

COMMENTS - PROFESSOR EDWARDSNOVEMBER 26, 1988 - 9:30 A.M.CHAIR

Ladies and Gentlemen, good morning.

We've spent two days considering the way in which the justice system here in Nova Scotia and, indeed, elsewhere has treated natives, blacks, and others. And this morning, we are going to spend our time considering the way in which the Office of the Attorney General, which in every province of Canada is responsible for prosecutions, might be restructured, should that be necessary, perhaps not. To insure that prosecutions are conducted fairly no matter how well connected the subject of an investigation or how poor or marginal the subject of an investigation. Whatever his race, whatever his politics, to insure that prosecutions are proceeded with when they ought to be, and that when they ought not to be, they are not proceeded with.

Well, for this morning's discussion, we have four very distinguished Canadian lawyers. I will introduce them all now before they come to the podium, and do so briefly, because I think they're well known to you. You've already met some of them during the course of the last three days.

Our first speaker is to my right, my immediate right, Professor John Edwards of the Faculty of Law, at the University of Toronto, Special Adviser to the Marshall Inquiry. Professor Edwards is Canada's leading authority

MR. THOMAS BERGER cont'd.

1 on the Office of the Attorney General, perhaps the  
2 Commonwealth's leading authority on the Office of the  
3 Attorney General. And we will ask Professor Edwards to  
4 prepare the ground, so to speak, to give us an overview of  
5 the measures that are being considered in other provinces  
6 and in other countries. The Office of the Deputy... of the  
7 Director of Public Prosecutions in England, the recent  
8 reforms made in Australia in the federal government there,  
9 and the various states, the office of the special  
10 prosecutor or independent counsel in the United States.

11 Some of the issues that have been agitated before the  
12 Marshall Inquiry here in Nova Scotia are not unique to Nova  
13 Scotia and have led to proposals for reform in the conduct  
14 of prosecutions in other jurisdictions.

15 We will begin then with Professor Edwards. Then we  
16 will hear from Mr. Richard Vogel, Q.C., of Vancouver, a  
17 distinguished member of the British Columbia Bar, who has  
18 been in private practice many years, but did a stint of  
19 public service as Deputy Attorney General, where he had  
20 responsibility for some years for maintaining an overview  
21 of prosecutions and prosecutorial discretion. I think  
22 you've met Dick Vogel. He's the gentleman with gray hair,  
23 and quite a bit of it there. Dick will speak second.

24 Our third speaker is to Dick's left, a gentleman with  
25 a good deal of hair, and none of it as yet gray, and that

MR. THOMAS BERGER cont'd.

1 is Morris Manning, Q.C., of Toronto, one of the nation's  
2 leading defence counsel, needs no introduction to any of  
3 you. I think you're aware that his most recent triumph was  
4 his very great success in the Supreme Court of Canada in  
5 the *Morgentaler* case and we're very grateful that he was  
6 able to come here to be with us today.

7 Finally, to my far right, is Serge Kujawa, Q.C., of  
8 Regina, one of Canada's ablest prosecutors, a terror of the  
9 criminal element in Saskatchewan. He is general counsel to  
10 the Attorney General's Department in Saskatchewan. Perhaps  
11 no one in Canada has had more experience than Mr. Kujawa  
12 when it comes to the prosecution of serious crime. His  
13 most recent well known case was, of course, the prosecution  
14 of Colin Thatcher for murder. Mr. Kujawa, despite his  
15 eminence, when I asked him how I ought to introduce him,  
16 said, "Just say 'I'm an old prosecutor'."

17 So there you have our panel. I will say nothing  
18 further, but invite Professor Edwards to come to the podium  
19 to begin the discussion.

20 PROF. JOHN EDWARDS

21 Mr. Chairman, Mr. Commissioners, Ladies and Gentlemen.

22 Throughout Nova Scotia's history, back to colonial  
23 days, the Attorney General has been at the very apex of the  
24 justice system. So, indeed, has he been in the federal  
25 situation, the head of the Department of Justice, as the

PROFESSOR JOHN EDWARDS cont'd.

1 Minister of Justice and the Attorney General of Canada.  
2 It's an office which has an even longer history in England,  
3 going back to the thirteenth century. And yet, despite  
4 this enormously responsible position, the level of  
5 ignorance that exists, not only amongst members of the  
6 ordinary general public, but amongst politicians, lawyers,  
7 be they members of the judiciary, the practicing bar, or  
8 those of us who seek to teach the future members of the  
9 profession. That level of knowledge as to the strange but  
10 important series of duties and responsibilities attached to  
11 this office is, to my mind, one of the most remarkable  
12 features which, hopefully, this Commission will be  
13 instrumental in bringing about a change which, to my mind,  
14 is fundamental. If, in fact, we are to achieve through  
15 those who hold this office, and those who serve as agents  
16 of the Attorney General, whether they are Deputy Ministers  
17 or whether they are line prosecutors, an understanding of  
18 what it is that are the essential qualities which will be  
19 associated with this office, to my mind, we have a very  
20 long way to go before we achieve that degree of public  
21 confidence in those who are the incumbents that they will  
22 reflect those qualities of even-handedness, of  
23 impartiality, of a resistance to political interference, of  
24 independence from the pressures that are a constant  
25 accompaniment of this particular office, public confidence

PROFESSOR JOHN EDWARDS cont'd.

1 in this province and in other jurisdictions in Canada and  
2 outside Canada. Perhaps it's a reflection of modern times.  
3 But if one looks across Canada, the experience that  
4 citizens of Nova Scotia have been experiencing in the last  
5 few years is, as Judge Berger said, not unique.

6 The adjacent province of New Brunswick saw fit to  
7 establish a Royal Commission with even wider terms of  
8 reference than the Marshall Inquiry. They did not pursue  
9 its terms of reference, but the latent causes would be well  
10 understood and recognized by those who live across the  
11 border in New Brunswick.

12 More recently, in terms of days rather than years, the  
13 recent report coming from Manitoba suggests that that  
14 province, likewise, is experiencing some of the turmoil of  
15 trying to ascertain what is expected and what is  
16 unacceptable in terms of the way in which discretionary  
17 power is exercised.

18 British Columbia has, for some years, as Mr. Vogel,  
19 I'm sure, would be quick to point out, not being an  
20 exception to the general rule that the public scrutiny, the  
21 enormous attention given to the manner in which, not only  
22 the Attorney General, but his senior officials conduct  
23 their duties, again, brings home once again the perhaps  
24 enormous gulf that exists between the conception of what  
25 this office demands and the realization, or the failure to

PROFESSOR JOHN EDWARDS cont'd.

1 realize, even the most basic tenants of the office.

2 In the United States, we are all able to recall the  
3 revelations that accompanied the Watergate hearings. And  
4 the activities of the most recent occupant of the office of  
5 the Attorney General of the United States, Mr. Edwin Meese.

6 If you go across to Australia, you can come if you  
7 could in your imagination with me, around the Commonwealth  
8 and discover that what has been occupying the attention of  
9 the Commissioners here in the Marshall Inquiry can be  
10 replicated in so many countries. Why is it then that, in  
11 fact, the perception on the part of those who, ultimately,  
12 those who hold public office are accountable to, falls so  
13 far short of the expectations. Those expectations are  
14 simple. They're not difficult to, I think, explain. I've  
15 said them before. I repeat them again. They are a  
16 combination of even-handedness, fairness, impartiality, and  
17 an independence which requires some personal qualities.

18 Whatever I may say in the few remarks that I'm going  
19 to make here, I want to leave with you, or I hope, an  
20 indelible recognition of the fact that no matter what  
21 system is in place, no matter what constitutional machinery  
22 we create or change, the essential qualities are those of  
23 personal integrity, qualities of character, backbone, and  
24 an understanding of what this office truly represents.

25 I've described the duties of an Attorney General, as

PROFESSOR JOHN EDWARDS cont'd.

1 requiring the agility to walk a tightrope. And I think  
2 that's precisely what so few of those who come into the  
3 office have an understanding what is expected of them, and  
4 so little guidance that is provided. Nevertheless, there  
5 are some strikingly splendid examples that one can cite,  
6 and there are occasions which are all too familiar in which  
7 those standards are sadly not realized.

8       When I came to undertake on behalf of the Commission a  
9 study of this office, and of those related offices, it  
10 became very apparent to me that one of the initial features  
11 that had to be recognized was the inherent problem of  
12 duties in relation to the police, in relation to the  
13 appointment of the judiciary, in relation to the  
14 appointment of and supervision of Crown prosecutors, which  
15 in itself represented an inherent conflict. And I was  
16 pleased to see, even during the course of the hearings,  
17 that in Nova Scotia, belatedly perhaps, the government has  
18 seen fit to take away from the Attorney General the duties  
19 and responsibilities of supervising policing in the  
20 province, in the creation of a ministerial Solicitor  
21 General. That has been done in other parts of Canada, and  
22 I believe it is an essential forerunner of other changes  
23 which, no matter how much one stresses, the inadequacies of  
24 a system in itself as guaranteeing an observance and an  
25 adherence to those qualities I've described.

PROFESSOR JOHN EDWARDS cont'd.

1           Nevertheless, it is my view that certain other  
2 fundamental changes are called for. My remarks are not  
3 directed in terms of a criticism of Nova Scotia and of the  
4 system as it has been administered in this province. As if  
5 Nova Scotia was unique in this regard and, therefore, it  
6 had to put its house in order where other parts of the  
7 country have been immune. That is not the case. I don't  
8 think it's an exaggeration to say that the rest of the  
9 country, both federal and provincially, are watching very  
10 carefully not only the discussions, but also what  
11 eventuates from this particular Commission. There is a  
12 ferment of concern. There's a great deal of desire to see  
13 whether the models that may come out of this Commission  
14 have an application, as I believe to be the case. Nova  
15 Scotia, as a single province, simply represents a whole  
16 body of experience that can be replicated directly in all  
17 the other provinces. And, consequently, whatever changes  
18 are maybe recommended by this Commission, are more than  
19 likely to be the activating force in producing parallel  
20 measures in other parts of the country.

21           One of the aspects of the Attorney General's office,  
22 which I think needs to be understood, is quite clearly,  
23 under our system, he's an elected politician. He's a  
24 member of the House of Assembly. He's a member of the  
25 Cabinet. We also, historically, accord to the Attorney



PROFESSOR JOHN EDWARDS cont'd.

1 General responsibilities as the guardian of the public  
2 interest, the provincial statute enumerating all his duties  
3 and responsibilities, declare that the Attorney General has  
4 the statutory, constitutional duty to see that all actions  
5 of the executive branch and of the legislature conform with  
6 existing law. It should be advent of the Charter of  
7 Rights, has, in dramatic fashion, re-emphasized that  
8 primary responsibility of the Attorney General to insure  
9 that the rights and freedoms enshrined in the Charter of  
10 Rights are his paramount responsibility. This reflects the  
11 ideals of the office. Clearly, where the Attorney General  
12 is seen as an avid, active politician, on the floor of the  
13 House of Assembly and in some of the more hidden sanctum of  
14 the Cabinet deliberations, does create difficulties in the  
15 minds of ordinary citizens. How can you reconcile these  
16 two expectations? I'd be less than sanguine in believing  
17 that, in fact, the mere recapitulation of what I've  
18 described as these duties and responsibilities can, in  
19 itself, by bringing them to the attention of the incumbent,  
20 bring about realization.

21 The office of the Attorney General, as a member of the  
22 Cabinet, is clearly one that gives rise to the question if,  
23 in fact, it were to be suggested that by removing the  
24 Attorney General from elective office, removing him from  
25 being a member of the Cabinet of the government of the day,

PROFESSOR JOHN EDWARDS cont'd.

1 | could we, by one stroke, achieve the necessary reforms to  
2 | bring about those ideas I've described? It's a very  
3 | attractive, but I think a rather dangerous proposition to  
4 | subscribe to, without realizing, as with all questions,  
5 | there are two sides to the coin.

6 | I espouse with greatest emphasis the need to insure  
7 | the independence with which the Attorney General discharges  
8 | his responsibilities. And, at the same time, I would want  
9 | to continue to assert that any office that carries with it  
10 | such immense responsibilities as to the kind of society we  
11 | live in, which is really, in my mind, the nature of the  
12 | functions that attach to this office, particularly with  
13 | respect to prosecutions. If that person is not held  
14 | accountable to the legislative body, to the community at  
15 | large in the fashion in which our system of parliamentary  
16 | democracy, I believe, is based upon, you may achieve much  
17 | by way of independence, but you would lose an enormous  
18 | aspect of the accountability of the office.

19 | For my part, therefore, I have gone through this very  
20 | carefully in asking and answering the question. I come  
21 | down on the side of maintaining, no, I do not see in the  
22 | transformation of the office of Attorney General into a  
23 | public non-elected office, the solution to many of the  
24 | problems that Nova Scotia has experienced. I do,  
25 | nevertheless, believe that there are other certain changes

PROFESSOR JOHN EDWARDS cont'd.

1 which, in the series of opinions that I've prepared for the  
2 Commission, review of the experience in the United Kingdom,  
3 in England, in Scotland, in Northern Ireland, in other  
4 parts of the Commonwealth. I've looked at the United  
5 States and I have come to the conclusion that, yes, the  
6 time has been reached where we have to give serious  
7 attention to the establishing of a statutory office of a  
8 Director of Public Prosecutions.

9 Each of the provinces already has, in effect, whatever  
10 his title may be. He may be the Director of Crown  
11 Prosecutors. He may be called, as Mr. Kujawa was in  
12 Saskatchewan, the Director of Public Prosecutions.

13 Don't be misled by that title into believing that once  
14 you've conferred that title, that you have somehow  
15 contributed to the solution of these problems. The  
16 difference between the Director of Public Prosecutions, who  
17 is a government servant, a public servant, a public  
18 official, who within the bureaucratic system is under the  
19 direct supervision and control of his superiors, is not  
20 what I am suggesting that the Commission examine and adopt.  
21 Namely, the creation of a largely independent, independent  
22 by virtue of legislation, where you create a statutory  
23 office in which the holder enjoys the status, analogous to  
24 that of a Supreme Court judge, with a degree of security of  
25 tenure, that provides the insulation very necessary to

PROFESSOR JOHN EDWARDS cont'd.

1 protect against some of the more insidious and less  
2 apparent influences that are constantly exerted against  
3 those who discharge the duties of prosecuting, and in which  
4 the duties, powers, functions, and responsibilities, the  
5 level of accountability, the direction of accountability,  
6 the nature of the independence associated with the office  
7 are spelled out by statute.

8 One of the questions that I would content myself  
9 before letting my commentators, who have had an opportunity  
10 to read more carefully the rather fuller development of  
11 this subject that I have prepared. To what extent where  
12 you have an independent, a staturally independent director  
13 of prosecutions, should an Attorney General as the Minister  
14 accountable to the Legislative Assembly have a right to  
15 become involved in individual cases. That is one of the  
16 critical questions.

17 Accountability, after all, would suggest that if you  
18 are to be accountable that you should have an ultimate  
19 power of disposition, control, with respect to the office  
20 upon whom independence may be granted, but not total  
21 independence. You can go the route that many of the  
22 Commonwealth countries have chosen to do. Some of you, who  
23 may have familiarity with Jamaica and other parts of the  
24 Caribbean, would know that the office of the Director of  
25 Public Prosecutions is enshrined in the Constitutions of

PROFESSOR JOHN EDWARDS cont'd.

1 those countries. Some of them have seen fit to confer upon  
2 this office the powers to discharge the responsibilities  
3 without being amenable to any direction or control from any  
4 other person or authority. Total absolute independence.  
5 There is no accountability, total independence.

6 I find that unacceptable. It runs counter to my  
7 adherence to the view that our system of parliamentary  
8 democracy requires that everything that's done in the name  
9 of the state ultimately has to be accountable to the  
10 Legislature through a particular minister of the Crown.  
11 Nevertheless, that model does exist.

12 I do not envisage, and I would resist any temptation  
13 that an Attorney General may have to interfere or to seek  
14 to influence the decisions made by the Director of Public  
15 Prosecutions and those who serve under the Director, the  
16 line prosecutors, in a general manner. It ought to be the  
17 most basic presumption that an Attorney General and his  
18 Deputy foreswear any desire to become involved.

19 Nevertheless, there may be exceptional cases. Only  
20 this morning, I was reading the latest chapter in the  
21 Province of Alberta in which the Premier and the Attorney  
22 General and the Lubicon Indians are now faced with the  
23 question of contempt of court charges, where the Lubicon  
24 Indians are threatening to withdraw completely from the  
25 negotiated settlement of their problems on the terms that

PROFESSOR JOHN EDWARDS cont'd.

1 the contempt of court charges be withdrawn.

2 These are the kind of pressures that, in difficult  
3 circumstances, raise their head and they have to be  
4 addressed. They are not likely to go away. You have to  
5 have very clearly defined principles upon which the system  
6 functions, if you are going to succeed in adhering to the  
7 twin principles of independence and accountability.

8 For my part, therefore, I would see it as an  
9 extraordinary situation, an exceptional situation in which  
10 an Attorney General might deem it incumbent upon him to  
11 become involved and to give directions, and that he be  
12 required to do so in writing, and that those instructions  
13 in writing be tabled in the Legislature, and by other means  
14 through the official gazette in a way that the general  
15 public, which is the ultimate body of accountability, has  
16 the opportunity to ask itself, did the Attorney General  
17 deem it necessary? Were the circumstances such as to  
18 justify that intervention? There may be a balancing of  
19 considerations where the ultimate test is, was this  
20 necessary? Was it wise? Was it imperative? Was it  
21 justified? And the only way you can do that is to insure  
22 the facts are on the table and a judgement can be rendered  
23 by the ultimate tribunal; namely, society at large.

24 So the changes that I would hope to see introduced  
25 into our system of prosecutions in this country will, I

PROFESSOR JOHN EDWARDS cont'd.

1 believe, be enhanced provided this balancing of the  
2 respective principles is reflected in the kind of system,  
3 that I've been seeking to advocate in these opinions, for  
4 the attention, consideration, by the Commissioners. But I  
5 come back to say that no matter what system is in place,  
6 there has to be a better understanding of the expectations  
7 of what the office requires. We have a long way to go by  
8 way of educating everyone as to the extraordinarily  
9 important nature of this office of the Attorney General.  
10 The creation of a statutorially independent Director of  
11 Public Prosecutions, I think, will go a long way to restore  
12 the perceptions in the public mind that the system is,  
13 indeed, committed to those ideas that I've described and,  
14 hopefully, the choice of individuals to occupy this kind of  
15 office will reflect the expectations and will not be  
16 something that can be simply continued out of the status  
17 quo. Fundamental changes are called for, and I think the  
18 time has been reached in which those changes should be  
19 implemented.

20 CHAIR

21 Thank you, Professor Edwards.

22 Before calling on Mr. Vogel, might I just offer a  
23 postscript to what Professor Edwards has said? I have had  
24 the advantage of reading some of the work that Professor  
25 Edwards has done.

MR. THOMAS BERGER cont'd.

1           In most provinces of Canada, I think in every province  
2 of Canada, responsibility for launching criminal  
3 prosecutions resides with the Attorney General, ultimately.  
4 He may delegate that function to the Deputy Attorney  
5 General or his Director of Criminal Law. In the end,  
6 however, those responsible for launching prosecutions or  
7 not launching prosecutions are really employees of the  
8 Attorney General and are perceived to be often not in a  
9 position of independence. The fact that the Attorney  
10 General has ultimate authority to determine whether a  
11 prosecution should be brought or not may lead the general  
12 public to believe that these things are not done fairly.

13           I recently met John Cowdrey, who is the new Director  
14 of Public Prosecutions in the State of Victoria in  
15 Australia. In the State of Victoria, they had a series of  
16 continuing controversies, not unlike the controversy you've  
17 had here regarding the Donald Marshall affair, and there  
18 were allegations of corruption in the Office of the  
19 Attorney General. A great many allegations were made that  
20 the system was not dealing fairly with well connected  
21 persons or with persons with no connections at all. And  
22 the State of Victoria went very far, farther than Professor  
23 Edwards would go. They established an office of Director  
24 of Public Prosecution. Mr. Cowdrey holds the office. He  
25 was in Canada earlier this year and some of us met him, and



MR. THOMAS BERGER cont'd.

1 he is given the same tenure as a Supreme Court Judge. He  
2 is in the Attorney General's Department, but he has the  
3 ultimate responsibility to determine whether a prosecution  
4 will be brought and the Attorney General cannot give him  
5 directions in the matter. He has tenure until he is 75  
6 years old. He can't be fired by the Attorney General. The  
7 Attorney General can't interfere with him in any way. He  
8 makes his report to the Legislature. And there you have a  
9 model that gives the authority for launching prosecutions  
10 to someone who is quite independent of political  
11 interference or political influence.

12 I was talking to Judge Coutu yesterday about that and  
13 he said, "Well, that's pretty dangerous, isn't it? Because  
14 if you got the wrong man or woman in that office, you  
15 couldn't get them out. The only way you can get rid of  
16 them is through impeachment."

17 It shows how delicate and difficult it is to draw the  
18 balance and we will now ask Dick Vogel to tell us how that  
19 has been achieved in British Columbia, where, as you know,  
20 all things go as they ought to.

21 MR. RICHARD VOGEL, O.C.

22 Mr. Chairman, Colleagues, learned Commissioners, and  
23 friends.

24 Tom Berger and I come from the "nut fringe" of Canada,  
25 as you know. So we, naturally when we're invited to leave,

MR. RICHARD VOGEL cont'd.

1 we come.

2 I want to pay a compliment publicly to John Edwards.  
3 I was, as Tom Berger said, the Deputy Attorney General for  
4 six years in British Columbia. I hadn't been the Deputy  
5 Attorney General before I was appointed. So I had a lot to  
6 learn, and I did learn a lot. But one of the invaluable  
7 aids in that learning curve was John Edwards' book on the  
8 Office of the Attorney General.

9 While it was geared, really, on the English  
10 experience, it was extremely useful to me. I have my own  
11 copy, and it's very worn, and what I had... I worked for  
12 three attorneys before I had finished and, on each  
13 occasion, John, when I met the new Attorney General, I gave  
14 them a copy of your book. Now I can vouch for the fact  
15 that two of them read it. Now I'll leave you all to guess  
16 which one didn't.

17 But the book was absolutely invaluable. It gave you  
18 the framework. It gave the person who had these very  
19 difficult positions, and they are fraught with difficulty.  
20 The real problem is that it really didn't matter, in many  
21 cases, which way you went, you were going to be criticized.

22 And perhaps the best example of that was the Clifford  
23 Olsen case. You're all aware of the fact that Clifford  
24 Olsen was ultimately convicted on a plea of guilty of a  
25 series of serial murders, mostly children, and in some

MR. RICHARD VOGEL cont'd.

1 cases, there were sexual overtones to the deaths, of some  
2 eleven children. Now we were faced with a situation,  
3 administratively, of we could not possibly prove murder in  
4 any one of the cases. The most we could have probably  
5 accomplished, after Clifford Olsen had been arrested, was a  
6 conviction for impaired driving. And I won't go into the  
7 background of that, but I will tell you that, and it's in  
8 this case where we agreed to pay a very substantial sum of  
9 money to Clifford Olsen's then wife. But although she was  
10 technically his wife, they were separated and they were  
11 divorced very shortly after. It was probably the most  
12 controversial decision of the term that I had while I had  
13 my office. But the interesting thing in retrospect, and I  
14 thought of it this morning listening to John, was that we  
15 knew when we made the decision that we would be criticized  
16 whichever way we went. To that point, the payment of  
17 substantial sums of money were relative to informers and to  
18 those who had the necessary evidence that was required for  
19 a conviction, was relatively uncommon. Most of you are  
20 familiar with the situation, was it Kirby in Ontario?

21 It's a very, very difficult area. But I mention it  
22 this morning to say that the whole of the discussion in  
23 respect of the decision prior to deciding what we, and  
24 there were seven of us in the discussion, including the  
25 Attorney General, and whose decision it was. The whole

MR. RICHARD VOGEL cont'd.

1 discussion took two hours. About 30 to 40 minutes of that  
2 two hours was devoted to determining whether or not we  
3 would bargain with Olsen with the sum of money he demanded,  
4 or the equivalent, to get the evidence we required to  
5 prosecute him for murder. That took about 30 to 40  
6 minutes. The rest of the two hours was devoted to how we  
7 would announce and implement the decision.

8 And that goes to your point, John. In terms of  
9 being public, coming out, taking the heat. Now the  
10 Attorney General concerned was Allan Williams. We set out,  
11 in the course of the balance of that two-hour period, a  
12 whole course of conduct for him to pursue. The first thing  
13 was that the negotiation group had to be set up and that  
14 was, in fact, assumed by the Department of Justice, the  
15 federal lawyers, with the R.C.M.P. The money was  
16 ultimately paid by the province and the responsibility for  
17 the decision was that of the provincial Attorney General.  
18 Allan Williams then went to all of the media, operational  
19 media people—the newspapers, the two newspapers, the radio  
20 stations, and the televisions stations, individually, over  
21 a period of three days, by appointment. He went over with  
22 each of the people concerned. Now the wrinkle here was  
23 that no announcement could be made until Olsen's trial was  
24 completed. And there were two messages that Williams  
25 carried. One, this is what we've done. You can say

MR. RICHARD VOGEL cont'd.

1 nothing about it until the trial is completed. This is  
2 what we've done and why we've done it. You can say nothing  
3 about it until the trial is completed or we will prosecute  
4 you for contempt. It's absolutely essential that Olsen get  
5 a fair trial.

6 So that the press had about... My memory is the  
7 decision was made in late August, early September. The  
8 trial collapsed on a plea of guilty in January, February.  
9 So the press and media had about six months, four or five  
10 months to scurry around and prepare their attack, and  
11 attack they did. It was an extraordinary media assault on  
12 the exercise of a prosecutorial discretion.

13 And, historically, when one looks back to it, from  
14 this perspective, I say to you, in the context of the talk  
15 that John has given you, that that really was a very  
16 important process for me to go through to understand what  
17 it is that we're talking about when we're talking about the  
18 role of the Attorney General. The very extraordinary  
19 delicacy of the office. The requirements of character, the  
20 requirements of strength, the requirements of a value  
21 system in that individual who served as Attorney General.  
22 His ultimate, his ultimate responsibility, of course, not  
23 only to himself, because he does put his footprint in  
24 history in accepting the oath of office, to that particular  
25 office, I think, more than any other provincial office in

1 matters of integrity and conscience, is to protect the  
2 integrity of the institutions that fall within his ambit of  
3 administrative influence.

4 So that when we're talking about the things that we're  
5 dealing with here today, the question about the integrity  
6 of the justice instruments in Nova Scotia, and I recognize  
7 that justice in many cases is quite a long way down the  
8 list of primary concerns. I think, really, we must all  
9 accept, and while it hasn't, I don't think, been said here,  
10 all of us accept the fact that the minority groups, whether  
11 visible or not, must have adequate housing, they must have  
12 food, they must have a health system, they must have  
13 educational opportunity, and all of the things that go with  
14 the keeping and the preservation of a decent life, a life  
15 that we've come to appreciate and expect as Canadians. Not  
16 only for ourselves, but for all of those who have  
17 citizenship.

18 But when we get to that point of sustenance and  
19 survival, surely we must expect that the justice  
20 institutions of each of our provinces retain the integrity  
21 in all of these very difficult decisions as we go along.

22 Now I leave to the Commissioners the question of  
23 whether or not the system in Nova Scotia has met the test.  
24 Clearly in our discussion group, particularly yesterday,  
25 there wasn't a single person in the room who was prepared

MR. RICHARD VOGEL cont'd.

1 to concede that that was the case. Virtually, I got the  
2 message from those who reported on behalf of their  
3 discussion groups, that that was more or less the position  
4 of each of the other discussion groups.

5 And I say that quite deliberately because I was  
6 really shocked at this piece that was in the *Mail Star*  
7 about the Marshall bash on the public tab. One of the  
8 speakers dealt with this. I don't know if Robert Gordon is  
9 in the room. I have had some experiences with the media.  
10 Two things, the shallowness of the reporting on this point  
11 isn't going to assist the public discussion in any way. It  
12 distracts. Now, clearly, if one reads this, the Attorney  
13 General doesn't come out very well, but he was sandbagged  
14 by the media. He knew nothing of the background of the  
15 party. But when one looks at the, not only the story, but  
16 the placing of the story in the newspaper and its general  
17 content, almost a column and a bit, one realizes that there  
18 is an enormous responsibility on the media to deal with the  
19 issues. And it's in the public interest that those issues  
20 be dealt with intelligently. My judgement is that there  
21 was some editorializing by the paper in the placing of the  
22 story on the front page. The paper, the story should, in  
23 my judgement, should never, this is an outsider's view,  
24 should never have been carried. But carried in the way it  
25 was carried, it's extraordinary to me that that should

MR. RICHARD VOGEL cont'd.

1 happen at this stage of this Inquiry. The whole country,  
2 by this time, is watching Nova Scotia. And it works, I'm  
3 afraid. I bumped into a very good lawyer friend last  
4 night. He demanded to know why I was in Halifax. I told  
5 him, and he talked about "being on the dole." So that I,  
6 it wasn't a situation in which I could take him by the  
7 scruff of his neck and shake him. But he clearly is  
8 getting the message, Mr. Gordon, and the editors of the  
9 *Mail Star*, as you choose to phrase it. That's not going to  
10 help this community. It's not going to help this community  
11 deal with these terribly sensitive and very complex and  
12 extraordinarily difficult problems.

13 What we're here talking about, first, is the  
14 recognition of a problem. If this Commission, in the  
15 course of its debates and consideration, come to the  
16 conclusion that the system, the justice system in Nova  
17 Scotia has failed, they must then characterize that  
18 failure. And if they characterize that failure as racism  
19 or anything equivalent to that, that will be an  
20 extraordinary advance. The problem has been recognized and  
21 it's been dealt with by an authoritative tribunal who have  
22 taken the deliberate, quite deliberately taken the time  
23 that's been required to sift through an extraordinarily  
24 complex series of patterns.

25 I didn't know about the issue of the Negro murders...



MR. RICHARD VOGEL cont'd.

1 the black killings that were in the background, until I  
2 came to this conference. And insofar as I'm concerned, I  
3 just say this again, and I address it, I suspect,  
4 particularly to Robert Gordon. I've learned a great deal  
5 by coming here. I didn't go to the dinner, although I was  
6 invited. But I haven't, in any way, and I wasn't by the  
7 coverage of the media, prepared to deal with the problems  
8 that I've, in terms of being able to take the  
9 responsibility of being on this panel today, to deal with  
10 them by what I've read in the media before coming.

11 And I've got a lot of loyalties to Nova Scotia. I  
12 went to the law school here many years ago, and I'll  
13 mention this in a moment, and I remain a member of the Nova  
14 Scotia Bar. And that was primarily why I came. It was  
15 going to be an opportunity for me to come back after a long  
16 absence to see what, in fact, had happened. And, as a  
17 consequence of having been where I was in British Columbia  
18 over the six years that I was there, I knew a lot of the  
19 players.

20 So that when I come here and I sit here and I listen  
21 and I, particularly in the discussion groups, I feel the  
22 heat and the venom and the anger. I really am terribly  
23 concerned for the responsibility that you, as  
24 Commissioners, have. The recognition, if it should come,  
25 has to lead into some sort of deliberate categorization of

1 mechanics. What's to be done?

2 Now John Edwards has given us an option. Do we  
3 rigidify the system? Do we continue the existing system?  
4 Must we have some kind of mechanical process for the  
5 vetting of qualification, for example, for the Attorney  
6 General, for the Director of Public Prosecutions? There  
7 were interesting suggestions yesterday from Rocky in  
8 respect of what he expected from the Ministry of the  
9 Attorney General in the routine administrative process of  
10 selection of prosecutors for the individual cases. I don't  
11 expect you, as Commissioners, have to get down to that  
12 level. My expectation is that you will be dealing with the  
13 bigger roles, the bigger jobs, and the saddling of the  
14 expressed and positive responsibility to exercise the  
15 conscience of the government of the day through the office  
16 of the Attorney General. What security can we have on a  
17 day-to-day basis that that conscience will be honourably  
18 discharged in accordance with the traditions of this very  
19 historic office that John Edwards has talked about so  
20 knowledgeably in his books, his writings, and his talk  
21 today?

22 Once we recognize, I say, the mechanics that are  
23 required in order to empower, to empower those who have the  
24 public responsibility to administering, and to empower  
25 those who have the outside responsibilities of insuring

1 that when and if they or theirs come into the maws of the  
2 law, they and theirs are going to be treated fairly and  
3 appropriately. So that there must be both recognition and  
4 empowerment.

5 Now what's the relevance of this to this talk here  
6 today and my role with you? I thought I would talk for a  
7 moment about the changes that have taken place in British  
8 Columbia, how it came to pass that they did, with a view to  
9 illustrating that it takes a great deal of time, a lot of  
10 effort on the part of a great many people, but, more  
11 importantly, a sustained political will.

12 We started out in British Columbia in '68, '69,  
13 something of that order, and Tom, you'll remember this very  
14 well. The Bar was very concerned about what they  
15 considered to be the breakdown of the administration of  
16 justice in the province. The Bar appointed a Committee  
17 under the Chairmanship of Tom Berger, a very big committee.  
18 But my memory is that there were 25 or 30 lawyers who  
19 worked on this committee a long time. And I very  
20 distinctly remember a meeting with the then Attorney  
21 General at a Bar convention, it was Les Peterson, where we  
22 sat down with the Attorney General. We presented our  
23 report to him. This would be about 1971, '72, and we put a  
24 price tag on what would be required. Well, the result was  
25 that he did nothing, absolutely nothing. And the further

MR. RICHARD VOGEL cont'd.

1 result was that there was a change in government. And we  
2 like to think that the government changed because the  
3 Attorney General did nothing about the administration of  
4 justice. But that's, I'm afraid, not the case. But the  
5 really interesting thing was that the successive  
6 government, the succeeding government, the N.D.P.  
7 Government under Dave Barrett, did a great deal. It was a  
8 revolution. They appointed a new deputy, a David Vickers,  
9 who came from the Bar, a direct appointment, and David was  
10 the perfect appointee. He had been directly and indirectly  
11 involved in a lot of the ferment in the Bar, very cognizant  
12 of the agenda that the Bar wanted, had some comprehension  
13 of what was required in terms of academic study and  
14 assessment, and set about very deliberately. He created a  
15 Crown corporation, if you like. Filled it full of  
16 thoughtful people. And it produced a whole raft of  
17 recommendations as to how the system would be changed. And  
18 changed it was. And we thought, at the end, when I was  
19 appointed in 1977, David was the Deputy for four years to  
20 the day under the leadership of Alex MacDonald, who was the  
21 N.D.P. Attorney General. He had fundamentally and  
22 radically changed the administration of justice in the  
23 Province of British Columbia. Now when I came in, the  
24 Ministry was some five thousand people direct within the  
25 Ministry. The organization was not clear. There were a

MR. RICHARD VOGEL cont'd.

1 lot of muddied lines and a lot of muddied responsibility.  
2 But the fundamental changes had been made. And let me just  
3 go over them very quickly. There had been a fundamental  
4 role change for the Attorney General in that he expected a  
5 regional prosecutorial system to be in place. And the  
6 Deputy had a fundamental change in that he had to put in  
7 place that regional prosecutorial system. The Attorney had  
8 accepted the responsibility for what we call  
9 "professionalizing the provincial bench." It had been a  
10 lay magistracy prior to this. He implemented all of the  
11 changes required to retire the lay magistracy and to  
12 appoint qualified lawyers on a province-wide basis, right  
13 across the piece. The prosecutorial responsibilities, in  
14 addition to being regionalized, some ten regions across  
15 the province, were professionalized as well. The political  
16 patronage process whereby the prosecution responsibility an  
17 assize, for a case, was withdrawn completely. That  
18 jurisdiction had been exercised by the deputy prior to  
19 David Vickers' tenure on effectively a political basis, as  
20 had the appointment of the magistrates been exercised,  
21 essentially, on a political basis.

22 So that when I arrived, what was in place,  
23 effectively, was a professionalized magistracy, a  
24 regionalized and professional prosecutorial structure,  
25 working under administrators across the province, and it

1 had a very dramatic effect. It bucked up the police. It  
2 really did change in a very fundamental way the  
3 administration of every courtroom in the province. The  
4 police were no longer prosecuting. There were court  
5 reporters in virtually every province at the magistrate's  
6 level, at the provincial court level right across the  
7 province, which was an incredible change, an absolutely  
8 incredible change. The police didn't like it one bit.  
9 They muttered and carried on about it over many months and  
10 years about the loss of the ability to decide which case  
11 went forward and whether or not a prosecution would be  
12 laid. And they're still at issue on that point.

13 But by the time, and my point is this, that these  
14 changes in terms of recognition took from about 1970 to  
15 about 1978 or 9 to be implemented. Now we didn't use any  
16 statutory enacting resources, if you like, to effect these  
17 changes. These changes were implemented really by  
18 administrative fiat. But the general philosophical thrust  
19 of these changes was essentially a political decision by  
20 the N.D.P. government that held office from 1973 to 1975.  
21 No changes were made by the succeeding Social Credit  
22 government. And Social Credit in British Columbia, while  
23 it's responsible for many of the nuttier parts of our  
24 reputation today, and Tom and my ability to go around and  
25 tell jokes about our political figures, to its credit,

MR. RICHARD VOGEL cont'd.

1 didn't make any changes in terms of cutting back. We  
2 always had a fiscal problem, but when I took the office, I  
3 took the office as, so far as I was concerned, an  
4 independent person. I was not a political supporter of the  
5 government of the day. I had no, ever any expectation of  
6 being treated in that character by anybody to whom I was  
7 responsible. And I was very fortunate in the strength of  
8 character and the professional will and dedication of the,  
9 particularly the two Attorneys General that I worked for  
10 initially-- Garde Gardom and Allan Williams.

11 So that I have this background when I come here today  
12 to deal with John Edwards' proposals in respect of the  
13 Director Prosecutions. And he's absolutely right. That  
14 these changes have to happen. And I recall dealing with  
15 Ian Scott at the time that he was trying to decide whether  
16 he would be the Minister of Health or the Minister of the  
17 Attorney General after the Liberal success in Ontario. And  
18 I was in touch with him and I said, "Look it, the  
19 revolution that took place in British Columbia has to occur  
20 in Ontario. It's absolutely vital that that revolution  
21 occur under the administrative charge of a knowledgeable  
22 and competent active practicing lawyer. It has to be  
23 nonpolitical, it has to be thorough, and it has to happen."

24 Now I don't think Ian Scott took the job because I was  
25 in touch with him, but I say the same thing to you today.

MR. RICHARD VOGEL cont'd.

1 That if, in fact, there is a recognition of a breakdown  
2 and a failure in the system in Nova Scotia, then there must  
3 be the mechanics recommended for the implementation for the  
4 change to insure that that doesn't happen again. When it  
5 does happen, despite the inadequacy of the reporting in the  
6 *Mail Star*, it reflects on the whole country. When the  
7 ticket scandal broke in Winnipeg, that really affected, in  
8 my judgement, the administration of justice right across  
9 the country. There are a lot of people who are prepared to  
10 believe, with some cynicism, that the institutions do not  
11 work with integrity. Whether that's an inherent thing or  
12 it's an Americanism, I don't know and I don't think it's  
13 profitable to speculate upon. But when there are scandals  
14 in respect of the institutional fabric of the  
15 administration of justice, it affects everyone. Not only  
16 the professionals in a place whose responsibility it is to  
17 run them, but those who have the expectation or the worry  
18 of becoming involved with those institutions and worrying  
19 about whether or not they're going to function in a  
20 nonpolitical integral and integrated and professional  
21 manner.

22 It was put very well to me when I was arguing salaries  
23 for the provincial court bench with the premier. And he  
24 finally said, "You know, you're right, the last thing in  
25 the world an accused person wants to think about when he's



1 standing in front of a provincial court judge is whether or  
2 not that man is worried about his salary." Now I thought  
3 that... But he didn't do much about the salary levels, I've  
4 got to say, but he put it very well.

5 I heard a Vice-Chancellor from England say, "Look the  
6 most important man in the courtroom is the one who is going  
7 to lose. When he leaves that courtroom, what is he going  
8 to think in the after moments of that experience about the  
9 adequacy of his hearing?"

10 The most important person in Nova Scotia is the  
11 person who will deal with the institutions of justice in  
12 this province after this Royal Commission has made its  
13 recommendations. Will those concerns that I felt yesterday  
14 in the discussion, are they going to be placated? Are they  
15 going to be resolved? I don't know. One hopes, and that's  
16 why we're here. We're not here to eat thirty-eight dollar  
17 lunches or dinners or whatever they might have been.

18 And let me just talk for a moment, and I'll quickly  
19 conclude, on an optimistic note. And I can say this  
20 because my wife is not here. She'd choke me to death if  
21 she heard what I'm now going to say to you.

22 She was a year behind me at Dalhousie, as a medical  
23 student. She did her rotating internship and we both went  
24 to England and studied and then returned to British  
25 Columbia and practiced for twelve years in the Kootenays,

MR. RICHARD VOGEL cont'd.

1 | which is the sticks, if you like. So that the changes that  
2 | I've talked to you about, in terms of the administration of  
3 | justice in British Columbia, was a very real thing to me,  
4 | because I had practiced in a town where the magistrate was  
5 | appointed as a political favour to somebody. He was very  
6 | interested in collecting the debts of his business. He  
7 | wasn't the least bit knowledgeable or competent to  
8 | discharge his justice's responsibilities in respect to the  
9 | administration of the Code. So that when Patty and I went  
10 | to Creston, first to Cranbrook, and then to Creston, she  
11 | ultimately, after we got settled, looked for work. She  
12 | went to see the clinic in Cranbrook, and I remember this  
13 | very clearly. She came home and she had talked to the  
14 | leading physician of this group and the man had explained  
15 | to her very carefully that, really, women, and people in  
16 | their community were used to dealing with male doctors, and  
17 | that there was no expectation on their part that that was  
18 | going to change, and if she wanted to work, really, there  
19 | was no work for her because people wouldn't come to her for  
20 | treatment. So she suggested that perhaps if they booked  
21 | their office on their days off, she could, by that trick,  
22 | see the patients in that man's practice. And there was no  
23 | concern on his part because they, after all, wouldn't be  
24 | satisfied with the treatment by her and they'd come back to  
25 | him and so on. So that was agreed that people in the

MR. RICHARD VOGEL cont'd.

1 clinic book their days and she worked their days off with  
2 their patients. And the result, interestingly, because we  
3 only stayed there twelve months, was that Patty had her own  
4 very big practice very quickly. And they were very  
5 appreciative, I may say. We moved to Creston and exactly  
6 the same thing happened again. Really, the patients in our  
7 practice like to deal with men, and there's no room for  
8 women. The result of this, of course, is that this  
9 cultural change took place quite subtly, very quietly. And  
10 I'm told by Patty today that the lady doctors who start  
11 practices in Vancouver are very much more quickly  
12 successful than the male doctors, which is quite a  
13 revolution, when you think about it, over a period of  
14 twenty or thirty years.

15 Look at the advances that women have made. And I  
16 think about this in terms of recognition. And I will come  
17 to the point that it's a personal problem for each of us,  
18 whether it's racism, whether it's sexism. Whatever it  
19 might be, those affected must take some responsibility in  
20 respect of affecting the change that's required, the  
21 recognition and the mechanics.

22 Women have, and I needn't go over it with you, they've  
23 made extraordinary advances in respect of divorce,  
24 extraordinary advances in respect of education,  
25 extraordinary advances in respect of abortion, which still

1 is a big issue. But today, and I can tell you that in my  
2 practice in that small town of Creston, I had to go to the  
3 hospital and threaten litigation in order for them to  
4 approve a surgical procedure known as a tubal ligation.  
5 The lady was single, she was pregnant, she was forty, and,  
6 at that time, that was a very advanced stage for children.  
7 They had an administrative procedure in that hospital,  
8 imposed by the administrator of the hospital, that the  
9 tubal ligation could not be done without the written  
10 consent and approval of the father or the husband. Now  
11 that was, so far as I was concerned, a totally wrong  
12 process for them to administratively impose on this lady in  
13 respect of her health. When I threatened the litigation,  
14 they withdrew.

15 Now that was a fairly simply process for me and that  
16 lady. But the advances to this day are really quite  
17 incredible in those areas for women. And I say to you  
18 that, if you're concerned about racism in this community,  
19 you should have some regard to the changes that have taken  
20 place in respect of ladies and their... women and their  
21 educational opportunities, their expectations from this  
22 community.

23 There were five ladies in our class at Dalhousie, and  
24 I've said this before at this thing. That was the largest  
25 group of ladies, of women ever in a law class at Dalhousie.

1 One is now on the Supreme Court of Canada. We have Chief  
2 Justices in Nova Scotia and in British Columbia, who are  
3 women. Routinely, classes are graduating in every one of  
4 the law schools in Canada somewhere in the twenties, where  
5 a third to a half of the class are women. Now that was  
6 absolutely unimagineable, totally and completely  
7 unimagineable twenty years ago.

8 A very good friend of mine, now a retired officer of  
9 the R.C.M.P., a Deputy Commissioner when he retired, has a  
10 daughter who is a prosecutor in Toronto. She was sent out  
11 by the Attorney General to run an assize in a small town.  
12 And after the trial was over, the bailiff stuck his head  
13 in, they were waiting for the jury to come in. There were  
14 three women in that room. One was writing recipes from a  
15 book, another was knitting, and the third one was reading.  
16 And the bailiff sort of said, wistfully, "You know, somehow  
17 I prefer the old days when they sat in here drinking." So  
18 I say, take heart, and keep up the pressure.

19 One more and last point. I want to make two points.  
20 These conferences are extremely important and might I say,  
21 give a compliment to the Commissioners. I couldn't believe  
22 it when I was asked to come. I guess thirty years of  
23 practicing law, I didn't understand how this format would  
24 work. I didn't really think, initially, that it was  
25 appropriate or perhaps even proper that the Commissioners

1 | should invite a wide range of people who, in their  
2 | judgement, think might give some useful comments in respect  
3 | of your responsibilities. And I picked up Tom Berger's  
4 | point at the beginning. When you have your  
5 | responsibilities, I can now see much more clearly that you  
6 | do have the view, and you're to be credited for having that  
7 | view, that you can take all the help that you might get.  
8 | And I don't know that you've got a lot of help from us in  
9 | the last three days, but we're very glad that you've asked  
10 | us to come. So far as I'm concerned, it emboldens me to  
11 | think that you are going to deal with the issues. And I  
12 | say to the rest of us, that the reason that these  
13 | conferences, in my judgement, are of value is that they  
14 | embolden us to work within ourselves and within our  
15 | community to empower the disadvantaged, as we see them, to  
16 | work to preserve the integrity of our institutions is daily  
17 | work. It's personal work. It's work within our heads,  
18 | particularly when you're dealing with something as  
19 | insidious as racism. We must create the political will to  
20 | compel change in a mechanical, pragmatic way. So far as  
21 | I'm concerned, we're not likely to do it if we don't, if  
22 | we're not emboldened by processes equivalent to this.

23 | Thank you very much.

24 | CHAIR

25 | Well, thank you, Dick. I'm sure all present now

1 realize why, when Dick Vogel left the Deputy Attorney  
2 General's office in British Columbia, he left with the  
3 respect and admiration of the profession, the Bench, the  
4 Bar, the public, and all of our political parties.

5 Dick has to leave soon to get a plane to get back to  
6 Vancouver. So I'll thank him again, on your behalf now,  
7 and we will take our coffee break and then we'll come back  
8 to hear Mr. Manning and Mr. Kujawa.

9 [BREAK]

10 CHAIR

11 Ladies and Gentlemen, before we ask our next speaker  
12 to make his presentation, could I, since we may not have  
13 another opportunity, could I, on your behalf, thank Susan  
14 Ashley and the Commission staff for making this gathering  
15 one that has gone so smoothly and for treating us all with  
16 such hospitality. I won't say anything about the famous  
17 dinner that resembled the New Year's Eve bash on the  
18 Concorde, but the arrangements have been simply excellent  
19 and, on your behalf, I just want to say to the Commission  
20 staff how much we appreciate it.

21 One other thing, we are going to hear from Mr. Manning  
22 and Mr. Kujawa, and I should state the obvious. That means  
23 that since we want to adjourn at 12:30, there will be only  
24 limited time to hear further remarks from the floor.  
25 That's in the nature of things and it happens at all of

1 these conferences. I, as Chair, have taken it upon myself  
2 to give our guests as much time as they need, since I think  
3 we're all eager to hear from them.

4 But I should tell you, and I've been asked to tell  
5 you, that if you have any representations to make to the  
6 Commission, you can simply write to them here in Halifax at  
7 their office. I've been told that if you do make  
8 representations in writing to the Commission, along the  
9 lines that we've been discussing here these past three  
10 days, or in furtherance to anything you may have said these  
11 past three days, to simply send your submissions in writing  
12 to the Commission, but do so as swiftly as you can, as they  
13 must soon be getting on with the completion of their  
14 report.

15 Well, that brings us to our next guest, Mr. Morris  
16 Manning, and we'll ask him to speak to us now.

17 MR. MORRIS MANNING

18 I'd like to start by making three observations.

19 First, merely because I'm wearing a three-piece suit  
20 doesn't mean I'm a pimp. I'm a solicitor, all right.

21 Secondly, I was brought here to critique a paper,  
22 which doesn't exist by a judge who is not here. And, in a  
23 way, though, I wish he had been, because Justice Watt is a  
24 man for whom I have the greatest respect and I'm sure that,  
25 in years to come, he'll have earned his spurs and



1 recognition as one of our great judges.

2 And, third, I didn't have an opportunity, because of  
3 prior court commitments, to come to the conference earlier  
4 and to attend the now infamous dinner. And I'm sorry about  
5 that. Because if I had, the bill would have been higher, I  
6 would have had more Scotch, but the bill wouldn't have been  
7 half as high as it would have been had I been retained to  
8 come here.

9 But, interestingly enough, the remarks about the  
10 dinner, and particularly the parading of ignorance by the  
11 Attorney General and his comments, highlight what is a most  
12 difficult area in the criminal justice system; that is, the  
13 ties by the Attorney General to his or her constituents.  
14 And I'll address that in a few moments.

15 The background that I bring to this conference is not  
16 merely that of a defence counsel. I think it's important  
17 to stress the fact that, in the summer of 1964, I worked as  
18 a summer student in the Ministry of the Attorney General,  
19 then called the Department of the Attorney General for  
20 Ontario. In 1965 and 1966, I articulated for the Attorney  
21 General of Ontario. And from 1967 to 1976, over nine  
22 years, I worked as Crown counsel and, ultimately, senior  
23 Crown counsel, head of civil litigation and legal advisory  
24 services.

25 Since that time, I've been in private practice and

1 have seen, therefore, the system from both within and  
2 without. So my observations today bring me to a period in  
3 time where, after 21 years, almost 22 years in practice,  
4 I'm familiar with the criminal justice system and how it  
5 operates and how it's supposed to operate. And a lot of  
6 how it's supposed to operate came to me from two sources.  
7 The first, the people that I worked under at the Ministry  
8 of the Attorney General, Bill Common and Bill Bowman. Two  
9 people who held the post of Director of Public  
10 Prosecutions, even though it was a statutory-type post,  
11 even though they were civil servants who held the ideals  
12 that one finds expressed in papers and books written by  
13 John Edwards.

14 The other area where I was able to go and find out  
15 what an Attorney General was supposed to be and what he was  
16 or wasn't, it was John Edwards' books, or book then, and  
17 now books. So that, in the past, I've had both practical  
18 and academic experience with this subject.

19 And I say that not to pat myself on the back or to  
20 show you that I'm well qualified to speak on the subject,  
21 but to give you some idea of the background that brings me  
22 here and why I was so pleased and honoured by the  
23 invitation from the Commission. Surprised, because it's an  
24 unusual and very bold step for a Commission to take, but  
25 nevertheless, quite honoured. I know two of the

1 Commissioners from interacting in the justice system and  
2 the judiciary system in the past, and one by reputation.  
3 And we are, indeed, fortunate in Canada, not just in Nova  
4 Scotia, not in the Marshall Inquiry, but in Canada, to have  
5 three such distinguished individuals, such experienced  
6 individuals who are opening up their minds to the problem  
7 that exists not only in this province but in the whole of  
8 Canada. I view what they have done as being of critical  
9 importance to the justice system in this country. I view  
10 it in that way because I hope that their recommendations  
11 will provide a model for the whole of the country. I  
12 deeply hope that their recommendations will not be put into  
13 never-never land by each provincial attorney general  
14 because it's not on the political agenda. I deeply hope  
15 that some day the justice system will get the kind of  
16 financial support that it has never had in this country. I  
17 deeply hope that we will have attorneys general in  
18 positions, be they political appointees, be they elected,  
19 be they put into a new position or an old position, who  
20 realize, who realize that the justice system in this  
21 country is not working. That it doesn't help those people  
22 who are being discriminated against. Ultimately, those  
23 people are the poor. The justice system will always work  
24 as well as it can work for those who can afford to pay for  
25 the best lawyers. It doesn't ultimately work for those who

1 can't, notwithstanding our legal aid schemes. It doesn't  
2 work when we have an attorney general who takes the job and  
3 says he'll change the system, who doesn't change it at all.  
4 It doesn't work when the attorney general can't convince  
5 his Cabinet colleagues to spend the kind of money that is  
6 necessary to pay provincial court judges what they should  
7 be paid so that the best people are attracted to the job.  
8 To pay Crown attorneys the best that they can be paid so  
9 the best people will stay in the job. Ontario has lost  
10 more experienced Crown attorneys in the last few years than  
11 in the past 15 before, and that creates real practical  
12 problems in administering justice. Young lawyers don't  
13 have the experience necessary to deal with sensitive cases  
14 in a proper way. They're afraid to make decisions for fear  
15 of being over-ruled or overturned in the back room.

16 And that leads me back to the problem we see  
17 highlighted by comments by the Attorney General about a  
18 dinner. And I say that because I'm sure the Attorney  
19 General's reaction is not based on his role as Minister of  
20 Justice or Attorney General, rather that his reaction to  
21 any such criticism of any such dinner is based on his first  
22 impression of how is this going to look to my constituents?  
23 Because the attorneys general in this country are married  
24 to the political system. They're tied in to constituents.  
25 And that's a pragmatic and realistic fact. And so long as

1 | you have an individual holding government office, who must  
2 | go back to the people, who must be re-elected in the same  
3 | way as anyone else, and who is identified and closely  
4 | connected with the Cabinet, with the government of the  
5 | province or the government of Canada, that individual can  
6 | never be said to be independent.

7 |         Now we must have a system of accountability. There's  
8 | no question of that. Young Crown attorneys prosecuting  
9 | sensitive cases in the provincial courts at all levels of  
10 | court in the provinces must be accountable to someone above  
11 | them, because we have to have recourse. We have to have  
12 | accountability. We can't let it be a runaway train, as it  
13 | were, the justice system.

14 |         So that it's my view, as you can readily see, that we  
15 | must have change in the system. The system is not working.  
16 | And the question then becomes, what kind of change should  
17 | we opt for? The model that's been put forward by  
18 | Professor Edwards and the model that's been put forward by  
19 | Professor Stenning, whose book I had read long before  
20 | coming to this conference, and whose paper about Professor  
21 | Edwards' tomb that he's prepared for this conference, which  
22 | is a marvelous work. I don't know how anyone gets to be so  
23 | prolific to churn out that material on a monthly basis like  
24 | a short newspaper column he turns out fifty, sixty, a  
25 | hundred pages of critical comment founded in fact and in

1 | great legal research. And my compliments to him. But I  
2 | have studied both, not for very long, but I have thought  
3 | about both, against my background, and I cannot see how we  
4 | can change this system by further marrying the attorney  
5 | general's position into the cabinet. I think we must  
6 | divorce it from the cabinet. I think we must opt for a new  
7 | system, which is separate and independent from cabinet  
8 | influences. Then they don't have to be direct influences  
9 | to be important. They can be indirect and have a great  
10 | effect on the administration of justice.

11 |         We must recognize as a matter of practical political  
12 | reality in this country, that there are no votes in the  
13 | justice system. There are no votes for those who advocate  
14 | higher pay for judges, because people think judges are paid  
15 | too much anyway. There are certainly no votes for  
16 | advocating higher pay for lawyers who are on government  
17 | staff, because they're viewed as being at the government...  
18 | at the trough, anyway. There are no votes for building new  
19 | and better courthouses because, after all, the only people  
20 | that are going to go through those courthouses are  
21 | criminals.

22 |         So who is going to vote for the justice system? When  
23 | it comes time to slice up the provincial pie, to allocate  
24 | resources by management boards of cabinet, or whatever  
25 | they're called in whichever province, the justice system is

1 always at the bottom. Because we, as Canadians, have not  
2 yet demanded high quality justice. And because we haven't  
3 demanded high quality justice, which has to be paid for in  
4 the same way as high quality medical care, we're getting  
5 the kind of justice system that we deserve, in a sense. We  
6 don't really deserve it, but we're getting it because our  
7 political leaders haven't the gumption to call for more  
8 resources. And linked to that, is the position of the  
9 attorney general, who is the minister of justice, knows  
10 there's problems in the system, but has to go back into  
11 cabinet to convince his cabinet colleagues of that. And  
12 everyone has different claims and different priorities.

13 So I think that, unfortunately, Philip Stenning's  
14 work, and I admire it greatly, doesn't have that degree of  
15 pragmatism or political reality as its basis as does  
16 Professor Edwards. I worked for seven attorneys general  
17 over a period of almost twelve years, as a student and as a  
18 lawyer, and I saw things that surprised me, because I  
19 didn't understand them, and things that surprised me,  
20 because I did. I saw pressure being put on governments to  
21 withdraw charges against cities for pollution offences.  
22 And at the time, as a young lawyer, I was asked to withdraw  
23 an appeal that I had launched as Crown counsel, and I was  
24 ordered to withdraw it. And I refused, because I didn't  
25 think what was happening was correct. In retrospect, and

1 after the fact, a lot was explained to me that should have  
2 been explained to me at the time. The other considerations  
3 being that the municipality was undertaking certain  
4 programs and so on. In other words, there was plea  
5 bargaining, but it was being done at the wrong level. And  
6 I was ordered to withdraw the appeal. I said "no." I was  
7 brash and full of myself at the time. I figured I could  
8 always go back to driving a laundry truck, as I did to get  
9 through law school. And nothing happened. Another Crown  
10 was asked to go out and do the job and did it. I was  
11 waiting for the repercussions and there were none. I saw  
12 appeals being taken in order to support a local Crown  
13 attorney, who was having difficulty because the judge  
14 sitting on the bench was always ruling in favour of his  
15 nephew defence lawyer, and no one would do anything about  
16 it.

17 Now whether that was a proper reason for appealing a  
18 case in order to show that the system was wrong remains to  
19 be seen to this day. I wonder how fair that was to the  
20 particular accused. I didn't think it was unfair at the  
21 time. I wonder what that accused would think.

22 I saw an appeal taken with respect to a sentence  
23 handed down in Northern Ontario with respect to native  
24 people, which sentence was viewed as being too harsh. And  
25 I saw the Court of Appeal consider the matter in a way



1 | which I had never seen before from a really pragmatic,  
2 | practical, everyday, reality way and lower the sentence  
3 | because they knew about the situation in the community.

4 |         In order to deal with that kind of situation, it was  
5 | my feeling at the time that the almost independent office  
6 | of director of public prosecutions should be operating away  
7 | from the political process. I had not yet had the  
8 | experience that I have today nor the learning that is based  
9 | on Professors Edwards' and Stenning's works in order to  
-0 | help me formulate my thoughts on this subject.

-1 |         But having formulated thoughts on this subject, I look  
-2 | around and I see great legal issues that come before us as  
-3 | a people, and I wonder why Attorneys General act or refuse  
-4 | to act under certain conditions. For example, let me  
-5 | highlight a few. The Meech Lake Accord is felt by a lot of  
-6 | people in this country to be seriously flawed because it  
-7 | endangers the rights of women and native peoples under the  
-8 | Charter. There's a very serious question of interpretation  
-9 | of the Meech Lake Accord, yet the governments refuse to put  
20 | those serious, legal questions, constitutional questions,  
21 | before the Courts of Appeal or the Supreme Court of Canada  
22 | because the governments themselves agreed with the Meech  
23 | Lake Accord. That, to me, highlights a situation where an  
24 | independent attorney general, or prosecutor, or director of  
25 | public prosecutions, or whatever you call the office, would

1 operate in the way that was in the best interest of justice  
2 and law and not merely politics.

3 On the other hand, for example, the Ontario government  
4 got itself out of a very neat problem, political problem,  
5 with the *Catholic School Funding* case by placing that  
6 before the Ontario Court of Appeal. Kicking the political  
7 football, as it were, into the Court and saying to that  
8 Court, "Here, you solve our problems for us by giving us  
9 your interpretation."

10 The abortion issue raises the same kind of concern.  
11 It's a political football, as we've all seen in this  
12 country, and whichever side one is on in this debate, I  
13 think we can all agree that politicians are cowards when it  
14 comes to the issue because it has done a lot of politicians  
15 in, and yet some attorneys general have not acted properly.  
16 For example, in the province of Quebec in the *Morgentaler*  
17 case, the continued prosecution, notwithstanding acquittals  
18 and the continued harassment using the legal process,  
19 raised great questions in the minds of Canadians not about  
20 Henry Morgentaler, not about the abortion issue, but about  
21 the abuse in the justice system.

22 In Ontario, after the jury acquittal, the decision to  
23 appeal was laid on to the Attorney General, Roy McMurtry.  
24 Now, I am sure that Mr. McMurtry, knowing him as I do,  
25 agonized over that decision, but I am also certain, without

1 knowing any facts, that he did not make that decision  
2 totally on his own because the decision had great  
3 ramifications in society. And that's the kind of scenario  
4 that we're going to run into more and more with the advent  
5 of the Charter of Rights.

6 Because the Charter controls government, both at the  
7 legislative and executive levels, someone has to place the  
8 case before the Court. Someone has to prosecute, and when  
9 the defence lawyer in the criminal case raises Charter  
10 Rights and that defence says, "We are saying that  
11 legislation is unconstitutional," the attorney general,  
12 ultimately, bears the responsibility for what decisions are  
13 made as to whether or not, for example, that particular  
14 argument should be agreed with.

15 You cannot have an attorney general make those kinds  
16 of decisions with respect to the propriety of government  
17 acts, executive acts, legislative acts, and be part of the  
18 government acts and legislative acts at the same time.  
19 That's clearly a conflict in interest. It's clearly a lack  
20 of independence. And while there's political  
21 accountability in the system, the political accountability  
22 is obviously through the political process, and we must be  
23 realistic about that process.

24 Those who go through the justice system, those who are  
25 poor and economically disadvantaged, because that's the

1 bulk of the people through the justice system, seldom have  
2 time, seldom and almost never have money to be able to  
3 participate in the political process as we see others  
4 participating. They can't support a political candidate.  
5 They can't take time to knock on doors, and they haven't  
6 got the money to take out ads in the papers.

7 As a result, we must be realistic about who has access  
8 to the political system and, at the same time, we must see  
9 where the attorney general's role comes in that system. If  
10 the attorney general is part and parcel of the political  
11 system in the same way as his cabinet colleagues are, then  
12 we've got a problem in this country, and it's never going  
13 to go away.

14 We see a model, in effect, in the House of Commons or  
15 in the legislative assemblies where the speaker of the  
16 House, who's supposed to be an impartial arbiter in the  
17 House of Commons or in the legislative assemblies, is part  
18 of the political process in a sense and is elected by the  
19 people at large. So we already have built into our system  
20 a kind of a model wherein someone runs for political  
21 office, has a constituency, gets to be elected and then is  
22 supposed to exercise quasi-judicial type functions, is  
23 supposed to be fair and impartial as between a number of  
24 competing political parties.

25 And I'm sure that with some thought and with the help

1 of people like Professor Edwards, we too can map out a new  
2 truly Canadian solution to a Canadian problem. We don't  
3 have to slavishly follow the English model or the  
4 Australian model, although I was pleased to hear that the  
5 Australian model provides not only for security of tenure  
6 like a Supreme Court Judge but also pay like a Supreme  
7 Court Judge.

8 But we have a lot of problems in this country created  
9 by the Charter which is there to help us. Operation  
10 Dismantle informs us of our view of the role of the courts  
11 today, and it's totally changed. It's changed because the  
12 courts review what the legislative bodies do and what the  
13 executive branch of government does, what the police do as  
14 part of the investigative arm for the executive branch.  
15 That's all up for review now.

16 And so the conclusion I bring is that, first, in my  
17 view, discrimination does exist in the justice system as a  
18 whole against those who are poor and can't swing political  
19 clout. And, second, that discrimination can be dealt with  
20 if we separate out the prosecutorial authority from the  
21 political process in such a way as to ensure justice and  
22 fairness and independence along with the necessity of  
23 accountability. Third, that Phillip Stenning's view, while  
24 I admire him and his work greatly, I feel is not  
25 appropriate, based on my experience.

1 Times have changed greatly. Crime is different, for  
2 example, money laundering offences you never heard of  
3 before. Methods of detection of crime is different, wire  
4 tap evidence, terrorism offences and so on. The defences  
5 have changed dramatically; we've constitutionalized both  
6 the process as well as the substance of the criminal law.  
7 But what has not changed, what has not kept up with the  
8 times is the prosecutorial system and the role of the  
9 attorney general.

10 It is time for a change. It is time for a model to be  
11 used, and why do we not view it in such a way that we can  
12 try it, and if it doesn't work, we don't have to stay with  
13 it. Why don't we build in a sunset provision in our new  
14 model. After all, Canadians like to look at precedent. We  
15 don't like to move too quickly. We've now got a precedent  
16 in the Charter of Rights. The over-ride provision, which  
17 allows government to take away our rights for a period of  
18 time, is confined to five years at first instance and then  
19 five years again. We could put in a new model and have it  
20 go out of existence after five years or ten years and then  
21 renew it upon a restudy of the situation. If it's  
22 warranted to be renewed, we'll renew it. And if it's not  
23 warranted, if the situation has worsened, we'll try  
24 something else or go back to our original system. The  
25 advantage is it will take away the uneasy feeling that many

1 have expressed and that I have had for quite some time that  
2 either we have a political decision being made in  
3 important, high-profile, political cases such as *Clifford*  
4 *Olson*, the *Guy-Paul Morin* case, the *Morgentaler* cases in  
5 Quebec and Ontario, the *Kirby* case, and so on. Or we have  
6 the feeling that the whole system at the lower end, where  
7 there's not this high political view, or pers-  
8 pective,...kind of case, is being run by people who are  
9 civil servants who don't have accountability to anyone.  
10 Either view makes us uneasy and should make us uneasy.

11 In closing, let me say that, having started the  
12 process, Mr. Commissioners, I truly hope that you will  
13 continue it, and you will put in your report a model for  
14 the whole of Canada which will be framed in such a way as  
15 to be a challenge to any of the governments, not to  
16 implement it.

17 Thank you very much for your invitation.

18 CHAIR

19 Thank you, Mr. Manning, before calling on our next  
20 speaker, let me just provide a further footnote. I  
21 mentioned the office of director of public prosecutions in  
22 the state of Victoria, in Australia. The occupant has the  
23 security of tenure of a Supreme Court Judge and Mr. Manning  
24 was pleased to note the salary of a Supreme Court Judge.  
25 He is in charge of all prosecutions. There is no political

1 | influence brought to bear on him, and the first occupant of  
2 | the office, by the way, is a well-known Melbourne defence  
3 | lawyer who spent his whole career at the defence bar and  
4 | used to spend about two months of his time away from his  
5 | busy Melbourne practice to go north to Darwin and Alice  
6 | Springs to defend aboriginal persons on a legal aid basis.  
7 | It showed that there may be an opening, Mr. Manning, for  
8 | someone like yourself when these...

9 | MR. MORRIS MANNING

10 | I thought you were going to take the job.

11 | CHAIR

12 | Now, I would like to call on Serge Kujawa to conclude  
13 | the discussion from the panel.

14 | MR. SERGE KUJAWA

15 | Thank you. Ladies and gentleman, I have been ordered  
16 | not to say anything about the dinner so I won't, but I want  
17 | to point out that I was not given any Drambuie following  
18 | the dinner.

19 | I found this whole several days very interesting. I  
20 | think what we were doing, without maybe even thinking about  
21 | it, is attacking the whole basis of a democratic system of  
22 | living. According to my understanding of democracy, and  
23 | it's a long way from very perfect, democracy is the will of  
24 | the people, it is the rule of all of us, but it's under the  
25 | rule of law. We tend to forget the importance of, "it's



1 under the rule of law."

2 Since that is what governs our whole system, the  
3 attorney general, who has been right along responsible for  
4 law, is an extremely important person in the scheme of  
5 things, which makes me wonder why it is that the citizens  
6 of Saskatoon refused to send Ray Hnatyshn over to Ottawa to  
7 be the Minister of Justice when they had it there for the  
8 doing.

9 But all of the speakers so far, and I heartily agree  
10 with them, point out that whoever is administering the law  
11 is accountable to the public because, after all, the public  
12 is the final government. And you have to, if you're  
13 representing them in dispensing justice and making laws and  
14 dealing with laws, you have to be responsible, accountable  
15 to the public.

16 How can you be accountable to anybody if you are  
17 stripped of your powers? That's my number one question and  
18 Professor Edwards, it seems to me, is saying that since the  
19 attorney general is a human being, therefore not perfect,  
20 therefore, we should split up his jurisdictions into bits  
21 and pieces and that way he can't do too much harm. It also  
22 follows that he can't do any good.

23 I suggest that we have with our...we've equated  
24 progress and change, we use them as if they're the same  
25 damned thing, and we get our idea of the direction in which

1 | we should change from the United States. The United States  
2 | is famous for, what, NFL plus due process. If it isn't  
3 | done according to due process, then it isn't good and it  
4 | isn't wonderful. We don't give a damn about justice, and  
5 | we don't care about accountability. If there is due  
6 | process, what else can you ask for? And yet, in a  
7 | democracy, if you want your government supported, if you  
8 | want your attorney general supported, then he had better  
9 | convince your public that what he's doing is a sensible and  
10 | just sort of a job. Not simply going through due process.

11 | Now the government isn't running the country because  
12 | it doesn't pass the final laws. We have, how many ever  
13 | people are left in Ottawa running the country from the  
14 | Supreme Court of Canada. They make the rules and they  
15 | apply the Charter, and I have trouble with my kids,  
16 | explaining to them, the perfectly logical, totally  
17 | reliable, infallible even, evidence. This is not  
18 | necessarily admissible at all. That has nothing to do with  
19 | justice. It depends on whether due process has been  
20 | followed. This is hard to sell to intelligent grade 11  
21 | kids. And I suspect that's about the level at which the  
22 | vote comes down; it's not going to sell too long,  
23 | generally. And I think we have to get back to where the  
24 | attorney general can say, "Here is how the system runs. We  
25 | are a democracy, and I am willing to have you judge the way

1 I do things." Unless we're doing that, we're not even in a  
2 democracy.

3 And we have in law, it sounds great, you know, we go  
4 by form as to the substance in law so damned much that it's  
5 unbelievable. This business that justice must appear to be  
6 done is one of the really sacred things in our law. And in  
7 a way, sure, justice must appear to be done. But if you  
8 and I are married to a pair of sisters, does that mean when  
9 we go into court on the opposite sides of a case, that we  
10 have to act like we hate each other? Isn't it a simple  
11 fact of life that any human being can understand that if  
12 you and I, or if the judge and I are old friends and we  
13 golf together, before appearing before that judge, I'm  
14 going to prepare a little more carefully, and I am going to  
15 show a little more integrity because I want him to like and  
16 respect me, more so than I would with a total stranger.  
17 Why do we totally ignore that? Why must we make it all  
18 look artificial and, therefore, justice appears to be done?  
19 That is giving the public too much credit for no  
20 intelligence.

21 Now, Professor Edwards said something that really, it  
22 really needs to be said, that I picked up on because it is  
23 so seldom that you hear anyone say it. He says that the  
24 attorney general must show a great deal of "integrity," was  
25 the word that he used, in the application and the

1 administration of justice. I couldn't agree more. But  
2 mostly we don't hear a word about that. What we hear is  
3 what we get in from the United States. Winning is not the  
4 important thing; winning is the only thing. Nice guys  
5 finish last. Who the hell cares about integrity?

6 And if you go to a whole lot of government  
7 bureaucracies right now, they have changed and progressed  
8 not from many, many laws; at one time, we used to think the  
9 Ten Commandments were necessary, now we've got it down  
10 pretty well to one, CYA. If you cover your...that's all  
11 you need to worry about. And if you say to someone, "Well,  
12 that's dishonest," or whatever. See, he looks at you and  
13 says...or either just the look tells you, "Well, isn't that  
14 what everyone does? Isn't that what's expected?"

15 We cannot sever the administration of justice from  
16 society as a whole and unless society as a whole takes on  
17 the Edwards formula based on integrity, nothing but nothing  
18 will work. And we're not working on that, and although  
19 Morris Manning points out that everything has changed and  
20 that we have computers now where we used to have ball point  
21 pens, I don't see that humanity has changed much in the  
22 last five thousand years. I see no evidence of it at all.  
23 As a matter of fact, one of my daughters here a while ago,  
24 asked if I would help her with an English essay. Well,  
25 when you have a kid that asks you for some help to indicate

1 that you could be of help, you pretty well say, "Yeah, I'd  
2 just love to do it." So she handed me a couple of books  
3 and they were Greek plays. And I said, "What's this for,"  
4 and she said, "well, you can't do essays on them until you  
5 read the plays." I wasn't undertaking that much, but I was  
6 stuck, so I did it. I read these old Greek plays, and if  
7 you would take those names and put in modern Canadian  
8 names, you would have an absolutely up-to-date, modern  
9 play. I see no change between us and those people except,  
10 there they had more persons asking for some integrity in  
11 the system.

12 Now getting on to sort of practicalities here.  
13 There's a suggestion made about the attorney general should  
14 not be involved in policing because, after all, that gives  
15 him too much power. We should have a solicitor general  
16 that's in charge of that. That's the recommendation that's  
17 being done in a great many places. My question is, if that  
18 is so, how is the attorney general to be accountable? And  
19 the answer is, well, he is accountable as far as he goes,  
20 and the rest he sluffs off onto the solicitor general, and  
21 the solicitor general passes the buck back to the A.G. and  
22 nobody really knows what the hell is going on. Because  
23 when you are handling an investigation, a prosecution,  
24 whoever you are that's in charge, you have to be in charge  
25 of the investigation as well as the prosecution. And if

1 | you want something more done in the file that's been handed  
2 | to you by the cops, you don't run to some other department,  
3 | the sol. gen.'s department, talk to the solicitor general  
4 | into giving you enough power to approach the investigator  
5 | to get this done. I mean, it should be clearly understood  
6 | at all times that you are in a position to get that done  
7 | without all of that bureaucratise. And if you can't do it,  
8 | you're not getting a proper job done and the attorney  
9 | general nor anybody else working on it can be accountable.  
-0 | And this is a very important part of the administration of  
-1 | justice because here is not only the preparation of the  
-2 | case but it is a whole lot of guidance to the police of  
-3 | what you expect from them in this case and also in future  
-4 | cases. If you can talk to them about, "This is not the way  
-5 | to take a statement. This is not the way to arrest a  
-6 | person. This is not the way to search. And here is what  
-7 | you do." You've got them on their way for the next case.  
-8 | If you have to go through the solicitor general's  
-9 | department, you usually give up because you haven't time  
20 | and it's not worthwhile.

21 |         And anyway, if we are so very proud of our systems and  
22 | our education and how everything works, it's always  
23 | bothered me a bit that from time to time, you get a guy  
24 | that spends the first fifty years of his life proving that  
25 | he has no interest in the administration of justice. Does

1 nothing in it. He gets elected to power and gets to the  
2 point of being the minister of justice, and he's in charge.  
3 How the hell can he be? And usually the solicitor general  
4 has even less, if that's imaginable, to do with the  
5 administration of justice; he takes over the policing of  
6 which he knows nothing.

7 That sort of a separation to me is entirely  
8 inconsistent with accountability which gets us right to the  
9 post of the public prosecutor, the director of public  
10 prosecutions. Sounds good on paper. He's independent, no  
11 political implications, in other words, no accountability  
12 to the public. The public can never comment to him about  
13 his calls. They can't vote against him. They can't throw  
14 him out. He's going to be there until he's seventy-five  
15 because there's nothing you can do about it. Short of him  
16 committing criminal offences, he's there until seventy-  
17 five. Now, if he happens to be or turns into a bit of a  
18 kook, you are stuck with him until he is seventy-five. Is  
19 that what you want or do you want some accountability where  
20 the public can rule itself and says this kind of  
21 administration of justice is unacceptable? Because I am a  
22 believer in the old John Diefenbaker saying that there's  
23 not all that much prejudice, et cetera, in this world. He  
24 said, I think this is his wisest saying, "That if stupidity  
25 is capable of explaining a situation, you usually need to

1 look no further for any explanation." Just bad, dumb  
2 calls. It's not usually dishonest.

3 Now, if this fellow is put in there, independent as  
4 can be, not until seventy-five but just for ten years,  
5 totally separate from the political scene, first of all,  
6 how did he get the appointment without a whole lot of  
7 political pull? Second, if he's there for ten years, when  
8 he gets out, he's going to want another career. That means  
9 he wants to build up a reputation, et cetera. That means  
10 he is going to do ten years of personal politicking, just  
11 because he's human, and just because he needs to. Is that  
12 accountable to the public? If it is, I pretty much give  
13 up.

14 I don't know when I started. I know that I shouldn't  
15 go much longer. I want to touch on one very practical,  
16 everyday point that I think a lot of people don't realize  
17 is out there and a very major part of the administration of  
18 justice. And that is to put it in a bold, attention  
19 getting form, police, not prosecutors, run most  
20 prosecutions. That's coming from a very old prosecutor who  
21 has served a half a dozen or more attorneys general. And  
22 in most cases if you go to the prosecutor and tell him  
23 this, he'll sneer at you and say, "Well, I, of course, am  
24 totally in charge," and he may be. All I'm saying is that  
25 ninety-five percent aren't.



1           And the way it works is, the police pull in a whole  
2 raft of stuff. And if you don't do everything the way they  
3 think it ought to be done, once, you'll get away with it.  
4 If you do it...see, my recommendation to Crowns is that  
5 your job as a prosecutor is to send home twenty-five  
6 percent of the witnesses the police bring in. Seventy-five  
7 percent of the chattels, which they call exhibits, are to  
8 be thrown out, and out of the seven thousand pictures that  
9 they bring to you, you use exactly three. Now, if that  
10 doesn't make them happy, if you follow that advice twice  
11 and the accused gets acquitted, the attorney general gets a  
12 report yea think, and if you think they can't do a good  
13 investigation, you should see the report they send in  
14 against you. And say, "Look it, we did all of the  
15 wonderful work in here, and the Crown failed to present all  
16 of this evidence; it's no wonder he was acquitted." Not  
17 too many young prosecutors can do that on a continuing  
18 basis and remain employed by that attorney general, so they  
19 go with the flow. It's all pensionable service and,  
20 anyway, they see people around them using the number one  
21 law which is CYA.

22           So there's no real incentive to show some integrity.  
23 And unless we get people that are people of integrity in  
24 the role of the attorney general and let them know we  
25 expect that sort of behaviour, so they let their staff know

1 that this is what they are supposed to do, then we're going  
2 to faction this off into seventeen different little  
3 departments, and we're going to go by due process, and  
4 we're going to have the public not really respecting us  
5 because I keep hearing people saying, "Hey, why don't you  
6 lawyers get together and get us another Bill of Rights. A  
7 Bill of Rights for law-abiding citizens." That's the kind  
8 of respect we're not getting now, and I think we'd better  
9 work on that. Otherwise, it's form, not substance. It  
10 won't help a bit.

11 Thanks for allowing me to be here and to speak.

12 CHAIR

13 Well, now you know why Serge Kujawa is the scourge of  
14 the defence bar in Saskatchewan. I think, once again,  
15 Chief Justice and Members of the Commission, the panel has  
16 left you with some fairly succinct ideas which they share.  
17 We all look forward to how you go about sorting out this  
18 very real dilemma, and I want to thank our panel for giving  
19 us all sides of a very tough issue.

20 We have time for discussion, and I have three names  
21 down and, as chairman, I would like to ask these three  
22 persons if they would like to say something, and,  
23 naturally, we have time to hear from others as well, but  
24 Phillip Stenning was the subject of a vicious attack  
25 launched on him by Mr. Manning, and if he would like to

MR. THOMAS BERGER cont'd

1 | come to one of the microphones and give us his views, I  
2 | certainly would be very grateful. Yes, here's Mr.  
3 | Stenning.

4 | PROF. PHILIP STENNING

5 | First of all, Mr. Chairman, I must say that I know Mr.  
6 | Manning well enough to know that that was not a vicious  
7 | attack from him. In fact, I was about to get up here and  
8 | thank Mr. Manning for being such an excellent publicist for  
9 | my work. I don't think I've had such good free advertising  
10 | in a long time.

11 | I think, as someone who has been commissioned by the  
12 | Marshall Inquiry to do research for them, I've had probably  
13 | as much opportunity as I deserve to have my views expressed  
14 | to the Commission in a number of different forums, and I  
15 | don't propose today to repeat the positions that I have  
16 | taken before them. So what I wanted to do to respond to  
17 | your invitation is to make one simple comment about the  
18 | presentations which have been made today.

19 | As you know, I am opposed to the notion of an  
20 | independent director of public prosecutions, and I'm  
21 | opposed to the idea that the prosecutorial process can, in  
22 | some magic way, be de-politicized in the way which  
23 | advocates of that kind of independent office have  
24 | suggested. But what I would like to do today is to suggest  
25 | that, if for a minute we accept this as the reality of

1 | what's going to happen, and I strongly suspect that it is,  
2 | it seems that the votes are about ninety-nine to one in  
3 | favour of some kind of independent office of attorney  
4 | general or independent director of public prosecutions,  
5 | then it seems to me that what the Commission has to do, and  
6 | I think it's going to be a difficult task, is somehow get  
7 | beyond the rhetoric of integrity and fairness and  
8 | intervention only in exceptional cases and tell us more  
9 | clearly exactly which of these cases it would be  
10 | appropriate or what kind of cases it would be appropriate  
11 | for an attorney general to intervene in, in the event that  
12 | we have a director of public prosecutions. Exactly what  
13 | the limits of such independence for such an office would  
14 | be.

15 |         And here I have great difficulty because I don't think  
16 | it's possible in advance to specify what kind of cases are  
17 | the appropriate ones to intervene in. I think each case has  
18 | its own special circumstances and that's why I believe that  
19 | the most appropriate person to make that decision is a  
20 | person who is in a political position. I believe that  
21 | these hard cases are political cases. But assuming that  
22 | they are to be treated as the subject of an independent  
23 | official, then I think we need to know when and when not it  
24 | will be appropriate for an attorney general to exercise his  
25 | residual, exceptional authority to intervene. And I think

1 the Commission should address itself quite specifically to  
2 those issues.

3 And the other point I want to make is that I have  
4 great difficulty in listening to the presentations today in  
5 seeing what difference any of these changes would have made  
6 to any of the three major cases that this Commission has  
7 been looking into so carefully during its hearings and  
8 other deliberations. It's not clear to me at all that, had  
9 Nova Scotia had an independent director of public  
10 prosecutions, Donald Marshall would have been treated any  
11 differently in the justice system in Nova Scotia than he  
12 was. It's not clear to me that either Mr. Thornhill or Mr.  
13 Maclean or any of the others that have been discussed would  
14 have been treated any differently, and I think it's,  
15 therefore, incumbent upon the Commissioners, if they're  
16 going to adopt the kinds of what I would call somewhat  
17 idealistic solutions at the sort of top of the pyramid to  
18 explain carefully and convincingly how these changes are  
19 going to address the fundamental problems down at the  
20 bottom of the system which I see as being revealed by the  
21 kinds of cases that they've been looking into.

22 Thank you very much for the opportunity.

23 CHAIR

24 Thank you Professor Stenning.

25 Michael Jackson asked me at the break if he could just

1 say a word on this subject. He's been with us now for  
2 three days, and I'm sure everyone would like to give him a  
3 chance to be heard.

4 MR. MICHAEL JACKSON

5 Some of you may remember, and you will be forgiven if  
6 you have forgotten that I made some statements two days ago  
7 relating to the setting the stage for change. Some matters  
8 have come up in the last couple of days which have given me  
9 some cause for concern in terms of whether we are at that  
10 threshold I talked about for, in fact, real change. And it  
11 relates to the subject we've talked about today, the role  
12 of the attorney general in the context of what we talked  
13 about two days ago, the whole question of the way the  
14 system treats native people, the indigenous people.

15  
16 Some of you may be aware that a few years ago the  
17 Supreme Court of Canada rendered a decision, a decision  
18 which, in Professor Mannings' words "related to one of the  
19 great legal issues." The question of whether a document  
20 signed in 1752 was, in fact, a treaty under Canadian law,  
21 the treaty between the Micmac nation and the Crown. The  
22 case went to the Supreme Court of Canada, and the Supreme  
23 Court of Canada, after very extensive argument, in an  
24 unanimous decision, ruled that that treaty, indeed, was a  
25 treaty in law and that under the terms of the *Indian Act*,

1 Indian people, acting pursuant to their hunting rights  
2 guaranteed by that treaty, were not subject to provincial  
3 wildlife legislation in Nova Scotia.

4 I teach a course in native rights, and that case is  
5 celebrated and is cited in law schools across this country.  
6 It was recently cited before the Supreme Court of Canada in  
7 another case recently argued about aboriginal and treaty  
8 rights. And the Court, in the course of its judgment, very  
9 clearly enunciated certain fundamental principles that  
10 treaties were to be interpreted in the broad and liberal  
11 way in accordance with the understanding the Indians would  
12 have given to the terms, and the ambiguities were to be  
13 interpreted in favour of the Indians.

14 That, in any event, the Supreme Court has enunciated  
15 as the appropriate canons of interpretation to  
16 constitutional rights, treaty rights are now entrenched in  
17 the constitution. It was with some alarm, therefore, that  
18 I learned that in Nova Scotia Micmac Indians continue to be  
19 prosecuted under the *Wildlife Act* on the basis that the  
20 treaty decision in *Simon*, the case of *Simon*, really was  
21 limited to its particular facts, enunciated no general  
22 principles of law.

23 There may well be important issues of the  
24 interpretation of the *Simon* case. There may be genuine  
25 issues relating to the scope of that treaty. One of the

1 | questions I would like to raise is that in any other  
2 | context in relation to the resolution of an important  
3 | constitutional issue affecting the fundamental rights of a  
4 | group of people who have special constitutional status, if  
5 | there were unresolved ambiguities, the provincial  
6 | government would negotiate. If it was another province  
7 | which had won a case vis-a-vis Nova Scotia, and the  
8 | government of Nova Scotia was concerned about that, it  
9 | would seek to negotiate. If negotiations failed, the  
10 | government would, as it has done in other situations, would  
11 | make a reference to the civil courts.

12 |         In this case, Nova Scotia, on the assumption that it  
13 | may have legitimate concerns about the *Simon* case, has  
14 | chosen to invoke the most intrusive process, the criminal  
15 | process, the process which in terms of the balancing of  
16 | resources, gives the state the pre-eminent role. It seems  
17 | to me that what we have here, using Esmeralda Thornhill's  
18 | definition of racism, of discrimination with empowerment so  
19 | that discrimination is fueled by the power of the state. I  
20 | am drawn reluctantly to the conclusion that to the extent  
21 | that the attorney general's office has chosen to prosecute  
22 | the Micmac because it disagrees with the *Simon* case, is, in  
23 | fact, an example of racism.

24 |         Relating to the last speaker, our senior prosecutor,  
25 | who eloquently said that the rule of law is a cardinal



1 principle of our constitutional regime. It seems to me  
2 that the Province of Nova Scotia, in taking the view it has  
3 of the *Simon* case, as being a decision which speaks only to  
4 one individual is, in fact, undermining the rule of law.

5 It's with some diffidence I've risen to make this  
6 point, but it seems to me that in the context of this  
7 Commission which has given such a powerful focus on the  
8 question of how the attorney general ought to be exercising  
9 his or her powers, the continued prosecution of the Micmac,  
10 I think, should be a cause of concern for all of us as to  
11 whether, in fact, change is about to happen in Nova Scotia.

12 Thank you.

13 CHAIR

14 Mr. Manning would like to...

15 MR. MORRIS MANNING

16 Your comments are most appropriate, in my view,  
17 because they raise another example of an area where the  
18 Commission can look in order to determine whether the  
19 attorney general, as a courtroom advocate, should be  
20 independent from his cabinet colleagues.

21 I've recently come into this area in the last year and  
22 a half by reason of being retained on an Indian land claim,  
23 and was struck in my research of the material to note the  
24 difference between the way in which the Supreme Court of  
25 Canada and other provincial appellate courts have dealt

MR. MORRIS MANNING cont'd

1 with Indian land claims across the country as distinct from  
2 the way in which the American Supreme Court has dealt with  
3 similar claims.

4 And it struck me that one of the reasons for the  
5 different approaches is obviously the position taken by  
6 counsel for the Crown and where there's prosecutions under  
7 provincial statutes for breach of provincial laws and the  
8 defence is raised that this is not a breach of the law  
9 because there's an overriding constitutional law or value  
10 or a treaty which make this not a crime, we find that the  
11 role of the attorney general changes into a political, as  
12 well as an advocacy role, and it highlights, and your  
13 comments, I think, are most apposite because they  
14 demonstrate that in those prosecutions as well as in the  
15 civil claims themselves, it is of the utmost importance  
16 that this feeling, the concept of racism or discrimination  
17 not be there. And the only way it can not be there is to  
18 have the person who is putting forward the legal position  
19 that the courts in this country take very seriously. The  
20 courts, make no mistake about it, as the Commission well  
21 knows, when counsel for the Crown stands up to speak,  
22 counsel represents the greater public interest, not the  
23 individual interest or the group of individuals. And when  
24 that counsel speaks, that counsel should be of assistance  
25 to the court to see that justice is done and that the

MR. MORRIS MANNING cont'd

1 interpretation that's placed on the laws is one that is  
2 coming from an independent perspective and not one that  
3 has, as its root, political expediency.

4 It's very difficult for me to imagine a Crown counsel  
5 arguing on behalf of the government in a case where there's  
6 a land claim or where there's a defence that there is, in  
7 effect, a treaty. It's very difficult for me to envisage  
8 that counsel not having anything to do with the attorney  
9 general or the ramifications. I mean, after all, if you're  
10 claiming that you own a piece of land that has within it a  
11 town or a large tract of land with a lot of resources,  
12 you're going to be dealing with cabinet colleagues. And  
13 those cases highlight the necessity for complete  
14 independence in order to be free of this concept of racism  
15 or discrimination, both in theory or in practice, and, as  
16 well, to be of greater assistance of the court.

17 CHAIR

18 Mr. Kujawa, you wanted to add something.

19 MR. SERGE KUJAWA

20 Assuming that Professor Jackson is correct that the  
21 attorney general is wrong in law and/or is prejudiced, he  
22 has said it, others can say it, "There will be an election  
23 before long, and he can be voted out and a great  
24 improvement put in his place." But let's say you have a  
25 director of public prosecutions who could be equally wrong

1 on those things. He's going to be there until he's  
2 seventy-five years of age. Which do you want? Where is  
3 the accountability? That's the issue.

4 CHAIR

5 Thank you Mr. Kujawa. Professor Slattery.

6 PROF. BRIAN SLATTERY

7 Yes, my name is Brian Slattery and I teach at Osgoode  
8 Hall Law School in Toronto. I was struck by something that  
9 John Edwards said at the very beginning which struck me,  
10 and it's very appropriate and right, and, yet, in a sense,  
11 little realized. And it links with the point that Michael  
12 Jackson has just made. Professor Edwards said that the  
13 attorney general and, indeed, one might say other members  
14 of the government, has not only the power but the duty, the  
15 constitutional responsibility to uphold the constitution.  
16 And, in particular, the Charter of Rights and Freedoms.

17 But, of course, there are constitutional duties which  
18 go beyond the Charter of Rights and Freedoms, some of  
19 which, are embodied now in Section 35 of the *Constitution*  
20 *Act* of 1982. And Section 35, as we all know, states that  
21 the existing aboriginal and treaty rights of the aboriginal  
22 peoples of Canada are hereby recognized and affirmed. The  
23 point that I want to make is that it is commonly thought  
24 that that section is addressed exclusively to the courts.  
25 So that if people feel, the native people, Metis, Inuit,

1 Indian people feel that their aboriginal and treaty rights  
2 have been violated, well, they can go to court. Or, at any  
3 rate, if they are brought to court, they can raise Section  
4 35 as a defence. And, of course, they may and they do.

5 But I think that is only to see one very small part of what  
6 ought to be the proper function of Section 35. It's as if,  
7 to make a point I made in a workshop earlier on, it's as if  
8 we thought that when the 1867 Act was passed setting up the  
9 federal government and provincial governments, that one had  
10 to go to court in order to get a federal government set up.  
11 Well, that's simply ridiculous. Of course, we know that  
12 federal government was just set up. It was set up by those  
13 people who had the constitutional responsibility to do it.

14 That's making the point in a more general and obvious  
15 context, but I think it holds true also in this context  
16 that there has been virtually nothing done, at least, in  
17 the parts of Canada that I'm aware of, and I'm told also  
18 here in Nova Scotia, on the governmental side and by the  
19 attorney general, to figure out, in effect, what are the  
20 aboriginal and treaty rights of the people of their  
21 province and to act accordingly. And I would have thought  
22 that one of the first major steps in that process is to  
23 consult with the people in question. What, in their view,  
24 are their aboriginal and treaty rights. This is not  
25 something that should be left to the courts alone. It's

1 too big a task. It's a task beyond the court. In the  
2 context of prosecutorial discretion, it is the  
3 constitutional responsibility of the attorney general not  
4 to prosecute when there are genuine aboriginal and treaty  
5 rights. And I don't think that any effort of that kind has  
6 been made.

7 I would also like to make the point that that  
8 unwillingness to act is not necessarily, in itself, racism.  
9 In fact, it's something deeper and more difficult to  
10 eradicate than racism. Racism is a definite act directed  
11 against an identified group. This is non-recognition. It  
12 is unwillingness to act because of total non-recognition of  
13 anything special about native people. Any special rights.  
14 How do you fight against non-recognition and inaction. A  
15 very difficult problem, indeed.

16 Thank you.

17 CHAIR

18 Thank you, Professor Slattery. I would like to  
19 ask...we are just about at the hour of closing, and I would  
20 like to ask Bill MacDonald, the Deputy Attorney General of  
21 Nova Scotia, to come forward and say a few words.

22 MR. BILL MacDONALD

23 Thank you, Mr. Berger. And I just want a word or two.  
24 Last night I reported to the Attorney General on the  
25 proceedings Thursday and Friday. I told him that this has

1 | been an important learning exercise for me and that I  
2 | thought all of the people attending this conference  
3 | regarded it as a very, very useful exercise. I dealt with  
4 | some detail, but it was a brief report, and I will be  
5 | speaking with him again at much greater length on a number  
6 | of the subjects that have been raised here.

7 | He did ask me, though, to express to all of the  
8 | panelists and all of the participants at the conference his  
9 | personal thanks for your contribution to the administration  
10 | of justice in Nova Scotia, and I think to the  
11 | administration of justice in all jurisdictions in Canada.  
12 | And that is especially significant since everybody has been  
13 | participating here without remuneration.

14 | I want to, now that I'm here, as well, express my own  
15 | personal thanks because I have found this to be a very  
16 | beneficial experience.

17 | Thank you Mr. Chairman.

18 | CHAIR

19 | Thank you, Mr. MacDonald. Well, before we go any  
20 | further, I just have one or two things to say in closing  
21 | and then I will ask Chief Justice Hickman to come forward  
22 | and offer some closing remarks. But could I, on your  
23 | behalf, thank this morning's panel, Mr. Kujawa, Mr.  
24 | Manning, Dick Vogel who, of course, has left us and  
25 | Professor Edwards. They have given us both sides. Do we

1 want the attorney general politically accountable, but  
2 subject to political pressure or do we want an independent  
3 director of public prosecutions who is set up in a way that  
4 makes him quite independent of the attorney general and any  
5 political pressure, or do we want something in between. I  
6 confess that when I came, I hadn't made up my mind, and now  
7 I'm thoroughly confused and I think it's a tribute to the  
8 eloquence of this morning's panel whom I thank on your  
9 behalf.

10       Might I, as Chairman, say that I appreciate the effort  
11 that has gone into this gathering. The panelists have all  
12 made a first rate contribution and all of you folks who  
13 have stayed with us for the past three days have, I think,  
14 made a very important contribution. I reminded you at the  
15 outset that we were speaking to Chief Justice Hickman and  
16 Mr. Justice Poitras and Mr. Justice Evans, the three  
17 Commissioners. We wanted to, in a polite way, inform them  
18 and educate them and enlighten them. I don't know whether  
19 we've succeeded or not, but we've done our best and we're  
20 grateful to them for making this whole forum available to  
21 all of us. And we wish them well in their endeavours, and  
22 with that, I should like to call on Chief Justice Hickman  
23 to close the conference.

24 CHIEF JUSTICE HICKMAN

25       Mr. Chairman on Thursday morning when I opened this



1 | consultative conference, I expressed the hope that there  
2 | would be frank and uninhibited dialogue between those in  
3 | attendance. Now at the end of two and a half days of  
4 | splendid discussion, I am able to say, without reservation,  
5 | that the Royal Commission's hopes and aspirations in that  
6 | regard have been realized. We are, indeed, grateful.

7 |         It was decided by the Commission at an early stage of  
8 | our deliberations that it would be of enormous benefit to  
9 | us if we could devise a conference which would bring  
10 | together people with particular expertise and experience in  
11 | the criminal justice system who possessed a passionate  
12 | belief in their cause. This consultative conference which  
13 | was formulated to meet that objective has more than  
14 | adequately discharged that mandate, in my view.

15 |         We knew it would be virtually impossible to elicit the  
16 | real concerns and experiences of natives and blacks with  
17 | the criminal justice system simply by calling witnesses to  
18 | appear before formalized public hearings to give *viva voce*  
19 | evidence in such a restrained atmosphere. We wanted  
20 | knowledgeable persons to have the public opportunity to let  
21 | it all hang out in a manner which would arouse the  
22 | conscience of the citizens of Nova Scotia and beyond, while  
23 | at the same time providing the commission with practical  
24 | recommendations based on experience and research. And in  
25 | that regard, we have not been disappointed.

1           Those Canadians from all areas of this nation as well  
2 as some from outside Canada who have, without any  
3 remuneration or fee, come to Halifax and allowed us the  
4 benefit of their expert and professional advice have, in my  
5 view, rendered outstanding service to the Province of Nova  
6 Scotia. For that, we, as Commissioners, thank you most  
7 sincerely.

8           On Thursday, led by outstanding panelists, supported  
9 by enthusiastic workshop participants, we were given  
10 graphic but well-researched descriptions and examples of  
11 the concern of native people with the criminal justice  
12 system which has been imposed upon them by the dominant  
13 society. Their realistic recommendations, based in part on  
14 centuries of caring traditions, will give us valuable  
15 insight when wrestling with the vexing problems as we work  
16 on the Commission Report.

17           Yesterday, highly articulate and extremely intelligent  
18 blacks shared with us their understandable frustrations  
19 with the criminal justice system which daily intrudes upon  
20 their private lives without, in their view, providing equal  
21 treatment under the law. Again, their meaningful  
22 recommendations and passionate pleas for justice will be  
23 carefully and sympathetically reviewed by all Commissioners  
24 as we try to shape realistic recommendations.

25           Today, we've had the good fortune to hear submissions

1 from Canadians with years of experience in the area of  
2 prosecutorial decisionmaking by attorneys general. And I'm  
3 certain I speak for both my fellow commissioners when I say  
4 their expert opinions will be extremely helpful.

5 The ultimate responsibility for law enforcement rests  
6 with Her Majesty's Attorney General who must perform his or  
7 her awesome duties without fear, favour or affection. It  
8 follows, therefore, that the independence of that office  
9 must not only be enhanced and strengthened, but must be so  
10 structured that all Canadians will perceive it as an  
11 institution of total independence from outside influences  
12 and the guardians of their rights and liberties under the  
13 rule of law.

14 On behalf of the Royal Commission, I thank all who  
15 have participated in this public consultative conference.  
16 I'm sure you will all agree, we were fortunate, indeed, to  
17 have Mr. Thomas R. Berger chair all our public sessions.  
18 His leadership has been outstanding. His experience in  
19 dealing with legitimate concerns of minority groups and his  
20 involvement in several, important Royal Commissions  
21 eminently qualified him to lead and guide our  
22 deliberations. This he has done and I extend to you, Mr.  
23 Berger, the sincere thanks of the Royal Commission for your  
24 splendid, splendid help.

25 All members of the Commission are extremely grateful

1 to our staff for their efforts in organizing this event.

2 It has been efficiently managed, and I thank all who are so  
3 involved.

4 I haven't the same courage of some other speakers; I  
5 thank the press for the knowledgeable coverage that they  
6 have given our public hearings during the past year or more  
7 and the coverage they have given this conference. It was  
8 deemed essential by the Commission that a public awareness  
9 of the problems in the criminal justice system be  
10 graphically brought into focus which was brought  
11 graphically brought into focus by the wrongful conviction  
12 of Donald Marshall, Jr. And in regard to that and in  
13 pursuit of that objective, the press, in my view, has  
14 played a meaningful role during the past year and a half,  
15 and I thank them for it.

16 Once again I thank all of you for participating and  
17 attending this consultative conference which I now declare  
18 to be at an end.

19 Thank you so much.

20 12:30 p.m. - CONFERENCE ENDS

21  
22  
23  
24  
25