

INQUIRY RESUMESMR. CHAIRMAN

Mr. Murray. Mr. Barrett.

EXAMINATION BY MR. BARRETT

Q. Yes, Judge How, my name is David Barrett and I represent the Estate of Donald C. MacNeil, and I just have a few questions of you.

A. Yes.

Q. Your Honour, yesterday you testified that following Mr. Marshall's reference hearing you were concerned about any possible wrongdoing on the part of the Sydney Police force or the actions of the prosecutor, Donald C. MacNeil.

A. Yes.

Q. And I understand you wrote a memo on the 25th of May, 1983, to Mr. Cole expressing those concerns.

A. Yes.

Q. And you testified yesterday that the Crown's role was not studied by the R.C.M.P..

A. I could...I don't recall much in...with reference to the Crown save and except there was reference to Donald C. MacNeil as being firstly a very capable, secondly aggressive, and thirdly that he was a sort of prosecutor in the style of a district attorney.

Q. But that didn't come from the R.C.M.P. reports.

A. I don't know whether it was in that or Edwards...some of

1 Edwards rather lengthy memorandums, Mr. Edwards. I
2 would say one or the other.

3 Q. And in your conclusion yesterday you stated that fault
4 possibly lies with the prosecutor MacNeil in regard to his
5 conduct as prosecutor, and I believe twice yesterday you
6 alluded to alleged pressures placed on witnesses by Mr.
7 MacNeil.

8 A. Well, there was some indication of that and, for example, it
9 was...it was related in these memoranda that in the course of
10 the trial in Sydney in 1971 that one of the witnesses who had
11 some misgivings about the statement he had given was
12 cautioned through the process of the Evidence Act, Canada
13 Evidence Act as a hostile witness, and then...which was some
14 indication that the person was a reluctant witness, of course,
15 and that Donald C. MacNeil had asked for this of the Court,
16 this process.

17 Q. Judge How, during the 1982 reinvestigation you've indicated
18 you either had access to the R.C.M.P. reports or were briefed
19 on those reports by senior staff in the Attorney General's
20 Department.

21 A. Mostly the latter, I would say almost exclusively. I...as I've
22 said I have recollections of seeing some of their reports and
23 analyses but in large part I...my recollection is that I saw
24 much more of Edwards, Edwards' reports.

25 Q. Can I have it from you then that the basis for these

1 | allegations in pressuring witnesses was from these reports?

2 | A. Yes.

3 | Q. Sir, I'd like to show you one R.C.M.P. report and I understand
4 | you may not have had that report but I want to know if the
5 | comment in that report was made known to you.

6 | A. Yes.

7 | Q. And I wonder if you could turn to Volume 19.

8 | A. Yes.

9 | Q. I believe that's in front of you, and it would be page 26.

10 | A. Yes.

11 | Q. And just to refresh your...that's a report by Staff Wheaton
12 | dated the 25th of February, 1982, that would be the first
13 | R.C.M.P. report that Staff Wheaton submitted.

14 | A. Oh, yes.

15 | Q. And turning to paragraph 18 of that report.

16 | A. Yes.

17 | Q. At page 26.

18 | A. Yes.

19 | Q. About halfway through that paragraph is the comment by Mr.
20 | Wheaton,

21 | 'He,' meaning Chant, '...emphasized that he was
22 | fourteen, turning fifteen years of age at the time
23 | and felt pressured into helping the police and
24 | the prosecutor. He advised that the prosecutor
25 | threatened him with a charge of perjury if he
 changed his story after the lower Court hearing.'

1 A. Yes.

2 Q. And, sir, I'm wondering were you made aware of that
3 comment in that report by the senior staff of the A.G.'s
4 Department?

5 A. Oh, I may have been and as, again I may have...I may have
6 read it myself. I...it's very difficult, in fact, with me it's
7 impossible to remember that.

8 Q. Sir, I can advise you that that is the only reference of
9 pressure being placed on any witness by Mr. MacNeil in the
10 R.C.M.P. reports.

11 A. I see.

12 Q. And would this comment in Staff Wheaton's report, your
13 knowledge of it, be the basis of your concern about pressure
14 being placed on witnesses by Mr. MacNeil?

15 A. I would have thought there were other references to it, and
16 then again there was the...there was the...

17 Q. Mr. Chant...

18 A. ...procedure followed in the...and I almost think it was with
19 Chant in the Supreme Court trial.

20 Q. Yes, and, sir, I wonder then if this comment by Staff Wheaton
21 proved to erroneous in this report and...

22 A. You say if it did.

23 Q. And was denied by Mr. Chant that the comment in that
24 report.

25 A. Yes.

1 Q. Can I assume that the basis for some of your concerns about
2 Mr. MacNeil's pressure on witnesses would not exist?

3 A. I don't know. It's hard to say, I suppose. I...to repeat, I
4 indicate...as I indicated earlier, there was not a great deal of
5 comment, that's what I had, my recollection, about the
6 performance of the Crown Prosecutor. There was some. Now,
7 whether this is the only one. You say it is, I can't challenge
8 that.

9 Q. Yes. I can advise you it's the only copy.

10 A. And if it... but your question is pretty hypothetical. If this
11 weren't here would I have any misgivings.

12 Q. Well, the...

13 A. I don't know.

14 Q. ...only reason I ask you that, Judge, is that yesterday you
15 indicated that in your comment...or in your testimony was
16 there was suggestions through the police investigation, the
17 investigation conducted by the R.C.M.P. to be more specific,
18 that there may have been pressure applied to witnesses by
19 the Crown Prosecutor in the 1971 trial.

20 A. Yes.

21 Q. And I'm just wondering if that comment I've just attributed
22 to the R.C.M.P. report proved to be false and that was the only
23 comment in the reports as to pressure being placed on
24 witnesses by Mr. MacNeil, would that change your opinion as
25 to the pressure?

1 A. Oh, I suppose it would.

2 MR. BARRETT

3 Those would be all my questions.

4 MR. CHAIRMAN

5 Mr. Pringle. Mr. Bissell.

6 EXAMINATION BY MR. BISSELL

7 Q. Yes, Chief Judge How, my name is Jim Bissell and I am
8 representing the R.C.M.P.. Now, I just have a couple of areas
9 that I wanted to ask a few questions on.

10 A. Yes.

11 Q. The first one really is to ask for your thoughts and your
12 experience with respect to disclosure.

13 A. Yes.

14 Q. You're aware that in November of 1971 following Mr.
15 Marshall's conviction that James MacNeil came forward and
16 gave the...

17 A. Yes.

18 Q. ...story about Roy Ebsary being the person responsible.

19 A. Yes.

20 Q. And I wonder if you feel that that's the type of information
21 that the Crown ought to disclose to a defence?

22 A. Oh, I would think so. It goes to a question of guilt, and of
23 course that's...isn't that the primary purpose of the police
24 investigation.

25 Q. I would think so.

1 A. And indeed, and indeed, isn't it a most important bit of
2 information for a defence.

3 Q. Yes. Well, I would think so and I was curious to see if you
4 would agree with that proposition.

5 A. Yes, I do.

6 Q. The other...the other question, the other area that I had for
7 you and that's really in response to a response that you gave
8 to my friend Joel Pink when he was asking you questions
9 earlier. And, he suggested that as a result of R.C.M.P.
10 correspondence you felt at the time that you were Attorney
11 General that the R.C.M.P. were doing an investigation into the
12 Sydney Police Department.

13 A. Yes.

14 Q. Is that correct? Is that what you felt?

15 A. Did I...

16 Q. Did you feel that?

17 A. At what stage, I'm sorry.

18 Q. While you were...at any time while you were Attorney
19 General. I don't think that Mr. Pink when he asked the
20 question specified any particular time or date.

21 A. Oh, did I think they were looking into the R.C.M...the Sydney
22 City Police.

23 Q. The Sydney City Police Department.

24 A. Well, it's pretty hard to be precise on that. My best thought
25 is...for you is that I would have...I would have expected it

1 would include an examination of the police procedures,
2 Sydney City Police procedures.

3 Q. Yes.

4 A. As well as examining the evidence and persons who gave it in
5 terms of their statements.

6 Q. Yes. I guess my question was did you believe at any time
7 that the R.C.M.P. were conducting an investigation into the
8 practises of the Sydney Police Department?

9 A. Well, I must say my recollection is that I thought they
10 would...there would be...one would be associated with the
11 other. That...do you...that an investigation of an allegation
12 that...are you speaking of 1971?

13 Q. Well, no, no, I'm talking now...at the time period that you
14 were Attorney General my friend, Mr. Pink, suggested that
15 you were of the view that the R.C.M.P. were doing an
16 investigation in '82 of the...

17 A. Yes.

18 Q. ...practises of the City Police Department.

19 A. Well, I frankly didn't distinguish in my mind as to what they
20 were concentrating on but I think it was a reasonable
21 conclusion to me at that time. They were investigating the
22 whole background of the conviction of Mr. Marshall and,
23 therefore, that it might well involve allegations of pressures
24 by the Sydney City Police.

25 Q. Mr. Pink said that conclusion was based upon R.C.M.P.

1 correspondence and you agreed with that and I was
2 wondering...

3 A. Yes, I think I...

4 Q. ...what R.C.M.P. correspondence it was that led you to that
5 conclusion that they were examining the police practises of
6 the Sydney Police Department?

7 A. Well, it was either...I either saw it in their report, was briefed
8 on it by Mr. Gale or Mr. Coles, probably Mr. Gale, or read it in
9 one of the rather lengthy incisive reports of Mr. Edwards.

10 Q. I see. Then you're quoted and, again, I realize the hazards of
11 relying on a quotation, but in a newspaper article, April 11th,
12 1982, there's a direct quote that says, I'm sorry, it's Volume
13 31, page 44 if you have it there. Page 44, My Lord.

14 A. Yes.

15 Q. It's page 44 and it appears to be an article April 11th or 12th
16 of 1982.

17 A. Yes.

18 Q. And it's the...it's the second-last paragraph in that article, sir,
19 where it says, "However Attorney General How said yesterday
20 he had," and in quotation marks, "'not even considered' an
21 investigation of the role of the Sydney Police Department in
22 convicting Mr. Marshall. 'We've never investigated the
23 investigators before.'"

24 A. Well, I don't remember saying precisely that. I think what I
25 ...what I may well have said is that at that stage in April '82

1 that the concern was investigating the case with respect to
2 the claim by Mr. Aronson that his client, Mr. Marshall, had
3 been unjustly convicted and that that was the stage that our
4 department was concentrating on at that time that article
5 appeared.

6 Q. Rather than the practises and procedures of the police
7 department, rather whether or not Mr. Marshall was guilty of
8 the offence.

9 A. That was, as the Ford Motor Company says, job one.

10 Q. Right. So, in April of '82 then, I take it, you didn't expect or
11 think that the R.C.M.P. were conducting an investigation into
12 the practises and procedures of the Sydney Police force.

13 A. Well, I don't know. I didn't know. They were...they were
14 investigating, as I understood it, a claim that...by Mr. Aronson,
15 that claim addressed to the Chief of Police of Sydney, as I
16 understood it, and eventually dealt with by our prosecutor,
17 Mr. Edwards, and assigned to the R.C.M.P.. That's what I was
18 dealing with. How it broke down, what it...but I did know too
19 that the main...that the purpose and focus at that time was to
20 assemble what evidence there was to support or to verify or
21 otherwise the claim by Mr. Aronson of improper conviction.

22 Q. Thank-you. And I gather from your own handwritten note of
23 July 8th, '83, that's in Volume 32 at page 209.

24 A. Of Volume 32.

25 Q. Volume 32, sir, yes. Page 209 of that.

1 A. Yes.

2 Q. That certainly in July 8th of 1983 you didn't think that the
3 Attorney General's Department or the R.C.M.P. were taking
4 any action on the Sydney Police force, with respect to the
5 Sydney Police force.

6 MR. MURRAY

7 With respect, My Lords, I don't think...that...I think that's
8 interpretative of what that note is saying and not necessarily the
9 only interpretation of what that note says.

10 HIS HONOUR CHIEF JUDGE HARRY HOW

11 I'm sorry, would you...

12 MR. BISSELL

13 Q. Well, the notes says, "Decided not to press any charges against
14 Marshall or the other witnesses and will hold action re the
15 Sydney Police force until we know the outcome of the civil
16 action Marshall has brought against them."

17 A. Well.

18 Q. I would interpret that to mean there was no investigation
19 going on in the practises of the Sydney Police Department at
20 that particular time under your direction, is that...is that a fair
21 conclusion?

22 A. Well, the...I think I explained this before, but let me try it
23 again. July 3rd, '83, yes. July 8, we...the phase one had been
24 completed, if I may use that term.

25 Q. Yeah.

1 A. When that had been completed there was in process a civil
2 action against the City of Sydney, against Chief MacIntyre,
3 I've forgotten who else, if any, oh, yeah, Mr. Urquhart, and
4 that that had been started before the Supreme Court had
5 ruled some two, three months before, by Mr. Aronson on
6 behalf of Mr. Marshall. That process could be, in our view at
7 that time, very revealing as to the conduct of the Sydney City
8 Police. After all it was the purpose of the action to expose
9 anything that they were able to expose in terms of the
10 processes of the Sydney City Police in this context. And so,
11 that was the reason for this comment in my view, it's my
12 recollection.

13 Q. That there would be no investigation at that point in...

14 A. Well, we...the whole action, I said, not investigation, the whole
15 action re the Sydney City Police force.

16 Q. So, you thought...

17 A. Mean...no, meaning...meaning, say for...an inquiry such as this.

18 Q. Uh-hum. I see.

19 A. That was the action that was intended there, but investigation
20 again in my view then, in my view now, the police were free
21 to proceed in that...any direction they wanted to on that
22 subject matter. Any subject matter they felt worthy of their
23 attention as I said.

24 Q. But you're aware now, even though you may not have been
25 then, that in May of '82 Mr. Gale had suggested that that

1 action be held in abeyance.

2 A. Well, I know, a lot has been read into that.

3 Q. Yeah.

4 A. It's like beauty, in the eye of the beholder if you want to look
5 at it one way you can, if you want to look at it another you
6 can, you can read, and therefore read... perhaps even
7 conflicting views might emerge from that.

8 Q. That's my...

9 A. I've explained by understanding of what he meant at that
10 time.

11 Q. That's fine, sir. Thank-you very much.

12 A. Thank-you.

13 MR. CHAIRMAN

14 Mr. Ross.

15 EXAMINATION BY MR. ROSS

16 MR. ROSS

17 Thank-you, My Lord.

18 Q. Your Honour, as you will recall my name is Tony Ross.

19 A. I do indeed.

20 Q. You've had your pleasure of bouncing me around in your
21 courts, now I've got you.

22 A. You counted it a pleasure, did you?

23 Q. Yes.

24 A. You came off rather well one day there.

25 Q. Yes, I did. Your Honour, there are one two questions I would

1 like to ask you about Sandy Seale.

2 A. Yes.

3 Q. When this investigation, for all intents and purposes, became
4 focused early in 1982, it is my understanding that Oscar Seale
5 came to see you.

6 A. Correct.

7 Q. You recall meeting with Mr. Seale.

8 A. I recall one meeting with Mr. Seale, yes, I've just forgotten
9 the exact time, but...

10 Q. Sure. Sure. I'm not going to get on to the details of time. My
11 understanding is that Mr. Seale was concerned that the
12 reputation of his son was being impugned some eleven years
13 after he had been buried.

14 A. That's true.

15 Q. And Mr. Seale expressed serious concern and wanted to know
16 what, if anything, was going to be done to protect the
17 reputation of his son.

18 A. Yes.

19 Q. In that regard, was there anything that you saw which your
20 department could have done to further advance the
21 investigation with respect to the circumstances of the death of
22 Sandy Seale?

23 A. Anything the department would have done?

24 Q. Your department, yes.

25 A. No, I think I, while very much sympathizing with Mr. Seale

1 and the fact of his son's death in these tragic circumstances,
2 the fact that the re-trial would open up the past, a very
3 painful past, one had to say at the time that the process
4 would essentially have to take its course.

5 2:30 p.m. *

6 Q. Well, the evidence that...sorry, the testimony of Sergeant
7 Wheaton, as I recall, when I questioned him he indicated to
8 me that his emphasis was on testing whether or not Marshall
9 had been convicted on perjured testimony, that was his first
10 test.

11 A. Yeah.

12 Q. And in that regard he interviewed Chant and subsequently
13 Pratico and formed the belief that Marshall could have been
14 convicted on perjured testimony.

15 A. Yes.

16 Q. That subsequent to that he interviewed Marshall and after a
17 short meeting with Marshall he himself, Wheaton, became
18 convinced, as he put it, of Marshall's innocence.

19 A. Yes.

20 Q. Now, this would have been as early as March 1982. Was the
21 conviction of Staff Sergeant Wheaton that Marshall was
22 innocent, was that communicated back to your department
23 early in '82, do you recall?

24 A. I don't recall at what precise time I learned of it.

25 Q. I see.

1 A. I made some statements in the House, I think, in response to
2 questions or, indeed, outside the legislature, but I just forget
3 whether it was it was in this precise time frame.

4 Q. Well, as I continued to question Staff Sergeant Wheaton, the
5 bottom line of his testimony as it relates to Sandy Seale was
6 that it was not part of his terms of reference, so to speak, to
7 look into the circumstances of the death of Sandy Seale as
8 much as it was to look at the improper conviction of Junior
9 Marshall. Was this the understanding of the department of
10 what the R.C.M.P. would be doing?

11 A. I don't know what their understanding was. But I...my
12 impression was that they were generally investigating the
13 evidence and persons giving...who gave evidence which
14 convicted him and that, as I said earlier, that this might
15 include what was...was all inclusive of any circumstance
16 surrounding that conviction.

17 Q. As I listened to your testimony yesterday and today, Chief
18 Judge, I got the impression that the office of Attorney General
19 as opposed to the Attorney General's Department, the office of
20 Attorney General is to a large extent administrative and
21 political and the people with the hands-on experience on the
22 matters which flow through the department to a large extent
23 would be the department heads, for instance Mr. Herschorn,
24 Mr. Gale, perhaps Reinhold Endres, who could give specific
25 answers on day-to-day happenings. Am I correct with that?

1 A. Yes.

2 MR. ROSS

3 Those are my questions, thank-you, very kindly, sir.

4 MR. CHAIRMAN

5 Mr. Wildsmith.

6 EXAMINATION BY MR. WILDSMITH

7 Q. Mr. How, my name is Bruce Wildsmith and I'm here on behalf
8 of the Union of Nova Scotia Indians.

9 A. Yes.

10 Q. And the questions I have for you relate to Indians in the
11 criminal justice system. Just before I do that though, there is
12 one point I want your comment on and that concerns the
13 documentation surrounding the civil action started against the
14 City of Sydney.

15 A. Yes.

16 Q. If you'll turn in Volume 32 to page 220.

17 A. Yes.

18 Q. You'll see an order that was signed by a local Judge of the
19 Supreme Court, Judge Ryan, on July the 22nd, 1983.

20 A. Yes.

21 Q. You'll see that that renews the originating notice that had
22 been started.

23 A. Yes.

24 Q. And, if we flip over two pages we'll see that the originating
25 notice appears there, the date isn't exact on it but it appears

1 as though it was issued in January of 1983.

2 A. Not exact, it's absent, but...

3 Q. Pardon.

4 A. ...the calendar date, the month...

5 Q. Yes.

6 A. The date or the month is absent, yes.

7 Q. That's right. And the stamp of the prothonotary is not there,
8 as well.

9 A. No.

10 Q. But in any event, it appears as though the notice was issued
11 in January and not served on the defendants. Would you
12 understand that that is the reason for the order that Judge
13 Ryan made on July the 22nd?

14 A. Oh, I wouldn't know whether it was served. You are
15 suggesting that because it wasn't served that it had to be
16 renewed.

17 Q. Exactly.

18 A. Well, it might.

19 Q. That sounds sensible.

20 A. It might be. I haven't practised since 1978. One gets a little
21 rusty on those.

22 Q. Yes.

23 A. But you can get caught on that procedurally, yes, so it
24 could...that could be the proper interpretation.

25 Q. At page 221 Mr. Herschorn is drawing to your attention the

1 fact of the renewal.

2 A. All right.

3 Q. And I take it from the thrust of this that what he's attempting
4 to do is bring you up to date on the status of the civil
5 proceedings.

6 A. He's trying to educate me, you mean, no. I think he was just
7 informing me more or less.

8 Q. Yes. Informing you of the status of the legal proceedings.

9 A. Yes, very well.

10 Q. In other words, that there was a need for renewing the
11 originating notice and that step had been taken.

12 A. Surely.

13 Q. And I'm putting it to you, but perhaps in your knowledge as
14 Attorney General you don't have this knowledge, but the only
15 reason for renewing the originating notice is it had expired
16 because it had not been served on the defendants.

17 A. Yes.

18 Q. That's correct.

19 A. Oh, I'm prepared to take your suggestion on that.

20 Q. Okay. Well, if we could...

21 A. It has to be served. There is a time period for service, yes.

22 Q. And if we could turn over to page two hundred and...no, my
23 notes have gotten beyond me, here. There is another memo.

24 COMMISSIONER EVANS

25 Do you think there is any dispute about that, Mr. Wildsmith?

1 MR. WILDSMITH

2 Well, I think the point I'm attempting to make to this
3 witness is that he was informed at least that there was a need to
4 renew the originating notice and I think that he should have
5 drawn the assumption it had not been served and that was the
6 reason for renewal. And there is another note in here which I
7 can't quite lay my hand on. I just saw it...well, here it is at page
8 274, 274. It's a note from Mr. Endres to your deputy, Mr. Coles.

9 HIS HONOUR CHIEF JUDGE HARRY HOW

10 A. Oh, yes.

11 Q. And in this note it indicates that the document now tells us
12 the date January the 24th, '83. The solicitor on record had
13 been changed, that there had been an order renewing it and
14 finally that no defence had been filed.

15 A. Yes.

16 Q. And I guess the first question is were you made aware of the
17 contents of this memo to Mr. Coles?

18 A. Oh, I don't think so. My understanding was the action was
19 still in progress.

20 Q. Yes. It had not been abandoned, that's certainly true.

21 A. That's right.

22 Q. Yes, but I'm wondering is whether you realized that it had not
23 been, the documents had not been served on the defendants.

24 A. No, I didn't.

25 Q. Okay. Mr. Aronson testified that the only reason to start the

1 legal proceeding was to protect against limitation periods. Is
2 that consistent with your understanding?

3 A. No, I didn't...

4 MR. SAUNDERS

5 What's consistent is...

6 HIS HONOUR CHIEF JUDGE HOW

7 A. I didn't know there was any problem in that area or he had a
8 problem, I didn't know that.

9 Q. Okay.

10 COMMISSIONER EVANS

11 I don't know where we're going with this but he says he
12 didn't know anything about it.

13 MR. WILDSMITH

14 Yeah.

15 COMMISSIONER EVANS

16 It's consistent with good legal practice, that if you issue it
17 and the limitation period is going to expire, you issue an
18 originating notice or something. If you don't serve it, you renew
19 it.

20 MR. WILDSMITH

21 Exactly.

22 COMMISSIONER EVANS

23 There doesn't seem to be any argument around the table
24 about that.

25

HIS HONOUR CHIEF JUDGE HOW, EXAM. BY MR. WILDSMITHMR. WILDSMITH

1
2 No. I'm wondering whether it went into the Attorney
3 General's mind as to why the action had not really been proceeded
4 with. It had been started, not served, no defence was filed, that
5 no progress had been made on the suit.

COMMISSIONER EVANS

7 What difference would it make?

MR. WILDSMITH

9 He was wondering why...

HIS HONOUR CHIEF JUDGE HOW

11 A. I didn't know there had been no progress. I could perhaps
12 have concluded it hadn't been served.

13 Q. Okay.

14 A. If you call that progress.

15 Q. Let's move on to something else. Yesterday, Mr. How, you
16 made a few comments about Indians. I think the first thing
17 you said is that you had never defended an Indian in your
18 practice?

19 A. I said I couldn't recall precisely that.

20 Q. Yes, and can you recall in your 19 or 20 years of practicing in
21 Wolfville ever representing an Indian?

22 A. Not a precise person, it doesn't come to mind. I might well
23 have.

24 Q. Okay.

25 A. I had a long period, I know that.

1 Q Is there an Indian reservation within your constituency of
2 Kings South?

3 A. No, but there was one in Kings West and, indeed, I think I
4 mentioned earlier or yesterday that I grew up in Annapolis
5 Royal and there was a reservation next to that town. And let
6 me add too that some of the finest people in our area lived on
7 that reservation.

8 Q All right, which reservation was that that was next to
9 Annapolis Royal?

10 A. I forget the name. I'm not so sure it had one, but it certainly
11 was a community of Indians and I think it must have had a
12 name, but I don't remember it by name.

13 Q That was a long time ago then, was it, when you were growing
14 up?

15 A. Yes.

16 Q I don't mean an insult by that, but...

17 A. You might assume that.

18 Q All right. I take it in your...

19 A. It wasn't yesterday, I can tell you that.

20 Q In your role as Attorney General, you would have come in
21 contact with some Indian issues?

22 A. I beg your pardon?

23 Q In your role as Attorney General, you would have come in
24 contact with some Indian issues.

25 A. Oh, yes...

- 1 Q. I'm not going to ask you for details.
- 2 A. Only because I was the designated Cabinet member to consult
3 with some Indian representatives who were concerned with
4 policing on reservations. What else? Perhaps that's the main
5 issue that comes to mind.
- 6 Q. Do you recall some discussions about a court worker
7 program?
- 8 A. Oh, yes, I know what it was. The other was court workers,
9 yes.
- 10 Q. Okay. We had some testimony from Mr. Giffin that the
11 Minister of Social Services was the main contact person with
12 the native community?
- 13 A. Well, yes, I think when Mr. Morris came along. I forget
14 whether he came in in '74 but... No, I'm sorry, he came in in...
15 Well, I can't remember the year but, in any event, he was
16 designated to succeed me as the person who... the liaison with
17 the Indian representatives.
- 18 Q. So for part of the period that you were Attorney General in
19 the late seventies, you were the designated person?
- 20 A. Yes, in the early...late seventies, yes.
- 21 Q. And that was because...
- 22 A. Probably for a couple of years.
- 23 Q. Was that because of your capacity as Minister of the Attorney
24 General's Department?
- 25 A. I don't know. Perhaps it was because, perhaps one of the

1 main issues, the two main issues I just mentioned did concern
2 our department.

3 Q. I'm wondering if you had any other contact or communication
4 with Indian people outside of your formal role as an Attorney
5 General? You've mentioned the friends of yours growing up...

6 A. Well, I do remember that there was some claim against
7 the....or some...What? Claim, I suppose, is the best word,
8 request might be better, for the government to re-examine
9 the environmental situation at Pictou which resulted from an
10 agreement signed in the Stanfield era, I think.

11 Q. Did you have some dealings with that?

12 A. By which certain rights over the reservation there were
13 conveyed.

14 Q. What contact did you have with that issue?

15 A. Well, I remember Mr. Walter Goodfellow coming and seeing
16 us about it.

17 Q. Was that when you were Attorney General?

18 A. Yes, and indeed...

19 Q. Okay, I'm talking about outside of your role as Attorney
20 General now.

21 A. Did I have any contact with people...

22 Q. Outside of your role as Attorney General of the province?

23 A. Well...

24 Q. I'm just trying to get a little background.

25 A. Well, I, you know, I met people of the Indian race a number

1 of times but I don't think it's indicative of anything except I
2 met them.

3 Q. Okay. I'm just trying to get some understanding of how
4 much contact you have had, but I think I have a judgement
5 on that now.

6 A. Yes.

7 Q. And would Indians have appeared before you in your
8 capacity as a judge as well?

9 A. Not very many, but no doubt some.

10 Q. You can't recall of a particular incident.

11 A. No.

12 Q. Is that correct?

13 A. I certainly don't recall that their numbers were greater than
14 any other segment of the population. I think that most times
15 that they would appear before me was at Shubenacadie which
16 would, of course, be natural.

17 Q. Okay, so you are saying that some did appear.

18 A. Oh, yes.

19 Q. I'm wondering...

20 A. In fact, one of them was named "Howe", H-O-W-E.

21 Q. I'm wondering whether upon assuming your office as a judge
22 whether you received any particular training or attended any
23 particular courses, workshops, seminars, that dealt with
24 Indians and special Indian problems in the criminal justice
25 system?

1 A. Well, we had meetings with Indian leaders, one of them I do
2 remember very distinctly was Viola, Mrs. Viola Robinson
3 from Bear River. And she was a very capable spokesperson
4 for them.

5 Q. You understand her to be President of the Native Council of
6 Nova Scotia?

7 A. Well, I think she holds a very high office, or did until very
8 recently, if not now.

9 Q. Yes.

10 A. Yes, and a Mrs...

11 Q. What was the purpose of her meeting with you?

12 A. Well, because these were meetings with respect to Indian
13 matters, and as I said, particularly...

14 Q. Were you Attorney General then?

15 A. Yes.

16 Q. I'm sorry, maybe you misunderstood my question. I'm asking
17 about after you were appointed a judge...

18 A. Oh.

19 Q. Whether there were any seminars to acquaint you, as a judge,
20 with special problems dealing with cross-cultural
21 understanding...

22 A. No, I don't.

23 Q. With Indians or other races.

24 A. I haven't participated in any...

25 Q. Okay, thank you.

1 A. Meetings of that nature.

2 Q. Do you know if any were sponsored that you could have
3 attended?

4 A. That I could have? You mean since I have become a judge?

5 Q. Yes, since 1983.

6 A. I don't recall any. Of course, on the other hand, I don't recall
7 any call for that sort of... but anyway.

8 Q. Perhaps I could just follow up on your last comment there.

9 One of the issues that this Commission is dealing with,
10 wrestling with, are problems of Indians in the criminal justice
11 system. I'm wondering whether you have any particular
12 observations from your role as Attorney General, from your
13 role as a practicing lawyer, from your role as a judge, that you
14 would care to make now?

15 A. Well, at the risk of seeming self-serving, I don't have a
16 prejudice against anybody that comes in the court.

17 Q. Of course. I'm not asking you that question.

18 A. Well...

19 Q. I mean whether you have any general observations about
20 Indians coming into contact with the criminal justice system,
21 any observations you'd like to share with us?

22 A. Not really.

23 Q. All right. I'd like to direct your attention to Volume 41 now.
24 Do you have Volume 41? It's a fairly thick volume. Most of
25 the material I'll refer you to is in this Volume 41. Would you

1 look at page 43?

2 A. Yes.

3 Q. This appears to be a letter sent by Gordon Coles to Dr. Fred
4 McKinnon in the Department of Social Services. And you'll see
5 that it refers to a National Conference on Native Peoples and
6 the Criminal Justice System that Mr. Coles attended?

7 A. Oh, yes.

8 Q. I direct your attention to the third paragraph.

9
10 Perhaps more than anything else, the conference
11 did point out the need for attitudinal changes on
12 the part of those involved in the criminal justice
13 system and the need for the system itself to be
14 more sensitive to native peoples who come in
15 conflict with the law.

16 A. Oh, yes, yes.

17 Q. Is that a sentiment that you would agree with?

18 A. It's fairly hard for me to assess or speak for others in it. I
19 myself have not seen evidence of prejudice against "native
20 peoples". I haven't detected that.

21 Q. So you don't see any need...

22 A. Maybe I'm naive, I don't know, but I haven't seen it. I
23 haven't felt it. And I don't know what they said at this
24 conference, because you understand, that was before my time
25 in government.

Q. Sure.

A. But I suppose your point is does it reflect something that I

1 saw when I became Attorney General?

2 Q. Indeed, and whether you saw any "need for the system to be
3 more sensitive to native people," part of his comment?

4 A. Well, the only thought that was ever expressed to me about
5 the judicial process was, I think, in connection with what I
6 mentioned moments ago that there was some requests for
7 native workers.

8 Q. Court workers, yes.

9 A. Court workers, and that request was not acceded to...

10 Q. Well, we'll come to that in more detail in a moment.

11 A. I see, all right.

12 Q. But I think my question to you was whether you, from your
13 observations, would agree or disagree that the system needed
14 to be more sensitive. And I take your response to be that you
15 have no observations on that one way or the other.

16 A. I haven't seen the prejudice that may be suggested by that.

17 Q. Do you see Indian people having any problems understanding
18 when they come into court?

19 A. I think any disadvantaged people have problems.

20 Q. Yes?

21 A. Perhaps more so in the economic sense.

22 Q. What do you mean "any disadvantaged people"?

23 A. Well, people who have not been as much a part of the main
24 stream of life in any given country as others have been.

25 Q. And you include Indian people in that category?

1 A. Well, because they have had a, they've had a background of
2 isolation through reservations, for example. Which, of course,
3 in my view didn't serve them well but that was the policy of
4 successive governments, federal governments. And so that's
5 the only reason I say it is because that didn't give them the
6 opportunity to participate as fully as I personally think they
7 were capable of.

8 Q. So is that fair to think that when they come into a criminal
9 justice system that they are at a disadvantage?

10 A. Not at a disadvantage in terms of the attitude of the court, in
11 my view.

12 Q. No.

13 A. No.

14 Q. But in terms of understanding...

15 A. But perhaps...

16 Q. What's going on.

17 A. In understanding their rights, that may well be.
18 2:52 p.m.*

19 Q. Assuming that there are some problems, and if you have
20 some problem in perhaps accepting that, do you think that
21 the province has some responsibility, because of its general
22 responsibility for administration...

23 A. Well...

24 Q. To assist in insuring that Indians get a fair shake in the
25 criminal justice system?

1 A. We want everybody to have a fair shake in the criminal
2 justice system.

3 Q. Okay. And so if there are...

4 A. Well, just for a moment, that's why we actively supported the
5 concept of legal aid, so that people could be represented, so
6 people could consult.

7 Q. Indeed.

8 A. And that's been available all the time I was Attorney General
9 and, indeed, before.

10 Q. And so if there are problems that Indian people experience,
11 would you see it as part of the provincial role to assist in
12 alleviating those problems?

13 A. Well, that might be if one were to develop a program of court
14 worker service generally. My answer to the Indian
15 representatives was, they have a rather special opportunity
16 to receive that kind of service through the Federal
17 Government.

18 Q. Yes.

19 A. Do you understand? We had no budget for it, for anybody,
20 and if we had embarked on that at that time, that we would
21 then have been susceptible to be called upon for other racial,
22 by other racial groups who felt at a disadvantage. What we
23 had in mind was, if I recall correctly, was to develop a court
24 worker service generally that would be available. Granted...

25 Q. Well...

1 A. No, just a moment. Granted a person might feel more
2 comfortable talking with someone of their own race, yes, but
3 we sort of, if my memory serves me correctly, felt that in due
4 course we would consider a general court worker approach
5 but the program would have to be worked out.

6 Q. Okay. Are you suggesting you have any less of a
7 responsibility because an accused person is an Indian?

8 A. What was the question?

9 Q. Any less of a responsibility because an accused person is an
10 Indian?

11 A. Who would have lesser?

12 Q. The Province?

13 A. Oh, no.

14 Q. I think what you're saying, I got some sense of this, anyway,
15 that because Indians are in some senses a federal
16 responsibility, that you ought not to have a special program
17 from them.

18 A. Well, to be perfectly frank, one saw illustrations of
19 tremendous expenditures by the federal government with
20 respect to Indian, matters of concern to Indians in this
21 country. And it was my feeling they could devote a small
22 part of that to this kind of program, if indeed the Indian
23 population or leaders felt that they were at some
24 disadvantage in the courts.

25 Q. Okay, we'll come back and trace a little bit of that in a second.

1 A. I'm not saying we wouldn't have taken it over eventually, but
2 I'm saying that for the moment, that seemed to me to be the
3 most immediate answer.

4 Q. And you're saying take it over as part of a general court
5 worker system...

6 A. Yes.

7 Q. That would be available to all citizens of Nova Scotia.

8 A. Yes, you have to remember the court worker system was a
9 rather novel or new idea at that time and we didn't have, I
10 know the Salvation Army had some representatives in the
11 courts, I can remember that, and they did some of that work.
12 But it was felt by the Indian leaders, at least, that that should
13 be extended.

14 Q. Okay. Putting aside for a moment the court worker program
15 and putting aside the policing issue you mentioned, were
16 there any other special programs offered through your
17 Department while you were Attorney General to provide
18 special services to Indians?

19 A. No, we didn't have, I don't recall any special programs.

20 Q. Thank you. Now let's turn to the court worker program.
21 You've indicated why you thought there should perhaps be a
22 general court worker program and not a special one for
23 Indians. Do you have any reason to think that the court
24 worker program would not be effective in providing useful
25 services to Indians?

1 A. Well, what I felt was that a court worker program should
2 perhaps be, if properly implemented, should perhaps
3 embrace follow-up programs to the court. First of all, it
4 should be an information program, a guidance program for
5 those coming into court. It should be, it should carry on that
6 function throughout the court process and it would be useful
7 and helpful if it carried on after the program, whether the
8 person was acquitted or not. Because my general attitude
9 was that crime is often associated with disadvantages of one
10 kind or another.

11 Q. Okay, so if I understand you correctly, you're saying the court
12 worker idea is a useful one, correct?

13 A. And perhaps deserves a larger concept than just the court
14 itself.

15 Q. Yes, okay. Do you recall taking an Indian court worker
16 program to Cabinet with your approval, with your
17 recommendation?

18 A. I don't recall doing that.

19 Q. Perhaps we could look at page...

20 A. For the reasons I gave.

21 Q. Yes, look at page 146 in that Volume 41.

22 A. All right.

23 Q. Page 146, it looks like "Memorandum to Executive Council". Is
24 that a document that normally submits material to Cabinet for
25 consideration?

1 A. Well, I guess my memory isn't as good on it as I thought. Let
2 me just read this.

3 Q. Just for the record, it says:

4 Subject - Native Court Worker Program.
5 Submitted by the Honourable Harry W. How, PC,
6 Attorney General.

7 A. I'm looking at that, yes.

8 Q. Yeah, I just wanted that on the record.

9 A. The amount was 200,000 requested, yes.

10 Q. Yeah, and the summary says "To provide the re-
11 establishment of a native court worker program."

12 A. Just a moment now.

13 COMMISSIONER EVANS

14 Mr. Wildsmith, am I correct that that program was in effect
15 from 1974, at least, since April the 1st, 1974? I'm looking at page
16 53 in this same volume.

17 MR. WILDSMITH

18 Yes.

19 COMMISSIONER EVANS

20 Where there was a joint contribution by the federal and
21 provincial governments.

22 BY MR. WILDSMITH

23 Q. Yes, my understanding, to put a cap on this, is that before Mr.
24 How was Attorney General, a predecessor Attorney General,
25 maybe a predecessor government, did support the program

1 between 1974 and March 31st, 1976. So there was a period
2 there for about a year and a half or so when there was
3 provincial support for the program.

4 A. For the years '74 to '76?

5 Q. Yes. This document recites the years in Paragraph 174 to 77,
6 but I don't find the documentation supports beyond March of
7 '76.

8 A. No, I don't...

9 Q. In any event, the point I'm making to you, Mr. How, is that
10 you did support the program apparently at one point in time
11 and, indeed, took it to Cabinet.

12 A. Yes, I guess I...

13 Q. And recommended the program.

14 A. I guess I did.

15 MR. CHAIRMAN

16 You should take your kudos while you have the chance.

17 HIS HONOUR CHIEF JUDGE HOW

18 You mean they're rather rare around here, I suppose, Your
19 Lordship?

20 MR. WILDSMITH

21 Q. Perhaps you could turn back a couple of pages to 143 now.

22 A. Just let me add, I don't think anything resulted from this.

23 Q. Okay, well, that was a question I had for you.

24 A. I'm sorry if my memory wasn't as good as it ought to be in
25 that, on that point.

1 Q. Just to finish off your last comment, it's correct, to your
2 understanding, that Cabinet did not go along with your
3 recommendation.

4 A. I don't think so.

5 Q. Now going back to 143, we see what looks like a file copy of a
6 memo from R.A. MacDonald, Director of Programs
7 Administration to yourself. And it says:

8
9 Attached is a memorandum to Executive Council
relative to the native court workers program.

10 Now this doesn't say from whom the memo goes and to
11 whom, but am I correct in thinking that the way you usually
12 set up memorandums in the Attorney General's Department,
13 this is going from MacDonald to yourself?

14 A. Yes.

15 Q. Okay, and the second sentence says, "I am asking that
16 Executive Council review their position," and that's Mr.
17 MacDonald talking then?

18 A. Yes, but he is saying that he drafted it and that he is, his
19 words are in the memorandum.

20 Q. Yes.

21 A. I would be signing it.

22 Q. Yes, okay. Well, that's what I wanted to clarify that Mr.
23 MacDonald was the person who actually put this in front of
24 you for your support.

25

1 A. But let me just add that, perhaps in defence of myself,
2 sometimes these were drafted but didn't proceed beyond...

3 Q. Ah-hah.

4 A. The drafting. But I'm not saying that this didn't. I just don't
5 remember now.

6 Q. Okay, and there appears to be no indication on the document
7 itself whether you actually signed it. It doesn't bear a
8 number or date...

9 A. Or signature.

10 Q. In the other stuff. It could be just a draft.

11 A. Or a signature.

12 Q. Yeah. So do you recall whether you accepted or did not
13 accept?

14 A. I think I had trouble with this one before. I don't recall.

15 Q. Is it customary for an official in your Department to prepare a
16 document like this...

17 A. Oh, lots of times.

18 Q. For Cabinet?

19 A. Lots of times.

20 Q. Without your prior authorization or direction?

21 A. They might.

22 Q. Okay. Notice the second sentence, second paragraph, sorry,
23 says: "As I indicated to you verbally," that suggests that there
24 may have been prior discussion with you about this.

25 A. Yes.

1 Q. So, presumably, it's fair to think you did discuss it and you
2 authorized him to continue.

3 A. Yes.

4 Q. And then the second sentence or the second part of that says:
5 "I think this is one area where the Province of Nova Scotia
6 could show good faith with the Union of Nova Scotia Indians."

7 A. Yes, I see that.

8 Q. You agree?

9 A. Oh, I'm, I wouldn't disagree at all.

10 Q. Okay.

11 A. It's a matter of money.

12 Q. Now there's some background to this documentation, which
13 I'd like to show to you. If you look now on page 148 in
14 Volume 41. This is a letter by that same Mr. R. A. MacDonald,
15 this time to Treasury Board. And you'll see that this was back
16 now in January of '79. The previous documentation was in
17 March of '79.

18 A. Yes.

19 Q. So this is the earlier document. This is a submission to
20 Treasury Board asking them to support a native court
21 worker's program, correct?

22 A. Yes.

23 Q. And it indicates that there was a meeting with status and
24 non-status Indians and the meeting recommended that the
25 native court worker program be reestablished.

1 A. Yes.

2 Q. So that sounds like a meeting with the Indian community...

3 A. Well, I said we, they met with me.

4 Q. Yeah.

5 A. And maybe there were meetings when others were present,
6 too.

7 Q. Okay, so everyone seemed to agree after that meeting that
8 you should reestablish the program. And then the first step
9 was to submit to Treasury Board?

10 A. Yes, you have to get the money from them.

11 Q. At that meeting, can you recall anything of what transpired?

12 A. What meeting?

13 Q. Well, the one that was...

14 A. Tuesday, you said?

15 Q. January the 16th, apparently.

16 A. Yes, January 16th.

17 Q. And it is awhile back, but I just wonder if you remember
18 meeting and whether you can give us any...

19 A. I remember meeting with them several times and, no doubt,
20 that was one. Well, obviously, it was.

21 Q. Okay. Since you were present and since the meeting
22 recommended reestablishing the program, would it be fair to
23 think that you made a commitment to try and reestablish the
24 program?

25 A. No, I never made commitments, or tried not, that I couldn't

1 guarantee I could carry out.

2 Q. No, but you, what I'm saying by commitment is that you
3 would recommend it, you would take it forward.

4 A. I was sympathetic to it, but that was as far as I could go at
5 the time, yes.

6 MR. CHAIRMAN

7 I think you should bring to Mr. How's attention page 149,
8 the last line: "It would appear that he was a bit more than
9 sympathetic."

10 MR. WILDSMITH

11 Yes, indeed.

12 BY MR. WILDSMITH

13 Q. Do you see the last line on 179, Mr. How?

14 MR. CHAIRMAN

15 149.

16 BY MR. WILDSMITH

17 Q. I'm sorry, 149.

18 A. Okay.

19 Q. "The Attorney General requests consideration of establishing
20 this program."

21 A. No doubt.

22 Q. Yeah, so it's clear that you're supporting it and putting it to
23 Treasury Board.

24 A. Yes, it looks like that.

25 Q. Now we flip over to 150 now, we see a letter back to your

1 Deputy from Secretary of Treasury Board.

2 A. Yes.

3 Q. And the Board declined approval.

4 A. Turned me down.

5 Q. And now the second paragraph is of interest. It says:

6

7 However, at the discretion of the Attorney
8 General, the board will allow the reallocation of
9 funds in your '79-'80 budget.

10 I take that to mean Treasury Board was saying, you have a
11 budget, you are authorized to reallocate internally the money
12 you have to assist in the program.

13 A. Providing they approved.

14 Q. Yeah, but they're saying this is a way that you can accomplish
15 the purpose you have in mind.

16 A. Yes, they are.

17 Q. Now flip again to 151, Gordon Coles, your Deputy, writes back
18 to Treasury Board saying that your budget estimates do not
19 enable any reallocation of funds.

20 A. That's what he said.

21 Q. Okay. And then it says, "The Attorney General has no
22 alternative but to so advise the advocates of the program." Do
23 you recall being consulted on that internal...

24 A. Oh, I think so.

25 Q. Pardon?

1 A. I said much, much earlier that I didn't think we ever
2 approved any. It was a matter of money and I think Mr.
3 Coles' final letter verifies that.

4 Q. Yeah, do you recall any...

5 A. Even though I did, I was unable to recall that, any submission
6 to Cabinet.

7 Q. Do you recall any personal involvement yourself in looking at
8 the budget to see whether there could be a reallocation?

9 A. I don't remember, Mr. Wildsmith.

10 Q. You'd leave that to Mr. Coles?

11 A. Yes, I think so.

12 Q. Now if you look at 153, we'll see back a letter to Mr. Coles,
13 copied to yourself.

14 A. Yes.

15 Q. From The Honourable Roland J. Thornhill, Chairman of
16 Treasury Board. And his comment to Mr. Coles is that the
17 Board found it difficult to understand how it could be
18 determined that such a reallocation was not possible given
19 that the budgetary process itself is not yet complete and
20 suggests that because of the apparent priority of this
21 program, that decision be deferred to a later date.

22 A. Yeah.

23 Q. Now I don't understand all the internal workings of the
24 government, but I take it the Chairman of Treasury Board
25 was telling Mr. Coles that the process of, the budgetary

1 process not being complete, it was premature to say that the
2 money wasn't there.

3 A. They appear to be saying that.

4 Q. Pardon?

5 A. They appear, it appears to be a difference of opinion between
6 him and Coles.

7 Q. Okay, do you expect the Chairman of Treasury Board to
8 understand the...

9 A. I don't know what we were to be taking it from. I can't recall
10 and it's not really in here. And Coles may have said to me,
11 "Look, we need every dollar of that particular allocation and,
12 therefore, can't spare any for a native court worker program."
13 That may have been, but I don't recall.

14 Q. But it's also fair to say that the thrust of this is for the
15 Chairman of the Treasury Board to rap Mr. Coles' knuckles a
16 little bit.

17 A. I wouldn't see it that way.

18 Q. Well, he's saying "apparent priorities".

19 MR. CHAIRMAN

20 As long as we don't get a way off on a tangent.

21 MR. WILDSMITH

22 Okay.

23 MR. CHAIRMAN

24 I don't if there's ever been a refusal by a Treasury Board in
25 any government in Canada that didn't say "reallocate funds from

1 some other subhead".

2 MR. WILDSMITH

3 Okay.

4 HIS HONOUR CHIEF JUDGE HARRY HOW

5 Thank you, My Lord.

6 MR. CHAIRMAN

7 It's a...

8 MR. WILDSMITH

9 One other comment before I leave this.

10 MR. CHAIRMAN

11 It's a curious way of saying "no".

12 MR. WILDSMITH

13 Thank you.

14 BY MR. WILDSMITH

15 Q. This letter is copied to you. It's to Mr. Coles but it's copied to
16 you.

17 A. Yes.

18 Q. Is that normal practice for letters to your Deputy to be copied
19 to you, the Minister, or is it normal for one Minister to always
20 copy another Minister?

21 A. Normally, it came to the Minister but I didn't take offence at
22 that and we were a tad informal in that way. You know, we
23 didn't have a rigid structure of...A layered society there, so to
24 speak.

25 Q. Well, what it says to me is that Mr. Thornhill wanted to insure

1 that this letter came to your personal attention.

2 A. Yeah.

3 Q. And so...

4 A. Probably.

5 Q. Probably it did.

6 A. Yes.

7 Q. Do you recall anything developing as a consequence? Any
8 further discussions with Mr. Coles about internal allocation?

9 A. I don't think so and, again, I think it came to a halt, if you
10 will.

11 Q. Okay. Assuming you did take this to Cabinet, which isn't
12 absolutely clear on these documents, can you just help me
13 understand the process here? You go to Treasury Board.
14 They say no. You look at your internal budget and decide no.
15 And then Mr. MacDonald is recommending you take it to
16 Cabinet. Now can you just help me out with understanding
17 the significance of sort of trying the first two steps, failing,
18 and then going to Cabinet?

19 A. Well, it's like appeal in the courts. The highest court is the
20 Cabinet. In fact, there's one above that, the Premier.

21 Q. So if Cabinet were to approve, the money would come from
22 somewhere?

23 A. I beg your pardon?

24 Q. If Cabinet were to approve, the money would come from
25 somewhere.

1 A. Yes.

2 Q. And it would come from somewhere outside of your
3 Department.

4 A. They would direct the Treasury Board to say yes.

5 Q. Okay. And I take it from your previous evidence, you have
6 no recollection of actually doing that.

7 A. Not really, Mr. Wildsmith, no.

8 Q. Okay.

9 A. I knew we dealt with it, I knew we didn't get it, we didn't get
10 it underway. That's really basically my recollection.

11 Q. Okay, and then it looks like, if you turn to 154 now, a few
12 months after this, there was another meeting on June the
13 18th with the Union of Nova Scotia Indians.

14 A. Yes.

15 Q. Do you see the first sentence, the second half, says:

16
17 I undertook to deal directly with the Union of
18 Nova Scotia Indians with respect to the Native
Court Workers program.

19 A. Yes, I see that.

20 Q. Does that mean that, is it fair to think that the Union would
21 have requested your personal attention?

22 3:15 p.m.

23 A. They always did.

24 Q. Yeah. They always did?

25 A. Yes.

1 Q. Okay. And when you say, "I undertook to deal directly with
2 them", what you are saying is I will give it my personal
3 attention.

4 A. Yes.

5 Q. Now, as we move through this documentation again it
6 appears, oh, I guess the first point is. On that page, 154, the
7 meeting was in June, mid-June, June the 18th of '79 and you
8 advised Mr. Coles of it July the 17th? Kind of a month later.

9 A. Well it might be, yes.

10 Q. Is that a normal kind of timeframe for you to communicate
11 with your Deputy?

12 A. Perhaps when you get a lot of things it might well be, yes.

13 Q. Normal.

14 A. Well, all right, yes.

15 Q. I have no idea so I'm just asking you. The next page, 155,
16 sorry, I wanted to direct your attention on a couple of pages.
17 You can look at that if you want. To 158. That's a letter to
18 the Union of Nova Scotia Indians from Mr. MacDonald, August
19 the 10th.

20 A. Yes.

21 Q. And there it appears that Mr. MacDonald is advising no
22 provincial funding for this fiscal year.

23 A. Yes.

24 Q. That would take you to March the 30th, 1980?

25 A. Yes.

1 Q. And then it says, "We're prepared to entertain a submission
2 for the fiscal year which would start April the 1st, 1980.

3 A. Yes.

4 Q. Just one little point. That letter is coming from Mr.
5 MacDonald rather than from yourself.

6 A. Yes. Mr. Wildsmith, I think I should mention here that from
7 what I'm seeing of these memoranda, the programs in the
8 1970s, before we took office in 1978, were shared programs
9 with the Federal Government and maybe the original one was
10 a government program, a Federal Government, I'm sorry,
11 program. It was often the practice of the Federal Government
12 to start these programs, give them three years, then
13 withdraw and unload it, or attempt to, on the Provincial
14 Government.

15 Q. Yes.

16 A. And I can't say for certain but I detect that kind of pattern
17 here.

18 Q. Well I think if you did you go back...

19 A. And I think we wanted, we wanted them to come back in in a
20 shared program.

21 Q. Well...

22 A. I always object to...

23 Q. Well if you did go back and look at the documents I think you
24 would find consistently that Court Workers has been a 50-50
25 program. 50 Federal, 50 Provincial.

1 A. Right. All right. But they dropped their 50.

2 Q. Well...

3 A. Apparently.

4 Q. I would say not. I would say that you dropped your 50 and
5 that dropped the program and the Federal Government was
6 always willing to put their 50 in.

7 A. Whatever. Have it your way.

8

9 CHAIRMAN

10 [There's something in there?] about the dropping the
11 program. Where did I see that? Somewhere. The program was
12 dropped in 1977 before Mr. How was Attorney General, I think.

13 HIS HONOUR CHIEF JUDGE HOW

14 Yes.

15 CHAIRMAN

16 Yes. Page 148.

17 MR. WILDSMITH

18 Page 148?

19 CHAIRMAN

20 Yes. This was, the submission of Mr. MacDonald to Treasury
21 Board. It says,

22

23 You will, no doubt, recall that from the years
24 1974/75 through 76/77 we, in fact, were
25 involved with a Native Court Worker Program.
This was terminated in March of 1977 due to a
difference of opinion as to the distribution of

DISCUSSION

1 funds between the Federal and Provincial
2 Governments and the then Minister, Mr. Pace,
3 was not prepared to remit the monies from the
4 Provincial Government through to the Federal
Government, having the Federal Government act
as the carrier agent of the program.

5 MR. WILDSMITH

6 Yes.

7 CHAIRMAN

8 So I guess that explains the mystery of the...

9 MR. WILDSMITH

10 Why the program was terminated?

11 CHAIRMAN

12 Presumably.

13 MR. WILDSMITH

14 I think, I'll put to this witness because he wasn't there then
15 but the earlier documentation seems to suggest that there was a
16 dispute about whether the services would be rendered to non-
17 status as well as status Indians. And there was some difficulty
18 about the Union of Nova Scotia Indians being a carrier agent that
19 would support or service the non-status Indians. And that that
20 was part of...okay.

21 CHAIRMAN

22 A carrier agent of the Federal Government, you see.

23 MR. WILDSMITH

24 Q. So continuing on with this...
25

DISCUSSIONCOMMISSIONER EVANS

1
2 And also at 155 there's some correspondence there
3 indicating that the Federal Government were prepared to pay
4 from September to, the full amount from September the 1st, '79,
5 or from September the 1st to March the 31st, 1980 and then after
6 1980 it would be the responsibility of the Province, as I read it.

MR. WILDSMITH

7
8 I think what was transpiring there, My Lord, is that the
9 Federal Government was trying to keep the program and they're
10 saying, "Well, for this block of time, we'll pay it all. And you'll
11 make your 50 percent contribution by making a full contribution
12 for a different block of time. And that way we'll span a block of
13 time with 50/50 contributions."

COMMISSIONER EVANS

14
15 I thought that the witness' answer was that they were
16 trying to unload the whole thing on the Province and the Province
17 wasn't going to buy it.

MR. WILDSMITH

18
19 That was a comment that he made. Perhaps I'll go back...
20
21
22
23
24
25

DISCUSSIONCOMMISSIONER EVANS

1 [There was?] some justification, too, in the material. But
2 then he seems to have disappeared from, this witness seems to
3 have disappeared from the negotiations around that time. In '79,
4 April the 8th, '79. I don't see him as being present at the meeting,
5 page 161. And 160, he doesn't appear there.

MR. WILDSMITH

7 Yes. That's right. He wasn't present at that meeting which
8 was a kind of vehicle between the Native community and the
9 Province. But the Court Worker Program, I believe, came up in
10 that meeting.

COMMISSIONER EVANS

12 I have no idea who the Honourable Laird Stirling and the
13 Honourable Bruce Cochrane are. I take it they're Provincial...

MR. WILDSMITH

15 It indicates on 161...

COMMISSIONER EVANS

17 Pardon?

MR. WILDSMITH

19 It indicates on 161. The first gentleman was chairman of
20 this committee, the Minister of Social Services.

COMMISSIONER EVANS

22 And I take it that's Nova Scotia.

MR. WILDSMITH

24 Yes.

DISCUSSIONCOMMISSIONER EVANS

1
2 And he was also present in 160, that August the 8th
3 meeting. That's the same meeting.

MR. WILDSMITH

4
5 Yes.

CHAIRMAN

6
7 I suspect we're entitled to assume that in 19-, whatever
8 date that, 1979, by August 1979 the Minister of Social Services for
9 Nova Scotia had been given the responsibility to deal with matters
10 relating to the Indians. And you knew then, I think you said this
11 morning, moved off that Committee.

HIS HONOUR CHIEF JUDGE HOW

12
13 Yes.

CHAIRMAN

14
15 Or were moved off.

HIS HONOUR CHIEF JUDGE HOW

16
17 Or was moved. I don't know which. I can't remember.

MR. WILDSMITH

18
19 Yes, although I'm not sure that, all this means is that there is
20 a formal vehicle for communicating between the Native
21 community and the Province. What it doesn't mean is that a
22 Minister, whose Department is involved, would not become
23 involved in that issue.

CHAIRMAN

24
25 No, I assume that, well, there are items coming up related to

DISCUSSION

1 various Departments of Government, but then by that Committee
2 be referred to...

3 MR. WILDSMITH

4 Yes.

5 CHAIRMAN

6 The appropriate Department.

7 HIS HONOUR CHIEF JUDGE HOW

8 I think, My Lord, the explanation is in part which you've
9 said. The other is that the Department that would liaise with
10 Indian representatives was the, was made the Department of
11 Social Services and taken away from the Attorney General's
12 Department. Because I think the reason was there were larger
13 issues than merely legal ones.

14 MR. WILDSMITH

15 Q. Now, I'd like to take you to the minutes of that meeting that
16 happened on August the 8th...

17 A. Where's that meeting referred to, please?

18 Q. Page 165.

19 A. Where's the meeting referred to, please?

20 Q. The portion I want to refer you to is on 165.

21 A. Yes.

22 Q. Dealing with the Court Worker Program. And perhaps this
23 helps explain what we were just speaking about. It says,

24 The Union of Nova Scotia Indians understands
25

HIS HONOUR CHIEF JUDGE HARRY HOW, EXAM. BY MR. WILDSMITH

1 the Attorney General's Department had agreed to
2 finance the program on a 50/50 basis with the
3 Federal Government effective September 1, '79,
4 and wishes confirmation. They are requesting a
5 letter of confirmation to Indian Affairs and to
6 the Union...(It goes on to say.) Following the
7 meeting an inquiry was made of the Attorney
8 General's Department and officials indicating a
9 letter had been sent to the Union of Nova Scotia
10 Indians indicating the terms and conditions
11 under which the Province would participate.

8 A. Yeah.

9 Q. I don't know whether it's the same letter but there is a letter
10 of August the 10th which precedes these minutes by Mr.
11 MacDonald to the Union of Nova Scotia Indians at 158. We've
12 already looked at this letter.

13 MR. CHAIRMAN

14 I think there may be mistake in, on page 165, in that second
15 paragraph, when they say, "August 17th."

16 MR. WILDSMITH

17 Well, that was discussion of the letter on August the 17th.

18 MR. CHAIRMAN

19 No, no. It says here, "Mr. Stirling discussed the contents of
20 this letter...."

21 MR. WILDSMITH

22 "...while in Sydney on August the 17th."

23 MR. CHAIRMAN

24 Oh, I see.
25

1 MR. WILDSMITH

2 So, presumably, it's prior to August the 17th and the only
3 letter in our record is the one of August the 10th, from the
4 Attorney General's Department to the Union and instead of having
5 terms and conditions as the minutes suggest, it says, "No resubmit
6 for the following fiscal year."

7 MR. CHAIRMAN

8 There was, apparently the Nova Scotia Union of Indians
9 were satisfied with the response. That's what it says here.

10 MR. WILDSMITH

11 Yes, it does.

12 Q. Next on 175 in here is a letter in September now, September
13 the 26th of '79 from the Department of Social Services to you.
14 And it says in this letter that the Union of Nova Scotia Indians
15 called to say that, "The Government of Canada would not fund
16 the above program for the remainder of the current year
17 unless the Province made a significant contribution." Which
18 translated in dollar terms into \$5000. Do you recall that
19 episode, if I can call it that, about the Province's \$5000
20 contribution?

21 A. Oh, I think I do, yes.

22 Q. Okay.

23 COMMISSIONER EVANS

24 This witness was no longer the representative of the
25 Cabinet, was he?

1 MR. WILDSMITH

2 No, but he was the Minister of the Attorney General's
3 Department and what I've been attempting to suggest is that
4 while there was this formal mechanism, Departmental Ministers
5 dealing with issues in their Department still would occasionally
6 deal directly with the Union or, as we see here, that Department's
7 representatives are funnelling the issue to the right Minister, to
8 the Minister of the Attorney General's Department, Mr. How. So
9 they're asking if the Department was in a position to provide the
10 \$5000 to keep the program going.

11 COMMISSIONER EVANS

12 Right.

13 MR. WILDSMITH

14 Q. If we turn over to 178 now we see Mr. Gale sending a note to
15 you referring again to the \$5000 and Mr. Renee, in your
16 Department, in the absence of Mr. MacDonald saying no
17 surplus funds that could be applied.

18 A. Yes.

19 Q. Correct?

20 A. Yes.

21 Q. Is that note at the bottom of the page your handwriting or
22 Mr. Gale's or somebody else's?

23 A. No. That's not mine.

24 Q. Not yours?

25 A. No.

1 Q. Okay. Now at page 185 we see the Union putting together
2 another Court Workers' proposal dated October '79. And at
3 page 203, now, Mr. How, I think we see a solution to the
4 \$5000 problem. Apparently you had a meeting with Mr.
5 Henderson and Mr. Paul of the Union of Nova Scotia Indians?

6 A. I think I remember that, yes.

7 Q. Yes.

8 A. I remember those names.

9 Q. And these are notes of yours that you made of that meeting?

10 A. That's what it says.

11 Q. These are notes you made of that meeting?

12 A. I think, yes, it indicates that, yes.

13 Q. Yeah, and the first item says that you will accept \$5000 from
14 the Indians providing it is explained to the Feds. "Mr.
15 Henderson will approach the Federal Government on their
16 and our behalf..."

17 A. Yes.

18 Q. "The Premier agreed with this when I told him today."

19 A. Yes.

20 Q. So the thrust of that is that the Union of Nova Scotia Indians
21 would give to the Province the \$5000...

22 A. Yes.

23 Q. And call that the Province's contribution to the program.

24 A. Yes, it looks like that.
25



1 3:30 p.m.

2 Q. And at page 206 we see a meeting with officials in your
3 Department and the Union going over the terms of how the
4 Court Worker Program would operate. And then at page 209,
5 now, you are writing to the Federal Minister of Justice...

6 A. Yes.

7 Q. And in the second paragraph you're telling the Federal
8 Minister that you agree to accept from the Union the \$5000....

9 A. Yes.

10 Q. And to make that the Provincial contribution.

11 A. Yes.

12 Q. And then you enclose a signed agreement and that has the
13 net effect of keeping the program going from December 1st,
14 '79 to March 31st, '80.

15 A. Yes.

16 Q. And you're quite careful to say no assurance of continuation
17 beyond March the 31st, 1980.

18 A. Yes.

19 Q. And it's at this point, at least in the documentation, we first
20 see the comment that you made at the outset about singling
21 out one disadvantaged group.

22 A. Yes, I do, yes.

23 Q. The agreement that you signed on, starting on page 211...

24 A. Yes.

25 Q. I don't know how carefully you looked at an agreement like

1 this but I just can't help but noticing that the two "whereas"
2 clauses on that page seem to be in contradiction to the
3 statement in your letter.

4 A. Contradicts what?

5 Q. To the statement that, "We ought not to favour one
6 disadvantaged group." It says, "This program would provide
7 great assistance promoting equality of justice."

8 A. Yeah. How do you think it conflicts?

9 Q. How do I think it conflicts? It seems to suggest in these two
10 paragraphs that this program is needed to ensure equality in
11 the level of justice received by Native people.

12 A. Well, I think it supports what I said. I said it's the right of
13 every individual to equality before the law.

14 Q. Yes.

15 A. And that was my misgiving that if we did it for one and didn't
16 do it for others we would not be adhering to that principle.

17 Q. And does that also lie with the notion that Indians are a
18 Federal responsibility?

19 A. That what?

20 Q. Indians are a Federal responsibility.

21 A. Well, no, but you only have to look back to see that there
22 were shared programs because the Feds did acknowledge
23 some responsibility. My point was, yes, they had
24 responsibility. And, indeed, until we had a general Court
25 Worker Program and they wished it, or the Indian

1 representatives wished it on behalf of their constituents, then
2 we would have to ask the Federal Government to assume, or
3 at worst or best, share it.

4 Q. Thank you. I also notice at page 242 in here, perhaps before
5 we get to that in August of 1980, there's no documentation in
6 here to suggest that the program continued after March the
7 31st, 1980.

8 A. I see. Well, you've got the advantage of me there. You've
9 read it.

10 Q. Okay. You have no knowledge of it continuing?

11 A. No.

12 Q. And the bottom line on what we've learned up to this point in
13 time is that while you were Attorney General no Provincial
14 contributions, except to the extent that the Union of Nova
15 Scotia Indians' \$5000 represented a Provincial contribution.

16 A. I think, Mr. Wildsmith, it illustrates perfectly a half-baked or
17 half-thought out program. What happens often to them or
18 often happens to them. And this is just exactly what's here.
19 This apparently didn't go beyond 1980 which was of little
20 help to anyone.

21 Q. Yes. Whose responsibility?

22 A. Pardon?

23 Q. Whose responsibility?

24 A. I don't know.

25 Q. Not the Indian people.

1 A. Well, obviously not.

2 Q. Okay. This letter at page 242, addressed to Mr. Dwight Dorey.

3 A. Yes.

4 Q. What you're saying is in your view any such program ought
5 to be funded entirely by the Federal Government.

6 A. Yes, I did feel that way. Certainly at that time.

7 Q. Do you know anything about the constituency of the Native
8 Council of Nova Scotia?

9 A. The what?

10 Q. Who are members of the Native Council of Nova Scotia?

11 A. I wouldn't recall at the moment.

12 Q. Any difference between...

13 A. I do remember a Mrs. Robinson, for one, but...

14 Q. Yeah. Any distinction in your mind between their
15 constituents and the constituents of the Union of Nova Scotia
16 Indians?

17 A. Only as I think was pointed out. One were, I think, classified
18 as status, the other non-status.

19 Q. All right. And what makes somebody non-status?

20 A. Well, status were those who were, resided on reservations, in
21 general terms. And non-status not residing. That's the main
22 distinction I understood.

23 Q. Let me offer a different one to you. That non-status Indians
24 are ones not recognized by the Federal Government as being
25 Indians.

1 A. All right. Sure.

2 Q. Agreed? No basis for disagreeing?

3 A. That may well have been.

4 Q. Well the point I'm putting to you is what you're, in effect,
5 doing is telling people who aren't recognized as Indians by
6 the Federal Government that any program for them should be
7 done by the Federal Government.

8 A. Well, Mr. Wildsmith, I'm sure you would agree that
9 traditionally the Native people of Canada were under, were
10 assigned a special Department of the Federal Government.

11 Q. Yes.

12 A. And the Federal Government had an elaborate program of
13 supports for those people giving them a special status under
14 the Federal regime. So what I'm saying here is that in the
15 absence of the ability of the Province to fund Native Worker
16 Programs and if, indeed, as we believed sincerely, that such a
17 program was desired by Native leaders then what was wrong
18 with asking the Federal Government to fund it until such time
19 as a shared or transferred responsibility could take place.

20 Q. Did you know that Nova Scotia was just about the only
21 province in Canada that wouldn't share in the program?

22 A. We were singular in many ways.

23 Q. A point of distinction here.

24 A. Well, we were. We were. I can't tell you.

25 Q. I just want to make sure I have this straight. What you're

1 saying is that...

2 A. Some of them could afford much more than we could.

3 Q. The Province's position was not to pay anything in relation to
4 Indian programs because the Federal Government ought to do
5 it.

6 A. No. The position we took in general terms was that until we
7 could afford an all-embracing one, or even if we took the step
8 of affording an Indian one, that the Federal Government
9 ought to, if they believed it to be a benefit to the Indian
10 people, they ought to fund it.

11 Q. I guess Nova Scotia receives equalization payments?

12 A. Pardon?

13 Q. With respect to provision of various justice services?

14 A. Yes. I don't know what was in that whole package. We got
15 equalization payments, yes.

16 Q. We've had some testimony that legal aid was much more than
17 50 percent paid for by the Federal Government.

18 A. Oh, no doubt.

19 Q. No doubt?

20 A. Yes. But, Mr. Wildsmith, you can't take it for lawyers and
21 take it for court workers at the same time, can you?

22 Q. No.

23 A. Well then, you can't spend a dollar twice.

24 Q. I refer you to page 270 in the volume.

25 A. Yes.

1 Q. This is a letter from the President of the Union of Nova Scotia
2 Indians...

3 A. Yes.

4 Q. Not directed to yourself but it attaches a letter from Premier
5 Buchanan.

6 A. It's what?

7 Q. You've seen Premier Buchanan's letter before? The one that's
8 on 271.

9 A. All right. What page? 270-...

10 Q. 271 has the letter from Premier Buchanan.

11 A. 271.

12 Q. Yes.

13 A. Okay.

14 Q. And this was in response to a request for the Province's
15 official position in relation to Indians?

16 A. Yes.

17 Q. It says, amongst other things, "The Federal Government has
18 not only jurisdictional authority but responsibility for
19 Indians."

20 A. Yes.

21 Q. And goes on to say, however, the Province, through various
22 Departments, not including yours, would continue to assist
23 whenever responsibly can.

24 A. Yeah.

25 Q. Now Mr. Doucette, the President of the Union, writes in the

HIS HONOUR CHIEF JUDGE HARRY HOW, EXAM. BY MR. WILDSMITH

1 letter on the previous page that one of the outcomes of this
2 letter is to say that the Province will not cost-share of the
3 Court Workers Program.

4 A. Yeah.

5 Q. And he suggests that the Province of Nova Scotia equalization
6 payment with respect to the administration of justice be
7 transferred directly, at least the Indian share, to the Micmacs.

8 A. Yeah.

9 Q. What do you think of that idea? Forlorn hope?

10 COMMISSIONER EVANS

11 That would have been a pretty forlorn hope.

12 A. I would have thought it would not have any chance of
13 success.

14 Q. Indeed.

15 CHAIRMAN

16 Well, before we leave that, is there such thing as
17 equalization payments with respect to the administration of
18 justice in the Province?

19 HIS HONOUR CHIEF JUDGE HOW

20 I'm sorry, My Lord?

21 CHAIRMAN

22 Is there such a thing as equalization payments covering the
23 administration of justice in the Province?

24 HIS HONOUR CHIEF JUDGE HOW

25 Oh, possibly, I don't know.

DISCUSSIONCHAIRMAN

I didn't think there was but there may be.

MR. WILDSMITH

I don't know myself.

CHAIRMAN

The cost, the Native Court Worker Program and the Legal Aid Program, they're not under equalization. They're separate cost-shared programs, are they not?

HIS HONOUR CHIEF JUDGE HOW

I think the Legal Aid Program is separate, My Lord, yes, it is.

MR. WILDSMITH

Yes. And certainly the Court Workers was set up that way as well.

CHAIRMAN

Yes.

HIS HONOUR CHIEF JUDGE HOW

I do know that we negotiate each year as to amount...

CHAIRMAN

I'm not sure you can equate these programs with equalization. Maybe you could then, you can't now.

MR. WILDSMITH

Let me briefly...

COMMISSIONER EVANS

Mr. Wildsmith, I know you're coming to some point and I'm just wondering what is the point you're trying to get out from this

DISCUSSION

1 witness?

2 MR. WILDSMITH

3 I'm looking at the level of support of the Attorney General's
4 Department for this Court Workers Program and I'm wondering
5 about any comments he may make as we go along through the
6 documents. I want to make sure the record is clear about the
7 history of what happened, at least to the extent that these
8 documents out of the Attorney General's files and out of the
9 Union's files are complete.

10 CHAIRMAN

11 It's pretty well, it's documented in great detail, isn't it.

12 COMMISISONER EVANS

13 Yes.

14 CHAIRMAN

15 Meaning that...

16 MR. WILDSMITH

17 Well there certainly are some gaps in it.

18 CHAIRMAN

19 Not many.

20 MR. WILDSMITH

21 For example, what happened after 1980. We seem to have
22 broken into a different mode. Originally we get support from the
23 Attorney General's Department for the program. Indeed, in the
24 past they had supported it and then all of a sudden there's a shift,
25 if I can put it that way, where this Minster and/or the

DISCUSSION

1 Government is saying, "We aren't going to cost-share on court
2 workers anymore."

3 COMMISSIONER EVANS

4 So there came a point when it stopped.

5 MR. WILDSMITH

6 Yes.

7 COMMISSIONER EVANS

8 And you say that it was because the Province of Nova Scotia
9 said, "We are not going to contribute."

10 MR. WILDSMITH

11 Yes.

12 COMMISSIONER EVANS

13 That's the point you were driving at?

14 MR. WILDSMITH

15 Yes. And...

16 COMMISSIONER EVANS

17 Aren't you there?

18 MR. WILDSMITH

19 And a complementary point, if I can put it this way, is this
20 issue has been one that the Indian community has placed on the
21 Provincial agenda since well before Mr. How was Attorney
22 General....

23 COMMISSIONER EVANS

24 Right.

DISCUSSIONMR. WILDSMITH

We saw the same thing when Mr. Giffin was here. There's a history, through the 70s and 80s, of some verbal support, very little financial support.

COMMISSIONER EVANS

Well, what's, isn't that usual with politicians? Lots of verbal support, very little financial support? That's not unusual, is it? As I understand what he was doing, this witness, he was recommending it to Treasury Board, Treasury Board turned it down, says, "If you have money in your own budget, take it out of that" and then the response was, "We have no additional money in our budget to fund it."

MR. WILDSMITH

Yes.

COMMISSIONER EVANS

And then you got back to the fight between how much contribution would be made by the Province. Whether it was going to be 50-50 and the Province said, "No". Mr. Buchanan says that is a Federal responsibility and that seems to have been the end of the social worker program.

MR. WILDSMITH

Yes. As far as this Minister's involvement with the Attorney General's Department.

COMMISSIONER EVANS

Right.

DISCUSSION

1 MR. WILDSMITH

2 But we heard some different evidence, I think yesterday,
3 and...

4 CHAIRMAN

5 Well, anyway, if we can sort of speed things up. As I see it...

6
7 MR. WILDSMITH

8 Q. Sure. I want to move away from the Court Workers Program
9 now to ask you a couple of questions about Indian policing.
10 okay. If you turn back in this volume to page 144...

11 A. Yes.

12 Q. You see a letter to yourself from the Union discussing the
13 concept of policing on Indian reserves.

14 A. From (Sergeant?) Henderson, yes.

15 Q. I'm sorry? From Sergeant Henderson, yes. And then we see a
16 fairly long gap until page 202. November of '79 now.

17 A. Yes.

18 Q. Which you write to your Deputy concerning a meeting with
19 you had with Mr. Henderson and Mr. Paul and you seem to
20 say in this memo at 202, "Indians can do more for their own
21 people than an outside policeman can."

22 3:45 p.m.

23 A. Yes.

24 Q. They prefer something called "Option 3(a), which would give
25 them their own police force. You've pointed out one of the

1 advantages of this is it may reduce your R.C.M.P. requirement.

2 A. It might do what?

3 Q. Reduce your R.C.M.P. requirement in the province?

4 A. Oh, yes, yes.

5 Q. And, finally, in the last paragraph, you say:

6
7 Personally, I would like to see innovations
8 introduced this year, if that is at all feasible.

9 Are you telling Mr. Coles then that you support this concept
10 and your instructions to him are to implement?

11 A. I would say it was very clear that I was.

12 Q. Good. And you notice the next page, again your notes on this
13 meeting, Item #2 says:

14
15 I will recommend Indian personnel on
16 reservations, Option 3(a).

17 A. Yes.

18 Q. And I take it, going away from the meeting with you, which
19 the representatives of the Union of Nova Scotia Indians had,
20 they would think you are committed to this program.

21 A. I would think so.

22 Q. Okay. Now if you look at page 217, you'll see a letter that Mr.
23 Coles sends to the Union of Nova Scotia Indians.

24 A. Oh, yes.

25 Q. And in that letter, he says at the end of the first paragraph:

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I understand the Attorney General approved in principle subject to the feasibility of the implementation of such a program.

A. Yes.

Q. Now I'll put it to you that's not quite correct, that it wasn't just an agreement in principle subject to the feasibility of implementation. What you understood is you thought this was the right way to go and your direction to Mr. Coles was to implement.

A. I've forgotten what I said to Coles but...

Q. I think you've just agreed with me that was your instructions to him.

A. Well, I think you're splitting hairs. I can agree with it in principle. The question is then, can it be implemented?

Q. Yeah.

A. Now I don't see a conflict in terms.

Q. Well, if you look at the second paragraph of Mr. Coles' letter, what he's saying is, "I'm sure you're aware there are pros and cons," et cetera.

A. Yes.

Q. And let's get together and determine the feasibility.

A. Yeah.

Q. Now the purpose of the Indian community with you was to get your agreement to implement it.

1 A. Yes.

2 Q. Now if you look over...

3 A. I told him I thought it was a good idea.

4 Q. Yes.

5 A. Yes.

6 Q. And you said...

7 A. Mr. Coles said, "We'll do it if it's feasible." You see a problem,
8 I take it?

9 Q. Yeah.

10 A. All right.

11 Q. Especially in light of the Union's response to you, or to Mr.
12 Coles' letter. This is December the 3rd.

13 COMMISSIONER EVANS

14 Doesn't that letter of December the 3rd indicate that there
15 was some disagreement among Indian Bands as to which was the
16 proper type of force to be employed?

17 MR. WILDSMITH

18 Can you help me out as to what page now?

19 COMMISSIONER EVANS

20 103...I'm sorry, 215.

21 MR. WILDSMITH

22 215, right. I think what it's saying, My Lord, is that nine of
23 the Bands in the province, each Band makes its own decision.
24 Nine Bands said, "We want Option 3(a)," and the purpose of
25 meeting with Mr. How was to get his support. It wasn't to talk

1 about feasibility. It was to get the approval of the Attorney
2 General of the Province to do this.

3 COMMISSIONER EVANS

4 3(a) or 3(b)?

5 MR. WILDSMITH

6 3(a). 3(b) is a different concept. Some Bands seem to prefer
7 3(b). The position of the Union has always been to let each Band
8 make up its own mind as to what it wants. And nine Bands were
9 saying, "This is what we want is a Micmac police force."

10 BY MR. WILDSMITH

11 Q. If you look at page 233 now, this is now January the 22nd,
12 the next year, is a submission on Option 3(a) to Mr. Coles.

13 A. Yes.

14 Q. You'll notice that the funding source mentioned on page 234
15 is solely from the federal government.

16 A. The what? The option?

17 Q. At the end of the first paragraph, it says: "Funding is
18 expected solely from the federal government for this limited
19 police force on reserves in Nova Scotia."

20 A. Yes.

21 Q. "Similar to existing arrangements on Quebec reserves."

22 A. Yes.

23 Q. Now did you have any involvement in this beyond the
24 meeting and the note that we've already looked at?

25 A. I'm not sure, Mr. Wildsmith, but this is familiar to me, when I

1 read this again. I don't think beyond that that anything took
2 place. I think, I've forgotten what 3(a) was. It seems to me it
3 was to have the R.C.M.P. assign people of Indian background
4 to the police dealing with reservations.

5 Q. No, that was Option 3(b). 3(a) was...

6 A. 3(a) was for them to have a separate police force.

7 Q. Yes, along the lines of municipal police forces.

8 A. All right, then we...

9 Q. And you explained that in your notes.

10 A. We had to settle for 3(b). I think that's the outcome of all
11 this.

12 Q. Why?

13 A. I don't remember why but I could speculate and say the feds
14 weren't prepared to provide the separate funding necessary
15 to police the reservations. They may have felt it was a
16 provincial responsibility, I don't know. If you have any
17 memoranda to that effect in your files.

18 Q. Well, I'd like to direct your attention to more memoranda but
19 the record now seems to be completely silent from 1980
20 through...

21 A. Well, that's what Mr. Coles probably meant by whether it was
22 feasible. You...Mr. Wildsmith, let me explain to you that when
23 you get into programs like this where there is a dual
24 jurisdiction, federal had jurisdiction over reserves and
25 Indians, right?

1 Q. Yes.

2 A. The province had jurisdiction over policing. You might well
3 find that there were difficulties in implementing a change of
4 policy on reservations. Indeed, I'd be surprised if there
5 weren't.

6 Q. Well, if you look back to this December 3rd letter on page
7 216, you'll see that all the Union was asking for from the
8 province was a letter confirming that 3(a) is considered a
9 valid program for policing.

10 A. That's the one where you explain...

11 Q. A Micmac police force.

12 A. You reminded me that that meant that there would be
13 Indians operating on reservations but not under a separate
14 police force, is that right?

15 Q. No, they would be like a municipal police force.

16 A. Oh.

17 Q. Like a municipal police force.

18 A. All right, then what did you say? All we need is a letter
19 confirming?

20 Q. Yes, that Option 3(a); that is, the municipal police force is
21 considered as a valid program for policing.

22 A. Well, you must remember that this went to Alan Clarke, not
23 to Harry How.

24 Q. Yeah, and Alan Clarke is in the Department of Social Services.

25 A. A copy went to me, yes, apparently.

1 Q. And you understand him to be the Coordinator for Aboriginal
2 Affairs in the province?

3 A. Well, all I can say, Mr. Wildsmith, we did not get 3(a). I can't
4 remember the reason. But you saw my support for it. The
5 question probably is, or the answer probably lies between the
6 two governments.

7 Q. Probably between the two provincial and federal
8 governments?

9 A. Yes.

10 Q. In any event, the letter that's requested here, apparently
11 from the documentation, was never forthcoming.

12 A. What wasn't forthcoming?

13 Q. The letter saying that the province considered 3(a) a valid
14 program. In other words, a letter of provincial support.

15 A. Oh, I don't know. Maybe it did.

16 Q. Well, it's not in the documents we have here. Do you have
17 any recollection of ever writing such a letter?

18 A. No, but I was in sympathy with the proposition but I can't
19 point to you a letter, no.

20 Q. Now we've talked about policing to some extent. We've
21 talked about court workers. And just to summarize the
22 previous evidence that you gave, while you were Attorney
23 General, there were no special programs supported by the
24 province to assist Indians in the criminal justice system.

25 A. That's right.

1 Q. No workshops, seminars, or training programs for judges,
2 lawyers, legal aid lawyers, prosecutors, probation officers.

3 A. Wait a minute. What's your...What's your...

4 Q. I'm saying that there was no training provided while you
5 were Attorney General to legal aid lawyers, judges, probation
6 officers, prosecutors on special problems that Indians have in
7 criminal justice.

8 A. We didn't call them in to train them, no.

9 Q. Pardon?

10 A. We didn't call them in to train them, no.

11 Q. No training program, no workshops, no seminars.

12 A. Yes, we didn't, no.

13 Q. Right, okay.

14 A. I don't know what we'd train them in, but maybe you have an
15 idea.

16 Q. How about cross-cultural understanding?

17 A. Cross-cultural?

18 Q. Yeah, "buzz" word. Cross-cultural understanding.

19 A. What's that mean?

20 Q. Does it mean anything to you?

21 A. Well, since it doesn't seem to, you tell me what it means to
22 you then, if you want me to answer it.

23 COMMISSIONER EVANS

24 Perhaps, Mr. Wildsmith, you tell him what you mean by it,
25 so he'll be able to answer you.

1 MR. WILDSMITH

2 Certainly. I mean...

3 HIS HONOUR CHIEF JUDGE HOW

4 A. There's lots of "buzz" phrases today. Maybe this is one of
5 them. Perhaps I should know.

6 Q. I mean programs that are designed to assist members of one
7 culture in understanding the differences of other cultures.

8 COMMISSIONER EVANS

9 Like Irish and Scotch, and reconcile those two, understand
10 their problems.

11 BY MR. WILDSMITH

12 Q. Nothing directed towards that, Mr. How?

13 A. I'm just sitting here thinking. Maybe common sense could be
14 perhaps involved here and a person might know what to say
15 to someone of the Indian extraction. Just by common sense
16 without a cross-cultural course. Maybe they're going to give
17 courses in common sense after awhile.

18 Q. One little question of a different sort. There's a letter in
19 Volume 25. We don't have to turn it up if you don't care to,
20 page 24, where Supt. Christen of the R.C.M.P. in July of 1978
21 says that...

22 A. I have to get that.

23 Q. Well, I can give you the upshot of it. We don't need to take
24 the time to turn it up.

25 A. All right.

- 1 Q. But in this letter, he refers to the Attorney General of Nova
2 Scotia commissioning a "criminal justice support group of
3 Nova Scotia."
- 4 A. Who says this?
- 5 Q. It's Doug Christen of the R.C.M.P.
- 6 A. Oh, yes.
- 7 Q. Do you ave any knowledge of such a entity, a "criminal justice
8 support group of Nova Scotia"?
- 9 A. Not immediately, no.
- 10 Q. Okay.
- 11 A. Does he indicate what it is?
- 12 Q. No. Nobody else seems to know either. I'd like to talk to you
13 for a moment about a newspaper clipping that's in Volume 41
14 at page 272.
- 15 A. Now which volume?
- 16 Q. 41?
- 17 A. 41. 272?
- 18 Q. Yes.
- 19 A. Thank you.
- 20 Q. This concerns a letter that you wrote to the Indo-Canadian
21 Association regarding the appointment of a librarian at
22 Acadia University?
- 23 A. Oh, yes.
- 24 Q. And there was some suggestion that your comments were
25 discriminatory?

1 A. Mrs. McDonough was frequently making those assertions.

2 Q. Yes.

3 A. In fact, I was surprised each day if she didn't have one.

4 Q. It suggests in there that your letter said something to the
5 effect that other things being equal, we ought to give native
6 Canadians a preference.

7 A. Yes.

8 Q. For positions where government funds are a major
9 contribution to the institution concerned. I'm wondering
10 about this expression "native Canadians".

11 A. Well, I didn't have a precise definition, more of a concept.
12 That is, people who are born and brought up in this country
13 might be roughly what I had in mind.

14 Q. Okay. It appears as though at the time that this gentleman
15 was a Canadian citizen.

16 A. I learned that afterwards, yes.

17 Q. And when you were apparently pressed as to what you
18 meant about "giving a preference to native Canadians," I think
19 you made a remark similar to what you just did, that "things
20 being equal, persons living for some time in a country have
21 earned some kind of preferred position.

22 A. Yes.

23 Q. I guess Indians as native Canadians are in a very preferred
24 position.

25 A. Well, I didn't make a distinction between races in the country,

1 no.

2 Q. Indians have been here longer than anybody else.

3 A. Well.

4 MR. CHAIRMAN

5 ...Natives Indians, are we?

6 MR. WILDSMITH

7 Q. In any event, what I want to focus on is the last portion of
8 this article, it says generally you quoted:

9 I am concerned today on every occasion
10 that some person of minority race applies for a
11 position and is not accepted, then it's proper to
raise the complaint of discrimination.

12 A. Yes.

13 Q. My reading of this, and please correct me if I'm wrong, is that
14 you wrote this letter and were mistaken about the factual
15 basis behind it.

16 4:00 p.m.

17 A. No, no.

18 Q. In other words...

19 A. No, I wasn't.

20 Q. That Mr. Jain was a Canadian citizen and you didn't know it.

21 A. Mr. Jain... Was it Janos?

22 Q. J-a-i-n, in this article.

23 A. Yes. Mr. Jain was admittedly a naturalized Canadian, I think
24 recent naturalized, but that wasn't the point. His contention
25 was that he was discriminated against because he was of a

1 minority group in this country, if I remember rightly. And
2 my answer to him was that the employer might want in the
3 person employed certain skills or characteristics; i.e. might
4 want someone who got along well with people; (b) might
5 want someone who was good at managing; might want
6 someone who was good at, in terms of the library,
7 organization. There were a number of factors besides colour
8 or anything else. Colour would not enter into it, in my view,
9 or should not. But those other characteristics; that is, the
10 characteristics which recommended a person for the
11 particular position to be filled were, I think, an employer's
12 right and responsibility to select the person who best suited
13 those criteria. That was my basis...

14 Q. Sure, and you would expect that to be set out in a job
15 description.

16 A. Pardon?

17 Q. When they're advertising the position.

18 A. Well, I suppose, Mr. Janos or Jain, then when he didn't get it,
19 he complained to it and also, as many of those kind of people
20 did, they frequently wrote an open letter, which was Mrs.
21 McDonough's favourite avenue to get something to the public
22 and they would write their, send a copy to each Member of
23 the legislature.

24 Q. Is that why you wrote, by the way?

25 A. That's why I replied.

1 Q. Because it was to the Human Rights Commission. It wasn't to
2 you as an Attorney General.

3 A. It was me as a member, as a person, as a citizen.

4 Q. And you saw fit to respond to it.

5 A. Well, I got a little annoyed about accusing Acadia of racial
6 bias.

7 Q. Did you...

8 A. When there was nothing in the letter to indicate Acadia had
9 been.

10 Q., Would you acknowledge that sometimes those complaints are
11 justified?

12 A. Well, they had a hearing on it. It was found it wasn't
13 justified.

14 Q. Yeah.

15 A. All right.

16 Q. Your letter was before the hearing, was it?

17 MR. CHAIRMAN

18 I don't know how...

19 MR. WILDSMITH

20 All right, I'll leave that topic.

21 MR. CHAIRMAN

22 This is related in any way to your client's interests, Mr.
23 Wildsmith. I take it these are...

24 MR. WILDSMITH

25 Well, I think discrimination doesn't...

1 COMMISSIONER EVANS

2 I thought it favourable to your clients.

3 MR. WILDSMITH

4 Well, in one sense, it was.

5 MR. CHAIRMAN

6 All right.

7 MR. WILDSMITH

8 Except we didn't see the preference accorded in the court
9 worker or policing programs.

10 MR. CHAIRMAN

11 To complete the record, whoever this person was that
12 complained, it was dealt with by some commission?

13 HIS HONOUR CHIEF JUDGE HOW

14 Yes, by a judge.

15 MR. CHAIRMAN

16 The Human Rights Commission?

17 HIS HONOUR CHIEF JUDGE HOW

18 Yes.

19 MR. CHAIRMAN

20 And then the case was dismissed?

21 HIS HONOUR CHIEF JUDGE HOW

22 Yes.

23 MR. WILDSMITH

24 Speaking of...

25

COMMISSIONER EVANS

1
2 That's like quoting a dissenting judgement to support a
3 problem, a legal problem.

MR. WILDSMITH

4
5 No, I think part of the point is...

MR. CHAIRMAN

6
7 Anyway, can we move on?

MR. WILDSMITH

8
9 I've only got a couple of more points.

BY MR. WILDSMITH

10
11 Q. One is about judicial councils. I'm wondering if you ever
12 made a complaint to the Judicial Council?

13 A. I passed through the Judicial Council a complaint made to me,
14 I believe through the Attorney General against a judge in
15 Digby, yes.

MR. MACDONALD

16
17 My Lord, I think, again, we'd better be cautious about
18 identifying other people in other cases.

MR. WILDSMITH

19
20 Q. Certainly, and I'm not going to ask about particular cases. I
21 only wanted to know whether he had and whether it was in
22 his capacity as Attorney General or in his capacity as Chief
23 Judge.

24 A. Capacity of Chief Judge.

25 Q. And say that this was a case that was referred to you by the

1 Attorney General?

2 A. I think the complaint came to the Attorney General, yes, and
3 was passed to me for my consideration and either action or
4 recommendation.

5 Q. And you referred it on to the Judicial Council.

6 A. I took the action.

7 Q. And it's fair to say, is it, that one of the responsibilities of a
8 Chief Judge is to bring matters involving his court members to
9 the attention of the Judicial Council?

10 A. Well, it doesn't have to go directly to them, but he has to deal
11 with complaints about the court, the functioning of the court,
12 yes, and the individuals in the court.

13 COMMISSIONER EVANS

14 Anybody can make a complaint, can they not?

15 HIS HONOUR CHIEF JUDGE HOW

16 Yes.

17 MR. WILDSMITH

18 Certainly.

19 COMMISSIONER EVANS

20 And then it goes to the Judicial Council and they deal with it.
21 If it's made to the Chief Judge, then he passes it on to the Judicial
22 Council. If it's made to the Attorney General, he passes it on to
23 the Judicial Council and they deal with it.

24 MR. WILDSMITH

25 Well, I'd like his advice on one point.

1 BY MR. WILDSMITH

2 Q. And it's this, whether if you have knowledge of something in
3 the absence of a complaint that appears to be judicial
4 misconduct, do you feel that it's part of your responsibility as
5 Chief Judge to refer it yourself, based on your knowledge,
6 without complaint to the Judicial Council?

7 A. Well, it's my responsibility to deal with it and that might
8 include what you suggest.

9 Q. Okay. And one last item dealing with juries. What I wanted
10 to ask you is based on your experience, some 19 years as a
11 practicing lawyer in criminal courts, as well as Attorney
12 General, and I'm wondering if you would have considered it
13 advisable if you were defending a white man charged with
14 killing an Indian, whether you would think it advisable to try
15 to keep Indians off the jury, putting on your defence hat?

16 A. I really don't think so. Our jury selection system is somewhat
17 difficult in the sense that you don't have the latitude to
18 examine the applicants, if you will.

19 Q. But you, as a defence attorney, have...

20 A. No, I...

21 Q. Peremptory challenges?

22 A. Pardon?

23 Q. You have peremptory challenges?

24 A. Yes, but I said earlier, and I repeat now, I think the jury
25 system evokes a chemistry in people who serve on it of

1 dedication to rendering a just verdict. I believe that very
2 firmly.

3 Q. So does that mean you don't exercise peremptory challenges?

4 A. I...Of course you do, but not on the basis of race, I'm saying.

5 Q. I see, so you wouldn't have a concern about...

6 A. I might not like the look of the person, I might know
7 something about their background, but I'm not, I'm not
8 agreeing that I would look at the colour of their complexion.

9 Q. So what you're saying is it would not be advisable as a
10 defence counsel to keep an Indian...

11 A. I can't think so. I wouldn't do so.

12 Q. Okay.

13 A. And I wouldn't recommend anybody else do so.

14 Q. Let me move on to a different point about the jury system
15 then. And I guess this would be Exhibit now 147. It's an
16 article that will be put in front of you. Exhibit 147 is an
17 article by Parker Donham on jury selection.

18 A. Yes.

19 Q. Of course we don't know anything about the truth of this
20 article, but I only want to put a couple of propositions that
21 flow from it to you.

22 MR. SAUNDERS

23 Well, before my friend does that, we've had a lot of
24 introduction of news clippings over the last couple of days, My
25 Lords, and I have difficulty with this one. My friend has just said

1 that we have no idea about the truthfulness of the commentaries
2 or the facts so-called cited in the report. Is my friend intending to
3 put all of this article before the witness and ask for his comments,
4 or portions thereof, or to test this witness's experience as a former
5 defence counsel over some 19 years with respect to what Mr.
6 Donham asserts as being so? Or is my friend putting these
7 propositions to this witness as a present judge, to which I would
8 take exception, because I don't think it's proper for any judge to
9 be before Your Lordships expressing opinions on matters like this.
10 So I have all of those concerns and I'd like my friend to be very
11 specific in what he intends to do with this thing before it's, indeed,
12 introduced as an exhibit.

13 COMMISSIONER POITRAS

14 Well, my question is, do we need the article for the
15 question?

16 COMMISSIONER EVANS

17 I'd like to ask, don't you have a Juror's Act in Nova Scotia?

18 MR. SAUNDERS

19 Yes, we do, My Lord.

20 COMMISSIONER EVANS

21 Isn't it the same in every county?

22 MR. SAUNDERS

23 Oh, absolutely. We can have a copy of that made and
24 introduced tomorrow, if it's of any use to you.

25

1 COMMISSIONER EVANS

2 And there's a certain procedure that goes through.

3 MR. SAUNDERS

4 Exactly.

5 COMMISSIONER EVANS

6 Put all the names in like you do in a bingo game and you
7 pull them out.

8 MR. SAUNDERS

9 That's right and the function of the Prothonotary as to what
10 happens in the determination of names from the polling lists is set
11 out in the civil procedure rules and we can introduce that as an
12 exhibit as well.

13 COMMISSIONER EVANS

14 So it's the luck of the draw.

15 MR. SAUNDERS

16 Yes.

17 COMMISSIONER EVANS

18 I'm not sure what the...

19 MR. WILDSMITH

20 I want to ask him on the assumption that the information in
21 here is correct, but in answer to your...

22 COMMISSIONER EVANS

23 That's an assumption I don't think anybody should make. If
24 you're going to pick out something...If it agrees with what's in the
25 Juror's Act, then, that's fine. But if it's some, just some...

1 MR. WILDSMITH

2 It's really talking about how the Juror's Act operates in
3 practice.

4 MR. CHAIRMAN

5 But don't we know?

6 MR. WILDSMITH

7 Well, this came as a revelation to me.

8 MR. CHAIRMAN

9 What?

10 MR. WILDSMITH

11 What's in here.

12 COMMISSIONER EVANS

13 Well, that may be because it's inaccurate.

14 MR. WILDSMITH

15 Perhaps so.

16 COMMISSIONER POITRAS

17 Well, can you not ask the question without the benefit of the
18 article?

19 MR. CHAIRMAN

20 Look, Nova Scotia has a Juror's Act. That's the law. That's
21 the way the juries have to be selected.

22 MR. WILDSMITH

23 Indeed. I simply want to draw attention to one effect or
24 impact that it may well have and seek his opinion as former
25 Attorney General on it.

1 MR. CHAIRMAN

2 Just so I won't be accused of being biased or anything, but if
3 somebody from Newfoundland comes over to Canada and gets
4 himself into trouble and is going to be tried in North Sydney,
5 there may not be one former Newfoundlander drawn to serve on
6 that jury. Are you going to suggest that that person is going to be
7 discriminated against? They may think they are, but the Juror's
8 Act is there.

9 MR. WILD SMITH

10 If Your Lordship's point is that Indians are in no different
11 position in terms of discrimination than anybody else, then if you
12 were in Newfoundland, then I would...

13 MR. CHAIRMAN

14 What I'm saying is that you have a Jury Act, as I understand
15 it, in Nova Scotia. And that Jury Act, obviously the mix of the
16 people you get out of the jury lists depends on the make of the
17 population in the area in that particular county, isn't it?

18 MR. WILD SMITH

19 Yes.

20 MR. CHAIRMAN

21 I would suspect that if you try to bring people in from other
22 counties, you will be overwhelmed with protestations that people
23 are not being tried by a jury of their peers. So...

24 MR. WILD SMITH

25 The thrust of what this article is suggesting is that even

1 under our existing Juror's Act that you don't get a proportionate
2 representation of Indians on the juror's list, for whatever reason.

3 COMMISSIONER EVANS

4 Well, that could well be. What do you want, it weighted in
5 favour of minority groups?

6 MR. WILDSMITH

7 No. Well, I'm not advocating that at the moment but I'm
8 saying as a minimal proposition, the juror's list should be
9 representative of the make-up of the population from which it is
10 selected. If it's not working out that way, there must be
11 something wrong.

12 COMMISSIONER EVANS

13 I don't think that follows because if it is made up the same
14 and the people who are eligible for jury duty, if their names are
15 put in that box, and the selectors do that, if there's something
16 wrong with the method of selection, then there may be some
17 cause of action against those selectors. But assuming that they
18 follow out their instructions properly, all the names go into a box.
19 Then they are cut down again by selectors and finally you will get
20 a bingo game going and you pull them up as court. I'm having
21 trouble...

22 MR. WILDSMITH

23 If it was a true and random process, you would expect the
24 proportion of Indians on the master list to be the same as the
25 representation amongst the electorate.

1 MR. CHAIRMAN

2 You know, Mr. Wildsmith, we're having a great deal of work
3 done by very knowledgeable people...

4 MR. WILDSMITH

5 Okay, well, I'll leave this one then.

6 MR. CHAIRMAN

7 Into these areas, but I don't want to leave it there. And we
8 will get that information. If it turns out, for instance, that in the
9 compilation of jury lists, forget the drawing of the jury, the first
10 thing is that someone, I presume, goes from door to door in the
11 county and takes down the name of every person over 19 years of
12 age, and under 65, I think, that's the general provision in the Jury
13 Act. And they are eligible for jury duty, unless they're...

14 VOICE

15 Not the electoral lists, voters' list.

16 MR. CHAIRMAN

17 Voters' list, is it? All right, the voters' list, and they all go in
18 there. Now if that isn't the most satisfactory method of selecting a
19 jury list as it relates to native persons, then the people who are
20 doing the work for us will certainly spot it and bring it to our
21 attention.

22 MR. WILDSMITH

23 Thank you. I'll wait for that report then.

24 MR. CHAIRMAN

25 Mr. Saunders?

1 MR. SAUNDERS

2 My Lords, I'm satisfied that all issues have been
3 exhaustively covered and we have no questions for Judge How.

4 MR. CHAIRMAN

5 Speaking of exhaustion, we certainly are. Thank you very
6 much, Chief Judge How.

7 HIS HONOUR CHIEF JUDGE HOW

8 Thank you, My Lord.

9 MR. CHAIRMAN

10 We'll adjourn until tomorrow.

11 4:20 p.m. INQUIRY ADJOURNED UNTIL MARCH 24TH AT 9:30 A.M.

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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 23day of March 1988 at Dartmouth, Nova Scotia