

1 2:35 p.m.

2 MR. G. MacDONALD

3 Innis MacLeod, please.

4 INNIS MacLEOD, duly called and sworn, testified as follows:

5 EXAMINATION BY MR. MacDONALD

6 Q. Now your name is Innis MacLeod?

7 A. Yes.

8 Q. And, Mr. MacLeod, you reside in Halifax, now, do you?

9 A. Dartmouth.

10 Q. Dartmouth. And at the present time I understand you're
11 retired.

12 A. Right.

13 Q. You're a graduate lawyer.

14 A. Yes.

15 Q. When did you obtain that qualification?

16 A. I graduated from law school in 1937 and was admitted to the
17 bar in 1938.

18 Q. And, generally, can you just hit the highlights of your career?
19 Where you practised and with whom, until you retired.

20 A. I practised in Sydney from 1938 to 1948, primarily with the
21 law firm of MacNeil and Morrison. And in 1948 I was
22 appointed solicitor for the Department of Mines and at that
23 time I moved to Dartmouth. I continued as solicitor in the
24 Department of Mines until 1950. In 1950 I was transferred
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1 from the Department of Mines to the Department of the
2 Attorney General. And I continued there until October 1950,
3 and in 1950 I was appointed Civil Service Commissioner for
4 the province and I continued in that office, I haven't got the
5 exact date because I didn't have access to some of the records
6 but I believe that continued until about 1953. And in 1953 I
7 returned to the Attorney General's Department as senior
8 solicitor and continued there until 1956. In 1956 I was
9 appointed administrative assistant to the premier. I
10 continued in that position, along with several other minor
11 positions until June '69. And in July 1969 I was appointed
12 Deputy Attorney General and I continued in that post until
13 September 1972. If you want anything further I went from
14 that in '72 to Deputy Minister of the Executive Council Office
15 and continued in that office until July 1976 and I retired in
16 1976 and following that I was continued on a retainer as
17 general counsel to the Province until August 1979. So that's a
18 thumbnail sketch of my career.

19 Q. Thank you. While you were with the Civil Service
20 Commission would that be practising law in any way?

21 A. No, it was purely administrative. The Civil Service Act, I
22 believe, was passed about 1939 but it continued for quite a
23 long period of time. I was only a part-time commissioner and
24 things had got into a condition that was making it very
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difficult to run the Departments of the Province and then
premier, Angus L. Macdonald asked me if I would take over
as Civil Service Commissioner for some period of time. And I
said, yes, I would, if he would assure me that I could get out
of that position when I had done everything that I thought a
lawyer could do with it. And, so the, during the time that I
was Civil Service Commissioner I rewrote the Civil Service Act
and the Civil Service Regulations and generally upgraded the
payscales of all the employees of the Province coming under
the Civil Service Act.

12 Q. And from, did you say '56 till '69 you occupied the post of
13 administrative assistant to the premier?

14 A. Yes.

15 Q. And that would, there would be several premiers in that
16 period of time, would there?

17 A. Yes.

18 Q. Who would they be?

19 A. The first one would be, '56, the first one, I think, would be
20 Premier Stanfield. And the second one would be The
21 Honorable G.I. Smith. And the third one would be The
22 Honorable Gerald Regan. And that's about it, I guess.

23 Q. I understood, and your memory may be better than mine, but
24 did not Premier Regan, wasn't he elected in '70?

25 A. I thought it was '69.

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Q Anyway, you did serve as his...

A. Yes, it doesn't matter...

Q Administrative assistant, in any event.

A. Yes.

Q And in those, in that position, Mr. MacLeod, would you be practising law in any way?

A. No, not really. Except in one respect. Through the years I had acted, together with John A.Y. MacDonald, the then Deputy Attorney General, I had acted on a series of Constitutional and financial conferences. And through the years, without regard to the position that I might fill at any particular time, I continued to act primarily along with John A.Y. MacDonald to act on Constitutional and financial conferences.

Q When you were appointed to the position of Deputy Attorney General, and that was in 1969, would that have been the result of a competition or would that have been an appointment by the premier?

A. No, unfortunately, John A.Y. MacDonald, who had been an outstanding Deputy Attorney General for a long period of time, died suddenly and there had to be a replacement and the, of course, the position of Deputy Attorney General is a Governor-in-Council appointment and I was simply appointed by the Governor-in-Council.

Q And at that time it would have been Premier Regan as

1 premier? If you were serving under him.

2 A. Let me see now until I get my dates straightened away. No, I
3 think in July '69 that the Honorable G.I. Smith was still in
4 office.

5 Q. I believe so. I'm just...

6 A. Yes.

7 Q. I...

8 A. So it was during the term of the Honorable G.I. Smith that I
9 was appointed Deputy Attorney General.

10 Q. Let me just go back for a moment, then. Did you ever serve
11 as administrative assistant to Premier Regan?

12 A. Yes, I certainly did.

13 Q. And that's where I'm having a little difficulty. I guess it's
14 history. I think the history is that was Stanfield, Smith and
15 Smith was defeated by Regan.

16 A. That's right.

17 Q. And never became premier again.

18 A. That's right.

19 Q. Did you serve as Deputy Attorney General and as
20 administrative assistant at the same time?

21 A. No, I did not. We must have some confusion here with
22 respect to dates but really the actual dates aren't really that
23 important.

24 Q. I agree, they're not important at all. When you then were
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1 appointed to the position as Deputy Attorney General, you
2 had been, you had had service in that Department from 1953
3 to '56 and also a brief period of time in 1950.

4 A. That's right.

5 Q. What was the role, then, of the Deputy Attorney General as
6 you took it on? What would be your responsibility?

7 A. Actually, it's pretty broad responsibilities. The, of course the
8 primary responsibility of the Attorney General's Department,
9 of course, rests with the Attorney General, but as Deputy you
10 had pretty much day-by-day administration of the overall
11 Department and all the functions of the Department.

12 Q. How was the Department structured when you took it over?

13 A. It was a fairly loose structure and that was not particularly a
14 bad situation because you were dealing largely in the
15 Department proper with a professional staff and you assumed
16 that they were perfectly capable of performing their
17 professional duties and, to a degree, there was an assignment
18 of work functions, but generally, the, it was a pretty
19 cooperative group of people and work had a tendency to
20 move from one point to another and, without any rigid,
21 without any really rigid lines. Now, I found when I took over
22 that there was far too much correspondence crossing my
23 desk. There was so much correspondence crossing my desk,
24 both going in, coming in and going out that I had very little
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1 time to devote to the other functions of the Department. So
2 very broadly, after I took over, I was able to arrange two
3 other Civil Service positions. One of them was Director,
4 Criminal and the other was Director, Civil. And from that time
5 on most of the criminal work went through the Director,
6 Criminal. On the other hand, the civil work was pretty
7 widespread. It covered such a wide spectrum of government
8 occupations in the government that the Director, Civil had sort
9 of a top control. But at the same time various solicitors were
10 assigned to various departments of the government and
11 various functions. So that the, a great deal of the
12 correspondence would come in to the Director, Civil but he, in
13 turn, would refer it out to the several solicitors servicing the
14 various departments.

15 Q. Now would these directors, then, report to you?

16 A. They would direct, they would report to me as needs be.

17 Q. It was not, then, a regular reporting function?

18 A. No.

19 Q. They were given autonomy to do their thing?

20 A. That's right.

21 Q. What about the reporting, if any, between yourself or the
22 directors and the Attorney General?

23 A. It was, again, it was pretty informal. The Attorney General, of
24 course, was sitting in the Department next to my office, or
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1 perhaps it would be more appropriate to say that I was
2 sitting next to his office and we moved back and forth. There
3 was no great rigidity in the Department. The door would pop
4 open the Attorney General would walk in, or, on the other
5 hand, if it was going from me to the Attorney General, it was
6 a little more formal. I'd make an appointment with his
7 secretary to see the Attorney General, but generally the door,
8 it was an open door operation.

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10 Q. Who was the Director, Criminal that was appointed by you?

11 A. My recollection is that it was the, Malachi Jones, who is now
12 The Honourable Malachi Jones. And he was appointed to the
13 bench, I haven't got the exact date, but he was appointed to
14 the bench. In any event, when he was appointed to the bench
15 then, I believe, Robert Anderson, who is now His Honor
16 Robert Anderson was appointed Director, Criminal. It seems
17 to be a stepping stone to higher, to greater things.

18 Q. And the, over the Deputy?

19 A. Yes, and over the Deputy, yes.

20 Q. And who succeeded Mr. Anderson? Judge Anderson.

21 A. I think Judge, or Robert Anderson was still there, I believe,
22 when I retired from that position.

23 Q. You retired in September '72?

24 A. I retired in September '72.

25 Q. From that position of Deputy Attorney General. I think the

1 record will show, Mr. MacLeod, that Judge Anderson was
2 appointed to the Court in December, December 15th of 1971, I
3 believe, is the date. So it would have been prior to your
4 retire-...

5 A. Yes.

6 Q. Prior to your leaving that post. You don't have any
7 recollection, then, of who succeeded him if my information is
8 correct?

9 A. My recollection is that it would be Gordon Gale.

10 Q. Thank you. Now when Judge Anderson occupied the position
11 of Director, Criminal would he have solicitors assigned to him
12 on the criminal side of things, if you will?

13 A. Not in any formal sense because the workload, of course, in a
14 department like that varies from time to time. But he would
15 have certain solicitors who did primarily civil work. But
16 although we tried to avoid having the young solicitors set
17 down into one branch of the department. We tried to give
18 them a certain variety of work so that they could move from
19 one side, civil to criminal.

20 Q. What about the more senior people? What about a person
21 like Gordon Gale? Would he be doing both criminal and civil?

22 A. I think Gordon Gale was doing both.

23 Q. Thank you. Was the Director of Criminal responsible to assign
24 work, the criminal work, to various people in the
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1 Department?

2 A. Pretty much, yes.

3 Q. Now you say there was no formal reporting to you. How
4 would you, as the Deputy, keep your finger on the pulse of
5 the Department? How would you know what was happening?

6 A. Well, as I say, it was a fairly loose arrangement but almost
7 every morning at 10 o'clock we had a meeting in my office
8 and it was attended, certainly by the senior members of the
9 staff and some of the more junior ones and we had a cup of
10 coffee and the conversation flowed back and forth and if
11 anybody had any particular problem they raised it at that
12 meeting. We did not keep minutes.

13 Q. Would things of interest, unusual sorts of things going on in
14 the Department, would they be discussed at these daily
15 meetings?

16 A. They probably would.

17 Q. But there was no agenda as such.

18 A. No. No.

19 Q. There was no assignment to particular lawyers, "You come
20 tomorrow and tell us something."

21 A. No.

22 Q. What about the filing set up in the Department, Mr. MacLeod?
23 If a case, we're dealing with a criminal case that is involved
24 with the AG's Department, what files would exist? In your
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1 time.

2 A. Just general files. I don't think there was anything peculiar
3 about the filing system.

4 Q. Would there be a central filing system or did each solicitor
5 keep his own files?

6 A. My recollection, and my recollection is pretty vague, is that
7 the various solicitors might have a filing, one, perhaps one
8 filing cabinet in their office, but generally, matters dealing
9 with criminal matters were kept pretty generally in a central
10 filing system. Now the reason I say that the various solicitors
11 might have filing cabinets in their office is that the, most of
12 the solicitors had certain departments assigned to them. And
13 there wasn't a great weight of correspondence, but there was
14 some correspondence back and forth, so that the
15 correspondence from some certain department that had been
16 assigned to a specified solicitor, he would probably keep that
17 in his own filing cabinet in his own office.

18 Q. Am I correct in assuming that would be almost exclusively
19 civil matters.

20 A. Pretty much civil, yes.

21 Q. And can I draw from that that with respect to criminal
22 matters there will be a central filing system.

23 A. Yes.

24 Q. What type of criminal matters would be handled by the
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1 Attorney General's office itself?

2 A. That's a pretty broad question.

3 Q. Perhaps I can refine it a little bit. Was there a prosecuting
4 office in Halifax as well?

5 A. Yes.

6 Q. And there was a prosecuting office in the various...

7 A. Yes.

8 Q. Counties of Halifax[sic]?

9 A. Yes.

10 Q. Those people who do, then, the normal prosecutions.

11 A. Yes.

12 Q. Would there be prosecutions done out of the AG's Department
13 itself?

14 A. I can't recall of one during my term of office.

15 Q. And if a prosecution is taking place in Sydney, or in Halifax, (I
16 guess?), would the file be with the prosecutor's office or
17 would it be with the AG's office?

18 A. It would be pretty much with the prosecuting officer.

19 Q. Okay. So what I'm trying to determine then, sir, what type of
20 criminal files would be kept in the AG's office, if the
21 prosecutions are being done out in the field?

22 A. Well entirely apart, perhaps we have a little confusion here,
23 entirely apart from the matter of prosecutions there was a
24 general recording system from the RCMP to the Attorney
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1 General's Department on a multitude of matters that related
2 to the enforcement of law and order in the province. And
3 with respect to the Crown prosecutors, the Crown prosecutors,
4 of course, would be acting in conjunction with the RCMP in
5 their own particular area, but the matters that related to the
6 whole province, of course, came directly to the Attorney
7 General's Department.

8 Q. During your tenure as Deputy Attorney General, were there
9 regular meetings between the RCMP and your Department?
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11 A. Yes

12 Q. And with what frequency and who attended?

13 A. It was usually once a week and someone came over from the
14 Royal Canadian Mounted Police and they met with the
15 Director, Criminal, whoever he might be at any particular
16 time.

17 Q. Would you attend those meetings?

18 A. No.

19 3:00 p.m.

20 Q. Would you be advised what was taking place at those
21 meetings?

22 A. If anything out of the ordinary, anything out of the ordinary
23 arose, I would certainly be advised and I suspect that I would
24 also keep the Attorney General advised.

25 Q. Okay. Was Milton Veniot in the Department during your

1 tenure as Deputy Attorney General?

2 A. Yes, I believe he was.

3 Q. He has testified before this Commission yesterday, in fact, Mr.
4 MacLeod, and I'm referring to page 7023 of the transcript for
5 the record, but he said this,
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7 That there was a large file room in which files
8 were kept. I know there were files to which
9 lawyers in the Department did not have access
10 and these would be files that would be sensitive
11 for, I think what you would call, political or
12 politically-related reasons. Files that I think
13 involved, I never got any of them, but files, they
14 used to have a green stripe on them and they
15 would be RCMP reports on sensitive matters.

16 And he repeated that a couple of times. Can you give us any
17 assistance with respect to the existence of such files?

18 A. I have no recollection of that at all. But Mr. Veniot's a lot
19 younger than I am and perhaps his memory is better than
20 mine but I must say that personally I have no recollection of
21 that.

22 Q. Without revealing, and I'm not trying to...

23 A. No, that's right.

24 Q. Find out what particular files may have been in existence but
25 were there files that you were involved with that you would
classify as sensitive for political or politically-related reasons
that the RCMP was looking into during your time as Deputy

1 Attorney General?

2 A. No, I have no recollection of such a situation.

3 Q. Now if the Directors, Civil, Directors, Criminal were looking
4 after the general flow of things and not reporting to you on a
5 structured basis in any event...

6 A. Yes.

7 Q. What would be your role in the Department, Mr. MacLeod?

8 A. Well, it was an overall administrative situation in the
9 Department. You have to keep in mind that in addition to the
10 enforcement of the Criminal Code of Canada, you had all the
11 penal statutes of the Province. You had the Prothonotary's
12 offices, the Registry of Deeds offices and the Registry of
13 Probate Offices. The administration, the formal
14 administration of courts, courthouses. As I mentioned before,
15 advice to the various departments of the government. Advice
16 to the, when requested, to the, all of the ministers, in fact, of
17 the government. Certain administration of the penal
18 institutions in the province and certain aspects of correctional
19 services in the province. So there was a broad variety of
20 activities going on all the time.

21 Q. And the Deputy is responsible, generally for all of those
22 things.

23 A. The overall, when I say that the, when I say that certain
24 things were delegated to certain people, the overall
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1 administration of the Department remained with the Deputy.

2 Q. The local prosecutors, wherever they be, were they pretty all
3 autonomous to do what they liked?

4 A. Yes, they were. As you well know the Criminal Code of
5 Canada, I suppose the, as far as the Province is concerned, the
6 prime officer is the Attorney General. And the Crown
7 prosecutors are appointed by the Governor-in-Council. They
8 do not come under the Civil Service. So that you had this
9 array of Crown prosecutors who were actually primarily
10 answerable to the Attorney General spread across the
11 province, but in actual practice, they were sort of considered
12 as part of the Department. But if it came to actually
13 instructing them what they could or could not do, the final
14 word on that, if there was a question, would have to come
15 from the Attorney General.

16 Q. Would the prosecutors, then, and they, in fact, bypass the
17 Deputy and go directly to the Attorney General?

18 A. No, not really, I, offhand I can't think of a case where we had
19 a conflict with a Crown prosecutor where he wanted to, in
20 fact, bypass the whole Department and go direct to the
21 Attorney General.

22 Q. What was the contact between the Director of Criminal and
23 the various prosecutors? What would be the relationship
24 between those people?
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1 A. I'm a little vague as to just how it worked at the time but my
2 feeling would be that the, as far as a Crown prosecutor is
3 concerned that he would not consider himself as being
4 answerable to the Director, Criminal, if he felt himself
5 responsible to anyone other than the Attorney General. He
6 would probably feel perhaps that he was responsible to the
7 Deputy.

8 Q. Was there a job description that was prepared for this
9 Director, Criminal by you? Or under your direction.

10 A. I don't recall. I would suspect that that would be because
11 that was generally required.

12 Q. And do I take it, then, from what you've just described to me
13 that that would not include the overall supervision or liaison
14 with the Crown prosecutor?

15 A. No.

16 Q. Thank you. Was there any type of a manual, procedural
17 directives, these sort of things available or produced by the
18 Department for use by Crown prosecutors?

19 A. No.

20 Q. Were there any policy directives of any kind that were given
21 out from time to time to Crown prosecutors?

22 A. Not that I'm aware of.

23 Q. I'm particularly concerned about what the Department's view
24 would be with respect to disclosure of information by the
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1 Crown to defence? Was, do I understand that there was no
2 formal policy as such?

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4 A. Perhaps I'm old enough now that I could back-up a few years.
5 When I started practising law it was like pulling teeth trying
6 to get any information from Crown prosecutors.

7 Q. Was that when you were practising in Sydney?

8 A. That's when I was practising in Sydney. It was difficult to get
9 information. Now, that started to loosen up through the years
10 and I think the Crown prosecutors began to be more aware of
11 the obligations that they owed to people of the province
12 generally in the enforcement of the law and by the time we
13 come up to the period when I was Deputy Attorney General,
14 generally I think that the, it had loosened up to the degree
15 that defence lawyers probably had very little difficulty in
16 getting pertinent information from Crown prosecutors. And,
17 now I don't say the Crown prosecutors went around
18 volunteering information, but I have a feeling that if they had
19 information in their possession and they received a request
20 from a defence lawyer, that they would make that
21 information available. At least I would hope so.

22 Q. Do I understand, though, Mr. MacLeod, there was no formal
23 policy in place within the Department that was imposed on
24 Crown prosecutors out in the field.

25 A. No.

Q. Was it left up to them?

A. Yes.

Q. What did you consider, as Deputy Attorney General, is the policy of disclosure that should be implemented by Crown prosecutors out in the field?

A. I felt that the, I felt and I still feel that the Crown prosecutors should make available to defence lawyers all the pertinent information that they need in order to give a proper defence to their client or the accused, yeah.

Q. What do you see the role of the Crown prosecutor to be?

A. Broad question. But I think it's the enforcement of the, primarily the enforcement of the Criminal Code of Canada.

Q. Is it to enforce, is it to get convictions or is it, to put in a cliché, is it to see that justice is done?

A. To see that justice is done.

Q. And when you say you would hope that prosecutors would make available pertinent information, can you be a little more precise as to what would be pertinent?

A. Well, it's little difficult to answer that because it changes so much with each case. But the, primarily, I suppose what I have in mind is that in a criminal case the defence should not suddenly be met in the middle of a trial with complete surprise. Of course where there's a preliminary hearing, of course the defence, I assume, knows what went on at the

1 preliminary hearing. But not infrequently in a criminal trial
2 witnesses will be called who did not appear at a preliminary
3 hearing.

4 Q. What do you, I took it from what you said earlier that your
5 impression when you were Deputy Attorney General was that
6 defence could get information, pertinent information, if they
7 asked for it.

8 A. Yes.

9 Q. Do I...

10 A. Yes.

11 Q. Do you consider, or did you consider that the burden would
12 be on the defence to seek out the information as opposed to a
13 burden on the Crown to seek out the defence and give them
14 information.

15 A. Well, certainly at the time I think it was generally regarded
16 in legal circles that the defence would have to take care of
17 themselves. But that if they looked for information, that the
18 information should not be withheld.

19 Q. And...

20 A. But it should not be simply handed to them and say, "Here's
21 all the information."

22 Q. And that may have been generally understood and can I take
23 it from that that if anyone had asked you as Deputy Attorney
24 General what the practice should be that that would have
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been the response they may have got?

A. Yes.

Q. Now you had indicated, Mr. MacLeod, that to your knowledge there was no policy directives as such in the Department. I've put in front of you, sir, to your right a file folder there that says "Exhibit 81" on it, I hope. This one here.

A. Yeah.

Q. Exhibit 81, Mr. MacLeod, is a document that was introduced, I believe, through Judge Lou Matheson and my recollection of his evidence is that this was sent to him by Malachi Jones once because he was being, for want of a better word, he was being chastised because he had turned over the entire police file to defence counsel and there was some complaint from the police that that was improper and my understanding is that in response to that, Mr. Jones sent this directive to Judge Matheson. And this directive, you'll see is quite old, it's March 23, 1961 and it's directed to the officer in charge of "H" Division, RCMP Halifax. I take it that Mr. Justice Jones would have written that in response to a request from the RCMP or something to that nature.

A. Um-hmm.

Q. Have you ever seen that before, sir?

A. No. It doesn't surprise me because perhaps as I intimated before, for a long period of time, and this is not peculiar to

1
2 Nova Scotia, it was a fact in the general administration of
3 criminal law wherever you went, the prosecution did not
4 volunteer information to defence counsel. So, I haven't read
5 these cases referred to here but I assume what they contain.
6 It doesn't really surprise me but...

7 Q. As Deputy Attorney General, though, just so I understand it,
8 you were not aware of any formal policy, as such, that was
9 given out to prosecutors saying here's the Department policy
10 with respect to disclosure.

11 A. I was not aware of any such...

12 Q. Thank you. I just want to direct you, sir, to a couple of the
13 comments in this letter and perhaps get your comments on
14 them if I could. On page 2, it's the second full paragraph that
15 starts, "In criminal proceedings ..."

16 A. Yes.

17 Q. In criminal proceedings additional considerations
18 apply because the Crown is a party and,
19 accordingly, has a greater duty to see that justice
20 is done.

21 And what they're talking about there is as opposed to civil
22 proceedings...

23 A. Yes.

24 Q. In criminal proceedings.

25 In some jurisdictions, such as Ontario and in
England, it is the practice in many courts for the

1 Crown to make copies of all statements made by
2 witnesses to the police available to defence
3 counsel.

4 I take it that if that's a correct statement of the practice in
5 Ontario, England and other places, that was not the practice in
6 Nova Scotia unless, at the very least, unless defence counsel
7 went and asked for them.

8 A. That's right.

9 Q. Is that correct?

10 A. I think that's correct.

11 Q. Thank you. And then if I can take you over to the next page
12 in that quotation from that book The Road to Justice from Sir
13 Alfred Denning...

14 A. Yes.

15 Q. Where he says,

16 The duty of counsel to see that justice is done is,
17 however, best shown by what is expected of
18 prosecuting counsel. If he knows of a credible
19 witness who can speak of facts which go to show
20 the prisoner's innocence he must, himself, call
21 that witness. Moreover, if he knows of a
22 material witness who can speak of relevant
23 matters but whose credibility is in doubt, then
24 although he need not call him himself he must
25 tell the prisoner's counsel about him so that he
can call him.

26 Would you agree with that statement of principle?

27 A. I certainly wouldn't disagree with it. It's a little startling,

1 perhaps, to a lot of us but...

2 Q. But that was not the practice in Nova Scotia during your
3 tenure as Deputy AG.

4 A. I think not. I think not.

5 Q. Thank you. What do you say should be done by a Crown
6 counsel in a situation where he has two statements from a
7 witness which are different? What's the duty of a Crown
8 counsel in those circumstances?

9 A. You mean at the actual trial level?

10 Q. Yes.

11 A. I suppose in terms of absolute justice the, in one way or
12 another, I'm not just sure how you'd go about it, but in one
13 way or another I think both of those statements should be
14 available.

15 Q. Available to whom?

16 A. To the court and to the defence.

17 Q. And would that depend on the defence coming and asking for
18 them?

19 A. As of today I would say it should not depend on the defence
20 asking for it.

21 Q. But in your time as Deputy Attorney General that would have
22 depended on that.

23 A. It probably would have, yes.

24 Q. Thank you. What was the role played by the RCMP in Nova
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Scotia during your time as Deputy Attorney General?

A. I don't quite understand the...

Q. What did they do in Nova Scotia from a policing point of view? For the province.

A. Well, actively they were provincial police force. They did the highway patrol work. I suppose practically, the major function would be the enforcement of criminal law and highway patrol.

Q. What about investigation of serious crimes? Do you have knowledge of what they would do in Nova Scotia in 1971 and '72, or '69 to '72 while you were the Deputy Attorney General?

A. Investigation, I don't quite follow the question.

Q. If there was a murder in Nova Scotia, a serious type of crime, what role, if any, was the RCMP expected to play?

A. Well, of course, they were, a large part of the province the, as I said the RCMP were, in fact, the provincial police force. And they would, in fact, investigate, let's say, a murder. But you get a situation, let's say in Sydney, where Sydney had its own police force, normally the RCMP would not investigate a murder in the City of Sydney.

Q. What would they do in a place like Louisbourg that had a one-man police force? If you had a murder in Louisbourg.

A. I really can't be sure but I suspect that if they got a murder

1
2 in a town where there was a very small police force that they
3 would probably request the Attorney General to direct them
4 to investigate that particular offence. But I don't think they
5 would go in simply because there had been a murder. They
6 would look for instruction from some source.

7 Q. Our understanding is, Mr. MacLeod, I think it's been inferred
8 by some witnesses, or talked about by some witnesses, and
9 it's our understanding, that in those days if there were what's
10 classified as serious crime, and in that category they put
11 murder, attempts, rapes, these sort of thing...

12 A. Yes.

13 Q. And if they occurred in jurisdictions other than Sydney,
14 Halifax or Dartmouth then, indeed, the RCMP was the force
15 that did the investigation.

16 A. Yes.

17 Q. Now, does that refresh your memory at all?

18 A. Yes, I think that's probably right.

19 Q. During your time in your position as Deputy Attorney General,
20 did you have any experience with the requirement to call in
21 the RCMP to investigate the work of another police force?

22 A. No, I did not.

23 Q. And would you consider such a request to be an unusual
24 request?

25 A. Yes, I suppose it would be.

1 Q. Would you consider it to be out of the ordinary?

2 A. Yes.

3 Q. And if such a request was made is that the sort of thing that
4 would be reported to you or should be reported to you by the
5 various people in the department?

6 A. Yes, I would think it would be referred to the Deputy
7 Attorney General.

8 Q. Did you have any experience, and I don't mean directly...

9 A. Yes.

10 Q. But did you have any experience with the use of polygraphs?

11 A. None whatever.

12 Q. Were you aware of their existence and the purpose for which
13 they could be used?

14 A. Oh, yes.

15 Q. And you were aware that at least their evidentiary value was
16 frowned on by the court.

17 A. Yes.

18 Q. Now, Mr. MacLeod, the evidence has been before this
19 Commission, sir, that in November of 1971, and I believe it's
20 around the 15th or so of November, the Sydney Police were
21 visited by a Jimmy MacNeil who told them he had knowledge
22 that Donald Marshall, Jr. did not stab Sandy Seale. First of all,
23 were you aware of the Marshall case? That is was going on in
24 Sydney, that Mr. Marshall had been convicted of murder.
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A. Only through the newspapers.

Q. There would be no...

A. And the radio and TV.

Q. So there would be no regular reporting from Mr. MacNeil in Sydney, Donnie MacNeil, up to your Department.

A. No.

Q. Now the evidence is, as I've just described, that Jimmy MacNeil approached the Sydney Police in November of 1971 and that that was relayed to the Crown in Sydney and that was Lou Matheson. You know Lou Matheson.

A. Yes

Q. And that Judge Matheson, in turn, passed that along to Robert Anderson in Halifax. Is that the type of information that should have been brought to your attention?

A. I would think so.

Q. That is, let me back up, would that type of information, forget the Marshall case, ever had come to your attention before. Having someone convicted of murder, a short time after someone comes forward and says, "It wasn't him, it was someone else."

A. No, I have no recollection of anything like that ever happening.

Q. No. And that would be, certainly, out of the ordinary.

A. That's right.

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Q. The evidence also is that the RCMP were contacted and asked to do at least something, there's some controversy, as to what they were asked to do.

A. Um-hmm.

Q. But the Attorney General's Department in Halifax contacted the RCMP to ask them to go to Sydney and look at this new evidence. That would be out of the ordinary, as well, wouldn't it.

A. I would think so.

Q. And that is the type of information that should have been brought to the attention of the Deputy Attorney General.

A. I would think so.

Q. And if that information was brought to the attention of the Deputy Attorney General, you should have brought that to the attention of the Attorney General, wouldn't you.

A. Most certainly.

Q. Do you have any recollection of that happening?

A. No recollection at all.

Q. This type of event, and assuming it happened, I can only tell you what the evidence has been, that would strike me as the type of unusual or out of the ordinary circumstance that at least should have been talked about during your coffee breaks in the morning. Was it ever discussed there?

A. I'm almost sure it that it was not.

1 Q. Thank you. We are also advised that after the RCMP did get
2 involved an Inspector Marshall went to Sydney and he
3 carried out an investigation. He conducted some polygraph
4 examinations. He advised Donnie MacNeil, who in turn, the
5 evidence is, called Halifax and spoke with the Attorney
6 General or someone in the Department. Do you have any
7 knowledge about that?

8 A. None whatever.

9 Q. And there is some concern or controversy over whether the
10 ultimate report prepared by the RCMP reached the
11 Department of the Attorney General. Would you look at that
12 volume I have open there for you, Mr. MacLeod, it's Volume
13 16 at page 204. It's open to the page. That is a report that
14 was prepared by Inspector Marshall following his work in
15 Sydney. Have you ever seen that before, sir? 3:30 p.m.

16 Q. That is a report that was prepared by Inspector Marshall
17 following his work in Sydney. Have you ever seen that
18 before, sir?

19 A. I have no recollection of ever seeing this report. Although in
20 accordance with the standard practise at the time I wouldn't
21 really have expected to see. It would have gone to the...it
22 would have gone to the director...director of criminal.

23 Q. Would you not expect the director of criminal to bring such a
24 report to your attention given that it was dealing with what
25 we've described as unique and out of the ordinary

1 circumstances?

2 A. Well, I'm not sure. This is...this is the first I've seen of this
3 report, and I would think it...to a degree it would depend on
4 the...on the degree to which the...to which the director really
5 took the report seriously or not. I'm afraid if he considered
6 it...didn't consider it a very serious effort that he might
7 not...he might not bring it forward.

8 Q. Well, Mr. MacLeod, when you're dealing with a situation here
9 where a young man is in prison, having been convicted of
10 murder, and we have someone coming forth and saying "he
11 didn't do it, someone else did".

12 A. Yeah.

13 Q. And the RCMP is asked to go and do something.

14 A. That's right.

15 Q. I can't imagine anything more serious than that.

16 A. Yeah, uh-hum.

17 Q. And we've had the RCMP then coming back with their report.
18 Would that not necessarily be something that the director, if
19 he got it, would bring to your attention and that you in turn
20 would bring to the attention of the Attorney General?

21 A. I think you're probably right. The...as I say if he took the,
22 and I think you would have to consider it seriously, that he
23 would have brought it forward.

24 Q. Thank-you. Look at page 204 and can you just...

25 A. The reason I'm hesitating is I...I don't know what's in this

1 report.

2 Q. Okay. In fairness to you that's a difficult question...

3 A. Yes.

4 Q. ...to put to you.

5 A. I can't answer the question when I don't know...I don't know
6 what's here.

7 Q. So no one has shown you this report.

8 A. No.

9 Q. To read.

10 A. No.

11 Q. Let me just take you and give you a couple of highlights of it...

12 A. Yes.

13 Q. ...so that it can perhaps put in context. Look at page 204,
14 paragraph numbered 3.

15 A. Uh-hum.

16 Q. It says, "After sentence was passed, " and the sentence is on
17 Junior Marshall.

18 A. Yes.

19 Q. "One James William MacNeil came forward and said that he
20 was with a man by the name of Roy Ebsary during the
21 evening of 29 May '71 and that he, Ebsary, had in fact
22 murdered Sealed in Wentworth Park." Well, that is
23 information that was brought to the attention of the Sydney
24 police. Now, just go on. "MacNeil was interviewed by Sydney
25 City Police and the prosecuting officer for Cape Breton County,

1 Donald C. MacNeil, on Monday, 15 November 1971." The
2 evidence is, Mr. MacLeod, that in fact it was Lou Matheson
3 and not Donnie MacNeil. But certainly...

4 A. Yes.

5 Q. Someone from the Crown Prosecutor's office interviewed this
6 person.

7 A. Uh-hum.

8 Q. Now, with that information that a person has come forward
9 and said Marshall didn't do this, in fact, the murderer is a
10 man named Ebsary.

11 A. Uh-hum.

12 Q. Startling information, isn't it?

13 A. Yes.

14 Q. Information that should be brought to your attention. It's in
15 the hands of the local crown prosecutor and if you will accept
16 what I say, it was delivered orally by him to Halifax. It
17 should have come to your attention, and we've already...we've
18 already come to that, haven't we?

19 A. Yes.

20 Q. Should it have been brought to the attention of defence
21 counsel?

22 A. Are you asking me?

23 Q. Yes.

24 A. Oh, I would say most certainly.

25 Q. Thank-you. Now, at that time...

1 A. Now, this is on the assumption that this report, in fact,
2 reached the department.

3 Q. Yes. Now, if I can put it on a different set of facts, Mr.
4 MacLeod, that on November the 15th of 1971 the Department
5 of the Attorney General was aware...

6 A. Uh-hum.

7 Q. ...that MacNeil came forward and said it wasn't Marshall, the
8 murderer is Ebsary.

9 A. Uh-hum.

10 Q. Forget the report.

11 A. Okay.

12 Q. And Lou Matheson passed that along to Halifax.

13 A. Uh-hum.

14 Q. Should that information have been made available to the
15 defence?

16 A. Yes.

17 Q. Now, at that time, sir, the evidence is that a Notice of Appeal
18 had been filed from the conviction of Mr. Marshall.

19 A. Uh-hum.

20 Q. And the evidence further is that once a Notice of Appeal is
21 filed, the local office is out of it and it transfers to Halifax.

22 A. That's right.

23 Q. That's correct, isn't it?

24 A. That's correct.

25 Q. And that the local guy has nothing else to do with it.

1 A. Correct.

2 Q. Now, in those circumstances recognizing that the information
3 is in Halifax now.

4 A. Uh-hum.

5 Q. That it was MacNeil, I'm sorry, that it was Ebsary who
6 murdered Seale and not Marshall, wasn't it the obligation of
7 the Halifax office of the A.G. to pass that information along to
8 the defence?

9 A. I would think so.

10 Q. Thank-you. And, not to wait for the defence to come.
11 There's no way the defence could know this information.

12 A. I agree.

13 Q. Thank-you. You said in the ordinary course of things, if the
14 ordinary course was followed.

15 A. Yes.

16 Q. The report from the RCMP would get to the director.

17 A. Yes.

18 Q. And if you can accept again from me that the director of
19 criminal in November of 1971 was Robert Anderson, although
20 he was appointed to the...

21 A. Bench.

22 Q. ...on December the 15th of 1971. This report is dated
23 December the 21st, 1971. Who would it go to in the ordinary
24 course of things?

25 A. Now, this is dated December...

1 Q. It's dated...if you look up in the top of the...right under the
2 words, the numbers 2 0 4 on the top, Mr. MacLeod.

3 A. Yeah.

4 Q. 21 December '71.

5 A. Now, that's the date up there, but have you a date as to when
6 it reached the Department of the Attorney General?

7 Q. There is real controversy here as I understand it, Mr.
8 MacLeod, whether it ever did.

9 A. Yes. Yes, yes.

10 Q. And I don't want to put myself into that, but I'm saying that
11 if it...if it...if the ordinary course was followed and this
12 information did go to the Department of the Attorney General,
13 who would it have gone to given the fact that Anderson is
14 now sitting in the Court?

15 A. Uh-hum. Well, I assume it would still go to the director of
16 criminal.

17 Q. And would that appointment have been made that quickly,
18 the matter of a week?

19 A. I don't know.

20 Q. When Judge Anderson was appointed to the Court, what steps
21 were taken to turn over his work to somebody else so that
22 there would be a continuity, a flow of work?

23 A. Strange, I...I have no recollection of that period of time where
24 Judge Anderson left the Department and there was a
25 movement of personnel. I have no recollection at all of just

1 how we...how we handled that.

2 Q. As Deputy Attorney General.

3 A. Yes.

4 Q. As the administrative man in charge.

5 A. Yes.

6 Q. Would you agree that that would be your responsibility to
7 make certain there was...

8 A. Yes.

9 Q. ...a turnover of information?

10 A. Yes.

11 Q. But you have no recollection at this stage how that actually
12 was accomplished.

13 A. No.

14 Q. I understand...

15 A. Now, I would assume and this cannot be taken as a fact, I
16 would assume that the...Gordon Gale at the time was probably
17 the senior...the senior man on the criminal side and I would
18 assume that he would probably carry on with the function.

19 Q. Did Gordon Gale use to attend meetings with the RCMP when
20 Anderson would be director of the criminal?

21 A. I rather doubt that he would.

22 Q. So, it would be Anderson alone attending.

23 A. Yes.

24 Q. So, Anderson would know what was going on...

25 A. Yes.

1 Q With the RCMP.

2 A That's right.

3 Q But, in effect, he was the only one.

4 A Yes.

5 Q And would you agree with me that there was certainly a
6 necessity then that somehow his successor would understand
7 and be told what was current between the...

8 A Yes.

9 Q ...RCMP and the Department?

10 A Yes.

11 Q I understand the evidence of Judge Anderson will be that
12 there was no formal turning over at all. That in fact he was
13 appointed and except for cleaning out his desk there was no
14 formal process followed.

15 A Yeah.

16 Q Would that surprise you?

17 A I find it a little surprising, yes.

18 Q I take it that there would in any given period of time be
19 many things going on between the Department and the RCMP.

20 A Oh, yes.

21 Q And the only appointed person in the Department who would
22 have knowledge of this would be the director of criminal.

23 A Yes.

24 Q And it would be fundamentally important that he pass that
25 information along...

1 A. Yes.

2 Q ...to his successor. What...assuming that this report or
3 something like it, a report of this nature, came from the
4 Attorney General, I'm sorry, from the RCMP to the Attorney
5 General, where would they be kept? Would there be some
6 sort of a file create dealing with, in this case, Donald Marshall,
7 Jr.?

8 A. Oh, certainly there would be a file, but...

9 Q And who would create that, Mr. Anderson or the director of
10 criminal?

11 A. Director of criminal.

12 Q Yeah. Now, recognizing...

13 A. Now, the...on the first...in the first instance, of course, reports
14 would start...would start coming in from the RCMP if this was
15 something that involved the RCMP.

16 Q Yes.

17 A. And that would be the beginning. That would be the
18 beginning of the file.

19 Q At the same time as I've indicated to you, Mr. MacLeod, there
20 was an appeal taken by Mr. Marshall from his conviction and
21 that goes to Halifax. That must generate a file, as well, I
22 assume.

23 A. It would.

24 Q Would that be a separate file?

25 A. No, I would think it would be the same. I think it would be

1 the same file.

2 Q. Mr. Veniot has testified that he did the appeal. That he was
3 the solicitor assigned and that he would not expect a report
4 such as this to be contained in the appeal file, as such.

5 A. Uh-hum.

6 Q. But that it would be, his understanding, I think, is one of the
7 green striped files.

8 A. Oh.

9 Q. You have knowledge at all.

10 A. I have no knowledge.

11 Q. Have you discussed this case, Mr. MacLeod, with anyone after
12 the...after the whole thing blew up in 1982 when Mr. Marshall
13 was released from jail?

14 A. No.

15 Q. These early morning meetings of members of the Department,
16 would they be attended from time to time by the Attorney
17 Generals?

18 A. On occasion, but not usually.

19 Q. It wouldn't be an unusual thing for them to drop in and hear
20 what was going on?

21 A. No, not unusual, no.

22 MR. MACDONALD

23 Thank you, sir, that's all I have.

24 EXAMINATION BY MS. DERRICK

25 Q. Mr. MacLeod, just picking up on that last point with respect to

MR. MacLEOD, EXAM. BY MS. DERRICK

1 the Attorney General attending the meetings with the RCMP,
2 do you recollect if there was any formal mechanism by which
3 it was determined if the Attorney General would attend those
4 meetings?

MR. MACDONALD

5
6 I didn't suggest the Attorney General attended the meetings with
7 the RCMP. It would be forwarding copies.

MS. DERRICK

8
9 Oh, I'm sorry, o.k. I was confusing with...fine.

10 Q. Mr. MacLeod, when Mr. Anderson was appointed to the
11 County Court, did Mr. Gale succeed him directly from the
12 departmental ranks?

13 A. Well, certainly the reason I'm hesitating a bit is you'll realize
14 that the solicitor, senior solicitor or solicitor, was a civil
15 service appointment so that the...you might have somebody
16 moving into a position. I might direct somebody to move into
17 a position but it might be a matter of weeks or a month
18 before I was able to process that through the Civil Service
19 Commission and get an official acknowledgement and consent
20 from the Civil Service Commission. But as a matter of fact, the
21 most senior person in any particular division, you would
22 expect him to take over in the place of somebody who had
23 left the department.

24 Q. In this instance, was Mr. Gale the most senior lawyer within
25 the department?

MR. MacLEOD, EXAM. BY MS. DERRICK

1 A. Well, he would be the most senior one on the criminal side.

2 Q And therefore, would it have been it have been the natural
3 course of things that when Mr. Anderson was appointed to
4 the bench that even though perhaps the formal paperwork
5 hadn't been completed that Mr. Gale would in essence step
6 into the position of directorship?

7 A. Yes.

8 Q And I think you said that...although you don't recall anything
9 about the RCMP report in this case, but had that...in the
10 instance of those types of reports, they would go to the
11 director of criminal posecution?

12 A. Yes.

13 Q And so therefore in the normal course of things, would you
14 expect that it would be the director of criminal prosecutions
15 who would be the person to chase down the report if it wasn't
16 forthcoming from the RCMP?

17 A. I would think so.

18 Q Now you were deputy attorney general, Mr. MacLeod, there
19 was no formal departmental policy concerning Crown
20 disclosures to defence counsel, is that correct?

21 A. That is correct.

22 Q And would you agree with me that such policy directives are
23 in fact a good idea?

24 A. Generally, I think so.

25 Q Would you agree that lack of formal departmental policies

1 concerning disclosure could well result in variations of
2 practice of prosecutors throughout the province?

3 A. I don't follow that last question.

4 Q. I'm asking you whether you agree with me that the fact that
5 there were no such policies disseminated from the
6 department might result in different prosecutors in different
7 parts of the province having different practices with respect
8 to disclosure...

9 A. Yes, I agree.

10 Q. And in fact there might even be variations within the same
11 prosecutor depending on dealings with different defence
12 counsel or...

13 A. I agree.

14 Q. So that in fact it's possible that departmental policies might
15 result in uniformity or a greater degree of uniformity?

16 A. Yes. Although you must also keep in mind that with regard to
17 matters such as this, the practice developed over two or three
18 hundred years and they seemed to work reasonably well.
19 And perhaps it takes a certain case such as this to bring our
20 attention that changes had to be made.

21 Q. I guess we're part of that evolution.

22 A. Yes, yes.

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MS. DERRICK

Thank you, Mr. MacLeod, those are my questions.

EXAMINATION BY MR. PUGSLEY

Q. Mr. MacLeod, I want to explore for a moment the paper trail that might have been left as a consequence of this investigation that was carried on by Inspector Marshall of the RCMP in 1971 when apparently he received a directive from the Attorney General's Department, or at least the RCMP locally did, to investigate this new evidence that came out in Sydney. And I take it that generally the province of Nova Scotia pays someone, the RCMP or the federal government, for the enforcement of the laws in Nova Scotia. That's done on a yearly basis, is it?

A. On a contract basis.

Q. On a contract basis?

A. Yes.

Q. Is it negotiated each year? Is that how it's done?

A. I don't recall now. I'm almost certain it extends more than one year.

Q. Well, if the RCMP performs extraordinary services or unusual services, and I would think that this might fall into that category, would the province of Nova Scotia be billed separately or have to pay additional sums of money to the

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RCMP for these services?

A. I wouldn't think so although it's a long, long, time since I saw an RCMP contract. It's quite a detailed contract.

Q. Well, I was thinking that not only were people in the RCMP stationed in Nova Scotia involved in the reinvestigation, but Corporal Smith who was assigned, I believe, in the Province of Saskatchewan and who was with the force in Saskatchewan, flew to Nova Scotia, flew to Cape Breton, incurred hotel expense here and flew back to Saskatchewan, all of which would be initially incurred, I suppose, by the Saskatchewan branch of the RCMP. And I wondered in the normal course of events whether bills, at least for his travel expenses and his motel expenses would have been forwarded to the province of Nova Scotia and if those bills would have been reviewed by anyone in your department to ensure that they were appropriate accounts to be paid by the province.

A. It could happen, but I never heard of a case where they billed us for some particular separate function of the department. See, you also have to keep in mind that the RCMP is also a federal police force. And that we pay, in Nova Scotia, we pay for a certain number of RCMP officers to be in fact provincial police officers. But over and above the number that we pay for, there's a substantial number of RCMP officers in Nova

MR. MacLEOD, EXAM. BY MR. PUGSLEY

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Scotia who are in fact paid by the federal government because they are carrying on federal functions.

Q Yes. And is that true of every province? I know that Ontario...

A. Well, Ontario has its own...

Q Has its own provincial police.

A. It has its own provincial police.

Q And so the RCMP doesn't really function in that province.

A. Well, they function in that province as the federal police force insofar as it may necessary to enforce federal laws in Ontario.

Q So in response to my questioning, you don't ever recall seeing any bills submitted by the RCM Police for any unusual services rendered by out-of-province policemen?

A. No, I do not.

MR. PUGSLEY

Thank you, sir.

VOICE

No questions.

EXAMINATION BY MR. BISSELL

MR. BISSELL

Q Sir, my name is Jim Bissell and I'm acting for the RCMP.

A. Yes.

Q And I just have one question for you. It's really a follow-up

MR. MacLEOD, EXAM. BY MR. BISSELL

1
2 to a question that Ms. Derrick asked you. She asked you if it
3 would be the director of criminal who, in your opinion, would
4 have the responsibility to...would be the person who had the
5 responsibility to chase down a report that wasn't forthcoming
6 from the RCMP that was expected. And I guess, just a follow-
7 up to that or a corollary to that is, do you think that the
8 director of criminal or somebody within his office should go
9 after or chase down a report on such an important matter as
10 this that had been requested if it wasn't forthcoming in a
11 reasonable time?

12 A. I would think so.

13 MR. BISSELL

14 Those are all the questions that I have. Thank you, sir.

15 MR. CHAIRMAN

16 Mr. Wildsmith?

17 MR. WILDSMITH

18 We have no questions for Mr. MacLeod, thanks, My Lord.

19 VOICE

20 No questions.

21 CHAIRMAN

22 So thank you very much, Mr. MacLeod.

23 MR. MacDONALD

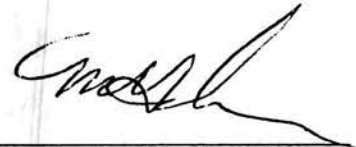
24 Those are all the witnesses we have for today, My Lord.

25 3:56 p.m. - ADJOURNED TO 9:30 a.m. 14 January 1988

REPORTER'S CERTIFICATE

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I, Margaret E. Graham Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 13th day of January , 1988, at Dartmouth,
Nova Scotia