

1 CHAIR

2 Well, good morning friends. We had a very full day
3 yesterday and I expect that we will have a full day today.
4 Our subject today, of course, is blacks and the justice
5 system. Let me begin by introducing our principal
6 speaker, Rocky Jones, and the members of the panel.

7 Burnley Rocky Jones is seated to my immediate right.
8 He was born and raised in Truro, Nova Scotia. He has a
9 Bachelor or Arts degree from Dalhousie University. He was
10 pioneer in the collection of oral history of the black
11 community here in Nova Scotia, and the tapes are in the
12 archives at Dalhousie University. That project, I'm sure,
13 is well known to all of you here in Nova Scotia. He has
14 spent many years as a community organizer. He organized
15 the project known as Kwacha House, an inter-city Halifax
16 project for youths, both black and native. He is a
17 founding member of the Black United Front of Nova Scotia
18 and the National Black Coalition of Canada. He is an
19 author. He published a work called, *Nova Scotia Blacks: A*
20 *Quest for a Place in the Canadian Mosaic*. He spent five
21 years as Executive Director of an organization called Real
22 Opportunities for Prisoner Employment, and the acronym,
23 forgive me, apparently is ROPE. He has organized
24 programs for parolees and prisoners. He is, of course,
25 well known here in Nova Scotia. His most recent work has

1 been in connection with this very Inquiry, the Marshall
2 Inquiry. He is project coordinator for a project that has
3 investigated the cases of five blacks who were murdered and
4 the disposition made of those cases by the prosecution and
5 the courts. We will be hearing from Rocky Jones in just a
6 minute or two. He will be opening the discussion for us.

7 Then we have, as well, three members of our panel.
8 Sitting to Rocky's right will be our first panelist,
9 Esmeranda Thornhill, Esmeralda Thornhill, forgive me, who
10 is a lawyer, a linguist, has worked very closely in the
11 field of race relations and minority rights in the Province
12 of Québec, and is currently with the Québec Human Rights
13 Commission.

14 Seated next to Esmeralda Thornhill is Dan McIntyre who
15 was born in Saint John, here in the Maritimes, educated in
16 Nova Scotia and is currently Race Relations Commissioner of
17 Ontario.

18 Seated to his right is Bromley Armstrong who was born
19 in Jamaica, has been forty-one years in Canada, is a former
20 member of the Ontario Human Rights Commission, and in that
21 capacity, I may say, made a presentation to a Commission I
22 headed back in the mid-seventies on the MacKenzie Valley
23 Pipeline Inquiry. And he is currently a member of the
24 Labour Relations Board of Ontario.

25 We intend to hear, first of all, from Mr. Jones.

MR. THOMAS BERGER cont'd

1 After that we'll take our coffee break and then we will
2 hear from the members of the panel. So we'll begin with
3 Mr. Jones.

4 MR. BURNLEY "ROCKY" JONES

5 Thank you, Tom. Fellow panelists and honoured Judges,
6 I'm really pleased to have this opportunity to address this
7 gathering and so I really want to thank the Commissioners
8 for giving me this opportunity.

9 As many of you know, I've been clearly at the
10 forefront of some of the criticism of the Inquiry and,
11 indeed, of the Commissioners because I certainly disagreed
12 with the position that they took on the Black United Front
13 being able to call witnesses to the Inquiry. Having said
14 that, I have the greatest respect for what they are
15 attempting to do, and we just find that there is a
16 difference of opinion on that matter. I do not believe
17 that this Commission deserves the kind of treatment that
18 they've received, in particular from the *Halifax Herald* and
19 the article that was just printed, and I want to address
20 that in terms of the racism that exists in the media and
21 how it's exemplified.

22 The article in question raised the point that here
23 were these Commission lawyers basically feeding on the
24 public purse and drinking free booze. Clearly when you
25 have people of the stature that we have at this gathering,

1 were they here to discuss matters that concerned the white
2 community, there is no doubt in my mind that they would
3 have had a banquet. Instead what has happened was only the
4 people doing presentations were invited to a very modest
5 luncheon, is almost what I would call it, because I indeed
6 argued that we should have a banquet and that everyone
7 should benefit from it. I mean let's face it, if we were
8 white and if it were dealing with whites as opposed to
9 blacks and natives, that would have happened. And the
10 *Chronicle Herald* daily sees that thing happen and never
11 once have I seen an attack such as that over a measly
12 little meal. That is racist.

13 I would like to also take this opportunity to
14 apologize publicly to Dr. Carrie Best who I was supposed to
15 meet last night, but I was involved in a meeting. We had a
16 Black Caucus meeting and I got caught up in that, and so I
17 do apologize to you for not following through on my
18 commitment to meet with you last night, but I do hope that
19 we get a chance to talk this afternoon.

20 I would also like to say, which I neglected to say
21 when I was talking about that media report, was the
22 response of the Attorney General. Without even attempting
23 to find out what the circumstances were about that measly
24 little lunch that we were provided, the Attorney General
25 said he couldn't comment because he, you know, and it was

1 as if to say the Commissioners and this Inquiry has done
2 something so drastic that he didn't even dare to comment.
3 And I'm sure that the Attorney General provides meals day
4 in and day out for other white people.

5 Now in terms of this Inquiry, I want to see if I can
6 help the Commissioners understand what it's like to be
7 black in Nova Scotia, perhaps what our history has been and
8 perhaps what is happening to us now. I want the
9 Commissioners to understand that we are looking to them for
10 some very strong recommendations to go to this government,
11 which indeed exists in a province which historically has
12 not treated us fairly, nor has it allowed us to participate
13 in the mainstream of the economic activity, such as it is,
14 that has gone on here.

15 I would also like to relate our struggle in the sense
16 that we're involved in a struggle that is common to all of
17 us. I go back to the development of the Red Power
18 Movement, and natives across the country saying "We need
19 Red Power." And I was involved in groups and supportive of
20 groups that said "We support that movement." I've been
21 involved in groups that support black power, power for
22 black people. So basically what we're talking about is a
23 combined protracted struggle for people power, for the
24 power of the people, for the power of people to realize
25 their goals.

1 Clearly there is a need for coalitions. It has been
2 said that coalitions without power become takeovers. So we
3 in the black community need to have power in order to form
4 strong coalitions with other groups. I speak particularly
5 to the native community and say as we support your
6 struggle. I hope that there's a possibility of us having a
7 combined struggle based on the integrity and the power that
8 resides in both of our communities, because indeed we have
9 a common oppressor. We are part of this country together.
10 Your history is somewhat different than ours. You have
11 different claims that we do. But the reality of it is the
12 same person who oppresses you oppresses me. The same
13 institutions that come to bear on you come to bear on me.
14 So as we continue our deliberations I would hope that we
15 would think in terms of that commonalty of our struggle.
16 The same as the groups have organized for Nelson Mandella
17 and Gerald Pelletier in terms of saying these are people
18 who have been abused by the state, incarcerated and held
19 there and the struggle of Mandella and Pelletier are the
20 same struggle.

21 Also in terms of the development of that struggle is
22 that kind of an orientation that led to the development of
23 the Transition Year Program. The idea that in this
24 province blacks and natives were excluded from the
25 mainstream of the educational system, streamed into

1 programs, not getting through the university, and on the
2 basis of that history we created a program to attempt to
3 get black and native students through the university.

4 Mahatma Ghandi once stated, "A man cannot see his
5 future until he has first seen his past." Our past and our
6 history in this province is a history of oppression. We
7 have been here since this province was settled by
8 Europeans. There were major waves of black people who
9 settled this province, and I will just touch on that
10 because I want you, Mr. Commissioners, to understand we
11 just didn't arrive off the boat. The things that we are
12 asking for, the equality that we demand, is due us because
13 we helped build this country, this province.

14 In 1783 and '84 there was an influx of Loyalists from
15 America to Nova Scotia, approximately 30,000 Loyalists.
16 There were also about 3,200 black Loyalists who arrived at
17 the same time and 1,200 slaves. Very few people understand
18 that slavery is part of the Nova Scotian experience.
19 That's our history, and that's the history of the people
20 who also run the province, which may give us an
21 understanding of why we are where we are at today.

22 When the Loyalists arrived in this country the white
23 Loyalist brought with them the racist attitudes that
24 evolved in the slave society from which they were fleeing.
25 What this meant in Nova Scotia was the kind of

1 schizophrenic mentality of whites which still exist to this
2 day. I'll explain that.

3 The English under Clinton offered freedom to any
4 rebel-owned slave if the slave could reach the British
5 lines. Clearly many, many, many, many hundreds up into the
6 thousands of black people deserted the rebels to arrive at
7 the British lines. But it was for military expedience that
8 this was done because at the same time the offer was not
9 open to the slaves who were owned by Loyalists. So getting
10 on the boat at the same time were over 3,000 free blacks
11 and 1,200 slaves getting on the same boat and coming to
12 Nova Scotia. It's just as stupid as this, when a black man
13 came to the ship leaving the harbour, the white man that
14 was checking it off would be saying, "What's your name,
15 boy?" "Well, I'm Burnley Jones." "Who was your master?"
16 "Jake Jones." "Oh, he was a Loyalist, well, you come on
17 board but you're now a slave still. What's your name,
18 boy?" "Bill Smith" "What was your master's name?" "Jack
19 Smith." "Oh, he was a rebel. You come on board too but
20 you can be free." And that's how ludicrous it was. So
21 upon arrival in Nova Scotia all of these black people got
22 off the ship together, black, black, black, and one guy was
23 a slave and one guy was a free man. And these people were
24 put to work building the fortifications, building the
25 roads, doing the work the whites didn't have time to do.

1 Part of what happened at that time that shaped our history,
2 and everyone else's history, was that the black people who
3 were coming believed, believed, that they were going to be
4 treated fairly and equally. The average grant of land that
5 the blacks received was considerably less than the land
6 that whites received. Blacks were settled on the outskirts
7 of the major towns, Guysborough County, outside of Halifax,
8 outside of Digby, outside of Shelburne. Then they came
9 into town on a daily basis to work for the whites from
10 daylight to dark with no time to build their own homes,
11 with no time to clear their own land, with no time left to
12 do anything but get home at night, crawl back into some
13 sort of shack and for many even a cave, and that's how we
14 existed.

15 The black people petitioned the government, "Please,
16 sir, mister sir, will you help us, sir, will you give us
17 the land you promised us, will you treat us as you promised
18 us?" year after year after year after year. They never got
19 the land and they were never treated any differently. So
20 finally the blacks went to England and asked the imperial
21 government of England, "Please, sir, mister sir, will you
22 make them do what you promised would be done?" It's very
23 interesting the response. They set up a commission, the
24 same as this, and the commission looked at the problems
25 that the blacks were facing, their legitimate claim for

1 land and decided in their wisdom that it was the blacks own
2 fault. The commission decided that because in the
3 intervening years, from the time that they had settled in
4 1783 and 1792 when the commission finally sat, a large
5 number of the blacks had left and gone back to Africa.
6 They just couldn't take it. An offer came up which I shall
7 talk about and a lot left, but not all. So the commission
8 said, "Because you have decided to leave in this particular
9 area, clearly the black people are at fault and we shall
10 not change the way land grants are given, we won't do
11 anything about it because you're wrong." I'm hoping that
12 this Commission will look at things differently and not
13 end up with the kind of conclusions that say we are at
14 fault because we cannot participate in the mainstream of
15 economic activity, or because we say that the system of
16 justice is racist and fails when blacks are the victim.

17 I hope that you find history as exciting as I do
18 because I really get into, you know, the history of my
19 people. It's very personal to me and it's very exciting.
20 Jim Walker, who I really admire as a historian, he's white,
21 he said "The story of blacks in Canada is a glorious story.
22 "It's a struggle, it's a story of struggle. It's a story
23 of survival. It's an exciting history." Whereas Robin
24 Winks, another reknown historian, has said "The history of
25 blacks is a depressing story," and it's all a question of

1 how you look at history and our history and to me it is
2 exciting. It is exciting that I am able to stand here
3 today as a black person from Nova Scotia, educated enough
4 to be able to talk to you, I think intelligently, after all
5 we have gone through and the oppression that we have
6 suffered at the hands of white Nova Scotians.

7 The black community through this Loyalist experience
8 with Loyalists, the black Loyalists and the black slaves
9 became merged into one group. So that Nova Scotia as a
10 province could not accommodate slavery, and slavery wasn't
11 feasible, it wasn't practical. We became a source of cheap
12 and readily available labour at a time when the manpower
13 needs of this country were very high. So, in fact, it was
14 sort of a positive experience for whites in Nova Scotia at
15 that time. They had these blacks. They only had to hire
16 them as long as they wanted. Then when they were finished
17 with them, they could let them go and they had to fend for
18 themselves. Some of the blacks were sold back into
19 slavery. Some people were indentured, but they survived.

20 When the blacks went back to Africa, it destroyed our
21 communities. The whole community would leave based on the
22 religious affiliation. So that if the minister agreed and
23 if his flock agreed, the whole community would just up and
24 leave and go back to Africa. So we had places where the
25 entire community was just devastated. The interesting

1 thing and the important thing about this was the Sierra
2 Leone Company which organized this exodus, which they did
3 for economic reasons, would not accept unwed mothers,
4 wouldn't accept people who couldn't produce a letter saying
5 that they were of sound, good character, et cetera, et
6 cetera, et cetera. So we, as black people, were left with
7 the people who didn't have skills, didn't have
8 organizational ability, et cetera, et cetera, et cetera.
9 All of those people were taken away. So in these little
10 communities we had these powerless uneducated people with
11 all kinds of problems.

12 Introduce another group, major group, that comes after
13 the War of 1812. The refugees who also on the basis of
14 proclamation fled to the British. Now these people come
15 into Nova Scotia at a time, again, when it seems that there
16 is prosperity. But we have a mice epidemic and a potato
17 crop harvest failure in 1813, 1814, 1815. So instead of
18 being with welcomed with open arms, suddenly these people
19 are competing for very scarce resources, and clearly the
20 response to that in the white community is the rise of
21 white racist attitudes that affect the black community.

22 Now what I am arguing or what I want to argue to you
23 is that the racism that evolved after the War of 1812 and
24 shaped our community has not gone away. That the legacy of
25 that is what we're experiencing now. Because the two

1 society, blacks found that in the church. They voted for
2 their deacon board. The deacon board in turn hired the
3 minister and the minister preached on behalf of the flock.

4 What that leads us to is our process of negotiation.
5 It was the role of the deacons to negotiate on behalf of
6 the black community. They were the leaders in our
7 community. But they were porters, they were labourers,
8 shoe shine people, chauffeurs. They were very poor people,
9 mostly uneducated. And they were forced to negotiate with
10 our premiers, the heads of our industry in this Province
11 with their bosses, and on their behalf they made bad deals. But
12 they had no choice. How can you negotiate with your boss
13 from a position of power? So we have never had any
14 power. And the institutions in this Province have kept us
15 powerless.

16 In our communities, I want to take just a moment, I'm
17 really rushing here, to talk about how this power, how this
18 happens. The government takes over the black community.
19 What happens is in the black community through the church
20 blacks are responsible for dispensing patronage within
21 their community. The deacon board would go out say and
22 they would talk to someone and they'd find out there's a
23 job here or there or whatever. They would come back and
24 then they would hand that off to the community. If a
25 person's house got burnt, within the community, through the

1 church and the deacon board and the women's auxiliaries,
2 when the house burnt down, the community rallied around.
3 They would help build the person a home. It was quite
4 common to have what we called pound parties where if a
5 person or the family was really destitute, the community
6 would have a pound party and everyone would be expected to
7 bring a pound of something to the home and so, therefore,
8 the community was looking after its own. If there was a
9 dispute in the community, the same as I heard the natives
10 talk about, the disputes were handled within the community.
11 Children were looked after by the community and, indeed,
12 the black community went so far as to set up the Nova
13 Scotia Home for Coloured Children on the basis of the fact
14 that we had to look after our own children.

15 But then the government came along. And like the
16 Indian agents, the government had their welfare workers and
17 their social workers. And into our communities were
18 introduced these foreigners and the white teachers took
19 over the educational system. The white social workers
20 began to dispense the patronage. Disputes were then
21 handled by the courts. The police were used as the
22 enforcers of the orders of the larger society, and the
23 traditional roles were all destroyed. So that the deacon
24 board lost their power, the church really lost its power in
25 that sense and we became dependent on big brother. We

1 became dependent on the government to such an extent that
2 it's now quite acceptable to live on welfare. It's
3 acceptable. Welfare is seen as a legitimate way of life
4 whereas before we had an independent community.

5 What has that all got to do with criminal justice, you
6 say? You know, why am I going through all of this to talk
7 about what the Commissioners have got to do?

8 The relevance of all of this is that given our
9 history, given the oppression, it's no wonder that the
10 police are able to treat us like they do.

11 When we looked at the cases that we looked at... I've
12 been involved for many years in organizing in the black
13 community. I was appalled at what we were finding out. I
14 will talk a bit very quickly, and I'm almost to fifteen
15 minutes, right?

16 What I want to do or what I want to leave you with is
17 the fact that this racism that I'm talking about, it's
18 intrinsic in our society now. We just can't escape this
19 kind of institutional racism. And yesterday I noticed
20 people didn't want to use the word, and today for the
21 record, I want to keep using the word because that's
22 exactly what it is. And when we look at the police, the
23 prosecutors, the Judges, the juries, the coroners,
24 custodial staff, basically they're all white, and basically
25 they all work to support the system which oppresses us.

1 Let's take a look very quickly at a couple of the
2 cases. Let's look at Graham Jarvis. Graham Jarvis was a
3 black man who was killed by a white man in Weymouth,
4 Weymouth Falls. What's interesting about this case is when
5 this black man was shot by this white man, he had to crawl
6 to the highway. There he bled to death on the highway
7 while this white man watched him, watched him crawl there,
8 watched him die. People drove by him, you know, so what?
9 Like a dog he lied there, and Tony Ross disagreed when I
10 said like I dog. But that's what it's like. That's what
11 it reminds me of. That you crawl to the highway to die and
12 this man watches you die. He wouldn't call for assistance
13 because he had painted his floor and didn't want to walk
14 over his painted floor to make a phone call to save
15 someone's life. That's not bad enough. He does go across
16 the floor to call the RCMP and say, "Look, I just shot this
17 black man, right." So the RCMP come from two places, one
18 car from Digby, another car from Meteghan. The area where
19 he is shot is basically in the middle of these two
20 communities. The car from Digby arrives first. They take
21 this man and they put him in their car. The car from
22 Meteghan arrives, takes the man out of the car, drives him
23 up the highway five miles, one officers questions him,
24 talks to him, brings him back and then let's him play out
25 the scenario of how he shot this black man clearly to

1 establish in his mind exactly what he was going to say.
2 Right on the scene they had him walk it, they walked him
3 through how he killed this black man. Now, of course, the
4 statement that the RCMP officer took was never, ever, ever,
5 able to be introduced as evidence. There were no witnesses
6 to the statement. Now an experienced RCMP officer, even me
7 who...I'm not a cop. I would know better than by myself to
8 take a murder suspect off and to take a statement by
9 myself. The next day they took another statement. The
10 tape recorder broke. This was the one where the Judge
11 supposedly made the remarks that, "You know what happens
12 when them black folks get to drinking." And, of course,
13 and everybody here can guess the end result. The white man
14 walked. The white man walked. And you know what we say,
15 there's five of these cases. It's open season on niggers.
16 That's all. People have a license to kill us when they
17 want.

18 Let's take a look at another case, a very interesting
19 case. Nicholas Downey, twenty years old. Here's a kid on
20 parole, so he must have clearly been a bad kid. He's
21 driving his white girlfriend from Preston back to
22 Dartmouth. He drops her off and he's on his way home. As
23 he's on his way back from Dartmouth the RCMP come along,
24 make a U-turn, pull in behind a Blazer truck that's
25 following him back out the highway. They then pull in

1 behind his car and they follow right on his car back out
2 into the dark and deserted highway. When they put on his
3 lights they say the boy speeded up, the got into a chase
4 and somehow or other the cars get involved at a collision
5 at Lake Major Road. The RCMP officer, one of them, takes
6 out his gun, points it at the kid. The other officer says,
7 "Wait a minute, there's no need of this," the kids backs
8 his car into theirs, jumps out of his car and runs away.
9 The officer who drew the gun chased him. The white man who
10 was driving the blazer then comes upon the scene and the
11 RCMP officer says to him, "Hey, you know, we've got this
12 boy that's...our man that's down the road and one of our
13 guys following him; we want you to go see what happened."
14 Well, I mean, I don't know whether he was deputized, was a
15 vigilante or what, but the reality of it is is he went
16 looking and then they didn't find him. The RCMP officer
17 comes back says, "No, I didn't find him." They found him
18 days later after nothing was done dead in the river. The
19 coroner says it was an accident. The community says it was
20 murder. I hope you say these things should be addressed
21 and should never be able to happen.

22 It's very interesting that one of the other cases,
23 young boy is incarcerated, he's being brought back to
24 Dartmouth, he's in a car. He escapes from the custodial
25 staff and is found dead under the bridge, under the

1 MacDonald Bridge. He was on his way home. He was running
2 to get back home. In that case the coroner said it was
3 suicide. The difference being that by saying it was
4 suicide the family have no recourse at all. There's
5 nothing they can do. The coroner has absolute power. In
6 one case he says it's an accident, so therefore you can't
7 do anything to the police, you can't do anything to anyone.
8 The other he says it's suicide, so therefore you can't do
9 anything either. The whole system at one time or another
10 between the racism and the harassment that comes from the
11 police right through to the fact that they appoint junior
12 prosecutors. If a black is a victim, you can be guaranteed
13 the Attorney General's Department is going to put some sort
14 of a junior prosecutor in to prosecute, and not
15 aggressively by any stretch of the imagination, the white
16 who kills a black, right through to the coroner who makes
17 those kinds of decisions to the Judges who say, "You know
18 what happens when those black folks get drinking." We
19 haven't got a chance. We haven't got a chance.

20 So what do we do about this? I have some
21 recommendations. I was hired by the Black United Front on
22 a project that was sponsored by the Secretary of State to
23 look into these cases. Part of what we were attempting to
24 do was find some recommendations that we could give to you.
25 We were hoping, of course, that we would have an

1 opportunity to examine these cases in full during the
2 Inquiry, but that didn't happen. So that now on behalf of
3 the researchers who did this work, and the Black United
4 Front who sponsored this work, and the Secretary of State
5 who paid for this work, I want to give you the
6 recommendations. They're not in any stretch of the
7 imagination all that's needed to be done, but there's some
8 things that we looked at.

9 One. The RCMP should make a special effort to recruit
10 blacks from Nova Scotia and have them stationed in Nova
11 Scotia. One of our problems is in these communities I'm
12 talking about there are no black cops. And the RCMP in the
13 outlying areas mostly are the police that look after it.
14 So we believe that one thing is is we could have some black
15 policemen from the area, and I'm hoping that we get good
16 cooperation from the RCMP on this matter.

17 Two. Municipal police forces in areas where there are
18 a sizeable number of blacks should make a special effort to
19 recruit and employ blacks.

20 Three. Police community liaison committees with black
21 representation from the community should be established in
22 areas where there is a sizeable number of blacks. These
23 committees should be established and chaired by the Nova
24 Scotia Police Commission.

25 Four. Police procedures and regulations relating to

1 investigations should be available to the public, and upon
2 request explained to the public by a senior member of the
3 investigating force. That's a very, for us, that's very
4 important because the things that happened in the Jarvis
5 case or the things that happened in the Downey, the
6 community didn't understand what the procedures were, how
7 they could...what they could do, who they could complain
8 to, and no one seems to know.

9 There should be a review of how prosecutors are
10 assigned to cases in the Attorney General's Department. In
11 all homicide cases the prosecutor should be a senior,
12 experienced lawyer.

13 Six. The Attorney General's Department should appoint
14 more black lawyers.

15 Seven. There should be blacks appointed to the bench.

16 Eight. Special funding should be made available to
17 allow more blacks to attend law school.

18 Nine. Dalhousie University Law School, Nova Scotia
19 Law Society, the Canadian Bar Association should establish
20 an affirmative action program to recruit black students.

21 Now it's clear that the University of Windsor, I've
22 been told, that they have a point system for minorities. I
23 cannot obviously get into the details of how this should be
24 done, but something has got to be done to change what
25 happens to blacks in getting into the law school here and

1 being able to get through the law school once they're
2 there.

3 Ten. A special court worker should be available to
4 assist blacks who are in conflict with the law and end up
5 in court or other blacks who are victims of crime and want
6 compensation.

7 Eleven. A penitentiary liaison worker program must be
8 established to work with black inmates. At one point
9 there was a Micmac native liaison, penitentiary liaison
10 officer and there was a black penitentiary liaison officer
11 in this area. The present governments in their wisdom
12 decided not to fund them. So that there's no
13 representation there any more. That should be looked into
14 and done again.

15 Twelve. Legal counsel should be provided for the for
16 the families of victims. This counsel should assist the
17 families apply for compensation and also represent the
18 families at all inquiries or legal hearings. We've had
19 problems with people who are poor going to hearings as a
20 family and not having adequate counsel. This should never
21 be.

22 Thirteen. Procedures and regulations governing the
23 medical examiner should be revised. Specifically the cause
24 of death should be determined by a rigid set of guidelines
25 that are established by a body other than the coroner's

1 office. There should be a procedure to appeal the
2 coroner's verdict which is simple and easily implemented.

3 Fourteen. A senior lawyer should be appointed by the
4 Attorney General to assist the families of the five victims
5 that we reviewed in our study in an attempt to resolve
6 these cases to the satisfaction of the family.

7 Fifteen. Diversion funding, funding for diversion
8 programs, should be made available to community groups.

9 Now those are our formal recommendations that we give
10 to you in hope that you would do something with them, pass
11 them on, help us to get them implemented.

12 There are some concerns in terms of the policy manuals
13 which may be outdated that the police are presently using.
14 It was raised at our meeting last night that someone may be
15 able to explore more fully on the floor that an independent
16 review commission should be set up here in our area.
17 There's got to be some way of making the police accountable
18 to the community so that they are not able to act in such
19 an arbitrary fashion. And there must be some way to monitor
20 the things that we have suggested so that we can ensure
21 that they're implemented.

22 And in closing, I want to say it's been really a
23 pleasure to participate in this Inquiry. I look forward to
24 some very good things and I say to you that you're either
25 part of the problem or you're part of the solution, and in

1 those famous words, "Which side are you on?" Thank you.

2 CHAIR

3 Well, thank you, Rocky. I think you know how well
4 your presentation has been received by the reaction you
5 just had. This is, I think, the appropriate time for us to
6 take our mid-morning break and digest what we have heard,
7 and after our coffee break we will be hearing from our
8 other distinguished panelists.

9 [BREAK - 10:35 to 11:00 a.m.]

10 CHAIR

11 Well, ladies and gentlemen, we've had an excellent
12 introduction to the subject from the point of view of a
13 Nova Scotia black person and I think we all very much
14 appreciated it. The other members of our panel are from
15 Québec and Ontario. I've already introduced them to you.
16 You're aware of their credentials and I'll ask them now to
17 make their presentations, calling first upon Esmeralda
18 Thornhill of the Québec Human Rights Commission.

19 MS. ESMERALDA THORNHILL

20 Merci, Monsieur le Président, Messieurs les
21 Commissaires, chers collègues, consoeurs et confrères,
22 messieurs et mesdames, chers amis. Les salutation très
23 chaleureuses du Québec. C'est avec un certain plaisir et
24 beaucoup d'optimisme que j'accueillis cet occasion sans
25 précédent dans les retombées...sûrement de se faire sentir

1 en dehors de la Nouvelle-Ecosse et même a travers notre
2 pays. I applaud this unprecedented initiative taken by the
3 Royal Commission of Inquiry on the Donald Marshall, Jr.,
4 prosecution. This Inquiry has courageously created
5 significant agenda space for an in-depth and unflinching
6 examination of the impact of racism on black and native
7 people in the administration of criminal justice in Canada.
8 It is my hope that this prestigious forum will contribute
9 to validating and affirming publicly the current day-to-day
10 existence of racism in Canada.

11 I made a deliberate choice the challenge of focusing
12 on racism, and decided to ground my presentation on the
13 necessity to focus directly on racism. This in itself is
14 no easy challenge since it admittedly feels so much more
15 reassuring and positive to forge ahead and present
16 recommendations. Therefore, I have concentrated on
17 underscoring the need for collective introspection of our
18 historical and present practises.

19 A story. Imagine that we in this room reconstitute
20 the world. Now the history, the story of the world is
21 going to be written. Each one of us gets a chance to tell
22 our story. We each get to go off, do our research, write
23 it up, relate it, recount it, put in, omit, whatever we
24 want, and it all goes in to the story of the world. We
25 constitute the world in this room. So we each go off, we

1 do our work and then comes Vermissage Day, the book is
2 ready. It's all dedicated by some personality of renown,
3 it's gold embossed, leather tooled, and we're each waiting
4 impatiently for our copy. Why? Because each one of us,
5 when we get our copies, what do we do? We each turn to
6 immediately to the table of contents, we look for our
7 chapter. I have my copy. I turn immediately to the table
8 of contents. I don't find any mention of my chapter. I go
9 over it again, a second time more seriously. I'm beginning
10 to panic, no chapter. Perplexed, I turn automatically to
11 the index in the back with mounting dismay and incredulity.
12 I scour the columns look for any entry referring to my
13 chapter, my story, my contributions--no mention. In
14 desperation, I go through the book page by page, line by
15 line, trying to glean a mention, a reference in the margin,
16 in the footnotes, by indirect mention, nothing. In total
17 dismay, I look around to complain but every one else, all
18 of you all are so gleefully happy, gloating and reliving
19 your contributions, reading your chapter. Feeling
20 powerless to oblige you all to scrap your copies and start
21 all over again, I face reality, the story of the world has
22 been written. The story of the world has been written and
23 I have been written out of history. This is the lot of the
24 people like myself, people like the native peoples, in fact
25 this is the lot of the majority of the world population.

1 This is the reality that has happened. We have been
2 written out of history. We have been left out, omitted and
3 dismissed. Our life experiences, contributions, folkways
4 and aspirations have been left out. So too with Canadian
5 history. As black people we are absent from Canadian
6 history and more importantly, our life experiences, past
7 and present, individual and collective, are also absent.
8 Our particular streams of consciousness do not inform
9 Canadian history. We have been erased and with erasure
10 goes any consciousness of our daily experience of racism.

11 On a summer's afternoon a father driving home with a
12 cellular telephone in his car receives a panic call from
13 two of his older children. The younger, a toddler on his
14 tricycle, has been dragged and taken to the police station.

15 Another day, a twelve-year-old-girl is taken to the
16 police station from the school. Why? She attempted to go
17 back into the school at recess to use the washroom
18 facilities and the teacher stopped her and told her she had
19 no permission because she had not asked the teacher before
20 going into the school, in spite of the fact that she said
21 she saw no one and she had to go badly. The police take
22 her away to take her to youth protection into the system.
23 Her mother is at work. She's not been abandoned.

24 An adolescent teenager repairing a broken window pane
25 of the family home in a suburban district of Québec is

1 taken away by the police to the station on suspicion of
2 breaking and entering his own house.

3 A Caribbean delegate to an international women's
4 conference is accosted at the bus stop, pulled out of the
5 cue by the police officers and questioned and forced to
6 present her passport and account for her presence in the
7 well-to-do suburban neighbourhood, residential
8 neighbourhood where she has been billeted by conference
9 organizers with a local Québécois family. Why? Because
10 neighbours wondered what she was doing around that
11 neighbourhood.

12 A black male high school teacher chances to witness
13 two Metro constables manhandling a youth who just happened
14 to be his former pupil, one of his former pupils. He
15 decides to stop and watch. The constables who see him
16 approach him threateningly with clubs drawn and order him
17 to move on.

18 During a summer's day sidewalk sale, a merchant
19 refuses to sell sale merchandise to a woman shopping.
20 Vilifying her with verbal abuse, he orders her to leave
21 his store. She appeals to a nearby police officer on foot
22 patrol. She explains to him and asks him to accompany her
23 because on principle she wants to buy the merchandise. He
24 says, "Madame, go and buy elsewhere."

25 A Municipal Court Judge hearing a highly publicized

1 case in which a black woman faces criminal charges brought
2 by the police breaks off his address, breaks off what he's
3 saying, addresses the jammed-packed courtroom and first he
4 expresses surprise at such a crowd. And then admonishing
5 that people not make of the situation...I should not
6 imitate, not make of the situation more than what it is, he
7 concludes in sanctorian tones and affirms that in his
8 municipality there is no racism.

9 Day in and day out attempts to be sociable on the part
10 of white fellow citizens inevitably start off with the
11 bungling, and "What island are you from?" And they don't
12 mean Montreal.

13 On a warm summer's afternoon, a warm summer's Sunday
14 afternoon, a church-dressed black woman of a certain age.
15 Now church-dressed means well dressed, driving her
16 spankingly washed, well-kept costly car, hand out the
17 window like this, is stopped and pulled over by a young
18 police officer. At the end of a long period of waiting
19 when the officer returns to her car and hands over her
20 documents, she asks, "What is the problem officer? Why did
21 you stop me?" "Oh, just checking."

22 A woman in lawyer garb and briefcase is accosted on
23 her way to the lawyer's cloakroom in the basement of the
24 courthouse in Montreal. She is accosted by a courthouse
25 guard who asks, "And where do you think you're going?"

1 A young woman applying for a learner's permit to drive
2 presents her Canadian passport as required ID. The clerk
3 disparagingly flips through it from start to finish, once,
4 twice and barks "Where's your pink slip?" "What pink
5 paper?" "Your pink paper?" "Instead of looking at the
6 colour of my skin, you should look at the Canadian passport
7 you're holding. Since when does a Canadian citizen need a
8 pink paper to show they have entered Canada legally."

9 Racism is a daily reality for black people living in
10 Canada. It is not a novel phenomena. A cursory overview
11 of our history suffices to reveal how the roots of racism
12 lie deeply imbedded in Canada's past. Significant
13 signposts stand out. The enslavement of native and black
14 peoples in Nouvelle France under both the French and
15 English regimes, the *Indian Act* which inspired the
16 architect of South African apartheid. Canadian immigration
17 policy with its enforced colour bar, white if possible.
18 The unabashedly exploitative government-sponsored domestic
19 scheme of the 1950s that recruited educated black women
20 from the Caribbean to come and work as servants in the
21 houses of well-to-do Canadian families. Jim Crow or
22 segregationist union policies whose exclusionary practises
23 forced black railroad porters to organize on their own as
24 the Brotherhood of Sleeping Car Porters. A Canadian civil
25 service whose hiring practises did not embrace blacks.

1 Multiple court rulings in public services which held that
2 that the overriding principle was freedom of commerce, the
3 liberty to contract freely with whomever one desired. Thus
4 dismissing the right of black members of the Canadian
5 public to non-discriminatory treatment. These salient
6 signposts and others have combined to bequeath to today's
7 Canadian institutions a legacy of racism. The justice
8 system is no exception, yet our justice system, along with
9 Canadian society as a whole, would appear to be playing
10 ostrich, indulging in an obdurate form of endemic willful
11 blindness that refuses to recognize that *de facto* and *de*
12 *jure* societal practises have indelibly written racism onto
13 the daily agendas of each black and native person living in
14 Canada.

15 Too often have we as a society disregarded our legal
16 history to keep from our full consciousness the
17 extraordinary insensitivity and brutality of our past. In
18 so doing we are falsifying the perspective in which we
19 evaluate the present state of affairs. Slavery with it's
20 concomitant value system remains the principal factor which
21 predetermined and limited the role which blacks, past and
22 present, could play on the Canadian scene. For although
23 slavery as a legal institution, was legally abolished by a
24 mere pen stroke, yet the legislators' pen did not succeed
25 in obliterating the attendant collective mind set, whose

1 social attitudes and practises equated black skin with
2 slavery, with inferiority. As a result I'm positing that
3 an unwritten social consensus emerged then and endures
4 today.

5 This consensus seems to dictate the proper place of
6 black people and native people. This classic consensus
7 would appear to determine, (1) which right a black and
8 native person is entitled to exercise, and (2) how these
9 rights can be exercised. This unwritten law is all too
10 pivotal in giving meaning to or sapping meaning from our
11 democratically inspired written codes. It would almost
12 appear that by some unspoken societal consensus, a
13 generalized negativeness, I know that's not proper English,
14 but negativeness towards blackness persistently link black
15 skin to criminalness. And all too frequently black skin
16 colour becomes the initiating catalytic factor which
17 jettisons black people into the criminal justice system.
18 It is also black pigmentation that colours and
19 preconditions and plops the quality of our trajectory
20 through a system seemingly inimical to our interests. (4),
21 to black offenders the justice system doles out uncommonly
22 harsh punishments. The evidence is there. And to black
23 beneficiaries, it grudgingly grants, if not denies, redress
24 or reparation.

25 Legal culture is much broader than laws and

1 legislation. Legal culture is an inclusive term which, by
2 encompassing behaviour, values and assumptions, compels us
3 to deal with unwritten law. Unwritten law that is
4 entrenched by social convention, customary practise and
5 which itself predetermines whether discretionary decisions
6 will be benign or adverse.

7 Services users and victims seeking reparation will
8 find the quality of access and response available to them
9 commensurate with the "place," in quotations, society has
10 reserved for them. The prevalence of racism in Canadian
11 legal culture today is demonstrable. A general conspiracy
12 of silence operates not only to obfuscate the issue of
13 racism, but also to deny its very existence. This denial
14 eliminates the possibility of addressing and implementing
15 imperative corrective measures.

16 Here are but a few examples, and they're only a few.
17 The common law of Great Britain has no traditional response
18 or remedies for racism, and rightly so. Since racial or
19 national equality were diametrically opposed to the
20 national interest of colonialism and the maintenance of a
21 British empire on which the sun never set. Consequently
22 our *BNA* Act emanating from the British parliament, British
23 imperial parliament, remains silent on the issue of race or
24 racism.

25 In our law schools. Certain law school admission

1 departments before processing a candidate still require
2 that a photo accompany the application form. To black
3 people this is inherently suspect. In law school there is
4 a dearth of positive black role models. In law school
5 black students fall victims of social alienation and
6 exclusionary mechanisms which penalize them while they
7 enhance in-group networking. For example, note sharing,
8 group study, articling tips, encadrement, summer jobs and
9 permanent gainful employment. In law school, law teaching
10 is devoid of the racial perspective.

11 Racism should also inform constitutional law. I'm
12 not talking about one course added on as a footnote, Racism
13 and the Law. I'm talking about mainstreaming. I'm talking
14 about a dimension that is going to give body and depth and
15 a certain stream of consciousness to what we study as law.
16 Racism should inform constitutional law. The *Indian Act*.
17 I'm going to say the *Indian Act* for every one because it's
18 equitable. Administrative law, the *Indian Act*. Human rights
19 law, the *Indian Act*. Contract law, freedom to contract
20 against...freedom to contract being...having primacy over
21 the right to non-discrimination. Property law, restrictive
22 covenants. If racism informed all of these areas of law,
23 there would be a whole other stream of consciousness that
24 practitioners, whether they end up being legal
25 professionals, lawyers, researchers or judges, they would

1 have another understanding.

2 Legal scholarship too is at fault. Bar schools
3 provide no racism awareness course in their curriculum.
4 Law professors, researchers, judges are uninformed of the
5 role law and legal apparatus have played in the reality of
6 black and native people's lives. Critical legal scholars
7 to date have failed to incorporate the authentic experience
8 of minorities in North America. This failure to take
9 account of the historical and existential needs of non-
10 white people expresses itself in ideological paradigm and
11 organizational practises that are total inimical to
12 minority interests.

13 Oh, one other one that I forgot. When you're looking
14 for a...I don't know what you call it here, a clerkship, or
15 do you say clarkship, I don't know. Looking for a [stage?]
16 in Québec and many black students are in a dilemma because
17 what do you do? When you have a resumé on which
18 affiliations with black groups or black community advocacy
19 work appears, you run the risk of that unleashing a gamut
20 of reactions at interview times, intimidation, hostility,
21 amusement, even contempt.

22 Our tools are faulty and faulty tools vitiate the end
23 result. Our arsenal of tools in legal culture is sorely in
24 want of repair. Example, a Canadian index to legal
25 periodical literature comports no category or heading

1 labeled, "Racism or racial discrimination," thus
2 incontrovertibly conditioning from the outset the body of
3 doctrine available to practitioners and to the courts to
4 assess racism. We have no case commentaries on decisions
5 involving incidents with racial overtones or similar body
6 of doctrine. We can boast no solid track record of having
7 exploited the technique of calling expert testimony to
8 prove racism so that the courts may take judicial notice of
9 what is public notoriety for so many black and and native
10 communities throughout Canada. When establishing the
11 quantum in cases of racial discrimination, the deterrent
12 value of punitive and exemplary damages is underexploited.
13 The piffling amounts established fail to reflect the social
14 gravity of racism and trivializes injurious nature. These
15 negligible compensations do little more than reinforce the
16 stereotypic spectre of that historic U.S. three-fifths
17 clause, which during slavery deemed that a black man was
18 worth no more than three-fifths of a white man.

19 We do not understand racism enough. Chaos reigns. We
20 confuse impartiality with neutrality. We fail to grasp the
21 very necessary distinction between racism and other
22 blameworthy misconduct such as brutality, abuse of power,
23 excessive and deadly force.

24 In the courtroom the contrived invisibility of our
25 black experience in legal culture in history contributes to

1 misinformation and misdiagnosis about blacks. Code
2 switching which in the courtroom, or who says what and how.
3 Eyeballing, that is to say steady, direct and unwavering
4 visual contact. Now for some, this is tantamount to
5 rudeness. For others it's indicative of truthfulness when
6 being interrogated. If successful one can perhaps be
7 exonerated. If failure one can pretty well be sure of
8 inculcation.

9 Different standards and concepts of punishment seem
10 to have been devised in the collective eyes of black
11 communities across Canada for blacks. Stop and search.
12 Just checking. These are just routine. A disproportionate
13 number of blacks are hauled up on minor charges which are
14 later dropped, sometimes after spending more than twenty-
15 four hours in prison. A disproportionate number of blacks
16 are roughed up by police and then charged with criminal
17 offences against the police. So much so that when
18 collectively we hear obstruction of justice or assault on a
19 police officer, they are immediately inherently suspect. A
20 disproportionate number of blacks experience run-ins with
21 the police. Often when blacks try to insist or assert
22 rights and/or confront vocally the reality of racism, they
23 are labeled lippy, uppity and charged with mischief.

24 Our correctional institutions, racism is also a fact
25 of life in our correctional institutions. Racist behaviour

1 and attitude in correctional institutions poses a question
2 as to the possibility of blacks or native inmates receiving
3 rehabilitative treatment and parole. Punitive actions
4 taken against black inmates, for example, seriously limit
5 their participation in educational trades, training,
6 recreational programs and self-improvement programs.
7 Racist behaviour impacts negatively in parole decision
8 making, assessment and evaluation since it affects
9 profoundly the black inmate's conduct, performance and
10 output which are assessed for parole. In halfway houses
11 the conduct and performance of black residents will be
12 significantly influenced by the racial atmosphere that is
13 present.

14 Every incident with racial overtones seems to be
15 systematically treated as an isolated, unrelated incident.
16 This offends, if not outrages, a collectivity whose
17 critical consciousness of the criminal justice system is
18 informed by our foremothers' and forefathers' experience
19 with the law.

20 Cavalier treatment by police officers, for example, a
21 dismissive attitude towards victims, responding with
22 misunderstanding, reluctant and even animosity. Or if
23 guilty, if the offender or suspected offender, guilty until
24 proven innocent, and police officers responding with over
25 enthusiasm, unwarranted assumptions and excessive and

1 sometimes even deadly force.

2 A general immigrancy status, remember what I said
3 about, "And which island do you come from?" A general
4 immigrancy status is conferred on blacks and played out in
5 legal culture with dire effects. Since an instinctive,
6 spontaneous, complicity of guardians of order operates with
7 oiled precision. For example, the Metro constables, the
8 immigration officials, the private security guards, and the
9 police. They all seem to be on the same wavelength.

10 Conceptual framework. I don't think that it would be
11 fair for me to just go right on to recommendations without
12 at least trying to offer, if not just for reaction, some
13 kind of analysis. I'll share with you the conceptual
14 framework that I use in the work that I do. While there is
15 an undeniable discomfort that majority group persons feel
16 when compelled to confront the pervasiveness of racism, yet
17 this uncomfortability in no way cancels out the important
18 leverage the factor of power plays in the equation of
19 racism. In the interest, therefore, of clarity and rigour
20 and to facilitate a comprehension of racism, I'm offering
21 the following operational definition. Do feel free to
22 accept it or reject it, but don't just reject it with a
23 void. Replace it with something else.

24 Racism is racial prejudice plus power, institutional
25 power. Therefore, racial prejudice plus institutional

1 power equals racism. What that means is that from the
2 minute that you do not have access to that institutional
3 power to invoke, to give expression to whatever ideas,
4 attitudes or prejudices you have in your mind, that's not
5 racism. The implications of that are important because
6 prejudice cannot become racism in the absence of
7 institutional power. Therefore, people in situations of
8 decisions, situations of power, situations of authority
9 have an onerous responsibility not to remain passive. What
10 this means is that we have to deal with behavioural
11 modification rather than dealing with attitudes. I'm not
12 saying that the attitudes are not important, but the
13 primacy or the priority has to be given to the behavioural
14 modifications.

15 Now for those who might be having some doubts, we do
16 it every day. If any of you get on a bicycle, get behind
17 the wheel or a car, we legislate behaviour in order for the
18 traffic to circulate in an orderly fashion in the street.
19 We can do it also according to the order and the value
20 system, democratic value systems that we purport to adhere
21 to.

22 Loss of the emancipatory should sustain us and should
23 enhance our existence as people. And though our dominant
24 experience as black people has been that of the law as a
25 victim, particularly when it comes to issues of racism and

1 racial discrimination, yet law remains too valuable a tool
2 for us ever to abandon. Any envisaged program of
3 corrective measures or solutions I am positing must itself
4 be predicated on two accepted premises.

5 One, racism exists as a demonstrable social factor in
6 social relations in Canada and the justice system is not
7 excepted. A demonstrable social factor. Therefore, it can
8 be proved.

9 Two, a resolute political will must be adopted to
10 acknowledge up front the existence of racism and to set
11 about eliminating it by moving it onto the public policy
12 agenda. Policymakers, legislators, government has an extra
13 responsibility to create a climate which will be more
14 inhospitable for racism. In light of the foregoing, I am
15 proposing certain recommendations.

16 One, international law. Canada has ratified the
17 convention for the elimination of the racial discrimination
18 but has not yet made the special declaration concerning the
19 optional complaints mechanism contained in article, Section
20 14. Canada is not yet a party. This mechanism would allow
21 individuals and groups to bring complaints to the
22 international arena and seek redress at international
23 level. I'm recommending that the Commission recommend
24 strongly that Canada make a special declaration to make
25 this optional complaint procedure part of our domestic law.

1 Canada each year as a member of this convention, a
2 party to this convention, submit an annual report on its
3 efforts, on our efforts, to eliminate racial discrimination
4 throughout the whole territory of Canada. I'm recommending
5 that Canada take the necessary...Canada-the government-
6 take the necessary steps to publicize this annual report
7 through wide diffusion, and/or distribution.

8 Given the silence of our legal history, it is
9 important that racism be named. I am inviting the
10 Commission to consider that our *Criminal Code* address
11 racism explicitly by creating a distinct and separate
12 infraction for racially motivated attacks on persons and
13 properties. When other crimes occur with racial overtones,
14 I'm recommending that stiffer penalties and sentences be
15 handed down. For those who object instinctively, we have
16 theft and we have armed theft. You don't say theft, you
17 say robbery. We have robbery and armed robbery, vol, et
18 vol qualifié. And when armed robbery happens, the
19 sentencing level is stiffer penalty.

20 I'm recommending that this Commission recommend that
21 the elimination of racism be moved onto the public policy
22 agenda of this country. I think it's the best occasion
23 that we have to really do some public education.

24 I'm also recommending that the justice system
25 proactively issue a declaration of anti-racist policy for

1 the entire justice system, wherein the justice system as an
2 institution shoulders its responsibility of aggressive
3 leadership signalling to the country and to its personnel
4 not to practise racism and of its intention to eliminate
5 racial discrimination by sanctioning it swiftly when it
6 occurs.

7 In the interest of public education, this declaration
8 of anti-racist policy, I'm suggesting it should be the
9 object of a high-visibility campaign among staff and
10 public. Now I don't know if this is elsewhere, but right
11 now in Québec for quite awhile we've had a blitzing
12 campaign on alcohol at the wheel. You don't say that,
13 alcohol...drinking while driving. I'm translating in
14 French, drinking while driving, and what it says is
15 "l'alcool au volant c'est criminale" not...drinking and
16 driving is criminal. And you know you're driving along, in
17 the Metro you see it all over the place. What I'm saying
18 is we need aggressive publicity measures like that.

19 I'm also recommending that this prestigious commission
20 take cognizance formally of the daily existence of racism
21 in Canada. We all in this room, it's almost preaching to
22 the converted, but I think it has to be written down, it
23 has to be formalized. Therefore, I'm suggesting that the
24 Commission take cognizance formally of the daily existence
25 of racism in Canada and make strong recommendations for

1 legislative cognizance to follow and judicial notice of its
2 existence to be also taken. This would be a first step.
3 Further to that effect I'm also suggesting that symposiums,
4 seminars, training sessions be prepared for members of the
5 judiciary, Crown prosecutors, civil servants in the
6 justice system, on racism as a substantive issue, including
7 the history and legal history of racism and racism
8 awareness.

9 That law faculties, bar associations, government
10 institutions should reserve agenda space for the issue of
11 racism.

12 The police. I'm recommending that there be a
13 separation of the internal, what I call the internal
14 discipline of the police, wearing of a uniform, improper
15 wearing of a uniform, administrative regulations, from the
16 code of ethics or the déontologie, the behaviour, that the
17 code of conduct or the déontologie ban racism, contain a
18 disposition that bans racism and racist behaviour
19 explicitly and provides stiff penalties for any violation
20 and stiffer penalties for any other violation that is
21 tinged with racism.

22 I'm also recommending that police departments and
23 government should proactively set about reducing the wide
24 areas of discretion open to officers by issuing clear and
25 restrictive policies, rules, statutes and municipal

1 ordinances and department rules regarding the use of force.
2 By enunciating clear and strict procedures for reporting
3 firearms discharges.

4 Hiring. Much criteria in the justice system has not
5 been updated to meet the exigencies of a multi-racial and
6 diversely cultural country. These should be revised.
7 Anti-racist dispositions must and should be a job-related
8 standard requirement. Psychological screening should be
9 used as an integral part of any selection process and
10 should be done, performed by qualified experts in order to
11 eliminate those candidates with a pre-disposition towards
12 violence, instability and racial prejudice.

13 Training. More emphasis should be placed in the
14 training programs on the social service aspect. Racism
15 around this training, fire arms refresher courses that
16 include training on legal standards governing excess and
17 deadly force and international law. Special crisis
18 intervention and conflict management in situations of
19 racial overtones should also be provided for new recruits
20 and recycling for older ripened veterans. I shouldn't say
21 ripened. I think I was thinking in French.

22 Community participation, numbers do count.
23 Affirmative initiatives should be taken and must be taken
24 to involve black members of the Canadian public throughout
25 this country in the justice process as meaningful partners

1 and participants. Examples, civilian oversight of police
2 conduct, racism awareness training with black role models
3 as authority figures, legislation drafting, elaboration of
4 policy at the blueprint stage, jury duty, delivery of
5 services, gainful employment at all levels including the
6 upper echelons of decisionmaking.

7 We must stop being evasive. We must name the problem.
8 I am suggesting and I'm recommending most strongly that
9 this Commission so set the tone for this country and send a
10 message of change of mindset by recognizing and naming
11 racism from the body of evidence that has been adduced
12 before this Commission. Thank you.

13 CHAIR

14 Thank you very much, Mrs. Thornhill. Our next
15 panelist is Bromley Armstrong of the Labour Relations Board
16 of Ontario.

17 MR. BROMLEY ARMSTRONG

18 Mr. Chairman, distinguished commissioners, fellow
19 panelists, ladies and gentlemen. I should first tell you
20 that I am not on the first team. I am only a pinch hitter.
21 I was sitting on the bench and I got a call and asked if I
22 would participate so here I am. So I am on the second or
23 third team, but I'll try to do the best I can.

24 I am very pleased to be here, and my reasons for being
25 so happy to be here are because I've always looked on

MR. BROMLEY ARMSTRONG cont'd

1 Halifax as not only a second home, but a place that I bear
2 in mind as the home of blacks in Canada. And I'm always
3 happy to visit Nova Scotia and to visit Halifax. And I was
4 so pleased to hear from my friend and must congratulate you
5 publicly, Rocky, for a splendid presentation, taking us
6 back to our roots of the blacks in this country, because I
7 think one of the problems that we face in Canada is the
8 perception that we've all just got off the boat. But those
9 boats...we've been off the boat for so long and they keep
10 asking us "What island you're from?" and here's my young
11 son over here, he's from New Brunswick, that's the island.
12 And they keep asking, you know, "Where is your mother from
13 and your grandfather from?" and so forth. I've been here
14 long enough and I hope that I am now a Canadian.

15 Anyway we're looking at the administration of the
16 criminal justice system in Nova Scotia and beyond and what
17 can we do.

18 Mr. Commissioners, I say to you there are many Donald
19 Marshalls in the courts daily. They're here with us and
20 there's nothing they're going to do. We have to look at
21 the Marshalls and the other like him that have been served
22 an injustice and see how we can correct this.

23 I must comment on some of the things my colleague
24 Rocky mentioned this morning, because I see many
25 similarities of what's happening here and what happened,

MR. BROMLEY ARMSTRONG cont'd

1 from my knowledge, in other parts of this country,
2 particularly where I come from in Ontario.

3 He mentioned the history of blacks and Wink saying
4 "The history of blacks in Canada is depressing," and I
5 support that. The reason being that after more than three
6 hundred and sixty years of blacks in this country, we're
7 still fighting to be recognized and we're still powerless.

8 Rocky talked about the Graham Jarvis case and there
9 are some similarities. And I understand in the Graham
10 Jarvis case the lawyer who represented the man who did the
11 shooting made a statement, and I may not be right dead on
12 this quote but he said all he needed to do was to select a
13 red-neck jury and he was home free, his client would get
14 off.

15 Rocky talked about shootings and people having a
16 license to kill in Nova Scotia. Rocky, I'd say this to you
17 and to the audience, the people who have license to kill in
18 Toronto or in Ontario are the police. They carry the
19 license. So the similarities are there.

20 You talked about the coroner and the coroner's
21 inquest. We have the same thing in Toronto and in Ontario
22 where the coroner, they make the findings, they use their
23 discretion, it could be murder today, it could be suicide
24 tomorrow and your hands are tied.

25 Ten years ago I was in Nova Scotia and I came here

MR. BROMLEY ARMSTRONG cont'd

1 because one of the sons of Nova Scotia was gunned down by
2 the police in Toronto. Ten years ago. A young, healthy,
3 black man, surrounded by nine police who could not restrain
4 him without the weapon and he was sent to his maker. What
5 happened? Nothing. You can't charge the police. They have
6 a license to kill. And we're still ten years later
7 fighting the same battle, just recently the police in
8 Toronto visited a man in his third floor, a disabled person
9 who they shot some four months earlier, three burly
10 policemen who are there to serve and protect, went into a
11 man who is disabled, saw him eating his dinner, sitting on
12 his bed and the next thing you heard the man was killed.
13 The first reports he was holding hostages. And the only
14 hostages he was holding were those qualified people who
15 enforce the law who could not restrain a disabled man who
16 was having his supper, and that was his last meal. What's
17 happening in that case? We're still waiting to hear how
18 the investigation will come through.

19 We have been fighting, and I say to you in Nova
20 Scotia, our position is we should be asking that the police
21 do not investigate themselves. We need civilian
22 investigation, people who can give us the facts and not the
23 coverups.

24 Rocky talked about the RCMP recruiting blacks in Nova
25 Scotia. I didn't want to chuckle, Rocky, but I want to

MR. BROMLEY ARMSTRONG cont'd

1 bring you up to date. At present there is less than one
2 percent of the complement in the RCMP of minorities. And
3 they're now recruiting, we should know this. And the
4 projection is that within the next fifteen years they hope
5 to have a complement of three percent of the RCMP that will
6 be non-white. So let us hold our breaths for that one and
7 I hope I'm alive in fifteen years and I will guarantee the
8 complement will still be one or less than one percent.

9 I endorse, Rocky, and later on I'll talk about it,
10 your suggestions that more blacks should be appointed to
11 the bench and as Crown attorneys. But I leave that for
12 later on in my presentation.

13 I'd like to say to you, Commissioners, that in the
14 majority of cases blacks and natives when they come in
15 contact with the justice system, it reflects to us a
16 failure for the successful, the lack of adjustment into
17 this society that is alien to natives and to blacks, to
18 their existence and to their aspirations. The problems
19 that they discern are long there before they come in
20 contact with the criminal justice system. For example, the
21 people who leave the school system early, they're not
22 motivated for any educational training because somewhere
23 along the line they lose that drive. In the cases of
24 blacks, I can tell you, young blacks feel there is no
25 future, so why am I in school? They see very few teachers

MR. BROMLEY ARMSTRONG cont'd

1 who look like them. They see very few guidance counsellors
2 that they can relate to. Teachers will tell them, as I was
3 told when I first came to Canada, blacks were told, why
4 have an education? If you're a black man, you're going to
5 be a porter. If you're a woman, you're going to be a
6 domestic in some Canadian household, so they say, what the
7 heck, we don't need education, so we drop out along the
8 way. It's worse than that.

9 We see developing more and more young blacks getting
10 involved with the law, and normally the first contact they
11 have, it could be for shoplifting. It could be, if you're
12 an adult, for traffic violations. It could be for creating
13 a disturbance because the place I come from we talk very
14 loud. And if two or three are gathered in the street
15 talking about a cricket game, I'm sure that you're going to
16 attract the police because somebody is going to say when
17 we're laughing and talking and somebody will think that we
18 must be crazy, these guys are fighting, but they don't know
19 we are enjoying ourselves. Tom Stroff just made a hundred
20 in Australia, oh, God, what a great day this is for us.
21 Police come, "What are you doing in the sidewalk? Why are
22 you guys fighting? Are you planning to rob the store next
23 door or something like that?" Because if two or three
24 black people are gathered any place, it's got to be a
25 conspiracy.

MR. BROMLEY ARMSTRONG cont'd

1 I've heard of a story of a young black man who was
2 pulled out of a car and charged for being drunk and
3 disorderly. But that's all right, I understand these
4 things happen, because you can sit in a car and be
5 disorderly talking to yourself. So it's nothing new.

6 And then when you get before the courts we find
7 sometimes that in the court system it's no better because
8 the system is just like the school, lily white. The poor
9 Judge up top there don't understand the culture some of us
10 come from and he perceives us to just come off the banana
11 boat also. The Crown Attorney, "What the heck you doing
12 here? You should be back in the bush where you come from
13 running around barefooted chasing snakes."

14 So you get into a problem. You depend on Legal Aid
15 lawyer or somebody who is going to tell you about the legal
16 system and sometime the people that are trying to tell and
17 to direct, because of lack of education, lack of
18 understanding of our system, don't know the difference
19 between pleading guilty or not guilty and don't know that
20 the consequences could be a sentence in jail.

21 I have a problem with the discretionary powers that
22 the police has, the Justice of the Peace, the Crown, the
23 Judges, these discretionary powers. What we find is a
24 policeman stops you for traffic violation or perceived you
25 did something, whether you do it or not. Because I don't

MR. BROMLEY ARMSTRONG cont'd

1 know if you know I understand, and I should tell you this,
2 Rocky, for your information, that the lawyer who said that
3 he needed to have a red-neck jury to get his client off,
4 that wouldn't happen in Ontario. They're too
5 sophisticated. So they wouldn't say things like that.
6 They're educated very well in Ontario. They know what not
7 to say so they won't get into trouble. They still do that
8 in Nova Scotia, so you got to educate the people here.

9 But a policeman will stop you for a traffic violation,
10 and especially if you look prosperous, you know, dressed up
11 in your three-piece suit or something like that. He's
12 going to figure that you must be a pimp because you're
13 driving a big limousine when they pull you over. "What's
14 your occupation?" What has that got to do with your
15 traffic, I don't know. You must be a pimp. You could be a
16 lawyer, but you got to be a legal pimp. Or you could be a
17 medical pimp too, because they come in all kind, you know,
18 different professions. If you're nicely dressed in a fur
19 coat, and you're a lady, you got to be a prostitute,
20 because you can't...wearing that kind of garment, you know,
21 you can't have some kind of special dress going looking so
22 nice. Or you look like somebody that just picked
23 somebody's pocket in a hotel. We get those kinds too. And
24 then you get them into this police station and they're
25 there all night and they find out that the lady who picked

MR. BROMLEY ARMSTRONG cont'd

1 the pocket in the hotel she was six foot five, and the one
2 they picked up was five foot six. So that's...those are
3 the things that we find in the justice system.

4 And then they lay so many charges. If they pick you
5 up for shoplifting maybe they will... you might have picked
6 up lipstick or whatever else and they make sure that they
7 lay enough charges on you, and before the cop is done, you
8 may be charged also for resisting arrest and assaulting the
9 police. So when he gets there to lay the charge, something
10 is going to stick when you get before the Judge, because he
11 has such a long list of charges against you that when they
12 start cutting it down with the discretion of the Crown, he
13 says, "Well, let's take this off and that off and leave
14 this one on and the other one one," you're glad to say,
15 "Guilty, sir. Put me away."

16 We have to look at the laws and the legislatures.
17 We've got to look at the people we elect to our Houses of
18 Commons, the people who make these laws. And it is in our
19 hands to start to be serious about our political
20 affiliations and what we do to get some people that look
21 like us in the Houses of Commons. Because we need to
22 change the system of appointment to the bench, as Crown
23 Attorneys and police boards and commissions. We need to
24 change those systems.

25 We need to take a very good look at the Legal Aid

MR. BROMLEY ARMSTRONG cont'd

1 system. Do they do justice to the people who really need
2 them? Because of the economic position of blacks and
3 natives they find themselves in a position where they can't
4 hire good legal counsel and they have to depend on the
5 system to be able to provide the legal requirements that
6 they need. And when you're poor, sometimes you get very
7 poor advice and getting very poor advice leads you to
8 confinement because a number of things happen.

9 We have to look at our courts and our courts, as well
10 as our police departments, should reflect the community in
11 which they serve. We have been fighting in Ontario to have
12 that reflection. Things are changing. We've been able to
13 change the police departments and they are starting
14 recruiting. And Toronto prides itself that it has the
15 highest complement of non-whites in any police force in
16 Canada and of 5,500 police constables in Metro Toronto we
17 have a grand total of non-whites of 118, the best of any
18 place in Canada. So I won't work out the percentage, you
19 have to do that, do your homework for yourself later. But
20 that's the best. So we're moving.

21 We have to look at the court system from the clerk of
22 the court right up to the bench. They have to have some
23 empathy, some understanding that when they see some poor
24 person that looked like me that come before them they think
25 I just got back from Florida because I have a sun tan is

MR. BROMLEY ARMSTRONG cont'd

1 not so. My sun tan is permanent and I didn't go to Florida
2 to get it. And they say, "What the hell you doing here?
3 You don't look like all the rest of the people around
4 here." You know, these minorities coming here and giving
5 us all this trouble. Look at all the money the taxpayers
6 are paying for them and they don't realize I'm a taxpayer
7 too. Because I've been paying some of that money to keep
8 the judge up there on the bench. And the guy is telling
9 me, you know, I come here and give them all these problems.
10 I've been paying taxes for over forty years, God, I should
11 get a refund.

12 What I see is can natives and blacks cope with the
13 bureaucracy of the court system, the legal justice system?
14 Do they understand what is happening around them? Do they
15 understand our system, why they are there and the things
16 they should be able to do? I don't think they do, and I
17 say to you...I ask you this question. Do you feel that
18 blacks and natives are treated fairly before the law? I
19 say to you, "No." I don't think they're treated fairly
20 before the law. And I'll give you an example. I talked
21 to you about the discretionary powers that they have. A
22 clip from the newspaper just recently, a little clipping
23 before I came, of a young black man who was driving a nice
24 expensive sports car. He had this car for two years and he
25 had the windows tinted. For two years he had no problem.

MR. BROMLEY ARMSTRONG cont'd

1 Suddenly a cop in his zeal to show how he can administer
2 the law pulled him over and gave him a ticket. The windows
3 are too dark. I don't know if it was the window or the man
4 in the car was too dark but he got a ticket, and he finally
5 went to court and he was fined \$40. That man happened to
6 be one of the premier athletes of this country, the high
7 jumper Milt Hardy. And he has finally come to the
8 conclusion, "I wonder if it's because I am black why they
9 gave me this ticket and I got \$40." And he said to myself
10 "I've had this for four years and everybody say it was
11 fine, suddenly I'm getting a ticket for having my windows
12 too black." That's one case.

13 There's another case of discretion here. You've heard
14 about the young offenders. If you're under eighteen and
15 you do anything, they can't tell your name. We have a
16 young offender in Toronto who committed murder, killed
17 three people, a mother, father and a child. His name can't
18 be disclosed. He's white, a young offender, can't disclose
19 it. Then we have a little young black who is sixteen years
20 old who discharged a firearm into the ground, the bullet
21 ricocheted and jumped up and hit a young fellow in his
22 arm. He is armed and dangerous and wanted by the police
23 and his pictures appears in the paper and his name appears
24 in the paper because you know what colour he is. He ain't
25 white and he's dangerous. But he didn't murder anybody.

MR. BROMLEY ARMSTRONG cont'd

1 But he discharged a firearm. So there's a discretion again
2 that we talk about with no equality in the law for people
3 that look like me or natives. So I think we need to look
4 at those things.

5 Mr. Commissioners, I say to you discretionary powers
6 need to be looked at and I am suggesting you a couple of
7 suggestions. I am suggesting that we need, first...before
8 I give you my suggestions I want to tell you something else
9 about my city I come out of. I have a letter here that was
10 issued and just to show you how the justice system works.
11 I have a letter here that was put out in a division in
12 Metro Toronto warning storekeepers about being on
13 surveillance for people who may come in and shoplift
14 because there have been a rash of break-ins at night. And
15 this letter comes from a division who tell the storekeepers
16 to be on the lookout for people who come into this nice
17 expensive stores and browse around. If you see any
18 suspects browsing, make a note of it. Try to get their
19 description, a nice drawing, and if you can get a car
20 license number, but be very discreet, get a license number
21 and all these things. And they went on and went on to say,
22 and then it says, "The suspects in these entries are
23 usually young blacks." Okay. They're usually young
24 blacks. So you can't now if you're black go into any of
25 these expensive stores. You don't dare browse. You better

MR. BROMLEY ARMSTRONG cont'd

1 not start taking off some coats and putting them on and
2 trying to see if they fit. Put on a hat and see if you
3 look good in it. Because they're sure going to be a
4 suspect and they're going to take a license number. And
5 we've had this happen. We've had decent people go into
6 stores just looking around, not ready to buy, I may be
7 looking for something for my wife for her birthday or for
8 my anniversary or something like, I don't dare go in
9 looking and browsing. You better go in and buy something
10 quick or they're be in trouble, because the cops are going
11 to be after you at nights. You know, somebody is going to
12 say, "Hey, this guy come in, he's brown, he had on a three-
13 piece suit and it was gray or something like that and he
14 was five feet ten and 180 pounds like me," so you got to be
15 careful.

16 Anyway my suggestions to the commissioners. I think
17 that what you need, (a) a mandatory affirmative action
18 program with goals and timetables to recruit and to place
19 in every facet of the legal justice system starting with
20 the police, who enforce the laws, the Justice of the Peace,
21 the Crown, the clerks in the court, right up to the bench,
22 the Judges on the bench. I also feel that the
23 discretionary powers that are given to the people who use
24 them should be interpreted a little bit more leniently to
25 accommodate the people who are now using the system most.

MR. BROMLEY ARMSTRONG cont'd

1 And most people who are using the system most, I think, are
2 natives and blacks.

3 There should be a review of the Legal Aid system to
4 provide competent legal services and advice to ensure that
5 the people who need these services that their rights are
6 not violated.

7 I'm also suggesting that first-time offenders be
8 referred to behavioural to...for behavioural evaluations
9 and to treatment centres instead of putting them behind
10 bars.

11 And one of the things I think that the people here in
12 Nova Scotia and other parts of the country should be
13 looking for, there should be funds made available to the
14 native and black organizations who can monitor the courts
15 and the legal justice system.

16 I strongly recommend training programs throughout the
17 legal justice system, sensitization program for the police,
18 cultural behaviour, for the Justice of the Peace, the
19 Crown, the clerks and all the people involved in the court
20 system. It is very, very important because they need to be
21 able to relate to the people who come before them
22 regularly.

23 And finally, the question of a civilian complaints
24 commission to investigate and to discipline police in every
25 jurisdiction in this country where police are subject to

MR. BROMLEY ARMSTRONG cont'd

1 misconduct. And I say this, we do have something in place
2 in Toronto and I can say to you it is like a baby without
3 teeth, but at least we have the baby and we can develop the
4 teeth as we go along.

5 Ladies and gentlemen, thank you very much.

6 CHAIR

7 Well, thank you, sir, very much. Our final panelist
8 this morning is Dan McIntyre, Race Relations Commissioner
9 of the Province of Ontario.

10 MR. DAN MacINTYRE

11 Ladies and gentlemen, distinguished panelists, Father
12 Bromley Armstrong, Commissioners, it is indeed a pleasure
13 for me to be here today, but I must say, Bromley, if you
14 were sort of the second string, I feel like I'm the clean-
15 up batter in this particular thing. I must congratulate
16 and commend my colleagues up here for the fine
17 presentations and I'm not sure if I have whole lot more to
18 say after they've covered in such detail.

19 I do want to make one comment though as an aside.
20 Rocky, you were talking about the kind of news coverage
21 vis-a-vis the dinner that was put on the other night. I
22 missed that dinner but in fairness and for the record I did
23 have a bacon-tomato sandwich last night and I was thinking
24 about whether, in fact, I should bill the Commission for
25 that or not. But if there's going to be a problem from the

MR. DAN MACINTYRE cont'd

1 Attorney General's office, I want to go on record that I'll
2 pay for it myself out of my own pocket.

3 Ladies and gentleman, you know, I come from this part
4 of the country. I was born and brought up in Saint John,
5 New Brunswick, and I can relate very well to some of the
6 things that have been said here about the history of blacks
7 in this part of the country and so on, and I went to school
8 at Dalhousie University for a couple of years in Halifax.
9 And I guess, you know, one of the things that is always
10 amazes me is where you find black settlements and where you
11 find people living in Nova Scotia. The same thing is true
12 in New Brunswick too. We have a kind of a saying that says
13 that where the pavement stops, that's where the black
14 community starts.

15 And I was in Saint John a couple of months ago making
16 a presentation and so on, and I commented to some of the
17 people that were there, including politicians and other
18 esteemed leaders of the community, and I said two or three
19 years ago I was up in Elm Hill where my parents were from
20 in New Brunswick, which is a small black community just
21 outside of Fredericton, Gagetown. And I said when I went
22 up there I noticed that as I drove down the road and I was
23 visiting and chatting with people that the road is a dirt
24 road, total dirt road, it's very poor community and so on.
25 And then when I got to the other end of the road, there was

1 this gap and then all of a sudden the road became paved.
2 And then I looked over and there were these prosperous kind
3 of farm houses on the end where the white people lived.
4 And I said that somebody has to deliberately sort of say in
5 the Department of Transport, "Guys or gals, " as the case
6 may be, "I want you to go out there and I want you to pave
7 the part of the road where the white folks live and I want
8 to make sure that you don't pave the part of the road where
9 the black folks live." And I think that that kind of
10 experience in growing up in the Maritimes, in New Brunswick
11 or Nova Scotia or whatever really speaks to the issue that
12 I think that this Commission has taken the courage to open
13 up for public debate and discussion, and that is the issue
14 of racism in our institutions, in all facets of our life in
15 Canada. We don't like to think of ourselves as Canadians,
16 as Nova Scotians, as New Brunswickans, as Ontarians, as
17 Quebecers or wherever as being racist generally. We think
18 that is something that the South Africans have to deal
19 with, that's something that goes on Britain, that goes on
20 in France, or in southern United States, but not in our own
21 backyard. And I think that we deserve a lot of credit here
22 in Nova Scotia for exposing that myth for what it is and
23 that is a myth that racism does exist, and it exists
24 everywhere in Canada. It's not something that is just a
25 historical legacy. It is something that exists here today.

1 So I think that that...I'd just like to start off on that
2 note and commend the Commission for that.

3 I'm not going to go through a long list of the
4 problems and so on in the justice system, but I would like
5 to touch on it a little bit, but not only in terms of the
6 justice system but in terms of other areas in which black
7 people come into contact, not only black people, there's
8 been references made to the plight and the situation
9 affecting native people and in other parts of Canada other
10 visible minorities have to deal with that in the school
11 system, in the housing, in social services, in practically
12 all facets of our life.

13 I want to talk to you a little bit about what I think
14 needs to happen in terms of sustaining and continuing the
15 work that's been started here in Nova Scotia to make sure
16 that we don't lose the focus on this issue and this problem
17 of racism. And I'd also like to talk a little bit about
18 what we're trying to do in Ontario so that, one, you can
19 perhaps learn from our mistakes and there may be some
20 things that you can pick up as ideas and where to go from
21 there.

22 Let me start off by just very quickly going down the
23 review of some of the things that I've picked up in the
24 last couple of days and from Wilson Head's study on the
25 criminal justice system in Nova Scotia and so on, some of

1 the problems.

2 Police. Breakdown in terms of police community
3 relations. Police see themselves in a role in which they
4 can't trust or have confidence in the black community, and
5 the black community obviously in terms of the experience
6 that they have with the police can't see themselves in
7 dealing with them in other way except a confrontation.

8 Inadequate representation of blacks on the police
9 force. Inadequate representation of blacks on the police
10 force. Bromley and other speakers have talked about the
11 need for affirmative action programs and so on, and it's
12 kind of ironic. I was down here in June for a part of the
13 Inquiry and as I went to my hotel room I noticed that there
14 were a number of these police officers that were down, but
15 they didn't have the metropolitan Halifax badges or
16 uniforms. And I looked a little closer and I found out
17 that they were Toronto police that were down here on an
18 affirmative action program to try to recruit blacks from
19 Nova Scotia to work in Toronto. As if we don't have enough
20 blacks in our own backyard to recruit there. But anyway
21 somewhat ironic that that's going on in Toronto, whereas I
22 kept saying to them afterwards, I said, "You know, in
23 Halifax they have some problems in terms of representation
24 on their police force and don't be going down there and
25 trying to recruit the blacks to go up here, they need them

MR. DAN MACINTYRE cont'd

1 down there in Halifax you know."

2 The third thing is in terms of police misconduct and
3 differential treatment based on race. Bromley has talked
4 about some of the examples, Esmeralda has, Rocky has, I
5 don't need to go through the particular issues related to
6 that. We know that exists, we know it's a problem.

7 In terms of the courts, again, inadequate
8 representation of blacks in the court system as judges,
9 lawyers, Crown prosecutors, et cetera. Differential
10 treatment in the laying of charges and sentencing. There
11 has been some evidence disclosed that that may, in fact, be
12 a very serious problem here in Nova Scotia and elsewhere.

13 Inadequate legal representation of blacks in the court
14 system. Lack of accountability. If there are problems
15 that are occurring in the justice system, in the court
16 system and so on, who is made accountable for correcting
17 those particular problems?

18 Similarly in the corrections end of the criminal
19 justice system. Differential treatment of black inmates,
20 native inmates in institutions, harassment, brutality.
21 Inadequate support of rehabilitative services for blacks.
22 Inadequate representations of blacks on staff. Again, lack
23 of accountability.

24 If we look at barriers to blacks in related areas, if
25 we look at the education system, because oftentimes we find

1 that blacks who are most vulnerable to having contact with
2 the police and so on are also those blacks that have been
3 for one reason or another are not in the school system, are
4 not connected in the school system. They're young and
5 they've dropped out. And the one reason that occurs in
6 Toronto and what I would consider to be almost epidemic
7 proportions, and I know when I was living here in Nova
8 Scotia and in New Brunswick there was a similar problem,
9 and it's called streaming, in which black kids are streamed
10 into certain kinds of programs that oftentimes leads to
11 dropping out or at least doesn't lead to a job at the end
12 of the rainbow.

13 Let me give you an example of a statistic that I found
14 in Toronto, that's occurring in the Ontario school system.
15 There are basically three forms of streaming that goes on
16 in the Toronto school system. One has to do with basic
17 programs, a second is called general programs and a third
18 is advanced programs. The advanced programs is kind of
19 academically slotted in which the drop-out rate in high
20 school is about thirteen to fifteen percent of kids who
21 enter in the advanced program drop out of school in high
22 school. For the general and basic levels the drop-out rate
23 by the time they get to high school or in high school is
24 anywhere from sixty to seventy percent of the kids that go
25 into the basic and general schools according to a study

1 conducted by George Radawanski in 1987 of the Ontario
2 School system, sixty to seventy percent drop out who go
3 into the general and basic level courses. Guess where
4 black kids get streamed? In Ontario they get streamed into
5 those basic and general level courses which, in fact,
6 sentence them to a life of unemployment, underemployment
7 and possible conflict with the law in the criminal justice
8 system.

9 If we look at the employment situation in Canada. We
10 talked about the injustices historically that have gone on
11 that have been perpetrated against native people, about
12 blacks, about visible minorities in general, and we think
13 that we've come a long way in that regard, because after
14 all we've had human rights commissions and human rights
15 codes and legislations in place in Ontario for twenty-five
16 years, twenty-six years, in Nova Scotia, in New Brunswick,
17 *Canadian Human Rights Act* and so on.

18 Recently I saw a study, a survey conducted by the
19 Recruiters Guild of Canada, 1988 survey of executive
20 managers, employment agencies, those people who are
21 involved in hiring decisions of recruitment of people from
22 all sorts of occupations right across the country. There
23 were 672 respondents in this survey. Of the 672
24 respondents in 1988, ninety-four percent admitted that they
25 had discriminated against people in the selection or

1 recruitment of people on the basis of colour. 1988,
2 ninety-four percent of 672 people that responded to the
3 survey. That I think in 1988 is a remarkable admission
4 that something is seriously wrong in the system in terms of
5 combating things that we call in polite terms, systemic
6 discrimination—in not so polite terms—racism.

7 Housing, we could go on and talk about the problems in
8 terms of adequate housing and these kind of things, the
9 social services area.

10 But let me get to my point. What do I think is
11 needed? I'm not going to talk about the need for an active
12 advocacy or community mobilization that keep a watch dog,
13 and to lobby and to pressure for changes that are obviously
14 needed. That goes without saying. I fully applaud what
15 Bromley said about the need for funding and for supports to
16 the community to be able to ensure that the changes that
17 are needed in this system do occur. Without that, anything
18 that I say from now on is not likely to happen, to be quite
19 frank with you. But what I am going to say if we assume
20 that that is going to happen, or that is happening here in
21 Nova Scotia, in other parts of Canada, let me say that I
22 think that the Nova Scotia Government's commitment and
23 responsibilities to eliminate inequalities based on race in
24 all social economic and cultural policy areas, including
25 the criminal justice system has to be very clearly stated

1 and articulated in some sort of policy format. Now I'm
2 going to give you an example of one.

3 In Ontario we have what's called an Ontario Policy on
4 Race Relations. Let me read a couple of excerpts in this
5 thing, and it's not important because of what it says, but
6 it's important in terms of an acknowledgement that racism
7 is an issue in Ontario and it's important in terms of a
8 reference document by which the community and other
9 advocates can use to say, "Okay, what are you doing about
10 this? Where is your implementation in terms of dealing
11 with these issues?" It says in this document in part,

12 The government will take an active role in
13 the elimination of all racial
14 discrimination including those policies and
15 practises, which while not intentionally
16 discriminatory, have a discriminatory
17 effect. To this end the government is
18 committed to: (a) employment equity
19 policies and practises within the public
20 service and throughout Ontario that ensure
21 equality of treatment and opportunity
22 through affirmative strategies. (b)
23 government services to the public that
24 reflect the particular needs and
25 perspectives of racial minorities. (c) A
positive and balanced portrayal of racial
minorities in the government's
communications and advertisements. (d)...

22 Take note Nova Scotia government.

23 Appointments to agencies, boards and
24 commissions that ensure these bodies fully
25 reflect the racial diversity of Ontario.

1 I just might add that with us today, the last couple of
2 days is the first black commissioner on a police commission
3 in Ontario, the Metropolitan Toronto Police Force, Roy
4 Williams, who is sitting over there and he's on that
5 particular commission because of people like Bromley
6 Armstrong, because of people like Wilson Head and other
7 very active people in the community that have been lobbying
8 for this kind of change for many, many years.

9 It also goes on to say,

10 The government will also continue to attack
11 the overt manifestations of racism,

12 Uses that dirty word, racism,

13 ...and to this end declares that racism in
14 any form is not tolerated in Ontario; all
15 doctrines and practises of racial
superiority are scientifically false.

16 Et cetera, et cetera, et cetera. Now that's...that's a
17 piece of paper. That's a piece of paper but it's
18 something, in fact, that has an opportunity for you to get
19 into place in Nova Scotia or a piece of legislation or
20 whatever other kind of document or policy framework in
21 which you can build on as a first step.

22 The second thing in terms of what I would recommend to
23 the Commission to include in any report to the Nova Scotia
24 government, that any policy, document or framework clearly
25 defines the Nova Scotia government's commitment and

1 responsibilities to reduce and eliminate racial tensions
2 and conflict. Let me say to you there is a development
3 that's occurring in Ontario, that's a spillover from the
4 States, which is a spillover from Britain and France and
5 Germany of a youth movement called skinheads. And these
6 skinheads, there are the benign, innocuous type of
7 skinheads and then there are the racist, fascist, white
8 supremacist skinheads that are growing in United States and
9 in some parts of Canada exponentially. That means that
10 where there were two or three yesterday, there are thirty
11 or forty today. And it takes on a particular insidious
12 type of manifestation in the sense that it has a whole
13 culture. It has music. It has a certain kind of
14 belongingness and so on. And it is hooked into the white
15 area supremacy groups in the United States and the Ku Klux
16 Klan and in Howard McCurdy, our esteemed Member of
17 Parliament from Windsor, he knows that in fact recently
18 they announced and had television coverage that they're
19 opening up headquarters, can you believe it, skinheads
20 having headquarters, in Windsor, Ontario, to promote the
21 supremacy of the white race. And declaring and issuing
22 blood oaths that they were committed to making sure that
23 Canada would be white and preserved for whites only. Now
24 what is so disturbing about that is because it also has
25 roots and is developing a certain amount of attraction for

1 young people in a number of centres in Ontario, as I
2 understand also in Montreal and in Vancouver and I don't
3 know where things are in Halifax. But you heard it here
4 first if you didn't hear before that this is a problem that
5 you want to be aware of. You might also pick up the
6 Rolling Stone which has an article on skinheads. I saw it
7 in the news stand today.

8 Third thing, that the Ontario government define this
9 responsibility for putting together a policy framework and
10 for the implementation of a policy framework as being
11 government wide, not the responsibility of one agency such
12 as the Human Rights Commission or one special office or
13 whatever, but that the Attorney General's Department, that
14 the Solicitor General's Department, that the education
15 department, that virtually every department in Nova Scotia
16 government machinery and all their agencies, boards, and
17 Commissions for which they are responsible for have a
18 responsibility, a duty and will be held accountable for
19 what they do in terms of improving the racial equality
20 index, if you will, in Nova Scotia and producing and
21 eliminating any racial conflict or tensions within their
22 jurisdictions. The fourth thing I would recommend for the
23 Commission to consider is the establishment of a special
24 office and a Minister responsible for race relations or for
25 anti-racism that co-ordinates and monitors the government-

1 wide implementation of its race relations policy and
2 reports annually in some public format on the government
3 initiatives and progress in terms of implementing any
4 particular strategy.

5 Let me talk to you a little bit, ladies and gentlemen,
6 about what we're trying to do in Ontario along those lines
7 and also at the beginning stages what they're trying to do
8 at the federal level in this regard.

9 In Ontario, as I mentioned, we do have an Ontario
10 policy on race relations. We have a Minister of
11 Citizenship whom I report to who is responsible for race
12 relations, multiculturalism and human rights. There is a
13 cabinet committee on race relations, which is comprised of
14 about a dozen Cabinet Ministers, including all
15 representatives from the justice department...criminal
16 justice field, education and so on, which my Minister
17 chairs. There is a \$7.7-million fund available to
18 government ministries to implement what's called a
19 multiculturalism strategy. We've got some fine tuning on
20 that in terms of moving it in the more, the harder areas of
21 racism and anti-racism. But that's available in terms of
22 implementation. And there's also the organization which I
23 lead, the race relations directorate which, among other
24 things, is charged with the responsibility of coordinating
25 and monitoring the implementation of this race relations

1 policy.

2 At the federal level they have a Minister of
3 Multiculturalism. There is a *Multiculturalism Act* that was
4 passed in 1988 which includes reference to racism and race
5 relations and requires an annual report to go to
6 Parliament, as I understand, on any progress vis-a-vis what
7 the government's initiatives are. To date they have no
8 significant incentive fund like \$7.7-million. They have a
9 couple of hundred thousand dollars for departmental
10 initiatives in race relations and multiculturalism and they
11 have formed a new Department of Multiculturalism.

12 Let me move from the sort of the abstract and the
13 conceptual area to what this may mean in terms of programs
14 to deal with racism, to deal with race relations in various
15 areas. Bromley has mentioned in the criminal justice system
16 that there is a public complaints commissioner's office
17 established which is a civilian review agency of alleged
18 police misconduct. I have their annual report here which I
19 would submit as Exhibit "A" for the commissioners if they'd
20 like to have a copy. The scope of the mandate in the
21 jurisdiction of the civilian review agency is only in Metro
22 Toronto. It's not as strong as a lot of people would like
23 it to be in terms of it doesn't have the powers to initiate
24 investigation of complaints or problems of police
25 misconduct. It's only in Toronto and there is some concern

1 that in terms of the first level of investigation, that's
2 an internal investigation by a police department rather
3 than having the first level investigation being the
4 civilian review agency. But as Bromley said, it's a
5 start.

6 In Metro Toronto there's a council on race relations
7 and policing which is funded by the Attorney General to
8 bring together representatives of police and community
9 leaders to address race relations issues in terms of
10 relations between the community and the police, what's
11 going wrong, what needs to be done and so on.

12 The ministries of Solicitor General, the Attorney
13 General and corrections are represented on the cabinet
14 committee on race relations and are required to develop one
15 to three-year race relations action plans to address
16 barriers to fair treatments of native people and racial
17 minorities in the criminal justice system.

18 In the municipalities currently there are fifteen
19 municipal race relations committees in Ontario to address
20 issues of equality and racial tensions in conflict. I made
21 mention of this Windsor opening of the skinhead's office.
22 The Windsor mayor was contacted by our office and
23 encouraged to hold a special meeting of the Windsor race
24 relations committee, which he did. And out of that meeting
25 they, in fact, issued a public statement condemning the

1 activities of the skinhead's group, had it broadcast on the
2 radio, alerted the school boards and universities and
3 colleges to be aware of these kinds of activities and that
4 they should put into place some kind of educational
5 programs to deal with this kind of stuff. These committees
6 have different models of representation in terms of
7 reference, some of them predominantly community
8 representatives, others have a blend of community,
9 municipal politicians and institutions such as the police
10 on these race relations committees.

11 In the educational area, currently there are fifteen
12 to twenty school boards which have race relations policies
13 addressing issues such as streaming, curriculum, teacher
14 training, handling racial incidents, school community
15 relations and employment barriers to minorities and native
16 people. That's fifteen to twenty out of about a hundred
17 and eight-five school boards in Ontario.

18 The Ministry of Education is currently developing a
19 model race relations policy and guidelines for all school
20 boards in Ontario in addition to a race relations action
21 plan for the cabinet committee on race relations, including
22 addressing the issues of concern to the native community in
23 terms of what's happening in the school system. In
24 addition, a few colleges and universities have or are
25 developing race relations policies and the Ministry of

1 Colleges and Universities is also required to develop a
2 race relations action plan.

3 In the area of public housing, the Metro Toronto
4 Housing Authority is the third largest housing authority in
5 North America. It has about 125,000 residents in its
6 domain, in its jurisdiction, which, if you compare it to
7 the population of Halifax, that would mean, I don't know,
8 eighty, ninety percent of the population of Halifax and
9 Dartmouth would be housed in public housing on an
10 equivalent basis. The public housing authority now has a
11 director of race relations and a race relations program in
12 place in terms of training of all staff, in terms of
13 handling racial incidents and so on, and that initiative,
14 frankly, is a direct result of the commitment from and
15 initiative of a cabinet committee on race relations, in
16 which a review of the public housing and race relations was
17 conducted and out of that came recommendations to the
18 cabinet committee on race relations to establish this
19 particular program in Metro Toronto Housing Authority. Now
20 the Ministry of Housing is developing a race relations
21 action plan for all public housing authorities in Ontario.

22 In the employment equity area we're not as great as
23 what the feds are doing in terms of having a legislation in
24 place, but the Ontario Public Service does have an
25 employment equity program for women, racial minorities,

1 native people, disabled persons and francophones. Goals
2 and timetables for each Ministry are to commence in
3 September, 1989, and there is a policy committee that's
4 working on guidelines or policy options for employment
5 equity in the broader public and private sectors.

6 I might add that the leading edge in terms of lobbying
7 for change and pressuring the government for change in the
8 area of employment equity has not been what we had thought
9 initially would be on the leading edge, and that is women's
10 groups or mainstream women's groups. It has not been so
11 much the disabled community, it has not been a number of
12 other potential target groups. It has, in fact, been the
13 visible minority community that have been lobbying for the
14 last couple of years for employment equity action by the
15 Ontario Government. And point of fact, aside from some
16 brother or, sorry, I should say Father Armstrong and
17 Brother Wilson and Roy Williams and other folks, the
18 visible Minority Women's Coalition has been probably the
19 most effective in terms of presenting their concerns about
20 employment equity in Ontario and Toronto and taken the
21 leadership in that role. So I think a number of us men can
22 learn something about the effectiveness of that kind of a
23 movement.

24 In terms of what's happening now with my particular
25 organization, Race Relations Directorate used to be the

1 Race Relations Division of the Ontario Human Rights
2 Commission and was headed by me as Commissioner for race
3 relations. Last year was reorganized as a Race Relations
4 Directorate and now I'm still ahead of it, but I have a
5 different title called executive coordinator. We have a
6 budget of about \$2.7-million of which three-quarters of a
7 million dollars was recently allocated through the cabinet
8 committee on race relations. We also administer, and this
9 was recently announced about a month ago, a \$500,000 race
10 relations project fund for community groups or native
11 organizations for municipalities and school boards to
12 launch race relations training, public education programs,
13 research and other kinds of activities.

14 The mandate of the Race Relations Directory is the
15 following. We develop and coordinate and monitor
16 government-wide policies and programs of race relations of
17 virtually all the ministries in the Ontario government, or
18 at least we're trying to do that. We monitor racial
19 tensions and we provide...it was interesting to hear in the
20 native presentations yesterday about the models of
21 mediation and conciliation in terms of dealing with
22 disputes. Well, we've tried to apply that particular motto
23 in terms of mediation and volunteer dispute resolution in
24 racial incidents such as conflicts between police and
25 community, where there aren't any specific allegations of a

1 criminal nature or whatever against the police, but there
2 have been some concerns about police harassment, the kind
3 of services or lack of services available to black
4 communities and other visible minority communities and we
5 spend a lot of time in dealing with those kinds of issues,
6 and well as dealing with the native and non-native issues
7 that are emerging in a great deal, in the north in
8 particular, as the backlash against native people seems to
9 be growing, I should say, as they assert their rights for
10 land entitlements and other kinds of aboriginal
11 entitlements.

12 We also provide advice and assistance to
13 municipalities, school boards, police, corrections, et
14 cetera, on the development of programs and policies.

15 We conduct public education and training programs. I
16 should say that in the area of training programs one word
17 of caution, there's a lot of talk about the need for
18 training. I recently saw a study conducted by a man, a
19 professor at UBC, Charles Ungerleider, who did a survey of
20 crosscultural, intercultural, multicultural, whatever
21 cultural, and race relations training in North America.
22 And he found and concluded in a study that forty-three
23 percent of this training not only did not have a positive
24 effect in terms of the participants, forty-three percent
25 had a negative impact. In fact, that it reinforced negative

1 stereotypes of a particular minority groups and so on and,
2 in fact, gave them or the individuals who participated more
3 ammunition or more cause or whatever, rationale, for
4 continuing on in their prejudicial and discriminatory
5 behaviour towards those particular groups.

6 So one of the things that we're trying to do is
7 develop...we've developed a first draft of a race relations
8 training manual and we hope to extract from that certain
9 guidelines so that we can assure that if there's training
10 that's going on, there is some parameters, there are some
11 evaluative mechanisms to ensure that the right kind of
12 training is going on rather than that forty-three percent
13 figure that I mentioned.

14 Finally we also have a lot of coordinating activities
15 that we have to do in terms of a number of these bodies and
16 so on that go on.

17 In closing, I guess, ladies and gentlemen, I want to
18 say that racism is a fact of life in contemporary society,
19 it's a part of our structure, it's a part of our
20 institutions, it's a part of our way of life and it's
21 evident in all aspects of our community institutions and
22 policy areas including the criminal justice system,
23 employment, education, housing, social services. I think
24 to effectively address this issue there is a need for a
25 partnership, there's a need for a will, there's a need for

1 resources among governments, community groups and various
2 key stakeholders such as unions, employees, et cetera.

3 I think I would suggest to the Commission that the
4 provincial government has a critical role to play to ensure
5 that, (1) its own house in order, and (2) to provide
6 leadership to other stakeholders. I think to assist in
7 reaching those two objections it is important that the Nova
8 Scotia government develop its own race relations or anti-
9 racism policy, put together an action plan for the
10 implementation of that policy, and ensure that there are
11 appropriate reporting mechanisms, evaluative mechanism
12 structures, offices or whatever in place to ensure that
13 this particular policy and these action plans do actually
14 succeed.

15 On that basis, ladies and gentlemen, I'll shut up and
16 leave it up to you. Thank you very much.

17 CHAIR

18 Well, thank you to Rocky Jones, Esmeralda Thornhill,
19 Bromley Armstrong and Dan McIntyre. We've had a really
20 excellent morning and I think we all are very grateful to
21 the panel. We will be adjourning in a moment for lunch and
22 lunch today is in the Halifax "A" room. Is that on this
23 floor? It's on this floor just down the hall. And then we
24 will reconvene in the workshops at 2:00 p.m..

25 And, of course, the workshops today are listed in

MR. THOMAS BERGER cont'd

1 your kit and they're not the same workshops or the same
2 workshop leaders as yesterday. Today Rocky Jones, Wayne
3 MacKay, Brent Cotter and Dan McIntyre will be leading the
4 workshops one to four, and in your booklet you will find
5 the workshop to which you have been designated and the
6 location of the workshop. We will then go to our workshops
7 at 2:00 p.m. We will come back here at 3:15 for coffee and
8 at 3:30 we will reconvene in plenary session. So we're
9 adjourned for lunch.

10 ADJOURNED - 12:35 p.m.

CHAIR

1 We have an hour and a quarter. And what I suggest we
2 do is that we hear from the rapporteurs from each workshop
3 and then we have a general discussion and then some
4 concluding remarks from our panelists. And that should
5 enable us to adjourn at 5 and to be able to look back on a
6 most useful day.

7 The four rapporteurs are Davies Bagambiire, Carolyn
8 Thomas, Dr. Wilson Head and Frank Edwards. And perhaps
9 they might come forward in that order. Can we start with
10 you, sir?

11 MR. BAGAMBIIRE

12 Thank you, Mr. Chairperson, members of the panel and
13 all the participants. I had the great privilege of being
14 rapporteur through workshop #2, chaired by the very able
15 Professor Wayne MacKay. And we also were lucky to have 21
16 participants take part in the discussion, Mr. Chairperson.
17 The discussion opened with a very challenging question from
18 the Chair, which really was to find out as to whether there
19 is significance in the fact that the panelists and the
20 speakers of today had taken a different approach from the
21 one taken by the panelists and speakers as we had them
22 yesterday. And, Mr. Chairman, I report that there were
23 different reactions to that challenging question. Some
24 members of the group felt that the difference in
25 methodology, or approaches, may have been due to the fact

MR. DAVIES BAGAMBIIRE cont'd.

1 that natives, particularly the Nova Scotian Indians, have
2 been isolated and, if you like, insulated on reserves,
3 unlike the blacks that have had to have direct day to day
4 contact with the criminal justice system in the province,
5 although the speaker pointed out very quickly that that
6 doesn't apply as a universal observation due to the fact
7 that certain native Indians live in urban centres, and,
8 therefore, are not very different from the majority of the
9 blacks.

10 Another participant observed that there was a strong
11 assertion of what was referred to as collective rights
12 among the natives, collective rights which have been
13 enshrined, of course, in the Constitution, whereas the
14 blacks appeared today to have been pushing for equality
15 within the system and reformation of that system. It was,
16 as well, observed and pointed out that there were several
17 years in which the concerns expressed yesterday and today
18 clearly overlapped and overlapped. It was pointed out, for
19 example, Mr. Chairman, that both speakers yesterday and
20 today have strongly suggested that there has to be
21 increased participation of both the native and the black
22 Nova Scotians in the composition of the various agencies of
23 the criminal justice system in the province, and, as well,
24 that the speakers on both occasions had, in fact, pointed
25 to the desire to reorganize the police forces and to create

1 a method whereby information would be free to be exchanged
2 between the police forces on the one hand and the black and
3 all native groups.

4 Having exchanged those views, Mr. Chairman, the group
5 agreed that the presentations that have been made before
6 the Commission clearly make it an acceptable fact that
7 racism exists in the society in Nova Scotia in general and
8 Canada in general, and, indeed, that racism exists in the
9 criminal justice system. That was the point that no one
10 contradicted.

11 And having arrived at that point, the question then
12 was how is the racism that exists in the criminal justice
13 system to be tackled? Mr. Chairman, the participants had
14 various suggestions in response to that question, some of
15 which, of course, have been heard this morning. The first
16 one was the appointment of minority judges to the bench, in
17 response to which someone questioned as to how this would
18 be useful and whether this would necessarily require that
19 black accused persons be, for example, tried by black
20 judges. The answer to that, by one of the discussants, was
21 to say that the appointment of black lawyers to the Bench
22 need not necessarily mean that all accused blacks appear
23 before their black brethren, but, rather, that such
24 appointments would serve several functions, including the
25 function of reeducating both the bureaucracy within the

MR. DAVIES BAGAMBIIRE cont'd.

1 criminal justice system, the clerks, for example, and
2 everyone else that is part of the components that go into
3 the system into realizing that black members of the Bench
4 would be as effective and as capable as the white members
5 of the Bench.

6 It was also pointed out by another discussant that, in
7 fact, appointments to the Bench of blacks would serve to
8 deter crime within the black communities in the sense that
9 experience has shown in the provinces such as Ontario that
10 black members of the Bench have, in fact, tended to hand
11 down much harsher sentences than white judges. That's a
12 good reason to appoint black judges, it was argued.

13 As a further solution to attacking the racism that
14 everyone agreed exists in the system it was suggested that
15 blacks and other minorities be empowered...or, rather, that
16 the disadvantaged minorities require what was referred to
17 as empowerment. And that's a very interesting and novel
18 concept, Mr. Chairman, which, according to the discussion,
19 meant allowing members of the minority groups to
20 participate in bodies that may be set up to investigate
21 complaints against any of the members of the various
22 agencies that constitute the criminal justice system, for
23 example, participation in bodies that may be set up to
24 investigate complaints against the police forces in
25 particular.

1 We then moved on to another suggested remedy, or
2 approach, which was the question of education of the
3 Canadian society in general. And this, of course, arises
4 out of the recognition that there is a complete lack of
5 understanding by the Canadian public at large of the
6 difficulties that have been expounded both this morning in
7 this forum and in our discussion, the existence of racism
8 both in the society in general and in the criminal justice
9 system. It was, therefore, argued that any other measures
10 may not be sufficient, measures such as appointment of
11 judges or participation in the police forces, if, indeed,
12 they are not accompanied by a massive program of re-
13 education of the general public, who, in turn, would bring
14 pressure to bear upon the politicians that would have to
15 implement whatever recommendations may be handed down by
16 this very august Commission. It was pointed out that the
17 Commission has the big responsibility in this respect, and
18 that the Commission ought to realize that their
19 recommendations are likely to have a major impact.

20 We then moved on to a further suggestion, by way of
21 response to the question of racism, which was the
22 suggestion of increased recruitment into the police forces.
23 We also had an additional emphasis on the necessity for
24 multi-cultural education, both in the police forces and in
25 the legal system as a whole. And it was pointed out by one

MR. DAVIES BAGAMBIIRE cont'd.

1 discussant that multi-cultural education does not simply
2 mean teaching a course in native rights at the law school,
3 that perhaps multi-cultural education has to be part of the
4 entire program, be it torts, contracts, or, indeed,
5 property law, provided it's appropriately brought into the
6 teaching and at the offering of the program as it
7 progresses.

8 Mr. Chairman, we then had emphasis on what was
9 mentioned this morning, that's increased penalty where
10 racially motivated crime is involved.

11 And after that, Mr. Chairman, we moved on to a very
12 interesting discussion centering upon access to the law
13 school as the response to improving, or, rather,
14 eliminating the existing racism in the criminal justice
15 system. On this very interesting discussion it was
16 suggested that there is need for the law school to
17 reexamine its admission criteria, particularly as they
18 apply to minorities. It was pointed out by discussants
19 representing, or, rather, working at the law school that,
20 indeed, the law school is in the process of doing just
21 that, i.e., re-examining its admission criteria.

22 We then had the benefit of comments from a professor
23 at U.B.C., who pointed out that the University of British
24 Columbia has, in fact, not dropped its standards, but
25 rather, has admitted native students on a discretionary

MR. DAVIES BAGAMBIIRE cont'd.

1 basis, meaning that specific spaces have been reserved for
2 native students, but that once they get admitted into the
3 school they then become part of the pot and they go through
4 the school on the same basis and examinations as the rest
5 of the students do. So that the affirmative action program
6 only applies at the point of admission. But once they get
7 in they get subjected to the same standards as the rest of
8 the group. But, however, they do get special support by
9 way of funding and special community and funding support,
10 meaning that they receive special attention that would
11 assist them in whatever non-law school problems they may
12 encounter and, of course, they have funds available so that
13 they do not drop out midway, before completion of the
14 programs.

15 Mr. Chairman, it was then pointed out that the absence
16 of a forum in this province whereby government
17 representatives and the representatives of minority groups
18 met on a regular basis to review the state of race
19 relations in the province would, in fact, make it a mockery
20 in the sense that any recommendations handed down by the
21 Commission could, in fact, go unheeded by the government
22 and may never be implemented. So it was recommended that
23 the Commission recommend the creation of a mechanism that
24 would ensure...the creation and the funding of a mechanism
25 that would ensure that the recommendations of the

MR. DAVIES BAGAMBIIRE cont'd.

Commission are, in fact, implemented.

In summary, Mr. Chairman...and I'm not sure that I really can do justice to the very bright thoughts of 21 participants. In summary, Mr. Chairman, the group recognized that the presentations and evidence presented overwhelmingly support the existence of racism as the fact, both in this province and in the country. The group then embarked on the various remedies that I went through, specifically discussed the admission of minority students to the law school, emphasizing the necessity to provide funding and to provide support for minority students that get admitted so that they do not leave the program before completion. And finally, Mr. Chairman, the group was concerned that the recommendations may just be put on the back burner, and, therefore, thought that the Commission have to devise a mechanism whereby that does not happen.

Mr. Chairman, thank you very much. Of course, any member of my group is at liberty to deliver dissenting opinion after I leave the hall.

CHAIR

Thank you, sir. Carolyn Thomas.

MS. THOMAS

Thank you, Mr. Chairman, members of the Commission, and friends. I am going to preface my remarks by saying that mine is not going to be as long and as in depth as the

MS. CAROLYN THOMAS cont'd.

1 person just before me and that our group was very actively
2 involved in this discussion and very supportive of many of
3 the recommendations that have come down already from
4 panelists and presenters. However, we did concentrate on
5 some areas and had much discussion.

6 And our main thrust was on the recognition of racism
7 in the system. It was felt that the justice system must
8 realize that there is racism in our society and that the
9 system must be careful not to feel that it doesn't exist
10 within the judicial system and not dismiss it, because it
11 is easily dismissed, whether intentionally or otherwise,
12 and assumed to be something else. And to ensure that that
13 doesn't happen, it was felt that they had to acknowledge
14 and then to deal with it in an effort to eradicate it.

15 How do we deal with it? Our group decided that policy
16 is extremely important, and that a policy has to be set,
17 must be set, should be set, by government and asked that a
18 recommendation of that sort go forward.

19 It was felt that there should be use of expert
20 witnesses, as well, in court cases, and expert witnesses
21 such as sociologists, psychologists, historians, people who
22 can shed light and help to create a greater understanding.

23 Another area that was talked about in our workshop was
24 the area of education. It was felt that corrective
25 measures must be taken in the education system, where a lot

MS. CAROLYN THOMAS cont'd.

1 of racism exists. It was the feeling that government
2 controls the education system, and, therefore, has to do
3 something about the lack of understanding that exists
4 within it, both with students as well as teachers. And an
5 illustration was used concerning black and native persons'
6 history and the elimination of it. There must be a policy
7 in this regard. For example, how many people really know
8 the positive contribution of black people? There is a
9 legitimacy of difference. And it's the government's
10 responsibility to ensure that it is recognized. It was
11 felt that we cannot leave it up to present administration
12 as it presently exists, and, therefore, a new mechanism has
13 to come into place. It can be, should be perhaps, in the
14 form of a special task force or commission or some kind of
15 mechanism that is going to look at the issue and deal with
16 it head on.

17 Again, I hark back, as we did so many times in our
18 workshop, that there must be a policy on racism, as it is
19 first and foremost. We must have policies to examine
20 systems, judicial, educational and otherwise.

21 We talked about access to the area of law enforcing
22 and felt that something has to be done. There was much
23 discussion on mandatory affirmative action programs and so
24 on. And it was felt that, yes, those things are good, but
25 there has to be some strong laws that are put into place

MS. CAROLYN THOMAS cont'd.

1 and accountability built in as well.

2 When we were talking about the education system we
3 were not just talking about education at elementary, junior
4 high and high schools. We went on to talk about education
5 of those people that are within the judicial system. It
6 was pointed out that the Canadian Bar School has sessions
7 every year, and they go on for a period of five years, I
8 believe. Nevertheless, we can find out about that. But
9 within that mechanism there should be something, at least a
10 week per year, where they would be looking at racism and
11 racist policies that exist, et cetera.

12 Also, we talked about laws that presently exist. We
13 talked about human rights legislations. And it was the
14 feeling that laws that presently exist are not addressing
15 the problems, that they can be strengthened, need to be
16 strengthened. But, in addition to that, perhaps there is a
17 need for the establishment of commissions like the race
18 relations commission. And race relations commissions were
19 talked about earlier this morning by Danny McIntyre and, I
20 believe, Exhibit 1 went down. So information would be
21 available from that source.

22 We also talked about, as the last speaker did, the
23 establishment of some kind of a mechanism so that after
24 today, after tomorrow, everything wouldn't be all over. It
25 was strongly felt that commissions come and commissions go.

MS. CAROLYN THOMAS cont'd.

1 Task forces come and they go. Recommendations are put into
2 writing, but then that's the end of it. We feel that there
3 is something that has to be continued. And, therefore, we
4 are strongly urging that a mechanism also be put into place
5 so that an annual review of the recommendations can be
6 looked at and we can find out how far we have progressed,
7 what else needs to be done and continued on.

8 Now, I am sure that I have missed a lot of things from
9 our workshop. But I want to reinforce that we were very
10 strong on policy. We were very strong on the recognition
11 of racism in the system, because that is something that
12 people don't seem to want to deal with and face.

13 That is our report. And I invite others from our
14 workshop to add. Thank you.

15 CHAIR

16 Thank you, Ms. Thomas. May I just, as a postscript,
17 say that there are continuing education programs for judges
18 all across the country certainly at the federal level.
19 There are schools for federally appointed judges such as
20 the three commissioners on this Commission who are
21 federally appointed judges. And most of the provinces have
22 schools for the provincially appointed judges. And quite
23 apart from whatever representations you make to this
24 Commission, you are free to go to the Chief Judge of the
25 Provincial Court in any province, including Nova Scotia,

1 and to the Canadian Judicial Council, and urge that these
2 programs be undertaken for those judges. And I don't think
3 that anyone will think that at all untoward. I think they
4 would be most receptive. And may I just say that when I
5 was sitting on the bench in the early '80s in British
6 Columbia the native people of the province invited judges
7 to come and live on an Indian reserve in northern British
8 Columbia for three or four days. And about eight or nine
9 judges from all the courts, the Provincial Court, the
10 County Court, the Supreme Court...the Court of Appeal
11 didn't go...we went and stayed and met these folks. And
12 they talked to us about their problems. So I don't think
13 you'd find judges unreceptive to this. And I only add that
14 it may be that in the end we cannot expect our three
15 commissioners here on the Marshall Inquiry to deal with
16 absolutely everything that has come up here. But you are
17 in a position to perceive those matters, yourselves, here
18 or at the federal level.

19 Well, forgive that interruption. Dr. Head, I should
20 be calling on you now, sir.

21 DR. WILSON HEAD

22 I am going to begin with sort of a statement that our
23 group, I think, in a sense, found this morning's discussion
24 extremely important, and paid particular attention to two
25 or three items which came up. But most of them have been

1 touched upon already by the two previous speakers.

2 I want to just mention one thing, though. There was
3 considerable interest in the definition of racism by Ms.
4 Thornhill. And we certainly appreciate the context of what
5 she was saying this morning about this concept, in a sense,
6 which is hardly understood by many, many people. In fact,
7 there are so many definitions for it that you can choose
8 your own. And I think what she did this morning was very
9 useful in trying to put it into what I'd call a more
10 scientific type of concept. So we thank you for that, Ms.
11 Thornhill.

12 The recommendations made by the speakers this morning,
13 and which have been repeated by the previous speakers here
14 just now, we felt pretty much the same way. As a matter of
15 fact, when I listened to them I felt, gosh, they must have
16 been in our group, because we said some of the same things.
17 And I don't want to go into it in detail, but I just want
18 to touch upon them.

19 We talked about the training of judges. We talked
20 about the fact of powerlessness among the black population.
21 We talked about the question of appointments and whatnot.
22 For example, we had a very strong plea that more blacks and
23 other minorities be appointed to boards, commissions,
24 government agencies, et cetera, but not the usual type, of
25 being appointed to boards and commissions that have no

DR. WILSON HEAD cont'd.

1 power. This person was saying very strongly that she
2 wanted blacks appointed to positions of power where they
3 could have some impact upon government policy. In the past
4 and present that doesn't seem to be happening very often.
5 Most of what we have today, as was pointed out, is
6 tokenism, where one or two people are appointed. And we
7 don't have what Dan McIntyre has called another kind of
8 terminology, which suggests, in a sense, that you have to
9 have a certain number of people there before it can really
10 be effective. One person can easily be swallowed up. And
11 on a committee of nine or ten people one vote makes very
12 little difference. And so, in that sense, we need to have
13 more than one, more than tokenism. And this is what is
14 coming out of that group.

15 A very interesting thing came up, for me at least.
16 The first time...I had never seen race relations equated
17 with hockey. One of our contributors mentioned that what
18 we really need is to look at race relations in the sense of
19 hockey, in the sense that hockey is very, very Canadian,
20 and race relations and racial groups among racial
21 minorities are not considered Canadian. They are
22 considered as strange people. They are considered as
23 outsiders and not a part of the body politic. So perhaps
24 from hockey we can learn that we can all become Canadians.
25 Maybe we ought to be get more black hockey players. I

DR. WILSON HEAD cont'd.

1 don't know. Maybe that may be the answer to that.

2 A strong feeling came out in support of coalitions.
3 The population is fairly small. It does not have a great
4 deal of political power in the sense of voting power.
5 Nobody said this, but I'll put my own interpretation of
6 this. What they are saying, in effect, I think, is that we
7 have to have the power to squeak. And it's the squeaking
8 axle that gets the grease. And while you don't have
9 numbers, if you squeak loud enough, that can carry some
10 weight, along with, of course, education and other things
11 of that nature which help people to fight for themselves.
12 The coalition concept recognized that there was a need for
13 other people. And our good friend Rocky Jones touched upon
14 it this morning, and, to some extent, so did Dan, that we
15 need allies. We need alliances or coalitions or whatever
16 term you want to use. We need to have people who have a
17 sense of our...because not all people who are concerned
18 about racism are black or native people. There are white
19 people concerned. There are people from India and other
20 countries, our East Asian, South Asian population and so
21 on. There are Chinese population that are concerned. And
22 there are church groups who are concerned. There are
23 labour unions concerned, and perhaps even some business
24 groups. I don't know, but there may be some business
25 groups concerned. Most of the business groups have been

1 opposed to any change.

2 But the possibility for alliances, I think, or
3 coalitions, whatever term you want to use, is a very
4 important one. Certainly the organization that I work with
5 in Toronto, the Urban Alliance on Race Relations, is
6 composed of people from a variety of racial backgrounds,
7 social backgrounds, economic backgrounds, and even
8 political backgrounds. We even have conservatives on our
9 Board of Directors.

10 Another aspect which received some discussion was, of
11 course, the question of legal aid. And we had a strong
12 plea that legal aid had to be expanded. It had to be
13 expanded in the sense that not just simply handling cases,
14 which had been done in the past, but talking about the work
15 which was formerly done by the Dalhousie group, who not
16 only did the traditional legal aid work, but also went out
17 in the community and helped groups to organize and to fight
18 the system, if necessary, to protect their rights. And
19 this has been cut back. And this is a symptom which...the
20 person who said this said the Nova Scotia government has
21 shown no commitment whatsoever. If they had had any real
22 commitment they would not have cut back a very valuable
23 program, a program which has been cut back to the bone at
24 this point.

25 The final two things that I want to mention and we

DR. WILSON HEAD cont'd.

1 talked about was the question of the Human Rights
2 Commission here, the Nova Scotia Human Rights Commission.
3 Everyone recognized that it was not able to do the job,
4 that it is not given the resources to do the job that ought
5 to be done. And furthermore, the job is too diffuse. It
6 takes on a number of things which need to be taken on. And
7 there needs to be an organization to do this. It takes on
8 the plight of the disabled, the plight of women, the plight
9 of native people, presumably, the plight of handicapped and
10 so on, and, of course, race relations. The feeling was
11 that there ought to be a council of some groups which focus
12 entirely on race relations, which touches on what was just
13 said by the last speaker, such a council as this, with
14 power. And there is a strong plea that this group should
15 have power. It should not be an advisory group. It should
16 be a group with power, itself, to investigate, somewhat
17 like an ombudsman, but not covering all the ground that an
18 ombudsman covers, focusing upon race relations. And this
19 was, I think, one of the strongest recommendations that
20 came out of our group, and one which I, myself, certainly
21 subscribe to.

22 So, with that short introduction, I am not going to
23 say any more, because most of what I would have said anyway
24 was covered by the two previous speakers. And I don't
25 think there is any need to repeat that. I'd like to stop

DR. WILSON HEAD cont'd.

1 by simply saying that it seems to me, as I have listened to
2 these recommendations coming from the panel discussion this
3 morning and what I am hearing this afternoon, it seems we
4 are reaching some degree of consensus about what ought to
5 be done. And in that sense I can leave this platform right
6 now with the feeling that we up till now seem to be on the
7 same wavelength. And I hope that means that we are right.

8 CHAIR

9 Thank you, Dr. Head. Frank Edwards.

10 MR. EDWARDS

11 As you have probably realized, I was pressed into
12 service at the last minute when Darrel Pink didn't show up.
13 He and I used to be good friends. And we may be again some
14 day.

15 So what I have attempted is a distillation of the
16 discussions that we had in our group. So don't get the
17 impression, by the brevity, that our group sat around for
18 part of the time, because such was certainly not the case.
19 The discussion was quite animated throughout.

20 There was an acknowledgement at the beginning of our
21 session that the Province should be commended for allowing
22 an inquiry with the scope of this one and touching on the
23 sensitive topics that we are touching on, for allowing such
24 an inquiry to go forward. And there is a general
25 acknowledgement of that in the group. Having said that,

1 the group then moved on to the question of what will happen
2 following the report by the commissioners, what will happen
3 to the recommendations. And, obviously, from the reporters
4 who have preceded me, that same concern and that same area
5 was the focus of some discussion in some of the other
6 groups. And there was a recognition in the group that as
7 important, if not more important, than the meat, or the
8 content, of the specific recommendations would be the
9 creation of a mechanism which would ensure the
10 implementation of those recommendations. That was
11 variously labelled a policy framework, a policy statement.

12 It was acknowledged that such a framework or statement
13 would provide...its existence would provide a means by
14 which government agencies could be pressured to implement
15 the recommendations. It was also recognized that there
16 should be a timetable set for such implementation, and
17 that...and probably most importantly, that the community
18 must have the means to monitor and pressure regarding the
19 recommendations. It was...well, there was some
20 considerable discussion about getting a commitment from the
21 government as far as these follow-up procedures were
22 concerned. And it was agreed that there should be a
23 commitment by government to meet with...now, that was
24 originally to consult with, but that was felt to be too
25 general and too vague. So it was felt that it should be

1 worded this way: that there should be a commitment by
2 government to meet with the interested groups, the native
3 and black groups, regarding the implementation of the
4 recommendations that pertain to them. And I believe I'm
5 correct in saying that those meetings should be specific
6 and at regular intervals so that the work, the very
7 considerable work, of this Commission doesn't become lost
8 on the shelf somewhere.

9 There was...well, just further to that, before I leave
10 that area, the follow up mechanism that I have referred to
11 would be the on-record meetings between the groups and the
12 government. And it was also suggested that another means
13 of ensuring implementation would be to strengthen the
14 mandate of the provincial Human Rights Commission.

15 Now, there was also quite a bit of discussion about
16 the need...or the existence in our institutions and through
17 our society generally of racism and racist attitudes. And
18 it was generally agreed in our group that there was a need
19 for a general educative initiative designed to modify that
20 racist behaviour in the community. And, in that regard,
21 there was quite a bit of discussion about where racism
22 exists and how best to eliminate it through the educative
23 process. One speaker pointed out that there cannot be
24 reform of the criminal justice system unless there is an
25 awareness of the problems, or the racist attitudes,

1 throughout the community, its institutions, both
2 governmental and educational. It was emphasized that to
3 change attitudes and behaviour, that must be done not vis-
4 a-vis people in certain positions as they exist now, but,
5 really, what you're talking about is a behaviour
6 modification pertaining to an entire generation, both those
7 who are in the positions now and those who will occupy
8 those positions in the future. And there was
9 agreement...rather than to spell out in detail in my report
10 how that might be done, the group mentioned that there
11 should be reference in particular to the recommendations
12 made this morning by Mrs. Thornhill to achieve those ends.

13 Another interesting area which was discussed and which
14 the group wanted to commend to the consideration of this
15 group and to the commissioners was the suggestion that
16 there be an evaluation every two years of persons involved
17 in the criminal justice system. And that would be from
18 police to lawyers to prosecutors to judges. And, of
19 course, that begs the question right away, well, who does
20 the evaluation. And although some work would have to be
21 done to consider that, generally speaking, there was
22 agreement in the group that a monitoring committee composed
23 of not only government representatives, but also
24 representatives of the native community and the black
25 community, be involved in such evaluation. As I say, the

1 mechanics of that will require a lot of consideration. But
2 that was a recommendation, or discussion, which was
3 embraced, with some enthusiasm, I might say, by some
4 members of the group.

5 You won't be surprised at this next one, considering
6 that my friend, Rocky, here was part of our group. There
7 was a discussion that our group should endorse the
8 recommendations made by the respective speakers this
9 morning. So we let that go and he came back to us. I am
10 only kidding. But I can report that there was a general
11 endorsement by the group of the recommendations made by the
12 speakers this morning. And the group felt that very many
13 valid points had been made by the respective speakers.

14 Finally, one of the members of our group mentioned,
15 and several agreed with him, that racist behaviour is
16 governed by the economic relationships which exist among
17 various segments of the community. And these economic
18 relationships will ultimately have to be addressed, either
19 in concert with the addressing of the racial problem itself
20 or when it is finished.

21 So I believe that is a summary of what our group said.
22 Hearing no dissent, I will move on to what is a very
23 pleasurable task I have been asked to perform here this
24 afternoon. And that is the introduction of a very charming
25 and remarkable lady who was a member of our group and who,

1 after a couple of moments speaking with us, received the
2 recognition from the group, "Heh, we should share this with
3 the entire body." And I think when you hear her you will
4 agree that it is a very fitting close to our discussions
5 here this afternoon.

6 The lady I wish to introduce to you is Dr. Carrie
7 Best, who gave me permission to be rather impolite and
8 reveal her age. She is 85 1/2 years old. This was the
9 first time I have ever had the opportunity to meet Dr. Best
10 personally. I had heard about her, of course, as every
11 Nova Scotian probably has from time to time. And I was
12 immediately impressed, as I know those of you who have not
13 yet had the opportunity to meet her will be. Dr. Best has
14 been awarded the Order of Canada. She is both a member and
15 officer. She has also received an Honorary Doctorate from
16 St. F.X. University. Would you please join with me in
17 welcoming to the podium Dr. Best. Would you come up.

18 DR. BEST

19 Thank you so very much. It will be difficult for me
20 to speak to you about my involvement in the pursuit of
21 justice in the three or four minutes that I have been
22 allotted. Memories crowd upon me, and I find it very
23 difficult not to become emotional. And, firstly, I say,
24 Justice Berger, that I want to thank you so much for
25 allowing me this privilege to address this body. Thank you

DR. CARRIE BEST cont'd.

1 so much. It isn't hard for me to get into a group like
2 this...it is, I mean. I have tried, believe me. And I see
3 so many people here that I have been associated with over a
4 period of 50 years, from all over this country. Lloyd
5 Perry, Dr. Traoure, Wilson Head, Dr. Johnson, McCurdy. And
6 suddenly I don't feel alone. I feel that all the
7 heartaches and all the struggles and all the things that I
8 have gone through has been worth it.

9 And first I want to say to you, Rocky, that I have
10 never been as proud of any member of my race in my 85 years
11 as I was of you today. I will not say that none of us
12 could do better. I will go further than that and say that
13 none of us could have done as well. And I said to you
14 jokingly a little while ago, "You have come a long way,
15 baby."

16 Forty-five years ago I had a small newspaper. And I
17 came to Nova Scotia just a young woman with a dream, to see
18 if I could get a little advertising to help to pay for the
19 cost of the publishing of a paper. And I stopped at a
20 store on Barrington Street. The operator was Mr. Manuel
21 Zive, a Jewish merchant. And I went in with my little 4 X
22 6 sheet. And I told him that I wanted just to have
23 something to say about racial understanding, because things
24 were not good. And he said to me, "You are just a small
25 voice crying in the wilderness, but keep crying." And he

DR. CARRIE BEST cont'd.

1 | went back into his office and he gave me a cheque for
2 | \$50.00, which in those days was a lot of money. And I
3 | thought today that I would give anything if Manny Zive
4 | could have been here today, to know that I am still crying
5 | in the wilderness, but I am not crying alone anymore.

6 | And I would just like to ask the Commission if they
7 | really know the power of the justice system in Nova Scotia,
8 | if you know the awesome power with which you are dealing.
9 | I wonder if you know that it took four years for the
10 | Attorney General to answer a letter that was certified and
11 | registered. I want to know if you know that it took the
12 | Premier that long to even acknowledge that he had been
13 | written about an injustice. And, finally, sometimes they
14 | say God works in mysterious ways, His wonders to perform.
15 | I can't believe he uses politics, but I think he did in
16 | this case. I had the thought that I would put at the
17 | bottom of my letter carbon copy to The Honourable Alexa
18 | McDonough and The Honourable Vince MacLean. And, suddenly,
19 | the next day I got a letter from the Premier. One line,
20 | but it was a toe in the door. "I have received your letter
21 | and have noted its contents." So I think we are making
22 | progress.

23 | I will not keep you, because I know everyone is tired.
24 | But I want you to know that I am the widow of a World War
25 | veteran. I have the honour of being made a member and then

DR. CARRIE BEST cont'd.

1 an officer of the Order of Canada. I have an Honorary
2 Doctor of Laws from the University of Francis Xavier. I
3 have so many awards and plaques in my living room that my
4 daughter has promised to throw them out so she can see the
5 walls. And I have come to the awful conclusion, as I near
6 the end of my life, that there is absolutely no difference
7 between Donald Marshall, a 17-year old Indian, and Carrie
8 Best, Order of Canada, in the justice system in Nova
9 Scotia. And I say that on the basis of absolute research.
10 I am a journalist. And I have kept a complete copy of
11 every letter I have ever written, of every survey that was
12 ever taken, of every response that I have had. And I would
13 be most happy, Justice Berger, to present it to the
14 Commission, if you would like to have it.

15 If you really want to know what the justice system of
16 Nova Scotia is in relation to blacks and Indians, I will
17 give it to you. I can only say that I have considered that
18 I am not living under British law. I am under the Gag Law
19 of 1885 of the United States of America, this atrocious
20 enactment that said, in essence, that no black has any
21 right that a white person needs to recognize, and they
22 cannot get justice in a court of law. In a sense, we have
23 been living under the Gag Law of April 3rd, 1885 for 131
24 years, although long since abolished. And many may feel
25 that this law has died. It didn't die. It limped across

DR. CARRIE BEST cont'd.

1 the undefended border of the United States into Canada. So
2 much for free trade. We live under a mind-over-matter
3 government. We don't mind because you just don't matter.
4 And I would like very much to recall...I know you're all
5 familiar with the words of William Lloyd Garrison, the
6 abolitionist in fighting slavery, which is just the mother
7 of racism...there is no difference between racism and
8 slavery. And I know you recall his famous words: "I will
9 not retreat. I will not equivocate. I will not retreat a
10 single inch. And I will be heard." And that is my prayer.
11 It may be my last that I'll ever make in public. But I
12 will die fighting injustice.

13 And I ask you to join forces with us, with the power
14 that you have, and bring this awful system of racism in
15 Nova Scotia to an end by letting the Attorney General and
16 the Premier and his ministers know that we will no longer
17 tolerate this injustice. That we are human beings, that we
18 have fought for this country, we have built it, we have
19 made our contribution. And we will be treated as citizens.

20 I am terrified of the justice system of Nova Scotia.
21 I have been fighting for 13 years to keep from going before
22 it. And I have had at my side black influential
23 intellectuals from all over the country, three Ph.D.s, five
24 M.B.A.s, three M.D.s, unlimited resources of intelligence
25 and will. And I will not go before the justice system of

DR. CARRIE BEST cont'd.

1 Nova Scotia until this Commission tells me that I will be
2 treated fairly. And I throw that challenge out to you,
3 that you send that message out to them. I will take other
4 means to get justice. I will surround the lands that the
5 Province of Nova Scotia stole from me. I am suing them for
6 \$40 million, because a mine was found on my property. I
7 own it. I have paid tax on it since 1969. And I had a
8 lawyer already engaged who told me, "I will personally go
9 out there and put a rope around that building." He's
10 working for the government now. And I cannot get a lawyer.
11 I cannot get a lawyer that will take my case to court. And
12 I will not go before the court. And I would ask the
13 Commission to recommend me...to help me to do this. The
14 deadline is December the 15th.

15 CHAIR

16 Well, I should say, on behalf of all of you, our
17 heartfelt thanks to Dr. Best. I had the pleasure of
18 meeting Dr. Best at lunch. And, of course, like so many of
19 us from out of the province, I was well acquainted with her
20 reputation and glad to see it confirmed here this
21 afternoon.

22 We only have fifteen minutes. And may I, as Chairman,
23 suggest that perhaps it might be appropriate and courteous,
24 as well, to use that fifteen minutes by inviting our four
25 panelists to make any brief concluding remarks that they

MR. THOMAS BERGER cont'd.

1 have in mind. And I should, myself, then like to make some
2 very brief concluding remarks about our two days' work.
3 Rocky, would you like to add anything?

4 MR. JONES

5 I would like to close by saying I certainly, up to
6 this point, have really enjoyed these deliberations. As I
7 said in the session, I don't know why the provincial
8 government ever got into it. I am sure they didn't know
9 that all of this was coming. I mean, they couldn't have or
10 they would never have allowed it. But I am convinced that
11 the commissioners will make the kinds of recommendations
12 we're hoping they are going to make. So I am going to
13 publicly thank them in advance. I may not get another
14 opportunity to thank you. And thank you for inviting me.
15 And, having said that...

16 CHAIR

17 Dr. Thornhill.

18 DR. ESMERALDA THORNHILL

19 Thank you. I think that what I would like to say is
20 something that I already said at the beginning of my
21 address this morning. And that's to say that I really
22 commend this Commission on the courage. It takes courage.
23 I think that to touch such an irritant subject, or try to
24 approach such an irritant subject, as racism, which is the
25 problem at the root of the Donald Marshall incident, I

1 think it really takes courage. I am optimistic. I feel
2 that courage does not happen without commitment. And I
3 feel that commitment rests on conviction. And I further
4 feel that out of conviction and commitment comes the
5 strength and the creativity that will bring about and
6 generate the innovation necessary to fly over the hurdles.
7 Not even jump, but fly over the hurdles that are going to
8 crop up, because I do believe there will be hurdles. And
9 with that in mind, I would just like to throw out
10 something...to plant a seed. That's what I want to say.
11 I'd like to plant a seed. I really don't know what the
12 final outcome is, the logistics, the format for
13 presentation of the findings, or of the report. But what I
14 am suggesting is that I would like you all, Mr.
15 Commissioners, to consider innovating, out of the
16 creativity of your commitment and your courage, a forum
17 that, in itself, will validate and will affirm the findings
18 that I feel are irrefutable, at least already over the past
19 two days and from the work that has been presented to you
20 before. I don't know to what extent it would be possible
21 to summon, or convene, the necessary partners for follow
22 up, but I think that it would be important, whether there
23 is a mechanism or a strong follow up, I think, by the
24 gesture of how the report is presented, how it's made
25 public. How it's finally, in its state, presented, that,

1 in itself, has educative value. That, in itself, has
2 political clout. And I think that that, in itself, can be
3 significant and indicative of the importance that you all
4 have placed on this subject, on this Commission, and the
5 depth of your commitment and your courage. Thank you.

6 CHAIR

7 Thank you very much, Esmeralda. Dan McIntyre.

8 MR. DAN MCINTYRE

9 I, too, would like to, once again, commend the
10 Commission for its broad look at this issue that, to coin
11 another hockey reference that the former Leader of the
12 Assembly of First Nations once said at a debate on the
13 Charter of Rights and Freedoms, he said that racism is as
14 Canadian as Hockey Night in Canada. And I think that the
15 Commission is to be commended in terms of opening this
16 particular issue up for debate, for discussion, for an
17 honest and candid examination that, I think, is
18 unprecedented anywhere in Canada, or at least as far as I
19 know, at any time. The challenge, I guess, before the
20 Commission, before Nova Scotians in general, and for all of
21 us as Canadians, is to ensure that the work, the
22 deliberations, and, I'm sure, the very elucidating and
23 positive recommendations that are going to emerge from the
24 Commission's examination of these issues, is not lost and
25 doesn't gather dust on some shelf. And I guess that is the

MR. BROMLEY ARMSTRONG cont'd.

1 one thing that I am concerned about. And I hope that we
2 overcome that obstacle. Thank you.

3 CHAIR

4 Bromley Armstrong.

5 MR. ARMSTRONG

6 Mr. Chairman, Your Honours, I wish, also, to thank you
7 for this opportunity to participate. To be called up from
8 the farm to be present with this distinguished group of
9 underpaid professionals will be a cherished memory. I know
10 we made no new discoveries. We didn't re-invent the wheel.
11 We did identify some of the problems. And we made some
12 suggestions as to how to deal with some of the problems
13 facing the natives and blacks in this country. It was
14 encouraging for me to observe the outstanding leadership
15 from my own community and from the native community, and,
16 particularly, the verve and commitment of all these
17 outstanding Canadians that are present here. I think they
18 are on the right track and there is some hope for this
19 country. Thank you.

20 CHAIR

21 Thank you, Bromley. Might I, on your behalf, thank
22 today's panel and tell you that a representative of the
23 media said after the conclusion of yesterday morning's
24 proceedings, after that panel had concluded its work, he
25 said to me, he said, "Well, that was a terrific panel." He

1 said, "No snoozers on it." He said, "You know, sometimes
2 you go to these things, and people put you to sleep." And,
3 well, we didn't have any snoozers today either. And I
4 think that it's a compliment to all of the panelists that
5 we've had in these two days that they have enlightened us
6 and educated us and, in a good humoured way, made a very
7 forceful...brought a very forceful message home to our
8 three Commissioners. And I think that's true of
9 yesterday's panel and of today's panel. And I, speaking
10 for myself, have learned a great deal from both.

11 Would you permit me just to say something that may be
12 useful to the Commission and perhaps to others about what
13 we have heard these last two days. The Commission was
14 established because a black person was killed and an Indian
15 person wrongfully tried and convicted for the crime. There
16 is a convergence, it seems to me, of interests so far as
17 Indians and blacks are concerned. Both have an intense and
18 abiding interest in seeing that equality is not only
19 entrenched in the Charter of Rights, but becomes the watch
20 word of our dealings with our governments and between
21 ourselves. Both are intensely concerned to put an end to
22 racial discrimination in our society, its institutions and
23 in its daily life. And the way in which Esmeralda earlier
24 today pointed out how racism is part of the dailyness of
25 life for blacks and I'm sure for other minorities was very

MR. THOMAS BERGER cont'd.

1 striking. Might I just be permitted to say, since this
2 Commission has as its mandate the obligation to deal with
3 both blacks in the justice system and Indians in the
4 justice system, that the discussion yesterday about native
5 land claims and native self-government...and those claims
6 arise from international law and our rights that the
7 indigenous people, the aboriginal peoples, of our country
8 and other countries enjoy. And they are rights which are
9 special to them. And sometimes it is said that Indian
10 people, when they seek to have, let us say, tribal courts,
11 are actually demanding institutions which are, themselves,
12 racist. Why should one race have its courts and they are
13 the only people who can get justice there? Well, I take
14 the liberty of putting that canard to rest, because,
15 conceptually, it is unsound.

16 The reason why Indian people are entitled to
17 institutions of their own is because they had those
18 institutions and they were functioning as political
19 institutions centuries ago, long before the Europeans came
20 to this continent. And the Supreme Court of the United
21 States, and, indeed, I think it is fair to say, our own
22 Supreme Court has accepted that the aboriginal rights of
23 the Indian people, the institutions deriving from their
24 long standing occupation of this continent, are political,
25 not racist.

1 The Supreme Court of the United States has said that
2 the reason why tribal governments do not offend the Bill of
3 Rights, the guarantees of equality in the Bill of Rights,
4 are because they are political institutions, not racial.
5 The Indians were here with their own political institutions
6 before the Europeans came. They were all of one race.
7 They cannot now be blamed if those institutions, having
8 persisted for centuries, they still claim them as their
9 own.

10 I take the liberty of mentioning that, because it
11 seems to me that Indians and blacks here in Nova Scotia and
12 around the country are allied in seeking many common goals.
13 And I shouldn't want them to find themselves at a
14 disadvantage in an argument with others over what those
15 very special institutions that we have acknowledged in the
16 Constitution are the right of Indian people in our country,
17 what they are. The intellectual foundations for the notion
18 of equality which has emerged and become manifest in our
19 human rights institutions, our Charter of Rights since the
20 Second World War and especially in recent years, the fight
21 against discrimination, which is world-wide, and you can
22 find reflected in the international conventions to which
23 Canada has subscribed, Indians and blacks join, and all of
24 us, all of us white folks, too, join in subscribing to
25 those goals and fighting for them. And the very special

MR. THOMAS BERGER cont'd.

1 claims that Indian people have in our country arise,
2 essentially, from their indigenous occupation and
3 government of this country before the Europeans came, and
4 cannot fairly be described as racist in any way.

5 Could I just offer one or two remarks about Royal
6 commissions, because the suggestion has been made that,
7 well, we don't want to see whatever recommendations emerge
8 from this Marshall Inquiry just put up on the shelf
9 somewhere and left to collect dust. And the suggestion has
10 been made that there might be a mechanism established...the
11 commissioners would recommend a mechanism be established to
12 see that their recommendations are carried out. Well, we
13 cannot expect more from our Commission than they are
14 entitled to do under the Constitution of Canada. They are
15 purely advisory. It is for the government of the province,
16 elected, having the confidence of the people of the
17 province, in the end to make the political choices that
18 have to be made. Our commissioners can only recommend.
19 And in a democratic society that is the way it must and
20 ought to be. But may I, as a veteran of a number of
21 commissions, and with the scars to prove it, as they say,
22 tell you that, in my view, there are two aspects to the
23 work of Royal commissions. One consists of the work of
24 public education. We're not just at these hearings
25 educating our three commissioners. We are engaged in the

1 work of public education, educating each other and, through
2 the media, the public. And that's a common feature of
3 Royal commissions in our country and a most important one.
4 It means they leave their imprint, even if they never make
5 any recommendations, even if the recommendations are
6 ignored by the government of the day. That, it seems to
7 me, is something worth remembering. And all across Canada
8 the work of this Commission is well known and has already,
9 I think, made it's imprint on the way we think about the
10 justice system and its treatment of Indians and blacks.

11 The second thing, of course, that commissions do is
12 they do write reports, and they present them to
13 governments, and governments decide to do what they will
14 with them. I think it's a bit of a myth, though, to
15 suggest that it is commonplace for the recommendations of
16 Royal commissions to go on the shelf and to remain
17 unexamined and unimplemented.

18 I think the history of commissions in our country is
19 really quite the opposite. If you'll allow me just to
20 spend a moment or two, let me remind you...it should be
21 fresh in our minds.

22 Medicare was, of course, pioneered in Saskatchewan by
23 the government of which Alan Blakeney, who is with us
24 today, was a part, in the late '50s and early '60's. But
25 it was a Royal commission, chaired by Mr. Justice Emmett

1 Hall, that held hearings all over the country and
2 recommended to the government of Canada that we have a
3 national medicare plan. And that, I think, is as good an
4 example as you could want of the effectiveness of a Royal
5 commission and the way in which its recommendations have
6 been implemented. And Mr. Hall is still with us to defend
7 his commission when anybody...could I just remind you,
8 also...some of you are old enough to remember the '60s,
9 when the use of marijuana and other drugs came to public
10 notice.

11 A Royal commission was established under Mr. Justice
12 Gerald LeDain, then the Dean at one of the law schools.
13 And it held hearings all over the country. It served to
14 bring to public attention, in the most graphic way, the
15 dangers of the non-medical use of drugs such as marijuana
16 and amphetamines and even cocaine. It served a very
17 important public purpose in that sense. Even though none
18 of the formal recommendations of the LeDain Commission were
19 ever carried out, it still had a very big impact on the
20 country.

21 There was a Royal commission a few years ago on the
22 status of women, headed by Florence Bird. That
23 commission's report contained hundreds of recommendations
24 to advance the condition of women in Canada. And all of
25 those recommendations haven't been carried out. But it

1 serves as a series of guidelines for women's groups all
2 over the country. It is still a club with which they can
3 beat the federal government and all the provincial
4 governments.

5 And, if I may just refer to the Ranger Inquiry that
6 Chief Justice Hickman carried out, that certainly had a
7 very great impact. It was a commission convened jointly by
8 the federal and Newfoundland governments on safety on these
9 gigantic oil rigs at sea.

10 Could I just say that I headed three commissions in
11 Canada, two for the federal government and one for the
12 government of our province. And the recommendations of all
13 three of those commissions were largely carried out by the
14 governments to whom I made the recommendations. I had the
15 opportunity of heading a commission in Alaska in the early
16 '80s. And I made recommendations...I hadn't been appointed
17 by the federal government to do so, but I made
18 recommendations to the U.S. Congress and administration,
19 which they have up till now rejected. But I remain
20 optimistic that the hearings I held in Alaska and the
21 report I wrote, which has been widely read, have made an
22 impact on the way people think about the issues that I was
23 concerned with. Finally, in case any of you have
24 forgotten, we had a commission called the MacDonald
25 Commission on free trade that handed in a report two years

MR. THOMAS BERGER cont'd.

1 ago. And nobody can say that the MacDonald Commission has
2 not had a very real impact on...

3 Well, if you will forgive me for taking advantage of
4 my place at the chair here to offer those thoughts, we will
5 be meeting again at 9:30 tomorrow to discuss the issue that
6 has emerged from the Marshall Inquiry regarding the
7 launching of prosecutions, how to ensure that that
8 function, which resides in the Attorney General's office,
9 is carried out fairly and effectively. And we have a
10 distinguished panel that will be speaking tomorrow morning
11 on the subject. I am looking forward to that panel. And I
12 invite all of you to be with us tomorrow morning at 9:30,
13 when we will be reconvening for that purpose. So we stand
14 adjourned.

15 ADJOURNED TO 9:30 a.m. - November 26, 1988
16
17
18
19
20
21
22
23
24
25