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ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME V

Held: September 15, 1987

At: St. Andrew's Church Hall  
Bentinck Street  
Sydney, Nova Scotia

Before: Chief Justice R. A. Hickman, Chairman  
Assoc. Chief Justice L. A. Poitras, Commissioner  
Hon. G. T. Evans, Commissioner

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:  
Commission Counsel  
  
Clayton Ruby, Ms. Marlys Edwardh, & Ms. Anne S. Derrick:  
Counsel for Donald Marshall, Jr.  
  
Michael G. Whalley, Q.C.: Counsel for City of Sydney  
Ronald N. Pugsley, Q.C.: Counsel for John F. Urquhart  
Donald C. Murray: Counsel for William Urquhart  
  
Frank L. Elman, Q.C., & David G. Barrett:  
Counsel for the Donald MacNeil estate  
  
Jamie W. S. Saunders, & Darrel I. Pink:  
Counsel for Attorney General  
  
James D. Bissell: Counsel for the R.C.M.P.  
Al Pringle: Counsel for Correctional Services Canada  
William L. Ryan: Counsel for Evers, Green and McAlpine  
Charles Broderick: Counsel for Carroll  
S. Bruce Outhouse: Counsel for Wheaton & Scott  
Guy LaFosse: Counsel for Davies  
Bruce H. Wildsmith: Counsel for Union of N. S. Indians  
Assisted by Daniel Christmas  
E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale  
E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

Court Reporters: J. Graham Robson, & Judith M. Robson, OCR, RPR

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INQUIRY RECONVENED AT 9:36 o'clock in the forenoon on Tuesday, the 15th day of September, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia.

1 MR. ROSS:

2 My Lord, before the witness is sworn, there is a matter that I'd  
3 like to raise with the Commission if it's appropriate at the  
4 start?

5 MR. CHAIRMAN:

6 Well, when you indicate what the matter is, then I'll indicate to  
7 you the appropriateness of your raising it at this time.

8 MR. ROSS:

9 Very appropriate, My Lord.

10 My Lord, it has to do with the witness, Mrs. Timmins who was  
11 called yesterday. To be very frank, I was caught a bit by  
12 surprise at her testimony. Now from all of the witnesses so far,  
13 we have got statements and if they were inconsistencies and so on,  
14 counsel could then direct their attention to cross-examination of  
15 all the witnesses to properly represent the positions of all  
16 various clients. Now I recognize that there was no written state-  
17 ment from Mrs. Timmins but it's my view that Commission Counsel  
18 was alerted to the type of testimony that she was going to be  
19 giving which was not really consistent with that of Mr. MacKay.  
20 And had I personally known of the type of evidence that she was  
21 going to be giving, I would have cross-examined Mr. MacKay quite  
22 differently. Now it leaves it that after the Hearings have been  
23 concluded, I can address this really in argument but I think that  
24 much is lost by not being able to address it by cross-examination  
25 and I was wondering whether or not it would be appropriate in

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1 situations where there is no statement, no statement that has been  
2 reduced to writing, that Commission Counsel advise other counsel  
3 of the type of evidence that could be anticipated.

4 MR. CHAIRMAN:

5 Does Commission Counsel wish to respond to that? Mr. MacDonald.

6 MR. MacDONALD:

7 My Lord, we have -- When we've had any written state -- or signed  
8 statement from witnesses, to the best of our -- to the best of  
9 my knowledge, those have been made available. Many times in meeting  
10 with witnesses, we haven't been able to get a signed statement, not  
11 because necessarily the witness has refused to but for our own  
12 convenience, we have taped many interviews on the understanding they  
13 would not be considered as sworn statement that people would be  
14 cross-examined on. It was to facilitate counsel and we've given  
15 people our undertaking that those tapes would not be circulated  
16 so that we could have a frank discussion and people would not have  
17 to be concerned about being cross-examined, "Did you say this at  
18 one time and something else at another time?". Now we have not  
19 met with counsel and said, "This is what we believe this witness  
20 is going to say or that witness is going to say." I don't think  
21 we have any objection to doing that. It's a question of -- I  
22 hesitate to be put in a position of someone coming up later and  
23 saying, "You didn't tell me this." because I may have forgotten  
24 to tell them. I have no objection to telling any of counsel if  
25 they want to contact us and say, "Do you know what evidence is

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1 | going to come from a particular witness?", we're quite prepared to  
2 | tell them that, if that would solve my friend's problem. I would  
3 | like to put the burden on counsel to come to us rather than have  
4 | me have to run around to all other counsel.

5 | COMMISSIONER EVANS:

6 | Mr. MacDonald, Mr. Ross was given a copy of the various witnesses,  
7 | the names of the various witnesses?

8 | MR. MacDONALD:

9 | Well that's been given out for some time, My Lord.

10 | COMMISSIONER EVANS:

11 | So he would be aware that Mrs. Timmins would testify and when she  
12 | would testify?

13 | MR. MacDONALD:

14 | Oh, yes.

15 | COMMISSIONER EVANS:

16 | No property in a witness?

17 | MR. MacDONALD:

18 | Well, that's always been my understanding, My Lord.

19 | MR. CHAIRMAN:

20 | What we've seen so far indicates to us that there has been very  
21 | commendable disclosure on the part of Commission Counsel to other  
22 | counsel. I refer to the exhibits that have been made available.  
23 | The evidence that we had yesterday of Mrs. Timmins was that she  
24 | did give a statement to the police -- the Sydney Police and we were  
25 | subsequently advised by counsel for the Commission yesterday that --

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1 and by, I think, counsel for Mr. MacIntyre that that statement  
2 just simply cannot be found and it seems to me that the Commission  
3 Counsel are discharging their responsibilities to bring forward  
4 all of the evidence. This Commission Counsel are not prosecutors.  
5 They have no axe to grind and I -- (And I'm sure my fellow  
6 Commissioners share my view.) have been under the impression that  
7 there has been very salutary, to some extent unprecedented, co-  
8 operation between Commission Counsel and counsel to the parties  
9 who have been granted standing. I have no reason to believe  
10 that that will not continue but -- and I welcome the statement by  
11 Commission Counsel that if any counsel appearing for any party  
12 who have been granted standing feels that there may be additional  
13 evidence or wants to review with counsel for the Commission the  
14 nature of the evidence to be called that the responsibility rests  
15 with such counsel with the Commission Counsel ready, willing, and  
16 able to make such disclosures. But I would be -- not be prepared  
17 to rule that Mrs. Timmins would be recalled at this time.

18 This does not preclude you, Mr. Ross, from -- when you're  
19 addressing the Commission at the end of the viva voce evidence  
20 of drawing to the or expressing your views on the credibility --  
21 reliability, rather, of Mrs. Timmins' evidence.

22 MR. ROSS:

23 Thank you, My Lord.

24 MR. RUBY:

25 My Lord, a second matter which is really short, which I won't take

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1 | much time with. I cross-examined Mr. Ebsary about a Toronto Star  
2 | article dated December 2, 1982. I neglected to file that and I  
3 | think I should put it in as an exhibit so that the comment which  
4 | was made about the "fastest blade in Canada cannot be beaten."  
5 | be before the Commission.

6 | MR. CHAIRMAN:

7 | "Blade" meaning sword, not "blade" meaning

8 | MR. RUBY:

9 | I don't think

10 | He's talking about "blade".

11 | MR. CHAIRMAN:

12 | Yes, by all means.

13 | MR. RUBY:

14 | The exhibit number - 29.

15 | MR. ORSBORN:

16 | Mr. Chairman, the next witness is Maynard Chant. I would ask that  
17 | he be sworn and I would point out that throughout his testimony,  
18 | I'll be referring primarily to Volume 12 of the exhibit books.

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