(3).

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely,

(a) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;

(b) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or provincial court judge, as the case may be, acting under Part XVI, other than a judge or provincial court judge who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or provincial court judge who tried the accused in the first instance;

(c) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury, the new trial shall be commenced by an indictment in writing setting forth the offence in respect of which the new trial was ordered; and

Section 615—*Continued*

In *R. v. TRECROCE* (1980), 55 C.C.C. (2d) 202 (Ont. C.A.) the accused who was present during his appeal pursuant to this section sought to discharge his counsel. The Court being possessed of certain psychiatric evidence raised the question of the accused's competency to discharge his counsel and appoint other counsel. The Court thereupon directed that the accused be examined by psychiatrists who then gave evidence as to the accused's fitness to instruct counsel. The Court held that the accused was competent to instruct counsel based on the evidence that he understood the nature of the proceedings and the function of the persons involved and knew the issues and the possible outcomes notwithstanding he might misinterpret some of the evidence and might not only disagree with his counsel but might not act with good judgment.

Subsec. (4). The term "appellant" is to be construed as equivalent to the accused even though he is the respondent on the appeal: *R. v. KRAWETZ* (1974), 20 C.C.C. (2d) 173, [1975] 2 W.W.R.676 (Man. C.A.).

RESTITUTION OF PROPERTY—Annulling or varying order.

616. (1) Where an order for compensation or for the restitution of property is made by the trial court under section 653, 654 or 655, the operation of the order is suspended

(a) **until the expiration of the period prescribed by rules of court for the giving of notice of appeal or of notice of application for leave to appeal, unless the accused waives an appeal, and**

(b) **until the appeal or application for leave to appeal has been determined, where an appeal is taken or application for leave to appeal is made.**

(2) The court of appeal may by order annul or vary an order made by the trial court with respect to compensation or the restitution of property within the limits prescribed by the provision under which the order was made by the trial court, whether or not the conviction is quashed. 1953-54, c. 51, s. 595.

Powers of Minister of Justice

POWERS OF MINISTER OF JUSTICE.

617. The Minister of Justice may, upon an application for the mercy of the Crown by or on behalf of a person who has been convicted in proceedings by indictment or who has been sentenced to preventive detention under Part XXI,

(a) **direct, by order in writing, a new trial or, in the case of a person under sentence of preventive detention, a new hearing, before any court that he thinks proper, if after inquiry he is satisfied that in the circumstances a new trial or hearing, as the case may be, should be directed;**

(b) **refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person or the person under sentence of preventive detention, as the case may be; or**

(c) refer to the court of appeal at any time, for its opinion, any question upon which he desires the assistance of that court, and the court shall furnish its opinion accordingly. 1968-69, c. 38, s. 62.

The rules as to the admissibility of fresh evidence on appeal should be borne in mind on a reference under para. (*b*). The appellate Court will determine each such situation on its merits and where the circumstances are unusual the appellate Court should not refuse to hear fresh evidence where the interests of justice require that it be heard: *REFERENCE Re REGINA v. GORECKI (No. 2)* (1976), 32 C.C.C. (2d) 135, 14 O.R. (2d) 218 (C.A.).

It would seem that in light of the Canadian Charter of Rights and Freedoms the refusal of the Minister to exercise his power under this section is reviewable by the courts: *WILSON v. MINISTER OF JUSTICE* (1985), 20 C.C.C. (3d) 206, 46 C.R. (3d) 91 (Fed. C.A.), leave to appeal to S.C.C. refused 62 N.R, 394*n*.

Appeals to the Supreme Court of Canada

APPEAL FROM CONVICTION—Appeal where acquittal set aside.

618. (1) A person who is convicted of an indictable offence and whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada

(*a*) on any question of law on which a judge of the court of appeal dissents, or

(*b*) on any question of law, if leave to appeal is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, for special reasons, allow.

(2) A person

(*a*) who is acquitted of an indictable offence other than by reason of the special verdict of not guilty on account of insanity and whose acquittal is set aside by the court of appeal, or

(*b*) who is tried jointly with a person referred to in paragraph (*a*) and is convicted and whose conviction is sustained by the court of appeal,

may appeal to the Supreme Court of Canada on a question of law. 1953-54, c. 51, s. 597; 1956, c. 48, s. 19; 1960-61, c. 43, s. 27; 1968-69, c. 38, s. 63; 1974-75-76, c. 105, s. 18.

Subsec. (1)(*a*). A dissent in a provincial appellate Court on the sufficiency of evidence for conviction is a question of fact and not law: *PEARSON v. THE QUEEN* (1959), 123 C.C.C. 271, 30 C.R. 14 (S.C.C.) (5:0).

Where one appellate court Judge finds a passage in a charge material and fatally misleading and another Judge holds that it was irrelevant, they are in disagreement on a point of law: *R. v. BROWN* (1962), 132 C.C.C. 59, 37 C.R. 101 (S.C.C.) (3:2).

To proceed under this paragraph there must be a strict question of law, not one of mixed fact and law, which is involved in the *ratio decidendi* and upon which there was a disagreement in the provincial appellate Court: *DEMENOFF v. THE QUEEN*, [1964] 2 C.C.C.305, 41 C.R.407 (S.C.C.) (5:0).

Section 674—*Continued*

without the approval of the National Parole Board and no day parole may be granted under the *Parole Act*.

675 to 681. [*Repealed, see note preceding s. 669 above.*]

Disabilities

PUBLIC OFFICE VACATED ON CONVICTION—When disability ceases—Disability to contract—Application for restoration of privileges—Order of restoration—Removal of disability.

682. (1) Where a person is convicted of an indictable offence for which he is sentenced to imprisonment for a term exceeding five years and holds, at the time he is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant. 1974-75-76, c. 105, s. 22.

(2) A person to whom subsection (1) applies is, until he undergoes the punishment imposed upon him or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of the Parliament of Canada or of a legislature or of exercising any right of suffrage.

(3) No person who is convicted of an offence under section 110, 113 or 376 has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(3.1) A person to whom subsection (3) applies may, at any time before a pardon is granted to him under section 4 of the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by him by virtue of that subsection.

(3.2) Where an application is made under subsection (3.1), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection (3) be restored to him in whole or in part and subject to such conditions as he considers desirable in the public interest. 1974-75-76, c. 93, s. 83.

(4) Where a conviction is set aside by competent authority any disability imposed by this section is removed. 1953-54, c. 51, s. 654.

Pardon

TO WHOM PARDON MAY BE GRANTED—Free or conditional pardon—Effect of free pardon—Punishment for subsequent offence not affected.

683. (1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of the Parliament of Canada, even if the person is imprisoned for failure to pay money to another person.

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

(3) Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

(4) No free pardon or
punishment to which the per
a subsequent conviction for
don was granted. 1953-54,

Where an accused has bee
a further offence, for the pu
offender: *R. v. SPRING* (197

An inmate who seeks to
tional pardon by way of *hab*
hearing of the application. T
inmate should not be admitt
the Crown to show breach o
nated thereby, or the Gover
rming that the pardon was
KOPP and THE QUEEN (19
H.C.J.).

684. [*Repealed.* 1974-7

REMISSION BY GOVERNOR

685. (1) The Governor
or in part of a pecuniary pe
of the Parliament of Canad
payable or however it may l

(2) An order for remissi
ission of costs incurred in th
prosecutor is entitled shall l

ROYAL PREROGATIVE.

686. Nothing in this Act
royal prerogative of mercy.

DANG

NOTE: This Part was subst
Amendment Act, 1977 (19
claimed in force October 16,

Transitional provisions.

Section 15(1) and (2) of th
77, c. 53), in force August 5,

"15. (1) Where, on the day
is pending before a court un
ventive detention of a dang
within the meaning of that
proceedings thereon shall b
section 14 had not been enac

(2) Sections 693 to 695 of
to a person who, before the
to preventive detention und
ences in those sections to "a

1982 SCC00580

May 10, 1983.

The Honourable Mark R. McGuigan,
Minister of Justice,
Ottawa, Ontario.

Ex. #126

Dear Mr. Minister:

Re: In the Matter of a Reference Pursuant to Section 617 of the Criminal Code by the Honourable Jean Chretien, Minister of Justice, to the Appeal Division of the Supreme Court of Nova Scotia upon an Application for the Mercy of the Crown on Behalf of Donald Marshall, Jr.

I have the honour to report that this Court has completed the hearing and determination of the conviction of Donald Marshall, Jr., for the murder of Sandford William (Sandy) Seale as directed in the abovenoted Reference to this Court by the Honourable Jean Chretien, Minister of Justice, dated June 16, 1982. We have received certain new evidence as suggested by the Minister and have considered the entire record of the trial of Donald Marshall, Jr., in November, 1971, and the new evidence received by us, treating the matter, as required by s.617(b) of the Criminal Code, as if it were an appeal by the convicted person from that trial.

I transmit to you herewith a copy of the Court's reasons for Judgment and of its formal order issued today.

The Court concluded that the verdict finding Donald Marshall, Jr., guilty of murdering Sandford William (Sandy) Seale is not now supported by the evidence and is unreasonable and must be quashed. We held that ordinarily in such cases a new trial would be ordered but that here no purpose would be served in so doing since the evidence now available could not support a conviction. We also expressed an opinion on the many factors which led to this miscarriage of justice within the judicial system.

The Court ordered that the appeal be allowed, the conviction quashed and a verdict of acquittal be entered.

On behalf of the Court, I respectfully submit this report respecting the Reference.

Yours faithfully,

Ian MacKeigan
Chief Justice of Nova Scotia

IM/RC

cc: Mr. John M. Bentley, Q.C., Dept. of Justice, Halifax

Ex. #127

Duff Evers

Mr. Evers, an R.C.M.P. hair and fibres analyst, has given expert testimony in six provinces, the Yukon, and Labrador. Evers had examined Seale's brown wool, and Marshall's yellow synthetic, jackets back in 1971, and still had uncontaminated slides containing samples of the material in his possession.

I should note as well that he had examined Marshall's jacket, and found a jagged series of cuts and tears. The reader will recall Marshall's statement that Ebsary's knife got caught up in his jacket. Evers' observation is consistent with this.

Evers examined the ten knives secured recently from the Ebsarys, as well as fibres in the envelope that knives had been transported to him in, and fibres in the basket which had contained the knives at the Ebsarys' residence.

Approximately 46 fibres other than cotton were removed from the knives. Twenty-six of these were consistent with the material in Seale's and Marshall's coats.

Knife number 8 had been picked out by Mrs. Ebsary as the one normally carried by her husband during May, 1971. Evers found on that knife:

> "one brown wool fibre consistent with the outer shell of Seale's coat;
>
> eight synthetic fibres all consistent with the inner lining of Seale's coat;
>
> and three synthetic fibres consistent with the material in Marshall's jacket."

The fibres in the inner lining of Seale's coat are "junk fibres" of a variety of types. Polyester, viscose, modacrylic, wool, and acetate, were all present in both the questioned and known samples.

By "consistent", Evers means that the fibres have the same pigmentation, diameter, and consist of the same specific kind of material.

Evers told me:

> "[I feel this is] fairly strong...evidence...it would be a very remarkable coincidence to find all these fibres from the three sources."

The fibres removed from some of the other knives were also consistent with the inner lining of Seale's jacket. There was undoubtedly some cross-contamination when the knives were transported to the lab in a single envelope.

CONVERSATION WITH GORDON GALE,
NOVA SCOTIA ATTORNEY GENERAL'S DEPARTMENT
(PROBABLY ON OR ABOUT APRIL 23, 1982)

- A.G. has taken case from Sydney police and given it to R.C.M.P.

- Sydney police playing games.

- Mrs. E. and daughter say they saw this stuff and recall it with great clarity.

- E. not yet sentenced - still under observation by psychiatrists.

    - is he fit to stand trial???

- Harris - new statement from her.

    - she describes E. to a t

        - old man with flowing white hair and cape.

- Aronson referred by A.G. to Legal Aid.

- compensation not decided

    - but may be given because of Sydney police

- perjury - it may not be...

- toss up between new appeal or pardon

- (I made an editorial note here saying "have distinct impression that he feels E., not Marshall did the stabbing")

- I asked him to write me to advise if they feel a remedy is warranted, and if so, which they would recommend.

- He said he hoped to have a letter for me the week after next.

- Hirshorn.

CONVERSATION WITH GALE MADE 20/82

- letter on the way
- not making a decision
- considerations:
  - pardon perhaps not expedient
  - [because there would be] no public airing of matter
- E. found unfit and in all probability won't recover
- will lay charge against Ebsary.

- CONVERSATION W GORDON GALE N.S. AG'S dept 1624941424-1032

In AG has taken case from Sydney police + given it to RCMP.

Sydney Police playing games.
Mrs E + daughter say they saw this stuff + recall it w great clarity.

E not yet sentenced - still under observation by psychiatrists
- Is he fit to stand trial?? ??

~~Harris~~ Harriss new st. from her
- she describes E to a T.
- old man w flowing white hair
cape

Donald referred by AG to legal aid.
- compensation not decided.
- but maybe given because of Sydney Police.

(6)

perjury - ~~problem~~ it may be noble

toss-up bet - New appeal
- or pardon.

(I have distinct impression that he feels E, not Marshall did the stabbing).

I asked him to write me to advise if they feel a remedy is warranted, and, if so, what they would recommend.

He said he hoped to have a letter for me the week after next.

Hirshhorn.

~~recommendations re compliments~~

— Conversation Cole May 20/82.

– letter on the way.
– not making a decision –
– Canada
– pardon perhaps not expedient.
– no public airing of matter.
– E[illegible] unfit + in all probability won't recover.
– will lay charge Conts Ebony.

Ex. #128

FEDERAL-PROVINCIAL TASK FORCE REPORT ON COMPENSATION OF WRONGFULLY CONVICTED AND IMPRISONED PERSONS

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September 19, 1985

Mr. Roger Tassé
Deputy Minister of Justice
Department of Justice
3rd Floor
Justice Building
239 Wellington Street
Ottawa, K1A 0H8

Dear Mr. Tassé:

At their meeting of November 22-23, 1984, the Federal-Provincial Ministers Responsible for Criminal Justice agreed to establish a Task Force to examine the question of compensation for persons who are wrongfully convicted and imprisoned. At a subsequent Federal-Provincial Deputy Ministers meeting concerning this matter, the Task Force was directed to examine foreign legislation and its frequency of use in compensating wrongfully convicted persons, to examine existing Canadian compensatory regimes to determine their applicability in the area of compensation for wrongfully convicted persons and finally to explore possible legislative options directed towards the creation of a system to compensate persons who are wrongfully convicted and imprisoned.

I have the pleasure of attaching the Report of that Task Force.

In preparing the Report, we met on several occasions to discuss the material available and to exchange views, knowledge and experience on this matter. As you know, Canada lacks a proper legislative mechanism for compensating the innocent person who is unjustly convicted and imprisoned. We hope that our Report will bring Canada closer to a resolution of this problem.

In submitting the Report, I wish to express my sincere appreciation to the members of the Task Force who, under severe time constraints, have worked hard and with dedication on this project. I would also like to thank the jurisdictions they represented for allowing and supporting their participation.

Yours sincerely,

P. Saint-Denis

Paul Saint-Denis
Coordinator
Federal-Provincial Task Force
on Compensation of Wrongfully
Convicted and Imprisoned Persons

Sask. N.B. PEI. not involved

FEDERAL-PROVINCIAL TASK FORCE ON COMPENSATION OF WRONGFULLY CONVICTED AND IMPRISONED PERSONS

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INTRODUCTION

Despite the procedural safeguards found in our criminal justice system, and through no fault of their own, persons are sometimes convicted and imprisoned for a crime they did not commit. While such occurrences are rare, they do in fact happen. Innocent persons who have thus been convicted and imprisoned should have available an avenue of redress which, to the extent possible, compensates them for the damages they have suffered.

Although legislation recognizing the right to compensation for someone who is unjustly convicted is widespread in Europe and in other parts of the world, Canada, like most Commonwealth countries, does not possess a statutory scheme providing for the compensation of persons who have been wrongfully convicted and imprisoned. In Canada, the only method whereby an individual who has been wrongfully convicted and imprisoned can be compensated is through ex gratia payments by the Crown.

As a result of three unusual cases, the Marshall, Fox and Truscott cases, public attention has recently been focussed on this lacuna in Canadian law. This issue was discussed at the Federal-Provincial Conference of Ministers Responsible for Criminal Justice and Juvenile Justice, held in St. John's, Newfoundland, in November 1984. The Minister of Justice and Attorney General of Canada made the following statement at the Conference:

> "Ministers recognize the injustice committed to those who are wrongfully convicted and imprisoned. I believe the federal government has a responsibility in this area, a view welcomed by my provincial colleagues. Ministers agreed to set up a Federal-Provincial Task Force of officials to review the matter and develop options for ministerial consideration."

At a Federal-Provincial Deputy Ministers meeting concerning persons who have been wrongfully convicted and imprisoned, held in January 1985, the terms of reference for the Task Force were finalized and approved. These were:

1. To examine U.S. and European legislation aimed at compensating wrongfully convicted persons.

2. To examine the frequency of use of such legislation and to determine its effectiveness and shortcomings in providing a proper compensatory scheme.

3. To examine existing Canadian compensatory schemes (such as the Criminal Injuries Compensation Board) to determine if such models could be applied in the area of compensation for wrongfully convicted persons.

4. To explore appropriate legislative options and the components thereof, cost implications, federal and provincial responsibilities, participation and cooperation, and other related issues which may be considered important to the development of a system to compensate the wrongfully convicted person.

It should be noted that Canada is a party to the United Nations International Covenant on Civil and Political Rights. Article 14(6) of the Covenant establishes the following right:

> When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

The expression "...shall be compensated according to law..." would appear to lead to the conclusion that entitlement to compensation should be based on a statute. This view is re-enforced by the general thrust of article 2 of the Covenant which states that:

> "...each State Party to the present Covenant undertakes to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

Canada acceded to the International Covenant on May 19, 1976. The International Covenant came into force on August 19, 1976.

At the direction of the Ministers and the Deputy Ministers, the Task Force has focussed its attention on the particular problem of persons who have been wrongfully convicted and imprisoned. The broader question of compensating wrongfully convicted persons who, as the International Covenant states, have "suffered punishment" (other than imprisonment) was not examined. It should be noted, therefore, that a

compensation scheme which limits claims to those who have been wrongfully imprisoned may not meet entirely Canada's obligations under the International Covenant.

The Federal-Provincial Task Force consisted of officials from the federal Department of Justice and the provinces of British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland.

The Task Force would like to acknowledge the important work that had already been accomplished in this area by Québec. The documents they provided us with were extremely useful in generating ideas for discussions on this subject.

The following is the Report of the Federal-Provincial Task Force.

CHAPTER I

BACKGROUND

1. Risk of Wrongful Conviction

The number of cases in which persons are convicted for offences they did not commit cannot be estimated with any degree of reliability. However, as indicated in the introduction of this report, three cases have recently focussed public attention on the issue of persons who were wrongfully convicted and imprisoned.

The first case is that of Donald Marshall Jr. who, in 1971, was convicted by a jury of non-capital murder and sentenced to life imprisonment. In late 1981, the Royal Canadian Mounted Police was asked to look into the matter, when new concerns over the conviction were raised by Marshall's counsel. The R.C.M.P. produced substantial evidence casting doubt upon Marshall's guilt and as a result, the Minister of Justice exercised his special prerogative under section 617 of the Criminal Code and referred the case back to the Nova Scotia Court of Appeal for a special hearing. Fresh evidence was called and Marshall was acquitted. The court found, however, that Donald Marshall's "untruthfulness through this whole affair contributed in large measure to his own conviction". Marshall launched a suit against the police responsible for the original investigation and whose conduct of the matter was alleged to have left much to be desired. The suit was not ultimately pursued. Marshall addressed instead, a general claim for compensation to the federal and provincial governments. The provincial government, which had prosecuted Marshall, appointed a judge from Prince Edward Island to inquire into and report to the Governor in Council respecting ex gratia payments of compensation, including legal costs. The claim was resolved when the Attorney General and Marshall agreed on a figure and Marshall was paid a sum of two hundred and seventy thousand dollars to which the provincial and federal governments contributed equally.

The second case is that of Kenneth Norman Warwick (Warwick had his name legally changed to Fox). Mr. Fox was convicted in Vancouver, in 1976 of rape, causing bodily harm with intent to wound, maim or disfigure and buggery. He was sentenced to ten years imprisonment and his parole on a previous rape conviction was revoked. His appeal to the

British Columbia Court of Appeal and to the Supreme Court of Canada were unsuccessful. Subsequently, newly disclosed evidence suggested that he had been mistakenly identified as the assailant and that another man had committed the offences. He was granted a free pardon October 11, 1984, by the Governor in Council pursuant to section 683(2) of the Criminal Code. The Attorney General of British Columbia announced the appointment of a Commissioner of Inquiry to look into the matter of compensation for Mr. Fox.

The third case is that of Wilfred Truscott. In February, 1984, in Leduc, Alberta, Mr. Truscott was convicted of assault, and mischief by causing damage to private property. His girlfriend testified that he had entered her dwelling house, punched her, and smashed some furniture. Truscott's alibi, that he was in Winnipeg, was neither given in advance to the police or Crown nor substantiated at the trial by any witnesses. Truscott was sentenced to 18 months incarceration. Subsequently, at the request of the Crown, the Winnipeg City Police interviewed certain witnesses referred to the Crown by Truscott's Counsel. When his alibi appeared to be supported, the R.C.M.P. called in the complainant, questioned her and suggested that she take a poligraph test, whereupon she confessed to the fabrication of her complaint. Truscott's conviction has since been quashed and the province is considering the matter of his compensation.

The fallibility of the judicial process has been amply demonstrated particularly in respect of convictions based on mistaken identifications. On February 8, 1984, Senator Metzenbaum of Ohio, read into the Congressional Record references to forty-eight American cases in which the accused was convicted of murder and later found innocent. In Britain, the cases of Adolf Beck, twice convicted of fraud on the basis of erroneous identification and, Oscar Slater who spent twenty years in a Scottish jail for a murder he did not commit, are text book examples of such errors. In 1966, Queen Elizabeth awarded a posthumous free pardon to Timothy Evans, hanged in 1950 for a killing to which the notorious mass-murderer Christie ultimately confessed.

It is difficult to ascertain the number of persons who may have been wrongfully convicted and cases of wrongful conviction may never come to light. In 1932, Professor Edwin Bouchard, in his pioneering book Convicting the Innocent, presented an account of sixty-five cases of wrongful convictions. In each instance the innocence of the person convicted was later conclusively established, but often only after that person had spent considerable time in prison. In about half the cases, mistaken identification

was the cause of the conviction. Unjust convictions were also attributable to perjured testimony, some of which was presented with the knowledge of the prosecutor, mistaken inferences from circumstantial evidence, over-zealous prosecutions, prior convictions and unsavory records, unreliability of expert opinion and frame-ups.

2. Existing Legal Remedies for Wrongful Convictions

i) Appeals

A right of appeal against conviction for an indictable offence is provided by section 603 of the Criminal Code by right on any ground of appeal that involves a question of law alone or, with leave of the court of appeal or a judge thereof, on any ground of appeal that involves a question of fact or of mixed law and fact. Section 613 of the Criminal Code provides that on hearing an appeal against a conviction, the court of appeal may allow the appeal where the evidence cannot support the verdict, where there was a wrong decision on a question of law or where there was a miscarriage of justice. Convictions affirmed by a court of appeal may be appealed to the Supreme Court of Canada under Section 618 of the Code on any question of law on which a judge of the court of appeal dissented or on any question of law for which leave to appeal is granted by the Supreme Court.

ii) Prerogative of Mercy

Under Section 617 of the Code, the Minister of Justice may exercise the prerogative of mercy and direct a new trial before any court in any case of a person convicted of an indictable offence or sentenced to preventive detention as a dangerous offender, if, after inquiry, he is satisfied that such is warranted in the circumstances. The Minister may alternatively refer any question to the court of appeal for its opinion on the matter or refer the case for a hearing as if it were an appeal by the convicted person. The rehearing by the Nova Scotia Court of Appeal of the evidence in the Donald Marshall case is an example of the use of this section.

The prerogative of mercy is also expressed in statutory form in section 683 of the Code which provides for the grant of remission of sentence, free pardons and conditional pardons. Where a free pardon is granted, the person is deemed never to have committed the offence in respect of which the pardon is given.

iii) Criminal Records Act

A form of pardon may also be granted under subsection 4(5) of the Criminal Records Act. This is the normal route used by applications of persons who have served their

sentences and have redeemed themselves over time following conviction. This pardon seals the record but does not eliminate the fact of the conviction. Applications for pardon under this provision and under section 683 of the Code are administered by the Clemency and Criminal Records Section of the National Parole Board.

iv) Civil Remedies

Tort law, of course, may provide a remedy for someone who was wrongfully convicted and/or imprisoned by way of an action in malicious prosecution and/or false imprisonment.

While successful actions based on false or wrongful imprisonment are not uncommon, actions in malicious prosecutions seldom succeed because:

a. it has been and continues to be the policy of the courts that it is essential to the criminal justice system, and in the public interest, that prosecutors, especially the Crown, should not be impeded by the fear of external influences, such as the possibility of a civil action, when properly invoking judicial process; and

b. the onus on the plaintiff in such an action creates a very heavy burden on him (he must establish that the proceedings complained of were instituted without reasonable and probable cause and for an improper purpose).

Indeed, success in such civil actions against Attorneys General and their agents is unheard of because the courts recognize the principle of general immunity of Crown officials (most recently affirmed in the Ontario case of **Nelles**).

CHAPTER II

INTERNATIONAL COMPENSATORY SCHEMES

Recognition that there is a need for legislation to deal specifically with the claims of persons who has been unjustly convicted is not a recent development. The need to provide such legislation has been recognized from the time of Voltaire. Enactment of legislation did not generally occur, however, until the late nineteenth century, a delay which was attributable to a dispute among legal philosophers who could not agree as to whether compensation was a duty of the sovereign or only a moral obligation. Legislation recognizing the government's obligation to compensate those who have been unjustly convicted is now widespread in Europe and in other parts of the world.

The Scandinavian Countries

The Scandinavian countries, Sweden, Norway and Denmark, first enacted, in 1886, 1887 and 1888 respectively, extensive and elaborate laws on the subject of compensation for errors of criminal justice. In considerable detail they worked out the conditions under which the right to compensation would be exercised, its various limitations and the procedure for giving it effect as a remedy to the injured individual.

In Norway, sections 469-471 of the Criminal Procedures Act provides for compensation from the state in cases of errors of criminal justice (similar provisions are found in Sweden's 1974 Act on Compensation in Case of Deprivation of Liberty - section 2 and Denmark's Administration of Justice Act - section 1918 (d).

Section 469 of the Norwegian legislation provides for compensation in three situations. The first provides for compensation where the accused has suffered a "material loss" through the prosecution per se, that is, if the accused was wrongfully charged with a crime. The second covers compensation for damages suffered by the accused through being subjected to detention during the police investigation of the case. The third situation concerns compensation for financial losses sustained by a convicted person because he has suffered a punishment which is later found to have been wrongfully imposed. In this case, to be able to lay a claim for compensation, the wrongfully convicted person must be acquitted of the crime for which the penalty was imposed.

NORWAY

The Criminal Procedure Act imposes two conditions which must be met before the person who was wrongfully convicted can claim compensation. Section 470 bars an award of compensation if in some way - for example, by a false confession or as a result of perjury - the accused himself has brought about the conviction. The second condition precedent to compensation is that the individual must file a timely claim. Section 471 provides that, in cases of a wrongfully convicted person, the claim must be filed within one month of the acquittal. If the accused overlooked this time limitation he loses the right to compensation.

Compensation may be awarded only for financial loss; damages of a non-financial nature are not compensative. The provisions for the assessment of compensation vary according to the reasons for the claim. When compensation is awarded in the case of the wrongfully convicted, the award may be made only in respect of the pecuniary loss suffered from the time the sentence is served. In spite of the wording of the legislation which indicates that awards are to be made for damages that "have been suffered", it would appear that compensation is also given for losses which the person is likely to suffer by reason of his conviction.

Under Swedish legislation, compensation may be paid for expenses, loss of earnings from employment, interference with business or the suffering caused. Compensation payments will cover losses caused by loss of liberty which can be verified by the person concerned. Relatively small sums are paid for compensation for suffering.

Amount of Compensation

The payments awarded to the wrongfully convicted under section 469 of Norway's Criminal Procedure Act would appear to be very infrequent. From 1953 to 1958, the only period for which figures are available, compensation was paid out to a wrongfully convicted person on only two occasions: one award of approximately $11,000 and another of about $35,000.

A comparison with Denmark which has a population roughly equivalent to that of Norway's, reveals that, for the same five-year period, about $12,000 was disbursed by way of compensation for wrongful prosecution for detention, as well as for wrongful conviction.

Holland

Compensation can be granted to persons detained in custody who are ultimately acquitted, and for persons whose sentence is annulled after it has been fully or partly served.

Compensation is available for both pecuniary and non-pecuniary loss and there is no limit to the amount of compensation that can be awarded. An application for compensation must be made within three months of the close of the case. The applicant has a right to be heard and to have legal representation. So far as possible, the court dealing with the claim for compensation will have the same composition as the trial court. There is a full right of appeal against all decisions on compensation.

Compensation is awarded where the court is of the opinion that, taking all the circumstances into account, it is fair and reasonable to make an award. The applicant is not required to prove his innocence, but he will not automatically get compensation in every case covered by the criteria set out above.

A claim for compensation may be made by the dependants of the person innocently detained as an alternative to a claim by the person directly concerned. If the claimant dies after having submitted an application or lodged an appeal, compensation is paid to his heirs.

France

In 1895, France passed a law creating a procedure for the review of judgments and providing for compensation for victims of wrongful convictions. Now included in sections 622 to 626 of the French Criminal Procedure Code, this procedure for review and consequent claim to compensation is limited to the field of criminal law.

The application for review is further limited to four specific instances:

- evidence establishing the continuing existence of the alleged victim after a conviction for homicide;

- contradictory judgments, where two decisions are irreconcilable because each has convicted a different person for the same crime;

- perjury against the accused;

- and finally, a new circumstance of factual or legal significance disclosed after the conviction, and which makes probable the innocence of the accused.

In the first three instances, the persons empowered to initiate proceedings of review are the Minister of Justice or the accused, or if the latter is incompetent or deceased, his duly appointed representative or estate. Only the Minister of Justice may apply for review on the basis of a new fact.

An application for review does not necessarily result in compensation. There must exist a conviction and it must be set aside as a result of the review. Only the victim, his spouse or his ascendents or descendents are entitled to compensation and it must be applied for rather than being granted of the court's own motion. And lastly, compensation is not granted where the victim himself was the cause of the mistake.

If compensation is granted it is not limited to financial loss but covers all non-pecuniary loss suffered by the victim. There is no limit on the amount of compensation which can be awarded. The award is payable by the State which may thereafter claim over against the person in fact responsible for the mistake. If the applicant so requests, the court decision setting aside his conviction is posted in the city when the conviction occurred, in the place where the offence was committed and in the town where the applicant lived.

The American Experience

In contrast to Europe, legislatures in the United States have shown a general apathy to the predicament of those who have been unjustly convicted. Only a few jurisdictions, including the federal government, have enacted legislation providing some measure of redress.

The earliest instance of an attempt to enact such legislation in the United States occurred in 1912 when a bill was introduced in the Senate for the relief of persons unjustly convicted of crimes against the State. California was the first State to enact legislation when a bill similar to the one introduced in the Senate became law in 1913.

The existing compensation legislation in the U.S. can be separated into two distinct categories. One consists of those which provide that the claim of one who alleges to be unjustly convicted is to be heard in an administrative agency. The other consists of statutes that create a cause of action in the courts for one who claims to have been unjustly convicted. Within these categories there are considerable differences.

The California, Tennessee, and Wisconsin statutes place the claims in an administrative agency. With respect to one who may file a claim, California and Wisconsin provide that the claimant may be any person who, having been imprisoned, claims to be innocent. Additionally, California provides that the claimant may be one who is granted a pardon on the ground of innocence. In both states, there is no requirement that the original conviction must have been reversed or set aside. Tennessee, on the other hand, provides that a claim may be filed only by one who is granted a pardon on the ground of innocence. In California and Wisconsin the burden of proof is placed upon the claimant to establish innocence. Only in Wisconsin is the standard of persuasion set forth, "clear and convincing evidence." So far as the amount of compensation that can be awarded, California places a maximum of $10,000. Wisconsin imposes a limit of $25,000, but not over $5,000 per year of imprisonment. However, in Wisconsin the administrative board may recommend a larger amount to the legislature. Tennessee does not restrict the amount recoverable. Unlike the other states, California limits the damages to pecuniary harm. In all three states, the State is the party which is liable for any damages recoverable.

The legislation of the federal government, District of Columbia, Illinois, New York, and Texas statutes create a cause of action. Illinois, New York and Texas require as a prerequisite to a suit that a person seeking relief has been granted a pardon. The federal government and District of Columbia statutes, on the other hand, require some form of official acknowledgement - not limited to a pardon - that an error has occurred as a prerequisite to a suit. Three methods of meeting this requirement are specified. They are proof that: (1) the criminal conviction has been reversed or set aside on the ground that the person convicted was not guilty of the offence; (2) the person seeking relief was found not guilty of the offence at a new trial or rehearing; (3) a pardon has been granted on the ground of innocence. The federal government and District of Columbia statutes

further require proof that the person seeking relief did not commit any of the acts charged. The District of Columbia requires that this proof be made by "clear and convincing evidence." The federal statute restricts the proof that may be admitted; proof of the required facts can only be made by a certificate of the trial court or pardon. The federal statute places a maximum of $5,000 on the level of compensation. Illinois imposes a limit based on the amount of years in prison, the maximum being $35,000 for imprisonment over 14 years; it will award up to $15,000 for up to five years in prison and $30,000 for five to fourteen years. Texas provides for a maximum of $25,000 for "physical and mental pain and suffering" and $25,000 for any medical expenses incurred. The District of Columbia and New York do not restrict the amount recoverable. In each instance, the sovereign government is the party who is liable for any damage recoverable.

In New York, the Law Revision Commission, in a recent report to the Governor of the State of New York on the issue of redress for persons unjustly convicted and imprisoned, expressed the view that the most appropriate way to provide a meaningful form of relief to one who was unjustly convicted is to create legislatively a new claim, and to have it asserted against the State. The Commission indicated that in view of the inherent nature of the Governor's power to pardon and the stringent requirement limiting the granting of a pardon on the ground of innocence, the existing mechanism for redress could not be considered a realistic remedy.

Amount of Compensation

In the U.S., there have been few claims made under the compensatory statutes. The information available on this question indicates that in California, there have been thirty claims in the past ten years, five of which were sustained; in the District of Columbia, there have been two claims filed in the past three years, one of which was successful and settled for a small dollar amount; and in Wisconsin, there have been eighteen claims filed in the past twenty years, three of which were sustained. New York recently awarded one million dollars to a person who had served more than 20 years in prison after being wrongfully convicted in 1938 of murdering a New York City policeman.

Japan

The rules governing compensation of persons wrongfully convicted and punished or wrongfully detained are found in the Criminal Compensation Act. Further, if a person's conviction was caused by a public official's intentional misconduct or negligence, the victim has a right to claim for damages in accordance with the State Redress Act.

After the normal appeal procedure has been exhausted, a conviction may be reviewed if the documentary evidence or the testimony upon which the conviction was based is found to be false or if new evidence comes to light which would have resulted in the accused's acquittal or in a lighter sentence imposed on the accused by the court. An application for review may be requested by a public prosecutor, the convicted person or his legal representative, or his spouse or family if the convicted individual has died.

If a conviction review results in an acquittal, the victim, or his successor if he has died, may make a claim for compensation against the government. The amount to be awarded, however, is determined by the court. Compensation for time spent in prison is calculated at the rate of not less than $3 a day and not more than $7 a day. In determining the amount to be awarded, the court must take into consideration the type of physical restraint i.e. simple detention or forced labour, the duration of the imprisonment, damages to the property of the victim, loss of benefits which were to be obtained by him, mental suffering and physical injuries suffered while in prison and the possible fact of intentional misconduct or negligence by the police, prosecutor or judicial authorities.

With respect to the compensation in the case of an accused who has been executed, the court may award up to approximately $16,000.

A person receiving a compensatory award based on the Criminal Compensation Act is not precluded from claiming damages in accordance to the State Redress Act if the conviction resulted from intentional misconduct or negligence of a public official.

CONCLUSION

Proof of innocence is a necessary element in many of the compensatory schemes examined in this section. The burden of proving innocence in the compensation proceeding is placed upon the claimant. The presumption of innocence afforded to the accused in a criminal proceeding is not

applicable in the subsequent statutory compensation proceeding. The time elapsed between the original trial and the time when the wrongfully convicted person is released may impede his attempt to prove his innocence. It could be argued that errors in past proceedings and evidentiary difficulties should not fall upon the shoulders of the claimant in his action for compensation, especially in view of the greater fact-finding resources of the government and the difficulty a claimant faces in proving a negative: that he did not commit a certain act. If proof of innocence is to constitute a key element in establishing a claim for compensation, the standard of proof to be met could be a less demanding standard of proof than the criminal law standard of proof beyond a reasonable doubt.

In a number of jurisdictions compensation is limited solely to pecuniary losses. In many cases it is precisely the mental anguish and loss of reputation which have most affected the wrongfully convicted person and it would appear reasonable to make amends for these injuries by way of financial recompense. The ability to award for non-financial damages could prove especially desirable where the person has suffered no financial loss whatever through the imprisonment. In such cases it is only through the award of compensation for non-financial damages that a wrongfully convicted person can receive the necessary redress resulting from a wrongful conviction.

Several jurisdictions have imposed a statutory ceiling on the amount of damages recoverable. Some of these limits are extremely low and, measured against any standard of decency, would fail to provide for any kind of adequate compensation. It has been argued that the wrongful conviction and imprisonment of an innocent person is such a serious invasion of civil liberties that the state should fully compensate such persons and consequently that no limit on compensation should exist. Opposing this view is the argument that failing to impose some limit on compensation would result in too great a drain on the public purse. It should be noted, however, that in the jurisdictions where there is no limit on compensation, this absence of a limit does not appear to have caused serious problems. This may be explained by the fact that generally there are very few claims for compensation, and where claims have been made, awards have been very conservative. The effect of limiting compensation would be that some people would be fully compensated and others would not. The more the claimant was damaged the less adequately, in proportionate terms, would he be compensated.

Lastly, certain jurisdictions impose unrealistically short time limits for filing compensation claims against the state. It is recognized that a time limitation should exist for filing a claim after which a claimant would be barred from filing. The time limitation, however, should be such as to appropriately balance the state's interest in avoiding stale claims and the wrongfully convicted and imprisoned person's interest in a fair opportunity to assert his claim.

CHAPTER III

ISSUES ARISING FROM ESTABLISHING A COMPENSATORY SCHEME FOR WRONGFULLY CONVICTED AND IMPRISONED PERSONS

A number of important policy questions must be addressed when contemplating the implementation of a compensatory system for individuals who have been wrongfully convicted and imprisoned. Who should be entitled to lay a claim? The imprisoned person, certainly, but should his family be entitled or should third parties who are able to show damages be entitled to present an independent claim? What prerequisites should be met by the claimant before he is awarded compensation? How should awards be calculated and should there be limits to the amounts which can be awarded? Who should determine the amounts? Who should pay the compensation? These questions and other related matters will be discussed in this section.

At this point, certain preliminary observations can be made with respect to this entire matter. First, our criminal justice system is not perfect and, in spite of many safeguards, errors will occur. Second, although these errors may occur at any given step of the criminal justice process, the most regrettable, the most unfortunate, and certainly the error which is most deserving of redress is the error resulting in an innocent person being convicted and imprisoned. Imperfect as our criminal justice system may be, it tends to progressively filter out those who have been erroneously involved in it such that the number of wrongful arrests will be greater than the number of wrongful prosecutions and so on. Our third observation, therefore, is that in trying to provide options for a system of redress for persons wrongfully convicted and imprisoned we are mindful that we are trying to provide a system which deals with freak occurrences. The rarity of such cases leads us to our last observation which is that whatever the compensatory scheme chosen, it should be simple and responsive to the injured person's claim for compensation.

Mindful that Canada is a party to the United Nations International Covenant on Civil and Political Rights and that article 14(6) of the Covenant provides for the compensation of unjustly convicted persons who have suffered punishment, the Task Force was of the view that the wording of article 14(6) would provide a useful framework within which this issue could be discussed. What follows is an examination of the wording of article 14(6) within the Canadian context. We wish to stress that article 14(6) of the Covenant provides that an unjustly convicted person who has suffered punishment shall be compensated. At the

request of Ministers and Deputy Ministers, our examination of the punishment suffered will focus on the narrower question of imprisonment.

The following underlined words and expressions of Article 14(6) of the Covenant will be examined:

> When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice the person who has suffered punishment as a result of such conviction shall be compensated according to law unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

PERSON

Who should be compensated? Under the Covenant, the actual person who has directly suffered punishment unjustly appears to be the only one entitled to compensation. In developing a compensatory scheme, however, it can legitimately be asked if relief should be provided to any person capable of demonstrating a loss or injury as a result of another's wrongful conviction. Not only the unjustly punished person serving his term in prison suffers from the wrongful imprisonment; his spouse, his children or other persons who are dependent on him may suffer financial and other damages. In some instances, damages may also be suffered by his employer or persons who are in a business relationship with him. If all these people have suffered damages as a result of the wrongful conviction and imprisonment, it is arguable that they should have a claim in damages. A number of foreign jurisdictions allow for such a broadly based compensation scheme.

Another dimension to the question of who should be compensated is whether the right to claim compensation should survive the death of the unjustly punished person. Should this person's claim for compensation survive so that it can be pursued by his dependents or representative? It would seem appropriate that at least his dependents be able to claim; but should his estate?

In our view, the purpose of a state compensatory scheme of the kind being examined is to provide redress to the person who, as a result of a wrong inflicted on him by the state, is imprisoned and deprived of his liberty. The right to lay a claim should therefore be limited to the person who was directly wronged by the state. If the injured party dies

while imprisoned, or after imprisonment and before redress is obtained, it would seem fair that the right to claim should be available to those surviving members of his immediate family who were wholly or partly dependent upon the deceased for support. But the compensation which the dependents may claim should be limited exclusively to the damages suffered by the deceased.

FINAL DECISION

At what point in the criminal justice process should the decision to convict and imprison be considered an error for which compensation should be awarded? Article 14(6) of the Covenant suggests that it is when "...a person has by a final decision been convicted of a criminal offence...". The expression "final decision" could be interpreted as meaning one of two things: because a sentence is enforceable from the moment it is imposed, it could mean the decision reached at trial; or it could be interpreted as that decision which remains after a person has exhausted all ordinary methods of judicial review and appeal or all waiting periods have expired.

An examination of article 14(6) when read as a whole suggests that the Covenant proposes to cover both types of final decision. Indeed, the Covenant would seem to impose an obligation to compensate when a wrongful conviction is corrected by reversal or pardon due to some newly discovered fact. Thus a conviction reversed at any level of appeal could, when based on a newly discovered fact, result in compensation being awarded if the person has suffered punishment. Compensation could also be awarded if, as a result of a new fact, the wrongfully convicted individual is pardoned.

In our view, however, a wrongful conviction which is reversed in the normal course of appeal is an indication that the criminal justice procedure has worked and that ultimately no error was committed. Compensation should only be awarded when a clear failure of the criminal justice system has resulted in a person being wrongfully imprisoned. In our estimation, compensation should be awarded only where the aggrieved party has exhausted all ordinary methods of judicial review and appeals. An exception may have to be made in the case of someone who has not exhausted his rights to appeal but where the time limits for an appeal have expired. In our view, this person should be compensated if he were wrongfully convicted and imprisoned despite his failure to appeal.

CONVICTED OF A CRIMINAL OFFENCE

In Canada the above expression is usually taken to mean convictions resulting from the commission of offences provided by federal legislation and enacted pursuant to federal criminal law powers under section 91(27) of the Constitution Act, 1867. This interpretation would necessarily exclude all wrongful convictions resulting from penal or quasi-criminal offences provided by provincial and federal legislation. Compensation limited to redressing wrongful conviction and imprisonment resulting from criminal legislation may meet the obligation set out in article 14(6) of the Covenant. In our view, however, redress restricted only to wrongful convictions resulting from federal criminal offences would appear too narrow an approach and would inadequately reflect the spirit of the International Covenant.

Canada's federal system of government, with legislative powers divided between the federal parliament and provincial legislature, has resulted in a distinction being made between federal criminal laws and provincial statutes to which penal measures including the possibility of imprisonment are attached. In unitary states this distinction between criminal and penal offences does not exist. In these countries, therefore, the Covenant would apply to all offences which can result in a wrongful conviction. It may be argued, therefore, that the intent of the Covenant is to provide compensatory relief for wrongful convictions arising out of criminal and penal offences. Moreover, the French version of article 14(6) uses the expression "condamnation pénale" which suggests that compensation should not be limited to wrongful criminal convictions.

For these reasons we believe that compensation should be made available to persons who have been wrongfully convicted and imprisoned pursuant to either federal (indictable and summary offences) or provincial penal legislation.

CONVICTION HAS BEEN REVERSED OR HE HAS BEEN PARDONED

Article 14(6) of the International Covenant provides that someone who is convicted of a criminal offence and subsequently has his conviction reversed or is granted a pardon shall be compensated. The Criminal Code already provides the means whereby a final decision resulting in a conviction may be reversed or where a wrongfully convicted person may be pardoned. Under section 617 of the Code, the Minister of Justice may, upon an application for the mercy of the Crown by or on behalf of someone who has been convicted of an indictable offence, direct a new trial. He may also refer the matter to the court of appeal for hearing or obtain an opinion from the court of appeal on any question upon which he desires assistance. Under section 683, the Governor in Council may grant a free pardon to any person who has been convicted of an offence. A person who is granted a free pardon is deemed never to have committed the offence in respect of which the pardon is granted.

The Interpretation Act provides that all the provisions of the Criminal Code relating to indictable offences and summary conviction offences apply also to all federal non-Criminal Code offences. Section 617, therefore, would be available as a mechanism to reverse wrongful convictions at the federal level generally. Insofar as we believe that any compensation scheme should be available for both summary conviction and indictable offences, section 617 of the Criminal Code, which presently applies only to indictable offences, would have to be amended to include summary conviction offences. A reading of section 683 of the Code suggests that the Governor in Council may grant a pardon in respect of any conviction resulting from federal legislation. If deemed necessary, provisions corresponding to sections 617 and 683 of the Criminal Code could be enacted by the provinces to address wrongful convictions and imprisonment resulting from provincial legislation. It should be noted that Quebec already possesses legislation - the Executive Power Act, permitting the granting of a pardon in respect of a conviction under its legislation.

A reading of article 14(6) of the Covenant indicates that the right being created is a right to compensation after a reversal or a pardon. It is not a right to have a hearing in respect of a final decision for the purpose of obtaining a reversal or pardon. In our view the discretionary element attached to the Minister of Justice's power to refer a case back for a new hearing or in the Governor in Council's ability to grant a pardon does not offend the intent nor the spirit of article 14(6).

NEW OR NEWLY DISCOVERED FACT SHOWS CONCLUSIVELY THAT THERE HAS BEEN A MISCARRIAGE OF JUSTICE

In our view the above expression is the cornerstone of the right to compensation created by the Covenant. There are two basic elements contained in the expression: the discovery of a new fact and conclusive proof showing a miscarriage of justice.

i) New or Newly Discovered Fact

The element dealing with the discovery of a new fact is straightforward. The new fact or evidence must not have been available to the accused before or during the regular criminal proceedings (this is more fully discussed below). The discovery of the new evidence must occur after the conviction has been reached by way of a final decision. The new fact can be any new evidence showing conclusively that the person was wrongfully convicted. It could be by way of evidence of perjured testimony leading to the conviction or the discovery of a new witness or new evidence showing that the offence was either not committed, or if committed, was not committed by the person who was convicted. In short, the new fact can be anything which could lead to a pardon or a reversal of the conviction and which conclusively demonstrates that there has been a miscarriage of justice.

ii) Miscarriage of Justice - Innocence

The element concerning miscarriage of justice is considerably more complex. This issue was the source of considerable concern and discussion among the members of the Task Force. We recognize that the concept of miscarriage of justice is very broad and can include a great number of types of injustices. We concluded that the concept of miscarriage of justice, within the context of a compensatory scheme for persons wrongfully convicted and imprisoned, should mean one of two things:

i) the injured party was unjustly convicted regardless of the objective fact that he did or did not commit the offence for which he was convicted; or

ii) the aggrieved person was unjustly convicted because he did not commit the offence in question; that he was, in fact, innocent.

The first interpretation would allow compensation in situations where a conviction was reversed because of a mistake in law or an error resulting from a mixture of fact and law. The question of innocence under this interpretation would not be in issue and would not be directly resolved. In this situation, it would be possible

for someone who committed the offence, but whose conviction was reversed because of a defect in the procedure, for example, through the admission of illegally obtained evidence, to claim compensation. In this situation the question of innocence could be indirectly examined by the hearing forum determining the amount of compensation when blameworthy conduct could be assessed. With the second interpretation, compensation would be available only on the presentation of evidence demonstrating that the aggrieved party did not commit the offence.

We recognize that proving innocence is foreign to our system of criminal justice. Nonetheless, we tend to believe that the creation of a new right allowing a claim against the state by way of compensation for a wrongful conviction and imprisonment should only be available to the claimant who is innocent.

It should be pointed out that proof of innocence is a key element in a number of jurisdictions where compensation for wrongful conviction is available. Some of these jurisdictions include several States of the United States where the criminal justice system is similar to Canada's.

Innocence may be established by a number of methods: by proving that the claimant did not commit the acts for which he was convicted; by proving that the acts which were committed did not constitute an offence; or by proving that the acts charged were not committed. Since the claimant is seeking compensation from the state, it would appear appropriate that he carry the burden of proving his innocence. At first glance this burden may appear unreasonable, especially when one considers that the claimant must prove a negative - that he did not commit the offence. It should be remembered, however, that this process of compensation is predicated on the discovery of a new fact. If the claimant is indeed in possession of new evidence showing that he was unjustly convicted, the burden of having to prove his innocence will have been at least partially established. Moreover, the standard of proof should be on a preponderance of evidence (the civil law standard); the criminal law standard of proof beyond a reasonable doubt would appear to be too harsh given the issue which must be determined. It would seem to us, therefore, that the burden of proving innocence may appropriately rest upon the claimant.

iii) Forum

The final question which needs to be addressed with respect to miscarriage of justice is the deciding forum. How should the question of innnocence be settled? Although there are a number of possibilities, the likeliest methods are through

the use of the criminal appeal court, a Governor in Council pardon, or by a tribunal, board or designated person.

As mentioned earlier, the determination of innocence is a concept foreign to our criminal justice system. However, we do not believe this to be an insurmountable obstacle. Indeed, subsection 617(c) of the Criminal Code which allows the Minister of Justice to obtain an opinion from the court of appeal on any question upon which he desires assistance could be interpreted as being broad enough for that court to determine the matter of innocence. Failing this, the subsection could be amended to allow the court to make such a determination. Section 613 which sets out certain powers of the court of appeal may also open the door for that court to rule on the issue of innocence. This section could be used where a wrongfully convicted and imprisoned person has not exhausted his rights to appeal but where the time limits for an appeal have expired and the court of appeal has granted an extension of the time within which an appeal may be heard. Under section 613 the court of appeal may allow an appeal on the ground that there was a miscarriage of justice. This section of the Code could be amended to allow a court of appeal to determine the issue of innocence when it proposes to reverse a conviction on the basis of a miscarriage of justice.

Subsection 683(2) of the Criminal Code provides that the Governor in Council may grant a free pardon to anyone convicted of an offence. This subsection would obviously apply to someone who was wrongfully convicted. Historically, however, this subsection has not been used exclusively to pardon persons who were wrongfully convicted. It has been used to terminate parole and, in cases of hardship, been used where the Criminal Records Act normally applied. When an application for a pardon on the basis of innocence is considered we were informed by officials of the Department of Justice that an intensive and exhaustive examination is carried out before the pardon is granted. We were also informed that the pardon may specify, on the document itself, that it was obtained because the person was innocent. A person who is granted a free pardon from the Governor in Council under 683(2) on the basis that he was innocent of the offence for which he was convicted would then be eligible for compensation.

Another possibility and perhaps the least desirable, is to have the matter of innocence resolved by an administrative tribunal, a board or a designated person such as a justice of a superior court of criminal jurisdiction. The selected forum would determine whether the person had in fact committed the act for which he was convicted. Using such an approach to decide the question of innocence in this manner would result in the curious situation of a tribunal reviewing in essence decisions made by the courts. Moreover, as between a court and a tribunal or administrative body, it is arguable that a court is the more appropriate body to decide the question of innocence.

SUFFERED PUNISHMENT

The expression is self explanatory and within the context of the International Covenant would include any type of punishment imposed on an individual following conviction. Although the International Covenant speaks of punishment in relation to a conviction, it is our view that punishment should include conditions prescribed in a probation order where the court chose not to convict the accused and direct that he be discharged conditionally. As indicated earlier, Ministers and Deputy Ministers Responsible for Criminal Justice have directed the Task Force to examine the problem of wrongfully convicted persons who have been imprisoned. In our view any compensatory scheme which requires imprisonment as a prerequisite for compensation would likely fail to satisfy Canada's obligation under the International Covenant.

The decision to limit compensation to cases of wrongful conviction and imprisonment, however, is not totally indefensible. In particular, the deprivation of liberty and civil rights, the separation from family and friends and the sufferance of the hardship of prison life are indeed the most serious consequences of a wrongful conviction. It is also the most serious failure of the administration of justice as a whole. For those reasons it is reasonable to single out imprisonment from other forms of punishment for the purpose of compensation.

Should compensation be limited to cases of imprisonment, we believe that imprisonment for default of fines should not be distinguished from regular imprisonment.

COMPENSATED ACCORDING TO LAW

a) According to Law

As mentioned earlier in this Report, in Canada, compensation for someone who has suffered punishment as a result of a wrongful conviction may only be obtained from the state via

an ex gratia payment. By its nature, ex gratia payments are made at the complete discretion of the Crown and involve no liability to the Crown.

The International Covenant, however, appears to suggest that entitlement to compensation should be based on a statute. This interpretation is strengthened by article 2 of the Covenant which states that:"...each State Party to the present Covenant undertakes to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

Consequently, we believe that once a person has established that he has been wrongfully convicted and imprisoned, he should be entitled by legislation to make a claim for redress against the state, as of right.

b) Compensation

Two general questions need to be addressed in respect of the compensation itself: who decides on the quantum of the award and how is the quantum calculated.

(i) Deciding Forum

With respect to the first question, a number of avenues are available. The most likely among them are the civil courts, tribunals, boards or designated persons or the court of appeal.

If a civil court is contemplated, a cause of action could be created giving the person whose conviction was reversed or who was granted a pardon a right to claim compensation against the Crown in right of Canada or a province. The benefit of this approach is that it uses an existing court system which is experienced in determining and calculating damages. Another advantage is that there would be virtually no costs involved in implementing this approach because it would make use of existing court and judicial officials.

The second possibility is to permit the matter to be referred to a tribunal, a board or a designated person which would determine the quantum to be paid. The advantage of this approach is that it would use mechanisms with which all jurisdictions in Canada are familiar. The provincial and federal governments have long and frequently used tribunals, boards or designated persons to examine and settle certain issues. The disadvantage is that this avenue would create yet another recourse to an administrative or quasi-judicial forum when most governments are attempting to reduce their use.

The last possibility is to have the matter of the quantum determined by the court of appeal which has determined that there has been a wrongful conviction. In this case, the powers of the court of appeal under section 613 of the Criminal Code could be expanded such that when the court reversed a wrongful conviction, it could determine, upon request by the individual, the quantum to be awarded. The advantage of this approach is that it would employ the existing framework in the Criminal Code and would permit the issues of wrongful conviction and compensation to be resolved at the same time by the same court. Although there does not appear to be a constitutional bar preventing the use of this approach, the propriety of such an approach may be questioned. Appeal court judges hearing a criminal case may object to the exercise of such an original jurisdiction and of having to order the Crown in right of Canada or a province to compensate someone who was wrongfully convicted and imprisoned. A clear disadvantage of this approach is that the court of appeal would not be able to consider those cases where an individual was granted a pardon.

(ii) Calculating Quantum

The second general question deals with how the quantum is calculated. Generally, the cost of the compensation itself is difficult to determine because it involves estimating actual awards. Normally, however, determining compensatory damages includes evaluating blameworthy conduct and assessing non-pecuniary and pecuniary losses.

Blameworthy Conduct

The inquiring forum would determine the degree to which, if any, the claimant's conduct contributed or brought about his conviction, and any award otherwise made would be adjusted accordingly. Awards would take into account contributory acts by the applicant which might involve his own perjury or failure to disclose an alibi or facts or other evidence in his own defence that contributed at least in part to his conviction. His refusal to retain counsel in serious circumstances might also have been a factor leading to the conviction which should be addressed in the context of contributory conduct by the applicant.

Non-pecuniary Losses

In the quadriplegic injury case Andrews v. Grand and Toy Alberta Ltd. found at (1978), 2 S.C.R. 229, the Supreme Court of Canada held that for non-pecuniary losses a rough upper limit of $100,000 should be adopted as the appropriate award for all non-pecuniary damages, including such factors as pain and suffering, loss of amenities and loss of expectation of life. "Save in exceptional circumstances,

this should be regarded as an upper limit of non-pecuniary loss in cases of this nature". However even if $100,000 were to be similarly applicable as the maximum limit for non-pecuniary damage including loss of liberty, and all mental and physical stress - and it is somewhat unclear as to whether the Andrews case would apply to lengthy imprisonments - the loss of reputation and attendant non-pecuniary damages would vary greatly; an upper limit of $100,000, or some other amount could be set or alternatively this could remain unstated, with the award in the Andrews case left as a possible precedent for such a limit. The headings for non-pecuniary damages include:

- loss of liberty and the physical and mental harshness and indignities of incarceration (including mental anguish);

- loss of reputation;

- family breakup (including mental anguish) etc.

Pecuniary Losses

Certainly the pecuniary loss aspect of the compensation would vary immensely depending, for example, upon whether the person imprisoned was untrained and unemployable or a highly trained professional person. These factors could increase or decrease the total compensation by large amounts. Therefore it is anticipated that in the very few cases for such compensation as would arise, the awards for compensation would vary greatly from case to case. The headings for pecuniary damages include:

- loss of livelihood including loss of earnings, less certain deductions;

- loss of future earning ability;

- loss of property resulting from incarceration - possibly involving foreclosure on a mortgage, or other consequential financial losses, etc.

In addition to the compensation for damages, consideration would have to be given to compensating the applicant with respect to the legal costs incurred for counsel to assist him in gaining compensation. Consideration would have to be given as to whether all solicitor/client costs would be paid or whether some limit for legal costs would be imposed at some reasonable per diem rate for a solicitor to reflect his time spent with respect to preparing and representing his client before the inquiring tribunal or court. Legislation could provide for a limit with respect to the legal costs and consideration could also be given as to whether there

should be some dollar limit upon contigency fee arrangements which would be paid by the applicant to the solicitor out of the compensation award.

Legislation for the compensation program could also consider whether compensation should be by lump sum or in monthly payments or a combination of both; or to provide for the expenses of retraining programs and other similar assistance. At the present time there may be a divergence of views among the jurisdictions involved as to whether large monetary lump sum awards should be avoided in favour of monthly assistance toward re-training coupled with some form of lump sum payment or pension scheme payments.

Generally, pecuniary and non-pecuniary compensation would be awarded to the period that runs from the commencement of imprisonment rather than from any period of interim custody. In those cases where a judge specifically counts the interim custody as punishment served towards sentence imposed, this arguably could be considered for inclusion within the period of punishment imprisonment for which compensation is being awarded.

NON-DISCLOSURE OF THE UNKNOWN FACT IN TIME IS WHOLLY OR PARTLY ATTRIBUTABLE TO HIM

This expression is discussed briefly in the previous section. We understand it to mean blameworthy conduct of the person in relation to his wrongful conviction. Assuming that the person did not commit the act for which he was convicted, it would seem reasonable that the more an individual's behavior was responsible for his conviction - either through his perjury during trial or his failure to disclose information which could have resulted in his acquittal, the less he should receive. The International Covenant adopts a very hard line in respect to blameworthy conduct: it states that the person who is partly or wholly responsible for the non-disclosure of the new fact showing that there was a miscarriage of justice should not be compensated.

The Task Force recognizes the rationale behind this approach. However, we are mindful that an accused who faces and endures the hardship of a trial may find himself in an extremely stressful situation. We accept that under such circumstances an accused may be very nervous and tense and as a result may not act as one might otherwise expect or in his best interest. We believe, therefore, that not all blameworthy conduct should automatically bar the wrongfully convicted and imprisoned person from obtaining redress. Rather, blameworthy behavior should be determined and evaluated and compensation, if any, awarded accordingly.

OTHER ISSUES

The wording of the International Covenant was useful in providing a framework within which a number of issues concerning compensation for persons wrongfully convicted and imprisoned could be discussed. There still remain, however, a number of areas which need to be examined in order to give this subject a proper airing.

1. Parties at Compensation Hearings

Regardless of whether a court or tribunal is chosen to hear the compensation claim, the process chosen may be either adversarial or upon hearing evidence produced only by the applicant. Since public funds are involved, the provincial Attorney General (or federal Attorney General in federal compensation matters) could be given party status to produce evidence and make legal submissions relating to compensation quantum and the blameworthy behaviour of the applicant, if any.

2. Costs

It should be noted at the outset that precise empirical data is lacking with respect to the number of wrongful convictions; there is simply no way of knowing how many innocent persons have been convicted. Based on past experience, however, the chances of numerous successful claims would seem slight. Costs related to the administration of this type of compensatory regime would not be extensive especially if the courts decide the claims. The cost of the actual awards themselves would be higher.

a) Administration costs

If such a compensation program is to be dealt with through applications to the courts, which would hear and determine the amount of compensation, it would appear that no additional expense would be involved in view of the very few applications for such compensation anticipated in any year in any one jurisdiction. Court services could be utilized either through the courts of each province or the Federal Court depending upon which government was responsible to answer to the claim. The administrative cost of processing the application (either through some government department or court services) and for having it heard by a judge could likely be born as part of the existing overhead and salaries. This would not necessitate any additional personnel or judges or additional salaries.

If, on the other hand, a tribunal is chosen to receive the application, to hear the matter and tribunal members are persons appointed for the task, it could be anticipated that for a tribunal of three comprising a chairman, vice-chairman and third member, costs would be approximately $1,000 to $1,200 per day. A hearing of approximately one half day would entail preliminary review and preparation by the tribunal members. Costs of a one half day hearing also taking into account preparation time would cost approximately $2,100 in per diem payments inclusive of disbursements to the tribunal. If the tribunal is an existing body performing other functions, then it would have in place support staff that would be in position to provide organizational and typographical services as part of the existing overhead. Since very few applications would be anticipated in any one given year, there would be no additional staffing requirements.

If however the tribunal is an ad hoc tribunal and no support staff is in place one would anticipate similar per diem costs for the tribunal members and possibly temporary staff expenses unless permanent government staff services can be provided for those few occasions when claims are presented. If outside stenographic services are required the rate per hour ranges from $9.00 to $11.00 which results in daily rates ranging from approximately $69.00 to $80.00. A single tribunal member sitting alone would likely require a per diem rate ranging from $350 to $500 per day. There may of course be travel and meal disbursements for the tribunal members, room rentals and the like.

b) Responsibility for Payment of Administration Costs and Awards

The provincial governments alone for the province in which the conviction was entered could fund the total cost of administering and compensating persons wrongfully convicted and imprisoned under a provincial law.

The federal government could solely fund the total cost of administering and compensating persons wrongfully convicted and imprisoned under a federal law and involving a federal prosecution.

For convictions under the Criminal Code there are at least three options:

i) The provincial governments could each fund the total cost of administration and compensation.

ii) The federal government alone could fund the total cost of administration and compensation.

iii) The federal government and the provinces could cost-share the compensation, leaving the administration costs to the provinces.

c) Cost Sharing

For wrongful convictions under the Criminal Code leading to compensation, a federal/provincial cost sharing program could be based upon a simple percentage split respecting

total cost of compensation payments made by a province in a fiscal year; the percentage could be split at 50% or some other suitable percentage as between the respective province and the federal government. Alternatively, a more complex cost sharing formula could be considered. Under the Criminal Injuries Compensation programs, for example, the initial cost sharing formula for provinces was that the federal government would pay the lesser of 5 cents per capita of the provincial population or 90% of the compensation awarded. Effective April 1, 1977, a new formula was implemented by which the federal government contributes the larger of 10 cents per capita or $50,000 but not in excess of 50% of the compensation paid. Provinces may, however, claim according to the old formula if it should be to their advantage to do so.

For the Territories the arrangement has been for the federal government to compensate them for 75% of the compensation awarded subject to certain maximum amounts for individual awards. The Northwest Territories has a new cost sharing formula under which the federal government pays 90% on the first $15,000, 75% on the next $15,000, 50% on the next $50,000 and 40% on all amounts in excess of $80,000.

There are a number of other agreements concerning federal-provincial cost sharing, such as legal aid and criminal legal aid agreements, which could be used as examples.

3. Ceiling on Awards

In an earlier section we noted that the Supreme Court of Canada held that the amount of $100,000 should be adopted as the appropriate upper limit for non-pecuniary losses. It is unclear, however, if this maximum would apply in instances of lengthy imprisonments. Many jurisdictions, especially in the United States have imposed maximum amounts which can be awarded. Conversely a number of jurisdictions have chosen not to set a ceiling.

In deciding whether a ceiling should apply, a number of elements should be considered:

- the wrongful conviction and imprisonment of an innocent person is such a serious error that the state, according to some views, should fully compensate the injured party;

- the number of potential claims would appear to be small so that there is no justifiable fear of a drain on the public purse;

- the fact of imposing a ceiling on the amount of the award would appear to be contrary to the general philosophy of wanting to provide redress for an injured party;

- the state very rarely imposes a limit on the awards available resulting from damage to property. Limiting compensation in the case of unjust convictions could appear as if the state valued property rights to a greater extent than the freedom of its citizens.

4. Statutory Limitation for Filing Claim

Most compensatory schemes prescribe a limitation period for the making of a claim. Such limitation periods are imposed for reliability purposes or simply to prevent stale claims. Should a limitation period be incorporated into the scheme under consideration, two issues will have to be determined.

1. When should the limitation period commence to run, e.g. on discovery of the new fact, on the granting of a pardon or finding of innocence, on release from imprisonment?

2. The duration of such limitation period?

An alternative to a limitation period would be to incorporate a due diligence test as a prerequisite to the granting of an award. Such a test would provide greater flexibility than a limitation period yet, at the same time, would protect the Crown against stale claims which might be difficult to rebut due to the passage of time.

On balance, we favour the less restrictive limitation of a due diligence test because of the extraordinary nature of the remedy.

5. Appeal

Awards might be final or not. We favour the view that an appeal or judicial review, depending on the nature of the forum in which the award is made, be available to both the claimant and the state. If compensation is to be determined by the courts, appeals should be available in the ordinary way to the parties involved. If a tribunal is to decide on the matter of compensation, a review mechanism should be provided.

As concerns the decision to recommend to the Governor in Council that a free pardon be granted, the decision to grant a pardon and the Minister of Justice's decision to refer a case back to the courts for review pursuant to section 617 of the Criminal Code, these decisions are exercised under the prerogative of mercy and cannot be appealled. We recommend that this not be changed.

6. Subrogation

To the extent that subrogation is an issue in this matter and to the extent that the state believes it necessary to be substituted to the claimant to seek redress against a third party who was responsible for the miscarriage of justice, subrogation rights should be clearly laid out in the compensatory scheme.

7. Retroactivity

Should the compensatory scheme apply only to those persons wrongfully convicted after its implementation or should it apply to those convicted before? Fairness would suggest that anyone who was wrongfully convicted should be able to obtain redress, regardless of when convicted.

CHAPTER IV

PROVINCIAL COMPENSATORY SCHEMES

As per its terms of reference, the Task Force considered provincial compensatory schemes to determine whether any of these could be used to administer the scheme to compensate wrongfully convicted and imprisoned persons. After an initial examination, the Task Force concluded that provincial compensation models were generally unsuitable as vehicles for providing redress for persons who were wrongfully convicted. They were either too complex or too narrow in their application to be adaptable to other tasks or did not exist in enough provinces to be of general use, with the exception of the Criminal Injuries Compensation schemes.

Criminal Injuries Compensation legislation exists in most jurisdictions (it does not exist in Prince Edward Island or at the federal level). The programs are funded through a federal-provincial cost-sharing arrangement. They deal with matters related to the criminal law and allow for the evaluation of blameworthy conduct. The schemes are not overly complex and show the possibility of flexibility in approach with a common goal.

In examining the provincial criminal injuries compensation legislation, we became aware of a Statistics Canada publication entitled Criminal Injuries Compensation 1993. We have made generous use of the publication's text in order to describe the framework, mechanisms and workings of the provincial laws on this matter.

Criminal Injuries Compensation

There is in each province, except Prince Edward Island, and territory a program to compensate innocent persons for injury or death as a result of (a) some specified or defined crime committed by another person, (b) an effort to prevent crime and (c) an effort to arrest an offender or a suspect.

The crimes for which compensation can be paid are, as a rule, listed in the legislation establishing the program, and they are for the most part violent in nature.

The aim is to compensate innocent victims of violent crime, and a distinction is drawn between those who participated in committing the crime, and those who contributed to their own

misfortune as victims. Those who committed crimes are, of course, not compensated; the actions of those who contributed to their misfortune are taken into account, and depending on the degree of culpability, compensation may be on a reduced scale or refused entirely.

Criminal injuries compensation legislation has been in effect in some provinces (Newfoundland, Ontario, Saskatchewan and Alberta) from the late 1960's.

Funds for the payment of awards and for the administration of the program come from the consolidated revenue fund in each jurisdiction. All programs are cost shared with the federal government, and all cost sharing agreements contain special provisions on qualification, disqualification, publicizing of the program, etc.

Administration of the legislation is, depending on the jurisdiction, either in the hands of the Minister of Justice, the Workers Compensation Board, the courts or administrative tribunals.

Grounds for Compensation

There are three grounds for making an award: (a) a person was injured while making an arrest or assisting a peace officer in doing so; (b) a person was injured while preventing an offence or assisting a peace officer in doing so and (c) a person was injured as an innocent victim of crime other than under circumstances described in (a) or (b).

Application for Compensation Eligibility

Application may be made by or on behalf of crime victims within the scope of the provincial or territorial legislation. If the victim has been killed, application may be made by or on behalf of surviving dependents. There are others who may apply with respect to pecuniary loss and expenses arising from the victim's death; but this varies depending on the jurisdiction.

Time Limit for Application

In all jurisdictions applications must be brought within one year, except in Manitoba, which allows two years for a claim to be brought.

Co-operation With the Police

It is expected that persons who apply for compensation report the crime to the police within a reasonable time.

Proof of Criminal Injury

A claim is established on the balance of probabilities as opposed to a reasonable doubt. Thus, the legislation of most jurisdictions authorizes the acceptance as evidence of statements, documents, information or matter that may assist in dealing effectually with applications, whether or not they would be admissible as evidence in a court of law. A conviction is not a necessary condition for the granting of an award, for a conviction may not take place at all. The offender may not be found, or the charge may have been dismissed on account of the higher standard of proof applied by the courts.

Quantum

In Quebec and Manitoba, victims are compensated as if they had been injured in a work situation. In British Columbia, the basis for decisions is similar to that used in civil courts for personal injury arising from negligence. In New Brunswick, awards are made as if damages were being assessed in a civil action, although to a maximum of $5,000.

In all other jurisdictions, there is no prescribed guiding principle for determining the quantum of compensation other than that compensation be awarded for factors such as expenses incurred as a result of injury or death, pecuniary loss, pain and suffering, and maintenance of a child born as a result of rape. In addition, financial need is specified in Saskatchewan as a further factor of consideration.

Minimum and Maximum

In all jurisdictions, other than Quebec and Ontario, there is a minimum of about $100 below which no compensation is paid. All jurisdictions, except Saskatchewan and Alberta, have a maximum whether payments are made monthly or in a lump sum.

There is in some programs a limit on compensation payable for any one occurrence regardless of the number of victims.

When injury or death occurs in the process of attempting to enforce the law, the maximum payable to any one victim is raised to $10,000 in New Brunswick. It is waived completely in Nova Scotia, Ontario and British Columbia.

Alberta imposes a limit of $10,000 for general damages for compensating persons who were attempting to arrest a person, preserve the peace or assist a peace officer in carrying out his duties.

Deductible Amounts

All jurisdictions have provisions for the deduction of monies which the victim recovered from various other sources.

Manner of Award

Awards may be in the form of lump sum awards, periodic awards or a combination of both.

Seeking a Civil Remedy

In all jurisdictions victims may proceed, simultaneously, to seek another civil remedy. Those who launch a civil action and recover are required to reimburse the authority concerned for any award under the program. If they do not launch a civil remedy, the authority concerned, upon the conferring of an award, is subrogated to the rights of the persons to whom payments were made.

Appeal and Review

In some jurisdictions there is a limited right to appeal on a question of law or law and jurisdiction.

The Quebec, Manitoba and British Columbia laws provide for an administrative review of decisions taken.

Conclusion

Criminal Injuries Compensation exists in most juridictions and it may provide the basic framework and mechanisms for the administration and adjudication of claims based on wrongful convictions and imprisonment. The cost-sharing agreements are flexible enough to allow each jurisdiction to deal with compensation as it sees fit (e.g. determination of quantum by judges, worker's compensation boards or specialized tribunals). In our view this type of legislation could, with amendments as needed, provide the necessary mechanism for determining quantum in cases of wrongful conviction and imprisonment. But, as indicated earlier, this is only one of several alternatives.

CHAPTER V

OPTIONS ON COMPENSATION FOR PERSONS WRONGFULLY CONVICTED AND IMPRISONED

Several options are possible in order to compensate persons who have been wrongfully convicted and imprisoned. In our view, the following pre-requisites must be met before a wrongfully convicted person can be compensated:

1. a conviction resulting in imprisonment (pursuant to federal or provincial legislation) all or part of which must be served;

2. a newly discovered fact showing that a wrongful conviction occurred;

3. the reversal of a conviction as a result of the case being referred back to the courts by the Minister of Justice pursuant to section 617 of the Criminal Code or after the court of appeal has extended the time within which an appeal may be heard (or similar provincial legislation in the case of a conviction for a provincial offence) or the granting of a pardon to a convicted person pursuant to section 683 of the Criminal Code (or similar provincial legislation for a conviction for a provincial offence).

If it is decided that a reversal of the conviction or a pardon is sufficient for the injured party to obtain compensation and that the matter of innocence need not be addressed, the question of determining quantum and blameworthy conduct may be resolved by:

1. The Courts

   a) The quantum could be determined by the court of appeal which reversed the original conviction after a reference by the Minister of Justice pursuant to section 617 of the Criminal Code or after it extended the time within which an appeal may be heard. This option would require amendments to sections 613 and 617 of the Code (and to corresponding provincial legislation) allowing the person whose conviction was reversed to claim compensation and permitting the court of appeal to hear the claim and to determine the

quantum to be awarded based on the evidence presented before it. This approach, however, would fail to provide a forum for persons who are granted a pardon.

b) A civil court could determine the quantum. Legislation would be required to create a cause of action allowing the person whose conviction was reversed or who had been granted a pardon to claim compensation. The court would determine the compensation to be awarded based upon evidence and the general principles of damages in tort law.

2. A Tribunal, Board or Designated Person

Existing tribunals or boards (or newly established ones) could be used as the forum for determining the quantum. Alternatively, the claim could be referred to a designated person, such as a justice of a superior court of criminal jurisdiction, appointed on a permanent or ad hoc basis.

A right of appeal or review would be available in all cases. The final decision on compensation would be binding on the Crown who had initiated the prosecution.

If, on the other hand, it is considered necessary to settle the matter of innocence before a claim can be made, then an initial hearing must be held to resolve that issue. Once the matter of innocence is resolved, the issue of compensation, could be addressed as outlined above.

The issue of innocence could be settled by:

1. a) The individual receiving a free pardon pursuant to a recommendation made to the Governor in Council by the Minister of Justice under section 683 of the Criminal Code (or similar provisions enacted by the provinces). Officials at the Department of Justice assured us that before a pardon is granted on the basis of innocence the case is thoroughly investigated and the recommendation to grant a pardon is only made when it is a certainty that the person did not commit the offence for which he was convicted. A free pardon, granted on the basis of innocence, could so specify on the face of the document.

b) The court of appeal which is reviewing a case pursuant to a referral by the Minister of Justice under section 617 of the Criminal Code or is reviewing a case after it has extended the time within which an appeal may be heard. If the court sets aside the conviction and directs a judgement or verdict of acquittal to be entered, it could, as part of its review, determine the question of innocence. This procedure may require amendments to Sections 613 and 617 of the Code. A similar procedure could be used by the provinces for provincial offences.The advantage of this approach is that it employs an existing framework within the Criminal Code to review the conviction and determine innocence. A major difficulty with this is that it would force the court of appeal into making two types of acquittals; acquitted and innocent; and simple acquittal with the consequent stain on the person's character resulting from a failure of the court to declare him innocent. Another disadvantage is that the court of appeal would have to address a question which to date is not part of our criminal justice system, and to act as an original fact finder.

c) A tribunal, board or designated person. An existing tribunal or board could review and determine the question of innocence. Alternatively, a new tribunal or board could be created to carry out this function. Lastly, a designated person could be appointed to review the case and decide the issue of innocence. The main disadvantage to this option is that the tribunal, board or designated person may be viewed as dealing with criminal law matters and thereby usurping the function of a criminal appeal court. For this reason, we believe this option should be rejected.

Constitutional Implications of Options

There does not appear to be a constitutional bar to having provisions in the Criminal Code for a court of appeal to make a determination of innocence, in respect of a Criminal Code conviction and of having that court determine the quantum to be paid. Care would have to be taken to draw the line on what the court of appeal could do in terms of criminal law and what could fall within the scope of

property and civil rights. In the absence of dovetailing legislation, difficulties could arise in having a determining forum established by one level of government making an enforceable order for another level of government to pay compensation. There does not appear to be a constitutional bar to a tribunal, board or designated person determining the quantum of compensation to be paid by the Crown (federal or provincial). Such a tribunal, board or designated person could be empowered to order payment by the level of government which established it by legislation or authorized it by legislation to be established.

There would appear to be very serious constitutional difficulties in having a tribunal, board or designated person determine the question of innocence in respect of a criminal conviction if they are not already superior, district or county court judges. The determination of innocence is inexorably tied up with section 96 of the Constitution Act, 1867. The function of determining guilt (and by extension innocence) was performed at the time of confederation by county, district or superior court judges. Since McEvoy v. Attorney General of New Brunswick (1983) 1 S.C.R., 709, section 96 is known to bar alterations to the constitutional scheme envisaged by the judicature sections of the Constitution Act, 1867.

CONCLUSION

Despite the many safeguards in Canada's criminal justice system, innocent persons are sometimes convicted and imprisoned. In this Report we have attempted to examine methods of providing redress to those who have been wrongfully convicted and imprisoned. In so doing, the Task Force examined redress mechanisms in foreign jurisdictions, looked at Canadian compensatory schemes, highlighted a number of significant issues, and suggested a number of options whereby a wrongfully convicted and imprisoned person could be compensated.

Whatever the redress mechanism ultimately chosen, it should be relatively simple in its application because there will not likely be many cases, and it should be as responsive as possible to the injured party given that he is the victim of the state's criminal justice system.

GLOBE + MAIL APRIL 12, 1982 PAGE 5

Evidence points to new suspect in 1971 murder

By ALAN STORY,
Special to The Globe and Mail

SYDNEY, N.S. — The RCMP has gathered enough evidence to charge a new suspect for the 1971 murder of a Sydney youth that resulted in an Indian teen-ager being sent to prison for 10½ years.

Without revealing the suspect's name, Nova Scotia Attorney-General Harry How said yesterday: "We have very strong suspicions about another suspect."

Donald Marshall Jr., the Micmac Indian originally found guilty by a July of the 1971 murder, was released on day parole from Dorchester Penitentiary on March 29. Mr. Marshall, now 28, has maintained his innocence.

The Sydney police department and the RCMP were given information in 1974 about the suspect's alleged role in Sandy Seale's murder but failed to act.

The RCMP finally reopened the investigation of the case two months ago and a report by Sydney's General Investigative Section indicates that Mr. Marshall is innocent.

That investigation has also uncovered the alleged murder weapon, a knife, and a second Sydney man who allegedly accompanied the suspect on the night of the murder.

During the November, 1971, murder trial, Mr. Marshall testified he was talking with 16-year-old Sandy Seale, his black friend of three years, in Wentworth Park on May 28, 1971 at about 11 p.m. Two men dressed in long blue coats approached them and started a conversation filled with racial slurs.

Then, Mr. Marshall testified, the older of the two men stabbed Mr. Seale in the stomach and slashed his arm.

Fibres from Mr. Seale's clothing and Mr. Marshall's were found on the alleged murder weapon.

The RCMP is interviewing the suspect's daughter, who lives outside Canada.

The exhibits used as evidence during the trial were kept by the RCMP crime laboratory in Sackville, N.B., and could be used again in a second trial.

It is not yet clear when the suspect will be charged with Sandy Seale's murder.

Stephen Aronson of Halifax, Mr. Marshall's lawyer, said it will be at least two weeks before the federal Department of Justice informs him of its decision on Mr. Marshall's original conviction.

While legal experts and Mr. How have said a suspect could be legally charged before Mr. Marshall is found innocent, a trial of anyone else would likely be delayed until Mr. Marshall is exonerated.

Under Section 617 of the Criminal Code, the Minister of Justice can order a new trial or refer the matter to an appeal court. Mr. Marshall's conviction was appealed in 1971, but that appeal was turned down.

Mr. Aronson says he would prefer the federal Cabinet grant his client a free pardon, which would declare him innocent of the murder. "Why drag Junior through another year and a half of trials after all he has been through?" he asked in an interview yesterday.

If Mr. Marshall is exonerated, it would be the first time in Canada that a murder conviction has been overturned after a person has served a long prison term. Mr. Aronson and one of Canada's top criminal lawyers in Toronto, who did not want to be identified, said the case was without precedent.

Mr. Marshall was convicted primarily by the eyewitness testimony of one 16-year-old youth who was drunk at the time of the murder and who had been a psychiatric patient of the Nova Scotia Hospital, less than a month before the trial began.

His mother has said he should not have been called as a witness and the psychiatrist was reportedly shocked that the youth's testimony was believed.

RCMP investigators are asking how Sydney police officers obtained statements from this youth and other witnesses about the murder.

One witness, John Prachico, recently told a Sydney reporter: "The police were out to get Marshall." Another witness has alleged he was pressured by the Sydney and Louisbourg police to concoct a story.

A Sydney man who has known the suspect for eight years says he went to the Sydney Police Department and the RCMP in 1974, gave them the suspect's name and evidence allegedly linking him with Sandy Seale's murder. "But they already had their man behind bars," the local resident, who did not want to be identified, said in an interview on Friday.

The Union of Nova Scotia Indians also gave the suspect's name to police in June, 1981, but the police again refused to reopen the case then. It was reopened after December, 1981.

However, Attorney-General How said yesterday he had "not even considered" an investigation of the role of the Sydney Police Department in convicting Mr. Marshall. "We've never investigated the investigators before."

Harry Porter, chairman of the Nova Scotia Police Commission, said that, if his agency conducts an investigation, it would likely include a public hearing "so that the air can be cleared."

Micmac case may set series of precedents

Special to The Globe and Mail

SYDNEY, N.S. — In coming months, the Donald Marshall case and its many spinoffs may establish a number of legal precedents and give opponents of capital punishment the specifics to support their point of view.

If Mr. Marshall is cleared of the May, 1971, murder of Sandy Seale — and a Sydney police report has indicated he is innocent — legal experts say he will be the first Canadian found not guilty of a murder charge after serving a long prison term.

In the past, there often wasn't a second chance. Convicted murderers were usually executed and some countries, notably Britain and the United States, have provided several examples of the classic miscarriage of justice: executing the wrong man.

The most famous case occurred in Britain. Timothy Evans was convicted of murder and hanged in 1864 but was later vindicated when another person named Christie was found guilty of the murder.

As for the Canadian experience, Ottawa criminologist David Chandler, writing in his 1978 text, Capital Punishment, concluded: "No Canadian case of executing the wrong person has been demonstrated."

That's not to say everyone is convinced. Critics have pointed to the contradictions surrounding the case of Wilbert Coffin, who was charged and convicted in the murder of one of three American hunters killed in the Gaspe region of Quebec in 1952.

The guilt of 14-year-old Steven Truscott for the 1959 rape and murder of a 12-year-old girl has also been questioned.

The Truscott case was a near-miss; his sentence to be hanged was later commuted to life imprisonment. He is now out of prison. But neither man was officially found innocent or pardoned by the federal Cabinet.

If Mr. Marshall is cleared, the Government has promised to pay compensation for his 10½ years behind bars.

"I don't know what yardsticks we will use," says Nova Scotia Attorney-General Harry How. "It might be an arbitrary lump sum based on a loss of earnings, plus a couple of other factors."

THE OTTAWA SCENE

And 4 makes ridiculous

BY THE OTTAWA BUR

There was a bundle of political outrage a few months back when someone discovered that three different Jetstars had carried three different Cabinet ministers to Winnipeg on the same day. The three sleek executive jets arrived within three hours of each other. Even Liberals were prepared to admit privately that that was a bit extravagant.

Now, it turns out, the story was not totally accurate. The facts are worse. There were not three but four Jetstars bearing different ministers to Winnipeg that day. The explanation of the discrepancy is simple: The guy who spotted the first three jets should have stayed around the airport a little longer; then he would have seen the fourth arrive.

●

The mixed metaphor award of the week goes to Rosedale MP David Crombie:

"To hear the minister (Finance Minister Allan MacEachen), I'm sure for the people affected in this areas, it's just to hear an air of unreality which has been with us since Nov. 12."

●

Speaking of Mr. MacEachen, perhaps his experience of the November budget really was a hair-raising experience. For years the Finance Minister has been known for his locks which always look as though they have gone through a vigorous Cape Breton breeze. But that appears to be a thing of the past. When he appeared in the Commons on Thursday Mr. MacEachen looked as though his hair has been styled in 1948 and then cemented for eternity with hair spray.

●

Governor-General Edward Schreyer is losing the services of his press secretary, Rene Chartier, who has gone off to work as a lobbyist for the beer industry.

Edward Schreyer
Losing a buffer

Paul Robinson
Playing hardball

Mr. Chartier has been an employee and crony of the Governor-General since the days when Mr. Schreyer was premier of Manitoba. In those days Mr. Chartier was his executive assistant.

Mr. Schreyer may feel the loss sharply. Mr. Chartier is regarded as the Governor-General's buffer against the rigid decorum of official life in Government House.

●

Does Manpower and Immigration Minister Lloyd Axworthy have a secret admirer?

A picture of Mr. Axworthy with the handprinted slogan "My Hero" hangs in the offices of Terry Sargeant (NDP, Selkirk-Interlake).

●

Which MP got caught in his shorts? The House of Commons tailor shop recently sent round an urgent plea to all MPs' offices looking for a pair of men's grey flannel trousers lost either in the shop or in delivery by the messenger service on Parliament Hill.

●

David Smith (L, Don Valley East) got all excited recently when his wife, Heather, a Toronto Crown attorney, was named one of the five best lawyers in the city. He sent copies of a newspaper article naming her to all and sundry on Parliament Hill, including Justice Minister Jean Chretien.

Mr. Smith has never seen his wife, who is reported to be a tiger in the courtroom, prosecute a case. She has asked him to stay away from the courtroom when she has a trial for fear that his presence would change her style.

Quebec test case of RCMP officer expected to rekindle controversy

MONTREAL (CP) — More political heat is expected to be generated this week when the first of 17 RCMP officers charged with various crimes in Quebec goes to trial.

At court hearings last November, RCMP lawyers attempted to have the charges dismissed by argument that federal politicians were responsible for illegal acts committed by individual Mounties.

But their motion was rejected by Sessions Judge Maurice Rousseau who ruled that "following orders" is not an acceptable defence for a policeman — even if he is a member of the RCMP's Security Service.

To rule otherwise, the judge said, "would mean that there are two classes of people in Canada."

At that point, it was decided RCMP Inspector Claude Vermette would go directly to trial on Tuesday as a test case. Insp. Vermette and 10 other officers are charged with the 1973 theft of computer tapes containing the names of more than 100,000 Parti Quebecois members.

Other outstanding charges against the RCMP include the kidnapping and forcible detention of two men in 1971-72, the burning of a barn in 1972, and the theft of dynamite.

In their defence, RCMP lawyers argued federal Liberal politicians applied pressure to force the RCMP to take aggressive action against the "separatist-terrorist" threat to Quebec.

One defence witness, John Starnes, director of intelligence between 1970 and 1973, said the fight was such a priority to Ottawa that it applied considerable pressure on the RCMP to create a special Security Service unit to coordinate efforts against Quebec separatists.

Mr. Starnes, former Canadian ambassador to West Germany, said the unit, known as G Section, would not have been created without pressure from Ottawa. It was set up with more than 100 officers in September, 1970, to counter the Quebec independence movement, he said.

The section's mandate said the PQ was "a prime target" because so many of the party's activities "clearly are subversive and have as their aim the break-up of Confederation."

This use of the RCMP to spy on a political party — a practice criticized by the McDonald inquiry into the RCMP — included wiretaps of PQ leaders, Mr. Starnes testified.

He also said a political intelligence group known as the Vidal group, which was set up by Marc Lalonde, then an aide to Prime Minister Pierre Trudeau, had attempted to obtain security information on the PQ from the Security Service.

Mr. Starnes said he resisted on grounds that the RCMP should not be involved in political spying, adding he was relieved when Jean-Pierre Goyer, the solicitor-general at the time, told him Mr. Trudeau had decided not to order the force to co-operate with the group.

Also mentioned were two current Supreme Court judges, Julien Chouinard and Jean Beetz.

Mr. Starnes said Judge Chouinard — a former Canadian army lieutenant-colonel responsible for security operations during the October Crisis — was one of two emissaries sent to Ottawa in 1970 by former Quebec premier Robert Bourassa, who wanted help to set up a provincial intelligence service. Judge Chouinard was then secretary to the Quebec cabinet.

Mr. Starnes said he gave them advice on what type of equipment and operations room would be needed.

Another witness, William Kelly — former chief of RCMP intelligence — said Judge Beetz was present at a 1967 meeting of the federal Cabinet security committee when the Mounties were ordered to spy on the Quebec government in "exactly the same way" as if it was a hostile foreign government. Judge Beetz was then assistant cabinet secretary.

Claude Vermette

French weekly in Niagara survives by being sensible

Special to The Globe and Mail

WELLAND — The Niagara area's first French-language newspaper is surviving because of its sensible views on public issues and specialized news items that do not appear in other local newspapers, its publisher, Jean-Louis Fontaine, says.

L'Echue published its first weekly edition in January, 1981. According to Mr. Fontaine, at 50 cents a copy it is the highest-priced weekly newspaper in Canada.

The publisher, who is also the editor, said that with 22,000 French-speaking people in Niagara, a French-language paper is necessary. Mr. Fontaine said he has no desire to force French down people's throats, but makes no apology for being somewhat outspoken on community problems.

He said the newspaper's primary concern is to "serve the common people" in the French-speaking community. Mr. Fontaine said the 12-to-20-page tabloid is attracting anglophones who originally lived in Quebec and French-speaking Italians as well as its regular readers.

He said it was a challenge to gain the interest of Francophones here so they would read their own language again. He said he is attracting their interest by featuring interviews with French personalities in the region and news from the area's eight French schools.

Mr. Fontaine said the advertisers in L'Echue are the same as in any other Niagara weekly, but the ads are translated into French.

The newspaper got its start with a $12,000 grant through the Secretary of State's minority-language program.

Micmac News April (B) 1982

...ld Marshall Jr. Case Has Many Spinoffs

...ported in 1974

Series of Precedents

According to the Toronto Globe and Mail the Donald Marshall case and its many spin-offs may establish a number of legal precedents and give opponents of capital punishment the specifics to support their point of view.

In the past, there often wasn't a second chance. Convicted murderers were usually executed and some countries, notably Britain and the United States, have provided several examples of the classic miscarriage of justice: executing the wrong man.

The most famous case occurred in Britain. Timothy Evans was convicted of murder and hanged in 1954 but was later vindicated when another person Christie was found guilty of the murder.

As for the Canadian experience, Ottawa sociologist David Chandler, writing in his 1967 text, Capital Punishment, concluded: "No Canadian case of executing the wrong person has been demonstrated."

That's not to say everyone is convinced. Critics have pointed to the contradictions surrounding the case of Wilbert Coffin, who was charged and convicted in the murder of one of three American hunters killed in the Gaspe region of Quebec in 1952.

The guilt of 14-year-old Steven Truscott for the 1959 rape and murder of a 12-year-old girl has also been questioned.

The Truscott case was a near-miss, his sentence to be hanged was later commuted to life imprisonment. He is now out of prison. But neither man was officially found innocent or pardoned by the federal Cabinet.

If Marshall is cleared, the Government has promised to pay compensation for this 10 1/2 years behind bars.

"I don't know what yardsticks we will use," says Nova Scotia Attorney-General Harry How. "It might be an arbitrary lump sum based on a loss of earnings, plus a couple of other factors."

Meanwhile newspapers across the country have given considerable space to the case; the Toronto Star said in a recent editorial that if Marshall is innocent, he should be unhesitatingly awarded a generous financial compensation.

"Of course there can be no value placed on 11 years of a man's life," the Star said. "Lost opportunities, lost pride and personal anguish do not trace easily into currency."

Meanwhile, it was learned that the Donald Marshall Jr. case is nothing new to Sydney City Police who have tried unsuccessfully to cover up the whole affair.

A Sydney man is reported to have known the suspect for eight years and had gone to the Sydney Police Department and the RCMP in 1974, giving them the suspect's name and evidence allegedly linking him with the Sandy Seale murder. "But...they had their man behind bars," he was told.

The Union of Nova Scotia Indians also gave the suspect's name to police in May 1981 but the police again refused to reopen the case then.

It was finally turned over to the RCMP after Donald Marshall Jr. wrote personally to Roy Newman Ebsary asking him to come out with what information he may have had in January 82.

In his letter he told Ebsary that he suffered long enough for somebody's mistake. "I have maintained my innocence for 11 years... I will pray that you'll be honest about it and ask God to give me the strength to forgive you and to forgive the people that were involved," he wrote.

Mr. Ebsary did not testify at the original 1971 trial although sources say he was questioned by City Police on the case.

He is presently under protective care at the Nova Scotia Hospital undergoing a 30 day examination for "Assault Causing Bodily Harm" at his Falmouth Street residence last December in which another man was seriously injured with a stab wound that missed the heart by less than an inch.

Ebsary has said publicly that he holds the key in the case. He also claimed he is an ordained priest in the "Universal Life Church."

He said he had all the answers in the Seale case and they stay here, he said, while pointing to his heart to a Sydney reporter.

"I want to see Marshall out and I'm going to do it my way."

TORONTO STAR MAR 31 1982
TORONTO ONT.

Police-prompted witnesses to get conviction in murder trial: RCMP

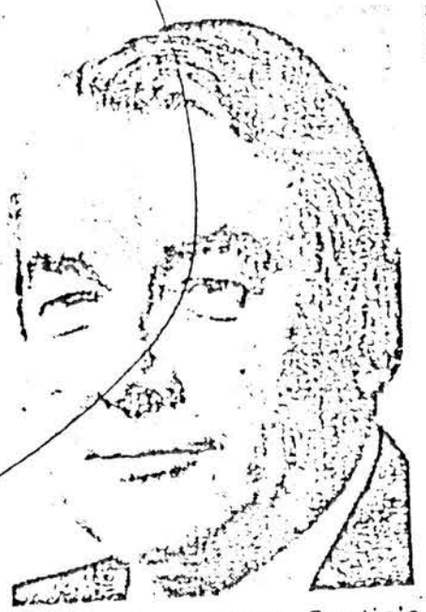
HALIFAX, N.S. — The police investigation which helped convict Donald Marshall 11 years ago for a murder he says he never committed has come under close scrutiny in a just-completed RCMP report on the case.

The Star has learned that key witnesses in the court case have admitted they were under intense pressure from Sydney police to say they saw Marshall stab a 16-year-old friend in a city park in May, 1971.

New evidence in the two-month RCMP probe suggests Sydney police went too far in urging the witnesses to accuse Marshall in the courtroom. It says they got the wrong man.

The report is now on the desk of Nova Scotia Attorney General Harry How.

"At this stage there appear to be very serious questions as to whether or not — as to the accuracy of the evidence given in that hearing," How told The Star yesterday.



Harry How: Nova Scotia's attorney-general is studying RCMP'S report into freed man's release.

Freed at last

Marshall, now 28, was 17 when a Supreme Court judge sentenced him to life imprisonment. Marshall left Dorchester Penitentiary on Monday — 10½ years later — after the National Parole Board granted him day-parole in a Halifax halfway house.

A spokesman said the board acted with unusual speed because of the course of the RCMP probe, which is expected to clear Marshall completely.

A final decision on granting an unconditional pardon, or ordering a new trial, rests with federal Justice Minister Jean Chretien, whose office is studying the affairs.

Court transcripts show one key witness, Maynard Chant, told Sydney detectives a phony story because he was frightened during a two-hour police interrogation a few days after the stabbing.

"See, I told them a story that was not true," Chant, who was 14-years-old and a drug addict at the time, testified in a November, 1971 hearing.

The grade 7 boy, who could not swear on the Bible and who had failed three years at school, said he faked a story "because I was scared," in the Sydney police station.

Chant testified he saw someone stab Seale, and admitted saying in a preliminary hearing that Marshall was the assailant. But during the trial, he said he couldn't swear that the man was Marshall.

He testified: "The only reason I knew his name, I mentioned his name because I knew his name — well, I knew who it was after, but up at the police station there — I don't know how to put it."

In an interview with The Star, Chant, now a born-again Christian, refused to discuss specifics of the case.

He said only: "I think the cops are underhanded," and would not elaborate. "It's like opening up old wounds. Wounds are hard enough to heal."

Witness drunk

The transcript also shows that the other key witness whose testimony sent Marshall to prison admitted he was drunk when he hid behind some bushes and, he testified, saw Marshall stab the victim, Sandy Seale.

John Pratico, then 16, admitted he had accompanied defence lawyer Simon Khattar to the sheriff in order to make a statement.

"I said that Mr. Marshall didn't stab Mr. Seale," he testified.

But in court the next day Pratico reverted to his original story, accusing Marshall of the stabbing. He said he had wavered because "I was scared . . . of my life being taken." He feared Marshall's friends would seek revenge if he "squealed" on him.

RCMP now have a new suspect in the murder case. Charges may be laid once Marshall is cleared.

4

ald Marshall Jr.

11 Year Nightmare Takes Sha

y Gould

BERTOU- Sydney's crack R.C.M.P gators have gathered enough evidence could find Donald Marshall Jr., 28, nt of the 1971 knife slaying of 16 year old Seale.

decision is expected soon from the l Justice Department in Ottawa. In the me, Junior Marshall is serving day parole Carleton Center in Halifax.

stice officials in Ottawa have confirmed of the RCMP report which indicates that pect has identified himself and has d "evidence of his own guilt."

CMP have turned up what is believed to be urder weapon" hidden at a Sydney house past eleven years. The knife has been over to the RCMP crime laboratory for nation by scientific methods. Along with the alleged murder weapon clothing exhibits used as evidence during the 1971 trial belonging to Seale and Marshall will be surfaced to match fibres found on the alleged murder weapon.

It is not clear when charges will be laid. However, indications are that Marshall must be granted full free pardon, which would declare him innocent of the crime...a crime he denied, found guilty and has served the allowable life term.

According to legal experts, he will be the first Canadian found not guilty of the charge after serving a long prison term.

Eyewitnesses Account

Mr. Marshall was convicted primarily by the eyewitness testimony of one 16 year old John Practico who testified that while drinking beer behind a bush at Wentworth Park, he heard Mr. Marshall and Mr. Seale arguing. He said he saw Marshall pull out a shiny object and stab Seale.

Mr. Practico admitted under cross-examination that he had consumed half a bottle of wine, six large bottles of beer and three small bottles. He also testified that he had become liquor sick at the dance, was a heavy drinker and drunk the day before the stabbing and the day after.

Outside the Supreme Court trial Practico told Crown Prosecutor Donald C. MacNeil in front of Det-Sgt. John MacIntyre and Sheriff James McKillop that "Marshall did not stab Seale." However, when they returned inside the court room, Practico stuck to the story he gave at the preliminary hearing.

A Globe and Mail reporter has learned that Practico was a psychiatric patient of the Nova Scotia Hospital less than a month before the trial began.

His mother has said he should not have been called as a witness and his psychiatrist was reportedly shocked that the youth's testimony was believed.

Meanwhile, Maynard Chant of nearby Louisbourg, was the other prosecution eyewitness. He said he was on his way to catch a bus when he noticed John Practico crouched behind a bush and watching two people on Crescent Street.

According to the court transcript, Mr. Chant testified: "One fellow, I don't know, hauled something out of his pocket - anyway, maybe - I don't know what it was. He drove it toward the left side of the other fellow's stomach."

At that point, Mr. Chant fled to a nearby street and a few minutes later, Mr. Marshall ran up to him.

Under direct examination by Mr. MacNeil, Mr. Chant contended that it was the youth who had stabbed Mr. Seale who met him on the nearby street. But under cross-examination he admitted "No, I'm not sure" that he had seen Mr. Marshall earlier on Crescent Street.

Mr. Chant also said that he had at first lied to police about what happened that night.

In his address to the jury, Mr. Marshall's lawyer indicated he found it strange that Mr. Chant did not name Mr. Marshall on the spot as the killer when the two of them met several policemen as Mr. Seale was being placed in an ambulance. It was also strange, the lawyer said, that Mr. Chant did not implicate Mr. Marshall when he again met police the next morning.

Lied Under Oath?

Both crown witnesses have now indicated they've given statements under pressure from Sydney's Detective Division under Det-Sgt. John MacIntyre, now the Chief of Police.

Sydney Police, it was learned, obtained statements because as one witness told a Globe and Mail reporter:"The Police were out to get Marshall." Another witness has alleged he was pressured by the Sydney and Louisbourg Police to concoct a story.

Maynard Chant revealed that he told Sydney detectives a phony story because he was frightened during a two-hour police interrogation.

Chant has indicated that he wants to clear his conscience because he was a "born again Christian."

Meanwhile, John Practico remains under psychiatric observation and resides outside Sydney.

pretty story . . . The unique case of **Donald Marshall** will result in one of the most bitter court battles witnessed in this province in a long time. The fact that notices of civil suits already have been filed has set in motion a series of moves by the defendants who plan a vigorous battle over the allegations of false imprisonment and false arrest. **Attorney- General Harry How** has made it abundantly clear the province in no way will become involved in any financial settlement in the case. City Solicitor Mike Whalley, although he received notice of suit against the city, says there is no way the city can be sued. Any action must be taken against individual police officers . . . Another **Sydney motel**

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Real story of 1971 stabbing will soon unfold, says lawyer

By MERLE MacISAAC
Staff Reporter

OCT. 6 - 1982

Donald Marshall's lawyer contends the real story behind the 1971 Sandy Seale stabbing in Sydney will unfold in the province's court of appeal Dec. 1 and 2.

A five-judge panel of the court ruled partially on lawyer Stephen Aronson's application to introduce new evidence Tuesday — seven witnesses will give testimony and the court reserved decision on the remainder of affidavit evidence and/or other oral evidence.

Marshall, 28, a Cape Breton Mic Mac Indian, is seeking to overturn his 11-year-old second-degree murder conviction. The action follows an RCMP re-investigation of the case and the intervention earlier this year by then justice minister Jean Chretien.

The new version of events in Wentworth Park, Crown and defence lawyers acknowledged Tuesday, include a change in Marshall's own story to clarify what lawyers referred to as his "less than forthright" testimony at trial in 1971.

Responding to questions from the court, Mr. Aronson said his client would be seeking protection under the Canada Evidence Act when the final version is told.

The Act protects persons from having testimony in one proceeding used against them in subsequent proceedings.

Crown prosecutor Frank Edwards took little issue with proposed new evidence except where witnesses concerned were likely to say "damnable things" about Sydney Police investigators William Urquart and John MacIntyre.

Mr. Edwards asked the appeal court to allow rebuttal from the police officers should the court entertain evidence from the original trial's two "eye-witnesses" — Maynard Chant and John Pratico.

The court said it would hear evidence of Chant but did not rule on whether Pratico would be called to testify.

Mr. Edwards opposed hearing any evidence of Pratico at all, accepting that Pratico was not present at the scene of the 1971 stabbing. He also noted the man's long history of psychiatric treatment — part of his symptoms being referred to as a tendency to "fantasize" and "seek the limelight."

The future of the case remains wide open following Tuesday's hearing. The court may still dismiss the appeal, or order a new trial or acquit Donald Marshall.

Other witnesses the court ruled would give testimony in December include Patricia Harris — who at the original trial told of seeing only Marshall and Seale in the park and who is now categorized as a "recanting" witness whose story has changed.

Evidence from a group of witnesses termed as "relating to the third party" include James MacNeil, spoken of in court Tuesday as the man who went to Sydney police immediately after Marshall's conviction with information that another man stabbed Seale.

CHRONICLE - HERALD

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NOV 30 1982

New evidence to be heard

Witnesses with new evidence in the 1971 slaying that resulted in a Cape Breton Micmac Indian's murder conviction will appear before a panel of appeal court judges tomorrow in Halifax.

The Nova Scotia Supreme Court Appeals Division, which is hearing the case of Donald Marshall Jr., has set aside Wednesday and Thursday for fresh evidence in the appeal.

The case was re-opened this year in an RCMP reinvestigation and justice minister intervention on behalf of Marshall who has maintained his innocence in the slaying of his 16-year-old friend Sandy Seale in Sydney's Wentworth Park.

Three options remain with the appeal court judges. They may dismiss the appeal, acquit Donald Marshall or order a new trial. There is no set time frame for their decision.

After defence lawyer Stephen Aronson's application to introduce fresh evidence in October, the appeal court ruled it would hear from at least seven witnesses, including Donald Marshall.

Expected is testimony pointing to a third party who stabbed Marshall's friend Sandy Seale in the park, and a new version of what happened from Marshall himself.

Witesses fall into two categories: a group referred to as "recanting" witnesses, and witnesses whose evidence relates to the third party. Included is James MacNeil, spoken of in earlier court proceedings as the man who went to Sydney police immediately after Marshall's conviction with information that another man stabbed Seale.

An RCMP fibre-expert; Sydney residents Allan Gregory Ebsary and Donna Marie Ebsary, and witnesses from the original trial: Maynard Chant and Patricia Harris, round out the list of witness required so far by the court.

The court reserved decision in October on whether testimony is necessary from 1971 investigating Sydney policemen John MacInytre and William Urquhart, who are now, respectively, Sydney's chief of police and head of detectives.

Prosecutor Frank Edwards requested the police be allowed to respond to anything "damnable" said against them in new testimony.

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Wednesday Oct 6/82

Court opens murder case of man jailed 11 years

Toronto Star special

HALIFAX — The legal process to clear Donald Marshall of his murder conviction has finally begun.

Marshall, 29, spent 11 years in prison for the 1971 stabbing death of 16-year-old Sandy Seale in Sydney, N.S. But he was released last March after a new investigation by police concluded he was innocent.

A Nova Scotia appeals court yesterday decided to summon seven witnesses to give fresh evidence on Dec. 1 and 2. The special review of the case was requested in June by Jean Chretien, former federal minister of justice.

Depending on the new evidence, the appeals court could confirm the original murder conviction; order an acquittal; or order a retrial before a jury in Cape Breton.

Stephen Aronson, Marshall's lawyer, said the testimony of four of the witnesses would prove that another person killed Seale on May 28, 1971.

None of these witnesses testified at the original trial.

But one of them told Sydney police in November, 1971 — 10 days after Marshall was convicted — that he saw someone else murder Seale.

Sydney police did not reveal this information until the Royal Canadian Mounted Police took another look at the case this year.

Two other witnesses to be called in December, both juveniles at the time of the murder, have recanted their earlier testimony, according to crown prosecutor Frank Edwards.

Marshall will be the seventh witness. He maintained his innocence throughout his original trial and his years at Dorchester maximum-security penitentiary in New Brunswick.

Aronson: Lawyer says someone else did killing.

John Pratico, the prosecution's sole alleged eyewitness during the original trial, was not called to appear before the appeals court.

Pratico also has recanted his original testimony and would "say some very damaging things about the police," Edwards said. "It would be an exercise in futility to hear his testimony."

Pratico was under a psychiatrist's

See MARSHALL/page A4

Marshall to get court hearing

Continued from page A1

care during the 1971 trial and still is today.

"Pratico will say anything to be in the limelight," Edwards said. "That is the nature of his illness."

Between the time of the preliminary hearing and the trial in 1971, Pratico suffered a nervous breakdown and was taken by police to the Nova Scotia Hospital in Dartmouth. He returned to Cape Breton a few days before the trial as the star witness.

In an affidavit filed with the court this year, Pratico claims he was pressured by police into testifying that he witnessed the murder.

Although some of the five appeals court judges appeared to favor sending Marshall to a retrial, both Edwards and Aronson argue the court will hear enough evidence to make its own decision. "It would not be fair to my client to order a new trial and prolong the matter," Aronson said.

A final decision is expected in early 1983.

If Marshall is finally cleared, legal experts say he will be the first Canadian found not guilty of a murder charge after serving a long prison term.

After yesterday's hearing, Aronson said his client "was happy that the case is making some progress".

It was the first time Marshall, son of the grand chief of the Micmac nation, appeared in court and was photographed since his 1971 trial.

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★★★ TORONTO STAR, MONDAY, NOVEMBER 29, 1982/A3

Murder trial reopens--11 years later

Special to The Star

SYDNEY, N.S. — The many mysteries in the Donald Marshall case will finally begin to unravel Wednesday in a Halifax courtroom.

That's when the Nova Scotia Supreme Court will begin to hear the appeal of the Micmac Indian from Cape Breton Island who spent nearly 11 years in prison for the 1971 murder of his friend Sandy Seale — a killing he always maintained he never committed.

Seven witnesses have been summoned to give evidence.

Marshall, now 28, was released on parole in March, 1982, after an RCMP probe of Seale's murder suggested he was innocent and the victim of a shoddy police investigation.

Special review

The special review by the Supreme Court was requested in June by former justice minister Jean Chretien.

The major question the seven subpoenaed witnesses may help solve is: If Marshall didn't murder Seale in a Sydney park 11 years ago, who did?

The court will hear the full version of the events in the park, including what occurred immediately before the murder.

The testimony is expected to reveal how officers of the Sydney police force coerced at least two Cape Breton youths into fabricating their evidence on which Marshall was convicted.

Marshall

Maynard Chant, 14 years old at the time of the murder, and John Pratico, then 16, have since signed sworn affidavits saying that fear of police led them to give eyewitness accounts of a murder they had not seen.

Roy Ebsary, 70, who says he is an ordained priest in the "Universal Life Church," is also expected to give evidence.

It was a confession by a new suspect that set the wheels in motion for Marshall's release.

Marshall testified at his trial that two men "who looked like priests" stabbed Seale and also cut Marshall on the arm.

Forensic evidence

Another witness is Jimmy MacNeil, a Sydney man who says he was involved in the murder.

Not until after the trial was over did he go to the police and tell his story.

There will also be new forensic evidence about fabrics found on the alleged murder weapon.

Marshall is represented by Dartmouth lawyer Stephen Aronson. He wants to get Marshall a "free pardon" — meaning government recognition he never committed the murder in the first place — and substantial financial compensation for his 11-year ordeal.

The Marshall case promises to become an important legal milestone. No Canadian has ever been declared innocent of a murder charge and had the sentence overthrown after having served time in prison, legal experts say.

Marshall case witnesses say investigators pressured them

Eleven years after he told a jury Donald Marshall Jr. stabbed Sandy Seale, Louisbourg resident Maynard Chant, 26, testified Thursday he saw no stabbing and felt pressured by investigators into giving false evidence.

Professing born-again Christianity and vowing the truth, Chant was testifying at the concluding day of evidence in Marshall's appeal from a second-degree murder conviction.

Five appeal court judges adjourned the case Thursday and now await printed transcripts before a date, likely in the new year, when Marshall's lawyer Stephen Aronson will argue for his client's acquittal.

DEC 3 1982

DEC 11 1982

Chant was one of two eye-witnesses at Marshall's first trial. Psychiatrists have declared the second, John Pratico, completely unreliable and his evidence will not be heard in the current appeal.

Final testimony for the day centred on what the defence contends was the weapon used to stab Seale near Sydney's Wentworth Park on May 28, 1971.

An RCMP expert said fibres off a knife seized from a collection belonging to 70-year-old Sydney man Roy Ebsary were consistent with materials in clothing worn by Seale and Marshall on May 28, 1971.

A drinking companion of Ebsary's, James MacNeil, told the court Wednesday he and the old man were walking near the park when Marshall and Seale attacked them — leading to Seale's stabbing by Ebsary.

Marshall admitted his intention "to roll someone" in the park when he testified Wednesday, but he said the attempt was never carried out.

See MARSHALL CASE page 2

Marshall case witnesses

(Continued from page one)

From all accounts, Marshall suffered a gash to his inner left arm during the incident. DEC 3 1982

The expert, A. J. Evers, who also testified in the 1971 trial when no murder weapon was produced, said chance were "fairly remote" that the fibres came from anywhere but the clothing worn by Seale and Marshall.

Maynard Chant and a second witness from the original trial, Patricia Harris, both said they were "young and scared" at the time of police questioning and felt pressured into giving false evidence.

Chant explained he was on a nearby street when Marshall came running up to him and told of the stabbing incident. Later, when police asked him what he saw in the park, he answered, "everything."

At the Sydney police station, Chant's first statement gave Marshall's version of the story; that two strangers were responsible for the stabbing of Seale.

In a second interrogation in Louisbourg's town hall, Chant reversed his story.

"When I tried to tell the truth, people taking the statement wouldn't believe me," he testified yesterday.

Present at the second interrogation, Chant said, were his probation officer, his mother and Louisbourg police chief Wayne McGee. Later, he said, Sydney's investigating detectives (William Urquhart and John MacIntyre) arrived.

On cross-examination by Crown prosecutor Frank Edwards, Chant, a 14-year-old at the time, said that during the second interrogation, "they told me that I had committed perjury.

"They said they had a fellow who said he saw me (in the park) and that I had seen everything he had seen.

"They brought up my record and the trouble I was in. That's when I said I hadn't seen anything," Chant testified.

"They told me I had to see something."

In 1971, Patricia Harris, then 14, told jurors of seeing Marshall in the park with one other person. Yesterday, she said she wanted to say there were two others, but during a "very unpleasant" six-hour session at the Sydney police station, she testified, "my statement was changed."

The word perjury was mentioned and it seemed they didn't want to believe I saw the two men."

She and Chant both testified they were "young and scared" at the time.

At yesterday's close, prosecutor Edwards decided against an earlier request that the court hear from Sydney police investigators in the 1971 case, MacIntyre and Urquhart.

Thursday's only other witness was Gregory Ebsary, son of Roy Ebsary. He identified the knives presented as evidence as those belonging to his father.

His father, Roy Ebsary, he described as "very violent" — a man who carried knives constantly and who enjoyed seeing how much alcohol he could consume.

On occasion, Mr. Ebsary testified his father would "beat the furniture up with a hatchet."

Mr. Ebsary said he was not at home on the day of the Seale stabbing and could not recall whether he warned James MacNeil against reporting his father's involvement.

HALIFAX CHRONICLE-HERALD

Marshall Launches Civil Action Against City, Police Officials

The Marshall murder case took a new twist today when a lawsuit was launched against the City of Sydney, Police Chief John MacIntyre and Detective Bill Urquhart.

The writ, issued by Marshall's lawyer Steve Aronson, claims unspecified damages as a result of murder proceedings brought against Marshall in 1971.

Donald Marshall, Jr., of Membertou now residing in Halifax, was convicted of the murder of 16-year-old Sandy Seale near Wentworth Park in May, 1971. Marshall served 11 years of a life term before new evidence surfaced that gave the accused his freedom pending a decision by the Supreme Court next month.

Marshall suing City of Syndey

SYDNEY (CP) — Donald Marshall, who served a decade in penitentiary for a murder conviction currently under review by the Nova Scotia Supreme Court, has filed a statement of claim against the City of Sydney and its two members of its police department.

Details of the claim are not available pending further court action. Marshall's suit names as defendants the city, police chief John L. MacIntyre and his chief of detectives, William Urquhart.

Jean Chretien, then the federal justice minister, ordered the review of Marshall's case after new evidence surfaced during an RCMP investigation.

The court heard two days of testimony in December before adjourning further hearings, later scheduled Feb. 16.

Several witnesses who gave testimony that helped convict Marshall of the fatal stabbing of Sanford (Sandy) Seale, 16, in 1971 told the Supreme Court their evidence had been false.

Marshall, 29, has served most of his time behind bars at the federal penitentiary in Dorchester, N.B.

Case studied, Marshall sues city, police

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Several witnesses who gave testimony that helped convict Mr. Marshall, 29, of the fatal stabbing of Sanford (Sandy) Seale, 16, in 1971 told the Supreme Court their evidence had been false.

Local legal experts were shocked that Donald Marshall, Jr. has launched a lawsuit against the city and two of its police officers before disposition of the case in the Supreme Court later this month. The city's legal staff indicates the suit against the city is not legal on the grounds the city cannot be held responsible for the action of members of the police department . . . And while we are commenting on this entire bizarre situation isn't it about time that the police officers involved in this case had a chance to tell their side of the story? The strain has been heavy on both **Police Chief John MacIntyre and Inspector Bill Urquhart** yet they have had to suffer in silence. It's not fair . . . The price war

Bruce W. Miller

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DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

Aug. 26/81
4.50 P.M.

FROM: B.W.

TO: File

T.C. from Wm. Urquhart - City Police - Wanted to say he had a visit this P.M. from young man by name of Ian Paul. Paul told Urquhart that he had a message from Donald Marshall that Roy Ebsary of Falmouth St. was the one who murdered Sandy Seale.

Urquhart indicated that Ebsary had been checked out previously with negative results but he would interview Ian Paul for further details and information supporting this allegation. He stated that he would get back to Frank Edwards regarding the results of his inquiry, but for now just wanted to state that Ian Paul was in.