

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

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- Held: March 24, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia
- Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
Hon. Justice G. T. Evans, Commissioners
- Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel
- Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.
- Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre
- Mr. Donald C. Murray: Counsel for Mr. William Urquhart
- Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate
- Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia
- Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada
- Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine
- Mr. Charles Broderick: Counsel for Sgt. J. Carroll
- Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Staff Sgt. Wheaton and Insp. Scott
- Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for
the Union of Nova Scotia Indians
- Mr. E. Anthony Ross: Counsel for Oscar N. Seale
- Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front
- Court Reporting: Margaret E. Graham, OCR, RPR

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Pres

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1 MARCH 24, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Good Morning. Mr. MacDonald?

4 MR. MACDONALD

5 Good Morning, My Lord. Thank you. The next witness is
6 Michael Whalley.

7
8 MICHAEL WHALLEY, duly called and sworn, testified as follows:

9
10 EXAMINATION BY MR. MACDONALD

11
12 Q. For the record, what's your name?

13 A. Michael Whalley.

14 Q. You reside in Sydney, Mr. Whalley?

15 A. Yes.

16 Q. At the present time, I understand you're retired as City
17 Solicitor for the City of Sydney?

18 A. Yes, that's correct.

19 Q. Although you're functioning as such, practically.

20 A. On a practical basis, yes.

21 Q. When did you retire?

22 A. Last September.

23 Q. How long did you hold that position?

24 A. City Solicitor since 1958.

25 Q. Just trace for the Commissioners, if you would, your

1 experience since graduating from law school. When did you
2 graduate?

3 A. I graduated from law school in 1949, was admitted to the Bar
4 in 1949. I practiced law in the City of Sydney until 1954
5 when I was appointed Stipendiary Magistrate for the City.
6 That was a part-time basis. I also practiced along with that
7 position.

8 Q. Until you became?

9 A. Until I became City Solicitor in 1958.

10 Q. What does "Stipendiary Magistrate" mean?

11 A. A jurisdiction of all matters that arose within the territorial
12 jurisdiction of the City of Sydney, within the boundaries of
13 the City of Sydney. All criminal, quasi-criminal matters came
14 from the Stipendiary.

15 Q. Similar to a Magistrate's Court?

16 A. Exactly the same as Provincial Magistrate today.

17 Q. Okay.

18 MR. CHAIRMAN

19 But you were permitted to practice law as well, Mr. Whalley?

20 MR. WHALLEY

21 Yes, that was the system in Nova Scotia in those days. Every
22 town and city had a stipendiary and the job was part-time
23 because it wasn't...The pay was commensurate with the part-time
24 work.

25 BY MR. MACDONALD

1 Q. You weren't paid from the fines, were you?

2 A. No.

3 MR. CHAIRMAN

4 But that's long since disappeared, I take it?

5 MR. WHALLEY

6 Oh, I was the last stipendiary for the City. My predecessor
7 was J. W. Madden.

8 MR. CHAIRMAN

9 J. W.?

10 MR. WHALLEY

11 He was a well-known lawyer in this province.

12 BY MR. MACDONALD

13 Q. As City Solicitor, Mr. Whalley, generally what would be your
14 duties?

15 A. Well, to handle all matters pertaining to the legal affairs of
16 the City, its boards and commissions. You'd have to prosecute
17 all city by-laws, all offences under the Liquor Control Act,
18 Motor Vehicle Act. Nothing to do with criminal matters.

19 Q. There is a Police Commission for Sydney, is there?

20 A. Yes, Sydney has had a Police Commission since 1907.

21 Q. And as City Solicitor, did you have some role with that
22 Commission?

23 A. Yes, solicitor for the Commission, an ex-officio member of that
24 Commission.

25 Q. How is that Commission constituted? Who's on it?

1 A. Well, from 1907 until the new Police Act in Nova Scotia was
2 passed in 1975, the Police Commission was established under
3 the provisions of the City Charter of the City of Sydney and it
4 could either be the Mayor and all council, or the Mayor and
5 six members of council. And over the years, some years it
6 was composed of the whole council and some years just part
7 of council.

8 Q. So all members of the Commission would be elected...

9 A. All members of the Commission up until 1975 were elected.

10 Q. What's the situation since '75?

11 A. After the Police Act came into effect in 1975, the City passed
12 a by-law in 1976 and was required to establish a Police
13 Commission but they had an option as to how it would be
14 established. The option they followed was they have a Police
15 Commission consisting of the Mayor, six members of City
16 council, two non-elected citizens of the City, and one member
17 appointed by the Attorney General's Department. That is and
18 has been since 1976, the Police Commission of the City of
19 Sydney.

20 Q. But prior to that, it was only the Mayor and aldermen, is it?

21 A. Prior to that.

22 Q. We had evidence, and this is what... There was evidence from
23 Mr. Mattson, I think, that he was on the Commission.

24 A. Yes, there were some members of the Police Commission, they
25 had a voice, but no vote. They were just ex-officio members

1 of the Police Commission.

2 Q. I see, nonvoting.

3 A. Nonvoting members.

4 Q. And is it the fact that also the Magistrate John F. MacDonald,
5 was a member of the Police Commission?

6 A. He was a member of the Police Commission, yes.

7 Q. In the same capacity, nonvoting?

8 A. Same capacity, nonvoting.

9 Q. What was the function of the Police Commission? What did it
10 do prior to '75?

11 A. Well, the same function as they perform today. The
12 management and control of the police force in the City of
13 Sydney is under the direction of the Board of Police
14 Commissioners. They hired and fired and dealt with all
15 matters pertaining to the police force, with the exception of
16 the Chief of Police, and that's the same today. The Chief of
17 Police is an appointee by City council, even under the present
18 Police Act.

19 Q. Was there and is there a provision for the Commission to
20 carry out investigations of any complaints that are lodged
21 against police officers?

22 A. Yes, very definitely.

23 Q. Would that include the police... I'm sorry, the Chief of Police?

24 A. Including the Chief of Police.

25 Q. What's the mechanism for lodging a complaint with the

1 Commission?

2 A. I don't know if there's any formal mechanism for lodging a
3 complaint against the Chief of Police. It would just...

4 Q. Any member of the force?

5 A. Well, under the Police Act, there's very definite, you can
6 complain... Normally what happens if you have a complaint
7 against a member of the force, the complaint would usually
8 start with the Chief of Police, and that's supposedly how it
9 should be done. In the case of a city, where the mayor is
10 available, most complaints would come, I would suggest,
11 through the mayor or one of the aldermen, or some member
12 of the Police Commission.

13 Q. Prior to '75, did the Police Commission have the authority to
14 initiate its own review or investigation of the force?

15 A. Yes, and they had power to subpoena witnesses to appear
16 before them. They had very extensive power to deal with
17 provisions of the Charter. They also had power to make, pass
18 by-laws as well.

19 Q. All right. I want to put several names to you and get your
20 comments of your knowledge of the individuals and your
21 view of the people. Let me start, first of all, with John
22 MacIntyre. What's been your experience with him over the
23 years?

24 A. Well, I've known John MacIntyre ever since I started
25 practicing law in Sydney. Certainly when I was Stipendiary, I

1 would see him on practically a daily basis. And after I was
2 appointed City Solicitor, I would see him very often, and
3 particularly after he became Chief of Police. Because I was in
4 the same building and if anything came up of a legal nature, I
5 suppose because I was handy, they would run to me for
6 advice.

7 Q. As a Stipendiary Magistrate, you said you saw him almost
8 daily. Was it the practice that the police would prosecute
9 themselves?

10 A. Yes. Particularly on guilty pleas, they would appear before
11 the court and give the facts

12 Q. We've seen documents and perhaps I should show you one,
13 which shows "City Court" and on the top of the page, it shows
14 the name of the prosecutor. I just wanted to see if that would
15 indicate to you that that person was, in fact, there. I'll get the
16 number here. It was introduced through Mr. Patterson. It's
17 Mr. Patterson's record. Exhibit 120, please. Exhibit 120, Mr.
18 Whalley, was a group of documents that were introduced
19 when Robert Patterson was on the stand. And I'm only using
20 them for illustration. But on the fourth page, there is a
21 document showing "Police Court - City of Sydney," and then
22 name of prosecutor, defendant, and so on.

23 A. Yes.

24 Q. Would that be from the Stipendiary Magistrate files or...

25 A. That would be from a Police Court of the City under the, yes,

1 and there's a place for the Stipendiary to sign if it was
2 necessary. That more properly could be described as the
3 informant.

4 Q. The informant as opposed to...

5 A. As opposed to prosecutor.

6 Q. Would it indicate in this, necessarily indicate that the person
7 described would have been present at the...

8 A. Not necessarily, no.

9 Q. Over the course of the years then dealing with John
10 MacIntyre, what was your impression of him as a policeman,
11 as an individual, and so on?

12 A. I always thought John MacIntyre was a capable officer, very
13 thorough policeman. He was strict, but he was a good police
14 officer and had a good reputation as a police officer.

15 Q. To your knowledge, was there ever any complaint filed with
16 the Police Commission alleging improper conduct by Chief
17 MacIntyre?

18 A. Never.

19 Q. Ever any suggestion made to you through the Police
20 Commission or otherwise that he was a racist?

21 A. No, never.

22 Q. That he was unfair to particular people.

23 A. Not to my knowledge, no.

24 Q. That he abused prisoners.

25 A. Never a suggestion of that. And down through the years,

1 there had been lots of allegations against other members of
2 the Police Department, but never John MacIntyre, nor William
3 Urquhart.

4 Q. But there had been experiences with the Police Commission
5 where complaints had been lodged about...

6 A. Yes.

7 Q. Brutality?

8 A. Brutality and investigations, prosecutions.

9 Q. Racism?

10 A. Firings. Not so much racism. Usually it was abuse of
11 prisoners.

12 Q. What about Mr. Urquhart, what do you say about him?
13 What's your experience with him over the years?

14 A. Very good experience. He was a fine gentleman and a good
15 policeman.

16 Q. And you've said...

17 A. And a good reputation in the community.

18 Q. Donnie MacNeil?

19 A. Yes, I went to university with Donnie and I articulated in the
20 same law firm. I was articulated to his father. I knew him very
21 well.

22 Q. What was your experience with him?

23 A. Donnie was a clever lawyer, a good prosecutor. I always
24 thought he was very fair. He was tough but he was fair. He
25 had a good reputation in the community as well, particularly

1 as a lawyer.

2 Q. Any complaints ever lodged with him, about him to your
3 knowledge?

4 A. There was one, I forget what year it was, he was prosecutor
5 and something in relation to a comment he made regarding
6 Indians at Eskasoni, I think.

7 Q. Prosecuted, that was with the Nova Scotia Human Rights
8 Commission?

9 A. I believe it was with the Human Rights Commission.

10 Q. Do you know the result of that?

11 A. I think at that time the then been Attorney General, which
12 was Mr. Harry How, I think came to his defence. And I don't
13 know what really happened to it. Nothing very serious, I
14 don't think. I know there was an allegation made against him
15 at that time.

16 Q. Did he ever appear before you when you Stipendiary
17 Magistrate?

18 A. Yes.

19 Q. In what capacity?

20 A. Usually as a defence lawyer.

21 Q. Did you ever have the opportunity to appear as defence when
22 Mr. MacNeil was prosecuting?

23 A. Yes.

24 Q. What do you say or what can you tell us about his practice
25 with respect to disclosure of information?

1 A. I never had any problem with him. You know, if you went to
2 see him about a case, he would tell you what he had and if he
3 had any statements, you asked for them, he'd show them to
4 you, certainly.

5 Q. Would he give you copies of statements?

6 A. If you asked for them, yes.

7 Q. Was it left on that basis that you asked and you received?

8 A. I think that would be fair to say, yes.

9 Q. He didn't seek you out.

10 A. No.

11 Q. What about Moe Rosenblum?

12 A. I knew him very well also.

13 Q. What was your experience with him?

14 A. He was a very capable, able lawyer; particularly criminal
15 lawyer in his day and I'd say back in 1971, he was as able as
16 any criminal lawyer in this province. That was his reputation,
17 certainly.

18 Q. Mr. Rosenblum also practiced as a prosecutor, did he not?

19 A. Yes, for a time.

20 Q. Do you have experience defending when he was prosecuting?

21 A. Oh, I think so, yes.

22 Q. Mr. Khattar has testified here that the practice in those days
23 was that there was no disclosure. Can you comment on that?

24 A. I think that's correct. No disclosure, but if you asked the
25 prosecuting officer if there was a statement, he would disclose

1 it. No disclosure voluntarily, certainly. That was not the
2 practice.

3 Q. Do you know if that's changed over the years?

4 A. Oh, it's changed now, yes.

5 Q. What do you understand the practice to be...

6 A. I understand the practice to be now that the Crown gives you
7 a file with the whole case and its statements, everything.

8 Q. Is that voluntarily? Do they seek you out or do you still have
9 to go find it?

10 A. I think pretty well they seek you out and give it to you.
11 Maybe just before you go into court but you do get it.

12 Q. Mr. Khattar, Simon Khattar?

13 A. Very capable, competent lawyer, certainly had a lot of
14 experience. Again, with Mr. Rosenblum in 1971, he was as
15 able, in my opinion, as any lawyer in this province.

16 Q. As City Solicitor, would you have dealings on a regular basis
17 with the Chief of Police of the day?

18 A. Oh, yes, practically daily basis.

19 Q. Become fairly familiar with these individuals?

20 A. Yes, definitely.

21 Q. Were you familiar with Gordon MacLeod?

22 A. Yes.

23 Q. How long was Mr. MacLeod Chief of Police, approximately?

24 A. 1965 until about 1972, I believe, six or seven years.

25 Q. If Chief MacLeod were contemplating firing someone, is it

1 something he'd likely discuss with you?

2 A. Probably after the fact.

3 Q. After the fact.

4 A. If Gordon was going to fire somebody, he'd do it right on the
5 spot.

6 Q. He'd do it right on the spot. He didn't wait around to think.

7 A. He didn't wait around for advice, no, on things like that.

8 Q. Did Mr. MacLeod or Chief MacLeod ever discuss with you the
9 possibility that he was going to fire John MacIntyre?

10 A. No.

11 Q. No?

12 A. They had a very good rapport. John had worked...Gordon
13 MacLeod before he was appointed Chief of Police had come up
14 through the Detective Department and he, and John
15 MacIntyre worked with Gordon in the Detective Division for
16 many years prior to Gordon's becoming Chief of Police.

17 Q. If Gordon MacLeod were contemplating firing John MacIntyre,
18 would you expect that's something he would discuss with
19 you?

20 A. Oh, I would think if he had ever contemplated it, yes. He
21 would have mentioned it to somebody, the Police Commission
22 or to myself or to the Mayor.

23 Q. There's been evidence given at this Commission by Staff
24 Sgt.Wheaton, and it's found on pages 7836 and also 7850 of
25 the transcript, where he says that he had been advised by

MR. WHALLEY, EXAM. BY MR. MACDONALD

1 Mike MacDonald, Red Mike, that the morning of the...
2 following the Seale stabbing, Red Mike had driven Chief
3 MacLeod to John MacIntyre's home and that the Chief told
4 MacIntyre he was so upset that he didn't come out the night
5 before that he was contemplating firing him because he
6 wasn't doing his job thoroughly. Has that ever...

COMMISSIONER EVANS

7
8 I think you said he told MacIntyre...

MR. MACDONALD

9
10 Did I have it...

COMMISSIONER EVANS

11
12 I think you had the wrong name. He told Red Mike, is that
13 it?

BY MR. MACDONALD

14
15 Q. He told Red Mike that he had passed that on, that he had told
16 MacIntyre he was going to fire him.

17 A. That's the first I've heard of it.

18 Q. Would that be consistent with your knowledge of MacLeod,
19 that he would get someone to drive him out to John
20 MacIntyre's house to tell him that sort of thing?

21 A. My opinion is if Gordon MacLeod felt like that, he would have
22 just got on the telephone and told MacIntyre to get into the
23 office post haste and they would have had it out in the office.
24 I don't think he would have gone to his house.

25 Q. Has Red Mike MacDonald ever told you of that incident?

1 A. No, he certainly has not.

2 Q. Do you have any knowledge personally and any involvement
3 with the Seale incident, the Seale murder?

4 A. My only involvement is I went to a meeting with Chief
5 MacIntyre and Sgt. Urquhart at Mr. Edwards' office some time
6 in July of 1982 with Harry Wheaton and Frank Edwards.
7 That's my only direct involvement in the matter.

8 9:51 a.m. *

9 Q. We'll come to that. Were you kept advised of the
10 investigation as it went on?

11 A. Starting with the letter that was written by Mr. Aronson to
12 the Chief.

13 Q. I'm sorry, I'm talking of the time of the murder itself.

14 A. Oh, in '71.

15 Q. Yes.

16 A. None whatsoever.

17 Q. It's not something that John MacIntyre would be reporting to
18 you about?

19 A. No, as I said...

20 Q. Did you discuss it with him at all?

21 A. Not at all. Sometimes something would come up relating to a
22 criminal matter that they might discuss with a solicitor but
23 certainly not...never in that case as far as I can recollect.

24 Q. Were you aware of the trial going on?

25 A. Oh, I'm sure I was at the time, but I have no independent

1 recollection of it today.

2 Q. Would you have any file of your own dealing with that
3 particular case, the murder?

4 A. Not as of '71, since '82, I have, yes.

5 Q. Thank-you. It's been suggested, in fact it's been more than
6 suggested, it's been stated, again by Staff Sergeant Wheaton,
7 that in 1971 there was what he called a redneck atmosphere
8 in Sydney and he described that to be that there were racial
9 problems. He described redneck as being a southern United
10 States sort of thing. Mr. Aronson has given evidence here as
11 saying that from his discussions with Wheaton that redneck
12 meant intolerant, intolerant towards members of the other
13 race. Now, you were in Sydney in '71 and indeed for a long
14 time on both sides, what's your comment on that?

15 A. Personally I think it's ridiculous. I don't think there was any,
16 I always felt we had a very broad-minded community and
17 good rapport with, not only the Indian, but the other minority
18 groups in the City. That's my opinion anyway.

19 Q. I've placed in front of you a newspaper article which was
20 introduced as Exhibit 146. And I want to direct your
21 attention to a paragraph, you've got a different copy than me,
22 so I don't...yes, it's in fact circled on that page. Where it's an
23 alleged interview with a member of the jury in the Marshall
24 case.

25 COMMISSIONER POITRAS

1 Could we have the date on the newspaper, Mr. MacDonald?

2 MR. MacDONALD

3 Yes, My Lord. I understand it's the Toronto Star of June the
4 9th, 1986.

5 Q. Indicating that the jury said "With one redskin and one Negro
6 involved, it was like two dogs in a field--you knew one of
7 them was going to kill the other. I would expect more from a
8 white person. We are more civilized." Had you ever seen that
9 comment before?

10 A. Never, until you showed it to me this morning.

11 Q. Was there a black section of Sydney in 1971?

12 A. I don't know if you'd call it a black section. Most of the black
13 people live in the Whitney Pier area and that's historically the
14 fact, the same as do most of the people of Ukrainian
15 extraction and Polish extraction, because most of them
16 worked at the steel plant and that was the closest position to
17 their work. The same reason as most of the people that work
18 with the CNR all lived in the north end of Sydney. That's
19 where they...they'd live near where they went to work near
20 the round house, so they built homes in the north end of the
21 city and the same with black people. Most of them worked in
22 the steel plant, and lived in wards 5 or 6 of the city.

23 Q. Are you saying that in your experience and to your
24 knowledge there would not be discrimination in Sydney in
25 1971?

1 A. Certainly no more than anywhere else. In fact we had, what I
2 considered, a very good rapport, particularly with the Indian
3 people. In 1969 the city entered into an agreement with the
4 people on the reserve, the Band council, and that was the first
5 agreement of its kind negotiated anywhere in Canada with a
6 municipality. In fact, the then Minister who was Jean
7 Chrétien came to Sydney to sign the agreement because it
8 was the first one of its kind in Canada.

9 Q. And that was an agreement whereby the City of Sydney
10 agreed to provide...

11 A. Services to the Band council, yeah.

12 Q. And that required an agreement with the Federal
13 Government.

14 A. That required an agreement with the Band council and the
15 Federal Government because the Federal Government was
16 going to pay the shot.

17 Q. Okay. I'll come to that in just a second. Tell me over your
18 years in, you may not be able to remember particular years,
19 but in 1971, were there any black members of the police
20 force?

21 A. I am not sure, 1971, to be honest I can't remember.

22 Q. Are there today?

23 A. There are today.

24 Q. How many?

25 A. Today there are two.

MR. WHALLEY, EXAM. BY MR. MacDONALD

1 Q. What's the total complement of the force?

2 A. The total complement of the force today I think is 66.

3 MR. CHAIRMAN

4 How many?

5 MR. WHALLEY

6 66.

7 MR. MacDONALD

8 Q. And just generally when would those two black members
9 have joined the force?

10 A. One of them is fairly recent, I'd say four or five years, and the
11 other is a fairly senior constable, he's been there sixteen,
12 seventeen years, I would say.

13 Q. He's a constable, is he?

14 A. I think he's one of the senior constables today.

15 Q. Okay. Thank-you. Are there any Indians on the force?

16 A. No, and there never has been I don't think, although we did
17 appoint...at one stage there was, and it was during Chief
18 MacIntyre's term as Chief, at the request of the Indian Band
19 he appointed a member of the Band as a special constable and
20 cloaked him with authority, and he was policing the...or doing
21 some police work at the...at Membertou. It didn't work out
22 and at their request he was taken off the job and his
23 appointment was canceled.

24 Q. As city solicitor would you have had knowledge of other
25 municipal work forces, for example the fire department?

- 1 A. Oh, yes, uh-hum.
- 2 Q. In '71 would there be black members of the fire department?
- 3 A. I don't think. There may have been now, I'm not...
- 4 Q. Are there today?
- 5 A. And I'm not sure of that. I'm not...I can't tell you.
- 6 Q. And what about natives?
- 7 A. I don't believe, but there may be. I'm not sure.
- 8 Q. Thank-you. Is there an Indian section of Sydney, and by that
- 9 I mean native Indian?
- 10 A. Yes, there is. There is...within the boundaries of the city there
- 11 is an Indian reservation called Membertou.
- 12 Q. Now, you've told us of the agreement respecting, did you say
- 13 provision of services?
- 14 A. Municipal services.
- 15 Q. Does an agreement continue today?
- 16 A. Yes.
- 17 Q. And that's been since 1969.
- 18 A. It's been since 1969.
- 19 Q. What services are provided?
- 20 A. Well, just prior to 1969 the first thing that was negotiated
- 21 was there was an agreement about 1964 or 5, I'm not sure of
- 22 the date, prior to that date the Indians had their own school
- 23 at Membertou, and I think those are the days when they felt
- 24 integration was more in line and so they made an agreement
- 25 with the school board of the city to educate the Indian

1 children from the reservation in the ordinary school system
2 at the city.

3 Q. Now, would that again be an agreement with the Federal
4 Government and the municipality?

5 A. That was with the Federal Government, the Band and the City
6 of Sydney.

7 Q. Okay.

8 A. And that's still in effect today. They still go to the city
9 schools.

10 Q. What about provision of services...

11 A. And in 1969 we, after negotiations with the Band council, we
12 entered into an agreement for the provision of police services,
13 fire services, sewer, water, snow removal, street lighting,
14 street maintenance.

15 Q. And does that continue today?

16 A. That continues today and at the present time there is
17 negotiations, the Band council wants to get in to do their own
18 snow removal and garbage collection because they figure they
19 can contract this out to members of the Band and have some
20 in-house jobs, and this is in the stage of negotiations right
21 now. In fact there's a meeting next week to renegotiate the
22 terms for the garbage and snow removal.

23 Q. To change the terms of those agreements do you require the
24 approval of the Federal Government too?

25 A. Yes, uh-hum. Our agreement is with the Federal Government

1 basically and the other two parties are signatories to it. The
2 Federal Government pays the money.

3 Q. You've also been involved over the years as city solicitor, I
4 understand, in the negotiation of the collective agreements
5 with the police.

6 A. With all city employees, yes, including the police.

7 Q. Yes. We've heard evidence that in '71 and prior to that that
8 promotion within the force was based strictly on seniority,
9 can you comment on that?

10 A. That is correct. And once or twice we tried to break that and
11 did make appointments which were challenged and lost them
12 in arbitration and had to go with seniority.

13 Q. Is that still the case?

14 A. No. That was changed in the restructuring of the police force
15 in 1979, I believe it was, the first phase of the restructuring
16 and that was...

17 Q. Who was Chief at that time?

18 A. John MacIntyre was Chief when the first restructuring took
19 place, phase one.

20 Q. And whose initiative was it?

21 A. I would say basically John MacIntyre's initiative and with the
22 cooperation of the union at that time and with the Nova Scotia
23 Police Commission. They were of great assistance.

24 Q. What is the situation today with respect to promotion?

25 A. Today, under the restructuring, promotion is strictly on

1 the...it's really on a seniority with ability. Seniority has a part
2 to play on it, but only a small part. It's based on how you do
3 on your written tests, oral examination, performance,
4 evaluations, all these are given a criteria and the highest
5 marks gets the job.

6 Q. Were you aware of the approach by Jimmy MacNeil to the
7 Sydney police in November of 1971 just after the Marshall
8 conviction?

9 A. No, sir, I was not.

10 Q. When did you become aware of that?

11 A. It would be after Mr. Aronson's letter to Chief MacIntyre, that
12 was, I believe, in 1981, I'm not sure of the date.

13 Q. You had no involvement, I understand, in the Marshall case at
14 all until after Aronson's letter in 1982.

15 A. That is my first involvement to my knowledge, yes.

16 Q. Tell me about that then? How did that letter come to your
17 attention?

18 A. The chief brought it to my attention and asked me what he
19 thought I should do with it, and at that time he told me what
20 had happened in '71 with the MacNeil thing, and I said, "Well,
21 you turned it over to the Mounted Police in 1971 and my
22 advice is do the same thing again today, have nothing to do
23 with it, you're too close to it. Turn the matter over to the
24 Mounted Police" and I understand he took my advice and
25 that's what he did.

- 1 Q. What did you mean by that advice, turn it over to the...
- 2 A. To let them investigate the allegations that Mr. Aronson was
- 3 making that there had been miscarriage of justice in 1971
- 4 and the Chief told me at that time that the matter had been
- 5 previously investigated by the Mounted Police in '71 and I
- 6 think again in 1974 and '76 or something. The Mounted
- 7 Police had been in two or three different occasions.
- 8 Q. Did you give any thought to how the Chief would turn it over
- 9 to the R.C.M.P.? Would that involve turning over the entire
- 10 file or did you give any thought to that?
- 11 A. Not at that time, no, not at all. Just I assumed he would just
- 12 contact the local inspector of the Mounted Police and go up
- 13 and see him and give him the letter and turn it over to them,
- 14 and handle it.
- 15 Q. The evidence also is that the Chief contacted, not only the
- 16 R.C.M.P, but the local Crown Prosecutor, did you give him that
- 17 advice?
- 18 A. I don't know if I did or not, but that would...I would expect
- 19 him to do that, to see the Crown Prosecutor.
- 20 Q. Did you have any knowledge of Staff Sergeant Wheaton at
- 21 that time?
- 22 A. No, none at all.
- 23 Q. Were you aware of the details of the reinvestigation by the
- 24 R.C.M.P. as it was carried out?
- 25 A. No. The only thing we were getting was what was happening

1 was in the press.

2 Q. And by, you say "we", who are you referring to?

3 A. Well, I'm referring to the Chief and Sergeant Urquhart and
4 also the Police Commission was getting upset as to what was
5 going on. The press was giving our police department a
6 pretty hard time.

7 Q. Was it something that was discussed at the Commission?

8 A. Oh, yes, on more than one occasion.

9 Q. And upset in what way? You said they were upset.

10 A. Well, there was a lot of allegations being made in the press,
11 which, to be honest, we felt were very unfair.

12 Q. What specific alle...can you give me any specifics?

13 A. Oh, that the police had forced people to lie on the stand and
14 this sort of thing.

15 Q. Now, why did the Commission consider that to be unfair?

16 A. Because they had a lot of confidence in our...particularly
17 Sergeant MacIntyre and Sergeant Urquhart.

18 Q. Was there any discussion or suggestion that the Police
19 Commission would carry out its own investigation into those
20 allegations of pressure by the police?

21 A. No, the Police Commission was aware that the Mounted Police
22 were looking after the matter.

23 Q. So...

24 A. And they had confidence in that force as well.

25 Q. In the R.C.M.P..

1 A. Uh-hum.

2 Q. There was no discussion though, to your knowledge, about the
3 Commission carrying out its own investigation of the Sydney
4 Police force?

5 A. No, none whatever.

6 Q. Thank-you. I want to take you through some of the
7 comments and notes that were prepared by Frank Edwards
8 on an on-going basis. That's in Volume 17, Mr. Whalley, that
9 has been placed in front of you. And I refer you first of all to
10 page 3. And, down toward...just beyond the middle where it
11 notes, Tuesday, February 23rd, 1982. Do you see that
12 notation?

13 A. Yes, uh-hum.

14 Q. Mr. Edwards is saying he "Met at the office with Wheaton and
15 Carroll, they updated the investigation, now believe Marshall
16 to be innocent." Then at eleven o'clock. "Called Wheaton.
17 Suggested investigation not complete until Chief MacIntyre
18 questioned, though he should not be privy to conduct of
19 investigation until department has had opportunity to decide
20 upon it." Now, did Frank Edwards ever discuss with you his
21 view that there should be questioning of Chief MacIntyre?

22 A. Never.

23 Q. Are you able to tell us whether to your knowledge MacIntyre
24 has ever been questioned by the R.C.M.P.?

25 A. Not to my knowledge he hasn't.

1 Q. Is it something that you or MacIntyre in your presence asked
2 to be done?

3 A. No. We had a meeting later on with Staff Sergeant Wheaton
4 and Frank Edwards.

5 Q. Okay. I want you to go to page 5. On the top of that page Mr.
6 Edwards is recording what he had been told by Harry
7 Wheaton about a meeting between Chief MacIntyre, Inspector
8 Scott, wherein Chief MacIntyre is alleged to have dismissed
9 the whole thing out of hand, saying that ...and pinning his
10 argument primarily on the fact that both Patricia Harriss and
11 Gushue had been in the park and seen only one person. Did
12 the Chief ever discuss with you his...his theory of the case
13 during the time the R.C.M.P. investigation was going on?

14 A. I don't know about his theory. I knew the facts that had been
15 presented to the original trial and I guess that was the Chief's
16 theory that there was two eyewitnesses who said they had
17 seen the stabbing and that was presented to the jury in the
18 original trial.

19 Q. When were you first made aware that these two eyewitnesses
20 had recanted their story and said they had been forced to
21 give false evidence, approximately?

22 A. Well, sometime after Mr.. Aronson's letter and that would be
23 through the press, that's when I first got the...

24 Q. Did you have the occasion to discuss that with Chief
25 MacIntyre?

1 A. Oh, certainly, yes.

2 Q. And can you tell us what his reaction would be?

3 A. Well, his reaction was that, you know, as far as he was
4 concerned that the allegation was that he and Urquhart had
5 forced them to tell this story, and of course he maintained
6 that that was completely untrue.

7 Q. When did you first hear the name of Patricia Harriss?

8 A. Oh, it would be in, you know, about the same time after Mr.
9 Aronson's letter when we discussed the file about the
10 statements.

11 Q. In discussing the file with the Chief, would there have been a
12 procedure of going through the file, seeing what statements
13 were there, was the Chief telling you...

14 A. No. I think I read all of the statements, as a matter of fact.

15 Q. You read all the statements.

16 A. I think so.

17 Q. Before advising him to turn it over to the R.C.M.P..

18 A. Oh, no, this was just...that was only a brief conversation at
19 that time, and...

20 Q. But be...at least then while the R.C.M.P. investigation was
21 going on.

22 A. That's after that when things started to appear in the press
23 and very obviously there was something amiss, something
24 going on.

25 Q. In reviewing the statements are you able to tell the

1 Commissioners whether there were two statements from
2 Patricia Harriss in the file?

3 A. Yes, two statements, certainly.

4 Q. One of which was incomplete, at least not signed.

5 A. I don't recall it in that detail. I know there had been a
6 statement taken from her early in the evening and then
7 sometime during the evening the police were convinced she
8 hadn't told the truth and they got her back in and she gave a
9 second statement.

10 Q. Did you ever have any discussion with either Chief MacIntyre
11 or Inspector Urquhart about that evening and how the change
12 in story came about?

13 A. Yes, on many occasions, and now it's hard to say...to, you
14 know, to get things in context.

15 Q. But what were you advised and by whom were you advised,
16 what caused the change?

17 A. Well, as I understood it, Patricia Harriss had given a
18 statement early in the evening and that somewhere during
19 the course of the evening the police were convinced that that
20 statement was not correct, and they then got her back later
21 that same evening and took a second statement from her.

22 Q. Your impression then was that she was in early in the home,
23 went home and was brought back.

24 A. That was my impression, or certainly there was two
25 statements and there was quite a considerable period of time

1 between the taking of the two statements.

2 Q. On page 8 of Volume 17, Mr. Whalley, on the top of that page
3 where Mr. Edwards is referring to a call with Mr. Gale, but it's
4 his comment in brackets that I'm interested in, where Mr.
5 Edwards says:

6
7 It is now clear that MacIntyre has been less than
8 forthright throughout and I believe that from
9 the beginning he has set out to have the
investigation reach a pre-determined goal, at
best he has been manipulative.

10 Did Frank Edwards ever express those sentiments to you?

11 A. Never.

12 Q. And you've had the opportunity to meet with him, I guess, at
13 least on some occasions with respect to this investigation?

14 A. Just really on one occasion, and maybe, I'm not sure, about
15 taking the affidavits back on the second day or not. If so,
16 there was a very short meeting.

17 Q. Is that the sort of thing that the Police Commission would be
18 interested in knowing?

19 A. Very definitely.

20 Q. If the Police Commission had been advised that the
21 prosecutor considered the Chief of Police was misleading and
22 being manipulative, would they have, in your opinion, or
23 would you have advised them to conduct an investigation?
24
25

1 10:14 a.m.

2 A. I think they would have started some kind of investigation.
3 There's no doubt they'd be very upset.

4 Q. Now on page nine, again at the top of the page, the second
5 paragraph, there's reference to the attendance at Chief
6 MacIntyre's office by Wheaton and a Sgt. Herb Davies, at
7 which time the Chief is alleged to have attempted to hide
8 statements under his desk. Were you ever made aware of
9 that?

10 A. Never became aware of it until...

11 Q. When is the first time you were made aware of that
12 allegation?

13 A. Mr. Pugsley made me aware of it some time much later on.

14 Q. Mr. Pugsley in the capacity of solicitor/client?

15 A. Yes, in capacity of, he was acting at that time for John
16 MacIntyre, yes.

17 Q. No, I don't want to intrude on any solicitor/client privilege.

18 A. No.

19 Q. Some time...

20 A. Oh, it was long, it would be 1983, I think, or maybe even in
21 '84.

22 Q. It was during the course of the litigation between the C.B.C.
23 and Mr. MacIntyre?

24 A. Correct. That's right.

25 Q. Thank you. Again, is that something the Police Commission

1 would be interested in knowing?

2 A. Very definitely.

3 Q It was never brought to the attention of the Police
4 Commission to your knowledge.

5 A. No, it certainly was not.

6 Q On page ten, opposite the item Monday, April the 19th, Mr.
7 Edwards is referring to a telephone conversation with Mr.
8 Herschorn, who is with the Attorney General's Department.
9 "Told him there were new developments in Marshall. He
10 phoned me back with him and Gale on the conference phone."
11 Mr. Gale, you know Mr. Gale, don't you?

12 A. Yes.

13 Q
14 Briefed him thoroughly on above. Suggested
15 that investigation should now focus on the City
16 Police. Gale was going to speak with the
17 Attorney General re direction to City Police
18 under the Police Act to turn everything over to
19 the R.C.M.P.

20 Were you ever advised by either Mr. Edwards, Mr. Herschorn,
21 or Mr. Gale of the view that the investigation should now
22 focus on the City Police?

23 A. Never, by anyone.

24 Q Was the Sydney Police Commission ever advised of that?

25 A. Never.

Q You are aware that the Attorney General did direct a letter to
the Chief and also to the Mayor of Sydney, who is Chairman of

1 the Police Commission, directing that or requesting that all of
2 the files be turned over the R.C.M.P.

3 A. Yes, the Chief showed me that letter and he was very upset
4 with it. I think the Mayor showed me the letter as well,
5 because the Chief's attitude at that time was all he had to do
6 was ask for the file and he could have received it all. They
7 just had to ask for it. They had never asked before that time
8 for the file.

9 Q. Had you ever had an experience before where the Attorney
10 General intervened and asked that the police turn over a file
11 to the R.C.M.P.?

12 A. Never. And my advice to the chief then was to make a list of
13 everything that was in the file and when they requested it
14 from him, to have them sign for the file and sign his list and
15 then turn it all over to them, which he did, I think.

16 Q. Prior to that time, I take it you would have seen what was in
17 that file?

18 A. Oh, I've seen the file on a number of occasions, read the
19 statements.

20 Q. And I ask you again specifically, were there two statements
21 from Patricia Harriss in that file?

22 A. Very definitely, yes.

23 Q. Did you ever hear of the "O'Reilly girls"?

24 A. Yes.

25 Q. And, in particular, in connection with this case?

- 1 A. Yes, only in connection with this case.
- 2 Q. That's all I want to talk about. What did you hear about them
3 in connection with this case and when?
- 4 A. All I knew about an O'Reilly girl, and I don't know her first
5 name, but I think she was the girl who was supposed to have
6 told the police that she was giving a statement, and as I
7 understood it, during the statement she broke down and
8 started to cry and then said she hadn't been telling the truth
9 and they asked her why not and she told them that Donald
10 Marshall had told her to tell this if she was questioned by the
11 police what story to tell them. As I understand it, they said,
12 "Did you tell this to anybody else?" And she said, "Yes, I told
13 Patricia Harriss that if she was questioned by the police, she
14 was to tell them so-and-so" Just all about the men in the
15 Volkswagen and all that nonsense.
- 16 Q. Now who relayed that to you, Mr. Whalley?
- 17 A. I'm not sure whether it was Mr. MacIntyre, Mr. Urquhart or
18 both of them, or you know. But it certainly was one or the
19 other or both of them.
- 20 Q. Okay.
- 21 A. Probably both because we had gone through this a number of
22 times.
- 23 Q. Can you assist us as to the circumstances under which that
24 conversation would have come up?
- 25 A. I'm not sure. Probably as a result of questions I, you know,

1 asked about the Harriss statements, I would think. And I
2 think it was in connection with the Harriss statements, I'm
3 not sure of that. That's my recollection.

4 Q. Now I want to jump to that meeting that took place on July
5 the 22nd, I think it was, and that's found on page 12 of
6 Volume 17.

7 A. July the 12th.

8 Q. July the 12th, thank you. Tell us what you recall about that
9 meeting, why you were there, when you were there, who was
10 there?

11 A. Well, my recollection is that John MacIntyre and Billy
12 Urquhart had been asked to go to Mr. Edwards' office to
13 prepare or give some information about, that Frank was
14 preparing. Frank Edwards was preparing affidavits for
15 presentation for some kind of an application to the court.
16 And they requested that I accompany them to that meeting
17 because they wanted to be sure what the affidavits would
18 contain and they were very concerned that they wanted their
19 part of the story to be told. Nobody was going to bat for them
20 at this time. They were getting a very, very rough ride in the
21 media.

22 Q. At this time...

23 A. They really didn't know what was going on and they couldn't
24 find out what was going on. There were all kinds of
25 allegations in the press.

1 Q. Did you make any attempt to find out what was going on?

2 A. Not directly, no.

3 Q. Did you make it indirectly?

4 A. Yes.

5 Q. How did you do that?

6 A. Oh, I talked to certain people.

7 Q. Were you able to find anything out?

8 A. Not very much.

9 Q. What were you able to find out?

10 A. Well, I talked to Sheriff Magee and I satisfied myself as to
11 what he, he had been at the meeting in Louisbourg. I talked
12 to Mr. Gunn, who had been interviewed by Patricia Harriss.

13 Q. He had seen Patricia Harriss.

14 A. He had seen Patricia Harriss.

15 Q. As a solicitor.

16 A. As a solicitor.

17 Q. Yes, and anyone else that you can recall speaking to?

18 A. Not specifically, I don't remember, no.

19 Q. You said that Magee satisfied you that he had been at the
20 meeting in Louisbourg?

21 A. Yes.

22 Q. Tell us about your conversation with him. How you met him
23 and what occurred?

24 A. He had an office in the courthouse and I went down to see
25 him because he had been at the, in fact, Sgt. MacIntyre or

1 Chief MacIntyre had told me that it was Magee who set up
2 the meeting with Chant in Louisbourg. So I went to Sheriff
3 Magee, he was the sheriff then. At that time, he had been
4 Chief of Police, in '71, he had been Chief of Police in
5 Louisbourg. And I talked to him about the statement taken at
6 Louisbourg, who was present. And everything he told me
7 substantiated exactly what Chief MacIntyre and Sgt. Urquhart
8 had told me. Magee told me that it was the fairest statement
9 he had ever heard taken. That John MacIntyre was more like
10 a father confessor than a police officer. And I had asked him
11 if those people were all present and he told me they were all
12 present during the whole interview.

13 Q. Were you able to determine if Sheriff Magee had been
14 interviewed or talked to by the R.C.M.P.?

15 A. I'm not sure at that time whether he had or had not. My
16 recollection is that when I talked to him, he had not been, the
17 Mounted Police had not talked to him at that stage.

18 Q. And your conversation with A. O. Gunn, what was that about?

19 A. I had learned, and I'm not sure who, probably from Sgt.
20 MacIntyre, or Chief MacIntyre and Sgt. Urquhart that Patricia
21 Harriss had gone to see Mr. Gunn prior to the original trial. At
22 that time, I lived on Park Street and just lived one house from
23 Mr. Gunn. We were very close personal friends and I saw
24 him practically everyday. And I don't know when this
25 conversation took place but I did talk to him about that

1 interview and he recalled Miss Harriss and her mother going
2 to see him. He recalled that she had told him she had given
3 two conflicting statements to the police and he told me that
4 his advice to her was that if you tell the truth in court, you've
5 got nothing to worry about. He didn't recall any allegations
6 by Miss Harriss of any police attempts to have her say a
7 certain story or anything of that nature.

8 Q. Let's go back to the meeting on July 12th. You were asked to
9 go by Mr. MacIntyre and Mr. Urquhart to represent, to make
10 sure their story was getting...

11 A. Just to be with them and try to find out what was going on.

12 Q. Also present were Frank Edwards and Harry Wheaton?

13 A. That's correct.

14 Q. Why was Staff Wheaton there?

15 A. Oh, I haven't... I knew he was going to be there because the
16 Chief had told me that Wheaton was going to be there. I
17 understand they were going to go through and they were
18 preparing affidavits. Mr. Edwards was going to prepare
19 affidavits for presentation to court for some kind of an
20 application he was making.

21 Q. Had you met Wheaton before?

22 A. I know who he was. I had never as far as I know, had never
23 even talked to the man before that.

24 Q. This was your first contact with him then?

25 A. Yes.

1 Q. How did the meeting progress? Tell us what was happening?
2 Who was doing what?

3 A. Well, basically that's, I think when we first went in, that Mr.
4 Edwards said the purpose of the meeting. He was going to
5 prepare some affidavits. He was making an application at
6 Chambers and he wanted to go over the statements of Harriss
7 and Chant and their conflicting testimony that they had given.
8 And that's what we did.

9 Q. Harriss, Chant, and Pratico as well.

10 A. And Pratico, as well, yes.

11 Q. Were the latest statements from these people that were
12 obtained from the R.C.M.P. available?

13 A. I don't think we saw those statements but we certainly talked
14 about the contents of what they were now saying.

15 Q. What time did the meeting start?

16 A. It was after lunch in the afternoon.

17 Q. How long did it last?

18 A. A couple of hours.

19 Q. How would you describe the mood?

20 A. It was, I don't know how to describe it, but we wanted some,
21 as the meeting progressed, I wanted some answers from Sgt.
22 Wheaton about certain things because I felt that he had a
23 predetermined opinion then and there as to what was what.

24 Q. What did you think his opinion was?

25 A. Well, he, you know, he was alleging then that the reason

1 that... He talked about Miss Harriss giving him a statement
2 that she had been pressured to give the second statement to
3 the police. And in connection with that, I asked him about if
4 he had taken a statement from Gushue, who I think had been
5 with Patricia Harriss that night. And he said he had taken a
6 statement from him. I asked him if he changed his story, and
7 he said, "No, he hadn't changed his story." And I said, "Well,
8 doesn't that substantiate what Patricia Harriss said at the
9 trial?" And his answer to that, he said, "Well, you can't rely
10 on Gushue. He's nothing but a drunk." Then when we got to
11 the Chant statements, he was saying about Chant, saying he
12 told the police what they wanted to hear and I asked him if
13 he, how about what Sheriff Magee said? First of all, he said
14 that John MacIntyre, that those people hadn't been present,
15 or I think there was some conversation about the names on
16 the back of that statement. That they were forged or
17 something and John said, "No, they weren't forged. That's my
18 writing. I just put those on the back of the statement to
19 indicate who were present when the statement was taken."
20 They were in his handwriting. And then there was
21 conversation about whether Mr. Burke had been present
22 during the whole interview, and both Urquhart and
23 MacIntyre said that he was. And Wheaton said that Burke
24 said he couldn't even remember being there at all, I think.
25 And that Mrs. Chant had not been present during the whole

1 interview and both Urquhart and MacIntyre disagreed with
2 that. And I asked him about Magee and I don't think at that
3 time he, and I don't know really whether he had previously
4 seen Magee to that or not, but I was concerned, I was
5 convinced that he didn't even want to hear what Magee was
6 saying about that meeting. That was my opinion of Sgt.
7 Wheaton. There had been an article in the paper a day or
8 two before that, or some time before that, that they had
9 found the murder weapon and we had quite a long discussion
10 about that and Mr. Wheaton told us that they were going to
11 present evidence to the court that they had found the murder
12 weapon. And he went through the evidence and he was
13 going to call in an expert from Ottawa. After he told us what
14 evidence he was going to present. I told him, in my opinion,
15 if he presented that evidence, he'd get laughed out of court.
16 But that, both MacIntyre and Urquhart were very concerned
17 that their stories should be told. They thought Magee should
18 be called as a witness. They thought they should be called as
19 a witness to refute these allegations that Chant, Harriss and
20 Pratico were now making against them.

21 Q. Was there any, as you recall, any pressure being applied by
22 you and the Chief to Frank Edwards to take a particular point
23 of view?

24 A. No, absolutely not.

25 Q. Staff Wheaton has testified again, and it's on page 7806 of the

1 transcript, that he at one stage left the room towards the end
2 of the afternoon session. And, by the way, he testified it was
3 both morning and afternoon.

4 A. He also said, I think, that Urquhart wasn't there.

5 Q. Well, just let me put this particular thing to you. He says:

6
7 A. I left toward the end of the afternoon session
8 to go to the washroom and when I came back,
9 Mr. Whalley and the Chief were standing over
10 Mr. Edwards and there was finger pointing
11 going on and so on. And that was right at the
12 end of the meeting.

13 Q. Standing over Mr. Edwards. Was Mr. Edwards
14 seated?

15 A. He was seated, yes.

16 Q. I see. Any shouting?

17 A. Voices were loud. I wouldn't say shouting,
18 but aggressive.

19 Any recollection of that occurring?

20 A. None whatever.

21 Q. Did it occur?

22 A. I certainly don't think so. If I was upset with anyone at that
23 meeting, it was with Staff Wheaton and not with Mr. Edwards.

24 Q. Do you recall, did you see the Chief standing over Edwards
25 who was sitting down shouting?

A. No, that's ridiculous.

1 Q Or being aggressive, I'm sorry.

2 A No, certainly not.

3 MR. CHAIRMAN

4 Mr. Whalley, was Mr. Gunn still alive at that time?

5 MR. WHALLEY

6 Yes.

7 MR. MACDONALD

8 Mr. Gunn is still alive, My Lord.

9 MR. CHAIRMAN

10 He's still alive, is he?

11 MR. MACDONALD

12 But he has suffered a stroke and he has Parkinson's disease
13 and would not be capable to give evidence.

14 MR. CHAIRMAN

15 That's right. I had forgotten that. Do you know if anyone
16 went to see Mr. Gunn at that time in 1982?

17 MR. WHALLEY

18 No, and I thought that Staff Wheaton should have gone to
19 see him as well.

20 MR. CHAIRMAN

21 Do you know whether anyone made Staff Wheaton aware of
22 the fact that Patricia Harriss and her mother had consulted Mr.
23 Gunn?

24 MR. WHALLEY

25 I can't swear to this, My Lord, but I believe I did at that

MR. WHALLEY, EXAM. BY MR. MACDONALD

1 meeting, but I can't swear to that. My recollection is that I did,
2 but I certainly knew about it.

MR. MACDONALD

3
4 There's certainly a reference, My Lord. I think it's in Justice
5 Denied to a discussion with Mr. Gunn. I believe, though, it was
6 with Michael Harris and Mr. Gunn. I don't know of any statement
7 from Mr. Gunn that was taken by the R.C.M.P. and I'm not aware
8 of any reference in notes of the R.C.M.P. to a visit with...

MR. CHAIRMAN

9
10 Nor am I, but I was curious as to whether or not Wheaton
11 had been made aware of the fact that Mr. Gunn in 1982 may have
12 some information that would have been relevant.

MR. MACDONALD

13
14 My recollection is that there is reference in one of the
15 Harriss statements, either Mrs. Harriss or Patricia, to that and
16 we'll find that for you and give it to you in a minute.

MR. CHAIRMAN

17
18 All right. Anyway, as far as Mr. Whalley is concerned, his
19 testimony is that he thinks he, but he's not sure, that he brought
20 that to Mr. Wheaton's attention. Is that what you're saying, Mr.
21 Whalley?

MR. WHALLEY

22
23 Yes, and there's no reference in Mr. Edwards' notes to that,
24 My Lord, either.

BY MR. MACDONALD

1 Q. What was the feeling as you left that meeting? Were you
2 going to get or were the police going to get their story across?

3 A. I believe as we left, both MacIntyre and Urquhart had asked
4 Mr. Edwards if they were going to have a chance to tell their
5 story and I think what he said is, "Don't worry. You'll be on
6 the hot seat." But I'm almost positive that was the remark.
7 They were both concerned that they wanted an opportunity
8 to be able to tell their story.

9 Q. Following that meeting, you did, I understand, yourself visit
10 the Attorney General's Department.

11 A. Yes, following that meeting with Mr. Edwards and Staff Sgt.
12 Wheaton, I had a meeting with the Mayor, City manager, and
13 I think Chief MacIntyre was present at that. And I'm not
14 sure who else was there. I think there was other people
15 there and we were upset at the time because we felt that our
16 police were not, nobody was looking after their interests and
17 I thought Staff Wheaton was definitely, you know, going on
18 attack to try and blame this whole thing on MacIntyre and
19 Urquhart, and to some extent, Donnie MacNeil. It was
20 decided then that we should report our feelings to the
21 Attorney General, and I was instructed to contact the
22 Attorney General and tell him our concerns, which I did.

23 Q. Now who did you contact?

24 A. As I recall, I tried to make an appointment with the Attorney
25 General, I believe he was either out of town or busy at the

1 time. Then I got put through to Mr. Coles and I told him I
2 wanted to talk to him about the Marshall case and I made an
3 appointment and I went to Halifax and I had a meeting with
4 Mr. Coles.

5 Q Just you and Mr. Coles?

6 A Just myself and Mr. Coles.

7 Q How long would that meeting have lasted?

8 A Most of a morning, an hour or two, an hour and a half, two
9 hours.

10 Q What do you recall about that meeting?

11 A I told Mr. Coles what had happened with the meeting with
12 Staff Sgt. Wheaton and Mr. Edwards and our feelings that the
13 police didn't know what was going on. Everything was being
14 reported in the press. They couldn't understand what was
15 happening. That we didn't think that, I didn't think at the
16 time that Mr. Edwards was going to present all the evidence
17 to the Appeal Court, or to the court. I thought they should be
18 in, certainly Wayne Magee's evidence, thought the police
19 should be given an opportunity to tell their side of the story
20 about these conflicting statements. And just generally made a
21 complaint as to the way we thought the investigation was
22 being conducted. That the whole story wasn't coming out.

23 Q What was the reception received from Mr. Coles?

24 A Oh, I had a very good reception.

25 Q Was he sympathetic to your view?

- 1 A. Well, he listened to me carefully.
- 2 Q. Did you have the understanding that he would do anything?
- 3 A. Well, I definitely had the understanding that he would make
4 some inquiries and see if there was any reason for our
5 concerns.
- 6 Q. During your visit with Mr. Coles, was he making any notes of
7 what you were saying?
- 8 A. I don't recall whether he was or wasn't.
- 9 Q. Did he seem to be familiar with the case?
- 10 A. Oh, he was quite familiar with the case. He knew what was
11 going on, yes.
- 12 Q. Did he invite you to look at the reports he had from the
13 R.C.M.P. at that time?
- 14 A. No.
- 15 Q. Did he tell you if he had any reports?
- 16 A. I don't recall that specifically whether he...
- 17 Q. Did he tell you that there was some suggestion by the R.C.M.P.
18 that there should, in fact, be an investigation of the Sydney
19 Police?
- 20 A. No, definitely not.
- 21 Q. Affidavits were prepared, I believe, by Frank Edwards.
- 22 A. Yes.
- 23 Q. As a result of what was said during the first meeting.
- 24 A. Yeah, that's correct.
- 25 Q. And were they given to Chief MacIntyre and Inspector

1 Urquhart and yourself to be reviewed?

2 A. Yes.

3 Q. Were they reviewed?

4 A. They were reviewed and some changes made in both
5 affidavits by Chief MacIntyre and Detective Urquhart.

6 Q. And, in your opinion, did Chief MacIntyre and Urquhart have
7 the full opportunity to make certain that those affidavits
8 were saying what they wanted to be said?

9 A. I would say so, yes.

10 Q. And are you confident that having sworn it, they were saying
11 that this is the truth of what's in those statements?

12 A. Yes.

13 Q. And it was their statements. It was nobody else's statements.

14 A. No, they had the opportunity and they read them and made
15 some corrections. The corrections, as I understand them,
16 were made. I didn't take their depositions on those
17 statements. They were sworn before someone else, but I
18 know they were made by Edwards and I was informed later
19 on that they had been signed.

20 Q. What did you understand was the use to which those
21 affidavits would be put?

22 A. I understand they were going to be presented to court in
23 making an application for some sort of an appeal under the
24 Criminal Code for, to have the matter reheard in the Appeal
25 Division.

1 Q. There's reference in a volume. Did I give you Volume 38
2 there?

3 A. Yes.

4 Q. On page 25 of Volume 38. I believe that's an extract from
5 the Cape Breton Post edition of August 28th, 1982. And it has
6 to deal with you. Can you tell us what that is dealing with?
7 Any assistance at all?

8 A. I haven't the faintest idea. In fact, I don't even recall ever
9 seeing that.

10 Q. Was there any attempt by you to stop the release of the
11 affidavits of MacIntyre and Urquhart?

12 A. None whatever.

13 Q. In fact, it would be your decision that you wanted those
14 affidavits before the court.

15 A. Absolutely.

16 Q. Let's go back then to Volume 17 at page 14, please. I'm
17 looking under Thursday, July the 22nd where it says that
18 "Whalley, MacIntyre, and Urquhart come to office with
19 affidavits I had previously drafted." I take it you don't take
20 any issue with that.

21 A. No, I have no independent recollection of that meeting but,
22 you know, I probably did attend it but I have no independent
23 recollection. I know I read the affidavits. I went over them
24 with both MacIntyre and Urquhart. They had some changes
25 they wanted made and I don't know if I communicated those

1 changes to Mr. Edwards. But from his notes, he said I did and
2 I have no argument with that at all.

3 Q And toward the bottom of that page, Mr. Whalley, it says, just
4 above that heading "John's Affidavit", it says: "Assured them
5 I would do everything possible to have their side of the story
6 presented."

7 A. That may be when I gave evidence a few minutes ago that he
8 said they would have their day in court. It may be at that
9 meeting that he said it and not at the, and not on the 12th.
10 I'm not sure of that. But I know he did say it and he gave me
11 the assurance that they would have their opportunity to tell
12 their story.

13 Q And by that, what did you understand? That they would
14 actually be called as witnesses in the Appeal Division
15 reference?

16 A. That's the understanding I had that they were going to be
17 used and given an opportunity to give evidence in court.

18 Q Thank you. Did you have any involvement with the case
19 then...Just a moment...You did have a discussion, I believe,
20 with Oscar Seale about this matter as well, did you?

21 A. Yes, I'm not sure when that took place but I did have a
22 conversation with Mr. Seale.

23 Q What was the nature of that discussion?

24 A. Oh, just a general nature of how he felt about the case and the
25 way he was, that he was upset with the press and...I'm not

1 sure...

2 Q. Mr. Seale was upset with the press as well?

3 A. I think it was just after Mr. Seale had been up to see the
4 Attorney General. I think that's about the time context when
5 I saw him.

6 Q. Now I think it was in July. Have I given you Volume 31?

7 A. No.

8 Q. Perhaps we don't need it. It was in July that the Notice of
9 Intended Action was served on the City, the action by
10 Aronson.

11 A. Nothing was ever served on the City, as far as I know.

12 Q. Notice of Action?

13 A. A Notice of Intended Action? Oh, I'm sorry, yes, okay. Yeah.

14 Q. It's...

15 A. I thought you meant the actual documents.

16 Q. No, the notice, yes.

17 A. Yeah.

18 Q. In fact, you acknowledged the Notice.

19 A. That's right.

20 Q. And advised that you were authorized to accept service of
21 any documents...

22 A. That's correct.

23 Q. That were issued. Now it's my understanding that no service
24 of documents, originating documents, was ever made on the
25 City, is that correct?

MR. WHALLEY, EXAM. BY MR. MACDONALD

1 A. That's correct.

2 Q. Are you aware that, in fact, the action was commenced?

3 A. Yes, I went to the courthouse and I had a copy of it that I got
4 from the courthouse.

5 Q. So you obtained a copy but...

6 A. That was in January of 1983, I believe, it was issued.

7 Q. But you were never...

8 A. Never served.

9 Q. Never served.

10 A. No.

11 MR. MACDONALD

12 My Lords, for your benefit and for the record, Staff Wheaton
13 testified on page 7612 that he was advised by Miss Harriss that
14 she and her mother went to a lawyer and that he did
15 subsequently contact A. O. Gunn.

16 BY MR. MACDONALD

17 Q. Were you present in the Appeal Division during the hearing
18 of the reference, Mr. Whalley?

19 A. Yes.

20 Q. Why were you there?

21 A. Just watching, I suppose.

22 Q. Were you instructed to go there by the City?

23 A. By the City, yes.

24

25

1 10:45 a.m. *

2 Q. Just to watch and report back.

3 A. Uh-hum.

4 Q. Did you have any discussions with Mr. Edwards prior to the
5 hearing?

6 A. No, no.

7 Q. Was it still your impression when you attended at that those
8 hearings that Chief MacIntyre and Urquhart would be given
9 the opportunity to be called and give evidence?

10 A. No, because before I went I knew that Chief MacIntyre had
11 been told by Mr. Edwards not to go to Halifax.

12 Q. Were you surprised by that?

13 A. Yes, quite frankly I was.

14 Q. On page 15 of Volume 17.

15 MR. CHAIRMAN

16 Before we leave that, Mr. Whalley, did Chief MacIntyre give
17 you any indication as to whether Mr. Edwards gave any reason to
18 him as to why he was not to go to Halifax during the hearing
19 before the Court of Appeal?

20 MR. WHALLEY

21 I don't recall that he did, My Lord, no, I don't recall that, but
22 I know that Mr. MacIntyre told me that Mr. Edwards told him that
23 he wasn't to go to Halifax.

24 MR. MacDONALD

25 Q. On page 15 of Volume 17 at the very bottom Mr. Edwards is

1 reporting on a conversation he had with Martin Herschorn,
2 and he says,

3 I also told him that I had conferred with Mike
4 Whalley during the noon adjournment on
5 December 2, 1982, at that time Whalley agreed
6 that there was not much point calling police
7 because he felt it was obvious that all the
witnesses were lying anyway.

8 Do you recall that conversation with Mr. Edwards?

9 A. I know I had a conversation at some during, I think, an
10 adjournment with Mr. Edwards but I don't think he asked my
11 advice about who he should call or who he shouldn't call, I
12 think I just asked how he thought the case was going or
13 something.

14 Q. Was it your view at the time that there would not have been
15 any point in calling the police, that is MacIntyre and
16 Urquhart?

17 A. Well, I knew they weren't going to be called because, you
18 know, they weren't there and the case was just about over at
19 that time.

20 Q. I know that, but...

21 A. I don't recall that conversation about it.

22 Q. But would it have been your view that there was no point in
23 calling them?

24 A. No, I certainly felt they should have been giving evidence
25 before the Appeal Court, as I did with Mr. Magee.

1 Q. And was it your view that all the witnesses you heard in the
2 Appeal Court were lying anyway?

3 A. That might be a fairer statement, yes.

4 Q. That would be a fairer statement.

5 A. That's right.

6 Q. And, was there any discussion with you between the time of
7 the evidence being called in the Appeal Division and the
8 argument as to what position should be taken by the Crown?

9 A. None whatever.

10 Q. Was there any attempt by you or through you to convince the
11 Crown to take any particular position?

12 A. Apart from my meeting with Mr. Coles, no.

13 Q. And that was some...the summer.

14 A. That was before. And I believe I had suggested to Mr. Coles
15 that we thought that the...there should be another prosecutor
16 appointed to act with Mr. Edwards who would look after the
17 interests of the city police members. I think I made that
18 suggestion to Mr. Coles and he wasn't buying that, I knew
19 that.

20 Q. Did you have the impression that Mr. Edwards was also of the
21 view that the Sydney Police had pressured Chant and Pratico
22 and Harriss to tell the untrue statements or stories?

23 A. He never came out and said that, but I had the distinct
24 impression that he was going along with Staff Sergeant
25 Wheaton's opinion of the Sydney Police.

1 Q. On page 16 of Volume 17, this is notes Mr. Edwards made
2 following a visit from Chief MacIntyre, and down at the
3 bottom of that page, the very bottom paragraph,

4
5 The Chief then began to rehash facts of case, and
6 tried to ascertain what my views now were at
7 this stage of the proceeding. Told me he would
8 go to his grave believing that Marshall had
9 inflicted the wound to his left arm himself.

10 Did Chief MacIntyre ever discuss that with you?

11 A. Yes.

12 Q. And did he express the same sort of views that Marshall...he'd
13 go to his grave believing that?

14 A. Well, he often expressed to me that it was a self-inflicted
15 wound and that he had talked to the doctor and had some
16 confirmation of that theory.

17 Q. Even after having heard the evidence of the recanting
18 statements from Chant, Pratico, Harriss and so on.

19 A. Well, I can't put it in which context when, you know, it may
20 have been before or it may have been after, but certainly he
21 mentioned it to me on more than one occasion, that's...

22 Q. Have you ever heard the Chief express a view contrary to
23 that?

24 A. Never.

25 Q. Was there any pressure that you're aware of asserted by the
province, I'm sorry, by the city for the police through the
Attorney General's Department that there should be an

MR. WHALLEY, EXAM. BY MR. MacDONALD

1 inquiry into this matter to clear the air?

2 A. The only, if you put it that way, is that when it was finally
3 announced there was going to be an inquiry, the city or the
4 Police Commission then instructed me to see if we could
5 obtain status, and their main concern at that time was to
6 make sure that we would have a voice in that hearing, to
7 make sure that everything came out.

8 Q. Could I put it a different way?

9 MR. CHAIRMAN

10 We missed, we missed it. Which hearing was this?

11 MR. WHALLEY

12 This one.

13 MR. CHAIRMAN

14 Oh, this hearing, I see.

15 MR. MacDONALD

16 Q. In fact, I understand that the Police Commission and the city
17 welcomed the inquiry to try and find out what happened
18 here.

19 A. Absolutely. That's really what they wanted.

20 Q. Was there any involvement at all by the city or you in the
21 compensation discussions between the Attorney General's
22 Department and counsel for Mr. Marshall?

23 A. None whatever as far as I'm aware.

24 Q. There's just one other point I want to deal with.

25 MR. CHAIRMAN

1 Were you made aware, Mr. Whalley, that the action against
2 the City et al. by Mr. Marshall had been discontinued?

3 MR. WHALLEY

4 I was told by the Mayor sometime later after the
5 compensation had been made that he was advised, and I forget
6 who he told me, he did tell me who had told him, that any actions
7 against the city or any members of the police force would be
8 discontinued.

9 MR. MacDONALD

10 Q. Earlier this morning when I was asking you about Sydney and
11 a redneck atmosphere or discrimination in 1971 or later, your
12 response was that there was no more discrimination in
13 Sydney than anywhere else. Do I take it from that that you
14 recognize that there is some degree of discrimination?

15 A. Oh, there always...I suppose there is some.

16 Q. And...

17 A. There's political discrimination, all kinds of discrimination.
18 There is discrimination, I don't...

19 Q. I'm talking racial.

20 A. I don't think there's any...I always thought Sydney was a
21 very, very undiscriminating community. There's a good
22 rapport between the citizens of Sydney. There's no...to say it
23 was a rednecked community I think is absolute nonsense.

24 Q. Did Wheaton ever discuss with you whether or not racism
25 played any role at all in the conviction of Donald Marshall, Jr.?

MR. WHALLEY, EXAM. BY MR. MacDONALD

1 A. Never mentioned it.

2 MR. MacDONALD

3 Thank-you, that's all I have.

4 MR. CHAIRMAN

5 There will be a short recess.

6 RECESS - 10:53 a.m.

7 INQUIRY RESUMES - 11:15 a.m.

8 MR. CHAIRMAN

9 Ms. Derrick.

10 MS. DERRICK

11 Thank-you, My Lord.

12 EXAMINATION BY MS. DERRICK

13 Q. Mr. Whalley, I know that nobody has asked you about this,
14 but I understand from your evidence that you have kept a
15 file concerning the Marshall matter since about 1982.

16 A. Yes.

17 Q. Is that correct? Can you indicate whether your clients, I
18 suppose that would be the City of Sydney, have any objection
19 to your producing that file for our inspection?

20 A. That file would have more to do with the civil action
21 than...but I have no objection to it, I'm sure they'd have no
22 objection to producing it.

23 Q. You don't have their instructions.

24 A. I don't have any instructions about that at all.

25 Q. Perhaps with the Commission's permission I could ask you to

1 advise the Commission counsel with their instructions so that
2 we could have production of that file. Thank-you. Mr.
3 Whalley, when Steve Aronson gave you notice of this
4 intended civil action, did you consider that you'd be acting for
5 Mr. MacIntyre or Mr. Urquhart with respect to the defence of
6 that action?

7 A. Yes.

8 Q. And, I'd just like to ask you this, whether this is an error or
9 whether it's accurate. We were provided on April 10th, 1987,
10 by the Commission with a list of applicants with standing and
11 amongst those listed, the parties with full standing, was Mr.
12 Urquhart, and under the list of counsel you were listed as
13 counsel. It says, "Counsel on behalf of William Urquhart,
14 M.G.Whalley, Q.C.." Was that an error or is that correct at that
15 time? In April of 1987 were you going to be acting for Mr.
16 Urquhart?

17 MR. MURRAY

18 What does this have to do with anything, My Lord?

19 MR. CHAIRMAN

20 So far nothing.

21 MR. MacDONALD

22 And I would state, My Lord, for Miss Derrick's benefit that
23 that was my error, that I had put that down and Mr. Whalley
24 brought it to my attention very quickly that he was not acting
25 for Mr. Urquhart.

1 MS. DERRICK

2 Thank-you, very much. That's simply the answer I wanted.

3 Q. How would you describe your relationship with Mr.
4 MacIntyre, Mr. Whalley?

5 A. I've known him for a great many years.

6 Q. Would you be close friends?

7 A. Not friends, well, I consider him to be a friend, but on a
8 professional basis.

9 Q. So, you've become closely associated on a professional basis,
10 is...

11 A. That's correct.

12 Q. ...that correct? And would that be the way you'd describe
13 your relationship with Mr. Urquhart as well?

14 A. Exactly.

15 Q. Is it accurate to say that in 1982 when this matter was being
16 reopened that you formulated the view that the police were
17 not at fault?

18 A. In 1982.

19 Q. Yes.

20 A. I suppose that is a fair assumption, yes.

21 Q. And would it be fair to say that is your view now today.

22 A. Yes, that's a fair statement, yes.

23 Q. In the course of your involvement with this matter since
24 1982 can you tell us what, if anything, you had access to? For
25 instance, did you ever see Sergeant Wheaton's R.C.M.P.

MR. WHALLEY, EXAM. BY MS. DERRICK

1 reports?

2 A. Never.

3 Q. Did you review Mr. Edwards' factum before the Court of
4 Appeal?

5 A. No.

6 Q. Did you see any of the memos that he wrote and provided to
7 the Attorney General's Department?

8 A. No.

9 Q. I take it at some point you did review the Court of Appeal
10 decision on the reference?

11 A. I have seen it, I read it, yes.

12 Q. You read it.

13 A. Yes.

14 Q. Were you ever provided, now for your assistance I'll just
15 point you to Volume 32 at page 239. Does the witness have
16 Volume 32?

17 COMMISSIONER EVANS

18 What is that page number, please?

19 MS. DERRICK

20 239.

21 Q. This was a memo prepared in the Attorney General's
22 Department, I believe in August of 1983, with respect to the
23 issue of municipal liability.

24 A. Uh-hum.

25 Q. And I just want to know whether you've ever seen that

1 memo before. Yes, it was August, 1983.

2 A. No, I've never seen this but...

3 Q. You've never seen that memo.

4 A. No.

5 Q. Did you ever discuss with members of the Attorney General's
6 Department the issue of the liability of the City of Sydney?

7 A. I may have. The City of Sydney, of course, is not liable for the
8 vicarious acts of its police officers.

9 Q. Was there ever any discussion with officials in the Attorney
10 General's Department as to their legal opinion with respect to
11 that matter? Have they ever given you the benefit of this
12 legal...

13 A. I've been to court on that matter, the case is Livingston v. The
14 City of Sydney.

15 Q. So, this was not any information that you got from the
16 Attorney General's Department.

17 A. No, no, this was a court action.

18 Q. And so until I just showed you that this morning you were
19 not even aware that a...

20 A. Not even...

21 Q. ...memo had been prepared.

22 A. No.

23 Q. Correct?

24 A. Never seen it before.

25 MR. CHAIRMAN

MR. WHALLEY, EXAM. BY MS. DERRICK

1 Are you saying that that question of law has been settled in
2 Nova Scotia by the...

MR. WHALLEY

4 By the Supreme Court of Canada, My Lord, yes.

MR. CHAIRMAN

6 The Supreme Court of Canada rather.

MR. WHALLEY

8 Yeah.

MR. CHAIRMAN

10 All right.

COMMISSIONER EVANS

12 When?

MR. WHALLEY

14 The Supreme Court of Canada decision, I think, was in 1954.
15 The most recent case in Nova Scotia was Livingston v. The City of
16 Sydney, that's about 1980 I would say.

MR. CHAIRMAN

18 That takes care of that.

MS. DERRICK

20 Q. Mr. Whalley, there's also a document and I can tell you where
21 it is, it's at Volume 32 at page 221, it again is a document, a
22 memo within the Attorney General's Department, from Mr.
23 Herschorn to then Attorney General How. I just want to ask
24 you whether something expressed in this memo would have
25 coincided with your own view. The concern is expressed in

1 this memo that a public inquiry with respect to the Marshall
2 matter ought not to serve as a forum for the assembling of
3 evidence in any civil suit initiated by Mr. Marshall. Would
4 that view have coincided with your own? Did you have
5 concerns that a public inquiry could have that effect?

6 A. No, I don't think. I was more concerned that the reverse
7 would happen, that a suit against the city and two police
8 officers might have the opposite effect.

9 Q. Or that there wouldn't be an airing of the issues, is that...

10 A. Uh-hum.

11 Q. ...what you're saying to us? Now, in...you've told us that in
12 1981 when Chief MacIntyre received Stephen Aronson's
13 letter, which was basically the beginning of this case being
14 reopened again, he brought it to you and I believe your
15 evidence was that he told you that the case had been looked
16 into by the R.C.M.P. on two previous occasions.

17 A. I think it was three previous occasions.

18 Q. And those occasions were in 1971.

19 A. '71.

20 Q. And in 197...

21 A. 1974 and I believe in 1976, now that's my recollection.

22 Q. That's your recollection of what Chief MacIntyre told you.

23 A. Of a conversation with Chief MacIntyre.

24 Q. Did you have the impression that the case had been looked
25 into quite thoroughly in the past?

1 A. I understood it had in 1971 been looked into quite
2 thoroughly, yes.

3 Q. And what about on the two subsequent occasions that Chief
4 MacIntyre mentioned to you?

5 A. Just that he wasn't sure what had happened, but he knew the
6 Mounted Police had been in and looking at the file again and
7 had apparently satisfied themselves with whatever they were
8 investigating at that time.

9 Q. And those are the details he gave you about what...

10 A. That's correct.

11 Q. ...had happened on those occasions.

12 A. That's correct.

13 Q. As this matter was being reopened did you have regular
14 discussions with Chief MacIntyre and Detective-Sergeant
15 Urquhart concerning it?

16 A. I wouldn't say regular, but quite frequent, yes.

17 Q. Can you give us any idea of how often? Would you talk to
18 them once a week, every day?

19 A. Well, as things...usually it would be as a result of something
20 that came up in through the media or in the newspaper.

21 Q. Do you recall him being upset?

22 A. Very upset, yes.

23 Q. And do you recall either or both of them expressing any
24 concerns about criminal charges being laid against them?

25 A. There was one allegation somewhere, I don't know whether it

1 was in the press or in the media somewhere that criminal
2 charges...

3 Q. And you recall discussing that with one or both of...

4 A. Yes, definitely.

5 Q. ...Chief MacIntyre or Detective-Sergeant Urquhart? Now, you,
6 as the case was being reinvestigated, learned about the
7 allegations of pressure and the allegations that Chief
8 MacIntyre had been manipulative and had been hiding
9 information. Why didn't you bring this to the Police
10 Commission and encourage them to investigate?

11 A. We knew it was being investigated by the Mounted Police at
12 that time.

13 Q. So, you were satisfied to leave it...

14 A. Absolutely.

15 Q. ...like that.

16 A. The Police Commission was very concerned, and they knew it
17 was being investigated by the Mounted Police and they were
18 satisfied that they would do a thorough investigation.

19 Q. And it was your feeling that there didn't need to be any other
20 investigation into the Sydney Police Department at the same
21 time?

22 A. Not an in-house investigation, no.

23 Q. Now would it be fair to say that there is no doubt in your
24 mind that Chief MacIntyre and Sergeant Urquhart were and
25 are honest and capable police officers? Is that...

1 A. No doubt whatsoever.

2 Q. ...correct? And, is it also fair to say that you were very
3 sympathetic toward them with respect to what was
4 happening as the case was being reinvestigated?

5 A. Yes, I felt they were getting a very rough time in the media
6 and had no opportunity to defend themselves.

7 Q. And I think you said that at this time no one was going to bat
8 for them, is that correct?

9 A. That's correct.

10 Q. So, therefore, was it on your initiative that you went to see
11 Chief Magee in Louisbourg?

12 A. No, I did this on my own. I was...Chief Magee had been
13 mentioned. I wanted to get his version of what happened in
14 Louisbourg.

15 Q. So, you just did this as...

16 A. I...

17 Q. ...basically a friendly and supportive gesture towards Chief
18 MacIntyre and...

19 A. It was more than friendly and supportive. I felt it was my
20 duty as solicitor to the Police Commission to find out as much
21 as I could about the case.

22 Q. So, in essence, it was almost like conducting a mini
23 investigation of your own, was it?

24 A. Well, I was checking out facts that I was told by the Chief and
25 Sergeant MacIntyre, Sergeant Urquhart.

1 Q. And when you met with Chief Magee I would...would it be fair
2 to say that you discussed the allegations that had been
3 surfacing with him at that time?

4 A. No, I just...I asked Chief Magee if he remembered the taking
5 of the Chant statement in Louisbourg.

6 Q. So, there was no discussion about what had been appearing in
7 the press of the witnesses saying that they had lied or
8 alleging that there had been police pressure?

9 A. There probably was as far as Chant is concerned, yes.

10 Q. Do you recollect his attitudes toward...attitude toward this?
11 Was he in agreement with you that Chief MacIntyre and
12 Sergeant Urquhart were receiving a rough ride in the press?

13 A. Oh, I don't know if we talked about that, but he was in
14 agreement that what Chief MacIntyre and Urquhart had told
15 me was correct, that there was no pressure used to obtain the
16 statement in Louisbourg from Mr. Chant.

17 Q. So, you don't recollect any discussion where the two of you
18 expressed sympathy or concern for what Chief MacIntyre and
19 Detective Urquhart were going...were experiencing?

20 A. I don't recall it.

21 Q. You don't recall that.

22 A. No.

23 Q. Now, my friend Mr. MacDonald has pointed you to some
24 notes...

25 MR. CHAIRMAN

MR. WHALLEY, EXAM. BY MS. DERRICK

1 Before we leave, I understood you to say earlier, Mr.
2 Whalley, that at the time you met with Mr. Magee he was no
3 longer Chief Magee.

4 MR. WHALLEY

5 No, he was Sheriff of the County at that time.

6 MR. CHAIRMAN

7 And had an office down the corridor from you or were in
8 the same building or...

9 MR. WHALLEY

10 No, in the same building, in the courthouse.

11 MR. CHAIRMAN

12 Right.

13 MR. WHALLEY

14 The same...

15 MR. CHAIRMAN

16 There had been some suggestion that he had gone to
17 Louisbourg.

18 MS. DERRICK

19 Right, that's my error.

20 MR. CHAIRMAN

21 Yes.

22 MS. DERRICK

23 I'm sorry, My Lord.

24 Q. Mr. Whalley, my friend Mr. MacDonald pointed you to some
25 notes kept by Frank Edwards, and I don't think you'll need to

1 refer to them but they are for your information in Volume 17
2 at page 12, and I'm referring to the July 12th, 1982, meeting.

3 A. Uh-hum.

4 Q. At which Staff Sergeant Wheaton was present.

5 A. Correct.

6 Q. Is it accurate to say that at this time, in July of 1982, that you
7 knew it was Staff Sergeant Wheaton's opinion that Mr.
8 Marshall was innocent?

9 A. Yeah, I think that would be a fair statement that he felt he
10 was innocent, yeah.

11 Q. What was your view at this time?

12 A. If you're asking me an opinion, I had formed an opinion.

13 Q. And what was your opinion?

14 A. I preferred to accept the testimony or the evidence that or
15 the statements that I was receiving from the Chief and
16 Sergeant Urquhart and Sheriff Magee and Mr. Gunn.

17 Q. So, you accepted the evidence as it had been given at the
18 original trial. Is that correct?

19 A. Yes, that's a fair statement.

20 Q. And is that a fair reflection of your view today as well?

21 A. I think you could say that, yes.

22 Q. Is it fair to say that you were upset with Staff Sergeant
23 Wheaton because he was...he accepted the allegations that
24 there had been police pressure?

25 A. No, I was upset with him, I think, because he just sluffed off

1 what anybody else said other than the people who had
2 recanted on their original stories. I had the distinct
3 impression he didn't want to hear what Mr. Magee said.

4 Q. What you felt was the right view?

5 A. Well, I felt it was an important view and that he should make
6 up his mind, and at that stage I wasn't sure whether he had
7 even seen Mr. Magee. In fact, I thought at that time that he
8 hadn't taken a statement from Mr. Magee.

9 Q. And you understood by this time that Chief MacIntyre and
10 Detective-Sergeant Urquhart wanted to be called as
11 witnesses at the reference.

12 A. Yes.

13 Q. In order to refute these allegations.

14 A. Yes.

15 Q. And that Mr. Magee should be called, as well, and you were
16 very much in support of this as a strategy, is that correct?

17 A. Yes, I think you could say that.

18 Q. Now, I'm looking at page 14 of that same volume now, Mr.
19 Edwards' notes and it would appear, I'm at the third
20 paragraph down, it would appear that in a call with
21 Gordon...in a call with Gordon Coles, Mr. Edwards was advised
22 that all affidavits would be reviewed by Mike Whalley and
23 that Mr. Edwards would make any changes they wished,
24 meaning MacIntyre, Urquhart and Magee, I take it.

25 A. No, I had nothing to do with Magee's affidavit.

- 1 Q. That was the question I was going to ask you. Did you review
2 Mr. Magee's affidavit with him?
- 3 A. No, just MacIntyre and Urquhart.
- 4 Q. Were you aware that Mr. Coles was going to give this
5 directive to Mr. Edwards that you should review Mr.
6 MacIntyre and Mr. Urquhart's affidavits?
- 7 A. No, that had been agreed to at our meeting of July the 12th,
8 that he would prepare the affidavits and I would review
9 them.
- 10 Q. You didn't discuss this with Mr. Coles at any point, is that
11 what you're saying?
- 12 A. I may have. I don't recall that specifically, no.
- 13 Q. And you don't recall suggesting this to Mr. Coles that you
14 would occupy this...
- 15 A. Oh, no.
- 16 Q. ...function.
- 17 A. No.
- 18 Q. Now, you did review these affidavits of Mr. MacIntyre and
19 Urquhart, and in assisting with these affidavits I believe
20 we've had evidence that a paragraph was deleted from Mr.
21 MacIntyre and Mr. Urquhart's affidavits regarding John
22 Pratico. I can point you to...
- 23 A. Yes, I believe that's correct.
- 24 Q. That...
- 25 A. I know there was some changes, just what exactly they were,

1 I don't know, but there was some...there was some changes in
2 the affidavits originally prepared by Mr. Edwards.

3 Q. We've had Mr. Urquhart's evidence, this is Volume 52 at page
4 9,641, in which he is asked, "Do you remember Mr.
5 Edwards...do you remember asking Mr. Edwards to delete any
6 reference in your affidavit?" And Mr. Urquhart says, "Yes,
7 but I can't remember what it was at the time. But there was,
8 I forget what was in there, but I didn't think it was correct
9 and without any hesitation he deleted it." And the question,
10 this is from Mr. Orsborn, "Mr. Edwards suggests that this
11 relates to a lack of knowledge concerning John Pratico. If Mr.
12 Edwards testifies to that effect, is it your evidence that he
13 would be correct?" And the answer is...the question goes on,
14 "If he testifies along the lines of this note that you told him to
15 delete the paragraph about John Pratico's medical mental or
16 just lack of knowledge regarding John Pratico, if he testifies to
17 that effect." Mr. Urquhart says, "That would, I would say,
18 would be correct." Do you recall whether a paragraph was
19 deleted with respect to Mr. Urquhart and Mr. MacIntyre
20 having a lack of knowledge about Mr. Pratico's mental
21 condition in 1971?

22 A. I can't be that specific. I know there were changes made in
23 the affidavits originally prepared by Mr. Edwards, just exactly
24 what they were I do not recall. But they were deleted at the
25 request of MacIntyre and Urquhart.

MR. WHALLEY, EXAM. BY MS. DERRICK

- 1 Q Do you recollect having any discussions with Mr. MacIntyre
2 and Mr. Urquhart where they indicated to you that they may
3 have had or that they did have some knowledge of Mr.
4 Pratico's mental condition in 1971?
- 5 A. No, I don't think. I can't recall it.
- 6 Q. You can't recall. Now, Mr. Edwards' notes also indicate that he
7 had a discussion with Gordon Coles which he describes as Mr.
8 Coles saying he was getting feedback from a source he
9 wouldn't identify regarding lack of impartiality by the Crown.
10 "Said he wouldn't want us to pre-judge the situation." This is
11 on page 14. Mr. Edwards goes on to say, "It became evident
12 in our conversation that complaint had come from Mike
13 Whalley." Now, Mr. Whalley, would it be fair to say that you
14 were not happy with Mr. Edwards' stated intention to
15 advocate to the Court of Appeal that Mr. Marshall should be
16 acquitted?
- 17 A. That's not what I was referring to at all. I didn't know what
18 he was going to advocate. He never told me that.
- 19 Q. I see.
- 20 A. But I was unhappy with the fact that I didn't think he was
21 going to present all the evidence before the Court.
- 22 Q. And all the evidence including the evidence from the police
23 officers.
- 24 A. From the police and from Magee and from Mr. Gunn and
25 others.

MR. WHALLEY, EXAM. BY MS. DERRICK

- 1 Q. And this was the complaint, the concern that you had
2 expressed to Mr. Coles at your meeting, is that correct?
- 3 A. That's correct.
- 4 Q. Did you get any feedback from Mr. Coles after having
5 expressed that concern? Did he get back in touch with you
6 and say, "Well, I've discussed this with Mr. Edwards and this
7 is what he..."
- 8 A. No, he did not.
- 9 Q. So, there was no follow-up then.
- 10 A. No, follow-up.
- 11 Q. To that meeting. How frequent was your contact with the
12 Attorney General's Department over this period of time,
13 either by phone or in person?
- 14 A. You mean in connection with this case or...
- 15 Q. Yes.
- 16 A. That's the only time I contacted the Attorney General's
17 Department.
- 18 Q. Did you support the view that the blame in this case should
19 be laid at Mr. Marshall's feet or did you have any discussions
20 with either Mr. Edwards or anybody in the Attorney General's
21 Department concerning that view?
- 22 A. None whatever.
- 23 Q. In your discussion with Mr. Coles, and may I just ask you this,
24 did you also meet with Mr. Gale?
- 25 A. No, just...

1 Q. Just with Mr. Coles.

2 A. Mr. Coles.

3 Q. In your discussion with Mr. Coles, did you take away from
4 that discussion that it was Mr. Coles' view as well that the
5 police had done nothing wrong?

6 A. I don't think I had any impression one way or the other. I
7 don't think he discussed the...I think he got my...he was well
8 aware of what my concerns were after the meeting.

9 Q. So, was there no discussion of the system not being at fault,
10 but Mr. Marshall being the person at fault.

11 A. None whatever, none whatever.

12 Q. I take it at that meeting there was no suggestion, however,
13 that Mr. Coles was in any way serious about inquiring into the
14 conduct of the police?

15 A. As far as I recall it wasn't even mentioned.

16 Q. Now, I believe Mr. MacDonald took you through this. Your
17 recollection of any discussion with Mr. Edwards at the time of
18 the reference, I believe you said you think you may have
19 talked with him at an adjournment.

20 A. Uh-hum.

21 Q. You say that you don't agree with Mr. Edwards' recollection
22 that you had felt there was not much point in calling the
23 police, is that correct?

24 A. Yeah. I don't really recall that. I, you know, I knew he
25 wasn't going to call the police, because I knew the police had

MR. WHALLEY, EXAM. BY MS. DERRICK

1 been told not to even attend the hearing.

2 Q. But is it your evidence now that that didn't accord with your
3 view. You still felt that it was desirable to call the police.

4 A. I would have preferred if the police had been called, yes,
5 certainly.

6 Q. So, when Mr. Edwards says in his notes, and this is on page
7 16, that this in a discussion he had with Mr. Herschorn, but
8 I'm...I'm just reading from the middle of the page, "Bottom
9 line was that the police had come through in best possible
10 light and calling them would not have improved their
11 position." Was that your view after sitting through the
12 reference?

13 A. Absolutely not.

14 Q. So, you were very concerned that by the police not having
15 been called, they were still subject to considerable criticism.

16 A. In the press they certainly were.

17 Q. Is that correct? Thank-you, Mr. Whalley, those are my
18 questions.

19 MR. CHAIRMAN

20 Mr. Murray.

21 EXAMINATION BY MR. MURRAY

22 Q. Mr. Whalley, my name is Donald Murray. In the absence of
23 Mr. Pugsley I am here asking questions on behalf of John
24 MacIntyre today, and there is just a very few areas I would
25 like to deal with with you. You discussed with Mr. MacDonald

1 the meeting that you attended with Harry Wheaton present.
2 Did you at any time attend a meeting with Mr. Wheaton that
3 lasted a whole day?

4 A. No, I did not.

5 Q. Were you advised at any time in May of 1982 that the
6 R.C.M.P. were going to be conducting interviews with the
7 Sydney City Police?

8 A. No. The only thing I knew about that, I knew that ...I was
9 informed by Chief MacIntyre that he had received a letter
10 from the Attorney General to turn over his file and that the
11 Mounted Police were going to pick it up on a certain date and
12 I advised him to make a list of the contents of the file and
13 turn it over at that time, and get the police to sign for it.

14 Q. Mr. MacDonald asked you about complaints about police
15 brutality being made to the Police Commission. I take it that
16 such complaints were made to the Commission over the
17 course of your time as city solicitor.

18 A. Yes, uh-hum, a number of them.

19 11:40 a.m.

20 Q. Without getting into names, can you indicate what the results
21 of those investigations were?

22 A. There's been various results from findings of innocence to
23 disciplinary action, loss of rank, dismissal, prosecution.

24 Q. You've also discussed with Mr. MacDonald the complaint
25 procedure to aldermen, the mayor, or the chief of police. Was

1 there any other method by which informal concerns could be
2 expressed and were those such views expressed from time to
3 time?

4 A. Oh, yes, you know, the members of the Police Commission
5 would hear things and bring them up at police meetings,
6 meetings of the Board. You know, it's a small City and
7 members of both the Police Commission, aldermen, the Mayor
8 are very readily available to the citizens of the City. That's
9 where most of them come from.

10 Q. Thinking particularly about concerns expressed by members
11 of the Membertou Reserve. Can you recall any specific
12 concerns expressed over the years by that community that
13 got before the Police Commission?

14 A. In relation to police brutality?

15 Q. In relation to police conduct of any sort?

16 A. No, over the years there's been requests for separate policing
17 for the Reserve. And, at one stage, I think it was about 1979,
18 we did try it out with...And that was under Chief MacIntyre
19 and we appointed a person from the Band on the
20 recommendation of the Band Council and swore him in as a
21 special constable. And that just didn't work out and at the
22 request of the Band, his appointment was cancelled within a
23 couple of months.

24 Q. Ms. Derrick raised with you your relationship with John
25 MacIntyre and William Urquhart. And I ask you in view of

1 your professional relationship, has that affected the evidence
2 you've given today in any way?

3 A. I hope not.

4 MR. MURRAY

5 I have no further questions, My Lords.
6

7 EXAMINATION BY MR. BARRETT
8

9 Q. Mr. Whalley, my name is David Barrett and I represent the
10 Estate of Donald C. MacNeil and I just have a few questions of
11 you. Mr. Whalley, there's been evidence before this
12 Commission that Mr. MacNeil had a reputation as a "district
13 attorney in the American style" and my understanding of the
14 suggestion is Mr. MacNeil had a reputation of directing police
15 or becoming directly involved in investigations. In your
16 experience, both as a solicitor for some 39 years in Sydney
17 and a member of the Police Commission, do you feel Mr.
18 MacNeil had this reputation?

19 A. I wouldn't feel that, no. He was a very competent lawyer and
20 he was a good prosecuting officer, in my opinion.

21 Q. Have you ever heard either of police officer or other lawyer
22 make this suggestion of Mr. MacNeil?

23 A. No, I have not.

24 Q. And if this was his reputation, do you feel, as a member of
25 the Police Commission, you would be aware of it?

MR. WHALLEY, EXAM. BY MR. BARRETT

1 A. More as a member of the Bar, I think I'd be aware of it.

2 Q. And the comment has also been made of Mr. MacNeil that he
3 was aggressive and liked to win and I'm wondering, do you
4 feel that Mr. Rosenblum shared a similar reputation?

5 A. Absolutely. They all liked to win.

6 Q. Just one further question, Mr. Whalley. If Mr. MacNeil was
7 aware in 1971 of the allegations made against Chief
8 MacIntyre or Detective Urquhart in 1982, what do you feel
9 his reaction would have been?

10 MR. CHAIRMAN

11 Could you say that again?

12 MR. BARRETT

13 Well, I'm just simply asking him, assuming that Mr. MacNeil
14 was aware in 1971 of the allegations made in '82 of police
15 pressure on witnesses by either Urquhart or MacIntyre, I'm
16 wondering if he could relate to the Commission what he feels his
17 reaction, Mr. MacNeil's reaction, may have been?

18 COMMISSIONER EVANS

19 What you're really asking him is at any time if MacNeil had
20 heard of the police were overstepping their bounds, would they
21 have made a report, is that what you want to know, to the Police
22 Commission?

23 MR. BARRETT

24 Well, I'm wondering what his reaction, MacNeil's reaction
25 might have been to those allegations if he was aware of them?

1 COMMISSIONER EVANS

2 How would he know?

3 MR. CHAIRMAN

4 That question has got... Anyway.

5 MR. BARRETT

6 Those will be all my questions then.

7
8 EXAMINATION BY MR. PINK

9
10 Q. Mr. Whalley, you made reference to a complaint against
11 Donald MacNeil some time in the early seventies and you
12 made reference to the Attorney General. Am I correct that
13 the Attorney General at the time was Richard Donohue, not
14 Harry How?

15 A. Yes, I'm sorry, I think it was Richard Donohue, that's right.

16 Q. You also indicated that disclosure in the early seventies, and I
17 didn't quite hear your evidence, but was it your evidence that
18 if you asked Mr. MacNeil for disclosure, that's when you got
19 it?

20 A. I think that was the practice then. It certainly was previous
21 to that, I know that because I, quite often, the only time you'd
22 find out about a statement was when it was presented in
23 court after your client had told you he had never gave a
24 statement to the police.

25 Q. And while you were practicing, it was a matter of requesting

1 and that's when you...

2 A. A matter of requesting. Nothing was volunteered.

3 Q. The meeting of July 12th at Mr. Edwards' office. You, Mr.

4 Urquhart, Mr. MacIntyre, Staff Sgt. Wheaton, and Mr. Edwards
5 were present.

6 A. That's correct.

7 Q. And from your testimony, I take it that Staff Wheaton was
8 very involved in the discussions as they proceeded through
9 the afternoon.

10 A. Oh, absolutely.

11 Q. He was asking questions of Mr. MacIntyre and Mr. Urquhart?

12 A. Yes.

13 Q. As was Mr. Edwards?

14 A. Yes, and answering questions asked of him by myself.

15 Q. And he was listening to the responses of Mr. MacIntyre and
16 Urquhart and engaging with them.

17 A. Absolutely.

18 Q. And there was no restriction on the role that he played in
19 that meeting on that day.

20 A. None whatever. It was a free give and take, in my opinion, in
21 that whole meeting we were trying to arrive at what Mr.
22 Edwards was going to put in his affidavits and we had to have
23 a complete discussion of everything that was...

24 Q. But my point is that Staff Wheaton participated in that free-
25 wheeling discussion.

1 A. Yes.

2 Q. Could you look at page 12 and 13, which are Mr. Edwards'
3 notes. That's in Volume 17. And particularly on page 13
4 which reflects the positions stated by Chief MacIntyre and
5 Mr. Urquhart.

6 A. Uh-huh.

7 Q. Does that note accurately reflect the position stated by Chief
8 MacIntyre and Mr. Urquhart on that day?

9 A. Is this in relation to which? Patricia Harriss or...

10 Q. Well, there's relation....there's reference to Patricia Harriss,
11 Mr. Chant, and Mr. Pratico.

12 A. I would think so.

13 Q. And the sum total of their evidence or the position they took
14 on that July 12th meeting was to deny the allegations made
15 by Chant, Pratico, and Harriss.

16 A. Absolutely.

17 Q. And Staff Wheaton was present throughout the time that that
18 denial was being asserted.

19 A. Yes.

20 Q. You indicated that the Police Commission in Sydney, can on its
21 own motion, commence an investigation into affairs that it's
22 aware of.

23 A. Yes, under the Police Act, I think they have that authority
24 and certainly they had it under the old, provisions of the old
25 City Charter.

1 Q. And so is the Chief a member of the Police Commission?

2 A. No, he is not.

3 Q. Does he attend any...

4 A. He attends the meetings of the Police Commission.

5 Q. And, in your experience, has the Chief ever been requested to
6 leave when matters were being discussed?

7 A. I can't recall that, you know.

8 Q. Was the Marshall case discussed in the Police Commission?

9 A. Yes.

10 Q. On many occasions?

11 A. Certainly on more than one. Short discussions, nothing very...
12 More they were wondering what was going on, concerned
13 about the newspaper reports.

14 Q. Are Minutes of Police Commission meetings kept?

15 A. Normally the only Minutes that are kept are motions.

16 Q. So none of the discussion regarding the Marshall case would
17 be reflected in minutes.

18 A. I wouldn't think. I think the only thing that's recorded is the
19 instruction to me to seek standing before this Commission.

20 Q. Was Chief MacIntyre present... Sorry, were the various
21 complaints, allegations of pressure that you were aware of
22 that were in the media, were they discussed at the Police
23 Commission?

24 A. Not in great detail but the allegations of police forcing the
25 statements from the accused, that was talked about, yes.

1 Q Yes, sir, because you indicated that there was concern on the
2 Police Commission...

3 A. Absolutely.

4 Q About the bad press.

5 A. Yeah, and they were being asked a lot of questions on the
6 street and none of them knew the answers and politicians
7 usually don't like that.

8 Q Was Chief MacIntyre present when this matter was
9 discussed?

10 A. No, Chief Walsh would be present, though.

11 Q That was under the new regime.

12 A. Under the new regime, yes.

13 Q So it was not discussed at the Police Commission while the
14 investigation was ongoing; namely, '82 and '83.

15 A. I don't recall it then, no. But there was discussions with
16 various members of the Commission, the Mayor, you know.

17 Q Did Chief MacIntyre ever assert before the Police Commission
18 that the allegations of pressure had no substance to them?

19 A. I don't ever believe it was discussed in that detail, no.

20 Q You indicated that you felt the R.C.M.P. were carrying out the
21 investigation, correct?

22 A. That's correct.

23 Q Did you believe that investigation would involve some
24 matters of the conduct of the Sydney Police in the 1971
25 investigation?

1 A. Absolutely.

2 Q Did you ever discuss that with Inspector Scott?

3 A. No.

4 Q Did you ever discuss that with Staff Wheaton?

5 A. No.

6 Q Did you ever discuss that with Sergeant... Or Corporal Carroll?

7 A. No.

8 Q Do I take it you discussed that with nobody in the R.C.M.P.?

9 A. No one in the R.C.M.P.

10 Q What was the source of your belief that the R.C.M.P. were
11 going to be investigating the Sydney Police Department's
12 conduct of the '71 investigation?

13 A. Probably.... I assumed that the Mounted Police would
14 investigate the complaints that were being alleged at that
15 time and would carry out a thorough and complete
16 investigation of the whole matter.

17 Q So the basis of your evidence is that of assumption...

18 A. That's right.

19 Q Rather than something someone told you.

20 A. Than fact, yeah, just assumption.

21 Q You spoke with Mr. Coles in July.

22 A. Uh-huh.

23 Q Is that the one and only time you spoke with Mr. Coles about
24 the Marshall matter? I guess there would be a telephone
25 conference and a meeting.

1 A. There was a telephone conference and then a meeting in
2 Halifax.

3 Q. Those are the only times you spoke with Mr. Coles about the
4 Marshall matter?

5 A. I think so, yes.

6 Q. You never spoke to Mr. Gale about the Marshall matter?

7 A. No.

8 Q. You never spoke to Mr. Herschorn about the Marshall matter.

9 A. No.

10 Q. And you never spoke to Attorney General How or Attorney
11 General Giffin about the Marshall matter?

12 A. No.

13 Q. The affidavits that Mr. Edwards prepared, did you understand
14 that an application was to be made to call new evidence?

15 A. Yes, that was...

16 Q. And that Mr. Edwards was going to apply to the Appeal
17 Division to tender the affidavits that he had prepared?

18 A. That is correct.

19 Q. And that it would be for the court to decide what affidavits
20 would be admitted and what evidence would be called?

21 A. Yes, basically.

22 Q. And you were aware that the court had decided that the
23 police would not be called as witnesses.

24 A. I wasn't aware of that.

25 Q. You were not aware?

11205 MR. WHALLEY, EXAM. BY MR. PINK

1 VOICE

2 With respect, I think the evidence...

3 MR. MACDONALD

4 I don't think that's what the court decided at all. The court
5 reserved decision.

6 MR. PINK

7 I'll rephrase the question.

8 BY MR. PINK

9 Q. You were aware that the court never allowed the calling of
10 the police as witnesses.

11 A. I wasn't aware of that, no.

12 VOICE

13 I don't think that's the case.

14 MR. CHAIRMAN

15 Put it the other way. Are you aware that the court never
16 disallowed the calling of the police?

17 MR. PINK

18 I won't pursue it any further, My Lord.

19 BY MR. PINK

20 Q. One final question, Mr. Whalley. You indicated that when you
21 spoke, I believe your evidence was that when you spoke with
22 Sheriff Magee, that he indicated that he set up the meeting in
23 Louisbourg with Mr. Chant and Mrs. Chant?

24 A. Yes.

25 Q. Did he tell you that?

MR. WHALLEY, EXAM. BY MR. PINK

1 A. He told me that. He told me that at the time he knew that
2 Maynard Chant was on probation and it just happened that
3 his probation officer was in Louisbourg that day, that was Mr.
4 Burke, so he had him attend the meeting. He knew these
5 people. He knew the parents quite well. He knew the young
6 boy quite well.

7 Q. And in saying that "he set it up", do you mean that he did it at
8 the request of Chief MacIntyre?

9 A. At the request of Chief MacIntyre and he said that when the
10 Chief arrived at his office, he was there, Mrs. Chant was there,
11 Maynard Chant was there, and Burke was there.

12 Q. So by saying that he set it up, MacIntyre requested it and he
13 just brought the people...

14 A. MacIntyre requested that he wanted a statement, take a
15 statement from Maynard Chant and I think he told me that
16 MacIntyre knew that Chant was a juvenile and he suggested
17 that he should have a parent with him. But Magee told me
18 that he knew that Maynard Chant was on probation and it
19 just happened that his probation officer was in Louisbourg
20 that particular day, so he had him, as well as Mrs. Chant,
21 attend at the statement taking.

MR. PINK

22 That's all I have. Thank you.
23
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EXAMINATION BY MR. PRINGLE

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Q. Mr. Whalley, my name is Al Pringle. I'm counsel for the R.C.M. Police. I have a few questions for you. Throughout 1982, February, March, and April, in your discussions with Chief MacIntyre, were you ever informed by the Chief that he had been in to see Inspector Scott on two occasions and had been briefed generally about the conduct of the R.C.M. Police reinvestigation?

A. I think I knew that, yes.

Q. And that the Chief had access to the new statements and, indeed, had read them?

A. I believe so, yes.

Q. And, indeed, had been asked if he had any suggestions on at least one occasion and the Chief had given some suggestions to Inspector Scott.

A. I know he had been talking with Inspector Scott on more than one occasion, yes.

Q. Did you yourself, sir, ever request an interview or a meeting with either Inspector Scott or Staff Sgt. Wheaton at any time throughout 1982?

A. I never did.

Q. Did you ever request at any time access to the R.C.M. Police reports?

A. Never.

MR. WHALLEY, EXAM. BY MR. PRINGLE

1 Q. Did you, sir, ever keep any notes at any of these events,
2 specifically the meeting of July 12th, 1982?

3 A. No, I did not.

4 Q. You've talked about interviewing, or meeting I should say,
5 with Mr. Wayne Magee. You referred to it as "checking out
6 the facts as part of your duty". Did you extend that same
7 duty to checking and interviewing or meeting with Mr.
8 Lawrence Burke?

9 A. No, I did not.

10 Q. Are you aware that Mr. Burke had given a statement in 1982
11 to Staff Sgt. Wheaton to the effect that he, Mr. Burke, was not
12 in attendance in Louisbourg on June 4th, 1971.

13 MR. MURRAY

14 That's not what the statement says, with respect.

15 MR. PRINGLE

16 Well, let's have a look at the statement. Volume 34, page 86.

17 BY MR. PRINGLE

18 Q. Do you have that in front of you, Mr. Whalley?

19 A. Volume 34?

20 Q. Yeah.

21 A. Page?

22 Q. 86. And it's a statement of Mr. Burke taken on the 21st of
23 April, 1982, and the fourth line down, the statement reads: "I
24 don't recall being present when Chant was interviewed by the
25 police." Were you aware of that?

1 A. I wasn't aware of this statement but I was aware, I think
2 through Sergeant Wheaton, that Burke had said that he wasn't
3 there all of the time.

4 Q. I see. But you did not...

5 A. Not that he wasn't there at all.

6 Q. But you did not go out and talk to Mr...

7 A. No.

8 Q. Burke as you did with Mr. Magee.

9 A. I did with Mr. Magee.

10 Q. Any particular reason for that?

11 A. No, I was satisfied as having talked to Mr. Magee and he
12 substantiated what MacIntyre and Urquhart told me.

13 Q. But if you had some doubt, at least someone saying that the
14 other person was not in attendance for at least part of the
15 time, why would you not see him?

16 A. I wasn't really investigating the thing. I was just satisfying
17 myself as to certain statements that were made.

18 Q. Thank you. With respect to Chief MacIntyre's telling you
19 about R.C.M. Police looking at the file or the matter in 1974
20 and 1976, did Chief MacIntyre at any time make any
21 reference to Gary Green, Constable Gary Green?

22 A. I'm trying to recall the names. I know Green's involv... name
23 but I don't know if it's in connection with this or not.

24 Q. What do you know Mr. Green's name with? You were going to
25 say I think you knew of some involvement or something?

11210 MR. WHALLEY, EXAM. BY MR. PRINGLE

1 A. I know with another case that happened at the City Police
2 Department.

3 Q. Do you have any knowledge about Constable Gary Green in
4 this matter?

5 A. Nothing definite comes to mind on that.

6 Q. Nothing at all?

7 A. No.

8 MR. PRINGLE

9 Thank you very much.

10 MR. CHAIRMAN

11 Mr. Ross?

12 MR. ROSS

13 Thank you, My Lord.

14 EXAMINATION BY MR. ROSS

15

16 Q. For the record, Mr. Whalley, my name is Anthony Ross. You
17 were on the Police Commission from when, sir? From what
18 year?

19 A. 1958 until the present time.

20 Q. I see, and you couldn't recall that you had a black police
21 officer back on the force back in 1971?

22 A. Oh, yes, I said there were police officers, black police officers.

23 Q. No, as a matter of fact...Well, okay, I'll accept that but, as I
24 recall, you indicated to Mr. MacDonald that you now know
25 that there were two, but back in 1971, that you didn't know if

1 there were any.

2 A. I couldn't swear in 1971.

3 Q. I see.

4 A. The senior black officer there now, I believe he's been there
5 about 17 years, I'm not sure of his seniority, but he's been
6 there a long while.

7 Q. And it was in 1979, I understand, that the basis for
8 promotion was changed from mere seniority to promotion
9 based on ability.

10 A. Yes, basically.

11 Q. And during the time, my recollection is that around the time
12 of the Seale stabbing, and the records will indicate, that a
13 police officer by the name of Crawford was asked to go down
14 to the park to, and he was involved in the picking, in
15 gathering evidence, any evidence that they might find. Does
16 that refresh your memory?

17 A. Yes.

18 Q. And if this man was in the police force in 1971, is there any
19 reason why until 1979 he remained a constable, if promotion
20 was just on seniority?

21 A. No, I would suggest there would be a lot of constables senior
22 to Mr. Crawford.

23 Q. I see.

24 A. This was part of the problem, a very small police depart...very
25 few officers, very little promotion. That's what we changed in

1 '79.

2 Q I see. Now you also indicated to Mr. MacDonald that as far as
3 you were concerned, Sydney... You never answered his
4 question specifically. He was asking about racism, and as I
5 recall your response, you said that Sydney was a very
6 undiscriminating society.

7 A. That is my opinion.

8 Q That is your opinion. And I take it that that opinion is based
9 on your experience living in the city.

10 A. Yes.

11 Q Would you go as far as to tell me that there is no differential
12 advantage along racial lines in Sydney?

13 A. No?

14 Q Differential advantage along racial lines.

15 A. Oh, I suppose there is, yeah.

16 Q Wouldn't you say that that is really the basis of racism?

17 A. No.

18 Q I see. Well, what then do you determine... Tell me what you
19 understand by the term "racism" then?

20 A. That the minorities are treated in a different fashion than the
21 other, rest of the community, and I don't think they are in
22 Sydney.

23 Q Oh, yes, I see. You went to high school in Sydney.

24 A. Yes.

25 Q Did you go to junior college in Sydney?

MR. WHALLEY, EXAM. BY MR. ROSS

1 A. No.

2 Q. Where did you go to college?

3 A. Mount Allison University, Kings University, and Dalhousie.

4 Q. As far as Sydney is concerned, when you were in high school,
5 were there many black students?

6 A. Yes.

7 Q. How many of them turned out to be lawyers, as you recall?

8 A. I don't think any of them did.

9 Q. How many of them turned out to be doctors?

10 A. I'm not sure.

11 Q. Do you know of any?

12 A. No, most of the people I went to high school with were killed
13 in the war, I'm sorry to say.

14 Q. Black people, too?

15 A. Yes, black people, too.

16 Q. I see. That's a nice way out of that one.

17 COMMISSIONER EVANS

18 What was that last comment?

19 MR. ROSS

20 It's a nice way out of that one.

21 MR. CHAIRMAN

22 It's a very truthful way out of that one.

23 MR. ROSS

24 Pardon me?

25

MR. WHALLEY, EXAM. BY MR. ROSS

1 MR. CHAIRMAN

2 And no one would know better than this witness, because
3 he's one of, as you know, one of Nova Scotia's outstanding war
4 heroes.

5 MR. ROSS

6 Absolutely. Absolutely.

7 MR. CHAIRMAN

8 So I don't think there was a nice way out.

9 BY MR. ROSS

10 Q. I'd like to ask you one or two questions with respect to the
11 reference now, Mr. Whalley. As City Solicitor.... Sorry, as far
12 as your practice is concerned, did you prosecute at one time?

13 A. I prosecuted all the offences in the City of Sydney under the
14 Liquor Control Act and the Motor Vehicle Act and all city by-
15 laws.

16 Q. And tell me, sir, did you get a look at the order referring the
17 review of the Marshall matter to the Appeal Division? Did
18 you ever look at the order, the reference order?

19 A. I probably did but I don't recall it, to be honest.

20 Q. Now my understanding is that the Appeal Court was to look at
21 the matter as though it was an appeal and receive new
22 evidence. Is that your recollection...

23 A. That's correct, that's my recollection on it.

24 Q. As a practicing lawyer, would you agree that the reference
25 turned out to be substantially more than what was in the

MR. WHALLEY, EXAM. BY MR. ROSS

1 order, more than just a review of the record and the calling of
2 the new evidence to address the terms of the conviction of
3 Marshall?

4 A. I don't quite follow what your question is.

5 Q. Perhaps I could rephrase it. As far as the reference is
6 concerned, would you agree that it appeared to require a
7 review of what happened in 19... of the record of what
8 happened in 1971, the necessary correcting of that record,
9 and an assessment of the finding of guilt?

10 A. I'm not sure I agree with that...

COMMISSIONER EVANS

12 Doesn't the order speak for itself? We don't need an
13 interpretation of the order, surely, if there is such an order.

MR. ROSS

15 My Lord, on that point...

COMMISSIONER EVANS

17 And I'm trying to find out what order are we talking about?
18 Was there an order? And if so, tell us where?

MR. MACDONALD

20 I assume my friend is talking about the reference from the
21 Minister of Justice to the Appeal Court.

COMMISSIONER EVANS

23 I'm not sure what he's talking about.

MR. MACDONALD

25 And what this witness thinks of it, and I don't mean to

MR. WHALLEY, EXAM. BY MR. ROSS

1 suggest his opinion may not be of interest, but I don't see that it
2 can be of any relevance, what he thinks of what the Appeal Court
3 of Nova Scotia was asked to do. All he did was have a watching
4 brief to go in and see what happened.

MR. WHALLEY

6 That's right.

MR. ROSS

8 You know, that's very correct, but I will go on also and
9 indicate that this witness has been giving substantial opinions on
10 many other matters. And if there is something of interest to me,
11 I'd like an opportunity to pursue it.

MR. MACDONALD

13 Well, that's not the test, My Lord, for admissibility, that it's
14 of interest to Mr. Ross. Whether it's of interest and relevance to
15 Your Lordships is the only question that's of interest here. We'll
16 be here forever if we're going to try and find answers to interests
17 of individual counsel.

MR. CHAIRMAN

19 The order speaks for itself, surely.

MR. ROSS

21 Thank you very much, sir, I recognize that.

MR. CHAIRMAN

23 So what is the.... I'm not really concerned about what Mr.
24 Whalley's opinion is of the order. The Minister of Justice under
25 the Criminal Code decided to make an order under 216(b) in

1 compliance with that Act, with that provision of the Code.

2 MR. ROSS

3 I recognize that, My Lord, and I will just change my line of
4 questioning to satisfy you.

5 BY MR. ROSS

6 Q. You indicated to Ms. Derrick that Mr. Coles, that you had a
7 meeting with Mr. Coles where you discussed the fact that all
8 evidence was not being presented by Mr. Edwards at the
9 reference. Am I correct?

10 A. Well, we were afraid that was the direction in which it was
11 going, yes, that's the basis of my complaint, I suppose, to Mr.
12 Coles.

13 Q. What other evidence were you of the view should have been
14 advanced to the, on the reference?

15 A. Well, we certainly thought the evidence of the police officers
16 should be there. It was...

17 Q. What about evidence about the background of Sandy Seale?
18 Was that considered by the City of Sydney at any time?

19 A. Not specifically, but...

20 Q. Was it considered in any way? You say "not specifically".

21 A. No, I don't think. I don't think we considered that as our
22 evidence, no.

23 Q. And being on the Police Commission for awhile, did you have
24 access to the 1971 R.C.M.P. Report?

25 A. No, I did not.

1 Q. When did you first become aware of the 1971 R.C.M.P.
2 Report?

3 A. That would be through Chief MacIntyre after the Aronson
4 letter.

5 Q. Was Sandy Seale, was his, he or his character discussed when
6 you were at these Police Commission meetings at any time?

7 A. Not at the Police Commission, no.

8 Q. Was it discussed by you?

9 A. Discussed with Chief MacIntyre and other members of the
10 Police Department, yes.

11 Q. What was the result of this discussion? What did you find?
12 What did you learn?

13 A. Well, I learned that he was considered to be a very fine
14 young man. I didn't know him personally. I knew his
15 parents.

16 Q. Just one final question. In your discussion with Oscar Seale
17 did he express concern that at the reference the reputation of
18 his son was being dragged through the mire, so to speak, and
19 that he was trying...trying to get Mr. Edwards to provide some
20 protection to the reputation of his son?

21 A. I know when I discussed it with Mr. Seale that was his main
22 concern was the reputation of his son, yes, he felt it was
23 being dragged through the mud.

24 Q. Did he indicate to you any discussions he would have had
25 with Frank Edwards?

MR. WHALLEY, EXAM. BY MR. ROSS

1 A. I don't recall that, no, I recall that he told me had been to see
2 the Attorney General.

3 Q. We've had evidence, and there is an exhibit, Exhibit 69, which
4 makes reference to the blockading of the Membertou reserve
5 back in 1971 because of possible reprisals from the black
6 community. Did you ever hear of such a blockading?

7 A. No, I did not.

8 Q. It is further suggested, I think, by Mr. Roy Gould, that this
9 was being done under the watchful eye of the Sydney Police.
10 Were you aware of such?

11 A. No, no, I was not.

12 Q. Would it be consistent with your knowledge of the black
13 community to expect reprisal as a result of what happened
14 with Sandy Seale?

15 A. Not of that nature, certainly not.

16 Q. Perhaps I'll just have a document entered.

COMMISSIONER EVANS

17
18 Mr. Ross, is the fellow referred to there the Judge MacDonald
19 who testified before this Commission?

MR. ROSS

20
21 Very...yes, yes.

COMMISSIONER EVANS

22
23 This was not brought to his attention at that time.

MR. ROSS

24
25 Only because I didn't have it at that time.

MR. WHALLEY, EXAM. BY MR. ROSS

1 COMMISSIONER EVANS

2 I beg your pardon?

3 MR. ROSS

4 Only because I did not have it at that time.

5 Q Mr. Whalley, ah...

6 MR. PINK

7 My Lord, we have some...I have some real concerns about
8 this. Again, it's a very strong allegation. It's now some twenty
9 years old, and the reference is there. I'm not quite sure what's
10 being referred to and what purpose my friend wishes to put to it,
11 use it. But again it's the same kind of problem we've been trying
12 to avoid, and I'm not sure where my friend is going to take this
13 and what use it's going to be as it relates to this witness or, to be
14 honest, with any witness.

15 MR. CHAIRMAN

16 Well, to this witness is what we're concerned with now, Mr.
17 Ross. Why would you expect this witness to be able to assist us
18 with respect to any comments made in a...alleged to have been
19 made, rather, and carried in a publication in 1968 called the The
20 Cape Breton Highlander?

21 MR. ROSS

22 With respect, My Lord, to the same extent that every other
23 publication that has been put before this Commission, and I want
24 to ask this witness, he was practising law in Cape Breton...

25

MR. WHALLEY, EXAM. BY MR. ROSS

1 MR. CHAIRMAN

2 Why don't you ask the witness if he's ever heard of any
3 remarks by any Provincial Court Judge in Sydney without naming
4 the judge? Here's a judge who was here giving evidence, and it's
5 totally unfair to be making allegations against people who have no
6 opportunity to defend themselves, and it's even more so when the
7 person involved had been testifying.

8 MR. ROSS

9 I make no allegation whatsoever. I've got an article from a
10 newspaper and I want to question this witness, to find out
11 whether, I just want to question this witness about the article and
12 his knowledge of it.

13 MR. CHAIRMAN

14 Well, let me put it the other way without admitting this in
15 evidence, you've had a look at this article, Mr. Whalley. Have you
16 ever heard of it?

17 MR. WHALLEY

18 Not to my knowledge. This is the first time I've ever heard
19 of it.

20 MR. CHAIRMAN

21 There you go.

22 MR. ROSS

23 Thank-you for the assistance, My Lord. You've solved my
24 problem. No more questions.

MR. WHALLEY, EXAM. BY MR. ROSS

1 MR. CHAIRMAN

2 Mr....that's not an exhibit, no.

3 MR. MacDONALD

4 Got it in the record.

5 MR. ROSS

6 Well, had the article been struck from the record?

7 MR. CHAIRMAN

8 No, the...it's not admitted as an exhibit. The answer is not
9 struck from the record.

10 MR. ROSS

11 But the document is not admitted.

12 MR. CHAIRMAN

13 That's right. Mr. Wildsmith.

14 EXAMINATION BY MR. WILDSMITH

15 Q. Mr. Whalley, my name is Bruce Wildsmith, I'm here on behalf
16 of the Union of Nova Scotia Indians. Just a couple of areas I
17 want to explore with you. The first one, you've given some
18 evidence about the servicing contract that the City of Sydney
19 has with the Membertou reserve.

20 A. Yes.

21 Q. And I think you said this already, but I wanted to make it
22 absolutely clear. Under that contract, all of the costs of the
23 services provided to the Membertou Reserve by the City are
24 paid for by the Federal Government.

25 A. That's correct.

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 Q And those services include policing.

2 A. Include policing, yes.

3 Q And so, the policing of that reserve is a hundred percent paid
4 for by the Federal Government.

5 A. By the Federal Government.

6 Q Okay.

7 MR. CHAIRMAN

8 Before we leave that, Mr. Wildsmith, are there any municipal
9 taxes imposed upon residents of Membertou?

10 MR. WHALLEY

11 No, there's no tax base at all.

12 MR. CHAIRMAN

13 I see. Thank-you.

14 MR. WILDSMITH

15 Q Just to pursue that point one step further, it's fair to think
16 that that agreement is advantageous to the City of Sydney.
17 Would you agree with that?

18 A. We'd rather have the taxation.

19 Q. Yes.

20 A. Be a far greater sum of money.

21 Q. To tax that land you mean.

22 A. To tax that land and all the residences there, yes.

23 Q. Yes. But by providing the services to that land, you're
24 reimbursed a hundred percent by the Federal Government.

25 A. Well, that's debatable, but we are reimbursed but we

1 wouldn't receive the same amount of money as if we had
2 taxation the way other residences in the City of Sydney are
3 taxed.

4 Q. Okay. But I guess what I'm trying to get at is that all of the
5 costs to the City of providing the services to the reserve are
6 supposed to be paid for under that agreement.

7 A. Supposed to be paid for by the Federal Government, that's
8 correct.

9 Q. Yeah. And that assists the City in having more staff, more
10 officers, say, on the police force, which assists in having a
11 more professional police force.

12 A. No, I wouldn't say that. It's just...that's the only advantage it
13 is to the City because we get extra money with the same work
14 force, police, fire. It wouldn't be any more or any less if
15 we...Membertou is not that large. It's only...

16 Q. So, you'd have the same police services regardless of whether
17 it covered the Membertou Reserve or not.

18 A. I would think so, yes.

19 Q. I see. So, in that sense it looks advantageous that you get
20 money for services that you might have otherwise provided
21 anyway.

22 A. We're not obligated to provide them, but...

23 Q. No.

24 A. ...I think we were providing them anyway.

25 Q. Okay. Well, I'll move on to something else. The Sydney Police

1 Commission, you've testified that there were no minutes or
2 records really kept of what transpired in front of the
3 Commission.

4 A. Oh, no, there's minutes of every meeting. I said...

5 Q. Oh, I'm sorry.

6 A. ...that the minutes are just kept, not of general discussions
7 that take place. Usually the minutes are just kept of if a
8 motion is passed and any discussion on that motion and what
9 happened to the motion, but a general discussion is not
10 necessarily minuted.

11 Q. But all...

12 A. Because you can't put everything down verbatim and they
13 felt it wasn't right for somebody to edit what people were
14 saying, so...

15 Q. All the topics that were discussed, would they be included in
16 those minutes?

17 A. Probably, yes.

18 Q. And those records would go back then for quite some years,
19 would they?

20 A. Go back right to 1907 I would think.

21 Q. And so those records are available for the time period around
22 1971.

23 A. Oh, yes, uh-hum.

24 Q. When the Commission engaged in its inquiries about
25 complaints, what sort of process would be followed?

1 A. Under the new procedure or the old procedure?

2 Q. No, around 1971, the old procedure.

3 A. 1971. Well, the Police Commission could investigate any
4 complaints laid before it and they had the same power as
5 a...as petite jury, could summons witnesses, issues summons.

6 Q. Yes, and would it conduct an inquiry in that way? Would it
7 summons witnesses to hear evidence?

8 A. Have done so, yes.

9 Q. And has done so.

10 A. Has done so.

11 Q. Okay. And would that be a matter of record, as well, would
12 you...

13 A. Yes.

14 Q. ...get a transcript?

15 A. Records, transcripts would be kept of those.

16 Q. Okay. now, you indicated various ways in which complaints
17 could come before the Police Commission. Can you advise
18 whether the police force itself was under any direction from
19 the Commission to funnel all complaints that it received into
20 the Commission?

21 A. No specific complaints, and there would be lots of complaints
22 that wouldn't reach the Police Commission. They would be
23 dealt with inhouse, I suppose, you know. Particularly if the
24 people who made the complaints were satisfied with what
25 action was taken, say, by the Chief of Police or his delegate.

1 Q. Yes.

2 A. That would be the end of it.

3 Q. Okay. So, I guess the point that I'm driving at is whether the
4 police were under any direction or obligation to necessarily
5 bring things to the attention of the Police Commission?

6 A. No.

7 Q. I take it...

8 A. Not all things, certainly not.

9 Q. Okay. So, there was a kind of self-filtering process that the
10 police might engage in.

11 A. Well, I think this was a matter for the Chief of Police to decide
12 those questions, I think.

13 Q. Okay. And...

14 A. If it was serious, it got to the Police Commission.

15 Q. If the Chief brought it to the Commission it would get there.

16 A. Yeah, or whatever. Most serious complaints were known to
17 the members of the Police Commission long before they were
18 officially brought.

19 Q. And about the nature of the complaints that were brought, I
20 think you used the expression about one of Mr. MacDonald's
21 questions, were they of a racial nature, and I think your
22 expression was "Not so much racial". My real question to you
23 is were there complaints of a racial nature that were
24 investigated by the Police Commission?

25 A. Not to my knowledge, there has never been a complaint of a

1 racial nature to the Police Commission.

2 Q. Okay. And that goes through this time period back in the
3 early nineteen hundreds?

4 A. Oh, I'm just talking about back through to 1958, that's all I
5 can talk about.

6 Q. Okay. From the time you were involved with the Commission.

7 A. The time I was involved in the Police Commission.

8 Q. Okay. Now, you also mentioned...you just stated a second ago
9 that many matters would be known to the members of the
10 Police Commission before a complaint was brought in front of
11 them.

12 A. Yeah.

13 Q. I'm wondering whether you felt there was an obligation on
14 the part of the Police Commission to investigate matters that
15 did come to their attention, whether there was a complaint
16 launched or not?

17 A. Oh, they would, certainly. Things happen in a small city and
18 people are aware of it, and they could be brought...it would be
19 brought up at the Commission meeting and discussed there
20 and if they felt it was worthy of investigation it would be
21 investigated.

22 Q. Would things that appeared in the press be a sufficient basis
23 for pursuing by the Police Commission?

24 A. Yes, and allegations made in the press, quite often the Chief
25 would be asked about those allegations and followed through

1 from there and report to the Commission.

2 Q. There were many such allegations contained in the press in
3 relation to the Marshall investigation.

4 A. Oh, very definitely.

5 Q. But you've...I think you've testified there were some
6 discussions within the Commission but no investigation.

7 A. No, because the Commission was advised that the matter was
8 under the investigation by the R.C.M.P. and they were
9 satisfied with that.

10 Q. And did the Commission ever do anything to obtain reports
11 that the R.C.M.P. might have filed?

12 A. No, they were waiting for the outcome of...they knew the
13 matter was going to Court and the outcome of that.

14 Q. Yes.

15 A. And they were fairly confident that there would be an
16 inquiry such as this somewhere down the line.

17 Q. Okay. Is it fair to say then that the Commission, Police
18 Commission, took the position that it should allow other
19 processes to investigate their own police department?

20 A. Well, they were already in progress and to let them take their
21 course. That was...

22 Q. Okay. So, even as of today it's not been a subject of inquiry
23 by...

24 A. No, definitely not.

25 Q. Now, you mentioned Mr. MacNeil, Donald C. MacNeil, in

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 relation to a few inquiries, and I think you testified that you
2 weren't aware of any complaints about Mr. MacNeil except
3 the one that concerned Eskasoni that went to the Human
4 Rights Commission.

5 A. That's the only one that comes to mind.

6 Q. We had a little bit of testimony about a complaint or dispute
7 concerning Mr. MacNeil that Nova Scotia Legal Aid had
8 concerning the conduct of a, I believe it was a murder trial at
9 Baddeck. Is that something you have any knowledge of?

10 A. Murder trial.

11 Q. I believe that was Belinda MacLean who testified to that
12 effect.

MR. CHAIRMAN

13
14 Does that come under your jurisdiction as well?

MR. WHALLEY

15
16 No, but...

MR. WILDSMITH

17
18 Well, I think he said he would know about this because he
19 was a member of the Bar.

MR. WHALLEY

20
21 I knew about it because of...I knew Donnie MacNeil very
22 well.

23 Q. Yeah. Do you recall the incident I'm speaking about?

24 A. Yeah, I do now, yes.

25 Q. Yes. Can you shed any light about the nature of that

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 problem?

2 A. I think it was more political than anything else. It was...I
3 don't know if I should say much more about it. I don't think
4 it was racial in that particular case.

5 Q. No, but it was some dispute about the way Mr. MacNeil had
6 conducted that case?

7 A. Um, yeah, I suggest that it was a political dispute and nothing
8 more than that.

9 Q. I don't know whether that's an answer to my question.

10 MR. CHAIRMAN

11 Well, it's...I believe we had evidence that at one time during
12 his career the late Donald MacNeil was a member of the
13 legislature.

14 MR. WHALLEY

15 Yes.

16 MR. CHAIRMAN

17 So, are you...

18 MR. WILDSMITH

19 Q. Is that what you meant by political?

20 A. Yes, it was political, and I mean political with a capital "P". It
21 was...

22 Q. You mean because...

23 A. Because of politics, Donald MacNeil was a very staunch
24 member of the conservative party and the person who was
25 objecting to this was a very staunch liberal.

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 Q. I see.

2 A. And I think that was the basis of the whole thing. In my
3 opinion it was anyway.

4 Q. Yeah. But I take it that...

5 MR. CHAIRMAN

6 I don't think we'd consider that very relevant.

7 MR. WILDSMITH

8 Q. Well, I just wanted to be sure whether it had anything to do
9 with the way that Mr. MacNeil conducted that murder trial.

10 A. I don't think it did, no.

11 Q. That wasn't the substance of what was alleged.

12 A. I can't remember the details of that specifically, but my own
13 recollection of this whole incident was that it was a political
14 matter and that's how it was treated in Sydney at the time.
15 That's certainly my recollection of it.

16 Q. I think what you're saying is that the reason it was done was
17 political, but surely the allegation, whatever it may have
18 been, must have been about substance.

19 A. I'm suggesting that in my opinion it wasn't. It was...

20 Q. Okay. Well, another area I wanted to explore with you is
21 comments brought out by Mr. MacDonald about Indians being
22 employed on the City of Sydney police force.

23 A. Uh-hum.

24 Q. And I take it your testimony was that no Indians were
25 employed on the police force.

1 A. No. We've made attempts to have some employed, we've
2 even offered to send some over to Maritime school to have
3 them trained.

4 Q. Yes.

5 A. Because we have a policy that we cannot hire anybody on the
6 police force unless they're a graduate of Maritime Police
7 Academy or equivalent experience.

8 Q. And can you tell me who you dealt with on that issue?

9 A. It would be the Band council.

10 Q. And can you name an individual?

11 A. I...there's been so many, I don't know. There's different
12 members of the Band council every time we meet.

13 Q. Do you recall interest expressed by one Dan Paul to
14 participate in that program?

15 A. I know there has been interest of people to participate and
16 tried and they weren't accepted into the school. I think that
17 was the...

18 Q. Weren't accepted in Holland College?

19 A. That's correct.

20 Q. I see. So, what you're saying is you were willing to hire them
21 if they got to Holland College and several members of the
22 Membertou Reserve applied to Holland College and weren't
23 accepted.

24 A. I don't know about several, but I know one or two did and...

25 Q. Okay.

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 A. And weren't accepted.

2 Q. And that was the...then the end of the issue.

3 A. Because we can't hire them unless they're graduates of the...

4 Q. We've had a lot of testimony that traditionally people seem to
5 just come out of high school or whatever and join the Sydney
6 Police force. You must be talking about recent times.

7 A. I'm talking in recent times.

8 Q. Yes, like when?

9 A. That would be since, oh, about, 19...the early seventies that
10 policy came into effect.

MR. CHAIRMAN

12 When did that program at Holland College start? It...was it
13 sometime in the seventies?

MR. WHALLEY

15 I believe, and before that we had a school here in Halifax
16 run by the Halifax Police Department and they used to accept, I
17 think, two members a year from other municipal police forces.
18 Because what you're saying is true, they were hired off the street
19 prior to that.

MR. WILDSMITH

21 Q. Yes, okay. And during that time period no Indians were hired
22 off the street?

23 A. No, I think at that time it was a question of how many...who
24 you knew on City Council as to how you got your job.

25 Q. Thank-you. And Mr. MacDonald also mentioned the fire

MR. WHALLEY, EXAM. BY MR. WILDSMITH

1 department and to your knowledge no Indians are on the fire
2 department.

3 A. I don't know of any specifically, no.

4 Q Okay. And you've practised law in Cape Breton for quite a
5 number of years, as you've testified. Has there ever been an
6 Indian who has been practising law on Cape Breton Island?

7 A. No.

8 Q And...

9 COMMISSIONER EVANS

10 Could that be the fault of the law school?

11 MR. WILDSMITH

12 Possibly so. Possibly so.

13 Q And I take it from that then there were no Indian Judges as
14 well.

15 A. No, I don't recall any.

16 Q You said your office is in the courthouse.

17 A. No, in City Hall.

18 Q City Hall. You're around the courthouse a lot.

19 A. Oh, yes, uh-hum.

20 Q Any Indians who are court personnel in any capacity around
21 the Courts?

22 A. I don't think so.

23 Q Of course, when I'm asking these questions I'm spanning the
24 time frame from 1958 when you joined to the present. What
25 about on city council?

1 A. No. There was one member of the Band who ran for city
2 council.

3 Q. Yes.

4 A. He was defeated, and he was defeated on the reserve, that's
5 where he didn't get the votes.

6 Q. I see. So, in any event, no Indians ever served on...

7 A. Never been elected.

8 Q. ...city council.

9 A. No. There's been one or two of them who have run. The
10 nomination, I think, only one ever actually ran in an election.

11 Q. Yes. And you said that the children from Membertou go to
12 schools in the City of Sydney.

13 A. That's correct.

14 Q. And are there any Indians who are teachers in those city
15 schools?

16 A. Oh, I wouldn't...

17 Q. Not to your knowledge.

18 A. I don't know. There could well be, I don't know.

19 Q. Yeah. None that you've ever run across.

20 A. No, I don't...no, I don't think so.

21 Q. Are those schools controlled by a school board?

22 A. Now a district school board.

23 Q. Are those elected positions?

24 A. Elected positions, yes.

25 Q. Any Indians serve on the school board then?

1 A. I don't think so, I don't...

2 Q. Okay.

3 A. Can't say specifically. Not to my knowledge.

4 Q. How many people are employed by the City of Sydney in
5 rough terms?

6 A. In all departments.

7 Q. Yes.

8 A. I would say approximately four hundred.

9 Q. And any idea of what the budget is for salaries for those four
10 hundred people?

11 A. I suppose three or four million dollars, and fringe benefits.

12 Q. Yes. Do you have a Department of Public Works?

13 A. Yes.

14 Q. Do you know of any Indians employed in the Department of
15 Public Works?

16 A. No, and I don't know if any of them ever applied, to be honest
17 with you.

18 Q. Yeah. What other departments do you have in the City of
19 Sydney?

20 A. Water Commission.

21 Q. Any Indians in the Water Commission?

22 A. Not to my knowledge.

23 Q. Yeah. What other departments?

24 A. Well, mainly police, fire, works and water commission, that's
25 the main ones, and city hall.

1 Q. And city hall. Any Indians employed in City Hall?

2 A. No Indians, no.

3 Q. I'm getting the distinct impression that there are no Indians
4 who are employed in the City of Sydney.

5 A. Not to my knowledge there's not.

6 Q. And that includes the time frame from 1958 to present.

7 A. '58 right to the present time.

8 Q. Do you have any idea what the unemployment rate is in the
9 Membertou Reserve?

10 A. I would imagine it's high, I don't have any knowledge of that,
11 no.

12 Q. Now, when you say there's no racism or discrimination in
13 Sydney, I take it what we've just been discussing you would
14 not regard as an example of that?

15 A. Not really, no.

16 Q. Could you explain that?

17 A. To my knowledge they haven't applied for jobs. I don't know
18 of any Indian that has applied and been qualified for a job
19 that's been refused a job if one was available for him.

20 Q. Ever heard of the concept of institutional discrimination?

21 A. In what regard?

22 Q. Have you heard of the concept of the institutional
23 discrimination?

24 A. Uh-hum. Yes, uh-hum.

25 Q. What do you take it to mean?

- 1 A. I really couldn't say. I know through...it's been discussed at
2 meetings with the Band council at which I've been present.
3 I'm not...I don't go to the affirmative action committee
4 meetings, but I know they have, they have a chairman of that
5 committee.
- 6 Q. Are there pamphlets or documentation that's been prepared
7 by the City?
- 8 A. I believe there has. That's quite an active committee.
- 9 Q. Yes.
- 10 A. It's under the direction of one of the alderman.
- 11 Q. I wonder if you would mind gathering together some of that
12 information and providing it to me through Commission
13 counsel. You're making a note of it. I guess the answer is,
14 yes, you wouldn't...
- 15 A. I wouldn't mind.
- 16 Q. Thank-you. Would you agree that members of minority race
17 may well have a different perspective on discrimination than
18 members of the majority race?
- 19 A. They may well have, yes.
- 20 Q. Yeah. And you're a member of the majority race in Sydney?
- 21 A. Yes, I guess I am.
- 22 Q. Would you agree that those on the receiving end of
23 discrimination may well see and note things that escape your
24 attention?
- 25 A. They may well, yes.

- 1 Q. Yes. And that these kinds of things can be very subtle?
- 2 A. Oh, yes, I agree with that.
- 3 Q. Indeed, they can often be explained away by justifications of
4 various sorts.
- 5 A. I assume they could be, yes.
- 6 Q. In fact, that's an often standard way of saying there is no
7 discrimination because we have reasons for what we've done.
- 8 A. Well.
- 9 Q. Yes.
- 10 A. I suppose so.
- 11 Q. Yeah.
- 12 A. If you wanted to go that route.
- 13 Q. Well, for example, I didn't give you the job because I thought
14 the other fellow would do a better job. Is that a good
15 example?
- 16 A. Well, I don't know if that's a particularly good example, but
17 sometimes you give a job to the more qualified person maybe.
- 18 Q. Yeah. If somebody says "My judgement is that the other
19 fellow could do the job better." It's very hard to attack that
20 kind of analysis, right?
- 21 A. Oh, I don't know if there's any justification for it or not, but...
- 22 Q. That's right. You don't know whether there's any justification,
23 but there could well be.
- 24 A. I don't know what you're trying to get me to say, but no, I
25 don't feel there's discrimination in Sydney. You may feel it.

MR. WHALLEY, EXAM. BY MR. WILD SMITH

1 Other people may feel it. I don't feel there is, to be quite
2 honest with you.

3 Q. Thank-you then, those are my questions.

4 MR. CHAIRMAN

5 Mr. MacDonald.

6 MR. MacDONALD

7 Nothing, My Lord.

8 MR. CHAIRMAN

9 That's all. Thank-you, Mr. Whalley.

10 MR. WHALLEY

11 Thank-you, My Lord.

12 LUNCH BREAK

