

I N D E X C O N T ' D

- EXHIBIT 82 Curriculum Vitae of Bruce Archibald
- EXHIBIT 83
VOLUME 26 Opinion prepared by Bruce Archibald re: The Use of Evidence and the Making of Evidentiary Rulings at the Trial of Donald Marshall, Jr.
- EXHIBIT 84 Affidavit of Keith Beaver, dated August 11, 1982
- EXHIBIT 85 Letter from A. D. Muggah to Daniel Morrison, dated November 26, 1971
- EXHIBIT 86 Original notes of John MacIntyre (reproduced at 16:129)
- EXHIBIT 87 Portions of notebook of Constable Clarke, Baddeck
- EXHIBIT 88 List of documents given by Sergeant MacIntyre to Harry Wheaton, dated April 26, 1982
- EXHIBIT 88A Handwritten copy of last page of Exhibit 88, S/Sgt. Harry Wheaton
- EXHIBIT 89 Affidavit of John MacIntyre, dated August 17th, 1984, MacIntyre vs. CBC
- EXHIBIT 90 Extract of notes from Staff Sgt. Wheaton's notebook 1982
- EXHIBIT 90A Notes - handwritten version of typed Exhibit 90, Harry Wheaton
- EXHIBIT 90B Original notebook, Harry Wheaton
- EXHIBIT 91 Letters of commendation etc. re: John MacIntyre 3 volumes A, B & C

I N D E X C O N T ' D

- EXHIBIT 92 Notes of Eugene Smith, November 17-24, 1971
- EXHIBIT 93 Polygraph Cases - 1971 (Eugene Smith)
- EXHIBIT 94 Job description of Reader (Donald Burgess), dated
1983
- EXHIBIT 95 Notes prepared by Donald Burgess, RCMP (A-5, Dec.
6, 1983)
- EXHIBIT 96 Notes of Eugene Cole
- EXHIBIT 97
VOLUME 36 File of Melinda MacLean/Deborah Gass
- EXHIBIT 98
VOLUME 29 Aronson's and Edward's notes
- EXHIBIT 99
VOLUME 34 Wheaton's Investigation/Lab Reports
- EXHIBIT 100 Original statement of Greg Ebsary, April 19, 1982,
witnessed by Harry Wheaton
- EXHIBIT 100A Statement of Mary Ebsary, dated April 19, 1982
- EXHIBIT 101 Original statement of Donald Marshall, Jr., 1982
- EXHIBIT 102 Affidavit prepared by H. Wheaton, re Reference,
September 7th (?), 1982
- EXHIBIT 103 Statement of Roy Ebsary, witnessed by Corporal
Carroll, dated February 23, 1982
- EXHIBIT 104 Handwritten notes of Corporal Carroll

I N D E X C O N T ' D

- EXHIBIT 105 Excerpts from Cape Breton Post, May 31-June 5, 1971
- EXHIBIT 105A Clipping - Cape Breton Post, re remand of Donald Marshall, Jr.
- EXHIBIT 106
VOLUME 37 Transcript of June, 1984 Examination of Discovery of Heather Matheson, MacIntyre v. CBC
- EXHIBIT 107 Calendar, 1800 to 2050
- EXHIBIT 108 Notes tken by Harry Wheaton during 1982 Reference
- EXHIBIT 109 Diagram of office where Wheaton/Davies met MacIntyre, April 26, 1982
- EXHIBIT 110 3 pages from Discovery evidence of Heather Matheson, missing from original document (See Exhibit 106)
- EXHIBIT 111 RCMP media guidelines
- EXHIBIT 112
VOLUME 35 Correctional services material
- EXHIBIT 113
VOLUME 27 Aronson materials
- EXHIBIT 114 Original statement from Donald Marshall, Jr. taken by Staff/Sgt. Wheaton, March 9th, 1982
- EXHIBIT 115 Superintendent Scott's Notes, 1982
- EXHIBIT 116 Cape Breton Post article, June 19, 1986

I N D E X C O N T ' D

- EXHIBIT 117 RCMP Operational Manual (one page)
- EXHIBIT 118 Letter from D. B. Scott, 1980, re Dan Paul
- EXHIBIT 119 William Urquhart - personal history
- EXHIBIT 120 Documentations re Robert Patterson
- EXHIBIT 121 Fingerprints, Roy Ebsary, April 9, 1970
- EXHIBIT 122 Criminal Code provisions
- EXHIBIT 123 Correspondence between Cacchione and National
VOLUME 30 Parole Board, House of Commons Justice Committee,
MacGuigan, and Correctional Services of Canada
- EXHIBIT 124 Correspondence - September 11, 1981 to February
VOLUME 31 22, 1983
- EXHIBIT 125 Correspondence - May 9, 1983 to February 23, 1984
VOLUME 32
- EXHIBIT 126 Letter dated May 10, 1983 from Chief Justice of
Nova Scotia to Federal Minister of Justice
- EXHIBIT 127 Notes of Ron Fainstein
- EXHIBIT 128 Federal-Provincial Task Force Report on
Compensation of Wrongfully Convicted and
Imprisoned Persons
- EXHIBIT 129 Notes of Brian Williston (D. Pink)
- EXHIBIT 130 Newspaper articles containing allegations against
William Urquhart (D. Murray)

EX # 82

CURRICULUM VITAE

BRUCE P. ARCHIBALD

Office Address:

Dalhousie Law School
Halifax, Nova Scotia
Canada B3H 4H9
Telephone: (902)424-3554

Home Address:

2140 Brunswick Street
Halifax, Nova Scotia
Canada B3K 2Y8
Telephone: (902)425-8107

1. PERSONAL DATA:

Date of Birth:	January 15 1948
Place of Birth:	Halifax, Nova Scotia Canada
Citizenship:	Canadian
Marital Status:	Married
Spouse:	Martha M. Pratt
Children:	Michael J. P. Archibald (October 16, 1979) Elizabeth J. P. Archibald (August 5, 1981)
Language Proficiency:	Mother Tongue-English; Second Language-French

2. EDUCATION:

Senior Matriculation, 1966, Sidney Stephen High School.

B.A., 1970 University of Kings College, Halifax, N. S.
(Honours - Political Science/Sociology),

M.A., 1971, Dalhousie University, Halifax, N. S.
(Sociology - Thesis: Economic Underdevelopment in the Atlantic
Provinces)

LL.B., 1974, Dalhousie University, Halifax, N. S.

LL.M., 1975, Columbia University, New York, N. Y.

Postgraduate Study 1975-76, Universite de Paris I (Pantheon-Sorbonne),
Paris, France

Sabbatical Leave, 1985-86, Max Planck Institute for Foreign and
International Criminal Law, Freiburg, Federal Republic Germany and
independent research in Strasbourg, France

MEDIA POOL COPY

3. SCHOLASTIC AWARDS:

New Living Endowment Scholarship, King's College, 1966;
President's Scholarship, King's College, 1967, 1968, 1969;
Governor General's Medal, King's College, 1970;
Graduate Assistantship, Dalhousie University 1970;
Sir James Dunn Scholarship in Law, Dalhousie Law School, 1971;
Jervey Fellowship in Comparative Law, Columbia Law School, 1975-76.

4. PROFESSIONAL EXPERIENCE:

Government

Dominion Bureau of Statistics, Government of Canada, Ottawa, Ontario,
1969-1970 Summer Researcher

Legal Profession

Dalhousie Legal Aid Service, Halifax, Nova Scotia 1972 - Summer
Researcher

Burchill, Jost, MacAdam, Hayman and Merrick, 1973-75
Articled Clerk

Office of Crown Prosecutor, Halifax, Nova Scotia 1978
Articled Clerk

Bar Admission, Nova Scotia Barrister's Society, 1977

Law Teaching

Dalhousie Law School, 1976-
Assistant Professor, 1976-79
Associate Professor, 1979-
Tenure, 1981

Courses Taught:

Criminal Law and Procedure	Legal Process
Criminal Procedure	Legal Development
Selected Criminal Law Problems	Family Law
Comparative Criminal Law	Quebec Law/
Evidence	Comparative Civil Law
Graduate Seminar on Legal Scholarship	

Bar Admission Course, Nova Scotia 1977-78, Legal Ethics

Civil Law/Common Law Exchange Programme, 1978-81
Matrimonial Property Law,
Comparative Matrimonial Property Law,
Comparative Law Methodology

Consulting Work

Consultant, Law Reform Commission of Canada, 1982 - Criminal Code Review

Consultant, Department of Justice, Government of Canada, Civil Law/Common Law Exchange Programme - 1987

Consultant, Royal Commission re: The Donald Marshall Jr. Prosecutor, Province of Nova Scotia - 1987

Labour Arbitration

Sole Arbitrator and Arbitration Board Chair in Private and Public Sector Grievance Disputes, 1984-

Administrative Experience

Dalhousie Law School Committees (Member or Chair):

Library Committee,	Academic Committee
Student Liaison Committee,	Ad Hoc Committee on
External Committee,	Merits Awards,
Graduate Studies Committee,	Admissions Committee,
Law School-Bar Society	Dean's Selection
Committee	Committees

Dalhousie University Senate

Ad Hoc Committee on the Ombudsman,
Senate Library Committee

Dalhousie Faculty of Graduate Studies, Council Member

Civil Law/Common Law Exchange Programme
Director, 1978-80

University of King's College, Board of Governors,
Member of Board, 1984-87,
Presidential Selection Committee Member, 1986-87

Canadian Association of Law Teachers
Executive Member, 1978-79
Secretary-Treasurer, 1980-81
First Vice-President, 1981-82
President, 1982-83
Past President, 1983-84

Dalhousie Legal Aid Service, Board of Trustees
Member, 1976-81
Chairperson, 1979-80
Finance Committee Chairperson, 1980

Dalhousie Law School Alumni Association
Secretary-Treasurer, 1980-81

University of King's College Alumni Association
President, 1982-85

Social Sciences and Humanities Research Council of Canada
International Travel Grant Awards Committee,
Member, 1979-1983
Special Advisory Committee on Scholarly Relations the Peoples
Republic of China, Member 1980
Committee on Research Grants to Scholarly Publication, 1987

Symposium on Leadership and Legal Development in China
by Dalhousie Law School, St. Mary's University and the University
of King's College, October 14, 1978-Organizer

5. PUBLICATIONS:

Non-legal

"Atlantic Regional Underdevelopment and Socialism", in Lapierre, And
Taylor (eds), Essays on the Left, McLelland and Stewart, Toronto,
1971

Community Development Corporation: American Experience and Nova Scotia
Prospects, Dalhousie Legal and Air Services, Halifax, 1973 (with Bruce
Holton).

Teaching Materials

"An Introduction to Matrimonial Property Law in Common Law Jurisdictions", (Dalhousie Law School, Halifax, 1978 Civil Law/Common Law Exchange Programme)

Criminal Law and Procedure: Cases and Materials, (Dalhousie Law School, 1976)

Selected Criminal Law Problems, Dalhousie Law School, 1980-1981,

Articles

"The Law of Arrest", in Vincent Del Buono, (ed), Criminal Procedure in Canada, Butterworths, Toronto, 1982

"Homicide Law in Canada: An Outline", Legal-ease, P.L.E Society, Halifax, 1984

"The Bill Joe MacLean Case: A Question of Rights", The Chronicle Herald/Mail-Star, Halifax, November 29, 1986, (with John Godfrey)

"Compelling Appearance of an Accused: Appearance Notice, Summons, Arrest, Bail and Pretrial Detention", in J. E. Pink and D. Perrier (eds)., Criminal Law for Layman, Carswells, Toronto, forthcoming

Book Reviews

On Criminal Procedure, Principes de droit penal general, Traite de droit penal general, (1984) 8 Dal. L.J. 248

Perspectives in Criminal Law: Essays in Honour of John LL.J. Edwards, (1986) Can. Bar Rev.

Essays on the Civil Codes of Quebec and St. Lucie (1986), Can. Bar Rev.

Principle of Criminal Law, Can. Bar Rev. (forthcoming)

Case Comments

Hayes v. Thompson : Annotation, (1985) 44 C.R. (3d) 317

Law Reform Working Papers and Reports

Law Reform Commission of Canada, Working Paper #41, Arrest, Ministry of Supply and Services, Ottawa, 1985 ("principal consultant," ie. "author")

Law Reform Commission of Canada, Report #29, Arrest, Ministry of Supply and Services, Ottawa, 1986, ("principal consultant")

Law Reform Commission of Canada, Working Paper, Compelling Appearance, Interim Release and Pretrial Detention, forthcoming, fall, 1987 ("principal consultant")

Publications in Progress

The Structure of the General Part in Canadian Criminal Law and its Importance for the Criminal Code Review - monograph.

Teaching Materials for Criminal Justice: The Individual and the State.

"The Constitutionalization of the General Part in Criminal Law", paper for a Conference entitled "Reform of the Criminal Law", London, England, July, 1987

6. PAPERS PRESENTED

"The Law of Contract in the People's Republic of China", comments to Symposium on Law and Leadership in the PRC, 1978

"Mistake as a Defence to Federal and Provincial Offenses", Educational Seminar of the Provincial Court Judges' Association, Halifax, Nova Scotia, February 20, 1981.

"Are there any defences left?", Conference on Criminal Justice of the Canadian Institute for the Administration of Justice, Halifax, Nova Scotia, October 30, 1981.

"Criminal Responsibility for Exceeding Justifiable Force: A Partial Excuse for the Misguided" Conference 2000 Educational Series, Nova Scotia Barristers' Society, April 26, 1982.

"The Abnormal Offender: A Challenge to Crime Reduction", Symposium of the Atlantic Institute of Criminology; November 6, 1986

7. GRADUATE THESES SUPERVISED

R. Paul Nadin-Davis, Erasing the Mark of Cain: The Stigma of the Criminal Sanction, Dalhousie University, 1979

Madeline Maillard, L'Element moral de l'infraction en droit francais et droit canadien, Dalhousie University, 1986

8. OTHER ACTIVITIES

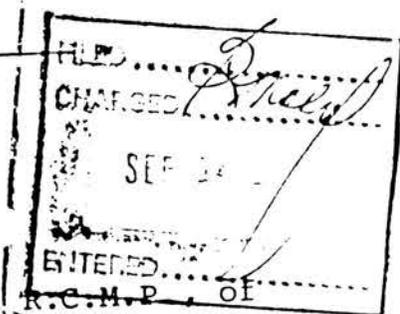
Childcare, Housework, Sailing, Banjo Playing, Scouting, Choral Music, Amateur Theology

#84

S.C.C. No. 00580

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

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.



AFFIDAVIT

I, Keith Beaver, a Constable in the R.C.M.P. of Baddeck, in the County of Victoria and Province of Nova Scotia, make oath and say as follows:

1. That on Friday night, May 28, 1971, I attended a dance at St. Joseph's Hall in Sydney and left the said dance at approximately 12:00 midnight in the company of Alanna Dixon and Karen MacDonald.
2. That upon leaving the said dance we were in the company of Alexander (Sandy) Seale, who was alone, and we talked to the said Sandy Seale, and the four of us proceeded to walk to Wentworth Park, in Sydney.
3. That when we arrived at the said Wentworth Park, Sandy Seale left our company and I do not recall whether or not he actually entered the said Wentworth Park.
4. That from the time we left the dance at St. Joseph's Hall until we parted company from Sandy Seale, no other person joined our company nor did Sandy Seale engage in a conversation with any person, other than myself, Alanna Dixon and Karen MacDonald.

MEDIA POOL COPY

5. That on March 2, 1982, I gave a free and voluntary written statement to the R.C.M.P., a copy of which is produced herewith and marked Exhibit "A", concerning my knowledge of the events leading to the death of Alexander (Sandy) Seale, and that to the best of my knowledge and belief the facts contained therein are true.

SWORN TO at WILTY CO COMACD)
in the County of INVERNESS)
Province of Nova Scotia, this)
11th day of August A.D. 1982,)
before me,)
R. C. Johnson)
A Barrister of the Supreme Court)
R. C. JOHNSON
A Commissioner of the
Supreme Court of Nova Scotia

M. K. I.
KEITH BEAVER

4.85

November 26, 1971

Daniel B. Morrison, Esq.,
Prothonotary,
The Law Courts,
Halifax, N.S.

Re: Queen vs Marshall

Dear Mr. Morrison:

At the request of Mr. Gordon Gale we are forwarding
herewith the record in the above case for use on appeal, con-
sisting of (1). Information, (2). Evidence, (3). Indictment,
(4). List of Exhibits and (5). Plan.

COPY

Yours very truly,

A. D. Muggah,
Prothonotary

ADM/db

MEDIA POOL COPY

NOTES TAKEN FROM THE NOTEBOOK OF
CPL. S.G. CLARKE WHILE STATIONED IN BADDECK, N.S.

4-6-71 - 7:50 P.M.

87

Det. MacIntyre & Urquhart arrived Baddeck and requested a member to go with them to Whycocomagh, Inv. Co., N.S. to locate Donald Jr. Marshall. The Marshall family is staying at John Googoo's house, a grandfather who died a few weeks ago. Gave a few details how Marshall had given them a statement of how they were walking through the park and two men came up to them and stabbed the other fellow in the stomach. Both men were big and one with white hair. We then proceed via TC #105 to Whycocomagh. Asked a couple of fellows on a house step where Googoo had lived and they pointed to the house across the road. Went to house. Women and children in yard and MacIntyre asked if Donald was home, said yes and he came out the door. I got out and MacIntyre got out. He asked if Donald had a jacket and ? to get it. Donald went back into the house and I opened the back door of the P.C. for him. Urquhart sitting in rear seat behind drivers side. MacIntyre then talked to father and got back in car. We drove to the edge of the Hwy. 105 and Det. MacIntyre gave the police caution and read the warrant to Marshall. There was no reply but Urquhart then handcuffed Marshall and we drove to Baddeck about half way there Marshall had been sobbing and had put his handcuffed hands over his head. Det. MacIntyre told him to sit up and at this time he said, "I did not do it". Those were the only words he spoke during the time I was with them. We arrived back at the office & before Marshall got into the Sydney City Police veh. I gave him a search. Nothing was found. Before we left Whycocomagh and just after he got in the car Det. Urquhart helped him bandage his arm where it was cut. Det. MacIntyre took my name and reg. number, got into their car and drove off. Left Baddeck 8:50 p.m. Cst. Lund called

MEDIA POOL COPY

4-6-71 7:50 pm

On 4/6/71 I arrived
 at the airport and
 contacted the
 Marshall family
 who were staying at
 P. Cobelli's house.
 A grandfather who
 did a few weeks
 ago - take a few
 minutes. Can I Marshall
 had given them a
 statement of how
 they were walking
 thru the park &
 two men came
 up to them &
 stabbed the other
 fellow in the
 stomach. Both men
 were from the
 with which they
 We then proceeded
 via I-95 to
 the prison. I
 asked a couple
 of fellows on a
 local bus when
 coming had given
 & they pointed to
 the house across
 the road. Went to
 house. Women &
 children in yard
 and N/A. I
 asked if Donald was
 home, and yes
 & he came out
 the door. I got
 out & N/A. I
 got out the wheel
 of Donald had a
 print of it. I
 got it. Donald

NOTE TAKEN
 FROM THE NOTES
 OF CHAIRMAN
 WHILE STATIONED
 IN BADDICK
 NIS. CPT S.G.

27
went back into
the house &
opened the back
door of the PC
for him. Urquhart
sat on rear seat
supposed driver side
that I saw, then told
me to get in & out
back in car. We
drove to the edge
of the village
at the top of the
river the police
captain & search
the apartment of
Marshall. There
was no reply. Urquhart
then said
cuffed Marshall &
we drove to saddle
about half past three
Marshall had their
clothing & had put
his knifecutting hands
over his head. I
the driver told him
to get up & get
this time he said
"I did not do it"
These were the only
words he spoke
during the flight &
was with them
we arrived back
at the office &
before Marshall got
into the Syd. City
police van & took
him to court
nothing was found
Other we left
wherever & just
after he was in
the van Det. Chant
helped him bundle
the van police got
into court. Det.
No more was

308
my name + my
husband, got into
their car & drove
off. Left ladder down

Left hand called
in alarm with

#88

SYDNEY POLICE DEPARTMENT

April 26, 1982.

82-04-27
11:31 AM
Rel. 11.31
82-04-27

Notes and handwriting taken by Sergeant Urquhart and Sergeant MacIntyre in 1971 - Nineteen loose leaf pages of names during the investigation of the Marshall case and possible evidence.

HFW S/Sgt

Statement of Facts - Marshall case - reference bearing Sergeant MacKinley's name on it.

HFW S/Sgt

City of Sydney Hospital - Dept. of Pathology to Sergeant MacIntyre re Haematology Report.

HFW S/Sgt

Previous record of Donald John Marshall, Jr.

HFW S/Sgt

Working papers of the late D.C. MacNeil, O.C., Prosecuting Counsel, given to Sergt. MacIntyre November, 1971 to be put in my file. Also copy of Warrant for the arrest of Donald Marshall, Jr. Copy from Sydney Ident. Section, J.Ryan, re photographs.

HFW S/Sgt

Typewritten copies of Statements:

Statement of Maynard Vincent Chant - May 29th; May 30th; June 4, 1971.

HFW S/Sgt

Statement of John Lewis Pratico - May 30th; June 4th, 1971.

HFW S/Sgt

Statement of Mrs. Merle Davis - July 8/71

HFW S/Sgt

Statements of Terrance Patrick Gushue - June 17, 1971.

HFW S/Sgt

Statement of Lawrence Gerard Paul - June 2/71.

HFW S/Sgt

Statements of Patricia Ann Harris - June 18, 1971.

HFW S/Sgt

Statement of Arthur James Paul - June 2, 1971.

HFW S/Sgt

Statement of Brian Doucet - June 14, 1971

HFW S/Sgt

Statement of Allana Dickson - May 30, 1971

HFW S/Sgt

Statement of Gary Vincent Tobin - June 3, 1971

HFW S/Sgt

Statement of Francis Joseph French - June 2, 1971

HFW S/Sgt

Statement of Donald Marshall - May 30, 1971

HFW S/Sgt

Statement of Barbara Ellen Vigneau - June 23, 1971

HFW S/Sgt

Statements of Marvel Dwight Mattson - June 8, 1971

HFW S/Sgt

Statement of Robert Scott MacKay - June 2, 1971

HFW S/Sgt

Statement of Roy A. Gould - June 7, 1971.

HFW S/Sgt

Statements of Constables Walsh; Mroz; Howard Dean; Ambrose MacDonald, Sydney Police Department - May 29th and the early morning of May 30th, 1971. The officers were on Duty at the time.

HFW S/Sgt

continued.....page 2

MEDIA POOL COPY

SYDNEY POLICE DEPARTMENT

Page 2 continued

Information after interview with Donald Roseworthy and Gaye Dickson

May 30, 1971

Keith Beaver - May 31, 1971

James Cote - June 1, 1971

Roseworthy

HFW S/sgt
HFW S/sgt
HFW S/sgt

Copies of Seventeen Summons served in Donald Marshall, Jr. case. *HFW S/sgt*
Four maps - scene of the murder by Engineering Department.

Copies of Statements of James William MacNeil - Nov. 15, 1971

Gregory Allan Ebsary - Nov. 15, 1971

David Wm. MacNeil - Nov. 15, 1971

John Joseph MacNeil - Nov. 15, 1971

Roy Ebsary - Nov. 15, 1971

Mrs. Mary Patricia Ebsary - Nov. 15, 1971

HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt

Original Statements taken November 15, 1971, as follows:

Gregory Allan Ebsary

Mrs. Mary Patricia Ebsary

Roy Ebsary

David William MacNeil

John Joseph MacNeil

John William MacNeil

HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt
HFW S/sgt

Statements of George Wallace MacNeil

Roderick Alexander MacNeil

} 2 in 1
HFW S/sgt

Six Police reports of May 29, 1971, pertaining to the Seale incident. *HFW S/sgt*
Letter dated June 1, 1971 from the Black United Front, Mr. P. A. Winn, *HFW S/sgt*
Supervisor.

Original Statements of Mary Patricia O'Reilly - June 18, 1971

Catherine Ann O'Reilly - June 18, 1971

Raymond Rudolph Poirier - July 2, 1971

HFW S/sgt
HFW S/sgt
HFW S/sgt

Report from the late Chief of Police G.K. MacLeod to National Parole Service September 12, 1972. *HFW S/sgt*

continued....page 3

SYDNEY POLICE DEPARTMENT

Page 3 continued

A letter addressed to Detective Sergeant John Mallowney, which he received on Jan. 4, 1981 to Mr. Roy Ebsary from Donald Marshall, Jr., which is self-explanatory. *McW*

Also a letter received by me, Chief John F. MacIntyre, on Feb. 1, 1982 from Mr. Stephen J. Aronson re Donald Marshall Jr. and my reply, which is self-explanatory. *McW*

As a result of this letter on Feb. 2, 1982, because of the contents of Mr. Aronson's letter, Mr. Eugene C. Smith of Commercial Investigations and Consultants Ltd., Rothesay, N.B., was contacted by myself by phone as to what he knew of the Ebsary investigation in 1971, as this particular investigation was handed over to the R.C.M.P. and an investigation took place on the 23rd day of November, 1971 when a Polygraph examination was conducted by him and his letter is self-explanatory. *McW*

April 26, 1982.

Inspector William Urquhart produced a document, dated August 26, 1981, which was given to him on that date by Mr. Dan Paul in regard to one Roy Ebsary. Inspector Urquhart informed Mr. Paul at that time that his information was not sufficient and to try and get the name of the party who made the statement and get back to him. Inspector Urquhart also informed the Assistant Crown Prosecutor, Mr. Brian Williston of this document and to date, no further information came forth. This document is enclosed for your perusal. *McW*

April 1982.
Sydney Police Department

ORIGINAL STATEMENTS

May 29th - Statement of Chant missing????

Original of Chant 4 June 71

Pratico	O.K.	<i>HW</i>
Davis	O.K.	<i>HW</i>
Gushue	O.K.	<i>HW</i>
L. Paul	O.K.	<i>HW</i>
P.A. Harris	One Statement given to S/S Wheaton already	<i>HW</i>
A. J. Paul	O.K.	<i>HW</i>
B. Doucet	O.K.	<i>HW</i>
A. Dickson	O.K.	<i>HW</i>
G.V. Tobin	O.K.	<i>HW</i>
F. J. French	O.K.	<i>HW</i>
Marshall	?????	<i>not present</i>
B. E. Vigneau	O.K.	<i>HW</i>
Mattson	????	<i>not present</i>
Mackay	O.K.	<i>HW</i>
Gould	O.K.	<i>HW</i>
Police	?????	<i>HW</i>

*2 in 1 { George M. Nut 31 May
Dandy*

C. King D. D. D.

2 Pages Handwritten Notes HW

Typed Abstract of Donald Marshall HW
Existence

EE.
[Signature]

Ex. 88A

SYDNEY POLICE DEPARTMENT

April 26, 1982.

82-04-27

11:31 AM

11.31

82-04-27

Notes and handwriting taken by Sergeant Urquhart and Sergeant MacIntyre in 1971 - Nineteen loose leaf pages of names during the investigation of the Marshall case and possible evidence.

HFW S/Sgt

Statement of Facts - Marshall case - reference bearing Sergeant MacKinley's name on it.

HFW S/Sgt

City of Sydney Hospital - Dept. of Pathology to Sergeant MacIntyre re Haematology Report.

HFW S/Sgt

Previous record of Donald John Marshall, Jr.

HFW S/Sgt

Working papers of the late D.C. MacNeil, O.C., Prosecuting Counsel, given to Sergt. MacIntyre November, 1971 to be put in my file. Also copy of Warrant for the arrest of Donald Marshall, Jr. Copy from Sydney Ident. Section, J. Ryan, re photographs.

HFW S/Sgt

Typewritten copies of Statements:

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HFW S/Sgt

Statement of John Lewis Pratico - May 30th; June 4th, 1971.

HFW S/Sgt

Statement of Mrs. Merle Davis - July 8/71

HFW S/Sgt

Statements of Terrance Patrick Gushue - June 17, 1971.

HFW S/Sgt

Statement of Lawrence Gerard Paul - June 2/71.

HFW S/Sgt

Statements of Patricia Ann Harris - June 18, 1971.

HFW S/Sgt

Statement of Arthur James Paul - June 2, 1971.

HFW S/Sgt

Statement of Brian Doucet - June 14, 1971

HFW S/Sgt

Statement of Allana Dickson - May 30, 1971

HFW S/Sgt

Statement of Gary Vincent Tobin - June 3, 1971

HFW S/Sgt

Statement of Francis Joseph French - June 2, 1971

HFW S/Sgt

Statement of Donald Marshall - May 30, 1971

HFW S/Sgt

Statement of Barbara Ellen Vigneau - June 23, 1971

HFW S/Sgt

Statements of Marvel Dwight Mattson - June 8, 1971

HFW S/Sgt

Statement of Robert Scott MacKay - June 2, 1971

HFW S/Sgt

Statement of Roy A. Gould - June 7, 1971.

HFW S/Sgt

Statements of Constables Walsh; Mroz; Howard Dean; Ambrose MacDonald, Sydney Police Department - May 29th and the early morning of May 30th, 1971. The officers were on Duty at the time.

HFW S/Sgt

continued.....page 2

MEDIA POOL COPY

SYDNEY POLICE DEPARTMENT

Page 2 continued

Information after interview with Donald Roseworthy and Gaye Dickson
May 30, 1971

Keith Beaver - May 31, 1971 *HFW S/Sgt*
James Cote - June 1, 1971 *HFW S/Sgt*
Roseworthy

Copies of Seventeen Summons served in Donald Marshall, Jr. case. *HFW S/Sgt*
Four maps - scene of the murder by Engineering Department.

Copies of Statements of James William MacNeil - Nov. 15, 1971 *HFW S/Sgt*
Gregory Allan Ebsary - Nov. 15, 1971 *HFW S/Sgt*
David Wm. MacNeil - Nov. 15, 1971 *HFW S/Sgt*
John Joseph MacNeil - Nov. 15, 1971 *HFW S/Sgt*
Roy Ebsary - Nov. 15, 1971 *HFW S/Sgt*
Mrs. Mary Patricia Ebsary - Nov. 15, 1971 *HFW S/Sgt*

Original Statements taken November 15, 1971, as follows:

Gregory Allan Ebsary *HFW S/Sgt*
Mrs. Mary Patricia Ebsary *HFW S/Sgt*
Roy Ebsary *HFW S/Sgt*
David William MacNeil *HFW S/Sgt*
John Joseph MacNeil *HFW S/Sgt*
John William MacNeil *HFW S/Sgt*

Statements of George Wallace MacNeil } *2 in 1*
Roderick Alexander MacNeil } *HFW S/Sgt*

Six Police reports of May 29, 1971, pertaining to the Seale incident. *HFW S/Sgt*
Letter dated June 1, 1971 from the Black United Front, Mr. P. A. Winn, *HFW S/Sgt*
Supervisor.

Original Statements of Mary Patricia O'Reilly - June 18, 1971 *HFW S/Sgt*
Catherine Ann O'Reilly - June 18, 1971 *HFW S/Sgt*
Raymond Rudolph Poirier - July 2, 1971 *HFW S/Sgt*

Report from the late Chief of Police G.K. MacLeod to National Parole *HFW S/Sgt*
Service September 12, 1972.

SYDNEY POLICE DEPARTMENT

Page 3 continued

A letter addressed to Detective Sergeant John Mallowney, which he received on Jan. 4, 1981 to Mr. Roy Ebsary from Donald Marshall, Jr., which is self-explanatory. *JFW*

Also a letter received by me, Chief John F. MacIntyre, on Feb. 1, 1982 from Mr. Stephen J. Aronson re Donald Marshall Jr. and my reply, which is self-explanatory. *JFW*

As a result of this letter on Feb. 2, 1982, because of the contents of Mr. Aronson's letter, Mr. Eugene C. Smith of Commercial Investigations and Consultants Ltd., Rothesay, N.B., was contacted by myself by phone as to what he knew of the Ebsary investigation in 1971, as this particular investigation was handed over to the R.C.M.P. and an investigation took place on the 23rd day of November, 1971 when a Polygraph examination was conducted by him and his letter is self-explanatory. *JFW*

April 26, 1982.

Inspector William Urquhart produced a document, dated August 26, 1981, which was given to him on that date by Mr. Dan Paul in regard to one Roy Ebsary. Inspector Urquhart informed Mr. Paul at that time that his information was not sufficient and to try and get the name of the party who made the statement and get back to him. Inspector Urquhart also informed the Assistant Crown Prosecutor, Mr. Brian Williston of this document and to date, no further information came forth. This document is enclosed for your perusal. *JFW*

April 1982.
Sydney Police Department

Original Hand written Statements of Following:

- | | | | |
|-----|------------------|------------|-----|
| 1. | Roy Gould | 7 June 71 | AMW |
| 2. | Roy Mackay | " " " | AMW |
| 3. | Barbara Viganau | 23 Jun 71 | AMW |
| 4. | Francis French | 2 Jun 71 | AMW |
| 5. | Bary Tobin | 3 Jun 71 | AMW |
| 6. | Allana Dixon | 30 May 71 | AMW |
| 7. | Brian Duguetto | 14 June 71 | AMW |
| 8. | Arthur Paul | 2 Jun 71 | AMW |
| 9. | Patricia Harris | 18 Jun 71 | AMW |
| 10. | Lawrence Paul | 2 Jun 71 | AMW |
| 11. | Terrance Gubue | 17 Jun 71 | AMW |
| 12. | Mrs. Merde Davis | 8 Jul 71 | AMW |
| 13. | John Pratico | 4 Jun 71 | AMW |
| 14. | John Pratico | 30 May 71 | AMW |
| 15. | Wayne Chert | 4 Jun 71 | AMW |
| 16. | Wayne Chert | 30 May 71 | AMW |

Listed on
Separated Page.

ORIGINAL STATEMENTS

May 29th - Statement of Chant missing????

Original of Chant 4 Jan 71 *W*

Pratico	O.K.	<i>W</i>
Davis	O.K.	<i>W</i>
Gushue	O.K.	<i>W</i>
L. Paul	O.K.	<i>W</i>
P.A. Harris	One Statement given to S/S Wheaton already <i>W</i>	
A. J. Paul	O.K.	<i>W</i>
B. Doucet	O.K.	<i>W</i>
A. Dickson	O.K.	<i>W</i>
G.V. Tobin	O.K.	<i>W</i>
F. J. French	O.K.	<i>W</i>
Marshall	????? not present	
B. E. Vigneau	O.K.	<i>W</i>
Mattson	????? not present	
Mackay	O.K.	<i>W</i>
Gould	O.K.	<i>W</i>
Police	?????	<i>W</i>

2 inl { George McNeil 31 May
E. Darby

C. King

2 Pages Handwritten Notes *W*

Typed Abstract of Donald Marshall *W* 7/7/71
Evidence

W

#89

1984

S.S.N. No. 03224

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

JOHN F. MacINTYRE

PLAINTIFF

- and -

CANADIAN BROADCASTING CORPORATION, a
body corporate

DEFENDANT

AFFIDAVIT

I, JOHN F. MacINTYRE, of Sydney, in the County of Cape Breton, Province of Nova Scotia make oath and say as follows:

1. THAT I am the Plaintiff herein and I have a personal knowledge of the matters and facts hereinafter related.
2. THAT annexed to this my Affidavit and marked Exhibit "A" is a written transcript of the radio program which I allege to be libelous referred to in the Statement of Claim herein.
3. THAT I verily believe that Parker Donham spoke those remarks contained in the last five lines of page 1, the first five lines of page 2, the eight lines contained in approximately the middle of page 4, the last five lines of page 5, the first twenty lines of page 6.

MEDIA POOL COPY

4. THAT I have listened to the tape of the said broadcast and I verily believe that the remarks of Mr. Donham were delivered with a great deal of emotion.

5. THAT I am very upset about the allegations he has made which are directly attributable or inferentially attributable to me such as:

"When he showed up as a suspect, I think the polices' problems were over (page 1)...two of those actually testified that they watched him do the crime, and those three witnesses now all say they were bullied or coerced by the police into changing their story. (page 1, page 2)...it wasn't the police who bullied three witnesses into lying on the stand - it wasn't the police and the Attorney General and the R.C.M.P. and the Crown Prosecutor who covered up contrary evidence of eyewitness evidence that someone else committed the murder. (page 6)..he wasn't the author of his misfortune - rascism was the author of this misfortune - police coverups were the author of his misfortune - police coercing witnesses into lying on the stand was the author of his misfortune -...".

6. THAT I was present at the examination on discovery of Parker Donham held on July 19th and 20th, 1984. That annexed to this my affidavit and marked Exhibit "B" are copies of the two volumes of evidence taken by the reporter.

7. THAT I refer to the following questions and answers:

"125 Q. You are not prepared to make an apology to Chief MacIntyre for what you have said on that morning?

A. No ...

A. In..to the best of my recollection, in January or February, of 1982, I received a tip that the Marshall has been reopened, that the R.C.M.P. were investigating it and it looked very much though Marshall were innocent.

129 Q. Did you know anything about the Marshall case prior to that time?

A. Yes. I recalled hearing about it and reading about it when the crime took place. I don't believe I was here when the trial took place, I believe that was during the period, during part of the time when I was back in the United States, I am not exactly sure of the date. I generally recall that a youngster had been knifed to death in Wentworth Park and that an Indian had been charged with the crime and that the case --I recalled the case creating a considerable sensation at the time in Sydney.

130 Q. Was that about the limit of your knowledge prior to January of 1982?

A. Yes.

131 Q. You did not attend the trial?

A. No.

132 Q. You had not read the evidence of the trial?

A. Prior to January...

133 Q. Prior to January, '82?

A. That is correct.

134 Q. You had not interviewed any of the participants?

A. That is correct.

...

156 Q. You read the articles for the summary for the transcript of the court's decision?

A. It is not an article or a summary, it is a transcript of that portion of the court's decision.

157 Q. From page 34 onwards. In the Cape Breton Post on or about the 14th of May, 1983 how many times did you read it prior to the interview with Heather Matheson?

A. I would be guessing at this point. My guess would be three times....

...

167 Q. Alright, so you read page 34 to the end of the decision of the Appeal Division, what else did you do?

A. Well the other two things that I did in addition to what I have already described is that I frequently discussed the Marshall case with reporters who were covering it. ...I also had detailed discussions with two reporters who had more than any other covered the case in detail. Those would be Michael Harris, reporter for the Globe and Mail, who is also quoted in the broadcast that is at issue here and Michael Harris is, I think you could describe him as a Marshallologist. He has devotes (sic) an extraordinary amount of time and energy into researching the Marshall case and the other journalist is Allan Story. Mr. Story was residing in Sydney at the time the case broke and began writing stories, I believe for the Globe and Mail. He researched a piece for MacLean's magazine which was written by someone else, and I think it was the cover story, I could be wrong about that and subsequent to that time, he began, he moved to Halifax and began stringing for the Toronto Star. He has since become the Chief of the Toronto Star's--Bureau Chief in Atlantic Canada and throughout that period has continued to devote a great deal of time and energy to researching the Marshall case and on more than one occasion I discussed the case in great detail with both of them.

169 Q. Yes, and what else did you do?

A. That was it.

170 Q. That was it?

A. Yes.

171 Q. That is all you did before the broadcast with Heather Matheson in November of 1983?

A. Well I'm going to again quivel (sic) with your wording, that's all I did imply is that I didn't do much, and I think I did a great deal. I don't specifically, I don't specifically recall having done anything else, but I may be overlooking something.

171 Q. Well let's just think about all the things you didn't do. You didn't talk to anyone who gave evidence, is that correct?

A. Prior to the broadcast, no.

173 Q. What I say is correct, you talked to no-one who gave evidence at the trial.

A. Yes, that is correct, nor would it be typical for an editorial writer. In fact it would be extremely unusual for an editorial writer opposed to render an editorial judgment to do so.

174 Q. May I suggest to you that it may be untypical but grossly unfair?

A. Well, you can suggest it but I as an experienced journalist who devotes a considerable amount of time and attention to these issues completely disagree with you. I don't think it is unfair at all, I think knowledgeable, qualified journalists acquainted themselves very thoroughly and did a diligent careful job of reporting the case. I have since had occasion to read the Affidavits that were submitted in the re-hearing and many of the Affidavits that were submitted in the original and subsequent police investigations and I find that...

175 Q. Excuse me, I take it that you have read none of those prior to the interview with Heather Matheson?

A. I had not read those prior to the interview with Heather Matheson, I had personal knowledge of the reporters on whose judgment, on whose confidence to report the facts I was relying. I consider them both to be extremely professional, talented, diligent journalists and in every respect that position has been confirmed by the court documents that I have since had the opportunity to review. They did a superb job of reporting the case and the facts on which my opinions were based had been confirmed in every respect.

176 Q. You did not attend the hearing in Halifax of the Appeal Division?

177 A. That is correct.

...

- 195 Q. At this point in time, when you interviewed... Heather Matheson interviewed you, had you read the transcript of the trial of evidence?
- A. No.
- 196 Q. Had you Judge's decision, I am sorry, have you read the Appeal Court's decision?
- A. Absolutely, yes.
- 197 Q. No, I mean the Appeal Court decision in 1971?
- A. Oh, I am sorry, no.
- ...
- 220 Q. Would you return to those and just comment again on the differences between fact and opinion as you see it?
- A. Well, I think that two places where I - I think essentially this is a paragraph to fact, relating fact in substantiation of - the only two places where I really see comment are the lines "I think the polices problems are over" and as I say the factual substantiation of that is in my what were originally previous remarks in the conversation with Heather Matheson. And then I think that in using colorful language, "bullied" and "coerced" to summarize the testimony of the three witnesses described to our Harris, Chant and Pratico, I - in that choice of words although essentially the statement is factual, that is what they said, the words are colorful words and that amounts to - and that is one of the ways we make comments, isn't it, in our choice of words you know you could choose very bland words or you could choose strong words. I chose strong words because it was a strong situation.
- 221 Q. Would it not be a question sir not the words that you chose but the words that they chose?
- A. Not at all.
- 222 Q. Well, you are purporting the quote?
- A. No I am absolutely not purporting to quote them. The word "said" does not imply direct quote. Are you familiar with the difference between a quote and a direct quote.

223 Q. Well, tell me the difference?

A. Well in a direct quote you use directly the words that a person, you know the precise words that a person used. In print journalist or indeed in any printed medium you do that with the use of quotation marks or by separating off the quoted material in a single space, separate paragraph generally indented from the main body of the text. In radio you do that generally either by saying the words "quote" or by using a - what is known in the trade as an actuality, a tape of the person's actual words or indeed, by having a reader read the person's actual words in a different voice from the person who is delivering the commentary around those words and those devices make the distinction quite clear.

224 Q. Do you mean to say that you think it is perfectly legitimate for you to say on the radio "those three witnesses now all say that they were bullied or coerced by the police" if in fact those witnesses had not used those words, considered it to be a perfectly legitimate tool of editorial journalism for you to say what you did when in fact these three people did not say that the police bullied or coerced them?

A. Well I don't accept that the police did not say that, when you originally - I was about to ask her affirmatively in your question when you said, when you did - when they did not use those precise words yes I believe indirect quotes are as long as they are faithful to the original remarks, are a perfectly acceptable tool and indeed, journalism would be a hopeless task without that tool, I mean it would be impossible to imagine having to cover everything by means of verbatim transcripts. It is a perfectly acceptable tool and in this case, it is a tool that is used accurately and fairly. That description, "bullied" or "coerced" fairly reflects what took place. Let's look at what took place. I have a 14 year old boy, do you have any children Mr. Pugsley?

225 Q. You are here to answer my questions.

A. Okay. I have a 14 year old boy. If he were taken to police headquarters after having given a truthful statement about his witnessing a crime. If he were taken to a police headquarters at 8:15 in the evening and I were not allowed in to see him, and he were kept in that room with two burly police officers who pounded their fists on the table and kept him there

insisting him that he changed his story until 1:15 in the morning, it is hard for me to imagine how I would respond to that. It is an incredible situation...

- 232 Q. Have you personally talked to any of the people - you've never talked to John MacIntyre before you went on the air had you?
- A. Well I recall meeting Mr. MacIntyre in 1974 or '75 and I have been anticipating that you might ask that question, have combed my memory trying to recall the circumstances and I just can't. ... I had not spoken to him about the Marshall case.
- 234 Q. So you did not know what comment or what comment he would have to make with respect to the investigation with respect to his meeting with Patricia Harris.
- A. Well, I have seen his affidavit.
- 235 Q. Have you seen that prior to this radio broadcast?
- A. No.
- 236 Q. Was anyone else present at the police station when Patricia Harris' statement was taken?
- A. Well I think that Sargent Erkhart was present at the time.
- 237 Q. Did you talke with Sargent Erkhart about taking the statement from Patricia Harris prior to the announcement?
- A. No, I did not.
- 238 Q. So you did not talk to Patricia Harris, you had not talked to John MacIntyre, you had not talked with Sargent Erkhart?
- A. That is right.
- ...
- 298 Q. Well that's fine. There were witnesses in the Cape Breton area that were close at home that you could have seen but you did not see. I take it that you have never seen Donald Marshall prior to this interview?
- A. That is correct.
- ...

368 Q. Yes you mentioned that you spoke to Mr. Edwards, the Crown Prosecutor, and Mr. Aronson, Mr. Marshall's defence counsel, you mentioned that on one occasion both of them were reluctant to discuss things with you because of the fact that the matter was ongoing. Did you ever go back and talk to them prior to the Sunday morning show of 1983?

A. Well I never talked to Aronson again prior to that, I did have a couple of chats with Edwards, but they were similarly unhallucinating.

...

398 Q. And you are satisfied with the remarks, your remarks that were put on the air were a faithful representation of all the remarks that you made?

A. They were.

...

419 Q. Well I want to be the second, you tell Mr. Murrant first. Picking it up on page 7 about ten lines from the bottom, "the Judges have the incredible, yeh, the incredible hardestness (sic) to say the system with which we are pillars should not be called to account for this. It is really this young punk that caused it all. It wasn't the police who bullied three witnesses into lying on the stand, "it wasn't the police and the Attorney General and the R.C.M.P. and the Crown Prosecutor who covered up contrary evidence of eyewitness evidence that someone else had committed the murder". Now I take it that it was used in an ironical sense, what you were saying was, and you correct me if I am wrong, "it was the police who bullied three witnesses into lying on the stand, it was the police and the Attorney General and the R.C.M.P. and the Crown Prosecutor who covered up contrary evidence, of eyewitness evidence of someone else who committed the murder". That is really what you meant, is that a fair statement to make?

A. Well I may be splitting hairs, essentially that is a fair - my problem is with the word "ironic". I wasn't trying to be ironic, I was trying to describe and perhaps it is ironic, yeh, I was trying to describe what the drift of the Supreme Court decision, that it wasn't the system, it was this kid, and in fact you are correct when you say I believe it was the police who bullied three witnesses into lying on the stand and that

I believe it was the police and the Attorney General and the R.C.M.P. and the Crown Prosecutor who covered up contrary evidence of eyewitness evidence.

420 Q. And that's what you meant by the statement I take it?

A. Yes.

...

453 Q. You have come to the conclusion so withstanding the fact that you've never seen the man, you've never seen him give evidence at trial, you've never seen him give evidence before the Appeal Division, you've never read his affidavits, but you presume to have a better knowledge to make a judgment about this man's veracity than five Supreme Court Judges that are trained in this, does that strike you as being a bit presumptuous Mr. Dunham?

A. No it doesn't strike me as being a bit presumptuous. I don't know what you mean by Supreme Court Judges being, I mean I've never heard of Judging School; I don't mean to be vacuous but I think Judges, I mean we may be fortunate enough in Nova Scotia to see the day that you become a Judge at which point, you know, you will presumably still you know, I don't think a bolt from the blue will hit you, you'll still be a powerful person, you'll still put your pants on one leg at a time.

...

555 Q. Would you agree that there would be virtually nothing you could have said about John MacIntyre that would have been more damaging to his position as Police Chief of this city than what you did say in this program?

A. I would say that there would nothing that can be more damaging to John MacIntyre's position as Police Chief of Sydney than the manner in which he conducted this investigation ... There is no doubt that what I said was strong in view of the outrageousness of what took place and the tremendous suffering that Donald Marshall and his family endured as a result of it, the comments are fully justified."

8. THAT in my opinion Mr. Donham reached conclusions about me that were completely wrong and have seriously defamed me.

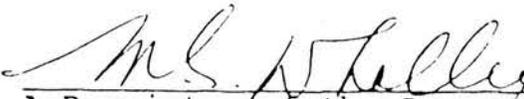
9. THAT his investigation of the Marshall affair was superficial as appears from the transcript of evidence referred to above.

10. THAT it was apparent during the course of his examination on discovery that he has a significant animosity towards me.

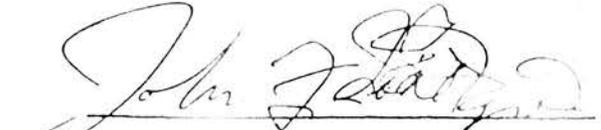
11. THAT I do not wish him to be present while I am examined on discovery. I would find his presence upsetting and to some extent, intimidating.

12. THAT it would be difficult for me to concentrate on the questions that will be asked of me if he is present in the room in which I am being examined.

SWORN TO at Sydney, Nova Scotia,)
this, 17th day of August, A.D.,)
1984.)


A Barrister of the Supreme
Court of Nova Scotia

M. G. WMALLY


JOHN F. MacINTYRE

#90

Extract of Notes from S/Sgt. Wheaton's Notebook 1982 -
Re: Donald MARSHALL Case

1. Mary EBSARY - Mechanic St. across from Taxi Stand
Phone 539-4399
2. Jimmie MCNEIL - 222 Mt. Pleasant St.
Father - Spring Garden Villa
3. To Dorchester 18Feb82 - Interview MARSHALL 11:34 a.m.
4. John L. PRACTICO - Andy ARSENAULT
Phone 562-3202
5. Interviewed Mrs. M. PRACTICO mother of John L. 10:00 a.m. -
15Feb82.
6. 22Feb82

EBSARY came into office at 10:17 a.m. Jim CARROLL and myself. Religious talk, war experiences.

11:15 a.m. left room and returned 11:31 a.m.
Read MCNEIL'S statement 12:27
1:41 p.m. finished interview - 3 hrs. 25 mins.

82Feb22

Received call from EBSARY at 4:30 p.m.

E - All our talking today was not in vain.

W - What do you mean by that?

E - Well, you know I am a British Officer and a gentleman.

W - Yes.

E - You called me a homosexual

W - Yes.

E - All our talking was not in vain.

W - Why is that?

E - Well I did it.

W - Are you admitting stabbing SEALE?

MEDIA POOL COPY
...2

E - Yes.

W - Would you like to speak to me?

E - No, the other fellow.

W - Okay, I'll send Jim down.

7. Ian MCPHERSON, Social Services
8. 3March87 - Ten knives seized from Greg EBSARY.
9. Forwarded to Lab - 4Mar82, Reg. Mail #2185;
Attention: Richard MCALPHIN
10. Knives returned via Registered Mail, No. 242 on
7April82.
11. 9March82 - Interview MARSHALL Dorchester -
Warned Statement taken 12:03 p.m. to 12:30 p.m.
12. 25March82 - Fruit basket found in basement of
EBSARY home.
13. 26March82 - Basket turned over to Guy ARSENAULT to be taken
to Lab.
14. A.D. GUNN - Confirms meeting with Patricia HARRIS and
mother on 28June71 at 4:30 p.m.
15. 25March82 - Cst. Gary GREEN contacted - recalls Dave
RATCHFORD telling him re Donna EBSARY'S father's knife -
Reports to Billy URQUHART - cool reception.
16. Debbie MACDONALD - Couture Bisco - 564-8228,
Home - 539-1790, 18 Milton.
17. 1April82, Interview with Dr. DONOVAN
18. 31March82 - Mary corroborates coat seized Jim MCNEIL.
19. 30March82 EBSARY remanded to Nova Scotia Hospital.
20. 2April82 - Interview with Donna EBSARY by phone.
21. Brian KAZOO - 469-7500, Local 715
539-7121
22. Catherine - 23 Cross St., Sydney
Mary O'RILEY - SEAL'S girlfriend
PALLETTS - tell going - Margaret O'RILEY'S sister.
23. Rudie POIRIER saw JUNIOR at steps.

24. Interviewed once EBSARYS.
25. Patricia HARRIS - 1-455-8070
3536 Connaught Avenue, Apartment #3.

26. 16April82

Interview 3:45 Chief MCINTYRE, Cpl. DAVIES, myself. Chief produced brown accordion file folder containing approximately four manila file folders as well as a number of envelopes. Chief was asked four or five times for any other statements from Patricia HARRIS. Last statement given - hand written statement of Bill URQUHART. On HARRIS showed numerous, only one read. Cpl. DAVIES saw it placed on floor, asked numerous times why, PRACTICO no explanation. No comment on line up. No comment on PRACTICO re witness.

Definitely did not interview EBSARY'S wife or son after murder on 15th. Total correspondence 31 pieces.

~~Dwight~~ Brian
Pres of State

Mary Chas
46 Michigan St.
Boston 1741 Street
539-4399

Francis M. Hill
222 Mt Pleasant

Father Spring Garden Ulla

Dorchester 18 Feb 82
Interview 11:34 am.

MEDIA POOL COPY

Cliff McKeenie
 Niagara Falls
 Address (17 level)

John L. Practice
 Andy Arsenault - 562-3202

I interviewed Mrs. M. Practice
 mother of John L. 10: AM
 15th Feb. 82.

82-02-22

Esbary came into office
 at 10:17 AM. Jim Carr, 906,
 myself. Religious talk
 wrap experiences
 11:25 AM left room
 returned 11:30 AM
 Read McNeil's statement
 12:27
 1:41 finished interview
 3/22/82

Re: Richardson.

82-02-22

4:30 Pm Call to Ebsary.

E - All our talking today was not in vain.

W - What do you mean by that

E - Well you know I am a British Officer and a gentleman.

W - Yes.

E - You called me a homosexual.

W - Yes.

E - All our talking was not in vain

W - Why is that

E - Well I did it

W - Are you admitting stabbing Seale.

E - Yes

W - Would you like to speak to me

E - To the other fellow

W - Okay, I'll send him down.

Jan McPherson
Social Services.

3rd March
Ten knives seized
from Dry Ebury

Forwarded to Lab
4 Mar 82
Reg Mail 2185
Att: Richard McAlpine

Knives return via
Reg Mail No 242. on
~~7 Mar 82~~ 7 Apr 82. 10 Apr 82
9 Mar 82 rest

Interview - Marshal Wainwright
Statements 1203 to 1234

23 Mar 82

Trout basket found in
basement of Elsbary home.
26th to Billy Arsenault

A. L. Deann - Confirms entrance
Mon 28 June 71
4:30 pm

25 Mar 82

Gary Deann contacted
recalls Dave Ratchford telling
him re: Donna Elsbary father
kings reports to Billy Klipfot
rec'd reception.

Debbie Mae Conalo
Basico Couture
564-8223
Home 539-1790
18 Milton

Interview with
Dr Donovan
1 Apr 82.

31st Mar
Mary cooperates
w. coat seized
Sam McNeil.

30 Mar 82.
Exray recorded to 7.5
Kcap.

985. ~~revised~~

2 April 82

Interview with Anna
Elery by phone

Land Registration
Co-operators Building

Cpl Creases SS
Kathy Chapp and
Adriane Claire C

Joan Clemens - B.C. -
Zetter John & Emily - 539-6151

9
PO Box 121.

Nonantum, Mass
Code 02195-0121

The Heller Company Inc
93 Chapel Street
PO Box 186
Newton Mass.

Bruce Hayes - 469-7500
Loc 715

539-7121

Caroline 23 Cross St Sydney
Mary O'Riley - Leslie's
yelpin' Pallets tell
going.

Margaret O'Riley's sister

Rudie Poirier
seen Junior at steps

Interviewed once
~~15th~~ Esbary's

Lynch's

Patricia Harris -

1-455-8070

3536 Concorde Apt #3

16 Apr

Interview 3:45 Chief

Mr. Intyre Cpl Davis brought
Chief produced Brown Accordion
file folder containing approx 4
M-shells file folders as well
as a number of envelopes.
Chief was asked 4 or 5
times for any other statements
from Patricia Harris last statement
given.

Hand written statements of
Bill Urquhart on Harris showed
numerous only one read Cpl Davis
see them placed on floor. Asked
numerous times why Patricia no explanation
No comment on line up.
No comment on Patricia as
witness.

Definitely did not interview
Ebsary wife or son after murder
on 15th.

Total Corrobor 31 pieces

Mr. Stephen Sattler
 743 1/2 St. S.E.
 Calgary Alberta
 403-279-7381.

Mrs. Mary E. Csernyik
 Sunwood Drive
 South East Calgary
 1-403-236-1925

Margaret E. Gerard Hoop.
 7408 21st S.E.
 Calgary, N.S.
 279-5380

Job
Photo knives
check John Ry
court
v. Wagon

772-5410

234-2050
Mike

8 1/2 Day
Paddy

553-544

500
sawdust

562-7247

Easty Paige
90 by
factory

Camera
/ apr

2852-12



21-6-37
Robert W. Brown
10 Howard St 722-8663

Statement of: Raymond Poirier
9 St. Victoria Rd.,
Sydney

15

Back in 1971 I
painted a house for Chief
Brian McIntyre and knew
him. John Practice
lived next door to me
and I knew he was not
all there. He was going around
saying he knew about the murder.
Junior Marshall came by
one time and told us that he
and Sandy were stabbed by two
Pirates.

I told McIntyre
what Marshall was saying
and what Practice was saying
that day. Junior was a calm as
you and me.

Wheaton

Raymond Poirier

Deleg mem re: # 92

~~KOENIG~~ File
SANGHI

Dr. KOENIG

525-6541-457-H

17 Nov 71

Text at Hanby Det

7:30am to 4:30pm

Ret to Regina

Call from Iny
Midland Co.

20 - 21 Nov 71

Weekend off.

May Annex

May 15/19, 1972

906 - 1:30pm

To office during
the P.M. of 21st. Called
Sanghi (P.M. re. crew
and called Sgt HOSKINS
re: the N.S. tests.
Some reports.

22 Nov 71

Left Regina at 9:00
for Halifax - Sydney

Pat Evans "H" Rev
Departed this PM
for Edmonton
for ~~testing~~
10PM to Montreal

Virginia LeCHANCE
B 24-6-48 - Sudan
Death of - near Jaber
also 8 July 67

18 Nov 71

Provision at Edmore
on LeChance matter
then to Beaudreault
at Amnville in

Arrived Sydney late
P.M. 6750

23 Nov 71

9AM to 9PM

Ran two subjects
on murder investigation

24 Nov 71

Sydney area: Talked
to members of Sydney
S/Div re subject

Returns to Regina
A/C arrived Midland

MEDIA POOL COPY

POLYGRAPH

CASES - 1971

AM No	FILE No	TOTAL CASES	DATE EXAM	SUBJECT	PLACE	CASE CAPTION	RE-EXAM	T	D	IN	V.T	VD	VE
6	1 Poly 20	20	26-10-71	ELDER, D. E.	Neakalation, York								
7	71 Poly 21	21	29-10-71	POIRREER, G. V.	Wilmington, N.H.	Joseph HERLE, SR at BOSTON from							
8	71 Poly 22	22	30-10-71	STARPLEFORD, T. W.	Fredricks, N.B.	Franklin Douglas DUNN - Bonds of:							
9	71 Poly 22	22	30-10-71	LEES, Thomas Davis	Fredricks, N.B.	John FERLINGS, et al - Walden Pond							
10	71 Poly 22	22	30-10-71	COLLETT, J. H.	Fredricks, N.B.	"							
11	71 Poly 22	22	30-10-71	REEVES, P. J.	Fredricks, N.B.	"							
12	71 Poly 22	22	31-10-71	KENGHORN, W. W.	Fredricks, N.B.	"							
13	71 Poly 22	22	31-10-71	NEILSON, M. M.	Fredricks, N.B.	"							
14	71 Poly 22	22	31-10-71	ROBICHAUD, J. W.	Fredricks, N.B.	"							
15	71 Poly 22	22	1-11-71	LONG, D. R.	Rockville, N.B.	"							
16	71 Poly 22	22	1-11-71	RILEY, G. A.	Boston, P.E.I.	"							
17	71 Poly 22	22	2-11-71	MacKEWZIE, C. R.	Summerside P.E.I.	"							
18	71 Poly 23	23	17-11-71	WILLIAMS, D. M.	Hamley, N.S.	Gary NEHER - Theft from							
19	71 Poly 24	24	18-11-71	BALDHEAD, Elizabeth	Edmonton, Alta.	Virginia LECHARLÉ - Walden Pond							
20	71 Poly 24	24	18-11-71	HOGLE, A. W.	Amerville, Alta.	"							
21	71 Poly 25	25	23-11-71	McNEIL, J. W.	Highway, N.S.	Donald MARSHALL - Murder							
22	71 Poly 25	25	23-11-71	ESBARY, R. N.	Highway, N.S.	"							

#94

CIB READERS

- a. **Location** - All operational divisions
- b. **Service** - Minimum of 10 years general investigation experience in Criminal Code, federal and provincial statutes.
- c. **Education** - Force minimum
- d. **Special Requirements**
 1. A working knowledge of Criminal Code, federal and applicable provincial statutes.
 2. Bilingualism for "A", "C" and "J" Divisions.
 3. Senior Investigators' Course and Effective Writing Course.
- e. **Functions**
 1. Reviewing and analyzing reports to ensure procedures are consistent with Force policy.
 2. Ensuring the requirements of the various statutes are met with respect to investigations.
 3. Checking that investigational reports are thorough and that they contain information needed to base a charge on or support a decision relevant to the charge.
 4. Preparing written replies, making specific recommendations where required and giving direction.
 5. Making recommendations on and preparing operational policy.
 6. Undertaking research projects relative to legal and investigative problems.

L

38. RÉDACTEURS S.D.E.C.

- a. **Endroit** - Toutes les divisions opérationnelles
- b. **Service** - Au moins dix ans d'expérience de l'enquête générale relative au Code criminel et aux lois fédérales et provinciales.
- c. **Instruction** - Le minimum exigé par la G.R.C.
- d. **Exigences spéciales**
 1. Avoir une connaissance pratique du Code criminel, des lois fédérales et des lois provinciales pertinentes.
 2. Être bilingue si on est affecté aux divisions "A", "C" ou "J".
 3. Avoir suivi le Cours supérieur destiné aux enquêteurs et le Cours sur l'art de la rédaction.
- e. **Fonctions**
 1. Réviser et analyser les rapports afin de s'assurer que les méthodes utilisées sont conformes à la politique de la Gendarmerie.
 2. S'assurer que l'on satisfait aux exigences des diverses lois en ce qui a trait aux enquêtes.
 3. S'assurer que les rapports d'enquête sont complets et qu'ils contiennent les renseignements nécessaires permettant de porter une accusation ou d'appuyer une décision ayant rapport à l'accusation.
 4. Répondre par écrit, faire des recommandations précises, s'il y a lieu, et diriger les travaux.
 5. Faire des recommandations sur les politiques opérationnelles et élaborer ces politiques.
 6. Entreprendre des projets de recherche sur les problèmes juridiques et d'enquête.

MEDIA POOL COPY
2258
83-07-15

NOTE - ÉCRIRE À LA MAIN

BIN BD	Classification
	File No. - N° du dossier

TO - À

FROM - DE

Date

File

De Gagnon

8/3/06

#95

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Action
Donner suite | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier actuel |
| <input type="checkbox"/> Perusal and P.A.
Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Ref. attached A-5. On the 8/3/06 Solicitor General RAPLAN was in Halifax in connection with Crime Prevention Week and was interviewed on TV. During interview he was asked about involvement of Insp. Marshall of RCMP in initial investigation and Solicitor General asked C.O. Cl. Dept. Reg. what case involvement was. As a result a review of file was made as noted in attached A-5 and B.C-1.11(ops) was advised by C.O. as Solicitor General requested that he be advised.

No further action required

MEDIA POOL COPY

Diary Date - Date d'agenda	Meeting Date - Date de réunion	P.A. - A.C.	
		Date <i>8/3/06</i>	Init./Ns <i>EG</i>

● HANDWRITE - ÉCRIRE À LA MAIN

TO - A C.O. CIBC (Readers)	FROM - DE D. J. J. J. C.O.	Date 8/3/12/05
--------------------------------------	--------------------------------------	-----------------------

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Action
Donner suite | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier actuel |
| <input type="checkbox"/> Perusal and P.A.
Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET

Ronald Marshall

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

- On reviewing file I find:
- ① file re-investigated at request of Sydney City Police - see note of CIBC dated 8/3/02/24
 - ② D.C.I. was first notified & correspondence sent to him on 8/2/02/26 when Insp. Marshall's report was filed.
 - ③ DAG ordered Sydney City Police to turn over all material re their investigation to us on 8/2/04/20.
 - ④ D.C.I. was ^{not} re-investigated on file up to 8/2/06/03.

Suggest we could send memo to DCI updating file to present and at same time advise that Solicitor General was enquiring as to our involvement in initial investigation & we could request H.Q. to inform SAJ Gen. that all that was done was for Insp. Marshall to review evidence & polygraph reports to give polygraph examination comments, etc.

Highly Urgent -

RM 112 331

I spoke to the D/C (ops) this
Sat (83-12-05) and expressed his that:

- (a) Insp Marshall was directed to proceed to Sydney by P.O. following a request for A.M. Dept. into more reacting to a request for the Crown, Forensic, & other bodies.
- (b) Insp Marshall did not do an investigation by examine the evidence as well as a psych. examination done.
- (c) Insp Marshall submitted his report on the further role to play.

I received the above info from Insp Marshall direct via telephone.

No more action necessary, & this
end unless the media publishes anything
of a sensational nature.

If you receive a call over response must
be: (1) No investigation done by force but we did
examine the evidence around the place the photograph
taken.
Advise me if there are other additional developments & release
RM 112 331/12/06

96

27 Sept 75. RTO in Myra rain

28 Sept 75 R.T.O. in Myra. rain.

29 Sept 75.

9 AM. 12 NN. doing work Sicut and
F.93 and certain Farms.

Advised that Laughlin is out on
Bail since Fri: 26 Sept 75.

Deputy Chief Sydney C. P.
interviewed and advised
that Roy Sherry was
given a Lie: Victor test
and found to be cleared and
not involved.

Enquiry conducted into
Earl Murda. can 5 yrs old.
Marshall presently serving life for
the murder.

MEDIA POOL COPY

290-1

12679

1 Oct 75.

9 AM - 12 NN Interview and
enquiries. Seele Murder. 1971.
Mentage re: enquiry. re: Ehrsony.
also enquiries re: Calculator,
Assist. Inquisit. re: Petrol
dozen form books, re: Contacts +
informants. until 5 PM. 5 PM to
6 PM. try to contact the Bear. re: Info. S.

2 Oct 75.

9 AM - 10 AM. attend annual
meeting. 10 AM - 12 NN
go to Tony Chew's, re: appointment
for 308. then return to Sydney.

1 PM - 5 PM. coffee re: Giles and
putting 15/ in locker and tagging
same.

3 Oct 75.

9AM-10AM. Send Message to
Mtl. re. Method. U.S.P. Seco. 10AM.
recd. Ehsany file. re Seal Mark.
also recd report from Hawkulung
re. N.S.P. Steam Failure. recd
info re. Calculators ship from Inguish
from U.S. Seco.

Serial # 51065 07403 and
13493 41796. 3" wide 6" long.
Add. Used Furniture Store
564-6123 and Halls and Ship
checked. negative results. R.M.
enquiry re. calculation

4 Oct 75 H.O.

5 Oct 75 H.O.

E-1 100

Statement of: Greg Allen Ebsary, B: 16 Dec 53
46 Mechanic St., Sydney, N.S.

Tonight Harry Wheaton of the R.C.M.P. has shown me a statement which I gave to the Sydney City Police back in November 1971. I remember being down at the Police Station and it looks reasonably accurate as far as it goes.

I was at the Sydney City Police that night for approximately three hours. I talked with John McIntyre a great deal more than what is in the statement. One thing being did I overhear Roy and my mother talking over what happened that night in the Park. He accused me of this and I denied it as I had not. I was truthful and honest and told him of my fathers violence, carrying knives and manner of dress. I do remember that I was very frightened and it seemed to me that he was trying to intimidate me.

I do remember Jimmie McNeil being at the house the day after the murder. During the period of the murder Roy always carried knives. We moved from Rear Argyle Street about two years after the murder. I collected up Roy's knives and moved them 46 Mechanic Street.

The knife sat for approx. nately nine years
in a drawer and then was placed by me in a basket
which I put in the cellar. I turned these
knives over to Harry Wheaton. To further clarify moving
the knives Roy packed them and I moved them to our present home.
H. F. Wheaton

Greg Ebsary.

Statement of Mrs. Mary Patricia Ebsary, B: 17 March 24
Jan 26 1946 Mechanic St., Sydney, N.S.

Wednesday night of the Seale murder.

I was at our home at that time 126 Rear Argyle St. Sydney. I was watching T.V. in the livingroom and I recall Roy and Jimmie McNeil coming home. Jimmie stopped in the doorway of the livingroom and said "something like you saved my life" to Roy. Roy said "shut up" I recall Roy telling Jimmie to cut across the field going home, not through the Park he said something about they won't catch you.

I didn't pay much attention to Roy as he was always bringing someone home with him. Roy drank heavily and was violent so I never said anything to him. He always carried a knife and when he got angry that was his favourite weapon. I recall one night he took an axe and completely chopped up the furniture downstairs this would have been during this period in 1971.

MEDIA POOL COPY

I recall I called the Sydney City Police on numerous occasions when Ray was in one of his destructive violent rages and nothing was done. The Sydney City Police were well aware of Ray as I turned him in in 1970 for carrying a knife as he was going to stab the chef at the Isle Royale Hotel. His exact words referring to "tonic the chef" when he opens the door "I'll gut him".

I have read the statement shown to me tonight by Harry Wheaton. I was only at the Station once and this must have been it. I notice the time on this statement are from 8:45^{pm} to 9:02^{pm} or twenty two minutes. This is not so I was interviewed for at least two hours. I also notice Sgt Vignehart was supposed to be present. There was a man there for about five minutes and he left. I don't recall exactly what the specific questions were but I do know I answered truthfully and honestly. I can not say I saw Ray stab the chef because I was not in

The Park that night. I certainly would not
hide anything from John MacIntyre any
more than I would hide anything from
you.

H. F. Wheaton
Mary Elsary

EX. # 101

Statement of Donald Junior MARSHALL - B.D. 53-09-13
shown at Dorchester, W.B. 11.34 AM 82-02-18

On Friday night May 28th 1971 around
11.30 PM I arrived at Memberton from Halifax
with Roy GORDON, we had been drinking
during the day. There was a dance at St.
Joseph's hall near St. Andrew's Park, I went
to the park and met Dandy SEAL in the
park, this would be later in the evening
while the dance was still on, Dandy said
I wanted some money, I don't know if we
wanted it for liquor or just the money.
I remember seeing a girl in the park talking
with a boy who was a sergeant in
the army cadets, I had seen him before.
There were two others in the park, one
I now know as Roy ERSARY, the other
fellow was taller, I don't know his name.
It would be around 11.45 PM, Dandy and
I decided to take some money from these
fellows, one of them asked me for a
cigarette or a light, we thought it would
be a good chance to get closer to them.
We walked over to them and had a short
conversation about liquor, women and everything.
They started to walk away from us, I
called them back

MEDIA POOL COPY

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617
OF THE CRIMINAL CODE BY THE HONOURABLE JEAN CRETEN,
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.

Spent

AFFIDAVIT

I, Harry F. Wheaton, R.C.M. Police Sergeant
of Halifax, in the County of Halifax and Province of Nova
Scotia, make oath and say as follows:

1. That at all material times hereto, I was posted in Sydney with the R.C.M. Police as co-ordinator of the General Investigation Section of the Sydney Detachment and have been a member of the R.C.M. Police for over 20 years.
2. That as a result of information submitted on behalf of Donald Marshall, Jr. in January, 1982, I was given the responsibility of conducting an impartial investigation into the circumstances connected with the conviction of Donald Marshall, Jr. for the murder of Sandford William (Sandy) Seale.
3. That during the course of the investigation many witnesses were interviewed, written statements taken, and a great deal of documents concerning the 1971 conviction were reviewed.
4. That I have read the Affidavits of Maynard V. Chant, John L. Pratico, James William MacNeil, Patricia Harris, Terrance P. Gushue, Donna E. Ebsary, Mary P. Ebsary, Gregory A. Ebsary, Keith Beaver, Barbara M. Floyd, Sandra V. Cotie, Dr. M. A. Mian, A. J. Evers and George W. MacNeil concerning this matter and, in substance, the said Affidavits contain a fair and accurate summary of the results of our investigation.

MEDIA POOL COPY

5. That during the investigation and on or about March 4, 1982, I received from Mary P. Ebsary and Gregory A. Ebsary, 10 knives and 1 cardboard basket, and to the best of my knowledge and belief the said knives are those depicted in a photograph marked Exhibit 'A' and referred to in the Affidavit of Adolphus James Evers dated July 30, 1982.

6. That on or about February 22, 1982, having interviewed Roy Newman Ebsary in person on that day, I returned a phone call from the said Roy Newman Ebsary at about 4:30 P.M., the relevant portion of our conversation being as follows:

EBSARY: All our talking today was not in vain.

WHEATON: What do you mean by that

EBSARY: Well you know I am a British Officer and a gentleman

WHEATON: Yes

EBSARY: You called me a homosexual.

WHEATON: Yes.

EBSARY: All our talking was not in vain you know.

WHEATON: Why is that.

EBSARY: Well I did it.

WHEATON: Are you admitting to stabbing SEALE.

EBSARY: Yes.

WHEATON: Would you like to speak to me.

EBSARY: No, the other fellow.

WHEATON: Okay, I'll send Jim down.

7. That as a result of the conversation referred to in Paragraph 7, Cpl. James E. Carroll of the Sydney R.C.M.P. Detachment attended at the home of the said Roy Newman Ebsary, ~~but no~~ written statement was taken from Ebsary.

and
1/1/82
3/1/82

Statement of: Roy Newman Ebsary.
26th June 12, 18 Falmouth St.
Sydney, N.S.

Q. What can you tell me about the
Beak Murder.

A. As far as I was concerned it
was an ordinary night. The
curee, Robert said had to
defend ourselves.

Q. How did you defend yourself?

A. We were held up by two
11.30 AM muggers, who demanded all our
money or whatever the steel we
had in our pockets, I shelled out
everything I had in my pockets but
the other fellow was fighting with
MARSHALL, do you see the point?
MARSHALL was giving him a hard
time, he had a reputation for that
all Sydney knows that. MacWELL
told me before this happened MARSHALL
had robbed him before, beaten him up
on standwood still. You arrange for
an interview with Mrs. MARSHALL and
I'll tell her the truth, I was
a witness to the robbery.

Q. Are you going to implicate yourself?
It's your own life.

MEDIA POOL COPY

Q. Do you know what that means?
A. Yes, it means that I'm willing to
go all out to prove MARSHALL did
not stab SEALE.

Q. Are you prepared to say or admit
you know who did stab SEALE?

A. Yes, I'll tell his mother.

Q. Are you saying you are responsible?

A. Yes, I'm not saying I'm responsible, I
convinced her, her son didn't. Before I
could make a statement like that I should
see a lawyer.

Witness Ppl. J. E. ^{12:16 PM} Counsel ^x R. M. Conway

EX. #102

to m.v. Branch re page
certificates. Copy of file to
Pros. EDWARDS 2:30 PM
office.

82-02-04 9-5 PM
Office, SEALE Murder file
review with 3/Sgt. WHEATON
Contacted Donald MacFARLANE
re Drug Ints. acc'd by
Capt. B. STORER. Office
inquiries re BEA Company.
Review MARSHALL file

82-02-05 4-5 PM 308
Office, Photos from Sydney
PO re OLSON, met with
Crown Pros. EDWARDS re
B.E.A. office, GIS meeting
Uista Motel.

82-02-06 RTO

82-02-07 RTO

82-02-08 9-5 PM 308
Office. BEA file discussed
with C. Pros. EDWARDS.
Local inquiries re Christine
WAGNER - photos re OLSON
office.

82-02-09 4-6 PM 308
Office, Referral to Victoria
re MARSHALL - Murdoch
acc'd 3/Sgt. W. WHEATON
2:22 PM Interview
McLachlan Bazaar SARSON
RD 62-06-24

11 Training at Victoria
485-677

MEDIA POOL COPY

Statement by WHEATON
Completed & signed 3.23 PM
agreed to Polygraph testing
Made motion to left
thigh re knife, right wrist
re knife wound to MARSHALL
uncertain which from -
Statement ~~had~~ read to
SARSON 3.23 PM Lodging
Playmore Motel, Antigonish

82-02-10 8.30 AM - 4.30 PM 30E
Return to Sydney, office
Inquiries re ALLEN - BEA

82-02-11 9-5 PM 30E
Office, inquiries to locate
ALLEN re BEA, came to
Det. 11.26 AM re fail to

make daily report. Inter-
view with ARENSON re
MARSHALL Murder. Patrol to
Louisburg to interview SHAWT
acc'd 3/sgt. WHEATON.

82-02-12 9-5 PM 30E
Office, guided Medical office
re records transfer. Call from
Insp. D. WEBSTER re Toronto
Seminar. To m.v. Brandy
re BEA documents. Called
head of Joint Stock Co.
U.S. re BEA.

82-02-13 RTO

82-02-14 RTO

82-04-16

82-02-15 9-5 308
office, BCA documents
photo copied for ALLEN
office, called Charlie-Joe's

82-02-16 12.30pm - 8.50pm 308
Office BCA documents,
letter to Mr. Branch re
BEA - DANCES. Crown Press.
re MARSHALL Murder 3.10pm
patrol to Newcastle interview
CHART, accid S/Sgt. WHEATON

82-02-17 9-5pm 308
office, patrol to Maitland, NB
re MARSHALL - Murder. Depart
Sydney 10.30am, arrive Maitland
5.00pm, lodging Beaujour
Hotel.

82-02-18 8.30am - 7.00pm 308

~~Toi Deschamps Pen 10.28~~
~~Amr Interviews (2) sold~~
~~MARSHALL Jan 11.30am~~
~~Bill GAMEL - Drive~~
~~Bill from near shipyard, talk~~
~~MARSHALL in car after assault~~
~~Bill GAMEL~~
~~Bill GAMEL~~
Return to Sydney 7.00pm.

82-02-19 9-5pm 308
office. BCA documents
to Art Moulton, inquiries
re MARSHALL file.
Memberton re Gordon
JOE

82-04-16

82-02-20 RTO

82-02-21 RTO

~~82-02-22~~ 9-5pm 308

Office interview Roy
Newman EBSARY - BP 12-06-20
68 Falmouth St., Sydney
10.17pm - 1.41pm driven
home, acc'd by S/Sgt. WHEATON
Patrol to Memberton to
locate Donald Gordon JOE
office & Cell from EBSARY.
4.45pm. to S/Sgt. WHEATON.
Patrol to 68 Falmouth St.,
interview Roy EBSARY,
laughing, smiling, showed to
drunk in kitchen, said it
was self defence, small pen
knife used, does it have it

new, victim car, took his
money, MARSHALL was fighting
with MAERWEL, what is your
sign? Birthday? 6 NOV 40,
Scorpio. The only break I
ever got was from a Scorpio
Did not want to give statement
then, "get a new trial for
MARSHALL & I'll give
evidence." wants to meet
Mrs. MARSHALL, see her
eyes, give her his pig,
tired of living, skid
new life, wants to, get
it over with, set up
meeting with Mrs. MARSHALL
he and dog. 5.15pm left
house.

82-04-16

82-02-23 8:30 AM - 1:30 PM 307

office, 10:59 AM to EBSARY home, warning by WHEATON 11:00 AM, understood. Captain's papers. John O'SAY.

Statement commenced 11:03 AM office, patrol to Memberton Donald MARSHALL Sr. & wife return to office, pick up EBSARY, to office, return MARSHALLS home. To Crown Pros. office 3:25 PM

~~BEA documents by Cousins~~

82-02-24 9-5 PM 308

office, BEA documents from mu. Branch Miss MacDONALD Cape Breton Hospital - interview Andrew ARSENAULT re John PRATICO.

82-02-25 9-5 PM 308

office, BEA documents to Sgt Malheur - at Court House 9:45 AM (MN certificates) Crown Pros. EDWARDS re BEA - no Certy evidence Patrol to New Waterford Hospital - interview - statement from John Louis PRATICO. 11:15 AM office. Summary to Heather MacLEAN Call from Cyril TUCKER re BEA.

82-02-26 9-5 PM 307

office, BEA files, documents from David MacLEAN, mu. Branch. Crown Pros office re BEA Trial.

82-02-16

82-02-27 R70

82-02-28 R70

82-03-01 9-5 pm 308
Office, BEA file, Crown
Prosec. office re MARSHALL
Called Hugh Cook re BEA
cheque, MV Branch.

82-03-02 8-30 am - 4:30 pm 308
Court re BEA, Grant Jury,
Justice W. BURKILL
Douglas Wilson - Inspector
Office - Newcastle from
Van BRADICK MacINNIS

82-03-03 1-5 pm 308
Office, BEA documents
related to North Sydney
BEA documents, Program
Matthew WILSON - re HARRIS
Inquiries Chamberlain Rd
re MARSHALL Murder.
Call from Pat WILSON
re G.E.T. Post the Bouque
Call from en Terminal
6:00 pm ETA 9:00 pm
Patrol to North Sydney
en Terminal, check passengers
William King CLARKE 18 yrs.
6:30 pm - 8:30 pm
Calgary B.I. re PETERS

82-03-04 9:00 am - 5:00 pm 308
Office, called WILSON
T. Bank re SLANEY
cheques, called Hugh Cook
Toronto, re Original cheque
office, copies of BEA.

82-04-16

Documents to Art MOHAN
Call from Guy LAFOSSE
re DEMEYER trial cancelled

82-03-05 9-5 pm 388
Office, G.O.'s visit
Crown Pros. 10.00am re
BEA,

82-03-06 RTO
1.00 pm - 2.00 pm
Monitor Room re Drug
Seizure. Michael-Alexander
SPARROW - BR 54-01-30

82-03-07 RTO

82-03-08 9-5 pm 388
Office, patrol to Moncton
Lodging Beausejour Hotel

82-03-09 8.50 am - 8.10 pm 380
WEDGE photos to Moncton
P.D. Sgt. Elmer CURRIE
Dorchester Den. interview
Donald Jr. MARSHALL

B.D. 53-09-13 11.20 am
to 12.55 pm
Statement signed, 12.59 pm
Returned to Sydney 8.00 pm
Call Roy EBSARY - no answer.

82-03-10 9-5 pm 388
Office, BLADE cheque
from T.D. Bank, call
from F. EDWARDS re
BEA. Trial, BEA exhibits
Prepared for Court

82-83-18 9-5 PM 308
Office, called BCA
witnesses.
Denard Godge Joe-Boss
Interviewed at Memberton
Was drunk on Venilla
Saw MARSHALL that Pm.
SEALE always associated
with Indians, MARSHALL
is cousin, talked to him
at Correctional Centre,
figured he was guilty.
Probably fought or argued
with SEALE.

82-83-19 9-12 Noon 308
Office, called F. EDWARDS
re HOLLAND trailer.
AOL. Met with Ian

McNEIL re BCA

82-83-20 RTO
82-83-21 RTO

82-83-22 9-4 PM 308
Office, called MacDONALD
re theft charges. Interview
& statement 2:00 PM prepare
Resume for prosecutor
called F. EDWARDS

~~82-83-23 8:30am - 4 PM 308~~
~~Office, prepare BSAK~~
~~Search warrant, to house~~
11:10 AM, net home, to
Probation Service return
to 68 Palmouth St, search
residence, seize tapes
to office.

82-84-16

82-03-27 RTO 7.00 AM - 2.00 PM
Patrol to New Waterford
P.D., interview & statement
from Brenda PERFECT
interview William MeeDULEY
by Sgt. T. DWYER & JEC
notes. Acc'd by S/Sgt. H.F.
WHEATON, Ident, Sgt. G.
KOEHLER attended scene.

82-03-28 RTO

82-03-29 8.30 AM - 4.30 PM 307
Office, Prov. Court re
MeeDWARD - Theft & Fraud
charges. Judge C.A.
O'CONNELL, F. EDWARDS
C. Prov. office - PERFECT
radiogram, C-257 request
for Polygraph.

82-03-30 9-5 PM 308
Court re E. BARRY
Sentence. Judge C.A.
O'CONNELL, Keith SHEARS
F. EDWARDS. Remanded to
N.S. Hospital for 30 days
office. PERFECT C-257

82-03-31 9-12.00 Noon 308
Patrol to 985 Westmount
Rd., interview Oscar SEALE
& wife re MARSHALL
Case 9.45 AM - 10.30 AM, office.
AOL 1/2 day.

82-04-01 9-5 PM 308
Office, court re MeeDWARD
Fraud & Guilty Plea.
Probation - Sentence Susp.
82-04-16

82-04-09 RTO 1

82-04-16 9-5 PM 308
Office, County Court re
WALKER, Witnesses - CARROLL
Mrs. MacMASTER, Miss
Donald WALKER. Ad.
to, Mon. 10:00 AM Office,
Mess Meeting 3:00 PM
OSK Meeting 1:30 PM

82-04-17 RTO

82-04-18 RTO

82-04-19 9-5 PM 308
Office. Court re WALKER
Decision Not Guilty.
Office, called BRUCKSCHWABER
C-237, local re Michael M...
Tim WYNET

82-04-20 9-8 PM 308

Office, WALKER C-237.
Local inquiry re Michael
MacINNES 72 Falmouth St.
Burling. Referral to Lewisburg
statements from Beaudah
CHANT, Maynard CHANT

82-04-21 9-5 308
Office, called Hlx. Allstate
re Vandover's trailer, to
Dr. Mahmood Ali NAQUI's
office 320 Esplanade re
SEABE Case. Dr. W.
CROOKS. Statement from
Lawrence BARK re
CHANT. Office with Sgt.
A. COPP.

82-04-22 9-5 PM 305
Office, MARSHALL file.
Statement from Dr. M.S.
VIRCK re MARSHALL
Office - MARSHALL Isla

82-04-23 2:00 AM - 2:00 PM 305
Patrol to Sydney Minos
re Robbery with Violence
Statement from FORREST
accid by Sgt. WIDE
DONOVAN

Suspect 5-10 170
Round face, mustache,
Dk Brn Hair - long
Knitted hat, stocking cap.
30-35 yrs. Plain shirt
Blue bag, white stripes.

Il Photo - Prints 12.00 Nov
Sydney P.D. re Prints - Photo
Lunch to Correctional Centre,
Pet Anthony DALTON To
Correctional Centre 1.20 PM
Films to Quality Camera
Office. To City Hospital
MADONALD Photo Identified
by STAGE.

82-04-27 9-5 PM 306
Office, called Polygraph. See
re PERFECT to Sydney P.D.
records from Chief I. MacINTYRE
Interview Mrs. Margaret PRATCO

acid by S/Sgt. H. WHEATON
Statement of Margaret
Pratico.

When the murder
happened in the Park in 1971
I remember first hearing
about it on the Radio
John woke up that
morning after the
murder and asked
me, who was hurt
in the Park.

There were no
names released. On
Monday the Police picked
up John. I only know
of once John was picked up.

Office, to Mamberton re Dan
PAUL. Review MARSH's statement

82-04-26 9-5 PM 305

Office, to North Sydney S.D.
re Joseph Shenggen MacDONALD
Pleas. - Attempted Murder -
Robbery w. Violence

BEAT. (5) - Bras. S. of Judges
Jury on all charges - read by
Judge S. CAMPBELL;

82-05-26 9.30 AM N. Sydney
NS. Consent to Remand.
Remanded to Correctional
Centre. Interviewed Clancy
BURTON & Darlene MARSH
11.30 AM 27 King St. S.
Mines. Admitted that he and
MACDONALD had flight bag.

Office, called Dan PAUL.

82-04-29 1802

82-04-30 9-8 PM 308

Office MacDONALD file
E-237. To Mamberton
interview Dan PAUL,
To Prob. Court 2.00 PM.
Keith SHEARS, S. EDWARDS,
Judge P.A. O'CONNELL
A.J. to Fri. EBARY 2.00 PM
For Evidence from W.S. ACTON
Remanded to Correctional Centre
Office

82-05-01 RTO 9.30 PM
Call from Cpl. Hank HAMMOND
JUDNEY Mines S.D. re

ire. Call from Sgt. M
Innis re PERFECT - R. 12

Polygraph.

82-05-11 9-5 PM 308

Office. Sydney P.D.

Interview John MacINTYRE
Statement from Sgt. Michael

Bernard MacDONALD - 11.10 AM

Finished 12.40 PM Sgt.

Gerard Arthur TAYLOR

Statement 12.46 PM Finished

1.09 PM. Statement from Cpl.

Jack JOHNSON. 1.15 PM -

1.35 PM Call semaphors.

Cpl. Fred LEMOINE statement

1.41 PM - 1.50 PM 1.55 PM

Insp. Richard WAINST - Statement

2.19 PM Finished 2.40 PM

Called Mae PATERSON, Simon

MacDONALD. re STAGE

File, STABG. called chief
H. VICKERS re SULLIVAN case.

82-05-12 9-5 PM 308
Office, to Sydney Airport
to St. John's ^{offd.} re EBSARY
interview Taxi from airport
to Howard St., St. John's.
Robert EBSARY - Hollywood
Power Plant. 3.45 PM

Interviewed by H.F. WHEATON
& CARROLL - Pennington Rd.

Ray EBSARY - Brother
Royal Stores? Rev. George E.
Frank EBSARY 193 Old Pennington
579-3483 22 Wellington
Gres. 364-5945 - Ray E.
Ray E. v. 8 Connollys Rd
40-04-26 Killarney ~~offd.~~

lodging ~~offd.~~ Hotel

82-05-13 8.30 AM - 7.00 PM

Interviewed Robert Samuel Barton
MachEAD St. John's City
Park, 8.40 AM. Sgt. H. AUERY
St. John's GIS return to
Sydney 7.00 PM.

82-05-14, 9-5 PM 308
Office, debriefing from audit
team. PETTAS C-238
Call from Crown Pres. EDWARDS
re ELLERBROK Fraud comp
Called Simon MacDONALD
re MacDONALD - Att. Murder
& SULLIVAN - Att. Rape.

82-05-15 RTO

82-05-16 RTO

Investigation Officer K. Wood
E. BASOL re ALLEN
Called Chatham P.D. re
ALLEN

82-05-19 8:30 AM - 4:30 PM 308
Office, to Sydney Mines
re SULLIVAN - P.D. Sydney

City Called, interview
Cpl. Fred LEMOINE, statement
from Cpl. Frank MacKENZIE,
Cpl. Leo MROZ.

82-05-20 9 - 5 PM 308
Office, statement from Cpl.
Howard DEAN, called Sydney
Mines P.D. re SULLIVAN
Office

82-05-21 9 - 5 PM
Sydney Airport not escort.
Det P.D. ARKINSON
Det Joltor BALLEJA
Warrant booked by J.P.
S. MURRAY to Co. Centre
escort 3 - not escorted

82-06-11 9-5PM 308
Office, HOLLAND, to
Ingarish re Roger HARVEY.
second statement, return to
Sydney 3:30PM, need by
Capt. D. HOFF, office.

82-06-12 RTO

82-06-13 RTO

82-06-14 9-5PM 308
Office, call from SHAWCROSS
re Lloyd FARMER, Chief
CROWE re SEALE case.
Discuss SEALE case with
O.C., called PERFECT re
interview 9:30AM

82-06-15 9-5PM 308

Office, Patrol to Nancy
Waterford, return records
PERFECT to Sydney GIS
for interrogation, return
Nancy, office, PERFECT
C-237. Called Chief CROWE
re Mrs. EDWARDS

82-06-16 9-12 Noon 308

Office, MARSHALL C-238
Call from SHAWCROSS.
AOL

82-06-17 AOL

82-06-18 AOL

82-06-19 RTO

82-06-20 RTO

82-06-21 9-5 308
Office, call from Mrs. EDWARDS
MARSHALL report to office

82-06-29 9-5 PM 305
Office, STAGE - report to
Criminal Injury Compensation
Board, called STAGE memo
re overtime. Called Pres. S
WILLIAMS, Sydney Mines
P.O. re summons to witness
Office. SULLIVAN Case

82-06-30 9-5 308
Office, Patrol to North Sydney
check Blue Star Troopers,
Shabibs for stolen furniture
also, Don's Surveillance, S.I.'s
Used Goods - Sydney, advised
Cherbourg Det. Office, called
Simon MacDONALD re
SULLIVAN

82-07-01 RTO
82-07-02 9-5 PM 308
Office, GAUTHIER C-238
CRIC, MARSHALL transcript
from Pres. EDWARDS
Office

reports. Callied Geo GREENE
at tit de Graf re Army

82-07-13 9-5 PM 308
Patrol by Petit de Graf
statement from George
William GREENE-BO 34-07-02

Interviewed William D.
MURKHEAD - Manager
Richmond Fisheries Inc.
Mrs Alfred LANDRY
Cathy Johnson, Edwina
Richard, Victor DAVID
Return to Sydney, N.S.
3:30 PM. office

82-07-14 9-7:30 PM 308
Office, PRIEMSKI file. Met
ARONSON re EHANT &
PRATYGO, Patrol to New
Waterford re PRATYGO,
Louisbourg re EHANT

82-07-15 9-5 PM 308
Office, PRIEMSKI report
call from HAMM re PERSON
ARSENVAULT

Janna PERSON, escort
Mrs INCALS
Frances BUTLER - Welfare
Mary PAUL - Mamberston
Mother - Mary ^{Ally} PERSON PAUL
Janaria Pains, Boston

Mrs. Linda WAGNER - Matron
Capt. D. HUSE, Lt. SHUMMERHORN

82-07-21 9-5 PM 308
Office, Court re MLODOWAN
82-08-04 9.30 AM A.J.
Detention Counsel K. SHEARS
request for St. John's
med. medical records.
Office PERSON C-238, PIC
to H' CIB, Advised Mary
EBBARY of husband's release
from Hx. PRIEMSKI C-237
Car 308 repairs - Brakes

82-07-22 9-5 PM 308
Office PRIEMSKI C-237
Call from Capt. BLAQUIER
re Harbor RYAN, call

308
ina called National S
for Cpt. Harvey MAULMAN
re PRIEMSKI, call from
Cst. Andrew MacDONALD
re ISADORE Att. Mysdor
PROPPER Arson. Police
Sydney Airport - statements;
82-07-31 RTO
82-08-01 RTO
82-08-02 RTO

82-08-03 9-5pm 308
Police, could see EPISTRY
Bill Hanning, remarks
related to witness program
reside Howard PROPPER
Box 50001-99 Dike of Fire 82-416
Examine fire scene 4:55pm
Dug - stepping, three programs
wooden dwelling. Tiled
Floor living room, kitchen
east hallway, bathroom
master bedroom
to room 16' x 11'

8) to [unclear], discussed
Louisbourg [unclear] with [unclear]
[unclear] J. McIVER, office
KOSPER resume.

82-08-06 9-5 PM 308
Offline, call from Sgt. Agent
Benny NILL re. [unclear] [unclear]
Florida Dept. of Law [unclear]
agents, called Hix re. [unclear]
[unclear] [unclear] called [unclear]
Det. [unclear] [unclear] Department
called [unclear] P.D. Sgt.
Don BRADKING re. suspects
Westville, [unclear]
Homer [unclear]. KOSPER
8-238

82-08-07 R T O
82-08-08 R T O
Call from John [unclear],
met, [unclear] [unclear] 2 29
May [unclear] 308

82-10-25 9-5 in 3c
Office, Jan Dewick Roy
Documents to M. J. Brand
Summons to Mrs.
CARMICK - Cady St.
Inquiries re locate
William ALLEN, unknown
at 23 Millview St.
re job offers.

Myles FURLONG - 368-3607
709-757-2786
Tool Pusher on ~~highway~~
sent in brief Sept. 82
Issue Application needs
Course School Communication
Personal Officer ~~Interstate~~
~~82-10-26 9-5~~ ~~BARLOW~~ 2340
Treat Wayne MARSHALL

BBS 53-66-20 539-7286
28 Mailand St Mamberton

Way Anselm Gouss
BBS 36-02-04
194 Riverside St. S. B. B.
2:45 PM warning by ~~1/5/82~~
BARLOW 2:41 PM Call to
Nash BROGAN - Buey
35 Bridge Diplomat
at Camp ~~1-1-82~~ - Choc. st
by ~~1-1-82~~ - had - 3:00 PM
Embroid BROGAN, "told to
say nothing" 3:07 PM
Out of office. Call from
Frank EDWARDS re BCA
Discussed BCA - Gouss
Cases with c.c.

~~82-11-27~~ 9-5 pm 305
Office, called EBSARY re
DOYLE, 8888 B.C. Sme
Bea memo, called Gung
KHATAR, call from EBSARY
7.30 pm, meeting sat for
9.30 am, call at home
10.30 pm via radio-cam

~~82-10-28~~ 9-5 pm 305
Office, met with EBSARY
7.30 am, agreed to type
details of SEAKE incident.
Called regarding tape recorder
sent to ^{Police} ~~Police~~
index no. 6814 and Josephine
Gouhis 350 51-12-20
3.46 pm 3/5th with new
Police 6814 and 6815
re-printed Gouhis - utility

~~82-10-29~~ 8.30 am - 4.30 pm 305
Tape recorder & new tape
to EBSARY at Fulmouth St
Sydney, N.S. 8.50 am, sunny
present, 3/5th BARLOW
office to EBSARY'S
residence 68 Fulmouth
11.15 am Donny GARDINER
present, departed 11.30 am
BRIANDE's taxi, tape
commenced 11.50 am after
letter & envelope completed
12.08 pm. tape finished
Departed 12.23 pm
Office

(found), "That's unkind
hat"

~~7-11-02~~ 9-7.30 PM 398

Office, 9.30 AM packed
up ERSARY with Cpt. HUFFE
Dug 3x4' area at rear of
residence 126 near Argyle
St., spikes, glass, nails, sed.
To Inganish re SMITH.

Interview David Smith
Wayne ROBERTS - Manager
of Keltic Lodge. 3.54 PM.

Alex MacCuffe - Comptroller
Prop. Keltic Lodge 424-5000
Ext. 164, return to Sydney
7.30 PM

8-11-03 9-5 PM 308

Office, Tape from EDWARDS
Meeting 1.30 PM, Cpt. R.
KESSLER, CHARA, etc. To

as severely as centre.

RTO

82-11-07 7.30AM - 5.00AM
Panel to Inghish with
Col D. HYDE, examine debris
met with MacLEOD, ROBERTS,
Harold CHEESEMAN, play at
building prepared, call from
Col. ETTINGER re SEALE.
Return to Sydney, called
SEALE, DONOVAN.
Prog. EBSARY.
46 Macleane St, Sydney
539-4399

82-11-08 9-5 PM 308
Office, Court re CORMIER
EBSARY, 6 mo. Carry
Cancelled Weapon, Judge
P. A. O'CONNOR, Elmer
SHEARS, Credit Card
charge first witnesses
Barbara BEDARD, HYDE,
CARROLL, Juir Dice
A.J. 82-11-16 9.30AM For
Decision, ~~2~~

Joseph SAMPSON-564-6341
Ais, Radio
Hurlbutt St, 226 562-3661
Nige INTARE, John 564-6225
Sydney Airport
Galled Keltie Lodge re
Observations. Two slides
at Arsean GITTENS to
Oscar SEALE with S/Sgt,
BARLOW

main office, 10 x 14'
inner office 8 x 8'
Cst. FLYNN, Serge POIRIER,
Cpl. R. LESSER

82-11-30 9-5 PM ³⁰⁸
office called Greg B., ^{Cod. Books}
from Frank EDWARDS, To
Sydney Airport, 1 hr.
with Sgt H. WATSON
lodging Chateau Halifax
Depart Sydney 1.15 PM

82-12-01 9-11.00 PM
Attend MARSHALL Appeal
Hearing - H.T.X. Court
Appeal, Frank EDWARDS,
Stephen ARONSON, MARSHALL
1st witness, James MACNELL,
Donna EBBSARY. Return to
Sydney 11.00 PM

82-12-02 9-6.30 PM ³⁰⁸
Office, Court re CORMIER
Fraud - cheque, Judge
C. O'CONNELL, Vernon McDonald
Gowan, F. ELMAN - Defence
Vr. hearing - re-election to
Magistrate "Guilty" Resume
sqad by MARDONALD
Att: 82-12-30 11.00 AM.
Office, Patrol to New W.
interrogate Charles William
BEIRD Jr. re Armed
Rabbery, Michele CHASSON
Statements. Acc'd by Cst.
FLYNN.

PROTEST INCREASES

- DISPUTE CONTINUES -

Union Must Produce 57 Membership Cards

The long-simmering dispute over union representation for trawler fishermen in the Canso Strait area moved into another stage Friday with the announcement that the Canadian Food And Allied Workers will be required to prove it represents a majority of the men.

The announcement came from Homer Stevens, president of the rival United Fishermen and Allied Workers, after he met with five members of the Provincial Labor Relations Board here. Mr. Stevens said after the two-hour meeting that the board had told him the FAW will be required to produce the 57 membership cards it claimed it had when it received certification to represent the trawlermen earlier this year.

Acadia Fisheries Ltd. of Canso signed a voluntary agreement with the CFAW March 9 that was later ratified by the Labor Relations Board. The UFAW challenged the contract, claiming that the CFAW did not (repeat not) represent a majority of the men. However, the contract was upheld by the board. Earlier this month, the UFAW received permission to re-apply for certification to challenge the CFAW's pact with Acadia. Friday's announcement that the CFAW would be required to show membership cards is the first step in that process.

Mr. Stevens also told a news conference Acadia will be asked to provide a list of the men employed when the contract with the CFAW was signed.

Labor Relation Board members and CFAW officials were not immediately available for comment on the decision to require the CFAW to produce the membership cards.

In Canso, an official of Acadia said he did not think the company would object to providing the employment lists.

Both unions have claimed to represent a majority of the trawlermen. The UFAW claims 81 men were fired by Acadia when they refused to join the CFAW after the contract was signed.

Mr. Stevens said there "can't be any industrial peace" in the Canso area until fishermen are represented by the union of their choice. He said the Labor Relations Board did not place a time limit on when the CFAW will have to provide the membership cards.

He also said that trawlermen who refused to join the CFAW are having a difficult time receiving unemployment and welfare benefits.

PARK INCIDENT

Two Men Injured

City Police, led by Detective Sergeant Michael R. MacDonald, are seeking a knife-wielding assailant who attacked two men in Wentworth Park early today.

One of the men, Sandy Seale, of Westmount, underwent emergency surgery in City Hospital for a wound in the abdomen.

The second man, Donald Marshall, Jr., was released from hospital after treatment for a gash in the left arm.

The men were taken to hospital shortly after 12:15 a.m.

United Appeal Rally Monday

The Cape Breton County United Appeal holds a campaign organization rally Monday evening in the Wandlyn Motel, it will be the final gathering until September when the annual campaign is launched. The meeting begins at 7:30 p.m.



LAWYER

AGUS MacIntyre received his Bachelor of Laws degree in recent convocation exercises at Dalhousie University. A son of Sgt. Detective and Mrs. John MacIntyre of Sydney, he is a graduate of Sydney Academy, of Xavier College, and of St. Francis Xavier University. Mr. MacIntyre is now articling with the law firm of Horne and Jones in Dartmouth.

New River Of Lava

PORNAZZO, Sicily (AP) — A new volcanic mouth of Mount Etna spewed lava in bursts Friday, vulcanologists reported, spreading destruction down the mountainside.

Prof. Alfredo Rittmann said eruptions from the two-day-old crater seemed to spell more danger for towns such as this roadside village on Etna. Residents stood by for possible evacuation in the face of advancing lava.

One stream that menaced the town already had gone past, but another scalding river of black lava threatened from the north. Farther down the slopes, fear and tension spread to two more towns, Clarra and Maccina de Arre. They could be hit by lava in two or three days.

The nearby town of Sant'Alfio has been spared by the present rains of lava.

WAVES FADE

The eruptions, already in their 53rd day, have become more worrisome, just as vulcanologists had hoped the threat was diminishing.

A recorded history, Mount Etna has erupted about 90 times, including 10 times between 1900 and the present. The present eruption already has become the second biggest of the century in amount of lava, might surpass the record of 1917.



RCM

With the advent of the summer tourist season, the R.C.M. anticipates increased vehicle traffic and the increased potential for accidents. The R.C.M. Nova Scotia are pre-intensify their efforts for enforcement of the provincial laws with a view to accidents. Effective R.C.M. Police Highway will officially adopt "VASCAR" as a partial traffic enforcement program.

VASCAR (Visual Speed Camera And Radar) is a new concept in traffic enforcement.

LAIMS LIFE OF STUDENT

- DETECTIVES SEEK ASSAILANT -

Sandy Seale Dies After Two Emergency Operations

City detectives remained on 24-hour duty today in an effort to apprehend a knife-wielding assailant who snuffed out the life of a 17-year-old high school student in a brief but bloody fracas near Wentworth Park early Saturday morning.

The city's first teen-age slaying triggered an intensive manhunt that extended into many parts of the Island Sunday. Seven persons were questioned during the day but all were released.

Sandy Seale, a son of Mr. and Mrs. Oscar Seale, Westmount, died in City Hospital Saturday after he underwent two emergency surgery operations.

The tragedy occurred near the park, now a gathering spot for hundreds of teen-agers. The victim had left a dance at a nearby hall and went to the park where he was joined by 17-year-old Donald Marshall, Jr., of Membertou.

Marshall is believed to have told police that a "white-haired" man approached them and asked for a cigaret or match. When Seale said he had neither the assailant plunged a knife into his abdomen.

Marshall was then attacked and received an arm wound that required 10 stitches. The assailant then disappeared into the darkness.

Seale's stomach wound severed three main arteries.

Seven men were placed in a police line-up at headquarters



SANDY SEALE

of restaurant-owner Jim Selo almost five years ago.

City Detectives John MacIntyre, M. J. MacDonald, M. R. MacDonald and William Urquhart are working around the clock in an effort to apprehend the assailant.

Sanford William (Sandy) Seale was a son of Mr. and Mrs. Oscar Seale, 985 Westmount Road and was a grade nine student at MacLennan Junior High.

He was a star hockey player and played on defence with St. Theresa's Midget team. He recently made a trip to Hamilton, Ont., as a member of Murray MacIntosh's Kinsmen Midgets.

Besides his parents, he is survived by three brothers, John, Howard and Raymond, and one sister, Elizabeth, all at home.

The body is resting at the T. W. Curry Downtown Chapel, 390 George Street. The funeral will be held Wednesday with services in Trinity United Church at 2:30 p.m.

Interment will be in Forest Haven Memorial Garden.



the No. 6 Medical Company (foreground), of the Sydney District Service Battalion. Inspecting officer, is accompanied by Lt. They are followed by Col. John Terry, C.O. nander. (Abbass Photo)

MONY. Diplomas and College

of decades ago. c. it seems vir- that commercial increase signifi- ears ahead, Mr. and if Canada rve its tradition- over the vast lands and island the Arctic, "we a maritime hese areas." DS HIGH -

phy for Cadet Marcel Darveau, which was accepted by Cadet Worden in the absence of the winner. The trophy is for the best all-round first year cadet. Cadet Darveau also won the Purney Trophy for tops in seamanship in first year. The trophy is offered in memory of Cadet Purney, former student drowned at sea. Cadet Pierre Michaud, who gave the graduating valedictory



ess Probe Into Killing

"Several" Released After Questioning

No new developments were reported Monday as city detectives continued their investigation into the slaying of a 17-year-old junior high school student.

Detective Sergeant John MacIntyre, who is leading the investigation, said last night that "several persons" were questioned Monday but were later released.

Sandy Seale, son of Mr. and Mrs. Oscar Seale, 985 Westmount Road, died in City Hospital Saturday less than 24 hours after he suffered a knife wound in the abdomen in a brief but bloody fracas near Wentworth Park.

Donald Marshall, Jr., 17, of Membertou was also attacked and received an arm wound that required 10 stitches.

Detective Sergeant MacIntyre said the search for the knife-wielding assailant is being concentrated in Cape Breton.

Seven persons were questioned Sunday but all were released.

Marshall is believed to have told police that a "white haired" man approached them and asked for a cigarette or match. When Seale said he had neither, the assailant plunged a knife into his abdomen.

Marshall was then attacked. The assailant disappeared into the darkness.

Seale died in City Hospital Saturday evening after he underwent two emergency operations. Seale's stomach wound severed three main arteries.

Meanwhile, funeral services for the popular Westmount youth will be held Wednesday with services in Trinity United Church at 2:30 p.m.

The body is resting at the T. W. Curry Downtown Chapel in lieu of flowers, donations can be made to either hospital.

RECEIVES AWARD

James Gordon Ross, son of Mr. and Mrs. James Ross, Townsend Street, Sydney, received his Bachelor of Arts degree in recent convocation ceremonies at University of Prince Edward Island in Charlottetown. He also

Upgraded Management Is Needed

"The Canadian economy, as a whole, needs upgraded management," Vic Prendergast, national president of the Canadian Institute of Management, told local members of the institute at a social meeting last night in Sydney.

Mr. Prendergast had previously attended the graduation in Halifax, of the first Maritime students to complete the four-year course in industrial management. Since the start of the Halifax course, the institute began classes here in Sydney with the assistance of Xavier College and under the direction of Rev. Charles MacDonald.

Mr. Prendergast, of Brantford, Ont., explained to the 200 guests and students present, that since its conception, the Canadian Institute of Management has assumed a broader role and increased responsibility to the country.

Affiliated with 17 different Canadian universities in 23 centers across Canada, what began as a process of upgrading industrial management personnel, has transformed into a broader organization.

Today, a quarter of the total membership is involved in government on a number of levels.



TO INSPECT CADETS - Commodore Ernest Sheppard Baker, CD, Base Commander, Canadian Forces Base, Halifax, and commander Technical Services Atlantic, will inspect the Sydney Sea Cadet Corps on Sunday, June 6, at 2 p.m. at Victoria Park parade square. The public is invited to attend the inspection. During the inspection 23 awards will be presented. Commanding Officer of the corps, sponsored by the Sydney Kinship Club, is Major N. J. Mazalin of Sydney.

format to ultimately serve as a focal point for management opinion in Canada. "A management viewpoint needs expression," Mr. Prendergast said.

Many attempts have been made to form such a source of contact between government and private enterprise, between the doers and the planners, but all had failed, he said. Many other countries have central management institutes.

Three years ago, this organization took a look at the requirements and held discussions with senior management people in an attempt to resolve the best approach to fill the need," he explained.

The student in the four-year course should be recognized by senior management. The course has a degree of portability and sets a recognizable standard for its graduates across Canada.

Mr. Prendergast was pleased that so many representatives of local municipal government and industry had attended the even-



County United Appeal Organization rally, the last Albert Dillon, deputy chairman, federal deputy chairman, Louis (Abbas Photo)

Rally

Comments from each of the representatives were heard in the hall and summed up by Mr. McKay in his reply. It was pointed out that it was not only the objective must be within the limits, but everyone must go over the top. Rev. Davis of North Sydney, "I hope I never live in a country where the full responsibility of assistance to the community is the prerogative of the government."

Plaques for past services were presented. They went to S. Hincber of New Waterford, C. R. Hatfield of Louisbourg, David Newton, Sydney former deputy public relations chairman; Inspector T. M. Duff, RCMP, former chairman federal services; Al Collins, past chairman of financial services and Don Isaac, former public relations chairman. The plaques: "Citation for distinguished service, awarded in recognition of outstanding achievement in serving the human needs of our community - 1971." Mr. Wilton distributed revised appeal kits to all chairman and deputy chairman present.

Demand For Services Is Increasing

Increasing demand for services of St. John's Ambulance in the Cape Breton area, where three new divisions have been formed during the past year was noted by Dr. Robert Mathieson, chairman at the recent annual meeting of the local branch held in the Officers Mess at Victoria Park.

Dr. Mathieson cited the high standards of St. J. A. in Home Nursing, Child Care, and First Aid, plus the dedication of its volunteer workers, as the factors mainly responsible for the expansion of the Cape Breton Branch.

With the exception of Dr. Mathieson who became branch medical officer, and was succeeded after seven years in the office of branch chairman by John Terry, most of the officers were returned for the coming

**BEAUTY AIDS
DISCOUNT PRICES**

US DISCOUNT

DRESSING 83c

US DISCOUNT

WASH 1.17

US DISCOUNT

8 OUNCE SUPER TUBE 99c

US DISCOUNT

ATNESS 99c

AGE OF 10 69c

ON 7 OUNCE BOTTLE 88c

**TH DISCOUNT VALUES
VEGETABLES**

RED 14 1/2 OZ. TINS 2-45c

3 OUNCE TIN 39c

MASHED 49c

12 OUNCE TINS 2-49c

4 OUNCE TINS 4-1

**55 ARE TOTAL ON
G SUPPLIES**

INCE CELLO PACKAGE 39c

WEIGHTS LB. 31c

ECES 8 OUNCE PACKAGE 69c

US DISCOUNT

ERRY OR PEACH 19 OUNCE TIN 59c

US DISCOUNT

POSE ENRICHED 1.69

VD BAG

**QUALITY AT
UNT PRICES**

OR JUNIOR 3-37c

44 OUNCE TINS

Cape Breton Post

June 2, 1971

P.B.

Louisbourg was presented and approved Monday night at a special meeting of the town council, presided over by Mayor George Lewis.
The 1971 tax rate was set at

last year's rate. Citizens may advantage of the 4 per cent discount on taxes paid before June 30 or a 3 per cent discount if paid before July 15.

added to all taxes not paid before September 30. A motion was passed authorizing action against citizens now in arrears unless payment is received before July 15.

Large Parade Will Open "Market Place"

Art MacVicar, general chairman of Sydney Rotary Club's first "Market Place", said Tuesday all committees report plans going ahead on schedule and all indications point to a most successful event.
"Market Place" will be held in the Centennial Arena June 10, 11 and 12. The event will be officially opened with one of the largest parades ever held in the

city. The parade will line up at Xavier College under the direction of co-ordinator G. A. Redicopp.

Included in the parade will be floats, bands and the star attraction will be the 10 local ladies who have entered the queen contest.

Each admission to the Centennial Arena will entitle a person to one vote in the queen contest. One of the prizes in the contest will be a trip for two to Montreal courtesy of Eastern Provincial Airways.

Another highlight of the three-day event will be a gigantic auction with a professional auctioneer in attendance and this committee is being handled by Cy Healey and Mack Haley.

There will be live nightly entertainment and the evening festivities will be broadcast live over C.J.C.B. Radio.

Other attractions will be a chicken barbeque and Dan MacLeod reports that everything is

in readiness for the mammoth outdoor event. Rotarians expect to sell 2,000 tickets for this event prior to the opening day.

Bev Trask heads the committee making final arrangements for a sale of home baked goods, jams, jellies, fried rice, potato salad, etc., will be offered for sale each night.

Anyone wishing further information regarding the parade may contact Mr. Redicopp at 539-5366 or for the queen contest by contacting Gordon Mercer at 564-6313 or Fred Miles at 561-9632.

Detectives Continue Investigation

Sydney police detectives continue their intensive investigation into the slaying of 17-year-old junior high school student Sandy Seale and a police spokesman said last night there were no new developments to report.

Funeral services for the youth, son of Mr. and Mrs. Oscar Seale of Westmount, were held in the city this afternoon.

The number of persons questioned by police increased yesterday as detectives press efforts to obtain information on the person who stabbed the teen-ager near Westworth Park early Saturday morning.

Scroll Of Achievement Presented

His Honor, Lieutenant Governor Victor de B. Uland visited Baddeck Rural High School Monday to officially present the Lieutenant Governor's scroll of achievement to the school.

The scroll was accepted by Donald Hugh Campbell of Bras d'Or, winner of the lieutenant governor's medal last year.

R. G. Bain, inspector of schools for Victoria County, was chairman of the ceremonies held at the school.

The Lieutenant Governor was introduced by R. Fisher Hudson, M.L.A.

Amalgamation Of Boards Discussed

Amalgamation of school boards on the southside of Sydney Harbor was discussed here Tuesday at a meeting between Education Minister Peter Nicholson and municipal officials.

"It was a very good meeting and a report on amalgamation is expected in July," said Mayor Carl Neville, of Sydney.

The minister assured officials that amalgamation of school boards to Sydney, surrounding towns and parts of the county would be given top priority.

FUNERAL TODAY

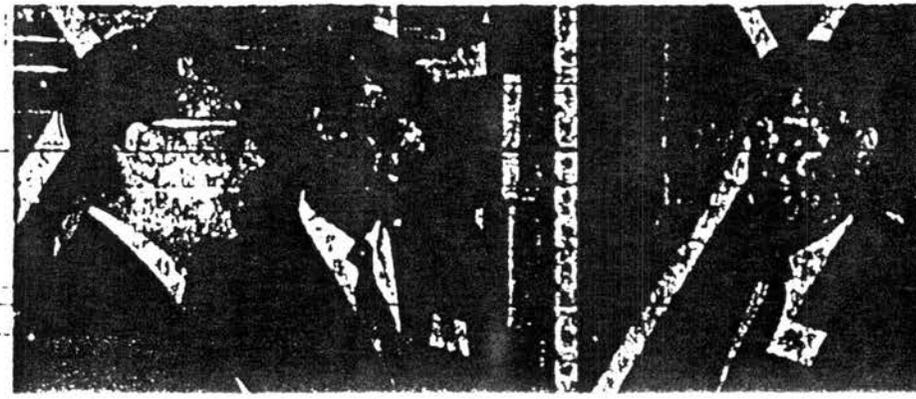
The body of the late Corporal Keith Easton of Canada's Armed Forces, Shannon Park, Dartmouth, rests at the R. H. Fillmore Funeral Home in Sydney.

Services will be held today at 2 p.m. in the chapel, and interment will take place in Hardwood Hill Cemetery.

NICHOLSON luncheon Monday, June 21, 1971, 7:30 p.m., Club P...

Crown's death by crime against Rodney Gillivray, 32, of Glace Bay, will Court jury this morning.

The Crown's death by crime against Rodney Gillivray, 32, of Glace Bay, will Court jury this morning. The Crown's completed evidence against F. M. B. after afternoon after scheduled as this morning. Charge again...



The president and chief executive officer of the Sydney Steel Corporation says the corporation is determined to maintain its reputation as one of the best producers of rails in the world.

D. W. R. Haysom said in Sydney Wednesday night that rails represent one-third of the plant's total production.

"We sell our rails to almost every part of the world and we consider our product to be the best made in the world," he told some 35 representatives of the Montreal Board-of-Trade.

The representatives were in Sydney for a brief visit and were guests at a reception and dinner at the Isle Royale Hotel last night sponsored by the Cape Breton Development Corporation.

Mr. Haysom told the visiting businessmen that the Sydney plant is undergoing a modernization program and "it is our task to replace as much old machinery as we can."

Modernization, he said, is necessary if the plant is to compete with other steel mills not only in quality but in price.

SEMI-FINISHED

The future of the plant, he said, lies in the production of semi-finished goods which can be shipped to areas where they are required.

The Sydney plant now is producing semi-finished goods with the exception of rails.

Mr. Haysom said the Sydney plant has been producing rails since 1908 when the first order came from India.

There were doubts at that time whether a plant in Sydney could produce quality rails, he said.

"The plant did produce the rails and it wouldn't surprise me if the rails are still in use," he said.

Mr. Haysom recalled the history of the plant and told the visitors that the provincial government assumed control on Jan. 1, 1968, after Dosec announced it would be closed for economic reasons.

"It was nothing short of hard work, determination and skill that we were able to get the plant back on its feet," he said.

"That was three and a half years ago but it seems like a half century ago for those of us involved in the plant."

Mr. Haysom also had words of praise for R.B. Cameron, the New Glasgow born industrialist who resigned recently as chief executive officer of the corporation.

Earlier Wednesday the Montreal visitors toured the plant and the Kaiser plant at Point Edward.

Kinsmen Club Names Officers

Jim Nixon was elected president of the Sydney Kinsmen Club replacing Joe Braunmiller.

Wentworth Park Hours Are Posted

The Sydney Recreation and Parks Commission announced Wednesday that Wentworth Park in the city's south end would be closed nightly from 11 p.m. to 7 a.m.

"The park was never intended to be an all night park," Recreation Director Jim Fox said. "The park is for the enjoyment of our citizens and is to be used not abused."

Mr. Fox said proper signs now are being made and will be installed soon.

He said the decision to close the park from 11 p.m. to 7 a.m. was made before the knife slaying of Sandy Seale, 17, of Westmount.

The youth died in hospital last Saturday from a knife wound suffered in a fracas near the park.

"What we are aiming for is regular park hours," Mr. Fox said. "There is plenty of time to enjoy the park."

Three-Month Jail Term Given Youth

Bruce Wayne Evans, 17, of 11 Ritchie Street, was sentenced to three months in County Jail Wednesday for breaking and entering the Ideal Sausage Co., on Johnstone Street.

He was sentenced by Provincial Judge Charles O'Connell, QC, who told him he was not only ruining his reputation with a criminal record, but damaging his health by dabbling in drugs.

Judge O'Connell was told Evans had a previous record and was on probation at the

Cape Breton Post

June 3, 1971 p. 5



The Montreal Board of Trade visited Sydney yesterday at the Isle Royale Hotel. Shown here are, left to right—Dr. G. J. MacCarthy, tour chairman, Peter MacCarthy, president of the Montreal and Larry MacIsaac, CNR. (Abbass Photo)



Reception and dinner for 35 representatives of the Montreal Board of Trade. Shown here are, left to right—Bill Massie, Montreal, Tom Kent, Deputy Chairman, North Sydney, and D.W.R. Haysom, president of the Sydney Steel Corporation. (Abbass Photo)

Expansion Of Park

Newspaper published in April outlined an area of expansion northward, which had been considered by the department.

But, following meetings with provincial officials in Halifax, they were not considered to be of high priority in the immediate future.

Questioned by representatives of the Land-Owners Protective Association, Mr. Gordon stated that during the present federal administration there would be no expansion whatever without the concurrence of the people of the area.

Northern expansion however remains a possibility that could be revived at sometime in the future at either level of government, Mr. Gordon said.

46 Will Be Honored At Ceremony

The Sydney Council of the Knights of Columbus will honor 46 members of the Council at ceremonies Friday evening in the K.O.C. Rooms on George Street. They are being honored for long and meritorious service.

Three members, David MacDonald, John A. Chisholm and William MacInnis, will receive

BATTLE
 — Palestinian Arab
 and Israeli troops
 a stiff battle Friday
 the southern Jordan
 near the town of Jer-
 uerilla broadcast said.

Between The Lines
 Page 5

Ontario Wants More
 Page 14

Rot

Cape Breton Post

FIRST YEAR, NO. 132. 30 PAGES 15 CENTS
 DNEY, NOVA SCOTIA, SATURDAY, JUNE 5, 1971.

Murder Charge Laid

Donald Marshall, Jr., 17, of Membertou Reservation, Friday night was charged with non-capital murder in connection with the knife-slaying of 17-year-old Sandy Seale on the fringes of Wentworth Park early last Saturday morning.

City detectives arrested Marshall at a secret hiding place where the Marshall family had been taken Thursday because of a series of threats against the family.

The youth appeared before Judge John F. MacDonald at 10 p. m. last night and was remanded to the County Jail.

The arrest climaxed a six-day investigation that kept police working around the clock.

Marshall had been questioned earlier in the case. He claimed that he was with Seale in the park and both were accosted by two assailants one of which he described as a "white-haired man."

Marshall suffered a gash in the arm which

he said was inflicted by one of the assailants. Seale, a son of Mr. and Mrs. Oscar Seale Westmount, died in City Hospital less than 24 hours after receiving a stab wound in the stomach.

Both Seale and Marshall attended a dance near the park just prior to the tragedy.

Detectives spent most of the week chasing down several leads, one of which involved two men running from the scene and departing in a small car with an out-of-province license plate.

Police would not elaborate on the break in the case that came suddenly early Friday evening.

The Marshall family had received threatening phone calls and other annoyances during the week. Police took them to a hideout for their own safety on Thursday.

Marshall is scheduled to appear before Judge MacDonald again on Monday.

New Trial Is Ordered

slipshod handling

CARL MOLLINS
 — Auditor-General Maxwell Henderson, recently unchastened by a rebuke with the disrepute of a deal administration last week presented Parliament Friday a bulky new catalogue of slipshod government spending of public money.

Henderson, whose office oversees the way the government conducts its business, government departments' agencies for alleged mismanagement of millions of dollars in net for the year ended 31. 1970.

riticular, free handed financial aid to private enterprises comes under attack in 23-page annual report.

attempts to recover over \$100 million failed because the government involved had loaned money to its foreign parent, of the 308 separate com-

CALGARY (CP) — A five-man Alberta Appeal Court ordered a new trial Friday on reduced charges of manslaughter for 11 of 13 men convicted of non-capital murder last year.

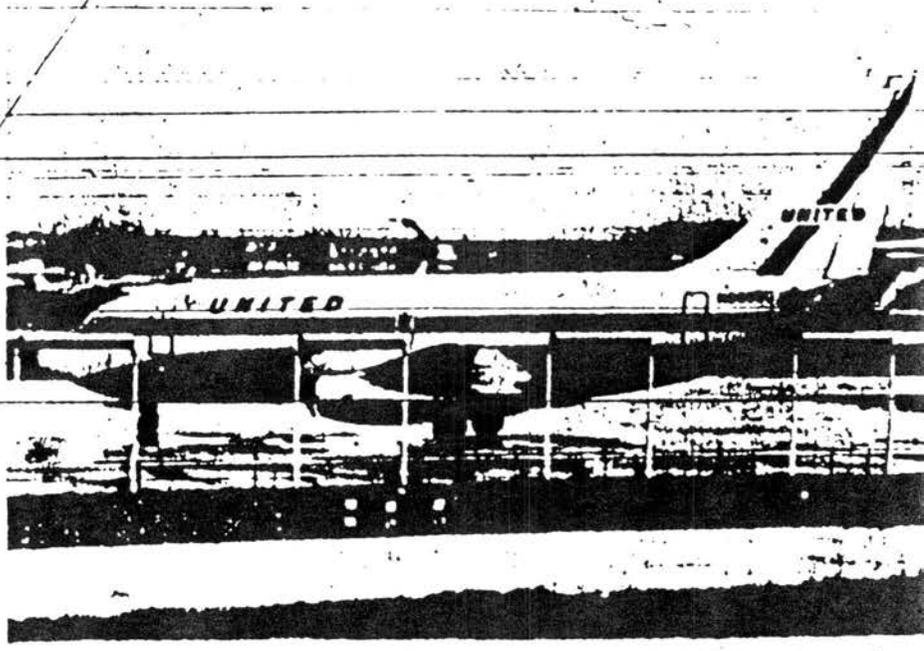
In a 27-page judgment, the court acquitted Barry Pyne, 24, of Red Deer and upheld a life imprisonment sentence against Ronald Lambert Emkeit, 24, of Calgary.

The men, all but one members of the Grim Reapers' motorcycle club, were sentenced to life imprisonment in the death of Ronald George Hartley, 23, of Calgary.

Hartley, president of the rival Outcasts motorcycle club, was beaten to death March 7, 1970, on a country road outside the city. The men were sentenced in September.

The judgment was written by S. Bruce Smith, Chief Justice of the Alberta Appeal Court, and concurred by Justices James M. Cairns, G. H. Allen, H. G. Johnson and Carlton W. Clement.

The court heard the appeals two months ago over a five-day period.



SITTING ON THE RUNWAY—A United Air Lines hijacked jetliner sits on the runway at Dulles International Airport Friday night after a gunman forced the plane to land while demanding a long-range jet to take him to Israel. Members of the crew overpowered the man, identified as Glen Briggs of Charleston, W. Va., and thwarted an attempted hijacking to Israel. (AP Wirephoto)

Talked Out Of Trip

WASHINGTON (AP) — A United Air Lines flight crew talked a pistol-packing hijacker out of a trip to Israel Friday night at Dulles airport, where the middle-aged gunman had forced their short-haul jet to

land at Dulles International Airport Friday night after a gunman forced the plane to land while demanding a long-range jet to take him to Israel. Members of the crew overpowered the man, identified as Glen Briggs of Charleston, W. Va., and thwarted an attempted hijacking to Israel. (AP Wirephoto)

ardesses unharmed. But he held the flight crew hostage and demanded a long-range jet to take him to Tell Aviv.

Three hours after the plane landed FBI agents took custody of the hijacker after he volunt-

tol, Va. and Charleston, W. Va. before starting the final leg of its planned flight to Newark.

But the gunman diverted the short-range plane and it landed at Dulles at 6:01 p.m. T-

105A

their best springinery for the year, Mrs. G. Sheppard, D. J. Johnston and M. Milburn

Guest speaker, the Hon. Allan Sullivan, was unable to attend because he had left for British Columbia to assist Premier Regan at the provincial conference on the constitution. Mr. Sullivan had sent his deputy minister, Dr. Fred MacKinnon in his stead.

Dr. MacKinnon first read a message from the Minister of Mines and Welfare who expressed his regret at being unable to attend in person. He then went on to inspire the students not to give up their studies. He said the world into which they are graduating is changing much more rapidly than it ever has in the past.

a \$200 Westside Legion scholarship; Jean Johnston got highest marks in science and home economics in the general program, a \$50 bursary from the Ukrainian Catholic Women and \$50 from Sydney Landscaping; Linda Patterson was highest in French and English in college prep.; she won a \$200 Woolco scholarship.

(Abbass Photo)



presented last night at the graduation... Fred Gallop, winner of year period and the Student Award... Betsy Chisholm, the valedictorian... Digest Award and scholarships... the MacLean Award for Academic

(Abbass Photo)

MINORITY

"Those who cop out and stand aside are in the minority. Most young people I know are excited about the future and they want to play an important part in planning for it," he said.

He stressed two main points concerning the drastic changes that the world is experiencing and the most important change relates to values.

Dr. MacKinnon said that the youth of today do not seek the material wealth and possession which was the prime mover of generations ago. "Making a lot of money has been the chief end of Twentieth Century man," he said, explaining that not only parents, but institutions have emphasized the money making occupations as opposed to those that relate to human service.

He said that in the past the materialistic approach of the world has brought affluence, prosperity, and technical advances equal to or greater than any other country in the world... "we have gadgets unlimited for everything under the sun."

END OF ERA

"But I tell you we have now reached the saturation point: we are watching the end of an era, and many of you young people have recognized this and have told it to us in a dozen different ways." This, he said, is what the youth revolution is all about.

"The new era places much less emphasis on material things and possessions. It has much more concern about people, their happiness, where they are going, and whether or not there is any hope for their survival on this planet."

He said we are entering a new age of human relationships as opposed to the old age of materialism.

He made a strong plea that each individual holds on to the faith in their own ability to shape the world and to make a useful contribution... "light a candle in the darkness" became his closing theme.

The speaker was introduced by Joseph Steele, Superintendent of Schools and thanked by

Marshall Remanded Until July 5

Donald Marshall, Jr., 17, of Membertou Reservation, Monday was remanded until July 5 when he appeared in court on a charge of non-capital murder. He was remanded to the County Jail without plea after Crown Prosecutor Donald C. MacNeil, Q.C., said the crown was not prepared to go ahead with its case.

Provincial Judge John F. MacDonald rejected a request for bail for the youth who is charged in connection with the knife-slaying of Sandy Seale, 17, of Westmount May 28.

The request came from C.M. Rosenblum, Q.C., who along with Simon Khattar, Q.C. appeared in court yesterday on behalf of the accused.

"It's not the fault of the accused that the hearing is not taking place," Mr. Rosenblum said. "Legally he's entitled to bail."

Judge MacDonald rejected the request and suggested that defence counsel could appeal to a higher court for bail.

He said he couldn't grant bail "especially while the investigation is not yet completed."

Mr. MacNeil told court that exhibits will be sent to the police lab this week and that it would be two weeks before the crown was in a position to go ahead.

Mr. Khattar said the defence was prepared to agree to a longer adjournment than eight days.

Accidents Are Probed By Police

City Police are investigating two hit-and-run accidents which occurred in the space of one hour Monday night.

Gordon Alexander Sullivan, of North Sydney, told police his automobile was struck by a car that failed to stop.

He told police he was travelling along King's Road near the Cove at the time of the accident. Mrs. Raylene C. Broussard,

Cape Breton Post June 15, 1974 P. 3.

Awards

Donna Stanley and David Phillip MacCormack.

SCHOLARSHIP AWARDS

prizes: Judy MacNeil, \$100 Sydney Credit Union and Beth Fraser English, \$50 Ann Marlin Auxiliary, Sydney City Hospital.

Young: in Student Council awards of \$150 went to Allyson Stanley, Dave MacPherson, Glen McDougall, Nelson Poushay, Debbie Skinner and Joan Thorne.

Senior: Helen Peck, winner of Xavier Scholarship of \$750 also won a \$200 scholarship donated by the Chicken Chalet.

Westside Legion scholarships went to: Danny MacCormack (\$300), Robert Murray (\$200) and Elizabeth MacDougall (\$100). Linda Stevens won a \$50 award from the Kinettes. Margaret Bragg received a bursary of \$150 given by Abbass Studios on the occasion of their 25th year in memory of their mother Lily Abbass.

Lee Murchison, \$100 IODE

School, highest in general and in academic: \$10 each to Ken...

CALENDARS FOR YEARS 1800 TO 2050

Look for the year you want in the index at left. The number opposite each year is the number of the calendar to use for that year.

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Supreme Court Ref.
Full Bench

Patricia Harris - Good witness
shaken abit

Greg Ekary - Ekary apparently
hates father

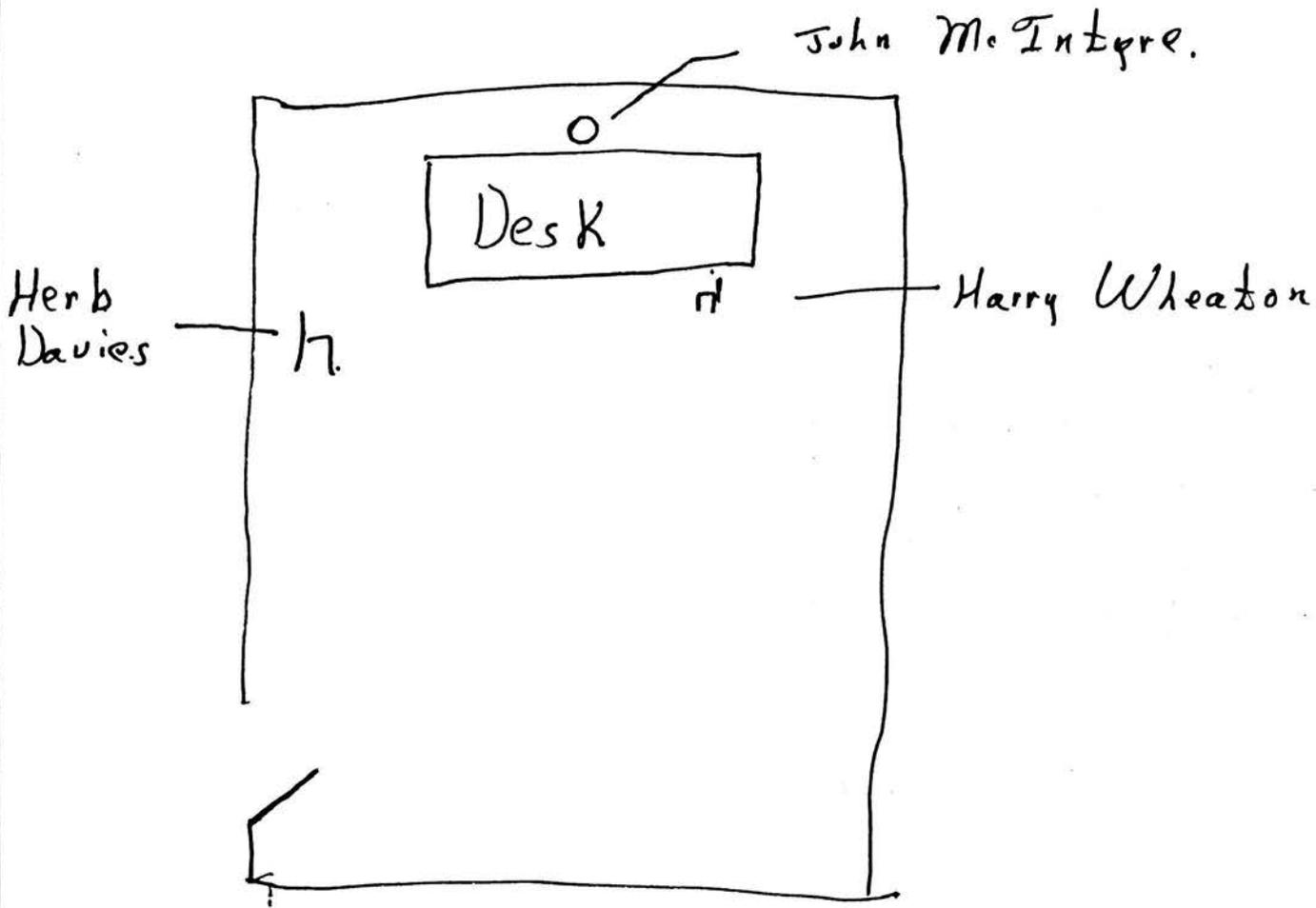
Donna Ekary - Ekary describes
father telling her lie

Donald Marshall - Poor witness
wouldnt stick up
robbery or robbery

Procuratorial System Frank &
Stephen agreeing too much
according to the judge

Why Police smarter in 82 than 71

Ed. 109



109

MEDIA POOL COPY

87 110

162. A. Who was not at that time the Chief but was the investigating officer.

163. Q. And the person responsible for the investigation.

A. That's correct.

164. Q. Are these conclusions you have come to, and I don't want to banter with you as far as words are concerned, you said it raises questions about improprieties and techniques used. Did you come to the conclusion that John MacIntyre used improper techniques in the investigation?

A. I simply read the RCMP document that I had and I trusted the RCMP.

165. Q. Why?

A. Why did I trust the RCMP?

166. Q. Yes.

A. It's my job to decide who to trust, I guess, and who not to trust, and I think that if you can't trust the RCMP, if they're doing an investigation that an investigation of one police force on another police force would be fairly worth listening to.

167. Q. Certainly no question about worth listening to but did you interview personally any of the RCMP officers prior to November 27th, 1983?

A. I spoke to one person, yes.

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168. Q. And who was that?

A. I spoke to one person who I told I would not reveal his

168. A. (cont'd) identity, I did not use any of his information in my broadcast.

169. Q. I guess I'm asking you to tell me who that is, and as I understand the law, you'll have to rely on your own solicitor, but as I understand the law you are obliged to answer my questions and there's no privilege that you can claim, as I understand it, to enable you to refuse to reveal sources to me.

MR. MURRANT: We would, of course, object.

MR. PUGSLEY: Really.

MR. MURRANT: Yes.

MR. PUGSLEY: Okay, then that's something we'll have to take to court because, as I understand the law, there's no privilege whatsoever.

Q. (cont'd) What is the name of the RCMP police source that you discussed this topic with prior to November 27th, '83?

MR. MURRANT: I'm instructing her not to answer.

MR. PUGSLEY: Really, all right, are you available this week in chambers?

MR. MURRANT: Possibly.

Q. (cont'd) Okay, you spoke to an RCMP police person.

A. Yes, I did.

170. Q. And when did you do that?

A. I did that Wednesday before leaving for Sydney.

171. Q. Wednesday in Halifax.

171. A. Yes.
172. Q. And where did you speak to that person?
A. I spoke to him at the RCMP office.
173. Q. Where?
A. I don't recall the name of the street.
174. Q. In Halifax?
A. Yes.
175. Q. Is it near this building?
A. No, it's in a house somewhere.
176. Q. And for what period of time did you speak to that person?
A. Approximately 40 minutes.
177. Q. How did you happen - did you know this person prior to that morning?
A. No, I did not.
178. Q. What did you do, phone the RCM Police and ask to speak to a person who was involved in the Marshall investigation?
A. No, in my reading and discussions I'd been given his name and decided that I should speak with him.
179. Q. In your reading and discussions in the Province of Ontario before you came down you mean.
A. No, after I arrived in Halifax.
180. Q. Perhaps I should go back a little. Did you do anything else in Toronto before you left and came to Halifax apart from reading the material in your library?
A. I made a few phone calls to Halifax.

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OPERATIONAL	PREVENTION	I.1

Ex. III

F. PUBLIC EDUCATION

F. 1. RELEASE OF INFORMATION TO MEDIA

F. 1. a. GENERAL

1. See Operational Manual I.1.J.3. and 4;
Administration Manual III.2.E.1. and 2.
2. Where there is a need for a public statement via the media, confine comments to who, what, where, when and why.
3. Events, which fall within the framework of Administration Manual III.2.E.2.a.5.1. and 2., will only be released by the CIBO or his delegate.
4. Information, which is minor in nature, may be released by:
 1. the Unit Commander;
 2. a shift supervisor; or
 3. any member, so designated by the Unit Commander; i.e., Unit CP/PCR Co-ordinator.

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OPERATIONAL

PREVENTION

I.1

F. PUBLIC EDUCATION (CONT'D)

- F. 1. a. 5. Unit CP/PCR Co-ordinators may release information related to that particular field of endeavour; e.g., Block Parent Program, Neighbourhood Watch, False Alarm Program.
6. The CIB Supervising NCO will, upon request, inform the news media of human deaths.
1. Before releasing information concerning a death, it is absolutely essential that:
1. next-of-kin have been informed; and
 2. the originator does not object.
7. The identity of a driver is not to be divulged when releasing information about fatal motor vehicle accidents, but it will be in order to identify the occupants of the vehicle.
8. The Division Traffic Supervisor will only release information related to traffic programs.
9. Release only the information allowed by Section 88(7) Motor Vehicle Act, when being queried about M.V. Accidents. See div. supp. I.1.K.1.a.13.

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F. PUBLIC EDUCATION (CONT'D)

- F. 1. a. 10. News releases are not to include photographing of exhibits.
11. It is your job to provide clear and factual information when dealing with the media, and the use of the cliché "no comment" is to be avoided.
12. Remarks, such as "off the record", do not provide immunity when dealing with the media; therefore, do not discuss topics with media personnel that you don't want aired to the general public.
13. When a charge is being considered, or has been laid, against a person under the age of 18 years, do not release the name of that young person to the media. Otherwise release information on young persons to the media, as per adults; e.g., victims of accidental deaths, when next-of-kin have been notified.
14. Do NOT release any information to the media relating to the contents of a search warrant unless a charge has been laid. See Sec. 443.2 CC.

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III.2	CORRESPONDENCE AND MESSAGES CORRESPONDANCE ET MESSAGES	ADMINISTRATION D'ADMINISTRATION

RELEASE PROCEDURES (cont'd)

1. b. 1. 2. the place, date, and time of the incident;
3. If it is the result of a motor vehicle accident, the make, model, and license number of vehicle, and the member's operators license number.
2. If additional information is requested, ask your Regional Office, Department of Justice, for guidance.

2. Information to the News Media

2. a. General

1. The efficiency of a police force depends largely on the confidence and support of the public. Accordingly, it is important to maintain good relations with the news media.
2. Ensure, in so far as is possible, that any information released to the news media will not:
 1. interfere with an investigation or arrest;
 2. result in embarrassment, injury or injustice to an innocent person or an accused person;
 3. result in publicity which could affect the course of a trial;
 4. deal with the internal administration of the Force.
3. Do not release information in regard to civil penalties imposed in relation to seizures under the Customs Act. In areas where there is a high incident rate involving a certain commodity, Units may release general information, i.e. type of commodity, number of seizures, country of origin.

E. DIFFUSION (suite)

- E. 1. b. 1. 2. le lieu, la date et l'heure de l'incident;
3. dans le cas d'un accident de véhicule à moteur, la marque, le modèle et le numéro d'immatriculation du véhicule et le numéro du permis de conduire du membre.
2. Pour tout renseignement supplémentaire, demander l'avis du bureau régional du ministère de la Justice.

E. 2. Renseignements à fournir à la presse

E. 2. a. Généralités

1. L'efficacité d'un corps de police dépend en grande partie du soutien et de la confiance que lui manifeste le public. Il importe donc d'entretenir de bonnes relations avec la presse.
2. Veiller, dans la mesure du possible, à ce que les renseignements transmis à la presse:
 1. ne compromettent pas une enquête ou une arrestation en cours;
 2. ne causent pas d'embarras, de préjudice ou d'injustice à un innocent ou à un prévenu;
 3. ne provoquent pas une publicité de nature à influencer sur le déroulement d'un procès;
 4. ne concernent pas l'administration interne de la Gendarmerie.
3. Ne pas diffuser de renseignements concernant les peines civiles infligées en rapport avec des saisies en vertu de la Loi sur les douanes. Dans les endroits où le taux d'incidents touchant un certain produit est élevé, les services peuvent diffuser des renseignements généraux, par ex., le type de produit, le nombre de saisies et le pays d'origine.

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E. RELEASE PROCEDURES (cont'd)

- E. 2. a. 5. 1. details of any major investigation involving the Force and likely to arouse the interest of the national news media;
2. details of any incident likely to bring favourable or unfavourable publicity to a member of the Force, or likely to give rise to questions in the House of Commons. (State if there has already been publicity, and if local release is planned.)
3. When appropriate, include a photograph of the member(s) with a press release.
6. **Headquarters.** Inform the Public Relations Officer of any major policy changes, and of any briefing or meeting on any matter that is likely to be of interest to the news media, so that he may be able to deal promptly and intelligently with queries.
7. **Division.** Establish a press clipping policy to monitor press coverage within your division. Forward press clippings to Public Relations Officer, Headquarters, ONLY in those matters referred to in E.2.a.4., 1. and 2., or as specifically requested.
- E. 2. b. **Release by Division Headquarters.** In contract provinces, the commanding officer will establish with the attorney general the policy to be followed for the release of information on provincial statute or Criminal Code matters. When consistent with this policy, the commanding officer may authorize release of information as follows:

E. DIFFUSION (suite)

- E. 2. a. 5. 1. le détail de toute enquête importante à laquelle la Gendarmerie est mêlée et susceptible d'intéresser la presse nationale;
2. le détail de tout incident susceptible de susciter une publicité favorable ou défavorable à un membre, ou qui pourrait faire l'objet de questions à la Chambre des communes. (Préciser s'il y a déjà eu de la publicité à ce sujet et si l'on prévoit la diffusion d'un communiqué à l'intention de la presse locale.)
3. s'il y a lieu, remettre la photographie du membre (ou des membres) avec le communiqué.
6. **Direction générale.** Mettre l'officier relationniste au courant de tout changement important de ligne de conduite et de toute réunion d'information ou autre sur un sujet susceptible d'intéresser la presse, afin qu'il soit en mesure de répondre aux questions sans délai et en connaissance de cause.
7. **Division.** Découper régulièrement et conserver les articles de journaux afin de pouvoir contrôler les reportages dans le territoire de la division. Transmettre à l'officier relationniste à la "DG" SEULEMENT les coupures concernant les sujets mentionnés en E.2.a.4.1. et 2. ou celles qui seront expressément demandées.
- E. 2. b. **Diffusion par les quartiers généraux divisionnaires.** Dans les provinces contractantes, le commandant divisionnaire établira en accord avec le procureur général la règle à appliquer à la diffusion de renseignements sur les affaires relevant de la loi provinciale ou du Code criminel. Dans la mesure compatible avec cette règle, le commandant divisionnaire peut autoriser la diffusion des renseignements suivants:

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RELEASE PROCEDURES (cont'd)

2. b. 1. **Fatal Accidents, Sudden Deaths, or Missing Persons**
1. After the next-of-kin have been notified: the name, age, and address of the person(s) involved, and the general circumstances. (Do not express an opinion about responsibility.)
2. **Prosecutions**
1. After arrest: the particulars of the charge(s) laid.
3. **Offences**
1. Details of the offence or series of offences, when release will not interfere with the investigation and may serve to arouse the vigilance of the public or encourage the giving of information.
4. **Joint Investigations.** When an investigation involves another police department or enforcement agency:
1. If it is not in conflict with their policy: the names of the other enforcement officers involved, and the nature of their assistance.
5. **Assistance Cases.** When an inquiry is made on behalf of another government or police department:
1. If that government or police department has the responsibility for releasing information, refer the news media to it.
6. **Other.** In any other situation, the commanding officer will decide. If there is doubt about what or how much information should be released to the news media, or if an official press release from Headquarters is desired, submit full details to the Commissioner, Attention: Public Relations Officer.

E. DIFFUSION (suite)

- E. 2. b. 1. **Accidents mortels, morts subites, personnes disparues**
1. Une fois la famille prévenue: le nom, l'âge, l'adresse des personnes impliquées et les circonstances générales. (Ne pas émettre d'opinion au sujet des responsabilités.)
2. **Poursuites**
1. Après l'arrestation: divulguer les accusations portées.
3. **Délits**
1. Les circonstances du délit ou des délits, si l'enquête ne risque pas d'être compromise et s'il peut en résulter une plus grande vigilance de la part du public ou une incitation à fournir des renseignements.
4. **Les enquêtes conjointes.** Lorsqu'un autre service de police ou de répression est engagé dans une enquête:
1. Le nom des agents et le genre d'aide qu'ils fournissent, pourvu que ce soit en accord avec leurs principes en la matière.
5. **Aide à d'autres organismes.** Lorsqu'une enquête est faite pour le compte d'un autre service de police:
1. Si cette organisme ou service de police est responsable de la diffusion des renseignements, demander à la presse de s'adresser à lui.
6. **Autres.** Dans tout autre cas, c'est le commandant divisionnaire qui décide de la marche à suivre. S'il y a doute sur la nature ou le nombre des renseignements à diffuser, ou si encore on préfère que la Direction générale fasse un communiqué officiel, faire part de toutes les circonstances au Commissaire, au soin de l'agent relationniste.

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E. RELEASE PROCEDURES (cont'd)

E. DIFFUSION (suite)

- E. 2. a. 4. Keep a record of information given to the news media, to protect against misquotation, exaggeration, or sensationalism.
5. Submit the following information, by the quickest means consistent with the possible impact of the investigation or incident, to the Commissioner, ATTN: Public Relations Officer, phone 613-993-1085, CPIC ON10093:

- E. 2. a. 4. Garder un contrôle des renseignements fournis à la presse comme mesure de protection contre les citations inexactes, l'exagération ou la recherche du sensationnel.
5. Transmettre, aussitôt que possible, selon la nature de l'impact que l'enquête ou l'incident pourraient avoir, les renseignements suivants au Commissaire, à l'att. de l'officier relationniste à (613) 993-1085, C.I.P.C. ON10093:

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E. RELEASE PROCEDURES (cont'd)

- E. 2. b. 6. 1. Use the official news release form, form 1344 (for Commissioner's use) or form 971. See App. III-2-7, and III-2-8, and Mat. Mgt. Man. 1-1.

E. 3. Reports

- E. 3. a. If a report contains administrative or investigational information which should not go beyond the recipient, stamp the report as follows before release:

1. This document is the property of the Government of Canada. It is loaned to your Agency only and it is not to be reclassified or further disseminated without the consent of the originator.

EXCEPTIONS: Do not stamp a report that is sent to:

1. the Solicitor General,
2. a department involved in enforcement e.g., National Revenue,
3. a department responsible for the administration of Justice, e.g., Justice Department, attorney general's department.
4. any other department specifically exempted by the Commissioner or the commanding officer.

E. 3. b. Privilege of Information Contained in Police Files

1. As a rule, police reports are confidential and are protected from production by law and by the rules of evidence. See R.V. Cherpak (1978), 42 CCC (2b) 166, 5 WWR 315 (Alta) SC App. Div.

E. DIFFUSION (suite)

- E. 2. b. 6. 1. Utiliser la formule officielle pour les communiqués de presse (formule 1344 à l'usage du Commissaire) ou la formule 971. Consulter les Ann. III-2-7 et III-2-8 et l'Ann. 1-1 du Man. de la gest. du mat.

E. 3. Rapports

- E. 3. a. Si la communication d'un rapport contenant des renseignements d'ordre administratif ou relatifs à une enquête ne doit pas dépasser le niveau du destinataire, il faut apposer sur le rapport, avant de le communiquer, la mention suivante:

1. Le présent document est la propriété du gouvernement du Canada. Il est prêté à votre organisme seulement; il ne doit être ni reclassifié ni transmis à d'autres organismes sans l'autorisation de l'expéditeur.

EXCEPTION: Ne pas apposer cette mention sur un rapport expédié:

1. au solliciteur général,
2. à un ministère s'occupant de répression, p. ex., celui du Revenu national,
3. à un ministère chargé de la justice, p. ex., le ministère de la Justice ou celui du procureur général,
4. à tout autre ministère expressément exempté par le Commissaire ou le commandant divisionnaire.

E. 3. b. Caractère privilégié des renseignements contenus dans les rapports de police

1. Règle générale, les rapports de police sont confidentiels et, de par la loi et les règles de la preuve, ne sont visés par aucune exigence de présentation. Voir R.V. Cherpak (1978), 42 C.C.C. (2b) 166, 5 WWR 315 (Alb.) C.S., Div. des appels.

Warned
10:00 am

EX R. I.
E.O.V.

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

Statement of: Donald Marshall Jr.
No: 1997B:132p531 Dorchester Pen.

EX 114

In 1971 I was convicted of the murder of Sandy Seal 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 a lot and generally hung around and was picked up by the Sydney City Police on several occasions. I was questioned a lot by John Mac Intyre for things like knocking over gravestones, dynamite caps and was kicked out of Wentworth Park. Mac Intyre didn't like me. As I wouldn't take a cop to these crimes.

On the night of the murder I was not with Sandy Seal until around midnight. I was with Roy Gould, Pauline Bernard and some other women. We came from ~~the~~ and arrived in Sydney around 10:30 and I then went to the Liquor Store. Archie and I then went to Terry Tobens on Interlobie St. From there we went to the Celtic Tavern. I left the Tavern alone at roughly a quarter to 11

from Dorchester St. to George St in the area of Wentworth Park.

MEDIA POOL COPY

J. Marshall
M. White

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 Mac's Dairy. Sandy and I met in the center of the park on this path. I remember Sandy telling me he came from the office, and he said he was heading home. I think this is when Bobbie Patterson came down from behind the backwheel. Patterson was very drunk so put him under some bushes so the police wouldnt 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 dont 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 shirt over his shoulder. 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 Kuskie and giving Terry a fight. Sandy went over and talked to Ebsary and the other guy. The three of them would be maybe 20 yards from Patricia Harris and I.

Michael
 Hi Marshall

I then walked down Crescent Street to Sandy and the two guys. We talked about everything ^{about them being friends} we've been hooge and 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 showing match with the tall guy. Sandy took the short ~~of~~ guy. I don't remember exactly what was said but I definitely remember Ebsary saying I got something for you and then stabbing Sandy.

I ~~had~~ let go of ~~the~~ 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 ran ^{and felt blood running from chest} and I can't describe the knife and Sandy fell and stayed there. I ran across the bridge and ran into Chart. I told him what happened. I met people coming from the store 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 keratid ~~to~~ ^{to} hurt. I. ...
arm!

I definitely did not stab Sandy. 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

for M. ...

11/1/57

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 Esary 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 Ma Intyre he
 didnt question me very much he said
 he had two witnesses to say I did it
 and locked me up. J. Marshall

12.34 PM

witnesses Ppt. J. E. Parale
 W. H. Hester

#115

NOTES OF

INSPECTOR D. SCOTT

MEDIA POOL COPY

PA. Marshall MARRSHALL
CASE

PAGE TWO - Witnesses in chief -

Proctor first statements say he saw some 2
fellows night of 20th around park - 1 - info of
Lumber

124 Tachinomy June 25
Sgt M Dupro sent for one

Harlie Lynch
Ermy & Herin Paul.
Thomas Christman

Donald Joe. - dining together that
night 20th

148 used his right hand (Marshall left hand)

Artie Paul

174 - no - as whether J Marshall had
Chin.

CHART

Summary A after Washington 20 May 21
shell at be 28/29

M. R. M^{oe} Donald - ~~Chart~~ Questioned Chart
originally at hospital - Re Johnson & M^{oe} Kuyper
(Marshall at 450 - 5-12 20th)

Chart Statement May 30th and 535
Proctor at 4pm some date

June 4th Proctor 10:45 AM. - 11:30 Chart 2:55 PM

11:10 Chart Pleines visits album

- 91 - 28 He showed his arm & it
was bleeding
- 102 - 1 - 10 Should not have been permitted
- 114 - 39 Told them they should wear their
115 Took him to Sydney on Sunday
Questioned for 2 hrs.
- 117 Unbelievable that the court would
clarify all these points for a crime of the
cross examination in front of jury!

Patricia Harris

As Seal & Marshall
turned around on June 18th as
compared to Photos & Charts

Donald Marshall

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

Dr would not let
let me see Donald in Room
with Seal & Marshall

John Paris's statement -

states that he, John Paris &
Alton Simpson were sitting on

Steps at John Paris's house. Sunday
Marshall came along said he was news
asked two why & he related story of Seal
murder including V.W.

Autopsy report on Seale.

Any statements or any other material

"First Case - Second Case."

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

"best of co-operation between two departments."

Statements

~~++++++~~

"What I done in 1971" ~~++++++~~

"Marshall set the scene."

Quotes of Chief in evidence re meeting between de + Gordon Cole.

[Signature]

May 25/29 1971.

Get ^{at least} 2 witnesses

1 eye witness Myron Chant - 25 yrs - 14

2 " " John Prastis 27 - 16
since (2) ¹⁶ ¹⁷ ¹⁸ ¹⁹ ²⁰ ²¹ ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸ ²⁹ ³⁰ ³¹ ³² ³³ ³⁴ ³⁵ ³⁶ ³⁷ ³⁸ ³⁹ ⁴⁰ ⁴¹ ⁴² ⁴³ ⁴⁴ ⁴⁵ ⁴⁶ ⁴⁷ ⁴⁸ ⁴⁹ ⁵⁰ ⁵¹ ⁵² ⁵³ ⁵⁴ ⁵⁵ ⁵⁶ ⁵⁷ ⁵⁸ ⁵⁹ ⁶⁰ ⁶¹ ⁶² ⁶³ ⁶⁴ ⁶⁵ ⁶⁶ ⁶⁷ ⁶⁸ ⁶⁹ ⁷⁰ ⁷¹ ⁷² ⁷³ ⁷⁴ ⁷⁵ ⁷⁶ ⁷⁷ ⁷⁸ ⁷⁹ ⁸⁰ ⁸¹ ⁸² ⁸³ ⁸⁴ ⁸⁵ ⁸⁶ ⁸⁷ ⁸⁸ ⁸⁹ ⁹⁰ ⁹¹ ⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ ⁶⁰⁶ ⁶⁰⁷ ⁶⁰⁸ ⁶⁰⁹ ⁶¹⁰ ⁶¹¹ ⁶¹² ⁶¹³ ⁶¹⁴ ⁶¹⁵ ⁶¹⁶ ⁶¹⁷ ⁶¹⁸ ⁶¹⁹ ⁶²⁰ ⁶²¹ ⁶²² ⁶²³ ⁶²⁴ ⁶²⁵ ⁶²⁶ ⁶²⁷ ⁶²⁸ ⁶²⁹ ⁶³⁰ ⁶³¹ ⁶³² ⁶³³ ⁶³⁴ ⁶³⁵ ⁶³⁶ ⁶³⁷ ⁶³⁸ ⁶³⁹ ⁶⁴⁰ ⁶⁴¹ ⁶⁴² ⁶⁴³ ⁶⁴⁴ ⁶⁴⁵ ⁶⁴⁶ ⁶⁴⁷ ⁶⁴⁸ ⁶⁴⁹ ⁶⁵⁰ ⁶⁵¹ ⁶⁵² ⁶⁵³ ⁶⁵⁴ ⁶⁵⁵ ⁶⁵⁶ ⁶⁵⁷ ⁶⁵⁸ ⁶⁵⁹ ⁶⁶⁰ ⁶⁶¹ ⁶⁶² ⁶⁶³ ⁶⁶⁴ ⁶⁶⁵ ⁶⁶⁶ ⁶⁶⁷ ⁶⁶⁸ ⁶⁶⁹ ⁶⁷⁰ ⁶⁷¹ ⁶⁷² ⁶⁷³ ⁶⁷⁴ ⁶⁷⁵ ⁶⁷⁶ ⁶⁷⁷ ⁶⁷⁸ ⁶⁷⁹ ⁶⁸⁰ ⁶⁸¹ ⁶⁸² ⁶⁸³ ⁶⁸⁴ ⁶⁸⁵ ⁶⁸⁶ ⁶⁸⁷ ⁶⁸⁸ ⁶⁸⁹ ⁶⁹⁰ ⁶⁹¹ ⁶⁹² ⁶⁹³ ⁶⁹⁴ ⁶⁹⁵ ⁶⁹⁶ ⁶⁹⁷ ⁶⁹⁸ ⁶⁹⁹ ⁷⁰⁰ ⁷⁰¹ ⁷⁰² ⁷⁰³ ⁷⁰⁴ ⁷⁰⁵ ⁷⁰⁶ ⁷⁰⁷ ⁷⁰⁸ ⁷⁰⁹ ⁷¹⁰ ⁷¹¹ ⁷¹² ⁷¹³ ⁷¹⁴ ⁷¹⁵ ⁷¹⁶ ⁷¹⁷ ⁷¹⁸ ⁷¹⁹ ⁷²⁰ ⁷²¹ ⁷²² ⁷²³ ⁷²⁴ ⁷²⁵ ⁷²⁶ ⁷²⁷ ⁷²⁸ ⁷²⁹ ⁷³⁰ ⁷³¹ ⁷³² ⁷³³ ⁷³⁴ ⁷³⁵ ⁷³⁶ ⁷³⁷ ⁷³⁸ ⁷³⁹ ⁷⁴⁰ ⁷⁴¹ ⁷⁴² ⁷⁴³ ⁷⁴⁴ ⁷⁴⁵ ⁷⁴⁶ ⁷⁴⁷ ⁷⁴⁸ ⁷⁴⁹ ⁷⁵⁰ ⁷⁵¹ ⁷⁵² ⁷⁵³ ⁷⁵⁴ ⁷⁵⁵ ⁷⁵⁶ ⁷⁵⁷ ⁷⁵⁸ ⁷⁵⁹ ⁷⁶⁰ ⁷⁶¹ ⁷⁶² ⁷⁶³ ⁷⁶⁴ ⁷⁶⁵ ⁷⁶⁶ ⁷⁶⁷ ⁷⁶⁸ ⁷⁶⁹ ⁷⁷⁰ ⁷⁷¹ ⁷⁷² ⁷⁷³ ⁷⁷⁴ ⁷⁷⁵ ⁷⁷⁶ ⁷⁷⁷ ⁷⁷⁸ ⁷⁷⁹ ⁷⁸⁰ ⁷⁸¹ ⁷⁸² ⁷⁸³ ⁷⁸⁴ ⁷⁸⁵ ⁷⁸⁶ ⁷⁸⁷ ⁷⁸⁸ ⁷⁸⁹ ⁷⁹⁰ ⁷⁹¹ ⁷⁹² ⁷⁹³ ⁷⁹⁴ ⁷⁹⁵ ⁷⁹⁶ ⁷⁹⁷ ⁷⁹⁸ ⁷⁹⁹ ⁸⁰⁰ ⁸⁰¹ ⁸⁰² ⁸⁰³ ⁸⁰⁴ ⁸⁰⁵ ⁸⁰⁶ ⁸⁰⁷ ⁸⁰⁸ ⁸⁰⁹ ⁸¹⁰ ⁸¹¹ ⁸¹² ⁸¹³ ⁸¹⁴ ⁸¹⁵ ⁸¹⁶ ⁸¹⁷ ⁸¹⁸ ⁸¹⁹ ⁸²⁰ ⁸²¹ ⁸²² ⁸²³ ⁸²⁴ ⁸²⁵ ⁸²⁶ ⁸²⁷ ⁸²⁸ ⁸²⁹ ⁸³⁰ ⁸³¹ ⁸³² ⁸³³ ⁸³⁴ ⁸³⁵ ⁸³⁶ ⁸³⁷ ⁸³⁸ ⁸³⁹ ⁸⁴⁰ ⁸⁴¹ ⁸⁴² ⁸⁴³ ⁸⁴⁴ ⁸⁴⁵ ⁸⁴⁶ ⁸⁴⁷ ⁸⁴⁸ ⁸⁴⁹ ⁸⁵⁰ ⁸⁵¹ ⁸⁵² ⁸⁵³ ⁸⁵⁴ ⁸⁵⁵ ⁸⁵⁶ ⁸⁵⁷ ⁸⁵⁸ ⁸⁵⁹ ⁸⁶⁰ ⁸⁶¹ ⁸⁶² ⁸⁶³ ⁸⁶⁴ ⁸⁶⁵ ⁸⁶⁶ ⁸⁶⁷ ⁸⁶⁸ ⁸⁶⁹ ⁸⁷⁰ ⁸⁷¹ ⁸⁷² ⁸⁷³ ⁸⁷⁴ ⁸⁷⁵ ⁸⁷⁶ ⁸⁷⁷ ⁸⁷⁸ ⁸⁷⁹ ⁸⁸⁰ ⁸⁸¹ ⁸⁸² ⁸⁸³ ⁸⁸⁴ ⁸⁸⁵ ⁸⁸⁶ ⁸⁸⁷ ⁸⁸⁸ ⁸⁸⁹ ⁸⁹⁰ ⁸⁹¹ ⁸⁹² ⁸⁹³ ⁸⁹⁴ ⁸⁹⁵ ⁸⁹⁶ ⁸⁹⁷ ⁸⁹⁸ ⁸⁹⁹ ⁹⁰⁰ ⁹⁰¹ ⁹⁰² ⁹⁰³ ⁹⁰⁴ ⁹⁰⁵ ⁹⁰⁶ ⁹⁰⁷ ⁹⁰⁸ ⁹⁰⁹ ⁹¹⁰ ⁹¹¹ ⁹¹² ⁹¹³ ⁹¹⁴ ⁹¹⁵ ⁹¹⁶ ⁹¹⁷ ⁹¹⁸ ⁹¹⁹ ⁹²⁰ ⁹²¹ ⁹²² ⁹²³ ⁹²⁴ ⁹²⁵ ⁹²⁶ ⁹²⁷ ⁹²⁸ ⁹²⁹ ⁹³⁰ ⁹³¹ ⁹³² ⁹³³ ⁹³⁴ ⁹³⁵ ⁹³⁶ ⁹³⁷ ⁹³⁸ ⁹³⁹ ⁹⁴⁰ ⁹⁴¹ ⁹⁴² ⁹⁴³ ⁹⁴⁴ ⁹⁴⁵ ⁹⁴⁶ ⁹⁴⁷ ⁹⁴⁸ ⁹⁴⁹ ⁹⁵⁰ ⁹⁵¹ ⁹⁵² ⁹⁵³ ⁹⁵⁴ ⁹⁵⁵ ⁹⁵⁶ ⁹⁵⁷ ⁹⁵⁸ ⁹⁵⁹ ⁹⁶⁰ ⁹⁶¹ ⁹⁶² ⁹⁶³ ⁹⁶⁴ ⁹⁶⁵ ⁹⁶⁶ ⁹⁶⁷ ⁹⁶⁸ ⁹⁶⁹ ⁹⁷⁰ ⁹⁷¹ ⁹⁷² ⁹⁷³ ⁹⁷⁴ ⁹⁷⁵ ⁹⁷⁶ ⁹⁷⁷ ⁹⁷⁸ ⁹⁷⁹ ⁹⁸⁰ ⁹⁸¹ ⁹⁸² ⁹⁸³ ⁹⁸⁴ ⁹⁸⁵ ⁹⁸⁶ ⁹⁸⁷ ⁹⁸⁸ ⁹⁸⁹ ⁹⁹⁰ ⁹⁹¹ ⁹⁹² ⁹⁹³ ⁹⁹⁴ ⁹⁹⁵ ⁹⁹⁶ ⁹⁹⁷ ⁹⁹⁸ ⁹⁹⁹ ¹⁰⁰⁰

3 below am L.R. 35 yrs Still see Seal

4 Roy Newman Esq. 20

5 Ronald J. Marshall 27 yrs

6 1979 Mitchell Bain Esq. 25 yrs
Confirms no other for
Chang.

Steven ARONSON.
Sole Agent

12/18/82
Loren Cole.

DM 54

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 Murray, 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 2 1/2 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 Westworth 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



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

new information and the attorney general's office was trying to prepare for a hearing which subsequently acquitted Marshall in May, 1981.

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, Freeholder Parker Barras

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 this 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 re-analysis 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 been lifted 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."

blamed doctors

tragic event," Robert Stephens said his wife went first to Ajax Chartering General Hospital — five from the couple's home. But the expert, experiencing one in a series of emergency department shutdowns to help her to the Whitby hospital — a 15-minute drive away.

For in the hospital's emergency old Mrs. Black it was "only hand-festering cases," said the

estier, Pat Ferguson.



away at the J.O. Ruddy Hospital used admission to Ajax-Picker was bleeding heavily when she



"H" Division

YOUR NO.
VOTRE N°

OUR NO.
NOTRE N°

Sydney, N.S.
80-01-08

118
Feb 4

Re: Donald Murrin, Jr.

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

118

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

MEDIA POOL COPY

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).

MEDIA POOL COPY

RIED
LE V
RCE

WEIGHT	HAIR	EYES	COMPLEXION	RELIGION
115	Brown	Blue	Fair	R.C.
HEIGHT	GOODS	VALUE	DISPOSITION	OCCUPATION
5'2"				Student
CHARGE	BOOK NO.	MAGISTRAT		

Aug. 17, 1970	Sec. 342 (1)(b) C.C. (5 counts) - Two yrs. Sentence	#2935	J. J. McDonald	
Feb. 1, 1971	Sec. 280 A C.C. One Month Co. Jail - Feb. 8th	#55189	K. J. McDonald	
March 17, 1971	Sec. 302 (1)(b) C.C. C.N.K. Box Car	Three months Co. Jail	#55263	WAD GU
May 21, 1971	Sec. 76(2) L.C.A. \$10.00 and costs or 10 days	#12336		
Sept. 1, 1971	Sec. 388(1) C.C. - Sept. 8th - 4 mos. Co. Jail	#55520	Judge J. J. McConnell	
28, 1971	Sec 57-1 M.V.A.	\$10.00 & costs or 10 days	#18818	R. R. MacIntyre

MEDIA POOL COPY

EX 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 CONSEC & 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 MCS 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

Det. Argubant Aug 12 1920 Prosecutor
Rebt. Burke Patterson Defendant

CHARGE:

Age May 12/54
Residence 13 Glebe Ave
Place of Birth Antigonish
Occupation student
Married or Single single
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 \$ _____

292-1B
(5 counts)

Time when committed

Aug 12/20
12 years less sentence
J. J. Donald

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

RCMP - 8886

SWSM

SEX M	*CONTRIBUTOR'S NO.	F.P.S. NO. 422521A	THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY	
NAME Robert Bruce Patterson				
SURNAME 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 Address				

	THUMB	INDEX	MIDDLE	RING	LITTLE
R I G H T	13	7	13	11	1
L E F T	20	8	12 03	18	1

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



SIGNATURE OF OFFICIAL TAKING PRINTS <i>Det. M. Alfuback</i>		DATE 13 Aug 70	*NAME AND ADDRESS OF CONTRIBUTOR Sydney City Police Dept.	
*SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS) <i>Robert Bruce Patterson 13 Glebe Ave Sydney</i>				
<i>Robert Bruce Patterson 13 Glebe Ave Sydney</i>				
*NATIONALITY Canadian	*RACIAL ORIGIN Irish	*OCCUPATION - EMPLOYER Labourer	*APPROXIMATE AGE 16	
DATE OF BIRTH 12 May 1954	PLACE OF BIRTH Antigonish Nova Scotia		IF FOREIGN BORN, ARRIVAL DATE IN CANADA	
HEIGHT 5' 3"	WEIGHT 116	*HAIR Slight	*EYES Grey	*COMPLEXION Blond
*SPECULARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC.				
DATE ARRESTED 11 Aug 70	DATE REMANDED TO 12 Aug 70	<input checked="" type="checkbox"/> ON BAIL	<input type="checkbox"/> IN CUSTODY	Sydney Police Court
DATE CONVICTED 12 Aug 70	DATE SENTENCED 12 Aug 70	County Court House Sydney Sydney City Police		

OFFENCES AND DISPOSITIONS:
 Five(5) separate charges of break & enter
 Received two(2) Years Probation
 Judge John F. MacDonald

55189

POLICE COURT
CITY OF SYDNEY

Feb 1 19 71

Det. Singh, J. J. MacIntyre: Prosecutor
Robert Bruce Patterson: Defendant

CHARGE:

Age: May 12, 1953
Residence: 128 George St.
Place of Birth: Singapore
Occupation: Laborer
Married or Single: Single
State of education: 8th TX
Religion: B.C.
No. of Prior Convictions:
Use of Liquor:
Convicted of offence charged and
adjudged to pay a fine of \$
and costs \$
Total \$

Acc.
25 ACC
Theft of personal effects
Jan 29th
Adj. Feb 8th
One no. [unclear]
[unclear]
[unclear]

Time when committed

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

Warrant Issued: Feb 5/71
Defendant: [Signature]

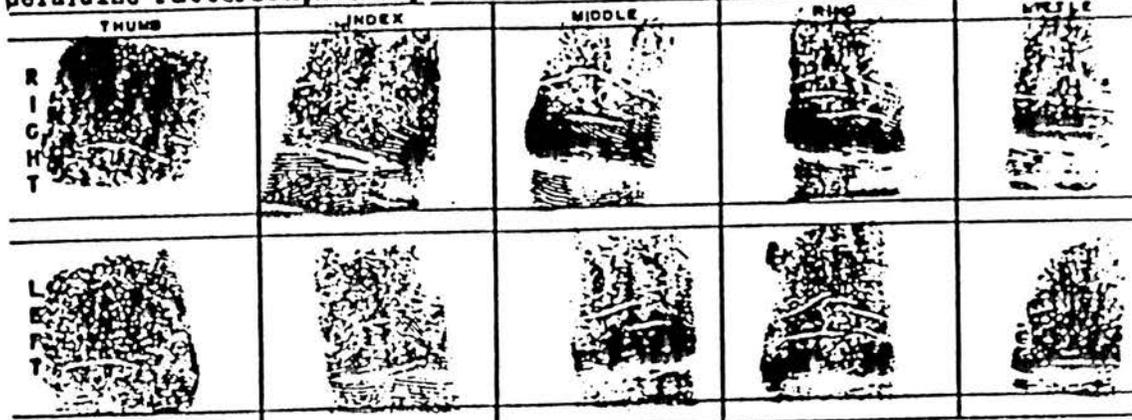
Stipendiary Magistrate in and for
the City of Sydney.

RECEIVED PAYMENT _____ 19 _____

City Collector

RCMP - 6886

SEX M	CONTRIBUTOR'S NO.	F.P.S. NO.	THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY
NAME Patterson		MIDDLE INITIAL M D	
SURNAME 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			



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



SIGNATURE OF OFFICIAL TAKING PRINTS <i>Sgt. M. [Signature]</i>		DATE 1-2-71	NAME AND ADDRESS OF CONTRIBUTOR Sydney Police Dept.	
SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS) <i>Robert Bruce Patterson 130 George Sydney</i>				
NATIONALITY Canadian	RACIAL ORIGIN Scottish	OCCUPATION - EMPLOYER Labor		
DATE OF BIRTH May 12, 1953	PLACE OF BIRTH Antigonish, N.S.		IF FOREIGN BORN, ARRIVAL DATE IN CANADA	
HEIGHT 5'4	WEIGHT 117	BUILD slight	EYES Blue	HAIR Blonde
COMPLEXION fair				
SPECIARITIES, MARKS, SCARS, TATTOOS, DEFORMITIES, ETC. back - Scar on left hand				
DATE ARRESTED Feb. 1, 1971	DATE REMANDED TO Feb. 8th	<input type="checkbox"/> ON BAIL	<input checked="" type="checkbox"/> IN CUSTODY	COURT Police
DATE CONVICTED Feb. 1/71	DATE SENTENCED	PLACE Sydney, N.S.	CASE HANDLED BY Sydney P.D.	

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

cc 12 # 1
cc 12 # 2
5 2 71
A
REC E 111

3
REGISTERED SECTION

1971

March 17-71 Arrested and charged the following with B & E Theft Robert Patterson & Barry Cameron.

the following with Sec. 296A C.C.

(68)

Brian Puskie, Richard Hill Gordon Pasher, Lawrence Jordin, Kevin Cooke, Glenni DeLaney, Michael Muller, Ferranq Kelso, Michael Joseph Sively, Thomas Stephen Kuba, Barry Mac Kenzie.

This was from theft of three kegs of beer from C.N.R. Bot Car.

Sgt. Det. John Mac Intyre
Det. Sgts. W. Hubert & Mrs. McDonald

Mon 18 Mr Hugh Mac Queen 211
Wanda St, reports his car

1960 Chev. Sps # 2-27-51
stolen from the Y.M.C.A

69. some time this evening,
On May 19, picked up one
Greg Janus, Dominican,
and he admitted taking
the car, and was charged
with the offense

Sgt John Mac Intyre
Sgt M.R. Mac Donald

No. 00203

POLICE COURT
CITY OF SYDNEY

March 18, 1971

M^{rs} J. J. McDonald - Urquhart Prosecutor

Robert Bruce Benjamin Patterson Defendant

CHARGE:

Age Mar 12, 53 Sec. 292-1-B CC

Residence 138 George St

Place of Birth Antigonish

Occupation Unemployed

Married or Single Single Time when committed March 18/71

State of education HS

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 \$ _____

via G. G. G.

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

Warrant Issued March 18/71

Defendant [Signature]

Stipendiary Magistrate in and for
the City of Sydney.

RECEIVED PAYMENT _____ 19 _____

City Collector

RCMP-8888

FORM 100

CONTRIBUTOR'S NO. P.P.S. NO.

NAME: PATTERSON ROBERT BRUCE BENJAMIN
 SURNAME: PATTERSON
 OTHER NAMES, ALIASES, NICKNAMES, MAIDEN NAME, ETC.: "BOBBY"

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

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

THIS SPACE FOR IDENTIFICATION BRANCH USE ONLY

1 0 100
1 5 100

	THUMB	INDEX	MIDDLE	RING	LITTLE
R I G H T					
L E F T					

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



SIGNATURE OF OFFICIAL TAKING PRINTS: *[Signature]* 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. Sydney N.S.

ETHNIC ORIGIN: Chinese/Tan RACIAL ORIGIN: Irish OCCUPATION - EMPLOYER: Unemployed APPARENT AGE: [blank]

DATE OF BIRTH: May 12, 1953 PLACE OF BIRTH: Antigonish, N.S. IF FOREIGN BORN, ARRIVAL DATE IN CANADA: [blank]

HEIGHT: 5'4" WEIGHT: 132 BUILD: small EYES: Green HAIR: blonde COMPLEXION: fair

SPECIARITIES, 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: [X] COURT: Police Court

DATE CONVICTED: March 18 DATE SENTENCED: March 18 PLACE: Sydney, N.S. CASE HANDLED BY: Sydney, P.D.

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. Mr J Mc Donald - A Joseph
Prosecutor
Robert Bruce Patterson Defendant

CHARGE:

Age *May 12 1953*
Residence *778 Winton Road* *Sec. 388(1) CC*
Place of Birth *Antigonish*
Occupation *Labourer* *Damage, under \$50.00*
Married or Single *single* Time when committed
State of education *IX* *Sept. 1/71*
Religion *PC*
No. of Prior Convictions _____ *Remand to jail Sept 8th*
Use of Liquor _____
Convicted of offence charged and
adjudged to pay a fine of _____ \$ _____
and costs _____ \$ _____
to be paid forthwith.
Total _____ \$ _____

4 m.c. to jail
under 18 years

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

Warrant Issued *Sept 8/71*
Defendant *Rob*

Stipendiary Magistrate in and for
the City of Sydney.

RECEIVED PAYMENT _____ 19 _____

City Collector

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

NAME ED MARY ROY NEWMAN LL

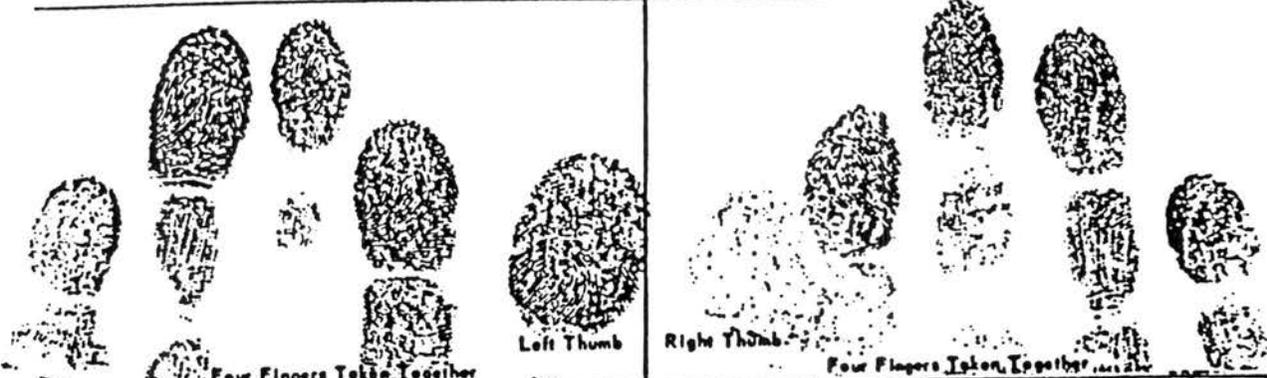
RESIDENT ADDRESS N. 126 Kyle St., Sydney, N.S.

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

1440
344
19
14
EX # 121

	THUMB	INDEX	MIDDLE	RING	LITTLE
R I G H T		13 (4)	16 14	0	19
L E F T		12 (3)	15 (3)	14 10	14

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



SIGNATURE OF OFFICIAL TAKING PRINTS *[Signature]* DATE 3-4-70 NAME AND ADDRESS OF CONTRIBUTOR Sydney Police Dept.

SIGNATURE OF PERSON FINGERPRINTED (FULL NAME AND ADDRESS) Roy E. Newman, 126 B. Kyle St., Sydney, N.S.

CANADIAN SPECIAL ORIGIN English OCCUPATION - EMPLOYER Cook APPARENT AGE

DATE BIRTH June 2, 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.

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

DATE RECEIVED April 8, 1970 DATE RELEASED TO April 9 ON BAIL IN CUSTODY COURT Police

OFFENSE(S) AND DISPOSITION(S) RECEIVED BY Sydney P.D.

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

\$100.00 1/3 two months (time to pay)

REVIEW SENT
APR 11 1970

MEDIA POOL COPY

Ex. #122

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

and any objections that
ript is transmitted to the
mitted to the judge who
ertify that the charge and
ately certify to the court

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

request, 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.884n (C.A.), it
only contain his views on
bility of witnesses and, in
o *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.*
3.255n (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-

MEDIA POOL COPY

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

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of insanity allowed—
of acquittal—Additional

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ground of law, or
of justice;

appellant, although he was
not part of the indictment,
or part of the indict-

the appellant on any

opinion that on any
ground the appeal might be
dismissed on the opinion that no
error has occurred, or

guilty at trial, the trial
judge, of the offence of which the
appeal is of the opin-
ion of the judge; 1985,

the opinion that the
appeal is of the effect of a
verdict to be recorded that
the appellant is guilty, and may pass a
sentence for the offence

appellant not guilty on
the ground that he should
be kept in safe cus-
tody where it is of
the opinion that he com-
mitted the act or
offence as 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 gover-
nor.

(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 war-
ranted 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, act-
ing 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 pro-
vincial 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 com-
menced 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. 394n.

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 conditional pardon shall be granted to a person who, after a subsequent conviction for an offence, a pardon or conditional pardon was granted. 1953-54, c. 51, s. 654.

Where an accused has been convicted of an offence and a further offence, for the purpose of the punishment of the offender: *R. v. SPRING* (1977).

An inmate who seeks to obtain a conditional pardon by way of habeas corpus should not be admitted to a hearing of the application. The Crown should not be admitted to show breach of the provisions of the Act enacted thereby, or the Government should not be admitted to show that the pardon was a conditional pardon: *KOPP and THE QUEEN* (1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 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3769, 3770, 37

1982

SCC00580

May 10, 1983.

The Honourable Mark R. McGulgan,
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.

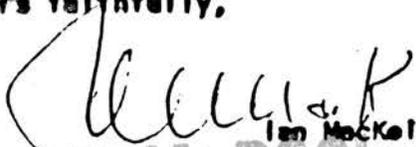
I transmit to you herewith a copy of the Court's reasons for judgment and of its formal order issued today.

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 MacKelgan
Chief Justice of Nova Scotia

MEDIA POOL COPY

IM/RC

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

Duff Evers

Ex. #127

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.

MEDIA POOL COPY

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.

CONFIDENTIAL W/ BONEW GAVE N.S. A.Y. Dept 16219+424-4082
In AB has taken case from Sydney police &
given it to RCMP.

Sydney Police playing games.
Mrs E's 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~~ Harris new st. from her
- she describes E to a T.
- old man w flowing white hair
cap

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



(6)

perjury - ~~pardon~~ it may noble

to say get - then appeal
- or pardon.

(I have distinct impression that he felt 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.

Hirshorn.

~~recommendations of the
committee~~

— Conversation with Cole May 20/82.

- letter on the way.
 - not making a decision.
 - Consider
 - pardon perhaps not expedient.
 - no public airing of matter.
 - E of deficit + in all probability won't recover.
 - will lay charge with Crosby.
-

Ex. #128

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

MEDIA POOL COPY

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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,



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

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

Sask.
N.B.
P.E.I.
not involved.

Coordinator

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Ministère de la Justice

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.] *Results?*

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 polygraph 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. *Results?*

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 619 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 for the rehabilitation 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. 11

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. Σ 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 ascendants or descendants 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 innocence 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 contingency 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 appealed. 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 jurisdictions 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.

EX #130

Evidence points to new suspect in 1971 murder

By ALAN STORRY

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 10 1/2 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 jury 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.

The investigation 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.

Flores 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 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 convicted.

Under Section 417 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 Justice through another year and a half of trials after all he has been through?" he asked in an interview yesterday.

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 P. 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 Pratico, 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's name and evidence allegedly linking him with 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."

THE OTTAWA SCENE And 4 makes ridiculous

BY THE OTTAWA BUREAU

There was a bonfire of political outrage a few months back when someone discovered that three different Cabinet ministers had been in the same day. The three ministers in question 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 Ministers bearing different ministries to Ottawa the same 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; that he would have seen the fourth arrive.

The mixed metaphor award of the week goes to Ronstale MP David Crombie.

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

Speaking of Mr. MacEwen, 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. MacEwen 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 confidant 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.

Don Marpower and Immigration Minister Lloyd Axworthy have a secret admirer?

A picture of Mr. Axworthy with the handwritten slogan "My Hero" hangs in the office of Terry Sargeant (NDP, Selkirk-Inverlake).

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 arguing that federal politicians were responsible for illegal acts committed by individuals in the Mounties.

But their motion was rejected by Superior Judge Maurice Rousselle 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 kidnaping 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.

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 minister-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 Chouffard and Jean Beetz.

Mr. Starnes said Judge Chouffard — a former Canadian army lieutenant-colonel responsible for security operations during the October Crisis — was one of the emissaries sent to Ottawa in 1970 by former Quebec premier Robert Bourassa, who wanted help to set up a provincial intelligence service. Judge Chouffard 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 1987 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

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'Écluse 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 an 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'Écluse 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 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 marriage 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 named Christie was found guilty of the murder.

As for the Canadian experience, Ottawa's sociologist David Chabot, 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 Gaspé region of Quebec in 1952.

The guilt of 44-year-old Steven Truscott for the 1959 rape and murder of a 14-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 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."

Old 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.

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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 Gaspé 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."

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TORONTO STAR
DORCHESTER, ONT.

MAR 31 1982

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.

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.



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

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.

Donald Marshall Jr.

11 Year Nightmare Takes Shape

by Gould

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

A decision is expected soon from the Federal Justice Department in Ottawa. In the meantime, Junior Marshall is serving day parole at the Carleton Center in Halifax.

Justice officials in Ottawa have confirmed the truth of the RCMP report which indicates that Marshall has identified himself and has admitted "evidence of his own guilt."

The RCMP have turned up what is believed to be the "murder weapon" hidden at a Sydney house for the past eleven years. The knife has been turned over to the RCMP crime laboratory for identification 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

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.

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.

8—Cape Breton Post, Saturday, August 14, 1982

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 receiv-

ed 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**

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 Syd-

ney 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

NOV 30 1982

2 THE CHRONICLE-HERALD Tuesday, Novem

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 re-investigation 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.

Witnesses 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 MacInyre 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.

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 Mount-

ed 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



Aronson: Lawyer says someone else did killing.

his original trial and his years at Dorchester maximum-security penitentiary in New Brunswick.

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.

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.

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 sus-

pect 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 overturned after having served time in prison, legal experts say.

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 chances 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 near-by 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.

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.

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 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 Sydney

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 Parchester, N.B.

Case studied, Marshall sues city, police

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Cape Breton Post, Saturday, February 5, 1983—7 E

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

DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

Aug. 26/81

4.50 P.M.

FROM: [Signature]

TO: File

T.C. from Wm. Spigant - City Police -
wanted to say he had a visit this P.M. from
young man by name of Dan Paul. Paul told
Spigant that he had a message from Donny
Wershoff that Roy Osory of Falmouth St. was
of the one who murdered Sandy Seale.

Spigant indicated that Osory had
been checked out previously with negative
results but he would interview Dan Paul
for further details and information supporting
his 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 Dan Paul was in.

MEDIA POOL COPY