

DISCUSSION

1 2:06 p.m.

2 MR. RUBY

3 My Lords, before I commence the cross-examination again
4 may I simply draw to your attention that there is a letter from
5 this witness to Arthur Donahoe concerning the Billy Joe MacLean
6 prosecution. Now we have, the Billy Joe MacLean prosecution. It's
7 a letter dated April 18, 1984. And it's in the materials. But I
8 thought I'd seek direction from you as to regards to raising it now
9 or raising it at a later stage. I thought it might well be appropriate
10 to do so at a later stage but I wanted to alert you to the fact that I
11 would like to go into it.

12 CHAIRMAN

13 Yeah. Where is it?

14 MR. RUBY

15 I don't have a page reference. It's, I'm sorry, it is in the
16 materials but I haven't got the page reference. But the letter, well
17 this generally advises no prosecution of Billy Joe MacLean for the
18 items in which he was later on, I understand, found guilty.

19 MR. SPICER

20 Are you sure that's in the materials we have before us now?

21 MR. RUBY

22 Yeah, it's somewhere in the materials. That letter. Sorry I
23 don't have the reference to it.

24 MR. SAUNDERS

25 I can't recall its presence in the materials. If it was, if it's

DISCUSSION

1 | there it's a mistake.

2 | MR. RUBY

3 | Well, in any event, it's a letter to Arthur Donahoe, dated April
4 | 18th, 1984, but I take it that's something that you would prefer to
5 | have raised at a later stage and that we can have the witness back
6 | for that purpose? Am I correct on that?

7 | CHAIRMAN

8 | I'm not sure we can have the witness back. We haven't ruled
9 | on the admissibility of any of these extraneous issues at this time,
10 | as yet. We have commissioned some fairly intensive research into
11 | the role of the various offices and officers in the criminal justice
12 | system and have insisted that they have an unrestricted right of
13 | examination of documents, et cetera. We won't be dealing with
14 | that until we complete all of the evidence directly related to the
15 | prosecution and incarceration of Donald Marshall, Jr., so I...

16 | MR. RUBY

17 | Let me correct myself. The reason I have no page reference
18 | for it is because I have a copy loose. It's not in the materials. But
19 | I would propose to argue, to cross-examine on that, and I can
20 | either raise the matter now and argue it now or I can defer it.

21 | CHAIRMAN

22 | You'll have to defer it because I'm not going to deal with it
23 | today.

24 | MR. RUBY

25 | All right. Thank you very much.

MR. GIFFIN, EXAM. BY MR. RUBY

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Q. You said before the break, sir, that we were, when were dealing with the question of releasing of files that in the beginning you were cautious and simply wanted not to make any firm policy decision, if I have it correctly. And it's been maintained it would have been done before. And later on you decided that it really was possible to live with full disclosure. Have I correctly put your position?

A. Yes. I'm not sure that's totally on all fours with what I said.

Q. Why don't you correct it for me then?

A. Well, I'll try and put it in my own words. In the first few months that I was serving as Attorney General I was just taking an extremely cautious approach to anything to do with the Marshall case. Some would say I was cautious to a fault but that was the approach that I took initially. But certainly by 1986, when that particular matter arose about making material available, in that case my recollection is that I discussed it with my staff and they indicated that it was okay to do that and I didn't see any problems with it.

Q. Would you look with me at the document at Volume 38, page 64, which is an extract from the Legislative debates and tell me whether or not the passage I'm going to refer you to is consistent with what you've described to me. Caution about the Marshall case as opposed to a definitive policy statement. Page 64 in Volume 38, bottom. It's a question from Mr.

MR. GIFFIN, EXAM. BY MR. RUBY

1 Vincent MacLean concerning release of files regarding Mr.
2 Marshall. And at the bottom of that you say,

3 Well, Mr. Speaker, we're getting into an
4 area of considerable importance here and
5 that is the access to investigative files
6 which the Honorable Member is referring
7 to. Let me make it very clear to that
8 Honorable Member, through you, Mr.
9 Speaker, and anybody else that's
10 interested in this matter, that I do not
11 make public investigative files that are
12 held by the RCMP or held by my
13 Department. That's never been done and
14 I'm not going to start doing it.

15 A. Yes, that was consistent with the approach that I was taking
16 at that time. I was being extremely cautious.

17 Q. It looks to me like a definitive policy statement. "...that's
18 never been done and I'm not going to start doing it."

19 A. Well, my concern about meeting that policy requirement and
20 at the same time dealing with the request for information
21 from Mr. Cacchione was the matter that we addressed when
22 the Campbell Commission was set up. But certainly, I wasn't
23 just going to, on my own, and without a great deal of thought,
24 start making confidential investigative files public.

25 Q. You weren't making a pronouncement about the policy of the
Department, in general, about the files.

A. Yes.

Q. You were just being cautious about Marshall, is that what

MR. GIFFIN, EXAM. BY MR. RUBY

1 you're telling me?

2 A. I'm saying that I was making that as a statement of general
3 policy in response to the question that was asked. Now, by
4 the same token, I wanted to try, within reason, to
5 accommodate the request from the Mr. Cacchione and that's
6 why we ended up on the compromise approach of making the
7 material available to Mr. Justice Campbell.

8 Q. You said yesterday that there had been discussions of the
9 Marshall case in the Government caucus. I'm interested in
10 knowing what the submissions and issues were as they
11 presented themselves to you and how you responded. So I
12 want to know what was said and by whom in Government
13 caucus about the Marshall case.

14 A. It was discussed in caucus...

15
16 MR. SAUNDERS

17 Unless, my Lords, there are certain members who are
18 participating in the caucus that are the same members who would
19 have been participating in the Cabinet, I don't see my friend
20 getting at the same information through another door, with the
21 greatest of respect...

22 CHAIRMAN

23 Well, my understanding is that there's no difference between,
24 there's a great deal of difference, rather, between Cabinet and
25 caucus...

DISCUSSION

1 MR. SAUNDERS

2 Yes.

3 CHAIRMAN

4 And caucus is an assembly of elected members who support
5 a particular political party, in this instance, supporting the
6 Government of the day.

7 MR. SAUNDERS

8 Yes.

9 CHAIRMAN

10 The caucus cannot make any decisions that are binding on
11 Government or could be articulated as Government policy.

12 Mr. SAUNDERS

13 Yes.

14 CHAIRMAN

15 They're mostly there, well, caucus is an unusual, I think,
16 assembly of ladies and gentleman who have been elected to public
17 office and they let their views known. My recollection is that
18 there are no minutes kept and that sensitive governments listen
19 carefully to what their caucus say. The caucus members say they
20 seldom act on it. But I'm not sure that would happen in Nova
21 Scotia. But it certainly is a separate and distinct institution from
22 government.

23 MR. SAUNDERS

24 I understand it to be so as well, My Lord, and I have no
25 quarrel with your description of caucus.

DISCUSSIONCHAIRMAN

1
2 And in this case, well maybe other counsel wish to be heard.

MR. SAUNDERS

3
4 My point being, My Lord, just before Mr. Spicer speaks is that
5 I wouldn't think it appropriate for my friend to try and find out
6 what members of Cabinet may have said at caucus meetings
7 when, through our discussions this morning, Your Lordship has
8 instructed that no such questions be put.

CHAIRMAN

9
10 Well you mean individuals, well it would certainly surprise
11 me if anybody can remember from one day to next day who said
12 what and the context.

MR. SAUNDERS

13
14 That may be so. It may be so, My Lord, but I just saw this as
15 way to get at that information a different way.

CHAIRMAN

16
17 We shall watch very carefully and listen very carefully but I
18 don't interpret it as being that approach.

MR. SAUNDERS

19
20 Very well, My Lord.

Mr. SPICER

21
22 I don't really see any necessity to say anything at this point.
23 You're not objecting at this stage of the game, I don't think.

CHAIRMAN

24
25 We just, you just wanted a lecture on political science, that's

DISCUSSION

1 all.

2 MR. RUBY

3 Just to complete the discussion. My position is that if a
4 Member of Cabinet chooses to repeat what he may or may not
5 have said in caucus, in Cabinet in caucus, that the caucus
6 discussion has no privilege.

7 CHAIRMAN

8 And I'll listen very, with great interest and see who
9 remembers what happened in any caucus in Canada.

10
11 MR. RUBY

12 Q. Tell me about caucus, what was said?

13 A. It's, with all due respect, going to be very difficult because it's
14 hard to remember. The subject came up for discussion in the
15 Government caucus certainly from the time that I became
16 Attorney General. I couldn't begin to say how many times the
17 Marshall case and the various aspects of it were discussed but
18 it was brought up because caucus is the one forum in which
19 Members of the Government, who are not members of
20 Executive Council, can discuss issues of that nature with
21 Ministers and get information and some sense of where the
22 Government is headed on a particular issue. I don't know
23 that I could ever recall specific conversations, or who said
24 what at what point in time, but the matter was raised.
25 Generally, my experience in caucus is that when matters are

1 being raised by members of caucus, particularly by the
2 private members as distinguished from the Cabinet ministers,
3 that it's often to seek information. To try to determine just
4 where the Government is headed. And by the same token, to
5 offer opinions on how a matter ought to be dealt with. But I
6 can certainly recall that it was discussed at caucus meetings
7 after I became Attorney General. The sense of those
8 discussions, as I recall it, was along the lines of, "What is going
9 to be done about the Marshall case?" "How can we deal with
10 it?" Members of the caucus, of course, had inquiries from
11 their constituents about the case. It had attracted a great deal
12 of public interest so a common question would be, "What
13 should we say in reply to inquiries that we get from
14 constituents?" So there was that kind of discussion. And then
15 as the matter progressed, at the same time we tried to keep
16 the caucus members informed of developments as they came.
17 Now, I'm not being very specific and with good reason. There
18 are no minutes kept of caucus meetings and the discussions
19 are very informal and it would impossible to start attributing
20 specific statements or quotations to specific individuals. I
21 really couldn't do it.

22 2:17 p.m. *

23 Q. Is there not a single statement that you can remember
24 attributed to a single individual?

25 A. It would be...no, I don't think that I could safely do that under

1 oath. One specific I can recall, and it comes later in 1986, and
2 perhaps that why I remember it, is that when we were
3 having a caucus meeting at the White Point Beach Lodge in
4 Queens County, which would have been in June of 1986, that
5 discussion began at that point again about the question of an
6 Inquiry of this nature into the Marshall case, and for some
7 reason it sticks in my memory that the person who first
8 raised the matter at that caucus meeting was the Speaker of
9 the House, but it's...it would be very difficult to go back to
10 1983, '84 and try to attribute statements to people and it
11 would be very, very risky because my memory just isn't that
12 good.

13 Q. When you got round to discussing with the caucus the amount
14 of money that Marshall was to be paid do you recall that
15 happening?

16 A. No. My recollection on the amount of the settlement that that
17 was a case of simply advising the caucus of what had been
18 done. In other words, the caucus was not consulted about
19 their views as to what they might have thought was an
20 appropriate amount of the settlement. They were not
21 involved in the negotiation process.

22 Q. Did any of them comment on the appropriateness of the
23 amount after it was learned?

24 A. I can't recall any specific individual. My recollection is that
25 as...a statement of a generality that the...that there were no

1 objections to the amount from the caucus. There was a
2 general satisfaction that the matter had been dealt with.

3 That's my recollection of the reaction in caucus.

4 Q. Any mention in caucus of the fact that Mr. Marshall was
5 Indian?

6 A. No, not that I can recall.

7 Q. Any mention of the Marshall case as a political problem?

8 A. Oh, yes.

9 Q. Tell me about that?

10 A. Well, just in a general sense, that as with any difficult matter
11 that's before a government and that is still unresolved, it is
12 the concern and this was certainly expressed in a general way
13 by members of the caucus, that we would have to try to find
14 a way of dealing with it, that it was not a situation that could
15 be left unresolved.

16 Q. Why? What were the political dangers that the caucus
17 perceived?

18 A. I think the political danger would have been one of the
19 government being perceived as being indecisive, as being
20 unprepared to act, as being unfair to Mr. Marshall. That those
21 certainly could have been damaging political...damaging
22 perceptions in a purely political context.

23 Q. Let me take you to the action of Edmund Morris, then your
24 colleague, who disclosed to the press Mr. Marshall's job offer,
25 do you recall that?

MR. GIFFIN, EXAM. BY MR. RUBY

1 A. Yes.

2 Q. You talked about that yesterday.

3 A. Yes, I do.

4 Q. He offered a job as a plasterer and I...sorry, as a repairman of
5 small appliances.

6 A. I thought it was as a...I could be mistaken on that. I
7 understood that his training was as a plumber or a plumber's
8 apprentice.

9 COMMISSIONER EVANS

10 He offered him a job in small...

11 MR. RUBY

12 He's trained as a plasterer and he's offered a job as a small
13 appliance repairman.

14 MR. GIFFIN

15 I'm sorry, for some...I thought...

16 MR. CHAIRMAN

17 He's a plumber.

18 MR. RUBY

19 Plumber, all right, My Lord, I said plasterer.

20 MR. GIFFIN

21 A. Yes. That was my recollection. His father was a plasterer.

22 Q. Plasterer. He does that as well, that's why it's sticking in my
23 mind.

24 A. Yeah. Yes, I do recall Mr. Morris making that statement to the
25 press, yes.

1 Q. So, the job, you'll agree, would have been a job that was
2 unsuited to his skills, correct?

3 A. Yes, my understanding was that his...he had worked
4 seventeen hundred hours in the field of plumbing.

5 Q. Yes.

6 A. And that that would have been the area in which he would
7 have had an opportunity to move ahead.

8 Q. And nothing as a repairer of small appliances.

9 A. Not that I know of. Like I don't know that Mr. Marshall had
10 any training in that area.

11 Q. Okay. Now, it seems that that was leaked to the newspaper
12 by Mr. Morris, is that correct?

13 A. It's my understanding that he told the press about it, yes.

14 Q. And you were very upset with Mr. Cacchione when he leaked
15 the date of your meeting. Were you equally upset with Mr.
16 Morris when he leaked this job offer?

17 A. It's my recollection that Mr. Morris did that in response to
18 statements that were made by Mr. MacGuigan and Mr. Munro
19 when they came to Halifax at about that time about the
20 Government of Canada offering employment to Mr. Marshall.

21 Q. So, you were not upset by it.

22 A. Well, I was concerned about the concern which Mr. Cacchione
23 expressed which was that there had been a communication
24 with his client that had not gone through Mr. Cacchione, and
25 that was the point that caused me concern and that's why I

1 dealt with that issue when I wrote to him in early March.

2 Q. And did you also object to Mr. Morris about that which
3 concerned you, and the raising it to the press rather than
4 through Mr. Cacchione?

5 A. No, I didn't make any objection to Mr. Morris having done
6 that.

7 Q. Why not?

8 A. Well, it just didn't...didn't occur to me to do that. The concern
9 that I had was the one that Mr. Cacchione had expressed.
10 Now, I will add that in the light of the Supreme Court decision
11 in the Brenda Thompson case that if something like that
12 happened now I would certainly be concerned about that
13 kind of thing.

14 Q. Mr. Morris has since been convicted of a similar release of
15 information and that's what you're referring to.

16 A. Yes.

17 Q. And that would be a breach of the Freedom of Information
18 Act, Section 6(2),

19
20 A department maintaining personal
21 information files shall not make the
22 personal information contained therein
23 available to another department or person
24 for another purpose without the person's
25 consent.

24 Correct?

25 A. That's the section. I don't know that I should sit here and

1 offer a legal opinion on whether or not what Mr. Morris did
2 back then violated that Act. But the point that I wanted to
3 make was that if the decision in the Thompson matter had
4 been ...had taken place prior to that, then I certainly would
5 have had a very real concern.

6 Q. I want to know why you didn't. I mean you were aware of
7 that provision of the Act. Correct?

8 A. Yes.

9 Q. You were the chief law enforcement officer of the Crown,
10 correct?

11 A. Yes.

12 Q. Why did you not at least consider charging Mr. Morris for that
13 breach of the Act?

14 A. I think the short answer is that to that point in time there
15 had never been a prosecution of that type with respect to the
16 Freedom of Information Act. It was just something that I
17 never directed my mind to.

18 Q. It's not a case of not looking because the man involved is a
19 member of the government, that's not what is happening?

20 A. No.

21 Q. You said that you thought the Attorney General has the right
22 to tell the Royal Canadian Mounted Police to stop an
23 investigation on the grounds that the Attorney General was
24 the person ultimately responsible for the administration of
25 justice in the province.

1 A. Yes.

2 Q. That was, I think, the position you put yesterday...

3 A. Yes.

4 Q. ...to Mr. Spicer. That troubles me a bit. If you act before the
5 investigation is complete how on earth can you know whether
6 it's proper to stop it because you haven't got a full picture of
7 what's going on or what it will uncover? How could you ever
8 cut off an investigation before it's complete?

9 2:28 p.m. *

10 A. Well, I think it's a speculative question. I would have to be in
11 possession of the facts relative to a particular situation. Just
12 to deal with it in the abstract is very difficult. I would have
13 to have a concrete fact situation and then see whether or not
14 there was some reason why there ought to be an intervention.
15 But obviously that is something that would be done only
16 under the rarest of circumstances.

17 Q. You'll agree with me that the danger of so doing is that you
18 prevent coming to light the very criminality which an
19 investigation is supposed to deal with in which you as chief
20 law officer are supposed to consider in making your decision.

21 A. Yes, that's correct.

22 Q. As to whether or not to prosecute.

23 A. That's correct.

24 Q. So, it is a logical impossibility, you agree?

25 A. I wouldn't say it's a logical impossibility, but I would say that

1 the ultimate power does exist in the Attorney General, the
2 exercise of the power would be enormously difficult and
3 fraught with...on the dangers that you've just pointed out.

4 Q. And, as you sit here today I take it you cannot think of any
5 example where it would appropriate to do that.

6 A. That's right.

7 Q. And, if you allow such a power would you agree with me that
8 it is fraught with possibilities for abuse?

9 A. Oh, yes.

10 Q. For example.

11 A. Very much so.

12 Q. There's a tendency to exercise that kind of discretion in
13 favour of friends of the government as opposed to ordinary
14 citizens. That would be one kind of abuse that's possible if
15 that power exists.

16 A. Yes. Any kind of abuse is possible where a power exists.

17 Q. And that kind particularly.

18 A. Oh, yes, very much so.

19 Q. As Attorney General you were aware that people do want the
20 Attorney General to exercise that power in favour of their
21 friends and associates, just generally, people want that
22 discretion exercised in their favour.

23 A. I'm sure there would always be people who want that, yes.

24 Q. And lots of pressure is placed on an Attorney General,
25 correct?

MR. GIFFIN, EXAM. BY MR. RUBY

1 A. I wouldn't exaggerate that. My attitude always would have
2 been that if somebody approached me and asked me to do
3 something improper such as stopping an investigation that
4 ought to continue, that I would view that as a totally
5 improper request to be directed to an Attorney General or to
6 interfere with a prosecution before the courts or what have
7 you.

8 Q. Do you know John MacIntyre?

9 A. I don't believe I've ever met him. I may have met him when
10 I was Minister of Municipal Affairs and traveled to Sydney
11 and met a number of people at the City's building in Sydney.
12 But I can't...the mayor introduced me to a lot of people that
13 day and it's possible I may have met him, but I certainly am
14 not acquainted with him.

15 Q. Did you read the report which contains the advice that we've
16 talked about a lot here of Mr. Gale, the holding of the case in
17 abeyance, referring to the investigation of the Sydney police?

18 A. Yes.

19 Q. When had you read that report?

20 A. When did I read it?

21 Q. When?

22 A. I can't give you a precise date. It was sometime after I
23 became Attorney General, but I can't give you a precise date.

24 Q. Early, middle, late.

25 A. I think fairly early. I think it was part of the process of

1 informing myself about the Marshall case.

2 Q. What did you take that to mean when you read it?

3 A. I took it to mean that Mr. Gale was asking the R.C.M.P. to hold
4 off on their...any inquiries with respect to the Sydney City
5 Police until the matter that they were then dealing with,
6 principally the re-opening of the Marshall case before the
7 Appeal Division, and also the possible prosecution of Mr.
8 Ebsary, that my understanding of it was that Mr. Gale was
9 prioritizing those matters, saying let's get this done first before
10 we turn our attention to the other.

11 Q. And did you agree with that?

12 A. Yes, I had no quarrel with it. It was actually, the memo was
13 issued before I became Attorney General. But after I read it I
14 had no quarrel with it.

15 Q. Why would you want to wait? For example, surely there was
16 enough manpower in your office to proceed with the
17 prosecution of Sergeant MacIntyre and Sergeant Urquhart if
18 that was deemed warranted after an investigation.

19 A. I don't think it was a question of manpower in the Attorney
20 General's Department to conduct a prosecution. My
21 understanding of the memo from Mr. Gale dealt with the
22 inquiries and investigative work being done by the R.C.M.P..

23 Q. Did you not think the R.C.M.P. had enough manpower to carry
24 on any investigations of Ebsary, which were already
25 completed in any event, according to the memo, and at the

1 same time investigate MacIntyre and Urquhart? Were they
2 short of men?

3 A. Pardon me?

4 Q. Were they short of men?

5 A. I know they have heavy demands on them in certain
6 divisions, but the R.C.M.P. could tell you more about that than
7 I could. I certainly wasn't reading that memo in terms of
8 manpower shortage.

9 Q. Then what is the problem? Why couldn't it go ahead? You've
10 got the manpower, they've got the manpower. What's the
11 problem?

12 A. Well, I didn't see it as a situation of Mr. Gale telling them not
13 to go ahead. I saw it as simply a situation in which he said
14 "Let's deal with these matters first, and then you can look at
15 the situation, vis-à-vis the Sydney City Police force."

16 Q. He's telling them not to go ahead for the time being.

17 A. Yes, that's right.

18 Q. Until we finish other matters.

19 A. Yes.

20 Q. Why? Why couldn't it all go ahead at once? Why shouldn't
21 the investigation of MacIntyre and Urquhart proceed at pace?

22 A. Well, I suppose in fairness you'd have to direct the question
23 to Mr. Gale because that happened before I became Attorney
24 General.

25 Q. But you said you approved of that.

MR. GIFFIN, EXAM. BY MR. RUBY

1 A. Yes, I had no quarrel with it, provided that putting the
2 matter in abeyance did not mean never dealing with the
3 matter, rather that I took it as read that when a matter is put
4 in abeyance that means that it's...that it is going to be dealt
5 with, not at that time but at a later time and as it was.

6 Q. If you agree with that policy tell me why it made sense not to
7 have that investigation commence immediately? Why hold it
8 in abeyance?

9 A. Well, I can't presume to speak for Mr. Gale but I can only tell
10 you that as far as I was concerned I had no problems with
11 that. It was simply a matter of setting priorities and as I
12 understood the memo he was saying that let's get these...these
13 other matters are urgent, particularly the re-hearing of the
14 Marshall case, let's get that dealt with first. That's all. I
15 didn't read anything into it beyond that.

16 Q. You practised law.

17 A. Yes.

18 Q. You know that if you don't do investigations promptly the
19 evidence vanishes, witnesses die, memories fade, it's a real
20 danger, you understand that.

21 A. Yes.

22 Q. You knew it then.

23 A. Yes.

24 Q. As chief law officer of the Crown that was one of your
25 concerns no doubt.

1 A. Yes.

2 Q. To see that evidence did not vanish in that way.

3 A. Right.

4 Q. So, that militates in favour of a quick investigation even if
5 you decide to hold the prosecution for some reason, does it
6 not?

7 A. Well, I think it should be pointed out that the memo from Mr.
8 Gale to the R.C.M.P. asking them to hold that in abeyance was
9 about eleven years after the original investigation and then
10 the following year he sent the memo asking the R.C.M.P. to
11 review the practises and procedures of the Sydney City Police
12 force.

13 Q. Do you agree with me that you cannot now think of a single
14 reason why holding in abeyance made good sense or good
15 policy?

16 A. To mean the reason was simply that the most urgent matter
17 was the re-hearing of the Marshall case, and that the most
18 urgent matter ought to be dealt with first.

19 Q. Why was that inconsistent with going ahead with the
20 investigation? What was the conflict?

21 A. I'm not sure that I see it as a conflict. We're talking here
22 about the R.C.M.P. officers who had already been involved in
23 the re-investigation and who presumably were also involved
24 in giving testimony and that sort of thing. And...

25 Q. They weren't in the Marshall reference.

1 A. Sorry. No, that's correct. I stand corrected on that. But, no, I
2 didn't see anything sinister in it, that it was just a setting of
3 priorities and saying, "Let's get this done first and then we'll
4 move on to the other."

5 Q. But there's no reason that you can now assign why that's a
6 good idea. Correct?

7 A. No, I can't purport to speak for Mr. Gale on that.

8 Q. To your own mind as you read it you can think now of no
9 reason why that would be a good idea, fair?

10 A. I think that's a fair comment.

11 Q. You do accept...

12 A. It was a setting of priorities.

13 Q. And you do accept that there's at least one good reason why
14 it's a bad idea, namely evidence fades and vanishes. Correct?

15 A. I think where you have a matter that's already eleven years
16 old that problem is already there in abundance.

17 Q. Doesn't that make it more urgent to move while witnesses are
18 still alive after eleven years, not less?

19 A. No, I think the most urgent matter that had to be dealt with
20 at that time as I've said was the re-opening of the Marshall
21 case.

22 Q. But you've also said there's no reason why they couldn't have
23 both gone on together.

24 A. Well.

25 Q. Correct?

- 1 A. I have a couple of problems with this. One, is that Mr. Gale's
2 testimony obviously would be of help on this point, and
3 secondly in terms of the question of R.C.M.P. manpower and
4 resources I did not make enquiries into that, so I don't know
5 what the situation was and whether or not that was a factor.
- 6 Q. You seriously thought or considered that the R.C.M.P. in all of
7 Nova Scotia might not have sufficient manpower to do an
8 investigation of MacIntyre and Urquhart. Are you telling me
9 that that's what you considered?
- 10 A. No. No, I didn't say that that what's I considered. I said that
11 I did not make enquiries into that.
- 12 Q. All right. So, you can't see any reason why they couldn't have
13 gone ahead, correct?
- 14 A. Well, I'm sitting here answering these questions, no, but I
15 don't want to make that a blanket statement because Gordon
16 Gale may come in and offer...
- 17 Q. Sure. He may have a wonderful reason.
- 18 A. ...perfectly good reason for that.
- 19 Q. But I'm talking about your mind now. You cannot think of
20 any reason why it could not have gone ahead.
- 21 A. That's right.
- 22 Q. And you could think of at least one good reason why it should
23 have gone ahead, namely the passage of time and the fading
24 of memories and evidence.
- 25 A. Well, that was already obviously a major problem in the case.

1 Q. Yes. And that was also a factor why it should go ahead,
2 correct?

3 A. Yes.

4 Q. Were you aware that that investigation never went ahead?

5 A. It was my understanding that what happened was that Mr.
6 Gale in 1983, I think just after the decision of the Appeal
7 Division was handed down, sent a memo to the R.C.M.P. and
8 asked them to review the information that they had, to
9 review the investigative procedures that were followed by
10 the Sydney City Police force in 1971 and to make a report on
11 those matters.

12 Q. Were you aware, I'll make it clearer, that the investigation of
13 MacIntyre and Urquhart, the criminal investigation of
14 MacIntyre and Urquhart, talked about by Wheaton, never
15 went ahead? Were you aware of that?

16 A. That's correct. There was no criminal investigation of Mr.
17 MacIntyre and Mr. Urquhart that I know of. The Inquiry that
18 was carried out was the one that I've indicated.

19 Q. Were you aware through your tenure that that inquiry, that
20 criminal investigation never got going?

21 A. That's right. There was no criminal investigation of Mr.
22 MacIntyre and Mr. Urquhart.

23 Q. And you knew that.

24 A. Yes.

25 Q. You also knew that the whole reason why Marshall had been

MR. GIFFIN, EXAM. BY MR. RUBY

1 granted a reference and acquitted was because witnesses said
2 they lied under oath because they were pressured by the
3 police. You knew that.

MR. PUGSLEY

4
5 I object. The indication of the Appeal Division...

MR. RUBY

6
7 Yeah.

MR. PUGSLEY

8
9 The Appeal Division based upon new evidence, as I recall it,
10 they discounted the evidence that my friend refers to.

MR. RUBY

11
12 Q. You knew that one of the major reasons why the reference
13 was granted and called and why the Court of Appeal from
14 reading their reasons acquitted Mr. Marshall was the fact,
15 together with other facts such as MacNeil's evidence, that
16 these witnesses said that what they said earlier was false and
17 that they had been pressured by the Sydney Police. Is that
18 not true?

19 A. Well, I was certainly aware that that was the evidence that
20 was placed before the Court. The report that came back from
21 the R.C.M.P. to the department in response to Mr. Gale's memo
22 or letter in 1983 contained no recommendation for criminal
23 prosecutions of anybody.

24 Q. You're anticipating my next question. If you knew that and
25 you knew there had never been a criminal investigation, why

1 didn't you as, Attorney General, ask that one take place so
2 that you could be satisfied that the people of Sydney were
3 being served by an honest police force?

4 A. When I read the reports back from the R.C.M.P. to Mr. Gale
5 that was the information upon which I based my view of the
6 matter, and those reports did not request or recommend an
7 R.C.M.P. investigation of the Sydney City Police force, nor did
8 they recommend criminal prosecutions of anybody. Now,
9 when I was reading that material I was not reading it for the
10 purpose of making a decision. I was simply reading it for the
11 purpose of informing myself about the case. But that was
12 what I took from that material, was that the R.C.M.P. were
13 recommending neither of those courses of action, and so I did
14 not pursue it further.

15 Q. When you read it I take it alarmed you as Attorney General
16 that these things were being said about the City of Sydney
17 police force.

18 A. No, when I read the reports from the R.C.M.P., first of all, as I
19 say, I was reading them for information and not for the
20 purpose of making decisions. But when I read them I saw
21 nothing in there that indicated that the R.C.M.P. were
22 recommending either a further investigation or criminal
23 prosecutions. And, I therefore did not see that there were
24 any steps that I had to take in connection with those reports.

25 Q. You didn't see any need for you to act on your own initiative.

1 A. That's right.

2 Q. There's a matter that I want to move on to if I can, and it's
3 this, you said that on occasion you disagreed with or
4 overruled Mr. Coles and one example you gave us was that his
5 view that Mr. Marshall was the author of his own misfortune.
6 Were there any other respects in which you disagreed with
7 or overruled Mr. Coles respecting his views in the Marshall
8 matter, any other respects at all?

9 A. I think it's fair to say that Mr. Coles had reservations about
10 the calling of this type of a public inquiry, and he was always
11 willing to express his views to me quite openly and quite
12 frankly, and he did express reservations to me about the
13 calling of this inquiry. It wasn't a case of my overruling him.
14 It was simply a case that he was expressing his views that
15 there would be problems about calling an inquiry because
16 there had been witnesses who had committed perjury,
17 because of the passage of time and because of the potential
18 cost. But those were just views that he communicated to me
19 as Deputy Attorney General. But once the Cabinet decision
20 was made to proceed with this Inquiry then he did what
21 work he had to do in connection with that.

22 Q. Any other respects in which you disagreed with... with Mr.
23 Coles with regard to his ideas concerning Marshall?

24 A. It's difficult to state a blanket yes or no, or a blanket no, if
25 you will, to that kind of question. I can't recall any at the

MR. GIFFIN, EXAM. BY MR. RUBY

1 moment, but my memory is not infallible, but nothing else
2 comes to mind at the moment.

3 Q. Are you aware from the conversations with him what Mr.
4 Coles' views were of Indians?

5 A. He was not racially prejudice. He certainly never gave any
6 indication of that.

7 Q. You told Mr. Spicer yesterday that there were no green
8 striped files as far as you knew during your tenure as
9 Attorney General. Were there any political or other files
10 during your tenure as Attorney General that were kept
11 separate and apart from the files to which ordinary staff
12 lawyers had access?

13 A. No, none that I know of. The Department has a central filing
14 system and as far as I know every file went into that central
15 filing system.

16 Q. My friend will rise, and would you just not answer this
17 question for a moment to give him an opportunity to do so.

18 A. All right.

19 Q. Are there any minutes or notes kept of Cabinet meetings and
20 are there any record of any kind or any secretary present?
21 Just give my friend a moment to see if he wants to object.

22 MR. SAUNDERS

23 With respect to?

24 MR. RUBY

25 Cabinet minutes, Cabinet meetings, any minutes, notes,

MR. GIFFIN, EXAM. BY MR. RUBY

1 records, secretary's recording, were there any kind of record at
2 all. That's the question.

MR. SAUNDERS

4 I don't know that that question is objectionable, My Lord. I'm
5 quite happy for my friend to pose the question.

MR. RUBY

7 Thank-you.

8 Q. Could you answer that for me?

9 A. Yes. Essentially the answer is no. There are no recordings of
10 discussions either mechanical or written. What emanates
11 from a Cabinet meeting is documentation, Orders-in-Council,
12 these are the formal documents that are done after the
13 meeting. I'm not sure how far you want to go with this, but I
14 can describe the procedures that go on in the Cabinet room.
15 There is a Cabinet book which has a agenda and has in it the
16 reports and recommendations or memoranda to Cabinet,
17 proposed appointments and then a host of other things. And,
18 at each Cabinet meeting we deal with the items in that book.
19 One Minister is responsible for noting in the book what the
20 disposition is with respect to each particular matter, and then
21 after we've gone through that book, which may take several
22 hours, we then...we then would deal with non-agenda items or
23 urgent matters that Ministers did not have time to put on the
24 agenda and they had to bring in. In those discussions there
25 would not be any keeping of minutes or anything of that sort.

MR. GIFFIN, EXAM. BY MR. RUBY

1 Q. Do you keep notes or do other Ministers keeps notes of these
2 meetings?

3 A. No, I very seldom...I never kept notes of things that happened
4 at Cabinet. There are a lot of notes moving around the
5 Cabinet room from one Minister to another on matters that
6 they're dealing with, but not for the purpose of a record, and
7 any scribblings like that in the course of a day would be
8 disposed of at the end of the meeting.

9 Q. You never took notes on discussions about Marshall, for
10 example, and kept those notes.

11 A. No.

12 Q. All right. In November of '83, shortly after you took office,
13 you asked for the inventories, I recollect, of the file. Did you
14 ever get such a thing?

15 A. The...I'm sorry I don't recall.

16 Q. The inventory to the Marshall file, you dictated off a memo to
17 your secretary.

18 A. I'd have to see that memo. I don't recall asking for an
19 inventory.

20 Q. All right. Let me leave it then. I take it you have no memory
21 of getting anything as a result.

22 A. No, I don't remember.

23 Q. Halifax City Police, do they have a regimental dinner?

24 MR. SAUNDERS

25 What was that?

1 MR. RUBY

2 Regimental dinner.

3 A. They have two or three different types of functions that I
4 recall. I think there is a Halifax...there is one for retired
5 members of the Halifax force, and I think there's another
6 large one each year which is more of a banquet and a...

7 Q. Yeah.

8 A. ...dance to follow kind of thing.

9 Q. You've attended and spoken at that particular function.

10 A. My wife and I attended that two or three times, but I think
11 the years that we attended we attended the reception
12 beforehand and other commitments prevented us from going
13 on to the dinner. But now I...if you're asking me about what
14 functions I've attended over the years I'd really have to go
15 back and check my calendars because there literally have
16 been hundreds.

17 2:50 p.m.

18 Q. I want to know if you've ever spoken to the Halifax City
19 Police at a dinner. Do you recollect that?

20 A. No, I just don't recollect. I'd have to check.

21 Q. Perhaps we can do this, My Lord. It looks like we will not
22 complete the witness today. I may not be here Monday but
23 Ms. Derrick will be here and if you could give us an answer to
24 that we'll follow through on further questioning.*

25 A. Yes. We'd have to, I keep my office calendars so we can

MR. GIFFIN, EXAM. BY MR. RUBY

1 check back and see if I ever did.

MR. SAUNDERS

3 My Lords, I wonder if my friend can give me a little more
4 detail on dates and exact location, years so that we can embark on
5 that search.

MR. RUBY

7 It was around the time of the RCMP dinner. But I have no
8 further information about the exact date.

COMMISSIONER EVANS

10 Around the time...I'm sorry, I didn't even get...

MR. RUBY

12 Around the time of the RCMP dinner.

MR. ROSS

14 RCMP what?

MR. SAUNDERS

16 Dinner.

MR. RUBY

18 The regimental dinner. It's around that time but I'm not sure
19 of the exact date.

MR. SAUNDERS

21 We'll undertake to look.

MR. RUBY

23 Thank you.

CHAIRMAN

25 I'd like to know the relevancy. I was not aware that the

MR. GIFFIN, EXAM. BY MR. RUBY

1 Halifax Police force had anything to do with the Marshall case but
2 we learn something every day here. Maybe they did.

MR. RUBY

4 Well, let me just indicate that I think the fairest thing to do is
5 to take this one step at a time and see how it goes. I won't take
6 much time of the Commission with it. Let's see how the answer
7 comes back.

COMMISSIONER EVANS

9 Except if you're going to do a lot of looking, what are you
10 looking for?

MR. RUBY

12 I don't want to embarrass the witness by telling you what I'm
13 looking for. Let's just see if there's a foundation.

COMMISSIONER EVANS

15 Well, I wouldn't think you'd be concerned about embarrassing
16 the witness, Mr. Ruby.

MR. RUBY

18 As Your Lordship knows there are proper ways of
19 embarrassing witnesses and ways which are not so proper and
20 I'm just trying to proceed cautiously.

COMMISSIONER EVANS

22 I'm sure you know them all.

MR. RUBY

24 To take the witness' language, I have no firm policy decision
25 on this.

1 Q. You realize it, I take it, when you examined the file that in
2 1971 Mr. MacNeil came forward with an account of what took
3 place which was subsequently not acted upon and, more
4 importantly, was apparently so we've learned, passed on to
5 your office, probably to Len Pace, by the local Cape Breton
6 prosecutor, but was never communicated to Marshall's lawyer
7 on the appeal, Mr. Rosenblum. You're familiar with that.

8 A. I'm familiar with it. Obviously, I can't testify to it personally
9 but I'm familiar with that.

10 Q. I take it you knew, as Attorney General, that this information
11 had not been passed on to the appeal lawyer.

12 A. Yes, that's right.

13 Q. What steps did you take to commence an investigation to find
14 out exactly what went wrong and why it wasn't passed on to
15 that appeal lawyer?

16 A. Well I think the problem with that matter, as I recollect it, is
17 that the Crown Prosecutor who was involved in that case, Mr.
18 Donald MacNeil, had passed away in 1978 and so it would
19 have been very, very difficult to ascertain what might have
20 happened.

21 Q. Are you saying you did nothing?

22 A. That's correct. Well, with the caveat that as I dealt with the
23 Marshall matter throughout, certainly there were problems
24 and question marks of that sort. But I always had it in the
25 back of my mind that if there were any matters that required

1 further inquiry, that if the Government decided to go ahead
2 with an inquiry like this one that then all those matters
3 would be explored.

4 Q. You did nothing.

5 A. That's correct.

6 Q. You were appointed Attorney General in November of '83.
7 Had your predecessor done anything about dealing with these
8 issues that were remaining? The compensation issues, for
9 example, and the calling of inquiry?

10 A. No, nothing that I know of. There was nothing I, perhaps I
11 could put it this way. When I went into the Department,
12 there was nothing there that indicated any steps had been
13 taken.

14 Q. You set up the compensation inquiry on March 5, 1984. Let's
15 take it month-by-month. I want to know what you did in
16 those months. First of all, in November of '83. What did you
17 do regarding the Marshall matter in respect of setting up and
18 formulating the policy that you told us you were doing over
19 that period.

20 A. Well, it's perhaps arbitrary to take it month-by-month but as
21 I, once I entered the Department I entered upon a process of
22 learning about the Marshall case. I think it's important to
23 understand that that was not done in isolation. That when a
24 Minister enters a new Department there is an enormous
25 amount of information that one has to acquire in a short

1 period of time on everything from Departmental estimates to
2 legislation to being briefed on the operations and all the
3 things that you're responsible for. So I wouldn't want to
4 leave the impression that this was being dealt with in
5 isolation. But the process on which I embarked was one of
6 having discussions with senior staff to become informed
7 about the matter and as the opportunity presented itself to
8 the look at the material and the first specific step that I can
9 recall taking was that of responding to Mr. Cacchione's
10 request for a meeting.

11 Q. I take it, then, that you cannot now go through it month-by-
12 month and tell me what you did, is that correct?

13 A. I do not keep a diary so I don't have that kind of day-by-day
14 information available to me.

15 Q. All right. You decided you wouldn't meet with Cacchione
16 after that first meeting again.

17 A. Yes, I decided if there were going to be any future meetings
18 that I would have staff solicitors meet with him rather than
19 meet with him personally.

20 Q. Why?

21 A. Because I felt, as I indicated earlier, that he had broken his
22 word to me. And, in particular, that my request that that
23 initial meeting not be made known to the media had been
24 made known to the media. My concern was that if I were to
25 have meetings with Mr. Cacchione and to have the kind of

1 open and without prejudice discussion that might have helped
2 us to move ahead on some of these issues, my concern, quite
3 honestly, was that I might be reading about it in the
4 newspaper the next day.

5 Q. Did you wind up reading about the meeting you did have in
6 the newspaper the next day?

7 A. Pardon me?

8 Q. Did you wind up reading about the meeting that you did have
9 in the newspaper the next day?

10 A. No.

11 Q. So you had no grounds for that fear.

12 A. I had grounds for the fear in the sense that Mr. Cacchione did
13 not keep his word to me and then once somebody has done
14 that I find I have to be very cautious in my dealings with
15 them.

16 Q. And you've told me that you've assumed that he didn't keep
17 the word.

18 A. Yes, but I think that you will find that Mr. Cacchione will
19 acknowledge that he told a journalist about that meeting.

20 Q. What was Mr. Cacchione supposed to do in that interval
21 period? You won't meet with him, the Department's not
22 meeting with him, you won't even tell him your position
23 because you haven't got one. What's he supposed to do?

24 A. Well, I think a solicitor representing a client is not completely
25 without resources. He could have pursued the action against

MR. GIFFIN, EXAM. BY MR. RUBY

1 the City of Sydney and Urquhart and MacIntyre. That, the
2 conduct of that action was in his hands.

3 Q. He couldn't get the information that would have helped him
4 to prosecute the lawsuit from you because you weren't
5 releasing it to him. Correct?

6 A. Well, at that point I was not. We'd been through this before
7 but at that point I was not. Now of course he had...

8 Q. So that's not a very viable alternative, is it.

MR. SAUNDERS

9
10 Well, My Lords, I'm not sure that's an accurate representation
11 either. After all, some two years earlier, June '82, material was
12 given to Mr. Aronson which, presumably, he passed on to Mr.
13 Cacchione. So I think there was ample information that Mr.
14 Cacchione had with which to pursue a civil action. I don't think
15 it's fair or accurate for my friend to say that he had nothing.

MR. RUBY

16
17 No, he didn't have the May 30th report and that's what I'm
18 talking about.

19 Q. You understand that.

20 A. Pardon me?

21 Q. You know that I'm talking about the May 30th report of
22 Wheaton.

23 A. Yes.

24 Q. Yeah, that's what he didn't have. You understood that.

25 A. Yes. By the same token a lawyer can pursue a civil action and

1 go to discoveries and so forth. There are certainly options
2 open there.

3 Q. Was the Government, in fact, saying to him publicly, to the
4 press, that the lawsuit was one of the reasons why they
5 couldn't deal with him on the issue, why they couldn't move
6 ahead?

7 A. No. No, I wasn't saying that. I indicated, and the Premier
8 indicated that we were concerned that any steps taken by the
9 Government, or any decisions that we made might, in some
10 way, impact on either the civil proceeding or, more
11 importantly, on the criminal proceeding. But I, at no time,
12 said to Mr. Cacchione, nor did anybody in the Department,
13 that it was a condition precedent to our dealing with these
14 matters. That the action against the City of Sydney and Mr.
15 MacIntyre and Mr. Urquhart be discontinued. The Province
16 had no vested interest in that proceeding one way or the
17 other.

18 Q. No, I agree. But the Premier made it clear, did he not, that
19 that was one of the impediments to the Government dealing
20 with the matters?

21 A. Well as I understand his statement, and certainly this was my
22 own recollection of it, is that we were expressing the concern
23 that any action taken by the Government had to be
24 considered very carefully on the light of the fact that those
25 matters were before the courts. I took that to be just a

1 statement of caution, but we, at no time, said that we were
2 going to do nothing.

3 Q. Let me move to the issue of the settlement discussions, if I
4 can. You've said that you didn't want to do anything that
5 would trespass on the Ebsary case. Could you explain to me,
6 concretely, what you mean by trespass? Give me an example
7 perhaps

8 A. All right. If, for example, I had issued a public statement
9 which dealt with some of the matters that were, that might be
10 considered by the jury at any later trial, or if I made any
11 statements or did anything that perhaps implied a statement
12 on my part that I was of the view that Mr. Ebsary was guilty,
13 in order words, if I did something like that that either
14 expressly or by implication or even inadvertently created
15 problems in terms of either selecting a jury or conducting a
16 trial, I just felt that I had to be extremely cautious in that
17 whole area.

18 Q. But surely you could have dealt with the Marshall case
19 without suggesting that Ebsary was guilty.

20 A. And ultimately, we did. But I did not, it was not a decision
21 that I, or the Government, as it was a Government decision,
22 made overnight.

23 Q. When it comes to the position that your Ministry put before
24 Chief Justice Campbell, that a fair and, "The hearing ought to
25 proceed on the basis," that is Mr. Coles said, "the police

1 investigation is not relevant," and you'll see that in Volume
2 33, page 411, if you want to look at that again. Page 411 of
3 Volume 33, My Lord. And you'll see that in the third
4 complete paragraph on that page, page 411. The comment
5 briefly...

6 A. Oh, I' m sorry, I was looking at the wrong one.

7 Q. Page 411.

8 A. Yes. Yes, I see that.

9 Q. At page 436, when the Commissioner seems about to expand
10 the reference to include that, 435 and 6, he writes a very
11 strongly worded letter trying to put him back on the rails. At
12 the bottom of 435,

13
14 It is my understanding when the matter
15 was discussed with Mr. Justice Campbell it
16 was understood there was no intention or
17 expectation that his inquiry would extend
18 into any consideration of events affecting
19 Donald Marshall, Jr. prior to his
20 incarceration in jail for a crime of which he
21 was subsequently found to be not guilty.
22 The starting point, therefore, is to be Mr.
23 Marshall's incarceration.

24 Now, you've said that you accepted that position and I want
25 to ask you how it is that there could be a fair and full
assessment of the harm done to Marshall if the police
investigation is kept out of it. How could that take place?

A. Well, our concern at that point was that, again, that if the

1 inquiry conducted by Judge Campbell became too broadly
2 based that then there was a danger that it was going to get
3 into areas that related to the Ebsary case which was still
4 before the court. It was just part of a general approach of
5 asking Mr. Justice Campbell to address the issue of
6 compensation without trespassing upon the Ebsary case. It
7 was a difficult situation but that was what we were trying to
8 do.

9 Q. See, I'd like to accept that as the truth but if it's the truth
10 then I don't understand why, at page 437, of Volume 33, and
11 now we're dealing with notes from private negotiations that
12 are not going to be public, these are private negotiations. No
13 hearing being contemplated. In the middle paragraph,

14
15 I understood that all communications were
16 to be private and confidential, without
17 prejudice, settlement to be all inclusive, no
18 punitive damages claim, and to cover
19 periods starting with stay of incarceration
20 following conviction.

21 I mean if that's the rationale why do you have to carry it on
22 in the private negotiations when there's no possibility of any
23 statement being made that will influence the Ebsary trial. I
24 suggest to you, and I want you to consider this, that the only
25 rationale for having that position both in public and in private
is that you were trying to get out of this as cheaply as you
could and that's it.

1 A. Well I think that's an oversimplification.

2 Q. Explain that to me.

3 A. Yes, I will. First of all, the Government did set up the inquiry
4 which was to be conducted by Mr. Justice Campbell. The
5 approach about negotiating a settlement was not made by the
6 Government of Nova Scotia. That approach was made by Mr.
7 Cacchione, it was first raised by Mr. Cacchione in the meeting
8 that's referred to in this notes. So my attitude towards the
9 settlement was that if it were to be a negotiated settlement
10 then we would try to get the best deal we could. But if
11 agreement could not be reached on a negotiated settlement
12 then the inquiry would proceed.

13 Q. So then you accept that the purpose of keeping that provision
14 in during the private negotiations was to get out as cheaply as
15 you could.

16 A. Well, that's not a, not the best way to put it but my view was
17 that if Mr. Cacchione wanted to negotiate with us then we
18 would negotiate with him and I was proceeding on the
19 assumption that that was a negotiation between equals. That
20 Mr. Cacchione is and was a competent, experienced lawyer
21 and that it was that type of negotiation. Nobody was saying
22 to Mr. Marshall or Mr. Cacchione that they had to accept any
23 proposed settlement. I would have been perfectly content to
24 have had the inquiry proceed.

25 Q. Am I right in suggesting to you that the high-minded purpose

1 that was publicly adduced, namely not to interfere with the
2 Ebsary trials, as soon as the negotiations commenced changes
3 to the purpose of getting out as cheaply as you could.

4 A. Well, we were certainly trying to negotiate the best
5 settlement that we could.

6 Q. You don't like the word "cheaply".

7 A. No, I don't.

8 Q. Why not?

9 A. No.

10 Q. Why not?

11 A. Well, because I think it suggests a state of mind that I
12 certainly didn't have. This was a very difficult matter and we
13 were trying to deal with it as best we could. And we did not,
14 for example, put any limits on Mr. Justice Campbell in terms
15 of dollar amount if he had proceeded with his inquiry. And,
16 but once the approach was made to us to negotiate a
17 settlement, then I treated it as a negotiation between two
18 equal parties in which we were trying to get the best
19 settlement that we could.

20 Q. The word "cheaply", I take it, does not misrepresent the facts,
21 it's just not a word you'd choose?

22 A. Well, we were trying to get the best deal we could.

23 Q. Is that fair?

24 A. Yes, that's fair. Sure.

25 Q. You were trying to get the best deal you could.

1 A. Yup.

2 Q. And it's fair to say that you were trying to get out as cheaply
3 as you could.

4 A. Yeah.

5 Q. But that has a denigrative tone to it so you don't like it.

6 A. That's right.

7 Q. All right. When Mr. Cacchione gives you the offer of
8 \$550,000, you were questioned about that by Mr. Spicer. It
9 was the first written offer, as I recall.

10 A. Yes.

11 Q. And you told him that you can't recall the terms in which the
12 advice of your law officers regarding that amount was put. I
13 think it was regarding the fairness of it or nonfairness of it.

14 A. That's correct.

15 Q. I want to know what the substance of that advice was, even if
16 you can't recall the terms.

17 A. Well...

18 Q. On the issue of being fair or not fair.

19 A. I don't recall that we discussed it in terms of fairness or
20 unfairness. We simply discussed it in terms that an approach
21 had been made for a negotiated settlement, that that had
22 been put forward as an opening position by Mr. Cacchione and
23 that we would then proceed with negotiations and see where
24 that took us.

25 Q. You directed your mind at no time to the issue of the fairness

1 of this offer.

2 A. Well, I assumed that Mr. Cacchione would represent his
3 client's best interests and that if the settlement was too low
4 that they would not accept it.

5 Q. Didn't you, as Attorney General, in your role as chief law
6 officer of the Crown and representative of the people in that
7 regard, all the people, also have an obligation to Donald
8 Marshall?

9 A. It would be difficult to define that obligation. My view of it
10 was that Mr. Cacchione was representing Mr. Marshall and
11 that it was his responsibility to represent Mr. Marshall's best
12 interests.

13 Q. And not yours.

14 A. That's right.

15 Q. And you were not concerned with Mr. Marshall.

16 A. I don't want to say that I was not concerned with him, but I
17 was acting on behalf of the Government of Nova Scotia.

18 Q. And not Mr. Marshall.

19 A. That's correct.

20 Q. And you were not looking out for his best interests.

21 A. No, if you want to put it that way. I didn't see that as my
22 responsibility. I saw that as Mr. Cacchione's responsibility.

23 Q. And it was not your concern.

24 A. I was certainly concerned about what was going to happen to
25 Mr. Marshall as an individual. I had not met him, so I don't

1 want to state that as being that kind of a concern of a
2 personal nature. But I was certainly concerned because that
3 was why I was particularly interested in the matter of his
4 future employment and the course at NSIT and so forth
5 because it seemed to me that, in the long run, the most
6 important thing for him would be to get the necessary job
7 training and to become productively employed.

8 3:12 p.m. *

9 Q. If you'd turn with me to Volume 33, page 473. It's one of
10 those unmarked pages that's blacked out, so it's just prior to
11 475. This is a memo June 26, 84, the top left. Do you have
12 that one?

13 A. Yes, yes.

14 Q. And it's a meeting with yourself and the Deputy. The first
15 entry is that the figure of \$270,000 plus Aronson's legal fees
16 which were \$78,000 for a total, I guess, of about three fifty
17 "Is in ballpark".

18 A. Yes.

19 Q. And I take it in the ballpark means that that was a
20 reasonable amount to pay, yes.

21 A. Yes.

22 Q. A fair amount to pay.

23 A. Yes. I would have been prepared to recommend that to
24 Cabinet.

25 Q. Right. If it was reasonable and fair, then, why would you

1 after that try and deprive Marshall of \$100,000 by offering
2 \$250,000 total instead of accept that fair and reasonable
3 offer?

4 A. I saw this as just a normal negotiating procedure. That when
5 one engages in a negotiation towards a settlement that one
6 does not place ones final figure on the table first. I simply
7 saw this as a normal negotiating procedure.

8 Q. Is there no principle involved beyond that, just a negotiation?

9 A. That was the way I saw it, and I assumed that Mr. Cacchione
10 would represent Mr.Marshall's best interests and that if the
11 government's offer was not acceptable then we would
12 proceed with the Inquiry.

13 Q. Are you really saying there's nothing important but the
14 process of negotiation. It's important the process should be
15 fair.

16 A. Yes.

17 Q. Yes. It should be honest and open and conducted in a
18 forthright manner, is that all true?

19 A. Yes.

20 Q. But that you're not looking at principles beyond that, the
21 process itself.

22 A. That's right. As far as I was concerned it was a process of
23 negotiation towards a settlement.

24 Q. Let's turn to page 484 if we could. You told us originally
25 that though you talked about an original figure of, what was

1 it, three hundred and thirty thousand, with your staff? There
2 was no...

3 A. I think it was three hundred and twenty-five.

4 Q. Three and twenty-five, but there was no real fixed figure in
5 your mind.

6 A. That's right. We were just in that range.

7 Q. Right.

8 A. In the ballpark, so to speak.

9 Q. It was not a limit in any real sense, correct?

10 A. That's right.

11 Q. And, the memorandum here, and I think this is in Mr. Endres'
12 writing, "Spoke to Felix," 484, "Told him that we cannot go
13 that far, that we have a limit." Let me first of all take you to
14 that?

15 A. Yes.

16 Q. Mr. Endres knew that you didn't have a limit, that you had
17 never imposed one, true?

18 A. Well, except that we were speaking in that range that I've
19 indicated, or in the ballpark which would have been up to say
20 three hundred and twenty-five or \$330,000.

21 Q. But you've also said you made it quite clear...

22 A. There was not any rigid limit that said you must not go
23 beyond this line.

24 Q. Nothing fixed in stone, was your language.

25 A. That's right.

1 Q. There was no limit, you made it clear.

2 A. Yes. Now, you know, I'm not talking about \$10-million, but,
3 no, he had not been given that type of rigid line and said you
4 must not cross that line.

5 Q. Well, isn't that misleading then for him to tell Mr. Cacchione
6 "We have a limit," when, in fact, you don't?

7 A. Well, I wasn't present at that conversation and I think the
8 question would really have to be directed to Mr. Endres.

9 Q. Assuming for a moment that he told him we have a limit
10 that's not true, correct?

11 A. That's certainly not my recollection of it.

12 Q. The truth would have been we have a figure at which we've
13 started, we would hope to come within that area, but we have
14 no fixed limit.

15 A. Yes, I was taking a flexible approach in that regard. I
16 certainly wasn't hung up as to whether we ended up with the
17 number of, say, two hundred and seventy thousand or three
18 hundred thousand. We were operating in that range.

19 Q. That's right.

20 MR. SAUNDERS

21 With respect, My Lord, I think to put it in context, in fairness
22 to the witness, perhaps my friend would turn to the previous page
23 where it notes, other numbers are recorded, in the centre of the
24 page, plus Aronson's account, and whether or not that's the
25 context in which Mr. Endres recorded his notations during his

1 discussions with Mr. Cacchione.

2 MR. RUBY

3 That's Mr. Endres' writing I take it.

4 MR. SAUNDERS

5 Yes.

6 MR. RUBY

7 That's a meeting with the Deputy at 483 and the advice was
8 "We should not move substantially, we might settle yet, but that
9 there was a risk of failure if we do not meet their demands for
10 \$300-325,000 plus Aronson's account." The Deputy says, "Add
11 another \$15,000 for a total of \$275,000 minus the \$25,000 paid
12 on account provided we get a full release from Marshall and his
13 parents."

14 Q. Are you now familiar with that?

15 A. Yes.

16 Q. All right. That doesn't affect the discussion we've had about
17 their being a limit or no limit, does it?

18 A. No.

19 Q. All right. The next item I want to take you to on 484 is he
20 says, and this is his note of a conversation with Cacchione,
21 that, "I spoke to my people and that, subject to approval by
22 Cabinet, I was authorized to offer an additional \$10,000 for a
23 total of \$270,000 minus the \$25,000." Did you read that?

24 A. Yes.

25 Q. And quite clearly that's not the full truth. The full truth on

1 page 483 that we've gone through is you offered another
2 \$15,000 and instead he just jiggles him a little bit for an extra
3 five. Telling him, "I was authorized to add ten," when, in fact,
4 he had been authorized to add fifteen. Isn't that so?

5 A. Yes, I'm not quarreling with what you said. It's there.

6 Q. Well, isn't it unconscionable for the Government to mislead in
7 negotiations, to say, for example, we have a limit when we
8 have none, to say "I'm authorized to add \$10,000," when, in
9 fact, he's been authorized to add fifteen? Isn't that wrong?

10 A. I think that's really a question you'd have to take up with Mr.
11 Endres because he was doing the actual negotiating with Mr.
12 Cacchione. He was the one that was going to the meetings and
13 having the conversations with him.

14 Q. See, I'm taking it up with you because you're responsible.

15 A. Right.

16 Q. It's being done in your name, right?

17 A. Yes.

18 Q. Under your authority, right?

19 A. Yes. Right.

20 Q. And if you don't know what's right and wrong about
21 negotiating who is to answer? Is it wrong to mislead the
22 other side when you're negotiating?

23 A. Oh, yes, of course it is.

24 Q. And it's particular wrong, I put it to you, when the other side
25 is a weaker individual than the Government of Nova Scotia, a

1 weaker party.

2 A. No, I certainly did not see those negotiations as being
3 negotiations on an unequal basis. As far as I was concerned
4 Mr. Cacchione was and is a tough, competent, experienced
5 lawyer, and I expected that he was representing his client's
6 interests.

7 Q. I'll come to that in a moment. As I understand this process
8 you take the position that there was no inequality because of
9 Mr. Cacchione's presence.

10 A. That's correct.

11 Q. And, I understand from what you said earlier that you were
12 not told that Mr. Cacchione had disclosed to Mr. Endres that
13 Marshall was in a bad emotional state.

14 A. That's correct.

15 Q. You can see, if you're interested, at Volume 33, page 431, in
16 his notes Mr. Endres marked that down as being a matter of
17 sufficient importance to note, page 431 under the first
18 heading "Felix". "Marsh. now in need of psychological
19 assistance. It maybe advantageous for him to settle now."
20 Was that ever communicated to you?

21 A. No, I did not see these notes until we began preparations for
22 my testimony here.

23 Q. It would be morally wrong to take advantage of that, would it
24 not?

25 A. It would depend on what was meant by that statement.

1 There is not much information there. But certainly it would
2 be morally wrong to take advantage of a situation in which, if
3 a client were unable to cope with the stress of dealing with
4 the matter to take advantage of that and to get a low
5 settlement. That's certainly something that I never did when
6 I practised law.

7 Q. You knew, however, that he had no money with which to pay
8 his past legal bills let alone his present lawyers.

9 A. Well, the first money that we paid out was the \$25,000 which
10 was the interim recommendation made by Mr. Justice
11 Campbell, and one of the reasons why I recommended that to
12 Cabinet and we paid it as quickly as we could was that I did
13 not want anybody to suggest that we were trying to put Mr.
14 Marshall or Mr. Cacchione under financial pressure and that
15 at least since that was the initial recommendation, the
16 \$25,000, that we wanted to pay that so that...and I assumed
17 that the reason for that was because, ah, since Mr. Marshall to
18 that point in time had received no compensation whatsoever
19 that this would at least ease whatever immediate financial
20 pressure he had.

21 Q. You knew that the \$25,000 would not come close to paying
22 even his past legal bills, which you knew were \$78,000
23 because it has been in negotiations, right?

24 A. Yes.

25 Q. You knew that Mr. Cacchione had commissioned and

1 expensive actuarial research to be done because, once again,
2 that was presented to you as part of the negotiations.

3 A. Right.

4 Q. So, you knew the \$25,000 was going to be of no real
5 assistance in providing him with the legal fees necessary to
6 pay his past bills or to carry on the present negotiations.

7 A. Well, I think the short answer to that is that that was the first
8 recommendation that we received from Mr. Justice Campbell.
9 When we received it we complied with it. He did not
10 recommend any further interim payments.

11 Q. Let me put it differently. You knew he was hard up for
12 money and in trouble financially.

13 A. I didn't know the...

14 Q. You had to know that.

15 A. ...details of his financial situation, but I certainly knew that he
16 owed legal bills.

17 Q. Large legal bills.

18 A. Yes.

19 Q. For a man eleven years in prison, hopeless legal bills.

20 A. Right.

21 Q. Never going to get a job to be able to pay those off in years
22 and years and years, right?

23 A. Yes.

24 Q. All right. So, you knew you had him hard pressed.

25 A. Well, I don't think that's completely fair, because the

1 payment of the interim request of \$25,000 as far as I was
2 concerned was the first recommendation that we had from
3 Mr. Justice Campbell, which I understand he made after
4 communication with Mr. Cacchione, and we responded to that
5 immediately and if a further request for a further interim
6 payment had been made I certainly would have been
7 prepared to recommend that. I certainly...by making the
8 interim payment I was hoping that we were easing whatever
9 immediate financial problems he had. Now, obviously the
10 \$80,000 was a financial problem, but it was a long-term
11 problem. And his immediate financial needs, I assumed, were
12 being met by the \$25,000.

13 Q You knew he had serious financial problems.

14 A Yes.

15 Q All right. You didn't...you had unlimited resources.

16 A Not unlimited, but certainly very substantial resources if
17 you're talking about the Government of Nova Scotia.

18 Q Unlimited for practical purposes.

19 A Yes.

20 Q For bringing to bear in this lawsuit or this litigation or this
21 negotiation unlimited.

22 A I'm sorry, this was not a lawsuit or litigation. We were
23 prepared to spend money on the conduct of the Inquiry.

24 Q You had no limit to the amount of money you were prepared
25 to spend to bring this Inquiry or this negotiation to a

1 conclusion, fair enough?

2 A. Well, that...yes, that's correct, sure. I won't say no limit.

3 Obviously that's not accurate, but in the context in which
4 you've put it the answer is yes.

5 Q. No practical limit.

6 A. Yes.

7 Q. You knew that Marshall would have difficulties associated
8 merely with the eleven years of wrongfully imprisonment,
9 correct?

10 A. Oh, certainly just as a general perception, yes.

11 Q. The Government didn't have that problem.

12 A. That's right.

13 Q. You knew that he was an Indian without education.

14 A. Yes.

15 Q. Whose only experience in the world at that point was narrow,
16 unsophisticated...

17 A. Yes.

18 Q. ...because of his eleven years of imprisonment.

19 A. Right.

20 Q. The Government didn't have that problem.

21 A. That's right.

22 Q. You'll agree with me that all those respects are important.

23 A. Yes.

24 Q. Significant.

25 A. Yes.

1 Q. And in each and every one of them the relationship between
2 you and Marshall was fundamentally unequal.

3 A. No, I don't subscribe to that.

4 it was my view that the negotiation was a negotiation
5 between equals and Mr. Marshall was well represented by
6 counsel and that he was under no obligation to accept the
7 settlement. We were prepared to proceed with the inquiry. I
8 would like to think that by responding to the first request for
9 a payment of \$25,000 that we had indicated at least some
10 degree of good faith and there were no further requests
11 coming forward for interim payments. But if any had been
12 made, I certainly would have given it very serious
13 consideration.

14 Q. Aside from the fact that his lawyer was as good as your
15 lawyers which I will concede to you quite freely, what's equal
16 about it? Where are you and Marshall on equal positions?
17 Explain it to me.

18 A. No, just in the sense that this was a negotiation in which he
19 was...he could either accept an offer or reject it.

20 Q. Yes, that's true.

21 A. We were not attempting to put any pressure on Mr. Cacchione
22 or Mr. Marshall to negotiate a settlement at all. We did not
23 initiate the process and we did make the interim payment.

24 Q. So the two respects and I take it the only two respects in
25 which you can suggest to me now that you and Mr. Marshall

1 were equal was that (a) you had good lawyers both and (b)
2 you were equal in that both had a perfectly equal right to
3 accept or reject the agreement. Any other respects in which
4 you're equal?

5 A. Well, equal in the sense that both sides were free to continue
6 on with the Inquiry, that we had set up that Inquiry for the
7 express purpose of addressing the issue of compensation for
8 Mr. Marshall and I would have been perfectly content to see
9 that proceed.

10 Q. Any other respects in which they're equal?

11 A. I'm not sure if I understand your question. Certainly, the
12 government obviously has enormous resources which no
13 individual would possess. I'm not too sure where you're...

14 Q. I'm suggesting that this is a big guy fighting a little guy and
15 it's an unequal contest. That's what I'm saying.

16 A. What I'm suggesting to you is first of all there was not a fight,
17 that we had set up an Inquiry which was in the process of
18 getting under way and which would have been, if it had
19 proceeded, an independent Inquiry conducted by Judge
20 Campbell and that he is the one who would have been making
21 recommendations in terms of compensation for Mr. Marshall.
22 And we were fully prepared to go that route.

23 Q. In your view, despite the significant important factors that
24 you've acknowledged which were unequal, this was still an
25 equal contest.

MR. GIFFIN, EXAM. BY MR. RUBY

1 A. Yes, in the sense that both sides were represented by
2 competent solicitors and both sides were free either to agree
3 on a settlement or not agree on a settlement.

4 Q. I think we understand each other. Let's go back then in the
5 negotiating process which I've digressed from because of your
6 interesting suggestion, and I understand it now, that the two
7 parties were bargaining equally, and come back to Page 484.
8 The top of the page again, the paragraph you already looked
9 at. Mr. Endres, according to the notes says, "Spoke to Felix.
10 Told him that we cannot go that far." And "that far" obviously
11 refers to Page 483, \$300,000 to \$325,000 plus Aronson's
12 account, which was \$400,000. Was that true?

13 A. I'm sorry, I misunderstood the question. Was what true?

14 Q. Was it true in relation to that offer which you'll find at 483
15 middle, \$300,000 to \$325,000 plus Aronson's account which
16 was \$78,000. "We cannot go that far." Is that true?

17 A. I don't mean to seem obtuse. I'm not sure if I understand
18 your question yet.

19 Q. Was the Attorney General actually in a position where they
20 could say in all honesty "We cannot go that far." Was that a
21 true statement or not?

22 A. You mean we cannot go to the...

23 Q. To the total of \$375,000 or \$380,000, to \$405,000.

MR. SAUNDERS

24
25 My Lord, I hesitate to interject again. It's my friend's cross-

MR. GIFFIN, EXAM. BY MR. RUBY

1 examination, but surely Mr. Endres is the best witness to say what
2 he intended by the phrase "that far." I mean it's his note of what
3 he perceived his instructions to be.

MR. RUBY

4 My Lord, it's inconvenient to the witness to bring him back
5 afterwards, after Mr. Endres has testified, so I want to ask him
6 what the ordinary meaning of that is and get his view.

MR. CHAIRMAN

7 I suppose the ultimate decision is for us to, after we hear the
8 other witnesses, as to what that means. My understanding is that
9 this is a note from Mr. Endres and I think I heard Mr. Giffin say
10 that he had not seen these notes until he started to prepare for his
11 testimony.

MR. RUBY

12 That's right.

MR. CHAIRMAN

13 And I don't know how his interpretation is going to help us.

MR. RUBY

14 I'm not asking him to interpret the note. I'm saying assuming it
15 means exactly what it says "We cannot go that far." Words of
16 plain English import. Whether that's true as far as he knew, what
17 was in his mind during the negotiations or whether that's another
18 misrepresentation.

MR. CHAIRMAN

19 There was evidence yesterday, as I recall it, from Mr. Giffin, that

MR. GIFFIN, EXAM. BY MR. RUBY

1 the lawyers negotiating or the lawyer negotiating for the
2 government of Nova Scotia could go to \$325,000 without coming
3 back.

MR. RUBY

4 That's right.

MR. CHAIRMAN

5 That's his maximum without coming back. Now whether when a
6 client gives that instruction to a lawyer on how to negotiate, "Now
7 you can go to three twenty-five." And the lawyer during his
8 negotiating starts from the bottom. One starts from the top and
9 goes down and the other from the bottom and comes up. Well, I
10 would leave that to the lawyers to decide and I'm sure the
11 practice varies from one lawyer to the next. I take it the same
12 questions could be put to Mr. Cacchione. "What was the lowest
13 amount that you were instructed to accept?"

MR. RUBY

14 I'm certain it will be.

MR. CHAIRMAN

15 That's why I say I don't know how helpful all this is.

MR. RUBY

16 What I want to get is what this witness can tell me, that whether
17 or not that statement was true or whether it required a
18 qualification in order to be true. And he's the only one who can
19 tell us that because he's the man in charge of the negotiation. Let
20 me try the question again so you'll understand what I want to ask.
21
22
23
24
25

MR. GIFFIN, EXAM. BY MR. RUBY

1 Don't answer for a moment until their Lordships rule. I want to
2 know from you whether or not it is true when he said "We cannot
3 go that far" or that the truth would have been "Look, I can't go
4 that far unless I go back to my Minister and get specific approval."

5 A. My understanding is...

6 Q. Don't answer for a moment.

7 A. I'm sorry, I apologize.

MR. CHAIRMAN

8
9 Let him answer. It's the fourth time he's been asked so once more
10 won't hurt him.

MR. RUBY

11
12 O.K. You may answer the question.

13 A. All right, my understanding was that we had given Mr.
14 Endres negotiating room up to \$325,000. That, if he was
15 going to go beyond that, then, yes, he would have to come
16 back.

17 Q. So an accurate statement would not be "We cannot go that
18 far," but rather "We cannot go that far without going back to
19 our Minister for approval." Is that true?

20 A. Yes, I have some difficulty in reading so much into that kind
21 of shorthand note.

22 Q. I'm not asking you to read into it. I'm just asking assuming it
23 means what it says, assuming that, that would not be
24 accurate?

25 A. That's correct. If he was going to go beyond three hundred

1 and twenty-five, then he would have had to come back to us.

2 Q. If this note is correct then, there are...tell me if you'll agree
3 with me, Page 484, three items that were not, strictly
4 speaking, true. (1) the statement "We cannot go that far,"
5 should have gone farther and you've just touched on that.
6 Secondly, "We have a limit" was not true. There was no limit.

7 A. Well, only in the sense that if he went past three twenty five,
8 he would have to come back to us.

9 Q. And that was not, you said, a real limit?

10 A. That's correct.

11 Q. And third when he says "I was authorized an additional ten
12 thousand dollars, he was authorized an additional fifteen." So
13 in three respects, if that note is correct as to what was said,
14 the representations were false, correct?

15 A. Yes.

16 Q. Now look, if that's so, I take it you would not have approved
17 that process because you told me that your primary concern
18 was to see that the process of negotiation was fair and honest
19 and open.

20 A. Yes.

21 Q. And if that's so, it's just not fair and honest and open, is it?

22 A. Well, you're asking me to...

23 Q. If that's so, assuming that that's so.

24 A. If that's so, then your statement is correct, yes.

25 Q. And you would not have approved that process if that's so?

MR. GIFFIN, EXAM. BY MR. RUBY

1 A. That's right.

2 Q. Were you Minister when Billy Joe MacLean who I think was
3 then Culture Minister...

4 MR. SAUNDERS

5 Does this have anything to do with this Inquiry?

6 MR. RUBY

7 He's very leery about certain names.

8 MR. SAUNDERS

9 Well, we recognize that...

10 COMMISSIONER EVANS

11 If we're going to be much longer I shall be leaving.

12 MR. CHAIRMAN

13 Ask the question at least so that we can decide whether or not it
14 has anything to do with Donald Marshall, Jr.

15 MR. RUBY

16 Q. Were you Minister when the government of Nova Scotia
17 forgave Billy Joe MacLean who I think was then Culture
18 Minister, you correct me if I'm wrong, a debt owed to the
19 family Shieling Motel in Port Hawkesbury. And would you
20 tell me the amount involved in that one?

21 MR. SAUNDERS

22 Well, My Lords, what does that have to do with this Inquiry?

23 MR. RUBY

24 I want to ask this man if he was in the government at that point
25 in time.

MR. GIFFIN, EXAM. BY MR. RUBY

1 MR. CHAIRMAN

2 Supposing he was. What does that suggest?

3 MR. RUBY

4 Whether the government bargained as hard on that issue as they
5 have done this one.

6 COMMISSIONER EVANS

7 Surely we're not going to try that issue.

8 MR. CHAIRMAN

9 No, we're not.

10 COMMISSIONER EVANS

11 We have problems enough, Mr. Ruby.

12 MR. RUBY

13 Thank you, My Lord.

14 COMMISSIONER EVANS

15 Next you'll be asking if they bargained about a breakwater in
16 some place rather than...if they bargained as hard as they should
17 have with the contractors.

18 MR. RUBY

19 I won't press it but the point of my question is that this seems to
20 me it's very hard bargaining indeed.

21 COMMISSIONER EVANS

22 It always is, Mr. Ruby. If you'd done civil work, you would
23 appreciate that. This was an ex gratia deal. They had a...as I
24 understand it, had a legal opinion. There was no legal
25 responsibility. They put two lawyers together at the request of

MR. GIFFIN, EXAM. BY MR. RUBY

1 Mr. Cacchione and they were bargaining. And you come in with
2 your top figure and you come in with your low figure and some
3 place in between you arrive at a settlement.

MR. RUBY

5 It may be tough negotiations but it's negotiations.

MR. RUBY

7 It's quite tough and maybe in criminal law we all act in sweetness
8 and light, but we'll bargain as hard.

COMMISSIONER EVANS

9 Oh, Mr. Ruby, in criminal law the bargaining is equally good when
10 you get into plea bargaining. Somebody wants to go to jail and the
11 other wants a suspended sentence. Some place you arrive at a
12 compromise. And you are very expert at that, I may say.

MR. RUBY

14 I cannot deny this.

COMMISSIONER EVANS

16 I speak with some experience in that, Mr. Ruby, and I appreciate
17 your ability in that line.

MR. CHAIRMAN

19 Well, the concern is that I hope that all these resources that we've
20 been hearing about today will still be available...are still available
21 to [eke?] out counsel fees now. And on that delightful note, we
22 will now adjourn until Monday at 9:30.
23

24 HEARING ADJOURNED TO MONDAY, MARCH 21, 1988, AT 9:30 A.M.

REPORTER'S CERTIFICATE

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 17 day of March 1988 at Dartmouth, Nova Scotia